**2022 Georgia Code
Title 9 - Civil Practice
Chapter 17 - Georgia Uniform Mediation Act
§ 9-17-1. Definitions**

As used in this chapter, the term:

1. “Mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.
2. “Mediation communication” means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, terminating, or reconvening a mediation or retaining a mediator.
3. “Mediation party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.
4. “Mediator” means an individual who conducts a mediation, or if conducting a mediation pursuant to the Supreme Court of Georgia Alternative Dispute Resolution Rules governing the use of alternative dispute resolution mechanisms by the courts of this state, an individual qualified to mediate under such rules.
5. “Nonparty participant” means a person, other than a mediation party or mediator, that participates in a mediation, including a representative of a party.
6. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
7. “Proceeding” means:
	1. A judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or
	2. A legislative hearing or similar process.
8. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
9. “Sign” means:
	1. To execute or adopt a tangible symbol with the present intent to authenticate a record; or
	2. To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

History. Code 1981, § 9-17-1 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-2. Application**

1. Except as otherwise provided in subsection (b) or (c) of this Code section, this chapter applies to a mediation in which:
	1. The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;
	2. The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
	3. The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or as a provider of mediation services.
2. This chapter shall not apply to a mediation:
	1. Relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;
	2. Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that this chapter shall apply to a mediation arising out of such a dispute that has been filed with an administrative agency or court;
	3. Conducted by a judge where that judge acts as a mediator and may still make a ruling on the dispute; or
	4. Conducted under the auspices of:
		1. A primary or secondary school if all the mediation parties are students; or
		2. A correctional institution for persons who are under the age of 18 years if all the mediation parties are residents of that institution.
3. If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under Code Sections 9-17-3 through 9-17-5 do not apply to the mediation or part agreed upon. However, Code Sections 9-17-3 through 9-17-5 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

History. Code 1981, § 9-17-2 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-3. Mediation Communication as Privileged; Use of Mediation Evidence**

1. Except as otherwise provided in Code Section 9-17-6, a mediation communication is privileged as provided in subsection (b) of this Code section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by Code Section 9-17-4.
2. In a proceeding, the following privileges apply:
	1. A mediation party may refuse to disclose and may prevent any other person from disclosing a mediation communication;
	2. A mediator may refuse to disclose a mediation communication and may prevent any other person from disclosing a mediation communication of the mediator; and
	3. A nonparty participant may refuse to disclose and may prevent any other person from disclosing a mediation communication of the nonparty participant.
3. Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

History. Code 1981, § 9-17-3 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-4. Waiver of Privilege; Criminal Activity**

1. A privilege under Code Section 9-17-3 may be waived in a record if it is expressly waived by all mediation parties and:
	1. In the case of the privilege of a mediator, it is expressly waived by the mediator; and
	2. In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.
2. A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under Code Section 9-17-3, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.
3. A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under Code Section 9-17-3.

History. Code 1981, § 9-17-4 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-5. When Communication Privilege Is Inapplicable; Use of Mediation Evidence**

1. There shall be no privilege under Code Section 9-17-3 for a mediation communication that is:
	1. In an agreement evidenced by a record signed by all parties to the agreement;
	2. Available to the public under Article 4 of Chapter 18 of Title 50, relating to open records, or made during a session of a mediation which is open, or is required by law to be open, to the public;
	3. A threat or statement of a plan to inflict bodily injury or commit a criminal act of violence;
	4. Intentionally used to plan a criminal act, to commit or attempt to commit a criminal act, or to conceal an ongoing criminal act or criminal activity;
	5. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;
	6. Except as otherwise provided in subsection (c) of this Code section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or
	7. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the Division of Family and Children Services mediation.
2. There shall be no privilege under Code Section 9-17-3 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:
	1. A court proceeding involving a felony; or
	2. Except as otherwise provided in subsection (c) of this Code section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.
3. A mediator shall not be compelled to provide evidence of a mediation communication referred to in paragraph (6) of subsection (a) or paragraph (2) of subsection (b) of this Code section.
4. If a mediation communication is not privileged under subsection (a) or (b) of this Code section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this Code section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

History. Code 1981, § 9-17-5 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-6. Limited Disclosures by Mediators**

1. Except as provided in subsection (b) of this Code section, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.
2. A mediator may disclose:
	1. Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
	2. A mediation communication as permitted under Code Section 9-17-5; or
	3. A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.
3. A communication made in violation of subsection (a) of this Code section may not be considered by a court, administrative agency, or arbitrator.

History. Code 1981, § 9-17-6 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-7. Limited Disclosures of Mediation and Mediation Communications**

Notwithstanding any provision of this chapter to the contrary, mediation and mediation communications, and such related conduct, shall not be admissible or subject to disclosure, except to the extent agreed to by the parties in writing or as provided in Code Section 24-4-408 or other law or court required rule of this state, unless such communications are subject to Article 4 of Chapter 18 of Title 50, relating to open records.

History. Code 1981, § 9-17-7 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-8. Review of Mediator’s Conflict of Interest; Required Disclosures by Mediator; Exclusion; Special Qualifications Not Required**

1. Before accepting a mediation, an individual who is requested to serve as a mediator shall:
	1. Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and
	2. Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.
2. If a mediator learns any fact described in paragraph (1) of subsection (a) of this Code section after accepting a mediation, the mediator shall disclose it as soon as is practicable.
3. At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator’s qualifications to mediate a dispute.
4. A person that violates subsection (a) or (b) of this Code section is precluded by the violation from asserting a privilege under Code Section 9-17-3.
5. Subsection (a), (b), or (c) of this Code section shall not apply to an individual acting as a judge.
6. This chapter shall not require that a mediator have a special qualification by background or profession.

History. Code 1981, § 9-17-8 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-9. Participation With Attorney or Designated Representative**

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

History. Code 1981, § 9-17-9 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-10. Application of Federal Model Law**

1. As used in this Code section, the term “Model Law” means the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, as approved at the 51st Session of the United Nations Commission on International Trade Law on June 26, 2018.
2. Except as otherwise provided in subsections (c) and (d) of this Code section, if a mediation is an international commercial mediation as defined by the Model Law, the mediation is governed by the Model Law.
3. Unless the parties agree in accordance with subsection (c) of Code Section 9-17-2, that all or part of an international commercial mediation is not privileged, Code Sections 9-17-3, 9-17-4, and 9-17-5 and any applicable definitions in Code Section 9-17-1 also apply to the mediation and nothing in Article 11 of the Model Law derogates from Code Sections 9-17-3, 9-17-4, and 9-17-5.
4. If the parties to an international commercial mediation agree that the Model Law shall not apply, this chapter shall apply.

History. Code 1981, § 9-17-10 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-11. Application of Federal Electronic Signatures in Global and National Commerce Act**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or supersede Section 101(c) of such act or authorize electronic delivery of any of the notices described in Section 103(b) of such act.

History. Code 1981, § 9-17-11 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-12. Uniformity Across Jurisdictions**

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Code 1981, § 9-17-12 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-13. Severability**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History. Code 1981, § 9-17-13, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

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§ 9-17-14. Applicability**

This chapter shall apply to all mediation agreements and mediation proceedings entered into on or after July 1, 2021.

History. Code 1981, § 9-17-14 , enacted by Ga. L. 2021, p. 646, § 2/SB 234.