

ABC'S IMPROVING CIVIL CASE RESOLUTIONS

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INSTITUTE OF MEDIATION AND ARBITRATION LLC

2022 FLORIDA SUPREME COURT DISPUTE RESOLUTION CENTER CONFERENCE WORKSHOP SESSION A8

FRIDAY, AUGUST 12, 2022, 10:30 AM - 11:45 AM

OBJECTIVES

IMPROVING CIVIL CASE RESOLUTIONS

1. EMERGING TECHNIQUES
2. INNOVATIVE STRATEGIES
3. REVOLUTIONARY RESOLUTIONS
4. ACTIONS OF REVOLUTIONARY LEADERS:

***GET REAL, GET CLEAR,
GET SMART
& GET WOUND UP!***



SCHEDULE

10:30 AM - 11:45 AM

- IMPROVING RESOLUTIONS OVERVIEW
- *QUESTIONS AND COMMENTS ARE ALWAYS WELCOME!*
- MEDIATION TECHNOLOGY DEMO
- Q&A
- CONCLUSIONS & ACKNOWLEDGEMENTS
- RESOURCES
- AI COLLABORATIVE NEGOTIATION TECHNOLOGY DEMO
- *“Practice with a Robot”*

TOPICS

ABC'S

A ALTERNATIVES & AI

B BIASES

C CONSENSUS

Is 'Consensus of Opinion' Redundant?

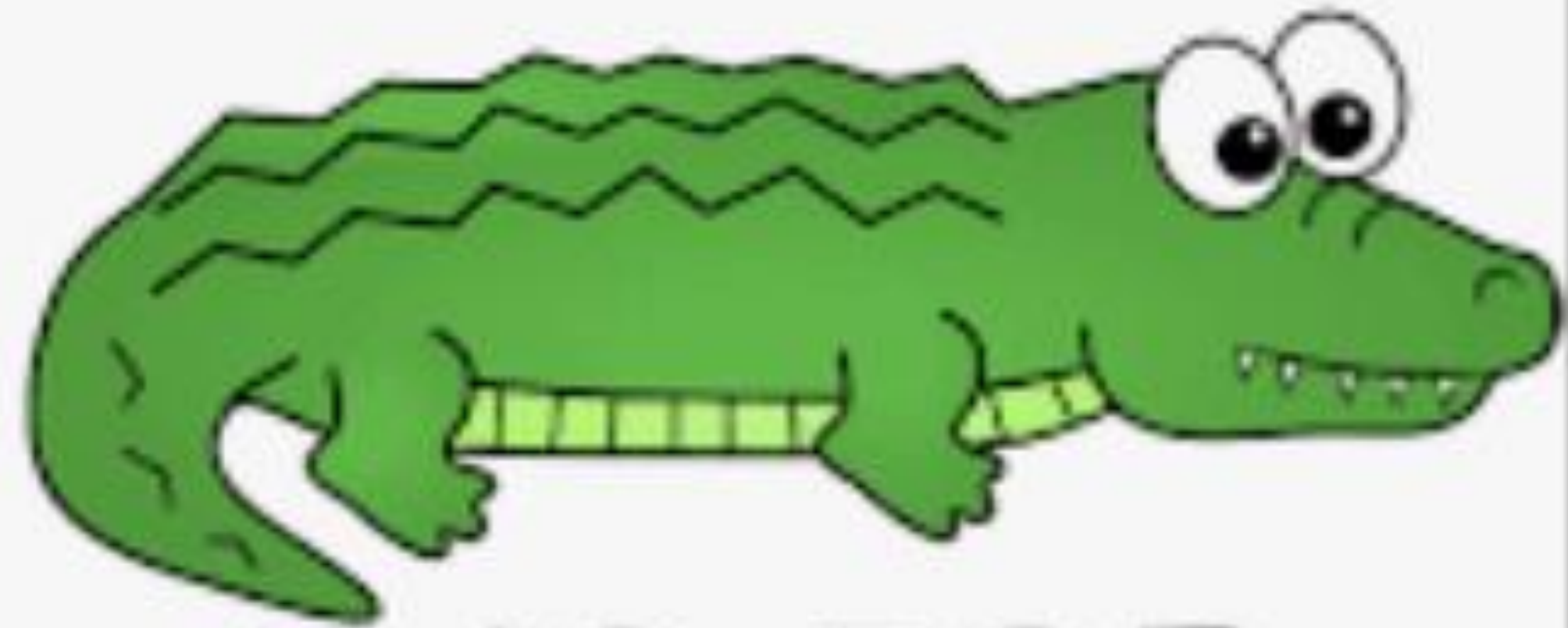
AI in the justice system threatens human rights and civil liberties



ARE YOU UP TO YOUR ARMITS IN ALLIGATORS?

When you're up to your neck in alligators it's hard to remember that your initial objective was to drain the swamp?

HAVING IN MIND A PURPOSE FOCUSES ON WHAT IS IMPORTANT!



**A IS FOR
ALLIGATOR**

? Can we ?
prioritise
our ?
priorities?



ALTERNATIVES **AI IN ADR IS STILL DEVELOPING**

1. Why Digital Transformation and AI

Matter for Justice Systems

Speed

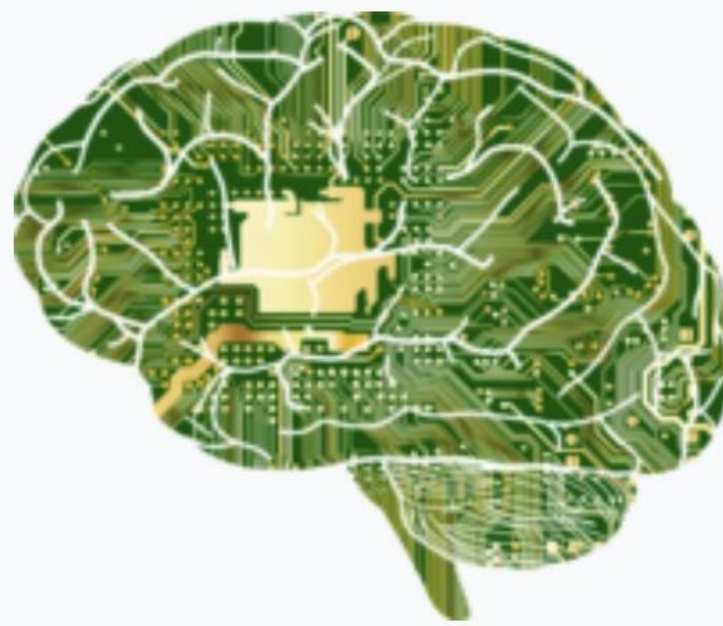
Accuracy

Algorithmic Bias

2. AI Adoption Across Justice Systems

3. **The Rise of Online Courts**

Artificial intelligence



This workshop we will demonstrate practical use in mediation software and technology for

Easier and quicker dispute settlement

Understanding possible resolutions

NO TIME TO EXPLAIN



GET IN THE CAR

AI Technologies

- Visual Perception
- Optical Character Recognition
- Natural Language Processing
- Symbolic AI
- Machine Learning

Where are humans?

- Vehicle Automation
- Chatbots

Where are courts?

- Automated Docketing
- Legal Information/Assistance

'Risks posed by AI are real': EU moves to beat the algorithms that ruin lives

B BIASES

- STEREOTYPING
- ALGORITHMIC BIAS
- IMPLICATIONS FOR JUDICIAL DECISION MAKING
- BIASES IN JUDGEMENT AND DECISION MAKING



SOURCE: THE GUARDIAN, AUGUST 2022, <https://www.theguardian.com/technology/2022/aug/07/ai-eu-moves-to-beat-the-algorithms-that-ruin-lives>

📹 The EU's Artificial Intelligence Act will have consequences beyond its borders as does the GDPR. Photograph: metamorworks/Getty Images/iStockphoto
'Black-box' AI-based discrimination seems to be beyond the control of organisations that use it

It started with a single tweet in November 2019. David Heinemeier Hansson, a high-profile tech entrepreneur, lashed out at Apple's newly launched credit card, calling it "sexist" for offering his wife a credit limit 20 times lower than his own.

Most viewed



Alex Jones sent nude photo of wife to Roger Stone, Sandy Hook lawyer reveals



**A PENNY THAT
DOUBLES EACH
DAY FOR A
MONTH OR \$1
MILLION?**

Cognitive biases

are unconscious errors in thinking that arise from problems related to memory, attention, and other mental mistakes. These biases result from our brain's efforts to simplify the incredibly complex and uncertain world in which we live under the constraints of limited knowledge, resources, and time. Objective thinking is difficult.

A penny doubled every day for 30 days is worth \$5,368,709.12.



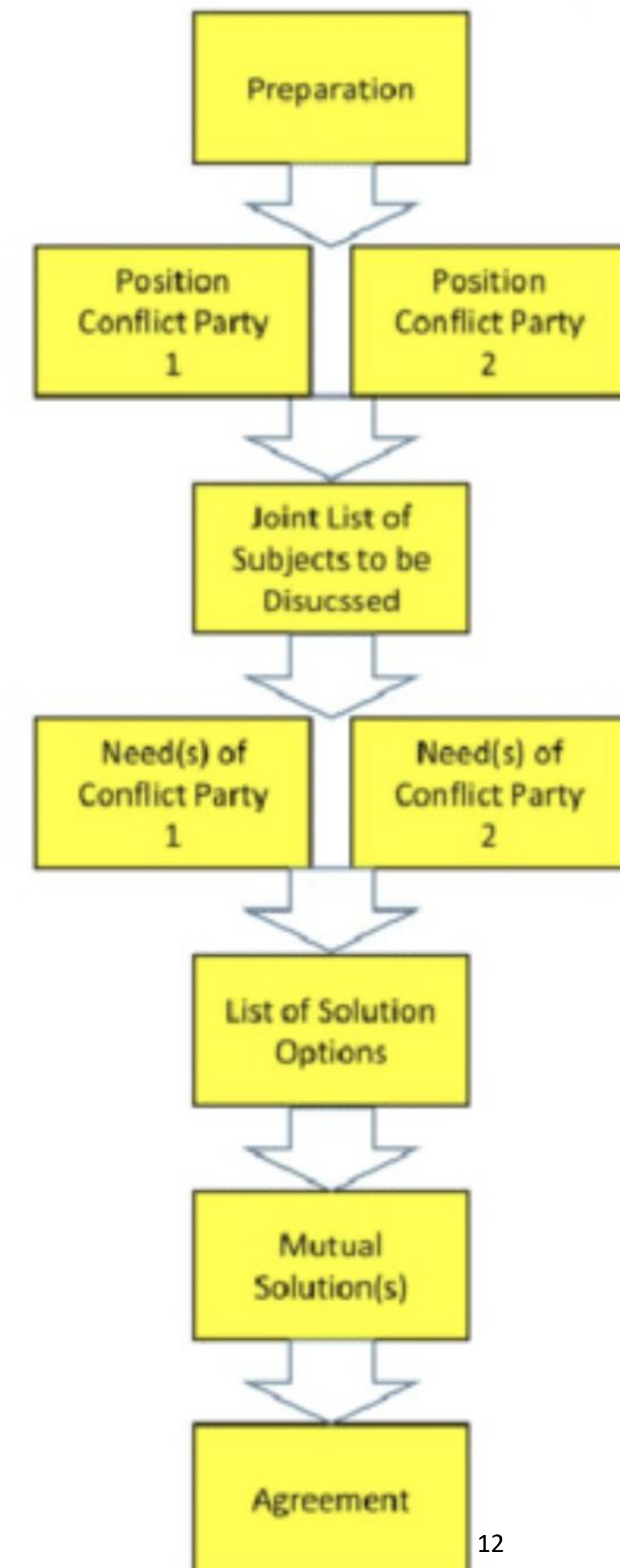
FLOW CHART OF MEDIATION PROCESS

Determining the underlying needs of all conflicting parties

Creative development of several options to solve the conflict

Joint assessment of the options

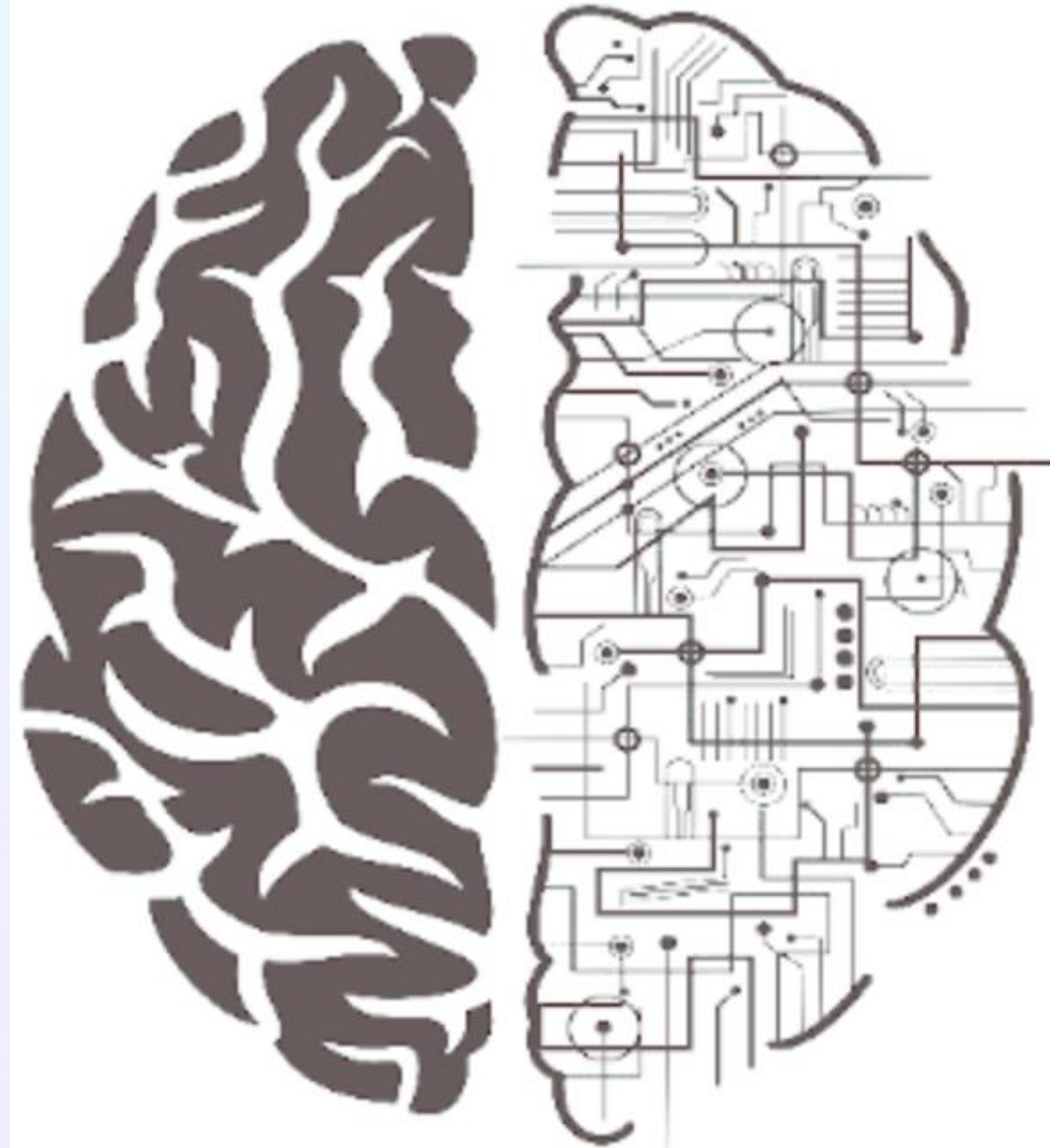
Mutual agreement between parties



C. CONSENSUS

1. Psychology Techniques

- a. Adaptive toolbox
- b. Cognitive Maps
- c. Judgement and Decision Making
- d. Behavioral Economics
- e. Priorities
- f. Analysis Paralysis



What are the goals of mediation?

Even if disputants do not resolve the dispute, mediation frequently will "bring out" the real issues and enhance communications between the parties, fostering an improved working relationship.

The goals of mediation are for the disputing parties to:

1. share feelings and reduce hostilities,
2. clear up misunderstandings,
3. determine underlying interests and concerns,
4. find areas of agreement, and
5. incorporate those areas into solutions devised by the parties themselves.

The advantage of mediation over more traditional complaint procedures is that it provides an environment for creative problem-solving between the parties. Through the skilled assistance of the mediator, disputants are encouraged to listen, keep confidences, be empathetic, suspend preconceived judgements, respect each other's values, and focus on resolving the underlying conflict.

C. CONSENSUS

IMPROVING RESOLUTIONS

2. Law and Economics

- a. AI Ethics & Governance Concerning Judicial Operators
- b. Rule of Thumb
- c. The Halo Effect

3. Artificial Intelligence

- a. Solution Space
- b. Goal Node

4. Resolution Tools

- a. Collaborative Negotiation Systems
- b. Conflict Resolution Resources



HALO EFFECT

- Positive Impression
- Higher Equity
- More Trust & Better Value



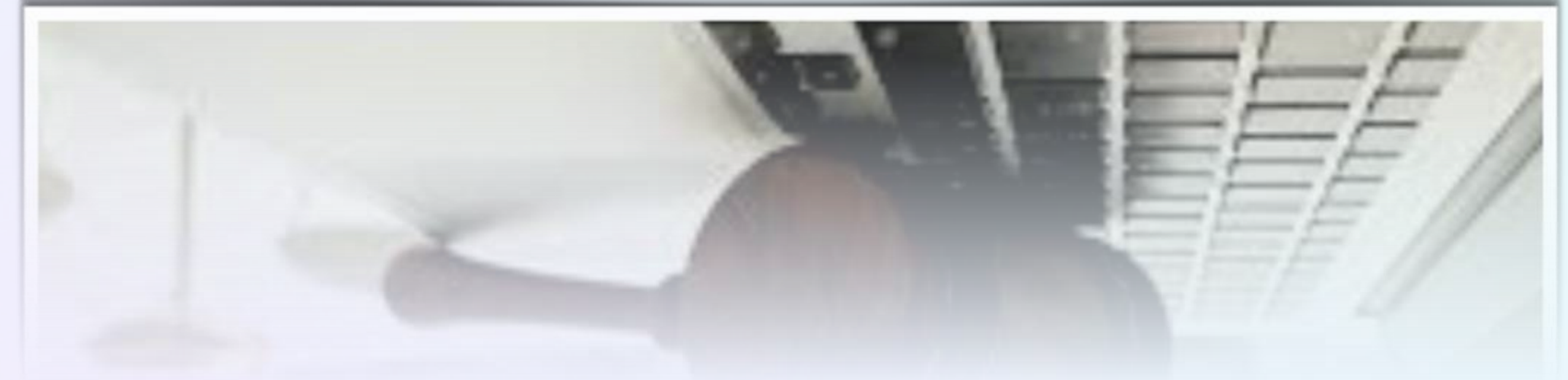
HORN EFFECT

- Negative Impression
- Lower Equity
- Lesser Value & Low Trust

EFFECTIVE EMERGING STRATEGIES

IMPROVING RESOLUTIONS

- A. The Psychological of Justice
- B. Legal and Psychological Strategies
 1. Augmented Intelligence
 2. Visual Blind Bidding
- C. MEAC



MEAC

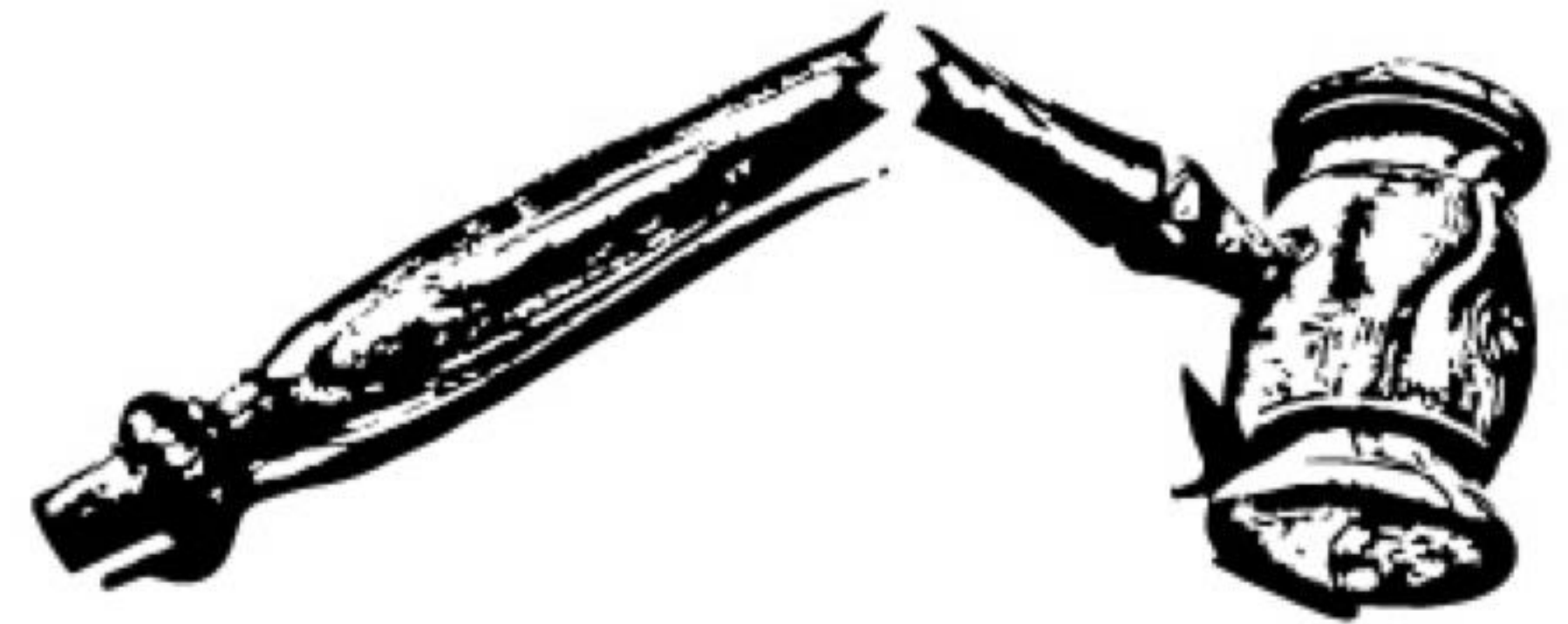
MEDIATION ETHICS ADVISORY COMMITTEE

Opinion #2021-011, January 31, 2022

Appropriate to use the title "Florida Supreme Court Certified County Mediator"

Opinion #2021-010, January 31, 2022

Mediation is a voluntary, consensual process. Mediation participants control the outcome of mediation. The mediator's role includes identifying issues, reducing obstacles to communication, and maximizing alternatives to reach a voluntary agreement. The mediator must maintain impartiality and refrain from coercion and giving legal advice.



MEAC

ETHICS

Opinion #2021-009, January 31, 2022

A mediator who is advised that the case has been settled and files a conference report stating, "settled prior to the mediation," is not required to further follow up with the parties.

Opinion Number: 2021-008

Date Issued: November 26, 2021

A mediator may report "no agreement," "agreement," or "partial agreement" to the court without comment or recommendation. No other descriptors or modifiers may be used in the mediator report unless the parties have consented to them in writing.



MEAC

ETHICS

Opinion #2021-007, November 26, 2021

A conflict check must be performed by a mediator for all "mediation participants" to allow self-determination of the parties.

Opinion #2021-006, November 26, 2021

The mediator should disclose the potential conflict to all parties as soon as practical* after the mediator is aware of it. The mediator may continue to serve only if all parties agree.

**IMPERFECT
ACTION IS
BETTER THAN
PERFECT
INACTION.**

AI TECHNOLOGY

IMPROVING RESOLUTIONS

Make better decisions,
improving processes by
increasing speed and accuracy
of strategic decision-making
processes....



Serving Algorithms

NEGOTIATION TOOLS

FAMILY LAW SOFTWARE ILLUSTRATION



ANAMARIA TAIT, ESQ.

INCREASE PRODUCTIVITY!

AI's analytical power and speed take over most data processing tasks, producing data-driven information that help guide decision-making.



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More family law professionals use Family Law Software than any other software

Support Guidelines

You can have fast entry of child and spousal support that includes tax consequences and net income after support. With support guidelines in 22 states, all you have to do is enter data on one screen, see the instant results, and print off official forms.

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Make your case even stronger with powerful footnoting. Handle separate and partially separate property with financial affidavits. So you can have automatic totals using less of your time and energy.

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CA, CO, CT, FL, IL, MA, MD, MI, MN, NJ, NY, OH, PA & RI

Property Division

Help parties see their options and settle quickly. Divide assets by dollars or percents, pre-tax or after-tax. Even divide retirement separately from non-retirement. So your parties can reach an agreement faster than ever.

Negotiation Tools

Negotiate and reach an agreement with your client in record time using our budgeting, alimony calculators, and "What If" tools.

Client Data Entry

Clients can enter their information online and send it directly to you. And with the cloud, clients can even view and edit their forms in real time. Saving you the hassle of updating their information.

Using Software to Consider Alternative Resolutions

- Mediation is defined by Florida Statute 44.1011
- Specifically, “In mediation, decision making authority rests with the parties. ***The role of the mediator includes***, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and ***exploring settlement alternatives.***”
- If the parties reach a voluntary agreement, it may be reduced to writing and is binding on the parties



Using Software to Consider Alternative Resolutions

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Family Law Software

- Family Law Software is an online platform for family professionals and mediators to create court forms, calculate child and spousal support, calculate tax consequences, and divide property among the parties.
- Common issues in family mediation:
 - Timesharing with children
 - Tax benefits related to children
 - Tax consequences of selling or dividing property
 - Fairly dividing property



**Family Law
Software**
A Centerbase Company

QUESTIONS?

WHEN ASKING A QUESTION PLEASE SPEAK INTO THE MICROPHONE SO IT CAN BE RECORDED. IF YOU DON'T SPEAK INTO THE MICROPHONE, WE WILL REPEAT THE QUESTION. DUE TO COVID-19 AND OUT OF AN ABUNDANCE OF CAUTION, THE PROCTOR HAS BEEN INSTRUCTED TO NOT HAND THE MICROPHONE TO THE ATTENDEE! INSTEAD THE PROCTOR WILL HOLD IT UP TO THE PERSON ASKING A QUESTION.

...followed by Acknowledgements, Alternative Dispute Resources and AI illustration of a collaborative negotiation process in the context of nine algorithms and an imaginary negotiation!

**MEET THE
ROBOT MEDIATOR!
NEXT...**



OPPORTUNITIES

IMPROVING RESOLUTIONS!

“Discourage litigation.

*Persuade your neighbors to compromise
whenever you can.*

*Point out to them how the nominal winner
is often the real loser...*

in fees, expenses and waste of time.”

Abraham Lincoln



THANK YOU!

IMPROVING RESOLUTIONS

Thank you to the DRC, Ana Tait from Family Law Software, Carissa Boynton and Ernest Thiessen of Smartsettle Resolutions Inc. and all of the following resources in our workshop handout which is online at the conference website, and

Thank you for attending!

MORE ALTERNATIVE DISPUTE RESOURCES

“Practice with a Robot” NEXT...





ALTERNATIVE DISPUTE RESOURCES

RESOURCES AND REFERENCES ARE AVAILABLE ONLINE IN CONFERENCE HANDOUT A8

An overview of a collaborative negotiation process in the context of nine algorithms and an imaginary

negotiation, **Enhancing the Power of Mediation**, can also be viewed at

<https://youtu.be/RovdboYLQBo> . To learn more about the “Augmented” Intelligence in this online program,

you can **“practice with a robot”** at Smartsettle.com. The video provides an uncomplicated example of

algorithms involved in alternative dispute resolution.

Reference to any specific company, products, processes, or services by trade name, trademark, manufacturer, or otherwise in this presentation, on the Website and/or Online Profiles does not necessarily constitute or imply its endorsement, recommendation, or favouring by the presenter. The products mentioned in the presentation are for the purpose of demonstrating examples of dispute resolution alternatives.

ABC's of Improving Civil Case Resolutions

Artificial Intelligence, Biases & Consensus



PRESENTATION BY VICTORIA J. KROUCH, Ph.D.
INSTITUTE OF MEDIATION AND ARBITRATION LLC

FLORIDA SUPREME COURT CERTIFIED COUNTY, CIRCUIT CIVIL, FAMILY, DEPENDENCY & APPELLATE
MEDIATOR

10:30 AM-11:45 AM, Friday, August 12, 2022

2022 DRC CONFERENCE

GENERAL WORKSHOP A8: ABC's of Improving Civil Case Resolutions

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