

Best Practices Guidelines for Online Family Dispute Resolution

Using online technology for family dispute resolution presents opportunity, but also brings risk.

It can be challenging to accurately read body language when limited to a screen; emotions or feelings or responses can be easily misinterpreted; the medium is tiring for clients and mediators alike; over use of bandwidth can cause process disruptions.

If working from home, most professionals will not have support staff available to assist; time lags in sound can cause frustration; parties have far more control over their environment which can cause unexpected reactions between them, or can leave professionals confused, and both parties and professionals can be distracted and even interrupted by things happening in their homes.

It can be more difficult to build trust and understanding when professionals and their clients are not meeting face to face.

Use of video technology inevitably means that the process, whatever it is, can take more time and be more tiring and more stressful for all involved.

You can expect that the many power imbalances that already exist between our clients may be exacerbated by the online medium, sometimes in ways that are apparent to the professional and in some cases, in ways that are not clear. It is more important than ever that intake and screening protocols are appropriate and are followed rigorously to minimize the risk of doing harm to parties or children.

FDR Professionals should conduct their businesses in such a way as to do no harm while protecting themselves from possible claims for negligence, breach of contract or breach of privacy.

This document addresses the main areas of concern:

SERVICES CONTRACT

1. Be familiar with all your contractual undertakings regarding all aspects of your service. Areas of your standard service contract that may require amendments to accommodate ODR include meeting formats, risks of mediation, confidentiality, and voice of the child.
2. Review the contract with clients and ask if they have any questions about any terms given the online format.

PRIVACY AND SECURITY

1. Be aware of your obligations under the law and pursuant to your contract to protect personal information. Best practices include:
 - a. Having a secure and 'hidden' (if possible) Wi-Fi network
 - b. A secure and private workspace
 - c. Secure storage of client information at your home office
 - d. A policy that is consistently followed for internet, computer, operating system and email security including use of firewalls and anti-virus protection, updated hardware and software, use of difficult passwords and ongoing awareness of phishing and other risks
 - e. Secure access to your computer, phone, and other technology including physical security, password protection, ensuring no one else has access
 - f. Use of headphones to protect client confidentiality; no one in your home can overhear you
 - g. Safe and secure data backup protocols including encrypted or secure cloud backup drives
2. Use professional, secure email accounts utilizing two-factor authentication
3. Use encryption for sensitive emails and password protected document transmission
4. Establish an appropriate document disposal/shredding service.
5. Use a secure, reliable means of confirming client identity. If identification is shown online, get permission to take a picture for the file.
6. Use secure and confidential payment methods
7. Use a secure and reliable document signing methods
8. Update cyber, CGL and professional liability insurance to apply to your work from home online
9. Zoom best practices are utilized including all features including security, waiting room, locked door and breakout rooms.

ZOOM BEST PRACTICES

1. Privacy settings are set to:
 - a. Route data through Canada
 - b. Disallow chat between parties
 - c. Activate waiting room and require all participants to start there
 - d. Allow parties to re-name themselves
 - e. Only host can share screen or use whiteboard
 - f. Disable recording.
 - g. Chat cannot be saved by anyone but host
 - h. Disallow "join before host"
2. Use a unique meeting password, do not use your personal meeting ID.
3. Use the chat feature for technical or scheduling matters only; do not use the chat feature to post documents or sensitive information.
4. Lock meetings once all parties /counsel have joined.
5. Anticipate the use of break out rooms and assign parties and counsel to their rooms in advance of the meeting. Start all meetings with parties (and their counsel) in a break-out room to do a check in.
6. Confirm in advance that both clients and counsel will be using the technology the same way, for example, that all are able to participate by camera, have microphones and know how to use the program. Limit telephone participation to procedural or technical issues.
7. Be familiar and comfortable with screen sharing process and be confident that you are sharing the right screen.
8. Turn off screen notifications.
9. Clean up your desktop-- just in case.
10. Take all other steps to ensure no inadvertent privacy or confidentiality breaches.
11. Ensure you have a good quality camera, mic and that your home office set-up is professional with appropriate lighting (test the video and audio settings before doing any mediations with clients).
12. Use headphones.
13. Ensure that no one in your home is able to overhear or see anything and that neither you nor the clients can see or hear any other person or animal or other distracting sounds.
14. Ensure no one is recording the session.
15. Ensure all have phone numbers to call if there are tech issues.
16. Do not continue meeting with one party if the other drops off; mute parties till issues resolved.
17. Know how to end a session and always double check that you have ended it for all participants.

INTAKE AND (INITIAL AND ONGOING) SCREENING PROTOCOLS

1. Ensure clients have completed an intake form to address unique aspects of power imbalance and risk that can exist in an online setting.
Questions should include:
 - a. Confirmation that client can participate fully and confidentially from home location
 - b. Confirmation that client is comfortable using online technology and has use of appropriate equipment.
2. Use a screening tool.
3. Take the time at outset of each intake meeting to confirm with clients that they understand the technology; that they are using their own computer in a private space; that they have no concerns about privacy breaches, stalking or other risks; that they can conduct meetings without children seeing or hearing; that they can share documents securely using your protocols; that they can sign and send you the Agreement to Mediate; and that they can provide appropriate ID.
4. Clearly state in your intake meetings (and in mediation ground rules) that clients cannot take photos of the screen; they cannot record with their cell phones; they cannot post any aspect of the mediation process on any social media, use in court documents or use for any purpose other than mediation.
5. Confirm in your notes that client represented that they are alone; there is no one else in the room or able to hear or see you or them; that the other party is not aware of the time of their intake; that they are not under duress; that they are not concerned about retribution from the other party.
6. Ensure clients are comfortable with any intern present/participating.
7. Ask about any barriers to participation or accessibility accommodations that need to be addressed and make plans to accommodate for full participation. For more information see the [ADR Institute of Canada Accessibility Guidebook for Mediators](#).
8. Arrange during the intake meeting with each client an understanding about how they might communicate if they are feeling uncomfortable but do not want to say anything—how will this be communicated? For example, Zooms has symbols that can be used for this purpose.
9. Have a safety plan including a plan for safe termination. Have information about referrals and resources available in accessible forms.

SESSION BEST PRACTICES

1. Many clients and professionals cannot manage a long mediation session using online video
 - Set expectations when planning the agenda for each meeting.
2. Conduct routine confidential re-screening prior to joint sessions.
3. Ensure clients have appropriate backgrounds that will not distract the other person.
4. Always have an agenda to keep mediation focused.
5. Use visuals as much as you can to help keep parties focused and engaged.
6. Summarize, summarize, summarize.
7. Type and share the terms of a draft MSR as often as possible.
8. Consider when to shift to audio only: parties struggling with tech; poor connection; parties triggering each other.
9. Build in regular and frequent breaks.
10. Speak more slowly than normal and check in more frequently.
11. Use caucusing more often and more strategically than normal.
12. Spend the same amount of time with each client in caucus.
13. Ensure both clients understand the confidentiality rules around caucusing.
14. Make use of the options for communication with one party while in caucus with the other.
15. Deal with urgent issues first.
16. Pay close attention to all visual and auditory cues.
17. Take careful notes.
18. If you have any concerns during mediation, take a break and check in with each client.
19. Follow safe arrival and departure protocols where appropriate; even in online dispute resolution, if the parties know where the other is and they are accessible to one another, the same safety risks exist.