Kluwer Mediation Blog

Mediating Online Is Much More Than "Doing It On Zoom"

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ICC's biggest educational event of the year, its International Mediation Competition, took place from 5 to 11 February 2021 and, for the first time of its history, it was conducted online. It was its 16th edition and 48 universities from 39 countries competed online, via a dedicated platform. It has been an opportunity for us, professionals of dispute resolution, to pause and reflect about where we are at with "mediating online".

During the last year, due to the pandemic, mediators were forced to adapt quickly and move their practice "online". The adaptation had to be done fast, without preparation.

The positive side of this disruption is that it boosted the adoption of video communication in mediation to a level well beyond what Online Dispute Resolution (ODR) experts had been able to achieve in 20 years of efforts. Have a look at the visionary paper published by Colin Rule in 2000 and you will see what we mean. To put it mildly, let us say that a vast majority of mediators were not technologically savvy and were not interested in getting savvier because, well, online dispute resolution "would not work". It is highly ironic but not surprising that some of those who dragged their feet are now presenting themselves as experts on how to mediate using ICT (information and communication technologies). But let's not get bogged down in the past, as we say in mediation: the real issue with this disruption is that there has not been any time to do any training at all. The ubiquitous usage of video communication for family and social purposes created the illusion that mediating online was about getting a good computer, a good webcam, a good internet connection and a good sense of improvisation. But learning which buttons to push in Zoom does not mean that you have been adequately trained in ODR. Zoom is a channel we can use to do our work, but being an effective mediator online calls for a much wider range of skills and awareness. This is what institutions like the National Center for Technology and Dispute Resolution (NCTDR), ICORD (International Council for Online Dispute Resolution) and more recently, the International Mediation Institute have been advocating and documenting in detail – see for instance here. In order to be engaged in effective, and ethical, online dispute resolution, there are several areas that third parties need to understand and master through ODR training and education.

First, Zoom and other platforms are merely channels of communication – just as our verbal and nonverbal interactions in face-to-face meetings are channels. If mediators are to be truly successful as online mediators, they need to learn about the communication elements and dynamics presented by communicating online. They need to learn how to compensate for the non-verbal and environmental elements we lose when working online, and how to exploit the new possibilities

offered by online communication. A simple rule of thumb can be summarized using the keyword "double": think twice about everything that you do, put twice as much effort as offline, etc. For instance, think twice about how you position yourself to the camera, about your background – two things that may look like a given if you are a regular Zoom user. Capturing your upper body– and inviting parties to do so – will help to maximize the non-verbal communication. Your real or virtual background should help parties read your facial expression – the border between your face and the background must be as clear as possible. When you smile, smile as visibly as possible – without being fake. Open the virtual mediation room at least 15 min before the scheduled hour to give an opportunity for a more informal pre-session chat. Use emojis or text messages though chat to reinforce your main messages or welcome contributions. Use polling to do quick temperature checks about how things are going and how well you are performing

Second, mediators need to understand that preparing themselves and parties for work online is different from, and more time consuming, than preparation for face-to-face mediation. Mediators need to decide what is the platform that they want to use and become fluent with it and of its limitations and possible hiccups – it is essential that they instill confidence in the minds of the parties about their mastery of the platform they are using. Parties also need to be confident in the platform. Basically, in face-to-face work, we don't need to teach parties how to talk, but working online means that we probably do have to help the parties learn how to talk using online apps features. A pre mediation session with them will help to understand their fluency with the platform – the old "do not assume anything" rule also applies here. For instance, most parties use Zoom for video-conferencing in one to one or one to few situations and few of them may have had the opportunity to adjust the lighting of their webcam, to use the annotations, the polls, the emojis, or even the break-out rooms. Using early sessions in the mediation process to make them comfortable with all this is a must.

Third, every one of the ethical principles and standards of practice for mediation are affected by working online. How do we guarantee self-determination when working online? How do we assess our own and party competence to engage in mediation? How do we explain and guarantee privacy and confidentiality online? All these issues and more must be addressed in effective ODR training. You can consult here the ethics principles for ODR initiative that gives an exhaustive list of ethics concerns.

Fourth, adapting the process to online requires taking into account the different variables of the mediation, including the needs of the parties about ICT. Are you making that process flexible and agile? What is the impact of the move to online on the parties? For some this can be a mental load, and for others a source of reward, but talking about this is important. Are you going to use text communication during the mediation? Are you going to use only audio? Or are you simply assuming that video is the way to go? But what were the criteria you used to make that decision?But what were the criteria you used to make that decision? You can find more in this article titled "Brain based analysis of online mediation process" for more food for thoughts.

Finally, working online brings the possibility of engaging in work that is asynchronous (allowing for reflection and calm consideration) and for input that is anonymous (reducing perceived danger for participants). Adequate ODR training addresses the possible alternative ways to work online and identifies and explore apps that make that alternative work possible.

2020 was the year of the adaptation to the unexpected – we can pat ourselves on the back for our resilience and agility. The experience we acquired was invaluable, but it's not enough to make
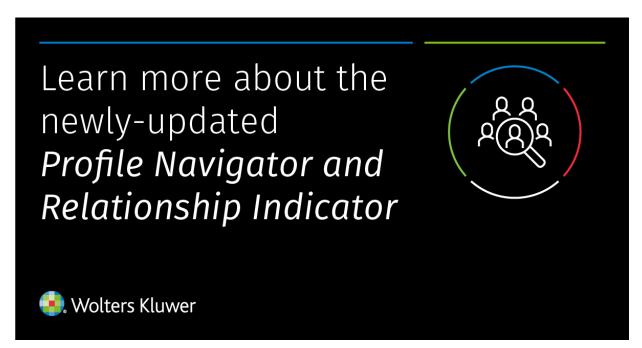
online mediation sustainable. Let's make sure that 2021 is the year of professionalization, the year where we continue to explore how to take full advantage of this online environment to ensure exceptional online experiences for parties. It's time to go beyond improvising.

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