

From the desk of...

Judge Sandra Mazer Moss (Ret.)

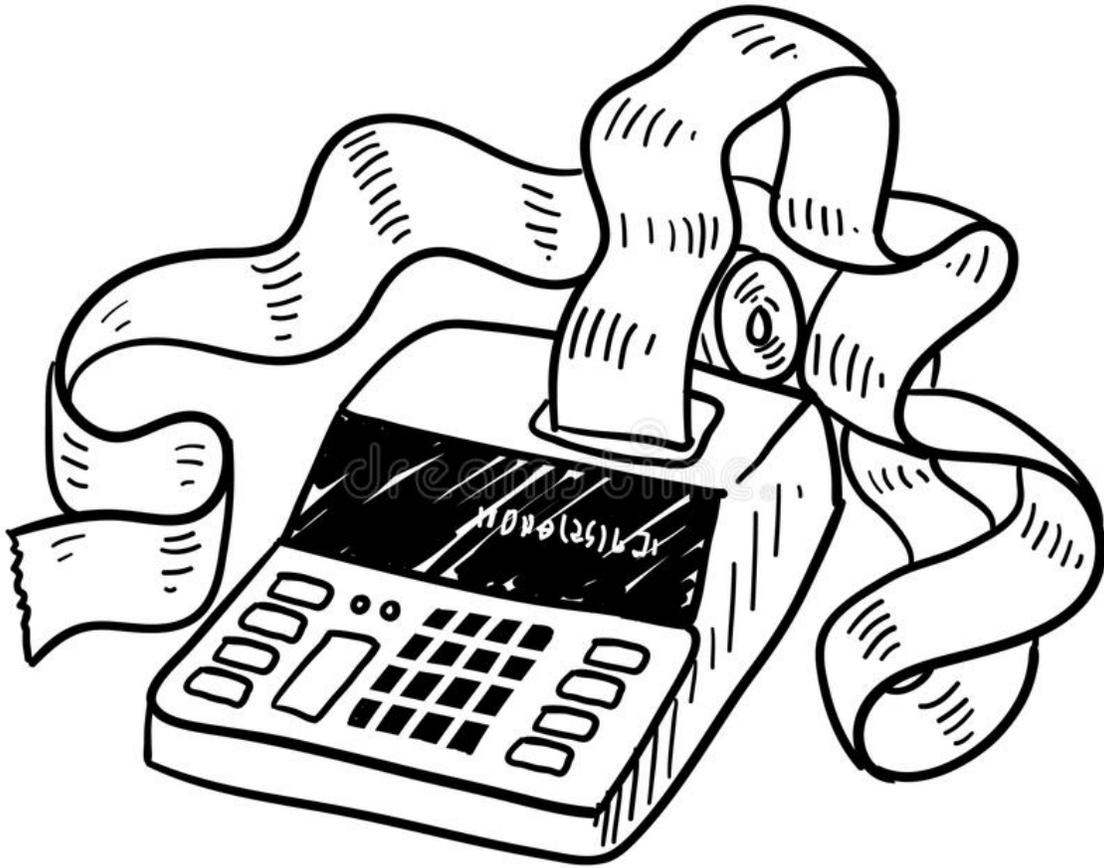


I help attorneys save time and money for their clients through effective dispute resolution.

THE REALITY OF THE VIRTUAL

Hon. Sandra Mzer Moss (Ret.)

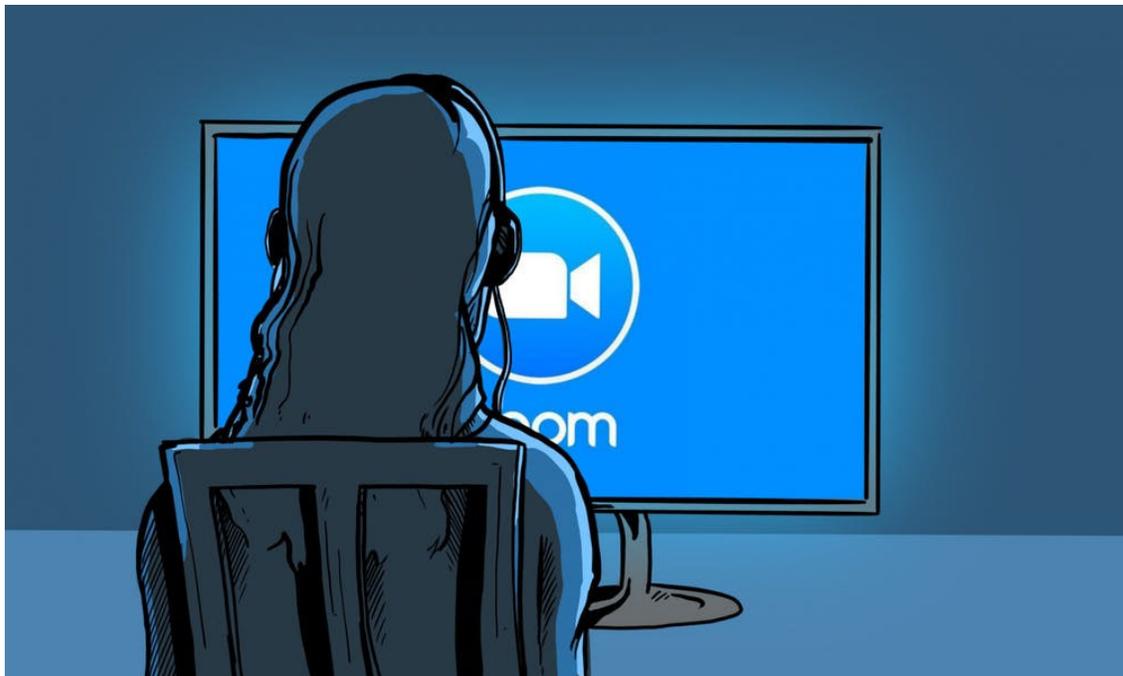
I am not a very technological person. In fact, I am terrified of machines. This, often irrational fear, stems from an unfortunate encounter I had with an adding machine in my grandfather's General Store when I was three or four years old (For those who have no idea what an adding machine did or what one bought in a General Store, check with your parents or grandparents.).



Since fears often become reality, that incident has morphed over the years into many such unfortunate encounters with mechanical products to the point where my husband, Bill, has forbidden me to touch the remote for our TV as I have knocked the power out on multiple occasions.

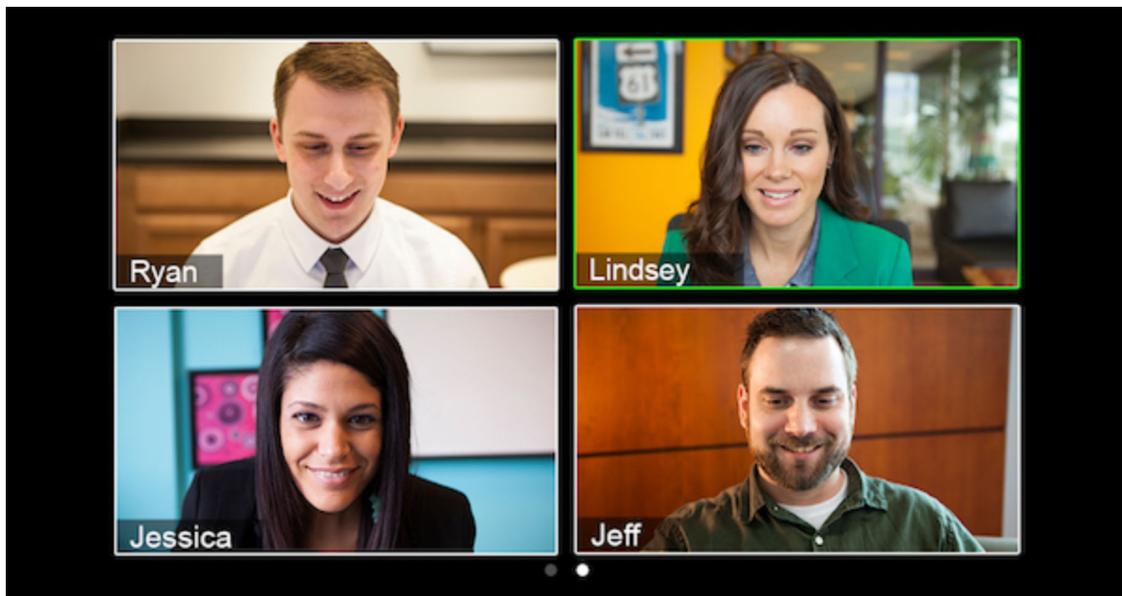
Having now explained my dubious background, you can only imagine my angst when the "real world", as I knew it, suddenly turned into a virtual one---literally overnight. One day I was sitting in my comfortable, sunlit office at The Dispute Resolution Institute, preparing for my next mediation and the next day I was packing my belongings for a hasty retreat to our shore house in Brigantine, New Jersey. And, in-person mediations at Two Logan Square was put on hold.

Now, one month settled into my new office, in what was once our den, and a veteran of five Zoom mediations and a plethora of Zoom meetings, Happy Hours and Town Halls, I feel, not only less intimidated, but eminently qualified to offer some helpful suggestions on participating in Zoom Mediations.



First, get over feeling uncomfortable with participating on screen. We all would prefer to congregate around a conference table, in person, with our clients by our side. This will not happen any time soon. So, we all need to get comfortable congregating virtually. The Zoom invitation is easy to follow and once logged on you're good to go. If the screen freezes for a few seconds, just hang on and everything will reconnect.

You have several options on how to communicate with your clients. Some plaintiffs and/or insurance representatives wish to attend "in person". This can be accomplished by issuing them Zoom invitations as well. If you notify the mediator of your client's participation, he or she will create virtual "break out" rooms so you can speak privately with your client and then leave that room virtually and join the mediator in his or her virtual "break out" room to also speak privately. Some clients wish to speak privately to the mediator with counsel present. This can be accomplished by bringing the mediator into your client's virtual room for a chat.



If you and your clients prefer to speak on the phone, that can happen by simply muting yourself and all other participants. Once you have conferenced with your client, you can signal the mediator and go back on line.

In this electronic age, we are all used to transmitting mediation statements by email or text. We have a printer in my new office because I am still hooked on reading and marking up a hard copy. My suggestion is to limit the size of submissions (which I think you should do anyway) to make life easier for the mediator and to zero him or her onto your most salient points.

Can there be glitches in this virtual world? Of course there can. In one mediation last week, two plaintiffs arrived virtually well before their attorney. Unfazed at finding only me present, they promptly jumped in and began negotiating. It took me a few tense minutes to explain that I was only the mediator and did not have any settlement authority to resolve their cases. I then promptly called their attorney and encouraged him to enter his "break out" room ASAP. Once both counsel arrived and we explained the rules to plaintiffs everything proceeded smoothly and the cases resolved to everyone's satisfaction, especially mine as plaintiffs were very tough negotiators with or without their lawyer.

If the matter does not settle during mediation, how do you follow up? I would suggest following up by phone through the mediator. I, for one, am persistent and will initiate follow up on my own which has proven successful in the virtual arena (I settled four of the five cases on screen and am working a follow up on the fifth by phone.). However, either plaintiff or defendant can initiate a follow up with the mediator confidentially. A virtual face to face can also be set up by contacting the mediator and requesting a second Zoom get together.



You may also wonder how long a Zoom mediation takes. The good news is, not as long as an old-fashioned face to face. My longest mediation went three hours. The others were successfully completed in one to two hours. The bad news was that our delicious lunches were not served. Virtual mediations are BYO all the way.

As with everything else, virtual mediation takes getting used to. I even suspect, that after this terrible pandemic is eradicated, virtual mediation may become the wave of the future. They are shorter, cheaper, and do not require extensive travel if plaintiffs or insurance representatives have to come from distant locations. And, as an aside, you don't have to dress up for them. Casual Friday may become casual Monday through Thursday as well.

If all of this seems a bit intimidating or too complicated to be worth your time or trouble, consider the alternatives. You can wait for the courts to open and then get in line for a new trial date or you could contact opposing counsel and try to work out a solution as best you can. Both of these options, however, may not result in a timely resolution of your case.



In any event, I am available now "virtually" all the time and would be happy to guide you through the Zoom maze and answer additional questions if you require a one on one tutorial. You may even get the full story about what happened to the adding machine in Pop's General Store.

I firmly believe no matter which side of the aisle you sit on, justice delayed really is justice denied. My suggestion is: it's worth a try.

If I can be of further help or you would like to chat, please contact me via phone, 215-888-1155 or email, smoss@adrri.com or smazermoss@gmail.com.



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