

GUIDELINES FOR ONLINE MEDIATIONS

1. Strengths and Weaknesses.

For some of us, online mediation seemed scary at first, simply because it is different than what we have done for a very long time. There are concerns about technology, but in the training that I have had, an attorney who has been doing mediations for more than five years noted that it was often the attorneys who were more concerned about using technology than their clients!

The often cited issue was “you can’t possibly get the same rapport built online that you can in person”, to which I respond, you can if everyone makes an effort to really connect and get the past the fact we are not physically in the same room. Generally, this happens very quickly. The one major drawback for mediators is that you lose control of what is going on in the room behind the plaintiff, or the adjuster working at home, so it is very important that all parties agree to all of the technological issues discussed below. The most important ones are to have secure email and to limit distractions at home, or in your office, and absolutely prevent others not part of the mediation from being in the virtual room with you. That goes for others in your office, kids, friends, significant others, absolutely no one that is not disclosed to the mediator. It is always a good idea to also keep pets in the other room as well. See the discussion of privacy and confidentiality below.

The benefits of online mediation are multiple. First of all, there is no travel involved for anyone, unless it is for a party to go to an attorney’s office, but each of us can do the mediation where it is most convenient and most cost efficient. Documents can easily be shared quickly so all can see them on the screen at the same time, and if everyone takes the time to learn the Zoom platform it can work seamlessly from anywhere in the world. It does require everyone to do the best they can to take advantage of the available technology and have backups in mind if and when something goes wrong.

2. Technology- The Zoom Online Platform

You need to know that your mediator uses the online secure platform provided by Zoom.US to conduct online mediations. You agree that at least several days prior to your first scheduled mediation session you will download and install the software from Zoom.US necessary to participate in Zoom online mediation sessions. All you will need is the free personal plan software which, by the way, will also allow you to personally connect with friends and family on your computer which is comforting and useful given the current situation. In order to do online mediation, you agree to familiarize yourself with the operation of the Zoom platform so that you will be able

to operate the system and participate efficiently in your mediation sessions. It is not difficult, but I do recommend that you take a look at Zoom.US tutorials available at <https://support.zoom.us> [DAVID: that needs to be a live link]. Once you get familiar with it, it is fun and is easy.

Despite everyone's best efforts sometimes technology fails so a backup plan should always be in place. Exchanging phone numbers with the mediator is the first step to ensuring that no one has to panic if something happens. See the discussion below.

3. Secure Document Transmission

Documents sent to the mediator and to participants need to be secure. One option is Dropbox. Another could be Fax or encrypted email, or a program like HighTail. This will be discussed and decided shortly after your mediation is booked.

4. Document Execution

You understand that whenever possible the mediator uses a secure platform for the execution of documents required during the mediation process. Your mediator uses DocuSign.com. It would be very useful if you did as well and had it downloaded and on your machine in advance of the mediation. If you choose not to use DocuSign for the execution of documents, then when original signatures are required, copies for execution will be transmitted to you for printing, signing and you will be responsible for returning the executed copies to the mediator via mail, or overnight delivery service. More information re DocuSign can be found at www.DocuSign.com.

5. Payment

You understand that all payments are due in accordance with the mediation agreement. All deposits paid by check need to arrive well in advance of the mediation. Payment can be processed electronically, and that is preferred. We use LawPay.

6. Secure WIFI

You **must have** a strong and secure WIFI or ethernet hard wired connection for your computer. **Do not use a public access WIFI connection**, such as those available in coffee shops. They are not secure, and your information may be at risk. Confidentiality and privacy can be inadvertently compromised. Further, a strong internet connection is vital to the proper functioning of the online video conferencing. A poor connection will result in frozen screens and/or audio issues that will significantly disrupt or end the mediation process.

7. Confidentiality and Privacy

Mediation confidentiality is spelled out in ORS Chapter 36. Confidentiality encourages parties to openly discuss issues which in turn helps to facilitate resolution. Generally speaking, what happens at a mediation is not allowed to be brought up in later proceedings if the case does not settle. Normally, the mediator cannot be compelled to testify, and one party is not allowed to testify about offers or what any other party said at the mediation, including what their own attorney said to them at the mediation, in a subsequent proceeding. That protection can be lost if anyone, not a part of the mediation, is allowed to sit in on or listen to or records and plays any portion of the mediation. Accordingly this mediator requires all participants to agree in writing to maintain that confidentiality by agreeing, among other things, to not let anyone not disclosed to the mediator and all parties be present in the same rooms used by participants during any online mediation. You must confirm that you alone in the room or with an authorized and disclosed person and cannot be overheard by anyone that is not actually part of the mediation.

8. Recording of the mediation is absolutely prohibited by this mediator

Further, all parties must agree in writing that neither you nor anyone else on your behalf may record via audio, video, or both, any mediation session or part thereof. In the event you learn of an audio or video recording session, you will take immediate measures to destroy the recording and will not disseminate it to any of the parties. You further agree that you will not transmit a live or deferred video or audio relay of the online mediation session to third parties.

All parties to the mediation are required to sign a document that indicates they have read and are agreeing to all of the above.

9. Most Important!

Mediation requires effort, good faith and commitment to the process. The goal is resolution of the dispute. Mediation is a tool used in an effort to achieve that goal. Virtual mediation can and will present some challenges from time to time, but if parties keep in mind the goal and are truly motivated and committed to the process, we can continue to achieve the goal of resolution even with the current challenges.