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## Making the Case for Greater Diversity in ADR

### JAMS

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There is no doubt - we are living in turbulent times. A persistent question is the diversity and inclusiveness of our society. This hotly debated topic is being discussed in all corners of our country. And the legal profession is no exception.

More recently, the legal community has been under the microscope as diversity within firms becomes a priority. As a result, law firms are working to embrace people of all colors, genders and sexual preferences. A great example of this is the Mansfield Rule, an initiative developed by the Diversity Lab, an incubator focused on diversity and inclusion issues in the legal industry, which sets a goal for firms to actively consider diverse candidates for at least 30% of open leadership and governance roles.

Not only is a focus on diversity the “right thing” to do, but it also creates a competitive advantage. More diverse firms are able to capture more large clients, who are increasingly sensitive to the diversity of their outside counsel. Correspondingly, retaining more diverse firms allows those clients to realize their own business goals and leverage diverse perspectives on their legal matters.

A similar advantage can be gained by improving the diversity within the alternative dispute resolution (ADR) field, as this has become an increasingly popular avenue for resolving business disputes. Corporate law departments have an opportunity to consider the diversity of ADR providers in order to further extend the merits and benefits of diversity, which they have already acknowledged through numerous studies.

Within the past year, a high profile dispute involving a celebrity put a spotlight on the value, including risk mitigation, of considering diversity in ADR.

The ADR community has responded positively to this increased focus, as more and more providers are working to improve the diversity of their slate of arbitrators and mediators. While progress has been made, much more needs to be done across the industry and throughout the legal profession - as well as in the corporate world.

### **ADR Can Play a Crucial Role in CSR**

Many companies are placing a greater emphasis on corporate social responsibility (CSR) out of a desire to become better corporate citizens and to meet the demands of increasingly vocal customers. These CSR efforts are reaching out across the supply chain to include vendors, suppliers and all manner of business partners. The diversity of outside counsel is certainly an area where corporations are looking to advance their CSR objectives.

ADR represents an opportunity to take that focus one step further. By utilizing a diverse list of mediators and arbitrators, law firms have an opportunity to demonstrate their commitment to their clients' CSR principles, which in turn strengthens the value they bring to the relationship. Another invaluable tool is an inclusion rider. Last year, JAMS introduced its inclusion rider, which encourages parties to consider diversity when choosing an arbitrator or panel of arbitrators. It contains language that parties can include in their arbitration contract that will request administering institutions to include a fair representation of diverse candidates on the list of potential arbitrator appointees.

Law firms can recommend an inclusion rider to corporate clients to further bolster diversity and inclusion programs as part of a larger CSR strategy. "It's important to note that the lawyers who are drafting arbitration contracts, as well as the litigators and clients, all play a role in who ultimately gets selected for cases," explained Kimberly Taylor, senior vice president, chief legal and operating officer for JAMS. "These are the folks who have an opportunity to help ensure diversity in the ADR process. By incorporating an inclusion rider, they can further the important goal of having a diverse slate of arbitrators that fully reflect the client community."

### **The Time to Do More is Now**

JAMS takes pride in being one of the first ADR providers to take the Equal Representation in Arbitration Pledge. This pledge seeks to increase the number of women appointed as arbitrators, with the ultimate goal of full parity. JAMS sponsors and partners with diverse national bar associations such as the National LGBT Bar Association,

National Asian Pacific American Bar Association, National Bar Association, Hispanic National Bar Association, and National Association of Women Lawyers, as well as numerous diverse local bar associations. We have an active, cross-functional Diversity Committee who meets regularly to discuss goals, implement strategies that accelerate progress, and increase diversity and inclusion across JAMS and throughout the ADR industry.

Nearly everyone understands the importance of diversity in the legal industry, but it is only through collective actions that real change will occur. It's time for all stakeholders to take bold steps to make diversity and inclusion a priority. We know we can do more and we are continuing to focus on this important area of our business. We encourage the rest of the legal community to do the same. But real change needs to be systemic.

“We’ve made progress on the road toward inclusivity and diversity in the legal profession, but we still have quite a ways to go,” concluded Chris Poole, president and CEO for JAMS. “Cultural change is never easy, but so long as all stakeholders in the process embrace the importance of diversity in the industry and work together to encourage qualified individuals from the judiciary and law firms to enter into the ADR field where they can then be selected as a neutral, I think we can achieve our objectives.”

Clearly, greater diversity in the legal profession is needed. This is not a strictly altruistic call to action. Diversity is also good for business. It helps to advance firms’ corporate goals, foster a positive working environment, ensure diverse perspectives and strengthen the values that are the bedrock of our profession. The time to do more is now.

**JAMS** - Mark Smalls

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