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Mediating on the Internet *Today and Tomorrow*

James C. Melamed, J.D.

INTRODUCTION

This paper will examine Internet opportunities for mediators and mediation participants. We will examine current Internet opportunities as well as where all of this may be taking us. The author suggests that there are unique qualities and opportunities for mediators on the Internet, including cost and convenience.

At one level, it may be argued, the Internet is just another communication medium, like phone, fax, or mail. Thinking within this context, more and more mediators choose email and the web for everyday communications and promotion, case management, client homework, agreement drafts, information distribution and pointing to other resources, because email and the web are fast (close to immediate) and cheap (close to free).

There are other qualitative differences of the Internet associated with having a fully connected world that make the Internet more than just another communication medium. Through email and web strategies, an unlimited number of mediation participants, in comfort and safety and at little or no cost, can be involved in communicating, negotiating, and drafting.

The Internet of today is primarily text based. If we squint our eyes and bend our ears, we see and hear a world in which audio and video comes to be seamlessly integrated with textual communications. Our online mediation world will become more and more "real," allowing for greater utilization as a means of enhancing and economizing mediation. There will be associated gains including increased participant involvement, enhanced quality of consideration, and cost savings.

MEDIATION BENEFITS FROM TECHNOLOGY

I did my first dozen or so mediations in the early 80's with a typewriter. This was right before the word processor and personal computer came on the scene. I remember fretting that a participant would want to insert a paragraph or make some other change to their agreement that would force me to retype an entire page, if not the entire agreement. I was so very pleased when dedicated word processors came on to the scene, and then the personal computer

Pepperdine Dispute Resolution Law Journal, Vol. 1, Iss. 1 [2000], Art. 3
with sophisticated word processor capacity. I am guessing that many other mediators feel similarly blessed by the word processor.

Over time, our technological arsenal has grown. I now have one of the latest laptops. I have two businesses on my laptop, family finances, and a decade of family pictures. I am able to bring all of this with me, on a computer weighing in at just about 7 lbs. Progress being what it is, I notice that I could now likely get a laptop closer to 5 lbs. I now have a computer projector and traveling printer. I can project an electronic flip chart and have participants leave a meeting with progress notes in hand. Through the Internet, an unlimited number of participants can communicate with me and with one another no matter where any of us are located. Technology has supported and continues to support mediation.

Many, if not most, mediators are already using the Internet to some extent to assist in their mediation business promotion and practice. Many mediators use email to communicate with clients and colleagues. Many send complete “attached” files with email. Many know how to highlight text in a file and change font colors. Many now have websites. Our clients are often even more advanced.

MEDIATOR USE OF THE INTERNET—NOT A MATTER OF EITHER/OR

In terms of performing mediation, the question is not whether to use the Internet, but how as a mediator, we can best integrate face-to-face, online, and other strategies to be maximally supportive of participant involvement and ability to reach agreement.

In many mediations, perhaps most, we will ideally have some measure of face-to-face, some measure of online, and some measure of other communication. We as mediators are wise to utilize phone calls, voice mail, faxes, express delivery, and good old snail mail as we think strategically in a particular case. The use (or not) of the Internet, like any and all other choices in mediation, should be a strategic choices based upon the specifics of the particular case.

However, a strong argument can be made that the Internet is advantaged over the other communicational media in terms of its impending ubiquity, low cost, silence, convenience, and most importantly, its “asynchronous” nature.

Knowing that the best use of the Internet as a general concept depends on the particulars of a case, some mediators, including myself, as a matter of style of practice choice, now reasonably decide that we want to maximize utilization of the Internet as we seek to attract clients.

MOVING BEYOND REAL TIME AND CRISIS MEDIATION TO ASYNCHRONY

In comparison to “real time” discussions, participants on the Internet (at least in email and web discussions) do not need to immediately respond as they are realistically compelled to do in face-to-face discussions. One’s immediate response, as a participant or mediator in face-to-face mediation, is not always one’s best response. It is often one’s worst! Participants will more thoroughly consider and develop options with a bit of time to fashion their response outside of “the gaze of the other side.” The asynchronous nature of the Internet offers participants and the mediator their own contemplative, safe space.

From a mediation perspective, it is suggested that we have falsely worshiped “real time” discussion. Without thinking about it, we often automatically assume that “real time” communications are preferable. Yet, whatever the benefits, there are many problems with “real time” discussions, particularly in the world of conflict. Think of the resources committed to and the fragility of “real time” discussion systems: physical meetings at a single time and location, group conference calls, and video conferencing. Just how satisfying is it for a participant to be in the waiting room most of the time while the mediator is in caucus with other parties? How satisfying is the typical phone conference call? Do we need to be physically together to make progress? Because of its affordability, capability, safety, and ease, the Internet will force us to reexamine everything that we do and how we do it.

Hard as it is to believe, we are entering a new world where a good measure of mediation will be on the Internet, with face-to-face meetings used strategically, but not exclusively nor primarily, to make progress. The cost savings and quality of consideration intrinsic to asynchronous discussion will be the leading factors driving mediation discussions to the Internet. As the Internet becomes more real, it will make less sense to travel and meet at enormous cost.

The realities of scheduling face to face meetings have also historically resulted in a single day’s session being scheduled with all participants, all attorneys, and experts present. Because of the difficulty of cost and “battle mentality” assumptions in scheduling the meeting, this type of civil/commercial mediation often becomes less of a crisis limited to a single, tense, meeting. By contrast, the Internet allows participants, lawyers, and the mediator to have a lengthy problem solving discussion not a single “crisis mediation”.

Squint your eyes, bend your ears, and hold on. We are moving into a period where it is very possible, if not certain, that the lion's share of mediation will come to take place on the Internet. While it is often our tendency to resist change, mediators should also recognize that this will result in more accessible, capable, and affordable mediation for the masses.

IMMEDIATE PRACTICAL USES OF THE INTERNET BY MEDIATORS

1. Use Email for Everyday Communications

While Email is not a panacea for all communications, it is certainly effective for moving information in a speedy, silent, affordable way. There is little reason today, beyond habit, for distributing hard copy correspondence and materials. You can almost certainly distribute the exact same information, looking just as good or better, in an instant over the Internet at virtually no cost. Digital information is also easily stored, filed, and searched. Large file cabinets are on the way out. Setting up an effective directory structure for client documents and a mail box for each case makes case management and accessing documents easy.

2. Post and Manage a Descriptive (Public) Website

If you develop and post a web site that you are proud of, you can dramatically lessen all of your other promotional costs as a mediator. You can commonly include your URL (your "www") address in directory listings, at no additional cost. You can shrink the size of all of your other advertising, because a consumer or referral source only needs to know is your website. Your website is your first opportunity to impress potential clients and referral sources with your professionalism, and to share with them the nature of your practice. We know that mediators are commonly selected in an open market system. It is important that mediators learn to put their best professional self forward on the web. In the near future, mediator sites will include audio and video clips. It can be argued that, in the mediator market economy, the more information that the consumer has, the more capable they will be in determining which mediation services to pursue.

3. Post Forms, Articles, and Handouts To Avoid Sending

In addition to having a public descriptive website, mediators are wise to consider posting forms, articles, handouts, and business documents on the web. Anything that the mediator would regularly send out can be posted, though not necessarily linked, as part of the public web site. The cyber medi-

ator sends very little, if any, hard copy mail. Having all of your business documentation posted on the web allows the mediator to respond to inquiries about services with quick preset emails that include all of the basic client contact information with embedded links to web pages. In terms of responding to client inquiries and “getting the case,” you cannot beat email.

4. Use Email for Meeting Notices, Homework and Caucus Discussions

Particularly in cases involving more than two participants, it can be efficient and effective to notify parties of meeting times, changes, and the like by email. It is often good to establish a protocol with participants as to how often they check their email. A suggestion is to check their email at least every 24 hours unless out of town.

Email is also a wonderful way of assigning both joint and individual “homework” to mediation participants. Rather than having to come up with the perfect homework assignment during the session, the mediator can simply say that “some homework” will be coming by email and then, after the participants have left the office, the mediator can carefully draft the best possible homework with a continuing record of the assignment. This stimulates beneficial participant consideration between mediation sessions at virtually no cost.

Given this powerful ability to assign participants “homework” questions, the meaningful dialogue, and change that occurs through Internet discussions, these benefits will move many mediations away from face-to-face sessions models. It may be that we move to a model where there is first a face-to-face meeting to ensure agreement as to process, hear initial presentations, and frame the agenda, but move to the Internet where dialogue will be done until there is reason for another physical “summit” to mark off progress and agreement or confirm the challenges.

Beyond homework, a good measure of what we are used to doing in caucus discussions can certainly be done online. We caucus in mediation because we know of the benefits of allowing each side the ability to think without the penetrating gaze of the other side. Most mediators purposefully break into caucus to create asynchrony to allow for each participant to be contemplative, thoughtful, and at their best. The Internet and its asynchrony offer

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these same “caucus” opportunities to assist participants to be at their best
only much more affordably.

5. Send Draft Agreements as Attached Files

There is great benefit to getting agreement drafts to participants as quickly as possible in a form that: 1) conveys the status of the mediation dialogue, and 2) gives participants control over the actual text so that they can fashion new responsive proposal and counter-proposals.

For example, agreement terms that have not yet been reviewed by participants for acceptability may be stated in italics, while provisions that have been reviewed and accepted are placed in plain text. Provisions that have been reviewed and rejected may be stricken, while a comment to participants is put in bold text. At the end of a mediation, the agreement is finished by stripping out the italics, strikeouts, and bold text. Participants may respond to drafts, by typing their responsive provisions in a particular chosen color.

6. Use Nicknames, Mailboxes, and Filters for Client Matters

Consistent with our themes of saving time and saving money, it makes sense for the mediator to create a “nickname” or “alias” for a client group. If we have six parties and eight attorneys in a matter, we are wise to simply enter those fourteen email addresses one time and then associate a nickname (such as “Smith”) to that group of email addresses.

While we are at it, it makes sense for us to create a “Smith” mail box and transfer all email on the particular case into this case mailbox. We are also wise to advise all participants in the case to utilize the word “Smith” in the Subject Line of all emails. Finally, we can then set a filter in our email program so that all incoming and outgoing email with “Smith” in the Subject Line will be automatically filed in the Smith mailbox. We accomplish most of our case filing in the process!

7. Other Helpful Tools: Voicemail, Efax, and Instant Messaging

Voice mail has come to be accepted and utilized. The reasons are clear: saved labor costs, twenty-four hour service, worldwide access, and full confidentiality. I am convinced that clients like it when I say that I am the only one who checks my voicemail and they can leave confidential messages. Even in offices that have a real live person answering the phones, there is typically a voice mail back up. Many prefer voicemail for speedy and certain communications.

The Cyber mediator is wise to recognize the cost savings of voice mail as well as the flexibility and confidentiality. If you utilize voicemail, be sure to mention your email address and website in your outgoing message. Even when you are not there, potential clients and referral sources can get to know you from your website. Your voice mail and website are your new and improved electronic waiting area. They are working for you twenty-four hours a day, 365 days a year. The more memorable that your email and website addresses are, the better. If they say something about the work you do then all the better.

Efax at www.efax.com is a helpful augmentation to our communicational options. With efax, you can send and receive faxes as email attachments. This process saves paper and allows for easy filing in your case email mailbox.

Instant messaging, such as that available from www.icq.com, allows you and agreeable others to be connected in a real time direct communication link. I can look at my instant messaging menu and see which of my work partners are presently on line. If on line, I can directly and immediately communicate with them.

8. Subject Lines

In addition to utilizing nicknames for participants in a mediation, creating a mail box for each case and filters to make filing automatic, the mediator is also advised to recognize the importance and power of subject lines. For example, you may have a name for a matter and reference to content such as "School Location: Confirming Identified Options from May 1 Meeting." The name of the matter will allow a filter to be set to the "School Location" mailbox, and the title clearly identifies the content of the message. As more and more communications are made through threaded discussion environments, where discussions are summarized by subject lines, it makes great sense to be highly strategic with phraseology. Subject lines are the mediator's first, and best, opportunity to frame a message. That frame, through replies, may be carried on well into the future.

The mediator is advised to keep emails short and on subject. It is often better to send more than one email with different subjects than one long email. Within each email, have short paragraphs and break where a response is called for. This will allow participants to helpfully embed their responses in the context of the earlier email.

The mediator should also have an email signature, such as:


~~~~~  
Jim Melamed  
www.to-agree.com  
541.345.1456  
~~~~~

This avoids having to sign your name to each email and also provides each recipient with access to your website which includes all important information. Remember, the recipient will already have your email address from the email message you send, so there is no need to repeat the address.

9. Harvest Key Email Addresses

It is also wise for the mediator to harvest email addresses of referral sources, satisfied clients, and key constituents for purposes of sending a periodic email newsletter. As wonderful as the web is, it is “just there.” In the rush of everyday life, it is easy for even those who like you to forget to go to your website. So, a mediator can remind clients by sending a monthly or bi-monthly short email newsletter with a few, short, news items that are also on the mediator’s website. In this way, mediators can use email strategies to drive traffic to their websites. A cheap alternative is to group your email addresses under the “bcc” field, and then send your announcement to yourself. Each “bcc” addressee will get a copy of the message without all of the addresses listed. This works for up to 50 or so emails, but beyond this, you will want an Internet mailing system such as that available at www.mediate.com/services.

INITIAL ONLINE MEDIATION AND ADR SERVICES

Initial efforts at establishing online dispute resolution services have been made including the following:

ClickNsettle at <http://www.clicknsettle.com>
CyberSolve at <http://www.consensus.uk.com/cybersolve.html>
CyberSettle at <http://www.cybersettle.com>
Disputes.org at <http://www.disputes.org>
iCourthouse at <http://www.i-courthouse.com>
Internet Neutral at <http://www.internetneutral.com>
MIRC at <http://www.mediate.com>
Online Mediators at <http://www.onlinemediators.com>
One Accord at <http://www.oneaccordinc.com>
Resolution Forum, Inc at <http://www.resolutionforum.org>
SettlementNow at <http://www.settlementnow.com>

Squaretrade at <http://www.squaretrade.com>

DIFFERENT TYPES OF ONLINE ASSISTANCE

Set System Processing: Blind Bidding

Cybersettle, CyberSolve, Clicknsettle and SettlementNow are websites that allow voluntary participants (often insurance companies and claimants) to submit financial offers for settlement without the offer being revealed to the other party. Offers are submitted over software that calculates whether the offers are within a designated range. The parties agree ahead of time that offers that are within a designated range will be resolved by splitting the difference. When the offers remain too far apart, the software keeps the offers secret and other negotiations can continue without any of the offers being shared.

This process is based on software that manages communication and performs a simple set of calculations. While it is a far cry from interest based negotiation, it is still, in certain contexts, a useful settlement device.

OPEN SYSTEM CONTENT PROCESSING

Content based processes, such as those at OnlineMediators (<http://www.onlinemediators.com>) and Resolution Forum (<http://www.resolutionforum.org>), use well organized case development and emailing processes for participants who want to convey their perspectives about the conflict. Email is certainly effective and convenient for purposes of conveying information but weak in transfer of motivation and emotional content.

In the context of content based processes, it is important to remember that audio and video are literally a year or two away as high bandwidth connections become the norm. We can envision a day when participants will choose how they want their thoughts to be represented (text, whiteboard, audio, or video) and only post messages when they are fully satisfied with the content. Multimedia content-based processes are right around the corner.

For the time being, the basic skills of communicating by email are critical for the mediator. Thus, email continues to be the mediator's best friend for purposes of framing and moving discussions forward.

We will continue to see progress in terms of organizing discussions, such as the webboard software used at Cyberweek at <http://webboard.mediate.com/~cyberweek>. During February 2000, nine thousand participants took part in an online conference about online dispute resolution. These discussion products

already include the ability to attach audio and video files. The cyber is about to become much more real!

Content based process will almost certainly become easier to design and implement than more complex, drawn out mediation communications. Designing software to support the effective online mediation of disputes is rather straightforward. The communication dynamics are predictable (process agreement, initial presentations, rebuttal(s), consideration, decision), and one can easily imagine that a good measure of arbitration will be going online whether through textual, audio, and/or video participation.

FRAMING DISCUSSIONS WITH EMAIL

As examples of how a mediator may frame mediation discussion with email, consider the following samples. Note that these are sample emails that are to be modified by the mediator, in his or her professional discretion. While imperfect, these mediator communications demonstrate the type of structuring and framing of discussions that is available through email.

~~~~~

Subject: Online Mediation; Getting Started

Hello party 1 and party 2:

Thank you for using Online Mediation. I am the mediator assigned to your case. My profile is available at <http://www.onlinemediators.com/mediator.cfm?id=1119> I am currently reviewing the case and will be composing some questions to begin the process. I will be sending that message to everyone involved within the next couple of days.

If you have questions about the process or would like to send me additional information, you may reply to this message. Remember 'Reply' will send the message to me alone. 'Reply All' will send the information to me and the other party.

Again, thank you for participating. I will be back to you soon.

Your Online Mediator

~~~~~

Subject: Time to Get Started

Hello. This is your friendly online mediator again.

Unless I hear otherwise, I will assume that you are satisfied with my selection as your mediator. I will do my best to assist you.

I want to confirm that you understand the voluntary nature of this process and also that you have complete decision-making power. I also want to confirm that our discussions are confidential. No communication will be held against anyone in any possible future contested action.

Please let me know of any questions that you have as we begin our discussions. Perhaps the best place to begin is to ask for each of you to summarize:

1. The Issues that you believe need resolution.
2. Your Interests (what you would like taken care of)
3. The Options (different ways we could solve the issues).

Thanks for working with me to resolve this matter. I will be back in touch as soon as I have heard from each of you. I encourage you to do a “reply all” on this message so that we can share this information. If you want to communicate with me individually, you should use a “reply” message or a separate message.

Your Online Mediator

~~~~~  
Subject: Perhaps Some Discussion Between You Would be Helpful  
Greetings,

I want to confirm for each of you that I have read your responses on the Online Mediators intake form and your respective descriptions of the situation.

I am thinking, to the extent that you desire, that it might be good for each of you to more fully share with one another (not just me) your concerns and your suggestions for improving the situation.

Also, do you have any questions for one another?

Your Online Mediator

~~~~~  
Subject: How Can We Make This Work for Everyone?

Hi Folks,

Understanding that we may not settle this matter in a way that will be ideal for either of you, we can only settle this matter if we have some flexibility from each of you.

What degree of flexibility would you be willing to demonstrate if the other was also so forthcoming?

Can you think of any exchanges of arrangements that might be acceptable to you both?

Can you think of any package deals that would work?

Are there any other ways that you could benefit one another?

Your Online Mediator

~~~~~  
Subject: How Important Is It For You To Settle This Matter?

Hi,

I sense your frustration.

I would like to hear from each of you as to the relative importance of solving this matter and being done with it.

How could we do that in a way that you could both support?

Your Online Mediator

~~~~~  
Subject: Time to Make Some Progress

Hi,

Thanks for working with me and the process thus far.

My understanding is that the fundamental question is how can we best solve these issues:

(List Issues as “How can we best . . . “ or “What is the best way for us to . . .”)

Let me now ask, what specific proposals for resolution would you like to make to the other that you believe they may accept?

Your Online Mediator

~~~~~  
Subject: Let’s Think About This Creatively

Hi,

Can you think of two different sets of arrangements, either of which would be acceptable to you?

What would you need to receive to agree to the other’s proposal?

What would you be willing to give, that you understand they desire, if they were willing to go with your suggestions?

Thanks for your consideration.

Your Online Mediator

~~~~~  
Subject: A Set of Arrangements for Your Consideration

Greetings,

As we have not been able to easily resolve this matter through direct exchange between you nor through my shuttle efforts to date, I am thinking that this might be a good time for me to describe a possible set of arrangements that I believe may work for both (all) of you.

In offering this possible “reference point,” I want to emphasize that this is not necessarily the resolution that I recommend. I have not even processed the information in that way. Rather, this is the resolution that, if you were to ask me, I would think that you would both (all) most likely be able to support.

I ask that you give this “reference point” your fullest consideration and please let me know whether it might possibly be acceptable, if acceptable to the other(s), or of any fine tuning that would be necessary for these arrangements to become acceptable.

Thanks for your consideration and efforts!

Here is the reference point set of arrangements that I ask you to consider:

Your Online Mediator

~~~~~  
Subject: Confirming Your Agreement

Greetings,

The purpose of this message is to confirm what I understand you agree to as a means of resolving this matter.

It is my understanding that you agree as follows:

Terms of Agreement

- 1.
- 2.
- 3.

Please let me know if I have misstated this agreement or if I am missing any important pieces.

Your Online Mediator

~~~~~  
For a transcript of online email communications in a divorce case, see:
<http://www.to-agree.com/advemed.htm>

STANDARDS FOR ONLINE MEDIATION

With the rapid emergence of online dispute resolution, standards and protocols for effective participation are now being established.

As an example, the U.S. Department of Commerce and Federal Trade Commission are sponsoring a public workshop on: Alternative Dispute Resolution For Consumer Transactions in the Borderless Online Marketplace (See <http://www.ftc.gov/os/2000/02/altdisputeresolutionfrm.htm>.) This public workshop will examine developments, gain further understanding, and identify potential issues associated with the use of alternative dispute resolution for on-line consumer transactions. The notice seeks public comments to inform the discussion that will take place at the workshop.

A set of initial Online Mediation Protocols have been developed by The Mediation Information & Resource Center (MIRC) (<http://www.mediate.com>) for MIRC's Online Mediators initiative (<http://www.onlinemediators.com>.)

MIRC ONLINE MEDIATORS PROTOCOLS FOR ONLINE MEDIATION

February 13, 2000

Special Note: These Protocols are in addition to online mediation practice consistent with the ABA/SPIDR/AAA Model Standards of Practice to which all MIRC Online Mediators subscribe.

I. Description of the Process

The process of Online Mediation typically involves a series of email messages between the mediator and each participant. In his or her professional discretion, the mediator may utilize joint email communication, web forum (more highly secure) discussion, textual or audio chat, instant messaging, fax, and phone communications.

MIRC's Online Mediators program encourages mediators to structure their facilitation in the following manner:

A. Each participant should be encouraged to present one or more confidential statements to the mediator setting forth the issue(s) they believe are in dispute, their interests for any settlement, and the various options the participant sees as possible.

B. The mediator should summarize the issues and seek to gain agreement that the full range of presented issues will be addressed.

C. The mediator is then encouraged to engage in a series of private electronic conversations with each participant and jointly with participants in the mediator's professional discretion. These conversations are to include questions to fully understand each participant's perspective, interests, and perceived options as well as any comments and suggestions that may further settlement by the mediator.

D. Upon conclusion of the electronic conversations, there should either be a confirmed settlement, including means of implementation, or the mediator's declaration that no agreement has been reached.

E. If there is a settlement, the mediator should prepare a summary of the terms of settlement and ask each side to confirm that they will abide by the terms.

II. SUGGESTED GROUND RULES

A. *Pre-mediation Responsibilities*

1. The participants are asked to notify the mediator of any travel plans or other circumstances that may prevent them from participating for more than 24 hours in the mediation.

2. The participants are asked to notify the mediator of any acceptable alternative email addresses in the event of technical difficulty.

B. *Sending/Receiving Email*

1. In the event the mediator sends a message to both parties at one time, be aware that **REPLY TO ALL** will have you sharing information with all listed participants. If you want to only contact the mediator, be sure that you simply **REPLY**. You can never be too careful in ensuring that only those whom you want to get your message are in fact sent your message.

2. The mediator should respond within 24 hours of receipt of any participant email message or other communication.

3. It is the responsibility of all participants to check their email at least once per 24 hours and to be responsive to mediator communications.

C. *Delay in Sending/Receiving Email*

In the event there is a delay in receiving a response online, the mediator shall be empowered to telephone, fax, or use whatever other means are available to contact a participant. The parties should assume that if there has been no contact for 3 days, they should make every effort to contact the mediator to determine what the problem is.

D. *Attachments*

It is possible that the mediator will be transmitting attachments to certain messages. If this occurs, it is important that all participants are able to read the attachment(s). The mediator is therefore to seek to obtain agreement on

an acceptable format (i.e. Word, Wordperfect, Rich Text Format or ascii) at the beginning of the mediation.

E. Distribution of Messages

All electronic communications generated from the mediation shall not be permitted to be distributed to a non-participant at any time without the express permission of all parties and the mediator. In the event of an inadvertent distribution, all effected participants shall be promptly notified.

F. Management and Disclosure of Information Online

The mediator shall only disclose specific offers and ideas from one participant to another as the mediator is expressly authorized to share. If it is unclear whether a mediator is authorized to share information, the mediator shall request this permission from a participant and only share information with the other participant as is authorized.

G. Privacy Protected

1. The participants agree to not use any of the information presented or received during the mediation in any future legal, administrative, or other contested proceeding nor in the media. This includes all communications between the participants and the mediator, and OnlineMediators program from the earliest contact regarding possible mediation to the completion of the mediation.

2. The participants further agree to not disclose any information presented or received to other people who are not participants to the mediation, with the exception of participant professional advisors (attorneys, financial advisors, union representatives, and the like). In all such events, the fact that a participant consults with a professional advisor does not in any way lessen the confidentiality of the online mediation process. The confidentiality of Online Mediation is intended to protect all participants with the expectation of such confidentiality (non-admissibility and no contacts with media) and also to protect the mediator and OnlineMediators Program.

THE FUTURE

There are already efforts to improve online case management, mediator conflict disclosures, agenda development, consensus determination and voting tools, joint document editing/ incorporating agreement models, and situation/

solution data bases. Assuming that the Internet and high speed connections become as common as the telephone and television, then it is certain that on-line dispute resolution will grow only if based upon the factors of cost and convenience. There will be “set system environments” (processes like blind bargaining and perhaps arbitration), as well as “open system environments” such as OnlineMediators where negotiators and mediators flexibly utilize a number of different facilitative tools.

Perhaps the greatest challenge will be for our dispute resolution processes, especially mediation, to maintain integrity and meaning as dispute resolution moves online. Now, more than ever, we need to define “mediation” exactly before the varied presentation of the process on the Internet blurs and confuses the meaning of the word. There are many other issues, such as: Just how “voluntary” will internet mediation be? How confidential? How will mediators be selected in a way that ensures their integrity? Their competency? What happens when parties do not reach agreement? Stay tuned for consideration of these and the many other issues that certainly lie ahead.

JIM MELAMED is Director of The Mediation Center in Eugene, Oregon and at www.to-agree.com and Co-Director of The Mediation Information & Resource Center (MIRC) at www.mediate.com and on the staff at www.onlinemediators.com. Jim is also Associate Director of the national technical assistance center for special education mediation (CADRE) and a Visiting Professor at Pepperdine University School of Law’s Straus Institute for Dispute Resolution. Jim is former Executive Director of the Academy of Family Mediators and former Chair of the Oregon Dispute Resolution Commission.

