Correcting the neutral selection gender bias

According to new research published in the American Bar Association’s Dispute Resolution Practice, lawyers and their clients are still disproportionately choosing men to act as their arbitrators and mediators.

The article summarizing this research, “Gender Differences in Dispute Resolution Practice,” by Andrea Kupper Schneider of Marquette University Law School and Gina Viola Brown of the ABA Section of Dispute Resolution, details their study collecting data from more than 6,000 neutrals and advocates.

A large percentage of the respondents had practiced for more than 20 years, and the gender breakdown was 66 percent men and 34 percent women, which reflects the membership of the Dispute Resolution Section.

The study showed women lagging in a number of areas. Women are selected less often, as well as a smattering of labor, health and energy disputes. Schneider and Brown suggest that along with more research in gender differences in neutral selection, several steps can be taken by courts, agencies, law firms and ADR institutions to improve the situation, including:

• Making a real effort to recruit and promote female mediators and arbitrators.
• Using lists of mediators and arbitrators for neutral selection instead of simply e-mailing your network.
• Making sure at least 35 percent of an institution’s roster is female.
• Adopting the presumption that for three-arbitrator panels, when considering equally qualified candidates, a woman should be selected for the panel.
• Engaging in awareness training.
• Making meaningful efforts to increase female and minority involvement in certain practice areas such as commercial and construction.

They also suggest that as most lawyers are still likely to ask their colleagues for neutral recommendations, female neutrals should work to promote themselves to their own networks.

Implementing these strategies for correcting the existing bias toward male arbitrators and mediators will directly benefit users of dispute resolution services as they will gain access to a much larger pool of talented neutrals.

A detailed report of Schneider and Brown’s survey is available online at goo.gl/jmo8fH.