CPR: The Metaphor of New Strategies

The Editor interviews Helena Tavares Erickson, Senior Vice President and Secretary, International Institute for Conflict Prevention and Resolution (CPR).

Editor: Helena, please describe your wide range of activities with CPR.

Erickson: I am Senior Vice President and Secretary at CPR. In this capacity, I direct CPR’s dispute resolution services and panels departments, CLE training, our annual ADR awards program, and our research program. I have contributed to several of CPR’s publications and currently act as liaison to a number of CPR’s committees and task forces, through which much of our “think-tank” work is performed. I also serve as CPR’s challenge officer and secretary to the board of directors.

Editor: Being in charge of the panels department, you oversee the selection of neutrals. In what respects does CPR’s selection process differ from that of other dispute resolution providers?

Erickson: In selecting individuals to serve on CPR’s Panels of Distinguished Neutrals, we conduct a rigorous review and vetting process whereby candidates are evaluated with respect to their ADR training and experience with complex commercial litigation. We also require neutrals to provide references from prior proceedings, which we check very carefully.

If the person is applying to serve on a specialty panel, his/her background is submitted to a review committee of individuals within that particular field of practice who determine whether the candidate has the necessary credentials in a given subject area. For example, for CPR’s technology panel, we have engineers, law firm users and corporate users with significant technology experience who determine whether a candidate has sufficient IP experience to handle sophisticated IP disputes as a neutral. We follow the same pattern for most of CPR’s specialty panels.

With respect to CPR’s selection process for choosing a neutral to serve on a particular case, that choice can occur in one of several different ways, some of which are unique to CPR. For example, in the exception of our Franchise and Employment Panels, which we provide as a public service, our panels of neutrals are for CPR members only. As a result, our members may directly select a neutral, on their own, for any given case and do not need to utilize CPR’s services. In this way, they can proceed in a completely non-administered way.

However, if they wish to use CPR’s selection services, they can do so in several different ways. First, we have a procedure called the “screened selection process,” which is utilized to CPR’s Dispute Resolution Protocols. In this process, a party can appoint a “party-appointed” arbitrator without the arbitrator knowing that the person has been selected. In fact, the party has the option of remaining anonymous because CPR is used to contact the neutral. Second, the party may utilize CPR’s standard selection process, whereby CPR convenes parties via a neutral to determine their conflict and determines the timing for arbitrating or mediating the matter and any criteria for neutral selection. CPR, then, attempts to identify and contact these criteria and queries them regarding conflicts and disclosures prior to any appointment. Once completed, CPR provides parties with a neutral, who then discloses any potential conflicts.

There are two additional ways that tribunals can be selected through CPR: 1) parties, who do not wish to go through a ranking process, can come to CPR under a direct appointment; or 2) parties can request a selection of up to 15 neutrals of those who meet certain criteria. CPR offers streamlined procedures that help solicitate parties to proceed from beginning to end of a dispute without having to use an administering body.

Editor: Is there a fee for this service?

Erickson: Yes, there are fees for each of these different procedures. However, free access to our panels of neutrals is provided to CPR’s members as part of their membership donation.

Editor: How much input on what they are seeking is provided by the parties in the selection of neutrals?

Erickson: Quite a bit. We convene the parties in a conference call to discuss the nature of the dispute and whether there is a need for a neutral with a particular background. About one month before the conference, we provide parties with some kind of technology background. We also get a high number of cases that involve sophisticated financial agreements requiring that we find neutrals having a high level of sophistication with certain types of financial matters. In order to best define parties’ needs, we gather this information during the initial conference call before approaching our neutrals.

Editor: Please describe the “screened selection process” which allows parties to select party-appointed arbitrators who do not know who appointed them.

Erickson: Rule 5.4 of CPR’s Non-Administrative Arbitration Rules specifically provided for a procedure in which CPR furnishes bios to parties. During a conference call with the parties, CPR furnishes bios of neutrals. If the parties are interested in a particular neutral, CPR will have a “selection to final award” timeframe of no more than six months. We only engage in a “screened selection” process when the parties agree to select a neutral who is available at a given time.

Editor: Describe your work in establishing CPR’s committees.

Erickson: CPR’s primary function is as an educational organization. We provide resources to the ADR community, including our members, in the form of our panels of neutrals. But, this is only one small aspect of the resources that we provide. CPR has an award-winning ADR me that includes Alternatives – numerous publications and tools, and DVDs containing mock mediation proceedings, which are translated into various languages. We routinely review ADR case law and post summaries and legislative developments on our website. We also utilize our think-tank work is done through CPR’s standing committees. As members bring to our attention new ideas, we establish committees to explore these trends. Participants on CPR’s committees are drawn primarily from our corporate and law firm members, but not exclusively. We also invite industry and academic experts to join the discussion.

One of the most active is our Arbitration Committee, which recently released a Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration. This tool provides model clauses that can be adopted in their arbitration agreements regarding modes of disclosure, ranging from “disclosure light” to in-depth discovery. There are specific provisions regarding electronic disclosure and how to present witnesses in a commercial arbitration, all of which are intended to streamline the process and make it efficient and cost-effective.

CPR offers a broad range of ADR solutions for companies whether they prefer commercial mediation to non-administered arbitration or, even, companies that require litigation, like the ELA. In all of these tools, CPR offers streamlined procedures that help minimize costs to the company.

Please email the interviewee at herickson@cpradr.org with questions about this interview.