

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION MEDIATORS'  
PERCEPTION OF REMOTE MEDIATION  
AND COMPARISONS TO IN-PERSON  
MEDIATION

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## Preamble

We would like to thank those who made invaluable contributions so that our work was fun. The Salisbury University Institutional Review Board (“IRB”) engaged in numerous hours of review of our surveys and methodology to ensure compliance with Human Subject research standards.

The Mediator and Participant studies required multi-level cooperation between the researchers, our EEOC contacts, and their interaction with the third party survey software provider Verint Systems (“Verint”). Tanya Stanfield, Management and Program Analyst in EEOC’s Office of Enterprise Data and Analytics (OEDA) office along with Lori Salter, Supervisor, XM Tech Team at Verint, served as our primary contacts for survey integrity and management; from the start they embraced the importance of our work and exhibited it on a daily basis. Robin Esak, Lead IT Specialist in Analytics & Data Management at EEOC’s Office of Information Technology (“OIT”) provided and designed targeted EEOC data reports used for parallel studies; they were a key tool for Dr. Obar’s data analysis. Alison Kilrain, Management and Program Analyst at OEDA provided oversight and quality control for the Verint integration of surveys and contact data; this was critical for a quality response rate for the online surveys. We also thank Tyrone Willett, IT Specialist/Systems Manager OIT who developed the link for our e-mail address integration. When the survey rolled out, given our months of work on the survey design and methodology, we were biting our nails over survey response and related mechanical details. Alison and Tyrone’s work was indispensable for our successful response rates. Chineyre Onye, Power BI Developer in OIT provided EEOC data reports for the participant surveys we were doing simultaneously with the mediator data; this allowed the team a broader understanding of our mediator measurements and the quality of our data across parties and mediators. A special thanks to our volunteer interpreters. My Salisbury University colleague, Wendy Jin (Chinese interpreter), who first graced my presence in 2008 as my law student during my Fulbright year in Shanghai; EEOC Investigators Mercedes Casasola (Spanish), Blondel Vincent (Creole) and Robby Cedon (Creole). We thank each of you for this donated hard work. Veronica Young, Management Support Specialist in OFP provided oversight of our two research contracts and was always a pleasure to deal with.

Chris Haffer, Chief Data Officer and Director of OEDA, combined vision and leadership skills in a pivotal role, providing survey insight and the necessary staffing for Verint data integration. We give special thanks to Chris for sharing his multi-decade expertise in survey development and data analysis.

The ADR Coordinators who provided survey development feedback and pre-test comments were integral to our success. We know it was a bit unsettling to permit outside academics to ask questions that exposed every aspect of their program, particularly in the context of the effort they expended in successfully transitioning a mediation program online in a pandemic crisis where no one had a playbook. We thank you for your trust. Your support for our work and your belief in your mediators’ abilities are memories we cherish. The ADR Program Assistants also provided support and are as appreciated.

We thank AFGE Council 216 and its leadership for their pre-test review of our Mediator Survey and suggestions on the addition of a quality of work life question. Your support and confidence in the abilities of the EEOC Staff Mediators are validated in our data.

We thank the mediators and participants who took time from their hectic schedules to complete the surveys. We saw the attention and seriousness with which they completed the survey and offered comments and sincerely appreciate their feedback.

A final thanks to National Program Director Steve Ichniowski who we first worked with in the 2000 participant evaluation survey. Once again, Steve was our internal expert who provided invaluable insights to help maximize the quality of our methodology, survey development and data analysis. One of the most challenging aspects of an evaluation is to gain the trust of the internal liaison to be able to ask any question in any format style to ensure that the evaluation is comprehensive and balanced. This included measuring all areas which sometimes is uncomfortable to those in leadership and in the field who are worried what the data will say. Steve provided us full freedom. Given the depth of our mediator and participant surveys, and all the program aspects measured, as the data rolled in, we sometimes felt as though we were waiting for Apollo 13 to successfully reenter the earth's atmosphere. Because of this access and unfettered opportunity, we can state without reservation that we explored every program area our abilities permitted, looking for all program challenges. If we missed any measure deemed important to the reader, it was our error and not that of the EEOC. Thank you Steve. The results reported herein reflect your hard work and that of all of those cited above, and many others who we apologize to if we have not named.

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## I. INTRODUCTION

This is a detailed survey of the mediation process and outcomes investigating mediator perceptions on the Equal Employment Opportunity Commission (“EEOC”) remote or online mediation program (“ODR”). The study uses benchmark mediator measures from a 2001 EEOC In-person Mediation (“IPM”) mediator survey.<sup>1</sup> Also, EEOC settlement statistics were accessed to measure ODR vs. IPM settlement rates. The 2021 mediator data establishes that ODR is an effective alternative to IPM, one that is arguably superior. It is clearly preferred by the mediators.

The data reveals a new pattern of mediation. Mediators report a process that is more flexible, uses enhanced communications tools, increases access to justice, continues to improve with increased use, and is embraced by the mediators. Anecdotal opinions on disadvantages in ODR were tested and are not supported by the data.

## II. SUMMARY OF KEY FINDINGS

Mediators report that:

- ODR at the EEOC is more flexible than IPM. There is increased use of caucusing, increased sharing of important documents, a significant reduction of the time pressure element found in IPM, scheduling flexibility including the ability to extend the time of a mediation and/or quickly reconvene a mediation to maintain settlement momentum, the added value of physical separation of the parties’ safe space, increased/varied communication lanes, the positive role played by insurance adjusters, and the real-time ability to invite other persons such as a key decision-maker into the mediation.

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<sup>1</sup> McDermott, *et. al.*, *The EEOC Mediation Program: Mediators' Perspective on the Parties, Processes, and Outcomes*, EEOC Order No. 9/0900/7632/G, July 31, 2001, Equal Employment Opportunity Commission, <https://www.eeoc.gov/eeoc-mediation-program-mediators-perspective-parties-processes-and-outcomes> (last accessed February 3, 2022).

- Mediators adopted new tactics with ODR that can be seen as a new type of mediation and not duplication of IPM online. The results reveal increased caucusing intensity not possible in IPM and new patterns of mediation communication using concurrent communications. Mediators report immediate private feedback to the mediator, increased use of document sharing, flexible scheduling tactics beyond the parameters set by a physical location, “one shot reconvening” to make one more attempt at settlement, and the flexibility to invite necessary additional participants.
- A majority of mediators saw similar or better quality and value of settlements for both parties in ODR.
- There is little mediator observation of “Zoom fatigue”.
- Mediators did not observe power imbalance issues between the parties. Open-ended comments suggest ODR has a leveling effect with the Charging Party (“CP”) being more comfortable in the Zoom setting.
- There is little evidence of technology issues interfering with the overall quality and results of the mediation. Where mediators report technological issues in ODR these are more likely to occur with the CP.
- The majority of mediators report they can read “body language” in ODR. One quarter report an issue observing body language on Zoom.
- The overwhelming majority of mediators did not report that case settlement was negatively affected by ODR. A minority of mediators observed a case or cases they believe did not settle due to the ODR format.
- Mediators found that ODR was effective across all EEOC Charge bases (race, gender, age, etc.).
- As a mediator gained additional experience in ODR, the numerous measures used herein to evaluate the effectiveness of ODR vis-a-vis IPM increased in favor of ODR.



- EEOC staff mediators, who mediated the majority of the ODR cases in this survey, reported consistently higher measures on the various measures for ODR as compared to the EEOC pro bono and contract mediators with much lower case volumes.
- For most mediators, the EEOC’s transition to ODR was the first time the mediator used ODR.
- Mediators did not observe many new “tactics” used by the parties in ODR.
- Twenty percent report higher settlement rates for their ODR cases with 9% reporting lower rates. A majority (62%) report that their settlement rate for ODR as IPM. Independent EEOC data confirms that ODR has a similar settlement rate (70.9%) as IPM (71.9%) .<sup>2</sup>
- Most mediators did not report a change in any of their tactics used to break an impasse.
- Mediators reported that ODR was easier to use than IPM; their open-ended comments reported an increase in the quality of their work-life balance. There is some evidence that mediations are of shorter duration in ODR.
- The 2021 ODR survey measured the “repeat player effect” which hypothesizes that prior experience with counsel or a party is an advantage. It is seen as a positive factor for resolution.
- The responses of the pro bono and contract mediators show they believe that their experience at EEOC ODR is similar to workplace mediation in other forums (American Arbitration Association, Financial Industry Regulatory Authority, courts, etc.) for this period of time suggesting this EEOC data is generalizable to other mediation forums.
- Access to justice is enhanced by the EEOC ODR program by increased employer personnel and decision-maker participation, ease of participation of other key attendees, increased employee access, power balancing, removal of the CP’s fear of being in the same location as the Employer for some cases, and related benefits to both parties.

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<sup>2</sup> Ichniowski.Stephen, Email to E. Patrick McDermott, 7 February 2021 reporting settlement rates of 71.9% in FY 2019 which was all IPM; 69.4% for 2020 which was split 50/50 between IPM and ODR; and 70.9% in FY 2021 which was all ODR.

### III. PROGRAM AND EVALUATION HISTORY

The EEOC mediation program began with a pilot program in 1991.<sup>3</sup> An evaluation of the pilot program was performed in 1994 (“McEwen pilot study”).<sup>4</sup> After the program was introduced nationally, the EEOC commissioned a comprehensive program evaluation (“the 2000 participant evaluation”).<sup>5</sup> In 2001 there was an evaluation of the mediator perceptions of the process, the dispute, and the parties (“the 2001 mediator study”).<sup>6</sup> The mediator study data resulted in peer reviewed journal articles and other scholarship.<sup>7</sup> In 2003 there was an evaluation of the reasons employers declined to participate in EEOC mediation.<sup>8</sup>

As a result of the pandemic, by mid-March 2020, the EEOC shifted all IPMs to remote platforms or phone mediations. By September 2020, Zoom was adopted as the primary platform.

### IV. METHODOLOGY:

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<sup>3</sup> E. Patrick McDermott, *et. al.*, *An Evaluation of the Equal Employment Opportunity Commission Mediation Program, Section D – The Evolution of the EEOC Mediation Program*, EEOC ORDER NO. 9/0900/7632/2, Equal Employment Opportunity Commission, 2000 - September 20, 2000 (referred to herein as the “2000 participant study”)(last accessed February 3, 2022).

<sup>4</sup> Craig A. McEwen, *An Evaluation of the Equal Employment Opportunity Commission's Pilot Mediation Program*. Report to the Center For Dispute Settlement under contract with the Equal Employment Opportunity Commission. March, 1994 (last accessed February 5, 2022). McEwen’s study data was gathered prior to enactment of the Americans With Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”). This suggests a different demographic mix of CPs than found in 1994.

<sup>5</sup> *Supra* note 1.

<sup>6</sup> E. Patrick McDermott, *et. al.*, *The EEOC Mediation Program: Mediators' Perspective on the Parties, Processes, and Outcomes*, EEOC Order No. 9/0900/7632/G, July 31, 2001, Equal Employment Opportunity Commission, <https://www.eeoc.gov/eeoc-mediation-program-mediators-perspective-parties-processes-and-outcomes>;

<sup>7</sup> E. Patrick McDermott and Ruth Obar, *What’s Going On in Mediation: An Empirical Analysis of the Influence of a Mediator’s Style on Party Satisfaction and Monetary Benefit*, 9 Harv. Neg. L. Rev. 75 (Spring 2004), *Reprinted in part* in *ADR in the Workplace*, Cooper, Nolan and Bales, Second and Third Editions; in press for Fourth Ed. at Chapter XIII, 2020; E. Patrick McDermott and Ruth Obar, *Mediation of Employment Disputes at the EEOC* in S. Estreicher & J. Radice (Eds.), *Beyond Elite Law: Access to Civil Justice in America*, (2016), Part III, Chapter 31: 463-477. Cambridge: Cambridge University Press. doi:10.1017/CBO9781107707191.035; McDermott, *et. al.*, *Mediator Style and Behavior: What You See and What You Get*, J. of Emp. and Labor Law, 2014, Vol. 15, Academy of Legal Studies in Business; *See also*, Cynthia Pierre, *Perceptions of Procedural Justice in Workplace Dispute Mediations, Bargaining in the Shadow of Justice*, Ph.D. Dissertation, The George Washington University School of Business and Public Management, February 22, 2006.

<sup>8</sup>E. Patrick McDermott, *et. al.*, *An Investigation of the Reasons for the Lack of Employer Participation in the EEOC Mediation Program*. Principle Researcher, Equal Employment Opportunity Commission, 2003 <https://www.eeoc.gov/investigation-reasons-lack-employer-participation-eeoc-mediation-program>. (last accessed February 11, 2022).

Using measures from the 2001 IPM survey, the 2021 ODR survey then added new measures to obtain the mediators' vantage point on ODR and comparisons to IPM. The one major difference is that the 2021 survey was taken online - not administered in person with written responses. Another 2021 survey advantage was that for certain closed ended questions providing a choice of responses, the online survey serially generated a random list of the possible responses; this minimized bias in favor of selection of the first listed response and reduced any cognitive anchoring that may occur by a fixed order of responses. Survey development occurred in the context of the rapid transition to video platform ODR at the EEOC and the existing practitioner debate over the effectiveness of ODR, including contemporary anecdotal professional discussions on this issue.<sup>9</sup> The authors attended professional conferences, communicated with dispute resolution professionals, and read professional and practitioner journals and discussion posts to develop new ODR measurements to test the anecdotal comments and professional opinions offered during this sudden and massive transition to ODR in our nation's legal system.<sup>10</sup>

The survey was pretested by the EEOC's 16 Supervisory ADR Coordinators from May 17, 2021 through May 20, 2021. The labor organization representing bargaining unit staff mediators provided

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<sup>9</sup> While most mediations were performed in Zoom the broader term of video platform is used to encompass Zoom, Microsoft Teams, and similar video platforms.

<sup>10</sup> *How The Pandemic Impacts Arbitrators and Mediators*, Scheinman Center, New York State School of Industrial and Labor Relations at Cornell University, [https://www.ilr.cornell.edu/scheinman-institute/practice/pandemics-impact-on-conflict-resolution?utm\\_medium=email&utm\\_source=custom-blast&utm\\_campaign=ilr-aad-outreach-2021](https://www.ilr.cornell.edu/scheinman-institute/practice/pandemics-impact-on-conflict-resolution?utm_medium=email&utm_source=custom-blast&utm_campaign=ilr-aad-outreach-2021) (November 29, 2020); *How The Pandemic Impacts Plaintiffs Attorneys, Id.*; *How The Pandemic Impacts Union Advocates, Id.*; Florida Bar, 21<sup>st</sup> Annual Labor and Employment Law Update, January 15, 2021; *Labor Relations in the Time of the Pandemic*, Labor and Employment Relations Association, <https://youtube/ar3Cyy5Yjgkbe/ar3Cyy5Yjgk> May 28, 2020; *Mediators Raise Concerns About Online Eviction Mediation Program* <https://boisedev.com/news/2021/07/08/mediators-raise-concerns-about-online-eviction-mediation-program/> (July 9, 2021); Anne Cullen, *EEOC's Pandemic Operations Get High Marks From Lawyers*, Law 360, July 20, 2021; Colin Rule, *New Mediator Capabilities in Online Dispute Resolution*, Mediate.com, <https://www.mediate.com/articles/rule.cfm> (December 2020); Ebner, Noam, *E-Mediation* (2012). M.S. Abdel Wahab, E. Katsh & D. Rainey (Eds.) *Online Dispute Resolution: Theory and Practice*, p. 357, The Hague: Eleven International Publishing, 2012, available at <https://ssrn.com/abstract=2161451> (last accessed February 5, 2022); Caputo, Andrea, Giacomo Marzi, Jane Maley, and Mario Silic. *Ten Years of Conflict Management Research 2007-2017*. International Journal of Conflict Management (Emerald) 30, no. 1 (January 2019): 87-110. doi:10.1108/IJCM-06-2018-0078; LERA Dialogue, *The Remarkable (And Often Very Surprising) Benefits of Online Mediation*, 2020.

additional valuable feedback.<sup>11</sup> The survey was then emailed by the EEOC to all EEOC roster mediators - EEOC staff, pro bono, and contract mediators.

The mediator survey began July 2, 2021 and closed on September 24, 2021. Mediators were initially advised by email on July 1st that the survey would be available for completion the next day. The survey was administered by the EEOC using Verint survey management software (“Verint”) in collaboration with the researchers. The solicitation automatically sent four initial and follow-up emails during the survey period (July 2<sup>nd</sup>, July 8<sup>th</sup>, August 4<sup>th</sup>, and August 24<sup>th</sup>) to remind and encourage those who had not responded to complete the survey. The response rate data is set forth below.

**Table 1. Survey Response Statistics<sup>12</sup>**

	<b>All Mediators</b>	<b>Staff</b>	<b>Contract</b>	<b>Pro bono</b>
Total number of mediators:				
Who received a survey via email	254	69	70	115
Who consented to complete the survey	161	53	41	67
Response rate	63%	77%	59%	58%
Surveys included in the analysis	139*	52	34	53
Completion rate**	86.3%	98.1%	82.9%	79.1%

\* Twenty-two surveys were excluded due to missing information or lack of experience in video mediation.

\*\* Completion rate is defined in this study as the number of eligible surveys (139) divided by the number who consented to complete the survey (161 total mediators).

During the survey period, the EEOC staff mediators performed about 91 percent of the mediations, with 4 percent for pro bono and 5 percent for contract mediators.<sup>13</sup> The breadth of mediator type is important because there is sufficient data from contract and pro bono mediators who mediate across other legal forums; this allows for the generalizability of the data. Results are reported by these classifications.

## V. **THE RESULTS**

### A. Experience Online

<sup>11</sup> A written version of the survey is attached as Appendix A.

<sup>12</sup> Ichniowski, Stephen. Email to E. Patrick McDermott, 27 September 2021 (identifying census for classifications of mediators surveyed).

<sup>13</sup> *Id.* (identifying mediations performed by classification).

The survey measured mediator experience with online mediation prior to the pandemic. Eighty-one percent (111 of the 137 mediators who responded) first used online mediation as a result of the pandemic; 19% (26) had prior experience. The results were similar across staff, contract, and pro bono mediators. For the 19% with prior experience, most of that small group used ODR within the five prior years; some had over a decade of ODR experience.

Many of the EEOC mediators had extensive online experience at the time of the survey, with 62% having conducted over 60 online mediations in the 12 months prior to the survey. In contrast, very few contract and pro bono mediators mediated with the same regularity. A little less than half of the pro bono mediators (49%) conducted six or more online mediations; contract mediators reported similar results (44%). The rest conducted from one to five mediations in the same period.

## B. Mediation Process

### 1. Mediation Duration

The survey asked if mediation took less time online compared to in-person. Forty percent agreed or strongly agreed that the online mediations took less time; 35% were neutral and 26% disagreed or strongly disagreed that online mediation took less time.<sup>14</sup> On a Likert Scale from 1 to 5 (with “1” corresponding to Strongly Disagree and “5” to Strongly Agree), the aggregate results tip slightly to the “less time” observation at 3.18. When the EEOC mediator responses are measured separately, the mean increases to 3.37. This measure is refined further by separating EEOC staff mediators with 21 or more cases mediated. This cutoff was selected to identify mediators with significant cases and thus a better foundation for comparison of ODR to IPM. The average rating of the 43 staff mediators who had mediated at least 21 cases in the past 12 months prior to the survey period is slightly higher at 3.49. This

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<sup>14</sup> This analysis does not provide an operational definition of “efficiency”. In constructing an efficiency model mediation duration would be an element.

suggests that the more experienced staff mediators observe, on the average, a decrease in duration for ODR compared to IPM.<sup>15</sup>

The majority (63%) of mediations lasted between 3-5 hours (31% at 3 – 4 and 32% at 4 – 5 hours). The 2001 IPM mediation study reported 36% of the mediations lasting 3-5 hours. Comparison of these similar, but not mirroring measures, suggests that for over two decades of measurement most mediations last between 3 to 5 hours.<sup>16</sup>

**Table 2. Length of Mediation Session**

	<b>2021</b>	
	<b>Total</b>	
	<b>#</b>	<b>%</b>
<b>Total number of mediators responding</b>	137	100%
Less than 2 hours	0	0%
At least 2 hours but less than 3 hours	7	5%
At least 3 hours but less than 4 hours	43	31%
At least 4 hours but less than 5 hours	44	32%
At least 5 hours but less than 6 hours	22	16%
At least 6 hours but less than 7 hours	14	10%
At least 7 hours but less than 8 hours	7	5%

C. Mediator Tactics

1. New Tactics In ODR

New tactics are classified into Invitation, Technology, and Administrative subsections. The survey questions were framed to emphasize that the mediator was being asked to identify *new* tactics in ODR. Tables 3 to 6 report these results.

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<sup>15</sup> Additional data at Table 7 (p. 23) indicates that over a third of the mediators see the opening offer and counteroffer appearing sooner in ODR and that this observation increases with mediator case experience.

<sup>16</sup> The 1994 McEwen pilot study found that the average mediation time was 3 to 6 hours.

**Table 3. Summary Table – Additional Tactics Used in ODR**

	All Mediators		Staff		Contract		Pro Bono	
Category: Invitation	139	100%	52	100%	34	100%	53	100%
Did not check any tactic under this category	63	45%	18	35%	15	44%	30	57%
Checked at least one tactic under this category	76	55%	34	65%	19	56%	23	43%
Category: Technology	139	100%	52	100%	34	100%	53	100%
Did not check any tactic under this category	21	15%	6	12%	4	12%	11	21%
Checked at least one tactic under this category	118	85%	46	88%	30	88%	42	79%
Category: Administrative	139	100%	52	100%	34	100%	53	100%
Did not check any tactic under this category	20	14%	5	10%	6	18%	9	17%
Checked at least one tactic under this category	119	86%	47	90%	28	82%	44	83%

A review of the use of the classifications show that about half of the mediators did not select any of the “inviting” tactics. A great majority reported use of the technology or administrative classification measures. Only about 15% did not use any of the Technology or Administrative tactics listed in the survey; most of those were contract or pro bono mediators.

a. Invitation Tactics

Practitioners were asked about inviting persons who were not at the mediation.<sup>17</sup> There was a list of various types of “invitees” to Zoom mediation. The survey also sought to identify how the need for the invitee arose. The survey also probes whether a key decision maker was “demanded” as opposed to invited. Table 4 sets forth the type of invitees and the context of the invitation:

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<sup>17</sup> This is the first of many “flexibility” measures embedded in the survey.

**Table 4. Additional Tactics Used by Mediators – Invitation Tactics**

Invitation Tactics	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Inviting an outside party (witness, family, expert, trusted intermediary, etc.)	21	15%	9	17%	7	21%	5	9%
Inviting a key outside person who can add important facts to join the session as a result of information exchanged in the mediation session	20	14%	10	19%	5	15%	5	9%
Inviting a key outside person who can add important perspective to join the session as a result of information exchanged in the mediation session	24	17%	11	21%	8	24%	5	9%
Inviting a key outside person who is a decision maker as a result of information exchanged in the mediation session	30	22%	16	31%	8	24%	6	11%
Inviting a key outside person who is needed for a party’s emotional or other support as a result of information exchanged in the mediation session	37	27%	20	38%	10	29%	7	13%
Inviting an insurance company representative	43	31%	19	37%	9	26%	15	28%
Demanding a key decision maker who is not at the table to join	16	12%	4	8%	7	21%	5	9%
Other key person you have invited to video mediation (see list below)	5	4%	4	8%	1	3%	0	0%

The survey asked an open-ended question to identify other key invitees. Four percent identified “other” key persons who including an interpreter, a service animal, a newborn who was being breastfed, and a Board member.

b. Technology Tactics

The survey sought to identify new technology related tactics and other tactics employed in ODR.



**Table 5. Additional Tactics Used by Mediators – Technology Tactics**

Technology Tactics	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Inviting a party to share a key document	89	64%	35	67%	23	68%	31	58%
More frequent use of the breakout room tool for caucusing/shuttling/attorney discussions, etc.	84	60%	35	67%	21	62%	28	53%
Concurrent caucusing (using a main session and concurrently communicating with each party during the main session with chat, text, etc.)	50	36%	23	44%	11	32%	16	30%
More use of a party's documents via the video share tool in the separate caucus/breakout room	45	32%	25	48%	6	18%	14	26%
More use of a party's documents via video sharing in joint session	48	35%	23	44%	11	32%	14	26%
Use of the "chat" tool for general communications	52	37%	30	58%	10	29%	12	23%
Use of the File Transfer chat tool to vet the settlement agreement language with parties	17	12%	6	12%	6	18%	5	9%
Using the video communication tools such as clap, thumbs up, etc.	15	11%	12	23%	2	6%	1	2%
Use of neutral audio-visual clip(s), music, etc.	5	4%	3	6%	1	3%	1	2%
Other technology tactics you use	8	6%	6	12%	2	6%	0	0%

**i. Document Sharing**

Sixty-four percent invited a party to share a document. All mediator classifications reported high use of this online tactic.

The survey measured the increased use of document sharing in *caucus*. It sought to identify whether *more* document sharing was occurring in caucus with ODR than in IPM. Overall, 32% report more sharing of documents in caucus. For the EEOC mediators this was much higher at 48%. Only 18% of the contract mediators reported a higher amount of document sharing in caucus.

ii. The Caucus

The data shows an acceleration in caucusing with ODR. There is a speed and ease of movement from one party to the next found in ODR.<sup>18</sup>

iii. The Chat Tool/Concurrent Caucusing

Thirty-seven percent of all mediators used the chat tool for general communications. Fifty-eight percent of the EEOC mediators use this tool compared to 29% for contract mediators and 23% for pro bono.

“Concurrent caucusing” is defined in the survey question as using “chat, text, etc.” to communicate with one party during the joint session. Practitioners identified this as a new aspect of ODR. This additional communication tactic/tool can be seen as a developing area in a mediator’s style as it broadens direct mediator – party communication. This communication could occur during a joint session or outside. It is also not limited to the video platform; that there may be multiple simultaneous digital channels of communication. For example, one could text the mediator while in joint session creating a simultaneous dual channel of communication.<sup>19</sup> Thirty-six percent of mediators engaged in this new type of mediator conduct. The EEOC mediator rate is much higher at 44% compared to 32% for contract and 30% for pro bono mediators.

iv. Other Technology Tools/Tactics

The survey measured the use of other platform tools/tactics. Eleven percent used the additional video tools of clap, thumbs up, etc. This was 23% for EEOC mediators and only 6% for contract mediators and 2% for pro bono.

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<sup>18</sup> Our one author’s experience in ODR mediation as an advocate in 2021 with a U.S. Magistrate Judge in a settlement conference and in a Financial Industry Regulation Authority (“FINRA”) mediation evidenced a qualitative improvement in caucusing via Zoom.

<sup>19</sup> Such simultaneous “dual channels” were nonexistent in IPM though one could posit that reading body language is a “dual channel”.

Four percent used neutral video clips and music to contribute to a positive setting. Six percent reported other technology tactics including caucus by phone, emails, whiteboarding, modeling settlement outcomes with the parties, and related technology tools. The EEOC mediators were more active with these tools/tactics.

c. Administrative Tactics

The survey also identified new tactics which labelled as “administrative”. They are classified separately as they do not involve substantive mediation conduct but elements surrounding mediation time and place that can be considered tactical.

**Table 6. Additional Tactics Used by Mediators – Administrative Tactics**

Administrative Tactics	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Enhanced scheduling availability to meet parties' needs (no building hours or traffic issues, etc.)	103	74%	43	83%	24	71%	36	68%
More effective separation of the parties by Zoom breakout room tool compared to when physically sharing the mediation site	85	61%	40	77%	20	59%	25	47%
Inviting a party to send a document to the other party via the video chat feature	29	21%	15	29%	8	24%	6	11%
Willingness to extend the time of the session due to the convenience of video	87	63%	40	77%	16	47%	31	58%
Offering to quickly reconvene the mediation at another time for one more shot at a settlement if possible	86	62%	39	75%	20	59%	27	51%
Other administrative tactics	9	6%	6	12%	1	3%	2	4%

The survey measured the ability to use ODR to reconvene for “one more shot” at settlement. This measure sought to measure an act that is almost always more difficult in the traditional fixed timeframe/location mediation format due to party and counsel scheduling, on-site issues, travel and other factors not found in ODR. Overall, 62% of the mediators reported using this ODR flexibility with 75% of

the staff mediators using this tactic. Fifty-nine percent of the contract and 51% of the pro bono mediators report engaging in this extra settlement effort.

i. Location – Physical Separation Benefits

Sixty-one percent reported the benefit of not having parties in the same physical location. For EEOC mediators this is a high percentage at 77%. This safe space advantage may be greater for some types of mediation issues. The data establishes increased access to justice for intimidated participants.

ii. Document Exchange Via Chat FTP

Twenty-one percent asked the parties to directly share documents with each other during the mediation with the file attachment tool in chat.

iii. Additional Administrative Tactics – Open-ended Responses

Other tactics reported in our open-ended section included the ability to easily reschedule without the parties and mediator having incurred travel expenses, use of the Microsoft Teams platform, and the ability to use multiple breakout rooms to separately talk to counsel, including one-on-one discussions with counsel.

d. Other Tactics

The final grouping sought any other tactics not classified in the Invitation, Technology, and Administrative tactics section. One additional important tactic was the ability to allow for longer breaks for parties to gather information. While this is reflected in the broader scheduling flexibility data reported above, it suggests that online mediation is a different process because of the real-time ability to gather information more easily during the session breaks.

D. Ground Rules

The survey asked if additional ground rules were used in online mediation. Sixty-three percent reported no change, while 25% reported additional ground rules. Nine percent of the mediators do not use ground rules and 3% report use of less ground rules. The mediators who used new ground rules in ODR

identified a range of rules such as no cameras turned off, obligation to identify the persons in the room, privacy of the mediation, no recording, using the mute when not speaking, and remembering that body language may not be as evident so make sure to be verbal.

#### E. Online Factors Facilitating Resolution

The survey sought to identify aspects of online mediation that facilitate resolution. Mediators identify flexibility in the process, including management of external time constraints (63%) and physical separation of the parties (37%). The change in the time constraints limitations suggest a major qualitative advantage of ODR as compared to IPM. The observation of less formality in online mediation is also reported as contributing to resolution (36%).

#### F. Novel Factors Facilitating Resolution: Mediator Voice by Verbatim Responses.<sup>20</sup>

The survey seeks to expand on the mediator voice by inclusion of additional insights from open-ended questions seeking the identification of novel “factors or conduct” that facilitate resolution. These verbatim responses can be found in Appendix B (Table 29). A number of these comments point out to ODR as fostering an environment conducive to mediation. Representative comments include “comfortable environment”, “people are more relaxed participating from home/in their personal environments”, and “complainants less nervous and more receptive to settling”. This comfortable environment contributes to “lowering the tension” and allows charging parties, specially, “to be calmer”, “listen better”, and “be more amenable to settle”. One commented that being in a federal building or an office setting is intimidating to some charging parties.

A number of comments compared the stress level of travelling and dealing with parking issues and related issues that “increase the tension” in IPM that are not found in ODR. One mediator mentioned that this not only applies to the parties but also to the mediators.

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<sup>20</sup> The verbatim comments were corrected for major spelling and grammar errors only.

The flexibility afforded by ODR to multi-task was also mentioned: “they can feed their kids”, “walk the dog”, and attorneys can multi-task while the mediator is with the other party. The observation that time is not “wasted” is found in this mediator survey and the related separate participant survey.

Employer focused comments note the financial savings that allow higher settlement offers including, “some attorneys will help parties to settle by reducing fees because they didn’t have to travel”. Other Employer-related comments note advantages such as the flexibility of allowing multiple distant parties to participate, reducing power imbalance and the availability of resources for both parties.<sup>21</sup>

### G. Comparing ODR and IPM

#### 1. Comprehensive Agree or Disagree Questions Comparing Video Mediation to In-Person

Embedded midway in the survey is a section of 18 short Agree/Disagree questions comparing IPM to ODR. This is a change of survey pace that seeks to elicit detailed insight in a faster flow. The mediators were presented a list of statements about the video mediation; the statements were randomly generated so that each mediator received a set of statements ordered differently from the others.<sup>22</sup> This section provides new data while also reinforcing, via different framing, other measurements. The results are shown in Table 7 below.

One key finding is that the element of time pressure, which is one of the key factors influencing traditional negotiation, is seen as being altered in online mediation by 67% of the mediators. This can be seen as positive because it reduces a coercive tactic in negotiation that less sophisticated parties could fall prey to. A second key finding is that 62% report that ODR protects “settlement momentum” to a greater extent than IPM. Third, while many critics of ODR claim that ODR makes it impossible to read body language, 57% of the mediators report they can effectively read body language in ODR; one-quarter report they cannot. Fourth, 55% report the document sharing tool improves communication for sharing of

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<sup>21</sup> In the related survey of participants the open-ended verbatim comments mirror those of the mediators suggesting that the ODR advantages extend far beyond the issue of the Covid-19 pandemic.

<sup>22</sup> This methodological advantage is not found in the 2001 IPM mediator survey.

documents that may impact settlement. Fifth, over 50% report more efficient caucusing. Sixth, almost half the mediators observe less emotional outbursts from participants. Finally there is minimal evidence that ODR negatively impacts impasse resolution with only 17% reporting this occurs.

**Table 7. Comparing ODR and IPM:**

	<b>% Agree</b>	<b>% Disagree</b>	<b>% Neither Agree nor Disagree</b>
The <b>time element pressure</b> at the end of the mediation on video is more flexible than the time pressure toward the end of an in-person mediation.	67%	16%	17%
In video mediation <b>settlement momentum</b> is not lost because the parties or their attorneys leave the in-person mediation due to external reasons (parking, other appointments, travel issues, someone else has scheduled the room, etc.)	62%	15%	23%
I can effectively read <b>body language</b> and related cues in video mediation.	57%	26%	17%
The <b>video document “share” function</b> improves communication of document content that may impact settlement.	55%	6%	39%
<b>Video caucuses</b> are more efficient with breakout rooms than when I used caucuses in person.	51%	20%	29%
I see <b>less emotional outbursts</b> from participants when mediating with video.	46%	28%	26%
Mediation moves at a faster <b>pace</b> by video compared to in-person mediation.	44%	22%	34%
Video mediation reduces the time I would normally spend in an in-person mediation in <b>preliminary relationship building</b> between me and a party.	40%	33%	27%
The parties are <b>more direct</b> in video communication with the other party in joint session compared to in person.	39%	24%	37%
Attorneys are more efficient in video mediation compared to in-person mediation.	38%	25%	37%
The <b>Opening offer</b> is usually on the table faster compared to in-person mediation.	37%	33%	30%
Parties are more <b>respectful</b> to each other on video.	37%	15%	48%
In a <b>caucus</b> the parties are more direct in video communication compared to in person.	35%	23%	42%
The <b>First counter-offer</b> is made quicker compared to in-person mediation.	33%	31%	36%
There is less <b>back and forth with attorneys</b> in video mediation.	33%	38%	28%
<b>Attorneys are more respectful</b> in video mediation.	26%	20%	54%

My <b>tactics</b> for managing <b>impasse</b> are different in video mediation than in-person.	23%	44%	33%
It is more difficult to resolve party <b>impasse</b> on video than in-person.	17%	50%	33%

\* Row totals sum to 100%. The number of mediators responding range from 119 to 123 mediators.

Comparison within the three types of mediators (See Table 22b, Appendix B) reveal that the contract and pro bono mediators report lower ability to read body language. In comparison to the staff mediators with their greater volume of case experience, these other mediators also do not as strongly rate the additional ODR tools in this survey. This suggests that the impact of case mediation experience on these observations.

Deeper analysis on mediator attitudes to ODR based on case volume is relevant here. (See Table 22c, Appendix B.) A twenty case cutoff measure was applied with the theory that twenty or more cases provides a mediator sufficient experience to compare ODR to traditional mediation. Mediators with ODR case experience of more than 20 mediations report a faster pace of mediation, a quicker first offer and counter-offer on the table, less time element pressure, better ability to maintain settlement momentum, better ability to read body language, and an overall effective use of the Zoom tools. These measures show a clear trend that as one mediates more cases by ODR, the comparative advantages of ODR are reported to be greater.

## H. Settlement Rates

### 1. Mediator ODR Perception

The mediators were asked to compare their online mediation settlement rates with in-person rates. Sixty-two percent reported no difference. Twenty percent observed a higher settlement rate while 9% reported a lower settlement rate. Nine percent were not sure of any difference.

**Table 8. Mediators' Perception of Settlement Rates Using IPM and ODR**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
Higher compared to in-person mediation	28	20%	18	35%	3	9%	7	13%



Lower compared to in-person mediation	12	9%	3	6%	5	15%	4	8%
The same as in-person mediation	85	62%	27	53%	24	71%	34	64%
Not sure	13	9%	3	6%	2	6%	8	15%

## 2. EEOC Settlement Statistics

The ODR settlement rate is about 70%.<sup>23</sup> This includes data from the rapid transition to ODR. For the IPM and ODR comparison measures, EEOC fiscal year (“FY”) data was used. This permits the comparison of the ODR settlement rates to IPM shortly before the ODR transition.

**Table 9. Settlement Statistics from the EEOC<sup>24</sup>**

<b>Period</b>	<b>All Mediators</b>	<b>Staff Mediators</b>	<b>Contract Mediators</b>	<b>Pro Bono Mediators</b>
FY 2019 10/1/18 – 9/30/19	71.9%	72.4%	70.1%	62.7%
FY 2020 10/1/19 – 9/30/20	69.5%	69.6%	68.4%	62.5%
FY 2021 10/1/20 – 9/30/21	71.0%	71.8%	65.1%	61.5%
ODR period: 3/15/20 – 6/30/21	69.1%	69.8%	66.1%	61.3%

### I. Settlement Value and Quality for the Charging Party

The survey sought the mediator’s perception of 1) the *total value* of the settlement that includes the monetary and non-monetary settlement values and 2) the *overall quality* of the settlement for the Charging Party.

#### 1. Settlement Value By Mediator Status

Responses by mediator status show a difference on the settlement value measure with 35% of the staff mediators reporting a higher settlement for the Charging Party compared to 9% for contract and 13% for pro bono. Staff mediators handle a much higher volume cases and thus arguably represent a more

<sup>23</sup> *Supra*, n. 2.

<sup>24</sup> *Id.*

experienced ODR cohort. The difference could be a function of case experience, type of mediator, or other factors not measured.

**Table 10. Mediators’ Perception on the Value of Settlement for the Charging Party**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
Higher – The Charging Party/plaintiff seems to do better in VIDEO mediation.	28	20%	18	35%	5	15%	5	9%
Lower – The Charging Party/plaintiff seems to obtain less value in VIDEO as compared to IN-PERSON mediation.	8	6%	1	2%	3	9%	4	8%
Similar	88	64%	29	57%	22	65%	37	70%
Not sure	14	10%	3	6%	4	12%	7	13%

2. Settlement Quality By Mediator Status

The survey sought to discern if the mediators reported different results when asked about the overall quality of the Charging Party outcome. The logic of the separate quality question was that a dispute resolution can be measured by a broader concept of “overall quality”. This logic aligns with the idea of mutual problem solving and value creation.<sup>25</sup> The results suggest some mediator discernment of the difference – but not much. Almost 70% report similar outcomes though a larger proportion of staff mediators observed a higher overall value outcome compared to a lower overall quality value.

**Table 11. Mediators’ Perceptions of the Quality of Settlement for the Charging Party**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
Higher – The Charging Party obtains a higher quality resolution in video mediation	23	17%	14	27%	5	15%	4	8%

<sup>25</sup> Stuart Nagel, *The Benefits of Win-Win Mediation*, *Judicature* 85, no. 3 (November-December 2001): 110-111.

Lower – The Charging Party obtains a lesser quality resolution in video as compared to in-person mediation	8	6%	1	2%	3	9%	4	8%
Similar	94	68%	32	63%	23	68%	39	74%
Not sure	13	9%	4	8%	3	9%	6	11%

J. Settlement Quality for the Employer

A majority of mediators (63%) believed that the value of the settlement for the employer was similar to IPM. Twenty-five percent saw the value as higher for the employer while only 3% reporting a lower value for the employer. Nine percent were not sure.

Once again there is a difference in the staff mediator response with 43% observing that the Respondent obtains a higher value settlement compared to 26% for contract and 8% for pro bono.

**Table 12. Mediators’ Perceptions of the Quality of Settlement for the Respondent**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
Higher – The Respondent obtains a higher quality resolution in video mediation	35	25%	22	43%	9	26%	4	8%
Lower – The Respondent obtains a lesser quality resolution in video as compared to in-person mediation	4	3%	1	2%	1	3%	2	4%
Similar	87	63%	25	49%	21	62%	41	77%
Not sure	12	9%	3	6%	3	9%	6	11%

K. Settlement Failure Due to the Online Format

Mediators were asked to identify what percent of the mediations that did not result in resolution were attributed by the mediators to the online format. Seventy-one percent did not observe any cases where ODR interfered with resolution. Seventeen percent of the mediators identified a continuum of 1% - 10% of their cases where ODR interfered with resolution. Only fourteen mediators reported that more than 10% of their cases were negatively impacted by ODR.

**Table 13. Settlement Failure as a Result of Using ODR**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	113	100%	44	100%	25	100%	44	100%
Zero cases affected	80	71%	28	64%	18	72%	34	77%
1% – 10% of cases conducted	19	17%	9	20%	2	8%	8	18%
11% – 25% of cases conducted	9	8%	4	9%	3	12%	2	5%
26% – 50% of cases conducted	1	1%	0	0%	1	4%	0	0%
51% – 75% of cases conducted	1	1%	0	0%	1	4%	0	0%
76% – 100% of cases conducted	3	3%	3	7%	0	0%	0	0%

L. Role of the Insurance Adjuster in Settlement

The 2001 mediator survey did not consider the role of the Insurance Adjuster. The current ODR survey provides this valuable additional measure.

The survey sought to identify the role and impact of the insurance adjuster in facilitating resolution. The adjuster could also have been invited by a party or counsel. The highest observation, at 47%, was that the adjuster was flexible, open, straightforward. Forty-three percent of the mediators identified the adjuster’s realistic conduct as another one of the top three elements facilitating resolution. Forty percent placed this measure as the number one of the three forced ranked factors. (See Table 30a at Appendix B).

The survey separately measured the mediator observations of the insurance adjuster’s direct interaction with the parties. Sixty-seven percent reported that the adjuster was able to effectively communicate online. Only 4% reported that the communication was not effective with the remainder unable to judge the effectiveness of the adjuster in communicating with the parties.<sup>26</sup>

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<sup>26</sup> The survey did not measure whether more adjusters were able to attend the mediations than before. This is important to consider as a flexibility measure not measured by the survey.

### M. The “Repeat Player Effect” In Mediation

The survey sought to gather data on the “repeat player effect” theory in justice literature.<sup>27</sup> This theory argues that one-shot litigants in traditional litigation or arbitration are at a disadvantage. The mediators were asked if they had prior experience with one of the parties, including counsel. If they answered yes, the survey sought to identify the party and to observe the influence of this repeat player situation by asking if it impacted the mediation outcome.

A majority of mediators report repeat player experience including with either the charging party attorneys or other representatives (68%), respondents (62%), and respondent attorneys or other representatives (67%). Less than half of mediators (42%) have repeat experiences with insurance adjuster.

Mediators were asked for the percent of their mediations involving multiple previous experience with each of the participants above. Their actual responses (in %) are tabulated below and grouped in increments of 20 percentage points. Among those who report repeat player experiences with various mediation participants, more than half (54%) report mediating with the same employer in more than 80% of their cases; 41% report mediating with the same employer attorney or representative in more than 80% of their cases. The frequency of mediating with the same charging party attorney or representative varies as shown in the table below. Three out of four mediators report mediating with the same insurance adjuster in no more than 20% of their cases.

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<sup>27</sup> For a discussion of the repeat player issue See Lisa B. Bingham, *Employment Arbitration: The Repeat Player Effect*, *Emp’ee Rts. and Emp. Pol. J.* 1 (1997): 189-220. Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *L. & Soc’y Rev.* 95 (1974). See also Bahaar Hamzehzadeh, *Repeat Player vs. One-Shotter: Is Victory all that Obvious*, 6 *Hast. Bus. L.J.* 239 (2010)(empirical testing of the repeat player theory for Wal-Mart in federal court litigation.)

**Table 14. Repeat Player Incidence**

	Charging Party Attorney or other Representative		Respondent		Respondent Attorney or other Representative		Insurance Adjuster	
	#	%	#	%	#	%	#	%
Total number of mediators responding	86	100%	74	100%	86	100%	51	100%
1% - 20%	17	20%	20	27%	20	24%	38	75%
21% - 40%	16	18%	5	7%	7	8%	8	16%
41% - 60%	16	19%	6	8%	7	8%	4	8%
61% - 80%	15	18%	3	4%	17	19%	0	0%
81% - 100%	22	25%	40	54%	35	41%	1	2%

The survey also sought to identify whether the prior experience impacted the outcome of the subsequent mediation. The mediators reported that this prior experience with a party or their advocate had very strong impact 8% of the time, strong impact 20% of the time, and some impact 33% of the time. Twenty six percent indicated no impact for the repeat player.

Following up on impact, in an open-ended format the mediator was asked how the impact is manifested. Overwhelmingly, the prior experience is reflected as developing trust and otherwise facilitating dispute resolution in the subsequent interactions. This element of bargaining credibility and relationship is one of the original repeat player theories in the list of nine factors favoring the repeat player; it is also one of seven factors adverse to the interests of the “one-shotter”.<sup>28</sup> The survey data establishes that this advantage flows equally to CPs with representation and to Employers.<sup>29</sup>

<sup>28</sup> *Id.* Galanter at 96-103.

<sup>29</sup> Michael Z. Green, *Tackling Employment Discrimination with ADR: Does Mediation Offer a Shield for the Haves or Real Opportunity for the Have-Nots*, Berk. J. of Employ. and Lab. L. 26, No. 2 (2005): 321-362 at 340. (discussing the application of the repeat player effect to mediation).

N. Participant Focus – Is There “Zoom Fatigue”?

The survey sought to measure participant focus. Zoom fatigue was mentioned in practitioner discussions at the onset of ODR, often framed as an important limitation of ODR. Sixty-three percent of the mediators reported no focus difference. Contrary to the anticipated fatigue, twenty-five percent reported *more* focus. Three percent reported less focus. These results showing that 88% percent do not identify a focus issue are inconsistent with the anecdotal claims of Zoom fatigue. Moreover, for the EEOC mediators who handled the majority of mediations during the survey, 43% reported greater focus, compared to 26% for contract and 8% for pro bono mediators.

At a later point in the survey this focus issue was measured from a different frame. The mediators were asked, in comparison to IPM, if the parties lost concentration sooner. Fifty-nine percent of the mediators did not observe such loss of concentration. Twelve percent observed this and 28% were not sure.

Finally, a third, more directly framed question, was used to measure “fatigue” The survey asked if the mediators generally observed “fatigue” and at what point in the mediation. Sixty-two percent reported that fatigue set in after four hours of mediation. Twenty-one percent reported this occurring in the 3 – 4 hour point. Thirteen percent saw fatigue between 2 to 3 hours and four percent reported fatigue after one to two hours.

**Table 15. Video Mediation Fatigue**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	102	100%	44	100%	21	100%	37	100%
In 1 hour or less	1	1%	1	2%	0	0%	0	0%
Over 1 hour to 2 hours	4	4%	0	0%	4	19%	0	0%
Over 2 hours to 3 hours	13	13%	3	7%	5	24%	5	14%
Over 3 hours to 4 hours	21	21%	7	16%	4	19%	10	27%
Over 4 hours	63	62%	33	75%	8	38%	22	59%

1. Connecting Fatigue To The Length Of Video Mediation

The data shows that 62% of mediators observe video fatigue after four hours. Note from Table 2 above that 68% of video mediations were reported as lasting short of 5 hours. The mediation duration data from the 2001 mediator survey to the present ODR, a period of twenty years, suggests a general mediation fatigue/failure/success point at the 4-5 hour mark.

O. Power Imbalance and Online Mediation

The consideration of power balance is important for civil rights mediation evaluation.<sup>30</sup> Ninety-seven percent of the mediators did not find that the technology involved in online mediation created a power imbalance between the parties that they could not manage.

P. Generalizability of Results - Mediator Experience in Other Forums

The survey sought to measure if those mediators who reported that they mediated in other forums (American Arbitration Association, Federal Mediation and Conciliation Service, FINRA, etc.) had similar experience in these other mediation forums. This was done to consider the generalizability of the EEOC data to these other forums. This group reported the ODR experience is similar.

Q. EEOC Charge Bases Not Amenable to Online Mediation

Ninety-six percent of the mediators reported that all the types (a.k.a. basis) of EEOC charges were amenable to online mediation.

R. The EEOC Mediator Observations On Their Personal Experience With Online Mediation

The survey asked mediators about their experience with online mediation. Sixty-three percent reported that it was easier to conduct online mediations than IPMs. Only six percent found it more difficult. Thirty-one percent found it to be similar.

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<sup>30</sup> Green, *Supra* n. 29 at 336 (discussing “power differentials, cultural dynamics, and other societal concerns involved with the resolution of a claim brought under a federal statute banning employment discrimination”).



For the EEOC staff mediators, 73% found the ODR process was easier than in person. Only 5% found it more difficult.

Mediator work-life balance was explored. Comments included that ODR permitted more time for mediation as opposed to commuting and other time commitment. Others noted the positive impact on family obligations, though some reported comingling. Overall, the comment reflect a positive experience.

## VII. CONCLUSION

From the perspectives of the overwhelming majority of mediators surveyed, the use of ODR is as, or more, effective than IPM. The data show a new pattern of mediation with a transformation in the intensity of caucusing and other communication; overall process flexibility that enhances settlement options including reconvening, session breaks, extension of the mediation where needed for settlement momentum; broader participation of key players/invitees for resolution; and power balancing resulting from the physical separation of the parties to create a safe space for mediation. Access to justice increases. Settlements are similar according to EEOC data and often seen as of a higher quality by the mediators. Zoom fatigue, the reading of body language, and other anecdotal “negatives” reported as issues during the introduction of ODR are not supported by the data. Mediators find ODR easy to use and that it has a positive impact on their work-life balance.

The most surprising conclusion is that the survey sought various vantage points from which to report process flaws and/or ODR flaws and found no probative issues. At most, the data shows that there exists some technology challenges – but they do not appear to impact the overall quality of the ODR session and seldom are seen as detrimental to the outcome.

# APPENDIX A

#2-2021 Mediator Survey - Copy [English (United States)]

## EEOC MEDIATOR SURVEY

This is a confidential survey. Your responses go to independent third-party university researchers, Dr. E. Patrick McDermott and Dr. Ruth Obar at Salisbury University. You are being asked to complete this survey because of your EEOC in-person and video mediation experience. Your responses will be reported in an aggregated form so that no one will know your individual response to protect confidentiality.

Your assistance in completing this survey will allow us to fully analyze the EEOC's mediation process, and EEOC's conversion to video mediation. The research study will assist the EEOC to advance its understanding of how video mediation compares to in-person mediation and your unique insights into these two types of mediation processes. In addition, this information will allow the EEOC to determine the type of training programs and other support that can be provided to mediators and program participants.

Participation is voluntary. Whether you elect to participate or not will not affect your work with the EEOC. The survey will take approximately twenty minutes to complete. We will be asking you questions about your mediation experience. The questions ask for your insights into how video mediation and in-person mediation compare.

The benefits of this study include providing valuable information to the EEOC, the dispute resolution community, practitioners and academe. The researchers evaluated the EEOC mediation program and the mediator experience and insights in 2000-2001. Their research highlighted the mediators' contributions to the program and in establishing its national reputation for quality, fairness, neutrality and consistency. This information and data collected from this new survey will allow for the continuation of such recognition and ADR academic scholarship. We sincerely appreciate the time, focus, and effort in sharing your responses. The aggregated data will be one of the earliest studies completed on how the mediation profession has adapted during these challenging times and continues to make a difference in the lives of many.

We ask that you try to answer all questions; however, if there are any items that make you uncomfortable or that you would prefer to skip, please move to the next question. Your

answers will be submitted to a database at a third-party database organization, Verint, and Verint will then provide the confidential survey responses to the university researchers. This information will not be possessed by any EEOC personnel. **Please complete the survey via computer** and not phone as the layout and characters become distorted and impact your responses.

If you have any questions or concerns about the survey, please feel free to email the Research Team at [epmcdermott@salisbury.edu](mailto:epmcdermott@salisbury.edu)

Thank you.

**1.** Please check the box below to provide your consent to participate in the survey. Once you consent the survey will open for you to take.

- I CONSENT TO PARTICIPATION IN THIS SURVEY
- I DO NOT CONSENT TO PARTICIPATION IN THIS SURVEY

(End of Page 1 )

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This Page is Conditionally Shown if: (1 = I DO NOT CONSENT TO PARTICIPATION IN THIS SURVEY)

**2.** Can you confidentially share with us the reason you have not consented? This is very important for the researchers.

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Destination: **I DO NOT CONSENT** (Set in 2)

(End of Page 2 )

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**3. Identify your status**

- EEOC Staff
- Contract Mediator
- Pro Bono

*The term "VIDEO MEDIATION" includes mediating using Zoom, Microsoft TEAMS, Google Meet, or any other video tool.*

**4. When was the first time you used Zoom, Microsoft TEAMS, GOOGLE Meet, or some other VIDEO platform tool to mediate in any forum?**

- Prior to the COVID-19 pandemic shutdown of March 2020
- During the COVID-19 pandemic shutdown

This Question is Conditionally Shown if: (4 = Prior to the COVID-19 pandemic shutdown of March 2020)

**5. Please type in the approximate year you first used Zoom, Microsoft TEAMS, GOOGLE meet or another VIDEO platform to mediate.**

\_\_\_\_\_

**6. How many VIDEO mediations have you conducted at the EEOC in the past 12 months?**

- None
- 1 - 5
- 6 - 10
- 11 - 20
- 21 - 30
- 31 – 50
- 51 – 60
- If more than 60, please type in your best estimate: \_\_\_\_\_

(End of Page 3 )

**The following questions refer to your experience with EEOC video mediation (Zoom, Microsoft TEAMS, Google Meet). When answering these questions, please consider your overall experience at the EEOC; do not lock in on your last EEOC mediation or those that may stand out more than others.**

**7.** In comparison, my time in the VIDEO mediations at the EEOC usually take less time than compared to an IN-PERSON mediation.

- Strongly Disagree
- Disagree
- Neither Agree nor Disagree
- Agree
- Strongly Agree

**8.** On average, how long do your EEOC VIDEO mediations last?

- Less than 1 hour
- At least 1 hour but less than 2 hours
- At least 2 hours but less than 3 hours
- At least 3 hours but less than 4 hours
- At least 4 hours but less than 5 hours
- At least 5 hours but less than 6 hours
- At least 6 hours but less than 7 hours
- At least 7 hours but less than 8 hours

(End of Page 4 )

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**Your perceptions of VIDEO mediation settlements are important for the researchers to better understand what you are experiencing in your VIDEO mediations.**

**9.** I estimate that my settlement rates using VIDEO mediation platforms are:

- HIGHER compared to in-person mediation
- LOWER compared to in-person mediation
- THE SAME as in-person mediation
- NOT SURE

**10.** I estimate that the **total value for the Charging Party** of the settlement (**monetary, non-monetary, etc.**) in my mediations using VIDEO as compared to IN-PERSON are:

- HIGHER – The Charging Party/plaintiff seems to do better in VIDEO mediation.
- LOWER – The Charging Party/plaintiff seems to obtain less value in VIDEO as compared to IN-PERSON mediation.
- SIMILAR
- NOT SURE

**11.** I estimate that the **overall quality** of the settlement **for the Charging Party** in my mediations using VIDEO as compared to IN-PERSON are:

- HIGHER – The Charging Party obtains a higher quality resolution in VIDEO mediation.
- LOWER – The Charging Party obtains a lesser quality resolution VIDEO as compared to IN-PERSON mediation.
- SIMILAR
- NOT SURE

**12.** I estimate that the **overall quality** of the settlement for the **Respondent** in ALL my mediations using VIDEO as compared to IN-PERSON are:

- HIGHER – The Respondent/defendant obtains a higher quality resolution in VIDEO mediation.
- LOWER – The Respondent/defendant obtains a lesser quality resolution in VIDEO as compared to IN-PERSON mediation.
- SIMILAR

NOT SURE

**13.** What percentage of the **EEOC mediations** conducted by you during the pandemic to now do you estimate were not resolved **solely because the session was conducted remotely and not in-person.**

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(End of Page 5 )

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**14.** Identify the tactics that you used for **in-person EEOC mediations prior** to the use of EEOC VIDEO mediations: **CHECK ALL THAT APPLY.**

- Reflexive questioning
- Reframing, paraphrasing, restating
- "Reality checking"
- Use of probing questions
- Mediator's proposal to break impasse
- Evaluating strengths and weaknesses
- Clarifying facts or areas of agreement
- Providing knowledge of the law and court litigation process
- Discussion of the EEOC investigation stage and access to courts
- Discussion of ability to obtain or afford counsel at later stages of the process
- Defusing negative emotions
- Encouraging openness, honesty
- Keeping parties focused
- Stepping back and letting parties fashion the remedy
- Presentation of data on EEOC charges or court disposition
- Pre-mediation calls/communication to prepare
- Power balancing
- Written pre-mediation submissions
- Helping parties see different vantage points
- Leveraging time concerns
- Leveraging limited opportunity to negotiate a settlement after today's mediation
- Other, **PLEASE SPECIFY.** \_\_\_\_\_

(End of Page 6 )

If you use **additional tactics** to help parties reach resolution in VIDEO mediation compared to IN-PERSON mediations, please identify such additional tactics that you now have introduced/employed in VIDEO mediation in either the joint session or in breakout room caucus. **CHECK ALL THAT APPLY.**

**15. A. INVITING KEY PERSON/S TO JOIN THE SESSION.**

From the list below, please identify additional tactics that you have introduced/employed in VIDEO mediation to help parties reach resolution. **CHECK ALL THAT APPLY**

Inviting an outside party (witness, family, expert, trusted intermediary, etc.) to join the session *as a result of information shared during planning of the session.*

Inviting a key outside person who can add important facts to join the session *as a result of information exchanged in the mediation session.*

Inviting a key outside person who can add important perspective to join the session *as a result of information exchanged in the mediation session.*

Inviting a key outside person who is a decision maker *as a result of information exchanged in the mediation session.*

Inviting a key outside person who is needed for a party's emotional or other support *as a result of information exchanged in the mediation session.*

Inviting an insurance company representative

**Demanding** a key decision maker who is not at the table to join

Other key person you have invited to video mediation. **PLEASE SPECIFY.**

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(End of Page 7 )

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## 16. B. TECHNOLOGY RELATED TACTICS.

From the list below, please identify additional tactics that you now have introduced/employed in VIDEO mediation to help parties reach resolution **CHECK ALL THAT APPLY.**

- Inviting a party to share a key document
- More frequent use of the breakout room tool for caucusing/shuttling/attorney discussions, etc. than in-person shuttling
- Concurrent caucusing (using a main session and concurrently communicating with each party during the main session with chat, text, etc.)
- More use of a party's documents via the video share tool in the separate caucus/breakout room
- More use of a party's documents via video sharing in joint session
- Use of the "chat" tool for general communications
- Use of the File Transfer chat tool to vet the settlement agreement language with parties
- Using the video communication tools such as clap, thumbs up, etc.
- Use of neutral audio-visual clip(s), music, etc. to improve the atmosphere of the session while other parties in private caucus
- Other technology tactics you use. **PLEASE SPECIFY.** \_\_\_\_\_

(End of Page 8 )

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**17. C. ADMINISTRATIVE FACTORS/TACTICS.**

From the list below, please identify additional tactics that you now have introduced/employed in VIDEO mediation to help parties reach resolution. **CHECK ALL THAT APPLY.**

- Enhanced scheduling availability to meet parties' needs (no building hours or traffic issues etc. so can start early, end late, work later into a Friday afternoon, and other Zoom convenience)
- More effective separation of the parties by Zoom breakout room tool compared to when physically sharing the mediation site
- Inviting a party to send a document to the other party via the VIDEO chat feature
- Willingness to extend the time of the session due to the convenience of VIDEO
- Offering to quickly reconvene the mediation at another time for one more shot at a settlement if possible
- Other administrative tactics you use: **PLEASE SPECIFY.** \_\_\_\_\_

(End of Page 9 )

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**18. OTHER TACTICS OR FACTORS.** Are there any other tactics you introduced in VIDEO mediation that were not asked about at the immediately preceding Sections A - C? **PLEASE SPECIFY.**

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(End of Page 10 )

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**19.** Compared to in-person mediation, has the use of VIDEO mediation caused you to set additional ground rules?

- Yes, I set additional ground rules compared to in-person mediation.
- No, I set less ground rules compared to in-person mediation.
- No, I set the same ground rules in video and in-person mediation.
- I don't set ground rules when mediating.

This Question is Conditionally Shown if: (19 = Yes, I set additional ground rules compared to in-person mediation.)

**20.** Please identify the additional ground rules you use for VIDEO mediation:

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**21.** In general, comparing in-person mediations to your mediations with VIDEO, how would you compare the level of participant focus?

- The parties on VIDEO are more focused.
- The parties on VIDEO are less focused.
- I have not noticed a difference.

(End of Page 11 )

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**22.** For your EEOC **video mediations**, please separately rate the video dispute resolution skills of the Charging Party and Respondent attorneys, and any Non-Legal Representatives who have appeared before you on a scale of 1 to 5 with:

- 1 = Minimal Skills
  - 2 = Below Average Skills
  - 3 = Average Skills
  - 4 = Above Average Skills
  - 5 = Excellent Skills
- Check "N/A" if not applicable

1=Minimum; 5=Excellent

	1 = Minimal Skills	2 = Below Average Skills	3 = Average Skills	4 = Above Average Skills	5 = Excellent Skills	N/A
CHARGING PARTY'S ATTORNEY:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
RESPONDENT'S ATTORNEY:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CHARGING PARTY'S NON- LEGAL REPRESENTATIVE:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
RESPONDENT'S NON-LEGAL REPRESENTATIVE	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(End of Page 12 )

**23.** I find that the **Charging Party (not counsel)** uses additional tactics in VIDEO mediation that I do not see at in-person mediation. Please remember these are your aggregate opinions of mediation participants.

- AGREE
- DISAGREE

This Question is Conditionally Shown if: (23 = AGREE)

**24.**

Please identify additional new tactics you are seeing from Charging Parties/plaintiffs in VIDEO mediation that you do not see at in-person mediation.

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**25.** I find that the **Respondent (not counsel)** uses additional new tactics in VIDEO mediation that I do not see at in person mediation. Please remember these are your aggregate opinions of mediation participants.

- AGREE
- DISAGREE

This Question is Conditionally Shown if: (25 = AGREE)

**26.**

Please identify additional new tactics you are seeing from Respondents in VIDEO mediation that you do not see at in-person mediation.

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(End of Page 13 )

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**46.** Based on your general experiences with VIDEO mediation by Zoom at the EEOC, please indicate whether you “Agree” or “Disagree” with each of the following statements.

	Agree	Disagree	Neither agree or disagree
Mediation moves at a faster pace by VIDEO compared to in-person mediation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Opening offer is usually on the table faster compared to in-person mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The First Counter-offer is made quicker compared to in-person mediation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The time element pressure at the end of the mediation on VIDEO is more flexible than the time pressure toward the end of an in-person mediation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My tactics for managing impasse are different in VIDEO mediation than in-person.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It is more difficult to resolve party impasse on VIDEO than in-person.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
VIDEO caucuses are more efficient with breakout rooms than when I used caucuses in person.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- In a caucus the parties are more direct in video communication compared to in person.
- The parties are more direct in VIDEO communication with the other party in joint session compared to in person.
- Parties are more respectful to each other on VIDEO.
- I see less emotional outbursts from participants when mediating with VIDEO.
- VIDEO mediation reduces the time I would normally spend in an in-person mediation in preliminary relationship building between me and a party.
- Attorneys are more efficient in VIDEO mediation compared to in-person mediation.
- There is less back and forth with attorneys in VIDEO mediation.
- Attorneys are more respectful in VIDEO mediation.
- In VIDEO mediation settlement momentum is not lost because the parties or their attorneys leave the in-person



In those instances where **EEOC VIDEO mediations were not resolved**, please identify the top 3 most important barriers to resolution.

**27. GROUP A – VIDEO TECHNOLOGY/SETTING BARRIERS** - Please choose **the top 3** most important barriers to resolution from this list of video technology barriers that you find generally interfere with the resolution of your EEOC cases. If another reason or reasons apply, use "Other". **PLEASE CHOOSE THREE FROM THIS LIST.**

- Technology Interference (internet connection, poor audio, etc.)
- The case needed an in-person mediation forum and not Zoom
- Interference from other persons at the Charging Party site that were not mediation participants
- Interference from other persons at the Respondent site that were not mediation participants
- Limited VIDEO platform skills of a participant
- Other, Please specify

(End of Page 15 )

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**28. GROUP B –CHARGING PARTY CONDUCT THAT WAS A BARRIER:** Please choose **the top 3** barriers that you find generally interfere with resolution within this list of potential charging party conduct. If another reason or reasons apply, use "Other". **PLEASE CHOOSE 3 FROM THE LIST.**

- Charging party (or their representative) used mediation to gather information (discovery, case related to another case, etc.)
- Charging party's (or their representative's) "positional conduct" (unrealistic, unreasonable)
- Charging party's (or their representative's) "negotiation conduct" (refused to discuss or explore options, refused to listen, did not show interest)
- Charging party's (or their representative's) "personal conduct" (emotional, angry, disrespectful)
- Charging party's (or their representative's) lack of preparation
- Charging party did not know what they wanted
- Charging party did not want to invest the time
- Charging party's representative had limited or no authority to settle
- Charging party's representative did not have the time
- Charging party needed legal representation
- Other, Please Specify \_\_\_\_\_

(End of Page 16 )

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**29. GROUP C – RESPONDENT CONDUCT BARRIERS:** Please choose **the top 3** barriers that you find generally interfere with resolution within this list of potential respondent conduct. If another reason or reasons apply use "Other". **PLEASE CHOOSE 3 FROM THE LIST.**

- Respondent (or their representative) used mediation to gather information (discovery, case related to another case, etc.)
- Respondent's (or their representative's) "positional conduct" (unrealistic, unreasonable)
- Respondent's (or their representative's) "negotiation conduct" (refused to discuss or explore options, refused to listen, did not show interest)
- Respondent's (or their representative's) "personal conduct" (emotional, angry, disrespectful)
- Respondent's (or their representative's) lack of preparation
- Respondent did not know what they wanted
- Respondent did not want to invest the time
- Respondent's representative had limited or no authority to settle
- Respondent's representative did not have the time
- Respondent needed legal representation
- 

Other Respondent (or representative) conduct

\_\_\_\_\_

(End of Page 17 )

**30. GROUP D - ADMINISTRATIVE ISSUES THAT ARE BARRIERS TO**

**SETTLEMENT:** Please choose the important administrative barriers that you find generally interfere with resolution within this list of administrative issues. **CHECK ALL THAT APPLY.**

- The mediation was not scheduled properly.
- E-signature delays caused the agreement to fall apart.
- I needed more support with settlement agreement template language.
- EEOC program procedures/rules interfered with resolving the case.
- Other, please specify. \_\_\_\_\_

**31. GROUP E - FORUM BARRIERS - TACTICS I CAN NO LONGER USE**

**EFFECTIVELY:** Are there any in-person mediation tactics that you can no longer use effectively in video mediation?

- No
- Yes

This Question is Conditionally Shown if: (31 = Yes)

**32.** Please identify these tactics you can no longer use effectively.

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(End of Page 18 )

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For the EEOC mediations **resolved via VIDEO platforms**, please choose **the top 3** factors you believe facilitate resolution for each of the categories below.

**33. A. Mediation Context:** In the list that follows, please choose **the top 3** factors you believe facilitated resolution. If another reason or reasons apply, use "Other". **PLEASE CHOOSE 3 FROM THE LIST.**

- The VIDEO background humanized the parties in a manner not possible in person.
- The VIDEO screen allowed for focus on the participants' faces in a manner not possible in person.
- Events that occurred in the background of the mediation created a positive environment for settlement.
- VIDEO mediation influenced the parties to be less formal in their interactions.
- The ability to keep these parties out of the same room or adjacent rooms as compared to an in-person mediation.
- VIDEO mediation provided the ability to continue a mediation because of less external time constraints (e.g., office closing, sundown in a downtown or other area people prefer to leave earlier no need to avoid rush hour or other traffic issues, parking issues, etc.).
- I see more effective decision-making processes.
- Other \_\_\_\_\_

(End of Page 19 )

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**35. B<sup>31</sup>. CHARGING PARTY AND REPRESENTATIVE CONDUCT THAT WAS A BARRIER:**

Please choose **the top 3** barriers that you find generally interfere with resolution within this list of potential charging party or charging party representative conduct. If another reason or reasons apply, please use "Other". **PLEASE CHOOSE 3 FROM THE LIST.**

- Charging Party (and/or their Esq./Representative) was flexible, open, straightforward.
- Charging Party (and/or their Esq./Representative) was realistic.
- Charging Party knew what they wanted.
- Charging Party (and/or their Esq./Representative) was prepared.
- Charging Party was willing to listen to their lawyer or legal argument.
- Charging Party (and/or their Esq./Representative) was able to effectively communicate with the other party over Zoom, including their effective use of Zoom tools, such as, document share, chat, communication icons, invite function, etc.
- Charging Party (and/or their Esq./Representative) was able to work cooperatively with mediator on Zoom.
- Charging Party expressed/exhibited need for closure.
- Charging Party (and/or their Esq./Representative) stated a commitment to settle the case.
- Charging Party (and/or their Esq./Representative) was able to effectively use other Zoom tools such as document share, chat, communication icons, invite function, etc.
- Charging Party (and/or their Esq./Representative) followed the mediation rules for Zoom.
- Charging Party (and/or their Esq./Representative) possessed problem solving problem skills.
- Charging Party Esq./Representative prepared their client.
- Charging Party Esq./Representative was focused.
- Charging Party Esq./Representative effectively managed their client in the mediation.
- Other \_\_\_\_\_

(End of Page 20 )

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<sup>31</sup> The online survey included this incorrect question. While some mediators understood the intent of the question, their responses were excluded from the final report.

**36. C.<sup>32</sup> RESPONDENT AND RESPONDENT REPRESENTATIVE CONDUCT**

**BARRIERS:** Please choose the **top 3** barriers you find generally interfere with the resolution within this list of potential respondent or respondent representative conduct. If another reason or reasons apply, please use "Other". **PLEASE CHOOSE 3 FROM THE LIST.**

- Respondent (and/or their Esq./Representative) was flexible, open, straightforward.
- Respondent (and/or their Esq./Representative) was realistic.
- Respondent (and/or their Esq./Representative) was prepared.
- Respondent Esq./Representative effectively managed their client in the mediation.
- Respondent (and/or their Esq./Representative) was able to effectively communicate with the other party over Zoom including effective use of Zoom tools such as document share, chat, communication icons, invite function, etc.
- Respondent (and/or their Esq./Representative) knew what they wanted.
- Respondent (and/or their Esq./Representative) was able to work cooperatively with the mediator on Zoom.
- Respondent was willing to listen to their lawyer or legal argument.
- Respondent expressed/exhibited need for closure or stated a commitment to settle the case.
- Respondent Esq./Rep effectively managed an insurance adjuster.
- Other \_\_\_\_\_

(End of Page 21 )

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<sup>32</sup> The online survey included this incorrect question. While some mediators understood the intent of the question, their responses were excluded from the final report.

**34.** Please explain any novel factor or conduct not seen in in-person mediation that in your opinion was important in the resolution of this case.

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(End of Page 22 )

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**39. For cases where you spoke with the adjuster or were in conference listening to the insurance adjuster:** Please **rank the top 3 factors** you believe facilitated resolutions for each of the categories below. Assign a "1" to the most influential conduct that facilitated resolution, "2" to the second most important conduct, and "3" to the third most important conduct. If another reason or reasons apply, check "Other".

	1	2	3	4	5	6	7	8
Adjuster was flexible, open straightforward.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adjuster was realistic.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adjuster was prepared.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adjuster knew what they wanted.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adjuster was willing to listen to my communications	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adjuster was willing to listen to the company representative.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Adjuster was willing to listen to the Charging Party.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(End of Page 23 )

**40. For mediations where the Insurance adjuster spoke to the parties:** Was the Insurance adjuster able to effectively communicate with the parties over Zoom?

- Yes
- No
- Not sure

**41.** I have had multiple previous experiences mediating with the following parties. (Check all that apply):

- Charging Party's Attorney or other Representative
- Respondent
- Respondent's Attorney or other Representative
- Insurance adjuster

(End of Page 24 )

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This Question is Conditionally Shown if: (41 (Count) > 1)

Charging Party's Attorney or other Representative: % is Conditionally Shown if: (41 (Charging Party's Attorney or other Representative) = Selected)

Respondent: % is Conditionally Shown if: (41 (Respondent) = Selected)

Respondent's Attorney or other Representative: % is Conditionally Shown if: (41 (Respondent's Attorney or other Representative) = Selected)

The Insurance adjuster: % is Conditionally Shown if: (41 (Insurance adjuster) = Selected)

**42.** You have indicated that you had multiple previous experience with one or more mediation participants, please estimate the percentage of prior mediations where a previous party or representative attended:

Charging Party's Attorney or other Representative: % \_\_\_\_\_

Respondent: % \_\_\_\_\_

Respondent's Attorney or other Representative: % \_\_\_\_\_

The Insurance adjuster: % \_\_\_\_\_

**43.** In general, for mediations where you have had a prior case with one party (or their counsel/representative) how strongly did this prior experience impact the mediation outcome?

- No impact at all
- Minimal impact
- Some impact
- Strong Impact
- Very strong impact

This Question is Conditionally Shown if: (43 = Strong Impact OR 43 = Very strong impact)

**44.** How is the mediation impacted if you have had prior experience mediating with one or more participants?

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(End of Page 25 )

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**45. Do you agree or disagree with this statement:** For EEOC cases that were resolved using VIDEO mediation, the settlements at these EEOC mediations often resolve actual or putative legal claims in other legal forums (e.g. state tort or contract claims, wage and hour law, workers compensation etc.).

- Agree
- Not Sure
- Disagree

(End of Page 26 )

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**64. Do you agree or disagree with this statement:** I find that parties tend to lose concentration sooner in video mediation than in my in-person mediations.

- Agree
- Disagree
- Neither agree nor disagree

**65. From my experience, I find that video mediation fatigue appears on average:**

- In 1 hour or less
- Over 1 hour to 2 hours
- Over 2 hours to 3 hours
- Over 3 hours to 4 hours
- Over 4 hours

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**47.** If you also mediate in **other forums** (state and local programs, FMCS, AAA, FINRA, etc.): My experience with VIDEO mediation in other forums is similar to what I have answered here.

- Agree
- Disagree
- Neither agree not disagree
- Not applicable

This Question is Conditionally Shown if: (47 = Disagree)

**48.**

Please explain the major differences you see between EEOC video mediation and video mediation in other forums.

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**49.** If you also mediate in **other forums** check if you have used any of the following mediation tactics and techniques not used at EEOC:

- Online blind bidding software (automated algorithm evaluates confidential bids from each party and if the two hidden bids are within a prescribed range then the case settles for the median)
- Informational videos as part of convening
- Dedicated pre-mediation technology convening session
- Emotion Recognition Artificial Intelligence (AI)
- Asynchronous Mediation Interaction
- Other Settlement Algorithms
- Pre-communication reframing
- Other, Please specify. \_\_\_\_\_

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**50.** Are there particular EEOC classifications of EEOC charges (race, age, gender, etc.) that you find more difficult to mediate by VIDEO compared to in-person?

- YES
- NO

This Question is Conditionally Shown if: (50 = YES)

**51.** If you answered "Yes" to the question above, please identify those types of charges you find more difficult to mediate in VIDEO compared to in-person:

- Race
- Ethnic origin
- Gender
- Sexual Harassment
- Age
- Disability
- Disability accommodation
- Sexual orientation
- Religion
- Religious accommodation
- Color
- Pay – EPA
- Pregnancy
- National origin
- Retaliation
- Reinstatement
- Issues under other law that will be resolved in a universal settlement at EEOC mediation
- 

Others, please specify:

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(End of Page 29 )

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**52.** Did you mediate any cases where there was a power imbalance you could not resolve due **solely** to a technology gap between the parties?

- Yes
- No

This Question is Conditionally Shown if: (52 = Yes)

**53.** In what percent of your cases did you find this irresolvable power imbalance?

\_\_\_\_\_

This Question is Conditionally Shown if: (52 = Yes)

**54.** In what percent of your cases did this prevent settlement of the dispute?

\_\_\_\_\_

This Question is Conditionally Shown if: (52 = Yes)

**55.** In what percent of the cases where there was a settlement did power imbalance impact the quality of the settlement?

\_\_\_\_\_

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**56.** How would you describe your experience conducting EEOC mediations **out of the office** during the closure of government workplaces?

- It was **more** difficult conducting EEOC mediations out of the office.
- It was **easier** conducting EEOC mediations out of the office.
- It was **similar to** conducting EEOC mediations in the office.

**57.** What improvement/adjustments to equipment or scheduling would you recommend?

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**58.** How has working at home affected your work/life balance?

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(End of Page 31 )

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**59.** In the space below list the **disadvantages** that you have experienced using VIDEO mediation:

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**60.** In the space below list the **advantages** that you have experienced using VIDEO mediation:

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(End of Page 32 )

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**61.** In the space below list **any other VIDEO mediation factors** that impact the mediation:

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**62.** List and explain anything that you believe would **enhance EEOC's VIDEO mediation:**

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**63.** Is there a question or issue that you believe this survey should have asked or addressed but did not? This is important to the researchers and we appreciate your insights as we learn from you. Please describe in detail below.

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**If you have any questions or concerns about the survey, please feel free to email the Research Team at [epmcdermott@salisbury.edu](mailto:epmcdermott@salisbury.edu)**

**If you have any adverse effects or concerns about the research, please contact the primary investigator at [epmcdermott@salisbury.edu](mailto:epmcdermott@salisbury.edu) or the Office of Graduate Studies and Research at Salisbury University at 410-548-3549 or toll free 1-888-543-0148. This research is approved by the Salisbury University's IRB under protocol number 32.**

**THANK YOU!**

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## APPENDIX B

**Table 1. Survey Participation**

*(Question 2: Please check the box below to provide your consent to participate in the survey.)*

Total number of mediators:	All Mediators	Staff	Contract	Pro bono
Who received a survey via email	254	69	70	115
Who consented to complete the survey	161	53	41	67
Response rate	63%	77%	59%	58%
Surveys included in the analysis	139*	52	34	53
Completion rate**	86%	98%	83%	79%

\* Twenty-two surveys were excluded due to missing information or lack of experience in video mediation.

\*\* Completion rate is defined in this study as the number of eligible surveys (139) divided by the number who consented to complete the survey (161 total mediators).

**Table 2. Mediator Status**

*(Question 3: Identify your status.)*

<b>Total number of mediators:</b>	<b>139</b>	<b>100%</b>
Staff mediator	52	37%
Contract	34	24%
Pro bono	53	38%

**Table 3. Experience with Video Mediation Platforms**

*(Question 4: When was the first time you used Zoom, Microsoft TEAMS, GOOGLE Meet, or some other video platform tool to mediate in any forum? For those who used video platforms prior to the pandemic shutdown: Please type in the approximate year you first used Zoom, etc.)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	137	100%	52	100%	33	100%	52	100%
During the COVID-19 pandemic shutdown	111	81%	41	79%	24	73%	46	88%
Prior to the COVID-19 pandemic shutdown of March 2020	26	19%	11	21%	9	27%	6	12%
2010 or earlier	(6)		(3)		(2)		(1)	
2011 - 2015	(5)		(4)		(0)		(1)	

2016 - 2020	(13)	(3)	(6)	(4)
No specific information provided	(2)	(1)	(1)	(0)

**Table 4. Number of Video Mediations Conducted at the EEOC**

(Question 8: How many video mediations have you conducted at the EEOC in the past 12 months? If more than 60, please type in your best estimate.)

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139	100%	52	100%	34	100%	53	100%
1 - 5	47	34%	1	2%	19	56%	27	51%
6 - 10	22	16%	4	8%	6	18%	12	23%
11 - 20	17	12%	4	8%	3	9%	10	19%
21 - 30	3	2%	0	0%	2	6%	1	2%
31 – 50	9	6%	6	12%	3	9%	0	0%
51 – 60	6	4%	5	10%	0	0%	1	2%
More than 60	35	25%	32	62%	1	3%	2	4%
61 – 100	(22)		(20)		(1)		(1)	
101 – 200	(13)		(12)		(0)		(2)	

**Table 5. Degree of Agreement to the statement: “In comparison, my time in the video mediations at the EEOC usually take less time than compared to an in-person mediation.”**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	136	100%	51	100%	34	100%	51	100%
Strongly Disagree	9	7%	3	6%	3	9%	3	6%
Disagree	26	19%	10	20%	3	9%	13	25%
Neither Agree nor Disagree	47	35%	13	25%	16	47%	18	35%
Agree	39	29%	15	29%	10	29%	14	27%
Strongly Agree	15	11%	10	20%	2	6%	3	6%

**Average rating\* (5-point Likert scale)**

**3.1838**

**3.3725**

**3.1471**

**3.0196**

\*Based on the following 5-point Likert scale: 1 – Strongly Disagree, 2 – Disagree, 3 – Neither Agree nor Disagree, 4 – Agree, 5 – Strongly Agree



**Table 6. Average Length of Video Mediations***(Question 10: On average, how long do your EEOC video mediations last?)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	137	100%	51	100%	33	100%	53	100%
Less than 1 hour	0	0%	0	0%	0	0%	0	0%
At least 1 hour but less than 2 hours	0	0%	0	0%	0	0%	0	0%
At least 2 hours but less than 3 hours	7	5%	1	2%	3	9%	3	6%
At least 3 hours but less than 4 hours	43	31%	15	29%	13	39%	15	28%
At least 4 hours but less than 5 hours	44	32%	20	39%	10	30%	14	26%
At least 5 hours but less than 6 hours	22	16%	9	18%	3	9%	10	19%
At least 6 hours but less than 7 hours	14	10%	4	8%	3	9%	7	13%
At least 7 hours but less than 8 hours	7	5%	2	4%	1	3%	4	8%

**Table 7. Settlement Rates***(Question 11: I estimate that my settlement rates using video mediation platforms are:)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
Higher compared to in-person mediation	28	20%	18	35%	3	9%	7	13%
Lower compared to in-person mediation	12	9%	3	6%	5	15%	4	8%
The same as in-person mediation	85	62%	27	53%	24	71%	34	64%
Not sure	13	9%	3	6%	2	6%	8	15%

**Table 8. Perceived Settlement Value for the Charging Party***(Question 12: I estimate that the total value for the Charging Party of the settlement (monetary, non-monetary, etc.) are:)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
HIGHER – The Charging Party/plaintiff seems to do better in VIDEO mediation.	28	20%	18	35%	5	15%	5	9%
LOWER – The Charging Party/plaintiff seems to obtain less value in VIDEO as compared to IN-PERSON mediation.	8	6%	1	2%	3	9%	4	8%
Similar	88	64%	29	57%	22	65%	37	70%
Not sure	14	10%	3	6%	4	12%	7	13%

**Table 9. Perceived Overall Quality of the Settlement for the Charging Party**

*(Question 13: I estimate that the overall quality of the settlement for the Charging Party in mediations using VIDEO as compared to IN-PERSON are:)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
Higher – The Charging Party obtains a higher quality resolution in video mediation	23	17%	14	27%	5	15%	4	8%
Lower – The Charging Party obtains a lesser quality resolution in video as compared to in-person mediation	8	6%	1	2%	3	9%	4	8%
Similar	94	68%	32	63%	23	68%	39	74%
Not sure	13	9%	4	8%	3	9%	6	11%

**Table 10. Perceived Overall Quality of the Settlement for the Respondent**

*(Question 14: I estimate that the overall quality of the settlement for the Respondent in mediations using VIDEO as compared to IN-PERSON are:)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
Higher – The Respondent obtains a higher quality resolution in video mediation	35	25%	22	43%	9	26%	4	8%
Lower – The Respondent obtains a lesser quality resolution in video as compared to in-person mediation	4	3%	1	2%	1	3%	2	4%
Similar	87	63%	25	49%	21	62%	41	77%
Not sure	12	9%	3	6%	3	9%	6	11%

**Table 11. Estimated Percentage of EEOC Mediations that were not Resolved Because the Session was Conducted Remotely**

*(Question 16: What percentage of the EEOC mediations conducted by you during the pandemic to now do you estimate were not resolved solely because the session was conducted remotely and not in-person.)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	113	100%	44	100%	25	100%	44	100%
Zero	80	71%	28	64%	18	72%	34	77%
1% - 10%	19	17%	9	20%	2	8%	8	18%
11% - 25%	9	8%	4	9%	3	12%	2	5%
26% - 50%	1	1%	0	0%	1	4%	0	0%
51% - 75%	1	1%	0	0%	1	4%	0	0%
76% - 100%	3	3%	3	7%	0	0%	0	0%

**Table 12a. Tactics Used for In-Person Mediations Prior to the Use of Video Mediations**

*(Questions 17: Identify the tactics that you used for in-person EEOC mediations prior to the use of EEOC video mediations. Check all that apply.)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Clarifying facts or areas of agreement	117	84%	40	77%	31	91%	46	87%
Encouraging openness, honesty	117	84%	41	79%	28	82%	48	91%
Reframing, paraphrasing, restating	115	83%	40	77%	30	88%	45	85%
"Reality checking"	115	83%	41	79%	29	85%	45	85%
Helping parties see different vantage points	113	81%	38	73%	29	85%	46	87%
Use of probing questions	112	81%	37	71%	28	82%	47	89%
Keeping parties focused	112	81%	40	77%	28	82%	44	83%
Defusing negative emotions	107	77%	42	81%	22	65%	43	81%
Evaluating strengths and weaknesses	105	76%	36	69%	26	76%	43	81%
Discussion of the EEOC investigation stage and access to court	93	67%	38	73%	19	56%	36	68%
Providing knowledge of the law and court litigation process	91	65%	33	63%	21	62%	37	70%
Mediator's proposal to break impasse	85	61%	38	73%	18	53%	29	55%
Pre-mediation calls/communication to prepare	85	61%	35	67%	22	65%	28	53%
Stepping back and letting parties fashion the remedy	80	58%	30	58%	23	68%	27	51%
Power balancing	75	54%	31	60%	20	59%	24	45%
Leveraging time concerns	72	52%	30	58%	17	50%	25	47%
Reflexive questioning	70	50%	29	56%	20	59%	21	40%
Leveraging limited opportunity to negotiate a settlement after today's mediation	69	50%	26	50%	19	56%	24	45%

Discussion of ability to obtain or afford counsel at later stages of the process	65	47%	30	58%	17	50%	18	34%
Written pre-mediation submissions	52	37%	21	40%	13	38%	18	34%
Presentation of data on EEOC charges or court disposition	48	35%	20	38%	11	32%	17	32%
Other (See Table 12b—Verbatim responses)	19	14%	10	19%	5	15%	4	8%

**Table 12b. Additional Tactics Used in In-Person Mediation**

<i>Attorney conferences, Pre-mediation consultation especially with pro se Charging Parties</i>
<i>Attorney One on Ones</i>
<i>Bracketing</i>
<i>Caucus</i>
<i>Doing joint opening session; flipside; bracketing, doing breakouts with just attorneys/or appropriate parties with permission of all; key to everything I do is parties' self-determination - let the parties' needs &amp; interests guide</i>
<i>Experience</i>
<i>I just began working in the mediator position. However, the same tactics used pre covid can be used during virtual mediation sessions</i>
<i>Inquiring about key factual or document evidence the party will need to see or resolve before seriously considering settling the case</i>
<i>Knowledge of counsel, at least by reputation. Chances of Summary judgment. Expense of defense. Potential danger of discovery.</i>
<i>Translating positions into needs &amp; interests</i>
<i>Venting.</i>

**Table 13. Additional Tactics Introduced/Employed in Video Mediations (Group A – Inviting key persons to join the session)**

(Question 19: From the list below, please identify additional tactics that you have introduced/employed in video mediation to help parties reach resolution. Check all that apply. [Group A - Inviting key persons to join the session])

Group A: Inviting key persons to join the session	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Inviting an outside party (witness, family, expert, trusted intermediary, etc.	21	15%	9	17%	7	21%	5	9%
Inviting a key outside person who can add important facts to join the session as a result of information exchanged in the mediation session	20	14%	10	19%	5	15%	5	9%
Inviting a key outside person who can add important perspective to join the session as a result of information exchanged in the mediation session	24	17%	11	21%	8	24%	5	9%
Inviting a key outside person who is a decision maker as a result of information exchanged in the mediation session	30	22%	16	31%	8	24%	6	11%
Inviting a key outside person who is needed for a party’s emotional or other support as a result of information exchanged in the mediation session	37	27%	20	38%	10	29%	7	13%
Inviting an insurance company representative	43	31%	19	37%	9	26%	15	28%
Demanding a key decision maker who is not at the table to join	16	12%	4	8%	7	21%	5	9%
Other key person you have invited to video mediation:	5	4%	4	8%	1	3%	0	0%
<i>Family member</i>								
<i>Spouse, family, or friend</i>								
<i>Board members, service animals and emotional support animals, newborns who are being breastfed</i>								





**Table 14a. Additional Tactics Introduced/Employed in Video Mediations (Group B - Technology related tactics)**

*(Question 92: From the list below, please identify additional tactics that you have introduced/employed in video mediation to help parties reach resolution. Check all that apply. [Group B - Technology related tactics])*

Group B – Technology-related tactics	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Inviting a party to share a key document	89	64%	35	67%	23	68%	31	58%
More frequent use of the breakout room tool for caucusing/shuttling/attorney discussions, etc.	84	60%	35	67%	21	62%	28	53%
Concurrent caucusing (using a main session and concurrently communicating with each party during the main session with chat, text, etc.	50	36%	23	44%	11	32%	16	30%
More use of a party's documents via the video share tool in the separate caucus/breakout room	45	32%	25	48%	6	18%	14	26%
More use of a party's documents via video sharing in joint session	48	35%	23	44%	11	32%	14	26%
Use of the "chat" tool for general communications	52	37%	30	58%	10	29%	12	23%
Use of the File Transfer chat tool to vet the settlement agreement language with parties	17	12%	6	12%	6	18%	5	9%
Using the video communication tools such as clap, thumbs up, etc.	15	11%	12	23%	2	6%	1	2%
Use of neutral audio-visual clip(s), music, etc.	5	4%	3	6%	1	3%	1	2%
Other technology tactics you use (See Table 14b.)	8	6%	6	12%	2	6%	0	0%

**Table 14b. Verbatim responses: Additional tactics in video mediation [Group B – Technology-related]**

<i>Inviting the parties to use the "Ask for Help" button while in caucus</i>
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<i>Use of phone for talking privately with a party, as necessary for additional communication channel.</i>
<i>Emails</i>
<i>Use of share screen to go over mediation settlement agreement language with each side in caucus; use of email in real time for sharing info and as back channel "hallway" communication with counsel especially</i>
<i>Whiteboarding/Note taking during joint session; modeling potential negotiation moves/outcomes to help parties overcome resistance; using charts to illustrate the parties progress toward settlement and to maintain awareness of the mid-point</i>
<i>I use the broadcast message feature to alert parties to when I leave or enter a room.</i>
<i>Use chat or ask for help buttons to allow parties to call mediator back to caucus room after private client discussion</i>

**Table 15a. Additional Tactics Introduced/Employed in Video Mediations (Group C - Administrative factors/tactics)**

*(Question 93: From the list below, please identify additional tactics that you have introduced/employed in video mediation to help parties reach resolution. Check all that apply. [Group C - Administrative factors/tactics])*

Group C – Administrative factors/tactics	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Enhanced scheduling availability to meet parties' needs (no building hours or traffic issues, etc.)	103	74%	43	83%	24	71%	36	68%
More effective separation of the parties by Zoom breakout room tool compared to when physically sharing the mediation site	85	61%	40	77%	20	59%	25	47%
Inviting a party to send a document to the other party via the video chat feature	29	21%	15	29%	8	24%	6	11%
Willingness to extend the time of the session due to the convenience of video	87	63%	40	77%	16	47%	31	58%
Offering to quickly reconvene the mediation at another time for one more shot at a settlement if possible	86	62%	39	75%	20	59%	27	51%
Other administrative tactics (See Table 15b)	9	6%	6	12%	1	3%	2	4%

**Table 15b. Verbatim responses – Additional tactics in video mediation [Group C – Administrative Tactics]**

<i>Ability to have multiple breakout rooms for side-conversations (counsel only, etc.) or multi-party cases, versus limitations on physical space</i>
<i>Ability to use the phone to call into the zoom if a party has a child at home and cannot participate by video</i>
<i>Attorney One on Ones</i>
<i>Easier to reschedule in instances where a party has to cancel since there were no travel expenses previously incurred by the parties and the Mediator.</i>
<i>If I think it would be helpful to talk to counsel separately I sometimes text them during the session.</i>
<i>Separate follow ups/with each side via zoom post mediation</i>
<i>Use of Microsoft Teams and PDF files</i>
<i>Willingness of the parties to extend the time of the mediation session because they do not have to worry about long drive home.</i>

**Table 16. Additional Tactics Used to Help Parties Reach Resolution – Verbatim Responses**

<i>Having an attorney only breakout session</i>
<i>requesting mediation participants email documents to the mediator using a cell phone to communicate with parties to rejoin a session</i>
<i>I found that most pro se Charging Parties were less intimidated by using Video and Teleconference. They were more relaxed. This goes for CP's that were represented by counsel as well.</i>
<i>I have noticed that overall, participants, especially Charging Parties, are less nervous, less intimidated, have a better disposition towards the mediation process and I spend less time dealing with calming people down or diffusing tension or aggression.</i>
<i>Making sure that the parties were comfortable with using zoom prior to the mediation session.</i>
<i>Not having to constantly escort the parties to the restroom or advise them on where to go for breaks and/or lunch as you have to do in person.</i>
<i>Reconfirming less expense for travel by Respondent to have parties gather which has allowed Respondent in many cases to offer other incentives to resolve. Discussing with both parties the efficiency and least stressful use of video than in person which has been extremely successful, decreased stress and anxiety on both parties and has addressed security concerns and health and safety concerns.</i>
<i>Reformatted convening documents to reflect video format. Reemphasize confidentiality -I'm not recording nor should they. Get affirmation to that from all participants and confirmation that only people identified are participating (furry friends, small children excluded :-))</i>
<i>The ability to have continuous negotiations via secondary meetings or calls</i>
<i>Have the parties wait in a waiting room and having a hands on training on how to use Zoom for those new to the system.</i>
<i>I encourage parties to use the "Ask for Help" button while chatting privately in the caucus room, to notify me when they're ready for me to return from the lobby. Most representatives have informed me that they love the feature and that they get a much quicker response from the mediator versus trying to track someone down in an office/building.</i>
<i>I offer the parties (mostly unrepresented CP's and small business owners) the opportunity for a "test connection." Sometimes, they are not tech savvy and will like to test their ability to connect to zoom prior to the mediation. We set up the test date and that usually leads to additional pre-mediation counseling. I find parties appreciate the opportunity of the test connection.</i>
<i>One of the tactics or zoom features that I have found very useful is the ask for help button on the bottom of the screen. This allows the mediator who is already in front of the screen to know when the parties are ready to step into the breakout room. This has saved a great deal of time for everyone since I no longer have to guess how much time to let the parties caucus on their own and they don't have to use a phone in the office to contact me in my office. It also allows me to get other administrative work done while I am at my computer because I know that the ask for help button will let me know when I am needed.</i>
<i>Language Interpretation or interpreters</i>
<i>Defusing conflict through observations of the parties' surroundings on the video, making connections, etc. (i.e., interesting art, pets, and even sharing view of personal space to make connections with people.) Defusing conflict/adding humor when technology glitches (frozen screen, muted mic, connection issues - reveals the humanity of the participants.)</i>
<i>Practice opportunity</i>
<i>Speak with parties pre-mediation to discuss process - this has helped with parties not represented by counsel to ensure they understand process which ends smoothly.</i>

<i>I've invited counsel to participate with me in pre-formal-session communication to generate momentum - and reduce surprise - going into the video session</i>
<i>Encouraging parties to have refreshments while waiting for me to return from a chat room. Encouraging parties to build a bridge of new options while in the caucus room. Asking parties to return any urgent calls which came in during the joint session, but to put themselves on mute. Reminder of the confidentiality nature of the session. If available, take a walk outside and leave the phones inside.</i>
<i>Scheduling separate zoom meetings for charging party and respondent so no risk of breakout room privacy breaches.</i>
<i>Able to have immediate contact with CP and R after CP resigned during the mediation. We quickly communicated with the CP to return her items and clear out desk while still in mediation. It was successful.</i>
<i>I believe more parties have attended for respondent than would have for in person which facilitated more rapid settlement</i>
<i>Settlement priorities identification - reviewing importance of potential monetary/non-monetary remedies with the parties using Excel to sort and compare CP and R's priorities and identify areas of overlap. Negotiation agent - using an algorithm model to help the parties estimate possible settlement moves and to consider alternative approaches to individual moves or overall strategy. Charts demonstrating bracket overlap areas and incremental progress toward resolution resulting from negotiation.</i>

**Table 17a. Setting Additional Ground Rules**

*(Question 20: Compared to in-person mediation, has the use of video mediation caused you to set additional ground rules?)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
Yes, I set additional ground rules compared to in-person mediation.	35	25%	22	43%	9	26%	4	8%
No, I set less ground rules compared to in-person mediation.	4	3%	1	2%	1	3%	2	4%
No, I set the same ground rules in video and in-person mediation.	87	63%	25	49%	21	62%	41	77%
I don't set ground rules when mediating.	12	9%	3	6%	3	9%	6	11%

**Table 17b. Setting Additional Ground Rules – Verbatim Responses**

<i>Ask who else is in the room with the parties</i>
<i>Confirm no one else in the room and discuss what to do if the technology fails. I give counsel my cell phone number in case of a technology failure.</i>
<i>I ask each video participant to confirm that no one other than persons visible on the screen can hear the mediation at their respective locations.</i>
<i>I find it important to ensure that no extra person is attending the mediation outside of the view of the camera. I provide advance information about this rule, and then when I detect that a spouse is attending off camera, I include them, get their confidentiality agreement signature, and discuss their attendance with the other side before beginning the mediation.</i>
<i>I instruct the parties in advance to announce when a non participant enters the space. We put a hold on the process until such party departs.</i>
<i>identifying who is present with the parties but may be off camera</i>
<i>Make sure no one else is in attendance that has not signed the agreement to mediate and confidentiality agreement.</i>
<i>make sure that anyone else who is in the room identifies themselves to the mediator and the other party and get consent for that person to listen in on the mediation.</i>
<i>No cell phones. No interruptions. No additional parties unless they agree and sign the confidentiality document.</i>
<i>Persons outside of the site of the camera, must sign the Confidentiality Form.</i>
<i>No recording, identification of anyone else in the room</i>
<i>There's an additional paragraph for telephone mediations where everyone in the room must identify themselves and have signed the Agreement to Mediate and Confidentiality Agreement.</i>
<i>There is a bit more conversation about the caucus rooms and how I will get in touch with the parties when I am returning to their room. Doesn't take long.</i>
<i>Mute yourself when others are speaking. And explain I might mute you if I can't hear the person who is speaking if you interrupt them.</i>
<i>Please silent all outside noise.</i>
<i>Appear via video. No turned off cameras. Make sure everyone is in a room with privacy to prevent third parties from hearing confidential communications. (I.e., you cannot attend mediation while sitting at the gate at the airport or riding in an Uber vehicle.)</i>
<i>Emphasis on confidentiality and instructing participants to ensure that they are in a place where they cannot be overheard by others</i>
<i>Ensuring no one else is in the room for confidentiality purposes</i>
<i>Ground rules relating to mediation confidentiality</i>
<i>I ask the parties to "guard" the confidentiality of their space. Meaning if a non-participant enters their space during the mediation (friend, relative, co-worker, etc.), I ask them to leave the mediation and to rejoin only when the non-participant has gone.</i>
<i>Mainly additional ground rules surrounding confidentiality and the importance of that since I can not see who is in the room as well reminding the parties that there shall be no recording of any part of the mediation session. I believe all parties have been very receptive of these ground rules and adhered to them without issue.</i>
<i>Do not video share the session proceedings. Do not live stream. Do not take pictures of the screen.</i>
<i>To safeguard the confidentiality of the process</i>
<i>No recording of the mediation session</i>
<i>No recording of the session</i>



<i>No recording of the session. I had this ground for in person but I had to confirm this for video sessions because I was not physically in the room to confirm no video. Also, added the ground rule that no one else (other than those participating in the mediation) could be present in the room that they were in.</i>
<i>No recording, no one else in the room, agreements to mediate and for confidentiality sent ahead of time (formerly signed at in person mediations) method for notifying parties when they need me to come back or when I want to enter their room</i>
<i>No video recording and confirming no one else is in the room</i>
<i>teach them to use Zoom and not to record or take pictures of Zoom</i>
<i>Ask parties and counsel to confirm that they are not recording the mediation and they understand and agree that what is discussed as part of the mediation process and all offers to settle are confidential and not discoverable in any litigation.</i>
<i>I ask each party to attest they are not recording the call and to attest they are in a location where they can speak openly and confidentially.</i>
<i>No out of sight participants; agreement that there are no recordings</i>
<i>Patience with technology and the technical issues encountered with zoom</i>
<i>Please be verbal when communicating...I may miss their body language.</i>
<i>I ask for participation by video. Some want to participate by audio only and I discourage that.</i>
<i>For a few people I have had to set the ground rule that they plan to be fully engaged the entire day. A few people scheduled other appointments during their mediation and came and went from the session in a manner that was very disruptive to the process. That is a very rare occurrence. But if that happens with someone, the next time I schedule a mediation with that person I clarify my expectation of continuous participation.</i>

**Table 18. Comparing Participant Focus in In-Person Mediations and Video Mediations**

*(Question 22: In general, comparing in-person mediations to your mediations with video, how would you compare the level of participant focus?)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	138	100%	51	100%	34	100%	53	100%
The parties on video are more focused.	35	25%	22	43%	9	26%	4	8%
The parties on video are less focused.	4	3%	1	2%	1	3%	2	4%
I have not noticed a difference.	87	63%	25	49%	21	62%	41	77%

**Table 19a. Mediators' Ratings of the Video Dispute Resolution Skills of the Charging Parties' Attorneys**  
*(Question 23-1: For your EEOC video mediations, please separately rate the video dispute resolution skills of the Charging Party and Respondent attorneys and any Non-Legal Representatives who have appeared before you on a scale of 1 to 5 with: 1 = Minimal Skills, 2 = Below Average Skills, 3 = Average Skills, 4 = Above Average Skills, 5 = Excellent Skills. Check "N/A" if not applicable. [Charging Party's Attorney])*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	123	100%	46	100%	30	100%	47	100%
1 = Minimal Skills	2	2%	0	0%	1	3%	1	2%
2 = Below Average Skills	4	3%	0	0%	2	7%	2	4%
3 = Average Skills	49	40%	17	37%	17	57%	15	32%
4 = Above Average Skills	35	28%	12	26%	5	17%	18	38%
5 = Excellent Skills	33	27%	17	37%	5	17%	11	23%
Not Applicable	0	0%	0	0%	0	0%	0	0%
<b>Average Rating*</b>	<b>3.7561</b>		<b>4.0000</b>		<b>3.3667</b>		<b>3.7660</b>	

\*Based on the following 5-point Likert scale: 1 – Strongly Disagree, 2 – Disagree, 3 – Neither Agree nor Disagree, 4 – Agree, 5 – Strongly Agree

**Table 19b. Mediators' Ratings of the Video Dispute Resolution Skills of the Respondents' Attorneys**  
*(Question 23-2: For your EEOC video mediations, please separately rate the video dispute resolution skills of the Charging Party and Respondent attorneys and any Non-Legal Representatives who have appeared before you on a scale of 1 to 5 with: 1 = Minimal Skills, 2 = Below Average Skills, 3 = Average Skills, 4 = Above Average Skills, 5 = Excellent Skills. Check "N/A" if not applicable. [Respondent's Attorney])*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	120	100%	46	100%	28	100%	46	100%
1 = Minimal Skills	1	1%	0	0%	0	0%	1	2%

2 = Below Average Skills	2	2%	0	0%	2	7%	0	0%
3 = Average Skills	39	33%	13	28%	12	43%	14	30%
4 = Above Average Skills	45	38%	16	35%	8	29%	21	46%
5 = Excellent Skills	33	28%	17	37%	6	21%	10	22%
Not Applicable	0	0%	0	0%	0	0%	0	0%
<b>Average Rating*</b>	<b>3.8917</b>		<b>3.6429</b>			<b>3.8478</b>		

\*Based on the following 5-point Likert scale: 1 – Strongly Disagree, 2 – Disagree, 3 – Neither Agree nor Disagree, 4 – Agree, 5 – Strongly Agree

**Table 19c. Mediators' Ratings of the Video Dispute Resolution Skills of the Charging Parties' Non-Legal Representatives**

*(Question 23-3: For your EEOC video mediations, please separately rate the video dispute resolution skills of the Charging Party and Respondent attorneys and any Non-Legal Representatives who have appeared before you on a scale of 1 to 5 with: 1 = Minimal Skills, 2 = Below Average Skills, 3 = Average Skills, 4 = Above Average Skills, 5 = Excellent Skills. Check "N/A" if not applicable. [Charging Party's Non-Legal Representative])*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	120	100%	46	100%	28	100%	46	100%
1 = Minimal Skills	4	3%	3	7%	0	0%	1	2%
2 = Below Average Skills	20	17%	6	13%	6	21%	8	17%
3 = Average Skills	43	36%	14	30%	13	46%	16	35%
4 = Above Average Skills	16	13%	9	20%	2	7%	5	11%
5 = Excellent Skills	12	10%	9	20%	2	7%	1	2%
Not Applicable	25	21%	5	11%	5	18%	15	33%
<b>Average Rating*</b>	<b>3.1263</b>		<b>3.3659</b>		<b>3.0000</b>		<b>2.9032</b>	

\*Based on the following 5-point Likert scale: 1 – Strongly Disagree, 2 – Disagree, 3 – Neither Agree nor Disagree, 4 – Agree, 5 – Strongly Agree

**Table 19d. Mediators' Ratings of the Video Dispute Resolution Skills of the Respondents' Non-Legal Representatives**

*(Question 23-4: For your EEOC video mediations, please separately rate the video dispute resolution skills of the Charging Party and Respondent attorneys and any Non-Legal Representatives who have appeared before you on a scale of 1 to 5 with: 1 = Minimal Skills, 2 = Below Average Skills, 3 = Average Skills, 4 = Above Average Skills, 5 = Excellent Skills. Check "N/A" if not applicable. [Respondent's Non-Legal Representative])*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	121	100%	46	100%	29	100%	46	100%
1 = Minimal Skills	2	2%	1	2%	0	0%	1	2%

2 = Below Average Skills	13	11%	5	11%	4	14%	4	9%
3 = Average Skills	47	39%	17	37%	13	45%	17	37%
4 = Above Average Skills	27	22%	9	20%	6	21%	12	26%
5 = Excellent Skills	17	14%	13	28%	2	7%	2	4%
Not Applicable	15	12%	1	2%	4	14%	10	22%
<b>Average Rating*</b>		<b>3.4151</b>		<b>3.6222</b>		<b>3.2400</b>		<b>3.2778</b>

\*Based on the following 5-point Likert scale: 1 – Strongly Disagree, 2 – Disagree, 3 – Neither Agree nor Disagree, 4 – Agree, 5 – Strongly Agree

**Table 20a. Do Charging Parties Use Additional Tactics in Video Mediation?**

*(Question 24: Statement: I find that the Charging Party (not counsel) uses additional tactics in video mediation that I do not see at in-person mediation.)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	123	100%	46	100%	30	100%	47	100%
Agree	12	10%	10	22%	2	7%	0	0%
Disagree	111	90%	36	78%	28	93%	47	100%

**Table 20b. Additional Tactics Used by Charging Parties in Video Mediation – Verbatim Responses**

*(Question 66: Please identify additional new tactics you are seeing from Charging Parties/plaintiffs in video mediation that you do not see at in-person mediation)*

<i>CPs seem to be more willing to engage, I think because they feel less intimidated and much less nervous about mediation, way less emotional and more focused on resolving.</i>
<i>Greater use of negotiating skills - Charging Party has greater focus on the issues and less anxiety. Being at home/in their own environment appears to comfort them more and thereby allows them to be more focused in negotiations without feeling anxious.</i>
<i>I feel Charging Parties are less intimidated when they are in their own homes and are facing their phones or computers. They easily share with you any documents necessary straight from their computer.</i>
<i>Charging Parties are able to access documents/files easier by participating from home/office and there's a reduced level of stress versus coming into a physical conference room and searching for a specific document.</i>
<i>CPs have presented using a power point presentation in the joint session to elaborate on their allegations. CPs have shared documents via the "share screen" without emailing the documents to the R as a "free discovery".</i>
<i>Sharing of documents. Most of the time during in person mediation, the CP forgets to bring the documents or does not understand that they can bring documents. Since we have used video, I have more time to prepare the parties for what to expect as well as to what they should bring to the mediation including any pertinent documents.</i>
<i>Negotiate harder because they feel there is more time for the mediation. Video mediations allow the Charging Parties to save time by not having to travel to the EEOC offices, which can be a substantial amount of time. They are also more relaxed because they are in their own environment, thus leading to less anxiety.</i>
<i>They feel more empowered and are able to formulate their own strategies- confidence.</i>
<i>Being able to text me information while the Respondents are giving their perspective has been helpful keeping the mediation process focused.</i>
<i>Frequent texting with non-mediation participants.</i>
<i>Not having the CP included on video, attending by phone.</i>

**Table 21a. Do Respondents Use Additional Tactics in Video Mediation?**

(Question 25: Statement: I find that the Respondent (not counsel) uses additional new tactics in video mediation that I do not see at in person mediation.)

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	123	100%	46	100%	30	100%	47	100%
Agree	11	9%	9	20%	2	7%	0	0%
Disagree	112	91%	37	80%	28	93%	47	100%

**Table 21b. Additional Tactics Used by Respondents in Video Mediation – Verbatim Responses**

(Question 67: Please identify additional new tactics you are seeing from Respondents in video mediation that you do not see at in-person mediation)

<i>Negotiate harder because they feel there is more time for the mediation. However, video mediations appear to take less time, which causes employers to feel better knowing that they do not have to pay more money to their attorneys. Respondents are also more content while using video because they have IT technical resources that they did not have before during in-person mediations. At the EEOC [office name] Local Office, that building did not provide Wi-fi, a printer, or computer to access important information. Additionally, Respondent and charging parties alike constantly complained that the breakout rooms at the EEOC [office name] Local Office were ineffective because they were not soundproof and parties could hear everything that was being said in said breakout room [in order] to fix this issue I had to make parties wait in the hall lobby, during caucus, which was not effective because strangers and opposing parties could [eavesdrop] into their confidential conversations. The parties who participate via video mediations now express more confidence because they are ensured privacy. The same situation applies to the EEOC local offices in [office names].</i>
<i>Documents presentation</i>
<i>Respondent has access to all of their materials and sources within their own environment. They also have internet access and access to their own network - which is unavailable to them at our office because we do not provide wifi or other internet access; as a result, they are more efficient and productive in mediation - cutting down on the length of time for the mediation.</i>
<i>R's have presented using a power point presentation in the joint session to elaborate on their decision-making process or whatever action is in question. R's have shared documents via the "share screen" without emailing the documents to the CP as a "free discovery".</i>
<i>Additionally, R counsel is finally able to come prepared with the supplemental agreement to have signed and returned either through email or the app. In person R counsel always complained about lack of wifi in the buildings or inability to upload docs onto EEOC computers etc..</i>
<i>Being able to text me information while the Charging Party is giving their perspective has been helpful keeping the mediation process focused. Video mediation helps me get the mediation scheduled with the parties that need to be there instead of having to contact these individuals by phone during the mediation.</i>
<i>I've found Respondents tend to have more individuals participating (HR, First line supervisor, Outside Insurance) on Zoom mediations versus in-person due to the possible time/cost savings of video mediation.</i>
<i>Respondents are very engaged in the process. They are not seating there thinking about traffic, getting out of downtown, parking, parking fees and they are feeling less intimidated by the process and more willing to resolve.</i>



<i>I feel they are more comfortable in their own environment.</i>
<i>They appear to use the mediator more to convey their wants and have access to very important files or info that may be needed during session. This is extremely important and has rendered successful in many cases.</i>

**Table 22a. Degree of Agreement to Statements Regarding the Mediators’ General Experience with Video Mediation – All Mediators**

*(Question 69: Based on your general experiences with video mediation by Zoom at the EEOC, please indicate whether you “Agree” or “Disagree” with each of the following statements.)*

	ALL MEDIATORS				
		Agree	Disagree	Neither Agree nor Disagree	Row Total
Mediation moves at a faster pace by video compared to in-person mediation.	#	54	27	41	122
	%	44%	22%	34%	100%
The Opening offer is usually on the table faster compared to in-person mediation.	#	46	40	37	123
	%	37%	33%	30%	100%
The First counter-offer is made quicker compared to in-person mediation.	#	40	37	43	120
	%	33%	31%	36%	100%
The time element pressure at the end of the mediation on video is more flexible than the time pressure toward the end of an in-person mediation.	#	81	19	21	121
	%	67%	16%	17%	100%
My tactics for managing impasse are different in video mediation than in-person.	#	28	54	40	122
	%	23%	44%	33%	100%
It is more difficult to resolve party impasse on video than in-person.	#	21	62	40	123
	%	17%	50%	33%	100%
Video caucuses are more efficient with breakout rooms than when I used caucuses in person.	#	63	24	36	123
	%	51%	20%	29%	100%
In a caucus the parties are more direct in video communication compared to in person.	#	42	28	50	120
	%	35%	23%	42%	100%
The parties are more direct in video communication with the other party in joint session compared to in person.	#	48	29	46	123
	%	39%	24%	37%	100%
Parties are more respectful to each other on video.	#	45	18	59	122
	%	37%	15%	48%	100%
I see less emotional outbursts from participants when mediating with video.	#	56	34	32	122
	%	46%	28%	26%	100%
Video mediation reduces the time I would normally spend in an in-person mediation in preliminary relationship building between me and a party.	#	48	40	33	121
	%	40%	33%	27%	100%
Attorneys are more efficient in video mediation compared to in-person mediation.	#	47	31	45	123
	%	38%	25%	37%	100%
There is less back and forth with attorneys in video mediation.	#	41	47	35	123
	%	33%	38%	28%	100%
Attorneys are more respectful in video mediation.	#	32	24	66	122
	%	26%	20%	54%	100%



**Table 22a. Degree of Agreement to Statements Regarding the Mediators' General Experience with Video Mediation – All Mediators (continued)**

	ALL MEDIATORS				
		Agree	Disagree	Neither Agree nor Disagree	Row Total
In video mediation settlement momentum is not lost because the parties or their attorneys leave the in-person mediation due to external reasons (parking, other appointments, travel issues, someone else has scheduled the room, etc.)	#	75	18	28	121
	%	62%	15%	23%	100%
The video document “share” function improves communication of document content that may impact settlement.	#	66	7	46	119
	%	55%	6%	39%	100%
I can effectively read body language and related cues in video mediation.	#	70	32	21	123
	%	57%	26%	17%	100%

**Table 22b. Degree of Agreement to Statements Regarding the Mediators’ General Experience with Video Mediation – Tabulated by Mediator Status**

*(Question 69: Based on your general experiences with video mediation by Zoom at the EEOC, please indicate whether you “Agree” or “Disagree” with each of the following statements.)*

<b>Note: # row refers to number responding; % row refers to % Agree - % Disagree - % Neither Agree nor Disagree</b>		<b>Staff Mediators Responding</b>	<b>Contract Mediators Responding</b>	<b>Pro bono Mediators Responding</b>
Mediation moves at a faster pace by video compared to in-person mediation.	#	47	30	45
	%	55%-15%-30%	40%-27%-33%	36%-27%-38%
The Opening offer is usually on the table faster compared to in-person mediation.	#	47	30	46
	%	49%-26%-26%	47%-30%-23%	20%-41%-39%
The First counter-offer is made quicker compared to in-person mediation.	#	46	29	45
	%	50%-28%-22%	38%-31%-31%	13%-33%-53%
The time element pressure at the end of the mediation on video is more flexible than the time pressure toward the end of an in-person mediation.	#	47	29	45
	%	77%-17%-6%	62%-7%-31%	60%-20%-20%
My tactics for managing impasse are different in video mediation than in-person.	#	47	29	46
	%	28%-53%-19%	14%-48%-38%	24%-33%-43%
It is more difficult to resolve party impasse on video than in-person.	#	47	30	46
	%	9%-57%-34%	17%-47%-37%	26%-46%-28%
Video caucuses are more efficient with breakout rooms than when I used caucuses in person.	#	47	30	46
	%	72%-9%-19%	53%-20%-27%	28%-30%-41%
In a caucus the parties are more direct in video communication compared to in person.	#	47	29	44
	%	47%-21%-32%	38%-17%-45%	20%-30%-50%
The parties are more direct in video communication with the other party in joint session compared to in person.	#	47	30	46
	%	51%-21%-28%	23%-23%-53%	37%-26%-37%
Parties are more respectful to each other on video.	#	47	30	45
	%	49%-15%-36%	33%-17%-50%	27%-13%-60%
I see less emotional outbursts from participants when mediating with video.	#	47	30	45
	%	60%-21%-19%	43%-27%-30%	33%-36%-31%

**Table 22b. Degree of Agreement to Statements Regarding the Mediators' General Experience with Video Mediation – Tabulated by Mediator Status (continued)**

<b>Table 22b. (continued)</b>		<b>Staff Mediators Responding</b>	<b>Contract Mediators Responding</b>	<b>Pro bono Mediators Responding</b>
Video mediation reduces the time I would normally spend in an in-person mediation in preliminary relationship building between me and a party.	#	47	30	44
	%	53%-23%-23%	27%-47%-27%	34%-34%-32%
Attorneys are more efficient in video mediation compared to in-person mediation.	#	47	30	46
	%	49%-23%-28%	40%-30%-30%	26%-24%-50%
There is less back and forth with attorneys in video mediation.	#	47	30	46
	%	49%-32%-19%	33%-37%-30%	17%-46%-37%
Attorneys are more respectful in video mediation.	#	47	29	46
	%	36%-19%-45%	24%-24%-52%	17%-17%-65%
In video mediation settlement momentum is not lost because the parties or their attorneys leave the in-person mediation due to external reasons (parking, other appointments, travel issues, someone else has scheduled the room, etc.)	#	47	28	46
	%	72%-13%-15%	61%-18%-21%	52%-15%-33%
The video document “share” function improves communication of document content that may impact settlement.	#	47	29	43
	%	70%-6%-23%	52%-3%-45%	42%-7%-51%
I can effectively read body language and related cues in video mediation.	#	47	30	46
	%	83%-2%-15%	37%-37%-27%	43%-43%-13%

**Table 22c. Degree of Agreement to Statements Regarding the Mediators’ General Experience with Video Mediation – Tabulated by Mediator Experience**

*(Question 69: Based on your general experiences with video mediation by Zoom at the EEOC, please indicate whether you “Agree” or “Disagree” with each of the following statements.)*

<b>Note: # row refers to number responding; % row refers to % Agree - % Disagree - % Neither Agree nor Disagree</b>		<b>All Mediators Responding</b>	<b>Mediators who have conducted 20 mediations or less during the past 12 months</b>	<b>Mediators who have conducted more than 20 mediations during the past 12 months</b>
Mediation moves at a faster pace by video compared to in-person mediation.	#	122	71	51
	%	44%-22%-34%	31% - 28% - 41%	63% - 14% - 24%
The Opening offer is usually on the table faster compared to in-person mediation.	#	123	71	52
	%	37%-33%-30%	32% - 32% - 35%	44% - 33% - 23%
The First counter-offer is made quicker compared to in-person mediation.	#	120	70	50
	%	33%-31%-36%	24% - 29% - 47%	46% - 34% - 20%
The time element pressure at the end of the mediation on video is more flexible than the time pressure toward the end of an in-person mediation.	#	121	69	52
	%	67%-16%-17%	59% - 17% - 23%	77% - 13% - 10%
My tactics for managing impasse are different in video mediation than in-person.	#	122	70	52
	%	23%-44%-33%	19% - 39% - 43%	29% - 52% - 19%
It is more difficult to resolve party impasse on video than in-person.	#	123	71	52
	%	17%-50%-33%	21% - 45% - 34%	12% - 58% - 31%
Video caucuses are more efficient with breakout rooms than when I used caucuses in person.	#	123	71	52
	%	51%-20%-29%	38% - 25% - 37%	69% - 12% - 19%
In a caucus the parties are more direct in video communication compared to in person.	#	120	68	52
	%	35%-23%-42%	31% - 22% - 47%	40% - 25% - 35%
The parties are more direct in video communication with the other party in joint session compared to in person.	#	123	71	52
	%	39%-24%-37%	31% - 30% - 39%	50% - 15% - 35%
Parties are more respectful to each other on video.	#	122	71	51
	%	37%-15%-48%	28% - 15% - 56%	49% - 14% - 37%
I see less emotional outbursts from participants when mediating with video.	#	122	71	51
	%	46%-28%-26%	39% - 27% - 34%	55% - 29% - 16%

**Table 22c. Degree of Agreement to Statements Regarding the Mediators’ General Experience with Video Mediation – Tabulated by Mediator Experience (continued)**

<b>Table 22c. (continued)</b>		<b>All Mediators Responding</b>	<b>Mediators who have conducted 20 mediations or less during the past 12 months</b>	<b>Mediators who have conducted more than 20 mediations during the past 12 months</b>
Video mediation reduces the time I would normally spend in an in-person mediation in preliminary relationship building between me and a party.	#	121	70	51
	%	40%-33%-27%	34% - 34% - 31%	47% - 31% - 22%
Attorneys are more efficient in video mediation compared to in-person mediation.	#	123	71	52
	%	38%-25%-37%	31% - 30% - 39%	48% - 19% - 33%
There is less back and forth with attorneys in video mediation.	#	123	71	52
	%	33%-38%-28%	25% - 42% - 32%	44% - 33% - 23%
Attorneys are more respectful in video mediation.	#	122	70	52
	%	26%-20%-54%	20% - 21% - 59%	35% - 17% - 48%
In video mediation settlement momentum is not lost because the parties or their attorneys leave the in-person mediation due to external reasons (parking, other appointments, travel issues, someone else has scheduled the room, etc.)	#	121	69	52
	%	62%-15%-23%	54% - 19% - 28%	73% - 10% - 17%
The video document “share” function improves communication of document content that may impact settlement.	#	119	69	50
	%	55%-6%-39%	43% - 6% - 51%	72% - 6% - 22%
I can effectively read body language and related cues in video mediation.	#	123	71	52
	%	57%-26%-17%	45% - 37% - 18%	73% - 12% - 15%

**Table 23a. Top Three Barriers to Resolution, Tabulated by Mediator Status – Group A: Video Technology/Setting Barriers**

*(Question 27: Please choose the top 3 most important barriers to resolution from this list of video technology barriers that you find generally interfere with the resolution of your EEOC cases.) – [Group A: Video technology/setting barriers]*

Group A: Video technology/setting barriers	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Technology Interference (internet connection, poor audio, etc.)	62	45%	27	52%	12	35%	23	43%
The case needed an in-person mediation forum and not Zoom.	22	16%	6	12%	7	21%	9	17%
Interference from other persons at the Charging Party site that were not mediation participants	29	21%	13	25%	9	26%	7	13%
Interference from other persons at the Respondent site that were not mediation participants	10	7%	2	4%	4	12%	4	8%
Limited video platform skills of a participant	45	32%	19	37%	12	35%	14	26%
Others (not specified)	33	24%	20	38%	5	15%	8	15%



**Table 23b. Top Three Barriers to Resolution, Tabulated by Mediator Experience – Group A: Video Technology/Setting Barriers**

*(Question 27: Please choose the top 3 most important barriers to resolution from this list of video technology barriers that you find generally interfere with the resolution of your EEOC cases.) – [Group A: Video technology/setting barriers]*

Group A: Video technology/setting barriers	Video Mediation Experience					
	All		20 or less video mediations		More than 20 video mediations	
	#	%	#	%	#	%
<b>Total number of mediators</b>	139		86		53	
Technology Interference (internet connection, poor audio, etc.)	62	45%	34	39.5%	28	52.8%
The case needed an in-person mediation forum and not Zoom.	22	16%	16	18.6%	6	11.3%
Interference from other persons at the Charging Party site that were not mediation participants	29	21%	16	18.6%	13	24.5%
Interference from other persons at the Respondent site that were not mediation participants	10	7%	8	9.3%	2	3.8%
Limited video platform skills of a participant	45	32%	26	30.2%	19	35.8%
Others (not specified)	33	24%	13	15.1%	20	37.7%

**Table 24a. Top Three Barriers to Resolution, Tabulated by Mediator Status – Group B: Charging Party/Representative Conduct**

*(Question 28: Please choose the top 3 barriers that you find generally interfere with resolution within this list of potential charging party conduct.) [Group B – Charging Party/Representative Conduct]*

Group B – Charging Party/Representative Conduct	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Charging party (or their representative) used mediation to gather information (discovery, case related to another case, etc.	17	12%	8	15%	2	6%	7	13%
Charging party’s (or their representative’s) “positional conduct” (unrealistic, unreasonable)	80	58%	34	65%	23	68%	23	43%
Charging party’s (or their representative’s) “negotiation conduct” (refused to discuss or explore options, refused to listen, did not show interest)	32	23%	17	33%	7	21%	8	15%
Charging party’s (or their representative’s) “personal conduct” (emotional, angry, disrespectful)	30	22%	15	29%	7	21%	8	15%
Charging party’s (or their representative’s) lack of preparation	36	26%	14	27%	12	35%	10	19%
Charging party did not know what they wanted	41	29%	18	35%	10	29%	13	25%
Charging party did not want to invest the time	9	6%	3	6%	3	9%	3	6%
Charging party’s representative had limited or no authority to settle	7	5%	2	4%	3	9%	2	4%
Charging party’s representative did not have the time	5	4%	1	2%	2	6%	2	4%
Charging party needed legal representation	27	19%	9	17%	6	18%	12	23%
Others (See verbatim responses below)	8	6%	3	6%	2	6%	3	6%
<i>C.P. unrealistic about both merits of charge and amount of possible financial remedy should the matter not be resolved.</i>								
<i>Totally unrealistic expectation of case worth and refusal to budge from that expectation.</i>								
<i>Charging party and counsel were not together and therefore counsel had less ability to persuade the client/charging party.</i>								

<i>Charging party and/or their representative not negotiating in good faith.</i>
<i>Different theory, perspective and perception</i>
<i>Non employment issues were involved.</i>

**Table 24b. Top Three Barriers to Resolution, Tabulated by Mediator Experience – Group B: Charging Party/Representative Conduct**

*(Question 28: Please choose the top 3 barriers that you find generally interfere with resolution within this list of potential charging party conduct.) [Group B – Charging Party/Representative Conduct]*

Group B – Charging Party/Representative Conduct	Video Mediation Experience					
	All		20 or less video mediations		More than 20 video mediations	
	#	%	#	%	#	%
<b>Total number of mediators</b>	139		86		53	
Charging party (or their representative) used mediation to gather information (discovery, case related to another case, etc.	17	12%	9	10.5%	8	15.1%
Charging party’s (or their representative’s) “positional conduct” (unrealistic, unreasonable)	80	58%	42	48.8%	38	71.7%
Charging party’s (or their representative’s) “negotiation conduct” (refused to discuss or explore options, refused to listen, did not show interest)	32	23%	11	12.8%	21	39.6%
Charging party’s (or their representative’s) “personal conduct” (emotional, angry, disrespectful)	30	22%	16	18.6%	14	26.4%
Charging party’s (or their representative’s) lack of preparation	36	26%	21	24.4%	15	28.3%
Charging party did not know what they wanted	41	29%	23	26.7%	18	34.0%
Charging party did not want to invest the time	9	6%	4	4.7%	5	9.4%
Charging party’s representative had limited or no authority to settle	7	5%	5	5.8%	2	3.8%
Charging party’s representative did not have the time	5	4%	3	3.5%	2	3.8%
Charging party needed legal representation	27	19%	17	19.8%	10	18.9%
Others (See previous table.)	8	6%	4	4.7%	4	7.5%



**Table 25a. Top Three Barriers to Resolution, Tabulated by Mediator Status – Group C:  
Respondent/Representative Conduct**

*(Question 29: Please choose the top 3 barriers that you find generally interfere with resolution within this list of potential respondent conduct.) [Group C – Respondent/Representative Conduct]*

Group C – Respondent/Representative Conduct	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Respondent (or their representative) used mediation to gather information (discovery, case related to another case, etc.)	62	45%	29	56%	15	44%	18	34%
Respondent’s (or their representative’s) “positional conduct” (unrealistic, unreasonable)	59	42%	23	44%	16	47%	20	38%
Respondent’s (or their representative’s) “negotiation conduct” (refused to discuss or explore options, refused to listen, did not show interest)	36	26%	11	21%	12	35%	13	25%
Respondent’s (or their representative’s) “personal conduct” (emotional, angry, disrespectful)	12	9%	4	8%	3	9%	5	9%
Respondent’s (or their representative’s) lack of preparation	20	14%	11	21%	4	12%	5	9%
Respondent did not know what they wanted	5	4%	2	4%	2	6%	1	2%
Respondent did not want to invest the time	10	7%	4	8%	2	6%	4	8%
Respondent’s representative had limited or no authority to settle	68	49%	31	60%	14	41%	23	43%
Respondent’s representative did not have the time	7	5%	1	2%	1	3%	5	9%
Respondent needed legal representation	10	7%	7	13%	1	3%	2	4%
Other Respondent (or representative) conduct (See list below)	6	4%	3	6%	1	3%	2	4%
<i>Needed more money</i>								
<i>Felt the need to rush through the process</i>								

<i>Respondents not negotiating in good faith.</i>
<i>Different theory, perspective, and perception</i>
<i>Don't want to concede anything.</i>

**Table 25b. Top Three Barriers to Resolution, Tabulated by Mediator Experience – Group C: Respondent/Representative Conduct**

*(Question 29: Please choose the top 3 barriers that you find generally interfere with resolution within this list of potential respondent conduct.) [Group C – Respondent/Representative Conduct]*

Group C – Respondent/Representative Conduct	Video Mediation Experience					
	All		20 or less video mediations		More than 20 video mediations	
	#	%	#	%	#	%
<b>Total number of mediators</b>	139		86		53	
Respondent (or their representative) used mediation to gather information (discovery, case related to another case, etc.)	62	45%	32	37.2%	30	56.6%
Respondent’s (or their representative’s) “positional conduct” (unrealistic, unreasonable)	59	42%	33	38.4%	26	49.1%
Respondent’s (or their representative’s) “negotiation conduct” (refused to discuss or explore options, refused to listen, did not show interest)	36	26%	23	26.7%	13	24.5%
Respondent’s (or their representative’s) “personal conduct” (emotional, angry, disrespectful)	12	9%	7	8.1%	5	9.4%
Respondent’s (or their representative’s) lack of preparation	20	14%	8	9.3%	12	22.6%
Respondent did not know what they wanted	5	4%	3	3.5%	2	3.8%
Respondent did not want to invest the time	10	7%	6	7.0%	4	7.5%
Respondent’s representative had limited or no authority to settle	68	49%	36	41.9%	32	60.4%
Respondent’s representative did not have the time	7	5%	5	5.8%	2	3.8%
Respondent needed legal representation	10	7%	2	2.3%	8	15.1%
Other Respondent (or representative) conduct (See previous table.)	6	4%	3	3.5%	3	5.7%





**Table 26a. Top Three Barriers to Resolution, Tabulated by Mediator Status – Group D: Administrative Issues**

(Question 79: Please choose the important administrative barriers that you find generally interfere with resolution within this list of administrative issues.) [Group D – Administrative issues]

Group D – Administrative issues	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
The mediation was not scheduled properly	4	3%	0	0%	2	6%	2	4%
E-signature delays caused the agreement to fall apart	19	14%	12	0%	3	6%	4	4%
I needed more support with settlement agreement template language	10	7%	3	0%	3	6%	4	4%
EEOC program procedures/rules interfered with resolving the case	10	7%	3	0%	3	6%	4	4%
Other, please specify (See below)	29	21%	17	0%	6	6%	6	4%
<i>DocUSign or electronic signature not available</i>								
<i>The Agency does not have E-signature which would make Agreement signing efficient</i>								
<i>Doc-U-sign ability for the parties, especially Charging Parties, will be a tremendous help or a private section on the online portal for Mediators to send and retrieve signed settlement agreements to the parties.</i>								
<i>E-signature delays is a challenge in processing timely closures. I would not necessarily it causes settlements to fall apart.</i>								
<i>Exchange of agreement documents</i>								
<i>Getting signatures on everything a problem</i>								
<i>Charging parties, in particular, often furnish lots of information through the "portal" and thus operate with the belief that said information has been provided, pre-mediation, to respondents. That, of course, is not the case and the agency needs address</i>								
<i>I do not like the rule that prevents me from asking for mediation statements prior to the mediation session. It makes the mediation session take longer for me to learn the relevant facts and issues.</i>								
<i>Don't always have current agreement language or specific requirements for agreements. Multiple versions of Agreement to Mediate and Settlement Agreement format.</i>								
<i>Disorganization at the EEOC level and bureaucratic lunacy and disregard of important follow up procedures and lack of administration at helping the neutral in getting opposing parties to schedule the mediation.</i>								
<i>Time limits to resolve the case.</i>								
<i>Timeliness of parties signing agreements and returning them to the EEOC</i>								
<i>Delay in Respondent getting separate agreement to Charging Party/counsel</i>								
<i>Unrealistic demands</i>								
<i>The 7 days revocation period from CP's over 4. at least 2 backed out of a deal this year only because they wanted more money and attempted to renegotiate after having agreed on an amount.</i>								
<i>The parties lack a sense of urgency when completing their side agreements</i>								

*The EEOC Mediation Settlement Agreement is a problem. That language needs to be revised to alleviate obstacles and resistance from Respondents to execute it, it is 9% of the time a problem.*

*Some Respondent don't bring any authority or anything to offer the other side.*

**Table 26b. Top Three Barriers to Resolution, Tabulated by Mediator Experience – Group D:  
Administrative Issues**

*(Question 79: Please choose the important administrative barriers that you find generally interfere with resolution within this list of administrative issues.) [Group D – Administrative issues]*

Group D – Administrative issues	Video Mediation Experience					
	All		20 or less video mediations		More than 20 video mediations	
	#	%	#	%	#	%
<b>Total number of mediators</b>	139		86		53	
The mediation was not scheduled properly	4	3%	4	4.7%	0	0.0%
E-signature delays caused the agreement to fall apart	19	14%	8	9.3%	11	20.8%
I needed more support with settlement agreement template language	10	7%	7	8.1%	3	5.7%
EEOC program procedures/rules interfered with resolving the case	10	7%	8	9.3%	2	3.8%
Others (See previous table.)	29	21%	12	14.0%	17	32.1%

**Table 27a. Are There In-Person Mediation Tactics That Are No Longer Effective in Video Mediation?**  
 (Question 80: Are there any in-person mediation tactics that you can no longer use effectively in video mediation?)

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	116	100%	47	100%	27	100%	42	100%
Yes	19	16%	5	11%	5	19%	9	21%
No	97	84%	42	89%	22	81%	33	79%

**Table 27b. In-Person Mediation Tactics That Are No Longer Effective in Video Mediation – Verbatim Responses**

(Question 81: Please identify these tactics you can no longer use effectively.)

<i>Signing agreement to mediate and signing the confidentiality agreement.</i>
<i>We need to be able to get signatures at the close of the resolved mediation. We cannot accomplish this on video at this time.</i>
<i>Eye contact, body language in some cases where the video on one end was of the entire room, bonding with the CP.</i>
<i>Having the parties look each other in the eye and apologize/hug/shake hands, etc.</i>
<i>Asking counsel or the party's representative to step out so I can speak to them separately or allowing them to ask to speak to me separately. I now do that by phone call with them.</i>
<i>Leaving the room and allowing both parties to sit in separate caucuses to use time as an advantage. I do this less on video.</i>
<i>Building a personal connection is much harder, less likely; can't see all of the body language</i>
<i>Certain non-verbal tactics that can't be used on video platform.</i>
<i>Controlling caucus environment. Executing agreements.</i>
<i>Escorting the parties to and from the bathroom and in and out of secure doors within the secure building.</i>
<i>I think it's easier in in person mediations to create a bond with the charging party especially. It's also more difficult to give immediate feedback and reflection when someone, either CP or R is giving a long dissertation.</i>
<i>I think you do not form the same level of connection with either the charging party or Respondent over zoom that you do in person.</i>
<i>In person communication. Some mediation participants are comfortable with video communication. Others are not. For those others, they do not relate to persons on a screen in the same way they relate to other persons in person. If the EEOC goes to video mediations only, for reasons of economy or efficiency, or for whatever other reasons, it will simply be tough luck for those who do not grow up with computers or are unfamiliar with, or uncomfortable with, video communication.</i>
<i>It is more difficult to ask questions "in front of" the parties.</i>
<i>Providing coffee/water/snack to the parties to help establish rapport and commonality.</i>
<i>Side bars with the parties' attorneys was more effective in person. With VIDEO, I have to create another breakout room or the attorneys will call each other directly.</i>
<i>Sometimes it is more difficult to have "off the cuff" discussions with counsel (without client present) on video than in person.</i>

*The power of presence*

*Too many to list: reading the body language of the participants; having their attention in person to keep the parties on task; building a relationship; etc.*

**Table 28. Top Three Factors That Facilitated Resolution**

(Question 30: In the list that follows, please choose the top 3 factors you believe facilitated resolution.)

Mediation Context Factors	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	139
VIDEO mediation provided the ability to continue a mediation because of less external time constraints (e	88	63%	36	69%	18	53%	34	64%
The ability to keep these parties out of the same room or adjacent rooms as compared to an in-person mediation	51	37%	22	42%	12	35%	17	32%
VIDEO mediation influenced the parties to be less formal in their interactions	50	36%	22	42%	12	35%	16	30%
I see more effective decision-making processes	30	22%	21	40%	5	15%	4	8%
The VIDEO screen allowed for focus on the participants' faces in a manner not possible in person	26	19%	10	19%	4	12%	12	23%
The VIDEO background humanized the parties in a manner not possible in person	16	12%	11	21%	2	6%	3	6%
Events that occurred in the background of the mediation created a positive environment for settlement	14	10%	6	12%	3	9%	5	9%
Other (See below.)	9	6%	5	10%	2	6%	2	9
<i>Charging Parties' emotions seem to sometimes be more comfortable in a home environment. Attorneys seem LESS performative, hostile and adversarial which allows settlement to be facilitated easier. Both parties seem to enjoy the lack of travel.</i>								
<i>Video allows people to be more comfortable in their surroundings. They don't have to deal with coming downtown and deal with going through security which is stressful.</i>								
<i>Video mediation allowed the parties to be more comfortable in their own settings vs. being in a conference room.</i>								
<i>Reduced administrative costs encouraged Respondents to be willing to pay more to settle nuisance value claims. Respondents representatives were more comfortable during joint session with angry/combatant Charging Parties than they would be in person.</i>								
<i>Video detracts at the present time—too easy for the parties to disengage.</i>								





**Table 29 – Novel Factors Not Seen in In-Person Mediation.**

*(Question 76 -Please explain any novel factors or conduct not seen in in-person mediation that in your opinion was important to the resolution of this case.)*

<i>I notice that legal counsel is less adversarial in approach, but they have a tendency to not allow the client to speak for themselves.</i>
<i>Charging Party and Respondent legal representatives were more open to meet with each other privately in the break out rooms to hash through their differences to resolve the issues.</i>
<i>Being able to send chat message during mediation or do a quick break out and then reconvene.</i>
<i>Being able to talk separately with counsel.</i>
<i>Generally, I think participants are more relaxed via video. I see a "we're in this together" mentality right from the beginning in terms of relating to the use of technology in the mediation context.</i>
<i>Humanizing situation via video, "everyone is in the same boat"</i>
<i>Many of our pro se Charging Parties are visibly uncomfortable in federal buildings and/or office settings. I see things like arms crossed jackets on, keys out, etc. Conversely, many Respondents and most attorneys are right at home in an office setting. They own room, take up lots of space, etc. The screen helps equalize this power imbalance.</i>
<i>Overall, I see participants more engaged, better attitudes and less tense. Less intimidated and more focus. Respondent not having concerns about long and expensive air travel which they can now put towards the settlement of the claim. I used to hear about this all the time. No concerns about local travel which is stressing and it delayed people into the mediation. All the time I used to get calls about being stuck in traffic, delayed at the Airport, accident on the road, don't hear that anymore. Participants now are punctual and way less stressed when they come to mediation and are ready and focused to work on resolving. It is even helpful to us as Mediators. I used to have to do 2, 3, 4, hour drives priors to a mediation stressing me and making me less effective. I find myself more effective now because I am less stress about travel and more focused. I did an excellent job before, for sure, but I get complemented all the time now about how well I am handling Zoom mediation and how good at it I have become. I was completely intimidated by Zoom before I started, I did not like it and after my first Zoom mediation and thought, wow!! Why was I so worried about this, this is an amazing platform for what we do, amazing! I was blown away by how effective Zoom mediations are and I understand in the private sector they use them ALL the time.</i>
<i>Parties are more enthusiastic and more body gestures, facial expressions</i>
<i>Parties were more relaxed in their personal environments, they were more friendly than when in person, and the Charging Party felt less intimidated when unrepresented</i>
<i>Parties, especially the Charging Party, seemed to be more comfortable being at their home vs in a conference room. Even when the Charging Party was in their attorney's office they seemed to be more comfortable than when at the EEOC's office/conference room. Being more comfortable, I believe, allowed them to be more calm, be able to listen better, and be able to think things through more rationally than emotionally.</i>
<i>People see my face up close, and I see theirs. So there is a better connection. People are more relaxed participating from home. Charging Parties have less fear. Charging Parties can walk the dog and nurse the baby. Attorneys like that they can attend to other work in their offices while I am talking with the other side, and some attorneys prefer not having to sit and chat all day with their clients. Attorneys like to be able to work while I am in the other room with the opposition. Everyone loves that they don't have to rush to get car out of NYC garage and don't have long commute home. It was easy for people to keep on mediating into the evening. The parties sometimes eat dinner while we are resolving the settlement agreement.</i>
<i>The more personal environment lowers the anxiety levels of participants - including eliminating tensions over in-person confrontations.</i>

<i>Easier inclusion of decision makers out of the area, easier to schedule.</i>
<i>Familiarity and security of being able to participate from home may have made some complainants less nervous and therefore more receptive to settling.</i>
<i>Flexibility, accessibility, capacity for distant parties on the same side to participate more economically (time &amp; money) in the mediation from different locations</i>
<i>The parties' flexibility to simultaneously handle personal issues (e.g. sick children, after school care for children/parents, home repairs, other family responsibilities etc.) while mediating facilitated continued negotiations and my ability to reach settlements. These types of factors would interrupt in-person mediations, require second sessions etc. Also, I find that people are much happier/more patient in their own homes and offices, where they are most comfortable and can get snacks and handle other work while on breaks, than they are being trapped in mediation rooms. I believe this happiness bump makes a big difference in facilitating settlements.</i>
<i>Effective listening; I listen to each side about 20-30 minutes separately so they can share their position on the case.</i>
<i>I have seen the respondents be more open to reaching a fair settlement.</i>
<i>I personally love getting a glimpse into participants work/home space and find talking points to connect with them, whether a work of art, a degree from a prestigious university or a beloved family pet.</i>
<i>The parties got a peek into the each other's world which helped create empathy.</i>
<i>The video background allowed all parties, to include the mediator, to be humanized and provided ice breaking points to build rapport and focus on a resolution.</i>
<i>Respondent is saving time and money by mediating online. They can use that money toward settlement</i>
<i>E-mediation/Video mediation enables the parties to avoid some of the challenges associated with scheduling a mediation by reducing or eliminating travel or time zone considerations. It helps the parties to feel more comfortable because there is a reduced threat of the potential for physical violence or an emotional outburst. The parties can feel more comfortable about the privacy of their conversations in breakout rooms as they will not be overheard by the other party. Some attorneys will help parties to settle by reducing fees because they didn't have to travel or incur other potential expenses for the video mediation. Documents can be shared and edited with the parties real time on screen. I can share charts and models with the parties far more easily than in person. Video mediation is much more effective than in person mediation in part because the parties and the mediator are not limited to the resources or amenities available in a physical space or room. In a virtual environment, the parties can have access to more resources/flexibilities that can help them to settle the Charge.</i>
<i>Same issue with unrealistic monetary settlements.</i>
<i>A case with issues outside EEOC jurisdiction that Respondent wanted to resolve along with EEOC case.</i>
<i>I think the biggest challenged in any mediation is the idea of the principle of the matter---and getting parties be willing to move forward.</i>
<i>Past year's social unrest and mood in the country: I see Charging Parties that see themselves as victims, and it adversely affects expectations and willingness to settle. Also, some respondents consider a Charging Party "playing the victim" hence unwilling to consider even a nuisance settlement.</i>
<i>Upon entering a Zoom mediation a Charging Party noticed that the Respondent invited a high ranking official to participate. She was noticeably uncomfortable and expressed her concerns. The official agreed not to participate during the opening statement, but joined in during the caucus. This helped facilitate an environment of comfort and empowered the Charging Party during the entire process. She felt heard and valued.</i>



**Table 30a. Top Three Insurance Adjuster Behaviors/Actions that Facilitated Resolution**

*(Question 82: For cases where you spoke with the adjuster or were in conference listening to the insurance adjuster: Please rank the top 3 factors you believe facilitated resolutions from the list of statements below.)*

	All Mediators who ranked a factor as a top three		Number and Percent of Mediators Ranking Each Factor				
	#	% (of 139 responding)		Ranked #1	Ranked #2	Ranked #3	Row Total
Adjuster was flexible, open straightforward	65	47%	#	23	22	20	
			%	35%	34%	31%	100%
Adjuster was realistic	60	43%	#	24	22	14	
			%	40%	37%	23%	100%
Adjuster was prepared	65	47%	#	23	25	17	
			%	35%	38%	26%	100%
Adjuster knew what they wanted	14	10%	#	4	7	3	
			%	29%	50%	21%	100%
Adjuster was willing to listen to my communications	50	36%	#	18	11	21	
			%	36%	22%	42%	100%
Adjuster was willing to listen to the company representative	31	22%	#	6	12	13	
			%	19%	39%	42%	100%
Adjuster was willing to listen to the Charging Party	34	24%	#	6	12	16	
			%	18%	35%	47%	100%

**Table 30b. Top Three Insurance Adjuster Behaviors/Actions that Facilitated Resolution, Tabulated by Mediator Status**

*(Question 82: For cases where you spoke with the adjuster or were in conference listening to the insurance adjuster: Please rank the top 3 factors you believe facilitated resolutions from the list of statements below.)*

	Staff Mediators Total = 52		Contract Mediators Total = 34		Pro bono Mediators Total = 53	
	#	%	#	%	#	%
Adjuster was flexible, open straightforward	27	52%	14	41%	24	45%
Adjuster was realistic	25	48%	12	35%	23	43%
Adjuster was prepared	27	52%	13	38%	25	47%
Adjuster knew what they wanted	6	12%	3	9%	5	9%
Adjuster was willing to listen to my communications	22	42%	10	29%	18	34%
Adjuster was willing to listen to the company representative	15	29%	6	18%	10	19%
Adjuster was willing to listen to the Charging Party	13	25%	11	32%	10	19%

**Table 31. Were Insurance Adjusters Able to Effectively Communicate with the Parties over Zoom?**  
*(Question 83: For mediations where the Insurance adjuster spoke to the parties: Was the Insurance adjuster able to effectively communicate with the parties over Zoom?)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	100	100%	44	100%	23	100%	33	100%
Yes	67	67%	37	84%	12	52%	18	55%
No	4	4%	1	2%	2	9%	1	3%
Not sure	29	29%	6	14%	9	39%	14	42%

**Table 32a. Multiple Experience Mediating with Mediation Participants**  
*(Question 36: I have had multiple previous experiences mediating with the following parties:)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators</b>	139		52		34		53	
Charging Party's Attorney or other Representative	95	68%	46	88%	20	59%	29	55%
Respondent	86	62%	45	87%	17	50%	24	45%
Respondent's Attorney or other Representative	93	67%	46	88%	20	59%	27	51%
Insurance adjuster	58	42%	35	67%	10	29%	13	25%

**Table 32b. Multiple Previous Experience Mediating with Charging Parties' Attorneys or Other Representative**

*(Question 37: You have indicated that you had multiple previous experience with one or more mediation participants, please estimate the percentage of prior mediations where a previous party or representative attended: CHARGING PARTY'S ATTORNEY OR OTHER REPRESENTATIVE)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
Total number of mediators responding	86	100%	44	100%	19	100%	23	100%
10% or less	12	14%	1	2%	6	32%	5	22%
11% - 20%	5	6%	3	7%	1	5%	1	4%
21% - 30%	9	10%	4	9%	1	5%	4	17%
31% - 40%	7	8%	6	14%	1	5%	0	0%
41% - 50%	12	14%	7	16%	1	5%	4	17%
51% - 60%	4	5%	4	9%	0	0%	0	0%
61% - 70%	4	5%	1	2%	2	11%	1	4%
71% - 80%	11	13%	9	20%	5	26%	4	17%
81% - 90%	7	8%	0	0%	0	0%	0	0%
91% - 100%	15	17%	9	20%	2	11%	4	17%

**Table 32c. Multiple Previous Experience Mediating with Respondents**

*(Question 37: You have indicated that you had multiple previous experience with one or more mediation participants, please estimate the percentage of prior mediations where a previous party or representative attended: RESPONDENT)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
Total number of mediators responding	74	100%	41	100%	15	100%	18	100%
10% or less	16	22%	8	20%	4	27%	4	22%
11% - 20%	4	5%	1	2%	1	7%	2	11%
21% - 30%	3	4%	3	7%	0	0%	0	0%

31% - 40%	2	3%	2	5%	0	0%	0	0%
41% - 50%	6	8%	5	12%	0	0%	1	6%
51% - 60%	0	0%	0	0%	0	0%	0	0%
61% - 70%	1	1%	1	2%	0	0%	0	0%
71% - 80%	2	3%	2	5%	4	27%	5	28%
81% - 90%	9	12%	0	0%	0	0%	0	0%
91% - 100%	31	42%	19	46%	6	40%	6	33%



**Table 32d. Multiple Previous Experience Mediating with Respondents' Attorneys or Other Representatives**  
*(Question 37: You have indicated that you had multiple previous experience with one or more mediation participants, please estimate the percentage of prior mediations where a previous party or representative attended: RESPONDENT'S ATTORNEY OR OTHER REPRESENTATIVE)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
Total number of mediators responding	86	100%	44	100%	19	100%	23	100%
					4			
10% or less	16	19%	4	9%	8	42%	4	17%
11% - 20%	4	5%	2	5%	0	0%	2	9%
21% - 30%	5	6%	1	2%	0	0%	4	17%
31% - 40%	2	2%	1	2%	1	5%	0	0%
41% - 50%	3	3%	2	5%	0	0%	1	4%
51% - 60%	4	5%	3	7%	1	5%	0	0%
61% - 70%	2	2%	2	5%	0	0%	0	0%
71% - 80%	15	17%	10	23%	1	5%	4	17%
81% - 90%	13	15%	6	14%	5	26%	2	9%
91% - 100%	22	26%	13	30%	3	16%	6	26%

**Table 32e. Multiple Previous Experience Mediating with Insurance Adjusters**  
*(Question 37: You have indicated that you had multiple previous experience with one or more mediation participants, please estimate the percentage of prior mediations where a previous party or representative attended: INSURANCE ADJUSTER)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
Total number of mediators responding	51	100%	32	100%	9	100%	10	100%
10% or less	29	57%	20	63%	5	56%	4	40%
11% - 20%	9	18%	4	13%	1	11%	4	40%
21% - 30%	7	14%	4	13%	1	11%	2	20%

31% - 40%	1	2%	0	0%	1	11%	0	0%
41% - 50%	4	8%	3	9%	1	11%	0	0%
51% - 60%	0	0%	0	0%	0	0%	0	0%
61% - 70%	0	0%	0	0%	0	0%	0	0%
71% - 80%	0	0%	0	0%	0	0%	0	0%
81% - 90%	0	0%	0	0%	0	0%	0	0%
91% - 100%	1	2%	1	3%	0	0%	0	0%

**Table 33a. Impact of Multiple Previous Experience Mediating with Mediation Participants**  
*(Question 37: In general, for mediations where you have had a prior case with one party (or their counsel/representative) how strongly did this prior experience impact the mediation outcome?)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	98	100%	46	100%	21	100%	31	100%
No impact at all	26	27%	13	28%	4	19%	9	29%
Minimal impact	12	12%	3	7%	4	19%	5	16%
Some impact	32	33%	13	28%	6	29%	13	42%
Strong Impact	20	20%	11	24%	6	29%	3	10%
Very strong impact	8	8%	6	13%	1	5%	1	3%

**Table 33b. Impact of Multiple Previous Experience Mediating with Mediation Participants – Verbatim Responses**

*(Question 38: How is the mediation impacted if you have had prior experience mediating with one or more participants?)*

<i>Attorneys know your style and I know theirs</i>
<i>Awareness of their negotiation style, respect for me built from prior mediations.</i>
<i>Building rapport and trust with the participant made for a smoother process.</i>
<i>Built rapport and trust.</i>
<i>Established rapport, background on a particular individual's communication style.</i>
<i>In cases where I have had Respondent Attorneys more than once they always try to get it resolved reasonably because we resolved previously.</i>
<i>Know willingness of Mediator to successfully mediate the matter.</i>
<i>Knowledge of the process</i>
<i>Mediation is a relationship business. Rapport and, most importantly, trust and faith in the mediator that is already established at the outset goes a long way to an efficient process and a good outcome.</i>
<i>Normally when the Charging Party is represented, the mediation either lasts longer or does not resolve due to the unreasonable resolution.</i>
<i>Positive</i>
<i>Prior experience and knowledge of the process.</i>
<i>The answer here depends on the experience, good or bad. Mine are 95% good. The one CP attorney I just did not want to work with. Other I found it helped because we know each other and generally they trusted me to do my job well and professionally to make useful suggestions, etc.</i>
<i>The attorneys felt I was neutral, did not have a stake in the outcome and therefore orally expressed to their client that they had a trust in my knowledge, skills and abilities. They openly stated they worked with me before and even if the case did not resolve, that my professionalism in the process was a reason they encouraged the current client to participate in mediation.</i>
<i>The parties are more comfortable and are aware of how the parties may proceed in mediating the matter.</i>
<i>The party and mediator know how far each can go.</i>
<i>The party is familiar with your mediation style and fairness.</i>
<i>The party trust me and it's more amenable to resolve the case because they already know me</i>
<i>There is more trust in the mediation and the mediator's ability to provide a more favorable forum for resolution.</i>
<i>They are more familiar with you as the Mediator and the process and have more buy-in on the settlement process.</i>
<i>They trust me to give them accurate information on how to get to a settlement.</i>
<i>Trust</i>
<i>Unrealistic expectations and using the scheduling of the mediation to negotiate a settlement prior to mediation.</i>
<i>When there is multiple prior experiences with counsel, the familiarity helps to expedite the process. Additionally, the trust that develops over time enhances the chance for resolution.</i>
<i>You build professional rapport with those you get to know. You also learn to anticipate road blocks and how to better handle them. You get to know the strengths and the weaknesses of the participants you get to know and how to use those for a better outcome. They learn to trust you as a Mediator.</i>

**Table 34. Degree of Agreement to the Statement: “For EEOC cases that were resolved using video mediation, the settlements at these EEOC mediations often resolve actual or putative legal claims in other legal forums (e.g., state tort or contract claims, wage and hour law, workers compensation, etc.)”**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	107	100%	46	100%	24	100%	37	100%
Agree	74	69%	32	70%	16	67%	26	70%
Disagree	24	22%	9	20%	6	25%	9	24%
Not Sure	9	8%	5	11%	2	8%	2	5%

**Table 35. Degree of Agreement to the Statement: *I find that parties tend to lose concentration sooner in video mediation than in my in-person mediations.***

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	106	100%	46	100%	23	100%	37	100%
Agree	13	12%	1	2%	6	26%	6	16%
Disagree	63	59%	34	74%	11	48%	18	49%
Not Sure	30	28%	11	24%	6	26%	13	35%

**Table 36. Occurrence of Video Fatigue***(Question 107: From my experience, I find that video mediation fatigue appears on average: )*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	102	100%	44	100%	21	100%	37	100%
In 1 hour or less	1	1%	1	2%	0	0%	0	0%
Over 1 hour to 2 hours	4	4%	0	0%	4	19%	0	0%
Over 2 hours to 3 hours	13	13%	3	7%	5	24%	5	14%
Over 3 hours to 4 hours	21	21%	7	16%	4	19%	10	27%
Over 4 hours	63	62%	33	75%	8	38%	22	59%

**Table 37. Degree of Agreement to the Statement: “If you also mediate in other forums (state and local programs, FMCS, AAA, FINRA, etc.: “My experience with video mediation in other forums is similar to what I have answered here.”**

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	56	100%	9	100%	19	100%	28	100%
Agree	51	91%	6	67%	19	100%	26	93%
Disagree	0	0%	0	0%	0	0%	0	0%
Neither agree nor disagree	5	9%	3	33%	0	0%	2	7%

**Table 38. Mediation Tactics and Techniques Used by Mediators in Other Forums**

*(Question 84: If you also mediate in other forums check if you have used any of the following mediation tactics and techniques not used at EEOC.)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	24	17%	11	21%	4	12%	9	17%
Pre communications	7	29%	3	27%	1	25%	3	33%
Dedicated pre-mediation technology session	5	21%	1	9%	1	25%	3	33%
Informational videos	4	17%	3	27%	1	25%	0	0%
Asynchronous mediation	2	8%	0	0%	0	0%	2	22%
Online blind bidding	1	4%	0	0%	0	0%	1	11%
Others	5	21%	4	36%	1	25%	0	0%

**Table 39a. Are There Classifications of EEOC Charges that Mediators Find More Difficult to Mediate by Video?**

*(Question 60: Are there particular EEOC classifications of EEOC charges (race, age, gender, etc.) that you find more difficult to mediate by video compared to in-person?)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	105	100%	46	100%	23	100%	36	100%
Yes	4	4%	3	7%	1	4%	0	0%
No	101	96%	43	93%	22	96%	36	100%

**Table 39b. Classifications of EEOC Charges that Mediators Find More Difficult to Mediate by Video**

*(Question 61: If you answered "Yes" to the question above, please identify those types of charges you find more difficult to mediate in video compared to in-person.)*

Race
Ethnic Origin
Gender

Sexual Harassment
Age
Disability
Transgender cases
Cases requiring the use of ASL. It is a 3D language and video is a 2D format.



**Table 40. Power Imbalance – Technology Gap***(Question 85: Did you mediate any cases where there was a power imbalance you could not resolve due solely to a technology gap between the parties?)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	102	100%	45	100%	22	100%	35	100%
Yes	3	3%	0	0%	1	5%	2	6%
No	99	97%	45	100%	21	95%	33	94%

**Table 41. Mediators' Description of their Experience Conducting EEOC Mediations Out of the Office***(Question 99: How would you describe your experience conducting EEOC mediations out of the office during the closure of government workplaces?)*

	All Mediators		Mediator Status					
	Total		Staff		Contract		Pro bono	
	#	%	#	%	#	%	#	%
<b>Total number of mediators responding</b>	100	100%	44	100%	22	100%	34	100%
It was more difficult conducting EEOC mediations out of the office.	6	6%	2	5%	3	14%	1	3%
It was easier conducting EEOC mediations out of the office.	63	63%	32	73%	11	50%	20	59%
It was similar to conducting EEOC mediations in the office.	31	31%	10	23%	8	36%	13	38%

**Table 42. Improvements/Adjustments to Equipment or Scheduling – Verbatim Responses**  
(Question 100: What improvement/adjustments to equipment or scheduling would you recommend?)

Note: “None”, “N/A” excluded)

*A formal introduction by the EEOC of the mediator to the parties so when the pro bono mediator call the parties to invite them to mediate, the pro bono mediator doesn't have to jump through hoops to establish that he/she is calling on behalf of the EEOC*

*Communicating with parties beforehand that the mediation could take up to 4-6 hours, etc. (Realistic preparation).*

*EEOC need more information presented up front to Respondents and Charging Parties regarding the difference between a person attending Mediation and/or presenting the Position Statement.*

*A calendar where there parties could schedule their own mediations through the portal or website would be very helpful and a big time saver. Also, it would be great if the agency would invest in some signing assistance platform such as DocuSign for the settlement agreements ( another time saver)*

*Ability to have the parties sign documents electronically such as docuSign would be a huge help.*

*Being able to obtain e-signatures or DocUSign on the spot once the mediation has resolved.*

*digital signature, printer, additional monitor, camera, desk, comfortable chair*

*It would help if I had a mobile hotspot and the ability to use DocUSign*

*Make sure pre mediation forms are available to all parties on the Portal and give us DocuSign for e-signatures for MSA's.*

*Sit stand desk and Doc-U-sign capability for the agreements to be signed and returned quicker.*

*Streamline process for signing settlement agreements - have agency approve and sign at the same time then send to parties OR have parties sign and then agency get fully signed copy to the parties.*

*Transmission of signature ready documents is still challenging.*

*Automated scheduling software/calendar. Workflow software.*

*green screen, online scheduling system, online document center, supplies, ergonomic chair, veridesk, larger monitors (two), standing light*

*Although using Zoom was a first time experience for me, the platform seems to meet the needs of all the participants involved. It is true that some participants are technology challenged, but we typically work through those together with more experience people, or on some occasions, a company may have their IT person intervene and help support the process.*

*As long as the laptop and printers are up to par we can do our job efficiently.*

*Having multiple monitors is helpful to be able to have the video mediation while reviewing the documents and taking notes on a computer separate from the screen you are mediating on. Having a printer can be helpful as well.*

*Headsets*

*I have a sit/stand desk and extra monitor which are all great and make this all work. Having an EEOC printer would be very helpful. (I currently have a work around using my own as needed which I try to rarely use).*

*Having docuSign would be great. Electronic signatures can still be a challenge. Having a calendar feature I can share with parties to select available dates would be very helpful and could make things more efficient.*

*I like to refer parties to the portal in order to execute the Agreement to Mediate and Confidentiality Agreement.*

*This does not come easy to many of my parties resulting in me having to help the parties navigate the portal in order to execute the agreements.*

*I would like to have a banner or background screen that has the Agency logo on my background.*

*I would love to have an additional monitor.*

*If feasible pay for internet connection. Have comprehensive training on ZOOM.*

*It would help me to have a printer/scanner*

*Large monitor with camera and audio instead of only small laptop*

*Larger monitors and maybe more comfortable chairs for home, better back support.*

*Prior to mediation, training on the use of the platform chosen should be required. I ran into several attorney/es/counselors that claimed they had experienced and obviously did not.*

*Provide a cell phone with internet sharing capability to all mediators to use as a back up to ensure great internet connection.*

*providing claimants a space where they can have a device with good internet access*

*Support by EEOC (On-Site IT Support; Two Monitors/connected by IT personnel; Printer/Scanner provided by Commission with preparation and maintenance.*

*The system has been unstable about 15% of the time, which requires me to continue the mediation via telephone. This can interfere with any momentum that was established.*

*Continue to allow the mediator to choose the platform with which they are most familiar/comfortable.*

*Continued use of mediations outside of the office as an option!*

*I think over zoom it is harder to form the connection with CP and Respondents.*

*In-person mediation; I do the scheduling*

*Make sure there are no schedule conflicts*

*Remove arbitrary office hours*

*When counsel are on both sides, I'd encourage the EEOC to encourage counsel to communicate - even explore settlement - before the mediation session in order to create momentum going into the mediation.*

*Zoom with break-out rooms is best.*

**Table 43. Work-Life Balance: Verbatim Responses**

*(Question: How has working at home affected your work-life balance?)*

*I feel less stressed due to the lack of commute and I am generally more relaxed.*

*I love teleworking. I made the choice to live in the suburbs, resulting in a daily three-hour round trip commute. I now sleep 9 hours instead of 6. I couldn't be happier! Now that I have a designated workspace, it is so easy to work from home. I can work around an appointment or a brief personal call without interrupting my work day.*

*I will say it is convenient and safer due to not having to travel.*

*Improved it. Do not have to commute to subway station and take subway to and from work. Easy to get lunch, coffee, etc. at home*

*It beats taking a one-way ninety-minute train or almost three-hour drive to downtown Los Angeles Federal Building for in person mediation. It is less stressful, and I have more time for other things on the days I have EEOC mediation.*

*It has been excellent! I save, on an average, three (3) hours of commute time, each day, with video mediations vs in person mediations.*

*It has greatly improved. I don't have to commute and I am able to take 15 min exercise breaks to improve my mental focus.*

*It has improved my work/life balance immensely. Telework has cut down on hours of commuting per day and has saved hundreds of dollars (gas, parking and tolls)*

*It has made a world of difference to be able to do Video mediations. There is nothing more frustrating than arranging travel for in person mediations and then have a party throw a wrench in the process by cancelling last minute which costs the Mediator money out of pocket as well as their valuable time.*

*It has positively affected my work life balance in the sense that I can start my personal life at an earlier time in the day since commuting has been taken out of the workplace situation. During work time, I am more productive since at home and have less distractions; therefore I am more focused on my work tasks. I am also able to enjoy my time off without the pressure of feeling that I have to get on public transportation (risking my health every day). I have also been able to incorporate positive habits and routines such as mediation at lunch time and exercise before and after work.*

*It has reduced the time I spent in traffic traveling to and from the mediation.*

*It has saved me time not to have to travel, find parking, etc. I can also do things like grab a snack more easily when I am working from home and conducting Zoom mediations.*

*Less commuting time means more time to devote to mediation.*

*Less travel, so more time.*

*More balance due to not having to travel*

*More time at home due to lack of traveling requirements.*

*My work/life balance has been improved by elimination of the commute.*

*Positively impacted due to lack of stress for travel, parking issues. Flexibility to perform duties in a less stressful environment.*

*Since I travel for mediations my work/life balance improved with working from home. However, I do miss traveling for work.*

*Working at home positively affects my work life balance because I do not lose time driving to the office, I can have healthy lunch so my weight has been positively affected, I have less distractions like public walking into the office asking to see me, I can conduct mediations with more flexibility, I am not worried about picking up some ailment and bringing home to my family, I have not had a cold or any sickness since working from home*

*It has immensely improved it! Mediating on Zoom is tremendously effective, has way more pluses than minuses, and makes my life as well as that of the parties so much easier.*

*Definite improvement! No travel time for me which often resulted in my being stuck in traffic coming and going to the office. Less pressure to "hurry up" and wrap up a mediation (in order to get a jump on traffic) since I am already home. Children can finally catch the school bus to and from school and get dropped off at home as opposed to before/aftercare. They don't have to get up extra early or stay late at before/aftercare since currently I don't have to drive to the office. No before/after care expenses, no parking expenses, no wear and tear on vehicle. Very grateful as I know others have not fared as well.*

*positively - more flexibility*

*I love it. I actually get more accomplished due to less distractions and actually work longer.*

*It's been great and as a contract mediator I am making more money than in the first 19 years.*

*It has greatly improved alongside my productivity at work*

*It is amazing. I have the additional time to do an abundance of housekeeping with IMS, call back parties, and communicate with supervisors and teammates. I am also able to ensure required training is completed. The non commute time helps!*

*I've been to have more productive work hours.*

*Made it better. More time to prepare for cases and focus.*

*Working from home has improved my work/life balance. There is far less stress, I am more productive with work AND my other pursuits. I am also far happier, and I am able to save more money. My home and family - a far more positive environment.*

*It has helped to reduce stress. Also, I have more ability to speak, respond to emails, and return calls with the parties sooner in that I am not away from my desk/office while mediating.*

*It has improved tremendously. I now feel less stressed, have less anxiety and I am much happier because I get to spend more time with my wife and children. I no longer have to take them to day care, which also saves me money, less wear and tear on my vehicle, less gas. Additionally, my physical health has improved because now that I have more time, I can go to the gym. My family is also much happier.*

*Working from home has been very good.*

*I'm not stressed from the long drive to and from work (in office).*

*I feel more comfortable in my "home" or "own" space.*

*I'm far more productive in the amount of work I can complete at home.*

*It is the best thing ever! I love my job much more now because I have more time for my family and to go to the gym to maintain my health. The EEOC is probably the only federal agency that does not provide a few hours a week for employees to use for the gym or personal health. The time I save from going to the office, I use it to maintain my physical activity and sacrifice less quality time from the family. Such activities provide more focus and motivation to be a mediator and my supervisor had told me that I am very effective and that I utilize*

*my time very efficiently. I believe Mediators should not return to the office because video mediations have increased acceptance rates tremendously from R and CP's and consequently increased the number of positive resolutions.*

*Better work-life management*

*GREATLY improved it.*

*Improved and made better.*

*Improved it.*

*It has been great.*

*It has been very helpful.*

*It has been very helpful.*

*It has improved my work/life balance tremendously.*

*It has made finding the balance easier.*

*It has positively impacted my work/life balance and has made me a better mediator.*

*It was improved.*

*Working at home has had a very positive effect on my work/life balance and I hope we can continue to work remotely, using the technology that has been made available to us.*

*working at home positively impacted my work/life balance*

*Yes, in a positive way!*

*positively*

*It's been challenging. I moved to Dallas (August 2020) for my position under the assumption I'd go into an office, but never did. Because of the isolation, I started occasionally going to a co-working space to perform admin work, just so I can interact with people. I truly believe I can effectively perform 100% of my job remotely; however, I also believe it's unhealthy to not interact with people for extended periods of time.*

*I work longer most of the time and check email more often than when I was in the office*

*I'm working more*

*Yes I find myself working a lot more, but I enjoy during mediation over zoom vs long distance travel.*

*Yes. I work more*

*Have had to establish and adhere to self-imposed cutoff boundaries to achieve balance.*

*I have to leave home daily to separate and get a piece of mind.*

*In the beginning, I was working longer hours. I've since stopped and adhere to my work schedule.*

*It's definitely had an impact. Some good and some bad.*

*My office is now in my home space but there is still some separation. I am handling it ok, but I would love to work in the office at one to two days a week.*

*Somewhat.*

*Yes - it's comingled more*

**Table 44. Disadvantages of Using Video Mediation – Verbatim Responses**

*(Question 62: In the space below list the disadvantages that you have experienced using video mediation.)*

*Although you can see the face of the speaker more clearly on video, you lose the ability to see other visual body language cues such as tapping fingers or feet etc., Sometimes the audio can be problematic and internet connectivity issues pop up from time to time.*

*Inability to read non-verbal cues that could help a mediator's thinking process.*

*It is difficult if one of the parties is in a conference room and the participants are not close to the camera. In that case, it is more difficult to read facial expressions and body language. It also can sometimes be difficult to hear what the participants are saying.*

*no mobility, no face to face, limited ability to bond and read body language*

*The use of intuition is not the same as it is in person. There are certain non-verbal techniques that a difficult or impossible to use on video. Can't use a flip chart like I would in mediation. Can't place different options for resolution, issues, etc. on flip chart paper and then tape them to walls of conference room for reference.*

*I have encountered the occasional person who takes the process less seriously because it is handled by video and checks in an out of the mediation for other activities. This is very, very rare.*

*Participants can get distracted easily.*

*Party distractions are more frequent remotely either due to others in their homes or offices who are competing for their attention. Ability to discern important, non-verbal cues is more difficult remotely. Finally, I think it's easier for the Complainant and/or Respondent to detach and say no over a video platform than it is when parties are together physically.*

*Some participants lose connection and only a few had to actually dial in instead of using video.*

*Tendency of counsel to multi-task during breakout room activities/caucus.*

*The parties are often remote from their counsel and it seems that counsel has a difficult time persuading their respective clients. Also the parties are often not focused as they would be in a live mediation. Also it is harder to pick up cues from the party and many times the party will talk longer than necessary.*

*Disadvantages-There is no control over conversations or heated communication.*

*Maybe the ability to have face to face when someone is upset- the ability to diffuse. But we are in some trying times and I would much rather do it via VIDEO. I have had a few sessions where the CP was very upset with employer and there were some cases of a sexual harassment which caused trauma. These cases are best mediated via VIDEO for the CP.*

*It makes getting the required documentation related to the mediation itself signed more difficult, but that has improved over time. Harder to read body language. Harder to give cues in reflection. When it's in person, you can keep people till everything is signed.*

*Perhaps the fatigue that comes from sitting on a video screen all day.*

*Lack of incidental "hallway" conversations that are often useful.*

*The disadvantage of video mediations is the human contact.*

*The lack of personal encounter can lead to lack of engagement, even enable detachment from the process.*

*Getting an intuitive feel and sense of the parties and their counsel.*



*collecting paperwork that is requested by the EEOC*

*I just have a couple of cases where charging parties were driving or have somebody in the room listening to the conversation*

*In person seems more personable*

*In some cases, being in person would allow the participant to be more respectful towards me. I had a couple situations where I felt that because I was not there, the participant made comments or acted in a way he/she ordinarily would not.*

*Getting final agreement signed by EEOC and the parties. Reaching out to EEOC ADR if there's issues that come up. Some scheduling issues.*

*Getting the private agreement signed. Sometimes there are distractions in the background of CP and Respondent locations.*

*I've had to wait days/weeks to get back the signed MSA.*

*Being able to socialize with a group of co-workers/friends.*

*Different interactions, no brief encounters in the halls*

*I do miss the human interaction, but that is it.*

*A disadvantage is that some charging parties have difficulty with the technology, especially unrepresented charging parties. Mediations have worked best in this circumstance with an audio dial in line, ensuring they do not have to try to have video if they do not have the technology for that. Sometimes I think there is screen fatigue also. Sometimes I miss being able to pop out in the hallway with an attorney to speak privately, although I utilize a 3rd breakout room for this sometimes.*

*All parties having equal access to the technology for video mediation (e.g., fast internet)*

*claimant's sometimes have difficulty with their devices and/or internet access;  
more difficult to make an interpersonal connection over video*

*If either party has a poor internet connection, it is frustrating when someone is continually dropped or their screen is frozen. I did have a mediation where the offer amount that I heard was not the amount the Respondent claims to have communicated. The Respondent blamed it on Zoom and not being able to hear clearly (the case did settle).*

*If people gather in a large conference room to share one video screen, it is more difficult to arrange for people to see me, and me to see them. I work in advance with parties to resolve this.*

*Internet connection*

*More of a challenge than a disadvantages: Making sure the parties are familiar with zoom. Most are but some are a little challenged by it. I try to talk to the parties ahead of time and make sure they are comfortable with the technology. If they are not, I will spend some time working with them on it.*

*Occasional internet connectivity problems. Stakeholders who are unfamiliar with technology.*

*Once in a while, inclement weather has knocked out internet service, causing delay. Sometimes, parties' lack of technical expertise can cause disruption.*

*Other than buffering or sound quality, none. And the buffering is infrequent.*

*outdated laptops, unrealistic and unfair goals that are not listed in your performance evaluation*

*Some parties need more help with the technology (and all parties are not always tolerant when other parties have technology failures).*

*Some plaintiffs may not have access to video capability and have to log on via phone or just choose not to appear by video.*

*Sometimes the video is not clear but it is not a halt as Teams offers a phone dial in as well so it removes that disadvantage. I have not had to have a translator but acknowledge that it could be a disadvantage.*

*Spectrum went out on me for about 10 minutes in a non EEOC mediation. Other parties have experienced temporary loss of service and other technical difficulties. I have had to give my personal cell phone number to counsel and they have exchanged their numbers so that if zoom went out we could communicate.*

*technical issues sometimes*

*The only disadvantage is when the system goes down*

*The only disadvantage I've experienced is that sometimes the parties internet connection is slow which lags on video/audio.*

*The systems are always subject to not working as they should.*

*When a party is not familiar with the technology beside mediating you also need to provide tech support for them.*

*When I first started doing Video mediation I kept getting disconnected from Zoom. That problem has been resolved. I have also had to walk some people through the Zoom process before the mediation .*

*Wifi connection wavers at times*

*It's hard to end the day. We now live at work. It was easier to leave when I had to catch a specific train or the lights went out at work.*

*Not as effective with the parties and counsel*

*Only disadvantage was distraction of charging party as she was going to the doctor while doing mediation*

*Possibility of unknown off-screen persons involved*

*Loss of discomfort/inconvenience that can motivate a party to resolve or feel the additional discomfort that lies ahead if not resolved*

*Occasionally more difficult to have an impromptu candid "hallway" chat with representatives outside of client presence*

*Sometimes the Charging Party doesn't seem to understand the fullness of what is going on.*

*The COVID fatigue is real.*

*Video mediation will never have the same quality as in-person mediation*

**Table 45. Advantages of Using Video Mediation – Verbatim Responses**

*(Question 63: In the space below list the advantages that you have experienced using video mediation.)*

*Less stress and irritation from all participants. More focused, more willing to participate when you are not coming from the Airport to a 5 hour mediation, or driving on the highway, or taking public transportation, or paying for expensive parking, etc., etc. No one is calling me telling me they are stuck in traffic and everyone else seating around waiting, very common. Mediation cancelations are way down, way down, hardly anyone cancels scheduled mediations anymore my calendar is already booked into November now, 5 months ahead,*

*so many Respondents wanting to mediate. More parties want to mediate now. Employer's not raising objections about expenses of traveling to mediations anymore, can put some of those funds into settlements. Easier to caucus. I've experienced very bad situations where parties have heard conversations in caucus rooms when we did in person mediations because they were walking down the hallway or because rooms were so close to each other, or relatives in the ADR lobby listening to Respondent side conversations and telling CP, etc., etc., these were common problems, not anymore! Mediators who were all stressed traveling all over the place and affecting their ability to mediate, not a problem anymore to say nothing of how cost effective this is now for our Agency and for Taxpayers. Now we can hire more mediators instead! I could go on and on about the benefits, for everyone, with this new technology that the Agency was so reluctant to use in the past because it would not work and it has worked so well and surpassed our expectations. Not one participant has complained to me about Zoom mediations, not one, on the contrary, people appreciate it.*

*Overall, I am surprised at how well video mediations can work. Communication is critical. I haven't changed my mediation style in any appreciable way using video. I am actually mediating more often than I did pre-pandemic because more employers are agreeing to mediate because it's convenient and saves time and money otherwise spent traveling to an in-person mediation. I can also mediate cases from my district office via video and that wasn't an option before.*

*Parties are more respectful of time constraints utilized to reach a resolution rather than display posturing conduct in person. Break out rooms not directly close to each other and the parties may also have the capability to do other things (if necessary). Mediations are held and resolved quicker sometimes than in person. Parties and representatives are more available because no travelling is required.*

*Video mediation creates a climate conducive to negotiation and resolution in part because it eliminates the stressors that accompany scheduling and traveling to an in person mediation, the stress of going through security and of meeting an antagonistic opponent in an unfamiliar space. The mediator can better control the pace and temperature of the conversation by moving parties between break out rooms as needed, and by sharing information and charts. An online mediation has the credible aura of neutrality, and offers access to research and sharing tools that may not be available in a physical space. Online mediation helps the parties to reduce their arguments to facts and numbers more quickly than they would in person, where often people spend more time posturing than they do communicating. When people are physically in a room, they spend time using body language to intimidate or pacify one another - it distracts from the progress of reaching an outcome and sometimes short circuits resolution. In an online forum, they have less ability to try to intimidate antagonize or otherwise manipulate the opponent through body language or other physical conduct.*

*Faster transitions between private caucuses. Greater ease of pulling both counsel into caucus with counsel only. Charging Parties seem less apprehensive.*

*Charging Parties are more relaxed inside a Breakout room versus when Respondent (current or former boss) is in a room next door and potential for awkward hallway encounter exists. Also, the potential for perceived power imbalance is minimized.*

*Charging Party seems more comfortable sometimes within their home or personal space. It also seems easier not to have either party having to travel for mediation reducing travel expenses, parking expenses, time off work for Charging Party, etc. Attorneys seem more civil and like there is less grand standing in the joint session. Parties seem generally more satisfied from what they have conveyed to me with remote mediation.*

*Convenient and more relaxing*

*Eliminates travel; facilitates scheduling for all; and the parties are more comfortable in their own space.*

*The parties adore it. Charging parties are more comfortable. Attorneys are happier that they don't have to sit with client every minute of the day. In NYC, everyone prefers not having to commute. The entire process results in very satisfied parties.*

*The parties, especially the Charging Party are more comfortable with being in their own environment vs coming to an office/conference room. Plus the parties have less anxiety about driving to the EEOC office, finding parking, figuring out where to eat, etc. It allows them to be more focused on the mediation itself and not distracted by these other infrastructure issues. The parties also seem to be, in general, more calm in the sessions and less emotional vs being in the same room or just on the same floor as the other party.*

*It is easy, no one has to commute and no one is usually late for Mediation.*

*No commute to the mediation*

*No commute, saving money on gas, tolls, parking buying lunch etc... which is less stressful*

*No traffic or travel stressors, more relaxed participants and ease of reconvening if necessary to continue negotiating.*

*No traffic, no metro, no late night taxi or ride sharing woes, home for dinner or even lunch, no need for extra clothes cleaning*

*No travel time, easier to prepare for, more time to work with parties before/after mediation if necessary, less formal/more relaxed, more convenient for both parties as well*

*No travel time; convenient to do in home*

*No travel to the EEOC office in the City - good for parties and mediator - especially when bad weather*

*No travel.*

*People don't have to travel to the mediation and are well rested. Participants are able to take a break in the comfort of their own homes. If I am caucusing with one party, the other can be using that timely wisely since they are home.*

*Respondent's representatives don't have to travel, which makes them sometimes more amenable to settlement.*

*Safer during pandemic and many unvaccinated people! Parties and mediator gain time otherwise spent on travel to mediation. Far fewer negative external factors that can upset process. Real scenarios: bad weather (attorney shows up in soaked suit with collapsed umbrella), parking bad (machine won't work and party knows they are getting ticketed while mediating, or checking a meter, etc.), flight delays, temptation to move a flight up or beat traffic when the mediation is not going well but still making progress, the list goes on...Parties and lawyers often dress more casually, which helps informalize the process and appearance of openness. Far fewer accommodation issues (parking/mobility, lack of food/drink, dietary restrictions, bathroom issues, able to easily step away (smoke breaks, bad back/can't remain seated, illness, temperature issues) parties control their own environment! I am able to accommodate my own hearing impairment using headset and volume which increases communication quality. No uncomfortable/problematic run-ins between parties (bathroom, elevator, parking lot). Company is often willing to pay a bit more due to cost savings of travel and additional attorney fees. No metal detectors / No physical security concerns. No entering cramped room with poor ventilation where several people have been sitting all day with the door closed...*

*The parties are so much happier. It is not easy to navigate a big city and a federal building. This is great for people with medical conditions and/or financial limits. I've had such an increase in authority people actually attending the session. There's no drama with lack of restrooms, food, water, air conditioning, etc. I'm also mediating cases all throughout my district instead of just focusing on my own office.*

*There have been almost no late starts as people are not commuting, traveling or struggling to find parking near the federal building. The money that the employer saves by avoiding travel and related expenses, may have a positive impact on resolutions (successes and settlement amounts) over time. I am able to offer flexibility as to end times and remain focused throughout sessions, as I am not concerned about missing my bus. There is*

*more privacy using digital breakout rooms, compared to the parties sitting in rooms where they may be overheard. There is also no concern about the firewall, compared to when enforcement and mediation staff are working in rooms next to, or near one another. Zoom Gov is an excellent platform for conducting professional mediations.*

*Video mediations are more convenient for all parties to attend because travel is not required and persons can attend from wherever they are. People do not get each other sick (I am not just talking about COVID). Because of the culture of working sick in the US, I have become ill frequently while working in mediation and this has greatly improved since conducting mediations over Zoom. Parties are much more patient while waiting in their own home or office and this facilitates smoother settlement negotiations. Charging parties are much less fearful attending because they do not have to physically engaged with alleged harassers, managers with whom they are in conflict etc. Participants have more time flexibility because they can handle personal responsibilities and perform other work on breaks while attending video mediations.*

*Video mediations have been easy on the parties, they no longer have to travel or spend money on lodging to be here. In the past charging parties (coming from rural areas) complained of having to drive hours to the office and would stay overnight locally because they were unfamiliar with the downtown area.*

*It is less time consuming, more convenient, and very efficient.*

*It is more convenient for almost everyone. It is easier to schedule. Insurance adjusters participate in person and are not just available by phone. It is easier to schedule mediations with parties and representatives who are out of town. Breaks don't last as long because people can grab a bite to eat, for example, when I am meeting with the other side and don't have to go anywhere to get food.*

*It's more efficient and convenient*

*Cost effective for all parties; quicker mediations being scheduled; safety*

*Cost effective, saves time, flexible and equally productive*

*Easier to convince parties to participate because travel costs were removed*

*Parties have easy access, they can break/reconvene easily, share documents (they often have access to additional documents and files they may need for the mediation).*

*ease of use, comfort on the part of participants - particularly Charging Parties that are pro se, facilitation of persons in different locations to participate more economically (time, money, travel)*

*People seem to be more relaxed and communicate more, some seem more engaged from start till the day wears on, and again convience, and use of the technology builds confidence in the integrative process.*

*Flexibility of schedule of the participants, being in a comfortable surrounding, less intimidating*

*Flexibility, parties are more relaxed and less confrontational, parties are willing to start earlier and seem to move toward resolution quickly. I schedule for 3.5 hours which causes the parties to be more focused. I have held a few that were over 4 hours but they resolved because of the initial short time scheduled. Parties are able to have their lunch/snack and do not have to leave the facility which would sometimes cause a break in the flow of communication when mediation was in-person.*

*More flexibility with time and more punctuality.*

*Parties are more flexible with scheduling, they can participate while sick or with kids at home, and there is more flexibility with who is invited to the mediation on Respondent's side.*

*We can mediate in bad weather and mediate later if needed. No transportation issues. It's easier to schedule video mediations. We get to see pets and children and it creates a bond. You get to know people better and they can be more relaxed and comfortable.*

*Ability to engage parties in a more focused setting.*

*Ability to humanize all parties and provide ice breaking topics with video backgrounds and just life around our homes. R's and CP's agree much more to participate in Mediation because it is less expensive for everyone to travel to the EEOC Office. This is especially true for R's because their attorneys are not always local and travel expenses are at a minimum \$1000.00 for each of R's participants due to travel, per diem, hotels, etc. R's do not want to make that expense just to settle for nuisance value or to add it to the overall cost of a settlement. CP's are less intimidated by video and are more willing to participate in mediation. Also, they do not want to face R's officials most of the time due to the conflict that gave them the courage to file the charge, therefore, video or telephone mediations makes everyone feel more comfortable and allows the parties to truly focus on a resolution for the charge.*

*Key advantage is maintaining involvement of out of town parties that would otherwise need to leave early for flights, traveling, etc.*

*More of respondents decision makers attended.*

*Easy for everyone to attend*

*I have far more participants in the mediation program via video than ever.*

*There is no travel problems for the participants. They can mediate from the comfort of their home/office. During these times, I feel more comfortable working via video. I'm not concerned about getting sick.*

*Mostly, the advantages have to do with time, efficiency and increased productivity. I am able to get more accomplished while still providing excellent customer service to the parties.*

*Video mediation is more efficient than in person mediation. Video is a cool medium, which reduces negative feelings the parties may have about each other.*

*Ease of scheduling, humanizing COVID and the challenges everyone faces, meeting attorneys face-to-face in pre-hearing conferences and establishing a greater relationship prior to the mediation*

*Easier to schedule, easier to get party, including insurance company, participation. Less distractions. Parties have better access to information when having the mediation from their workspace. I think it's easier for the parties during caucuses because they can be working on something else during the downtime. Overall I haven't found it made success less likely.*

*easier to schedule, somewhat more likely to involve out of state decision makers.*

*Effective and more convenient. Parties like it and it can be easier to schedule. Have necessary parties participate from across the country as travel is not required. Parties more likely to show up and participate as not such an investment to go downtown. This is a less scary alternative and it works!*

*I think it can help with scheduling.*

*Scheduling*

*Scheduling and convenience primarily.*

*Scheduling for all parties, efficiency, lack of travel.*

*Finding office space for mediation is very difficult and the travel time is exhausting.*

*I [am] able to get cases to the table more quickly. I am able to get important individuals to the success of the mediation at the table. Because Attorneys do not have to travel I feel my financial settlements are larger.*

*Better outcomes, less stressful and time consuming scheduling process, happier parties, easier transmission of settlement and other documents, enhanced communication, better logistically with regard to no worries about office space restrictions, etc.*

*Efficient use of time*

*Less time constraints/obligations to be finish at a certain time due to the need to be physically somewhere else after the conclusion of the mediation.*

*Easier access to documents and requested information. Parties are at their computers and therefore, have the immediate ability to look at relevant emails/documents. This is very helpful.*

*Less time, more communication, SAFER, the choice for the parties and staff*

*Parties and attorneys save time and money in not having to travel for in person mediation.*

*Saves more time, more privacy, more efficient, parties feel more comfortable, and more cost efficient for all parties.*

*Saves time.*

*Saving time/energy/resources. Easier to schedule.*

*Time efficiency for all involved.*

*Time, logistically more accessible, ability to have both joint and separate caucuses more quickly*

*Video mediations are more time efficient, greater privacy for parties, parties are more comfortable, and it is more cost efficient for all participants.*

*easier, quicker*

*Just as effective as in person mediation*

*Many advantages, I get more done, I am saving the government money by conducting all mediations via zoom from home. I feel more productive working from home.*

*Parties seem to be more eager to start and communicate. The condescending attitudes of parties is still present but does not seem to persist as long r require much request for behavior modification as mediator.*

*The advantages of video mediations is the safety aspect with respect to the Charging Party and confidentiality regarding the break out rooms.*

*The attorneys tend to get to the numbers more quickly.*

*Timeliness. Pace*

**Table 46. Video Mediation Factors that Impact Mediation – Verbatim Responses**

*(Question 64: In the space below list any other video mediation factors that impact mediation.)*

*Especially during COVID and key to mediation is flexibility. There can be reasons that people don't want to appear on camera. Sometimes you need to work through that and understand. Sometimes it is tech related sometimes it is fear sometimes embarrassment about surroundings. Sometimes they will do in caucus and not joint session and vice versa. Key is to just keep working with parties to understand their needs and create processes that work for all that in some instances may be a hybrid (audio, video and combo). As long as everyone agrees to the process and sometimes I've had to mediate those issues (just as I sometimes did in in person sessions--the warmup mediation about dates, logistics, attendees etc. some like to argue over everything). I've never found the "medium" audio, video, in-person to be a hindrance to getting to a resolution.*

*Video and more specifically, online/e-negotiation seems to be the natural line of evolution for mediation because of ubiquitous nature of technology. People have come to expect the convenience of internet access to services. People want self service options. Video/online mediation can satisfy this desire for convenience in dispute resolution in a way that makes in person mediation irrelevant. If the parties want to settle a charge they will do it whether they are in person or in a video mediation. Giving disputants an easier way to settle a charge, by making negotiation tools available to them online, improves the likelihood that they will do so.*

*The parties are able to be assigned to private break out rooms which has allowed Respondents who are out of the country to participate in mediation, this has been tremendously helpful in resolution. Respondents have openly acknowledged that their cost decreased in participating in mediation because it is virtual (video) and they can speak directly with the client as opposed to phoning them and unable to reach them during pertinent times in the mediation. Charging Parties have been more relaxed and have been more willing to have discussion and not feel intimidated by in person mediation (this has been stated to me multiple times)*

*Makes it even easier to go to mediation in bad faith*

*I believe all parties during mediation feel for safe and relaxed which will produce a better outcome.*

*Parties are more relaxed; breakout room caucuses with just the attorneys induces collaboration.*

*Settlement agreements are more readily available for the parties to execute and return immediately. Charging Party without legal representation are more comfortable in presenting by video than in person. Respondent more likely to have settlement authority than to attend mediation in person to gather information. Avoid intimidation tactics.*

*Getting email information for all parties and participants and sending confidentiality and agreement to mediate to parties.*

*The willingness of parties to stay and work toward solutions - no flights to catch or other diversions.*

*The Document sharing feature is extremely valuable.*

*As the mediator, I am more at ease in my location than I would be in an office not my own. I am able to read the on camera participants better than surveying a conference table where people are not facing me. I think that is true for all participants.*

*Sometimes an attorney will announce that he or she needs to take a kid to soccer practice. This is pandemic-related care-giving responsibility. The video process still works. We resume the mediation in the car at soccer practice, or after they get back. This works. It is flexible. But it is not optimal.*

*All the factors I can't think of impacts Zoom mediations positively, all of them. From more participation, to less stress, to less irritation among parties, to better caucus sessions which are truly private, to now reaching a*



*larger scope of participants to way many less mediation cancelations to 100% better punctuality to cost effectiveness for everyone, etc. to better resolutions.*

*I have seen less interrupting and cross-talk during video mediations as compared to in-person mediations.*

*Lack of assurance of confidentiality .....clearly causes the respondents to decline to meaningfully participate in the opening session (9 out of 10 cases), be more guarded in their discussions with the mediator and less forthcoming with problem solving suggestions*

*Easier to schedule*

*it is easier to schedule cases, especially involving parties from different states.*

*Ensuring that you have access to 2 screens can be very helpful - a screen to conduct the mediation, and a screen for reviewing documents and taking notes during the mediation.*

*I have a hard wire that I use to better the signal.*

*If TEAMS or ZOOM goes down.*

*Internet connection, video protocols for participation.*

*It is always good for the mediator to exchange cell phone numbers with the parties in case there are any issues with the video connection.*

*Poor connectivity - both respondent and CP*

*Technical issues arise at times that make it challenging.*

*The ability to turn the screen off is so helpful for people who need a moment to collect their thoughts/emotions.*

*The only problems I have encountered have been technological; e.g., when the power goes out, internet connection is lost, etc.*

*Whether a charging party has a computer rather than just a cell phone.*

*So far so good - working effectively*

*You can participate anywhere if need be.*

**Table 47. Comments/Suggestions that Mediators Believe Would Enhance EEOC's Video Mediation – Verbatim Responses**

*(Question 65: List and explain anything that you believe would enhance EEOC's video mediation.)*

*EEOC could incorporate a blind bidding tool or other e-negotiation method guided by algorithm to settle Charges without a mediation session. Only the most complex disputes could go to mediation. Other non complex claims could be settled at the earliest stage of processing using negotiated settlement/bidding. This could provide real relief to the most vulnerable low income Charging Parties who are often seeking a few weeks or months of pay to tide them over until they can find a new job.*

*All of the participants appearing and not just by phone.*

*Zoom is best, with breakout rooms.*

*Continue offering remote video mediation post pandemic, with the ability to return to in-person mediation when requested or necessary.*

*Let's continue to use Zoom, its positive factors are so amazing and the technology is here, Ignoring it is impossible and does great disservice to so many people at so many levels. I would like to have a background screen with the Agency's Logo.*

*Use it more frequently, have it as an option for the parties if not required.*

*Better handling of closing documents. Respondent should come prepared with private settlement agreement.*

*Use technology for pre-convening videos of the EEOC Mediation process. Online bidding may help as well.  
wireless headphones  
larger monitor*

*I think that the invite process could be more streamlined - currently sending a letter with a Zoom link. It seems as if this could be sent via calendar invites. It also is difficult because as a pro bono mediator I don't have access to the portal so I am always concerned and checking that the Agreement to Mediate and Confidentiality Agreements have actually been completed prior to mediation.*

*Going forward, give parties the option for in-person or video mediation.*

*Allow a pre-mediation session with the mediator to elicit demands and response more quickly.*

*EEOC staff should send all the required premediation documents to each party and have them return to EEOC.*

*Encouraging pre-mediation discussion - beginning of negotiation - between the parties when both are represented by counsel.*

*Ability to allow parties to docusign or other way to sign the documents electronically.*

*Additional instructions or options on how to handle signatures on documents. Should we use electronic signatures using the PDF format or have the parties sign/scan/email document back? Sometimes this can be a challenge for the parties.*

*E-Signatures or DocuSign*

*The ability to electronically fax and receive faxed documents from participants.*

*It would greatly improve EEOC's video mediation program if it was easier for parties and representatives to sign our mediation agreements in our electronic portal. It would also help if parties and representatives received automatic reminders to sign these forms at least twice prior to the mediation date. It would also help if the agency provided more flexibility in our hours of work so that we could further accommodate parties' schedules.*

*People love it. The only enhancement would be getting e-signatures through DocuSign and making sure the pre mediations forms are available to all parties on the Portal.*

*using DocuSign to make easier for the parties to sign their settlement agreements.*

*Using DocuSign to make it easier for parties to sign documents.*

*Agreement transmission technology*

*Better internet access with parties in more remote areas. This can be a problem - I don't believe this can be resolved by EEOC.*

*Better more enhanced technology*

*I am doing mediation from my home office and have great technology. I can't speak to what the Agency can provide better.*

*I think if the EEOC could offer tech support to CP and Respondents would help the process.*

*More training on INNOVATIVE techniques. I know how to use the basic zoom features.*

*Provide a cell phone with internet sharing capability to all Mediators to have as a tool in case our own internet is down. Frankly, the EEOC should be paying our home internet or compensating us at least \$50 per month because that is out of our pocket.*

*providing staff with the necessary tools, equipment and supplies.*

*Step by step instructions for parties to execute the pre-mediation agreements (Agreement to Mediate & Confidentiality Agreement) on the portal. Maybe a "How To Video" link on the eeoc website explaining eeoc video mediations and how they are conducted (how to prepare/what to expect).*

*Video Guidelines (Explicit)...*

*Zoom tips that could be distributed in advance to parties and their representatives.*

*Training Training Training*

*Making sure there is flexibility to address the needs of the parties as stated above. A one size fits all is the antithesis of what mediation is all about.*

*Use it as a last resort.*

*Automatic participant polling would provide a lot of data for evaluation purposes that could easily be obtained, transmitted and collated.*

**Table 48. Questions/Issues Not Addressed by the Survey - Verbatim Responses**

*(Question: Is there a question or issue that you believe this survey should have asked or addressed but did not?)*

*The nature of confidentiality in mediation is a concern. In person we can see if someone is recording in spite of our stating that recording is not allowed. However, I have been trained to assume that the person is recording in spite of the rules.*

*Asking questions directly related to what we are asked to do in our position description verses what management asks us to do that is not a part of our position description. There are times we are threatened with bad reviews although we are performing our jobs based upon the description. Our managers are stressful and pressure employees although things happen that are beyond our control. We can't force people to participate in mediation, we can't stop customers from canceling or rescheduling, we can't stop charging parties from deciding to get counsel after their conference is scheduled and now it has to be rescheduled, we can't make respondents decide to mediate in one day- most ask for a few days to review the charge, talk to their attorney and make an informed decision before accepting the mediation invitation, we can't have conferences all day everyday twice a day- we are not robots, we are human beings that function much better when we are well rested, and not trying to mediate under exhaustion. Our leadership is not concerned about our mental health at all and it's becoming ridiculous. We are here to service the public and eradicate discrimination. We are not here to just process cases like people are cattle and compete with our coworkers, we are supposed to find violations of the law and be visible within the communities we work in so that people feel comfortable coming to the Commission when they have a problem. Please ask management to treat their employees better than they do now.*

*Hopefully, the EEOC will allow us to use more video mediations when we return to the office. Respondents will be reluctant to travel after finding that they can conduct mediations over video and save time, money, and other resources.*

*Impact of video mediations on job performance/work. Our productivity has soared since conducting video mediations.*

*What is the impact on video mediations regarding job performance. On this note, my work performance has improved drastically. In fact, since teleworking (using video) has enhanced my performance as I broke the record at the [name] District Office for most successful resolutions and resolution rate, in the history of the ADR Mediation Program.*

*Are contract mediators happy with their pay? I've been doing this for over 20 years and we are paid the same amount of money. Everything else has increased in cost; mediation pay has not increased to match.*

*As a contract mediator being able to use video to mediate has been very helpful to me financially. Although I love to travel the cost has gone up quite a bit and the contract price has not. I hate to say it, but that will be a factor in the cases I can take. Thank you.*

*For contract mediators, the invoicing process can be very slow. PO show be on ipp site prior to mediation.*

*Video mediations are much easier and less costly to conduct. The EEOC only pays contract mediators \$800 per mediation and before video mediations this generally required travel. This could result in little to no income after expenses. I started mediating for the EEOC to gain experience as a new mediator, but I also have a private practice where I charge \$4,000 per mediation. At a certain point it would not make financial sense to travel for the EEOC to conduct mediations. But I would continue doing video mediations because I like to help the parties and EEOC resolve disputes.*

*A question on preference for Video versus in-person mediation.*

*Do mediators prefer video versus in-person mediations.*

*Do they parties prefer video over in-person mediation?*

*Do you prefer conducting Video Mediations versus Onsite Mediations?*

*My perception is that stakeholders are very pleased with video mediations. I wonder when the EEOC offices re-open will stakeholders want to return to in-person mediations? I trust in-person mediations will be an option for those who seek one but I can't imagine there will be many requests for in person. Since the pandemic, I have had only request to hold an in person mediation and that request was only made by the Charging Party who was unrepresented. Respondent was fine with a Video mediation.*

*What is the mediator's preferred method, in-person or virtual.*

*Whether the Contract Mediators would prefer to stay with Video mediations after the pandemic ends.*

*would prefer pre-mediation statements, very helpful*

*Ability to receive pre-mediation statements from both parties may enhance preparedness on both sides, as well as alert the mediator to issues that are particularly important and that require especial attention.*

*Do you believe that pre-mediation outreach to the parties (from either the mediator or the EEOC) can build momentum going into the mediation session? If so, what sort(s) of outreach do you suggest?*

*I think a form on the Zoom process should be sent to the cp and r when the charge is filed so they know what to expect if the case is mediated.*

*It would be helpful if EEOC had a program that allowed us to create a term sheet that could be electronically sent to the parties and easily signed by them electronically. I have been reading that an email confirming agreement to a term sheet is not enforceable in many jurisdictions. Getting a signed term sheet after a video mediation is currently difficult because many parties do not have their own ability print/sign/scan a term sheet or a method of affixing an electronic signature. This creates difficulty/risk at the end of our mediations.*

*Video (i.e.: zoom) has also made it more flexible to schedule the sessions. Ex: I had a mediation where the attorney for the Respondent was in a different state from the Respondent. Using zoom made it really easy to schedule everyone and the use of break out rooms made it easy for the Respondent and their attorney to work with each other. Prior to the use of zoom, the Respondent and the attorney would have been required to physically go to the EEOC office closest to them for the session. The use of zoom in this type of instance is more efficient and practical. Thanks for asking.*

*Maybe develop a Q&A - add a few questions about what to expect and how to test their connectivity before the day of mediation.*

*yes, should the EEOC be providing cell phone and internet to all mediators? the answer is yes*

*There seemed to be an assumption that video fatigue has to happen after 4 hours. I have had some really lengthy in person mediations as well as on video (like 10+ hours) Thankfully they are rare. But it is the parties who keep them going and want to get them done. So I would suggest assumptions not be made, and there was no open ended option that I recall. Also I mentioned earlier but I think 2 sets of questions were actually looking for top 3 helpful conduct of CP and Respondent but stated in negative so that was confusing. The survey also didn't address any hybrid between audio and video. When we did in person sometimes folks had to participate by phone and that worked. It is rare that the audio only now happens but still I find having someone show up audio only is better than not showing up at all. And it can be necessary if there is a tech snafu. Yes, way harder to mediate and takes more skill but it still works. I maintain you can still hear a smile and the opposite. I also have found that the medium phone/video/in person has never been the reason something doesn't resolve.*

*I believe that the survey should have inquired from the mediators (those on the front lines) what percentage of parties have directly or indirectly communicated with the mediator that they prefer in person mediation over video mediations. In my personal experience, I have never had any party complain about video mediations nor have they ever indicated that they prefer in person. Quite the contrary... I have had both CP and R or R attorneys comment regarding the efficiency and convenience that video mediation has provided to them.*

*I don't think, given some of the questions and the structure of the questions, that this survey is really asking questions in a way that we can better assess and relate to decision makers how amazingly effective Zoom mediations are. I was completely intimidated and scared with them at the beginning and I am blown away not only how comfortable I have become with Zoom mediations but I am taken aback how comfortable all participants are with them; attorneys, Respondents, CPs, people are very confirmable with this technology and I actually find them to act in a more civil, more professional and less aggressive manner that when they participated in person for so many reasons.*

*Please provide feedback to the Respondents and Charging Party about the process prior to assigning the case to ADR.*

*Sometimes Mediation continues for a couple of days and therefore the time can be a factor*

*Why doesn't EEOC obtain more funding for such a successful voluntary resolution program?*