

## A Mediator's Guide to Conducting A Remote EDNY Mediation

Dear EDNY Mediators:

Below is an outline of how the EDNY ADR Department would like you to conduct your EDNY Mediations in the event you choose to use our remote platform for any of your upcoming sessions.

***Step 1: Confirm you have adequate technological capabilities.***

### **Technical Requirements**

- 1) You need a computer with the following features:
  - a. Camera
  - b. Microphone
  - c. NOTE: You cannot mediate via Zoom on an iPhone because the Zoom App for iPhone doesn't offer breakout sessions.
- 2) Strong, secured (password protected) internet connection (DO NOT USE PUBLIC WIFI)
- 3) Zoom. Available for download here: <https://zoom.us/ent?zcid=2582>
- 4) A private, quiet space with a simple background.

***Step 2: Contact the Parties via E-mail Prior to the Mediation***

#### 1) Pre Mediation E-mail

The following is a sample e-mail that you may use to set up your remote mediation. Many attorneys may be comfortable with the online platform, but others may not. All of your communications leading up to the remote mediation should serve to allay any concerns and to prepare attorneys and parties to participate in a remote process.

*Dear All:*

*I look forward to working with you towards a successful resolution of this matter via Zoom as set forth in the notice below.*

*Attached is the standard EDNY Confidentiality Agreement, as well as a Remote Mediation Agreement. Both agreements must be signed by all individuals who plan to participate in the mediation. The agreement may be signed in counterparts and must be e-mailed back to me and the ADR Department at [nyed\\_adr@nyed.uscourts.gov](mailto:nyed_adr@nyed.uscourts.gov). In the event you are unable to print or scan the document, you may reply to this e-mail with the following verbiage: "I do not have the capacity to return a signed copy of the Mediation Confidentiality Agreement and the Remote Mediation Agreement. I hereby agree to abide by the Mediation Confidentiality Agreement and the Remote Mediation Agreement."*

*My phone number is (XXX) XXX-XXXX and will serve as a backup for anyone who may experience any technical difficulties or wishes to call by phone instead of on the Zoom*

*platform. You will also be using my phone number to text me during the mediation, as a means to communicate with me during breakout sessions.*

*Prior to the mediation session I will schedule pre-mediation Zoom calls with each party to discuss the process, and to familiarize all parties with the Zoom platform. I will be in touch with each of you to schedule those individual sessions.*

*Please do not hesitate to contact me if you have any questions about any of the above. I look forward to working with you.*

*Sincerely,*

*Mediator X*

## **2) *Pre-Mediation Zoom Call***

Contact counsel for each party individually and schedule a pre-mediation Zoom session to discuss any issues that might come up. These pre-mediation Zoom calls must be done through your own individual Zoom account. You can download a free Zoom account here: <https://zoom.us/ent?zcid=2582> that will allow for 40 minutes sessions – which should be sufficient for these calls.

At some point during the pre-mediation Zoom, you may want to include counsel **and** their client so that everyone has a chance to get familiar with the platform. This will minimize technological challenges during the actual mediation.

During this pre-mediation Zoom session, be sure to confirm that all parties have received and signed the confidentiality forms. Please ask the parties to sign and return the documents to you and cc' the ADR Department at [nyed\\_adr@nyed.uscourts.gov](mailto:nyed_adr@nyed.uscourts.gov).

Please also use these pre-mediations Zoom sessions to discuss the substantive issues involved in the case, and to streamline the actual mediation. Use this time to confer with counsel regarding the pros and cons of conducting a joint session.

## **3) *Pre-Mediation Briefs***

Pre-mediation briefs should be exchanged via e-mail as they would for an in-person mediation session. Please discuss these briefs in your pre-mediation Zoom call.

### ***Step 3: Conducting the Mediation Session***

#### **1) Mediation Session Set Up on Zoom**

EDNY Panel Mediators are permitted to use your personal Zoom account to conduct the mediation sessions – however, you must set the privacy settings in Zoom as follows:

- a) Enable Meeting Password
  - a. This is an additional layer of security to prevent anyone who does not have a meeting password from entering the session.
- b) Enable Waiting Room

- a. This function enables you to admit individuals to the mediation session. No one may enter a mediation session unless you admit them.
- c) Disable Join Before Host
  - a. This will make sure no parties will “run into” each other in the joint session without the mediator present.
- d) Mute Upon Entry
  - a. All parties will be muted upon entry into the main session. This function serves to reduce background noise during the mediation session. Parties can unmute themselves when they’d like to speak, and as host you can unmute them. Ask all parties to mute themselves when they are not speaking.
- e) Turn Off Recording Capabilities
  - a. This turns off the recording function offered by Zoom. NOTE: This does not prevent individuals from recording the session with other devices or functionalities on their computer.
- f) Turn off the Chat Function (This is NOT a confidential forum)
  - a. The chat function in Zoom is not confidential, and it is possible that communications via this function can be seen by others involved in the mediation.
- g) Enable Breakout Sessions
  - a. You will need separate breakout rooms for caucus, and also to take mediator breaks.
- h) Require Encryption for 3<sup>rd</sup> Party Endpoints

The ADR Department Staff can assist you with these privacy settings as needed. These settings ensure privacy and confidentiality in the mediation session.

## 2) Mediator’s Opening Statement

Once all individuals have arrived into the joint session of the video conference, be sure to lock the room so that no one else may enter.

Please include the following in your opening statement:

- Welcome everyone to the session;
- Introduce yourself and ask all present to introduce themselves, as the host of the session you can re-name individuals as they enter the session. Be sure that everyone uses their full name, so that they are easily identified. Individuals who do not have access to video can participate in Zoom via telephone, so be sure to identify and name anyone who is participating via telephone.
- Affirm that you are not recording the session and you are alone in the room, ask each person to affirm they are not recording the session and that there is no one else in the room;
- Review Zoom platform and explain how you will conduct caucus through breakout rooms;

- Ask parties to mute themselves when they are not speaking;
- Provide all parties with your phone number so that:
  - Parties can contact you during caucus
  - If parties run into technical difficulties with Zoom.

You should conduct the remainder of your opening statement as you would in a normal session. Once you have completed this, parties may share opening statements, or move to caucus.

### **3) Breakout Rooms/Sessions**

At the start of the session you should create five or six breakout rooms. Be sure to name them in a manner so that you will be able to identify who is in each room. You may not use them all, but it helps to have extra rooms in the event counsel would like to speak with you without their client present.

When you are ready to move from joint session to caucus, you should then assign parties to their respective breakout rooms. This should NOT be done in advance of the mediation, as you want to confirm who should be grouped together in each room. You do not want to have to undo a room assignment as this can be awkward and take extra time.

When you are going back and forth between each room, text the parties to check-in and gain their permission to enter the breakout room. You do not want to just jump into a caucus room without checking first – this can be jarring and you may hear some information not intended for you. Be sure that all counsel and parties have your cellphone number so that they can contact you when they are ready for you to come into a breakout session.

Please PRACTICE breakout room management in advance of the mediation. The ADR Department will be glad to assist you with a practice session.

### **4) Document Exchange**

Document exchange should occur via e-mail for maximum security. There is a screen share function via Zoom, but this is not a secure way to share documents. Parties have accidentally shared their e-mail inboxes or other private documents via the screenshare function. If you decide to use screen share, please practice in advance of the session, and do so carefully. You may also deactivate screen share in the Zoom settings to eliminate the risk entirely.

### **5) Mediator Breaks**

Be sure that during the session you use one of the breakout rooms for yourself as a place to think and reflect. Zoom mediation can be more exhausting than in person mediation – and it is best practice to take a short break to reflect before jumping to the next breakout room. Try your best to re-create the walk you would have going from room to room in an in-person session.

If the parties seemed fatigued offer them a break too. If parties appear disengaged from the mediation – consider offering parties a follow up session.

#### ***Step 4: Closing Out the Mediation Session***

##### **1) Settlement**

If the parties reach a settlement during the mediation, they may exchange draft settlement agreements via e-mail. Offer counsel assistance if they need help with negotiation of settlement terms, and remain on Zoom to assist them if necessary. Be sure to notify the ADR Department of the outcome of the case immediately upon completion of the mediation. Please fill out the Mediator Assessment Form and return that to the ADR Department as soon as practicable.

##### **2) No Settlement**

In the event you do not reach a settlement, offer the parties a second mediation session. If they decline a second session, please follow up with the parties in two weeks. Be sure that the parties have completed all information exchange, and that they have a plan for how to move forward with the case. Please notify the ADR Department of the outcome of the case immediately upon completion of the mediation. Please fill out the Mediator Assessment Form and return that to the ADR Department as soon as practicable.

This is in no way a complete guide to Zoom mediation, but hopefully it will assist you in getting started with the process. The ADR Department is here to assist you, please contact Robyn Weinstein directly at 718.613.2578 for any assistance as you move forward with your remote mediation practice.