# Paths Forward for Online Mediation

## Final Report
**of the Mediate.com**
**Online Mediation Training Task Force**



**Primary Report Authors**

Forrest (Woody) Mosten, Task Force Chair

James C. Melamed, Mediate.com Board Chair

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*"If you squint your eyes and look into the future, there will be very little, if any, difference between ADR and ODR."*
Jim Melamed, Mediate.com Board Chair

# Introduction

*"Welcome to the online mediation revolution"*
Forrest (Woody) Mosten, Task Force Chair

What follows is a well-intended, if not noble, effort intended to assist the global mediation field to best embrace online mediation and online mediation training as we move forward beyond Covid-19.

Mediate.com's Online Mediation Training Task Force here presents our Final Report and Recommendations, along with our Committee recommendations and resources, with humility, knowing that the ideas contained herein are intended to stimulate additional and continuing consideration, discussion and research.

While we understandably act without a complete vision of the future, and knowing that the technical and legal contexts of our work are constantly evolving, we do here strongly encourage the mediation field to now fully embrace the many opportunities available with online mediation and online mediation training. There is, quite simply, no good reason for delay.

Please know that all of the Task Force efforts have been 100% volunteer.  While Mediate.com, the flagship website of Resourceful Internet Solutions, Inc., has generously donated technical support to the Task Force, this Report and the Task Force and Committee recommendations herein are fully independent of Mediate.com and Resourceful Internet Solutions, Inc. As is clear from the depth and quality of materials presented in and linked to in this report, Task Force Executive Committee, Advisory Board and Committee Members spent many hundreds of hours on this important project.

As mentioned, a vast array of resources are herein made available, both within this Task Force Report and via links from the Report. To the extent that these resources have been developed through Task Force efforts, such as Committee Reports, Task Force Forum videos, resources and chat, and links to all Mediate.com resources, these Task Force specific resources are all readily available to you without cost and may be utilized without prior permission.  We do ask that all Task Force and Mediate.com resources receive proper attribution whenever they are used.

This Final Report completes the work of the Online Mediation Training Task Force with the exception of a planned September 24, 2021 Online Forum during which we will "roll out" this Final Report and respond to Forum participant inquiries by those in Zoom attendance.

# Task Force's 8 Primary Recommendations

*"Online mediation and online mediation training are here to stay."*
Tara Ollapally

In addition to the many Committee Recommendations that follow, the Task Force's Executive Committee offers these 8 Primary Task Force Recommendations to support the field of mediation fully embracing online mediation and online mediation training:

## 1 - Develop Online Mediation Advocacy and Resource Capacities

Develop online mediation advocacy and resource capacities to vigorously promote the use of online mediation globally, including expanded access to online training of conflict resolution skills and effective mediation for all ages.

## 2 - Expand Access to Online Mediation Services and Online Mediation Training

One of the great advantages of online mediation and online mediation training is in the area of access. The Task Force recommends that online mediation should be easy for participants to find and participate in and not limit their right to representation. Online Mediation should further be available through both mobile and desktop channels, minimize costs to participants, and be easily accessible by people with different physical ability levels.

## 3 - Update Mediation Practice and Ethical Standards to Embrace Current and Evolving Issues Raised by Online Mediation

Update mediator practice and ethical standards to fully embrace online mediation and online mediation training.  Online privacy and security issues need to be addressed in addition to mediation confidentiality.  Issues of participant communicational preferences, and platform equity and access also need to be addressed.

As further described under the Standards and Technology Committee section of this Report, here are an initial set of **Recommended Practice Standards for Online Mediation** intended to be consistent with International Council for Online Dispute Resolution (ICODR) Standards (ICODR.org):

## Recommended Practice Standards for Online Mediation

A.  **Accessible**: Online Mediation should be easy for parties to find and participate in and not limit their right to representation. Online Mediation should be available through both mobile and desktop channels, minimize costs to participants, and be easily accessed by people with different physical ability levels.

B. **Accountable**: Online Mediation providers should be continuously accountable to participants and the legal institutions and communities that are served.

C. **Competent**: Online Mediation providers must have the relevant expertise in dispute resolution, legal, technical execution, language, and culture required to deliver competent, effective services in their target areas. Online Mediation services must be timely and use participant time efficiently.

D. **Confidential**: Online Mediation providers must maintain the confidentiality of party communications in line with policies that must be made public around: a) who will see what data, and b) how that data can be used.

E. **Impartial**: Online Mediation must treat all participants with respect and dignity. Online Mediation may enable often silenced or marginalized voices to be heard, and ensure that offline privileges and disadvantages are not replicated in the Online Mediation process.

F. **Fair/Impartial/Neutral**: Online Mediation providers must treat all parties impartially and in line with due process, without bias or benefits for or against individuals, groups, or entities. Conflicts of interest of providers, participants, and system administrators must be disclosed in advance of the commencement of Online Mediation services.

G. **Legal**: Online Mediation providers must abide by and uphold the laws in all relevant jurisdictions.

H. **Secure**: Online Mediation providers must ensure that data collected and communications between those engaged in Online Mediation is not shared with any unauthorized parties. Users must be informed of any breaches in a timely manner.

I. **Transparent**: Online Mediation providers must explicitly disclose in advance: a) the form and enforceability of mediation outcomes, and b) the risks and benefits of participation. Data in Online Mediation should be gathered, managed, and presented in ways to ensure it is not misrepresented or out of context.

## 4 - Define a Universal Online Mediator Code of Disclosure

As described under the Standards and Technology Committee section of this Report, define a broadly usable international code for online mediator transparency and disclosure of mediator qualifications and a mediator's commitment to recognized online mediation ethical standards of practice.

## 5 - Assist Existing Mediation Programs to Renovate Basic Mediation Trainings and Expand Online Mediation Training

Assist existing mediation programs to thoroughly renovate basic mediator training curricula to fully address online mediation issues and to take full advantage of online mediation service opportunities, online mediation training, and ongoing online mediation group and mentorship opportunities.

## 6 - Encourage Established Mediators to Get Training to Most Competently Offer Online Mediation Services

Encourage experienced mediators to expand and renew their mediation training to include online mediation best practices by motivating participation in "renovated" basic online mediation trainings, participation in advanced online mediation trainings, and participation in ongoing online mentorship and consultation opportunities. It is recommended that all mediators take at least two (2) basic mediation trainings, at least one of which has been thoroughly renovated to comprehensively address online mediation issues, concepts and skills.

### 7 - Expand Online Mediation Mentorship, Clinical and Apprenticeship Opportunities

Define and professionally recognize 100+ hour online and face-to-face mediation mentorship, clinical and apprenticeship opportunities.

### 8 - Elevate the Recognition of Online Mediation as the "Green Way" to Resolve Disputes

Elevate the recognition of online mediation as the environmentally sound, accessible, cost effective, and safe way to resolve disputes.

## What is the Online Mediation Training Task Force?

*"Technology will be omnipresent in the future of dispute resolution. Mediation training must reflect this new reality."*
Colin Rule

The Mediate.com Online Mediation Training Task Force (hereinafter "Task Force") was formed in response to the Covid-19 pandemic and its impact on mediation services and mediation training. The Task Force website is at www.mediate.com/OnlineTraining.

With the globally required physical separation beginning in March of 2020, overnight, *ALL* global mediation and *ALL* global mediation training was suddenly forced to be *fully* online.

"Mediation" was thus suddenly transformed to *online mediation* and "mediation training" was suddenly transformed to *online mediation training*. With this dramatic paradigm shift of mediation and mediation training to "the online," there is also increasing recognition that historic mediator standards of practice and mediation training standards simply have not kept up with this new online mediation reality.

Put succinctly, the purpose of the Mediate.com Online Mediation Training Task Force is to ask: "How can the field of mediation best embrace online mediation and online mediation training today and in the future?

## How Is The Task Force Organized & Who is On the Task Force?

In July 2020, Jim Melamed, 25-year founder and former CEO of Mediate.com and Mediate Board Chair, announced the establishment of a  blue-ribbon **Online Mediation Training Task Force,** headed by **Forrest R. (Woody) Mosten as Chair**, to make recommendations on how the field of mediation can best embrace online mediation and online mediation training.

The Online Mediation Training Task Force has worked with leading mediation organizations, professional mediators, academics and researchers in formulating these findings and recommendations.  Mediate.com has provided ongoing technical support, information distribution and publicity for the Task Force. With Forrest (Woody) Mosten **providing his experience and reputation** as Task Force Chair, the following additional mediation leaders served on the **Task Force Executive Committee which provided policy leadership for the Task Force** (click on name for background):

- Clare Fowler
- Susan Guthrie
- Marvin Johnson
- Tricia Jones
- Melissa Kucinski
- Michael Lang
- Tara Ollapally
- Colin Rule
- Donna Silverberg
- Angelia Tolbert

In consultation with the Chair and Task Force Executive Committee, an **Online Mediation Training Advisory Board** was also formed. Advisory Board Members include:

- Michael Aurit
- Ken Cloke
- Bruce Edwards
- Alberto Elisavetsky
- Sherrill Ellsworth
- Douglas Frenkel
- Brian Galbraith
- D.A. Graham
- Tim Hedeen
- Sam Imperati
- Chris LaHatte
- D.G. Mawn
- Ken Neumann
- Cinnie Noble
- Morenike Obi-Farinde

- [Kendra Ogunshina](#)
- [DeAnn Pladson](#)
- [Julian Portilla](#)
- [Pattie Porter](#)
- [Angela Reddock-Wright](#)
- [Jonathan Rodrigues](#)
- [Elizabeth Potter Scully](#)
- [Peter Salem](#)
- [Manon Schoenewille](#)
- [Linda Seely](#)
- [Sukhsimran Singh](#)
- [Amy Skogerson](#)
- [Sharon Sturgess](#)
- [John Sturrock](#)
- [Lara Traum](#)
- [Winter Wheeler](#)
- [Leah Wing](#)

*"Are we as a mediation field best organized to embrace the unprecedented opportunity to grow online mediation?"*
Forrest (Woody) Mosten

# Task Force Committees

The Task Force established the following Committees to accomplish our work:

### Beyond Mediation Committee
Conflict Coaching, Life Coaching, Collaborative Practice & Consultation
https://www.mediate.com/onlinetraining/pg22.cfm
Co-Chairs: Brian Galbraith and Pattie Porter
Members: D.A. Graham, Amy Skogerson, DeAnne Pladson, Sam Imperati, Jonathan Rodrigues, Tricia Jones

### Community Mediation Committee
https://www.mediate.com/onlinetraining/pg22.cfm
Chair: D.G. Mawn
Members: Arron Addison, Kabrina Bass, Brandon Brown, Sara Campos, Corinne "Cookie" Levitz, Charles A. Lieske, Norma López, Jeanne Felicity Zimmer

### Cross Jurisdictional Issues Committee
https://www.mediate.com/onlinetraining/pg24.cfm
Chair: Melissa Kucinski
Members: David Hodson, Ai Kuroda, Morenike Obi-Farinde and Michael Coffee

### Ethics, Standards and New Technologies
https://www.mediate.com/onlinetraining/pg32.cfm

Chair: Colin Rule
Members: Obi-Farinde Morenike, Linda Seely, Leah Wing, Sharon Sturges, Tim Hedeen, Dan Rainey

## Experiential Training Committee
### Clinics, Simulations & Video Feedback
https://www.mediate.com/onlinetraining/pg27.cfm
Chair: Tricia Jones
Members: Doug Frenkel, Melissa Kucinski, Judge Elizabeth Potter Scully, Tim Hedeen, Julian Portilla, Sukhsimran Singh, Lara Traum, Bruce Edwards, Jan Martinez

## Family & Elder Mediation Committee
https://www.mediate.com/onlinetraining/pg28.cfm
Chair: Susan Guthrie
Members: Ken Neumann, Peter Salem, Lara Traum, Gabrielle Hartley, Linda Seely

## Global Mediation Development Committee
### Developing Cultures of Mediation
https://www.mediate.com/onlinetraining/pg29.cfm
Chair: Tara Ollapally
Members: Obi-Farinde Morenike, Bruce Edwards, Lara Traum, Ken Cloke, Alberto Elisavetsky

## Marketing Online Mediation Committee
https://www.mediate.com/onlinetraining/pg25.cfm
Chair: Susan Guthrie
Members: Alberto Elisavetsky, Gabrielle Hartley, Jonathan Rodrigues, Michael Aurit

## Mentoring & Case Consultation Committee
https://www.mediate.com/onlinetraining/pg30.cfm
Chair: Tricia Jones
Members: Vivienne Fey, Angela Haberholz, Chris Lahatte, Michael Lang, John Settle, Susan Terry, Howard Herman, Cherise Hairston, Amanda Semenoff and Patricia Draves

## Public Policy & Large Groups
https://www.mediate.com/onlinetraining/pg31.cfm
Chair: Donna Silverberg
Members: Alana Knaster, Annie Kilburg Smith, Betsy Daniels, Janet Chance, Ken Cloke, Kristen Wright, Laurel Singer, Tahnee Robertson, Toby Berkman and Winter Wheeler.

## Workplace Mediation Committee
https://www.mediate.com/onlinetraining/pg33.cfm

Chair: Clare Fowler
Members: Winter Wheeler, Angela Reddick-Wright

## Youth and Schools Mediation Committee

https://www.mediate.com/onlinetraining/pg34.cfm
Chair: Clare Fowler
Members: Sherril Ellsworth, Linda Seely, Jonathan Rodrigues

*"Online Mediation Training is the greatest opportunity in the history of the field."*
Michael Aurit

# Initial Issues for the Task Force

Among the initial issues that the Task Force identified for consideration were:

- Training with new online technical capacities
- New issues of the online environment
- Improving diversity and inclusion in online mediation
- Best practices for online role play exercises
- The sufficiency of recorded trainings in meeting training requirements
- Developing synergy between online and in-person trainings
- Using recorded trainee video for constructive feedback
- Online mediation ethical issues and standards
- Online co-mediation best practices
- The use of interdisciplinary consultants and evaluators online
- Online mentorship and case consultation
- Online practice building and career development
- Staying current with ongoing online innovation
- Online mediation research
- Training online trainers

# Consideration of Diversity, Equity & Inclusion Issues

The Task Force Executive Committee determined that diversity, equity and inclusion ("DE&I") issues are important "across the board" as we seek to best bring online mediation and online mediation training to expanded communities. This Task Force Report, particularly the Global Growth Committee and Community Mediation Committee Reports, do meaningfully consider certain DE&I issues, but not to the extent that is needed.

The Task Force Executive Committee determined that the timeframe for issuing this Report is insufficient to make needed progress on DE&I issues given their breadth,

depth and complexity.  These issues need their own more expansive timeframe and independent process to make best progress.

In this context, the Diversity & Inclusion Committee originally established by the Task Force, with Marvin Johnson and Angelia Tolbert as Co-Chairs, and with Leah Wing, Kendra Jobe-Ogunshina and D.G. Mawn as Members, is anticipated to continue beyond the Online Mediation Task Force's timeframe with the continuing support of Mediate.com led by CEO Colin Rule. In this context, it is anticipated that a more expansive and comprehensive DE&I series of workshops and presentations will be offered as an adjunct to the DE&I Curriculum Component of the Center for Alternative Dispute Resolution's (CADR's) ADR Certificate Program. CADR is located in Greenbelt, Maryland.

## Issues for Committee Consideration

Additional issues for committee consideration were identified during December 2020 as follows:  https://www.mediate.com/onlinetraining/pg38.cfm

### Beyond Mediation: Conflict Coaching, Life Coaching, Collaborative Practice & Consultants

- How can we best inform and provide resources to conflict coaching, collaborative practice, mediation consultants and unbundled (limited scope) service providers to appreciate, embrace and utilize online mediation services and new online mediation training opportunities?

### Community Mediation

- How can we best assist and support community mediation centers and other non-profit mediation organizations to embrace and offer online mediation services and to utilize and benefit from basic and ongoing online mediation training that will help the underserved?

### Cross Jurisdictional  Issues

- How, if at all, are multi-state and international laws and regulations currently in place or proposed relevant to our defining and improving best online mediation training standards?

### Marketing for Online Mediation

- What resources, resource center(s) and organizational support will best support elevation, acceptance and use of the quality of online mediation training and online mediation services?
- How can mediation provider and policy organizations best support the expansion of online mediation providers?

- How can mediation and other professionals (ie focus of Beyond Mediation Committee) best support the expansion of online mediation
- What are the best new opportunities for expanding the application of mediation and online mediation services?

## Ethics

- What "face to face" mediation ethical standards exist that may help to inform our discussions (and may be eligible for updating and improvement)?
- How should mediation ethical standards be updated to best address online mediation and online mediation training?
- What might be the confidentiality, privacy and security standards for online mediation and for online mediation training?
- What are the risks, if any, to mediation participant self determination from the application of online artificial intelligence (AI)?

## Experiential Training: Clinics, Simulations & Video Feedback

- How can we most capably train future mediators?
- Does it make sense for the Task Force to seek to define and explore best practices for the components of a quality mediator education, e.g., basic training requirements, ongoing training requirements, mentorship, case consultation, role play, video feedback, etc.?

## Family & Elder Mediation

- How can family and elder mediation training be improved to embrace online mediation?
- How can family and elder mediation training best be offered online, for basic training, advanced training, and ongoing continuing education?

## Global Mediation Development: Developing Cultures of Mediation

- How can we best spread online mediation services and online mediation training throughout the world?
- How can we best create problem-solving, respectful cultures through on-line training that will contribute to peacemaking and less adversarial means of resolving disputes?

## Mentoring & Case Consultation

- How can we most capably train future mediators on a continuum from basic training, advanced training, consultation/study groups and various models of professional mentoring?
- To what extent should mentorship and case consultation be a part of mediator education at every level. If so, how best do?

- Does it make sense for the Task Force to seek define the components of a quality mediator education, e.g., basic training requirements, ongoing training requirements, mentorship, case consultation, role play, video feedback, etc.?

## Public Policy & Large Group

- How can public policy development best be benefited with online facilitation and mediation?
- How can public policy and large group collaboration and problem-solving best be supported with online training?
- What different and best practices differentiate public policy and large group mediations from two party and small group mediations?

## Standards and New Technologies

- What mediation training standards exist and may be eligible for "online" improvement?
- How can these training standards best be improved to accommodate online mediation and online mediation training?
- How can mediation continuing education standards be improved to accommodate online mediation and online mediation training.
- What newly available technical abilities can now enhance online mediation training (e.g. breakouts, recording, chat, "widgets")
- Should online mediation training now include "form creation," such as website terms and conditions, confidentiality agreements, agreement to mediate, Agreement/MOU development, editing, signing, billing, mediator evaluation, and other mediation business practices?

## Workplace

How can workplaces be best trained online to effectively collaborate, pre-empt conflict and problem-solve?

- How can workplaces best utilize online mediation services?

## Youth and Schools

What can we learn from existing Peer Mediation Training Programs about online training and online mediation services?

- How can we best support the expansion of respectful problem-solving and mediation in schools and relative to all aspects of childhood education and development.
- How can parent education and conflict resolution programs and technology contribute to the future health and development of the youth in our society

# Historic Online Mediation Development

*"This last year has been transcendent for all of us."*
Bruce Edwards

While the pandemic induced movement of mediation services and mediation training to the online environment was rather dramatic, this movement toward online communication has also been taking place incrementally over the past 30 years. This development started with the popularization and use of email addresses. Soon we were attaching files and developing websites. In time, we have also learned to do online promotion, education, intake, scheduling, agreement editing, agreement signing, payment, satisfaction surveys and just about every other "pre-mediation" and "post-mediation" function.

What had not fully taken hold prior to Covid-19 was holding actual client mediation meetings and mediation trainings online. Sure we would send correspondence and drafts and make occasional phone calls to mediating parties, but the need to have mediators and participants physically get together had been a relatively unexamined assumption of mediation practice and mediation training.

With the Covid-19 pandemic, the mediation profession was forced to ask ourselves, "What is our 'Plan B' for meeting and training if we are not able to get physically together?"

Fortunately, among the most recent online technical developments for mediators and professionals were "Zoom" and other comparable "rich media" (online audio and video) platforms. Zoom and the other rich media platforms (GoToMeeting, BlueJeans, Microsoft Teams, Lawyerly, Skype, WebEx, Google Meet, Samba, WhatsApp, etc.) have allowed for an online mediation revolution.

Historic face-to-face meetings have now been replaced by Zoom and other capable rich media platforms. In fact, Zoom and its analogue platforms have proven to be a rather remarkably effective surrogates for forbidden face-to-face meetings during the pandemic. We can find no reason to think that this effective and affordable use of online platforms will go away or perhaps even lessen following the current pandemic.

In sum, it has been a combination of 30 years of incremental, accelerating online technical development, plus the fortuitous development of easy-to-use rich media online platforms like Zoom (that are "almost as good as being there,") that have allowed for the present near complete movement of mediation and mediation training online.

While some mediators and trainers are understandably concerned that the new online meeting environments are inferior to face-to-face meetings, when the only true option is no meetings at all, the new online meeting environments, while imperfect, must be seen as a miraculous development for the mediation field and many allied professionals as well. We are now in position to bring capable mediation services and the best of

mediation trainings to any computer or smart phone on planet earth. This dramatically elevated access, convenience, affordability and safety of online mediation and online mediation training is a "game changer" for the field of mediation.

## Online Mediation Services Overview

*"Online mediation is now mediation, and mediation is now online mediation."*
Jim Melamed

As noted, the effective development of online capacity really began with professionals and the pubic acquiring internet-based email addresses.  Overtime, email addresses have, as both a practical and legal matter, become the most accepted and used means of communicating individual notices and content.  This is now generally true for courts and agencies, and not only in North America, but globally.  Of course, emails can effectively carry with them virtually any digital file as an "attachment" and provide links to either public or confidential and secure web content. Further, mediators and other professionals now well recognize the promotional and educational value of websites for describing their offerings, providing complete background information, testimonials, unlimited education, introductory videos, contact forms, automated scheduling and more.

In fact, nearly every aspect of mediation, other than the face-to-face meeting, had already been digitized and moved online prior to the Covid-19 pandemic.  It is not far off to say that nearly the entire "front-end" of acquiring a mediation case and arranging for a mediation meeting had already been refined online prior to March 2020.  Further, nearly the entire "back-end" of a mediation (all communications following a presumed face-to-face mediation) had also moved nearly fully online via email and other platforms prior to March 2020. This "back-end" online support includes online correspondence, settlement drafts and track changes, PDFs, online signing, online payment, online satisfaction surveys, etc.

So, the fact that there had already been 30 years of incremental, accelerating development of online capacities for mediators and the public, satisfying nearly all pre-meeting and post-meeting needs, was a fortunate context within which the mediation profession responded to Covid-19 with Zoom and other new rich media meeting platforms.  We quickly learned that Zoom and its analogue platforms can capably, even if imperfectly, serve as surrogates for our historically cherished face-to-face meetings.

While it was recognized by some, maybe even most, that "meeting online" is "sub-optimal," and that face-to-face meetings are for many preferred, when the *only* option is no meetings at all, Zoom and the other meeting platforms were quickly understood by all, both professionals and the public, to be near miracles compared to no meetings at all.

Simply stated, without Zoom and the other rich media platforms, combined with 30 years of incremental online development, many mediators and mediation trainers would have gone out of business over the past year. Most importantly, people would not have had, nor would they currently have, assessable opportunities to resolve their disputes. It is not a far reach to say that online mediation and online mediation training have "saved" the field of mediation.

With the pandemic, there was also an unprecedented "technologic mass training event" for both professionals and the public getting used to using Zoom and the other new online meeting platforms. People quickly learned how to use email to send online meeting invitations, including secure meeting links so that the meetings became a simple click away. We have also caught on quickly to such things as how to mute and un-mute, how to turn our cameras on and off, how to use backgrounds and filters, how to chat, breakout rooms, and more.

In this remarkable context, where nearly all mediation and nearly all mediation training worldwide has been online for the past 18 months, it is the Task Force's prediction that the world of mediation will now be primarily online for years to come. While it is expected that some mediators will go back to meeting in person when the pandemic clears, it is equally clear that as many or more mediators will continue with online mediation as their primary means of offering services and taking mediation training.

Articles regarding the extent of social change engendered by the pandemic include:

- [Coronavirus Will Change the World Permanently](https://www.politico.com/news/magazine/2020/03/19/coronavirus-effect-economy-life-society-analysis-covid-135579) (34 big thinkers' predictions)
  https://www.politico.com/news/magazine/2020/03/19/coronavirus-effect-economy-life-society-analysis-covid-135579)

- [The Coronavirus pandemic drove life online. It may never return](https://www.nbcnews.com/tech/internet/coronavirus-pandemic-drove-life-online-it-may-never-return-n1169956).
  https://www.nbcnews.com/tech/internet/coronavirus-pandemic-drove-life-online-it-may-never-return-n1169956

- [New study shows online legal mediation could be the future](https://www.bristollawsociety.com/new-study-shows-online-legal-mediation-could-be-the-future)
  https://www.bristollawsociety.com/new-study-shows-online-legal-mediation-could-be-the-future

*"It is not the mediators who will lead in bringing technology into the mediation process -- it is the parties who will insist that it be included."*
Colin Rule

Notably, even if a mediator is to now or in the future meet with parties face-to-face, that mediator will still want to do "all of the right things online" in support of the mediation effort.  In fact, the issue is not whether a mediation is an online or face-to-face.  ALL mediation cases are now online cases to a substantial extent. Even if participants do not meet with the mediator online, follow-up letters, drafting and editing of settlement agreements are already routinely performed online. The real choice in the future is whether participants and mediators feel the need, in addition to their online communications, to get physically together to resolve a matter. Increasingly, we predict, many parties, in fact most, will come to prefer to resolve matters fully online for reasons of access, convenience and cost.

As noted below, initial surveys show that more than half of professional mediators currently intend to practice mediation exclusively online following the Covid-19 pandemic. Perhaps even more notable is that more than half of surveyed mediation clients have indicated a preference for online mediation. See such articles as:

[Mediators Like Online Mediation And Other Verifiable Facts](https://www.mediate.com/articles/claxton-verifiable-facts.cfm)
by James Claxton
https://www.mediate.com/articles/claxton-verifiable-facts.cfm

[Live or virtual? Is the Future Here to Stay? Born of necessity. Driven by ease](https://www.mediate.com/articles/chang-future-stay.cfm)
by Louis Chang
https://www.mediate.com/articles/chang-future-stay.cfm

[The Remarkable (And Often Very Surprising) Benefits of Virtual Mediation](https://www.mediate.com/articles/galton-benefits-virtual.cfm)
by Eric R. Galton
https://www.mediate.com/articles/galton-benefits-virtual.cfm

[Virtual Mediation: An Enhanced Process or an Ephemeral Solution?](https://edwardsmediationacademy.com/virtual-mediation-enhanced-process-or-an-ephemeral-solution/?c=82bbee7cce5c)
by Bruce Edwards
https://edwardsmediationacademy.com/virtual-mediation-enhanced-process-or-an-ephemeral-solution/?c=82bbee7cce5c

[Using E-Mediation and Online Mediation Techniques for Conflict Resolution - Technology makes online mediation and professional dispute resolution more accessible](https://www.pon.harvard.edu/daily/mediation/dispute-resolution-using-online-mediation)
by Harvard Program on Negotiation Staff
https://www.pon.harvard.edu/daily/mediation/dispute-resolution-using-online-mediation

[They Said It Couldn't Be Done – Mediation Training Online](https://www.mediate.com//articles/sturrock-mediation-online.cfm)
by John Sturrock
https://www.mediate.com//articles/sturrock-mediation-online.cfm

[Yes, IMI will be recognizing training conducted entirely online](https://imimediation.org/2021/06/25/yes-imi-will-be-recognising-training-conducted-entirely-online)
by Laura Skillen
https://imimediation.org/2021/06/25/yes-imi-will-be-recognising-training-conducted-entirely-online

## June 2021 NADN Membership Survey Results

Compelling data on the acceptability of online mediation was recently compiled by the National Academy of Distinguished Neutrals in NADN's National Survey of Members conducted online June 17-30, 2021. See https://nadn.org/marketing/uploads/NADN-2021MemberSurvey-FinalReport.pdf.  NADN had a response rate of 782 out of 1160 total members (67%).

Over the past 12 months and averaged out across the nation, a mean average of 91.6% of cases were convened online, with less than 9% in-person. While that 9% figure is already rising as restrictions are lifted and we emerge from the worst of the pandemic, the following survey results suggest it will not regain majority status. According to

NADN, "In all likelihood, there's no going back to the old normal. The Zoom genie has left the bottle and has no intention of returning."

Only 11% of NADN members nationally reported that their settlement rate had declined somewhat mediating cases online. 82% of NADN members have a clear majority of their cases scheduled into 2022 set to be completed online.

Another big takeaway from the NADN Survey is that litigators and adjusters (aka, "customers") are now fully awakened to the huge time and cost efficiencies of ODR - and they're generally not in a hurry to return to in-person mediations. The Survey reports that some parties say that they've found that their cases are more effectively presented online due to the powerful screen-share functions. Parties also reported that they appreciate that key decision makers really have no excuse now not to attend the session, with others saying that the parties are actually more engaged in the process.

Also notably, 88% of NADN survey respondents reported that their settlement rate online was the same or better than meeting in-person!  A clear majority of NADN members also reported that they had increased their client base to include folks that were outside of their local area.

## Online Mediation Services Summary

The marketplace has thus recognized that online mediation has certain advantages over a reliance on physical meetings in terms of ease of access, convenience, scheduling and affordability. Online mediation can be more easily accomplished without parties needing to take off work, get child-care, waste time and money driving through traffic, or our needing to heat and cool expensive office buildings.  In fact, one of the most compelling aspects of online mediation for the future is that it is so very "green!"

As mentioned above, the fact that so much technology and know-how have been developed over 30 years to allow for effective online mediation does not mean that mediator practice and ethical standards have kept pace. In fact, and rather remarkably, nearly all currently operative mediator practice standards were developed at a time where the Internet either did not exist or was not recognized as worthy of consideration.

One of the Task Force's conclusions is thus that various mediator ethical practice standards need to now be updated and expanded to best support online mediation, whether online communications are in real time or asynchronous, and whether they are text, image, audio or video. In addition to updating our understandings of confidentiality, transparency, and disclosure in mediation, issues of privacy and security also now need to be directly addressed.

# Online Mediation Training Overview

*"Regarding training, the technology allows us to transcend borders."*
Bruce Edwards

In addition to the focusing on issues of how can mediators best offer online mediation services, the Task Force also focused on the many issues of online mediation training. One issue, for example, is whether historic 30 and 40 hour "basic mediation trainings" should be reviewed and updated to address the myriad of online mediation issues. Rather remarkably, nearly all current mediation training standards do not currently include any specific focus on online mediation.

Further, there are the questions of, "what makes an effective mediator generally?" and, "what makes for an effective online mediator specifically?" The Task Force notes that the more general question of "what makes an effective mediator generally" has itself never really been historically resolved (what are the "specific skills criteria?"). Whatever these historic skills are, they surely must now be complimented by mediators developing online facility with their interventions on screen as well as their use of technical platforms. The Task Force notes that mediating online is simply not the same as mediating in person. For example, the mediator must ensure that each individual participant is comfortable with the communication technologies being utilized, whereas, in "face-to-face" mediation, participants simply need to show up at a certain physical place at a certain designated time.

As a further example, the development of rapport online is different and more challenging. There are also likely differences online in terms of the relative balance between joint and individual caucus meetings. Meetings are also commonly shorter and more frequent online. All of this elevates the value of effective online scheduling software.

Still further, there is the question of the extent to which a mediator can satisfy evolving mediation training requirements, be those requirements for face-to-face or online mediation, with online mediation training, as opposed to face-to-face mediation training. Most mediation training standards were developed at a time when the ability to obtain online mediation training was not even recognized! Overtime, more and more mediation training has moved online, with quality online educational offerings now being offered by a variety of providers.

*Training requests have increased with the online training option. A part of the reason has to do with the ease of training online. You don't have to book a meeting room and get a caterer. You just push a button. Online mediation training has simplified the offering and taking of mediation training.*
Clare Fowler

Critical mediation training questions exist for both face-to-face mediation and online mediation. For example, to what extent can a "face-to-face mediator" be trained online?

Also, to what extent do these trainings need to be "live," as opposed to recorded? Further, can training experiential requirements also be fully met online? What about for an "online mediator" who wants to offer nothing but online mediation services? Does it make sense to require that an online mediator be trained face-to-face? Can an online mediator satisfy all of their training requirements online? If not, why not?

Still further, what new training opportunities exist online for both face-to-face and online mediators? For example, with Zoom, it is rather easy to record training participants (often in breakout rooms) for purposes of providing highly specific individualized video feedback. Beyond this, the online environment now also offers satisfying new opportunities for ongoing webinars, "cohort" learning groups, mentorship, apprenticeship, case consultation and clinical learning opportunities. Thus the Task Force has examined not only online mediation skills and training, but also how the online training and experiential environments can best be utilized to improve all mediation practice, both face-to-face and online.

# Task Force Open Forums

*"We have a generational opportunity to grow mediation globally. And this is going to happen online. It is not going to happen in the brick and mortar world."*
Jim Melamed

The Task Force invited global colleagues to participate in six (6) Open Forums, each 2 hours in length, to learn more about and further inform the Task Force's work. Each Forum was introduced by Jim Melamed and Woody Mosten, who also provided concluding summarizing comments to put the Forum's content into perspective of the overall Task Force mission. Registration for these Open Forums was without charge. The importance of these public education and discussion opportunities for our field and society were so substantial that the Task Force wanted to encourage maximum attendance and participation. The result: over 800 mediators and dispute resolution professionals from more than 40 countries participated in the Task Force's Open Forums!

## Complete Forum Schedule

If you click on a Forum Name, you will be taken directly to that Forum's webpage, which includes the entire Forum Video, all Forum Resources, and the Forum Chat.

**April 23, 2021**
**How Can We Best Support the Global Growth of Mediation?**
See: https://www.mediate.com/onlinetraining/pg6.cfm
**Hosts: Bruce Edwards** & **Tara Ollapally**

**Global Growth of Mediation Forum**
**Today's Forum Hosts & Panelists**

Tara Ollapally   Bruce Edwards

Alberto Elisavetsky   Morenike Obi-Farinde   Lara Traum

**April 30, 2021**
**Forum on Online Mediation Training**
See: https://www.mediate.com/onlinetraining/pg17.cfm
**Hosts: Susan Guthrie, Donna Silverberg & Jim Melamed**


**Online Mediation Training Forum**
**Today's Forum Hosts & Panelists**

Forrest (Woody) Mosten   Jim Melamed

Susan Guthrie   Clare Fowler   Donna Silverberg

**May 7, 2021**
**Forum on Standards, Ethics & New Technologies**
See: https://www.mediate.com/onlinetraining/pg9.cfm
**Hosts: Colin Rule, Leah Wing, Dan Rainey & Melissa Kucinski**



Leah Wing   Dan Rainey   Melissa Kucinski   Colin Rule

**May 14, 2021**
**Forum on Experiential Training and Mentoring**
https://www.mediate.com/onlinetraining/pg51.cfm
**Hosts: Tricia Jones & Forrest (Woody) Mosten**

## Forum Hosts



Woody Mosten     Tricia Jones     Jim Melamed

## Forum Presenters & Panelists

| | | |
|---|---|---|
| Daniel Kos | Tricia Jones | Susan Terry |
| Doug Frenkel | Michael Lang | Howard Herman |
| Merri Hanson | Patricia Draves | Norval "John" Settle |

**May 21, 2021**
**Beyond Mediation Forum**
Interdisciplinary Collaborative Practice, Coaching and Limited Scope Representation
See: https://www.mediate.com/onlinetraining/pg19.cfm
**Hosts: Brian Galbraith & Forrest (Woody) Mosten**

**May 28, 2021**
**Forum on Online Mediation Training for Youth & Schools**
See: https://www.mediate.com/onlinetraining/pg16.cfm
**Hosts: Clare Fowler and Jonathan Rodrigues**

# Committee Reports, Recommendations & Resources

# Community Mediation Committee
https://www.mediate.com/onlinetraining/pg23.cfm
Chair: D.G. Mawn
Members: Arron Addison, Kabrina Bass, Brandon Brown, Sara Campos, Corinne "Cookie" Levitz, Charles A. Lieske, Norma López, Jeanne Felicity Zimmer.
Additional Report Facilitators: Felicia Washington, Lori Dieckman and Phillip Hong

*How can we best assist and support community mediation centers and other non-profit mediation organizations to embrace and offer online mediation services and to utilize and benefit from basic and ongoing online mediation training that will help the underserved?*

## Virtual Interpersonal Community Mediation

Think Tank Report
Hosted by the National Association For Community
5/25/21

In November 2020, Mediate.com approached D.G. Mawn of the National Association for Community Mediation (NAFCM) to facilitate a national think tank regarding possible support Mediate.com may wish to consider which would strengthen and broaden the impact of community mediation through on-line access. The exact charge was: Develop best-practice recommendations for Mediate.com regarding their online services so they best support the field of community mediation to embrace and offer online mediation services and utilize and benefit from basic and ongoing online mediation training.

NAFCM established three workgroups, which met multiple times between January 2021 and April 2021 to develop recommendations for Mediate.com to consider that may strengthen the discipline of community mediation. Those who worked on parts of this report included: A INCLUDE LINKS aron Addison, Piedmont Dispute Resolution Center (Virginia); Kabrina Bass, Midlands Mediation (South Carolina); Brandon Brown, George Mason University's Carter School for Peace and Conflict Resolution (Maine); Sara Campos, Loyola Marymount Law School's Center for Conflict Resolution (California); Lori Dieckman, National Association for Community Mediation (Colorado); Philip Hong, Pepperdine School of Law (California); Corinne "Cookie" Levitz, Center for Conflict Resolution in Chicago (Illinois); Charles A. Lieske, Mediation West (Nebraska), Norma López, Orange County Human Relations (California); Felicia Washington, National Association for Community Mediation (Virginia); and, Jeanne Felicity Zimmer, National Association for Community Mediation (Minnesota).

*Online mediation access is a key breakthrough for unrepresented parties.*
Woody Mosten

## READ THE ENTIRE COMMUNITY MEDIATION COMMITTEE REPORT
https://www.mediate.com/onlinetraining/MediateDraftRecommendationsMay2021fiinal.pdf

## COMMUNITY MEDIATION COMMITTEE RECOMMENDATIONS:

These recommendations are separated into three categories. The first category focuses on how Mediate.com may be able to help strengthen the community mediation centers themselves. The second category focuses on strengthening the ability of community mediation to be infused into our formal and informal dispute resolution practices. The third category focuses on expanding the knowledge and openness of the broader community to the value and use of community mediation.

## Strengthening the community mediation centers and structure

Community mediation centers need to have the capacity to increase access to justice by underserved populations. Some suggestions:

- Online Login/Portal for Community Mediators to use which will allow mediators from different states to help without worry of distance and free up other people's schedule if needed.

- Create a training session on being a volunteer online mediator for centers. We would want a vetting process/training module for community mediators to make sure that the volunteer mediators are skilled.

- Create an orientation for cultural awareness for the area you want to mediate in

- Create on-line training webinars on how to utilize all the tools for online mediation. This would include: Zoom tools, other video tools, Whiteboard, Microsoft, E-Signatures, etc.

- Offer a certain number of slots for free to community mediation centers to advertise their on-line trainings. This could be done similar to a lottery system.

- Hold a percentage of the money made by Mediate.com from trainings (10 - 20%) and give back to community mediation centers.

- Could do online trainings on the different categories of mediation that community mediation centers do. A short list would include: Family mediation; Small claims; Workplace conflict mediation; Teenager/parent mediation; Juvenile/court-connected cases; Sexual Harassment cases; City - Ordinance violations; Employment First cases (people getting kicked off state benefits); Restorative Justice; and Domestic Violence.

- Accessibility is key when looking to support community mediation centers this would include:

  o **Cost effective** - smaller mediation centers have limited budgets or service lowincome communities. Any training opportunities should be low-cost or free

- **Addressing language needs** - assessing language needs will help develop translated collateral and even offer translation during training
- **Addressing technology gaps** - some communities do not have the same technology capacity or accessibility and prefer in-person trainings
- **Incorporate a mentoring portion** that also allows for trainees to debrief

## Strengthening community mediation centers footprint in conflict resolution activities

Community mediation centers need to be part of the just infrastructure. Two overarching suggestions are:

## Community Mediation Training

The content on Mediate.com is largely focused on purchasable training modules and articles written by members about the art of mediation in various settings. In the area of community mediation specifically, however, the website seems only to link to articles written about the wider picture of mediation, some of which deal specifically with community mediation. The website seems to fall short in connecting people with services that would be considered under the CMC umbrella. One way that Mediate.com can assist CMC's in embracing and offering online services is by tailoring aspects of the website to individuals and organizations doing community mediation work.

Finding, or encouraging articles that explicitly discuss the ways that CMC's work within other systems (schools, courts, human services, etc.) would be a starting point. Mediate.com could also begin exploring ways to facilitate connectivity between systems and CMCs in the virtual space.

Developing more CMC-geared trainings is another approach that Mediate.com might take. CMC's work extends beyond the interpersonal conflicts, they also facilitate a lot of group work that is specific to their communities. Mediate.com would benefit from creating, or partnering with CMCs, NAFCM, or other organizations to create virtual trainings that equip mediators with specific skills that are more group- and community-based. A current example of this would be a training about facilitating conversations between communities and police, communities and political figures, communities, and the courts, etc. If Mediate.com offered more trainings tailored to CMC needs, they would be moving towards centers embracing ongoing online trainings that are specific to helping systemically underserved people and communities.

The training that Mediate.com offers should also be evaluated in terms of the diversity they are representing. If training videos are going to appeal to CMCs they should represent people that centers will find in their community as opposed to only the skills someone might need to mediate with people generally. The current offerings on the website seem to be lacking in diversity; of who and what is represented. This point ties in with the one above, that Mediate.com should consider expanding their community section on the website to include a wider diversity of content.

Mediate.com should also be communicating with NAFCM or CMCs to get recommendations for what trainings would be most beneficial moving forward, and partner with organizations to offer the best, most representative trainings, in order to pull in interest from centers who could benefit from those trainings.

## National Virtual Mediation Platform

NAFCM and Mediate.com could develop and pilot a virtual CM platform - this could be national - and could help fill in the gaps across the country where there are no CMCs. Private practitioners/individuals could be trained through this partnership - trained for the first time - or re-trained (unlearning the legal model) through this collaboration, and experienced volunteer virtual community mediators would provide coaching and apprenticeships opportunities. These volunteer virtual community mediators (VVCMs) would co-mediate a wide variety of cases across the country - primarily those where participants are geographically distanced. A sliding-scale fee chart would be developed, and contracts/grants could be sought to fund the program. This could be a way to connect systems - virtually - across the country.

## Strengthening the awareness of community mediation centers

Community mediation centers need to assist in ending being their community's best kept secret. Some suggestions:

- Strengthen the public partnership of NAFCM and Mediate.com with an updates and information section about community mediation on the Mediate.com platform.

- Create learning opportunities for local grassroots organizations that are working with underserved communities with the intent of:
  - Increasing their knowledge of community mediation
  - Facilitate a planning process on how community mediation can enhance the capacity of those they serve and explores ways this can be done
  - Create avenues for funding new "community mediation" ventures

- Create a community mediator training resource/module to educate and train individuals in local communities about mediation that does not require official court sanctioned training.

- Facilitating conversations working directly with local organizations to promote mediation using: Listening Sessions, Restorative Justice Circles, Community Dialogues, Police Department Community Dialogue Facilitation.

- Members of the public who could benefit from community mediation may not be aware of what mediation involves. One possible way that Mediate.com could help to increase systems capacity to increase access to justice would be to provide

free collateral materials for the public such as general FAQs and short videos aimed at educating the public about mediation. These materials could be posted on Mediate.com's website and cross posted or linked on community mediation center websites.

- o Consumers of mediation can easily find Mediate.com in a keyword search.
- o Add a section for FAQs and include information and short videos in the tab already on the site for "Community".
- o An advisory committee from NAFCM will partner with Mediate.com on content that would be relevant and applicable to clients of community mediation centers.
- o NAFCM member centers would be able to use these materials on their websites and/or provide a link to the information on Mediate.com.

- How services are advertised on Mediate.com is also important. If the goal is to increase the use of community mediation instead of the judicial institution, then there is a need to advertise alternatives to judicial intervention boldly for visitors to the site. Something needs to catch people's eyes on the site that directs them to mediation as an alternative to judicial processes, at the beginning of a conflict.

*Building rapport and trust with online parties is a necessary skill for competent mediators.*
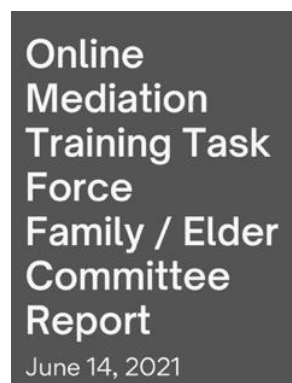Woody Mosten

# Family & Elder Mediation Committee

https://www.mediate.com/onlinetraining/pg28.cfm
Chair: Susan Guthrie
Members: Ken Neumann, Peter Salem, Lara Traum, Gabrielle Hartley, Linda Seely



Online Mediation Training Task Force Family / Elder Committee Report
June 14, 2021

## ISSUES CONSIDERED BY THE FAMILY & ELDER COMMITTEE:

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

- How can family and elder mediation training be improved to embrace online mediation?
- 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:

- How has your Sector historically approached training and qualification and how well has this worked?
- What changes have taken place for your Sector's mediation services since the beginning of the Covid-19 pandemic?
- To what extent has your sector's mediation training moved online? How well has this worked? Benefits? Challenges?
- What are the new online practice capacities that mediators now need to reasonably master?
- To what extent can your sector's mediation training needs be met online? To what extent can they not?
- To what extent do you think that mastering online mediation will be needed even once the pandemic passes?

## READ ENTIRE FAMLY & ELDER MEDIATION COMMITTEE REPORT
https://www.mediate.com/onlinetraining/Online%20Mediation%20Training%20Task%20Force%20Family%20%20Elder%20Committee%20Report%206.14.2021%20FINAL.pdf

*"How can we best train mediators online?  This question is not just for online mediators, but also includes how can we best utilize the online environment to better train "face-to-face" mediators."*
Jim Melamed

## FAMILY & ELDER 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.

- 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.

- 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.

*In the public policy area, another way to create a hybrid process is to take helpful field trips with the group being facilitated.*
Donna Silverberg

# EFFECTIVE ONLINE MEDIATION TRAINING FOR PUBLIC POLICY AND LARGE GROUP MEDIATORS

## An Initial Inquiry and Recommendations

## Public Policy & Large Group Committee

https://www.mediate.com/onlinetraining/pg31.cfm
Chair: Donna Silverberg
Members: Alana Knaster, Annie Kilburg Smith, Betsy Daniels, Janet Chance, Ken Cloke, Kristen Wright, Laurel Singer, Tahnee Robertson, Toby Berkman and Winter Wheeler.

At the request of Mediate.com, a small group of US-based public policy and large group mediators/mediation trainers met online during the winter/spring of 2021 to consider best practices and ideas to enhance online training and practice. All of us had moved our practices to the online setting as a result of the Covid-19 pandemic. Some of us had moved our trainings online before Covid (if not completely through university-based online programs, then as a hybrid tool as practitioners). All of us had found the online transition to have benefits AND limitations both in practice and in training. None of us have yet found a way to completely mirror hallway conversations, the 'breaking of bread', or the before/after small-talk time during which so much rapport is built that supports creative resolution of public policy and large group conflicts.

As a result, we identified areas for which additional understanding and support could enhance both the training and practice of online public policy and large group mediation. This report summarizes our ideas and recommendations for ourselves, our colleagues, and Mediate.com. We look forward to sharing this with others in order to build upon the tools we have identified that can support the processes we and our trainees run…so we can all better serve the public.

### READ ENTIRE PUBLIC POLICY & LARGE GROUP REPORT
https://www.mediate.com/pdf/Report%20on%20Public%20Policy%20and%20Large%20Group%20Mediat
ion%20Online%206-14-21.pdf

## PUBLIC POLICY & LARGE GROUP
## COMMITTEE RECOMMENDATIONS:

1. Survey students from the past several years of online public policy mediation courses to learn whether or not they are able to successfully move from their online training to doing public policy and large group mediation, either online OR in person.
   a. What helped them feel prepared to do the work?

   b. What additional training have they sought to raise their level of understanding and proficiency?

   c. If they sought training, what more was needed from what they got in the online setting?

2. Offer hybrid trainings that integrate 1-2 full days of in-person training with online training to provide trainees/students with the full spectrum of large group mediation experience.

   a. All who discussed these issues agree: one cannot gain an understanding of the complexities a large group/public policy mediator faces without including a portion of face-to-face training. Seeing faces-only online limits the numbers of distractions and challenges a mediator faces when managing a large group conflict in person.

   b. Large group mediators need to be proficient both in person AND online because their clients want to integrate the two mediums. We have been surprised to see how many private organizations have sought to hold their internal strategic planning and conflict resolution discussions face-to-face as the Covid numbers have begun to decline.

   c. Mediators who have not had any large group, face-to-face training will be unprepared for the types of issues that arise in large group and public policy settings and, therefore, will provide less-than-acceptable levels of practice for these types of cases.

3. Develop and share a library of public policy and large group mediation simulations that have been found to work well in the online training environment. By well we mean simulations that:

   a. allow many trainees the opportunity to experience both the role of mediator and stakeholder/interest group member;

   b. provide opportunities to use multiple functions of the online environment (such as breakout rooms, shared documents, whiteboards, and other tools to support online brainstorming and consensus building);

   c. are appropriately timed to allow exploration, closure, and debrief of each phase/stage of the public policy mediation.

4. Analyze and develop a set of 'best practices' that will enable public policy mediators to determine when it is best to do work face-to-face, when a hybrid is appropriate, and when a case can or should be done completely online (e.g. safety, travel, or accessibility issues).

5. Hold a series of online Expos that demonstrate and give an opportunity for public policy mediators and mediation trainers to try different tools and techniques in a "safe" setting.

6. Set up a registry that will enable public policy and large group mediation trainees to find seasoned mentors and apprenticeship opportunities that will support ongoing learning.

## Conclusion

Our group appreciated the request and opportunity to come together to discuss what this brave new world of online mediation and mediation training looks like, especially as it pertains to the successful management of multi-party and public policy conflicts. We believe that online mediation, training, and others services will be a part of our lives for the foreseeable future. We also believe that this is an opportune time to learn from our experiences and begin to create a series of best practices to help mediators be most capable of handling multi-party public disputes on the platform and with the tools most appropriate for the individual case. We look forward to continued dialogue, to enhancing research, and to helping develop best practices with our colleagues and Mediate.com.

## Specific Training-Related Advice

How do we best accomplish public policy/large group role play exercises online?

Synchronous simulations are most effective for 'training' mediators how to do the work in real time (moving parties from room-to-room, using different tools such as whiteboard, etc.);

- Extra time is needed for these trainings to do realistic simulated activities/practice: Public policy and large group mediation cases take a long time in real life; simulations need to be extended to get a realistic sense of how they might actually progress.

- Use Asynch lecturettes to cover foundational issues
    o And longer synchronous sessions for simulations/application/demonstration
    o Recognize that opportunities for clearly linking questions and discussion to asynch lectures are lost and need to be accounted for in the training.

- Use different approaches/tools for allowing all trainees to 'facilitate' or be engaged. Combine micro and macro skills such as:
    o Fishbowl – allows all to watch/learn together;
    o Facilitate "challenging moments" (in fishbowl, triad or dyad) – use chat to send secret instructions which create a tougher dynamic for the facilitators;
    o Dyads: all sorts of active listening possibilities such as:
        ▪ Actively listen to challenging moments one-on-one - one person shares a challenge in their life, other only asks questions to let them know they have been heard;
        ▪ Pet Peeve Rant - one person rants, the other reframes to interests.

- - Yes, and…exercise which starts with 'no, because', moves to 'yes, but…', then yes, and… to let everyone really experience the difference of those three modes of thinking/experiencing.
  - Trainer - send Chat notes that support the mediator/facilitator when they do something well;
  - Use one role-play that extends through the entire training, but focuses on different phases with different mediators for each; this gets everyone in front of the group without having to learn multiple new fact patterns.
  - Use one 4-hour role play of a group that is 'self-facilitating': rotate mediators for each stage of a single meeting agenda;
  - Use every breakout room discussion as a practice session: remind them to assign a facilitator, scribe, timekeeper; and reporter;
  - Public Policy Improve: give 3-4 sentences of the 'conflict'…send off to create a skit and bring back to do in the group;
  - Different shorter sims (specific purpose of learning for each simulation), to support rotating mediators frequently;
  - Process Analysis: here's the case, here are the parties, here's some background for consideration: what process would you advise your client to use? Why? (share and group debrief)

# Youth and Schools Committee

https://www.mediate.com/onlinetraining/pg34.cfm
Chair: Clare Fowler
Members: Sherril Ellsworth, Linda Seely and Jonathan Rodrigues

## YOUTH AND SCHOOLS COMMITTEE RECOMMENDATIONS:

**New Mediators' Guidance from May 15-16 Youth Conference**
https://www.mediate.com/articles/youngmindssummary.cfm
This article summarizes the Young Minds, Global Voices Conference.
This conference was sponsored by Mediate.com in an effort to hear from younger mediators. These 6 sessions included thought young leaders from around the globe, forming a brain trust for how to create peace in ourselves, our community and our world.

**Presentation Materials from May 28 Forum:**
**New Voices in Dispute Resolution**
https://www.mediate.com/onlinetraining/New%20Voices%20in%20Dispute%20Resolution.pdf

**Additional Resources**

- **Online Peer Mediation Project**
  by Judy Tindall
  https://www.mediate.com/articles/OnlinePeer.cfm
- **Ensure the Future Through Mentoring and Practice Programs for New Mediators**

by Angela Herberholz
https://www.mediate.com/articles/herberholz-key3-mentoring.cfm

**Association for Conflict Resolution (ACR)**
**Recommended Standards for School-Based Peer Mediation**

Peer mediation can be a successful approach to managing interpersonal conflict in elementary and secondary schools. These programs provide a unique opportunity for diverse students to use communication, human relations, and problem-solving skills in real-life settings. Effective programs can help to create a safe and welcoming school environment, improve interpersonal and inter-group relations, and assist in reducing school conflicts and violence, especially when part of a comprehensive violence prevention plan.

**Click to download ACR Recommended Standards for School-Based Peer Mediation Programs**
https://cdn.ymaws.com/acrnet.org/resource/resmgr/docs/Recommended_Standards_for_Sc.pdf

*"People follow standards, generally speaking, because they make sense and they work. Standards do something for you.  They keep you in proper boundaries."*
Dan Rainey

# Standards & New Technologies Committee
https://www.mediate.com/onlinetraining/pg32.cfm
Chair: Colin Rule
Members: Obi-Farinde Morenike, Linda Seely, Leah Wing, Tim Hedeen, Dan Rainey

## STANDARDS & NEW TECHNOLOGIES COMMITTEE RECOMMENDATIONS:

## RECOMMENDED UNIVERSAL CODE OF DISCLOSURE

See: **Creating a Universal Code of Disclosure** (7 Keys Collection)
https://www.mediate.com/Mediation2020/article.cfm?zfn=universal-disclosure.cfm

**Creating Universal Code of Disclosure** (Cyberweek)
https://www.mediate.com/articles/CodeOfDisclosure.cfm

A Code of Disclosure is a simple, powerful concept. It would provide that a mediator must first establish a set of principles to explain how he or she will conduct mediation. The framework of the disclosure statement would be uniform, regardless of the subject matter of the dispute and wherever and however the mediation will take place. Although the Code would have a uniform list of principles for disclosure, the mediator's declared conduct could vary greatly underneath each principle, and it would do so with the knowledge and approval of the parties. In addition to any declaration of adherence to a

specific State or professional code of conduct or model rules, the principles may include elements such as independence, neutrality, impartiality, confidentiality, envisaged mediation process steps, the mediation style to be adopted, the mediator's role, any conflicts of interest, the applicable complaint process and the mediator's qualifications.

Taking the 'Mediation Process' principle as an example, the Code of Disclosure would not require that the mediator use a specific process but would require that the mediator explain to the parties the process s/he proposes to use and to secure the parties' approval. This broad 'process' principle could be broken down into topics such as 'pre-mediation', 'Mediation', 'post-mediation'. The Qualifications topic, for example, might require the mediator to disclose if s/he is credentialed by a dispute resolution institution(s), and if so which.

Creating a Code of Disclosure is achievable within a reasonable time frame. Compared to a uniform Code of Professional Conduct for mediation, creation of a flexible and adaptable Code of Disclosure would only require discussing and agreeing on the broad principles for what a mediator needs to disclose in advance to the parties.

The creation of the Code of Disclosure could be initiated by convening an *ad hoc* international working group of respected stakeholders in the dispute resolution field. The working group could be co-chaired by users of dispute resolution services and moderated by several leading mediation scholars.  All deliberations could be conducted in an online forum that anyone interested could observe, with a draft Code of Disclosure offered for public comment. The development process would involve consulting existing codes of professional conduct and studies on ethics in negotiation and mediation and would involve consultation with mediation-related institutions across all subject areas.  The working group would then publish a recommendation for adoption by service providers and mediators on an open, online register that could be endorsed by governments, NGOs and professional bodies. Once widely adopted, the Code of Disclosure could be formally incorporated into national and international norms.

The creation of a Code of' Disclosure would bring many benefits to mediation and its stakeholders.  It would:

- Support and guarantee parties' self-determination, which is today as close to being a universally accepted principle in the mediation field globally as currently exists;
- Build confidence in the profession's trustworthiness by showing the emergence of a uniform practice;
- Provide greater transparency and certainty to parties on how their cases will be handled;
- Provide a framework for clarifying to all stakeholders for what mediators can be held accountable;
- Codify what must be disclosed by the mediator to parties and counsel as an integral part of the mediation agreement at the beginning of each mediation;

- Allow mediators and parties to continue benefiting from what is one of the most important hallmarks of mediation: flexibility. The Code would not impose behavior on the mediator, but would impose the duty to explain and get party agreement about what is going to be done and how;
- Provide to a judge a set of agreed 'case-specific standards' against which he or she will be able to measure 'serious breaches';
- Provide a platform for a future conversation between professionals about a uniform 'Code of Conduct'.

*Should mediators be responsible for training and supporting disputants in using the technology that will be employed during their mediation?*
Leah Wing

## RECOMMENDED PRACTICE STANDARDS FOR ONLINE MEDIATION

Here are recommended Online Mediation Practice Standards intended to be consistent with International Council for Online Dispute Resolution Standards (ICODR.org):

A. **Accessible**: Online Mediation should be easy for parties to find and participate in and not limit their right to representation. Online Mediation should be available through both mobile and desktop channels, minimize costs to participants, and be easily accessed by people with different physical ability levels.

B. **Accountable**: Online Mediation providers should be continuously accountable to participants and the legal institutions and communities that are served.

C. **Competent**: Online Mediation providers must have the relevant expertise in dispute resolution, legal, technical execution, language, and culture required to deliver competent, effective services in their target areas. Online Mediation services must be timely and use participant time efficiently.

D. **Confidential**: Online Mediation providers must maintain the confidentiality of party communications in line with policies that must be made public around: a) who will see what data, and b) how that data can be used.

E. **Impartial**: Online Mediation must treat all participants with respect and dignity. Online Mediation may enable often silenced or marginalized voices to be heard, and ensure that offline privileges and disadvantages are not replicated in the Online Mediation process.

F. **Fair/Impartial/Neutral**: Online Mediation providers must treat all parties impartially and in line with due process, without bias or benefits for or against individuals, groups, or entities. Conflicts of interest of providers, participants, and system administrators must be disclosed in advance of the commencement of Online Mediation services.

G. **Legal**: Online Mediation providers must abide by and uphold the laws in all relevant jurisdictions.

H. **Secure**: Online Mediation providers must ensure that data collected and communications between those engaged in Online Mediation is not shared with any unauthorized parties. Users must be informed of any breaches in a timely manner.

I. **Transparent**: Online Mediation providers must explicitly disclose in advance: a) the form and enforceability of mediation outcomes, and b) the risks and benefits of participation. Data in Online Mediation should be gathered, managed, and presented in ways to ensure it is not misrepresented or out of context.

## RECOMMENDED ADDITIONAL STANDARDS FOR ONLINE FAMILY AND DOMESTIC RELATIONS MEDIATION

**See: [Establishing Standards for Online Domestic Relations Mediation](https://www.mediate.com/articles/OnlineDomRelMediationStandards.cfm)**
https://www.mediate.com/articles/OnlineDomRelMediationStandards.cfm

Below are recommended Online Mediation Practice Standards for Domestic Relations Mediation developed with an intent of adding to Academy of Professional Family Mediator practice standards. See www.APFMnet.org

### A.   Discuss Mediation Communication Options

**As part of a mediation process, be the mediation "face-to-face," or "online," or a mixture of the two, mediators should discuss and seek best means of communicating during the mediation with all participants.**

In addition to meeting face-to-face, mediators and participants may communicate via online video, as part of online mediation platforms, by email, attachments, text, phone and other means. Mediators and participants are encouraged to utilize a range of communicational options in support of their mediation. It is understood that the confidentiality of mediation communications shall not be lessened nor determined by a selected modality of communication. To the extent that participants jointly prefer communicating in certain ways during a mediation, those preferences should generally be honored by the mediator. To the extent that participants have different preferences for how to communicate during a mediation, the mediator shall seek to best satisfy those interests in an overall balanced way.

### B.   Inclusion of Online Communication Understandings in Substantive Agreement

**As part of a mediation process, be the mediation "face-to-face," or "online," or a mixture of the two, mediators are encouraged to raise issues of how participants,**

**particularly parents, can best communicate with others, including children, both during and following the mediation.**

Understanding these issues tend to evolve, Mediators are advised to assist parents in particular to discuss and set clear expectations for their children's online access and communications, both with a non-present parent and more generally. In the best interests of their children, parents are encouraged to consider adopting common online access standards for their children.

### C.   Reaching Understandings About Post-Mediation Communications

**As part of a mediation process, be the mediation "face-to-face," or "online," or a mixture of the two, mediators are encouraged to raise issues of whether and how participants can best communicate directly following the mediation process.**

As determined by the participants, future communication agreements may or may not be included as part of a formal binding mediation agreement. Participants having clear expectations about future communications can assist with mediation agreement implementation and assist to pre-empt future conflict.

*"Online mediation practice introduces new ethical concerns, concerns that should be raised as part of any mediation training."*
Colin Rule


## RECOMMENDED DEVELOPMENT OF SUPPLEMENTAL ONLINE MEDIATION TRAININGS

**See: ICODR ODR Training Concepts**
https://www.icodr.org/guides/training.pdf

**See: Sample 12-hr Online Mediation Curriculum**
https://www.mediate.com/onlinetraining/pg54.cfm

It is recommended that quality 12-20 hour supplemental online mediation curricula and trainings be developed and widely offered, such as the above ICODR 20-hour and the Sample 12-hr Online Mediation Curricula.

While ICODR Training Standards are more general, applying to online dispute resolution (ODR) generally, including, for example, online arbitration, online mediation should seek to develop training standards consistent with established ICODR Standards to the extent ICODR Standards pertain to online mediation.  See: https://www.icodr.org/guides/training.pdf.

Importantly, it is critical to also note the **International Mediation Institute's** ("IMI" at https://www.imimediation.org) recently defined **Easy-read online mediation**

**competences for individuals** (https://www.imimediation.org/practitioners/competency-criteria/#ODR), including defined competencies for IMI Online Mediator Specialization. Here are IMI's newly defined online mediator competencies, a quality starting place for any organization seeking to define needed online mediator competencies.

## Model Online Mediator Standards—IMI Online Mediator Specialization

**Experience Requirements**

At least twenty full-scale e-Mediations in the past 24/36 months (exceptions: IMI Certified Mediators who have completed a minimum of five full-scale e-Mediations; mediators who have acted as sole mediator in at least 20 e-Mediations (200 hours), in countries where there is no Qualifying Assessment Program for IMI Certification.

**Knowledge**

The following areas of knowledge and understanding are required for effective use of mediation integrated with ICT (Information and Communication Technology). This list is intended as guidance to ODR QAPs in designing knowledge assessments. It is not necessarily exhaustive or mandatory.

### Situational Awareness

- Knowing when the online environment may not be a suitable way to conduct the mediation process;
- Determining when ODR approaches are likely to add value to the process;
- Staying abreast of developments in ICT, ODR schemes, various ODR platforms and general issues related to Online Dispute Resolution (ODR);
- Knowledge about the impact of ICT on the practice of mediation.

### Basic Knowledge

- Understanding the principles of text based, video based, audio based communication (or a combination) and ability to identify the most appropriate one for a mediation or for phases of the mediation process;
- Understanding of the role of a mediator, and how the mediator's approach and practice are adaptable or not to the online environment;
- Knowledge and adherence to ethical standards;
- Knowledge of the dynamics of online negotiation;
- Knowledge of relevant laws affecting mediation practice in the online environment (if any): enforceability of online mediation agreements (where relevant), confidentiality and privilege;
- Knowledge of the various laws affecting the structure and enforceability of online mediation agreements, particularly across jurisdictions;

**Platform/Technology**

- Ability to select the appropriate ICT platform that meets the needs of the parties;
- Knowledge about which features of the ICT platform to use in a mediation (functions, security, access, complexity, others);
- Knowledge (as applicable) in Technology (hardware and software)
    (i) Devices needed to perform the mediation using ICT
    (ii) Telecommunications technology
    (iii) Information technology
    (iv) Required electronic records;
- Knowledge about possible technology issues and breakdown.

**Process/Impact**

- Understanding of the emotional, social and cognitive advantages and disadvantages of using ICT in a conflict resolution process and the ability to measure and manage the impact and effects on third parties;
- Ability to move between different communication channels based on the nature of the relationship and task at hand; (e.g. use of email to coordinate a call, use the phone before going to a face to face meeting and then shift back to phone before writing again a final email);
- Understanding of biases related to ICT use and impact on parties and third parties' performance in mediation;
- Knowing how to use relevant procedures and techniques for facilitating online communication including (i) management of asynchronous communication, (ii) balancing limitations of each ICT towards the needs of each party;
- Familiarity with the impact of the online environment in techniques like listening, questioning, paraphrasing, summarizing and concurrent caucusing.

**Communication with Parties**

- Understanding and explaining to the parties policies, procedures and protocols relevant to conduct the mediation using ICT. Including but not limited to:
    - Ethical and legal issues
        - (i) Consent, privacy, confidentiality, security
        - (ii) Limitations of technology;
    - Documentation
        - (i) Scheduling and follow-up
        - (ii) Accountability /responsibility;
        - (iii) enforceability;

- Understanding of technological challenges and ability to identify them for each participant, including but not limited to literacy, acceptance, and compatibility;
- Knowing how to use techniques for adequately supporting technologically challenged participants and address possible imbalances between parties;
- Knowledge of cultural bias related to the use of technologies in mediation practice

**Skills**

The following areas of practical skills are required for effective use of mediation integrated with ICT (Information and Communication Technology). This list is intended to aid ODR QAPs in designing skills assessments. The list is not necessarily exhaustive or mandatory and is offered as guidance.

1. **General skills in mediation** (IMI Certification)

Include but are not limited to ethical obligations, neutrality, awareness of potential biases (conscious and unconscious), and confidentiality.

2. **Skills related to technology**

2.1. Basic computer skills and basic mobile computing skills;
2.2. Working with ICT platform set-up, operation, and trouble-shooting;
2.3. Ability to manage efficiently any technology challenges;
2.4. Ability to use the technical equipment and environment (e.g. lighting, sounds, distractions) in order to deliver a high-quality experience to participants of the respective e-Mediation;
2.5. Ability to convey clear and effective messages in verbal and non-verbal communication synchronously and asynchronously;
2.6. Ability to use the ICT platform in such a way that the platform does not take away the focus from the content of the conversation with/among the parties;
2.7. Ability to show confidence and critical self-awareness in working with technology to address parties' issues;
2.8. Ability to simultaneously address people who are in different countries and regions and different time zones – understanding the impact that this can have on the dynamics of the communication;
2.9. Understanding implications for privacy in storing digital information and communicating with parties and others online;
2.10. Ability to combine asynchronous communication and videoconferencing in order to manage caucuses;
2.11. Ability to use specific options of the ICT platform such as (i) meeting planning, (ii) screen sharing, (iii) online caucus, (iv) giving mouse controls, (v) muting and unmuting, (vi) multiple webcams (vii) multiple modes of

communication simultaneously.

3. **Skills related to the e-Mediation process**

3.1. Assessing suitability of the dispute/disputants to e-Mediation
3.2. Determining which approaches are likely to add value to e-Mediation;
3.3. Determining and explaining to the parties the impact of the use of ICT in terms of process and potential impact on the outcome of mediation;
3.4. Dealing with the different levels of readiness of the parties to accept the implication of using ICT in the mediation process, evaluating and securing equal access to ICTs for all parties involved.
3.5. Determining special costs or fees associated with the use of ICT in e-Mediation.

**3.6. Preparing for e-Mediation**

1. Considering parties' knowledge of mediation process and impact of ICT;
2. Understanding the level of technical knowledge of the parties and their capacity to communicate effectively using ICT platforms;
3. Guiding parties and all participants through the ICT (the process and information management);
4. Identifying possible outcomes, risks and consequences associated with e-Mediation;
5. Identifying and explaining to the parties (in common-language) the potential risks in relation to privacy and confidentiality while using online or computer-based platforms or applications;
6. Identifying and communicating common technical issues, problems or questions that may arise during an e-Mediation process and providing parties with possible protocols to address them;
7. Identifying reasonable industry standards for security and privacy protection of a determined online or computer-based platform, and refraining from using or recommending the ones that do not meet those standards;
8. Creating a protocol agreement that defines the parties' understanding of the process, the use of any ICT, the potential risks to their information, and the responsibilities of an eMediator (including responsibilities related to confidentiality and ability to provide protection to data transmitted online);
9. Choosing the online platform that is going to be used during the e-Mediation;
10. Getting agreement regarding who will be present during the different audio and/or video sessions of the e-Mediation;
11. Getting agreement regarding who will have access to any information stored online as part of the mediation process and define how that access is going to take place;

12. Creating an atmosphere where the use of ICT by the e-Mediator outside of the mediation does not create the perception of a conflict of interest by the parties;
13. Identifying and getting agreement on the procedure to follow in case of technology breakdown;
14. Disclosing the appropriate information so the e-Mediation can be conducted without any conflict of interests; ensuring transparency with regard to the e-mediator, the institution, the 4th party and the online procedure.
15. Identifying the parties' understanding of the sources of the dispute, their interests, rights and options, and the other party/ies' interests, rights and options.

### 3.7. During e-Mediation

1. Effectively using technology and outside assistance if needed;
2. Conducting a high-quality process within the online environment;
3. Deciding on the best online process that meets the needs of the parties despite personal preferences or bias in favour or against the use of ICT;
4. Monitoring of the parties' perceptions and attitudes towards the e-Mediation and adjusting the process respectfully;
5. Being aware of the different features of the ICT platform, their corresponding advantages and constraints to be able to discern which feature to use in which context;
6. Understanding and dealing with technology impact in power imbalances (e.g. typing capabilities of the parties, imbalance due to computer power and internet speed, others);
7. Monitoring to ensure that parties deal with the online process on equal ground and competence;
8. Being self-aware to avoid becoming biased by party's performance using ICT;
9. Taking advantage of the change of communication type provided by online dispute resolution mechanisms to help the parties take the most out of the situation (e.g. create space for brainstorming, time to reflect, etc.);
10. Understanding how to adapt text/audio/video based communication to the kind of issue parties are discussing;
11. Applying emotion management techniques;
12. Understanding how to use active listening online that also includes attentive and active reading;
13. Using ICT to facilitate negotiations in an efficient way;
14. Ensuring that impartiality is maintained;
15. Exhibiting lack of bias related to considerations of geographical location or cultural orientation of e-Mediator or use of facilities;
16. Ensuring that the e-Mediator's conduct is always professional and appropriate (respecting the protocol agreement regarding the access to parties, responsiveness to parties' requests, taming tempers);

17. Managing the continuation and the termination of the e-Mediation (addressing parties' hanging up, technical failure, automated processes, etc.);
18. Understanding how to translate face to face mediation techniques into the online environment.

### 3.8. Reaching agreement

1. Ensuring parties have given their informed consent;
2. Ensuring that agreement addresses issues, interests and rights as identified throughout the process.

### 3.9. Post-mediation process

1. Encouraging parties to provide feedback on their experience in e-Mediation;
2. Conducting follow-up when needed.

## Also from IMI:
## The Identification of Programs (QAPs)
## to Assess Online Mediation Competence

IMI has also taken the lead in terms of identifying Criteria for QAPs (Qualifying Assessment Programs) for Online Dispute Resolution Certification. The IMI 'Online Dispute Resolution' (e-Mediation) Task Force was set up to assess and make recommendations on how to develop high level standards for the provision of ODR services, having regard to:

A. the current development of mediation and other ADR tools in this field
B. the importance of ODR as a mechanism for all forms of dispute resolution
C. the emergence of legislation impacting upon ODR.

These criteria for QAPs are the output of this Task Force. Read more about the IMI Task Force at https://imimediation.org/about/who-are-imi/odr-tf.

IMI Online Mediation Specialization is now available. These three videos provide guidance to organizations sbmitting their programs for QAP assessment:

- **Introduction:** https://www.youtube.com/watch?v=semcdmRXbac
- **Competencies:** https://www.youtube.com/watch?v=9yufRXolQxI
- **Skills:** https://www.youtube.com/watch?v=YIyRfHG-C_w

Organizations wishing to submit their program as an IMI Approved QAP can do so using this form
https://docs.google.com/forms/d/e/1FAIpQLScDoX9C5iVVMEtCS_V0HDIH40tgHEgoWWQr4gkjwXKb3fYzYQ/viewform

## IMI Competency Criteria for Online Mediators

See:

- **IMI QAP Competency Criteria for e-Mediators.pdf**
- **Annex 1_ IMI e-Mediation Core Competency Skills.pdf**
- **Annex 2_ IMI e-Mediation Core Competency Skills.pdf**

### Background

The integration of information and communication technology (ICT) into mediation introduced a need to identify specific recognized competencies vital for mediators practicing with ICT. The term e-Mediation is used here for ease of reference and means the application of any information and communication technology (ICT) to the process of mediation online or via any other technology. The IMI Independent Standards Commission (ISC) set up a special Task Force consisting of thought-leaders and outstanding practitioners in online mediation. The first goal of the Task Force has been to explore and design a measurable set of criteria for competency in Online Mediation for professionals. The IMI Competency Specialization in Online Mediation will help users to make informed decisions while choosing and appointing e-mediators for negotiations and Dispute Resolution (DR). It will also help competent and experienced online mediators promote their ICT advanced services.

### Criteria

IMI ISC ODR Task Force has designed Criteria for programs qualifying competent online mediators to establish a professional and technical basis for enabling disputing parties to identify professionals competent and experienced in e-mediation. The Criteria are presented in two broad categories: General Requirements for the Qualifying Assessment Programs (QAPs) and Substantive Criteria for online mediator Competency:

### 1. General Requirements for e-Mediation QAPs

Any online mediation QAP (ODR-QAP) must meet the following general criteria to qualify professionals for IMI Specialization:

### A. Methodology

An ODR-QAP must explain how implemented competency assessment criteria and developed performance-based assessment instruments ensure that online mediators meet the Substantive Criteria on an ongoing basis. The ODR-QAP should clearly explain how these competences are verified.

*Comment: The assessments may be based on the most innovative technology in online assessment and measurement such as Self-Tests, Quizzes and Surveys, Assignments*

*(Self-assessments, written reviews or summaries, problems to decipher, spreadsheet or document to complete, etc.). Assessments may be Videotaped and/or live assessments (interviews, peer reviews, dramas, role-plays).*

## B. Transparency

An ODR-QAP must be transparent regarding the Substantive Criteria assessment by publishing such information on a website and other publicly available media.

## C. Integrity

Each Assessor of the ODR-QAP must have substantial experience in online mediation and/or teaching/assessing competency of online mediators. The ODR-QAP must ensure independence and describe how the assessors will maintain their independence (i.e. that their assessors are independent from the training faculty of the applicant and have no conflict of interest with the QAP in regards to the outcome of the assessment). The assessors should
share objective criteria of the QAP and should be part of the on-going professional development for their assessment experience and skills.

## D. Ongoing Monitoring of Program

An ODR-QAP must include a process for the ongoing monitoring of the performance and practice of the assessors, qualified/certified online mediators, and the program itself. IMI will liaise closely with all approved program organizers to maintain a sustainable quality control system.

## E. Diversity

An ODR-QAP establishes that assessment is open to all applicants meeting substantive requirements, without discriminating based on gender, race, ethnicity, age, religion, sexual orientation, nationality, political views or any other personal or professional characterization. This should be stated on a website and other public available means, alongside the substantive criteria for online mediators.

## 2. Substantive Criteria for Online Mediators

Any program qualifying candidates for IMI Online Mediation Specialisation must meet the following minimum substantive criteria with respect to all applicants:

## A. Experience of Online Mediation

The ODR-QAP must include a method for ensuring that applicants have demonstrated to the satisfaction of the Program's Assessors experience of online mediation and have carried out in the previous 24/36 months a minimum of twenty full-scale online mediations. The QAP must include clearly identified criteria on this requirement.

Exemptions (minimum of five full-scale online mediations):

- IMI Certified Mediators
- Mediators having acted as sole mediator in at least 20 online mediations (or 200 hours if any of mediations lasted longer than one day) in countries where there is no Qualifying Assessment Program for IMI Certification.

**B. Knowledge of Online Mediation**

The ODR-QAP must include a method for determining that applicants have demonstrated an understanding of e-Mediation to maximize the efficiency of mediation. Using the online and ICT advanced environment, ODR-QAPs can use tests, essays, reports, theses and interviews to determine such knowledge. Applicants are expected to be tested on and exhibit a comprehensive understanding of online mediation theory and practice. An ODR-QAP may use the Core Competency Knowledge Elements (set out in detail in Annex 1).

**C. Practical Online Mediation Skills**

An ODR-QAP must include a method for the performance-based assessment to demonstrate a high degree of online mediation competency. The IMI ISC expects that the method used by online mediation QAPs should address all the Core Competency Practical Skills (sections and sub-sections detailed in Annex 2). The method should be sufficiently detailed to attest that an applicant demonstrated a high level of competency as an online mediator. However, it is not expected that all detailed Core Competency Practical Skills listed in Annex 2 will be assessed in the same depth, and ODR-QAPs will be free to assess other practical skills not listed in Annex 2.

## IMI Certification in E-Mediation
## Annex 1
## E-Mediation (EM) Core Competency Knowledge Elements

The following areas of knowledge and understanding are required for effective use of mediation integrated with ICT (Information and Communication Technology). This list is intended as guidance to e-Mediation QAPs in designing knowledge assessments. It is not necessarily exhaustive or mandatory.

**Situational Awareness**

1. Knowing when the online environment may not be a suitable way to conduct the mediation process;

2. Determining when ODR approaches are likely to add value to the process;

3. Staying abreast of developments in ICT, ODR schemes, various ODR platforms and general issues related to Online Dispute Resolution (ODR);

4. Knowledge about the impact of ICT on the practice of mediation.

**Basic Knowledge**

5. Understanding the principles of text based, video based, audio based communication (or a combination) and ability to identify the most appropriate one for a mediation or for phases of the mediation process;

6. Understanding of the role of a mediator, and how the mediator's approach and practice are adaptable or not to the online environment;

7. Knowledge and adherence to ethical standards;

8. Knowledge of the dynamics of online negotiation;

9. Knowledge of relevant laws affecting mediation practice in the online environment (if any): enforceability of online mediation agreements (where relevant), confidentiality and privilege;

10. Knowledge of the various laws affecting the structure and enforceability of online mediation agreements, particularly across jurisdictions;

**Platform/Technology**

11. Ability to select the appropriate ICT platform that meets the needs of the parties;

12. Knowledge about which features of the ICT platform to use in a mediation (functions, security, access, complexity, others);

13. Knowledge (as applicable) in Technology (hardware and software)

    1. Devices needed to perform the mediation using ICT
    2. Telecommunications technology
    3. Information technology
    4. Required electronic records;

14. Knowledge about possible technology issues and breakdown.

**Process/Impact**

15. Understanding of the emotional, social and cognitive advantages and disadvantages of using ICT in a conflict resolution process and the ability to measure and manage the impact and effects on third parties;

16. Ability to move between different communication channels based on the nature of the relationship and task at hand; (e.g. use of email to coordinate a call, use the phone before going to a face to face meeting and then shift back to phone before writing again a final email);

17. Understanding of biases related to ICT use and impact on parties and third parties' performance in mediation;

18. Knowing how to use relevant procedures and techniques for facilitating online communication including (i) management of asynchronous communication, (ii) balancing limitations of each ICT towards the needs of each party;

19. Familiarity with the impact of the online environment in techniques like listening, questioning, paraphrasing, summarizing and concurrent caucusing.

**Communication with Parties**

20. Understanding and explaining to the parties policies, procedures and protocols relevant to conduct the mediation using ICT. Including but not limited to:

> 20-1-Ethical and legal issues (i) Consent, privacy, confidentiality, security (ii) Limitations of technology;

> 20-2-Documentation (i) Scheduling and follow-up (ii) Accountability /responsibility; (iii) enforceability;

> 21. Understanding of technological challenges and ability to identify them for each participant, including but not limited to literacy, acceptance, and compatibility;

> 22. Knowing how to use techniques for adequately supporting technologically challenged participants and address possible imbalances between parties;

> 23. Knowledge of cultural bias related to the use of technologies in mediation practice.

## IMI Certification in E-Mediation
## Annex 2
## E-Mediation Core Competency Practical Skills

The following areas of practical skills are required for effective use of mediation integrated with ICT (Information and Communication Technology). This list is intended to aid e-Mediation QAPs in designing skills assessments. The list is not necessarily exhaustive or mandatory and is offered as guidance.

**1. General skills in mediation** (IMI Certification) include, but are not limited to, ethical obligations, neutrality, awareness of potential biases (conscious and unconscious), and confidentiality.

**2. Skills related to technology**

2.1. Basic computer skills and basic mobile computing skills;

2.2. Working with ICT platform set-up, operation, and trouble-shooting;

2.3. Ability to manage efficiently any technology challenges;

2.4. Ability to use the technical equipment and environment (e.g. lighting, sounds, distractions) in order to deliver a high-quality experience to participants of the respective e-Mediation;

2.5. Ability to convey clear and effective messages in verbal and non-verbal communication synchronously and asynchronously;

2.6. Ability to use the ICT platform in such a way that the platform does not take away the focus from the content of the conversation with/among the parties;

2.7. Ability to show confidence and critical self-awareness in working with technology to address parties' issues;

2.8. Ability to simultaneously address people who are in different countries and regions and different time zones – understanding the impact that this can have on the dynamics of the communication;

2.9. Understanding implications for privacy in storing digital information and communicating with parties and others online;

2.10. Ability to combine asynchronous communication and videoconferencing in order to manage caucuses;

2.11. Ability to use specific options of the ICT platform such as (i) meeting planning, (ii) screen sharing, (iii) online caucus, (iv) giving mouse controls, (v) muting and unmuting, (vi) multiple webcams (vii) multiple modes of communication simultaneously.

**3. Skills related to the e-Mediation process**

3.1. Assessing suitability of the dispute/disputants to e-Mediation

3.2. Determining which approaches are likely to add value to e-Mediation;

3.3. Determining and explaining to the parties the impact of the use of ICT in terms of process and potential impact on the outcome of mediation;

3.4. Dealing with the different levels of readiness of the parties to accept the implication of using ICT in the mediation process, evaluating and securing equal access to ICTs for all parties involved.

3.5. Determining special costs or fees associated with the use of ICT in e-Mediation.

## 3.6. Preparing for e-Mediation

1. Considering parties' knowledge of mediation process and impact of ICT;

2. Understanding the level of technical knowledge of the parties and their capacity to communicate effectively using ICT platforms;

3. Guiding parties and all participants through the ICT (the process and information management);

4. Identifying possible outcomes, risks and consequences associated with e-Mediation;

5. Identifying and explaining to the parties (in common-language) the potential risks in relation to privacy and confidentiality while using online or computer-based platforms or applications;

6. Identifying and communicating common technical issues, problems or questions that may arise during an e-Mediation process and providing parties with possible protocols to address them;

7. Identifying reasonable industry standards for security and privacy protection of a determined online or computer-based platform, and refraining from using or recommending the ones that do not meet those standards;

8. Creating a protocol agreement that defines the parties' understanding of the process, the use of any ICT, the potential risks to their information, and the responsibilities of an eMediator (including responsibilities related to confidentiality and ability to provide protection to data transmitted online);

9. Choosing the online platform that is going to be used during the e-Mediation;

10. Getting agreement regarding who will be present during the different audio and/or video sessions of the e-Mediation;

11. Getting agreement regarding who will have access to any information stored online as part of the mediation process and define how that access is going to take place;

12. Creating an atmosphere where the use of ICT by the e-Mediator outside of the mediation does not create the perception of a conflict of interest by the parties;
13. Identifying and getting agreement on the procedure to follow in case of technology breakdown;

14. Disclosing the appropriate information so the e-Mediation can be conducted without any conflict of interests; ensuring transparency with regard to the e-mediator, the institution, the 4th party and the online procedure.

15. Identifying the parties' understanding of the sources of the dispute, their interests, rights and options, and the other party/ies' interests, rights and options.

## 3.7. During e-Mediation

1. Effectively using technology and outside assistance if needed;

2. Conducting a high-quality process within the online environment;

3. Deciding on the best online process that meets the needs of the parties despite personal preferences or bias in favour or against the use of ICT;

4. Monitoring of the parties' perceptions and attitudes towards the e-Mediation and adjusting the process respectfully;

5. Being aware of the different features of the ICT platform, their corresponding advantages and constraints to be able to discern which feature to use in which context;

6. Understanding and dealing with technology impact in power imbalances (e.g. typing capabilities of the parties, imbalance due to computer power and internet speed, others);

7. Monitoring to ensure that parties deal with the online process on equal ground and competence;

8. Being self-aware to avoid becoming biased by party's performance using ICT;

9. Taking advantage of the change of communication type provided by online dispute resolution mechanisms to help the parties take the most out of the situation (e.g. create space for brainstorming, time to reflect, etc.);

10. Understanding how to adapt text/audio/video based communication to the kind of issue parties are discussing;

11. Applying emotion management techniques;

12. Understanding how to use active listening online that also includes attentive and active reading;

13. Using ICT to facilitate negotiations in an efficient way;

14. Ensuring that impartiality is maintained;

15. Exhibiting lack of bias related to considerations of geographical location or cultural orientation of e-Mediator or use of facilities;

16. Ensuring that the e-Mediator's conduct is always professional and appropriate (respecting the protocol agreement regarding the access to parties, responsiveness to parties' requests, taming tempers);

17. Managing the continuation and the termination of the e-Mediation (addressing parties' hanging up, technical failure, automated processes, etc.);

18. Understanding how to translate face to face mediation techniques into the online environment.

### 3.8. Reaching agreement

1. Ensuring parties have given their informed consent;

2. Ensuring that agreement addresses issues, interests and rights as identified throughout the process.

### 3.9. Post-mediation process

1. Encouraging parties to provide feedback on their experience in e-Mediation;

2. Conducting follow-up when needed.

*"Trust in online confidentiality, security and privacy are going to be key."*
Lara Traum

## More Organizational Resources and Standards

### ICODR:

- **ICODR ODR Training Standards**
  https://www.icodr.org/guides/training.pdf
- **ICODR Practice Standards**
  https://icodr.org/standards

### IMI

- '**Applying the criteria**' - a brief intro to standards developed by IMI and several of their key uses
  https://imimediation.org/orgs/applying-the-criteria
- **Easy-read online mediation competences for individuals**
  https://www.imimediation.org/practitioners/competency-criteria/#ODR
- **Criteria for ODR-QAPs -** Programs assessing online mediation competence
  https://imimediation.org/orgs/cag-odr
- **Training program criteria** and **trainer/coach/assessor criteria**
  https://imimediation.org/orgs/training-program-requirements
  https://imimediation.org/orgs/trainer-coach-assessor-requirements
- **Links to some of the research** in relation to online mediation
  https://imimediation.org/2020/11/25/clarifications-over-online-training-and-refresher-course-concept
- **Information on IMI Logbook**
  https://imimediation.org/mediation-logbook
- **Logbook launch post**
  https://imimediation.org/2021/01/07/new-features-for-mediators-mediation-logbook-feedback-hub-and-mentorship-program

## RSI

- **Click to link to the RSI's Court ADR Resource Center**
  https://www.aboutrsi.org/resource-center?ID=3
- **Court ADR Across the US**
  https://www.aboutrsi.org/acrossus

## APFM

- **Standards of Practice**
  https://apfmnet.org/standards-practice-professional-family-mediators
- **APFM Standards for Introductory Family Mediation Training Programs**
  https://apfmnet.org/wp-content/uploads/2014/12/APFM-40-Hour-Divorce-Mediation-Training-Guidelines-Approved-final.pdf
- **Certification and Accreditation of Professional Family Mediators**
  https://apfmnet.org/certification-accreditation-professional-family-mediators
- **Certified Advanced Practitioner Requirements / Application**
  https://apfmnet.org/membership/certified-membership

## ACR

- **Model Standards of Conduct for Mediators**
  https://cdn.ymaws.com/acrnet.org/resource/resmgr/docs/MODEL_STANDARDS_OF_CONDUCT.pdf
- **Model Standards for Mediator Certification Programs**
  https://cdn.ymaws.com/acrnet.org/resource/resmgr/docs/ModelStandardsCertification.pdf
- **Model Standards of Practice for Family and Divorce**
  https://cdn.ymaws.com/acrnet.org/resource/resmgr/docs/Model_Standards_of_Practice_.pdf

- **Recommended Standards for School-Based Peer Mediation**
  https://cdn.ymaws.com/acrnet.org/resource/resmgr/docs/Recommended_Standards_for_Sc.pdf

*"What we are all about is growing and sharing the wisdom of the work that we do as mediators, conflict resolvers and educators."*
Tricia Jones

# Mentoring & Case Consultation Committee

https://www.mediate.com/onlinetraining/pg30.cfm
Chair: Tricia S. Jones
Members: Vivienne Fey, Angela Herberholz, Chris Lahatte, Michael Lang, John Settle, John Sturrock, Susan Terry, Howard Herman, Cherise Hairston, Amanda Semenoff and Patricia Draves

- **Presentation Slides from Open Forum**
  https://www.mediate.com/onlinetraining/Forum%20Presentation.pdf

- New Article by John Settle:
  **Mentoring in Mediation: *An Overview of Principles and Best Practices***
  https://www.mediate.com/onlinetraining/Mentoring%20in%20Mediation-%20John%20Settle.pdf

## READ THE ENTIRE REPORT ON MENTORING BEST PRACTICES

https://www.mediate.com/onlinetraining//Final%20report%206.15.21.pdf

This report is prepared on behalf of the members of the Mentoring and Consultation subcommittee, all of whom are actively providing or participating in mentoring activities.

The term "Mentor" been commonly used to include guide, champion, teacher, supervisor. Today because we inherited many traditions of mentoring practices, we continue to use the term broadly while also attempting to give it somewhat more definition in terms of mediation and related professional practices.

Sub-committee members have provided program descriptions, mentoring documents and other extensive materials related to mentoring, all of which may be found at: www.mediate.com/onlinetraining/pg30.cfm. Throughout this report, we will refer to these documents.

*"A mentor/coach is a way of being."*
Juliana Birkhoff

**SECTION I – TYPES OF QUESTIONS WITH WHICH WE WERE DEALING IN THIS PROJECT**

This section includes five identified groups of questions that emerged through our discussions. Further focused discussions will undoubtedly expand and refine these

questions which help us understand the complexity and nuances of the mentoring process. Our efforts have been focused on how we as a field can have a more common understanding of what we mean by mentoring and how we can build a multi-faceted mentoring network that can meet the multiplicity of needs of a complex field of endeavor.

**SECTION II – WHAT WE HAVE LEARNED SO FAR ABOUT BEST PRACTICES**

Our work focused primarily on structured, articulated, or otherwise intentional forms of mentoring. We used the knowledge and experience of private organizations, governmental entities, and private practitioners that have put a great deal of thought and effort into building integrated and thoughtful mentoring programs. From the discussions with programs and practitioners as well as reviewing materials (program descriptions, articles, etc.) we have extrapolated common elements and key learnings. Our anticipation is that this document can serve as our "working draft" of Best Practices for Mentoring.

## READ THE ENTIRE REPORT ON MENTORING BEST PRACTICES
https://www.mediate.com/onlinetraining//Final%20report%206.15.21.pdf

## SECTION II - MENTORING RECOMMENDATIONS

### SECTION II
### WHAT WE HAVE LEARNED SO FAR ABOUT BEST PRACTICES FOR MENTORING

*"The process of establishing a Mentoring Contract is key. Both mentor and mentee understand the stated expectations and deliverables. The contract can be altered, but in an intentional and stated manner."*
Michael Lang

## 1. THE MENTORING PROCESS

**Mentoring:**

a. begins with a practitioner's earliest training. Possibly earlier if the mentee consults with a mentor in order to learn about practice as she decides whether to enter the profession.

b. is essential for continued practice development, no matter the practitioner's degree of experience and proficiency—an exercise in life-time learning.

c. is necessary for dealing with a practitioner's trajectory of professional development from novice to accomplished professional.

d. provides a process to support practice with theory. Mentors should help mentees link beliefs, values and principles to intervention choices.

e. in order to be effective, requires a commitment from both mentor and mentee expressed through an agreement setting out the goals, objectives and mutual obligations.

f. must include a strong experiential component of "doing" and learning. Teaching through showing (observation) and instruction are valuable, but should not be the sole methods used. g. to be successful, there should be a good match of personalities, teaching/learning styles and methods, and objectives.

h. sessions must be confidential; there must be a commitment from mentor and mentee to protect both the privacy of their conversations and of any party/client information that is shared.

i. Should be done with a mentor that is knowledgeable about the field, arena of practice, resources for other learning, has actual recent/current practice experience, and enjoys the experience of mentoring.

## 2. QUALITIES OF AN EFFECTIVE MENTOR

a. Understanding that being an accomplished practitioner is only one prerequisite for mentoring. Effective mentors will have knowledge about and specific training in mentoring.

b. Ability to separate their own need to instruct from the mentee's desire to learn.

c. Ability to focus on the learning goals established in the mentoring agreement.

d. Capacity to help mentee translate feedback into practical action.

e. Encouraging and supporting mentee self-exploration and self-discovery through reflection.

f. Patience.

g. Can set aside sufficient time for feedback conversations and other mentoring engagements.

h. A Commitment to Servant Leadership: displays the key qualities of a servant leader focus on helping others grow and development to their fullest capacity. Critical skills include: empathy, giving and receiving trust, a capacity for empathic engagement, a willingness to be vulnerable, and a willingness to invest in others.

i. View Mentoring as Relationship-building: Relationship-building includes regular, ongoing connection and interaction that allows for a synergy to build in the relationship.

j. Communication of Explicit Values: Explicitly communicates their personal/professional values and "walks the talk" of those same values.

k. Willing to Share Power and Influence: Because of their positional and structural power, a willingness to use their power and influence on behalf of others who would benefit from being mentored.

l. An Inclusion and Equity Advocate: Notices who's voices and interests aren't "in the room" or "at the table" and advocates to bring in those voices and is willing to develop a mentoring relationship.

m. Humility and a Balanced Ego: Has cultivated and done the personal work of their own human development and stay grounded in their own sense of humility and awareness of their needs and how they impact others.

n. A Deep Listener: Has perfected the art and skill of deep, reflective listening.

o. Gratitude: Is grounded in a sense of their own good fortunes and "lessons" learned and desires to "give back" with time, commitment to build a mentoring relationship over time.

*"Part of a mentor's role is to assist the mentee in looking forward to a professional practice as an ongoing learning process."*
Susan Terry

## 3. CONSISTENCY OF MENTORING

"Cafeteria style" mentoring (short-term, "tasting" different mentors without settling into systematic and sustained learning) while having the appeal of variety has significant drawbacks and is not recommended, for reasons including:

Lack of consistency will likely limit the benefits of mentoring and may be confusing and counter-productive.

Mentor is not aware of "patterns" in the mentee's behavior, areas of practice in need of challenge, or the importance/need for additional learning.

Mentee may choose to focus on experiences that avoid difficult areas in need of attention.

However, in some instances, an agency or professional association may require mentoring from more than one mentor. In that instance, communication between mentors about the mentee's progress is essential. (Mentoring in Mediation: An Overview of Principles and Best Practices
https://www.mediate.com/onlinetraining/Mentoring%20in%20Mediation-%20John%20Settle.pdf

## 4. THE MENTORING CONTRACT

The process of establishing a Mentoring Contract is key. Both mentor and mentee understand the stated expectations and deliverables. The contract can be altered, but in an intentional and stated manner. This entire process of stating the goals and/or altering the contract is one of the most crucial steps in the mentoring process and parallels initial step in the mediation process when parties work to establish what has brought them to mediation and what they hope to get out of it.

A. Possible arenas of work to be identified in a contract/mentoring relationship

1. Assessment of skill/understanding level and/or improvements
2. Teaching/information sharing
3. Encouraging thought, experimentation, change
4. Modeling through observation
5. Providing safety net
6. Exploring a new arena or context of work
7. Career planning / guidance
8. Building confidence – co-mediator
9. Strengthening structural and conceptual thinking
10. Offering companionship through a difficult phase
11. Providing a practice gyroscope and method of adjustment
12. Administrative guidance – setting up practice

## B. Nature of the Mentoring Contract

1. Prior to beginning any form of mentoring, whether group or individual, whether structured or spontaneous, mentor and mentee should establish the terms of the mentoring relationship. Matters to be considered include confidentiality, type of mentoring requested (e.g. advice on practice development, case consultation), understanding of the mentoring process, goals and expectations, standards for assessment, and duration.

2. Identify the mentee's experience as a practitioner, including matters such as the nature of disputes involved, whether the mentee acted as sole or co-facilitator, the number of disputes in which the mentee was engaged.

3. Discuss mentee's prior experience with mentoring and identify those elements that had been successful and those that had been awkward or ineffective.

4. Is there a fee for mentorship (and if so, the amount), or offered by a volunteer as a service to a professional organization, or provided by an employee of an agency or mediation program?

5. A key to the success of mentoring is defining and agreeing on expectations and goals. Determine the mentee's objectives and whether mentoring can yield those same benefits. Are the mentee's goals realistic and achievable?

6. Does the mentor have the knowledge, experience and qualifications (such as agency or association approval) to properly assist the mentee in fulfilling the mentee's goals.

7. If the process is structured, are the principles and methods (such as co-mediation or observation) as well as any evaluation criteria, clear and agreed to?

8. If mentoring is provided as part of a "gatekeeping" process, such as membership in a professional organization or certification by agency or government body, are the terms and conditions of the mentorship (including policies and regulations governing mentoring) clearly established, and are mutual expectations defined and accepted?

9. If mentoring is a prerequisite to the mentee's certification or similar approval, or if mentoring is required following a complaint of professional misconduct by the mentee, there must be a well-defined plan for mentorship based on applicable standards. For example, is the mentor required to conduct an assessment, submit reports or provide other documentation? Are the standards upon which the assessment or reports will be based well-understood by the mentee and mentor?

10. If mentoring involves live observation of the mentor or participation as a subordinate partner in the process, are the mentee's roles defined clearly? Will the mentor and mentee meet following the live event to debrief the experience? What are the goals for the post-mediation debrief conversation?

11. Does mentoring involve written assignments, such as draft agreements? If so, what are the expectations for submitting those assignments and for reading and providing feedback?

12. Establish whether mentoring sessions will be conducted face-to-face, via telephone or video conference, by other methods, or a combination of them. In that regard, also identify any logistical challenges in meeting the mentoring goals.

## 5. Mentoring Ethics

A. Mentor should not substitute "feel good" feedback for rigorous engagement and holding mentee to agreed-upon goals and to established professional standards.

B. Mentor should identify and raise questions of Ethics according to Model Standards of Mediator Conduct in any questionable situation.

C. Mentor may not benefit financially from the relationship or information gained in it, other than agreed-upon fee.

D. If not gatekeeper, mentor should not provide assessment (such as rating capabilities, disputing a program's decision about mentee's readiness to solo mediate, or suggesting

that the mentee leave the field) unless upon request of mentee and unless the request is consistent with the mentoring agreement.

E. Mentor shall disclose their core beliefs, values, commitments and style in which they practice.

F. Mentor shall not present themselves as knowing an area of work in which they do not have knowledge or expertise.

G. Mentor should understand they are making a commitment not only to be mentee, but also to the field, a program or organization the mentee maybe in and to be mentee's future clients.

H. Issues of gender, race, culture should be addressed in contracting as well as throughout the process. Both mentor and mentee should have ongoing training in these issues. Mentor should routinely use questions which ask a mentee to look at an issue they are exploring through the lens of gender, race, culture or class.

I. Mentors should have some form of ongoing support/development for their own practice as well as for their mentoring practice. The support they receive should adhere to these Best Practices as well.

J. In discussing intervention decisions, focus on "why" a specific choice among many is preferable, and not just "this is the way it's done" or "this is how I was trained."

K. Unless different ethical standards apply (e.g. professional association or agency) mentoring will look to the Model of Standard of Conduct as a guide.

L. Best mentoring is done in a manner that is consistent with the mentor's own practice of mediation.

M. Mentees should not receive compensation for activities associated with mentoring observation or co-facilitation.

N. For observation and co-facilitation, clients/parties must consent in writing to the participation of the mentee. Mentee must consent to the principles and conditions of confidentiality established between the mentor and the clients/parties.

O. Mentee should determine whether any discussion with a mentor might violate a client's/party's privacy and confidentiality, and if so, mentee should obtain their consent in advance to discuss the situation with the mentor.

## SECTION III - RECOMMENDATIONS FOR MENTORING PROGRAMS

In the source materials collected by the mentoring and case consultation sub-committee

are a number of program descriptions:

- Supreme Court of Virginia, Mediator Certification
- Orion mentoring
- Mediators Institute of Ireland (MII)
- International Mediation Institute (IMI)
- Reflective Mediation Practice (U.S. District Court, Northern District of California ADR Program) International Academy of Mediators (IAM)

The goals and methods vary, in large measure as a consequence of the overarching purpose for mentoring. For example, the IMI and IMA programs are designed for and focused on mediators entering the field; the Virginia mentoring program involves certifying mediators according to rules established by the Supreme Court; the MII mentoring program is a pre-requisite for certification within a professional association; volunteer mediators with the District Court are required participate in monthly reflective practice groups; and Orion program is an independent professional mentoring program. Many of these programs utilize an internship framework involving observation and co-mediation. Some also include case consultation/mentoring meetings, either individual or group. Volunteer mediators in the District Court program participate in monthly reflective practice/case consultation groups.

From these resources, we derive the following general principles and best practices for all mediation programs.

1. Pre-requisites (criteria) for participation

Qualifications may include: completion of training courses, extent of active mediation practice, or membership in a professional association, recommendation by a trainer or qualified co-mediator. Setting these pre-conditions should be based on the overall objectives and capabilities of the program and should be set out clearly in the program description.

2. Application for participation

At a minimum, the applicant should explain her/his reasons for participating in the program and describe her/his educational background, training experiences, and (if applicable) years of mediation practice. Mentor interview of potential mentee is highly recommended because effective mentoring requires a level of compatibility, common outlook, personal commitment, and trust.

3. Criteria for mentors

Years of active mediation practice are only one criterion for approving/certifying a mentor. Additional qualifications and experience should include: mentor's prior participation in a mentoring program as well as ongoing access to and consultation with other mentors, as well as the criteria set out in Section II, Part 2 above.

4. Explanation of mentoring activities and objectives

Possible program activities might include: telephone/video conference consultations; group meetings; review of agreements and other documents; observation of mentor with feedback; co-mediation with feedback; observation of mentee as primary mediator with feedback.

5. Description of mentoring processes and methods used for feedback See Section II, Part 1, above.

6. Mutual agreement on goals of the mentoring process. This is especially important with new practitioners who are just entering the field and the mentoring process is a requirement of being part of a program. The goal of the mentee should not only be to "get into the program" but independently should indicate a thoughtfulness about awareness and intentionality of learning.

7. Access - commitment by mentor and mentee to be available for mentoring activities Accepting mentorship responsibility obligates the mentor to be available on a regular basis as agreed between the mentor and mentee, or as proscribed by program rules.

Assessment criteria (if appropriate) to be used See Section II, Part 4 above. If assessment is being used, such as in gatekeeper mentoring, it is the responsibility of the program to give a prior statement of the criteria as well as how, and at what stages, it is determined whether the mentee is meeting the criteria or not.

If the assessment involves direct observation of a mentee's mediation, or co-mediation with the mentee's parties/clients, or review of a video recording of a mentee's mediation session, the program is obligated to set out clearly the reasons for this process as well as the goals, the manner in which it is handled, assessment criteria to be applied, and the process by which the mentee will receive any assessment or feedback. Additionally, both the program and the mentee must assure that the parties/clients knowledgably and thoughtfully consent to the participation of or viewing by an assessor.

9. Adherence to ethical principles of the profession (Standards of Practice) or of the professional association (MII). See additional criteria in Section II, Part 5 above.

If the mentorship is part of the ongoing process of a program, it is the responsibility of the program to be transparent and pro-active about any ethical violation that would cause sanction including removal from the program. This is particularly crucial because the mentoring process invites vulnerability and openness while at the same participants could be removed from a program for revealing violations. Any actions on the part of a program to sanction a mentee should be done in a manner that is consistent with the type of mentoring that is being done and in the recognition that it is a teaching opportunity.

10. Mentors in the program should not only be in some form of co-mentoring or supervision but the program itself should regularly challenge itself to self-examine. Methods of doing such might include: annual retreats with scrutiny of each part of the program, surveys of participants to see if outcomes match stated program goals, invitation of outside reviewers to assess all or parts of the program and raise questions for consideration. Some form of evaluation should take place no less than once a year.

## Linked Resources:

**Tips for Mentors**
https://www.mediate.com/pdf/TipsforMediators.pdf
Developed by John Settle, Certified Mentor Mediator - Supreme Court of Virginia

**Guidelines for Starting a Reflective Practice/Peer Consultation Goup (RPG)**
https://www.mediate.com/pdf/guidelines.pdf
by Michael Lang

**Why Case Consultation/Reflective Practice Groups Matter for Mediators**
https://www.mediate.com/pdf/WhyCaseConsultation-ReflectivePractice.pdf
by Michael Lang, Rochelle Arms Almengor

**Excellence: Using Reflective Debrief to Build Competence**
https://www.mediate.com/pdf/ReflectiveDeBrief.pdf
by Michael Lang and Susanne Terry

**Virginia Mediator Self-reflection.pdf**
https://www.mediate.com/onlinetraining/Virginia%20mediator%20self-reflection.pdf

**Virginia self reflection form.pdf**
https://www.mediate.com/onlinetraining/Virginia%20self%20reflection%20form.pdf

**Virginia Guidelines for training and certif.pdf**
https://www.mediate.com/onlinetraining/Virginia%20Guidelines%20for%20training%20and%20certif.pdf

**Virginia mentorship_guidelines.pdf**
https://www.mediate.com/onlinetraining/Virginia%20mentorship_guidelines.pdf

**Help Shape the Next Generation of Mediators! - Herberholz.pdf**
https://www.mediate.com/onlinetraining/Help%20Shape%20the%20Next%20Generation%20of%20Mediators!%20-%20Herberholz.pdf

**Peacemaker self study-mosten and scudder .pdf**
https://www.mediate.com/onlinetraining/peacemaker%20self%20study-mosten%20and%20scudder%20.pdf

**Mentoring and Evaluating New Mediators- Evan Ash.pdf**
https://www.mediate.com/onlinetraining/Mentoring%20and%20Evaluating%20New%20Mediators-%20Evan%20Ash.pdf

**International Academy of Mediators - Mentorship Program.pdf**
https://www.mediate.com/onlinetraining/International%20Academy%20of%20Mediators%20-%20Mentorship%20Program.pdf

**ORION mentoring.pdf**
https://www.mediate.com/onlinetraining/ORION%20mentoring.pdf

[IMI - Mediation Mentorship.pdf](https://www.mediate.com/onlinetraining/IMI%20-%20Mediation%20Mentorship.pdf)
https://www.mediate.com/onlinetraining/IMI%20-%20Mediation%20Mentorship.pdf

[IMI - The benefits of becoming a mediation mentor — International Mediation Institute.pdf](https://www.mediate.com/onlinetraining/IMI%20-%20The%20benefits%20of%20becoming%20a%20mediation%20m%20entor%20%E2%80%94%20International%20Mediation%20Institute.pdf)
https://www.mediate.com/onlinetraining/IMI%20-
%20The%20benefits%20of%20becoming%20a%20mediation%20m%20entor%20%E2%80%94%20International%20Mediatio
n%20Institute.pdf

[MentorshipAssociationofDivorceFinancialPlanners1.pdf](https://www.mediate.com/onlinetraining/MentorshipAssociationofDivorceFinancialPlanners1.pdf)
https://www.mediate.com/onlinetraining/MentorshipAssociationofDivorceFinancialPlanners1.pdf

[Herman - Reflective Mediation Practice Materials - UC Hastings Symposium - 2019.pdf](https://www.mediate.com/onlinetraining/Herman%20-%20Reflective%20Mediation%20Practice%20Materials%20-%20UC%20Hastings%20Symposium%20-%202019.pdf)
https://www.mediate.com/onlinetraining/Herman%20-%20Reflective%20Mediation%20Practice%20Materials%20-
%20UC%20Hastings%20Symposium%20-%202019.pdf

# Experiential Training Committee
## Clinics, Simulations & Video Feedback
https://www.mediate.com/onlinetraining/pg27.cfm
Chair: Tricia Jones
Members: Doug Frenkel, Melissa Kucinski, Judge Elizabeth Potter Scully, Tim Hedeen, Julian Portilla, Sukhsimran Singh, Lara Traum, Bruce Edwards, Jan Martinez

**READ THE ENTIRE EXPERIENTIAL TRAINING COMMITTEE REPORT**

**VIEW THE EXPERIENTIAL TRAINING FORUM SURVEY**



Q2 Which ADR/conflict management processes have you been formally trained in? (Please select all that apply)
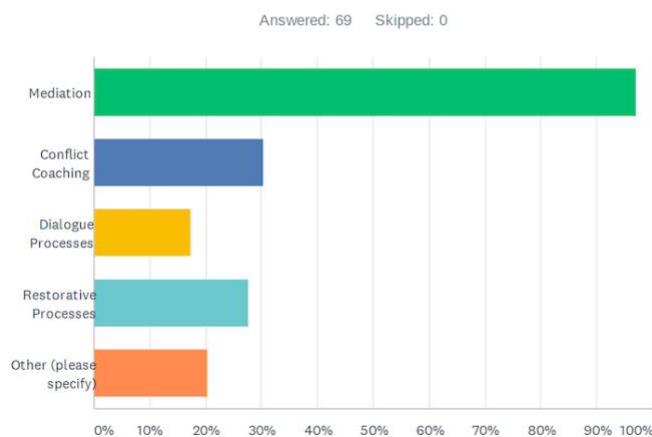
This Committee Report focuses on questions and issues considered by the committee, valuable resources, and committee recommendations for moving forward.

# 1. Questions and issues considered by the committee

## A. Broadening Our Focus Beyond Mediation

***It is important to broaden the scope of inquiry beyond mediation to integrated dispute resolution processes***: We appreciate the focus on mediation as the core ADR process for the task force. We also see strong opportunity and need to focus on a spectrum of ADR processes where issues of experiential training are equally germane. We believe that our discussions of experiential training should answer the following questions:

- What is the current state of the field in terms of the types of interventions for which experiential training is most needed and valued (e.g., mediation, arbitration, conflict coaching, facilitation, etc.)?
- Should we be concentrating our energies on processes like arbitration or conflict coaching where we generally know less about the role of experiential learning?
- What do we know about what experiential learning is being used where?
- How does this help us build capacity for ADR processes by thoughtful development of excellent experiential learning?
- When thinking about disputes where more than one ADR process is used, what should we understand about how experiential training in one process affects experiential training in another?

We assume that the use of multiple dispute processes and the degree of their integration changes the need for and value of experiential training from a within-training to a between-training orientation. How does good experiential training for one process build on good previous experiential training? What helps create a cumulative effect? Understanding the benefits of experiential training in integrated interventions will likely provide insights to refine optimal experiential learning for a single intervention, like mediation.

## B. Mapping KSA Learning

***Identify key experiential training components to align with desired Knowledge, Skills and Attitude (KSA) Learning Development***:  Our field will benefit from mapping components of experiential training to specific KSAs. The discussion of key skills and the overlay of articulated standards has been a focus of ADR educators for years. However, we need to refine our mapping especially with how online experiential training operates.

- As a field, we have gaps in our understanding of which experiences produce learning in terms of critical KSAs (knowledge, skills and attitudes). We suggest that we may be operating with past patterns of practice rather than proven practice benefits, especially in light of the advent of online learning.
- How confident are we that what we have learned previously still applies? As we mention elsewhere, we have far too little research informing us of connections between ET and KSAs and almost none that looks at that relationship now.
- What evidence is our degree of confidence based on? What do we "know" about the best alignment of methods of experiential training and key learning outcomes for mediation and for other ADR processes?
- For all of the preceding questions how do the answers change for an online experiential training component? How does online learning change the nature and number of experiential training options?

We suggest that starting with an analysis of online learning potential without visiting/revisiting the foundational question of "what are we really wanting people to learn and why?" is less productive than we need.

## C. Learning From Other Fields

***Adult learning theorists, educational psychologists and instructional learning specialists have provided resources that we can use to our advantage.*** Health care (e.g., nursing), social work, education (specifically pre-service and in-service teacher education) as well as other fields have rich histories of using and researching experiential training processes. There is a significant expertise in adult learning that our field is not sufficiently knowledgeable about.

- What are KSAs in other professions that are also critical in dispute resolution?
- What can we learn from their research to guide our development of experiential learning?
- What are unique KSAs to our field that we need to develop unique experiential training for?
- How does an online learning context impact the above?
- What are the most promising online experiential training methods in other fields that we can adapt for use in our own?

## D. Learning from Contexts and Cultures Within Our Field

***In general, the knowledge available from our field and other fields about efficacy of experiential training in various cultures and in various contexts is quite limited.*** The global expansion of ADR provides an amazing opportunity for exploration of this question and conducting research on best practices.

## E. Experiential Learning Across an ADR Career

***There is a lot of value in thinking of how experiential learning opportunities build on each other across someone's career.*** Several other committees are also discussing how we learn across our career and how things like mentoring and reflective practice are ongoing and cumulative. We agree and suggest that when and how experiential training takes place in the arc of a person's ADR career matters – although we know little about the specifics of those learning outcomes.

## F. Balance Accessibility and Technology

***We should design experiential training to strike a balance between accessibility, technology and use of online experiential training***: We seek elegant and parsimonious methods of experiential training that are effective but also accessible and user friendly. Opening our thinking to use of different learning platforms is important. Developing online experiential training that only a small segment of interested participants can (afford to) participate in is a serious issue.

## 2. Valuable resources identified by the committee

The following areas of resources are presented here: general resources on online experiential learning, professional associations and centers dedicated to experiential learning, resources on the efficacy and essentiality of experiential learning in ADR, and exemplar mediation certification programs and processes.

- The general resources on online experiential learning include articles that summarize foundational theory about experiential learning and recent research that reports what makes

experiential learning effective across contexts. These help us think about the broader field of learning theory and how that can inform our work.

- Existing professional associations, like ATD, are a wealth of resources we can import into our work. Some university centers are leading the way in groundbreaking work.
- As mentioned earlier, there is a real lack of research on ADR and experiential learning. This section of resources provides some excellent summary articles that have reviewed what we have done as a field and what we need to do.
- Our field has developed some strong mediator certification programs at federal, state and community mediation levels. This area provides links to websites of some of the more impressive programs.

## A. General Resources on Online Experiential Learning

Beinicke, A., & Kyndt, E. (2020). Evidence-based actions for maximizing training effectiveness in corporate E-learning and classroom training, *Studies in Continuing Education,42*:2, 256-276, DOI: 10.1080/0158037X.2019.1608940

Hyochang Lim, H., Lee, S-G., & Nam, K. (2007). Validating E-learning factors affecting training effectiveness. *International Journal of Information Management, 27*(1), 22-35. https://doi.org/10.1016/j.ijinfomgt.2006.08.002. https://www.sciencedirect.com/science/article/pii/S0268401206001095

Kim, S., Park, C., & O'Rourke, J. (2017). Effectiveness of online simulation training: Measuring faculty knowledge, perceptions, and intention to adopt.  Nurse Education Today, 51, 102-107. https://doi.org/10.1016/j.nedt.2016.12.022. https://www.sciencedirect.com/science/article/pii/S0260691716303288

Kolb's Learning Styles and Experiential Learning Cycle/ Simply Psychology https://www.simplypsychology.org/cognitive.html

Online Experiential Learning – Center for Integrative and Experiential Learning / University of South Carolina https://sc.edu/about/initiatives/center_for_integrative_experiential_learning/

Sitzmann, T., & Weinhardt, J. M. (2019). Approaching evaluation from a multilevel perspective: A comprehensive analysis of the indicators of training effectiveness. Human Resource Management Review, 29(2), 253-269. https://doi.org/10.1016/j.hrmr.2017.04.001. https://www.sciencedirect.com/science/article/pii/S1053482217300268.

Stirline, A. E. (2013). Applying Kolb's Theory of Experiential Learning to Coach Education, Journal of Coaching Education, 6(2), 104-121. https://api.semanticscholar.org/CorpusID:151935115

## B. Professional Associations Dedicated to Experiential Learning Expertise

Association for Talent Development (formerly the American Society for Training and Development) https://www.td.org

American Management Association https://www.amanet.org

## C. Resources on Efficacy and Essentiality of Experiential Training in ADR

Benston, S., & Farkas, B. (2018). Mediation and Millennials: A dispute resolution mechanism to match a new generation. *Journal of Experiential Learning, 2*(2), 3. https://digitalcommons.tourolaw.edu/jel/vol2/iss2/3

Brubaker, D., Noble, C., Fincher, R., Park, S.K.-Y. & Press, S. (2014). Conflict resolution in the workplace: What will the future bring? *Conflict Resolution Quarterly, 31*, 357-386. https://doi.org/10.1002/crq.21104 https://onlinelibrary.wiley.com/share/ZI4XE42KA8DUBFQIRTUS?target=10.1002/crq.21104

Cominelli, L. (2016). Training young lawyers in the European mediation framework: It's time to devise new pedagogy for conflict management and dispute resolution. *Italian Law Journal, 2*(1), 163-176. https://heinonline.org/HOL/P?h=hein.journals/italj2&i=170

Fox, S., & Stallworth, L. E. (2009). Building a framework for two internal organizational approaches to resolving and preventing workplace bullying: Alternative dispute resolution and training. *Consulting Psychology Journal: Practice and Research, 61*(3), 220–241. https://doi.org/10.1037/a0016637

Francis, V. F. (2018). Infusing dispute resolution teaching and training with culture and diversity. *Ohio State Journal on Dispute Resolution, 33*(2), 171-232. https://heinonline.org/HOL/P?h=hein.journals/ohjdpr33&i=183

Frenkel, D. N., & Stark, J. H. (2015). Improving lawyers' judgment: Is mediation training de-biasing. *Harvard Negotiation Law Review, 21*(1), 1-58. https://heinonline.org/HOL/P?h=hein.journals/haneg21&i=7

Goforth, C. (2017). Transactional skills training across the curriculum. *Journal of Legal Education, 66*(4), 904-929. Retrieved August 1, 2021, from https://www.jstor.org/stable/26453525.

Hinshaw, A., & Wissler, R. (2005). How do we know mediation training works? Dispute Resolution Magazine, 12, 21-32. Available at SSRN: https://ssrn.com/abstract=1432478.

Jones, T. S., (2005). Editor's introduction: The emperor's knew clothes – What we don't know will hurt us. *Conflict Resolution Quarterly, 23*(2) 129-139. DOI 10.1002/crq.129.

Malin, M. H., & Ginsberg, D. I. (2018). Flipping the classroom to teach workplace ADR in an intensive environment. *Journal of Legal Education, 67*(2), 615-625. https://heinonline.org/HOL/P?h=hein.journals/jled67&i=621

Malizia, D. A., Jameson, J. K., Halberstadt, A., & Eng, N. (2020, March). *Mediation Training and the Law School Experience.* Report to the North Carolina Chief Justice's Commission on Professionalism and the Department of Communication at North Carolina State University.

Merritt, D. (2010). Pedagogy, progress, and portfolios. *Ohio State Journal on Dispute Resolution, 25*(1), 7-24. https://heinonline.org/HOL/P?h=hein.journals/ohjdpr25&i=9

Press, S. (1996). Institutionalization: Savior or saboteur of mediation. *Florida State University Law Review, 24*, 903-918. https://heinonline.org/HOL/P?h=hein.journals/flsulr24&i=989

Qu, Y., & Cheung, S. O. (2013). Principle-based experiential e-learning exploration in construction mediation training. https://doi.org/10.1061/(ASCE)EI.1943-5541.0000183.

Raines, S., Hedeen, T., & Barton, A. B. (2010). Best practices for mediation training and regulation: Preliminary findings. *Family Court Review, 48*(3), 541-554. doi:10.1111/j.1744-1617.2010.01328.x

Ravindra, G., & Hedeen, T. K. (2015). Alternative paths to careers in ADR. *Dispute Resolution Magazine, 21*(3), 11-16. https://heinonline.org/HOL/P?h=hein.journals/disput21&i=101

Simons, M. A., & McGuinness, M. E. (2015). American legal education, skills training, and transnational legal practice: Combining Dao and Shu for the global practitioner. *Tsinghua China Law Review, 8*(1), 125-134. https://heinonline.org/HOL/P?h=hein.journals/tsinghua8&i=135

## D. Exemplar Mediation Certification Programs

Department of the Navy Mediation Certification Training
https://www.secnav.navy.mil/ADR/Pages/mediacert.aspx

Florida Supreme Court Mediator Certification
https://www.flcourts.org/content/download/526739/file/HowToBecomeAMediatorGuideJuly2021.pdf

Court-Certified Mediator Qualification Requirements by State
https://onlinemasteroflegalstudies.com/career-guides/become-a-mediator/court-certified-mediation-requirements-by-state/

New York Dispute Resolution Association; Mediator Certification
https://www.nysdra.org/page/BecomeAMediator

Mediation Training Manual of India
https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf

# EXPERIENTIAL TRAINING COMMITTEE RECOMMENDATIONS

## Committee Recommendations for Moving Forward

**General Infrastructural Opportunities to Develop:**

**1. Improve the quality and quantity of research on experiential training with priority to online ET**.

At this stage of our search we can find no published research or reports on the effectiveness of online ET in our field. We also note that previous reviews of training research in our field (some included in #2 below) since 2000 have raised deep concerns about how little we have generated evidence about whether and to what extent our ADR training produces desired outcomes. The bottom line is we can't "prove" to external audiences that our training works – even though we have strong-held assumptions about its value.

**2. Engage our professional associations to better promote this work.**

We could consider how professional associations may be able to create collaborative efforts to support the development of optimal experiential training methods and standards.

**3. Develop expert trainers to serve the field in performing optimal experiential training.**

There are a number of world-class trainers in our field, however, we do not have infrastructures to build cohorts of expert trainers – especially those proficient in online experiential training. We have no identifiable learning processes to develop online trainers.

**4. Mobilize graduate and undergraduate ADR programs to collaborate on addressing the issues identified here**.

There are a number of ADR and related programs that could consider collaborative projects and research as well as curriculum development.

**Specific Recommendations:**

**1. Identify and Survey ADR trainers for their online experiential training practices:**

We need a better idea of what people are currently doing to think about best practices and needs.

> a. Sample people who represent training in different ADR processes and different conflict contexts.

> b. Use the survey to identify trainers willing to engage in ongoing conversations or on a team to explore mapping the field in these areas.

**2. Create online training education curricula for mediation and other ADR process trainers.**

> a. Encourage involvement of representatives of higher education ADR degree and specialty programs, instructional learning experts, instructional technology experts, national organizations (e.g., NAFCM), and professional membership associations.

> b. Review online training curricula and standards from related professions.

**3. Explore advantages of developing a certification in online ADR training competence.**

*"The future of ODR is more promising than the initial mediation movement."*
Lara Traum

# Global Mediation Development Committee
Developing Cultures of Mediation
https://www.mediate.com/onlinetraining/pg29.cfm
Chair: Tara Ollapally
Members: Obi-Farinde Morenike, Bruce Edwards, Lara Traum, Ken Cloke, Alberto Elisavetsky

## READ THE ENTIRE GLOBAL MEDIATION DEVELOPMENT REPORT
https://www.mediate.com/onlinetraining/Global Mediation Development Committee Report.pdf

**Introduction and Objectives**

To support the growth of mediation movements on a global level, our Committee sought to understand the growth of mediation in Argentina, India, Nigeria, and Russia with the objective of building a resource for new mediation movements to understand the requirements of building and sustaining a mediation movement. The main questions that we analyzed were:

1. **How was mediation introduced in your country?**
2. **What were the main challenges you faced introducing mediation into your country?**
3. **How have you addressed these challenges?**
4. **What are the factors that have supported the growth of mediation in your country?**
5. **Where do you see mediation in your country in the next 5 years?**

Through an understanding of these questions for these four diverse jurisdictions, documented in this report are some considerations to bear in mind when introducing a mediation movement as well as supporting its growth to acceptance and adoption.

*"We have been living through a cannibalization process. Online mediation is eating face-to-face mediation."*
Alberto Elisavetsky

**Committee Papers on National Development:**

- Download Mediation in Argentina.pdf
- Download Mediation in India.pdf
- Download History of Mediation in Nigeria docx.pdf
- Download Mediation in Russia.pdf

**Global Growth Forum Video, Chat & Resources**

## RECOMMENDATIONS OF GLOBAL MEDIATION DEVELOPMENT COMMITTEE

**III. Adoption of Mediation - Ways to Address the Challenge**

**a. Mediation Law** - Legislation in the form of a comprehensive mediation law or as amendments to existing laws is critical to gain acceptance and recognition as a valid dispute resolution process. Argentina succeeded in passing a law mandating mediation before the filing of a suit in a local court, which has greatly enhanced the understanding and usage of mediation. In contrast, Russia has faced the challenge of inadequate legislation that has impacted public acceptance of the process. India amended current legislation to include mediation, which serves short term needs, but does not instill the public confidence and credibility that comes with a comprehensive mediation legislation.

**b. Programs to create awareness** - Regular programs with the Bar, Courts, Industry Associations, Chambers of Commerce, Community Organizations on the mediation process are necessary to create awareness. In Nigeria, the state of Lagos introduced Lagos Settlement Week for both the Magistrates and High Courts which supported a significant improvement in the knowledge and awareness about mediation.

**c. Building a culture of mediation** - Taking mediation beyond legal disputes as a way to influence mindset and gain social legitimacy must be considered. Community mediation programs to foster good community relationships through dialogue (Nigeria), educational programs with schools and universities that emphasize the value of collaboration and dialogue (Argentina & India), facilitated dialogues for issues of public concern are some ways to build a culture of mediation.

**d. Training judges** - Judges are an integral resource for building a mediation movement. Training judges to understand mediation and identify appropriate cases to refer for mediation is an essential way to legitimize and increase usage of the process.

**e. Growth of Private mediation** - While several mediation movements begin with court annexed programs, building a private mediation movement is necessary to (1) professionalize the service, (2) attract high quality professionals, (3) allow more complex disputes to be mediated, and (4) support the growth of the movement as a whole.

**IV. Other Factors to support the growth of mediation**

**a. Online Dispute Resolution and the use of technology** - With COVID forcing the closure of courts, mediation has become more visible and appealing to many disputants. Mediation has also been able effectively move online - ODR platforms have supported the increased and easy access to dispute resolution resulting in a significant increase in the number of users of mediation. Increased awareness programs and training programs that have been held online has also significantly added to the tremendous growth of the mediation eco system.

**b. Increased government backing** - With the signing of the Singapore Convention, governments and courts are recognizing the need and value of mediation to support overwhelmed court systems. Increased jurisprudence validating the legality of a mediated settlement agreement, especially in India and Nigeria, has significantly boosted the movement. Policies mandating mediation courses in law school curricula (India) or requiring lawyers to inform their clients about ADR processes (Nigeria) or online mediation platforms set up by the government to promote easy and free access to mediation services (Argentina)2 are other factors that have supported the recent growth of mediation.

**c. Overwhelmed court systems** - Alternative processes like mediation have become necessary because of over overburdened court systems. With caseloads increasing every year, access to justice has become a significant issue. There is no other option

but to design and promote alternative options. Mediation is increasingly being seen as not only an alternative process but also as an appropriate process for many disputes.

**d. Entry of young legal professionals** - Young, innovative legal professionals who see the need for a change in the status quo, has propelled the growth of the mediation movement in each of the countries we examined. In Russia, the entry of young, new professionals in dispute resolution as mediators is seen as a welcome change in a society that is distrustful of the "old guard" while in India mediation is being seen as the space for innovation in the law and justice space. Legal systems established in colonial times in many of these countries are finally experiencing change through the introduction and growth of mediation movements.

## V. Mediation through the next 5 years

There is a strong sense of hope that mediation is a concept whose time has come and will see significant growth in the next five years. It is recognized that collaborative dispute resolution is not only needed as an alternative to overwhelmed court systems but as a more peaceful way to respond to and manage dispute. Mediation growth for the next 5 years include:

a. The Singapore Convention on Mediation will incentivize governments to introduce/amend laws to recognize mediation. This will also place mediation on par with traditional processes such as litigation and arbitration.

b. Local and contextual growth of mediation that is understood by the public as a home - grown process as opposed to a western influenced process will go a long way in garnering domestic support for mediation.

c. The culture of mediation will expand beyond legal disputes through efforts to encourage the mindset of collaboration.

d. Increased referral from the judiciary as judges realize the value of the process and understand ways to use mediation to ease case load.

e. A significant increase in the use of Online Dispute Resolution especially after positive user experience through COVID.

f. The increased demand for mediation will spur the need for strong mediator training programs. In order for mediation to grow, well trained, strong mediators who can mediate effectively online as well as face-to-face are an essential focus for the next 5 years.

g. More focused systems will need to be established at the national and international levels to monitor and maintain quality of the profession.

*With the increase in remote mediation, many mediators are managing caseloads that have multi-jurisdictional elements. With each individual now remote, often in different jurisdictions, the lines and standards to apply have become blurred."*
Melissa Kuchinski

# Cross Jurisdictional Issues Committee

https://www.mediate.com/onlinetraining/pg24.cfm
Chair: Melissa Kucinski
Members: David Hodson, Ai Kuroda, Morenike Obi-Farinde and Michael Coffee

**Multi-Jurisdictional Issues in Mediation**

With an increase in remote mediation, many mediators are managing caseloads that have a multi-jurisdictional element (at times, unintentionally). In the past, a mediator and the parties could physically sit in the same jurisdiction, often where a court case was pending, and everyone knew or understood what laws, standards, and ethical considerations applied to the structure and process of the mediation. However, with each individual in a remote mediation process potentially located in a different jurisdiction, the lines have been blurred.

This committee report defines what issues may arise in a multi-jurisdictional mediation process, and focuses on the necessary training elements to handle these multi-jurisdictional implications.

## READ THE ENTIRE REPORT ON
## MULTI-JURISDICTIONAL ISSUES IN MEDIATION
https://www.mediate.com/onlinetraining/Multi-Jurisdictional%20Issues%20in%20Mediation.PDF

## RECOMMENDATIONS OF
## THE MULTI-JURISDICTIONAL ISSUES COMMITTEE

**Mediation Training**
This Sub-committee envisions three key components to a training program for mediators that will intentionally or inadvertently find themselves in a multi-jurisdictional mediation. These components include:

a. Understanding the different approaches and practices to mediation and mediation traditions
b. Being able to spot the multi-jurisdictional issues
c. Understanding best practices to address the multi-jurisdictional issues

**1. Envisioning a Multi-Jurisdictional Mediation**

Mediation training should include a discussion that highlights certain different approaches to mediation in different jurisdictions, so that mediators are able to better understand how their mediation process may differ. This could include differences in the structure of the mediation process (such as co-mediation, use of caucus), different sources of referrals (such as court-referred mediation), and different rules (such as confidential mediation or reporting mediation).

Ideally, a training would include a discussion among mediators of different jurisdictions about the processes and rules employed in their jurisdictions, so the mediators being trained can appreciate those differences. This will ensure that participants are not only prepared, but better equipped to structure a mediation process where multi-jurisdictional issues are identified, the mediator is better able to set expectations among mediation participants, and they are better equipped to structure a successful mediation process. Having a more sophisticated understanding of these differences may allow mediators to explore a structure that is new or different from what is typical in the jurisdiction where the mediator practices.

**2. Issue-Spotting: Being Able to Grasp the Multi-Jurisdictional Issues in a Mediation**

Mediation training should include a discussion of the various cross-border issues that exist. This will enable mediators to spot these issues, understand how they may clash with other jurisdictions' processes and rules, and attempt to set expectations and address those clashes.

The list of issues that might arise in a cross-border mediation process are varied. This sub-committee includes, at Appendix C, a list of potential issues that might need to be addressed in a mediation. At a minimum, the key issues that should be included in any training are:

a. **Educating the Participants:** how can the mediator best ensure that the participants enter the mediation process with the same understanding of its format, what rules apply, and the mediator's role?

b. **Privilege:** what is permitted to be disclosed at the end of the mediation process, and who may see it?

c. **Ending Mediation:** at the end of a mediation process, particularly one that spans jurisdictions, there will be questions about how the participants can take the next steps, for example, whether their agreement can be brought to a court, whether a particular jurisdiction will enforce its terms and how, and how the parties can further comply with the elements to which they agreed. How can mediators best address these complex cross-border issues to end their mediation process successfully?

**3. Best Practices to Address Multi-Jurisdictional Issues**

Mediation training should include an analysis of some of the key parts of the mediation process that can help a mediator best address the issues that he or she spots as potentially problematic. These training components include:

a. **Intake:** What process should be employed at the outset so a mediator can assess what multi-jurisdictional issues exist, whether the mediator is competent to handle them, and what structure should be employed to best situate the mediation to be successful?

b. **Agreements or Contracts to Mediate:** Can the mediator require the parties to sign a contract in advance of the mediation session that outlines the rules for the mediation? What additional elements should be included in such a contract to address the conflicts in rules and procedures? How can the mediator ensure the contract itself is enforceable if one of the parties fails to comply with its tenets? (See Appendix A)

c. **Communication with the Parties:** How will the mediator successfully communicate with the parties in a situation where their geographic location may include additional obstacles, such as time zone differences, cultural differences, or the need for specialized legal advice in multiple venues? While e-mail or even text messages may present the most easy forum for communication, will having something in writing present additional jurisdictional obstacles for the parties or the mediator?

d. **Ending Mediation Successfully:** How can the mediator successfully conclude mediation so that the parties feel competent to take their agreement, receive proper legal advice, and render that agreement enforceable in the appropriate place? Will the mediator's actions or words prejudice either party if the mediator is unfamiliar with the laws or procedures in any or all of the jurisdictions that this family may be situated (or litigating)? If this is judicially referred mediation, can it be concluded with no final resolution without judicial consent?

**Appendix A: Sample Language for Agreements/Contracts to Mediate**

Below are sample clauses for a Contract or Agreement to Mediate for a case that has multi-jurisdictional elements.

1. While traditional mediation processes include the Mediator and the parties meeting (in-person or remotely), which may include the Mediator meeting with each person separately from the other, mediation may also include follow-up communication with one or both parties to help that person weigh settlement proposals, or other communication made with the goal of moving towards a mutually agreeable resolution. The Mediator will charge for any time she responds to individual communication. Both parties agree that they will act in good faith and not use communication outside of meetings to harass the other person or increase costs. Even if the communication is generated by one person, both parties remain responsible for the payment of the Mediator's time and costs as outlined in paragraph [x].

2. The parties represent and guarantee that none of the funds used to pay the Mediator originated from or are tied to a person or entity on any government sanction or screening list, including, but not limited to the U.S. Department of the Treasury's Specially Designated Nationals list, Foreign Sanctions Evaders list, or Sectoral Sanctions Identifications list.

3. The parties agree that all information and communication divulged to the Mediator during the sessions, or individually outside of the sessions, shall be treated as confidential and personal and will not be released by the Mediator to anyone unless the Mediator is ordered to do so by any court of competent jurisdiction, or by federal or state law of the jurisdiction where the Mediator is conducting the mediation (herein the location of the Mediator's office, [x]). This Agreement to Mediate and any final written and signed settlement shall not be confidential. Allegations of child or elder abuse and credible threats of personal harm must be disclosed by the Mediator, if necessary, to prevent people from being harmed. The Mediator makes no representations as to the current law in any jurisdiction regarding the confidentiality of mediation.

4. The parties agree that they shall not subpoena any of the Mediator's files or the contents of the Mediator's files and are prohibited from requiring the production of any documents, records, recordings or other tangible objects made by the Mediator. The parties, or their agents or representatives, shall be prohibited from requiring the Mediator to participate in any court or judicial proceeding in any jurisdiction. If the Mediator is mandated, for any reason, to participate in any court or judicial proceeding in any jurisdiction, or to produce tangible records from the mediation, the party that is mandating the Mediator's participation or production of documents shall be responsible for the cost associated therewith, including any attorney's fees paid by the Mediator, and the cost of the Mediator's time at the hourly rate stated herein.

5. There shall be no record or recordings of the actual mediation sessions, nor shall either party request any be kept. The parties recognize that if they are using a videoconference system to participate in distance mediation for part of all of the sessions, that the third-party video conferencing provider may record or otherwise maintain the content of the session in accordance with its own privacy and other policies. The parties consent to interaction with the Mediator by video conferencing. The parties recognize that security and privacy threats are possible with any technology, and the parties hereby waive and discharge the Mediator from any liability that results from a breach of confidentiality that may occur by the use of technology. Insert platform and link to its privacy policy. The parties agree that they will take reasonable steps to participate from a quiet and private location, and in using secure technology and internet connections.

6. Third parties or non-parties may participate in any mediation session only by agreement of the parties and the Third Party and must sign a confidentiality agreement and be bound by the same rules of confidentiality that the parties and Mediator are bound.

7. The Mediator's predominant mediation practice is situated in [x], and the Mediator abides by the [x] Standards of Conduct. The Mediator also adheres to the principles in the Hague Conference's Guide to Good Practice – Mediation and the International Social Service Charter for International Family Mediation Processes.

8. The Mediator has no authority to determine which jurisdiction will enforce any final agreement, nor can s/he guarantee that any agreement reached by the parties will be enforceable in any jurisdiction.

9. The Mediation may be conducted in one or more sessions of varying lengths, as is appropriate or necessary. The Mediation will be conducted in the English language, except to the extent that either party, or the Mediator, requests the use of a foreign language interpreter to facilitate communication. Any document that the Mediator produces will be produced in English and the parties must bear the expense of having it translated to any other language, if necessary.

10. By agreeing to mediate, and agreeing to use [x] as mediator, the parties are not consenting to jurisdiction over any issue in their separation, divorce, property, support, or custody matters, or any other matter of any kind. Participation in mediation is not acceptance of jurisdiction or service of any court action or paperwork.

11. This Agreement to Mediate is a binding contract between those who sign it. It shall be construed under the laws of [x].

12. The Mediator shall not produce any document for any third party, including any court, in any jurisdiction as to the status or conclusion of the mediation process, unless all parties, including the Mediator, so agree.


## The Beyond Mediation Committee

Conflict Coaching, Life Coaching, Collaborative Practice & Consultants to Mediation
https://www.mediate.com/onlinetraining/pg22.cfm
Co-Chairs: Brian Galbraith and Pattie Porter
Members: D.A. Graham, Amy Skogerson, DeAnne Pladson, Sam Imperati and Jonathan Rodrigues

## READ ENTIRE REPORT OF THE BEYOND MEDIATION COMMITTEE
https://www.mediate.com/onlinetraining/Beyond%20Mediation%20Report%20(Final).pdf

## RECOMMENDATIONS FROM
## BEYOND MEDIATION COMMITTEE REPORT

### 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/makeyour-powerpoint-presentations-accessible-to-people-with-disabilities-6f7772b2-2f33-4bd2-8ca7-dae3b2b3ef25

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

**Video Relay Interpreting (VRI) & 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 whether 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.

**Additional Committee Resource Links:**

- **Collaborative Practice Paper**
  from Brian Galbraith
  https://www.mediate.com/onlinetraining//Collaborative%20Practice%20Paper%20(Brian%20B).pdf
- **Public Facilitation Paper**
  from Sam Imperati
  https://www.mediate.com/onlinetraining//Beyond%20Mediation%20-%20Sam%20Imperati%20Slide%20Deck.pdf
- **Conflict Coaching Paper**
  from Pattie Porter & Cinnie Noble
  https://www.mediate.com/onlinetraining//Conflict%20Coaching%20Paper-Presentation.pdf
- **A Few Best Practices for Online Practice and Trainings**
  by from AJ Skogerson
  https://www.mediate.com/onlinetraining//5.19.21%20Mediate.com%20Virtual%20Practice%20Trainings%20-%20Skogerson.pdf

# Marketing Online Mediation Committee

https://www.mediate.com/onlinetraining/pg25.cfm
Chair: Susan Guthrie
Members: Alberto Elisavetsky, Gabrielle Hartley, Jonathan Rodrigues, Michael Aurit

Online
Mediation
Training Task
Force
Marketing
Committee
Report
June 14, 2021

The Online Mediation Marketing Committee consisted of the following members: Chair: Susan Guthrie Members: Michael Aurit, Gabrielle Hartley and Alberto Elisavetsky.

## Issues Considered By The Committee:

The Marketing Committee was tasked with considering the following questions:

1. What resources, resource center(s) and organizational support will best support elevation, acceptance and use of online mediation training and online mediation services?

2. How can mediation providers and policy organizations best support the expansion of online mediation providers?

3. How can mediators and other professionals (ie focus of Beyond Mediation Committee) best support the expansion of online mediation?

4. What are the best new opportunities for expanding the application of mediation and online mediation services?

## READ THE ENTIRE MARKETING COMMITTEE REPORT
https://www.mediate.com/pdf/Online%20Mediation%20Training%20Task%20Force%20Marketing%20Committee%20Report%20-%206.14.2021%20%20FINAL.pdf

## MARKETING COMMITTEE RECOMMENDATIONS

Based upon the analysis and discussion of the issues and questions outlined above, the Marketing Committee makes the following recommendations with respect to the establishment of modalities for advancing the fields of online mediation and online mediation training:

- A non-profit organization should be established to promote, educate and further the advancement of mediation, online mediation and online mediation training. Ideally, this organization would include participants from around the world and would promulgate material in multiple languages and incorporating international peacemaking trends.

- A central resource hub, perhaps curated and maintained by the aforementioned non-profit organization, should be established to curate and solicit materials in order to provide professionals with support in both educating the public on mediation and online mediation but also to provide high-level training materials for training professionals. These materials should be made available in a wide-range of languages for use internationally. Online Mediation Training Task Force Marketing Committee Report | June 14, 2021

- The many benefits of online mediation and online mediation training should be emphasized in the materials provided to expand awareness.

- Digital marketing allows for the creation of one asset to be disseminated across many platforms (i.e., websites, social media, email marketing, etc.) This repetition of content can, and should, be leveraged across platforms to create a consistent and ongoing message regarding the efficacy, convenience, and other benefit of the online mediation and mediation training fields.

## MARKETING COMMITTEE CONCLUSIONS:

As with all things, organization and collaboration go a long way to successfully expanding and enhancing the dissemination of any message. A centralized hub created to aggregate the effort would go a long way to creating more awareness and acceptance of mediation, online mediation and online mediation training.

- Both professional and public awareness of online mediation and online mediation training is needed.

- It would be helpful to have one hub to accumulate materials and centralize messaging in a manner suitable for international dissemination.

- Digital marketing allows for a broad distribution of messaging across multiple and far-reaching platforms which makes it well suited for this endeavor.

Online mediation and online mediation training have been widely adopted during the Covid-19 pandemic and as we move into a post-pandemic world, the benefits of both will likely continue expanding the range of options for all. The Recommendations in this Report of the Online Mediation Training Marketing Committee are suggested in furtherance of promoting acceptance of mediation, online mediation and online mediation training.

# Task Force's 8 Primary Recommendations

In addition to the many Committee Recommendations that follow, the Task Force's Executive Committee offers these 8 Primary Task Force Recommendations to support the field of mediation fully embracing online mediation and online mediation training:

### 1 - Develop Online Mediation Advocacy and Resource Capacities

Develop online mediation advocacy and resource capacities to vigorously promote the use of online mediation globally, including expanded access to online training of conflict resolution skills and effective mediation for all ages.

### 2 - Expand Access to Online Mediation Services and Online Mediation Training

One of the great advantages of online mediation and online mediation training is in the area of access. The Task Force recommends that online mediation should be easy for participants to find and participate in and not limit their right to representation. Online Mediation should further be available through both mobile and desktop channels, minimize costs to participants, and be easily accessible by people with different physical ability levels.

### 3 - Update Mediation Practice and Ethical Standards to Embrace Current and Evolving Issues Raised by Online Mediation

Update mediator practice and ethical standards to fully embrace online mediation and online mediation training. Online privacy and security issues need to be addressed in addition to mediation confidentiality. Issues of participant

communicational preferences, and platform equity and access also need to be addressed.

As further described under the Standards and Technology Committee section of this Report, here are an initial set of **Recommended Practice Standards for Online Mediation** intended to be consistent with International Council for Online Dispute Resolution (ICODR) Standards (ICODR.org):

## Recommended Practice Standards for Online Mediation

**Accessible**: Online Mediation should be easy for parties to find and participate in and not limit their right to representation. Online Mediation should be available through both mobile and desktop channels, minimize costs to participants, and be easily accessed by people with different physical ability levels.

**Accountable**: Online Mediation providers should be continuously accountable to participants and the legal institutions and communities that are served.

**Competent**: Online Mediation providers must have the relevant expertise in dispute resolution, legal, technical execution, language, and culture required to deliver competent, effective services in their target areas. Online Mediation services must be timely and use participant time efficiently.

**Confidential**: Online Mediation providers must maintain the confidentiality of party communications in line with policies that must be made public around: a) who will see what data, and b) how that data can be used.

**Impartial**: Online Mediation must treat all participants with respect and dignity. Online Mediation may enable often silenced or marginalized voices to be heard, and ensure that offline privileges and disadvantages are not replicated in the Online Mediation process.

**Fair/Impartial/Neutral**: Online Mediation providers must treat all parties impartially and in line with due process, without bias or benefits for or against individuals, groups, or entities. Conflicts of interest of providers, participants, and system administrators must be disclosed in advance of the commencement of Online Mediation services.

**Legal**: Online Mediation providers must abide by and uphold the laws in all relevant jurisdictions.

**Secure**: Online Mediation providers must ensure that data collected and communications between those engaged in Online Mediation is not shared with any unauthorized parties. Users must be informed of any breaches in a timely manner.

**Transparent**: Online Mediation providers must explicitly disclose in advance: a) the form and enforceability of mediation outcomes, and b) the risks and benefits of participation. Data in Online Mediation should be gathered, managed, and presented in ways to ensure it is not misrepresented or out of context.

## 4 - Define a Universal Online Mediator Code of Disclosure

As described under the Standards and Technology Committee section of this Report, define a broadly usable international code for online mediator

transparency and disclosure of mediator qualifications and a mediator's commitment to recognized online mediation ethical standards of practice.

## 5 - Assist Existing Mediation Programs to Renovate Basic Mediation Trainings and Expand Online Mediation Training

Assist existing mediation programs to thoroughly renovate basic mediator training curricula to fully address online mediation issues and to take full advantage of online mediation service opportunities, online mediation training, and ongoing online mediation group and mentorship opportunities.

## 6 - Encourage Established Mediators to Get Training to Most Competently Offer Online Mediation Services

Encourage experienced mediators to expand and renew their mediation training to include online mediation best practices by motivating participation in "renovated" basic online mediation trainings, participation in advanced online mediation trainings, and participation in ongoing online mentorship and consultation opportunities.  It is recommended that all mediators take at least two (2) basic mediation trainings, at least one of which has been thoroughly renovated to comprehensively address online mediation issues, concepts and skills.

## 7 - Expand Online Mediation Mentorship, Clinical and Apprenticeship Opportunities

Define and professionally recognize 100+ hour online and face-to-face mediation mentorship, clinical and apprenticeship opportunities.

## 8 - Elevate the Recognition of Online Mediation as the "Green Way" to Resolve Disputes

Elevate the recognition of online mediation as the environmentally sound, accessible, cost effective, and safe way to resolve disputes.

Notable here are the efforts of John Sturrock and others who have organized an effort to support a "Green Pledge for Mediators."  See https://womacc.org. Thus far, nearly 300 mediators from around the world have signed up to support the Green Pledge for Mediators. Over 40 countries are already represented!  The Pledge is already available in English, Czech, Italian and Spanish. A brief Corporate Pledge has also been developed as follows: "*As a business, we are committed to minimising our impact on the environment. Therefore, we commend this initiative and wish to add our support to the Mediators' Green Pledge.  We undertake, whenever possible, to use mediators who share a similar commitment to minimising their impact on the environment and who are signatories to this Pledge.*"

Knowing that the technical and legal contexts of our work are constantly evolving, we sincerely here encourage the mediation field writ large to now fully embrace the many opportunities available with online mediation and online mediation training. There is, quite simply, no good reason for delay.

## Conclusion

Due to the pandemic induced rapid expansion of online mediation and online mediation training, our Task Force was formed quickly and has sought to be responsive in developing our structure, recruiting talented personnel, establishing our priorities, conducting public forums, writing committee reports and in releasing this Final Task Force Report.

A public forum to discuss the Task Force's work is now scheduled for September 24, 2021. Additional information about this Forum will be posted at the Task Force website: www.mediate.com/OnlineTraining.

After this September 24 Public Forum, the work of the Task Force will be complete. It is our hope that our consideration of issues, identification of resources and our recommendations will help to elevate and spread effective online mediation services and online mediation training for years to come.