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## **THE AMERICAN ARBITRATION ASSOCIATION'S COMMITMENT TO DIVERSITY**

### **The AAA's Commitment to Fair Treatment and Equal Employment Has Been Ongoing Since Its Inception in 1926. Jennifer Coffman Reviews That Organizational Mindset and Explores Ways in Which the AAA and the Dispute Resolution Field at Large Can Increase the Inclusiveness of ADR**

\***32** In 2003, the American Arbitration Association, a not-for-profit provider of alternative dispute resolution services, whose mission is one of education and public service, published a strong commitment to diversity with the following message of inclusiveness:

The American Arbitration Association is the global leader in conflict management with core values of integrity and service. Our integrity demands impartial and fair treatment of all people with whom we come in contact, regardless of gender, race, ethnicity, age, religion, sexual orientation, or other characterization. Our conflict management services put into practice our goal for the resolution of disputes between parties with different perspectives, experiences, and backgrounds.

Because of the breadth of the Association's work and the global reach of its services, we recognize the importance and contribution of a diverse work force, a diverse Roster of Neutrals, a diverse Board, and commit to respect and increase diversity in all our endeavors.

This commitment to fair treatment and equal employment are core values that have been part of the AAA organizational culture since 1926, when Frances Kellor was its first female executive. Today, more than half of AAA employees are women and 46% are persons of color; 47% of executives, vice presidents and department managers are women and 28% are persons of color.

The AAA also carries its commitment to diversity into the recruitment of directors: 28% of AAA directors are women, 22%

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of directors are minority men and women, and in total 41% are female and/or minority professionals. This is a significant change from the 8% diversity of the AAA's board in 1993.

As a leader in the field of alternative dispute resolution and dispute prevention, the AAA is constantly working to create a level playing field, not just within its own walls, but also outside the organization.

It has played a leadership role in creating minimum standards of due process for consumer, ecommerce, statutory employment, and healthcare disputes, recognizing that consumers, employees and patients need minimum procedural fairness protections since their disputes tend to involve a party with greater bargaining power.

In these endeavors, the AAA has worked with industry organizations and stakeholders, such as the American Medical Association in connection with the Healthcare Due Process Protocol; and with the National Association of Consumer Agency Administrators, the Bureau of Consumer Protection at the Federal Trade Commission, Consumers Union and Consumer Action, among other groups and government agencies, in connection with the Consumer Due Process Protocol.

The Association has also created ethical standards for arbitrators and mediators, working together with the American Bar Association and with the Association for Conflict Resolution in the case of the Model Standards of Conduct for Mediators.

The Association always has fairness in mind when it drafts its rules. Its arbitration rules have been tested by time and the courts, and are used as standard procedures for the field of alternative dispute resolution.

Proposed rules changes are made by a committee whose members include outside experts in the field. In addition, the Association solicits input from users of its services when changes are proposed to its rules.

In 2002, the AAA created a Code of Ethics for Employees to guide impartial behavior of AAA staff throughout the organization. As an example, employees may not accept gifts.

The Association also requires every staff member to undergo sexual harassment and discrimination prevention training. This training helps employees recognize and avoid this unwelcome and illegal conduct. Supervisors also receive additional training to better coach and guide their staff.

In forming committees and task forces to assist in its work, the Association seeks out women and persons of color in order to obtain broader perspectives \*33 and ideas. It also seeks out diverse panelists to serve on its educational programs.

The Association recognizes that actual fairness is not enough. Equally important is the perception of fairness. The services the Association seeks to provide must be perceived as fair and impartial. Thus, the Association recognizes that its services are only as good as its staff and neutrals.

And it believes that its goals for improving the perception of fairness and impartiality can only be achieved by increasing the diversity of the individuals who serve on its roster of neutrals. Users of ADR should have the ability to choose neutrals with a shared background and experience because they may better understand the parties' experience and the issues that concern them.

Greater diversity is an imperative for the legal profession and the courts. Bar associations and courts have their own diversity programs, as do some law firms, in order to demonstrate to the public that the law is not just the purview of a single privileged group. Courts recognize that having judges, court attorneys and clerks with different ethnic and racial backgrounds is an important civil justice goal.

Very recently, the Hon. Denny Chin, a judge in the Southern District Court of New York, who wrote about the dearth of Asian-Americans on the bench ("Why Race Matters," *New York Law Journal*, Dec. 17, 2007), indicated that judges of different races will not decide cases differently, but what they will do "is bring our diverse backgrounds with us." Having a

broad mix of judges, he says, “more fairly reflects the rich diversity of our society.”

The same could be said of ADR neutrals. Having a more representative panel of qualified, well-trained neutrals that has more women and people with different racial and ethnic backgrounds available to serve on arbitration and mediation panels means that there will be more diverse experience on those panels.

Diversifying the AAA’s roster of neutrals is one of the biggest challenges facing the Association. At one point during the last decade, the roster numbered 60,000 individuals. The panel at that time was made up of leading business and legal professionals throughout the country. As a result, the panel reflected the lack of diversity in the business and legal fields.

In recent years, and as part of a comprehensive review of the AAA’s caseload and its neutrals, the panel was vetted to approximately 7,000 of the most qualified and experienced neutrals in the world. The AAA also developed a mandatory comprehensive training program for existing and new panelists and created a new process for applying to the panel. This process includes rigorous review by regional advisory committees composed of diverse ADR experts.

These changes, combined with the greater diversity in hiring by business and law firms, have improved the diversity statistics of the AAA panel.

So where does the panel stand with respect to diversity at the present time? Today, approximately 20% of the panel is diverse by race and/or gender. This is a statistic that the Association very much wants to change. To assist in its diversity efforts, the AAA established an Advisory Committee on Diversity chaired by the Hon. Timothy K. Lewis. The committee’s mission is to assist the Association in increasing inclusiveness--specifically those who have historically been excluded from active and meaningful participation--in the field of alternative dispute resolution.

The committee has identified three obstacles to achieving true diversity in ADR. The first is the erroneous belief that women and persons of color are less experienced than their white male peers. The second is that, despite similar commitment to diversity in firms and corporations, the attorneys responsible for selecting neutrals rarely consider diversity in making these decisions. Finally, the committee found that there are limited opportunities for minority neutrals to become future ADR leaders.

In 2008, the AAA will further several projects that respond directly to the identified diversity challenges. Working with national minority bar associations, with which it has formed strategic alliances, the AAA will identify minority candidates for the AAA roster, promote leading ADR practices through joint programs, and establish collaboration between affiliate chapters and AAA regional offices.

Speakers bureaus will include diverse neutrals and customers. In addition, the AAA business development staff will also promote diverse neutrals on sales calls and presentations to ADR users. They will also interact with local minority bar associations. In addition, bonus compensation is tied to increases in diversity.

Programming is planned in the next months that will enable case managers to include a minimum of 20% diverse neutrals on each list of neutrals that is submitted to parties on AAA cases. With a more diverse roster, promotion of diverse neutrals, and diverse lists required by the AAA, the AAA expects more minority and women neutrals will be selected.

Lastly, to identify new opportunities for future ADR leaders, diverse arbitrators will be recommended \*34 by the AAA as judges for the Willem C. Vis International Commercial Arbitration Moot in Vienna; and a new AAA Fellows program will identify and train future ADR leaders and provide opportunities for ongoing networking and education.

## Conclusion

The AAA’s commitment to diversify the field of ADR will never sunset. It will continue to solicit diverse opinions when

establishing ADR standards and rules, hire a diverse staff, nominate minorities for leadership roles on the board and elsewhere, and recruit professionals to the panel who mirror the world at large.

Diversity should be demanded of all ADR providers. Users who are concerned about this question should ask: (1) Is the ADR provider committed to diversity in hiring practices? (2) Is its staff diverse? (3) Are women and persons of color included in management? (4) Is its board of directors diverse? (5) Does it have women and minorities on its panel? (6) Is it committed to improving minority representation on the panel? In short, is there an overall commitment to diversity that is part of the fabric of the organization?

The AAA examines the performance of its employees with its core values in mind and also rewards individuals who live these values through the President's Award for Living the Values. This is a monetary prize of \$10,000 plus an all-expense paid trip for two to the AAA's annual meeting--which will be held this year in Washington, DC.

Footnotes

<sup>1</sup> *The author is a senior vice president at the American Arbitration Association*

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