

Mediation: Sanctions and Mediator Response to Boorish Behavior (*Wohnberger v. Lucani*, 214 A.D.3d 615, 616–17, 186 N.Y.S.3d 618, 619 (2023))

Video Clips: https://open.mitchellhamline.edu/dri_mclvideo/54/

- Mediation
- Post-Mediation Threat to Lawyer
- Post-Mediation Threat to Mediator

Overview of the Scenario

In *Wohnberger v. Lucani*, 214 A.D.3d 615, 616–17, 186 N.Y.S.3d 618, 619 (2023) (2023), a court-ordered Zoom mediation involved the plaintiff (Wohnberger), her attorney, and a non-party representative (her business partner and fiancé, Goldstein). The mediator permitted Goldstein to participate at the request of the plaintiff. During the mediation, Goldstein became increasingly belligerent: he allegedly interrupted repeatedly, spoke over the mediator, raised his voice, issued verbal threats, and refused to allow his client or counsel to speak. His behavior severely obstructed the ability to engage in meaningful settlement discussions. After multiple failed efforts to regain control, the mediator muted Goldstein in the Zoom session while continuing discussions with the remaining participants. Goldstein eventually left the session voluntarily. However, post-mediation, he allegedly made threats to the mediator and defendant’s counsel. (NOTE: For detailed explication of the allegations, see Defendant-Respondent’s Brief on Appeal, available on Westlaw). The mediator later reported Goldstein’s disruptive behavior to the court’s ADR coordinator, who in turn forwarded the report to the trial judge. The court ultimately dismissed the plaintiff’s case, partly based on the mediator’s report of noncompliance with ADR rules. The dismissal was reversed on appeal because the party was not “apprised of any ADR rule or related court rule(s) that she purportedly violated [and was not provided] opportunity to refute or otherwise respond to the allegations.”

Classroom/Training Objectives

- Understand and apply the law of mediation sanctions
- Analyze the ethical considerations involved when a mediator faces highly disruptive behavior in a virtual mediation setting, specifically the ethical permissibility of muting participants to preserve the integrity of the mediation process.
- Evaluate options for deciding who participates in a mediation

Key Teaching Points (Sanctions)

- Simply refusing an offer, or not making an offer that the court finds acceptable, typically does not justify sanctions.
- Conversely, violating court orders about “objective” mediation obligations (attendance, settlement authority, preparation of required documents) may trigger sanctions.
- Disruptive behavior such as “bullying, intimidating, or harassing” the mediator could be considered bad faith, but many courts hesitate to impose sanctions unless such conduct violates a specific, clearly articulated rule or order.

Key Teaching Points (Mediator Options to Deal with Boorish Behavior)

- Muting disruptive participants may be a proportionate response to uphold fairness, protect the process, and ensure that other parties retain a meaningful opportunity to participate.

Analysis (Sanctions)

While the appeals court agreed that Goldstein's behavior was egregious, it reversed the dismissal order because plaintiff was "never apprised of any ADR rule or related court rule(s) that she purportedly violated. Nor was plaintiff given any opportunity to refute or otherwise respond to the allegations in the mediator's email, which ostensibly prompted the dismissal." Moreover, the plaintiff herself was not personally disruptive and there was no evidence that she encouraged or condoned the behavior. The appeals court did not explicitly address plaintiff's assertion that the mediator violated confidentiality by reporting the conduct to the ADR coordinator. However, the relevant local court rule provides that "a party, the ADR coordinator, or the Neutral may report unethical behavior during the proceeding to a proper authority." New York County Commercial Division Rules and Procedures of the ADR Program, Rule 8(b)(2), which would seem to foreclose a confidentiality breach claim against the mediator.

Analysis (Mediator Options)

Standard I: Self-Determination

- **Principle:** Mediators must support parties in making voluntary, informed, and uncoerced decisions.
- **Application:** When a participant is so disruptive that negotiation cannot proceed, the mediator has a duty to act to maintain the quality and fairness of the process. While self-determination protects the right of each party to make free, uncoerced decisions regarding settlement, it does not entitle any party to sabotage the process itself. Muting the disruptive participant temporarily — rather than immediately terminating the session — can be a proportionate response to protect the process while maintaining opportunities for other participants to engage productively. Other options: verbal warnings, a pause for private caucuses, or temporary suspension of the session to allow for reflection and de-escalation.

Standard II: Impartiality

- **Principle:** Mediators must maintain impartiality throughout the process.
- **Application:** Transparency and proportionality are key. The mediator should explain the reasons for muting and ensure that it is applied solely to control disruptive conduct, not to silence dissenting viewpoints or limit substantive contributions. After restoring order, the mediator may offer the muted party an opportunity to participate constructively. Consistent enforcement of ground rules for all participants helps minimize the appearance of bias.

Standard VI: Quality of the Process

- **Principle:** Mediators are responsible for ensuring that the mediation process is conducted fairly, diligently, and safely.
- **Application:** A disruptive party who prevents others from speaking directly undermines the procedural fairness that the mediator is ethically bound to preserve. A mediator might elect to issue verbal warnings, pause for private caucuses, or temporarily suspend the session to allow for reflection and de-escalation. Suspension or termination would have prevented immediate progress but might have been necessary if muting failed to restore

order. The advantage of muting was that it allowed the process to continue while preserving decorum. However, it carried the risk of being perceived as favoring one side if not handled transparently.

Discussion Questions

1. Under the 2005 Model Standards of Conduct for Mediators, what duties did the mediator have in response to Goldstein's behavior?
2. Was it ethically permissible for the mediator to mute Goldstein? Why or why not?
3. How does controlling disruptive conduct relate to (or conflict with) the principle of party self-determination?
4. Could alternative actions have been taken by the mediator? What are the pros and cons of muting vs. suspending or terminating the mediation?
5. What special considerations arise when managing disruptive conduct in a virtual mediation setting (Zoom or other platforms)?
6. How should mediators balance the duty to maintain a fair and orderly process against the potential appearance of bias if one party's representative is muted?
7. What guidelines should a mediator use in deciding who attends and speaks at a mediation?
8. Did the mediator violate mediation confidentiality by describing the offensive behavior to the ADR coordinator? Did the ADR coordinator err in forwarding the information to the trial judge?
9. Does Mr. Goldstein's status as an authorized representative automatically make Plaintiff responsible for his misconduct?
10. Should Plaintiff have done more to control Mr. Goldstein's conduct during the mediation?
11. Under what circumstances would sanctions against Plaintiff be appropriate?

Resources

PowerPoint Slides for Classroom Use (with embedded video clip)

[Wohnberger v. Lucani, 214 A.D.3d 615, 616–17, 186 N.Y.S.3d 618, 619 \(2023\)](#) (Westlaw link)

[Wohnberger v. Lucani-Defendant Respondent's Brief on Appeal, 214 A.D.3d 615, 616–17, 186 N.Y.S.3d 618, 619 \(2023\)](#) [for detailed allegations of alleged misconduct] (Westlaw link)