**Mediation Podcast**

**Hi folks and welcome to another episode of The Good Judge-ment Podcast! I’m Wade Padgett**

And I’m Tain Kell. Today, Wade, we’re going to talk about a topic that is near and dear to my heart- MEDIATION.

**Yeah, Tain, you’ve been up to your eyeballs in mediations over the last few months, haven’t you?**

Right, Wade, my new business is booming, and because that subject is at the forefront of my mind, we thought we’d discuss some of the issues surrounding mediation in civil cases

(or what I like to call “how daddy brings home the bacon”)

**Let’s start at the beginning. Are there some statutes governing mediation in Georgia?**

Yes, the Georgia Uniform Mediation Act is the Act that governs all things mediation in Georgia. That act is found in O.C.G.A. §§9-17-1 et seq.

"§ 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."

Voluntariness is a hallmark of the mediation process, because no outcome in the process can be mandated.

**But can’t courts compel parties to mediation?**

 “Lead (mandate) them to water, but you can’t make them drink”

Well, what exactly is a mediator?

"(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..."

In Gerogia, mediators participating in court-annexed mediation programs are required to be certified by the Georgia Supreme Court through the Office of Dispute Resolution.

40 hours of training plus observations

**Are all mediators lawyers?**

Nope.

Another important aspect of mediation is the element of **confidentiality or privilege**

In Georgia’s case, mediation communications are *privileged communications*, on the level of attorney/client communications and marital communications.

**§ 9-17-3. Mediation communication as privileged; use of mediation evidence**

(a) 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.

[relating to waivers and criminal activities]

In fact, subject to some exceptions, mediation communications are inadmissible in court:

§ 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.

**How is a mediation conducted?**

**What’s your technique?**

**How do your build a rapport with the parties and attorneys?**

**Is there a “secret sauce” to a successful mediation? Are there any weird “jedi mind tricks” you use to get a case settled?**

**Are you just a “pony express rider” who caries dollar figures back and forth?**

**How much does “thinking outside the box” come into play in a mediation for you?**

**How much preparation goes into the mediation beforehand?**

**Do you have a favorite type of case to mediate?**

**How does your judicial experience come into play in a mediation?**

**How do you keep from interfering with the attorney/client relationship in a mediation?**

**Advice to any lawyers our there about how to achieve successful mediation?**

(client control, reasonable expectations)

**How can judges use mediation in a case?**

**Just so we don’t confuse the two, what’s the difference in mediation and arbitration?**

(arbitrator’s role is a decision maker and parties are compelled to follow it unless it is non-binding arbitration)

O.C.G.A. §§9-9-1 et seq.

**Any thoughts on the broader use of mediation in our post-COVID judicial world?**

(another “tool in the toolbox”)

**Folks, that wraps up another episode of the Good Judge-ment Podcast. Don’t forget to visit us on our LinkedIn page where you can “follow” us for upcoming episode alerts, or go to goodjudgepod.com for show notes.**

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**And as always, you can reach out to us at** **goodjudgepod@gmail.com** **for comments, topic suggestions, or just general tomfoolery. We love that! I’m Wade Padgett.**

And I’m Tain Kell reminding you that trial by combat was outlawed centuries ago. Just mediate, ok?