



THE FUTURE OF IN-PERSON MEDIATIONS: A MEDIATOR'S UPDATE

By: Ross Hart

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Los Angeles, CA – AMCC has been conducting all of its mediation sessions via video-audio conferencing (typically via Zoom) or conference calls since the week of March 9, 2020.

Several attorneys have recently asked us when we think “in person” mediation sessions will resume as we see the gradual reduction of the stay at home orders by Governor Newsom and other governors across the nation.

AMCC’S first priority is the health and safety of our clients and employees. When will it be safe for the many lawyers, experts, party representatives and carrier representatives, along with the mediator and staff who typically gather and participate in such “in person” mediation of disputes, to resume mediating in an office location using several physical conference rooms?

Currently, Covid-19 is present in the community and will remain so for the indefinite future. No effective vaccine or therapeutic treatment is available yet and many of the participants in mediation of complex disputes are over the age of fifty. In light of these realities, what are the health risks of resuming “in person” business meetings like mediation with small groups of people gathering around a table in conference rooms?

Below is a link to a recent article by Dr. Erin Bromage, PhD, a comparative immunologist and professor of Biology specializing in immunology at the University of Massachusetts Dartmouth. This thorough article discusses the mechanism of transmission of the virus and specifically the risks of transmission in various settings.

<https://www.erinbromage.com/post/the-risks-know-them-avoid-them>

Essentially, in order to get infected with Covid-19, a person must be exposed to an infectious dose of the virus. The author points out that the key to assessing the risk of transmission is the dose and time of exposure to viral particles. Such dose and time of exposure varies dramatically depending upon the activity and setting in which people are participating. The author concludes that meetings of groups of people in enclosed rooms with limited air exchange can release enough infectious particles to be concerning from a transmission standpoint. While no

one knows for sure, that may mean for example that groups of people in an enclosed conference room talking for several hours with one asymptomatic infected person, even with social distancing and masks within the room, can release enough viral particles into the air circulating in the conference room through breathing over time to give an infectious dose of the virus to others in the room. Again, the key to the risk of transmission is the dose and time of exposure to viral particles.

The answer to the question regarding when in person mediation sessions should resume requires a balancing of risks against need, benefits against burdens.

When Covid-19 hit, for a week or two there was resistance to mediation by video-audio conference as people tried to grapple with the sudden and dramatic impact of the pandemic on their lives and business pursuits. Since that time, attorneys, parties, experts and carriers have generally accepted the reality of having to participate in virtual mediation. Mediating disputes via video-audio conferencing is working well with cases being mediated and resolved at seemingly the same rate as before Covid-19. While people of course miss the “in person” interaction, under the circumstances they have come to accept this form of mediation, at least for now. Many of our clients have actually predicted that mediation by video-audio conference will be the preferred method of mediation in the future due not only to avoiding the virus but the incidental benefit of substantial savings of travel cost and travel time for the participants. In addition, the participants’ ability to participate remotely from their homes or offices around the country creates potential added productivity during the down time inherent for parties at any mediation.

Just as there was initial resistance to mediation by video-audio conferencing by attorneys, parties, carriers and experts, it is likely that until a vaccine or effective treatment for Covid-19 is developed, many of those same participants will be resistant to resuming in person mediation with groups of people gathered in conference rooms. In order to start convening in-person mediation, the parties will have to get universal agreement from all the attorneys, party representative, experts and carrier representatives (and the employers of such participants) to allow them to attend and participate in person. If and when the parties in any particular case, along with the necessary participants for an effective mediation of the dispute, all agree that it is time for an in-person mediation, and that they are willing, able and permitted to go forward, AMCC will work with the parties to help plan and coordinate as safe and healthy a protocol as possible for such an event within government mandates.

Stay healthy and safe.

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