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## COURTS Georgia Court-annexed Alternative Dispute Resolution Act: Create and Fund Alternative Dispute Resolution Programs in Each County in Georgia

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## COURTS

### *Georgia Court-annexed Alternative Dispute Resolution Act: Create and Fund Alternative Dispute Resolution Programs in Each County in Georgia*

CODE SECTIONS: O.C.G.A. §§ 15-23-1 to -12 (new)  
BILL NUMBER: HB 143  
ACT NUMBER: 559  
SUMMARY: The Act provides for a means of funding court-annexed or court-referred alternative dispute resolution programs in every county. The Act enables counties to collect a sum not to exceed five dollars, in addition to all other legal costs, for each civil action or case filed in one of the designated courts within the county. The Act designates who in each county shall collect and manage the funds as members of a Board of Trustees.  
EFFECTIVE DATE: July 1, 1993

#### *History*

The Georgia Constitution provides that “the [s]upreme [c]ourt shall . . . adopt . . . rules which shall provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions.”<sup>1</sup> In an effort to adhere to this constitutional provision, the court established the Joint Commission on Alternative Dispute Resolution in the fall of 1991 for the purpose of studying and experimenting with the use of court-annexed or court-referred alternative dispute resolution (ADR) programs.<sup>2</sup> The ADR Commission found that implementing such programs would result in a more efficient use of judicial resources.<sup>3</sup> Additionally, the public would benefit through reduced court costs and fewer delays.<sup>4</sup>

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1. GA. CONST. art. VI, § 9, ¶ I. Both the Joint Commission on Alternative Dispute Resolution and the Georgia Supreme Court cited this constitutional provision as the basis for their efforts. See Joint Commission on Alternative Dispute Resolution, Recommendation to the Georgia Supreme Court (1992) [hereinafter Comm’n Recomm.]; Alternative Disp. Resol. Rules, Ga. Order 93-6 (1993).

2. Comm’n Recomm. *supra* note 1; Alternative Disp. Resol. Rules, Ga. Order 93-6 (1993).

3. Comm’n Recomm., *supra* note 1. Since 1987, the number of civil actions filed in Georgia has increased an average of nine percent per year. Bill Rankin, *Extra \$5 Fee Proposed for Civil Suits*, ATLANTA J. & CONST., Feb. 26, 1993, at E4. Superior court judges handled an average of 2000 cases in 1991. *Id.*

4. *Id.*

There are some counties in Georgia that already have ADR programs in place.<sup>5</sup> The LaGrange-Troup County program was a grass roots effort that grew out of judicial concern to divert petty misdemeanor cases from the courtroom and to provide parties with a more satisfactory way of resolving these disputes.<sup>6</sup> The ADR Commission treated LaGrange-Troup as a pilot program by providing grants to fund the start of the original program and later expansions in the program.<sup>7</sup> The ADR Commission observed the success of the LaGrange-Troup program and other similar programs, conducted additional research, and arrived at a set of recommendations which it gave to the Georgia Supreme Court in September of 1992.<sup>8</sup>

The Georgia Supreme Court published Alternative Dispute Resolution Rules in October of 1992 to be effective April 15, 1993.<sup>9</sup> The supreme court had the power to establish all the necessary facets of a state-wide ADR program with one exception—funding.<sup>10</sup> This Act enables counties to increase court filing fees by as much as five dollars provided that the additional funds are used to fund local ADR programs.<sup>11</sup> The Act is not intended to provide the means to acquire *all* the funds necessary to support such programs.<sup>12</sup> However, “the Act will likely provide the added impetus for some counties to establish ADR programs.”<sup>13</sup>

### HB 143

The Georgia Court-annexed Alternative Dispute Resolution Act defines ADR as “any method other than litigation for resolution of

5. Rankin, *supra* note 3. For example, the counties of Cobb, DeKalb, Fulton, Hall, and LaGrange-Troup all have programs in some form or another. *Id.* Cobb was the first county to require mediation for all civil cases beginning in January of 1993. *Id.*

6. Telephone Interview with Sheryl Hicks, Mediation Coordinator for Troup County Mediation Center (June 15, 1993) [hereinafter Hicks Interview]. Residents in the LaGrange-Troup community were swearing out private warrants on each other at an alarming rate. *Id.* A committee in this community was formed to research ADR with an emphasis on private warrants. *Id.*

7. *Id.* Initially, the mediation center handled only misdemeanor warrants brought by one party against another party. *Id.* The program now accepts referrals from magistrate and juvenile court judges, as well as divorce and child custody cases. *Id.*

8. Telephone Interview with Ansley B. Barton, Director of the Georgia Office of Dispute Resolution (June 17, 1993) [hereinafter Barton Interview]. “ADR was a plan from the 1970s and it was time to mainstream that plan. The Commission acted in that spirit.” *Id.*

9. Alt. Disp. Resol. Rules, Ga. Order 93-6 (1993).

10. Telephone Interview with Rep. Charles A. Thomas, Jr., House District No. 100 (June 16, 1993) [hereinafter Thomas Interview]. Rep. Thomas was a member of the Joint Commission on ADR and was the chief sponsor of HB 143. *Id.*

11. See O.C.G.A. § 15-23-7 (Supp. 1993).

12. Thomas Interview, *supra* note 10.

13. Hicks Interview, *supra* note 6.

disputes.”<sup>14</sup> The Act lists “mediation, arbitration, early case evaluation or early neutral evaluation, summary jury trial, and minitrial” as examples of ADR methods.<sup>15</sup>

The Act mandates that it is the judge or a majority of judges for any given court who determine whether an ADR program would be beneficial for that court.<sup>16</sup> Once the need is determined, an ADR program is established and the funding mechanism becomes available.<sup>17</sup>

The key part of this legislation is the funding mechanism. This provision enables courts to increase filing fees up to five dollars per case in order to support the court-annexed or court-referred ADR program.<sup>18</sup> The chief judge, or the superior court judge with the longest service if there is no chief judge, fixes the amount to be collected and has the option of altering that amount within the five dollar limitation as needed.<sup>19</sup>

The ADR Commission discussed funding of ADR programs in its recommendations to the supreme court.<sup>20</sup> The ADR Commission did conclude that there would be disadvantages to managing the collected surcharge on a local level, as opposed to collecting the surcharge statewide, pooling the funds in a general account, and disbursing the money to the counties.<sup>21</sup> The concerns included a lack of uniformity in funding and program development across the state, as well as potential problems with quality control.<sup>22</sup> The supreme court responded to the concern for quality control by creating the Georgia Commission on Dispute Resolution in its ADR Rules.<sup>23</sup> The role of this permanent

14. O.C.G.A. § 15-23-2(1) (Supp. 1993).

15. *Id.* In the ADR Rules, the supreme court includes the concept of “multi-door courthouse” in a list of common ADR terms. Alt. Disp. Resol. Rules, Ga. Order 93-6, Rule 1 (1993). This concept is founded on the idea that rather than limit a disputant to the traditional means of resolving a conflict before a judge or jury, a disputant should be able to select from a variety of dispute resolution processes. *Id.* The ADR methods listed in the bill would be available in this “multi-door courthouse.” *Id.*

16. O.C.G.A. §§ 15-23-7, -10 (Supp. 1993).

17. *Id.*

18. *Id.* § 15-23-7 (Supp. 1993). The Act defines “case” as “any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned, whether such matter is contested or not.” *Id.*

19. *Id.*

20. The ADR Commission uses a figure of five dollars as an example in its recommendations to the supreme court. Comm’n Recomm., *supra* note 1, at 12. Thus, this amount was basically predetermined before Rep. Thomas, a member of the ADR Commission, ever drafted HB 143. Thomas Interview, *supra* note 10. In Texas, the filing fee surcharge may be fixed at an amount as high as ten dollars for each civil action filed. Comm’n Recomm., *supra* note 1, at 14.

21. *Id.* at 13.

22. *Id.*

23. Alternative Disp. Resol. Rules, Ga. Order 93-6, Rule 2 (1993).

commission is policy and it is answerable to the supreme court.<sup>24</sup> This Commission is charged with developing guidelines for the ADR programs, developing criteria for training, encouraging experimentation and creativity in programs, establishing standards of conduct, and overall quality control.<sup>25</sup>

The Commission also recognized as a disadvantage the probable inequality in the collection of funds between small and large communities.<sup>26</sup> The Act responds to this concern by providing that the surcharge funds collected from a combination of counties can be commingled.<sup>27</sup> This provision for a district-wide program is a very important part of the bill for smaller communities who might not otherwise have sufficient funds to support an ADR program.<sup>28</sup>

The Act creates a Board of Trustees in each county that establishes an ADR program.<sup>29</sup> The members of the board are designated in the Act and include judges, the clerk of the superior court, and one practicing attorney appointed by and serving at the pleasure of the other members of the board.<sup>30</sup> The powers and duties of the board are provided in detail and are all related to the management of the funds.<sup>31</sup>

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24. Barton Interview, *supra* note 8.

25. Alternative Disp. Resol. Rules, Ga. Order 93-6, Rule 2 (1993); Barton Interview, *supra* note 8.

26. See Comm'n Recomm., *supra* note 1, at 13-14.

27. O.C.G.A. § 15-23-12 (Supp. 1993). The Act specifically states that "the board of trustees of each county fund is authorized by contract to combine such fund with the fund of any other county or counties within the same judicial circuit, within the same administrative district, or in any other combination which would foster an efficient use of available resources." *Id.*

28. Hicks Interview, *supra* note 6. Smaller communities may need to funnel their funds to a larger hub that is better equipped to support an ADR program. *Id.* The Troup County Mediation Center, for example, has already taken in cases referred from other neighboring communities. *Id.*

29. O.C.G.A. § 15-23-3 (Supp. 1993). The Act provides that these boards will be known as the "Board of Trustees of the \_\_\_\_\_ County Fund for the Administration of Alternative Dispute Resolution Programs." *Id.*

30. *Id.*

31. See *id.* § 15-23-6 (Supp. 1993). The Board of Trustees provided for in the Act does not have the responsibility of administering the actual ADR program. Hicks Interview, *supra* note 6; see also O.C.G.A. § 15-23-6 (Supp. 1993). The ADR program in Troup County, for example, is currently administered by the Mediation Coordinator, Sheryl Hicks. Hicks Interview, *supra* note 6. In addition, the Troup County Mediation Coordinator also has an advising committee comprised of four individuals for those instances when major decisions must be made. *Id.*