



## Gender Diversity in ADR: The Role In-House Counsel Can Play

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Reliable data on the percentage of women mediators and arbitrators or the frequency with which they are chosen to serve compared to men is hard to come by. Anecdotally, while women neutrals can maintain steady work handling cases in the employment area, they are less likely than their male colleagues to be chosen for more complex commercial matters or in specialty practice areas that are dominated by men.

Women tend to be selected more often in employment matters than securities litigation or intellectual property disputes, for example. Whether this suggests a biased view that women aren't "tough" enough to handle certain cases, or whether it reflects a choice about the background and experience of the mediator is hard to quantify. Advocates choosing mediators in such matters may believe they need a mediator who will assert authority and persuade the other party, despite the other party's lawyer's view of the case. If that is true, they may be more apt to choose a man over a woman. It is also disproportionately the case that the decision about who to hire as a mediator or arbitrator rests with counsel and their business clients. These decision makers—litigators, general counsel, business leaders—are overwhelmingly male, as noted above,

and may be more likely to choose a mediator or arbitrator who most closely mirrors their own professional experience, giving men an inherent advantage in the ADR selection process.

More can and should be done to increase the ranks of women in the ADR profession. ADR providers such as JAMS can continue to raise awareness about this issue with its clients, and make concerted efforts to increase the ranks of women and minority neutrals through concentrated recruiting efforts, and also by ensuring gender balance in all marketing efforts, providing support for those women who want to branch out into specialty areas that tend to be dominated by men.

But decision makers in law firms and in-house can also assist. Most companies and law firms today have strong diversity initiatives, and many corporations will simply not work with a law firm unless it has demonstrated a commitment to diversity in its employee ranks. Extending this commitment to the choice of mediator or arbitrator, and setting aside implicit biases, will give more skilled women mediators and arbitrators an opportunity to serve in a wider variety of cases.

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