

How to conduct effective sports dispute resolution & advocacy online

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The world as we knew it has changed dramatically as a result of the pandemic. Sports dispute resolution, like nearly every other sector, has to adapt to remain effective. As is so often the case, however, the commercial world of dispute resolution has moved more quickly than the sports industry in adopting appropriate standards for resolving disputes in this new world. Births, deaths, taxes, and disputes are all certainties in life and, with few exceptions, they pause for no one and nothing. Sports dispute resolution professionals need to embrace this new world and be prepared to move through it effectively. With some forms of social distancing, business shutdowns, and travel restrictions appearing to remain in place for months more, and with people starting to posit views that this work at home situation is workable and inquiring why did we fly around the world so far and so often for seemingly little reason, some of the things we have learned during this time may come to stick.

This article sets out some of the basic learnings of the authors: one a busy arbitrator and mediator in sports and commercial cases in the UK and US trying to apply learnings in a sporting context, and similarly, the other, the Head of Case Management at [Sport Resolutions](#), who oversees hundreds of sport-related disputes and arbitrations at both national and international level, to provide the perspective of the institution, the neutral, and the advocates. Specifically, it looks at:

- Sports dispute resolution characteristics in pandemic
- Moving sports dispute resolution away from live hearings
- Picking the right platform
- Collaboration between counsel and between counsel and the arbitrator or mediator
- Preparing witnesses for the experience
- Agreeing on time-saving tools for efficiency's sake
- Preparing how to look and sound on the online platform
- Practice, practice, practice
- Recording the hearing
- Actively practicing confidentiality
- Dealing with the witness problem
- Dealing with the holdout problem
- Suitability for athletes
- Special mediation issues online

[Sports dispute resolution characteristics in pandemic](#)

Sports dispute resolution is unique in some ways from its commercial counterpart. Time is often very important in sports disputes; events and deadlines do not wait for a case to get resolved and when time passes it is often final and fatal to some aspect. At this time, sports are mainly still on a hiatus (although starting to reopen), anti-doping laboratories are not yet functioning at as high a level as before, en masse, and most governing bodies are focused on addressing financial issues and planning for a restart, so time is perhaps not as significant as it might normally be. In addition, sports cases, or certainly sports disciplinary and governance cases, tend to involve no or low dollar values and offer the prospect of primarily or exclusively non-monetary relief to a party. The analysis of the doctrines of force majeure, frustration, impossibility and impracticability does not differ in any unique way in the sports context. So we are left with sports disputes that really compare favorably to commercial cases in their fundamental characteristics.

Moving sports dispute resolution away from live hearings

Commercial dispute resolution, including in the courts, is moving online, worldwide. By way of example, [JAMS](#) annually has approximately 16,000 cases filed (about 2/3 of which are mediations with the rest being arbitrations), and since mid-March it has conducted over a thousand cases online with more being scheduled daily. The major commercial arbitration institutions have published protocols and guidelines for conducting disputes online, including the following:

- AAA-ICDR's [COVID-19 Update](#), [Best Practices Guide for Maintaining Cybersecurity and Privacy](#), [Virtual Hearing Guide for Arbitrators and Parties](#), [Virtual Hearing Guide for Arbitrators and Parties Utilizing Zoom](#), [Model Order and Procedures for a Virtual Hearing via Videoconference](#)
- ABA SIL's Arbitration Subcommittee's [COVID-19 Quick Reference Guide](#)
- CIArb's [Guidance Note on Remote Dispute Resolution Proceedings](#)
- African Arbitration Academy's [Protocol on Virtual Hearings in Africa](#)
- CPR's [COVID-19 Resource Center](#) and [Model Annotated Model Procedural Order for Remote Video Arbitration Proceedings](#)
- Delos' [Checklist on Holding Arbitration and Mediation Hearings in Times of COVID-19](#)
- IBA's [Cybersecurity Guidelines](#)
- ICCA-IBA's [Joint Task Force on Data Protection in International Arbitration Proceedings](#)
- ICCA-NYC Bar-CPR's [Protocol on Cybersecurity in International Arbitration](#)
- ICC-SICANA's [COVID-19 Messages](#) and [Guidance Note on Possible Measures Aimed at Mitigating the Effects of COVID-19](#)
- JAMS' [Coronavirus Resource](#)
- KCAB International's [Seoul Protocol on Video Conferencing in International Arbitration](#)
- SCC's [Platform for Ad Hoc Arbitrations](#)
- HKIAC's [Guidelines for Virtual Hearings](#)
- [Virtual Arbitration in India: A Practical Guide](#)¹

In the sporting context, Sport Resolutions (and the hearing panels it services, which include numerous international federations and the UK's National Anti-Doping Panel) is currently conducting the vast majority of its hearings by videoconference, a practice which will have already been familiar to its

¹ The India guide is a real surprise as it is among the best and most practical of this group of resources.

users, being favored by many for its practicality and cost efficiency. Pre-Covid, and in the last year alone, more than 100 case-related hearings and meetings were conducted via videoconference.

The Basketball Arbitration Tribunal, long a sports institution offering decisions without in person hearings, has published [a protocol relating to COVID-19-related cases](#)², as [has FIFA](#)³, though these protocols cover substantive law issues more than procedure (and in the case of BAT, which acts *ex aequo et bono* (simply put, from equity and conscience), there is more of a sense of equity in its protocol than could be offered otherwise). The Court of Arbitration for Sport has suspended in person hearings but continues to offer the parties the opportunity to conduct hearings online or to postpone their case until they can conduct an in-person hearing.

As illustrated, online or telephonic hearings in the international context are not entirely new creatures, having been offered by many institutions for many years. In addition, all arbitrators in sports cases (or international commercial cases) have experienced at least a witness or witnesses appearing by telephone or video in lieu of testifying in person, so some aspect of the online hearing experience is not novel and has been practiced. But never has there been this much focus on the subject.

The alternatives here are simple and straightforward.

- First, hearings can be postponed to a date when both in person hearings and airplane travel are deemed to be safe again. Consideration must also be given to each country's public health measures, such as border closures and mandatory quarantine on arrival, as well as reduced or suspended air travel offerings. Even when travel is deemed safe again, those considerations may make it impractical, and still impossible for some, to do so. There is very little ability to predict successfully when those restrictions will end, and this may result in either a backlog of cases during some period hence causing further delays or the need to reschedule yet again because government restrictions are not lifted causing further delay.
- Second, the parties and arbitrator can move forward with evidentiary hearings on the dates already set or on dates to be set relatively close in time using online resources. Online hearings are not subject to the various social distancing and travel restrictions that otherwise have characterized the pandemic.

² COVID-19 Guidelines Issued on 20 April 2020 by the BAT President, Vice-President and Arbitrators, <http://www.fiba.basketball/documents/bat/covid-19-guidelines.pdf> (last accessed 11 June 2020)

³ FIFA Covid-19 Football Regulatory Issues, available here: <https://www.fifa.com/who-we-are/news/fifa-guidelines-to-address-legal-consequences-of-covid-19> (last accessed 11 June 2020)

Below we will address the approaches to effectively conduct and advocate in an online hearing process, whether in mediation or arbitration, for sports cases.

Pick the right platform

Just as one may select an arbitral forum, if you decide to go online for your proceeding, make sure you pick the right platform. Dispute resolution, like remote working, has benefitted from tremendous advances in online technology. Platforms like Zoom, Blue Jeans, Webex, and others, developed for collaborative workplace projects originally, offer robust online capabilities for hearings.

Experienced institutions will have already undertaken the exercise of selecting which platform best suits theirs and their clients' needs, and will have mechanisms in place to ensure the confidentiality of the information shared over the chosen platform. The parties can choose their own platforms, and considerations of costs for licenses to use the platforms, and for the various needed features, should be considered.

This article does not purport to endorse any single one of these platforms but the authors have significant experience using Zoom for hearings so the focus will be on effective use of that platform, but the basic principles apply to every platform. The needs of arbitration and mediation will differ and will be addressed below separately.

The characteristics of the “right” platform **for arbitration** include the following capabilities:

1. Ability to hear and see every participant contemporaneously;
2. Ability to share documents on screen so that every participant can observe;
3. Ability to mute all participants who are not speaking;
4. Ability to permit group and private chats during a hearing so that issues can be raised with the Panel appropriately;
5. Ability to provide a secure environment for the hearing, with no ability for interference or impermissible leaks of confidential information;
6. Ability to record the hearing, and;
7. The ability to permit court reporters and interpreters to do their important work logged into the system.

The “right” platform **for mediation** would include the following capabilities:

1. Ability to convene all parties and party representatives in the room together so that everyone can see and hear each other contemporaneously;

2. Ability for the mediator to move into private rooms with each party, party representative, or both, to have private caucuses (discussions);
3. Ability to share documents onscreen with the mediator and any other participant as appropriate; and
4. Ability to warn a party or party representative that the mediator is coming into their private room so as to not disturb interactions of that side.

The ease and flexibility through which parties and tribunal members may join a hearing or mediation is also key. A platform which enables participants to join through a variety of devices, or to be dialed in should there be connectivity issues (an inherent risk in online hearings), is preferable.

Collaboration between counsel and between counsel and the arbitrator or mediator is key

Mediation is a much less formal exercise online than arbitration, and the fallback from a contemporaneous online experience to a telephonic effort is not a substantial change in terms of how the proceeding develops (of course, mediators will tell you that when it is just their voice on the end of the line they lose the ability to read parties' body language and reactions and to express with their own body language and reactions certain aspects of the mediation process, but as a procedural, not experiential, matter proceeding by telephone is not substantially different than video).

Arbitration, however, is a much more formal process. There are legal standards in nearly all jurisdictions for overturning awards and it is not difficult to see how an online arbitration process could fall afoul of those principles. The formality of arbitration, while less than the formality of court litigation, requires the parties and the arbitrator to work together to ensure a robust hearing experience.

The parties and arbitrator should be actively engaged with each other to ensure success. Steps that need to be taken include:

1. Reviewing the arbitration institution's rules to ensure that they provide for a hearing proceeding in the manner being contemplated, including how to deal with holdouts or both sides demanding an in-person hearing (discussed below);
2. Reviewing their procedural and scheduling orders to ensure that the deadlines accommodate moving the hearing online, and developing a procedural order that ensures that the parties and arbitrator have considered all issues that might affect the hearing process and disposed of those issues in a final order (an example of such an order is

[available here](#) - “Attachment 1”) which can be tailored to different procedural rules and arbitral institutions);

3. Preparing a hearing timetable down to the minute if necessary to ensure an orderly presentation of witnesses and arguments, with time for breaks and accounting for the potential for slight delays due to connectivity;
4. Setting steps to ensure confidentiality of the proceedings (more on this in detail later);
5. Sharing contact information for all hearing participants (this does not mean just email addresses (like snail mail these days) but mobile telephone and WhatsApp or similar chat app accounts) so that if there are tech issues or an individual participant has difficulty accessing the hearing or staying online there can be real time interaction to ensure that the hearing continues to move forward expeditiously); and
6. Setting a final procedural order to govern the proceedings.

[Prepare witnesses for the experience](#)

Make sure that your witnesses have access to a reliable and reasonably quick Internet connection, preferably a hard-wired connection but if not then wifi will suffice. Alert them to the fact that their face and upper body will be all that the arbitrator will see framed in the video screen. As a result, witnesses need to be very conscious, even more so than when testifying in person, of their body language. Ensure that they have either an electronic or hard copy of the documents on which the parties will examine them at the hearing and that they know how to search that copy for specific page or exhibit references. The personal electronic or hard copy with each witness and the ability to share documents on screen on the platform are complementary adjuncts for moving things along in the presentation of evidence, and one can be the backup to the other. Advise them to turn off all virtual backgrounds and just use an actual clean looking background in their home or wherever they are testifying from. Counsel them to do all they can to have the time of their testimony be quiet and without interruption or intrusion from others in their home, to the extent they are able (in this time of home schooling and shared home working arrangements, this can be a difficult proposition but it must be one to which all hearing participants aspire). They should otherwise be alone and unaided, because the arbitrator will be able to tell if they are not testifying from their own knowledge or permitted documents. Of course, make sure they do not have before them prepared notes to aid their testimony unless those have been provided to the other side and the arbitrator. Make sure that time differences are disclosed, respected and managed into the hearing process as they become even more important in the online experience.

Agree on time-saving tools for efficiency's sake

It is common in English courts and international commercial arbitration to use prepared witness statements in lieu of direct testimony, so that witness testimony commences with cross examination after the witness is sworn in and their witness statement is entered into evidence and confirmed by the witness. This practice is not followed in a great many other jurisdictions, including in the United States and before the Court of Arbitration for Sport. Using witness statements can have a profound effect on creating a more effective and efficient proceeding and should be considered. So too, the practice of hot-tubbing expert witnesses, another creature of international commercial arbitration practice, should be considered as a more efficient mechanism for presenting technical evidence (if you do not know what this is, check [Google](#)).

Prepare how to look and sound on the online platform

Know that the online video frame forces an arbitrator to focus on your face and upper body, and your testimony or argument, as appropriate, without the distraction of other things in the room that exists at an in-person hearing. Ensure that your, or your witness' online presence is optimized for success. Make sure the camera is at eye level so they can easily look into it when testifying (do not have it low so the camera is looking up, or high so that the camera is looking at the top of their head as both of these make it distracting and may cause the observer to conclude lack of trustworthiness in the testimony). Frame the face appropriately, basically having the camera at the distance and angle where there is only a small amount of ceiling showing. In other words, the screen should consist largely of the face, head, and upper body of the individual appearing, reducing background clutter or ceiling visuals. It goes without saying that attendees should dress as they would in an in-person hearing.

Practice, practice, practice

Given the large number of moving pieces in conducting an online hearing, the first time an advocate or the panel uses the online platform should not be minute one of the hearing. Many institutions, JAMS and Sport Resolutions included, will provide free training on using the platform they support for counsel and parties, and arbitrators and mediators. Counsel must practice with their witnesses and the arbitrator should be involved in at least one final practice run before the hearing with at least counsel for each party to ensure that everyone is comfortable using the online platform. Alternatively, each

party, counsel, witness and panel member should take up the institution's offer of testing the software with them individually before the hearing. Otherwise, valuable, and limited, hearing time will be wasted on learning rather than presenting the case.

Recording the hearing

The relevant procedural rules or institution's practice might provide for the hearing to be recorded as a default. Regardless, it is good practice for the arbitrator to inform parties, witnesses and experts that the hearing is being recorded. Everyone needs to agree on how to record the hearing if there is to be a record to be consulted. On Zoom, settings can be amended to automatically record hearings when they begin. Making use of a separate recording device in addition to built-in software is not recommended, as they might interfere with one another and result in poor recording quality. Break-out rooms should not be recorded. If any private discussions or deliberations are to take place within the main hearing room, the arbitrator should ensure that the recording has stopped before doing so.

On Zoom, or any platform, the party representatives need to be satisfied that the various specific privacy and confidentiality laws, like the EU's GDPR, the onerous California privacy statute, and other regulations that might be implicated with sharing personal information including possibly medical information, are respected and followed. On Zoom for example, there is an option to record the hearing locally, on a computer, rather than on the cloud, which may be preferable. The arbitrator or the institution can make that recording available after the hearing via a regulatorily compliant and password protected file sharing service accessible to all parties equally and at the same time. In some jurisdictions, like in the US, the use of court reporters for online hearings is common and may or may not make sense for your proceeding depending on the cost and the nature of the dispute.

Recording also brings with it the questions of interpretation and transcripts. The Zoom platform enables interpreters to join and provide simultaneous interpretation during a hearing, in multiple languages. If the more traditional, consecutive interpretation is preferred, that will need to be factored into the hearing timetable, as it may effectively double the time required for the hearing. Of course, there must be an agreed mechanism for the interpreter(s) to alert the arbitrator if there are issues with the interpretation or if the witness is speaking too quickly.

Similarly, if live transcription is required, make sure the court reporter has a way of communicating directly with counsel and the arbitrator so that if there are problems (e.g., if the witness is speaking too quickly or their Internet connection is lagging or buffering or they are speaking over counsel too often), those issues can be resolved immediately. And be sure to have a way to display the live transcription

that does not interfere with the conduct of the proceedings, which may perhaps another computer or display for the arbitrator(s) and counsel.

Lastly, the same confidentiality provisions which are applicable to in-person hearings apply to virtual ones, and any procedural order should prohibit any recording of the hearing other than with the consent or direction of the arbitrator.

Actively practice confidentiality

There have been headlines about privacy and confidentiality concerns with various platforms. Until recently, apparently Zoom was sharing user data with Facebook under a deal it had had with Facebook from its early days; they are no longer doing that. There are daily media stories about “Zoom-bombing” where uninvited guests appear on Zoom calls and display information or photos you might wish to un-remember later. These stories stem from unsophisticated Zoom call participants failing to take adequate measures to protect their security on Zoom, and can easily be avoided.

Make sure every case has a unique Zoom meeting code generated for each hearing, that there is a separate password requirement, and preferably, that they are distributed to parties separately by email. The Arbitrator can issue an order requiring the login credentials to be maintained as confidential and not shared with anyone who is not a counsel, witness, or consultant for the case.

Use the waiting room feature on Zoom whereby everyone coming onto the call must pass through a waiting room where they are cleared to go to the hearing based on their name or other identifying features. Do not post or allow your clients to post any aspect of the meeting credentials on any social media or online. These basic steps have kept arbitration hearings in institutions that use them one hundred percent free from outside intrusion and parties should insist on them as a basic level of service, and confidentiality, for the hearing.

The witness problem

Lawyers have raised as an issue that arbitrators are not able to effectively gauge witness credibility online because they cannot see the witness in person and in the totality of their person with the benefit of observing body language. In addition, the argument goes, there is no way to know for certain that a witness is not being coached during online testimony.

In response, here are some considerations:

1. Witnesses have been testifying by video for at least a decade in arbitration proceedings and there is not a great upswell in vacated arbitration awards as a result nor is there a wealth of literature discussing the problem of witness credibility on video.
2. Witness credibility on video is gauged in the same way it is in person, except on video the arbitrator has a more focused look at the witness, whose face and upper body are now framed in a computer screen without distraction from other things going on in the room. This can be enhanced in Zoom by utilizing the Speaker View as opposed to Gallery View when a witness is testifying.
3. There is ample social science research that suggests that human beings are poor judges of witness credibility in any event, with computers being able to do a better job spotting liars than human beings. Perhaps the issue of witness credibility is much ado about nothing.
4. On the coaching point, it is not video testimony that encourages coaching, it is unscrupulous counsel and parties. But given the very personal and focused camera angle for witnesses, when set correctly, coaching should be self-evident, as should the sounds of coaching, whether vocal, of typing, or of paper being shuffled around. Coaching simply does not go on very much in a video witness environment. In sports, given that most awards involving athlete discipline are public, and we operate in a small community where everyone knows everyone, counsel who engages or encourages this conduct would be identified and become known in the public arbitration award, which by itself should be a sufficient check on curbing such activity.

The holdout problem

In some recent cases, one party or both have decided they do not want an online hearing and want to wait for restrictions on in-person hearings to be lifted. In some cases this may be an appropriate decision of the parties, in others the arbitrator may determine that the hearing should proceed as originally scheduled albeit online, or that the hearing should be set to proceed online from the outset.

For the holdout problem, the first line of inquiry has to be what do the arbitration rules permit the arbitrator to do. Does the arbitrator have the authority under the rules to determine the form of the hearing even if the parties have a different view?

By way of example, the JAMS Comprehensive Arbitration Rules and Procedures provide in Rule 22(a) & (g) that:

“(a) The Arbitrator will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator may vary these procedures if it is determined to be reasonable and appropriate to do so ...

(g) The Hearing, or any portion thereof, may be conducted telephonically or videographically with the agreement of the Parties or at the discretion of the Arbitrator.”

The ICC Arbitration Rules provide in Article 22(1) that tribunals and parties have the duty *“to conduct the arbitration in an expeditious and cost-effective manner.”*

Sport Resolutions’ Arbitration Rules provide at article 8.1 that, *“The Tribunal shall conduct the proceedings of the arbitration in such manner as it considers fit and may follow any arbitral procedure agreed by the parties if it is in the Tribunal’s opinion reasonably practicable so to do.”*

The CAS Code of Sport-related Arbitration (“CAS Code”) provides in R44.2, governing ordinary proceedings, that, *“The President of the Panel may decide to conduct a hearing by video-conference or to hear some parties, witnesses and experts via tele-conference or video-conference. ”*

These rules are very express in their grant of authority to the arbitrator to make these determinations. Other sets of rules are not as clear or express.

After making the determination that there is suitable authority for the arbitrator to make the decision to conduct a hearing virtually over any party’s objection, then the arbitrator must determine if an online hearing under the totality of the circumstances is the right form for the hearing in the particular case. It really is a case by case determination, not susceptible to a blanket rule.

Even in the face of objection by one or both parties, the arbitrator has to be willing to make the decision, and communicate it to the parties, on the form of the hearing and stick to it and proceed accordingly.

The athlete issue

Athlete arbitrations are usually not consensual in the ordinary sense, outside of perhaps certain employment or sponsorship/licensing disputes where an arms’ length negotiation might have resulted in the arbitration provision in their agreement. Jurisdiction on an arbitral institution is generally conveyed by way of referral clause within a sports governing body’s rules, or by a contract that was required to be signed as a condition of event participation, which some may argue is a legal fiction of consent. Various bases are given for this; such as, by agreeing to the terms of membership in their member sports federation, athletes agree to certain terms as a condition of entering an event, and similar rationales. But ultimately these are take-it-or-leave-it determinations.

For this reason, where it exists as a last recourse, it appears that the Swiss Federal Tribunal has taken a closer look at these cases perhaps differently from its approach to straightforward commercial disputes.

In any event, when athletes are facing losing the right to practice or participate in their sport, perhaps it is significant to them to have their proverbial day in court, live and possibly in person, rather than through the filter of an online experience (certainly conducting a hearing on the papers without their consent may raise concerns). Perhaps there is good reason, psychological or otherwise, for enabling in person hearings for athlete discipline cases. This consideration may auger in favor of postponing athlete cases that might otherwise be ready to move forward until after those cases can be heard in person, if the athlete so requests. Arbitral institutions and sports governing bodies should take a hard look at this issue in athlete discipline disputes. In the end, counsel and the arbitrator should consider this issue before determining the form the hearing will take.

The authors have provided a possible form order for managing an arbitration case headed toward an online or virtual hearing, which offers views on the key issues to be addressed by the arbitrator and the parties in advance of the arbitration hearing to ensure success; this document can be [found here](#) – Attachment 1.

[Special mediation issues online](#)

There still remains seeming reluctance to mediate most sports disputes, at least internationally. There are many reasons suggested for this, including that sports is inherently distributive, with one party achieving success by winning, and all others are losers (there is little room for a win-win, particularly when you gain a point for a draw in football). In addition, international sport is dominated by entities based in civil law jurisdictions (those of the continent of Europe), represented by civil law lawyers, where mediation is not widely taught or practiced. There is considerable room for the use of mediation, particularly early stage mediation, in international sports practice, and the use of it could benefit the dispute resolution process for many reasons, most of which are cost and relationship sparing focused, both particularly relevant in sport environments where close relationships are formed and need to be maintained to achieve sporting success. (For a recent article extolling the benefits of early stage

mediation in sports disputes, see Benz, [Early Mediation of Sports Disputes Equals Efficient Outcomes](#)⁴).

Mediation is an inherently consensual process, where a neutral third party assists the parties to find a solution to their dispute that they can agree on. There is no ruling or order or award that comes out of mediation; there is only an agreement and the parties can choose to consent to that or not. There is no way to compel a party to agree to a mediated resolution; the parties have to want to agree to resolve their dispute or the dispute is not resolved and it continues on. Mediation offers considerable flexibility in outcome for the parties and considerable protections of confidentiality before a dispute becomes public, with assistance in an informal environment from an expert in the subject matter of the dispute.

The online environment presents considerable opportunity for use of mediation. With online mediation, scheduling and availability of key players, and specialized sports mediators, is maximized. There is no need to travel and the process can be conducted from home, an office or from anywhere in the world, time zones permitting.

Mediating online is not very different from mediating in person, if the technology is right. So long as the mediator can bring the parties and counsel together in one virtual room with the mediator and move them into separate rooms for private caucuses, can see documents shared by the parties with the appropriate level of confidentiality, and can otherwise communicate clearly with the parties, the process looks and feels a lot like in-person mediation. Using and gauging body language beyond the face and upper body is near impossible, but perhaps this forces the participants to focus more on expressing themselves in language more clearly and persuasively and to use the body language that can be conveyed more effectively.

With the Singapore Convention (the mediation equivalent of the New York Convention for arbitration, as some would refer to it) entering into force in September 2020 (with 52 signatories already since its opening for signature in August 2019), mediated agreements will become just as enforceable as arbitration awards worldwide. As a result, the international enforceability that highlights the strength of international sports arbitration awards would become a hallmark of mediated agreements arising from mediation, even if conducted online. When conducted early in the lifecycle of a dispute, and where

⁴ Jeff Benz, 'Early mediation in sports disputes equals efficient outcomes', lawinsport.com, 8 June 2020, last accessed 11 June 2020, <https://www.lawinsport.com/topics/item/early-mediation-in-sports-disputes-equals-efficient-outcomes>

successful, online mediation often is the most effective and efficient way to resolve a dispute, without excess cost or delay.

We have included with this article a checklist ([available here](#) – “Attachment 2”) for online mediation of sports disputes that might provide views on the successful conduct of online mediations that can be found here.

Conclusion

One of the tremendous benefits of the pandemic is that we were all forced to work from home doing our usual work in new ways. We have effectively been forced to conduct online hearings for arbitrations and mediations, when we probably should have been using this method a lot earlier given the advances in technology that enable an effective online hearing with minimal expense to occur. We have learned that perhaps we do not need to spend the tremendous resources required to fly a group of people around the world to sit on a one-day hearing, with the attendant logistical and travel complications that accompany. Allowing witnesses to testify remotely makes them more available rather than less, because they do not have to devote multiple days to travel to testify for an hour or two when they can do it from home.

There are also positive effects on diversity (based on gender, race, location, legal tradition, etc.) of arbitrator or mediator appointments in this environment. No longer are parties or institutions limited to selecting arbitrators or mediators from a particular geographic location. For example, the entire pool of experienced women sports arbitrators or mediators worldwide becomes available instead of those who can cost efficiently participate from a location nearby to where the hearing will be held. For arbitrators and mediators who are parents and have childcare responsibilities, carers, or those with physical impairments which may normally prevent them from engaging in extensive travel, new opportunities for appointment should present themselves. Where visa restrictions might have prevented some arbitrators to sit, those will no longer exist in virtual hearings or mediations. Parties can have greater choice as well of arbitrators across the entire spectrum, not just based on diversity, when everyone can participate online, subject only to constraints on time zones and commitments to work possibly at odd local hours.

So, imagine a world where out of town and out of country travel is reduced for advocates, arbitrators, parties, and witnesses, where hearings can be conducted from anywhere with an Internet connection for no additional expense, where witnesses are more available than ever before, where scheduling hearings is made easier, where hearing out of pocket costs are effectively reduced to nearly nothing, where there is a greater pool of available arbitrators or mediators, and where delivery of final binding

arbitral awards or mediated agreements is accelerated not slowed down? This is the brave new world we as sports dispute resolution professionals can create for our industry with very little adjustment to current rules and structures. With any luck, we, as sports industry professionals, and dispute resolution professionals, will take this learning to heart, arising from this tremendous worldwide tragedy, to bring new light and life to this thing we do, and insist on using these newly rediscovered or refined techniques to deliver improved, efficient, expeditious, and binding dispute resolution.

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Authors



Jeffrey Benz

Jeff is an accomplished arbitrator, mediator and certified electronic discovery specialist with JAMS in Los Angeles and London and is a Door Tenant at 4 New Square Chambers, London.

Jeff started his law practice in San Francisco, first with a small maritime and admiralty firm and then with a major international law firm (Coudert Brothers) as an antitrust, commercial and IP litigator. As a former General Counsel of the United States Olympic Committee (where he was responsible for all of the legal work (commercial, regulatory, governance, and otherwise) of the world's largest and most successful National Olympic Committee), and other leading sports entities (including a stint as a California licensed professional boxing promoter, and separately as professional beach volleyball executive), and as a former athlete, Jeff's sports credentials are without compare, though sports disputes form only a part of Jeff's overall dispute resolution experience and practice.

A Court of Arbitration for Sport arbitrator and mediator for over 20 years (many of his cases would be characterized as leading or high profile cases, particularly in doping-related matters), Jeff has acted as arbitrator or mediator or counsel in a wide variety of sports, including, among others, archery, athletics/track and field, badminton, basketball, biathlon, bobsleigh, boxing, canoe and kayak, cycling, equestrian, figure skating, football/soccer, golf, gymnastics, ice hockey, rowing, rugby, sailing, shooting, skateboarding, skeleton, speedskating, surfing, swimming, table tennis, taekwondo, team handball, tennis, triathlon, volleyball and beach volleyball, water polo, and wrestling, and in cases

involving complex disputes and transactions involving sponsorships, film financings and production, technology, licensing, and live events in the sports and entertainment industries. Jeff's wide and varied subject matter expertise in sports includes disputes involving commercial/licensing, governance, discipline, doping, matchfixing, selections, transfers, employment, rulemaking/regulatory, safeguarding, and technology issues.

In 1998-99, Jeff was one of five members of the independent Mitchell Special Bid Oversight Commission, headed by former US Senate Majority Leader George Mitchell, which was charged by the USOC with investigating allegations of vote buying, influence, and bribery in the bid for the 2002 Olympic Winter Games in Salt Lake City. The recommendations made by the Commission were adopted in whole by the USOC, and the International Olympic Committee adopted many of them when it reformed its Olympic Games bid process.

Jeff is Chair of the National Collegiate Athletic Association's Infractions Referral Committee and is a member of its Independent Resolution Panel. He is a member of the World Athletics Disciplinary Tribunal and is a Sport Resolutions arbitrator and mediator. He is also a member of the doping panels for the PGA Tour and Ladies Professional Golf Association.

He is a long-time member of the Sports Lawyers Association Board of Directors and former chair of its International Committee, and he is a member of the National Sports Law Institute, both of which are based in the US.

Jeff is a CEDR accredited mediator, an IMI certified mediator, a Fellow of the Chartered Institute of Arbitrators, and a Fellow of the College of Commercial Arbitrators.

He has extensive practical experience (as both counsel and neutral) in commercial arbitration, mediation, early neutral evaluation, and other forms of non-court dispute resolution. He is an active, appointed, member of several panels of arbitrators and mediators including the American Arbitration Association, JAMS, Hong Kong International Arbitration Commission, Beijing Arbitration Commission, China International Economic and Trade Arbitration Commission (CIETAC), Shenzhen Court of International Arbitration, London Court of International Arbitration, International Chamber of Commerce, Court of Arbitration for Sport (CAS), and formerly the Rugby Football Union (RFU).

Jeff has taught dispute resolution, arbitration, mediation, and sports dispute resolution as an adjunct professor at the law school at Los Angeles-based Pepperdine University, and he contributes regularly to the literature and international speaking on dispute resolution and sports law.

Since 2013, Jeff has been named annually as one of a handful of worldwide professionals in the Who's Who of Entertainment and Sports Law, where he is one of the few neutrals so recognized in the field. In 2016, the BBC noted he is "widely regarded as amongst the most experienced judges" in world sport. According to Who's Who Legal UK Bar, where he has been listed since 2016, he is "'widely recognised for his first-rate arbitration practice' and clients note he is 'in a class of his own' when it comes to complex sports disciplinary disputes."

He is qualified as a US lawyer as a member of the bar of the states of California, Colorado, Hawaii, and New York, and a number of United States federal district and appellate courts, and he is qualified as a barrister in England and

Wales. Jeff has AB and MBA degrees from the University of Michigan and a JD degree from the University of Texas School of Law. Jeff also attended a semester of law school at Queen Mary University of London and the Institute of Advanced Legal Studies, and started his professional career as an intern in Lloyd's Claims Office, in London. Having lived in Pittsburgh, Detroit, Austin, San Francisco, Denver, and Los Angeles, Jeff now lives in London, splitting time in the US.



Catherine Pitre

Catherine Pitre is Head of Case Management at Sport Resolutions, based in London, where she oversees proceedings before arbitral tribunals operated by Sport Resolutions, including those of international sport federations, and in the UK, such as the National Anti-Doping Panel and the National Safeguarding Panel. She also manages the operation of ad hoc panels for international sport competitions and championships.

Catherine previously worked at the Sport Dispute Resolution Centre of Canada, and for the Federal Court of Canada. Her experience of dispute resolution in the sport sector is wide ranging, and includes matters relating to anti-doping, safeguarding, integrity, governance, disciplinary, eligibility, team selection, and financial fair play, among others. Catherine has overseen arbitrations, mediations, med-arb processes, resolution facilitation, independent investigations, and reviews.

Catherine has been a guest lecturer and speaker for various Masters programs, and conferences. She has delivered training to arbitral institutions and stakeholders internationally.

Catherine is an elected Board member of the international association Women in Sports Law. She was a competitive gymnastics coach and judge for many years.

Catherine is a qualified lawyer and called to the Bar in the province of Ontario, Canada. She holds a Masters in International Sports Law from ISDE, and a JD from the University of Ottawa, where she also undertook undergraduate studies in political science and civil law. She holds a MBA Essentials certificate from the London School of Economics.