



The virtues of virtual alternative dispute resolution - by Richard Byrne

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The experience gained from a crisis can often prove meaningful - and even transformative - as adaptive changes, which otherwise may have evolved at a lesser pace, are accelerated.

This mediator received his initial training in virtual ADR (Alternative Dispute Resolution) a number of years ago and has seen its acceptance grow, albeit slowly, since that time. Surely, there is a part of all of us that resists change and supports the old adage, “if it ain’t broke, don’t fix it.” And, setting aside the vagaries of human nature, there were also specific questions and concerns about the adequacy of the technology:

- “Is the process secure?”
- “Won’t there be glitches leading to delays and frustration?”
- “How will the confidentiality of the mediation be maintained?” and
- “How can the technology provide the equivalent feel and experience of an in-person session?”

From this mediator’s perspective, those who have experienced virtual ADR would undoubtedly provide positive responses to all of the above. To begin, the parties are all able to see each other and interact with one another in real time over a secure, high-speed network. To participate, they need only to log in. The session then proceeds no differently than if each of the participants was seated around the conference room table. Frankly, it is remarkable how soon one forgets the parties are not physically present as the focus immediately turns to the matter at hand. As the caucuses begin, the mediator then has the ability to send an individual party or group of parties into separate, secure “conference rooms” and meet with them privately.

The technology also allows parties to make PowerPoint presentations or provide the other participants with on-screen views of documents or photographs—just as if they were being passed across the table for consideration. All audio, video and screen sharing data is encrypted and has

specific settings that are provisioned/configured differently than the generally available Zoom commercial account. At NAM, customized videoconference technology through Zoom, currently meets or exceeds the privacy and security specifications provided by The Health Insurance Portability and Accountability Act (HIPAA). Each mediation/arbitration is also password protected, as confidentiality is of the utmost importance.

While this leap to virtual ADR may be a child of necessity, the impact will be far reaching. The savings in travel time and expense for out-of-town participants alone will be considerable. Virtual ADR will also allow additional team members to attend mediations from which they might have otherwise been precluded due to time or cost constraints. Even those nearby will be more productive if they are able to remain in their office to prepare, or attend to other matters, until it is time to log in and begin the session.

This, in turn, will lead to increased ease in scheduling mediation sessions. The parties need only agree on the date and time - having the ability to attend from anywhere. Flexibility can prove to be particularly important when a matter needs to be scheduled and addressed in a time-sensitive fashion.

Thus, while the leap to virtual ADR is being accelerated, the bottom line is that its strengths are known, tested and available.

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