

Kluwer Mediation Blog

Mediators Like Online Mediation And Other Verifiable Facts

James Claxton (Waseda University) · Monday, May 17th, 2021

It is common to hear people observe, reflecting on the pandemic, that things will never go back to the way they were. There is certainly good reason to believe that virtual meetings are now a fact of life. If you “zoom” you are either moving fast or teleconferencing on Zoom, capitalization optional, according to the [Cambridge English Dictionary](#). Commentary about online etiquette abounds. Teleconferencing platforms have shifted their focus from basic functionality to enhancements that blur our messy offices and erase our spots and wrinkles, clearly concerns of a mature market. Demand for “credibility bookcases” to frame our online faces with symbols of culture and learning has meanwhile led to [increases in sales of physical books](#).

The same shift from novel to normal can be seen in mediation, a subject that [I previously wrote about on this blog](#). The pandemic has obliged mediators to relocate their practices from the physical to the digital worlds. Many mediators who did not like the disruption to their practices have now embraced online mediation. Yet there remains skepticism, particularly about communication and trust. Many worry that something important is lost when rapport-building is pixelized. Is this justified?

Last year, I began a survey of mediator attitudes about their online experiences and their perspectives on the digital future. I circulated a questionnaire of 10 substantive questions to mediators with online experience beginning in late December 2020, about a year after the pandemic first began disrupting physical mediation practice.

The questionnaire was translated into 8 languages. Respondents range from regional practitioners to recognized global thought leaders in Who’s Who Legal. Most have practices that are predominantly commercial. The questionnaire was shared by various individuals and organizations including the [International Mediation Institute](#), the [International Academy of Mediators](#), and [mediate.com](#). By the time the survey closed on 1 May 2021, the questionnaire had generated nearly 500 responses.

This post provides an overview of some of the findings, which will be published in full with analysis later this year. The information here is limited to English-language responses to the questionnaire. There were roughly the same number of responses in English as in the other languages combined. Respondents in this category reported to have practices focused on the Americas (**49%**), Europe and Central Asia (**34%**), the Asia Pacific (**18%**), and Africa (**4%**).

How has mediation practice changed online?

Respondent mediators observe that the online environment has enabled participation by party decision-makers who are more senior (**according to 36% of respondents**), a finding with potentially significant implications. Many also report shorter mediation days (**44%**). Respondents attribute this to **Zoom fatigue** and to accommodating parties joining at irregular hours and from different time zones.

Mediators also identify various changes in their mediation procedures. Respondents observe that they use more private sessions (**41%**) or more joint sessions (**18%**) than they do in person. Mediators have likewise been using asynchronous proceedings, meetings without all participants present at the same time, more often online than they do in person (**30%**). Some have seen increases in co-mediation (**5%**) and participation by experts (**8%**).

How do mediators feel about online mediation?

Given reported skepticism and lack of online experience, mediator attitudes about their experiences online are remarkably favorable according to the survey results. About **83%** of mediators describe their experiences online as either positive (**43%**) or highly positive (**41%**). About **13%** describe their experience as neutral. By contrast, **5%** describe their online experience as negative. A significant number of mediators who describe their experience as “highly positive” report that they had never used online mediation before the pandemic.

What benefits have mediators experienced online?

Many mediators report improvements in access to participants (**81%**), in time efficiency (**80%**), and in cost efficiency (**72%**) mediating online. A significant number also observe benefits resulting from the comparative flexibility of online mediation (**45%**) consistent with reported changes in process mentioned above. Several mediators stated in optional comments that an advantage of online mediation is that participants seem to feel more comfortable joining from their own environments than meeting in person.

What disadvantages have mediators experienced online?

Perhaps unsurprisingly, most mediators identify technical problems (**65%**) as the main disadvantage of mediating online. Some report environmental distractions (**43%**) including interruptions while mediating from their homes or offices. A significant number also report difficulty building rapport online (**42%**) as well as a general lack of party engagement (**28%**) in the online mediation process.

Will online mediation be used commonly after the pandemic?

Approximately **67%** of mediators say that they will use online mediation more often than they did before the pandemic. About **18%** say that they will use online mediation in the future by default, remarkable given the high percentage of respondents who had no experience online before the pandemic (**54%**). Nearly **8%** say that they will use online mediation about as often as before. By contrast, about **4%** say that they will use online mediation less often after the pandemic than they did before the pandemic.

Does online mediation affect settlement rates?

Mediators report that the online shift has not led to a significant change in settlement rates. Most

respondents say that they settle no more or fewer cases online than they do in person (**71%**). About **10%** report that more cases settle online, and about **10%** report that fewer settle online.

Positive trends for online mediation

The results of the survey suggest that online mediation is as effective as mediation in person based on settlement rates. They also indicate that online mediation will continue to be a regular feature of mediation practice even when physical meetings are possible. Based on these results, the pandemic seems to have awoken mediators to the benefits of mediating online.

The online space also seems to favor the inherent flexibility of mediation. As observed, mediators report using different processes online than in person, and they identify flexibility as a comparative benefit over physical mediation. This suggests that mediators are better able to tailor the mediation process to parties and their disputes online than in person.

The results also suggest that as barriers imposed by time, place, and cost come down, mediation is attracting new users. Respondents report increases in both low-value disputes (**16%**) and high-value disputes (**10%**). This finding implies that online mediation opens mediation up to new categories of disputes. [Depending on your perspective](#), this feature of online mediation may be seen to increase access to [procedural or substantive justice](#).

Negative trends for online mediation

As observed, many mediators report technical problems online and problems caused by environmental distractions. An implication of this finding is that those with better access to technology and those who experience fewer distractions, perhaps those who are financially better off, may have better experiences online. Fortunately, technological limitations are not an indelible feature of online mediation as functionality, access, and hardware improve with time. Mediators can avoid some technical problems by advising participants about good online practices and by meeting participants before mediations to test connections and provide feedback about the chosen joining spaces.

Respondents also report difficulty building rapport with participants online. This issue is significant given the [central importance of trust](#) and effective communication to the success of mediation. Concerning trust, some empirical research on communication channels, including [research on online mediation in particular](#), suggests that trust is no more difficult to develop or maintain online than in person though [it may take more time to build](#).

Research has also identified various ways that online communication is different than communication in person in terms of body language, [voice](#), [eye contact](#), and perceptions about [silence](#). Other research suggests that [viewing oneself when speaking](#) and [having too many communications in the same space](#) may have negative effects on the psychology of speakers.

Strategies are being developed that build on such findings to improve online communications. Researchers at Stanford University and the [Virtual Human Interactive Lab](#), for example, have published [advice for avoiding Zoom fatigue](#) based on their research. Mediators may be able to improve rapport with participants by adapting their communication styles and by better managing online communications based on these findings.

Full Report

The full report and article will present additional findings and consider other aspects of online practice including, for instance, regional differences and variations across sectors. The report will also give proper recognition to the many fantastic people and organizations that supported the distribution of the questionnaire.

The survey gives empirical weight to the common refrain that online mediation works. United States President Franklin D. Roosevelt said that the only limit to our realization of tomorrow is our doubts of today. Responses to the survey suggest that doubt has been a bigger obstacle than experience to the uptake of online mediation.

To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

This entry was posted on Monday, May 17th, 2021 at 9:57 am and is filed under [Future of mediation](#), [mediation process](#), [Online Dispute Resolution \(ODR\)](#), [Online Mediation](#), [Research](#), [Zoom](#)
You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a

response, or [trackback](#) from your own site.