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Virtual ADR Relief Zooming In

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Covid-19 has closed businesses, moved school instruction online, delayed surgeries and created suffering and health fears throughout the United States. To say the least, the last two months have been very challenging.

With civil trials suspended, Covid-19 also has significantly disrupted civil litigation. It is unclear how civil jury trials will be handled once the stay in place orders are lifted. How will courts address social distancing concerns to safeguard court personnel, attorneys and litigants? Will courts assemble jurors before widespread testing or vaccines are available? Criminal matters, unlawful detainers and preference cases likely will be prioritized. Meanwhile, the backlog of civil cases is growing. Covid-19 related litigation itself is expected to add significantly to the courts' already heavy caseload. Further continuances of existing court dates are anticipated. More delays and increased litigation costs will follow.

Remote alternative dispute resolution services can help reduce the backlog and ease the burden on courts and litigants.

For example, special masters streamline discovery and overall case management and address problems before they evolve into unnecessarily expensive and time-consuming disputes. Special masters allow parties to preserve their right to trial, while minimizing litigation risks and delays and maximizing settlement opportunities. Just last year the ABA encouraged the accelerated use of special masters to "aid in the 'just, speedy and inexpensive' resolution of cases." ABA Resolution 100. Special masters can advance these goals largely through focused and strategic teleconferences.

Many mediators, referees, attorneys, carrier representatives and litigants started using virtual mediation for the first time during the shelter in place. The popular *Zoom* video platform is easy to use and a simple way to navigate these sessions. All participants need is a strong and secure Wi-Fi connection, a computer with a camera, the *Zoom* app and some basic instruction to gain confidence in the process. The mediator guides participants through virtual rooms and advances settlements through confidential negotiations. A brief overview of the tools used by participants in a *Zoom* mediation follows; the platform also offers short, helpful online tutorials.

Facetime is another option for mediating simple, two party disputes.

State and federal courts are using the *Zoom* platform for mediations and judicial hearings. The process works equally well for arbitration hearings. Further, court reporting services are offering free technical training to prepare participants, particularly with the introduction and marking of exhibits.

Clearly, virtual sessions are not the perfect substitute for in person negotiations or hearings. In person meetings allow participants to interact informally, read body language, look each other directly in the eye, express empathy with a pat on the back and seal a settlement with a handshake. High emotion cases, such as wrongful death and medical malpractice cases, may be especially challenging to negotiate remotely. Business, commercial and construction cases may be more suitable for remote resolution.

On the other hand, virtual meetings significantly reduce travel costs and time commitments and make it easier to schedule meetings. Participants can simultaneously see each other's reactions onscreen. As technological advances continue to improve the speed and quality of videoconferences and people become more comfortable with the technology, virtual sessions will continue to grow in popularity. *Zoom* recently reported 300 million daily users. All businesses are learning to thrive under these new and unique conditions, and this is a great time to master this phenomenal tool.

An Overview of a *Zoom* Mediation for Participants

- Participate from somewhere comfortable, free from distractions and with a strong, stable and secure internet connection. Do not use public access Wi-Fi, such as those available in public spaces and businesses. Make sure to have light on your face; your primary light source should be behind your camera. Use a headset if you have one.
- From your computer, tap the *Zoom* link in the email notice. You will be placed in a **Waiting Room**. The names of waiting participants are visible, but no one in the waiting room can be seen or heard by anyone else in the conference. The Waiting Room is a security feature that prevents uninvited guests from entering the mediation.
- From the Waiting Room, the mediator will move participants into a virtual **Main Conference Room**. Everyone in the Main Room can see and hear everyone else in the room. Joint sessions are conducted in the Main Conference Room.

- The mediator will assign participants to **Breakout Rooms**. Here, you can only hear and see other participants in your same room. The mediator announces her arrival into a Breakout Room by **broadcasting** a message to all rooms (watch for a blue banner at the top of the screen for mediator messages) or by sending a private cell phone text. The mediator can enter the Breakout Room and move participants from one room to another. Also, you may summon the mediator to your room by pushing the **Ask For Help** button at the bottom of your screen or simply sending a text to the mediator's mobile phone.
- A **screen share** button at the bottom of your screen allows you to share documents on your computer screen only with others in your room. You also may use a **white board** and have **chats** with others in your room.
- You can **mute your audio or stop your video** at any time through buttons on the tool bar at the bottom of the screen.
- When the mediator **broadcasts** that the parties will be returned to the Main Conference for a joint session, a one to two minute count down will appear on all screens.
- Participants can use **screen share** to edit and finalize a Settlement Agreement. All parties may sign the agreement via DocuSign or Adobe Sign or by personally signing and then scanning/ photographing and emailing the executed document to the group.
- *Zoom* has responded to recent security concerns primarily with upgrades in the host controls. For more information on *Zoom* new and old security systems, see <https://zoom.us/docs/doc/Exec-Letter.pdf>.