



# Quelling Fear of Video Mediation

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Video mediation has shot to prominence recently as the best way to get to settlement—during a pandemic, and possibly afterwards as well. Your clients might feel nervous about using it, and you might too. This guidebook, *Quelling Fear of Video Mediation*, can help you address any fears and set you up to use the medium wisely and successfully.

## 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 as well
- 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 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 table 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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