

MCLAIN MEDIATION SERVICES

2020 ELECTRONIC MEDIATION PROCEDURES

RULES AND PROCEDURES FOR ELECTRONIC/REMOTE MEDIATION

RULES FOR REMOTE MEDIATION

1. Mediation is a confidential process. At the outset of mediation, each party shall identify any other person or persons who are in the room where the remote participant is located. Unless agreed by all counsel of record and approved by the mediator, no non-party may participate or be present during the mediation. An exception is made for participation of the spouse of any participant. Please see my standing rule set for an explanation of my position on this issue.
2. Recording, whether by dictaphone, recording machine, telephone, or any other digital or electronic means of capturing or making a record of the proceedings, is strictly prohibited. This prohibition includes accessing the "record" feature of Zoom. As the administrator and host of the electronic meeting, I will engage the "block recording" feature of Zoom when I set up the meeting, and will get an immediate message if a participant attempts to record the session.
3. All participants shall remain fully available to participate in the ongoing mediation once it is underway. The remote mediation process will not be a productive use of anyone's time if someone cannot be reached as needed. I encourage all participants to set aside the scheduled mediation time as his/her exclusive focus, just as you would in an "in-person" setting.
4. If you anticipate using documents which you will refer to during the mediation, please provide me a digital copy of each such document at least 24 hours prior to the time set for mediation to convene.

PROCEDURES FOR REMOTE MEDIATION

1. Download the Zoom app on your iPhone or computer. Set up your account using your email address. If you are using your desktop computer, make sure that you have internal (or purchase and install an external) video capabilities.
2. If you and your client are going to be in separate locations, your client will also need to download Zoom, and will need to provide me with his/her email address or cell number.
3. I will then send you a meeting notice and invitation. You will click on the link I provide in the invitation, and, at the appropriate time, you will be able to join the meeting.

4. As a mediator, it is my responsibility to ensure the privacy and confidentiality of the mediation process. One way I have found that I can easily meet those duties is to have all joint caucuses end and reinstate an new session with you, once I have finished a session with the other party and his/her attorney. The procedures are simple:

At the end of a session, I will ask you to "leave" the meeting (click on button on top of screen). I will then start a "new" meeting with those I need to speak with next. I favor this method because it completely negates the possibility that the other side can overhear or see anything happening in my session with you, and vice-versa.

5. Once an agreement is reached, I will prepare the draft MSA and email it to both attorneys by pdf. We then use the same meeting process to receive and discuss edits to the proposed MSA from the attorneys.
6. At this point, I will email the revised "final form" MSA to all participants for signature. There are a couple of ways to handle signing off on the Mediated Settlement Agreement:
 - A. If Docusign is available to the participants, the final form MSA will be signed by all parties. Each participant will have ready access to the fully executed and approved MSA.
 - B. Each litigant will sign the MSA and initial all pages, and will scan/email or fax the signed document to my email address. The attorney for each party will sign and return only the lawyer signature page. I will then assemble the duplicate original pages from all parties and transmit copies to everyone so that all participants have a fully signed copy for their records.

NOTE: ***Alternatively, I am willing to conduct mediation using a hybrid method that is acceptable to the participants. An example would be where one party and counsel appeared by Zoom and the other side via traditional telephone/speaker phone.***

NOTE: *At this point, my purchase of the "Pro" version of Zoom has not updated to my system. Under the "Basic" version, sessions end at the 40 minute mark. Should we need additional time for an ongoing session, I will simply invite you again to a new session. It takes a matter of seconds, so this will not impede the orderly flow of the caucuses.*