

MINUTES: NOVEMBER 12, 2009, MEETING
GEORGIA COMMISSION ON DISPUTE RESOLUTION

Edith B. Primm, Esq., called the meeting to order. In addition to Ms. Primm, Commission members present were: Judge Charles E. Auslander III; Judge Edward E. Carriere, Jr.; Sen. William S. Cowsert, Esq.; Judge C. Andrew Fuller; Alan Granath; Melissa C. Heard; Dale Hetzler, Esq.; Martha Kitchens; Justice Hugh Thompson; and Judge Cynthia Wright.

GODR staff members present were: Shinji Morokuma, Esq., Director; Nicky Davenport, Deputy Director; Tynesha Manuel, Administrative Coordinator; and Shania King.

1. Visitors:

Ms. Primm welcomed the visitors: Ansley Barton, Ansley Barton, LLC; Patti Anderson, Cobb County ADR Program; Jo Avery, mediator; Elmira Barrow, Coweta Judicial Circuit ADR Program; Tracy J. (TJ), BeMent, 10th Judicial Administrative District; Bob Berlin, The New DMA; Deborah Blanton, DeKalb County Dispute Resolution Center; Shelby Bricka, Georgia Senate; Amy Bryant, Cordele Judicial Circuit ADR Program; Kim Bunker, Association for Conflict Resolution, Georgia Chapter; Hala Carey, neutral; Ray Chadwick, State Bar of Georgia Dispute Resolution Section; Tom Charron, Cobb County Superior Court; Larry Christenson, State Bar of Georgia Dispute Resolution Section; George Cockrell, 7th Judicial Administrative District; Mary Cockrell, mediator; John Cowart, Second Judicial Administrative District; Lisa Curia, mediator; Amy Dever, Macon and Houston Judicial Circuits ADR Program; Linda Gernay, Eastern Judicial Circuit ADR Program; Bill Goodman, Atlanta Bar Association Dispute Resolution Section; Dan Gulden, neutral; Beth Hand, Ninth Judicial District ADR; Tim Hedeem, Kennesaw State University; Sheryl Hicks, Coweta Circuit ADR; Linda McClellan-Horvath, 10th Judicial Administrative District; Jackson Hughes, neutral; Tracy Johnson, Sixth District ADR Program; Greg Jones, Third Judicial Administrative District; Shelia Key, Clayton County Juvenile Court ADR Program; Sandy Lee, Council of Superior Court Judges; Kathie Lesesne, forensic accountant; Larry Love, Third District ADR Program; Valerie Lyle, Ninth District ADR Program; Anne Lyon, Carroll County; Sherelle Matthews, Justice Center of Atlanta; Martha McConkey, mediator; Linda McClain, Cobb County ADR Program; Cathy McCumber, Fourth Judicial Administrative District; Cynthia McElmurray, Augusta Circuit ADR Program; Jody Overcash, Seventh Judicial Administrative District; Bonnie Powell, Fulton County Landlord/Tenant Mediation Program; Judge Toby Prodgers, Cobb County ADR Program; Carolyn Raines, The New DMA/Neutral; Reba Ramey, Ninth District ADR Program; Raye Rawls, University of Georgia; Carol Rice, Conflict Resolution Academy; Anne Richards, Coweta Judicial Circuit; Judge Rob Rodatus, Gwinnett County Juvenile Court; Gary Rosenthal, mediator; John Sherrill, State Bar of Georgia Dispute Resolution Section; Brenda Sutton, Macon and Houston Judicial Circuits ADR Program; Laura Lynn Swafford, Gwinnett County ADR Program; Michael Tabachnick, mediator; Eileen Tann, mediator; Rick Voyles, Conflict Resolution Academy; Allis Wade, mediator; Karen Walter, Conflict Resolution Academy; Wendy Williamson, The Mediation Center, Savannah; Douglas Witten, mediator; Jerry Wood, Fulton County ADR Program.

2. Minutes:

The minutes of the September 3, 2009, Commission meeting were approved.

3. Committee Reports

Committee on Ethics: Judge Wright

Judge Wright reported that the committee would be meeting the following day via conference call.

Committee on Training and Credentials: Mr. Morokuma

Mr. Morokuma presented the new GODR policy for selecting trainers who are contracted to train on GODR's behalf. The trainings are usually at the request of a new court program or a dormant program that is being revitalized. The policy was drafted and approved by the committee, and is presented to the full Commission for approval, he said. The Commission voted unanimously to approve the new policy.

[Attachment 1]

4. Update on Filing Fee Statute Amendment and Budget:

Ms. Primm said she was heartened that so many people had recently communicated their thoughts about GODR's financial crisis and had come to the Commission meeting. This confirms that Georgia's ADR community is strong and concerned about its future, she said. Despite the severe financial cutbacks, the judiciary more than ever needs the services of ADR professionals, she said, and the Commission is committed to ensuring that all forms of ADR continue to be available to Georgia citizens.

She noted that the Georgia Supreme Court and State Bar of Georgia created the Commission to regulate and protect the quality of the court-connected ADR system, its professionals, and its court programs. The Commission believes that most of the ADR community understands the need for such single, statewide regulatory authority, she said.

Ms. Primm added, however, that the Commission and GODR must provide more services to the constituents in the ADR system if they are to continue to fulfill their purpose. To solicit more input from those constituents, she announced the formation of a new ADR Court Program Liaison Committee. The committee's purpose is to help GODR provide needed support and services to court programs and registered neutrals. The new committee, chaired by Alan Granath, would comprise three to five Commission members and – in an advisory capacity – five ADR program directors and two registered neutrals. She set a deadline of December 15 for program directors to choose their five representatives and for registered neutrals to nominate their two representatives.

Ms. Primm also announced that three Georgia-approved trainers would be selected to sit in an advisory capacity on the Training and Credentials Committee. Trainers should nominate their choice for their representatives by December 15, she said, and trainers who already sit on the Commission would be excluded from consideration for these three advisory positions.

Kathie Lesesne, the forensic accountant who has been working with GODR and the Budget Committee for several weeks, presented a detailed analysis of GODR's financial history and its current budget situation. She reported on the steady and precipitous decline of state funding for GODR in the last three years and on the Commission's efforts to make up for that funding loss. Ms. Lesesne concluded that if the Commission did not act immediately to significantly increase GODR's income, and if the GODR's FY2010 and FY2011 state funding were eliminated this spring as expected, then GODR would have to close sometime around the end of the fiscal year – June 30, 2010. Ms. Lesesne then presented various scenarios and options that would adequately fund GODR for FY2010 and beyond.

Judge Wright, chair of the Budget Committee, then presented as a motion the committee's recommendations to produce an additional \$320,000 in revenue that would fund GODR operations through December 31, 2010. The recommendations were based on Ms. Lesesne's analysis. Those recommendations:

-- Assess a \$25 per participant training fee for all mediation training (including colleges) that occurs in Georgia with the exception of GODR-sponsored training. The fee applies to all participants whether they are Georgia residents or out-of-state residents. The charge, collection and remittance of the per-participant fees is the responsibility of the trainer. This "training fee" applies to courses that are approved by GODR as registration categories (General Civil, Domestic Relations, Domestic Violence, Arbitration and Case Evaluation). The fee does not apply to practicums or continuing education courses.

-- The neutral registration renewal period should be changed from every other year to every year. The registration or renewal fee shall be \$125 per year, for all registrations or renewals on or after January 1, 2010, except as noted below:

* Persons registered in domestic relations and/or domestic violence must pay an additional \$25 registration or renewal fee. This \$25 covers registrations in either domestic relations or domestic violence or both. To clarify, a mediator who is registered in both domestic categories is not assessed a \$50 annual fee;

* Strictly volunteer mediators will not be charged the \$125 annual renewal fee. Strictly volunteer mediators are defined as those mediators who receive no compensation for their mediation service whether within or outside a court program. If, at any time, one who is registered as a strictly volunteer mediator receives compensation for work performed as a mediator, that person must immediately notify his or her local program and the GODR and pay the required renewal fee. To qualify for the renewal waiver, the mediator seeking the renewal waiver must submit a sworn affidavit in which the mediator and the local program director both swear that the mediator performs work only on a volunteer basis within the local Court program and receives no other compensation for his or her mediation service. The GODR will distribute appropriate certification affidavits. Volunteer mediators do not include those who perform work

within their local Court program and are paid for their services by the Court or their local ADR Board; those persons must register and renew at the \$125 annual level.

Judge Wright added that the Commission is actively exploring other avenues of possible funding. Further, the Budget Committee will continue to monitor revenues and expenditures. All expenditures, including salaries, are under review by the Budget Committee. She also noted that the Budget Committee is not recommending that the Commission assess a fee on local programs to fund this budget.

Mr. Hetzler asked why the \$25 per-trainee fee would not be charged for GODR-sponsored trainings. Ms. Heard explained that trainers who contract with GODR to provide training requested by a court program usually provide the training at a reduced rate. GODR would be providing the training, and thus paying itself if it charged the fee, she said.

Ms. Primm said the Commission had received about 20 e-mails and two letters – from Judge C.J. Becker of DeKalb County and Judge Kenneth Nix of Cobb County – containing comments on the Commission's efforts to solve GODR's funding crisis. She asked the guests representing court programs, trainings, ADR professionals and others to comment on the Budget Committee's revenue recommendations before the Commission votes on them.

Ms. Powell of Fulton County's Landlord/Tenant Mediation Program pointed out that some academic programs require students to take an approved mediation training as part of their coursework, even if the students never intend to register. She asked if those programs and students could be exempted from the \$25 per-trainee fee proposed, or if the fee could be waived unless they decide to register. Otherwise, she said, students who are forced to pay a fee on top of their tuition may simply not sign up for the course. Judge Wright said the Budget Committee did discuss the issue of applying the training fee to academic programs. She said the committee considered the training fee to be akin to a "book fee" that students would be expected to pay for some courses. Ms. Powell said her law students are already paying for books and for mediation coaches. She said did not want another fee from discouraging future lawyers from taking an ADR class, especially if they do not intend to register with GODR. Judge Wright asked Ms. Lesesne if she had any idea how many students would be affected by the new training fee. Ms. Lesesne said she did not, but she said the committee left it up to the trainers to decide whether to absorb the training fees or pass them on to trainees. In academic trainings, the fee could be included as part of the tuition, or paid by each student as a separate fee. Ms. Powell said it is more likely that the fee would be taken by the school out of the trainer's or adjunct professor's compensation, which is minimal.

Ms. Dever, a mediator in the Macon and Houston Circuits, said asking registered neutrals to carry most of the financial burden of supporting GODR supposes that only registered neutrals benefit from the ADR system. She said the court programs benefit the most and should share the burden of supporting the system, as should taxpayers, who also benefit. For neutrals to be GODR's primary source of income is unfair and endangers the future of the system, she said. Many mediators simply will not be able to afford to mediate, she said, while pointing out that most of the domestic violence cases she handles pay at a greatly reduced rate. Ms. Dever also suggested starting the registration renewal season at the start of the fiscal year, so income is generated as soon as it is needed.

Ms. Key said she and her colleagues in Clayton County Juvenile Court who are registered neutrals must pay their registration fees out of their own pockets. She asked if court staff would be expected to pay the full registration renewal fee. Judge Wright said only volunteers who receive no compensation would qualify for a fee waiver; court staff are paid by the court, so they would not qualify, she said. Ms. Key said she felt that making court staff pay was not fair.

Ms. Carey, a mediator, asked if the fees being considered for registered neutrals could instead be charged as court filing fees that would be given to GODR. Judge Wright said the committee investigated using court filing fees to support GODR, but the idea was not feasible politically.

Ms. Sutton asked why trainers were not being asked to pay an annual fee to renew their training approvals if neutrals were being asked to pay an annual fee to renew registrations. Ms. Primm said the charge of the per-trainee fee would be significant for the trainers, while increasing the training approval fees would not generate much additional income.

Mr. Berlin, a trainer, said neutrals and trainers should ask what they would be getting for their increased fees. For example, he said, GODR used to produce a newsletter regularly, but nothing similar has been produced for years. Applicants are having to wait up to eight weeks for their registration approvals. He complained of a general lack of political alliance-building by the Commission and GODR in order to ensure the ADR system's long-term health. He worried that the revenue recommendations were merely stop-gap measures that did not address more fundamental issues about the way the ADR system is run and supported. The system's constituents must be consulted and communicated with more often, he said. He also invited Commission members to take mediation training and learn more about ADR so their decisions would be better informed. Ms. Primm pointed out that the Commission and GODR made great efforts to invite as many people as possible to this meeting. Certainly all 2,400 registered neutrals did not come, she said, but the attendance was quite high – high enough that the meeting room had to be changed to accommodate the large number of guests.

Ms. McClain said she hears often in Cobb County about domestic mediators who are not being compensated by parties. There is a misperception that domestic mediators earn a great deal of money, but that is not true, she said. Many are doing a lot of pro bono work, and it is not fair to charge domestic mediators more for their registrations, she said. Ms. Blanton said domestic mediators in DeKalb County are paid at the same rate as other mediators, and she agreed that neutrals should not be shouldering so much of the burden of supporting GODR. Mr. Cockrell, a domestic mediator, said domestic mediators are not paid as well as the Commission may believe, so the new fee structure will be a burden to many of them, he said. Ms. Parkhouse said her program in Clayton County has been collecting statistics on domestic mediations. Historically, mediators are compensated fully in about 60 percent of domestic mediations, she said, but more recent figures indicate that that figure may be as low as 40 percent now.

Ms. Lyle said her Ninth District ADR Program already charges a \$15 administrative fee to the mediator for each case, so she is concerned about additional fees being charged to mediators. She said her office reduces expenses when funds are low, and she asked if expense reductions were considered in the revenue recommendations. Ms. Primm said they were, and the Commission would continue to look at spending carefully. She said she also agreed that neutrals and trainers should not bear the entire burden of funding GODR, but said there are political problems with some other potential sources of revenue. She said the Commission would

continue to explore other ways to fund the Commission's work. She asked the attendees for their help in making sure their judges understand the value of the ADR system and a central statewide authority. And she emphasized that the new ADR Program Liaison Committee is going to help the Commission and GODR provide more services to the courts, trainers and neutrals. Judge Wright added that the Budget Committee worked very hard and struggled with the revenue recommendations. It took into account input from the local court programs, and that is why some of the exceptions were made in the recommendations. Ms. Lesesne was able to provide the committee with important financial details so that the recommendations were based on hard data, Judge Wright said. If the recommendations are adopted and provide the expected income, she said she hoped that the ADR community would see more services from GODR in the near future.

Ms. Lyle added that she believes that the ADR system needs the leadership of GODR. But there are many more services that GODR could provide, and she would like to see the office on the cutting edge of state ADR offices, she said.

Ms. Barton asked if trainers would be required to remit the \$25 per-trainee fee even for trainings they provide on a volunteer basis to people who will never get registered. Ms. Primm confirmed that requirement, but added that those trainees would still have 18 months to register if they decided to do so sometime after the training. Ms. Barrow asked if trainees could be asked to pay the \$25 only if they wanted certificates of completion from their trainings. Ms. Primm said trainees who would not consider registration often change their minds later, and to institute such a process would create an administrative nightmare for trainers and for GODR.

Judge Producers noted that local court programs, including his in Cobb County, also are struggling with reduced financial resources. He thanked the Commission for the invitation to the meeting and asked to be included in future meetings on GODR finances.

Judge Auslander asked if an exception to the per-trainee fee could be crafted for trainings provided on a volunteer basis. Judge Carriere suggested that the idea could be looked at later, but right now it was important to increase revenue as much as possible rather than create exceptions to the fee structure. Justice Thompson clarified that the Budget Committee's revenue recommendations are based on GODR's financial needs at this moment. There may be other recommendations later as the finances change, he said.

Mr. Hedeon said it would be difficult for him at Kennesaw State University to collect \$25 each from students, most of whom do not intend to register, or to ask his dean for more money to cover the training fees. He asked for reconsideration of the training fee for academic trainers.

Ms. Matthews said she is aware of how hard the Commission has worked to help GODR make up for the drastic reduction in state funding over the last few years. In considering the proposed fee structure, she asked that the ADR community rally together to support GODR, just as a family does when a member is in need.

Mr. Granath thanked everyone for their comments. He reminded attendees that the Commission is focused not just on GODR's short-term survival but on the long-term financial viability of the ADR system. Part of that effort is the new ADR Program Liaison Committee, which will establish and improve regular communications with the ADR system's constituents. Another component of the long-term plan is the new fee structure, which is designed to make the

Commission financially independent from the uncertainties of legislative funding. The Commission's goals, he said, are to enhance communication with constituents, to establish new value-added programs and to provide for a more efficient GODR. The goal is not merely to increase funding for GODR but to find the resources required to achieve these long-term goals.

Judge Wright asked for any further comments before the Commission votes on the Budget Committee's motion to adopt its revenue recommendations. Judge Auslander moved to amend the motion to make an exception to the \$25 per-trainee fee for trainings provided on a volunteer basis and in which no certificate is awarded to trainees. Judge Wright said such an exception would be difficult to monitor and enforce, and would amount to only a small amount of money in savings. Moreover, the trainees in such trainings are indeed receiving valuable knowledge and skills, whether or not they choose to register, she said. Judge Carriere added that the trainees also must believe they are receiving something of value, otherwise they would not take the training in the first place. He advised that the revenue recommendations be adopted. He asked trainers to keep statistics on how many trainees who intend not to register pay the \$25 fee and pass that information to the Budget Committee when it takes up the matter again. The motion to amend failed for lack of a second.

Mr. Hetzler asked the Commission to consider the unintended consequences of the training fee. To avoid the fee, he said, nothing would prevent trainers from offering non-approved trainings to groups that did not intend to register, and, at a higher price, offer approved trainings to groups that did intend to register. Ms. Primm said there would be no way for the Commission to monitor such actions by trainers. Ms. Heard clarified that only trainings that lead to registration would be affected by the new per-trainee fee; other trainings organized by trainers would not be affected.

The Commission voted to adopt the Budget Committee's motion and implement its revenue recommendations.

[Attachments 2 and 3]

7. New Business

Next meeting dates: Ms. Primm said a list of possible dates for the 2010 Commission meetings would be distributed soon.

The meeting was adjourned.

Attachments:

1. New GODR Trainer-Selection Policy
2. Kathie Lesesne's budget analysis
3. Budget Committee's revenue recommendations

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