

The Committee on Ethics of the Georgia Commission on Dispute Resolution

Ethics Opinion 7

Introduction

The Committee on Ethics (Committee) received a complaint against a registered neutral. This complaint did not arise from a mediation, but instead arose from a Zoom calendar call in which the mediator and Complainant were both present. During this calendar call, the Complainant, a self-represented litigant, saw an individual on the Zoom call with the label “Mediator”. The Complainant said they were confused about the calendar call and privately messaged the mediator about whether they could reschedule their court appearance. The self-represented litigant assumed the mediator was in a position of authority and could help. The mediator took a screenshot of the communication and proceeded to post the screenshot of the Complainant’s communication to the mediator’s private Facebook page. The mediator captioned the post with a snide comment alluding to the mediator’s annoyance with the Complainant’s inquiry, and included several annoyed looking emoji’s with the post.

The post received several views and comments and was eventually seen by a mutual friend of the mediator and the Complainant. The mutual friend sent the Facebook post to the Complainant who was upset by this post and subsequently filed a complaint against the mediator with Office of Dispute Resolution. After review, the Committee issued a private reprimand, requiring the mediator (Respondent) to issue a formal apology to the Complainant, and decided to issue a formal ethics opinion. The Committee believes that a formal opinion based on the complaint may be useful to assist mediators in understanding their role and representation of the court system, as well as helping to guide mediators with appropriate uses of social media.

Jurisdiction

Rule II.5. of the Supreme Court of Georgia’s Alternative Dispute Resolution (ADR) Rules states that the “[Georgia] Commission [on Dispute Resolution] has jurisdiction . . . [t]o receive, investigate, and hear complaints about neutrals registered with the Commission.” The Committee made a determination that the Commission had jurisdiction over the Respondent because the Respondent is a neutral registered with the GODR.

Allegations

The Complainant asserted that the Respondent’s actions violated the ethical standards for mediators by publishing a private courtroom communication between Complainant and Respondent to the Respondent’s Facebook page.

Opinion

The Committee found no mediation had been conducted, and there was no technical breach of confidentiality between the mediator and the complaining party. The Committee did, however, decide to issue a private reprimand to the mediator, as the Committee found the mediator’s actions

to be unprofessional and did not adhere to the high ethical standards established by the Commission for registered neutrals.

Pursuant to Appendix B of the Supreme Court of Georgia ADR Rules, the Commission seeks to ensure that courts and litigants have access to well-trained, highly skilled neutrals who adhere to the highest ethical standards. Appendix B requires that all neutrals serving in Georgia programs be of good moral character.

Additionally, the Model Code of Conduct for Court Professionals provides exceptional guidance on how the behaviors of courtroom professionals have an impact on the public's trust of the judiciary. The Model Code of Conduct for Court Professionals provides that the foundation of our society rests in the ability of our citizens to judge the value of the courts and to appreciate the integrity of our judiciary as a fundamental, coequal branch of government. Court professionals who work for the judicial branch should be faithful to its values and held accountable to this trust. The Model Code of Conduct for Court Professionals is promulgated by the National Association for Court Management. The Model Code of Conduct may be found on the National Association of Court Managements webpage, accessible at the following link: <https://nacmnet.org/resources/education/ethics/>.

When a neutral is participating in court, particularly via Zoom with a name tag indicating they are a "Mediator" to the courtroom attendees, they are perceived as an official member of the court and immediately held to a higher standard of decorum and conduct. To promote the public's confidence in the judiciary, and by association, confidence in alternative dispute resolution, mediators must conduct themselves in such a way to not call into question the morals and integrity of themselves and the court system. Many members of the public find the judicial system to be confusing and intimidating, and even those with the most experience in the courtroom have found it challenging to adjust to virtual format. When an individual seeks basic assistance from those they view to be in a position of authority, it is prudent to treat them with respect and offer them as much assistance as they are permitted to give.

We find ourselves in the day and age where social media is extremely popular and one of the primary ways societies communicate and obtain information. Social media allows individuals to communicate through the internet via many different platforms. We have the ability to share every thought and idea with the public through social media, and while this creates an easy way to communicate with trusted friends and family, it also presents the danger of sharing these posts with others with whom we did not intend to share. No matter how private a social media profile may be, what is posted should be considered public, as those you have privately shared it with can easily share the post with anyone.

In this case, a mutual friend of the Complainant and mediator shared the post with the Complainant. The mediator certainly never intended the post to be shared with said individual, but the mediator nonetheless created a hurtful and embarrassing situation for the Complainant. While the mediator may not have intended for the post to be seen by the Complainant, this situation produced an instructive example of just how exposed the judiciary and the court room professionals are to the public. When a mediator is in court and represents to the public that they are a mediator in a

courtroom setting, either in person or on a virtual platform such as Zoom, their actions reflect directly on the court and the Office of Dispute Resolution.

When the Office of Dispute Resolution registers mediators, they are affirming to the public that they trust these individuals to conduct themselves ethically, and that these neutrals have a high sense of integrity. This event could have been the Complainant's first impression and interaction with the Court. Neutrals must remember and the Code of Court Professionals suggests that all courtroom professionals must act in such a way as to promote trust in the judiciary. The mediator's actions in this instance are a prime example of how to erode trust in the court system and the alternative dispute resolution process.

Appropriate Social Media Usage

The Office of Dispute Resolution does not seek to censor or limit a neutral's right to free speech and express that right through social media platforms. The Committee does, however, caution its neutrals that any communication that threatens the integrity of the Office of Dispute Resolution and the court system will be addressed to ensure it aligns with the Supreme Court of Georgia ADR rules and ethical standards, specifically being of good moral character. Neutrals who apply to be a mediator do so with the understanding that once registered, they have agreed to be of and maintain good moral character, adhering to the highest ethical standards. The Committee cautions neutrals that the rules of ethics still apply whether the neutral is mediating or not, and neutrals are always expected to uphold and promote the public trust and confidence in the judiciary.

Neutrals are highly visible, especially while appearing as a "Mediator" for a court calendar, whether in person or remote, and should exercise discretion in posting about the court process. Furthermore, many courts have implemented social media policies to which each neutral must be familiar with and abide by while working in that court. While court proceedings may seem routine and simple to the mediator, the same court proceeding may be foreign and stressful to the litigant. Neutrals should offer professional assistance when appropriate and always refrain from making fun or light of those who are less knowledgeable about our court system and processes. Neutrals should be respectful and never assume that a post to Facebook (or any social media platform), even on a private page, cannot be seen by the public. Inappropriate posts, such as mocking or ridiculing an individual regarding a dispute resolution or court proceeding will not be tolerated by the Office of Dispute Resolution.

Conclusion

While the Office of Dispute Resolution trusts all neutrals to conduct themselves morally and with discretion when posting on social media, the Ethics Committee reminds all neutrals of their obligation to hold themselves to a high ethical standard. Social media has become a cornerstone of our society and is one of the central ways courts communicate information to the public. Social media is not inherently bad, as it can afford neutrals a unique opportunity to engage with the community, promoting public trust and confidence in the judiciary and the processes and procedures in place.

In this instance, the neutral in question posted a seemingly private communication to their Facebook page about a court proceeding making fun of the Complainant who had reached out for assistance. This behavior does not comport with the ethical guidelines and negatively impacts the public's trust and perception of the judiciary. Neutrals have a commitment to the judiciary to assist members of the community in reaching a resolution for their respective disputes. While no mediation occurred in this instance, and no confidential communications were shared, the Committee nevertheless found that the ethics rules and standards continue to apply to neutrals in the absence of a mediation, and neutrals are encouraged to act in a way that does not erode the public's confidence in the judiciary.