

Helpful Hints for using Zoom for Remote Mediations

Introduction

The article below, originally written for the South Carolina Bar Dispute Resolution Section, was shared with our office on March 26, 2020. Authors, Karl Folkens and Richard Hinson, have graciously given the NCDRC permission to re-post the article and disseminate to all NC mediators to use as a resource tool for online dispute resolution. We are very thankful to have out-of-state colleagues who are willing to share their knowledge of online dispute resolution with our organization. NCDRC staff is continuing to receive positive feedback from NCDRC mediators who are experiencing great success conducting mediations through remote technology.

This article was prepared by mediators, for mediators. The NCDRC is providing this information to help educated NC mediators on the use of ODR. **Please note, the comments regarding the Agreement to Mediate in the article below are not relevant to NCDRC rules, please disregard. Additionally, all contact information has been removed from the article. Should you have any questions, please contact NCDRC staff. The NCDRC does not endorse Zoom, or any other brand name item listed within the article, nor has the article been checked for accuracy.** However, that being said, I believe this is an excellent read. Thank you, Karl and Richard!

Sincerely,
Tara L. Kozlowski
Executive Director, NCDRC

Article by Karl Folkens and Richard Hinson

Friends,

Richard Hinson and I have developed the following for use in Zoom-based online dispute resolution sessions which we send out ahead of time. Given the Chief Justice's recent Order regarding attendance by video-conference, strong consideration should be given to video-conferenced mediations and arbitrations instead of simply postponing them, at least until the coronavirus crisis is over.

TIPS, GROUND RULES and ASSURANCES:

- Make sure you have a laptop, desktop, smartphone, or tablet, with a working microphone and camera.
 - If you don't, you can still call in with any telephone, but that's not ideal.
- Download the Zoom app if you do not already have it. Apps are available for smartphones, tablets, laptops and desktops here: <https://zoom.us/download> (You can

also use a web browser, such as Google Chrome, Firefox, Edge, etc. in lieu of the app).

- You DO NOT need to sign up for Zoom. Just download the app for your device.
- Be in an "Interruption Free Zone", silence your notifications and ringer on your device, and ensure that no one is eavesdropping on your participation during this mediation.
- Test your microphone and video long before participating in the mediation.
- If two or more are participating on separate devices in the same room, you may need to mute your audio to avoid annoying sound feedback.
- Be sure to position your head and shoulders in the middle of the video frame.
- Log on to the mediation at least 5 minutes before the start time to work out any technical difficulties.
- Log on from a secure location and with a secure internet connection. Starbucks, your local library and a hotel guest wifi are not secure locations and don't provide secure connections.
- Remember to be respectful to others and communicate effectively during the online mediation session. Multiple people talking at the same time makes it difficult for everyone to hear.
- Your app may allow "Speaker View", "Gallery View" or other view formats. Pick the one you find most helpful during the mediation.
- You will enter the "Waiting Room" when you sign on. Once everyone is in the Waiting Room, you will be brought into the Main Meeting Room.
- Breakout rooms have been assigned for private caucusing. After the initial caucus, you will be directed by the mediator to click on the button to go to your assigned breakout room.
- If you run into technical problems during the session, signing-off and signing back-in usually resolves those problems.
- Be sure to have power sources for your devices, including charging cables for cell phones, tablets and laptops.
- No one may record the mediation session in any manner, including taking videos or audio recordings of any session. Anyone recording the mediation session without the full consent of all parties, counsel and the mediator shall be deemed to have violated the mediation confidentiality rules.
- You will receive an Agreement to Mediate for this online session which includes a provision allowing email acknowledgements of consent and acceptance. Your email acknowledgement, when sent to the mediator, constitutes your legal signature which will not be subject to the confidentiality rules, and the mediator may report such outside of

the mediation without violating any confidences.

- PowerPoint presentations and the like can be shared with the group in Zoom. If you intend to share anything during the session, learn how to "share your screen" in Zoom beforehand. If using the app, make sure your computer security settings are checked to allow Zoom to share your screen.
- If you encounter any problems before or during the conference, please call the mediator.
- If you get disconnected, use the same link to try to reconnect.
- If you have a total video failure on your end, you can call the mediator above in order to join the conference solely via phone with no video.
- If there is a total failure of the video conference, we have a conferencing number and will go to a traditional audio call.
- Please be patient and flexible as we all work together to try to get this case resolved.

Here are some suggestions to pass along to lawyers:

- Set your screen to "Gallery View" instead of "Speaker View" and watch whether the participants are listening or not. Don't lose your audience. Reading from depositions and the like isn't as effective as looking straight into the camera and taking advantage of the captive audience you have.
- Haven't had anyone use a PowerPoint presentation or the like, yet; but that's very doable in Zoom. If your case is well-suited for PowerPoint, learn how to do that on Zoom.
- When another lawyer or adjuster is speaking, look into the camera and listen. You're asking them to give your client and you lots of money, or you're asking the other side to accept significantly less than they expect to receive. They can see you doing other things, such as checking email or surfing the web, in an even more conspicuous way than in a standard in-person mediation format, which seems counter-intuitive. But think about it: They're stuck staring at a 24" - 27" television screen and taking in every pixel, rather than sitting in a 400 sq. ft. conference room with lots of places for eyes to wander!
- If your client(s) and you are sharing the same camera, set it up ahead of time so the mediator can see everyone, or at least arrange for them to have their own devices (being sensitive to the feedback issue).
- Unless it's a "speed mediation", be mindful that many of the same mediation techniques that are used in a live, in-person mediation also occur in an online mediation. Even one nationally-renowned mediator who uses Zoom regularly is reporting that non-lawyers are finding the online process more engaging than the lawyers. I think lawyers tend to be more impatient, and we old lawyers are especially thinking, "Can't we just move on!" For many clients, this is their entire life and most likely their first real encounter with the judicial system. Richard Hinson commented to me on a successful Zoom mediation he conducted yesterday where he had to intentionally slow the process down to keep people focused. As some of you have heard me say before, mediation is like baking a

cake, and you don't want to take it out of the oven too early or else it will fall. The online version of mediation seems to accentuate all of that.

- In that same vein, be sure to give your clients some screen time with the mediator. Their comfort level with the process will go up the more engaged they are in it.

Some tips for mediators:

- Be sure to have a computer with a fast processor and the best Internet speed your area offers. We have 1gig service now in Florence, and it's well worth it. We tweaked the firewall to get as much throughput as possible, and it's paying off in these online conferences and mediations.
- Use a wired connection as your best option assuming your modem can handle the speed. A wireless connection is dependent upon your wireless access point/router bottleneck, and there may be a significant price to pay if you're choosing wireless over wired.
- A 27" monitor gives you much more real estate to work with when more than four connections are videoing in. I did one yesterday with ten participants, and the larger monitor allowed for plenty of room for chats, managing breakout rooms, etc.
- When folks log in, use the "rename" function to change what's displayed. "John Smith" looks better than "Johnny's iPhone." There's plenty of time as people are coming in to do that on the fly.
- Learn how to create breakout rooms on the fly. When a lawyer asked to speak with an insured about a *Tyger River* demand in a private room, they're impressed when you can move them into their own private room instead of relegating them to calling each other on their cell phones. Same with "woodshed sessions" with lawyers. Take them into a separate, secure room, and have at it.
- Get at least the Pro version of Zoom. The free version has fewer features and ends after 40 minutes! At \$150/yr., the Pro price is well worth it, even if you only use it a few times a quarter.
- Use the Calendar Invite feature to schedule. You can add to it (like we do with the TGRAs listed above), and it will populate the date into the recipients' Calendar (in most cases) without their having to do any manual importing.
- Offer up a "Dry Run" late in the day one day before the scheduled mediation. Invite the lawyers and anyone else to sign up in a separate Calendar Invite at, say, 4:00 p.m. three days before the mediation. For lawyers (and their legal assistants) new to online discussion platforms, such a session will go a long way to helping them feel more at ease when the actual mediation begins. I had one lawyer who was very tentative about the whole process go through such a dry run, and then she was helping the others on her team during the actual session on how to navigate around.
- We're still working through the best practice to push the initial "Agreement to Mediate" out and get consent from everyone. That continues to be a work in progress, and you'll

note how we're struggling with that with the consent provisions in the TGRAs above.

- Buy a decent microphone. Most device-built-in microphones have a tunnel/well effect that can be better avoided with a good microphone. I use the Apogee MiC96k USB mic which I think has been discontinued. It sits below screen level, is portable, and was at the right price point. There are many others out there. Do some research on podcast mics, and you'll see what's available. It's money well-spent.
- Do some dry runs with your office staff, adult children, and anyone else you can corral from the first step of sending out the Calendar Invite to actually getting them into the Welcome Room, into the Main Room and into breakout rooms.
- Learn how to Share Your Screen. You can display the Mediated Settlement Agreement and walk through it with everyone...Folks can even watch you type it up, and if you're doing "single text mediation", it's outstanding. Remember, you have to set it up before starting the Zoom app. If you're on a new computer and wait until the actual mediation, you'll have to sign out and sign back in to give your computer permission to Share.
- Learn the nuances to renaming the Breakout Rooms. Breakout Rooms 1, 2 and 3 don't work very well when you're in the middle of herding cats. For multiple parties, I've found using the party side and last name of the team's lawyer as the best way: "Defendant - Jones' Room". An alternative is: "Allstate Room" or "Walmart Room", etc.
- Learn the "Mute All" and "Unmute All" buttons, and how to quickly mute and unmute individual speakers. That will save time clicking each individual participant when a session begins. You'll find that keeping everyone muted except for the speaker and the person on-deck helps prevent feedback, tapping pens on desks, background jackhammers, and the like.
- Be mindful of when to bring folks into the Main Meeting Room from the Waiting Room. Some may be offended if they see you've already been in the Main Meeting Room without them. Some don't let anyone in until everyone is in the Waiting Room. I like not letting anyone in until someone from the "other side" has also entered the Waiting Room. Find a comfortable practice.
- Read through ALL your available Meetings settings and learn each one. The app is very robust, and the more time you spend tweaking the settings, the better user experience you'll offer to others.
- There are several other platforms out there but Zoom appears to be the choice of online mediators for the time being.
- Let Richard or me know if we can help you get going with mediations on Zoom. Feel free to use or build on the TGRAs above.

Final Thoughts

I've been asked if I think lawyers and their clients will get as good of a result as they would in a traditional, in-person mediation. My knee-jerk reaction is to say, "No."

But on further reflection, I think it depends on a number of factors, including how well the mediator knows the attorneys and/or adjuster(s); how well the attorneys know each other (making a woodshed session more effective); whether a party (usually on the plaintiff's side) needs in-person attention to understand the process; whether it's the kind of process where we're all just trying to figure out how much the insurer has put on the claim with little or no flexibility on that number; and whether there's a modicum of technical abilities by everyone participating.

I haven't done an arbitration using Zoom, yet; but I think it is well-suited for most kinds of arbitrations.

I also think that for the next few months, this is still new for folks, and it's a novelty. I think in time we might see online mediations used by some segments as simply a cost-savings device to avoid in-person mediations which, in my experience, have higher resolution rates. Once we come out of this crisis, we'll see if this is still a viable, effective tool for getting cases resolved. For now, it definitely is.

I hope this helps some of you interested in online dispute resolution.

Stay well and stay safe.

Karl

Karl A. Folkens

“ZOOM” TIPS & GROUND RULES:

Make sure you have a laptop, desktop, smartphone, or tablet, with a working microphone and camera. *Test your microphone, video, and device long beforehand to make sure everything is working.*

It is recommended that you download the Zoom app if you do not already have it. Apps are available for smartphones, tablets, laptops and desktops here: <https://zoom.us/download> (However, you can also use a web browser, such as Google Chrome, Firefox, Edge, etc., on your computer in lieu of the app.)

You will receive a calendar invitation to accept along with a link to the conference. You **DO NOT** need to sign in or open a Zoom account. When the time comes for the conference, simply click the link and follow the instructions. You will want to select the option for “computer audio” in order to use your computer microphone.

Important: If two or more people are participating on separate devices in the same room, they will probably need to mute their audio/speakers in order to avoid annoying sound feedback. Multiple persons in the same room can always use one device, but make sure that the computer is situated so that everyone in the room can be seen/heard.

Be in an "Interruption Free Zone", silence your notifications and ringer on your device, and ensure that no one is eavesdropping on your participation during this mediation.

Log on to the mediation at least 5 minutes before the start time to work out any technical difficulties.

Log on from a secure location and with a secure internet connection. Starbucks, your local library, and a hotel guest Wi-Fi are not secure locations.

Your app may allow “Speaker View”, “Gallery View” or other view formats. Pick the one that you find most helpful during the mediation.

You will enter the "Waiting Room" when you sign on. Once everyone is in the Waiting Room, the mediator will bring you into the Main Meeting Room.

Breakout rooms have been assigned for private caucusing. After the initial caucus, you will be directed by the mediator to click on the button to go to your assigned breakout room. Other rooms can be created, and participants can be moved about in order to have private sessions. Participants can also send chat messages to each other and the mediator at certain times.

Be sure to have power sources for your devices, including charging cables for cell phones, tablets and laptops. It is recommended you leave them charging all the time, as the video will drain batteries quickly.

PowerPoint presentations, photos, documents, and the like can be shared with the group in Zoom. If you intend to share anything during the session, learn how to "share your screen" in Zoom beforehand (it's a single button). *If using the app, make sure your computer security settings are checked to allow Zoom to share your screen before you join the conference.*

Keep your email client open, as any mediation or settlement agreements that need to be signed or consented to will usually be sent via traditional email.

No one may record the mediation session in any manner, including taking videos or audio recordings of any session.

TROUBLESHOOTING AND ASSURANCES:

If you encounter any problems before or during the conference, please call the mediator, Richard Hinson, directly at 843.xxx.xxxx (office); or 843.xxx.xxxx (cell).

If you run into technical problems during the session, signing-off and signing back-in usually resolves those problems.

If you have a total video failure on your end, you can use your phone to call one of the numbers at the bottom of the email in order to join the conference solely via phone with no video.

If there is a total failure of the video conference for everyone, we have a conferencing number and will go to a traditional audio call. Please be patient and flexible as we all work together to try to get your case resolved.