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Mediation by videoconferencing — nothing is lost

Improved technology allows long-distance mediation

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By Michelle Lore

Finding the right mediator for a particular case can be a challenge. It's an even greater challenge, not to mention a huge expense, if the mediator you want is located in another state. But that is all changing.

The technology behind videoconferencing — interactive, audiovisual communication among parties located at two or more sites — has improved tremendously over the past few years. More and more attorneys are beginning to use it for long-distance meetings, depositions, interviews and even mediations.

Attorney Joan A. Morrow has been utilizing videoconference technology for mediations for the past two years. Morrow, who spent much of her career practicing law and mediating cases in Minnesota, moved to Williamsburg, Va., several years ago. She now mediates cases across the country — without leaving her office.

Morrow recently told *Minnesota Lawyer* that she was initially hesitant to use the technology, unsure if she would be able to deliver a quality mediation experience. "I was not going to do videoconference mediations unless I could give people extremely high quality service," she said. "It was either going to be really right, or I wasn't going to do it all."

After some test runs, Morrow conducted her first videoconference mediation in November 2002. She has since conducted more than 30 such mediations.

"Videoconferencing won't work and doesn't work well unless you have a good picture, good sound and good reception," she observed. "That's what I've been able to deliver on these mediations."

In the beginning

Morrow took the leap into videoconferencing mediations about a year and a half after moving out to Virginia. She explained that after she moved away she continued to get requests to come back to Minnesota to conduct mediations.

For the most part Morrow wasn't willing to fly back, so some attorneys flew out there. At one point, an attorney requested that Morrow conduct a mediation by telephone, which she reluctantly agreed to do. When that turned out to be a success, however, Morrow began to consider using videoconferencing to conduct mediations.

"I started to look into the technology of videoconferencing, had some test experiences to see how it worked and began to call people back in Minnesota to see whether it was something they would even consider," she said.

The attorneys she contacted were interested, but a bit skeptical. Late in 2002, Morrow went ahead and purchased the necessary equipment and began conducting mediations with it.

"For the most part, it's been working with people whom I worked with previously while living and working [in Minnesota] who have access to videoconference equipment," she said.

Equipment needed

Michael J. Werch, the founder and president of Eden Prairie-based Video Guidance, a full-service conferencing provider, recently told *Minnesota Lawyer* that videoconference technology has been around for more than two decades, but it has become cost-effective and highly reliable

only in the last few years.

The equipment necessary to conduct a videoconference includes:

- a display monitor;
- a camera; and
- a videoconference network (including digital telephone lines).

When the technology first became available, it cost between \$75,000 and \$80,000, the operators of the equipment needed to be specialized and the failure rate was high, according to Werch. "Today, it's a fraction of the price and is as reliable as a phone call. All sorts of organizations are getting behind the technology now," he said.

Werch added that even five years ago, the video was subpar and there was an audio delay. "Today, the challenge is to let people know that the technology is better, easier, more cost-efficient and adds value," he said.

Morrow is still using the same equipment she started with two years ago. She noted that she's checked into whether there is anything new or more elaborate that she should be getting, but has discovered that at this point what she has works just fine.

"This used to be something that only really big companies or really big firms would do and could use," she said. "But like so many things, cell phones, VCRs and everything else, the price [has] gone down."

According to Werch, law firms today can purchase quality videoconference equipment for between \$5,000 and \$10,000.

Initial skeptics

Morrow wasn't the only one who was initially hesitant to conduct mediations by videoconference; attorneys shared her skepticism.

Minneapolis employment attorney Daniel G. Wilczek acknowledged that he was skeptical about conducting a mediation by videoconference, but ultimately agreed to try it. He's since conducted several mediations in this fashion.

"I tried it on a test basis and worked through the glitches," he said. "It worked amazingly well."

According to Wilczek, Morrow's ability to flash in and out of the room by videoconference was essentially the same as if she were actually in the building conducting the mediation.

Minneapolis attorney Sheila Engelmeier also wasn't sure if a videoconference mediation would be as effective as an in-person mediation. As a mediator herself, Engelmeier said she understands the importance of looking directly across the table at the parties involved. "The ability to look eyeball to eyeball ... is a key part of a successful mediation," she said.

Despite her initial hesitation, last year Engelmeier went ahead and tried it. "I didn't think [Morrow] could pull it off but she did fabulously," Engelmeier said. "[A mediator] can still have a good rapport with the client with the technology available."

Engelmeier said that any problems she's encountered with the videoconferencing technology have been minor. "I'm tremendously impressed. It's like having [the mediator] in the room," she added.

Employment law attorney Nicholas May, of Minneapolis, agreed. "I was reluctant at first and went in with some trepidation. But when you are in the room with the person, you almost forget they are on TV," he said.

Sensitivity training

Some people who have used videoconference equipment in the past may have had bad experiences with the technology, Morrow observed. Accordingly, she stressed the importance of being sensitive to the lighting, the color, and the camera placement in order to have the clearest picture possible.

“What’s important to me is that if I was going to do this, people were going to get a picture almost as good as if I was there,” Morrow observed. “So I’ve worked on the lighting; I’ve worked on the color; I’ve fixed the camera so that when I appear at these videoconferences, I fill the screen. In other words, it’s as if I was sitting right across the table. ... People can see me well, they can hear me well, they can read my features.”

According to Morrow, another concern some people have with videoconferencing a mediation is that they don’t know how to videoconference and they don’t want to have to learn how to use the technology.

“Every place that has videoconference equipment, every law firm or every company that has it, generally has someone internally who is technologically skilled and gifted when it comes to dealing with the equipment,” she said. “Frankly, you don’t have to be a rocket scientist to operate it.”

Morrow explained that prior to every videoconference mediation she conducts a test call with the technical people so that before anybody enters the room, the lighting is worked out, the sound is operating properly and all of the lines are working.

“When the real people and the lawyers come to the mediation the only thing they have to know how to do is press a mute button ... on the microphone to make sure that I can’t hear them and they can’t hear me at times when they might want a private conversation,” she said.

Morrow added that the hook-up process is as simple as dialing a long distance phone number. Once she dials the number for the videoconference equipment, she immediately appears on the screen. “It’s the same thing as if I were coming through the door. The only difference is I am popping up on the screen,” she said.

Handshakes and hugs

The upsides of conducting mediations by videoconference are obvious: limited travel time, fewer expenses and a wider choice of mediators. Morrow believes — and attorneys who’ve used the process agree — that very little is lost through having the mediator appear by videoconference.

“The advantage to people in Minnesota is that if they want to mediate with me this is a means by which they can do it on a very cost-effective basis and not have lost anything in the process,” she said. “[They have] not have lost the quality of the mediation experience, the ability of the mediator to relate to parties and be persuasive in both rooms.”

Only one thing is really “lost” through a videoconference mediation, according to Morrow. “I don’t get the handshakes and I don’t get the hugs,” she said.

Nonetheless, attorneys agree that the videoconferencing process is an effective alternative to traveling.

St. Paul attorney Leslie L. Lienemann said that she willing to try the technology primarily because she wanted to use Morrow as a mediator even after she moved away.

“It is a cost-effective way of conducting a mediation if the alternative is to travel,” she said. “It’s a nice efficient way to have a mediation that might not otherwise be available.”

Own turf

Attorneys who have used videoconferencing for mediations have few, if any, complaints about the process. Some even contend that a videoconference mediation may actually work better than a traditional mediation.

Wilczek explained that when he needed to have a private conversation with his client, he merely had to press the “mute” button, rather than ask the mediator to leave the room and then go out later to find her again. “Plus, it provides all the advantages of an in-person mediation,” he said.

May explained that for one videoconference mediation, he and his client were in Minneapolis, the defendant and defense counsel were in Milwaukee, Wis., and Morrow was in Williamsburg. He noted that the nice thing about a videoconference mediation like that is the parties don't run into each other in the hall or the bathroom.

"You don't feel like you are on somebody else's turf. ... It's a real neat process," he said.

Like other attorneys, Lienemann acknowledged that she too was a bit skeptical at first, explaining that an important component of mediation involves the mediator developing a trust relationship with the parties.

"At first I was leery about not having the ability to do that," she recalled. "[But] it's surprising how little effect the fact that it's a videoconference [has on the process]. The mediation flows."

In the end

Videoconferencing technology has been available for a long time. In Morrow's opinion, however, businesses and lawyers have "only begun to scratch the surface of its use and its usefulness in their practice."

Today, the technology has a variety of uses in a law firm, including depositions, witness interviews, meetings with clients or expert witness, and meetings with firm members located in other states.

Werch explained that large law firms can utilize a videoconference technology called "bridging," which allows attorneys in multiple locations to get together and appear simultaneously on the monitor.

"It operates much like Hollywood Squares," Morrow quipped.

Wilczek said he's utilized videoconferencing technology for other things, like firm meetings, but that he still feels it is best utilized in the mediation setting.

"I've found mediation to be the most effective use of it," he said, adding that when using the technology for meetings, participants have to be careful to avoid talking over each other. "In meetings, people are interjecting ... [so] it can be less effective," he said.

A word of caution

While attorneys enjoy the technology and the conveniences it affords, they do have some words of caution.

Wilczek stressed that it's important to make sure the videoconference equipment is working properly before the mediation begins.

"If someone is considering doing this, it's essential they do a thorough trial run to make sure the mediator and the firm have the technology to make it work very well," he said. "Technological problems would kill the momentum."

Lienemann added that an effective videoconference mediation may depend in part on the mediator. "Success in large part relates to the level of attention the mediator gives to setting the right environment for the mediation," she said.