

Zoom Mediation

By Stephen O’Ryan QC

I am a member of Family Law Chambers. In May 1972 I was admitted as a solicitor of the Supreme Court of New South Wales and in October 1975 I commenced practice as a barrister. After a period as a judge I resumed practice at the Bar in 2011. Since returning to the Bar my practice has been in Family Law and I have undertaken mediations in that area. When the COVID-19 crisis began, for various reasons including my age, I went into isolation and was fortunate to be able to do so in a rural area of New South Wales. Since March 2020 I have undertaken my practice from where I currently reside.

Prior to March 2020 I had never facilitated a mediation by Skype or telephone and always accepted that face-to-face communication was essential to mediation. I conducted preliminary conferences by telephone but never the mediation session. However, since the pandemic hit I have facilitated mediations by Zoom video communication. I now subscribe to Zoom Pro and for this facility I pay a very reasonable monthly fee. As one commentator in an article published in May 2020 observed: 'As necessity is the mother of invention, so the pandemic has birthed Zoom mediations': Donald L Swanson 'Zoom Mediations Work!'

The same commentator explained that his biggest Zoom mediation fear was whether he could use the technology and I had the same fear. My concerns also included the following. How is a meeting scheduled? How does everyone get invited and placed into the meeting? Is it possible to accidentally put someone in the wrong meeting room? How do I enter into and leave separate meeting rooms? When the parties are in their separate rooms how do I get them all back into a joint session?

I realised that I could not seek technical assistance each time I conducted a mediation and so I resolved that I had to try and master the technology. The material that I read made little sense and so with the assistance of my children, including my son who resides overseas, I set up test Zoom meetings and had some practice runs. For my first Zoom mediation I managed the technology



without any major issues. Although there is more that I can learn I am now confident that I can conduct mediations by Zoom.

The commentator whose observations I have referred to in this brief commentary also observed: 'There is no drop-off in quality and depth of communications between this Zoom experience and prior face-to-face mediations. In fact, the Zoom distance, during joint session, may even be better than in-person.' There may be differences of opinion as to the quality and depth of communications between the Zoom experience and face to face mediations. However, my experience is that Zoom does work well. Importantly it has enabled the community to resolve conflicts during this

extraordinary period of history.

Mediation by Zoom has advantages that justify its continued use even when face-to-face mediations can effectively be resumed. For example, it enables joint sessions in matters where one or both parties will not have any face-to-face meeting even in a joint session. Next, it has cost benefits that include where travel by distance is a consideration for one or both parties. Because of the benefits of technology, and the goodwill and professionalism of members of the profession, during the COVID-19 crisis I have been able to continue to work and unfortunately that is something that many in the community have not been able to do. **BN**