The Steering Committee of the Franchise Mediation Program met in Scottsdale Arizona on Friday April 25, 2008. Co-Chair Bill Hall convened the group and asked everyone to introduce themselves and their affiliation. Attending were:

Kay Marie Ainsley
Michael H. Seid & Associates, LLC
Don Armstrong
McDonald’s National Leadership Council
Morton H. Aronson
Kilpatrick Stockton LLC
Marcus Banks
Wyndham Worldwide Corporation
Robyn Fuller
LQ Management LLC
William G. Hall (Co-Chair)
William G. Hall & Company
Lee Heriaud
McDonald’s National Leadership Council
John Kujawa
McDonald’s USA LLP
Jay S. Patel
LHS Companies
Robert L. Purvin, Jr.
American Association of Franchisees & Dealers
Karen Satterlee
Starbucks Coffee Company
Fred Schwartz
Asian American Hotel Owners Association
Raxit N. Shah
Liberty Group of Companies
Matthew Shay
International Franchise Association
Mr. Hall conveyed Mr. McLester’s regret at not attending; Scott continues to support the Program but he suggests that a new franchisor Co-Chair be appointed because the pressure of his work has not allowed him to devote the time that the Program deserves. A new Co-Chair will be presented for the group’s consideration in the near future.

Mr. Hall noted the “power of the group” because of the diversity of the participants and the continuing value of the Program in convening like-minded organizations and individuals to study improvements and efficiencies in the franchise mediation area. The vision shared by the group in the fall meeting was:

- Providing the framework through CPR of the Franchise Mediation Program that any franchisor or franchisee could take advantage of. This would include rules, qualified mediators and other information sources to assist anyone in the franchise industry with their dispute resolution efforts.
- Being an advocacy group for mediation as the methodology to resolve disputes in the franchise industry. Any mediation in the franchising industry will be considered a positive action regardless of whether the mediation is initiated directly through the CPR Franchise Mediation Program or otherwise.
- Education of the members of the Steering Committee at each meeting regarding the current trends, events and realities of mediation in the franchise industry.
- Promotion of mediation in the franchise industry by writing articles, giving presentations, granting interviews and other public relations efforts to raise the awareness of mediation to franchisees, franchisee associations, franchisors, industry trade association, attorneys, regulatory agencies and other parties with direct interest in franchising conflicts.
- Being a “think tank” for mediation in the franchise industry
- Continued meetings of the steering committee twice year

Mr. Hall discussed a plan for the continued and increased impact of the Program. Much past effort has been put on money – how to find the resources to advocate mediation in the industry. But taking a “think-tank” approach is much more promising: to convene a group of leaders to exchange experiences, increase education, advocate alternatives to litigation, and attract leadership. Moreover, the fiscal demands would not be great. He and Mr. Phillips outlined, in general terms, the concept of a larger and broader group that would engage in semi-annual meetings to discuss ADR topics and share experiences and best practices. Mr. Hall committed to finding money sufficient to pay for the time and expenses of the CPR liaison, and the rest of the group would each pay around $250 per year to defray expenses of the dinners and other out-of-pocket costs. The enlarged group would be the definitive core leadership in the topic of dispute avoidance, management and resolution in the franchise community and would, over time, attract many prominent and interested persons on a self-selected basis. A newsletter
would be sent out to a very wide address list every quarter, and the group itself would meet semi-annually.

Because the guest had arrived, it was agreed to put off discussion of this concept until after Bruce Meyerson’s presentation.

Bruce Meyerson, a mediator from Phoenix, joined the group to share his observations and recent developments. He shared thoughts on the recent legislative initiatives regarding mandatory arbitration and class action waivers in arbitration. Mr. Valentino reported that, prompted by past experience, Tropical Smoothies had removed the arbitration clause from its standard agreement and replaced it with a mandatory mediation clause. Two current bills in Congress address the issues: one would attempt to ensure that arbitration is fair; the second would make arbitration clauses unenforceable in consumer and employee relationships. The second bill is framed to distinguish between “the party that drafted the contract” and “the party that did not draft the contract,” seeming to bring into its ambit strong franchisors with developed standard agreements, as distinct from start-up franchisors who may change provisions through negotiation. In any event the distinction does not acknowledge the existence and influence of strong multi-unit franchisees that have bargaining power but sign standard agreements.

Mr. Meyerson also discussed initiatives to assert quality control on mediation and to professionalize the practice. An effort is underway in Europe, the International Mediation Institute, to set forth criteria for mediators and to issue accreditation to mediators who satisfy the criteria. It was generally held within the group that the market will distinguish between good and bad mediators, though that implies a situation in which bad mediators continue for a while before they are identified. Some noted that, even with states that certify mediators (such as Florida), certification has provided no assurance that the mediators are any more qualified than in jurisdictions that do not certify. In the end, it was felt, a successful mediator possesses a mix of talents that are not the product of training and that defy standardized accreditation.

Turning to “lessons learned” from the mediator’s perspective, Mr. Meyerson noted the importance of the parties’ advising the mediator on the factual background of the dispute in quality written materials, whether shared or not, submitted prior to the mediation. He warned against participants in the mediation making caustic comments and engaging in aggressive posturing, whether in pre-mediation written submissions or in their conduct during mediation sessions. He hoped to have controversial and upsetting comments made confidentially, to the mediator, rather than in front of others. The lawyer is most successful who is collaborative with his client, his adversary and the mediator. The proper temperament, being prepared, thinking through the problem, being flexible and receptive to new proposals, are all important components of successful mediations. The benefits and risks of an opening session with all parties were discussed. Most participants – both neutrals and attorneys – schedule such sessions if they think it would be useful, and tailor each mediation to the personalities of the parties and the facts of each dispute.

With thanks to Mr. Meyerson, the group returned to the topic of its future. The group expressed concern that a large membership may be cumbersome and its discourse not focused. A larger group might meet periodically, but a steering committee that is more
selective in its membership has very important advantages. During steering committee meetings, everyone has a voice and can listen and learn. The group hoped that the quality and leadership of the current composition would be maintained and that some degree of selectivity would be preserved.

No one felt that the imposition of nominal dues would be a problem to continued membership. It was important to include smaller franchisees and start-up franchisors as the group develops, to assure diversity of the committee. It was also important that the Program remain independent of established trade associations, but endorsed and supported by them.

The group agreed that:

- Members would contribute a modest level of dues (with voluntary requests for other contributions from members so inclined);
- Mr. Hall will undertake to raise $5,000 each year for a three-year period for basic administration;
- A newsletter would be developed, relying on Mr. Phillips to gather editorial content and on some organization to offer design services on a pro bono basis;
- The web site will be made more robust;
- The committee will work on appropriate enlargement. Committee meetings could also be adjoined to wider, public workshops or seminars. It might also be possible to work with IFA for programs for CFE credit

The book that has been written was planned to be accessible from the new website. However, several members of the group felt strongly that it should be physically published, as well as chapters appearing as featured articles in the newsletters. Mr. Phillips will work with Mr. Purvin to determine the cost and revenue-splitting arrangements; Mr. Aronson expressed an interest in assisting this effort as well.

The group declined to endorse the proposed arbitration rules because of a concern for diluting its message as a pro-mediation advocate. However it agreed that the rules were of a high quality and should be available as an alternative to AAA rules, and asked whether CPR might promulgate them separately from the Program. It was also agreed that they might appear as an appendix to the book.

The next meeting of the group was discussed. A suggestion was made that the next meeting be held just before or just after the ABA Forum on Franchising which will take place on October 15-17, 2008 at the Hilton Hotel, Austin, Texas. Mr. Phillips and Mr. Hall will work on arranging a meeting around those dates in Austin.

With thanks to all, Mr. Hall adjourned the meeting at 4:10 p.m.

Respectfully submitted,

F. Peter Phillips
Secretary