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## The Benefits of Video-Conference Mediation – Available Now

By Claudia M. Viera

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**Attorneys (and mediators) are grappling with the best way to mediate cases**, given the current Covid-19 shelter-in-place order. For attorneys concerned with supporting their clients during this difficult time, it is worth considering video-conferencing instead of re-scheduling mediation dates. While some mediations may require in-person mediations at a later date, many do not. Clients may benefit from the security of resolution sooner rather than later, and they can achieve this through the use of video-conferencing.

As a mediator with over 15 years of experience conducting in-person sessions, I have been pleased to find that the mediations I have conducted by Zoom video conference (as well as Facetime video conference) have been remarkably effective. I have found that Zoom, in particular, allows the mediator to create a reasonable simulation of the in-person joint session and confidential private caucus meetings.

Using Zoom, I have held private and fully confidential caucus meetings with different parties and their attorneys in breakout rooms (just as would occur in ordinary in-person mediations.) Zoom breakout rooms do not allow participants outside the breakout room to hear or see anything that is happening inside the room, so it effectively protects conversations from the other side and from the mediator, when desired.

With Zoom, it is also possible to share documents privately with the mediator in the breakout room. In addition, it is possible to share a whiteboard which the mediator can use to demonstrate a decision tree risk analysis for each side separately.

### Protecting the Attorney-Client Privilege – Breakout Room Alternative

As a mediator, I understand that virtual private conference rooms may seem risky to some attorneys. Therefore, some attorneys might prefer using separate connection points for phone calls/video conferences with their clients to ensure total and complete privacy (even from the mediator). These options work well, as long as mediators ensure that all participants can be reconvened with no more than five or ten minutes' notice. Having all parties available at all times helps streamline the mediation process considerably.

### Advance Preparation for Zoom Video-Conference Mediations

Here are some key steps to take in advance to ensure an effective use of Zoom video conference in mediation:

- 1) Hold a joint, pre-mediation telephone call with the mediator and all counsel to ensure that the logistics are clear to everyone. Ensure you discuss how the day will be structured, that the mediator

will send the appropriate video link, whether there will be a joint session or if it will take place in caucus (breakout rooms), how the mediation documents will be signed, and so forth;

2) On the call, discuss whether attorneys would be more comfortable having a separate contact line with their clients which they organize themselves (and can utilize when the mediator is not in their breakout room);

3) Ensure that all cellphone numbers and email addresses are exchanged prior to the mediation (including those of the parties) as each participant will generally sign in separately during this shelter-in-place period;

4) Ensure that everyone sets aside the entire day for mediation and understands that scheduling other work calls will diminish and delay the process for all (although, of course, other work can be done and calls can be made while the mediator is with the other party);

5) Stress the importance of signing in to the mediation from a private, quiet room from a computer (rather than a cell phone) to ensure maximum connectivity and enhanced communication. While cell phones are adequate, the screen is generally too small to allow for effective sharing of documents, photos or other image-intensive data;

6) Encourage all parties to download and practice with Zoom prior to the date of the mediation. Using the free version of Zoom to communicate with family members is an ideal way to practice in advance;

7) Be flexible! These are unusual times and may call for unusual modes of negotiation while we work to ensure your clients' needs for resolution, certainty and fairness are met effectively.

I look forward to serving you at your next mediation – whether online or eventually in person. For now, stay safe, and let's all do our part to protect each other by meeting virtually.

**About the Author:**

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