

Virtual Arbitration FAQs

Keep cases moving with flexible, efficient virtual arbitration at JAMS.

JAMS neutrals have successfully handled thousands of cases via videoconference, including large, complex, multi-party arbitrations. Whether a hearing is being conducted in person, virtually or as a hybrid proceeding, our experienced arbitrators are adept at managing the resolution process. JAMS neutrals and case managers receive ongoing training on the latest videoconferencing technology and best practices. In addition, we provide a **moderator who initiates and secures the virtual session and remains on standby for technical support.**

What remote options does JAMS offer?

We can accommodate the virtual platform that best suits your needs, including Zoom, Microsoft Teams, GoToMeeting and WebEx. We also provide **hybrid hearing options** at JAMS Resolution Centers across the country, where counsel and clients who wish to attend in person can be connected with those who prefer to participate remotely. Conference calls are also an option.

What are the technical requirements?

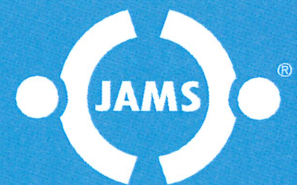
Download the app to your computer or tablet in advance of your session and confirm that your computer microphone is enabled, you have a videocam on or attached to your computer, your internet connection is working, and you have a suitable backdrop and good lighting. Visit jamsadr.com/online for additional information and download our **Virtual ADR Tips**.

How do I prepare for a virtual arbitration?

Confirm that all parties and representatives are available and prepared to participate, decide which documents will be used and shared, and have the necessary technology available. Attorneys and their clients should also decide in advance how they will confer in private—via phone call or text message, or in a virtual breakout room (depending on the agreed-upon platform). Finally, we recommend that you schedule a **practice session with a JAMS moderator** to familiarize all parties with the process.

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Arbitration by Videoconference: Not as Scary as You Think

November 10, 2020

I have heard from many lawyers who have reluctantly adapted to virtual mediations that even though Zoom and other platforms work well for mediations, they do not work so well for arbitrations. These lawyers have asked that I postpone their arbitrations until the pandemic is over and we can arbitrate in person. My response is always the same: Tell me the date when the pandemic will be over, and we will arbitrate then. Of course, no one knows when that will be, and cases cannot sit idle forever. Slowly, and with a push from arbitrators, most lawyers have come to the realization that there is currently no alternative to arbitration by videoconference.



What is virtual arbitration using a platform such as Zoom like, and how is it different from in-person arbitration? The answer, surprisingly, is that it is very similar to an in-person arbitration once you get used to it, and it works very well. The mechanics are fairly simple. Counsel provide their contact information and their witnesses' contact information, and they are given a meeting number and a password. The arbitrator, counsel and the court reporter, if there is one, join the meeting, and counsel notify all witnesses, either by email or cell phone, when it is their time to join. The witnesses join the meeting at the appropriate times and give their testimony.

Typically, an arbitration involves asking a witness about various exhibits. The arbitrator and all counsel can view the witness as he or she testifies, and they can ask questions of the witness. Counsel may show the witness exhibits in order to question him or her about the exhibits in two ways. Counsel can provide the witness with hard copies of the exhibits in advance, and the witness can look at them as needed. Alternatively, counsel can use the screen share function on the virtual platform to show the witness—and everyone else—the exhibit on the screen. If you have ever participated in an in-person arbitration where each side has binders full of exhibits, you can see the advantage of sharing exhibits onscreen. Instead of the witness (and the arbitrator and counsel) thumbing through a binder in search of a specific exhibit, counsel can simply put it on the screen. It is a real time-saver.

Speaking of time-savers, having an online arbitration can prevent a witness from being late due to travel delays. During an online arbitration, because a witness doesn't have to travel in order to testify he or she can appear from his or her home or office. If the time a witness is scheduled to appear is pushed back, he or she won't be stuck waiting in a JAMS resolution center lobby or waiting room. A witness can just stand by at his or her home or office.

Attorneys who are skeptical about conducting arbitrations virtually often wonder if it's possible to read a witness' face and capture his or her demeanor onscreen. In other words, can a witness' credibility be determined by watching his or her body language on a video screen? This is a valid concern. My answer is that while it may be more difficult to pick up on physical cues on a screen versus in person, it can still be done. If a witness speaks softly, pauses before answering or partially covers his or her mouth while speaking, these things are all conveyed onscreen. A witness and his or her lawyer can be viewed simultaneously onscreen to gauge the impact, if any, the testimony is having on counsel. As you can imagine, this is much more difficult to do at an in-person hearing.

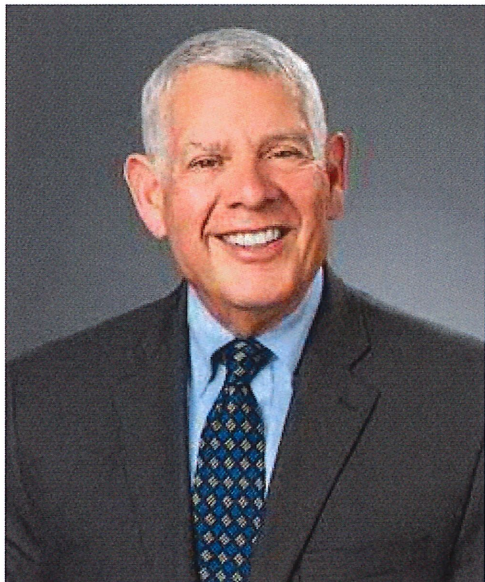
In sum, arbitrations conducted via online platforms can work very well, and in certain ways, they can be more efficient than in-person hearings. There is always fear of the unknown, but once you have arbitrated by Zoom, you will see that it isn't so scary and that it has some real advantages. So give it a try. You may wonder why you waited so long.

Joel Grossman is an arbitrator and mediator with JAMS in Los Angeles.

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Remote Mediation: An Opportunity for Customization

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We all fall into routines. In the past, busy lawyers and mediators have been reluctant to engage in too much pre-mediation session process, assuming instead that most mediations will proceed in a predictable fashion. Administrative staff, or perhaps junior lawyers, get the matter on calendar and perform the advance work. Briefing schedules are set, with briefs seldom exchanged, and perhaps there might be brief pre-session calls between counsel and the mediator after completion of the briefing before the day of the session.



Remote mediation has presented an opportunity to rethink the mediation process and brings a welcome change to typical daily patterns. Technology has opened the door to allow us truly to customize each mediation. Participating in a remote mediation requires advance planning about many technical aspects beforehand. Some of these include the following:

- Which videoconferencing platform will be used
- Whether all participants will appear via video, or some will appear in person or by phone
- Processes and procedures to maintain security and provide privacy
- Use of video tools: screen sharing, breakout rooms and chat functions
- How to document the agreement: via DocuSign or another tool

- General ground rules; e.g., length of sessions, breaks

The mediator and counsel can have a conversation about these things and the substance of the mediation as well. As every dispute has its own unique dynamics, even if the legal issues are routine, an initial, joint conference with the mediator and lead counsel can address such issues as:

- Pre-session discovery/information exchange
- Determining the most useful participants
- The nature of the briefing; i.e., whether briefing should be exchanged or provided only to the mediator confidentially or a mix of both
- Whether a joint session makes sense either at the outset, or perhaps will be needed at a later point during the mediation
- Whether the entire mediation should occur on a single day or in a series of shorter sessions

In addition, remote mediation presents opportunities related to several of the above substantive points. For example, deciding who will participate looks a bit different with remote mediation. For corporate parties, higher-level decision makers may have greater availability if travel is not necessary. For individual litigants, more thought might be given to the inclusion of people who ordinarily might not participate but who might contribute productively to the negotiation process (e.g., family members or other support persons). And the targeted use of joint sessions – either at the outset of a mediation or at other points – may prove to be less uncomfortable on video than when actually sitting in the same room.

After the briefing, but before the session, relatively short videoconferences have become common to ensure that the technology works for all of the participants. Expanding the length of these meetings, perhaps to one hour per side, has many advantages. The mediator can essentially have a brief first caucus to do the following:

- Establish trust and a connection between the mediator and the clients
- Begin to understand the perspectives of each participant
- Process initial reactions to matters revealed by any information exchange and in response to the briefing
- Revisit the organization of the mediation session, further customizing the process to needs of case

For example, in a recent mediation of a single plaintiff, failure to accommodate disability case, during the initial call with counsel both sides thought it was best to defer any joint meeting until late in the mediation process (if at all). During the pre-session videoconferences, it became clear to me that each side had things that needed to be said directly to the other side before productive negotiations could occur. Therefore, counsel and I designed a targeted joint opening session to accomplish this while avoiding the adversarial “opening statements” that had driven the original decision to work mainly in caucus.

When the pandemic made remote mediation the only choice, many were wary. So much of mediation practice is about connection, and in-person interactions are still ideal for that purpose. But a hidden benefit of this disruption has been a renewed focus on planning, which can lead to true customization of each mediation experience. Let’s hope that this customization will remain even after we’re able to return to mediating in person.

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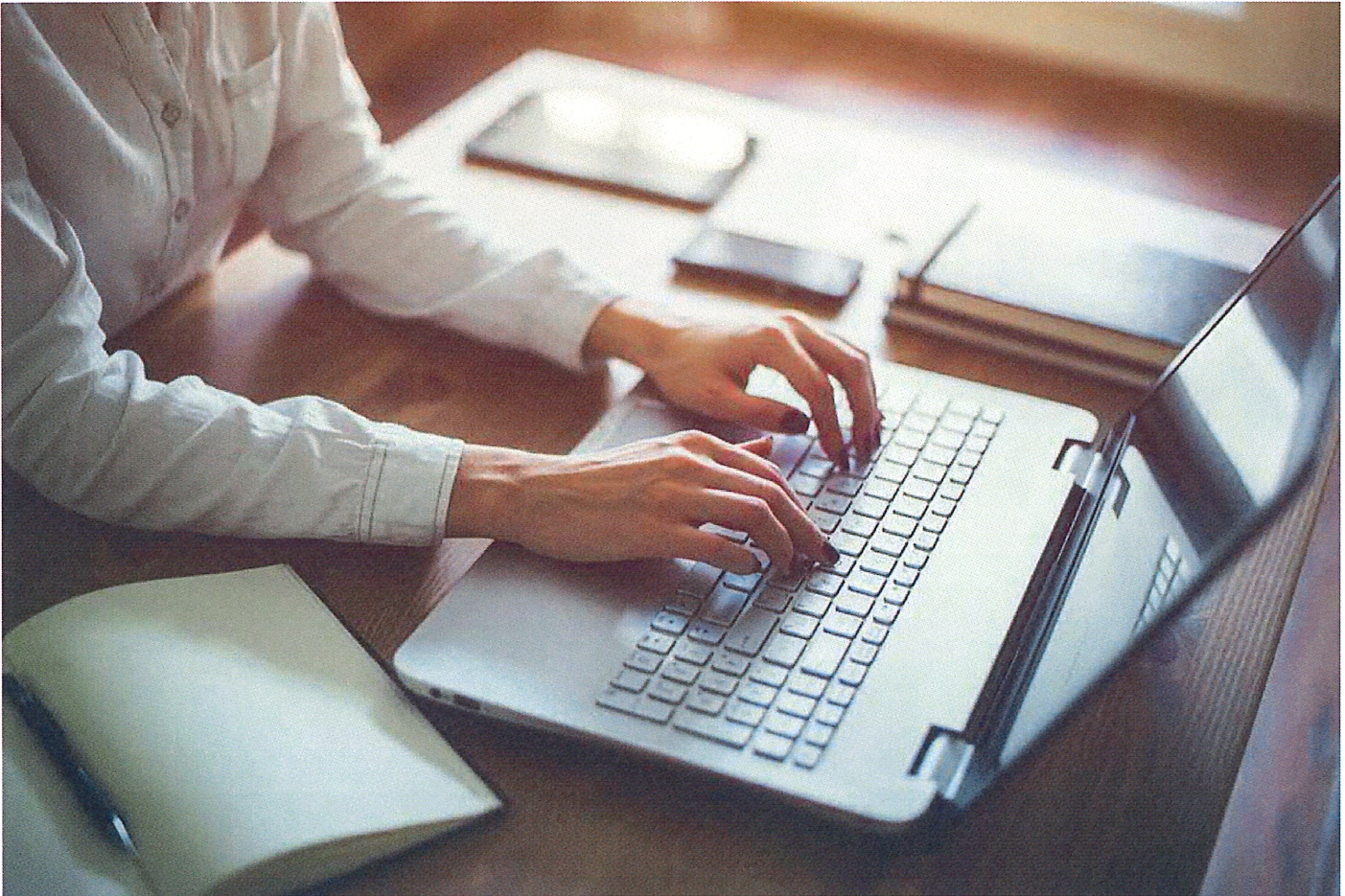
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Update on Remote Mediations and the Virtual Evolution of ADR

October 29, 2020

During past eight months, due to the coronavirus pandemic, mediators, lawyers and clients have experienced something once inconceivable: Almost all mediations have been conducted remotely. What have we learned from this experience so far, and how can we improve it?



What have we gained?

First and foremost, during this pandemic, JAMS neutrals have settled thousands of cases on-line. Mediators, myself included, who were skeptical about our ability to connect with parties on a screen have been proved wrong. Using speaker view on a videoconferencing platform can bring us even closer to parties than when they are seated across a conference room table. Some individual participants have reported feeling more comfortable when appearing from home than at a more formal location. Settlement rates have been at least as high as they were for in-person mediations.

Lawyers have reported that they appreciate the savings in time and expense of not having to travel (or pay for mediators' travel) to attend mediation sessions. Remote mediation makes it more convenient for executives and insurers to participate because they can appear from their homes. In addition, lawyers and clients alike enjoy their ability to turn off their video and turn to other tasks during breaks. Scheduling is more flexible: I occasionally have held individual sessions with parties the day before a scheduled "mediation day" or followed up on a subsequent day for an hour or two.

What are the problems, and how can we fix them?

One drawback of remote mediation is the inability of participants to initiate impromptu conversations when they meet at the coffee machine or around the buffet table. If the mediator wants to move a lawyer to a breakout room for a private chat, it must be done in front of the other participants in the same breakout room. (I've learned to do that only after asking permission in advance by text.) The chat function on Zoom works only among those in the same breakout room, and is often too stilted for exploring options. To circumvent this limitation, participants should obtain the cell phone numbers of the mediator and any other participants whom you may want to contact privately. Cell phone calls and texts have become almost essential to the experience.

Another issue related to remote mediation is that, although reaching an agreement in principle may not require any more time remotely than it does in person, it often takes longer to produce a written agreement, whether it be a term sheet or a complete settlement agreement, to document the deal. Although a simple agreement can be drafted via the screen-sharing function, anything complicated or controversial seems to require multiple emails and red-lined documents. This back-and-forth often occurs late in the day, when people are tired and less patient, and any changes made by other parties can be frustrating. The solution—which is obvious to me but often a hard sell to lawyers who may be reluctant to signal optimism about reaching agreement—is for the lawyer who wants to do the initial drafting to send to opposing counsel a proposed agreement, with blanks for dollar amounts and other terms that may be in dispute, and invite consultation and/or red-lining in advance of the mediation. In some cases, accountants, tax or technical advisors can be consulted in advance to iron out any complicated issues.

Because of its convenience and other practical advantages, remote mediation is likely to survive the current pandemic. Consequently, lawyers and mediators should continue to identify and try to solve problems associated with the remote experience.

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