

# How Can We Increase Selection of Diverse ADR Neutrals?



**By Hon. Ariel E. Belen (Ret.)**

Increased companies and individuals have engaged alternative dispute resolution professionals to resolve their disputes. Indeed, ADR processes are increasingly becoming the default mechanism for dispute resolution instead of litigation.

In successful mediation, the mediator seeks to help parties identify the core personal and emotional concerns that are driving a dispute and often have little to do with their legal claims. It is here where shared experience and cultural competency are critical tools for a mediator. Similarly, fluency in a language and cultural competency can help arbitrators more readily confront the issues of credibility that they are routinely called upon to decide.

Thus, it is not a surprise that there has been growing public demand for more diversity in the selection of ADR professionals. Leaving aside the manifest benefits of having diverse and culturally competent neutrals resolving disputes, I would argue that it is imperative for the public legitimacy of these processes that neutrals be as diverse as the communities from which they come. This is particularly the case in employment and consumer matters where ADR is often mandatory.

Notwithstanding this clear need for more diversity, there is still a large disparity in the actual selection of neutrals of color to serve as ADR neutrals. This is borne out by both the lived experience of litigators and neutrals working in this space and the most recent

academic literature. See, Volpe, M. R, *Measuring Diversity in the ADR Field: Some Observations and Challenges Regarding Transparency, Metrics and Empirical Research*, Pepperdine Dispute Resolution Law Journal, Vol. 19 (2019); La Rue, H. C., & Symonette, A. A., *The Ray Corollary Initiative: How to Achieve Diversity and Inclusion in Arbitrator Selection*, 63-2 Howard Law Journal 216 (Winter, 2020); Rudolph, S, C, *Arbitrator Diversity: Can It Be Achieved?*, Washington University Law Review, Vol. 98 (2020).

The members of the HNBA Litigation and ADR Section have been discussing both within the Section and in conjunction with the National Bar Association and the National Asian Pacific American Bar Association ways to develop protocols that will help grow the selection of diverse neutrals. Some of the proposals include finding ways to collect data on neutral selection and creating rosters of qualified minority neutrals. We are also considering how affinity bars working in conjunction with local and national bar associations and the major national and international ADR forums can promote policies, such as ensuring that mediator and arbitrator strike lists contain diverse candidates. Other proposals include assisting the major arbitral forums as they seek to identify, recruit, and promote diverse neutrals of color. All these efforts are in their beginning stages, but our Section is committed to them, and we welcome the assistance of other sections and members of the HNBA in this necessary effort.

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