Diversity – Law Firms

The Next Level: Promoting Diversity In The ADR Arena

The Editor interviews Joshua W. Martin, III, Potter Anderson & Corroon LLP, and Thomas L. Sager, Vice President and Chief Litigation Counsel, DuPont.

Editor: While neither of you gentlemen is a stranger to our readers, would each of you say something about your background and professional experience?

Martin: I have experience in business as general counsel to a president and CEO of a telecom company. I have also served as a state court judge in Delaware. I started the arbitration program in the Delaware court system in 1984, and I have been involved in alternative dispute resolution since then. I joined Potter Anderson in 2005.

Sager: I have spent my entire professional career with DuPont, which I joined in 1976 at graduation from Wake Forest Law School. Most of those 30-plus years have been spent at Company headquarters in Wilmington, Delaware. In my role as Vice President and Chief Litigation Counsel I have worldwide responsibility for litigation. At any point in time, we are involved in as many as 4,000 cases pending against the Company. I also have general oversight responsibility for our attorneys throughout the regions.

Editor: I am sure your extensive experience in the areas you address. Can you share some examples of how your outlook has evolved over time?

Martin: At the beginning of my career, I was fixated on winning every case and many of our strategies were driven by that goal – a motion to dismiss, a summary judgment, or an actual victory at trial — as opposed to what action might be in the best interests of the client. Over time, as my business acumen and experience has increased, I have come to view our litigation challenges from more the standpoint of the client. The goals of the client should be embraced and supported by its attorneys. The objectives are the same, but it is essential to develop strategies in defending our attorneys throughout the regions.

in your practice?

Sager: I am sure your extensive experience has been an asset to you. Can you share some examples of how your outlook has evolved over time?

Sager: Two issues come to mind. One is addressing the “pipeline.” DuPont has adopted a local community, Kingswood Community Center, which provides a constructive outlet for young people in junior high school. They are interested in learning more about the legal profession. We want them to be able to identify with certain role models such as Joshua Martin and Stacey Mobley, DuPont’s General Counsel. In working through the center, we focus upon the importance of communication, writing skills, computer literacy, and the like, and we try to give them as much exposure to our legal department as possible. Whether or not they choose a legal career path, we think the exposure we provide them is helpful and enhances their confidence and competence in beginning to navigate through a very complex world.

A second area of concentration for me involves the Minority Corporate Counsel Association, MCCCA is about to celebrate its 10th anniversary. The organization has been a leader in promoting greater inclusiveness in the legal community, both locally and nationally.

In addition, we have recently adopted Howard High School, a predominantly black high school in Wilmington, Delaware, where we, together with a local law firm, attempt to do things similar to what the DuPont legal department has done with Kingswood Community Center. This initiative is directed at 16- and 17-year-olds, however, with an eye to motivating them to apply to college and, possibly, law school. At MCCCA, we also work to encourage corporate law departments, and the law firms that serve them, to undertake similar pipeline initiatives.

Editor: Judge Martin, Potter Anderson has a long history of commitment to diversity and to a culture of inclusiveness. This is an ongoing process. Can you tell us about the efforts the firm is undertaking today?

Martin: The firm has a comprehensive diversity program. We continue in our efforts to recruit and retain women and minorities. As of January 1, 2007, one of our new partners, Theresa Brown-Edwards, is a female African American. She is an asset to the firm, both within and outside the firm. We have an active diversity committee comprised of leaders from all levels of the firm. At the end of last year the committee hosted our first diversity week program, which was well-received by the entire firm. We have a new mentoring initiative, and we have made a real commitment on professional development. We anticipate that the impact of these steps with respect to retention will be significant, especially as they relate to minorities. And, as Tom suggests, we rely on many of the resources made available to us through MCCCA in implementing such programs.

Editor: Potter Anderson participates in the DuPont primary law firm network. What has this relationship meant to the firm?

Martin: We have been a DuPont primary law firm since the program started in 1994. We are very proud of this relationship, which enables us to work across a wide range of practice areas, including commercial litigation, labor and employment, M&A and general corporate matters, IP, IT, and real estate and environmental. The relationship also provides the opportunity to take part in cutting edge thinking about the DuPont legal model. We have worked with DuPont on the concept of law firm-inside counsel partnering, on the use of paralegals and on a variety of ways in which to improve the opportunities for women and minorities in the profession.

Sager: Potter Anderson has been a tremendous partner of DuPont. Their efforts in diversity have been unique not only in advancing this issue within the firm, but through their outreach activities. DuPont presents Challenge Awards annually to those firms which have distinguished themselves through their activities in support of the Company and its core values. The development of truly meaningful career paths for attorneys of color is one of the criteria we use in evaluating the firms. Potter Anderson has done an excellent job in this regard and has received a Challenge Award in recognition of its efforts. We have a great relationship, and it rests on more than the terrific results that the firm attains for us.

Editor: Can you comment on your efforts to increase the number of women and minority arbitrators and mediators?

Martin: ADR practitioners, who are in great demand today, are often retired judges. A truly diverse judiciary is something of fairly recent origin, so the available pool is not large. For those interested in becoming ADR practitioners, other than retiring judges, access to opportunity is critical if we are to be successful and thrive for another 200 years.

Sager: As a matter of principle, arbitrators and mediators, like judges, should reflect the diversity of those lives and livelihoods they impact. The business case for diversity has been made. What now needs to occur is an increase in the pool of available talent. We have a real need for people like Josh Martin in this area. As we attempt to resolve complex corporate disputes, it is the experience and perspective of people such as Josh that need to be heard in corporate America.

Editor: Mr. Sager, you are co-chairing a national task force on diversity and ADR. Would you tell us about this?

Sager: This Task Force evolved out of CPR’s last annual meeting, Charles Morgan, former General Counsel of Bell South, deserves a great deal of credit for its creation. There are a great many people who see a real need to advance diversity in the ADR field. We hope others will embrace the work of the Task Force which is co-chaired by Mr. Morgan, Carla Herron of Shell Oil and myself. We are simply trying to transform this discussion into meaningful change within the ADR profession. We are currently attempting to identify one or two tasks that will propel the discussion forward. I believe that should include reaching down into the law firms engaged in ADR and incentivizing them to mentor their young attorneys who have an interest in this field. It also requires companies like DuPont and Shell to hold their firms accountable for progress in this area. And, of course, to support their efforts along the way.

Editor: Judge Martin, you focus on ADR. How does your background on the bench and as a business leader help in your practice?

Martin: In arbitration and mediation it is of great benefit for a practitioner to understand both the business issues and the legal issues. It gives a certain comfort level to the parties, and it enhances the degree of creativity and innovation that the ADR practitioner brings to the dispute. Many of the disputes addressed in ADR today, in addition, have an international dimension. Having a neutral with a variety of experiences to draw upon – in my case, as an in-house attorney, judge and CEO – can be very important. People expect us to be fair and impartial. If we are perceived as having a practical contribution to make as well, the parties often feel they have been well served.

Editor: Would you share parting thoughts on what you consider to be important goals and trends in the future of ADR?

Martin: The future of ADR seems to be driven by new technology. ADR offers the potential to break down barriers that have traditionally precluded successful dispute resolution. The Internet and other technologies present an opportunity to address the needs of a more diverse population.

Sager: It is the difference between winning and losing. DuPont has been in existence for 204 years and now faces a new era of intense global competition. The business need for diversity in the background, perspective and experience – is critical if we are to be successful and thrive for another 200 years.