Remote Arbitration in a Pandemic
ADR Providers Are Adapting During the Crisis

How does ADR continue during a pandemic? Experts from the leading ADR providers, JAMS, CPR, AAA, and NYIAC discuss how the providers are working with staff, virtual technology, neutrals and clients during this unprecedented crisis. Is it business as usual? Will online hearings be the norm in the future? What issues may arise with virtual hearings? What types of disputes may arise post-COVID? These topics and more are explored in this webinar.

- Overview
    - How COVID crisis has impacted caseloads
    - Continuing with resolution during court closures
        - Court closures across the country since mid-March.
        - Many ADR providers have also gone remote since then.
        - ADR providers moved their processes online quickly since March.

- Adaptation, Transformation & Learning
    - Digital and virtual ADR: types of online/video technology being deployed
        - ADR providers are using a number of different virtual meeting platforms, including Zoom and Skype.
        - Each of the ADR providers have a comprehensive set of rules and guidelines for using virtual platforms.
    - Virtual ADR challenges
        - Cybersecurity and privacy
        - Safety

- Confidentiality
- Recording the sessions and who can store and access the recordings
- Court reporting services and live transcription options
- Taking into account different time zones of parties
  - Various online and offline tools that can be used
- Language barriers
- Body language and facial expressions during mediation
- "Zoom-fatigue"
  - How best to manage zoom fatigue
- o Cybersecurity risks and best practices
  - ICCA-NYC Bar-CPR Working Group on Cybersecurity in Arbitration Cybersecurity Protocol for International Arbitration[1]: a framework for tribunals to assess risks. Includes model procedural orders and basic cybersecurity guidelines.
    - Access controls allowing only authorized users
    - Communications security including secure networks and files
    - Encryption of data, including using a private WiFi connection and websites that employ HTTPS security
    - Operations security
  - Information storage
    - Identifying and controlling certain more high-risk information
    - Access controls and encryption of information
- o Challenges for neutrals
  - Neutrals are encouraged to attend virtual ADR and cybersecurity bootcamps.
  - Neutrals must be familiar with multiple platforms.
  - ADR providers have so far not experienced neutrals having issues with the platforms because of the intuitive nature of the platforms.
- o Recommendations
  - Parties should have agreed-upon protocols for logistical matters. Include information about schedule, exchanges of documents, deadlines, etc.
  - Implement measures for testimonies and witnesses.
  - Consider shorter sessions and breakout sessions during virtual hearings.

- Post-COVID
  - o Increases in certain types of disputes post-pandemic likely

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[1] Cybersecurity Protocol: https://www.arbitration-icca.org/publications/ICCA_Report_N6.html

- Consumer
- Contract
- Employment
- Hospitality and travel
- Insurance
- Medical care
  - Future trends in ADR post-COVID
    - Requires continually updating guidelines
    - Flat fee mediation programs for small and mid-sized businesses
  - Virtual ADR post-COVID
    - Hearings will not likely resume in person for a while during the pandemic.
    - Highly trained and professional neutrals are essential to keeping the hearings as similar to in-person meetings as possible. Parties must feel safe and confident in the proceedings.

- Additional Resources
  - AAA-ICDR COVID-19 Resource Center: https://go.adr.org/covid-19-resource.html
  - CPR Resource ADR in the Time of COVID-19: https://www.cpradr.org/resource-center/adr-in-the-time-of-covid-19
  - JAMS Coronavirus Resources: https://www.jamsadr.com/coronavirus
  - NYIAC COVID-19 Resources: https://nyiac.org/resources/covid-19-resources/