Getting the Word Out -- ABA Resolution 105 and Diversity in Dispute Resolution
By Conna A. Weiner

The House of Delegates of the ABA recently adopted an important resolution, Resolution 105, aimed at increasing diversity in dispute resolution. This resolution was initiated and driven by WIDR members as one of WIDR’s key projects starting in the Summer of 2017; the full Dispute Resolution Section Council got behind -- and worked tirelessly -- on this effort, leading to unanimous support at the HOD in August 2018. Chair Harrie Samaras has now appointed a Steering Committee to roll out the Resolution with concrete action steps. The Committee is led by Myra Selby, and contains several members of WIDR, including current Co-Chairs Maureen Beyers and Patricia Nolan, and former co-chair Conna Weiner. Theo Cheng and Beth Trent have also been appointed to the Steering Committee along with Jessica Ortiz, Frederick Hertz, Robin Powell and Rekha Ranagachari.

Resolution 105 states:

RESOLVED, That the American Bar Association urges providers of domestic and international dispute resolution services to expand their rosters with minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities (“diverse neutrals”) and to encourage the selection of diverse neutrals; and

RESOLVED, That the American Bar Association urges all users of domestic and international legal and neutral services to select and use diverse neutrals.

This Resolution expands upon ABA Resolution 113, adopted in 2016, which encourages providers of legal services and their clients to increase opportunities for diverse attorneys. Law firms and inside counsel are working hard to implement the goals of Resolution 113; for example, many inside counsel now require that outside counsel use diverse teams on their matters. (Resolution 113 and the supporting report can be accessed here. The ABA strongly believes that enhancing diversity in dispute resolution is an integral element of efforts to increase diversity in the legal profession as a whole. A report in support of Resolution 105, summarized here, details the problem in ADR with supporting statistics and authorities. We encourage those interested in the issue to read it in full here.

The Steering Committee will be focusing on developing materials that can be used by all to roll out Resolution 105 and share with stakeholders what can be done to implement the goals of the resolution, as well as ensuring that the viewpoints of all of the diverse communities the resolution aims to help are heard. A preliminary list of action steps is as follows:

What Clients/Inside Counsel Can Do:
(a) Select diverse neutrals whenever possible.
(b) Include JAMS diversity inclusion language in dispute resolution clauses: “The parties agree that, wherever practicable, they will seek to appoint a fair representation of diverse arbitrators (considering gender, ethnicity and sexual orientation), and will request administering institutions to include a fair representation of diverse candidates on their rosters and list of potential arbitrator appointees.”
(c) Take public diversity pledges available from various institutions. The International Institute for Conflict Prevention and Resolution (CPR) provides a diversity pledge for clients and law firms: “We ask that our outside law firms and counterparties include qualified diverse neutrals among any list of mediators or arbitrators they propose. We will do the same in lists we provide.” The Equality in Arbitration Pledge, focusing on women in arbitration, is available here: http://www.arbitrationpledge.com.

(d) Raise the ADR diversity issue at internal and industry association meetings.

(e) Raise the issue with outside counsel:
   (i) Circulate Resolution 105 and the Report to outside counsel with a note supporting the resolution.
   (ii) Revise outside counsel guidelines to include a requirement that outside counsel present lists of diverse neutrals, tying this effort directly to efforts to increase diverse attorneys on teams pursuant to ABA 113.
   (iii) Ask outside counsel to use the JAMS diversity inclusion rider or similar language in contractual dispute resolution clauses (see (b) above).
   (iv) Encourage outside counsel to take diversity pledges (see (c) above).

(f) Raise the issue with providers such as AAA, JAMS, CPR and others:
   (i) Encourage providers to increase diversity in their rosters.
   (ii) Ask for diverse neutrals to be included on selection lists.
   (iii) Ask for opportunities to meet or otherwise become familiar with diverse neutrals on the panels of major providers.

What Outside Counsel Can Do:
   (a) Promote Resolution 105 and the Report in internal firm meetings and with Women’s and other Diversity Initiatives.
   (b) Take diversity pledges (see above).
   (c) Include the JAMS diversity inclusion rider in contracts (see above).
   (d) Encourage providers to increase diversity on their rosters.
   (e) Ask providers to provide diverse lists.
   (f) Ask that providers create opportunities to meet or otherwise become familiar with diverse neutrals on their panels.

What Providers of Dispute Resolution Services Can Do:
   (a) Promote Resolution 105 and the Report to management and case managers.
   (b) Promote Resolution 105 and the Report to clients, and create client communications encouraging selection of diverse neutrals.
   (c) Continue efforts to identify and promote diverse neutrals, including performing outreach to diversity bar associations, etc.
   (d) Encourage or require case managers to include qualified diverse neutrals on lists.
   (e) Create opportunities for users to learn about and meet diverse neutrals through profiles, events, etc.
   (f) Track annual progress regarding increased roster diversity and selection of those neutrals.

What Neutrals Can Do:
   (a) Select or appoint diverse neutrals as chairs of arbitration panels.
   (b) Nominate and sponsor diverse neutrals for membership in ADR organizations that require nominations or sponsorships.
(c) Mentor diverse neutrals in their practice development.

What Other Stakeholders Can Do:
(a) **Neutral organizations**: Revise membership requirements to permit new members who have not previously served on panels with existing members, and to eliminate any other requirements that result in the exclusion of qualified diverse neutrals.
(b) **Law schools**: Encourage diverse students to become actively involved in dispute resolution organizations.
(c) **Industry organizations (such as Construction)**: Request that members increase their use of diverse neutrals and take diversity pledges.

Please join the Section of Dispute Resolution in getting the word out about this important initiative!

**Conna A. Weiner** is a mediator and arbitrator with JAMS (www.jamsadr.com/weiner) and serves on a number of other arbitration and/or mediation panels, including CPR, WIPO and AHLA. Ms. Weiner is also a Fellow in the Chartered Institute of Arbitrators and was appointed to the Silicon Valley Arbitration and Mediation Tech List in 2016. She began her career as a litigator and then spent many years as inside counsel with broad leadership responsibilities in multinational life sciences and healthcare companies in the US and abroad. She focuses her mediation practice on domestic and international complex commercial, IP, technology, life sciences and health care disputes.