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WHAT'S GOING ON? DIVERSITY, EQUITY, AND INCLUSION DISPUTE RESOLUTION INITIATIVES IN THE U.S.

Robyn Weinstein*

“Our past, our history, and the people we encounter in life matter. They matter because they shape our experiences, our stories, our identities, what we choose to do (or not do), our present, our future and our ethical stance.”¹ - Jacqueline N. Font-Guzmán

INTRODUCTION

Over the course of my career, I have worked for and managed community dispute resolution centers, overseen a court-annexed dispute resolution program, and run a law school mediation clinic (my current position). In each post, I have been in a position of power over a different “gateway” or entry point into the field of dispute resolution. In these roles, and especially in my work overseeing a court-annexed ADR program, I became increasingly aware of who applied (and did not apply); who was appointed (and was not appointed); and who was selected (and not selected) for work as a mediator and arbitrator. As I realized that the arbitrators and mediators (“neutrals”) participating in my programs were not reflective of the communities being served, I joined diversity and inclusion subcommittees of professional organizations and participated in New York based diversity, equity and inclusion initiatives to find ways to increase

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1. Jacqueline N. Font-Guzmán, *A Conflict Counter-Story: How a Puerto Rican Woman Ended Up in a Field Dominated by Anglo Men*, in *EVOLUTION OF A FIELD: PERSONAL HISTORIES IN CONFLICT RESOLUTION* 275, 276 (Howard Gadlin & Nancy A. Welsh eds., 2020).

representation of women, people of color and other communities who were underrepresented or not represented at all.

I began by looking at how court-annexed ADR programs might increase diversity, equity and inclusion,² and explored efforts to increase diversity, equity and inclusion in New York.³ This past year, I worked with Margaret Huang, ADR Coordinator for the Office of Mediation and Arbitration for the New Hampshire Judicial Branch, to seek out initiatives to increase diversity, equity and inclusion in dispute resolution throughout the United States. We presented our findings at the ABA Dispute Resolution Section Conference in May of 2023, and this article is the product of our research as well as additional research conducted after the presentation.

I was motivated to write this article for two reasons; first, to create a comprehensive resource for those seeking to create or build diversity, equity and inclusion dispute resolution initiatives in their local communities,⁴ and second, to share some thoughts about how we (members of the dispute resolution field) might continue to work collectively to increase diversity, equity and inclusion.

In reflecting upon my own experience as a dispute resolution professional, I realize that I experienced what I now understand was very radical inclusion somewhat early in my career. In 2014-2015 I served as the president of the Southern California Mediation Association (“SCMA”). It was an opportunity that helped propel me forward into several career breaks in the dispute resolution field. It was also an opportunity that almost didn’t happen. In 2014, I was still serving as president-elect of the SCMA when mid-way through the year I became pregnant with my first child. At the same time my husband got a job offer in New York City, and we decided that he should accept the job and we would move to New York. Shortly after making the decision to move, I called the current SCMA president, Joseph

2. Robyn Weinstein & Lance Bond, *Visions for the Future: Diversity and Inclusion Initiatives in Court-Annexed ADR Programs*, 22 CARDOZO J. OF CONFLICT RESOL. 499, 507 (2021).

3. Robyn Weinstein & Michelle Lavrichenko, *What's Going On? An Overview of Diversity, Equity and Inclusion Dispute Resolution Initiatives in New York*, N.Y. DISP. RESOL. LAW 15–19, (2022).

4. Marvin E. Johnson & Maria Volpe, *Roots of Diversity in the Dispute Resolution Field: Some Preliminary Observations*, ACRESOLUTION Q. MAG., Winter 2013, at 14 (stating “None of the mainstream journals in the dispute resolution field, law or the social sciences have covered the evolution of diversity-related developments in a comprehensive and systematic fashion. The information that does exist is often fragmented and does not address concerns like the nuances of what happens when, who did what, why some situations were groundbreaking, what issues surfaced at different points, and so on.”).

C. Markowitz, and the Immediate Past President, Wendy W. Kramer, and offered to resign. I simply assumed that the move, compounded with the pregnancy, would put an end to my time in leadership. I can still remember sitting in my car (because that is where you spend time in Los Angeles), with both Wendy and Joe on speakerphone, and the way I felt when they refused to accept my resignation. They told me I had worked too hard to give up and encouraged me to continue. At the time, I did not give it much thought. I followed their advice and carried on with the support of the board of directors and Floyd J. Siegel, my president elect. I served out my presidency without incident, first pregnant then as a new mother, making trips to California and running meetings via Zoom, well before Zoom was popularized. I can imagine things going very differently had it been a less creative, less inclusive leadership team. In retrospect, I see how lucky I was, and that experience now inspires my thinking about diversity, equity, and inclusion in the field. For every story like this one, there are probably hundreds of stories where passionate conflict resolution professionals felt discouraged, met barriers to enter the field, or were actively excluded.

Part II of this article provides the research methodology used to locate DEI DR initiatives throughout the U.S., and Part III provides a definitional framework for diversity, equity, and inclusion (“DEI”) initiatives in the field of dispute resolution (“DR”). Part IV discusses DEI initiatives designed to increase the number of dispute resolution professionals from diverse backgrounds and efforts to get them paid work. Part V discusses other DEI DR initiatives aimed at increasing DEI for process participants, such as anti-bias training requirements, grants to incentivize organizational DEI work, and efforts to increase scholarship about equity in dispute resolution and highlight voices of scholars from diverse backgrounds. Part VI of this article will discuss steps that members of the dispute resolution field can take to assess efficacy and promote sustainability of DEI DR initiatives.

I. RESEARCH METHODOLOGY

The research to seek out U.S. DEI DR initiatives was conducted in partnership with Margaret Huang. Our outreach was focused on state and federal court ADR administrators, private ADR providers, law school ADR programs, community dispute resolution centers, local bar associations, and mediator and arbitrator professional associations. Collectively we sent

outreach e-mails to two hundred and twelve individuals from forty-six states and received seventy-four responses from twenty-one court ADR programs, twenty-one community dispute resolution centers, twenty-two professional associations, and ten law school programs. There were jurisdictions we did not receive responses from and, thus, did not conduct further follow-up due to time constraints and the extensive nature of the outreach.

We conducted interviews via phone or video call with the individuals who responded and indicated knowledge of local DEI initiatives. These interviews were unstructured; interviewees were asked questions about local DEI DR initiatives, and many shared information about both formal (e.g., written policies, practices, initiatives) and informal (e.g., intentions, aspirations, frustrations) DEI efforts. These interviews were not recorded to encourage candor from interviewees. Additionally, for this article, I contacted individuals who created or implemented DEI DR initiatives and asked them to respond to one of four questions about the implementation of DEI DR initiatives: 1) What motivated you to create your DEI Initiative? 2) What has been challenging about implementing your DEI Initiative? 3) How did you keep going given the challenge? or 4) Describe a success – or a failure – of your initiative. Do you have advice to share about working towards DEI in ADR, and what gives rise to the particular advice? Information and statements from their responses are included throughout the article.

This article is focused on U.S. DEI DR initiatives, but it should be noted that there are several important DEI DR initiatives in international dispute resolution that are not discussed in this article.⁵

5. There are several Dispute Resolution Organizations with recent DEI DR initiatives focused on international dispute resolution, including The International Academy of Mediators Diversity Mentorship Program, the JAMS International Fellows Program, Arbitral Women's Diversity Tool Kit, The List of Arbitrators of African Descent, the Equal Representation in Arbitration Pledge, and New York International Arbitration Center's Diversity Corner, Racial Equality for Arbitration Lawyers, and the International Council for Commercial Arbitration Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings. See, e.g., *Inclusion and Diversity*, INT'L COUNCIL FOR COM. ARB., <https://www.arbitration-icca.org/inclusion-and-diversity> [https://perma.cc/34CA-MLYT] (last visited Aug. 1, 2023).

II. DEFINING DIVERSITY, EQUITY, AND INCLUSION IN DISPUTE RESOLUTION

This section reviews definitions of diversity, equity, and inclusion offered by dispute resolution organizations and members of the field. These definitions provide a framework to answer the following questions: what are DEI DR initiatives, and what are they designed to address?

A. How is Diversity in Dispute Resolution Defined?

One of the most widely disseminated definitions of diversity in the dispute resolution field comes from ABA Resolution 105, which encourages providers of dispute resolution services to diversify their rosters and asks users of dispute resolution services to increase selection of “diverse neutrals.”⁶ The Resolution defines “diverse neutrals” as “minorities, women, persons with disabilities, and persons of differing sexual orientations.”⁷ This definition is based on available information and research that demonstrates that these groups are underrepresented in the field of dispute resolution and that increasing their participation in the field will increase diversity among dispute resolution practitioners.⁸ Many dispute resolution providers and professional associations have created their own definitions of what constitutes diversity on their websites.⁹ In defining

6. *Report to the House of Delegates: Resolution*, 105 A.B.A. SECTION OF DISP. RES. 1 (2018), <https://www.americanbar.org/content/dam/aba/images/abanews/2018-AM-Resolutions/105.pdf> [<https://perma.cc/65E5-JCGC>].

7. *Id.*

8. *Id.* at 2 (stating “available data show that diversity within Dispute Resolution significantly lags the legal professional as a whole”).

9. See *Diversity, Equity, Inclusion, and Accessibility*, RESOL. SYS. INST. (Dec.16, 2021), <https://www.abourtsi.org/special-topics/deia-overview> [<https://perma.cc/WA8U-X5MS>] (defining diversity as “varied identities and differences, including different races, genders, religions, national origins, ethnicities, income levels, sexual orientations, educational levels and for whom English is not their first language”); see also, *Driving Diversity, Equity, & Inclusion in ADR*, AM. ARB. ASS’N, <https://www.adr.org/dei> [<https://perma.cc/V89Y-VQB3>] (last visited May 30, 2023) (stating their DEI “efforts continue to center on actively recruiting highly qualified women and racially and ethnically diverse arbitrators”); *Our Commitment to Achieving Arbitrator and Mediator Diversity at FINRA*, FINRA, <https://www.finra.org/arbitration-mediation/our-commitment-achieving-arbitrator-and-mediator-diversity-finra> [<https://perma.cc/27QE-Q46M>] (last visited May 30, 2023) (including gender, race and ethnicity, LGBTQ status, and age in its neutral demographic survey and reporting); *Diversity, Equity, and Inclusion*, CPR, <https://www.cpradr.org/diversity-equity-and-inclusion> [<https://perma.cc/GJ65-W2JG>] (last visited June 3, 2023) (emphasizing “diversity, equity, and inclusion

diversity, most organizations include the categories of race, ethnicity, gender, and sexual orientation.¹⁰ A smaller number of organizations include disability status, socioeconomic status, language ability, age, religion, and geographic location in their diversity definitions.¹¹

Maria R. Volpe and Marvin E. Johnson, who have written prolifically on this subject and were early architects of several DEI DR initiatives, share a more nuanced definition of diversity as “a very broad, catchall umbrella term that applies to many qualities and characteristics and is defined differently by different segments of society.”¹² This definition reflects the fact that the definition of diversity in dispute resolution changes depending upon geography, dispute resolution service, case type, community served, and other factors.

When considering definitions of diversity in dispute resolution, the term can be applied to practitioners of dispute resolution, individuals who administer and oversee dispute resolution services and programs, and individuals who participate in dispute resolution processes (“process participants”).

B. How is Equity in Dispute Resolution Defined?

Definitions of equity in dispute resolution are most commonly applied to two groups: 1) equity for practitioners, and 2) equity for process participants.¹³ However, these categories are often linked, as it is argued that

in the dispute resolution field, especially among women and minorities”); RAY COROLLARY INITIATIVE, END-OF-YEAR REPORT, 2021 16 (2021) (defining diverse candidates as “[] Black, Latinx, Indigenous, Asian American Pacific Islander (“AAPI”), other people of color, women, persons of the LGBTQ community, and persons living with disabilities []”); *Diversity*, ASSOCIATION FOR CONFLICT RESOLUTION, <https://acrnnet.org/page/DiversityEquity> [https://perma.cc/NE7G-L7QB] (last visited June 6, 2023) (stating “diverse populations including, but not limited to races, ethnicities, national origins, languages, genders, sexual orientation, economic statuses, school or organizational locations, physical abilities, ages, religions, educational types or levels, and perspectives”); INT’L COUNCIL FOR COM. ARB., ICCA DIVERSITY AND INCLUSION POLICY 1 (2020), https://cdn.arbitration-icca.org/s3fs-public/document/media_document/icca_diversity_and_inclusion_policy_final11may2020.pdf [https://perma.cc/3CEY-9VKR] (stating that the organization “values the diverse ways by which people identify inclusive of age, colour, disability, ethnicity, gender, indigenous origin, nationality, national origin, race, religion, sexual orientation and socioeconomic status”).

10. *Diversity, Equity, Inclusion, and Accessibility*, *supra* note 9; *Our Commitment to Achieving Arbitrator and Mediator Diversity at FINRA*, *supra* note 9; RAY COROLLARY INITIATIVE, *supra* note 9.

11. *See Diversity*, *supra* note 9.

12. Johnson & Volpe, *supra* note 4, at 14.

13. *Diversity*, ASS’N FOR CONFLICT RESOL., <https://acrnnet.org/page/DiversityEquity>

an increase in diversity of practitioners will increase equity within dispute resolution processes.¹⁴

Definitions of equity date back to Aristotle who theorized that “justice in its highest sense [takes] into consideration the specific characteristics of unique situations.”¹⁵ For dispute resolution practitioners, inequities for women and people of color have been defined by research indicating their low numbers on commercial rosters and proportionately low selection rates.¹⁶ Inequity for women and people of color has also been defined in the

[<https://perma.cc/QQ4L-4UYU>] (last visited June 6, 2023) (defining equity broadly as “recognizing and working to eliminate injustices in access, process and consequences of ACR’s efforts to strive to meet the needs of the diverse members and stakeholders”).

14. Bill Stempel, *The E in D & E, Diversity & Equity in ACR*, ACRESOLUTION Q. MAG., 2013, at 23 (Arguing that equity within the Association for Conflict Resolution needs to be tied to diversity and defining “equity” in “diversity and equity” as “equity with respect to differences that have in the past been the basis for unjust treatment of those perceived to be different.”); see also Michael Z. Green, *Arbitrarily Selecting Black Arbitrators*, 88 FORDHAM L. REV. 2255, 2258 (stating “arguably, a lack of arbitrator diversity poses the greatest concern when individual minority participants. . . face well-heeled and powerful corporate opponents”); Lisa Blomgren Amsler, Alexander B. Avtgis & M. Scott Jackman, *Dispute System Design and Bias in Dispute Resolution*, 70 SMU. L. REV. 913, 940 (2017) (stating that “by designing programs with a conscious view towards representative bureaucracy as diversity in the mediator and arbitrator rosters, over time we may be able to enhance perceptions of procedural justice and the reality of distributive justice”).

15. See GUENTHER H. HAAS, *THE CONCEPT OF EQUITY IN CALVIN’S ETHICS* (1997) at 18.; see also John Powell & Ned Conner, *Form and Substance: Understanding Conceptual and Design Differences Among Racial Equity Proposals and a Bold Application*, 38 OHIO ST. J. ON DISP. RESOL. 13, 22 (2023).

16. See Homer C. La Rue & Alan A. Symonette, *The Ray Corollary Initiative: How to Achieve Diversity and Inclusion in Arbitrator Selection*, 63 HOW. L.J. 215, 221 (2020) (stating that out of 1484 members in the National Academy of Arbitrators, only 2.35% were persons of color); see also *NAA Diversity, Equity, Inclusion and Belonging: A Strategic Plan, Special Committee Report to the Board of Governors* 24–25 (Mar. 30, 2022), https://naarb.org/wp-content/uploads/2022/06/DEIB-Committee-Report-to-BOG_Final-3.22.pdf [<https://perma.cc/U5E9-BE4Q>] [hereinafter *NAA Diversity, Equity, Inclusion, and Belonging*] (citing a survey of 400 labor and employment neutrals done by the National Academy of Arbitrators’ Research and Education Fund that showed, 4–5% were neutrals of color, and 17–21% of neutrals were women, and citing a review of 951 arbitrator appointments done by the International Centre for Settlement of Investment Disputes between 2012 to 2017 that shows only 11% of appointed arbitrators were women); Gina Viola Brown & Andrea Kupfer Schneider, *Gender Differences in Dispute Resolution Practice: Report on the ABA Section of Dispute Resolution Practice Snapshot Survey* (Jan. 31, 2014), https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/materials/gender-differences-in-dispute-resolution-practice.pdf [<https://perma.cc/G3ZD-DDLA>] (providing survey data to support that selection of female neutrals declined for cases with higher amounts in controversy); Noah J. Hanft, *Making Diversity Happen in ADR: No More Lip Service*, *The N.Y. L.J.* (Mar. 2017), <https://www.cobar.org/Portals/COBAR/Repository/Sections/ADR/10920/NYLJ-Making%20Diversity%20Happen%20In%20ADR.pdf?ver=2020-10-09-151649-450> [<https://perma.cc/SBN8-WU2L>] (sharing CPR selection data from 2010 indicating that among arbitrators that were selected multiple times, 15% percent were arbitrators of color); F. Peter Phillips,

context of the highest echelons of the dispute resolution field (higher dollar value cases) as available data demonstrates that there is a decrease in the number of women and people of color selected for those opportunities.¹⁷

For process participants, equity has been discussed in terms of the risk that individuals from marginalized groups can face in dispute resolution processes simply because of their status as a member of those groups.¹⁸ This definition of equity is also reflected in the *Ethical Principles* developed by The National Center for Technology & Dispute Resolution, which recommend that online dispute resolution platform designers consider the unique situation created by “cultural differences. . . access to resources, and [different communities'] experiences of marginalization.”¹⁹ The principles go on to state that failure to recognize these differences could hinder the dispute resolution process.²⁰

DEI DR initiatives discussed in Part IV of this article attempt to address inequities for practitioners and the initiatives described in Part V are intended to increase equity among process participants by addressing barriers to participation in dispute resolution that are specific to those groups. These barriers will be discussed further in sections III(C) and (E) below.

C. *What is Inclusion in Dispute Resolution?*

Inclusion in dispute resolution is considered in terms of both practitioners and process participants. For practitioners, inclusion can be

Diversity in ADR: More Difficult to Accomplish than First Thought, 15 DISP. RESOL. MAG. 14, 14-16 (2009); Sharon Press, *Court-Connected Mediation and Minorities: A Report Card*, 39 CAP. U. L. REV. 819 (2011); Floyd D. Weatherspoon, *Eliminating Barriers for Minority ADR Neutrals*, 5 ACRESOLUTION, 2006, at 32.

17. Brown & Schneider, *supra* note 16, at 18; *see also* Weatherspoon, *supra* note 16, at 121.

18. *See* Michele Hermann, *New Mexico Research Examines Impact of Gender and Ethnicity in Mediation*, DISP. RESOL. MAG., 1994, at 10 (describing a study done in New Mexico demonstrating that “[a]n ethnic minority plaintiff could be predicted to receive eighteen cents on the dollar less than a white plaintiff in mediation, while an ethnic-minority respondent could be predicted to pay twenty cents on the dollar more”); *see also* Richard Delgado, Chris Dunn, Pamela Brown, Helena Lee, & David Hubbert, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359 (1985); *see also* Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1584-85 (1991).

19. *Ethical Principles for Online Dispute Resolution*, NAT’L CENTER FOR TECH. AND DISP. RESOL., <https://odr.info/ethics-and-odr/> [<https://perma.cc/H83U-A6WJ>] (*see* principles “Accessibility” and “Equality”).

20. *Id.*

divided into two categories: (a) organizational inclusion—acceptance, sensitivity, and meaningful opportunities for full and equal participation within a dispute resolution organization, and (b) commercial inclusion—access to opportunities that lead to commercial success. For process participants, inclusion is considered in terms of who has access to the dispute resolution process and how a participants’ lived experience, culture, and identity are reflected in dispute resolution processes.

Organizational inclusion is well defined in *How Do Organizations Welcome – Or Rebuff?* written by Cheryl Jameson, former president of the Association for Conflict Resolution (“ACR”) and conflict resolution practitioner.²¹ She identifies six critical elements to establish organizational belonging and connectedness, with a focus on inclusion of people of color.²² Her list includes: “1) courage to create a belonging and connectedness environment; 2) concise and measurable belonging and connectedness goals and objectives; 3) commitment to a belonging and connectedness plan; 4) complete involvement in the belonging and connectedness plan; 5) constant race and antiracist education and dialogue; 6) conflict resolution processes when belonging and connectedness encounter a problem.”²³ Jameson also explains that when she considers getting involved with an organization, she is not impressed with diversity policies printed on a website; instead, meaningful inclusion is based on her interactions with the community and her own feelings of whether the “words match the organization’s actions.”²⁴

Commercial inclusion is well defined by DEI DR leaders Homer La Rue and Marvin E. Johnson, in their article, *The Gated Community: Risk Aversion, Race, and the Lack of Diversity in Mediation in the Top Ranks*. La Rue and Johnson explain that in the highest ranks of the commercial mediation field, there is “little or no overlap” between the mediators of color and the individuals responsible for selection.²⁵ La Rue and Johnson, analogized high-end ADR users to those residing in a “gated community”

21. BEYOND EQUITY AND INCLUSION IN CONFLICT RESOLUTION: RECENTERING THE PROFESSION, ROWMAN & LITTLEFIELD 32 (S.Y. Bowland et al. eds., 2022) (citing Cheryl Jameson, *How Do Organizations Welcome – Or Rebuff?*) [hereinafter BEYOND EQUITY].

22. *Id.*

23. *Id.* at 32–33.

24. *Id.* at 33.

25. Marvin E. Johnson & Homer C. La Rue, *The Gated Community: Risk Aversion, Race, and the Lack of Diversity in Mediation in the Top Ranks*, 15 DISP. RESOL. MAG. 17, 19 (2009).

that requires credentials or a “preapproved guest list” to gain entry.²⁶ They explain that when there is no invitation beyond the gate, access to the higher commercial marketplace is virtually impossible.²⁷

Efforts to improve organizational and commercial inclusion for underrepresented groups are baked into many of the DEI DR initiatives described below. The initiatives described in Part IV include local and national fellowships and mentorship programs, pledges to increase the selection of diverse neutrals, dispute resolution clauses that prioritize diverse neutral selection, DEI neutral directories, and DEI plans and networks to support neutrals from diverse backgrounds.

Inclusion is also discussed in the context of how historically underrepresented and/or marginalized groups are treated as participants in dispute resolution processes. In her piece entitled, *Culture Is to People Like Water is to Fish*, Lara Ward Branca states, “People of color in mediation are often resigned to the likelihood that the institution or the mediators themselves will reflexively see them as the source of the problem. The referring agency will probably not be able to see how systemic exclusion and insensitive practices have contributed to or even created the problems that bring them to mediation... Mediation can seem contrived and unlikely to really resolve matters.”²⁸

Professors Sharon Press and Ellen Deason also explore the issue of inclusion for mediation process participants in their article *Mediation: Embedded Assumptions of Whiteness?* by identifying ways that Black, Indigenous, and other people of Color (“BIPOC”) process participants may be effectively excluded from the mediation process.²⁹ Professor Leah Wing,

26. *Id.*

27. *Id.* at 19–20.

28. BEYOND EQUITY, *supra* note 22, at 122. (citing Lara Ward Branca, *Culture Is to People Like Water is to Fish*, *Community Mediator*, NAT’L ASS’N FOR CMY. MEDIATION (2004); *see also* Cynthia R. Mabry, *African Americans “Are Not Carbon Copies” of White Americans – The Role of African American Culture in Mediation of Family Disputes*, 13:2 OHIO ST. J. ON DISP. RESOL. 427–430 (1998)) (discussing the impact of prejudice, stereotypes, and language on the mediation process for African American participants).

29. Sharon Press & Ellen E. Deason, *Mediation: Embedded Assumptions of Whiteness?*, 22 CARDOZO J. CONFLICT RESOL. 453–61 (2021). (Press and Deason examine Western-style mediation through the lens of tone policing, color blindness, racial stereotyping, anti-blackness, white silence, and white supremacy, and provide several examples of how people of color may be effectively excluded and or negatively impacted during the mediation process. In discussing exclusion through tone policing, Press and Deason state, “From a person of color’s perspective, when a white person insists that they speak in an approved tone that suits the white person, then the white person is imposing the idea that

citing Trina Grillo, also describes the risk of party disempowerment when a mediation process does not “effectively engage with the realities of one’s worldview, oppression, limited resources, or violence.”³⁰

Part V of this article discusses initiatives intended to recognize and ameliorate the impact of exclusion for process participants from historically underrepresented groups. These initiatives include anti-bias training requirements for neutrals, equity and inclusion focused dispute resolution trainings, and targeted grants to increase equity and inclusion among community dispute resolution providers.

D. What are DEI Initiatives in Dispute Resolution?

For the purposes of this article, DEI DR initiatives described in this article are divided into two categories: 1) initiatives to increase diversity among dispute resolution practitioners; and 2) initiatives designed to increase DEI for participants in dispute resolution processes.

DEI DR initiatives aimed at increasing DEI for practitioners fall into two categories: 1) strengthening the pipeline—increasing the number of diverse professionals entering the field; and 2) diversifying selection—creating meaningful opportunities for full and sustainable participation. Specific examples of these initiatives are described below, but in a broad sense, strengthening the pipeline includes increasing access to educational opportunities and training, experiential opportunities, mentorship, guidance and relationships, with an eye towards building long-term careers in dispute resolution. Diversifying selection includes efforts to create opportunities and relationships that translate into commercial success for neutrals from historically underrepresented groups.

DEI DR initiatives designed to increase DEI among process participants described in part V are divided into two categories: 1) those that increase awareness and education about cultural competence and bias among dispute resolution practitioners; and 2) those that examine and address barriers to equitable participation in dispute resolution processes for historically underrepresented and marginalized communities.

their standards are superior.”)

30. Leah Wing, *Mediation and Inequality Reconsidered: Bringing the Discussion to the Table*, 26 CONFLICT RESOL. Q. 383, 391–92 (2009) (citing Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1584 (1991)).

E. Why Do Diversity, Inclusion, and Equity Initiatives Exist?

As described in sections B and C above, dispute resolution practitioners and process participants from marginalized groups face exclusion and inequities through their participation in the field and dispute resolution processes respectively. In their article, *Barriers to Participation: Challenges Faced by Members of Underrepresented Racial and Ethnic Groups in Entering, Remaining, and Advancing in the ADR Field*, Maria R. Volpe, Baruch Bush, Marvin E. Johnson, and Christopher Kwok, Janice Tudy-Jackson, and Roberto Velez identified specific challenges that people of color face in entering the field and building sustainable careers.³¹ They identified barriers such as lack of clear entry into the field, no clear career path, limited access to established networks, lack of mentors, limited opportunities for selection and repeat selection, lack of paid work, and a culture of low-bono and pro bono opportunities.³²

These barriers likely contribute to the reality that that people of color and women are underrepresented on mediator and arbitrator rosters and are selected with less frequency,³³ and selection of women and people of color declines as the dollar value of the cases increase.³⁴ These barriers, which cause lack of diversity among neutrals, may also contribute to the fact that members of marginalized groups who participate in dispute resolution

31. Maria R. Volpe, Robert A. Baruch Bush, Gene A. Johnson, Jr., & Christopher M. Kwok, Janice Tudy-Jackson & Roberto Velez, *Barriers to Participation: Challenges Faced by Members of Underrepresented Racial and Ethnic Groups in Entering, Remaining, and Advancing in the ADR Field*, 35 *FORDHAM URB. L.J.* 119 (2008).

32. *Id.* at 136–140 (discussing the specific impact of cultural views about working without compensation, which they discuss could be seen by African Americans as a reminder of slavery and racial exploitation).

33. La Rue & Symonette, *supra* note 16 at 221 (stating that out of 1484 members in the National Academy of Arbitrators, only 2.35% were persons of color); *see also NAA Diversity, Equity, Inclusion and Belonging*, *supra* note 16, at 24 (citing a survey of 400 labor and employment neutrals done by the National Academy of Arbitrators' Research and Education Fund that showed 4-5% were neutrals of color and 17-21% of neutrals were women, and citing a review of 951 arbitrator appointments done by the International Centre for Settlement of Investment Disputes between 2012 to 2017 that shows only 11% of appointed arbitrators were women).

34. Brown & Schneider, *supra* note 16, at 14 (providing survey data to support that selection of female neutrals declined for cases with higher amounts in controversy); *see also Hanft*, *supra* note 16, at 2–3 (sharing CPR selection data from 2010, indicating that among arbitrators that were selected multiple times, 15% were arbitrators of color); Phillips, *supra* note 16, at 14; Press, *supra* note 16, at 848; Weatherspoon, *supra* note 16, at 121.

processes can be disparately impacted by the process,³⁵ and have led critics to decry dispute resolution processes as dangerous and inequitable, especially for women and marginalized groups.³⁶

For these reasons, members of the dispute resolution field have acted, in the form of DEI DR initiatives, to reduce barriers to participation and attempt to address inequities in dispute resolution processes for practitioners and participants from marginalized communities.

III. DEI INITIATIVES FOR DISPUTE RESOLUTION PRACTITIONERS

This section will discuss DEI DR initiatives that are designed to increase diversity among dispute resolution practitioners. These initiatives are divided into two categories: 1) initiatives that strengthen the pipeline of neutrals from diverse backgrounds; and 2) initiatives aimed at increasing the selection of and the long-term career development for those individuals.

A. Training Scholarships

As a first step to enter the field of dispute resolution, most individuals must attend some form of training to serve as a neutral for dispute resolution organizations, court-annexed dispute resolution programs, or private ADR providers.³⁷ These trainings can be a costly hurdle to enter the field, and many dispute resolution organizations have developed scholarships intended to reduce barriers to entry into to the field of dispute resolution for neutrals from historically underrepresented communities.

35. Hermann, *supra* note 18, at 10; see also Lorig Charkoudian & Ellen Kabcenell Wayne, *Does It Matter If My Mediator Looks Like Me? The Impact of Racially Matching Participants and Mediators*, 15 DISP. RESOL. MAG. 22 (2009); Phyllis E. Bernard, *Minorities, Mediation and Method: The View from One Court-Connected Mediation Program*, 35 FORDHAM URB. L.J. 1 (2008).

36. See Delgado, *supra* note 18, at 1403 (stating that dangers for minority dispute resolution process participants “increase when the mediator or other third party is a member of the superior group or class.”); see also Grillo, *supra* note 18, at 1592-92 (discussing how a mediator’s values, background, and implicit biases may influence mediation outcomes and disadvantage women participants.).

37. See, e.g., RULES OF THE CHIEF ADMIN. JUDGE pt. 146.4 (N.Y. CTS. 2008) (“Mediators who wish to qualify for appointment to a court roster must have successfully completed at least 40 hours of approved training...”)

i. National Scholarships

The American Arbitration Association – International Center for Dispute Resolution (“AAA-ICDR”) Foundation offers diversity scholarships for law students and professionals from diverse backgrounds for up to \$2,000 in assistance towards attendance at conferences and trainings related to dispute resolution.³⁸ The AAA-ICDR Foundation also funds scholarships for second- and third-year law students at Howard University and North Carolina Central University, which are both historically black universities with law schools that offer a certificate in dispute resolution.³⁹ The law schools are responsible for selecting the recipient, and the scholarship is a three-year commitment of \$150,000.⁴⁰

Another national DEI mediation scholarship opportunity is offered by the Academy of Professional Family Mediators.⁴¹ This scholarship was initially launched in 2020 and funded five \$1,000 scholarships for mediation training.⁴² Currently, the scholarship offers applicants access to trainings offered by The Mosten Guthrie Academy, Divorce Mediation Training, and the Center for Mediation Training.⁴³ The DEI scholarship page does not state the criteria for applicants, and individuals seeking more information are asked to e-mail the organization.⁴⁴

ii. Local Scholarships

In our research, we found many local community dispute resolution service providers and some bar associations that offer scholarships for attendance at dispute resolution trainings. The training scholarships are primarily divided into two categories 1) scholarships seeking diversity of

38. *Diversity Scholarship Grants*, AM. ARB. ASS'N, <https://www.aaacdrfoundation.org/diversity-scholarship> [<https://perma.cc/DXH6-Q55X>] (last visited June 29, 2023).

39. *Id.*

40. *Id.*

41. *Diversity, Equity and Inclusion Mediation Scholarships*, ACAD. OF PRO. FAM. MEDIATORS, <https://apfminet.org/diversity-equity-and-inclusion/mediation-training-scholarship/> [<https://perma.cc/4MYQ-MCFR>] (last visited July 19, 2023).

42. E-mail from Kacy Wiant, Acad. of Pro. Fam. Mediators Adm'r, (Nov. 2, 2022, 8:13 PM EST. (On file with author.)

43. *Id.*

44. *Id.*

participants⁴⁵; and 2) Scholarships or training fee waivers based on socio-economic need.⁴⁶ To access these scholarship opportunities, some organizations have an online form that individuals can fill out to indicate their desire to participate, while others have a less formal process asking individuals to send an e-mail indicating their interest in the scholarship.⁴⁷

B. Pipeline Initiatives

The purpose of pipeline programs is to help individuals from diverse backgrounds build sustainable careers in dispute resolution through access to training, experiential opportunities, professional connections, and guidance.⁴⁸ As described below, these programs usually last for a fixed period and are often organized so that a group of individuals begin and end the program together as a “class.” Some pipeline programs offer access to dispute resolution training opportunities, and others provide participants with opportunities to “shadow” dispute resolution processes and/or serve as a neutral. This section begins by describing some of the earliest DEI DR national pipeline initiatives and then discusses recent local pipeline initiatives in New York, Oregon, and Massachusetts. These local programs

45. For examples of diversity scholarships, see *LIDRC – Basic Mediation Training*, EAC NETWORK, <https://eac-network.org/basic-mediation-training/#1660683254922-5270c1f7-408f> [https://perma.cc/ANU8-SC4N] (last visited Sept. 22, 2023); see also *Dispute Resolution Section Diversity Scholarship*, NYSBA, <https://nysba.org/committees/dispute-resolution-section/> [https://perma.cc/UDN2-YB4P] (last visited Sept. 22, 2023); see also *Diversity in ADR Scholarship*, N.Y. CITY B., https://www2.nycbar.org/htmlmail/diversity/March_2017_Newsletter.htm [https://perma.cc/XV2T-8SY4] (last visited Sept. 22, 2023); see also *Full Scholarship Opportunity to Surrogate’s Court Mediation Training*, ARMENIAN B. ASS’N, <https://armenianbar.org/2020/08/27/9368/> [https://perma.cc/9VAW-7Y4A] (last visited July 2, 2023) (described as an effort to recruit diverse neutrals); see also *Diversity & Inclusion Scholarship Application*, NJAPM, <https://njapm.org/page/diversity-inclusion-grant-application> [https://perma.cc/X4WL-FQSP] (last visited Sept. 22, 2023); see also *Diversity, Equity and Inclusion Mediation Scholarships*, APFM, <https://apfmnet.org/diversity-equity-and-inclusion/mediation-training-scholarship/> [https://perma.cc/669P-GD92].

46. For examples of need-based scholarships, see *Basic Mediation Training Schedule*, APADRC, <https://apadrc.org/training/basic-mediation-training/> [https://perma.cc/8DM7-JYNS] (last visited Sept. 22, 2023); see also *Training Scholarships*, DISP. RESOL. CTR. THURSTON CNTY., <https://www.mediatethurston.org/training-scholarships.html> [https://perma.cc/6LH3-SQKC] (last visited Sept. 22, 2023); *CCR 40-Hour Training Programs 40-Hour Mediation Skill Training*, CCR, <https://www.ccrchicago.org/mediation-skills-training> [https://perma.cc/WQY9-YC6L] [hereinafter *CCR 40-Hour Training Programs*] (last visited Sept. 22, 2023).

47. *Basic Mediation Training Schedule*, *supra* note 46; *Training Scholarships*, *supra* note 46; *CCR 40-Hour Training Programs*, *supra* note 46.

48. See discussions *infra* sections i-ii.

are worth examining as they offer different models than their national counterparts, and neutrals often work within their local jurisdictions, so efforts to increase opportunities for neutrals from diverse backgrounds to create local connections and career opportunities is important to build sustainable careers.

i. National Pipelines

One of the earliest pipeline initiatives in dispute resolution was *The Minority Initiative in Alternative Dispute Resolution*. The initiative was founded in 2002 by Professor Floyd Weatherspoon at Capital University Law School and was held for ten consecutive years.⁴⁹ The goal of the initiative was to “[make] sure that minorities were given the opportunity to develop careers in Alternative Dispute Resolution.”⁵⁰ As part of the initiative, Capital University Law School partnered with the American Arbitration Association, the Federal Mediation and Conciliation Service, The National Arbitration Forum and FINRA to provide training and placement of minorities on their rosters.⁵¹ Participants in the Initiative reported that it “was the first time anyone had reached out to them to utilize their skills to be trainers or presenters at a conference.”⁵² Another participant noted “that when the National Conference for Minority Professionals was held at Capital University Law School, women and people of color found a particular space where they could talk and become aware of mentoring possibilities, ways of entering the field, and more opportunities for minorities in dispute resolution.”⁵³ The Minority Initiative in ADR is no longer active but limited information about the initiative remains available online.⁵⁴

49. Johnson & Volpe, *supra* note 4, at 19; see also Alex Green IV, *Minority ADR Neutrals: The Invisible Class*, JUST RESOL. NEWSL. (A.B.A. Disp. Resol. Section), Jan 2021; see also *The Minority Initiative in Alternative Dispute Resolution*, <http://law.capital.edu/adr/> [<https://perma.cc/U9EJ-793M>] (last visited May 31, 2023); see also *Giving Back to Floyd Weatherspoon*, GOFUNDME.COM (Oct. 27, 2021) <https://www.gofundme.com/f/giving-back-to-floyd-weatherspoon> [<https://perma.cc/LP8Q-HFQQ>] [hereinafter *Giving Back*].

50. *Giving Back*, *supra* note 49.

51. Floyd D. Weatherspoon, *The Impact of the Growth and Use of ADR Processes on Minority Communities, Individual Rights, and Neutrals*, 39 CAP. U. L. REV. 789, 790 n.6 (2011).

52. *Giving Back*, *supra* note 49.

53. Johnson & Volpe, *supra* note 4, at 18.

54. See *NDA History*, THE NEUTRALS DIVERSITY ALLIANCE, <https://ndaneutrals.com/nda-history/> [<https://perma.cc/Y8RW-Y9H8>] (last visited on July 24, 2023) The Neutrals Diversity Alliance,

ACCESS ADR was developed by Marvin E. Johnson and Homer La Rue in 2004.⁵⁵ The goal of ACCESS ADR was “to increase the number of professionals of color and to enhance their access to ADR clients.”⁵⁶ ACCESS ADR was co-sponsored by the ABA Section of Dispute Resolution and JAMS and was supported by funds from the JAMS Foundation, the International Academy of Mediators, and the William and Flora Hewlett Foundation.⁵⁷ Mediators and arbitrators of color were recruited to participate as “ACCESS ADR Fellows” with the goal of recruiting attorneys from both the plaintiff and defense bars to select the fellows for their cases.⁵⁸ Fellows needed at least five years of experience and come from ethnic and racial groups that are “under-utilized” in the ADR field.⁵⁹ The fellowship lasted twelve to eighteen months, with the expectation that fellows would receive cases with high amounts in controversy, referred to the fellows by members of the Advisory Board of ACCESS ADR.⁶⁰ The fellows were to receive two case referrals per month with a maximum of twenty-four cases during the entire fellowship.⁶¹ At the start of the program, a few cases were referred into the program, but after some time it became apparent that the volume of referrals necessary to sustain the fellowship were not going to materialize.⁶² Johnson and La Rue posit that perhaps it was the lack of knowledge about the fellows or lack of knowledge about ACCESS ADR that made ADR users hesitant to select

which is administered by Resolute Systems, LLC, indicates that it operates as a continuation of the Conflict Resolution Diversity Initiative (CRDI) pilot that began at Capital University Law School in 2009. *Id.* The NDA indicates a mission to increase diversity in ADR proceedings on its website, but it is unclear based on a review of the website whether the organization is active. NEUTRALS DIVERSITY ALLIANCE, <https://ndaneutrals.com/> [<https://perma.cc/Z2Y4-2FNB>] (Last visited November 9, 2023).

55. See La Rue & Symonette, *supra* note 16, at 244; see also Maria R. Volpe, *Measuring Diversity in the ADR Field: Some Observations and Challenges Regarding Transparency, Metrics and Empirical Research*, 19 PEPP. DISP. RESOL. L.J., 201, 202 n.7 (2019); *ACCESS ADR: An Initiative Launched With The Support Of The JAMS Foundation And The ABA, CCBJ*, <https://ccbjournal.com/articles/access-adr-new-diversity-initiative-launched-support-jams-foundation-and-aba> [<https://perma.cc/D94U-A5CM>] (last visited June 7, 2023).

56. VOLPE, *SUPRA* NOTE 55, AT 202 N.7.

57. See La Rue & Symonette, *supra* note 16, at 230; see also Marvin E. Johnson & Homer C. La Rue, *The Gated Community: Risk Aversion, Race, and the Lack of Diversity in Mediation in the Top Ranks*, 15 DISP. RESOL. MAG. 17, 18 (2009).

58. See La Rue & Symonette, *supra* note 16, at 230.

59. *Id.* at 244 n.85.

60. *Id.*

61. See Johnson & La Rue, *supra* note 57, at 19.

62. *Id.*

them for their cases.⁶³ ACCESS ADR is now inactive, but both Johnson and La Rue remain involved in various other DEI initiatives.⁶⁴

Another early pipeline initiative that lasted for just one year, was the Diversity Mentoring Pilot Project developed by ACR's Environmental and Public Policy (EPP) Section in 2006.⁶⁵ Four individuals were competitively selected to participate in the year-long program, and three completed the program.⁶⁶ Of the three participants in the program, only one continued on to develop a mediation practice and stayed involved in ACR.⁶⁷ In follow-up interviews about the project, participants cited challenges in competing with attorney and judge mediators and the extensive nature of the volunteer requirements involved in the field.⁶⁸

In 2009, the American Arbitration Association launched the Higginbotham Fellows Program, which is one of the longest continuously running dispute resolution fellowship programs in the U.S.⁶⁹ The fellowship is described as a one-year program for "diverse ADR practitioners who historically have not been included in meaningful participation in the field."⁷⁰ Participants in the fellowship attend an intensive training program, followed by opportunities to shadow AAA panel members, network and receive mentorship.⁷¹ The fellowship is unpaid, and the participants pay for their own travel costs, although the program application indicates that some scholarships are available upon request.⁷² The program reports that one hundred and forty-nine fellows have completed the fellowship since its inception.⁷³

63. Johnson & La Rue, *supra* note 25, at 19.

64. *Id.*

65. Dana K. Goodson, *Mentoring for Diversity: A First Step*, ACRESOLUTION. Q. MAG., 2013, at 24.

66. *Id.*

67. *Id.* at 25.

68. *Id.* at 24–25.

69. *Cf.* Johnson & Volpe, *supra* note 4, at 20 (showing no other programs before 2009).

70. *Diversity, Equity and Inclusion*, AM. ARB. ASS'N, <https://www.adr.org/dei/adr-pipeline> [<https://perma.cc/7VYP-2NWE>] (last visited June 29, 2023).

71. *AAA Higginbotham Fellows Program*, AM. ARB. ASS'N, <https://www.adr.org/higginbothamfellowsprogram> [<https://perma.cc/XF6Y-N22Z>] (last visited July 3, 2023).

72. HIGGINBOTHAM FELLOWS PROGRAM 2024 GUIDELINES AND APPLICATION, AM. ARB. ASS'N, https://www.adr.org/sites/default/files/document_repository/2024_AAA_Higginbotham_Guidelines_Form_Booklet.pdf [<https://perma.cc/J3XH-SUVX>]

73. AM. ARB. ASS'N, ADVANCING THE FUTURE OF DISPUTE RESOLUTION 2022 ANNUAL REPORT

The International Institute for Conflict Prevention & Resolution (“CPR”) developed a mentoring and apprentice program in partnership with the Leadership Council on Legal Diversity (LCLD) and FINRA.⁷⁴ This program was developed in 2016 and is a two-year program designed to help mediators and arbitrators to develop their skills and increase their likelihood of selection.⁷⁵ In its first two years, eleven individuals participated in the program.⁷⁶ CPR has also changed its admission criteria for the CPR roster for employment neutrals and reduced requirements for subject matter expertise and/or arbitration training, by offering applicants opportunities to obtain the necessary subject matter and process training through assistance from CPR.⁷⁷

More recently, the American Arbitration Association launched the Diversity Student ADR Summit in 2019.⁷⁸ The Summit is a one and a half-day conference designed to offer law students an “in-depth understanding of what it really takes to become a successful arbitrator and/or mediator.”⁷⁹ Students are competitively selected to attend, and each attendee receives a \$1,300 dollar travel stipend to cover expenses.⁸⁰ The Summit has been held

AND FINANCIAL STATEMENTS 12,

https://www.adr.org/sites/default/files/document_repository/AAA_2022_Annual_Report_and_Financial_Statements.pdf [<https://perma.cc/QD8J-GXVM>]

74. *International Institute for Conflict Prevention and Resolution, Diversity in ADR Taskforce*, CPR, <https://www.cpradr.org/diversity-in-adr-task-force> [<https://perma.cc/5UMY-ZHRJ>] (last visited July 2, 2023); see also Sarah Rudolph Cole, *The Lost Promise of Arbitration*, 70 S.M.U. L. REV. 849, 883 (2017).

75. *Diversity, Equity, & Inclusion Initiatives*, CPR, <https://www.cpradr.org/diversity-equity-and-inclusion##>, [<https://perma.cc/G2SQ-UEUZ>] (last visited July 19, 2023).

76. *International Institute for Conflict Prevention & Resolution, CPR, LCLD & FINRA Program Aims for Actual Selection, Not Just Training, of Diverse Neutrals*, CPR (Sept. 14, 2017) <https://blog.cpradr.org/2017/09/14/cpr-lclld-finra-program-to-create-diversity-in-adr-aims-for-actual-selection-not-just-training-of-diverse-neutrals/> [<https://perma.cc/9SAZ-TXPD>].

77. *Alternative Pathways for Employment Panel*, CPR, https://assets-002.noviams.com/novi-file-uploads/cpr/pdfs-and-documents/CPR_Neutral_Pathways_-_Employment_Final.pdf [<https://perma.cc/WMQ3-FWJW>] (last visited on July 24, 2023).

78. AM. ARB. ASS’N, 95 YEARS · 2021 ANNUAL REPORT AND FINANCIAL STATEMENTS 17, [<https://perma.cc/6ULX-GSFY>]

79. AM. ARB. ASS’N, ADVANCING THE FUTURE OF DISPUTE RESOLUTION 2019 ANNUAL REPORT AND FINANCIAL STATEMENTS 23, https://www.adr.org/sites/default/files/document_repository/AAA_AnnualReport_2019.pdf, [<https://perma.cc/XUL4-KNFK>]

80. See AAA-ICDR Council, *Advancing the Future of Dispute Resolution, Annual Report and Financial Statement*, AM. ARB. ASS’N 23 (2019), https://www.adr.org/sites/default/files/document_repository/AAA_AnnualReport_2019.pdf [<https://perma.cc/ZE8V-QLHJ>].

twice, and forty students have participated in the program.⁸¹

Attorneys with at least 10 years of experience can apply for the JAMS Diversity Fellowship, which was launched in 2021.⁸² The Fellowship website states that it offers “training, mentorship, sponsorship, and networking opportunities to up and coming diverse ADR professionals.”⁸³ Fellows attend a three-day virtual training, are paired with a mentor and receive opportunities to shadow mediations and arbitrations.⁸⁴ The program is designed to create pathways onto the JAMS panel, and is intended to “increase pipeline opportunities in dispute resolution and assist with diverse recruitment in key JAMS markets.”⁸⁵ To date, ten individuals have participated in the first two classes of the fellowship.⁸⁶ The Fellowship is run by Joanne Saint Louis, who was hired in 2019 to serve as the JAMS diversity program manager.⁸⁷

The ABA Dispute Resolution Section also established a new fellowship program in 2020.⁸⁸ This program is for law students and recent graduates as well as experience practitioners who are interested in a career in dispute resolution.⁸⁹ The fellowship includes an initial one-year commitment followed by the option for a continued “advanced fellowship.”⁹⁰ The fellowship lists benefits such as mentorship from Section members, access to networking, opportunities to speak and publish, and free registration for

81. See AM. ARB. ASS'N, *supra* note 73, at 19; AM. ARB. ASS'N, *supra* note 79, at 23.

82. *Diversity Fellowship Program*, JAMS, <https://www.jamsadr.com/diversity-fellowship-program?tab=overview> [<https://perma.cc/5EKT-ABK3>] (last visited June 30, 2023).

83. *Id.*

84. *Id.*

85. *Id.*

86. Joanne Saint Louis, *Introducing the JAMS Diversity Fellowship Program and its Inaugural Class of Fellows*, JAMS (Apr. 19, 2021), <https://www.jamsadr.com/blog/2021/introducing-the-jams-diversity-fellowship-program-and-its-inaugural-class-of-fellows> [<https://perma.cc/QM6K-KUR2>]; See also, *Diversity Fellowship Program*, *supra* note 82.

87. *JAMS Welcomes Diversity Program Manager*, JAMS (Oct. 9, 2019), <https://www.jamsadr.com/news/2019/jams-welcomes-diversity-program-manager>

[<https://perma.cc/6FGA-9S7P>] (describing the Diversity Program Manager role as furthering “the organization’s diversity and inclusion goals, which include bringing on high-caliber, diverse neutrals to its panel and working with law firms, in-house counsel and affinity bar organizations to diversify the selection of mediators and arbitrators”).

88. *ABA Dispute Resolution Section Fellowship Program*, INDISPUTABLY (July 10, 2020), <http://indisputably.org/2020/07/aba-dispute-resolution-section-fellowship-program/> [<https://perma.cc/7WPG-D3MX>] (last visited July 2, 2023).

89. *Id.*

90. *Id.*

the annual spring conference.⁹¹ Fellows may select their specific area of interest which include diversity, inclusivity, and equity.⁹² In 2022 and 2023 combined, there were 76 fellows admitted to the program.⁹³

ii. Local Pipelines

In New York, there are two local pipeline initiatives designed to increase representation for diverse attorneys. For attorneys with more than five but less than fifteen years of experience, there is the EDNY Pilot Mediator Incubator which was established in 2019.⁹⁴ The Incubator Pilot was established by the ADR Department of the United States District Court for the Eastern District of New York (“EDNY”) to develop additional pathways for junior attorneys from diverse backgrounds, with at least 24 hours of mediation training to join the EDNY Mediation Panel.⁹⁵ Individuals are competitively selected to participate in the program, which provides short training sessions, opportunities to observe and co-mediate EDNY matters, and mentorship from members of the EDNY Mediation Panel.⁹⁶ Candidates that successfully complete the program are eligible for admission to the EDNY Mediation Panel.⁹⁷

Another New York pipeline program is the New York State Bar Association Dispute Resolution Section (“NYSBA DR Section”) Diversity Mentorship Program.⁹⁸ The Mentorship Program lasts for one year and offers training, support, and connections for aspiring neutrals.⁹⁹ Participants can “shadow” mentors, attend NYSBA events and network with members

91. *Fellowship Program*, A.B.A. SEC. OF DISP. RESOL., https://www.americanbar.org/groups/dispute_resolution/awards_competitions/section-fellows/ [<https://perma.cc/R2L4-83FC>] (last visited July 18, 2023).

92. *ABA Dispute Resolution Section Fellowship Program*, *supra* note 88.

93. *Id.*

94. *Pilot Mediator Incubator*, U.S. FED. D. CT. FOR THE E.D.N.Y., <https://www.nyed.uscourts.gov/pilot-mediator-incubator> [<https://perma.cc/Z25A-SUDH>] (last visited July 2, 2023)

95. *Id.*; *see also* Weinstein & Bond, *supra* note 2, at 507.

96. *Pilot Mediator Incubator*, *supra* note 94.

97. *Id.*

98. *Dispute Resolution Section Scholarships and Mentorship Program*, NYSBA, <https://nysba.org/committees/dispute-resolution-section/> [<https://perma.cc/6STU-85GX>] (last visited July 2, 2023); *see also* Weinstein & Lavrichenko, *supra* note 3, at 15–16.

99. Weinstein & Lavrichenko, *supra* note 3, at 15.

of the Section.¹⁰⁰ The mentorship is unpaid; however those participating in the fellowship can apply for five mediation and arbitration training scholarships offered by the Section.¹⁰¹

In Massachusetts, the Habitus Fellowship for Diversity in Negotiation, Mediation and Conflict Resolution offers a unique fellowship for aspiring conflict resolution professionals outside of the legal realm.¹⁰² The Fellowship is run by Habitus Incorporated in partnership with the Consensus Building Institute and was established by Habitus in 2019.¹⁰³ This Fellowship is unique because it pays its fellows a stipend of \$9,460.¹⁰⁴ Another distinguishing feature is that, unlike the other fellowships, this program is not geared towards attorneys, but instead encourages individuals from a variety of professional backgrounds to apply.¹⁰⁵ The Habitus fellowship also offers opportunities for its fellows to work with actual clients, which have resulted in fellows being hired as paid staff and sub-contractors of the organization.¹⁰⁶ The fellowship is overseen by Dr. Kathy Gonzales, who worked with a diversity and equity consultant to design the program in a way that would attract a diverse cohort of fellows.¹⁰⁷

In Oregon, a group of individuals established the Oregon Mediator Diversity Project (“OMDP”) in 2021, which is described as an effort to “create a pipeline of lawyers from outside the dominant culture who will train to become mediators with an eye to opening a mediation practice in the next five years.”¹⁰⁸ The group has modeled itself on the Oregon Judicial Diversity Coalition, “a project of legal affinity bars to recruit and support judicial candidates outside the dominant culture and those committed to diversity, equity, and inclusion principles for the bench.”¹⁰⁹ The OMDP developed a program in which individuals must apply to attend a forty hour

100. *Id.*

101. *Id.* at 15–16.

102. *Fellowship for Diversity in Negotiation, Mediation, and Conflict Resolution*, HABITUS INC., <https://habitusincorporated.com/about-the-fellowship/> [<https://perma.cc/82S5-6FWE>] (last visited June 12, 2023).

103. *Id.*

104. *Id.*

105. Zoom Interview with Dr. Kathy Gonzales, Chief Learning & Development Officer, Habitus Incorporated (June 5, 2023).

106. *Id.*

107. *Id.*

108. *Oregon Mediator Diversity Project*, OR. MEDIATOR DIVERSITY PROJECT, <https://www.omdp.org/about> [<https://perma.cc/8HCE-RFJE>] (last visited June 3, 2023).

109. *Id.*

mediation training and are paired with an “established mediator or judge for mentorship and mediation shadowing.”¹¹⁰ Based on the information available on their website, the most recent training took place in 2021 and the application is not currently live.¹¹¹

C. Initiatives Designed to Increase the Selection of Diverse Neutrals

There are a variety of efforts designed to increase the selection of, and career opportunities for neutrals from diverse backgrounds. This section describes those initiatives and is divided into four categories: 1) pledges, clauses, policies and plans with commitments to increase selection and career advancement for neutrals from diverse backgrounds; 2) national and local directories designed to highlight neutrals from diverse backgrounds; 3) initiatives designed to gather information about the number of neutrals from diverse backgrounds appointed to rosters and selected for paid opportunities; 4) the development of networks to support neutrals from diverse backgrounds; and 5) efforts by dispute resolution organizations to promote the importance of diverse neutral selection, both within the field, and to those who hire neutrals.

i. Pledges, Clauses, Policies, and Plans to Increase Commercial and Organizational Inclusion

Several organizations have developed pledges and dispute resolution clauses to increase paid opportunities for neutrals from diverse backgrounds. “Pledges” are initiatives that ask ADR service providers and end-users to commit to selecting neutrals from diverse backgrounds; “Clauses” are dispute resolution clauses drafted by ADR service providers with language that encourages diversity in neutral selection; and the “policies and plans” described below are developed by dispute resolution organizations to commit the organizations to certain actions or initiatives that promote organizational inclusion among practitioners.

In 2020, a pledge called *The Ray Corollary Initiative* (“RCI”) was developed by experienced practitioners and leaders in DEI DR, Homer La

110. *Id.*

111. *Id.*

Rue and Alan Symonette.¹¹² The RCI pledge asks dispute resolution providers and end-users to “strive for their slates of rosters of proposed neutrals to include at least 30% diverse neutral candidates” and defines diversity as “Black, Hispanic, Latino/a/x, Indigenous, Asian American Pacific Islander (“AAPI”), other people of color, women, persons of differing sexual orientations and gender identities and persons living with disabilities.”¹¹³ The pledge also asks providers and ADR consumers to track both the proposed slates and the selections in an effort to increase the accountability of the RCI Pledge.¹¹⁴ RCI was adopted as an initiative of the National Academy of Arbitrators, which developed an organizing committee that will take specific steps to promote RCI, including forming a National Task Force.¹¹⁵ ADR service providers AAA, CPR, JAMS, and Resolute Systems Inc. have signed the RCI Pledge.¹¹⁶ The pledge has also been signed by end-users such as the American Postal Workers Union, The National Rural Letter Carriers’ Association, and several AMTRAK unions.¹¹⁷

Another effort to increase selection of neutrals from diverse backgrounds comes in the form of diversity and inclusion clauses created by ADR service providers. In 2018, JAMS created an inclusion rider option to its “JAMS Domestic and International Clause Workbooks.”¹¹⁸ The

112. See La Rue & Symonette, *supra* note 16, at 235.

113. *The RCI Pledge for ADR Users*, RAY COROLLARY INITIATIVE, <https://www.raycorollaryinitiative.org/the-pledge> [<https://perma.cc/8H8E-8YJT>] (last visited on July 2, 2023); see also La Rue & Symonette, *supra* note 16, at 245 (describing the basis for RCI’s 30% requirement of diverse neutrals in proposed slates and citing studies that indicate an increase in the diversity of the pool of candidates substantially increases the likelihood that a diverse candidate will be ultimately be selected and that negates some of the effects of implicit bias in the hiring process).

114. *The RCI Pledge for ADR Users*, *supra* note.

115. *End-Of-Year Report, 2021*, RAY COROLLARY INITIATIVE, (Dec. 31, 2021), https://static1.squarespace.com/static/622667c91aaa421dcbbd7f6d/t/622a55b812e8200f78c1810c/1646941625300/RCI-End-of-Year-Report_Final_Signed-011222_.pdf [<https://perma.cc/7JZY-52K4>].

116. *AAA Ongoing Commitment to Diversity, Equity & Inclusion*, AM. ARB. ASS’N (Apr. 11, 2023), https://www.adr.org/sites/default/files/document_repository/AAA_Ray_Corollary_Pledge_Release_11_April2023.pdf [<https://perma.cc/X783-AU3E>]; see also *JAMS, DEI Pulse, Spring 2023*, JAMS, <https://www.jamsadr.com/blog/2023/jams-dei-pulse-spring-2023> [<https://perma.cc/Z3DQ-DUFN>] (last visited July 3, 2023).

117. *Announcements*, RAY COROLLARY INITIATIVE, <https://www.raycorollaryinitiative.org/announcements> [<https://perma.cc/36ZA-29NN>] (last visited on July 19, 2023).

118. *JAMS Introduces Inclusion Rider, Promotes Diversity Initiatives in ADR*, JAMS (May 29, 2018), <https://www.jamsadr.com/news/2018/jams-introduces-inclusion-rider-promotes-diversity->

inclusion rider states, “the parties agree that, wherever practicable, they will seek to appoint a fair representation of arbitrators from diverse backgrounds (considering gender, ethnicity and sexual orientation), and will request administering institutions to include a fair representation of diverse candidates on their roster and list of potential arbitrator appointees.”¹¹⁹ To support their clients in tracking the selection of neutrals from diverse backgrounds, JAMS also developed a confidential neutral utilization report which provides clients with a mechanism to track and monitor diversity in neutral selection.¹²⁰ CPR also developed a “Diversity Commitment Clause” that asks parties to commit to at least one member of a three-person tribunal to being a member of an under-represented group “such as women, persons of color, members of the LGBTQ community, disabled persons, or otherwise agreed to by the parties to this Agreement.”¹²¹ End users of ADR may elect to use these clauses, but there is no data indicating the frequency with which the clauses are used.

Recently, several dispute resolution organizations have developed DEI plans and policies intended to increase organizational inclusion among practitioners from diverse backgrounds. The idea behind the plans and policies is to identify the barriers to participate within the organization and develop an action plan for the organization to eliminate those barriers.¹²²

The National Academy of Arbitrators (“NAA”) published a Diversity, Equity, Inclusion and Belonging (“DEIB”) Strategic Plan in 2023.¹²³ The plan outlines the NAA’s past DEIB initiatives and provides a list of forward-looking recommendations and initiatives. The recommendations include

initiatives-in-adr [<https://perma.cc/T52Q-DADQ>]; see also JAMS Clause Workbook, *A Guide to Drafting Dispute Resolution Clauses for Commercial Contracts*, JAMS (June 1, 2018), <https://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS-ADR-Clauses.pdf> [<https://perma.cc/HL4Y-RTET>].

119. JAMS Clause Workbook, *A Guide to Drafting Dispute Resolution Clauses for Commercial Contracts*, JAMS, <https://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS-ADR-Clauses.pdf> [<https://perma.cc/H56D-P9TY>] (last visited June 30, 2023).

120. *Measure Your DEI Progress with the JAMS Neutral Utilization Report*, JAMS, <https://www.jamsadr.com/files/uploads/documents/jams-neutral-utilization-flyer-03-16-22-rev1.pdf> [<https://perma.cc/KXL5-YFU9>] (last visited July 2, 2023).

121. *Model Clauses Domestic Disputes*, INT’L INST. FOR CONFLICT PREVENTION & RESOL., https://assets-002.noviams.com/novi-file-uploads/cpr/pdfs-and-documents/CPR_Model_Clauses_-_Domestic_Disputes.pdf [<https://perma.cc/8SPL-W252>] (last visited July 24, 2023).

122. See *Executive Summary*, NAT’L. ACAD. OF ARBITRATORS, https://naarb.org/wp-content/uploads/2022/06/Executive-Summary_DEIB_Final-3.22.pdf [<https://perma.cc/2JEZ-HHAE>] (last visited July 2, 2023).

123. *Id.*

increasing DEIB education among academy members in an effort to promote increased equity within the organization and the arbitration process; increased DEIB Leadership within the Labor and Employment community; developing data tracking and accountability measures; early mentorship, with an emphasis on persons of color; increased efforts to recruit neutrals from diverse backgrounds to the academy; increased inclusion efforts; the development of internal grievance procedures for incidents of racial or sexual harassment; and a proposed internal and external structure for DEIB initiatives implemented by the NAA.¹²⁴

An example of a local DEI plan was developed by the New York State Bar Dispute Resolution Section in 2021.¹²⁵ The plan includes increased efforts in mentorship, leadership, and programming and describes the Section's intentions to develop accountability, which includes quarterly reports to their Executive Committee, and an annual report on DEI at the Section's annual meeting.¹²⁶ Another example of a local DEI Plan is the Florida State Bar Association Alternative Dispute Resolution Section's DEI committee goals.¹²⁷ These goals include raising awareness about ABA Resolution 105 to members; developing best practices for increasing diversity in ADR in Florida; increased outreach to diverse practitioners; increasing diversity in section activities; and establishing a baseline and tracking and reporting on measurable goals for DEI with a commitment to accountability and change over time.¹²⁸

Organizations have also enacted DEI policies to increase representation of speakers from diverse backgrounds at conferences and educational programs. This is in part an effort to increase inclusion within the organizations, but it also has the benefit of increasing visibility and career opportunities for practitioners from diverse backgrounds. The ABA Dispute Resolution Section implemented a diversity statement for conference workshops in 2001, which asks program organizers to encourage diversity

124. *NAA Diversity, Equity, Inclusion And Belonging: A Strategic Plan, Special Committee Report to the Board of Governors*, NAT'L. ACAD. OF ARBITRATORS, https://naarb.org/wp-content/uploads/2022/06/DEIB-Committee-Report-to-BOG_Final-3.22.pdf [<https://perma.cc/9LSK-587P>] (last visited July 2, 2023).

125. THE DISPUTE RESOLUTION SECTION'S DIVERSITY AND INCLUSION PLAN (N.Y. STATE BAR ASS'N, Proposed Official Draft 2001)(on file with author).

126. *Id.*

127. *ADR Section DEI Committee*, FLA. STATE BAR ASS'N, <https://flabaradr.com/diversity-equity-inclusion/> [<https://perma.cc/672T-5PDH>] (last visited July 27, 2023).

128. *Id.*

among panelists.¹²⁹ In 2021, a similar local initiative was implemented by the New York City Bar ADR Committee for programs hosted, co-hosted, sponsored, or co-sponsored by the ADR Committee.¹³⁰ The guidelines pledge that “all programs which include three or more speakers including the moderator shall include at least one participant who is diverse from the other two speakers.”¹³¹ The guidelines indicate that the Committee will not host or sponsor any events that fail to comply with this policy.¹³² The New York State Bar Association DR Section diversity and inclusion plan described above also indicates plans to “mandate a diversity-based speaker requirement” for programs hosted or sponsored by the Section.¹³³

ii. Directories Featuring Neutrals from Diverse Backgrounds

Another effort to increase the selection of neutrals from diverse backgrounds is the establishment of national and local directories featuring neutrals from historically underrepresented groups. These directories are intended to increase visibility and opportunities for neutrals from diverse backgrounds and to connect them with paid work. This section discusses national directories for women and neutrals from diverse backgrounds, as well as two local directories, one in New York and a second in North Carolina.

a. National Directories

In 2020, the National Bar Association ADR Section created a directory of mediators and arbitrators under the leadership of the ADR Section Chair, Dean Burrell.¹³⁴ The National Bar Association is a professional association comprised of predominantly Black American attorneys and judges.¹³⁵ For

129. Johnson & Volpe, *supra* note 4, at 18.

130. See e-mail from Robyn.Weinstein@nyed.uscourts.gov (Feb. 2, 2021) (on file with author) (emphasis omitted), <http://listserver.jjay.cuny.edu/scripts/wa.exe?A0=NYC-DR> (last visited July 11, 2023).

131. *Id.*

132. *Id.*

133. THE DISPUTE RESOLUTION SECTION'S DIVERSITY AND INCLUSION PLAN (N.Y. STATE BAR ASS'N, Proposed Official Draft 2001) (on file with author).

134. Zoom Interview with Dean Burrell, Chair, National Bar Association, ADR Section (July 10, 2023).

135. *Id.*

individuals to be listed in this directory, they must pass a screening process, be a member of the National Bar Association ADR Section and be able to serve as mediators and/or arbitrators in their respective jurisdictions.¹³⁶

The American Bar Association Dispute Resolution Section (“ABA DR Section”) maintains two directories for dispute resolution professionals; one is intended to increase visibility for women, and the other is intended to feature mediators who are historically underrepresented in the field.¹³⁷ The ABA DR Section Women in Dispute Resolution (“WIDR”) Committee developed the WIDR Directory, which it updates on a regular basis in an effort to increase commercial opportunities for female practitioners.¹³⁸ The Section also maintains the Diversity in Dispute Resolution (“DIDR”) Member Directory that was re-released in February 2023.¹³⁹ The stated purpose of the directory is to “feature diverse neutrals that self-identify along the dimensions of race/ethnicity, gender, sexual orientation, and disability.”¹⁴⁰

A national directory of Black arbitrators is maintained by Arbitrate.com.¹⁴¹ The list was launched in 2022 and is described as an “evolution” of the list of Arbitrators of African Descent that was originally developed in 2020 by Nancy Thevenin and Dr. Katherine Simpson.¹⁴²

136. Alternative Dispute Resolution Section, *About the ADR Section*, NAT’L. BAR ASS’N, <https://www.nba-adr.org/about> [https://perma.cc/5EDH-DGKY] (last visited July 1, 2023).

137. *Member Directory of ADR Practitioners: Women in Dispute Resolution Committee*, A.B.A. DISP. RESOL. SEC. (Sept. 2023) https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/leadership/women-in-dispute-resolution-directory.pdf [hereinafter *Women in Dispute Resolution Committee*]; see also *Member Directory Diversity in Dispute Resolution*, A.B.A. DISP. RESOL. SEC. (Feb. 2023) https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/leadership/diversity-directory.pdf [https://perma.cc/4BP4-5HV3] (last visited June 7, 2023) [hereinafter *Diversity in Dispute Resolution*].

138. *Women in Dispute Resolution Committee*, *supra* note 137.

139. *Diversity in Dispute Resolution*, *supra* note 137. The precursor to this directory is the Minorities in Dispute Resolution Directory, which was also created by the ABA DR Section and available online in 2015. See Theodore K. Cheng, *The Case for Bringing Diversity to the Selection of ADR Neutrals*, 9 N. Y. DISPUTE RESOL. LAW. 18, 20 (2016); see also *So You Want to Be a Mediator and Arbitrator: A Guide to Starting a New ADR Practice and Giving Your Existing Practice a Boost – for New York State Lawyers*, N.Y. STATE BAR ASS’N, <https://nysba.org/NYSBA/Sections/Dispute%20Resolution/Dispute%20Resolution%20PDFs/2019/ADR%20Career%20Guide.pdf> [https://perma.cc/VGJ3-WFBB] (last visited June 7, 2023).

140. *Diversity in Dispute Resolution*, *supra* note 137.

141. Indraneel Gunjal & Colin Rule, *Looking Back at the First 18 Months of Arbitrate.com*, MEDIATE (Aug. 29, 2022), <https://mediate.com/looking-back-at-the-first-18-months-of-arbitrate-com/> [https://perma.cc/7EA9-434K].

142. *Id.*

Arbitrate.com also states that it is offering free listings to any Black arbitrators who would like to join the list.¹⁴³

While it is not exactly a directory, it is notable that dispute resolution service provider National Arbitration and Mediation (“NAM”), created a new division called Tapestry ADR.¹⁴⁴ To lead this initiative, they hired Marcie Dickson, founder of Alterity ADR, “the country’s largest national minority-owned ADR company,” which focused on building a diverse panel of neutrals.¹⁴⁵ NAM states that the initiative will focus on leveraging the full resources and infrastructure of NAM to drive innovative new offerings for clients and to increase inclusion and equity in the ADR industry.¹⁴⁶ NAM also maintains a list of neutrals on the Tapestry ADR panel, which is listed on a separate Tapestry ADR page; however, the site does not indicate what qualifies a neutral to be listed on the Tapestry ADR panel.¹⁴⁷

b. Local Directories

More localized initiatives to increase the visibility of neutrals from diverse backgrounds exist in New York and North Carolina. In 2021, the New York City Bar Association ADR Committee and the New York State Bar Dispute Resolution Section developed a new directory which includes more than two hundred individuals who self-identify as underrepresented in the field and are current members of more than twenty local affinity bar associations.¹⁴⁸ On the “directory questionnaire,” which individuals must fill out if they wish to be included in the directory, “members of a historically underrepresented community” include but are not limited to “a person of color, a member of the LGBTQ+ community, as having a

143. *Id.*

144. *Introducing Tapestry ADR, A New Division of NAM*, NAT’L ARB. & MEDIATION, <https://www.namadr.com/tapestry-adr/> [https://perma.cc/8V55-6YMN] (last visited July 3, 2023).

145. *Id.*; ALTERITY ADR, *Alterity ADR Voted Best Mediation & Arbitration Firm In First Year of Operation*, PRNEWswire, (May 23, 2022).

146. *NAM Adds ADR Trailblazer Marcie Dickson to Launch Tapestry ADR*, BUS. WIRE (Apr. 18, 2023), <https://www.businesswire.com/news/home/20230418005558/en/NAM-Adds-ADR-Trailblazer-Marcie-Dickson-to-Launch-Tapestry-ADR%E2%84%A2> (last visited June 3, 2023).

147. *Introducing Tapestry ADR*, *supra* note 144.

148. Weinstein & Lavrichenko, *supra* note 3, at 21; *see also New York Diversity Equity & Inclusion Neutral Directory*, NY DEI Neutral Directory, <https://sites.google.com/view/ny-dei-neutral-directory/home> [https://perma.cc/PB8W-XN63] (last visited June 20, 2023) [hereinafter *Neutral Directory*].

disability, or identify as a women.”¹⁴⁹ The directory lists individuals by their self-identifying characteristics with self-identification options such as: member of the LGBTQ+ community; identifying as a person with a disability; identifying as a woman; and racial identity and ethnic heritage.¹⁵⁰ A unique feature of the directory is that for racial and ethnic heritage, individuals can write in their own ethnic and racial diversity, which are listed in alphabetical order on the left side of the “self-identifying characteristics” page of the directory.¹⁵¹ The only screening done for admission to the directory, is membership of a partnering bar association, and the directory states that it does not imply endorsement or recommendation of any of the neutrals listed in the directory.¹⁵²

The North Carolina Bar Association Dispute Resolution Section (“NCBA DR Section”) created an online directory of mediators of color.¹⁵³ The effort is part of a campaign to encourage “all forms of diversity, equity and inclusion in dispute resolution.”¹⁵⁴ On the page that lists the directory, the NCBA DR Section also shares information about a motion made by the Race & Equity Committee of the NCBA DR Section that moves to “adopt an initiative to actively support, promote and encourage the designation and appointment of mediators of color.”¹⁵⁵ The motion refers to the broader guidelines issued by the North Carolina Bar Association to “develop equity and inclusion and to dismantle systemic racism in our justice system” and seeks to conform to the polices of the NCBA DR Section with those guidelines.¹⁵⁶

149. *Self-Identifying Characteristics*, NY DEI NEUTRAL DIRECTORY, [https://sites.google.com/view/ny-dei-neutral-directory/home/self-identifying-characteristics?authuser=00_\[https://perma.cc/3KRN-PGQN\]](https://sites.google.com/view/ny-dei-neutral-directory/home/self-identifying-characteristics?authuser=00_[https://perma.cc/3KRN-PGQN]) (last visited June 20, 2023) (individuals listing themselves in many ways, including Biracial/Italian, Puerto Rican and Spanish, Black and Puerto Rican, Afro-South American, Afro-Anglo, Afro-Southeast Asian, African-American, Multi-Racial, African American and Asian, Black/African-American, Caribbean American, and Born in Argentina).

150. *Id.*

151. *Self-Identifying Characteristics*, *supra* note 149.

152. *Id.*

153. *Try Someone New: Diverse Mediator List*, N.C. BAR ASS’N, [https://www.ncbar.org/members/communities/sections/dispute-resolution/diverse-mediators/\[https://perma.cc/6CQB-TECZ\]](https://www.ncbar.org/members/communities/sections/dispute-resolution/diverse-mediators/[https://perma.cc/6CQB-TECZ]) (last visited June 20, 2023).

154. *Id.*

155. *Id.*

156. *Id.*; see also N.C. BAR ASS’N, REPORT FROM THE EXECUTIVE DIRECTOR TO THE NORTH CAROLINA BAR ASSOCIATION (NCBA) BOARD OF GOVERNORS AND THE NORTH CAROLINA BAR FOUNDATION (NCBF) BOARD OF DIRECTORS REGARDING RELATIONSHIPS BETWEEN THE NCBA AND SYSTEMIC RACISM IN NORTH CAROLINA (Nov. 2020), <https://www.ncbar.org/wp->

iii. Efforts to Track Neutral Selection and Appointment

National dispute resolution service providers have begun publishing data about neutral demographics and/or selection rates. Through tracking the appointment of neutrals from diverse backgrounds and their selection rates, this increases transparency and develops a baseline for organizations as they expend time and resources to recruit neutrals from diverse backgrounds and promote their selection. Most of the efforts to track neutral diversity are done by national organizations, such as JAMS, AAA, and FINRA however, there was also a recent effort by the Florida State Bar Association ADR Section to track the appointment of neutrals from diverse backgrounds from the Florida state court rosters which is described below.

Since 2017, FINRA Dispute Resolution Services has published mediator and arbitrator demographics on its website. The demographics, which are collected by a third-party consultant, survey the neutrals based on race, gender, LGBTQ status, and age.¹⁵⁷ The American Arbitration Association also publishes some data about neutral demographics on its website, and includes information about the number of lists of mediators and arbitrators that are at least 20% from diverse backgrounds, as well as data about the percentage of “diverse appointments.”¹⁵⁸

We also found a local effort to collect neutral demographic data by the Florida State Bar ADR Section’s new committee called the Justice, Equity, Diversity and Inclusion (“JEDI”) Committee.¹⁵⁹ After its formation, the JEDI Committee conducted an initial research project to gather the demographic data of certified mediators in the state of Florida as a means of “developing a numerical baseline.”¹⁶⁰ The team used the demographic

content/uploads/2020/12/Report-Regarding-Relationships-Between-the-NCBA-and-Systemic-Racism-11-30-2020.pdf [https://perma.cc/4352-4UE7].

157. See *Our Commitment to Achieving Arbitrator and Mediator Diversity at FINRA*, FINRA, <https://www.finra.org/arbitration-mediation/our-commitment-achieving-arbitrator-and-mediator-diversity-finra> [https://perma.cc/DT9J-9WMW] (last visited July 2, 2023).

158. *Diversity, Equity, Inclusion*, AM. ARBITRATION ASS’N, <https://www.adr.org/dei/panel> [https://perma.cc/TS4F-RV2R] (last visited July 28, 2023).

159. Ana Cristina Maldonado & Megan Moschell, *Diversity, Equity and Inclusion in ADR and Law: A Capital “J” for Justice Issue*, THE COMMON GROUND 16, 19 (2022); see also *ADR Section DEI Committee*, FLA. BAR ALT. DISP. RESOL. SECTION, <https://flabaradr.com/diversity-equity-inclusion/> [https://perma.cc/MNA7-KRXZ] (last visited June 20, 2023).

160. Maldonado & Moschell, *supra* note 159.

data on gender and race/ethnicity for mediators which is available on the Florida Dispute Resolution Center (DRC) website.¹⁶¹ They assessed mediator demographics across the five different certifications offered by the DRC (County, Family, Circuit, Dependency, and Appellate), and also compared mediators who selected “attorney” under “occupation” with those that did not identify as attorneys.¹⁶² Additionally, JEDI compared the mediator demographic data obtained from the DRC with attorney demographics obtained from the Florida State Bar and the ADR Section of the State Bar and compared this data with the 2020 Census.¹⁶³ They found that certified mediators were less gender diverse among Circuit and Appellate mediation panels than county, family, and dependency courts.¹⁶⁴ The group also found that the race and ethnicity of mediators who served on all five types of court panels and self-reported as African American, Hispanic, Asian American/Pacific Islander, or American Indian were well below the Florida population percentages reported in the 2020 Census.¹⁶⁵

iv. Networks to Support Neutrals from Diverse Backgrounds

One of the earliest networks designed to support neutrals from diverse backgrounds is the Mediators of Color Alliance Network (“MOCA”), founded in the early 1990’s by Marvin E. Johnson.¹⁶⁶ It was founded with the purpose of creating a network of mediators of color with the intention to “advance their interests in the dispute resolution field.”¹⁶⁷ It was also founded with the intention of being a “resource for individuals and organizations looking to partner, collaborate, contract or employ talented mediators of color.”¹⁶⁸ MOCA maintains a website and for many years maintained a directory of mediators of color; however, during the period in

161. *Id.*

162. See 2021 Review of Racial Ethnic and Gender Diversity: Florida Supreme Court Certified Mediators, Florida Qualified Arbitrators, Florida Bar Members and ADR Section Members, FLA. BAR ALT. DISP. RESOL. SEC. (Dec. 2021) (on file with author).

163. *Id.*

164. *Id.*

165. *Id.*

166. Johnson & Volpe, *supra* note 4, at 16.

167. Mediators of Color Alliance, MOCANET, <http://www.mocanet.org/> [<https://perma.cc/4VJE-D8DK>] (last visited June 19, 2023).

168. *Id.*

which we conducted this research, the directory site was inactive.¹⁶⁹

The ADR Inclusion Network was established in 2017 by a group of New York ADR professionals, including practitioners, service providers, court ADR administrators and academics, to meet regularly and discuss issues impacting diversity and inclusion in the field, with an emphasis on practitioner diversity.¹⁷⁰ The organization maintains a listserv and a website which has a diverse speakers bureau, resources relating to diversity and inclusion in dispute resolution, and a pledge to “work proactively to increase representation of diverse neutrals in New York State.”¹⁷¹

There is also a networking initiative by the Institute for the Study of Conflict Transformation to host a monthly “transformative practitioners of color café,” which is billed as “a place to share information or an issue. . .to get more information about an unfamiliar topic. . .a place to network and make connections.”¹⁷²

v. Promoting the Importance of Diversity in Neutral Selection

There has been a great deal of effort by members of the dispute resolution field to publicize the importance of selecting diverse neutrals. There have been many events and programs about DEI in dispute resolution,¹⁷³ and articles published in various dispute resolution

169. *Id.*

170. ADR INCLUSION NETWORK, <https://adrdiversity.org/> [<https://perma.cc/6PZS-GWHL>] (last visited July 20, 2023).

171. *Take Our Diversity & Inclusion in ADR Pledge*, ADR INCLUSION NETWORK, <https://adrdiversity.org/pledge> [<https://perma.cc/WMN3-G2GD>] (last visited July 1, 2023).

172. *Practitioners of Color Café*, INST. FOR THE STUDY OF CONFLICT TRANSFORMATION, https://www.transformativemediation.org/Cafes_ [<https://perma.cc/5D29-JK6E>] (last visited June 29, 2023).

173. *See, e.g.*, ADR and Diversity, New York University Law School (Jan. 26, 2023), <https://www.nyls.edu/events/symposium-adr-and-diversity/> [<https://perma.cc/YH78-5AHK>]; Driving Toward More Diverse Selection of Neutrals: The Ray Corollary Initiative at Work, CPR (May 16, 2023), [https://www.cpradr.org/events/driving-toward-more-diverse-selection-of-neutrals#:~:text=The%20Ray%20Corollary%20Initiative%20\(“RCI,the%20selection%20of%20ADR%20neutrals](https://www.cpradr.org/events/driving-toward-more-diverse-selection-of-neutrals#:~:text=The%20Ray%20Corollary%20Initiative%20(“RCI,the%20selection%20of%20ADR%20neutrals) [<https://perma.cc/R98X-V9U9>]; Anti-Racism and the Mediator’s Role: Irreconcilable Differences or Ethical Imperative?, U.S. FED. DISTRICT CT. E.D.N.Y. ADR DEPT. (Nov. 13, 2020), <https://www.nyed.uscourts.gov/adr-programs-and-trainings> [<https://perma.cc/PFV3-AQ59>]; JAMS, Achieving Access to Justice Through ADR: Fact or Fiction, Fordham Law School (Nov. 1, 2019), <https://www.jamsadr.com/events/2019/the-fordham-law-review-symposium-achieving-access-to-justice-through-adr> [<https://perma.cc/26P2-AMBL>]; NYSBA, Using Alternative Dispute Resolution to Address Racial, Ethnic and Socio-Economic Disparities in Heirs’ Property Ownership, American Arbitration Association (Dec. 7, 2022), <https://nysba.org/events/using-alternative-dispute-resolution-to->

publications, magazines, scholarly journals, and other media outlets.¹⁷⁴ There have also been three magazine issues entirely dedicated to the topic of DEI in dispute resolution, two published by the ABA Dispute Resolution Section in 2009 and 2022 and the third published by the Association for Conflict Resolution in 2013.¹⁷⁵

Specific resources have also been developed by professional associations to increase education among end-users about the importance of diversity in neutral selection. In 2022 the ABA Dispute Resolution Section published a *Resource Guide for the Selection of Diverse Arbitrators and Mediators* in partnership with the Federal Bar Association Alternative Dispute Resolution Section and CI Arb North America Branch.¹⁷⁶ Another promotional effort was by members of The National Association of Arbitrators, who created a video series to raise awareness about diverse neutral selection entitled, “Why Diversity, Equity, Inclusion and Belonging is Important to Me.”¹⁷⁷

Another way members of the field have worked to increase awareness about diversity in dispute resolution is by giving awards to individuals who promote diversity, equity, and inclusion in the field. The Association for Conflict Resolution gives the Marvin E. Johnson Diversity & Equity Award, which is given to “an outstanding contribution or a specific extraordinary achievement that has enhanced diversity and equity within an area of

address-racial-ethnic-and-socio-economic-disparities-in-heirs-property-ownership-hybrid/ [https://perma.cc/JNT5-2JDK].

174. See e.g., Marvin E. Johnson & Maria R. Volpe, *The Color of Money: Compensation Opportunities and Examples include: Barriers*, DISP. RESOL. MAG., 2017; Homer C. La Rue, *A call – and a blueprint – for change*, 27 DISP. RESOL. MAG. 6 (2021); David A. Hoffman & Lamont E. Stallworth, *Leveling The Playing Field for Workplace Neutrals: A Proposal for Achieving Racial and Ethnic Diversity*, DISP. RESOL. J., Feb./Apr. 2008; Carrie Menkel-Meadow, *Women in Dispute Resolution: Parties, Lawyers and Dispute Resolvers - What Difference Does “Gender Difference” Make?*, DISP. RESOL. MAG., 2012.

175. See *Focus: Uncovering Race in Dispute Resolution*, 15 DISP. RESOL. MAG. 5, 2009; *Reckoning with Race and Racism*, 27 DISP. RESOL. MAG., no.1, 2021; *Looking at Diversity and Equity*, ACREOLUTION Q. MAG., Winter 2013 at 4.

176. *A Resource Guide for the Selection of Diverse Arbitrators and Mediators*, A.B.A. DISP. RESOL. SEC. (Apr. 2022), https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/leadership/resource-guide-for-selection-of-diverse-arbitrators-mediators.pdf [https://perma.cc/PWD9-9Q5J].

177. *Diversity Initiatives*, NAT'L ACAD. OF ARBITRATORS, <https://naarb.org/diversityinitiatives/> [https://perma.cc/D8S3-VQHF] (last visited July 2, 2023); see also *Why Diversity, Equity, Inclusion and Belonging Is Important to Me*, NAT'L ACAD. OF ARBITRATORS, <https://www.youtube.com/playlist?list=PLh434Ud-aadCV31FLDfzp2guTeDe9mo1b> [https://perma.cc/NV5L-ECXC] (last visited July 2, 2023).

society.”¹⁷⁸ The ACR Diversity Committee has also given a separate Diversity & Equity Award to a member of the organization who promotes diversity and inclusion initiatives within the organization.¹⁷⁹ The International Center for Conflict Prevention and Resolution National Taskforce on Diversity also gives out an annual Diversity Award to an individual for their outstanding contributions to diversity in ADR.¹⁸⁰

IV. INITIATIVES AIMED AT INCREASING EQUITY FOR PROCESS PARTICIPANTS

This section will discuss DEI DR initiatives designed to increase equity for dispute resolution process participants. These initiatives include mandatory anti-bias training; equity and inclusion focused mediation trainings; organizational grants to fund diversity, equity and inclusion work among dispute resolution providers; and efforts to elevate the voices of scholars from diverse backgrounds and increase scholarship about equity for process participants in dispute resolution.

A. Mandatory Anti-Bias Training

Mandatory anti-bias training for neutrals is one way that courts and ADR service providers have worked to combat inequity in dispute resolution processes.¹⁸¹ These training requirements are intended to increase

178. Tajae Gaynor, Marvin Johnson, & Angelica Tolbert, *Diversity & Equity in ACR*, ACRESOLUTION Q. MAG., Winter 2013, at 7, 9; see also *Marvin E. Johnson Award*, THE ASS'N FOR CONFLICT RESOL., <https://acrnet.org/page/MarvinJohnson> [<https://perma.cc/N2V3-D9L4>] (last visited Aug. 1, 2023). Previous awardees include Ken Cloke, Hon. Timothy K. Lewis, Dr. Terry Flowers, Sandra S. Yamate, Peacebuilders International, Tim Wise, Ambassador J. Christopher Stevens, Chief Judge Robert M. Bell, Navajo Elder James Peshlakai, Susan Collins Marks and John Marks, Nelson and Joyce Johnson, and The Rev. Mpho A. Tutu. *Id.*

179. *Id.*

180. See *Diversity Award, Outstanding Contribution to Diversity in ADR*, CPR, <https://www.cpradr.org/diversity-award> [<https://perma.cc/7UQD-GEE3>] (Last visited Nov. 2, 2023). Awardees include Amanda Lee, FCI Arb, Professor Benjamin Davis, REAL – Racial Equity for Arbitration Lawyers co-founders Dr. Kabir Duggal and Rekha Rangachari, Gail J. Wright, Hon. Timothy Lewis (Ret.), Lucy Greenwood, Barry Leon, PD Villarreal, Louise Barrington, Laurel Pyke Malson, and Marvin E. Johnson. *Id.*

181. *Alternative Dispute Resolution Anti Bias Training Guidelines*, N.Y. STATE CT. UNIFIED CT. SYS. (Oct. 2022), <https://ww2.nycourts.gov/sites/default/files/document/files/2022-10/ADR-OJIDI%20Anti-Bias%20Training%20Guidelines%20-%20Oct%202022.pdf> [<https://perma.cc/H6NR-LTDL>] (last visited, July 31, 2023); *CME Sponsor Activities*, FLA. CTS., <https://www.flcourts.gov/Resources->

awareness of implicit biases among neutrals, to lessen negative impacts on marginalized communities,¹⁸² and to decrease systemic exclusion and insensitive practices described above in Part III of this article.¹⁸³ In 2022, the New York State Court System implemented an administrative order that requires all mediators, neutral evaluators, arbitrators and special masters to complete two hours of anti-bias training every two years.¹⁸⁴ The order lists the objectives of the training, which include increasing “awareness of bias and its impact”, providing neutrals with tools to manage bias, reducing or mitigating the impact of bias on outcomes, and promoting “inclusivity and cultural awareness in ADR services”.¹⁸⁵

The Florida State Court system also requires mediators to complete 16 hours of continuing mediator education (“CME”) every two years, which includes a minimum of one hour of diversity/cultural awareness education.¹⁸⁶ Florida also maintains an extensive list of free CME opportunities, including programs on increasing the selection of neutrals from diverse backgrounds, neurotrauma of domestic violence and its impact on women, implicit bias, and eliminating cultural bias.¹⁸⁷

Several court-annexed programs have mandated diversity and inclusion and/or anti-bias modules in their basic mediation training programs.¹⁸⁸

Services/Alternative-Dispute-Resolution/Training-Information/Continuing-Mediation-Education/CME-Sponsor-Activities [https://perma.cc/XW5B-C3YR] (Last visited Nov. 2, 2023).

182. Herman, *supra* note 18.

183. BEYOND EQUITY, *supra* note 21, at 121.

184. AO/124/22, ADMIN. ORD. (Chief Admin. Judge of the Cts. 2022) <https://ww2.nycourts.gov/sites/default/files/document/files/2022-05/AO124-22.pdf> [https://perma.cc/W4N7-FR V4].

185. *Id.*

186. *How to Become a Florida Supreme Court Certified Mediator, Step by Step Guide*, FLA. DISP. RESOL. CTR. 12, (revised Jan. 2023), <https://www.flcourts.gov/content/download/682798/file/how-to-become-a-mediator-guide-january-2023.pdf> [https://perma.cc/Z8UB-U49D].

187. *See Free Continuing Mediator Education (CME) Opportunities*, FLA. DISP. RESOL. CTR., 8, 9, <https://www.flcourts.gov/content/download/633571/file/free-cme-july-2023.pdf> [https://perma.cc/ZEY4-T2UU] (Last visited Nov. 30, 2023).

188. *See Mediation Training Standards and Procedures*, STATE CT. ADMIN. OFF., MICH. SUP. CT. (Jan. 1, 2023), <https://www.courts.michigan.gov/4907ff/siteassets/court-administration/standardsguidelines/dispute-resolution/mediator-training-standards-and-procedures.pdf> [https://perma.cc/Z87M-8XAS]; *see also* MD. R. ADR RULE 17-104 (2023), <https://casetext.com/rule/maryland-court-rules/title-17-alternative-dispute-resolution/chapter-100-general-provisions/rule-17-104-basic-mediation-training-programs> [https://perma.cc/D5TF-S8YM]; *see also Mediation Training Curriculum Guidelines* N.Y. STATE CT., ADR (Dec. 2022), <https://ww2.nycourts.gov/sites/default/files/document/files/2022-12/Part%20146%20Mediation%20Curriculum%20Guidelines%20Dec%202022%20.pdf> [https://perma.cc/C37T-K9AX] (last visited July 11, 2023).

Additionally, Resolution Systems Institute, an organization that evaluates and administers court-annexed dispute resolution services, has developed a resource guide for court-annexed ADR programs to support their efforts to increase DEI and accessibility efforts in dispute resolution processes.¹⁸⁹

Some private ADR service providers are also requiring annual anti-bias training for their neutrals. In 2021, the AAA hosted a required course for most of its panel members called *Impartiality: Do You Know Where Your Biases Are?*¹⁹⁰ CPR hosted an anti-bias training for its neutrals in October of 2023.¹⁹¹

B. Equity and Inclusion Focused Dispute Resolution Training

Another means to increase equity in the practice of dispute resolution is through the development of training that focuses on equity and inclusion in the dispute resolution process. One example is inclusive mediation, which was founded in Maryland in the 1990s and is listed by the Maryland State Court System as one of the predominant forms of mediation practiced in the state.¹⁹² Inclusive mediation encourages radical acceptance (or inclusion) of everyone and everything brought to the mediation process.¹⁹³ Inclusive mediation does not require guidelines for how participants engage in the process and attempts to eliminate any form of “tone policing” by the mediator.¹⁹⁴

Leah Wing, founder of the Social Justice Mediation Institute, developed a form of equity focused mediation training.¹⁹⁵ When describing the training

189. *Diversity, Equity, Inclusion & Accessibility Basics*, RSI, <https://www.aboutrsi.org/special-topics/deia-basics> [<https://perma.cc/YY6B-UNZR>] (last visited July 2, 2023).

190. E-mail from Jeff Zaino, Vice President, Commercial Division at American Arbitration Association - International Centre for Dispute Resolution to author (July 24, 2023 3:58 PM EST.) (on file with author).

191. E-mail with Ellen Waldman, Vice President of Advocacy and Educational Outreach, International Institute for Conflict Prevention and Resolution, (July 24, 2023 at 4:23PM EST.) (on file with author).

192. *Maryland Program for Mediator Excellence: Mediation Framework Descriptions (2010)*, <https://www.mdcourts.gov/sites/default/files/import/macro/pdfs/mediationdefinitions.pdf> [<https://perma.cc/C8JP-BX9X>] (approved May 19, 2020).

193. Caroline Harmon-Darrow, Lorig Charkoudian, Tracee Ford, Michele Ennis, & Erricka Bridgeford, *Defining Inclusive Mediation: Theory, Practice, and Research*, CONFLICT RESOL. Q. (2020).

194. *Id.*

195. *Mediation Training from a Social Justice Perspective*, SOC. JUST. MEDIATION INST., <http://www.sjmediation.org/> [<https://perma.cc/6V34-F6B5>] (last visited July 31, 2023).

approach, Wing explains that the training is developed on the assumption that mediation does not produce fair and equal treatment for all and created a training that provides methods and strategies to "counter the potential unfair and unequal process."¹⁹⁶

A training resource focused on equity for individuals with mental health needs was launched in 2023. The initiative is called the Dispute Resolution in Mental Health ("DRMH") Initiative and is operated by the CUNY Dispute Resolution Center at John Jay College and MH Mediate.¹⁹⁷ The DRMH Initiative offers free courses about conflict resolution and mental health communication skills.¹⁹⁸ One course is specifically designed for conflict resolution professionals to "become sensitive, impartial, and accessible to parties with mental health needs."¹⁹⁹

C. Grants Funding Organizational DEI Efforts

Grants designed to fund DEI work in dispute resolution organizations are yet another type of initiative to increase equity in dispute resolution processes. One national grant offering this type of funding is the AAA-ICDR Foundation.²⁰⁰ As part of its mission, the Foundation funds projects that "eliminate barriers to and expand access to the use of alternative dispute resolution to help marginalized and underserved groups' access justice."²⁰¹ The foundation delineates four core values, one of which is providing funding to individuals from diverse groups.²⁰²

We also identified two local grant programs that fund initiatives aimed at increasing diversity, equity and inclusion efforts by community dispute resolution centers. The first is the Minnesota State Bar Association Alternative Dispute Resolution Section, which offers grants between \$2,500 and \$10,000 to nonprofit organizations that "address diversity, equity and

196. *Id.*

197. *DRMH Initiative: Mental Health Communication and Conflict Resolution Resources*, CUNY DISP. RESOL. CTR. & MH MEDIATE, <https://drmhinitiative.org/> [<https://perma.cc/Q276-QBMH>] (last visited July 31, 2023).

198. *Id.*

199. *Id.*

200. *See International Centre for Dispute Resolution*, AM. ARB. ASS'N, <https://aaaicdrfoundation.org/> [<https://perma.cc/7JR9-JSQW>] (last visited July 31, 2023).

201. *Id.*

202. *Id.*

inclusion in the ADR and community mediation work.”²⁰³ The Minnesota State Bar Association also worked to make its application process inclusive for those for whom a written submission is a barrier by offering an option to submit the application in writing or via Zoom interview with the ADR Grant Committee.²⁰⁴

The second local grant is issued by the Massachusetts Office of Public Collaboration (MOPC), which administers funds to community mediation centers throughout the state of Massachusetts. In 2022, the MOPC launched a DEI initiative with the objective of “breaking down barriers against realizing diversity, and also pursu[ing] changes to create greater equity and inclusion in community mediation.”²⁰⁵ Through this initiative, MOPC awarded \$160,000 in grants to community mediation centers to conduct DEI organizational assessments.²⁰⁶ In its annual report, the MOPC indicated that the grant awards resulted in “mediation training scholarships and stipends, a mediation training for a diverse cohort, DEI trainings for staff, board and volunteers, and an initiative to begin a DEI assessment, community listening sessions, and the hiring of Spanish and Portuguese language interpreters.”²⁰⁷ An additional bonus award was granted later in the year, which supported the continuation of center DEI efforts, including organizational changes to promote and incorporate DEI.²⁰⁸ The MOPC team also developed a DEI learning community to encourage collaboration and share resources among the centers.²⁰⁹

Prior to developing the DEI grant, the MOPC convened listening sessions with diverse communities across Massachusetts to improve its understanding of “barriers to inclusion in community mediation” and developed a committee to “examine the structural barriers inherent in the volunteer mediator model.”²¹⁰ Through these listening sessions, the MOPC

203. *ADR Grants Program*, MINN. STATE BAR ASS'N, <https://www.mnbar.org/members/sections/adr-section/grant-application> [https://perma.cc/YGV4-RLSK] (last visited July 31, 2023).

204. *Id.*

205. Madhawa Palihapitiya, *Massachusetts Community Mediation Center Grant Program: Fiscal Year 2022 Report & Evaluation*, MASS. OFFICE OF PUB. COLLABORATION PUBL'NS 14 (Dec. 31, 2022), https://scholarworks.umb.edu/mopc_pubs/33 [https://perma.cc/4QLR-ZYFX].

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.* at 14.

210. *Id.*

assessed power structures in the mediation process and identified barriers to participation in the process including economic status, social class, language barriers, and lack of trust and cultural awareness.²¹¹

D. Efforts to Increase Scholarship About Equity in Dispute Resolution Processes

Lastly, specific initiatives exist to increase scholarship about equity in dispute resolution and elevate the voices of scholars from diverse backgrounds.

The Practitioners Research and Scholarship Institute (“PRASI”) was formed in 2000 by S.Y. Bowland, Linda James Myers, Phillip M. Richards, Beth Roy, and Mary Adams Trujillo to increase scholarship around equity in dispute resolution.²¹² The editors explain that “concerned not only with what they perceived to be an increasing exclusion of practitioners and scholars of color, but also with an absence of critical dialogue about questions of social justice, these practitioners and scholars sought a deepening of perspectives at the center of the pool of shared knowledge.”²¹³ The group has published two important volumes of literature, *Recentering Culture and Knowledge in Conflict Resolution Practice* and *Beyond Equity (2008)* and *Inclusion in Conflict Resolution (2022)*, which highlight the lived experience of people of color in the field of conflict resolution.²¹⁴ They also host a multicultural community network and symposia and conduct research on conflict resolution specifically as it relates to “issues of multiculturalism.”²¹⁵

Another effort to increase scholarship about equity in dispute resolution processes for marginalized communities stemmed from the Minority Initiative in Alternative Dispute Resolution described above in Part IV. Through that initiative, the Capitol University Law Review published a journal issue to articles focused on the impact of ADR on minority

211. Madhawa Palihapitiya, Jarling Ho & Shino Yokotsuka, *Diversifying Community Mediation in Underserved and Underserved Communities*, ACRESOLUTION MAG., Jan. 2023, at 13.

212. RE-CENTERING CULTURE AND KNOWLEDGE IN CONFLICT RESOLUTION PRACTICE, SYRACUSE UNIVERSITY PRESS xi-xiii (Mary Adams Trujillo, S.Y. Bowland, Linda James Myers, Phillip M. Richards, & Beth Roy eds., 2008) [hereinafter RE-CENTERING CULTURE].

213. *Id.*

214. RE-CENTERING CULTURE, *supra* note 212; BEYOND EQUITY, *supra* note 22.

215. PRASI, <https://www.prasi.org/> [<https://perma.cc/WVV4-DPNT>] (last visited July 31, 2023).

communities with articles by a diverse group of scholars, including Floyd D. Weatherspoon, Oliver Solomon, Jr., Sharon Press, Larry J. Pittman, Bobby Marzine Harges, and Janice Tudy-Jackson.²¹⁶

A more recent initiative to increase scholarship around dispute resolution and systems design is the Divided Communities Project symposia series.²¹⁷ The series is intended to help communities that are “engaged in the design, development, and implementation of truth and reconciliation-style commissions.”²¹⁸ The call for proposals for the symposia and accompanying articles invite contributions regarding all aspects of the design of racial equity initiatives across the U.S. and offer a modest stipend for “Black, Indigenous, and other people of Color (“BIPOC”) authors with non-academic careers.”²¹⁹ Additionally, the Ohio State Journal on Dispute Resolution is publishing four journal volumes on topics relating to racial equity and systems design.²²⁰

V. BUILDING DEI DR INITIATIVES TO LAST

Challenges for DEI DR initiatives include lack of data about short and long-term outcomes of pipeline and selection initiatives, lack of resources and funding, the fragmented nature of information about DEI DR initiatives, and challenges around program design, leadership, and succession. These challenges can be addressed through increased efforts to track data, increased efforts to build coalitions and foster future leadership, and continued efforts to pool resources and centralize information about DEI

216. See Weatherspoon, *supra* note 51; see also Oliver Solomon, Jr., *Alternative Dispute Resolution (ADR) and Minorities in the Federal Courts*, 39 CAP. U. L. REV. 805 (2011 Press, *supra* note 16, at 848; Bobby Marzine Harges, *Disaster Mediation Programs – Ensuring Fairness and Quality for Minority Participants*, 39 CAP. U. L. REV. 893 (2011); Larry J. Pittman, *Mandatory Arbitration: Due Process and Other Constitutional Concerns*, 39 CAP. U. L. REV. 853 (2011); see also Janice Tudy-Jackson, *Non-Traditional Approaches to ADR Processes That Engage African-American Communities and African-American ADR Professionals*, 39 CAP. U. L. REV. 921 (2011).

217. Conducted in partnership with the Harvard Negotiation and Mediation Clinical Program (HNMCP) and Stanford Law School’s Martin Daniel Gould Center for Conflict Resolution (SLS).

218. William Froehlich, Sara del Nido Budish, Jan Martinez, Cary McClelland, Neil McGaraghan & Carl Smallwood, *An Introduction to the Collaborative Symposium Series “Rethinking Systems Design for Racial Justice & Equity”*, 38 OHIO ST. J. ON DISP. RESOL. 1, 2 (2023).

219. *Id.* at 4.

220. *Id.* at 4–6. Journal article topics include lessons learned from mediating race and equity issues, discussing race in rural and other non-diverse communities, and applying dispute resolution and technology to improving police interactions with black civilians. *Id.*

DR work. This section will discuss these challenges and offer ways to strengthen current and future DEI DR initiatives.

A. Increasing Accountability for DEI DR Pipeline and Selection Initiatives

With so many DEI DR initiatives developing in recent years, it is an opportune time to study the efficacy of these programs. Except for the very small ACR Diversity Mentoring Pilot Project, there is little public information available about the long-term outcomes of DEI DR fellowship and mentorship programs.²²¹ Among the pipeline programs described in this article, there are more than 200 individuals who have participated in fellowship or mentorship programs during the last 20 year period.²²² In assessing these programs, we should look to whether “graduates” of the fellowship and mentorship programs continue to work as neutrals, their impressions regarding equity and inclusion in the field, and whether they were able to build sustainable careers.

Yet another reason to study these programs is that pipeline initiatives require a substantial investment of resources by both the host organization and the participants. Many of the pipeline initiatives require at least a one-year commitment; attendance at training programs; expectations that participants will shadow or participate in cases, which can require several hours or even multi-day commitments; additional time-commitments from mentors and mentees for meetings; and attendance at other events or conferences hosted by the sponsoring organization. If organizations are going to ask for such substantial commitments in exchange for the hope of positive long-term career outcomes, we should examine whether the outcomes merit the costs. Further, because the time commitments of the fellowships are so great, and the outcomes are not guaranteed, the field

221. Goodson, *supra* note 65, at 24. Seven years after the completion of the fellowship, two out of the three mentees left the field of dispute resolution because of barriers and challenges similar to those outlined in the Volpe, Bush, Johnson, and Kwok research. See *AAA Higginbotham Fellows Program*, *supra* note 71; see also *International Institute for Conflict Prevention & Resolution, CPR, LCLD & FINRA Program Aims for Actual Selection, Not Just Training, of Diverse Neutrals*, *supra* note 76; Saint Louis, *supra* note 86; *ABA Dispute Resolution Section Fellowship Program*, *supra* note 88.

222. See *AAA Higginbotham Fellows Program*, *supra* note 71; see also *International Institute for Conflict Prevention & Resolution, CPR, LCLD & FINRA Program Aims for Actual Selection, Not Just Training, of Diverse Neutrals*, *supra* note 76; Saint Louis, *supra* note 86; *ABA Dispute Resolution Section Fellowship Program*, *supra* note 88.

should reconsider the norms of these programs and compensate fellows and mentees for their time and participation like the Habitus Fellowship and the Divided Communities Symposium Series described above.²²³ As more groups invest time and resources to develop these programs, we should obtain data to develop a set of best practices for mentorship and fellowship programs in dispute resolution, so local organizations have resources to develop effective pipeline programs.

Members of the dispute resolution field should also double down on efforts to track the appointment to rosters and the selection of neutrals from diverse backgrounds. Initiatives like the Ray Corollary Initiative, which ask parties to measure their selection data, and the JAMS Neutral Utilization Report, which helps users do the tracking, may increase neutral diversity, as it has been demonstrated that diversity initiatives with accountability measures substantially increase the likelihood of a DEI initiative's success.²²⁴ Organizations developing clauses, plans, policies, and directories to increase diversity, equity, and inclusion, should follow this model and develop accountability measures and methods to report on their efforts. Those administering diverse neutral directories should also track efficacy by tracking visitors to the directory site, and by asking directory members to track whether directory membership led to paid opportunities.

B. Centralizing Resources and Pooling Efforts to Implement DEI DR Initiatives

In our conversations with individuals implementing DEI initiatives throughout the U.S., funding and resources were repeatedly discussed as a challenge. Many DEI DR pipeline and selection initiatives are created by individuals who are volunteers, either within professional associations, or

223. See Froelich, *supra* note 218 at 4 n.11. An example of this reexamination was done by the leadership of the Collaborative Symposium Series "Rethinking Systems Design for Racial Justice and Equity," which offered participants of color a stipend for their participation in the program; *see also* Habitus, *supra* note 102. Habitus offers a \$9,460 stipend to its fellows. *Fellowship for Diversity in Negotiation, Mediation, and Conflict Resolution*, *supra* note 102.

224. Alex Green IV, *Minority ADR Neutrals: The Invisible Class*, Just Resolutions Newsletter, A.B.A. DISP. RESOL. SEC (2021) (citing a study by Alexandra Kalev, Frank Dobbin, and Erin Kelly published in 2006 that analyzed "data on Equal Employment Opportunity (EEO) initiatives designed to increase diversity in 708 workplaces, as well as the retention and promotion of women and minority employees covering 1971-2002, which concluded that the only initiatives that produced consistent results were the ones with established accountability for diversity outcomes").

staff at dispute resolution service providers or courts, who have extensive responsibilities beyond implementing diversity and inclusion initiatives. These limited resources impact the sustainability of certain initiatives, because volunteers have limited time and resources, and a group or individual's availability and desire to do DEI work can change over time.

One way to address the lack of resources is to work collectively to amplify the impact of existing DEI DR initiatives. Currently, there is a lack of centralized data about DEI DR initiatives, including scholarships, fellowships, and other opportunities relating to DEI and ADR.²²⁵ Information about local initiatives is difficult to find as many professional organizations share information directly with their members and keep much of it behind paywalls.²²⁶ Scholarships for training opportunities are listed on training pages of individual organizational websites, and there is no clearinghouse for these pipeline opportunities.²²⁷ The creation of a centralized location for DEI DR initiatives, trainings and scholarships, and other opportunities for diverse practitioners may help increase awareness about these opportunities.

There are also countless programs, workshops, events, conferences, and symposia hosted by bar associations, professional associations, ADR service providers, law firms, courts, and educational institutions on the topic of DEI in dispute resolution. Information about these events should be collected as part of a national DEI DR clearinghouse and would serve as a useful resource when planning future events, with the additional benefit of avoiding redundant programming and cyclical conversations. Creating a clearinghouse may also provide additional clarity about where the field has built strong connections and pathways for increased DEI and where we should expand our efforts.

Resources to promote equity in dispute resolution, such as anti-bias training, can be maintained in a central clearinghouse format. The Florida

225. Johnson & Volpe, *supra* note 4 at 14 (“None of the mainstream journals in the dispute resolution field, law or the social sciences have covered the evolution of diversity-related developments in a comprehensive and systematic fashion. The information that does exist is often fragmented and does not address concerns like the nuances of what happens when, who did what, why some situations were groundbreaking, what issues surfaced at different points, and so on.”).

226. *In the Alternative*, ILL. STATE BAR ASS'N SEC. ON ALT. DISP. RESOL., <https://www.isba.org/sections/adr/newsletter> [<https://perma.cc/F4JV-4FBS>] (last visited November 20, 2023).

227. *Supra* note 45.

State Bar publishes links to free anti-bias continuing mediator education on the Court's website,²²⁸ and it can be shared with mediators serving in other jurisdictions without much effort. ADR service providers that offer anti-bias training to their neutrals might also consider posting these trainings to a clearing house or finding ways to share this resource more broadly, such as offering access to the trainings for neutrals serving court-annexed dispute resolution programs.

Another way that builders of DEI DR initiatives can increase targeted use of their limited resources is to increase communication with stakeholders. This was done by the Massachusetts Office of Public Collaboration (MOPC) prior to developing a DEI-specific grant for community dispute resolution centers throughout the state.²²⁹ As a result of their efforts, MOPC identified specific needs of their stakeholders, including more equitable and inclusive HR practices, the need for bilingual Spanish-English culturally responsive mediation training, and gender-neutral language guidance for mediation centers.²³⁰ The MOPC was then able to offer funding and resources targeted to address those needs.²³¹

C. Long-Term Planning

When building DEI DR initiatives, individuals should develop both short and long-term goals. The objective of a planning committee should not only be to create an initiative, but also to plan for the initiative's long-term success. Partnering with large organizations that have the resources to sustain a DEI DR initiative seems to increase the likelihood of an initiative's success.²³² However, even when a DEI initiative is supported by multiple large ADR organizations, the initiative is not guaranteed survival.²³³ Those

228. See *Free Continuing Mediator Education (CME) Opportunities*, FLA. DISP. RESOL. CTR., <https://www.flcourts.gov/content/download/633571/file/free-cme-july-2023.pdf> [<https://perma.cc/ZEY4-T2UU>] (last visited July 11, 2023).

229. Palihapitiya, *supra* note 205.

230. See Prepared statement in response to author's questions by Jarling Ho, Program Manager, Massachusetts Office of Public Collaboration (received on July 17, 2023) (on file with author).

231. *Id.*

232. See *AAA Higginbotham Fellows Program*, *supra* note 71; see also *International Institute for Conflict Prevention & Resolution, CPR, LCLD & FINRA Program Aims for Actual Selection, Not Just Training, of Diverse Neutrals*, *supra* note 76; Saint Louis, *supra* note 86; *ABA Dispute Resolution Section Fellowship Program*, *supra* note 88.

233. See *ACCESS ADR: An Initiative Launched With The Support Of The JAMS Foundation And*

planning initiatives should also develop a leadership succession plan, as initiatives led by a single individual are less likely to last unless there is a clear leadership and succession plan in place.²³⁴

If a program is designed to offer experiential opportunities for neutrals from diverse backgrounds, the planning team should develop a long-term plan to ensure a steady stream of cases for participants prior to the start of the program. Court ADR programs may serve as an effective partner for pipeline initiatives with experiential opportunities, as the referrals are built in, and the parties are often used to a model where neutrals are appointed by the court system. Obtaining paid work for individuals through pipeline programs is challenging because many paid opportunities rely upon the ADR consumer to select their neutral.²³⁵ Despite this challenge, those administering pipeline programs should continue pursue methods for connecting participants with paid opportunities either during or immediately following their completion of the pipeline program.²³⁶

Long-term planning is also required for those who oversee directories of neutrals from diverse backgrounds. These directories need constant updating to stay relevant and require a great deal of labor. Without an organization with the necessary resources handle the volume of work, the directories risk becoming obsolete. For those planning directories featuring diverse neutrals, it is worthwhile to develop a plan to maintain the directory and a team to manage the updates, raise awareness about the directory's existence, and track its use.

D. Observations about DEI DR Initiative Leadership

Leadership in DEI DR initiatives requires creativity, flexibility, and perseverance. Dr. Kathy Gonzales, Chief Learning & Development Officer Habitus Incorporated, who built the Habitus Fellowship, expressed the need for creativity and perseverance in seeking non-traditional funding sources for the Habitus fellowship.²³⁷ Joanne Saint Louis, Director of

The ABA, *supra* note 55.

234. See *The Minority Initiative in Alternative Dispute Resolution*, *supra* note 49.

235. See Johnson & La Rue, *supra* note 25.

236. See *ACCESS ADR: An Initiative Launched With The Support Of The JAMS Foundation And The ABA*, *supra* note 55.

237. Prepared statement in response to author's questions, Dr. Kathy Gonzales, Chief Learning & Development Officer Habitus Incorporated (received July 1, 2023) (on file with author).

Diversity Outreach for JAMS, described the need for flexibility as she designs DEI initiatives within the organization and makes adjustments based on results and feedback from end-users.²³⁸

Homer La Rue and Dr. Katherine Simpson, Chair and Vice Chair of the Ray Corollary Initiative, expressed both the frustration and the optimism and hope expressed by many of the “architects” of DEI DR initiatives throughout the U.S.²³⁹ They stated:

Just as we’ve been surprised or even disheartened at times by opposition to increased diversity, we have also been impressed and encouraged by those who want to improve ADR for users and providers alike, and who recognize that increasing diversity is a key component to improving ADR. Changing course and improving is not an admission that the prior course was wrong – rather, it is an action that acknowledges that improvement involves change.²⁴⁰

In the face of the substantial challenges that exist in building DEI DR initiatives, those who choose to lead these initiatives should prepare for these challenges by creating initiatives with clear accountability measures, developing short and long-term goals and plans, encourage leadership succession planning, collaborating with well-resourced organizations, and remembering that creativity, flexibility, and perseverance will be necessary to propel DEI efforts forward.

E. Additional Challenges for DEI Initiatives

There have been recent efforts to roll-back certain DEI policies in bar associations, such as the requirement that a minimum number of presenters on a panel must be diverse based on “race, ethnicity, gender, sexual

238. Prepared statement in response to author’s questions, Joanne Saint Louis, Director of Diversity Outreach for JAMS, (received June 20, 2023) (on file with author).

239. Prepared statement in response to author’s questions, Homer La Rue, Chair, Ray Corollary Initiative, and Dr. Katherine Simpson, Vice-Chair, Ray Corollary Initiative, in response to the author’s questions (received on July 14, 2023) (on file with author).

240. *Id.*

orientation, gender identity, disability, and multiculturalism.”²⁴¹ In 2022, The ABA Board of Governors softened its diversity equity and inclusion policy to eliminate numerical requirements for diverse faculty and instead said it would “invite and include” moderators and faculty from diverse communities.²⁴² This raises a question as to the dispute resolution associations that continue to maintain numeric diversity requirements and whether they will continue to do so despite these roll-backs. Further, in 2023, the Florida Supreme Court eliminated a requirement that judges attend a daylong training on “fairness and diversity” and discontinued its “Standing Committee on Fairness and Diversity.”²⁴³ Florida is one of the few state court systems that requires continuing mediator education in diversity and cultural awareness, and it is unclear whether these roll backs will spread to the mediation program.

Additionally, the recent ruling on affirmative action in higher education may also lead to changes in the way the above DEI DR initiatives are structured.²⁴⁴ In a recent interview with the New York Times, Edward Blum, who was an advocate for the plaintiffs in *Students For Fair Admissions, Inc. v. President and Fellows of Harvard College*, indicated that programs such as “internships, scholarships, certain research grants – [need] to be revisited if they have been race-exclusive.”²⁴⁵ It is possible that organizations and businesses that have previously implemented DEI ADR programs indicating priority for individuals from specific racial backgrounds may revise their policies due to the threat of litigation.

241. *In re: Amend. to Rule Regulating the Fla. Bar 6-10.3, 6-10.3*, No. SC21-284 (Fla. 2021) (amending a Florida State Bar Rule so as not to “approve any course submitted by a sponsor, including a section of The Florida Bar, that uses quotas based on race, ethnicity, gender, religion, national origin, disability, or sexual orientation in the selection of course faculty or participants”).

242. Debra Cassens Weiss, *ABA's new CLE policy appears to comply with state ban on diversity 'quotas,' Florida Bar says*, A.B.A. J. (Apr. 6, 2022) <https://www.abajournal.com/web/article/aba-revises-cle-policy-after-florida-bans-course-credit-over-panel-quotas-numeric-mandates-are-gone> [<https://perma.cc/6Z2M-32U8>] (“Under the old CLE policy, programs with three or more panelists, including the moderator, had to have at least one member from a diverse group. Programs with five to eight panelists had to have at least two diverse members, and programs with nine or more panelists had to have at least three diverse members.”).

243. *In re: Standing Committee on Fairness and Diversity*, No. AOSC23-7 (Fla. 2023), <https://supremecourt.flcourts.gov/content/download/859293/file/AOSC23-7.pdf> [<https://perma.cc/PW2R-7Q55>].

244. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

245. Lulu Garcia-Navarro, *He Worked for Years to Overturn Affirmative Action and Finally Won. He's Not Done.*, N.Y. TIMES, July 8, 2023.

CONCLUSION

With so many new DEI DR initiatives sprouting up and older initiatives having fully grown or lived out their existence, there is a unique opportunity for members of the field to assess what works well and explore how we can better expend our limited time, efforts, and resources. We can do this by developing a method to track short-term and long-term outcomes for fellowship and mentorship programs; supporting accountability and tracking of neutral selection and other DEI efforts; encouraging succession planning and long-term strategies for DEI DR initiatives; increasing communication between DEI DR initiative planners and stakeholders; pooling individual and organizational resources to disseminate DEI DR trainings and resources as widely as possible; and creating a national clearinghouse for DEI DR initiatives and resources.

Now is an important time for members of the field of dispute resolution to coordinate our efforts to improve diversity, equity, and inclusion in dispute resolution. This means working together to develop a cohesive strategy to create sustainable career opportunities for practitioners from diverse backgrounds, build inclusive and equitable organizations, and increase equity and inclusion among the diverse communities we serve.