

Mediation Alert: Virtual Mediation Tips for Lawyers

Virtual mediations have become the new normal amidst the COVID-19 pandemic. It is now more important than ever to prepare in advance for mediation. The following tips for lawyers will make your next virtual mediation go smoothly and increase the likelihood of a successful mediation.

1. **Confirm your client's technology and conduct a test run**

Lawyers need to make sure their client has a working computer or tablet, a strong internet connection, and that they have downloaded Zoom or other software to be used for the mediation. A test run should be scheduled well in advance of the meeting to ensure that your client is comfortable using the virtual software.

2. **Client appearance and background**

Remind your client that they should dress appropriately during the mediation and make certain they have a suitable and neat background during the video call. For lighting, have your client make sure their surroundings are well lit and that they do not have a large light source behind them so as to not obscure their face. Encourage your client to make eye contact by looking into the camera, not the screen, and to really try and connect with others on the call. Your client's appearance and the surrounding environment will impact their credibility and their ability to build positive relationships and trust with the mediator and opposing attorneys and clients.

3. **Use separate computers or monitors**

If you are in person with your client during the mediation, you and your client should use separate computers or monitors. This will allow both of you to communicate easily and effectively with everyone else at the mediation, enhance non-verbal communication and further help with building trust between all the participants in the mediation.

4. **Communicating with your client during mediation**

Devise a plan in advance for how you and your client are going to confidentially communicate with each other during the mediation (ex., cell phone, text or email) outside the presence of the mediator and the opposing attorneys and clients. Remind your client not to divulge private or confidential information while in the virtual joint meeting rooms.

5. **Communicating with the mediator and opposing attorneys**

Exchange cell phone numbers with the mediator and opposing attorneys in order to have an alternative method of communicating in the event of a technology problem or in case personal communication becomes necessary during the mediation.

6. **Settlement Agreement or Term Sheet**

Prepare a draft settlement agreement in advance and an agreed-upon process for signing the agreement, such as DocuSign or other electronic signature software. If a written settlement agreement cannot be finalized, prepare a term sheet that memorializes the settlement and have the attorneys and parties agree that all material terms have been resolved and have them approve and sign off on the term sheet by email.

Mr. Murphy is respected by attorneys from both sides and has been retained as a mediator by dozens of different plaintiffs' and defense attorneys in state and federal court cases across Upstate New York. He has completed the 40 hours of mediation training required by Part 146 of the Rules of the Chief Administrative Judge qualifying him to serve on court-approved rosters of mediators and to receive referrals from the court. To schedule a mediation, please contact Timothy P. Murphy at 315.565.4544 or tmurphy@hancocklaw.com.