



Federal Bar Association  
San Diego Chapter

# **Remote Mediations: How to Effectively Negotiate and Settle Cases Remotely**

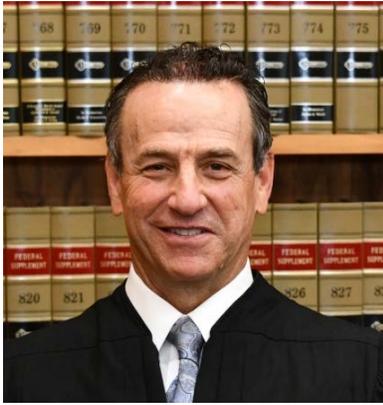
MCLE Written Materials

October 28, 2020

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# **Panelist Biographies**



## **HONORABLE MICHAEL S. BERG**

The Honorable Michael S. Berg is a United States Magistrate Judge for the US District Court for the Southern District of California where he was appointed in 2018. As part of his Magistrate Judge duties, Judge Berg conducts Early Neutral Evaluation (ENE) conferences and Mandatory Settlement Conferences (MSC) where he mediates settlements between parties on all civil cases ranging from simple contract disputes to complex class action matters.

Prior to his appointment, Judge Berg was a criminal defense attorney for 36 years and was certified as a Criminal Law Specialist by the State Bar of California, Board of Legal Specialization, for over 20 years. His area of practice included both state and federal crimes. He successfully represented some of the most high-profile criminal cases in San Diego, including the first ever death penalty case filed in the United States District Court for the Southern District of California. Judge Berg is a Member of the Board of Governors for the Association of Business Trial Lawyers (ABTL) and a 38-year member of the Lawyers Club of San Diego. Judge Berg is also a long-standing member of the International Brotherhood of Magicians. Judge Berg received his BA from the University of South Dakota in 1978 and JD from the University of San Diego School of Law in 1981.



## **ABBY B. SILVERMAN**

Abby Silverman joined JAMS with over a decade experience as a full-time arbitrator and mediator resolving employment and employment related business disputes. Ms. Silverman is a knowledgeable, effective and skilled problem solver. She specializes in discrimination, retaliation, employment agreement, wrongful termination, founder/company, competition, corporate governance, and trade secret and confidential information controversies. Before becoming a full-time neutral, Ms. Silverman had a long, successful litigation career at an international law firm, where her practice spanned a variety of industries, including life sciences, technology, staffing, hospitality, retail and real estate.

As an arbitrator, Ms. Silverman has the insight, experience and temperament to deliver a just result by being well-prepared, fair-minded and decisive. She is determined to make the arbitration process more efficient and cost-effective than litigation and respects the trust parties place in it. As a mediator, Ms. Silverman designs the process to suit the complexity of the issues, the size of the problem and the expectations of the participants. This creates trust, assures respect and allows for agreement and resolution. Ms. Silverman received her J.D. from the University of San Diego School of Law.



## **DEBORAH DIXON**

Deborah Dixon is a founding partner of Dixon Diab & Chambers. Her practice focuses on representing those injured by utility-caused fires in Northern and Southern California and employment actions, including gender discrimination and sexual assault. In addition to filing claims on behalf of employees, Ms. Dixon frequently advises employers on best practices to avoid lawsuits and encourage inclusivity in the workplace. Ms. Dixon actively litigates cases in state and federal court. Ms. Dixon is also Of Counsel at Gomez Trial

Attorneys focusing on class action cases on behalf of consumers relating to misrepresentations and defective products.

Ms. Dixon has been named a Super Lawyer by *Super Lawyers* magazine from 2016-2020 and a *Super Lawyers* “Rising Star” from 2014 through 2015. In 2014, Ms. Dixon was named by San Diego Metro Magazine as one of the best and brightest in San Diego in its “40 Under 40” designation. Ms. Dixon served as a Director on Lawyers Club of San Diego Board of Directors for three years and served as its President from 2015-2016. She was appointed by the federal judges to serve as Lawyer Representative to the United States District Court for the Southern District of California. She serves as a Director on the Board for the San Diego County Bar Foundation. Ms. Dixon received an alumni of the year award from California Western School of Law in 2017 recognizing her for her dedication to mentoring law students and young lawyers and community service.



## **MELISSA HOLMES**

Melissa Holmes is a Senior Deputy County Counsel with Office of County Counsel for the County of San Diego. She leads a ten-person team that defends the County and County employees in civil litigation.

Prior to working for the County, Ms. Holmes practiced in the Bay Area representing public entities. Ms. Holmes also clerked for Magistrate Judge Bernard Zimmerman at the United States District Court for the Northern District of California. Melissa has participated in numerous mediations, including several remote mediations since the pandemic. Over the past five years, Melissa has tried seven jury trials in the United States District Court for the Southern District of California. Melissa received her J.D. from Hastings College of the Law.



## **STEVE B. CHU**

Steve Chu is an Assistant United States Attorney in the Civil Division of the United States Attorney's Office for the Southern District of California. He defends the United States on cases in a number of different subject matter areas, including medical malpractice, law enforcement, personal injury, and wrongful death. He has tried many civil cases in the Southern District, and has argued several civil cases before the Ninth Circuit Court of Appeals.

Mr. Chu is a certified mediator, and was a founding member of the Hastings Negotiations Competition program. He has participated in several remote mediations during the pandemic. Mr. Chu also teaches trial advocacy and civil litigation at the National Advocacy Center, the Department of Justice's training center. Mr. Chu served as President of the Board of Directors for 10 years for the Barry T. Moskowitz childcare center, and is an active member of the Legal Geeks, a group that presents on the intersection of law and "geek" pop culture including Star Wars, Marvel and Star Trek.

# **Judge Berg's Zoom ENE Sample Order**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

XXXXX,

Plaintiff,

v.

XXXXX,

Defendant.

Case No.: XXXXX

**NOTICE AND ORDER FOR EARLY  
NEUTRAL EVALUATION CONFERENCE  
AND CASE MANAGEMENT CONFERENCE**

**IT IS HEREBY ORDERED** that an Early Neutral Evaluation (“ENE”) of your case will be held via **video conference** on **DATE**, at **TIME**, to be hosted through the Court’s ZoomGov account. All discussions at the ENE Conference will be informal, off the record, privileged, and confidential. Counsel for any non-English speaking party is responsible for arranging for the appearance of an interpreter at the conference. The following rules and deadlines apply:

**1. Personal Appearance of Parties Required:** All named parties, party representatives, including claims adjusters for insured defendants, as well as the principal attorney(s) responsible for the litigation, must participate in the video conference, and be legally and factually prepared to discuss and resolve the case. Counsel appearing without their clients (whether or not counsel has been given

settlement authority) will be cause for immediate imposition of sanctions and may also result in the immediate termination of the conference.

**2. Full Settlement Authority Required:** A party or party representative with full settlement authority<sup>1</sup> must be present at the conference. Retained outside corporate counsel shall not appear on behalf of a corporation as the party representative who has the authority to negotiate and enter into a settlement.

**3. Confidential ENE Statements Required:** No later than **DATE (1 WEEK BEFORE ENE)**, the parties shall submit directly to Magistrate Judge Berg’s chambers (via hand delivery or by e-mail to the Court at XXXXX), confidential settlement statements. The ENE statement is limited to **five (5) pages or less, and up to five (5) pages of exhibits or declarations**. Each party’s ENE statement must outline (1) the nature of the case and the claims, (2) position on liability or defense, (3) position regarding settlement of the case with a **specific demand/offer for settlement**, and (4) any previous settlement negotiations or mediation efforts.

If a specific demand or offer cannot be made at the time the ENE statement is submitted, then the reasons as to why a demand or offer cannot be made must be stated. Further, the party must explain when they will be in a position to state a demand or offer. General statements such as a party will “negotiate in good faith” is not a specific demand or offer. The ENE statement should be submitted confidentially and need not be shared with other parties.

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<sup>1</sup> “Full settlement authority” means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to change the settlement position of a party. Pitman v. Brinker Int’l, Inc., 216 F.R.D. 481, 485–86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference contemplates that the person’s view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan’s Foods, Inc., 270 F.3d 590, 595–97 (8th Cir. 2001).

4. The Court will use its official Zoom video conferencing account to hold the ENE. **IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on computers through a download on the Zoom website (<https://zoom.us/meetings>) or on mobile devices through the installation of a free app.<sup>2</sup> Joining a Zoom conference does not require creating a Zoom account, but it does require downloading the .exe file (if using a computer) or the app (if using a mobile device). Participants are encouraged to create an account, install Zoom, and familiarize themselves with Zoom in advance of the ENE.<sup>3</sup> There is a cost-free option for creating a Zoom account.

5. Before the ENE, the Court will e-mail each ENE participant an invitation to join a Zoom video conference. Again, if possible, participants are encouraged to use laptops or desktop computers for the video conference, as mobile devices often offer inferior performance. Participants shall join the video conference by following the ZoomGov Meeting hyperlink in the invitation. **Participants who do not have Zoom already installed on their device when they click on the ZoomGov Meeting hyperlink will be prompted to download and install Zoom before proceeding.** Zoom may then prompt participants to enter the password included in the invitation. All participants will be placed in a waiting room until the ENE begins.

6. Each participant should plan to join the Zoom video conference **at least five minutes before** the start of the ENE to ensure that the ENE begins promptly at **TIME (ENE)**. **The Zoom e-mail invitation may indicate an earlier start time, but the ENE will begin at the Court-scheduled time.**

7. Zoom's functionalities will allow the Court to conduct the ENE as it ordinarily would conduct an in-person ENE. That is, the Court will begin the ENE with all

<sup>2</sup> If possible, participants are encouraged to use laptops or desktop computers for the video conference, as mobile devices often offer inferior performance.

<sup>3</sup> For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>.

participants joined together in a main session. After an initial discussion in the main session, the Court will divide participants into separate, confidential sessions, which Zoom calls Breakout Rooms.<sup>4</sup> In a Breakout Room, the Court will be able to communicate with participants from a single party in confidence. Breakout Rooms will also allow parties and counsel to communicate confidentially without the Court.

8. No later than **DATE (1 WEEK BEFORE ENE)**, counsel for each party shall send an e-mail to the Court at XXXXX containing the following:

- a. The **name and title of each participant**, including all parties and party representatives with full settlement authority, claims adjusters for insured defendants, and the primary attorney(s) responsible for the litigation;
- b. An **e-mail address for each participant** to receive the Zoom video conference invitation; and
- c. A **telephone number where each participant** may be reached so that if technical difficulties arise, the Court will be able to proceed telephonically instead of by video conference. (If counsel prefers all participants of their party on a single conference call, counsel may provide a conference number and appropriate call-in information, including an access code, where all counsel and parties or party representatives for that side may be reached as an alternative to providing individual telephone numbers for each participant.)

9. All participants shall display the same level of professionalism during the ENE and be prepared to devote their full attention to the ENE as if they were attending in person. Because Zoom may quickly deplete the battery of a participant's device, each participant should ensure that their device is plugged in or that a charging cable is readily available during the video conference.

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<sup>4</sup> For more information on what to expect when participating in a Zoom Breakout Room, visit: <https://support.zoom.us/hc/en-us/articles/115005769646>.

**10. New Parties Must be Notified by Plaintiff or Plaintiff's Counsel:** Plaintiff's counsel shall give notice of the ENE to parties responding to the complaint after the date of this notice.

**11. Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires that an ENE take place within forty-five (45) days of the filing of the first answer. Requests to continue ENEs are rarely granted. An ENE may be rescheduled only upon a showing of good cause and adequate notice to the Court. **Absent good cause, requests for continuances will not be considered unless submitted in writing no fewer than seven (7) calendar days prior to the scheduled conference.**

**12. Case Management Conference:** If the case does not settle during the ENE, the Court will conduct a Case Management Conference. In preparation for this conference, the parties must do the following:

a. Meet and confer pursuant to Fed. R. Civ. P. 26(f) no later than **DATE (2 WEEKS BEFORE ENE)**;

b. File a Joint Discovery Plan no later than **DATE (1 WEEK BEFORE ENE)**. Agreements made in the Joint Discovery Plan will be treated as binding stipulations that are effectively incorporated into the Court's Case Management Order. The Joint Discovery Plan must be one document and must cover the parties' views and proposals for each item identified in Fed. R. Civ. P. 26(f)(3). In addition, the Joint Discovery Plan must include the following:

i. **Service:** A statement as to whether any parties remain to be served and, if so, a proposed deadline for service;

ii. **Amendment of Pleadings:** The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings;

iii. **Protective Order:** Whether a protective order is contemplated to cover the exchange of confidential information and, if so, the date by which the proposed order will be submitted to the Court;

- iv. **Privilege:** The procedure the parties plan to use regarding claims of privilege and whether an order pursuant to Fed. R. Evid. 502 will be sought;
  - v. **Evidence Preservation:** Whether the parties have discussed issues related to the preservation of relevant evidence and if there are areas of disagreement, how the parties are resolving them;
  - vi. **Electronic Discovery:** In addition to the requirements set forth in Fed. R. Civ. P. 26(f)(3)(C), the parties must describe their agreements regarding methodologies for locating and producing electronically stored information and the production of metadata, and must identify any issues or agreements regarding electronically stored information that may not be reasonably accessible (see Fed. R. Civ. P. 26(b)(2)(B));
  - vii. **Discovery:** In addition to the requirements of Fed. R. Civ. P. 26(f)(3)(B), the parties must describe the discovery taken to date (if any), any proposed limitations or modifications of the discovery rules, and any identified discovery disputes; and
  - viii. **Related Cases:** Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
- c. Exchange initial disclosures pursuant to Rule 26(a)(1)(A-D) no later than **DATE (1 WEEK BEFORE ENE)**.

**IT IS SO ORDERED.**

**NOTICE OF RIGHT TO CONSENT TO TRIAL**  
**BEFORE A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a United States Magistrate Judge of this district may, upon the consent of all parties, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Consent forms are available in the Clerk's Office. Plaintiff or his counsel shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of Court. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgments of United States Magistrate Judges are appealable to the United States Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.

# **JAMS Letter & Video Mediation Materials**



Re: Guidance for Virtual Mediations

Dear Counsel,

I look forward to a productive Mediation Session with you and your client.

The Mediation Session is scheduled for \_\_\_\_\_, 2020 and will be conducted virtually on the Zoom platform, starting at 9 am, Pacific time. Prior to the Mediation Session, I will contact you to set up a Zoom video conference to discuss the case. In the interim, the following is some guidance for participating in the Session that you can share or discuss with your client.

*JAMS assistance:* If you request it, a JAMS technical person or Zoom moderator will meet with you and your clients in advance of the Session to discuss any technical or other issues that you may have. The moderator also can provide your clients with guidance and practice. Obviously, these sessions will be on Zoom.

*Access:* The Session will be convened by a JAMS Moderator. Access will be password protected. The Moderator will communicate the password at the appropriate time. Counsel shall be responsible for securely sharing the password with their respective team members and clients. To facilitate access and communications with participants during the Session, please provide a list of each person who will attend any portion of the session, including a name, mobile number, and email address.

*Breakout rooms:* The Moderator will set up separate break out rooms for Counsel and their clients. Once all authorized attendees have joined the session and are in their breakout rooms, the Moderator will turn over the hosting duties to me. I will then convene everyone for a joint session if we decide that is a good way to start or I will join one of the parties in the breakout room.

*Documents:* As the host I can “share” documents to which I have access, so you can e-mail me documents to share with the other side, or I can share the host duties with you to allow you to share a document directly.

*Breaks:* We have learned that breaks are important during a virtual hearing. During the breaks, Counsel and clients are advised to turn off their video and mute their audio but NOT to “leave” the meeting.

*Security during the Session:* For confidentiality and security there are some additional rules:

- No participant may record any part of the hearings. The “record” function of Zoom will be turned off.
- The “chat” function shall be disabled.
- No participant shall join the hearing from a public setting or unsecured, public Wi-Fi.
- Each participant shall identify any other person present at his or her location.
- Participants may not use a virtual background and their actual location must be visible.
- Participants not actively speaking are to place their audio on mute.
- If a participant is disconnected from the hearing and connection cannot be re-established within 5 minutes, he/she shall contact the Moderator and send an email to all participants. (Soon, we will have a Hotline to call which will reduce the time to reconnect.)

I look forward to working with you.

Sincerely,



Abby Silverman

# Virtual Arbitration FAQs

## Keep cases moving with flexible, efficient virtual arbitration at JAMS.

**JAMS neutrals have successfully handled thousands of cases via videoconference**, including large, complex, multi-party arbitrations. Whether a hearing is being conducted in person, virtually or as a hybrid proceeding, our experienced arbitrators are adept at managing the resolution process. JAMS neutrals and case managers receive ongoing training on the latest videoconferencing technology and best practices. In addition, we provide a **moderator who initiates and secures the virtual session and remains on standby for technical support.**

### What remote options does JAMS offer?

We can accommodate the virtual platform that best suits your needs, including Zoom, Microsoft Teams, GoToMeeting and WebEx. We also provide **hybrid hearing options** at JAMS Resolution Centers across the country, where counsel and clients who wish to attend in person can be connected with those who prefer to participate remotely. Conference calls are also an option.

### What are the technical requirements?

Download the app to your computer or tablet in advance of your session and confirm that your computer microphone is enabled, you have a videocam on or attached to your computer, your internet connection is working, and you have a suitable backdrop and good lighting. Visit [jamsadr.com/online](https://jamsadr.com/online) for additional information and download our **Virtual ADR Tips**.

### How do I prepare for a virtual arbitration?

Confirm that all parties and representatives are available and prepared to participate, decide which documents will be used and shared, and have the necessary technology available. Attorneys and their clients should also decide in advance how they will confer in private—via phone call or text message, or in a virtual breakout room (depending on the agreed-upon platform). Finally, we recommend that you schedule a **practice session with a JAMS moderator** to familiarize all parties with the process.

*Continued on the back* →



## Virtual Arbitration FAQs *Continued*

### How will the virtual process be managed?

The arbitrator will work closely with counsel and parties in advance of the hearing to determine how the process will be managed and to ensure an orderly hearing. Parties should agree on rules of etiquette, how evidence will be presented in a virtual environment and how witnesses and experts will be examined. Parties may also consider breaking a lengthy day into short segments to maximize attentiveness throughout the session. On the day of the hearing, a neutral or tribunal will host the meeting and join all parties in the main meeting room.

### How secure are virtual platforms?

All the platforms we use require user authentication, passwords, and end-to-end encryption to access any virtual proceedings; several are HIPAA compliant and prevent the collecting and reporting of identifiable information. Hearings may only be recorded with the explicit agreement of all parties. JAMS provides a unique meeting ID and password and a JAMS moderator is available for the duration of the hearing to control access and resolve any technical issues that may occur.

### How are documents viewed and shared?

Most videoconferencing platforms allow document sharing. JAMS clients can also share documents via **JAMS Access**, our online case management platform. Provided at no charge, JAMS Access offers unlimited document uploads and downloads. Please contact your case manager for additional information on best practices.

**Schedule your virtual arbitration today at [jamsadr.com/online](https://jamsadr.com/online).**

# Virtual ADR. Real Results.



## Tips and Techniques for a Successful Videoconference

JAMS neutrals have long used videoconferencing to mediate and arbitrate disputes of all kinds. Virtual ADR allows JAMS to bring counsel, clients, experts and witnesses from across the globe together to resolve complex, multiparty matters and keep business on track. These tips focus on best practices in remote dispute resolution.

**Avoid technical glitches and delays.** A reliable, hard-wired (as opposed to wireless) connection to high-speed internet provides the best video and audio quality.

**Optimize camera angles and lighting.** Position your laptop camera or webcam at eye level and sit far enough back so that your head, shoulders and hand gestures are visible. Place multiple light sources in the room and avoid having bright lights or a window behind you.

**Minimize distractions.** If you are working from home, choose a room that will afford you privacy and a lack of interruptions and background noise.

**Set the stage.** A glimpse into your work environment can reveal shared interests that enhance empathy and cooperation. Create a personal yet professional setting at your home or office or use a virtual background.

**Get comfortable.** Make sure you have beverages, a notepad and other essentials nearby so you don't have to leave the room.

**Exchange contact information.** It's important to make sure that the neutral and all parties are able to communicate with each other via email, cell phone and/or text.

**Schedule a pre-hearing test run with a JAMS moderator.** We provide tech support before and during your session. Familiarizing all parties with the process in advance can help build confidence and rapport.

**Manage expectations.** Begin the session by addressing how virtual communication may differ from in-person interactions. For instance, looking at the camera creates the illusion of eye contact, but you miss others' facial expressions. Taking notes or looking at other participants can be mistaken for a lack of attention.

**To schedule a virtual, in-person or hybrid mediation or arbitration, visit [jamsadr.com/online](https://jamsadr.com/online).**

**Local Solutions. Global Reach.®**

## VIRTUAL ADR AND HIPAA COMPLIANCE

JAMS uses the Zoom HIPAA-compliant platform for all scheduled virtual proceedings, including mediations and arbitrations. This Zoom platform incorporates the necessary security features to satisfy the requirements of the Health Insurance Portability and Accountability Act (HIPAA).

Here are some ways that this Zoom platform ensures HIPAA compliance:

- Requires that all devices accessing the Zoom platform connect via strong encryption.
- Prevents recording of sessions from being saved to the Zoom cloud. Session recordings may only be saved to a local device. As such, personal information will not be saved to the cloud.
- Personal health information (PHI) or personal identifiable information (PII) will not be collected or reported. This includes personal identification numbers (e.g., driver's license numbers, social security numbers, passport numbers, etc.); medical records; and IP addresses, to name a few.
- The chat feature is secured with the strongest available encryption. This means that no message will be read by anyone outside of the meeting. Messages saved outside of the meeting will only be made available with explicit permission by all parties.

We all play a critical role in ensuring that virtual sessions are secure and satisfy HIPAA requirements. In order to maintain HIPAA compliance, parties must refrain from capturing any images or screen shots of the sessions, and sharing of information.

For specific information regarding Zoom's HIPAA compliant platform and its related security features, please go to <https://zoom.us/docs/doc/Zoom-hipaa.pdf>.

# Resolve Your Dispute at JAMS via Videoconference or Conference Call

## We offer a range of effective virtual options

**Videoconferences and conference calls are tools that JAMS has long used to successfully resolve thousands of disputes of all kinds.** JAMS mediators and arbitrators (neutrals) are adept at managing the resolution process whether they are conducting an in-person or virtual hearing. Additionally, JAMS neutrals and case managers receive ongoing training in the latest videoconferencing technology and best practices.

In addition to traditional conference calls, JAMS offers a range of videoconference options for mediations and arbitrations based on case size and complexity, client comfort level and cost considerations.

**Zoom** is a popular online platform that can be used for mediations and arbitrations of almost any size. JAMS provides the Zoom accounts, and there is no cost to the parties. It offers private breakout rooms for mediations. Zoom is self-administered and requires some preparation by participants, as detailed on the following page. JAMS neutrals and staff are available to assist you with this convenient and user-friendly tool.

**Endispute**,<sup>™</sup> a proprietary JAMS mediation platform provided by CourtCall,<sup>®</sup> includes a high level of moderated service for a modest fee. A CourtCall representative will be available for the entire session to handle any technical aspects so that the parties can focus on settling their dispute. Endispute also allows private breakout rooms for each party and document sharing capability. This option is ideal for smaller, straightforward cases that can be resolved in a few hours. To determine if your case is appropriate for Endispute, contact a JAMS Case Manager or visit [jamsadr.com/endispute](https://jamsadr.com/endispute).

### How do I prepare for an online mediation or arbitration with JAMS?

- Determine which platform is best for your case (*see the following page for more information*).
- A JAMS Case Manager will provide you with the appropriate paperwork prior to your session. Parties will need to agree in advance on issues such as whether the session will be recorded and whether all participants must appear on camera.
- Just as you would with an in-person mediation or arbitration, confirm that all parties and representatives have blocked off time and are fully prepared to participate in the videoconference at any moment.
- Determine how you and your clients will communicate if you are participating from separate locations.
- Determine what documents you intend to share and ensure that they are forwarded to the neutral before the session.

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## JAMS Online Mediation or Arbitration with Zoom

### What are the technical requirements?

- Download Zoom to your computer or tablet in advance of your session at <https://zoom.us/>. Though less optimal, you may also participate via your smartphone.
- Confirm that:
  - ◆ your computer audio is enabled
  - ◆ you have a videocam on or attached to your computer
  - ◆ your internet connection is working
  - ◆ you have a suitable backdrop and good lighting
- Consider doing a test run, if possible, in advance of your scheduled conference in order to address any technical concerns.

### How does the process work?

- You will receive an invitation to a Zoom videoconference. This will include both the link and the password.
- The JAMS neutral will be the host of the meeting.
- Depending on whether your videoconference involves a mediation or arbitration, the neutral may have you join parties in the main Zoom meeting room or go directly into a breakout session.
- The neutral may use the mute button at various stages during the process to eliminate background noise.
- If you are in the same location as your client, then you may also use the mute button (as appropriate) to have a sidebar conversation with your client.
- During mediation sessions, you may also have a conversation with your client – and with the mediator – in one of the breakout rooms. Conversations in that room will be limited to invitees only.

## JAMS Endispute™ Online Mediation

### What are the technical requirements?

- The Endispute online dispute resolution (ODR) platform is easily accessible, requiring only a phone and a computer or tablet with a webcam to participate in a mediation from anywhere.

### How does the process work?

- Once you have determined that your case is appropriate for this platform, you can submit a case inquiry at [jamsadr.com/endispute](https://jamsadr.com/endispute).
- An Endispute ODR case manager will then help parties select a neutral from the Endispute ODR panel and assist in the case convening process.
- Once the mediation session has been scheduled, confirmed participants will receive information about how to access the Endispute ODR mediation session, including dial-in instructions for audio as well as a link to access the video portion of the session.
- The parties will receive a fee agreement and confidentiality agreement which must be completed and returned in order to confirm the mediation session.

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#### **Disclaimer/Notice:**

*JAMS is providing parties with top-quality Alternative Dispute Resolution Services when in-person proceedings are not possible. Neutrals are available to conduct mediations, arbitrations and other matters via Zoom, Endispute, conference calls and any other platform agreed to by the parties.*

*Zoom has become a particularly popular platform for JAMS clients. While JAMS is not able to control Zoom security policies and procedures, JAMS neutrals and associates have been trained to make best use of the security protocols provided by the Zoom platform. Parties to matters at JAMS have reported good results using the Zoom platform because of its ease of use and the fact that it is cost-free to them.*

*For questions or concerns related to the security or privacy of any platform, please visit the website for that particular platform.*

For more information, visit [jamsadr.com/online](https://jamsadr.com/online) or contact:

**Western U.S. – Ed Cruz • [ECruz@jamsadr.com](mailto:ECruz@jamsadr.com) • 415.774.2668**

**Eastern/Central U.S. – Shavonne Applewhite • [SApplewhite@jamsadr.com](mailto:SApplewhite@jamsadr.com) • 212.607-2712**