

MINUTES: APRIL 8, 2010, 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: Judge Charles E. Auslander III; Judge Debra Bernes; Alan Granath; Martha Kitchens; Justice Hugh Thompson; and Judge Cynthia Wright. Melissa Heard participated by phone. New Commission member Laurence L. Christensen's presence and participation after his swearing in resulted in the requisite quorum needed to transact business.

GODR staff members present were: Shinji Morokuma, Esq., Director.

1. Visitors:

Ms. Primm welcomed the visitors: Bill Adams, mediator, trainer; Dick Austin, mediator; Elmira Barrow, Coweta Judicial Circuit ADR Program; Billie Bolton, Administrative Office of the Courts; Debbie Blanton, DeKalb County ADR Program; Laurence Christensen, Esq., attorney/mediator; Mike Cuccaro, Administrative Office of the Courts; Linda Gernay, Eastern Judicial Circuit ADR Program; Larry Harton, DeKalb County ADR Program; Chandler Haydon, political consultant; Tracy Johnson, Sixth District ADR Program; Kathie Lesesne, forensic accountant; Valerie Lyle, Ninth District ADR Program; Linda McClain, Cobb County ADR Program; Linda McClellan, Tenth District ADR Program; Marla Moore, Administrative Office of the Courts; Bob O'Connor, student, Straus Institute; Laura Lynn Swafford, Gwinnett County ADR Program; Nicole Woolfolk, Ninth District ADR Program; Jerry Wood, Fulton County ADR Program.

2. Swearing In of New Member: Justice Thompson

Justice Thompson swore in Laurence L. Christensen, Esq., an attorney and mediator, as the newest member of the Commission.

3. Minutes:

The minutes of the January 14, 2010, Commission meeting were approved prior to the April 8 meeting via e-mail vote.

4. Committee Reports:

Budget and Personnel Committee: Judge Cynthia Wright

Ms. Lesesne summarized the four reports that were handed out to Commission members. Those reports were 1) a year-to-date report comparing budgeted and actual income and expenses for GODR; 2) a month-by-month report of year-to-date Office expenses by

budget category; 3) an accounting of spending on GODR's state purchasing card, held by Mr. Morokuma; and 4) a cash-flow analysis based on available cash and projected expenses.

Judge Wright said the committee has spent several months examining GODR's budget and found there was relatively little that could be cut. So the committee has been exploring other ways to try to find efficiencies. Among those ideas is for GODR to become formally supported administratively by the Administrative Office of the Courts (AOC). Such an arrangement would produce economies of scale for GODR and the AOC, something the legislature favors. By providing human resources, information technology and fiscal support, the AOC would return the Commission to a policy-making body and would help GODR improve compliance monitoring, training, and services to its constituents. In summary, this relationship would help GODR do more with less, she said. Judge Wright presented the information as a motion from the committee.

Ms. Moore, AOC director, said the AOC and other judicial agencies have an obligation during this budget crisis to question "business as usual." She said the AOC currently hosts the staff of three commissions with responsibilities, structures and challenges similar to those of GODR, and two more commissions may join the AOC after the legislative session. All of those commissions, like GODR, are being expected to become self-supporting without state funding. Ms. Moore said her goal is create a better model so that the commissions can share resources and provide services more efficiently and effectively, particularly in the areas of compliance monitoring and training. GODR staff would become AOC staff, but both GODR and AOC would benefit from the new arrangement, she said.

Ms. Primm clarified that while the AOC would make recommendations to the Commission regarding GODR, the Commission would maintain full and final authority over GODR.

Ms. Haydon, the Commission's legislative consultant, said there was a time when the legislature did not understand the AOC's function and therefore tended to want to take away responsibilities from the AOC. Now, however, legislators understand how consolidating similar commissions under the AOC could produce efficiencies, and they are now encouraging more agencies to operate under the AOC umbrella.

Ms. Moore assured the Commission that there are no legal impediments to staff of fee-supported agency like GODR being considered state employees working for the AOC. The AOC's legal department has confirmed the legality of such an arrangement, she said, and the AOC already has staff positions that are paid by fees. Such a structure is fairly common in the executive and judicial branches. For example the Secretary of State's office has staff paid by fees, as does the Board of Court Reporting, one of the judicial agencies that functions under the AOC, she said.

Ms. Moore said she wanted to start immediately and expected to have the integration work completed by July 1, 2010, the start of FY2011. She said part of that work would be to determine what fees, if any, GODR would pay to the AOC for its support. The

legislature would also be kept informed of the changes to GODR and AOC so any effects on the budgeting process could be anticipated.

Ms. Moore added that she was working at the AOC when the Commission and GODR were created, and she has watched the court-connected ADR system grow over the years. So she was shocked when she returned to the AOC last year to see GODR under attack from constituents and legislators, with some people calling for its elimination. She said GODR is very important to the judiciary, and its integration with the AOC is part of her commitment to ensure that GODR operates as it should and provides better service.

Judge Auslander asked for clarification on whom the GODR director and staff would report to under the proposed arrangement with the AOC. Ms. Moore said the AOC's relationship with the Commission would be like those it has with the three other commission it hosts. The commission staffs are fully integrated into the AOC's support systems, as GODR's staff would be. AOC's role would be to provide support only, and it would not be involved directly between the Commission and GODR staff. The GODR director would be an AOC employee, so he would continue to report to the Commission on substantive matters and report to the AOC director on administrative matters. The Commission would remain the final authority on all matters concerning GODR and its staff.

Ms. Primm asked for the Commission to vote on the Budget Committee's motion for GODR to formally integrate administratively with the AOC. The motion passed unanimously.

On behalf of the Commission Ms. Primm thanked Ms. Lesesne and Ms. Haydon for their hard work supporting the office, and she thanked the Georgia Bar Association's Dispute Resolution Section, which at Mr. Christensen's request, helped provide funds to hire Ms. Lesesne and Ms. Haydon.

Committee on Ethics: Judge Auslander

Judge Auslander reported that the committee met in February 2, 2010, to discuss neutral registration applications. Four applications were considered, and all four were approved.

Committee on Rules: Judge Auslander

Judge Auslander said because he is the new chair of the Ethics Committee, Judge Edward Carriere has been appointed chair of the Rules Committee. The committee is waiting to hold a meeting until Judge Carriere is available.

Committee on Training and Credentials: Mr. Morokuma for Ms. Heard

Mr. Morokuma said a small group of ADR professionals has begun drafting training and registration requirements for juvenile court mediators in two categories – delinquency mediation and deprivation mediation. The committee has voted to make that group a subcommittee. The members of the subcommittee are: Ms. Heard; Lynn Goldman, Fulton County Juvenile Court; Pam McClure, Cobb County Juvenile Court; Raye Rawls,

trainer, Fanning Institute; Judge Robert Rodatus, Gwinnett County Juvenile Court and Council of Juvenile Court Judges; and Mr. Morokuma. Several others, Mr. Granath; Ruby Thomas, former juvenile court judge; and Pam Anderson, trainer, have asked to be kept apprised of the subcommittee's work.

The committee is also reexamining the training and registration requirements for mediators who have been trained outside of Georgia, Mr. Morokuma reported. The committee felt that the requirements should be amended to be more like the requirements of Georgia-trained mediators.

The committee has appointed three trainers to serve as advisors to the committee: Bill Adams, Bob Berlin, and Raye Rawls. They will help the committee keep professional trainers in mind when it considers changes to rules and policy. Each advisor has agreed to serve at least 18 months, with terms staggered afterward. The advisors are currently helping amend the registration requirements for out-of-state mediators. A conference call of members and advisors is scheduled for late April to continue the work.

ADR Court Program Liaison Committee: Mr. Granath

Mr. Granath said the committee has done good work in its first three months. Registered neutrals were polled in December regarding their interest in GODR offering group-rate professional liability insurance for mediators and arbitrators. Based on the significant interest shown from that survey, the insurance program was launched and announced to neutrals in March. One benefit of neutrals' buying policies through the GODR-negotiated program is that they will receive Unlicensed Practice of Law protection at no additional charge.

GODR is now in negotiations with the insurance broker that is the Georgia Bar Association's recommended broker in hopes of offering health, dental, vision, long-term care, and other insurance policies at group rates to registered neutrals. GODR has received the broker's proposal, which will be forwarded to the Liaison Committee for review.

Mr. Granath said Ms. Gernay, from the Eastern Judicial Circuit, surveyed fellow program directors to see if they would like GODR to post on its website information regarding how neutrals should approach the local court programs to be considered for their local rosters. Several program directors have provided that information, and GODR will post it in hopes that it will provide consistent information about local requirements and reduce the volume of inquiries made to local programs.

A software developer, Alliance, has approached GODR with a proposal to provide software that would help local court programs collect and manage their ADR case data and improve their court processes, Mr. Granath said. As a result, Ms. Johnson, of the Sixth Judicial Circuit, surveyed fellow program directors to learn how they currently manage their ADR case data and what their interest might be in an updated system. Of those program directors who responded, only two said updating their database system was a priority. Although there was broader interest in a new system, the main concern was how to pay for it. Ms. Johnson is exploring alternative funding opportunities such

as grants, and is also seeking other companies that may be able to provide the needed software application. Ms. Primm asked the committee to coordinate those efforts with Ms. Moore and the AOC, as software support is one area in which the AOC may be able to help.

Mr. Steven Gold, one of the committees advisors, has asked that the Commission meeting agendas and minutes be posted on GODR's website in a timely manner. Mr. Morokuma has promised to try to post agendas at least a week prior to each meeting and to post minutes within three weeks of each meeting. Mr. Granath asked Commission members to help Mr. Morokuma by responding in a timely manner to requests for review of minutes.

Mr. Granath reminded the Commission that the Liaison Committee is uniquely constituted; seven program directors and three mediators serve as advisors to the committee. The advisors help the committee to respond quickly to public comments and inquiries, as well as to seek out opinions of constituents.

5. Recent Issues in ADR Programs: Ms. Primm

Mediator Subpoena: Ms. Primm asked Ms. Gernay, of the Eastern Judicial Circuit, to talk about a recent case in the circuit where a mediator has been subpoenaed. Ms. Gernay reported that a pro se party to a mediated case disavowed the written agreement he signed. He did so after the three-day grace period given to unrepresented parties in the circuit, claiming that he lacked the capacity to enter into that agreement under the Georgia Supreme Court case of Wilson v. Wilson. The mediator in that case has been subpoenaed to testify about the party's capacity during the mediation, which was conducted through the Mediation Center in Savannah. Ms. Primm said she and former Commission member Bobby Glenn and Wendy Williamson, director of the Mediation Center, have discussed the issue, and they agreed to let the mediator testify, but only as to the party's capacity, as the Wilson case creates a confidentiality exception to mediation communications for that purpose. Attorneys knowledgeable about mediation will be representing the mediator and the Mediation Center, she said. The hearing is scheduled for June 7.

ADR Filing Fees: Ms. Primm asked Mr. Morokuma to report on the premature collection of ADR filing fees in the Brunswick Judicial Circuit. Mr. Morokuma said GODR had gotten word that the Brunswick Circuit had begun collecting the ADR filing fee prior to the Commission's approval of the circuit's ADR program application on July 9, 2009. Such action is a violation of the ADR filing fee statute, he said. He contacted Chief Judge Amanda Williams about the matter, and she immediately ordered the refunding of all prematurely collected ADR filing fees to the plaintiffs in those cases. An e-mail the morning of the Commission meeting stated that the refunding is almost complete. When all ADR funds have been refunded, Judge Williams has agreed to alert the Commission in writing, so that there is documentation that the matter has been resolved.

Ms. Primm said these two cases clearly demonstrate the need for the Commission and GODR to be responsive to local ADR programs about any issues that come up. She

commended the Brunswick Circuit for addressing the matter quickly and without question.

6. Director's Report: Mr. Morokuma

Renewal Season Update: Mr. Morokuma reported that the 2009 registration renewal season has ended. To date, 1,600 neutrals have renewed their registrations out 2,600 total. The renewal number will likely increase a bit as the final renewal applications are processed. He said that GODR will work with the AOC and the other commissions to find ways to process renewal applications more efficiently.

GODR Vendors: Mr. Morokuma said he produced a report of the vendors that GODR has paid or is paying over the last fiscal year, at the request of Judge J. Carlisle Overstreet at the last Commission meeting. The alphabetical listing of vendors, payments, and service provided was included in the Commission members meeting folders. Most of the expenses are for the database software vendor, postage, travel, training, and staff Blackberries.

[Attachment 1]

Passing of Ed Henning: Mr. Morokuma handed out a recent obituary for Mr. Ed Henning, founder of Henning Mediation and Arbitration Service. He was an early adopter, pioneer and champion of ADR in the legal profession, Mr. Morokuma noted.

[Attachment 2]

7. New Business:

-- Next Meeting Dates: June 10; September 9; November 18, 2010

8. Presentation of Resolution: Justice Thompson

Justice Thompson presented a Georgia Supreme Court Resolution to Judge Cynthia Wright, who was resigning from the Commission to focus on her responsibilities as the new Chief Judge of the Atlanta Judicial Circuit. The resolution, signed by all of the justices, recognized Judge Wright for her support of and commitment to ADR in Georgia courts and for her six years of service on the Commission as chair of the Ethics and Budget committees, which benefitted the judiciary, neutrals and the public. Judge Wright accepted the resolution, noted the great work of the Commission during her tenure, and thanked the Commission for helping to make the courts more mediation friendly.

The meeting was adjourned.

The Commission went into Executive Session.

Attachments:

1. List of vendors GODR has paid in last fiscal year;
2. Obituary of Ed Henning.

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