

## **Coast to Coast ADR**

### **Online Mediation Best Practices**

These are the best and necessary practices to follow on online mediations. We're using the acronym ODR or online dispute resolution as part of the mediator's lexicon these days. We are using the ZOOM platform. Each participant (clients too) will receive an email invitation from C2C ADR to attend the mediation at the scheduled time with a meeting ID and passcode to get into the meeting. You will be admitted initially to what ZOOM calls a waiting room (and do not worry – no one can chat or talk or see each other in the waiting room. The mediator will admit everyone one by one.

- Use a desktop or laptop
  - An iPad might work but it's not conducive except in an emergency to active participation
  - A cell phone is a super-emergency backup only (consider battery life)
- Keep the room bright
- Keep light in front of you (NOT behind you) to avoid shadows hiding your face
- Use an external (and they are not expensive – like a Fifine mike as an example from Amazon)
- Keep in mind that you are ALWAYS on display
  - Unless you turn the video off, everyone will see whatever you do
  - Do not do anything you would not do in a meeting in the presence of others
  - Coughing or grunting or sneezing or inadvertently rubbing a body part you would not do in public will be seen by all
  - If you stand up to get something, keep in mind if you are wearing non-office attire, everyone will see you
  - If you need to stretch, stand up, walk around or get a coffee, turn your video off and your name or photo will replace the video until you turn it back on – or everyone has a close up of the wrong part of your anatomy
  - Do not chew your sandwich like there is no tomorrow (unless that's you and how you act in public) and remember that the camera's eye exaggerates things like chewing
  - Keep the background professional and neat and organized

“Let us never negotiate out of fear. But let us never fear to negotiate.”

John F. Kennedy

- Do not have unmade bed, clutter, rubbish etc in your background
- Make no off the cuff remarks that you think are “off the record” because everything is heard unless your audio is off
  - Keep your audio in an off position is a best practice until you are in a conversation, a back and forth or are answering questions
- Keep the room you are in, closed, even to the point of scotch taping a do not disturb sign to the closed door
  - No one other than the signed in participants is permitted due to confidentiality and privacy of a mediation to be in the mediation – even by accident – so family, friends, colleagues are not to be present or within earshot at all
  - All participants must sign the confidentiality and participation form and no one who has not done so and has been disclosed to ALL present via the mediator may participate or even hear or see anything connected to the mediation
- Practice with lawyer to client and lawyer, mediator and client before the mediation to get the bugs out of any first experience with online mediation
- The mediator controls the technology
  - The mediation will start in a joint session just like in a normal mediation
  - There will be separate breakout or caucus rooms for plaintiff and defendant and for lawyers just like a non-online or traditional mediation
  - The mediator can go back and forth between the rooms, and pull lawyers or others out to talk in a separate room
  - There will be a whiteboard feature available to use
  - There will be an ability to screen share and the closing documents can be drafted in the online session and distributed via DocuSign for signatures
  - If there are documents to show the other side during the mediation, in a joint session for example, or in a caucus, the mediator can grant the attorneys rights to share a screen with the document or photo for example on it – or perhaps an engineering or medical record
- Everyone planning to attend the should provide their cell phone number to counsel and through counsel to the mediator so the lawyers and the mediator can have a way to reach out to someone who gets knocked out of the system somehow – an emergency backup
- Coast to Coast ADR’s mediator will hold a private telephone conversation with each lawyer and then jointly with all lawyers and then should either side be interested will

have a practice with ZOOM session (about 20 minutes with each side to ease any anxiety about the technology and process).

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