



THE NATIONAL ACADEMY OF
DISTINGUISHED NEUTRALS

Survey of Litigators on Virtual Mediation

Comparing Responses from Sep 2020 to Sep 2022

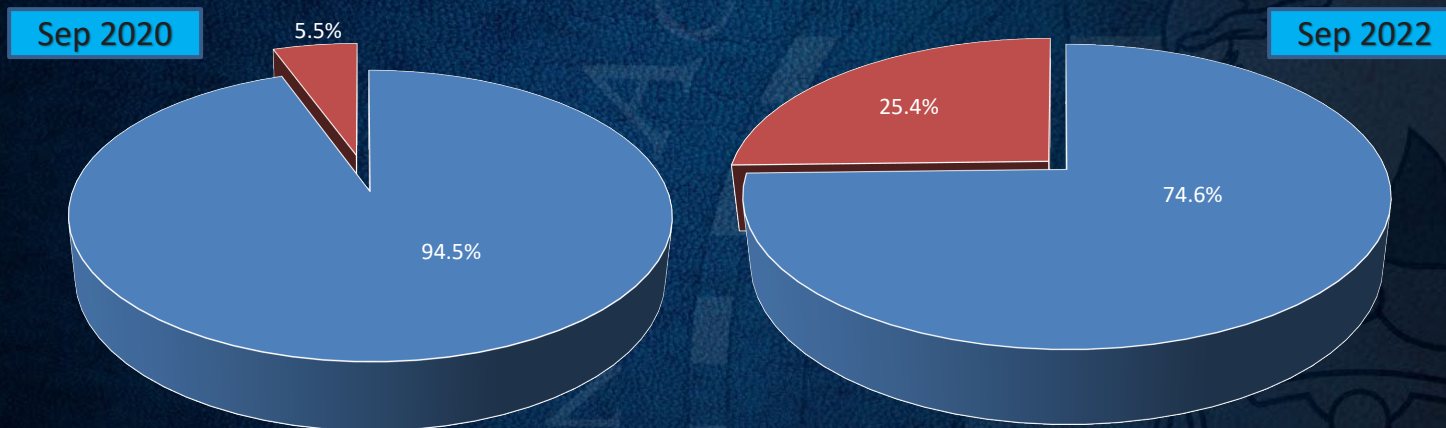
THE PANDEMIC HAS
PERMANENTLY
CHANGED THE ADR MARKET

For years on the fringes, more often for non-litigated cases:
family disputes, small claims, domain names, eBay disputes, etc.

Reminder: Only 2% of litigators had EVER attended
a mediation or arbitration by video
before March 2020.

2.5 years on, what do litigators think...?

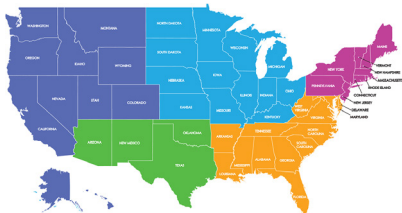
Q1. Over the last 6 months, approx. what percentage of your cases have been conducted online?



* 2022 Survey conducted by email via SurveyMonkey, 770 litigators responded (354 DRI / 412 AAJ)

* 2020 Survey conducted by email via SurveyMonkey, 724 litigators responded (364 DRI / 360 AAJ)

Regional Breakdown - Mean Average Response



West: 72%

Midwest: 70%

Northeast: 74%

Southwest: 79%

Southeast: 84%

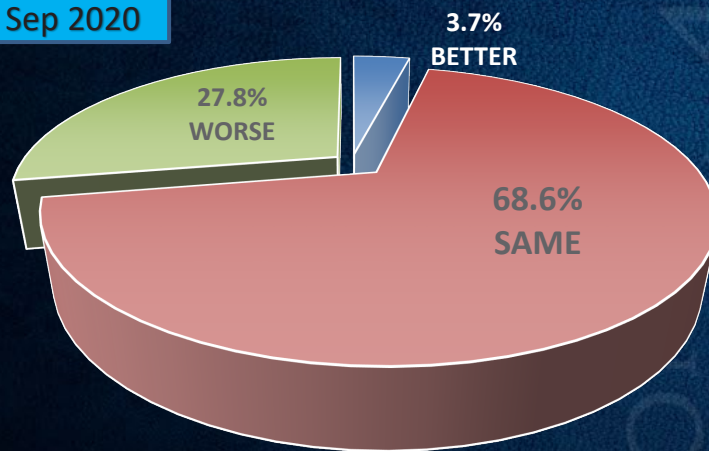
Commentary

Our original survey of litigators 6 months into the pandemic ([video here](#)) showed that the litigation and ADR community had quickly adapted, migrating to Zoom and other platforms, due to the pandemic and the related health concerns. But 2 years on, with the pandemic now behind us for the most part, we see clearly that around 3 in 4 cases are still being convened online nationally this year. This has little-to-nothing to do with that pesky virus, and everything to do with the now obvious advantages, efficiencies and cost-savings of convening online. There is some wide variation here regionally, with states like Florida and the Carolinas at over 90% of cases remaining online, while some markets (particularly those dominated by ADR panel firms, like California) appear nearer to 65% - still a clear majority, though.

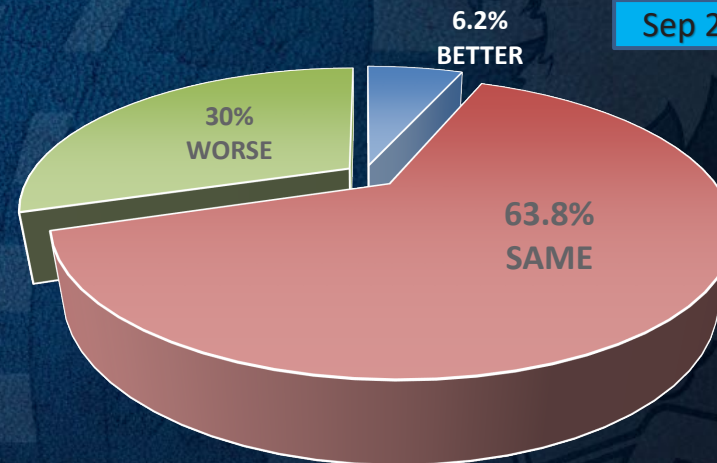
2.5 years on, what do litigators think...?

Q2. Generally, how would you rate your ability to **effectively advocate** for your client via Zoom/video platforms, as compared with traditional in-person mediations? ABOUT THE SAME, BETTER or WORSE?

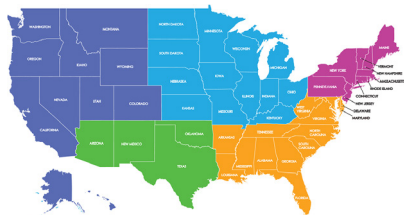
Sep 2020



Sep 2022



Regional Breakdown - Same or Better Total %



West: 67%
Midwest: 66%
Northeast: 65%
Southwest: 68%
Southeast: 74%

Commentary

A very similar result to our survey of litigators back in 2020, just a few points movement in 2 years. Perhaps a small percentage have brushed up their online advocacy skills in the interim, while a similar number have decided that they just can't recreate the personal touch in the virtual world. Regardless, a large 70% of litigators nationally still feel they're able to advocate for their clients just as effectively via Zoom.

2.5 years on, what do litigators think...?

*Q2. Generally, how would you rate your ability to **effectively advocate** for your client via Zoom/video platforms, as compared with traditional in-person mediations? ABOUT THE SAME, BETTER or WORSE?*

If WORSE, why? Common responses in 2022 included:

“Find it harder to read people, non-verbal cues, etc”

“Need my client in the same room as me for better control” (Plaintiffs bar especially!)

“Miss stepping out into the hallway, casual downtime contact”

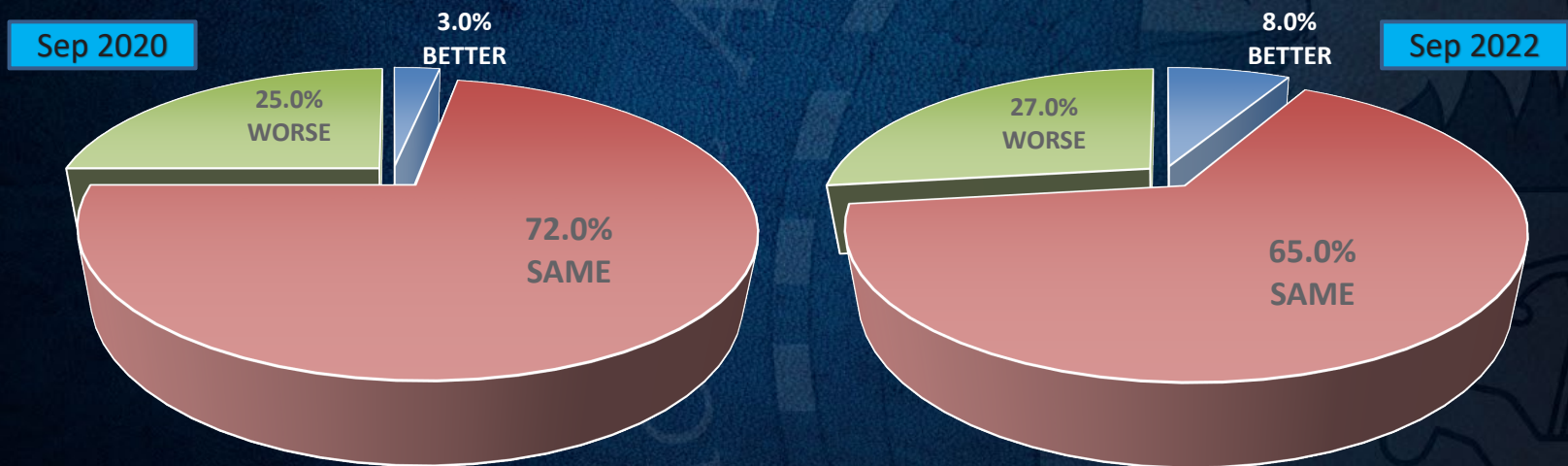
“Can’t talk face-to-face with opposing counsel - no ‘grab a snack’ moments”

“I like to ‘head for the door’ in real mediations - can’t do that online!”

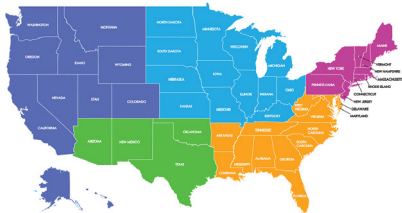
2.5 years on, what do litigators think...?

Question 3:

Generally, how would you rate your mediator's effectiveness in resolving disputes via Zoom/video platforms, as compared with traditional in-person mediations?
ABOUT THE SAME, BETTER or WORSE?



Regional Breakdown - Same or Better Total %



West: 67%
Midwest: 66%
Northeast: 65%
Southwest: 68%
Southeast: 74%

Commentary

From the outset of the migration to Zoom in 2020, around 3 out of 4 surveyed litigators were of the mind that the mediator was just as effective online as in-person. Two years on, these results suggest that not much has changed, except a few litigators have "seen the light", perhaps swayed by the fact that - despite their own preferences - the vast majority of their cases mediated online are *still settling*, as reported by NADN members in our last membership survey, in late 2021. ([Link to 2021 NADN Member Survey](#)). The one major difference in the comments box (see next page) for those that chose "Worse" - zero mentions this year of neutrals being unfamiliar with their chosen video platform/tools - it seems most everyone is now able to use Zoom with aplomb!

2.5 years on, what do litigators think...?

Question 3:

Generally, how would you rate your *mediator's effectiveness in resolving disputes* via Zoom/video platforms, as compared with traditional in-person mediations?
ABOUT THE SAME, BETTER or WORSE?

If WORSE, why?

"Mediator couldn't build a rapport with the clients as well"

"Working from home, participants were less invested, easily distracted"

"Found mediator less able to get the claimant to budge on their figure"

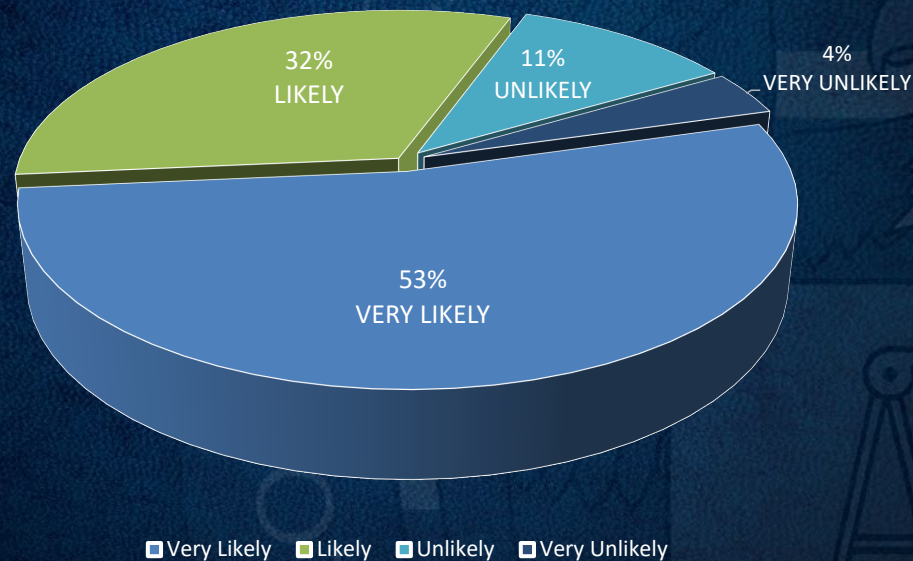
"Procedure had less gravitas online"

"Mediator nervous the whole time of hitting a wrong button!" (2020)

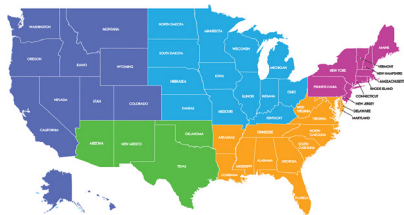
2.5 years on, what do litigators think...?

Question 4:

Looking to 2023 – how likely is it that you'll agree to attend mediations virtually if that's the consensus?



Regional Breakdown - Very Likely or Likely Total %



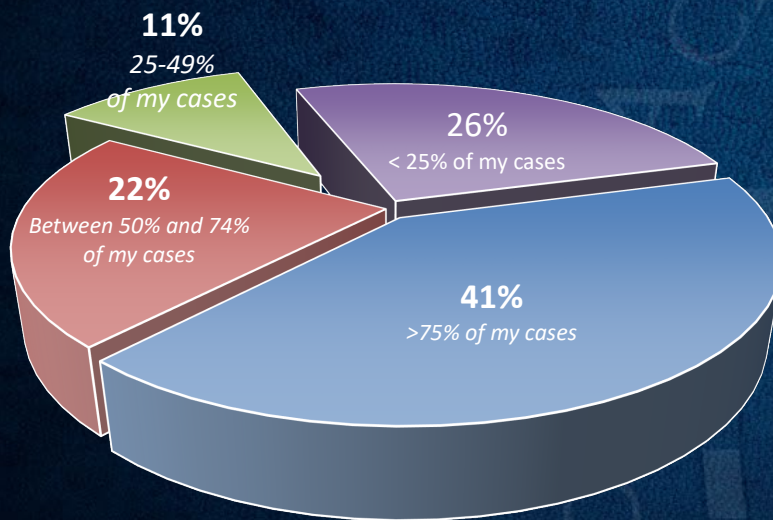
Commentary

A new question not on the litigator survey in 2020 when most every mediation and arbitration in North America was via Zoom/platforms. Looking forward to 2023 - when health concerns are surely 99% in the rear-view mirror - if the neutral and/or opposing counsel & parties express a preference to convene the mediation online, do you acquiesce? 85% of litigators surveyed nationally will go with the proverbial flow, with just 15% "unlikely" or "very unlikely" to insist otherwise. I've heard this time and again from members, anecdotally - all it takes is one participant to express a concern ("elderly relative", "immune compromised client") or, more lately, an honest preference ("I'm not spending 2 hours in traffic for a 3-4hr mediation!") and *everyone* tends to gravitate to the path of least inconvenience.

2.5 years on, what do litigators think...?

Question 5:

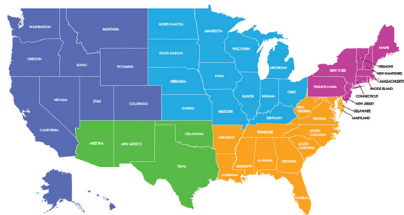
What % of your cases would you PREFER to attend online, rather than in-person?



LOVE IT!
100% of my cases and prefer not to go back to in person:
19%

HATE IT!
0% of my cases and never going back to Zoom:
14%

Regional Breakdown - % Preferring Majority Online



West: 60%
Midwest: 58%
Northeast: 57%
Southwest: 65%
Southeast: 72%

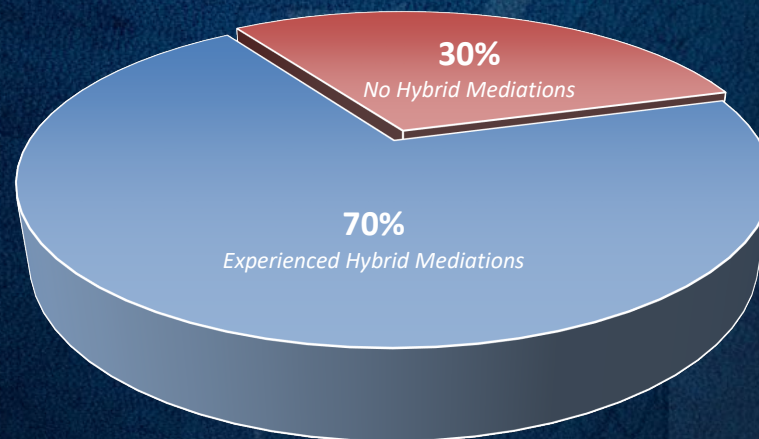
Commentary

Here we asked litigators to adjust a sliding scale - what percentage of cases would you *personally prefer* to mediate online? This factors in all of the previous, including perceptions that they and/or the neutral are less (or more!) effective online versus in-person. But, with the obvious personal and business advantages of convening online, these results are telling. Around 2 out of 3 litigators express a preference for more than half their mediations to be via Zoom. That includes 19% that moved the slider all the way to 100%, presumably never to return to in-person cases. At the other end of the spectrum, 26% responded they'd like less than a quarter of cases to be online, with 14% preferring to never use Zoom again. (Note from Q4 results, though, that perhaps only 4% might stand firm, refusing to attend virtually!)

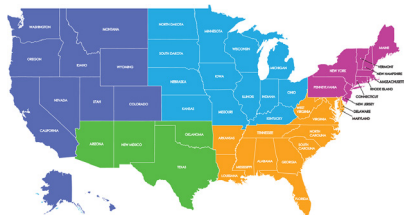
2.5 years on, what do litigators think...?

Question 6:

Do you have any experience with **hybrid mediations**, where some counsel & clients appear in-person, while opposing counsel & clients attend virtually?



Regional Breakdown



West: 76%
Midwest: 62%
Northeast: 75%
Southwest: 72%
Southeast: 67%

Commentary

Many NADN members have mentioned to me that they're seeing more hybrid mediations, where some clients attend virtually while others are in the room with the mediator. I know some members and ADR firms have invested in new technology such as face-scanning cameras to help better facilitate these meetings. By definition, these hybrid mediations are happening when there's no consensus as to the venue/format - so it's possible that they're slightly more contentious disputes right out of the gate. As can be seen here, a solid majority of litigators now have some experience of this format. But what do they (our all-important paying customers!) think about it...?

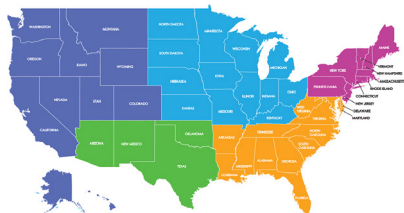
2.5 years on, what do litigators think...?

Question 6: (If YES to hybrid experience)

Please click the statements that you agree with:

STATEMENTS ON HYBRID MEDIATIONS	Percentage
NO OBJECTIONS TO THIS FORMAT	39%
I'D EXPRESS A PREFERENCE TO MEDIATOR THAT <u>EVERYONE</u> ATTEND VIRTUALLY	31%
I'D EXPRESS A PREFERENCE TO MEDIATOR THAT <u>EVERYONE</u> ATTEND IN-PERSON	37%
I FEEL THAT AS THE VIRTUAL PARTICIPANT, I'M POTENTIALLY DISADVANTAGED	42%
I FEEL THAT AS THE IN-PERSON PARTICIPANT, I'M POTENTIALLY DISADVANTAGED	15%

Regional Breakdown - As Virtual Attendee I'm Disadvantaged



West: 44%

Midwest: 41%

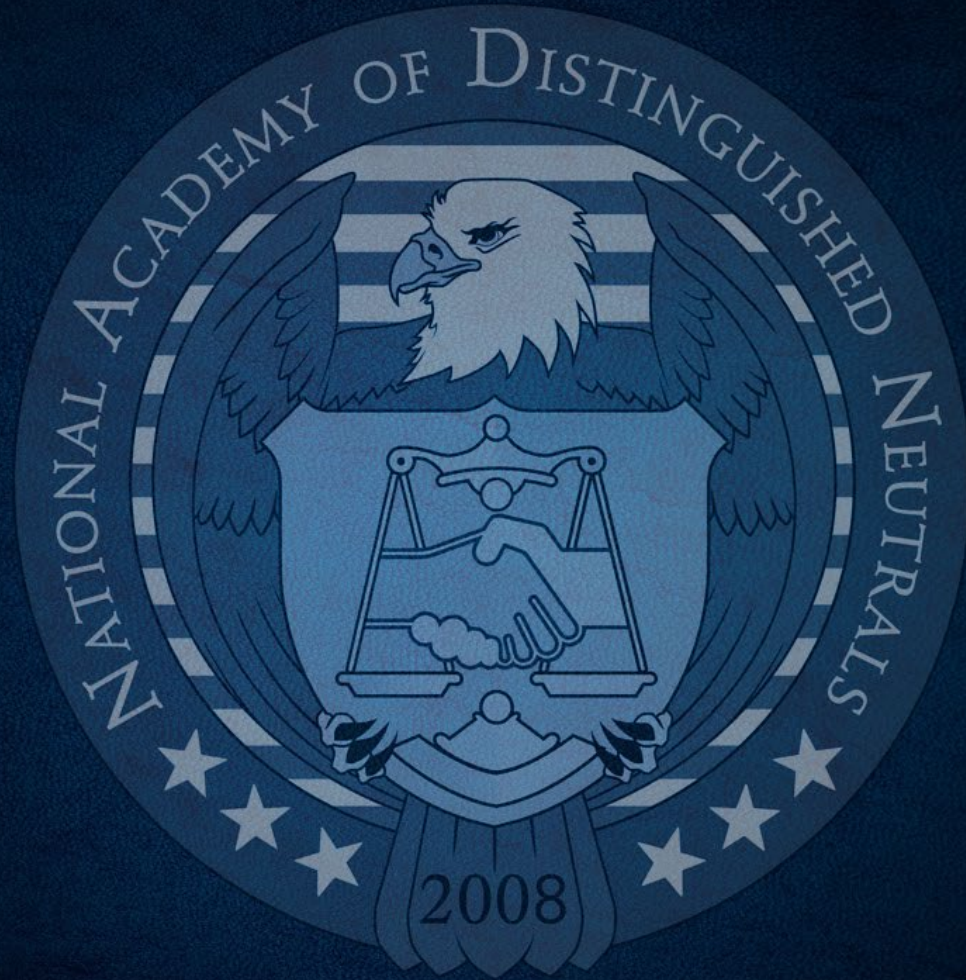
Northeast: 45%

Southwest: 38%

Southeast: 45%

Commentary

Well, despite the sexy new tech - there's not much enthusiasm from litigators, with just 39% checking the box saying they had "no objections to this format". Similarly, around a third of respondents checked the statements that instead of hybrid, they would push for everyone to be in person (37%) or everyone on Zoom (31%). The most concerning data is highlighted in red; almost 3 times as many litigators feel they're *disadvantaged* if they're the side advocating virtually (42% to 15%). It's imperative from an ethical and business perspective, that neutrals offer clients a genuinely level playing field and complete impartiality. This data suggests that from the outset, the 'virtual' attorney may feel disadvantaged/distanced, which is not an ideal starting point for eventual resolution (or, perhaps, repeat business). I'm thus bearish on hybrids becoming the 'new normal'.



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