

MINUTES: SEPTEMBER 18, 2008, MEETING
GEORGIA COMMISSION ON DISPUTE RESOLUTION

Judge Joseph Iannazzone called the meeting to order. In addition to Judge Iannazzone, Commission members present were: Judge Charles Auslander III; Wade Coleman, Esq.; Bobby Glenn, Esq.; Alan Granath; Marti Kitchens; Justice Hugh Thompson; and Judge Cynthia Wright. Judge Louisa Abbot; Dale Hetzler, Esq.; Judge David Irwin and participated by phone.

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

1. Visitors:

Judge Iannazzone welcomed the visitors, who were Patti Anderson, Cobb County ADR Program; Melissa Heard, 7th District ADR Program; Elmira Barrow, Coweta Circuit/Carroll County ADR Program; Deborah Blanton, DeKalb County ADR Program; Theresa Christina, 10th District ADR Program; Tracy Johnson, 6th District ADR Program; Valerie Lyle, Ninth District ADR Program; Linda McClellan-Horvath, 10th District ADR Program; Debra Nesbit, AOC; Nancy Parkhouse, Clayton County ADR Program; Reba Ramey, 9th District ADR Program; David Ratley, AOC; Brenda Sutton, Macon and Houston Circuits ADR Program; and Jerry Wood, Fulton County ADR Program.

2. Minutes:

A draft of the March 20, 2008, meeting minutes was submitted for review. Judge Auslander asked that the report from the Rules Committee, which he chairs, be amended in the following ways: in paragraph 1, strike the word “private,” and add at the end of that sentence, “if [the parties] do not opt out of the mediation program.” He said he would provide Mr. Morokuma with the exact language for the amendment. The minutes were approved as amended. (The May 22, 2008, meeting was cancelled due to the lack of a quorum. Therefore no minutes are available.)

3. Senior Judges’ Mediation Training: David Ratley, AOC

Mr. Ratley, director of the Administrative Office of the Courts (AOC), reported that at the last meeting of the Judicial Council of Georgia, council members learned that the Council of Superior Court Judges had decided to curtail its senior judges program, effective September 1, 2008, because of budget constraints. There would be no more funds to pay senior superior court judges to handle new cases or to continue handling the cases they had already taken on.

Chief Justice Leah Sears asked the AOC to look into the effects on the judiciary of that action. Mr. Ratley said the AOC estimates that the senior judges program accounts for about 20 percent of the judicial manpower available and about 35 percent of the case dispositions. Also,

according to the AOC, there were 1 million open or backlogged superior court criminal and civil cases as of August 1, 2008.

While the AOC will monitor the open and backlogged cases, Mr. Ratley said it was obvious from these figures that the judiciary needed a new “safety valve” to help it dispose of cases. After talking with other states that had similar issues and after consulting with GODR, he said the AOC developed a proposal to train approximately 30 senior superior court judges as mediators. The training would involve a total of 112 hours of training, comprising training for registration in General Civil Mediation, Domestic Relations Mediation, and Specialized Domestic Violence Mediation. The plan also includes some follow-up training in settlement conferences for these judges and those senior judges who are already registered mediators. Training in judicially hosted settlement conferences is not normally available to judges through the Institute for Continuing Judicial Education and is not a training offered through GODR. Mr. Ratley noted that Judge Philip Etheridge is providing judicially hosted settlement conferences in the Atlanta Circuit with great success. Approximately 52 senior judges are what the AOC characterizes as “active,” and of those, 10 to 12 have received some form of mediation training, though all may not be registered with GODR.

Mr. Ratley said he talked with several district court administrators and asked them to talk to their chief judges to see if they would be interested expanding their ADR programs or establishing new programs and referring cases that until now have not been sent to ADR. The response was very positive, he said. The state would not be paying the judges to attend the training nor reimbursing them for travel expenses, although the state would be paying for the training itself. Many of the ADR programs said they would be able to reimburse their senior judges for travel expenses in exchange for what the state would require of the judges – a guarantee of their availability for court-connected cases for at least two years.

Also, Ms. Nesbit shared this plan with members of legislative budget committees, Mr. Ratley said, and they were impressed that the judiciary was considering this action.

Because of the positive response to the plan, Mr. Ratley said, he is asking the Commission to authorize GODR to fund the mediation training for the senior judges and help put this plan in place. He said the AOC would work with GODR on the training and follow up, and the AOC would handle the logistics and planning. The benefits of the plan would be to provide a safety valve for judicial caseloads, to expand the scope of ADR to unserved or underserved areas in the state, and to broaden the types of cases that are sent to ADR, he said.

The total cost of the training would be approximately \$57,000, including travel costs for trainers and staff, Mr. Ratley said. That figure comprises about \$41,000 for trainers, \$350 for manuals, \$11,350 for food, facilities and travel, and \$4,100 for coaches. He also said he would ask the Training and Credentials Committee to examine the registration requirements to see if any portion of the requirements might be waived for these senior judges.

Mr. Ratley said he helped set up an ADR court program and learned about mediation at that time. He also said he has been a court administrator for 35 years, so he has learned much about judges. And he understands that some judges’ idea of mediation does not agree with his understanding of mediation or that of other mediators. But he said he also knows that some judges do take very well to the mediation training and practice according to the principles set

forth by the Commission. GODR's recommended trainers will be respected by the judges, he said, and he hoped to include some Georgia mediator judges as trainers and coaches in the process. He reiterated that using senior judges as mediators would provide a great resource to the state.

Judge Auslander asked if the AOC has heard directly from the senior judges themselves about whether they would be interested in serving in this capacity. Mr. Ratley said the response has been positive. However, he said the AOC did not broadcast this plan to all senior judges, but rather made discrete inquiries to judges whom they thought would be interested. Judge Iannazzone asked if the program could be opened up to senior judges in other classes of court. Mr. Ratley said if 30 senior superior court judges cannot be found to participate in the program, the AOC would look next to superior court judges who would become senior judges on January 1, 2009, such as Hon. Anne Workman in DeKalb County, Hon. Arthur McLane in Valdosta, Hon. Ken Followill in Columbus, and others. If there is still not enough interest, then the AOC would look to the senior judges in other classes of court for judges who are otherwise qualified to be superior court judges. It is more efficient to train as many judges as possible at once, he noted.

Mr. Glenn asked if the senior judges, once trained, would be charging for their services as mediators. Mr. Ratley said he assumed that they would. Mr. Glenn then asked who would set their rate of compensation. Mr. Ratley responded that the market would set that rate. Mr. Glenn asked if the judges would be handling both court-annexed and private cases. Mr. Ratley said he expects the judges to commit to serving as court-annexed mediators for two years in exchange for being provided the training at no cost, but that the obligation would not prevent them from mediating privately. Mr. Glenn asked if the senior judges' colleagues on the bench would be appointing them to mediate cases. Mr. Ratley said he assumed that the judges would refer cases to the ADR programs and let the programs assign the cases to the mediators. But he also said that if some types of cases that had not previously been referred to mediation were referred, that those cases may have to be handled by the mediator judges. He added that some district court administrators said they may be willing to pay the travel costs of senior judge mediators to serve in jurisdictions that may not have any or enough senior judge mediators of their own.

Mr. Coleman said most of the judges he knows who take senior status are well compensated by their state retirements, and some of them are also fairly well off financially. He asked why they wouldn't be willing to pay their own training expenses to serve as mediators. Mr. Ratley replied that many senior judges would not consider themselves to be recipients of huge state retirements. Senior judges receive 74 percent of their state salary, Mr. Ratley said. Justice Thompson said that after 16 years, a judge can draw two-thirds of his or her state salary, and get another percentage point increase for every year after 16 years, up to 75 percent. He noted that senior judges also do not receive county supplements, as they did before they took senior status, so financially they are not necessarily well off. However, Mr. Ratley said, the state was most concerned with putting on the mediation training. Compensation arrangements for the senior judge mediators would be up to their local court programs to decide, he said.

Judge Wright asked if there weren't already enough mediators statewide to handle the caseload. Several other Commission members echoed her sentiments. Mr. Glenn noted that his mediation practice has shrunk dramatically in the last several years because there are so many mediators entering the field. He said the trainers are doing a fine job, but they make their money training,

and there isn't enough work for the mediators to do. He said he would not want to see the Commission, at its own expense, train judges to compete with existing mediators who are already struggling to find enough work. Very few people in the state can make a full-time living through mediation, he said. Mr. Ratley said he cannot speculate why existing mediators are underutilized, but he said the senior judge mediators' involvement would broaden the types of cases that are sent to mediation rather than the judges competing for existing case types. Mr. Glenn said the senior judge mediators may get work because their colleagues on the bench would refer them cases. He pointed out that the best model of mediation is where the parties get to choose their mediator. Mr. Ratley replied that he assumed that parties would always have that choice. Mr. Glenn said if a judge assigns a senior judge to mediate a case, the parties would be put in a politically awkward position if they asked instead to choose their own mediator. Mr. Morokuma noted that GODR has strongly discouraged judges from playing any part in assigning mediators to cases for that very reason. Such a hands-off policy insulates the judges and the mediators from any accusations of undue influence or bias. So mediator assignments should be made the local ADR program, if at all, he said. Mr. Ratley said his experience with mediation was that judges took themselves out of the process of assigning mediators, as in a recusal. But he said he also knows that there are cases that are not referred to mediation that could be referred.

Justice Thompson pointed out that most senior judges work only piecemeal, perhaps several times a month. And he said his understanding of the proposal was that a lot more cases that aren't being referred to mediation will start to be, so these senior judges will be mediating new types of cases rather than the same cases that are being referred now. Mr. Coleman said in his area, all civil cases are already sent to mediation, so there aren't any new types of cases that the senior judges would handle.

Judge Iannazzone said the best use of senior judges was as early neutral evaluators or in judicially hosted settlement conferences. He hoped that such training could be incorporated into the proposal.

Mr. Glenn asked again why the state should pay to train judges to compete with private mediators for whom the state did not pay. He pointed out that other judges, including Judge Abbot, have taken mediation training without state subsidy. Judge Abbot concurred that she knows of several senior judges who have taken mediation training at their own expense with no expectation that the state would pay. She also asked where in the budget would the Commission find \$57,000 to pay for the training. Judge Wright said she disagreed with a proposal that calls for the Commission to pay for the senior judges' training and also allows the judges to skip some of the registration requirements. Mr. Ratley reiterated that he was merely asking the Commission to look at whether some requirements could be waived in this case.

Mr. Morokuma said there is enough money in the budget this fiscal year to cover the cost of the training. The main reason is that GODR did not spend the last \$83,000 check from the Georgia Bar Foundation grant of \$250,000, and GODR has asked the foundation to extend the grant into this fiscal year. The grant funds, plus what could be available in registration fees, would support the training costs, despite a 2.5 percent overall cut in state funds and another 6 to 10 percent cut that's been requested.

Judge Abbot said if the Commission were to pay for their mediation training, the senior judges would need to commit to conducting some court-connected mediations at no cost or at reduced cost to the parties. The concern is valid, she said, that the Commission would pay for judges to compete with mediators who did not receive free training. And, she said, it was realistic to worry that the senior judge mediators would take work away from existing mediators because parties would seek the judges out for their opinions on trial outcomes. Judge Iannazzone agreed that without some *quid pro quo* from the judges, the program would be perceived as an effort to replace lost income for senior judges after the cutting of the senior judge program. Several Commission members agreed that the proposal seemed to them to be exactly such an effort. That conclusion is inevitable, Mr. Glenn pointed out, when one sees that all senior judges could get trained and registered at their own expense and mediate all the cases they want.

Mr. Hetzler said that registered neutrals may protest if their registration fees and the State Bar grant are used to train competitors in an already competitive market. Judge Abbot also questioned the expectation that other types of cases would be opened up to mediation; in her circuit, all civil cases are referred to mediation unless they are specifically exempt as being inappropriate for mediation. And a local mediation center in Savannah handles the cases at virtually no cost, she said. She said she did not see how the proposal would serve to reduce any backlog in cases, if such a thing exists. A more attractive proposal might be to require these senior judge mediators to go to areas of the state underserved by mediation and take on for no pay some number of difficult cases like *pro se* child support cases, she said. Judge Irwin agreed that the judges should pay their own way to participate in the ADR system just as everyone else has done; to have them do otherwise would send an unproductive message to registered mediators. It is not the Commission's place to supplement the retirement income of senior judges, he said. Mr. Granath said he perceived a danger under this proposal of creating a two-tiered system – judge mediators and everybody else – with two different sets of registration requirements and two different pay scales.

Judge Iannazzone asked how soon the plan would be implemented, if approved. Mr. Morokuma said that because the senior judges would no longer be available to the superior courts in two weeks, he understood that the need was to get them trained and registered as quickly as possible. No training schedule had been set yet, but he estimated that the training would take at least two months, since the total number of training hours required is 112 hours. Mr. Ratley said he hoped to complete the judges' training by the end of the calendar year.

Mr. Morokuma asked Judge Abbot if he understood her to agree with other Commission members that under the proposal mediators would be fighting over the same types and number of cases rather than an enlarged pool of cases. She agreed. She said in her circuit, there are no senior judges, but acknowledged that other circuits depend heavily on the work of the senior judges, and the loss of their services is significant. But she said in her experience senior judges were most helpful in handling criminal calendars, so she questioned the proposal's assumptions about the effect of senior judge mediators on civil calendars. She also restated her concerns about the political implications of using funds from a reduced budget to support judges who are by and large in as good a place financially as any other person wanting to get mediation training. Judge Wright concurred, even though her circuit relies heavily on senior judges and she and others on the Commission could eventually become senior judges themselves. She also restated fears that it is likely that sitting judges would involve themselves in funneling cases to the senior judges. She said she felt the proposal was wrong legally, politically and morally.

In the interest of giving Commission members all available information, Mr. Morokuma recounted for the Commission one of the arguments he has heard in favor of the senior judges training proposal. He said he understood the chief justice's main concern during this budget crisis to be the judiciary's ability to meet its constitutional obligations in criminal cases and to dispose of civil cases in a timely manner. With the loss of the senior judges, the call has gone out to members of the judiciary "team" with resources to find new ways to help the judiciary dispose of cases as efficiently as possible. The Commission is uniquely positioned to help the judiciary team in this time of need, he said. The benefits to the ADR system would be the creation of ADR programs where they don't exist now and an increased understanding of and appreciation for the enormous role that ADR plays in the court system. Also, the Commission and GODR would stand to gain friends in the judiciary and in the legislature. Mr. Morokuma said he was reminded recently that the Supreme Court created the court-connected ADR system in 1992 primarily as a case management system for the judiciary. Of course, the system benefits mediators, trainers, and many others, he said, but its basic purpose is the help manage the judicial caseload. The proposal to support the training of senior judges as mediators was a call to duty for the Commission, he said. It has been presented as an opportunity for the Commission to help the team, and the team would eventually be able to show its gratitude for the help, he said.

Mr. Morokuma explained that for the proposal to work, a framework of rules around judicially hosted settlement conferences would have to be created so that the judges would ethically be able to provide the services for which they are uniquely qualified – giving their opinions on the legal strengths and weaknesses and likely outcomes of cases, based on decades of experience on the bench. Such opinion giving is discouraged under the current ethics rules for mediators. He said to refer to the unique service the judges would provide as "mediation" would further muddy what is already an increasingly misunderstood term.

Judge Iannazzone said he could see how creating this new framework around judicially hosted settlement conferences or early neutral evaluators would be a more palatable proposal because the judges would not be competing with mediators but providing a unique service. But he said the consensus on the Commission seemed to be that it should be not providing training to senior judges that is readily available in the marketplace and that the rest of the ADR community pays for out of their own pockets. He determined that no vote was necessary on the proposal because no motion was made.

4. Recognition of Betty Manley

Judge Wright asked that the Commission take a moment to remember Commission member Betty Manley for her numerous contributions to the ADR community and courts. Ms. Manley died August 3, 2008.

5. Director's Report: Shinji Morokuma

a. Budget Update

GODR's state appropriation actually rose from 37 percent of funds requested in FY08 to 50 percent of funds requested in FY09, an increase of \$50,000, Mr. Morokuma said. The total state appropriation for FY09 was approximately \$196,000. However, the legislature requested that all state offices cut 2.5 percent from their budgets, which reduced GODR's budget by \$15,000. Then the legislature requested that the judicial branch offices submit proposals to cut their state appropriations by 6 percent, 8 percent and 10 percent. Including all reductions, GODR's state appropriation could range from \$163,000 to \$170,000, depending on the percentage cut by the legislature. GODR will not know its final FY09 state appropriation until April 2009, he said. Even at the lowest proposed state appropriation, GODR would be able to operate by combing about \$140,000 in saved registration fees, about \$60,000 that it collects annually in registration fees, and the remaining \$83,000 of the Georgia Bar Foundation grant.

The legislature has requested the same budget reductions for FY2010. So GODR will start with \$196,000 and submit proposals to reduce that by 6, 8 and 10 percent. The uncertainty of GODR's operating budget in FY2010 is one reason why Mr. Morokuma said he is asking the Commission to consider increasing the registration fees neutrals pay every two years. The legislature has made clear to GODR that it expects the Commission to raise registration fees as a way to reduce the need for state appropriation.

b. Trainings

Mr. Morokuma said GODR has greatly increased the number of trainings it sponsors, particularly on updates to the child support law and the new parenting plan law, subjects that are important to domestic relations mediators. He noted that in June the Clayton County, Coweta Circuit and 6th District ADR programs sponsored a seminar on updates to the child support guidelines, but GODR was able to help the seminar earn approval from ICLE so the lawyers who attended could receive CLE credit. In addition, GODR has sponsored trainings for DeKalb County in Decatur, the 7th District in Cartersville, the Southern Circuit in Valdosta, and the 10th District in Washington, Ga. Attendance at the seminars has quite high, including more than 60 in Decatur, 30 in Cartersville, 40 in Valdosta, and 40 in Washington, he said. With help from the local program directors, GODR has invited not only local mediators in the jurisdictions but also judges' law clerks and members of the local bars. The feedback from the seminars indicates that no one else is providing seminars on these topics, he said. Several domestic lawyers approached him after the seminars to say that they were not aware that the laws had changed and that they appreciated GODR's sponsoring the seminars.

Mr. Morokuma said that Jill Radwin, staff attorney to the Child Support Commission, who had been leading the seminars on the child support guidelines, is battling cancer. One of her staff members has taken over for Ms. Radwin at some seminars, but that office's calendar as getting full. However, he said he heard that they may be willing to conduct more seminars if GODR was willing to pay their travel expenses, so more trainings in more communities may be available. Mr. Morokuma thanked Commission

member Marti Kitchens for leading the seminars on the new parenting plan law. He said the seminars combining the child support guidelines and the parenting plan law are an important learning opportunity for mediators and lawyers doing domestic work.

Mr. Morokuma pointed out that he or Ms. Davenport have been at every one of these trainings to introduce the speakers and get to know mediators and lawyers in the local communities. He said it was important for neutrals and other to know about GODR and what it does and for them to associate people with GODR.

Ms. Radwin and her assistant Elaine Johnson also will be leading a child support seminar at the annual ADR Institute and Neutrals' Conference in October, Mr. Morokuma said. An important factor in increasing attendance at these seminars has been the fact that CLE credit is available to lawyers, along with neutral CE, he said. When he was in Valdosta, he said he was told that a CLE seminar has never been offered in that area, so GODR may be able to exploit that niche in the Southern Circuit with future seminars.

Because Ms. Radwin is ill and her office may be unavailable, Mr. Morokuma said GODR plans to record Ms. Radwin's seminar presentation and make it available for viewing via GODR's webpage. That way neutrals across the state would have the benefit of learning from Ms. Radwin's seminar. He suggested that the same process might be used for Ms. Kitchens' seminar on the parenting plan law.

GODR also recently sponsored a training in Atlanta on how to screen mediation cases for domestic violence. The training was attended by about 20 court staff members from 11 different ADR program around the state, including Columbus, Savannah, Gainesville, Macon, and Augusta. Mr. Morokuma thanked Ms. Davenport for organizing the training.

Next week, GODR is sponsoring a juvenile mediators skills review in Warner Robbins for the Houston County Juvenile Court ADR Program, Mr. Morokuma said. Ms. Kitchens and former Commission Member Raye Rawls will be leading the discussion, at which 30 to 40 attendees are expected. At the end of the month, GODR is sponsoring a general civil mediation training for 20 to 25 students for the 10th District in Athens.

Mr. Morokuma said the trainings have been a huge benefit as neutrals, judges, lawyers and others learn more about GODR's function in the ADR system and GODR staff meet more neutrals across Georgia. He planned for GODR to continue to sponsor trainings statewide as the budget allows.

c. Registration Renewal

The registration renewal season is planned to start October 1, Mr. Morokuma said. This year, neutrals will be able to renew online using GODR's new web-based registration system that has been in final development for a year. Instead of filling out paper forms and mailing them in with checks or money orders, neutrals will be able to log in to their accounts, check their personal information, enter their continuing education information, pay their registration fee through PayPal, and submit their applications, all from their computers. GODR staff benefit because they will not have to transcribe information into

the database or process paper checks. He hoped to demonstrate the system at the November Commission meeting.

d. ADR Program Directors' Retreat

Mr. Morokuma reported that the local ADR program directors held a retreat in Savannah in April. About 20 program directors from around the state spent a day and a half in discussions and seminars. It was a productive opportunity for the program directors, both new ones and veterans, to network and to share ideas and advice about how to better manage their programs, he said. Judge Abbot opened the seminar and welcomed the program directors. She also spoke at lunch about the creation of uniform court rules and specifically the new child support law as a member of the Child Support Commission. Also at lunch, Sen. Eric Johnson talked to program directors about how the legislative process works from his point of view as President Pro Tem, the second highest member of the Georgia Senate. Planning for the next retreat has not begun, but Mr. Morokuma said GODR is happy to sponsor the retreats.

e. ADR Program Data Collection System

Mr. Morokuma said most program directors are using an ADR data collection system that was designed by a GODR staff member in the early 1990s. The system is based on Microsoft Access software, which is becoming outdated. He said GODR is developing a new Web-based system that will not only collect data, but also help with producing letters and forms that court programs need. The system is expected to make it easier for the court programs to provide local statistics for GODR's annual reports. Tracy Johnson, from the 6th District, is helping GODR collect information on what the program directors need from the new system. An update of the current system has been need for a long time, he said, and GODR will proceed as the budget allows.

f. ADR Institute and Neutrals' Conference

The 15th Annual ADR Institute and Neutrals' Conference will be held October 17 at the State Bar Conference Center in Atlanta. Mr. Morokuma said the conference planning committee made a special effort this year to bring in speakers from outside of Georgia so attendees could see some new faces and hear some fresh perspectives. Georgia was not left out: Former Commission Member Doug Yarn and his colleague Greg Jones from Georgia State University College of Law, will present on the "Biology of Reconciliation." Mr. Morokuma said registration fees have gone down this year, and attendees can earn CLE and neutral CE credit. Pre-registration is already running ahead of last year's, he said, so expected attendance to be high.

Mr. Coleman asked if the Institute was televised. Mr. Morokuma said he believed that the conference was recorded on video but not televised.

[Attachment 1]

g. New Commission Member Search

Mr. Morokuma asked for recommendations for a non-attorney to fill the seat previously filled by Betty Manley. He said he hoped for candidates with some background in training, because Ms. Manley also sat on the Training and Credentials Committee.

6. Committee Reports

Committee on Ethics: Judge Wright

Judge Wright reported that the committee reviewed six applications for neutral registration. Of those, two were approved, one was rejected, and three were set aside to request more information.

Committee on Training and Credentials: Bobby Glenn

Mr. Glenn reported that he had a telephone conference with Judge Auslander, Commission Member Edie Primm, and Mr. Morokuma to discuss several applications for neutral registration. Most of the applications involved requests for waivers of some of the registration requirements. Mr. Glenn said the committee developed a rule of thumb to help with the waiver requests: have the applicants been using their neutral skills? So whether an applicant has been mediating would be a large factor in determining whether he or she would be required to retake a training that was more than 18 months old.

The committee also discussed the case of a registered attorney arbitrator whose age exempted him from CLE requirements and who wanted to be exempted from neutral CE requirements. Again, the committee asked whether he had been arbitrating regularly, which he had. So the committee decided to exempt him from CE requirements. Mr. Glenn said the committee would discuss later whether to recommend that the Commission's CE rules match those of the State Bar's rules.

Dr. Susan Raines of Kennesaw State University had asked the committee to clarify whether there existed a "30-day rule," that is, whether trainings leading to registration had to be completed within 30 days of their start. Mr. Glenn said the committee found no such rule did not see any justification for such a rule. Notice would be sent to all approved trainers, he said.

The committee also decided that a letter of recommendation should not be necessary for registration in Specialized Domestic Violence (SDV). Mr. Glenn asked Mr. Morokuma to explain. Mr. Morokuma said the question of the requirement was raised Dr. Raines of KSU. She asked why a letter of recommendation was no longer required for registration in any other neutral category, but the SDV category, created in 2005, does require a letter specifically from a superior court program director who is familiar with the neutral's work as a domestic relations mediator. Mr. Morokuma said he was not at GODR when the rule was created, but he assumed that the letter requirement was designed to control the quality of mediators who registered in SDV, so that only those mediators who had experience in domestic relations, who had been mediating in the

courts, and who had been observed by a superior court program director would be permitted to register.

He said the committee discussed the issue at great length, but determined that there was a greater public policy interest in encouraging as many mediators as possible to receive appropriate training and become registered in SDV, because domestic violence can arise in most any mediation. The committee also decided that many domestic relations mediators who have worked in the courts have not had the opportunity to be observed by one of the few superior court program directors available; to arrange such an observation is logistically very difficult for the mediators and the program directors. The committee also was not convinced that the letter of recommendation requirement was actually doing the job of limiting SDV registration only to “high quality” domestic relations mediators.

Therefore the committee made a motion to eliminate the letter of recommendation requirement for registration in the category of Specialized Domestic Violence. No second was needed, and there was no discussion. The Commission voted unanimously to adopt the committee’s motion.

[Attachment 2]

Committee on Rules: Judge Auslander

Judge Auslander said the committee came before the Commission in March and indicated that it was working on modifying three rules, but wanted to give the program directors and neutrals an opportunity to comment on the proposed changes. The committee received several well-considered responses. The committee then met with about 20 program directors today and uncovered several issues that required more discussion. He said he intends for the committee to meet with program directors again at the November Commission meeting to continue what has been a fruitful dialogue.

One issue that remains is the fact that there is no uniform definition of court-connected, court-referred, or court-annexed in our rules. The committee will work on that issue and ask for the Commission’s review and the Supreme Court’s approval of a definition. Judge Auslander thanked the program directors for their input.

7. New Business

a. Proposed Atlantic Circuit Program

Mr. Morokuma said the Atlantic Judicial Circuit wants to start an ADR program. He traveled to Hinesville, Ga., in April and met with the circuit’s judges and law clerk to discuss what their needs were and to advise them on the steps to take to create an ADR program. He said the application from Chief Judge David Cavender provides the information required under the Commission’s rules, comprising a statement of existing resources, a demonstration of need, a description of the program, a budget for the program, and a demonstration of administrative capability. Mr. Morokuma said he asked the Atlantic Circuit not to submit local rules yet because the Model Mediation Rules were

going to be modified soon. If the Commission approves the circuit's application, the circuit will be able to start collecting the ADR filing fee to begin funding the program. He recommended that the Commission approve the application.

Judge Iannazzone noted that the application contains references to the Mediation Center in Savannah, and he asked the two Commission members from that area if they had any comments. Mr. Glenn said he thought there was a need for an ADR program in the circuit and made a motion to approve the application. The motion was seconded, there was no further discussion. The Commission voted unanimously to approve the Atlantic Judicial Circuit's application.

[Attachment 3]

b. Neutral Registration Fees

Mr. Morokuma reiterated the need for the Commission to increase neutral registration fees. He noted that the basic neutral registration fee has been \$25 every two years since 1992, when the Commission and GODR were created. The \$125 fee paid every two years by neutrals who earned more than \$2,500 by providing ADR services in the prior two years, has been \$125 since 1994. Adjusted for inflation, the \$25 fee should be \$40, and the \$125 fee should be \$185 today.

Mr. Morokuma said that the state legislature has told GODR explicitly that it expects fee-generating state agencies like it to increase their fees and reduce their need for state funds. GODR compiled a list of professional fees paid to other Georgia agencies and neutral fees paid in other states. He said in comparison to those other fees, GODR's current neutral registration fees are low. He said as he has traveled the state, he has asked mediators and program directors what they thought of the current registration fees. They all agreed that the fees were ridiculously low and the doubling the fees would not be unreasonable. In fact, he said, many asked why the fees haven't been raised already.

GODR generates an average of about \$60,000 a year in registration fees. Doubling the current fees may not result in the double the fees collected, Mr. Morokuma said, because some neutrals would choose to drop their registrations rather than pay the higher fees. He thought a more reasonable estimate would be \$100,000 in fees a year. He noted that registration with GODR is an important credential and the sole credential offered by the state to professionals in dispute resolution. It is a credential that is offered by a state supreme court. So its value may be even higher than double the current fees.

Mr. Coleman asked if it was reasonable to charge the fees annually and to find administrative efficiencies by sending bills via e-mail, for example. Mr. Morokuma said the administrative work is actually reduced by having neutrals renew every two years, rather than every year, thus spreading the work of renewing all neutrals over two seasons. Ms. Kitchens asked if GODR was considering raising original registration fee or renewal fees. Both were being considered for increases, Mr. Morokuma replied, though most neutrals pay the \$25 fee when they first register, some move into the higher bracket as they get more work.

Mr. Morokuma said he did not know what to recommend to the Commission. Judge Iannazzone said he would hesitate to more than double the fees because many mediators are not making much money and anything more would be a big shock to neutrals. Mr. Morokuma said about 70 percent of registered neutrals pay the \$25 fee, while 30 percent pay \$125. Judge Auslander suggested that everyone be charged the same rate of \$100 or \$125. Ms. Kitchens asked if the original registration fees and the renewal fees could be considered separately. Judge Wright asked how GODR could know how much neutrals have earned from providing ADR services, and she speculated that trying to get that information would increase GODR's administrative work dramatically. Judge Iannazzone said he suspected that many neutrals were underpaying their fees.

Nancy Parkhouse from Clayton County said many mediators are students, like those in the Fulton County Landlord/Tenant Mediation Program, so she opposed making the fees unaffordable for such neutrals. While many court programs rely heavily on their volunteer mediators, many of those court programs also pay their volunteers' registration and renewal fees, Mr. Morokuma said. Deborah Blanton from DeKalb County said she preferred a two-tiered fee structure that recognized that many neutrals are volunteers, although she said it was obvious to her that many mediators were paying the lower fee when they should be paying the higher one.

Judge Iannazzone said the State Bar of Georgia charges new members lower annual dues that gradually increase with years of membership. He suggested a similar formula for neutrals. That way mediators who were new to the field or volunteering would pay a lower fee than those who were more experienced. Mr. Coleman said he liked that idea.

Ms. Johnson from the 6th District said she liked Florida's system of charging separate fees for every category of court the neutral was certified to work in. Mr. Morokuma responded that GODR has not considered such a system yet, but it has considered asking for a separate fee each time a neutral asks to add a registration category, since each such request takes GODR staff administrative time to process.

Mr. Granath said he would like to see the higher fee disconnected from neutrals' earnings. Also, because fewer neutrals than should be are paying the higher fee, he said, it would be helpful to develop an algorithm that helps maximize income for GODR. He noted also that the cost of entry into the field is relatively low, too low compared to the cost of entry into other professions. He felt that the cost of entry into ADR should be high enough to adequately reflect how seriously the Commission wishes people to take ADR as a profession and should be high enough to discourage all but those who are serious about joining the profession. The low fees cheapen the credential, he said.

Judge Auslander asked if one higher fee could be paid by everyone except those who can prove they are students or those who can prove they serve only as volunteers for court programs. Mr. Morokuma said the current registration and renewal forms already require applicants to affirm by signature that they should pay the lower fee because they are volunteers or earned less than \$2,500 in the previous two years providing ADR services. Judge Auslander suggested having the program directors confirm officially that the applicant is a volunteer for the court program. Ms. Kitchens pointed out that some

mediators volunteer for court programs but also provide fee-for-service mediation as well, and program directors would not necessarily know that.

Judge Wright made a motion to approve a fee structure of \$100 for registration and \$100 for renewal, with exceptions made for students. Mr. Glenn seconded the motion. Ms. Davenport warned that the \$100 flat fee in the motion is too high and will debilitate court programs that rely heavily on new and volunteer mediators. She suggested a fee structure tied to the number of cases neutrals handle, data that GODR already collects from each mediator.

Because the meeting lost its quorum, Judge Iannazzone suggested a discussion and vote via conference call later. He said he understood the urgency of getting a decision on the fees quickly.

[Attachment 4]

c. *Cook v. Cook* Domestic Mediation

Mr. Morokuma asked Linda McClellan-Horvath of the 10th District to talk about a murder-suicide that arose out of a court-connected divorce mediation in Athens. He said Commission members may learn about the incident, and he wanted them to have a more accurate account of what happened. Ms. McClellan-Horvath said the case was handled through her office. It was reviewed according to standard procedure, and there were no indications, allegations or legal history of domestic violence between the couple. The case was deemed appropriate for mediation and was mediated on August 21, starting at 9 a.m. and ending around noon. The parties did not reach a settlement. At 4 p.m. that day Mr. Cook called his wife's attorney and said that he had killed Ms. Cook. The attorney called 911. When police arrived at the couple's home, they found Ms. Cook had been beaten to death with an aluminum baseball bat and Mr. Cook had shot himself to death.

Ms. McClellan-Horvath said she was at home when she learned of the incident and immediately returned to her office to review the Cook file again to see if any legal actions had transpired between the parties since the file was first reviewed. She found no new civil or criminal information that would indicate any history of abuse or violence between the Cooks. She also spoke with Ms. Cook's attorney, who said she had no indication from her client that there had been violence between her and her husband or that she feared him in any way. There was never any reason for the ADR office to suspect or screen for abuse or violence in this case, Ms. McClellan-Horvath said.

Mr. Coleman said he felt the violence was coincidental and was not related to the mediation in any way. He said Mr. Cook was upset because a judge had voided his pre-nuptial agreement and then put both parties back in the same house. Ms. McClellan-Horvath noted that it was the judge's policy to require that all firearms be removed from the marital home during divorce proceedings, but Mr. Cook was able to acquire a firearm.

Mr. Morokuma said he wanted Commission members to understand from Ms. McClellan-Horvath that the ADR system worked exactly as it was designed to do in this case. No one involved, including the court staff and the mediator, had any reason to

suspect a violent end to the case. Nothing that occurred in the mediation put anyone in danger. This case also highlights the fact that violence can occur arise out of any case and emphasizes the need for court program to screen cases carefully for violence and abuse as the ADR rules require, he said.

[Attachments 5 and 6]

d. Next meeting date

The next meeting of the Commission was scheduled for November 20, 2008.

The meeting was adjourned.

Attachments:

1. Program for 15th Annual ADR Institute
2. Dr. Susan Raines' letter to Commission
3. Atlantic Judicial Circuit ADR Program Application
4. Fee chart for registration, licensing
5. *Cook v. Cook* article
6. *Cook v. Cook* article

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

ADDENDUM
MINUTES: SEPTEMBER 18, 2008, MEETING
GEORGIA COMMISSION ON DISPUTE RESOLUTION

The Commission lost its quorum on September 18, so was unable to conclude discussion or vote on whether or not to increase neutral registration fees.

On September 22, Mr. Morokuma sent an e-mail to all Commission members asking them to consider a proposal to double the current registration and renewal fees to \$50 and \$250 every two years, effective October 1. He explained that GODR planned to open registration renewal on October 1. A motion was made to double registration fees effective October 1, 2008, and the motion was seconded. On September 24, Chairman Iannazzone tallied the e-mail votes, and the motion passed by a vote of 8 to 2, out of 15 Commission members.

On September 25, a motion for reconsideration of the vote was made and seconded. This motion suspended the effect of the vote on the prior motion. On September 26, Chairman Iannazzone put the motion for reconsideration to an e-mail vote. On September 30, the motion for reconsideration passed by a vote of 7 to 4, out of 15 Commission members. Therefore the doubling of registration fees effective October 1, 2008, was suspended.

Chairman Iazzazzone postponed any further discussion of the issue of increasing registration fees to the November 20, 2008, meeting.

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