

Online Mediation Training Task Force Family / Elder Committee Report

June 14, 2021



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1. Introduction

The Online Mediation Committee Task Force Family and Elder Committee consisted of the following members:

Chair: Susan Guthrie

Members: Michael Aurit
Gabrielle Hartley
Ken Neumann
Peter Salem
Linda Seely
Lara Traum

The Committee met online on four separate occasions and participated in a Public Forum facilitated by Mediate.com on May 30, 2021. The Forum was hosted by Jim Melamed, Donna Silverberg and Susan Guthrie.

Members of the Family and Elder Committee, the Workplace Committee and the Public Policy and Large Group Committee all participated in this Forum.

2. Issues Considered by the Committee

The Family and Elder Committee was initially tasked with Considering the Following Questions:

- 1. How can family and elder mediation training be improved to embrace online mediation?**

- 2. How can family and elder mediation training best be offered online, for basic training, advanced training, and ongoing continuing education?**

In order to properly formulate answers to these questions, the Committee further broke their inquiry down to include the following:

- a.** How has your Sector historically approached training and qualification and how well has this worked?

- b.** What changes have taken place for your Sector's mediation services since the beginning of the Covid-19 pandemic?

- c.** To what extent has your sector's mediation training moved online? How well has this worked? Benefits? Challenges?

- d.** What are the new online practice capacities that mediators now need to reasonably master?

2. Issues Considered by the Committee, cont.

- e.** To what extent can your sector's mediation training needs be met online? To what extent can they not?
- f.** To what extent do you think that mastering online mediation will be needed even once the pandemic passes?

3. Identified Resources

The Family and Elder Committee has identified the following resources which may be of assistance and/or interest to practitioners in the field.

1. American Bar Association Section of Dispute Resolution Online Practice Tools

https://www.americanbar.org/groups/dispute_resolution/resources/resources-for-mediating-online/

2. AFCC Family Court Review, April 2021, edited by Colin Rule and Melissa Kucinski (available to members of AFCC)

3. The Learn to Mediate Online Podcast with Susan Guthrie, Esq.

<https://www.learntomEDIATEonline.podbean.com> for audio podcast
<https://www.youtube.com/c/SusanGuthrieLTMO> for video podcast

4. Harvard Law School Program on Negotiation Online Mediation Guide

<https://www.pon.harvard.edu/tag/online-mediation/>

5. The European Union-Council of Europe Joint Project on “Promoting Alternative Dispute Resolution in Turkey” held its Launching Conference

<https://www.coe.int/en/web/ankara/-/the-european-union-council-of-europe-joint-project-on-promoting-alternative-dispute-resolution-in-turkey-held-its-launching-conference>

4. Analysis of Options Moving Forward

The Family and Elder Committee met as a group on four occasions and additionally individually provided input and considerations in analyzing the 7 questions (a. - g.) recited above. In addition, the Committee produced and provided a PowerPoint presentation outlining a summary of information collected. The PowerPoint is available for all at: <https://www.dropbox.com/s/04adxyzle91vpsr/Family%20and%20Elder%20Mediation%20Slide%20Deck%20Handout.pdf?dl=0>

**Online
Mediation
Services and
Online
Mediation
Training as
we go
forward.**

This Presentation was a part of the program presented at the Forum on Online Mediation Training held virtually on March 30, 2021. A link to the video of the presentation can be found here:

https://youtu.be/t_I1pwF2ZDs.

4. Analysis of Options Moving Forward

Family and Elder mediation training has traditionally included completion of a 30 or 40-Hour "Basic" Training program. These programs cover skill building, theory, techniques, family and elder specific law as well as financial, mental health and parenting information.

Most courses contain elements that are lecture format as well as reading and interactive instruction. A great deal of the skill building incorporated in the trainings takes place in the form of role-play exercises and other experiential instruction.

Historically, these trainings have been held in 3,4 or 5 day-long sessions of 8 hours and are held in-person in locations such as classrooms, lecture halls, conference rooms and homes.

The general consensus of the Committee is that this historical approach is challenged in meeting the needs of those taking the trainings. The 30 or 40-Hour format is inadequate to effectively teach the skills necessary to

a. How has your Sector historically approached training and qualification and how well has this worked?

4. Analysis of Options Moving Forward, cont.

to mediate family and/or elder matters. In addition, with the rapid shift to almost all providers transitioning to solely online mediation services during Covid-19, most, if not all 30 and 40-Hour trainings contain no instruction on the ethical and practical issues of mediating virtually and there is no way to add this to the current curriculum without removing other material from what is already a challenged training agenda.

Some jurisdictions are already discussing and/or making plans to expand their requirements

for mediators who wish to work through the courts, to expand from a 40-Hour to a 60-Hour training format with a requirement that a certain number of hours be dedicated to online and virtual mediation issues. In the past, many jurisdictions expanded their training requirements to add additional necessary hours for training in domestic violence issues and this expansion is similar in nature.

b. What changes have taken place for your Sector's mediation services since the beginning of the Covid-19 pandemic?

4. Analysis of Options Moving Forward, cont.

As with mediation services during the pandemic, mediation training programs have also transitioned online and for the past year or more, almost all have been conducted virtually.

Anecdotally and based upon input from Committee members and Forum participants, there have been several **benefits** to virtual trainings:

- Participants from around the world
- No travel, lodging, food costs
- Environmentally friendly
- Less expense to hold the training with no space rental, food, etc.
- Greater ease in role play scenarios and feedback with breakout rooms and recording capabilities which allows asynchronous review.
- Allows for ease of using visual aids
- Easier for training providers to hold more training opportunities without the in-person logistics

c. To what extent has your sector's mediation training moved online? How well has this worked? Benefits? Challenges?

4. Analysis of Options Moving Forward, cont.

However, there are some **challenges** that have been identified as well:

- "Zoom fatigue" is a real impediment to online sessions lasting longer than 3-4 hours.
- Access to high speed internet is not universal so some communities and individuals have limited or no access to online trainings.
- The cost of necessary equipment for virtual trainings can be prohibitive for some.
- "Tech fear" and lack of technical skills can present a barrier to access for some.
- With more participants involved in a training online, there may be less opportunity for interaction.
- Not all learning styles are best-suited to a virtual format.
- Not all in-person exercises translate well to a virtual medium.

c. To what extent has your sector's mediation training moved online? How well has this worked? Benefits? Challenges, cont.?

4. Analysis of Options Moving Forward, cont.

With mediation services and trainings being performed online, there is a great deal of **additional capacities** that a skilled mediation practitioner should reasonably have.

These are at a minimum:

- Platform and technical competence
- An understanding of the ethical considerations of mediating online and how to mitigate or eliminate any challenges or issues,
- Client education and onboarding
- Advocate education.
- Language for mediation agreements and other forms and communications
- Cybersecurity and privacy issues and how to address them.
- Online communication skills and neuroscience of virtual meetings.
- Managing hybrid mediations and meetings.

d. What are the new online practice capacities that mediators now need to reasonably master?

4. Analysis of Options Moving Forward, cont.

With the advent of the pandemic and quarantine which prohibited in-person trainings, all mediation training, across sectors has primarily taken place virtually since March, 2020 and again anecdotally, based upon feedback from providers and participants, the reaction has been quite favorable.

The shift to online programming has not been without challenges as well and the ease of creating and holding trainings online

has reportedly resulted in an increase in trainings available with little to no oversight or quality control. In addition, there has been little to no research into the efficacy of online training for mediation so there is a dearth of empirical data to determine how effective online training truly is.

e. To what extent can your sector's mediation training needs be met online? To what extent can they not?

4. Analysis of Options Moving Forward, cont.

That all being said, it seems clear that the popularity of online mediation and online mediation training indicate that both will continue to be appealing and sought after by clients seeking mediation and those seeking mediation training. In all, the benefits seem to outweigh the challenges in the minds of those accessing the services and trainings.

f. To what extent do you think that mastering online mediation will be needed even once the pandemic passes?

To this end, it clearly would behoove the mediation community to establish baseline competencies for both online mediation and online mediation training. We will discuss this further in the Committee Recommendations that follow.

Committee

Recommendations

Based upon the analysis and discussion of the issues and questions outlined above, the Family and Elder Committee makes the following recommendations with respect to the establishment of core competencies for online mediation and online mediation training going forward.

Mediation training courses and programs should be expanded to include as a mandatory part of the curriculum, instruction on core competencies needed to conduct mediations online via videoconferencing, including but not limited to the practical and ethical issues raised by the virtual medium.

The practical issues of online mediation that should be covered in any training should include, technical competence on videoconferencing platforms such as Zoom, Microsoft Teams and more. In addition, training in the practical issues of using breakout rooms for caucus, private chat, white board, screen share, document share, waiting room, meeting security and other essential functionality should be required.

Ethical issues related to mediating online that should be emphasized in trainings for online mediation are privacy, confidentiality, cybersecurity, competence, diligence and unconscious bias.

Committee

Recommendations, cont.

Based upon the analysis and discussion of the issues and questions outlined above, the Family and Elder Committee makes the following recommendations with respect to the establishment of core competencies for online mediation and online mediation training going forward, cont.

Training programs for mediation conducted online should be limited in duration to no more than 3 to 4 hours per day and suitable breaks should be scheduled throughout to combat online fatigue.

Training programs for mediation conducted online may include both pre-recorded video instruction as well as live training via videoconferencing. Trainers should be transparent in their communications with participants about the modalities used.

Training programs for mediation conducted online should be limited in number of participants to insure that participants have adequate opportunity for interaction and participation. It is helpful to limit the number of overall participants to no more than can be viewed at one time on a screen. For example, at this time the maximum is 49 for a Zoom meeting. The total number of participants includes all trainers, guests and trainees.

Committee

Recommendations, cont.

Based upon the analysis and discussion of the issues and questions outlined above, the Family and Elder Committee makes the following recommendations with respect to the establishment of core competencies for online mediation and online mediation training going forward, cont.

As family and elder mediation trainings generally include a number of role-play and interactive exercises the use of breakout rooms is critical. It is suggested that recording the role-play activities would allow for review and feedback from trainers to enhance the training experience.

All mediation training programs should fully support the legitimacy and efficacy of mediating online and acknowledge it as mediation with additional facets and complexities to consider and address.

Conclusion

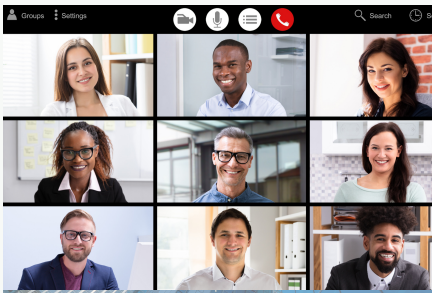
The Family and Elder Committee of The Online Mediation Training Task Force sees a future that incorporated both online mediation services and online mediation training. The need to incorporate additional training to prepare mediators to conduct their mediations online necessitates a long look at the length of trainings, which have likely been inadequate even without the online component.



Both mediation services and mediation training have successfully moved online



There are a number of ethical and practical issues that must be incorporated into online mediation training



Successfully mediating and training for mediation online require adjusting from the in-person format.

The family law and elder mediation fields will continue to help families resolve conflict and the addition of online services and trainings. The addition of both online mediation and online mediation training will further enhance options available to these families. It is hoped that the content of this Report and Recommendations provided will aid in this endeavor.