

RSI SPECIAL TOPICS

DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY



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This Special Topic explores diversity, equity, inclusion and accessibility (DEI) in court alternative dispute resolution (ADR) programs. The aim is to help court ADR programs determine how to provide services in which individuals have equal access to opportunities, feel that they are welcomed, and receive fair treatment.

This Special Topic is meant to be a welcoming resource for anyone working in court ADR and is intended for ADR programs that are just beginning to explore DEI and for ADR programs that have begun to implement DEI efforts. It is not intended to be prescriptive or proscriptive. Readers are encouraged to make use of what is most helpful for their court ADR programs and the individuals involved with them. As with other aspects of court ADR, programs would be well-served by inviting a diverse group of stakeholders to assist with DEI efforts.

This Special Topic differs from most considerations of DEI in that it is framed for court ADR programs. So, for instance, although accessibility is generally viewed as part of DEI, making ADR services fully accessible is often a particular challenge for court ADR programs. Accessibility, therefore, gets specific attention in this Special Topic. The acronym “DEI” as used here should be read to include accessibility.

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DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY BASICS

UNDERSTANDING THE BASICS OF DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY

Before tackling how courts may choose to work on DEI, it is helpful to start with common definitions of the concepts that are used in this Special Topic.

- **Diversity** refers to people of varied identities and differences, including different races, genders, religions, national origins, ethnicities, income levels, sexual orientations, and educational levels, as well as people for whom English is not their first language. In the context of court ADR programs, diversity may include having a diverse staff and a diverse roster of neutrals, and striving to be fair, accepting, and inclusive of the different attributes that staff, neutrals and program participants may bring.
- **Equity** is fair treatment, equality of opportunity, and access to information and resources for all, while also working to identify and eliminate barriers that have prevented the full participation of some groups. In the context of court ADR programs, equity is often seen as everyone who is eligible for a program having access to information about the program and being offered appropriate tools to participate fully in the program.
- **Inclusion** refers to situations in which any individual or group is and feels welcomed, respected, supported, valued, and able to fully participate. In the context of court ADR, inclusion is often seen as programs that make everyone feel welcome and included so they are empowered to participate in the ADR process and feel they belong.
- **Accessibility** is the opportunity for an individual with a disability to make use of the same or equivalent services as a person without a disability with substantially comparable ease of use. In the context of court ADR, accessibility is seen in many aspects, including communication, physical access, etc.

THE ROLE OF DEI IN COURT ADR PROGRAMS

Diversity, equity, inclusion and accessibility all work together to create a court ADR program in which parties¹ have equal access to opportunities, feel that they are welcomed, and receive fair treatment.

A court ADR program may value DEI for a variety of reasons. For example, programs with diverse staff and neutrals may appreciate the different perspectives these individuals bring. Programs may value having diverse ADR staff and neutrals who enable their program to reflect the same diversity that is found among the parties who use their programs. The program may find that providing diverse staff and neutrals assists parties in having an experience of procedural justice.

Court ADR programs might be prompted to work on DEI for a variety of reasons. This could happen, for example, if a law or policy on DEI in the court is adopted or if the demographics of the community a program serves change and the court wishes to be more representative of its community. For other court ADR programs, a decision to focus on DEI may be a natural extension of their work in related areas. These might be mandates such as having interpreters for parties who speak languages other than English or for those who communicate using sign language. Additionally, a court ADR program's decision to work on DEI may be as a result of physical changes to a courthouse such as renovations to ensure that make the courthouse physically more accessible.

¹ *Parties* refers to the litigants and their lawyers, while *litigants* refers to the people in the legal case

DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY IN COURT ADR PROGRAMS

STEPS TO FOSTERING DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY

Court ADR programs can take a variety of steps to provide diverse, inclusive and accessible services. The following outlines a few of the steps a court ADR program seeking to implement DEI efforts can consider taking.

FORM A DEI COMMITTEE

A court ADR program may find it helpful to create a Diversity, Equity and Inclusion Committee (DEI Committee) to emphasize the importance of the principles that underlie DEI and to help ensure that DEI principles are followed. Ideally, this committee would include members who themselves are reasonably diverse. Diversity among the members of this committee allows for a varied collection of experiences and perspectives to be brought together to work on DEI issues. In addition, this committee should seek to have members who serve in various roles in a court ADR program (e.g., as lawyers, administrators, neutrals and judges).

DEVELOP A DEI PLAN

One of the first steps a court ADR program's DEI Committee can take is to develop a diversity, equity and inclusion plan (DEI plan). The plan outlines the ADR program's vision for diversity, equity, inclusion, and accessibility and could include goals, strategies and accountability steps.

When developing a plan like this, it is helpful to have an understanding of what the court ADR program is currently doing with DEI and then develop attainable growth strategies from there. For example, a court ADR program seeking to implement a DEI plan may want to start by first assessing how the demographic profile of their current roster of neutrals compares to the profile of the parties who use it, how neutrals are recruited, and how inclusive the court's language is ([more on using inclusive language below](#)). With that information in hand, the court ADR program can then develop action steps for the DEI plan. Once a DEI plan is created and implemented, the plan should be reviewed from time to time to assess how effective the steps have been and determine if changes to the plan are needed. ([See Evaluate DEI Initiatives below.](#))

CONDUCT ACTIVITIES RELATED TO DEI

In addition to developing a DEI plan and overseeing the plan, the DEI Committee can also host events, programs and workshops to foster diversity and inclusion. For example, the

committee could host a regular brown-bag lunchtime conversation series on diversity and inclusion topics, which staff, neutrals, lawyers and judges could attend. The DEI Committee could also consider adopting and managing a mentorship program for diverse staff or neutrals.

SHARE DEI RESOURCES

In addition to hosting events, DEI committees may also want to consider regularly collecting and sharing DEI and accessibility related resources. For example, the Florida courts use a [Fairness and Diversity Repository](#) to share DEI resources. This repository contains a collection of articles, essays, training materials and a list of various associations and committees dedicated to diversity and inclusion. A well-vetted clearinghouse like this can be used to easily share quality resources with staff, judges, parties, neutrals and other courts. Additionally, courts may also consider using a repository like this to share their DEI plan with their community and regularly report on the results of these ongoing efforts.

LIMITATIONS A COURT ADR PROGRAM MAY FACE WHEN WORKING ON DEI

As court ADR programs consider implementing DEI efforts, they are likely to encounter limitations to what they can do. Of course, all programs must operate within the parameters of existing law.

The extent to which a court ADR program can address various aspects of DEI may vary greatly from program to program. One potential limiting factor is how much authority the ADR program has over staffing. Although the program will generally have at least some authority over who it hires for its staff, how it trains its staff, and what it expects of its staff, the amount of that authority can vary greatly. Similarly, the ADR program may or may not have control over any accommodations it can offer to its staff, mediators or parties, as those policies may be set by court policies, government hiring policies, etc.

Despite these limitations, there are still steps a court ADR program can take to foster DEI and provide accessible programs.

COMMUNICATIONS

A court ADR program's communications – including how outreach is conducted and the language that is used – can make important contributions to whether a program is seen as diverse, equitable, inclusive and accessible. The following recommendations are ideas that court ADR programs seeking to improve their DEI efforts may want to consider.

MESSAGING ABOUT THE PROGRAM

Good dispute system design often overlaps with principles of DEI. One example of this occurs in the outreach (or messaging) to parties that makes them aware of the program and educates them about it. Programs should ensure that their message is accessible and welcoming to all. This might mean, for example, providing information in ways that can be accessed by people with disabilities or in multiple languages.

ADR program staff can start by looking at each touchpoint with the parties, e.g., website, clerk's office, e-filing platform, summons, brochures, and other tools such as postcards, phone calls and text messages. Then they can consider how accessible those communications are and how they may be perceived; for example, whether videos include subtitles or downloadable text, photos reflect the diversity of the parties, screen readers can capture whatever is on the website, brochures are printed in languages most used by parties, and fonts and colors are accessible so that all parties can read them easily.

Court ADR staff can seek input on these communication tools. For example, the DEI Committee can provide feedback or program staff might informally ask parties in mediation waiting rooms to give feedback on draft text for communications.

USING INCLUSIVE LANGUAGE

Programs may want to consider the language used in any communications with program participants. In any writing, an ADR program's main goal is to communicate clearly. One way to avoid some barriers to clarity is to use inclusive language. The [Guidelines for Inclusive Language](#), published by the Linguistic Society of America (LSA), defines inclusive language as language that “acknowledges diversity, conveys respect to all people, is sensitive to differences, and promotes equal opportunities.”

The following are some tips about using inclusive language.

ACCESSIBILITY INCLUSIVE LANGUAGE

About [1 in 4 US adults – 61 million Americans](#) - live with a disability. When choosing inclusive terminology, court ADR programs can use person-first language, which is language that puts a person before their diagnosis or situation and describes a person’s disability without defining that person by their disability. For example, when assisting participants who have disabilities, program staff would use terms such as “people who are blind” or “person who uses a wheelchair” instead of “the blind” or “wheelchair bound.”

RACE AND ETHNICITY INCLUSIVE LANGUAGE

Another continuing challenge for many court ADR programs is what terms to use for racial and ethnic groups when, for example, reporting on who the program serves. The goal of racially and ethnically inclusive language is to use clear, recognizable terms that do not make people feel excluded or otherwise diminished. Consulting a DEI Committee or a stakeholder group can help the program use terminology that is inclusive.

Programs that ask participants for this information may need to use categories specified by their courts or particular funders. Sometimes programs may want to refine their categories depending on the make-up of their jurisdiction.

As the American Psychological Association (APA) [notes in their *Racial and Ethnic Identity Guide*](#), “terms used to refer to racial and ethnic groups continue to change over time,” so courts should regularly review and update the terms they use.

GENDER INCLUSIVE LANGUAGE

ADR programs looking to be more welcoming might want to shift to gender-inclusive language. The [United Nations defines](#) gender-inclusive language as “language that does not discriminate against a particular sex, social gender or gender identity, and does not perpetuate gender stereotypes.” For example, a family mediation program seeking to implement inclusive language might change the wording on its forms from Boyfriend/Girlfriend to Significant Other or Partner, or consider changing Husband/Wife to Spouse.

Additionally, with increasing gender diversity in society, a court ADR program might want to be flexible in the gender pronouns it uses. If someone working in a court ADR program is referring to an individual whose identified pronouns are not known they might use the singular “they” to avoid making assumptions about an individual’s gender or they might ask an individual which gender pronouns they identify with, i.e., she/her/hers; he/him/his; or they/them/theirs.

INCLUSIVE LANGUAGE REGARDING COMMUNITIES

When a court ADR program serves litigants and communities that are thinly-resourced, finding inclusive wording can be a challenge. In this situation, a court program may choose

to use phrases such as “neighborhoods with high poverty rates” instead of “the poor” or “under-resourced communities” instead of “the inner city.”

ADDITIONAL RESOURCES TO EXPLORE INCLUSIVE LANGUAGE FURTHER

- [APA Bias-Free Language Guide](#)
Compiled by the APA, this guide provides instruction on how to use bias-free language and write and speak inclusively with respect to age, gender, racial and ethnic identity, and socioeconomic status.
- [Gender-Inclusive Language Guide](#)
Compiled by the University of North Carolina at Chapel Hill, this guide provides information and examples on how gender-inclusive language can be used with varied audiences.

ACCESSIBILITY

Ensuring that court ADR programs are accessible for all litigants, lawyers and neutrals can be a challenge. Nevertheless, all court ADR programs operate under legal requirements for accessibility. The [Americans with Disabilities Act](#) (ADA) requires all state and local agencies to provide reasonable accommodations for individuals with disabilities. Federal courts are [not subject to the ADA](#), but there are laws and policies that result in similar requirements.

Examples of accommodations include physical adjustments to a facility (i.e. moving furniture, offering wheelchair access), providing sign language interpreters, furnishing auxiliary aids or Braille, etc. Programs may also need to make electronic accommodations such as modifying their websites to be screen-reader accessible, using subtitles for videos, etc.

While there are many different kinds of accommodations, the type of accommodation a court ADR program employs will depend on the needs of the person with the disability and the policy of the court. Court ADR staff may find themselves in the position of facilitator between the person seeking an accommodation and the individual in the court with authority for determining what accommodations are available.

MAKE ACCOMMODATION INFORMATION EASILY ACCESSIBLE

A court's website is often one of the first places an individual will go to seek information about a court ADR program. As a result, it is helpful to the ADR program if there is a dedicated page on the court's site that delineates the court's commitment to accessibility and describes the types of accommodations available. Whether or not the court has accessibility information, a court ADR program may provide similar information on its own page.

ELECTRONIC ACCESSIBILITY

Similar to in-person accessibility, court ADR programs must ensure that their websites and other electronic platforms (such as Zoom) used for their court ADR programs are accessible.

WEBSITES

Sometimes websites can create unnecessary barriers for individuals with disabilities. As courts work to provide accessible websites, it's helpful to have an understanding of the variety of ways individuals with disabilities may access websites. For example, individuals may use assistive technologies or adaptive strategies to enable themselves to view websites

in easier-to-read colors and font sizes; navigate a site using their voice or keyboard; or have an assistive device read content on a website to them.

The U.S. Department of Justice Civil Rights Division has put together an [ADA Best Practices Tool Kit for State and Local Governments](#) that court programs may find helpful. Within it, the *Tool Kit* offers some specific [advice concerning websites](#).

VIRTUAL PLATFORMS

In 2020, due to the COVID-19 pandemic, many court ADR programs quickly transitioned to a virtual format. As programs move forward and consider if or how they will use virtual platforms, they may find these guides, [Virtual Meetings: Accessibility Checklist & Best Practices](#) and [Zoom: Accessibility for Deaf and Hard-of-Hearing](#), to be helpful.

NEUTRAL DIVERSITY

Courts' inherent responsibility to administer justice fairly is shared by the ADR programs to which the court sends cases. It is important, therefore, that the public have an experience that is welcoming, fair and accessible when they use the ADR program. One way a program may work to accomplish this is to offer diverse neutrals who reflect the parties who use the program.

DIVERSIFYING ROSTERS OF NEUTRALS

Interested programs might start by examining the demographics of their current roster (including, for example, diversity with respect to age, race, gender and disability) and comparing it to the parties who use the ADR program. This can help the program identify any potential gaps. Two areas to consider when seeking to diversify a roster of neutrals are recruitment and qualifications.

RECRUITMENT

To diversify their rosters, ADR programs can actively recruit neutrals who are diverse. In larger jurisdictions this recruitment could include working with specialized bar associations, such as those whose membership is composed of lawyers from particular racial groups and those who identify as LGBTQ or a particular ethnicity. Local law schools and recent graduates may be a source of more diversity, as the legal profession becomes more diverse. Current neutrals from diverse backgrounds might also be interested in assisting the ADR program in reaching out to organizations or to individuals that can help diversify the roster.

To diversify rosters in programs that rely on volunteer mediators, ADR programs might conduct outreach to community groups, houses of worship and other social service agencies. Providing opportunities for volunteers to mediate outside the usual workweek may open the program to more participants, too.

QUALIFICATIONS

Courts seeking to increase neutral diversity might revisit their qualifications and consider adjusting the scope of their educational and work experience requirements for neutrals. For example, a law license is unlikely to be necessary to mediate small claims matters in most jurisdictions – although it might be required – and it is likely to limit the diversity of mediators. Similarly, adjusting the criteria for family mediators to include those with degrees in social work, psychology or other family-related areas of study, may help in diversifying a mediator roster.

In 2018, the [American Bar Association's Resolution 105](#) noted the lack of diversity among neutrals and made recommendations for change. The action steps included with the resolution may provide helpful tips for court ADR programs.

ADDITIONAL RESOURCE

- [Ten Ways to Increase Diversity and Inclusion in Court-Annexed ADR](#)

Written by Robyn Weinstein, this article provides a list of ten suggestions court ADR programs can utilize to improve diversity and inclusion among their roster of neutrals.

EVALUATE DEI INITIATIVES

DATA COLLECTION

Before embarking on DEI evaluation efforts, programs not currently collecting demographic data will want to determine how best to do so. The National Center for State Courts has published a [good resource for collecting race and ethnicity data](#). Court ADR programs also typically collect quite a bit of other data that might be useful in evaluating DEI efforts. This may include numbers of cases referred to ADR, mediations or arbitrations conducted, time to resolution and ADR outcomes. For help with participant surveys, programs can look to the [Model Surveys Toolkit](#) created by Resolution Systems Institute (RSI) and the American Bar Association for help. In particular, they may want to consult the [Model Party Survey](#).

EVALUATION PROCESS

Assessing DEI initiatives has three levels of depth. They are described in the following two hypothetical examples.

EXAMPLE 1

A foreclosure mediation program determines that Latinx homeowners are not represented proportionately in the group of homeowners who contact the program, as compared to homeowners overall who are facing foreclosure. The program decides on steps to address this issue, such as enlisting a social services agency to reach out to the community.

The first level of assessment is to monitor progress on the steps taken to address this issue. For example, what outreach was conducted?

The second is to determine whether those steps are working. In this case, how many people did the social services agency reach through its efforts?

The third level of analysis examines the impact of the actions taken. For example, the program would examine the race/ethnicity make up of those who contacted the program after the social services agency began its outreach to see if the percentage of Latinx homeowners increased.

EXAMPLE 2

A small claims mediation program becomes aware of an issue when Juan, a self-represented defendant, is referred to his court's mediation program. Juan has received an email from the court about the program that directs Juan to the court's website, which features a video on the program. Juan is also a person who is deaf, and when he starts watching the court's video about the program he discovers there are no subtitles or downloadable text for the video. The ADR program responds by including closed captioning for all program videos as one of its action steps.

The program's first assessment is to ensure it has enabled people who are deaf to review the video on its website by adding closed captioning.

The next level of assessment is to make sure that the steps have worked. If the court has decided to use YouTube's automatic closed captioning program (which can often have many errors) to address the lack of access for people with hearing disabilities, people may still not be able to understand the video. Therefore, to find out if people who have hearing disabilities are having any difficulties with this, courts can provide an opportunity for feedback. This can be in the form of a pop up question on the website asking for feedback, through a focus group of similarly situated people, or an end of program participation survey.

The third level would be to examine the impact of steps taken to see if those steps lead to a change in experience. For example, did adding closed captioning lead to participants who are deaf or hard of hearing feeling better able to navigate the mediation process?

All programs should conduct the first two levels of assessment. Those who want to go further will learn much more about the effectiveness of their program. For more information on conducting evaluations, see [RSI's Guide to Program Success](#).

CONCLUSION

Court ADR programs that are diverse, inclusive, equitable and accessible recognize that there are differences among the litigants, lawyers, neutrals and others who participate in ADR. They structure their programs so that all people (regardless of their differences) can access and participate fully in ADR services, and feel welcome while doing so.

ADDITIONAL RESOURCES

The following resources are recommended in addition to those mentioned above.

[A Meaningful Opportunity to Participate: A Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with Disabilities](#)

Created by the Judicial Council of Georgia, this handbook provides extensive information on providing accessible courtrooms and court programs.

[ADA Website Accessibility Checklist](#)

This checklist is a helpful guide for state and local governments to use when assessing the accessibility of an agency's website. Although this book is directed at government agencies, there is ample helpful information in here that courts can turn to for guidance as well.

[Effective Communications and Practical Accommodations for Persons with Disabilities](#)

Created for the California Courts, court ADR programs may find the last seven pages on Interacting and Communicating particularly helpful.

[The Evolving Science of Implicit Bias: An Updated Resource for the State Court Community](#)

Published by the National Center for State Courts, this resource explains implicit bias and summarizes research in the psychological and brain sciences.

[Google Lighthouse](#)

Google's Lighthouse is a web development tool that court ADR programs can use to audit and review the accessibility of their website.

[ODR Accessibility for Persons with Disabilities: We Must Do Better](#)

This article provides resources and tools that can aid courts and neutrals with providing and maintaining accessible online dispute resolution and technology-based platforms.

[State Court Accessibility Resources](#)

Compiled by the American Bar Association, this digital guide provides various state court accessibility resources from across the United States.

[Web Content Accessibility Guidelines](#)

This guidebook provides information and explains how to make web content more accessible to individuals with disabilities.

[Website Accessibility Under Title II of the ADA](#)

This resource provides extensive information on online barriers to accessibility for individuals with disabilities and shares information on how to make websites accessible.