

Remote vs In Person Mediations

Resolution Rates Compared

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As the dispute resolution profession is slowly exiting the pandemic era, many jurisdictions are questioning whether to continue to allow use of communications technology (i.e., remote platforms) in dispute resolution processes, specifically mediation. This article attempts to compare pre-COVID statistical data with COVID-era statistical data of one active mediation practice, in order to determine the effectiveness of remote mediation sessions.

Initially, a limited number of mediations (61) are compared between 2019 and 2021. The “controls” that remain the same in this sampling are as follows:

1. The mediator is the same. Thus, no variance in mediation styles or manners occurs. The same mediator, W. Jay Hunston, Jr., is the mediator in every data sample.

2. The types of mediations are similar. Between the 2019 period and the 2021 period, Mr. Hunston’s practice remained the same as it has been for over thirty years. Thus, a very similar blend of case types (i.e., commercial, real estate, construction defects, employment, etc.) were analyzed in both the 2019 sampling and the 2021 sampling. The samples involved between two to ten parties, with no personal injury or workers’ compensation mediations included in either year’s sampling.

3. All mediations in the database were conducted in Florida, thus there are no jurisdictional differences to be accounted for.

4. All remote mediations were conducted via zoom.us, thus there is no variance in the platform used between the samplings.

5. The period of time was as similar as possible. The 2019 samplings were conducted between January and June, while the 2021 samplings were conducted between January and September. In order to obtain an identical number of cases to analyze, it was necessary to extend the 2021 samplings beyond June, as fewer mediations were occurring during 2021. The goal was to initially have an identical number of cases in each database.

The period of January 2019 through June 2019 was totally devoid of any talk, mention or fear of a COVID pandemic. The first COVID case was reported in the United States in January, 2020. Thus, all mediations in 2019 were in person, as that was the norm pre-COVID. Although some jurisdictions (i.e., Montana) were using zoom and other remote platforms for mediations pre-COVID, that resulted from the vast distances necessary to be traveled in a state as large as Montana in order to conduct in person mediations. Florida did not experience that same usage.

2021 was chosen as the appropriate period to compare with pre-COVID data, as the pandemic was well established, numerous protocols and guidelines had been established nationwide limiting in person contact, but most importantly, attorneys had been using zoom and other platforms for many months by the time 2021 came around.

Mr. Hunston conducted two zoom webinars in March 2020 for attorneys in Florida, in order to familiarize them with the platform and its uses and nuances. By 2021, most active trial lawyers were comfortable with remote platforms for mediation sessions. Also, during the 2021 period of sampling, Mr. Hunston was only called upon to conduct two in person mediations, both of which were excluded from the 2021 statistical sampling.

The raw data of cases analyzed follows:

Period	# of Cases	Settled	Adjourned	No Agr.
2019	61	38 (62.3%)	4 (6.6%)	19 (31.1%)
2021	61	36 (59.0%)	5 (8.2%)	20 (32.8%)

In 2019, 62.3% of the cases reached a full settlement of all issues, 6.6% of the cases adjourned, while 31.1% of the cases ended with no agreement. In order to keep the comparisons accurate, no attempt was made to alter or update the data based on subsequent resolutions of “adjourned” cases or resolutions that occurred just weeks after the mediation session (arguably because of momentum gained during the mediation session).

In 2021, 59.0% of the cases reached a full settlement of all issues, 8.2% of the cases adjourned, while 32.8% of the cases ended with no agreement. Given the small number of cases analyzed, the statistical differences are not critical.

In order to test the implications of the data sampled, an analysis of mediations conducted during the balance of the calendar years 2019 and 2021 was conducted. The total numbers of mediations conducted in 2019 were higher than 2021, so the comparisons for these periods were 50 mediations in the last half of 2019, with only 20 mediations in the last three months of 2021. The ratios remained similar, however,

Period	# of Cases	Settled	Adjourned	No Agr.
2019	50	31 (62%)	5 (10%)	14 (28%)
2021	20	12 (60%)	1 (5%)	7 (35%)

Basically, although the percentages of cases that ended in an adjournment or no agreement varied somewhat between in person and remote sessions, the percentage of cases that reached settlement at mediation were remarkably similar: 60.4% (in person throughout 2019) and 59.3% (remote throughout 2021).

What conclusions may be drawn from this limited sampling? First, the percentage of settlements at mediation are statistically insignificant between in person

and remote mediations. Second, in cases reaching no agreement, the percentage is statistically higher in remote mediations (33.3% vs. 29.7). As to adjournments, remote mediations tended to end in adjournment less often than in person sessions (7.4% vs. 8.1%). However, as no analysis of whether adjourned or “impassed” mediation sessions later ended in a settlement because of the momentum gained at mediation, it is impossible to determine how many of those adjourned and impassed mediations ultimately resolved.

Thus, with the similarity in the rates of settlement between in person and remote mediations, it appears that remote mediations should be permitted, if not encouraged, by courts in Florida. This can be justified based upon the savings in both time and costs provided by allowing parties, attorneys, adjusters, and party representatives to appear remotely, rather than requiring in person attendance, while the rate of settlement does not appear to suffer when using a remote platform.