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Video Mediation Redux: A Deeper Dive

Zoom has now become a part of modern reality, especially over the past two months. Its many useful features are particularly useful in mediation.

Convening and Conducting Virtual Mediations with Zoom

After conducting the typical pre-mediation telephone conferences with counsel, the participants will join the mediation at the scheduled time. When joining the meeting, I generally (but not always) have parties, counsel and representatives, convene in a general Main Meeting Room.

From there, Zoom has a feature called "breakout rooms", which I as the mediator and the meeting host can control. I set up as many breakout rooms as there are parties and also set up an additional "counsel only" breakout room. In a typical two-party mediation, we have one room entitled "plaintiff", a second room entitled "defense", and a third room entitled "counsel only". It is incumbent upon me as the mediator and meeting host to engage in virtual "shuttle diplomacy" by entering and leaving the breakout rooms as in a typical mediation. As I engage in caucus with one side, we can confidentially discuss their offers, demands and positions. From there, when I am ready, I simply leave the room to allow that side to discuss the next steps privately, while moving myself to the other party's breakout room.

It is not always appropriate for all parties and counsel to convene together initially in the Main Room before assigning them to breakout rooms. In certain

cases, especially those where there has been considerable rancor or where there are sensitive issues between the parties, I will have the parties join the mediation separately and assign one of the parties to a breakout room before admitting the second (or third) parties to the main room and assigning them to their own breakout room.

It is good practice for the attorneys and the mediator to exchange cell phone numbers in advance so that I may send counsel a text message to confirm that it is acceptable to enter their breakout room. It's the Zoom version of "knocking" before entering the breakout/caucus room.

Another nice feature on Zoom is document sharing. Though I will always maintain confidentiality of the briefs and exhibits, I ask the parties if there are certain documents we can treat as "shared documents" for all sides and email the .pdf to everyone. When we want to look at documents, I simply enable "share screen" and open a .pdf file I have created for the documents of the case. The documents are thus shared on everyone's screen in any given breakout room so that we can all view them and discuss them together in real time.

However, the best and most convenient feature of document sharing for mediation is the joint drafting of settlement agreements. I typically send an editable "Memorandum of Settlement" in MS Word form to all counsel before the mediation. When the parties have reached an agreement, counsel and I go into the "counsel only" room and enter the terms directly on the MS Word document together. The document is editable in real time on each counsel's (and my) screen. Once we have assent to the specific terms of the agreement as written by the parties, I will convert the document into .pdf form, open it in DocuSign, create signature and initial fields for counsel and parties and email the agreement to all parties and counsel for digital signature.

Thus, we have a legally binding document, enforceable under CCP 664.6.

The takeaway: Mediation by video conference is here to stay. Zoom provides a number of features (breakout rooms, real time document viewing and real time editing) that are particularly useful in mediation.

Some cases require face to face participation. However, many can be conducted online with a few adaptations for virtual participation. Flexibility in scheduling, avoidance of travel, confidentiality and ease of closing all mandate the use of this wonderful tool going forward.

For more information, contact us by [Sending us an email](#), calling at (818) 610-8799 or [Visiting our website](#)