

Virtual Mediations

Seeing eye-to-eye, at a social distance



By Michael W. Hawkins

In recent months, there have been training sessions, articles, and significant dialogue about virtual mediations. Indeed, many mediations are now conducted virtually and as a mediator myself, I have been involved in this process.

Working remotely and addressing issues of social and physical distancing while keeping cases moving has brought about the utilization of virtual mediation. It allows parties to resolve their disputes while addressing health concerns brought on by COVID-19. It has also demonstrated to parties that disputes can be resolved without physical presence and travel, while retaining a measure of the traditional face-to-face approach.

Will virtual mediations replace the face-to-face mediation session or settlement conference? I do not believe so. However, there is no question that more mediations will be done virtually as parties, counsel and mediators gain more experience in using both the tools available and those yet to be developed. The following are recommended best practices for virtual mediation:

- Select a mediator who is familiar with conducting virtual mediations and is prepared to assist the parties in making it successful.
- Have a planning conference call with the mediator to discuss the logistics and format to be used. Determine if it will be by phone, a secure videoconferencing platform or multiple conference lines.
- Make sure all parties involved have the necessary email addresses, cell phone numbers for texting and instructions for conference or platform instructions.
- Logistically work out what documents need to be exchanged between the parties and mediator to provide for good flow and exchange during the mediation.
- Make sure you can electronically exchange documents or exhibits that may be pertinent and assist in resolving the dispute.

- Consider a mutual exchange of mediation statements. I request this of parties, and it is more productive in a virtual setting. Also, exchange key pertinent documents.
- Have a joint session for introductions and discussion of logistics and the process.
- Exchange proposed settlement agreement language prior to the mediation session. This avoids confusion regarding the essential boilerplate terms of an agreement.
- Consider including decision-makers in discussions with the mediator where they may not attend a face-to-face mediation. This can include executives or insurance claim representatives.
- Be flexible, patient and adaptive to this new process with your client and the mediator. Consider creative and out-of-the-box ideas that will enhance the likelihood of success in the virtual mediation.

Having conducted virtual mediations and arbitrations, I can attest that they can and do work. The key to success with a virtual mediation is quality preparation and anticipating any unique aspects to this method of mediation. We will continue to have fact-to-face mediations, but with the success some are having with virtual mediation, this trend will continue.

Hawkins is a mediator at the ADR Center at Dinsmore. A neutral for the American Arbitration Association (AAA) since 1992, Hawkins has been successful in mediating and arbitrating employment-related claims, commercial disputes, litigation involving discrimination laws, contract and non-compete issues, wrongful discharge claims, construction, domestic relations and class-actions. He recently served as Chair of the Cincinnati Bar ADR Committee and is a mediator with CBADR. He is Harvard and Pepperdine-trained on mediation and negotiation. Hawkins is a past President of the Cincinnati Bar Association.