



## Be Neutral

April 2011

A Publication of the Georgia Office of Dispute Resolution



**From the Director:**

### **Social Media Sites Can Help You and Hurt You**

I confess: I'm not on Facebook. I don't Tweet. I don't blog. Call me a Luddite. Call me a hermit. Call me a techno-fogey. Creating a Facebook page or the like seems to me like investing in a beautiful, lush green lawn. That you – or someone you hire – then have to mow and mulch and weed and water and fertilize and otherwise fuss over now and forever. (As you may have guessed, I don't have a lawn.) To use an urban dictionary-type, mildly naughty-sounding descriptor, social media sites for me are a "time suck." I've got plenty to do already, thank you.

However, I concede that at least 600 million Facebookers and 97 million Twitterers may not share my priorities. So, we commend to you again a new Facebook page, the [Georgia Mediators Network](#), a great resource for the latest mediation news and articles from around the world. The page is the brainchild of registered mediator Michele Gibson, our marketing columnist and newsletter producer. In her marketing column this month, Michele shows mediators how they can harness the power of social media to grow their businesses.

Amid the hoopla over social media, let me strike a cautionary tone here. Social media make it easy to connect and communicate – for example, they played a major role in the recent pro-democracy revolts in the Middle East and North Africa. But social media also make it easy to flame out fantastically in front of a whole lot of people. A certain duck, a comedian, and a natural disaster in Asia come to mind.

The intersection of social media and the law has produced some mesmerizing ethical collisions. You've heard about the judge who violated judicial canons by "friending" an attractive juror in one of his active trials. Or about the juror who was jailed for contempt after she posted her opinions about the case she was deliberating. Or about the lawyer who was sued after boasting by posting confidential terms of a case he had settled. As you might expect, social media misbehavior is a major migraine for the courts.

As John D. Marshall, a lawyer and registered neutral, points out in a guest column this month, social media are no less ethically fraught for mediators. Georgia-registered mediators are bound by their ethical obligations to self-determination/voluntariness, confidentiality, impartiality, and fairness. Mediators who use social media can easily find themselves afoul of one or more of these ethical standards unless they use great care and discretion. For example, mediators are obligated generally to keep confidential anything that is said or done in a mediation. That obligation doesn't end when the mediation ends. It continues. Forever. So, if a mediator ever posts online confidential information from a mediation, no matter how old, the mediator has violated confidentiality.

The immunity available to registered neutrals under the Georgia ADR Rules can protect mediators, but only so far:

C. Immunity:

No neutral in a court-annexed or court-referred program shall be held liable for civil damages for any statement, action, omission or decision made in

the course of any ADR process unless that statement, action, omission or decision is 1) grossly negligent and made with malice or 2) is in willful disregard of the safety or property of any party to the ADR process.

So if a mediator posts confidential information or personal thoughts about any mediation, the mediator's conduct could be found to be "grossly negligent." If the mediation involved parties with a history of abuse or violence, a mediator's posts may be found to display "willful disregard of the safety" of a party. If your conduct goes that far, let's hope your professional liability policy is up to date.

A good rule of thumb: If you shouldn't say it or do it in "real life," then certainly don't say it or do it electronically – on your phone or your computer or your tablet. Another good rule of thumb: Think before you post.

So, fellow mediators and social media consumers, enjoy! Have fun! But be careful, and be smart. Assume that anyone in the world – past, present and future clients, colleagues, friends, family, and enemies – can see what you post. And act accordingly. I'm going to go not mow the lawn that I don't have.

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Archive



## ABA DR Section Annual Spring Conference Denver, April 13-16

There's still time to register for the world's largest conference of ADR professionals. The American Bar Association Dispute Resolution Section's Annual Spring Conference typically draws 1,000 or more attendees from across the globe for four days of learning and networking with some of the most respected names in the profession. Like whom? This year, how about renowned mediator, teacher, and author Robert Mnookin, professor of law at Harvard, director the Harvard Negotiation Research Project, and steering committee chair of Harvard's Program on Negotiation.

The year's conference will be held April 13-16 in Denver and will feature nearly 100 programs covering the breadth of the dispute resolution field. Program topics should appeal to mediators, arbitrators, educators, lawyers, judges, court administrators and others who have made ADR their vocation or avocation. "If you are interested in dispute resolution, we have something to offer you," says Dispute Resolution Section Chair R. Wayne Thorpe, Esq., a former member of our Georgia Commission on Dispute Resolution who now serves as a full-time neutral with JAMS in Atlanta.

Costs? There are special conference registration rates for first-time attendees; government employees, judges, and students. See [this link](#) for more information on the conference and to register online.

## Case Watch for Mediators: School Attendance and Child Support

Child support obligations often end once a child stops attending secondary school. But what constitutes a "school" under Georgia law? And when does the law consider a child to be "attending" school? The Georgia Supreme Court's answers to these deceptively simple questions are the focus of this month's CaseWatch for Mediators by Mary Ellen Cates, divorce attorney and registered mediator.

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### **Case Watch for Arbitrators: U.S. Supreme Court to Hear FAA Challenges**

The federal government has the Federal Arbitration Act. States have their own arbitration laws. What happens when the FAA collides with state law and policy? The U.S. Supreme Court is about to hear a California case that challenges the authority of the FAA over state law, a case that has the potential to change a federal policy favoring arbitration that has been in place for nearly 90 years. Read on for an analysis of the conflicts in the case and their implications in this installment of CaseWatch for Arbitrators, by John Allgood, Esq., veteran attorney, mediator and arbitrator.

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### **Marketing Tip: Social Media – The 800-pound Gorilla**

Facebook. LinkedIn. Twitter. Plaxo. Social media can connect you to friends, family and like-minded folks all over the world. But can these powerful services actually help you to grow your mediation practice? You bet! In this month's Marketing Tip, registered mediator and marketing expert Michele Gibson tell you all you need to know to start effectively harnessing the power of social media to bring Internet traffic – and potential clients – to your electronic doorstep.

[Read Full Article](#)

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### **Theory to Practice: Social Media and the Law**

So a lawyer gets steamed at a judge and does what many of us do today...he blogs about said judge calling her "an evil, unfair witch" and ends up with a \$1,200 fine. Or consider the man who tells the judge that he can't afford to pay child support at the same time as he is posting photos of his recent cruise and his new ferrari. Social media is having significant impact on the courts and it's time to take a look at the implications of a seemingly simple post. Learn more in this enlightening article by guest columnist John D. Marshall, lawyer and registered neutral.

[Read Full Article](#)

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### **Georgia Mediators Network is Now on Facebook**

Check out this a great new online resource for mediators: the [Georgia Mediators Network](#). Created by registered mediator Michele Gibson (who also produces this newsletter and writes the "Marketing Tip" column), the Georgia Mediators Network posts ADR links to articles from around the world on its [Facebook page](#). Think of it as an electronic newsstand

Georgia



Mediators Network



where you can find informative news that you can post on your own websites or distribute to your students. Two recent postings: an article on the cost-savings of mediating v. litigating a divorce, from Ireland's Independent, and a press release on how China is using mediation to encourage out-of-court settlements of civil cases, from the Xinhua News Agency. Content is updated daily, sometimes several times daily, so check back often. And yes, you can view the content even if you don't have a Facebook account of your own. Thank you, Michele!



## Georgia ADR Blog

While GODR staff have not had the time to blog for you, we encourage you to visit the [blog](#) created by Georgia State University law professor Doug Yarn and GSU law student Tom DeFreytas to inform and encourage discussion. Please add it to your reading list, send the link to your colleagues, and visit often. The address: <http://georgiaadr.wordpress.com/>

## Recent Changes in Local ADR Programs

Two ADR programs have new directors: Mary Hogan is now the program director for the Rockdale County Juvenile Court Mediation Program. And Courtney Shedd is the new program coordinator for the Floyd County Magistrate Court Mediation Program. Their contact information:



Mary Hogan, Programs Administrator  
Rockdale County Juvenile Court  
922 Court Street  
Conyers, GA 30012  
770-278-7763  
770-278-8916 Fax  
[mary.hogan@rockdalecounty.org](mailto:mary.hogan@rockdalecounty.org)



Courtney Shedd, Court Supervisor/Mediation Coordinator  
Magistrate Court of Floyd County  
3 Government Plaza  
Suite 227  
Rome, GA 30161  
706-291-5250  
706-291-5269 fax  
[sheddc@floydcountyga.org](mailto:sheddc@floydcountyga.org)

The latest contact information for local court ADR programs is always available on our [website](#). Search by county or program name.



## Upcoming CE and Training Offerings

Don't wait until the 2011 renewal season to get your CEs. Check frequently at our [website](#) for the latest CE and training offerings. Remember, any training you take counts as CE as long as you took it since your last renewal or your initial registration, whichever comes later. Lawyers, any CLE you took during that same time period counts as CE. Likewise, judges and CJE. Accountants and other professionals with CE requirements, same thing.



## Be Neutral Back Issues Available Online

*Be Neutral* is sent monthly to all registered neutrals, generally at the beginning of the month. If you missed an issue, our back issues are posted at the bottom right of our website, under "[Newsletter Archive.](#)" Please take a look. If you know people who want *Be Neutral*, please direct them to our subscription box at the bottom right of our [website](#), where they just need to enter their e-mail addresses. Please forward this newsletter to anyone who might be interested in ADR in Georgia courts. Forward it just as you would any other e-mail. If folks who are not registered neutrals want to receive the newsletter free of charge, they can submit their e-mail addresses in the subscription box at the bottom right of our [website](#). And sending us feedback is easy – just reply to this e-mail as you would any other e-mail. We want to hear from you!

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## Spread the Word

Please forward this newsletter to anyone who might be interested in ADR in Georgia courts. Forward it just as you would any other e-mail. If folks who are not registered neutrals want to receive the newsletter free of charge, they can use the subscription box at below this text or submit their e-mail addresses in the subscription box at the bottom right of the home page of our [website](#). And sending us feedback is easy – just reply to this e-mail as you would any other e-mail. We want to hear from you !

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