

Georgia Commission on Dispute Resolution
MEETING AGENDA
Thursday, November 21, 2013, 2-3 PM
State Bar of Georgia

I. Call to Order: Judge Charles Auslander

II. Minutes from August 29, 2013, meeting approved via e-mail vote.

III. Committee Reports:

-- Budget and Personnel Committee: Larry Christensen

-- Training and Credentials Committee: Melissa Heard

-- Ethics Committee: Hugh Bell

IV. Special Committee Reports:

-- Evaluative Mediation Committee: Tim Hedeem

V. Director's Report: Shinji Morokuma

-- Renewal season update

-- Advisory Opinion on confidentiality published

-- GODR plan to address issues in customer service survey

-- Update on summary jury trials in Griffin Circuit

-- Marketing update

-- ADR Institute update and Chief Justice Harold G. Clarke Award

VI. Chairman's Report: Judge Charles Auslander

-- Commission member conflicts policy

-- Next Meeting Dates: February 6; May 14, 2014.

VII. Old Business: Judge Charles Auslander

-- HB 438 update

VIII. Adjournment

Executive Session 3-4 pm

MINUTES: NOVEMBER 21, 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: Hubert J. Bell, Jr., Esq.; Judge Sara Doyle; Judge C. Andrew Fuller; Melissa Heard; Timothy Hedeem, Ph.D.; Judge J. Carlisle Overstreet; Edith B. Primm, Esq.; Emily S. Bair, Esq.; Vjollca P. Young; and Laurence Christensen, Esq.

Staff members present were: Shinji Morokuma, Esq., Director, Georgia Office of Dispute Resolution; Zan Patorgis, Esq., Administrative Office of the Courts; and Linda Smith, Commission on Interpreters.

1. Visitors:

Judge Auslander welcomed the visitors: Wes Acosta, Administrative Office of the Courts; Elmira Barrow, Coweta Judicial Circuit ADR Program; Steven J. Gold, Esq., mediator; Sheryl Hicks, Coweta Judicial Circuit ADR Program; Tracy Johnson, Sixth District ADR Program; Brandon Marlow, Coweta Judicial Circuit ADR Program; Linda McClain, Cobb County Superior Court ADR Program; Kim Miller, Administrative Office of the Courts; Nancy Parkhouse, Clayton County ADR Program; Bonnie Powell, Esq., Fulton County Landlord/Tenant Mediation Program; Molly Perry, Administrative Office of the Courts; Margaret Roth, mediator; and Jerry Wood, Esq., Fulton County ADR Program. There were no participants by phone.

2. Minutes:

Judge Auslander noted that the Commission approved the August 29, 2013, meeting minutes via email vote. He said that the minutes from this meeting will be available sooner.

3. Committee Reports:

Budget and Personnel Committee: Mr. Christensen

Mr. Christensen reported that GODR currently has over \$300,000 cash on hand. Last year, the GODR had 2,384 registrations granted or renewed, exceeding the target of 2,000.

[Attachment 1]

Since the last meeting, at Mr. Christensen's request, Dr. Hedeem and his colleagues at Kennesaw State University conducted a national survey of how other state offices of dispute resolution are funded. The survey found that more than 30 states have no full-time state ADR office. New York has the largest; North Carolina is the closest to Georgia in the way it generates revenue. Five state offices operate exclusively on fees.

The purpose of the survey was to search for a model program that funds itself in an innovative way, but Mr. Christensen said none was found. He said the survey results will serve as a foundation for exploring more funding options for GODR. Judge Auslander suggested sharing the survey results with other states.

[Attachment 2]

Training and Credentials Committee: Ms. Heard

Ms. Heard had nothing new to report from the Training and Credentials Committee.

Ethics Committee: Mr. Bell

Mr. Bell first reported that immediately following the meeting, the Commission is scheduled to hear an appeal from an applicant who was denied registration by the Ethics Committee. Two complaints were filed with the GODR in recent days. The first concerns a mediator who was not registered with the GODR, and the second is against an ADR program. He said he believes the Commission probably does not have jurisdiction over the first complaint since the mediator is not registered. As to the latter, GODR has sent the complaint to the program for a response.

4. Special Committee Reports:

Evaluative Mediation Committee: Tim Hedeem

Dr. Hedeem reported on the expected activities of this new committee, which was created to explore the possibility of incorporating evaluative mediation into Georgia ADR practice, and to determine how evaluative mediation is defined, how other states employ it, how Georgia has used it thus far, and whether it fits within the Commission's jurisdiction. Dr. Hedeem asked for suggestions on how to gather information on how to incorporate evaluative mediation into ADR practice and how evaluative mediation is already being used. Ms. Primm suggested starting with the judges and court programs directly. Ms. Bair suggested examining the current practices in family law, where evaluative mediation is already prevalent.

Dr. Hedeem distinguished between early neutral evaluation and evaluative mediation, saying that the former encompasses an affirmative responsibility on the part of the neutral to research and explore outcomes, whereas the latter merely requires listening and understanding on the part of the mediator before rendering advice or opinion. He said he would explore the idea of whether evaluative mediation violates the GODR's rules on self-determination. He said four Commission members have been assigned to the committee, and it gave itself nine months to complete its mission.

[Attachment 3]

5. Director's Report: Mr. Morokuma

Renewal season update: Mr. Morokuma reported that the 2013 renewal season began on November 1, 2013. More than 90 applications have come in over the past several weeks. He reported that GODR is still using its old database system, but has invested some time and money with the vendor to make it more user friendly.

Advisory Opinion 8 on confidentiality published: Mr. Morokuma reported that GODR published Advisory Opinion 8, which deals with the confidentiality of mediation communications. The opinion arose out of concern about news reports in which attorneys appeared to be disclosing confidential details of their mediations. The opinion is already being used at trainings and has been praised for its thoroughness and helpfulness, he said. He and Judge Auslander thanked mediator Steve Gold, former Commission member Alan Granath, and Dr. Hedeem for their efforts in drafting the opinion.

GODR plan to address issues in customer service survey: Mr. Morokuma noted that the AOC's research department conducted a survey of user satisfaction with the renewal process during the 2012 renewal season. A summary of the survey results was distributed to Commission members at the August meeting. Issues identified by the survey included the inability to find documents easily within the system, difficulty of payment, the desire of some neutrals to have more networking and training opportunities, and problems with the general usage of the system. Most of the difficulty with the renewal process stems from the current database system, he said. The AOC is creating a new database system for all agencies that issue professional credentials to people who support the court system, and it should be available in the coming year. Registrants and staff will benefit from the system, which will address most of the issues disclosed in the survey. Among changes that neutrals said they wanted in the survey were more continuing education, more networking opportunities, and discounts on fees. Mr. Morokuma stated that the GODR website has available 4.5 hours of free continuing education videos that can viewed by neutrals anywhere. There are many existing networking opportunities, and the office can look into creating more. The new database system will allow neutrals to publish their qualifications and professional website addresses for the general public to reference, increasing networking and marketing opportunities. The new system may also allow for "early bird" discounts for neutrals who register early or for multiple years.

Judge Auslander reminded Commission members that GODR operates primarily from registration funds. He said the survey will allow the Commission and GODR to use those funds more resourcefully to target the need areas highlighted by the survey. He suggested that the Liaison Committee could take the lead in this mission.

[Attachments 4, 5]

Summary Jury Trial Update: Mr. Morokuma reported that he, Dr. Hedeem, and his KSU colleague Dr. Heather Pincock continue to work with Chief Judge Christopher Edwards on summary jury trials in the Griffin Judicial Circuit. Judge Edwards is looking for cases in which summary jury trial could be a useful ADR process, he said. The judge is also

going to approach colleagues in superior courts of Fulton County and Cobb County to see if they have any interest in using summary jury trials.

ADR Institute update and Chief Justice Harold G. Clarke Award: Mr. Morokuma reminded Commission members that the annual ADR Institute will be held December 13. During the conference, the Institute leadership will inaugurate the Chief Justice Harold G. Clarke Award for significant contributions to ADR in Georgia. The award, which is expected to be given annually, is sponsored by the Commission on Dispute Resolution and the State Bar of Georgia Dispute Resolution Section. He shared a photograph of the Frabel blown glass sculpture of a dogwood that would be presented to awardees.

[Attachment 6, 7]

6. Chairman's Report: Judge Charles Auslander

Judge Auslander stated that the Commission is looking into adopting a conflict of interest policy for Commission members. The policy is designed to increase transparency whenever GODR or the Commission have need to contract for services with Commission members, their associates or their relatives. The AOC legal counsel is working with Justice Keith Blackwell and the Commission on Interpreters, as well as the Board of Court Reporting, to develop a uniform conflicts policy that can be utilized by all three entities. Judge Fuller will represent the Commission on Dispute Resolution in that effort.

Judge Auslander stated that Mr. Morokuma has been asked to provide staff support to another commission, the Commission on Interpreters. Ms. Perry explained that Mr. Morokuma's new assignment was part of a reorganization of the AOC's Certification and Licensing agencies, and the goal of the reorganization was to increase efficiency and reduce duplication of services while sharing limited resources.

7. Old Business: Judge Charles Auslander

Judge Auslander noted that the Commission's next two meetings will be February 6 and May 14, 2014.

Lastly, Judge Auslander revisited the Commission's prior discussion of HB 438, which proposes to raise from \$7.50 to \$10 the cap on the ADR civil filing fee approved court programs can charge. Judge Auslander emphasized that any increase in the cap will not be mandatory and that all local ADR programs retain the discretion to decide how much their civil filings will be. Since the last meeting, the full Judicial Council has voted to support the bill, upon the recommendation of its Policy and Legislative Committee, he reported. He asked Commission members if they would like to formally vote whether to support the bill, even though the Commission may not lobby for it. Ms. Primm moved for a vote, and the motion was seconded. The Commission members unanimously voted to support HB 438. Judge Auslander said he would write a letter of support on behalf of the Commission to the sponsor of the bill, Representative Jay Powell.

The meeting was adjourned.

The Commission went into Executive Session.

Attachments:

1. GODR budget report
2. Survey of state ADR programs
3. Questions for the charge of the Evaluative Mediation Committee
4. Report of AOC customer service survey of users during the 2012 renewal season
5. Summary of GODR responses to issues disclosed in the survey
6. Program for the 2013 ADR Institute
7. Photograph of Frabel blown glass dogwood sculpture

[Minutes prepared by Zan Patorgis, Administrative Office of the Courts and Shinji Morokuma, Office of Dispute Resolution]