



Online Dispute Resolution and Domestic Violence

Tips on overcoming the limitations of digital meetings

Online processes can increase access to dispute resolution for some domestic violence survivors. They can be out of reach for others who don't have access to private space, reliable internet, uncompromised electronic devices, or basic technical know-how. Online dispute resolution can also expand opportunities for abuse. Mediators can't afford to jump into online processes without considering certain core limitations.

The only thing mediators can see is what is on their screen. During online dispute resolution sessions, the only things visible to mediators are the things that appear on their own computer screens. Typically, mediators can see each party's head, neck, and shoulders. Unless the parties are using virtual backgrounds, mediators might also see the space behind the parties, which can include very little or very much, depending on how the parties position themselves.

However, mediators cannot see anything that does not appear on their own computer screens. They cannot see, for instance, what is immediately in front of or facing the parties. They can't see

Published:
09/03/2020

Article Type:

E-NEWSLETTER

Receive emails with
resources, news
and updates

[SIGN UP NOW](#)

whether someone or something is positioned behind a party's monitor—facing them directly from across the table or desk. Mediators cannot see what is immediately below the parties—right under the table or on the floor beside the parties. Mediators cannot see what is going on in the periphery—or in the next room—or just upstairs. Mediators cannot see who's driving past the parties' window or sitting in their driveway. What the mediators can't see might be innocuous or it might be menacing.

Mediators also cannot see what the parties see on the parties' own monitors. Mediators can't see, for instance, whether a party is looking at a threatening image—or email—or social media post. They can't see what other apps are running on the parties' monitors behind the mediation platform.

The only thing mediators can control is the mediation platform. During online dispute resolution sessions, the only things mediators can control are the features of the mediation platform. Depending upon the chosen technology, mediators can establish waiting areas and breakout rooms. They can disable private chats, recording devices, microphones, and video functions. They can open and close sessions.

Mediators cannot, however, control what's going on outside the mediation platform. In other words, mediators cannot control whether the parties communicate with one another through text messaging, FaceTime, social media, email, or any number of other means. Mediators cannot control whether the parties record sessions or caucuses on their phones, iPads, voice-activated devices, or even on an old-fashioned tape recorder. Mediators can't control whether parties utilize spyware or tracking devices to monitor, intrude upon, or intimidate the other.

The only things mediators can know is what the parties tell them. Mediators can attempt to mitigate some of these risks by establishing ground rules and asking the parties to affirm that they're in compliance and that the conditions for mediation have been met. However, mediators have no way of monitoring or

enforcing the ground rules unless the violations are visible—or one of the parties admits to or complains about them. While mediators will be able to address issues of tone or civility, for instance, they might not be able to hold parties accountable for blatantly violating rules concerning private communications, recording sessions, having others present, or otherwise undermining the process.

Top Ten Tips for Mediators:

1. **Recognize these limitations.** The first step to structuring a successful online mediation session is to recognize the limitations and risks associated with using an online platform—and accounting for them throughout the planning process.

2. **Explain risks of the platform and limits of confidentiality.** Mediators must explain that in an online environment, information and communication may not be confidential or secure. For example, mediators need to explain that they cannot know about, nor control, one party from recording the session. Mediators must explain the specific confidentiality risks associated with the platforms or technologies used at every stage of the process including screening, private caucusing, conversations with attorneys and advocates, etc.

3. **Screen for safety issues.** Given that remote mediators have a limited view of the parties and their surroundings, they must rely more heavily on what the parties tell them about risk and safety. Mediators should not assume that parties will voluntarily disclose risk and safety issues such as the threatening presence of an abuser in the room or within earshot. Rather, they should adopt a systematic screening protocol to identify and address abuse between the parties, use of coercive controlling behaviors, and the children's safety and well-being. To ensure safe and informed dialogue about these issues, mediators must conduct these conversations with each party, individually and in private. These conversations should occur before online mediation begins and throughout the mediation process so adequate safeguards can be

put in place. In some cases, safety risks can outweigh the potential benefits of online dispute resolution.

4. Discuss dynamics that undermine autonomy. Mediators must explore the parties' relationship, including behaviors that can undermine autonomy. To have a successful mediation, both parties must be free from undue pressure, duress, threats, manipulation, and intimidation. Explore how comfortable the parties are at voicing their thoughts, disagreeing with the other party, and discussing difficult topics. Keep in mind that the opportunities to undermine a party's autonomy may be greater—and less obvious to the mediator—when the mediator cannot fully see the parties or control their surroundings.

5. Explore parties' commitment to good faith participation. When assessing parties' willingness to engage in good faith, mediators routinely rely on body language and other cues that are harder to detect and assess in the online setting. Bad faith and coercive tactics can easily poison an online mediation process, resulting in unsafe and unworkable outcomes, even while the mediator remains completely unaware of the dynamic. Great care must be taken to fully explore this possibility with each party.

6. Gauge parties' level of trust in the others' parenting judgment. It is much more difficult for mediators to gauge the parties' level of trust, confidence, and commitment to the children in remote settings. Many of the non-verbal cues and signals that mediators customarily rely upon in live settings aren't as easily detectable in remote mediations. In order to facilitate a productive mediation process, online mediators should endeavor to assess each party's parenting capacity and judgment, as well as their trust in the other party's ability to share decision making and participate in attending to the children's needs.

7. Consider parties' access to internet and digital literacy. In order to conduct a successful and safe online mediation session, all parties must have regular, private access to electronic devices

and reliable internet. All parties must also demonstrate competence in using the technologies.

8. Clearly describe the online dispute resolution process and mediators' experience. The mediator needs to provide a comprehensive overview of the online mediation process, from start to finish, including disclosing their own prior experience and comfort level with the technology that is going to be used during the session, any fees or costs associated with the technology, as well as a backup plan if the technology fails to work as intended.

9. Confirm parties' understanding of and consent to the process. Parties require additional information to give informed consent for participation in an online mediation process. Each party must be confident that the other party, and the mediator, will adhere to the ground rules. Each party must be confident in the online process and mediators should attempt to ensure that consent to online mediation is properly informed.

10. Assess your own capacity and the appropriateness of the process to the case. The mediator needs to assess their own capacity to lead a successful online mediation by considering all aspects and circumstances of a specific case. It is up to the parties to decide if online mediation is right for them; it is up to the mediator to decide if online mediation is appropriate for a case and whether the mediator has the necessary experience and skills.

The SAFeR Mediation Discussion Guide can be used to structure conversations that will help determine whether, and if so, how, to use any type of mediation process. Find the guide in our resource center, here on BWJP.org.

PROJECTS

TOPICS

DV and Firearms	FVSPA Resource Center	Advocacy	Child Custody
ICJR Grantees	Intimate Partner Violence Intervention	Coordination Models	Firearms
Protection Orders	SAFeR	Gender-Based Violence	Mandatory Arrests
		Offender Intervention	Protection Orders
		Risk Assessment	Safety Assessment

Sign Up for the BWJP Newsletter

Get interesting news and updates and training announcements delivered to your inbox.

SUBSCRIBE

1801 Nicollet Ave. S., Ste 102 Minneapolis, MN 55403

PH (800) 903-0111 x 1 | Fax (612) 824-8768 | technicalassistance@bwjp.org |  Follow us on Facebook

Copyright © 2020 Battered Women's Justice Project

[Privacy Policy](#) | [Sitemap](#)

Minneapolis Web Design by Plaudit Design

Funded as a Special Interest Resource Center: Civil & Criminal Justice Responses to Domestic Violence by the [Family and Youth Services Bureau, Department of Health and Human Services](#), with additional funding provided by the [Office on Violence Against Women, Department of Justice](#). [See Details.](#)