

Diversity in ADR: Time for Another Uncomfortable Conversation

It's time to put down the press release and get to work to spur transformational change in the industry once and for all.

By Marcie Dickson
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Can I let you in on a little secret? We're not impressed with your corporate statement about diversity and inclusion. Especially if to this point your organization has perpetrated some of the core offenses around retention, lack of opportunities and access for people of color. It's deeply injurious and nothing short of corporate hypocrisy to profit off of exclusionary practices, then scramble to fix the optics and grab the proverbial mic when the cover is blown.

Now is not the time to issue a mea culpa and highlight your new CSR initiative or inclusion rider. Instead, create a sustainable strategy for your commitment to diversity, equity and inclusion and double down on efforts to align your actions with your rhetoric. And do this without fanfare.

By now we've all heard that diversity is a business imperative. Organizations with equal representation and a range of perspectives are more profitable and better positioned to innovate, attract top talent, increase client satisfaction, take risks, and bounce back from disruptive forces.

Let's take a look at the legal profession, where the lack of diversity is a long-standing issue. According to a study by National Association for Law Placement, at the partnership level, women make up 23.36% of law firm partners; Blacks make up 1.83% of law firm partners; and minorities overall make up 9.13% of partners. In the same study of over 1,000 major law firms, only 2.86%



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of attorneys were LGBTQ, and 0.52% were attorneys with disabilities. A recent ABA study released last week unveiled a more distressing tale: 70% of women of color have considered leaving the practice of law due to the lack of inclusion and opportunities for advancement.

What's even more distressing are the numbers in the area of alternative dispute resolution. For reference, 17 out of the 412 neutrals at a top ADR provider with a panel of primarily judges are BIPOC (Black, Indigenous and people of color)—in other words 4%. According to a 2015 survey for the National Academy of Arbitrators Research and Education Fund, of more than 400 practicing employment arbitrators, 74% were male and 92% were non-Hispanic white. And in 2018, celebrity Jay-Z

lambasted a national arbitration provider for its lack of diversity on a roster of arbitrators presented for his arbitration. He contended that only three of the 200+ arbitrators on the panel's New York Large Complex Case Roster were Black arbitrators.

Historically, mediation, arbitration, and ADR services were considered an elite arena for white male retired judges. There is a reason for this. First, there was no incentive for institutional ADR providers to diversify their homogenous panels; second, there was zero accountability for said providers to alter their practices, until now; and third, there was no perceivable talent pool from which to hire diverse mediators and arbitrators.

When questioned why a national ADR provider has experienced issues increasing panel diversity, a senior executive responded that the organization is "looking at people who have reached partner-level status or are retiring from the bench." But according to the executive, the number of women, people of color, and women of color that meet the panel's criteria is "statically small" and the "supply-side starts to become more narrow."

On the contrary, there is a large pool of talented associates and nonjudges who possess the markers of good mediators and arbitrators, but never realize the opportunity because the market has not embraced them and large ADR panels have resisted the exhortation to create pipelines to recruit, train, and invest in talent.

To transform diversity, equity, and inclusion in ADR, we need to make appreciable efforts to recruit, train, and retain diverse neutrals on panels. Clients deserve and demand this level of service and selection because what good is an inclusion rider if an ADR panel does not reflect the demographics of the communities it purports to serve?

Supporting Diversity in ADR

The lack of diversity for most providers may signal the need for a **cultural shift** in the organization. Consider training and intentional programs designed to foster an environment that celebrates and recognizes differences.

Building a culture of inclusion will invariably attract talent who seek to join a forward-thinking firm.

Recruitment, development, retention, and promotion are crucial components that require intentional efforts. Diversity-aligned recruiting means looking beyond the rigid checklist of what determines a potential neutral and searching for true talent in unconventional places.

Mentorship programs can help develop promising neutrals into rainmakers. ADR providers can create programs that provide greater access and learning opportunities for law school students and business professionals. The International Institute for Conflict Prevention & Resolution's Diversity in ADR Task Force offers an excellent example in its mentorship and apprentice program.

There is a business and categorical imperative for diversity in ADR. But there's no imperative for cause marketing when an organization is woefully behind in the practice of diversity, equity, and inclusion. A more genuine approach is to focus on internal strategies for increasing panel diversity and celebrating these achievements—when obtained—through representation in marketing collateral and through creative storytelling that puts diverse candidates front and center.

There are myriad challenges to increasing diversity, equity and inclusion in ADR. Fortunately, the industry is comprised of courageous, creative conflict-resolution specialists who are trained to find solutions in even the most difficult of situations.

It's time to put down the press release and get to work to spur transformational change in the industry once and for all.

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