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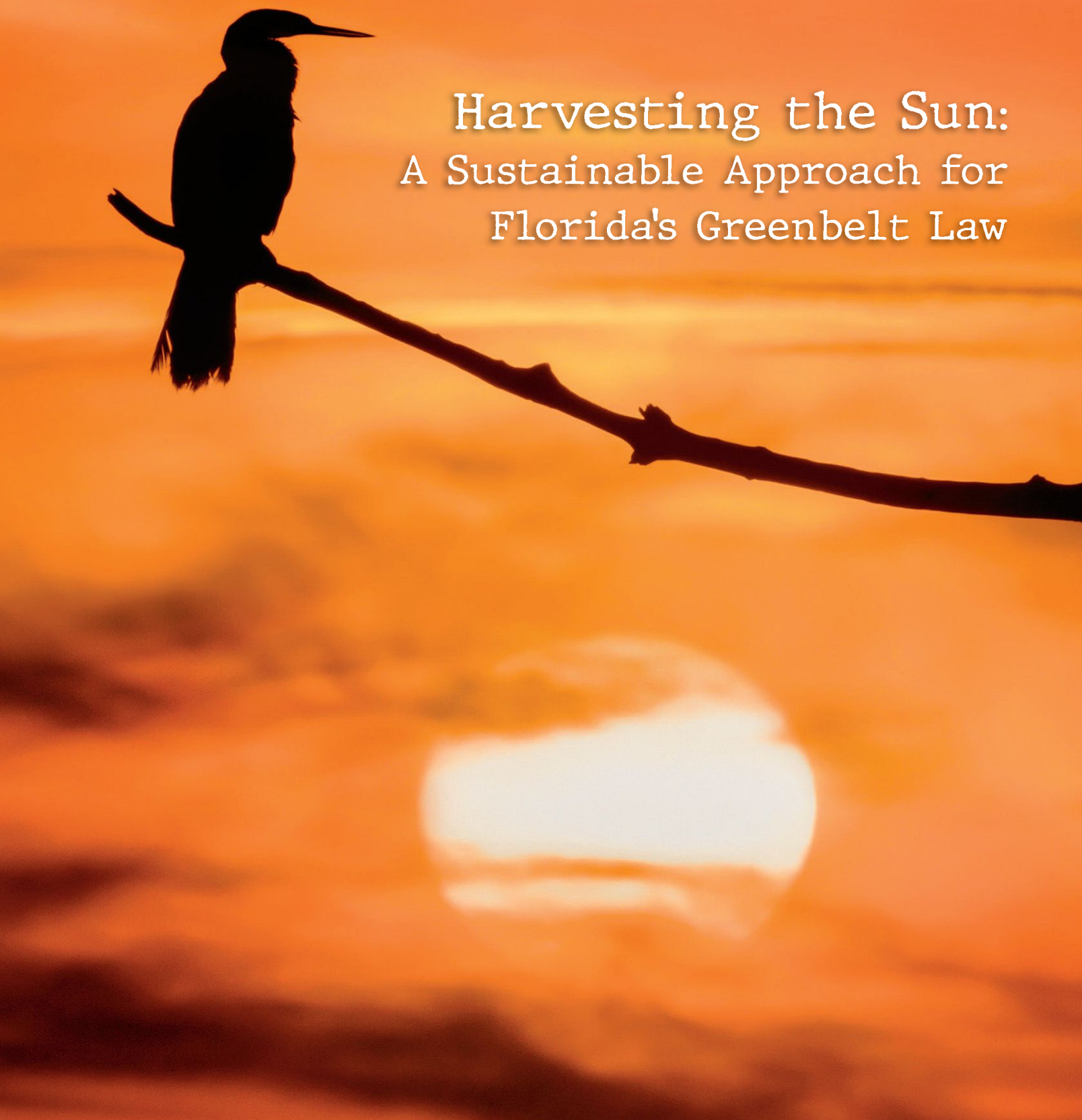

Harvesting the Sun:
A Sustainable Approach for Florida's Greenbelt Law

by Christopher M. Shulman, Jeanne Charles, and Dorsey C. Miller III

Changing The Face of ADR: A Call for Greater Diversity Among the ADR Profession

Mediation and arbitration are the most commonly used forms of alternative dispute resolution in Florida. In both processes, a neutral professional either assists the parties to explore a negotiated settlement of their pending dispute (mediation) or makes the decision for the parties regarding the dispute (arbitration). As the term "neutral professional" suggests, ADR professionals are required to be impartial as to the dispute and the disputants.[1] There is a growing concern that disputants' perception of the fairness of the ADR process may be tainted by implicit or other race- and ethnicity-based biases.[2]

In this article, we first examine the (lack of) diversity of the ADR profession, especially as compared to the Florida legal community and Florida's general population. We will then discuss why underrepresentation of racial and ethnic minorities and of women among the profession can negatively impact perceptions of fairness among consumers of ADR services. Finally, we offer some suggestions to address the concerns going forward.

What Does the ADR Cadre Look Like?

According to the U.S. Census Bureau, as of January 2023, just slightly more than half of all Florida adults (50.8%) are women; likewise, 52.7% identify as Caucasian (not Hispanic), with the balance comprised of individuals who identify as Caucasian (Hispanic), African American (regardless of whether Hispanic), American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, or two or more races.[3] In contrast, the legal profession, Florida's state judiciary, and the ADR profession are not typically representative of the people whom we serve. This can have negative consequences for parties' perception of the fundamental fairness of the proceedings, especially in the typically confidential setting of mediations and most arbitrations. Indeed, with few exceptions, the disparity between the ethnic and gender make-up of these groups, on the one hand, and the general public, is significant and — as we shall see below — worrisome. So, let's take a look at the numbers.

The American Bar Association (ABA) has noted, in its report submitted in connection with ABA Resolution 105 (discussed later),

> [i]t is well established that, despite significant efforts, the legal profession as a whole lags behind other professions regarding diversity and inclusion. As of 2012, African Americans and Hispanics comprised 16.5% of accountants and auditors, 18.9% of financial managers, 12.3% of physicians and surgeons, but only 8.4% of attorneys. Women, members of racial and ethnic groups, members of LGBTQ [sic] groups, and attorneys with disabilities continue to be underrepresented.[4]

Locally, The Florida Bar's most recent published data (as of October 2022) indicate that 78% of Florida attorneys are Caucasian/White, 12% are Hispanic/Latino, 5% are African-American/Black, 1% are Asian/Pacific Islander, less than 1% are Native American, and 3% identify as "Other."[5] As to gender, 59% of Florida Bar members report as male, 41% as female, and less than 1% as nonbinary.[6] As to sexual orientation, only 3% identify as gay, lesbian, bisexual, or transgender.[7]

Similarly, according to the 2014 "Report of The Florida Bar President's Special Task Force to Study Enhancement of Diversity in the Judiciary and on the JNCs," Florida's trial court judiciary (county judges and circuit judges) consisted of 84.1% Caucasians and 15.9% of non-Caucasians; approximately 65% were men and 35% were women.[8] Thus, when compared to the Bar's data for 2014, Florida judiciary's gender and ethnicity data are roughly similar to those of The Florida Bar for 2014.[9]

Nationally, the ADR neutral profession also lags behind the general population in terms of gender and ethnic composition. For example, the American Arbitration Association (AAA), a major source of mediator and arbitrator referrals, reports that, "As of the end of 2021: 29% of active panel members [including specialty panels] are women and racially and ethnically diverse. 50% of new additions to the AAA-ICDR Roster are women and racially and ethnically diverse."[10] The ABA, in its 105 Report mentioned above, noted that "the available data show that diversity within Dispute Resolution significantly lags the legal profession as a whole," pointing out that disparities exist at both the roster level (*i.e.*, whether women and non-Caucasians are on the panels submitted for consideration) and the selection level (*i.e.*, whether women and non-Caucasians are selected, even if they appear on a roster).[11]

The National Academy of Arbitrators (NAA), largely considered the preeminent labor arbitrator orga-

nization, issued its NAA Diversity, Equity, Inclusion, and Belonging: A Strategic Plan (National Academy of Arbitrators March 30, 2022) (hereinafter, "NAA DEIB"),[12] to discuss and address earlier findings of significant underrepresentation of arbitrators who were not Caucasian men.[13] Relying on a 2019 survey of over 400 labor and employment arbitrators,[14] the NAA DEIB notes that approximately 80% of these arbitrators were men (slightly more, 83%, of respondents who were only labor arbitrators, identified as male) and approximately 95% were Caucasian.[15] Those earlier data tracked with the anecdotal evidence of the gender- and race-composition of the NAA itself: approximately 80% men and approximately 93% Caucasian.[16] Neither the NAA DEIB nor the underlying 2019 survey addressed either the gender identity/sexual orientation or the disability identification of such arbitrators.

In Florida, the gender make-up of Florida Supreme Court certified mediators[17] overall is that about half are men (46.3%) and half are women (47.5%), with other/no report making up the 6.2% difference. However, these data are somewhat misleading, as reported gender varies significantly by type of mediator certification. For example, the percentages are skewed in favor of women in two of the five mediation certification areas: family mediation (50.9% female) and dependency mediation (68.2% female). Both of these certification areas have significant numbers of certificants drawn from the fields of psychology, social work, and mental-health professionals, fields that are, themselves, historically skewed female. In contrast, the circuit civil mediation certification area (which, until about 2007, required at least five years' Florida Bar membership), trends heavily in favor of men: 61.51% are male. Appellate mediation certification, which requires circuit, dependency or family mediator certification as a prerequisite, also skews male (60.71% are men). That tracks the gender disparity seen in the broader legal profession, discussed above. The final area of certification, county mediation, is roughly the same as the data for the entire group, with women (53.03%) slightly edging men (40.22%); there is an additional 6.75% of county mediators who either did not disclose their genders or did not accept a cis-gender classification.[18]

The ethnicity data for these Florida certified mediators tells a somewhat different tale: 65.66% of all certified mediators identify as Caucasian, with only 34.23% identifying as either African-American, American Indian/Alaska Native, Asian/Pacific Islander, Hispanic, or other; significantly less than 1% failed to identify themselves. While county mediators, 57.77% of whom identify as Caucasian, and family mediators, 64.29% of whom identify as Caucasian, the other mediator certifications skew even more Caucasian: Circuit is 70.55%; dependency is 70.51%; and appellate is 71.76%.[19]

These disparities pose a major challenge within the ADR profession: the fact that, despite express policies against discrimination on the bases of race, sex, and other innate characteristics of mediators and arbitrators, the vast majority of such ADR neutrals are Caucasian men. This has led some ADR parties to ask why the neutrals do not look like them, with resulting questions about whether the neutrals really understand them.[20] And this is not a new concern. In 2008, two authors noted that "the lack of racial and ethnic diversity in the ranks of neutrals may cause society to lose confidence in the fairness of private dispute resolution, leading legislators, regulators, and the courts to reverse the policies that now support ADR."[21]

One well-publicized instance of this perceived disconnect was that of Rapper Jay-Z, who, in 2018, had a trademark dispute that was to be submitted to arbitration before AAA. He sought a temporary restraining order and other relief against AAA in New York state court, because the entire list of arbitrators submitted to him for consideration were Caucasian. Indeed, Jay-Z asserted that he could not identify any arbitrator on AAA's Large and Complex Case panel who was African-American. After inquiry, AAA sent Jay-Z a list of some 200 arbitrators, only three of whom were African-American (and one of those was conflicted out of handling the case). In his court filings, the principal basis for challenging the arbitration clause was the lack of African-American arbitrators, which, he asserted, had a discriminatory effect analogous to exclusion of potential jurors on account of race. In essence, Jay-Z asserted he could not get a fair shake from an arbitration panel that had no (or vanishingly few) African Americans on it.[22]

The issue also has broader concerns when discussing arbitration of alleged police misconduct cases in the current environment. Two of the authors here regularly serve as arbitrators where law enforcement officers seek to challenge discipline or discharge meted out for alleged police misconduct. This can include instances of alleged police brutality or excessive force. In those instances, especially when the underlying incident and resulting discipline involve allegations of racially-motivated actions by the police officer, the race of the arbitrator may give pause to the police officer (if the officer and

the arbitrator are of different races), as s/he may not have confidence the arbitrator would understand their position. The contrapositive situation is no better: if both the officer and the arbitrator are Caucasian, but the person against whom the officer was accused of using excessive force, etc., is African American, the arbitrator's decision may be subject to public condemnation and protest, even if the substance of the arbitrator's decision were unassailable on the merits. Either way, we suggest that having an arbitrator cadre that is more racially diverse could lead to greater acceptance of arbitrator decisions that (happen to) put officers back to work, regardless of the arbitrator's or the officer's race — or the race of the person to whom the officer was alleged to have directed misconduct.

A similar thought obtains with regard to another common subject matter area: sex. When a woman has brought a claim involving allegations of sexual harassment, sexual assault, or similar misconduct, and the mediator or arbitrator is not also a woman, this can lead that woman to question whether the ADR neutral actually understands her perspective — or will give her a "fair shake."

To be clear — we do not suggest that, to be an effective mediator or arbitrator, one must necessarily share gender or race/ethnicity (or other DEIB characteristics) with the parties and their counsel. ADR neutrals have ethical obligations that are intended to obviate those concerns, requiring impartiality and self-initiated recusal/withdrawal in the event of bias. Instead, we simply point out that, since the DEIB data above indicate the ADR neutral cadre is not representative of the persons who bring matters to us for resolution, there are more opportunities for mismatches of gender and race/ethnicity between the neutrals and the parties/counsel they serve. If there were more women and persons of color among the rosters of people proposed for appointment as mediators or arbitrators generally, the greater resulting frequency of appointment of women and people of color as the neutrals could lead to a decrease in the significance parties and counsel might ascribe to the DEIB characteristics of the neutral. As Florida courts data show, almost 75% of all circuit civil cases resolve before trial,[23] and ADR neutrals have a pivotal role in this pretrial resolution. Thus, the diversity of the ADR neutral cadre in Florida (or lack thereof) can have a real impact on litigants' and society's perceptions of the fairness of the outcomes of litigated matters.

Benefits of a Diverse ADR Cadre

While diversity for diversity's sake is a worthy goal, diversity has benefits beyond mere altruism. Alternative dispute resolution practitioners and clients alike have noted how a lack of diversity within the field can have negative impacts on litigants and the business of conflict resolution itself. For example, as discussed above, there is a legitimate argument that an arbitration panel lacking in diversity will be unable to fully understand a diverse claimant's issues and concerns. If litigants of diverse backgrounds do not believe the arbitration process is fair, they are far less likely to voluntarily pursue arbitration, or in those instances where they are compelled to participate (whether by virtue of a contractual provision or a court order), they are less likely to believe that it can adequately address their problems. The overall legitimacy of alternative dispute resolution will only be enhanced when litigants from diverse backgrounds can see themselves represented in the process.

This becomes readily apparent when considering the increasing diversity within American society as a whole, particularly during the last decade. In 2021, the U.S. Census Bureau published the results of a study using the Diversity Index, which measures the probability that two people chosen at random will be from different racial and ethnic groups. The study revealed that in just 10 years (2010 to 2020), that probability increased from 54.9% to 61.1%.[24] As the population becomes less and less homogenous, many organizations are already seeing the positive impact a diverse workforce can have on their bottom line.

This mindset was the impetus behind the Mansfield Rule, which seeks to boost and sustain diversity in law firm leadership through three main pillars: 1) shifting cultures and mindsets through data tracking, advancement process transparency, and considering a broad slate of 30-50% underrepresented talent for all leadership roles and the activities that lead to leadership; 2) sharing knowledge to work together, learn together, and succeed together as a community; and 3) increasing the marketplace visibility and economic power of underrepresented talent through Mansfield Client Forums, Diverse Partners Directory, etc.[25] Thanks to the more than 270 law firms who have participated in the Mansfield certification process, positive results have already been realized across the country since the program launched in 2017. Specifically, as of June 17, 2022, Mansfield firms increased the racial and ethnic diversity of their management committees by 4.4% — more than 30 times the rate of non-Mansfield firms.[26] Additionally, in that same time frame, the racial and ethnic diversity of Mansfield firms' partner nomination committees increased by nearly 4%.[27] And finally, Mansfield firms saw the racial and ethnic diversity of their equity partnership more than double with an increase of 1.5% between 2017 and 2019.[28]

Just as law firms have recognized the need to diversify based on an ever-changing populace, so, too should those who operate within the sphere of conflict resolution. Having a diverse pool of mediators/ADR practitioners lends greater credibility to dispute resolution programs in that those who participate — many of whom are themselves not Caucasian — are more likely to have confidence in the process if it involves practitioners whose backgrounds and perspectives mirror their own. The ADR process itself is designed to be inclusive, so it stands to reason that its practitioners should be inclusive as well. This was recognized by the Mediator Certification Task Force established by the Association for Conflict Resolution in 2004, when it was tasked with creating a national certification program for mediators. The task force identi-

fied nine core principles, one of which was an "[a]bility to manage diversity in the mediation process."[29] Clearly, the task force recognized the inherent value of diversity and its ability to strengthen the deliberative process and allow for different points of view to be acknowledged, respected and heard. It also goes without saying that greater diversity among neutrals lessens the possibility that racial, ethnic, and/or cultural biases will impede the conflict resolution process.

Finally, and perhaps most importantly, diversity in ADR makes good business and ethical sense. Increasing the pool of neutrals from which litigants may draw can encourage better performance among ADR practitioners (if only due to increased competition), reduce the likelihood of reappointment of insensitive neutrals who may place inexperienced litigants of diverse backgrounds at a disadvantage, and provide more options for litigants in general. In other words, the overall quality of services delivered by mediators and arbitrators can be greatly enhanced by broadening the scope of those who provide those services. Increased diversity can ensure that a variety of different voices are heard. Now, with the use of technology, users of ADR services can experience geographical diversity as well without expanding the costs. Against this backdrop, the benefits of a diverse ADR cadre become obvious.

Solutions and Call to Action

While there is general agreement on the importance of fairness and inclusivity in the justice system, there are differing views on the most appropriate and effective methods for achieving these ideals. It is not enough to identify problems without also exploring solutions to meet these challenges. That said, it is crucial that users of ADR services, whether they are attorneys, clients, or appointing agencies (including court systems), be intentional about creating balance.

This idea is not new. For example, the Florida Supreme Court has recognized the important "principles of nondiscrimination and equal opportunity for all"[30] and of ensuring "procedural fairness" and "nondiscrimination in the court system."[31]

The move toward creating such balance has been addressed in various industries seeking to level the playing field. In the literal playing field of the National Football League, the Rooney Rule, a policy that went into effect in 2003, requires teams to interview candidates of color for head coaching and senior operation vacancies.[32] The league, just recently, expanded the rule to include women as part of the external minority candidate interview pool. Further, as briefly discussed above, the Mansfield Rule measures whether "Big Law" law firms have affirmatively considered at least 30% women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions. The Mansfield Rule is grounded in behavioral science research, as researchers have found the 30% requirement leads to the critical mass necessary to disrupt biases.[33]

A fairly new initiative in this regard for the ADR profession is The Ray Corollary Initiative, Inc. (RCI). The idea began with an article, published in the Howard University Law Journal by Professor Homer C. La Rue and Mr. Alan Symonette.[34] Both gentlemen have been long-time labor arbitrators. Prof. La Rue is the immediate past president of the National Academy of Arbitrators. The RCI is named after the first African-American woman to obtain a law degree in America. Ms. Ray was a graduate of Howard University School of Law. The mission of the RCI is to:

> increase diversity, equity, and inclusion in the *selection* of arbitrators, mediators, and other ADR neutrals. It will do this by encouraging commitment to the RCI pledge and otherwise providing research and tools to support the selection of diverse neutrals.[35] (emphasis added).

Three separate RCI pledges have been developed: one for law firms; one for ADR users, such as employers, labor organizations, for-profit and nonprofit companies, and educational institutions; and yet another for ADR providers like the American Arbitration Association (AAA), International Institute for Conflict Prevention & Resolution (CPR), New Era ADR and JAMS, among others. A significant feature of the pledge (using the research mentioned above for the Mansfield Rule) is to set 30% as the goal for the inclusion of diverse neutrals (as defined by the ABA) on strike lists sent to requestors of mediation and arbitration neutrals or lists maintained informally by practitioners. Additionally, advocates for the RCI pledge note that it creates a paradigm shift, by urging others to adopt the pledge and to track the results. They point out that the pledge drives home

the principle that, to really bring about balance, all stakeholders must make a strategic, intentional effort *that is measurable*. The developers of the RCI pledge believe that implementing a metric such as the 30% factor to serve as a guidepost moves the profession in the right direction.

It is important to recognize that the RCI pledge does not set up quotas, which the Florida Supreme Court has stated are "antithetical to basic American principles of nondiscrimination."[36] Instead, advocates for the RCI pledge — like your authors — believe the RCI pledge is among the types of programs the court supports: "proactive measures to ensure that individuals from all backgrounds are afforded fair opportunities to participate…in the legal profession," but has also made clear that, while "[i]nclusivity is a laudable goal, and it can be achieved without resorting to discriminatory quotas."[37] The RCI pledge does not *require the selection* of any particular neutrals of color, etc. Instead, the pledge opens the way for neutrals of color to have an *opportunity to be considered*.

Your authors instead reiterate that some change is necessary to address the concepts of balance, inclusion, and fairness, which are crucial to maintaining the legitimacy and sustainability of ADR as an institution. Further, to be sustainable there must be professional readiness, on-going reflection, and analysis of outcomes for continued engagement and ultimate balance — as your authors believe the RCI pledge contemplates. The RCI approach is a national move, but, your authors suggest, it can — and should — be adopted here in Florida.

Having said that, we would be remiss if we did not mention the efforts of voluntary sections of The Florida Bar aimed at increasing ADR neutral diversity. For example, in June 2021, the ADR section of The Florida Bar created the Justice, Equity, Diversity and Inclusion Committee (JEDI).[38] The committee sponsored an excellent CLE panel discussion on the topic in April 2022: "Are We There Yet? The Path Forward on Bias Elimination and Greater Diversity in ADR," in which Linda Klein (former ABA president), Kelly Overstreet Johnson (former Bar president), and Sia Baker Barnes discussed where we've been and where we need to go.[39]

Moreover, the RCI approach only really deals with half of the problem, what the 105 Report called the "selection problem" — *i.e.*, increasing the frequency with which diverse neutrals are selected. It does not directly address the other half of the problem, what the 105 Report termed the "roster issue," *i.e.*, getting diverse individuals to take the training and become neutrals in the first place, so they may then be considered for selection. The idea of sustainability includes development of a pipeline of ADR professionals from diverse backgrounds. To achieve such a pipeline, we need early exposure to the ADR career path not only for law students but also for high school and college students. Such exposure should include a curriculum broad enough to inform students of all backgrounds about ADR as a means for resolving disputes in family law, commercial law, workplace law, international law, consumer matters and even community justice.

Further, we note — and concur in — the committee's emphasis on the involvement of voluntary bar associations around the state, the goal of which is to bring this conversation to local bar groups, especially diverse bar groups,[40] so lawyers — especially diverse lawyers — can learn about the path to getting certified as a mediator or qualified as an arbitrator, and the benefit of acquiring those skills.

Users of ADR services (largely attorneys who make the selections) should seek to do what is right, not simply what is easy. Be open to seeking out individuals of diverse backgrounds in order to be sensitive to clients' unspoken but desired need to come before a neutral whom they feel is relatable. In other words, consider whether your client feels seen, heard, and understood in the mediation or arbitration process. Most recently (February 2023), the ABA published a member directory entitled Diversity in Dispute Resolution.[41] While this particular directory does not contain a lot of neutrals from Florida,[42] given the expanded use of technology in dispute resolution with video conferencing platforms, geographic boundaries no longer serve as limitations.

In sum, the institution of ADR can and must remain credible and perceptively legitimate. It is a viable, efficient, and effective means of obtaining fair resolution of disputes. But we all have a role to play in protecting it. We must not be afraid to have tough discussions about these considerations with opposing counsel when making selections. We must make the personal commitment to seek to appoint, wherever practicable, a fair representation of diverse arbitrators and/or mediators (considering gender, ethnicity, and sexual orientation), and request administering institutions to include a fair representation of diverse candidates on their rosters and lists of potential arbitrator appointees. Our message to lawyers and judges both: It's time to take a long, hard look at your "short list" of go-to neutrals and make a concerted effort to expand that circle to include diverse neutrals. If we do, litigating parties and the public as a whole will have greater confidence in our judicial system.❑

[1] FLA. R. MED. 10.330, 10.340; FLA. R. ARB.11.080.

[2] *See, e.g.,* Carol Izumi, *Implicit Bias and the Illusion of Mediator Neutrality*, 34 WASH. U. J. L. & POL'Y 71 (2010), and Gilat J. Bachar and Deborah R. Hensler, *Does Alternative Dispute Resolution Facilitate Prejudice and Bias? We Still Don't Know*, 70 SMU L. REV. 817 (2017).

[3] U.S. Census Bureau QuickFacts, Florida, https://www.census.gov/quickfacts/FL.

[4] ABA Resolution 105 Report, pp. 1-2 (Feb. 2018) (hereinafter "105 Report"), *available at* https://www.americanbar.org/content/dam/aba/images/abanews/2018-AM-Resolutions/105.pdf.

[5] The Florida Bar, *Results of the 2022 Economics and Law Office Management Survey* 51 (Oct. 2022) (hereinafter "2022 Results"), *available at* https://www-media.floridabar.org/uploads/2022/11/2022-Florida-Bar-Economics-and-Law-Office-Mgmt-Survey-Report-Final.pdf.

[6] *Id.*

[7] No other categories were listed. *Id.* at 52.

[8] The Florida Bar, *Report of The Florida Bar President's Special Task Force to Study Enhancement of Diversity in the Judiciary and on the JNCs* App'x 2 "Demographics

of Florida Judicial Officers" (May 2014), *available at* https://www-media.floridabar.org/uploads/2017/04/appendices-to-task-force-report.pdf.

[9] *See* 2022 Results at 51-52.

[10] *See* American Arbitration Assocation, *Diversity, Equity and Inclusion*, https://www.adr.org/diversity-and-inclusion. On its site, AAA does not differentiate, in identifying percentage of "diverse" panels, between ADR neutrals who are women (who are Caucasian or of color) and those who are men of color.

[11] *See* 105 Report at pp. 2-7.

[12] National Academy of Arbitrators, *NAA Diversity, Equity, Inclusion, And Belonging: A Strategic Plan* (2021-2023), *available at* https://naarb.org/wp-content/uploads/2022/06/DEIB-Committee-Report-to-BOG_Final-3.22.pdf.

[13] NAA, and other organizations and writers, use the acronym "DEIB" to refer to this area of concern.

[14] Mark D. Gough, *Arbitration 2019 — The Future of Work*, Proceedings of the 72nd Annual Meeting, NAA, Bloomberg Law, Ch. 12 — Characteristics and Professional Practices of Labor and Employment Neutrals 233 (May 29-June 1, 2019).

[15] NAA DEIB at 24.

[16] *Id.* at 23.

[17] In Florida, mediators may be certified, but are not licensed. The Florida Dispute Resolution Center (DRC) oversees, inter alia, training, certification, recertification of certified mediators and discipline of both certified and court-appointed mediators (including those who are not certified). DRC does not track gender, ethnicity, or similar data on court-appointed arbitrators (who handle principally non-binding arbitrations of civil actions pending in state court), and has no purview over traditional arbitration, hearing matters pursuant to pre-dispute arbitration clauses under state or federal arbitration laws: the Revised Florida Arbitration Code, Fla. Stat. Ch. 682, or the Federal Arbitration Act, 9 U.S.C. §§1-16, respectively.

[18] Fla. Disp. Res. Center, Mediator Search Demographic Data, http://drc.flcourts.org/MediatorSearch/DemographicsSearch.

[19] *Id.*

[20] *See* Homer C. La Rue, *A Call — and a Blueprint — for Change*, American Bar Association *Dispute Resolution Magazine*, Vol. 27, No. 1 (Jan. 2022).

[21] David A. Hoffman & Lamont E. Stallworth, *Leveling the Playing Field for Workplace Neutrals: A Proposal for Achieving Racial and Ethnic Diversity*, 63 Disp. Resol. J. 37, 39 (2008).

[22] *See* Petitioners' Memorandum of Law in Support of the Order to Show Cause for a Temp. Restraining Order and Preliminary Injunction, *Carter v. Iconix Brand Group Inc.*, NY County Case No. 655894/2018, at pp. 4-6 (N.Y. Sup. Ct. Nov. 28, 2018). *See also* Homer C. La Rue and Alan A. Symonette, *The Ray Corollary Initiative: How to Achieve Diversity and Inclusion In Arbitrator Selection*, 63(2) Howard L. J. 205, 218-219 (Winter 2020); Sarah R. Cole, *Arbitrator Diversity: Can It Be Achieved?*, 98 Wash. U. L. Rev. 965, 967 (2021). Eventually, AAA and Jay-Z reached an agreement on a satisfactory process for that case, and the matter — including the underlying dispute in arbitration — settled. *See Jay-Z Has 99 Problems, and...Lack of Diversity Is One,* JDSupra.com (Jan. 23, 2020), https://www.jdsupra.com/legalnews/jay-z-has-99-problems-and-lack-of-92312/; *see also* Jonathan Stempel, *Jay-Z wins fight for African-American arbitrators in trademark case*, Reuters.com (Jan. 30. 2019), https://www.reuters.com/article/us-people-jayz-lawsuit/jay-z-wins-fight-for-african-american-arbitrators-in-trademark-case-idUSKCN1PO32T.

[23] Florida Office of the State Courts Administrator, Trial Court Statistical Reference Guide, https://www.flcourts.gov/Publications-Statistics/Statistics/Trial-Court-Statistical-Reference-Guide (Data cited are from FY 2021-2022).

[24] Eric Jensen, *et al.*, U.S. Census Bureau, *The Chance That Two People Chosen at Random Are of Different Race or Ethnicity Groups Has Increased Since 2010* (Aug. 12, 2021), https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html.

[25] John Iino, Jim Sandman, & Caren Ulrich Stacy, *Diversifying Leadership: How the Mansfield Rule is Driving Change*, Bloomberg Law (June 17, 2022), https://news.bloomberglaw.com/us-law-week/diversifying-leadership-how-the-mansfield-rule-is-helping.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] ACR Task Force, ACR Mediator Certification Task Force: Report and Recommendations (Jun. 14, 2004), https://mediate.com/acr-mediator-certification-task-force-report-and-recommendations/.

[30] *In re: Amendment to Rule Regulating the Florida Bar* 6-10.3, Case No. SC21-284, Order of Dec. 16, 2021, at 3.

[31] Admin. Order SC23-7 (Feb. 2, 2023).

[32] Scott Neuman, *Why a 20-year Effort by the NFL Hasn't Led to More Minorities in Top Coaching Jobs,* NPR (Feb. 3, 2022), https://www.npr.org/2022/02/03/1075520411/rooney-rule-nfl.

[33] Stefanie K. Johnson, *et al., If There's Only One Woman in Your Candidate Pool, There's Statistically No Chance She'll Be Hired*, Harvard Business Rev. (Apr. 26, 2016), https://hbr.org/2016/04/if-theres-only-one-woman-in-your-candidate-pool-theres-statistically-no-chance-shell-be-hired.

[34] La Rue and Symonette, 63(2) Howard L. J. 205.

[35] The Ray Corollary Initiative, https://www.raycorollaryinitiative.org/.

[36] *In re: Amendment to Rule Regulating the Florida Bar 6-10.3*, Case No. SC21-284, Order of Dec. 16, 2021, at 4.

[37] *Id.* at 5-6.

[38] Florida Bar ADR section DEI committee, https://flabaradr.com/diversity-equity-inclusion/. There is a great article discussing the creation and activities of the committee at ADR section's The Common Ground (Summer 2022), *available at* https://flabaradr.com/wp-content/uploads/2022/07/The-Common-Ground-Summer-2022.pdf.

[39] The Florida Bar Continuing Legal Education Browse Feature, https://tfb.inreachce.com/Details/Information/a4190595-54f6-4e7d-ac72-44bd73bb818c2E57CE76588DB0992FC-6134CE8ABB4CD2ADC243BE02451D3E.

[40] By way of non-exclusive examples: chapters of the Florida Association for Women Lawyers, Hispanic bar associations, Florida chapters of the National Bar Association, Asian and Pacific American bar associations, gay and lesbian lawyer associations, and Caribbean bar associations, to name a few. *See* Florida Voluntary Bar Association Listings, https://www.floridabar.org/about/volbars/florida-voluntary-bar-associations/.

[41] ABA Dispute Resolution Section Member Directory (Feb. 2023), *available at* https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/leadership/diversity-directory.pdf. *See also* the Directory of Black Arbitrators hosted by https://Mediate.com.

[42] Something Florida neutrals of color should change.

AUTHORS

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This column is submitted on behalf of the Alternative Dispute Resolution Section, Christy L. Foley, chair, and Ana Cristina Maldonado, editor.