



EUNICE BAROS

• *“Charles Darwin saw in the diversity of species the principles of evolution that operated to generate those species: variation, competition and selection. (Scientific American)”*

Diversity has invited discussion and debate for a long time in many spheres, but the topic is now a crucial primary concern in mediation and arbitration as well. When I became a Florida Supreme Court-Certified Circuit/Civil Mediator in 1993, **diversity** as a stand-alone subject was rarely discussed. New mediators and arbitrators were taught conflict resolution, awareness, and empathy, but implicit bias and diversity were not specifically recognized or emphasized.

Today these components are integral to the training in continuing legal education and mediation and arbitration courses. “Diversity pervades our entire existence,” says Stanley Zamor, founder of South Florida-based ADR Training Collaborative, LLC and Effective Mediation Consultants, LLC. “Diversity goes beyond ‘cultural characteristics.’ It affects our socio-economic, gender, geographical, and financial status.”

For example, Zamor observes: “The COVID-19 pandemic has forced us all to be aware of others and not just ourselves. We need to emphasize fairness, equity, values, empowerment and self-determination at every level of our interaction and in every situation in our lives now.”

This, he concludes, is why diversity matters. “We are diverse. We want to be valued; we want to be recognized; we want to be respected. Diversity is what we are and who we are. It’s part of the human condition.”

If we accept this common-sense premise, lawyers seeking the most appropriate mediator or arbitrator for any given case need to review a mediator’s or arbitrator’s background and experience for the most effective selection. This is most important in cases where diversity is a primary concern, such as in family, money/

## The Importance of Diversity in Alternative Dispute Resolution

commercial disputes, employment, and consumer matters. Moreover, because of the pandemic’s limitations on court appearances, mediations and arbitrations have become even more important for resolving legal issues.

Lawrence Gordon, founder of Phoenix Mediation in Palm Beach County, cautions that “Diversity is not created by good thoughts and well-meaning deeds. One fosters diversity by deliberately and intentionally creating it,” he says. “Bias must be recognized and rooted out for diversity to exist and thrive.” Gordon suggests and encourages more minorities and people of color become mediators. Now, more than ever, in our multi-faceted environment, diversity training is crucial.

Oscar Franco, founder of Divorcio Pacifico and Peaceful Divorce, exemplifies a family mediator with significant diversity training. Educated as an attorney in his native Venezuela, Franco now mediates divorce cases in South Florida. He explains, “The Latin cultural family dynamic is quite different from the Anglo-Saxon. The mediator and the attorneys on the case should not be misguided by stereotypes such as the husband is the sole leader of the Latin family and the wife plays an insignificant role.”

Another common mistake, Franco says, is when mediators consider Latin culture in all South American countries as the same just as it would be an error to think there is no cultural diversity among people from different states in the U.S. A mediator or arbitrator who can show that he or she understands the parties’ issues is one who has a better opportunity to help them resolve various concerns. Franco concludes. Franco, a former Broward County Court mediator, advises attorneys to seek out mediators who have specific diversity training.

Mediators and arbitrators looking for additional diversity training may visit the Florida Bar’s Henry Latimer Center for Professionalism. This web site offers resources and leadership grants, among

other valuable tools.

The Latimer Center’s mission statement under the heading of “Diversity” reads: **“To increase diversity and inclusion in The Florida Bar so that the Bar will reflect the demographics of the state, to develop opportunities for community involvement, and to make leadership roles within the profession and The Florida Bar accessible to all attorneys, including those who are racially, ethnically and culturally diverse, women, members of the LGBTQ community and persons with disabilities.”**

Rosine Plank-Brumback, an international arbitrator with the American Arbitration Association, sees a slow but growing trend toward including diversity in international arbitration, which can only add legitimacy and value to the process, she says. “Gender and diversity statistics on appointments are also starting to become more publicly available,” says Plank-Brumback, a former chair of the ADR Committee of the Palm Beach County Bar Association. “Many law firms and institutions have signed the Equal Representation in Arbitration Pledge which seeks to increase the number of women appointed as arbitrators on an equal opportunity basis. Full parity is the ultimate goal.”

These trends underscore the ongoing importance of diversity in today’s legal landscape. “We all view life through our own prism of experience,” observes Palm Beach County Chief Judge Krista Marx. “Diversification among dispute resolution facilitators will result in more balanced and just outcomes.”

Kimberly Kosch, Senior Court Operations Consultant for the State Courts Administrator, Florida Dispute Resolution Center in Tallahassee, agrees. Awareness of cultural diversity, she says, is an important tool for a mediator in helping parties feel comfortable, trust the process, and work towards resolution.

<sup>1</sup> Diversity, Am. Heritage Dictionary (4th Ed. 2000).