



Effective and Personalized Mediation During the Zoom Boom

BY THE HON. MICHELE F. LOWRANCE (RET.)

Lockdown! COVID-19 came in like a wrecking ball. Your whole life—work, meals, entertainment, fun—was now all happening in one space: home. What once had been respite and recovery from work, activities, and school days was now a center of strife. Distractions were suddenly limited to Amazon Prime or Netflix and Lucky Charms for dinner. We expected our spouse to be better during stress, only to find out they may have exposed us to the virus. The capacity to see the marriage as a life-long commitment was replaced with criticism at the micro level. What used to be leaving a marriage for greener pastures had turned into the hope of being locked down with someone else.

During COVID, people had to wait while almost everything seemed to be on hold. At the same time, divorce suddenly became the only option for many, and there was an explosion of divorce being mediated on Zoom. Divorce was one thing you didn't have to wait for.

I was on the bench for almost twenty years in the family law division and mediating high-conflict divorce for seven years on a daily basis. I certainly thought I had seen it all. I was wrong. The complications of ending a marriage now came with anxiety that was at an all-time high. Everyone, including the attorneys, were experiencing their own difficulties. Clients who had always closely shared this most challenging life change with their mediator found the personal connection was missing. For me as the mediator, the personal touch that I had learned as the backbone of mediation was gone. Relationship building was ambushed. It was replaced by technology that we all had to become masters of at break-neck speed.

When I started doing Zoom mediation, it was so stressful that I almost changed my mind. After about two months into COVID, the legal community started to ramp up their skills on Zoom. Often dogs were barking, and children were crying while the lawyers, the parties, and I were trying to concentrate on making life-defining agreements. Other times internet connections were lost at the moment of reaching agreement and, by the time the connection regained, someone had changed their mind. Towards the end of the day, I often thought cases had only settled so people could retreat to their dinner.

And yet, Zoom works!

On Zoom, we separated households, figured out parenting time, divided assets, and settled support issues. We had financial experts, therapists, and coaches on Zoom. Counter-intuitive as it may be with Zoom, I came to learn there were unexpected advantages that mediating “in person” never had. With Zoom, the parties maybe never had to be in the same room as their spouse. There was the ability to bargain hard without having to look your spouse in the eye. Perhaps years

of venom had finally found an outlet where you could process your grievances and, with a click you, could hit the leave meeting button when you have had enough. There is also the unique advantage of being in the safety of your own home or office, reducing the stress level, which in turn helps people think more clearly. People are not in a rush to go home and are in a better mood as they may have just had lunch with their children. And, yes, many days can go for eight hours straight or more, and, by the time we are done, everyone is exhausted. But we got it done!

Given that, I believe Zoom is here to stay. I will share some of what I believe are best practices for Zoom mediation and how to substitute the personal touch and bonding that are usually the hallmark of “in person” mediation. Here are my twelve suggestions:

- 1. Emotions:** Give your clients permission to say how they are feeling as those stressed, angry, sad emotions will be hard to read on Zoom. Remember: There is also a lack of eye contact, which is usually needed to build trust and rapport. Check in with them on this more often than in person because they may not otherwise volunteer their state of mind. I have observed that people need extra attention, so it is essential for the attorneys and the mediator to stay as connected to the clients as possible.
- 2. Micro expressions:** If there is an associate on Zoom, task them with watching for your client’s micro expressions and tone of voice. You may be too busy calculating figures to notice the nuances of your client’s behavior.
- 3. Financials:** Have prepared or, better yet, have exchanged comprehensive financial information so time in mediation is not used becoming familiar with that content. If the other party waits for hours in a Zoom room, they may become suspicious and frustrated and may misread the effectiveness of the process.
- 4. Optimism:** Transfer optimism about the benefits of Zoom mediation. The parties will initially face the Zoom mediation with a disbelief that it could work.
- 5. Meetings:** Conduct private pre-mediation meetings with your client, yourself, and the mediator to help your client become engaged in the process. It will also give the mediator time to listen to and digest your client’s goals and concerns. Start your relationship building in meetings prior to the mediation. Then conduct a post-mediation meeting, or what I call a debrief, to help your client digest this complicated process. They might not know how to evaluate what has happened in mediation in terms of progress and success.
- 6. Dry run:** Attorneys might help a client who is not comfortable with Zoom do a dry run to iron out their level of comfort and any technical difficulties that could arise.
- 7. Documents:** Get a copy of all relevant documents including balance sheets to the mediator and to the other attorney or party ahead of the mediation.
- 8. Cost-benefit analysis:** Do a cost-benefit analysis with your client detailing the expenses of going to trial versus settling. Include in that analysis what will be the investment of time and the emotional cost to them and their children.
- 9. Texts:** During the mediation, ensure that you and your client can exchange texts so you can continue to communicate off-line privately. You may want to text each other when you are even in the joint meeting room. This also gives them a break from being tied to the computer while they speak with you and allow them to express concerns they are unwilling to discuss directly in the mediation.
- 10. Preliminary drafts:** If possible, before the mediation, start a rough draft of a Memorandum of Understanding leaving blanks for the settlement terms reached in the process as you go along.
- 11. Keep up the momentum:** If mediation is not completed, schedule a follow-up mediation as soon as possible, ideally before the close of the mediation day.
- 12. Stay sensitive to overload:** Allow your client to say when they have had enough and really need to take a break. That could include resting, taking a walk, or closing the mediation for the day. You want to ensure that their decision-making ability is not impaired or has not otherwise reached capacity.

Whether you are in person or in a Zoom meeting, always remember if your own ego becomes part of the mediation, then your client’s needs are no longer the priority. Yes, I know—easier said than done! [FA](#)



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