# MINUTES: MARCH 3, 2011, MEETING
# GEORGIA COMMISSION ON DISPUTE RESOLUTION

Chair Edith B. Primm, Esq., called the meeting to order. In addition to Ms. Primm, Commission members present were: Justice Hugh Thompson; Judge Edward E. Carriere, Jr.; Laurence L. Christensen, Esq.; Judge Sara Doyle; Judge C. Andrew Fuller; Alan Granath; Melissa C. Heard; Dale Hetzler, Esq.; Judge Michael D. Johnson; Martha Kitchens; and S. Lester Tate III, Esq. Judge J. Carlisle Overstreet participated by phone.

GODR staff members present were: Shinji Morokuma, Esq., Director; and Nathelia Davenport, Deputy Director.

## 1. Visitors:

Ms. Primm welcomed the visitors: Elmira Barrow, Coweta Judicial Circuit ADR Program; Kingsley Buhl, Esq., mediator, arbitrator; Amber Gallman, Esq., DeKalb County ADR Program; Melissa Johnson, Esq., Administrative Office of the Courts; Jennifer Keaton, mediator; James Kenworthy, mediator, arbitrator; Linda McClain, Cobb County ADR Program; Nancy Parkhouse, Clayton County ADR Program; Chris Patterson, Administrative Office of the Courts; Richard Pincus, mediator; Bonnie Powell, Esq., Fulton County Landlord/Tenant Mediation Program; Brenda Sutton, Macon and Houston Judicial Circuits ADR Program; and Jerry Wood, Esq., Fulton County ADR Program. Pete Desrochers, mediator; and Pam Godfrey, Seventh Judicial District ADR Program, participated by phone.

## 2. Minutes:

The minutes of the January 6, 2011, Commission meeting were approved prior to the meeting via e-mail vote.

## 3. Committee Reports:

### Budget and Personnel Committee: Mr. Christensen

Mr. Christensen reported that GODR had received 1,959 renewals as of February 28, close to the target of 2,000 renewals the committee set for GODR to operate. He predicted that GODR would be able to operate until the beginning of the next renewal season, which begins November 2011.

### Committee on Ethics: Mr. Christensen (for Judge Charles Auslander)

Mr. Christensen reported that the committee took up three applications for renewal and decided to request more information from all three applicants. He said the committee is close to completing its decision in a complaint against a practicing mediator, but it has requested more information from the mediator on a specific issue.

**Committee on Training and Credentials: Ms. Heard**

Ms. Heard reported that the committee hoped to meet prior to the next Commission meeting to work more on the definitions of terms such as "court-annexed," "court-referred," "court-connected" and "court-ordered" as used in the ADR Rules and revise the registration requirements for out-of-state mediators. The Juvenile Mediation Subcommittee has finished drafting registration and training requirements for delinquency and deprivation mediation, and it is finishing up the grandfathering rules for delinquency and deprivation mediation. Ms. Heard said the committee has finished drafting the policy excepting academic-based mediation training programs from charging the $25 per-participant filing fee unless the students choose prior to the training to seek registration. The policy requires only a change in GODR procedure rather than an amendment of the ADR Rules, she said.

Ms. Primm clarified that the policy states that students must decide at the time they take an academic-based mediation training whether to pay the $25 per-participant fee in order for the training to count toward their registration requirements. The academic institution will collect the fee from those trainees and forward them to GODR, and the institution will issue those trainees certificates that verify that they paid the fee. Students who choose not to pay the $25 fee at the time of the training will not be able to register based on that training by paying the fee later.

Ms. Heard added that the new fee policy would be included in GODR's training approval guidelines, so trainers seeking review or renewal of their trainings will be informed of the policy. A copy of the revised policy was made available to the Commission.

[Attachment 1]

**ADR Court Program Liaison Committee: Mr. Granath**

Mr. Granath reported on the results of the registered neutrals survey that the Commission conducted late last year. He thanked Liaison Committee Advisors Ray Chadwick, Esq., Pete Desrochers, and Steve Gold, Esq., for their work producing the survey.

The 29-question survey received responses from 73 Georgia mediators across 26 counties. Commission members received documents containing raw survey data, a summary of the raw data, and major issues and recommendations from the survey. The goal of the survey, Mr. Granath said, was to help the Commission and GODR improve communication with Georgia neutrals and give them what they believe would add value to their registrations. After reviewing mediator demographics from the survey, Mr. Granath focused on the major issues and recommendations.

[Attachment 2]

Two significant findings were that surveyed mediators felt that there was not enough work for mediators and that what work is available does not pay enough. Mr. Granath said the responses indicate a misperception that mediators can make a living working just

as mediators. Mediators are concerned that it is difficult to get on local rosters; that it is difficult to get cases when on a roster; that there is a bias toward judges and lawyers; that judges and lawyers get more cases than non-lawyers even though non-lawyers comprise more than half of the registered neutrals in Georgia. Survey respondents want GODR's help in developing work opportunities for mediators outside the courts, he said.

Mr. Granath said among his recommendations would be to continue to get information from program directors about how neutrals can get on local rosters, how they are selected for cases and how they are paid. It is important also to use more modern communication technology to increase awareness about the realities of mediation practice. GODR has excellent information on its website, Mr. Granath said, but it appears the more direct communication with neutrals is needed to get this information to them. An example might be a Q&A column each month in the e-newsletter, he said.

The Commission also needs to decide if promotion of mediation outside the court system is within its mission, Mr. Granath said. Approved trainers do their best to set reasonable career expectations for their trainees, but the Commission perhaps could do more, for example, by providing information or a narrative that could be communicated consistently in approved trainings.

Among other issues and recommendations:

-- Mediators are not paid enough through some court programs: Need to explain how mediators are paid in various programs, and perhaps seek some uniformity in mediator compensation.

-- Lack of training and CE opportunities: Make more CE available at lower cost that is accessible from anywhere at any time, using the GODR website.

-- Insufficient facilities in some programs: Review current facilities in court programs and make recommendations for adequate facilities and equipment.

-- Insufficient funding and opportunities due to insufficient marketing: Increase promotion of the benefits of mediation to judges, lawyers, legislators, and the general public to increase use of and demand for mediation services.

-- Perception of benefits of GODR registration renewal: Continue to investigate creative benefits that can be offered to neutrals besides of insurance products and encourage vendors to increase marketing efforts.

-- Commission-related activities: Harness expressed desire of neutrals to provide volunteer help with Commission initiatives.

-- Lack of knowledge and general misunderstandings about the mission and benefits provided by the Commission and GODR: Continue use existing methods of communication – website, newsletter, etc. – to explain the work of Commission and GODR, and answer questions on the ADR system in Georgia courts.

Ms. Primm thanked Mr. Granath and the survey subcommittee members for their hard work. She also thanked Greg Arnold and Kevin Tolmich of the Administrative Office of the Courts for their help creating the survey. This is the first time, she said, that the Commission has had such an in-depth view of what is on mediators' minds.

On the issue of mediators needing more work, Ms. Primm said every mediator in the country is looking for more business, not just Georgia mediators. The Commission and GODR do their best to set realistic expectations for new mediators. Trainers need to help to make it clearer to their trainees that the mediation field is a difficult field to enter, she said.

Mr. Christensen asked if there was any sense from the survey that mediators felt the registration fee was too high. Mr. Granath said there was not. Ms. Kitchens said the Commission cannot guarantee mediators work anymore than the State Bar of Georgia can guarantee work for its members. She added that it would be difficult to set a uniform rate for mediator pay throughout Georgia court programs. Ms. Parkhouse agreed that local control of ADR programs is important. Compensation paid by local courts is set by the local ADR board based on the program's income, said, so uniformity on pay would be impractical. Ms. Primm said it is important for neutrals to know what the Commission does as well as what it does not have the authority to do, such as set compensation rates for mediators.

Ms. Primm emphasized the importance of the Commission's capitalizing on the new information from the survey. Ms. Heard suggested that the Commission prioritize the issues, focus on those matters that are most easily dealt with, and take small steps to make progress. Ms. Kitchens moved that the Liaison Committee appoint a special task force, comprising stakeholders in the state ADR system, to study the survey results, to explore viability of addressing the issues, and to create a plan to address those issues. The motion was seconded. The motion carried unanimously.

Ms. Primm said she expected to see tangible progress from the subcommittee at each Commission meeting.

## 4. Director's Report: Mr. Morokuma

Online CE: Mr. Morokuma said he hoped soon to post a 1-hour video from the 2010 ADR Institute on the GODR website. Neutrals will be able to view the video and get 1-hour of CE free after they answer a few questions about the video. He said he planned to post a second 1-hour CE video from the 2003 ADR Institute.

Outside Assistance to GODR: Mr. Morokuma said his staff of three is focused on processing renewals during renewal season, so it is difficult to get other work accomplished. He said former Commission member Raye Rawls has suggested that GODR look to Georgia universities for students who are willing to help GODR with various projects for academic credit. Ms. Rawls has solicited a Ph.D. student at the University of Georgia to help GODR collect, compile and present court ADR statistics.

UGA law students are reviewing the ADR Rules with fresh eyes to see if they need to be updated. Mr. Morokuma said GODR is happy to have any such help it can get.

Brunswick Circuit ADR Rules: Mr. Morokuma said the Brunswick Circuit has submitted its local ADR rules to the Commission. He said Ms. Davenport worked closely with Brunswick Circuit Senior Judge James Tuten to draft the rules. Mr. Morokuma said he and Ms. Davenport have reviewed the rules carefully, and he recommends that the Commission approve them. A motion was made to approve the Brunswick Circuit ADR Rules, the motion was seconded, and the motion carried unanimously.

[Attachment 3]

Database Software for ADR Court Programs: Mr. Morokuma said the licensing contract is still pending with Jackson Hughes, the mediator and attorney who wrote the new software that allows ADR court programs to manage their data. Mr. Hughes has already installed the latest software at The Mediation Center in Savannah, which apparently was still using the oldest version of the software from the mid-1990s.

E-Newsletter: Mr. Morokuma said he hoped that the March issue would be e-mailed to registered neutrals by the weekend.

Insurance: Mr. Morokuma said BPC Financial, GODR's broker of insurance products for registered neutrals, is planning to increase its marketing efforts by submitting articles for the e-newsletter, soliciting client feedback for the e-newsletter, sending direct mailings to neutrals, and by inserting flyers in GODR mailings. He showed an example of flyer that BPC would use for those mailings.

[Attachment 4]

Registration Renewal: Mr. Morokuma reported that GODR is about 3/4 of the way through the renewal applications they have received. The work has taken longer because the office has one fewer staff member this year. Processing has been helped by an increase in the number of neutrals who renewed using the online system. Last year, about 25 percent used the system, and this year, it appears that about 40 percent have used the system. Online applications require less staff handwork, Mr. Morokuma said. GODR continues to work with the vendor to improve the system and continues to encourage its use among neutrals.

## 5. New Business:

-- Next Meeting Dates: May 26; September 1; November 10.

The meeting was adjourned.

Attachments:

1. Revised training approval guidelines
2. Neutral survey data, issues and recommendations
3. Brunswick Judicial Circuit ADR Rules
4. BPC Financial flyer

[Minutes prepared by Shinji Morokuma, Office of Dispute Resolution]