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Gender Differences in Dispute Resolution Practice: Report on the ABA Section of Dispute Resolution Practice Snapshot Survey

Gina Viola Brown

Andrea Kupfer Schneider

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**GENDER DIFFERENCES IN DISPUTE RESOLUTION
PRACTICE: REPORT ON THE ABA SECTION OF DISPUTE
RESOLUTION PRACTICE SNAPSHOT SURVEY¹**

Gina Viola Brown and Andrea Kupfer Schneider²

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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 2013-2014,³ 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 2011.⁴ 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.

3. *Section of Dispute Resolution Leadership*, A.B.A., http://www.americanbar.org/groups/dispute_resolution/leadership.html (last visited Mar. 23, 2014).

4. Deborah Masucci, *From the Chair*, 18 DISP. RESOL. MAG., no. 3, 2012, at 2.

devoted to women produced by the Dispute Resolution Section,⁵ the American Arbitration Association,⁶ the International Institute for Conflict Prevention and Resolution (CPR),⁷ The Chartered Institute of Arbitrators and the New York State Bar Association's Dispute Resolution Section.⁸

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.⁹ 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.¹⁰ Several announcements also promoted the survey via Listservs, and an advertisement in *Dispute Resolution Magazine*.¹¹ 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.¹² For instance, if the respondent

5. 18 DISP. RESOL. MAG., no. 3, 2012.

6. 67 DISP. RESOL. J. 1 (2012).

7. 30 ALTERNATIVES TO THE HIGH COST OF LITIG. 4 (2012).

8. 5 N.Y. DISP. RESOL. LAW. 1 (2012).

9. Masucci, *supra* note 4.

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.

11. *Help Us Learn More about the Practice of Dispute Resolution*, 19 DISP. RESOL. MAG., no. 1, 2012, at 31.

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

CHART 1
Years Respondent Served as a Neutral or Advocate in Arbitration, Mediation, or Other Dispute Resolution Process

Years Served	Percentage of Respondents
1-4	15%
5-9	13%
10-20	31%
More than 20	41%
Total n=666	100%

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

Survey, SURVEYMONKEY, <https://www.surveymonkey.com/mp/tour/skiplogic/> (last visited Mar. 22, 2014).

13. A full copy of the survey is available at http://meetings.abanet.org/webupload/commupload/DR589300/otherlinks_files/gender_differences_dr_report.pdf.

14. Other countries have compiled similar statistics. For an example of a comparison by age of practitioners, see *Practitioner Statistics*, LEGAL SERVICES BOARD, <http://www.lsb.vic.gov.au/lawyer-search/practitioner-statistics/> (last visited April 21, 2014).

the gender breakdown of Section of Dispute Resolution membership.¹⁵ 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
Gender of Respondents

Gender	Percentage of Respondents
Male	66%
Female	34%
Total n=646	100%

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.¹⁶

CHART 3
Race/Ethnicity of Respondents

Race	Percentage of Respondents
White/Caucasian	90%
African American	5%
Hispanic	2%
Asian	1%
Native American	0%
Pacific Islander	0%
Other	2%
Total n=651	100%

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).

16. *Diversity and Inclusion ABA Member Survey*, ABA, 8-9 (2013), http://www.americanbar.org/content/dam/aba/administrative/diversity/ABA_DI_MemberSurveyFinal.authcheckdam.pdf.

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
Respondent's Year of Birth

Birth Year	Percentage of Respondents
Before 1939	10%
1940-1959	70%
1960 or later	20%
Total n=657	100%

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
Respondent's Type of Practice by Gender¹⁷

Type of Practice	Percentage of Male	Percentage of Female	Total
Private Practice	71%	29%	345
Corporate Counsel/ In-house Counsel	56%	44%	36
Judiciary	59%	41%	22
Law School/Academia	48%	52%	60
Legal Services	67%	33%	42
Government or government agency (includes prosecutors, public defenders, etc.)	29%	71%	34
Public Interest and Not-for-Profit	45%	55%	38
Full-time Neutral	70%	30%	142
Part-time Neutral	75%	25%	181
Retired and Not Currently Employed	68%	32%	47
Other	61%	39%	38
Total	66%	34%	645

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.

17. 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 Age¹⁸

Year of Birth	Male	Female	Total (n=635)
Before 1929	5	2	7
	71%	29%	
1930-1949	250	53	303
	83%	17%	
1950-1969	151	124	275
	55%	45%	
1970 or later	16	32	48
	33%	67%	

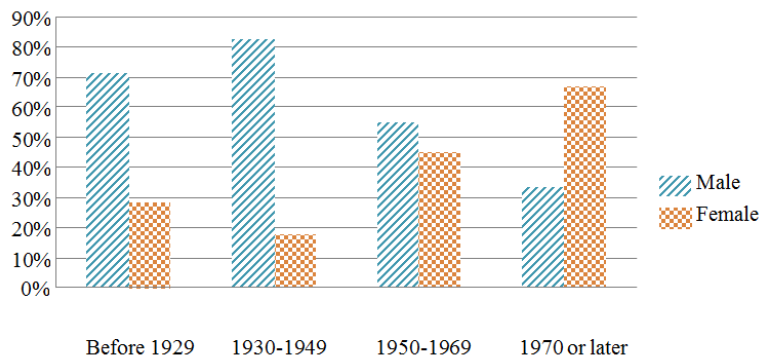


Chart 7 shows a similar comparison, examining gender versus the number of years the respondent has practiced as a neutral or advocate in arbitration, mediation, or other dispute resolution process. The number of men in “dispute resolution” practice for more than 20 years far exceeds the number of women. 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.

18. P-value = 0.00.

CHART 7
Respondent Gender and Years of Practice¹⁹

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

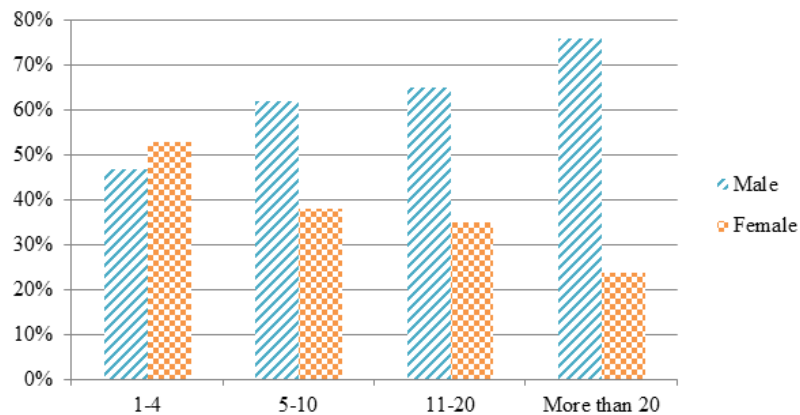


Chart 8 shows how the years in practice vary depending on the role that the respondent played in the dispute referenced. Interestingly, respondents skew dramatically younger in mediation with most of the mediators evenly divided between practicing 11-20 years and more than 20 years. In contrast, the 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
Dispute²⁰

Practice	1 - 4	5 - 10	11 - 20	More than 20	Total
Arbitrator	5.88%	7.84%	27.84%	58.43%	255
Mediator	17.56%	15.63%	34.67%	32.14%	672
Advocate for a party	8.33%	9.31%	25.98%	56.37%	204
Other ²¹	14.29%	14.29%	28.57%	42.86%	35
Total	13.29%	12.78%	31.48%	42.45%	1166

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.

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.

CHART 9
Respondent Role Served in Dispute Compared to Gender²²

Practice	Male	Female	Total
Arbitrator	80%	20%	242
Mediator	63%	37%	648
Advocate for a party	67%	32%	196
Other role	65%	35%	35
Total	67%	33%	1121

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.

CHART 10
Arbitration Panel Member Gender Composition

Gender	Total Number	Total Percentage
Three males and no females	64	56%
Two males and one female	26	23%
One male and two females	8	7%
Three females and no males	0	0%
Other	17	15%
Total	115	100%

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

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

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

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

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

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).

CHART 13
Gender of All *Neutrals* Compared to Subject Matter of Dispute²³

Subject Matter	Male Neutrals	Percentage of Male Neutrals	Female Neutrals	Percentage of Female Neutrals	Total Neutrals
Corporate and Commercial	238	82%	52	18%	290
Class Action	11	79%	3	21%	14
Construction	93	86%	15	14%	108
Consumer	16	52%	15	48%	31
Family, Elder, and Probate	69	43%	93	57%	162
Labor and Employment	119	63%	70	37%	189
Energy and Environment	10	71%	4	29%	14
Health Care	13	68%	6	32%	19
Insurance	51	91%	5	9%	56
Intellectual Property	28	93%	2	7%	30
Malpractice	18	86%	3	14%	21
Small Claims	14	36%	25	64%	39
Other	104	66%	54	34%	158
Total	784	69%	347	31%	1131

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.

23. P-value = 0.00.

CHART 14
Gender of Advocates Compared to Subject of Dispute

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

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

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

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

Amount of Money	Male Arbitrators	Percentage of Male Arbitrators	Female Arbitrators	Percentage of Female Arbitrators	Total Arbitrators
Primarily a non-monetary dispute	16	73%	6	27%	22
Under \$99,999	32	73%	12	27%	44
\$100,000 - \$499,999	39	81%	9	19%	48
\$500,000 - \$999,999	18	67%	9	33%	27
\$1,000,000 - \$9,999,999	55	89%	7	11%	62
\$10,000,000 - \$24,999,999	13	87%	2	13%	15
Over \$25,000,000	20	83%	4	17%	24
Total	193	82%	43	18%	236

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)

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

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

Amount of Money	Male Advocates	Percentage of Male Advocates	Female Advocates	Percentage of Female Advocates	Total Advocates
Primarily a non-monetary dispute	5	56%	4	44%	9
Under \$99,999	10	43%	13	57%	23
\$100,000 - \$499,999	28	65%	15	35%	43
\$500,000 - \$999,999	19	56%	15	44%	34
\$1,000,000 - \$9,999,999	42	86%	7	14%	49
\$10,000,000 - \$24,999,999	12	75%	4	25%	16
Over \$25,000,000	16	76%	5	24%	21
Total	127	68%	59	32%	186

V. NEUTRAL SELECTION

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.

CHART 19
Type of Dispute Compared to Years in Practice²⁴

Subject Matter	How many years have you been a neutral or advocate in arbitration, mediation, or other process?				
	1-4	5-10	11-20	More than 20	Total
Corporate and Commercial (includes banking, accounting, securities, franchise, and partnership)	12%	13%	34%	41%	394
Class Action	5%	10%	35%	50%	20
Construction	9%	7%	23%	62%	151
Consumer	21%	15%	31%	33%	39
Family, Elder, and Probate	22%	18%	34%	27%	200
Labor and Employment Law (includes sexual harassment)	10%	13%	29%	48%	245
Energy and Environment	11%	0%	19%	70%	27
Health Care	16%	13%	35%	35%	31
Insurance	6%	10%	44%	40%	80
Intellectual Property	4%	8%	46%	42%	48
Malpractice	7%	25%	29%	39%	28
Small Claims	52%	13%	22%	13%	46
Other	13%	14%	32%	40%	214
Total	13%	13%	32%	42%	1523

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 Gender²⁵

Selection Process	Male	Female	Total
Choice – one or all of the parties or their attorneys, or pre-dispute agreement	71%	29%	447
Limited choice or appointment (list, roster, or provider appointment)	53%	47%	217
Other ²⁶	32%	68%	37
Total	63%	37%	644

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

Source	Responses from Male Advocates	Percentage of Male Advocates	Responses from Female Advocates	Percentage of Female Advocates
ADR provider list	11	9%	5	9%
Colleague recommendation	31	26%	15	27%
The client recommended the neutral	1	1%	0	0%
The neutral is part of my professional or personal network	53	44%	16	29%
I was not in a position to select the neutral	11	9%	8	14%
Other	13	11%	12	21%
Total N=176	120	68%	56	32%

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 Arbitrators²⁷

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

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

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

27. 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.