

MINUTES: MAY 26, 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 Charles E. Auslander III; Hubert J. Bell, Esq.; Judge Edward E. Carriere, Jr.; Laurence L. Christensen, Esq.; Judge Sara Doyle; Alan Granath; Melissa C. Heard; Judge Michael D. Johnson; Martha Kitchens; and S. Lester Tate III, Esq. Judge C. Andrew Fuller 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; Cynthia Clanton, Esq., Administrative Office of the Courts; Amber Gallman, Esq., DeKalb County ADR Program; Pam Godfrey, Seventh Judicial District ADR Program; Melissa Johnson, Esq., Administrative Office of the Courts; Tracy Johnson, Sixth Judicial District ADR Program; Ellie Lanier, Esq., UGA Law School; Michael Opitz, mediator, arbitrator; Nancy Parkhouse, Clayton County ADR Program; Bonnie Powell, Esq., Fulton County Landlord/Tenant Mediation Program; Brenda Sutton, Macon and Houston Judicial Circuits ADR Program; Laura Lynn Swafford, Gwinnett County ADR Program; Michael Tabachnick, Esq., mediator; and Jerry Wood, Esq., Fulton County ADR Program.

2. Minutes:

The minutes of the March 3, 2011, Commission meeting were approved.

3. Recognition of Judge Johnson

Ms. Primm took time to thank Judge Johnson for his service on the Commission. Judge Johnson is pursuing a career in politics, and he said his last day on the Fulton County Superior Court bench would be June 3, 2011. He said he would give up his seat on the Commission to make room for another superior court judge.

4. Committee Reports:

Budget and Personnel Committee: Mr. Christensen

Mr. Christensen reported that GODR will have enough funds to function through the end of FY2011, and if spending continues at the current rate, the office will also have enough funds to get through the renewal period ending December 2011. The office budget will be able to carry a \$6,000-\$7,000 a month in surplus through the first half of FY2012.

That is significant, Mr. Christensen said, considering that last year there was a great possibility that the office would have to close. He added that the role of the Budget Committee must change from helping the office survive to helping to increase funding in order to increase office activities.

Justice Thompson reminded the Commission that it was important for the office to get back to fulfilling its mission, now that the funding crisis has abated somewhat.

[Attachment 1]

Committee on Ethics: Judge Auslander

Judge Auslander reported that the committee met earlier that day. It did not have any registration applications to review. However, the committee did decide to issue a three-month suspension to a registered mediator, based on an ethics complaint. Any such decision by the Ethics Committee is subject to appeal to the full Commission within 30 days of the decision, Judge Auslander said. The committee has requested that Mr. Morokuma draft an ethics opinion based on the decision in order to advise others on what is and is not appropriate conduct for registered mediators. Two further complaints are pending with Mr. Morokuma, he said, and those may be referred to the committee in the coming months.

Committee on Training and Credentials: Ms. Heard

Ms. Heard reported that Committee Advisor Bill Adams and former Commission member Raye Rawls are working with a graduate student on the definitions of terms such as “court-annexed,” “court-referred,” “court-connected” and “court-ordered” as used in the ADR Rules. The Juvenile Mediation Subcommittee is finishing up its remaining work on training requirements for registration in delinquency and deprivation mediation, she said.

ADR Court Program Liaison Committee: Mr. Granath

Mr. Granath reported that a subcommittee has been formed to develop short- and long-term plans for GODR based on the neutral survey. The members are Mr. Granath, Ms. Barrow, Ms. Heard, Ms. Kitchens, Ms. Sutton, and Mr. Morokuma. The short-term goals are: 1) Improve understanding of the mission and mandate of the Commission and GODR; 2) Clarify the reality of work and financial opportunities for neutrals in the court-connected ADR system; 3) Offer more web-based continuing education opportunities for neutrals.

The action plan is: 1) Start a monthly Q&A column in the e-newsletter to address issues raised in the survey. The first Q&A column will be in the June newsletter and will clarify the mission and mandate of the Commission and GODR; 2) Post online CE opportunities. Mr. Morokuma has already posted two hour-long videos on the GODR website that neutrals can view for free from their computers. The videos are Bill Eddy’s presentation from the 2010 ADR Institute, and Kenneth Feinberg’s speech from the 2003 ADR Institute. Feinberg was the special master for the September 11 victim compensation

fund; 3) Ask Training and Credentials Committee to draft a letter to trainers asking them to spend time in their mediation trainings setting realistic expectations for employment in the court-connected ADR system; 4) Work with GODR insurance providers to better publicize their benefits offerings. A long-term implementation plan should be ready by mid-summer, he said.

Mr. Granath said the committee is also looking at the feasibility of several other longer term initiatives including: a statewide neutrals' speakers bureau to help publicize GODR and provide positive exposure for our neutrals; enhanced GODR participation in annual Conflict Resolution Day; seeking out other organizations and agencies that use mediators; adding that information to the GODR website; and looking into the feasibility of having GODR serve as an interface between the organizations/agencies and our neutrals to help mediators seek work opportunities outside the court-connected system.

Ms. Primm thanked the members of the subcommittee. She urged attendees to view the video of Kenneth Feinberg's "magnificent" address from the 2003 ADR Institute that was just posted on GODR's website.

She agreed that it is a good idea to ask trainers to tell their trainees about the limited work opportunities in the court-connected system. Although she was doubtful that anyone would pay attention, she said the Commission is ethically obligated to provide that information.

Registration Committee: Mr. Morokuma (for Ms. Emily S. Bair, Esq.)

Ms. Primm said she created a new Registration Committee, chaired by Ms. Bair and including members Ms. Kitchens and Mr. Christensen. She did so because of concern that the registration and renewal processes were taking too much time and effort for GODR and neutrals. Ms. Bair has already met with the GODR staff to discuss ways to streamline the processing, and Ms. Primm said she hoped that this next season renewals would be completed by the end of January.

Mr. Morokuma said the staff meeting with Ms. Bair helped to generate several ideas for increasing the efficiency of the renewal process: 1) Encourage neutrals to use the online system. It takes dramatically less time for neutrals to fill out the online form and the office to process it. GODR continues to work with the database vendor to improve the functionality of the system; 2) Encourage neutrals to rely on their online account to check the status of their applications, instead of calling or e-mailing the office. Answering phone and e-mail inquiries about application receipt and status takes a large amount time from actually processing application; 3) Run background checks on neutrals every two years instead of once a year. That change alone would reduce the background check workload by half; 4) Use a master signature page that gives GODR the authority to run background checks without getting signature permission every year. That change would eliminate 2,000 pieces of paper the office handles each year. Ms. Davenport is seeking permission from the GBI for the office to use a master signature page.

Mr. Morokuma said these changes to the renewal process can be implemented for new registration applications as well. Another issue the office must address is to clarify for

program directors that even if neutrals are not renewed by January 1, they are still eligible to handle court cases through April 30. Part of the problem, he said, is the confusing terminology used by the database vendor to denote when neutrals are not renewed by the on-time renewal deadline.

Judge Auslander suggested that the Commission consider amending the rule that specifies that GODR will conduct background checks on neutrals. The rule could be amended to allow background checks to be done at random, or every 10 years, or for neutrals to self-report their background and GODR to audit their reports at random. Ms. Davenport explained that running a single background check can take from 5 minutes to 20 minutes, depending on whether any issues are found. With 2,000 neutrals registering or renewing each year, that adds up to a lot of time. What also takes time, she said, is matching up signature pages with applications, because sometimes neutrals send them separately. Ms. Primm emphasized that the key is to continue the important task of checking backgrounds without creating administrative problems. Ms. Heard said she would work with other Commission members to investigate the idea of amending the background check rule and report at the next Commission meeting.

Justice Thompson cautioned that any revised background check process does not become so lax that the office fails to catch people who have had problems since they were checked last. That would damage GODR's reputation and erode confidence in GODR's credentialing process, he said. Mr. Morokuma agreed that the background check is an important service GODR provides to the court programs. Each year, only 1 or 2 renewing neutrals are found to have run into professional or criminal issues since the previous background check, he said. One reason those numbers are so low, he said, may be because the Ethics Committee has a good job screening out applicants with the potential to have long-term professional or personal problems.

5. Director's Report: Mr. Morokuma

Registration Renewals: Mr. Morokuma reported that GODR received approximately 1665 renewals this past season. About 1,500 have been processed, and the office is asking neutrals to provide missing documents for the remaining renewals. The office has received about 300 new registration applications in FY2011. Those numbers align with the approximately 1960 neutrals who were expected to register, renew or reinstate this year, and they put GODR on target fiscally, as Mr. Christensen reported earlier. Ms. Primm added that the per-participant training fee that trainers pay to GODR also has contributed to the fiscal stability of the office.

Brunswick Circuit ADR Rules: Mr. Morokuma reported that the Brunswick Circuit ADR Program has started and will begin referring cases June 1. Senior Judge James Tuten has been appointed the part-time program coordinator. The program's Board of Trustees has met, approved the local rules and standing orders, and has made them available to the public, Mr. Morokuma said. The board has also alerted local bar associations about the start of the program. The program has an administrative office and a facility at which to hold mediations. At first domestic cases and personal injury cases would be referred by standing order, with other types of cases sent to mediation after screening by a judge.

E-Newsletter: Mr. Morokuma said the e-newsletter continues to be well read. Approximately 30 percent of the people who receive the newsletter open it, which is a very high percentage. He said he is hearing from more neutrals who wish to contribute articles to the newsletter, and he said he hoped the newsletter would be a showcase for the high quality of neutrals in Georgia.

[Attachment 2]

Caribbean DR Conference: Ms. Davenport reported that she recently gave an invited talk at the 5th Caribbean Conference on Dispute Resolution, in Jamaica. She emphasized that she spent her personal funds to attend; no office funds were used. Her presentation on how GODR survived its fiscal crisis and became self-supporting was very well received. Ms. Davenport met Jamaica's Chief Justice Zaila McCalla, former Chief Justice Lensley Wolfe, and Donna Parchment Brown, who runs the Dispute Resolution Foundation, the nonprofit organization appointed by the Supreme Court to refer cases to mediation in Jamaican courts. Jamaican courts have a standing order referring civil cases to mediation, she said.

Conference presenters and attendees came from all over the world. Ms. Davenport met a law professor from South Africa who was interested in coming to Georgia to learn about the ADR system. Several Jamaican justices also asked to visit Georgia so they could study the system and observe cases. Dr. Walter Leavell, the C.E.O. of the Clarendon Peace & Justice Centre, is an affiliate of the Dispute Resolution Foundation, shared that he had been trained in domestic mediation by current Commission Member Ms. Heard and by the late Betty Manley, who also served on the Commission.

[Attachment 3]

6. New Business:

-- Research by University of Georgia law students: Professor Lanier reported that mediation scholars at several local universities – the Consortium on Negotiation and Conflict Resolution at Georgia State University College of Law, the University of Georgia School of Law, the Fanning Institute at UGA, and Kennesaw State University – have formed an ad hoc research group. The group has already begun using law students and graduate students to conduct research that supports the Commission's work. Research projects in dispute resolution are very attractive to students, she said, and not just to those who take mediation training.

Professor Lanier supervised two student projects at the law school this past semester. In one project, student Lee Niedrach examined the Georgia ADR Rules with a fresh eye, looking for ambiguities, inconsistencies, definition issues, and other problems. His report contained 79 recommendations ranging from simple formatting changes to language changes and additional definitions.

Another law student conducted a 50-state survey of mediation ethics rules for various state ADR programs. The particular focus was on rules governing the mediator's giving

opinion or legal advice. Professor Lanier said that project is finished, but she plans to review the work before turning it over to the Commission. Two more law students are available to work on projects, she said.

Professor Lanier said the ad hoc research group is looking forward to working with the Commission to enhance the quality and ethical practice of mediation in Georgia. Ms. Primm thanked Professor Lanier for the group's research work.

-- HB 114: Mr. Morokuma reported that he recently learned from Mr. Wood of Fulton County that HB 114, which was just signed by the governor, would severely affect the county's ADR fund income. HB 114 amends state law by limiting to \$10 the fees that towing companies pay when filing affidavits to get title to abandoned vehicles. No other fees can be charged on those filings, according to the bill. In several jurisdictions, towing companies apparently paid the full allotment of filing fees charged to any civil filing. Mr. Wood said that the Fulton County ADR fund stood to lose about \$55,000 a year in income now that ADR fees can no longer be collected on those abandoned vehicle affidavits. Mr. Morokuma said he first did not know about the bill, nor apparently did any lobbyists, particularly at the county level.

He said he wanted ADR program directors to be aware of the issue, and to talk to their judges and clerks to ascertain if and how much their ADR funds would be affected by HB 114. Ms. Gallman said the DeKalb County ADR fund took in \$21,000 last year from those affidavit filings. Judge Auslander noted that the other agencies whose filing fees were affected by HB 114 – sheriffs, public defenders, magistrate judges and court clerks, – may be allies should the Commission ask the legislature reconsider HB 114.

-- Next Meeting Dates: September 1; November 10. Ms. Primm said GODR would begin exploring dates for 2012 meetings.

The meeting was adjourned.

The Commission went into Executive Session.

Attachments:

1. GODR budget summary
2. GODR newsletter
3. Cover of Caribbean conference brochure

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