



CPR NATIONAL TASK FORCE ON DIVERSITY IN ADR

Minutes of Meeting of March 17, 2009

Washington DC

Attending

In Person:

William K. (Kip) AtLee, Jr.

John Bickerman

David Burt

R. Phillip (Phil) Deavel

Cassandra Georges

Wilbur Hicks

Marvin Johnson

Charles Morgan

Tom Sager

Via Phone:

Chuck Beach

Caleb Davies

Nelson Diaz

Harold Franklin

Dye Anne Graham

Wendy Hufford

Jim Hurd

Laura Kaster

Barry Leon

Ken Menendez

Ben Picker

Lori Prokes

Ken Standard

Edna Sussman

Nancy Vanderlip

Jay Waks

For CPR:

Kathy Bryan

Hilary Kromnick

Kathy Bryan, CPR President & CEO, convened the meeting and thanked FTI for their generosity. She also thanked R. Phillip (Phil) Deavel and William K. (Kip) AtLee, Jr. from the Air Force for their talk during the luncheon (a brief description of their remarks are attached). Co-Chairs, Charles Morgan and Tom Sager, introduced themselves and brought the meeting to order.

The minutes of October 2, 2008 were approved as submitted.

The meeting began with a discussion of ideas for speakers at future meetings. The Task Force agreed that it is helpful to think more broadly about diversity in the field. Several names were submitted and participants are encouraged to provide CPR with additional names:

- Dr. Arin Reeves is a professor at Northwestern and a speaker on diversity in the legal profession.
- General Counsel of Rutgers, Jonathan Alger, has championed diversity programs and is interested in helping the Task Force.
- David Plant is a professor at Cornell on “Cross Cultural Negotiation” and could be helpful in discussing how diversity is being approached on law school campuses.
- Verna Meyers in Philadelphia and Carl Cooper in Pittsburgh.
- Veta Richardson from MCCA in Washington, DC.

Review of Activities of the Task Force

Mr. Morgan acknowledged the presentation of CPR’s first annual CPR Diversity Leadership Award at the 2009 Annual Meeting. The Award was presented on basis of multifaceted approach to supporting diversity in ADR and the group congratulated Marvin Johnson as the first recipient of the Award.

Mr. Morgan raised the possibility of the Task Force making a presentation on its work to group of chief litigation officers.

CPR is a “grandfathering” institution for the International Mediation Institute (IMI) which allows CPR-qualified neutrals to apply to become neutrals listed with the IMI.

Dye Anne Graham asked whether CPR has addressed diversity with a focus toward the current issues in the United States, such as the recent rash of foreclosures in Florida that are mostly being resolved via ADR. Ms. Bryan responded that CPR has monitored the situation, and because the foreclosures have been occurring at the state level, provides information and connections on the website. John Bickerman brought up the current Maryland foreclosure program, and its attempts to identify mediators for their program, as a great opportunity for mediators who want to gain experience.

Cassandra Georges suggested that the Task Force continue to work in conjunction with the minority bar associations and make diversity information more broadly available. Harold Franklin volunteered to help CPR connect with the minority bar associations. Ms. Bryan will be speaking at the ACR meeting in June and the Hispanic Bar Association in September.

The discussion then turned to the benefits and problems inherent in creating a separate list of women and minority neutrals. Part of the challenge is that by identifying neutrals on the website by gender or race, the information could be used for exclusionary purposes.

Currently, CPR requests its neutrals provide race and gender information voluntarily and, for those that provide the information, CPR can provide lists of women and minority neutrals on request.

Ms Bryan proposed completing a “business case” supporting diversity in selecting ADR neutrals. The group felt that the information would be helpful in many. Wilbur Hicks stated that most companies will say that they see the case for diversity in the legal world, and it is not a large jump from the litigation world to the neutral world.

CPR did not receive many diversity scholarship nominations for the 2009 Annual Meeting, and there were not as many CPR-sponsored new faces as we had hoped. CPR is starting a Y-ADR group that will focus on young arbitrators and mediators (under the age of 40). The prospective members of this committee are currently being recruited from older law students. The Task Force discussed law student outreach, and the donation of a “CPR Excellence in ADR award” to law schools with a modest financial prize.

The discussion turned to further incentivize hiring women and minority neutrals. Mr. Morgan suggested the Task Force host a diversity seminar to sensitize law firms about the issues. Ms. Bryan discussed the creation of an online diversity commitment, which would list organizations as having made a commitment to diversity in ADR and connect in with the Diversity Task Force. Online listings such as this can spread diversity much more efficiently than a hard copy pledge.

The Task Force discussed instituting a mentoring program wherein a second mediator piggybacks on a mediation or arbitration session, perhaps at a reduced rate. This would provide involvement in a high-level experience and gives visibility to the newer mediator. Ms. Bryan informed the Task Force about the creation of the Diversity in ADR website (currently in development) as an appropriate place to post mentoring opportunities. She asked the group if they would be willing to act as mentors and list their willingness on the website.

The conversation turned to the current economy, and the realistic market expectation for ADR. There are a limited number of full-time neutrals, and it is not realistic to assume a full-time career as a neutral. Arbitrators and mediators are best at their respective specializations, but this work is often augmented by other work. If the lawyers involved are well-versed in processes, it can be more effective than having the best neutral. The skill set that comes with being an advocate / mediator / neutral is enhanced by growing the whole practice.

Ben Picker stated that in Philadelphia there are five to seven full-time mediators, but around 100 arbitrators. It is a more realistic goal to mediate and do other neutral work, including arbitration. Ms. Bryan cautioned that we should be careful about sending realistic messages about the opportunities in the field.

CPR has taken on a new Diversity intern, Richard Arce. He is the inaugural intern in CPR's Diversity Intern program, which is supported by donations. Ms. Bryan requested that those who can support this initiative please make a donation.

The next Diversity Task Force meeting will take place in June 2009 in Philadelphia, Pennsylvania.

PRESENTATION RE THE AIR FORCE AND DIVERSITY IN ADR

Phil Deavel began with his presentation on the US Air Force ADR Program, which is a division within the Air Force Office of the General Counsel. It is a robust program that covers employment and a few other legal areas, and tries to look for systematic solutions so that the use of dispute resolution is the default position. Each Air Force base has a dispute resolution champion. This position is a collateral duty taken on by individual servicemen, who devote at least 20% of their time to dispute resolution matters. At larger bases, the dispute resolution champion posting is a full-time position.

The Air Force has grappled with diversity in both the civilian force and within military ranks, most specifically with the issue of how to bring about diversity that is constitutionally defensible and viable. The most robust diversity can be found in the ARC (Area Rights Complaints) division in the civilian workforce.

The Air Force has approached ADR as the most cost effective way to handle disputes. As such, they have created a collateral duty mediation program that trains mediators from within the Air Force and civilian force ranks. Once potential mediators are identified, the Air Force sends them to the Air Force ADR University, where they take a one week course on mediation. Once their course is complete, the mediator then works under the wing of an established mediator. When this apprenticeship is finished the Air Force management can decide where they should be placed. These mediators do not need to have a law degree, but rather must hold a managerial position prior to their mediation training.

There are over 400 Air Force certified collateral mediators actively working in the Air Force. In 2008, early intervention ADR was utilized in around 3,000 cases – of these, almost 99% were performed by collateral mediators. To ensure the impartiality of their mediators, the Air Force will never use a mediator to mediate a dispute in their work area (for example sending a California mediator to a case in Arizona). The mediator will not be part of disputes' chain of command. Resultantly, there is great diversity in the program – 40% of mediators are bargaining unit eligible (blue collar) employees, and 20% have not completed college. While the mediator program is less diverse higher up the chain of command, because they have reached out into the rank and file the mediation program reflects the diversity in the Air Force as a whole. Many section supervisors (especially those who work with civilians) support mediation, which leads to the program's success – a program in a large institution must be funded and supported from the top down.

Kip AtLee then presented on more specific matters of diversity in the Air Force. As diversity issues are worked on throughout the military, it has become apparent that government officials have less leeway than those in the private sector. The Air Force has always embraced and emphasized diversity, but has focused on it more specifically during the past 20 years. Everyone has a different idea of “diversity,” be it one of gender, race, or economics. What is the value of “diversity” once defined? Can the “need” be demonstrated (especially in the military)? Studies on diversity in the military skew both pro and con in a fighting force. Due to the system of rank in the military, if diversity is desired in higher levels of leadership a diversity program needs to be cultivated 20-25 years ahead of time. Since the military is at heart a meritocracy, there is a deeply held belief that selection processes should be on an equal playing field for all throughout their careers. The Air Force has to demonstrate a track record of equal diversity.

From studying such institutions as recruiters' offices, ROTC, and the Air Force academy, it was found that in many areas other than race or gender (and especially in economic background) there was little diversity. This resulted in the Air Force definition of diversity: Diversity in the Air Force is broadly defined as a composite of individual characteristics, experiences, and abilities consistent with the Air Force Core Values and the Air Force Mission. Air Force diversity includes, but is not limited to, personal life experiences, geographic background, socioeconomic background, cultural knowledge, educational background, work background, language abilities, physical abilities, philosophical / spiritual perspectives, age, race, ethnicity and gender.

Legal benefits to processes: Due to the “strict scrutiny” accorded to members of the Air Force, there are many economically disadvantaged recruits thus leading to greater diversity with less risk. The Air Force encounters less difference between race diversity than economic diversity.

The Air Force looks at its diversity policies as a journey, not as an “end-all” solution. Those in charge of diversity programs hope that their current actions will positively affect AF diversity. Policy leaders have found that the best way to encourage diversity in the Air Force is to engage in activities that encourage and welcome people from all walks of life into the military. If people can be effectively encouraged to apply to the Air Force, then the ideal meritocracy will take over and diversity will be accomplished. Preliminary statistics suggest that this works. America’s Air Force reflects the composition of those people who are qualified to be in the Air Force – not necessarily what America looks like as a whole.

To this end, certain standards must be met – for example, those in the officer corps must have a college degree. It wasn’t sufficient to look at high minority schools that were not able to give technical training needed, because these applicants would not be able to succeed without the proper tools. The Air Force attempts to create a rapport with a prospective recruit’s family, pastor, etc., and utilizes recruiting officers of a similar racial or economic background to recruit in a given area. It is important that people become involved with the Air Force in a low threat environment.

To encourage an even playing field, scholarships cannot be issued from a governmental organization. Instead, the Air Force encourages activities whereby people can become competitive and eligible rather than scholarships. These activities are open to everyone, which helps to encourage the perception of the Air Force as a welcoming entity. It is also useful to get “advertising” at the hometown level, such as a potential recruit reading in the local newspaper that someone from their town has succeeded in the Air Force.

Questions:

1. Do you know statistics from AF academy in minority representation? Traditional diversity is around 13% at the academy. As compared to eligible pool 13% is very high, especially versus the United States as a whole.
2. What role does gender play in diversity efforts? There is a very high proportion of women in the Air Force (especially in the officer corps – enlisted diversity is up and coming).
3. What is the Air Force’s experience with outside mediators and arbitrators? The AF internal program is mediation, rarely arbitration. Most of the 5,000 cases are filed by individuals, which works well with collateral mediation program format. Collateral mediation works best in labor and employment, and the Air Force will sometimes contract outside mediators for other areas of dispute.
4. From what source do you draw outside mediators? The Air Force wants someone who can immediately identify and understand issues, which “drives the train”. It’s few cases that require outside counsel, but it’s not dependent on diversity.

5. How are the mediators found? The Air Force works from a variety of sources, and looks to people who have worked with them in the past. The critical element in making dispute resolution work is to establish a rapport. The Air Force needs to do this on a “streets of Baghdad” level as quickly as possible. The “rubbing elbows” process allows them to develop the rapport quickly.

The Air Force documents will be circulated to the Task Force in conjunction with the meeting minutes.