

## Tips For Online Mediation In The Age Of Social Distancing

By **Sidney Kanazawa** (March 23, 2020, 5:31 PM EDT)

When we cannot physically get together in the midst of our COVID-19 “social distancing” crisis, a practical alternative is to use an internet conferencing platform that allows for audio and video conferencing.

One of the great advantages of mediating on an internet conferencing platform is that there is little excuse for nonparticipation. People can join — visually and audibly — no matter where they are located. All they need is a mobile phone, tablet or laptop/desktop computer (preferably with a camera and a microphone) and an internet connection. In this age of selfies, TikTok, YouTube and Instagram, cameras and microphones are ubiquitous, which should ease access for most.



Sidney Kanazawa

Even without a mobile phone, tablet, computer or internet connection, people can still participate via a landline phone. The only limitation is that they cannot see the visuals shared by others, cannot see who is in their conference or breakout room, and cannot utilize other tools of conferencing (e.g., chat, polling, etc.).

Here are some tips for mediating in this social distancing context.

### Visuals Make a Difference

Words and tone convey less than 50% of our message and meaning. More than 50% of our message and meaning are conveyed by our facial expressions and body language. A simple phrase like, “Is that your offer?” can be transformed into a sincere collaborative inquiry, a shocked response, or a sarcastic put-down depending upon how we visually convey that message. The requirement of in-person visual presence at trials, arbitrations, mediations, hearings, and even in the Sixth Amendment’s confrontation clause all underscore our recognition that visual interactions are of vital importance.

### Dress for Success

Just as body language transforms the meaning of our words, how we dress and appear to others makes a huge difference as well. We wear suits to look professional. We comb our hair and wash our face to look clean and decent. And we sit up straight to appear attentive and prepared. It is no different in internet mediations.

That you may be at home or in the relaxed atmosphere of your office does not alter the observations of others and their unconscious judgment about you based on how you dress and present yourself. To be credible, dress as you would in court or be conscious of how a deviation from that norm affects your appearance to others and their silent judgments about who you are.

### **Backgrounds for Success**

Backgrounds are important too. Just as you carefully choose the clothes and shoes and accessories you wear to court, a similar careful choice must be consciously made about what appears behind you. It is as much a part of your persona as the clothes you wear.

### **Sit Up**

Look at yourself and imagine what your image conveys to others. The casualness of an internet meeting does not stop the judgment of others about how you appear. You may be more comfortable curled up in your favorite chair or couch but leaning back has the same disengaged appearance as if you exhibited the same posture in a face-to-face meeting.

### **Check Camera Angle and View**

In movies and video production, camera angles are critical and convey a message of their own. Heroes are often shot with the camera angle tilted slightly upward (in other words, with the camera just below the face) to force the viewer to look up at the hero's face. Lesser characters are diminished by tilting the camera downward so the viewer is effectively looking down on that character.

Ideally, a fair and neutral angle would be a 0-degree straight shot with the camera pointed directly at your face. To do this with a laptop usually requires elevating the laptop with boxes or books to bring the camera to face level. Without this elevation, others will see your face from an upward angle and you will appear to be looking down when viewing the screen.

### **Note the Intimacy of the View**

Be conscious that the distance of the camera to the subject creates an artificially intimate view. In a normal meeting (even before social distancing), our distance from one another would allow us to see most of the other's body. Not just their face. In internet conferencing, it is not unusual for the participants to see only a head-and-shoulders "television newscaster's" view of each person.

To see only the head and shoulders of a person in a live meeting would require participants to be so close that their noses are practically touching. That is a far more intimate view than is socially acceptable in most meetings. As such, we see and are overly conscious of tics and eye and facial movements that we would not be as conscious of in a live meeting. Wash your face.

### **Check Microphone**

In addition to your visual image to others, check how your voice will sound to others. You are speaking through your microphone. No matter how you sound to yourself in your own environment, the only thing that matters is how you sound to others through your microphone. Check your sound before the mediation.

## **Check Audio Reception**

Most computers and laptops are not equipped with high-quality speakers. They are adequate. Sound quality is usually greatly improved by using ear buds, headphones or supplemental speakers. But be conscious about how your ear buds or headphones will appear to others. Appearance still counts.

## **Breakout Rooms**

One of the most useful features of video conferencing is the ability to electronically put people into virtual conference rooms where only those in the room can see and hear the discussion in that room. Participants can be moved in and out of rooms as needed. New rooms can be added. And, like in normal conference rooms, the participants can see who is in (and who is not in) the room and can be assured that they are sharing and talking with only those in that room.

## **Screen Sharing**

Another useful feature of video conferencing is the ability to share documents, photographs, video, or whiteboards with those in a breakout room or in the larger joint session. The host/mediator/arbitrator controls the sharing but can allow any participant to share, annotate, edit, or add to the visuals shown to the group.

## **Chat**

Private or general messages can be silently passed between participants or the entire group without interrupting the meeting. Testing this and announcing this feature at the beginning of the mediation gives the participants tools that will help them communicate when they are in breakout rooms.

## **Keep Participants Engaged**

Unlike a physical meeting where separated parties can open the door and venture into the hall, electronic breakout rooms can be very isolating. When you are left in a breakout room, you cannot see or hear what other parties are doing or if they are still present. At the same time, you are normally communicating from a familiar place and probably have a million things there to distract you.

To minimize this isolation and distraction, it is important to affirmatively keep the parties engaged by meeting together (so they can see who is present), asking questions to get participants talking, giving assignments when not in a room, and sending chat messages when visits to a room are delayed.

## **Keep Parties Civil**

Because controlling parties when you are not physically present will be difficult (e.g., by seating positions, standing up, turning around, raising a hand, etc.), it is important to set the ground rules early in the mediation. Remind the parties — especially the more warrior-oriented parties — that a mediation requires the agreement of both parties.

Harsh attacks usually only result in defensive counterattacks. No one likes to be told they are wrong — especially lawyers in front of their clients. Disrespectful dominant talk does not normally encourage opposing parties to surrender to the other side.

Unlike sports or war, mediation is not about scoring points or slaying the other side. It is about moving the parties to join together in a voluntary agreement. It is about being on the same team. Active listening, questions, brainstorming, collaboration and empathy are more likely to move parties together than demonizing the character, ethics and motivations of the other side.

### **Exchange Contact Numbers**

Nothing ever works perfectly. Exchange alternate contact numbers to allow each of the participants to let at least the mediator know of any technical or personal problem that may arise in the midst of the mediation.

It is not perfect. In-person meetings and the opportunity for side chats over coffee or snacks are better. But in the midst of this COVID-19 crisis, internet conferencing is a practical way to convey and receive essential nonverbal messages that are now diminished by our current social distancing.

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*Sidney Kanazawa is a full-time mediator and arbitrator at ARC.*

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