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## **Alternative Dispute Resolution and The Coronavirus Meeting Our Social and Professional Obligations**

Unfortunately, current governmental guidelines and orders do not permit the conduct of in-person mediations and arbitration hearings.

It is our intent to honor those restrictions and our obligation to the community to keep one another safe. Nonetheless, I strongly believe that most mediations can go forward with the use of modern video conference and teleconference technology. Our goal is to meet our obligations to our community while continuing, to the best of our ability and with your cooperation, to provide excellent alternative dispute resolution services to our clients.

Regrettably, we are implementing the following policies effective immediately:

1. Pending further governmental guidance, we will not conduct in-person mediations. We are prepared to convene videoconference and teleconference based mediations for all matters currently on our calendar and for future settings pending additional governmental guidance and directive. More detailed information on available technology is below.
2. While we believe that remotely conducted mediation sessions are, in the great, great majority of cases, as effective as in-person sessions, we recognize not everyone shares that view. Accordingly, we will waive our normal late cancellation fees when a mediation date is canceled because of legitimate coronavirus concerns and the matter is rescheduled with us.
3. We will discuss and resolve options for conducting arbitrations, Special Master, Discovery Referee and similar matters on an individual case basis.

### **Video Based Mediation to accomplish Social Distancing**

#### **What we are doing.**

Arguably, mediations with all necessary decision-makers and decision influencers in the same place and the same time enhances the prospects of settlement to some extent. Nonetheless, actual experience over many years teaches that mediation of most cases can be successfully concluded with one or more participants participating remotely.

With our mutual obligation to “shelter-in-place” and maintain social distancing in our

work lives, it is time to maximize the use of technology to convene mediation sessions through remote participation. Without doubt, video enhances the quality of the interaction over voice telephone. To that end, my colleague and building partner Ernie Long and I will be providing access to Zoom technology to conduct “virtual” mediation sessions.

Zoom is a leading-edge video and telephone technology that simulates the real time face-to-face mediation process. ( <https://zoom.us/> ) Both Ernie and I are ready and trained to host litigants using this format.

### **A WORD ABOUT SECURITY**

*We take the security and confidentiality of our mediations and conferences very seriously.*

There has been a lot of news and speculation about the security of Zoom video conferences. The reported hackings all involve large group meetings with published schedules.

For our Zoom meetings:

- Each conference and mediation is given a unique meeting number and password.
- All participants first go to a waiting room and are only connected to the meeting manually by the host on verification of identity.
- All capacity to record a session or chat between participants is disabled.

**These steps avoid all reported issues with Zoom.**

Use of the Zoom platform technology is easy, confidential and secure. We will provide an email link to all mediation participants before the hearing that will enable access to the Zoom platform from any device with Internet access and audio and video capacity. Activating the link will take the participants to the secure virtual mediation site. Remote participants without the necessary technology can be provided a dial-in number to participate in the virtual mediation via telephone audio.

We will need counsel to provide email addresses for all who will be participating for their side (all attorneys, clients, insurance representatives and other participants).

The Zoom platform allows the Mediator to organize and assign separate virtual Breakout Rooms for each of the parties so that private caucuses can be held at the outset or during the mediation with the mediator or only between the members of the individual party group. No matter where a party’s team members are at the time of the mediation, they will retain the ability to communicate together privately in their separate virtual Breakout Room while the Mediator is speaking with another group either in person or virtually. The mediator can also join multiple parties together in a virtual Joint Session.

We will be available before the scheduled mediation to answer any questions or address concerns from either you or your clients.

20 years ago I had the privilege of being a mediator/Special Master any large multiparty coordinated action. To streamline the process, we were among the first to utilize cloud-based discovery exchange, document storage and case communications. There was much skepticism back then. Now “e-discovery” and cloud-based document storage and case communication is the norm. With many years of mediation experience and many cases under my belt involving remote communication, I am confident the challenge we face to maintain safe social distance in this time of crisis will provide an opportunity for us to improve the efficiency and effectiveness of what we do for our clients.

### **What you can do.**

I have three suggestions for counsel to help make the virtual mediation process more effective:

1. Be sure that there is some exchange of mediation briefs between the parties prior to the mediation. If there is information which needs to be kept confidential, provide that to the mediator separately.
2. Provide your mediation statement and any confidential information at least two days in advance of the mediation. While the Zoom platform makes provision to display documents in a separate window, wherever possible, provide any supporting documentation in advance as well.
3. Be sure that clients and other participants are well acquainted with the nature of the mediation process and that they are expecting and prepared for virtual participation.

### **Arbitrations and other matters.**

Arbitrations, Discovery Referee and other ancillary Alternative Dispute Resolution procedures will provide unique challenges that can be dealt with on a case-by-case basis. There is, clearly, a role for “virtual” hearings. We will consult with you on how to move forward to provide an appropriate forum to you and your clients in your case.

**Thank you for your cooperation as we face this challenge together. We remain open to your suggestions on how to move forward and look forward to working with you in the future.**

Richard L. Gilbert