

MINUTES: MAY 14, 2014, MEETING  
GEORGIA COMMISSION ON DISPUTE RESOLUTION

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Chair Judge Charles E. Auslander III called the meeting to order. In addition to Judge Auslander, Commission members present were: Chief Justice Hugh P. Thompson; Emily S. Bair, Esq.; Hubert J. Bell, Jr., Esq.; Judge Sara Doyle; Melissa Heard; Timothy Hedeem, Ph.D.; and Edith B. Primm, Esq. Judge C. Andrew Fuller participated by phone.

AOC staff members present were: Marla Moore, Director; Molly Perry, Court Services Division Director; Cynthia Clanton, Esq., General Counsel; Shinji Morokuma, Esq., Director of Certification and Licensing; Derek Bryant, Graphic Designer/Photography; Catherine Fitch, Policy Analyst; Tracy Mason, Program Administrator; and Kimberly Miller, Research and Statistical Analyst; Zan Patorgis, Esq., contract attorney; Maggie Reeves, Policy and Program Analyst; and Linda Smith, Education Certification Officer.

**1. Visitors:**

Judge Auslander welcomed the visitors: Steven J. Gold, Esq., mediator; Sheryl Hicks, Coweta Judicial Circuit ADR Program; Nancy Parkhouse, Clayton County ADR Program; and Jerry Wood, Esq., Fulton County ADR Program.

**2. Induction of New Members:**

Judge Auslander introduced the Commission's three newest members: State Representative Jay Powell; Judge Stefani Lacour, Magistrate Court of Fulton County; and Raymond G. Chadwick, Jr., Esq. Mr. Powell could not be present; Chief Justice Thompson swore in both Judge Lacour and Mr. Chadwick.

**3. Minutes:**

The minutes of the November 21, 2013, Commission meeting were approved prior to the meeting via e-mail vote. The February 6, 2014, meeting was cancelled.

**4. Committee Reports:**

**Budget and Personnel Committee: Mr. Morokuma for Mr. Laurence Christensen, Esq.**

Mr. Morokuma provided members with a report on GODR spending for the fiscal year. The office is currently at 85% of its target – right on track with projections. The figure will shape the 2015 budget. The GODR has a current positive fund reserve. Mr. Christensen and the rest of the committee are working on recommendations for the 2015 budget.

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

Ms. Heard proposed a change of terminology in the ADR Rules from “deprivation” to “dependency” to be consistent with the new juvenile code. Ms. Primm moved that the change be made in all appropriate sections of the ADR Rules, and Ms. Bair seconded the motion. The motion passed unanimously.

Ms. Heard reported that new model forms for juvenile programs for delinquency and dependency cases have been posted on the GODR website. The forms will assist existing and new juvenile court mediation programs in making their forms more accurate and consistent.

Lastly, Ms. Heard reported that five late requests for grandfathering into juvenile mediation categories have been reviewed. Two were accepted by the committee, two were denied by the committee, and one was denied by the office, but is being appealed to the committee.

### **Ethics Committee: Mr. Bell**

Mr. Bell followed up on two complaints the committee had been processing when the Commission last met in November. The two complaints were against an unregistered mediator and against an ADR program. The complaint against the unregistered mediator was dismissed for lack of jurisdiction, while the complaint against the program was dismissed with a letter of instruction.

GODR also received a complaint in December against a neutral who had his registration revoked but was still holding himself out on his website as being registered with the GODR. He said that he had forgotten to remove the designation from the website and voluntarily removed the incorrect information.

Mr. Bell noted that the GODR also received four applications of note – three for registration and one for renewal. Three of the applications involved pending criminal charges and were put on hold until disposition of the charges; all three were eventually processed. The final application involved an applicant convicted of an out-of-state, federal crime. The committee weighed his rehabilitative evidence, decided that his proposed efforts to assist with juvenile mediations would ultimately prove beneficial for the mediation system, and approved the application.

GODR staff, along with AOC Legal, closed out three registration applications that had been pending for several months. So as of the meeting, all registration and renewal applications have been closed.

Lastly, the committee met with GODR staff immediately preceding the meeting to begin developing clear office guidelines for the review and referral of applications. Ms. Bair and Mr. Christensen were tasked with developing a set of internal operating guidelines.

**5. Special Committee Report – Evaluative Mediation Committee: Dr. Hedeem**

Dr. Hedeem reported that the committee continues to explore the concept of recognizing an evaluative style of mediation in the ADR Rules. The committee canvassed the rules and procedures in 25 states to see how they handled evaluative mediation. About 20 states do not have any rules in place that recognize evaluative mediation; several leave the term “mediation” open; and several assisted the committee with other information. Among the many issues the committee’s research has uncovered is whether and when a mediator must inform the parties that he or she has switched from mediating to evaluating. The committee has recognized that client preparation for the mediation process, client sophistication with the process, and whether clients are represented are critical factors in deciding whether evaluations should be offered by the mediator, or whether the mediator should use an evaluative style, in court-connected cases.

**6. Director’s Report: Mr. Morokuma**

HB 438: Mr. Morokuma reported that Gov. Nathan Deal signed HB 438 into law at a signing ceremony on April 24. The new law raises the cap on the ADR filing fee to \$10 from \$7.50, where it was set 21 years ago. The increase will allow local programs to decide whether to increase their filing fee beyond \$7.50 to meet budgetary shortfalls while meeting high demand for services. Mr. Morokuma showed a photo of the signing ceremony, which was attended by several members of the Commission. He also thanked Rep. Jay Powell, who sponsored the bill; Chief Judge Harry Jay Altman and ADR Program Director Tim Hendrick of the Southern Judicial Circuit, who recruited Rep. Powell; and the Governmental Affairs and Trial Court Liaison staff, who worked hard to ensure that the bill passed both chambers of the General Assembly.

Renewal Season Update: Mr. Morokuma reported that most renewal applications submitted by the December 31, 2013, on-time deadline were processed by February 4, 2014, while applications submitted by the April 30, 2014, late deadline were processed by May 7. GODR received and processed just over 1,600 renewal applications, which is in line with previous years’ figures.

Chief Justice Thompson reminded the Commission of its funding crisis several years ago and its fears that increasing registration fees would greatly reduce the number of registered mediators in Georgia. He asked whether that fear has been justified. Mr. Morokuma assured the Commission that the figures are not down significantly, and the number of registered neutrals is still between 1,900 and 2,000 at any given time.

ADR Institute: Mr. Morokuma reported that the 2013 ADR Institute, held December 13 at the State Bar of Georgia, attracted 217 attendees, including those who watched live remote broadcasts of the conference at State Bar offices in Tifton and Savannah. An additional 15 people attended a video replay of the conference on March 21 at Mercer Law School. Temple Grandin, an internationally-known autism advocate, was the keynote speaker. The 2014 ADR Institute will be held on December 11.

ADR Conferences: Mr. Morokuma reported that he recently attended two ADR conferences – a southeastern states ADR directors conference, in Raleigh, N.C., and the ABA Dispute Resolution Section annual conference, in Miami. These were the first two conferences he had been able to attend in 6-7 years because of GODR's budget crisis. He expressed relief and gratitude that GODR's finances had stabilized enough that he could once again participate in the exchange of ideas with ADR professionals at the regional and national level.

Mediation Videos in Spanish and American Sign Language: The GODR website has long posted a professionally produced video explaining the court mediation process. Mr. Morokuma reported that he recently discovered two variations of that video – one in Spanish and another in English with American Sign Language interpretation. Both videos are now posted on the GODR website.

Explanation of Registrar System: Mr. Morokuma reported that the AOC has been designing a new online registrar system that will make the certification process significantly more efficient and easy for the public and for AOC staff who credential neutrals, private probation providers, court interpreters, court reporters, process servers, and other similar professionals. Ms. Reeves, who is managing the new registrar project, provided a PowerPoint description of the new system. Mr. Morokuma thanked the AOC, particularly Director Moore, for investing more than \$300,000 to create this system, for which GODR and the other certification and licensing agencies will not have to pay until FY2016.

## **7. Chairman's Report: Judge Auslander**

Mr. Morokuma's New Role: Judge Auslander briefly introduced the topic and then asked to Ms. Perry to provide further details. She stated that the AOC recently made a staffing change so that Mr. Morokuma would split his time equally between GODR and the Commission on Interpreters in an effort to bring certification and licensing matters under one manager. The change will allow the AOC to assist both commissions more effectively and efficiently. Ms. Smith, previously exclusively with the Commission on Interpreters, will now be a certification education officer for both agencies.

Judge Auslander remarked that there may be a contractor hired by the Commission to assist with the newsletter and any special projects.

ADR in Next Generation Courts Commission: Judge Auslander reported that the recently release report from the Next Generation Court Commission contained two recommendations concerning ADR in the courts: 1) Make ADR programs available to all litigants in all classes of court in Georgia, especially low-income and *pro se* litigants; and 2) Expand ADR instructional opportunities and to promote the establishment of ADR clinics at all Georgia law schools.

Strategic Planning: The Next Generation Courts Commission report is one of several factors that make this an ideal time for the Commission to consider developing a strategic plan that focuses its mission and goals for the next several years, Judge Auslander said.

First, the Commission finally has budget stability. Second, the Commission budget can now afford an investment in new planning and programming. Third, with the new division of labor in the Certification and Licensing offices, the Commission can spread its work over more staff members. Fourth, new member Mr. Chadwick will revive the Liaison Committee in order to assist the Commission in helping mediators and court programs directly. Lastly, the Judicial Council recently developed its own strategic plan, and the various judges council have developed strategic plans, so it makes sense for the Commission to develop its own strategic plan that dovetails with those of the Judicial Council and judges councils.

For the sake of convenience of the out-of-town members, Judge Auslander proposed having a planning session for about two hours before the next two Commission meetings. Judge Auslander said he will make arrangements for a planning session preceding the August 20 meeting.

Advisory Opinion 8: Judge Auslander said the Commission's advisory opinion on confidentiality was released in October 2013. The Commission still intends to draft a letter to *The Daily Report* to remind all mediators, lawyers, and judges around the state of their confidentiality obligations in mediation. He said he is seeking a co-signer for the letter from the leadership of the Dispute Resolution Section of the Atlanta Bar Association.

## **8. New Business**

Judge Auslander reminded the Commission that it had previously determined that it needed a conflict of interest policy for its members. Judge Fuller was tasked with overseeing the drafting of the policy with the assistance of AOC Legal. Ms. Clanton presented the new policy.

Ms. Clanton explained that the new policy defines what a conflict of interest is and what standards members should obey. The overarching goal of the policy is to make open all business or personal conflicts between Commission members and GODR-approved vendors. She summarized the standards of the policy and introduced an annual questionnaire disclosing any potential conflicts of interest that Commission members will be required to complete. Ms. Clanton clarified that any disclosure of a potential conflict of interest would not necessarily subject members to discipline. Members will need to receive the permission of the chair and the Commission prior to proceeding with any business or personal relationship that may create a conflict of interest. Judge Auslander asked that the questionnaire be modified so that Commission members' would not have to disclose their home addresses or phone numbers.

Judge Auslander moved for the Commission to vote to approve the policy subject to the change he suggested. Chief Justice Thompson seconded the motion. There was no discussion, and members voted unanimously to adopt the new policy subject to the amendments.

Ms. Clanton then went on to explain an updated trainer-selection policy. The policy, which was adopted by the Training and Credentials Committee in 2009 but never by the

full Commission, lays out the policy and procedure that GODR follows in selecting trainers when court programs request GODR-sponsored trainings. Essentially, the procedure calls for the requesting court programs to choose from among the trainers approved to provide the training; GODR does not select the trainers. GODR then contracts with the trainer chosen by the court program to provide the required services.

Judge Auslander noted that the policy is in place so that the Commission is not accused of picking favorite trainers and instead allows the ADR programs the autonomy to choose the trainers they prefer. Ms. Primm moved for the policy to be adopted by the Commission, and Mr. Chadwick seconded. The motion passed unanimously.

The Commission set future meeting dates for August 20, 2014, November 19, 2014, and February 11, 2015.

The meeting was adjourned at 3:47 pm.

[Minutes prepared by Zan Patorgis, AOC, and Shinji Morokuma, AOC]