

March 2021

Paradigm

President's Podium:

Positioning Primerus

Navigating a Legal World Changed by COVID-19

 **PRIMERUS**

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Rothman Gordon is built upon a combination of sophisticated law and personalized service. With nearly 30 attorneys, we are large enough to bring a breadth of resources to meet our clients' needs, yet small enough to maintain personal relationships with them.

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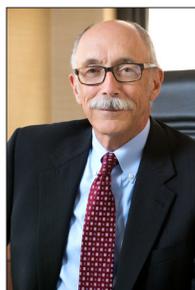
Rothman Gordon is a Pittsburgh-based law firm that has been advocating for our clients' interests since 1954. Rothman Gordon has created a suite of services for individuals, organizations and closely-held and family businesses.

Our areas of practice include alternative dispute resolution; business and corporate law; commercial real estate; construction law and litigation; commercial and business litigation; white collar criminal law; estate planning and administration; taxation; financing and commercial loans; employment law; labor law; oil and gas for landowners; and workers' compensation and social security disability.

Rothman Gordon is built upon a combination of sophisticated law and personalized service. With nearly 30 attorneys, we are large enough to bring a breadth of resources to meet our clients' needs, yet small enough to maintain personal relationships with them. Our belief is that by

listening to and understanding our clients, we can be trusted to represent their best interests. It's a philosophy that has served us well for over 65 years and, we believe, provides a strong foundation for the future.

Rothman Gordon's attorneys have mediated a wide range of civil cases, including class actions and multiple party cases, and commercial cases such as franchise, contract, shareholder, real estate and breach of warranty disputes. The firm also has extensive experience in labor and employment mediation and arbitration, including sexual harassment, discrimination, wrongful termination, FLSA and other employment issues. The family law mediation practice strives to achieve fair settlements for all parties in custody, relocation, equitable distribution and protection from abuse cases.



Stephen H. Jordan

Stephen H. Jordan has built an extensive mediation and arbitration practice focused primarily in the area of employment law in both private industry and with non-profit employers. He has also mediated commercial disputes, including breach of contract and intellectual property issues.



Rothman Gordon's Day of Caring at the Wilkinsburg Free Store

With the arrival of COVID-19, our office has successfully moved to virtual mediations. In-house training on the various virtual platforms has enabled our mediators to conduct virtual mediations with ease.

Embracing Virtual Mediation Amid COVID-19

The COVID-19 pandemic has changed everything, including how mediations are conducted. Pre-COVID, mediations were nearly always in-person events. In many jurisdictions, court-ordered mediation protocols required decision makers to attend mediations in-person. Anyone familiar with the mediation process would agree that such a requirement enhances the chances of reaching agreement. Actual attendance, while witnessing the give and take, provides the decision makers with the necessary flavor of the parties' respective positions. It also provides insights regarding the chances of success, or failure, of the litigation in the event settlement is not achieved.

In contrast, contacting a decision maker by phone to obtain assent to a settlement proposal, only after many hours of the in-person participants modifying their respective settlement positions, is not optimal. It robs the decision maker of the "flavor" of what has led to the proposed settlement. In-person attendance also enables the mediator to build a rapport with the participants which, in turn, enables

the mediator to assess the feasibility of reaching agreement and what elements need to be included in a mutually acceptable settlement.

It has been my experience, pre-COVID, that corporate decision makers and their insurance representatives often sought permission not to attend mediations in person mainly due to cost and scheduling issues. When the mediation involves multi-state parties, travel costs and scheduling issues are quite understandable. I also found that ordering corporate decision makers and their carriers to attend mediations in person, despite their objections, often resulted in an unhappy party. This made them less inclined to compromise, especially in light of being required to expend funds for travel which could otherwise be used in a settlement.

During the pandemic, our office has successfully moved to virtual mediations. In-house training on the various virtual platforms has enabled our mediators to conduct virtual mediations with ease. While some would argue that the personal touch a seasoned mediator brings to an in-person mediation would be lost, we have not found

that to be the case. Virtual mediation has enabled our mediators to bring the same level of expertise to the process. In doing so, we have found that the participants are equally comfortable with the process. We are able to easily move from "room to room" to have private discussions with participants, and we are able to place parties together, if need be, or confer with counsel confidentially. Plaintiffs, who are often uncomfortable being in the same physical room with a defendant, feel more secure and at ease "attending" remotely. Likewise, we have been told that defendants and their insurers prefer virtual mediations because of cost savings and scheduling ease. Our mediators also have discovered that our settlement success rate has remained unchanged.

While the pandemic has certainly been a tragedy, we have found that the necessity of handling mediations virtually has not impacted litigants' ability to resolve their disputes through the time-tested process of mediation.

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