

# Alternatives



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# ADR BRIEFS • ADR BRIEFS • ADR BRIEFS

## WHO ELSE WILL STEP UP? A MENTOR PLAN SEEKS TO SPREAD ADR DIVERSITY

A veteran Pittsburgh attorney-neutral, fresh off the completion of a one-year mentor fellowship he designed and funded, is readying a diversity plan he hopes will be replicated by conflict resolution practitioners coast to coast.

The goal, says mediator Robert A. Creo, is provide access to ADR experience to younger attorneys stymied by provider panels that require stiff training and calendar minimums.

"I was trying to learn more about ADR," says Dispute Resolution Fellow

Cassandra J. Georges, who finished the year-long stint at Creo's Impartial Dispute Resolution Services in Pittsburgh last August, and continues to work on efforts promoting the idea, including, at year-end, wrapping up the diversity plan with Creo. "But the handful of people who actually do this had a unanimous answer: You have to come back in 20 years."

Creo and Georges say apprenticeship is useful and beneficial for the individuals involved and for the profession—and not hard to construct. Both expected to complete a final statement of goals and an outline of Georges' fellowship responsibilities that they say can serve as a mentor's program, in early 2008.

Both also look at diversity broadly. They said it shouldn't be difficult for the conflict resolution profession to get younger, as well as make better use of minority and female talent. Creo says that he started his career in the kind of mentor relationship their report will advocate. He says it allowed him to get valuable labor arbitration experience within two years of graduating law school in the 1970s. "As a young person, I was able to get cases and establish myself," he explains.

Creo concedes that the labor market 30 years ago was narrower. "But," he adds, "the profession isn't stepping up to

(continued on next page)

Cartoon by Leo Cullum



"AND, WHILE YOU WERE UNDER ANESTHESIA, YOU BELIEVE YOUR DENTIST MILKED YOU?"

# ADR BRIEFS • ADR BRIEFS • ADR BRIEFS

(continued from previous page)

the plate and developing sustaining 'mentorship' relationships." Training should be a "minimum platform," he says, and the "whole [entry] model should be revised to an apprenticeship."

Georges—an African American and a 2006 University of Pennsylvania Law School graduate who did mediation work in the school's Gittis Center for Clinical Legal Studies—says that women neutrals and mediators of color appear to have made inroads in areas like restorative justice and community work.

But she adds, the commercial world is a stark contrast. At the Third National Conference of Minority Professionals in ADR at Capital University in Columbus, Ohio, last spring, Georges says she "met people who were waiting for a response for years, and haven't been able to join" commercial provider panels.

She adds, "We've come a distance, and there is so much we could do."

Creo says the year-long fellowship—which cost more than \$50,000 in stipend, benefits, and travel expenses, he says—was accompanied by outreach efforts that mostly haven't taken off. But the year has produced more ideas, he says, and their joint report on the fellowship should lay out an adaptable path.

For example, Creo suggests that local ADR groups get together to establish funding, devise a simple selection process, and get multiple mentor volunteers to assure an ADR fellow of seeing 100 cases in a nine months-to-one year apprenticeship. "Somebody can step up and do that at not-a-huge cost," he says.

Creo said the stipend could rise or fall depending on the location's living costs. He said that Georges sat in on cases with about 10 neutrals over the course of the year; Georges says that she got her own mediation case during her fellowship with Creo.

He says that the report also will include a recommendation he and Georges made over the course of the fellowship: Providers should solicit party requests for a minority mediator or arbitration panel members. "It would be easy for them to do it because they could just have a checkbox on their

submission forms," says Creo, adding that he doesn't know if any providers have acted up on the suggestion.

The plan, Creo explains, will borrow the technique of some state schemes, like Florida, that have different experience-level classifications, to get practitioners to pick up apprentices as, for example, "observers." He expresses surprise that the market hasn't done this on its own, citing

## More Diversity Is Sought

**The issue:** The conflict resolution field needs to be more diverse to reflect its customers. That includes commercial practice.

**The problem:** Too much talk, not enough action?

**An answer?** A Pittsburgh attorney will soon have a diversity plan that will explain how to set up a mentor program.

high numbers of women and minority consumers in employment ADR programs.

Creo plans to pack these ideas and options, as well as share some financial information on the arrangement, into the fellowship plan, to be posted on his website. Georges is writing the bulk of it, based in part on a journal she kept about the experience. See [www.rcreo.com/pg90.cfm](http://www.rcreo.com/pg90.cfm).

An adaptable plan is needed because there has been little feedback on their efforts, the two say. Creo explains that he sent a letter to major ADR providers and organization when the fellowship kicked off in 2006, but there was "minimal or no response" about the particulars, or inquiries about expanding the effort.

Still, the letter-writing effort opened some doors for Georges. The National Arbitration Forum, a large Minneapolis-

based provider, paid for her trip last April to Washington for the American Bar Association Section of Dispute Resolution's annual meeting, where she discussed her "mentorship" at a panel session. The CPR Institute, which publishes this newsletter, invited her to join its CPR National Task Force on Diversity in ADR. [Georges appeared on a panel on task force efforts at the second day of CPR's Fall Meeting in Boston. Details on her session appear in the CPR News feature on page 13 of this issue. The CPR task force has received positive responses about developing mentors for diversity purposes, and plans to address the subject at a meeting this month in New York. See [www.cpradr.org](http://www.cpradr.org) for more details.]

The fellowship also turned out different than expected for both Georges and Creo.

Though she mediated a case, Georges says she thought she would have been able to develop a docket of cases to work on as a neutral, and build financially upon her stipend. Creo agrees, noting that the catastrophic loss cases he focuses ultimately weren't suitable for a full takeover by a less-experienced person.

Georges blames panels rosters' exclusivity for hindering caseload development during the fellowship, but says that soon after Pittsburgh, she worked on and was paid for a case she arbitrated via an assignment from the Philadelphia County Court's ADR roster.

She says that Creo may not have gotten the increased office productivity or professional interest she says he sought at the outset. She says that her year-long payoff came not only from peering behind the scenes, but also from her work at public meetings, and contacts within the profession. "[I] got so much more out of it that wasn't on my radar when it began," she says.

"Certainly, there's a financial risk," says Creo. "But I don't think there is much other risk to it. I don't perceive that it affected my relationships with parties in any negative way, and if anything, they thought it was a positive thing."

Georges says she took financial risks too, by living on the stipend. But by her

# ADR BRIEFS • ADR BRIEFS • ADR BRIEFS

preliminary calculations, she says that her risk of relocating to Pittsburgh for the unknown could yield “an opportunity to get experience that they just couldn’t put a dollar amount on,” she says. The result: “I was so right.”

Creo, a founder in 2006 of Mediators Beyond Borders, a nonprofit that promotes peace processes internationally, says that he got a lot out of the fellowship, too. “I got the opportunity to have another very different perspective with me,” he said, as well as “the benefit of promoting something that I think is the right thing to do—to reach into the field and promote [good] things, expanding and diversifying the field.”

For the future, Creo says he hopes providing a replicable plan will help the profession grow younger and more diverse. “I think a lot of people have lots of meetings and talk about diversity, but ultimately the question becomes, ‘What have you done?’ he says. “You need that as a platform to raise awareness and education. But you also need action in the field.”

Meantime, Georges is continuing to apply to rosters as she works on the diversity plan and its dissemination. She says is working on creating her own business while doing contract attorney work. “Even if the cases aren’t flying off the shelf,” she said late last year, “I’m committed to moving forward and being in this for the long haul.”

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*Creo is an editorial board member of this newsletter. He writes the Master Mediator column for the website of Alternatives’ publisher, the CPR Institute, at [www.cpradr.org](http://www.cpradr.org).*

## ITALY MAY ALLOW CLASS ACTIONS, BUT WITH AN ADR TWIST

Italy’s Senate in November approved a bill that permits, for the first time, class action cases.

But there’s a twist: the proposal requires

litigants to go through a conciliation process after the court battle, to quantify damages that would be paid to individual consumers.

The bill was sent to Italy’s Parliament for debate and final passage as *Alternatives* went to press at year end. Changes were likely. But if a bill emerges, explains Riccardo Buizza, a partner in the Milan, Italy, office of Piergrossi Bianchini Eversheds, the ADR process is likely to survive. “There is a strong drive in the Italian judicial system to introduce conciliation procedures,” he

**‘You need . . . a platform to raise awareness and education. But you also need action in the field.’**

writes in an E-mail, “so I believe this part will definitively stay.”

The bill’s big change is allowing collective actions for damages. Until now, class actions in Italy could only get cease-and-desist injunctive relief.

The new law would apply not only to class actions involving contracts, but also to suits over mass torts, unfair commercial practices, and unfair competition.

The new “Conciliation Chamber” doesn’t avoid trials. After the case goes to trial or is settled, the judge would determine the criteria for quantifying the damages that individuals would receive, according to an Eversheds memo by Buizza, who is co-head of the Milan office’s dispute resolution group.

The judge establishes the Conciliation Chamber to determine the award amounts by appointing a mediator to hash out the numbers with the attorneys from either side. Once established, class claimants may

apply for relief. “Minutes of conciliation,” signed by the parties, set out the terms and time limits for applying.

Under the proposed law, if the Conciliation Chamber can’t construct a payment plan, consumers may bring individual judicial actions to determine damages.

All of this, however, comes after a trial, or a settlement “underwritten” by the parties, emphasizes Buizza in the paper, which was co-written with Giuseppe Giudici, also of Eversheds.

Buizza notes that there is pressure for the bill from consumer groups, while business is fighting it. He adds that some of the procedural mechanisms are potential amendment targets, especially the post-Conciliation Chamber opt-in provisions.

Class actions are a new phenomenon in Europe, with England and Sweden adding provisions for them since 2000, and several other nations considering them. Unlike the U.S. jury trials, however, European class actions are judge-based determinations or court-directed settlements. The Conciliation Chamber proposal would be unique to Italy. 

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