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Consumer Breakout

Bankruptcy Mediation in Consumer Cases: New Tools for Changing Times

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AAA-ICDR® Virtual Hearing Guide for Arbitrators and Parties

Optimizing the Virtual Hearing Experience*

1. Use a PC or laptop for the video portion of the hearing as monitor size will be important, particularly for hearings with many participants
2. The device/screen you are using to participate in the virtual hearing will not be available for other purposes, such as taking notes or viewing documents; arrange for alternate means of doing so
 - a. Use of dual monitors (or even a single monitor with a laptop screen) is recommended, with the virtual hearing running on one screen
3. Use a good quality webcam if possible, and check lighting conditions. Backlighting is generally not desirable
4. Audio considerations
 - a. Audio quality can be affected by a variety of factors and may take some experimentation to come up with the best way to connect, whether by phone, through your computer speakers/microphone, and with or without a headset; try to determine your best method prior to the scheduled event.
 - b. If there are multiple participants in the same physical location, there may be an echo if their microphones/phones are not muted (this is highly dependent on the equipment being used but is obvious when it occurs)
 - c. Find a quiet location
 - Minimize background noise
 - Mute yourself when you are not speaking
 - Avoid multi-tasking such as checking email
5. Consider steps that may be taken to establish a high-speed internet connection (e.g., if possible, a hard-wired internet connection is generally preferable to a wireless internet connection)

Virtual Hearing Security Considerations

1. The platform utilized should have a unique, automatically generated meeting ID for each virtual hearing, not personal meeting ID's that are utilized more than once
 - a. As an additional layer of security the hearing should be password-protected with a unique password, but that password should be shared with the participants via a medium other than via the virtual hearing invitation email

* Please note that video hearings or proceedings are conducted through third party platforms. The use of such platforms for proceedings is subject to the platform's terms and policies. The AAA-ICDR does not endorse any one platform over another nor does the AAA-ICDR guarantee the suitability or availability of any platform.



2. Participants should use secure internet connections and not attend from public locations or in circumstances where non-invitees could hear or see the proceedings
3. The host should be provided with the list of participants (including witnesses) and their email addresses for the purpose of inviting them to the virtual hearing
 - a. Participants should be instructed to not forward or share the hearing invitation
 - b. Any additional participants should be invited directly by the hearing host
4. Use security features available through the platform to prevent ex parte communication with the arbitrators prior to the start of the event
5. Give the virtual sessions meaningful description such as “AAA Case 01-20-0001-0003 with Arbitrator Jane Doe”
6. Do not include information that would disclose the identity of the parties to the case
7. You may also want to consider including contact information for the virtual hearing host in the description
8. Disable any “private” chat features (only allow chat with “everyone”)
9. Participants must decide if platform recording features will be utilized. If not, disable all recording and emphasize that no independent recording or taking of screenshots is permitted

Preparing for the Virtual Hearing

1. At least one week before the hearing, have a trial run with the panel, representatives and any technical support people that will participate to verify their connectivity and get them familiar with some basic features of the video conferencing platform
 - a. Basic features to cover
 - Overall display
 - Control Panel features
 - Participant list
 - Muting/unmuting
 - Screen sharing
 - Passing control
 - Inviting a non-participant
 - Waiting rooms/breakout rooms
 - Locking the meeting
 - b. If there are any technical issues with the panelists’ equipment, take steps to get them resolved or decide whether the hearing can proceed virtually
 - c. Discuss with the panel hosting/co-hosting responsibilities



- d. Each party is responsible for testing platform connectivity for its witnesses in advance of the hearing
2. Send the hearing invitation to the necessary participants
 - a. Meeting set-up in video conferencing platform
 - Send the hearing invitation via Outlook (not directly through the platform) so that you can customize meeting subject line and body
 - Hearing description in the platform should not contain full party information
 - Use the AAA case number and arbitrator name
 - Include the following disclaimer in the Notice of Hearing and in the electronic hearing invitation:
Please note that video hearings or proceedings are conducted through third party platforms. The use of such platforms for proceedings is subject to the platform's terms and policies. The AAA-ICDR arranges proceedings through these third party platforms for the arbitrators' and parties' convenience. The AAA-ICDR does not endorse any one platform over another nor does the AAA-ICDR guarantee the suitability or availability of any platform. Any concerns regarding the use of a third party video conferencing platform should be raised by copying correspondence to all parties to this matter.
 - b. Document and communicate any ground rules in advance; see the model *Procedural Order for Virtual Hearings* for an extensive list of considerations, including:
 - How will document display be managed?
 - Conditions for witness participation
 - Camera use
 - Entering the hearing with full names
 - Whether the hearing will be recorded
 - How to manage panel conferences

At the start of the hearing

1. Show up early
2. Verify participants and their connectivity
3. The hearing host should use any available security features during the hearing to manage waiting or breakout rooms, screen sharing, chat, and locking the hearing
4. The hearing moderator/host should monitor the participant list for participants who may drop off or for participants that join to ensure that they are required participants
5. Restate any ground rules
6. At least for the early part of the hearing, participants should state their names before speaking so other participants can easily identify the speaker



AAA-ICDR® Virtual Hearing Guide for Arbitrators and Parties Utilizing ZOOM

Optimizing the Virtual Hearing Experience*

1. Use a PC, laptop or large tablet for the video portion of the hearing as monitor size will be important, particularly for hearings with many participants
2. The device/screen you are using to participate in the virtual hearing will not be available for other purposes, such as taking notes or viewing documents; arrange for alternate means of doing so
 - a. Use of dual monitors (or even a single monitor with a laptop screen) is recommended, with Zoom running on one screen
3. Disable any pop-up notifications within applications such as Outlook and Skype to prevent these from appearing onscreen while presenting
4. Use a good quality webcam if possible, and check lighting conditions
 - a. Backlighting is generally not desirable
 - b. For AAA staff, use a virtual background image provided by Marketing
5. Audio considerations
 - a. Audio quality can be affected by a variety of factors and may take some experimentation to come up with the best way to connect, whether by phone, through your computer speakers/microphone, and with or without a headset; try to determine your best method prior to the scheduled event.
 - b. If there are multiple participants in the same physical location, there may be an echo if their microphones/phones are not muted (this is highly dependent on the equipment being used but is obvious when it occurs)
 - c. Find a quiet location
 - Minimize background noise
 - Mute yourself whenever you are not speaking
 - Take notes quietly if not muted, if necessary on paper as opposed to using a keyboard
 - Avoid multi-tasking such as checking email
6. Consider steps that may be taken to establish a high-speed internet connection (e.g., if possible, a hard-wired internet connection is generally preferable to a wireless internet connection)

* Please note that video hearings or proceedings are conducted through third party platforms such as Zoom are subject to the platform's terms and policies, for example: <https://zoom.us/privacy-and-legal>. The AAA-ICDR arranges proceedings through these third party platforms for the arbitrators' and parties' convenience. The AAA-ICDR does not endorse any one platform over another nor does the AAA-ICDR guarantee the suitability or availability of any platform. Any concerns regarding the use of a third party video conferencing platform should be raised by copying correspondence to all parties to this matter.



- a. Recognize that much of the technology infrastructure involved is not in our control and there may be conditions under which a virtual hearing is not feasible
- b. Consider arranging for a “lower technology” backup alternative such as an audio-only conference bridge

Zoom Technical Support

1. Zoom hardware test is available here: <https://zoom.us/test>
2. Zoom technical support is here: <https://support.zoom.us/hc/en-us>
3. Zoom Support by Chat
 - a. Zoom support is available whenever you are logged into a Zoom account at [Zoom.us](https://zoom.us)
 - b. Go to ‘Help’ at the bottom right
 - c. Click the ‘Live Chat’ button

Virtual Hearing Security Considerations

See Appendix A - Default Meeting Settings for details, but generally:

1. A unique, automatically generated meeting ID must be used for each virtual hearing, not your personal meeting ID
 - a. As an additional layer of security the hearing can be password-protected with a unique password, but that password should be shared with the participants via a medium other than via the Zoom invitation email
2. Participants should use secure internet connections and not attend from public locations or in circumstances where non-invitees could hear or see the proceedings
3. The host should be provided with the list of participants (including witnesses) and their email addresses for the purpose of inviting them to the online hearing
 - a. Participants should be instructed to not forward or share the hearing invitation
 - b. Any additional participants should be invited directly by the hearing host
4. You can use the Waiting Room feature to prevent ex parte communication with the arbitrators prior to the start of the event
 - a. Give the waiting room a meaningful description such as “AAA Case 01-20-0001-0003 with Arbitrator Jane Doe”
 - b. Do not include information that would disclose the identity of the parties to the case
 - c. You may also want to consider including contact information for the AAA Zoom host in the description
5. Disable the “private” chat feature (only allow chat with “everyone”)
6. Participants must decide if the recording feature will be utilized (see below Considerations for Recording a Zoom Hearing). If recording feature is not being utilized, disable all recording and emphasize that no independent recording or taking of screenshots is permitted



Preparing for the Virtual Hearing

1. At least one week before the hearing, have a trial run with the panel, representatives and any technical support people to verify their connectivity and get them familiar with some basic features of Zoom
 - a. Basic features to cover
 - Overall display/tiling
 - Control Panel features
 - Participant list
 - Muting/unmuting
 - Screen sharing
 - Passing control
 - Inviting a non-participant
 - Waiting Room/Breakout Rooms
 - Locking the hearing
 - b. If there are any technical issues with the panelists' equipment, take steps to get them resolved or decide whether the hearing can proceed virtually
 - c. Discuss with the panel hosting/co-hosting responsibilities
 - d. Each party is responsible for testing Zoom connectivity for its witnesses in advance of the hearing
2. Send the hearing invitation to the necessary participants
 - a. Meeting set-up in Zoom
 - Send the hearing invitation via Outlook (not directly via Zoom) so that you can customize meeting subject line and body
 - Hearing description in Zoom should not contain full party information
 - o Use the AAA case number
 - o You may also use names of representatives and/or abbreviations of party names that do not allow for actual party identification
 - Include the following disclaimer in the Notice of Hearing and in the electronic hearing invitation:

Please note that video hearings or proceedings are conducted through third party platforms. The use of such platforms for proceedings is subject to the platform's terms and policies, for example: <https://zoom.us/privacy-and-legal> The AAA-ICDR arranges proceedings through these third party platforms for the arbitrators' and parties' convenience. The AAA-ICDR does not endorse any one platform over another nor does the AAA-ICDR guarantee the suitability or availability of any platform. Any concerns regarding the use of a third party video conferencing platform should be raised by copying correspondence to all parties to this matter.



- b. Decide if breakout rooms will be used and to the extent possible, set them up in advance; see guide here: <https://support.zoom.us/hc/en-us/articles/360032752671>
 - Special Considerations for Phone Only participants
 - o Phone participants can be assigned to a break out room, however:
 - i. If you assign them to the break out room before you “open all rooms” they will automatically be sent to the break out room upon “opening”,
 - ii. The only way that phone participants can rejoin the main room is if you “close all break out rooms” which ends them for everyone for the rest of the call (of course you could re-create them again).
 - o Phone participants can be placed in the waiting room.
- c. Document and communicate any ground rules in advance; see the model *Procedural Order for Virtual Hearings* for an extensive list of considerations, including:
 - How will document display be managed?
 - Conditions for witness participation
 - Camera use
 - Entering the hearing with full names
 - Whether the hearing will be recorded
 - How to manage panel conferences

At the start of the hearing

1. Show up early
2. Verify participants and their connectivity
3. The hearing host should use the Security Option feature on the control panel to manage settings during the hearing for items such as the waiting room, screen sharing, chat, and locking the meeting
4. The hearing moderator/host should keep the participant list open
 - a. Clean up/combine virtual participant entries (names, duplicate phone/video sessions)
 - b. Monitor waiting room activity and watch for participants who may drop off
 - c. The host may lock the meeting but needs to be made aware of anyone who may need to join and then unlock the meeting; use of a waiting room is generally preferable to locking the meeting unless the extra level of security is warranted
5. Restate any ground rules
6. At least for the early part of the hearing, participants should state their names before speaking so other participants can easily identify the speaker



Considerations for Recording a Zoom Hearing

Should the case participants opt to use Zoom's recording features, they should be fully aware of Zoom's Terms of Service (<https://zoom.us/terms/>), and the conditions under which the session will be recorded should be formalized and shared with case participants in advance of the hearing (see Model Procedural Order for Virtual Hearings).

The recommended process for recorded sessions that are not conducted with AAA Zoom accounts is to use cloud storage and have the Zoom account owner send a link to the recording to case participants as directed by the arbitrator(s) or as identified in the procedural order. The link should be password protected and the password should be sent separately from the communication containing the link.

The recipients would then have seven (7) calendar days to download a local copy of the recording via the link, after which the cloud recording would be deleted. The recipients are responsible for maintaining security around and controlling access to their locally stored copies of the recordings.

Should the case participants opt to not use cloud storage and save the recording locally, the host on whose computer the file is stored must then arrange to transmit the file to the specified case participants in a secure manner (such as via Citrix ShareFile or other file sharing tools) and also take steps to maintain the security around and control access to their locally stored copy of the recording.

Recommended Zoom Settings for Cloud Recordings

Recommended Settings for Local Recording

See Appendix A - Default Meeting Settings for detailed settings

Cloud recording

Allow hosts to record and save the meeting / webinar in the cloud

☒ Record active speaker with shared screen

☐ Record gallery view with shared screen ⓘ

☐ Record active speaker, gallery view and shared screen separately

☐ Record an audio only file

☐ Save chat messages from the meeting / webinar

Advanced cloud recording settings

☒ Add a timestamp to the recording ⓘ

☒ Display participants' names in the recording

☒ Record thumbnails when sharing ⓘ

☐ Optimize the recording for 3rd party video editor ⓘ

☐ Save panelist chat to the recording ⓘ

Local recording

Allow hosts and participants to record the meeting to a local file

☐ Hosts can give participants the permission to record locally



Appendix A

AAA-ICDR Suggested Zoom Default Settings for Virtual Hearings

Schedule Meeting Settings

Configuration Section	Default Setting	Comments
Host Video	On	Allows for default to video so participants can see who is in attendance
Participants Video	On	Allows for default to video so participants can see who is in attendance
Audio Type	Telephone and Computer Audio	Allows participant to choose which has better sound quality for them
Join Before Host	Off	Keeps one party and arbitrator from being in the room together
Use Personal Meeting ID (PMI) when scheduling a meeting	Off	We must use the "generate automatically" option to randomly create a new meeting code per hearing in order to keep someone who has a link from a prior meeting from joining
Use Personal Meeting ID (PMI) when starting an instant meeting	Off	PMI not to be used
Only authenticated users can join meetings	Off	This means that the meeting participants will have to sign in to their Zoom account to join the meeting. Would require every arbitrator/party/participant/witness to create a zoom account.
Require a password when scheduling new meetings	On	
Require a password for instant meetings	On	
Require a password for Personal Meeting ID (PMI)	Off	PMI not to be used
Embed password in meeting link for one-click join	Off	
Mute participants upon entry	Off	More appropriate to be managed by host and as needed
Upcoming meeting reminder	Off	Not needed as Outlook invitations should be used



In Meeting (Basic) Settings

Configuration Section	Default Setting	Comments
Require Encryption for 3rd Party Endpoints (H323/SIP)	On	This means zoom meetings where a participant is using a different room-based solution like WebEx or Lifesize would require an encrypted connection Set to "on" in case we ever have meetings with third party endpoints, but this will not impact anything with standard Zoom meetings using the Zoom client on desktops/laptops/mobile devices
Chat	On and check box to prevent participants from saving chat	Concern over who has access to Zoom data
Private chat	Off	Concern over who has access to Zoom data, <i>ex parte</i> communication with panel
Auto saving chats	Off	Concern over who has access to Zoom data
Play sound when participants join or leave	Off	Can be distracting; may be set to play only for the host
File Transfer	Off	Concern over who has access to Zoom data
Feedback to Zoom	Off	
Display end-of-meeting experience feedback survey	Off	
Co-host	On	
Polling	Off	
Allow host to put attendee on hold	On	Good for temporarily allowing the host to remove an attendee such as a witness



Configuration Section	Default Setting	Comments
Always show meeting control toolbar	On	
Show Zoom windows during screen share	Off	Only need to share documents/presentation
Screen Sharing	On	
Who can share?	All Participants	
Who can start sharing when someone else is sharing?	Host Only	
Disable desktop/screen share for users	Off	Needed for presenting
Annotation	On	Allows participants to mark up a document
Whiteboard	On and Uncheck Auto save whiteboard content when sharing is stopped	Concern over who has access to Zoom data
Remote control	On	Allows others to control shared content
Nonverbal feedback – off	Off	
Allow removed participants to rejoin – off	Off	Keeps removed people from getting back in



In Meeting (Advanced) Settings

Configuration Section	Default Setting	Comments
Breakout room	On and Check Allow host to assign participants to breakout rooms when scheduling	Only can pre-assign those with full license but n harm to allow this setting
Remote Support	Off	We do not want to get into others computers
Closed captioning	Off	
Save captions	Off	
Far end camera control	Off	
Group HD video	Off	To reduce bandwidth use
Virtual background	On	Use professional background image
Identify guest participants in the meeting/webinar	Off	Not needed as most are guests vs. someone on AAA corporate account
Auto-answer group in chat	Off	
Only show default email when sending email invites	Off	
Use HTML format email for Outlook plugin	On	
Allow users to select stereo audio in their client settings	Off	
Allow users to select original sound in their client settings	Off	



Configuration Section	Default Setting	Comments
Attention tracking	Off	Feature disabled/removed by Zoom
Waiting room	On	Can be disabled if needed (Case by case basis)
Show a "Join from your browser" link	On	Do not want to force participants to download the app
Allow live streaming meetings	Off	

Email Notification Settings

Configuration Section	Default Setting	Comments
When a cloud recording is available	On	
When attendees join meeting before host	On	
When a meeting is cancelled	On	
When an alternative host is set or removed from a meeting	On	
When someone scheduled a meeting for a host	On	
When the cloud recording is going to be permanently deleted from trash	On	



Other Settings

Configuration Section	Default Setting	Comments
Blur snapshot on iOS task switcher	Off	This setting can be used to hide potentially sensitive information on the Zoom iOS mobile app preview screen when multiple apps are open using the iOS tasks switcher Off as we don't see the need to enforce this
Direct call a room system	Off	This option enables a zoom client to directly call a room-based system instead of needing the room based system to be joined to a meeting first Off as it is not applicable to us
Invitation Email – Choose Language	English	
Schedule privilege – Assign scheduling privilege to	No one	May be used to assign privileges to other case staff

Recording Tab

Configuration Section	Default Setting	Comments
All settings	Off	See section on "Considerations for Recording a Zoom Meeting" if turning on

Telephone Tab

Configuration Section	Default Setting	Comments
All settings	On	



Recommended Zoom Settings for Cloud Recordings

When setting up the meeting for recording, you will need to verify these configurations.

Configuration Section	Default Setting	Comments
Local Recording	Off	If changed to yes, do not select "Hosts can give participants the permission to record locally" You must document the file distribution/retention strategy
Cloud Recording	On	See detailed settings image below
Automatic Recording	Off	
IP Address Access Control	Off	
Only authenticated users can view cloud recordings	Off	
Require password to access shared cloud recordings	On	
Auto delete cloud recordings after days	21	Set to 21 as a precaution against inadvertently premature deletion; participants should be directed to download a local copy within 7 days
The host can delete cloud recordings	On	
Recording Disclaimer	On	Set to "Ask host to confirm before recording starts"
Multiple audio notifications of recorded meeting	Off	



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Detailed Cloud Recording Settings

These are the recommended settings when using cloud recording

Cloud recording
Allow hosts to record and save the meeting / webinar in the cloud

☒ Record active speaker with shared screen

☐ Record gallery view with shared screen ⓘ

☐ Record active speaker, gallery view and shared screen separately

☐ Record an audio only file

☐ Save chat messages from the meeting / webinar

Advanced cloud recording settings

☒ Add a timestamp to the recording ⓘ

☒ Display participants' names in the recording

☒ Record thumbnails when sharing ⓘ

☐ Optimize the recording for 3rd party video editor ⓘ

☐ Save panelist chat to the recording ⓘ



AAA-ICDR® Model Order and Procedures for a Virtual Hearing via Videoconference

AAA® is providing this document as a model or template which the arbitrator and the parties can modify to fit the specific needs of their specific case. The model order may not be a good fit for every AAA case, but even in those situations it may provide guidance as to issues the arbitrator and parties could consider. Based on the circumstances of the specific case before them, an arbitrator or parties may make decisions or take actions different from those noted below.

1a. Agreement to Videoconference: [if it's been agreed to]

- A. The parties and the panel/arbitrator agree that the hearing in this case will be conducted via [Platform Name] videoconference. This confirms that the hearing will be deemed to have taken place in [locale/place of arbitration].
- B. The parties acknowledge that they have made their own investigation as to the suitability and adequacy of [Platform Name] for its proposed use for the videoconferenced hearing and of any risks of using [Platform Name], including any risks regarding its security, privacy or confidentiality, and they agree to use [Platform Name] for the hearing.

[or]

1b. Order for Videoconference Hearing: [if ordered by the arb/panel & not agreed to by all Ps]

- A. The arbitrator/panel hereby orders that the hearing in this case be conducted via [Platform Name] videoconference in accordance with the procedures set forth below. This confirms that the hearing will be deemed to have taken place in [locale/place of arbitration].
- B. The arbitrator/panel notes the [claimant's/respondent's/other parties'] objections to holding the hearing via [Platform Name]. The arbitrator/panel finds, however, that conducting the hearing via videoconference is a reasonable alternative to an in-person hearing in light of the COVID-19 pandemic, stay-at-home orders, and travel limitations. Videoconferencing technology will provide the parties a fair and reasonable opportunity to present their case and will allow the hearing to move forward on the dates previously scheduled instead of postponing the hearing to a future date.

2. Hearing Record and Recording:

- A. The parties and panel/arbitrator agree that the hearing [will/will not] be transcribed by a court reporter. [If yes – The parties and panel/arbitrator agree that the court reporter's transcript will be the official record of the hearing. Regardless of physical or remote attendance, the court reporter may interrupt attorneys, witnesses, or the arbitrator/panel as needed to clarify items for the record.]
- B. The parties and panel/arbitrator agree that the hearing's audio and video [will/will not] be recorded through [Platform Name]. [If yes – The parties and panel/arbitrator agree that the video conferencing platform's recording [will/will not] be the official record of the hearing [if a court reporter is not transcribing the hearing]. The



parties and panel/arbitrator agree that the recording [will/will not] be made available to all counsel and panel members after the hearing concludes [on request/and the Chair/host will send a link to the recording as soon as is practicable after each hearing day concludes/after the hearing concludes]. The panel/arbitrator will control when the hearing is on and off the record.]

- C. The parties and counsel agree that they will not record, via audio, video or screenshot, or permit any other person to record, via audio, video or screenshot, the hearing or any part of it, except as is provided for in this Order. The parties and counsel will ensure that each additional attendee at the hearing for which that party is responsible also acknowledges and agrees to this prohibition on recording.

3. Technical Aspects:

- A. Invitations to Access Hearing: The [AAA case manager/arbitrator/one of the panel members] will invite attendees via email to join the [Platform Name] hearing. To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized attendees only. Hearing attendees should not forward or share the hearing link or password.

In order to facilitate e-mail invitations for the hearing, no later than XX, the parties shall circulate to the AAA a list of each attendee's name, e-mail address, and phone number (where they will be reachable on the day(s) they attend the hearing).

- B. Advance Testing of System:

- i. At least one week before the hearing, counsel and the panel/arbitrator will test the videoconferencing system to ensure that all arbitrators and counsel can connect and that their video and audio systems work (and noting camera settings, lighting, delays/time lags, clarity, volume, feedback, and other sound disruptions).
- ii. Each party will be responsible for testing the videoconferencing system with each of their witnesses, including any third-party witnesses that party has subpoenaed, who will be attending virtually (as opposed to in counsel's offices). Each party also is responsible for ensuring that all logistical requirements of this Order are satisfied.
- iii. The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of all participants.
- iv. Each participant should test their equipment to determine their best audio connection – whether by phone, through their computer speakers/microphone, and with or without a headset.

- C. Back-Up Conference Call Line:

The parties/AAA shall reserve an optional dial-in conference call number in case one or more participants has poor quality computer audio (after trying the audio connection through the computer-- with and without a headset – and by phone).

- D. Hearing Participants:

- i. Each party will inform the panel/arbitrator and all other parties/counsel [XX] days before the hearing the names of all persons who will attend, participate in or will be able to hear any communications in the



hearing using [Platform Name], including any technicians assisting the party or counsel. The parties agree that no persons will attend, participate or be allowed to listen in on the hearing without the prior consent of all parties and the panel/arbitrator.

- ii. If the arbitrator/any panel member plans to have a technician present with them or available to assist them in person, they will communicate to counsel [and the other panel members] the technician's name and affiliation at least [XX] days before the hearing.
 - iii. Each attendee of the virtual hearing shall disclose at the start of each hearing session all people in the room with the attendee. Should an individual join the attendee after the hearing session has begun, that individual should be identified to counsel and the panel/arbitrator at the earliest opportunity.
 - iv. During the videoconference, the participants [or the witness] shall always be in view of the camera. If two or more people are attending the hearing together in a room, they shall use a single camera, which shall be placed to provide a view of a reasonable part of, if not the entire, room.
 - v. At the Chair's/arbitrator's request, unknown participants shall identify themselves by showing a piece of identification to the camera or by responding to the panel's/arbitrator's questions regarding their identity.
- E. Ensuring Good Audio/Video:** Hearing participants shall make best efforts to ensure that there will be clear video and audio transmission during the hearing. Participants should:
- i. consider steps that may be taken to establish a high-speed internet connection (e.g., if possible, a hard-wired internet connection is generally preferable to a wireless internet connection);
 - ii. use the computer microphone, with or without a headset, for audio transmission or use a phone to dial into audio portion of the platform (or if necessary, use the back-up conference call number if the computer and platform audio are of poor quality);
 - iii. eliminate any background noise;
 - iv. consider camera positioning and lighting (e.g., avoid sitting near a window, positioning a light in front of (instead of behind) the participant);
 - v. access [Platform Name] via desktop or laptop rather than by smartphone or tablet;
 - vi. ensure computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary; and
 - vii. not join the hearing from a public setting or using unsecured, public wifi to ensure the privacy and security of the hearing.
- F.** All counsel shall endeavor to speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question asked or to alert other participants of technical difficulties.
- G.** All participants who are not actively being questioned as a witness, asking questions of a witness, defending a witness, or providing or responding to opening statements, closing arguments, or other arguments, shall maintain their audio on mute to limit potential interruptions. The video hearing host and co-host [if any] also will have the ability to mute and unmute any participant if needed.



H. For each person participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the accurate transcription or recording of the participant's speech as appropriate.

I. Each participant in the hearing shall have accessible a computer or other device with email [and a printer to which the device can print exhibits or other documents if needed].

4. Witnesses and Exhibits:

A. With the exception of the parties' corporate representatives and expert witnesses, who may attend the entirety of the hearing, all witnesses are to be sequestered until they testify. [If recording video - Witnesses shall be advised in advance by the party calling them that their testimony will be recorded.]

B. Witnesses should follow the below practices:

- i. A witness shall give evidence sitting at an empty desk or table, and the witness' face shall be clearly visible in the video.
- ii. To the extent possible, the webcam should be positioned at face level, relatively close to the witness (e.g., by positioning a laptop on a stack of books).
- iii. Witnesses may not use a "virtual background." Instead, the remote venue from which they are testifying must be visible.
- iv. Witnesses should speak directly to the camera while testifying.
- v. Witnesses should avoid making quick movements.
- vi. All non-party or expert witnesses shall sign-off from the [Platform Name] session at the conclusion of their testimony.

C. At any time, the Chair may ask a witness to orient his or her webcam to provide a 360-degree view of the remote venue in order to confirm that no unauthorized persons are present; any authorized persons (counsel, etc.) in the room with the witness must be identified at the start of the witness' testimony.

D. In accordance with the provisions of this Order, the Chair shall instruct each witness about: (i) what to do in the event of a disconnection or other technical failure; and (ii) the impermissibility of any unauthorized observers or recordings of the hearing.

E. Hearing exhibits:

- i. Before the hearing, counsel shall provide each witness with a clean, unannotated hard copy set of exhibits to be referred to during the witness' evidence, as well as a clean, unannotated copy of his or her witness statement [if any]. At any time, the Chair/arbitrator may ask a witness to display the set of exhibits and/or witness statement and verify that they do not bear any annotations. Witnesses shall not be aided by any notes, unless permitted by the Panel/arbitrator upon motion for good cause.
- ii. The parties may agree on utilizing a shared virtual document repository (*i.e.*, document server) to be made available via computers at all participants' locations, provided that the parties use best efforts to ensure the security of the documents (*i.e.*, from unlawful interception or retention by third parties). If available, a



separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show and display the relevant documents to the witness during the course of questioning.

5. Hearing Schedule & Logistics:

- A. The hearing shall commence on _____, 2020, and it will begin at 9 a.m. [time zone], with morning, lunch, and afternoon recesses at such times as the Panel determines in its discretion are appropriate, and the hearing shall continue on _____ as may be necessary. It is recommended that all participants access the virtual hearing room early [each day of hearing]. The Panel may take additional recesses and adjust the hearing schedule, in its discretion, to facilitate a smooth and efficient hearing.
- B. The hearing schedule, and the daily schedule, will take into account that extra time may be needed if there are technical problems that cause delays.
- C. Upon joining the [Platform Name] hearing, participants will be admitted to a virtual Waiting Room [if offered by the platform]. The panel/arbitrator will admit all participants to the hearing at the same time. To avoid delay and difficulty reconnecting, hearing attendees should not disconnect from the [Platform Name] meeting during any recess. However, lines may be muted during this time, and the Panel may move participants to “break-out” and/or the virtual Waiting Room.
- D. The panel/arbitrator will disable the private “chat” function in [Platform Name]. The arbitrator/panel may use a virtual “break-out” room to confer privately. The arbitrator/panel may also use virtual break-out rooms to facilitate private conversations between other case participants as may be appropriate (e.g., upon request, to allow members of a party’s legal team to confer with each other directly, outside of the presence of the arbitrator/panel and witnesses).

6. Technical Failure:

- A. Should one party’s or participant’s videoconferencing connection fail, the panel/arbitrator will ask the counsel remaining on the videoconference to mute their audio and to turn off their video to avoid concerns regarding potential *ex parte* communications. Once the panel/arbitrator sees that the dropped participant has rejoined the videoconference, the remaining counsel should unmute their audio and turn on their video.
- B. If a participant is disconnected from the videoconference or experiences some other technical failure and connection cannot be re-established within a 5-minute interval:
 - i. the arbitrator/panel may take steps to “pause” the hearing, which may include moving participants into a virtual waiting room or one or more separate break-out rooms, and the parties agree to pause proceedings as needed to accommodate any reconnections or technical issues;
 - ii. such participant shall e-mail all hearing attendees, by replying all to the [Platform Name] invitation circulated by the arbitrator/panel, and shall monitor e-mail for any further instructions from the arbitrator/panel [or – The parties and participants shall use telephone communication to indicate if any party, attorney, or witness has been dropped from the hearing due to a connection problem or other technical issue. Unless agreed otherwise, _____ [name and number] _____ is the designated person and number to contact in the event that parties, counsel, or witnesses are disconnected.]



- C. If the videoconferencing system fails to work such that the hearing cannot take place as scheduled, or if the panel/arbitrator determines that the videoconferencing system otherwise does not allow the parties to adequately present their case or that it would be unfair to any party to continue the hearing via videoconference, the panel/arbitrator may reschedule the hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings.
7. Costs of Videoconferencing: The parties agree that the costs of using [Platform Name] for the hearing will in the first instance be borne equally between them, 50% to Claimant and 50% to Respondent [if not equally split, or if more than 2 parties, need to specify how to allocate costs]. [For Consumer or Employment cases – The parties agree that the costs of using [Platform Name] for the hearing will in the first instance be borne 100% by the business/employer.]

For the avoidance of doubt, the parties agree that those costs are included in the costs of the arbitration, as specified in the applicable Rules and are subject to allocation by the panel/arbitrator in any final award.

DOs AND DON'Ts OF EFFECTIVE ADVOCACY IN MEDIATION

The Mediation Summary Statement

- Summarize your position as succinctly as possible.
- A mediation statement is different from a trial brief or an appellate brief: In most cases, the focus should be on the facts.
- If there are legal issues involved, don't string cite the case law. Don't cite cases that stand for well-known legal principles, like the definition of negligence or breach of contract. Mediators are interested in reading only what the controlling case is on any material, non-basic point of law.
- Don't send the mediator copies of the pleadings, but do include key documents, like the contract and any emails that might constitute admissions.
- If you are the creditor, it advances the mediation process if you include a demand in your mediation summary. If you are the debtor, it advances the mediation process if you include evidence of ability (or inability) to pay in your mediation summary.
- Unless there is some extraordinary reason to keep the position statement confidential, share it with opposing counsel.
- If you think the parties should start in separate rooms, rather than together, say so in your mediation statement, and explain, generically, why.
- Tell the mediator who is going to attend the mediation and what their roles are.

The Mediation

- Think carefully about your “opening statement.” With whom will you make the most eye contact? How do you get your point across without causing opposing counsel, or the opposing parties, to get defensive? How do you make your point without rehashing everything in the mediation summary?
- If after opening statements you think it would be useful for the parties to remain in the same room for further discussion, say so.
- When the parties separate, if you have a “non-traditional” settlement approach in mind, share it with the mediator, and don’t give up if the mediator doesn’t catch on.
- As the time available wanes, if you want the mediator to give both sides a “take it or leave it” number, say so.



Virtual ADR & Security – Frequently Asked Questions (FAQ)

Quick Links

What steps is JAMS taking to protect security and privacy while using Zoom?

What alternative remote options are available for my case other than Zoom?

Can I resolve my case through virtual ADR proceedings if there are HIPAA compliance issues?

What is JAMS reaction to the lawsuit(s) filed against Zoom related to security?

What steps is JAMS taking to protect security and privacy while using Zoom?

At every step of the proceeding JAMS employs processes to help protect security & privacy:

Step One – Invitations and Joining the Proceeding:

- JAMS provides a unique meeting ID for each mediation session and arbitration hearing.
- JAMS begins every proceeding by using the “waiting room feature.” This feature ensures that only participants invited to the proceeding are granted access to the actual meeting.
- A JAMS moderator is assigned to every Zoom proceeding.
 - The moderator troubleshoots technical issues.
 - The moderator controls entry of the participants to the proceeding.
 - The moderator facilitates the use of break out rooms where needed or appropriate.

Step Two – The Proceeding:

- Once all participants have joined the session, the neutral and moderator have the ability to lock the meeting to prevent anyone else from joining.
- The neutral and moderator have the ability, and will, disable the recording function.
- The neutral and moderator will control the screen sharing function.

Step Three – Continuous Review and Training:

- JAMS provides ongoing training to neutrals and associates on best practices for virtual proceedings using Zoom.
- JAMS IT department monitors security developments regarding the use of virtual platforms such as Zoom and will update our processes as needed.

What alternative remote options are available for my case other than Zoom?

While JAMS is not able to control Zoom security policies and procedures and understands some clients have concerns with this platform, JAMS neutrals and associates have been trained to make the best use of the security protocols provided by the Zoom platform (see above). Parties to matters at JAMS have reported good results using the Zoom platform because of its ease of use and the fact that it is cost-free to them. However, should clients prefer another virtual option, JAMS has its own platform - Endispute™, operated by CourtCall™.

Endispute™ via CourtCall™

JAMS offers Endispute™, a mediation platform provided by CourtCall™, for a modest additional fee. Endispute™ is a browser-based video and audio application that is easily accessible through a phone, computer or tablet. A CourtCall™ representative is available for the entire session to resolve any technical aspects.

Endispute™ also allows private breakout rooms for each party and document sharing capability. Endispute™ application security is the strongest encryption standard. Only authenticated callers are let into the call and each meeting ID is unique.

Other Platforms

Should clients prefer another virtual platform, JAMS will work with the parties to accommodate the request. There are several alternative platforms available, including the following:

- **Microsoft Teams (and Skype)** - Users can host audio and video conferences with anyone. This platform provides features such as meeting note taking, screen sharing, meeting recording, and instant messaging.
 - A Microsoft Teams meeting can be locked by enabling the lobby setting and not allowing entrance into the meeting.
 - Appropriate for arbitrations or mediations based on available features.
- **Conference Call** (no video – please see below)
 - Appropriate for arbitrations or mediations.
- **GoToMeeting™** – This platform includes features such as screen sharing, meeting recording, and instant messaging.
 - Provides each participant a password in order to enter the session.
 - The neutral has total control and can lock the room once the session begins to restrict others from accessing the videoconference.
 - Only appropriate for arbitration hearings based on available features.
- **WebEx:** This platform offers features such as screen sharing, meeting recording, and instant messaging.
 - Provides each participant a password in order to enter the session.
 - The neutral has total control and can lock the room once the session begins to restrict others from accessing the videoconference.
 - Only appropriate for arbitration hearings based on available features.

Audio Only

If the parties prefer not to use videoconference, JAMS can arrange for a mediation session telephonically through the use of LoopUp. This platform offers unique features by allowing participants to join the session with a click of a button, users can see who is speaking, and provides the host the capability to mute background noise.

JAMS has found that LoopUp is highly reliable and has had success with it thus far.

Can I resolve my case through virtual ADR proceedings if there are HIPAA compliance issues?

Yes. JAMS uses the Zoom HIPAA-compliant platform for all scheduled virtual proceedings, including mediations and arbitrations. This Zoom platform incorporates the necessary security features to satisfy the requirements of the Health Insurance Portability and Accountability Act (HIPAA).

For additional information regarding Virtual ADR and HIPAA compliance, please visit the JAMS website at <https://www.jamsadr.com/files/Uploads/Documents/JAMS-VIRTUAL-ADR-AND-HIPAA-COMPLIANCE.pdf>.

For specific information regarding Zoom's HIPAA compliant platform and its related security features, please go to <https://zoom.us/docs/doc/Zoom-hipaa.pdf>.

What is JAMS reaction to the lawsuit(s) filed against Zoom related to security?

JAMS is continually reviewing updates and news related to various online platforms and making necessary adjustments to our procedures as needed. Through the JAMS Institute, JAMS offers industry leading, ongoing training to its neutrals and associates on the use of available security measures from each platform. JAMS is instructing its neutrals and associates to take full advantage of security features in order for proceedings to be protected.

With any virtual platform or electronic medium, security is an important factor. JAMS does not have an opinion on legal action by other parties, which is consistent with our position of neutrality. As with anything, there are no guarantees. If a client or party prefers any particular platform, JAMS will do its best to accommodate the request. Attorneys are encouraged to reach out to us directly to discuss their options.

Disclaimer / Notice:

JAMS is providing parties with top-quality Alternative Dispute Resolution Services when in-person proceedings are not possible. Neutrals are available to conduct mediations, arbitrations and other matters via Zoom, Endispute™, conference calls and any other platform agreed to by the parties.

Zoom has become a particularly popular platform for JAMS clients. While JAMS is not able to control Zoom security policies and procedures, JAMS neutrals and associates have been trained to make best use of the security protocols provided by the Zoom platform. Parties to matters at JAMS have reported good results using the Zoom platform because of its ease of use and the fact that it is cost-free to them.

For questions or concerns related to the security or privacy of any platform, please visit the website for that particular platform.

[Submit a Case Online](#) 

Virtual ADR Resources

- **JAMS Videoconferencing Guide (PDF)** ›
- **Virtual ADR & Security FAQ** ›
- **HIPAA Compliance (PDF)** ›

Additional Questions? Contact Us.

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Local Solutions. Global Reach.™

JAMS successfully resolves business and legal disputes by providing efficient, cost-effective and impartial ways of overcoming barriers at any stage of conflict. JAMS offers customized dispute resolution services locally and globally through a combination of industry-specific experience, first-class client service, top-notch facilities and highly trained panelists.

Resolve Your Dispute at JAMS via Videoconference or Conference Call

We offer a range of effective virtual options

Videoconferences and conference calls are tools that JAMS has long used to successfully resolve thousands of disputes of all kinds. JAMS mediators and arbitrators (neutrals) are adept at managing the resolution process whether they are conducting an in-person or virtual hearing. Additionally, JAMS neutrals and case managers receive ongoing training in the latest videoconferencing technology and best practices.

In addition to traditional conference calls, JAMS offers a range of videoconference options for mediations and arbitrations based on case size and complexity, client comfort level and cost considerations.

Zoom is a popular online platform that can be used for mediations and arbitrations of almost any size. JAMS provides the Zoom accounts, and there is no cost to the parties. It offers private breakout rooms for mediations. Zoom is self-administered and requires some preparation by participants, as detailed on the following page. JAMS neutrals and staff are available to assist you with this convenient and user-friendly tool.

Endispute™, a proprietary JAMS mediation platform provided by CourtCall®, includes a high level of moderated service for a modest fee. A CourtCall representative will be available for the entire session to handle any technical aspects so that the parties can focus on settling their dispute. Endispute also allows private breakout rooms for each party and document sharing capability. This option is ideal for smaller, straightforward cases that can be resolved in a few hours. To determine if your case is appropriate for Endispute, contact a JAMS Case Manager or visit jamsadr.com/endispute.

How do I prepare for an online mediation or arbitration with JAMS?

- Determine which platform is best for your case (*see the following page for more information*).
- A JAMS Case Manager will provide you with the appropriate paperwork prior to your session. Parties will need to agree in advance on issues such as whether the session will be recorded and whether all participants must appear on camera.
- Just as you would with an in-person mediation or arbitration, confirm that all parties and representatives have blocked off time and are fully prepared to participate in the videoconference at any moment.
- Determine how you and your clients will communicate if you are participating from separate locations.
- Determine what documents you intend to share and ensure that they are forwarded to the neutral before the session.

Continued on the back

Local Solutions. Global Reach.™



JAMS Videoconference Guide *continued***JAMS Online Mediation
or Arbitration with Zoom****What are the technical requirements?**

- Download Zoom to your computer or tablet in advance of your session at <https://zoom.us/>. Though less optimal, you may also participate via your smartphone.
- Confirm that:
 - ◆ your computer audio is enabled
 - ◆ you have a videocam on or attached to your computer
 - ◆ your internet connection is working
 - ◆ you have a suitable backdrop and good lighting
- Consider doing a test run, if possible, in advance of your scheduled conference in order to address any technical concerns.

How does the process work?

- You will receive an invitation to a Zoom videoconference. This will include both the link and the password.
- The JAMS neutral will be the host of the meeting.
- Depending on whether your videoconference involves a mediation or arbitration, the neutral may have you join parties in the main Zoom meeting room or go directly into a breakout session.
- The neutral may use the mute button at various stages during the process to eliminate background noise.
- If you are in the same location as your client, then you may also use the mute button (as appropriate) to have a sidebar conversation with your client.
- During mediation sessions, you may also have a conversation with your client – and with the mediator – in one of the breakout rooms. Conversations in that room will be limited to invitees only.

JAMS Endispute™ Online Mediation**What are the technical requirements?**

- The Endispute online dispute resolution (ODR) platform is easily accessible, requiring only a phone and a computer or tablet with a webcam to participate in a mediation from anywhere.

How does the process work?

- Once you have determined that your case is appropriate for this platform, you can submit a case inquiry at jamsadr.com/endispute.
- An Endispute ODR case manager will then help parties select a neutral from the Endispute ODR panel and assist in the case convening process.
- Once the mediation session has been scheduled, confirmed participants will receive information about how to access the Endispute ODR mediation session, including dial-in instructions for audio as well as a link to access the video portion of the session.
- The parties will receive a fee agreement and confidentiality agreement which must be completed and returned in order to confirm the mediation session.

Disclaimer/Notice:

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Zoom has become a particularly popular platform for JAMS clients. While JAMS is not able to control Zoom security policies and procedures, JAMS neutrals and associates have been trained to make best use of the security protocols provided by the Zoom platform. Parties to matters at JAMS have reported good results using the Zoom platform because of its ease of use and the fact that it is cost-free to them.

For questions or concerns related to the security or privacy of any platform, please visit the website for that particular platform.

For more information, visit jamsadr.com/online or contact:

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Recipe for Success: Tips and Techniques for a Mediated Settlement

by Judge Louis Kornreich

Mediation and the process of resolving disputes can be an overwhelming experience; akin to being thrust into a baking competition with no recipes, a tight deadline, and judges eagerly awaiting the final product. Few of us would be able to successfully bake an apple pie under such conditions. Some may have the skills and know enough about food chemistry to be successful, while others may be able to watch a competent baker and get the gist of it. And then there are the rare individuals with a good enough memory to take a shot at a second pie without following written directions.

However, most of us benefit from having a list of ingredients, utensils, and instructions for each pie we bake. Yet, even with the best recipe followed to the letter, we know perfection is not assured. Baking is an art form; so is mediation. Here to help is a list of ingredients and a basic recipe for mediation. We will then discuss how and why some approaches may be more successful than others, and how technique and personality can be key factors for success.



Judge Louis Kornreich

There are many qualified mediators, with different styles, experiences, and backgrounds. Picking one with a suitable combination of these factors for a specific case is crucial.

Ingredient List

- 1 mediator, at least 2 parties with lawyers
- 1 mediation agreement with a confidentiality provision to be signed by the mediator, the lawyers, and the parties
- A brief confidential mediation statement from each party describing all factual and legal issues in dispute
- A bullet-point checklist from each party showing all monetary and non-monetary open issues
- One joint draft settlement agreement with boiler plate and open spaces for unresolved issues

Instructions

- Choose your baker — Select a mediator based upon experience, expertise, and temperament. In other words, select the best ingredients.
- Study your recipe carefully — Everyone, including the mediator, the lawyers, and the parties must be prepared in advance of the mediation. Each participant must know the pertinent law, the material facts, the issues in dispute, their own positions, and the positions of the opposing party. They also need to know their own interests and the interests of the opposing party, the options for settlement, and the objective criteria to be applied during the negotiations.
- Sift your flour — Separate perceptions from reality and positions from interests.
- “*Mise en place*” (a French culinary phrase which means “everything in its place.”) Have a pre-mediation telephone conference. As any good baker will tell you, preparation is key and having everything assembled and in place increases the likelihood of a smooth process.
- Preheat the oven — Find a proper venue, which may now be a remote connection.
- Set your timer — Discerning the facts from tangled disputes and stressed relationships can take time. Be patient and engage in this process without whipping the parties into a frenzy.
- Check in often — A good mediator, like a good baker, does not leave the oven unattended. Neutrality is fine to a point, but often, genuine engagement by the mediator helps to forestall or break an impasse. This may involve case evaluation or direction, so choose a mediator who knows both the fine art and the timing of engagement.
- Simmer — Soften positions until they reveal valid interests.
- Let it breathe — Be sure to cut option holes, to make sure any steam escapes.
- Season to taste with objective criteria.

Discussion

Now that we’ve completed the baking experiment, let’s examine why some mediations succeed, and others fail. There are many reasons for failure, and every case is different. Sometimes even best practices will not result in a settlement. Three very common reasons:

- The wrong mediator

—continued

Recipe for Success *continued*

- Lack of preparation
- Failure to distinguish between interests and positions

The Wrong Mediator

There are many qualified mediators, with different styles, experiences, and backgrounds. Picking one with a suitable combination of these factors for a specific case is crucial. For example, expertise in the law of the case may be essential; particularly in areas like construction or bankruptcy where knowledge of the law and experience may make a difference.

But many great mediators can do well in areas of law where they have limited familiarity. Sometimes style is more important than acumen in a field of law. Wisdom is another factor to be assessed; and wisdom may be found in many young mediators, just as it may be lacking in older mediators.

People skills are essential. Does a mediator garner trust? Is he or she a retired judge? Can he or she read people? Lead people? Teach people? Will the potential mediator be able to shift from being a neutral facilitator to an assertive evaluator without losing the confidence of anyone in the room? Does a mediator have *gravitas*?

There are many ways to learn about a mediator. One may read an online bio, ask other lawyers, check academic credentials, or look for judicial experience. These are all positive preliminary steps. But the best approach to selecting a mediator after doing preliminary research is to conduct an interview. A good mediator will welcome a discussion about his or her qualities and style.

Lack of Preparation

This factor is linked to the selection of a mediator and a failure of participants to distinguish between interests and positions. The right mediator will insist upon preparation. He or she will want to learn about the case and the law involved. A good mediator will educate counsel and the parties on the difference between an interest and a position. Many of the steps discussed above, like the mediation statements and bullet-point checklists, will force counsel and the parties to focus on what is vital.

Interests and Positions

Litigation is position-based. A position is a stance — a posture taken on an issue in an adversary proceeding. It may be a claim or a defense or a value placed upon damages. A position may appear to be an objective statement; but it is usually a subjective evaluation of intention.

An interest is very different. An interest is the stake that a party has in the outcome of a case and can be economic or personal. An interest is based upon need; a position is premised upon want.

Lawyers translate client needs into client desires and then joust in the arena of want. Mediators work in the realm of need. Settlements are more often reached when the discussion turns from wants to needs.

Conclusion

Mediation is a process requiring skills, preparation, and knowledge. Like baking, the best outcomes in mediation may be had by those who add a pinch of insight and their own personal touch to the recipe.

As a registered mediator in the Southern District of New York, the District of Delaware, and the District of Massachusetts, Judge Kornreich's mediation practice includes bankruptcy matters and all aspects of general litigation. Prior to joining Bernstein Shur, his distinguished career as one of Northern New England's top reorganization specialists spanned 40 years; the last 14 of which were spent on the U.S. Bankruptcy Court for the District of Maine, where he served as Chief Judge.