

MEDIATION FACT SHEET

Fulton County Courts Office of Alternative Dispute
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WHAT IS MEDIATION?

Mediation is a confidential and informal negotiation process in which an impartial third party, a mediator, facilitates settlement discussions between disputing parties. Any settlement is voluntary.

Unlike a judge in a trial, or an arbitrator in arbitration, the mediator does not impose a decision upon the parties. In a mediation, the parties themselves decide whether or how to settle the dispute.

WHAT IS THE ROLE OF A MEDIATOR?

The role of a mediator is to maintain their neutrality and to use their training and skills to assist parties in exploring their concerns, identifying areas that must reach resolution and creatively exploring a wide array of possible solutions to the disputed issues. The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon rights and positions.

Despite the mediator's professional background, he/she may not provide counseling, legal advice or legal representation, and again, they do not have the authority to impose decisions.

Mediators who provide services through the Fulton County Courts' Office of Alternative Dispute Resolution meet both State and Fulton County standards which involves a careful evaluation of their educational background, professional experience, mediation training and their skills as a neutral.

IS MEDIATION CONFIDENTIAL?

Mediation is a confidential process by law and by agreement. In mediation, the parties will sign an agreement to mediate that includes provisions governing confidentiality.

According to the Georgia Supreme Court Alternative Dispute Resolution rules, any statement made during mediation or as part of intake by program staff in preparation for mediation is confidential and is not subject to disclosure by the mediator or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding.

However, if parties reach a settlement agreement in mediation, the written and executed agreement or memorandum of agreement **is not** subject to confidentiality, unless all parties to the proceeding agree so in writing.

Confidentiality **does not** include:

1. mediators and program staff reporting whether or not the parties appeared for mediation;
2. threats of imminent violence to self or others; or
3. if the mediator believes that a child is abused or that the safety of any party or third person is in danger

Another exception to confidentiality is that a mediator or the ADR program may disclose information needed to defend their actions if a complaint is filed against them. However, only documents or communications relevant to such claim or complaint may be revealed only to the extent necessary to protect the neutral or ADR program.

HOW LONG DOES MEDIATION TAKE?

The time required for mediation depends on the nature of the dispute and the number of parties involved. A typical mediation session lasts three hours. However, it is wise for parties to plan for up to four hours.

*Mediation can be scheduled and completed much sooner than it would take to complete a trial.

IS MEDIATION BINDING?

If the parties reach a settlement agreement in mediation, the written agreement may in fact be binding. Parties should understand that signing a settlement agreement can have a significant effect upon their rights and upon the status of their case. However, reaching and signing an acceptable settlement agreement to the dispute is strictly voluntary.

*If after going through the mediation process the parties are unable to reach a settlement agreement, the case will proceed in a regular fashion through the court process.

WHO PAYS FOR MEDIATION?

For Family Division cases, each party pays \$115 to the ADR Office at least 10 days prior to any scheduled mediation by certified check, money order, or other certified funds. Payment may be made by credit or debit card on the ADR website. A fee waiver may be granted for unrepresented parties based on need.

WHAT ARE THE BENEFITS OF MEDIATION?

- Mediation can lower the intensity or level of conflict enabling parties to better communicate and explore options that would resolve their dispute.
- Mediation empowers parties to reach their own decisions versus having outcomes determined by others, such as a judge.
- Mediation recognizes that all parties have legitimate needs and helps develop alternatives to meeting those needs.
- Mediation is typically less time consuming, less expensive and allows for greater privacy than going to court.
- Mediation can set the stage for future cooperative problem solving between parties where there is a need for an ongoing relationship.

HOW SHOULD YOU PREPARE FOR MEDIATION?

Each participant should come to mediation prepared to present and discuss a variety of ways to resolve the dispute to their satisfaction. If the parties are stuck on only one solution to the dispute, it will be more difficult to reach a resolution.

For mediation to be successful, parties should come prepared to provide open and honest communication and statements, including providing each party with all information relevant to resolving the dispute.

*All parties are required to be present at mediation including those with settlement authority if other than the party.