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Technology: Using Modern Methods to Streamline ADR

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As the Chief Judge of the Third District Court of Appeal in Miami, Florida, I experienced first-hand my colleagues' reluctance to adopt technology. We had the means at our disposal to adopt new methods, such as live streaming our oral arguments, yet some of my colleagues were fearful of unintended consequences. When I first came to the court in January 2000, every judge had a computer, but some would not even turn theirs on, perhaps still suffering from the Y2K hysteria.

Now that I am an arbitrator and mediator with JAMS, I have encountered the same anti-technology qualms. We have made tremendous strides in making conference calls cheaper. For those of us who have suffered through the adversities of airplane travel, the option of appearing by telephone can be quite attractive. Yet I hear: "I want to see people in the flesh; I want to read their body language." As an attorney for 13 years, a judge for 12 years and an appellate judge for another 12 years, I believe people's professed ability to read body language is very overrated. My credibility determinations were based more on whether the witnesses' stories made sense, rather than in what direction they averted their eyes. I am not advocating abandoning face-to-face ADR sessions in most cases. They are unquestionably more valuable than telephonic ones. But I do believe that technology will not wait for us to

become more comfortable with its advances. We need to stay current with innovation and adopt those improvements that work.

The most obvious use of technology in ADR is the Internet. Online dispute resolution has been around for years and would find greatest value in the resolution of simple consumer disputes where the amount contested does not merit a full-blown, in-person session. The Internet Corporation for Assigned Names and Numbers (ICANN) provided the option for resolving cybersquatting disputes online through the World Intellectual Property Organization. Another example is Cybersettle, which allows parties to settle all types of disputes. It uses a simple strategy. Insurance company representatives, for example, can enter three confidential settlement offers through the secure website. Cybersettle then will contact the attorneys for the claimants to invite them to participate. If they accept, they are invited to submit three demands. If no settlement is reached, all figures submitted are confidential. ODR.INFO serves as the home of the National Center for Technology and Dispute Resolution, and is the primary portal for the field of online dispute resolution. The site is currently engaged in a pilot project with the goal of showing how mediators can practice and improve their mediation skills by participating in simulations via Skype.

Another way of utilizing the Internet is to emulate the real world within the virtual world. One advantage of in-person mediation sessions is the ability to caucus separately with the parties. One way to achieve this is by using Second Life, an online virtual world developed by Linden Lab that enables users to interact with each other through avatars. The program allows a group to meet online, then break up into sub-groups that cannot hear each other.

While we wait for a holographic version of Second Life that would allow for us to read people's body language, it would be useful to view technology not as a mechanism for replacing lawyers, mediators and arbitrators, but as a way to adjust their role. We can use technology today to resolve many preliminary matters. Conference calls can help not only in resolving scheduling matters, but can help the mediator/arbitrator define disputes. It is important that we participate in these endeavors to ensure they operate at a high professional and ethical level. We cannot abdicate this role to the unscrupulous.

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