TOOLKIT ONLINE MEDIATION
Checklist for the challenges and opportunities in online mediation

Online mediation; in which cases you wouldn't / would do that?

Why wouldn't you?

- Logistics, responsibility for and depending on tech and technical equipment
- You have to immerse yourself in the matter and technical side
- Some of the non-verbal communication and interaction is missing
- It can feel more impersonal or less engaging
- Attention from parties (and mediator) can drain more quickly
- Confidentiality matters
- (Some) basic technical ingenuity is required of the parties and this can be a barrier
- The parties or you as a mediator cannot or do not want to mediate online
- Initially it requires some preparation, thinking and planning ahead

Why would you?

- Flexibility
- "The show can go on" under almost any circumstances
- Participants and mediator do not have to travel
- Quick to initiate, crisis intervention possible
- You can easily view and edit documents digitally
- Because there is less direct confrontation and everyone is in their own (safe) environment, people often feel more free to share feelings and discuss sensitive topics
- You can easily involve constituency / a stakeholder
- You literally have control over the communication buttons and can, e.g., set that only 1 person can talk at a time and you can also set everyone to "silent" or to not visible
- Some programs offer the possibility for a digital waiting room and also separate break-out rooms where you can talk to someone individually during a caucus.

Step by step tips & tricks & best practices

1. **General**
   a. Check which platforms are available and test drive. Some providers such as Skype and Zoom have free options. You can also use FaceTime or WhatsApp video call. Or the conference call facility on the IPhone, etc.
   Which is the best? Depends on which facilities you need and what works for you in terms of feeling comfortable to work with. Sometimes the simplest application is best. And in addition you can also work from the platform that your parties are used to working with. For especially sensitive cases you have to take in account security options while selecting a platform. Take precautions to keep hackers out of your system.
   b. Before the start of your mediation, the intended platform should be ready and set to go and you have done testing, but also consider a backup. For example, Zoom meeting and as a backup conference call. Inform your parties about this.

c. There are also great benefits to co-mediating and setting up another host to avoid disruptions. You each work from a different internet connection so chances are that at least one of you is able to stay online. Besides, co-hosts could also jump separately to different break out rooms if necessary.

d. Consider investing in good and convenient earphones with microphone function.

e. Put (prominently) on your website and LinkedIn account that you also offer online mediation. Your customers and / or their advisors may not think of it on their own and this is how you can spark for them the idea how you can additionally serve them.

2. Beforehand

a. Send an invitation to join with log in procedures, practical steps to take and possibly an invitation for a test-drive moment. For most cases a general log in link is sufficient. As long as you make sure you have the waiting room function and/or 'host needs to admit participants' function switched on.

b. Have the email addresses and mobile numbers of all participants available and programmed in your phone or on your laptop. Make sure everything is ready in advance, so that you are linked via Skype, for example, that you have sent a Zoom invitation or that you have created a WhatsApp group or shared the telephone numbers or number to call in.
If your online platform stops functioning, in this way you do not have to search or email everything at that time but can just revert to the fallback option. It is useful to inform those involved about the fallback option beforehand.

b. Put the documents or email correspondence that you may want to look at during the mediation on your desktop and close everything else. This way you can share your screen at all times, you will not get strange blips and beeps and it will also make your laptop faster.

c. Consider what options you want to use for visual communication or for working on/sharing documents or lists. Because the "attention time span" for online meetings is generally shorter than in person, it is also useful to alternate. So, for example have behind you a flip-over where you write something now and then. Have a blank document (e.g. word) ready to make notes e.g. to capture as many ideas as possible during brainstorming sessions or to set an agenda.

d. Have some pre-prepared slides (e.g. a first welcome screen with the word CONFIDENTIAL on it) to set the tone. You can also take this to an advanced level (see below).

e. Mediation agreement: have it signed and returned in advance. You can avoid having to circulate 1 document by regular mail for several days or sending it back and forth digitally so that the document has to be printed out several times and thus becomes less legible (also note that a digital signature is not always accepted). What I do: email the mediation agreement signed by me to both parties and ask if they each sign and initial their own copy and send it back to me. Include a provision as follows in the mediation agreement:
    "If several copies of this agreement are signed separately, each copy will be considered original and these copies together form the mediation agreement."

Then send a digital copy both signed documents jointly to the parties by email. This works fine for me, but please check where applicable with the Courts or a mediation provider whether this is accepted in your case and jurisdiction.

f. If parties or you need it, you can agree to be online earlier to test the sound and vision. Also inform the parties that if you have a platform with a waiting room function you will let them in at the same time so that it can take a while before they are admitted (otherwise people sometimes keep logging out and logging in because they think something might be wrong) and for Skype or conference call you both calls at the same time. In some cases it is important sense to let them know there are individual waiting rooms.

g. During your test, also check what the parties see when you turn on your video.

3. Start of mediation

a. Make sure that you have the platform with the waiting room function switched on (e.g. Zoom) or that you are the one who calls / admits both at the same time. Don't be tempted to allow someone into your digital mediation room if the other person isn't already there. Not even if the person takes a long time to arrive. It is better to send a text message or email to both in such a case.

b. Spend time at the beginning to go through the online system and ensure everyone knows how to use it for basic things. It creates a shared learning/bonding experience, and puts everyone at ease with the mediator's ability to pilot the process. Unless you will not use video and have everybody unmuted all the time, make sure they know how to:
    1. Mute/unmute themselves
    2. Turn on/off the video
If you will use advanced functions and depending on your mediation style also educate participants how to:
    3. Be able to share their screen
    4. Be able to send a chat message (warning them to select a person and not "everyone" if they want it to be private!
    5. How to get from a breakout room back to the joint session room, etc.
    6. Raise their hand or ask for a break.

c. Check confidentiality and explicitly ask if there are others with a participant in the room who can listen in. And to report if that happens during the meeting. Because it is easier to secretly make videos, sound recordings, etc online., also explicitly mention this.

d. I personally find it useful to share the mediation agreement via my screen and visually walk the parties through it.

4. During the mediation session
a. Attention diminishes quickly online so agree that everyone can indicate whether there is a need for a break and that this can also be more often. Try to keep attention alive by limiting speaking time and doing something else every now and then. For example, go to a flipchart behind you (can also be taped on the wall when you are at home) and alternate that with a digital whiteboard if you have that

available on your platform. Also take a break now and then to allow everybody to get something to drink or to go to the toilet.

b. Some platforms (e.g. Zoom) make it possible to set in advance whether participants can talk 1 by 1 or also simultaneously. You can also silence everyone or a specific person. In that respect, online mediation means that you are literally at the communication control button.

c. Rather plan for a few short sessions than 1 long session (however there are exceptions….). With 1 ½ or maximum 2 hours, it has will be the max long enough for most parties.

d. My experience is that with session online you miss a piece of non-verbal communication, but you get in return that people often feel at ease / safe in their own place and that often helps to share feelings and to address difficult themes. They also do not look each other directly in the eye, do not sit opposite each other, but can always see each other and looks at the same thing from the same point of view.

e. It is sometimes a bit of a jump to switch from the business introduction to speaking about the undercurrent instead of continuing with picking up to discuss substance. We are often used to focus on content topics only during business conference calls and so you can easily be drawn into that. What works well for me is to address this and start with some helpful images, the iceberg drawing, for example, and explain that you would like to start with a conversation about what is under water. Where the emotion / blocking / resistance / concern etc. is.

f. Depending on the type of mediation and the parties, I often request that the parties put their own perspective on paper beforehand and exchange it with each other (I send a list of questions for this mediation briefing). This helps the conversation turning to the undercurrent despite digi-meeting customs. After all, then the content has already been taken care of and exchanged / shared with each other.

g. Even more often than in a f2f mediation, provide a summary or paraphrase and ask if you have captured this correctly. Most importantly: summarize especially the relationship and the emotion / undercurrent / interests / concerns, etc. Not just the content.

h. Silences often feel more natural online, perhaps because we are used to technology sometimes having poor reception. So make extensive use of silences.

i. I also note myself that with online mediations, partly due to the temporization and that it concerns usually shorter and more frequent meetings, I can leave even more up to parties and put them to work more. For example, request them to summarize an offer that they verbally made during the meeting in an e-mail to follow up with the mediation. So the other party can then quietly look at it and the next time it will be discussed. Note: email or text message communication is tricky and is often misinterpreted (and in general more negatively), and also the recipient may reread a negatively interpreted message several times. So consider carefully whether such an intervention suits these parties (can they express themselves neutraly in an email).

j. Working together on a settlement agreement digitally with 1 text is actually better than if everyone sits at the table with their own paper copy.

k. Dito with a mediator proposal.

5. **Advanced uses**
    For those of you who would like to take this beyond and dive deeper into the possibilities, or who engage in things like large group mediations, publicity sensitive / security concern cases, cross-border, one day commercial cases, several (legal) advisors involved, otherwise potentially complicated cases, etc., below some additional ideas:
    a. For large cases where there may be security concerns and/or potential publicity sensitivity issues, you can set-up passwords to restrict access in advance, encrypt the call, and send prior invitations only to pre-approved participants so that others cannot join, even if they have the access URL and password. ZOOM offers a feature of preregistered people who have to be Authorized in advance by the mediator only.
    b. Setting up breakout rooms: you can customise each room to each team's name, pre-allocate rooms to individual participants, and also have a separate mediator breakout room for caucuses and a separate room for lawyers or experts room to work in separately (even if it is never used it makes sense for large commercial cases or cases with many advisors/participants to do so).
    c. You are already on a digital platform so you can easily include using pre-prepared slides to set the tone, and for enabling discussions on sensitive topics. (e.g. the iceberg, Hofstede's cultural dimensions). You can also have slides for set topics (e.g., an interests vs. positions chart) or for other sections (e.g., mediator's introduction words and for joint collaborative exercises to do in joint session, such as listing interests and topics for discussion, or generating an analysis of BATNAs WATNAs and R/PATNAs).
    d. You can even prepare a series of slides for your mediator's opening presentation. Not only to clarify ground rules, but where the parties think they are at and what type of process they want. Useful slides to discuss this with parties are e.g. Glasl Scale or on the modified Riskin grid. This can be enhanced with anonymous polls, to that everyone can see if they are in the same or different starting blocks. Polls are really helpful for this!
    e. The poll function to do a 1-10 "how are you feeling" check is also very useful. Polls can be made anonymous so participants can self-identify with their selection if they wish to. You don't always need to show the results.