

Georgia Commission on Dispute Resolution
MEETING AGENDA
Thursday, November 10, 2011, 2 - 4 PM
State Bar of Georgia

I. Call to Order

II. Minutes from September 1, 2011, meeting approved via e-mail vote

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

V. Director's Report: Shinji Morokuma

-- Renewal season

-- ADR Institute December 9, 2011

VI. New Business

-- Next Meeting Dates: January 12, March 8, May 10, September 27, November 15, 2012

VII. Adjournment

Executive Session

MINUTES: NOVEMBER 10, 2011, MEETING
GEORGIA COMMISSION ON DISPUTE RESOLUTION

Chair Edith B. Primm, Esq., called the meeting to order. In addition to Ms. Primm, Commission members present were: Judge Gregory A. Adams; Judge Charles E. Auslander III; Emily S. Bair, Esq.; Laurence L. Christensen, Esq.; Judge C. Andrew Fuller; Alan Granath; Melissa C. Heard; Martha Kitchens; 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; Amber Gallman, Esq., DeKalb County ADR Program; Valerie Lyle, Ninth Judicial District ADR Program; Linda McClain, Cobb County ADR Program; Nancy Parkhouse, Clayton County ADR Program; Bonnie Powell, Esq., Fulton County Landlord/Tenant Court Mediation Program; Christina Scott, mediator; and Jerry Wood, Esq., Fulton County ADR Program. Ellen Lahtinen, Seventh Judicial District ADR Program, participated by phone.

2. Minutes:

The minutes of the September 1, 2011, Commission meeting were approved prior to the meeting via e-mail vote.

4. Committee Reports:

Budget and Personnel Committee: Mr. Christensen

Mr. Christensen reported that GODR can expect to end the fiscal year with about \$70,000 more than budgeted if its spending continues on its current course. That is because one staff position remains open and no decision has been made about whether to fill that position. If fee income is similar to the previous year, then the office may run a surplus of as much as \$150,000 by the end of the fiscal year. The Commission will have to decide how much of that money should be put aside for emergency operating funds and how much should be spent on additional office activities. The committee will make recommendations to the Commission in January, Mr. Christensen said.

[Attachment 1]

Committee on Ethics: Judge Auslander

Judge Auslander reported that the committee met and considered four registration applications today; one was accepted, one was held for more information, and two were denied.

The committee further discussed how GODR should handle ethics complaints in the future. Under the rules, the GODR director is the only person authorized to conduct ethics investigations. Yet because of the nature of the position, the director also comes to know many neutrals professionally. Judge Auslander said the integrity of any ethics investigation can be questioned if the investigator knows the subject of the investigation. The committee is exploring whether someone other than the GODR director should be designated to handle ethics investigations. One possibility is to ask the Administrative Office of the Courts' legal department to conduct investigations under contract. Further details would still need to be worked out with the AOC, he said.

Judge Auslander said the committee has requested that the Commission amend its rules to allow ethics investigations to be conducted by the GODR director or another person designated by the Commission chair. He said he would draft the amended language over the next few weeks and circulate it to Commission members for their review and possible vote at the January 2012 meeting. Judge Auslander said the committee also would propose tighter timeframes for processing ethics complaints.

Judge Adams asked how an outside entity would be paid if it were to investigate an ethics complaint. Ms. Primm responded that any proposal to designate an outside entity would include the potential costs, and the Commission would be asked to review and vote on such a proposal. Judge Adams asked for an explanation of the nature of an ethics investigation. Mr. Morokuma responded by describing the investigation procedure, from its beginning with a complaint in writing, to an Ethics Committee decision on a violation and the appropriate sanction, to final appeal to the full Commission.

Mr. Shigley asked about the volume and nature of complaints. Mr. Morokuma said generally the office has received about two complaints a year, although there have been more in the past year. The most common complaint concerns mediator bias, whether actual bias or the appearance of bias, he explained. Ms. Primm informed Mr. Shigley that ethics investigations are also conducted when neutrals apply for registration. Mr. Morokuma added that in the last five years, all but one ethics complaint concerned conduct of a mediator who was also an attorney.

Judge Auslander clarified that the ethics investigative summary compiles the facts as found by the director, and points out possible ethics violations if those facts are assumed to be true. It is up to the committee to determine the accuracy and credibility of the facts and then to decide if violations occurred. Mr. Shigley likened the process to a probable-cause finding or the process used by the bar disciplinary committee. Ms. Lyle pointed out that an investigator of this nature should be properly trained, especially when people's livelihoods were at stake. Ms. Primm stated that the Commission would consider the credentials of anyone designated to conduct investigations.

Committee on Training and Credentials: Ms. Heard

Ms. Heard reported that a subcommittee of the Training and Credentials Committee is working on the definitions of the terms “court-connected,” “court-annexed,” “court-referred” and similar terms used in the ADR Rules. At the same time, the subcommittee is reviewing the ADR Rules as a whole for updating. The terms and definitions must be updated simultaneously with the ADR Rules, he said. She hopes to have a working draft by the end of the year.

Ms. Heard pointed out that the lack of definitions should not hold up the work of the Ethics Committee, since the committee can claim jurisdiction not just on the basis of whether the case at issue was connected to the courts, but also on the basis of whether the mediator is registered.

Ms. Lyle asked the Commission to consider that how it defines its jurisdiction will greatly impact the administrative workload on local court programs. She said her program considers private any case that did not directly originate from a court referral.

The Training and Credentials Committee later this month plans to review and approve the new juvenile court mediation rules to be presented for approval by the Commission in January 2012, Ms. Heard said.

ADR Court Program Liaison Committee: Mr. Granath

Mr. Granath reported on four recent efforts designed to increase communication with registered neutrals about the ADR system, benefits of registration, and work opportunities. The first was a September 14 letter to approved ADR trainers, in which Mr. Morokuma asked the trainers’ assistance and setting realistic career expectations for their trainees. The second effort was a new “Quick Question and Answer” column in the monthly GODR newsletter. The column, written by Mr. Morokuma, is designed to address common questions from neutrals. The third effort was an e-mail from Mr. Morokuma to registered neutrals reminding them of the upcoming registration renewal season. In the e-mail, Mr. Morokuma highlighted some of the benefits of registration, including the availability of exclusive insurance programs for professional liability and other forms of insurance such as health, dental and home. Lastly, law students from Ms. Powell’s Landlord/Tenant Mediation Program, are helping GODR update its website’s web links. The updates will also add links to organizations and agencies outside Georgia’s judicial system – such as the U.S. Postal Service and the Social Security Administration – that use ADR services. Enterprising neutrals may be able to find work through those agencies, Mr. Granath said.

Ms. Primm noted the Michele Gibson, a registered neutral who designs and distributes the GODR e-newsletter for free each month, was recently seriously hurt in an accident at home. She wished Ms. Gibson well and thanked her for her work on behalf of the Commission.

5. Director's Report: Mr. Morokuma

Insurance Programs: Mr. Morokuma reported that GODR's insurance broker, BPC Financial, has produced color flyers that GODR now includes in every mailing to neutrals. The publicity from the flyers and from articles in the e-newsletter has apparently paid off. BPC Financial reports that interest in the insurance products offered through the GODR program has doubled recently. BPC has received 75 quote requests and 24 policy applications, and has placed 10 policies place so far. More and more neutrals are taking advantage of the program, Mr. Morokuma said.

[Attachment 2]

GODR Website Links: Mr. Morokuma continued Mr. Granath's report on GODR's website, which contains web links to court, private, academic, and other ADR organizations. He said he created the links about 10 years ago, and recently law students from Ms. Powell's court mediation program updated those links and found other similar organizations that should be listed. The next step, he said, was to add links that may lead to employment and other opportunities for neutrals outside the court system. He said the students appreciated the opportunity to learn more about the ADR community, and he thanked Ms. Powell for giving the students credit for working on the GODR project.

Registration Renewal Season: Mr. Morokuma said the annual renewal season, which began November 1, was going smoothly. This season, GODR is accepting only online renewal applications to reduce the huge volume of paper previously generated. Online renewals, especially those paid through PayPal, can be processed in a fraction of the time that paper renewals did. To date, GODR has received 171 renewal and reinstatements, with 90 of them fully processed and the rest waiting on missing information, he said. A complete online renewal application has taken less than a day to process. Since November 1, GODR has received 20 new registration applications, with half of them processed and the rest waiting on missing information. Complete new applications have taken 1-3 days to process. Staff give priority to renewal applications, as court programs and neutrals depend on applications being processed quickly. Mr. Morokuma predicted that the office will meet its January 31, 2012, deadline for processing all renewal applications received by December 31, 2011. Ms. Primm thanked Ms. Bair for her work on the Registration Committee.

Mr. Morokuma added that the online renewal system has helped the office process applications efficiently with a staff of only two. Moreover, it has helped to reduce paper at a time when GODR is digitizing its neutral records.

2011 ADR Institute: Mr. Morokuma announced that registration is open for the 2011 ADR Institute, scheduled for Friday, December 9, in Atlanta. It is the largest event GODR sponsors each year. Co-sponsor is the Dispute Resolution Section of the State Bar. Three tiers of registration rates are available: one for attorneys who want CLE; one for neutrals and others who do not need CLE; and for the first time, a discounted rate for students. A highlight will be an extended ethics panel discussion based on the documentary, "Out of the Ashes: 9/11," about the September 11 Victim Compensation

Fund. Panel members will include the film's director, who is a professor at Seattle University School of Law, the deputy special master for the fund, as well as an attorney who mediated for the fund. 6 hours of neutral CE and CLE are available. Ms. Primm said she has seen the documentary and recommends it highly. She said the panel was particularly timely since Congress recently reopened the fund – something it said it would never do. Mr. Morokuma announced that Ms. Gallman will serve as moderator of that panel.

[Attachment 3]

PayPal Fees: Mr. Morokuma continued the discussion from the last meeting on the question of whether the Commission can and should charge neutrals for the fees that PayPal charges for electronic payment transactions. He noted that PayPal collects 3-4% of registration and renewal fees paid online to GODR, a total of about \$3,200 last fiscal year. The AOC's fiscal department has stated that PayPal is the least expensive way for the agency to accept electronic payments. An unofficial opinion from the AOC's general counsel's office stated that the Commission can charge the PayPal fees to neutrals. However, Mr. Morokuma said the processing efficiencies achieved by accepting online payments were worth the PayPal fees. He noted also that some neutrals were still accommodating the fee increase from two years ago. He recommended that no additional PayPal fees be charged to neutrals. Judge Adams made a motion to not charge PayPal fees to neutrals, which was seconded. The Commission voted unanimously to accept the motion.

Background Checks: Mr. Morokuma asked the Commission to discuss the question raised at the last meeting of whether GCIC background checks should be conducted on all renewing neutrals every year, as required by the current ADR Rules. He stated that all new registrants and reinstatement applicants are checked. New applicants – about 400 last year – particularly are screened carefully by GODR and the Ethics Committee. Because of careful initial screening, perhaps 1-2 renewing neutrals of nearly 2,000 each year may have some issue in their background that warrants further review.

Mr. Morokuma said the Commission's consensus at the last meeting was that the small number of renewing neutrals with potential issues cannot justify the staff time and expense to check 2,000 renewing neutrals every year. He said other judicial branch regulatory agencies – the Board of Court Reporting, the Commission on Interpreters, and the County and Municipal Probation Advisory Council – check their charges must less frequently. BCR does no background checks, COI only checks new interpreters, and CMPAC checks new applicants and existing members every two years. State Bar members are checked for their fitness to take the bar exam, but bar members are not afterward checked unless some cause is shown.

Mr. Granath confirmed that the intent was not to change the ethics questions on the renewal applications; renewal applicants still must report any changes to their criminal or professional status. GODR would still investigate applicants based on their answers to the ethics questions.

After further discussion, Judge Adams moved that the GODR director be permitted to conduct background checks on a random sample of renewing neutrals each year and be given the authority to determine the appropriate percentage of neutrals to be checked. He amended his motion to allow the director to check any neutral's background based on triggering information. The motion was seconded, and the Commission voted unanimously to accept the motion. Ms. Primm asked that the GODR director report to the Commission at least annually about how many renewing neutrals were checked. Judge Auslander said the language in Appendix C would now need to be amended. He said he hoped to present the new language to the Commission at the same time as the new language for the rule change concerning who conducts ethics investigations.

6. New Business:

-- Next Meeting Dates: Next Meeting Dates: January 12, March 8, May 10, September 27, November 15, 2012

The meeting was adjourned.

The Commission went into Executive Session.

Attachments:

1. GODR budget summary
2. BPC Financial insurance flyer
3. ADR Institute flyer

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