

Resolution

Newsletter of the National Bar Association
Alternative Dispute Resolution Section

November 2020

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Chairman's Corner by Dean Burrell, Esq.



Welcome to my first Chairman's Corner since being elected Chair during the National Bar Association Annual Conference this past summer. I would like to thank outgoing Chair Emeritus Gloria Johnson for her hard work and incredible ten years of service as chair of the NBA Alternative Dispute Resolution Section and our leader. She has left big shoes to fill, however with her continued support and that of the members of the NBA-ADR Section we will succeed!

During the 2020 NBA Annual Conference the NBA-ADR Credentialing Committee introduced some thirty qualified African-American professional neutrals who have taken training provided by the NBA-ADR and passed our certification process. We could not be prouder and welcome them.

This year we have structured the Section into five Committees; Certified Panel, Programming, External Marketing, Membership Development, Newsletter, and Fundraising/Sponsorship.

The Certified Panel Committee, co-chaired by Chair Emeritus Johnson and myself, will ensure the continued high quality of the Panels of Arbitrators and Mediators, and continuously improve the presentation of our online panels so our "customers" can find professional African American neutrals in their needed specialty areas and geographic regions. The Certified Panel Committee will also focus on internal marketing, partnering with the NBA and its sections so they know where to procure top caliber professional neutrals who look like us. Paul Garrison and Gail Wright co-chair the External Marketing-Communications Committee, which also includes the Section's social media presence. We are excited at the pilot programing they will introduce shortly to test our marketing strategies, focusing on specific specialty areas in selected regions of the country. This Committee will seek out those organizations besides the NBA seeking diversity in ADR such as other bar associations and professional groups.

Erika Butler and Rebeka Ratliff co-chair the Programing Committee which will implement, develop, and deliver CLE programming and podcasts to the Section, the NBA and beyond. They are our in-house experts, creating uniform templates, working with the other Committees to maintain quality standards, and expanding our clientele.

Chair Verlyn Francis and the Membership Development Committee will strengthen the skillset of the members of the Section as the field of ADR continues to evolve. We are excited to see their upcoming training for Section Members, in conjunction with the Programming Committee, on managing virtual mediations and arbitrations now that so much of our practice has moved online with the onset of corona virus. The Membership Development and Certified Panel Committees will also partner with providers such as the AAA, the FMCS, CPR and FINRA to educate prospective members of the Panels permitting their entry to the panels and introducing them to the ADR profession.

Otis McGee and the Fundraising/Sponsorship Committee will establish uniform rules for sponsorship as we procure funding to pay for the activities of the Section. Finally, Carl Turpin and his Newsletter Committee, which has edited and produced this newsletter, will continue to feature our members and their accomplishments, substantive articles, and case updates. I am excited at what the Alternative Dispute Resolution Section has accomplished in the past and am excited at our potential for the future. If you are interested in finding out more about this Section please do not hesitate to contact me at DLBurrell1@gmail.com.

Gloria Johnson's Letter to Honorable Arnette R. Hubbard and Remembering United States Supreme Court Associate Justice Ruth Bader Ginsburg



Hiram Tanner, Gloria Johnson, Knia Tanner, , Justice Ruth Bader Ginsburg, and Honorable Arnette R. Hubbard Past NBA President. Both Knia and Hiram Tanner are certified mediators.

I got your private email address from Ellen Douglas [NBA Board member and Region VII Regional Director], because as I reviewed the photo of you with Justice Ginsburg standing in the Lawyers Lounge with me, my husband, and our daughter. I was filled with warm appreciative thoughts and memories of how supportive you have been of the Women Lawyers through the years as Iris McCollum Green [Former Washington Bar Association President and Chairperson of the NBA Supreme Court Induction Committee] has worked tirelessly to recruit NBA members to become certified to practice before the United States Supreme Court. Frequently, we

remark how Justice Ginsburg was always the first of the Supreme Court Justices to knock on the door and enter the NBA WLD reception after the swearing in ceremony each year, but what was emotionally overpowering for me as I looked at the photos this week - was the fact that on the day that I was able to stand as Movant for my daughter, you - the first woman to serve as

NBA President, was not only there in the courtroom to hear me raise my voice before the nine Justices, but before I nervously stood up, you touched me and personally encouraged me to capture and enjoy the moment. That meant the world to me! Then after the ceremony was over, you came into the reception, took time to take pictures with me and my family and spoke warm words of encouragement and accolades to my daughter. I thank you for making that such a memorable NBA family event. I will always treasure you as not only a trailblazer among NBA Presidents, but you are the platinum standard, in that you have always been there to support not only Iris, me and all of the Women Lawyers, but also the NBA as a whole. You have always been the continuing leader of our organization. I love you and commend you for the fact that you did not just serve as President for one year and then disappear. You have remained present and supportive throughout the years! That speaks volumes for who you are. Please know that you mean so much to me and I deeply appreciate all that you have done, for me, my family, and the NBA.

**Make It Rain: “Learn How to Market your Legal/ADR Practice and Thrive in the Evolving New Normal”
by Joyce A. G. Mitchell, Esq.**

On July 27, 2020, during the virtual NBA 95th Annual Convention, the ADR Section presented a comprehensive seminar by NBA colleagues and an international guest marketing expert, who demystified marketing, encouraged publicity, and provided effective techniques and tips for building a Legal/ADR practice, and getting selected, and serving parties as a panelist for one of the major ADR providers. Ethical concerns for marketing and advertising our practices were also addressed.

The Panel was moderated by NBA ADR Section Vice President, **Alfredia B. Kenny**, Esq., Law Office of Alfredia Kenny, of New York, NY, and former Board member **Joyce Gates Mitchell**, Esq. of Joyce A Mitchell and Associates, PC, of Rockville MD. Serving on the Convention Program Committee with them were ADR Section Chair **Gloria J. Johnson**, Esq., Law Office of Gloria Johnson of Upper Marlboro MD and Section Member, **Paul E. Garrison**, Esq. of the Law Office of Paul E. Garrison, of Oakland, Los Angeles, CA and Houston, TX.

The Panelists were ADR Section Board member **Earlene Baggett-Hayes**, Esq., the Law and Mediation Center, PLLC of Pontiac, Michigan; ADR Section Secretary, **Rebekah Ratliff**, Capital City Mediation, LLC, Suwanee, Georgia; ADR Section member, **Ingeuneal C. Gray**, Esq., Vice President, the American Arbitration Assoc., (AAA) International Centre for Dispute Resolution, Houston, TX; and international guest marketing expert, **Natalie Armstrong-Motin**, Marketing Resolution of Normandie, France.

Natalie Armstrong-Motin began the panel discussion by emphasizing the importance of treating our legal and ADR practices as businesses. The hallmarks of business development are writing articles, speaking before professional and client centered groups, networking, providing, and taking training, and using social media to publicize the business. She gave the attendees, four (4) things to avoid as entrepreneurs and fourteen (14) things which are important to do. The four things she urged the attendees to avoid are: (a) Failing to change with the changing times because placing ads on the television and in magazines are not as effective in marketing as the new ways people are communicating; (b) Volunteering for long periods of times because the cost often outweigh the return benefit of new cases and clients, (c) Ignoring the benefits of being proactive by writing, speaking, or training in the subject matter expertise and (d) Speaking negatively about others.

Some of the fourteen (14) action items which she recommended were:

- Dedicate yourself to being an entrepreneur. Do something every day to proactively develop your business, e.g., read trade magazines, research how to start a blog, watch YouTube videos on business management and marketing, stay up to date with technology, use publicity such as videos, podcasts to reach potential clients; accept credit cards, PayPal, Zelle or participate with paying services like Law Pay;
- Be on social media regularly at least two to five times per week; Post information on your practice, follow your clients, invite them to connect with you, like or share posts, write comments when you like a post, tag others in your field; Include your logo or organization icons;
- Conduct a client centered business by writing thank you notes to your clients, ask how you are doing, put an evaluation form on your website and when you receive comments, adjust your practice;
- Have fees which are straightforward and all inclusive; Under-promise and over-deliver;
- Be easy to contact, have current and complete contact information on your social media sites, business cards and your website;
- Specialize in one thing or in associated, comparable specialties; and
- Anticipate and accommodate your clients' needs, whether physical or sensory to participate in any forums (trial, mediation, arbitration, virtual or in person sessions) to remove any discomfort they may have.

Earlene Baggett-Hayes recommended that you jump start your mediation practice and produce your own public media program. She provided the following tools and techniques:

JUMP-START YOUR MEDIATION PRACTICE

| | |
|---------------------------------------|--|
| Social Media | Write Articles/Books |
| Website | Sign up for Local Court Rosters |
| Brochures | Join Organizations which need services |
| Business Cards | Market to Other Professionals |
| Volunteer at Community ADR orgs. | Keep Your Resume Updated |
| Send Letters | Follow Mediate.com |
| Develop Fliers | Develop a CR tv or radio program |
| Identify Mentors | Join/Established ADR panels, orgs. |
| Attend ADR Events | Attend/Conduct Training |
| Follow up with Contacts | Review Mediators' Resumes |
| Identify Niche Topic(s) for Mediation | Network with Other Mediators |

PERIODICALLY JUMP-START YOUR PRACTICE AGAIN

| | |
|-------------------------------|---|
| Educate Yourself: | Set Goals; Take Training Courses |
| Educate Others: | Become the Trainer |
| | Offer to conduct presentations/seminars |
| Market Your Specialty Skills: | Do a Zoom virtual ad |
| Contact Potential End-Users: | Lawyers, Law Firms, Municipalities, Companies, HR Directors, or Property Managers |

Ms. Baggett-Hayes is the producer of her own public television show, "We Can Work It Out." She provided an outline of steps to develop a media program. They are: Identify a production sources, like a local community public service channel; Locate actors; Develop scenarios with mediation topics, Write scripts, participant outlines, mediator opening and closing remarks; Choose backdrops, and Learn the optimum ways to light, film and stage your show from the production sources.

Rebekah Ratliff identified three areas to make it rain. They were:

- Leverage your social media connections: Like articles and comments of others, use #hashtags to optimize visibility and share with your connections postings which you think will interest them. She recommended that LinkedIn is the best professional social media platform to build and enhance a professional profile. Also remember to endorse or recommend others, and to seek endorsements and recommendations. Twitter and Instagram are other platforms used depending on what you are trying to accomplish or who to reach.
- Relationships are the Secret Sauce: Build a professional network of relationships by intentionally seeking out connections to build mutually beneficial opportunities. Take a

personality profile to see who you are and others so that you will know how to communicate with others. This will help you develop meaningful relationships.

- **Do the Work:** Stay visible by attending selective events and participating in activities, programs, etc., which align with your current and next level goals. Develop your subject matter expertise and be BOLD in showcasing your knowledge and expertise. Collaborate on projects to learn new ways of doing things. Be intentional in your actions. Enlist a mentor(s)...be willing to listen and learn. Have different mentors for different purposes.

Ingeuneal C. Gray focused on roadmaps within the context of the ADR platforms, subject matter expertise, gaining experience and getting exposure. She recommended that there should be dedicated focus on a particular area of practice and expertise. Becoming a member of the AAA means the selectee should have subject matter expertise. Therefore, in anticipation of being on a panel, an individual should consider what he/she wants to do, e.g. as an arbitrator or mediator, and develop the expertise to meet the qualification criteria for that area. She stated that at least 50% of the applicant's current practice should have been in the area where he/she wants to serve as a AAA mediator or arbitrator. The expertise and exposure needed can be developed through mentorship, and even multiple mentorships which can provide exposure needed in different industries so that you can see what you would like to pursue. Shadowing an experienced neutral provides exposure and networking opportunities. Pro bono and volunteering are other great ways to get experience, e.g., in court programs and local government or community infrastructures. Reduced fee, fast track and expedited cases for the provider organizations also provide some opportunities to get experience. Networking and leadership roles in various professional organizations and joining Bar Association ADR sections present other ways to gain and demonstrate your people skills. Ms. Gray echoed the recommendation of an earlier panelist that finding a mentor or ADR professional to shadow, participating in an internship or a fellows program will all prepare you for your selection and success on an ADR panel.

Ms. Gray cautioned the participants that after appointment to a panel there are things which may impact your selection for a case such as a high hourly rate, unreasonable cancellation or postponement fees, a poorly drafted resume or insufficient experience for the type of case to be handled. Billing practices can also impact future selection where there have been invoices presented which are not detailed or the description of services are not clear. The resume should not inflate expertise or be outdated. It is important to use keywords strategically, list technology and video conferencing experience and to state a focus on cybersecurity.

Ms. Gray encouraged the participants to publish articles and post on blogs. However, the articles and blogs should focus on your subject matter expertise.

Link to the seminar marketing manual handout from Armstrong-Motin:

<https://drive.google.com/file/d/13g7114mhsxvikHPi5cE9aGFT4H16uOzN/view?usp=sharing>



Joyce A. G. Mitchell, Esq. is a Board Member and Distinguished Fellow of the International Academy of Mediators ("IAM") and President of Joyce A. Mitchell and Associates, Rockville, MD. She is on the mediator rosters of the EEOC, the Financial Industry Regulatory Authority (FINRA) and the CPR International Institute for Conflict Prevention and Resolution (CPR). Joyce arbitrates for the commercial panel of the American Arbitration Association (AAA), CPR and the FINRA employment and securities panels. Mitchell is an arbitration adjunct at the Carey School of Law, University of MD. Mitchell is a former Chair of the

Maryland State Bar, ADR Section. A certified mediator by the states of VA and NC, she has practiced employment and business law in Maryland and the District of Columbia for 30 years.

ETHICS IN ARBITRATION: Bias, Diversity, and Inclusion (Abstract) by Verlyn Francis©

In recent years, the muted conversations about the lack of diversity in arbitration rosters and within the *ad hoc* arbitration community have developed into a full-fledged drumbeat. Even as Black arbitrators have educated themselves and arbitration is becoming a more universal method of resolving disputes, there remains a glaring lack of diversity among arbitrators selected to conduct arbitrations. Why does this continue when arbitrators are governed by a code of conduct that sets out ethical standards which require arbitrators to be impartial and free of bias. Is the profession dominated by older white men? Are qualified Black arbitrators being excluded from the field by conscious or unconscious bias? Do the arbitral institutions and professional associations have any responsibility to make the profession more closely resemble the population? For that matter, is there any need for diversity among arbitrators? If there is a lack of diversity, what does that say to the public about whose experience and worldview matters and who should make the decisions that affect their lives? Does a monolithic worldview in decision-making matter?

My upcoming article¹ will attempt to answer some of these questions and provide suggestions about how arbitrators can become more inclusive.

Due to the enormity of the subject matter, the discussion in the article is confined to arbitration ethics as it applies to equality of treatment and bias which, under most Arbitration Act, are grounds for vacating an arbitration award.

¹ *Ethics in Arbitration: Bias, Diversity and Inclusion* (2020) 51:2 Cumberland Law Rev.

The decisions of arbitrators are given great deference by the courts because arbitrators are expected to abide by high ethical standards, be impartial, and free from bias. This deference is partially based on the presumption that arbitrators abide by the various codes of ethics put forward by institutions that govern their behaviors. But the problem with rules is that, if we do not understand the reasons for the rule, we can pay homage to the tenet while missing its intent. This can lead eventually to corruption of the rule itself and bring the whole process or institution into disrepute.

Most human beings want to think they are fair and rational in their dealings with others. On the surface, most arbitrators will appear to their peers to be unbiased and impartial, but we now understand that we are the products of our cultural affiliations. If arbitral rosters are made up of arbitrators who attended the same professional schools, worked in the same firms, and are members of the same organizations, etc., it is not difficult to see how the observation of each other's behavior can lead to the sameness of views on who belong, and what is right and wrong.

Scientific research has shown that when we encounter people who do not look like us or who do not belong to our social circles, we might harbor stereotypical thoughts about them. These stereotypes can become biased feelings or prejudice. Overt or explicit bias is rare, but covert or implicit bias is pervasive and can lead to discrimination. As the Jay-Z case showed, the lack of Black arbitrators on the rosters of arbitral tribunals leaves the profession open to charges of bias and can result in historically marginalized parties fearing differential treatment or discrimination in arbitrations.

After undertaking a fulsome analysis of why there is a lack of diverse neutrals, the article sets out a non-exhaustive list of some of the principles that can be adopted by educators, arbitral institutions, arbitrators, and parties to increase the number of Black arbitrators selected to serve on panels.



Verlyn Francis is a professor of alternate dispute resolution at Centennial College, Toronto, Canada; a visiting professor in advanced negotiation at La Salle EMCI in Lyon, France; and a guest lecturer in the LL.M. dispute resolution program at Osgoode Hall Law School. Francis is lawyer, arbitrator, adjudicator, and mediator. She is principal consultant and culture and diversity specialist at Isiko Dispute Resolution Consultants in Toronto, Ontario. Francis has practiced law in Toronto for more than 20 years in the areas of civil litigation, and corporate, commercial, family and estates law.

Physician Heal Thyself: The Lack of Diversity in ADR **By Rebekah Ratliff**

The purpose of this article is to enlighten readers about the lack of inclusion in alternative dispute resolution (ADR), an industry where we are trained to look at issues from all angles.

Diversity and Inclusion (D&I) is a hot topic, but we have diluted the message of important initiatives like D&I by using it so many times (without implementing meaningful change) that it has gone stale. I believe the confusion arises from a disconnect of understanding from different perspectives, from fear and unconscious bias. Diversity is defined as “distinct in kind; unlike; having variety in form.” The broad definition of diversity includes not only diversity of

race, gender, and age, but diversity in thought, skill sets, sexual orientation, mental health, disability, and personal/professional culture. Culture is defined as “the common beliefs and customs of a particular group.” Diverse cultures can exist even in the same family. The acknowledgment and acceptance of those differences is how we effectively communicate and negotiate having some of our interests met in navigating relationships.

We all suffer from unconscious bias. In addition to the possibility of being on the wrong end of bias, imagine existing without privilege. People of color live on the wrong end of bias in more areas than we care to recount. It has been inescapable. Microaggressions are ignored or endured for years in some form or another. We are exhausted. In the wake of COVID-19 and civil unrest across the country and the world, we are witnessing a pandemic inside of the pandemic. The isolation that is necessary to stay safe from coronavirus has had an effect on everyone in different ways. Black communities are noted as having the highest number of cases, for a variety of reasons: less access to health care, underlying medical conditions, poverty, and the performance of essential work. The disadvantages and injustices in Black communities are undeniably higher than in other communities. Opportunities exist for some, but not for all. We have barely begun to see the conflicts that will arise from this period in time.

People ask how we can do better. How?... We are dispute resolvers! We get paid as skilled listeners and analyzers, and we convey tough messages every day. Any complicated conversation around the lack of diversity in ADR or in any industry just became even more complicated. We know that transparency is key in ADR for solidifying trust, so that we, the compromise facilitators, can better guide negotiations and communicate the parties’ interests. The ability to relay the right information, at the right time, and in the right way can make or break negotiations. So, we must always tell the truth, or we sacrifice the sanctity of self-determination. We manage other people’s ugly truths all the time. It is uncomfortable, but that truth, no matter how ugly or painful, is the basis for healing and resolution. We convince people of that in common practice. Our own challenges with having the tough talks are no different than the conversations we help others navigate every single day.

The ADR profession cannot fully thrive until communications around D&I are honestly conducted. The inclusion of the contributions of diverse professionals in ways that are meaningful will change the face of ADR from the standpoint of culture and subject matter expertise. Are we intentionally making strides that will move us forward in the battle for the contributions of diverse groups to be seen, heard, and valued in the ADR space? Now is the time to bring equitable solutions to a system that has leaned to one side for far too long. It is our responsibility as dispute resolvers. The covers are off. Are we ready to openly address the systemic societal ills? Love is the anti-virus. Start with you.

Here is a suggested method to have the tough talks: **HEAL**

Have the first tough conversation. Go ahead, the next one will be a little easier.

Encourage honesty and openness. Be quiet and listen, then talk.

Acknowledge it is uncomfortable and try to understand why.

Let there be light. Begin to understand another’s experience. Be an ally.

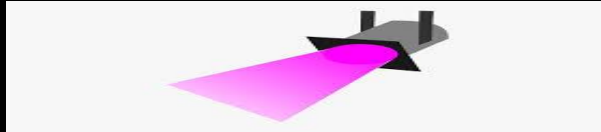
Diversity is different ways of presenting a dish. Inclusion is adding the right variety of ingredients to enhance the flavor.

People of color no longer emphasize the concept of “equality,” because our right to equality is embedded in the U.S. Constitution. Equity is what we demand. We need our allies to step up and speak up. If you are silent... we hear you.



Rebekah Ratliff, CCLS, 2nd Vice Chair NBA-ADR, President of Capital City Mediations LLC. Capital City Mediations, LLC is a civil and domestic mediator and arbitrator. She is also on the FINRA panel of Arbitrators. Rebekah serves as Co-chair of the American Bar Association's Dispute Resolution Section Diversity Committee. Rebekah is a recipient of various prestigious awards to include the National Bar Association's SFSPD Outstanding Service Award and a 7th US District Congressional Award.

Membership Spotlight



Rev. Dr. Frederick D. Lewis is a seasoned Pastor of 40+ years and experienced arbitrator and mediator. He grew up in the rough and tumble of Illinois politics starting out as a 13-year-old runner for his precinct captain in the successful 1960 election of President John F. Kennedy. He later became a Precinct Captain in Chicago under Mayor Richard J. Daley. His social action and political action influences came from Dr. Martin Luther King, Jr. whom he marched with in the Civil Rights Movement. Dr. Lewis has been involved in major political and social action events such as the 1963 March on Washington and the 1995 Million Man March. He was granted an Honorary Doctor of Laws Degree from the A. M. E. Church for his work in the Civil Rights Movement in 1985 along with the MLK Drum Major Award. Dr. Lewis'

extensive background includes service on no less than 20 boards and commissions including 2 Governors' appointments. Since coming to Dallas in 1995, Dr. Lewis service has been in serving the Dallas Fort Worth community.



Brent Wilson was in his first year at the University of Georgia Law School when his wife, Trojanell, got a job at Xerox Corp. in Rochester. So, there was a choice to be made: He could drive east every day to a private law school in Syracuse or drive west to Buffalo and the SUNY system's only public law school.

He knew that SUNY Buffalo Law "had a stellar tradition" of educating future lawyers barred from attending law school in the segregated South, and it was clear that the school recognized the value of educating minority attorneys, so the drive west was a clear choice. He put a lot of

miles on that old car, stayed over with friends sometimes when the class schedule demanded it, and graduated in 1976.

Thus, began Wilson's long association with SUNY Buffalo Law School, one that has continued with his service since 2004 on the Dean's Advisory Council and now with a major gift to support diversity scholarships at the school.

"I have pride in the institution," says Wilson, who practices mostly labor and employment law litigation as a partner in the Atlanta law firm Elarbee, Thompson, Sapp & Wilson. "I wanted to become a lawyer, and Buffalo provided me with an opportunity. I received a quality education at the Law School. It allowed me to go into the profession that I desired and to do relatively well, and I felt that I owed a debt of gratitude to the institution.

"As you grow older, you want the institutions that you are affiliated with to be appropriately recognized. The only way that happens is when alumni support those institutions."

Because Wilson's \$100,000 gift is structured over a period of years, it helps to provide the Law School with a stable element in planning its scholarship budget. Brent Wilson Scholars will be chosen based on financial need and membership in a racial or ethnic group traditionally under-represented in the legal community.

He says he is sold on the idea that more scholarship support equals an improved student body, and thus better recognition for his alma mater.

"The dean has a vision to elevate the Law School to a more competitive position in comparison with other nationally ranked law schools in the United States," Wilson says. "In order to do that, it is necessary to attract a certain kind of student who has options to go to other institutions. If you can make it desirable for that student to attend Buffalo because you are able to provide some scholarship assistance, that helps us in attracting that student. And it helps us to change the footprint of an institution that, albeit well recognized in Western New York, is coming to be better recognized nationally and even internationally."

In addition to his work on the DAC, Wilson has spoken to SUNY Buffalo Law students in small-group and mentoring events and knows that reputation plays a large role in how students choose a law school. He also says he has been "just blown away by the quality of the professors who are leaving high-ranking institutions in much more desirable climate conditions to come to Buffalo and teach. It has been very rewarding and exciting to see the educational and professional backgrounds of the faculty we have been attracting."



Lei-Chala Wilson and Carl Turpin received "Five-Year Pins" for FINRA service. Also, Mr. Turpin recently certified for FINRA Arbitrator Panel Chairperson.



ABA Res 105 Roundtable: Diversity in the Selection of Dispute Resolution Professionals



NBA-ADR members: Rebekah Ratliff, Joanne Saint Louis, Ingeuneal Gray, Gail Wright Simans (also on the panel Ben Davis and Dan Bernstein) participated in a Roundtable Zoom Discussion on Diversity in the Selection of Resolution Professionals held on October 21, 2020. Link to ABA Resolution:

<https://www.americanbar.org/content/dam/aba/images/abanews/2018-AM-Resolutions/105.pdf>



Erika Butler was a presenter at the State Bar of Michigan’s Annual ADR Section Meeting held Saturday, October 17, 2020 on the following topic: “Crossing the Line: Avoiding Bad Behavior that Gets Arbitrators in Trouble.”



Dean Burrell was one of the moderators of a panel discussion held by Garden State Bar Association Labor and Employment Relations Association, and New Jersey State Bar Association on unique procedural protections accorded police union members gained via collective bargaining, their rationale, and whether they aid or hinder the movement of racial justice. The panel discussion was held on November 9, 2020.



Paulette Brown, Esq.

Distinguished Fellows of the International Academy of Mediators (IAM) **Gail Wright Sirmans** nominated to the IAM and **Joyce Gates Mitchell** introduced former NBA President Paulette Brown as the keynote speaker at the October 16, 2020 Virtual Fall Conference of the IAM. Past President Brown spoke on “**The Critical Now of Diversity, Equity and Inclusion in International Alternative Dispute Resolution.**” **Wright Sirmans**, Co-Chair of the IAM Diversity Committee introduced her committee members and outlined the Committee goals to increase diversity in IAM and sponsor a series of webinars on diversity, equity, and inclusion for the benefit of the members from a US historical focus and an international perspective.



Gail Wright Sirmans has been instrumental in creating the International Institute for Conflict Prevention and Resolution’s Pathways to Arbitration and Mediation. This effort is designed to increase the participation of members of color on CPR panels. CPR has a commitment to include diverse neutrals on each slate. Several of our NBA ADR members have taken advantage of this opportunity and many have participated in free training programs. CPR was energized when former NBA/ABA president Paulette Brown and Howard University Professor Homer LaRue, respectively, addressed CPR this past fall. CPR President Allen Waxman extends an invitation to NBA ADR members to join CPR. For additional information go to: cpr@adr.org

Cases of Interest Carl Turpin, Esq.

Employment lawsuits declined first three quarters of 2020

[Lex Machina's latest report](#) on federal employment litigation, released on October 29, 2020 found workers filed just over 14,000 lawsuits in the first three quarters of 2020, compared to about 16,700 and 16,000 in 2018 and 2019, respectively. The figures put this year's employment case filings well below the totals of about 21,000 to 23,000 for each of the last 10 years, according to the report

Calls Spread to Enact 'Right of Recall' For Laid-Off Workers

Major California cities including Los Angeles, Oakland and San Francisco have granted recall rights to workers in the hospitality industry and related fields in recent months, and labor unions are lobbying policymakers in Nevada, Massachusetts, and other jurisdictions to provide laid-off workers a right to return to their jobs.

<https://www.law360.com/articles/1320169/calls-spread-to-enact-right-of-recall-for-laid-off-workers>

OSHA Whistleblower claims increased

U.S Department of Labor Office of Inspector General (OIG) issued a report finding that the number of OSHA whistleblower claims increased by 30% increase between February to May 2020 as compared to the same period during 2019

<https://www.jdsupra.com/legalnews/usdol-office-of-inspector-general-28403/>

Families First Coronavirus Response Act (<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>)

As more and more employees continue to request leave under the Families First Coronavirus Response Act, some are also starting to bring lawsuits alleging that their requests for leave were wrongly denied, or that they were retaliated against for asserting their rights under the Act.

<https://www.fisherphillips.com/resources-alerts-back-to-square-one-court-ruling-upends>

A federal district court in New York struck down four components of the regulations adopted by the Department of Labor (“DOL”) pursuant to the Families First Coronavirus Response Act (“FFCRA”), four months after the regulations went into effect, and five months before the FFCRA is set to expire

<https://www.nysd.uscourts.gov/sites/default/files/2020-08/State%20of%20New%20York%20v.%20United%20States%20Department%20of%20Labor%20et%20al%2C%2020-cv-3020%20%28JPO%29.pdf>

List of Employment Litigation post-COVID-19 & Other Class Action Developments
(*National Law Review*)

<https://www.natlawreview.com/article/employment-litigation-post-covid-19-other-class-action-developments>

The first wave of Covid-19 workplace lawsuits

Major employers nationwide are facing a wave of lawsuits filed by workers claiming they contracted the novel coronavirus as a result of their employer's negligence—a trend that is sparking debate over whether Congress should grant businesses liability protections during the epidemic.

<https://www.advisory.com/daily-briefing/2020/08/03/covid-lawsuits>

Michigan has enacted significant new legislation that prohibits employees with “the principal symptoms” of COVID-19 from reporting to work and forbids employers from discharging, disciplining, or retaliating against employees who stay home because they have been diagnosed with or exposed to COVID-19.

https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525182--,00.html

Duty to Bargain on Return to Work

In response to complaints filed by the Washington Teachers' Union (WTU), the Public Employees Relations Board (PERB) Hearing Examiner and the Board ruled that DC Public Schools (DCPS) violated the law by refusing to bargain with WTU regarding reopening planning and bargain in good faith on health and safety issues concerning COVID-19.

[file:///C:/Users/cturp/OneDrive/Documents/DCPS/2020-10-19%20Hearing%20Examiner%20Decision%20in%20Case%2020-U-30%20\(1\).pdf](file:///C:/Users/cturp/OneDrive/Documents/DCPS/2020-10-19%20Hearing%20Examiner%20Decision%20in%20Case%2020-U-30%20(1).pdf)

file:///C:/Users/cturp/OneDrive/Documents/DCPS/Preliminary_Relief_Order_No._1760.pdf

Justice Ruth Bader Ginsburg as a Deciding Vote on the Supreme Court: Select Data, Congressional Research Service, September 25, 2020

<https://crsreports.congress.gov/product/pdf/R/R46546>

North Carolina Court of Appeals Decision on Attorneys Signing Mediated Settlement Agreements

The case arose from a dispute over the enforcement of a memorandum of settlement, signed by attorneys on behalf of their clients. The signature of an attorney on behalf of their client, regardless of whether they have been given authority to sign or not, produces an unenforceable agreement.

[Mitchell v. Boswell, No. COA19-1077 \(N.C. Ct. App. Nov. 3, 2020\)](#)

A federal appeals court upheld a ruling clearing Harvard University of discrimination against Asian American applicants.

<http://media.ca1.uscourts.gov/pdf/opinions/19-2005P-01A.pdf>



Carl K. Turpin, Esq. 1st Vice Chair of the NBA-ADR Section, recently started an ADR practice after over 40 years of handling labor and employment issues for management and employees.

ADR Toolbox



Compiled by Carl Turpin

- FINRA Dispute Resolution Services is providing Arbitrator Resource Guide for Virtual Hearings

<https://www.finra.org/arbitration-mediation/case-guidance-resources/arbitrator-resource-guide-virtual-hearings>

- **2021 Section of Dispute Resolution Spring Conference** -April 14-17, 2021

https://www.americanbar.org/content/dam/aba/events/dispute_resolution/2021-spring-conference/2021-dr-spring-conference-rfp.pdf

- **Elder Abuse**

The ABA Section of Dispute Resolution Task Force on Elder Abuse Screening for Mediators has created guidelines that provide information about possible signs of elder neglect and abuse (physical, sexual, emotional, financial, social, and neglect), that negatively impact the ability of older adults to participate in mediation.

https://www.americanbar.org/groups/dispute_resolution/resources/elder-abuse-and-neglect-screening-guidelines-for-mediators/

- **ABA/Suffolk University Law School Dispute Resolution Video Center**

<http://www.adrvideo.org/>

- **The Section of Dispute Resolution Task Force on Access to Justice** has created a 20-page white paper with recommendations. The white paper includes how dispute resolution services can increase access to justice and services, the roles attorneys representing clients can play, the role technology can play and recommendations.

https://www.americanbar.org/groups/dispute_resolution/resources/access-to-justice/

- **Arbitration and Mediation in the Time of Coronavirus**

https://www.americanbar.org/groups/dispute_resolution/resources/resources-for-mediating-online/arbitration-and-mediation-in-the-time-of-coronavirus/

- **FINRA Postpones In-Person Arbitrations, Mediations To 2021**

The Financial Industry Regulatory Authority said Wednesday that it has administratively postponed all in-person arbitration and mediation proceedings through the rest of the year in response to the evolving COVID-19 pandemic

<https://www.finra.org/rules-guidance/key-topics/covid-19/arb-hearings#:~:text=In%20response%20to%20the%20evolving%20coronavirus%20disease%202019.hearings%20will%20take%20place%20telephonically%20or%20by%20Zoom.>

- **Arbitrator Training Videos for Virtual Hearings**

<https://www.finra.org/arbitration-mediation/case-guidance-resources/virtual-hearings-videos>

- **Law 360 free Coronavirus Litigation Roundup**

https://www.law360.com/articles/1319977/coronavirus-litigation-the-week-in-review?nl_pk=125e4f68-7fd4-458d-8439-675e04be1147&utm_source=newsletter&utm_medium=email&utm_campaign=special

Arbitrator Tips

Videoconference Tips: Increasingly we are offering videoconferencing as an alternative to in-person or telephonic hearings. Before you join your next videoconference, be prepared, and keep these tips in mind to ensure a successful meeting:

- **Test Your Equipment:** Make sure your computer and connection are ready when you are. If you have any questions about logging on to the videoconference, be sure to contact FINRA staff in advance of the call.
- **Properly Position Your Camera:** Position your camera at eye level. When a camera is angled too high or too low, it can be distracting.
- **Mute Your Microphone:** When you are not speaking, mute your line to avoid any background noise like construction, lawnmowers, barking dogs, televisions, etc. Be sure to turn your microphone back on before speaking.
- **Limit Distractions:** Turn off computer notifications, mute cell phones and streaming music, etc. Avoid checking your cell phone or emails while you are on a videoconference.
- **Look Professional:** Dress as if you are meeting in person and be mindful of personal grooming. That means no pajamas, t-shirts, baseball caps, etc. Always look professional.

Source: FINRA, April 2020

- **International Chamber of Commerce Arbitration and ADR.**

This site contains free downloads of webinars and publications.

<https://2go.iccwbo.org/explore-our-products/free-downloads.html>

- **The New York International Arbitration Center (NYIAC) and the New York Branch of the Chartered Institute of Arbitrators (CIArbNY)** are pleased to continue their joint leadership of New York Arbitration Week (NYAW) for the second year. This year, the event will take place from November 16-20, 2020 and will be virtual.

<https://nyarbitrationweek.com/>

NBA-ADR Meeting Dates

| | |
|-----------------------------|---------------------------------|
| Thursday, November 19, 2020 | Officers and Directors |
| Thursday, December 17, 2020 | Members, Officers and Directors |
| Thursday, January 21, 2021 | Officers and Directors |
| Thursday, February 18, 2021 | Members, Officers and Directors |
| Thursday, March 18, 2021 | Officers and Directors |
| Thursday, April 15, 2021 | Members, Officers and Directors |
| Thursday, May 20, 2021 | Officers and Directors |
| Thursday, June 17, 2021 | Members, Officers and Directors |
| Monday, July 26, 2021 | Annual Meeting of Members |
| Saturday, August 21, 2021 | Member Retreat |

NBA-ADR Committees

**Help grow the NBA-ADR Section. Join a Committee.
Your help is needed.**

Credentialing: Rosters of Arbitrators and Mediators

Maintains and continuously upgrades Rosters, including uniformity, geographic locator, skills inventory, and readable format

Determines eligibility and additions to Rosters, initial certification, and annual recertification

Develops and implements internal marketing and link on NBA website

Co-Chairs: Gloria Johnson, gjlaw75@aol.com; Dean Burrell, dlburrell1@gmail.com

External Marketing-Communications

Conducts external marketing of Section Rosters, programs and publications, including announcements of member achievements

Creates standardized marketing templates for Rosters and Section

Creates and maintains website, bios and pictures of Board, ongoing calendar of Section

Develops of programming, such as CLEs, podcasts and webinars

Creates and maintains social media, such as Facebook, Instagram, LinkedIn, Twitter

Co-chairs: Paul Garrison, paulgarrison55@comcast.net; Gail Wright Sirmans, wrightsir2@aol.com

Fundraising/Sponsorship

Procures for funding activities of the Section, covering cost of virtual platform, social media accounts, meetings and programs

Establishes rules, subject to approval of Board and officers, for sponsorship
Functions within rules of NBA, Treasurer as ex-officio

Chair: Otis McGee, omcgee@jamsadr.com

Membership Development

Produces programing regarding developments and critical thinking in ADR, via podcasts and webinars developed by the Committee alone or with other Sections

Topics include arbitration, mediation, special master/neutral training

Provides training from and assistance in joining panels of major providers (AAA, CPR, FINRA, FMCS)

Chair: Paula Tillman, paulatillman@gmail.com

Newsletter

Publishes three times per year

Features include Member Spotlight, announcement of Member activities

Solicits advertisements as form of fund raising

Publishes developments and critical thinking in ADR, articles regarding relevant legal decisions

Chair: Carl Turpin, cturpin@igc.org

Programming Committee

Develops standard methodology, determines and implements CLE programming for Section
Facilitates and monitors the selection of speakers, titles, descriptions and educational materials, and the overall production of CLE programming

Develops programming for annual convention and events, two annually, preferably quarterly

Delivers programming in conjunction with External Marketing, other ADR Section Committees, NBA Sections and Divisions, organizations and various audiences such as BALSAs and related organizations; Other as directed by the Chair

Co-Chairs: Erika Butler, erika@butlerdavis.co; Rebekah Ratliff, rebekahratliff@gmail.com

2020-2021 NBA-ADR Officers and Directors

Officers

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Rebekah Ratliff,
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