

Online Dispute Resolution in Our New Normal

By **Leslie A. Berkoff**

Learning to adapt to remote mediation/arbitration has become a necessity for those in the dispute resolution (DR) field at the present time. Until such time as traditional face-to-face meetings return, it is important for neutrals and counsel participating in this arena to become well versed in the online formats. Here are a few key constructs that practitioners should focus on in particular.

First, no matter which platform a neutral selects, he/she must be comfortable with its operating features and must also ensure that all participants are encouraged to do the same. To that end, I recommend that participants engage in a practice session to become familiar with the

technology. Knowing how to use the mute button, or request a private caucus, or communicate confidentially in a breakout room are critical components of the process. For the neutral, being facile with technology is part of a mediator's trust-building role with the participants.



Second, the neutral needs to ensure that participants understand the limitations of confidentiality in the process and what steps should be taken to enhance the confidentiality of the process. Most remote platforms have recording features, which

must be disabled, and the neutral should obtain an affirmative representation that no party is recording the sessions on a separate device. Moreover, the neutral should stress that each participant should be in a private space where they cannot be overheard and should not be utilising public Wi-Fi.

Third, there are additional security precautions which can be taken to protect the integrity of the sessions, such as adding dual passcodes and locking the session once all participants have joined. Fourth, the parties should agree upon a contingency plan in case the technology fails to work, such as exchanging cell phone numbers and emails to communicate in the event of a glitch.

Alternative dispute resolution is always dependent upon the parties having trust in the neutral and the process. Therefore, it is up to the neutral to properly set the stage by establishing trust in himself/herself, the technology, and the process of a virtual format.

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