

Online mediation: The wheels of justice keep turning

By: Special to The Daily Record Jeff Trueman ☉ March 27, 2020

Many lawyers have expressed concerns to me about mediating online, worrying that it's not as effective as mediating face to face. Although I was inclined to agree, I was willing to learn more about the technology. I spent time studying different platforms, practicing on them and talking to others who use them. But I maintained the opinion that people need to see each other in person; I told myself that I need to "read the room" in order to be effective. Now, however, COVID-19 has changed my mind. I have been mediating online and cases are settling. Other mediators report the same success.



For sure, online mediation has some shortcomings. Although computers, tablets and smartphones are ubiquitous, not everyone has access to a strong and secure internet connection. Not everyone is proficient with technology. Some people are not ready to change the way in which they do business. But we can conduct online mediation in much the same way we did in typical in-person mediation: We see and hear the participants, caucus with as many or as few people as we want, and share and edit documents. As a participant, using the platform is very easy.

In some ways, online mediation may be *better* than in-person mediation. People can't talk over each other in online mediation. No one has to leave early to catch a plane or beat traffic. With the assistance of other communication media, deals get done more efficiently. Drafting and editing settling documents is easy by virtually sharing screens or through email. Quick ideas can be shared via text. Confusion or frustration can be ironed out the old-fashioned way – by cellphone. At midday, everyone makes their own lunch, so dietary issues are better managed as well.

Online mediation permits the legal business to continue as usual. Your law office and the claims and defenses of clients need not remain in limbo. Of course, I *love* mediating in person. That's my preference. But right now, everyone needs stress relief, especially clients.

Here's how it works: The mediator invites you to join a video conference (I use Zoom meetings). You accept the invitation and click through the intuitive prompts to download the software ahead of time. When you sign on for the mediation, you will be placed in a waiting room until everyone arrives. We can start with a brief "meet and greet" with all participants (or not). I can assign each side to private caucus rooms where no one else can hear or see you and your team. I can create more caucus rooms if I want to meet with counsel only. If you want your own private room, away from others on your side, we can create that too. Virtually anything can happen with online mediation as it does in person, except you can't shake hands (and get sick).

Given court closures and other pressures and anxieties caused by the long-term implications of the COVID-19 outbreak, the demand for cost-efficient, timely resolution will only increase. Online mediation may be better than delaying resolution. No one knows how long this will last. People need to keep working and moving their lives forward while complying with travel and social restrictions.

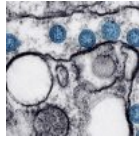
From a broader perspective, I believe technological advancements in dispute resolution will become more prevalent in the future, even after we defeat the virus. Whenever travel and social restriction ease, mid- to large-scale legal disputes and financial deals will justify in-person meetings and negotiations. But don't discount the power of technology to change institutions and the ways in which we conduct the business of law and mediation.

No one thought the internet would affect brick and mortar retailers, or journalism, or the music industry or taxicabs — until it did. Increasingly, people don't have to reorder their lives around the directives and time frames chosen by courts, or incur travel expenses and frustrations with airports, traffic and parking, or take time off from work or wait years for resolution.

The tools that help people solve their legal problems outside of court will only get better. So while courts are closed, the engine of justice is humming along with online mediation. I suggest giving it a chance. I bet you will be pleasantly surprised.



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