

PRESENTED AT

Jay L. Westbrook Bankruptcy Conference

November 19, 2021

Austin, Texas

Avoiding Ethical Pitfalls In Virtual Mediations, Auctions And Committee Meetings

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Look Before You Leap

VIRTUAL MEDIATIONS AND CONFIDENTIALITY

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COVID Changed Everything

COVID-19 Presented New Challenges for Courts and Practitioners

- Courts transitioned to holding telephonic hearings, and others transitioned to video hearings using online platforms like Zoom, Webex, and GoToMeeting.
- Judges and bankruptcy professionals also conducted more virtual mediations.
- Virtual mediations existed well before the pandemic, but this was new for many bankruptcy professionals.

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COVID Changed Everything – Virtual Mediations

Virtual Mediations Proved to Be Very Effective

- Parties could participate in a safe environment.
- Schedule and travel concerns were minimized.
- Mediations continued without traditional disruptions.
 - Parties could take breaks for dinner, go to their homes, and take the virtual mediator wherever they went using smartphones, computers, and tablets.

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Virtual Mediations and Confidentiality

Virtual Mediations Will Remain

- This requires bankruptcy professionals and mediators to consider some new ethical issues.
- Let's consider confidentiality.



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A Hypothetical . . . Let's Assume

Debtor corporation files a chapter 11 petition in the S.D. Texas.

The Debtor and two creditors agree to mediate virtually to settle the creditors' claims against the Debtor, the Debtor's CEO, and each other.

On the day of the mediation:

- The Debtor's attorneys are in California, the Debtor's CEO is in New Jersey, and the Debtor's financial adviser is in New York.
- Creditor 1's attorney is in Illinois and the client representative is in Ohio.
- Creditor 2's attorney is in Georgia and the client representative is in Oklahoma.
- The mediating judge is in Texas.

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First appeared as part of the conference materials for the
40th Annual Jay L. Westbrook Bankruptcy Conference session
"Ethics Session - Look Before You Leap"