

“I’m Sticking with Zoom for Mediation,” Palm Beach County Bar Association Bulletin

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Zoom mediation was thrust upon us last year. At first, the technology was intimidating. I was skeptical about people being in different locations. Some have a concern that remote participation impacts the physical pressure and motivation to settle cases. In my experience, forcing people to travel, find parking, and sit for hours on end in

conference rooms waiting for the mediator or meaningful settlement discussions creates frustration. This is particularly true in multi-party complex construction cases where parties may be in rooms for hours on end waiting on other parties to facilitate the process.

Also consider some of the reasons mediations sometimes get cut short. Participants have planes to catch, need to pick up children, tend to other business, etc. If settlement discussions are not progressing quickly enough for participants who must leave, the process is stifled. **Imposing pressure on parties to make a deal out of frustration or fatigue is also counter to the core principle of mediation. Namely, self-determination and resolving claims without undue influence.** Unfortunately, we also live in a time of escalating violence. Not forcing people who may already be under significant stress into the same rooms and facilities alleviates a safety concern.

For construction cases, there are usually multiple parties, and multiple insurance carriers. An issue that routinely comes up is whether out of state adjusters must physically attend. Zoom makes scheduling mediation easier since adjusters or other participants can attend without having to build in the added travel time. Zoom also permits parties that may have smaller scopes in the underlying construction project the flexibility to multi-task while still being fully accessible and engaged. I have conducted many in person mediations where parties with a smaller role become annoyed to have to sit in a conference for the better part of a day without much interaction with the mediator or say in the outcome of the negotiations.

As an example, a typical construction case could involve a property owner suing a contractor for construction defects, and the contractor asserting third party claims against subcontractors. If there are hot button or big-ticket claims that occupy most of the owner and contractor’s attention, there may be subcontractors that are sitting on the sidelines for the bulk of mediation. Parties could be spending much of the day discussing roof claims, while a plumbing subcontractor is looking at his or her watch in a conference room waiting and wondering. The mediator can

use his or her best efforts to assure the subcontractor and counsel that they are not forgotten, and yet, they may be wondering why they must be there instead of joining by virtual room when needed.

The circumstances equally apply to other types of cases including personal injury, medical malpractice, real estate, and other commercial disputes where there are multiple defendants, cross claims, and third-party claims. Think of the added tension of either waiting for parties stuck in traffic or being the person stuck in traffic. How about the stress of wondering what else you have going on in your office or with other cases? What about the cost savings to the parties by reducing the overall time and expense of mediation? **Might alleviating some of the additional cost and stress allow counsel and parties to focus more on the case and think more clearly?**

It is also easier to coordinate with parties that may be excused for portions of mediation when their attention is not required. The attorney contact for the party can be texted, for example, when their virtual room needs to assemble. This has worked well for my mediations, and the parties appreciate the flexibility of being able to tend to other business.

Another benefit of using Zoom is when it comes to meals. Parties can plan for meals and personal comfort. Those who must eat and/or take medications on a schedule are benefitted by not having to travel and attend in person. Again, the purpose of mediation is to facilitate resolution by self-determination and not attrition.

Signatures can be procured on settlement documents in real time by electronic scan. Attorneys that may be participating from their own offices can multi-task and work on settlement agreements during the day and potentially avoid the added time and fatigue that comes with waiting for someone to prepare and agreement at an in-person session. How many times to you spend all day at a mediation, and then must wait around, exhausted, for someone to type up an agreement?

There are no doubt opinions and reasons why people prefer in person mediation. However, just because the availability of in person mediation is returning, it doesn't mean that Zoom is no longer an option. From my standpoint, I expect there will be a continued appetite for remote mediation and use of technology to avoid some of the stress, inconveniences and issues outlined above.

For additional ADR tips and resources, please [click here](#).

William J. Cea is a Board Certified Construction Attorney and Certified Circuit Court Mediator. He has extensive experience in the areas of construction defects litigation, public procurement, and mediation, and regularly represents developers, property owners, public agencies, design professionals, contractors and service providers. In his capacity as a mediator, Bill assists parties in resolving all types of civil and commercial disputes. To learn more about Bill, please [click here](#).