

Georgia Commission on Dispute Resolution  
MEETING AGENDA  
Thursday, May 10, 2012, 2-4 PM  
State Bar of Georgia

I. Call to Order

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II. Minutes from March 8, 2012, meeting approved via e-mail vote

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III. Committee Reports

-- Budget and Personnel Committee: Larry Christensen

-- Ethics Committee: Judge Charles Auslander

-- Training and Credentials Committee: Melissa Heard

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IV. Director's Report: Shinji Morokuma (5 mins.)

-- Juvenile mediation

-- Newsletter update

-- Scanning neutral records this summer

-- ADR Institute Dec. 14

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V. New Business

-- Presentation on e-Neutrals: Allison Skinner, Esq.

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

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VII. Adjournment

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MINUTES: MAY 10, 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 Gregory A. Adams; Judge Charles E. Auslander III; Emily S. Bair, Esq.; Hubert J. Bell, Jr. Esq.; Laurence L. Christensen, Esq.; Judge Sara Doyle; Judge C. Andrew Fuller; Melissa C. Heard; Martha Kitchens; and Judge J. Carlisle Overstreet.

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

**1. Visitors:**

Ms. Primm welcomed the visitors: Elmira Barrow, Coweta Judicial Circuit ADR Program; Kingsley Buhl, Esq., mediator; Cynthia Clanton, Esq., Administrative Office of the Courts; Myra Crawford, DeKalb County Juvenile Court Mediation Program; Amber Gallman, Esq., DeKalb County ADR Program; Pam Godfrey, Seventh Judicial District ADR Program; Jennifer Keaton, Esq., mediator; Valerie Lyle, Ninth Judicial District ADR Program; Linda McClain, Cobb County ADR Program; Linda McClellan, Tenth Judicial District ADR Program; Kendra Mitchell, Administrative Office of the Courts; Marla Moore, Administrative Office of the Courts; Nancy Parkhouse, Clayton County ADR Program; Bonnie Powell, Esq., Fulton County Landlord/Tenant Mediation Program; Allison Skinner, Esq., University of Alabama School of Law; Brenda Sutton, Houston and Macon Judicial Circuits ADR Program; Laura Lynn Swafford, Gwinnett County ADR Program; and Jerry Wood, Esq., Fulton County ADR Program

**2. Minutes:**

The minutes of the March 8, 2012, Commission meeting were approved prior to the meeting via e-mail vote.

**3. Committee Reports:**

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

Mr. Christensen reported that based on current spending, GODR should finish FY2012 about \$45,000 under budget. In addition, it has about \$255,000 in the bank with which to start FY2013. Registration fee income during the year is expected to be about \$250,000.

Ms. Primm confirmed with Mr. Christensen and Ms. Moore that the Commission has paid its bills to the Administrative Office of the Courts. She thanked Ms. Moore, Ms. Clanton, and the rest of the AOC staff for their support of the Commission and GODR.

[Attachment 1]

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

Ms. Heard reported that the committee met that day and came up with a set of goals for the review and revision of the ADR Rules. The goals were: conform any changes to the Uniform Rules (Appendix A), which the Commission does not have the authority to change; make changes consistent with the rules of other organizations like State Bar and the Association for Conflict Resolution; review ADR case law; review the rules of dispute resolution commissions in other states and jurisdictions; ensure reliable public access to the ADR system; and encourage non-members to become registered.

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

Mr. Morokuma reported that the two newly approved juvenile mediation registration categories – delinquency mediation and deprivation mediation – became effective on May 1. That was also the day that GODR began accepting requests for grandfathering into the two new categories. To date, GODR has received six grandfathering applications, most of which are incomplete.

GODR's e-newsletter continues to receive 1,200-1,300 "opens" every month. Mr. Morokuma reported that Kathy Lesesne, the forensic accountant who advised the Commission on its self-supporting fee structure two years ago, sent her compliments recently about the newsletter.

Mr. Morokuma noted that the draft FY2013 GODR budget includes \$10,000 for digital scanning of paper neutral files. The scanning, into a document management program called Laserfiche, is planned for this summer while the office is not in its busy neutral registration renewal season, Mr. Morokuma said. The digitized neutral files will be easily accessible from any computer with the proper software. GODR's inactive and archived neutral files were scanned at the AOC's expense last year, he said.

The ADR Institute Planning Committee met the previous week to begin work on the 2012 ADR Institute and Neutrals' Conference, which the Institute for Continuing Legal Education has scheduled for Friday, December 14. Planners agreed on the main speaker to invite to speak at the Institute. Mr. Morokuma said the event continues to draw big crowds each year and is one of the largest single-day events that ICLE sponsors each year. Ms. Primm thanked Ms. Powell for her work finding possible speakers for the Institute at the national American Bar Association Dispute Resolution Conference.

**5. New Business:**

**Committee on Ethics: Judge Auslander**

Judge Auslander reported that the Ethics Committee has been more active than it has ever been. He reminded the Commission that it had entered into a contract with the AOC for legal services and that Ms. Clanton was designated by the AOC to assist the Commission.

He summarized the status of six ethics investigations: one was recently settled with Ms. Clanton's help, one was dismissed, one is being handled by Mr. Morokuma, three are being investigated by Ms. Clanton, and one requires a hearing. He thanked Ms. Clanton for her assistance.

Judge Auslander also reported that attorney mediator Steve Gold, Commission member Alan Granath, and Mr. Morokuma have developed a comprehensive plan to address possible mediation confidentiality violations by attorneys and mediators in the media. The plan involves much education of neutrals and attorneys through several venues. The plan will be implemented in the near future. The committee did not discuss the plan because Mr. Granath was unable to attend due to a family emergency, he said.

Judge Auslander next presented recommendations from the committee for amendments to the ethics procedures, Appendix C, Chapter 2. The amendments constitute a rewrite of the ethics procedures, he said, which Ms. Clanton helped to draft. Copies of the proposed amendments were e-mailed to Commission members earlier. The amendments do three things:

1. Provide clear authority of Commission to contract with the AOC for ethics investigation assistance. The Commission previously approved the change in principle;
2. Clarify the rules regarding the frequency of background checks conducted for neutral registration, renewal and reinstatement applications. The Commission previously approved the change in principle; and
3. Update and clarify the ethics procedures, and delineate timeframes designed to streamline the process of handling ethics complaints.

[Attachments 2 and 3]

Judge Auslander explained additional minor changes that were not presented earlier: that a respondent has 30 days to respond in writing to a complaint, and that a respondent must request a hearing in writing within that 30 days or the hearing is deemed waived. The Commission voted unanimously to approved the proposed rule changes.

Judge Doyle asked for clarification of previously approved language in Section I(C) about when background checks are conducted. She thought that a typographical error had been made and suggested changing the word "registering" to "registered." The Commission voted unanimously to approve the correction.

Judge Auslander reported that the committee had agreed that the ethics procedures were missing an important option that allowed for the imposition of confidential sanctions for ethics violations, not just public sanctions. He said the committee planned to draft an amendment based on Section 4-205(C) of the State Bar disciplinary rules, which Mr. Bell recited. Confidential discipline, he said, would be issued when there is a finding that the complained of conduct "was engaged in inadvertently, purposely but in ignorance of the applicable rules, or under such circumstances that it is the opinion of the panel that the

protection of the public and the rehabilitation of respondent would be best achieved by issuance of a letter of admonition or investigative panel reprimand rather than by any other form of discipline.” Judge Auslander pointed out that the Bar disciplinary rules also allow for any confidential discipline to be considered for purposes of invoking the repeat-offender rule. He said the committee intended to draft a similar provision. Also, he said, the facts of any confidential discipline must be available for use as the bases of ethics opinions, provided that names and other identifying information are redacted. The ability of the committee to use information from confidential discipline is critical to the committee’s work to educate and train neutrals, he said. A draft of the proposed amendments will be circulated for the Commission’s review via e-mail so the rule can be in effect well before the September Commission meeting, he said. The Commission voted unanimously to review and vote on the text of the proposed changes via e-mail.

Judge Overstreet asked if there was any way for the public to see if a neutral had been disciplined, just as the State Bar’s website permits the public to see if a lawyer has been disciplined. Judge Auslander replied that there currently is no public record, but disciplinary information is not confidential and is available to anyone who requests it. The committee did discuss if neutral discipline information should be made publicly available, he said, but did not come to any conclusion. The committee will take up the matter before the September Commission meeting, he said.

Lastly, Judge Auslander presented a proposed amendment to Appendix B that would allow for the committee to investigate and pre-approve people for registration prior to their investing time and money in any neutral training. The rule would help save money for people who are concerned that their criminal history or past professional discipline may prevent them from registering. Mr. Morokuma drafted the amendment, he said.

[Attachment 4]

Judge Overstreet said the Georgia Constitution considers judgeships as positions of “public trust” that are held to high standards of professional conduct. He asked if mediators are similarly in positions of public trust that should be held to standards other than just past criminal or professional issues. After some discussion, Ms. Primm asked the committee and the Commission to take the question under advisement. She added that in considering these questions, the Commission is sending a clear message that it views mediation as a profession of public responsibility and that prospective mediators should think carefully about their obligations.

Ms. Primm added that Georgia trainers would find the proposed amendment very helpful to send to prospective trainees who had concerns about their ability register. The Commission voted unanimously to approve the proposed amendment.

#### e-Neutrals:

Professor Allison Skinner gave a presentation on the cutting-edge field of e-neutrals, that is, using ADR experts to help resolve conflicts around discovery of electronic information. Prof. Skinner is a mediator who teaches at the University of Alabama

School of Law in Birmingham and the Thomas Goode Jones School of Law in Montgomery. She founded the American College of e-Neutrals and has written law review articles on e-neutrals. She was in Atlanta to conduct a two-day training on e-neutrals and e-discovery. Mr. Morokuma thanked her for opening seminar registration at first exclusively to Georgia-registered neutrals, for offering seminar discounts to registered neutrals, and for writing an article for GODR's e-newsletter. Registered mediator Jennifer Keaton helped coordinate the opportunities for Georgia neutrals.

Prof. Skinner explained that "e-neutral" is an umbrella term for any third-party neutral who assists with e-discovery issues, including referees, special masters, mediators, arbitrators, judges, and discovery referees. They function mainly at the pre-trial phase, rather than at the settlement phase. She said several factors are driving the new need for e-neutrals. One factor is our reliance on technology; 98 percent of corporate information in the U.S. is stored electronically, she said. Also, e-discovery grew rapidly after the Federal Rules of Civil Procedure were amended in 2006 to allow for the discovery of electronic information. Since then, litigation costs have increased 20-40 percent because of e-discovery issues, spawning an e-discovery vendor industry with revenues of \$1.3 billion that are projected to grow to \$7 billion soon. Moreover, she said, electronic information presents different issues than paper documents, such as data preservation, data about data (metadata), privilege, and storage in multiple locations.

Prof. Skinner said Alabama adopted e-discovery rules similar to the Federal Rules, and the Chief Justice of the Alabama Supreme Court was relieved to know that ADR processes were available to help over-burdened courts manage e-discovery disputes. Courts across the country recognize that a single e-discovery dispute in a single case and monopolize a court's docket, Prof. Skinner said. She offered several recommendations to the Commission: include e-discovery and e-neutral information in any benchbooks; educate judges and lawyers about the field of e-neutrals; ensure that trained e-neutrals are available in Georgia; and include e-discovery as an area of expertise in the Georgia registered neutrals directory.

Judge Auslander asked if there is typically an on-going relationship between an e-neutral and the parties in a case. Prof. Skinner replied that it is possible to engage e-neutrals early in a case to develop and manage an e-discovery plan or to engage them when issues arise.

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

The meeting was adjourned.

Attachments:

1. GODR budget summary
2. Appendix C with amendments blacklined
3. Appendix C without amendment blacklined

4. Appendix B amendment

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