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## Preparing for online mediation with Zoom

THE ROOM WHERE IT HAPPENED: AN INSIDE VIEW OF MOVING FROM “IN PERSON” TO “VIRTUAL” MEDIATION IN A SPLIT SECOND

It was slightly gloomy, traffic heavy as usual, but a normal Thursday. I greeted the parking attendant and went upstairs to start my day. On the news, I witnessed a frantic tension across the country as people became nervous about the spread of a pandemic now known as COVID-19. In 2008, I survived Swine Flu, with great pride, and felt pretty secure in knowing that it was just a flu like any other. While I was not worried, I was concerned about the calls we received from clients feeling hesitation to move forward with previously scheduled in-person mediations. They were looking for answers and guidance.

My boss, mediator Jeff Krivis, was deeply entrenched in a mediation, and so my brain began racing for answers. Clearly something major was about to take place. I could sense it in the voices of the clients, in the extra silence within the hallways, the paranoia amongst the news reporters, a trending conversation on social media and undeniable grocery shortages within L.A.

A slow haze of fear and panic began to graze the city and hour by hour, the phone began to ring and ring.

By noon, we were putting together an emergency plan. Based on our initial outreach to colleagues and clients around the country, we would launch Zoom as a virtual application to conduct mediations online starting the upcoming Monday.

The Zoom platform made sense to me as it was a frequently used tool by the Straus Institute for Dispute Resolution, where I obtained my Master's Degree in Dispute Resolution. I participated in over two dozen Zoom role-play mediations the year before COVID-19 arrived and felt comfortable organizing our emergency plan. In truth, these Zoom role-play mediations were the catalyst to my career as a mediator. These virtual mediations were

the window into a niche that gave me gratification by being able to contribute by helping people around the country reach resolution. The mediations were just as intense, passionate and effective as the ones we did on campus. Initially, I was nervous to suggest this idea to Jeff, but it seemed like our best option and I knew he would be open to my thoughts. My understanding of how to transfer the virtual technology into our commercial mediation practice seemed like the perfect fit and I felt confident in encouraging our firm in this direction.

### Starting the transition

Our focus in transitioning was based on these three principles of success: 1) efficiency, 2) value, and 3) confidentiality. The primary goal was to ensure that our firm had a practical solution to continue long-planned mediations as scheduled, while the world around us began to crumble. While some of our colleagues panicked, and others closed their doors for a period of time, we were looking for innovative ways to keep commerce flowing through the process we loved.

After we set up the ability to host Zoom mediations as our new virtual platform, we then needed to create an effective process to communicate this change to our clients. To ensure success and confidentiality, we brainstormed ways to ensure clients had the same experience virtually as they would in person.

Success for me is not only seeing Jeff settle a case for our clients, but also ensuring that their experience from beginning to end is exceptional. As Jeff's assistant, my goal is to ensure that our clients have a positive and fulfilling experience. Since using online mediation was an unfamiliar concept to most people, we began to draft the best way to teach clients how to use Zoom and to feel comfortable and secure in the process.

When drafting the protocols for using Zoom, we thought about the existential and practical value that mediation brings to a case, as well as the uncertainty some clients have when reaching out to our office about setting up a mediation. Our hope was to translate this same value virtually by being available to clients more than usual to ensure that although the world seemed chaotic, we were still that same safe place with which they had grown accustomed. While many things became unclear in society, such as basic needs and services, we stood firm in producing a solution sooner rather than later to create confidence in our community. Our hope was that clients would look to our firm for direction in a time of vast change and confusion.

Lastly, we thought about the many ways we keep things confidential during in-person mediations and how we could achieve that same level of confidentiality via Zoom. We found we could mirror this by the use of integrated break-out rooms on the Zoom platform, disabling of the open chat feature and sending private Zoom invitations with easy-to-understand instructions and precautions.

Later that same day, Jeff instructed us to leave the office until further notice. He told us we would be in contact by text message and that we were all in this together. From that moment until now, things have never been the same.

I drove home on the 405 freeway with all the other confused and uncertain people, holding on to our faith for dear life. Everything became an emergency in that moment. As I exited the freeway at National Boulevard, the line to Ralph's grocery store was wrapped around the corner. What was happening? I kept driving and decided to call my mom.

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“Mom, what is going on?” My mom said, “It has begun, I will be home soon, we have got to go to the store.” She was right! That day was the beginning of the temporary shut-down for so many businesses in Los Angeles. March 19, 2020 was a day of immense panic, fear and denial. Not to mention, I was suffering from allergies, and although I knew I did not have coronavirus, I still became extremely nervous, paranoid and concerned for my own health.

After arriving back from the store two hours later with my mom, I sat in my home office and looked at my inbox. Things had hit the fan.

### Damage control during panic

It was time to handle damage control and fish our way through this chaos. As leaders in the industry, we were prepared to show direction and leadership. We gave clients an option in a world where everything was being slammed in the face of a flawed government system. We were fighting others for toilet paper and water, while also trying to solve cases. With the help of our team, we began notifying clients scheduled for mediation in the next three weeks that all mediations would be moving forward via Zoom or could be rescheduled to later in the fall. Within minutes of sending my first email, we began receiving responses – a sense of relief and a cry for help from many. People were happy and overjoyed that they still had the option to go forth in working to resolve their matter. Some were delighted that they still had some control in their life. Others felt this was not yet necessary and thought we were overreacting.

Months later, and the pandemic is still with us. In these last several months, my life has changed dramatically. My view of myself as a person and as a member of humanity has shifted. My worldview has widened and my career has expanded. My ability to relate and help people has emerged and been extended through gratitude and appreciation. In the midst of uncertainty, I have created

relationships with clients that will be sustainable for years to come. They have reached out to us and we have reached back out with flexibility, certainty, and compassion.

### Attitudes shift with new solutions

As can be expected, with any major shift, conflict may emerge. For us, this conflict was rooted in reorganizing important matters that had a higher interest to mediate in-person as opposed to virtually. While this happened several times, the majority of clients opted for the Zoom option (over 70 percent).

After a month and a half of doing Zoom mediations, we evaluated our settlement rate, which was actually slightly higher than in-person mediations. Additionally, the outreach for our services grew even more as people were willing to take last-minute cancellation dates via Zoom without hesitation. In fact, we became almost completely booked for 2020 by the end of May as the marketplace adapted. As time progressed, our new methods for conflict resolution began to flourish beyond our greatest expectations. A solution that we expected to last three weeks at maximum, has now become our new way of handling cases. People have generally been more amenable, respectful and forthcoming. For lawyers and mediators, this is quite humbling. We have witnessed some of the toughest characters submit to compromise in the face of this pandemic, allowing barriers to be broken and higher results achieved.

While the beginning of this pandemic was scary, it has been inspirational to see the world come together to push through the difficult challenges of this moment. Through this process, we have identified that problem-solving can happen at any level, in any space, in any capacity. Essentially, we believe that virtual mediation will be a preferred method for years to come. We are convinced that due to accessibility and convenience, virtual mediations will allow conflict resolution to happen sooner than later. Now that we have several months of this experience behind us, we

have become healthy advocates for this groundbreaking technology. While our intention is not to conduct all mediations virtually moving forward, our hope is to have this as an available tool for all of our clients, especially people with health and travel restrictions. We have found great success in the ability to effectively use Zoom and we plan to continue being leaders in the field. Below are my top pointers of advice for successful virtual mediations.

- 1. Arrive early to the mediation to ensure your video and audio are properly connected.** I recommend testing video before joining the actual mediation, to ensure the camera is properly focused and adjusted.
- 2. Be prepared by having all documents, notes and additional information available at arm's reach.** It is much easier and more comfortable when you are not forced to pause or get up from your seat during the session. Having all items nearby will create a more comfortable experience.
- 3. Consider using airpods or earphones.** Due to there being multiple parties within the session, it is much easier (but not necessary) to hear and focus if you use one or two earphones during the mediation.
- 4. Ensure that you have a computer and phone charger handy.** Due to the length of time it can take to mediate a case, it is more effective to have chargers readily available to avoid being dropped out of the session or having to pause.
- 5. Download the Zoom application.** While you will be able to access your session through a web browser, you will not have all of the same easy-to-use features and functions on the browser as you do while using the application.
- 6. Once you join a session, Zoom will ask you to change your name as it appears.** I recommend always changing your name so that you do not appear as your telephone number or online screen name, as the parties and mediators will need to know who you are by name.

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**7. A glass of water by your side at all times.** Due to the length of mediations, you will want to have water nearby to avoid disrupting the flow of the process.

**8. Keep telephone numbers of both the mediator and co-counsel readily available in case you are accidentally dropped out of the mediation due to internet issues.** You want to feel as prepared as possible in the event that there is a technology issue. You will feel much more comfortable if you have the contact information handy.

**9. Be open.** The world around us is rapidly changing, but people like us have your back in ensuring that business goes on as usual, in a safe and healthy environment.

**10. Ask questions before the day of mediation.** Feel comfortable in knowing that mediators want you to feel as comfortable as possible and want to be of assistance during this time. Asking

questions ahead of time will eliminate last-minute issues.

As we wait patiently for life as we knew it to resume, it is important to also embrace change, and to see the positivity in the innovation that is being created through conflict resolution. We are confident in leading you and your clients into peaceful and successful settlement at any level. I continue to look forward, to grow and find innovative ways to problem-solve in this chaotic time.

The very essence of what we do is guide people in a time of needed help and create a sustainable path to move forward. The pandemic was a call for leaders to rise and guide the majority to an alternate way of life – a settlement with our new reality itself. While we are still taking steps to secure normality, we continue to find innovative ways to survive in the here and now.

*Devin Tucker currently works at First Mediation where she helps Jeffrey Krivis administer cases. After recently graduating with a Master's degree from Pepperdine Law, she plans to learn and grow under the direction of Jeff and become a mediator in the field. Devin received a bachelor's degree in International Relations from the University of Southern California, which inspired her to understand the importance of conflict resolution and the necessity for peacemakers. While taking classes at the Straus Institute for Dispute Resolution, Devin participated in mock mediations where she found a passion and strong skillset to communicate and convene matters. She looks forward to continuing her mentorship with Jeff and helping to resolve matters.*

