

Georgia Commission on Dispute Resolution
MEETING AGENDA
Thursday, May 23, 2013, 2-4 PM
State Bar of Georgia

I. Call to Order: Judge Charles Auslander

II. Minutes from February 28, meeting approved via e-mail vote.

III. Committee Reports:

-- Jurisdiction Committee: Judge Sara Doyle

-- Budget and Personnel Committee: Larry Christensen

-- Training and Credentials Committee: Melissa Heard

-- Ethics Committee: Hugh Bell

IV. Director's Report: Shinji Morokuma

-- New juvenile code, ADR references, textual changes to ADR Act

-- Changes to the Illegal Immigration Reform and Enforcement Act of 2011

-- HB 438 update

-- Summary jury trials in Griffin Circuit

-- Customer service survey by AOC Research Department

V. New Business

-- Next Meeting Dates: August 29; November 21

VI. Adjournment

MINUTES: May 23, 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: Presiding Justice Hugh Thompson; Hubert J. Bell, Jr., Esq.; Laurence L. Christensen, Esq.; Judge Sara Doyle; Tim Hedeem, Ph.D., and Judge J. Carlisle Overstreet. Emily S. Bair, Esq., and Melissa C. Heard participated by phone.

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

1. Visitors:

Judge Auslander welcomed the visitors: Rebecca Chandler, intern, Council of State Court Judges; Nicole Woolfork Hull, trainer; Tracy Johnson, Sixth District ADR Program; Keiji Morokuma; Eiko Morokuma; Brenda Sutton, Macon and Houston Judicial Circuits ADR Program; Laura Lynn Swafford, Gwinnett County ADR Program; Gwen Wiggins, mediator; and Jerry Wood, Esq., Fulton County ADR Program. Pam Godfrey, Seventh District ADR Program, participated by phone.

2. Minutes:

The minutes of the February 28, 2013, Commission meeting were approved prior to the meeting via e-mail vote.

3. Committee Reports:

Jurisdiction Committee: Judge Doyle

Judge Doyle reminded the Commission of the Jurisdiction Committee's mandate to determine what the Commission's current jurisdiction is – not what its jurisdiction should be – and to draft an appropriate rule to present to the Commission. She said the committee examined the ADR Rules, ethics opinions, case law (including *Wilson v. Wilson*), and prior practice. Dr. Hedeem noted that the committee also studied approaches to jurisdiction in several other states. Judge Doyle offered three proposals for the Commission's consideration.

Proposal 1 recommended that the Commission ask the Supreme Court to amend the ADR Rules to include the drafted statement of jurisdiction. Judge Overstreet suggested that the statement manifest jurisdiction in the Commission alone, not also in its committees. Judge Doyle agreed to amend the proposal to state that jurisdiction lies just with the Commission. Judge Auslander called for a vote on the amended proposal, and it passed unanimously.

Proposal 2 recommended that the Commission ask the Supreme Court to amend the ADR Rules to add a definition of the term "court program," which encompasses the terms "court-connected," "court-referred," and "court-annexed" as applied to court ADR

programs. Mr. Morokuma explained that the definition would simplify and clarify the rules and make the terminology more consistent. After some discussion, Judge Auslander called for a vote on the proposal, and it passed unanimously.

Proposal 3 recommended that the Commission amend the ethics procedures in Appendix C to explicitly require the Ethics Committee to decide if the Commission has jurisdiction over a complaint before proceeding with investigation. Judge Auslander noted that the Ethics Committee has always done so, but wanted the rules to clearly reflect the practice. He called for a vote on the proposal, and it passed unanimously.

[Attachment 1]

Budget and Personnel Committee: Mr. Christensen

Mr. Christensen reported that GODR's finances appear to be healthy and stable. Still, he suggested that the Budget Committee explore ways to enhance cash flow and to provide for GODR's ongoing stability. He said he met with Dr. Hedeem, who has much experience and many contacts in the ADR field around the country, to discuss a survey of how other state dispute resolution offices fund themselves. Mr. Christensen said he wanted to learn how successful programs are run and funded, as well learn how not to emulate poorly run programs. He said he hoped to enlist some of Dr. Hedeem's graduate students to assist with the research and to produce a report and some recommendations by November.

[Attachment 2]

Training and Credentials Committee: Ms. Heard

Ms. Heard gave an update on GODR's efforts to schedule delinquency and deprivation mediation trainings around the state. Trainings have been scheduled in the Ninth Judicial Administrative District for September and October. Other dates are being sought for Chatham County and Macon. The discounted fee will be \$160 per person for each training.

Ethics Committee: Mr. Bell

Mr. Bell reported that the committee has written proposals for much-needed amendments to the ethics procedures. Proposal 1 allowed the Ethics Committee to initiate a complaint on its own without receiving a formal complaint; created a statute of limitations for complaints of four years after the complained-of act; and allowed the committee to stay a complaint for good cause for up to two years. Proposal 2 allowed the investigator to contact "anyone possessing information that" may relevant to the complaint, rather than "anyone whose observations" may be relevant. Proposal 3 specifically included a "neutral trainer" among neutrals who could be sanctioned by the committee; and required that neutral discipline notices be disseminated to ADR program directors and court administrators and published in the GODR newsletter and on the GODR website.

Judge Overstreet expressed concern about the notion of the Ethics Committee initiating complaints on its own without receiving a formal complaint. He recommended that the rule require that Commission be consulted before the committee initiates a complaint. After discussion, Mr. Bell withdrew the proposals and agreed to redraft them to address the Commission's concerns and recommendations.

[Attachment 3]

4. Director's Report: Mr. Morokuma

Juvenile Code: Mr. Morokuma reported that the new juvenile code passed the legislature and was signed by the Governor. The Commission had previously approved for inclusion in the juvenile code bill some textual changes to the Court-Connected Alternative Dispute Resolution Act, the statute that permits approved local court programs to collect an ADR filing fee. The textual changes clarified that juvenile courts were entitled to share in the ADR funds at the discretion of the local ADR board; and stated that approved court programs must meet the standards of all of the Supreme Court ADR Rules and appendices, rather than just the Uniform Rules for Dispute Resolution Programs. The changes to the statute will take effect on January 1, 2014.

Immigration Reform Act Changes: Mr. Morokuma reported on recent legislative amendments to the Immigration Reform Act of 2011. Previously, all persons who newly applied for a Georgia "public benefit" such as neutral registration or applied to renew a benefit had to provide an affidavit and ID affirming that they were in the U.S. legally. The law was revised so that persons applying to renew a benefit no longer have to provide an affidavit or ID. The amendments take effect July 1, 2013

HB 438: Mr. Morokuma reported on the status of the bill to raise the filing fee cap from \$7.50 to \$10 per civil filing. That bill did not get out of committee in the 2013 legislative session, but it still is alive. The Administrative Office of the Courts legislative and policy staff is gathering information on ADR court program finances and processes throughout the state. That information will be presented to the Judicial Council's Policy Committee on July 17 to decide whether or not it will recommend that the Judicial Council support HB 438 in the 2014 legislative session.

Summary Jury Trials: Mr. Morokuma reported that GODR is assisting Christopher Edwards, Chief Judge of the Griffin Judicial Circuit, in starting a pilot project to offer summary jury trials in his Fayette County courtroom. Summary jury trial is an ADR process that is essentially a highly abbreviated trial during which a jury picked from the county jury pool deliberates in front of the parties and issues a nonbinding verdict. It is a reality-testing tool that gives parties and counsel an opportunity to see how real jurors respond to their legal arguments. While the process is recognized by the ADR Rules, it has never been formally used by a Georgia court before. Mr. Morokuma hoped to report on the project's progress at the next meeting.

Customer Service Survey: The research staff at the Administrative Office of the Courts is conducting a customer service survey of GODR's online registration system. The survey was sent to all neutrals who renewed their registrations during the 2012 renewal

season. To date, the response rate is nearly 40%, which is very high. The staff will report the results of the survey to GODR in the next month or so.

Chief Justice Harold Clarke: Mr. Morokuma reported that he is working with Ms. Barton and others to find ways to honor Justice Clarke's contributions to the ADR field in Georgia. One idea proposed is to create a tribute to Justice Clarke that will be made at the annual ADR Institute in December. The tribute will be appropriate because this year's institute will be the 20th annual conference and this year marks the 20th anniversary of the ADR system, which Justice Clarke helped create in 1993. Mr. Morokuma said he will continue to work to find other ways to honor Justice Clarke.

5. New Business

Next Meeting Dates: May 23; August 29; November 21. Judge Auslander reported the Mr. Morokuma would begin scheduling 2014 meeting dates this summer. He said he intends to continue holding meetings on Thursday afternoons.

The meeting was adjourned.

Attachments:

1. Jurisdiction proposals
2. GODR budget report
3. Ethics proposals

[Minutes prepared by Shinji Morokuma, Office of Dispute Resolution, and Rebecca Chandler, intern, Council of State Court Judges]