



Mediation Monitor

Issue 21

January—June 2020

Archived newsletter issues can be found at www.mediatenmc.org

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Our Virtual Reality

"Resilience is all about being able to overcome the unexpected. Sustainability is about survival. The goal of resilience is to thrive."

Jamais Cascio

Seemingly out of nowhere, the COVID-19 pandemic has caused us and our world to undergo a seismic shift. The way we work, play, parent, shop, learn, socialize, worship, conduct business, obtain medical care, and many other things has become virtual, virtually overnight. Much of this online world may become permanent. Thriving will require resilience, flexibility, and acceptance of the "new normal."

Adapting to this much change and so quickly is overwhelming. Physical isolation isn't natural. We humans are social creatures and need physical interaction to not only survive but to thrive. As dispute resolution practitioners, our job is to foster effective communication and an important piece of information needed to do the job well is missing. So much of communication is in our bodies. Body language encompasses an energy that is often palpable and intuiting that energy is simply more difficult through a computer screen. However, for the foreseeable future, Zoom, Webex, Teams and other web-based meeting platforms have replaced in-person gatherings. Ironically, even with its inherent deficits, this technology is a blessing in many respects.

The legal system is not exempt from these changes. People still need access to justice; conflicts and crimes still need attention. Hearings, depositions, arbitrations and mediations, even some types of trials, are now being conducted virtually to the extent possible throughout the country and the world. Over the last several weeks, the staff and volunteers at the NMC have adapted to this new reality. Court and in-office mediations and board, staff, and volunteer meetings are now conducted through Zoom.

While many mediators miss being in the same room with parties and eagerly await the resumption of in-person sessions, there are some undeniable advantages to virtual mediation. The convenience to parties and practitioners is popular and an early observation indicates a higher rate of party participation. Distance between highly emotive parties provides added security and comfort. The court system can continue to provide its services. However, while resolutions are still reached, depending on the nature of the case, resolution rates appear to be somewhat lower and good faith engagement in the process by parties seems more challenging.

We all look forward to the pandemic being behind us. We long for the day when the acute suffering, grief, isolation, and economic hardship experienced by so many is healed by time and by the gift of safety in being together in person again. Until then, our virtual reality will keep us connected in important ways.

The Model Standards of Conduct for Mediators—The Benefits of Conforming

Model: *an example for imitation or emulation; structural design*

Standards: *something established by authority, custom, or general consent as a model or example*

Conduct: *to cause oneself to act or behave in a particular and especially controlled manner*

In 2005, the American Bar Association, American Arbitration Association and the Association for Conflict Resolution collaboratively updated and adopted the Model Standards of Conduct for Mediators. These ethical guidelines are intended to serve three main purposes: to guide the practice and conduct of mediators; to instruct the mediating parties; and to cultivate public confidence in mediation. They are the bedrock of mediation practice for NMC. And why wouldn't we want to follow standards that help to ensure the best outcome for our parties as well as give consistency to our practice?

In large part, the practice of mediation remains unregulated. The Standards provide the framework for self-regulation. At NMC, we take the time to mentor new mediators within that framework to help ensure the Standards are understood and applied in a uniform and professional manner.

The nine Standards are: Self-determination; Impartiality; Conflicts of Interest; Competence; Confidentiality; Quality of the Process; Advertising and Solicitation; Fees and other charges; and the Advancement of Mediation Practice. A full copy of the Standards can be found at:

https://www.mediate.com/articles/model_standards_of_conflict.cfm

Due to COVID-19, the 40-Hour Training has been Rescheduled!

***The Neighborhood Mediation Center
in collaboration with UNR Extended Studies
Presents a***

40-Hour Beginning Mediation and Conflict Resolution Training

Monday—Friday, October 5-9, 2020

With instructors

Monica Kales, Executive Director, NMC and Dawn Rafferty, Rafferty Consulting LLC

Topics include: Conflict and Negotiation theory, The Mediation Process, Mediation theory and practice, Self-awareness and Cultural considerations, Effective Communication techniques and Ethics and Standards of Practice

For more information: www.extendedstudies.unr.edu or call 775-784-4046

**“People generally see what they look for
and hear what they listen for.”**

Harper Lee, *To Kill a Mockingbird*

Mediation Zooming

As a society we’ve gone from being frightened by people wearing masks to being frightened when people do not wear a mask. The worm has definitely turned. Who would have thought people would have trouble buying paper products, like toilet paper or paper towels, and become concerned about entering a store to buy groceries: these have all become part of our adjusted normal. It seems things that were routine or normal a few months ago now cause us concern or make us rethink decisions. People have cancelled vacations/trips and seeing family is now done via Facebook or Zoom – in person get-togethers, where we once got to hug family members, are now being conducted from a distance to protect everyone. I have met with family members, cooked and done crafts via Zoom; these activities were enjoyed and everyone stayed safe.

Performing mediations via Zoom is very much the same thing. Because the courts are closed, people can now attend court from their office, home, and in some cases their car. (It is really strange to have to ask some to pull to the side of the road so the mediation may proceed.) In our new adjusted lives, people feel they have lost control over movements outside their homes; sheltering in place has become the new normal for some. This is a way to help people and mediators regain some control over their lives: they do not have to wear a mask and it may be more convenient.

With mediation on Zoom, the courts, and the process are now coming to the parties. As mediators, we can help make a difference by facilitating a video/online process that allows parties to work toward resolution of disputes via an established process. This is what we do: mediate by facilitating conversations with people in conflict. Mediators, by continuing in the facilitative process, help others while ensuring the safety and well-being of everyone involved. Court Zoom mediations may move a little slower, but the process remains the same. The courts have done a great job in working out some of the technological bugs but, when it comes down to it, we still must follow the process: make people comfortable, facilitate the conversation, caucus when needed, and help people move forward. This is our adjusted normal for now.

“I wish it need not have happened in my time,’ said Frodo. ‘So do I,’ said Gandalf, ‘and so do all who live to see such times. But that is not for them to decide. All we have to decide is what to do with the time that is given us.” —J.R.R. Tolkien

“You may not control all the events that happen to you, but you can decide not to be reduced by them.” —Maya Angelou

Child Custody/Divorce Mediation 30-Hour Advanced Training
Saturdays and Sundays, October 3&4 and 10&11, 2020—8:30-5:00
Instructors: Nancy Cleaves, Carson Mediation Center and Kathrine Berning, MA, JD
To register: 775-887-0303 or carsonmediationcenter@gmail.com

Unresolved conflict is expensive and disruptive!!
NMC can help you improve your Conflict Handling Skills!
The NMC offers fee based half-day or full-day conflict resolution trainings.
For more information: Email: mkales@mediatenmc.org or Phone: 775-788-2127