

Georgia Commission on Dispute Resolution  
MEETING AGENDA  
Thursday, March 8, 2012, 11 AM-12:30 PM  
State Bar of Georgia

I. Call to Order

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II. Minutes from January 12, 2012, meeting approved via e-mail vote

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III. Committee Reports

-- Budget and Personnel Committee: Shinji Morokuma

-- Ethics Committee: Judge Charles Auslander

-- Training and Credentials Committee: Melissa Heard

-- ADR Court Program Liaison Committee: Alan Granath

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IV. Director's Report: Shinji Morokuma

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V. New Business

-- Next Meeting Dates: May 10, September 27, November 15, 2012

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VII. Adjournment

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MINUTES: MARCH 8, 2012, 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 P. Thompson; Judge Charles E. Auslander III; Emily S. Bair, Esq.; Hubert J. Bell, Jr. Esq.; Judge Edward E. Carrere, Jr.; Judge Sara Doyle; Judge C. Andrew Fuller; Alan Granath; Melissa C. Heard; Martha Kitchens; Judge J. Carlisle Overstreet, and Kenneth L. Shigley, Esq.

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

**1. Visitors:**

Ms. Primm welcomed the visitors: Elmira Barrow, Coweta Judicial Circuit ADR Program; Cynthia Clanton, Esq., Administrative Office of the Courts; Myra Crawford, DeKalb County Juvenile Court Mediation Program; Amber Gallman, Esq., DeKalb County ADR Program; Steven Gold, Esq., mediator; Linda McClain, Cobb County ADR Program; and Nancy Parkhouse, Clayton County ADR Program. Pam Godfrey, Seventh Judicial District ADR Program, participated by phone.

**2. Minutes:**

The minutes of the January 12, 2012, Commission meeting were approved prior to the meeting via e-mail vote.

**3. Committee Reports:**

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

Mr. Morokuma reported that GODR continues to operate under budget. Taking into account the approximately \$13,500 that the office will pay the Administrative Office of the Courts under the new Memorandum of Understanding, the office is projected to finish FY12 with a surplus of about \$56,000. GODR will start FY13 with approximately \$224,000 plus \$56,000, assuming it incurs no unusual expenses, he said.

[Attachment 1]

Ms. Clanton distributed copies of the new MOU with the AOC, which was effective January 12, 2012. She explained that under the MOU the AOC would assist with GODR's ethics investigations and any issues associated with registration, which will help GODR operate while down one staff member. The AOC would continue to provide umbrella support services to GODR. The funds will be transferred to AOC after the meeting, Ms. Clanton said.

Ms. Primm thanked the MOU committee, chaired by Judge Overstreet, for its work with Ms. Clanton on the MOU.

[Attachment 2]

**Committee on Ethics: Judge Auslander**

Judge Auslander reported that Ms. Clanton has already been doing an excellent job helping GODR with investigating ethics complaints.

The committee considered two registration applications and approved both of them, he said.

Judge Auslander next reported that the committee heard a presentation from attorney mediator Steve Gold. Mr. Gold told the committee that he had been concerned by post-mediation statements to the media by attorneys, parties and mediators that may have violated the Commission's rules on confidentiality. Mr. Gold showed committee members several articles from the Fulton County Daily Report. After the presentation, Judge Auslander decided that the committee should investigate whether the published statements violated any ethical standards and what if anything the committee should do about them. Judge Auslander outlined three actions that the committee may consider to help neutrals better understand what they can and cannot disclose about their mediations: 1) a session at the annual ADR Institute; 2) educational material published in the monthly e-newsletter; 3) a review and clarification of the ethics rules. He pointed out that the Commission has no jurisdiction over the attorneys' conduct, so it would have to work with the State Bar to ensure that the Bar's rules are clear on confidentiality of mediation discussions and that there is potential for redress of complaints through the Bar.

Justice Thompson suggested that all three approaches may be needed. He said it is more efficient to prevent problems from happening than to deal with them after they occur. People will do what is expected of them if they know what is expected, he said.

Mr. Shigley pointed out that only one person complained about the article in the Daily Report after the settlement of the Bluffton bus crash case. The settlement was not confidential, he said, so when contacted by media, he and several others involved in the case told the paper the settlement figure, praised the mediator for a fantastic job, and gave the mediator's name. He said he saw nothing wrong with sharing that information. Judge Auslander responded that the committee did not have enough information from the articles to determine if there were any violations or whether any exceptions to confidentiality applied. However, one article, he said, talked about the parties disputing actual offers made in mediation session itself. Mr. Shigley agreed that such information should be confidential. The ADR Rules should be revised to make clear that parties can agree to waive confidentiality, Judge Auslander said.

Judge Auslander also discussed another issue that Mr. Gold brought before the committee, that of a company called CaseMetrix. Mr. Gold said the company contacts mediators, solicits information about their cases and settlements, and enters that information into its database. It offers mediators a free subscription to the database in

exchange for the mediators asking for the names of the attorneys they've mediated for. The company then contacts the attorneys to solicit more information for the database. CaseMetrix states that it redacts case-specific information, but Mr. Gold expressed concern about relying on a third-party vendor to redact information that should be kept confidential.

Judge Auslander said he was concerned about whether the private database was a legitimate use of mediator, attorney and case information. He said he was also concerned that the company offers mediators compensation in the form of a subscription in order to sell its product to attorneys. Marketing thus enters the mediation process, he said. He asked Mr. Morokuma to contact GSU Law Professor Doug Yarn for his opinion on ethics of mediators participating in the CaseMetrix database.

Judge Auslander reported that final text revisions to the ethics rules have been made to coincide with previously approved amendments. The amendments permit the AOC to be designated by the Commission to investigate ethics complaints. The revisions add clear deadlines for various processing and investigation milestones that together reduce the complaint processing time to about six months. While that may seem like a long time, he said, it is not considering that each case may have a minimum of four potential witnesses (two parties, two attorneys) plus the mediator, and several pending ethics cases have multiple third parties who must be interviewed. Judge Auslander said he intends to present the revised rules to the Commission for approval at the May meeting.

The committee also is looking into another rule change that would permit registration applicants who are concerned about their background checks to seek pre-approval from the Ethics Committee prior to their taking training, Judge Auslander said. Sometimes applicants who have issues in their backgrounds invest several hundreds or thousands of dollars in training, only to be denied registration. Or they decide not to take training at all. The new rule would allow applicants to pay a fee, have their background investigated, and possibly receive provisional approval for registration, if nothing in their background changes and they take training within a certain period, he said.

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

Mr. Morokuma reported that the committee met the previous week to finish integrating the newly approved juvenile mediation rules into the ADR Rules. The committee has begun the work of revising all of the ADR Rules and will coordinate with the other committees, he said.

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

Mr. Granath reported that GODR's third CE video – on the 9/11 panel discussion from the 2011 ADR Institute – has been posted to the GODR website. The 90-minute video offers 1.5 hours of CE credit for registered neutrals. Since February 21, the video has already been viewed 37 times. The other two videos, featuring Bill Eddy from the 2010 ADR Institute and Ken Feinberg from the 2003 ADR Institute, have been viewed 333 times and 188 times respectively. He reminded Commission members that the videos are

particularly important to neutrals outside the metro Atlanta area who may not have easy access to other CE opportunities.

Mr. Granath reported that 18 policies have been issued through GODR's professional liability insurance program. The office is working with the broker to increase the amount of general advertising for the program directed at registered neutrals. In GODR's other general insurance program, 93 quote requests were received, 30 policy applications were submitted, and 10 policies were written in dental, vision, and medical areas. GODR has been sending out a color flyer with each mailing to neutrals, but more general advertising needs to be done, he said. The insurance broker routinely sends e-newsletters to thousands of lawyers in Florida, and it is considering the same practice for Georgia registered neutrals, he said.

Mr. Granath reported that work continues on the project to update the GODR website with help from law students from Ms. Bonnie Powell's landlord/tenant mediation program. This semester, the students are adding links that may lead to employment and other opportunities for neutrals outside the court system. Five new links have been added in that category recently, including a link to the federal EEOC mediation program.

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

Mr. Morokuma reported that the Board of Court Reporting is planning to join GODR's general insurance program within the next month and offer group insurance products as a benefit for its members. The Commission on Interpreters has also expressed interest in joining the program, he said. The insurance broker, BPC Financial, is excited by the prospect of increasing the pool of insured professionals in Georgia. BPC Financial is also the recommended insurance broker for the State Bar of Georgia.

GODR's e-newsletter continues to routinely receive 1,200 "opens" every month and to attract subscribers who are not registered neutrals, Mr. Morokuma reported. Of the 15-17 articles that comprise the newsletter each month, the most popular are job listings. Michele Gibson, who writes the newsletter's marketing column and produces newsletter, has suggested that GODR use web-based software to create a jobs board or jobs listing open exclusively to registered neutrals. Job seekers could post resumes, employers could post jobs, he said.

[Attachment 3]

Mr. Morokuma said about 1,500 renewal applications have been submitted, and about 1,300 have been renewed. 160 applications are pending, most because the applicants' new lawful presence affidavit or photo ID or both are missing. The application form, postings on the website and e-mails have been changed to clarify that applicants must submit both the affidavit and the photo ID. 163 new applications have been received, and they have generally been processed within 8-10 days of receipt.

**5. New Business:**

Next Meeting Dates: Next Meeting Dates: May 10, September 27, November 15, 2012.

The meeting was adjourned.

The Commission went into Executive Session.

Attachments:

1. GODR budget summary
2. MOU with AOC
3. GODR e-newsletter

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