

MINUTES: SEPTEMBER 3, 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.; Alan Granath; Martha Kitchens; Judge J. Carlisle Overstreet; and Judge Cynthia Wright.

Melissa C. Heard participated by phone.

GODR staff members present were: Shinji Morokuma, Esq., Director, and Nicky Davenport, Deputy Director.

1. Visitors:

Ms. Primm welcomed the visitors: Elmira Barrow, Coweta Circuit ADR Program; Debbie Blanton, DeKalb County ADR Program; Kim Bunker, Association for Conflict Resolution, Georgia Chapter; Charleston Carter, Tifton Circuit; Linda Gernay, Eastern Circuit ADR Program; Pam Godfrey, Seventh District ADR Program; Tracy Johnson, Sixth District ADR Program; Larry Love, Third District ADR Program; Valerie Lyle, Ninth District ADR Program; Linda McClain, Cobb County ADR Program; Linda McClellan-Horvath, Tenth District ADR Program; Bonnie Powell, Fulton County Landlord/Tenant Mediation Program; Jon Ripans, arbitrator; Patricia Sammons, Ninth District ADR Program; John Sherrill, State Bar of Georgia Dispute Resolution Section; Brenda Sutton, Houston and Macon Circuits ADR Program; Laura Lynn Swafford, Gwinnett County ADR Program; and Jerry Wood, Esq., Fulton County ADR Program.

2. Minutes:

Ms. Primm said the minutes from the June 25, 2009, meeting would be distributed for approval to Commission members via e-mail next week.

3. Update on Filing Fee Statute Amendment and Budget:

Ms. Primm reminded members that the Commission had accepted the gift, offered by the Dispute Resolution Section of the State Bar of Georgia, to hire a lobbyist who would explore the idea of amending the filing fee statute so that more money might come to local court programs and the Office of Dispute Resolution. Since that time, she said she has had eight meetings on the subject with various people. At one meeting a group of DR Section, consulting with Commission members, interviewed and picked a lobbyist to hire. That lobbyist, Chandler Haydon, had been recommended by Judge Auslander, who knew her through her successful lobbying for retirement legislation for magistrate judges. DR Section and Commission representatives later had a breakfast meeting with Ms. Haydon. In August, Ms. Primm and Mr. Morokuma asked to attend a meeting of several metro Atlanta area program directors at the

DeKalb County Dispute Resolution Center to talk about the Commission's legislative plans. After that long meeting, she said she called Mr. Sherrill of the DR Section to tell him that the program directors would not support an amendment to the filing fee statute so the legislative efforts had to halt. A planned presentation at the Judicial Council meeting on the Commission's legislative plan was cancelled.

Ms. Primm then said she asked that the Commission's Budget Committee of Judge Wright and Mr. Granath be enlarged to include Ms. Heard, Ms. Kitchens and Judge Fuller. The newly constituted committee met over the phone to discuss how the Commission might make up for the almost certain elimination of state funding for GODR. Later, she and Mr. Morokuma met with Chief Justice Carol Hunstein to discuss the Commission's ideas to keep GODR operating. The chief justice was very supportive of the Commission's efforts to help GODR become self-funding, and she suggested that the Commission consult with a forensic accountant who was instrumental in helping the Office of Bar Admissions become self-funding. Ms. Primm and Mr. Morokuma met with the accountant, Kathie Lesesne, and afterward Ms. Primm said she decided to hire Ms. Lesesne to help the Commission and the Budget Committee take a careful and professional look at all possible sources of income that could support GODR and the work of the Commission. Ms. Primm and Mr. Morokuma also met with Marla Moore, the new director of the Administrative Office of the Courts, who also supported the idea of GODR becoming self-funding.

Ms. Primm said the Commission members then corresponded via e-mail to discuss various funding ideas and to compose possible amendments to the ADR Rules that would enable those ideas. The Commission members then voted overwhelmingly to submit to the Supreme Court a set of proposed amendments to the ADR Rules. The Supreme Court then met en banc the day before the present Commission meeting and voted to approve the Commission's proposed amendments to the ADR Rules.

Ms. Primm clarified that when the Commission voted to amend the rules, the Commission was not determining which sources of funding to tap or to what degree if at all. The Commission was merely asking the Supreme Court simply to empower it to take action if it decided to do so. Nothing has been decided yet prior to this meeting, she emphasized.

Mr. Sherrill said the DR Section was willing to continue to support the Commission's efforts to seek funding for GODR. He said the Section had been prepared to seek the Bar legislative committee's approval to hire a lobbyist to amend the filing fee statute, but cancelled that meeting at Ms. Primm's request. He said he understood that the Commission may still be interested in having a lobbyist support GODR's existing and future state appropriation, and he was prepared to have his executive committee vote on any such request.

Mr. Sherrill said he personally vetted Ms. Haydon with several legislators, and all of them spoke highly of her contacts, abilities and the way she conducts business. His conclusion was that Ms. Haydon's approach was consistent with the Bar's high expectations, and he was comfortable with choosing her to represent the Section's and Commission's interests before the Legislature.

Ms. Primm asked if the Section was willing to pay for the forensic accountant, whose work is capped at 40 hours at \$125/hour. Mr. Sherrill said the Section could probably support the idea and said he would propose it to the executive committee. A motion was made to formally

request funding from the DR Section for a forensic accountant to assist the Commission. The motion was seconded. The Commission voted unanimously to make the request.

Judge Wright asked Mr. Sherrill for a deadline if the Section had to get the Bar's approval to pay for the forensic accountant. Mr. Sherrill said the deadline would be in December, but he did not think the Section would need the Bar's approval, as no legislation was involved. Bryan Cavan, president of the Bar, has already authorized payment for the lobbyist from Section funds, and Mr. Sherrill expected that Mr. Cavan's response would be the same to this request. Mr. Sherrill said he would notify the Commission as soon as he had an answer.

Judge Auslander said he was impressed by the Section's support of the Commission, and he hoped that Commission members would support the Section by paying \$15 to join it next year. He said he appreciated that the Section was working so hard to help people outside of the Section. Mr. Sherrill responded that assisting the Commission is an important task, one that is within the Section's mission, and one that is worth the Section's time and money.

Ms. Primm then asked the visiting program directors to share with the Commission the views they expressed in the August meeting regarding local ADR programs and funding of GODR. Ms. Blanton said it was clear from the meeting that the idea of amending the filing fee statute was not supported. Regarding the issue of local ADR programs helping to support GODR, she pointed out that her DeKalb program is entirely self-funded, unlike some other local programs. The DeKalb program pays all of its own bills, including payments to mediators, and needs to all of its local fees to operate. She also said she was reluctant to consider diverting program funds to support GODR when her program can provide for itself some of the services GODR provides.

Ms. Primm said her understanding from the meeting was that the program directors there felt that the Commission and GODR needed to continue to exist. Ms. Blanton said the program directors agreed that they needed the Commission's leadership and GODR's registration service because most court programs do not have the resources to run criminal background checks, for example, on registered neutrals. GODR's assistance in ethics matters is also important, she said.

Ms. McClellan-Horvath said her recollection of the meeting also was the program directors did not support an amendment to the filing fee statute. She said other ideas for funding GODR were discussed by the attendees. Ms. Primm said she also understood from the meeting that last year's increase in registration fees did not – as was feared – affect the ability of the local programs to operate. She also said her understanding was that the program directors accepted the possibility that the neutral registration fee might have to rise as high as \$200-\$300 a year in order to fund GODR. Mr. Wood said that was correct. He reported that his Fulton County ADR Board met to discuss the issue of funding GODR. Like the DeKalb program, he said, Fulton pays mediators out of the ADR fund, and the board did not want to divert any local funds to support GODR. However, he said, the board was very supportive of a registration fee instead. He said he also talked to several of his local mediators, and he predicted that there would not be much objection to an increase in registration fees or an annual fee. Mr. Wood pointed out that his is unlike Ms. Barrow's program, which relies heavily on volunteer mediators. So he asked the Commission to be mindful of volunteer-reliant programs. His board supported a two-tiered registration that permitted volunteers to register for a lower fee than non-volunteers. He also suggested created a separate registration category for volunteers – those who earn no money from neutral services – just as there are categories for general civil mediators and domestic relations mediators.

Ms. Primm said the idea was a good one, but she pointed out that there is a cost to GODR to process applications even for volunteers, and that must be kept in mind. Ms. Barrow said her program has 12-15 volunteer mediators who have served her program for up to 15 years. Both her juvenile program and her magistrate program rely heavily on those volunteers. If registration fees were raised to, say, \$125 a year, she feared that she would lose many of her volunteers, several of whom are retired and living on fixed incomes. Ms. Barrow said if her program paid all or most of the registration fee for its volunteers, then she would be less likely to lose them. Her board chair, Judge Allen Keeble, said he supported the idea of the program paying a portion of the volunteers' registration fee. She did feel that some of her domestic relations mediators might be able to afford a higher registration fee, considering what they can earn from mediation.

Mr. Wood added that his Fulton County mediators were not opposed to an increase in registration fees, as long as they received some benefit to increase their status within the community. The mediators wanted most to be recognized as professionals, he said. So a laminated identity card might meet that need. They also expressed a desire for reduced malpractice insurance premiums.

If registration fees are increased, Ms. Swafford suggested the creation of a Membership Committee that would include mediators. The committee would recommend any benefits that GODR could provide and would give mediators a greater voice in matters that affect them. She also said it was important to determine GODR's true budget needs before deciding on the registration fee. Ms. Primm replied that the reason for hiring the forensic accountant was so the Commission could make well-informed decisions regarding GODR's budget.

Ms. Sutton said most mediators do not have a clear idea of what GODR does, so she suggested that GODR launch a public relations campaign. She also said she would not oppose to paying some money to support GODR because otherwise, her program would have to bear the costs of those services GODR provides. On the subject of fees for trainers, she noted, as a trainer, that in other contexts there is normally a large fee required of trainers for the privilege of teaching a certified training. Ms. Primm, who is also a trainer, agreed. The Justice Center of Atlanta earns considerable income from trainings that are advertised as providing a credential from the Georgia Supreme Court. There is no question, she said, that being a GODR-approved training brings in business, and the Justice Center should pay something to GODR for that privilege.

Ms. Gernay said her board likely would oppose an amendment to the filing fee statute, but would support an increase in the neutral registration fees. She noted, however, that her program contracts with the Mediation Center in Savannah, which relies on about 75 volunteer mediators to handle cases. An increase in the registration fee would ultimately be passed to her program through the contract, she said, while her program is already struggling to handle an increasing caseload without additional funds. The local filing fee is at the \$7.50 maximum already. She said she hoped the Commission would take the need for volunteers into consideration.

Ms. Lyle said her program may be unique in that her employees are considered state employees, and her program already pays the state (the Administrative Office of the Courts) 5 percent for managing the program's funds. So within her program, which is large and relatively independent, there were questions about what services GODR provides that it should have to pay for, she said. She said raising the registration fees, however, would not significantly impact her

program. Ms. Primm added that some program directors at the August meeting said losing some mediators because of an increased registration fee might help the system by leaving only the most professional and dedicated mediators in the field.

Judge Overstreet asked what GODR's annual budget was and how much money is taken in annually through registration fees. Mr. Morokuma said the GODR has been about \$350,000 for three full-time staff members, and registration fees averaged \$60,000 a year. After the fee increase, income rose to about \$140,000 a year.

Ms. Johnson said she was glad to learn that the Commission was considering other funding options beside raising registration fees. She added that some local programs might be willing to pay to support GODR, but that they, like her program, do not have the money to do so.

Ms. Primm thanked the program directors for meeting with her in August and said she hoped it was apparent from the discussion that the meeting did have an impact on the Commission's thinking. Ms. Blanton said she does not recall program directors ever having the opportunity to meet with the Commission chair, and said she hoped the meetings would continue.

Ms. Primm later emphasized that the November 12 meeting might be among the most important meetings the Commission has ever held. The Commission must at that time make decisions about how GODR should be funded, because GODR has only enough funds to function through the present fiscal year, she said. GODR also needs to know about any new registration fee structure so it can be implemented for the upcoming registration renewal season. She promised to keep the Commission members informed so that they would have ample time to consider their actions on November 12. Ms. Lesesne would also attend the November meeting so Commission members can ask her questions, she said.

Judge Auslander asked how GODR was supporting itself since registration fee income alone clearly was inadequate. Mr. Morokuma explained that GODR originally was funded by the Supreme Court. It was then supported through the years by a combination of state funds and registration fees. Now that state funds are disappearing, the funding mechanism needs to change, he said. Ms. Primm added that the Georgia Bar Foundation has given GODR a total of \$650,000 over the years as seed money to help GODR start new court programs. The foundation also gave \$250,000 in emergency funding two years ago when GODR's state funding was cut by that amount. But the foundation has seen a dramatic decrease in available funds, so any further support from the foundation was unlikely.

Ms. Primm summarized the GODR funding efforts as shifting from a state-supported organization to a self-supporting one. The disadvantage of that strategy is that difficult decisions such as raising of registration fees must be made. The advantage is that GODR will be free of legislative control through the budget – an important goal for an office that occasionally must discipline its constituents.

Mr. Morokuma explained that the various sources of funding that the Commission can consider under the amended rules are state funds, neutral registration fees, training approval fees, trainee registration fees for trainings and seminars, contributions by local ADR boards, and grants. Ms. Primm emphasized that these were potential sources only; the Commission would decide in November which sources to tap.

Ms. Blanton emphasized that local court programs also are affected by registration fee increases, as many staff members are registered. She asked the Commission to keep staff members in mind when considering the registration fees. Ms. Powell added that her program is unique in that every year it trains and registers law students to mediate in court. Since her program pays the students' registration fees, any increase would have a significant impact, especially if it comes in the middle of a budget year as last year's increase did. Such fiscal unpredictability ultimately affects the services she can provide to the public, she said.

Judge Carriere asked if any funds were available from counties, which benefit from the efficiencies of an ADR system in their courts. The program directors said they generally do not receive funding from their counties; the local support comes in the form of space and court staff – such as bailiffs – being available to help the ADR program. Judge Carriere acknowledged that counties would also be reluctant to contribute money to support the Commission's work because they feel they receive no services. Judge Overstreet noted, however, that if the Commission did not exist, the local court programs could not collect their ADR filing fees.

Ms. Primm said all mediators must understand that mediation is a profession, that registration can benefit them financially, that registration is in effect a license to practice through the courts, and therefore that registration has some value.

If mediation is to be considered a service profession, Judge Wright suggested that registration should include a pro bono requirement, especially for those registered mediators who are able to earn a good deal of money handling court-referred cases. Ms. Powell said she recently asked her roster of approximately 40 mediators to provide one pro bono day a year in order to remain on the roster and to help her program balance her budget. The response from her mediators was very supportive, she said.

Mr. Granath said a review of GODR's finances is important. He characterized GODR as caught in a three-year negative spiral, where the legislature cuts funding, GODR goes into survival mode, then GODR is criticized for failing to provide services to local programs and neutrals. GODR cannot provide services without a reasonable level of consistent funding, he said. It needs a reliable source of funds so it can do more for all of its constituents. Ms. Primm added that it is important for program directors attend Commission meetings so they can hold the Commission accountable for any funding decisions it makes.

Ms. Sutton asked that when the Commission consider rule changes, that it remember that each local court program operates in a unique way. Ms. Primm said the Commission is working very hard to find a solution to the GODR funding crisis, and difficult decisions will have to be made in the future. She emphasized that it is vital for the continued health of the ADR system that local court programs follow the ADR Rules approved by the Commission and passed by the Supreme Court.

[Attachment 1]

4. Amended ADR Rules

Ms. Primm asked Commission members to review the amendments to the ADR Rules. The changes allow the Commission to consider a wider variety of funding sources and to emphasize the Commission's authority to request audits of local ADR boards.

Ms. Lyle asked what was meant by the rule, "Appropriate administrative fees may be charged by the Georgia Office of Dispute Resolution for technical assistance and training." Mr. Morokuma explained that that was not a new rule but one that had been in effect since 1993, and the Commission decided to leave it in when amending the rules. Ms. Primm emphasized that the rule says "may," not "shall."

Mr. Morokuma said the amended rules would be posted on the GODR website as soon as possible; copies would be distributed to Commission members, program directors and trainers.

[Attachment 2]

5. Committee Reports

Committee on Ethics: Judge Wright

Judge Wright reported that the committee took up four neutral registration applications, three were approved, and one was held for additional information.

She also asked the Rules Committee to consider expanding the Ethics Committee's scope of review for registration applications to include, for example, any civil judgments that the applicant has not paid. She said that such behavior reflects on an applicant's character and integrity.

Committee on Training and Credentials: Mr. Morokuma

Mr. Morokuma said the committee was working on a 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. A policy has been drafted and approved by two of the four committee members, but it is not yet ready for full Commission for review, he said. While the new policy may not require the Commission's vote and approval, the complaint about GODR's previous policy was made before the entire Commission, so it is appropriate that the entire Commission have a chance to review the new policy, he said.

Committee on Budget: Judge Wright

The committee met to discuss funding options for GODR, Judge Wright said. However, as Ms. Primm has reported, those options were found not to be viable after meetings with various stakeholders.

Committee on Rules: Judge Auslander

Judge Carriere and Ms. Heard have joined Mr. Granath on the committee, Judge Auslander reported. The committee is working on two issues: amending the Model ADR Rules; and clarifying the use of the terms “court-connected,” “court-annexed,” “court-referred,” and “court-ordered” as used in the ADR Rules. For the second issue, the committee has asked to consult with Professor Doug Yarn of Georgia State University College of Law, a former Commission member and author of the “Dictionary of Conflict Resolution.” Prof. Yarn has provided the committee some advice via e-mail, but Judge Auslander said he hoped the committee could meet with Prof. Yarn personally in November to discuss the terminology.

6. Tifton Circuit ADR Rules:

Mr. Morokuma presented the Tifton Judicial Circuit’s ADR Rules. He said Ms. Davenport has worked closely with Mr. Carter, Tifton’s circuit court administrator, to compose rules that meet the Commission’s requirements.

Mr. Carter said the population of the Tifton Circuit is growing rapidly. The circuit’s superior court judges disposed of 2,600 cases and state court judges disposed of 1,200 cases last year without a dispute resolution program. He felt that more cases could be disposed of by all of the circuit’s courts if an ADR program was in place, and asked for the Commission’s support.

Mr. Morokuma recommended that the Commission approve the rules. The Commission voted unanimously to approve the Tifton Judicial Circuit’s ADR rules.

[Attachment 3]

7. New Business

Next meeting date: The Commission’s next meeting date was scheduled for November 12.

The meeting was adjourned.

Attachments:

1. Kathie Lesense resume
2. Amended ADR Rules
3. Tifton Circuit ADR Rules

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