

MINUTES: MAY 22, 2007, MEETING
GEORGIA COMMISSION ON DISPUTE RESOLUTION

The meeting was held in Athens, Ga.

Judge Joseph Iannazzone called the meeting to order. In addition to Judge Iannazzone, Commission members present were: Judge Charles Auslander III; Ansley Barton, Esq.; Wade Coleman, Esq.; Marti Kitchens; Bobby Glenn, Esq.; Alan Granath; Elizabeth Manley; and Raye Rawls, Esq.

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

1. Visitors:

Judge Iannazzone welcomed the visitors, who were: Elmira Barrow, Coweta/Carroll County ADR Program; Bev Bradburn-Stern, DeKalb County ADR Program; Chris Cannon, 7th District ADR Program; Larry Cliatt, Southwestern Circuit ADR Program; Theresa Christian, 10th District ADR Program; Linda Gernay, Eastern Circuit ADR Program; Tracy Johnson, 6th District ADR Program; Tena Helms, Macon Circuit ADR Program; Sheryl Hicks, Coweta Circuit ADR Program; Valerie Lyle, 9th District ADR Program; Linda McClain, Cobb County ADR Program; Linda McClellan-Horvath, 10th District ADR Program; Cindy McNamara, 10th District ADR Program; Debra Nesbit, Deputy Director, Administrative Office of the Courts; Nancy Parkhouse, Clayton County ADR Program; Edie Primm, Justice Center of Atlanta; Reba Ramey, 9th District ADR Program; Laura Lynn Swafford, Gwinnett County ADR Program; Doug Yarn, Georgia State University College of Law.

2. Minutes:

The minutes from the March 20, 2007, meeting were approved without amendment.

3. Director's Report: Shinji Morokuma

a. Program Directors' Retreat

Mr. Morokuma said he hoped that the two-day Program Directors' Retreat, which was concluding with this Commission meeting in Athens, was a productive one for the attendees. He noted that the program directors attending this year voted to have another retreat next year. He thanked Linda McClellan-Horvath, program director of the 10th Judicial Administrative District ADR Program, for doing the bulk of the work to organize the retreat.

b. Budget Update: Debra Nesbit

Mr. Morokuma asked Ms. Nesbit, associate director, Legislative and Governmental Affairs, Administrative Office of the Courts, to explain the critical state of GODR's budget after the 2007 legislative session.

Ms. Nesbit said that the House initially had "zeroed out" GODR's FY2008 budget, as she had reported at the March 20 Commission meeting. The Institute for Continuing Judicial Education (ICJE) was similarly cut. Ms. Nesbit and Chairman Iannazzone then met with Sen. Preston Smith, chair of the Senate Judiciary Committee and member of the Judiciary Subcommittee of the Senate Appropriations Committee, to ask the Senate to restore the funds that the House had cut. The Senate Appropriations Committee restored GODR's original budget. The House and Senate versions of the state budget disagreed, so the budget went to Conference Committee, where three members of each house met together behind closed doors to reconcile differences in the budget. No public input was possible at that stage. When Ms. Nesbit saw the budget that came out of Conference Committee, GODR's state budget had been cut a total of \$250,000, \$150,000 of which the Committee replaced with registration funds that it believed GODR had access to.

Ms. Nesbit said the Senate Budget Office arbitrarily cut the GODR's budget because money was needed elsewhere. The budget office acted without considering that the registration funds were already budgeted for other needs by GODR. More oddly, the budget included GODR pay increases, increases in health care premiums, and other annual increases starting January 2008, based on the FY2007 budget. Combined with the last-minute cuts, the increases confirm that the budget office decision was arbitrary and not well considered. If the budget office wanted to eliminate GODR, it would have eliminated funding for staff positions and any annual increases for them.

Ms. Nesbit said it is always difficult to recover once one's budget is cut to zero. The AOC and the Supreme Court are working with GODR to make up the \$250,000 shortfall and to help in any way they can get that money restored in the next legislative session, she said.

Ms. Nesbit pointed out that in addition to GODR's and ICJE's budgets, the budgets of several different judicial and law-related state offices have been cut drastically in recent years, including the AOC, the prosecuting attorneys and the public defenders. Parts of the judicial branch seem to be picked by the legislature each year for scrutiny, Ms. Nesbit pointed out, and offices with administrative functions such as GODR and AOC are typically the ones targeted because legislators do not understand what the offices do.

Ms. Barton asked Ms. Nesbit if there was anything GODR or Commission should do to remedy the situation. Ms. Nesbit said GODR staff needed to travel the state to educate judges and legislators about GODR's function in the state's judicial system. Among the comments she heard from legislators is that judges in their

districts did not know what GODR did. She encouraged staff and Commission members to work harder to enlighten judges throughout the state about GODR's function and the services it provides the judiciary.

Mr. Morokuma said in exploring options to replace the funds cut by the legislature, he has looked at grant opportunities from organizations such as the American Bar Foundation and the Georgia Civil Justice Foundation. Those organizations do not fund operating expenses, however. The Association for Conflict Resolution (ACR), the national organization of which many Georgia neutrals are members, was another possibility for support, he said. ACR's Internet home page, however, discussed how to erase its deficit, so it was not a good candidate to approach for money. The best hope for funding is through a one-time emergency grant request to the Georgia Bar Foundation, which collects interest on lawyer trust accounts, or IOLTA funds, and distributes them throughout the state to enhance judicial administration. The Bar Foundation's application deadline is June 1, and GODR is working with AOC grant writers to submit an appropriate application on time. Mr. Morokuma reminded Commission members that he has requested letters from them in support of the grant application, which he will package with the application for submission. The application will ask for \$250,000 to replace the funds cut by the legislature, and Mr. Morokuma said the application and any communications with the Bar Foundation make clear that GODR does not intend to approach the foundation for such operating funds ever again.

Mr. Morokuma asked the Commission to consider raising the fees paid by neutrals who register with GODR as another option for raising funds. While the option may generate more money, it will not be enough to make up the \$250,000 shortfall. He noted that GODR currently has 2,200 neutrals registered, and because they renew every two years, about 1,000 neutrals can be expected to renew in any year. Most of those renewing neutrals pay \$25 and a few making more money pay \$125, so GODR can expect \$25,000 to \$30,000 in registration fee income every year. Those funds are earmarked for training and other programs that directly benefit neutrals and court ADR programs. Over the last several years, those registration funds accumulated to the point where the legislature took notice, and the recent budget cuts were partly the result of that pool of funds. If the registration fees were doubled to \$50 and \$250, Mr. Morokuma said he would expect some number of neutrals to drop their registrations, and it would be unreasonable then to expect that income from registration fees would necessarily double to \$50,000 to \$60,000. For background information, Mr. Morokuma noted that registration fees have been at their rate since 1997, when the \$100 fee was raised to \$125. The \$25 volunteer rate has been the same since 1994.

Ms. Manley pointed out that Tennessee charges neutrals \$200 a year to register, and charges and additional \$50 to register to handle domestic violence cases. Mr. Morokuma drew Commission members' attention to a comparison of fees that other states charge neutrals and fees that Georgia charges for other professional licenses. GODR is currently charging less than Florida, North Carolina and

Tennessee. Mr. Morokuma said he hesitates to raise fees on neutrals, but GODR must find ways to raise funds, especially if the Bar Foundation grant application is not approved.

[Attachment 1]

Chairman Iannazzone said it also was important for GODR to demonstrate to the legislature that it is exploring options for raising operating funds in addition to state funds. However, he said it was unreasonable to hope that GODR would become self-supporting through registration fees, as so many registered neutrals make very little money. Mr. Morokuma said the Bar Foundation also will be interested to know what other efforts GODR is making to recover from the budget shortfall and decrease dependence on state funds. He said other options include approaching the ADR Section of the State Bar, the ADRL Section of the Atlanta Bar, local ADR boards, and district court administrators for support and ideas.

Mr. Morokuma said former Commission member Prof. Yarn suggested that GODR make use of interns, externs, and research assistants from Georgia State University's undergraduate and law programs and other area schools to help GODR do its work. Among other ideas, Mr. Morokuma said he and Ms. Nesbit have discussed asking the State Bar's lobbyist to help advocate on GODR's behalf in the next legislative session. Ms. Nesbit said she plans to meet with Tom Boller, the Bar lobbyist, to learn the process GODR would go through to request the Bar's assistance. She suggested that GODR produce a one-page summary of its work and contributions to help people understand quickly the value of GODR. Also important, Mr. Morokuma said, is to appoint a member of the General Assembly to the Commission, a requirement that has been ignored for several years. Ms. Nesbit said she has given Mr. Morokuma a list of legislators who are also lawyers and good candidates for the Commission.

Prof. Yarn noted that the Ohio Office of Dispute Resolution has gone through similar problems every year for the past six years, and he suggested conferring with other state ADR offices about how they coped with funding issues with their legislatures.

Judge Auslander suggested that to fund GODR the Commission consider proposing legislation that would create a separate \$1-\$2 add-on fee per civil filing or criminal case in circuits that have ADR programs. The fees would be collected by the Superior Court Clerks' Cooperative Authority and administered by the Commission. Such a system would reduce GODR's dependence on state funds, he said. Mr. Morokuma said the current filing fee legislation that allows local ADR boards to collect up to \$7 per civil filing to fund local ADR programs could perhaps be modified by legislation to allow another fee to be collected for GODR.

Ms. Barton said for many years the president of the State Bar was an active *ex officio* member of the Commission, and she hoped to revive that relationship. It was through close collaboration with the Bar that lobbyist Tom Boller was able to help the Commission enact the current filing fee legislation. Although each Bar

president has been listed as a Commission member, Ms. Barton said she doubted if any of them had gotten notice of their appointment from GODR. Mr. Morokuma agreed that GODR has not taken advantage of the opportunity to maintain close ties to the State Bar and that it was important to open those lines of communication again.

Ms. Hicks expressed concern that any efforts to change statutes carry the possibility that there will be unintended negative consequences for local court programs. Mr. Morokuma agreed that trying to change the filing fee legislation is not an ideal solution, especially considering GODR's recent history with the General Assembly. However, the Commission must consider all possible avenues to address the budget crisis, he said.

Mr. Coleman asked how many of the registered mediators paid the \$25 fee v. the \$125 fee and suggested a graduated fee schedule based on years of registration. Mediators who make less than \$2,500 every two years perhaps should not be in the mediation business, he said. A lot of lawyer mediators are making a lot of money, and they can afford to and be expected to pay a higher fee. Chairman Iannazzone responded that many court programs rely on volunteer mediators, especially in the lesser trial courts. He thought it may be possible to institute an escalating registration fee system based on income, with a provision for lowering the fee for neutrals who perform confirmed pro bono work. Mr. Morokuma said any fee increase should be considered in light of the fact that many mediators and judges do not know what GODR does. He said he would feel he would have to justify any fee increase by promising increased services to neutrals and courts in return. He said perhaps three-quarters of all registered neutrals pay \$25 and sign affidavits swearing that their income from ADR services justifies their paying the lower fee.

Ms. Manley expressed shock that so many mediators attest that they are justified in paying only \$25. Ms. Primm informed the Commission that in her experience a great many people take mediation training and register with GODR who never mediate in the Georgia courts. She said the Justice Center trains many people who work in human resources or in the employment discrimination field for the federal government, who likely will never mediate in the courts and never be paid for ADR services. Those people nonetheless seek the credential of Georgia registration, and to raise registration fees would be a mistake.

Chairman Iannazzone asked the members of the Budget Committee to work with Mr. Morokuma to try to develop some proposals for long-term funding by the September Commission meeting, if possible.

Ms. Barton suggested that it would also be helpful to examine the services that GODR provides and see if improvements should be made. Mr. Morokuma agreed that it was important for GODR to provide needed services. He noted, however, that the number of registered neutrals has doubled since the GODR staff was expanded to four. The administrative functions of the office around neutral registration have grown to overtake the staff's ability to provide the other

functions it is mandated to do. GODR requested funding for a new staff position from the legislature so it could perform all of the office's functions better. That requested was not granted, and Mr. Morokuma felt that the staff could not effectively take on any more administrative functions. He said the office is exploring other options for getting more work done at little or no cost.

c. Nominations for Commission Members

Mr. Morokuma reminded Commission members and guests that GODR is collecting nominations for Georgia Bar members to succeed Ansley Barton and Raye Rawls, who were due to rotate off in February.

d. Child Support Guidelines Training Compliance

Mr. Morokuma reported that there still about 200 domestic relations mediators -- about a third of the total registered -- who had not sent GODR documents attesting to their having taken an approved 6-hour course on Georgia's new child support guidelines. Since January 1, 2007, they have not been permitted to mediated cases that may involve child support issues. Notices will soon go out to those neutrals that after June 30, 2007, those who still had not taken an approved training would be prohibited from mediating any domestic relations cases. After December 31, 2007, those who still had not taken an approved training would lose their domestic relations registrations entirely. Mr. Morokuma said that the online and video replay of the October 13, 2006, ICLE seminar is the only remaining opportunity for neutrals to take an approved training. Chairman Iannazzone asked the program directors to send the message to their neutrals that they need to get this training if they want to retain their domestic registrations. Mr. Morokuma said a list of domestic relations mediators who had not taken an approved training yet is posted on GODR's homepage. The list is updated about once a week, and he asked people to call the office if they see errors in the listing.

e. Annual Report

Mr. Morokuma reported that Ms. Wini Stephens, associate director of the Fulton County Landlord/Tenant Mediation Program, has been working to compile court program statistics for GODR's FY2006 Annual Report. He said the schedule was to get the report printed and distributed in July. The report will be sent to all judges in the state, all the ADR court program directors, and friends of GODR.

e. CE Audit

Mr. Morokuma reported that Ms. Stephens is also helping GODR with the annual CE audit of neutral registration renewals. A total of 57 neutrals had been selected at random to send in documentation that shows that they actually took the CE

hours they claimed on their 2006 renewal application. He said he expected the audit would be completed in about a month.

f. Court-Connected ADR in the News

Mr. Morokuma alerted Commission members to a recent article in the *Savannah Daily News*, which reported a decision by the Chatham County judges that nearly all civil cases in the county courts would be referred first to an ADR process before coming to court. The article featured a photograph of Commission member Judge Louisa Abbot. Mr. Morokuma said the decision to make ADR the rule rather than the exception was revolutionary and demonstrated a strong commitment to ADR by the Chatham County judges. Included with the story was a copy of an editorial from the newspaper supporting the judges' decision. Mr. Morokuma said he found it ironic that GODR's budget would be threatened with elimination at the same time that ADR is thriving in Chatham County.

[Attachment 2]

g. Upcoming Activities

Mr. Morokuma reported on several upcoming activities:

- The 2007 ADR Institute and Neutrals' Conference is being planned. It will be a one-day conference, held in October at State Bar headquarters.
- The long-scheduled juvenile court mediation training in Waycross had to be cancelled due to the proximity of the fires burning in the Okefenokee Swamp. GODR is waiting for the Waycross program to give the OK to reschedule there.
- Ms. Rawls is organizing a summit on juvenile mediation to help draw more attention and respect to the field and to explore avenues for growth and improvement. Anyone interested in helping was urged to contact Ms. Rawls.

5. Committee Reports

a. Committee on Training and Credentials: Bobby Glenn

Mr. Glenn reported that the committee took up two neutral credentialing matters on appeal from GODR's denial of registration: one appeal was denied, the other appeal was granted subject to certain conditions. The decisions were unanimous.

The committee heard a proposal by Ms. Primm of the Justice Center. The Justice Center offers a 40-hour training that combines a 28-hour general mediation training with a 12-hour general mediation practicum. Ms. Primm asked that the committee to consider allowing the Justice Center to count up to 2 hours of

homework toward the 40-hour total, at the trainer's discretion. After discussion, a motion was made and seconded to accept the Justice Center's proposal. Upon a vote, the motion passed unanimously, Mr. Glenn said. The decision was effectively immediately,

Mr. Glenn reported that the committee once again discussed the idea of increasing the number of hours required for a domestic relations mediation training from 40 hours to 42 hours, to allow trainers time to cover the more complex Georgia child support guidelines. The additional 2 hours could be used for class time or homework, at the trainer's discretion. Mr. Morokuma said he spoke with all of the approved domestic relations trainers, and they reported that they agreed that the increase in hours was needed. Most had been training for more than 40 hours. Mr. Glenn said a motion was made and seconded in committee to increase the length of a required domestic relations training from 40 hours to 42 hours, effective July 1, 2007. Upon a vote, the motion passed unanimously. Because the full Commission needed to vote on such a change, Chairman Iannazzone entertained the motion from the Training and Credentials Committee, which did not require a second. Upon a vote, the motion passed unanimously.

b. Committee on Ethics: Judge Iannazzone

Judge Iannazzone reported for committee Chair Judge Cynthia Wright. He said the committee reviewed 14 neutral applications: 10 were approved, 1 was denied, and 3 were held for further information.

6. New Business: Judge Iannazzone

Judge Iannazzone reported that the dates of the next several Commission meetings had been decided. They are July 18 and September 19, both Wednesdays. Unless otherwise noted, the meetings would be held in Atlanta.

The meeting was adjourned.

The Commission went into Executive Session.

Attachments:

1. Fee schedule in other states
2. Savannah Daily News article featuring Judge Louisa Abbot