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# ADR in Florida, The Severe Lack of Diversity

What do the Academy Award Nominations, the National Football League and ADR in Florida have in common? There is an appalling lack of diversity in each of them.

All are controlled by white men. In most cases, older white men who are adept at protecting the status quo and fighting the tides of change. Some argue that diversity should not be considered in the arts, professional sports, and even ADR. Therein lies the problem.

People of color didn't receive Oscar Nominations and African American assistant coaches didn't receive consideration for head coaching positions despite seventy-five percent of league players being African American. Of the thirty-two NFL teams, only two Head Coaches were African American in 2019.

According to the Florida Dispute Resolution Center, there are approximately thirty-two hundred Supreme Court Certified Circuit Civil Mediators in the state. Unfortunately, only 3.8 percent or 122 are men and women of color.

People of color are often excluded from the process. One cannot win if one is not allowed in the game. Seeking quality and seeking diversity aren't mutually exclusive. The belief that diversity will work itself out without being fostered and nurtured is rubbish. Diversity isn't created by good thoughts and well-meaning. One creates diversity deliberately and intentionally. Bias must be recognized and rooted out for diversity to exist and thrive. Access and power are rarely given up voluntarily. This usually requires strong and direct actions for change.

In 2006-2007, the Florida Supreme Court changed the rules of qualifications for one to become a mediator.

It created a path for non-lawyers to become Certified Mediators. The lack of diversity among Florida mediators contributed to this rule change. In a 2019 report, Judicial Arbitration and Mediation (JAMS) called on the legal profession to work harder toward diversity. It asked firms to institute the

Mansfield Rule which urges firms to actively pursue diverse candidates for at least thirty percent of their employees.

This is very similar to the Rooney Rule in the NFL which requires any team with a head coach opening to interview at least one candidate of color. While these are admirable efforts, they are voluntary and very little has changed.

Mediation firms have made it difficult for non-lawyer mediator candidates to participate in the ten apprentice mediations required for certification. They argue that many of these candidates are not qualified, open them to serious liability exposure and take jobs from lawyers. Nonsense, Malpractice insurance covers any errors and certainly the Supreme Court considered these issues before changing the rules. Some mediation firms argue that there are too many mediators. How can that be when Florida's population is approximately 21.5 million and there are only five thousand six hundred in all categories of Certified Mediators? What they really should be saying is, if there is an excessive number of mediators, it is because there are too many who are white males. Perhaps it should become mandatory for these firms to mentor a certain number of mediator candidates of color each year to remain in good standing with the Florida Bar. The lack of diversity must change.

The larger and more diverse the pool, the greater the chance for new ideas, growth, and perspectives. ADR can be used to push diversity forward by using a diverse list of Mediators and Arbitrators.

In 2018, business mogul and rapper, JayZ was involved in a \$204 million-dollar arbitration. He noticed there were few African American arbitrators for him to select. He complained to the court, which agreed that the lack of African American arbitrators was discriminatory under the Constitution of New York State. Again, this situation demonstrates a need for greater diversity.

Recently, I received a call from a prominent personal injury law firm about mediating a

case that had been mediated twice before however, remained unresolved. I accepted the case, and after several hours, it was clear that the lack of diversity was an important issue.

The two previous mediators had been white males. The injured plaintiff was the only person of color involved. I suspect that I was selected because I'm a person of color. The plaintiff felt that his interest wasn't being protected because he had never seen anyone who looked like him. Fortunately, I was able to assist in getting the case resolved. The plaintiff, just as JayZ, felt the process had been discriminatory.

How can the mediation process be fair and equitable if people of color aren't involved in meaningful numbers? The pool of mediators should reflect the racial, ethnic and gender diversity of the community. Sixteen percent of Florida's population, over three million, are African American. How can we justify having just over two hundred mediators of color in all Certified categories? There are seven mediators of color in the 15th Judicial Circuit, covering Palm Beach County, an area of 1.5 million people. These statistics are an indictment of the mediation industry and clearly indicate that the problems are both systemic and institutional. Diversity is about strength, not weakness. There is something about every group that can improve the whole. The ADR community must do better.

For additional ADR tips and resources, please go to the ADR Committee page of the updated Palm Beach County Bar Association website at [www.palmbeachbar.org](http://www.palmbeachbar.org).

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