

Setting the Table for a Seamless ODR Session

By **MICHAEL RANAHAN**

The coronavirus pandemic has forced the legal community to reexamine the way we live and work. We are being challenged both personally and professionally. The alternative dispute resolution (ADR) community has had to consider alternatives to the traditional in-person approach to resolving disputes. Online dispute resolution (ODR) technology affords us the opportunity to continue to assist parties with resolving disputes. Options range from an exclusively telephonic session to a mediator-hosted session on a platform such as Zoom to a concierge approach like the JAMS Endispute program. The keys to success, whether via an ODR approach or an in-person ADR session, are preparation, creativity, openness to new ideas and processes and civility in dealing with each other.

ODR by definition involves the use of technology in the settlement process. A lack of familiarity with ODR and its associated technology may cause both lawyers and parties to be reluctant to

use it. There are steps that can be taken to make participants more comfortable with the ODR platform and to maximize the benefit of an ODR session.

The more seamless the ODR process, the easier it is for the parties to focus on the dispute. Avoiding distractions and anticipating possible glitches allow the parties to navigate and participate in the session. Here are some considerations regarding ODR.

1. Choosing ODR

The first question to ask is if ODR is appropriate for the dispute. Considerations include whether the dispute is time sensitive, whether counsel and their clients are receptive to it and whether the chosen mediator is comfortable and familiar with ODR. In addition, consider whether the ODR provider offers technical assistance, whether the participants have the necessary equipment, whether the participants want an operator to provide assistance throughout the entire session and whether a mediator-hosted session on a platform such as Zoom is appropriate. Finally, a



telephonic mediation should be considered if an online session is not possible or wanted.

2. Selecting an ODR Platform or Approach

There are many ODR platforms, such as Zoom, Cisco Webex, GoToMeeting and Skype. Most of the ODR platforms were designed for traditional meetings, not for mediations. Some of the platforms are more appropriate for ODR sessions. For example, JAMS uses the Zoom HIPAA-compliant platform for all scheduled virtual proceedings, including mediations and arbitrations. This Zoom platform incorporates

the necessary security features to satisfy the requirements of the Health Insurance Portability and Accountability Act (HIPAA). Zoom also includes a waiting room feature that allows the mediator to either start the mediation with a joint session or place participants directly into their private breakout rooms. In addition to waiting and breakout rooms, Zoom has a document-sharing feature, as well as a chat function that allows the parties to communicate privately or with everyone. If you are more comfortable with a concierge approach, ascertain whether the mediation provider has such a program. JAMS' Endispute program utilizes a CourtCall operator throughout the session to assist parties and the mediator with managing the session. Whichever ODR platform or approach is selected, consider whether it is appropriate for your mediation.

3. Using Technology

An information technology (IT) person is not necessary to participate in an ODR session, but participants do need basic equipment. All participants should have a computer, laptop or tablet with either an internal or external camera and microphone. Not all platforms support all devices, so be sure to check compatibility beforehand. Also, check the quality of your image and sound. If it is subpar, an external camera or microphone may be necessary. Testing your equipment

ahead of the session will minimize technical glitches.

4. Communicating With the Mediator and Clients

Whether for an in-person or ODR session, speaking with the mediator prior to the session is always helpful, and with an ODR session, it is even more important. Having a pre-mediation online session with the mediator and your clients allows the participants to test their equipment and to understand the platform's features. It also affords counsel and their clients the chance to ask questions about the platform and the process. The more comfortable the participants are with an ODR platform or approach, the greater the chance of a seamless session.

5. Avoiding Distractions

Participants in an ODR session might be tempted to multitask and thus be distracted and less invested. You want participants to focus on the content of the session. Think about how you will appear and sound. Lighting and background should be given careful consideration in order to minimize distractions and maximize everyone's participation.

6. Getting the Mediator's Contact Information

Even when taking all precautions, there is no guarantee of a seamless ODR session. Therefore, it is important for counsel to be able to contact the mediator directly during the session should any issues

arise. Be sure to get the best phone number and email address for the mediator so that you can reach him or her in the event of a problem.

Most clients are interested in resolving their disputes and not continuing with litigation, which can be time-consuming, costly and stressful. ODR not only provides an approach during a time of social distancing, but it will continue to be a flexible and affordable option in the future. ODR skills acquired now will serve lawyers well going forward. A new approach to anything can be frustrating and stressful. It is important to be patient as we become more familiar and comfortable with this process.

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