



## **ADR JUDGE *PRO TEMPORE* MEDIATION TRAINING**

**FEBRUARY 12, 2020**

9:00 A.M. TO 4:30 P.M.  
Downtown Justice Center  
Classrooms 1 & 2 (2nd Floor)  
620 W. Jackson St., Phoenix, Arizona

# **ALTERNATIVE DISPUTE RESOLUTION-NEXT GENERATION**

Sponsored by Alternative Dispute Resolution, Judicial Branch of Arizona in Maricopa County



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## **ALTERNATIVE DISPUTE RESOLUTION-NEXT GENERATION**

### Program

8:15 a.m.-8:55 a.m.	Registration
9:00 a.m.	Opening Remarks: Judge (Retired) Kenneth Fields
9:15 a.m. - 10:30 a.m.	Artificial Intelligence/Cyber Security/Data Protection/Blockchain  What relevance, if any, have these concepts for mediations/arbitrations/settlement conferences?  Mr. Robert Copple, Esq. Copple & Associates
10:30 – 10:45 a.m.	BREAK

- 10:45 a.m.– 12:00 p.m. Online Dispute Resolution in Arizona Today
- Panel Discussion: Remote/Internet Mediations
- Moderator: Judge (Retired) Bethany Hicks  
Mr. David Horowitz, Esq.  
Ms. Norma Izzo, Esq.  
Ms. Annette Burns, Esq.  
Ms. Catherine Clarich, AZ Supreme Court Administrative Office
- 12:00 p.m.– 1:30 p.m. LUNCH ON YOUR OWN
- 1:30 p.m.– 3:30 p.m. Online Settlement Conference using Zoom Audio/Video as a medium
- A settlement conference with an active Superior Court case to be conducted online by Judge (Retired) Ken Fields and Ms. Lynn Cole, Esq., BRDGES Academy, Tampa, Florida, and observed by attendees
- Case: State Farm Fire and Casualty Company v KJ's Cooling and Heating, LLC, et. al. CV2019-011962*
- Mr. Timothy L. Moulton, Esq. representing State Farm  
Mr. Thomas P. Burke, Esq. representing KJ's Cooling and Heating, LLC
- 3:30 p.m.-4:30 p.m. Discussion of the Settlement Conference/Mediation Techniques used and effectiveness of Online Mediation/Settlement Conference via Zoom or other media by Panelist & Attendees
- Moderator: Judge (Retired) Glenn Davis  
Panelist: Judge (Retired) Bethany Hicks  
Mr. Robert Copple, Esq.  
Mr Catherine Clarich  
Ms. Lynn Cole, Esq.
- 4:30 p.m. Conclusion

**Refreshments will be available**

**Sponsored by Alternative Dispute Resolution, Judicial Branch of Arizona in Maricopa County**

## **JUDGE (RETIRED) KENNETH L. FIELDS**

Judge Kenneth L. Fields is a retired Judge of the Superior Court of Arizona in Maricopa County, Phoenix, Arizona. He presided over civil, juvenile, criminal, probate, special assignment, and family court calendars. From February 1993 through June 1995, he served as the Presiding Judge of the Domestic Relations Department (Family Court), Superior Court of Arizona, in Maricopa County.

From November 29, 2002 to June 2007, he was one of three (3) judges state-wide assigned to the Complex Litigation Court, which had a paperless (electronic filing) docket. Judge Fields participated in the establishment and organization of the Complex Litigation Court in Arizona as a part of this assignment. The Complex Litigation Court was assigned not only complex business and commercial litigation, but it was also assigned other types complex cases such as fraud/white collar criminal cases, dissolution of marriages cases involving business assets and election/voter fraud cases.

Since his retirement as an active judge, Judge (ret) Fields has worked as a re-call judge doing both civil and criminal cases in various courts in the State of Arizona in addition to having an active mediation and arbitration private practice. He is the presiding commissioner for a 5-person arbitration commission deciding disputes between the Navajo Nation and the Hopi Tribe (both Native American tribes). In addition to civilian courts, Judge Fields, a retired Army officer, acted as a Military Trial Judge for the Arizona National Guard presiding over Court-martials until September 15, 2015.

He taught Mexican Judges, prosecutors and public defenders in 2007-2008 as a member of a U.S.-Canadian team. Judge Fields has taught at Law Schools in Russia, Ukraine, Serbia, and Kosovo. In April 2014, Judge Fields had a paper presented at the Azov Legal Conference in Berdyansk, Ukraine on Business Courts in the United States. In 2004 prior to his retirement, Judge Fields presented a class on U.S. Civil Procedure to European Judges in Madrid, Spain as a part of a comparative law course. In April and September 2014, he was a guest lecturer at the University of South Wales, Cardiff, United Kingdom, on Alternative Dispute Resolution.

Judge Fields was the Program Co-Chair at a symposium on international mediation and alternative dispute resolution at the Center for International Legal Studies (CILS) in Salzburg, Austria in 2015, 2017 and 2019. In 2015, he was inducted into the Congress of Fellows for the Center for International Legal Studies.

Judge Fields has been a settlement Judge for the Superior Court ADR Department since 2007 doing civil cases primarily.

## **ROBERT F. COPPLE**

**Robert F. Copple, JD, PhD**, Copple & Associates PC, is an arbitrator, mediator, investigator, and litigation strategy consultant. He helps to resolve disputes involving technology and science issues, including intellectual property, biotechnology, information technology, cybersecurity, telecommunications, high tech manufacturing, the environment, and health care. He was on the ground floor applying alternative dispute resolution (ADR) to the rapidly growing cannabis industry. Bob frequently lectures on law and technology issues both in law schools and professional organizations. He has authored more than 40 books and articles including the ABA Treatise, “Biotechnology and the Law” (Editor-in-Chief and coauthor). Bob is recognized as an organization leader, both statewide and nationally, serving as the chair of the board for the Arizona State University (ASU) Center for Law, Science, and Innovation, chair of the ADR Section of the Arizona State Bar Association, and member of the Intellectual Property Section Executive Council, among other positions. Bob worked as a litigator and regulatory negotiator for large law firms in Denver and Phoenix and was Senior Litigation Counsel for Motorola. In addition, he was a judicial law clerk for a Federal District judge and for a state supreme court chief justice. He received his BA, MA, and JD from the University of Nebraska, and his PhD from The University of North Carolina at Chapel Hill. Bob was the executive editor of the *Nebraska Law Review* and is a Certified Information Privacy Professional (CIPP/US).

# **BETHANY G. HICKS**

## **Employment**

- 2016 - present      HicksMediation, Scottsdale, AZ - Mediation of civil and family law matters, ADR settlement conferences, parenting coordinator
- 1995 - 2015      Maricopa County (Arizona) Superior Court Judge, Phoenix and Mesa, AZ – Civil, Criminal, Family, Juvenile and Probate courts; Family Court presiding judge (1999-2002);
- 1991 - 1995      Maricopa County (Arizona) Superior Court Commissioner and Judge Pro Tem, Phoenix and Mesa, AZ – Civil, Family, Probate and Juvenile courts
- 1985 - 1991      Private practice, Scottsdale, AZ – Corporate and family law

## **Memberships**

- 2015 – present      Board of Directors, Homeward Bound
- 2008 -- 2011      Arizona Supreme Court Judicial Ethics Advisory Committee
- 2007 – 2018      Thurgood Marshall Inn of Court
- 2005 -- 2006      Associate Dean and Dean, Arizona Judicial College
- 2001 – present      Arizona Women Lawyers Association; Executive Committee (2005 – 2010)
- 1998 – 1999      Valley Leadership, Class XIX

## **Education**

- 2016      Mediation Certificate, National Judicial College, Reno, NV
- 1980 - 1984      J.D., Arizona State University School of Law, Tempe, AZ
- 1974 - 1975      M. Ed., Boston University, Boston, MA - Early Childhood Development
- 1969 - 1973      A.B., Vassar College, Poughkeepsie, NY

## **Other Honors**

- Who's Who in the World, in America and in American Law (1999 – present)

## GLENN DAVIS

Glenn Davis is a mediator in private practice in Phoenix.

He retired from the Superior Court Maricopa County bench in 2013, after serving as a Commissioner and Judge on Family, Civil and Criminal assignments. He served as a Supervising Attorney at the Arizona State University Alumni Law Group from 2013-2014.

Prior to being appointed to the Maricopa County Bench, Glenn was in private practice for 25 years, in areas including civil litigation, family law and juvenile law. For ten years, 1994 to 2003, Glenn also served as General Counsel to the Arizona State Senate Minority while maintaining a private practice. He also served as a member of the Arizona House of Representatives from 1981-1985.

He is a past-president of the Maricopa County Bar Association, a former Chair of the State Bar Juvenile Law Section and currently chairs the Board of Directors of the Maricopa County Justice Museum and Learning Center. In 2012 Glenn was presented the *Robert R. Mills Member of the Year Award* by the Maricopa County Bar Association and he is a past recipient of the *Chandler Award for Excellence in the Field of Juvenile Law* from the Arizona State Bar Juvenile Law Section, the *Top 50 Pro Bono Lawyer Award* from the Arizona Bar Foundation for Legal Services and Education.

# **SHARI CAPRA**

SHARI M. CAPRA, Esq., has over thirty-five years of mediation and legal experience in the areas of family and probate law. Ms. Capra concentrates her energies in the field of private mediation where she has worked with couples going through the marital dissolution process, parents wishing to develop effective parenting plans, families seeking assistance with school and residential placements arrangements for a child or family member with special needs and coaching people on effectively communicating with each other regarding difficult topics.



Ms. Capra has been acknowledged as an Advanced Practitioner Member of the Association for Conflict Resolution, ACR, a national organization of dispute resolution professionals. She actively participates in professional & civic associations which promote the use of mediation and other alternative dispute resolution services in the community. She is a past president and current co-Program Chair of The Maricopa County Association of Family Mediators, MCAFM, a member and previous board member of the Arizona Association for Conflict Resolution, AACR.

Ms. Capra serves as a Judge Pro Tempore assigned to the Probate and Mental Health Division of the Maricopa County Superior Court. She participates in the Alternative Dispute Resolution Program of the Superior Court where she acts as a mediator and settlement conference facilitator for contested probate and elder care cases. Ms. Capra is a member of the State Bar Elder Law and Mental Health and Alternative Dispute Resolution Sections.

Ms. Capra is active in various civic activities, including The O'Connor Institute which promotes community dialogue and civil talk which leads to civic action, Raising Special Kids which provides information and support to families whose children have special needs and Sojourner Center, a Phoenix based domestic violence shelter for women and children of which Ms. Capra is a co-founder.

**Ms. Capra can be reached at:**

**3030 North 3<sup>rd</sup> Street, Suite 1300**

**Phoenix, AZ 85012-3099**

**Phone: 602-385-1745**

**Fax: 602-385-1747**

**Email: [shari@capramediation.com](mailto:shari@capramediation.com)**

**Websites: [www.mediate.com/capra](http://www.mediate.com/capra) and [www.capramediation.com](http://www.capramediation.com)**

## **ANNETTE BURNS**

**Annette Burns** is a Family Law Specialist and has practiced law in Arizona since 1984. She is a past president of AFCC and the Arizona chapter of AFCC. She has been a fellow of the American Academy of Matrimonial Lawyers (AAML) since 2001. She served on every committee and task force that created, revised and restyled the Arizona Rules of Family Law Procedure, from 2003 to the present. Annette is a co-author of the Arizona Family Law Rules Handbook for Thompson/West publishers, updated annually. She maintains an ADR, family law and parenting coordinator practice in Arizona.

## **DAVID HOROWITZ**

Mr. Horowitz is the head of the Family Law/Domestic Relations Practice Group at May, Potenza, Baran & Gillespie, PC. David's practice focuses on family law and domestic relations matters, including collaborative divorce, mediation, custody and child support. David is a fellow of the American Academy of Matrimonial Lawyers and Co-Chair of its mediation committee and serves on the Family Law Executive Council for the State Bar of Arizona. He is a past President of Collaborative Divorce Professionals of Arizona, and serves on the Arizona Supreme Court's Child Support Guidelines Review Committee, the State Senate's Domestic Relations Committee, and the Parenting Coordinator Committee. David also serves as a Judge Pro Tempore for the Maricopa County Superior Court. David is a certified family law specialist and is appointed to the Family Law Advisory Commission of the State Bar of Arizona Board of Legal Specialization and is its current chair. David teaches family law at Phoenix College and has taught at Arizona Summit Law School.



## **NORMA C. IZZO**

Chair, Family Law and Domestic Relations/Chair, Associates Committee

### **OVERVIEW**

Ms. Izzo is Chair of the firm's Family Law and Domestic Relations practice. Ms. Izzo has been recognized as a Certified Family Law Specialist by the State Bar of Arizona Board of Legal Specialization.

She concentrates her practice in the area of family law and domestic relations matters, including complex litigation and asset division, business dissolution, collaborative divorce, mediation, arbitration, parent coordination, child custody and child support, and spousal maintenance. Ms. Izzo also has experience in family court matters that span multiple states and internationally.

Ms. Izzo has over 15 years of experience litigating complex family law matters, and brings a determined and intelligent approach to her cases. As a result of her mediation training and experience, Ms. Izzo works hard to seek resolutions. However, she is always prepared to use her significant courtroom experience to advocate for her clients in trial.

Ms. Izzo serves as a parenting coordinator and mediator for family law matters of all levels of complexity. She is also trained in collaborative divorce, a process that allows separating parties work with their attorneys, financial and mental health professionals during a dissolution.

Ms. Izzo has served as the Past President of the Maricopa County Bar Association and Chapter Council Representative and is current President of the Association of Family and Conciliation Courts – Arizona Chapter. She also currently serves as the Chair of the Associates Committee for Jennings Strouss.

### **AREAS OF FOCUS – FAMILY LAW**

- Family Law and Domestic Relations
- Pre/Post-Nuptial Agreements
- Co-Habitation Agreements and Domestic Partnerships
- Adoptions and Guardianships
- Asset Division
- Collaborative Divorce

- Parent Coordination
- Child Custody and Child Support
- International and Interstate Domestic Relations Issues

#### **AREAS OF FOCUS – ALTERNATIVE DISPUTE RESOLUTION**

- Mediation
- Arbitration
- Business Dissolution/Business Divorce
- Settlement Conferences
- Complex Litigation

#### **ADMISSIONS**

- Arizona
- U.S. District Court for the District of Arizona
- U.S. Court of Appeals for the Ninth Circuit

#### **MEDIA AND PRESENTATIONS**

##### **Articles**

- Author, "[With gratitude](#)," *Letter from MCBA President, Vol. 36, Number 12, pg. 2* (December 2017)
- Author, "[The how and why of "unplugging"](#)," *Letter from MCBA President, Vol. 36, Number 11, pg. 2* (November 2017)
- Author, "[Your opinion matters](#)," *Letter from MCBA President, Vol. 36, Number 10, pg. 2* (October 2017)
- Author, "[The business of conflict](#)," *Letter from MCBA President, Vol. 36, Number 9, pg. 2* (September 2017)
- Author, "[Connecting the Bench and the Bar](#)," *Letter from MCBA President, Vol. 36, Number 8, pg. 2* (August 2017)
- Author, "[Lawyer Referral Service is our best-kept secret](#)," *Letter from MCBA President, Vol. 36, Number 7, pg. 2* (July 2017)
- Author, "[The bystander effect](#)," *Letter from MCBA President, Vol. 36, Number 6, pg. 2* (June 2017)
- Author, "[Nominate your mentor for the Maricopa County Bar Hall of Fame](#)," *Letter from MCBA President, Vol. 36, Number 5, pg. 2* (May 2017)
- Author, "[Don't worry - none of us feel like we know what we're doing](#)," *Letter from MCBA President, Vol. 36, Number 4, pg. 2* (April 2017)
- Author, "[Finding ways to make your voice heard](#)," *Letter from MCBA President, Vol. 36, Number 3, pg. 2* (March 2017)
- Author, "[From my perspective](#)," *Letter from MCBA President, Vol. 36, Number 2, pg. 2* (February 2017)
- Author, "[What makes you relevant?](#)," *Letter from MCBA President, Vol. 36, Number 1, pg. 2* (January 2017)
- Featured, New MCBA President Announcement, *Maricopa Lawyer* (2016)
- Featured, "Meet 5 Women Who are Shaping AZ's Economic Future," *The Arizona Republic* (2016)
- Featured, "2016 Who's Who in Business Class of Arizona Women Shows that You Can't Leave Greatness to Chance," *The Arizona Republic* (2016)
- Author, "The Sex Appeal of Prenuptial Agreements," *Arizona Weddings* (April 2014)
- Contributor, "Ethics in Family Law: Leading Lawyers on Guiding Clients Through Domestic Disputes in a Principled Manner," *Inside the Minds* (2014)
- Contributor, "Gay Marriage Rights in Arizona," *Gay Arizona* (July 2013)
- Contributor, "Hide Your Husbands: How to Handle Living In the City with the Highest Chance of Infidelity," *Scottsdale Living Magazine* (July 2013)
- Author, "In 2013, New Statute Declares 'Custody' Out, 'Decision-making' In," *Maricopa Lawyer* (January 2013)
- Author, "Visitation: When the Kids Don't Want to Go – One View," *Maricopa County Bar Newsletter* (December 2010)

##### **Blogs**

- "The Psychology of Settlement," Jennings Strouss Blog (December 28, 2015)
- "Happy Holidays for Children of Divorce," Jennings Strouss Blog (December 18, 2014)

##### **Videos**

- "Prenuptial Agreements Can Be Romantic" (May 23, 2013)

- "How a Mediator Helps Through the Divorce Process" (May 23, 2013)
- "The Benefits of Having a Prenuptial Agreement" (May 23, 2013)
- "Prenuptial Agreement for Later Life Marriage" (May 7, 2013)
- "How Collaborative Divorce Works" (Feb. 3, 2013)

#### **Interviews**

- "Collaborative Divorce Trend," ABC15 Arizona (February 14, 2018)
- "Changes with Arizona Custody Law," KTVK-TV (February 5, 2013)

#### **Presentations**

- "Advanced Family Law," State Bar of Arizona (November 15, 2019)
- "Legal Ethics," Association of Family and Conciliation Courts, Arizona Chapter (January 2019)
- "Nicaise and Paul E. v. Courtney F. Decisions," Association of Family and Conciliation Courts, Arizona Chapter (January 2019)
- "Improving Outcomes for Family Law Cases," Court Leadership Conference (October 2018)
- "Alternative Dispute Resolution Techniques for Family Law Matters," Spanish Association of Family Law Attorneys (March 2014)
- "Collaborative Divorce – The Peaceful Power of a Team," Scottsdale Mustang Public Library 'Ask a Lawyer Series,' (August and October 2013)
- "Advanced Family Law Practice for Paralegals: Handling Financial Issues at a Higher Level," Halfmoon Seminars (March 2013)
- "Legal Decision-making and Parenting Time: Big Deal or Hyperbole?," Maricopa County Bar Association (January 2013)
- "Sense and Sensibility – The Critical Interplay of Lawyers & Coaches in Collaboration," International Academy of Collaborative Professionals (October 2012)
- "ADR and Collaborative Law in the Family Law Context," Phoenix College of Law (May 2012)
- "The Culture of Divorce is Changing," Maricopa County Bar Association (June 2011 and September 2012)
- "Updates in Family Law," State Bar of Arizona, Advanced Family Law (April 2010)
- "Assisting with Child Custody Issues," National Business Institute, Arizona Family Law Practice for Paralegals (February 2010)
- "Alternative Dispute Resolution in All Areas of Law," NALS of Phoenix (July 2009)

#### **MEMBERSHIPS**

- State Bar of Arizona
  - Certified Family Law Specialist, Board of Legal Specialization
  - Member, Family Law Section; Alternative Dispute Resolution Section. Past Member, Family Law Practice and Procedure Committee; CLE Committee
- Member, Maricopa County Bar Association (MCBA)
  - Board of Directors
    - Past President (2018)
    - President (2017)
    - President-Elect (2016)
    - Treasurer (2015)
    - Secretary (2014)
    - Member (2012-present)
  - Director of Executive Committee, Family Law Section, (2007 – 2012)
- Member, Collaborative Divorce Professionals of Arizona (2007-2016)
  - President, (2007 – 2016)
- Member, Association of Family and Conciliation Courts
  - President (2019)
  - President-Elect (2016-2018)
  - Chapter Council Representative (2018)
  - Board of Directors, Arizona Chapter
- Member, Association for Conflict Resolution

#### **HONORS AND AWARDS**

- Listed, [AZ Business Leaders](#) (2020)
- Listed, "[18th Annual Outstanding Women in Business](#)," Phoenix Business Journal (2019)

- Selected, *The Best Lawyers in America*® Phoenix "Lawyer of the Year" for Family Law Arbitration (2019)
- Listed, *The Best Lawyers in America*® in the category of Family Law, Family Law Mediation, Family Law Arbitration (2018 - 2020)
- Voted, [Best Divorce Attorney](#), *Arizona Foothills Best of Our Valley* (2017, 2019 - 2020)
- Listed, *Southwest Super Lawyers Rising Star* in the categories of Family Law and Alternative Dispute Resolution (2014-2017, 2019)
- Listed, Most Influential Women in Arizona 2018, *AZ Big Media* (July 2018)
- Listed, Who's Who in Business, *Az Business Magazine* (2016)
- Listed, Arizona's Top Mediators, *Az Business Magazine* (2015)
- Listed, "2014 Arizona Business Top Lawyers: Family Law," *Az Business Magazine* (April 26, 2014)
- U.S. Attorney General Honors Program (2005 - 2006)
- [AV Preeminent® Peer Review Rated](#)

#### COMMUNITY INVOLVEMENT

- Women's Metropolitan Arts Council (WoMAC)
- Family Lawyer's Assistance Project
  - Volunteer Attorney
- Maricopa County Justice Court
  - Mediator (2003 - 2005)
- Arizona State University, Lodestar Mediation Clinic
  - Volunteer Attorney (2006 - present)
  - Teaching Assistant (2004 - 2005)

#### EDUCATION

- J.D., Arizona State University (2005)
  - Recipient, Pro Bono Merit Award
- B.A., Spanish, Northern Arizona University (1999)
- Trained, Collaborative Divorce (2007)
- Certified Mediator (2004)

#### FOREIGN LANGUAGE

- Spanish (Fluent)

## **CATHY CLARICH**

Cathy Clarich is the current Manager of the Court Operations Unit at the Administrative Office of the Courts. She has previously held positions in Court Administration with both the Glendale and Scottsdale Municipal Courts. She also served as a Deputy Director with the Maricopa County Clerk of the Court. Cathy has her Master's Degree from Northern Arizona University and is also a Fellow from the Institute of Court Management.

## **NICOLE LACONTE**

Nicole LaConte is currently a Court Programs Specialist with the Administrative Office of Courts at the Arizona Supreme Court. She grew up in Arizona and obtained bachelor's degrees in Psychology and Spanish before relocating to Guadalajara, Mexico where she obtained a Master's degree in Interpretation and Translation English/Spanish. She returned to Phoenix in 2004 and worked as a Court Interpreter Supervisor with Maricopa County Superior Court until 2014. Nicole obtained her MBA from the University of Arizona and has been working since 2016 as a member of the eCourts Services Unit where she works on projects such as eFiling, eAccess and Online Dispute Resolution.



## **LYNN COLE**

Lynn Cole, is President of the Law Offices of Lynn Cole, LLC. She also is the founder, CEO and faculty member of BRDGES Academy (Building Resolutions for Disputes Globally with E-learning Strategies) where the global focus is on developing core intercultural competencies for conflict resolution practitioners worldwide.

Having been both a federal and state trial attorney, for the past 18 years Ms. Cole has been a full-time mediator and mediation trainer who is Harvard and Florida trained in mediation. She is mediation certified in Florida (Circuit Civil) and intercultural and internationally certified by the International Mediation Institute ("IMI") in The Hague. Beginning in 2005, she assisted in the design and implementation of court-related mediation programs in Bulgaria, Jordan, Kosovo and Sri Lanka, where she served as a USAID Mediation Specialist and Senior ADR Advisor through 2017.

For over three years, she served as the second President and Chair of the Board of Directors for Mediators Beyond Borders, International. In May, 2011, she spoke to the United Nations about mediation as an effective global conflict resolution tool within global communities. (<https://lynncole.com/international-alternative-dispute-resolution-adr/>) She is a recognized author on the explosive global growth of international mediation. She has lectured and trained extensively internationally in Commercial Mediation; Ethics; Basic and Advanced Mediation; and, Community Mediation, and has taught mediation courses domestically and internationally for students in Universities and Law Schools worldwide, and formerly as an Adjunct Professor at Stetson College of Law. For over the last 12 year, she has conducted mediation training for judges, attorneys and mediators from Jordan, Oman, Lebanon, Saudi Arabia, Iraq, Slovenia, Bulgaria, Serbia, Croatia, Greece, Kosovo, Turkey, Indonesia and Sri Lanka.

She has a private mediation practice in Florida and is listed with the U.S. Court for the Middle District of Florida. She successfully has mediated many hundreds of court and pre-litigation cases in labor and employment and all types of commercial cases. She is an invited member of select international organizations as a neutral, including the American Arbitration Association, the International Chamber of Commerce, the International Institute for Conflict Prevention and Resolution and the World Intellectual Property Organization (WIPO), the International Mediation Institute ("IMI"), and the National Academy of Distinguished Neutrals.

She formerly has served as an Adjunct Professor and serves on the Faculty of BRDGES Academy teaching Intercultural Communications. Ms. Cole conducts mediations online in the US and internationally.

**Lynn Cole, Esq.**

President and CEO of Law Offices of Lynn Cole, LLC and of BRDGES Academy ([BRDGESAcademy.com](http://BRDGESAcademy.com)); See also, [www.LynnCole.com](http://www.LynnCole.com) and Email: [adr@LynnCole.com](mailto:adr@LynnCole.com)  
301 West Platt Street, Ste. 409, Tampa, FL 33606

# ALTERNATIVE DISPUTE RESOLUTION

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NEXT GENERATION

# TODAY'S EVENTS

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- Introductory Remarks & Questions
- Data management for mediations, arbitrations and Judges Pro Tem Settlement conferences
- State of online mediation in Arizona by Practitioners and Designers of online ADR
- Observation of a settlement conference conducted online
- Evaluation and comments on techniques for settlement conferences and online ADR

# TODAY'S CASE & PARTICIPANTS

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- Attorneys and Clients
- Settlement Judge With Mediator Assistance from Ms. Lynn Cole
- Attendees in Seminar & Role
- Nature of the Case-Need for Confidentiality
- Observations by Attendees
- Subsequent Evaluation by Panel & Audience

# SETTLEMENT CONFERENCE TECHNIQUES-FIELDS

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- Opening session-Joint or Not?
- Introductory Comments by Settlement Judge-How Directive?
- Eliciting Participation by Client/Client Representative
- Attorneys Role in this process
- Support Persons for Clients

# ONLINE (VIDEO) ADR-FIELDS

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- Why Use it?
  - Expense
  - Security
  - Greater Reach for ADR

# ONLINE (VIDEO) ADR-FIELDS

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- Negative Aspects
  - Lack of the Interpersonal Climate necessary for Mediation/ADR
  - Diminished Awareness or “Missing the Tell”



# **Cyber Security Artificial Intelligence Blockchain For The Mediator and Arbitrator**

1

**Robert F. Copple, JD PhD CIPP**

# Cyber Security in ADR

- **The Practice of Law has Become Largely Digital**
- **Neutrals Regularly Receive and Send Personal Information and Confidential Business Information**
- **Lawyers are Targets of Hacking and Breach**
- **What Laws Apply to the Neutral and the Parties**
- **Best Practices to Protect Party Information**

# Jurisdiction: The Global Reach of the Internet

- **The Influence of the European Union**
  - **Internet Anarchy**
  - **The EU Privacy Directive 1995**
  - **The FTC Safe Harbor – Privacy Shield**
  - **European Commission Invalidates US Safe Harbor 2015**
  - **General Data Protection Regulation (GDPR) 2018**

# Jurisdiction: The Global Reach of the Internet

- **Who is covered?**
- **What is covered?**
- **What is required or prohibited?**
- **Consequences of Noncompliance?**
- **Who enforces?**

# Fair Information Practices

## The Tenets of Digital Privacy Law

### ➤ Personal Information:

➤ Information that makes it possible to identify a specific individual

### ➤ Direct:

➤ Social Security, Passport, Credit Card and Driver's License Numbers

➤ Street Address, Telephone Number, Email Address

➤ Sensitive Information: Financial, Health and Academic

### ➤ Indirect - Combinations That Identify Individual

➤ 54-year-old female law professor at ASU who teaches Ethics

# Fair Information Practices: The Tenets of Digital Privacy Law

## ➤ The Rights of Individuals

### ➤ Notice:

- Privacy Policies and Procedures
- Purpose for which Data Is Collected, Used, Retained and Disclosed

### ➤ Choice and Consent:

- Choices Available to Individual
- Implicit or Explicit Consent

### ➤ Data Subject Access:

- To Review, Correct and Update

# Fair Information Practices: The Tenets of Digital Privacy Law

- **Controls on Information**
  - **Information Security**
    - **Administrative, Technical and Physical Safeguards to Protect PI**
  - **Information Quality**
    - **Accurate, Complete and Relevant Information for Identified Purpose**

# Fair Information Practices: The Tenets of Digital Privacy Law

## ➤ Information Lifecycle

### ➤ Collection

➤ Only For Purpose in Notice

### ➤ Use and Retention

➤ Use Limited to Purpose in Notice

➤ Retain Only as Long as Necessary to Fulfill Purpose

### ➤ Disclosure

➤ Only for Identified Purpose

➤ With Consent (Implicit or Explicit)

# Fair Information Practices: The Tenets of Digital Privacy Law

- **Information Management**
  - **Create Policies**
  - **Assign Accountability**
  - **Monitor Compliance and Enforce**
  - **Procedures to Address Complaints and Breaches**

# US Privacy Law: A Patchwork of Federal and State Laws

- **No Overriding Federal Privacy Law Like the EU**
- **Federal Law - Focus on Industries and Types of Records**
- **State Law - All 50 States Have Some Form of Digital Privacy Law**
- **Co-Regulation**
  - **Adherence to Industry Code Deemed to Satisfy Law**
- **Self-Regulation**
  - **Industry Establishes Standards and Enforcement**
  - **No Parallel State or Federal Law**
- **Contract – To Impose Legal Requirements on Third Parties**

# Breach Response

- **State and Federal Privacy Law – Response to Data Breach**
- **Generally Require:**
  - **Investigation - Determine Whether a Breach Has Occurred**
  - **Contain and Analyze Incident**
    - **Recover Devices, Limit Access, Audit**
  - **Notification**
    - **Affected Parties**
    - **Relevant Agencies and Attorneys General**
  - **Implement Follow-up**

# Mitigating Actions: Data Security

- **Encryption**
- **Anonymization**
  - **Remove Identifiers**
  - **Scramble Data**
- **Demonstrate Lack of Injury**
- **May Eliminate Notice Requirement**

# Federal: Federal Trade Commission

- **The FTC Has Broad Authority Over Data Management and Breach**
  - **Section 5:**
    - “. . . unfair or deceptive acts or practices in or affecting commerce . . .”
    - **Application – Failure to Comply With Own Terms and Conditions**
    - **Concurrent Jurisdiction With Other Agencies**
    - **Does Not Apply to:**
      - **Nonprofits**
      - **Banks, Federally Regulated Financial Institutions,**
      - **Common Carriers – Communications and Transportation**
    - **Enforcement Limited to Injunction and Consent Decree**

# Federal: Financial Institutions

## ➤ Fair Credit Reporting Act (FCRA)

- Regulates any consumer reporting agency that furnishes a Consumer Report used to establish credit eligibility
- Includes businesses that use reports or furnish information
- Fair and Accurate Credit Transactions Act (FACTA) part of FCRA
  - Provides additional consumer protections including rules for disposal of credit records
- Enforced by Consumer Financial Protection Bureau (CFPB) and FTC

## ➤ Gramm-Leach-Bliley Act (GLBA)

- Financial Institutions
- Regulates collection, storage, notice and sharing of customer information
- Enforced by CFPB and State Attorneys General

# Federal: Healthcare

- **Health Insurance Portability and Accountability Act (HIPAA)**
  - **Strict, detailed requirements for the collection, security and dissemination of electronic patient health information**
  - **Applies to Healthcare Providers, Health Plans, Healthcare clearinghouses and business associates.**
  - **Enforcement – US Department of Health and Human Services, Department of Justice.**
  - **FTC and state Attorneys General may enforce for unfair and deceptive trade practices.**
- **Genetic Information Nondiscrimination Act**
  - **Prohibits**
    - **Health Insurance Companies from discriminating based on genetics**
    - **Insurance Companies requiring applicants to get genetic screening**
    - **Employers using genetic information for employment decisions**

# Federal: Education Records

## Family Education Rights and Privacy Act (FERPA)

- Provides students with control over disclosure of and access to their education records
- Disclosure only permitted if:
  - Information not personally identifiable
  - Consent by parent or student
  - Health and safety purposes
- Students have right of access
- May request corrections

# Federal: Children Privacy

## Children's Online Privacy Protection Act (COPPA)

- **Applies to Websites Likely to be Visited by Children Under 13**
- **Requires Notice of Data Collection**
- **Parental Consent Required**
- **Enforced by the FTC**

# Federal: Telecommunications and Marketing

## FTC and FCC Coordination

- **FTC – Telemarketing and Consumer Fraud and Abuse Protection Act**
- **FCC – Telephone Consumer Protection Act**
- **Rules governing US National Do Not Call Registry**
  - **Including Robo Calls**
- **Exceptions:**
  - **Existing business relationships**

## Controlling the Assault of Non-Solicited Pornography and Marketing Act

- **Rules govern form of email solicitations**

# State Law: Arizona ARS § 18-522

- **Application:**
  - person that conducts business in this state and that owns, maintains or licenses unencrypted and unredacted computerized personal information
- **If Breach:**
  - Notice within 45 days of discovery
- **If more than 1000 people, notice to:**
  - Impacted individuals
  - Consumer reporting agencies and Attorney General
- **Content of Notice**
- **Form of Consumer Notice – written, email or telephone contact, post on website**
- **Notice not required if “breach has not resulted in or is not reasonably likely to result in substantial economic loss to affected individuals.”**

# State Law: California

## California Consumer Privacy Act -- Effective January 1, 2020

- ▶ **Applies worldwide if entity controls or received information from California residents and meets revenue or consumer number requirements**
- ▶ **Gives residents a right to:**
  - ▶ **Access to Data.**
  - ▶ **Deletion of Data**
  - ▶ **Opt out of sale of information**
  - ▶ **Minors must opt in**
  - ▶ **Businesses may not discriminate against consumers who opt out**

# EU: General Data Protection Regulation

- **Applies to all businesses that do business in the EU and/or collect PI about EU residents.**
- **Penalties – Up to \$20 million or 4% of revenues**
- **Consent – Opt in**
- **Data Protection – Encryption and Anonymization**
- **Right to be forgotten**
- **Stringent data security requirements**
- **Mandatory breach notification**
- **Privacy by design**
- **International data transfer**
- **Enforcement?**

# Cyber Security: The Lawyer's Ethical Obligations

- [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aba\\_formal\\_op\\_483.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_op_483.pdf)
  - **Duty of Confidentiality**
  - **Duty to keep client informed**
- <https://www.azbar.org/Ethics/EthicsOpinions/ViewEthicsOpinion?id=704>
  - **Confidentiality; Maintaining Client Files; Electronic Storage; Internet**
- [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aba\\_formal\\_opinion\\_477\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_477_authcheckdam.pdf)
  - **Securing Communication of Protected Client Information**
- <https://www.floridabar.org/etopinions/etopinion-12-3/>
- **ADR Provider Platforms and Rules**

# Best Practices for Neutrals

23

- **Raise Cyber Security Issues at the Beginning of the Proceedings**
- **Data Minimalization**
  - **If the Personal or Confidential Information is not Necessary, Ask Parties to Clean the Data**
- **Harden Your Systems**
  - **Up to Date Protective Software and Assessment**
- **Know Your Systems and Where Sensitive Data is Stored**
  - **Vendors**
  - **The Cloud**
- **Limit Access to Sensitive Information**
- **Encryption**
- **Employee Training**
- **Backup and Redundancy**

# Artificial Intelligence and ADR

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**What is?**

- ➡ **Artificial Intelligence?**
- ➡ **Big Data?**
- ➡ **Super Computing?**

# Potential Applications of AI to Legal Practice

25

- **Due Diligence**
- **eDiscovery and Document Review**
- **Automated Brief Writing**
- **Patent Application Drafting**
- **Predictive Technology – Decisions**
- **Mediation Resolution**
- **Access to Legal Services**
- **Ethical Issues**

# Blockchain and ADR

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## Lesson #1

➔ **Blockchain and Crypto Currency  
Are Two Different Things!**

# Potential Legal Applications

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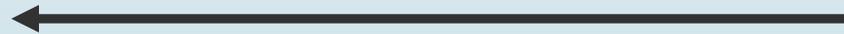
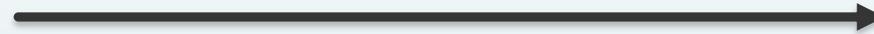
- **Smart Contracts**
- **Litigation Documents and Chain of Custody**
- **Regulated Industries**

A decorative graphic on the left side of the slide. It features a dark grey arrow pointing to the right, positioned at the top. Below the arrow, several thin, curved lines in shades of blue and grey sweep upwards and to the right, creating a sense of movement and depth.

# What is Blockchain?

# A Decentralized And Secure Ledger

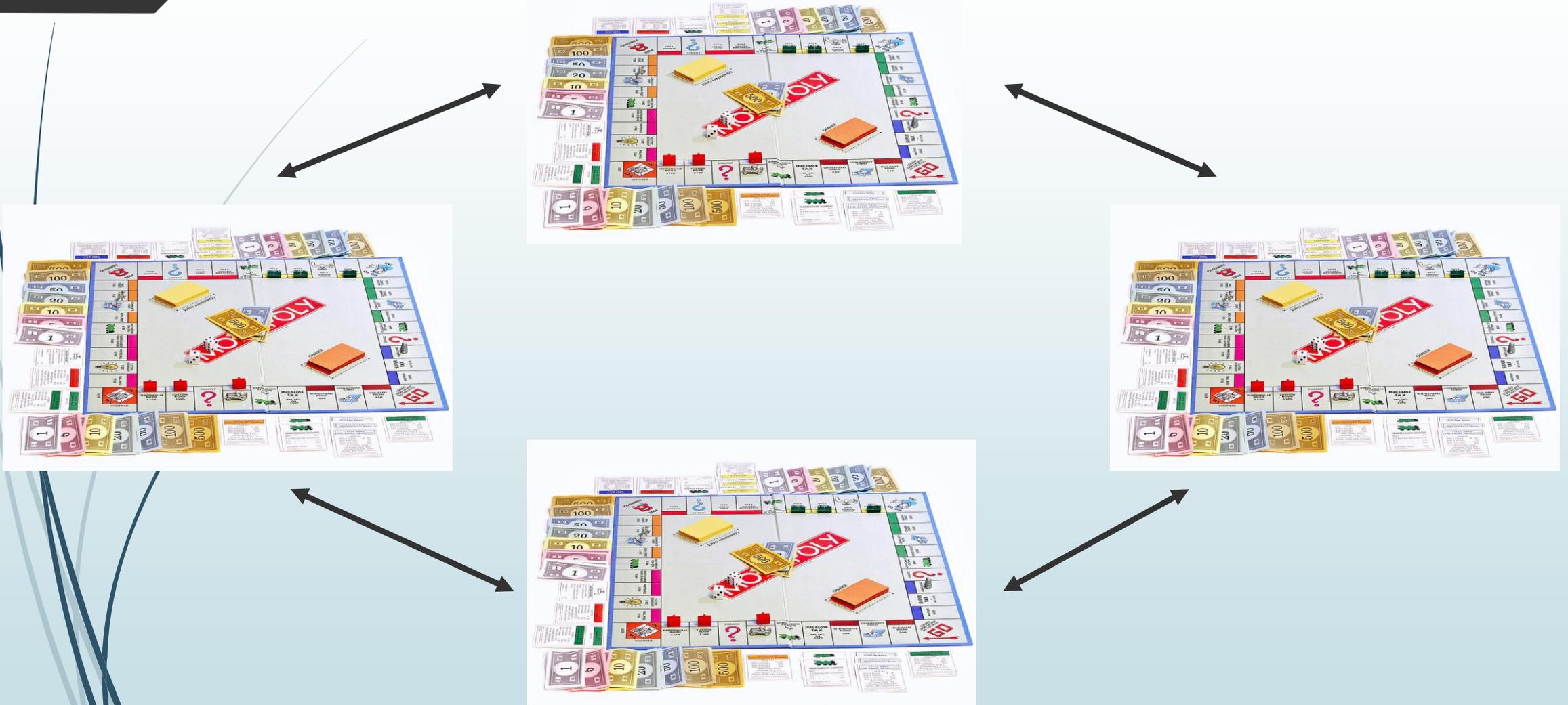
# Correspondence Chess



# Correspondence Monopoly



# Example 1 – Blockchain Monopoly



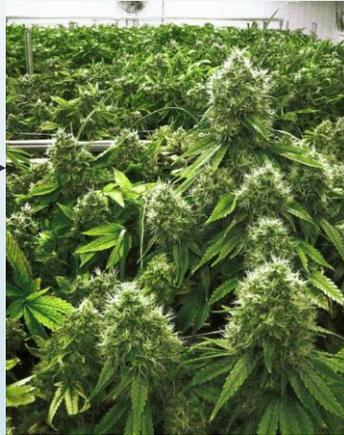
# Healthcare Blockchain Network



**YOU**



# Regulated Commodity Blockchain



The background features a dark blue field with a grid of thin, light blue lines. These lines curve and warp, creating a sense of depth and movement, similar to a tunnel or a digital landscape. The overall effect is modern and technological.

# Alternative Dispute Resolution- Next Generation: Tomorrow's Courts Today

FEBRUARY 12, 2020

# Introductions and Overview

- What is Online Dispute Resolution?
- Promoting Access
- Arizona Proof of Concept Pilot Courts
- Challenges and Opportunities
- Next Steps
- Matterhorn Demonstration
- Q & A



# What is Online Dispute Resolution?

Online Dispute Resolution (ODR) is an online platform that utilizes technology to facilitate resolution of court matters.

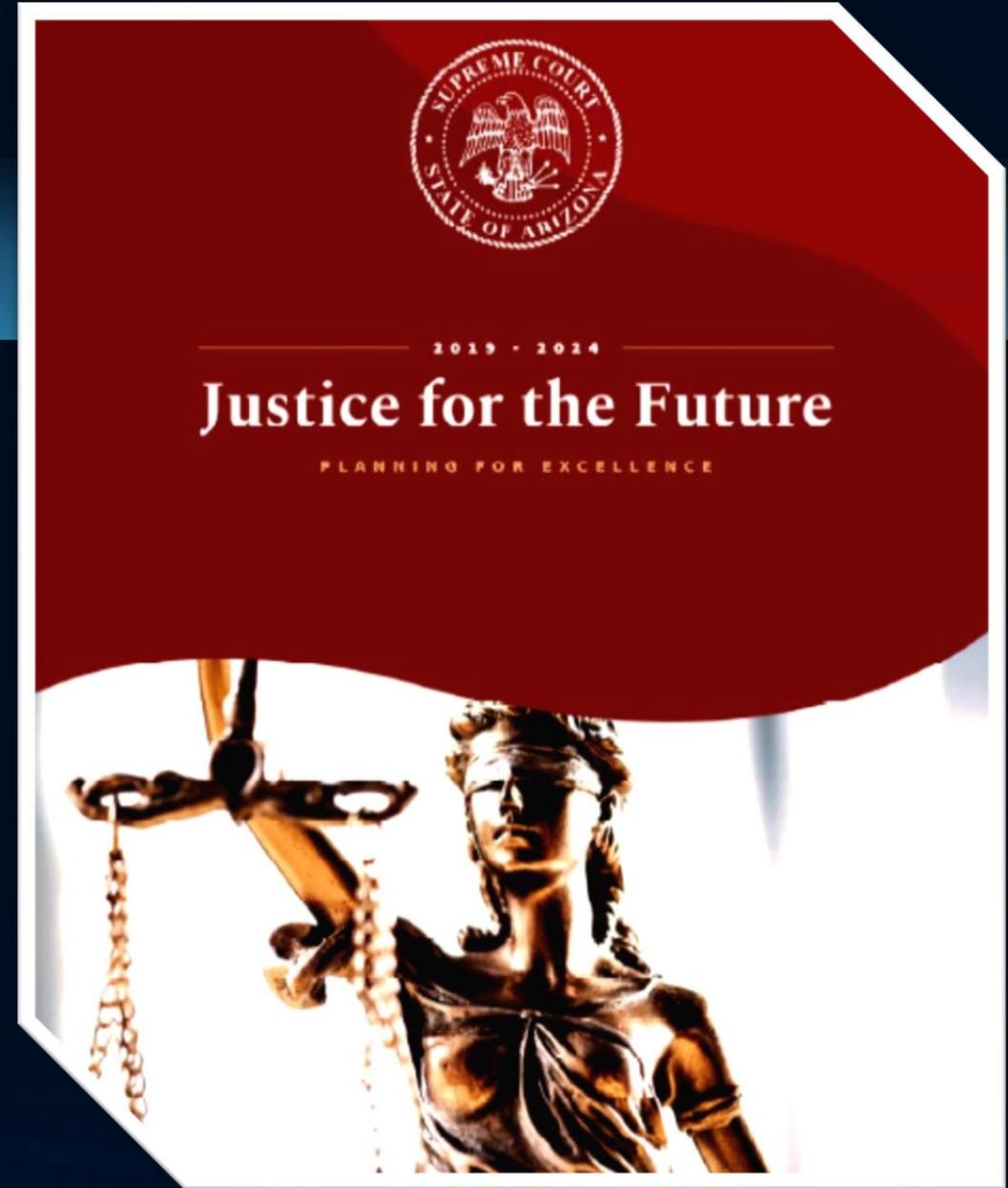


# Applying Technology to Resolution Process

*"Simply defined, online dispute resolution (ODR) is a digital space where parties can convene to work out a resolution to their dispute or case...ODR leverages technology to provide the same customer-centric "anytime/anywhere" access that internet provides for online banking, shopping, dating, healthcare, genealogy, and other activities."*<sup>1</sup>

## GOAL 1

# Promoting Access to Justice



# Barriers to Access

## Economic Challenges

- Lost wages
- Absence(s) from employment
- Cost of child care
- Transportation costs
- Cost of legal representation

## Geographic Barriers

- Distance from courts
- Lack of public transportation
- Disability and physical limitations
- Scarcity of legal aid and lawyers

## Psychological Difficulties

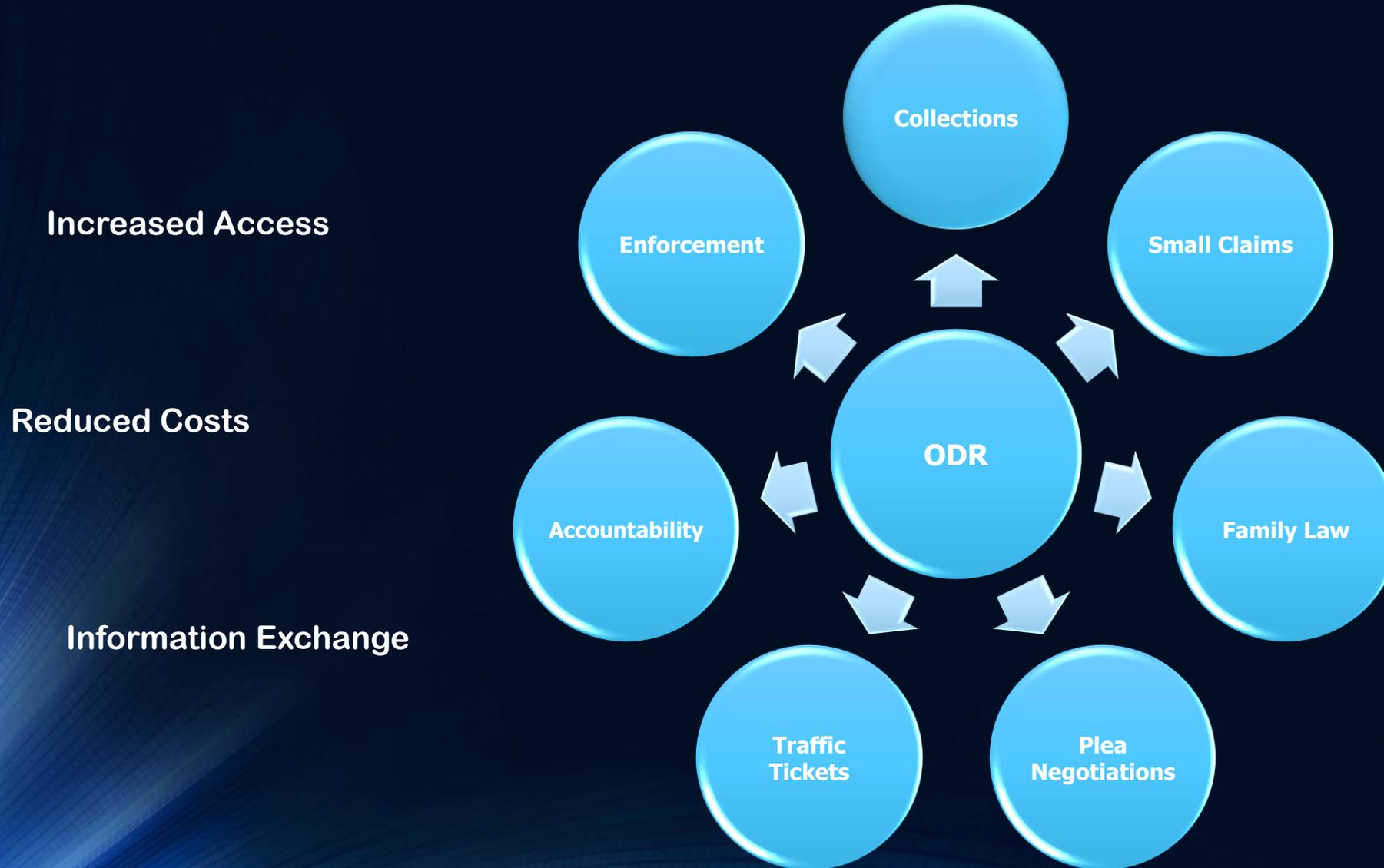
- Confusion about the law and the process
- Apprehension of facing the court
- Anxiety or even fear about the legal outcome

# Accessibility

- ODR allows users to resolve their court matters electronically, including by way of mobile devices
- Increases access to justice by removing the requirement for court users to travel to the courthouse



# Potential ODR Applications in Courts



# Pilot Courts

- Maricopa County Superior Court
  - Family Law and Civil Judgment Debtor
- Pinal County Superior Court
  - Family Law
- Yuma County Superior Court
  - Family Law
- Scottsdale City Court
  - Misdemeanor Pleas

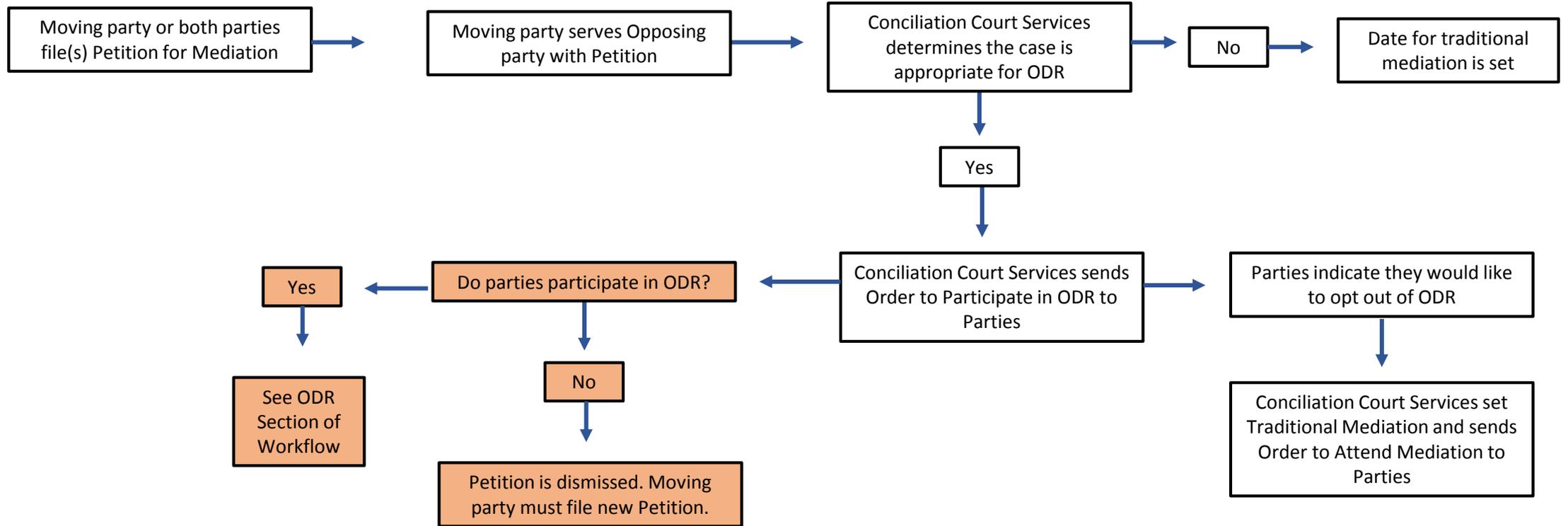


# Family Law Implementations

- Petitions for Mediation
- Modification of:
  - Legal Decision-Making
  - Parenting Time
  - Child Support
  - IV-D only
- Enforcement of:
  - Child Support
  - IV-D only



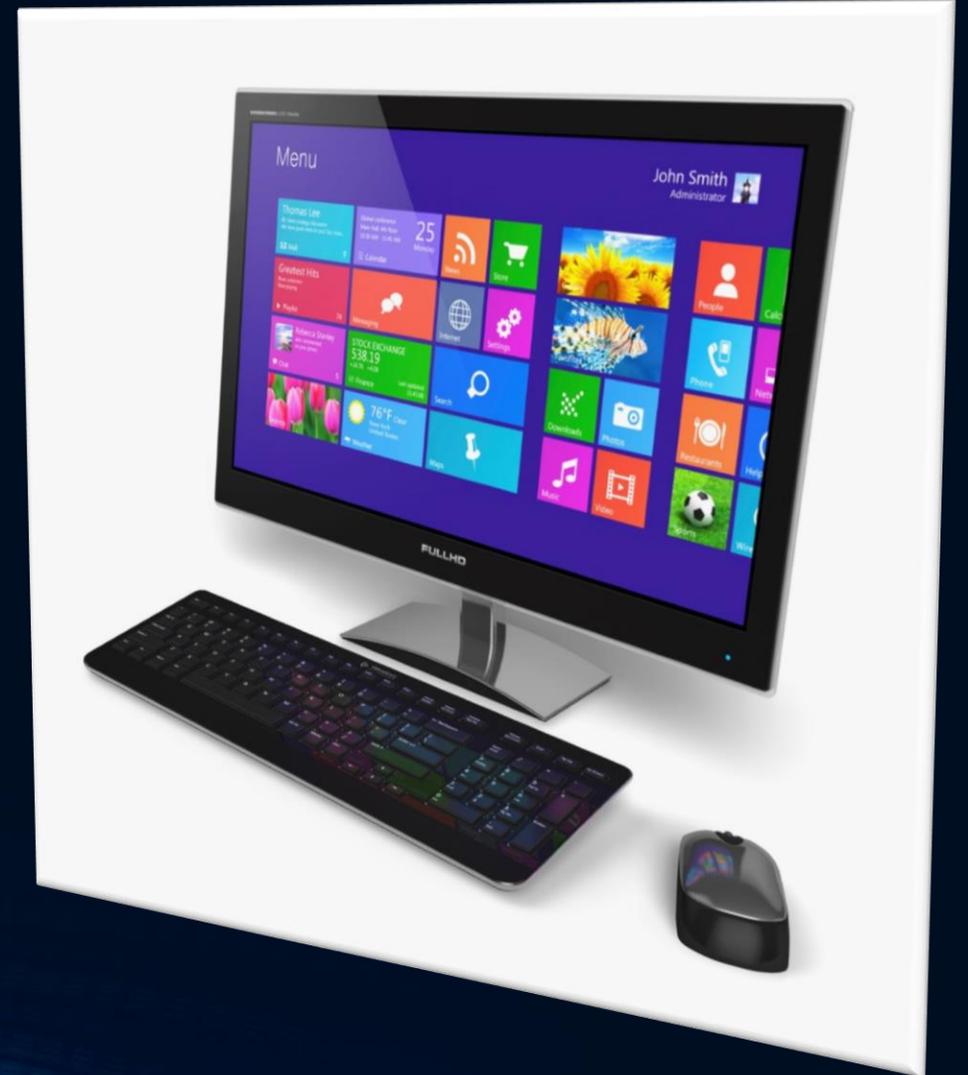
# Petition for Mediation for Legal Decision Making or Parenting Time Issues



Child support is not calculated during mediation.  
 If it is a non IV-D case, parties will have to file a separate petition to address child support.  
 If it is a IV-D case, Conciliation Court Services will send the AAG notification of outcome of mediation.

# Scottsdale Municipal Court Plea by Mail/Telephone

- Pilot Plea by Mail/Telephone in Online Setting
  - Prosecutor and defendant can exchange documents necessary to enter a plea on specified misdemeanor cases
  - Prosecutor can send plea and associated documents through the platform
  - Defendant can accept or reject plea



# Potential Challenges

- Staffing Resources
- Parties who do not have a computer
- Parties who are not computer-literate
- Confirming user identity





# Online Dispute Resolution – Family Court

- Family Court Rules currently require a sworn written verification for “a stipulation or agreement that substantially changes the terms of a legal decision-making or parenting time order. . .”
- Family Court Rules effective 1/1/2019 require these documents be notarized for all agreements including post decree matters

# Opportunities

- Less time off from work and family obligations for litigants
- Can be accessed 24/7
- Saves on transportation costs for litigants
- Better setting for those that won't meet face-to-face
- Saving time for mediators



*"There is no doubt that technology will greatly influence future courtroom and litigation practices, but the extent to which change will occur is subject to a reasonable amount of speculation because of what are now referred to as disruptive technologies, that is, yet-to-be invented technologies that will reshape our lives and change the way we live."* – Judge Herbert Dixon, Jr. <sup>2</sup>

# Next Steps

- Evaluate program outcomes
- Identify potential case types
- Develop RFP to contract a vendor
- Deploy to courts through out the state



# For more information:

- Cathy Clarich, Court Operations Unit Manager, AOC  
[cclarich@courts.az.gov](mailto:cclarich@courts.az.gov)
- Nicole LaConte, Project Specialist, AOC  
[nlaconte@courts.az.gov](mailto:nlaconte@courts.az.gov)





A handwritten signature in black ink that reads 'Lynn Cole'.

Lynn Cole, Esq.

**BRDGES Academy**

301 West Platt Street, Ste 409

Tampa, FL 33606

+1 813-223-7009

Email: [lhc@BRDGESAcademy.com](mailto:lhc@BRDGESAcademy.com)

Linkedin: [www.linkedin.com/groups/8340343](http://www.linkedin.com/groups/8340343)

Facebook: [www.facebook.com/BRDGESacademy](http://www.facebook.com/BRDGESacademy)

# ONLINE ADR, A Brief Overview

# Online ADR - An Overview



# Advantages

## Mediation Has Gone Global

A mediator can host attendees from anywhere in the world.



We live in a shrinking world but mediation is the leading form of dispute resolution.

# Advantages, Cont'd

## Cost

Mediation is increasingly being used worldwide because it saves money.

Avoids delays associated with litigation;

Costs are significantly reduced for travel associated expenses



# Advantages, Cont'd

## Traditional Mediation Advantages

- √ As in real-time, online you are directly involved in negotiating your own agreement;
- √ No settlement can be imposed upon you (as happens in litigation or arbitration);
- √ The parties select the services of an experienced neutral who can assist in negotiations, and in achieving a quick settlement.

# Advantages, Cont'd

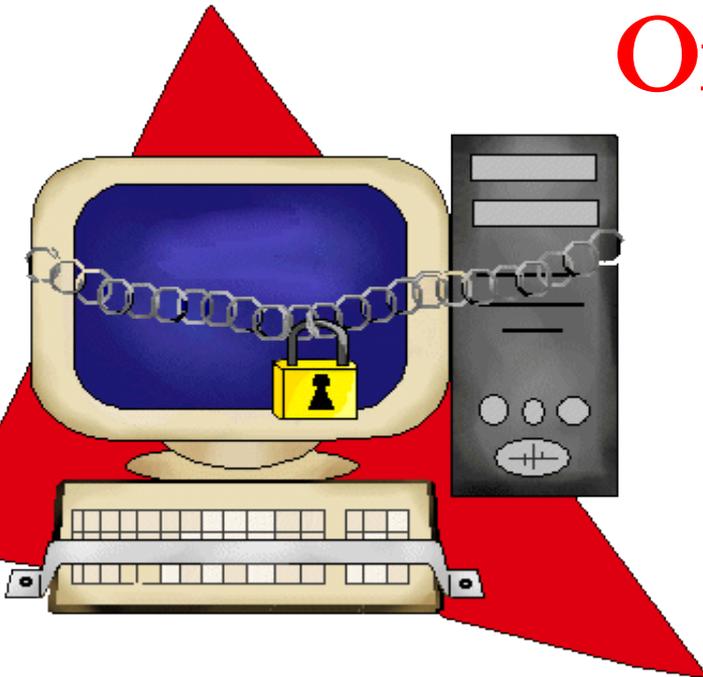
- ✓ The ability to explore alternative solutions that may not have been considered by the parties or are not possible or available through the courts;
- ✓ It is possible to re-establish a positive relationship between the parties once the dispute is resolved;
- ✓ Neither party is prejudiced or has sacrificed any legal rights or delayed significantly any ultimate settlement by the legal process if mediation is unsuccessful.

# Advantages, Cont'd

Confidentiality is preserved.



Online is secure.



# Advantages, Cont'd

## Comfort and Safety



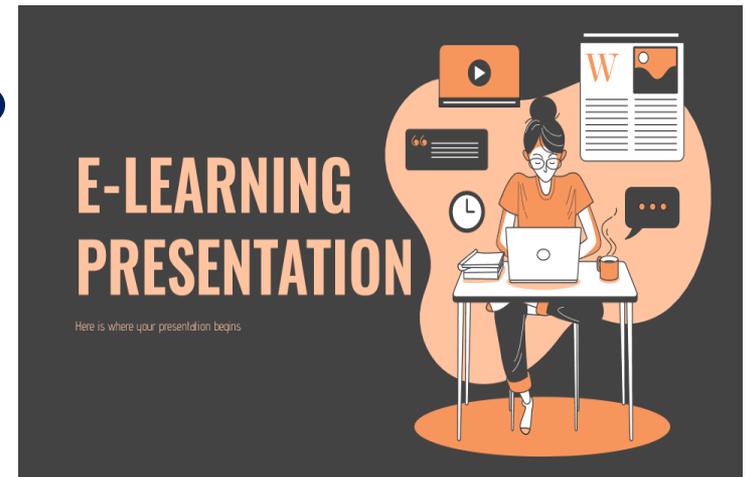
# Advantages, Cont'd



Online increases potential for  
**INCLUSIVITY**

# Advantages, Cont'd

- √ Expanding clientele nationally and internationally;
- √ Expanding skill-set to your practice;
- √ Use and expand intercultural skills in your online mediations and arbitrations;
- √ Many classes available to learn online mediation and arbitration



# Potential Disadvantages

## Establishing Empathy

It may be more difficult to establish empathy;

Limitations on reading body language;

No touching (handshake)



# Potential Disadvantages, Cont'd

Cultural Awareness and Adeptness Needed



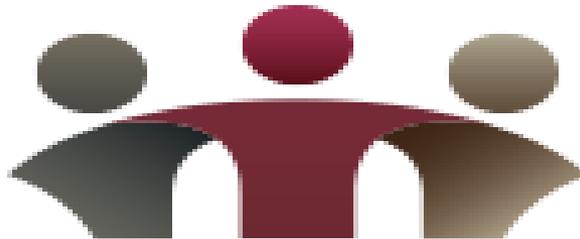
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