

Mediator Guide to Mediating Remotely

Lauren Marx, M.S.

MarxMediates@gmail.com

954-593-6153

“The advance of technology is based on making it fit in so that you don’t really even notice it, so it’s part of everyday life.”

Bill Gates

Welcome and Overview

Imagine if we had always conducted mediations remotely, and then one day, that was no longer an option, and we had to adjust to mediating in-person. What would we need to consider? How would we transfer our skills?

This guide is designed to assist mediators, neutrals, and dispute resolvers in mediating from a distance. I have included a comprehensive list of considerations and strategies as they relate to rapport building and trust, confidentiality and privacy, technology challenges, logistics and setup, private meetings, pre-mediation work or case development, drafting the settlement agreement, and much more. You will also find a series of checklists to help you and the parties prepare for the mediation. I highly encourage you to share copies of the participant's version with the parties during the pre-mediation phase. Finally, in the appendices, you will find a list of software options to be used during many of the mediation phases, as well as links to other resources and articles you might want to check out.

I would like to take a moment to acknowledge the concerns and challenges of mediating virtually. What has worked for me is going back to basics: trust the process and be confident that it will work. Yes, virtual mediation has limitations. I encourage you to be open to tech challenges and even failures; accept that they are par for the course. Virtual mediation demands higher levels of attentiveness; accept that it might be exhausting, especially at first. Yes, nonverbal communication, situational context, and subtle gestures are all diminished in a virtual environment. That is okay; you can and will train your mind to pick up on other cues. You can also implement some of the strategies in this guide to fill in the gaps. Alternatively, virtual mediation has some unique benefits. For example, it might be easier for parties to be vulnerable wearing the "mask of technology." It can also make mediation more accessible to those who cannot take time off from work or lack childcare options. Can you think of any advantages or benefits?

At the end of the day, whether you are mediating in person or mediating virtually, the fundamentals are the same. Trust the process; trust your skillset; and trust that you will develop a comfort with the technology.

If you have any questions, concerns, or suggestions, please do not hesitate to contact me.

Warmly,
Lauren

Virtual Mediation Guide: Considerations and Strategies

Mediators must consider several factors in addition to the standard requirements of good mediation practice when facilitating in a virtual environment. The use of technology can change the dynamics, add structure, or alter the tone of the discussion in mediation. You see, virtual mediation is much more than just the sum of the parts — more than just technology added to mediation. It has a character all its own, requiring special techniques and management of effects brought about because of distance and the use of technology to bridge that distance. Technology, also known as the “fourth party,” impacts how mediators build rapport and trust with the parties, as well as how mediators and parties communicate through the entire mediation process. It is a different type of social skill altogether – in fact, most people are quite different over email, text message, telephone, and even video conference to how they come across in person. That is why preparation is critical.

According to Noam Ebner in his article “ODR and Interpersonal Trust,” mediator preparedness is one of the elements which impact the degree of trust with parties. This is true even if the parties are very familiar with the technologies you are using – and even more so if they are not. The good news is that most people engage and communicate in a virtual setting at least part of the time and can use those experiences to help inform how to mediate virtually successfully.

To build confidence working in a virtual environment, begin to observe your virtual interactions (email exchanges, text messages, phone calls, chat messages, conference calls, video conferences, etc.) and notice what works and what doesn’t and try to understand why. Consider leveraging these interactions as opportunities to practice and refine your practical communication skills. Additionally, consider practicing mock virtual mediations with fellow mediators and asking for feedback.

This guide highlights the unique considerations of a virtual mediation at various stages of the process and provide mediators with some strategies and tips to work through them.

Before the Joint Session: Case Development or Pre-Mediation Work	
Considerations	Strategies and Tips
Rapport and Trust Building trust and rapport with parties may be more difficult when mediating virtually. The lack of personal connection can impact the process negatively in several ways. It is, therefore, essential to find ways to get to know the parties, for them to get to know you, and for you to convey a professional presence in working with them.	<ul style="list-style-type: none"> • Share your bio and picture before the call • Invite parties to engage with you by asking: <ul style="list-style-type: none"> ○ What questions do you have of me as your mediator? • Discuss confidentiality especially as it pertains to <ul style="list-style-type: none"> ○ No electronic recording ○ No additional observers or parties present at their location without notification to the mediator ○ All uploaded documents removed from a web-conferencing platform ○ Add a sentence to your email signature saying the following: <i>Please note that all communication is treated with the utmost confidentiality; however, due to the limitations of technology security, confidentiality cannot be 100% assured when using email.</i>

<p>Comfort and Expertise Using Technology</p> <p>Mediators need to assess each participant's capability and confidence in using communication technologies. It is crucial to help the parties understand how it will be different and to acknowledge and normalize the challenges that might occur when using technology.</p>	<ul style="list-style-type: none"> • Ask the parties <ul style="list-style-type: none"> ○ What is your experience with conference calls and video conferencing platforms? ○ What questions or concerns do you have about mediating virtually? ○ What is your level of comfort and ability to communicate virtually? ○ What technical IT support do you have access to at your location? • Explain to parties <ul style="list-style-type: none"> ○ Although we will prepare you to participate virtually, expect to have connectivity issues which might impact our ability to see each other via the webcam, or to hear each other clearly ○ We know this can be frustrating and add to the anxiety during the conversation. We recognize this as part of the normal process when mediating virtually ○ We do put into place alternative methods for communication if we experience technology challenges • Confirm parties are willing to mediate virtually and which method: teleconference or video platform
<p>Special Needs or Accommodations</p> <p>How might a disability or special need impact a participant's ability to mediate virtually? Including but not limited to physical, cognitive, or mental disabilities, caretaker status, etc.</p>	<ul style="list-style-type: none"> • Ask the parties <ul style="list-style-type: none"> ○ Are there any reasonable accommodations we need to consider for you to participate in a virtual environment? • Contact IT support if you need assistance with accessibility issues when using a web-conferencing platform • Coordinate with the Reasonable Accommodation Program Manager or Coordinator • Read the article "ODR for All: Digital Accessibility and Disability Accommodations in Online Dispute Resolution (see Resource Section – Appendix)
<p>Full Engagement</p> <p>With in-person mediations a large amount of information is shared without the need for explicitness (i.e., you can see someone is still in the room, so no need to ask "are you still there"). This contextual knowledge is a vital element of effective communication since it describes relevant conditions and events, which we need to interpret the behaviors and activities of others accurately. Without situational information and nonverbal communication cues, we increase the opportunity for miscommunication.</p>	<ul style="list-style-type: none"> • Discuss with parties <ul style="list-style-type: none"> ○ The importance of privacy and minimal distractions particularly if they are located at home, public space, cubicle, or open office space ○ How they will communicate to the mediator if they are experiencing eye fatigue from the computer or cognitive fatigue from long periods on the phone and need a break <ul style="list-style-type: none"> ▪ Private chat via web conferencing ▪ Text message

<p>Additionally, there is a tendency to check emails, send text messages, play games on your phone, or browse the internet during teleconferences and even video conferences.</p> <p>It is important to explore with parties how they can best engage fully in a virtual environment.</p>	<ul style="list-style-type: none"> ○ The sound delay that might occur when using web-conferencing platforms, and to pause more frequently to allow what was said to be heard ○ The ground rules they might need to be productive, present and fully engaged • Make sure to keep parties involved by asking them for input throughout the process • Consider breaking up the mediation session into smaller chunks of time with breaks for sessions over 2 hours • Instruct participants to have a note pad and pen available during the mediation • Ask the parties (if applicable) <ul style="list-style-type: none"> ○ If the mediation is a teleconference/audio-only participation, what would you need to be fully present and engaged since there will be no visual cues from eye contact, body language, or facial expressions? ○ Depending on your location during the virtual mediation, what distractions might you anticipate which can be eliminated or minimized?
<p>Professional Setting and Etiquette</p> <p>Mediators strive to recreate a professional virtual setting as if they were in a face-to-face mediation.</p>	<ul style="list-style-type: none"> • Arrange the room to be free of distractions <ul style="list-style-type: none"> ○ Put a note on the door indicating that 1) you are in an important meeting and should not be interrupted and 2) people should please keep their voices down when passing your office/room • Educate parties about the fact that microphones and speakers do not differentiate between relevant and irrelevant sounds. They will pick up and transmit any conversation taking place near them — including side conversations during mediation • When using video-enabled technology, remind participants that technology is not a privacy shield and discuss proper virtual etiquette such as: <ul style="list-style-type: none"> ○ Wearing what is customary for the parties' workplace environment ○ Limiting eating and no smoking ○ Choosing a wall with minimum distractions as the background ○ The need to sit close enough to the screen that one's face is clearly visible ○ Keeping hand gestures to a minimum

The Joint Session – During the Mediation Getting Started and Open Discussion	
Considerations	Strategies and Tips
<p>Maintaining Neutrality and Privacy Mediators need to be aware of their neutrality at all times. Parties often arrive at different times in a virtual environment. Keep the conversation limited to technology checks so that a party doesn't virtually walk into a casual or private conversation.</p> <p>Once all participants arrive, acknowledge the importance of privacy and confidentiality and how they will be achieved in a virtual environment.</p>	<ul style="list-style-type: none"> • Always use the waiting room function when having clients log on to the Mediation session to avoid any issues or perceptions that neutrality has been breached. <ul style="list-style-type: none"> ○ Let them know that this is to protect the process and to preserve neutrality. • Set up the meeting for the clients well in advance and let them know that they will be in a "virtual waiting room" until they have all signed on to the session, at which time they will be admitted to the meeting simultaneously. • Before beginning the mediator's opening statement, do the following: <ul style="list-style-type: none"> ○ Confirm all parties' identity when they arrive ○ Confirm parties are in a private and confidential location with doors closed ○ Ask if there is anyone else in their room or on the phone/computer listening ○ Confirm participants have closed or logged out of applications, including email, internet, calendars, instant messaging apps, etc. ○ Similarly, if they receive desktop notifications, ask that they temporarily disable the notifications. • Do not use speakerphone so as not to breach confidentiality where others might overhear the conversation outside of the room <ul style="list-style-type: none"> ○ Use headset or earbuds • Once one party's audio and video are checked, ask them to mute their audio and/or pause their video as you wait for the other parties to arrive • Once all the required participants are present, lock the teleconference or videoconference to prevent any further participants from joining (if possible) • Confirm that no one will record the mediation and caucus sessions • E-mails, chat messages, text messages, etc. are all considered confidential <ul style="list-style-type: none"> ○ Do not copy or forward text-based messages or attachments without the writer's permission ○ Do not BCC anyone

Establishing a Communication Process and Ground Rules

Dropped calls, frozen screens, muffled sound, poor reception, spotty internet connections are all connectivity issues we deal with daily. “Can you hear me?” “Can you repeat that?” can undermine a trust-building/vulnerable process such as mediation.

Since technology is a 4th party consideration, it is vital to address the ground rules and processes for effective communication in a virtual environment.

- Be overt and explicit – subtle gestures are often missed
 - Address the parties by name when you wish to address them.
 - When asking an open question, it makes sense to ask one party first then ask the other.
 - Switch the order throughout the process so that party B does not start to feel that it is always party A who gets to speak first
- Ask parties to mute their audio as their default mode and unmute only when they’re speaking
- Avoid interrupting one another as the message gets easily lost in a virtual setting
- Speak more slowly than usual, reducing crosstalk and creating space for listening. This is especially helpful when there is lag time with the internet connection.
- Request a break when needed and mute phones/computers

Video-conferencing platform

- Use the “raised-hand” icon or chat box to minimize interruptions
- If there is poor sound quality, turn off the webcam to utilize the full bandwidth for audio
- If audio is lost, communicate via the chatbox or text message the mediator
- Practice patience and confidence, normalize any technology challenge and move on with the conversation
 - For example, a party’s representative loses his video connection, but everyone can still hear him. The mediator can say, *“This is a normal occurrence. Since we can hear Joe, let’s continue our conversation. Joe, to enhance your ability to communicate, consider using the raise hand icon and chatbox to let us know you wish to speak. I will also check in with you along the way.”*

Teleconference only

- Ask participants to say their name first as they begin to speak until all recognize their voices
- When joining or rejoining a teleconference, parties need to announce themselves

	<ul style="list-style-type: none"> • Determine how to indicate when you finished speaking • Use text messaging or emails to communicate with parties privately when <ul style="list-style-type: none"> ○ There is a need for a caucus or break ○ Parties are unusually silent ○ Parties communicating destructively
<p>Rapport and Trust Building</p> <p>As more and more employees can telework on either a part-time or full-time basis, it is not uncommon that participants lack much, if any, face-to-face interaction. The absence of regular face-to-face interactions and casual “water cooler” encounters presents an additional barrier to developing rapport with each other.</p>	<ul style="list-style-type: none"> • Describe the room you are in and suggest connecting to parties by sharing one relevant or meaningful item in the room. Ask parties to do the same • If using a webcam, you can show one another the room by swinging your webcam around the room as you describe what is around you • Ask parties to share by using one of the following questions to connect. <ul style="list-style-type: none"> ○ What is one thing you want each other to know about you as a person?
<p>Non-Verbal Communication Limitations</p> <p>In a virtual environment, non-verbal communication cues are limited. Therefore, mediators need to consider how the participants will address one another, decipher and acknowledge emotions, and continue to build rapport and trust. Being prepared and confident to engage in an online environment is a crucial trust factor for participants.</p> <p>When using video, parties can usually see body language and facial expressions. However, subtle gestures that mediators utilize, such as a nod of the head, direct eye contact, or an “uh hmm” to acknowledge something that is said, is not as readily recognized or heard in a virtual environment. Moreover, when we are missing the visual cues completely, it is essential to listen for tone, attitude, and emotion. It is not uncommon for participants to feel “anonymous” on a conference call and to behave in riskier ways to communicate their hurt and be heard. For example, they might emote stronger feelings, say more derogatory remarks or name call.</p>	<ul style="list-style-type: none"> • Pay attention to the position of your eyes in terms of eye contact with the participants. If it looks like you are reading off-screen or looking down, it might be perceived as being uninterested or disconnected <ul style="list-style-type: none"> ○ Adjust your computer or how you sit. If you are reading a document, then simply state to participants that you are reading a document • Vocalize more frequently to acknowledge tone, attitude or emotion <ul style="list-style-type: none"> ○ For example, <i>“What I think I am hearing in your voice is frustration. What do you believe is not being heard and understood?”</i> • Use more empathetic listening statements to convey warmth and connection • Check-in with unusually silent participants. Be careful not to interpret silence as disinterest or shutting down <ul style="list-style-type: none"> ○ Give additional space for the participant to talk ○ Use chatbox as a tool for all participants to reply to a question to engage everyone
<p>Connectivity Issues</p> <p>Sometimes things happen outside of your control that will impact your connection, such as inclement weather, power outage, construction mistakes, etc.</p>	<ul style="list-style-type: none"> • Pause the mediation and restart the connection. This allows the connection to refresh and, in most cases, will resolve the problem. • Have a backup plan (see technology checklist)

Trying to work through a poor connection will make the parties lose faith and confidence not only in the mediator but also in the concept of online mediation.	
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The Joint Session – During the Mediation: Caucusing	
Considerations	Strategies and Tips
If using a teleconference line	<ul style="list-style-type: none"> • Option #1 Ask the other party to hang up. <ul style="list-style-type: none"> ○ Allow a brief pause to ensure that the party not privy to the caucus is fully disconnected • Option #2 Hang up and call the party you're caucusing with back on their alternate phone #s • Confirm the other party knows when to rejoin and/or next steps
If using a video conference (VC) platform	<ul style="list-style-type: none"> • Option #1 Create separate "rooms" for caucusing. All parties will have a unique link or code to access their room (if available) • Option #2 Ask the other party to leave the VC <ul style="list-style-type: none"> ○ Allow a brief pause to ensure that the party not privy to the caucus is fully disconnected • Give non-privy party an estimated time they will be out of the room, then disconnect the non-privy party • Use a note pad, Google Doc, or Word Doc for brainstorming options for resolution and share screen when needed. • Save the document and close before caucusing with the other party to protect confidentiality. • Communicate to the non-privy party to return to the video conference room and disconnect the first party. You can do this through text or email. Repeat steps above for 2nd caucus.

The Joint Session – During the Mediation: Returning to the Joint Session	
Considerations	Strategies and Tips
Brainstorming and Drafting Settlement Terms Mediators need to consider how they will use communication technology to brainstorm and analyze options as well as draft and share settlement terms.	<ul style="list-style-type: none"> • Teleconference only <ul style="list-style-type: none"> ○ Use texting to brainstorm ideas ○ Chat software – found in Appendix C ○ Use Google Drive to collaborate simultaneously and edit

For instance, I use Dropbox for secure document transmission, DocuSign for document execution, and PayPal or Square for payment processing. The main thing is that you need to think ahead about how certain functions that would typically happen in person, such as taking a check for payment, will occur when all participants are remote from each other.	<ul style="list-style-type: none"> ○ Use Microsoft Word to draft terms and save it in a private folder, share only with participants ○ Review and edit the document as you discuss and finalize the terms ● Video-conference platform <ul style="list-style-type: none"> ○ Use chatbox ○ Use polling tool (if available) ○ Google Docs ○ Use the platform's note pad to draft settlement terms and export file to email ○ Open a Microsoft Document and share your screen as you draft the terms ○ Start a Google Doc ○ Use the polling function to rank options
Settlement Review Process Mediators need to reiterate privacy and confidentiality as it pertains to the Settlement Terms.	<ul style="list-style-type: none"> ● Reiterate to parties the agreed-upon process for reviewing and signing documents in the first email ● Remind parties to only share documents with approved participants, ask them not to forward emails or documents, confirm they are sending to the correct person, do not BCC ● Use "draft" watermark on all materials (except the final) ● Convert documents into read-only pdfs before sharing them unless they are working documents

The Joint Session – During the Mediation: Ending the Joint Session	
Considerations	Strategies and Tips
Privacy and Confidentiality of Stored Data	Video-conferencing platform <ul style="list-style-type: none"> ● Before ending the session, remove all uploaded documents, clear chatbox, delete answers to polls and erase the note pad/whiteboard ● Be sure to "end" the session (log off, hang up, etc.) ● Notify Tech Support (if applicable) ● Before leaving your device(s), ensure data related to the mediation is protected and safely stored

After the Joint Session: Closing Out the Mediation	
Considerations	Strategies and Tips
Privacy and Confidentiality of Stored Data	<ul style="list-style-type: none"> ● Upon completion of the process, purge all data related to the mediation from your device(s)

Mediator Virtual Mediation Technology Checklist – Videoconference (VC)

Not everyone is comfortable or skilled at using communication technologies. As the mediator, you are responsible for creating a safe environment and facilitating the process, and when doing so virtually, that might include troubleshooting some (common) technology hiccups. Therefore, you must be comfortable, confident, and in control of the technology so you can keep the mediation on pace and earn the parties' trust. If the mediator is not comfortable with technology, that discomfort might convey a lack of competence with mediation in general.

The following technology checklist will help you prepare for a virtual mediation that will include a video component (videoconference). You can find a similar list for the participants on the following page. It is encouraged that you share the checklist with them.

Get Familiar with the Technology

Learn how the technology works — what are the features you'll utilize and how the parties can use them

- ☐ Hardware
 - ☐ Use and test your headset or earbuds for the best audio quality
 - ☐ Use and test the video camera for the specific platform chosen
 - ☐ Make sure you know how to turn the webcam on or off (this may help if bandwidth is an issue)
 - ☐ Confirm access to high-speed Internet connection
 - ☐ Connect your computer directly to the modem (if possible) for best bandwidth
 - ☐ Avoid using unsecured Wi-Fi networks including "Wi-Fi hotspots" for transmitting or accessing confidential information
 - ☐ If possible, confirm what type of computer and operating system you and the participants are using to share with tech support (when needed)
- ☐ Software
 - ☐ Identify which video conferencing platform the organization or agency uses. Note: you may have to work with an IT Support person to log on and hand over Host control to you. (See below for After the Mediation Session ends in these cases)
 - ☐ Know how to use the chat space or breakout space (if available)
 - ☐ Familiarize yourself with any recording functions and disable them
 - ☐ Make sure you know how to mute yourself and know how to mute the parties (if possible)
- ☐ Determine how you will caucus either within the platform or by phone (see page # 20)
- ☐ Determine how you will share, review, and edit documents during the mediation – both the process that will be used and the platform such as Google Drive, Dropbox, email, or built-in features.
 - ☐ Check if the platform has a notepad to use for problem-solving, brainstorming, or drafting settlement terms. If so, familiarize yourself with it
 - ☐ Know how to share your computer screen or give access to a party to share their screen
 - ☐ Know how to upload documents for review during the mediation

Create a Backup Plan

- ☐ The backup plan should be as specific as possible; for example, the participants will resort to the backup plan after a specific number of failed attempts with the technology
- ☐ Determine what will be done if only one of the parties has difficulty accessing the technology, or is limited to only partial use of its features

- ☐ Make sure to have alternative options to contact the parties
- ☐ Provide parties with your alternate contact information
- ☐ Have parties identify an IT point person who will be available the day of the mediation (if possible)
- ☐ Confirm participants understand and are comfortable with the backup plan

Logistics

- ☐ Create a meeting. Enable a waiting room function if available.
- ☐ Send an email and calendar invite with the login/participation information, including the backup plan
- ☐ Ask parties to arrive **5 minutes** before the official start time to allow for any technical challenges. The mediator should arrive **10 minutes** before the official start time
- ☐ Conduct a test run with each participant 1-3 business days before the mediation. (If applicable)
 - ☐ The test run should be conducted at the chosen mediation location. It is vital to confirm that the “room” follows best practices

Prepare Location and Equipment for Mediation

- ☐ Close all applications unrelated to the mediation, i.e., email, social media, calendars, chat apps, etc.
- ☐ Silence your cellphone and remove it from your view unless it will be used during the process
- ☐ Put a note on the door indicating that 1) you are in an important meeting and should not be interrupted and 2) asking people to please keep their voices down when passing your office/room
- ☐ Figure out how to best position yourself to the camera and microphone (see page #16)
 - ☐ Check lighting to ensure everyone can be viewed without it being too dark or too much light
- ☐ Make sure people cannot overhear the conversation through the walls
- ☐ Clean up computer's desktop and temporarily disable notifications that appear on your desktop
- ☐ Temporarily disable system updates the day of the mediation
- ☐ Check for and run all software updates **24 hours** before the mediation session
 - ☐ Confirm that the participants have all done the same (If applicable)
- ☐ Check for and run all virus and malware scans **24 hours** before the mediation
 - ☐ Confirm that the participants have all done the same (If applicable)
- ☐ Fully charge all necessary devices and have access to chargers

After the Mediation Session

- ☐ Confirm the meeting has “ended”
- ☐ Use a “draft” watermark on all, except final, documents (If applicable)
- ☐ Convert documents into read-only pdfs when sharing them with the parties for review
- ☐ Safely and confidentially save the following from the VC platform for settlement drafting:
 - ✓ Uploaded documents
 - ✓ Chat dialogue
 - ✓ Notes written on a notepad
- ☐ Upon completion of the mediation, the above documents must be purged from the VC platform, and all connected devices. Handwritten notes must all be destroyed.
- ☐ Notify the IT point-of-contact that the mediation is completed and the virtual room is closed. Keep in mind that IT might be the “official” host for the meeting turning the control of the room to the Mediator. They would need to sign off from the platform (if applicable)

Participant Virtual Mediation Technology Checklist – Videoconference

The following technology checklist will help you prepare for a virtual mediation that will include a video component (videoconference).

Get Familiar with the Technology

Learn how the technology works — which features will be utilized and how you will use them

- ☐ Hardware
 - ☐ Use and test your headset or earbuds for the best audio quality
 - ☐ Use and test the video camera for the specific platform chosen
 - ☐ Make sure you know how to turn the webcam on or off (this may help if bandwidth is an issue)
 - ☐ Confirm access to a high-speed Internet connection
 - ☐ Connect your computer directly to the modem (if possible) for best bandwidth
 - ☐ Avoid using unsecured Wi-Fi networks including “Wi-Fi hotspots” for transmitting or accessing confidential information
 - ☐ Confirm what type of computer and operating system are using and share that information with the mediator
- ☐ Software
 - ☐ Identify which video conferencing platform will be used for the mediation
 - ☐ Sign in to your account. If you do not have an account, create an account and save your password
 - ☐ Know how to use the chat space or breakout space (if available)
 - ☐ Make sure you know how to mute yourself
 - ☐ Check if the platform has a notepad to use for problem-solving, brainstorming, or drafting settlement terms. If so, familiarize yourself with it
 - ☐ Know how to share your computer screen
 - ☐ Know how to upload documents for review during the mediation

Create a Backup Plan with the Mediator

- ☐ The backup plan should be as specific as possible; for example, everyone will resort to the backup plan after a specific number of failed attempts with the technology
- ☐ Determine what steps you will take if only one of the parties has difficulty accessing the technology, or is limited to only partial use of its features
- ☐ Make sure to have alternative options to contact the parties
- ☐ Provide mediator with your alternate contact information
- ☐ Identify an IT point person who will also be available the day of the mediation (if available)
- ☐ Confirm with the mediator that you understand and are comfortable with the backup plan

Logistics

- ☐ Confirm mediator has sent an email or calendar invite with the login/participation information, as well as the backup plan details
- ☐ Plan to arrive **5 minutes** before the official start time to allow for any technical challenges.

- ☐ Schedule a test run with the mediator 1-3 business days before the mediation.
 - ☐ The test run should be conducted at the chosen mediation location. It is essential to confirm that the “room” meets the preferred standards

Prepare Location and Equipment for Mediation

- ☐ Close all applications unrelated to the mediation (i.e., email, social media, calendars, chat apps, etc.)
- ☐ Silence your cellphone and remove it from your view unless it will be used in the mediation
- ☐ Put a note on the door indicating that 1) you are in an important meeting and should not be interrupted and 2) asking people to please keep their voices down when passing your office/room
- ☐ Figure out how to best position yourself to the camera and microphone
 - ☐ Check lighting to ensure everyone can be seen without it being too dark or too much light
- ☐ Make sure people cannot overhear the conversation through the walls
- ☐ Clean up computer’s desktop and temporarily disable notifications that appear on your desktop
- ☐ Temporarily disable system updates the day of the mediation
- ☐ Check for and run all software updates **24 hours** before the mediation session
 - ☐ Notify the mediator when you have completed this step
- ☐ Check for and run all virus and malware scans **24 hours** before the mediation
 - ☐ Notify the mediator when you have completed this step
- ☐ Fully charge all necessary devices and have access to chargers

After the Mediation Session

- ☐ Confirm the meeting has “ended.”
- ☐ Use a “draft” watermark on all, except final, documents
- ☐ Upon completion of the mediation, any notes or chatbox conversations must be purged from the video conferencing platform, as well as your devices. Handwritten notes must also be destroyed.

Mediator Virtual Mediation Technology Checklist – Teleconference

Not everyone is comfortable and skilled at using all forms of communication technologies. As the mediator, you are responsible for creating a safe environment and facilitating the mediation process, and when doing so virtually, that might include troubleshooting some (common) technology hiccups. Therefore, you must be comfortable, confident, and in control of the technology so you can keep the mediation on pace and build trust with the parties. Alternatively, if the mediator is not comfortable with technology, it might convey a lack of competence in mediation in general.

The following technology checklist will help you prepare for a virtual mediation that will be conducted **without** a video component (teleconference). You can find a similar list for the participants on the following page. It is encouraged that you share the checklist with them.

Get Familiar with the Technology

Learn how the technology works — what are the features you'll utilize and how the parties can use them

For this checklist, we focused on two methods for conducting conference calls: 1) using a conference call service and 2) manually adding participants to a call.

- ☐ If using a conference call service
 - ☐ Identify the conference call number
 - ☐ Confirm whether any codes are required to either initiate and/or join the call
 - ☐ Confirm whether there is audio associated with someone entering or leaving the call
 - ☐ What will participants hear if they call before the mediator has initiated the call?
- ☐ If manually adding participants to a call
 - ☐ Identify the steps required based on the type of phone you will be using
 - ☐ Determine what, if anything, the connected party will hear when adding another party to reduce confusion and uncertainty about whether the call has been dropped
 - ☐ Make sure you have everyone's number, and they know which number you will be calling from
- ☐ Use and test your headset or earbuds for the best audio quality
- ☐ Use and test the speakerphone
- ☐ Familiarize yourself with any recording functions and disable them (if possible)
- ☐ Make sure you know how to mute yourself and how to mute the parties (if possible)
- ☐ Make sure you know how to add participants to a call and place a participant on hold
- ☐ Determine how you will caucus (see page #20 of the Participants Guide for examples)
- ☐ Determine how you will share, review, and edit documents during the mediation – both the process that will be used and the platform such as Google Drive, Dropbox, email, Slack, etc.

Create a Backup Plan

- ☐ The backup plan should be as specific as possible; for example, when to resort to the backup plan and what will happen if only one of the parties has difficulty joining the call, has poor reception, or is limited to only partial use of its features

- ☐ Explain to parties that if there are connectivity issues, you will pause the mediation until they are resolved
- ☐ Obtain the parties' alternate contact information
- ☐ Provide parties with your alternate contact information
- ☐ Possibly include an alternative conference call line
- ☐ Have parties identify a technical support point person to be available the day of the mediation

Logistics

- ☐ Create a meeting. Enable a waiting room function if available.
- ☐ Send an email or calendar invite with the login/participation information, as well as the backup plan.
- ☐ Ask parties to arrive **5 minutes** before the official start time to allow for any technical challenges.
*The mediator should arrive **7 minutes** before the official start time*

Prepare the Location and Equipment for Mediation

- ☐ If access to a computer is required for the mediation, close any applications unrelated to the mediation, and minimize any applications that might be used, such as email, calendars, etc.
- ☐ Figure out how to best position yourself to the microphone or speaker
- ☐ If using a cellphone
 - ☐ Check for and run all software updates **24 hours** before the mediation session
 - ☐ Choose a location with reliable cell phone reception
 - ☐ Fully charge your phone and make sure you have access to a charger
 - ☐ Confirm that the participants have completed the previous three steps
- ☐ Put a note on the door indicating that 1) you are in an important meeting and should not be interrupted and 2) people should please keep their voices down when passing your office/room
- ☐ Silence your cellphone and remove it from your view, if you are not using it for the mediation
- ☐ Make sure people cannot overhear the conversation through the walls

After the Mediation Session

- ☐ Confirm the call has ended
- ☐ Safely and confidentially save the following for the settlement drafting:
 - ✓ Uploaded documents that were shared during the session
 - ✓ Any notes taken during the joint session
 - ✓ Text dialogue
- ☐ Upon completion of the mediation, the above documents must be purged from all devices
 - ☐ Destroy all handwritten notes

Participant Virtual Mediation Technology Checklist – Teleconference

The following technology checklist will help you prepare for a virtual mediation that will be conducted **without** a video component (teleconference).

Get Familiar with the Technology

Learn how the technology works — what are the features you'll utilize and how the parties can use them

For this checklist, we are focused on two methods for conducting conference calls: 1) using a conference call service and 2) manually adding participants to a regular call.

- ☐ If using a conference call service
 - ☐ Identify the conference call number
 - ☐ Confirm whether any codes are required to either initiate and/or join the call
 - ☐ Confirm whether there is audio associated with someone entering or leaving the call
 - ☐ What will participants hear if they call before the mediator has initiated the call?
- ☐ If manually adding participants to a call
 - ☐ Let the mediator know what type of phone you will be using
 - ☐ Make sure you have everyone's number, and they know which number you will be calling from
- ☐ Use and test your headset or earbuds for the best audio quality
- ☐ Use and test the speakerphone
- ☐ Make sure you know how to mute yourself.
- ☐ Confirm how you will caucus during the mediation
- ☐ Confirm how you will share, review, and edit documents during the mediation – both the process that will be used and the platform such as Google Drive, Dropbox, email, Slack, etc.

Create a Backup Plan with the Mediator

- ☐ The backup plan should be as specific as possible; for example, when to resort to the backup plan and what steps will be taken if only one of the parties has difficulty joining the call, has poor reception, or is limited to only partial use of its features
- ☐ Ask the mediator how connectivity issues will be handled
- ☐ Provide the mediator with alternate contact information
- ☐ Get the mediator's alternate contact information
- ☐ Identify a technical support point person to be available the day of the mediation (if possible)

Logistics

- ☐ Confirm mediator has sent an email or calendar invite with the login/participation information, as well as the backup plan details
- ☐ Plan to arrive **5 minutes** before the official start time to allow for any technical challenges.
- ☐ Schedule a test run with the mediator 1-3 business days before the mediation.
 - ☐ The test run should be conducted at the chosen mediation location. It is essential to confirm that the "room" meets the preferred standards

Prepare the Location and Equipment for Mediation

- ☐ If access to a computer is required for the mediation, close any applications unrelated to the mediation, and minimize any applications that might be used, such as email, calendars, etc.
- ☐ Figure out how to best position yourself to the microphone or speaker
- ☐ If using a cellphone
 - ☐ Check for and run all software updates **24 hours** before the mediation session
 - ☐ Choose a location with strong cell phone reception
 - ☐ Fully charge your phone and make sure you have access to a charger
 - ☐ Confirm that the participants have completed the previous three steps
- ☐ Put a note on the door indicating that 1) you are in an important meeting and should not be interrupted and 2) people should please keep their voices down when passing your office/room
- ☐ Silence your cellphone and remove it from your view, if you are not using it for the mediation
- ☐ Make sure people cannot overhear the conversation through the walls

After the Mediation Session

- ☐ Confirm the call has ended
- ☐ Upon completion of the mediation, any notes or chatbox conversations must be purged from the video conferencing platform, as well as your devices. Handwritten notes must also be destroyed.

Pre-Virtual Mediation Communication Checklist

Communication Best Practices Before a Virtual Mediation

- ☐ Explain key differences between mediating in a traditional face-to-face setting and virtually
- ☐ Learn about parties' experience and comfort with technology and reassure any concerns
- ☐ Educate the parties' about the technology that will be used in the mediation
- ☐ Prepare parties to mediate virtually

Explain How Virtual Mediation Works (key points to mention)

- ☐ How to maintain confidentiality and privacy virtually Confidential process – the parties, mediator, and anyone else present will sign the agreement to mediate
- ☐ Explain key differences between mediating in a traditional face-to-face (F2F) setting and mediating virtually. Reference the virtual mediation technology checklist.
- ☐ Discuss caucus or private meeting process such as using separate phone # or remaining in the video platform

Explore Issues and Concerns (sample questions to ask)

- ☐ If virtual, ask the party to share issues and concerns related to mediating virtually
 - ✓ Acknowledge anxieties and normalize technology challenges (if applicable)

Coordination

- ☐ Discuss technical requirements and determine what technology (PC or MAC, Browser, video platform, or phone system) will be used. **Note:** [insert] is the preferred video conferencing platform for [insert organization]. Individuals may have purchased other platforms. Please check with the program coordinator for approved use.
- ☐ Review the purpose of recreating a professional setting, basic etiquette, and best practices related to using technology
- ☐ Ask parties to identify a private, confidential location to participate in the mediation
- ☐ Schedule a technical practice run for a virtual mediation
- ☐ Share tech support resources (e.g., Zoom help page)
- ☐ If possible, identify an IT point person to provide tech support preparing for the mediation and during the mediation. Each organization may have their options.
- ☐ Inquire about any special needs/accommodations for participation in a virtual environment

Next Steps

- ☐ Confirm date, time, location for mediation with all parties
 - ☐ Send relevant login information for a virtual mediation (if applicable)
 - ☐ Confirm date and time for a test run
 - ☐ Confirm technical IT point person (if applicable)
- ☐ Email mediation agreement and confidentiality agreement to all parties (if applicable)

Resources

Articles

Body Language in Online Mediation - What Do We Miss? by Giuseppe Leone

<https://www.mediate.com/articles/LeoneGbl20141024.cfm>

Ethical Principles for Online Dispute Resolution: A GPS Device for the Field by Leah Wing

<https://www.mediate.com/articles/WingL2.cfm>

New Mediator Capabilities in Online Dispute Resolution by Colin Rule

<https://www.mediate.com/articles/rule.cfm>

ODR for All: Digital Accessibility and Disability Accommodations in Online Dispute Resolution by David Larson and Lainey Feingold

<https://www.mediate.com/articles/larsond2.cfm>

ODR and Interpersonal Trust by Noam Ebner

<http://www.ombuds.org/odrbook/ebner.pdf>

Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution by Mohamed S. Abdel Wahab, Ethan Katsh, and Daniel Rainey (Eds.)

http://www.ombuds.org/odrbook/Table_of_Contents.htm

Using E-Mediation and Online Mediation Techniques for Conflict Resolution by Harvard's Program on Negotiation

<https://www.pon.harvard.edu/daily/mediation/dispute-resolution-using-online-mediation/>

Webinars

Mediator Maneuvers: Flexible Skills to Handle Challenging Moments in an Online Environment

<http://www.adrhub.com/forum/topics/discussion-forum-mediator-maneuvers-flexible-skills-to-handle-cha>

Online Dispute Resolution Basics and Best Practices by Colin Rule

https://empower.tylertech.com/2018_Modria_WebinarSeries.html

Websites

International Council for Online Dispute Resolution (ICODR) <http://icodr.org/>

The National Center for Technology and Dispute Resolution <http://odr.info/>

Zoom

The following suggestions will help you to secure Zoom sessions and increase the level of confidentiality and privacy of your virtual mediations. Most videoconference (VC) platforms have similar functions.

1. Use scheduled meetings. These create unique IDs that are more difficult to guess. Also, ensure that the meeting ID has a passcode on them.
<https://support.zoom.us/hc/en-us/articles/360033331271-Account-Setting-Update-Password-Default-for-Meeting-and-Webinar>
2. Consider using the webinar function to create a Zoom meeting instead of the meeting function. This will restrict who can share the screen and prevent “Zoom Bombing.”
<https://support.zoom.us/hc/en-us/articles/200917029-Getting-Started-With-Webinar>
3. Use Multi-Factor Authentication (MFA) on your Zoom account so that if a password is compromised, the attacker does not have access to your Zoom account.
<https://support.zoom.us/hc/en-us/articles/360038247071-Setting-up-and-using-two-factor-authentication>
4. Lock the meeting or webinar once all the participants have arrived.
<https://blog.zoom.us/wordpress/2020/03/27/best-practices-for-securing-your-virtual-classroom/>
5. Enable a waiting room feature to screen individuals that are coming into your meeting room. This will help to avoid any issues or perceptions that neutrality was breached. It will also prevent unknown individuals from joining your session.
<https://blog.zoom.us/wordpress/2020/03/27/best-practices-for-securing-your-virtual-classroom/>
6. Enable break out rooms to create private “room” to meet with the parties individually. This is essential if you want to separate the parties at any point during the process.
<https://support.zoom.us/hc/en-us/articles/206476093-Enabling-breakout-rooms>
7. Disable all recording functionality for the parties. This includes audio recordings, chat messages, screen shares, whiteboards, and audio and screen recordings.
<https://support.zoom.us/hc/en-us/articles/203741855-Cloud-recording>
8. To temporarily remove a participant (party) from the conversation, put them “on hold.”
<https://support.zoom.us/hc/en-us/articles/360041848151-In-meeting-security-options>

Software Options

Below are some of the top, easy-to-use, and secure software to conduct a virtual mediation to date. Most have free versions with limited functionality and affordable paid subscriptions.

Videoconference (VC) Platforms	<ul style="list-style-type: none"> ○ Skype ○ Google Hangouts Meet ○ Zoom ○ WebEx ○ GoToMeeting
Teleconference	<ul style="list-style-type: none"> ○ Manual on phone ○ FreeConferenceCalls.com
Chat	<ul style="list-style-type: none"> ○ Slack ○ Google Hangouts (requires Google Account and Gmail Address) ○ Whatsapp ○ Discord.com ○ Google Docs (in document chat option) ○ Rocket.chat ○ SMS ○ Chat box function in the VC platform
Document Sharing and Storage	<ul style="list-style-type: none"> ○ Dropbox ○ Google Drive ○ Box ○ Microsoft OneDrive
Document Signing	<ul style="list-style-type: none"> ○ DocuSign ○ Adobe ○ Formstack Sign ○ SignNow ○ Eversign ○ SignRequest

Lauren Marx, M.S.

MarxMediates@gmail.com | 954-593-6153 | Portland, OR.

A collaborative problem-solving expert, Lauren recognizes that as our society and organizations become more complex, *our ability to thrive* requires us to *foster new courage, explore diverse perspectives, and engage in powerful conversations that equitably and inclusively address conflict.*

Lauren brings over nine years of experience providing direct conflict management services and consultation to organizations in both the public and private sectors facing the challenges of conflicting styles, limited resources, differing values, and change. During this time, she has developed a distinctive style that emphasizes her directness, insight, empathy, ability to connect with others. A trained conflict coach, Lauren works with individuals, groups, and teams. She creates a safe and non-threatening environment in which people can focus on their own growth at a manageable pace while empowering them to directly address the tensions impacting their work. As an experienced mediator, she offers individuals and teams processes to explore their disagreements and create new avenues out of conflict.

Additionally, she has designed and delivered interactive training programs for improving conflict resolution and communication skills, mediation case management, and online mediation, which have been delivered to thousands of individuals nationwide.

Lauren has a private practice in workplace mediation, coaching, program design, ombuds and training. She is based in Portland, Oregon.

Education and Certifications

- M.S. Conflict Analysis and Resolution, Nova Southeastern University
- B.S. Business Administration, Marketing, University of Florida
- Cinergy Conflict Management Coaching Certified
- Florida Supreme Court Certified Mediator
- District of Columbia Superior Court Certified Mediator
- Oregon Judicial Department Certified Mediator
- Ombuds Subject Matter Expert

