

A GUIDE TO ONLINE MEDIATION FOR MEDIATORS

Mediation is a flexible process and as process managers mediators are encouraged to innovate using a variety of face-to face and online platforms in their practice. In this time of COVID-19 mediators are providing mediation services online so that parties to disputes can maintain social distance and interact remotely in the safety and comfort of their homes or offices, wherever these may be.

Conflict Dynamics has extended its CD Direct mediation service from a face-to-face service to offering mediation services using Zoom, a secure online platform which has the ability to replicate the face-to-face mediation experience very effectively. This doesn't preclude you using other channels of communication with the parties at the same time, such as e-mail, WhatsApp and telephone calls and messages.

You will need the following hardware and system requirements to conduct mediation using Zoom:

- A Zoom account – Pro is most secure and versatile
- A steady broadband connection
- A PC/laptop/iPad with a camera
- Enhancements include a headset with a microphone and a second screen

The Zoom website has a very helpful series of video tutorials and other resources which you can use to set up your account and learn the basics. You will find settings for managing audio and video, and tips on how to position yourself ensuring suitable lighting and backgrounds. There is help on how to share your screen, chat with parties and, most valuable of all, use breakout rooms for private meetings with parties. There are whiteboard facilities and annotation tools. There is a recording function, which you would probably not need as a mediator but could use if investigating or chairing hearings.

CD Direct provides coaching sessions for groups of mediators who wish to practice using Zoom. Contact Craig Hulscher to arrange these at craig@conflictdynamics.co.za

Parties and their representatives don't need to subscribe to Zoom, as they can join the meeting via the link that you send them. In order to participate in breakout rooms however, parties will need to have downloaded the Zoom app on their computers which they can do here: <https://zoom.us/support/download>

The following guidelines for how to use Zoom video conferencing in mediation are set out in relation to the usual phases of the mediation process.

1. Preparation for the mediation

- a. CD Direct will manage the early stages as the parties agree to mediate and select the mediator. Ensure that your profile on our website is up to date to enhance your chances of appointment.
- b. Once the parties have agreed to mediate and you have been appointed to mediate, we will provide you with the parties' contact details and a draft **Agreement to Mediate** to use. The agreement is one that has been specifically adapted for remote online mediation.
- c. You should then contact the parties in the usual way by email and invite them each to a private pre-mediation preparation meeting with you, either by phone, Zoom, Teams, Skype or another suitable channel.
- d. You should conduct these preparation meetings in the usual way although we suggest you add in some tips on using Zoom effectively and share with them our **Guide to Online Mediation for Parties and their Representatives**. If unfamiliarity with Zoom is an issue, encourage parties to watch the webinars on the Zoom website and to test their connection - which they can do here: <https://zoom.us/test>.
- e. Once a date has been set for the mediation, set up your meeting in Zoom and copy the invitation into an email to the parties and also send calendar invitation to the parties with the link.
- f. Check your general settings in Zoom and decide on the settings for when they enter the mediation, in relation to:
 - i. Access to the main meeting via the waiting room
 - ii. Audio and video controls
 - iii. Screen share, chat and whiteboards
 - iv. Consider setting up and pre-assigning your breakout rooms beforehand so that parties can be moved from the main room to the breakout rooms with ease. You will need to use the email addresses that parties use to access the Zoom meeting to do this. You can instead of course set up breakout rooms as parties arrive in the waiting room.
- g. Prepare yourself for the mediation day, including considering the lighting and background for your video conference, what you will wear and how you will sustain yourself with refreshments

2. On the day of the mediation

- a. Ensure that the **Agreement to Mediate** has been signed and exchanged by email.
- b. Make sure you have all the documents you will need on your screen so you can share them as necessary. Minimise or close any other documents so that you don't share them by mistake.
- c. As the mediator and host of the Zoom meeting, you are in control of the process. Have your settings such that when the parties arrive, they wait in the waiting room on mute without video.
- d. When everybody has arrived, and you are ready invite the parties into the main room and start the mediation in the usual way. This is easiest, although you could move each party from the waiting room through the main room to the breakout room, and then when they are all ready you could bring them back to the main room to start the mediation.
- e. Using gallery view helps you see everybody at once.
- f. Conduct the mediator opening in the usual way, although it is a good idea to discuss some of the challenges in remote mediation such as:
 - i. Agree that if something goes wrong with the technology or a party wants to leave a meeting or leave the mediation altogether, they will send you a private message on Zoom or WhatsApp to ask to speak to you privately
 - ii. Give parties permission to mute their audio and video
 - iii. Agree on how you will alert them before you enter a breakout room as you can't chat to them when you are outside a breakout room. Either use a 'broadcast message' (which goes to everybody in the breakout rooms) or WhatsApp
 - iv. Discuss taking breaks in the usual way for teas and lunches
- g. As you move through the day from opening to exploration, bargaining to concluding give yourself time to consider your process options of joint and private meetings using the breakout rooms
- h. Consider using the whiteboard and annotation functionality as you would a flipchart or highlighter.
- i. When it comes to drafting and signing the **Settlement Agreement**, you might put the lawyers into one breakout room to work on that. You might use a single text procedure with a shared screen or email back and forth for checking and signing.
- j. Remember to end well and if necessary, agree on follow-up steps.

Finally, practice, rehearse, take it slowly

To discuss mediation through CD Direct, contact Craig Hulscher at craig@conflictdynamics.co.za OR go online <https://www.conflictdynamics.co.za/Mediators>