



Survey

ADR PREFERENCE AND USAGE

*In Collaboration with General Practice Solo and Small Firm
Division of the American Bar Association*

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GPSOLO ADR SURVEY OVERVIEW

Purpose

The purpose of the GPSolo ADR survey was to assess the usage and preferences regarding negotiation, mediation and other forms of alternative dispute resolution (ADR) among the membership of the GPSolo Division of the ABA.

The survey goals were:

- (i) To determine which features of negotiation, mediation and other forms of ADR the members of GPSolo found most effective in serving their client cases,
- (ii) To identify the needs of GPSolo members that would allow them to effectively use ADR for client cases and
- (iii) To obtain a baseline of importance for further study of the GPSolo members' use of ADR for their client cases.

Survey Sample

The entire membership of the GPSolo Division of the ABA was eligible to participate in the survey and all members with email permissions were sent an email invitation to participate in the survey plus a follow-up reminder email approximately seven days later. Approximately 500 GPSolo Division members took the survey.

Survey Instrument

The instrument was composed of sixteen questions in multiple choice and text comment format.

The instrument was designed in four parts to elicit:

- (1) quantitative metrics regarding current ADR usage and practice area,
- (2) qualitative feedback regarding aspects of ADR,
- (3) attitudes and behaviors in the functional stages of negotiation and settlement and
- (4) open ended question designed to elicit comments about ADR usage.

Survey Administration

The survey was reviewed and finalized by the GPSolo Division of the American Bar Association and the National Arbitration Forum (FORUM) was administered by the independent survey company Surveys and Ballots, Inc.

The survey was posted online at the Surveys and Ballots, Inc. survey site, and the data was collected and reported, by Surveys and Ballots, Inc.

EXECUTIVE SUMMARY OF KEY FINDINGS

I. Current Usage and Views of ADR

More than one third (34.6%) of ABA GPSolo respondents resolved more than five cases through ADR last year, with 3.6% resolving over 25 cases through ADR. The majority of respondents resolved 5 or fewer cases through ADR last year.

A decided majority (over 85%) of ABA GPSolo respondents believe that their clients' interests are at least sometimes best served by offering ADR solutions. More than half of respondents also believe that: (1) their practice will include offering ADR solutions in the future; (2) offering ADR solutions is an ethical obligation as a practitioner; and (3) ADR use will increase in the future.

Most ABA GPSolo respondents want additional information about ADR including: empirical studies comparing litigation to ADR; effective contract drafting techniques; and education about the laws governing mediation and arbitration. More than one in three ABA GPSolo respondents would value opportunities to learn more about the distinctions and implications of the rules and panels of national ADR providers.

II. Mediation

Regarding mediation, more than 80% of ABA GPSolo respondents value mediators who are lawyers or former judges.

- While all respondents, regardless of practice area, highly rated having mediators who are lawyers or former judges, Securities, Insurance Defense and Employer-Employee practitioners were unanimous (100%) on this point. Additionally, more than 90% of Plaintiff Counsel (Personal Injury/MedMal) practitioners valued having mediators who are lawyers or former judges.
- Of the respondent Construction Law practitioners, 66% highly rated the availability of “a competent mediation panel as opposed to an ‘elite’ panel, priced accordingly.” Of respondent Health and Disability practitioners, 60% also rated this highly.
- The majority of Staff Counsel and Employer-Employee practitioners value the ability to select a mediator from a roster provided by an ADR administrator, thereby assuring that the mediator has been screened for qualifications and is in compliance with institutional codes of ethics.

More than 28% of ABA GPSolo respondents resolved six or more cases through mediation last year.

Of the ABA GPSolo respondents, 64% reported that mediation, when used, successfully resolved half, or more than half, of client matters.

Of the GPSolo respondents, 63.8% prefer to get a mediator selection list of three to five candidates, rather than just one or two; 64.5% are always open to the other side's suggestions for a mediator; and 71.1% of GPSolo respondents almost always split the mediation costs equally with the other side.

Of the ABA GPSolo respondents, 76% reported that half, or more than half, of their mediations are private mediation and not court ordered.

ABA GPSolo respondents are most likely (37.5% of respondents) to mediate a case when the amount in dispute is up to \$25,000, with 27.5% most likely to mediate a case when the amount is more than \$100,000.

- Construction Law practitioners and Securities Lawyers are more likely to submit matters to mediation where the amount in dispute is over \$100,000.
- Insurance Defense practitioners are as likely to submit matters to mediation where the amount in dispute is more than \$100,000 or less than \$100,000.
- Plaintiff Counsel (Personal Injury/MedMal), Staff Counsel, Employer-Employee practitioners, Consumer Law practitioners and In-House Counsel are more likely to submit matters to mediation where the amount in dispute is \$100,000 or less.
- Health and Disability practitioners are most likely to submit matters to arbitration when the amount in dispute is \$100,00 or less, with 75% indicating that they are most likely to submit matters to arbitration where the amount in dispute is between \$25,000 and \$100,000.

III. Arbitration

Regarding arbitration, the overwhelming majority of ABA GPSolo respondents (72.9%) value arbitrators who are learned in the law (attorneys/former judges), as opposed to lay arbitrators and arbitrators who are required to apply substantive law (60.3%).

- While all respondents, regardless of practice area, highly rated having arbitrators trained in the law (lawyers and former judges), practitioners in Consumer Law and Insurance Defense ranked this much higher than average (85.7% and 90.9%, respectively, compared to the average 72.9%).
- Similarly, while all respondents, regardless of practice area, highly rated having arbitrators required to apply the substantive law, 92.9% of Employer-Employee Relations practitioners valued this element of arbitration most.

Of the ABA GPSolo respondents, 6.3% resolved more than five cases last year by arbitration, while most (93.6%) resolved five or fewer cases by arbitration last year.

A wide range of features would encourage ABA GPSolo respondents to use arbitration more frequently: More than two-thirds of ABA GPSolo respondents (68.6%) would use arbitration more often where arbitrators are required to follow the law (67.5%) and where arbitrators are lawyers or former judges (55.4%).

ABA GPSolo respondents are about equally split on their likelihood of arbitrating cases whether the amount in dispute is higher or lower than \$100,000.

- Most Health and Disability practitioners (75%) indicated that they were most likely to submit matters to arbitration where the amount in dispute is \$25,000 or less.
- Half of Consumer Law practitioners are most likely to submit matters to arbitration where the amount in dispute is between \$25,000 and \$100,000, while the other half are most likely to submit matters to arbitration when the amount in controversy is less than \$25,000.
- Of respondent Construction Law practitioners, 77.8% are most likely to submit matters to arbitration when the amount in dispute is between \$100,000 and \$500,000. The balance (22.2%), are most likely to submit matters to arbitration when the amount in dispute is between \$500,000 and \$1,000,000.
- Business Litigation practitioners are about equally likely to submit matters to arbitration where the amount in dispute is between \$100,000 and \$500,000 as when it is between \$25,001 and \$100,000, or less than \$25,000 (30.3%, 25.8% and 30.3%, respectively).
- Of respondent Employee-Employer Relations practitioners, 50% indicated that they are most likely to submit matters to arbitration where the amount in dispute is between \$25,000 and \$500,000; 42.9% are most likely to submit matters to arbitration where the amount in dispute is less than \$25,000.
- Staff Counsel and Insurance Defense practitioners are most likely to submit matters to arbitration where the amount in dispute is less than \$25,000 (40.9% of Staff Counsel and 41.7% of Insurance Defense practitioners, respectively).

IV. Current Settlement Practices and Impediments

Nearly 40% of ABA GPSolo respondents initiate settlement immediately after becoming aware of the dispute; 27% initiate settlement discussions during discovery, while another 17% wait until discovery is completed to initiate settlement discussions. Not surprisingly, settlement is rarely initiated once a trial has commenced, or while awaiting verdict, or after the verdict is rendered.

- Health and Disability practitioners and Staff Counsel are somewhat more likely than other practice areas to initiate settlement negotiations immediately after becoming aware of the dispute (50.0% and 46.7%, respectively, compared to the average 39.2%).
- Consumer Law practitioners predominantly (33%) initiate settlement negotiations upon filing the dispute, compared to the average 6.4%.
- Insurance Defense practitioners and In House Counsel are more likely than other practice areas to initiate settlement negotiations during discovery than any other time (69.2 and 55.6%, respectively, compared to the average 27%).

- Plaintiff Counsel (Personal Injury/MedMal) are most likely to initiate settlement discussions at two stages: immediately after becoming aware of the dispute and immediately upon completion of discovery.

ABA GPSolo respondents rely primarily upon face-to-face negotiations (40.5%) for the *biggest* impact to settle cases. The telephone is the next most-cited form of communication (30%), followed by mediation sessions (17.8%). US Mail, E-Mail and other forms of communication accounted for 11.7% of responses.

- Insurance Defense and Employee-Employer Relations practitioners rely *most* on facilitated mediation for the biggest impact to settle cases (38.5% and 37.5%, respectively, compared to the average of 17.8%).
- Plaintiff Counsel (Personal Injury/MedMal) rely *most* on the telephone (51.2%) and about equally on face-to-face negotiations and mediation sessions (22% and 19.5%, respectively).
- Although email is only relied on by 2.3% of GP Solo respondents, 12.5% of Intellectual Property practitioners rely on email for the biggest impact to settle cases.

Nearly 40% of ABA GPSolo respondents ranked “evaluation of the claim” as the biggest impediment to settling more cases. Initiating the negotiation process was cited by almost 15% of respondents as the largest impediment. And actually negotiating the settlement was the largest impediment for 28% of respondents.

- Respondents in two practice areas – Consumer Law and In-House Counsel – were three times more likely to indicate that “identification of issues” is the largest impediment to settling more cases (14.3% and 12.5%, respectively).
- “Evaluation of the Claim” presented the largest impediment to settling more cases, especially for practitioners in the areas of Construction Law (83.3%), Intellectual Property (75%) and Insurance Defense (66.7%).
- Health and Disability practitioners and Consumer Law practitioners were somewhat more likely than average to select “negotiating the settlement” as the largest impediment to settling more cases (50% and 42.9%, respectively).

V. Demographics

ABA GPSolo respondents reflected a wide cross section of major practice areas represented within the American Bar Association.

Nearly 40% of ABA GPSolo respondents (39.9%) have more than 25 cases “open” and at some stage of litigation or alternative dispute resolution.

1. Usage Of ADR In The Most Recent Year

<i>In your role as client counsel, how many cases did you resolve through ADR last year (mediation, arbitration, and other forms of ADR)?</i>	
Response:	Percent
5 or fewer	65.4
6-25	31.0
26-50	1.7
over 50	1.9
Total	100.0

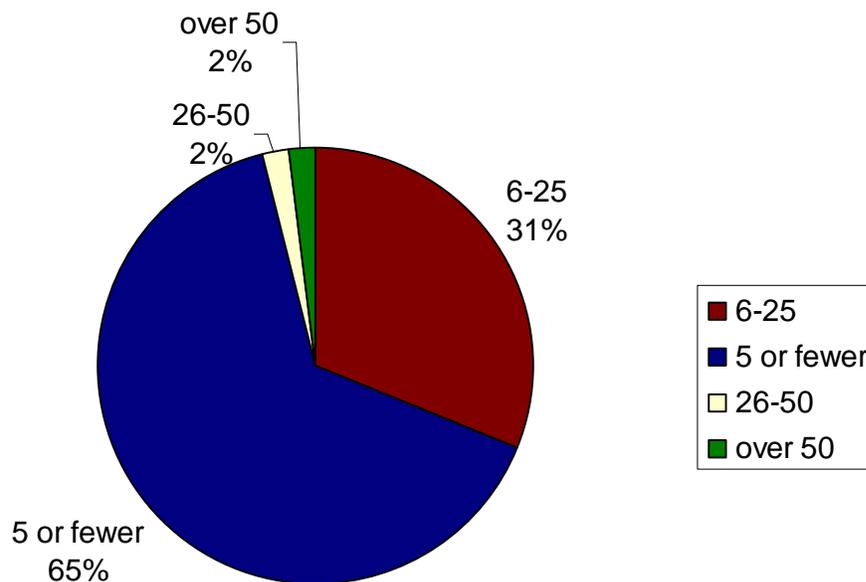
(Q3-5 n=468)(Q3-6-7 combined results: Each respondent is counted only once. Highest response for each respondent across the three categories is reported.)

Key Findings

More than one third (34.6%) of ABA GPSolo respondents resolved more than five cases through ADR last year, with 3.6% resolving over 25 cases through ADR. The majority of respondents resolved 5 or fewer cases through ADR last year.

These results are illustrated in the chart below.

**Cases Resolved Last Year Through All Forms of ADR
(Mediation, Arbitration and Other Forms of Alternative Dispute Resolution)**



2. Views on Alternative Dispute Resolution

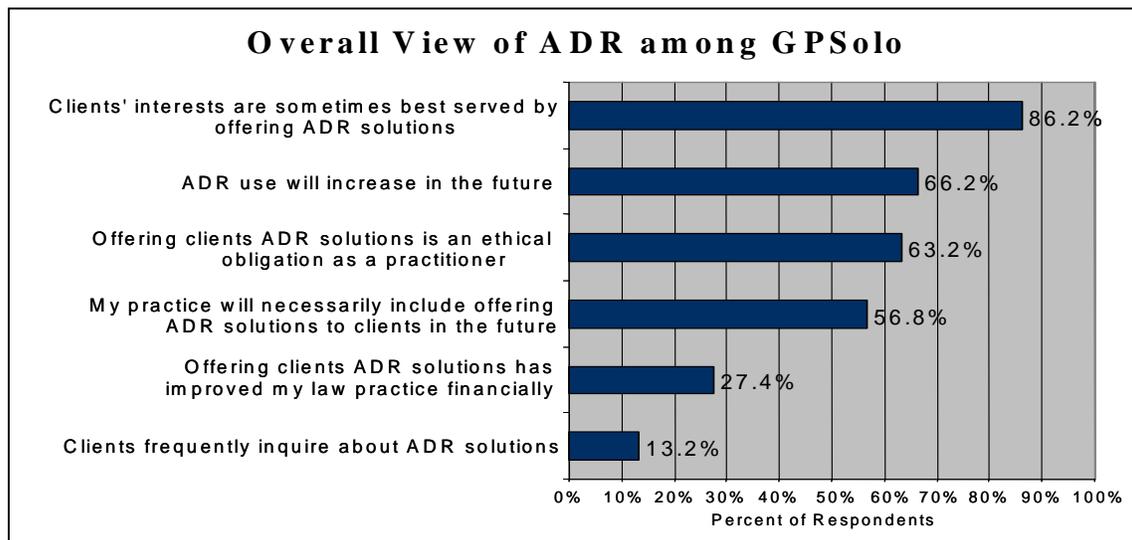
<i>Overall View of ADR among GPSolo Respondents</i>	
Response:	Percent
Clients' interests are sometimes best served by offering ADR solutions	86.2
ADR use will increase in the future	66.2
Offering clients ADR solutions is an ethical obligation as a practitioner	63.2
My practice will necessarily include offering ADR solutions to clients in the future	56.8
Offering clients ADR solutions has improved my law practice financially	27.4
Clients frequently inquire about ADR solutions	13.2

(Q.14 n=340)

Key Findings

A decided majority (over 85%) of ABA GPSolo respondents believe that their clients' interests are sometimes best served by offering ADR solutions. More than half of respondents also believe that: (1) their practice will include offering ADR solutions in the future; (2) offering ADR solutions is an ethical obligation as a practitioner; and (3) ADR use will increase in the future.

These results are illustrated in the chart below.



3. Desire For Additional ADR Information Resources

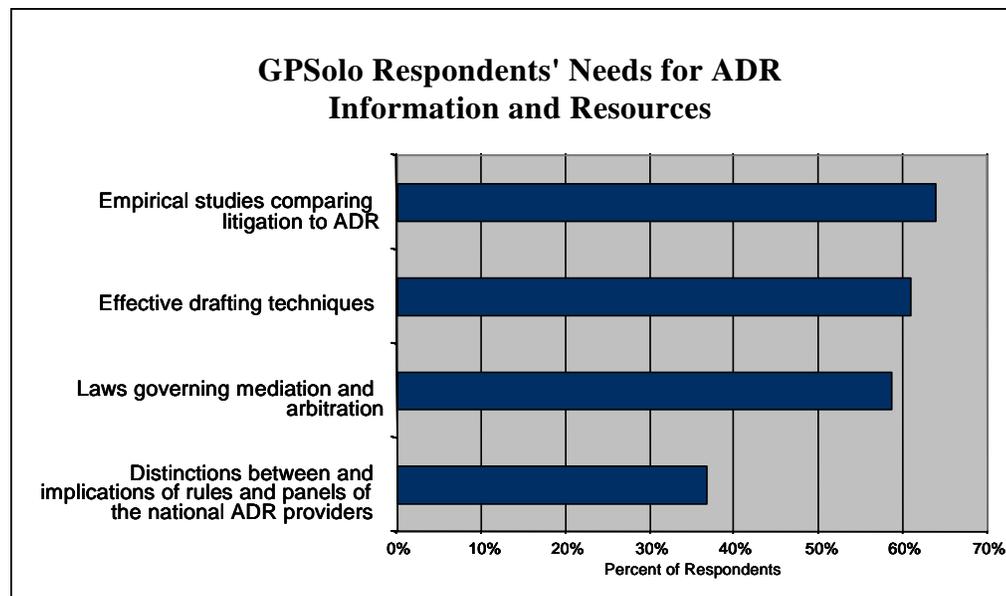
“I would value opportunities to learn more about the following areas:”	
Response:	Percent
Empirical studies comparing litigation to ADR	64.0%
Effective drafting techniques	61.0%
Laws governing mediation and arbitration	58.7%
Distinctions and implications of the rules and panels of national ADR providers	36.7%

(Q.15 n=300)

Key Findings

Most ABA GPSolo respondents want additional information about ADR including: empirical studies comparing litigation to ADR; effective drafting techniques; and learning about the laws governing mediation and arbitration. More than one in three ABA GPSolo respondents would value opportunities to learn more about the distinctions and implications of the rules and panels of national ADR providers.

These results are illustrated in the chart below.



4. Valued Features Of Mediation

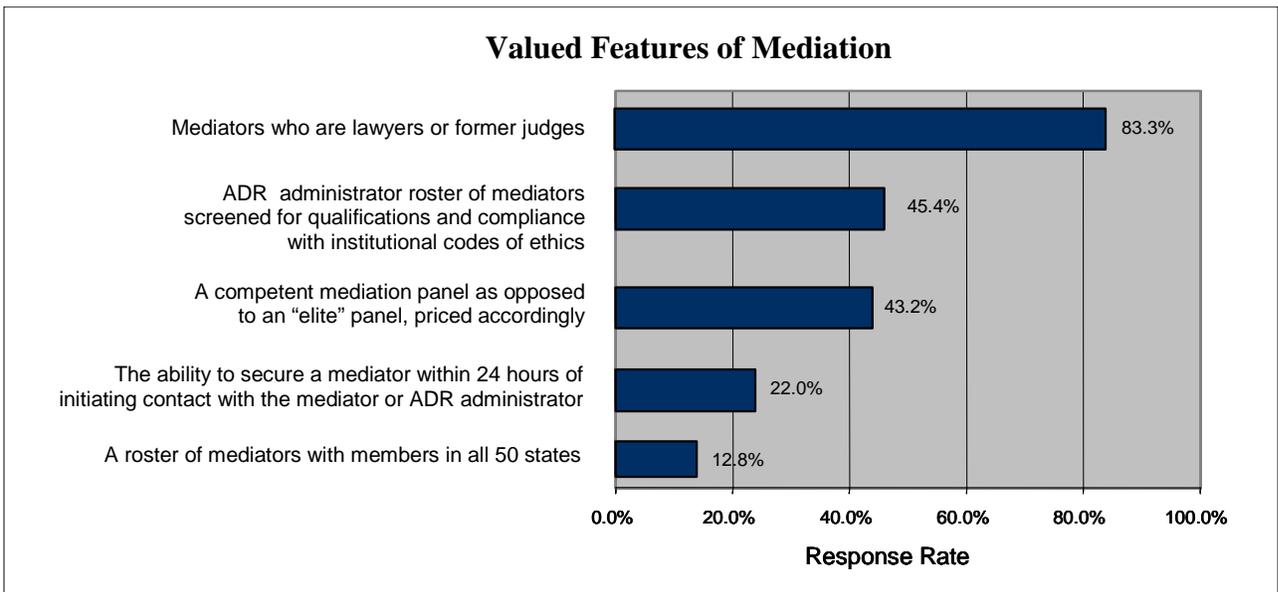
“Which of the following elements of mediation do you value?”	
Response:	Percent
Mediators who are lawyers or former judges	83.3%
The ability to select from a roster provided by an ADR administrator, thereby assuring that the mediator has been screened for qualifications and is in compliance with institutional codes of ethics	45.4%
A competent mediation panel as opposed to an "elite" panel, priced accordingly	43.2%
The ability to secure a mediator within 24 hours of initiating contact with the mediator or ADR administrator	22.0%
A roster of mediators with members in all 50 states	12.8%

(Q.12 n=359)

Key Findings

Regarding mediation, more than 80% of ABA GPSolo respondents value mediators who are lawyers or former judges.

These results are illustrated in the chart below.



The data revealed some differences based on practice area in the value placed on certain elements of arbitration:

- While all respondents, regardless of practice area, highly rated having mediators who are lawyers or former judges, Securities, Insurance Defense and Employer-Employee practitioners were unanimous (100%) on this point. Additionally, more than 90% of Plaintiff Counsel (Personal Injury/MedMal) practitioners valued having mediators who are lawyers or former judges.
- Of respondent Construction Law practitioners, 66% highly rated the availability of “a competent mediation panel as opposed to an ‘elite’ panel, priced accordingly.” Of respondent Health and Disability practitioners, 60% also rated this highly.
- The majority of Staff Counsel and Employer-Employee practitioners value the ability to select a mediator from a roster provided by an ADR administrator, thereby assuring that the mediator has been screened for qualifications and is in compliance with institutional codes of ethics.

5.1. Cases Resolved by Mediation Last Year

“In your role as client counsel, how many cases did you resolve last year by mediation?”	
Response:	Percent
5 or fewer cases	71.3
6-25 cases	25.9
26-50 cases	1.1
over 50 cases	1.7
Total	100.0

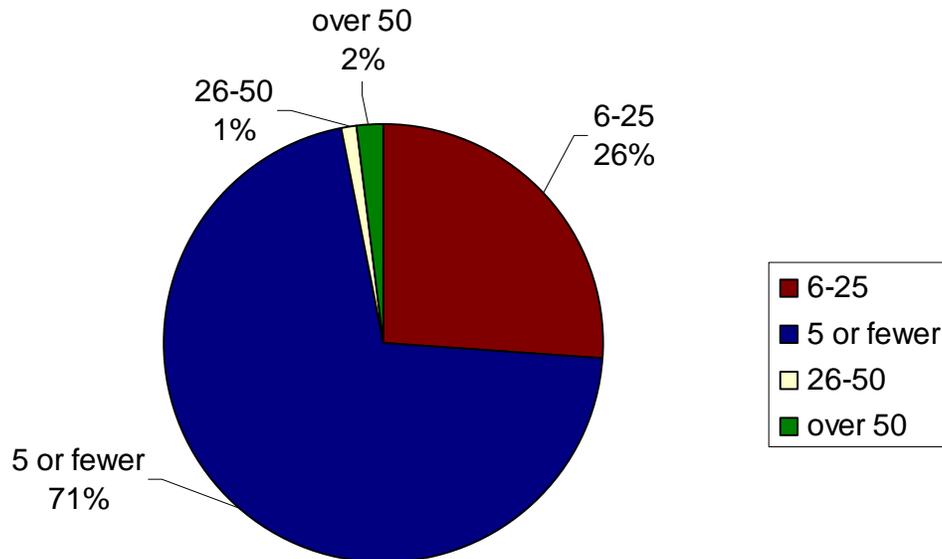
(Q.3 n=460)

Key Findings

More than 28% of ABA GPSolo respondents resolved six or more cases through mediation last year.

These results are illustrated in the chart below.

Cases Resolved through Mediation in Most Recent Year



5.2. Rate of Successful Resolution through Mediation

“When you use mediation for client matters, how often does mediation successfully resolve the matter?”	
Response:	Percent
Almost always	18.4
In about 3 out of 4 matters mediated	21.9
In about half of matters mediated	23.7
In about 1 out of 4 matters mediated	20.0
Almost never	16.0
Total	100.0

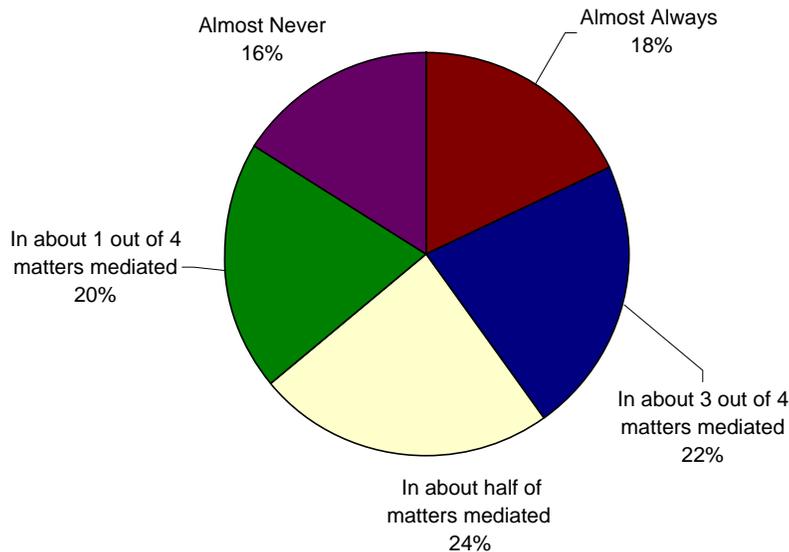
(Q.4 n=430)

Key Findings

Of the ABA GPSolo respondents, 64% reported that mediation, when used, successfully resolved half, or more than half, of client matters.

These results are illustrated in the chart below.

How often does mediation successfully resolve the matter:

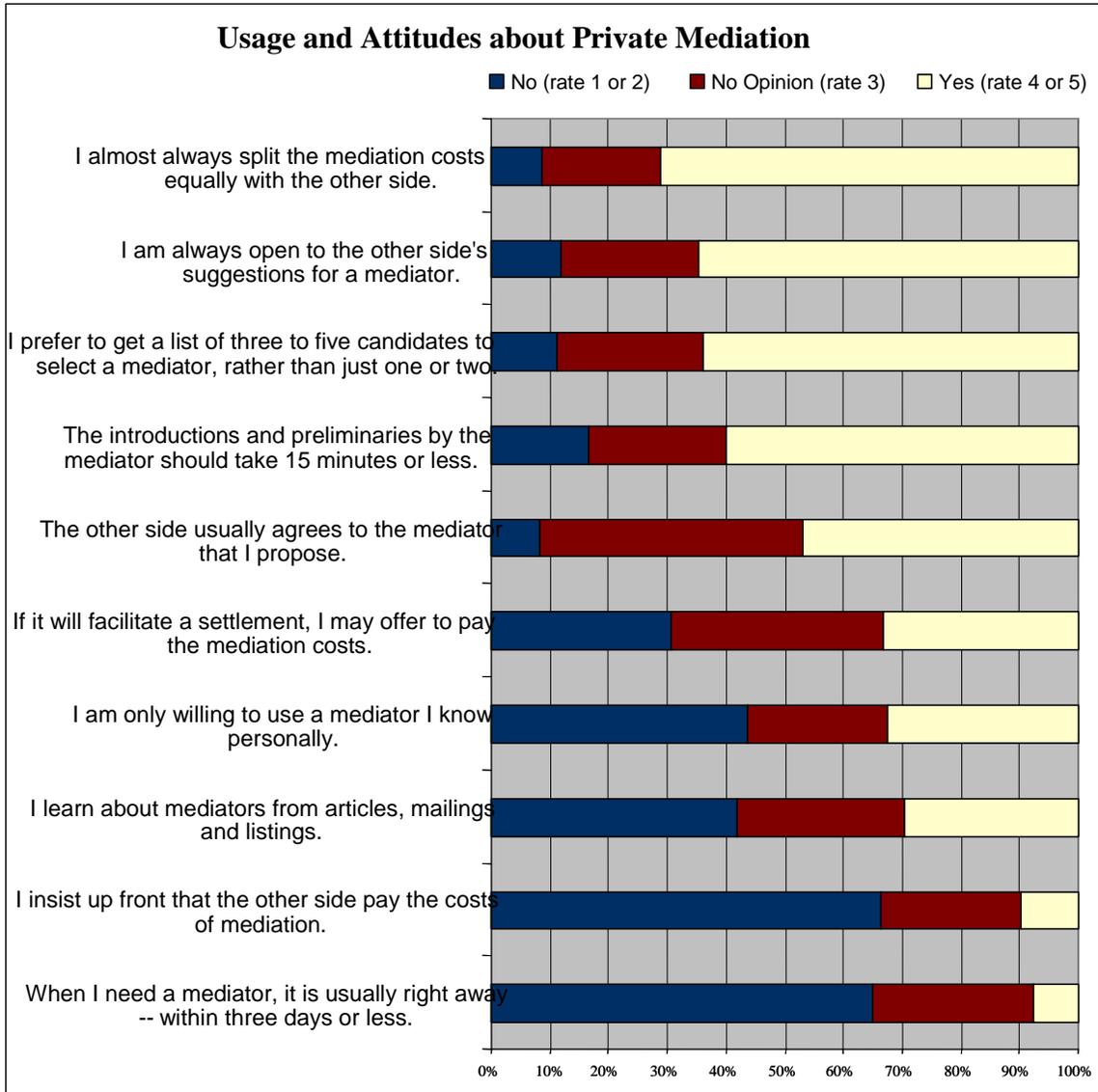


5.3. Practices and Attitudes about Private Mediation

**“Rate your attitudes and practices about private mediation
(scale: 1-5)”**

(Q.13 n=430)

The results are illustrated in the chart below.



Key Findings

Of the GPSolo respondents, 63.8% prefer to get a mediator selection list of three to five candidates, rather than just one or two; 64.5% are always open to the other side's suggestions for a mediator; and 71.1% of GPSolo respondents almost always split the mediation costs equally with the other side.

5.4. Frequency Of Court-Ordered Mediation

“Overall, how many of all mediations of your client matters are court-ordered mediation?”	
Response:	Percent
None	33.9
In about 1 out of 4 matters mediated	25.6
In about half of matters mediated	16.5
In about 3 out of 4 matters mediated	13.8
All	10.2
Total	100.0

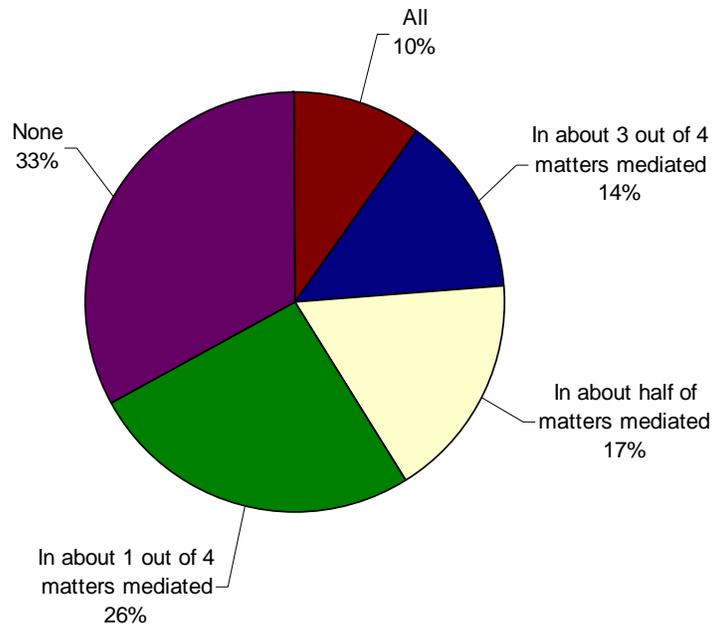
(Q.5 n=442)

Key Findings

Of the ABA GPSolo respondents, 76% reported that half, or more than half, of their mediations are private mediation and not court ordered.

These results are illustrated in the chart below.

Overall, how many of all mediations of your client matters are court ordered mediation?



6. Mediation Preference by Amount in Controversy

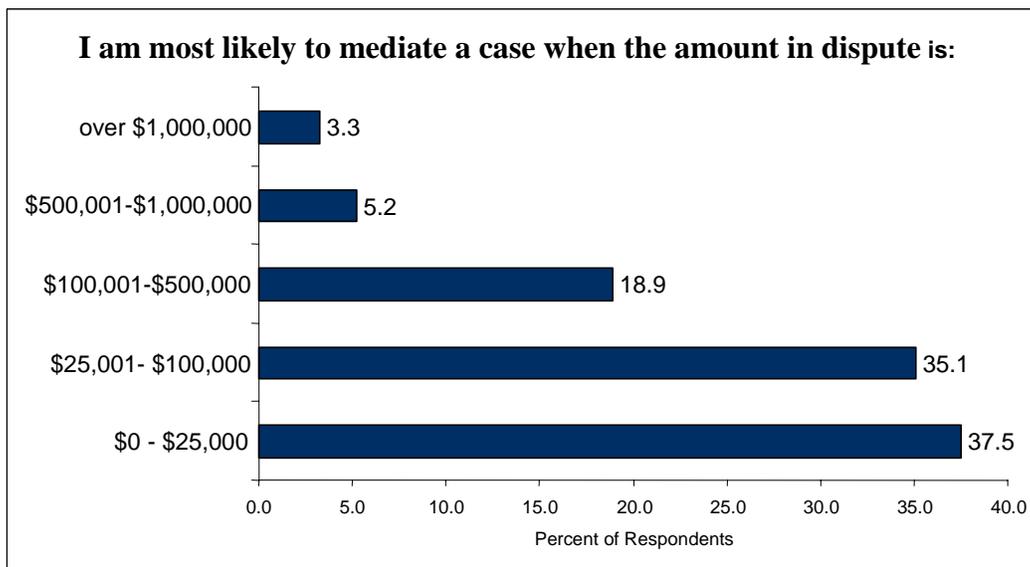
“I am most likely to mediate a case when the amount in dispute is:”	
Response:	Percent
Up to \$25,000	37.5
\$25,001- \$100,000	35.1
\$100,001-\$500,000	18.9
\$500,001-\$1,000,000	5.2
over \$1,000,000	3.3
Total	100.0

(Q.8 n=365)

Key Findings

ABA GPSolo respondents are most likely (37.5% of respondents) to mediate a case when the amount in dispute is up to \$25,000, with 27.5% most likely to mediate a case when the amount is more than \$100,000.

These results are illustrated in the chart below.



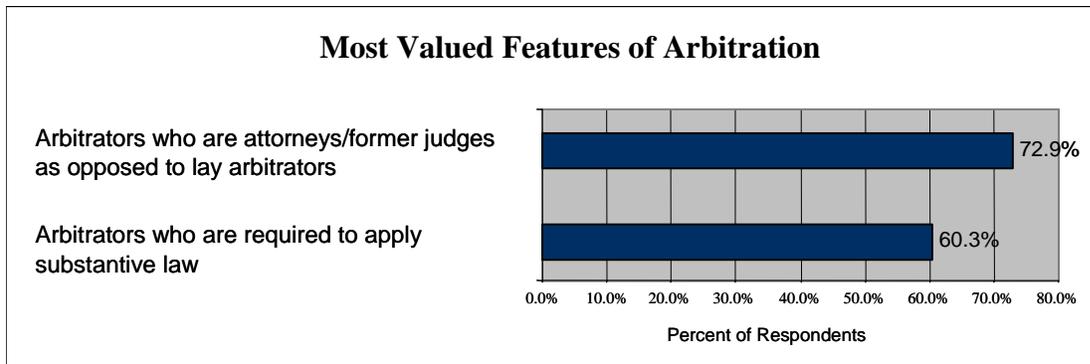
7. Valued Elements of Arbitration

“Which of the following elements of arbitration do you value?”	
Response:	Percent
Arbitrators who are learned in the law (attorneys/former judges) as opposed to lay arbitrators	72.9
Arbitrators who are required to apply substantive law	60.3
Decision by Single Arbitrator	32.9
Decision by Panel of Three Arbitrators	28.6
Administered arbitration, as opposed to ad hoc arbitration	16.0
Centralized case management, as opposed to decentralized case management	12.9

(Q.10 n=350)

Key Findings

Regarding arbitration, the overwhelming majority of ABA GPSolo respondents (72.9%) value arbitrators who are learned in the law (attorneys/former judges) as opposed to lay arbitrators, and arbitrators who are required to apply substantive law (60.3%). These results are illustrated in the chart below.



The data revealed some differences based on practice area in valuing certain elements of arbitration:

- While all respondents, regardless of practice area, highly rated having arbitrators trained in the law (lawyers and former judges), practitioners in Consumer Law and Insurance Defense ranked this much higher than average (85.7% and 90.9%, respectively compared to 72.9%).

- Similarly, while all respondents, regardless of practice area, highly rated having arbitrators required to apply the substantive law, 92.9% of Employer-Employee Relations practitioners valued this element of arbitration most.

8. Cases Resolved by Arbitration Last Year

“In your role as client counsel, how many cases did you resolve last year by arbitration?”	
Response:	Percent
5 or fewer	93.6
6-25	5.9
26-50	0.4
over 50	0
Total	100.0

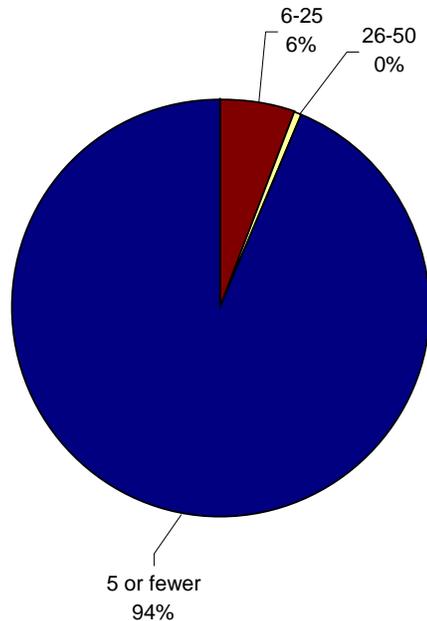
(Q.6 n=456)

Key Findings

Of the ABA GPSolo respondents, 6.3% resolved more than five cases last year by arbitration, while most (93.6%) resolved five or fewer cases by arbitration last year.

These results are illustrated in the chart below.

Cases resolves last year by arbitration



9. Features to Use Arbitration More Frequently

Which features of arbitration would cause you to use arbitration more frequently?	
Response:	Percent
Arbitrators are required to follow the law	68.6
Arbitrators are lawyers or former judges	55.4
Arbitration awards are reviewable for legal error	54.5
Reliable, empirical data showing properly administered arbitration less expensive and less time-consuming than litigation	38.7
Reliable, empirical data exists showing that arbitration does not frequently result in "split the baby" awards	36.1
Arbitration proceeds under established rules administered by trained case coordinators	34.0
Statutory and case law strongly favors enforcement of properly drafted arbitration agreements	27.9

(Q.11 n=422)

Key Findings

A wide range of features would encourage ABA GPSolo respondents to use arbitration more frequently: More than two-thirds of ABA GPSolo respondents (68.6%) would use arbitration more often where arbitrators are required to follow the law (67.5%) and where arbitrators are lawyers or former judges (55.4%).

10. Arbitration Preference by Amount in Controversy

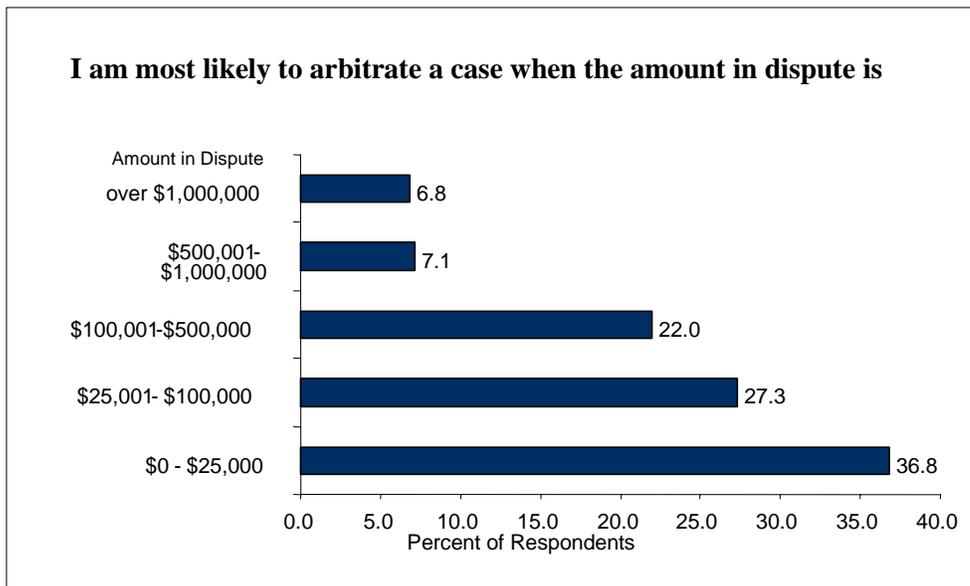
I am most likely to arbitrate a case when the amount in dispute is:	
Response:	Percent
Up to \$25,000	36.8
\$25,001- \$100,000	27.3
\$100,001-\$500,000	22.0
\$500,001-\$1,000,000	7.1
over \$1,000,000	6.8
Total	100.0

(Q.9 n=337)

Key Findings

ABA GPSolo respondents are about equally split on their likelihood of arbitrating cases whether the amount in dispute is higher or lower than \$100,000.

These results are illustrated in the chart below.



Respondents' practice areas impacted the amount in dispute that they would most likely submit to arbitration. For instance:

- Most Health and Disability practitioners (75%) indicated that they were most likely to submit matters to arbitration where the amount in dispute is \$25,000 or less.
- Half of Consumer Law practitioners are most likely to submit matters to arbitration where the amount in dispute is between \$25,000 and \$100,000, while the other half are most likely to submit matters to arbitration when the amount in controversy is less than \$25,000.
- Of respondent Construction Law practitioners, 77.8% are most likely to submit matters to arbitration when the amount in dispute is between \$100,000 and \$500,000. The balance (22.2%) are most likely to submit matters to arbitration when the amount in dispute is between \$500,000 and \$1,000,000.
- Business Litigation practitioners are about equally likely to submit matters to arbitration where the amount in dispute is between \$100,000 and \$500,000 as when it is between \$25,001 and \$100,000 or less than \$25,000 (30.3%, 25.8% and 30.3%, respectively).
- Of respondent Employee-Employer Relations practitioners, 50% indicated that they are most likely to submit matters to arbitration where the amount in dispute is between \$25,000 and \$500,000; 42.9% are most likely to submit matters to arbitration where the amount in dispute is less than \$25,000
- Staff Counsel and Insurance Defense practitioners are most likely to submit matters to arbitration where the amount in dispute is less than \$25,000 (40.9% of Staff Counsel and 41.7% of Insurance Defense practitioners, respectively).

11. Initiating Settlement Negotiations

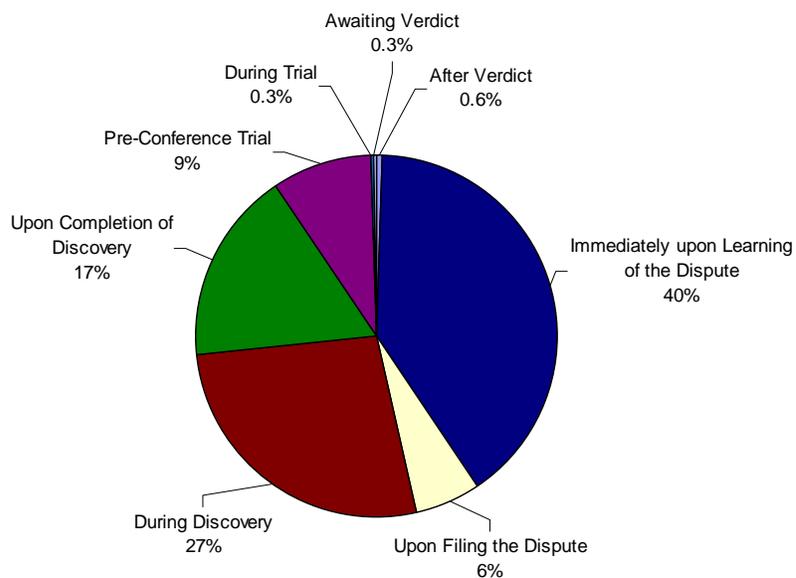
“When do you most commonly initiate settlement negotiations?”	
Response:	Percent
Immediately after becoming aware of the dispute	39.2
Upon filing the dispute	6.4
During discovery	27.3
Immediately upon completion of discovery	16.9
Pre-trial conference	9.0
During trial	0.3
Awaiting verdict	0.3
After verdict	0.6
Total	100.0

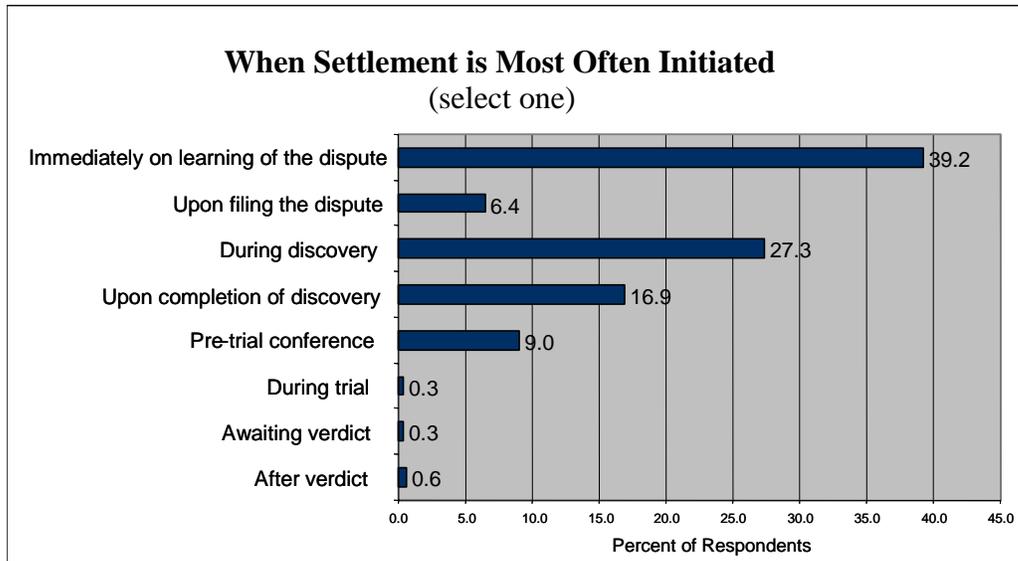
(Q.17 n=344)

Key Findings

Nearly 40% of ABA GPSolo respondents initiate settlement immediately after becoming aware of the dispute; 27% initiate settlement discussions during discovery, while another 17% wait until discovery is completed to initiate settlement discussions. Not surprisingly, settlement is rarely initiated once a trial has commenced, or while awaiting verdict, or after the verdict is rendered. These results are illustrated in the charts below.

**When Settlement is Most Often Initiated
(Select One)**





The data revealed differences based on GPSolo respondents' practice area about when settlement negotiations are most commonly initiated:

- Health and Disability practitioners and Staff Counsel are somewhat more likely than other practice areas to initiate settlement negotiations immediately after becoming aware of the dispute (50.0% and 46.7%, respectively, compared to the average 39.2%).
- Consumer Law practitioners predominantly (33%) initiate settlement negotiations upon filing the dispute, compared to the average 6.4%.
- Insurance Defense practitioners and In House Counsel are more likely than other practice areas to initiate settlement negotiations during discovery than any other time (69.2 and 55.6%, respectively, compared to the average 27%).
- Plaintiff Counsel (Personal Injury/MedMal) are most likely to initiate settlement discussions at two stages: immediately after becoming aware of the dispute, and immediately upon completion of discovery.

12. Most Relied-upon Form of Settlement Communications

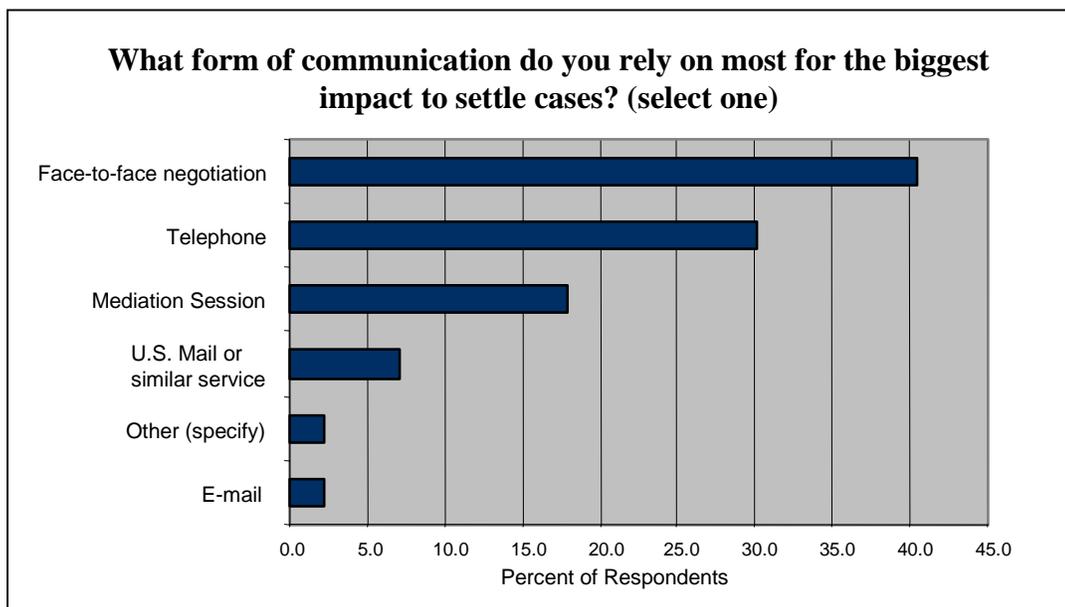
“What form of communication do you rely on most for the biggest impact to settle cases?”	
Response:	Percent
Face-to-face negotiation	40.5
Telephone	30.0
Facilitated mediation session	17.8
U.S. Mail or similar service	7.1
Electronic mail	2.3
Other (specify)	2.3
Total	100.0

(Q.18 n=353)

Key Findings

ABA GPSolo respondents rely primarily upon face-to-face negotiations (40.5%) for the *biggest* impact to settle cases. The telephone is the next most-cited form of communication (30%), followed by mediation sessions (17.8%). US Mail, E-Mail and other forms of communication accounted for 11.7% of responses.

These results are illustrated in the chart below.



The data revealed differences based on respondents' practice area about which communication method is relied on most for the biggest impact to settle cases:

- Insurance Defense and Employee-Employer Relations practitioners rely *most* on facilitated mediation for the biggest impact to settle cases (38.5% and 37.5%, respectively, compared to the average of 17.8%).
- Plaintiff Counsel (Personal Injury/MedMal) rely *most* on the telephone (51.2%) and about equally on face-to-face negotiations and mediation sessions (22% and 19.5%, respectively).
- Although email is only relied on by 2.3% of GP Solo respondents, 12.5% of Intellectual Property practitioners rely on email for the biggest impact to settle cases.

13. Impediments to Settling More Cases

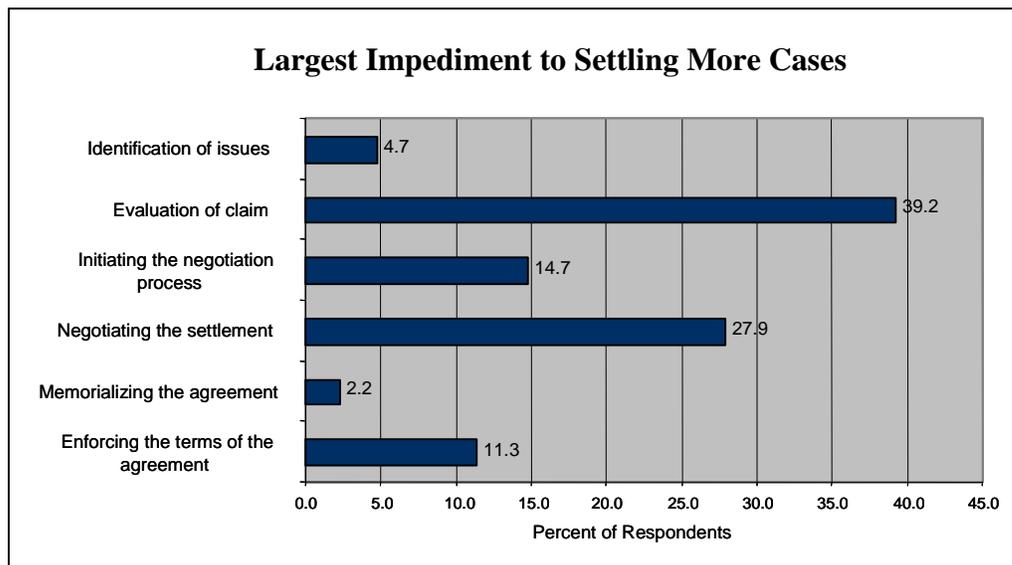
“Indicate the largest impediment that prevents you from settling more cases:”	
Response:	Percent
Identification of the issues	4.7
Evaluation of the claim	39.2
Initiating the negotiation process	14.7
Negotiating the settlement	27.9
Memorializing the agreement	2.2
Enforcing the terms of the agreement	11.3
Total	100.0

(Q.16 n=319)

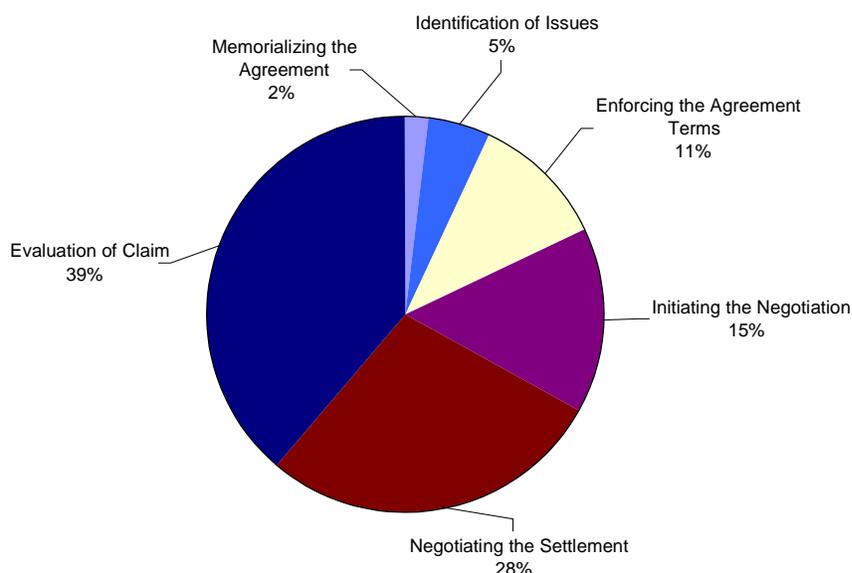
Key Findings

Nearly 40% of ABA GPSolo respondents ranked “evaluation of the claim” as the biggest impediment from settling more cases. Initiating the negotiation process was cited by almost 15% of respondents as the largest impediment. And actually negotiating the settlement was the largest impediment for 28% of respondents.

These results are illustrated in the charts below.



Largest Impediment to Settling More Cases



The data revealed differences based on respondents' practice area about what presented the largest impediment to settling more cases:

- Respondents in two practice areas – Consumer Law and In-House Counsel – were three times more likely to indicate that “identification of issues” is the largest impediment to settling more cases (14.3% and 12.5%, respectively).
- “Evaluation of the Claim” presented the largest impediment to settling more cases, especially for practitioners in the areas of Construction Law (83.3%), Intellectual Property (75%) and Insurance Defense (66.7%).
- Health and Disability practitioners and Consumer Law practitioners were somewhat more likely than average to select “negotiating the settlement” as the largest impediment to settling more cases (50% and 42.9%, respectively).

Method and Demographics

Sample

The entire membership of the GPSolo Division of the ABA was eligible to participate in the survey, and all members with email permissions were sent an email invitation to participate in the survey plus a follow-up reminder email approximately seven days later.

Instrument

The survey instrument was a multi-question survey posted online at a secure third-party survey site. The online survey was administered by SURVEYS and BALLOTS, Inc. The survey instrument was jointly reviewed and finalized by the ABA GPSolo Division and the FORUM, the survey sponsor. The instrument was designed in four parts to elicit (1) quantitative metrics regarding current ADR usage and practice area, (2) qualitative feedback regarding aspects of ADR, (3) attitudes and behaviors in the functional stages of negotiation and settlement and (4) open ended question designed to elicit comments about ADR usage.

Respondent Demographics

Primary Practice Area

“What is your primary area of practice?”	
Response:	Percent
Business litigation	19.6
Construction	2.3
In-House Counsel	2.3
Intellectual Property	2.5
Employee-Employer Relations	3.8
Health and Disability	1.1
Insurance Defense	3.4
Plaintiff Counsel (Personal Injury/MedMal)	11.0
Consumer Law	2.0
Securities	0.9
Staff Counsel	51.1
Total	100.0

(Q.1 n=444)

Key Findings

ABA GPSolo respondents reflected a wide cross section of major practice areas represented within the American Bar Association.

Caseload

“What is your typical case load - in other words, on any given day, how many cases are considered "open" and are at some stage of litigation or ADR?”	
Response:	Percent
25 or fewer cases	60.1
26-50 cases	21.4
51-100 cases	11.3
over 100 cases	7.2
Total	100.0

(Q.2 n=459)

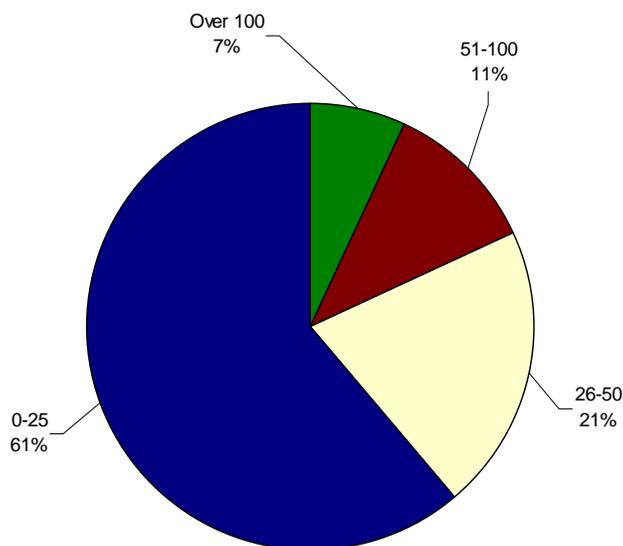
Key Findings

Nearly 40% of ABA GPSolo respondents (39.9%) have more than 25 cases “open” and at some stage of litigation or alternative dispute resolution.

These results are illustrated in the chart below.

Typical Case Load of Respondents

What is your typical case load in other words, on any given day, how many cases are considered “open” and are at some stage of litigation or ADR?



APPENDIX: ABA GPSOLO DIVISION MEMBERSHIP SURVEY 2005: DISPUTE RESOLUTION

The purpose of this survey is to gather information on the uses and preferences of the GPSolo membership as they relate to alternative dispute resolution (ADR.) The information will be used to better serve the dispute resolution needs of GPSolo membership.

I. Questions Designed To Elicit Quantitative Metrics

1. What is your primary area of practice? (Check One)
 - Business Litigation
 - Construction
 - In-House Counsel
 - Intellectual Property
 - E-Commerce
 - Employee-Employer Relations
 - Health and Disability
 - Fidelity Surety
 - Insurance Defense
 - Plaintiff Counsel (Personal Injury/MedMal)
 - Consumer Law
 - Securities
 - Staff Counsel
 - Other (specify)

2. What is your typical case load – in other words, on any given day, how many cases are considered “open” and are at some stage of litigation or ADR? (Check One)
 - 0—25
 - 26—50
 - 51-100
 - over 100

3. In your role as client counsel, how many cases did you resolve last year by mediation? (Check One)
 - 0-5
 - 6-25
 - 26-50
 - Over 50

4. When you use mediation for client matters, how often does mediation successfully resolve the matter? (Check One)
 - Almost never
 - In about 1 out of 4 matters mediated
 - In about half of matters mediated
 - In about 3 out of 4 matters mediated
 - Almost always

5. Overall, how many of all mediations of your client matters are court-ordered mediation?
(Check One)

- None
- In about 1 out of 4 matters mediated
- In about half of matters mediated
- In about 3 out of 4 matters mediated
- All

6. In your role as client counsel, how many cases did you resolve last year by arbitration?
(Check One)

- 0-5
- 6-25
- 26-50
- Over 50

7. In your role as client counsel, how many cases did you resolve through other forms of ADR?
(Check One)

- 0-5
- 6-25
- 26-50
- Over 50

8. I am most likely to mediate a case when the amount in dispute is:
(Check One)

- \$0 - \$25,000
- \$25,001- \$100,000
- \$100,001-\$500,000
- \$500,001-\$1,000,000
- Over \$1,000,000

9. I am most likely to arbitrate a case when the amount in dispute is:
(Check One)

- \$0 - \$25,000
- \$25,001- \$100,000
- \$100,001-\$500,000
- \$500,001-\$1,000,000
- Over \$1,000,000

II. Questions Designed To Elicit Qualitative Feedback

10. Which of the following elements of arbitration do you value?

(Check all that apply.)

- arbitrators who are required to apply substantive law
- administered arbitration, as opposed to “ad hoc” arbitration
- arbitrators who are learned in the law (attorneys/former judges) as opposed to lay arbitrators
- centralized case management, as opposed to decentralized case management
- panel of three arbitrators
- single arbitrator
- other (describe)

11. Which of the following would cause you to use arbitration more frequently?

(Check all that apply.)

Assurance that:

- arbitration awards are reviewable for legal error
- arbitrators are required to follow the law
- arbitrators are lawyers or former judges
- arbitration proceeds under established rules administered by trained case coordinators
- reliable, empirical data exists showing that properly administered arbitration is less expensive and less time-consuming than litigation
- reliable, empirical data exists showing that arbitration does not frequently result in “split the baby” awards
- statutory and case law strongly favors enforcement of properly drafted arbitration agreements
- where arbitrators have authority to require full compliance with FRCP
- in certain cases, a panel composed of both an experienced legal expert plus a non-lawyer with relevant technical expertise
- other (describe)

12. Which of the following elements of mediation do you value?

(Check all that apply.)

- mediators who are learned in the law (lawyers or former judges)
- the ability to negotiate/mediate on-line
- the ability to select from a roster provided by an ADR administrator, thereby assuring that the mediator has been screened for qualifications and is in compliance with institutional codes of ethics
- a roster of mediators with members in all 50 states
- the ability to secure a mediator within 24 hours of initiating contact with the mediator or ADR administrator
- a competent mediation panel as opposed to an “elite” panel, priced accordingly

13. On a scale of 1 to 5, where 1 is **STRONGLY DISAGREE**, 3 is **NO OPINION** and 5 is **STRONGLY AGREE**, please indicate your attitudes and practices about private mediation:

- a. I am only willing to use a mediator I know personally.
- b. I almost always split the mediation costs equally with the other side.
- c. When I need a mediator, it is usually right away -- within three days or less.
- d. I learn about mediators from articles, mailings and listings.
- e. I insist up front that the other side pay the costs of mediation.
- f. I am always open to the other side's suggestions for a mediator.
- g. If it will facilitate a settlement, I may offer to pay the mediation costs.
- h. The introductions and preliminaries by the mediator should take 15 minutes or less.
- i. I prefer to get a list of three to five candidates to select a mediator, rather than just one or two.
- j. The other side usually agrees to the mediator that I propose.

14. Which of the following expresses your view? (Check all that apply.)

- offering clients ADR solutions has improved my law practice financially
- offering clients ADR solutions is an ethical obligation as a practitioner
- clients' interests are sometimes best served by offering ADR solutions
- clients frequently inquire about ADR solutions
- my practice will necessarily include offering ADR solutions to clients in the future
- ADR use will increase in the future

15. I would value opportunities to learn more about the following areas. (Check all that apply.)

- distinctions between and implications of the rules and panels of the national ADR providers
- laws governing mediation and arbitration
- effective drafting techniques
- empirical studies comparing litigation to ADR

III. Questions Designed To Elicit Settlement Procedural Data

16. Indicate the largest impediment that prevents you from settling more cases:

- Identification of issues
- Evaluation of claim
- Initiating the negotiation process
- Negotiating the settlement
- Memorializing the agreement
- Enforcing the terms of the agreement

17. When do you most commonly initiate settlement negotiations?

- Immediately after becoming aware of the dispute
- Upon filing the dispute
- During discovery
- Immediately upon completion of discovery
- Pre-trial conference
- During trial
- Awaiting verdict

- After verdict

18. What form of communication do you rely on most for the biggest impact to settle cases?

- Telephone
- U.S. Mail or similar service
- Electronic mail
- Face to face negotiation
- In-person session with mediator
- Other (specify)_____

IV. Open Ended Questions Designed To Elicit Comment

Please describe your most rewarding mediation or arbitration experience.

Please offer any other comments on your uses and preferences concerning ADR.