

CPR/ABA Scorecard on Diversity Task Force Meeting
April 9, 2010
Hyatt Regency San Francisco
Minutes

Present: Deborah Masucci, Kathy Bryan, Philip Armstrong, Ken Andrichik Maria Volpe, Marvin Johnson, Jay Welsh, Mark Smalls, Serena Lee, David Burt, Victoria Pynchon, Jeff Kichaven, John English, Wayne Thorpe, Ben Picker, Michael Lewis, Linda Singer, Erin Gleason Alvarez, Ben Davis, Homer La Rue, John Bickerman, David Moora, Kim Knight. Present by Phone: Jay Waks, Jim Hurd, Dye Ann Graham, Tom Sager, Barry Leon, Lori Prokes, Cassandra Georges.

The meeting was convened by Deborah Masucci, Vice Chair of the ABA Dispute Resolution Section, and Kathy Bryan, President of CPR, on behalf of CPR's Diversity Task Force. Deborah Masucci called the meeting to order at 12:35pm and asked each participant to introduce themselves. Kathy Bryan then explained that the purpose of the meeting was to determine what needs to be done going forward to continue efforts to increase selection of diverse neutrals and increase diversity among the ranks of qualified mediators and arbitrators.

The Roots of Diversity in the Field of ADR

Maria Volpe and Marvin Johnson described a project they are leading with the goal of gathering and preserving historical information about the efforts to increase diversity in the mediation and arbitration professions. Many projects have been implemented over the years, some more successful than others. Up until now there has been no central repository for tracking diversity-related efforts and projects in the ADR field. Maria and Marvin are partnering to create such a repository, and are going back to collect project data and details from past decades up to the present. They presented a session during the Spring Conference on this topic to highlight some of the findings to date. The importance of the project is that to avoid having history repeat itself, the history must be known. Successful projects could be replicated in other areas of the country.

Kathy then asked each entity represented in the room to provide an update on the activities they are undertaking to diversify the mediator and arbitrator ranks and build more diverse panels.

AAA

John English and Serena Lee presented AAA's diversity initiatives. They stated that AAA's leadership is committed to diversity and "the numbers are improving." William Slate's quarterly in-house emails regularly highlight AAA's commitment to diversity. Moreover, AAA is taking the following measures to increase diversity among their mediators and arbitrators:

- Panel recruiters' performance appraisals take into account whether they made any efforts to diversify local panels
- In 2009, English added 10 people who fit the AAA's diversity profile and each has been successful
- Higginbotham Fellows Program: AAA started a minority arbitrator and mediator fellowship, for 15 attorneys per year. Education and training are provided for free. Fellows are also paired with experienced neutrals in speaking engagements

and provided writing opportunities to raise their profiles. Fellows also co-mediate with experienced neutrals.

- For each case that comes to AAA, the roster of proposed neutrals provided by AAA has a diversity index; there is a 20% allocation for women and minorities.
- Most women and minority neutrals work in the employment arena. AAA is actively recruiting for their other panels by participating in local minority bar association meetings and speaking with law students about including ADR in their career plans.

JAMS

Jay Welsh described JAMS' work with ACCESS ADR which was established and designed to promote an elite group of minority mediators. Three experienced mediators were selected to serve as ACCESS ADR fellows in 2005. Fellows were trained with JAMS neutrals and then marketed to a group of users, but they were rarely selected.

JAMS has 240 neutrals, and the marketplace decides with whom they want to work. Corporations and law firms drive the decision, he said. Sixty percent of JAMS' senior management is comprised of women and people of color. The JAMS panel is comprised of 19% women, 1.1% Asian, 3% African-American, and 1.8% Hispanic. Whereas, the federal judiciary is 26% women, 11% African American, 7.7% Hispanic, and 1.0% Asian (source: Brookings Institute). JAMS is also working to assess how these numbers compare to the numbers of law firm partners in each of the same categories.

FINRA

Ken Andrichik advised that diversity is not a separate initiative for FINRA, because it is part of the organizations' ongoing work. To build a diverse panel, recruitment is conducted at minority bar and other professional associations. FINRA does not have data on the diversity of their roster, because this information is collected in a voluntary demographic questionnaire. In recruiting efforts, FINRA has made it clear that they are looking for women and minority neutrals. FINRA's website, which demonstrates their process, includes diverse people and their staff is also diverse.

It was suggested that through a third party FINRA should try to reach out to minority neutrals who left their panel, to determine their reasons for leaving. This will help to identify any trends as to why diverse neutrals are leaving the panel.

CPR

Kathy Bryan discussed the need for changing users' selection decisions, and to broaden the thinking of those making neutral selection decisions. Unknowns and those with different qualifications should be encouraged.

CPR conducted a diversity survey, which was an attempt to challenge corporate counsel on their selection decisions. While this has not been widely used, according to Kathy, it might be worth revisiting and promoting again... Kathy described corporate user's diversity initiatives with outside counsel, but questioned why they don't take these diversity goals into account when selecting neutrals.

She suggested looking at mentoring, and other career support options to promote minority mediators. In closing she recommended the book “Switch” which focuses on how to make change happen and how to cope with change.

There was then a group discussion and brainstorming of ideas:

- DuPont is compiling a list of mediators and arbitrators who are qualified and meet diversity criteria. They have a goal for making a certain number of diversity appointments in 2010. Is this a good model to put forward for other corporations? It should be followed to study the outcomes.
- Create a database for users to access, which would identify and highlight diverse mediators. A follow-on idea is to compile the entire universe of neutrals in a central database.
- Should corporate users add diversity to the neutral selection process along with other factors they are already using (i.e., geography, background, etc.). It was noted that although most disputes are not “bet the company” high stakes disputes, minority or women mediators, who may not have the panache or experience of others, are still not getting much work.
- Create an incentive for users to select diverse mediators. For example, one out of every twenty cases, valued at \$50,000 - \$200,000, must be mediated by a neutral who meets diversity requirements.
- This Task Force should focus on action, instead of more research.
- Pair popular mediators with minorities and for the former to help promote/sell the latter’s services.
- Conduct focus groups to get user feedback and “educate” on the importance of using diverse mediators, and perhaps trying new mediators on smaller cases. The group agreed that using the ABA and CPR to convene focus groups, similar to those set up in 2006 on the Mediation Quality Task Force, would be a good way to draw users’ attention to reasons for selecting minority mediators.
- The group agreed that the Association of Corporate Counsel is an important voice in this effort. They have set diversity as a major goal. Kathy was asked to reach out to them and involve them in future meetings.

With agreement that this group should meet again and continue the conversation, the meeting adjourned at approximately 2:00 pm.