

Georgia Commission on Dispute Resolution  
MEETING AGENDA  
Thursday, January 6, 2011, 2 - 4 PM  
State Bar of Georgia

I. Call to Order

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II. November 18, 2010, Minutes approved via e-mail vote

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III. Welcome back Judge Edward Carriere

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IV. Committee Reports

-- Budget and Personnel Committee: Larry Christensen

-- Ethics Committee: Judge Charles Auslander

-- Training and Credentials Committee: Melissa Heard

-- ADR Court Program Liaison Committee: Alan Granath

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V. Director's Report: Shinji Morokuma

-- Registration renewal report

-- ADR Institute follow up

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VI. New Business

-- Kinglsey Buhl, Turning Points Mediation, foreclosure mediation legislation

-- Next Meeting Dates: March 3, May 26, September 1, November 10.

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VII. Adjournment

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Executive Session

MINUTES: JANUARY 6, 2011, MEETING  
GEORGIA COMMISSION ON DISPUTE RESOLUTION

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Chair Edith B. Primm, Esq., called the meeting to order. In addition to Ms. Primm, Commission members present were: Justice Hugh Thompson; Judge Charles Auslander; Emily S. Bair, Esq.; Hubert J. Bell, Jr., Esq.; Judge Edward E. Carriere, Jr.; Laurence L. Christensen, Esq.; Alan Granath; Melissa C. Heard; Dale Hetzler, Esq.; Judge Michael D. Johnson; Martha Kitchens; and S. Lester Tate III, Esq. Judge Sara Doyle and 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; Kingsley Buhl, Esq., mediator, arbitrator; Cynthia Clanton, Esq., Administrative Office of the Courts; Myra Crawford, DeKalb County Juvenile Court ADR Program; Mike Cuccaro, Esq., Administrative Office of the Courts; Amber Gallman, Esq., DeKalb County ADR Program; Tracy Johnson, Sixth Judicial District ADR Program; Valerie Lyle, Ninth Judicial District ADR Program; Michael Opitz, mediator, arbitrator; Nancy Parkhouse, Clayton County ADR Program; Chris Patterson, Administrative Office of the Courts; Raye Rawls, Esq., UGA Fanning Institute; Alex Scherr, Esq., UGA School of Law; Laura Lynn Swafford, Gwinnett County ADR Program; and Jerry Wood, Esq., Fulton County ADR Program. Pam Godfrey, Seventh Judicial District ADR Program, participated by phone.

**2. Minutes:**

The minutes of the November 18, 2010, Commission meeting were approved prior to the January 6, 2011, meeting via e-mail vote.

**3. Welcome Back Judge Edward J. Carriere, Jr.: Ms. Primm**

Ms. Primm welcomed back Judge Edward Carriere, who had been absent from Commission business for about six months while he was treated for an illness.

**4. Committee Reports:**

**Budget and Personnel Committee: Mr. Christensen**

Mr. Christensen reported that the registration renewal season has so far generated about \$180,000 in fees from about 1,400 registration renewals. That figure includes electronic fee payments, checks that have been deposited, and checks that have been received but not yet deposited. About \$15,000 in per-participant training fees have also been collected

during the calendar year, he reported. By the March Commission meeting, all renewal checks should be deposited and all renewal income should be reflected in the budget reports. GODR's expenses have been as expected, he added.

Mr. Christensen said that 2,000 renewals was the baseline for GODR to be self-supporting on fees. While the on-time renewal season has ended, neutrals may continue to renew through April by paying a late fee. Income will also come also from new registrations, Ms. Primm noted. Mr. Christensen said the GODR's cash savings will allow it to operate for the remainder of this fiscal year, so now the goal is to collect enough in fees for the office to operate until the next renewal season.

[Attachment 1]

### **Committee on Ethics: Judge Auslander**

Judge Auslander reported that the committee has been addressing a complaint against a practicing mediator. No registration applications came before the committee.

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

Ms. Heard reported that the committee continues to review the definitions of terms such as "court-annexed," "court-referred," "court-connected" and "court-ordered" as used in the ADR Rules and revise the registration requirements for out-of-state mediators. The Juvenile Mediation Subcommittee hopes to have Model Juvenile Court Mediation Rules to present to the committee for review by the March meeting. The committee is also doing a more comprehensive review of the training standards to ensure that requirements and prerequisites are clear and consistent.

### **ADR Court Program Liaison Committee: Mr. Granath**

Mr. Granath said the three mediator advisors to the committee – Pete Desrochers, Ray Chadwick and Steve Gold – are analyzing the results of the survey that was distributed to all registered neutrals during the renewal season. The survey solicited demographic information about neutrals as well as their opinions on the strengths and weaknesses of the Commission and GODR. Neutrals from 26 counties responded to the in-state survey, and 5 registered neutrals from around the country responded to the out-of-state survey. The advisors hope to have a report to present to the Liaison Committee and the Commission by the March meeting, he said.

Mr. Granath reported that the new ADR data-collection software program is now available to court programs. The software, based on Microsoft Access and written by registered mediator and attorney Jackson Hughes, is designed to improve courts' ADR data recording and reporting at low cost. The Sixth District ADR Program and the DeKalb County ADR Program are already using the software and report that they are satisfied with its performance, he reported.

**5. Director's Report: Mr. Morokuma**

-- On the subject of the new ADR data-collection software, Mr. Morokuma added that the AOC's legal department is drafting software licensing agreements so that GODR can license the software from Mr. Hughes's company, and so that GODR can in turn sublicense the software to individual court programs. He said he does not anticipate any costs to GODR or to the court programs for those licenses.

-- About registration renewal season, Mr. Morokuma reminded court program directors that neutrals can continue to work in court programs until April 30, 2011, even if their registration expires on January 1, 2011.

-- The 17th Annual ADR Institute and Neutrals' Conference held on December 10 was a huge success, Mr. Morokuma reported. About 300 people registered for the conference, compared to the record 250 who registered last year. He thanked members of the conference planning committee, the Dispute Resolution Section of the Georgia Bar and the Dispute Resolution Section of the Atlanta Bar. He noted that the Institute for Continuing Legal Education (ICLE) videotaped more than 6 hours of the conference and will make that video available on DVD for a fee. The videos should be available in late January. Mr. Morokuma said he has asked ICLE to create two pricing tiers for the video rental fee – for lawyers seeking CLE and neutrals not seeking CLE – just as it did with the conference registration fee.

Mr. Morokuma said also that ICLE has given permission for video of the conference's first plenary session to be posted on GODR's website. The hour-long session, "High Conflict People in Mediation," by Bill Eddy, will qualify for 1 hour of neutral continuing education credit and will be available at no cost. Mr. Morokuma said GODR is very pleased to be able to offer this service to neutrals.

Mr. Morokuma reported that at the start of the conference, Ms. Primm presented a resolution from the Commission on Dispute Resolution to John Sherrill, 2010 chair of the state bar's Dispute Resolution Section, and to Mr. Christensen, the 2009 section chair. The resolution thanked the section and its leadership for its pivotal role in allowing GODR to hire an accountant and a lobbyist to help it retain enough state funding to survive until it could become self-sustaining on fees.

-- Mr. Morokuma said that GODR's e-newsletter continues to publish a variety of timely and practical information for registered neutrals. As an example, he pointed to the "Scam Alert" article in the January issue, a story about mediation fraud that came from a registered neutral the very day the newsletter was distributed. Two new columns were introduced in the January issue. Professor Timothy Hedeem of Kennesaw State University introduced the "Theory to Practice" column, which will highlight important research findings that can help neutrals in their practice. The "Marketing Tip" column, written by the newsletter's producer, Michele Gibson, will help neutrals maximize their efforts to improve their bottom lines. Ms. Primm noted that the newsletter had more than 1,100 "opens" in just the past two days, indicating that interest in it continues to be high.

[Attachment 2]

**6. New Business:**

-- Foreclosure Mediation Bill: Mr. Kingsley Buhl told Commission members about a bill he and partner Mr. Michael Opitz have drafted that encourages mediation of foreclosure disputes. The bill addresses a great need for mortgage borrowers to be able to communicate and negotiate with their lenders. Several legislators are interested in sponsoring the bill, he said, and he hopes the General Assembly will take it up this spring.

Under the bill, Mr. Buhl explained, qualified mortgage holders could elect to mediate any foreclosure issues with their lenders, and if they elect to do so, the mediation would be mandatory on the lenders. Lenders would be required to send representatives with authority to negotiate, as well as all documentation demonstrating their rights to foreclose on the properties. Any agreements would be voluntary, but fines and other sanctions would be applied to those lenders who did not cooperate. The mediations would be administered by the local ADR court programs in the locations where they exist, or the superior court clerk's office where there is no ADR court program. The Commission's role would be to set registration and training standards for mortgage foreclosure mediation specialists.

Mr. Buhl asked for feedback. Ms. Primm expressed concern that the bill does not include any sort of funding mechanism that would help local court ADR programs pay their administrative costs for new foreclosure mediations. Mr. Buhl responded that a filing fee could be added to the bill. Mr. Christensen asked about the potential response to the bill of the lending community. Mr. Buhl acknowledged that lenders would likely view the bill unfavorably. But requiring communication between borrowers and lenders ultimately could benefit all parties, he said.

Mr. Buhl noted that Georgia and only five or six other states use a "power of sale" foreclosure process that bypasses the court system. All other states use a "judicial foreclosure" system in which foreclosures are executed through the courts. Legislation similar to his bill has been more easily adopted in judicial foreclosure states, he said.

Mr. Cuccaro said he has been reviewing drafts of the bill from the judiciary's perspective. In so far as any bill calls for the Supreme Court or the Judicial Council to enact rules for foreclosure mediation, he noted that the judiciary is constitutionally limited in such power, and such matters are best left to the legislature. He said he would advise his superiors that the judicial branch treat the bill like any other proposed legislation and express its concerns to the legislature. Mr. Cuccaro also noted that the bill has the potential to pit the judiciary against powerful lending interests who seek to retain the power of sale foreclosure process. At a time of severe budget cuts, he said he would suggest to his superiors that the judicial branch has higher priority matters that require its attention. Mr. Buhl responded that he favors expansion of any use of mediation, and any plan to administer that growth would be acceptable as long as it was productive.

Judge Auslander said he appreciated the bill's specific reference to GODR, as it puts mediators on notice that the Commission and the office could be monitoring the ethical conduct of foreclosure mediators.

Ms. Parkhouse noted that her county, Clayton, has the state's highest foreclosure rate. She expressed concern that the courts would have no authority to require foreclosure mediation or to enforce any foreclosure agreement absent a civil filing in a dispute. She also restated concerns about how local ADR programs would be expected to fund those mediations. She suggested that the local ADR program could serve as resources for those seeking foreclosure mediation, without serving as administrators of the foreclosure program. For example, her program could provide space and lists of mediators and their biographies, but parties in foreclosure mediations would have to make arrangements with the mediators directly. Ms. Johnson said she was concerned about the idea of creating a registration category for foreclosure mediation specialists. She said she could envision mediators seeking creation of other specialist categories, which she felt were unnecessary. Mr. Buhl said the specialist category was not important, but that it was critical that mediators handling these cases had adequate knowledge of and training in mortgages and foreclosures. Mr. Wood said he was concerned about how he would prioritize his office's work using limited program resources if there was a statutory mandate that his office handle foreclosure mediations.

Mr. Opitz ended by pointing out that there is strong interest in mortgage fraud and illegal mortgages, but there is no legislation that allows state to prosecute. New laws to address mortgage fraud civilly and criminally may be passed in this legislation session, and the mediation bill may become part of those new laws, he said.

[Attachment 3]

-- Next Meeting Dates: March 3; May 26; September 1; November 10.

The meeting was adjourned.

The Commission went into Executive Session.

Attachments:

1. GODR budget reports
2. Printout of January e-newsletter
3. Foreclosure mediation bill draft

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