



Virtual Mediation

By Heather Heiskell Jones

HHJ Mediations

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Introduction

The purpose of this paper is to provide information to mediators and parties who engage in virtual mediation. In-person mediation is traditional and preferred by many. Virtual mediation, however, became necessary and prevalent during COVID. Virtual mediation has many benefits including time, travel, and cost savings, to name a few. It is not always the preferable means of mediation and in some cases, it is not even possible due to technology or other impediments. For those who chose it, this paper is written to provide useful tips for the mediator and participants in virtual mediation.

Nothing in this paper is meant to be contrary to the West Virginia Rules of Civil Procedure nor the West Virginia Trial Court Rules governing mediation.

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The Virtual Platform

Decide on the virtual platform with which you are experienced and can control.

*Examples are Zoom, TEAMS, MediationsSuites, telephone conference, etc. [for purposes of this presentation, Zoom is the platform described].

*Make sure your platform has enough time and capacity for the mediation.

*Make sure you are comfortable and experienced with the platform.

*Practice in advance.

*Ensure all attorneys and their parties have access to, and experience with, the platform.

*Send via email Zoom mediation invitations in advance to participants.

Before Mediation

Actions to consider in advance of mediation:

*Request the parties obtain Court approval for virtual mediation.

*Request written submissions in advance of mediation.

*Request the names, positions, locations, and contact information for individuals who will attend.

*Reinforce the confidential nature of mediation.

*Obtain written agreement that no party shall record the mediation and that only individuals identified in advance of mediation shall be present during mediation unless notice is given to the mediator.

*Make a chart that identifies who is who, whom each person represents and where each person is located and update it on the day of the mediation.

*Determine whether the parties desire a joint opening session for purposes of introduction and for making position statements.

Mediation Protocols

Decide protocols for virtual mediation.

*Request that all parties maintain the virtual connection throughout the mediation.

*Explain the audio, video, and muting features.

*Request the audio and video features always remain on during virtual interaction.

*Provide your cell phone number and place it in the chat. Advise if you are willing to communicate via text. Agree on the best means by which you and each participant may be reached outside of the virtual platform during the mediation.

*Explain breakout rooms and joint rooms and how they will be managed.

*Explain the mediator's ability to appear without notice in a breakout room.

*Make sure you have a breakout room for yourself.

*Determine whether there will be the need for virtual document sharing.

Virtual Mediation in Action

*Either begin with all parties in the same room and then move them to breakout rooms or place them in pre-assigned breakout rooms from the start (the latter is recommended).

*Introductions and an explanation of the process are just as important as in-person mediation.

*Make sure the parties see you, know your role, and interact with them.

*Update and confirm the chart of who is who and who will be in each breakout room.

*Explain the process, goals, and how virtual mediation will work and afford the opportunity for questions.

*Explain where you will be when you are not in each person's "room."

*Allow plenty of time and opportunity for the parties to speak to you.

*Explain that you can be reached on your cell phone at any time throughout the mediation.

*Expect the unexpected – parties may lose Internet connection; one or more parties may not be able to log into the virtual mediation; a party may log on with two different devices, causing an audio problem, etc. Have a plan to address these situations.

Prepare for Success

*Prepare a Word document term sheet on your computer that, in the event of resolution, can be completed, circulated among the parties, and finalized before ending the mediation.

*Exchange the document via email to counsel for the parties and obtain written affirmation of the terms setting forth the resolution.

