WBAI
WOMEN'S BAR ASSOCIATION OF ILLINOIS

# NEWSLETTER

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# SILENCE IS NOT AN OPTION

**Member Spotlights**
Recognizing Ms. Clifford, Ms. Loizon & Ms. Velez

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Although the history between the two parties was important, the mediator wanted to support them through a productive dialogue and ensure they did not spend their time in mediation simply airing past grievances. The mediator encouraged the parties to talk to one another about how the incidents had impacted their lives and asked them to reflect on what they wanted their neighbor relationship to look like.

The men began to identify common ground. They were both black, Christian men; they both loved pit bulls; and they each wanted to be respected as the owner of his property. Most importantly, they emphasized for one another that their real enemy is a system rigged against black men and that neither of them wanted to see another black man go to jail. They talked about the potentially dangerous consequences of having the police called over a neighbor dispute. They both agreed that the only time they would want to call the police is if they were seeing criminal activity.

Near the end of the mediation, the mediator opened the conversation to potential agreement terms and they agreed to concern themselves with their own property and not their neighbors. Then they discussed some communication strategies, such as calling and texting when frustrated with each other, instead of involving others or calling the police.

The mediator asked them if they had anything else they wanted to add to their agreement and Jordan said that he would like it to be noted that he wanted Donte to join him for lunch and that he would pay.

By that point in the mediation, the men were laughing and chatting about where they wanted to eat and gossiping about other members of their neighborhood.

The mediation gave the parties an opportunity to discuss their concerns and put to rest decades of poor communication and hard feelings. Both men signed their agreement with a sense of relief and left with newfound respect for one another and an understanding that they shared the same values regarding their community.

"The mediation gave the parties an opportunity to discuss their concerns and put to rest decades of poor communication and hard feelings."

## NEXT STEPS

CCR offers on-going trainings that help participants develop conflict resolution skills and techniques. Upon completion, participants have the necessary skills to mediate in a wide variety of real-world situations. Anyone interested in training should contact CCR's Training Department at 312-922-6464 ext. 15, training@ccrchicago.org, or visit CCR's website at https://www.ccrchicago.org/mediation-skills-training. For more information about mediation services, please contact CCR's Programs Department at 312-922-6464 ex.22, cm@ccrchicago.org, or visit our website at https://www.ccrchicago.org/mediation-services.

*Jackie Lustig is a past WBAI President and a past CCR President.*





# TIME FOR MORE WOMEN MEDIATORS AND ARBITRATORS: A PERSPECTIVE FROM ADR SYSTEMS

## PROFESSIONAL DEVELOPMENTS

By: Jann Johnson and Michael Koss

For almost 28 years, ADR Systems has sought to increase the presence of women on its panel of senior mediators and arbitrators. Today, five former Circuit Court of Cook County women judges regularly mediate and arbitrate disputes at ADR Systems. The company has been, and will be, uniquely positioned to add even more women judges to its panel of neutrals thanks in part to the jurisdiction in which its offices reside.

In the Circuit Court of Cook County, from which ADR Systems draws many of its neutrals, women judges have comprised over 40% of its judiciary since at least 2011.[1] By comparison, approximately two-thirds of judges[2] in the federal judiciary are men, and state judiciaries look quite similar nationally, with only one-third of state judges estimated to be women, according to 2017 data.[3]

And while we as an alternative dispute resolution provider gain from the Circuit Court of Cook County's higher-than-average representation of women on the bench, we are also not content to sit as simple beneficiaries of this modest laurel. It is time for more women mediators and arbitrators – particularly to help counter disparities which persist in the legal profession.

Beyond the judiciary, for example, male attorneys preponderate women attorneys by at least 26%.[4] Women attorneys are underrepresented in leadership roles that attorneys traditionally achieve before pursuing careers in the judiciary: They comprise only 31% of non-equity and 21% of equity partners – with representation by women attorneys of color in those roles at significantly lower rates.[5] Further studies indicate that women attorneys are less likely to serve in lead counsel positions across various case types[6] and, when compared to male attorneys, report lower rates of satisfaction with their jobs in specific areas: opportunities for advancement, recognition for their work, and law firm policies designed to improve diversity, provide new leadership opportunities, and retain talented women attorneys.[7]

Very often, alternative dispute resolution providers recruit retiring judges as mediators and arbitrators; nearly all neutrals at ADR Systems previously served as a judge in state or federal court. There is sound justification for this practice. Counsel value retired judges as mediators and arbitrators for their jury trial and pretrial experience, legal acumen, broad knowledge base and impartial reputation; they trust that a retired judge can effectively review submission materials, navigate the complex issues in a case, facilitate a settlement in a mediation or render a reasoned decision in an arbitration. But there is also a consequence: Alternative dispute resolution panels can tend to mirror the judiciary at large, with limited and decentralized metrics roughly attesting to this or falling below current judicial proportions. [8]

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Even so, it behooves alternative dispute resolution providers to continue to diversify their neutral panels and amend gender imbalances. Neutrals discuss their work with one another, and diverse panels can diversify perspectives and approaches to legal problems among panelists just as diverse judiciaries can for sitting judges. Women judges are more likely to observe the presence of gender bias in legal proceedings than male judges[9], for example, and the presence of women judges can influence the decision-making on federal appellate courts regarding certain sexual harassment cases.[10] In the private context of mediation and arbitration, background, perspective and life experience matter all the more; it is what neutrals draw upon, in part, to help resolve disputes in confidential forums, as neutrals at ADR Systems have noted to us time and time again.

> "Evidence indicates that parties to a dispute feel more comfortable within the process when they share some affinity or commonality with those selected as a neutral.[14]"

Diversification also constitutes an ethical obligation. Standard IX of the Model Standards of Conduct for Mediators, obliges mediators – and the institutions for which they work, transitively – to bolster diversity among mediators to "promote public confidence in mediation as a process for resolving disputes." [11]

And just as judicial diversification can help propagate public trust in the legitimacy of the courts,[12] increased diversity among mediators and arbitrators can contribute to perceptions of alternative dispute resolution proceedings as legitimate and procedurally just alternatives to the courts in "the shadow of the rule of law."[13] Evidence indicates that parties to a dispute feel more comfortable within the process when they share some affinity or commonality with those selected as a neutral.[14] It is the neutral's role in mediation, after all, to create "a comfortable context for parties to communicate amongst themselves and try to reach an understanding about their concerns in a private environment, often behind closed doors." [15]

By such demonstrations, neutrals communicate their desire to listen to the parties' positions without a personal stake in the result, "motivated to do what is good for the people involved" in the dispute.[16] Studies of procedural fairness in alternative dispute resolution note that such demonstrations encourage trust between the neutral and the parties, one of four criteria commonly used to assess whether one was treated fairly.[17] Truly, the experience of fair treatment in such proceedings encourages satisfaction with the process regardless of its outcome, as well as adherence to the outcome in the long term.[18] In private processes like mediation and arbitration, evaluations of process and fair treatment are paramount.

Based upon recent statistics, the legal profession is, hopefully, primed to change in the coming years to correct gender imbalances from the ground up. Women have matriculated at law schools at roughly co-equal rates with men since 2000, for example; and in the past few years, more women than men have attended law school.[19] As of 2021, even, the student bodies at twenty-five law schools consisted of at least 60% women students.[20] Not only that, women attorneys comprised 47% of law firm associates in 2020. [21]

If the number of women law school graduates continues to grow, and if these women remain in the profession, it can lay the groundwork for forthcoming gender parity as the up-and-coming generation of attorneys assume leadership roles like judge and then mediator and arbitrator. It will be our role as an alternative dispute resolution provider to help cultivate this change by seeking out qualified women judges and highly experienced women attorneys for our panel of neutrals. Just as Justice Ruth Bader Ginsberg hoped to see "three, four, perhaps more women on the High Court bench, women not shaped from the same mold, but of different complexions," we hope to see the very same gender parity come to pass across the legal profession, and among neutral panels in particular."[22]

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