

Building an Equitable and Inclusive Mediation Community Committed to Racial Justice

By Maxine H. Park, Esq., Member of the NYSCDM Winter Symposium Committee

On September 15, 2020, NYSCDM and FDMC of greater NY co-hosted a workshop entitled *Building an Equitable and Inclusive Mediation Community Committed to Racial Justice*. Ambitious – yes, but Social Justice Educator Marta Esquilin led the attendees lucidly through a trove of information. With an introduction on how personal biases are formed and psychological trauma are retained – horrors such as slavery having intergenerational effects – we were able to revisit power dynamics, oppression, and fragility through a revealing societal and interpersonal lens.

It is an understatement to say that Professor Esquilin's message is timely; increased diversity in the field of mediation, as in so many desired professions, is long overdue. Fifteen years ago, in 2005, Standard IX of the Model Standards of Conduct for Mediators, in enumerating ideals for the "Advancement of Mediation Practice," states as its first element: "1. Fostering diversity within the field of mediation." Then, an entire subsection was devoted to the following: "A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict." Twenty years ago, in the year 2000, AFCC's Model Standards of Practice for Family and Divorce Mediation starts out: "Effective mediation requires that the family mediator be qualified by training, experience, and temperament...that the mediator be aware of the impact of culture and diversity." Sadly, growth has been slow.

What we each bring to the table (parties and mediators alike) cannot be overlooked. For example, an instructive exercise from the workshop forced us to think about who gets to define the phrase "Black Lives Matter." We explored how its proponents' meaning might be explained to anyone who wants to respond with "All Lives Matter." Perhaps the biggest challenge for mediators though is how to listen and not dismiss either side. Moreover, how can a mediator maintain authority and remain a persuasive guide when an issue is steeped in identity and the stakes so high? I propose something quite simple – trust. Those being mediated must trust the mediator.



While simple, trust might also seem to be a tall order, especially in divisive times like now. Two recurring themes in Professor Esquilin's workshop might give us all some hope: humility and empathy. A healthy dose of humility allows the mediator to listen to someone's perspective and empathize with, at least, where that person is coming from. To do this well not only happens to be right in the wheelhouse of a good mediator, it also turns out to be the key to cultivating trust. When a mediator earns the parties' trust, they can be guided. Our work is largely trust-building and it is an eventual outcome if we employ humility and empathy effectively.

As recognized in the model standards adopted by the AFCC, Divorce and Family Law calls out for mediators who understand that our field is optimized by diversity, inclusion and a commitment to racial justice. Our mediation sessions unavoidably include personal issues informed by one's cultural identity. Marriage, parenting, finances—not much gets more personal—and, these topics are often infused with an individual's biases and traumas. However, each also requires social participation; each even involves the state. Professor Esquilin's methods for introspection, listening, and managing difficult conversations, enhances the mediator's tool kit so that we might help whomever it is that must communicate, transcend differences and become allies toward common goals for the common good. Actively seeking inclusiveness in all that we do will get us there sooner and more meaningfully.

Editor's Note: During the Council's 2019 strategic planning meeting, we made diversity and inclusion a priority. We are working on this goal through membership outreach and programming. We have made some modest progress, but, as Maxine says in her article, "Sadly, growth has been slow." As we continue to work on our diversity and inclusion, we call on all members to help us by making personal invitations to all the divorce and mediation professionals you know and inviting them to be part of our mediation community.