

Zoom Mediations Are Effective and Here to Stay

By Patrick Keel



Patrick Keel, a former state district judge, has been a full-time mediator and arbitrator for over 16 years, helping resolve thousands of disputes involving all areas of civil litigation. He is also an adjunct professor and frequent guest lecturer at the UT School of Law.

After months of mediating cases by Zoom, how do lawyers feel about the video format compared to traditional, in-person mediation? I was genuinely curious, so I asked all lawyers in my contacts list. Over 300 shared their opinions by replying to an on-line survey.

The responses confirmed my suspicion: Lawyers believe that mediating by video conference has worked well. In fact, a huge majority of lawyers (75%) report that their effectiveness as advocates for their clients has been unchanged or even *improved* while using the video format (See Chart 1).

Likewise, 70% of lawyers rate the effectiveness of mediators as unchanged or even *better* by video (See Chart 2).

Moreover, the above responses reflect the opinions of experienced lawyers, not just young attorneys who might be expected to more easily adapt to mediating

by video. Over 76% of the survey's respondents have practiced law for more than 15 years; only about 2% have been practicing for fewer than five years (See Chart 3).

Many of the responding lawyers' comments strike familiar themes: Mediating by video is different but manageable, eliminates the stress of travel and other logistical challenges, and minimizes "downtime" during mediation sessions.

What about the opportunity to reach a settlement by video compared to mediating in person? As with their views about mediators' and their own effectiveness, the responding lawyers reported either no change or an improvement—59% said no change and 13% said that the video format actually improved the chances of striking a deal (See Chart 4).

As one lawyer commented: *If a case is not going to settle live, it won't settle by Zoom. If it likely would settle live, it'll likely settle by Zoom.*

Finally, the above enthusiasm for mediating by video is also reflected in lawyers' predictions about the future. When asked whether they are likely to consider using video for mediations after the pandemic is over, a whopping 69% said yes. Only 12% said no, with the remaining 19% saying maybe (See Chart 5).

Among those who said they would consider mediating by video in the future, 44% said they would prefer to attend more than half of their mediations by video. See Chart 6).

As one lawyer said: *Even after COVID, Zoom will have become the venue of choice for those who want to reduce travel time and expenses.* Another predicted: *There still will be occasions when in-person interaction between the mediator and one or more parties will prove beneficial. In most instances, that will not be a factor.*

Here is a prediction of my own: Although many practices developed during the pandemic will carry over to our “return to normal,” there are plenty of things we used to do in person that we will still prefer to do in person. Thus, I anticipate that some of my post-pandemic mediations will still be conducted by Zoom; but most, I expect,

will return to the traditional, in-person format.

Why? Right or wrong, I believe the view is cemented among both lawyers and mediators that personal interaction is a big part of mediation’s usefulness in settling disputes. Although platforms like Zoom have rescued us from sitting idle during Covid-19 and perhaps will cause some mediation participants to question expenses like travel, the majority of mediations will still be done in person, the “old-fashioned” way.

Time will tell. Here’s to being flexible enough to adapt to whatever the future holds.

Chart 1

Compared to the traditional, in-person format, mediating by video has made my ability to advocate for my clients:
343 responses

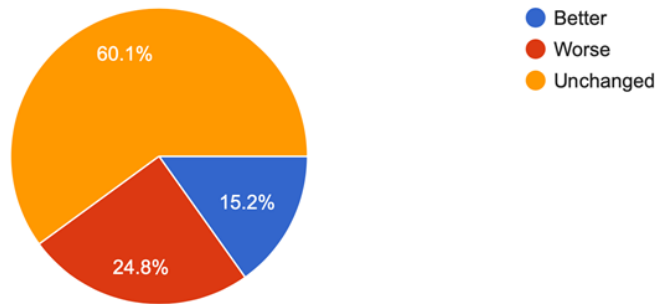


Chart 2

Compared to the traditional, in-person format, mediating by video has made mediators' effectiveness:
347 responses

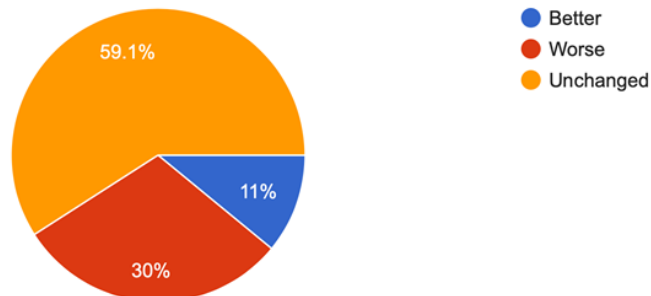


Chart 3

I have been licensed to practice law for:
348 responses

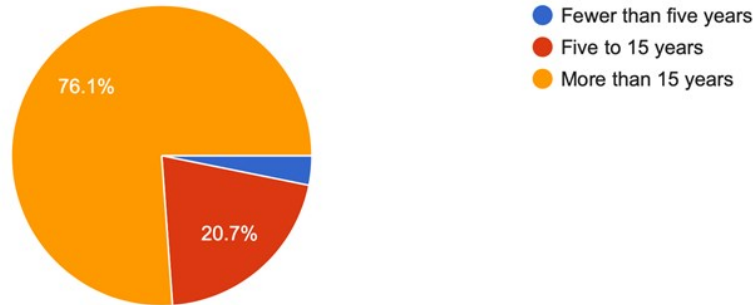


Chart 4

Compared to the traditional, in-person format, mediating by video has made the opportunity to reach a settlement:
345 responses

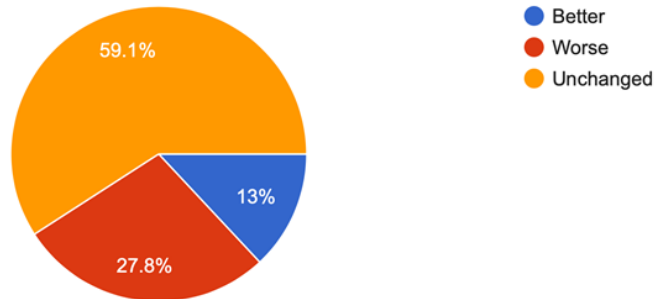


Chart 5

After the pandemic is over, are you still likely to consider using video for mediations?
347 responses

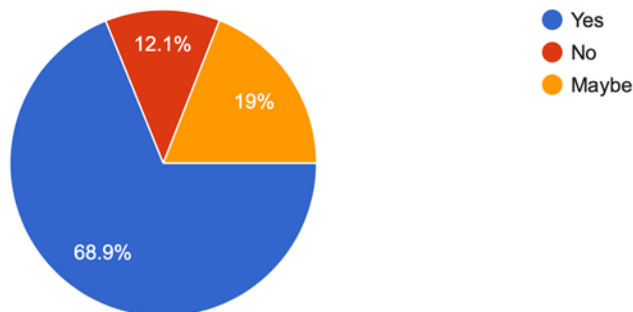


Chart 6

After the pandemic is over, what percentage of mediations would you PREFER to attend by video instead of in person?
303 responses

