



Technology: Tools for the 21st century mediation

How technology helps companies resolve disputes fairly and efficiently

BY JAMES E. MCGUIRE, ESQ.

Mediation is a preferred way of resolving many modern business disputes. It remains current by refreshing the tools used by mediators. In this century, information technology provides powerful tools for mediators (and arbitrators) to aid in the process of resolving disputes fairly and efficiently. Following is a discussion of some of those tools. Though many may already be in your toolbox, you may learn of others that you will want to add.

Technology helps the parties find the right mediator.

Google and other modern search engines have changed the way we find information. In seconds, the search engine will provide access to mediators and service providers tailored to the needs of the parties. In just a couple of clicks, parties can research an alternative dispute resolution (ADR) provider, read biographies of potential neutrals and access the rules of various types of ADR procedures.

Technology helps the parties get started.

Parties now expect that all preliminary procedures will be handled with phone calls, web-based filing of papers and forms and emails. Most mediations now start with one or more of the parties filling

out a simple online form. These now-standard tools enable the parties to select a mediator and start the process within days of the decision to mediate.

Technology helps the parties exchange information.

Modern mediation is a process, not an event. The process starts with the first phone call or email to suggest mediation. It continues with a case manager or mediator sharing information (usually electronically or through websites) about the process, rules and selection of the mediator, including any disclosures by the mediator. Shortly after being selected, the mediator will contact the parties, usually by a conference telephone call, to exchange information about the dispute; select the time, date and place for the mediation; and learn who will be attending the mediation session. Any available background materials (the relevant contracts and communications) and a mediation statement are usually sent as PDF attachments to an email, sent to the mediator and the other parties. In today's world, mediators also provide cell phone information to the parties so that they can be reached readily before and after the mediation session.

Technology helps information management.

Technology is also a critical component in the effective and efficient management of the information-exchange process in mediation and arbitration. Traditional discovery, including e-discovery, can overwhelm a business, sometimes costing more than the value of the claims in dispute. In many business mediations, the parties will benefit by early involvement of the mediator in managing the information-exchange process. Both parties in a mediation may need information to aid in resolution of the dispute, which may be more limited in scope than the information that would be demanded in litigation or even in arbitration. A neutral party can aid in managing those costs by helping the parties to narrow the scope of needed information and to use technology wisely to locate and share needed information.

A protocol for handling electronically stored information (ESI) is a critical step in e-discovery, whether for litigation or arbitration. Tech-savvy neutrals can help the parties in negotiating the ESI protocol. In some cases, it may be cost-effective to use only one professional e-discovery vendor. It may be easier for the parties to agree on this approach when a neutral aids

that discussion by addressing the concerns that come up in sharing both information and a common vendor. A deeper discussion of search terms and scope (record-keepers, time frames, back-up files, devices to be searched) can be aided when a neutral party is guiding that discussion. Even when the process has been established and is being implemented, misunderstandings and disputes can arise. Fast access to the neutral (email or conference call) can help resolve the dispute. This works best when the parties do not need to spend a lot of time explaining the technology or the is-

sue to the neutral. The neutral who assists the parties in this process can be a mediator whose role is limited to assistance in e-discovery or a tech-savvy arbitrator. Whether the parties use a mediator or the arbitrator, this approach is likely to yield significant savings in e-discovery costs.

Mediation is making great use of technology and will continue to adapt as new methods of finding providers, communicating with parties, and exchanging information are created and integrated into the ADR process.

James E. McGuire, Esq., a JAMS dispute resolution professional since 1989, has extensive experience in all aspects of ADR including mediation and arbitration, as well as serving as a special master and neutral evaluator. He can be reached at jmcguire@jamsadr.com.