

GEORGIA COMMISSION ON DISPUTE RESOLUTION:

THE FIRST 25 YEARS



[T]he Supreme Court shall ... provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions.

-- Constitution of the State of Georgia, Article VI, Section IX, Paragraph I

GEORGIA COMMISSION ON DISPUTE RESOLUTION

2018

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FRANK E.A. SANDER

PHOTO COURTESY OF HARVARD LAW SCHOOL

INTRODUCTION

Fifty years ago, the term multi-door courthouse would have sounded more like architectural prowess and less like a responsive system of judicial solutions for litigants. However, in 1976 Harvard Law Professor Frank E.A. Sander changed all of that. Sander is widely considered the originator of the Alternative Dispute Resolution (ADR) field, by proposing his “multi-door” approach in an environment of uncertainty, fear, and hesitation, but also one of great potential. Local judges and lawyers were key in bringing ADR practices to Georgia, thus creating a network that has allowed the Commission to celebrate 25 years this 2018.

Sander challenged new practitioners to apply his ideas through foggy resistance... and almost entirely without a clear road map. These early Georgia practitioners were unsure if the ideas would work, but forged full steam ahead, hoping not to embarrass Sander or themselves. They often asked the questions: Would litigants come? If they came, would they settle? And, finally, would they keep those agreements forged by them, not ordered by judges? However, stakeholders were steadfast. They believed Sander’s idea that working with – not separately – from the courts was key to obtaining referrals. They also listened when Sander said mandatory referrals to mediation might be necessary as long as the parties were NOT mandated by courts or mediators to settle.

The recent death of Professor Sander is cause for reflection. It is the belief of the Commission that the success of the ADR

field in Georgia is owed to the vision of Frank Sander and the individuals willing to implement his concept. Without him, there would be no Dispute Resolution Section of the American Bar Association (ABA); no law school courses teaching ADR; no institutionalization of ADR in local courts; and, notably, no Georgia Commission on Dispute Resolution.

On our 25th year, we encourage all readers to enjoy the journey of the Commission’s rich history; to celebrate the advancements in judicial service efficiency; and to take pride in looking ahead at the possibilities for the next 25 years.

Thank you for your continued support of the Commission on Dispute Resolution and the Georgia Office of Dispute Resolution. It is our honor and pleasure to serve the courts, neutrals, and communities throughout our state.

LAYING THE ADR FOUNDATION IN GEORGIA

The development of alternative dispute resolution as a philosophy and a profession has had a profound and permanent impact on how people define justice and where people seek justice – throughout the country and certainly in Georgia. Several pioneers laid the foundation for the robust ADR system in Georgia's courts today.

Judge Griffin B. Bell

In examining ADR's broad and leafy family tree in Georgia, its deepest roots can belong to only one person – Griffin B. Bell, native Georgian, U.S. attorney general, U.S. appellate court judge, and partner at the King & Spalding law firm. Dispute resolution likely owes its very existence in Georgia to the early vision of Judge Bell.

In 1976, when he sat on the United States Court of Appeals for the Fifth Circuit, Judge Bell attended the Pound Conference, organized by the Judicial Conference of the United States, the American Bar Association, and the Conference of State Chief Justices. The conference convened leaders from a broad range of disciplines to contemplate the future of the judiciary and to discuss substantive and procedural ways to improve the administration of justice. Judge Bell returned from the conference with a radical idea to encourage people to resolve their disputes outside of court and its adversarial system.

After Judge Bell was appointed attorney general by President Jimmy Carter in 1977, one of his first official acts was to launch a national experiment to test the viability of mediation and arbitration in resolving minor disputes outside the judicial system. Judge Bell's experimental pilot offered competitive grants through the U.S. Department of Justice Law Enforcement Assistance Administration to establish "Neighborhood Justice Centers," which would serve as loci for community dispute resolution efforts outside the courts. The pilot was based on the concepts of Harvard Law Professor Frank Sander, who believed that neighborhood justice centers could provide people with faster, fairer, and less expensive resolutions

of their disputes than the courts offered. Another important goal of Judge Bell's pilot project was to help relieve overcrowding in the court system.

In 1977, proposals from three cities – Los Angeles, Kansas City, and Atlanta – were each awarded \$208,000 for 18 months to establish a dispute resolution center, hire staff, and train mediators.

Each of the three pilot neighborhood justice centers organized themselves differently. The Kansas City center was run by the city, and the Los Angeles center became a bar association

function. The Atlanta center was born as a private, nonprofit organization, and it expanded its mission beyond neighborhood disputes by contracting for mediation and arbitration services with local courts and by offering mediation training.

Judge Bell's experiment helped spur the growth of hundreds of neighborhood justice centers and other community dispute resolution centers nationwide. Today, dispute resolution concepts have become widely adopted by public and private entities. However, of Judge Bell's three pilot centers, only the Atlanta center remains, in the form of the Justice Center of Atlanta.



Judge Jack P. Etheridge, Sr.

How did Atlanta come to submit a grant proposal to the Justice Department for a chance to fund the creation of an experimental neighborhood justice center? It turns out that being the home town of the U.S. Attorney General has its advantages, and it turns out that Judge Bell knew exactly whom to approach to give his city a solid

chance to win a grant: fellow Atlantan Judge Jack P. Etheridge, Sr.



PHOTO COURTESY OF DAILY REPORT

In 1977, when Judge Bell was just starting his career as the country's top law enforcement officer, Judge Etheridge was leaving the bench after 11 years as a superior court judge in Fulton County. Bell knew Etheridge, an open and gregarious man who in his service to bench and bar had earned a reputation as a man of respect who got things done. Etheridge may not have had any particular interest in alternative dispute resolution at the time, but Bell was convinced that Etheridge was the right person to assemble a team and craft a proposal that would win Atlanta some seed money from the pilot project. Etheridge agreed to take on the challenge.

As part of his proposal to the Justice Department, Judge Etheridge founded in 1977 what was to be called the Neighborhood Justice Center of Atlanta. He chose to operate it as an independent,

nonprofit, 501(c)(3). He appointed himself chairman of the nascent organization and named Atlanta attorney David G. Crockett as president.

Etheridge's proposal won one of the three competitive \$208,000 grants awarded by the Justice Department, and under Etheridge's chairmanship over the following ten years, the Neighborhood Justice Center of Atlanta was transformed from experimental vision to vital reality.

According to Edith B. Primm, Esq., Executive Director of what is now known as the Justice Center of Atlanta, the Center's 40 years of success can be traced to that single early decision Etheridge made to form the Center as a nonprofit entity. Unlike the other two Centers, in Los Angeles and Kansas City, the Atlanta center, as a private charitable organization, was free to operate outside the bureaucratic and geographic constraints of government or professional associations. Its flexibility to negotiate contracts with, offer services to, and raise funds from any appropriate entities was, Primm says, critical to its financial viability and future vitality.

Perhaps inspired by the success of his Justice Center and by the emerging judicial and legal appreciation for ADR, Judge Etheridge focused his post-judicial career on dispute resolution practice. In 1992, he opened the Atlanta office of JAMS (Judicial Arbitration and Mediation Services), the national dispute resolution firm, and ran it until 1998. In 1994, he wrote the book *Coming to the Table: A Guide to Mediation in Georgia*, a primer for lawyers. He later distinguished himself as a special master in several national class action lawsuits.

Justice Center of Atlanta

From its founding in 1977 as an experiment on the viability of ADR processes to resolve community and legal disputes, the Justice Center of Atlanta has survived and thrived into the 21st century. Under the leadership of Executive Director Edith B. Primm, it has earned an enviable national and international reputation, particularly for its high-level trainings in a variety of mediation specialties. It also has been an innovator from the time when ADR and the idea of dispute resolution outside the courts were still in their infancy. For example, two years after it was founded, when it was still known as the Neighborhood Justice Center of Atlanta, the Center became a pioneer in mediating disputes involving parents of students with disabilities and public schools that were required by federal law to provide services and benefits. Such disputes are today routinely mediated nationwide in local and federally operated schools. The Center has handled more than 80,000 cases and taught

more than 50,000 people how to mediate.

Ironically, Primm, who has served the Center for 41 years, says she had no grand vision when she first applied at the Center. She just wanted to leave a drab job at Rich's department store. "Thanksgiving Day 1977, I saw a notice in the paper about the Neighborhood Justice Center looking for staff. I thought it would be fun to try a national experiment, why not?" But even when she was hired as the Center's first deputy director, she was unconvinced that the community dispute resolution experiment would live past its 18-month grant.

"I remember thinking that this won't work. People won't come. If they come, they won't agree. And if they come and agree, they won't keep their agreement," recalled Primm, who has served as the Center's executive director (only its fourth) for 24 of its 41 years. "Every two weeks I'm reminded how wrong I was because I get a paycheck."



Perhaps the most high-profile case handled by the Center in its 40-year history was Atlanta's "Presidential Parkway" dispute, which erupted when plans were unveiled in the mid-1980s to raze a historic in-town neighborhood in order to build a \$27-million, three-mile, four-lane expressway that linked the new Carter Presidential Library to the greater metro Atlanta. In 1991, after several years of bitter litigation, DeKalb County Superior Court Judge Hilton Fuller referred the case to mediation at the Center. The disputants were the City of Atlanta, the State of Georgia, and an umbrella association of twenty-four neighborhood coalitions.

To maintain the appearance of neutrality amid the history of acrimony among the local parties, a mediator was selected from outside Georgia. The first six mediation sessions were paid for through a grant to the Center. The parties, buoyed by the realization that mediation could lead to a better resolution than a court proceeding, agreed to pay for three more sessions themselves and reached a satisfactory resolution. The neighborhoods still stand,

and the Presidential Parkway is now known to Atlantans in its truncated form as "Freedom Parkway."

The critical impact of the Presidential Parkway mediation was to show the national judicial and legal communities that large, complex legal disputes were just as appropriate targets for alternative processes as were smaller, neighborhood disputes. And at a time when ADR was still in its infancy, the Justice Center demonstrated that its collaboration with local courts and the local legal community was essential to generating political support for ADR.

The Center's early and notable successes in Atlanta led Georgia to become an incubator for and a leader in the use of ADR in public and private entities.¹ In 2016, American Bar Association's Section of Dispute Resolution named the Justice Center of Atlanta the recipient of its annual John W. Cooley Lawyer as Problem Solver Institutional Award in recognition of the Center's history of resolving disputes by creative and non-traditional means for clients and the community.

¹That the state is fertile ground for processes of peace is not surprising to those who remember that two native Georgians – Rev. Martin Luther King, Jr., and President Jimmy Carter – have received the Nobel Peace Prize.



JUDICIAL BUILDING IN ATLANTA

BRINGING ADR TO THE COURTS

The pioneering work of the Justice Center of Atlanta demonstrated that disputes of any type and size could be resolved without resort to lawsuits. One key person noticed its successes. Through the work of the Justice Center, he realized that processes like mediation and arbitration could bring relief to Georgia's overburdened court system while offering less expensive, fair, efficient, and speedier litigation alternatives to disputants who waited too long and paid too much for imperfect justice. He possessed the credibility and charisma to rally others to join him in institutionalizing ADR in the court system. Fortunately for Georgians, that key person happened to be the Supreme Court's Chief Justice, Harold G. Clarke.

Chief Justice Harold G. Clarke

Before he rose to the bench, Justice Clarke practiced law in his hometown of Forsyth and served from 1961 to 1971 in the Georgia House of Representatives. There, he supported legislation that created the State Bar of Georgia and made membership mandatory for all Georgia-licensed attorneys. He served as president of the State Bar in 1976-77. Governor George Busbee appointed Clarke to the Supreme Court in 1979, and Justice Clarke was instrumental in the Court's creation of the Chief Justice's Commission on Professionalism, the nation's first state body dedicated to enhancing the professionalism of lawyers. Clarke served as chief justice from 1990 to his retirement from the court in 1994.

For all of his professional accomplishments, Clarke was proudest, some have said, of his work in helping to create Georgia's court-connected ADR system, instituting one of the most fundamental changes in the history of Georgia judicial process and legal practice.

The story of how Justice Clarke came to spearhead the formal integration of ADR into the courts begins not with a walk in a park, but with a jog in a cemetery. For years, Justice Clarke would frequently join his law assistant, Ansley B. Barton, for lunchtime runs through Oakland Cemetery, located less than a mile from the Supreme Court in downtown Atlanta. During their runs, Barton would often recount for Justice Clarke her experiences as a volunteer mediator at the Justice Center of Atlanta. Her belief in mediation's power to resolve disputes infected him and bloomed into a vision. He saw that alternative processes like mediation might offer practical solutions

to the growing problems of overcrowded dockets and delayed justice for tens of thousands of litigants and their lawyers.

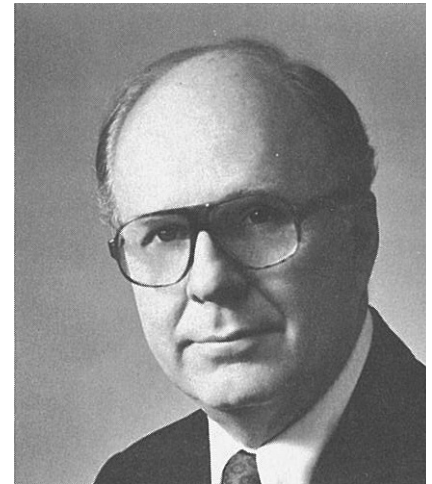
In his June 23, 1989, concurrence in the Supreme Court's famous "Presidential Parkway" case,² mediated under the auspices of the Justice Center of Atlanta, Justice Clarke perhaps for the first time publicly declared his belief that ADR had a rightful place in Georgia's judiciary:

"I believe the [State of Georgia] Constitution points the courts in the direction of using mediation and other

alternative dispute resolution procedures as tools within the judicial workshop available to repair the good order of society."

The following year, in 1990, the Supreme Court and the State Bar of Georgia together formed at Clarke's direction the 18-member Joint Commission on Alternative Dispute Resolution to explore the feasibility of promoting ADR within the judiciary. Barton, his law clerk and running partner, was appointed the Joint Commission's reporter.

One does not succeed as a lawyer, legislator, or justice without the ability to convince others to rally under one's flag, and Justice Clarke could be an irresistible force of persuasion. Among his first allies was Evans



Plowden, Jr., then president of the State Bar of Georgia, who agreed to serve as co-chair with Justice Clarke of the Joint Commission. Clarke also approached Jack Watson, then a partner at the Atlanta-based law firm of Long, Aldridge & Norman, who agreed to serve as permanent chair of the Joint Commission.

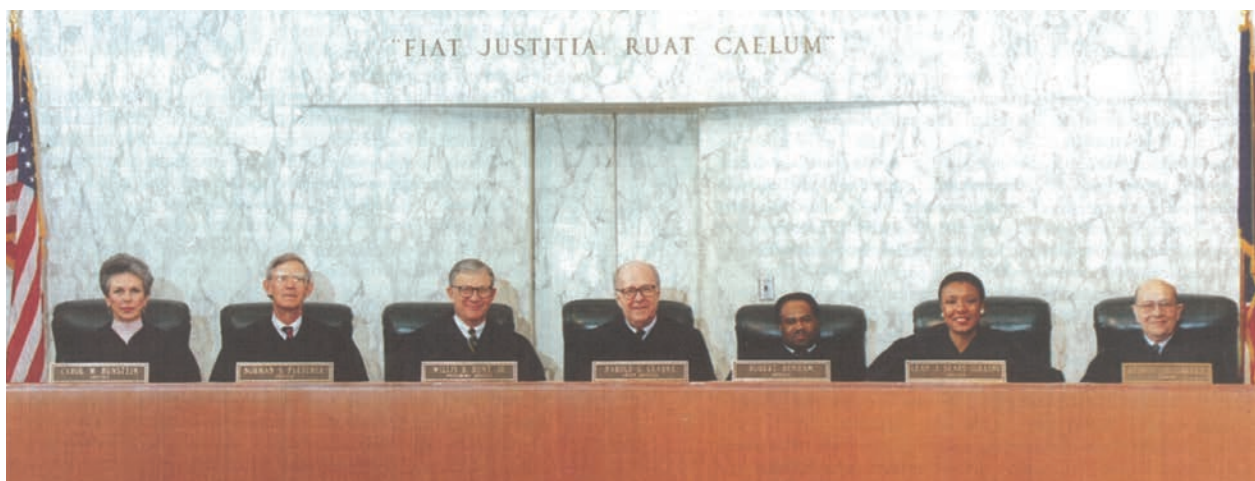
After two years of intensive discussion, research, and writing, the Joint Commission recommended to the Supreme Court that it formally make ADR processes available through the judiciary for the benefit of judges, lawyers, and the people they serve. In 1993, the Supreme Court adopted the Joint Commission's recommendations in full and created the Georgia Commission on Dispute Resolution and its executive arm, the Georgia Office of Dispute Resolution. Watson and Plowden reprised their respective roles as permanent chair and co-chair of the brand new Commission, while Barton was hired as the first director of the new Office. Clarke's dream had become a reality.

Clarke retired from the Supreme Court in 1994, but he continued to promote ADR as chair of the alternative dispute resolution

group at the Atlanta-based law firm Troutman Sanders.

Following Justice Clarke's passing in 2013, his former law clerk Ansley Barton and the Justice Center's Edith Primm wrote in a letter to the editor of the *Fulton County Daily Report*, "Justice Clarke has ensured access to high quality ADR for millions of Georgians who use the court system. Today, the system he championed helps resolve tens of thousands of court cases each year without resort to trial. His vision has fundamentally changed the face of legal practice and legal education in our state."

In an homage to his colleague on the bench, former Chief Justice Norman Fletcher called the creation of the ADR system in Georgia's courts Justice Clarke's "legacy." In 2013, the Commission and the State Bar's Dispute Resolution Section chose to memorialize that legacy by creating the Chief Justice Harold G. Clarke Award recognizing outstanding contributions to ADR in Georgia. Fittingly, the inaugural recipient of the award was Justice Clarke's law clerk and jogging partner, Ansley Barton.³



SUPREME COURT OF GEORGIA, 1993.

²*Department of Transportation v. City of Atlanta et al.*, 380 S.E.2d 265, 259 Ga. 305 (1989).

³For a list of all winners of the Clarke award, see Appendix F.

Jack H. Watson, Jr., Esq.

In 1990, when Chief Justice Harold G. Clarke of the Georgia Supreme Court asked him to lead a volunteer commission to study the idea of offering ADR processes through the judiciary, Jack Watson could have said no. A Harvard law graduate who was then a busy senior partner at the Atlanta-based law firm of Long, Aldridge and Norman, he had already run for governor of Georgia and served Governor and President Jimmy Carter in several key roles, including White House chief of staff. He had consulted with Brazil as it revised its constitution. By anyone's assessment, Watson was an accomplished and busy man.

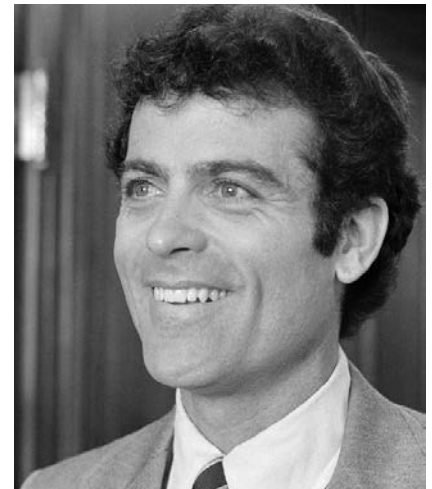
Moreover, Watson was a lifelong trial lawyer and veteran of complex litigation. One might reasonably assume that philosophically he would be among the last people to be interested in alternatives to litigation. And yet, when Justice Clarke shared his vision for ADR in the Georgia judiciary, Watson felt compelled to say yes. Familiarity with trial practice, he realized, had bred exasperation.

"As a commercial trial lawyer for many years, I had frequently been frustrated by the fact that litigation cost my clients so much time and money, some of it unnecessary in my opinion, because there were so many opportunities for manipulation, abuse, and delay of the system in pretrial discovery, and pretrial motions and tactics," said Watson, who agreed to serve as permanent chair of the Joint Commission on Alternative Dispute Resolution. "In many cases, I thought there could be better, more effective ways to resolve the disputes, and I agreed with Justice Clarke that we should explore all those possibilities."

The challenge facing Watson, Clarke, and the other members of the Joint Commission was daunting. Processes like mediation and arbitration are as old as civilization, but in 1990 they were alien to litigation. They were viewed with skepticism – or outright hostility – by judges and lawyers across the country, who saw ADR as a threat to the Constitutional rights of the people, to the sovereignty of the courts, and to the livelihoods of trial attorneys. ADR was controversial, not just in Georgia, but nationwide, despite its growth in a handful of other states.

Against that backdrop, the Joint Commission nonetheless was charged with studying the feasibility of a dispute resolution system that had the potential to fundamentally change trial practice in Georgia. The tough political job fell mostly to Justice Clarke and Co-Chair Evans Plowden, Jr., both highly respected by the state's judges and lawyers, who needed to convince their skeptical colleagues that ADR processes could help their courts work better for people in their communities.

The massive behind-the-curtain work of researching and crafting a set of concrete recommendations for the Supreme Court fell primarily on Watson, as chair of the Joint Commission, and on Justice Clarke's



law clerk, Ansley Barton, as the Joint Commission's reporter.

After two years of monthly meetings and intensive research and writing, Watson led the Joint Commission to submit in 1992 a ground-breaking proposal for a court-connected ADR system that balanced state authority with local autonomy. The Supreme Court adopted the Joint Commission's entire set of recommendations, effective 1993. It created a successor Commission to oversee the implementation of the Joint Commission's plan. Watson agreed to chair the new Commission.

"When I recently went back and read the recommendations, I must confess, I was very proud of our work," Watson

said. "When Harold Clarke asked me to chair the Commission that would oversee implementation of the new system, I couldn't say no. I was too invested by that time in the idea of court ADR throughout the judicial system of Georgia."

Watson then served as chair of the Supreme Court Commission for its first six years, until 1999. By then, the ADR system he helped create had blossomed. Confident that Chief Justice Clarke's vision was becoming a robust reality, Watson retired from the volunteer leadership role that occupied him for nearly 10 years. He had done what Chief Justice Clarke had asked him to do, and he was confident the system would survive and flourish.

Ansley B. Barton, Esq.

After graduating from Emory law, Ansley Barton embarked on a stellar legal career – two years clerking at the U.S. District Court for the Northern District of Georgia, followed by two years as a law firm associate, then an elite position as law clerk to Justice Harold G. Clarke of the Supreme Court of Georgia.

Yet a newspaper article about community mediation conducted at the new Justice Center of Atlanta would fundamentally alter the trajectory of Barton's legal career from traditional to alternative, and Barton, in turn and in several ways, would help revolutionize the system of justice and the practice of law in Georgia.

"When I read the story, I didn't know anything about mediation, never heard about it," Barton said. "But I immediately thought the process makes perfect sense, and I wanted to find out more about it. So I took the Justice Center's training, and they asked me to mediate the next day." She began volunteering in 1982 at the Justice Center to mediate cases referred from Fulton County courts.

Barton's instinct that mediation makes perfect sense was vindicated as she saw case after case resolve through mediation in non-legal, decidedly human ways. "I remember one magistrate court case involved these women who were in a quarrel over the same man, and one of the women keyed the other one's car," she said. "It was so interesting because at the end of the mediation, the women agreed that they were both furious at this guy, and they made up."

Barton frequently felt compelled to share such first-hand accounts of mediation's power to restore peace with Justice

Clarke during their regular lunchtime jogs around Oakland Cemetery. Her passion for mediation intrigued Clarke, who was confronted with a state judicial system that had grown dysfunctionally overcrowded. Judges, litigants, and lawyers were struggling in the pursuit of justice delayed and imperfect. Barton's faith in mediation prompted Clarke to consider the radical notion that non-adversarial processes like mediation could – perhaps ironically – provide speedier and more satisfactory justice within the adversarial legal system.

By the time he became chief justice in 1990, Clarke had molded his radical notion into solid form as the Joint Commission on Alternative Dispute Resolution, a group of judicial, legal, political, and community leaders organized by the Supreme Court and the State Bar of Georgia to study the viability of processes like mediation and arbitration in the judiciary. Whom did he appoint to staff the new Commission? His law clerk, his jogging partner, and the court's resident mediation enthusiast, Ansley Barton.

What followed for Barton and the Joint Commission were two years of intensive research and discussion on ADR processes and their potential for successful integration into the judicial process. The Supreme Court adopted the Joint Commission's



recommendations in full in 1993, creating the Georgia Commission on Dispute Resolution and its executive arm, the Georgia Office of Dispute Resolution. The first chair of the new Commission? Joint Commission Chair Jack Watson. The first director of the new Office? Ansley Barton, of course.

Barton served as director of the Office of Dispute Resolution for its first seven years, painstakingly nurturing and growing the court-connected ADR system she helped to create. In 2000, she left the judiciary for academia, but continued to focus on ADR as Professor of Conflict Management and Director of the Master of Science in Conflict Management at Kennesaw State University. In 2005, she became Interim Director of Kennesaw's Center for Conflict Management, then left in 2006 to start her own mediation, training, and consulting firm. From 2002 to 2007, she revisited her commitment to the judiciary as a member of the Commission on Dispute Resolution. Arguably no one has served in so many leadership roles to promote ADR in Georgia and its courts as Barton.

Reflecting on her various roles in the court-connected ADR system, Barton noted the fortuitous confluence of people, organizations, and circumstances that created fertile ground for ADR to prosper in Georgia's courts. ADR had been tried

in other forms by other state judiciaries, but few with as much success as Georgia's has had. She attributes the success to a unique combination of strong statewide leadership by the Supreme Court and State Bar, combined with a sensitivity to local autonomy in dealing with systemic overcrowding.

"We started looking at ADR at the time of the 'war on drugs,' when the superior court dockets became so crowded with criminal cases," Barton said. "The Supreme Court and the State Bar saw ADR as a way to divert cases from those courts, especially divorce cases, which can be particularly time-consuming and contentious." The state ADR rules allowed for superior court judges to decide for themselves whether or not to start ADR programs in their jurisdictions and to tailor their programs to their local needs. No one felt coerced.

"It also helped that Justice Clarke and Commission Co-Chair Evans Plowden had both been presidents of the State Bar and were from smaller communities," Barton said. They had the respect of judges and lawyers who were interested in solutions to their problems but leery of being dictated to by the state. "There never seemed to me any question that this was going to work, because the right people at the right time were committed to making it work."

Joint Commission on Alternative Dispute Resolution

The 1983 Georgia Constitution mandates that the judicial branch “provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions.” As part of its ongoing efforts to fulfill that mandate, the Supreme Court created the Joint Commission on Alternative Dispute Resolution in September 1990 as a first step in exploring the idea of a statewide court-connected ADR program in Georgia. The Commission was “joint” because it was led by the Chief Justice Harold G. Clarke and State Bar President Evans Plowden, Jr., who together appointed the Commission’s members. Attorney Jack H. Watson, Jr., served as permanent chair of the Joint Commission. Ansley Barton, Justice Clarke’s longtime law clerk, served as the reporter for the Joint Commission.

The Supreme Court’s order creating Joint Commission⁴ framed its mission thusly:

The Commission is charged to explore the feasibility of a comprehensive court-annexed alternative dispute resolution program to complement dispute resolution methods currently used in Georgia. The focus of this feasibility study will be on mediation and arbitration as alternative methods of dispute resolution. The Commission is charged to gather information, to implement experimental pilot programs, and to make recommendations for a comprehensive program.

The Joint Commission studied the impact of ADR nationwide and analyzed information gathered within the state from the bench, the bar, directors of existing programs, private providers of ADR, and others. Some states, like Virginia and Florida, had earlier begun their own experiments in court-connected ADR systems, and they provided invaluable guidance. ADR scholars, experts, and practitioners, judges, lawyers, court administrators, and other justice stakeholders – not just in Georgia but nationwide – were consulted extensively and their feedback catalogued and analyzed.

When the Joint Commission was preparing its recommendations to the Supreme Court, not only were the Executive and Legislative branches consulted, but the draft was distributed for comment to all State Bar leaders, including the Board of Governors, past presidents, section chairs, committee chairs, Uniform Rules Committee, Younger Lawyers executive council, and the Advisory Committee on Legislation. News of the draft was placed in the State Bar newsletter, and lawyers had access to the draft through their superior court clerks.

It eventually became clear that the Joint Commission would conclude officially that ADR could and should be integrated into Georgia’s judicial system. However, it was not enough to simply recommend to the Supreme Court that it create an ADR system. To fulfill its mission and to ensure that the Court would actually adopt its recommendations, the Joint Commission had to draft a blueprint that detailed not only what the Court should create but how

it should create it.

“That was probably the most challenging part, getting down to the specific set of recommendations in detail, not only what to do but how to do it, what laws should be passed, what rules to create, what the confidentiality provisions should be, what trainings should be required,” said Watson, who worked closely with Barton to gather and sift massive amounts of data to draft the Joint Commission’s final recommendations.

After two years of monthly meetings and intensive research and writing, Watson led the Joint Commission to submit in 1992 a ground-breaking proposal for a court-connected ADR system that balanced state authority with local autonomy. The Joint Commission recommended that the Supreme Court create an ADR program and included a detailed blueprint of statutes, rules, and standards needed for immediate implementation. The proposed system

would run generally under Supreme Court rule but comprise independent court ADR programs created by and managed by local courts. No jurisdictions would be required to create ADR programs. Courts wanting one would have to draft local rules that complied with the Supreme Court rules and Uniform Rules for Dispute Resolution Programs. Approved programs could assess local ADR civil filing fees, which would be collected, managed, and spent by local boards of trustees to operate the programs.

Upon recommendation by the Joint Commission, the Supreme Court, pursuant to its rule-making power under the Georgia Constitution, adopted rules that created a statewide court-connected ADR system in 1993. In keeping with Chief Justice Clarke’s vision, the system’s purpose was to help manage the burgeoning caseload in the trial courts and offer litigants true and effective alternatives to litigation.

⁴For a copy of the Supreme Court order, see Appendix B.

GEORGIA'S COURT- CONNECTED ADR SYSTEM

Georgia's court-connected ADR system provides “pockets and dockets” benefits by handling and resolving cases without trial or full intervention by the courts. The system benefits:

- ◆ **TAXPAYERS**, by mitigating the need to hire more judges and staff and build more courtrooms;
- ◆ **LITIGANTS**, by offering effective, empowering, inexpensive alternatives to litigation that save them time, money and energy;
- ◆ **ATTORNEYS**, by giving them more ways to solve their clients' problems and by reducing overcrowding in the courts;

- ◆ **JUDGES and JURIES**, by clearing dockets so they can concentrate on cases that truly require their intervention;
- ◆ **COURTS**, by settling tens of thousands of cases since 1993 and helping the judiciary handle more cases with fewer resources. Court cases handled through ADR are mainly civil matters; some programs also handle minor criminal matters such as misdemeanor warrant applications.

THE ADR SYSTEM BENEFITS:



The superior courts, with exclusive jurisdiction over felony criminal cases and domestic civil cases, were the first courts to adopt mediation, arguably because their calendars were under the greatest pressure. As felonies threatened to overrun their dockets, superior court judges came to realize that mediation of domestic cases could provide substantial relief to their trial calendars and get the wheels of justice turning more quickly. The Family Law Section of the State Bar supported mediation, and domestic cases began to settle, even cases where the lawyers were convinced that the parties couldn't or wouldn't settle. It became clear to judges,

lawyers, and litigants that mediation offered opportunities for resolution that were different than just a traditional settlement conference.

The system today comprises approximately 40 local ADR court programs, whose sizes vary from a program in a single court in a single county, to a program covering all levels of court in an entire judicial administrative district. The Commission reviews and approves local ADR rules, which give local courts authority to tailor their program rules to local needs, within the requirements of the Uniform Rules of Dispute Resolution Programs.

Georgia Commission on Dispute Resolution

The Georgia Supreme Court Alternative Dispute Resolution Rules, adopted in 1992, created two entities to oversee that system, the Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution.

The Commission's responsibilities are:

- To administer a statewide comprehensive ADR program;
- To oversee the development and ensure the quality of all court-annexed or court-referred ADR programs;
- To approve court programs;
- To develop guidelines for court-annexed or court-referred programs (ADR Rules, Appendix A);
- To develop criteria for training and qualifications of neutrals (ADR Rules, Appendix B); and
- To establish standards of conduct for neutrals (ADR Rules, Appendix C).

Seventeen members appointed by Supreme Court to five-year terms: Supreme Court Justice (1); Court of Appeals Judge (1); Superior Court Judges (3); judges from other trial courts (2); State Bar of Georgia President (1); General Assembly Member (1); State Bar of Georgia Members (5); non-lawyer public members (3).

The Commission meets in full session four times a year. The Commission's standing committees are: Budget and Personnel; Court Program Liaison; Ethics; Strategic Planning; Training and Credentials.

Georgia Office of Dispute Resolution

The Office of Dispute Resolution staffs the Commission on Dispute Resolution and implements its policies. The Office functions as the sole statewide office regulating the quality and quantity of the ADR service. Ansley B. Barton, Chief Justice Harold G. Clarke's law clerk, was appointed the first director of the Office.⁵ Since 1993, the Office size has varied from one to four staff members, including the director.

Under the ADR Rules, the Office's responsibilities include:

- *To serve as a resource for ADR education and research.* The Office provides opportunities for judicial stakeholders to learn more about ADR processes available to them. It also consults regularly with other state ADR offices to address issues.
- To provide technical assistance to new and existing court-annexed or court-referred programs at no charge. The Office partners with local court programs regularly to maintain a high level of service to court users. It sponsors regular meetings for local court program directors to work together on common issues.
- To develop the capability of providing training to neutrals in courts throughout the state at no charge. The Office reviews, approves and monitors the quality ADR trainers and their trainings in various registration categories, as well as continuing education offerings. The Office also co-sponsors the largest ADR conference in Georgia, the annual ADR Institute and Neutrals' Conference.
- To implement the Commission's policies regarding qualification of neutrals and quality of programs. The Office enforces the Commission's statewide rules of procedure for the courts and standards of conduct for ADR professionals;
- To register neutrals and remove neutrals from the registry if necessary. The Office reviews the education, training and ethical qualifications of more than 2,400 neutrals registered in general civil mediation; domestic relations mediation; specialized domestic violence mediation; delinquency mediation; dependency mediation; arbitration; and early neutral evaluation. Georgia is one of a handful of states in which the credentials for dispute resolution professionals are issued by an office of the state's highest court.
- To collect statistics from court programs in order to monitor the effectiveness of various programs throughout the state. The Office is constantly seeking ways to make the process of data collection and analysis easier for local programs.

⁵For a list of all Georgia Office of Dispute Resolution directors, see Appendix E.

STATE BAR OF GEORGIA

The State Bar has been a close and stalwart partner with the Supreme Court on promoting alternative dispute resolution from the time when ADR in the courts was just a radical new idea.

The Bar and the Supreme Court together created the Joint Commission on Alternative Dispute Resolution, the Commission on Dispute Resolution, the Office of Dispute Resolution, and the court-connected ADR system in Georgia. For several years, Office and Bar staff literally worked side by side in the State Bar's former location in the Hurt Building in downtown Atlanta.

The State Bar was interested in ADR processes before working with the Supreme Court on the statewide court-connected ADR system. For example, from 1979 to 1987, the State Bar had a Committee to Study the Practicality of Mediation and Arbitration, whose stated purpose was, "To explore innovative avenues seeking

expeditious resolutions of disputes; to consider the feasibility of conducting an in depth study as to appropriate utilization of mediation and arbitration; to review statutes and decisions relating thereto; and to make recommendations to the Board of Governors in connection therewith." Committee member Douglas H. Yarn, Esq.,⁶ then associate professor at Georgia State University College of Law, drafted the Georgia Arbitration Code, the state's modern comprehensive commercial arbitration act, which was enacted with the support of the State Bar in 1988.

The Dispute Resolution Section of the State Bar was established by the Bar's Board of Governors in 1993, just months after

the Commission and Office were created. The president of the State Bar or his or her designee serves as a member of the Commission. Every year since 1994, the Section, the Commission, and the Office have organized and sponsored the ADR Institute and Neutrals' Conference, the state's largest dispute resolution conference.⁷ In 2013, the Section and the Commission

together created the Chief Justice Harold G. Clarke Award to recognize outstanding contributions to dispute resolution in Georgia.⁸

It is the Bar's continued political and financial support of the work of the Commission that perhaps has had the greatest impact on the continued vitality of the ADR system in Georgia's courts.

Commission on Dispute Resolution

One of the Joint Commission's recommendations was that the Supreme Court create a permanent Commission on Dispute Resolution, whose members would include a designee of each year's State Bar President and four members of the State Bar. Evans Plowden, Jr., though his term as State Bar President had long passed, continued serving on the Commission until 2000. His participation was vital in gaining the support of lawyers. In one of the first meetings of the Joint Commission, he reiterated his concern that members of the bar participate fully in the work of the Commission and his belief that only through bar participation would ADR be accepted on a large scale.

Among the bar members to participate fully in the Joint Commission's work – and whose concept of legal practice was transformed in the process – was family law attorney Martha C. Christian. At the start, she says she tried to be open minded about this new idea of ADR in the courts, but she also shared the skepticism of many fellow small-town lawyers and their concerns that ADR was a threat to their practices. "After lawyers found out I was on the Joint

Commission, they told me, 'I want you to go up there and protect us,'" said Christian.

Despite her professional wariness, Christian's own domestic clients started asking for mediation. That fact and experiences with the ADR community started winning her over. One ADR conference in Ohio was personally transformative, she says.

"I met all these nice, friendly people and great listeners. They were problem solvers. They were people people. And I realized that there's something to this mediation world," she said. "I'm not casting aspersions, but as lawyers we can be contentious. We are taught to be hard-nosed, zealous representatives. But I saw, particularly in dealing with custody of



⁶Yarn served on the Commission on Dispute Resolution from 1996 to 2002.

⁷The agenda for the 1st ADR Institute and Neutrals' Conference is available in Appendix G.

⁸For a list of Clarke Award winners, see Appendix F.

children, how nasty court battles could be, and I'd seen what it did to children.”

Through her service on the Joint Commission, Christian became convinced that processes like mediation had a critical place in court, particularly in domestic cases. After the Joint Commission completed its work, Christian, the one-time mediation skeptic, served the newly created Supreme Court Commission on Dispute Resolution from 1993 to 2003, chairing the Commission in her final year. During her term, she chaired the Family Law Section of the State Bar. In 1994, after

she was appointed superior court judge in the Macon Judicial Circuit,⁹ one of her first official judicial acts was to take over the entire domestic caseload for Bibb County so she could encourage parties to resolve their cases in mediation. She also supported the Commission's controversial decision to allow for mediation in cases involving domestic violence, because she believed that victims should not be deprived by the courts of the opportunity to resolve their cases in a process that offered more privacy and safety than court.

Georgia Court-Connected Alternative Dispute Resolution Act

The court-connected ADR system was established primarily by Supreme Court rule based on the Court's Constitutional mandate to “provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions.” However, the Georgia Court-Connected Alternative Dispute Resolution Act of 1993 was critical to the system's financial sustainability. The statute, O.C.G.A. §§ 15-23-1 to 15-23-12, provides for collection of a filing fee surcharge (now up to \$10 per filing) on civil cases in courts whose local ADR rules have been approved by the Commission on Dispute Resolution. Counties' coffers would not be directly burdened by the expense of a court's ADR program.

The statute also provides for the creation of a local Board of Trustees for the ADR Fund composed of eight members representing all levels of trial court, the local bar, and court administration, and chaired by the chief judge of the jurisdiction.

The Board determines the amount of the ADR filing fee and manages those fees. Thus the ADR filing fees are set locally, collected locally, managed locally, and spent locally to support the delivery of ADR services in the local jurisdiction. No local ADR filing fees go to the Georgia Commission on Dispute Resolution or the Georgia Office of Dispute Resolution. The Commission has no authority over the local ADR boards except that it can withdraw a court ADR program's approval, thus preventing the local program and its courts from lawfully collecting ADR filing fees under the statute.

Funding for juvenile court mediation programs was also authorized through O.C.G.A. § 15-11-71, permitting collection of supervision fees for mediation services.

Rusty Sewell and Thomas Boller, longtime lobbyists for the State Bar, led efforts by the Bar and the Supreme Court to introduce and pass the ADR Act. Sewell and Boller arranged meetings with Joint

⁹Christian was the first female superior court judge in the Macon Judicial Circuit. In 2007, she became the first female chief judge of the circuit. She retired in 2011.

Commission leaders and Speaker Tom Murphy, Lt. Gov. Pierre Howard, Gov. Zell Miller's office, and other key leaders. The Bar's legislative council also worked on the bill, HB143, which was introduced

by Rep. Charles Thomas, a member of the Joint Commission. Sen. Mary Margaret Oliver, who served on the Commission on Dispute Resolution from 1993 to 1997, was instrumental in ensuring passage of the law.

Financial Assistance

The work of the Joint Commission and Commission has been supported by several large grants from State Bar-related entities, such as the Georgia Bar Foundation, totaling \$870,000 from 1991 to 2007. Of the total, \$615,000 was awarded by the Joint Commission and the Commission in the form of grants to newly proposed local court-connected ADR programs. The programs used the grants as seed money for training an initial roster of neutrals, obtaining equipment, etc.

The Commission and the Office faced their period of greatest challenge beginning in 2007, when the Georgia General Assembly unexpectedly reduced the Office's annual appropriation by 63 percent, from \$395,000 to \$145,000. With tax revenue shrinking at the start of a recession, the legislature began forcing the Commission and other fee-generating agencies off of the state budget. The Georgia Bar Foundation gave a \$250,000 award in 2007 as a one-time emergency grant to help make up for the unexpected cut in the Office's state appropriation for FY2008.

That \$250,000 cut by the legislature was the first of several drastic reductions that would see the Office's state appropriation shrink to \$0 by the end of FY2011 and

threaten the very existence of the Office and the state's court-connected ADR system. During this time of crisis, the Commission appointed Commission Member and Bar Member Edith B. Primm of the Justice Center of Atlanta as chair in 2009.¹⁰

Primm, through her reputation and leadership in the ADR and legal community, was able to attract critical political and financial assistance from the



State Bar. The Bar's Dispute Resolution Section, led by Section Chair and Commission Member Dale C. Hetzler, paid for a lobbyist who helped limit the legislature's cuts and bought time for the Commission to strategize how it would survive. Concurrently, the Section agreed also to pay for a forensic accountant to advise the Commission on how to

¹⁰Former Chief Justice Hugh P. Thompson, a member of the Commission from 2006 to 2016, would later describe Primm as a "war-time consigliere," using a term a godfather would appreciate.

restructure its income and expenses so it could operate without state appropriations.

Through a combination of staffing reductions and fee increases recommended by the forensic accountant and overseen by Primm, the Office officially became self-supporting through its fee collections on July 1, 2011, at the start of the FY2012. Since that date, the Office budget has been free from the unpredictability of legislative fiat, and the Commission has developed the confidence to look to the future.

Longtime Commission Member Judge Charles E. Auslander III succeeded Primm as Chair in 2012. In the Office's new fiscal self-reliance, Judge Auslander saw the opportunity to refocus the Commission's priorities from day-to-day crisis management

to long-term development of the ADR system and service to the judiciary. He set goals to stabilize and grow the Commission's financial resources; to raise the profile of the Commission and the Office; and to increase the professional value of neutral registration. During 2014 and 2015, he oversaw the drafting of a detailed strategic plan that would serve as the master plan for the Commission's priorities through FY2018. The strategic plan prioritized critical responsibilities that the Commission was forced to neglect during the financial crisis – providing ADR research, data analysis, and evaluation; increasing the variety and availability of ADR processes; and educating stakeholders, neutrals, judges, lawyers, and the public about ADR in the courts.



JUSTICE GEORGE H. CARLEY

THE FUTURE OF THE COURT- CONNECTED ADR SYSTEM

Justice George H. Carley has had a unique perspective from which to witness the success of ADR in the court system and its impact on the practice of law in Georgia.

He had a long and elevated vantage point. After all, he had been a lawyer since 1961, a Court of Appeals judge since 1979, and a Supreme Court justice since 1993, ultimately retiring from the bench as Chief Justice in 2012.

Back in 1990, Carley, then Chief Judge of the Court of Appeals, was convinced by his close friend Justice Harold G. Clarke to join the new Joint Commission on Alternative Dispute Resolution.

“I was interested in the whole concept of mediation after learning about it going to appellate judges’ conferences,” Carley said. He liked the idea that parties could be empowered to resolve their issues without trial and with more satisfactory results. But

like most people, his knowledge of ADR was not particularly deep. “I didn’t know the difference between mediation and arbitration for the longest time,” he admitted. He saw service on the Joint Commission as a unique opportunity to educate himself. And so he did.

For more than two years, Carley immersed himself in the work of the Joint Commission (Chair Jack Watson, Jr., said Carley never missed a monthly meeting). By the time the Joint Commission recommended to the Supreme Court in 1992 that it create a statewide court-connected ADR system, Carley was sure that ADR was the key to speedier and better justice for judges, lawyers, and

litigants. When the Supreme Court created a permanent Commission on Dispute Resolution, he stayed on. He remained on the Commission even after Governor Zell Miller elevated him to the Supreme Court in March 1993. Carley was “hooked” on ADR.

Carley had promoted appellate mediation when he was still on the Court of Appeals, though he ultimately found few lawyers or fellow judges were interested. He advocated for more ADR in the courts most everywhere he spoke publicly – at judges conferences, at Bar meetings, at Rotary clubs. If some people did not initially share his enthusiasm for mediation, many eventually came to realize how right he was.

“People don’t like change, especially lawyers,” Carley said, who eventually stepped down from the Commission in 2001. But once mediation caught on, they saw that it could be good for litigators and litigants. The judiciary and the law are better for embracing ADR. “A lot of lawyers do

only mediation and arbitration now. It’s remarkable,” he said.

After nearly 25 years of development and leadership from the bench and bar, the court-connected ADR system is now fully integrated into Georgia litigation practice. Lawyers, who have learned to expect a court order to ADR, will often go to mediation before they are ordered to do so. Courts have come to rely on their ADR programs to help settle cases that do not require the courts’ intervention and to relieve pressure on still-crowded dockets.

But while the system is mature, there is still room for expansion. For example, more courts offering dispute resolution processes, a wider variety of processes being offered, more education of stakeholders, and more research on the benefits of the system.

Next Generation Courts Commission

In 2014, the Next Generation Courts Commission, a partnership of the Supreme Court and the State Bar, released its comprehensive final report on its vision for the future of Georgia's judiciary. The report, titled *Embracing the Courts of the Future*, included two sets of recommendations for increasing the role and responsibilities of ADR in the court system. Those recommendations are excerpted below:

Recommendation: Expand Alternative Dispute Resolution (ADR) programs to make them available to all litigants in Georgia and include reduced-cost mediation services for low income and pro se litigants.

Discussion: Courts reap many benefits by using the Alternative Dispute Resolution (ADR) processes. They are generally touted as increasing participant satisfaction, reducing time, and saving money. No matter what the motivating factor, the court must always be focused on providing a just process through ADR. Additionally, while the outcomes may not be exactly the same as those reached through traditional litigation, the parties must perceive the process and the outcomes as fair. Well run ADR programs will result in three major benefits:

1. Increasing Satisfaction – Improving the experience that participants have while resolving their disputes is an important motivator for many court ADR programs. Whether framed in terms of justice or in terms of customer satisfaction, ADR is very successful. Either way, serving the parties well is central to this motivation.

2. Reducing Time – Many courts have looked to ADR processes to reduce time spent on a case both by

the court and by the parties. This time savings can be measured in many ways, including: time from filing to case closure; number of court appearances prior to resolution; and amount of attorney and/or judge time spent on discovery and other case tasks. Virtually all courts can look to ADR to reduce backlogs of cases by lessening the caseload of judges, as many cases can be dealt with through the ADR process.

3. Saving Money – Courts see ADR as potentially saving parties money by reducing the number of attorney hours spent on the case, by decreasing the amount of discovery done, and/or by settling the case sooner with fewer court appearances. For the courts, savings are seen as coming from fewer court hearings and trials, and other time that would be spent by the judge and other court personnel on the case.

ADR processes are currently available in the courts of 121 of 159 Georgia counties. In some counties, ADR is available in just one court in just one county. In other counties, ADR is available in all of the trial courts – superior, state, magistrate, probate, and juvenile. Mediation is popular in superior courts as a way to reduce the

caseload of family law cases. Magistrate courts appreciate ADR to help the courts handle the sheer volume and nature of disputes.

Mediation is also appropriate and productive in juvenile and probate cases and in many minor criminal warrant applications. Courts, lawyers, parties, and taxpayers will benefit from more resolution options, more efficient courts, and less crowded dockets. ADR programs should be expanded to include all courts in all counties.

ADR programs should be made available to all Georgia residents – adults, juveniles, and the elderly – regardless of income. That said, such services should be made available at little to no cost for those who are low income.

Recommendation: Expand ADR instructional opportunities and promote the establishment of mediation clinical programs at all law schools to bring students into the courtrooms to mediate real cases at no charge to the parties.

Discussion: Mediation clinics give those students who may make mediation part of their professional lives a good start in terms of both skills and ethics. These programs help students see the benefits and limitations of mediation and other dispute-resolution techniques so that they can responsibly counsel their future clients about their choices. Such clinics also help students understand how feelings, background values, and personal style affect performance in a professional role. Participants benefit from these programs, as there is little to no cost for them. But just as important is that law students are highly motivated to help the parties resolve their conflict and will spend more time and effort to reach that goal.

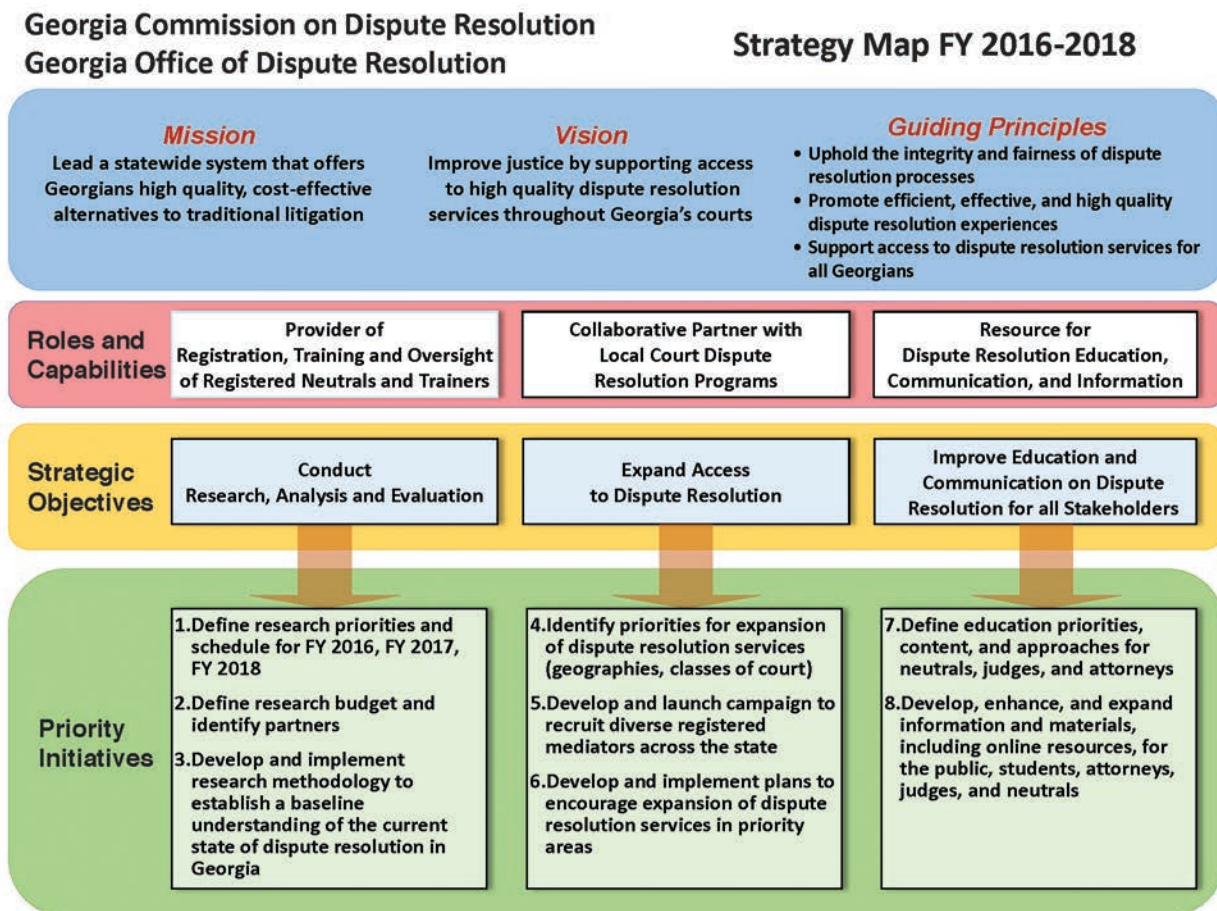
ADR is a mandatory subject in only one Georgia law school, Walter F. George School of Law at Mercer University, where an overview class is required of all students at the start of their third year. At other schools, the available ADR classes are electives, yet they are chronically oversubscribed. There is great student interest and need, as ADR has become mainstreamed into legal practice. ADR instruction can be integrated into the law school curriculum in many ways. Introduction into the concepts and theories of ADR should be mandatory for students at all Georgia law schools.

All students at accredited Georgia law schools have access to at least one clinical ADR experience. Law students are hungry for practical experience, as reflected by the fact that current ADR clinics are chronically oversubscribed. Courts will benefit by having cases handled by law students for academic credit rather than fees, and the legal profession will benefit from having lawyers who have hands-on experience in ADR. Law schools should continue to foster these clinical ADR opportunities and seek ways to expand them to benefit both law students and the courts.

Strategic Plan, FY 2016-2018

In 2014, the Commission engaged in a series of facilitated meetings whose goal was to develop a strategic plan that would guide the Commission's work for the next several years. In April 2015, after nearly a year of careful study, the Commission approved a comprehensive new strategic plan for the

period FY2016-2018. The plan described in detail what the Commission saw as its mission, its values, and its role in the judicial system, and then set out the Commission's goals for the next three years and specific priorities to achieve those goals. A summary map of the strategic plan is included below:



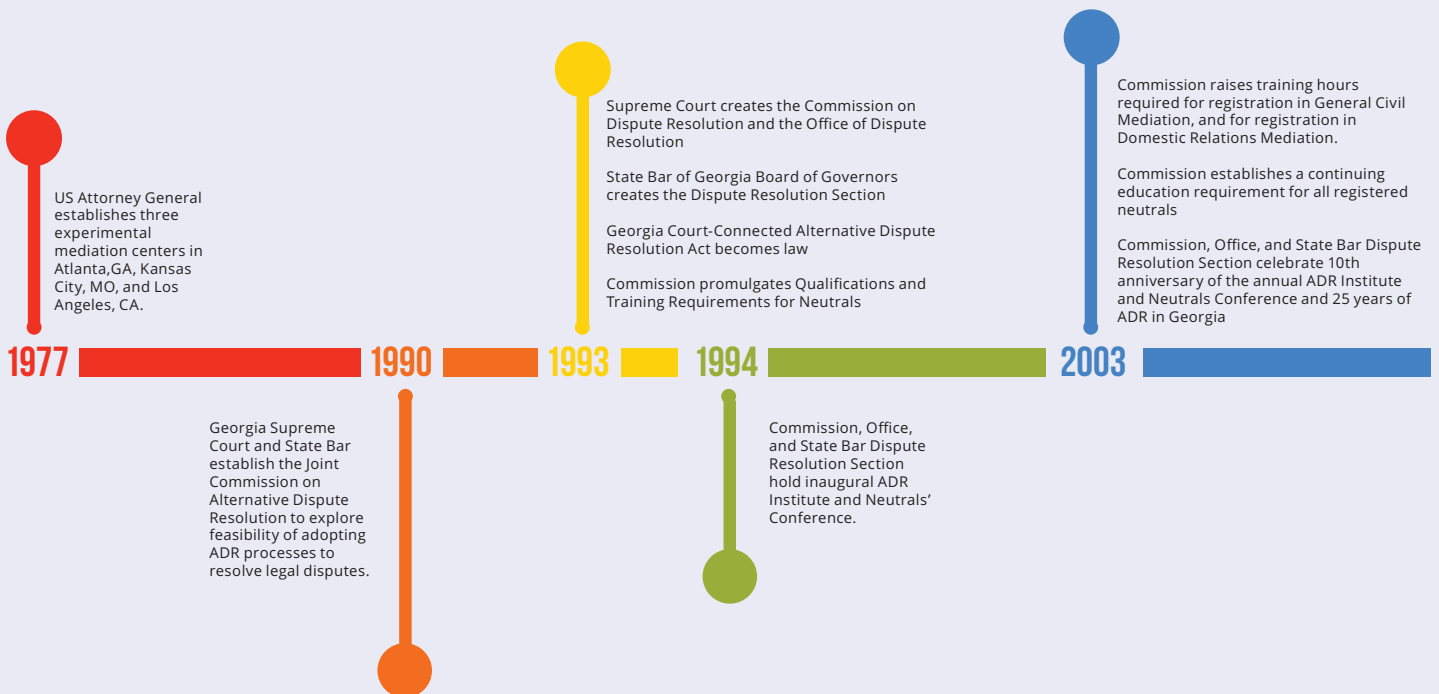
The Next 25 Years

Thanks to the dedication of visionary leaders, Georgia's court-connected ADR system is now, nearly 25 years after its creation, well integrated into the state's judicial process and legal practice. Yet the Commission understands that many Georgians do not yet have access to the benefits of processes like mediation and arbitration. More work must be done toward the ideal of a system where fair and effective alternatives to traditional litigation

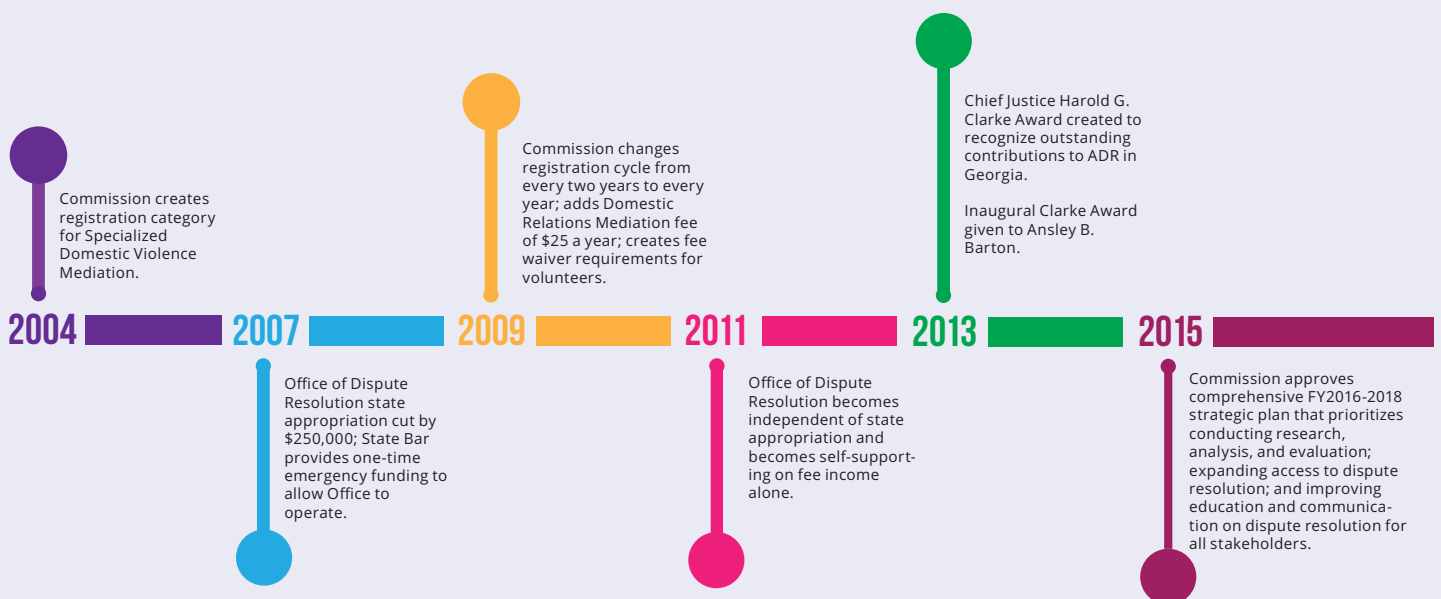
are available to every litigant, in every case, in every court, in every county in Georgia.

As the state's population explodes toward the 11 million mark and beyond, the availability of a robust and comprehensive dispute resolution program is more critical than ever in helping the judiciary fulfill its Constitutional mandate to "provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions."

Commission on Dispute Resolution Timeline*



*See Appendix A



APPENDICES

APPENDIX A: Commission on Dispute Resolution Timeline

1977: U.S. Attorney General establishes one of three experimental Neighborhood Justice Centers in Atlanta.

1988: Neighborhood Justice Center of Atlanta changes name to Justice Center of Atlanta.

1990: Georgia Supreme Court and State Bar establish the Joint Commission on Alternative Dispute Resolution to explore feasibility of adopting ADR processes to resolve legal disputes.

1991: Settlement of Presidential Parkway dispute by the Justice Center of Atlanta demonstrates to courts and legal communities nationwide that ADR can resolve large disputes.

1992: Supreme Court adopts Alternative Dispute Resolution Rules upon recommendation of the Joint Commission.

1993: Supreme Court creates the Commission on Dispute Resolution and the Office of Dispute Resolution; Attorneys Jack Watson and Evans Plowden, Jr., appointed Commission Co-Chairs, and Ansley B. Barton is appointed first director of the Office.

1993: State Bar of Georgia Board of Governors creates the Dispute Resolution Section.

1993: Georgia Court-Connected Alternative Dispute Resolution Act becomes law.

1993: Commission promulgates Qualifications and Training Requirements for Neutrals as Appendix B of ADR Rules.

1994: Commission, Office, and State Bar Dispute Resolution Section hold inaugural ADR Institute and Neutrals' Conference.

1995: Commission promulgates Ethics Standards for Neutrals as Appendix C of ADR Rules.

1999: Commission reclassifies Ethics Standards for Neutrals as Appendix C, Chapter 1, and adds Ethics Procedures as Appendix C, Chapter 2, of ADR Rules.

2003: Commission raises training hours required for registration in General Civil Mediation from 20 to 28 hours, and for registration in Domestic Relations Mediation from 40 to 42 hours.

2003: Commission establishes a continuing education requirement for all registered neutrals of 6 hours every two years (later becomes 3 hours every year when registration cycle becomes annual).

2003: Commission, Office, and State Bar Dispute Resolution Section celebrate 10th anniversary of the annual ADR Institute and Neutrals Conference and 25 years of ADR in Georgia with a special, two-day conference, featuring keynotes by Frank E. A. Sander and Kenneth Feinberg.

APPENDIX A: Commission on Dispute Resolution Timeline

2004: Commission creates registration category for Specialized Domestic Violence Mediation.

2007: Office of Dispute Resolution state appropriation cut by \$250,000; State Bar provides one-time emergency funding to allow Office to operate.

2008: Commission changes registration rate for all neutrals to \$125 per registration cycle.

2009: Following recommendation of forensic accountant, Commission changes registration cycle from every two years to every year; adds Domestic Relations Mediation fee of \$25 a year; and creates fee waiver requirements for volunteers.

2011: Office of Dispute Resolution becomes independent of state appropriation and becomes self-supporting on fee income alone.

2012: Commission creates registration categories for Delinquency Mediation and Deprivation (later renamed Dependency) Mediation.

2013: Chief Justice Harold G. Clarke dies; Commission and State Bar Dispute Resolution Section announce establishment of the Chief Justice Harold G. Clarke Award to recognize outstanding contributions to ADR in Georgia; inaugural Clarke Award given to Ansley B. Barton.

2015: Commission approves comprehensive FY2016-2018 strategic plan that prioritizes conducting research, analysis, and evaluation; expanding access to dispute resolution; and improving education and communication on dispute resolution for all stakeholders.

APPENDIX B: Joint Commission on Alternative Dispute Resolution, September 1990-February 1993

SUPREME COURT OF GEORGIA

ATLANTA September 26, 1990

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

The Georgia Constitution of 1983 mandates that the judicial branch of government provide "speedy, efficient, and inexpensive resolution of disputes and prosecutions." As part of a continuing effort to carry out this constitutional mandate the Supreme Court of Georgia hereby establishes a Commission on Alternative Dispute Resolution under the joint leadership of the Chief Justice of the Georgia Supreme Court and the President of the State Bar of Georgia. The Commission shall be known as the Joint Commission on Alternative Dispute Resolution.

The Commission is charged to explore the feasibility of a comprehensive court-annexed alternative dispute resolution program to complement dispute resolution methods currently used in Georgia. The focus of this feasibility study will be upon mediation and arbitration as alternative methods of dispute resolution. The Commission is charged to gather information, to implement experimental pilot programs, and to make recommendations for a comprehensive program.

The Commission shall consist of fifteen members (15) as follows: The Chief Justice of the Georgia Supreme Court and the President of the State Bar of Georgia, Co-Chairs; the Chief Judge of the Georgia Court of Appeals or his designee; two superior court judges; one senior superior court judge; Chair of the House of Representatives Judiciary Committee or his designee; Chair of the Georgia Senate Judiciary Committee or his designee; one non-lawyer; six lawyers who represent various aspects of the law practice. Appointments not filled by designated officeholders shall be made by the Co-Chairs. Staff support, including staff counsel, shall be provided by the Georgia Supreme Court.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 Deputy Clerk

APPENDIX B: Joint Commission on Alternative Dispute Resolution, September 1990-February 1993

Co-Chairperson Harold G. Clarke, Chief Justice Georgia Supreme Court	Foy R. Devine, Esq. Jack P. Etheridge, Esq. Judicial Arbitration and Mediation Services, Inc.
Co-Chairperson Evans J. Plowden, Jr., Esq., President, State Bar of Georgia Watson, Spence, Lowe & Chambliss	Hilton Fuller, Judge Stone Mountain Judicial Circuit
Permanent Chairperson Jack H. Watson, Jr., Esq. Long, Aldridge & Norman	Mark A. Gonnerman, Esq. Watson, Spence, Lowe & Chambliss
George H. Carley, Judge Georgia Court of Appeals	Paul Kilpatrick, Jr., Esq. Pope, McGlamry, Kilpatrick & Morrison
Thomas C. Chambers III, Esq. Chambers, Rice & Rogers	Hugh Lawson, Chief Judge Oconee Judicial Circuit
Martha C. Christian, Esq. Stone & Christian, P.C.	Charles T. Lester, Jr., Esq. Sutherland, Asbill & Brennan
Chris Curle WSB-TV	H. Worthington Lewis, Esq.
Senator J. Nathan Deal, Esq. Carey, Deal, Jarrard & Walker	Charles Thomas, Representative District 69
	Reporter Ansley B. Barton, Esq.

Appendix C: Commission on Dispute Resolution Chairs and Terms of Service

(Chronological Order)

Chief Justice Harold G. Clarke, Chair, Joint Commission, 1990-2003; service 2/93-2/99

Evans J. Plowden, Jr., Esq., Co-Chair, Joint Commission, 1990-2003; service 2/93-2/00

Jack H. Watson, Jr., Esq., Permanent Chair, 2/93-4/99; service 2/93-4/99

Dr. Peter Ash, Chair, 9/99-1/02; service 4/96-2/02

Judge Martha C. Christian, Chair, 2/02-2/03; service 2/93-2/03

Judge Gibbs Flanders, Chair, 2/03-2/04; service 3/99-2/04

Dawn G. Benson, Esq., Chair, 2/04-2/06; service 2/02-2/06

Judge Joseph C. Iannazzone, Chair, 2/06-6/09; service 9/03-6/09

Edith B. Primm, Esq., Chair, 6/09-9/12; service 1/08-Present

Judge Charles E. Auslander III, Chair, 9/12-Present; service 9/06-Present

APPENDIX D: Commission on Dispute Resolution Members and Terms of Service

(Alphabetical Order)

Judge Louisa Abbot, 9/03-2/09
 Judge Gregory A. Adams, 9/11-11/16
 Dr. Peter Ash, 4/96-2/02; Chair, 9/99-1/02
 Judge Charles E. Auslander III,
 9/06-Present; Chair, 9/12-Present
 Emily S. Bair, Esq., 11/10-Present
 Ansley B. Barton, Esq., 2/02-2/07
 Judge Jane Barwick, 11/16-Present
 Hubert J. Bell, Jr., Esq., 11/10-12/17
 Dawn G. Benson, Esq., 2/02-2/06;
 Chair 2/04- 2/06
 Judge Debra Bernes, 9/06-7/10
 Justice Keith R. Blackwell, 2/17-Present
 Chief Judge James G. Bodiford, 2/93-2/96
 Jeffrey Bramlett, Esq., 2008-2009
 Dennis Caniglia, Esq., 2/93-2/96
 Justice George H. Carley, 2/93- 9/01
 Judge Edward E. Carriere, Jr., 6/09-6/13
 Bryan Cavan, Esq., 2009-2010
 Raymond G. Chadwick, Jr., Esq.,
 5/14-Present
 Laurence L. Christensen, Esq., 4/10- 5/14
 Judge Martha C. Christian, 2/93-2/03;
 Chair 2/02- 2/03
 Chief Justice Harold G. Clarke, 2/93- 2/94
 Wade Coleman, Esq., 9/06- 2010
 George B. Collins III, 2/02- 2/06
 Senator William Cowsert, Esq., 1/08- 1/13
 Foy R. Devine, Esq., 2/93-2/97
 Mary Donovan, Esq., 11/14-Present

Chief Judge Sara Doyle, 11/10- 11/16
 Judge Frank Eldridge, 1/03-12/04
 Judge Philip F. Etheridge, 3/98-2/03
 Judge Gibbs Flanders, 3/99- 2/04;
 Chair 2/03- 2/04
 Judge C. Andrew Fuller, 6/09-Present
 Chief Judge Hilton Fuller, 2/93-2/98
 Denny C. Galis, Esq., 3/99-2/04
 Judge Martha K. Glaze, 3/98- 2/03
 Robert Glenn, Esq., 8/04- 2009
 Judge Kathlene F. Gosselin, 2/93-2/98
 Alan Granath, 12/06-9/12
 Justice Britt C. Grant, 2/17-Present
 Herbert H. (Hal) Gray III, 1/18-Present
 Mary Ellen Griffin, 9/97-2/02
 Dr. Patrice A. Harris, 5/02-9/06
 William C. Hatcher, 2/93-4/94
 Melissa C. Heard, 6/09-Present
 Dr. Timothy Hedeon, 9/12-Present
 Dale Hetzer, Esq., 1/08-1/11
 Judge William B. Hill, Jr., 2/93-2/00
 Judge Joseph C. Iannazzone, 9/03-6/09;
 Chair 2/06-6/09
 Judge David B. Irwin, 9/03-6/09
 Judge Michael Johnson, 11/10-7/11
 Helaina Jolly-Triche, 4/97-2/02
 Robert J. Kauffman, Esq., 2015-2016
 Judge Alan Keeble, 2/95- 2/99
 Martha Kitchens, 9/07-9/12
 Judge Stefani R. Lacour, 5/14-Present
 Chief Judge Hugh Lawson, 2/93-2/95
 Dr. Sandra Maas-Robinson, 2/93-2/96

APPENDIX D: Commission on Dispute Resolution Members and Terms of Service (cont.)

Elizabeth Manley, 12/06-8/08	Vjollca Prroni Young, 9/12-Present
Robert McMahan, 6/94-2/96	Raytheon Rawls, Esq., 2/02-2/07
Judge Amanda H. Mercier, 11/16-Present	Kenneth L. Shigley, Esq., 2011-2012
Judge M. Cindy Morris, 1/18-Present	S. Lester Tate III, Esq., 2010-2011
Sen. Mary Margaret Oliver, 2/93-2/97	Bernard Taylor, Esq., 2/93-2/97
Patrick O'Connor, Esq., 8/16-Present	Justice Hugh P. Thompson, 9/06-11/16
Judge J. Carlisle Overstreet, 6/09-12/17	R. Wayne Thorpe, Esq., 9/97- 2/02
Judge Guy Pfeiffer, 4/96-2/02	Freeman Walker, Jr., 5/02- 2/06
Judge David M. Pierce, 9/02- 2/06	Justice Leah Ward Sears, 9/01- 9/06
Evans J. Plowden, Jr., Esq., 2/93-2/00	Jack H. Watson, Jr., Esq., 2/93-2/99;
Judge Marion T. Pope, 2/95-3/02	Chair 2/93-4/99
Rep. Jay Powell, Esq., 5/14-Present	Judge Cynthia D. Wright, 8/04-2/10
Edith B. Primm, Esq., 1/08-Present;	Prof. Douglas H. Yarn, Esq., 4/96-2/02
Chair 6/09- 9/12	

APPENDIX E: Georgia Office of Dispute Resolution Directors

Ansley B. Barton, Esq., 1993-2001

Leila Taaffe, Esq., 2001-2006

Shinji Morokuma, Esq., 2006-2016

Tracy B. Johnson, M.S., 2016-Present

APPENDIX F: Chief Justice Harold G. Clarke Award Winners



The Commission on Dispute Resolution and the Dispute Resolution Section of the State Bar of Georgia created the Clarke Award in 2013 to honor the memory of the late Supreme Court Chief Justice Harold G. Clarke. The Clarke Award recognizes outstanding contributions to the field of alternative dispute resolution in Georgia. These are the awardees:

Ansley B. Barton, Esq., 2013
Edith B. Primm, Esq., 2015
Douglas H. Yarn, Esq., 2016
R. Wayne Thorpe, Esq., 2017

APPENDIX G: First Annual Alternative Dispute Resolution Institute and Neutrals' Conference Agenda



INSTITUTE OF CONTINUING LEGAL EDUCATION IN GEORGIA

MAR 23 1994

1st Annual **ALTERNATIVE DISPUTE RESOLUTION INSTITUTE**

May 6-7, 1994
Waynesville Country Club Inn
Country Club Dr.
Waynesville, North Carolina
1-800-627-6250

DIRECTIONS TO THE SEMINAR

Coming north on U.S. 441/23 from Georgia, get on U.S. 23/74 East just north of Dillsboro, go to the West Waynesville Exit and turn right off the exit ramp. Go to Balsam Rd. (1/10 mile) and turn left. Go to the 3rd stoplight and turn right (Country Club Dr.). The entrance to the Inn is straight ahead.

Reservations for accommodations must be made directly with the Waynesville Country Club Inn by **April 1, 1994**. Be sure to tell the reservations operator that you will be attending the ICLE Seminar.

Co-Sponsor:



APPENDIX G: FIRST Annual Alternative Dispute Resolution Institute and Neutrals' Conference Agenda

PRESIDING: *Edward J. Henning*, Program Chair, Henning & Associates, Atlanta

FRIDAY MORNING MAY 6, 1994

- 8:00 **REGISTRATION**
- 8:30 **OVERVIEW AND WELCOME**
Edward J. Henning
- 8:45 **MASTER ROLE PLAY – Tort (Auto Accident) Case**
This role play is designed to emphasize the mediation structure, the mediator's initial comments, roles of plaintiff and defendant and the attorneys and all that usually occurs in civil legal dispute mediation.
- Mediator** – *Honorable Robert N. Leitch*, Attorney, Arbitrator and Mediator, Atlanta
Plaintiff Attorney – *William S. Goodman*, Goodman, McGuffey, Aust & Lindsey, Atlanta
Injured Claimant – *Tina Wilson*, Claims Specialist, Merastar Insurance Company, Chattanooga, TN
Defendant Attorney – *Stephen E. Boswell*, Attorney at Law, former Judge, Superior Court, Clayton County
Ins. Claim Rep. – *Charlene Smith*, Senior Claim Representative, State Farm Mutual Automobile Insurance Company, Norcross
- 10:00 **COFFEE BREAK**
- 10:15 **COMMENTS ON MEDIATOR'S ROLE**
Honorable Jack P. Etheridge, Senior Superior Court Judge; Southeastern Director of Judicial Arbitration and Mediation Services, Atlanta
What should trained mediators do and how should they go about doing it?
- 11:00 **PANEL DISCUSSION ON MEDIATION PURPOSE AND PROCESS**
Moderator: *Honorable Hardy Gregory, Jr.*, Davis, Gregory, Christy & Forehand; Cordele/Vienna; former Justice, Georgia Supreme Court
- Panelists:** *Honorable Keegan Federal, Jr.*, Federal & Goetz; former Judge, DeKalb Superior Court
Edward J. Henning
Prof. Abraham P. Ordovery, Chief Executive Officer, Resolution Resources Corporation, Atlanta
- What is the philosophy and purpose of mediation and how do you structure and do it?**
- 12:00 **OTHER ADR PROCEDURES**
India Johnson, Regional Vice President, American Arbitration Association, Atlanta
Early Neutral Evaluation (ENE), Mini-trials, Arbitration and other procedures.
- 12:45 **ADJOURN**
- 6:30 **RECEPTION (ends at 7:30)**

SATURDAY MORNING May 7, 1994

FOCUS GROUPS

(Seminar Attendees choose Focus Group they want to attend).

- 8:30 **ANNOUNCEMENTS AND 2ND DAY PROCEDURES**
- 8:35 **Focus Group #1A – FAMILY LAW – (Room #1)**
PANEL – DIVORCE MEDIATION – STRUCTURE AND CONTENT (1 hr. 45 min. Session)
Moderator: *Elizabeth Manley*, M.Ed., J.D., Atlanta Divorce Mediators, Inc.
- Panelists:** *Mark O. Shriver, IV*, Shriver & Gordon, Woodstock
Nancy F. Lawler, Altman, Kritzer & Levick, Atlanta
Prof. Beverly K. Schaffer, Ph.D., Professor of Economics, Emory University, Atlanta
- Initial discussion with parties – voluntary mediation v. mandatory – best location – room arrangement – how to structure a divorce mediation – understanding the procedure – when to discuss certain subjects – when to caucus – drafting settlement memo. How to: establish rapport, cooperation, objectivity – handle venting – caucus – arrange a compromise – keep focus on child's needs – create many options and other skills unique to divorce mediation.**

8:35

Focus Group – #1B – CIVIL LAW CASES – (Room #2)

PANEL – CIVIL MEDIATION – STRUCTURE
Moderator: *Honorable Braswell D. Deen, Jr.*, ADR Specialist; former Chief Judge, Georgia Court of Appeals; Senior Appellate Court Judge, Atlanta

Panelists: *Lloyd W. Hoffspiegel*, Tobin & Hoffspiegel, Atlan.
Cheryl Cornelius, Regional ADR Coordinator, GEICO Insurance, Macon

How to arrange for mediation – voluntary v. mandatory – best location – documents needed – prepare clients – understanding the procedure – mediator's opening statement – parties opening statements – caucus – when to compromise – closure – settlement documents.

9:15

Focus Group – #2B – CIVIL LAW CASES – (Room #2)

DISCUSSION GROUP – CIVIL MEDIATION – CONTENT FROM MEDIATOR'S AND PARTICIPATING PARTIES' PERSPECTIVES
Co Leaders: *Edward J. Henning*
Carol A. Levine, Carol A. Levine, Attorney at Law, Atlanta

How to present your case – establish rapport – handle venting – negotiate with a prepared, unprepared, aggressive, passive or different gender opposite party – establish cooperation – minimize competition – create options and establish compromise possibilities – listening skills – body language – problems encountered in mediation.

8:35

Focus Group – #1C – MULTIPLE PARTY CASES – (Room #3)

PANEL – MULTI-PARTY MEDIATION – STRUCTURE
Moderator: *Honorable Sidney O. Smith, Jr.*, Alston & Bird; former Judge, U.S. District Court, Northern District of Georgia

Panelists: *Curtis W. Martin*, Griffin, Cochran & Marshall, Atlanta
John E. Floyd, Bondurant, Mixson & Elmore, Atlanta

How to arrange adequate location and coordinate all parties – opening statement by mediator – statements by each party or not – defining issues – exchanging documents – caucus with groups and with each party or not – obtaining contributions – apportioning and spreading risk and payments – handling counter and cross claims – resolution without general release – preparation of settlement documents.

9:15

Focus Group – #2C – MULTIPLE PARTY CASES – (Room #3)

PANEL – MULTI-PARTY MEDIATION – CONTENT
Moderator: *James B. Hiers*, Swift, Currie, McGhee & Hiers, Atlanta

Panelists: *Nisbett S. (Ken) Kendrick, III*, Johnson & Montgomery, Atlanta
Larry S. McReynolds, McReynolds & Welch, Atlanta
Sewell (Kip) Loggins, Mozley, Finlayson & Loggins, Atlanta

How to present each party's case – establish cooperative attitudes – minimize competition – develop options and areas of contribution while in caucus – properly phrase questions – listen – and when to compromise to obtain settlement of some issues and eventually all.

10:15

BREAK

10:30

PANEL DISCUSSION ON ETHICS AND PROFESSIONALISM

Moderator: *Honorable Harold N. Hill, Jr.*, Judicial Resolutions, Inc.; former Chief Justice, Supreme Court of Georgia, Atlanta

Panelists: *Leslie Ellen Berkin*, ADR Program Coordinator, Ninth Judicial District, Gainesville
Dennis Caniglia, Claims Manager, St. Paul Fire and Marine Insurance; Member, Chief Justice's Committee on Alternative Dispute Resolution

11:30

PANEL DISCUSSION ON ADR DEVELOPMENTS IN GEORGIA AND HOW TO GET INVOLVED

Moderator: *Ansley B. Barton*, Director, Georgia Office of Dispute Resolution, Atlanta

Panelists: *Judy C. Cohn*, American Mediation Resources, Inc., Atlanta
Leslie Ellen Berkin

12:15

CONCLUSION AND SUMMARY

Edward J. Henning

12:45

ADJOURNMENT

In State: 1-800-422-0893
Out-of-State: 706-369-5664

Georgia Commission on Dispute Resolution
244 Washington Street, SW, Suite 300
Atlanta, GA 30334

<http://godr.org/>