

**Focus** | *ADR/Solo & Small Firm*

# Virtual Mediations: Building Client Engagement for Success

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Even with the business world starting to reopen in the midst of the COVID-19 pandemic, all is not back to normal and much has changed. A new normal has been developing throughout Dallas and beyond, including in the legal community. In light of court closures with the resulting postponed motion hearings and trials, the options for resolving disputes have been drastically reduced. One long favored pathway toward resolution - mediation - has also been impacted by the COVID-19 pandemic. Social distancing and other limitations, such as travel restrictions, have made it very difficult, if not impossible, to engage in live mediation of cases.

But many clients still clamor to get their disputes resolved and are impatient and frustrated by the current legal environment. Given the challenges of participating in a live mediation, coupled with, for some, a continued eagerness to resolve disputes, many are choosing to participate in virtual mediations through remote platforms such as Zoom.

These virtual mediations have been embraced by the legal community for the simple reason that they have been successful. There are a number of factors which contribute to that success.

To begin with, there are actually advantages to conducting a virtual mediation: it is easier to coordinate schedules, not having to worry about making a flight at the end of the day and no hotel expenses; and it is easier for decision makers to participate remotely.

But fundamentally, a successful mediation requires the parties to be committed to resolution by settlement. This commitment can only occur when the parties are engaged in the process of mediation.

There is concern that the engagement needed for mediation success requires the human element. Some attorneys are reluctant to proceed to a virtual mediation for fear that this human element may be missing in mediating via Zoom. But—with your help—we can achieve the requisite level of engagement in a virtual mediation. Here are some steps we can all take.

You can work with a mediator experienced with Zoom. To be effective, a mediator needs to be entirely focused on the mediation itself and should not be distracted by or lacking confidence in the technology. Plus, your client needs to feel connected to the mediator which is difficult if the mediator appears ill at ease with the platform.

Like the mediator, you too need to display “Zoom fluency.” Pay attention to camera angle, lighting, and background. You want your client to feel that you are sitting right there, boosting their confidence, and thus engagement, in the process.

A pre-mediation session, in which your client has the opportunity to experience the platform and technology first hand, can prove invaluable. This can bolster client confidence when mediation day arrives. Plus, this provides a great opportunity for the mediator to break the ice with your client prior to the mediation day.

Even in live mediations, parties can feel disengaged when their attorneys do all or most of the talking. A client can be left feeling that even though it is their case and supposed to be their day, they are relegated to the role of an observer. In a live mediation, a client can usually find a way to speak up, ask questions and otherwise get engaged. But virtual mediations, by nature, come with built in distance: the participants are all remote from each other, as they are, literally, in separate locations. The risk of disengagement is high: your client is sitting alone, probably at home, in a makeshift office, feeling quite detached from the process.

Get your client engaged. Your client needs to be asked questions and offered opportunities to weigh in. While this may run counter to the tactical preferences of some attorneys, it is essential to having an engaged client who will otherwise feel like little more than a disembodied head on a screen.

Virtual mediations will never completely replace live mediations. But given some of the advantages and flexibility of virtual mediations, there will no doubt be a continued place for them long after the pandemic subsides and everyone is back to the office full time.

In the meantime, as long as virtual mediations are a viable option, with these simple steps, you can help get and keep your client engaged in the virtual mediation. This crucial ingredient of client engagement will contribute to a successful virtual mediation day. **HN**



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