

## Zoom: The New Normal

By Judge Elaine Gordon, (ret.)

I hope this blog finds you safe and successfully dealing with the challenges the pandemic has forced upon all of us. In my last blog, I wrote about Gordon ADR's recent transition from in-person Mediations and Arbitrations to the ZOOM online platform. I said, at that time, I could not have imagined the seamlessness of the change to virtual hearings.

Four months later, and more than 60 full day cases under my belt, I am pleased to underscore the positive results. Settlement rates have remained historically high, if not higher. For most of my cases, online proceedings have become routine. The lawyers and their clients engage easily and feel competent with the technology. With that ease has come a revelation.

We are not conducting "Zoom mediations or arbitrations." We are simply mediating or arbitrating, while using an online tool called Zoom. The participants drive the process, not the technology. And as we have adjusted to and become comfortable with this new normal, we are able to do most, if not all, of what we did in person.

My prior concerns about creating an environment of trust and candor have evaporated. The responses to our surveys are overwhelmingly positive about the online mediation process. Most importantly, lawyers have taken the time to underscore the rapport and trust that was built. They felt their clients were heard and were fully engaged in the process.

Increasing technological comfort has allowed mediation participants to be themselves. For me, listening with empathy, speaking directly, and broaching difficult topics have become just as easy as in-person communication.

I am impressed at the connection that can be created virtually as I listen to clients explain the experience that brought them to the Mediation. In private discussions with each counsel, often in a breakout room called "My Office," we speak as candidly as ever about legal issues and negotiating strategy. Often, all the lawyers and I will meet in the "Lawyers Conference Room," to take stock of where we are.

The active participation of insurance adjustors and corporate executives has increased because the travel barrier has been eliminated. We all benefit when decision makers are in the case and fully participate.

In these discussions, I find that there is more openness and respect for differing points of view. Something about the medium thwarts posturing and table-pounding. Because we see ourselves as we speak, and see the immediate effect of our tone, we have learned to modulate our behavior. Perhaps, because we are in the comfort of our homes or offices, we feel more relaxed and there seems to be more humor, as we communicate by video.

Whatever the reasons, which I am sure will be studied well into the future, "online mediation" has become simply just "Mediation." In the face of the interruption of critical court functions and the significant human cost of their absence and ensuing delay, we should all be grateful for this technology.



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