

## SDNY MEDIATOR TIP SHEET:

### Mediator's Opening – Remote Mediation Supplement

This **Tip Sheet** starts with the recommendation to begin your first remote mediation by specifically addressing the opportunities, challenges, and technical aspects of remote participation. Why? Though many people have been using telephone and video conferencing platforms for years, for many participants this will be their first opportunity to use these platforms to mediate. To begin, a **best practice** when mediating through telephone or video conference is to have at least one practice session with every participant in advance of the actual mediation session, using whatever platforms, phones, computers, and WIFI/Ethernet connections will be used during the mediation itself. Please only use remote platforms for which you have training and experience.

#### Topics You **Should** Cover in Your Remote Pre-Mediation Calls/Practice Sessions:

- ∞ **Review the Basics:** Review the necessary technical aspects of any telephone or video conferencing system including whether they require a download to function, and whether they can be used on the full range of MAC and/or PC devices. Remind participants that all computing devices should be charged and power cables or backup batteries must be available. For many platforms to work properly, it is necessary to have a high-speed internet connection (Wi-Fi). A hard-wired connection (Ethernet) may be preferable to Wi-Fi. For the mediation session, unnecessary computer applications should be turned off rather than running in the background. Address the feasibility of everyone joining the mediation from a secure connection (not a public or unsecured Wi-Fi). If a secure connection is not available for any participant, all participants should be made aware and should consent to proceeding under those conditions.
- ∞ **Encourage Dress Rehearsals:** Prior to the session, work with parties and counsel to test each participant's audio and/or video to be sure they will work as intended for the mediation. Establish a back-up means of communication should anyone have a software/hardware fail on the day of the mediation.
- ∞ **Support Participation:** If anyone might need to share documents, or audio or video files, during the mediation, make sure you have the ability to do so. Depending on the software and personal settings, participants may be able to upload the document or audio/video files to their screens or share with the mediator in advance so that the mediator may upload the information. If the platform you are using does not support sharing information in this way, be prepared to e-mail during the session. Depending on the platform, you may want to demonstrate or test breakout rooms, chat, or other functions.
- ∞ **Reinforce Security and Confidentiality:** Remind all participants that there is no recording of any kind during the session. Depending on the platform you will be using, describe to participants any steps you have taken to support the security of the platform, including disabling any saving functions, locking the meeting, using a waiting room to admit only intended participants, and using unique meeting IDs for each session.
- ∞ **For the Mediation Session:** Remind everyone to log into the platform about 10 minutes before the start time of the scheduled mediation session so any connectivity problems can be addressed before the start. If you are only communicating with attorneys, ask them to make sure that their clients also log on 10 minutes early.

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**Topics You Should Cover in Your Remote Opening for the Initial Mediation Session:** Do not assume that the lawyers have had experience in remote mediation or, even if they have, that they have spent much time educating their clients about the process. This moment is your opportunity to explain the import of participation in mediation and to assess whether or not all attorneys and clients can engage in this format. Pitch your opening to the individuals in the room who have the least experience with the process. At the start of the session, describe how the mediation will work with the telephone or video software, including how to mute/unmute lines, rejoin if there are lost connections or breaks, and any other features of the software you are using (e.g. “breakout rooms”).

∞ **Security:** Reiterate that no person may attend, participate, or be allowed to observe or listen to the mediation without the prior consent of all participants and the mediator. Each participant should take steps to ensure that unauthorized persons in each participant's premises are aware of and do not intrude on or observe the mediation. Have everyone declare at the beginning of the session who is in the room with them, even if not visible. Have everyone commit that if someone leaves or comes in, that person must be identified when that happens. Make sure that anyone who will be communicating during the session announces themselves when they join.

∞ **Optics:** For video conferencing, all participants must show their actual place of participation. The use of virtual backgrounds without the knowledge and consent of other participants is not permitted. Lighting or location may need to be adjusted so participants can be seen (e.g. it is preferable to avoid sitting near a window and it may be helpful to position lights in front, not behind, a participant).

∞ **Audio:** For video conferencing, it is preferable to use the computer microphone and reserve the optional dial-in number in case of poor internet access. Participants may be required to turn on or unmute video and/or audio connections by clicking the appropriate buttons.

∞ **Distractions:** Remind all participants that cell phones should be set to “do not disturb”, computer notifications (particularly audio notifications) should be turned off, and remember to “mute” when there are noises in your space.

#### SAMPLE PRE-MEDIATION E-MAIL FOR REMOTE MEDIATION

I am writing to provide some guidance for the virtual mediation session we have scheduled for Date/Time. Mediation statements and any attachments are due (by e-mail only) one week before the session. This is new territory for all concerned and there may be learning experiences or even glitches. We will conduct a preliminary practice session to make sure everyone's technology is working and briefly introduce (name of audio/video platform). Please provide a list of available times on DATE and DATE when you and your clients are available. We should not need more than about 30 minutes.

For security reasons, each participant must join both the technology call and the mediation from an invitation I will provide and will have to enter the meeting ID and password provided in the invitation. For this reason, please also provide a list of individuals who will participate with an e-mail address for each so I may send any invitations to them directly. Please observe the security and technical protocols discussed in the SDNY Confidentiality Form. Counsel are responsible to ensure that their participants have arranged to meet these requirements. If you experience technical difficulties during the session and/or need to reach me outside of the platform, you can reach me at the mobile telephone number shown below. I ask each counsel to provide me with a mobile telephone number where you can be reached by text message during the session.