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## Georgia's New Mediation Law: Harmonization and Innovation


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# Georgia's New Mediation Law: Harmonization and Innovation

This article explains the genesis of the new Georgia Uniform Mediation Act, outlines its scope and function and discusses some important practice points for attorneys and mediators.

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**Each year, thousands of mediations take place in** Georgia.[1] Some are court-ordered, many are administered privately pursuant to voluntary agreements by the parties and an increasing number involve parties in international disputes arising from business activities in Georgia. Although reliable statistics are hard to come by given the proliferation of voluntary mediations and the growth in mediations in which the parties are unrepresented, most practitioners would agree that, over the last two decades in Georgia, far more civil disputes have been resolved through mediation than jury verdicts. Given the current backlog in the courts due to the COVID-19 pandemic, and the escalating costs associated with civil litigation, this trend will likely continue in the years ahead, not only in Georgia but around the country.

In most mediations, the decisive factor in whether the mediation will prove successful is the parties' willingness to be open and candid with each other and the mediator about their underlying interests and the strengths and weaknesses of their respective claims and defenses. And the willingness to be candid depends on assurances by the parties and the mediator that what happens in mediation stays in mediation.[2]

Most Georgia lawyers are familiar with the assurances of confidentiality that mediators give in their introducto-

ry statements at the outset of a mediation. But does the law back up these assurances? Until recently, the answer to this question was uncertain and depended in part on whether the mediation was court-connected, and thus subject to the Alternative Dispute Resolution Rules (Georgia ADR Rules) promulgated by the Supreme Court of Georgia,[3] or whether the parties were conducting a voluntary mediation, where parties are free to express in writing (or not) their agreement to keep mediation communications confidential. This uncertainty created confusion in Georgia case law[4] and has contributed to a reluctance on the part of some parties, particularly those from outside the United States who are increasingly engaged in international trade and investment activities in Georgia, to conduct mediations in this state.

The new Georgia Uniform Mediation Act (GUMA),[5] which became effective on July 1, 2021, was drafted to address these issues by creating a well-defined statutory privilege for mediation communications and requiring all mediators to disclose potential conflicts of interest before a mediation, regardless of whether the mediation is court-connected or voluntary. The GUMA also contains a specific section that is designed to promote international mediation in Georgia, which will enhance Georgia's position as a leading hub for the resolution of international business disputes.[6]

This article explains the genesis of GUMA, outlines its scope and function and discusses some important practice points for attorneys and mediators.

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## Background and Objectives

Generally, there are three mechanisms available to help keep mediation communications confidential: (1) confidentiality agreements, (2) evidentiary exclusion and (3) evidentiary privilege. With respect to confidentiality agreements, it is common practice to include confidentiality provisions in an agreement to mediate, at least when the parties are represented by lawyers, which is not always the case. A confidentiality agreement may bind the parties with a duty to maintain secrecy and restricts what they can reveal to the public or others about the mediation. A confidentiality agreement cannot, however, bind non-signatories, and the mediator may or may not be a signatory.[7] A confidentiality agreement also cannot insulate mediation communications from being introduced in court proceedings unless a court chooses to recognize and enforce the agreement.[8]

With respect to evidentiary exclusion, Section 408 of Georgia's evidence code makes "[e]vidence of conduct or statements made in compromise negotiations or mediation" inadmissible.[9] But Section 408 applies only to proceedings governed by Georgia's evidence code. It does not protect mediation communications from discovery, and it contains loopholes that allow mediation communications to be offered as evidence for "another purpose," such as "proving bias or prejudice of a witness, negating a contention of undue delay or abuse of process, or proving an effort to obstruct a criminal investigation or prosecution."[10] Moreover, only parties to the litigation may invoke Section 408, which does little to protect a non-party mediator-witness who feels ethically bound not to disclose what occurred in the mediation.

In contrast to confidentiality agreements and evidentiary exclusion, evidentiary privilege provides more protection from disclosure because it creates (1) a right not to disclose, and (2) a right to keep others from disclosing mediation communications, in both discovery and

at trial. Prior to the GUMA, the law on the existence of an evidentiary privilege for mediation in Georgia was murky and inconsistent at best. Murky, because the Georgia ADR Rules, which regulate court-connected mediation in Georgia,[11] indirectly establish a hybrid rule of evidentiary exclusion and privilege that insulates court-connected mediation communications from discovery and protects the mediator from subpoenas. Inconsistent, because the ADR Rules do not apply to private, voluntary mediations, which are thus denied the same protections.[12] The resulting confusion came to a head in *Wilson v. Wilson*,[13] where the Supreme Court of Georgia confronted a mediation that may or may not have been court-connected and raised significant questions about the admissibility of the mediator's voluntary testimony in a subsequent trial. In light of the murky and inconsistent state of the law on mediation confidentiality, the Court justified its decision to allow the evidence by citing the Uniform Mediation Act (UMA), which was not Georgia law at the time.[14]

Naturally, the Court's policy-making body for court-connected mediation, the Georgia Commission on Dispute Resolution (GCDR), became interested in a Georgia version of the UMA to fill the gaps left open by confidentiality agreements and evidentiary exclusion and to provide more clarity and consistency to the law governing confidentiality in mediation. The Uniform Law Commission promulgated and approved the UMA in 2001,[15] in collaboration with the American Bar Association's Section on Dispute Resolution. The ABA approved the UMA the following year, and all the major national providers of dispute resolution services have endorsed it. Twelve other states have passed versions of the UMA, and other states currently have it under consideration. Other states, such as Florida, have drawn on the UMA's principles when devising or revising their mediation confidentiality schemes.[16] The UMA is remarkably stable having generated very little case law over its meaning and application.

In 2017, the Atlanta International Arbitration Society (AtlAS) began exploring draft legislation on confidentiality in international mediations. The primary goal of AtlAS is to promote Georgia as a venue for international dispute resolution.[17] One way to achieve this goal is to create an attractive legal environment for the resolution of international disputes by promoting legislation familiar to international practitioners. One obvious candidate was the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Conciliation, which was promulgated in 2002 to serve as a model law for international mediation.[18] But adopting this legislation would not have solved Georgia's problems with confidentiality in domestic mediations.

A 2003 amendment of the UMA incorporated the UNCITRAL Model Law on International Commercial Conciliation.[19] Adopting the UMA in Georgia would therefore allow the GCDR and AtlAS to kill two birds with one stone. Thus, representatives of both bodies formed a joint working group to study and report on the efficacy of the UMA for both domestic and international mediations in Georgia. After several months of study, discussion and revision, the working group recommended adopting a version of the UMA. Since 2018, GCDR, AtlAS and the Dispute Resolution Section of the State Bar of Georgia worked with other stakeholders to garner support for the Act. This group effort ultimately obtained the support of the Judicial Council of Georgia, the Atlanta Chamber of Commerce, numerous sections of the State Bar and the Atlanta Bar Association, the State Bar's Board of Governors and the Association of Conflict Resolution's Georgia Chapter, as well as important input from the Georgia Trial Lawyers Association. The State Bar of Georgia voted to include the GUMA in its

legislative package in 2019 and 2021. The General Assembly passed the GUMA on March 25, 2021, and the governor signed it into law on May 10, 2021.[20]

## Scope of the GUMA

The GUMA covers "mediation communications," including verbal and non-verbal statements made during a mediation or for the purposes of mediating.[21] "Mediation communications" also includes documents and other materials created for purposes of the mediation.[22] Consistent with the evidentiary exclusion rule, the privilege created by the GUMA does not extend to the underlying facts of the dispute, and otherwise discoverable or admissible information and evidence does not become privileged merely because it was disclosed in mediation.[23]

While the GUMA broadly defines the term "mediation," it applies only to formal mediations such as:

- mediations required by statute or rule or referred by an adjudicative body or administrative agency;
- private, voluntary mediations where the parties and mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged; or
- any mediation conducted by someone who holds themselves out as a mediator or provider of mediation.[24]

The GUMA does not cover mediations involving collective bargaining, programs for minors in primary and secondary schools, programs in prisons for inmates and judicial settlement conferences conducted by a judge who may make a ruling on the dispute.[25] Consistent with mediation's core principle of party autonomy, parties can opt out of the GUMA's coverage.[26]

## Operation of the Mediation Privilege

The GUMA creates a mediation privilege by providing that mediation communications are neither subject to discovery nor admissible in evidence in any adjudicative or legislative process.[27] Further, all the participants in a mediation can invoke the privilege[28] in ways limited to their status as parties in the dispute and process. For example, "mediation parties" (actual disputants) may use the privilege to protect mediation communications from disclosure by themselves or by others.[29] A "mediator" may use the privilege to refuse to disclose a mediation communication or to keep others from disclosing the mediator's communication.[30] "Non-party participants" (including an attorney) may use the privilege to refuse to disclose a mediation communication or keep others from disclosing their communication.[31]

The GUMA also provides that holders of the mediation privilege can explicitly waive it.[32] Waivers operate as follows:

- For testimony about a party's mediation communications, all parties hold the privilege, and therefore all parties must waive the privilege before a party or nonparty participant may testify or provide evidence about a party's mediation communication. If a mediator seeks to provide that testimony, then all parties and the mediator must waive the privilege.[33]
- For testimony about a mediator's mediation communications, both the parties and the mediator hold the privilege, and therefore both the parties and the mediator must waive the privilege before a party, mediator or nonparty participant may testify or provide evidence of a mediator's mediation communications.[34]
- For testimony about a nonparty's mediation communications, both the parties and the nonparty participants hold the privilege, and therefore both the parties and the nonparty participant must waive the privilege before a party or nonparty participant may testify. If that testimony is to be offered through the mediator, then the mediator must also agree to waive the privilege.[35]

Finally, if a person makes a disclosure that prejudices another, that person is precluded from asserting a privilege to the extent necessary for the prejudiced person to respond.[36] Similarly, a person who uses a mediation in furtherance of a crime is precluded from asserting the privilege.[37]

## Exceptions to the Privilege and Confidentiality

The GUMA sets out a limited number of categorical exceptions to the mediation privilege for situations where society's interest in the information outweighs the parties' interest in maintaining confidentiality.[38] These include: (1) signed agreements relating to the conduct of the mediation or the resolution of the dispute; (2) communications covered by the open records or open meetings laws; (3) communications involving threats of violence; (4) communications in furtherance of crimes; (5) communications relating to a professional malpractice claim against a mediator; (6) communications relating to a professional malpractice claim against a participant; and (7) information necessary to protect children or vulnerable elders.[39]

Moreover, a party can seek a limited exception to the privilege in a court proceeding involving a felony or to contest a mediated settlement agreement.[40] In a hearing *in camera*, the party must convince the adjudicator that the evidence is not available otherwise and that the need for it outweighs the parties' interest in protecting confidentiality.[41]

Despite these exceptions, mediators cannot be compelled to reveal mediation communications related to contested mediated agreements or ethics or malpractice claims against other participants in the mediation.[42] If a mediation communication is excepted from the privilege, only the portion necessary for the excepted purpose can be admitted, and the communication does not become discoverable or admissible for any other purpose.[43]

## Mediators' Responsibilities

In addition to the privilege, which confers a right upon the mediator to refuse to disclose evidence in a subsequent proceeding, the GUMA imposes certain responsibilities upon mediators. Like the current ADR Rules,[44] the GUMA prohibits communications between mediators and courts or

other adjudicative bodies that may rule on the matter.[45] This rule is designed to reinforce party confidence in the neutrality of both the mediator and any subsequent adjudicator. This rule insulates the adjudicator from information that might prejudice their subsequent judgment. Specifically, mediators cannot "make a report, assessment, evaluation, recommendation, finding, or other communication" to an adjudicator;[46] however, a mediator can disclose information necessary for administrative purposes, such as whether the mediation occurred, who attended, and whether a settlement occurred.[47] Of course, the mediator is allowed to disclose the exceptions discussed above and report evidence of neglect, abuse or abandonment to an agency responsible for protecting vulnerable individuals.[48]

The GUMA also includes a consumer protection element by imposing on a mediator the responsibility to disclose any existing or potential conflicts of interest that may cast doubt on the fairness of the proceeding.[49] Before accepting a mediation, the mediator has a duty to make a reasonable inquiry to determine whether there is a past or existing relationship or some other fact that would lead a reasonable person to believe that the mediator may have an interest in the outcome.[50] After accepting a mediation, the mediator has a continuing duty to disclose any such facts that may come to the mediator's attention.[51] This rule is consistent with mediation's core values of promoting party autonomy and informed consent. Mediators who fail to make timely disclosures waive their right to assert the privilege in that case.[52]

Finally, mediators must disclose their qualifications to serve upon request by a mediation party.[53] This allows parties to make informed decisions about the person they select to help them resolve their dispute. Importantly, the GUMA does not impose any special qualifications upon mediators.[54] As long as the parties are informed, they may select lawyers or nonlawyers, experienced or inexperienced mediators, and mediators who use different styles. Mediators in court-connected programs, however, are still required to meet the qualification standards under the ADR Rules.[55]

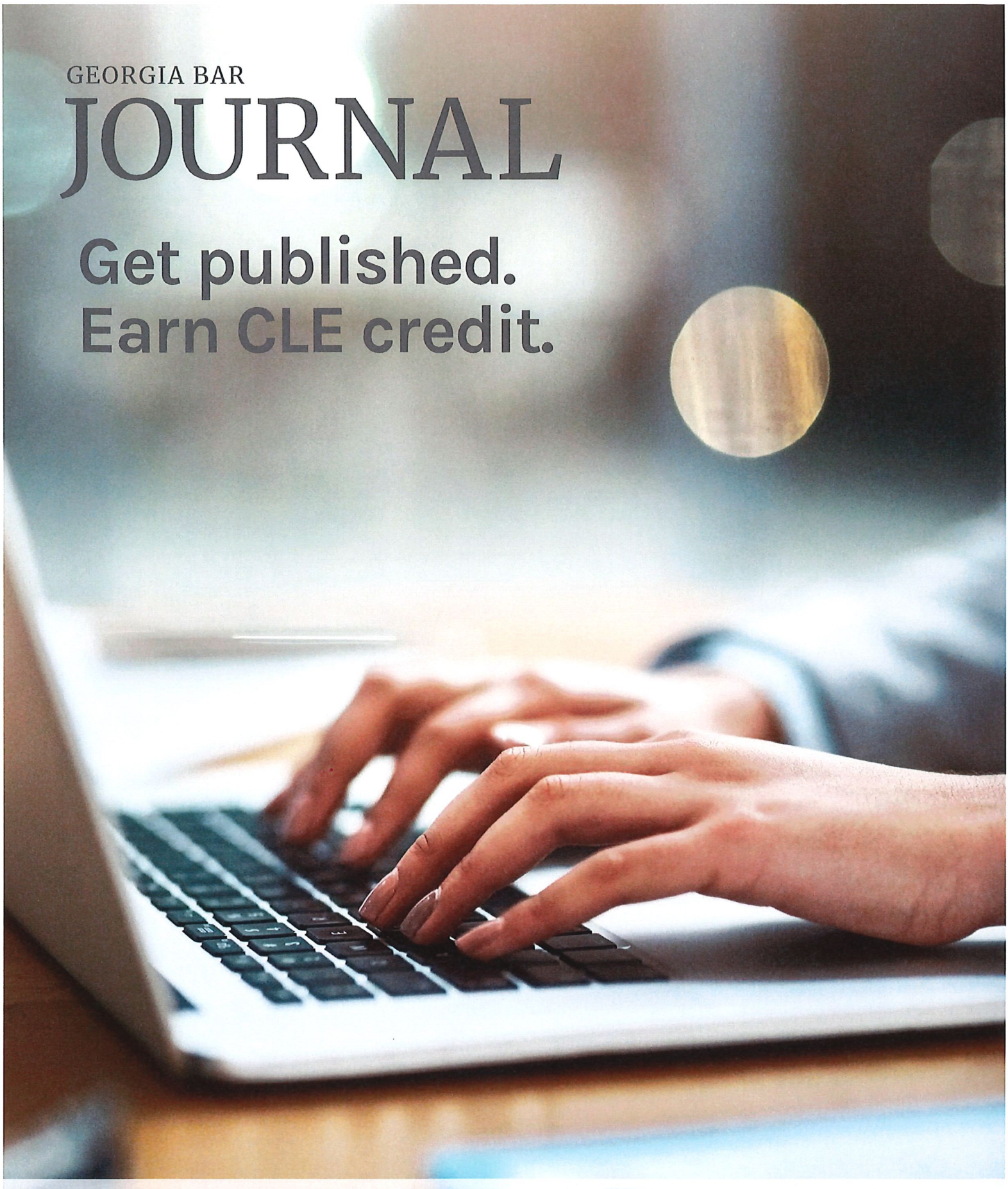
## Promoting International Mediation in Georgia

A key feature of the GUMA that sets Georgia apart from other states that have adopted the Uniform Mediation Act is its express incorporation of the United Nations Commission on International Trade Law's (UNCITRAL)[56] 2018 Model Law on International Commercial Mediation and Settlement Agreements Resulting from Mediation (the Model Law).[57] The Model Law amended and modernized UNCITRAL's earlier 2002 Model Law on International Commercial Conciliation to reflect recent innovations in international dispute resolution and to address issues surrounding the enforcement of international mediated settlement agreements. Section 10 of the GUMA expressly provides that if a mediation is an "international commercial mediation" as defined by Article 2 of the Model Law,[58] then the mediation is governed by the Model Law unless the parties agree in advance that all or part of the mediation is not privileged,[59] or the parties otherwise agree that the Model Law shall not apply, in which case the rest of the provisions in Chapter 17 shall apply.[60] Georgia is the first state in the United States to enact the Model Law.

The Model Law represents a significant innovation in the field of international commercial dispute resolution. Mediation is increasingly seen as a cost-effective mechanism for resolving cross-border business disputes, but the use of mediation around the globe is uneven. For a mediation to be successful, the parties must understand and trust the process and also know that what they say in the mediation may not be used against them, whether in the actual dispute being mediated, or in a collateral proceeding that may take place halfway around the globe at some point in the future. Further, parties from different countries may agree conceptually with the idea of using a neutral party to facilitate a settlement discussion, but because they come from different legal traditions, they may disagree about the ground rules that should govern the mediation. Finally, the goal of mediation is to produce a settlement, but if the mediation results in a settlement agreement that is difficult to enforce across international boundaries, there may be little incentive to mediate in the first place. The Model Law attempts to address these issues in several ways.

First, the Model Law addresses numerous procedural aspects pertaining to international mediation, such as the process for commencing a mediation,[61] the appointment of the mediator,[62] the conduct of the mediation[63] and the termination of the mediation.[64] Because foreign parties may have less familiarity with mediators outside their home jurisdiction, the Model Law provides that "[w]hen a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence."[65] While the Model Law allows parties to agree to conduct the mediation by reference to the rules of a particular institution,[66] in the absence of such an agreement, the mediator "may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, [and] any wishes that the parties express and the need for a speedy settlement of the dispute,"[67] as long as the mediator seeks "to maintain fair treatment of the parties" in so doing.[68] The mediator also is empowered to make "mediator's proposals" for a settlement at any stage of the mediation,[69] a tool that U.S.-based mediators frequently use in domestic mediations.

Second, the Model Law addresses confidentiality concerns by providing that, unless the parties otherwise agree, "all information relating to the mediation proceedings shall be kept confidential."[70] In addition, the Model Law prohibits parties, the mediator and any third persons involved in the administration of the mediation proceedings from relying on, introducing as evidence or giving testimony or evidence in another arbitral or judicial proceeding about an invitation to mediate, views expressed in the mediation about settlement, statements or admissions made during the mediation, mediator proposals and documents prepared solely for purposes of mediation.[71]

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Third, Section 3 of the Model Law provides mechanisms for the enforcement of international commercial settlement agreements resulting from a mediation.[72] For example, Article 18 sets forth a non-exhaustive list of criteria that courts may rely upon to determine whether to enforce an international settlement agreement governed by the Model Law.[73] Article 19 then enumerates a limited set of factors that courts may consider when asked to refuse enforcement of an international settlement agreement governed by the Model Law, such as the incapacity of a party to the settlement agreement; evidence that the settlement agreement is null and void, not final and binding, or has subsequently been modified; evidence that the obligations in the settlement agreement have been performed or are not clear and comprehensible; evidence of mediator misconduct or a failure of the mediator to disclose conflicts of interest; or public policy.[74] These enforcement mechanisms for mediated international settlement agreements that can now be used in Georgia courts go hand in hand with the 2018 United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation).[75] The Singapore Convention on Mediation established a legal framework for the enforcement of mediated international settlement agreements across jurisdictions, in much the same way that international arbitral awards are now enforceable in most countries pursuant to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).[76] In the two and half years since the General Assembly adopted the Singapore Convention, 54 countries have signed the Convention, including leading trading powers like the United States, Brazil, China, India, Nigeria, the Republic of Korea, Singapore and Saudi Arabia.[77] Although the United States has not yet ratified the Convention, and most European countries have not yet signed it, the Singapore Convention is now in force in the countries that have ratified it, and the Convention is expected to promote international mediation in much the same way that the New York Convention fostered an explosion in the use of international commercial arbitration in the decades following its adoption in 1958.

Georgia has long been one of the leading jurisdictions in the United States for the resolution of international business disputes[78] due to its incorporation of the UNCITRAL Model Law on International Commercial Arbitration into its international arbitration code,[79] Georgia's strong public policy in favor of international arbitration,[80] pro-international arbitration decisions from the Eleventh Circuit,[81] and the State Bar's adoption of inclusive rules that allow foreign lawyers to practice in Georgia.[82] Georgia's enactment of the Model Law continues that trend and places Georgia on the leading edge of international dispute resolution. Global businesses that operate in Georgia can now be confident that the international mediations they conduct in Georgia will be confidential, governed by well-recognized, streamlined international standards that now represent best-practice in international dispute resolution, and that Georgia courts will enforce mediated settlement agreements in much the same way that arbitration awards are enforced under the New York Convention.

## Important Practice Pointers for Lawyers and Mediators Operating Under the GUMA

For attorneys, the GUMA should not have an appreciable effect on best practices in mediation representation. The Act specifically recognizes the right of parties to have their attorneys participate in a mediation.[83] Although parties might consider opting out of the statutory protections afforded under the Act, there seems little reason to do so. The biggest question for attorneys is how best to manage the three confidentiality mechanisms now available. Under the GUMA, the mediation privilege does not supplant traditional confidentiality agreements or existing rules of evidentiary exclusion.[84] This allows all three confidentiality mechanisms to come into play as needed. Attorneys can continue to use and enforce confidentiality provisions in mediation agreements. Such agreements are particularly important if subsequent related litigation might occur outside Georgia or in federal courts, though parties may wish to provide expressly that the GUMA governs their mediations, which may trigger enforcement of the GUMA in non-Georgia jurisdictions. Further, attorneys can continue to invoke O.C.G.A. § 24-4-408 at trial to exclude evidence of conduct and statements made in mediation. Moreover, there may be other statutes,[85] court rules[86] or agency rules[87] that provide for confidentiality in particular circumstances.

For mediators, the Act simply encourages what should already be accepted best practices for conflicts and qualifications disclosures. The GCDR has formed a working group to review the ADR Rules to ensure conformity with the GUMA; however, the GCDR remains free to impose additional provisions on confidentiality, disclosure and qualifications. Georgia courts with mediation programs can do likewise through their local rules in conformity with the ADR Rules.

## Conclusion

Practitioners are increasingly comfortable using mediation as a mechanism for resolving disputes. The GUMA harmonizes the law governing court-connected and voluntary mediations in Georgia, thereby creating greater protections for party-participants, lawyers and mediators alike. It promotes uniformity of the law across state boundaries given the growing acceptance of the UMA around the country. It also further solidifies Georgia's position as a leading innovator in the field of international dispute resolution and should benefit all members of the Bar, as well as the state's economy, by encouraging more foreign businesses to keep Georgia on their mind when deciding where to conduct trade and resolve international business disputes. ●

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## Endnotes

1. Georgia courts that reported their activity referred 31,228 cases to mediation in 2019. *See* Georgia Administrative Office of the Courts, *Georgia Office of Dispute Resolution 2019 Caseload Data 2* (2020). This total excludes private voluntary mediations for which there is no reliable data available.
2. Douglas H. Yarn, Georgia Alternative Dispute Resolution § 7:30 (2021).
3. Ga. Alt. Dispute Resolution R. 7.
4. *See*, e.g., Wilson v. Wilson, 282 Ga. 728, 653 S.E.2d 702 (2007).
5. Georgia Uniform Mediation Act ("GUMA"), O.C.G.A. §§ 9-17-1 to 9-17-17.
6. O.C.G.A. § 9-17-10.
7. *See generally* Yarn, *supra* note 3, at § 6:56.
8. Barger v. Garden Way, 231 Ga. App. 723, 726, 499 S.E.2d 737, 741 (1998) (disclosure of parties to confidential settlement agreement required because it is implicit in such agreements that parties may nevertheless comply with subpoenas, court orders, and applicable laws).
9. *See* Georgia Evidence Code, O.C.G.A. § 24-4-408(b).
10. For example, offers to compromise are admissible in claims for litigation expenses based on bad faith, stubborn litigiousness and abuse of process against defendants under O.C.G.A. §§ 13-6-11, 24-4-408. *See* Christie v. Rainmaster Irr., Inc., 299 Ga. App. 383, 390, 682 S.E.2d 687, 693 (2009) (plaintiff's statement allegedly made in the course of settlement correspondence and subsequently elicited during cross-examination admissible to support defendant's claim for attorney's fees); *see also* Reid v. Reid, 348 Ga. App. 550, 556, 823 S.E.2d 860, 866 (2020) (settlement offers were admissible for the purpose of determining whether husband's actions constituted delay or abuse of process). An example of "other purpose" can be found in Agio Corp. v. Coosawattee River Resort Ass'n, Inc., 328 Ga. App. 642, 646, 760 S.E.2d 691, 695 (2014), where evidence of discussions about installing a firewall to settle a claim was admissible because the court did not consider the evidence as an admission, but as evidence that the installation of the firewall might result in corruption of the shared server. *See also* Rogers v. Dupree, 340 Ga. App. 811, 820, 799 S.E.2d 1, 9 (2017) (allegedly extortionist demand letter made by attorney in sexual harassment claim not protected by exclusionary rule nor was the amount of money demanded by that attorney's client during the mediation). The 2017 *Rogers* decision was vacated and remanded on other grounds and in light of State v. Cohen, 302 Ga. 616, 807 S.E.2d 861 (2017), and Cohen v. Rogers (Case Nos. S17C1376–S17C1380) (April 16, 2018) (order), but on remand the Court of Appeals of Georgia did not revisit the evidentiary issues because the Supreme Court of Georgia had ruled that the demand letter did not constitute evidence of extortion.
11. *See* Ga. Alt. Dispute Resolution R. (2016). The Georgia Court-Connected Alternative Dispute Resolution (ADR) Act, O.C.G.A. § 15-23-1 *et seq.*, outlines how to fund court-connected mediation programs. The ADR Act does not discuss mediation confidentiality or privilege, but those topics are addressed in the ADR Rules.
12. Ga. Alt. Dispute Resolution R. VII.
13. 282 Ga. 728, 653 S.E.2d 702 (2007).
14. *Id.* at 733.
15. Details relating to the Uniform Law Commission's drafting history of the UMA and an annotated version of the UMA are available on the ULC's website at https://www.uniformlaws.org (last visited Aug. 1, 2021).
16. *See*, e.g., Fla. Stat. Ann. §§ 44.401 et seq. (LexisNexis 2021), and Me. R. Evid. 514.
17. *See* AtlAS Mission Statement, available at http://arbitrateatlanta.org/atlas-mission-vision-values (last visited Aug. 1, 2021).
18. *Model Law on International Commercial Conciliation,* United Nations Commission on International Trade Law (UNCITRAL), 57th Sess., Supp. No. 17, U.N. Doc. A/57/17, annex I (2002).
19. Uniform Mediation Act, § 11 (2003).
20. 2021 Ga. Laws 268.
21. O.C.G.A. § 9-17-1(2).
22. *Id.*
23. O.C.G.A. § 9-17-3(c).
24. O.C.G.A. § 9-17-2(a).
25. O.C.G.A. § 9-17-2(b).
26. O.C.G.A. § 9-17-2(c).
27. O.C.G.A. § 9-17-3 (a). *See also* O.C.G.A. § 9-17-1(7) (defining "proceeding").
28. *See* O.C.G.A. § 9-17-3. O.C.G.A. § 9-17-1 defines the participants as either a "mediator," a "mediation party" or a "nonparty participant." In somewhat of a redundancy, Georgia's version of the UMA expressly includes mediators in court-connected mediations to emphasize coverage of the Act over those mediations. In another redundant but useful clarification, the GUMA expressly includes lawyers, in their representative capacity, as nonparty participants. *See* O.C.G.A. § 9-17-1(5).
29. O.C.G.A. § 9-17-3(b).
30. *Id.*
31. *Id.*
32. O.C.G.A. § 9-17-4(a).
33. *Id.*
34. *Id.*
35. *Id.*
36. O.C.G.A. § 9-17-4(b).
37. O.C.G.A. § 9-17-4(c).
38. O.C.G.A. § 9-17-5.

39. O.C.G.A. § 9-17-5(a).
40. O.C.G.A. § 9-17-5(b).
41. *Id.* This is equivalent to the UMA section that the Georgia Supreme Court specifically approved of and referenced in Wilson v. Wilson, 282 Ga. 728, 733 (2007).
42. O.C.G.A. § 9-17-5(c).
43. O.C.G.A. § 9-17-5(d).
44. Ga. Alt. Dispute Resolution R., App. C, Ch. 1, III(C)(b).
45. O.C.G.A. § 9-17-6(c).
46. O.C.G.A. § 9-17-6 (a).
47. O.C.G.A. § 9-17-6(b).
48. *Id.*
49. O.C.G.A. § 9-17-8(a)(1).
50. O.C.G.A. § 9-17-8(a).
51. O.C.G.A. § 9-17-8(b).
52. O.C.G.A. § 9-17-8(d).
53. O.C.G.A. § 9-17-8(c).
54. O.C.G.A. § 9-17-8(f).
55. Ga. Alt. Dispute Resolution R. V.
56. *Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation,* UNCITRAL, U.N. Doc. A/73/17, Annex II (2018) (the "Model Law"). The United Nations General Assembly established UNCITRAL in 1966 to promote the harmonization and modernization of the law of international trade. *See* GA Res 2205, UNGAOR, 21st Sess, Annex II, U.N. Doc A/6394. Over the last 55 years, UNCITRAL has worked with member states of the United Nations, non-member states, and intergovernmental and nongovernmental organizations to negotiate and prepare model laws, international treaties and other legal instruments regarding numerous aspects of international commercial law, including international dispute resolution, the international sale of goods, international contracting, international transport, electronic commerce and international transport. *See* A Guide to UNCITRAL: Basic Facts About the United Nations Commission on International Trade Law (2013), at 1. UNCITRAL's model laws and instruments have been widely adopted across the globe in part because they can help countries accommodate differences and resolve disputes that sometimes arise when countries from different legal traditions and in different stages of economic development engage in international commerce.
57. O.C.G.A. § 9-17-10(a)–(b).
58. Under Article 2 of the Model Law, a mediation is "international" if: (a) the parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different States; or (b) the State in which the parties have their places of business is different from either: (i) the State in which a substantial part of the obligations of the commercial relationship is to be performed; or (ii) the State with which the subject matter of the dispute is most closely connected.
59. O.C.G.A. § 9-17-10(c).
60. O.C.G.A. § 9-17-10(d).
61. Model Law, Art. 5.
62. Model Law, Art. 6.
63. Model Law, Art. 7.
64. Model Law, Art. 18.
65. Model Law, Art. 6(5).
66. Model Law, Art. 7(1).
67. Model Law, Art. 7(2).
68. Model Law, Art. 7(3).
69. Model Law, Art. 7(4).
70. Model Law, Art. 10.
71. Model Law, Art. 11(1).
72. *See generally* Model Law, § 3. Section 3 on International settlement agreements expressly does not apply to certain categories of settlement agreements involving consumer transactions, "family, inheritance or employment law," court approved settlements or settlement agreements that are enforceable as an arbitral award. *See* Model Law Art. 16(2)–(4).
73. Model Law, Art. 19 (listing factors).
74. Model Law, Art. 19.
75. United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018.
76. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21.3 U.S.T. 2517.
77. *See* Status: United Nations Convention on International Settlement Agreements Resulting from Mediation, available at https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status (last visited, Aug. 1, 2021).
78. For a discussion of the Georgia International Arbitration Code and other innovations in Georgia designed to facilitate international commercial dispute resolution in Georgia, *see generally*, Stephen L. Wright & Shelby S. Guilbert Jr., *Recent Advances in International Arbitration in Georgia: Winning the Race to the Top*, Ga.St.B.J., June 2013, at 18.
79. *See* O.C.G.A. § 9-9-20, *et seq.*
80. *See* O.C.G.A. § 9-9-20(b) (stating that the purpose of the international arbitration code is "to encourage international commercial arbitration in the state, to enforce arbitration agreements and arbitration awards, to facilitate prompt and efficient arbitration proceedings . . . and to provide a conducive environment for international business and trade").
81. Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1445 (11th Cir. 1998) (holding that an international arbitration award issued in a U.S. proceeding is subject to vacatur only on the grounds set forth in Article V of the New York Convention); Bautista v. Star Cruises, 396 F.3d 1289, 1302 (11th Cir. 2005) (eliminating domestic arbitration law as a basis for vacating international arbitration awards).
82. *See, e.g.,* Ga. Super. Ct. R. 4.4 (authorizing *pro hac vice* admission of foreign lawyers) and Ga. R. Prof. Cond. 5.5(e) (authorizing temporary practice of law by foreign lawyers).
83. O.C.G.A. § 9-17-9.
84. O.C.G.A. § 9-17-7.
85. *See, e.g.,* O.C.G.A. § 12-10-100 (confidentiality of mediation under the Apalachicola-Chattahoochee-Flint River Basin Compact, Art. XIII (a)(8) & (9)), and O.C.G.A. § 12-10-110 (confidentiality of mediation under the Alabama-Coosa-Tallapoosa River Basin Compact, Art. XIII (a)(8)&(9)).
86. *See, e.g.,* ADR Rule VII. B.
87. *See, e.g.,* Rule 100 of the Board of Workers' Compensation (confidentiality of mediation of workers; compensation claims).