

DISSOCIATIVE IDENTITY DISORDER AND MEDIATION: EXPLORING LEGAL CAPACITY

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Dissociative Identity Disorder (“DID”) is a mental disorder where the affected individual has two or more distinct personalities.¹ As a protection strategy against severe, persistent abuse and trauma, DID develops in childhood and lasts the entirety of the person's life.² A crucial aspect of DID is "dissociation," which is defined as a defense mechanism in which threatening ideas and feelings are separated from the rest of the psyche and conflicted impulses are kept apart.³ Dissociation refers to the disconnection from one's environment, emotions, memories, and thoughts. The child's neuronal sense of self-identity is still developing at the time of this acute dissociation and eventually, the dissociated states become fully distinct personality states.⁴

When an individual suffers from DID, they believe they are someone else.⁵ Everything about them changes; their name, speech, handwriting, and background.⁶ The mind and body are interconnected and an alter personality operates on differing neural pathways that manifest in different symptoms and experiences.⁷

DID poses a number of curious legal puzzles. Since some of these personality states may not be aware of the others,⁸ it is not immediately evident how a single individual living in several independent states fits into legal definitions and frameworks. Is an individual with DID considered insane or sane in the eyes of the law?⁹ What if one of the personalities meets the legal definition of insanity, but other ones don't?¹⁰ Because there are distinct human beings all sharing one host body, it becomes complex to disentangle one alter from another when committing a crime.

Mediators attempt to facilitate a mutually beneficial resolution between parties and if a compromise is reached, they have the ability to write up a settlement.¹¹ Once signed, this

¹ *What are Dissociative Disorders?*, AM. PSYCHIATRIC ASS'N (Oct. 2022), <https://www.psychiatry.org/patients-families/dissociative-disorders/what-are-dissociative-disorders#:~:text=Symptoms%20of%20dissociative%20identity%20disorder,or%20reported%20by%20the%20individual> [https://perma.cc/53VP-PKGE].

² Andrea Ashburn, *Dissociated Decision-Making: Contract Competency Evaluations of Individuals with Dissociative Identity Disorder*, 56 COLUM. J. L. & SOC. PROBS. 195 (2023).

³ *Id.*

⁴ *Id.*

⁵ *Dissociative Identity Disorder (Multiple Personality Disorder)*, CLEVE. CLINIC (May 25, 2021), <https://my.clevelandclinic.org/health/diseases/9792-dissociative-identity-disorder-multiple-personality-disorder> [https://perma.cc/7LP3-N6JV].

⁶ Jared Slater, *Can Dr. Jekyll Sign For Mr. Hyde?: Examining The Rights Of Individuals Suffering From Dissociative Identity Disorder In Civil Contexts*, 24 S. CAL. REV. L. & SOC. JUST. 239, 265 (2015).

⁷ *Id.*

⁸ *Dissociation and Dissociative Disorders*, BETTER HEALTH CHANNEL (Feb. 17, 2023), <https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/dissociation-and-dissociative-disorders> [https://perma.cc/6DEM-BJA8].

⁹ Janny Scott, *Multiple Personality Cases Perplex Legal System*, N.Y. TIMES (May 9, 1994), <https://www.nytimes.com/1994/05/09/nyregion/multiple-personality-cases-perplex-legal-system.html> [https://perma.cc/7CDN-DCB7].

¹⁰ *Id.*

¹¹ Arthur L. Finkle and Jon Linden, *Determining 'Legal Capacity' in Mediation*, MEDIATE EVERYTHING MEDIATION (May 11, 2003), <https://mediate.com/determining-legal-capacity-in-mediation/> [https://perma.cc/WVA3-6G5C].

stipulation is essentially a contract that becomes legally binding. Therefore, in order to participate in mediation, an individual must possess adequate legal capacity.¹² Legal capacity is necessary to sue another person, make decisions of a legal nature, and make binding legal agreements.¹³ Not all jurisdictions give a statutory definition of ‘mental capacity’ and *Gibbons v. Wright* sets a standard.¹⁴ There, “the mental capacity required by law is relative to the particular transaction which is being affected by means of the instrument, and may be described as the capacity to understand the nature of the transaction *when it is explained*.”¹⁵ Applying this particular standard to individuals with DID is complex as they possess numerous mental states and there is no current literature on the topic. Therefore, it is likely scenario-dependent and could go either way depending upon the relevant facts.

Presuming an individual with DID is legally sound to participate in mediation, mediation could be a more beneficial alternative to litigation for those afflicted. Mediation allows for flexibility and customization of the process to accommodate the unique circumstances of those involved and adapt the process to reflect it.¹⁶ When the parties sign a settlement stipulation at the end of mediation, they have the sovereignty to discuss what to do in the event an alter personality breaches the agreement and what steps they will take to rectify misconduct.¹⁷ The individual with DID knows more about their situation than others, and the collaborative nature of mediation allows everyone to be part of the dialogue and negotiate mutually acceptable terms,¹⁸ which can only be beneficial in complex transactions.

Mediation can also have therapeutic benefits for individuals with DID, as it provides an opportunity to explore and address underlying conflicts in a supportive environment.¹⁹ The mediation process can promote self-awareness, self-advocacy, and emotional healing for individuals with DID.

In addition, mediation proceedings are confidential.²⁰ This provides a safe space for the individual with DID to discuss sensitive issues and divulge specifics about their condition relevant to keeping the agreed-upon terms—without fear of judgment or stigma. This confidentiality can help alleviate concerns about privacy and protect the individual’s dignity in a manner litigation could not.²¹

¹² Dr. Hanna Jaireth, *Legal Capacity in Mediation: A Short Recap of the Fundamentals*, THE AUSTL. DISP. RESOL. RSCH. NETWORK (Jan. 29, 2019), <https://adrnetwork.blog/2019/01/29/working-with-elderly-clients-mental-capacity-in-mediation/> [<https://perma.cc/E8E3-8X4E>].

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *CPR Mediation Procedure*, CPR DISP. RESOL. (July 1, 2022), <https://drs.cpradr.org/rules/mediation/cpr-meditation-procedure> [<https://perma.cc/5Z3U-QT9M>].

¹⁷ *Stipulations and Settlements*, N.Y. ST. UNIFIED CT. SYS. (Jan. 16, 2020), <https://www.nycourts.gov/courts/nyc/housing/stips.shtml> [<https://perma.cc/Z4MB-3NP9>].

¹⁸ Nathan DeLadurantey, *Understanding the Mechanics of Mediation in Civil Lawsuits*, DELADURANTEY (Sept. 4, 2023), <https://www.dela-law.com/understanding-the-mechanics-of-mediation-in-civil-lawsuits> [<https://perma.cc/8LQH-QX2Z>].

¹⁹ Milan Slama, *Self-Awareness in Mediation*, MEDIATE EVERYTHING MEDIATION (May 17, 2010), <https://mediate.com/self-awareness-in-mediation/> [<https://perma.cc/L3XB-PGKB>].

²⁰ *10 Reasons to Mediate*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/10-reasons-mediate> [<https://perma.cc/7UZZ-DTH3>] (last visited Feb. 18, 2024).

²¹ Jeremy Pollack, *The Importance of Confidentiality in Mediation*, POLLACK PEACEBUILDING SYS. (Apr. 24, 2017), <https://pollackpeacebuilding.com/blog/importance-confidentiality-in-mediation/> [<https://perma.cc/CTD5-RLH5>].

In conclusion, mediation emerges as a promising avenue for individuals grappling with DID, offering a more tailored and supportive approach to resolving conflicts compared to traditional litigation. By prioritizing collaboration, confidentiality, and flexibility, mediation empowers these individuals to navigate legal disputes with greater autonomy and dignity. Moreover, the therapeutic benefits inherent in the mediation process facilitate healing and reconciliation, fostering a more holistic approach to addressing the needs of DID individuals. As the legal community continues to grapple with the complexities of accommodating individuals with this disorder, embracing mediation as a mechanism holds immense potential for promoting inclusivity, understanding, and effective resolution in the face of unique challenges.