

INTERNAL OPERATING PROCEDURES OF
CLAYTON SUPERIOR COURT RECEIVED AND FILED

CLAYTON JUDICIAL CIRCUIT
6TH JUDICIAL DISTRICT

JAN 28 2011



CLERK SUPERIOR COURT
CLAYTON COUNTY, GEORGIA

The undersigned Judges hereby prescribe the following Internal Operating Procedures of Clayton Superior Court. They are designed to make more uniform the practices of both the bench and the bar of Clayton Superior Court. No individual judge shall issue orders or make rules in derogation of these procedures, nor in conflict herewith. Both court and counsel may rely upon these procedures, and members of the bar practicing in Clayton Superior Court are urged to familiarize themselves with them.

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PREAMBLE

It is the purpose and intent of these procedures of Clayton Superior Court to provide for the fair, efficient, and expeditious administration of justice in the Court. It is intended that, through the application of these procedures, there shall be a fair and equitable distribution of business among the judges of the court. To this end, the Chief Judge is empowered to supervise same, assist and give such directions as may be necessary to carry out these procedures. Notice of same shall be given to the other judges of Superior Court.

PROCEDURE 1 - DIVISIONS

There shall be as many divisions of the court as there are Superior Court Judges. All of the work of the Clayton Superior Court shall be divided fairly and equitably among the divisions thereof. The judge of each division of the court shall set individual calendars for his or her particular division of the court and shall maintain exclusive jurisdiction over all cases and matters assigned to such judge within the provisions of these procedures.

The assignment of divisions shall be as follows:

- Chief Judge Deborah C. Benefield will preside in Division Number Six, Courtroom Number 402.
 - Judge Matthew O. Simmons will preside in Division Number Eight, Courtroom Number 403.
 - Judge Albert B. Collier will preside in Division Number Five, Courtroom Number 404.
 - Judge Geronda V. Carter will preside in Division Number Nine, Courtroom Number 405,
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PROCEDURE 2 - SESSIONS

Sessions of the court shall begin at 8:00 A.M. each day of the week, except Saturday, Sunday, and County holidays, unless otherwise directed by the Chief Judge or by the judge presiding over the Division which is in session on such days. The Office of the Clerk of Superior Court shall be open whenever the court is in session.

The terms of the court in the Clayton Judicial Circuit shall be three months beginning on the first Monday in FEBRUARY, MAY, AUGUST, and NOVEMBER.

Calendars will be posted at the entrance of each courtroom indicating the business of the courts for the day, the place where said business will be conducted, and the name of the judge assigned for each hearing or trial that is scheduled.

PROCEDURE 3 - COURT ADMINISTRATOR

- a) The Superior Court in conjunction with the State Court may appoint a court administrator. The court administrator shall be qualified in the fields of court administration and shall serve at the pleasure of the courts. The court administrator shall be appointed by the Chief Judge of the Superior Court.
- b) The court administrator shall have such authority and responsibility as shall be determined by a majority of the judges of the courts.

PROCEDURE 4 - PRESIDING JUDGE

- a) The duties of Presiding Judge shall rotate monthly among the judges of the Superior Court.
- b) The Presiding Judge shall be responsible for any matters not assigned to another judge.

PROCEDURE 5 - APPOINTMENTS BY COURT

- a) All appointments in all matters of a general judicial nature that this court has the power to make shall be made by a majority of all judges of this court, except for the appointments of lawyers in cases. If a majority cannot agree, the Chief Judge shall decide the matter.
- b) The Chief Court Orderly Officer shall direct and supervise all bailiffs in the performance of their duties.
 - 1) No bailiff shall be assigned to any courtroom without the prior approval of the judge presiding therein.
 - 2) The Chief Court Orderly Officer shall provide for the selection, training, scheduling, outfitting, and employment of bailiffs ensuring sufficient numbers for the operation of all courts plus the Grand and Petit Juries.
 - 3) Bailiffs shall be administered oaths of office prior to entering upon their duties.

PROCEDURE 6 - ASSIGNMENT OF CASES

The Clerk shall assign to the Judges of Superior Court on an equal basis all actions of the following categories:

- **CIVIL**
 - 1) General Civil Cases
 - 2) Divorce or Domestic Cases
 - 3) Child Support Other Than Divorce (i.e. URESA and CSRU)
 - 4) Adoptions
 - 5) TRO/Habeas Corpus
- **CRIMINAL**
 - 1) Death Penalty Cases

- 2) Murder Cases in Which the Death Penalty is Not Sought
- 3) Other Criminal Cases

The assignment system shall be in accordance with Uniform Superior Court Rules 3.1 and 3.2.

In a criminal case, a defendant who was previously assigned to a Judge will be reassigned to that Judge for the disposition of any new charges.

PROCEDURE 7 - COURT REPORTERS

Court Reporters shall follow the Rules and Regulations set forth in the Georgia Certified Court Reporter's Handbook, with the following additional provisions:

a) Appointment of Court Reporters

Only official Court Reporters appointed by the Court, upon taking the prescribed oath, shall be permitted to function as reporters in this Court. Per diem or contract reporters, upon taking oath, may be permitted by the Presiding Judge of the Division wherein such reporter is requested to assume duties of a Reporter whenever an officially designated reporter is unavailable. Reporters assigned to the respective Court shall be subject to the supervision of that Court.

b) Termination of Employment

An official reporter who discontinues his or her employment relationship in any way shall cause all of his or her notes and records to be transmitted to the Clerk of Court for storage. The Clerk shall see that these records are appropriately placed and are available when needed.

c) Reporter's Acknowledgment of Transcript Order

- 1) Upon filing a motion for hearing wherein a filing of a transcript is required, said motion shall include the signature of the Court Reporter responsible for the production of such transcript, acknowledging that the transcript has been ordered and an indication as to the date by which the transcript will be filed.
- 2) Upon filing a motion extending the time to file a transcript pursuant to notice of appeal, said motions shall include the signature of the Court Reporter responsible for the production of the record, acknowledging the date the transcript was ordered, and indicating the date by which the transcript will be filed.
- 3) Upon investigation of counsel and the representation to the Court that the Court Reporter is unavailable to acknowledge the order of the transcript, it is incumbent

upon counsel to notify the Court Reporter in writing within ten (10) days of the date said motion was filed.

- 4) No transcript shall be furnished to an indigent criminal defendant without a written order from the assigned Judge.
- 5) Each official Court Reporter shall be required to keep a log of requested transcripts of all official hearings and trials in this Court, such log to include the style of the case, date transcript is requested, the name of the person requesting the transcript, and the date completed.

d) Availability of Reporters

- 1) Official Court Reporters will be available for all scheduled jury trials. An Attorney, including the District Attorney, requiring a Reporter in a non-jury matter shall give at least two working days advance notice to such Reporter to insure his or her availability at the time of the hearing.
- 2) All Court Reporters and clerical personnel are expected to keep normal court hours. Court Reporters may do "outside work" but only with the prior approval of the Judge to whom a Court Reporter is assigned.

PROCEDURE 8 - REFERRAL OF CASES TO MEDIATION

- a) This operating procedure applies to all parties in all civil actions, including but not limited to domestic relations actions as described and defined by Uniform Superior Court Rule 24.1, filed on or after May 1, 1996.
- b) All parties in every contested domestic matter shall be referred to mediation unless otherwise ordered by the assigned Judge. All parties shall have the financial affidavit required by the Uniform Superior Court Rules present at the scheduled mediation and are directed to negotiate in good faith throughout the mediation process. See Exhibit "A" which describes the mediation procedure and other rules applicable thereto and which is attached hereto and incorporated herein by express reference.
- c) All parties in any contested civil matter may be referred to mediation and are directed to negotiate in good faith in connection therewith.
- d) Upon a party's failure to engage in the mediation process in good faith pursuant to this rule, the assigned Judge may take appropriate action, including but limited to actions for contempt.
- e) For good cause shown, the assigned Judge may waive the requirement of completion of

this program in individual cases.

****See attached "Exhibit A".**

PROCEDURE 9 - DIVORCING PARENTS SEMINAR

This Seminar applies to all parties in all actions in which children under the age of 18 years are involved that are filed on or after the 1st day of January 1994. Specifically the following actions: divorce, separate maintenance, paternity, modification of custody, modification of visitation, and legitimation. Unless a waiver is obtained, all such parties shall successfully complete the seminar within forty-five (45) days of service of the original complaint on the original defendant.

****See attached "Exhibit B".**

PROCEDURE 10 – USE OF INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS

The Superior Court of Clayton County has adopted the Order issued by the Supreme Court of Georgia as its policy for the use of interpreters for non-English speaking persons.

****See attached "Exhibit C".**

PROCEDURE 11 – USE OF SIGN LANGUAGE INTERPRETERS FOR HEARING IMPAIRED PERSONS

The Superior Court of Clayton County has adopted the Official Code of Georgia applicable statutes regarding the use of sign language interpreters for hearing impaired persons.

O.C.G.A. § 24-9-100 (State Policy)

It is the policy of the State of Georgia to secure the rights of hearing impaired persons who, because of impaired hearing, cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of the courts, legislative bodies, administrative agencies, licensing commission, departments, and boards of the state and its subdivisions unless qualified interpreters are available to assist them.

HISTORY: Code 1981, § 24-9-100, enacted by Ga. L. 1983, p. 852, § 2.

O.C.G.A. § 24-9-101 (Definitions)

As used in this article, the term:

- (1) "Agency" means any agency, authority, board, bureau, committee, commission, court, department, or jury of the legislative, judicial, or executive branch of government of the state or any political subdivision thereof.
- (2) "Department" means the Department of Human Resources.
- (3) "Hearing impaired person" means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications when spoken in a normal conversational tone.
- (4) "Intermediary interpreter" means any person, including any hearing impaired person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between the variance of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter.
- (5) "Proceeding" means any meeting, hearing, trial, investigation, or other proceeding of any nature conducted by an agency.
- (6) "Qualified interpreter" means any person certified as an interpreter by the National Registry of Interpreters for the Deaf or approved as an interpreter by the Georgia Registry of Interpreters for the Deaf.

HISTORY: Code 1981, § 24-9-101, enacted by Ga. L. 1983, p. 852, § 2.

OCGA § 24-9-102. Appointment of interpreters for hearing impaired persons interested in or witness at agency proceedings; hearing impaired persons to make requests for interpreters

(a) The agency conducting any proceeding shall provide a qualified interpreter to the hearing impaired person:

(1) Whenever the hearing impaired person is a party to the proceeding or a witness before the proceeding; or

(2) Whenever a person below the age of 18 years whose parents are hearing impaired persons is a party to the proceeding or a witness before the proceeding conducted by an agency.

(b) The hearing impaired person shall notify the agency **not less than ten days**, excluding weekends and holidays, prior to the date of the proceeding of the need for a qualified interpreter. If the hearing impaired person receives notice of the proceeding less than ten days, excluding weekends and holidays, prior to the proceeding, he shall notify the agency as soon as practicable after receiving such notice. Upon receiving a request for a qualified interpreter, the agency shall immediately forward such request to the department. Upon receiving a request from an agency, the department shall provide a qualified interpreter for the proceeding specified in the request.

HISTORY: Code 1981, § 24-9-102, enacted by Ga. L. 1983, p. 852, § 2; Ga. L. 1985, p. 149, § 24.

***** The “agency” as referred to in the above statute is the Court Administration staff designee. *****

OCGA § 24-9-104. Indigent hearing impaired defendants to be provided with interpreters

(a) A court shall provide a qualified interpreter to any hearing impaired person whenever the hearing impaired person has been provided with a court appointed legal counsel. The court shall request a qualified interpreter from the department, and the department shall provide a qualified interpreter.

(b) The qualified interpreter authorized by this Code section shall be present at all times when the hearing impaired person is consulting with legal counsel.

HISTORY: Code 1981, § 24-9-104, enacted by Ga. L. 1983, p. 852, § 2.

OCGA § 24-9-105. Waiver of right to interpreter

Whenever a hearing impaired person shall be authorized a qualified interpreter, such person may waive the right to the use of such interpreter. Any such waiver shall be in writing and shall be approved by the agency, law enforcement agency, or court before which the hearing impaired person is to appear. In no event shall the failure of a hearing impaired person to request an interpreter be deemed to be a waiver.

HISTORY: Code 1981, § 24-9-105, enacted by Ga. L. 1983, p. 852, § 2.

OCGA § 24-9-106. Replacement of interpreters unable to communicate accurately with hearing impaired persons; appointment of intermediary interpreters; qualified interpreter list

(a) Whenever a hearing impaired person shall be authorized a qualified interpreter, the agency, law enforcement agency, or court shall determine whether the qualified interpreter so provided is able to communicate accurately with and translate information to and from the hearing impaired person. If it is determined that the qualified interpreter cannot perform these functions, the agency, law enforcement agency, or court shall request another qualified interpreter from the department or shall appoint an intermediary interpreter to assist the qualified interpreter in communicating with the hearing impaired person.

(b) The department shall prepare and maintain a list of qualified interpreters and qualified intermediary interpreters from which such interpreters shall be provided.

HISTORY: Code 1981, § 24-9-106, enacted by Ga. L. 1983, p. 852, § 2.

OCGA § 24-9-107. Oath of interpreters; privileged communications; situation of interpreters during proceedings; taping and filming of hearing impaired persons' testimony

(a) Prior to providing any service to a hearing impaired person, any qualified interpreter or intermediary interpreter shall subscribe to an oath that he will interpret all communications in an accurate manner to the best of his skill and knowledge.

(b) Whenever a hearing impaired person communicates with any other person through the use of an interpreter and under circumstances which make such communications privileged, the presence of the interpreter shall not vitiate such privilege and the interpreter shall not be required to disclose the contents of such communication.

(c) Whenever an interpreter is required by this article, the agency, law enforcement agency, or court shall not begin the proceeding or take any action until the interpreter is in full view of and spatially situated so as to assure effective communication with the hearing impaired person.

(d) The agency, law enforcement agency, or court may, upon its own motion or upon motion of any party, witness, or participant, order that the testimony of the hearing impaired person be electronically and visually taped or filmed. Any such tape or film may be used to verify the testimony given by the hearing impaired person.

HISTORY: Code 1981, § 24-9-107, enacted by Ga. L. 1983, p. 852, § 2.

OCGA § 24-9-108. Compensation of interpreters; fee schedule; fee may be assessed as cost in civil proceeding

(a) Any qualified interpreter or intermediary interpreter providing service under this article shall be compensated by the agency, law enforcement agency, or court requesting such service. Compensation shall be as provided in the fee schedule developed by the department.

(b) The department shall develop a fee schedule to be used in determining the compensation to be paid interpreters under this article. The schedule shall include reasonable fees commensurate with the services provided and shall include travel expenses and subsistence allowances as are authorized for state employees.

(c) The expenses of providing a qualified interpreter or intermediary interpreter in any civil proceeding may be assessed by the court or agency as costs in such proceeding.

HISTORY: Code 1981, § 24-9-108, enacted by Ga. L. 1983, p. 852, § 2.

The above-stated amended Procedures are hereby adopted by the Judges of the Superior Court of Clayton County, effective immediately.

SO ORDERED this 25 day of January, 2011.

Deborah C. Benefield
Chief Judge, Superior Court
Clayton Judicial Circuit

Matthew O. Simmons
Judge, Superior Court
Clayton Judicial Circuit

Albert B. Collier
Judge, Superior Court
Clayton Judicial Circuit

Geronda V. Carter
Judge, Superior Court
Clayton Judicial Circuit

EXHIBIT A

CLAYTON JUDICIAL CIRCUIT ALTERNATIVE DISPUTE RESOLUTION RULES (AS AMENDED MARCH 29, 2007)

This alternative dispute resolution rule applies to all Superior, State, Probate, Magistrate, and Juvenile Courts of the Clayton Judicial Circuit.

GENERAL POLICY:

The court will make information about alternative dispute resolution (ADR) options available to all litigants. Mediations will be conducted through the circuit's dispute resolution office. All other types of alternative dispute resolution will be referred by the coordinator to private alternative dispute resolution providers.

DEFINITION:

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. Settlement shall be made based upon the needs and interests of the parties rather than upon rights and positions. Although in court-referred mediation programs the parties may be ordered to attend a mediation session, any settlement is entirely voluntary. In the absence of a settlement, the parties lose none of their rights to a jury trial.

RULE 1. Referral to Mediation

(a) Except as hereinafter provided, every contested domestic matter shall be referred for mediation before being placed on a trial calendar, unless otherwise ordered by the judge to whom the particular case is assigned.

(b) Except as hereinafter provided, any contested civil matter may be referred to mediation in the Superior, State, Probate, and Magistrate Courts.

(c) Except as hereinafter provided, any matter in the Juvenile Court may be referred to mediation.

(d) Parties may be ordered to appear for a mediation conference. Compliance does not require that the parties reach a settlement. All cases shall be screened by the judge or the dispute resolution office to determine:

(1) Whether the case is appropriate for mediation;

(2) Whether the parties are able to compensate the mediator if compensation is required;

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

(e) Previous Participation in Mediation. If the parties have submitted the dispute to mediation prior to filing suit, the court will not require that the parties submit the case to mediation a second time. If parties are required by statute to submit a dispute to any ADR process before filing suit, the court will not require submission to mediation.

(f) Request for Mediation. Any party to a civil dispute may request that the court refer the case to mediation or request that a matter referred to mediation should be referred to another ADR process. The request for referral should be made to the judge assigned to the case.

(g) Effect of Referral upon Progress of the Case. The scheduling of a case for mediation conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the court. The court may refer the matter to mediation before any hearings before the court.

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

(i) 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 of the injurious activity and the alleged adverse effect. Upon a showing of reasonable probability of such adverse effect, the court will proceed with emergency measures provided by law. Later referral to and ADR process may be appropriate if the emergency measures do not bring the case to a conclusion.

(j) Except for domestic cases, the judge referring a case will enter an order referring the case to mediation. The original order will be filed with the clerk of court with copies sent to all attorneys of record and the dispute resolution office.

RULE 2. Timing of Referral to Mediation

(a) For all domestic cases, the Clerk will inform the party/attorney of the mediations rule at the time of filing and provide a notice of the requirements. Before entering a domestic case on a contested calendar, the party/attorney will be required to present a document stating that the case has been through mediation. All notifications of the mediation rule provided by the Clerk or the ADR office shall include a procedure for the report of domestic violence issues.

(b) For all other cases, the timing of referral will be determined on a case by case basis

and set forth in the order of referral. All mediation sessions will be concluded prior to the final hearing or trial date.

RULE 3. Exemption or Exclusion of Cases from Mediation

(a) The following cases are excluded from mediation:

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

(2) Other good cause is shown before the judge to whom the case is assigned;

(3) The issues have been referred by consent order of the court to a private provider of mediation services;

(4) The case was filed under the Family Violence Act. If an alleged victim is also seeking a divorce or other civil relief which would be appropriate for mediation but for the alleged abuse, the case, if not released from the ADR requirement by the assigned judge, will be referred to mediation provided that certain safeguards are in place. These will include consultation with the alleged victim as to the process of dispute resolution, the presence of a mediator with advanced training in domestic violence dynamics and the presence of security outside of all mediation sessions. Sensitive information, such as the parties' places of residence, will be protected and information obtained by the ADR staff in any screening process for domestic violence will not be communicated to the court except to qualify the case as not appropriate for mediation.

Additional precautions may include:

(i) requiring one party to arrive fifteen to thirty minutes before the other, providing a separate room for each party, and ending the session fifteen to thirty minutes early for one party.

(ii) conducting the mediation entirely in caucus.

(iii) allowing the alleged victim to have an advocate available for the entire session.

(b) The following actions shall not be referred to mediation except upon petition of all parties or upon sua sponte order of the court:

(1) Appeals from rulings of administrative agencies;

(2) Forfeitures of seized property;

(3) Habeas corpus and extraordinary writs;

(4) Bond validations;

(5) Declaratory relief;

(6) Uniform Reciprocal Enforcement of Support Act cases;

(7) Injunctive Relief.

Rule 4. Appointment of the Mediator.

(a) The parties will choose a mediator from a list of neutrals approved by the court and registered with the Office of Dispute Resolution. If the parties cannot agree on a neutral, one will be appointed by the mediation program administrator.

(b) The parties may petition for a change in appointment of a neutral if a conflict is cited or if a neutral's objectivity is questioned. The petition shall be heard by the judge to whom the case is assigned.

RULE 5. Scheduling and Rescheduling.

(a) For domestic cases, the parties will have ten (10) days from the date that the filing of a response is due to agree upon a mediator and inform the dispute resolution office of their choice.

(b) Upon receipt of the referral order in all other cases, the parties will have ten (10) days to agree upon a mediator and inform the dispute resolution office of their choice.

(c) The plaintiff shall have the responsibility of coordinating and scheduling the session. The plaintiff will have ten (10) days to contact the mediator to arrange the scheduling of the mediation session. If the plaintiff fails to do so, the dispute resolution office will schedule the session. The session must be scheduled within forty-five (45) days of the date that an answer is due or prior to any scheduled hearing, whichever is sooner.

(d) If the parties cannot agree on a mediator within ten days, the ADR coordinator will assign a mediator, setting the date, time and place for the session and informing the parties of the assignment.

(e) Once a mediation is scheduled, no unilateral rescheduling is permitted. The party requesting a rescheduling must obtain consent from the opposing party and the assigned mediator. The dispute resolution office must also be notified of any rescheduling attempts.

RULE 6. Qualification of Neutrals.

(a) All neutrals will be required to attend the required mediation training and subsequently obtain registration by the Georgia Office of Dispute Resolution.

(b) All neutrals will attend an orientation program given by the court for which they work.

(c) All neutrals will attend continuing education seminars as prescribed by the Georgia Office of Dispute Resolution.

RULE 7. Compensation of Mediators.

(a) For all cases in Superior, State, Magistrate, and Probate Court, the Mediators will be compensated as follows:

(1) Mediators will be compensated by the parties, each party being responsible for half of the neutral's fees. Neutrals shall set hourly fees to be approved by the mediation program administrator. The neutrals' fees shall be available to the parties prior to their selection of a neutral.

(2) Parties who cannot afford the mediation fees may request indigent status by making application to the program coordinator, who shall be solely responsible for determining the indigency of the applicant based on the criteria established by law for the appointment of counsel in criminal cases. If the party qualifies for indigent status, that party will not be required to pay their half of the fee. All requests for fee waiver are to be made to the dispute resolution coordinator prior to the mediation session.

(3) The neutral chosen for each case shall submit a report including a statement as to the length of time and amount of compensation paid to them for that case.

(4) All neutrals will be required to provide services for indigent parties by contributing some pro bono hours on a pro rata basis according to rules established by the Clayton County Alternative Dispute Resolution Board of Trustees.

(5) Parties shall pay the mediators for a minimum of two hours at the beginning of the mediation session.

(b) The Juvenile Court may participate in a mediation program established by their rules and employ such mediators as may exist under the rules of this program, and such mediators shall be paid by the Juvenile Court. The ADR coordinator for this program may also coordinate other mediation programs, with the approval of the Board of Trustees of this ADR program.

RULE 8. Immunity.

No neutral in a 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. Neutrals shall enjoy any other additional immunity as may now or hereafter be provided by law.

RULE 9. Confidentiality.

(a) Any statement made during a court-referred mediation conference is confidential, not subject to disclosure, may not be disclosed by the mediator, and may not be used as evidence in any subsequent administrative or judicial proceeding.

(b) Any document or other evidence generated in connection with a court-referred mediation is not subject to discovery. An agreement resulting from a court-referred mediation conference is not immune from discovery unless the parties agree in writing. Otherwise discoverable material is not rendered immune from discovery by use in a mediation.

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

(d) Confidentiality does not extend to any actual or threatened violence which occurs during an ADR process. Confidentiality does not extend to documents or communications relevant to legal claims brought against a neutral or an ADR program and arising out of an ADR process. Nothing in the above rule negates any statutory duty of a neutral to report information. Parties should be informed of the limitations on confidentiality at the beginning of the conference. Collection of information necessary to monitor the quality of the program is not considered a breach of confidentiality.

RULE 10. Appearance.

(a) The appearance of all parties or their qualified representative is required at mediation conferences unless the court finds that a party is a nonresident or is incapacitated or otherwise authorizes the party's absence. A qualified representative is one who has full authority to settle without further consultation and a full understanding of the dispute and full knowledge of the facts. The presence of a representative with authority to settle is required if the decision to settle depends on an entity other than a party.

(b) Attorneys are not required to attend mediation conferences, but are encouraged to attend and are not excluded from any part of the process.

(c) In domestic relations cases involving temporary or permanent child support, alimony, equitable division of property, modification of alimony or attorneys' fees, a financial affidavit is required pursuant to U.S.C.R. 24.2. If a party fails to bring a copy of a current, notarized financial affidavit and in cases involving child support, the schedules required by O.C.G.A. § 19-6-15, that party may be deemed to have not appeared and subject to the sanctions stated in Rule 11 below.

RULE 11. Sanctions for Failure to Appear Without Good Cause.

(a) If a party fails to appear at a duly noticed mediation conference without good cause, fails to give 48 hours notice of cancellation or rescheduling (excluding weekends and holidays), or fails to bring a current, notarized financial affidavit when required, the dispute resolution staff shall notify the judge to whom the case is assigned. The judge, upon motion, may subject the party to citation for contempt and to the imposition of sanctions permitted by law, including the award of mediator and attorney costs against the party failing to appear.

RULE 12. Communication with Parties.

The only ex parte communication between a party and mediator outside of the mediation conference shall be for the purposes of verifying appointment times and locations and answering questions about the mediation process and procedures. The mediator may meet privately with any party or attorney during the mediation conference.

RULE 13. Communication with the Court.

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

(b) Once the mediation process is under way, communications between the administrator and the court should be limited to the following matters:

- (1) Failure of parties to attend scheduled sessions.
- (2) Procedural questions.
- (3) Case assessment results that case is inappropriate for mediation.
- (4) Request for additional time for mediation.
- (5) Settlement agreement information concerning whether or not the case has settled.
- (6) Contents of an agreement, unless the parties have agreed in writing that the agreement should not be disclosed.
- (7) Discovery, motions, or actions which, if resolved, would facilitate settlement.

RULE 14. Completion of Mediation.

(a) Mediation shall be completed prior to any scheduled hearing or trial or within fifty-five (55) days of the date that a response is due in a domestic suit or from the referral order, whichever is sooner, unless extended by order of the court. The motion asking for extension of the mediation shall be submitted to the dispute resolution coordinator, who shall present the motion to the judge to whom the case is assigned.

(b) The length of the mediation session will depend on the nature of the contested issues and on the parties themselves. The parties should be prepared to spend a minimum of two hours at the initial session.

(c) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 2. No further notification is required for parties present at the adjourned conference.

(d) If an agreement is reached, it shall be reduced to writing at the end of the mediation session by the neutral and signed by the neutral, the parties, and their attorneys. If the agreement cannot be reduced to writing at the mediation conference, it should be reduced to writing within three (3) days. A copy will then be forwarded to the program administrator. It shall be the responsibility of the parties to file this agreement as required by law and to schedule necessary procedures. The ADR office shall maintain a record of all agreements reached in mediation and make such available upon request of the court or the parties.

(e) If a party is unrepresented or represented by an attorney who is not present, the parties will have an opportunity to have the agreement reviewed by an attorney. If there is no objection in writing by the attorney within ten (10) calendar days of the mediation conference, the agreement will become binding on all parties and enforceable as a settlement agreement. Any objection by an attorney must be given to opposing counsel and the dispute resolution coordinator.

(f) If a partial agreement is reached, it shall be reduced to writing and signed by the parties and counsel, if any, in the same manner as outlined above for the full agreement. The same procedures apply for objection within ten (10) days.

(g) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the dispute resolution coordinator. The dispute resolution coordinator shall notify the judge to whom the case is assigned of the lack of agreement. With the consent of the parties, the mediator's report may also identify any pending notices or outstanding legal issues, discovery processes, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

RULE 15. Court Conflicts.

For the purposes of conflicts, as contemplated under the Uniform Rules of Superior

Courts, the mediation procedure shall be construed as being a non-jury proceeding and counsel and the parties may rely upon said designation in resolving any scheduling conflicts.

RULE 16. Evaluation.

The dispute resolution coordinator will provide to the Office of Dispute Resolution information which will allow an evaluation of the program. This information will be provided on an ongoing basis. The model for this evaluation will be provided by the Georgia Office of Dispute Resolution. Participants will not be contacted for evaluation without their permission. The program should seek permission of the parties for this contact either at the beginning of the mediation or by means of an exit survey.

REVISED 3/07

Exhibit B

IN RE: SEMINAR FOR
DIVORCING PARENTS

On the 30th day of November 1993, Clayton County, Georgia and Families First entered into an agreement under which Families First would provide a program designed to inform, educate, and counsel the parties of domestic relations actions concerning the effects of divorce on their minor children.

An order was entered by the Superior Court Judges on November 30, 1993 which implemented the program and subsequent orders of October 19, 1999 and January 9, 2002, effectively amended the order and again implemented the program under the current Superior Court Judges. This order will modify these orders to reflect changes in the administration of the program.

This order is intended to implement the program and is passed pursuant to the inherent powers of the Superior Court of Clayton County and Rules 1.2 and 24.8 of the Uniform Rules for the Superior Court.

A synopsis of the seminar to be conducted by Families First is attached to the Order, marked "Appendix A", and by reference made a part of this order.

This order applies to all parties in all actions in which children under the age of 18 years are involved that are filed on or after the 1st day of January, 1994. Specifically the following actions: divorce, separate maintenance, paternity, legitimation, and contested modifications of custody and visitation.

Unless a waiver is obtained, all such parties shall successfully complete the seminar within forty-five (45) days of service of the original complaint on the original defendant. Failure to successfully complete the seminar shall be cause for action by the assigned Judge, including but not limited to, withholding the final decree of divorce, holding in contempt, and/or awarding attorney's fees and costs. The assigned Judge may in his/her discretion grant a final decree of divorce before completion of the seminar, but shall retain authority to impose sanctions upon either party who fails or refuses to comply with this Order.

The assigned Judge shall retain discretion to waive attendance for good cause shown. Requests for a waiver of attendance may be made through the ADR Program Director who will forward the request to the assigned Judge with a recommendation. Such good cause may include: a party's non-residence in Georgia or in the county in which the action is pending, the reasonable availability of a similar program to the party, or other such reasonable causes which indicate to the Court that a party should not be required to complete the program. The Court, in its discretion, may accept alternative counseling covering the subject matter of the required seminar or allow a party to attend an appropriate out-of-county seminar as a substitute for

attending the seminar in Clayton County. The ADR Program Director will determine which of the various courts in other jurisdictions have established a seminar similar to the Clayton County seminar.

The Clayton County Superior Court, Court Administrator, ADR Program Director and personnel of the ADR Office will administer the program. The Court Administrator or ADR Program Director shall promptly deposit all receipts of fees into a special account to be set up with the County Finance Director, and this account is subject to audits by Clayton County, as are county accounts. The undersigned will be furnished a summary of receipts and expenditures in the previous quarter on January 15, April 15, July 15, and October 15 of each year. Expenditures from the account will only be made by authorization of the Court Administrator or the ADR Program Director through established procedural requests to the Director of Finance for disbursement of Funds in the appropriate category of a budget approved by the Superior Court on a yearly basis and submitted to the Finance Department.

Information concerning the seminars will be furnished by the office of the Clerk of the Superior Court and by the ADR Office. The Clerk's office shall inform parties of their responsibility to attend the seminar upon the filing of the pleadings. Attorneys practicing in the Clayton Judicial Circuit should provide information concerning the seminar, the mandatory requirement of the seminar, and its cost when giving advice to clients involved in an action covered by the Order.

The Clayton Police Department and the Sheriff's Office of Clayton County shall provide security at all seminar locations from one-half hour before the beginning of a seminar until all participants have departed the premises, including the parking lot. The ADR Office shall work with the Police Department and the Sheriff's Office to accomplish this task.

Revised 2/2003



SUPREME COURT OF GEORGIA

Atlanta January 13, 2003

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

USE OF INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS

Pursuant to the inherent powers of the Court and the Georgia Constitution of 1983, and in order to secure the rights of non-English speaking persons, this Court now promulgates the following rules to establish a statewide plan for the use of interpreters by the Courts of Georgia.

I. DEFINITIONS

- (A) "Non-English Speaker" means any party or witness who cannot readily understand or communicate in spoken English and who consequently cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist him or her. The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter;
- (B) "Interpreter" means any person certified as an interpreter by the Georgia Commission on Interpreters; any person on the registered interpreters' list; or any person authorized by a court to translate or interpret oral or written communication in a foreign language during court proceedings.
- (C) "Court Proceedings" means a proceeding before any court of this State or a Grand Jury hearing.
- (D) Uniform Rule for Use of Interpreters is found in Appendix A.
- (E) Requirements for Certification, Registration and Training of Interpreters are found in Appendix B.
- (F) Code of Professional Responsibility is found in Appendix C.

Commentary: Courts should make a diligent effort to appoint a Certified interpreter. If a Certified interpreter is unavailable, a Registered interpreter is to be given preference. There will be occasions when it is necessary to utilize a telephonic language service or a less qualified interpreter. Faced with a need, where no interpreter is available locally, courts should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. Unless immediacy is a primary concern, some delay might be more appropriate than the use of a telephonic language service.

APPENDIX "A" - UNIFORM RULE FOR INTERPRETER PROGRAMS

- I. **General Rule:** The following rules apply to all proceedings in Georgia where there are non-English speaking persons in need of interpreters.
- (A) An interpreter is needed and a court interpreter shall be appointed when the judge determines, after an examination of a party or witness, that: (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (2) the witness cannot speak English so as to be understood directly by counsel, court, and jury.
 - (B) The court should examine a party or witness on the record to determine whether an interpreter is needed if: (1) a party or counsel requests such an examination; or (2) it appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings, or (3) if the party or witness requests an interpreter. The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter.
 - (C) To determine if an interpreter is needed the court should normally include questions on the following:
 - 1. Identification (for example: name, address, birth date, age, place of birth);
 - 2. Active vocabulary in vernacular English (for example: "How did you come to the court today?", "What kind of work do you do?", "Where did you go to school?", "What was the highest grade you completed?", "Describe what you see in the courtroom", "What have you eaten today?"). Questions should be phrased to avoid "yes or no" replies;
 - 3. The court proceedings (for example: the nature of the charge or the type of case before the court, the purpose of the proceedings and function of the court, the rights of a party or criminal defendant, and the responsibilities of a witness).
 - (D) After the examination, the court should state its conclusion on the record, and the file in the case should be clearly marked and data entered electronically when appropriate by court personnel to ensure that an interpreter will be present when needed in any subsequent proceeding.
 - (E) For good cause, the court should authorize a pre-appearance interview between the interpreter and the party or witness. Good cause exists if the interpreter needs clarification on any interpreting issues, including but not limited to: colloquialisms, culturalisms, dialects, idioms, linguistic capabilities and traits, regionalisms, register, slang, speech patterns, or technical terms.
 - (F) When a Certified or Registered interpreter is not being used, the court or the court's designee should give instructions to interpreters, either orally or in writing, that substantially conform to the following:
 - 1. Do not discuss the pending proceedings with a party or witness, outside of professional employment in the same case.
 - 2. Do not disclose communications between counsel and client.
 - 3. Do not give legal advice to a party or witness. Refer legal questions to the attorney or to the court.

4. Inform the court if you are unable to interpret a word, expression, special terminology, or dialect, or have doubts about your linguistic expertise or ability to perform adequately in a particular case.
5. Interpret all words, including slang, vulgarisms, and epithets, to convey the intended meaning.
6. Use the first person when interpreting statements made in the first person. (For example, a statement or question should not be introduced with the words, "He says . . .")
7. Direct all inquiries or problems to the court and not to the witness or counsel. If necessary you may request permission to approach the bench with counsel to discuss a problem.
8. Position yourself near the witness or party without blocking the view of the judge, jury, or counsel.
9. Inform the court if you become fatigued during the proceedings.
10. When interpreting for a party at counsel table, speak loudly enough to be heard by the party or counsel but not so loudly as to interfere with the proceedings.
11. Interpret everything including objections.
12. If the court finds good cause under section (E), hold a pre-appearance interview with the party or witness to become familiar with speech patterns and linguistic traits and to determine what technical or special terms may be used. Counsel may be present at the pre-appearance interview.
13. During the pre-appearance interview with a non-English speaking witness, give the witness the following instructions on the procedure to be followed when the witness is testifying:
 - (a) The witness must speak in a loud, clear voice so that the entire court and not just the interpreter can hear.
 - (b) The witness must direct all responses to the person asking the question, not to the interpreter.
 - (c) The witness must direct all questions to counsel or to the court and not to the interpreter. The witness may not seek advice from or engage in any discussion with the interpreter.
 - (d) During the pre-appearance interview with a non-English speaking party, give the following instructions on the procedure to be used when the non-English speaking party is not testifying: (i) The interpreter will interpret all statements made in open court. (ii) The party must direct any questions to counsel. The interpreter will interpret all questions to counsel and the responses. The party may not seek advice from or engage in discussion with the interpreter.

Commentary: A model written form for performing this procedure may be obtained from the Georgia Commission on Interpreters. It is recommended that when a non-professional interpreter is used that the Court personally verify a basic understanding of the interpreter's role on the record.

- (G) The court or the court's designee should give the following instructions to counsel, either orally or in writing:
1. When examining a non-English speaking witness, direct all questions to the witness and not to the interpreter. (For example, do not say to the interpreter, "Ask him if . . .");
 2. If there is a disagreement with the interpretation, direct any objection to the court and not to the interpreter. Ask permission to approach the bench to discuss the problem;
 3. If you have a question regarding the qualifications of the interpreter, you may request permission to conduct a supplemental examination on the interpreter's qualifications.

II. *Criminal Cases.*

- (A) Each non-English speaking defendant will be provided with an interpreter at each step of the proceedings; within the judge's discretion, costs can be assessed upon a defendant when appropriate.
- (B) A non-English speaking person may waive the right to the use of an interpreter. Such a waiver shall be in writing and approved by the court. The court shall determine, on the record, that the right to an interpreter has been waived knowingly and voluntarily utilizing the services of the most available interpreter. Additionally, counsel may waive the presence of an interpreter in bond hearings.
- (C) The court shall provide an interpreter to any non-English speaking person whenever the non-English speaking person is a party, or has been subpoenaed, or summoned or has otherwise been compelled to appear in a court proceeding. Within the judge's discretion, costs can be assessed upon a defendant when appropriate.

III. *Civil Cases.*

- (A) Upon request, each non-English speaking person shall be provided with the fee schedule and a list of the interpreters who have been approved for providing services within that particular court.
- (B) Each non-English speaking party shall have the right to an interpreter at each step of the proceedings at the expense of the non-English speaking person. If a fee schedule exists then one shall be given. Advanced notice of use of an interpreter shall be provided to all parties and to the court.
- (C) In the event the court has approved a pauper's affidavit in any civil case and the person filing said affidavit requires the use of an interpreter, one will be provided at no cost to said person.

IV. *Juvenile Cases.*

- (A) Each non-English speaking person in a delinquency proceeding or whose parental rights to full custody of any minor child are challenged by any governmental unit or agency such as DFCS, shall be provided with an interpreter at each step of the proceedings;
- (B) The court shall provide a qualified interpreter to any non-English speaking person whenever such person's rights to full custody of any minor child are challenged for allegedly causing a child to be dependent or delinquent or neglected in violation of the Georgia Juvenile Court Code of 1971, as amended, and the rules established by this court;
- (C) The provided interpreter shall be present at all times when the non-English speaking person is consulting with legal counsel should said legal counsel not be able to communicate with the non-English speaking person;

(D) A non-English speaking person may waive the right to the use of an interpreter. Such a waiver shall be in writing and approved by the court. The court shall determine, on the record, that the right to an interpreter has been waived knowingly and voluntarily utilizing the services of the most available interpreter. In no event shall the failure to request an interpreter be deemed to be a waiver.

V. *Replacement of interpreter.* Upon a request by the non-English speaking person, by his or her counsel, or by any other officer of the court, the court shall determine whether the interpreter so provided is able to communicate accurately with and translate information to and from the non-English speaking person. If it is determined that the interpreter cannot perform these functions, the court shall provide the non-English speaking person with another interpreter.

VI. *Interpreter's fees and expenses.*

- (A) Any interpreter providing service under this rule shall be compensated as directed by these rules.
- (B) The expenses of providing an interpreter in any court proceeding may be assessed by the court as costs in such proceeding.