Beyond Mediation Sub-Committee Report

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Mandate of Sub-Committee

What can we learn from professional communities outside of mediation, such as Professional Coaching, Collaborative Practice, Facilitation, and other consensual dispute resolution professional communities, regarding:
- best practices for practicing mediation online; and,
- best practices for teaching mediation online

Areas of Expertise
Our committee members have experience in the following areas:

- Collaborative practice
- Unbundled services
- Public policy facilitation
- Conflict coaching

Deliverables to Mediate.com

- Subcommittee Report
- Facilitate Public Forum

The committee discussions to key questions as well as the results from the Public Forum breakout sessions form the basis of this report.

I. **Public Forum Breakout Questions & Participant Responses**
  A. *What are the best practices as an online practitioner (any practice, not just mediation) you have discovered during the pandemic?*
  - Create space for everyone to be heard and involved authentically
  - Flexibility to work from home and reduce travel
  - Preparing parties ahead of time
    - Technology access to audio, webcam, and bandwidth (mediator's office, library, Senior Center, other such location for the client who has no access to technology)
    - Technology and online check-list sent to clients
    - Building rapport earlier
    - Have a Plan B when online technology goes out including a conference phone line, What's App, etc.
    - Using DocuSign or other technology for electronic signatures
    - Disability access and accommodation
  - Allows for shorter and more frequent mediation sessions/discussions
  - Discussions seem more solutions-focused than problem-focused

- Be aware of your body language, emotional reactions, facial expressions as they are accented visually online
- Pay more close attention to people's reactions as words and non-verbal cues can be lost online.
- Being more transparent about what you are doing (e.g. taking notes) when they can see what you are doing when not facing the camera

B. *What are the best practices as a online trainer in any field that you have discovered during the pandemic?*
- Video feedback during role plays
- Use of breakout spaces saves time
- Ensure the experiential element is front and center
- Build community as soon as possible
  - Create a Getting Acquainted discussion board/email exchange
- Pre-Training Technology Check List
  - Conduct a technology test run with participants
  - Have a Plan B including a conference line for audio
  - Hardwire your computer to modem and router
- Consider your technology to meet needs as a trainer
  - 2-3 monitors for multiple documents
  - 1-2 Webcam (s) for different angles
  - 1-2 studio or ring lights for proper lighting
  - Wireless mouse and keyboard
  - Ability to use a rolling/mobile podium
  - Connect computer to big screen TV so you can stand during your training
- Disability access and accommodation

C. *What are your biggest concerns going forward?*
- The digital divide is evident between those with equipment and Internet access and those who do not. Makes it very difficult to provide online mediation services.
- Mediators and clients not comfortable with technology skills
- More "hand-holding" to facilitate
- Reduced ability to read non-verbal cues
- Maintaining confidentiality and addressing clients' recording the session, people hiding in the client's room, etc.
- Have a secure place to share documents so as not to breach confidentiality

D. *What are the biggest hopes going forward?*
- Creating a permanent space for online practice/training as well as incorporating a hybrid model
- Opportunity to expand our practices
- Become early adapters to the next round of technology advancements
- Self-Reflective practice to improve, adapt, and making ourselves more accessible

II. Subcommittee Topic Areas of Discussion
A. Disability Access

It is important that online mediation or training be accessible to all individuals. The Department of Justice-ADA provides technical assistance for those providing public services (Title III), like online mediation training or mediation services, and what is required to pay and provide reasonable accommodation. Each country needs to consider their local laws and government resources to provide guidance.

Regardless of whether a disability rises to the level of the U.S.A laws, every individual deserves to have full access and the ability to fully participate in an online mediation or training. This might require the practitioner to accommodate in several ways including

- Assistance with verbal or written communication
- Consideration for meeting start/end times and break times to accommodate fatigue, medical condition or medication usage
- Management of environmental factors such as light, noise, chemicals
- Permission for a personal assistant to be present in the virtual mediation room for the sole purposes of supporting their client
- Reminders about what is being discussed, roles others are playing in the mediation, and the way the mediation will be conducted
- Other modifications to the way the mediation is ordinarily conducted

When accommodating individuals in the online mediation or training, first ask the participant what they need to give them full access and ability to participate. They are the expert of themselves and will know what works for them or not. Other possible accommodation strategies are

- Set up Live Transcription or Closed-Captioning in your online platform
- Invite Sign Language Interpreters
- Wearing clear face masks so that it allows for lip reading
- Send electronic documents to be used by screen readers

Suggested resources:

Making your PowerPoint Accessible: https://support.microsoft.com/en-us/topic/make-your-powerpoint-presentations-accessible-to-people-with-disabilities-6f7772b2-2f33-4bd2-8ca7-dae3b2b3ef25

Making your Word document Accessible: https://support.microsoft.com/en-us/topic/make-your-word-documents-accessible-to-people-with-disabilities-d9bf3683-87ac-47ea-b91a-78dcacb3c66d

Video Relay Interpreting (VRI) or Video Relay Service (VRS)
http://www.interpretereducation.org/specialization/vrs-vri/

[Job Accommodation Network (JAN)](#) is the leading source of free, expert and confidential guidance on workplace accommodations listing each disability A-Z.

VRI or VRS is a service which can be used with deaf individuals and the hearing. These services in the U.S.A. are provided for free for conversations up to one-hour.

B. Technology Access or Lack Thereof

During the pandemic, Zoom and Microsoft teams were the go-to video platforms for education, coaching, Collaborative Practice, Unbundled legal services, mediation, training, and education.

Other online platforms such as WebEx, Go To Meetings, Adobe Connect, Skype, BlueJeans, Modron Spaces, CREK, Legelar, and What's App are alternative technologies.

The needs such as bandwidth, webcam, audio, breakout space, polling, shared screen, white board space, etc. dictates the type of platform used.

In addressing technology disparities where not everyone has access to a computer or reliable Internet, Collaborative practitioners working with family cases

- Arrange clients to attend the virtual mediation from their attorney's office
- Provide clients with their own room in the same building with an available electronic device to access online mediation
- If there is known domestic violence in a relationship, every effort is made to have the parties in different locations. It is not ideal to have them within the same home in case there is a violent response by a party.
- Prepare the parties before mediation to ensure that their technology device connects appropriately to the Internet. They conduct a technology test.
- If feasible, provide a laptop to the client.

C. Safety, Security & Confidentiality

Several issues need to be considered when conducting online practice regardless of whether it is mediation, collaborative practice, coaching, unbundled services. Etc.

Who is in the physical or virtual room?

In Collaborative cases, it is best practice to ask if there are any other people in the room or within earshot. Some insist on their client moving their webcam about the room so that they can confirm that no other person is present.

Ask clients/attorney who will be in the room prior to conducting the mediation

Include a statement in the mediation agreement stating that they have disclosed all parties in the room with them. The mediator can also ask stressing the important of transparency and trust.

Enable meeting password or lock room after participants join to control any unexpected or late participants from joining.

Where or how are documents stored and shared?

Based on who the audience you are serving, parties need to consider where and how confidential documents are stored and shared. For example, coaches might use Box, Google Drive, or Dropbox to share and store coaching documents.

Practitioners can also exchange documents via email using [Trustifi](#), an email encryption with added security. There is a free version.

Are there restrictions to certain platforms

If you work with the U.S. federal government, they might require you to sign an agreement that you are not using any Chinese-based technology used in online platforms. Check your government agencies for any restrictions to using certain platforms such as Zoom, Teams, WebEx, Adobe Connect, etc.

Who else needs to sign the confidentiality agreement?

In addition to the parties of a mediation, collaborative practice, facilitation, or coaching, the system host of a virtual platform or conference line needs to sign the Confidentiality Agreement. Use Docusign or similar software to obtain electronic signatures.

Whether to use private chat?

Let clients know that the chat box is not confidential or discuss with them whether they would like for the chat box to be confidential. Encourage clients to break out into their own room with their attorney and not to use the chat box for confidential discussions.

Inform client that they can use the private chat box if they would like to although some prevent private chats by limiting use of the chat so that messages can only be sent to everyone.

Zoom does have the option to allow participants to only chat with the host or whoever the host specifies.

How do we address screening and safety issues?

For family-related cases, determine is there is a protective order and ensure that the mediation does not infringe on it.
Ask the parties privately if there are any safety concerns or triggers
Ask the parties if they have weapons

Use caucus approach to keep parties in separate rooms so they do not interact with each other

Use breaks and breakout rooms to de-escalate emotions

How do we address substance abuse in the online environment?

Observe the client and if there are any concerns, ask them to go into a separate breakout room. Discuss whether they are under the influence of any drugs or alcohol at this time. If they are under the influence, it may be best to end the mediation and reschedule the mediation for another day.

Mediators need to watch out for potential signs of substance abuse due to the stressors of the COVID 19 pandemic, and in general. Read more on [Substance Abuse During the Pandemic.](#)

D. **Cultural competence and cultural dynamics**

The boom in using online services opens the door to working with individuals throughout the globe. Practitioners need to become culturally competent and adjust practices to address those cultural differences.

- Ask participants what holidays, issues, family roles are important to them in their culture
- Mediators can ask clients questions about cultural differences prior to the start of mediation
- If the mediator is aware of cultural dynamics that may impact participants, they can do some research prior to the mediation
- Mediators need to be agile and open to changing the process, if possible, to make the client more comfortable

How do we address language barriers in an online mediation environment?

Use Language Line Interpreters or other court approved mediators

Use Monsoon which is great in the Des Moines area for the Hmong population. They provide interpreters and have case workers that work with clients during their divorce/other issues that involve the legal system.

Use the language interpretation tool in Zoom

E. **Sexual orientation and gender**

In Collaborative practice and other trainings, reference to non-traditional family arrangements and gender-fluid participants can normalize the diversity of family life and should be done in mediation training online.

First ask participant for their pronoun and consider using pronouns in the tile of documents (He/his/him or She/Her/Hers or Them) or as part of the name in the video box in the online platform.

F. Protocols during Meetings

The following is an addendum some use in the Collaborative community. It is attached to the Participation Agreement for online video joint meetings and could be adapted for use in a mediation:

a.   No one will audio or video record any meeting. We will check with each other that none of us nor anyone on your/our behalf, has done so.

b.   If a video link is lost, we will all wait, without speaking, until it is restored.

c.   We may terminate online video meetings if there is inadequate quality of connection or a breach of this agreement may have occurred.

d.   We may suspend the meeting if there is any remote interruption and will restart the online session once satisfied that any interruption has been resolved and that it remains appropriate to continue following such interruption.

e.   Only the people who have signed the Participation Agreement may be present in the same rooms used by the participants during any online video meeting session unless otherwise agreed by all participants. We will all confirm that we cannot be overheard from your location.

f.   We agree to do all we can to ensure that we are not interrupted during online video meeting by anyone else such as children, relatives, pets, deliveries. But if someone is interrupted, we will all wait quietly until the interruption is dealt with.

g.   We agree to turn off or put to silent any phones, tablets or computers, and disable any alerts announcements or notifications of texts, emails, tweets or other social media activity, and close all or any other open application.

h.   We all agree to turn off any music or radio or background noise.

i.   We all agree to there being no live or deferred video or audio relay of the online meeting to third participants.

j.   We all agree not to video or audio record any online session.

k.   If you create any video or audio recording of the online meeting, inadvertently or otherwise, you undertake to destroy any such recording as soon as you become aware of its existence.

l.   Online video collaborative joint meetings are a without prejudice process to seek a negotiated settlement.

m.   All the other aspects of the Collaborative process as set out in the Participation Agreement and the Terms of Business of each practitioner applies to video online meetings.

G. Training

In the Collaborative community, the IACP's ethics and standards stipulated that Introductory Trainings had to be done in-person. The pandemic made it impossible to do in-person trainings so a temporary exception was created to allow for online training. Initially, it was stipulated that the online trainings should be no longer than 3 hours on video-conferencing technology per day to minimize Zoom-fatigue. Many trainers felt that this was an unnecessary limitation and have asked for this to be revised.

Various techniques have been used to make the trainings engaging:

- Lecture
- Fishbowl demonstrations
- Power Point
- Break out rooms for role plays and small group discussion
- Playing of videos for skill demonstrations
- Playing videos for educational purposes such as TedX talks, etc.
- Playing of videos as homework
- Use of Drop Box or Google Drive to distribute resources
- Journaling
- Use of Survey Monkey after each session for reflective learning

An excellent resource about how to have engaging meetings is entitled, *"Engaging Virtual Meetings"*, by John Chen. Wiley 2021. This book explains the basics of meetings online and lists many advanced ideas that can really make meetings online be more engaging. He has a Facebook group of others doing this type of work.

Other tips include turning off self-view, using "active learning" worksheets, offering asynchronous activities, and offering frequent breaks. It is important to encourage participants to move away from the screen during breaks and get some exercise and nutrition if possible.

In Collaborative trainings, we insist on everyone having their camera on so that we can ensure their attendance and level of engagement.

Recording of roleplays done by the students during Zoom is another idea. It enables the participants to review their work after the event.

Conclusion

The pandemic has escalated the speed at which we transition to a digital, online professional practice. As we stumbled into this new age, we all developed new skills to continue to offer services to our clients. We have developed best practices for this moment in history but as technology evolves, so will our practices and how we approach communication and engagement.

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