Mr. Purvin reported that the Annual Meeting of the American Association of Franchisees and Dealers was successful, drawing about 150 attenders. He noted that franchisees themselves were not interested in ADR as a topic; rather, the key is reaching and educating the franchisee legal community.

Mr. Phillips gave the case report as of April 30, 1999 (attached), noting activity since December 31, 1998. The Committee asked for further information on: (i) the reasons why filed cases were withdrawn; (ii) what disputes are captured in the “Miscellaneous” category; (iii) whether the rate of recent filings is above or below historical rates. Mr. Phillips undertook to get the information requested. Mr. Aronson asked that the reports be made less general, to permit analysis necessary to assist marketing efforts. Mr. Dixon and Mr. Aronson asked for the names of members of the Program who had never filed a matter.

The Committee discussed ways to increase Program utilization. Mr. Rosen noted that franchisee associations may be efficient vehicles to spread word about the Program. Holding seminars and creating videos for subsequent distribution was discussed, as was use of the meetings held by the ABA and the AAFD. The initiative for NFMP inclusion in such meetings should come from the members, not from CPR. Messrs. Purvin, Simon and Rosen will be on Panels at the ABA Forum on franchising and will mention the Program. Mr. Wolf will investigate NFMP inclusion at the Forum’s 2000 conference, and Mr. Aronson will investigate the feasibility of a conference call among franchisee association heads. Mr. Henry believed that the best chance for the Program to grow lies in getting more franchisors to use it, not getting franchisees or their lawyers to hear about it.
Mr. Aronson described the origin, mission and status of the National Franchise Council. Mr. Simon distributed materials on the NFC (attached), including its endorsement by the New York State Attorney General. Other state regulators are considering using the NFC. No mediations have been needed thus far in the matters referred to the NFC by the FTC. There are now 15 NFC members. The NFC has taken out print ads to encourage the industry to engage in self-regulation. Mr. Simon felt that the legal staff of the FTC could benefit from learning more about ADR, and Mr. Henry agreed to work with the FTC if it wished.

Mr. Wolf reported on Cendant's use of ADR. In 1998 Cendant had 39 mediations, none of which went through the Program. Most were conducted after litigation was commenced, since in Cendant's experience franchisees (or their counsel) seldom were willing to engage in mediation prior to suit. Some cases had mandatory judge-conducted settlement conferences, which were less satisfactory because the judges were not skilled and were hesitant to refer the matter to an outside mediator. It was difficult to pursue other ADR after an unsuccessful settlement conference. Mr. Wolf felt that the NFMP Panel lacked “depth” – that some areas of the country were not represented by a Panelist. Mr. Purvin and Mr. Hazlett mentioned that they had made recommendations for new Panelists but had heard nothing. Mr. Henry encouraged the Committee members to send recommendations to Mr. Phillips’ attention.

Further discussion of how to increase Program usage included citing the AAFD's endorsement to counterbalance the misperception that the Program is franchisor-dominated; use of the AAFD's communications capabilities; and possible paid ads in trade press organs.

The Committee noted the need for appointment of a fourth franchisor representative, as well as eventual successors to Messrs. Dixon and Aronson. It was agreed that the group act as a Committee of the Whole to seek out possible new members with fresh ideas and energy. Mr. Wolf was named to the Committee in place of Mr. Buckberg.

Mr. Wolf discussed Section D of the CPR Procedure for Resolution of Franchise Disputes, proposing that a mediation taking place when litigation is pending should not presumptively be sited in the region in which the franchisee is located. After consideration, the Committee determined not to amend the Section, on the ground that the disputants may always agree on where the mediation takes place, but in the absence of agreement the franchisee's participation in ADR should be encouraged by having the mediation in a convenient site.