

Georgia Commission on Dispute Resolution
MEETING AGENDA
Thursday, February 28, 2013, 2-4 PM
State Bar of Georgia

I. Call to Order: Judge Charles Auslander

II. Minutes from September 27, 2012, meeting approved via e-mail vote; November 15, 2012, meeting cancelled.

III. Committee Reports:

-- Budget and Personnel Committee: Larry Christensen

-- Ethics Committee: Hugh Bell

-- Training and Credentials Committee: Melissa Heard

-- Jurisdiction Committee: Judge Sara Doyle

IV. Director's Report: Shinji Morokuma (15 mins.)

-- New marketing efforts

-- Summary jury trials pilot in Griffin Circuit

-- Speaking engagements

-- Juvenile mediation training planning

-- ADR Institute results, video, replay, remote, CE video posting

-- Renewal season update

-- ABA Advanced Mediation and Advocacy Skills Institute, Nov. 21-22, Nashville

V. New Business

-- Renewal of MOU for legal services with AOC

-- Filing fee legislation

-- Next Meeting Dates: May 23; August 29; November 21

VI. Adjournment

MINUTES: FEBRUARY 28, 2013, MEETING
GEORGIA COMMISSION ON DISPUTE RESOLUTION

Chair Judge Charles E. Auslander III called the meeting to order. In addition to Judge Auslander, Commission members present were: Justice Hugh Thompson; Emily S. Bair, Esq.; Hubert J. Bell, Jr., Esq.; Laurence L. Christensen, Esq.; Judge Sara Doyle; Judge C. Andrew Fuller; Melissa C. Heard; and Tim Hedeem, Ph.D.

GODR staff members present were: Shinji Morokuma, Esq., Director; and Cynthia Clanton, Esq., Chief Counsel, Administrative Office of the Courts.

1. Recognition of Former Chief Justice Harold Clarke: Judge Auslander

Judge Auslander recognized the contributions of former Georgia Supreme Court Chief Justice Harold Clarke, who passed away on February 28. In addition helping create the Commission on Dispute Resolution and the Office of Dispute Resolution, Justice Clarke helped transform the Georgia Bar Association into the State Bar of Georgia, chaired the Institute for Continuing Legal Education, chaired the Judicial Council, and helped create the Chief Justice's Commission on Professionalism. Copies of Justice Clarke's obituary were handed out to members and guests, who observed a moment of silence. Judge Auslander asked Mr. Morokuma to draft a letter to the editor of Daily Report on Justice Clarke's contributions to ADR and to work with former GODR Director Ansley Barton and others on ways in which the Commission should recognize Justice Clarke's influence. He asked Mr. Morokuma to present their ideas at the May 23 Commission meeting.

Justice Thompson, who was appointed to fill Justice Clarke's seat on the Supreme Court, said everyone will remember Justice Clarke as a kind, generous and accomplished man who was a father figure to many on the court.

[Attachment 1]

2. Minutes:

The minutes of the September 27, 2012, Commission meeting were approved prior to the meeting via e-mail vote. The November 15, 2012, meeting was cancelled by the chair due to lack of pressing matters.

3. Visitors:

Judge Auslander welcomed the visitors: Elmira Barrow, Coweta Judicial Circuit ADR Program; Laura Fuller, mother of Judge Fuller; Nicole Woolfork Hull, trainer; Kamau Hull, trainer; Tracy Johnson, Sixth District ADR Program; Shelia Key, Clayton County Juvenile Court Mediation Program; Ellen Lahtinen, Seventh District ADR Program (phone); Valerie Lyle, Ninth District ADR Program; Linda McClain, Cobb County Superior Court ADR Program; Marla Moore, Administrative Office of the Courts; Molly Perry, Administrative Office of the Courts; Brenda

Sutton, Macon and Houston Judicial Circuits ADR Program; and Jerry Wood, Esq., Fulton County ADR Program.

4. Committee Reports:

Budget and Personnel Committee: Mr. Christensen

Mr. Christensen reported that the office continues to operate in a frugal manner. The office has about \$430,000 cash on hand of which \$172,000 is budgeted for the remainder of FY13. He reported that actual FY13 spending will likely be below budget, and some funds will carry over into FY14. He said the budget estimate assumes that 2,000 neutrals will renew or register each budget year, and he estimated that about 1,900 neutrals have renewed or registered during FY13 to date.

[Attachment 2]

Ethics Committee: Mr. Bell

Mr. Bell reported that the committee met earlier in the day to set a hearing date in an ethics complaint. The committee also considered several amendments to the ethics procedures in Appendix C, Chapter 2, drafted by Ms. Clanton: a rule to allow for publication in the GODR newsletter and on the GODR website of public discipline administered to a neutral; a rule to allow the Ethics Committee to initiate a complaint on its own motion; a rule to establish a statute of limitations on complaints; and an amendment to the rule that would allow the ethics investigator to contact any person “possessing information that may be relevant” to the complaint, rather than any person “whose observations may be relevant.” The committee also realized that a rule was needed to allow for the interim suspension of a neutral who does not respond to or cooperate with an ethics investigation of the neutral’s conduct. Ms. Clanton was asked to draft such a proposed rule for the committee.

Training and Credentials Committee: Ms. Heard

Ms. Heard reported that the committee is working with GODR to schedule three juvenile delinquency mediation trainings and three juvenile deprivation mediation trainings in three locations – North Georgia, Macon, and Coastal Georgia. Delinquency trainings will be conducted in each location first, followed by deprivation trainings. Tentative training dates have been set, with the intent to complete the trainings by October or November 2013. Most of the training costs will be subsidized by GODR, so that each trainee will pay less than \$200 per training.

Jurisdiction Committee: Judge Doyle

Judge Doyle reported that the committee has met three times and has drafted proposed language that defines the Commission’s jurisdiction as it stands now. The committee plans to continue working on the draft with the goal of presenting it to Judge Auslander by the end of March, and with the hope for distribution to the entire Commission and discussion at the May 23 meeting. The committee invited members of the Ethics

Committee to join the discussion at its meeting earlier in the day, since the Ethics Committee deals most closely with jurisdiction issues. Judge Doyle noted that the committee understood that the question of what the Commission's jurisdiction should be is a separate question that is best discussed at a later date by the full Commission and perhaps presented to the Supreme Court.

5. Director's Report: Mr. Morokuma

Marketing efforts: As part of Judge Auslander's plan to raise the profile of the Commission, the office, and the credential of registration, Mr. Morokuma is working with AOC graphics and marketing staff to produce a logo symbolizing registration that neutrals could use in their own marketing efforts. The office also will approach the State Bar of Georgia with the idea of allowing attorneys who are also registered neutrals to post the logo on their personal directory information.

Judge Auslander reminded the Commission that his vision for the logo is one that would be recognizable – like that of the Better Business Bureau or AAA – and that neutrals would want to have on their stationery, business cards, ads and websites. He hopes that people who do not have the logo will be encouraged to seek out registration, and that attorneys and parties will seek out neutrals who display the logo, he said.

Mr. Hedeem urged the Commission, as a regulatory body, to carefully consider what the logo should represent. The logo should not be seen as an endorsement of the neutrals who display it but rather a sign that they have committed to follow the ethical standards of the Commission and agree to its jurisdiction in ethics matters. He noted that Florida's neutrals are prohibited from using any logo to denote their Supreme Court credentials. Mr. Hedeem also asked the members to consider how the Commission would monitor the logo's use, for example, when neutrals lose their registration for some reason.

The marketing effort will include an ongoing series of articles written by Mr. Morokuma for publication in the Daily Report, State Bar journal, and YLD newsletter. Mr. Morokuma presented several story ideas, and Judge Auslander asked the Commission members for other ideas. Judge Doyle noted that she is co-editor of the Atlanta Bar's magazine and suggested that the articles could also be published there. Mr. Morokuma also listed his public speaking engagements over the past year, including presentations at several local bar associations, ICLE seminars, and law schools.

Summary jury trials in Griffin Circuit: Chief Judge Christopher Edwards of the Griffin Judicial Circuit asked Mr. Morokuma to help him establish a pilot project in his court using summary jury trials. Mr. Morokuma explained that summary jury trial is a court-connected process in which lawyers in a civil case present an abbreviated summary of their evidence to a jury drawn from the county's jury pool. The jurors render a non-binding verdict that can serve as reality-testing information to move the parties toward settlement. It can be most useful in big, complex cases. Ms. Johnson of the Sixth District ADR Office explained that Judge Edwards's circuit covers four counties, and judges there still ride circuit. So any process that reduces the need to conduct lengthy trials is very helpful to the judges, she said. Mr. Morokuma noted that summary jury trial is recognized under the ADR Rules, but no court ADR program has ever used the process

in the 20 years since the court-connected system was created. New rules will have to be written after consulting with ADR experts and other states that use summary jury trial. Any new rules will be presented to the Commission for approval.

Mr. Bell added that summary jury trial has been used by the Army Corps of Engineers for about 25 years. The process was introduced by Les Edelman, former general counsel for the Corps. Mr. Edelman is now practicing in private ADR and law in the D.C. area, and Mr. Bell suggested that he might be a good resource as GODR writes new summary jury trial rules. Another resource, he said, would be the U.S. District Court for the Middle District of Florida, which uses a summary arbitration process wherein an arbitrator or panel hears abbreviated arguments and issues a non-binding award that becomes binding on the parties if they don't opt out after 30 days. Justice Thompson suggested that Mr. Morokuma contact the business courts in the Atlanta area, as they may be interested in summary jury trial to relieve the pressure on their dockets.

ADR Institute debrief: Total attendance at the 2012 Institute was high – about 240, comprising 160 attorneys, 60 neutrals, and 9 speakers. For the first time, ICLE live broadcast the Institute to the State Bar offices in Savannah and Tifton, allowing 10 people in Savannah and 9 people in Tifton to participate in the Institute remotely. Also for the first time, ICLE held a video replay of the Institute, one week after live institute, at Mercer University Law School in Macon. 16 attorneys attended there.

Renewal season update: The office had received about 1,500 renewals to date, about 2/3 of them have been processed, with another 1/3 probably missing documents such as the affidavit of lawful presence U.S. and ID required by state law. Mr. Morokuma explained that the office spends a lot of time asking neutrals to submit missing documents. As a solution, the new database system that the AOC is creating for the Certification and Licensing Section would require neutrals to assemble all documents before submitting them to the office.

ABA Advanced Mediation and Advocacy Skills Institute: GODR was requested to sponsor the ABA's Institute, which will be held November 21-22, in Nashville. Sponsorship does not require any financial commitment, but simply a willingness to publicize the event in state and to recommend speakers.

6. New Business

Renewal of MOU with AOC: Judge Auslander noted that the Commission's Memorandum of Understanding with the AOC that took effect January 1, 2012, expired on December 31, 2012. Under the MOU, the AOC agrees to provide office space and support services to GODR. Among those services are legal services for GODR ethics matters. Ms. Clanton stated that the MOU anticipated that she would spend up to 50 hours of her time on ethics matters in 2012, but she spent 263 hours. Judge Auslander said he and Ms. Moore agreed to renew the MOU, effective January 1, 2013, through December 31, 2013, with the only change being an increase in cost from \$13,640 to \$15,000 to account for Ms. Clanton's workload. Mr. Christensen said the Budget Committee reviewed and approved the terms, and it recommended that the Commission

approve the MOU. The Commission voted to approve the MOU. Judge Auslander said he would sign the MOU at the end of the meeting, and he thanked Ms. Moore and Ms. Perry for attending.

Filing fee legislation: Judge Auslander reminded the Commission that according to a GODR email in November, a local ADR court program has asked a legislator to introduce a bill that would raise the cap that individual court programs can charge as an ADR filing fee on civil filings from \$7.50 to \$10. Some court programs are struggling financially and are in need of more revenue to meet demand. He emphasized that the bill proposes only to raise the cap that programs can charge; whether to charge a fee and how much that fee should be is left to individual court ADR programs. Because the Commission works to support local ADR court programs, he said it was appropriate for the Commission to discuss whether to support the bill.

Mr. Morokuma explained that the Court-Connected ADR Act has capped the ADR filing fee at \$7.50 since 1993. Tim Hendrick, director of the Southern Judicial Circuit ADR Program, and his Chief Judge, Harry Jay Altman, approached their representative, Rep. Jay Powell, about sponsoring a bill to raise that ADR filing fee cap. Rep. Powell agreed, and HB 438 was introduced in the House on February 21. A geographically diverse group of legislators, including Rep. Ed Lindsay and Rep. Wendell Willard, have signed on to support the bill.

GODR polled local ADR court programs and ADR boards by email on HB 438 and heard back from 10 of them. Five of them unequivocally supported the bill, two opposed, one was neutral, and one supported the bill only as a last resort to save ADR programs. All program directors and judges heard from expressed concern about the risk of unintended or unexpected consequences when introducing legislation. Amendments that could harm court programs could be made without warning. However, Mr. Hendrick felt that the risk was outweighed by the potential benefit to his program, Mr. Morokuma said.

Ms. Lyle of the Ninth Judicial Administrative District ADR Program, a 14-county program, said revenue is down \$85,000 in her program since 2008-09, and she had to eliminate a full-time staff position. At the same time, the program is serving more indigent parties and handling more cases; the program received about 7,500 case referrals last year alone. She expressed concern about the risks of introducing legislation, but she said her program needs some kind of fiscal relief.

Justice Thompson noted that it would have been best practice for the Judicial Council to have been informed about the bill before it was introduced. The Council's Policy and Legislation Committee exists to evaluate any legislation proposed by anyone in the judicial branch to see if it should be supported by the judiciary. In the future, he suggested that any proposed legislation – no matter how well intended – go through the Judicial Council so the judiciary can act in a unified, coordinated way before the legislature. Bills such as this one impact nearly every court in Georgia, so it is important that the judiciary follow an agreed-upon process that involves all court representatives before proposing legislation, he said.

Mr. Morokuma explained that when GODR first heard from Mr. Hendrick about this proposed bill, he approached the AOC legislative team, who consulted with the Council of Superior Court Judges. There was some effort in the Council to bring the proposed bill before the Policy and Legislation Committee through its normal procedure, but the bill was introduced in the legislature before the Council could act. Ms. Moore noted that the timing of the bill's drafting and introduction was not in sync with the Judicial Council's process.

Justice Thompson clarified that the Commission is welcome to discuss proposed legislation and even voice its opinion about it, but that the Judicial Council needs to be informed and involved from the beginning so that the judiciary can act together as a group rather than as individual entities. He added that he hoped that an ADR program would not have to close for lack of funding.

Judge Doyle said it is possible that a \$10 cap may be insufficient to help some court programs, so such issues make it all the more important for the Judicial Council to evaluate such sweeping legislation. Mr. Bell pointed out that \$7.50 from 20 years ago would be far more than \$10 today after adjusting for inflation.

Judge Auslander asked if any Commission member wished to make a motion with regard to this legislation. No motion was made.

Judge Fuller suggested that the Commission stay any further action and allow time for Mr. Morokuma to gather more information from the court programs and for the Council of Superior Court Judges to take the bill to the Judicial Council. Ms. Moore noted that the MOU allows the AOC research staff to help GODR gather the information it needs. She added that the bill has been discussed in the weekly legislative meetings that AOC holds with representatives from all of the trial court councils and is being monitored by staff. No official action has yet been taken, she said.

[Attachment 3]

Next Meeting Dates: May 23; August 29; November 21. Judge Doyle noted that the next meeting occurs just before the Memorial Day holiday and asked for reconsideration of the date. After discussion Judge Auslander said he would discuss with Mr. Morokuma whether May 21 would be a better date for the meeting and would notify the Commission. (After the meeting, it was decided to keep the meeting on May 23.)

The meeting was adjourned.

Attachments:

1. Justice Clarke obituaries
2. GODR budget summary
3. HB 438

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