

MINUTES: JANUARY 14, 2010, MEETING
GEORGIA COMMISSION ON DISPUTE RESOLUTION

Edith B. Primm, Esq., called the meeting to order. In addition to Ms. Primm, Commission members present were: Judge Charles E. Auslander III; Judge Edward E. Carriere, Jr.; Sen. William S. Cowsert, Esq.; Alan Granath; Melissa Heard; Dale Hetzler, Esq.; Martha Kitchens; Judge J. Carlisle Overstreet; Justice Hugh Thompson; and Judge Cynthia Wright.

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

1. Visitors:

Ms. Primm welcomed the visitors: Elmira Barrow, Coweta Judicial Circuit ADR Program; Debbie Blanton, DeKalb County ADR Program; John Bracey, political consultant; Ray Chadwick, State Bar of Georgia Dispute Resolution Section; Linda Gernay, Eastern Judicial Circuit ADR Program; Steve Gold, mediator; Chandler Haydon, political consultant; Jackson Hughes, mediator; Tracy Johnson, Sixth District ADR Program; Kathie Lesesne, forensic accountant; Valerie Lyle, Ninth District ADR Program; Jerry Wood, Fulton County ADR Program.

2. Minutes:

The minutes of the November 12, 2009, Commission meeting were approved prior to the January 14, 2010, meeting via e-mail vote. Ms. Primm said she has asked the Office of Dispute Resolution to draft minutes of each meeting within two weeks after the meeting so that the Commission may review and approve them promptly and they may be posted on GODR website.

3. Committee Reports:

Committee on Ethics: Judge Auslander

Judge Auslander said the committee met via conference call earlier in the week. It reviewed four registration applications, and approved three of them and denied one. He said the committee planned to meet more often via conference call and expected to do so again in the next 30 days or so. Ms. Primm encouraged all Commission members to use available electronic means to communicate.

Committee on Training and Credentials: Ms. Heard

Ms. Heard reported that committee denied one request for waiver of registration requirements and is considering three more. The committee also will be looking at amendments to the registration requirements for mediators who have trained outside of

Georgia. The committee also will be voting on three trainers to serve as advisors to the committee soon, she said.

ADR Court Program Liaison Committee: Mr. Granath

Mr. Granath said the new committee met in the morning for the very first time. Seven program directors and three mediators have been appointed as advisors to the committee, and most came to the meeting. The program director advisors were selected by their peers, and they represent as much of the state geographically as possible. The mediator advisors were selected by committee members based on the mediators' experience, dedication to ADR and willingness to serve. The advisors will serve staggered terms of one, two or three years. Mr. Granath reported that a draft of the committee mission statement is being circulated. He reminded the Commission that the committee's mandate is to enhance communication between Office/Commission and constituents in the state ADR system, and to recommend services and programs that constituents need.

The committee is already addressing several issues: the need for an electronic system that lets constituents easily communicate with the committee and committee members with each other; problems with the online registration renewal process; the need for a periodic newsletter for neutrals; the need to give neutrals information on the realities of working as a neutral and on how to get on local rosters; the concerns of program directors regarding Commission rule changes; professional liability insurance for registered neutrals; and updates to the databases used by ADR court programs.

The committee plans to meet every month, at least by phone, Mr. Granath said. The next conference call is scheduled for February 9.

Budget and Personnel Committee: Judge Cynthia Wright

Judge Wright said the committee had promised to present a detailed budget report for GODR at every Commission meeting. Four draft documents were distributed: 1) an overview of predicted 2010 Office budget, the budget after it was changed on November 12, 2009, and a year-to-date spending report; 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) year-to-date Office expenses by budget category with vendor names.

Judge Wright said the reports show that GODR is operating under budget so far this budget year, although some spending reductions were statewide – namely reductions in the employer's share of the State Health Benefit Plan and staff salary reductions through mandated furloughs. Spending on the state purchasing card has been for appropriate expenses. She reported that GODR appears to be operating in a fiscally responsible manner.

To show that the Commission is serious about cutting expenses, Judge Wright said the committee voted to make two motions: 1) that Commission members pay for their own lunches when meeting on Commission business, rather than have GODR pay; and 2) that

any Office contract or expenditure of more than \$1000 must first be approved by the committee and the Commission.

The Commission voted unanimously to pass the first motion.

Judge Wright explained that the second motion was prompted in part by ongoing dissatisfaction with the high costs and poor service of one particular vendor of computer services. GODR is seeking other vendors who can do the work at lower cost, provide better service, or both, she said.

Judge Overstreet asked for more detail on what the various vendor contracts are for. Ms. Primm directed Mr. Morokuma to have that information ready for next Commission meeting. Judge Carriere asked if the \$1000 limit was too low. Ms. Davenport said the \$1000 limit was easily crossed, especially when paying or contracting for training-related expenses. Ms. Heard asked how the Commission's approval would be sought, particularly for time-sensitive expenditures. Ms. Primm said many of the Commission's discussions and votes had successfully used e-mail, so that might be one way to seek approval. Judge Carriere said he saw the purpose of the approval as not so much to question the expense as it is to help the Commission understand what the expense is for. Ms. Primm said the Commission would surely approve legitimate expenses as long as the funds were available. But if there ever was a question about an expense, the Commission's prior approval of that expense would help protect GODR from accusations of impropriety, she said.

Judge Overstreet asked if the Commission could not grant the chair the authority to unilaterally approve expenses in emergency situations without the full Commission's approval. Judge Carriere suggested that the Commission grant both the Commission Chair and the Budget Committee Chair that authority.

After several questions, Judge Wright clarified that the committee motion should be that any unexpected Office contract or expenditure of more than \$1000 – except for those occurring regularly, such as staff salaries, and those already budgeted for – must first be approved by the committee and the Commission. Ms. Primm said a simple rule of thumb for GODR should be that if there is any question about an expense, check with her and Judge Wright first before committing to it.

The Commission voted unanimously to pass the second motion as clarified.

[Attachments 1-4]

4. Director's Report: Mr. Morokuma

-- State Funding Update: Mr. Morokuma said he understands that the legislative budget committees will be cutting at least 8 percent from state agency budgets. GODR has set aside about \$11,000 in state funds to return to the state in anticipation of those cuts. He said due to the recent shakeup in the House leadership it was unknown if the budget committee memberships would change. GODR has had informal meetings with Sen. Preston Smith, chair of the Judicial Subcommittee of the Appropriations Committee and

with Rep. Chuck Martin, chair of the Public Safety Subcommittee of the Appropriations Committee. The legislators are very interested in GODR's progress in becoming self-funded. Mr. Morokuma said he has told the subcommittees that the Commission has made some tough decisions to try to achieve that goal, but that some amount of state funding will be needed until GODR can be entirely self-supporting.

Sen. Cowsert later said he had hoped to discuss with the Commission the Governor's recommendations for the FY2010 Amended budget, but it was not released as expected. He said it is important to make sure that GODR is included in that budget, as it is easier to keep funding in the budget than to add it. The budget outlook is bleak, he said, though he has not heard anything negative about GODR's funding. He would try to make sure that GODR retains its funding as amended. He said he would keep GODR and Ms. Haydon apprised from his position of the Judicial Subcommittee of the Senate Appropriations Committee. He confirmed that Sen. Smith would remain as chair of the subcommittee. Both he and Sen. Smith were unhappy that the subcommittee's funding recommendation for GODR was changed in full committee last year for FY2010, he said.

Ms. Haydon said she had been told that the memberships of the House Appropriations Committee and subcommittees would change after the recent change under the new Speaker of the House. She would keep the Commission informed of any changes.

-- GODR Income: The total fiscal year income to date has been just less than \$50,000. Most of that income is from registration and renewal fees. About \$35,000 of that income was collected in the first half of the fiscal year, and to date about \$14,000 have been collected in the second half of the fiscal year. Mr. Morokuma said he could not yet predict from these figures how much income will be collected during the current registration renewal season. More than half the renewing neutrals have been doing so using the online system, which creates less work for the staff than paper renewals.

-- 2009 Renewal Season: Many neutrals have been confused by the recent rule changes. Those who do understand the changes have been upset, particularly those who did not expect to renew for another year. Many of them have questioned the Commission's authority to change the terms of what they consider a registration contract. Other complaints have been from neutrals who registered in 2009 but did not qualify for the grace period that grant another 12 months of registration.

The online renewal system has generally been working well, although neutrals have alerted us to problems. The hope is that the vendor will fix all of the problems soon.

-- New GODR Website: The Administrative Office of the Courts Information Technology staff helped GODR design a new user-friendly website using the commonly available Joomla template system. There is as much if not more information posted on the new website as the old one, and the information is much easier to access.

-- Tifton Circuit Training: GODR recently sponsored a general mediation training to help the Tifton Judicial Circuit's new ADR program get started. The 18 trainees included court staff and community members, and many have already asked how they can get domestic relations mediation training. Ms. Heard conducted the training.

5. Changes to Continuing Education Requirements:

Mr. Morokuma said the continuing education (CE) requirements for registration renewal need to be updated to conform to the new annual renewal cycle. Under the previous, two-year cycle, the CE requirements for renewal were 6 hours for most neutrals. Up to 3 hours of excess CE hours could be carried over and applied to the requirements for the following renewal cycle.

Ms. Heard said the Training and Credentials Committee recommendation was that the new CE requirement be 6 hours per year, with up to 3 hours of CE that could be carried over to the following year's renewal. Ms. Kitchens said she objected to essentially doubling the CE requirement because it increases the costs to neutrals and GODR does not provide any CE opportunities at no cost to neutrals. Ms. Primm agreed that imposing a 6-hour requirement would require GODR to provide free CE many times a year throughout the state. Depending on the number of CE hours they provide, seminars can cost between \$50 and \$150, she said, which when combined with the new annual fee structure could be cost-prohibitive for many neutrals. Judge Overstreet said 6 hours – or one day of training – seemed relatively easy to accomplish. Ms. Heard clarified that the committee's recommendation did take into account improved services from GODR.

Ms. Lyle said her Ninth District program requires its neutrals to get 8 hours of CE a year, which her program provides free of charge twice a year. Up to 2 hours can be carried over to the next year's local requirement, she said. Ms. Blanton said the DeKalb County program holds two 3-hour CE seminars a year, but many court programs are unable to provide similar services. Moreover organizations and companies in the field have reduced the number of CE seminars they conduct, so 6 hours of CE would be difficult for many neutrals to achieve every year.

Judge Auslander recalled that when the state child support guidelines changed, GODR posted an online seminar on its website. He said GODR could offer similar opportunities several times a year, which would allow access to neutrals throughout Georgia, and very low cost to GODR. Ms. Heard reminded the Commission that neutral CE hours can be earned in a variety of ways, including CE taken for other professions, such as law. CE does not have to be earned through a GODR-sponsored activity. Mr. Morokuma said the cost of producing online CE courses would depend on whether GODR could produce them in house, or if outside help would be required. Mr. Granath said GODR could create an archive on online courses that neutrals could view for CE credit after passing a short test on the content. Some courses might be mandatory of all neutrals, some may be optional. Ms. Primm said she was wary of increasing the CE requirement to 6 hours per year until at least the Commission was absolutely sure that was a way to provide the online services being discussed reliably and at reasonable cost to GODR. Ms. Johnson warned that increasing the CE requirement now would only add to the dissatisfaction neutrals feel about GODR.

Judge Carriere asked the local programs that provide on-site CE opportunities free to their local neutral rosters if they are able to include neutrals from adjoining jurisdictions. Many said they must in order to get enough attendance. Ms. Lyle said she has enough

attendees for her seminars, but she pointed out that many programs do not have the resources to put on CE seminars of their own.

Ms. Davenport noted that if the Commission is interested in increasing the professionalism of registered neutrals, then carryover CE hours should not be permitted. For example, if the annual requirement was 3 hours, and 3 more hours could be carried over to the following year, then a neutral who attends a single one-day seminar could potentially not have take any more CE for two years.

A motion was made to make the CE requirement for renewal 3 hours a year, with no carryover hours, for all neutrals. The Commission voted unanimously to approve the requirement.

[Attachment 5]

6. Rule to Permit Neutrals to Drop a Registration Category:

Mr. Morokuma explained that several neutrals have asked that they be permitted to decline to renew an existing registration category. Specifically, neutrals have asked to drop domestic relations mediation from the registrations, so they do not have to pay the additional \$25/year to maintain that registration. There is no such rule right now, he said. Ms. Heard asked if the 18-month rule would apply. Mr. Morokuma acknowledged that the issue becomes much more complex when considering questions such as: Can neutrals reinstate a registration category that they voluntarily gave up? How much time could pass before reinstatement was not possible? What would the reinstatement requirements be? Judge Overstreet said he did not feel it was the time to make decisions that could reduce income to GODR. Ms. Primm noted that neutrals with domestic relations registration have the potential to earn much more than other neutrals, so she could not understand why a neutral would give up such a credential for \$25.

The Commission chose to close the matter without further discussion.

7. New Business:

-- Next Meeting Dates: April 8; June 10; September 9; November 18, 2010

-- Lapsed, Inactive and Archived Status: Mr. Hetzler asked for clarification of the process through which registration becomes lapsed, inactive, then archived. Mr. Morokuma said a registration is lapsed once the renewal application has not been submitted by the deadline. Neutrals who are lapsed may still work in the court system, but must pay a late fee to renew. Lapsed neutrals who have not renewed by April 30 after their renewal deadline become inactive, at which point they must reinstate by paying a late fee plus submitting 8 CE hours. Neutral registrations may be inactive for up to two calendar years from their last renewal deadline, after which they become archived. Archived neutrals must start their entire registration process over, including all training and observations. Mr. Morokuma added that there seemed to be no need to change the current lapsed,

inactive and archived schedule or conditions when the Commission voted to make registration renewal annual.

The meeting was adjourned.

The Commission went into Executive Session.

Attachments:

1. Overview of predicted 2010 Office budget, the budget after it was changed on November 12, 2009, and a year-to-date spending report.
2. Month-by-month report of year-to-date GODR expenses by budget category.
3. Spending on GODR's state purchasing card.
4. Year-to-date GODR expenses by budget category with vendor names.
5. Current rule on continuing education requirements for renewal.

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