



Diversity Task Force Meeting

November 3, 2009

AIG, 70 Pine Street, New York, NY

In Attendance:

CARLA HERRON – CO-CHAIR
Shell Group

JAMES HURD
Shook, Hardy & Bacon LLP

CHARLES MORGAN – CO-CHAIR
FTI Consulting

SUE ANN INGLE
FTI Consulting

THOMAS SAGER – CO-CHAIR
DuPont

BENJAMIN JEALOUS
NAACP

KEN ANDRICHIK
FINRA

LAURA KASTER

JEFF KICHAVEN

DENNIS ARCHER
Dickinson Wright PLLC

BARRY LEON
Perley-Robertson, Hill & McDougall
LLP/s.r.l.

DAVID BURT
DuPont

TIMOTHY LEWIS
Schnader Harrison Segal & Lewis LLP

BARBARA DANIELLE (FROM 11:30)
GE Capital Americas

LAUREL PYKE MALSON
Crowell & Moring LLP

STEPHEN GATES (FROM 11:20)
Mayer Brown LLP

DEBORAH MASUCCI
Chartis Insurance

CASSANDRA GEORGES
Above & Beyond Dispute Resolution

ROBERTO PIROZZI

DYE ANN GRAHAM
Upchurch Watson White & Max

HON. CHARLES RENFREW (FROM 11:50)

STEVE GROO
FTI Consulting

EDNA SUSSMAN
SussmanADR LLC

CLAIRE GUTEKUNST
Proskauer Rose LLP

NANCY VANDERLIP
ITT Corporation

JAY WAKS
Kaye Scholer LLP

FOR CPR:
RUSS BLEEMER
MOLLY BRANNON
LORRAINE BRENNAN
KATHY BRYAN
HELENA TAVARES ERICKSON

Kathy Bryan began by welcoming the participants, who introduced themselves, and thanking AIG for hosting the meeting today. Co-Chairs Mr. Morgan and Ms. Herron welcomed all of the invitees.

The participants approved the Minutes from the June 22, 2009 meeting of the Task Force.

Overview of Activities

Ms. Bryan briefly reviewed the current activities of the Task Force and directed the group to the Overview provided. Her goals for this meeting were to discuss the activities accomplished to date and plan for the future. She noted that the Task Force is not intended to exist in perpetuity and solicited the views of the members to see if the Task Force was accomplishing its purposes.

Ms. Herron stated that while there always remains more to be accomplished, the Task Force has raised awareness and continues to do so. She noted that a lost cost arbitration alternative may be a way to expand the market. She highlighted the Award for Diversity in ADR and solicited nominees for it.

Mr. Morgan stated that he feared apathy and highlighted that this group needs to lead the way in ADR. He pointed to pages 3-4 of the Overview as to projects to be considered and their prioritization.

Mr. Sager noted the need for prioritization.

Ms. Masucci noted that she was impressed with the number of activities that CPR and the Task Force have undertaken. She stated that there was a need to measure and track results in order to measure success. Also necessary is the need to identify women mediators and arbitrators and feature them, perhaps on CPR's website.

Ms. Bryan noted that because of our self administered nature, it is not possible to measure totally the selections that parties are making with respect to neutrals. She invited Mr. Andrichik to comment on how an administering agency measures outputs. He noted that because demographic information is kept separately, FINRA cannot measure outputs.

Ms. Kaster encouraged a method of "self reporting" by organizations as a way to measure progress.

Discussion of Task Force Projects

Mr. Archer commented on the election of the President and contrasted the number of cases filed and events happening throughout the US that are appalling. He suggested initiatives across the profession. Ms. Lamm as ABA President, Thomas Wells (past president) and Mr. Zack, incoming president (of Cuban heritage) are all focusing on diversity in the profession. He thanked Mr. Sager for his early work in the area. A new group has been formed of which Robert Grey of Hunton & Williams, former ABA President is Director of a new group that is going to update the Pledge that was originally made by Rick Palmore and others. This mechanism can be used by CPR to further its initiatives.

Ms. Masucci, who will be Chair Elect of the ABA DRS Section, volunteered to make this the lynchpin of her year. Ms. Gutekunst pledged the support of the State Bar.

Mr. Sager noted that there needs to be alignment on the specific projects to ensure progress. Mr. Morgan suggested putting together the leaders of the Task Force and the ABA group on a conference call. Mr. Sager stated that we need to determine whether we focus on the pipeline or existing neutrals.

Mr. Lewis questioned how to measure demographics and asked how MCCA measured for the purposes of the Tom Sager Award for Diversity. He suggested inquiring of them how they measure for the Award.

Ms. Herron questioned whether an Award achieves our objectives. Mr. Burt noted that it may very well be the drumbeat that keeps up momentum.

Outside Speaker

Judge Lewis introduced Benjamin Jealous, the 17th and youngest President of the NAACP. The NAACP is observing its 100th anniversary this year.

Mr. Jealous noted that there is a larger pool of qualified people in the field that need to be accessed. He then focused on the watershed of Inauguration day and the aftermath. He noted that 7 out of 10 new child HIV cases are children of color. He noted that the US incarcerates people at 5 times the world rate and that ex-felons cannot get jobs. He used as an example – baggage handlers at airports are made to check off whether they have ever been convicted of a crime. He then stated that Black crack users account for 15% of all users but 85% of those incarcerated. He highlighted single mothers as a class disproportionately affected by such incarceration rates. The NAACP is trying to get corporations to change their application processes so that such issues are handled in the interview process rather than being used as an entry barrier.

Judge Lewis thanked Mr. Jealous and invited comments and questions. Mr. Morgan stated that CPR's focus is on finding more mediators and other neutrals of color. He invited Mr. Jealous to

delegate someone from the NAACP to serve on our Task Force. Mr. Jealous suggested Justice Banks or the NAACP general counsel. He noted that the NAACP puts on a CLE event every year that attracts many black attorneys and judges. He highlighted that there is a huge pipeline issue especially with the number of Black men entering law school. This will be a future problem. Mr. Sager asked whether CPR's mediators could be used by the NAACP in its work. Mr. Jealous stated that mediation suffers from a lack of knowledge and suggested working together to publicize the virtues of mediation.

Ms. Bryan asked how to address the key levers, and asked how the NAACP made its decisions on how broad or narrow to approach those key levers. Mr. Jealous noted that lynching was eradicated by the constant focus on the issue. Now the issue is the school to prison pipeline. They will be focusing on the corporate hiring and cooperating with mayors on the school systems. He suggested dealing with the pipeline issues. If the pipeline to mediators is judges, then concentrate on diversifying the judiciary.

Mr. Hurd noted that he had spent a number of years as a federal prosecutor and asked what the NAACP is doing on raising the consciousness on issues like the crack/powder disparity. AG Holder supports the position of the NAACP and now the Association is directing itself at Congressional holdouts such as Congressman Sessions.

Judge Lewis thanked Mr. Jealous and highlighted that he will be attending CPR's CLA Dinner.

Discussion of Task Force Projects

Ms. Bryan returned to the issue of whether the Task Force should focus on the narrow or broad. Starting with the Diversity Award, she noted that the criteria for the Award was intentionally broad. Ms. Kaster stated that it was not an issue of narrow or broad but rather an issue of publicizing the Award far ahead of time.

Mr. Andrichik noted that it was necessary to develop a checkbox nomination form to publicize the Award. Ms. Georges suggested launching the Award at the CLA Dinner.

Ms. Graham suggested adding another component to the Award. She noted that it was necessary to bring in the mediators that are already out there – possibly groups for mediators of color because such groups have worked for the ABA and similar groups.

Mr. Kichaven stated that the criteria we are all talking about are “dead on arrival.” Professional mediators must concentrate on nothing else other than being a successful mediator. He highlighted Ms. Georges' efforts in this respect and stated that we need to find others like her and seeing how can we help them. Personal relationships are the most important factor in this field. He suggested that CPR's efforts in specialized panels actually retard diversity efforts. He noted that “professional mediator” must be a term of art within CPR.

Mr. Waks observed that the area of employment and labor law are an area in which females and people of color are active and have been successful. As the profession changes, the changes will be more acceptable in the mediation and arbitration realm.

He noted that inclusion could be highlighted by supporting cross cultural training.

Mr. Leon stated that Mr. Jealous noted that the issue was really supplier/demand. What are the strengths that CPR can bring to the issue? What can CPR do well? Identify 2-3 projects that CPR can do well?

Ms. Gutekunst echoed Mr. Leon's points and stated that the focus must be on the selectors – the corporations and the law firms. Because CPR administers so few cases, what we need to do is influence other organizations that administer higher numbers of cases. An Award helps, but perhaps a pledge might be considered.

Ms. Masucci disagreed that there was a sufficient pool of diverse neutrals. She noted that when she is looking for certain demographic characteristics, she finds that people have dropped out of the field because it is not sufficiently lucrative.

Mr. Hurd stated that awards do help in raising awareness.

Mr. Morgan commented that most people have had mentors. He suggested articles in *Alternatives* about how you get to the pinnacle in the profession, a little booklet about how to get into the field. Mr. Sager suggested targeting business publications rather than legal publications. Ms. Herron suggested featuring people of color and women.

Mr. Sager volunteered his PR firm to help CPR in this endeavor. Mr. Burt noted that it is necessary to change the cultural fabric and that it was necessary to do all of the things that we are looking at and to not loose heart.

Ms. Bryan noted that perhaps for the future we should expand the categories for the Diversity Award. For this year we need nominations, which will close on November 24.

Mr. Waks suggested also looking at what other organizations are doing that we should be considering. Ms. Bryan stated that AAA has been participating in the Task Force.

Ms. Brennan described Arbitral Women and its project to fund women at the Vis Moot. CPR wanted to do the same with a minority law school. We are looking for contacts at schools other than Howard which is already funded for this year.

Ms. Masucci noted that the JAMS developed "Access ADR." Ms. Georges suggested reaching out to local bar associations rather than the national partners. Other organizations include MOCHA, Young Lawyer DRS committees in various bar associations.

Ms. Bryan called for a subcommittee to look at what kinds of metrics or programs would be appropriate for a company. Mr. Lewis believed that the Diversity Survey was the first step in this direction and volunteered to serve on the subcommittee.

Ms. Bryan summarized the meeting consensus as follows:

- Support for the Award, with some changes going forward but commitments to provide nominations this year
- Support for a low cost arbitration program to be further defined by the subcommittee
- A booklet or marketing materials provided by CPR would help raise awareness
- A willingness by the Task Force participants to write articles
- A desire to keep activity going

Ms. Bryan asked for volunteers to host the next meeting – Houston and DC were suggested as locations.