



## **CPR NATIONAL TASK FORCE ON DIVERSITY IN ADR Minutes of Meeting of October 4, 2007**

The CPR National Task Force on Diversity in ADR met in the offices of CPR Institute in New York City on Thursday, October 4, 2007. Chairman Charles Morgan welcomed the group. Those participating introduced themselves:

Kenneth Andrichik	Laura Kaster
Phillip M. Armstrong	Jeff Kichaven
Colleen Askvig	Janet S. Kloenhamer
John G. Bickerman	Nancy Lee
Kathleen A. Bryan	Hon. Timothy K. Lewis
Jennifer Jester Coffman	Charles R. Morgan
Harold E. Franklin, Jr.	Ben Picker
Cassandra J. Georges	Charles Renfrew
Susan Guerette	Jane Rushton
Carla Herron	Nancy L. Vanderlip
Wilbur Hicks	PD Villarreal
James A. Hurd, Jr.	Jay W. Waks
Joia M. Johnson	William Webster
Marvin Johnson	

Also attending was F. Peter Phillips of CPR, who acted as Secretary.

Chairman Morgan gave a background of the issue and the circumstances giving rise to the formation of the Task Force. Judge Lewis noted that a Diversity Committee had formed at the American Arbitration Association and hoped that exchange and coordination would take place between AAA and CPR. CPR President Bryan noted that the CPR Task Force includes representatives of AAA, JAMS, FINRA, ABA and NAF,

and hoped that AAA's group might be similarly inclusive. Mr. Phillips brought all Task Force members up to date on the work of the Task Force so far, and reported on the work of the three subcommittees that had been established since the group's last meeting in April. (Minutes of those Subcommittees' meetings were distributed to the group and are attached to these minutes.)

**New Initiatives Subcommittee:** This group asked whether individual mentoring or other "one-to-one" efforts could be appropriate. Another concern was to introduce underutilized neutrals to the CPR membership by underwriting their attendance at CPR Meetings or committees.

**Second-Seat Subcommittee:** This group considered a project to place women and minorities into mediation and arbitrations that were ongoing, in an effort to enhance those neutrals' recognition among influential end-users, one at a time. The subcommittee determined that such a project would make sense only if already experienced professionals were given a chance to work in high-end cases, and that they should be seen to actually work, not to monitor or shadow. Within other constraints placed on the project (such as its having to financial impact on participants of a particular mediation) the group was frustrated in making a solid proposal for the full Task Force.

**Neutrals Pool Subcommittee:** This group wrestled with the proposal that a group of well-qualified but underutilized mediators and arbitrators be identified for use in the Second-Seat project or otherwise. It was noted that the main ADR provider organizations had already extended themselves to identify such candidates and it was unlikely that others were waiting to be discovered. Moreover, there were ethical and legal hurdles in

encouraging the employment of people based on their race and/or sex. A joint meeting of this subcommittee and the Second-Seat group did not result in clear recommendations.

The Task Force considered these reports and discussed their implications. Ms. Coffman reported that the AAA had identified female and minority neutrals among its roster and adopted a policy targeting their inclusion in constituting at least 20% of in every list it proposes. Other ADR organizations reported that they had purposely excluded race and gender information in their databases of neutrals, and that it would be very difficult to recapture that information. Ms. Bryan expressed the hope that AAA would share its strategies and accomplishments in this respect with others. Moreover, everyone agreed that the inclusion of unfamiliar names on a list, without more, would not result in the selection of such names in cases where the most salient attribute for selection is prior familiarity.

After discussion, Chairman Morgan requested that Mr. Phillips prepare a sheet of ideas that have been proposed at this meeting and at prior meetings so that Task Force members can have a consolidated list of possible action items. Such a list is provided immediately below.

The Task Force noted that over \$31,000 has been received to support the work of the group, and a marketing plan has been created to support further public awareness and support for the group's initiatives. Mr. Phillips noted that CPR's Fall Meeting in Boston October 25-26 includes a three-day Mediator Training course.

Respectfully Submitted,

F. Peter Phillips  
Secretary

# LIST OF DIVERSITY TASK FORCE PROPOSALS FOR FURTHER ACTION

## I. Initiatives Dealing with the Selection Decision

- ✚ Sensitize corporate counsel and their outside firms to the need for greater diversity in the field, and pressure outside counsel to create results (i.e., do more along the line of the Diversity Survey).
- ✚ Coordinate with minority bar associations (i.e., NBA, MCCA, NAPABA, ABA DR Section Diversity Committee, NNABA, HNBA, etc.) and other diversity initiatives.
- ✚ Focus on particular consumers of ADR (such as the insurance industry) and design a focused campaign to provide incentives and rewards for the use of women and minority mediators and arbitrators within that industry (i.e., recognition by industry associations, etc.).

## II. Initiatives to Increase Access to Information

- ✚ Create a “pool” or list of high-quality mediators and arbitrators from which corporate counsel can make selections in appropriate cases. (Query: Should this pool be selected by CPR according to CPR’s criteria applicable to all of its Distinguished Neutrals? Same question for other providers? Or should the “pool” have its own, *sui generis*, criteria for inclusion? If the latter, who administers and markets it?)
- ✚ Modify CPR’s neutrals web pages (and other ADR organizations’ public information pages) to include videos or photos of candidates to permit the user to determine their sex and race.

## III. Training/Pipeline

- ✚ Create and aggressively market a protocol whereby women and minorities are inserted into ongoing mediations in any capacity they agree to accept; and under any terms that the parties agree to; and upon the initiative of any provider, party, counsel or neutral; in order to give those people the “track record” they need to present resumes that will command the attention of high-end disputants.
- ✚ Hold training sessions for mediators on how to market their services to high-end case disputants and their counsel. Involve successful minority and female mediators in this training.

- ✚ Offer scholarships for female and minority mediators to attend CPR meetings, trainings and other events.

#### **IV. High-End vs. Low-End**

- ✚ Abandon the Task Force's emphasis on "high-end" cases and shift focus from serving the corporate end-user to assisting promising neutrals of color: Undertake incentives to train more diverse neutrals and to place them in any cases of any size, to encourage their careers.

#### **V. Increasing Demand**

- ✚ Do even more to increase the amount of commercial mediation available, on the ground that there is too little business as it is and increasing the gross number of mediations will increase the amount of work available for all (including women and minorities).
- ✚ Create a new CPR Award recognizing corporations taking leadership roles in the aggressive use of female and minority neutrals.
- ✚ Create a new CPR Corporate Pledge that would be more detailed, and that would include a commitment to using more women and minorities as mediators and arbitrators
- ✚ Contact courts with information on minority and female mediators in their regions and encourage their use in court-annexed mediations.
- ✚ Include reports on the Task Force in all CPR public speaking, Meetings, etc., to ensure broad recognition of the work being done. Adopt and execute strong media campaign.



**CPR NATIONAL TASK FORCE ON DIVERSITY IN ADR**  
**“New Initiatives” Committee**  
**Minutes of Meeting of July 13, 2007**

The “New Initiatives” Committee of the CPR National Task Force on Diversity in ADR met by telephone on Friday, July 13, 2007. Those participating were:

Philip Armstrong  
Charles Beach  
Barry Leon  
Lori Prokes

Also Attending:  
F. Peter Phillips

Mr. Phillips set forth the issue to be discussed. Two products have been undertaken by the Task Force: the Diversity Audit and the “Second Seat” initiative. The question for this committee was to identify a third or fourth project suitable for the Task Force and within its projected resources.

Mr. Armstrong recalled a proposal that Task Force members – or, indeed, CPR members and panelists -- can invite female and minority counsel and neutrals to Diversity Task Force meetings and CPR meetings. One obstacle might be the cost of one organization’s bringing two people to a meeting. CPR might offer a price inducement for the first meeting that the new person would attend. Mr. Leon also noted that having someone “take them under wing” and introduce them to people would further the aims of

the initiative. CPR might identify particular women and minorities to directly invite to take part.

It was felt that this would not be a departure from the way CPR meetings are usually run. Corporate participants attend CPR meetings to “rub elbows” and many would welcome the opportunity to meet such practitioners. A separate booklet or set of bios highlighting these guests might also be prepared. CPR should continue to seek women and minorities as speakers. It would also be important to prominently display the Diversity Task Force in an effort to convey CPR’s encouragement that such people participate in CPR’s events. Holding a meeting for women/minorities in conjunction with a CPR meeting might also be effective. A meeting restricted to “Under-40’s” would also likely attract a more diverse participation.

Another CPR-related idea was an intentional “mentor” outreach effort, by which women and minorities who attended CPR events would be contacted by women or others already affiliated with the Institute, to welcome them and offer to assist them.

More broadly speaking, lack of familiarity was targeted as a major obstacle to hiring neutrals who are currently underutilized. The challenge in any new initiative is to ensure that corporate clients know, and feel familiar with, women and minority neutrals. Some of the solution may be social and some professional. To some degree, however, this is a problem faced by any inexperienced or unfamiliar neutral regardless of race or sex.

Training in marketing for neutrals might also be an effective way to make an impact. John Bickerman and some others on the Task Force may have some information

on who does this work and how the Task Force might facilitate some successful offerings.

The committee agreed to report at the Task Force's next meeting on October 4, 2007.

Respectfully Submitted,

F. Peter Phillips  
Secretary



**CPR NATIONAL TASK FORCE ON DIVERSITY IN ADR**  
**“Neutrals Pool” Committee**  
**Minutes of Meeting of July 13, 2007**

The “Neutrals Pool” Committee of the CPR National Task Force on Diversity in ADR met by telephone on Friday, July 13, 2007. Those participating were:

Cassandra Georges  
Gene Johnson  
Barry Leon  
Linda Singer

Also Attending:  
F. Peter Phillips

Mr. Phillips set forth the issue committed to the group. Two products have been discussed by the Task Force that implicate identifying a pool of skilled and experienced but underutilized women and minority neutrals: (i) a “Second Seat” initiative and (ii) a project to invite women and minorities to the Task Force, CPR meetings, or other appropriate events to meet prospective clients. The question is how to create such a pool; whether CPR should encourage other organizations to create and share pools. And what unintended adverse consequences may result from doing so.

An initial question was raised whether CPR or the Task Force was the right body to create such a pool. It was felt that it was entirely appropriate to do so through those bodies, and make the pool available to all potential users.

Some conceptual hurdles were discussed. One involved the target for the pool and the branding that might be insisted upon by providers such as AAA, JAMS and CPR in order for them to encourage use of the listed mediators and arbitrators. Mr. Phillips described the criteria that CPR uses in selecting its Panelists, and three questions arose: (i) women and minorities who meet those criteria may already be on the CPR or JAMS Panels; (ii) minorities on CPR's and JAMS' Panels may nevertheless still be underutilized; and (iii) CPR or JAMS may be hesitant to include people in a pool bearing their brands or endorsement unless they meet those criteria. By that time, the objectives of bring new neutrals to the attention of corporate end-users, or of increasing utilization of women and minority neutrals, have been self-defeated.

A threshold question was raised whether a pool can be created, for the purpose of encouraging employment, that is restricted by race or sex. The group had no immediate solution to the legal problems that might be raised were the CPR web site (for example) to have a button saying "Seeking a Minority Neutral? Click Here."

One solution might be that the pool is housed within an advocacy association rather than a provider of services. Affiliation of the pool with an advocacy organization might identify the nature of the pool without offensive description. Collaboration with the ABA Conference on Minority Lawyers, the Diversity Committee of the ABA Dispute Resolution Section, or the National Bar Association might be candidates. If one outcome might be to restrict the pool to minorities rather than women, that might not be a bad outcome – it might be netter to "take a smaller bite" at first. However, it was agreed that the intended end-users of the pool – high-end mediators and big-money disputants – would anticipate that rigorous vetting for quality and suitability had been performed,

once again raising the question of whether well-known service providers (or even the Task Force itself) would be comfortable endorsing the pool with their organizational brand and good will.

Another starting point would be to ask women and people of color who are on JAMS' or CPR's Panels whether they would be interested in participating in the second-seat program. The resulting list might be supplemented using the criteria that CPR has already used. However, while this might lead to a reliable quality list, it would not answer the question whether the list itself is offensive.

The committee agreed that these issues are fundamentally intertwined with the proposals that the Second Seat committee is reviewing. It therefore agreed to join that committee's previously scheduled telephonic meeting at 3:00 EDT Monday August 13, 2007.

Respectfully Submitted,

F. Peter Phillips  
Secretary



**CPR NATIONAL TASK FORCE ON DIVERSITY IN ADR  
“Second-Seat” Committee  
Minutes of Meeting of July 12, 2007**

The Second Seat Committee of the CPR National Task Force on Diversity in ADR met by telephone on Thursday, July 12, 2007. Those participating were:

Ken Andrichik  
Judith Cohen  
Nelson Diaz  
Cassandra Georges  
Barry Leon

Also Attending:  
F. Peter Phillips

Mr. Phillips set forth the issue to be discussed. After the issuance of the ADR Diversity Survey, designed to communicate corporate clients' expectations to their outside firms, the Task Force addressed the question how to get women and minorities in the room during actual mediations and arbitrations. Models such as “mentoring” and “shadowing” had been proposed but found flawed in various ways. The task of this committee was to propose a program that would meet this goal; identify how it would be implemented by the Task Force; and consider how the resources necessary for that implementation would be found.

Mr. Andrichik noted that an “apprentice” model might be a possibility. Ms. Georges related that for the past year she had been working with Robert Creo, a well-established mediator, and participates in everything he does, observing every aspect of the process. She reported that the experience has given her a great many skills and, if it were generalized, would advance the careers of women and minorities and advance the aims of the Task Force.

Judge Diaz observed that minority judges who retire from the bench fare less well as ADR practitioners than white counterparts. He believed that corporate insistence on their use is the first and best way to combat this problem. Ms. Cohen said that the goal should be to use already skilled people, not to mentor or train new people. The challenge to be addressed is to change the homogeneous nature of the slate of ADR professionals that results from choosing “safe” mediators. She thought that the model of co-mediation could be used, especially if the second mediator has something special to offer. In labor arbitrators, for example, she noted that the availability of an under-utilized arbitrator meant that hearings could be scheduled without delay. Data would be helpful in order to determine why clients do not currently choose unfamiliar mediators and arbitrators.

Mr. Andrichik thought that offering a co-mediator would be accepted by the disputants if it were presented as a regular part of the program (i.e., not unique to a particular dispute) and there was no change in the cost of the mediation to the participants. Ms. Cohen said that, ideally, principle mediators would need to be trained and willing to engage in co-mediation. If the goal is to create opportunities for already skilled mediators, the key is to have clients experience them working. This model will work best by identifying those mediations (and arbitrations) in which the clients are

willing to use two neutrals – and then actually and actively use them. It is also to be hoped that the underutilized mediator may bring to the process some values and insights that were unexpected, and thus value-added for the parties.

Mr. Phillips summarized the sense of the group as follows:

- ✚ The Task Force should not consider either “mentoring” or “shadowing” projects but rather restrict its recommendations to processes where an underutilized, but experienced and skilled, “second-seat” actually works as a professional neutral.
- ✚ The proposal of the “second-seat” co-mediation option should have no financial impact on the parties.
- ✚ The proposal that a particular mediation or arbitration have a “second-seat” can be made by the client, counsel, the service organization, or the chosen “first-seat” neutral, and thus the target market in any effort to encourage this practice would be quite wide.
- ✚ The project may necessitate the creation of a “pool” of second-seat candidates from which candidates for these opportunities would be drawn. However, some clients, mediators, law firms or providers may have their own suggestions or preferences for suggested candidates.
- ✚ The question remains whether clients, firms, mediators, arbitrators and service providers may need training or education on the implications of a “co-mediation” or “co-arbitration” model.

Mr. Anrichik noted that, in light of this adding another “layer” to planning the ADR process for all constituencies, some added expenditure of resources will be implicated. A business case therefore needs to be made, showing that there would be a benefit to each stakeholder from this program.

Mr. Phillips asked that the group consider (a) a definitive statement of both the goal and the process that is being considered; (b) a clear plan to effectively communicate (and justify) the program to the necessary stakeholders of the process; and (c) a disciplined estimate of the cost of this program to the Task Force, and recommendations for how those costs can be realized.

The committee agreed to meet again by phone at 3:00 p.m. Monday August 13,  
2007.

Respectfully Submitted,

F. Peter Phillips  
Secretary



**CPR NATIONAL TASK FORCE ON DIVERSITY IN ADR  
Joint Meeting, “Neutrals Pool” and “Second-Seat” Committee  
Minutes of Meeting of August 13, 2007**

The Second Seat and Neutral Pool Committees of the CPR National Task Force on Diversity in ADR met jointly by telephone on Monday, August 13, 2007. Those participating were:

Laura Castor  
Judy Cohen  
Cassandra Georges  
Claire Gutekunst  
Gene Johnson  
Marvin Johnson  
Barry Leon  
Linda Singer

Also Attending:  
F. Peter Phillips

Mr. Phillips set forth the issues to be discussed. The deliberations of both committees were reviewed: The Second Seat group had agreed on an approach to place qualified but underutilized neutrals in a co-equal status with other neutrals who had been assigned to high-end cases, in a program that could be initiated by provider organizations, parties, counsel or the affected neutrals. The Neutrals group sought a way for such qualified but underutilized neutrals to be identified. Both groups also had addressed how

such a program could operate within professional, ethical and legal constraints and expectations.

Marvin Johnson shared his experience that there may not be highly qualified neutrals who have not been previously identified by current service providers, suggesting that the “diversity pool” of very qualified neutrals may already have been created.

Ms. Castor asked why only high-end proceedings are under discussion. Mr. Phillips explained that the challenge as first stated by the Task Force was to address corporate end-users’ desire for more diverse pools of neutrals from which to choose in such cases. Ms. Cohen shared her experience with the National Academy of Arbitrators, which had selected about 20 mentors to whom younger arbitrators were assigned. She also reminded the group that some “minorities” included those with disabilities or had other non-racial minority attributes. While acknowledging the rationale for concentrating on better placement for accomplished professionals, Ms. Georges encouraged the Task Force to continue to consider “creating the pipeline” and establish a mentoring program for beginning or less experienced neutrals.

The question was discussed whether service providers can, as a matter of practice and law, encourage the employment of arbitrators and mediators who are women or members of racial minorities. Ms. Cohen suggested that the established neutrals might bring those people in on their own accord, rather than their being appointed through a service provider. It was noted that full co-mediation and (particularly) co-arbitration are not desired by many parties to high-level disputes, and that limiting the “second-seat” process to those instances where both neutrals will be co-equal in the facilitation or arbitration may drastically reduce the instances of usage.

It was proposed that a broader approach be adopted: A “diversity pool” of excellent and reliable professionals who are women and/or racial minorities can be created by CPR and/or by other organizations in the field of ADR, and made available to users and (especially) to established neutrals. These companies, attorneys and established ADR professionals would then be urged to invite people from the “diversity pool” to participate in a given proceeding. The participation of the invited neutral may vary with everyone’s desires and expectations – it may be to observe, to assist or fully to co-participate, depending on the desire of the parties and the neutral, and the opportunities presented by the process. Use of the “diversity pool” for this purpose must then be very strongly encouraged by the influential corporate and legal end-users who seek this outcome in the first place – that is, members of the Task Force and participants in other likeminded initiatives.

This approach was tentatively approved by the group, and Mr. Phillips was asked to formulate an articulation of the proposal for consideration of the joint Committees and, ultimately, the Task Force at its October 4 meeting. He will also contact the other major service providers to determine whether this approach could be implemented and would earn their support.

Ms. Georges asked how data could be collected on current usage of women and minorities, in order to measure the impact on initiatives such as the Task Force is considering. The group agreed that the information may not be of immediate use and, in any event, was outside the purview of the Committees.

Respectfully Submitted,

F. Peter Phillips  
Secretary