

# Diversity Task Force

*Friday, September 29, 2006 Meeting Minutes*

## **CPR NATIONAL TASK FORCE ON DIVERSITY IN ADR**

**Minutes of Meeting of September 29, 2006  
Minority Corporate Counsel Association  
1111 Pennsylvania Avenue NW  
Washington, DC**

The CPR National Task Force on Diversity in ADR met at the offices of the Minority Corporate Counsel Association at 10:30 a.m. Friday September 29, 2006. CPR President Kathy Bryan introduced the three co-chairs of the Task Force and invited everyone attending to introduce themselves:

Carla Herron (Co-Chair)  
The Shell Group

Marc Gary  
BellSouth Corporation

Charles R. Morgan (Co-Chair)  
On Site E-Discovery

Claire P. Gutekunst  
Proskauer Rose LLP

Thomas L. Sager (Co-Chair)  
E.I. du Pont et de Nemours and  
Company

Sylvere Hyacinthe  
Wilson, Elser, Moskowitz, Edelman &  
Dicker

Dennis W. Archer (by phone)  
Dickinson Wright PLLC

Laura A. Kaster

Kathy A. Bryan  
CPR Institute

Jeffrey G. Kichaven  
Jeff Kichaven Mediation

Cynthia J. Collins (by phone)  
FedEx Corporation

Carolyn Kimbrough-Davis  
Cardinal Health, Inc.

Nancy Lee  
Marriott International, Inc.

Timothy K. Lewis  
Schnader Harrison Segal & Lewis LLP

Laurel Pyke Malson  
Crowell & Moring

Bennett G. Picker (by phone)  
Stradley Ronan Stevens & Young, LLP

Claudia Ray (by phone)  
O'Melveny & Myers LLP

Rachel Saldana (by phone)

Buchalter Nemer  
Patricia Caycedo Smith (by phone)  
Duke Energy Corporation

Nancy Vanderlip (by phone)  
ITT Corporation

PD Villarreal (by phone)  
Schering-Plough Corporation

Jay W. Waks (by phone)  
Kaye Scholer LLP

Also present:

Peter Phillips  
CPR Institute

Beth Corman (by phone)  
CPR Institute

Ms. Bryan opened the meeting by sharing CPR's concern about the diversity of participants in the ADR field. The Institute's historical focus on quality is supplemented by an equally important emphasis on diversity. She shared a recent news article on a report by the National Academy of Sciences, concluding that unintended and subtle behaviors and outdated institutional structures have created barriers for women entering the science field. The report recommended that, in order for appropriate scientific progress to be made, a deeper pool of talent needed to be tapped than was currently available. The same conclusion, she suggested, applies in the ADR field from the viewpoint of corporate America. The composition of the work force, the customers and the decision makers themselves is changing, yet the pool of dispute resolvers is not changing at the same pace. The Task Force will seek to come up with a clear articulation of its mission and rationale, and to make concrete proposals for change.

Mr. Morgan welcomed the group and said that articulating the reasons why change is needed should precede solutions to address that problem. Ms. Herron related that the first time she attended a CPR meeting she noticed the absence of diversity – there were few women and even fewer people of color. That lack of diversity persists throughout the ADR world, she felt, and is the reason that CPR convened the Task Force. She encouraged the group to focus on change that will resonate within entire organizations, not just with those individuals within it who are predisposed. Mr. Sager was heartened by the quality of people in the Task Force, and challenged the group to ask what CPR can bring to the table to make a realistic contribution for change.

The Task Force discussed its mission and the problems it would be addressing. Ms. Kaster encouraged the Institute to take on an advocacy role to provoke the entire arbitration and mediation profession to be aware of the issue. She perceived a slow-down of progress in women's advances in the legal profession, but more prominent in ADR for a simple reason: Most neutrals are senior lawyers, and most senior lawyers are men. The Task Force's role should be to make this a "big issue." Mr. Waks agreed and added that CPR committees also suffer from a lack of diversity. Mr. Lewis recounted a prior effort by CPR to identify women and people of color to join the CPR Panels of Neutrals, noting its awareness of the problem. Mr. Phillips reported on the result of that effort and suggested that the Task Force's mission was broader than the composition of CPR's own proprietary Panels.

Mr. Kichaven suggested that corporate America's success at identifying diverse vendors of most services, and its failure to identify diverse mediators and arbitrators of color, suggest that there are very few of them – that it is a supply-side problem. He proposed that the real challenge is to get talented minorities and women (who are in demand within the legal profession) to

commit to a relatively insecure career as a mediator. The challenge therefore may be for the mediation profession rather than the corporate user -- to mentor and encourage people to engage in it. Mr. Picker agreed, but noted that many hundreds of successful lawyers practice mediation on a part-time basis, so it is not a question of choosing whether to practice law or to be an ADR professional. CPR has institutionalized ADR into law firms, he said, and perhaps diversity can also be institutionalized. Both AAA and ABA are also working on the issue, he said.

Mr. Gary suggested that the Task Force focus in the first instance on CPR, to combat the perception that CPR is a closed community of the same people with the same lists of neutrals. More attention should be paid in identifying younger and more diverse individuals to join the lists that CPR gives its corporate users and reach out to a broader group of people. He said that diversity at BellSouth means getting everybody who can contribute to a solution involved, not just on the basis of sex or ethnicity but other characteristics – not the same sort of people at the same problems. That is the nature of creativity – looking for people with new and different perspectives, perhaps who are rural or from a different country, or young, or having other attributes. He added that a mere statement of nondiscrimination will not satisfy any realistic mission. Mr. Lewis distinguished between encouraging pluralistic corporate decision making, and addressing the specific barriers that have historically confronted women and people of color.

Ms. Gutekunst said the question is not whether more diverse names are on the CPR lists, but whether they are ultimately chosen: How do we ensure that such individuals get the kind of training that makes them competitive in the eyes of the end-user? Mr. Archer noted that women are starting more businesses, represent 46% of the workforce and will be a majority by 2014. Corporations that choose to utilize services of minority vendors, and that encourage law firms to increase diversity, do so to reflect these demographic changes. He also warned that to refer

“qualified” women and blacks is in effect to ask them to leave the room, and the term shouldn’t be used. People get hired because of what they can do and have done – there is a presumption of qualification for women and minorities who have those accomplishments. Ms. Malson said that placing more women and blacks on panels would increase the likelihood of their being selected, and that the Task Force can work both internally to CPR and also within the broader ADR community.

Mr. Lewis said that people who have been historically excluded from professional opportunities are the appropriate beneficiaries of the Task Force’s work. Mr. Phillips said the CPR’s constituency was corporate users, and the focus should be to benefit them rather than individual neutrals’ career-building (except to the extent that career-building would be of benefit to corporate end-users). Others said that the work of stating the corporate business case for diversity has already been done, and we now need to increase the supply. Ms. Lee agreed that there is no crying need for stating the business case for diversity in ADR – it is now a question of how to make diversity in ADR happen.

Mr. Morgan asked whether the Task Force’s mission should be to make CPR the place to go with the assurance that there are a lot of women and people of color on the CPR list, and where training was available to those who want it. CPR should be activists, not just sitting and waiting for professionals who are women and minorities to approach it. Mr. Lewis said that if CPR could increase its ranks of neutrals by a hundred, it would be a huge contribution. Mr. Sager suggested that revising the CPR Pledge to reflect a commitment to diversity in ADR may be a good start on the corporate side.

Ms. Gutekunst returned to the concern that neutrals are chosen who have experience as mediators – how do minorities, women and younger practitioners get that experience to be

chosen for the big cases? Might a mentor program address it? Ms. Bryan agreed the challenge is not getting people on the list – it's getting them selected. Mr. Waks suggested that CPR members be asked to make recommendations to identify experienced mediators and arbitrators who are women and minorities. Mr. Archer suggested that initial communications take place with the ABA Dispute Resolution Section, and other groups, to avoid replication of effort. He also urged that women and minorities be on the podium rather than just in the audience at CPR meetings.

Ms. Bryan noted that CPR does not enjoy not a diverse participant group among its member organizations. Mr. Sager again proposed having corporations sign onto a Pledge instrument that would mark a renewal by the existing corporate signatories to the ADR process (taking the language of the existing Pledge) and further revising it to reflect an express commitment to advance diversity in the profession by thorough institutional and individual efforts. Mr. Villarreal said it has to be a campaign of persistent reminders in this regard. Ms. Gutekunst said that if the corporate representatives ask the law firms to bring women to CPR meetings, they will do so. Mr. Gary was concerned that most law firms do not retain women and people of color as senior members, so there may be few for them to bring. CPR may need to have special programs for associate-level people in order to get them interested in the area. Ms. Herron thought that corporations and law firms would be willing to mentor young people by engaging them as neutrals in smaller matters, giving them experience and making them viable candidates for bigger cases. She agreed that CPR should offer training for younger people to interest them in ADR.

The group discussed ways to train and prepare younger and more diverse people as mediators, including special training and participation in CPR. Mr. Gary prefers cooperative

efforts between corporations and law firms, rather than statements and pledges. For example, a CPR member company could call a law firm to convey not only an expectation that the law firm will bring a woman to a CPR event, but also that the representative will sit with Gary during the meeting. It would be a personal and direct gesture of mentoring between corporations and their law firms. Ms. Bryan noted that the suggested model can apply to other CPR events. The Task Force could also offer scholarships to encourage certain people to take mediator training.

Identifying promising individuals in the first instance is also a part of the process, particularly if it were a broader process than a one-time training. Mr. Archer suggested that the members-only meeting in January be used to get the buy-in from the corporations and law firms, and the Spring Meeting be used to execute it.

Ms. Vanderlip said that, as a CPR corporate member, she is not getting from CPR the broad array of neutrals that she expects and requires, and that correcting that deficit is an important objective of the Task Force, as well as broadening CPR itself. Mr. Lewis said that CPR's Board of Directors also has to be more diverse.

Ms. Bryan raised the "pipeline" issues – how to get more people into the pipeline of becoming the kind of neutral that corporations sought. Mr. Sager said that Street Law, Inc. ([www.streetlaw.org](http://www.streetlaw.org), Lee Arbetman, Director of U.S. Programs) has developed a "pipeline kit" that CPR could model, providing substantive expertise to create training modules for high school students to become interested in ADR. A second "pipeline" initiative is scholarships as discussed, like an AmJur award to young lawyers to intern with firms. Minorities who already have the requisite skill sets could also be enlisted to mentor younger professionals. Mr. Morgan and Mr. Gary noted that these training opportunities should be marketed not just as intended to provide skills in mediation and arbitration, but a more broadly applicable set of settlement and

negotiation skills. Mr. Villarreal said that experience is not an assurance of quality, and that many advocates and negotiators who have not conducted mediations may nevertheless have the attributes of trust and credibility that he seeks when he engages a facilitator. Mr. Lewis agreed that a broad scope of attributes for useful neutrals is appropriate.

The group discussed expansion of the composition of the Task Force. It was felt that the broader the group, the greater its likely impact. Both CPR members and non-members should be invited, and representatives of other like-minded organizations should also be included. An effort will be made to identify what other organizations have done, and to report on those efforts at the next meeting.

Between now and the next meeting, in addition to these tasks, the CPR staff will circulate these minutes and a “check-list” of proposals for Task Force projects. The group will review these proposals and determine what resources will be necessary to execute them, and then select its agenda going forward.

The Task Force will next meet at the offices of CPR Institute, 575 Lexington Avenue, from 2:00 to 4:00 on Tuesday, November 7, 2006. With thanks to all, Ms. Bryan adjourned the meeting at 1:00 p.m.