I. Introduction

The Women in Dispute Resolution Committee (“WIDR”) of the ABA Section of Dispute Resolution was formed in response to concerns that Ruth Glick, Chair of the Section of Dispute Resolution in 2013-2014, had heard from a number of Section members about the low rates of women being selected as neutrals. With the enthusiastic support of Chair of the Section from 2011-2012, Deborah Masucci, WIDR was formed in the fall of 2011. WIDR has had a number of early successes, including motivating several different dispute resolution organizations to combine forces and focus on the role and involvement of women. In April 2012, the members of WIDR also coordinated several publications.

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2. We would like to thank JD Hoyle, Section of Dispute Resolution Law Clerk, for assisting us with data analysis and editorial support, as well as Carrie Kratochvil for her superior assistance with the text and formatting the charts.


devoted to women produced by the Dispute Resolution Section, the American Arbitration Association, the International Institute for Conflict Prevention and Resolution (CPR), The Chartered Institute of Arbitrators and the New York State Bar Association’s Dispute Resolution Section.

Some of the goals of the WIDR Committee were to change how neutral selection occurs in disputes, to increase the number of women who serve as neutrals, and to ensure that women and minorities were proportionally represented as neutrals. The first step, before suggesting changes, was to understand the current situation in the world of dispute resolution. In fall 2012, the Section of Dispute Resolution surveyed the lawyers belonging to the Section to determine how mediators and arbitrators are selected in legal cases and the types of cases being resolved through the many available dispute resolution processes. Specifically, the survey was designed to examine who is being selected as a neutral, by whom, using what process, and for what types of cases. This report explains the methodology of the survey, the demographics of the respondents and neutrals involved in particular cases, and, most importantly, the information about neutral selection.

II. METHODOLOGY

The survey was sent to lawyer members of the Dispute Resolution Section via e-mail. Several announcements also promoted the survey via Listservs, and an advertisement in Dispute Resolution Magazine. The survey asked detailed questions about the last two disputes in which the respondent had been involved within the past year. We received 743 responses to the survey (for a response rate of 11.7 percent). This compares favorably to other e-mail surveys that the Section has conducted. The survey structure was complex using a survey design called skip logic; depending upon the responses, the respondent would see different follow-up questions. For instance, if the respondent

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5. 18 DISP. RESOL. MAG., no. 3, 2012.
7. 30 ALTERNATIVES TO THE HIGH COST OF LITIG. 4 (2012).
8. 5 N.Y. DISP. RESOL. LAW. 1 (2012).
10. In fall 2012, there were more than 7000 lawyer members of the ABA Section of Dispute Resolution. The survey was sent via e-mail to the 6,284 lawyer members who had opted in to receiving e-mail from the Section.
12. For a more detailed explanation as to how “skip logic” works, see Using Skip Logic in a
indicated he or she had served as an arbitrator for the dispute, then the respondent would see questions as to how he or she was selected to serve as a neutral for the dispute. If the respondent indicated he or she had served as the advocate, then the respondent would see a different series of questions about the selection process. Therefore, not all respondents answered all of the questions in the survey.13

Ninety percent of the respondents indicated that they had been involved in at least one dispute as a neutral or advocate within the past year and these are the disputes analyzed below.

III. DEMOGRAPHICS OF RESPONDENTS

The survey responses in Chart 1 indicated that most of the respondents had spent a significant number of years serving as a neutral or advocate in arbitration, mediation, or other dispute resolution process. Twenty-eight percent of the respondents had practiced in dispute resolution for nine years or fewer. Thirty-one percent of the respondents had practiced in the field for 10–20 years. Forty-one percent of the respondents had practiced in the field for more than 20 years.14

<table>
<thead>
<tr>
<th>Years Served</th>
<th>Percentage of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>15%</td>
</tr>
<tr>
<td>5-9</td>
<td>13%</td>
</tr>
<tr>
<td>10-20</td>
<td>31%</td>
</tr>
<tr>
<td>More than 20</td>
<td>41%</td>
</tr>
<tr>
<td>Total n=666</td>
<td>100%</td>
</tr>
</tbody>
</table>

Significantly more men than women responded to the survey as shown in Chart 2. Sixty-six percent of the respondents were men and thirty-four percent were women. These percentages are very similar to

the gender breakdown of Section of Dispute Resolution membership. These percentages are important to keep in mind when looking at the charts below that compare the representation of male and female practitioners in further data analysis.

CHART 2
<table>
<thead>
<tr>
<th>Gender of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
</tr>
<tr>
<td>Male</td>
</tr>
<tr>
<td>Female</td>
</tr>
<tr>
<td><strong>Total</strong> n=646</td>
</tr>
</tbody>
</table>

The respondents were primarily White/Caucasian (90 percent). Five percent of the respondents indicated they were African American; 2 percent Hispanic; 1 percent Asian and 2 percent “other,” as shown in Chart 3. These percentages are comparable to the ABA membership as a whole.

CHART 3
<table>
<thead>
<tr>
<th>Race/Ethnicity of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
</tr>
<tr>
<td>White/Caucasian</td>
</tr>
<tr>
<td>African American</td>
</tr>
<tr>
<td>Hispanic</td>
</tr>
<tr>
<td>Asian</td>
</tr>
<tr>
<td>Native American</td>
</tr>
<tr>
<td>Pacific Islander</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td><strong>Total</strong> n=651</td>
</tr>
</tbody>
</table>

15. Thirty-six percent of the Section of Dispute Resolution lawyer members are women and sixty-four percent of Section lawyer members are men. For comparison, a 2005 study of lawyer demographics indicated that men comprised seventy percent of the profession and women comprised the remaining thirty percent. Lawyer Demographics, ABA, http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2013.authcheckdam.pdf (last visited April 21, 2014) (tracking changes between male and female representation as a percentage of total licensed lawyers over time).

Respondents were also asked their year of birth as shown in Chart 4. A significant majority of the respondents (70 percent) were born between 1940 and 1959. Ten percent of the respondents were born before 1940, and 20 percent of the respondents were born after 1959.

**CHART 4**

<table>
<thead>
<tr>
<th>Respondent’s Year of Birth</th>
<th>Percentage of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1939</td>
<td>10%</td>
</tr>
<tr>
<td>1940-1959</td>
<td>70%</td>
</tr>
<tr>
<td>1960 or later</td>
<td>20%</td>
</tr>
<tr>
<td>Total n=657</td>
<td>100%</td>
</tr>
</tbody>
</table>

Survey respondents were asked about their current work and answers are shown in Chart 5. The survey allowed respondents to select more than one option, reflecting that many dispute resolution practitioners serve in multiple professional roles. Fifty-four percent indicated they are in private practice. There were some interesting variations in the numbers of men and women in different practice areas. For example, a higher relative percentage of women reported working in law school/academia, government, and non-profit.
Chart 5 compares the gender and the age of the respondents. The bar graph shows that of the respondents born before 1949 there were far more men than women. Of the respondents born between 1930 and 1949, 250 (83 percent) were men and 53 (17 percent) were women. The percentage of men and women starts to even out with those born in 1950. Starting with the cohort of respondents born in 1970 there are more female respondents than male respondents. Of the respondents born 1970 or after, 16 (33 percent) were male and 32 (66 percent) were female. The bar chart shows a visual representation of the percentage of men and women in each age cohort.

Chart 6 compares the gender and the age of the respondents. The bar graph shows that of the respondents born before 1949 there were far more men than women. Of the respondents born between 1930 and 1949, 250 (83 percent) were men and 53 (17 percent) were women. The percentage of men and women starts to even out with those born in 1950. Starting with the cohort of respondents born in 1970 there are more female respondents than male respondents. Of the respondents born 1970 or after, 16 (33 percent) were male and 32 (66 percent) were female. The bar chart shows a visual representation of the percentage of men and women in each age cohort.

Where possible, the p-value for each table is provided. (P-value is the probability that the results shown in each table would occur by chance.) P-value for Chart 5 = 0.00 showing these differences are highly significant.
**CHART 6**

**Respondent’s Gender and Age**

<table>
<thead>
<tr>
<th>Year of Birth</th>
<th>Male</th>
<th>Female</th>
<th>Total (n=635)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1929</td>
<td>5</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>1930-1949</td>
<td>250</td>
<td>53</td>
<td>303</td>
</tr>
<tr>
<td>1950-1969</td>
<td>151</td>
<td>124</td>
<td>275</td>
</tr>
<tr>
<td>1970 or later</td>
<td>16</td>
<td>32</td>
<td>48</td>
</tr>
</tbody>
</table>

Chart 7 shows a similar comparison, examining gender versus the number of years the respondent has practiced as a neutral or advocate in arbitration, mediation, or other dispute resolution process. The number of men in “dispute resolution” practice for more than 20 years far exceeds the number of women. Of the respondents in practice for 20 or more years, 204 (76 percent) were men and 64 (24 percent) were women. The bar chart shows a visual representation of the percentage of men and women in each practice cohort.

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18. P-value = 0.00.
CHART 7
Respondent Gender and Years of Practice

<table>
<thead>
<tr>
<th>Years of Practice</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>44</td>
<td>49</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>47%</td>
<td>53%</td>
<td></td>
</tr>
<tr>
<td>5-10</td>
<td>49</td>
<td>30</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>62%</td>
<td>38%</td>
<td></td>
</tr>
<tr>
<td>11-20</td>
<td>130</td>
<td>71</td>
<td>201</td>
</tr>
<tr>
<td></td>
<td>65%</td>
<td>35%</td>
<td></td>
</tr>
<tr>
<td>More than 20</td>
<td>204</td>
<td>64</td>
<td>268</td>
</tr>
<tr>
<td></td>
<td>76%</td>
<td>24%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>427</td>
<td>214</td>
<td>641</td>
</tr>
<tr>
<td></td>
<td>67%</td>
<td>33%</td>
<td></td>
</tr>
</tbody>
</table>

Chart 8 shows how the years in practice vary depending on the role that the respondent played in the dispute referenced. Interestingly, respondents skew dramatically younger in mediation with most of the mediators evenly divided between practicing 11-20 years and more than 20 years. In contrast, the majority of arbitrators and advocates have been practicing more than 20 years. As we map gender onto years of practice later in this report, the fact that mediation has younger representation shows up again.

19. P-value = 0.00.
CHART 8
Years in Practice Compared to the Role They Served in the Dispute

<table>
<thead>
<tr>
<th>Practice</th>
<th>1 - 4</th>
<th>5 - 10</th>
<th>11 - 20</th>
<th>More than 20</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitrator</td>
<td>5.88%</td>
<td>7.84%</td>
<td>27.84%</td>
<td>58.43%</td>
<td>255</td>
</tr>
<tr>
<td>Mediator</td>
<td>17.56%</td>
<td>15.63%</td>
<td>34.67%</td>
<td>32.14%</td>
<td>672</td>
</tr>
<tr>
<td>Advocate for a party</td>
<td>8.33%</td>
<td>9.31%</td>
<td>25.98%</td>
<td>56.57%</td>
<td>204</td>
</tr>
<tr>
<td>Other21</td>
<td>14.29%</td>
<td>14.29%</td>
<td>28.57%</td>
<td>42.86%</td>
<td>35</td>
</tr>
<tr>
<td>Total</td>
<td>13.29%</td>
<td>12.78%</td>
<td>31.48%</td>
<td>42.45%</td>
<td>1166</td>
</tr>
</tbody>
</table>

IV. DEMOGRAPHICS OF NEUTRALS AND CASES

In order to arrive at an overview of a larger number of disputes, the survey asked respondents to discuss their last two cases that had been handled through a neutral, whether or not the case settled, and regardless of whether the respondent had served as the neutral or an advocate for one of the parties. With these parameters, the data discussed below reviews the information for 1250 cases. Given that not every respondent fully answered each question, the numbers vary slightly in each of the following charts.

The first item reviewed was the gender of the respondents versus the role each respondent played in the dispute. Keep in mind that we are comparing this to the 66 percent men/34 percent women overall baseline of survey respondents (and Section members). As shown in Chart 9, the gender representation is within several percentage points of the baseline whether the respondent served as an advocate or mediator in the case. In arbitration, however, 80 percent of the neutrals were men. These numbers become more nuanced as we examine several other factors including experience level and type of case. And, again, note that the numbers do not always add up on each chart given differences in respondents.

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20. P-value = 0.00.
21. Respondents who answered “other” indicated a variety of roles, including expert witness team, facilitator, special master, and settlement judge.
We looked more closely at arbitration panels to understand the gender breakdown. In cases where there was a single arbitrator (n=125), women served as the arbitrator in 30 of them (24 percent). In fact, this number is higher than the overall number of female arbitrators (at 20 percent) so the issue of representation arises more clearly in multi-arbitrator panels.

Chart 10 below shows gender breakdowns on these panels. Fifty-six percent of the panel arbitration cases reported had three male arbitrators while none of the reported cases had panels of all women. Twenty-three percent of the cases were two men and one woman, while 7 percent of the panel arbitration cases were two women and one man. Examining the number of arbitrators in multi-arbitrator panels is even more telling. Of the 294 arbitrators who served in the disputes outlined below, only 42 (14 percent) were women.

The variety of types of the reported cases is shown in the following series of charts. Interestingly, the representation of men and women in these cases varies widely from each other, and often from the 66/34

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**CHART 9**

<table>
<thead>
<tr>
<th>Practice</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitrator</td>
<td>80%</td>
<td>20%</td>
<td>242</td>
</tr>
<tr>
<td>Mediator</td>
<td>63%</td>
<td>37%</td>
<td>648</td>
</tr>
<tr>
<td>Advocate for a party</td>
<td>67%</td>
<td>32%</td>
<td>196</td>
</tr>
<tr>
<td>Other role</td>
<td>65%</td>
<td>35%</td>
<td>35</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>67%</td>
<td>33%</td>
<td>1121</td>
</tr>
</tbody>
</table>

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22. P-value for case 1 = 0.03; p-value for case 2 = 0.00.
baseline. As heard anecdotally, and now reported empirically, women neutrals are highly represented in family, consumer, and small claim disputes, and underrepresented in certain high-end areas including insurance, financial disputes, construction, and intellectual property.

Chart 11 compares gender versus type of case in mediated cases. Here, even though women represent approximately 36 percent of all mediators in these reported cases, the numbers have a significant swing depending on the type of case. (Note again that percentages vary from the initial survey question since not all respondents answered all questions.) Women serve as mediators in over half the cases dealing with family and elder law, as well as consumer law and small claims and are well represented in labor, health, and energy disputes. On the other hand, corporate, construction, insurance, and intellectual property disputes are significantly male-dominated.

### CHART 11

**Gender of Mediators Compared to the Subject Matter of the Case**

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Male Mediators</th>
<th>Percentage of Male Mediators</th>
<th>Female Mediators</th>
<th>Percentage of Female Mediators</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate and Commercial (includes banking, accounting, securities, franchise, and partnership)</td>
<td>117</td>
<td>77%</td>
<td>35</td>
<td>23%</td>
<td>152</td>
</tr>
<tr>
<td>Class Action</td>
<td>10</td>
<td>77%</td>
<td>3</td>
<td>23%</td>
<td>13</td>
</tr>
<tr>
<td>Construction</td>
<td>49</td>
<td>82%</td>
<td>11</td>
<td>18%</td>
<td>60</td>
</tr>
<tr>
<td>Consumer</td>
<td>10</td>
<td>43%</td>
<td>13</td>
<td>57%</td>
<td>23</td>
</tr>
<tr>
<td>Family, Elder, and Probate</td>
<td>67</td>
<td>42%</td>
<td>92</td>
<td>58%</td>
<td>159</td>
</tr>
<tr>
<td>Labor and Employment</td>
<td>77</td>
<td>61%</td>
<td>50</td>
<td>39%</td>
<td>127</td>
</tr>
<tr>
<td>Energy and Environment</td>
<td>6</td>
<td>67%</td>
<td>3</td>
<td>33%</td>
<td>9</td>
</tr>
<tr>
<td>Health Care</td>
<td>5</td>
<td>50%</td>
<td>5</td>
<td>50%</td>
<td>10</td>
</tr>
<tr>
<td>Insurance</td>
<td>41</td>
<td>95%</td>
<td>2</td>
<td>5%</td>
<td>43</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>15</td>
<td>94%</td>
<td>1</td>
<td>6%</td>
<td>16</td>
</tr>
<tr>
<td>Malpractice</td>
<td>15</td>
<td>88%</td>
<td>2</td>
<td>12%</td>
<td>17</td>
</tr>
<tr>
<td>Small Claims</td>
<td>13</td>
<td>35%</td>
<td>24</td>
<td>65%</td>
<td>37</td>
</tr>
<tr>
<td>Other</td>
<td>88</td>
<td>64%</td>
<td>49</td>
<td>36%</td>
<td>137</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>513</td>
<td>64%</td>
<td>290</td>
<td>36%</td>
<td>803</td>
</tr>
</tbody>
</table>

In Chart 12, we now examine the gender versus subject matter of disputes that went to *arbitration*. In arbitration, women only served as
the neutral in 17 percent of cases overall. Again, subject matters that exceed that baseline are in family, labor, consumer and small claims. Similarly, commercial, construction, and intellectual property have even more male arbitrators. The fact that over half of all arbitration cases studied (186 of 328) are in male-dominated areas also helps to explain low average numbers of women.

CHART 12
Gender of Arbitrators Compared to the Subject Matter of the Dispute

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Male Arbitrators</th>
<th>Percentage of Male Arbitrators</th>
<th>Female Arbitrators</th>
<th>Percentage of Female Arbitrators</th>
<th>Total Arbitrators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate and Commercial</td>
<td>121</td>
<td>88%</td>
<td>17</td>
<td>12%</td>
<td>138</td>
</tr>
<tr>
<td>Class Action</td>
<td>1</td>
<td>100%</td>
<td>0</td>
<td>0%</td>
<td>1</td>
</tr>
<tr>
<td>Construction</td>
<td>44</td>
<td>92%</td>
<td>4</td>
<td>8%</td>
<td>48</td>
</tr>
<tr>
<td>Consumer</td>
<td>6</td>
<td>75%</td>
<td>2</td>
<td>25%</td>
<td>8</td>
</tr>
<tr>
<td>Family, Elder, and Probate</td>
<td>2</td>
<td>67%</td>
<td>1</td>
<td>33%</td>
<td>3</td>
</tr>
<tr>
<td>Labor and Employment</td>
<td>42</td>
<td>68%</td>
<td>20</td>
<td>32%</td>
<td>62</td>
</tr>
<tr>
<td>Energy and Environment</td>
<td>4</td>
<td>80%</td>
<td>1</td>
<td>20%</td>
<td>5</td>
</tr>
<tr>
<td>Health Care</td>
<td>8</td>
<td>89%</td>
<td>1</td>
<td>11%</td>
<td>9</td>
</tr>
<tr>
<td>Insurance</td>
<td>10</td>
<td>77%</td>
<td>3</td>
<td>23%</td>
<td>13</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>13</td>
<td>93%</td>
<td>1</td>
<td>7%</td>
<td>14</td>
</tr>
<tr>
<td>Malpractice</td>
<td>3</td>
<td>75%</td>
<td>1</td>
<td>25%</td>
<td>4</td>
</tr>
<tr>
<td>Small Claims</td>
<td>1</td>
<td>50%</td>
<td>1</td>
<td>50%</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>16</td>
<td>76%</td>
<td>5</td>
<td>24%</td>
<td>21</td>
</tr>
<tr>
<td>Total</td>
<td>271</td>
<td>83%</td>
<td>57</td>
<td>17%</td>
<td>328</td>
</tr>
</tbody>
</table>

Chart 13 combines the two above charts and demonstrates even more clearly the extremes of practice area differentials for male and female neutrals. While overall representation of women in the Section is 34 percent and as neutrals in the cases below is 31 percent, the interesting elements to examine are the variations based on practice area from the single digit lows of 7 percent women in intellectual property and 9 percent women in insurance to the majority women neutrals in small claims (64 percent) and family/probate (57 percent).
Finally, just to provide another basis of comparison, Chart 14 shows the gender of those respondents who served just as *advocates* versus the subject matter of the dispute. The numbers for some types of disputes are too small at this point to draw conclusions. Still, we can see much of the same pattern for family, labor, and consumer versus commercial and construction disputes.

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23. P-value = 0.00.
CHART 14

Gender of Advocates Compared to Subject of Dispute

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Male Advocates</th>
<th>Percentage of Male Advocates</th>
<th>Female Advocates</th>
<th>Percentage of Female Advocates</th>
<th>Total Advocates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate and Commercial</td>
<td>46</td>
<td>75%</td>
<td>15</td>
<td>25%</td>
<td>61</td>
</tr>
<tr>
<td>Class Action</td>
<td>3</td>
<td>60%</td>
<td>2</td>
<td>40%</td>
<td>5</td>
</tr>
<tr>
<td>Construction</td>
<td>28</td>
<td>82%</td>
<td>6</td>
<td>18%</td>
<td>34</td>
</tr>
<tr>
<td>Consumer</td>
<td>2</td>
<td>50%</td>
<td>2</td>
<td>50%</td>
<td>4</td>
</tr>
<tr>
<td>Family, Elder, and Probate</td>
<td>8</td>
<td>32%</td>
<td>17</td>
<td>68%</td>
<td>25</td>
</tr>
<tr>
<td>Labor and Employment</td>
<td>20</td>
<td>49%</td>
<td>21</td>
<td>51%</td>
<td>41</td>
</tr>
<tr>
<td>Energy and Environment</td>
<td>7</td>
<td>100%</td>
<td>0</td>
<td>0%</td>
<td>7</td>
</tr>
<tr>
<td>Health Care</td>
<td>4</td>
<td>67%</td>
<td>2</td>
<td>33%</td>
<td>6</td>
</tr>
<tr>
<td>Insurance</td>
<td>12</td>
<td>71%</td>
<td>5</td>
<td>29%</td>
<td>17</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>11</td>
<td>92%</td>
<td>1</td>
<td>8%</td>
<td>12</td>
</tr>
<tr>
<td>Malpractice</td>
<td>5</td>
<td>83%</td>
<td>1</td>
<td>17%</td>
<td>6</td>
</tr>
<tr>
<td>Small Claims</td>
<td>1</td>
<td>100%</td>
<td>0</td>
<td>0%</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>29</td>
<td>82%</td>
<td>6</td>
<td>17%</td>
<td>35</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>176</strong></td>
<td><strong>69%</strong></td>
<td><strong>78</strong></td>
<td><strong>31%</strong></td>
<td><strong>254</strong></td>
</tr>
</tbody>
</table>

The next four charts examine the amount of money in dispute compared to the gender of the mediator. These charts help both to flesh out the story of the subject matter differences and to demonstrate in another way the significance of the difference between the female and male neutrals.

Chart 15 starts with the amount of money in dispute in mediated cases. With the baseline in these cases where the amount of money was reported of 37 percent female mediators, (close to the Section membership baseline of 34 percent) it is quite telling that women serve as neutrals much more often in cases with no money in dispute or in smaller disputes under $100,000. Of the 166 cases with more than $1,000,000 in dispute, women were mediators in 23 percent (38) of them. Of the 263 non-monetary or smaller amount disputes, women were the mediators in 54 percent of these cases. Of the 383 cases above $100,000, women were the mediators in only 25 percent.
CHART 15
The Amount of Money in Dispute Compared to the Gender of the Mediator

<table>
<thead>
<tr>
<th>Amount of Money</th>
<th>Male Mediators</th>
<th>Percentage of Male Mediators</th>
<th>Female Mediators</th>
<th>Percentage of Female Mediators</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primarily a non-monetary dispute</td>
<td>29</td>
<td>34%</td>
<td>57</td>
<td>66%</td>
<td>86</td>
</tr>
<tr>
<td>Under $99,999</td>
<td>92</td>
<td>52%</td>
<td>85</td>
<td>48%</td>
<td>177</td>
</tr>
<tr>
<td>$100,000 - $499,999</td>
<td>105</td>
<td>72%</td>
<td>40</td>
<td>28%</td>
<td>145</td>
</tr>
<tr>
<td>$500,000 - $999,999</td>
<td>53</td>
<td>74%</td>
<td>19</td>
<td>26%</td>
<td>72</td>
</tr>
<tr>
<td>$1,000,000 - $9,999,999</td>
<td>95</td>
<td>78%</td>
<td>27</td>
<td>22%</td>
<td>122</td>
</tr>
<tr>
<td>$10,000,000 - $24,999,999</td>
<td>14</td>
<td>78%</td>
<td>4</td>
<td>22%</td>
<td>18</td>
</tr>
<tr>
<td>Over $25,000,000</td>
<td>19</td>
<td>73%</td>
<td>7</td>
<td>27%</td>
<td>26</td>
</tr>
<tr>
<td>Total</td>
<td>407</td>
<td>63%</td>
<td>239</td>
<td>37%</td>
<td>646</td>
</tr>
</tbody>
</table>

Chart 16 addresses the same issue in arbitration cases comparing the amount of money at stake to the gender of the arbitrator. The arbitration numbers are not quite as consistent, with interesting outliers in the $500,000-$999,999 cases (these appear to be several employment cases). At the same time, the arbitrators in the non-monetary and smallest amount disputes are more likely to be female than other amounts both below and above the $500,000 level.

CHART 16
The Amount of Money in Dispute Compared to the Gender of the Arbitrator

<table>
<thead>
<tr>
<th>Amount of Money</th>
<th>Male Arbitrators</th>
<th>Percentage of Male Arbitrators</th>
<th>Female Arbitrators</th>
<th>Percentage of Female Arbitrators</th>
<th>Total Arbitrators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primarily a non-monetary dispute</td>
<td>16</td>
<td>73%</td>
<td>6</td>
<td>27%</td>
<td>22</td>
</tr>
<tr>
<td>Under $99,999</td>
<td>32</td>
<td>73%</td>
<td>12</td>
<td>27%</td>
<td>44</td>
</tr>
<tr>
<td>$100,000 - $499,999</td>
<td>39</td>
<td>81%</td>
<td>9</td>
<td>19%</td>
<td>48</td>
</tr>
<tr>
<td>$500,000 - $999,999</td>
<td>18</td>
<td>67%</td>
<td>9</td>
<td>33%</td>
<td>27</td>
</tr>
<tr>
<td>$1,000,000 - $9,999,999</td>
<td>55</td>
<td>89%</td>
<td>7</td>
<td>11%</td>
<td>62</td>
</tr>
<tr>
<td>$10,000,000 - $24,999,999</td>
<td>13</td>
<td>87%</td>
<td>2</td>
<td>13%</td>
<td>15</td>
</tr>
<tr>
<td>Over $25,000,000</td>
<td>20</td>
<td>83%</td>
<td>4</td>
<td>17%</td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td>193</td>
<td>82%</td>
<td>43</td>
<td>18%</td>
<td>236</td>
</tr>
</tbody>
</table>
Chart 17 combines both processes to tell a clearer story about money at stake regardless of which dispute resolution process is used.

**CHART 17**

**Gender of the Neutrals Compared to the Amount in Dispute**
(Charts 15 and 16 combined)

<table>
<thead>
<tr>
<th>Amount of Money</th>
<th>Male Neutrals</th>
<th>Percentage of Male Neutrals</th>
<th>Female Neutrals</th>
<th>Percentage of Female Neutrals</th>
<th>Total Neutrals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primarily a non-monetary dispute</td>
<td>45</td>
<td>42%</td>
<td>63</td>
<td>58%</td>
<td>108</td>
</tr>
<tr>
<td>Under $99,999</td>
<td>124</td>
<td>56%</td>
<td>97</td>
<td>44%</td>
<td>221</td>
</tr>
<tr>
<td>$100,000 - $499,999</td>
<td>144</td>
<td>75%</td>
<td>49</td>
<td>25%</td>
<td>193</td>
</tr>
<tr>
<td>$500,000 - $999,999</td>
<td>71</td>
<td>72%</td>
<td>28</td>
<td>28%</td>
<td>99</td>
</tr>
<tr>
<td>$1,000,000 - $9,999,999</td>
<td>150</td>
<td>82%</td>
<td>34</td>
<td>18%</td>
<td>184</td>
</tr>
<tr>
<td>$10,000,000 - $24,999,999</td>
<td>27</td>
<td>82%</td>
<td>6</td>
<td>18%</td>
<td>33</td>
</tr>
<tr>
<td>Over $25,000,000</td>
<td>39</td>
<td>78%</td>
<td>11</td>
<td>22%</td>
<td>50</td>
</tr>
<tr>
<td>Total</td>
<td>600</td>
<td>73%</td>
<td>225</td>
<td>27%</td>
<td>825</td>
</tr>
</tbody>
</table>

Finally, and again as a comparison, Chart 18 examines the cases in which respondents served as an advocate to see if the numbers were the same or different depending on the role respondent played. Again, women are underrepresented at the highest amounts. On the other hand, this decrease in female representation does not appear to occur until the $1,000,000 level.

**CHART 18**

**Gender of Advocates Compared with the Amount in Dispute**

<table>
<thead>
<tr>
<th>Amount of Money</th>
<th>Male Advocates</th>
<th>Percentage of Male Advocates</th>
<th>Female Advocates</th>
<th>Percentage of Female Advocates</th>
<th>Total Advocates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primarily a non-monetary dispute</td>
<td>5</td>
<td>56%</td>
<td>4</td>
<td>44%</td>
<td>9</td>
</tr>
<tr>
<td>Under $99,999</td>
<td>10</td>
<td>43%</td>
<td>13</td>
<td>57%</td>
<td>23</td>
</tr>
<tr>
<td>$100,000 - $499,999</td>
<td>28</td>
<td>65%</td>
<td>15</td>
<td>35%</td>
<td>43</td>
</tr>
<tr>
<td>$500,000 - $999,999</td>
<td>19</td>
<td>56%</td>
<td>15</td>
<td>44%</td>
<td>34</td>
</tr>
<tr>
<td>$1,000,000 - $9,999,999</td>
<td>42</td>
<td>86%</td>
<td>7</td>
<td>14%</td>
<td>49</td>
</tr>
<tr>
<td>$10,000,000 - $24,999,999</td>
<td>12</td>
<td>75%</td>
<td>4</td>
<td>25%</td>
<td>16</td>
</tr>
<tr>
<td>Over $25,000,000</td>
<td>16</td>
<td>76%</td>
<td>5</td>
<td>24%</td>
<td>21</td>
</tr>
<tr>
<td>Total</td>
<td>127</td>
<td>68%</td>
<td>59</td>
<td>32%</td>
<td>186</td>
</tr>
</tbody>
</table>
One step to fixing gender imbalance is to recognize that there are number differentials between men and women neutrals. The next step is to figure out why.

One potential theory is that the gender differential is reflective of years of experience. (See Chart 19 below). In other words, one might argue lawyers and parties select their neutrals based on years of experience. Since women tend to be less experienced, one might argue that women are selected less often, at least in certain type of cases.

This perhaps is part of the story in construction disputes which appears to select quite experienced neutrals and, on the other hand, consumer or family disputes, which appears to select a mix of ages. (Of course, we cannot tell whether this is causation or correlation for gender.) On the other hand, this does not appear to be the case in commercial disputes where the difference in years of practice is not nearly as great as the gender difference (shown in Chart 13) or in intellectual property (which skews young but not female) or in energy (which skews more experienced but also more evenly female.) So experience does not appear to be a satisfactory answer. Perhaps the neutral’s previous work as a judge or in private practice (which skews more male) might also explain some of the neutral selection.
Another theory to explain gender imbalance could be that the way neutrals are chosen contributes to the imbalance in certain areas and reinforces stereotypes in others. Chart 20 demonstrates the gender difference in how mediators are selected. In this chart, the respondents who served as mediators reported how they were selected for the case.

Again, anecdotal evidence appears to be replicated by numbers. When the mediators are selected by attorneys or clients who looked to their personal network those choices are apparently more gender imbalanced. Only 29 percent of mediators selected this way are women. When parties or lawyers had to choose from a roster of mediators created by an ADR provider or a court, the proportion of women

---

24. P-value = 0.00.
selected as mediators jumps from 29 percent to 47 percent.

**CHART 20**

How the Mediator was Selected Compared with Mediator’s Gender

<table>
<thead>
<tr>
<th>Selection Process</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Choice – one or all of the parties or their attorneys, or pre-dispute agreement</td>
<td>71%</td>
<td>29%</td>
<td>447</td>
</tr>
<tr>
<td>Limited choice or appointment (list, roster, or provider appointment)</td>
<td>53%</td>
<td>47%</td>
<td>217</td>
</tr>
<tr>
<td>Other<strong>6</strong></td>
<td>32%</td>
<td>68%</td>
<td>37</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>63%</td>
<td>37%</td>
<td>644</td>
</tr>
</tbody>
</table>

The following chart lists the ways in which survey respondents who served as advocates identified neutrals to serve as mediators for their case. These responses are different from the chart above when neutrals report their own experience versus how advocates make choices. The most common answer, from both male and female advocates, was that the mediator was selected from their personal network. The second most common answer was that the neutral was identified as the result of a colleague recommendation. This data backs up a common understanding within the dispute resolution field: network matters.

**CHART 21**

Sources from Which Advocates Identified Mediators for the Case

<table>
<thead>
<tr>
<th>Source</th>
<th>Responses from Male Advocates</th>
<th>Percentage of Male Advocates</th>
<th>Responses from Female Advocates</th>
<th>Percentage of Female Advocates</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR provider list</td>
<td>11</td>
<td>9%</td>
<td>5</td>
<td>9%</td>
</tr>
<tr>
<td>Colleague recommendation</td>
<td>31</td>
<td>26%</td>
<td>15</td>
<td>27%</td>
</tr>
<tr>
<td>The client recommended the neutral</td>
<td>1</td>
<td>1%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>The neutral is part of my professional or personal network</td>
<td>53</td>
<td>44%</td>
<td>16</td>
<td>29%</td>
</tr>
<tr>
<td>I was not in a position to select the neutral</td>
<td>11</td>
<td>9%</td>
<td>8</td>
<td>14%</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>11%</td>
<td>12</td>
<td>21%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>120</td>
<td>68%</td>
<td>56</td>
<td>32%</td>
</tr>
</tbody>
</table>

25. P-value = 0.00.
26. “Other” answers included from a community mediation center roster, human resources, a judicial colleague.
Chart 22 demonstrates the gender differences in arbitrator selection. Interestingly, the percentage selected through the network or through a list are virtually the same. When attorneys or clients select the arbitrator from their network, 20 percent of the arbitrators were women. When arbitrators were selected from a list, roster or a provider organization, the percentage of women was 19 percent. This demonstrates an additional concern and opportunity for reform. Perhaps the lists themselves are not an appropriate balance if the goal is more inclusion of women.

### CHART 22
Arbitrator Selection Process Compared to Gender of Arbitrators

<table>
<thead>
<tr>
<th>Selection Process</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>One of the parties or clients or attorneys for one of the parties</td>
<td>80%</td>
<td>20%</td>
<td>59</td>
</tr>
<tr>
<td>ADR provider strike list or provider appointment or court</td>
<td>81%</td>
<td>19%</td>
<td>159</td>
</tr>
<tr>
<td>Appointed as umpire by co-arbitrators</td>
<td>90%</td>
<td>10%</td>
<td>10</td>
</tr>
<tr>
<td>Other</td>
<td>65%</td>
<td>35%</td>
<td>26</td>
</tr>
<tr>
<td>Total</td>
<td>79%</td>
<td>21%</td>
<td>254</td>
</tr>
</tbody>
</table>

Chart 23 examines the data on selection compared to the respondent’s age. Clearly, most neutrals in either arbitration or mediation, appointed by choice or chosen from a list, are born within the 1940-1959 range. Interestingly, it appears that the ADR provider list skews slightly older than personal networks.

### CHART 23
Process by Which Respondent was Selected as Mediator Compared with Respondent Year of Birth

<table>
<thead>
<tr>
<th>Selection Process</th>
<th>Before 1939</th>
<th>1940-1959</th>
<th>1960 or Later</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Choice (by one or both parties or their attorneys)</td>
<td>9%</td>
<td>73%</td>
<td>18%</td>
<td>445</td>
</tr>
<tr>
<td>ADR provider or court appointed list or roster</td>
<td>9%</td>
<td>66%</td>
<td>25%</td>
<td>228</td>
</tr>
<tr>
<td>Other</td>
<td>11%</td>
<td>72%</td>
<td>17%</td>
<td>36</td>
</tr>
<tr>
<td>Total</td>
<td>9%</td>
<td>71%</td>
<td>20%</td>
<td>709</td>
</tr>
</tbody>
</table>

P-value for case 1 = 0.51; p-value for case 2 = 0.33.
Finally, does the gender of the advocates in the dispute make a difference? Our data indicate it does. Female survey respondents who served as advocates in disputes reported a greater percentage of female mediators for their cases than male survey respondents reported. Male advocates reported that 84 percent of the mediators in their cases were male. Female advocates reported that 63 percent of the mediators in their case were male.

VI. PRELIMINARY CONCLUSIONS AND NEXT STEPS

This survey provides clear data on women serving in neutral capacities and demonstrates several different potential avenues of change.

Three preliminary conclusions drawn from this data are: first, the type and subject matter of the dispute clearly impacts neutral selection. As detailed above, certain practice areas are far more male and certain others are quite female. Second, it appears to matter how the neutral is selected in mediation. Networking resulted in only 29 percent women while provider lists resulted in an increased percentage of 47 percent. Finally, arbitration and mediation are not the same for gender integration. Arbitration seems to hold steady at 20 percent regardless of selection process and even decreases further in panel arbitrations.

A few preliminary recommendations:

► This survey should be replicated with groups that can provide additional information about minority participation in dispute resolution. We hypothesize that most of the remaining recommendations would support minority participation in dispute resolution but the low number of minority participants in this survey meant we do not have the data to support our hypothesis.
► Clients and lawyers could be encouraged to think more broadly about who they use as neutrals. Particularly in three arbitrator panels, when considering equally qualified candidates, there should be a presumption that a woman be selected as part of a panel.
► Neutrals need to be aware that personal networks still appear to be the primary source of referrals and that these networks need to be strengthened and broadened to include women.
► Provider organizations should be commended for improved gender balance in mediation. Courts, provider organizations,
agencies, and other organizations that administer and oversee ADR programs should be encouraged to use lists and the lists themselves should be broadened to include more women.

► In arbitration, provider organizations (a) should also adopt the assumption that multi-arbitrator panels should include one woman when they are appointing the panel and (b) should have a higher percentage of women on their list so that these lists can do more than reflect the current situation.

► These arbitration rosters should aim for a gender distribution of at least 35 percent of the roster be women similar to mediation rosters. Various ADR organizations such as the Section, CPR, AAA, and others, should encourage membership to work with provider organizations to increase access to rosters, as well as encourage members to provide awareness training and be an active participant on the rosters.

► Additional efforts in certain practice areas (commercial, construction, etc.) are likely warranted with a targeted program to identify and encourage women and minorities to serve as neutrals. As these areas are the most heavily represented in the Dispute Resolution Section and also home to some of the most high-end disputes, these additional efforts could likely have great impact.

► This survey should be regularly repeated to measure progress and continue to illuminate further action proposals.

► We would welcome any opportunity to replicate this survey in other ABA sections and other groups of advocates and neutrals.