

# Quelling Clients' Fear of Video Mediation (and Yours Too)

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## Client Expectations

- The legal system is a foreign language to most clients
- Clients are nervous (legal system, business reversals, injuries, economy, pandemic, etc.)
- They expect you to be:
  - Calm
  - Competent
  - Confident



## Advantages of Remote Mediation

- COVID-19 distancing
- Removes client fear of proximity to other parties
- Mediation can take place sooner rather than later
- Comfort of home (tell clients not to get too comfortable—e.g. lying down when not medically necessary, etc.)
- Everything you need at hand
- No traffic/excuses
- The real decision maker, who may not be available for a face-to-face meeting, can participate
- No pants? No. Advise your client to wear appropriate clothing from head to toe—not only will there be no embarrassing surprises, but it promotes a serious frame of mind



## Traditional Advantages of Mediation

- Saves time and money
- Convenient scheduling—no waiting for court calendar
- Privacy—not open to the public, confidentiality rules
- Catharsis—may be the only time your client gets to tell his/her story to a neutral party
- Parties are in control of the outcome
- No precedent creation—no surprises down the road
- Facilitates communication among hostile parties—mediator reframes things with less heightened emotion
- Preserves the attorney/client relationship—the mediator can be a foil (good cop/bad cop)
- Client satisfaction—in general, clients express greater satisfaction with mediated settlement than with results of trial

## Remote Mediation Platforms

- BlueJeans
- Zoom
- Legaler
- Skype for Business
- FreeConferenceCall.com
- WebEx
- GoToMeeting

## Open a Free Account

You don't have to be an expert—you'll learn features and controls over time. Practice using the platform technology—play with it and try things out.

- Alone
- With friends and family
- With the mediator
- With your client(s)

## Overcoming Objections

- Security concerns
  - Zoom bombing issues have largely been resolved (most Zoom bombing took place in large meetings)
  - Confirm at beginning of mediation that no one has shared the link or password with anyone
  - Waiting room, host (mediator) admittance creates more security
- Caucusing—use breakout rooms, controlled by the mediator (only the mediator or host can set up breakout rooms)
- Screen sharing—you can share documents
- Whiteboard function—for example, valuation in a PI case—everyone can contribute
- As a substitute for in-person mediation: not the same, but close—and better than audio conference call
- What about body language? You can still use your hands and facial expressions; remind your client that they can be seen and heard

## Test Your Tech

Do some test runs with your client to test the technology.

### Tools

Use the device with the biggest screen.

- Laptop
- IPad
- Phone—if the client must use a phone, make sure they use it in landscape
- Earbuds/headphones—make sure your client has an effective microphone and can be heard

## Internet Connection

Talk to your client about their connection. It needs to be:

- Strong—so they won't freeze or cut out
- Fast
- Secure—should not be a public wifi connection (e.g. a coffee shop or a library)

## Rules

The mediator needs to have specific rules for remote mediation in their agreement to mediate.

- Only people who have signed the remote mediation agreement can attend—no family members wandering in and out
- Acceptable locations—no public spaces
- No recording of any kind—even though it's easy to do in a remote mediation



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## Preparing the Client

- Conduct a practice session
- Tell your client what to expect—e.g. waiting room, breakout room, etc.
- Go over what kind of device and internet access the client will have
- Assurance of confidentiality with your client—the same rules apply as if it were not remote
- Help your client not be nervous—assure them about ease of use and your support
- Ask them whether they need a translator—a translator needs to be on the agreement of confidentiality
- “Nothing can happen you don’t agree to”
- Use your people skills—it’s part of being a lawyer



## Best Practices

- Read the instructions from the mediator, and go over them with your client
- Practice in advance
- Exchange contact information with everyone who will participate
  - During the mediation, if your client wants to communicate something ONLY to you, have them text rather than use the platform, to ensure they don’t communicate with everyone
  - You can text the mediator during mediation if you’re ready to come back from a breakout room, etc.
- Use a dark background—a bright background will backlight and obscure faces
- Close other tabs—you don’t want any accidents and it uses up bandwidth
- No internet activity which does not pertain to the mediation—it’s distracting
- Have additional devices on hand, but muted
- Log in early
- Only one person can talk at a time
- Use the mute function when you’re not talking
- Use the chat function to communicate either with everyone or with just the host (the mediator)
- Have your water/coffee ready in advance—tell your client to do the same
- No eating during the mediation—it’s unprofessional and noisy
- Ask for breaks as needed, just like you would in person
- Ask for different groupings if you need to—tell your clients they can do this as well (they can ask for breakout room time with just the mediator, with just you, etc.)

## Be Prepared

- Technology failure happens—have backup plans
  - log out and log in again
  - use another meeting platform
  - continue with audio only, etc.
- Document drafting and execution
  - come with a draft settlement agreement
  - use screen sharing to collaborate
  - minimally, agreement will be documented with a stipulation or memorandum of understanding
- For signing documents, use Adobe Fill & Sign, DocuSign, or a similar app
- Email—having a second device helps with this
- Key documents should be part of your mediation brief or statement—you can designate it as confidential (for the mediator only), share in advance, or share during the mediation

## Alternatives When the Technology is Just Not There

- Phone—a client could possibly just call in if they don't have a smart phone, but it's not ideal
- Tablet—in a contingent fee case, consider buying the client an inexpensive tablet and including it in your costs advanced
- Library public wifi if your client doesn't have access—not a best practice but it's happening
- Conference room—have a client come into your office; you can even be in separate rooms

Everyone must be comfortable with all aspects of the process.



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