



**MINUTES OF THE DIVERSITY TASK FORCE**  
**October 2, 2008**  
**New York, NY**

*Attendees:*

Kenneth Andrichik  
William Baker  
Kathy Bryan  
David Burt  
Stephen Gates  
Cassandra Georges  
Michael Greco  
Susan Guerette  
Claire Gutekunst  
Carla Herron  
Michael Heyrich  
Wendy Hufford  
James Hurd  
Laura Kaster  
Jeff Kichaven  
Tim Klinger  
Janet Kloenhamer  
Timothy Lewis  
Dale Matschullat  
Ken Menendez

Charles Morgan  
Ashish Prasad  
Lori Prokes  
Jane Rushton  
Robert Ruyak  
Ken Standard  
Edna Sussman  
Eric Toder  
PD Villarreal  
William Webster

*CPR Staff in Attendance:*

Russ Bleemer  
Molly Brannon  
Lorraine Brennan  
Helena Erickson  
Hilary Kromnick

Kathy Bryan, CPR President & CEO, convened the meeting and thanked Pfizer for their generosity. She also thanked Rich Wallis, Deputy General Counsel, Litigation, Microsoft Corporation, for his talk during the luncheon (a brief description of his remarks is attached). Co-Chairs, Charles Morgan and Carla Herron, introduced themselves and brought the meeting to order.

The minutes of January 16, 2008 were approved as submitted.

Mr. Morgan began by stating that the Chairs would hope that we would all walk out of the meeting with a short list of specific action items. Ms. Bryan recounted the history of the Diversity Task Force meetings since 2006 and the core group suggestions

for action items. She described a key role of the Task Force as reinforcing the progress made to date and to encourage opportunity for further change.

The group discussed whether there was sufficient information on which to base a conclusion that a problem exists with a lack of diversity in mediator and arbitrators. Mr. Lewis suggested that a diversity survey be completed of corporate members. Mr. Villarreal noted that it would be impractical because corporate members have not kept statistics. The group discussed whether rough estimates or directional information would be helpful. Ms. Kaster suggested implementing specific corporate goals to hire diverse neutrals.

Mr. Morgan called attention to CPR's announcement of an annual award for Commitment to Diversity in ADR. Ms. Bryan described the Annual Meeting and the various awards given. The New Diversity Award would be added to the other awards given at the Annual Meeting and would have broad criteria at first, with possible further refinement in the future.

It was suggested that nominations be sought from the National Bar Association, Hispanic Bar Associations and similar groups. Mr. Greco suggested that after this year we will need to establish more detailed criteria for the nomination and selection of the honorees. Mr. Andrichik noted that CPR should ensure that the awardee will be able to attend.

Mr. Morgan brought the discussion back to specific projects for the Task Force to pursue. One such project is to invite and sponsor diverse attendees at future CPR meetings. It was agreed that CPR will use some Task Force funds for scholarships for deserving women and people of color who otherwise would not be able to attend. The Task Force agreed to propose candidates to CPR.

Ms. Georges suggested partnering members with scholarship applicants for funding purposes. Another attendee stated that the most important concrete project was to bring a friend to the Annual Meeting. Ms. Gutekunst noted that we should make efforts to embrace newcomers and to open up our cliques at the meetings because otherwise people don't feel welcome and subsequently will not become involved. Ms. Brennan noted that CPR is going to be adding a group focused on young lawyers for the first time.

The discussion turned to the need to identify diverse neutrals on the selection lists provided by provider organizations and law firms. Although one can obtain lists of minority law firms, the same information is not available for neutrals. Mr. Lewis noted that there is some case law that might make the distribution of such a list challenging.

Ms. Erickson summarized the legal advice CPR received regarding diverse panelists and what CPR is doing in terms of releasing their information. CPR is asking its panelists to voluntarily identify themselves by race and gender and is working on having photographs on the CPR website. CPR will also provide lists of diverse neutrals upon request.

Mr. Villarreal will bring up the work of the Task Force and the “Corporate Commitment to Diversity” to the Chief Litigation Counsel Association and will seek to have a Task Force speaker address the group.

In conclusion, the group approved the following specific projects:

- CPR Award for Outstanding Contribution to Diversity in ADR
- Scholarships for deserving neutrals to attend the CPR Annual Meeting in January 2009
- Roll out of a “Corporate Commitment to Diversity in ADR” after coordination with the group focused on broader corporate diversity goals through the “Call to Action”
- CRP will show its leadership in the field by providing lists of diverse neutrals on request
- CPR will continue to expose the issues through speaking, writing and presenting, including identifying a “speakers bureau” of interested speakers on the subject

The meeting adjourned at 3:20 pm.

## **SUMMARY OF PRESENTATION BY RICH WALLIS OF MICROSOFT**

Kathy Bryan introduced Rich Wallis, Deputy General Counsel, Litigation, Microsoft Corporation, who addressed the Task Force about Microsoft's program on diversity in law firms.

Mr. Wallis spoke briefly about his background as both a firm and corporate attorney, and spoke about being able to understand the particular issues that arise for each type of organization regarding the expansion of diversity.

He then summarized how Microsoft streamlined and brought various legal functions under the same umbrella in 2003. Microsoft participated in various initiatives but faced an even greater challenge on the diversity front as IP (and software companies in general) are even less diverse than the general legal population.

Microsoft devised several initiatives in response to these issues:

- The Microsoft Women and Minority IP Law Summit – over 1200 attendees to date.
- Consciously working with law professors to redefine the “IP Attorney” and engender change in the law schools.
- The creation of the Minority Corporate Counsel scholarship program.
- The LCA Summer Intern Program – focuses on first year scholarship winners and similar students; law firms then hire these students, furthering diversity.

One of the main initiatives created by Microsoft is the Law Firm Diversity Program. Microsoft looked back at other initiatives and saw that progress had been made, but there was still much room for improvement, and that there was a business necessity for diversity. In response, Microsoft put together the Premier Provider program.

With the Premier Provider program, Microsoft started a dialogue with the 17 firms that represent them on a wide variety of matters. The firms will receive a performance bonus of 2% for progress on diversity goals. The Microsoft LCA team's bonuses are also dependent on the progress made – 5% of their bonus will be applied to the firms who make their diversity goals. Some of the firms were concerned that one size didn't fit all and resultantly wanted their bonuses to apply also to non-Microsoft work. So as to facilitate the best expansion of diversity throughout the entire profession, Microsoft expanded it beyond the Microsoft-affiliated attorneys at a given firm. A .5% bonus for increases firm wide was instituted.

Since the institution of the program, Microsoft has seen a .5% increase in women and minority owned firms that work with Microsoft, and a 1 % increase in Microsoft lawyers. As with any new program, they have received both positive and negative feedback.

A Question and Answer session followed with the members of the Diversity Task Force.

- How does Microsoft enforce this program with its vendors?
- Microsoft provides for self reporting either quarterly or annually. As this is first year, enforcement measures are still being developed. If the firm is unable to earn their bonus, a liaison from the legal department will sit down with the point person at the firm and see how Microsoft can help them in their efforts. To this end, Microsoft puts on a trial advocacy program annually and invites 10-20 lawyers from each firm. Microsoft is focusing on recruiting a diverse group of young lawyers to be sent from each firm.
- Is there an ADR component to the program?
- Not yet, but a great idea for the “2.0” version of the program. Mr. Wallis welcomes any information on diverse ADR neutrals.
- What about focusing on who from the firm is managing the billing relationship with the company?
- Microsoft has not yet officially focused on that, but at times they have quietly addressed the issue of who is credited with their work. Of the 17 firms that work with Microsoft, at least three have women who are the relationship managers with the company. There are some up and coming diverse partners, so within a few years Microsoft believes that that there will be more diversity within the firms.
- How does Microsoft go about choosing neutrals? Is diversity important in the selection process?
- Microsoft has found that for mediation finding a neutral who the other side will listen to is the number one criteria. As such, Microsoft will usually ask the other side for a list of their preferred neutrals and will choose from that list. This strategy may have to be revamped in order to facilitate diversity. 80% of disputes might be open to new mediators. The prominence of women in the ADR landscape seems to be gaining in number, but people of color are having a harder time gaining a foothold. The proportionality of how they are doing relative to the proportion in the populace was unclear.
- Would Microsoft propose to its outside counsel to include more women and minorities in the proposed neutrals lists?
- This would be difficult to implement because of the partnership structure. The cost of neutrals is not significant as compared to the rest of the practice, so the focus is not usually directed on ADR. The pool of neutrals tends to reflect the geographic area in which the case is taking place - where there is more diversity in the region, there is usually more diversity in the pool of neutrals.