

Kluwer Arbitration Blog

Interviews with Our Editors: The ICDR in the Spotlight with Luis Martinez, Vice President of the ICDR

Ulyana Bardyn · Wednesday, March 4th, 2020 · International Centre for Dispute Resolution (ICDR)



*Mr. Martinez, thank you for joining us on the Kluwer Arbitration Blog! I am thrilled to have this opportunity to share with our readers your perspectives and to highlight interesting initiatives undertaken by the American Arbitration Association's (AAA's) **International Centre for Dispute Resolution (ICDR)**.*

1. *Before we delve in, would you please briefly introduce yourself and describe the path that brought you to the ICDR?*

Thank you for your invitation and it is a pleasure to be on the Kluwer Arbitration Blog. I joined the ICDR as the first attorney hired when the organization was established in 1996 and, aside from a period where I worked at the AAA's Office of the General Counsel, I have been with the ICDR exclusively. My current responsibilities include international business development covering the

east coast of the United States, South and Central America, the Caribbean and Europe. I also oversee the ICDR international cases relating to my assigned region, which are administered out of our Miami office.

- 2. It must be an amazing feeling to be with an organization since its inception and to see it grow over time. How, if at all, have your views about the role of an arbitral institution in the arbitration process evolved over the years?***

The transformation has been truly amazing. I remember in the early years where the international arbitration cases filed with the ICDR were much less formalistic, frankly faster, and less expensive. It was also a period where the practice was evolving. The common law – civil law divide was much more evident and there was a range of issues where regional perceptions differed, such as the use of non-neutral arbitrators in the United States (prior to the revision of ABA-AAA Code of Ethics in 2004), the approach to the exchange of information, conflicts and disclosures were all issues of great debate.

- 3. The ICDR is, of course, the AAA's international arm. What does it mean in practical terms, from the perspective of the users, the arbitrators, and the institutions' teams? What is the extent of collaboration between the two divisions?***

The ICDR is the international division of the AAA. Since its creation in 1996, its focus has been on providing international conflict management services for the global business and legal communities. The ICDR's administrative system is comprised of its international case counsel (who are typically multilingual attorneys from various jurisdictions) working with ICDR executives as they administer the ICDR's international arbitrations and mediations. ICDR cases are administered out of New York, Miami, Houston and Singapore.

The cornerstone of the ICDR's administrative system is its [International Arbitration Rules](#). These Rules, revised in 2014, have been well received. International users have welcomed the provisions on transparency, time and costs, and international "best practices" such as limiting the exchange of information and providing the arbitrators with the powers they need to protect the efficiency and integrity of the arbitral process.

Last but not least, the ICDR's panel of arbitrators, comprising of men and women from around the world who are recognized experts in their respective fields and have established track record as arbitrators. This is a testament to our institutional messaging that "expertise matters." Our arbitrators undergo a rigorous vetting process before being added to the ICDR's international panel and then they must participate in the ICDR's international case management training, which ensures that the arbitrators are well versed in the ICDR's Rules and are otherwise well positioned to preside over arbitration matters.

While the ICDR's focus is on the AAA's international cases, we work extensively with our domestic colleagues on numerous initiatives, including joint conferences and other programs.

4. *What is, from your perspective, the key factor or factors that users value most in arbitration? How does the ICDR implement user feedback in its practices?*

The most important factor for our users, and this has been confirmed by a number of studies and surveys that we have conducted over the years (including our [Dispute-Wise Studies](#)), is the value they place on justice.

Win, lose or draw, our users value well-reasoned awards so they know that the arbitrators understood the case as it was presented by the parties, and correctly applied the law and determined the facts. They want awards that they can bring back to their executives or boards or other stakeholders and feel that their matter was resolved professionally with due process and thoughtful determinations. Time and costs are still a major concern for our users as well.

To ensure user satisfaction with AAA/ICDR arbitration, our executives carefully review responses to our client surveys. In these surveys, the institution, the case counsel and the arbitrators are reviewed. We carefully reflect on user reviews and we make improvements accordingly. In addition, positive feedback about arbitrators is also shared with them and tracked in our databases.

5. *The issue of ever-growing time and cost has given rise to [concerns](#) among users, and it has caused arbitration to become cost-prohibitive in some instances. I know the ICDR offers a special track for [expedited proceedings](#) to help address some of these concerns. Is this option frequently used by disputing parties? What are the key characteristics of such proceedings?*

The ICDR introduced its [Expedited Procedures](#) with its last major revision to its International Arbitration Rules in 2014. As provided by Article 1.4 of its International Arbitration Rules:

“Unless the parties agree or the Administrator determines otherwise, the International Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds USD \$250,000 exclusive of interest and the costs of arbitration.”

Importantly, the parties may also agree to use the International Expedited Procedures in other, larger cases. The International Expedited Procedures are found in Articles E-1 through E-10 of the International Arbitration Rules and supplement the main Rules. This means they are applied in conjunction with the main Rules, so long as there is no direct conflict with the main Rules.

The ICDR has managed expedited cases in accordance with its International Arbitration Rules since June 2014. However, in 2000, the AAA promulgated Expedited Procedures in its Commercial Arbitration Rules, and the ICDR also has managed cases under these rules since that time. Our caseload over the past five years demonstrates a steady interest in the administration of expedited cases.

Parties are quite accepting of the use of the Expedited Procedures for smaller claims and the associated abbreviated time frames and reduced costs. The arbitrator costs are limited to one flat fee (amount is case and location dependent).

The AAA-ICDR has also implemented a number of other initiatives aimed at reducing time and costs. For example, the [Streamlined Panel Option](#) offers the parties an option of a tripartite panel being appointed and once the panel is in place, the chairperson will then serve as the sole arbitrator

to manage the preliminary stages of the case (including exchange of documents). The other two arbitrators become involved 60-30 days before the hearings, thereby saving the parties that portion of their compensation during the early stages of the arbitration.

6. *The ICDR offers its users **Optional Appellate Arbitration Rules**. How does this process work?*

On November 1, 2013, the AAA introduced new Optional Appellate Arbitration Rules.

These Rules were developed in response to our client feedback requesting more expansive review of arbitration awards than that available in court, especially for large and complex cases or in matters where the parties think the ability to appeal is particularly important. These Rules provide parties with an option of a streamlined and standardized appellate arbitration process. These cases can be filed within 30 days of issuance of an award and the panels consist of former federal and state judges and arbitrators with strong appellate backgrounds.

A panel of three appellate arbitrators is appointed unless the parties agree to utilize a single arbitrator. An appeal to a panel can be completed within 3 months, giving both sides adequate time to submit appellate briefs. The scope of the review is limited to errors of law that are material and prejudicial, and determinations of fact that are clearly erroneous. To date we have seen a relatively small number of appellate arbitrations.

7. ***Cybersecurity** is another topic that has received a lot of attention in the arbitration world recently. Does the AAA/ICDR have any position on this issue?*

This is and has been an important area of focus for the AAA-ICDR. The duty to protect information and potentially sensitive data stems not only from the arbitration rules but also from other sources, such as contractual obligations, regulatory obligations (e.g. GDPR, HIPAA), and various emerging “best practices” guidelines.

The AAA has developed a sophisticated protocol designed to deal with the ever-increasing threats to information security. The AAA employs several layers of advanced “best practices” protections against cyber threats. These protections are extended to the AAA’s data and case management systems incorporating advanced firewalls and extensive encryption, with a range of other related security technologies in place to secure AAA’s networks and website. The focus on information security extends to all staff, who receive regular training and testing as well as to our arbitrators. The AAA-ICDR formally scores all its security controls against the National Institute of Standards and Technology (NIST) Cybersecurity Framework providing a quantitative view of risks, ensuring alignment with industry standards and providing specific and actionable control/mitigation recommendations. For further reading on the AAA-ICDR Cybersecurity Protocols, please see a [report](#) from our Chief Information Office, Diana Didia.

8. *As a signatory of the **Pledge on Equal Representation in Arbitration**, AAA/ICDR has signaled its commitment to diversity. Could you please tell us more about the ICDR’s initiatives in this area?*

The ICDR has signed the Equal Representation in Arbitration Pledge committing to improving the profile and representation of women in arbitration.

In 2018, 22% of ICDR international panel were women and 22% of ICDR cases had a female arbitrator appointed.

The ICDR's international roster includes eminently qualified women from numerous jurisdictions all of whom are well known and highly qualified international practitioners. The selection of women arbitrators to international cases continues to show a positive trend as several prominent international arbitration institutions are signing on to the pledge and are tracking and sharing information on the composition of the arbitral tribunals. The AAA-ICDR has also worked with ArbitralWomen and WomenWay in conducting programs that discuss the diversity issue. For example, this year we hosted programs in New York and Miami with both organizations featuring "[The Arbitral Women Diversity Toolkit®](#)." This is an interactive seminar designed to examine the way you think (and act) about arbitration and diversity.

On the racial diversity front, the AAA has had in place its [Higginbotham Fellows Program](#). This program was established in 2009 to provide training, mentorship and networking opportunities to up and coming diverse alternative dispute resolution professionals. Since 2009, the Fellows Program has inducted 134 Fellows.

9. I understand that the [AAA-ICDR Foundation](#) is a not-for-profit organization devoted to promoting alternative dispute resolution (ADR) by funding projects and proposals, and I am interested in hearing more. How did the idea of this Foundation come about and what kinds of projects has the Foundation funded so far?

The AAA-ICDR Foundation was established in 2015 with the purpose of providing funding to important projects devoted to promoting ADR domestically and internationally. Its purpose is to provide support to the ADR community by expanding the use of ADR, improving the process, increasing access to ADR for those who cannot afford it, and sharing knowledge.

The Foundation is a separate not-for-profit organization from the AAA and it is not involved in any way in the oversight, administration or decision-making of the AAA-ICDR cases or in the maintenance of the AAA-ICDR's rosters of arbitrators or mediators. The Foundation's mission is to solicit donations and provide grants to worthy ADR projects.

One example of such worthy ADR project is described in a podcast series titled "[Thanks for Listening](#)," which is organized under the auspices of the Harvard Negotiation and Mediation Clinical Program funded by the AAA-ICDR Foundation and spotlights the Foundation supported program, "[Rebuilding after Crisis: Community Conversations in Falcon Heights, Minnesota](#)." The podcast, as well as the program it features, is a great example of the innovative ways ADR can be utilized to nurture personal growth and societal peace. The Foundation has funded many grants that tackle some of the most difficult issues of today as well as advance the use of ADR, for example:

- Funding ADR to address community disputes and local unrest,
- Teaching conflict resolution skills in schools, prisons and internationally,
- Supporting ADR research, both domestic and international, and
- Funding ADR technology efforts to provide better access to justice.

Each of the grants issued provides a critical service that otherwise would go unmet. More details about the work the AAA-ICDR Foundation supports can be found on the Foundation's [website](#).

10. *What advice would you have for young lawyers interested in pursuing a career in arbitration?*

I would positively encourage a career in international arbitration. It continues to be a growing field with opportunities no longer limited to the international law firms, but expanding to arbitration institutions, in-house counsel, government positions, tribunal secretaries, among other options. I would invite your readers to see the results of a recent [study](#) we conducted highlighting arbitration programs from around the world.

I would also strongly encourage young lawyers to join the ICDR's Young and International group. The ICDR Y&I provides networking opportunities in the areas of international commercial and public interest arbitration, as well as alternative dispute resolution. They conduct free programs all over the world and currently have over 2500 members in 90 countries. The membership information is available on our [website](#) and is free of charge.

Thank you for your time and perspectives – we wish you and the ICDR continued success!

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