Inclusion Speaks Louder Than Words
By Rebekah Ratliff

Diversity is defined as “distinct in kind; unlike; having variety in form.” The broad definition of diversity includes not only diversity of race, gender, and age, but diversity in thought, skill sets, sexual orientation, mental health/disability and personal/professional culture. Culture is defined as, “the common beliefs and customs of a particular group.” We do not always think about the reality that cultural differences exist, even in our own families. Diversity transcends culture and custom. The business case has been made to show that diversity in corporate America directly and positively impacts profitability, but which comes first… the chicken or the egg?

Now that issues highlighting diversity, or lack of it, have been brought to the surface, a deeper dive is needed to uncover the factors that inhibit both diversity and inclusion. The words diversity and inclusion are frequently used together, but what we are hearing from the field is that without intentional actions this new highly embraced initiative is an empty concept, across industries. The reality is that we still have miles to go before inclusion has the impact to which we aspire in making a difference in the dispute resolution space.

Effective inclusion practices will produce more successful compromise facilitation in dispute resolution. A mediator’s opening statement should include suggestions for inclusivity when differences are known to be under the surface. If the mediator has conducted a pre-hearing conference on a sensitive matter, information can be gathered to insert at mediation, at the right time. The right questions should be asked of counsel on each side outside of the joint sessions, so that knowledge of the issues can enable the neutral to communicate between the parties in a way that encourages collaboration as the mediation progresses. Most lawyers are trained advocates. Lawyers who mediate cases could benefit from inclusion training (different from unconscious bias training) so that they can properly guide their clients on how to navigate situations that inhibit negotiations at mediation. When parties acknowledge the other side’s interests, that awareness can sway negotiations. A mediator can make suggestions to encourage parties on how a concession or inclusive acknowledgment could be communicated, because the mediator has the benefit of processing messages on all sides. It can be dangerous for a mediator to use their personal filters to interfere with the canon of self-determination. This is almost always unintentional, but it could come back to bite the mediator if an inaccurate message is conveyed. Mediators, should only guide conversations with the information tools they are given by the parties. This is why subject matter expertise is so important. A skillful mediator can leverage the tools from their own experience to incorporate with real time tools at mediation to influence a settlement. It can be as simple as conveying a compliment that is relevant to an issue discussed at mediation, from one side to the other. Sometimes it’s that ONE sentence that can change the course and bring a “low flying” mediation that looks like a crash in for safe landing.

There will always be matters in dispute, but when people feel visible, reaching a resolution is less challenging. One focus has to be on recruiting and retaining diverse candidates with the right skill sets to better ensure their good ideas are solicited and implemented in the corporate space. We all have to work to better appreciate and celebrate our differences,
understanding that we have more that joins us than separates us, if we take a closer look inside. “Walking the walk” requires thoughtful engagement. Being invited into the room is not sufficient to meet the tenets of inclusion. Sitting at the table in the room appears to be inclusion, but contributing to the menu is real inclusion. Inclusion is how we gain better perspectives, plan the next move, and strategize proper execution. As dispute resolution professionals, we have the opportunity as keepers of the dispute resolution “thermostat” to thoughtfully calibrate and facilitate the conversations on inclusion, to enhance the results of the work we love. We need to have the tough talks. It takes us out of our comfort zones… where the magic happens.

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