

MEDIATION RULES FOR THE AUGUSTA JUDICIAL CIRCUIT

These mediation rules apply to the Superior, State, Probate and Magistrate Court of Burke, Columbia and Richmond Counties.

GENERAL POLICY:

The Court will make information about alternative dispute resolution (ADR) options available to all litigants.

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. 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.

RULE 1. REFERRAL TO MEDIATION

- (a) Except as hereinafter provided, any contested civil, criminal, or domestic matter may be referred to mediation in the Superior, State, Probate and Magistrate Courts. Parties may be ordered to appear for mediation conference. Compliance does not require the parties to reach a settlement. Cases shall be screened by the judge or the alternative 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.

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

- (c) Request for Mediation. Any party to a civil dispute may request the Court to refer the case to mediation or request a matter referred to mediation be referred to another ADR process. The request for referral should be made to the judge assigned to the case. The referral of misdemeanor criminal cases shall remain in the sole discretion of the assigned Judge and/or the District Attorney or Solicitor.

- (d) Effect of Referral upon Progress of the Case. The scheduling of a case for a 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.
- (e) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a 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.
- (f) 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. The Georgia Office of Dispute Resolution will assist courts in developing guidelines for training court personnel in referral decisions.
- (g) 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 an ADR process 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.
- (h) The court may impose a users' fee upon any party participating in mediation who has not paid a filing fee surcharge at the time the action was filed.
- (i) Unless a standing order has been entered, the judge referring a case will enter an order referring the case to mediation. The original order will be filed with the clerk of the court with copies sent to all parties and attorneys of record. The ADR office will keep a copy of each order.
- (j) Cases will not be referred to mediation by any judge who lacks jurisdiction over the subject matter.
- (k) See Appendix I of this document for the Guidelines for the screening of cases involving domestic violence. These guidelines must be followed when a case involving domestic violence is reviewed or referred for mediation.

RULE 2. TIMING OF REFERRAL OF MEDIATION.

The timing of the referral will be determined on a case by case basis and set forth in order of referral. All mediation sessions will be concluded prior to final hearing or trial date.

RULE 3. EXEMPTION OR EXCLUSION OF CASES FROM MEDIATION.

- (a) Any party to a dispute referred to mediation may petition the court to exclude the case from mediation if:
- (1) The issue to be considered has been previously mediated by a mediator registered with the State Office of Dispute Resolution as a mediator in the area of the dispute;
 - (2) The issue presents a question of law only;
 - (3) Other good cause is shown before the judge to whom the case is assigned;
 - (4) The issues have been referred by consent order of the court to a private provider of mediation services;
 - (5) The case was filed under the Family Violence Act.
- (b) The following actions shall not be referred to mediation except upon petition of all parties or upon sua sponte motion 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) URESA (Uniform Reciprocal Enforcement of Support Act);
 - (7) Misdemeanor simple battery cases between spouses or former spouses.

RULE 4. APPOINTMENT OF THE MEDIATOR

- (a) The parties shall agree upon a mediator from the list of mediators registered by the Georgia Office of Dispute Resolution who have been chosen for service in the program. (1) After a case is filed, parties are free to choose their own neutral and negotiate a fee with that neutral before a case is ordered to an ADR process; however the confidentiality and immunity protections of the Georgia Supreme Court ADR rules do not apply in the absence of a court order referring the case to mediation. (2) Once the case is ordered to an ADR process, parties are still allowed to choose their own neutral and proceed under that neutral's fee or negotiate a fee with that neutral

provided the neutral chosen is registered with the Georgia Office of Dispute Resolution in the appropriate category. (3) Where possible, parties should be allowed input into the choice of process as well as choice of a neutral. (4) Should the parties fail to agree upon a mediator, the court or mediation coordinator will appoint a mediator from the list of mediators qualified for service in the program and may set the fee. The court will not order the parties to mediation with any private individual or entity without consent of the parties.

- (b) Disqualification of a Mediator. Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from a case, an order shall be entered setting forth a qualified replacement from the list of mediators in good standing on the Augusta Circuit ADR Program's mediator roster. The motion disqualifying the mediator shall be presented to the dispute resolution program, who shall present the motion to the judge to whom the case is assigned.

RULE 5. SCHEDULING AND RESCHEDULING; CANCELLATIONS

- (a) Upon a case being ordered to an ADR process it is the responsibility of Plaintiff's counsel or of the Plaintiff to notify the ADR office of the mediation and date selection. Failure to do so will result in the assignment of a mediator and a date by the mediation office which cannot be changed absent good cause shown.
- (b) Exception: Magistrate court cases – upon receipt of referral order the dispute resolution program will assign a qualified mediator to serve the case. The dispute resolution program will notify the parties and attorneys of record of the assignment, the date, time and location of the session. The dispute resolution office must be notified of any request for rescheduling.
- (c) Cancellations: Cancellations with no attempt to reschedule the mediation session will only be permitted where one or both of the parties has applied for relief from the judge to whom the case has been assigned, or is in compliance with the Uniform rules related to conflicts. If a session is cancelled due to a conflict, the attorney with the conflict must notify the dispute resolution office and the session will be rescheduled. If a case is resolved prior to the scheduled mediation session, the session may be cancelled upon written notification to the mediator and the dispute resolution office of the settlement.

RULE 6. MEDIATOR QUALIFICATIONS FOR SERVICE IN THE PROGRAM.

The qualifications for service as a mediator in the Augusta Circuit ADR Program shall be determined by the participating judges of the circuit in conjunction with the dispute resolution program director. The qualifications shall not be less than the minimum qualifications set out in the Supreme Court Rules for Alternative Dispute Resolution Programs. Appropriate use of non-lawyer mediators is encouraged. The program will maintain a roster of mediators chosen for

service in the program. Mediators serving in the program will be evaluated by the program on an ongoing basis.

RULE 7. COMPENSATION FOR MEDIATORS COMPENSATED BY THE PARTIES.

- (a) The parties shall share the cost of the mediation equally and should be prepared to pay the mediator at the conclusion of the session. There will be no charge to parties in magistrate court cases, cases in which a party is to be determined to be indigent or in such other cases as the referring judge determines that fees should be waived. In these cases the mediator's fee will be paid by the program at the fee set by the Augusta Circuit Alternative Dispute Resolution Program.
- (b) All requests for fee waiver or fee reduction are to be made to the dispute resolution program at least three (3) days prior to the mediation session.
- (c) Before being placed on the roster of approved mediators, a mediator must agree to provide pro bono hours at a reduced rate to defray mediation costs for parties with limited ability to pay.
- (d) Failure of a party (parties) to appear at a mediation session will authorize the mediator to bill the absent party (parties) for the first full hour of the mediation session at the hourly fee agreed upon with the neutral when the mediation was scheduled. The referring court may issue its execution for recovery of the entire cost of a mediation session against a party (parties) who fails to appear.
- (e) A cancellation fee for the first full hour of the mediation session, at the hourly fee agreed upon with the neutral when the mediation was scheduled, must be paid to the assigned mediator when the mediation is cancelled or continued within 24 hours of the scheduled mediation session.

RULE 8. 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 9. CONFIDENTIALITY.

- (a) The Extent of confidentiality:

Any statement made during a court-annexed or court-referred mediation or as part of intake by program staff in preparation for a mediation is confidential, not subject to disclosure, may not be disclosed by the mediator or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. A written and executed agreement or

memorandum of agreement resulting from a court-annexed or court-referred mediation is not subject to the confidentiality described above.

Any document or other evidence generated in connection with a court-annexed or court-referred mediation is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred mediation is discoverable unless the parties agree otherwise in writing. Otherwise discoverable material is not rendered immune from discovery by use in a mediation session.

Neither the neutral or any observer present with permission of the parties in a court-annexed or court-referred mediation may be subpoenaed or otherwise required to testify concerning a mediation 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) Recording Devices:

Recording of a mediation session by any means, by the mediator, parties, attorneys or observers is not permitted. Recording devices are not allowed in the mediation session. The only exception to this rule would be the recording of the agreement for future use. All parties must agree to the recording of the agreement.

RULE 10. APPEARANCE.

The presence of parties at all mediation conferences is required unless the court finds that a party is a nonresident or is incapacitated. The requirement that a party appear at a mediation conference is satisfied if the following persons are physically present:

- (a) The party and/or
 - (1) The party's representative who has:
 - (i) full authority to settle without further consultation; and
 - (ii) a full understanding of the dispute and full knowledge of the facts;
 - (2) A representative of an insurance carrier for any insured party if that representative has full authority to settle without further consultation, except that telephone consultations with persons immediately available are permitted.
- (b) Attorneys are not required to attend mediation conferences, but may not be excluded by the court or the mediator.
 - (1) The attorney appearing at the mediation session must be the attorney who will try the case in the event a trial is necessary.
- (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, that party will be deemed to have not appeared and subject to the sanctions stated in Rule 11 below.

RULE 11. SANCTIONS FOR FAILURE TO APPEAR.

If a party fails to appear at a duly noticed mediation conference without good cause, fails to give 24 hours notice of cancellation or rescheduling, 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 impose sanctions including the award of mediator and attorneys' fees against the party failing to appear.

RULE 12. COMMUNICATION WITH PARTIES.

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

Copies of any written communication with the court should be given to all parties and their attorneys.

- (b) Once a mediation is underway in a given case, contact between the dispute resolution director and the court, concerning that case, should be limited to:
 - (1) Communicating with the court about the failure of a party to attend;
 - (2) Communicating with the court, with the consent of the parties, about procedural action on the part of the court, which might facilitate the mediation;
 - (3) Communicating to the court the neutral's assessment that the case is inappropriate for that process;
 - (4) Communicating any request for additional time to complete the mediation;
 - (5) Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case;
 - (6) Communicating the contents of an agreement unless the parties agree in writing that the agreement should not be disclosed.
 - (7) Communicating with the consent of the parties information concerning any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

RULE 14. COMPLETION OF MEDIATION.

- (a) Mediation shall be completed prior to any scheduled hearing or trial or within 50 days of the order of the court referring the matter to mediation, 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 program, 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 not withstanding Rule 2.
- (d) Agreement. If an agreement is reached, it shall be reduced to writing. If possible, the agreement should be reduced to writing at the end of the mediation conference. In the event the agreement cannot be reduced to writing at the end of the mediation conference, it should be reduced to writing within 3 calendar days

after the mediation. It is the mediator's responsibility to draw the agreement unless all parties determine otherwise.

- (1) If parties are represented by counsel present at the mediation, the agreement should be reduced to writing by the mediator and signed by the mediator, parties and attorneys at the end of the mediation conference.
 - (2) If any party is unrepresented or is represented by an attorney who is not present, the agreement should be reduced to writing by the mediator and signed by the mediator and parties at the end of the mediation conference. The parties will have an opportunity to have the agreement reviewed by their attorney of record. If there is no objection to the agreement within 10 calendar days following the mediation session, the agreement will be binding upon all parties enforceable as a settlement agreement. If there is an objection, the attorney objecting to the mediated agreement must notify opposing counsel and the dispute resolution director in writing within 10 calendar days of the mediation session.
- (e) 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 parties will have an opportunity to have the agreement reviewed by their attorney of record. If there is no objection to the agreement within 10 calendar days following the mediation session, the agreement will be binding upon all parties enforceable as a settlement agreement. If there is an objection the attorney objecting to the mediated agreement must notify opposing counsel and the dispute resolution program in writing within 10 calendar days of the mediation session.
- (f) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of any agreement to the dispute resolution program. The dispute resolution program shall notify the judge to whom the case was assigned of the lack of an 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 settlement.

RULE 15. ROLE OF COUNSEL.

Attorneys of record shall never be excluded from the mediation conference. The mediator shall at all times be in control of the mediation and procedures to be followed during the mediation. Counsel shall be permitted to communicate privately with their clients at any time. Counsel's presence at the mediation is a matter to be decided by the attorney and the client, unless otherwise ordered by the court. If counsel is not present, any agreement reached is subject to counsel's review and approval. See Rule 13(d).

RULE 16. COURT CONFLICTS.

For the purpose 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 17. INTERPRETERS.

The Augusta Circuit Alternative Dispute Resolution Program will provide interpreting services during court ordered mediation sessions, if needed. The ADR Program will pay the interpreter for these services.

RULE 18. EVALUATION.

The dispute resolution program will provide to the Office of Dispute Resolution information which will allow any 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.

APPENDIX I

ALTERNATIVE DISPUTE RESOLUTION PROGRAM AUGUSTA JUDICIAL CIRCUIT

Guidelines for Mediation in Cases Involving Issues of Domestic Violence

For purposes of these guidelines and the procedures that implement them, domestic violence is defined as follows:

Causing or attempting to cause physical harm to a current or former intimate partner or spouse; placing that person in fear of physical harm; or causing that person to engage involuntarily in sexual activity by force, threat of force or duress.

In addition to acts or threats of physical violence, for purposes of these guidelines, domestic violence may include abusive and controlling behaviors (such as intimidation, isolation, and emotional, sexual or economic abuse) that one current or former intimate partner or spouse may exert over the other as a means of control, generally resulting in the other partner changing her or his behavior in response. Even if physical violence is not present in these circumstances, such a pattern of abusive behavior may be a critical factor in whether or not a party has the capacity to bargain effectively. Therefore, a person conducting screening for domestic violence must be alert to patterns of behavior that, while not overtly violent, may indicate a pattern of domestic abuse that should be treated as domestic violence for purposes of these guidelines.

1. Criminal cases that involve domestic violence should not be referred to mediation from any court.
2. The Alternative Dispute Resolution Program for the Augusta Judicial Circuit (hereafter referred to as "the program") will screen all domestic relations cases for domestic violence through intensive intake. Those domestic relations cases referred to mediation directly from the bench are also subject to the domestic violence screening process. These intake procedures are designed to identify cases involving allegations of domestic violence.
3. When intake and screening procedures are completed and the alleged victim chooses to proceed with mediation, those cases may be referred to mediation. Only mediators who have received special Advanced Domestic Violence Training will mediate such cases.
4. The final determination as to appropriateness of mediation will be made by the Court.
5. If allegations of domestic violence arise in the context of a mediation, any mediator who has had no special training in handling cases involving domestic violence should in most instances conclude the mediation and send the case back to the court. In concluding the mediation, the mediator should take precautions to guard the safety of the participants, particularly the alleged victim, and of the mediator.

GUIDELINES FOR SCREENING FOR DOMESTIC VIOLENCE

I. SCREENING

PHASE ONE

Initial Screening of All Domestic Cases

- (a) At the initial screening stage, the program should determine whether either party has filed a petition under the Family Violence Act.

For purposes of these guidelines, a petition filed pursuant to the Family Violence Act against the other party is considered an indication of domestic violence, as is any verbal or written statement alleging domestic violence made in pleadings or in the screening process.

If there is or has been a petition filed under the Family Violence Act, the program should proceed to Phase Two of the screening process.

- (b) If there has been no petition for protective order under the Family Violence Act, the program shall review the Civil Initiation Form in the Clerk's file to see if the appropriate box is checked under the question regarding domestic violence. If the "No" box is checked or if neither box is checked, or if no Civil Initiation Form is filed, the program shall proceed with Phase I of the screening process. If the "Yes" box is checked, the case will proceed to Phase II of the screening process.

- (c) The Program Director shall review the pleadings in domestic cases to determine if there are any allegations of domestic violence. At this point in the process, if there are no allegations of domestic violence, the case will be scheduled for mediation in the routine manner.

It then becomes the responsibility of the parties and their attorneys to inform the program of any domestic violence allegations. When the party and/or attorney have indicated that there may be domestic violence, it is the responsibility of the program to follow up on these indications of domestic violence and continue with Phases II and III of the screening process.

- (d) If there is an indication of domestic violence in Phase I, then the program will contact the party alleging domestic violence to obtain further information as set forth in Phase II. If that party is represented by counsel, the attorney must be contacted first and given an opportunity to participate in further screening, should they choose to do so.

PHASE TWO

Further Screening Where There Is An Indication of Domestic Violence

1. **Further Screening.** This screening technique will include personal contact, either by telephone interview or face-to-face interview. The program director will conduct the screening interview. This screening process could place a victim at risk. The Program Director will, to the

best of his/her ability, ensure that the screening is conducted under safe and confidential circumstances.

If direct contact reveals that there is in fact no allegation of domestic violence (because the indication in Phase I resulted from a miscommunication, clerical, error, etc.), then the case may be scheduled for mediation in the normal manner. If there is an allegation of domestic violence, the process continues in order to ensure that the alleged victim is fully informed about the mediation process before making a decision whether to proceed with mediation.

2. Informed Consent. Informed consent involves two aspects of information to be discussed with the alleged victim: (1) information about the mediation process; and (2) information about how the individual's circumstances may affect her or his ability to function in the mediation setting.

Because the dynamics of a relationship characterized by a pattern of violent and abusive behavior may manifest in mediation, an alleged victim of such behaviors is provided with choice in order to avoid further victimization or endangerment. The Ethical Standards for Neutrals (Appendix C, Chapter 1, Alternative Dispute Resolution Rules) places primacy on the principles of self-determination and voluntariness. These standards also require that parties be fully informed about the mediation process. In keeping with these principles, and the necessity of protecting participants, an alleged victim of domestic violence will be given the opportunity to exercise choice about whether to proceed with mediation prior to assignment of the case. To ensure that the alleged victim's choice to proceed with mediation is self-determined, he or she must be provided with sufficient information about the process to make an informed choice. At a minimum, the nine items set forth in "Ethical Standard I. Self-Determination/Voluntariness. A" must be explained. This information may be conveyed informally in conversation between the program director and the alleged victim, and may be discussed in conjunction with the following screening questions. (Please see Appendix A of this document.)

While mediation is oriented towards the future, past and/or present patterns of party interaction can have a significant impact upon the process. Questions about party interaction are a valuable tool for ensuring that the alleged victim has enough information about the mediation process to make an informed decision about whether he or she wishes to proceed with mediation. For this reason, the program will make a good faith effort through the screening process to discuss the following questions with the party alleging domestic violence. The purpose of this process extends beyond obtaining information and should assist the party in focusing on barriers and the capacity to mediate.

1. *Can you tell me more about what has happened that led you to file for a protective order (or says there has been violence, etc.)?*
2. *Mediation is a process that helps parties to plan for the future. Are you able at this time to think about your own future needs?*
3. *Have you had an opportunity to think about your own needs, interests and concerns separate from those of your spouse?*

4. *Do you think that you will be able to talk about your needs, interests and concerns if your spouse is in the room?*
5. *Is there any reason that you do not feel able to discuss your needs openly with your spouse?*
6. *Are you able to disagree with your spouse and talk about that disagreement? Do you feel safe in saying no to things that you do not agree with?*
7. *Do you have concerns about sitting in the same room with your spouse?*
8. *Are you afraid of your spouse? If so, would you be able to speak up for yourself in a separate room with a mediator? (Explain shuttle mediation option.)*
9. *Are you still living in the same home with your spouse? If so, do you think you would feel safe in returning home after discussing the issues in your case in mediation?*
10. *Do you have concerns about going to court?*
11. *Do you have any other concerns about safety that you would like us to know about?*

After presenting information about the process of mediation and discussing the information elicited by these questions, the program director will ask whether the person needs any further information about the mediation process in order to decide whether or not he or she is willing to mediate.

PHASE THREE

Referral to Mediation if Domestic Violence Alleged

After the information in Phase II has been discussed, the party alleging domestic violence may choose whether or not to proceed with mediation. If represented, he or she will be encouraged to discuss that decision with counsel and given an opportunity to do so before a decision is made. No case involving issues of domestic violence should be sent to mediation without the consent of the alleged victim given after a thorough explanation of the process of mediation.

- (a) If the person alleging domestic violence declines mediation, the case will be released for process through the court system, and the court will simply be notified that mediation was not appropriate.
- (b) If the alleged victim chooses to proceed with mediation, the case should be sent to mediation unless the assigned Judge determines that there is a compelling reason (such as extreme violence) that this particular case should not be referred.

- (c) If the party alleging domestic violence chooses to mediate, this program will take appropriate steps to ensure that the safeguards set forth in Section II herein are in place for the mediation session.

II. SAFEGUARDS FOR THE MEDIATION SESSION IN CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE

1. This program will exercise care to avoid disclosure of the parties' places of residence by either the program staff or the mediator.
2. The mediator conducting the session will have received special training in dealing with issues of domestic violence in the context of mediation.
3. The alleged victim will have an attorney or advocate available for the entire session or sessions. If the alleged victim does not have an attorney, he or she will be notified that an advocate or friend should attend the mediation session and/or be available for consultation and to see the parties safely to his or her car.
4. Arrangements will be made for the parties to arrive and leave the mediation session separately.
5. A Deputy should be on duty outside the mediation room when a case involving domestic violence is being mediated.
6. Arrangements will be made for the session to be held entirely in caucus if necessary.
7. At the earliest possible point in the mediation the mediator should explore power dynamics in order to 1) confirm the comfort of each party with the mediation format and 2) confirm the ability of each party to bargain for him/herself.

III. CONFIDENTIALITY IN SCREENING FOR DOMESTIC VIOLENCE.

All information obtained during this screening process will be confidential. Information obtained will not be communicated to the court unless absolutely necessary.

APPENDIX A **Guidelines for Phase II Screening**

I. CONTACTING THE ALLEGED VICTIM.

If the alleged victim is represented by counsel, the program director will consult with the attorney regarding the need to contact the alleged victim to conduct an interview to learn more

about the allegations and to provide information about mediation so that the alleged victim can make an informed choice about whether to participate in mediation.

Because the program is not making a decision about whether the allegations of domestic violence are credible, the alleged perpetrator will not be contacted unless there are indications of violence on the part of both parties in Phase I. If any contact with the alleged perpetrator is necessary; great care will be exercised to avoid disclosure of any allegations of abuse that do not appear in court pleadings.

If it is necessary to contact the alleged victim by mail, expressions of specific concerns regarding domestic violence in correspondence will be avoided. Any routine mail correspondence about the mediation to the parties will not include the alleged victim's address on any correspondence that is sent to anyone other than the victim.

During telephone interviews or telephone conversations to arrange an interview with the victim, precautions will be taken to ensure that the person is able to speak privately.

During first contact with the alleged victim, the program director will explain how the case came to the Court's attention for further screening and that the purpose of the screening is to allow the person to make an informed choice regarding their participation in mediation.

II. INFORMATION TO BE INCLUDED IN THE SCREENING INTERVIEW

- a. **Neutrality**: an explanation of the role of the mediator as a neutral person who will facilitate the discussion between the parties but who will not coerce or control the outcome; an explanation that the mediator will not allow abusive behavior of which she or he is aware and will have skills in balancing power, but will not in any way serve as an advocate for the alleged victim.
- b. **Confidentiality**: an explanation of confidentiality of the mediation session and any limitations on the extent of confidentiality;
- c. **Termination**: an explanation that the mediation may be terminated at any time by either party or the mediator;
- d. **Legal counsel**: an explanation that the alleged victim may bring an attorney to the mediation or consult his or her attorney by telephone during the mediation as needed; and an explanation that if he or she does not have an attorney, he or she may bring another advocate or friend;
- e. **Expert advice**: an explanation that the mediator will not provide any legal or financial advice;
- f. **Process**: an explanation of how mediation is conducted (joint sessions, caucus, etc.) with an explanation of the option of shuttle mediation.

- g. Good faith: an explanation that parties will be expected to negotiate in good faith and therefore should be prepared to make full disclosure of matters material to any agreement reached; but that good faith does not in any way require parties to enter an agreement about which they have any reservations;
- h. Effect of agreement: an explanation that a mediated agreement, once signed, can have a significant effect on the rights of the parties and the status of the case.