




REPORT OF THE TASK FORCE ON DIVERSITY IN ALTERNATIVE DISPUTE RESOLUTION



ACTION PROPOSALS FOR CRAFTING AN
EFFECTIVE ALTERNATIVE DISPUTE
RESOLUTION SYSTEM THAT ADDRESSES
ISSUES OF DIVERSITY



Task Force convened by the Equal Access Initiative
and the Alternative Dispute Resolution Section of the
State Bar of Michigan

DECEMBER 2009 - MARCH 2011

THANKS AND ACKNOWLEDGMENTS

The Task Force extends its heartiest thanks and appreciation to:

The presenters on Day One and others submitting material who readily accepted the invitation to open our imaginations to vision an alternate dispute system responsive to the needs of all Michigan citizens;

The Steering Committee, who has had the tenacity and patience to dialogue and problem-solve on issues where words often fail us;

The State Court Administrative Office for the work attendant to hosting Task Force meetings;

The Grand Rapids Bar Association for readily understanding a project on access to justice and offering space for the facilitators' planning meetings;

The State Bar of Michigan Equal Access Initiative and the Council of the ADR Section of the State Bar for their imagination, commitment, and collaborative spirits; and

The State Bar Staff for, as always, accomplishing much under pressure and generating support and enthusiasm for this project among volunteer leaders over the last two years.

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Thank you

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cooperlumen.com
(616) 633-3104

ALTERNATIVE DISPUTE RESOLUTION SECTION

OFFICERS

CHAIR

Donna J. Craig
Donna Craig & Associates, PLC
7 West Square Lake Road, #119
Bloomfield Hills, MI 48302-0462

CHAIR-ELECT

A. David Baumhart, III, Bloomfield Hills

SECRETARY

Robert E. Lee Wright, Grand Rapids

TREASURER

Antoinette R. Raheem, Bloomfield Hills

COUNCIL MEMBERS

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Gene J. Esshaki, Detroit
Richard J. Figura, Empire
Kevin S. Hendrick, Detroit
Catherine A. Jacobs, Lansing
Paula K. Manis, Lansing
Michael G. Nowakowski, Detroit
Brian A. Pappas, East Lansing
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Donald G. Rockwell, Flint

March 3, 2011

Dear Readers of the Diversity in ADR Report:

The Alternative Dispute Resolution (ADR) Section of the State Bar of Michigan is proud to be a co-convenor of the Diversity in ADR Task Force. This project provided a unique opportunity for a broad array of voices on the issues of both ADR and Diversity to come together, educate and learn from each other, and envision a world where diverse populations of people can access a diverse spectrum of ADR processes provided by a diverse group of professionals and organizations to resolve disputes and engage in conflicts constructively.

The ADR Section extends its appreciation to the members of the Steering Committee for their leadership throughout this project. We commend the Steering Committee for its decisions to ensure an inclusive process by inviting individuals with expertise in both public and private ADR systems and by inviting individuals with expertise in diversity issues involving race, ethnicity, gender, disabilities, sexual identity, poverty and more.

The ADR Section congratulates and thanks the co-facilitators of the Task Force, Antoinette R. Raheem and Dale Ann Iverson, for designing a process that remained true to principles of ADR and Diversity. The ADR Section also wishes to thank the members of the Diversity in ADR Task Force for giving so generously of their time, insight, creativity, and thoughtfulness.

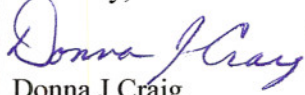
This report contains valuable information about both ADR and Diversity; it contains details of the process used to engage the Task Force members; and it contains the work product of the Task Force (in the aggregate and in small groups) throughout the process. We offer this report for the broadest dissemination possible not only for its substantive outcomes but also for its insights in designing a process that engages and draws out the creativity of people of diverse viewpoints. This report is also unique in that its contents have not been pre-vetted or censored in any way by this co-convenor. In this way, the ADR Section honors the intent of and work of the Task Force to give voice to views and ideas of a large, inclusive group of individuals who are both experienced in and passionate about issues of diversity and ADR.

The sessions of the Diversity in ADR Task Force have concluded. The greatest tribute that can be paid to the Task Force members, however, would be for readers of this report to take the ideas that germinated in this Task Force and grow them into programs and projects that further these ideas. No one organization can be or should be responsible to develop these ideas. Rather, any and all organizations that have a stake in the future of the access to and use of ADR processes within the broadest array of diverse populations should use this report as a source for ways to make that future a reality.

The ADR Section will use the ideas in this report to inform its efforts and projects to expand the knowledge and use of ADR. Additionally, the ADR Section welcomes opportunities to work collaboratively with public or private

groups to further access to and use of ADR by diverse populations of individuals and organizations. Contact the leadership of the ADR Section with collaboration proposals by e-mailing Antoinette R. Raheem at arlaw@sbcglobal.net. We would like to work with you.

Sincerely,

A handwritten signature in blue ink that reads "Donna J Craig". The signature is written in a cursive style with a large initial "D".

Donna J Craig
ADR Section Chair, 2010-2011

TABLE OF CONTENTS

Task Force Participants.....	7
Foreword.....	11
Framework for the Task Force Work:	12
From Vision to Action.....	12
1. Convening The Task Force	12
2. The Task Force Question.....	14
3. The Task Force Answers	14
A. Themes For Action	14
B. Task Force Action Proposals: Executive Summary.....	15
Task Force Action Proposals: Theme 1.....	20
Task Force Action Proposals: Theme 2.....	22
Task Force Action Proposals: Theme 3.....	24
Task Force Action Proposals: Theme 4.....	26
Conclusion	29
Appendix A: Raw Data from Work Groups.....	30
Appendix B: Presenter Materials from First Task Force Meeting	41
Appendix C: Resource Materials from First Task Force Meeting	42

TASK FORCE PARTICIPANTS

MS. NINA ABRAMS

Abrams Law Firm PC
30300 Northwestern Hwy
Suite 112
Farmington Hills, MI 48334-3217
248 932-3540 ext 337
ninadabrams@abramspc.com

MS. ERIKA AKINYEMI

Akinyemi Law, PLLC
645 Griswold
Suite 1300
Detroit, MI 48226
313 237-6295
eakinyemi@sbcglobal.net

MS. TRACY L. ALLEN

Global Resolutions, PLLC
44 First St.
Mt. Clemens, MI 48034
586 979-6500
tallen@mediate.com

MS. EARLENE BAGGETT-HAYES

The Law & Mediation Center
110 N Perry St
Pontiac, MI 48343-2343
248 454-9660; 248 426-8800
erbhayes@sbcglobal.net

KERRY BERNARD

(formerly Mediation Coordinator
Michigan Department of Civil Rights)
Current address:
14221 N 51st Ave, #2180
Glendale AZ 85306
(313) 622-9099
kerryjbernard@gmail.com

MS. JOANIE BINKOW

President
Dispute Resolution Center
3530 West Huron River Drive
Ann Arbor, MI 48103-8318
734 995-1650
joanbinkow@aol.com

MS. TRACEY BRAME

Assistant Dean
Thomas M. Cooley Law School
111 Commerce Ave SW
Grand Rapids, MI 49503
616 301-6800 x6919
bramet@cooley.edu

MR. RON BROOKS

Co-Director
Southeastern Dispute Resolution Services
711 S. Mechanic Street
Jackson, MI 49203
517 784-4800
rbrooks@caajlh.org

MS. ZENELL BROWN

Wayne County Friend of the Court
645 Griswold St Fl 3
Detroit, MI 48226
313 224-5370; 313 224-4115
zenell.brown@3rdcc.org

MS. SUSAN BUTTERWICK

2950 S State Street
Suite 300
Ann Arbor, MI 48104
734 665-4808
sbutterw@ameritech.net

MR. GREGORY CONYERS

Director of Diversity
State Bar of Michigan
306 Townsend Street
Lansing, MI 48933
517 346-6358
gconyers@mail.michbar.org

TASK FORCE PARTICIPANTS

MS. REGINA DANIELS THOMAS

Law Office of Regina Daniels Thomas
18530 Mack Avenue
Suite 316
Grosse Pointe Farms, MI 48236
313 967-5555
rdthomaslaw@comcast.net

DR. WILLIAM DONOHUE

Professor
Dept of Communication
Michigan State University
563 Communication Arts & Science Bldg
East Lansing, MI 48824-1212
313 492-9379
donohue@msu.edu

MS. BELINDA DULIN

Executive Director
The Dispute Resolution Center
110 N Fourth Avenue, Suite 100
P.O. Box 8645
Ann Arbor, MI 48107
734 222-3788 (direct); 734 222-3745
dulinb@ewashtenaw.org

MS. CHERYL FRIDAY

School Truancy Services Representative and
Mediator
Wayne Mediation Center
17666 Rowe
Detroit, MI 48205
242.715.2626
friday-cl@sbcglobal.net

MS. AMY GLASS

President
Michigan Mediation & Arbitration Services
1610 Grand Ave
Kalamazoo, MI 49005
269 342-9046
amyglass@net-link.net

MR. DAVID GRUBER

Director
Dispute Resolution Education Resources Inc
229 North Pine Street
Lansing, MI 48933
517 485-2274
resolve@tds.net

MS. LADONTAI HARRIS

Southfield Regional Office
American Arbitration Association
27777 Franklin Road, Suite 1150
Southfield, MI 48034-8208
248 352-5500
HarrisL@adr.org

MS. JULIE HAVEMAN

Operations Unit Manager
Kent County Friend of the Court
82 Ionia Avenue, NW Suite 200
Grand Rapids, MI 49503
616 632-6846
Julie.Haveman@kentcountymi.gov

MS. JANICE HOLDINSKI

American Arbitration Association
27777 Franklin Road, Suite 1150
Southfield, MI 48034-8208
248 352-5500
holdinskij@adr.org

MR. RICHARD HURFORD

Ogletree Deakins
33 Bloomfield Hills Parkway
Suite 120
Bloomfield Hills, MI 48304-2945
248 723-6129 (direct); 248 593-6400;
313 510-8175 (cell)
Richard.Hurford@ogletreedeakins.com

MS. DALE ANN IVERSON

Just Mediation, PLC
PO Box 150156
Grand Rapids, MI 49515-0156
616 560-2243
daleiverson@justmediation.com

TASK FORCE PARTICIPANTS

MS. BARBARA JOHANNESSEN

Mediation Specialists Inc
757 Redwood Court
Rochester Hills, MI 48309
248 375-9411
bajohan@quixnet.net

MS. LINDA JOHNSON

Attorney Advisor
Office of General Counsel
Dept of Housing & Urban Development
477 Michigan Ave Rm 1725
Detroit, MI 48226-2526
313 226-7955
linda_d._johnson@hud.gov

MR. JAY KAPLAN

LGBT Project Staff Attorney
ACLU of Michigan
2966 Woodward Avenue
Detroit, MI 48201-3035
313 578-6812
kaplan@aclumich.org

MS. SUSAN WILSON KEENER

Keener Law Offices PLC
29 Pearl Street, Northwest
Suite 410
Grand Rapids, MI 49503-3020
616 726-5900
skeener@keener-law.com

HON. DENNIS KOLENDA

Dickinson Wright, PLLC
200 Ottawa Ave NW Suite 900
Grand Rapids, MI 49503-2427
616 336-1034
dkolenda@dickinsonwright.com

MS. DIANE KRATZ

ADR Supervisor
Oakland County Circuit Court
1200 N Telegraph Dept 404
Pontiac, MI 48341-0404
248 858-8088
kratzd@oakgov.com

MS. MARGARET MCCRYSTAL

Director of Staff Relations
Grand Valley State University
1 Campus Dr # 140LMH
Allendale, MI 49401
616 331-2215
mccrystm@gvsu.edu

MR. MARK MCWILLIAMS

Director of Education Advocacy
Michigan Protection & Advocacy Service Inc
4095 Legacy Pkwy
Suite 500
Lansing, MI 48911
517 487-1755
mmcwill@mpas.org

MR. PAUL MONICATTI

Attorney/Mediator/Arbitrator
1111 West Long Lake Road
Suite 201
Troy, MI 48098-6308
248 641-0060
paul4adr@aol.com

MS. MARY MORRIS

Wayne Mediation Center
Garrison Place
19855 W. Outer Drive
Suite 206-East Building
Dearborn, MI 48124
ladymediator@yahoo.com

TASK FORCE PARTICIPANTS

MR. JOHN NUSSBAUMER

Associate Dean
Thomas M. Cooley Law School
2630 Featherstone Rd
Auburn Hills, MI 48326-2814
248 751-7800 x7717
nussbauj@cooley.edu

MS. RUTH O'CONNOR

Michigan Rehabilitation Services
Dept. of Energy, Labor and Economic Growth
PO Box 30010
Lansing, MI 48909
517 241-5730
OConnorR1@michigan.gov

MS. STEPHANIE PERKINS

Mediator
EEOC, Detroit Field Office
477 Michigan Avenue
Room 865
Detroit, MI 48226
313 226-4623
Stephanie.Perkins@eEOC.gov

MR. SANTE PERRELLI

Assistant Attorney General
State Operations Division
525 W Ottawa St Fl 2
PO Box 30754
Lansing, MI 48909
517 373-1162; 517 241-0574 (DD)
perrellis@michigan.gov

MS. ANTOINETTE RAHEEM

Law & Mediation Offices of Antoinette R. Raheem
PC
7 West Square Lake Road
Bloomfield Hills, MI 48302
248 972-5550
arlaw@sbcglobal.net

MS. MARGO RUNKLE

Runkle Law Office
4265 Niles Rd
Saint Joseph, MI 49085
269 615-2450
runklefamilylaw@aol.com

MS. VICKI RUPERT

MACM Board Member
Oakland County Friend of the Court Family
Counselor
230 Elizabeth Lake Rd
Pontiac, MI 48341
248 858-5560; 248 202-1843 (cell)
rupertv@oakgov.com

MS. AGENIQUE SMILEY

Staff Attorney
Macomb County Legal Aid & Defender Association
21885 Dunham Rd Rm 4
Clinton Township, MI 48036
586 465-1344 x7904
asmiley@ladadetroit.org

MS. ANNE SMILEY

Mediation Management Services
423 W Grand River
Lansing, MI 48906
517 316-7766
smiley_aw@yahoo.com

HON. CYNTHIA STEPHENS

Michigan Court of Appeals
3020 W Grand Blvd Suite 14-300
Detroit, MI 48202
313 972-5708
cstephens@courts.mi.gov

MS. LISA TIMMONS

Executive Director and ADR Clerk
Mediation Tribunal Association
333 West Fort Street
Suite 1500
Detroit, MI 48226-3154
313 224-5606
lisa.timmons@3rdcc.org

TASK FORCE PARTICIPANTS

MR. DOUG VAN EPPS

Director, Office of Dispute Resolution
Michigan Supreme Court
PO Box 30048
Lansing, MI 48909
517 373-4839
vanepspd@courts.mi.gov

MS. ZENA ZUMETA

Mediation Training & Consultation Institute
330 E Liberty St Suite 3A
Ann Arbor, MI 48104-2238
734 663-1155
mtci@igc.org

MS. LORRAINE WEBER

Director, Access and Fairness
Office of the Chief Justice
2225 Burns Street
Detroit, MI 48214
313 615-0496
lweber@detroitlawyer.org

HON. BETTY WIDGEON

Arbitrator, Mediator, Visiting Judge
Widgeon Dispute Resolution & Consultation Services
PO Box 3500
Ann Arbor, MI 48106-3500
734 645-6107
bwidgeon@comcast.net

MS. DEBORAH WIESE

Michigan Rehabilitation Services
Dept. of Energy, Labor and Economic Growth
PO Box 30010
Lansing, MI 48909
800 605-6722
wiesed@michigan.gov

MS. NAHLA YASSINE-HAMDAN

Professor
Department of Political Science,
Wayne State University
20430 Edmonton Drive
St. Clair Shores, MI 48080
313 283-2960
nyassine.hamdan@wayne.edu

FOREWORD

Our society is full of conflict—it is one way we learn and grow. There are business and neighborhood disputes, wars, scams, crimes, educational issues, employment disagreements, family feuds, political schisms, healthcare-related disputes and more. Yet many cannot afford the long, drawn-out court battles traditionally used to address these conflicts. Meanwhile our society is becoming increasingly diverse¹ with the growth of ethnic communities within the country, influxes of people with diverse backgrounds from outside the country, the aging of the baby boomer generation, and the increased openness of sexual orientation and non-traditional lifestyles.

This combination of increased conflict and diversity has coincided in recent years with decreased funding for traditional legal conflict resolution processes. This means that unless an accessible, affordable, efficient mechanism for conflict resolution that appeals to the diverse communities in our society is made available, many conflicts will go unresolved or be resolved in undesirable ways. This Task Force was convened with the hope and belief that alternative dispute resolution² (“ADR”) at its best can provide accessible, efficient and effective mechanisms for conflict resolution that also address the unique needs of diverse communities.

In the spirit of energized and creative problem-solving, the Task Force and its Work Groups have generated an exciting and promising roster of Action Proposals. The unedited proposals are attached as Appendix A. The report also synthesizes the Task Force’s Action Proposals throughout the report. These proposals urge communication, education, outreach, and greater access for and between ADR providers and ADR end users³ from all segments of society. The Task Force members also identified public and private stakeholders who might be a starting point to assess, support and/or implement these action proposals in order to craft an alternative dispute system in our state that will effectively address issues of diversity.

This report is a call for action. For real improvement in our ADR system in Michigan, many Task Force members and the convening organizations look forward to working with various stakeholders throughout the state to explore next steps and see where these proposals can and should become reality—or where they may engender even better ideas.

For many seeking to improve the quality and effectiveness of ADR in Michigan, input from a full range of stakeholders in the ADR system has often been lacking. This Task Force worked mightily to provide that input from community activists, private and community ADR providers, African-Americans, whites, Latinos, the Gay/Lesbian/Bisexual/Transgender community, Southeast, Western and Northern Michigan, government employees, academicians, physically challenged individuals, court personnel, business persons and many more. Given that input, we hope the information contained in this report will be carefully considered in future efforts made in this state to create a more effective and diverse ADR system.

The Task Force on Diversity in ADR

1 As used herein “diversity” means inclusion of peoples of varied races, physical and mental challenges, religions, ages, cultures, economic groups, sexual preferences, national origins and genders. However, this definition is not intended to limit the application of the proposals in this report.

2 As used in the work of the Task Force, “ADR” refers to the variety of dispute resolution processes parties to a conflict may use. For some disputes, these may be an alternative to adjudication in court. The ADR processes most commonly used in Michigan include arbitration, case evaluation, and mediation.

3 ADR end users include but are not limited to lawyers and law firms, individuals, community organizations, businesses, religious groups, educational institutions, health care facilities and providers, political organizations, advocacy groups and more.

FRAMEWORK FOR THE TASK FORCE WORK: FROM VISION TO ACTION

1. CONVENING THE TASK FORCE

THE VISION

Between 2007 and 2009, some of the interests of two groups from the State Bar of Michigan converged – the Equal Access Initiative and the Alternative Dispute Resolution Section. The Equal Access Initiative develops policies and programs to address bias and benefit underserved populations in the justice system. Among other things, the Alternative Dispute Resolution (ADR) Section is committed to improving access to ADR and improving the quality of ADR in Michigan. In 2009, these two groups collaborated to convene the Task Force on Diversity in ADR (Task Force).

THE STEERING COMMITTEE

Initially, a Steering Committee was convened to determine the initial questions that the Task Force would be asked to consider, to design the Task Force's process, and to develop the list of stakeholders for inclusion on the Task Force. The Steering Committee was comprised of a small group identified by the conveners to represent the conveners and the broad community affected by this issue. It also included two facilitators chosen by the two convening organizations.

THE TASK FORCE

To identify Task Force participants, the Steering Committee considered the breadth of the dispute system in Michigan and worked to identify the primary stakeholder groups. While this project was initially conceived among lawyers, the Steering Committee was intentionally comprised in part of people outside the arena of court-connected ADR. The Steering Committee identified these major areas from which to draw Task Force participants:

- Government agencies
- Courts
- ADR Provider organizations
- Private ADR Practitioners and Specialized ADR Services and Programs
- Advocacy and Other Community Groups (including business)
- Legal Service Providers
- Professional Associations in ADR
- Academia and Training Providers

The Task Force was comprised of over almost 50 members, including 11 Steering Committee members. They were associated with over 38 organizations. Task Force members were invited to speak from their individual perspectives. The intention was to get as much input as possible without constraining any member to offer only those ideas and points of view upon which they could gain consent from their organization(s).



THE FACILITATORS

The role of the facilitators was to organize and focus discussions. It was intended that the Task Force facilitators remain neutral throughout this process, although both are actively involved in the ADR field in Michigan, in the convening organizations, and with some stakeholder organizations.

TASK FORCE VALUES

Underlying the Task Force process were several key values:

First, the Task Force should include a significant cross-section of the parties with a stake in the outcome of its work;

Second, Task Force members should begin their work with some understanding of each other's diverse backgrounds and perspectives as they relate to the Task Force work;

Third, the Task Force should be encouraged to brainstorm creative and innovative Action Proposals in response to the overarching question posed to the Task Force; and

Fourth, the convening organizations should work as diligently as possible to disseminate the Task Force Action Proposals to stakeholders in the hopes of generating partnerships and collaborations among Task Force participants, their organizations, and others to evaluate and implement some or all of these Action Proposals and to respond to other data generated by the Task Force.

TASK FORCE MEETINGS

Participants were asked to meet for three days over several months. In the first meeting, Task Force members were asked to develop a joint picture of our world, values and histories as they related to the Task Force questions, below. At the second work session, Task Force members focused on current trends relating to the Task Force questions, what is being done now to address those, and Task Force members' "hoped for future".

Finally, at the third work session in March 2010 Task Force members worked to generate Action Proposals, with some attention also paid to identifying individuals and organizations in the state and elsewhere who might be among the initial resources to guide, support or implement the actions.

2. THE TASK FORCE QUESTION

The Steering Committee presented this OVERARCHING question to the Task Force:

“What would an ADR system look like that effectively addresses issues of diversity?”

The Steering Committee anticipated that considering answers to the following sub-questions would help answer that query:

A. What can and should be done to provide equal access to ADR processes?

B. What can and should be done to broaden professional opportunities in ADR for members of under-represented groups?

C. What can and should be done to improve the effectiveness of conflict resolution processes and providers in responding to the diverse conflict resolution needs of the state’s citizens, including cultural competence?

These sub-questions were suggested tools to help the Task Force manage their work and not questions they were specifically tasked to answer.

3. THE TASK FORCE ANSWERS

A. THEMES FOR ACTION

In developing proposals for action, the Task Force worked in groups that ranged in size from 3 to 9 individuals from a cross-section of stakeholder groups (the “Work Groups”). These six Work Groups were not asked to reach consensus across or within Work Groups, but to brainstorm proposals for action. Thus, each action proposal below came from one of the six Work Groups that comprised the Task Force.

There are four broad themes reflected in the Action Proposals made by the Work Groups. These broad themes for action are:

I. Better understand and consider cultures, languages and other factors among potential ADR end users so that diverse end users may gain optimal access to and benefit from ADR.



3. THE TASK FORCE ANSWERS (CONT.)

II. Support individuals from diverse communities in becoming successful ADR providers so the ADR provider pool will be reflective of a wider spectrum of end users.

III. Increase the cultural competence of all ADR providers so that the needs of all ADR end users may be better met.

IV. Increase community knowledge of, access to and receptivity to ADR, while ensuring that the ADR provided is tailored to the needs of all end users.

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

Set forth in the table below is an Executive Summary of the Action Proposals developed by the Task Force. Following this, at (C) below, is a fuller description of the Task Force proposals, including description of the context from which each proposal emerged, and other information related to each Proposal and generated from the Work Groups.

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

Action Proposal Themes	Potential Resources for initiation, implementation, and oversight	Report page
<p>I. Better understand and consider cultures, languages and other factors among potential Alternative Dispute Resolution (ADR Section) End Users so that diverse End Users may gain optimal access to and benefit from ADR.</p>		
<p>a. Identify cultural differences of diverse End Users that should be better understood to improve ADR processes.</p>	<p>Academia, government and unions</p>	<p>20</p>
<p>b. Reach out to End Users for help in more effective communication with diverse End Users.</p>	<p>Law schools, courts, bar associations, and ethnic centers</p>	<p>20</p>
<p>c. Create a tool to identify the diverse conflict resolution techniques of diverse End Users.</p>	<p>Religious leaders, social workers and community elders</p>	<p>20</p>
<p>d. Assess values important to diverse communities' conflict resolution process.</p>	<p>Professional social scientists</p>	<p>21</p>
<p>II. Support individuals from diverse communities in becoming successful ADR providers so the ADR provider pool will better reflect a wider spectrum of End Users.</p>		
<p>a. Promote diversity among approved ADR trainers, ADR trainees and training material.</p>	<p>Private trainers, foundations, and community groups</p>	<p>22</p>
<p>b. Develop assessment tool to help End Users identify and select available and knowledgeable ADR providers from diverse communities.</p>	<p>State Court Administrative Office (SCAO), Judicial Crossroads Task Force and relevant stakeholders</p>	<p>22</p>
<p>c. Develop an objective rotational system for court appointment of mediators.</p>	<p>ADR Providers, SCAO and End Users</p>	<p>22</p>

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

Action Proposal Themes	Potential Resources for initiation, implementation, and oversight	Report page
d. Institute and promote a mentoring system for new ADR professionals.	State Bar of Michigan (SBM)/ADR Section, Community Dispute Resolution Programs (CDRPs) , law schools and ADR Providers	22
e. Encourage the State Bar of Michigan to accept pro bono ADR services as fulfilling the pro bono obligation of its members.	SBM/ADR Section, community groups, social workers	23
<p>III. Increase the cultural competence of all ADR providers so that the diverse needs of ADR End Users are better met.</p>		
a. With regard to training: 1) supplement basic ADR training with training to enhance cultural competence; 2) verify that diversity training has been taken by every court-appointed mediator; and 3) create an electronic resource list of those trainers and/or trainees of enhanced training.	Association for Conflict Resolution (ACR), American Arbitration Association (AAA), Institute for Continuing Legal Education (ICLE), Family Mediation Council (FMC), Masters in Alternative Dispute Resolution Program (MADR), CDRPs and law schools	24
b. Assess the current system of ADR training to determine the degree to which cultural competence is incorporated.	MI Department of Education, Michigan Supreme Court, SCAO, and Dispute Resolution Education Resources (DRER)	24
c. Develop a universal framework for cultural competence and increase the number of culturally competent and diverse trainers.	MI Department of Education, Michigan Supreme Court, DRER and SCAO	24
d. Develop Code of Conduct for ADR Providers that sets ethical standards addressing cultural competence and bias.	MI Department of Education, Michigan Supreme Court, DRER and SCAO	24

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

Action Proposal Themes	Potential Resources for initiation, implementation, and oversight	Report page
e. Educate ADR Providers on the “business case” for developing their own cultural and other competencies.	SBM/ADR Section, CDRPs, SCAO and ADR Providers	25
<p>IV. Increase community knowledge of, access to and receptivity to ADR, while ensuring that the ADR provided is tailored to the needs of all End Users.</p>		
a. Provide ADR services closer to the points of conflict within the community.	CDRPs, ADR Providers, and academicians	26
b. Decentralize access to ADR by outreach and promotion to community groups through websites, governmental organizations, education, expansion of pro bono ADR services, exploration of non-traditional funding, early ADR for cases under \$25,000, ADR on line and allowing non-prejudicial extensions in court cases so parties can pursue ADR.	Senior citizens’ groups, courts, bar associations, community ethnic centers, educators, therapists, community elders, and the media	26
c. Embed ADR in state government service contracts with for-profit and not-for profit service providers.	Government agencies, legislature, Attorney General	26
d. Educate and empower diverse communities through education on the value of ADR.	Social workers, religious centers, courts and media	28
e. Reach out to community leaders for guidance in development of a culturally respectful dispute resolution process.	Community organizations, houses of worship and CDRPs	28
f. Create a website for diversity and conflict resolution which includes educational resources on diversity, community needs and assessment tools, and self-evaluation tools.	ACR, AAA, PREMi, FMC, SBM/ADR Section, MADR, Law schools, and governmental agencies	28

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

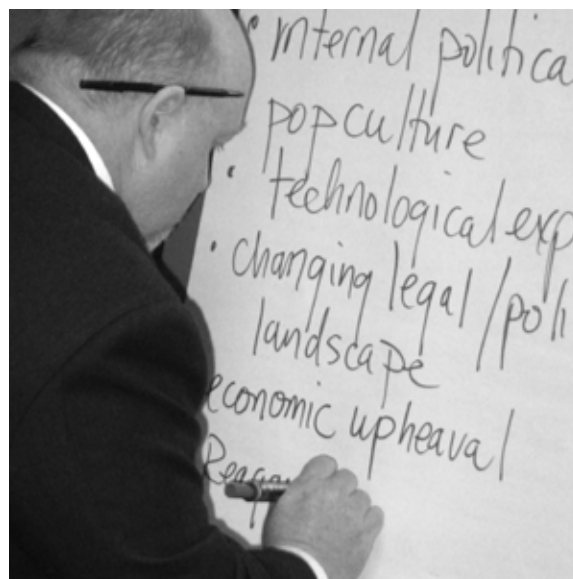
Action Proposal Themes	Potential Resources for initiation, implementation, and oversight	Report page
g. Develop a Pilot ADR Project by identifying a potential ADR End User community of diverse citizenry and develop a trial program to implement some or all of the above Action Proposals.	End users, school boards, law schools, bar associations and government	28

3. THE TASK FORCE'S ANSWERS (CONT.)

C. TASK FORCE ACTION PROPOSALS: A CLOSER LOOK

Set forth below are the Action Proposals, with extensive information supplied by the Work Groups related to possible implementation. This information includes:

- Some comments from the facilitators about the context from which each proposal emerged;
- Suggestions by the Task Force Work Group that drafted the proposal for:
 - who (including individuals and entities) might be able to assist in implementing each Action Proposal;
 - who might be a resource or support for each Action Proposal;
 - who should be informed of each Action Proposal; and
- Suggestions from Task Force Work Groups about:
 - how each Action Proposal should be prioritized;
 - the time line that should be applied to each Action Proposal;
 - and other factors relevant to implementation of each Action Proposal.



Better understand and consider cultures, languages and other factors among potential ADR End Users so that more diverse End Users may gain optimal access to and benefit from ADR.

A. ACTION PROPOSAL

Develop a methodology to identify cultures, subcultures and other differences that need to be better understood and addressed in order for the ADR community to better serve a wider spectrum of End Users.

COMMENT:

The concern expressed by the Work Group was that differences among potential ADR End Users and ADR Providers may impede End User access to quality ADR.

B. ACTION PROPOSAL

Identify language barriers between ADR End Users and ADR Providers and reach out to groups that represent non-English speaking End Users and/or End Users for whom English is not their primary language and/or End Users who otherwise communicate differently from mainstream ADR Providers.

COMMENT

Outreach contemplated by this proposal would better inform diverse communities about ADR and improve communication within ADR processes. Examples of organizations that might be included in this outreach include Arab-American Anti-Discrimination Committee (ADC), Latin Americans for Social and Economic Development (LASED), National Association for the Advancement of Colored People (NAACP) and Arab Community Center for and Economic Social Services (ACCESS).

C. ACTION PROPOSAL

Create an assessment tool to determine the diverse conflict resolution techniques and factors of diverse communities.

COMMENT

Diverse communities may approach conflict resolution in ways that vary from mainstream ADR assumptions about how End Users resolve conflict. For example one community may approach conflict as a very private matter while another may prefer to include many family, elders or religious leaders in the resolution process. This tool should identify those varied approaches.

D. ACTION PROPOSAL

Develop a structure/template/matrix for assessing the values and principles that are important to a community in defining its conflict resolution processes.

COMMENT

This proposal anticipates that a professional would be retained to design the template, that one or more organization(s) willing to fund the project be sought and that financial support be solicited from the Bar and conflict resolution providers as well. This template is intended to take the information gathered through methods such as those proposed above and make the information usable and useful to ADR Providers.

POTENTIAL RESOURCES FOR THEME 1 PROPOSALS

For proposals under Theme I, End Users have responsibility for determining the best way to carry out these proposals. Other potential resources suggested by the Work Groups include academia, governmental agencies, unions, training institutions, community organizations, religious institutions, bar associations, social scientists, courts, senior centers, social workers, ethnic centers, therapists, community elders, etc. Broad-based marketing (i.e. television and radio) would be utilized for some or all of these projects. The information gathered through implementation of these proposals should be distributed to ADR Providers.

Support individuals from diverse communities in becoming successful ADR providers so the ADR provider pool will better reflect a wider spectrum of End Users.

A. ACTION PROPOSAL

Promote diversity in the ranks of approved ADR trainers and require that all ADR trainers in turn promote diversity among ADR trainees and in training material.

COMMENT

This proposal is intended to increase the likelihood that all End User communities are represented in the ADR provider pool. The Work Group suggested this be presented to the Supreme Court through SCAO and to other organizations such as the Judicial Crossroads Task Force of the State Bar. The suggested implementation date was 2011.

B. ACTION PROPOSAL

Develop an assessment tool to assist attorneys, private ADR provider groups (such as the American Arbitration Association “AAA” or PREMI), CDRPs and End Users to better identify and select available and knowledgeable ADR providers in order to address underutilization of ADR providers from diverse communities.

COMMENT

Underlying this proposal was the Work Group’s assessment that ADR Providers from diverse communities must be trained and utilized in order to have the desired impact. This was deemed a high priority by the Work Group. Resources for this proposal might be volunteers, foundations and grants. An electronic media packet may be a possible tool for publicizing this proposal.



C. ACTION PROPOSAL

Develop an objective rotational system for court appointment of mediators.

COMMENT

This proposal is intended to use court appointments to serve as an entry point from which more new and diverse mediators may be selected. The priority level assigned to this proposal by the Work Group that developed it was “not high”.

D. ACTION PROPOSAL

Institute a mentoring system for new mediators—with incentives to mentors and mentees to encourage maximum participation.

COMMENT

This proposal recognizes that ongoing support for mediators from diverse communities is desirable.

E. ACTION PROPOSAL

Encourage the State Bar of Michigan to accept pro bono ADR services as fulfilling the 30-hour pro bono obligation of all SBM members.

COMMENT

This proposal would support ADR providers from diverse communities who are also lawyers by supporting their work to provide ADR services to low-income parties.

POTENTIAL RESOURCES FOR THEME 2 PROPOSALS

Assistance with the projects under Theme II might come from the ADR office of the Supreme Court Administrative Office (SCAO) because of its unique role in approving court-approved trainers, training, training material and court ADR plans. Courts would also be involved to the extent they would need to approve inclusion of these proposals in their ADR plans. Support could also come from private trainers, bar and other legal organizations (particularly the ADR Section of the state Bar), foundations and individuals in human services, community organizations, religious institutions, educators, attorneys, businesses, cultural groups, law schools, courts, senior centers, social workers, ethnic centers, therapists, community elders, Community Dispute Resolution Programs (CDRPs), Institute for Continuing Legal Education (ICLE), ADR providers, businesses and End Users etc. Broad-based marketing (i.e. television and radio) may be utilized for portions of these proposals.

Increase the cultural competence of all ADR providers so that the needs of all ADR End Users may be better met.

A. ACTION PROPOSAL

Develop these tools for ADR providers: 1) basic ADR training supplemented with training to enhance cultural competence and self-awareness, 2) verification that diversity training has been taken by every applicant to be approved for court-appointed mediations, and 3) an electronic resource list of those trainers and/or trainees of this enhanced training.

COMMENT

This proposal is intended to improve skills among all ADR providers in providing quality ADR services in a diverse society. The Work Group designated this as a Top Priority.

B. ACTION PROPOSAL

Assess the current system of conflict resolution education or training at all levels (including but not limited to court-approved trainings) to determine the degree to which culturally defined resolution processes and recognition of, sensitivity to, accommodation for and competence regarding cultural differences is incorporated.

C. ACTION PROPOSAL

Develop an appropriate universal framework for what cultural competence is and increase the number of culturally competent and diverse trainers.

COMMENT

This proposal was based on the premise that if ADR training is to have greater emphasis on cultural competence and diversity, more trainers must be prepared to provide that enhanced training.

D. ACTION PROPOSAL

Develop a Code of Conduct for all conflict resolution providers that sets ethical standards addressing cultural competence and bias.

COMMENT

For a model or prototype, the Work Group suggested review of the Medical Code of Conduct related to cultural competency and/or bias. The State Bar's Michigan Pledge to Achieve Diversity and Inclusion may also be relevant.

E. ACTION PROPOSAL

Educate ADR providers on the “business case” for developing their own cultural competency, along with other competencies, to increase their business as an ADR Provider (the “needs-based approach”).

POTENTIAL RESOURCES FOR THEME 3 PROPOSALS

Resources to evaluate and implement action proposals under Theme III could include SCAO's Michigan Judicial Institute (MJ) and Judicial Information Systems (JIS), organizations such as Association for Conflict Resolution (ACR), CDRPs, American Arbitration Association (AAA), ICLE, Family Mediation Council (FMC), State Bar of Michigan (SBM), local bars, the Masters in Alternative Dispute Resolution (MADR) program and law schools, Dispute Resolution Education Resources, Inc. (DRER) and the Michigan Department of Education. Support could also be sought from courts, governmental agencies, cultural communities throughout the state, private ADR provider groups, individual ADR Providers and End Users.



Increase community knowledge of, access to and receptivity to ADR, while ensuring that the ADR provided is tailored to the needs of all End Users.

A. ACTION PROPOSAL

Provide ADR services closer to the points of conflict within the community, thereby permeating the fabric of the community.

COMMENT

To promote this project, the Work Group proposed coordination of this project with efforts to place ADR clauses in government contracts (infra), that money be raised (e.g. grants), and public relations efforts be developed to promote ADR in target communities. The Work Group suggested that potential sites within diverse communities be identified, that ADR providers be solicited to provide services specifically to those sites and that the solicited sites be used to provide ADR. A final suggestion was that pilot projects in various geographic points throughout Michigan be created in 2011 and implemented in 2012. Following evaluation and appropriate adjustments, the project could then be institutionalized throughout the state.

B. ACTION PROPOSAL

Decentralize access to conflict resolution services via outreach to community groups, websites, involvement of governmental organizations in the promotion of ADR, education, expansion of ADR services, promotion and support of pro bono ADR work, exploration of non-traditional funding for mediation, early ADR for cases under \$25,000, ADR on-line and allowing non-prejudicial extensions to parties to allow them time to pursue ADR.

COMMENT

This proposal was intended to increase community access to ADR services. The Work Group also suggested that broad-based marketing through radio and television be utilized to implement this plan.

C. ACTION PROPOSAL

Embed ADR in State government service contracts with for-profit and not-for profit service providers, to both increase the reach of ADR and to provide conflict resolution resources to support the services to be delivered.

COMMENT

This proposal identified state service contracts as a vehicle for permeating communities with ADR. The Work Group recommended that this proposal be implemented to increase access to ADR, while neither increasing nor decreasing access to courts. The manner in which the contracts require vendors to offer ADR services to service recipients should be flexible and appropriate to the service rendered.

To support implementation of this plan, the Work Group proposed drafting model ADR language for different types of contract, the development of a business and service case for this plan, a coalition to build support, and a target agency or activity to initiate implementation of the plan.

D. ACTION PROPOSAL

Educate and empower diverse communities on the value of ADR.

COMMENT

This Action Proposal was given moderate priority. The Work Group determined that the primary implementation cost would be the donation of volunteer time.

E. ACTION PROPOSAL

Develop a culturally sensitive and respectful dispute resolution process, acceptable to the community in which it is to be provided, through a structured outreach to community leaders and incorporation of a process awareness complimentary to the opinions of the community.

COMMENT

Underlying this proposal is recognition that, for diverse communities to be truly receptive to ADR, it will take more than education of communities as to what ADR is and how it can benefit them. The communities must be able to trust that the ADR offered will truly meet their needs in ways consistent with their values.

F. ACTION PROPOSAL

Create a website for diversity and conflict resolution which includes: a) educational resources on diversity, b) community needs and assessment tools, and c) self-evaluation tools.

COMMENT

The proposal would empower ADR Providers to learn about the needs of diverse communities while simultaneously educating the communities about the best uses of ADR.

G. ACTION PROPOSAL

Institute a Pilot ADR Project by identifying a potential ADR End User community of diverse citizenry and developing a program to implement some or all of the above recommendations on a trial basis.

COMMENT

This proposal was intended to garner support for and assure the best methodology for implementation of the Action Proposals above. This proposal was given high priority by the Work Group. It should be an ongoing initiative with most costs met by volunteer efforts.

POTENTIAL RESOURCES FOR THEME 4 PROPOSALS

Resources to implement action proposals under Theme IV could include educational institutions, libraries, shopping centers, houses of worship and other non-governmental sites where people in target communities gather for goods or services. This project may be supported by CDRPs and other ADR Providers, the legal services community and foundations, bar associations, courts, senior centers, social workers, community ethnic centers, therapists, community elders, etc. Broad-based marketing, (i.e. television and radio) would also be helpful. Advice and resources could also be solicited from organizations that already utilize ADR institutionally. Support may also be sought from the governor, state attorney general, the Secretary of State, Department of Management and Budget, Chambers of Commerce, trade associations, service vendors, constituent or niche groups, businesses, End Users, volunteers and cultural groups. Other resources may include SCAO's Michigan Judicial Institute (MJI) and Judicial Information Systems (JIS), Association for Conflict Resolution (ACR), AAA, ICLE, Family Mediation Council (FMC), the Masters in Alternative Dispute Resolution (MADR) program, law schools, courts, governmental agencies and cultural communities throughout the state.

CONCLUSION

In order to create an ADR system in Michigan which truly is effective in addressing issues of diversity, much work is needed. This report builds on efforts already underway, but it is also a beginning. Its value today lies in the creativity and innovation of the proposals from diverse stakeholders. In the long-term, the value of this effort will be measured by commitment and action to create an ADR system in Michigan that effectively addresses issues of diversity. This is our goal, and our challenge.

The Task Force on Diversity in ADR

APPENDIX A: RAW DATA FROM WORK GROUPS

ONE: RECOMMENDATION	TWO: TENTATIVE “RASI” ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>Describe your RECOMMENDATION and, if you have time, also describe tasks that might be taken to accomplish this recommendation.</p>	<p>Identify groups, stakeholder(s), and others:</p> <ul style="list-style-type: none"> a. who would likely have RESPONSIBILITY by virtue of their interest, position, resources, or other for achieving this recommendation; b. with AUTHORITY to implement; c. who can SUPPORT the recommendation (e.g. with volunteers, staff, money), e.g. law schools, bar organizations, government; and d. who needs to be INFORMed of the recommendation. 	<p>Share your thoughts about how this recommendation should be prioritized, time needed to complete, important windows, and coordination with related efforts.</p>

ONE: RECOMMENDATION	TWO: TENTATIVE "RASI" ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>1. Address training by diversifying approved trainers and requiring that trainers diversify their class. Trainers are asked to be ambassadors to their interest groups, communities, etc.</p>	<ul style="list-style-type: none"> a. Supreme Court/SCAO – approves court-annexed CDRP trainers and materials and educates/certifies trainer and court ADR plans (modify materials and applications) b. courts to include this within their ADR Plan c. private training – other governmental training to incorporate diversity in trainers/materials also. d. bar and legal organizations support these efforts with outreach and money e. foundation support f. human service community workers (including churches) can provide resources, trainers and trainees. Do not limit scope of recruits and support 	<p>RED Work Group</p> <ul style="list-style-type: none"> i. present concept to Supreme Court to SCAO and to others including Judicial Crossroads, etc. Request implementation in training year 2011 ii. seek support for rule/ concept from stakeholders iii. ask for \$\$ 2011

ONE: RECOMMENDATION	TWO: TENTATIVE “RASI” ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>2. Embed ADR in state government service contracts with profit and not-for-profit service providers to both increase the reach of ADR and provide resources for the services to be delivered. Access to ADR not plus/minus denial of access to courts. How the contract requires that the vendor offers ADR to service recipients should be flexible and appropriate to service.</p>	<p>RED Work Group –</p> <ul style="list-style-type: none"> a. government agencies that contract (government attorneys to be influenced) b. policy makers (legislature) who fund c. can get advice/resources from organizations that utilize ADR institutionally d. state executive (Governor/ Attorney General/SOS and DMB) e. ADR providers f. Chamber of Commerce and trade associations (e.g. Michigan Manufacturers Association) g. Foundations h. Service vendors 	<p>RED Work Group –</p> <ul style="list-style-type: none"> i. draft model ADR language for different contract types (look to expertise) ii. develop a business and service case for this iii. coalition building to support iv. target/pilot one agency or activity
<p>3. Develop a methodology to identify cultures and subcultures so that ADR may better serve them all</p>	<ul style="list-style-type: none"> a. End users. Use diverse potential/actual users to evaluate programs/ processes as with Washtenaw to identify gap. b. Academy (universities/ training institutions, research), Health Care, and government/unions resource for existing knowledge. c. seek additional inputs on who/what/when/where/why through RFP like process that addresses the dynamic demographics of America. d. current ADR providers e. churches 	<p>RED Work Group</p> <ul style="list-style-type: none"> i. inventory existing information ii. evaluate information iii. formulate methodology and methodologies iv. test with pilots v. recommend

ONE: RECOMMENDATION	TWO: TENTATIVE "RASI" ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>4. Provide ADR contacts/ services closer to the points of conflict within the community. Thereby, ADR would permeate the fabric of the community.</p>	<ul style="list-style-type: none"> a. law schools, colleges, shopping centers, houses of worship, other non-governmental sites where people gather for goods or services could be ADR hot spots b. governmental entities such as libraries, police stations c. CDRPs and other ADR providers d. legal services community e. foundations f. academy to provide data 	<p>RED Work Group</p> <ul style="list-style-type: none"> i. coordinate with efforts to place ADR clauses in government contracts and to obtain \$\$ and PR efforts ii. prioritize potential sites within community with diverse end-users a major concern iii. solicit ADR providers to provide site-based services iv. solicit sites to be used v. create geographic pilots in 2010/11 for 2012 vi. seek grants vii. implement in 2012 and evaluate and institutionalize
<p>5. Education for providers:</p> <ul style="list-style-type: none"> - basic training needs to be enhanced - goal of training to enhance cultural competence and self-awareness - there should be a section in the proposed state mediator application process to include diversity training - create a resource list (electronic) 	<ul style="list-style-type: none"> a. SCAO – <ul style="list-style-type: none"> - JIS - MJI b. other groups – ACR, CDRP, AAA, ICLE, FMC-MI, State Bar, local bars, higher education (MADR, law schools) c. courts d. private providers e. government agencies f. diverse groups 	<p>Green Work Group #1 priority</p>

ONE: RECOMMENDATION	TWO: TENTATIVE “RASI” ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
6. Increase the number of culturally competent and diverse trainers. Create an understanding framework for cultural competence – what is it.	- SCAO – Circuit courts/bars. Etc. For case evaluators – Government agencies – See list for (5), above	Green Work Group #2 priority
7. Create an assessment tool to determine the diverse conflict resolution citizens. Distribute results to ADR providers.	See (5) above	Green Work Group #3 priority
8. Outreach to all citizens and organizations irrespective of cultural diversity to increase awareness and use of conflict resolution services	See (5) above	Green Work Group #4 priority
9. Create a website for diversity and conflict resolution: (a) with educational resources in diversity/CR; (b) community needs and assessment tools; and (c) self-evaluation tools	SCAO and everyone listed at (5) above	Green Work Group #5 priority
10. Code of Conduct for arbitrators, case evaluators, mediators (ALL CR providers) to include cultural diversity/ethics/bias recognition	Compare to medical code of conduct in cultural competency and everyone listed at (5) above	Green Work Group #6 priority

ONE: RECOMMENDATION	TWO: TENTATIVE "RASI" ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>11. Develop a structure/ template/matrix for assessing the values and principles that are important to a community in defining its conflict resolution processes:</p> <ul style="list-style-type: none"> - Cultural components; - Conflicts resolution components; - Prioritization 	<ul style="list-style-type: none"> R. \$ instrument designer A. an organization willing to "fund" S. CR professionals and bar foundation (\$) I. - 	<p>Purple Work Group</p> <p>Serves another recommendation so should come before or contemporaneous to recommendation #12</p>
<p>12. Develop a structure and process awareness for outreach to individual communities (culturally diverse) that is respectful and complimentary to the opinion leaders of the community:</p> <ul style="list-style-type: none"> - To develop culturally sensitive dispute resolution processes acceptable to that community 	<ul style="list-style-type: none"> R. Community Dispute Resolution Centers (CDRPs), ADR Section, Action, CR professionals A. Board of Directors of CDRPs, SCAO S. institutions within the community I. - 	<p>Purple Work Group</p> <p>Should come after recommendation #11 – must do #12 first</p>
<p>13. Develop an assessment mechanism to evaluate the "systems" identified in recommendations #14 and #15, the template/matrix, etc.</p>	<ul style="list-style-type: none"> R. instrument designer 	<p>Purple Work Group</p> <p>Needs to be done before Recommendations #14 and #15</p>

ONE: RECOMMENDATION	TWO: TENTATIVE “RASI” ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>14. Examine the current system for approval of court-approved trainings to assess the level of recognition/accommodation of cultural competence, cultural sensitivity, and culturally defined conflict resolution processes:</p> <ul style="list-style-type: none"> - using available pilot projects (i.e. Dearborn) as tests 	<ul style="list-style-type: none"> R. SCAO (or its designee) A. Supreme Court S. CDRP – local “cultural” community – training community – provider community 	<p>Purple Work Group</p> <p>Could be done right now and has test vehicles available or soon to be available</p> <p>For “S”, need to do recommendation #13 first</p>
<p>15. Examine the current system of conflict resolution education (at all levels) to assess level of incorporation of cultural sensitivity and cultural competence and culturally defined conflict resolution processes</p>	<ul style="list-style-type: none"> R. individual universities or departments (education, conflict resolution, A. Michigan Dept of Education –authority within an individual university or school S. DRER – providers of school conflict resolution education – professional educator and administrator organizations 	<p>Purple Work Group</p>
<p>16. Developing and educating practitioners on the business case for cultural competency among other competencies for selecting ADR providers – needs-based approach</p>	<ul style="list-style-type: none"> R. ADR providers, i.e. AAA, CDRPs, etc. State Bar Supreme Court – VanEpps ADR Section Law Schools A. practitioners, businesses, cultural groups and end-users S. law schools, schools, ADR providers, courts – VanEpps, State Bar, ADR Section I. cultural communities, practitioners, end-users 	<p>Blue Work Group #1 priority</p> <p>On-going continuing education along with recommendation #17 and #21 – coincide with each other</p> <p>Anticipated costs: volunteers, foundations, grants</p>

ONE: RECOMMENDATION	TWO: TENTATIVE "RASI" ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>17. Provide practitioners with an assessment tool that will assist in selecting the ADR providers</p>	<p>R. Ps, etc., State Bar, Supreme Court – VanEpps, ADR Section, law schools</p> <p>A. practitioners, businesses, cultural groups, end-users</p> <p>S. law schools, schools, ADR providers, Supreme Court, State Bar, ADR Section</p> <p>I. cultural communities, practitioners, end-users</p>	<p>Blue Work Group #2 priority</p> <p>Electronic media packets for ? – Along with #16 and #21 – coincide with each other</p> <p>Anticipated costs: volunteers, foundations, grants</p>
<p>18. Developing practicum/ mentoring system for new mediators – with incentives</p>	<p>R. CDRPs, ICLE, State Bar, Supreme Court – VanEpps, law schools</p> <p>A. practitioners, businesses, end-users</p> <p>S. law schools, ADR providers, Supreme Court, State Bar, ADR Section</p> <p>I. cultural communities, practitioners, end-users</p>	<p>Blue Work Group #3 priority</p> <p>In the middle of the chart –along with #2 and #21</p> <p>Anticipated costs: volunteers</p>
<p>19. Educating and empowering diverse communities on the value of ADR</p>	<p>R. CDRPs, State Bar, community groups, constituent groups (niche groups), law schools</p> <p>A. practitioners, businesses, end-users, cultural groups</p> <p>S. law schools, ADR providers, courts, State Bar, ADR Section, government</p> <p>I. cultural communities, practitioners, end-users</p>	<p>Blue Work Group #4 priority</p> <p>But not high on the chart – along with #18 and #21</p> <p>Anticipated costs: volunteers</p>

ONE: RECOMMENDATION	TWO: TENTATIVE “RASI” ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>20. Developing an objective rotational system for appointing mediators – only for court-appointed mediators (for newer mediators; entry point for getting selected)</p>	<ul style="list-style-type: none"> R. practitioners and end-users making recommendations to the courts A. courts, legislature, end-users, practitioners S. ADR providers, Supreme Court, courts, State Bar, ADR Section, government I. cultural communities, practitioners, end-users 	<p>Blue Work Group #5 priority</p> <p>Not high on the chart – along with #19 and #21 – coincide with each other</p>
<p>21. Identify a potential end-user and develop a program to implement some of these recommendations</p>	<ul style="list-style-type: none"> R. ADR providers to promote; law schools to promote; State Bar and ADR Section to promote A. end-users S. ADR providers, courts, State Bar, ADR Section, government, law schools, affinity bars I. cultural communities, schools, practitioners, end-users, volunteers, school boards 	<p>Blue Work Group</p> <p>HIGH priority that accompanies recommendations #16-20</p> <p>On-going initiative</p> <p>Anticipated costs: volunteers</p>
<p>22. Identify different language barriers – reach out different bar groups, cultural community groups (ADC, LASED, NAACP, Access)</p>	<p>Everyone (educators, law schools, bar associations, courts, senior centers, community ethnic centers), religious centers, social workers, therapists, community elders (ethnic background)</p> <p>Broad-based marketing (radio and television communication)</p>	<p>Black Work Group</p>

ONE: RECOMMENDATION	TWO: TENTATIVE “RASI” ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>23. Community education on ADR (at gatekeeper level) providing all information necessary to educate ADR process – to all consumers –</p> <p>a. Educating ADR providers</p>	<p>Everyone (educators, law schools, bar associations, courts, senior centers, community ethnic centers), religious centers, social workers, therapists, community elders (ethnic background)</p> <p>Broad-based marketing (radio and television communication)</p>	<p>Black Work Group</p>
<p>24. De-centralize access to services (taking ADR to local community organizations), reaching out to different community ethnic groups (via websites, government organizations):</p> <ul style="list-style-type: none"> - Education - Expand and decentralize access to services - Recommend and promote pro bono work - Explore and promote non-traditional funding for mediation - Early ADR for cases under \$25,000 - Virtual ADR – on-line ADR internet - Allow parties to elect an extension to use ADR (still preserving rights) 	<p>Everyone (educators, law schools, bar associations, courts, senior centers, community ethnic centers), religious centers, social workers, therapists, community elders (ethnic background)</p> <p>Broad-based marketing (radio and television communication)</p>	<p>Black Work Group</p>

ONE: RECOMMENDATION	TWO: TENTATIVE “RASI” ANALYSIS	THREE: PRIORITIES AND TIME CONSIDERATIONS
<p>25. State bar accept ADR service as contributing to 30-hour pro bono requirement – recognize and recommend ADR as part of pro bono</p>	<p>Everyone (educators, law schools, bar associations, courts, senior centers, community ethnic centers), religious centers, social workers, therapists, community elders (ethnic background)</p> <p>Broad-based marketing (radio and television communication)</p>	<p>Black Work Group</p>

APPENDIX B: PRESENTER MATERIALS FROM FIRST TASK FORCE MEETING

(To be made available online and on request)

APPENDIX C: RESOURCE MATERIALS FROM FIRST TASK FORCE MEETING

(To be made available online and on request)



REPORT PRESENTED & UNDERWRITTEN BY

GLOBAL BRIDGEBUILDERS
CREATING. CONNECTING. COMMUNICATING.
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globalbridgebuilders.com
(616) 813-0613

COOPER LUMEN
WEB + IDENTITY + PRINT + UX

cooperlumen.com
(616) 633-3104