

# **Top Tips for Successful Zoomediations of Probate, Trust and Estate Disputes**

**Presented to:**

***Estate Planning Council of Central Texas***

**Via Zoom Webinar**

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**Presented by:**

***Ross W. Stoddard, III***  
**Attorney-Mediator**  
**Williams Square in Las Colinas**  
**5215 N. O'Connor Blvd., Suite 1820**  
**Irving, Texas 75039**  
**O Ph: (972) 869-2300**  
**Fx: (972) 869-4691**  
**E: [StoddardRW@aol.com](mailto:StoddardRW@aol.com)**

***Jeff Abrams***  
**Attorney-Mediator**  
**Abrams Mediation**  
**5720 LBJ Frwy, Suite 560**  
**Dallas, Texas 75240-6328**  
**O Ph: (972) 702-9066**  
**Fx : (214) 526-5880**  
**E: [jeff@abramsmediation.com](mailto:jeff@abramsmediation.com)**

## **Attachments**

1-Short Bios: *Ross W. Stoddard, III* and *Jeff Abrams*

2-Outline: Effective Advocacy in Probate (and Other) Mediations

3-Stoddard's Revised Rules of Mediation

4-Attorney Information Form

5-Stoddard's Zoomediation Process

6-Response to Q re In-person Session with Masks & Mediator Effectiveness

7-Zoomediation Resource Guide

### **Ross W. Stoddard, III, Attorney-Mediator**

**Office Location:** Williams Square in Las Colinas (Irving), Texas, since 1986.

**Education:** SMU: B.B.A. 1972; UT School of Law: J.D. 1975

**Mediation/Law Practice:** Full-time professional mediator of civil and probate disputes for the past 30+ years, following a 15-year career practicing law; conducted 5,000+ mediations, involving \$30B+ in aggregate claims.

**Financial Consulting:** During the mid-1980's: served as Chairman of Focus Financial Consultants, Inc., which provided financial and investment advice to high-income professionals and entrepreneurs.

**Faculty Service:** From 2002 until 2014, served as adjunct faculty in the Southern Methodist University Executive MBA Program (*Effective Negotiations* and *Global Business Environments* courses); since 1989 served as a trainer for several dozen ADR/Bar associations' mediation or negotiation training programs.

**Publications:** Authored the chapter on the use of ADR in tort cases in the American Bar Assn.'s *The Litigator's Handbook*, and numerous articles for mediation training and CLE courses.

**Most importantly:** Blessed to be married to June, his wife of 28+ years, with two sons (technically, step-sons) and six grand-children; shared most of that time with several Golden Retrievers along the way.

**Future:** Excitedly looking forward to serving as a mediator for the next 20-25 years.

### **Jeff Abrams, Attorney-Mediator**

Jeff has been an attorney for over 40 years, with a practice that is dedicated exclusively to mediation and arbitration (100% ADR) for the last 32 years. He earned his B.A. from Pace University in 1977 and his J.D. from Florida State University College of Law in 1980.

Jeff served on the legislative task force that drafted the landmark Texas ADR law. He created mediation and advocacy training programs for courts, regulatory institutions, and private businesses. Through use of videoconference technology, Jeff mediates across time zones in the United States and abroad. Jeff is a frequent speaker at legal conferences on the use of Zoom technology for effective mediation, mediation advocacy, and negotiation strategy.

Jeff lives in Dallas with his wife Angela and his dog Alea. He has two children and four grandchildren. Jeff can be reached at work 972-702-9066, on his cell 214-289-4427, by email [jeff@abramsmediation.com](mailto:jeff@abramsmediation.com), or through his company website [www.abramsmediation.com](http://www.abramsmediation.com). The website has an interactive online calendar for ease of scheduling.

# EFFECTIVE ADVOCACY IN PROBATE (AND OTHER) MEDIATIONS

-- Ross W. Stoddard, III  
Attorney-Mediator

## I. How to Use Mediation Effectively to Achieve Optimal Settlement for Your Clients.

- A. **Learn** all you can about the mediation process, the dynamics of mediation, *negotiation techniques and strategies*, the psychology involved in negotiations, human dynamics. Attend seminars. Read books. Listen to tapes. *READ* the court's Order of Referral for Mediation and the Rules for Mediation, issued by the court or the mediator. Be sure to read Getting to Yes: Negotiating Agreement Without Giving In, by Roger Fisher & William Ury, Penguin Books (New York 1981).
- B. **You** tell your client about the *availability* of mediation, preferably in your *initial* client visit - do not wait until the **client** brings it up to **you**!
- C. **Use** mediation. Suggest it. Ask for it. Insist on it. Argue for it. Do so with your client, the other parties' counsel, as well as the judge.
  - \* Become an advocate for prompt resolution of the matter. Let your client, the other party's lawyer, and the judge know that you and your client are ready, willing and able to resolve the matter at the earliest feasible moment, and that mediation is a viable means to that end.
  - \* Refuse to accept the belief that it necessarily will take a lot of time and money to resolve every dispute.
  - \* Except in extremely rare instances, do not object to a case being referred to mediation - instead, after discussing the case with the court-appointed mediator and opposing counsel, seek agreement of the other parties' counsel to schedule mediation at an *optimal* point in the proceedings, which often is sooner rather than later.
  - \* Develop a "short list" of mediators who you believe will work hard to help the parties achieve a resolution; but be open to suggestions by opposing counsel to use other mediators. Most urban areas have a number of qualified, well-trained, competent mediators, with various levels of experience and fees, from whom to choose.

- \* Even though the court may have appointed a mediator, never hesitate to suggest or request a substitute mediator if you believe another mediator would be more appropriate for the case. Jointly request a substitution if all counsel agree. As court-appointed mediators, we may be a bit disappointed that we had, then lost, the opportunity to mediate that case. But still we are pleased for the parties that they reached their *first* agreement - the selection of a mediator.
- \* **If you do not trust the mediator to maintain confidences; to remain neutral; to be proactive in helping the parties reach resolution, while maintaining the integrity of the mediation process; to draw on his/her instincts, intuition, gut feel, “higher power;” to be patient with the process; and to remain ready to continue working towards a resolution if the dispute doesn’t resolve during the initial session - THEN GET ANOTHER MEDIATOR.**
- \* In court-annexed mediation, it is most advantageous to select/appoint a mediator immediately after a case is filed – although not necessarily to conduct a mediation at that point in time; rather, to *assist* the lawyers in distinguishing between the discovery which is necessary in order for all parties to **evaluate** the merits of the case, and the additional discovery necessary to **prepare** the case for trial. The mediation most likely should occur between the two stages of discovery, prior to the parties incurring the frequently substantial additional cost of the final phase of discovery and trial preparation.

**D. Prepare for mediation.**

- \* Prepare **yourself** first.
  - \*\* Know your case:
    - Facts, undisputed and disputed.
    - Liability issues, undisputed and disputed.
    - Elements of your causes of action.
    - Amount of damages (The elements of damages should be written down, to be delivered to the other parties before, or at least at the commencement of, the mediation session).
    - Counterclaims.

- Extent and values of assets and liabilities of the Estate.
- Your client's interests, and what your client wants to achieve in the litigation/settlement.

\*\* Think about your case:

- Strengths.
- Weaknesses.
- Probable and possible jury verdicts.
- Likelihood of appeal; possible appellate results
- Evaluation of the case by the other parties' counsel.
- What the other party likely will do, in terms of settling the case.
- What the other party thinks your client is likely to do, in terms of settling the case.

\*\* Research your case:

- Read the applicable case law and statutes.
- Read the Trial Report Service for similar cases.
- Access statewide/national databases for similar cases (e.g.; TTLA).
- Talk to other lawyers about the settlement value of the case - **after** having disclosed to them the *weaknesses* and *problems* in your case - to get a more unbiased response.
- Read and understand the correspondence that you receive from the mediator.

\* Then prepare your *client*:

\*\* Provide your client with information about the mediation process and the role of the mediator.

- Court's Order of Referral for Mediation.
- Rules of Mediation (sample attached).
- Copy of mediator's correspondence to you.
- Copy of completed Attorney Information Form (sample attached) and/or Position Paper provided by you to the mediator.
- Articles on mediation.
- The proceedings are **privileged** and **confidential**, pursuant to Section 154 of the Texas Civil Practices and Remedies Code, the Court's Order of Referral for Mediation, and the Rules of Mediation.
- There will be no recordings of the proceedings.
- The mediator's role is to be an **advocate of settlement**; a neutral, objective facilitator of the negotiations, there to assist with the communications and evaluation of the case.
- The mediator is in control of the proceedings, but the **parties** are in control of the **results** of the mediation. The mediator will not be issuing any rulings or decisions on the merits of the case.
- The proceedings are informal; that is, witnesses will not be called to testify, and evidence will not be presented.

**\*\*** Visit with your client about the mechanics of the mediation session:

- Initially, you most likely will (or should!) begin in a **Joint Session** with all of the parties and their counsel.
  - The mediator will introduce the process and the mediator's role; lay out some "ground rules;" and get commitments from each participant that they are attending in "*good faith*," have the requisite *authority* to resolve the matter, and will give the process enough *time* to have a fair chance for the parties to reach a settlement.

- Then each lawyer will have the opportunity to present a short statement of the case from the lawyer's client's perspective, including:
  - Facts;
  - Liability;
  - Damages;
  - Extent of estate assets and liabilities
  - Status of discovery; and
  - Status of previous settlement negotiations.
- You and your client will decide whether or not to have your client make any comments at the Joint Session.
- Remember, the purpose of the mediation session is to determine if the parties can find a resolution to the dispute, so **all** communications should be focused on accomplishing that objective.
- Then, the parties will be divided into **Confidential Private (Separate) Caucuses**, where the mediator will be meeting privately with each party and counsel, to **openly** discuss the merits of the case - including the strengths and weaknesses - and their respective evaluations of the case.
  - Here, it is *critical* that your client vocalize what is on the client's mind; vent whatever emotions need to be vented; and *actively participate* in the discussions and evaluations, so that the client is actively involved in making the final decision on whether, and how, to resolve the dispute.
- The mediator then likely will **shuttle** back and forth between the separate parties, conveying information and settlement proposals, until the material terms of an agreement between the parties is reached.



- Finally, a Family Settlement Agreement (“FSA”) or Mediation Settlement Agreement (“MSA”) will be drafted and signed at the conclusion of the mediation session; sometimes followed by a more complete and “formal” settlement agreement.

\*\* Most importantly, prepare your client's **attitude** for mediation:

- The day of the mediation is **the** day set aside to explore all alternatives for resolution of the dispute. Typically, at least initially, the **objective** of the mediation is to find a final, binding mutually agreeable solution to the dispute **that day**.
- Define your client's **objective** during the mediation. **However, do not let your client lock into a bottom line resolution prior to the mediation.**
  - Certainly, come to the mediation session with some parameters for settlement in mind.
  - But remember, the purpose of the mediation is to utilize the services of the mediator to develop new information and insight into the case, which will permit all participants to re-evaluate the settlement value of the case.
  - **It is very likely that the ultimate agreement reached during mediation will be beyond that which any of the parties thought that they would be willing to do to resolve the case prior to the mediation session.**
  - Mediation permits the parties in a probate case to craft a solution that may be beyond what the court can order, but one which has elements in it which are desired by the parties; or in a business case, the parties may be able to find a business solution to the dispute - something that a jury verdict may not be able to provide.
  - Mediation permits the parties in a substantial personal injury case to utilize a structured settlement - something that a jury verdict would not provide.

- Develop your client's trust in the mediator and the mediation process - both are neutral and objective.
- Be sure that your client understands that when the mediator is in caucus with the other party, the mediator is working hard for **your** client's position. So if the mediator is in the other caucus room for a longer period of time than with you and your client, that doesn't mean the mediator favors the other side; instead, it just means the mediator likely is having to work even harder in the other room on your behalf.
- If the case is not resolved during mediation, there are ramifications - be sure your client understands them:
  - Additional legal fees.
  - Additional court costs.
  - Additional out-of-pocket expenses.
  - Time to trial.
  - Emotional impact of further depositions and trial.
  - Appeal - likelihood, time, cost.
  - Retrial if remanded.
  - Collectibility of judgment, if your client prevails on a claim.
  - Post-judgment actions (abstraction of judgment, execution, depositions, attachment, garnishment, receivership), if your client is a defendant.

\* Lastly, prepare your **mediator**.

\*\* **Timely** respond to the mediator's request for information:

- Attorney Information Form (sample attached).
- Pleadings (last Amended Petition and Answer, Motion for Summary Judgment and Response).

- Position Paper (confidential vs. distributed to other counsel).
- Calendar of available dates for the mediation session.

\*\* Let the mediator know if you believe that there are any particular problems or special considerations to be anticipated in dealing with any of the participants.

- Your client is "uncontrollable".
- Opposing counsel's client is "uncontrollable" by opposing counsel.
- There is a long-term relationship between a counsel and client - which may be perceived as more important to protect than reaching a settlement in this one case.
- Public policy/corporate policy will be a determinative factor in the resolution of the dispute.
- Counsels' working relationship has been somewhat acrimonious or, hopefully, the antithesis, during the litigation.
- One or more participants will have special medicinal or food intake requirements, or physical disabilities, which will need special accommodation.
- One of the parties has "definitively" stated what he/she will not ever do to resolve the dispute.
- Additional discovery will be necessary to fully evaluate the case for settlement.
- Defendants have not ever received a demand from Plaintiff's counsel.
- The extent of the assets and liabilities is not yet known, in a probate dispute.
- You are concerned that the other party will not come to the mediation session "in good faith", or with adequate authority.

- Persons other than the participants at the mediation session may play an important role in the decision-making process.
  - Spouse, or other family member.
  - Supervisor.
  - Board of Directors, or other committee.
  - FDIC/creditor.
  - Trust officer, financial advisor, CPA, estate planner, tax lawyer/accountant.
  - Expert on damages, business valuation,
  - Governmental entities.
- Your prior experiences in mediation likely will affect your beliefs about the chances of success in this one.

**E. Attend** the mediation session, appearing with a positive attitude and bringing with you the most optimal participants representing your client. Essential elements are:

- \* **Persons Involved.** Bring the person(s) necessary for full resolution of the dispute.
  - \*\* **YOU!** You need to attend the mediation session. Do **not** send another attorney from your firm who either does not know the case as well as you do, or who does not have an equally strong relationship with your client.
  - \*\* Individual party.
  - \*\* Individual party's spouse.
    - Named as party.
    - Community interest in results.
    - Strong influencer.
  - \*\* Corporate officer.

- \*\* Insurance company claim's representative.
  - \*\* Guardian ad litem.
  - \*\* Attorney ad litem.
  - \*\* Executor, Trustee.
  - \*\* Guardian of the person.
  - \*\* Guardian of the estate.
- \* **Authority.** Person attending must have authority to settle the case. This is best defined as a person who not only has the **authority** to fully settle the dispute, but also the **discretion** to decide the resolution which is acceptable to such party.
- \*\* Disclose limits on authority to mediator (e.g.; approval required by Probate/Bankruptcy Court, Texas Attorney General; FDIC; city council; etc.).
  - \*\* "Discretion to decide the resolution which is acceptable" is often may best be defined as meaning that the person in attendance has the authority to resolve the case for the last settlement proposal made by the other party (although such proposal likely will never be accepted by such person).
  - \*\* If person in attendance has limited authority, you need to have the person(s) with the requisite additional authority (and discretion) standing by their telephone, and the mediator needs to have available such person(s) office, cell and home telephone numbers. **Be sure to have access to such person after regular business hours.**
  - \*\* If all of your clients cannot attend in person, if possible, bring a written, properly executed, valid Durable Power of Attorney empowering an attending client to act on their behalf.
- \* **Time.** All participants must commit to being available for the full amount of time necessary to allow the mediation process to have the optimal chance to result in full settlement, as determined by mediator.

- \*\* Participants should clear their calendars to be available from commencement of the mediation through the balance of the day and evening.
- \*\* Do not let your out-of-town client, or other participant representing your client, schedule a return flight in the afternoon; rather, make the flight as late as possible on the day of the mediation, or better yet, the following day.
- \* **Good Faith.** Client and lawyer should come with the good faith intention to find a reasonable resolution of the dispute.
- \* Be sure to advise the mediator ASAP, preferably before commencement of the mediation, if a conflict arises as to any participant's ability to attend with all of the above essential elements.

## II. Checklist of What Works, and Doesn't Work, During Mediation.

### A. Joint Session.

- \* You and your client should arrive on time.
- \* You and your client preferably should have fully reviewed the case and your negotiation plan shortly before the day of the mediation session.
- \* Be courteous and professional with all participants.
- \* Introduce yourself and your clients to all other participants, and identify their respective positions so that everyone knows who is in which role during the mediation.
- \* Be cognizant of where the other participants are sitting and decide whether it is better for you/your clients to sit directly across from the other party.
- \* Be attentive during the mediator's opening remarks.
- \* Be especially attentive - and actively listen - during opposing counsels' opening remarks. You will have an opportunity to clarify any incomplete/erroneous information conveyed by opposing counsel - but will not know to do so unless you listened. You and your client should not snicker, laugh, roll your eyes, etc. while the other counsel are making their remarks.

- \* Be prepared to make your opening remarks. During the mediator's and opposing counsel's opening remarks, do not be reviewing your file documents (for the first time in months) to learn about your case.
- \* NEVER FAIL TO MAKE OPENING REMARKS! You likely will never have another opportunity to talk directly to the other party.
- \* The purpose of the communications during the mediation process is very different than at trial.
- \*\* Direct most of your remarks to the opposing participants - typically, primarily the other party, who ultimately will make the decision regarding settlement, rather than to the mediator (who will not be making *any* decisions as to the settlement). As a courtesy, occasionally look at the other party's counsel and the mediator while making your comments (it helps make you appear less "threatening" to the other party). When describing the other party's "bad" acts, direct your comment to the mediator. The other party will not feel as "attacked", but will hear the allegations as being told to a neutral person (such as will be the case with the jury or judge).
- \*\* At trial, opposing counsel's "gladiator" role may be to thrust the spear deeply into the other party's position, so as to debilitate it. In mediation, settlement will occur if the parties shift their respective evaluations so as to have them meet somewhere in between their respective ideal results, albeit preferably closer to their own evaluation rather than the other party's evaluation.
- Thank the other participants for attending the mediation and listening to your comments.
- Acknowledge that you are aware that they may not agree with your views, but you at least want to give them the opportunity to understand them.
- Remember, use language which will draw the other party towards your client's position, rather than language which will repel the other party.
- The more the participants understand each other's positions and interests, the more likely a mutually agreeable resolution can be found. Enlighten them as to the risks of proceeding to trial.

- A sincere apology, when made during the mediation process, can be a powerful, effective communication, which may stimulate significant movement towards resolution, and is a protected communication (i.e., privileged and confidential) under TCP&RC Sec. 154.
  - Carefully consider the potentially detrimental impact on negotiations, if you or your client are inclined to be acrimonious in your comments directed towards the other participants.
  - This is not the time for jury argument. Save the posturing and "chest beating" for another time.
  - "Showcase your clients"; by having him/her speak if you believe he/she will be effective in communicating to the other parties.
- \* Unless absolutely necessary, do not "backtrack" from your last settlement proposal made prior to the mediation session. If you feel you must, be prepared to point out the factors which have changed in the interim, and which justify the shift in settlement position.
- \*\* The other party's **perception** of your good faith may be severely affected detrimentally by your backtracking.
- \*\* Anticipate that the opposing party may be inclined to respond by also backtracking on its last settlement proposal, which inevitably will create considerable delay in the settlement process.
- \*\* Recognize that your or opposing counsel's prior communications of "indications" of acceptable settlements likely will be "heard" as acceptable, and therefore considered a starting point by the listener.
- \* Refrain from making any new settlement proposals until you have met in private caucus with the mediator.
- \* Normally, discovery which is necessary to evaluate the case will be substantially completed by the time of the mediation session. If not, use the opportunity to share information and documents which will cause the opposing participants to better understand your client's position in the case.



**B. Private Caucuses.**

- \* Let your client talk with the mediator, particularly about:
  - \*\* Facts of case.
  - \*\* Client's view of damages.
  - \*\* Client's view of settlement.
  - \*\* Client's view of the other parties, and opposing counsel.
  - \*\* Client's life considerations affecting decision-making process.
- \* Let your client vent whatever emotions need to be vented, while the mediator is with you, as well as when the mediator is not with you.
- \* Be prepared to discuss with the mediator:
  - \*\* Facts, undisputed and disputed.
  - \*\* Liability issues, undisputed and disputed.
  - \*\* Elements of your causes of action.
  - \*\* Amount of damages (The elements of damages should be written down, and delivered to the other parties before, or at least at the commencement of, the mediation).
  - \*\* Counterclaims.
  - \*\* Your professional view regarding the case:
    - Strengths.
    - Weaknesses.
    - Probable and possible jury verdicts.
    - Evaluation of the case by the other parties' counsel.
    - What the other party likely will do, in terms of settling the case.

- What the other party thinks your client is likely to do, in terms of settling the case.
  - Estimated time and cost to prepare for, and participate in, a trial of the case.
- \* Focus on your client's "broader picture": the life considerations which affect, or are affected by, this dispute, or the resolution of the dispute. Do not just focus on what you think will happen at trial. Remember, you are licensed as an "Attorney *and Counselor* at Law".
  - \* Be realistic, honest, and forthright with the mediator regarding:
    - \*\* Possibilities of various results at trial.
    - \*\* Anticipated effect of case law and court rulings on the probable outcome of this case.
    - \*\* Impact of expected testimony or depositions of fact and expert witnesses.
  - \* Be creative and innovative in thinking of solutions which may resolve the case.
  - \* If you feel compelled to posture for your client's benefit, let the mediator know in advance. However, do not later "torpedo" the mediator's efforts by refusing in front of your client to acknowledge any weaknesses in your client's position, or any risk in proceeding with litigation.
  - \* Trust your mediator - strongly consider following the mediator's suggestions/guidance when offered. The mediator will be drawing on his/her experiences as a mediator, as well the experience of, and communications in, the present mediation.

**C. If Settlement Cannot Occur During the Mediation Session.**

- \* Determine what is "in the way" of settlement, and then determine the course of action which is the most cost effective, expeditious route to remove the impediments to settlement.
  - \*\* Additional discovery. Work to reach an agreement as to the order and timing of the remaining depositions and written discovery, prior to continuing with the mediation.

- \*\* Court rulings on dispositive motions. If one counsel (or perhaps both) is extremely confident in his/her “prediction” of an upcoming ruling of the Court on dispositive motions (e.g., Motion for Summary Judgment, Motion to Strike Pleadings, etc.), then perhaps the Court should first rule, prior to continuing with the mediation.
- \*\* More time is needed. In some cases, the parties simply need more time to reflect on the realities of the settlement possibilities. In other cases, further discussions with, or evaluation by, non-participants will be necessary before substantial shifts in position can occur.
- \* Regardless of the reason for the parties' inability to reach settlement during the mediation session, utilize the services of the mediator during the follow-up period in any manner which you believe will facilitate resolution of the case at the earliest juncture.

#### **D. After the Settlement has been Reached.**

- \* Remember, “*it's not over 'til it's over.*” Until a Mediation Settlement Agreement ("MSA") is fully drafted and signed by all signatories, including parties and counsel:
  - \*\* **Do not** discuss with opposing counsel the merit, or more importantly, lack of merit, of your case.
  - \*\* **Do not** at that time acknowledge your recognition of your inability to prove your case.
  - \*\* **Do not** gloat or brag about how happy you and your client are about the terms of the settlement. Often, a settlement is probably "about right" if all parties are somewhat "unhappy" with the amount of the settlement (though a proactive mediator will work hard to help all of the parties feel as good as possible about the settlement terms..
  - \*\* You and your clients probably should refrain from joking and laughing during the drafting of the MSA or term sheet at the mediation session, particularly if the opposing participants are not pleased with the outcome.
  - \*\* Be reasonable regarding the provisions which you feel should be included in the MSA.

**\*\* All parties and counsel should sign the MSA. The mediator should *not* sign the parties MSA (doesn't make the MSA any "more binding" and opens the mediator up to becoming a "signatory witness" to the MSA in the event of a dispute over the terms. **DO NOT LEAVE THE MEDIATION SESSION WITHOUT A FULLY EXECUTED WRITTEN MEDIATION SETTLEMENT AGREEMENT. TO BE AN ENFORCEABLE AGREEMENT UNDER TCP&RC SEC. 154 AND RULE 11, THE AGREEMENT MUST BE IN WRITING. IT ALSO MUST INCLUDE ALL OF THE MATERIAL TERMS, BE SIGNED BY THE PARTIES/COUNSEL WHICH HAVE AUTHORITY /CAPACITY TO SIGN, AND SIGNED WITHOUT DURESS.****

**\*\* However, if the mediation has continued long into the night/early a.m.), consider **not** signing an MSA until the next day. You might proceed with "writing up" the MSA that night, then reviewing and signing it the next day. That certainly opens up the possibility of one or more parties balking at signing the MSA. However, that situation probably can be worked through. It is probably a better scenario than one in which a signatory party develops "buyer's remorse" the next day and successfully invalidates the agreement on the grounds of duress; or *unsuccessfully* attempts to invalidate it, and later *successfully* complains that their lawyer should not have let them sign it when they were too mentally/physically drained to be thinking clearly. Also let your client know that there always is a risk that the other party might not sign the MSA the following day; so that your client is fully informed of the possibilities.**

**\* If a more formal settlement agreement is to be executed, move quickly to get an acceptable draft circulated and signed by all parties.**

**Contact Information:**

**Ross W. Stoddard, III  
Attorney-Mediator  
Williams Square in Las Colinas  
5215 N. O'Connor Blvd., Suite 1820  
Irving, Texas 75039**

**O Phone: (214) 869-2300  
Fax: (214) 869-4691  
E-mail: StoddardRW@aol.com**

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**RULES FOR MEDIATION (Revised for Stoddard's Mediations)**  
(Updated 1/1/2015)

**1. Definition of Mediation.** Mediation is a process by which an impartial person--the mediator--facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties. **THE MEDIATION BEGINS UPON THE FIRST CONTACT WITH THE MEDIATOR BY ANY PERSON REGARDING THE DISPUTE.**

**2. Conditions Precedent to Serving as Mediator.** The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator shall disclose any circumstances likely to create a presumption of bias, or prevent a prompt meeting with the parties.

**3. Authority of Mediator.** The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The mediator is authorized to conduct joint sessions and separate caucuses with the parties, and to offer suggestions to assist the parties achieve settlement. If necessary, the mediator also may obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

**4. Parties Responsible for Negotiating Their Own Settlement.** The parties understand that the mediator will not and cannot impose a settlement in their case. The mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. **THE MEDIATOR DOES NOT WARRANT OR REPRESENT THAT SETTLEMENT WILL RESULT FROM THE MEDIATION PROCESS.**

**5. Authority of Representatives.** PARTY REPRESENTATIVES MUST HAVE AUTHORITY TO SETTLE, AND ALL PERSONS NECESSARY TO THE DECISION TO SETTLE SHALL BE PRESENT. The names of such persons shall be communicated in writing to the mediator in advance of the mediation session.

**6. Time and Place of Mediation.** The mediator shall set the time of each mediation session. The mediation shall be held at the office of the mediator or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.

**7. Identification of Matters in Dispute.** Prior to the first scheduled mediation session, each party shall provide the mediator with an Attorney Information Form and Consent to Mediation on the form provided by the mediator, setting forth its position with regard to the issues that need to be resolved. At or before the first session, the parties will produce all information reasonably required for the mediator to understand sufficiently the issues presented. The mediator may require any party to supplement such information. The parties may agree to share with each other any of such information in advance or during the mediation sessions.

**8. Privacy.** Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

**9. Confidentiality.** Confidential information disclosed to the mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any judicial, arbitral, administrative or any other proceeding. Any party that seeks to compel same shall pay all reasonable fees and expenses of the mediator and other parties, including reasonable attorneys' fees and the mediator's hourly fee, incurred in opposing the effort to compel testimony or records from the mediator. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any judicial, arbitral or other proceeding: (a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; (b) admissions made by another party in the course of the mediation proceedings; (c) proposals made, or views expressed, by the mediator; or (d) the fact that another party had, or had not, indicated willingness to accept a proposal for settlement made by any party or the mediator.

**10. No Stenographic Record.** There shall be no stenographic record of the mediation process and no person shall record any portion of the mediation session.

**11. No Service of Process At or Near The Site of The Mediation Session.** No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session, or while such person is entering, attending or leaving the session.

**12. Conclusion of the Mediation Session.** The mediation session shall be concluded by: (a) the execution of a settlement agreement by the parties; (b) the declaration of the mediator that further efforts during the mediation session are no longer likely to be productive; or (c) a written declaration of a party or parties to the effect that the mediation session is concluded, following completion of one full-day mediation session. Mediation communications may continue beyond the conclusion of the mediation session.

**13. Interpretation and Application of Rules.** The mediator shall interpret and apply these rules.

**14. Mediation Fees and Expenses.** The Mediation Fee consists of (a) a daily Case Administration Fee; (b) an hourly Mediator Services Fee; (c) plus Travel Costs for sessions conducted out of the mediator's office. Unless the parties agree otherwise, the Mediation Fee shall be borne equally by the parties (with all parties represented by a law firm counted as a single party). The Retainer Deposit shall be paid in advance of commencement of each mediation session, and any balance due shall be paid upon receipt of an invoice. The expenses of attorneys/witnesses/experts in attendance at the request of a party shall be paid by that party. All other expenses of the mediation, and any expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**ROSS W. STODDARD, III**  
**ATTORNEY-MEDIATOR**

**PHONE**  
**(972) 869-2300**

**WILLIAMS SQUARE IN LAS COLINAS**  
**5215 N. O'CONNOR BLVD., SUITE 1820**  
**IRVING, TEXAS 75039**

**FAX**  
**(972) 869-4691**

[StoddardRW@aol.com](mailto:StoddardRW@aol.com)

**CONFIDENTIAL Attorney's Information Form and Consent to Mediation**  
**[Please print or type your responses]**

**Case Style (In Full):** \_\_\_\_\_

**Cause No.:** \_\_\_\_\_ **Court No.:** \_\_\_\_\_ **Pre-Suit:** \_\_\_\_\_  
**County:** Dallas \_\_\_\_\_ Tarrant \_\_\_\_\_ Collin \_\_\_\_\_ Denton \_\_\_\_\_ Kaufman \_\_\_\_\_ Other \_\_\_\_\_  
**Court:** Federal District \_\_\_\_\_ State District \_\_\_\_\_ County \_\_\_\_\_ Appellate \_\_\_\_\_  
**Court No.:** \_\_\_\_\_ **Judge's Name:** \_\_\_\_\_

**Type of Case:**

Business	_____	PI	_____	Lender Liability	_____
Contract	_____	IP	_____	Product Liability	_____
DTPA	_____	Wilful Tort	_____	Libel/Slander/Def	_____
Note	_____	Property	_____	Civil Rights	_____
Securities	_____	Malpractice	_____	Probate	_____
Insurance	_____	Subrogation	_____	Employment/Labor	_____
Other (Specify): _____					

**Mediation Referral to Ross Stoddard Initiated By:**

**Court** \_\_\_\_\_ **Attorney** \_\_\_\_\_ **Insurance Co.** \_\_\_\_\_ **Party** \_\_\_\_\_  
**Referring Person(s)'s Name:** \_\_\_\_\_

**Critical Dates:**

<b>Dispute/Claim arose:</b>	_____ / _____ / _____
<b>Suit Filed (if applicable):</b>	_____ / _____ / _____
<b>Court's Order of Referral for Mediation (if applicable):</b>	_____ / _____ / _____
<b>Latest date for Mediation, (per Order, if applicable):</b>	_____ / _____ / _____
<b>Appellate Argument (if applicable):</b>	_____ / _____ / _____
<b>Trial Setting (if applicable):</b>	_____ / _____ / _____

**Responding Attorney's Information:**

**Your Party/Client:** Plaintiff \_\_\_\_\_ Defendant \_\_\_\_\_ Intervenor \_\_\_\_\_ 3rd Party Pl./Def. \_\_\_\_\_  
**Lead Attorney's Name:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_  
**Assoc/Asst/Secy (scheduling):** \_\_\_\_\_ **E-mail:** \_\_\_\_\_  
**Firm Name:** \_\_\_\_\_  
**Street Address:** \_\_\_\_\_  
**City, State Zip:** \_\_\_\_\_, \_\_\_\_\_  
**Phone Number:** (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ **Fax Number:** (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
**Attorneys attending Mediation Session:** Lead Attorney \_\_\_\_\_  
**Other Attorney(s):** \_\_\_\_\_

**Your Party/Client #1:** Plaintiff\_\_\_\_ Defendant\_\_\_\_ Intervenor\_\_\_\_ 3rd Party Pl./Def.\_\_\_\_  
Name:\_\_\_\_\_  
Residence/Hdqtrs. (City, State):\_\_\_\_\_, \_\_\_\_\_  
If a Corp/LLC/LLP, state of organization:\_\_\_\_\_  
Person attending Mediation Session: Named Party\_\_\_\_ or  
Company Executive Officer (Name):\_\_\_\_\_  
Insurance Co. Rep. (Name):\_\_\_\_\_

**Your Party/Client #2:** Plaintiff\_\_\_\_ Defendant\_\_\_\_ Intervenor\_\_\_\_ 3rd Party Pl./Def.\_\_\_\_  
Name:\_\_\_\_\_  
Residence/Hdqtrs. (City, State):\_\_\_\_\_, \_\_\_\_\_  
If a Corp/LLC/LLP, state of organization:\_\_\_\_\_  
Person attending Mediation Session: Named Party\_\_\_\_ or  
Company Executive Officer (Name):\_\_\_\_\_  
Insurance Co. Rep. (Name):\_\_\_\_\_

**Your Party/Client #3:** Plaintiff\_\_\_\_ Defendant\_\_\_\_ Intervenor\_\_\_\_ 3rd Party Pl./Def.\_\_\_\_  
Name:\_\_\_\_\_  
Residence/Hdqtrs. (City, State):\_\_\_\_\_, \_\_\_\_\_  
If a Corp/LLC/LLP, state of organization:\_\_\_\_\_  
Person attending Mediation Session: Named Party\_\_\_\_ or  
Company Executive Officer (Name):\_\_\_\_\_  
Insurance Co. Rep. (Name):\_\_\_\_\_

**Your Party/Client #4:** Plaintiff\_\_\_\_ Defendant\_\_\_\_ Intervenor\_\_\_\_ 3rd Party Pl./Def.\_\_\_\_  
Name:\_\_\_\_\_  
Residence/Hdqtrs. (City, State):\_\_\_\_\_, \_\_\_\_\_  
If a Corp/LLC/LLP, state of organization:\_\_\_\_\_  
Person attending Mediation Session: Named Party\_\_\_\_ or  
Company Executive Officer (Name):\_\_\_\_\_  
Insurance Co. Rep. (Name):\_\_\_\_\_

**Your Party/Client's Insurance Company:**  
Insured [Party/Client #'s from above]: \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_  
Company Name:\_\_\_\_\_  
Representative's Name:\_\_\_\_\_  
Rep's location (City, State):\_\_\_\_\_  
Person attending Mediation Session (if other than above):\_\_\_\_\_

**Nature of your Party/Client's claims/defenses:**\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total affirmative relief sought by your Party/Client(s) at trial:

**Monetary Relief:**

Actual Damages	\$	_____
Attorney Fees	\$	_____
Pre-Judgment Interest	\$	_____
TOTAL (before Exemplary Damages)	\$	_____
Exemplary Damages	\$	_____
TOTAL MONETARY RELIEF	\$	_____

**Other Relief:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Primary disputed issues of liability, damages and/or trial error (from your Party/Client's perspective):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Status of Discovery:** Completed \_\_\_\_\_ Substantially Completed \_\_\_\_\_ Partially Completed \_\_\_\_\_  
Not Started \_\_\_\_\_

**Discovery Remaining:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Does your party/client have sufficient information to form a realistic settlement position?**  
Yes \_\_\_ No \_\_\_ If "No," list additional information needed and the estimated date by which you will need to get it: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Status of settlement negotiations (in chronological order):**

<u>Date of Demand/Offer</u>	<u>Amount of</u>		
	<u>Plaintiffs' Demand</u>	<u>Defendants' Offer</u>	<u>Interv's'/3d P's Demand/Offer</u>
/ /	\$ _____	\$ _____	\$ _____
/ /	\$ _____	\$ _____	\$ _____
/ /	\$ _____	\$ _____	\$ _____
/ /	\$ _____	\$ _____	\$ _____
/ /	\$ _____	\$ _____	\$ _____
/ /	\$ _____	\$ _____	\$ _____



Expenses which arise out of this dispute/litigation incurred by your Party/Client to date  
(A=Actual; E=Estimated):

<u>Expenses</u>	<u>Taxable</u>	<u>Non-Taxable</u>	<u>Attorney's</u>
<u>A</u> <u>E</u>	<u>Court Costs</u>	<u>Expenses</u>	<u>Fees</u>
_____ : _____	\$ _____	\$ _____	\$ _____

Estimated total litigation costs (attorney's fees, depositions, experts, court costs, non-taxable litigation expenses, travel, hotel, airfare, etc.) expected to be incurred from the date of mediation through trial:  
\$ \_\_\_\_\_.

Estimated number of trial days: \_\_\_\_\_.

Anticipated number of persons(including all parties, attorneys, staff, insurers, etc.) in your party coming to mediation session: \_\_\_\_\_

Do you prefer to share a caucus room with another party(ies) most or all of the time? \_\_\_\_\_  
If so, which other party(ies)? \_\_\_\_\_.

Do you anticipate that this matter most likely will require a full or half day of mediation for the parties to fully explore settlement possibilities? Full \_\_\_\_\_ Half \_\_\_\_\_

#### CONSENT TO MEDIATION:

On behalf of my Party/Clients in the above-referenced cause, the undersigned attorney consents to Ross W. Stoddard, III, Attorney-Mediator, serving as mediator in such cause and agrees to the Rules of Mediation and mediation fee criteria which have been provided to me previously by him.

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Attorney of Record (Signature)

\_\_\_\_\_  
Attorney of Record (Printed)

Please return via e-mail (preferably) [ [StoddardRW@aol.com](mailto:StoddardRW@aol.com) ], fax [(972) 869-4691], or mail:  
ROSS W. STODDARD, III  
ATTORNEY-MEDIATOR  
5215 N. O'CONNOR BLVD., SUITE 1820  
IRVING, TEXAS 75039

Atty Info Form -WP 2-13-19.for

## **Stoddard's Zoomediation Session Process**

**Session Objective:** Our session objective is for the parties to ascertain if it is possible for them to reach a resolution of the issues in the case; and if so, to be sure that they get that done during our session.

**Mediation Process:** Our plan is to replicate, as closely as we can, an in-person mediation session, while taking advantage of some of the efficiencies available in the telemediation process.

Here's what will happen to each person after they Join our Meeting through the Zoom app, using the mediator-provided Session ID and Password:

1. You will arrive in a Waiting Room and the mediator will be notified of your arrival.
2. I will come get you and move you into your pre-assigned separate Breakout Room.
3. Once everyone has arrived and been sent to their respective Breakout Rooms, I will bring everyone into the Joint Session Room.
4. After introductions, I will provide some administrative information and ascertain commitments of everyone attending in Good Faith, with Authority, and identify if anyone has any specific Time constraints that would preclude their continuing participation in our process.
5. Counsel then will have the opportunity to offer any insights which might enlighten the other parties as to their respective perspectives on the issues.
6. All participants will then be returned to their respective separate, private Breakout Rooms.
7. I will join one of the groups (most likely Plaintiff's/Complainant's/Contestants) for an initial, separate caucus to address the issues and (likely) get a proposal.
8. When I finish there, I then will move to another party's caucus room, and continue to do so throughout the remainder of the session, just like in an in-person session.
9. At various times, I may pull counsel, or some subset of participants, into a separate Breakout Room, if I think it will be productive and those participants are ok with doing so.
10. Through the authorized exchange of information and proposals, resulting in sufficient adjustment of expectations and appreciation of risks involved in the case, hopefully the parties will be able to reach a settlement.
11. Once the settlement terms are identified, it is likely that a Mediation Settlement Agreement, containing all of the material terms of the parties' settlement, will be drafted at that time, with the participants signing it (physically or electronically). In some cases, the signed MSA may be

supplanted with a more comprehensive Compromise Settlement Agreement, to be drafted by counsel and executed by the parties, often within a few days after the session concludes.

**Please remind your clients that:**

**Confidential/Privileged Process:** Our mediation session -- just like an in-person session -- is a private, CONFIDENTIAL and PRIVILEGED mediation process. Only the people on our list of registered participants, which will be shared with all counsel, are permitted to be admitted into our session, or in "hearing range" while I am caucusing with you and your client during our session. If you later need to add another person (e.g.; lawyer, paralegal or client rep), tell me first so that I will know to admit them into our session. If, while I am not caucusing with your group, you or your client rep need to make phone calls during our session to someone who is not a listed as a participant in our session, you are welcome to do so.

**No Recordings:** No recordings of any kind are permitted, either through Zoom (which I will have toggled "Off") or any other recording device. If I suspect that any of our participants might have a non-registered person "listening in" at their location (either in person or via phone) at any point during the session, I may ask that participant to rotate his/her camera around the room to confirm if anyone is there, and/or require that the unregistered person leave the area, and/or amend our roster of registered attendees to include such person.

**Available throughout Session:** It is imperative that each participant remain readily available to participate in a private caucus session throughout the mediation session. When I am caucusing with other groups, you and your client are welcome to leave your camera/mic areas. Take your cell phones with you so that I can text you when I'm ready to come back into your Breakout Room. Also, leave your computers on, but mute your microphones while you are away.

**Breakout Rooms:** Each group will have its own Breakout Room, in which you and your client will be free to discuss matters privately when we are not meeting with everyone during our initial Joint Session; or when I am in a private caucus with another group in another Breakout Room. No one else will be admitted to see or hear your conversations. When I return to your Breakout Room for a private, separate caucus session with your group, you will see me immediately and I will verbally announce my entry.

**Venue:** Since this session likely would have been scheduled for an in-person session in my offices in Las Colinas, it is considered as being conducted in Dallas County, Texas, even though some participants may be located in other jurisdictions. Each person participating in our session shall be considered participating in our Dallas County, Texas mediation process as if they were attending in person.

## **Long Form Response to Q Whether In-person Session with Everyone Wearing Masks Hinders the Mediator's Effectiveness:**

The primary issue with the face masks (assuming true discomfort is not an issue for any of the participants) is that it “hides” (thus the name!) much of the facial expressions, which hinders the mediator’s ability to “read” what participants are feeling, or how they are reacting. As a result, we might not be as quick to perceive what we need to do... or not to do ... at a particular point, which could impact our effectiveness.

For example, if a party is getting “tight jawed” as we are discussing a particular point, and the mediator doesn’t back off of the issue a bit immediately, the escalation of the emotion of the party might lead to him/her “shutting down” — maybe for the rest of the session.

Ditto for a slight smile or frown upon the receipt of a proposal, a slight “quivering lip” when discussing a known emotional topic, or a reddening of the cheeks if starting to get mad.

All of those are indicators that are particularly helpful for mediators to be able to “read” in order to know best what to do at a given moment in time. Since the mediator’s job is to keep the negotiation process moving, we don’t want to contribute errantly to it stopping prematurely.

Likewise, the participants are less able to “read” the *mediator’s* expressions, which hinders their ability to “see” that the mediator’s facial expressions echo what is being communicated.

For example, when the mediator brings in “bad news” from the other side, that message needs to be not only “heard” by the recipients, but cross-confirmed by their observation of the mediator’s face. All done in milliseconds, but vitally important communications. If they doubt the perilousness of the status of the mediation that the mediator is trying to convey, their next responsive proposal could shut down the process, to the detriment of all parties.

So when your group sends the mediator into the other party’s room with the instruction that the mediator makes sure that the other folks “get it” that there is “no more room to move,” the mediator’s facial expressions need to be visible for the other folks to read so that they can cross-confirm that message.

BTW, it’s the same reasoning behind why we typically prefer either on-line or in-person participation over an audio-only or telephonic participation; or for a participant to remove sunglasses. (Same reason why poker players sometimes wear sunglasses.)

Though in online sessions the mediator may miss out on seeing waist-down reactions (which most often are up not observable under the table anyway), or tightening of off-screen hand muscles, the facial expressions are far-and-away the most important “signals” we rely on.

So yes, from my perspective as the mediator, an in-person mask-wearing session likely could/would hinder a mediator’s effectiveness.

Fortunately, and to my complete (and pleasant!) surprise, I, and most of my experienced mediator colleagues with whom I’ve spoken, have found online sessions to be equivalently effective as in-person sessions, and considerably more so when face masks are being worn during in-person sessions.

Blessedly, we have a viable alternative available to us that has the additional benefit of being completely devoid of any risk of COVID-19 transmission. And no traffic or travel required for any of the participants!

Sorry for the long explanation, but I thought yours is a very valid and important question that merited a response offering a bit more insight into the basis for my perspective from the mediator's viewpoint.

Hope it helps your group's decision-making on which platform to use in this, and other, mediations during this pandemic.

I'm looking forward to working with you and the other folks during our upcoming session.

—Ross Stoddard

**Christopher Nolland**  
**Attorney-Mediator**  
1717 Main Street, Suite 5550  
Dallas, Texas 75201

Email: [chris@nolland.com](mailto:chris@nolland.com)  
OFFICE: (214) 653-4360  
CELL: (214) 801-6110



**ROSS W. STODDARD, III**  
**ATTORNEY – MEDIATOR**  
5215 North O'Connor Blvd  
Suite 1820  
Irving, Texas 75039  
[StoddardRW@aol.com](mailto:StoddardRW@aol.com)



## **Zoom Mediation Resource and Reference Guide/ Frequently Asked Questions**

### **How do I get on Zoom?**

Zoom is easy to learn – just click on the meeting ID provided in the mediator’s separate email and select “join by computer,” although you may go to [www.zoom.us](http://www.zoom.us) and open an account and download the desktop app at <https://zoom.us/client/latest/Zoom.pkg>. Importantly:

- For our purposes a free account is all you’ll need, although you don’t have to open an account to participate.
- While you can log in through your browser using the Meeting ID and the Password provided in advance of the mediation, the desktop app provides the strongest encryption available.

### **How can I learn more?**

- You can find Zoom tutorials at <https://support.zoom.us/hc/en-us>.

### **Why Zoom?**

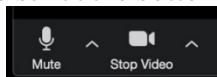
- It’s encrypted.
- It has capabilities we need to make our mediation successful:
  - breakout rooms
  - screen sharing
  - whiteboards.

### **What kind of internet connection do I need to have?**

- It must be fast, stable, and secure -- no coffee shop or public wifi.
- If you are experiencing problems with videos “catching,” try closing other apps on your computer or others sharing your internet connection.
- If your connection continues to be unstable, mute your audio and then call in by phone so some of the data for the meeting isn’t on your wifi network.

### **I can’t hear, or you can’t hear me. What do I do?**

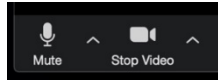
- If you’re having audio issues, make sure audio is not set to “off” or “mute” (a red slash across the microphone icon at the bottom left corner of your zoom window) – scroll to the popup bar at the bottom left corner of your zoom window – it looks like this:



- Make sure the correct microphone and speakers are selected by clicking on the “carrot” to the right of the microphone icon. You may need to try each of the available microphones and speakers until you find the ones that work.
- If you are using a separate mic, the source should be yours and not “the system”.

### **I can’t see you. What do I do?**

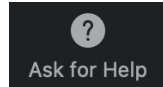
- If you’re having video issues, make sure video is not set to “off” (a red slash across the camera icon at the bottom left corner of your zoom window) – it looks like this:



- Make sure the correct camera is selected by clicking on the “carrot” to the right of the camera icon. You may need to try each of the available cameras until you find the one that works.

### **How do I communicate with you privately?**

- The Mediator will provide you with their cell number at the beginning of the mediation so you can contact him/her directly and privately.
- If you need to speak with the Mediator privately during the mediation, or if you need to suggest a restroom break or for some other reason, please text him/her.
- To quickly contact a mediator when you are in a breakout room, click the “Ask for Help” button at the bottom of your screen.



### **What are your tips for success?**

- Appearance
  - Backlit participants are difficult to see – please face the light
  - Be sure confidential information can’t be seen in the background.
    - Turn off all notifications that reveal personal information.
    - You may choose to share your screen during the mediation, so you may want to clean up your computer’s desktop.
  - Find a quiet area and be sure family members, pets, and others are aware you shouldn’t be interrupted.
- Don’t talk over each other – Zoom only allows audio from one person at a time.
- Turn off all reminder buzzers, dings, etc. – but allow your phone to receive text messages so you can communicate with the Mediator and with others in your group.
- Stay near your computer even when the Mediator has gone in the other room so you will know when the Mediator returns to your breakout room.

### **Can I use my smartphone or my tablet?**

- There are options to use Zoom smartphone and tablet apps and you may wish to download those apps as a backup in case of technical difficulties.
- Participating on a desktop or laptop with a strong, secure internet connection will make your experience much better.

### **How do breakout rooms work?**

- A quick video at <https://www.youtube.com/embed/jbPpdyn16sY?rel=0&autoplay=1> shows what breakout rooms look like.
- Soon after the beginning of mediation, the Mediator will usually put each client/counsel group into a breakout room separate and apart from the opposing parties and counsel. This breakout room is the equivalent of a private conference room – while you are in your breakout room no one outside the room can hear any communications between the parties and their counsel (including the Mediator unless he/she joins the meeting and you see them on your screen). This room is where you most likely will spend the majority of your mediation. The Mediator will shuttle between breakout rooms over the course of the day.
- Note that for security reasons the Mediator may have disabled the chat feature. If you need to communicate privately with anyone in your room, we suggest texting one another on your cell phone. You can also communicate with the Mediator when he/she is not in your room by sending him/her a text to their cell.

### Can I share a document or a presentation?

- Yes – the host (the Mediator) and with Mediator’s permission during the mediation (for security reasons) any attendee can screen share by clicking the “Share Screen” icon. The Mediator can help you with this feature during the mediation.
- A video at <https://support.zoom.us/hc/en-us/articles/201362153-Sharing-your-screen> demonstrates how to use this feature.
- When enabled by the Mediator the screen share function allows participants to show documents, PowerPoints, or other content on their computers to all participants in the mediation or just their group in their breakout room.

### Will you record our mediation?

- No. Under our Mediation Agreement no one may record the mediation.

### Can you participate by phone?

- It’s better if everyone attends by video conference, but sometimes that isn’t possible.
  - You can join the meeting as an audio participant only by dialing one of the phone numbers listed on your invitation and then entering the Meeting ID and password.
  - Note that, if you participate by phone, it’s just like a conference call.
- Calling in can also serve as a “workaround” when internet connections become unstable – simply mute your computer and call in while remaining on video.

### How do I control my video and audio?

- The “Magic Toolbar” is at the bottom of your Zoom window and looks like this:



- If you pull your cursor to the bottom of the screen the Magic Toolbar will pop up. You can lock the Magic Toolbar in place by clicking:
  - The carrot to the right of *Stop Video*
  - *Video Settings*
  - *Accessibility* (on the bottom)
  - *Always show meeting controls*
- You can mute your microphone by clicking on the microphone icon and can stop your video from streaming by clicking on the camera icon. When the microphone is muted or the video stopped you will see a red slash through the mic or camera icon. To unmute or to re-start video streaming just click on the appropriate icon.
- You can change your view – see the upper right-hand corner of your screen
  - Your Zoom screen features a choice to toggle between “speaker” and “gallery” view. “Speaker view” shows the speaker, and “gallery view” shows all meeting participants.

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### Important Phone Numbers and Notes:

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