



# New York State Bar Association

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August 28, 2023

**Via Email and Regular Mail: [rlewis@hhk.com](mailto:rlewis@hhk.com)**

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**RE: Report of the New York State Bar Association Task Force on Advancing Diversity**

Dear President Lewis:

I write as Chair of the Dispute Resolution Section (DRS), and on behalf of its Executive Committee and its more than 1,200 members, to provide comments on the first draft Report of the New York State Bar Association's Task Force.

First, thank you for originating the mission and working to launch the project. The Dispute Resolution Section wholeheartedly supports this project and congratulates the 57+ member group in undertaking the monumental task of assessing the implications of the United States Supreme Court's joint decision in *Students for Fair Admissions, Inc. v. Presidents & Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina*. We applaud the members of the Task Force for having conducted a thorough, critical cross-constituency analysis that synthesizes the relevant issues, and for making clear recommendations for educational institutions, law firms, and courts.

We fully support the work of NYSBA to promote diversity, and all agree that this work is instrumental in furthering this critically important mission within our profession. As dispute resolvers and designers of methods of conflict prevention, the DRS section provides a vital service to the public, litigation service providers and the courts. The legal discipline of Dispute Resolution has experienced

explosive growth in the last two decades. Our Section is deeply devoted to improving the delivery of dispute prevention, mediation and arbitration services, and increasing the presence of ethnically and gender diverse neutrals in the field. Over the past several years, we have developed policies and practices in furtherance of this objective. A fine blueprint for this is found in American Bar Association Resolution 105, adopted in February of 2018, to which we aspire.

Increasing diversity in the field of Dispute Resolution is reflected in many aspects of our Section's work. By way of example, one of our ten standing committees is The Diversity and Inclusion Committee, presently chaired by Alfreida Kenny and Mary Austin. The committee puts on programs to bring together diverse practitioners with the goal of raising awareness of the importance of diversity, promoting collegiality, and to foster entry of diverse practitioners into the field of Dispute Resolution. Ms. Kenny offered this insightful comment to the draft Report of the Task Force:

*I would like to see included in the Report a section that discusses how the legal community can partner with not-for-profits to increase the pipeline of students of color and diverse ethnic backgrounds. I can envision such a partnership that would help students to learn about the process of applying to colleges and law schools, including writing the admissions essays, building one's resume, and taking the appropriate college courses. This partnership might include exposing students to internships, various careers in the law and/or business. I believe that the not-for-profit community, which includes bar associations, could be a valuable resource and partner in helping to address myriad diversity issues. I am not excluding partnering with the private sector. Given the increased challenges students of color and of diverse ethnic backgrounds now must encounter, the initial emphasis has to be upon gaining admission to colleges and law schools, which will require assistance from many communities.*

Another Section member, Craig Atlas, also commented, suggesting language referencing the importance of the Dispute Resolution field in the report:

*...that the report include one or more brief statements about the importance of advancing diversity in alternative dispute resolution. It could note that the use of ADR to resolve disputes has grown in recent years, so it is important that the effort to advance diversity includes ADR programs.*

*This could be done through language inserted in the following portions of the report:*

*Supplier Diversity (page 76 of the report; page 80 of the pdf file)*

*Implications of the SFFA Decision for the Judiciary (beginning on page 78 of the report; beginning on page 82 of the pdf file)*

*This section could note that certain ADR neutrals serving under New York State court programs are required to complete at least two hours of anti-bias training every two years. See Administrative Order 124/22 at <https://ww2.nycourts.gov/sites/default/files/document/files/2022-05/AO124-22.pdf>.*



As Chair since June, two of my announced initiatives are designed to further promote diversity and inclusion within the field of Dispute Resolution, building upon the work of past leaders. The first involves establishing a formal, ongoing relationship between DRS and New York State's fifteen law schools. The goal is to provide aspiring lawyers with the awareness of the opportunities for practice within the Dispute Resolution field. Students are offered free membership to DRS, are encouraged to partake in its excellent programs, and network with both new and seasoned Dispute Resolution practitioners. The second initiative builds upon the work of past leaders, to increase the presence of diverse neutrals on our committees; and to enhance the selection of diverse neutrals in both private and court annexed programs.

With all that our Section is doing, we need to do more, and will. The field of Dispute Resolution is now an integral part of our State's legal system. Former Chief Judge DiFiore's creation of the presumptive ADR program, and the ever-expanding use of private dispute resolution services, support the use of mediation and arbitration as tools to provide just resolution of disputes in a client focused, time and cost-efficient manner. We will continue to work to increase the number and selection of diverse neutrals by both private and court annexed users in New York State, and the utilization of mediation and arbitration services by lawyers.

Once again, we applaud the work of the Task Force and appreciate this opportunity to comment on and contribute to its excellent work.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey K. Anderson', with a long horizontal line extending to the right.

Jeffrey K. Anderson

JKA/tdh