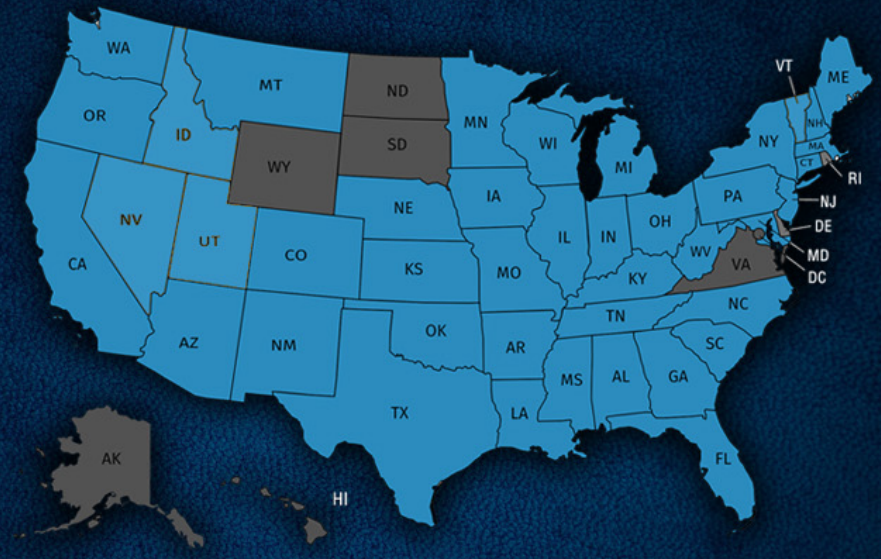
THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

NATIONAL SURVEY OF MEMBERS

Conducted Online, June 17-30, 2021

NADN Current Membership – 1160

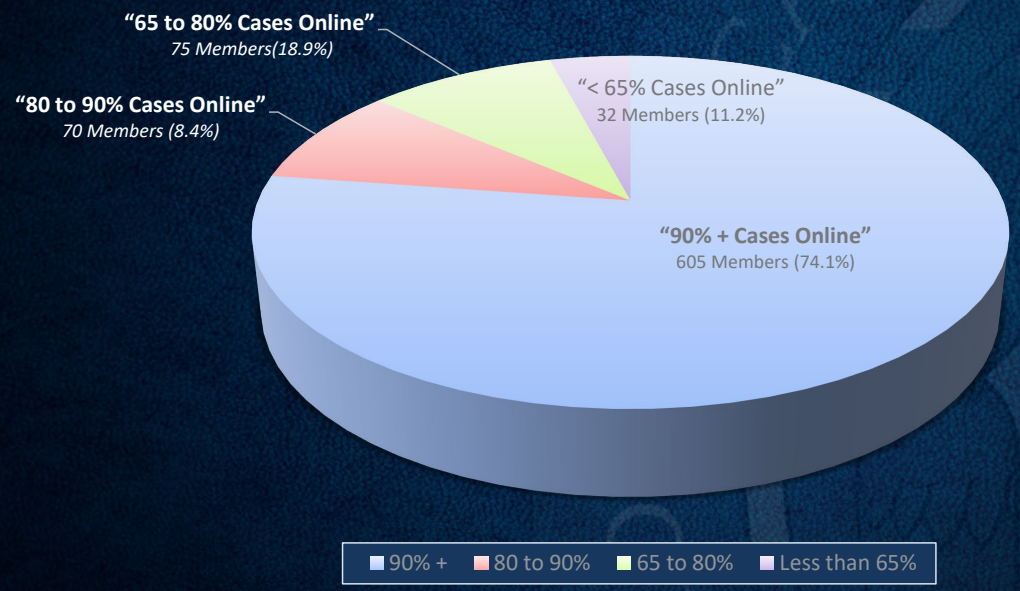


Formal State Chapters with local websites in 42 States

782 MEMBERS COMPLETED SURVEY - 67% RESPONSE RATE

LOOKING BACK OVER THE LAST YEAR…

Q1: What percentage of your cases have been conducted by video?



National Mean Avg: 91.6%
National Median Avg: 100%

Members Limiting Practice to Online Only: 512 (65.4%)

Members Limiting Practice to In-Person Only: 11 (1.4%)

Regional Breakdown - Mean Average

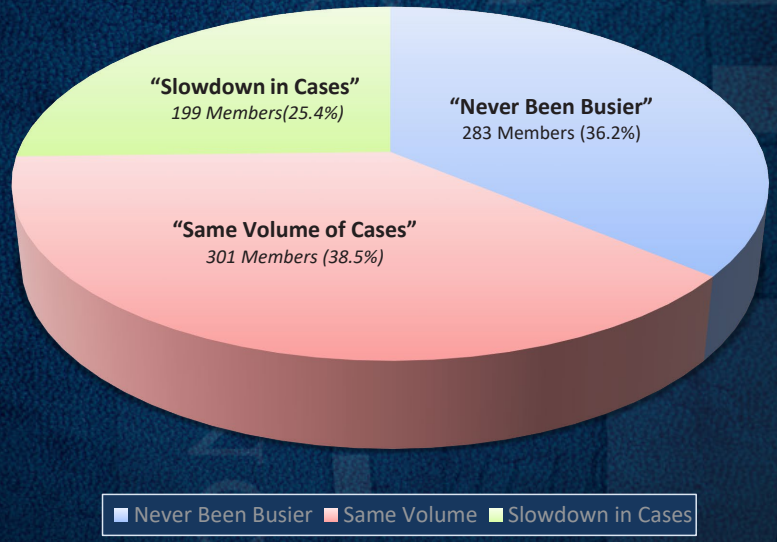
West: Avg. 93.6%
Midwest: Avg. 86.6%
Northeast: Avg. 92.3%
Southwest: Avg. 90.2%
Southeast: Avg. 88.6%

Commentary

Not surprisingly, our entire sector – like numerous others - has been entirely reliant on Zoom and other video platforms the last year. The headline takeaway, I think, is that *two-thirds* of our membership have not done any in-person cases over the last 12 months. Averaged out across the nation, a mean average of 91.6% of cases were convened online, with less than 9% in-person. While that 9% figure is already rising as restrictions are lifted and we emerge from the worst of the pandemic, the following survey results suggest it will not regain majority status. In all likelihood, there's no going back to the old normal. The Zoom genie has left the bottle and has no intention of returning.

LOOKING BACK OVER THE LAST YEAR…

Q2: Have you maintained the volume of cases you had prior to COVID?



Regional Breakdown - Most Popular Response

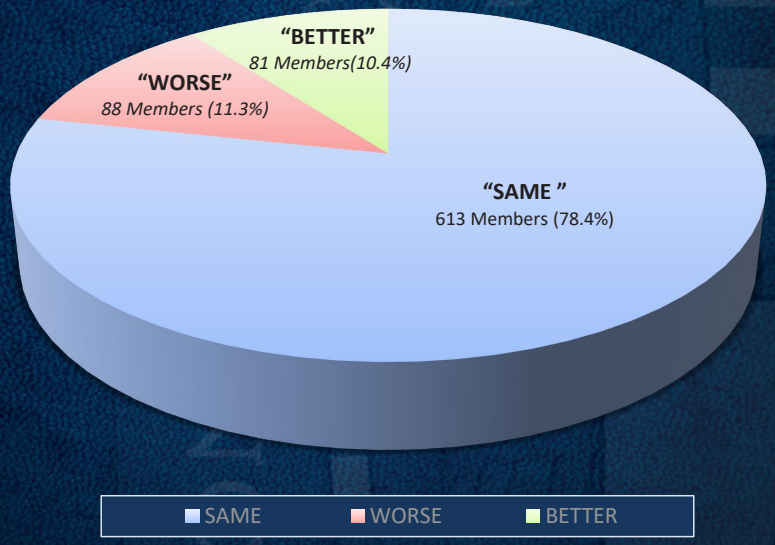
West: Avg. Slowdown (38%)
Midwest: Slowdown (37%)
Northeast: Busier (42%)
Southwest: Same (40%)
Southeast: Same (41%)

Commentary

It's important to note that most *everyone* saw a dramatic freeze in their business for the first few weeks of the pandemic, as the courts basically ground to a halt and the silly tabloid panic over Zoom played out. But since then, only 25% of members nationally reported a general slow down in their business - looking at the data this seems to have been dis-proportionately in certain regions, particularly the Midwest and California, while members in the mandatory mediation states, notably Florida, have continued to be busier than ever.

LOOKING BACK OVER THE LAST YEAR…

Q3: How has your settlement rate been online, compared to in-person?



Regional Breakdown - Same or Better Total %

West: 87.7%
Midwest: 88.7%
Northeast: 89.6%
Southwest: 91.0%
Southeast: 88.1%

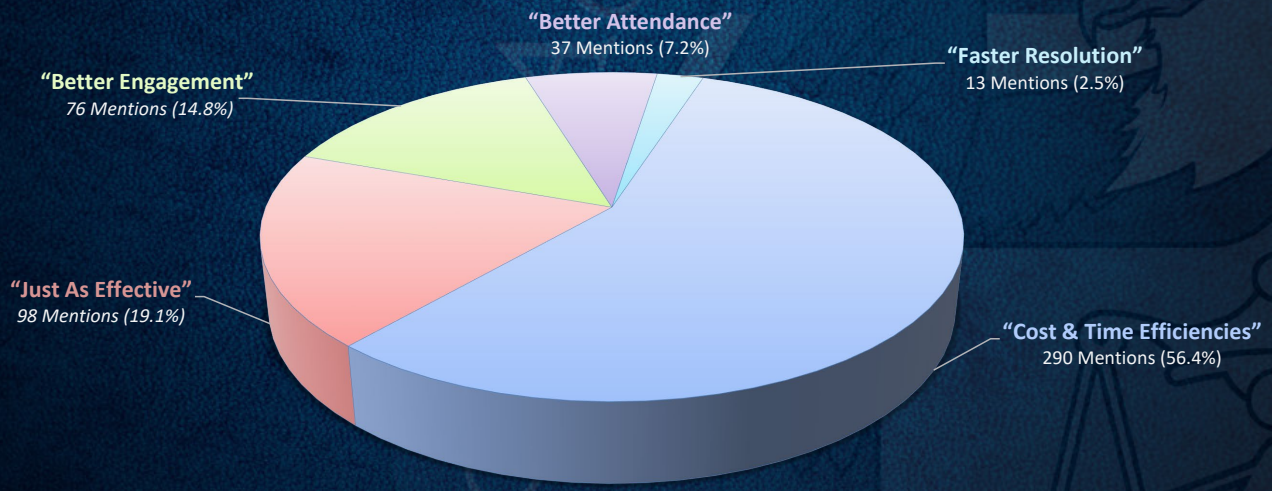
Commentary

I think if someone had told us all back in March 2020 that 88% of NADN members would say that their settlement rate online would be the same (or "Better"!) than meeting in-person, we'd have been incredulous. Yet, here we are – only 11% of members nationally reported that their settlement rate had declined somewhat, mediating cases online. Now that almost everyone is comfortable with the medium, I think there are very few disputes, of all shapes and sizes, that don't reach settlement simply because the participants weren't in the same physical location, treading the same carpet.

LOOKING BACK OVER THE LAST YEAR…

Q4a: What positive feedback have you had from counsel about ODR?

Members were asked to enter a sentence or two summarizing feedback from their own clients. We quantified these responses into the following general categories.



Regional Breakdown

N/A

Cost & Time Efficiencies related feedback the #1 response across ALL regions

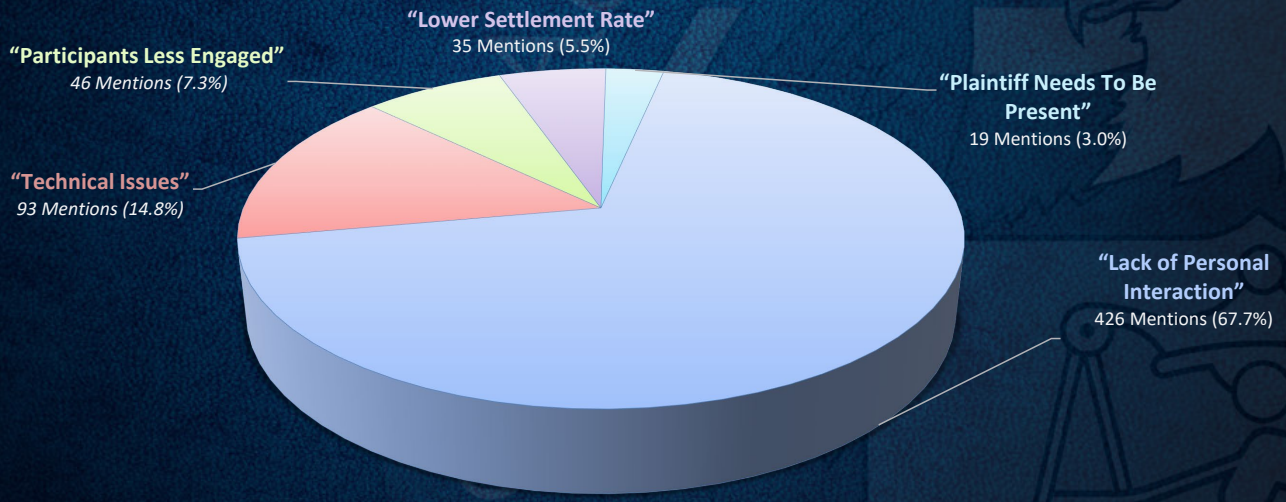
Commentary

The big takeaway here is that litigators and adjusters (aka, "the customers") are now fully awakened to the huge time and cost efficiencies of ODR - and they're generally not in a hurry to return to in-person mediations, with some enthusiasts even saying that they've found that their cases are more effectively presented online due to the powerful screen-share functions in platforms like Zoom, Teams, WebEx, etc. Customers have also reported to mediators that they appreciate that key decision makers really have no excuse now not to attend the session ("Better Attendance"), with others saying that the parties are actually more engaged in the process ("Better Engagement"), perhaps due to being more at ease in their own homes. (Great article here from member Eric Galton on the surprising advantages of mediating online).

LOOKING BACK OVER THE LAST YEAR…

Q4b: What negative feedback have you had from counsel about ODR?

Members were asked to enter a sentence or two summarizing feedback from their own clients. We quantified these responses into the following general categories.



Regional Breakdown

N/A

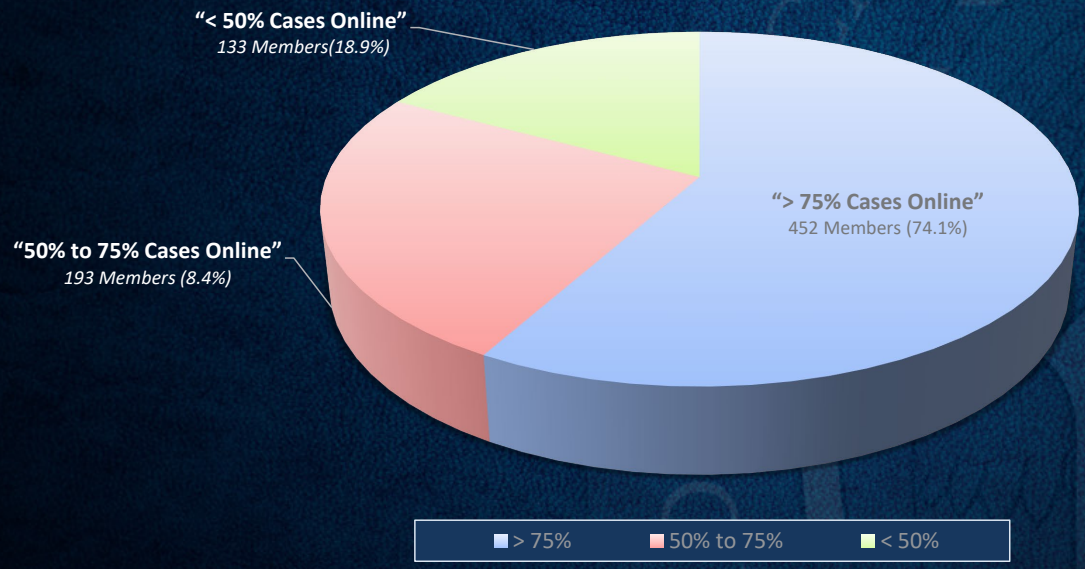
'Lack of Personal Interaction' related feedback the #1 response across ALL regions

Commentary

The most common complaint from attorneys was regarding missing personal interaction, whether with the neutral ("lunches" were mentioned 40+ times!) or with their clients and opposing counsel. Technical issues remained the second biggest bugbear - if we'd taken this survey in mid-2020, I'm certain it would have been the #1 gripe, but we've all clocked up many hours with our preferred platforms (overwhelmingly Zoom) and all members surely know to have a backup plan by now. Some mediators reported that counsel felt they were simply less effective advocating for their client online, with some plaintiff attorneys insisting they need their injured party to be physically present in the room with them. (I think we'll see more hybrid video/in-person cases as a result of this need to better 'manage the client'.)

LOOKING FORWARD INTO NEXT YEAR…

Q5: What percentage of your scheduled cases are *still* online?



National Mean Avg: 67.1%
National Median Avg: 75%

Members Limiting Practice to Online Only: 112 (14.3%)

Members Limiting Practice to In-Person Only: 24 (3.0%)

Regional Breakdown - % of Cases Online Into 2022

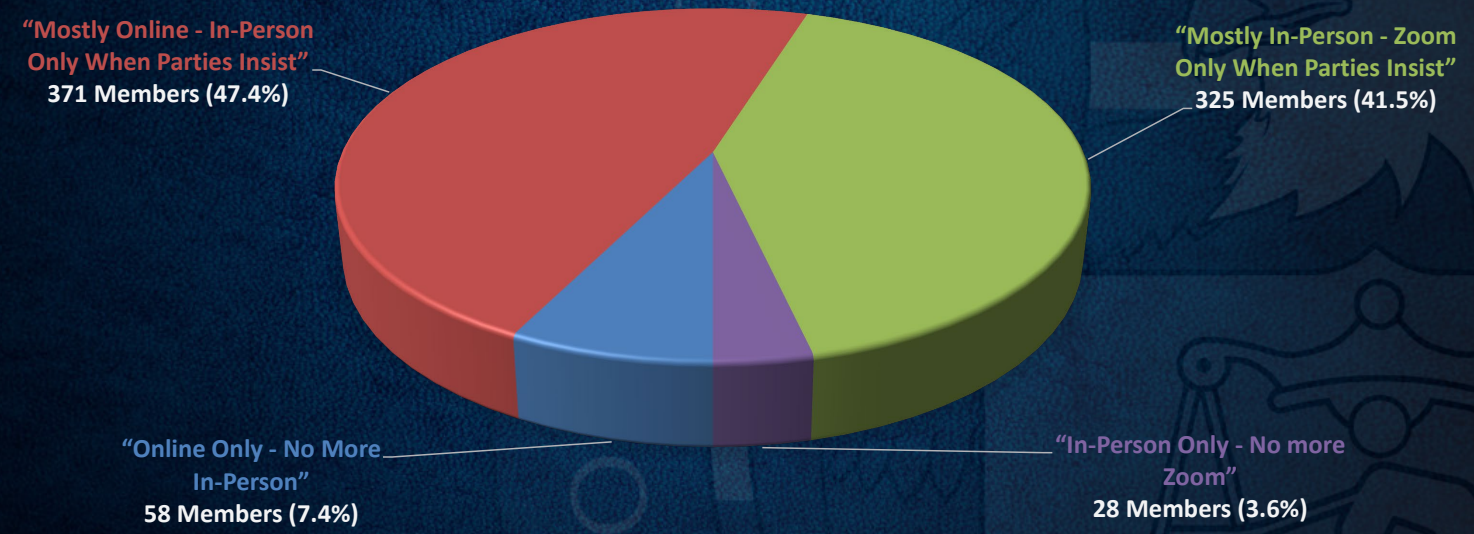
West: Avg. 70.1%
Midwest: Avg. 60.5%
Northeast: Avg. 67.9%
Southwest: Avg. 71.6%
Southeast: Avg. 67.6%

Commentary

We've broken the results down here into 3 different bands: 75%+, 50% to 75%, and Less Than 50%. As it stands, 82% of members still have a clear majority of their cases scheduled into 2022 set to be completed online. Now that most states have eased restrictions (admittedly, some more than others) the mean average of 91.6% of cases online over the last year from Question 1 has dropped, but not by too much – down to 67.1%, with the most popular (and median) member response being 75%. Moreover, just 24 Academy members nationally have gone back to entirely In-Person appointments, while 112 members have 100% of their cases still scheduled to take place online.

LOOKING FORWARD INTO NEXT YEAR…

Q6: For the foreseeable future, your *personal* preference is to provide:



Regional Breakdown - Total Favoring Online by Default

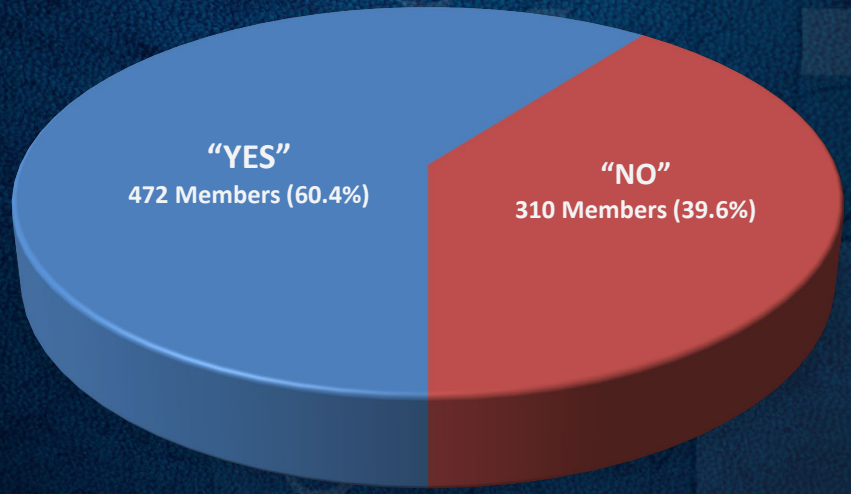
West: 63.9%
Midwest: 45.4%
Northeast: 57.7%
Southwest: 62.4%
Southeast: 54.9%

Commentary

Like it or not, we're all market-driven – successful mediators need to provide a service that local attorneys are willing to pay for. ("The customer isn't always right – but they're always the customer!") Just as many NADN members have dropped the joint session over the years because it's proven unpopular with counsel in their state (great recent article on that topic here), so we'll similarly be driven to offer what the litigators want in terms of preferred venue, whether online or in-person. Members will recall that we surveyed 500 litigators (250 defense + 250 plaintiffs) litigators ahead of last October's Roundtable Webinar and the consensus from them suggested a general preference to stay online given the considerable time and cost efficiencies. (Link to video presentation).

LOOKING FORWARD INTO NEXT YEAR…

Q7: Are you picking up additional clients outside of your local area, due to the convenience of online meetings?



Regional Breakdown

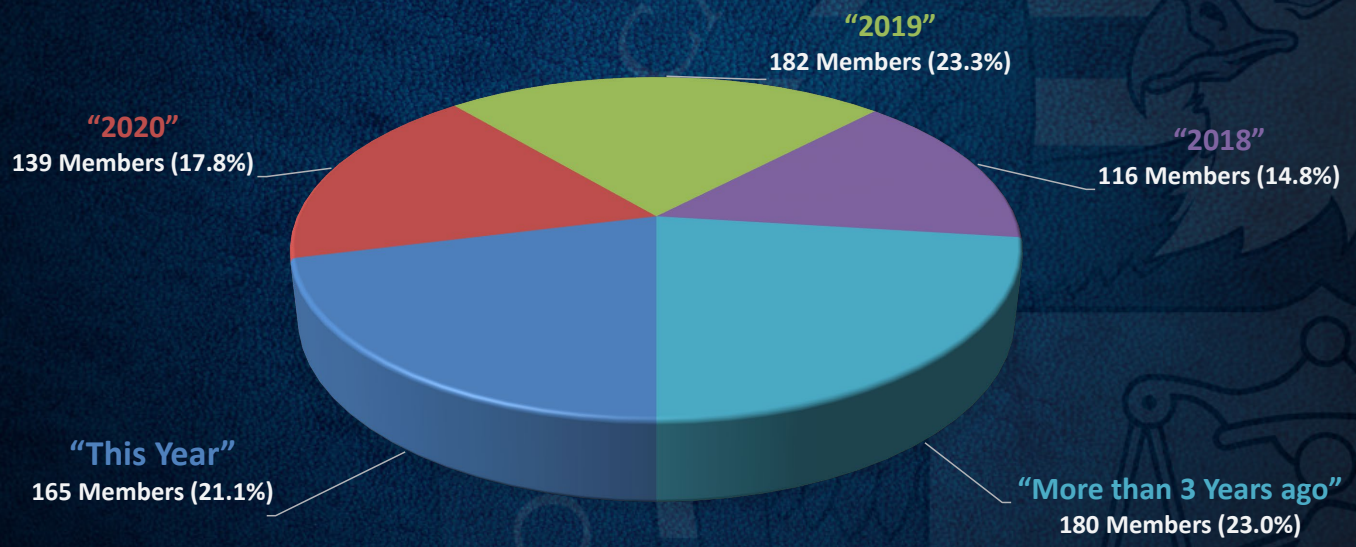
West: YES - 60.8%
Midwest: YES - 59.8%
Northeast: YES - 58.6%
Southwest: YES - 56.4%
Southeast: YES - 62.7%

Commentary

A clear majority of members reported that they had indeed increased their client base to include folks that were outside of their local area, which is great news. By the summer of 2020, with everyone on Zoom, I began to wonder if attorneys wouldn't now just start selecting mediators *regardless* of their location, hiring out of state. We've analyzed the bookings and search criteria data at NADN.org and that hasn't happened - litigators are still hiring the same mediators they've grown comfortable with over the years, generally in their own, or neighboring, state. Mediation remains a "local reputation" business, at least for now. (Searches for arbitrators in the NADN database were markedly up this last year, often with *no preference* for state/location, unlike searches for mediators.)

LOOKING FORWARD INTO NEXT YEAR…

Q8: When was the last time you raised your hourly or per-diem rates?



Regional Breakdown - 3 or more years back

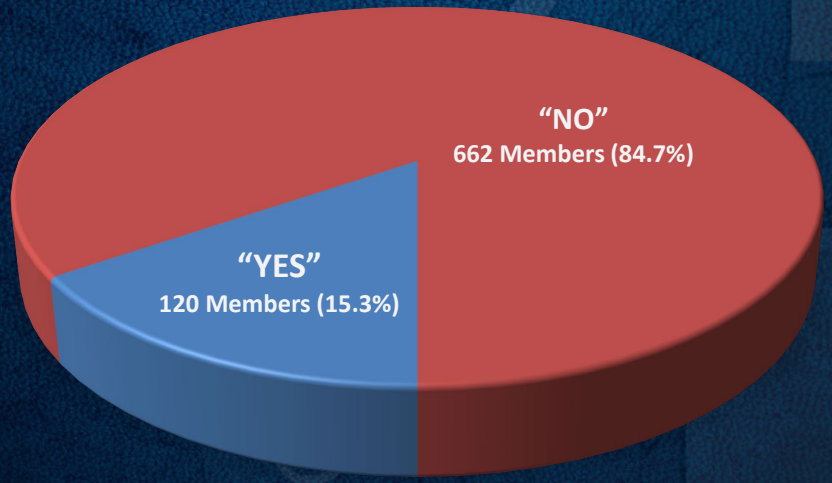
West: 41.8%
Midwest: 37.8%
Northeast: 37.0%
Southwest: 41.6%
Southeast: 34.7%

Commentary

A large number of Academy members publish rates on their NADN profiles – but I noted in some cases that text data had not been updated for several years! My theory was that, compared to our friends in other areas of legal practice, neutrals are perhaps more reticent to raise their fees. These results go some way to confirming that, with around 40% of members not raising rates in 3 or more years. Most US attorneys/law firms increase rates on a 1 or 2 year cycle, averaging 3-6% per annum (Clio's 2020 Legal Trends Report has data on market norms). Anecdotally, I've spoken with heavily in-demand members who've deliberately bumped their rates (15-20% hikes) with the intention of becoming a little less busy, but it *rarely works*: firms continue to happily pay the 'going rate' for trusted, effective mediators who can get their cases settled.

LOOKING FORWARD INTO NEXT YEAR…

Q9: Some NADN members are now charging a modest premium for a return to In-Person mediations.
Would you likely charge a similar rates premium going forward?



Regional Breakdown

West: Avg. NO - 84.4%
Midwest: NO - 91.6%
Northeast: NO - 87.0%
Southwest: NO - 78.2%
Southeast: NO - 82.9%

Commentary

Drilling down a little more on these results, all of the "Zoom Only, No More In-Person" respondents voted Yes, with a similar number of those expressing a default preference for Zoom. In part then, this rates premium is clearly intended as a disincentive to nudge clients over to online meetings. Generally though, across all regions, a large majority of members will NOT be adjusting their rates based on venue.

(Note: A supplementary 'comments' question on the web survey asked members what in-person precautions, if any, they were taking for in-person meetings going forward. Responses were WAY too varied to quantify, but we did find that 17% of members have zero or minimal stipulations, while 83% have varying requirements incl. distancing, masks or vaccinations.)