

The Equal Employment Opportunity Commission Mediation Participants Experience in Online Mediation and Comparison to In-Person Mediation

E. Patrick McDermott, Ph.D.
Franklin P. Perdue School of Business
Salisbury University

Dr. Ruth Obar, Ph.D.
Consultant

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I. Introduction:

The Equal Employment Opportunity Commission (“EEOC”) mediation program began with a 1991 pilot program.¹ An evaluation of the pilot program was performed in 1994 (“McEwen pilot study”).² After the pilot program was expanded nationally, the EEOC commissioned a comprehensive program evaluation that included a survey of participants’ opinions (“2000 participant evaluation”) followed by an evaluation of the mediator perceptions of the process, the dispute, and the parties (“2001 mediator study ”); and concluding with a 2003 evaluation of the reasons employers declined to participate in EEOC mediation (“declination study”).³

Since the 2000 participant evaluation, the EEOC annually used selected 2000 survey questions to measure participant satisfaction for its in-person mediation (“IPM”). As a result of the pandemic, by mid-March 2020, the EEOC shifted all IPM to online dispute resolution (“ODR”) using remote video platforms or phones. In September 2020, Zoom was adopted as the primary platform.

In September of 2020, the EEOC commissioned an external evaluation of how the 2000 participant evaluation results compared to the EEOC-administered IPM survey responses in June 2018 and July of 2019. The EEOC later sought external evaluation of its transition to ODR. This included separate online surveys of the participants’ and mediators’ perspective. Participants included Charging Parties (CP or CPs), Employers, and Representatives of either party who were predominantly attorneys. This resulted in a comprehensive database of 2000 and

¹ 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, (September 20, 2000), <https://www.eeoc.gov/evaluation-equal-employment-opportunity-commission-mediation-program> (Last accessed February 3, 2022).

² 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.

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

2018/2019 IPM performance measures plus these same measures for the 2020 ODR transition.

The 2021 ODR survey then added a battery of new measures unique to the ODR process.

II. Summary of Key Findings

The data establishes that ODR is valued by the mediation participants. Key findings include:

- Ninety-two percent of CPs and 98% of Employers would use EEOC ODR mediation again.
- Procedural Justice measures show that 86% of Charging Parties (“CPs”) and 94% of Employers view the ODR procedures used by EEOC mediators as fair.
- The Distributive Justice measure of overall fairness shows that 82% of CPs and 91% of Employers view the overall ODR mediation as fair.
- The Distributive Justice measure of outcome satisfaction shows that 60% of CPs and 72% of Employers are satisfied with the results of the ODR mediation. This outcome satisfaction rate is much higher than the 2000 IPM rate.
- Nearly 70% of the participants prefer ODR to IPM for a future mediation even where IPM is offered by the EEOC. Only 13% preferred IPM in the future.
- While responses to an open-ended question reflect that the COVID-19 pandemic (“pandemic”) influences the preference for ODR, there was extensive data showing that the ODR preference is often related to non-pandemic factors such as flexibility, location convenience, safe space, and efficiency. In particular, Employers and counsel note the importance of this efficiency in open-ended comments.
- Sixty-two percent of Employers stated that the availability of ODR makes it more attractive for them to participate in EEOC mediation.
- Overall, the ODR measures are similar to or higher than the 2000 IPM measures but not quite as high as the EEOC’s internal 2018/2019 survey using the same benchmark measures.
- CPs overwhelmingly report that the key issue at impasse is money. New ODR measures show that at final impasse the parties are far apart on money. EEOC mediators seldom had an impasse outcome unless the money impasse gap was large suggesting the mediators competently discharged their duties.
- Access to justice is significantly increased by ODR flexibility and location *plus* Employer willingness to participate in a case resolution via ODR.
- In comparison of measures across the two parties, Employers historically report higher satisfaction across the range of procedural and due process measures including in ODR.
- Where the parties do not settle, 33% report progress was made toward resolution. Thirty-eight percent report no progress with the remaining neither agreeing or disagreeing.
- Overall, the data show that, in general, a CPs best chance for obtaining economic value is at the mediation stage.
- 68% of the CPs had first attempted to resolve the dispute directly with their employer but were unsuccessful.

III. Literature Review on the EEOC Program and its Progeny

The 2000 EEOC participant evaluation addressed the parties and representatives vantage point on mediation effectiveness, participant satisfaction, and process variables.⁴ This

⁴ *Supra* note 1; See also E. Patrick McDermott *et. al.*, *Has the EEOC Hit A Home Run? An Evaluation of the EEOC Mediation Program from the Participants’ Perspective*, (2002) *Advances In Industrial and Labor Relations*, Volume 11:1-40 (2002), Elsevier Press – JAI, Oxford.

methodology formed the foundation for similar workplace dispute resolution evaluation of participant satisfaction and process at the State of California Department of Fair Employment and Housing (DFEH) and in the People’s Republic of China at the Dalian, China Labor Arbitration Committee.⁵ The participant evaluation data also resulted in numerous peer reviewed journal articles, book chapters and other academic contributions.⁶

Scholars have called for more evaluation research on workplace mediation.⁷ The pandemic-driven migration to ODR accelerated this need. Issues include the promise of increased access to justice and the challenge of the digital divide.⁸ Rainey and Bridgesmith, citing Susskind, argue that it is axiomatic that ODR increases access to justice.⁹ They recognize the issue of the digital divide but argue that it is “more feared than it need be”.¹⁰ They argue that ODR can only be

⁵ E. Patrick McDermott *et. al.*, *An Evaluation of the California Department of Fair Employment and Housing Pilot Mediation Program* (2002) <https://pdfmedia.net/book/ItIGWAACAAJ/an-evaluation-of-the-california-department-of-fair-employment-and-housing-pilot-mediation-program/e-patrick-mcdermott/unknown/530/2002/OCLC:60360205/conflict-management> (last accessed February 3, 2022); E. Patrick McDermott, Jinyue Sun & Ruth I. Obar, *Chinese Labor Contract Arbitration: No Union, No Problem*, *Labour & Industry: A Journal of the Social and Economic Relations of Work*, August 2010, Vol. 21, No. 1: 410–437.

⁶ Seth D. Harris, *Disabilities Accommodations, Transaction Costs and Mediation: Evidence from the EEOC's Mediation Program*, 13 *Harv. Negot. L. Rev.* 1 (Winter 2008); E. Patrick McDermott and Ruth I. 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 Danny Ervin, *Influence of Procedural and Distributive Variables on Settlement Rates in Employment Discrimination Mediation*, *J. Disp. Resol.* (2005); 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; E. Patrick McDermott and Ruth I. Obar, *Perceptual Differences Between Mediation Parties And Their Influence On Resolution of Employment Law Disputes At The EEOC*, *Emp'ee. Rts. and Emp. Pol. J.*, Vol. 24, No. 4, 2020; *Mediation of Employment Disputes at the EEOC*. In S. Estreicher & J. Radice (Eds.), *Beyond Elite Law: Access to Civil Justice in America Part III*, Chapter 31: 463-477. Cambridge: Cambridge University Press. doi:10.1017/CBO9781107707191.035; McDermott, *et. al.*, *After 20 Years, Mediation is Mainstream at the EEOC*, *Dispute Resolution Magazine*, American Bar Association, 2018, Vol. 24, No. 4, Reprinted in GPSolo eReport, American Bar Association Solo, Small Firm, and General Practice Division, October 23, 2018, https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2018/october-2018/after-20-years-mediation-is-mainstream-eeoc/ (last accessed February 3, 2022).

⁷ Katalien Bollen and Martin Euwema, *Workplace Mediation An Underdeveloped Research Area*, *Negotiation Journal*; Jul 2013; 29, 3; ABI/INFORM Globalpg. 329. (Recognizing the EEOC mediation program as a “major milestone” in workplace mediation).

⁸ Daniel Rainey and Larry Bridgesmith, *Bits and Bytes and Apps - Oh My*, *International Journal on Online Dispute Resolution* (8)(1) doi: 10.5553/IJODR/235250022021008001001

⁹ *Id.* at 5-8 citing Richard Susskind, “Forward”, in *ODR Theory and Practice*, 2nd Ed. (Eleven International Publishers, 2021) (“If Susskind and others are correct, A2J will come to mean access to fair treatment, access to problem-solving and access to information, in addition to access to the courts”.)

¹⁰ *Id.* at p.10.

successful if it is seen as fair and accepted by the parties.¹¹ In ODR assessment, it is important to consider any evidence of structural bias.¹²

Renowned dispute resolution expert Martin Scheinman, in an early Labor and Employment Relations Association (“LERA”) program that brought practitioners and scholars together to examine the accelerated migration to ODR in the midst of the first wave of Covid-19, commented that while there was much anecdotal observation and opinion, social scientists would provide the final vantage point on the effectiveness of ODR in alternative dispute resolution.¹³

IV. Methodology

Using core benchmark measures from the 2000 EEOC participant evaluation, an online participant survey with numerous dedicated ODR questions was created. This development occurred during the debate over the appropriateness of online dispute resolution, how online mediation differed, and early professional discussions on online mediation efficacy. The survey authors attended professional conferences, communicated with dispute resolution professionals, and read professional and practitioner journals and discussion posts to assist in the development

¹¹ Allan E. Lind, & Tom R. Tyler (1988) *The Social Psychology of Procedural Justice*. New York: Plenum; Tom R. Tyler et. al. (1990); *Why People Obey the Law*. New Haven: Yale Univ. Press. Tyler, Tom R., & E. Allan Lind (1992) *A Relational Model of Authority in Groups*, 25 *Advances in Experimental Social Psychology* 115–91. Lind, E. Allan, et al. (1993) *Individual and Corporate Dispute Resolution: Using Procedural Fairness as a Decision Heuristic*, 38 *Administrative Science Q.* 224–51; Alan E. Lind et. al. (1990) *In the Eye of the Beholder: Tort Litigants’ Evaluations of Their Experiences in the Civil Justice System*, 24 *Law & Soc. Rev.* 953–96.

¹² Michael Z Green, *Tackling Employment Discrimination with ADR: Does Mediation Offer a Shield for the Haves or Real Opportunity for the Have-Nots* (2005) 26:2 *Berkeley J. Emp. & Lab. L.* 321.

¹³ *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 (November 29, 2010) (last accessed February 3, 2022). *How The Pandemic Impacts Plaintiffs Attorneys, Id.*; *How The Pandemic Impacts Union Advocates, Id.*

of ODR measurements.¹⁴ The survey considered these various practitioner and expert opinions on ODR and developed and vetted measures for empirical analysis.¹⁵

The online survey was developed and tested over 10 months. The researchers oversaw the administration of the survey by the EEOC with its Verint survey management software. The instrument continued the 2000 and 2018/2019 participant measures, referred to herein as the “benchmark measures”. The ODR instrument added an array of new measures to capture the participant experience with ODR, mediator and mediation effectiveness, technology issues, and insights into new patterns of mediation in ODR. The survey was pretested by the EEOC’s 16 Supervisory ADR experts from May 17, 2021 through May 20, 2021.¹⁶

The participant survey opened on August 23, 2021 and closed on November 17, 2021. The EEOC stopped sending invitations to new mediation participants after this date, although follow-up emails continued to previous recipients of the survey who have not yet responded. The data reflects responses received through December 13, 2021. The survey was sent by email and solicited the CP and Respondent (hereinafter referred to as “Employers”) as well as party representatives. The research protocol included a mediator explanation at the start of the mediation that the participants would be asked to participate in an online survey via email after the close of the mediation. The mediator repeated this at the close of the mediation reinforcing

¹⁴ *Id.*; *How The Pandemic Impacts Plaintiffs Attorneys, Id.*; *How The Pandemic Impacts Union Advocates, Id.* *Florida Bar, 21st Annual Labor and Employment Law Update*, January 15, 2021; *Labor Relations in the Time of the Pandemic*, Labor and Employment Relations Association, <https://youtube/ar3Cyy5Yjgk> May 28, 2020 (not accessible); *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)(last accessed February 3, 2022); Colin Rule, *New Mediator Capabilities in Online Dispute Resolution*, Mediate.com, <https://www.mediate.com/articles/rule.cfm> (December 2020)(last accessed February 3, 2022); Noam Ebner, *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 SSRN: <https://ssrn.com/abstract=2161451> (last accessed February 3, 2022); LERA Dialogue, *The Remarkable (And Often Very Surprising) Benefits of Online Mediation*, 2020; Jennifer L. Gibbs and Amanda L. Rodriguez, *Insurer Considerations for Post Pandemic Virtual Mediation*, *Insurance Law360* (August 12, 2021)(citing Baker and McKenzie and KMPG report on maintaining concentration in mediation, “Zoom fatigue”, issue of party appreciation of formality, confidentiality, and choice of law issues.); William D. Cohan, *My Years on Wall Street Showed Me Why You Can’t Make a Deal on Zoom*, Guest Essay, *New York Times*, August 16, 2021 <https://www.nytimes.com/2021/08/16/opinion/covid-wall-street-delta-office.html> (last accessed February 3, 2022); John Vatvisanos, *We’re Kidding Ourselves That Workers Perform Well From Home*, Guest Essay, *New York Times*, July 26, 2021, <https://www.nytimes.com/2021/07/26/opinion/covid-return-to-office-work-houston.html> (last accessed February 3, 2022).

¹⁵ Michael Heise, *An Empirical Analysis of Empirical Legal Scholarship Production, 1990-2009*, *University of Illinois Law Review* 2011, No. 5 (2011): 1739-1752 (“Rather than relying on anecdotes, one’s intuition, or instinct, theory fuels research hypotheses that, in turn, are submitted to data for testing..”)

¹⁶ A written version of the online survey is attached as Appendix A.

that the survey was confidential and was being performed by independent outside scholars; the mediator encouraged participation.

After the mediation closed, within the next few days, the participants received the survey prompt by email. The EEOC sent four sequentially spaced follow-up emails during the survey period. The survey provided a skip process so that a party or representative who had previously participated in an online mediation during the survey period could skip some measures to avoid gathering duplicate data.

Two thousand three hundred eighty-seven mediation participants received the survey by email.¹⁷ One thousand one hundred ninety-seven (50%) answered the full survey and another 37 (2%) answer the short version for repeat responders. One thousand one hundred and fifty three (48%) did not elect to participate; this included those who did not consent, left the survey blank or answered very few questions. These persons were offered the opportunity to explain why they declined to participate but elected not to respond.

Table 1. Survey Participation Rate		
	#	%
Total number of mediation participants who received surveys by email	2387	100%
Consented – full survey	1197	50%
Consented – short survey *	37	2%
Did not consent/left survey completely blank/answered a few basic “demographic” information only	1153	48%
Actual number of surveys included in the analysis	1234	
* “Repeat participants”: participants (mostly party representatives) who have completed the survey from a previous mediation/case and agreed to complete a shorter version of the survey pertaining to a different case.		

One thousand two hundred thirty four surveys form the database.¹⁸ Five hundred eleven surveys were from Employer representatives (41%). Two hundred seventy one (22%) identified

¹⁷ Email invitations were sent to about 6,000 mediation participants. Out of this number only 2,387 participants saw or read the survey (i.e., at the very least, the recipient clicked on the survey URL). The rest (about 3,600) included participants who received the email but did not click on the survey URL, clicked on the unsubscribe link, the email bounced back from the server, and others where there is no indication that the participant saw or read the email invitation.

¹⁸ The study did not gather data on those who declined to participate in the ODR mediation, which was the sole process offered. It is possible that a party uncomfortable with ODR declined mediation in favor of an EEOC investigation. This is unlikely given that the acceptance rates are relatively constant. In 2021 the CP acceptance rate was 90.6% and Respondent acceptance rate was 33.36%; in 2020 it was 89.5 % and 31.73%; in 2019 it was 87.8% and 32.73 % and in 2018 it was 81.67% and 27.6%. Ichniowski, Stephen email to E. Patrick McDermott, February 16, 2022.

as the Employer. Two hundred twenty seven (18%) were from CP Representatives and 225 (18%) were from the CP. For those who reported themselves as representatives of a party, 83% were attorneys. Nine percent were company Human Resource representatives. About 3% identified as upper level management; less than 1 percent identified as immediate supervisors, union representatives, labor relations personnel, consultants, or friends appearing as representatives.¹⁹

The survey also sought to identify if the parties report that an insurance company is involved and whether an insurance adjuster was participating in the mediation. Twenty one percent reported the involvement of an insurance company, 64% said there was none, with 15% uncertain. Where an insurance company is involved, only 26% reported the participation of an adjuster in the mediation session.

Twenty-eight percent of the cases did not result in a settlement after the mediation. Seventy-five percent of the cases were settled or awaiting final signing of the agreed upon deal. In 6%, mediation is continuing.

V. Comparison of the 2000 IPM and 2021 ODR Measures.²⁰

A. Six Key Measures For Comparative Assessment.

The first set of data reports key measures on the ODR program compared to our 2000 IPM data.²¹ The first four are the same benchmark measures first used in 2000. The final two are direct questions that test how the parties compare ODR to IPM on the key measures of preference and employer willingness to participate in ODR vs. IPM.²² The data chart reports the 2000 and 2021 measures. It also reports the difference between the CP and Employer measures, which will be addressed where salient.

¹⁹ For those who see mediation as transformative, the absence of management or union engagement in this process suggests a lack of foundation for this mediation “style”.

²⁰ Appendix B reports the survey results in detail.

²¹ The 2000 data following from the 1994 McEwen pilot study established that the EEOC mediation program was well-received by participants and was a success across numerous measures. *Supra* note 2.

²² This employer question is important for the longstanding EEOC interest in enhancing employer engagement in the mediation process that was first evaluated in the 2003 declination study.

1. Fair Procedures (Procedural Justice).

The survey asked if the procedures used by the mediator were fair. This a key cumulative measure that arguably subsumes the many more focused individual measures of procedural and substantive due process detailed below. For ODR, 86% of the CPs and 94% of the Employers report fair procedures.²³ When comparing the 2000 IPM measure to ODR, the fair procedures measures for both parties are similar. Table 2 below shows that the CP measure is 2%-point less for ODR; there is a 2%-point increase for Employers.

Using the mean or average ratings scale from 1 to 5, CPs have significantly lower average satisfaction compared to Employers: 4.33 and 4.44, respectively in 2000 and 4.36 and 4.52, respectively in 2021.²⁴

As a whole, participants in 2021 ODR have statistically significantly higher average ratings to the statement that the procedures used by the mediator were fair: (4.45) compared to participants in 2000 IPM (4.38).

2. Overall Fairness (Distributive Justice Measure 1).

In addition to procedural fairness, the survey attempts to measure overall “fairness”. This is a distributive justice measure. It asks if the parties were satisfied with the fairness of the mediation. In 2000 IPM, 79% of CPs and 87% of Employers report fairness satisfaction. These percentages increased substantially in 2021, with 82% and 91% for CPs and Employers, respectively. Using the overall mean rating the increase in fairness satisfaction between these two periods is statistically significant – from 4.19 in 2000 to 4.39 in 2021. As in the previous measure, CPs have a lower level of satisfaction compared to the Employers.

3. Result Satisfaction (Distributive Justice Measure 2).²⁴

a. Overall Data

The survey asks a second, more focused, distributive justice question - was the party satisfied with the results of the mediation. For ODR, 60% of CPs and 72% of the Employers

²³ Reference to CP and Employer includes both parties and representatives. For some measures there is a separate report of the representative measures. Those identifying as representatives are almost always attorneys.

²⁴ This is computed based on a 5-point scale: Strongly Agree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5).

²⁴ The concept of “success” in mediation is multi-faceted. Michal Alberstein, *The Success-Failure Anxiety in Conflict Resolution: Between Law, Narrative and Field Building*, International Journal of Conflict Engagement and Resolution 2, no. 1 (2014): 35-40.

were satisfied with the results. In 2000 IPM 55% of CPs were satisfied with the results, 5%-point less than in the 2021 ODR data. In the same period 63% of Employers were satisfied, 9%-point less than in the ODR data. Results of comparing the mean differences between the two periods show statistically significant improvement from an average of 3.52 in 2000 to 3.87 in 2021.

Statements/ Mean Ratings ^{a,b}	2000 IPM Data				2021 ODR Data			
	CP/Party Rep		Employer/ Party Rep		CP/Party Rep		Employer/ Party Rep	
	#	% ^c	#	% ^c	#	% ^c	#	% ^c
The procedures used by the mediator in the mediation were fair to me.	1668	4% - 7% - 88%	1564	3% - 5% - 92%	433	7% - 7% - 86%	744	2% - 5% - 94%
Mean Ratings, by Party	4.33		4.44		4.36		4.52	
	<i>p-value = less than 0.001</i>				<i>p-value = less than 0.001</i>			
Mean Ratings, 2000 vs. 2021	4.38				4.45			
	<i>p-value = 0.017</i>							
I was satisfied with the fairness of the mediation session.	1648	8% - 13% - 79%	1559	4% - 9% - 87%	432	10% - 8% - 82%	751	1% - 7% - 91%
Mean Ratings, by Party	4.07		4.31		4.24		4.47	
	<i>p-value = less than 0.001</i>				<i>p-value = less than 0.001</i>			
Mean Ratings, 2000 vs. 2021	4.19				4.39			
	<i>p-value = less than 0.001</i>							
I was satisfied with the results of the mediation.	1547	26% - 19% - 55%	1477	18% - 20% - 63%	428	21% - 19% - 60%	752	9% - 19% - 72%
Mean Ratings, by Party	3.38		3.67		3.64		4.01	
	<i>p-value = less than 0.001</i>				<i>p-value = less than 0.001</i>			
Mean Ratings, 2000 vs. 2021	3.52				3.87			
	<i>p-value = less than 0.001</i>							

^a Mean ratings are computed based on a 5-point scale: Strongly Disagree (1), Disagree (2), Neither Agreed nor Disagreed (3), Agree (4), and Strongly Agree (5)

^b Statistically significant mean ratings differences (at 95% level, i.e., with p-values less than 0.05) are bolded.

^c The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed", and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.

4. Willingness to Use EEOC Mediation In The Future.

The survey asked the participant if they would be willing to participate in the EEOC mediation program in the future. In 2000, 93% of the CPs reported that they would participate again. For ODR, 92% stated that they would use the program again, similar to the 2000 IPM results.

Employers show consistent “acceptance” of the EEOC mediation program— almost all employers (98%) are willing to participate in EEOC ODR mediation if they were a party to a charge in the future.

This “willingness to return” is a key measure, along with the prior overall fairness, process fairness and result satisfaction measures. When viewed together, they suggest that similar to IPM in 2000, ODR in 2021 is highly valued by the parties.

5. Party Preference For ODR Over IPM.

Parties were asked if they preferred ODR over IPM for future cases. The question asked if the participant would prefer ODR even if in-person mediation was offered. Sixty-six percent either strongly agreed (39%) or agreed (27%). Only 13% preferred IPM with 21% neither agreeing nor disagreeing. Fourteen percent of CPs and 12% of Employers prefer IPM.

For those who preferred ODR the survey asked why. A closed-end list was used along with an open-ended option. In addition to the closed-end selections the survey sought other reasons for preferring ODR. These comments provided great insight into why many prefer ODR. The data show that location convenience/challenge, attendance of others who may not readily attend in-person mediation, flexibility, efficiency, safe space and cost considerations are some of the most important reasons for preferring video mediation to in-person mediation. While some comments indicate that the pandemic was a factor, the data and these comments establish ODR as a preferred process for various other reasons.²⁵

²⁵ The survey does not attempt to control for the pandemic by asking the parties if there was no pandemic what their preference would be.

Table 3. Reasons for Preferring Video Mediation to In-Person Mediation (Pre-listed Choices in Survey)						
	All Participants		CP and Party Representative		Employer and Party Representative	
	#	%	#	%	#	%
Total participants who prefer video mediation over in-person mediation	753		263		490	
Travel challenge - I do not have ready means of convenient transportation.	103	14%	40	10%	63	9%
Location challenge – I do not want to travel to the EEOC office location.	436	58%	144	35%	292	40%
I would not want to be in the same location as the other party.	135	18%	81	20%	54	7%
I prefer to be online due to the issue being mediated.	117	16%	59	14%	58	8%
Allows for others to attend mediation or be available if needed who would not otherwise may not be able to do so.	447	59%	134	33%	313	43%
Cost considerations.	431	57%	114	28%	317	44%
Current job obligations.	204	27%	48	12%	156	22%
Other (Verbatim responses follow)	77	10%	36	9%	41	6%

The succeeding four tables provide the participants’ reasons, in their own words, for preferring video mediation to in-person mediation including the various factors that participants consider or experience when participating in mediation. The comments generally note the convenience, less stressful experience, safe space, cost saving or efficiency, flexibility and other factors that make ODR more attractive.

Table 4a. Reasons Provided for Preferring Video Mediation to In-Person Mediation – CPs Verbatim Responses/Reasons
<i>I was able to choose a place where I was comfortable which eased the stress of the process.</i>
<i>Convenience</i>
<i>Convenience and it’s in accordance with Covid protocols</i>
<i>It is generally more convenient.</i>
<i>It is more convenient to meet via video</i>
<i>Due to COVID mediation was the option.</i>
<i>I have long covid issues. The company hired lesser qualified younger white males and promoted them rather than to promote an older disabled female. Seeing them makes me feel dehumanized.</i>
<i>Virtual conferences acceptable method of meeting due Covid.</i>
<i>I did it over the phone. I felt very comfortable and less stressed and it allowed me to have all of my paperwork at my fingertips</i>
<i>In 2014, I traveled to San Jose, CA. (from Oakland) for my EEOC case. Mediation was about 8 or more hrs. The commute was too long and traveling on 880 (freeway needed for my commute) is dangerous (accidents, road rage, angry drivers, & drivers who speed).</i>
<i>Auditory challenges supported by video mediation</i>
<i>I believe that was the only option</i>
<i>I have a really hard time driving. Due to my anxiety. I do not even like being in a car at all.</i>
<i>It difficult to sit in one’s presence knowing what they did to me just to see them lie about it</i>

Table 4b. Reasons Provided for Preferring Video Mediation to In-Person Mediation – CP Representatives’ Verbatim Responses/Reasons
<i>Zoom mediations are just as effective as in person unless special circumstances exist. This also allows participants to be more comfortable, allowing for increased patience in the process. I hope that zoom continues to be the preferred method for mediation</i>
<i>Convenience of doc sharing via Zoom</i>
<i>Convenience of the parties.</i>
<i>Convenience. I would be willing to mediate in-person (and have multiple times, including at the EEOC), but virtual mediations are extremely convenient.</i>
<i>It is generally more convenient.</i>
<i>Just convenient, especially for cases that don’t resolve. Time not wasted.</i>
<i>Mediation via Zoom is very cost effective, saves time and money and easier to schedule sooner. OUR CLIENTS AND OUR FIRM LOVE IT!</i>
<i>I can do everything I would normally do in mediation in the comfort of my home. It reduces costs (although, I’m not really concerned about that) and its just better. I honestly don’t understand why we do any work in-person unless absolutely necessary.</i>
<i>More scheduling dates available where we are not close to the district offices</i>
<i>As a Non-attorney Representative, I have clients all over the country and the costs of travel would be prohibitive and counterproductive in most instances</i>
COVID SAFETY
<i>Doesn’t require the parties to waste time.</i>
<i>Ongoing pandemic</i>
<i>The online mediation is much more efficient</i>
<i>Time and efficiency</i>
<i>Video mediation is a more efficient use of resources.</i>
<i>My clients are typically not wealthy or sophisticated and they are very nervous about getting dressed up and traveling to a stuffy office building</i>
<i>Can also complete other work while awaiting a response from the other side</i>
<i>It is significantly easier to schedule a virtual mediation compared to an in-person mediation</i>
<i>saves time</i>
<i>Easier to schedule and get an earlier date. More can easily participate since there is no travel involved</i>
<i>efficiency of process</i>

Table 4c. Reasons Provided for Preferring Video Mediation to In-Person Mediation – Employers’ Verbatim Responses/Reasons
<i>Convenience</i>
<i>Just more convenient.</i>
<i>More time and money saved, period.</i>
COVID
<i>video mediation allows for more flexibility</i>
<i>ability to do other things at my desk while waiting</i>
<i>ability to multi-task</i>
<i>On breaks I was able to work. That would not have been the case if we were all out of the office for mediation.</i>
<i>Video mediation allows for multi-tasking while waiting in breakout rooms; it is much more efficient. I also feel it’s more productive as it takes some of the emotion out - emotions can run high when all parties in the same room with one another.</i>
<i>efficiency of time, and also pandemic-related concerns</i>
<i>Ease of use allowed it to proceed smoothly without the hassle of travel and bouncing between rooms.</i>
<i>Ability to reach out to others within the organization to help settle the matter.</i>
<i>Video mediation allowed me to not say or show my emotions whereas an in-person meeting would likely have caused an impasse.</i>
<i>If Covid-19 is ongoing, I would prefer to be in a video mediation rather than in a closed conference room with others for many hours.</i>
<i>If possible, I would make the decision on a case-by-case basis.</i>

Table 4d. Reasons Provided for Preferring Video Mediation to In-Person Mediation – Employer Representatives’ Verbatim Responses/Reasons
<i>Cost, convenience, ability to get all decisionmakers to attend</i>
<i>General convenience for the parties and representatives.</i>
<i>It’s simply more convenient and time/cost effective. It would have cost the entire day to go to the EEOC office by the time we wrapped up. With ZOOM, I still had a half day to get other things accomplished. Video is a modern and better option.</i>
<i>just overall convenience</i>
<i>The convenience of attending mediation via ZOOM from work/home with process as effective as in person at EEOC office.</i>
<i>Reduces costs to client as no travel time to account for and client can remain at the workplace to address onsite issues that may arise during mediation</i>
<i>Saves cost for legal fees for the respondent (my clients) so they may have more money to contribute to a resolution, which was true in this case. Personal appearance requires additional billed hour time to the client.</i>
<i>The Zoom/Video mediations save a tremendous amount of travel time and expense. This is invaluable.</i>
<i>All involved in the mediation would need to attest to being fully vaccinated against COVID-19 before I would be comfortable participating in person.</i>
<i>Covid</i>
<i>COVID</i>
<i>COVID, efficiency, convenience, ease of technology</i>
<i>COVID, Just as effective and reduces travel cost/expense.</i>
<i>Covid-19</i>
<i>Prevents the spread of COVID-19</i>
<i>Allows for flexibility for all parties and timely scheduling - Mediation virtual was managed professionally and I think the process allows all parties to be comfortable</i>
<i>Ability to multitask during down time.</i>
<i>Allows parties to engage in other activities while the mediator is meeting privately with the other participants. The lack of travel time, dealing with parking, etc. make the virtual mediation much more efficient for all involved.</i>
<i>Easier as a working parent to participate remotely, given childcare obligations.</i>
<i>Cases get resolved quicker via Zoom/online. Parties get to the point quicker. Much more efficient, especially with an excellent mediator such as Mr. Melendez.</i>
<i>Makes it easier to schedule when travel is not involved - more cost and time effective</i>
<i>more efficient and convenient</i>
AVOIDS WASTING TIME/ HASSLE GETTING TO/FROM MEDIATION
<i>I strongly prefer virtual mediation because it does not waste my whole day. I can get work done while the mediatory is communicating separately with the other side as opposed to being at an in-person location where the time would be wasted.</i>
<i>It is a great tool for clients to participate without needing to travel and is particularly helpful when there are out of state individuals who need to be involved.</i>

6. ODR Impact On Employer Participation.

The survey asks Employers if the use of ODR made it more attractive for the Employer to participate in the EEOC mediation program. Sixty-two percent either strongly agreed (24%) or agreed (38%) that the use of a video platform makes it more attractive. Only 5 percent disagreed or strongly disagreed with the statement that ODR mediation was more attractive for employers. This is another example of the additional access to justice provided by the EEOC’s use of ODR; it suggests that ODR convenience brings the employer to the negotiation table.

7. Access to Justice Implications.

The six key measures data suggests that ODR is as effective as IPM on key benchmark measures and is preferred by the parties for reasons beyond the pandemic. The data establishes that it increases access to justice. First, ODR provides greater access to justice to CPs who may otherwise not have been able to participate in mediation for reasons beyond the pandemic. Second, about 20% of CPs don't want to be in the same location as the Employer, which we see as a "safe space" issue. Third, access to justice is improved when more Employers are willing to come to the table to negotiate.

VI. Detailed Comparison of Benchmark Measures From 2000 IPM and 2021 ODR.

There are additional detailed measures that address the various elements of mediation in both IPM and ODR. This includes in-depth procedural and distributive justice measures including mediator conduct and option generation, convening, process understanding, voice, perceptions of outcome, and satisfaction measures. The data is reported by comparison of 2000 IPM to 2021 ODR and also by comparison of CP to Employer measures. The totality of this granular data further buttress the data found in the six key measures reported above.

A. MEDIATION PROCESS MEASURES COMPARISONS – ODR vs. IPM And CP vs. EMPLOYER.

1. Cumulative Party Process Responses

i. Process Knowledge - Pre-mediation/Convening Adequate Explanation

The 2000 and 2021 ODR data reflect a consistent pattern where most participants report that prior to the mediation they receive an adequate explanation about the mediation from an EEOC representative. Eighty-seven percent of 2000 mediation participants and 85% of 2021 participants agreed that they received an adequate explanation prior to the start of the mediation session. (See Table 5 below.)

ii. Process Knowledge at Mediation Onset

The next measure seeks the participants' reported understanding of the *mediation process* at the start of the mediation. The 2000 survey asks if after the mediator's introduction at the mediation session, the party believe they understood the mediation process. Ninety four percent reported they understood the mediation process.

For the ODR survey the question focused on whether the parties understood how to use *the mediation technology*. This is an important question since the addition of technology in the mediation process is a major factor that could undermine its effectiveness. Results show that almost 9 in 10 (88%) understood the process, close to 1 in 10 (8%) are unsure, and a small minority (5%) did not understand the use of the mediation technology. Comparing the two parties, the proportion of CPs who understood how to use the technology is slightly lower than the Employer (85% and 89%, respectively).

iii. Participant Voice

Participant voice is measured by asking whether one had “full opportunity to present my view”. The overall results are impressive. Almost everyone believed that the mediation offered full opportunity to present their views (92% in 2000 and 93% in 2021).

Eighty-seven percent of the CPs compared to 95% of the Employers reported that they had a full opportunity to present their views during the mediation process. This is a 3%-point drop from 2000. For Employers the results are about the same with 95% reporting the full opportunity to present their views.

Statements	2000 Data		2021 Data	
	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*
Prior to my attendance at this mediation session today, I received an adequate explanation about mediation from an EEOC representative.	3153	7% - 6% - 87%	1150	5% - 9% - 85%
After the mediator's introduction at the mediation session, I felt that I understood the mediation process.	3237	3% - 3% - 94%	-	-
<i>2021 Survey: After the mediator's introduction at the mediation session, I understood <u>how to use the mediation technology</u>.</i>	-	-	1152	5% - 8% - 88%
I (or my representative) had a full opportunity to present my views during the mediation process.	3240	3% - 4% - 92%	1186	4% - 4% - 93%
* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.				

2. Mediation Process Statements By Party

The data reflects an overall slight decrease in CP process measures between 2000 and 2021.

For example, the adequate explanation measure and opportunity to present views measure drop 3%-points. Results for Employers show a slight increase and no change for the same measures.

Table 6. Responses to Statements Concerning the Mediation Process – 2000 IPM and 2021 ODR, Tabulated by Party								
Statements	2000 Data				2021 Data			
	CP/Party Rep		Employer/ Party Rep		CP/Party Rep		Employer/ Party Rep	
	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *
Prior to my attendance at this mediation session today, I received an adequate explanation about mediation from an EEOC representative.	1637	7% - 5% - 88%	1516	6% - 8% - 85%	418	6% - 10% - 85%	732	5% - 9% - 87%
After the mediator's introduction at the mediation session, I felt that I understood the mediation process.	1676	4% - 5% - 92%	1561	2% - 2% - 96%	-	-	-	-
<i>2021 Survey: After the mediator's introduction at the mediation session, I understood how to use the mediation technology.</i>	-	-	-	-	419	6% - 10% - 85%	733	4% - 7% - 89%
I (or my representative) had a full opportunity to present my views during the mediation process.	1677	4% - 6% - 90%	1563	2% - 3% - 95%	433	8% - 5% - 87%	753	2% - 3% - 95%
* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.								

B. Comparison of Mediator Process Statement Differences Between The Parties For 2021 ODR

The CP and Employer ODR measures are compared for significant disparity with means difference testing. The only significant difference is for the opportunity to present one’s views where the CP measure (87%) vs. the Employer measure (95%) was significant. Thus, while both measures are very high, and should be deemed as a success, Employers report an extremely high opportunity to present their views.

Statements	Both parties	CP/Party Rep	Employer/Party Rep
	Mean Rating **	Mean Rating **	Mean Rating **
Prior to my attendance at this mediation session today, I received an adequate explanation about mediation from an EEOC representative.	4.25	4.28	4.24
Mean difference test***: CP/Party Rep compared to Employer/Party Rep		0.489	
After the mediator's introduction at the mediation session, I understood how to use the mediation technology.	4.32	4.29	4.35
Mean difference test***: CP/Party Rep compared to Employer/Party Rep		0.278	
I (or my representative) had a full opportunity to present my views during the mediation process.	4.50	4.38	4.58
Mean difference test***: CP/Party Rep compared to Employer/Party Rep		Less than 0.001	
<p>* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed", and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.</p> <p>** Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)</p> <p>*** Bolded entries refer to statistically significant differences at the 95% or 99% level.</p>			

C. MEDIATOR CONDUCT MEASURES.

1. Cumulative measures

i. Pre-mediation Neutrality

The program consistently scores high on perceptions of pre-mediation neutrality. A high percentage of participants considered the mediator to be neutral at the start of the mediation: 92% in 2000 and 94% in 2021. In 2021, we see a 5% difference between the parties in this measure: 91% of CPs versus 96% of Employers considered the mediator neutral at the start of mediation. See Table 8 below.

ii. Continuing Neutrality

Participants' perception of the mediator's continuing neutrality remains high at 90% in 2000 and 91% in 2021.

iii. Realistic Option Development

This is the first of two measures on mediator problem-solving. Agreement with this option generation measure was 75% in 2000 and 80% in 2021. Historically, this is one of the lower measures because the survey seeks "realistic" options that were developed from the eye of the beholder - which are often inextricably linked to a negotiation position on what one is entitled to in negotiation. Even with this very subjective measure, 8 in 10 parties in ODR reflect that the mediation met this difficult standard.

iv. Option Generation For The Parties Use

The survey also measures option generation from a different frame without using the word "realistic" but rather focusing on the parties use of the options generated. The focus is on the mediator assisting the parties in the development of options. Parties are asked if they thought the mediator helped the parties develop options. This shifts the inquiry from mediator development of options to mediator assistance in the development.; this question asks about both parties being assisted from the vantage point of each party. There is a 2%-point drop in this measure.

<p>Table 8. Responses to Statements Concerning the Mediator – 2000 IPM and 2021 ODR Data</p>

Statements	2000 Data		2021 Data	
	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*
At the beginning of the mediation, I considered the mediator to be neutral.	3240	3% - 5% - 92%	1180	2% - 4% - 94%
The mediator remained neutral during the session.	3228	4% - 6% - 90%	1181	5% - 5% - 91%
The mediator helped the parties develop options for resolving the charge.	3206	5% - 10% - 85%	1176	6% - 11% - 83%
Most of the options developed during the mediation session were realistic solutions to resolving the charge.	3167	10% - 14% - 75%	1177	5% - 15% - 80%
* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.				

2. Mediator Conduct Measures By Party Symmetry – 2000 vs. 2021.

This set of data compares the CP and the Employers cumulative responses to the questions. It then compares the 2000 evaluation results to the 2021 results. This provides insight into the symmetry of party perceptions on a wide range of measures in IPM vs. ODR.

i. Pre-Mediation Neutrality

In 2000 both parties reported a 92% measure – perfect symmetry. In 2021, there is a 5% difference between the parties with 91% percent of CPs versus 96% of Employers considering the mediator neutral at the start of mediation. This is an interesting disparity complicated by the deviance in ODR “convening” by EEOC office. Some mediators engage the parties prior to mediation while in other offices there is minimal pre-mediation contact.

ii. Continuing Neutrality

In 2021 there was a 2% difference with the CP seeing the mediator remaining neutral at 91% vs. 89% for the Employer. In 2021 there is 4% drop in CP perception of the mediator remaining neutral in contrast to a 5% increase in Employer perception that the mediator remained neutral. This is an overall 9% spread in perception of continuing neutrality in 2021 vs. the 2% in 2000.

iii. Realistic Option Development

In 2000 there was near symmetry with 75% of CPs and 76% of Employers reporting realistic option development. In 2021, 77% of CPs and 81% of Employers report that in ODR the mediators developed realistic options. There are two increases here. First, in both parties report

an increase in the development of realistic options in ODR vs. IPM. Second, the symmetry between the parties in ODR spreads from 1% to 4% more Employers reporting realistic options.

iv. Option Generation For Use By The Party

In 2000, there is near symmetry with 1% more CPs reporting option generation for parties use (85% vs. 84%). There is a 6% spread for ODR with 79% of CPs and 85% of Employers agreeing that the mediator helped the parties develop options. This is an overall shift of 7% in the symmetry (+1% CP in 200 to -6% in ODR).

Table 9. Responses to Statements Concerning the Mediator – 2000 IPM and 2021 ODR, Tabulated by Party								
Statements	2000 Data				2021 Data			
	CP/Party Rep		Employer/ Party Rep		CP/Party Rep		Employer/ Party Rep	
	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *
At the beginning of the mediation, I considered the mediator to be neutral.	1674	4% - 4% - 92%	1566	3% - 5% - 92%	429	4% - 5% - 91%	751	1% - 3% - 96%
The mediator remained neutral during the session.	1664	4% - 5% - 91%	1564	4% - 6% - 89%	429	8% - 6% - 87%	752	3% - 4% - 94%
Most of the options developed during the mediation session were realistic solutions to resolving the charge.	1648	12% - 13% - 75%	1519	9% - 16% - 76%	427	9% - 14% - 77%	750	4% - 15% - 81%
The mediator helped the parties develop options for resolving the charge.	1661	5% - 10% - 85%	1545	5% - 11% - 84%	428	10% - 10% - 79%	748	3% - 12% - 85%
* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.								

3. Comparison Of Mediator Conduct Measure Differences Between The Parties For 2021 ODR.

The next analysis looks at symmetry of the mediator conduct measures with the ODR process. Are the measures balanced by party?

There is only one significant difference for the 2021 mediator conduct measures by party. This is for the mediator remaining neutral, where almost nine out of 10 CPs report that the mediator remains neutral while an extremely high percentage of Employers (94%) report the same. These percentages correspond to average ratings of 4.28 for CPs and 4.52 for Employers.

Table 10. Mean Difference Tests: Comparison Between CP and Employers, 2021 Data Responses to Statements Concerning the Mediator
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Statements	Both parties	CP/Party Rep	Employer/Party Rep
	Mean Rating **	Mean Rating **	Mean Rating **
At the beginning of the mediation, I considered the mediator to be neutral.	4.52	4.49	4.54
Mean difference test***: CP/Party Rep compared to Employer/Party Rep		0.192	
The mediator remained neutral during the session.	4.47	4.38	4.52
Mean difference test***: CP/Party Rep compared to Employer/Party Rep		0.007	
The mediator helped the parties develop options for resolving the charge.	4.25	4.21	4.28
Mean difference test***: CP/Party Rep compared to Employer/Party Rep		0.212	
Most of the options developed during the mediation session were realistic solutions to resolving the charge.	4.19	4.16	4.20
Mean difference test***: CP/Party Rep compared to Employer/Party Rep		0.494	
<p>* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed", and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.</p> <p>** Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)</p> <p>*** Bolded entries refer to statistically significant differences at the 95% or 99% level.</p>			

D. PARTY PREPARATION - DID YOU KNOW WHAT YOU WANTED?

In assessing outcome measures, it is important to first know if the party knew what they wanted going into mediation. It could be argued that not knowing impacts one’s later opinion of the results; one can question whether the party formed realistic positions and attitudes. The data shows a major shift where those going into ODR have a better idea of what they wanted to obtain. In 2000 17% of CPs and 14% of Employers reported they did not know what they wanted. With ODR this measure dropped significantly to 7% for CPs and 6% for Employers. ODR appears to have better prepared parties. One explanation is that parties in ODR use the Internet to better prepare. It is even possible that this measure taken after mediation is completed may conflate information learned while multi-tasking in mediation with pre-mediation knowing what one wanted. Finally, since many of the survey respondents are representatives, and thus “repeat players”, it may be that prior experience, standing alone, allows one to formulate their goals. EEOC mediation has matured greatly since 2000 and one must assume some of the parties are more sophisticated.

Table 11. Participants' Expectations Going into the Mediation 2000 IPM and 2021 ODR Data						
	2000 Data			2021 Data		
	All Parti- cipants	CP/Party Rep	Employer/ Party Rep	All Parti- cipants	CP/Party Rep	Employer/ Party Rep
Going into the mediation, did you know what you wanted from this mediation?	100% (3122)	100% (1607)	100% (1515)	100% (1142)	100% (412)	100% (730)
Yes	84%	83%	86%	93%	93%	94%
No	16%	17%	14%	7%	7%	6%

VII. ODR Measures On Process, Party, Mediator Performance, and Outcome.

The survey asked a range of new questions to measure what is going on in ODR and issues arising in this forum. For these data, there are no prior benchmarks; the measures are focused on what is happening in the recently introduced ODR model. The survey identifies impasse data, in-mediation party conduct, ODR Zoom tool usage, convening conduct, device and technical issues, repeat player issues, whether there exists “Zoom fatigue” and other measures in the new pattern of mediation in ODR.

A. Result Satisfaction – Outcome Measures (Did You Get What You Wanted?).

1. CP Outcomes

Mediation is facilitated negotiation. The 2021 ODR survey delves into how the negotiation outcome is viewed by each party.

For the 2000 survey, the parties who reported they knew what they wanted were then asked whether they obtained what they wanted. CPs obtained what they wanted in 42% of the cases in 2000. The 2021 ODR survey sought similar, but much more detailed measures. The survey asked if the party received “nothing”, “some”, “much or majority” or “everything” that they wanted. In ODR 33% of the CPs. Thus, 67% of CPs obtained some value in the negotiation – but how much? Thirty-two percent of the CPs reported they got “some” of what they wanted. Twenty-nine percent reported they got “much or a majority” of what they wanted going into mediation. Seven percent reported they got all that they wanted. While the ODR data shows much higher percentages of parties getting what they wanted, these are not directly comparable to the 2001 measure since the Yes/No options in the previous survey was more restrictive.

Table 12a. CPs' Expectations and What They Obtained at End of Mediation: 2000 IPM and 2021 ODR Data		
For those who knew what they wanted going into mediation: In this mediation did you obtain what you wanted going into the mediation?	2000 IPM Data	2021 ODR Data
2000 IPM Survey (Number responding in parentheses)	(1282)	
Yes	42%	-
No	58%	-
2021 ODR Survey (Number responding in parentheses)		(375)
I received nothing of what I wanted	-	33%
I received some of what I wanted	-	32%
I received much or majority of what I wanted	-	29%
I received everything I wanted	-	7%

This data can be viewed from another vantage point with external data for comparison. From a CP outcome perspective, for FY 2020, the EEOC found Reasonable Cause of a violation of the law in 17% of the charges filed.²⁶ Almost sixty-seven percent resulted in a No Reasonable Cause Finding and another near 16% were “administrative” closings. Thus, over 80% of charges filed are not seen as meritorious by the EEOC either before or after investigation.²⁷ The statistics reflect that since FY 2016 there are similar numbers where over 80% of the case do not result in a meritorious finding.²⁸ From this vantage point, at the EEOC, in mediation where no investigation and EEOC finding has yet occurred, 67% report some benefit while if they proceed to investigation in FY 2020, the most recent data, there was a 17% chance of a “merit resolution” which was the highest percent for the prior five years.²⁹

Finally, where the CP proceeds on their own and elects to file in court in federal court after obtaining a Right to Sue Letter (“RTS”), including RTS Letters where the EEOC has found Reasonable Cause, scholars have documented that plaintiffs seldom prevail. Decades of empirical analysis establishes that claims of employment discrimination tend to fare more poorly in court compared to other civil claims.³⁰ Between 1978 and 1985 plaintiffs in employment

²⁶ EEOC Website, Data Visualizations, All Charges, All Charge Resolutions FY 2016-2020, December 10, 2021 <https://www.eeoc.gov/statistics/data-visualizations> (last accessed February 5, 2022).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ An analysis of employment discrimination cases in one federal court in Georgia suggest outright racial bias (whites prevail on reverse discrimination while blacks lose on their claims), some judges who always rule against plaintiffs, and a very high percentage of rulings in favor of employers. Amanda Farahany & Tanya McAdams, Analysis of Employment Discrimination Claims for Cases in Which an Order was Issued on Defendant’s Motion for

discrimination prevailed at trial in 2% of the verdicts.³¹ Clermont and Schwab found that employment discrimination plaintiffs lose at nearly every stage of litigation, excluding the effects of settlement. They noted that plaintiffs prevailed in about 19% of bench trials where judges ruled and about 37% of jury trials³² compared to other types of cases which are won approximately 45% of the time regardless of judge or jury type.³³ Federal employment discrimination plaintiffs, compared to non-civil rights plaintiffs, "manage fewer resolutions early in litigation, and so they have to proceed to trial more often. They win a lower proportion of cases during pretrial and at trial. . . . On appeal, they have a harder time both in preserving their successes and in reversing adverse outcomes."³⁴

Eisenberg reinforces Clermont and Schwab's finding noting that "employment discrimination cases constitute an increasing fraction of the federal civil docket, now reigning as the largest single category of cases at nearly 10 percent".³⁵ From 1988 to 2003 Eisenberg reported statistics from the American Bar Foundation, an arm of the American Bar Association, showing that in all federal court filings, (1,672 cases) 19% of cases were dismissed on early motions to dismiss, 50% settled early, 18% were lost on summary judgment, 8 % were settled after summary judgment, and 2% were won at trial.³⁶

For CPs, the mediation data suggests that ODR and EEOC mediation in general, is an attractive opportunity to resolve a charge with value.

2. Employer Outcomes

Employers were asked if they obtained the outcome they sought. The 2000 IPM data show that 58% of employers obtained what they wanted. In the more detailed 2021 ODR results, twenty percent reported they got nothing and 20% reported they obtained all that they wanted.

Summary Judgment in 2011 and 2012 in the U.S. District Court for the Northern District of Georgia , <http://ssrn.com/abstract=2326697> (September 16, 2013).

³¹Theodore Eisenberg, *Litigation Models and Trial Outcomes in Civil Rights and Prisoner Civil Rights Litigation*, 12 J. Empirical Legal Stud. 4, 6 (2015).

³²*Id.* at 442.

³³*Id.*

³⁴*Id.*

³⁵*Id.* citing Kevin M. Clermont & Stewart J. Schwab, *Employment Discrimination Plaintiffs in Federal Court: From Bad to Worse?* 3 Harv. L. & Pol'y Rev. 103, 103 (2009); Clermont, K., Schwab, S. J. (2004). *How employment discrimination plaintiffs fare in federal court*. J. Of Empir. Legal Stud., 1, 429-458, 429.

³⁶Eisenberg, Theodore. 2015. *Four decades of federal civil rights litigation*. J. Of Empir. Legal Stud. 12(1): 4-28.

Twenty five percent reported they obtained some of what they wanted with 36% reported they obtained a majority of what they sought.

Table 12b. Employers' Expectations and What They Obtained at End of Mediation: 2000 IPM and 2021 ODR Data		
For those who knew what they wanted going into mediation: In this mediation did you obtain what you wanted going into the mediation?	2000 IPM Data	2021 ODR Data
2000 IPM Survey (Number responding in parentheses)	(1266)	
Yes	58%	-
No	42%	-
2021 ODR Survey (Number responding in parentheses)		(664)
I received nothing of what I wanted	-	20%
I received some of what I wanted	-	25%
I received much or majority of what I wanted	-	36%
I received everything I wanted	-	20%

Where the Employer did not get anything the survey sought to identify why from a list of reasons plus open-ended options. Employers report that where the mediation was not resolved (“nothing” measure) the primary reason was that the CP sought an excessive amount of money. There were a few (13%) where a non-monetary demand was the impediment. The italicized responses in the table below provide responses on why employers report receiving nothing.

Table 13. Factors or Reasons Why Employers Received Nothing of What They Expected		
	#	%
Total number of employers and party representatives who obtained nothing of what they wanted	131	
Non-substantive process issues such as technology, lack of time, missing key party or person to continue or other factors that prevented us from settling the case.	2	2%
Charging Party sought excessive amount of money	114	87%
Charging Party made a non-monetary demand we could not meet	17	13%
Mediator interfered with opportunity to settle	3	2%
We were not prepared for what happened at mediation	3	2%
Other (See verbatim responses below.)	19	15%
<i>Charging party rejected our non-monetary offer and did not counter-offer.</i>		
<i>I was expecting to mediate this out. The pre-mediation offer was 150k and then we got to mediation and the demand went to 500k, then down to 290k, the mediator should have told them it would be wise to get back to their original position.</i>		
<i>The charging party did not accept any of our attempts at a resolution</i>		
<i>The charging party did not agree with our settlement offer.</i>		
<i>We thought we had a solution but the charging party backed out unexpectedly over the form of payment of the settlement (3 checks vs 2 checks).</i>		
<i>Charging party did not sign agreement</i>		
<i>The Complainant was not satisfied with the settlement and indicated not all her requests were met in the settlement agreement. As a result, she will not sign agreement.</i>		
<i>Charging party did not come prepared with what he wanted out of the mediation</i>		

<i>Charging party did not identify or make a demand.</i>
<i>Charging party refused to disclose what the basis of the charge was.</i>
<i>Charging party is uninformed about the situation, and even upon explanation, has unrealistic demands</i>
<i>Charging Party's attorney hung up on the mediator and called off the mediation</i>
<i>Charging Party attended but then refused to engage in any reasonable discussion</i>
<i>Charger did not have a solid case and discuss quickly discovered at the beginning of mediation.</i>
<i>Charging party claimed discrimination was the reason for her termination, when in fact she was terminated for workplace violence and threats.</i>
<i>The charging party would not cooperate with the Mediator and it was moved to the next step.</i>
<i>Mediator said her job was not to discover or discuss the facts. I don't know how you get the two parties together if you don't help them agree on (stipulate) facts and evidence and see likelihood of their claim being successful through the EEOC process.</i>
<i>The mediator failed to properly assist my client in evaluating the strengths/weaknesses of the charge and our standing. She was simply a courier for the charging party's offer.</i>
<i>The process did not allow for my side to fully explain our position to the other side. This was not the fault of the mediator, who did the best she could.</i>

B. Technology and Skills Measures

1. Prior Video Conference Experience

Overall ninety-six of the parties and representatives reported that they had prior experience with online video platforms. For CPs and representatives, 8% did not have prior experience, while only 2% of employers and representatives did not have prior experience.

2. Devices Used:

The survey sought detailed information on the devices used by the parties. This provides insight into how parties communicated and also possible multi-tasking activity. Seventy-four percent used only 1 device. Twenty-two percent used two devices. Four percent used 3 or more devices.

The survey then asked participants to identify the types of devices used. Eighty-eight percent reported the use of a laptop or desktop computer in mediation. Twenty-eight percent used a cell phone. Eight and one-half percent used a landline phone; 6% used an I-Pad or other tablets.

When asked for the device that they used for video mediation, 86.5% used a computer, with 9% using a phone, and 4% using a tablet or an I-Pad.

3. Communication Effectiveness

The survey asks whether the party was able to communicate effectively with other participants with their device. Eighty-five percent reported effective communication with 55%

strongly agreeing and 30% agreeing. Twelve percent had problems - 11 percent strongly disagreed and 1% disagreed. Comparison by party shows a slightly higher percentage of CPs and Representatives disagreed with this statement compared to Employers and their Representatives (14% and 10%, respectively).

Table 14. Degree of Agreement to the Statement: “I was able to communicate effectively with the other mediation participants with my device.”						
	All Participants		Charging Party and Party Representative		Employer and Party Representative	
	#	%	#	%	#	%
Total responding	1182	100%	432	100%	750	100%
Strongly Disagree	126	11%	55	13%	71	9%
Disagree	12	1%	3	1%	9	1%
Neither Agree nor Disagree	46	4%	27	6%	19	3%
Agree	350	30%	128	30%	222	30%
Strongly Agree	648	55%	219	51%	429	57%
Mean Rating *	4.1692		4.0486		4.2387	
* Based on the Likert scale: 1 – Strongly Disagree, 2 – Disagree, 3 – Neither Agree nor Disagree, 4 – Agree, 5 – Strongly Agree						

4. Technology Issues

The survey sought to measure technology issues arising during the mediation. We asked for *major* issues and provided a checklist that may have encouraged identification of all issues. Among the 138 survey participants who could not effectively communicate with the other party, very few identified any specific technical issues or equipment problems.

C. Party Conduct During Mediation

The survey asked the parties to identify activities that they engage in during the mediation. This is important because the ODR format provides opportunities for a participant to engage in a range of activities not found in the traditional in-person mediation and in particular the joint session. The question sought to determine if there was participant conduct unique to ODR such as simultaneous online researching, communication or other conduct less common in IPM. Fifty-nine percent reported that they did not engage in other activity during mediation. Eighteen per cent engaged in non-mediation related activity. Others used the time in mediation for mediation activities such as: contact others to ask for advice (8%), help reach a decision

(7%), help with mediation (5%). Five percent used the internet to research a mediation issue or topic.

D. Mediator ODR Performance

Participants were asked about their perceptions of the mediator's online skills, use of the breakout room, convening and other ODR skills.

1. Mediator Explanation on Technology

This measure is different from the historical measures of prior mediator introductions due to the focus on explanation of the technology component. The data shows the mediator effectively explained the ODR technology. Only five percent reported that after the mediator's explanation they did not understand the technology. This was segmented into 6% of the CPs and 4% of the Employers.

2. Mediation Understanding

The survey added a question to complement our historical benchmark question on party understanding of the process. Parties were asked when they first understood the process. Only 4% indicated that this occurred during the mediation. Six percent of the CPs and 3% of the Employers first gained understanding of mediation during the session. Most obtained prior knowledge from a wide range of sources including counsel, prior experience, prior communication with EEOC personnel and other pre-mediation activities. These results, when added to the prior benchmark explanation measure, show that almost all parties have a grounding on how mediation operates in ODR prior to the mediation. Almost 6 in 10 of the total participants in ODR are "repeat players": 44% of CPs had experience with mediation prior to the current case. The number is higher for Employers at 65%. These data include responses from the parties and their representation which is almost always an attorney. The data shows that among those who received adequate explanation prior to the mediation, about half (52%) had the mediators who engage in convening conversations with the parties. This number is higher for CPs (61%) than for Employers (47%).

Table 15. When Participants First Gained an Understanding of the Mediation Process						
	All Participants		Charging Party and Party Representative		Employer and Party Representative	
	#	%	#	%	#	%
Total participants	1234	100.0%	452	100.0%	782	100.0%
I had experience prior to this EEOC case	711	58%	201	44%	510	65%
During the charge filing process	72	6%	60	13%	12	2%
Upon notification that a charge had been filed against us	50	4%	-	-	50	6%
When I was contacted by the mediator to discuss a mediation	65	5%	46	10%	19	2%
From my attorney or representative	156	13%	53	12%	103	13%
In communications with the EEOC in the days prior to the mediation	37	3%	26	6%	11	1%
During the mediation session	49	4%	26	6%	23	3%
No information provided	94	8%	40	9%	54	7%

3. Preparation/Convening – Platform Pre-test.

The survey asked whether the mediator tested the video platform prior to mediation.

There is another near 50/50 convening split where 53% pre-tested and 47% did not. CPs report a higher pre-testing of 57% vs. 51% for Employers.

4. Technological Skill

Ninety-two percent reported that the mediator was skilled in the technology. Only 2% disagreed. Only 3% of CPs disagreed and this was 1% for Employers.

5. The Breakout Room Tool

Ninety-one percent reported that the mediator made effective use of the breakout room tool. Only 3% disagreed. 88% of CPs report effective use of this tool compared to 93% of Employers.

VIII. Additional Measures

A. History of the Dispute

The survey asked if the CP first tried to work the dispute out directly with the Employer. Thirty-two percent did not make any such effort while 68% tried to find an earlier resolution.

B. Relief Expected

The survey sought to identify the type of relief expected by the CP and the Employer.

This is for those who indicated that they knew what they wanted going into the mediation.

1. CP

Forty-two per cent of the CPs sought a monetary offer. Three percent sought a non-monetary offer. Fifty-five percent sought combined relief. Thus, for 97% of the CP sought money as all or part of the relief.

2. Employer

For Employer expectations the survey provided a list of options plus an open-ended response. Fifty-seven percent reported they wanted to resolve the issue to save organizational time. Eighteen percent were motivated to save the costs of defending the case at EEOC. Eight percent sought to resolve the dispute and continue the employment relationship; 2% believed that they made a mistake and were seeking to correct it.

Table 16. Employers' Expectations of Mediation Outcome		
	#	%
Total responding	665	100.0%
Resolve situation where we made a mistake	13	2%
Resolve situation to avoid monetary costs with EEOC	121	18%
Resolve situation to avoid further use of organizational time	380	57%
Resolve situation as concerned about fairness of EEOC process	27	4%
Resolve situation to continue this employment relationship	50	8%
Verbatim responses:		
<i>Avoid further litigation/further cost; financial consideration</i>	22	3%
<i>Understanding the charge; getting information/clarification; hear both sides</i>	18	3%
<i>Resolution</i>	8	1%
<i>Ensure fairness; fairness to both sides</i>	4	1%
<i>Possible settlement</i>	3	0.5%
<i>Discussion/explanation</i>	3	0.5%
<i>Continued employment</i>	3	0.5%
<i>Amicable parting</i>	2	0.3%
<i>Prove charge is false/no wrongdoing</i>	2	0.3%
<i>Other reasons</i>	8	1%

C. Where No Money Was Offered Was There A Non-monetary Offer

The survey sought to identify for those cases where the CP reported obtaining nothing, whether the Employer made a non-monetary offer that was rejected by the CP. For the 39 CPs who reported obtaining nothing, 33% reported that a nonmonetary offer was made but the CP rejected the offer in favor of not settling the case.

Table 17. Employer's Offer of Non-monetary Benefit		
	Charging Party and Party Representative	
	#	%
Total number of charging parties and party representatives who expected monetary offer but obtained nothing	39	100.0%
Yes, a nonmonetary offer was made that I rejected in favor of not settling the charge	13	33%
No [a nonmonetary offer was not made]	26	67%

D. Impasse – Scope of Monetary Demand

It was reported earlier that 87% of Employers stated that the reason for impasse was what they saw as an excessive monetary demand by the CP. Where the CP obtained nothing the survey sought to identify the amount of the monetary demand. The majority of impasse occurs at CP demands of over \$40,000 (78%); at \$100,000 the likelihood of impasses increases. At CP demands of \$75,001 and above about 60% of the impasses are found. We note that each case is unique with the damage demands based are different based on a multitude of factors. Also, our

response rate is 39 cases only and six also had a nonmonetary request. These results do suggest that as the damages sought increase, the likelihood of resolution on one session drops.

E. Impasse – Was A Deal Close or Far Apart?

This next measure sought to determine if the parties were closer than they realized in their “monetary divide”. This analysis is not ODR-driven but rather a new area of exploration flowing from the 2000 study. This measures whether the ODR results had a process failure at impasse where the parties were closer in monetary numbers than was realized. Where the case is identified as not resolved due to money, the data shows that impasse seldom occurs where there is a monetary spread of less than \$10,000 (14%). Forty percent of cases that do not settle have an impasse spread of over \$50,000. These data suggest that where impasse occurs it is not over a small difference but sizeable disagreement. Given that Employers report that 87% are not resolved due to what the Employer sees as an excessive monetary demand, this data suggests that the mediators are resolving the majority of cases where the parties are close.

Table 18. Monetary Demand Difference in Cases Unable to Reach a Monetary Settlement		
Employers and Representatives who knew what they wanted going into the mediation <i>and whose cases involved monetary settlement</i>	Employer/Party Representative	
	#	%
Total responding	222	100%
\$500 or less	2	0.9%
From \$501.00 - \$1,000	3	1.4%
From \$1,001 to \$3,000	5	2.3%
From \$3,001 to \$5,000	8	3.6%
From \$5,001 to \$10,000	12	5.4%
From \$10,001 to \$20,000	30	13.5%
From \$20,001 to \$50,000	50	22.5%
From \$50,001 to \$100,000	43	19.4%
Over \$100,000	46	20.7%
Not sure	23	10.4%

F. Mediation Benefits

1. CP

The mediation produces a wide range of benefits to those negotiating. For half of the CPs and their representatives the monetary settlement is the main benefit. Three in ten consider the ability to address their concerns as another important benefit of mediation.³⁷

³⁷ This data further confirms the transactional nature of many cases.

Table 19. Benefits Obtained by the Charging Party from Mediation		
	CP	
	#	%
Total number of CPs	225	
I was able to address my concerns on an equal basis with those present.	66	29%
I obtained money.	113	50%
I obtained another needed work benefit.	7	3%
I learned more about what happened to me in my workplace.	28	12%
I was able to keep my job.	8	4%
I obtained a commitment from my employer about how I will be treated at work.	6	3%
I obtained a job reference.	20	9%
I realized that I may not have a case.	3	1%
My employer agreed not to contest my unemployment benefits or otherwise interfere with my receipt of unemployment.	14	6%

2. Employer

For Employers, demonstrating that they did not violate and law (66%) and closing the case/moving on (59%) were the two most important benefits from the mediation. Almost half (42%) mentioned that being able to demonstrate their respect for the opposing party and their perspective is another benefit from going to mediation.³⁸

Table 20. Benefits Obtained by the Employer from Mediation		
	Employer	
	#	%
Total number of Employers	271	
We were able to explain why we believe we did not violate the law.	178	66%
We were able to demonstrate our respect for the CP and their perspective.	114	42%
We were able to close this case and move on.	160	59%
We were able to correct a misunderstanding.	26	10%
We were able to improve our relationship with a continuing employee.	15	6%
We were able to improve our relationship with a terminated employee.	17	6%
We discovered and recognized improvements or actions that we will implement going forward.	46	17%
We learned valuable information related to overall operation of the business.	33	12%
We were able to demonstrate concern for our community stakeholders beyond this individual charge.	20	7%
Other benefits (See list below.)	9	3%

G. Covid -19 Impact on Settlement

The survey also sought to determine if the Covid-19 pandemic has affected the amount of money that the employer settled cases for. Only 12% of the Employers reported less monetary flexibility due to Covid-19. Most reported no change.

H. Impact of ODR on Settlement Offer

³⁸ This suggests that there may be a transformational goal by the Employer with a mediation partner seeking a transactional outcome.

The survey also asked employers if the online format influenced the amount of money offered in EEOC mediation. The data show no impact. The data was tallied separately for CP and Employer counsel survey respondents. Seventy six percent saw no change in client conduct while 22% saw less flexibility.

I. Progress and Continuing Efforts

Where the ODR case was not resolved, the survey measured if the parties saw progress from the mediation. One-third reported progress toward a final resolution.

Table 21. Degree of Agreement to the Statement: “I believe that progress was made toward resolution of this claim.”						
Participants in Ongoing Mediation or Completed Unresolved/Impasse Cases	All Participants		CP and Party Representative		Employer and Party Representative	
	#	%	#	%	#	%
Total responding	377	100%	155	100%	222	100%
Strongly Disagree	72	19%	47	30%	25	11%
Disagree	71	19%	23	15%	48	22%
Neither Agree nor Disagree	110	29%	35	23%	75	34%
Agree	94	25%	37	24%	57	26%
Strongly Agree	30	8%	13	8%	17	8%
Mean Rating	2.8382		2.6516		2.9685	
* Based on the Likert scale: 1 – Strongly Disagree, 2 – Disagree, 3 – Neither Agree nor Disagree, 4 – Agree, 5 – Strongly Agree						

The survey identified the next steps in the dispute given that there was no resolution. Most (46%) will wait to see the results of the EEOC investigation that ensues once mediation fails.

Table 22. Follow-up Activities/Plans for Ongoing Mediations or Completed Mediations but Cases are Unresolved or at an Impasse						
Participants in Ongoing Mediation or Completed Unresolved/Impasse Cases	All Participants		CP and Party Representative		Employer and Party Representative	
	#	%	#	%	#	%
Total responding	358	100%	149	100%	209	100%
We will wait for completion of EEOC investigation and consider settlement later.	165	46%	69	46%	96	46%
We have scheduled another EEOC mediation session or follow-up settlement discussion.	29	8%	13	9%	16	8%
The parties will meet again, but outside of EEOC.	29	8%	13	9%	16	8%
We will wait until a lawsuit is filed and consider settlement after all the evidence is seen during the lawsuit process.	66	18%	24	16%	42	20%
Other	69	19%	30	20%	39	19%

IX. A Final Vantage Point – Comparison of the Benchmark Measures from the 2000 IPM, 2018/2019 IPM and the 2021 ODR Data.³⁹

This analysis introduces the EEOC’s 2018/2019 June/July surveys taken for internal performance measures in 2018/2019 using the 2000 participant evaluation benchmark measures. With the data gathered over two decades, including the 2000 and 2018/2019 hard copy surveys administered at the conclusion of the IPM mediation plus the 2021 ODR data, this report compares the benchmark measures. There are two caveats. First, the 2018/2019 surveys were not administered under the auspices of the external research team subject to research protocols and external researcher quality control. Second, the 2021 ODR data is arguably less subject to influence than the prior surveys because of its online format. Previously the IPM surveys involved completion of the IPM survey at the mediation site where it was often distributed and collected by the mediator. The ODR online survey chain of custody is more reliable.

Overall, the 2000 IPM, 2018/2019 IPM and 2020 ODR data has a relatively consistent pattern. 2021 ODR and 2000 IPM data are similar with overall high performance on the benchmark measures. From 2000 to 2018/2019 data there is a discernable improvement in the benchmark measures. In the transition to ODR these high performance measures generally drop back but are generally higher compared to the 2000 IPM level. This pattern is found for the key measures of procedural and overall fairness; and satisfaction with the results reported out earlier.

Tables 23 to 25 present 3-period comparisons of the participants’ average ratings. For the three periods, three pairs of comparison can be made: (a) 2000 IPM versus 2018/19 IPM ratings, (b) 2000 IPM versus 2021 ODR ratings, and (c) 2018/19 IPM versus 2021 ODR ratings. The statistical results of each of these pair-wise comparisons are shown immediately under each statement. When bolded (i.e., p-values less than 0.05) the pair-wise difference is statistically significant.

A. Participant Perception of Fairness and Satisfaction.

The results for these statements show the general pattern described above. There is a statistically significant improvements from the 2000 IPM average ratings compared to the 2018/19 IPM and the 2021 ODR average ratings. Average ratings for the 2018/19 IPM data are

³⁹ Appendix C reports these results in detail.

highest, except with satisfaction with the results of the mediation. In this case, the 2018/19 IPM ratings and 2021 ODR ratings are statistically identical at 3.86 and 3.87.

Fairness and Satisfaction Statements	2000 IPM Mean Rating **	2018/19 IPM Mean Rating **	2021 ODR Mean Rating **
The procedures used by the mediator in the mediation were fair to me.	4.38	4.70	4.45
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: 0.017		
Mean difference test: 2018/19 compared to 2021***	p-value: Less than 0.001		
I was satisfied with the fairness of the mediation session.	4.19	4.58	4.39
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: Less than 0.001		
Mean difference test: 2018/19 compared to 2021***	p-value: Less than 0.001		
I was satisfied with the results of the mediation.	3.52	3.86	3.87
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: Less than 0.001		
Mean difference test: 2018/19 compared to 2021***	p-value: 0.942		
* ANOVA tests indicate that the differences in mean/average ratings for the three survey periods are statistically significant (with p-value less than 0.001). This table shows the post-test multiple comparisons of mean/average ratings.			
** Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)			
*** Bolded entries refer to statistically significant differences at the 95% or 99% level.			

B. Responses to Statements Concerning the Mediation Process

The table below establishes that the 2021 ODR is on par with the 2000 IPM data, and that the EEOC's internal survey in 2018/2019 produced higher measures than both 2000 IPM and 2021 ODR for adequate explanation and full opportunity to present views.

Mediation Process Statements	2000 IPM Mean Rating **	2018/19 IPM Mean Rating **	2021 ODR Mean Rating **
Prior to my attendance at this mediation session today, I received an adequate explanation about mediation from an EEOC representative.	4.23	4.55	4.25
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: 0.681		
Mean difference test: 2018/19 compared to 2021***	p-value: Less than 0.001		
After the mediator's introduction at the mediation session, I felt that I understood the mediation process.	4.44	4.75	-

2021 Survey: After the mediator's introduction at the mediation session, I understood how to use the mediation technology.	-	-	4.32
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	Note: Statements are not comparable		
Mean difference test: 2018/19 compared to 2021***	Note: Statements are not comparable		
I (or my representative) had a full opportunity to present my views during the mediation process.	4.47	4.75	4.50
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: 0.488		
Mean difference test: 2018/19 compared to 2021***	p-value: Less than 0.001		
* ANOVA tests indicate that the differences in mean/average ratings for the three survey periods are statistically significant (with p-value less than 0.001). This table shows the post-test multiple comparisons of mean/average ratings.			
** Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)			
*** Bolded entries refer to statistically significant differences at the 95% or 99% level.			

C. Responses to Statements Concerning the Mediator

For statements concerning the mediator, the 2000 IPM results show the lowest average ratings regarding mediator neutrality and option development. The 2000 ratings are statistically lower compared to the 2018/19 IPM ratings for all four statements below. Compared to the 2021 ODR ratings, the ratings are statistically similar except for the development of realistic solution by the mediator. Here the average rating rose from 3.97 in 2000 to 4.19 in 2021.

Table 25. 3-Period Comparison of Participants' Average Ratings Concerning the Mediator: 2000 IPM, 2018/19 IPM, and 2021 ODR Data			
Statements Concerning the Mediator	2000 IPM Mean Rating **	2018/19 IPM Mean Rating **	2021 ODR Mean Rating **
At the beginning of the mediation, I considered the mediator to be neutral.	4.46	4.73	4.52
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: 0.052		
Mean difference test: 2018/19 compared to 2021***	p-value: Less than 0.001		
The mediator remained neutral during the session.	4.43	4.70	4.47
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: 0.253		
Mean difference test: 2018/19 compared to 2021***	p-value: Less than 0.001		
The mediator helped the parties develop options for resolving the charge.	4.25	4.55	4.25
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: 0.986		
Mean difference test: 2018/19 compared to 2021***	p-value: Less than 0.001		
Most of the options developed during the mediation session were realistic solutions to resolving the charge.	3.97	4.41	4.19
Mean difference test: 2000 compared to 2018/19***	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021***	p-value: Less than 0.001		
Mean difference test: 2018/19 compared to 2021***	p-value: Less than 0.001		
* ANOVA tests indicate that the differences in mean/average ratings for the three survey periods are statistically significant (with p-value less than 0.001). This table shows the post-test multiple comparisons of mean/average ratings.			

** Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)
 *** Bolded entries refer to statistically significant differences at the 95% or 99% level.

D. Willingness to Use EEOC Mediation in the Future

The 3-survey period comparisons show a very high degree of “acceptance” of the EEOC mediation program based on their willingness to use the program again. There is near unanimity in participants’ willingness to participate in the program in the future.

Table 26. Participants' Willingness to Participate in the EEOC Mediation Program in the Future						
	2000 IPM Data		2018/19 IPM Data		2021 ODR Data	
	#	%	#	%	#	%
If you were a party to a charge before the EEOC in the future, would you be willing to participate in the EEOC's mediation program?	3178	100.0%	2578	100.0%	1135	100.0%
Yes	3035	95%	2482	96%	1084	96%
No	143	5%	96	4%	51	4%

X. CONCLUSION

As previously reported, from 2000 to 2018/2019 the EEOC’s in-person mediation (IPM) program improved over a range of measures reflecting the maturation of a program that established its mainstream position in employment dispute resolution. In 2020, as a result of health and safety protocols implemented in response to the COVID-19 pandemic, the EEOC’s IPM mediation model pivoted entirely to an online dispute resolution (ODR) format. This was an untested model.

This new ODR model of mediation possesses novel tools, flexibility, convenience, cost savings, and safe space for key participants. Analysis reveals that the Charging Parties, Employers, and all Representatives who participated in EEOC ODR, and responded to the survey, prefer ODR over IPM. Survey respondents report high process and outcome satisfaction ratings, and minimal issues with ODR. -Similarly, an analysis of survey responses to the extensive procedural and distributive due process measures suggests a positive program impact. The overall results from this 2021 ODR evaluation are consistent with the EEOC’s initial evaluation of its mediation program in 2000.

The current data show that ODR mediation operates as an effective negotiation process where one doesn’t always get what they want, outcome satisfaction is high in that context, and

for the cases that end in impasse the parties' expectations are far apart. The data suggest that the mediators' performance indicates that where there is impasse, it is not over a minor or medium difference in party position.

The results suggest that the pivot to the ODR model was successful. The EEOC experience demonstrates that ODR may be a sustainable new pattern of mediation. It can be argued that even with a response rate of 52%, the results reported in this process evaluation only reflect the experiences reported by those who completed the survey. However, preliminary analysis that triangulates the participant study data with the data from a separate mediator study performed for the EEOC – where mediators offer opinions on the experiences of all participants in the mediation – suggests similar positive participant experience.⁴⁰ These two data sets were gathered in close temporal proximity.⁴¹

After the 2000 evaluation, these authors reported that the EEOC had “hit a home run” in its mediation program performance. Twenty years later, without a playbook, there is a similar result with even greater import. This ODR program data suggests to the dispute resolution community and the U.S. legal system that new and flexible online mediation procedures are seen by all the parties and representatives as efficient, flexible, cost-saving, attractive, and preferable to traditional in-person mediation.

⁴⁰ E. P. McDermott and Ruth I. Obar, Equal Employment Opportunity Commission Mediators' Perception Of Remote Mediation And Comparisons To In-Person Mediation, February 18, 2022.

⁴¹ The EEOC, subject to IRB approval, may choose to evaluate the survey non-respondents' opinions by selected follow-up sampling of these persons. We also suggest a cost-benefit analysis of the ODR model including an organizational climate survey seeking detailed feedback from the EEOC mediators on human capital issues flowing from the ODR experience.

APPENDIX A – PARTICIPANT SURVEY

Test Copy 2021 Mediation Participant Survey - Copy [English (United States)]

EEOC Mediation Participant Survey

This is a confidential survey. You are being asked to complete this survey due to your recent experience in an EEOC mediation. Your responses go to third-party independent university researchers, Dr. E. Patrick McDermott and Dr. Ruth Obar at Salisbury University.

Participation is voluntary and will have no impact on your case at the EEOC.

The purpose of this confidential survey is to assess your satisfaction with EEOC's Mediation program. The survey asks participants to answer a series of questions. We estimate it will take you less than 15-20 minutes to complete this survey. We ask you a series of questions about your mediation experience. You must be at least 18 years old to take this survey. All information obtained during this survey will be collected through Verint, a secure survey software developed by a third-party contractor.

The benefits of this study include you helping us to improve mediation at the EEOC and to better understand the experiences of our mediation participants. The university researchers will prepare a report for the EEOC, and they may use the data for other research purposes in the future.

Your responses will be reported in an aggregated form so that no one will know your individual response to protect confidentiality. For a few questions we provide a chance for you to provide additional written comments. **For these responses the researchers will use their expertise to ensure that these responses will not identify you or allow anyone to determine that this was your response.**

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 do so.

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

1. To ensure confidentiality, only the last six digits of your charge number is shown
Charge number: _____

2.

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 HAVE COMPLETED THIS QUESTIONNAIRE IN A PREVIOUS CHARGE BUT I CONSENT TO ANSWERING A FEW QUESTIONS THAT ARE **SPECIFIC TO THIS CURRENT CHARGE**

I DO NOT CONSENT TO PARTICIPATION IN THIS SURVEY

Branch to: **Page 3** (2 = I HAVE COMPLETED THIS QUESTIONNAIRE IN A PREVIOUS CHARGE BUT I CONSENT TO ANSWERING A FEW QUESTIONS THAT ARE SPECIFIC TO THIS CURRENT CHARGE)

(End of Page 1)

This Page is Conditionally Shown if: (2 = I DO NOT CONSENT TO PARTICIPATION IN THIS SURVEY)

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

Destination: **Survey Submitted** (Set in 46)

(End of Page 2)

This Text Block is Conditionally Shown if: (2 = I HAVE COMPLETED THIS QUESTIONNAIRE IN A PREVIOUS CHARGE BUT I CONSENT TO ANSWERING A FEW QUESTIONS THAT ARE SPECIFIC TO THIS CURRENT CHARGE)

Thank you for previously participating in our survey. Please answer the following questions that are **specific to this current charge or mediation.**

4. I am the:

- Charging Party
- Charging Party Representative
- Respondent
- Respondent Representative

Branch to: **Page 4** (2 = I HAVE COMPLETED THIS QUESTIONNAIRE IN A PREVIOUS CHARGE BUT I CONSENT TO ANSWERING A FEW QUESTIONS THAT ARE SPECIFIC TO THIS CURRENT CHARGE AND(4 = Charging Party OR4 = Charging Party Representative OR4 = Respondent OR4 = Respondent Representative))

(End of Page 3)

49. Is an insurance company involved in this case?

- Yes
- No
- Not sure/don't know

This Question is Conditionally Shown if: (49 = Yes)

50. Was an insurance adjuster present during or at any time in the mediation?

- Yes
- No

Branch to: **Page 13** (2 = I HAVE COMPLETED THIS QUESTIONNAIRE IN A PREVIOUS CHARGE BUT I CONSENT TO ANSWERING A FEW QUESTIONS THAT ARE SPECIFIC TO THIS CURRENT CHARGE AND(4 = Charging Party OR4 = Charging Party Representative OR4 = Respondent OR4 = Respondent Representative) AND49 ≤ Not sure/don't know)

(End of Page 4)

This Question is Conditionally Shown if: (4 = Charging Party Representative OR 4 = Respondent Representative)

5.

2. Please identify your title or role.

- Attorney
- Company HR representative
- Company Labor Relations representative
- Company line management or employee supervisor
- Company management a level or more above that of the Charging Party supervisor
- Union representative
- Friend or family member
- Consultant
- Other, **PLEASE SPECIFY:** _____

(End of Page 5)

If you are a Charging Party or Respondent, we request your opinion and not that of your representative or attorney. Feel free to consult with your representative or attorney but please do not allow someone else to complete this survey.

6. What communications platform was used in your mediation?

Primarily/mainly by **video** call: Zoom including on cellphone and iPad, Google Meet, or another Video service

Primarily/mainly by **audio** call: hardline/landline phone, cell phone

Roughly **50/50** use of audio and video

7. Please check ALL the devices you used in today's mediation. **PLEASE CHECK ALL THAT APPLY.**

Cell phone

Tablet/iPad

Laptop/Desktop computer

Hardline/Landline phone

(End of Page 6)

This Question is Conditionally Shown if: (7 (Count) > 1)

Cell phone is Conditionally Shown if: (7 (Cell phone) = Selected)

Tablet/iPad is Conditionally Shown if: (7 (Tablet/iPad) = Selected)

Laptop/Desktop computer is Conditionally Shown if: (7 (Laptop/Desktop computer) = Selected)

Hardline/Landline phone is Conditionally Shown if: (7 (Hardline/Landline phone) = Selected)

48. Please identify the device that you used to **video conference** with the mediator AND the other party. **CHECK ONLY ONE.**

- Cell phone
- Tablet/iPad
- Laptop/Desktop computer
- Hardline/Landline phone

(End of Page 7)

9. Please tell us how strongly you agree or disagree with this statement: I was able to communicate effectively with the other mediation participants with my device.

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

This Question is Conditionally Shown if: (9 = Strongly Disagree OR 9 = Disagree)

10. Were there any major technical issues or equipment problems that prevented satisfactory communication during this mediation? PLEASE CHECK ALL THAT APPLY.

- My Internet connection was bad/unstable
- Video kept freezing or cutting off
- Audio kept lagging or cutting out
- I was on my phone participating without Zoom and the call kept dropping
- Difficulty operating Zoom on my cellphone
- When using Zoom on my cellphone I could not use certain Zoom tools
- When using Zoom on my tablet (iPad/Samsung Galaxy/Lenovo, etc.) I could not use certain Zoom tools
- Problems with my or my representative's device
- Problems with other party's or their representative's device
- Problems with the mediator's device
- Other, **PLEASE SPECIFY:** _____

(End of Page 8)

8. I had prior experience (friends, family, school, teacher, etc.) using Zoom, Google Meet, Microsoft Teams, or other video conferencing tools before this mediation.

- Yes
- No

11. Please tell us if you engaged in any of the following activities while in joint session with the other side? (Note, please do not include those activities during caucus with the mediator where the other party is not involved.) **PLEASE CHECK ALL THAT APPLY.**

I contacted others (friends, colleagues, etc.) outside of the mediation to get help with mediation.

I used the internet to research a mediation issue or topic that I was not familiar with.

I contacted someone to help me reach a decision.

I was able to talk to other persons where I was located for their advice.

I worked on non-mediation related activities ("multitasking").

No, I did not engage in other activities during the mediation session.

I was able to use the chat tool to directly and privately chat with the mediator while in a joint session (for example to immediately respond to what the other party was saying)

Other mediation related activities not listed above, **PLEASE SPECIFY.**

(End of Page 9)

12. Please tell us if you agree or disagree with this statement: The mediator was skilled in using the technology in this mediation.

- Disagree
- Neither Agree nor Disagree
- Agree

13. Did the mediator test and/or preview the video platform prior to the actual mediation session commencing?

- Yes
- No

14. Please tell us if you agree or disagree with this statement: The mediator made effective use of mediation break out rooms where we met separately without the other side so that we could speak privately about my case.

- Disagree
- Neither Agree nor Disagree
- Agree

(End of Page 10)

15. Please tell us how strongly you agree or disagree with this

statement: Prior to my attendance at this mediation session today, I received an adequate explanation about mediation.

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

This Question is Conditionally Shown if: (15 = Agree OR 15 = Strongly Agree)

16. What were your sources of information? PLEASE CHECK ALL THAT APPLY.

- Prior discussions with the mediator explained it to me prior to mediation.
- EEOC charge filing portal
- EEOC general website
- Pamphlets
- Friends and family who had previous mediation experience
- Other, **PLEASE SPECIFY:** _____

17. When did you first gain an understanding of the mediation process?

- I had experience prior to this EEOC case
- During the charge filing process
- Upon notification that a charge had been filed against us
- From my attorney or representative
- In communications with the EEOC in the days prior to the mediation
- During the mediation session
- When I was contacted by the mediator to discuss a mediation

(End of Page 11)

Please tell us how strongly you agree or disagree with the following statements. Do you strongly disagree, disagree, neither agree nor disagree, agree, or strongly agree to each of the following statements?

18. After the mediator's introduction at the mediation session, I understood how to use the **mediation technology**.

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

(End of Page 12)

Please tell us how strongly you agree or disagree with the following statements. Do you strongly disagree, disagree, neither agree nor disagree, agree, or strongly agree to each of the following statements?

19. The procedures used by the mediator in the mediation were fair to me.

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

This Question is Conditionally Shown if: (19 = Strongly Disagree OR 19 = Disagree)

63. Please explain why you disagree or strongly disagree with the statement.

20. I (or my representative) had a full opportunity to present my views during the mediation process.

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

(End of Page 13)

21. At the beginning of the mediation, I considered the mediator to be neutral.

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

22. The mediator remained neutral during the session.

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

(End of Page 14)

47. The mediator helped the parties develop options for resolving the charge.

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

23. Most of the options developed during the mediation session were realistic solutions to resolving the charge.

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

This Question is Conditionally Shown if: (23 = Strongly Disagree OR 23 = Disagree)

65. What options should have been explored in resolving the charge? Please specify.

(End of Page 15)

24. I am satisfied with the **fairness** of the mediation.

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

This Question is Conditionally Shown if: (24 = Strongly Disagree OR 24 = Disagree)

62. Please explain why you disagree or strongly disagree with the statement.

25. I am satisfied with the **results** of the mediation.

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

Branch to: **Survey Submitted** (2 = I HAVE COMPLETED THIS QUESTIONNAIRE IN A PREVIOUS CHARGE BUT I CONSENT TO ANSWERING A FEW QUESTIONS THAT ARE SPECIFIC TO THIS CURRENT CHARGE AND 25 ≤ Strongly Agree)

(End of Page 16)

This Question is Conditionally Shown if: (4 = Charging Party)

66. Did you first attempt to resolve the issues in your charge with your employer prior to filing a charge with the EEOC?

- Yes
- No

This Question is Conditionally Shown if: (66 = Yes)

67. Who did you speak with?

This Question is Conditionally Shown if: (66 = Yes)

68. What specific actions did your employer take to resolve the issue?

This Question is Conditionally Shown if: (66 = No)

69. Why did you not attempt to resolve the issue with your employer prior to filing a charge with the EEOC?

(End of Page 17)

26. Going into the mediation, did you know what you wanted to obtain from this mediation?

- Yes
- No

(End of Page 18)

This Question is Conditionally Shown if: ((4 = Charging Party OR4 = Charging Party Representative) AND26 = Yes)

27.

What did you expect to obtain from this mediation?

- Monetary offer
- Non-monetary offer
- A combination of monetary and non-monetary offer

This Question is Conditionally Shown if: ((4 = Charging Party OR4 = Charging Party Representative) AND26 = Yes)

28. Did you obtain what you wanted going into the mediation?

- I received nothing of what I wanted
- I received some of what I wanted
- I received much or a majority of what I wanted
- I received everything I wanted

This Question is Conditionally Shown if: (27 = Monetary offer AND28 = I received nothing of what I wanted)

30. If you obtained nothing from this mediation and were asking for money, what was your monetary demand?

- \$5,000 or less
- From \$5,001 to \$10,000
- From \$10,001 to \$15,000
- From \$15,001 to \$20,000
- From \$20,001 to \$30,000
- From \$30,001 to \$40,000
- From \$40,001 to \$50,000
- From \$50,001 to \$75,000
- From \$75,001 to \$100,000
- From \$100,001 to \$200,000
- From \$200,001 to \$500,000
- Over \$500,000

This Question is Conditionally Shown if: (27 = Monetary offer AND28 = I received nothing of what I wanted)

31. You answered that you obtained nothing from this mediation, did you ask the employer for something that did not require employer payment of any money to you?

- Yes, I asked for something other than money from the employer
- No, I did not seek any nonmonetary benefit

This Question is Conditionally Shown if: (27 = Monetary offer AND28 = I received nothing of what I wanted)

32. You answered that you obtained nothing from this mediation did the employer offer you any nonmonetary benefit?

- Yes, a nonmonetary offer was made that I rejected in favor of not settling the charge
- No

This Question is Conditionally Shown if: (27 = Non-monetary offer AND28 = I received nothing of what I wanted)

51. You answered that you obtained nothing from the mediation; did the employer offer you any money to settle the case?

- Yes, a monetary offer was made

No, no money was offered

(End of Page 19)

This Question is Conditionally Shown if: ((4 = Respondent OR4 = Respondent Representative) AND26 = Yes)

52. What did you expect to obtain from this mediation?

- Resolve situation where we made a mistake
- Resolve situation to avoid monetary costs with EEOC
- Resolve situation to avoid further use of organizational time
- Resolve situation as concerned about fairness of EEOC process
- Resolve situation to continue this employment relationship
- Other, **PLEASE SPECIFY** _____

This Question is Conditionally Shown if: ((4 = Respondent OR4 = Respondent Representative) AND26 = Yes)

56. Did you obtain what you wanted going into the mediation?

- I received nothing of what I wanted
- I received some of what I wanted
- I received much or majority of what I wanted
- I received everything I wanted

This Question is Conditionally Shown if: ((4 = Respondent OR4 = Respondent Representative) AND26 = Yes)

54. If this case was not resolved due to an inability to reach a monetary settlement, how far apart were the parties when the mediation ended?

- \$500 or less
- From \$501.00 - \$1,000
- From \$1,001 to \$3,000
- From \$3,001 to \$5,000
- From \$5,001 to \$10,000
- From \$10,001 to \$20,000
- From \$20,001 to \$50,000
- From \$50,001 to \$100,000
- Over \$100,000
- Not sure
- Not applicable to this case

This Question is Conditionally Shown if: (56 = I received nothing of what I wanted)

55. You answered that you received nothing from this mediation, please identify any factors that were involved. **PLEASE CHECK ALL THAT APPLY.**

- Non-substantive process issues such as technology, lack of time, missing key party or person to continue or other factors that prevented us from settling the case.
- Charging Party sought excessive amount of money
- Charging Party made a non-monetary demand we could not meet
- Mediator interfered with opportunity to settle
- We were not prepared for what happened at mediation
- Other, **PLEASE SPECIFY** _____

This Question is Conditionally Shown if: (4 = Charging Party)

33. Identify below any benefits you obtained from your mediation. PLEASE CHECK ALL THAT APPLY.

- I was able to address my concerns on an equal basis with those present.
 - I obtained money.
 - I obtained another needed work benefit.
 - I learned more about what happened to me in my workplace.
 - I was able to keep my job.
 - I obtained a commitment from my employer about how I will be treated at work.
 - I obtained a job reference.
 - I realized that I may not have a case.
 - My employer agreed not to contest my unemployment benefits or otherwise interfere with my receipt of unemployment.
 - Please describe other benefits you obtained that are not listed above.
-

This Question is Conditionally Shown if: (4 = Respondent)

34. Identify below any benefits you obtained from your mediation. PLEASE CHECK ALL THAT APPLY.

- We were able to explain why we believe we did not violate the law.
 - We were able to demonstrate our respect for the Charging Party and their perspective.
 - We were able to close this case and move on.
 - We were able to correct a misunderstanding.
 - We were able to improve our relationship with a continuing employee.
 - We were able to improve our relationship with a terminated employee.
 - We discovered and recognized improvements or actions that we will implement going forward.
 - We learned valuable information related to overall operation of the business.
 - We were able to demonstrate concern for our community stakeholders beyond this individual charge.
 - Please describe other benefits you obtained that are not listed above.
-

(End of Page 21)

This Question is Conditionally Shown if: (4 = Respondent)

57. Has the economic impact from COVID-19 resulted in your organization coming to EEOC mediation with:

- Less monetary flexibility
- More monetary flexibility
- About the same
- Not Applicable

This Question is Conditionally Shown if: (57 = Less monetary flexibility OR 57 = More monetary flexibility)

58. Please elaborate. In what way do you have less/more monetary flexibility in mediation as a result of the economic impact of COVID-19.

This Question is Conditionally Shown if: (4 = Respondent)

59. I find that in mediation by video my organization tends to offer:

- More money than for in-person mediation
- Less money than for in-person mediation
- About the same
- Not Applicable

(End of Page 22)

This Question is Conditionally Shown if: (5 = Attorney)

60. Has the economic impact from COVID-19 resulted in your employer clients coming to EEOC mediation with:

- Less monetary flexibility
- More monetary flexibility
- About the same
- Not Applicable

(End of Page 23)

35. Please identify the status of your mediation session.

- Completed and the case is resolved.
- Completed and waiting for e-signature.
- Mediation is ongoing.
- Completed but the case is not resolved/impasse.

This Question is Conditionally Shown if: (35 = Mediation is ongoing. OR35 = Completed but the case is not resolved/impasse.)

36. If the mediation did not resolve the charge, why do you think that there was no resolution? **PLEASE CHECK ALL THAT APPLY.**

- The other party was not sincere in resolving the case.
- The options developed were unacceptable to me.
- We had to cut the mediation short because of an unplanned event.
- I made a final offer and the other party did not accept.
- No final offer was made by the other side.
- There was an agreement, but it must be approved by a decision maker who was not at the mediation.
- There was a non-monetary issue that we could not resolve.
- The parties could not agree on the amount of money to resolve the case.
- The issues of reinstatement to employment could not be resolved.
- We needed more time.
- No money was offered.
- Another issue prevented resolution. **PLEASE SPECIFY.** _____

This Question is Conditionally Shown if: (35 = Mediation is ongoing. OR35 = Completed but the case is not resolved/impasse.)

37. I believe that progress was made toward resolution of this claim.

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

This Question is Conditionally Shown if: (35 = Mediation is ongoing. OR35 = Completed but the case is not resolved/impasse.)

38. Please check if you plan to follow-up with any of the following:

- We will wait for completion of EEOC investigation and consider settlement later.
- We have scheduled another EEOC mediation session or follow-up settlement discussion.
- The parties will meet again, but outside of EEOC.
- We will wait until a lawsuit is filed and consider settlement after all the evidence is seen during the lawsuit process.
- Other, **PLEASE SPECIFY.** _____

39. Do you agree or disagree with this statement: If I had a future case before the EEOC, I would be willing to participate in the EEOC's mediation program.

- Yes
- No

This Question is Conditionally Shown if: (39 = No)

64. Please tell us why you would be unwilling to participate in EEOC's mediation program in the future.

40. How strongly do you agree or disagree with this statement: If I had a future case with the EEOC, I would prefer to participate in an EEOC mediation via VIDEO mediation even if in-person mediation is allowed.

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

This Question is Conditionally Shown if: (40 = Agree OR 40 = Strongly Agree)

41. Please select your main reason(s) for preferring VIDEO mediation to in-person mediation. **PLEASE CHECK ALL THAT APPLY.**

- Travel challenge - I do not have ready means of convenient transportation.
- Location challenge – I do not want to travel to the EEOC office location.
- I would not want to be in the same location as the other party.
- I prefer to be online due to the issue being mediated.
- Allows for others to attend mediation or be available if needed who would not otherwise may not be able to do so.
- Cost considerations.
- Current job obligations.
- Other, **PLEASE SPECIFY.** _____

(End of Page 25)

This Question is Conditionally Shown if: (4 = Respondent)

42. How strongly do you agree or disagree with this statement: The use of VIDEO mediation makes it more attractive for my organization to participate in the EEOC mediation program.

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

This Question is Conditionally Shown if: (42 = Strongly Disagree OR 42 = Disagree)

43. Please state your main reason(s) for preferring in-person mediation to VIDEO mediation. PLEASE CHECK ALL THAT APPLY.

- I want to be in the same location as the other party.
- I want to speak to or look the other party in the eye.
- I hope to resolve the charge and "shake hands" in a positive in-person process.
- The in-person mediation is more formal.
- Others are more focused in an in-person mediation.
- I am more focused in an in-person mediation.
- I want to be able to see what the mediator is doing in person.
- Other, **PLEASE SPECIFY.** _____

(End of Page 26)

45. Please explain in detail how you believe EEOC's mediation process can be improved.

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

THANK YOU!

If you have any adverse effects or concerns about the research, please contact the primary investigator Dr. McDermott (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.

You can also contact the EEOC at OEDA@eeoc.gov or call 202-921-2928.

(End of Page 27)

APPENDIX B – DATA TABLES

Table 1. Survey Participation Rate

	#	%
Total number of mediation participants who received surveys by email	2387	100%
Consented – full survey	1197	50%
Consented – short survey *	37	2%
Did not consent/left survey completely blank/answered a few basic “demographic” information only	1153	48%
Actual number of surveys included in the analysis ^b	1234	

* “Repeat participants”: participants (mostly party representatives) who have completed the survey from a previous mediation/case and agreed to complete a shorter version of the survey pertaining to the current case.

Table 2. Survey Participation, by Party

	All Participants	
	#	%
Total number of mediation participants	1234	100%
Charging Party	225	18%
Charging Party Representative	227	18%
Respondent	271	22%
Respondent Representative	511	41%

Table 3. Involvement of Insurance Company*Question: Is an insurance company involved in this case?*

	All Participants	
	#	%
Total number responding	1234	100%
Yes	258	21%
No	789	64%
Not sure/don't know	180	15%
Blank/No response	7	1%

Table 4. Presence of Insurance Adjuster*Question: Was an insurance adjuster present during or at any time in the mediation?*

	All Participants	
	#	%
Total number responding (cases where insurance company was involved)	258	100%
Yes	66	26%
No	185	72%
Blank/No response	7	3%

Table 5a. Specific Role of Charging Party and Respondent Representatives

	All Participants	
	#	%
Total number of charging party and respondent representatives responding	709	100.0%
Attorney	590	83.2%
Company HR representative	64	9.0%
Company Labor Relations Representative	3	0.4%
Company line management or employee supervisor	5	0.7%
Company management a level or more above that of the Charging Party supervisor	20	2.8%
Union representative	4	0.6%
Friend or family member	2	0.3%
Consultant	3	0.4%
Others (See list below)	18	2.5%
<i>Company/general/in-house counsel</i>	5	
<i>Claim Specialist</i>	1	
<i>Compliance Officer</i>	1	
<i>EEO Specialist/Manager</i>	2	
<i>Insurance representative</i>	1	
<i>Non-attorney Representative</i>	1	
<i>Paralegal</i>	4	
<i>Others</i>	3	

Table 6. Communication Platform*Question: What communication platform was used in your mediation?*

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total number responding	1159	100%	426	100%	733	100%
Primarily/mainly by video call: Zoom including on cellphone and iPad, Google Meet, or another Video service	1002	86%	350	82%	652	89%
Primarily/mainly by audio call: hardline/landline phone, cell phone	98	8%	46	11%	52	7%
Roughly 50/50 use of audio and video	59	5%	30	7%	29	4%

Table 7a. Devices Used – Number of Devices Used during Mediation

Question: Please check ALL the devices you used in today's mediation. (Cell phone, Tablet/iPad, Laptop/Desktop, Landline)

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total number responding	1155	100%	421	100%	734	100%
Used one device only	856	74%	286	68%	570	78%
Used two devices	255	22%	106	25%	149	20%
Used three devices	41	4%	27	6%	14	2%
Used four devices	3	0.3%	2	0.5%	1	0.1%

Table 7b. Devices Used during Mediation

Question: Please check ALL the devices you used in today's mediation. (Cell phone, Tablet/iPad, Laptop/Desktop, Landline)

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total number responding	1155		421		734	
Cell phone	320	28%	173	41%	147	20%
Tablet/iPad	71	6%	42	10%	29	4%
Laptop/Desktop computer	1012	88%	336	80%	676	92%
Hardline/Landline phone	98	8%	36	9%	62	8%

Table 7c. Device Used to Video Conference with Mediator and Other Party

Question: Please identify the device that you used to video conference with the mediator and the other party

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total number responding	1114	100%	410	100%	704	100%
Cell phone	102	9%	73	18%	29	4%
Tablet/iPad	48	4%	25	6%	23	3%
Laptop/Desktop computer	964	86%	312	76%	652	93%

Table 8: Degree of Agreement to the Statement: “I was able to communicate effectively with the other mediation participants with my device.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1182	100%	432	100%	750	100%
Strongly Disagree	126	11%	55	13%	71	9%
Disagree	12	1%	3	1%	9	1%
Neither Agree nor Disagree	46	4%	27	6%	19	3%
Agree	350	30%	128	30%	222	30%
Strongly Agree	648	55%	219	51%	429	57%
Mean Rating *	4.1692		4.0486		4.2387	

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

Table 9. Technical Issues or Equipment Problems that Prevented Satisfactory Communication During Mediation

Question: Were there any major technical issues or equipment problems that prevented satisfactory communication during the mediation?

Question was asked among the 138 survey participants who Strongly Disagreed/Disagreed to the statement: <i>“I was able to communicate effectively with the other mediation participants with my device.”</i>	
Reasons/options listed in survey:	
My internet connection was bad/unstable	-
Video kept freezing or cutting off	5
Audio kept lagging or cutting out	5
I was on my phone participating without Zoom and the call kept dropping	-
Difficulty operating Zoom on my cellphone	-
When using Zoom on my cellphone I could not use certain Zoom tools	-
When using Zoom on my tablet (iPad/Samsung Galaxy/Lenovo, etc.) I could not use certain Zoom tools	-
Problems with my or my representative’s device	8
Problems with other party’s or their representative’s device	8
Problems with the mediator’s device	3
Other, please specify:(notable responses listed below)	22
Notable verbatim responses	
<i>Delayed start due to technical difficulties with Zoom. Later during mediation other party's calls dropped.</i>	
<i>mediator did not have a strong knowledge of zoom capabilities. We were not given separate rooms during the breakout, and ended up communicating a lot through email and phone calls. There were times when the video would freeze, as well.</i>	
<i>Mediator did not have Zoom rooms/breakouts mastered and was unable to use their video</i>	
<i>We didn't have zoom</i>	
<i>I would prefer to be face to face when trying to resolve complex issues. Face to face interactions are generally more civil than over the phone or internet.</i>	
<i>These need to be held in person</i>	
<i>I was unable to use the video option on my cell phone or laptop. However, I was able to use the audio to attend the mediation.</i>	
<i>My video feed was sideways. I could fix, but needed to rerotate every time I went in or out of the break out room.</i>	
<i>Plaintiff said that a computer with camera was too much trouble so he only had a telephone connection</i>	

Table 10. Prior Experience with Video Conferencing

Question: I had prior experience (friends, family, school, teacher, etc.) using Zoom, Google Meet, Microsoft Teams, or other video conferencing tools before this mediation.

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total number responding	1173	100%	428	100%	745	100%
Yes (With prior experience)	1124	96%	395	92%	729	98%
No (No prior experience)	49	4%	33	8%	16	2%

Table 11a. Other Activities Engaged in While in Joint Session with the Other Party

Question: Please tell us if you engaged in any of the following activities while in joint session with the other side? Please do not include those activities during caucus.

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total participants	1234		452		782	
No, I did not engage in other activities during the mediation session.	730	59%	285	63%	445	57%
I contacted others (friends, colleagues, etc.) outside of the mediation to get help with mediation.	58	5%	19	4%	39	5%
I used the internet to research a mediation issue or topic that I was not familiar with.	62	5%	36	8%	26	3%
I contacted someone to help me reach a decision.	84	7%	10	2%	74	9%
I was able to talk to other persons where I was located for their advice.	95	8%	19	4%	76	10%
I worked on non-mediation related activities (“multitasking”).	227	18%	68	15%	159	20%
I was able to use the chat tool to directly and privately chat with the mediator while in a joint session (for example to immediately respond to what the other party was saying)	93	8%	48	11%	45	6%
Other mediation related activities not listed above (See list below)	38	3%	15	3%	23	3%

Table 11b. Verbatim Responses to the Question on Other Activities Engaged in While in Joint Session with the Other Party

Question: Please tell us if you engaged in any of the following activities while in joint session with the other side? Please do not include those activities during caucus.

Verbatim responses by charging parties:
<i>Gathering evidence to defend myself and to show the damage from the responding party.</i>
<i>I had support from friends however, I was told that I couldn't have an attorney present. The Responding team had an attorney present</i>
<i>I played a card game while waiting in a zoom room alone while the mediator was in separate discussion with other participants</i>
<i>I was in contact with my lawyer</i>
<i>Writing mediation related notes</i>
<i>I was never in "joint session" with the other side. I only spoke on the phone with the mediator. No one else was involved. This was confidential so no one advised me.</i>
<i>There was no direct contact with the other side directly. The mediator went back and forth between the two parties</i>
<i>There was no joint session with the responding party. It was only by cell phone that I communicate to only the mediator.</i>
Verbatim responses by charging party representatives:
<i>Contacted client using cell</i>
<i>I communicated with my client, the Complainant, via break out room and by cell</i>
<i>I communicated with the client one-on-one</i>
<i>Speak with my client</i>
<i>Electronically send documents to mediator</i>
<i>Receipt of emails/documents from opposing counsel and mediator pertinent to the negotiation/merits of the claim</i>
<i>Reviewed client documents and EEOC Complaint to refresh my memory or confirm something discussed during the mediation.</i>

Table 11b. Verbatim Responses to the Question on Other Activities Engaged in While in Joint Session with the Other Party - continued

Verbatim responses by respondents:
<i>Discussed case with our client who was also charged in matter</i>
<i>Interacted with counsel/representative</i>
<i>Legal Representation was with me</i>
<i>Spoke with team while in break out room.</i>
<i>Updating information and damages calculations</i>
<i>Use breakout rooms to discuss strategy</i>
<i>When we were on long breaks we were able to mute and work on some of our daily office work. We also had access to our attorney the whole time</i>
<i>We were never in a joint session</i>
Verbatim responses by respondent representatives:
<i>Advising others at client of progress</i>
<i>Communicated separately with clients who were on the Zoom, but physically located in a different place</i>
<i>communications with client</i>
<i>I consulted with my client without the mediator</i>
<i>I spoke with my clients by telephone. Zoom was only used for the introduction and conclusion.</i>
<i>I was able to caucus with my client representatives.</i>
<i>Talk with my client</i>
<i>I pulled up file documents to support my positions taken</i>
<i>I was able to look for files and documents related to this claim that were saved in my computer</i>
<i>Review relevant file materials electronically/information to assist with mediation</i>
<i>Reviewed documents and exhibits related to case.</i>
<i>I did not have a joint session with the other side. Both parties were in separate rooms.</i>
<i>I spoke to the mediator on my cellphone while in a joint session to immediately respond to the other party or answer the mediator's questions.</i>
<i>I typed notes of the parties' opening remarks and mediator's questions, during joint session</i>
<i>I was able to take notes.</i>

Table 12. Agreement/Disagreement to the Statement: “*The mediator was skilled in using the technology in this mediation.*”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1173	100%	427	100%	746	100%
Agree	1082	92%	379	89%	703	94%
Neither Agree nor Disagree	72	6%	36	8%	36	5%
Disagree	19	2%	12	3%	7	1%

Table 13. Did Mediator Test or Preview the Video Platform Prior to Actual Mediation?

Question: Did the mediator test and/or preview the video platform prior to the actual mediation?

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total number responding	1128	100%	410	100%	718	100%
Yes (Mediator tested/ previewed the video platform prior to actual mediation)	597	53%	234	57%	363	51%
No (Mediator did not test/preview the video platform prior to actual mediation)	531	47%	176	43%	355	49%

Table 14. Agreement/Disagreement to the Statement: “*The mediator made effective use of mediation break out rooms where we met separately without the other side so that we could speak privately about my case.*”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1172	100%	428	100%	744	100%
Agree	1067	91%	375	88%	692	93%
Neither Agree nor Disagree	69	6%	33	8%	36	5%
Disagree	36	3%	20	5%	16	2%

Table 15a. Degree of Agreement to the Statement: “Prior to my attendance in this mediation session today, I received an adequate explanation about mediation.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1150	100%	418	100%	732	100%
Strongly Disagree	33	3%	12	3%	21	3%
Disagree	28	2%	13	3%	15	2%
Neither Agree nor Disagree	106	9%	41	10%	65	9%
Agree	429	37%	132	32%	297	41%
Strongly Agree	554	48%	220	53%	334	46%
Mean Rating *	4.2548		4.2799		4.2404	

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

Table 15b. Sources of Information Among Participants Who Received Adequate Explanation about Mediation

Question: If you chose “Agree” or “Strongly Agree” that you received adequate explanation about mediation: What were your sources of information?

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total participants who received adequate explanation about mediation	983		352		631	
Prior discussions with the mediator explained it to me prior to mediation.	512	52%	214	61%	298	47%
EEOC charge filing portal	346	35%	114	32%	232	37%
EEOC general website	240	24%	107	30%	133	21%
Pamphlets	48	5%	15	4%	33	5%
Friends and family who had previous mediation experience	61	6%	27	8%	34	5%
Others (See list below)	343	35%	101	29%	242	38%

Table 15c. Sources of Information Among Participants Who Received Adequate Explanation about Mediation – Detailed Tabulation by Type of Participant

	All Participants	Charging Party	Charging Party Representative	Respondent	Respondent Representative
Total participants who received adequate explanation about mediation	983	177	175	214	417
	%	%	%	%	%
Prior discussions with the mediator explained it to me prior to mediation.	52%	66%	55%	36%	53%
EEOC charge filing portal	35%	47%	18%	41%	35%
EEOC general website	24%	40%	21%	21%	21%
Pamphlets	5%	3%	6%	5%	5%
Friends and family who had previous mediation experience	6%	11%	5%	6%	5%
Verbatim responses:					
Attorney/Lawyer/Legal Counsel	11%	18%	2%	25%	6%
Prior experience with mediation	21%	2%	30%	16%	28%
Other sources	3%	3%	4%	3%	3%

Table 16. When Participants First Gained an Understanding of the Mediation Process*Question: When did you first gain an understanding of the mediation process?*

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total participants	1234	100.0%	452	100.0%	782	100.0%
I had experience prior to this EEOC case	711	58%	201	44%	510	65%
During the charge filing process	72	6%	60	13%	12	2%
Upon notification that a charge had been filed against us	50	4%	-	-	50	6%
When I was contacted by the mediator to discuss a mediation	65	5%	46	10%	19	2%
From my attorney or representative	156	13%	53	12%	103	13%
In communications with the EEOC in the days prior to the mediation	37	3%	26	6%	11	1%
During the mediation session	49	4%	26	6%	23	3%
No information provided	94	8%	40	9%	54	7%

Table 17. Degree of Agreement to the Statement: “After the mediator’s introduction at the mediation session, I understood how to use the mediation technology.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1152	100%	419	100%	733	100%
Strongly Disagree	30	3%	11	3%	19	3%
Disagree	18	2%	13	3%	5	1%
Neither Agree nor Disagree	94	8%	41	10%	53	7%
Agree	414	36%	133	32%	281	38%
Strongly Agree	596	52%	221	53%	375	51%
Mean Rating *	4.3264		4.2888		4.3479	

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

Table 18a. Degree of Agreement to the Statement: “The procedures used by the mediator in the mediation were fair to me.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1177	100%	433	100%	744	100%
Strongly Disagree	24	2%	16	4%	8	1%
Disagree	18	2%	13	3%	5	1%
Neither Agree nor Disagree	63	5%	29	7%	34	5%
Agree	360	31%	118	27%	242	33%
Strongly Agree	712	60%	257	59%	455	61%
Mean Rating *	4.4596		4.3557		4.5202	

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

Table 18b. Reasons Given Why Participants Strongly Disagreed or Disagreed to the Statement: “The procedures used by the mediator in the mediation were fair to me.”

Charging Party Verbatim Responses
<i>Because the mediator did not do his job correctly.</i>
<i>During the first mediation session, I got the impression that I had some leverage. In the second mediation, it appeared that the mediator was entirely reiterating the agency's line.</i>
<i>I don't feel the mediator used effective tools to shorten the length of the session or encourage resolution</i>
<i>I feel the mediator did Not work in the best interest of my case. The negotiations were poorly executed and advised me to accept instead of moving to the next step in which I did. Then after the call he immediately sent an email case closed. The opposing party send an agreement after the fact for me to sign in order to release funds but I haven't signed I Sent the mediator an email but I received no call back. So this case is not closed.</i>
<i>I went through the process just to get what I could have gotten when I was initially laid off and was convinced that my number was unreasonable. I have had health issues due to the stressful and hostile environment I endured and felt that I should have been compensated for it.</i>
<i>It seems as if the mediator was working for the other side. She was in constant communication with them. She made it clear that I should settle as she felt I didn't have a case</i>
<i>My mediation lasted 5.5 hours and I was engaged in discussion with the mediator a total of about 30 minutes. I do not know how many people were present for the charged party but they used 5 hours of the mediation time with the mediator.</i>
<i>Stated my company said otherwise when I had proof it was a false statement.</i>
<i>The mediator became personally and emotionally involved in our private chat expressing his personal offense from my perception of bias towards those that represented the interests of Chewy.</i>
<i>The mediator interrupted me and my representative several times when we tried to speak in turn. The mediator made accusations as to why I filed an EEOC claim against the respondents. The mediator stated, "Money!" So it is money you want." The mediator also insinuated to the respondent (EEOC representative) that "I wish this situation would just go away!" And the EEOC representative said, "Yes, I do wish this would go away!"</i>
<i>The mediator led with emotional arguments which did not align with the nature of the dynamic between the parties and emphasized that we had control over the outcome and that the point was not to purely be a law / facts resolution. Yet, the mediator seemed to draw strong conclusions about the law based on facts that are disputed and gradually undercut the point of being at the mediation. The mediator had statements from each side which clearly identified our arguments. If the mediator had drawn conclusions or was seeking specific facts which tipped his determination in one direction or the other, he should have been clearer. Ultimately, my attempts to understand what was driving the discussion -- law / fact arguments (strength of the case) or emotional arguments (whether wrong was done, even though a particular party could prevail) -- were unfruitful because, in my opinion, the mediator was concerned about driving the mediation toward success despite power and posture imbalances between the parties. Including to the point where, despite emphasizing law in favor of Respondent in order to encourage me to settle, the mediator de-emphasized law and questioned my reliance on law when the issue of Confidentiality was raised once I had coalesced to his pressure to, "put what happened behind me and move on." This is not to say that the mediator is not skilled or uninformed about the law. I am judging neither. I am only judging the process and how the session played out.</i>
<i>The mediator seemed to fish and gather privileged information for the respondents. It is my opinion that the respondents had no intention to settle but gather information to defend against my case against them.</i>
<i>The mediator should get fired she was very rude and racist and unfair to me</i>
<i>The mediator was not impartial. He attempted to hold me accountable to certain part of a rejected offer saying I had already agreed to it. He clearly had a relationship with the attorney and made statement throughout telling g me what he thought the attorney was thinking</i>

<i>the opposite party did not act sincere</i>
<i>The representative keeps saying things to discourage me and talked as if nothing happened, I felt like she was on their side even though she said she wasn't</i>
<i>Was no help at all for me.</i>
Charging Party Representative Verbatim Responses
<i>I was not allowed to have anyone present for representation or support.</i>
<i>I've never dealt with a worse mediator in my career, either privately or with the EEOC.</i>
<i>[Mediator] is unfit to mediate cases. He has a clear bias against employees. I have worked with [Mediator] on numerous occasions as an investigator and found him to be outright terrible toward my clients in those instances and this mediation was unfortunately no different. In addition to being biased against employees, he also made a critical error that destroyed the usefulness of the mediator's proposal. First, he presented the mediator's proposal without first asking the parties if they were both willing to hear a mediator's proposal. Second, he did not allow the defendant to make a last and final offer, but did the mediator's proposal because "this mediation has already lasted hours and I am not allowed to work more hours." Finally, because he didn't first ask for approval before making the proposal, the parties could not then negotiate the material non-monetary terms that were at issue without revealing whether or not they were willing to accept the mediator's proposal.</i>
<i>My client, the charging party needed an interpreter to participate. The mediator did not give any pauses in speaking to allow for interpretation, nor instruct the Respondent/Respondent's attorney to do so. The mediator permitted me to speak briefly on my client's behalf but when I invited my client to speak, the mediator cut him off in the middle of speaking. She seemed impatient with waiting for interpretation.</i>
<i>She did not listen</i>
<i>The client should have had more opportunity to discuss her issues with the other side and was side tracked into a separate room for the entire mediation.</i>
<i>The mediator elicited information from my client in the joint session which did not assist our claims.</i>
Respondent Verbatim Responses
<i>At no time was I able to speak to the person making the complaint. I was not able to explain my side directly with the complainant. I believe that only alone may have been able to resolve her issues. For example, the last time the mediator spoke to me she said the complainant had a couple of questions she could not understand and I could have answered if I had the opportunity to do so. Now I may never be able to answer those questions, other than to an investigator that may not relay them to the complainant and therefor may result in future litigation.</i>
<i>I could not see the plaintiff. I was not permitted to question the plaintiff. I had no opportunity to present a verbal rebuttal to these charges. I was not given ANY opportunity to present evidence proving that I am innocent of these charges. I was not permitted to present the testimony of witnesses that would have proven that I am innocent. I was not permitted to show photographs proving my case. There was no judge. No jury. As a small businessman my rights under the 7th amendment just flew out the window. This whole procedure is nothing short of extortion.</i>
<i>The mediator was absolutely ineffective in the mediation process. She did little more than pass limited information between the two parties. I have been on a few mediations prior and a good mediator makes all of the difference in the world and ultimately leads to more cases being resolved outside of the court. We were not able to come to terms in this case primarily because of the lack of actual mediation on behalf of the court representative. She was a very nice lady but very ineffective in her role as a mediator.</i>
<i>The mediator was really there as an extension of the charging party. She was not neutral and she seemed more interested in allowing the charging party to be heard and understood. The charging party was represented by counsel who was present so there was no need for the mediator to always talk about the charging party.</i>
<i>When my summary was being presented the mediator requested documentation that I was referencing. Once the documentation was shared on Zoom, the mediator then only wanted a summary of what was sent. I didn't feel that the mediator was a neutral party.</i>

Respondent Representative Verbatim Responses
<i>Professional, very knowledgeable and did not rush anything.</i>
<i>The first question asked before mediation began was "Do you have authorization for a settlement"? How can we even discuss settlement when the mediation discussions had not even begun? Furthermore, both sides did not have the opportunity to ask questions to the other side.</i>
<i>The mediator felt more like a shuttle diplomat and at times did not seem to understand the relationship between the two respondents.</i>
<i>The Mediator was fair and did his job and the technology made it easier on the parties.</i>
<i>The mediator was overly aggressive with my clients (the respondents) and refused to listen to their side of the events without interrupting them. It was clear that the mediator viewed my clients' positions with contempt. It took me intervening and asking everyone to please speak one at a time and dial down the rhetoric to make any progress.</i>
<i>We were surprised that the Mediator did not read our Mediation Statement. In addition, the Mediator never contacted us beforehand to discuss procedures prior to the Mediation (such as that he would not read a Mediation Statement).</i>
<i>Works fine.</i>

Table 19. Degree of Agreement to the Statement: “I (or my representative) had a full opportunity to present my views during the mediation process.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1186	100%	433	100%	753	100%
Strongly Disagree	23	2%	16	4%	7	1%
Disagree	24	2%	16	4%	8	1%
Neither Agree nor Disagree	42	4%	23	5%	19	3%
Agree	339	29%	112	26%	227	30%
Strongly Agree	758	64%	266	61%	492	65%
Mean Rating *	4.5051		4.3764		4.5790	

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

Table 20. Degree of Agreement to the Statement: “At the beginning of the mediation, I considered the mediator to be neutral.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1180	100%	429	100%	751	100%
Strongly Disagree	10	1%	7	2%	3	0%
Disagree	14	1%	7	2%	7	1%
Neither Agree nor Disagree	48	4%	23	5%	25	3%
Agree	385	33%	125	29%	260	35%
Strongly Agree	723	61%	267	62%	456	61%
Mean Rating *	4.5229		4.4872		4.5433	

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

Table 21. Degree of Agreement to the Statement: “*The mediator remained neutral during the session.*”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1181	100%	429	100%	752	100%
Strongly Disagree	20	2%	16	4%	4	1%
Disagree	31	3%	17	4%	14	2%
Neither Agree nor Disagree	57	5%	24	6%	33	4%
Agree	339	29%	102	24%	237	32%
Strongly Agree	734	62%	270	63%	464	62%
Mean Rating *	4.4699		4.3823		4.5199	

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

Table 22. Degree of Agreement to the Statement: “The mediator helped the parties develop options for resolving the charge.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1176	100%	428	100%	748	100%
Strongly Disagree	26	2%	16	4%	10	1%
Disagree	42	4%	26	6%	16	2%
Neither Agree nor Disagree	131	11%	44	10%	87	12%
Agree	386	33%	109	25%	277	37%
Strongly Agree	591	50%	233	54%	358	48%
Mean Rating *	4.2534		4.2079		4.2794	

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

Table 23a. Degree of Agreement to the Statement: “Most of the options developed during the mediation session were realistic solutions to resolving the charge.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1177	100%	427	100%	750	100%
Strongly Disagree	26	2%	17	4%	9	1%
Disagree	39	3%	20	5%	19	3%
Neither Agree nor Disagree	177	15%	61	14%	116	15%
Agree	382	32%	108	25%	274	37%
Strongly Agree	553	47%	221	52%	332	44%
Mean Rating *	4.1869		4.1616		4.2013	

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

Table 23b. Participants' Suggestions on Options to Resolve the Charge: Participants who Strongly Disagreed/Disagreed to the Statement: "Most of the options developed during the mediation session were realistic solutions to resolving the charge."

Question: What options should have been explored in resolving the charge?

Charging Party Verbatim Responses
<i>A reasonable payout amount.</i>
<i>Based upon the amount that I loss in commissions and the ridiculous amount paid to an attorney who I feel did not do anything to earn the money, I am overall disappointed and felt like I should have received more and should NOT have had to pay federal taxes on something I didn't ask to happen to me. H&H should have paid attorney fees as well as ALL federal taxes applicable. I am not happy with the overall outcome.</i>
<i>Further compensation</i>
<i>Leave my pay the way it was originally from beginning before the pay discrepancy.</i>
<i>The amounts involved.</i>
<i>I wasn't given any options other than accept what was offered.</i>
<i>No options, there has been no ending to this issue.</i>
<i>None... the respondents repeatedly requested privileged information from me about my claims.</i>
<i>The mediator did not help provide a realistic solution at all. He was pro company in my eyes</i>
<i>The mediator did not offer any resolutions to the situation. I, the charging party and my representative, presented solutions and were told that they were impossible to fulfill.</i>
<i>I feel as though the mediator didn't want to hear any of the evidence or my side of the charge. I feel like had she read the information I provided for my charge she wouldn't have been so partial to the other parties accusations</i>
<i>I never heard any resolution or opinion</i>
<i>It was apparent from the first counter offer made by defendant, and further solidified by 2nd counteroffer, that the plaintiff has no desire to settle. Would have liked the mediator to recognize that, and decide early on, that this was an entire waste of time. This became a fact-finding mission on behalf of plaintiff. The entire day was wasted unnecessarily. This should have easily been recognized by mediator, and the mediation should have ended in one hour verses 6 hours. The 2 sides were nowhere near in the same vicinity of coming to agreement, yet the mediator pushed my side to accept the offer. In this way, I felt he was not fair, just, or knowledgeable in the process at all. He self-admittedly, has only been in this role for one year. He should study and train under a more experienced mediator before handling another case solely.</i>
<i>Listening to both sides.</i>
<i>Respondent was not willing to negotiate realistic/mutually beneficial options.</i>
<i>She kept throwing out the threat that the other party was going to walk away and not mediate in good faith</i>
<i>The fact of what all I have experienced during this time.</i>
<i>The mediator was at favor of the other parties not respecting my wishes and point of view</i>
<i>The option to investigate reports that HR had received complaints from me regarding being treated differently because of my age. HR denied my ever making reports to them and that was that as far as the mediator was concerned. Based on HR's denial of my making age discrimination reports to them the mediator told me I should have never brought the case against the party I charged.</i>
<i>The other party did not at any point try to meet me even halfway even though they did not dispute the facts. Therefore, it was a waste of everyone's time.</i>
<i>The respondent did not come to meditate the charge. They came to see how best to refute the charge which I believe is not likely due to the substantiated evidence I have.</i>
<i>What final docs that would be outcome out of mediation and timing.</i>
Charging Party Representative Verbatim Responses
<i>Monetary compensation</i>

<i>Offering real money</i>
<i>Mediator should have listened instead of wasting our time</i>
<i>Mediators often take a back seat and just exchange numbers. They should use their influence to be a sounding board to each side. So although neutral, weigh in with experiences to be an objective voice that moves a hold out toward resolution. For example, point out strengths, identify weaknesses, provide insight into how the EEOC may respond during the investigation (for either side). Otherwise, the mediator is just shuttling numbers back and forth.</i>
<i>The mediator seemed biased from the start and that her mind was made up about the case. As a result, the solutions she was interested and/or willing to explore were limited.</i>
<i>The mediator should have pressed the defendant's more and given us her opinion regarding the "sweet spot" for settling this matter. My client (rightfully) believed that the mediator was on the defendant's side and didn't adequately taking into consideration his arguments/facts.</i>
<i>The Mediator took the other side and did not appreciate the arguments I was making and conveyed an attitude that he was not listening at all. He himself drafted the last edit of the agreement. Ultimately the side he favored shorted the check by over [amount] in violation of the agreement and he shockingly issued a statement on EEOC letterhead that the settlement was satisfied. He gave a legal conclusion about a breached agreement. He was terrible.</i>
Respondent Verbatim Responses
<i>The \$\$ figure that was discussed by the claimant and the basis for such were not substantiated and it seemed the mediator was using that figure as a starting bargaining tool.</i>
<i>The charging party refused to discuss the charge with the mediator; we don't know what happened to have the charge be filed.</i>
<i>The Charging Party's expectations were unrealistic for the case.</i>
<i>The Mediator appeared to be nothing more than a messenger and did not come up with any creative fair sounding solutions</i>
<i>The mediator had little to no skill. The whole process lasted 45 minutes and she had no tricks to help the parties meet for consensus.</i>
<i>The person who filed the charge had unrealistic demands and was uncompromising, it was not the mediators fault</i>
<i>The settlement asked for - in three rounds- was outrageous.</i>
<i>The two parties were too far apart to come up with any reasonable solutions for either party. The procedure use did not allow for the two parties fully understand where the other side was coming from.</i>
Respondent Representative Verbatim Responses
<i>Dropping the charge.</i>
<i>I felt like the mediator simply "walked offers" back and forth without attempting to get the parties to agree. We started out very far apart and never got any closer.</i>
<i>Mediator wanted to end mediation sooner than necessary.</i>
<i>Only option was payment</i>
<i>The mediator appeared largely unfamiliar with the allegations and filings. The vast majority of the claims in the charge were time-barred but the mediator was unfamiliar with the applicable law and was therefore unable to explain that to the charging party in a meaningful and credible way. Additionally, the charging party remains employed and therefore had no lost wage claim. Nonetheless, the charging party proceeded to make large 6-figure demands throughout the mediation without an articulable basis. The only way the case could have settled was with a mediator with a good grasp of the law who could have credibly explained to the charging party why their demands did not match the facts and law, and we did not have that here unfortunately.</i>
<i>The mediator failed to properly assist my client in evaluating the strengths/weaknesses of the charge and our standing. She was simply a currier for the charging party's offer.</i>
<i>The mediator should have taken a stronger position in trying to convince both parties to resolve the matter and consider the costs of litigation compared to the costs of settling.</i>

The mediator was excellent. However the other side was not participating in good faith, so the "options" developed were not feasible or based in law or fact. The mediator recognized this and tried to provide assistance, but could not convince the other side to work with us in good faith.

The mediator's argumentative demeanor made developing resolution options difficult.

The other side was not being reasonable during mediation regarding their damages and made it impossible to resolve this case. I did not feel like they came to mediation in good faith.

We did not get that far as the claimant was pro per and did not understand the purpose of mediation. He refused to make a demand.

We were not provided with remedy the charging party was seeking and therefore it was difficult to develop options.

Table 24a. Degree of Agreement to the Statement: “I am satisfied with the fairness of the mediation.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1183	100%	432	100%	751	100%
Strongly Disagree	24	2%	21	5%	3	0%
Disagree	30	3%	20	5%	10	1%
Neither Agree nor Disagree	87	7%	36	8%	51	7%
Agree	365	31%	114	26%	251	33%
Strongly Agree	677	57%	241	56%	436	58%
Mean Rating *	4.3872		4.2361		4.4740	

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

Table 24a. Reasons Given for Disagreeing with the Statement: “I am satisfied with the fairness of the mediation.”

Question: Please explain why you disagree or strongly disagree with the statement: “I am satisfied with the fairness of the mediation.”

Charging Party Responses:
<i>After paying attorney 40%, prior sales manager lied as well as I am sure was paid off or told he would lose his job if he told the truth. I also feel that my attorney could have done WAY more than what they did to fight for my compensation package. Paying taxes on something I didn't ask for to happen to me being fired and without employment, having to relocate and the loss of over 15,000 in payable commissions I am totally disappointed with the outcome and will if ever need representation will never use this attorney nor will I participate in mediation because if I took it to trial I would have received a much more substantial amount with an experienced corporate attorney who is an expert at determining lies and call the liars out on their bs. I also had witnesses that would have contributed to my case tremendously. But, I was done fighting and needed closure, next time if there is one, I will do everything different. It is a shame that a single women who was just performing her position above expectations was discriminated against and all I got was \$8,000 which did not even cover my loss of wages or my relocation expenses. The whole career choice with [company name] was a total monetary loss. Poor business by [company name] and I can guarantee I am not the only victim.</i>
<i>Again, it seemed the mediator wasn't bias</i>
<i>As I stated before it was like what I asked for was unrealistic and kept reminding me that everything had to be proven which I was totally aware of I have witnesses and documentation of the occurrences the company denied everything and I feel like she was on their side</i>
<i>Because there was no fairness even offered.</i>
<i>For example, I find it unfair for the Mediator to make a "reasonable person" standard determination, stating what was not reasonable, but also be unwilling to give one example of what would have been reasonable. I asked for this and I received a response suggesting that he did not want to deal in hypotheticals.</i>
<i>I feel some key points may have been missed or looked past.</i>
<i>I feel the mediation was a waste of time and was only done so the respondents could gather information.</i>
<i>I felt I wasn't heard enough and was just being pressured to accept any payment and to be quiet.</i>
<i>I felt that the mediator wasn't on my side and basically disagrees with me</i>
<i>I felt that the other party was able to use this mediation to further their own narrative and present me in a negative light to the mediator with baseless claims and false representation of who they say I am.</i>
<i>I was in the meeting for over 3 hours and most of that time I was in hold while the mediator was on the other side discussing the case with the other parties. When mediator came back to me he had already decided to end the mediation without me completely expressing my side.</i>
<i>It was not fair at all and he seem to favor the opposing side</i>
<i>It's not fair that the city attempted to terminate me a week after mediation and all I'm told is to file another charge and haven't been contacted by the investor and didn't hear from the mediator for two months.</i>
<i>Mediator seemed biased</i>
<i>Mediator stated in disagreement with my statement. Much evidence was given to prove my case Not given opportunity to show evidence.</i>
<i>Please see my last statement I felt sides were taken</i>
<i>Please see other comments</i>
<i>See past comment. Mediator tried to push us to accept plaintiff offer when we were clearly way off, from the get-go.</i>
<i>The mediator was not neutral and was argumentative with me</i>
<i>The charged had all the options to make claims denying wrong doing. I was told by the mediator that I had a bad manager.....so what, lots of people have bad managers. My manager was more than just a bad manager who in the past had been convicted of aggravated assault with a deadly weapon against a household member....so he was NOT JUST ANOTHER BAD MANAGER. The mediator had an answer for each item I tried to defend that was not in my favor.</i>

<i>The mediator convinced me of his neutrality during the first session. As a result, my hopes were high. Prior to the second mediation, he called me to say that the employer was not willing to give an inch.</i>
<i>The mediator did not seem impartial, she was not a good listener, and did not offer any solutions at no time during the mediation. It appeared to me that she did not take my case seriously.</i>
<i>the opposing party showed no good faith so it went nowhere</i>
<i>too much to put here.</i>
<i>Up until the day before the mediation, I was told the other party was attending without council and it would be a chance to work together to resolve the issue. The day before, I found out that the other party was bringing council and the COO. This was after the mediator had relayed that I could obtain council, but that attorneys usually get in the way and the respondent wasn't being represented by an attorney. I feel I was I'll prepared because of the information and persuasion to not obtain council.</i>
Charging Party Representative Responses:
<i>As I said before, [name] is very biased towards employees and I do not say this lightly. He should not be a mediator. I found him to be an awful investigator, but as an investigator he had far less effect on the matter. Second, he made significant errors relating to the mediator's proposal. Third, when I pointed out the error, he got angry and defensive. None of his traits are appropriate for a mediator's temperament. He should not be mediating.</i>
<i>As previously stated, given the proven facts of the case, the mediator should have pressed the defendant's to come up with more money to resolve this matter. My client was extremely upset with the settlement offer, as was I. As a result, our firm decided to drop this case.</i>
<i>He did not press for the settlement language that we required. We worked in the only safeguard against them acting in bad faith, which they did, fraudulently, in sending her settlement check through payroll and deducting an outrageous amount shorting her settlement check for over \$\$\$. He then issued a statement they were compliant with the terms of the agreement when they were not. He could get the EEOC in trouble sued as a co conspirator in the Fraud of the other side. He has created liability for the EEOC.</i>
<i>I felt overwhelmed by my employer representative and their attorney.</i>
<i>It was very important for my client to be able to briefly share his experience and he was not allowed to do so. My impression was this was due to the mediator's impatience with interpretation.</i>
<i>I've never experienced a worse mediator in my career as an attorney. She really should not be doing mediations for the EEOC as it is a disservice to the parties and reflects poorly on the mediation process.</i>
<i>Mediator seemed to lean toward the employer.</i>
<i>She was ineffective and clueless</i>
<i>There were a couple of reasonable things we requested to make the situation right. However it was denied. It was not the fault of [name] at all. She tried her best to try to help!</i>
Respondent Participant Responses:
<i>Based on the credentials required to be a mediator, it was clear within the first few hours of the case that there was not a case and if we moved forward into the court the charge would not stand. Regardless of this we were pushed towards a monetary settlement I complete the mediation and close the case. I do not believe that is how employment law is intended to operate.</i>
<i>Claimant's representative had not signed and submitted the mediation documents in order to be able to attend the mediation. EEOC rep confirmed during joint session that he had not received the signed participation agreement from claimant's representative. We should have been notified which parties were going to be on video or not using video. Claimant and claimant's rep knew that they could submit documents to mediator and had done so and were prepared to submit more. I had contacted the mediator well before the meeting asking about submitting documents and he did not respond nor answer the question. I had to email again right before the meeting to ask about the documents. He replied back at day of the mediation meeting with a "thank you for the email" and asked that myself and attorney sign participation agreements which we had already done weeks prior. He still did not answer my question in his late response. This was false accusations from an employee who has a record of filing harassment claims at each of her employers, but mediation was rushed and limited that I felt I did not get the chance to prove our innocence. Mediator had scheduled another mediation during the time slot that was allotted to us. Then asked the next</i>

<i>mediation appt to push theirs back which rushed our mediation to be completed in the single session.</i>
<i>I do not believe the mediator accurately passed along our information to the defendant. When she would repeat what we said, to confirm she had it right, she wouldn't. She also said, "I shouldn't be telling you this, but..." which made me wonder what she was telling the defendant about our discussion.</i>
<i>I had to have documentation for proof of the charges against us, but when asked for documentation of proof for the charges brought it was not required and settlement was made.</i>
<i>Plaintiff refused to use a computer/camera so remained hidden through the entire process. No Judge. No jury. Not permitted to even question the plaintiff. Not permitted to present evidence (photographs / witness testimony) proving that I am innocent. This whole operation is nothing short of an extortion mill. Irrefutable proof that the US Government considers the small businessman to be a clueless rube to be fleeced at will.</i>
<i>She seemed to be leaning</i>
<i>We settled simply to avoid lengthy and costly litigation. The charges were bogus and unfounded. The plaintiff had a skillful attorney who manipulated the Mediator and proceedings very well.</i>
Respondent Representative Responses:
<i>EEOC Mediation essentially operates as legal extortion. The merit of the employer's case is virtually irrelevant. The only issue is what will the employer pay to avoid having to defend a meritless lawsuit. The mediator, while intended to be neutral, should interject when it is obvious the charging party's case is frivolous. The attorney for the charging party even stated he would file multiple lawsuits against the employer and would "paper us to death," or the employer could buy its way out of that nightmare for an expensive nuisance value settlement.</i>
<i>Mediator had little or no knowledge about the requirement of the charges.</i>
<i>The mediator appears to be in favor of the charging party and wants us to settle via mediation with what her demands are. Also advised us if we didn't settle this could get messy if it goes to investigation.</i>
<i>The time that we spent isolated in breakout or individual discussion was too long. We should have had some person to person dialogue to express needs and concerns. The mediator did not facilitate any discussion. She said she had 30 years of experience! I did not feel she was a neutral mediator or effective.</i>

Table 25. Degree of Agreement to the Statement: “I am satisfied with the results of the mediation.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1180	100%	428	100%	752	100%
Strongly Disagree	66	6%	47	11%	19	3%
Disagree	90	8%	42	10%	48	6%
Neither Agree nor Disagree	224	19%	82	19%	142	19%
Agree	344	29%	103	24%	241	32%
Strongly Agree	456	39%	154	36%	302	40%
Mean Rating *	3.8763		3.6425		4.0093	

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

Table 26a. Attempt to Resolve the Issue with Employer Prior to Filing a Charge

Question: For Charging Party: Did you first attempt to resolve the issues in your charge with your employer prior to filing a charge with the EEOC?

	Charging Party	
	#	%
Total number responding	215	100%
Yes (Attempted to resolve the issue with employer prior to filing a charge)	146	68%
No (Did not attempt to resolve the issue with employer prior to filing a charge)	69	32%

Table 26b. Attempt to Resolve the Issue with Employer Prior to Filing a Charge – Persons Contacted

Question: For Charging Parties who attempted to resolve the issue prior to filing a charge with the EEOC: Who did you speak with?

	Charging Party	
	#	%
Total number who attempted to resolve the issue with their employer prior to filing a charge with the EEOC	146	
Human Resources Department/Head	61	42%
Manager/Supervisor	35	24%
Company attorney/counsel	17	12%
Management/Employer	16	11%
Union Representative/Union	5	3%
Others (Unspecified company positions)	35	24%

Table 26c. Attempt to Resolve the Issue with Employer Prior to Filing a Charge – Actions Taken by the Employer

Question: For Charging Parties who attempted to resolve the issue prior to filing a charge with the EEOC: What specific actions did your employer take to resolve the issue?

	Charging Party	
	#	%
Total number who attempted to resolve the issue with their employer prior to filing a charge with the EEOC	146	
None/No action taken	87	60%
Investigation	12	8%
Terminated/Retaliated	11	8%
Offered to settle/money	5	3%
Mediation	4	3%
Others	17	12%

Table 26d. Reasons for Not Attempting to Resolve the Issue with Employer Prior to Filing a Charge

Question: For Charging Parties who did not attempt to resolve the issue prior to filing a charge with the EEOC: Why did you not attempt to resolve the issue with your employer prior to filing a charge with the EEOC?

Lack of communication/cooperation of employer
<i>The employer was, has been, and is still being very obstinate and uncooperative on other issues in the past and with present issues dealing with anything in regards to me. And the employer DID blatantly LIE UNDER OATH at a previous Unemployment Compensation Appeal Hearing that occurred prior to this mediation. And DID LIE again during this mediation process.</i>
<i>They didn't want to talk about anything or comments that I had</i>
<i>Unable to speak with them</i>
<i>Was not going to talk to an employee that ignores sexual harassment and wrongful terminated me.</i>
<i>They didn't care to know what happened during my time there</i>
<i>Didn't think they were open to it</i>
<i>I was going to try to resolve the issue with the employer. I reached out to the via email. They eventually got back to me, but it was only about 10 days from the mediation date, so I decided to wait for the formal mediation so it would be covered by the confidentiality agreement.</i>
<i>My employer was not concerned with my issue</i>
<i>My voice was never heard when I was an employee, I was always brushed off when try to make a complaint.</i>
<i>No contact</i>
<i>They did not seem interested in resolving</i>
<i>They basically told me to get off the property and didn't want to talk about it</i>
<i>They would not listen to me</i>
<i>I wasn't sure there was a way to do that considering the nature of this case.</i>
<i>I knew it wouldn't be in my best interest.</i>
<i>It was clear to me after over 2 years of internal discussions and attempting to change the trajectory of the company from inside they were not interested in altering their behavior</i>
<i>It was not an option</i>
<i>I had previously filed a charge and they weren't being helpful since the beginning.</i>
<i>Because there was no opportunity available to resolve the issue with my employer, they deny any contact with me. Also there was no help from the [Government Employer] (Georgia).</i>
<i>I was never allowed to speak to the Warden. At that time he was not the warden for my cases.</i>
<i>My employer refused to speak with me</i>
Employee is no longer with the company: fired/terminated/left the company
<i>My employer had furloughed me some five months prior to the charge. In my job as chief strategist for banking & payments - I reported to the CEO, Worldwide President and many times did work directly for the Chairman of the Company. Thus, I had often seen their behind-the-scenes methods, tactics and slander when others had either filed or had brought up the same complaints; as well as I witnessed their retaliations -- so I was anxious as to how to put up with it or manage my charge, without an attorney. Thus I sought an attorney out first, then followed the attorney's advice.</i>
<i>Did not speak with them d/t being terminated</i>
<i>I felt I was wrongly terminated based on discrimination.</i>
<i>I reported to them what had happened to me and as soon as cops were involved they suspended me then fired me</i>
<i>I was already terminated</i>
<i>I was fired and not given the option to.</i>
<i>I was fired due to discrimination, so I was unable to speak with the employer prior to filing the charge.</i>
<i>I was terminated</i>
<i>I was terminated.</i>
<i>They fired me</i>

<i>Was fired and could not contact.</i>
<i>My employer made it clear that they didn't want me working there.</i>
<i>Because they refuse to rehire me</i>
<i>Because I had already left the company and they argued that there was no evidence that supported my case</i>
<i>I had resigned, because I had 7 Interviews and was no. Five on the list on the position that I was interviewing for. No one gave me any explanation why I was not chosen for any of the positions with over 40+ years of experience.</i>
Lack of trust with HR/authority/company
<i>Because those that had authority to do so we're the main ones involved in the offense that led to the charge filed</i>
<i>The HR director was part of the issue</i>
<i>I did not trust their HR department and management. I had no one to go to.</i>
<i>I don't trust the agency I worked for to be fair or honest.</i>
<i>Because I was harassed, and I did not feel comfortable speaking with the company</i>
<i>Retaliation</i>
Hiring issue
<i>The respondent was not my employer. The inquiry was regarding a hiring decision.</i>
<i>Not employed by the company</i>
<i>Complaint was not with an employer--rather, the potential employee's recruiter.</i>
<i>I am not an employee, I was a candidate for a job.</i>
<i>Failure to hire case.</i>
Other reasons provided
<i>Trusted EEOC process better.</i>
<i>Too much hostility from the employer regarding charges filed against them</i>
<i>I couldn't solve this issue because [company name] was on lockdown.</i>
<i>They asked for mediation.</i>
<i>I went through my attorney</i>
<i>Because my employer denied being at fault.</i>
<i>I charged them with unfair discrimination. I had tried to get reasonable accommodations but my employer denied them.</i>

Table 27. Did Participants Know What They Wanted Going into the Mediation?

Question: Going into the mediation, did you know what you wanted to obtain from this mediation?

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1142	100%	412	100%	730	100%
Yes (Participant knew what they wanted)	1066	93%	383	93%	683	94%
No (Participant did not know what they wanted)	76	7%	29	7%	47	6%

Table 28a. Participants' Expectations of Mediation Outcome – Charging Party and Party Representative

Question: What did you expect to obtain from this mediation?

Charging Parties and Party Representatives who knew what they wanted going into the mediation	Charging Party and Party Representative	
	#	%
Total responding	378	100.0%
Monetary offer	158	42%
Non-monetary offer	13	3%
A combination of monetary and non-monetary offer	207	55%

Table 28b. Participants' Expectations Compared to Mediation Outcome – Charging Party and Party Representative

Question: Did you obtain what you wanted going into the mediation?

Charging Parties and Party Representatives who knew what they wanted going into the mediation	Charging Party and Party Representative	
	#	%
Total responding	375	100.0%
I received nothing of what I wanted	122	33%
I received some of what I wanted	119	32%
I received much or a majority of what I wanted	109	29%
I received everything I wanted	25	7%

Table 28c. Monetary Demand – Charging Party and Party Representative

Question: If you obtained nothing from this mediation and were asking for money, what was your monetary demand?

	Charging Party and Party Representative	
	#	%
Total number of charging parties and party representatives who expected monetary offer but obtained nothing	39	100.0%
\$5,000 or less	-	-
From \$5,001 to \$10,000	2	5%
From \$10,001 to \$15,000	-	-
From \$15,001 to \$20,000	1	3%
From \$20,001 to \$30,000	3	8%
From \$30,001 to \$40,000	3	8%
From \$40,001 to \$50,000	5	13%
From \$50,001 to \$75,000	3	8%
From \$75,001 to \$100,000	5	13%
From \$100,001 to \$200,000	11	28%
From \$200,001 to \$500,000	5	13%
Over \$500,000	1	3%

Table 28d. Request for Non-monetary Benefit from Employer – Charging Party and Party Representative

Question: You answered that you obtained nothing from this mediation did you ask the employer for something that did not require employer payment of money to you?

	Charging Party and Party Representative	
	#	%
Total number of charging parties and party representatives who expected monetary offer but obtained nothing	39	100.0%
Yes, I asked for something other than money from the employer	6	15%
No, I did not seek any nonmonetary benefit	33	85%

Table 28e. Employer’s Offer of Non-monetary Benefit – Charging Party and Party Representative

Question: You answered that you obtained nothing from this mediation did the employer offer you any nonmonetary benefit?

	Charging Party and Party Representative	
	#	%
Total number of charging parties and party representatives who expected monetary offer but obtained nothing	39	100.0%
Yes, a nonmonetary offer was made that I rejected in favor of not settling the charge	13	33%
No [a nonmonetary offer was not made]	26	67%

Table 28f. Employer’s Offer of Monetary Benefit – Charging Party and Party Representative

Question: You answered that you obtained nothing from this mediation did the employer offer you any money to settle the case?

	Charging Party and Party Representative	
	#	%
Total number of charging parties and party representatives who expected <i>nonmonetary</i> offer but obtained nothing	6	100.0%
Yes, a monetary offer was made	4	67%
No, no money was offered	2	33%

Table 29a. Participants' Expectations of Mediation Outcome – Respondent and Party Representative

Question: What did you expect to obtain from this mediation?

Respondents and Party Representatives who knew what they wanted going into the mediation	Respondent and Party Representative	
	#	%
Total responding	665	100.0%
Resolve situation where we made a mistake	13	2%
Resolve situation to avoid monetary costs with EEOC	121	18%
Resolve situation to avoid further use of organizational time	380	57%
Resolve situation as concerned about fairness of EEOC process	27	4%
Resolve situation to continue this employment relationship	50	8%
Verbatim responses:		
Avoid further litigation/further cost; financial consideration	22	3%
Understanding the charge; getting information/clarification; hear both sides	18	3%
Resolution	8	1%
Ensure fairness; fairness to both sides	4	1%
Possible settlement	3	0.5%
Discussion/explanation	3	0.5%
Continued employment	3	0.5%
Amicable parting	2	0.3%
Prove charge is false/no wrongdoing	2	0.3%
Other reasons	8	1%

Table 29b. Participants' Expectations Compared to Mediation Outcome – Respondent and Party Representative

Question: Did you obtain what you wanted going into the mediation?

Respondents and Party Representatives who knew what they wanted going into the mediation	Respondent and Party Representative	
	#	%
Total responding	664	100.0%
I received nothing of what I wanted	131	20%
I received some of what I wanted	163	25%
I received much or a majority of what I wanted	237	36%
I received everything I wanted	133	20%

Table 29c. Monetary Demand Difference – Respondent and Party Representative

Question: If this case was not resolved due to an inability to reach a monetary settlement, how far apart were the parties when the mediation ended?

Respondents and Party Representatives who knew what they wanted going into the mediation <i>and whose cases involved monetary settlement</i>	Respondent and Party Representative	
	#	%
Total responding	222	100%
\$500 or less	2	0.9%
From \$501.00 - \$1,000	3	1.4%
From \$1,001 to \$3,000	5	2.3%
From \$3,001 to \$5,000	8	3.6%
From \$5,001 to \$10,000	12	5.4%
From \$10,001 to \$20,000	30	13.5%
From \$20,001 to \$50,000	50	22.5%
From \$50,001 to \$100,000	43	19.4%
Over \$100,000	46	20.7%
Not sure	23	10.4%

Table 29d. Factors that Prevented Party from Receiving Part or All of What was Expected – Respondent and Party Representative

Question: You answered that you obtained nothing from this mediation, please identify any factors that were involved.

Total number of respondents and party representatives who obtained nothing of what they wanted	131	
Non-substantive process issues such as technology, lack of time, missing key party or person to continue or other factors that prevented us from settling the case.	2	2%
Charging Party sought excessive amount of money	114	87%
Charging Party made a non-monetary demand we could not meet	17	13%
Mediator interfered with opportunity to settle	3	2%
We were not prepared for what happened at mediation	3	2%
Other (See verbatim responses below.)	19	15%
<i>Charging party rejected our non-monetary offer and did not counter-offer.</i>		
<i>I was expecting to mediate this out. The pre-mediation offer was 150k and then we got to mediation and the demand went to 500k, then down to 290k, the mediator should have told them it would be wise to get back to their original position.</i>		
<i>The charging party did not accept any of our attempts at a resolution</i>		
<i>The charging party did not agree with our settlement offer.</i>		
<i>We thought we had a solution but the charging party backed out unexpectedly over the form of payment of the settlement (3 checks vs 2 checks).</i>		
<i>Charging party did not sign agreement</i>		
<i>The Complainant was not satisfied with the settlement and indicated not all her requests were met in the settlement agreement. As a result, she will not sign agreement.</i>		
<i>Charging party did not come prepared with what he wanted out of the mediation</i>		
<i>Charging party did not identify or make a demand.</i>		
<i>Charging party refused to disclose what the basis of the charge was.</i>		
<i>Charging party is uninformed about the situation, and even upon explanation, has unrealistic demands</i>		
<i>Charging Party's attorney hung up on the mediator and called off the mediation</i>		
<i>Charging Party attended but then refused to engage in any reasonable discussion</i>		
<i>Charger did not have a solid case and discuss quickly discovered at the beginning of mediation.</i>		
<i>Charging party claimed discrimination was the reason for her termination, when in fact she was terminated for workplace violence and threats.</i>		
<i>The charging party would not cooperate with the Mediator and it was moved to the next step.</i>		
<i>Mediator said her job was not to discover or discuss the facts. I don't know how you get the two parties together if you don't help them agree on (stipulate) facts and evidence and see likelihood of their claim being successful through the EEOC process.</i>		
<i>The mediator failed to properly assist my client in evaluating the strengths/weaknesses of the charge and our standing. She was simply a courier for the charging party's offer.</i>		
<i>The process did not allow for my side to fully explain our position to the other side. This was not the fault of the mediator, who did the best she could.</i>		

Table 30a. Benefits Obtained from Mediation – Charging Party

Question: Identify below any benefits you obtained from your mediation

	Charging Party	
	#	%
Total number of charging parties	225	
I was able to address my concerns on an equal basis with those present.	66	29%

I obtained money.	113	50%
I obtained another needed work benefit.	7	3%
I learned more about what happened to me in my workplace.	28	12%
I was able to keep my job.	8	4%
I obtained a commitment from my employer about how I will be treated at work.	6	3%
I obtained a job reference.	20	9%
I realized that I may not have a case.	3	1%
My employer agreed not to contest my unemployment benefits or otherwise interfere with my receipt of unemployment.	14	6%
Verbatim responses:		
Nothing, no agreement, not settled	13	6%
Change in company policy/practice	9	4%
Received non-monetary benefit: offered position, reverse reason for termination, unemployment benefits	5	2%
Able to present my view/side; learned the position of employer	5	2%
Other benefits	6	3%

Table 30b. Benefits Obtained from Mediation – Respondent*Question: Identify below any benefits you obtained from your mediation*

	Respondent	
	#	%
Total number of respondents	271	
We were able to explain why we believe we did not violate the law.	178	66%
We were able to demonstrate our respect for the Charging Party and their perspective.	114	42%
We were able to close this case and move on.	160	59%
We were able to correct a misunderstanding.	26	10%
We were able to improve our relationship with a continuing employee.	15	6%
We were able to improve our relationship with a terminated employee.	17	6%
We discovered and recognized improvements or actions that we will implement going forward.	46	17%
We learned valuable information related to overall operation of the business.	33	12%
We were able to demonstrate concern for our community stakeholders beyond this individual charge.	20	7%
Other benefits: None, baseless charge; learned other party's intention/allegation	9	3%

Table 31a. COVID-19’s Economic Impact on Respondents’ Monetary Offer Going into Mediation

Question: Has the economic impact from COVID-19 resulted in your organization coming to EEOC mediation with:

	Respondent	
	#	%
Total number responding	252	100.0%
Less monetary flexibility	30	12%
More monetary flexibility	-	-
About the same	115	46%
Not applicable	107	42%

Table 31b. COVID-19’s Economic Impact on Respondents’ Monetary Offer Going into Mediation – Verbatim Responses

Question: In what way do you have less monetary flexibility in mediation as a result of the economic impact of COVID-19?

<i>Our company has been greatly affected by the pandemic.</i>
<i>Our industry has been devastated.</i>
<i>Business losses due to increased Covid medical claims for enrollees.</i>
<i>COVID 19 caused an approximate 40% loss of business from the previous year. All company funds went to keeping team members employed, and all other expenses were cut.</i>
<i>As a non-profit organization we have to be mindful of financial resources.</i>
<i>We had to cancel both of our fundraising events due to COVID-19, so less income for expenses such as this.</i>
<i>We have fewer funders and as a nonprofit have less flexible funding.</i>
<i>Covid and all the remaining challenges to the labor pool have left me with limited labor and an inability to recapture sales.</i>
<i>Declined sales.</i>
<i>Less overall revenue/budget to spend on medication.</i>
<i>Less sales = less money viable for dispute resolution</i>
<i>Our charger was terminated due to lack of revenue, yet it took us to mediation for money.</i>
<i>Our overall net revenues have declined substantially during COVID due to increased costs and reduced revenues. This limited our ability to provide the high level of monetary damages requested by the charging party.</i>
<i>Our profit margins have become minimal due to client downsizing and in some cases bankruptcies. Our staffing issues have also made overtime a big issue with our payroll. Meeting payroll is our cash flow priority and there just isn't much left to negotiate settlements.</i>
<i>Revenue has decreased</i>
<i>Revenue is down and expenses overall have skyrocketed including employee wages</i>
<i>We have less children. I say roughly a 3rd less children in attendance. We have to pay staff every time we close down, most time its the whole center. If it weren't for state assistance, we would have shut down by Aug 2020. We open a new center in [site] but it is not full and is losing money. We have to credit private pay clients when shut down. The cost of PPE supplies, training, keeping ratios and keeping up with minimum wage increases yearly have taken a toll on child care business all over the United States.</i>
<i>Financial situation is weaker. We have less money.</i>
<i>Financials of the organization negatively impacted by Covid</i>
<i>Our business has been severely impacted financially by the pandemic</i>
<i>We received no government relief funding - therefore my company has struggled significantly to stay afloat. We do not have the financial ability to negotiate due to financial strain.</i>
<i>We had zero funds for this mediation and did not anticipate paying a single penny to this false claim. We opened in January 2021 and immediately felt the effects of Covid. I am guessing this employee also felt the effects and resorted to providing false information to get hired and then intentionally premediated her steps so that she could file a false claim later on.</i>

Table 31c. Video Mediation’s Economic Impact on Respondents’ Monetary Offer Going into Mediation, Compared to In-Person Mediation

Question: I find that in mediation by video my organization tends to offer [compared to in-person mediation]::

	Respondent	
	#	%
Total number responding	251	100.0%
More money than for in-person mediation	4	2%
Less money than for in-person mediation	6	2%
About the same	116	46%
Not applicable	125	50%

Table 32. Attorneys' Opinions on COVID-19's Economic Impact on their Clients' Monetary Offer Going into Mediation

Question: Has the economic impact from COVID-19 resulted in your [clients] coming to EEOC mediation with:

	All Attorneys		Charging Party Attorneys		Respondent Attorneys	
	#	%	#	%	#	%
Total responding	545	100%	184	100%	361	100%
Less monetary flexibility	7	1%	3	2%	4	1%
More monetary flexibility	77	14%	14	8%	63	17%
About the same	261	48%	58	32%	203	56%
Not applicable	200	37%	109	59%	91	25%

Table 33. Case Status*Question: Please identify the status of your mediation session.*

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1131	100%	410	100%	721	100%
Completed and the case is resolved.	575	51%	192	47%	383	53%
Completed and waiting for e-signature.	177	16%	61	15%	116	16%
Mediation is ongoing.	66	6%	31	8%	35	5%
Completed but the case is not resolved/impasse.	313	28%	126	31%	187	26%

Table 34a. Factors/Reasons Preventing Case Resolution (Ongoing Mediations or Completed Mediations but Cases are Unresolved/Impasse

Question: If the mediation did not resolve the charge, why do you think there was no resolution?

Participants in Ongoing Mediation or Completed Unresolved/Impasse Cases	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	379		157		222	
The other party was not sincere in resolving the case.	163	43%	96	61%	67	30%
The options developed were unacceptable to me.	64	17%	39	25%	25	11%
We had to cut the mediation short because of an unplanned event.	1	0%	1	1%	0	0%
I made a final offer, and the other party did not accept.	108	28%	31	20%	77	35%
No final offer was made by the other side.	29	8%	20	13%	9	4%
There was an agreement, but it must be approved by a decision maker who was not at the mediation.	7	2%	5	3%	2	1%
There was a non-monetary issue that we could not resolve.	55	15%	26	17%	29	13%
The parties could not agree on the amount of money to resolve the case.	203	54%	77	49%	126	57%
The issues of reinstatement to employment could not be resolved.	18	5%	7	4%	11	5%
We needed more time.	24	6%	11	7%	13	6%
No money was offered.	27	7%	15	10%	12	5%
Another issue prevented resolution. (See table below.)	53	14%	26	17%	27	12%

Table 34b. Factors/Reasons Preventing Case Resolution (Ongoing Mediations or Completed Mediations but Cases are Unresolved/Impasse – Verbatim Responses

Question: If the mediation did not resolve the charge, why do you think there was no resolution?

Charging Party and Representative
<i>The opposing side attorney didn't come to mediation with the goal of resolving. Not sure the motivation then to request mediation.</i>
<i>Their attorney wanted to wait and see what CHRO involvement would be</i>
<i>Respondent was not represented by counsel who had experience in discrimination matters.</i>
<i>the respondent's attorney needed to investigate the claims further based on information learned at mediation</i>
<i>The persons present did not have actual authority to settle the matter for more than nuisance value.</i>
<i>I requested they change the termination to layoff or resign and they offered me 20k only . It was more important to me to fix the unfair termination</i>
<i>We are awaiting proof of a claim and if provided we will agree to settle at a certain amount</i>
<i>We are still negotiating outside of the mediation process and the mediator has become an impediment by trying to force his time constraints on the parties.</i>
<i>I was able to review papers from employment I had been asking for and were never sent to me. I discovered papers that were falsified and had my signature forged on them. These papers were what they were using to support their argument.</i>
<i>My employer refused/failed to discipline the female supervisor that sexually harassed me.</i>
<i>My manager failed to tell which supervisor she said the horrible things to. Human Resource didn't investigate any further</i>
<i>Employer was not honest with answers based on paperwork, and personnel file.</i>
<i>They violated the terms of the agreement. They agreed to pay the client \$7,700 and only paid \$4,876.17 after absurdly running a settlement check through payroll and deducting completely inappropriate things for a fired non employee. Outrageous.</i>
<i>The case was returned for formal investigation and ongoing action.</i>
<i>Mediator was an obstacle that we could not overcome</i>
<i>The mediator was an impediment to resolving the case.</i>
<i>Parties had different views of the facts/evidence of this case.</i>
<i>The other party had failed to adequately prepare</i>
<i>The [other party's] Attorney representing the county does not believe the charge.... which the mediator told them was valid and encouraged them to reconsider.</i>
<i>Why has this case dragged on for so long? The employer just waits and makes it harder to resolve.</i>
<i>the other party did not engage in negotiation, nor did it appear that they had any intention. They more appeared to participate in an effort to learn facts about the case.</i>
<i>The contract is risky and could be deceptive / harmful. I'm still trying to get an attorney to review the contract, before signing.</i>
<i>Other party pulled out of mediation</i>
<i>Other party unwilling to negotiate, offer or agree to any requests to resolve.</i>
<i>The alleged discriminator who was the subject of the Charge of Discrimination was also the Corporate Representative. He stated he had full authority and that his company and its attorneys knew of the charge but he did not appear with any attorney.</i>
<i>The respondent was awaiting notice that the [company] investigation and had assumed it would have been completed by the scheduled mediation date, but it was not and as such the mediation was continued until the investigation is completed</i>
Respondent and Representative
<i>Charging Party's attorney hung up on the mediator</i>
<i>Complainant appeared at the mediation without her attorney.</i>
<i>Decision maker not available to give authorization to make final offer. Optimistic that authority will be given and case will resolve.</i>
<i>While an agreement was reached, the other party was not held responsible for signing of the agreement as agreed to in mediation.</i>
<i>The charging party was not willing to negotiate or offer any break down as to why they were asking for so much more money than what we calculated</i>

<i>The resolution was complex. A final offer by the employer was made today. The charging party will accept or decline the offer tomorrow.</i>
<i>The CP did not provide information as to what was discrimination, therefore we were unable to offer taxpayer dollars to resolve a complaint which has no merit. Had the CP provided documentation/evidence of wrongdoing we likely would have resolved.</i>
<i>The other party was not in agreement with the final offer from the City</i>
<i>We are still working on language for a nonmonetary issue. I expect a resolution.</i>
<i>We had strong documentation facts of the case. Charging party had no evidence just opinions or perceptions. If our facts were true, they had no case. They did not dispute any of our facts with any evidence. No effort was made to seek agreement on facts.</i>
<i>Charge was resolved at conclusion of mediation by the parties but before MSA and side agreement were signed, charging party elected not to go through with settlement she had agreed to.</i>
<i>Poor mediation skills on the part of the court representative.</i>
<i>The mediator had not reviewed the documents we submitted prior to the session so she could not adequately negotiate based upon our evidence.</i>
<i>The charging party did not want to pay taxes on the money that was offered.</i>
<i>The parties also did not agree on all of the facts presented by the other side and disputed the legal basis of the charge.</i>
<i>Charging party did not make an offer and withdrew from mediation.</i>
<i>Claimant did not know what he wanted out of the mediation</i>
<i>It is still ongoing & likely to be resolved.</i>
<i>The parties are continuing to try and resolve the dispute, but we needed some additional outside information (in this case, a medical examination and recommendation)</i>
<i>The other party stated they wanted to pursue becoming a possible test-case for changing or interpreting the applicable laws regarding this situation</i>
<i>The mediator told my representative that the claimant was in agreement with our final offer, but the claimant later said they were uncomfortable signing documents because something had been added that she did not approve (non-disparagement).</i>
<i>Employee expressed desire to pursue their case and apply their legal knowledge to obtain resolution</i>
<i>Charging party refuses to believe facts showing that no discrimination occurred</i>
<i>The Charging Party was facing the discipline process at the time that had not yet been decided on. It was too early in the process to craft a settlement that would be acceptable to the employer; we discovered we needed to look at further evidence.</i>
<i>We are still trying to resolve language in the agreement.</i>
<i>Charging party did not want to settle the claim.</i>

Table 34c. Degree of Agreement to the Statement: “I believe that progress was made toward resolution of this claim.” (Ongoing Mediations or Completed Mediations but Cases are Unresolved/Impasse)

Participants in Ongoing Mediation or Completed Unresolved/Impasse Cases	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	377	100%	155	100%	222	100%
Strongly Disagree	72	19%	47	30%	25	11%
Disagree	71	19%	23	15%	48	22%
Neither Agree nor Disagree	110	29%	35	23%	75	34%
Agree	94	25%	37	24%	57	26%
Strongly Agree	30	8%	13	8%	17	8%
Mean Rating	2.8382		2.6516		2.9685	

Table 34d. Follow-up Activities/Plans (Ongoing Mediations or Completed Mediations but Cases are Unresolved/Impasse

Question: Please check if you plan to follow-up with any of the following:

Participants in Ongoing Mediation or Completed Unresolved/Impasse Cases	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	358	100%	149	100%	209	100%
We will wait for completion of EEOC investigation and consider settlement later.	165	46%	69	46%	96	46%
We have scheduled another EEOC mediation session or follow-up settlement discussion.	29	8%	13	9%	16	8%
The parties will meet again, but outside of EEOC.	29	8%	13	9%	16	8%
We will wait until a lawsuit is filed and consider settlement after all the evidence is seen during the lawsuit process.	66	18%	24	16%	42	20%
Other (See list below)	69	19%	30	20%	39	19%

Table 34e. Follow-up Activities/Plans (Ongoing Mediations or Completed Mediations but Cases are Unresolved/Impasse – Verbatim Responses

Question: Please check if you plan to follow-up with any of the following: Other, please specify.

Charging Party and Representative
<i>We are amending Charge to include Franchisor, [Company name] corporation because we do not believe that the franchisee (Respondent) is acting in good faith at mediation. Mediator concurred on lack of good faith of Respondent.</i>
<i>I need another meeting</i>
<i>Waiting to schedule another EEOC mediation session.</i>
<i>Mediation will remain open to allow the parties to exchange some information.</i>
<i>The Charging Party would be open to further settlement discussions</i>
<i>The parties are continuing to negotiate outside of the EEOC mediation process.</i>
<i>I am confident that the EEOC will find probable cause</i>
<i>I will wait for completion of EEOC investigation and then consider what my options are.</i>
<i>The employer is dishonest with the whole process. Nothing was accomplished. My bar was very low for a settlement. Now an investigation will take place because they claim no responsibility.</i>
<i>We intend to request that the EEOC bring its investigatory resources to bear in this matter.</i>
<i>Again, the contract is risky and could be deceptive / harmful. Again, I'm still trying to get an attorney to review the contract, before signing.</i>
<i>I will continue to follow up with my attorney and will not settle until the other side agrees with us on something.</i>
<i>The Charging Party intends to continue to attempt to settle the matter, but has received no signs from Respondent that informal resolution will be feasible.</i>
<i>Not sure</i>
<i>Nothing has been settled.</i>
<i>Pending agreement of counter on documentation, consider action.</i>
<i>Just waiting for the ongoing investigation and hopefully we agree to a resolution and come to an understanding of the settlement</i>
<i>I was told by the mediator that I had no case so I settled.</i>
<i>A Federal suit was already filed in July - Whistleblower, discrimination, and retaliation concerning state laws, [company] requested a continuance until after mediation. If EEOC does not wish to prosecute, the charges will be amended to the existing case</i>
<i>I plan to file suit regardless of the EEOC investigation. The EEOC is understaffed & does not conduct thorough investigations. Likewise, the respondent, in bad faith, used the EEOC mediation to gather privileged information or potential evidence</i>
<i>To my understanding, we are awaiting a "right to sue" letter from the EEOC. Then my attorney will contact [name] who will take my case on, on a contingency basis.</i>
<i>We may look into legally resolving this issue.</i>
<i>[Name] the ADA Mediator has said he is sitting on the charge. It should be sent to Legal for enforcement. We will file an amended charge or a new one if we have to, its still timely and also a DC Superior Court action. Their conduct was in total bad fait</i>
<i>We have already requested the NORTS. We will try to negotiate directly with the employer before filing suit, but may need to move into litigation.</i>
<i>We will request a right to sue letter and litigate against the former employer</i>
<i>Haven't heard back from most recent charge after several attempts</i>
<i>We may use the EEOC mediator again, depending on the response from the Respondent</i>
<i>Will not be representing charging party further.</i>
<i>As previously stated, our firm is no longer representing the client. He will be seeking new counsel or will be handling the claim himself.</i>
<i>Choose not to answer</i>
Respondent and Representative
<i>We are not closed to meeting again but nothing is scheduled or currently planned.</i>
<i>We are open to another EEOC mediation session, but this has not been scheduled.</i>
<i>We will complete the position statement and work through the process</i>
<i>We will move forward with defending against the charge.</i>

<i>Continuing with EEOC process</i>
<i>Mediation is ongoing</i>
<i>We will continue to communicate with the plaintiff's attorney</i>
<i>Just finalizing the agreement with opposing counsel.</i>
<i>It has moved to investigation.</i>
<i>We will wait for completion of EEOC investigation only</i>
<i>We will wait for the outcome of the investigation</i>
<i>We will wait until the EEOC completes the investigation and finds that the claims of the charging party were false.</i>
<i>We will wait for completion of EEOC investigation which should absolve us of claimed actions</i>
<i>We will wait for completion of EEOC investigation.</i>
<i>We will wait for completion of the EEOC investigation but remain open to the possibility of trying to reach a settlement at all times.</i>
<i>The mediator asked to keep it open for a few more days</i>
<i>charging party has notified us they are now willing to consider final offer</i>
<i>Position Statement</i>
<i>Will submit EEOC position statement</i>
<i>After the employer makes an ultimate internal disposition of the related discipline and the EEOC completes the investigation, we will reevaluate settlement.</i>
<i>Waiting for former employee next steps.</i>
<i>We will wait until a lawsuit is filed then go to trial if necessary, the case is without merit</i>
<i>If the settlement is approved, parties will communicate to finalize settlement agreement.</i>
<i>mediator following up with other side</i>
<i>Mediator left case open to settle until September 17, 2021. After that, it will go back to investigation process and we will submit a position statement. I am hopeful that charge will be dismissed.</i>
<i>The parties expect the case will resolve tomorrow after charging party reviews defendant's final offer.</i>
<i>Waiting next steps from [name] adjuster</i>
<i>We are one week time for the charging party to reconsider the company's offer</i>
<i>We made a last and final offer that must be accepted by a date certain and, if it is not, the offer is withdrawn and the file will be transferred back to the investigator.</i>
<i>We will wait until charging parties takes next step</i>
<i>We will respond to the charge by the EEOC deadline</i>
<i>I have not been notified of next steps at this time</i>
<i>We will oppose this claim</i>
<i>No follow-up action with respect to settlement is currently planned.</i>
<i>No further action considered.</i>
<i>Not sure</i>
<i>Undecided</i>
<i>Undetermined</i>

Table 35a. Willingness to Participate in EEOC Mediation Program

Question: Do you agree or disagree with this statement: If I had a future case before the EEOC, I would be willing to participate in the EEOC mediation program.

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1135	100%	411	100%	724	100%
Yes [Willing to participate in the EEOC mediation program]	1084	96%	377	92%	707	98%
No [Not willing to participate in the EEOC mediation program]	51	4%	34	8%	17	2%

Table 35b. Reasons for Participants' Unwillingness to Participate in EEOC Mediation in the Future – Verbatim Responses

Question: Please tell us why you would be unwilling to participate in EEOC's mediation program in the future.

Charging Party and Representative
<i>Everything was denied that I asked for accept past wages that were already owed to me I only want to be treated fairly not discriminated against because of my injury and being a women</i>
<i>I believe the university would agree to mediation as a means to find preliminary information that they could not gleam from the charging document and they have no sincere intentions of resolving the charge through mediation.</i>
<i>I would be hesitant because I don't feel like the company really was interested in resolving the issue. I think the company was more interested in knowing/hearing what I had to say about the situation so they could build a defense for the charge.</i>
<i>I feel like the entire process was set up to intimidate me into just dropping the case or settling for whatever the employer offered.</i>
<i>I'll just contact an attorney.</i>
<i>It was very unclear and seemed that without representation I had no option of a resolution that was fair although I was wrongly discriminated against</i>
<i>It wasn't worth it! If it happened again I would hire a labor lawyer.</i>
<i>Communication with the mediator for EEOC has been non existent for two weeks.</i>
<i>Either the mediator had not reviewed my case thoroughly or she sided with the company I work for</i>
<i>I felt that the mediator was in helpful or on my side wasn't pushing the issue</i>
<i>The EEOC's mediation program is useless and I feel that the EEOC representative did not take my claim seriously and was disorganized.</i>
<i>The mediator was clearly not neutral. He was argumentative with me. Was very condescending</i>
<i>The mediator was on a too friendly a basis with the lawyer of my previous employer and had has several dealing with them in the past. It was like routine for him to deal with my opposing employers lawyers and other people there from HR.</i>
<i>I feel this is more of a hesitancy than an outright no. I feel that Complainants get less desirable outcomes in an EEOC mediation as opposed to private mediation. The mediator did not fully advise my client of the legal arguments being advanced by the other side or the fact issues, i.e. lacking in strengths and weaknesses analysis, and did not aggressively pursue settlement in the manner that I am accustomed to with paid mediators. Obviously, I understand that a free service has its limitations.</i>
<i>I will mediate in the future, but if I discover I have been assigned to [name], I will contact opposing counsel and tell them that we will have to use an outside mediator as we will not mediate with Mr. Dixon.</i>
<i>Inept mediator who failed to listen to the parties</i>
<i>I am not satisfied with this outcome, and if further investigating was performed I could have taken the case to court and received what I am entitled to. Not a bunch of lies and pennies that didn't even come close to covering my losses.</i>
<i>Release me to sue. This should have been resolved in 2018. Any delay just benefits the employer.</i>
<i>Because of the circumstances of this mediation; I would not trust the process if mediation was an option for a future event.</i>
<i>Because it was very unprofessional</i>
<i>Because I did not understand that the long wait for a session allows an employer to horse around and buy extra time to hire an expensive attorney and collect data for their response which was due months ago.</i>
<i>I was only placed back on the street, I still can't get correct uniforms and I had to wait two months before I was measured for a new vest, when my current vest has been expired for almost two years and falling apart. I was placed back on the street alone, when other officers that had been off the street had been allowed to ride with someone when my request was denied and was given a car without a working computer.</i>
<i>It seemed like a [waste] of time</i>

<i>I would not have initially considered mediation if my counterparty had been more cooperative at any point prior. I tried mediation with the belief that, despite my counterparty's posture, the mediator's approach would level the playing field and at least callout issues on all sides equally. Yet, I believe a mediation cannot be effective with one party believing (in a legal, argumentative way) that they have an open and shut case, they are making (as the mediator stated) "a business decision", and they are not responsive to concerns about desiring to mend the actual relationship between the parties. I went into the mediation skeptical, but hopeful. I left feeling coddled and herded. If the EEOC believes cases are open and shut, and see an unrelenting party postured in such way with their statement, they should not be encouraged to go into and proceed through a full day of mediation.</i>
<i>It didn't help me. I feel it was biased and didn't work in my favor.</i>
<i>Mediation seems more biased for the employer only interested in high profile cases.</i>
<i>Sides were taken it seemed</i>
<i>The program is worthless a lot of favoritism involved</i>
<i>My experience as a litigator is that EEOC mediations rarely result in a resolution in my matters. It seems like a delaying tactics by employers/respondents where they low-ball claimants and simply delay the process of litigating when they are not truly making good faith attempts to resolve the matters.</i>
Respondent and Representative
<i>There was no value to this process and it forced us to show our defense. We should have gone straight to trial.</i>
<i>I felt there was no flexibility and not enough information shared or discussion. I also wanted to participate in an additional meeting but was told that was not an option. (?)</i>
<i>Mediator was super nice but I would prefer a different style of mediation.</i>
<i>It was a waste of time. The mediator did not assist the parties in reaching resolution.</i>
<i>Mediator was creating a non charging matter worth monetary gain opportunity and not dismiss the case for some money. Since the charges are groundless.</i>
<i>The mediator was not effective in assisting the parties in reaching a compromise in light of the available evidence and allegations.</i>
<i>False accusations that are rewarded by monetary gain is not a fair and neutral playing field. Money was saved from a long drawn out trial so that is fair enough.</i>
<i>IF the claim was actually true, then I would. However, there seems to be no sign that EEOC cares if the claim is true or not. They have no liability or concern towards the small business owner who has done nothing wrong. This is an unfair biased organization that empowers people to make claims with zero or very little real evidence. It gives money to underserving people who have found a way to make easy money through EEOC. Small business owners have no choice but to mediate because it's advertised as free, but then a mediator comes in with the sole purpose to come up with a number in the quickest time possible.</i>
<i>Mediation goal seems to just be what we are willing to give the claiming party. Not that the charge was totally bogus and should just have been resolved.</i>
<i>I would only participate in a mediation session with the EEOC if specifically requested by my client. I prefer private mediators who are not nakedly antagonistic to employers.</i>
<i>Our case had a claimant's attorney who is unfamiliar with employment law. The mediator was unfamiliar with the facts and law and therefore did not challenge the charging party or counsel with any of the fundamental problems with the charging party's claim in a meaningful manner. If I attempt to mediate at the EEOC phase again, I will likely use a private mediator who is more familiar with the applicable law.</i>
<i>I felt due to the evidence that I would rather have an investigator do the investigation and give his findings.</i>
<i>Not very effective and became more of a numbers game led by plaintiff's attorney.</i>
<i>We will have to carefully weigh the cost benefits of mediation. It is obvious, mediation is a way to extort money from employers. Employers have 3 options: 1) face the onslaught of the EEOC's discovery process, or 2) defend meritless cases filed by the charging party's attorney where they hope for some positive resolution so attorney fees can be granted, or 3) buy its way out of options 1 and 2 by paying the charging party a settlement to which he/she is not entitled. The</i>

EEOC needs to spend time and effort screening cases before placing employers in this perilous situation.

Table 36a. Degree of Agreement to the Statement: “If I had a future case with the EEOC, I would prefer to participate in an EEOC mediation via video mediation even if in-person mediation is allowed.”

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total responding	1137	100%	413	100%	724	100%
Strongly Disagree	44	4%	22	5%	22	3%
Disagree	101	9%	36	9%	65	9%
Neither Agree nor Disagree	239	21%	92	22%	147	20%
Agree	307	27%	100	24%	207	29%
Strongly Agree	446	39%	163	39%	283	39%
Mean Rating *	3.8883		3.8378		3.9171	

Table 36b. Reasons for Preferring Video Mediation to In-Person Mediation*Question: Please select your main reason(s) for preferring video mediation to in-person mediation.*

	All Participants		Charging Party and Party Representative		Respondent and Party Representative	
	#	%	#	%	#	%
Total participants who prefer video mediation over in-person mediation	753		263		490	
Travel challenge - I do not have ready means of convenient transportation.	103	14%	40	10%	63	9%
Location challenge – I do not want to travel to the EEOC office location.	436	58%	144	35%	292	40%
I would not want to be in the same location as the other party.	135	18%	81	20%	54	7%
I prefer to be online due to the issue being mediated.	117	16%	59	14%	58	8%
Allows for others to attend mediation or be available if needed who would not otherwise may not be able to do so.	447	59%	134	33%	313	43%
Cost considerations.	431	57%	114	28%	317	44%
Current job obligations.	204	27%	48	12%	156	22%
Other (See list below.)	77	10%	36	9%	41	6%

Table 36c. Reasons for Preferring Video Mediation to In-Person Mediation – Reasons Given by Charging Parties

Question: Please select your main reason(s) for preferring video mediation to in-person mediation: Other, please specify.

Charging Parties' Responses/Reasons
<i>I was able to choose a place where I was comfortable which eased the stress of the process.</i>
<i>Convenience</i>
<i>Convenience and it's in accordance with Covid protocols</i>
<i>It is generally more convenient.</i>
<i>It is more convenient to meet via video</i>
<i>Due to COVID mediation was the option.</i>
<i>I have long covid issues. The company hired lesser qualified younger white males and promoted them rather than to promote an older disabled female. Seeing them makes me feel dehumanized.</i>
<i>Virtual conferences acceptable method of meeting due Covid.</i>
<i>I did it over the phone. I felt very comfortable and less stressed and it allowed me to have all of my paperwork at my fingertips</i>
<i>In 2014, I traveled to San Jose, CA. (from Oakland) for my EEOC case. Mediation was about 8 or more hrs. The commute was too long and traveling on 880 (freeway needed for my commute) is dangerous (accidents, road rage, angry drivers, & drivers who speed).</i>
<i>Auditory challenges supported by video mediation</i>
<i>I believe that was the only option</i>
<i>I have a really hard time driving. Due to my anxiety. I do not even like being in a car at all.</i>
<i>It difficult to sit in one's presence knowing what they did to me just to see them lie about it</i>

Table 36d. Reasons for Preferring Video Mediation to In-Person Mediation – Reasons Given by Charging Party Representatives

Question: Please select your main reason(s) for preferring video mediation to in-person mediation: Other, please specify.

Charging Party Representatives' Responses/Reasons
<i>Convenience of doc sharing via Zoom</i>
<i>Convenience of the parties.</i>
<i>Convenience. I would be willing to mediate in-person (and have multiple times, including at the EEOC), but virtual mediations are extremely convenient.</i>
<i>It is generally more convenient.</i>
<i>Zoom mediations are just as effective as in person, unless special circumstances exist. This also allows participants to be more comfortable, allowing for increased patience in the process. I hope that zoom continues to be the preferred method for mediation</i>
<i>Just convenient, especially for cases that don't resolve. Time not wasted.</i>
<i>Mediation via Zoom is very cost effective, saves time and money and easier to schedule sooner. OUR CLIENTS AND OUR FIRM LOVE IT!</i>
<i>I can do everything I would normally do in mediation in the comfort of my home. It reduces costs (although, I'm not really concerned about that) and its just better. I honestly don't understand why we do any work in-person unless necessary.</i>
<i>More scheduling dates available where we are not close to the district offices</i>
<i>As a Non-attorney Representative, I have clients all over the country and the costs of travel would be prohibitive and counterproductive in most instances</i>
<i>COVID safety.</i>
<i>Doesn't require the parties to waste time.</i>
<i>Ongoing pandemic</i>
<i>The online mediation is much more efficient</i>
<i>Time and efficiency</i>
<i>Video mediation is a more efficient use of resources.</i>
<i>My clients are typically not wealthy or sophisticated and they are very nervous about getting dressed up and traveling to a stuffy office building</i>
<i>Can also complete other work while awaiting a response from the other side</i>
<i>It is significantly easier to schedule a virtual mediation compared to an in-person mediation</i>
<i>Saves time</i>
<i>Easier to schedule and get an earlier date. More can easily participate since there is no travel involved</i>
<i>Efficiency of process</i>

Table 36e. Reasons for Preferring Video Mediation to In-Person Mediation – Reasons Given by Respondents

Question: Please select your main reason(s) for preferring video mediation to in-person mediation: Other, please specify.

Respondents' Responses/Reasons
<i>Convenience</i>
<i>Just more convenient.</i>
<i>More time and money saved, period.</i>
<i>COVID</i>
<i>video mediation allows for more flexibility</i>
<i>ability to do other things at my desk while waiting</i>
<i>ability to multi-task</i>
<i>On breaks I was able to work. That would not have been the case if we were all out of the office for mediation.</i>
<i>Video mediation allows for multi-tasking while waiting in breakout rooms; it is much more efficient. I also feel it's more productive as it takes some of the emotion out - emotions can run high when all parties in the same room with one another.</i>
<i>Efficiency of time, and pandemic-related concerns</i>
<i>Ease of use allowed it to proceed smoothly without the hassle of travel and bouncing between rooms.</i>
<i>Ability to reach out to others within the organization to help settle the matter.</i>
<i>Video mediation allowed me to not say or show my emotions whereas an in-person meeting would likely have caused an impasse.</i>
<i>If Covid-19 is ongoing, I would prefer to be in a video mediation rather than in a closed conference room with others for many hours.</i>
<i>If possible, I would make the decision on a case-by-case basis.</i>

Table 36f. Reasons for Preferring Video Mediation to In-Person Mediation – Reasons Given by Respondent Representatives

Question: Please select your main reason(s) for preferring video mediation to in-person mediation: Other, please specify.

Respondent Representatives' Responses/Reasons
<i>Cost, convenience, ability to get all decisionmakers to attend</i>
<i>General convenience for the parties and representatives.</i>
<i>Its simply more convenient and time/cost effective. It would have cost the entire day to go to the EEOC office by the time we wrapped up. With ZOOM, I still had a half day to get other things accomplished. Video is a modern and better option.</i>
<i>just overall convenience</i>
<i>The convenience of attending mediation via ZOOM from work/home with process as effective as in person at EEOC office.</i>
<i>Reduces costs to client as no travel time to account for and client can remain at the workplace to address onsite issues that may arise during mediation</i>
<i>Saves cost for legal fees for the respondent (my clients) so they may have more money to contribute to a resolution, which was true in this case. Personal appearance requires additional billed hour time to the client.</i>
<i>The Zoom/Video mediations save a tremendous amount of travel time and expense. This is invaluable.</i>
<i>All involved in the mediation would need to attest to being fully vaccinated against COVID-19 before I would be comfortable participating in person.</i>
<i>Covid</i>
<i>COVID</i>
<i>COVID, efficiency, convenience, ease of technology</i>
<i>COVID, just as effective and reduces travel cost/expense.</i>
<i>Covid-19</i>
<i>Prevents the spread of COVID-19</i>
<i>Allows for flexibility for all parties and timely scheduling - Mediation virtual was managed professionally and I think the process allows all parties to be comfortable</i>
<i>Ability to multitask during down time.</i>
<i>Allows parties to engage in other activities while the mediator is meeting privately with the other participants. The lack of travel time, dealing with parking, etc. make the virtual mediation much more efficient for all involved.</i>
<i>Easier as a working parent to participate remotely, given child care obligations.</i>
<i>Cases get resolved quicker via Zoom/online. Parties get to the point quicker. Much more efficient, especially with an excellent mediator such as Mr. Melendez.</i>
<i>Makes it easier to schedule when travel is not involved - more cost and time effective</i>
<i>more efficient and convenient</i>
AVOIDS WASTING TIME/ HASSLE GETTING TO/FROM MEDIATION
<i>I strongly prefer virtual mediation because it does not waster my whole day. I can get work done while the mediatory is communicating separately with the other side as opposed to being at an in-person location where the time would be wasted.</i>
<i>It is a great tool for clients to participate without needing to travel and is particularly helpful when there are out of state individuals who need to be involved.</i>

Table 37a. Degree of Agreement to the Statement: “The use of video mediation makes it more attractive for my organization to participate in the EEOC Mediation Program.” (Among Respondents Only)

	Respondents	
	#	%
Total responding	250	100%
Strongly Disagree	6	2%
Disagree	7	3%
Neither Agree nor Disagree	84	34%
Agree	94	38%
Strongly Agree	59	24%
Mean Rating *	3.7720	

Table 37b. Reasons for Preferring In-Person Mediation to Video Mediation (Among Respondents Only)

Question: Please state your reason(s) for preferring in-person mediation to video mediation.

	Respondents	
	#	%
Total responding	13	
I want to be in the same location as the other party.	10	77%
I want to speak to or look the other party in the eye.	12	92%
I hope to resolve the charge and “shake hands” in a positive in-person process.	5	38%
The in-person mediation is more formal.	9	69%
Others are more focused in an in-person mediation.	7	54%
I am more focused in an in-person mediation.	5	38%
I want to be able to see what the mediator is doing in person.	8	62%
Other reasons:	2	15%
<i>Being in person makes all parties commit time to the process and have more skin in the game.</i>		
<i>Most likely never do mediation again regardless of platform</i>		

Table 38. Mediation Participants' Suggestions*Question: Please explain in detail how you believe EEOC's mediation process can be improved.*

Number responding	444	
None; process was great/went smoothly/effective/best practice/outstanding; great experience; EEOC staff very professional/impressed with the process	147	33%
Mediator was excellent/knowledgeable/professional/skilled; was fair/neutral; satisfied with how mediator handled the session; impressed with mediator's ability to work towards a resolution; mediator helpful/explained the process; mediator was not intimidating; mediator gave participant confidence to talk; mediator was helpful	129	29%
Mediators need to be assertive/recognize when no settlement is possible/suggest options; mediator need more training/experience; mediator should do more than "shuttling" offers from one party to the other; mediators should be neutral; EEOC need more mediators (for scheduling mediations faster/earlier)	39	9%
Expressed preference for online/video/Zoom mediation: Continue with virtual mediation/allow for virtual participation; video mediation is flexible/convenient/saves time and money; video mediation avoid intimidating/uncomfortable situations	33	7%
Expressed preference for in-person mediation: In-person is more effective/works better; greater investment of time and effort; a different dynamic that encourages settlement; process for obtaining signature [shortened]; human presence\	19	4%
Pre-mediation or beginning-of-session suggestions: Ask/clarify party demands prior to meeting; inform parties of participants (especially, presence or absence of legal counsel); check/ensure both parties' willingness to negotiate/discuss; manage expectations (especially relating to monetary demands); explain the process; require/explain if opening statements are required; review evidence/documents beforehand	31	7%
Participant behavior: parties should come to mediation in good faith/sincere/open to dialogue; come with legal representation; should state demand/no offer	15	3%
Technology-related concerns/suggestions: Ensure strong internet connection; participants should be knowledgeable with using video; prefer Zoom – had issues with Microsoft Teams	14	3%
Documents: Exchange of documents; no documents withheld; upload documents for both parties to review; uniform software for signing documents	10	2%

APPENDIX C – THREE DATA POINT COMPARISON TABLES

Table 1a. Responses to Statements Concerning Fairness and Satisfaction with EEOC Mediation: 2000, 2018/19, 2021 Data						
Statements	2000 Data		2018/19 Data		2021 Data	
	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *
The procedures used by the mediator in the mediation were fair to me.	3232	4% - 6% - 90%	2681	2% - 4% - 95%	1177	4% - 5% - 91%
I was satisfied with the fairness of the mediation session.	3207	6% - 11% - 83%	2676	3% - 6% - 91%	1183	5% - 7% - 88%
I was satisfied with the results of the mediation.	3024	22% - 20% - 59%	2397	16% - 17% - 67%	1180	14% - 19% - 68%
<p>* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.</p>						

**Table 1b. Comparison of Mean Ratings*:
2000, 2018/19, 2021 Data
Responses to Statements Concerning
Fairness and Satisfaction with EEOC Mediation**

Statements	2000 Mean Rating**	2018/19 Mean Rating**	2021 Mean Rating**
The procedures used by the mediator in the mediation were fair to me.	4.38	4.70	4.45
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: 0.017		
Mean difference test: 2018/19 compared to 2021	p-value: Less than 0.001		
I was satisfied with the fairness of the mediation session.	4.19	4.58	4.39
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: Less than 0.001		
Mean difference test: 2018/19 compared to 2021	p-value: Less than 0.001		
I was satisfied with the results of the mediation.	3.52	3.86	3.87
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: Less than 0.001		
Mean difference test: 2018/19 compared to 2021	p-value: 0.942		
<p>* ANOVA tests indicate that the differences in mean/average ratings for the three survey periods are statistically significant (with p-value less than 0.001). This table shows the post-test multiple comparisons of mean/average ratings. ** Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5) *** Bolded entries refer to statistically significant differences at the 95% or 99% level.</p>			

**Table 1c. Responses to Statements Concerning
Fairness and Satisfaction with EEOC Mediation:
2000, 2018/19, 2021 Data
Tabulated by Party**

State- ments	2000 Data				2018/19 Data				2021 Data			
	CP/CP Rep		RSP/RSP Rep		CP/CP Rep		RSP/RSP Rep		CP/CP Rep		RSP/RSP Rep	
	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*
Statement #1	1668	4% - 7% - 88%	1564	3% - 5% - 92%	1197	2% - 4% - 94%	1484	2% - 3% - 95%	433	7% - 7% - 86%	744	2% - 5% - 94%
Statement #2	1648	8% - 13% - 79%	1559	4% - 9% - 87%	1194	5% - 7% - 88%	1482	2% - 5% - 92%	432	10% - 8% - 82%	751	1% - 7% - 91%
Statement #3	1547	26% - 19% - 55%	1477	18% - 20% - 63%	1069	21% - 17% - 62%	1328	12% - 16% - 72%	428	21% - 19% - 60%	752	9% - 19% - 72%
Statements:												
Statement #1	The procedures used by the mediator in the mediation were fair to me.											
Statement #2	I was satisfied with the fairness of the mediation session.											
Statement #3	I was satisfied with the results of the mediation.											
* The three percentages refer to, firstly, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement												

**Table 1d. Comparison of Mean Ratings* by Party:
2000, 2018/19, 2021 Data
Responses to Statements Concerning
Fairness and Satisfaction with EEOC Mediation**

Statements	2000 Data		2018/19 Data		2021 Data	
	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*
The procedures used by the mediator in the mediation were fair to me.	4.33	4.44	4.69	4.70	4.36	4.52
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	Less than 0.001		0.660		0.001	
I was satisfied with the fairness of the mediation session.	4.07	4.31	4.52	4.63	4.24	4.47
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	Less than 0.001		0.001		Less than 0.001	
I was satisfied with the results of the mediation.	3.38	3.67	3.66	4.02	3.64	4.01
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	Less than 0.001		Less than 0.001		Less than 0.001	

* Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)
** Bolded entries refer to statistically significant differences at the 95% or 99% level.

**Table 2a. Responses to Statements Concerning the Mediation Process
2000, 2018/19, and 2021 Data**

Statements	2000 Data		2018/19 Data		2021 Data	
	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *
Prior to my attendance at this mediation session today, I received an adequate explanation about mediation from an EEOC representative.	3153	7% - 6% - 87%	2482	4% - 5% - 91%	1150	5% - 9% - 85%
The mediation was scheduled promptly.	3232	6% - 5% - 89%	2651	3% - 4% - 92%	-	-
After the mediator's introduction at the mediation session, I felt that I understood the mediation process.	3237	3% - 3% - 94%	2651	2% - 2% - 96%	-	-
<i>2021 Survey: After the mediator's introduction at the mediation session, I understood how to use the mediation technology.</i>	-	-	-	-	1152	5% - 8% - 88%
I (or my representative) had a full opportunity to present my views during the mediation process.	3240	3% - 4% - 92%	2684	2% - 3% - 96%	1186	4% - 4% - 93%
* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.						

Table 2b. Comparison of Mean Ratings*
2000, 2018/19, 2021 Data
Responses to Statements Concerning the Mediation Process

Statements	2000 Mean Rating**	2018/19 Mean Rating**	2021 Mean Rating**
Prior to my attendance at this mediation session today, I received an adequate explanation about mediation from an EEOC representative.	4.23	4.55	4.25
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: 0.681		
Mean difference test: 2018/19 compared to 2021	p-value: Less than 0.001		
The mediation was scheduled promptly.	4.34	4.59	-
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	Not Applicable		
Mean difference test: 2019 compared to 2021	Not applicable		
After the mediator's introduction at the mediation session, I felt that I understood the mediation process.	4.44	4.75	-
<i>2021 Survey: After the mediator's introduction at the mediation session, I understood how to use the mediation technology.</i>	-	-	4.32
Mean difference test: 2000 compared to 2018/19	Not Applicable		
Mean difference test: 2000 compared to 2021	Not Applicable		
Mean difference test: 2019 compared to 2021	Not Applicable		
I (or my representative) had a full opportunity to present my views during the mediation process.	4.47	4.75	4.50
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: 0.488		
Mean difference test: 2019 compared to 2021	p-value: Less than 0.001		
<p>* ANOVA tests indicate that the differences in mean/average ratings for the three survey periods are statistically significant (with p-value less than 0.001). This table shows the post-test multiple comparisons of mean/average ratings. ** Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5) *** Bolded entries refer to statistically significant differences at the 95% or 99% level.</p>			

**Table 2c. Responses to Statements Concerning the Mediation Process:
2000, 2018/19, 2021 Data
Tabulated by Party**

Statements	2000 Data				2018/19 Data				2021 Data			
	CP/CP Rep		RSP/RSP Rep		CP/CP Rep		RSP/RSP Rep		CP/CP Rep		RSP/RSP Rep	
	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*
Statement #1	1637	7% - 5% - 88%	1516	6% - 8% - 85%	1113	5% - 4% - 91%	1369	3% - 5% - 91%	418	6% - 10% - 85%	732	5% - 9% - 87%
Statement #2	1673	7% - 5% - 88%	1559	4% - 5% - 91%	1188	4% - 5% - 91%	1463	3% - 4% - 93%	-	-	-	-
Statement #3a	1676	4% - 5% - 92%	1561	2% - 2% - 96%	1183	2% - 3% - 96%	1468	1% - 2% - 97%	-	-	-	-
Statement #3b	-	-	-	-	-	-	-	-	419	6% - 10% - 85%	733	4% - 7% - 89%
Statement #4	1677	4% - 6% - 90%	1563	2% - 3% - 95%	1201	2% - 3% - 95%	1483	2% - 2% - 96%	433	8% - 5% - 87%	753	2% - 3% - 95%
Statements:												
Statement #1	Prior to my attendance at this mediation session today, I received an adequate explanation about mediation from an EEOC representative.											
Statement #2	The mediation was scheduled promptly.											
Statement #3a	After the mediator's introduction at the mediation session, I felt that I understood the mediation process.											
Statement #3b	<i>2021 Survey: After the mediator's introduction at the mediation session, I understood how to use the mediation technology.</i>											
Statement #4	I (or my representative) had a full opportunity to present my views during the mediation process.											
* The three percentages refer to, firstly, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement												

**Table 2d. Comparison of Mean Ratings by Party:
2000, 2018/19, 2021 Data
Responses to Statements Concerning the Mediation Process**

Statements	2000 Data		2018/19 Data		2021 Data	
	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*
Prior to my attendance at this mediation session today, I received an adequate explanation about mediation from an EEOC representative.	4.24	4.21	4.56	4.54	4.28	4.24
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	0.354		0.607		0.489	
The mediation was scheduled promptly.	4.28	4.39	4.56	4.62	-	-
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	0.001		0.046		-	
After the mediator's introduction at the mediation session, I felt that I understood the mediation process.	4.35	4.53	4.72	4.77	-	-
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	Less than 0.001		0.057		-	
<i>2021 Survey: After the mediator's introduction at the mediation session, I understood how to use the mediation technology.</i>	-	-	-	-	4.29	4.35
Mean difference test: CP/CP Rep compared to RSP/RSP Rep					0.278	
I (or my representative) had a full opportunity to present my views during the mediation process.	4.39	4.57	4.71	4.77	4.38	4.58
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	Less than 0.001		0.011		Less than 0.001	
* Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)						
** Bolded entries refer to statistically significant differences at the 95% or 99% level.						

**Table 3a. Responses to Statements Concerning the Mediator:
2000, 2018/19, 2021 Data**

Statements	2000 Data		2018/19 Data		2021 Data	
	#	SD/D - N - A/SA *	#	SD/D - N - A/SA *	#	SD/D - N - A/SA*
The mediator understood my needs.	3221	4% - 9% - 87%	2662	2% - 5% - 93%	-	-
The mediator helped clarify my needs.	3169	5% - 13% - 82%	2605	2% - 7% - 91%	-	-
At the beginning of the mediation, I considered the mediator to be neutral.	3240	3% - 5% - 92%	2693	2% - 3% - 95%	1180	2% - 4% - 94%
The mediator remained neutral during the session.	3228	4% - 6% - 90%	2691	2% - 3% - 94%	1181	5% - 5% - 91%
The mediator helped the parties develop options for resolving the charge.	3206	5% - 10% - 85%	2630	3% - 7% - 90%	1176	6% - 11% - 83%
Most of the options developed during the mediation session were realistic solutions to resolving the charge.	3167	10% - 14% - 75%	2598	5% - 10% - 84%	1177	5% - 15% - 80%
* The three percentages refer to, first, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement.						

**Table 3b. Comparison of Mean Ratings*:
2000, 2018/19, 2021 Data
Responses to Statements Concerning the Mediator**

Statements	2000 Mean Rating**	2018/19 Mean Rating**	2021 Mean Rating**
The mediator understood my needs.	4.30	4.67	-
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	Not Applicable		
Mean difference test: 2018/19 compared to 2021	Not Applicable		
The mediator helped clarify my needs.	4.21	4.60	-
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	Not Applicable		
Mean difference test: 2018/19 compared to 2021	Not Applicable		
At the beginning of the mediation, I considered the mediator to be neutral.	4.46	4.73	4.52
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: 0.052		
Mean difference test: 2018/19 compared to 2021	p-value: Less than 0.001		
The mediator remained neutral during the session.	4.43	4.70	4.47
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: 0.253		
Mean difference test: 2018/19 compared to 2021	p-value: Less than 0.001		
The mediator helped the parties develop options for resolving the charge.	4.25	4.55	4.25
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: 0.986		
Mean difference test: 2018/19 compared to 2021	p-value: Less than 0.001		
Most of the options developed during the mediation session were realistic solutions to resolving the charge.	3.97	4.41	4.19
Mean difference test: 2000 compared to 2018/19	p-value: Less than 0.001		
Mean difference test: 2000 compared to 2021	p-value: Less than 0.001		
Mean difference test: 2018/19 compared to 2021	p-value: Less than 0.001		

* ANOVA tests indicate that the differences in mean/average ratings for the three survey periods are statistically significant (with p-value less than 0.001). This table shows the post-test multiple comparisons of mean/average ratings.

** Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)

*** Bolded entries refer to statistically significant differences at the 95% or 99% level.

**Table 3c. Responses to Statements Concerning the Mediator:
2000, 2018/19, 2021 Data
Tabulated by Party**

Statement	2000 Data				2018/19 Data				2021 Data			
	CP/CP Rep		RSP/RSP Rep		CP/CP Rep		RSP/RSP Rep		CP/CP Rep		RSP/RSP Rep	
	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*	#	SD/D - N - A/SA*
Statement #1	1669	5% - 9% - 86%	1552	3% - 10% - 87%	1194	3% - 4% - 93%	1468	1% - 5% - 94%	-	-	-	-
Statement #2	1665	5% - 10% - 84%	1504	4% - 17% - 79%	1185	3% - 6% - 91%	1420	2% - 7% - 91%	-	-	-	-
Statement #3	1674	4% - 4% - 92%	1566	3% - 5% - 92%	1206	3% - 2% - 95%	1487	2% - 3% - 95%	429	4% - 5% - 91%	751	1% - 3% - 96%
Statement #4	1664	4% - 5% - 91%	1564	4% - 6% - 89%	1203	3% - 3% - 94%	1488	2% - 4% - 94%	429	8% - 6% - 87%	752	3% - 4% - 94%
Statement #5	1661	5% - 10% - 85%	1545	5% - 11% - 84%	1177	3% - 6% - 91%	1453	3% - 8% - 89%	428	10% - 10% - 79%	748	3% - 12% - 85%
Statement #6	1648	12% - 13% - 75%	1519	9% - 16% - 76%	1159	6% - 10% - 84%	1439	5% - 10% - 85%	427	9% - 14% - 77%	750	4% - 15% - 81%
Statements:												
Statement #1	The mediator understood my needs.											
Statement #2	The mediator helped clarify my needs.											
Statement #3	At the beginning of the mediation, I considered the mediator to be neutral.											
Statement #4	The mediator remained neutral during the session.											
Statement #5	The mediator helped the parties develop options for resolving the charge.											
Statement #6	Most of the options developed during the mediation session were realistic solutions to resolving the charge.											
* The three percentages refer to, firstly, the % who "Strongly Disagreed" or "Disagreed", followed by the % who "Neither Agreed nor Disagreed, and, lastly, the % who "Agreed" or "Strongly Agreed" with each corresponding statement												

Table 3d. Comparison of Mean Ratings by Party: 2000, 2018/19, 2021 Data Responses to Statements Concerning the Mediator						
Statements	2000 Data		2018/19 Data		2021 Data	
	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*	CP/CP Rep Mean Rating*	RSP/RSP Rep Mean Rating*
The mediator understood my needs.	4.30	4.31	4.64	4.69	-	-
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	0.726		0.148		-	
The mediator helped clarify my needs.	4.25	4.17	4.61	4.60	-	-
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	0.011		0.900		-	
At the beginning of the mediation, I considered the mediator to be neutral.	4.44	4.49	4.71	4.74	4.49	4.54
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	0.076		0.421		0.192	
The mediator remained neutral during the session.	4.42	4.43	4.71	4.70	4.38	4.52
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	0.586		0.726		0.007	
The mediator helped the parties develop options for resolving the charge.	4.27	4.23	4.58	4.52	4.21	4.28
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	0.235		0.069		0.212	
Most of the options developed during the mediation session were realistic solutions to resolving the charge.	3.95	4.00	4.39	4.41	4.16	4.20
Mean difference test: CP/CP Rep compared to RSP/RSP Rep	0.221		0.567		0.494	
* Mean ratings are computed based on a 5-point Likert scale: Strongly disagree (1), Disagree (2), Neither Agree nor Disagree (3), Agree (4), and Strongly Agree (5)						
** Bolded entries refer to statistically significant differences at the 95% or 99% level.						

Comparison Table 4a. Participants' Expectations Going into the Mediation and What They Obtained at End of Mediation 2000, 2018/19, 2021 Data						
	2000 Data		2018/19 Data		2021 Data	
	All Participants		All Participants		All Participants	
	#	%	#	%	#	%
Going into the mediation, did you know what you wanted from this mediation?	3122	100%	2489	100%	1142	100%
Yes	2630	84%	2014	81%	1066	93%
No	492	16%	475	19%	76	7%
For those who responded YES to the question above: In this mediation did you obtain what you wanted going into the mediation?	2548	100%	1939	100%	-	-
Yes	1279	50%	1071	55%	-	-
No	1269	50%	868	45%	-	-
<i>2021 Survey: For those who responded YES to the question above: In this mediation did you obtain what you wanted going into the mediation?</i>	-	-	-	-	1039	100%
I received nothing of what I wanted	-	-	-	-	253	24%
I received some of what I wanted	-	-	-	-	282	27%
I received much or a majority of what I wanted	-	-	-	-	346	33%
I received everything I wanted	-	-	-	-	158	15%

**Table 4b. Participants' Expectations Going into the Mediation and
What They Obtained at End of Mediation
2000, 2018/19, 2021 Data
Tabulated by Party**

	2000 Data		2018/19 Data		2021 Data	
	CP/ CP Rep (#)	RSP/ RSP Rep (#)	CP/ CP Rep (#)	RSP/ RSP Rep (#)	CP/ CP Rep (#)	RSP/ RSP Rep (#)
Going into the mediation, did you know what you wanted from this mediation?	100% (1607)	100% (1515)	100% (1102)	100% (1387)	100% (412)	100% (730)
Yes	83%	86%	82%	80%	93%	94%
No	17%	14%	18%	20%	7%	6%
For those who responded YES to the question above: In this mediation did you obtain what you wanted going into the mediation?	100% (1282)	100% (1266)	100% (868)	100% (1071)	-	-
Yes	42%	58%	44%	64%	-	-
No	58%	42%	56%	36%	-	-
<i>2021 Survey options:</i>					100% (375)	100% (664)
<i>I received nothing of what I wanted</i>	-	-	-	-	33%	20%
<i>I received some of what I wanted</i>	-	-	-	-	32%	25%
<i>I received much or majority of what I wanted</i>	-	-	-	-	29%	36%
<i>I received everything I wanted</i>	-	-	-	-	7%	20%

**Table 5a. Participants' Willingness to Participate in the
EEOC Mediation Program in the Future
2000, 2018/19, 2021 Data**

	2000 Data		2018/19 Data		2021 Data	
	All Participants		All Participants		All Participants	
	#	%	#	%	#	%
If you were a party to a charge before the EEOC in the future, would you be willing to participate in the EEOC's mediation program?	3178	100.0%	2578	100.0%	1135	100.0%
Yes	3035	95%	2482	96%	1084	96%
No	143	5%	96	4%	51	4%

**Table 5b. Participants' Willingness to Participate in the
EEOC Mediation Program in the Future
2000, 2018/19, 2021 Data
Tabulated by Party**

	2000 Data		2018/19 Data		2021 Data	
	CP/ CP Rep (#)	RSP/ RSP Rep (#)	CP/ CP Rep (#)	RSP/ RSP Rep (#)	CP/ CP Rep (#)	RSP/ RSP Rep (#)
If you were a party to a charge before the EEOC in the future, would you be willing to participate in the EEOC's mediation program?	100% (1643)	100% (1535)	100% (1149)	100% (1429)	100% (411)	100% (724)
Yes	93%	98%	95%	98%	92%	98%
No	7%	2%	5%	2%	8%	2%

