



# The Importance of Developing Cultural Competency in ADR

The Justice Marie L. Garibaldi American Inn Of Court for ADR

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# Defining

CULTURE

CULTURAL COMPETENCE

DIVERSITY AND INCLUSION

# U.S. POPULATION

26% = Immigrants + US-born children

45M People living in US were born in foreign country

Over 350 languages spoken

Over 300 different religions & denominations

# NEW JERSEY POPULATION

Nearly 1 in 4 New Jersey residents is an immigrant

1 in 6 residents is a native-born U.S. citizen with at least 1 immigrant parent

Top 5 countries of origin for immigrants: India 13 %; Dominican Republic 10%; Mexico 5%; Ecuador 4%, and the Philippines 4%

Racial Composition : White: 67%; Black or African American: 13.47% Asian: 9.42% Other race: 6.40% Two or more races: 2.56% Native American: 0.20% Native Hawaiian or Pacific Islander : 0.03%

# Model Standards of Conduct for Mediators

## Standard IV Competence

A. A Mediator shall mediate only when the Mediator has the necessary competence to satisfy the reasonable expectations of the parties.

1. ...Training, experience in mediation, skills **cultural understandings** and other qualities are often necessary for mediator competence. (emphasis added).

## Standard II Impartiality

B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality

1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

# UNIFORM MEDIATION ACT

Section: 2A:23C-9: Mediator's disclosure of conflicts of interest; background

# NEW JERSEY COURT RULE 1:40

(f) Mediator Disclosure of Conflict of Interest

# STANDARDS OF CONDUCT FOR MEDIATORS IN COURT-CONNECTED PROGRAMS

II. Impartiality

IV. Competence

VI. Quality Of The Process

# ARBITRATION

## AAA, CPR

CANON I: An arbitrator should uphold the integrity and fairness of the arbitration process.

CANON IV: An arbitrator should conduct the proceedings fairly and diligently

R-17 Disclosure

R-18 Disqualification of Arbitrator

## The Federal Arbitration Act

Title 9, US Code, Section 10

## JAMS

- II. AN ARBITRATOR SHOULD BE COMPETENT TO ARBITRATE THE PARTICULAR MATTER
- VI. AN ARBITRATOR SHOULD ENDEAVOR TO PROVIDE AN EVENHANDED AND UNBIASED PROCESS AND TO TREAT ALL PARTIES WITH RESPECT AT ALL STAGES OF THE PROCEEDINGS

## Revised NJ Arbitration Act

2A:23B-12

2A:23B-15


2A:23B-23a

# ABA





# BIAS



**EXPLICIT BIAS-** Attitudes or beliefs that one endorses at a conscious level [Explicit biases & prejudices are intentional and controllable while Implicit biases are not]

**IMPLICIT BIAS-** Bias in judgment and behavior that operate at a level below conscious awareness & control

**COGNITIVE BIAS-** Repeated patterns of thinking that can lead to inaccurate or unreasonable conclusions

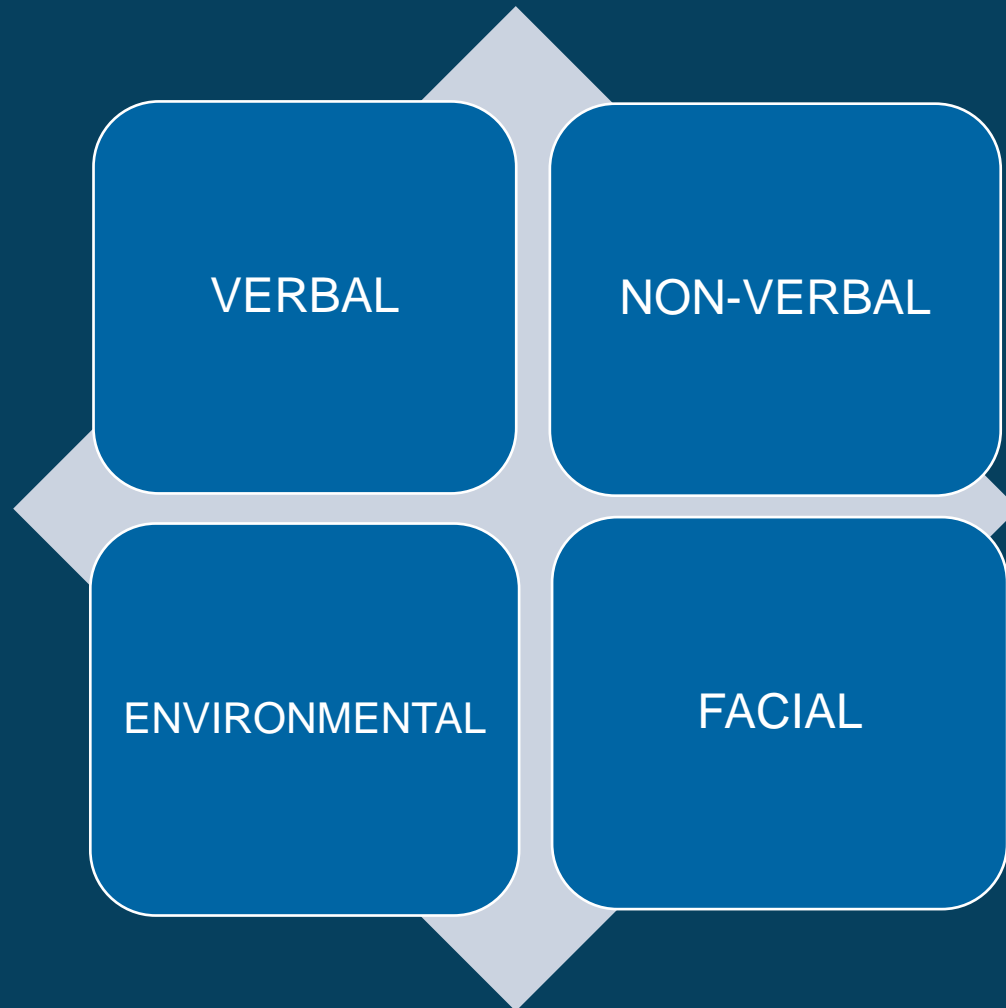
**IMPLICIT ATTITUDES-** Positive or negative thoughts & feelings that occur outside our conscious awareness and control

**IMPLICIT STEREOTYPES-** Belief that most members of a group have some characteristic

# SELF-ASSESSMENT TESTS

- Harvard Implicit Association Test
  - <https://implicit.harvard.edu/implicit/takeatest.html>
- Short Cultural Competency Test by Consulting firm Rowland & Associates
  - <https://www.international-excellence.com/blog-1/318-test-your-cultural-competence-2>
- Greater Vancouver Island Multicultural Society Cultural Competence Self-assessment Checklist
  - <http://rapworkers.com/wp-content/uploads/2017/08/cultural-competence-selfassessment-checklist-1.pdf>

# MICROAGGRESSIONS



# CULTURES

## HIGH CONTEXT CULTURES

China  
India  
Japan  
Korea  
Saudi Arabia  
Iraq  
Iran  
Mexico

## LOW CONTEXT CULTURES

United States  
Canada  
Australia  
United Kingdom  
Germany  
Netherlands  
Denmark  
Finland



**Thank You**

**Felicia Farber**  
**FARBER RESOLUTIONS LLC**