

STATE OF FLORIDA

Division of Administrative Hearings



2009-2010 Settlement Report and Mediation Statistics Report of the Office of the Judges of Compensation Claims

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Overview of Florida Workers' Compensation:

The Office of the Judges of Compensation Claims (“OJCC”) is part of the Division of Administrative Hearings, referred to throughout this Report as DOAH. Each year, the OJCC publishes an Annual Report, which provides the Florida Legislature with statistical measures of the volumes of litigation and the operations of this Office. Fla. Stat. §440.45(5). Those reports are available on the OJCC website, www.fljcc.org, within the “Notices, Order, and Reports” section.

Florida Workers' Compensation is a self-executing system defined by Chapter 440, F.S. The purpose of workers' compensation is to provide individuals injured at work with certain defined benefits for the treatment of the resulting medical condition(s) and for replacement of a portion of the wages lost as a result of the accident. Chapter 440, F.S. defines who participates in the workers' compensation system, and delineates the participant's rights and responsibilities. The primary participants in this system are Florida's employers and their employees. Some employers purchase workers' compensation insurance from a “carrier.” These are therefore often collectively referred to as the “employer/carrier” or the “E/C.” Other employers are “self-insured,” but have their claims administered or managed by an outside entity, commonly called “servicing agents.” These are therefore often referred to collectively as “E/SA.” For the purposes of this report, references to E/C should be interpreted to refer to employers, carriers, and servicing agents collectively, unless some distinction between insured and self-insured is specifically stated.

The OJCC mission is centered on the impartial processing, mediating, and adjudicating of disputes regarding benefits allegedly due to such injured workers. The litigation process for most Florida workers' compensation disputes begins with the filing of a pleading called the petition for benefits, or “PFB.” A PFB may seek medical care benefits and/or lost income (“indemnity”) benefits. Mediation is mandatory in most Florida workers' compensation claims. Fla. Stat. §440.25(1). There is a limited exception to this requirement in Fla. Stat. §440.25(4)(h) that “involve a claim for benefits of \$5,000 or less.”

Organizationally, the OJCC is comprised of thirty-two Judges. Each is appointed by the Governor for a term of four years. Geographically, the Judges serve in seventeen District Offices throughout Florida. The OJCC employs thirty-two full-time mediators, each of whom is appointed by the Director of the DOAH. Each OJCC mediator is assigned to particular Judge. Together, each such Judge/Mediator team compose a “Division” of the OJCC.

Mediation is statutorily mandated to occur within 130 days after the PFB is filed. If the assigned mediator cannot accommodate that time restriction, then the PFB must be assigned to private mediation at the expense of the E/C. Additionally, parties may elect to participate in private mediation in lieu of mediation with the assigned OJCC mediator.

Data Collection and Reporting:

The data in this report is dependent for accuracy upon the efforts of district staff and mediators in the seventeen District Offices throughout Florida. The OJCC has struggled with accurate data collection. Since fiscal year 2005-06 extensive effort has been expended to provide all OJCC personnel with training and resources in support of accurate collection of data regarding all OJCC operations, including mediation efforts and mediation outcomes. It is believed that the data represented herein is accurate as a result of that significant effort.

A petition for benefits (“PFB”) is effectively a combination of a “claim for benefits” and an “application for a hearing” on the claimed benefits. Each PFB might seek a single benefit, such as a claim for a change in physician or a medical test, or could seek multiple benefits. When an injured worker believes she or he is entitled to a benefit that is not provided by the Employer or their insurance Carrier, the worker files a PFB describing entitlement to that benefit(s). This filing will generally result in the scheduling of an OJCC mediation. Thereafter, as other additional benefits become due, an injured worker may file additional PFB. All pending PFB filed before the mediation will be mediated at that time. Thus an OJCC mediation could address one benefit or many benefit issues. Entitlement to various workers' compensation benefits may be litigated before the OJCC over a period of years as those issues arise. Therefore, workers' compensation is very different than other litigation which addresses damages that are less serial in nature. Because of the serial nature of workers' compensation benefits, and the resulting potential for serial litigation of the issues surrounding entitlement to those benefits, it is not uncommon for the same case to be mediated, albeit on different benefits, by the same OJCC mediator on more than one occasion.

Reports of Settlements Pursuant to §440.20(11)(A):

Although settlements of litigated disputes are generally favored in the law, Florida workers' compensation cases have historically been treated differently. It is currently legally permissible to settle all of a worker's rights under the workers' compensation statute. There are three legal provisions that authorize settlements of workers' compensation cases, all contained in Fla. Stat. §440.20(11).

Injured workers who are represented by an attorney may settle their cases without the approval of a Judge of Compensation Claims. However, unrepresented claimants may settle their cases only if the Judge approves, and that approval can only be granted if (a) the employer has denied compensability of the accident from the outset or (b) the claimant has reached the point where no further improvement of his or her medical condition can be expected (maximum medical improvement). Of these settlements by unrepresented claimants, only the former are required by statute to be reported by Judges of Compensation Claims and summarized in a special annual report to the legislature.

These cases, known as "11(a) washouts" because they are authorized by Fla. Stat. §440.20(11)(a) and permanently extinguish or "wash out" an employer's liability for a given accident, are the subject of this report. Other settlements are reported in the comprehensive Annual Report of the Office of Judges of Compensation Claims (OJCC), published in December of each year.¹

In the fiscal year ending June 30, 2010, there were 89 reported 11(a) washouts. That figure is 10% fewer than the previous year's 99 reported 11(a) washouts. The settlements were classified by the basis given for denying compensability of the claim. As shown in the chart below, by far the largest category of denials was "Not in Course and Scope of Employment" which accounted for 31.5% of the settled cases. Another 20.2% of the cases were denied on the basis of "Causal Connection Lacking", which analytically is similar to the course and scope defense, as both postulate the lack of a nexus between the work duties or activities and the mechanism of injury. In 5.6% of the 11(a) washouts, the clerical staff of the OJCC could not determine the basis for the carrier's denial of compensability. These settlements were approved by the assigned Judges despite this lack of clarity.

The monetary value of these settlements totaled \$431,359 representing an average of \$4,847 per case settled. This is a 33.6% decrease from the FY 08-09 total of \$649,416. The table below gives the average, highest, and lowest amounts for each category of compensability denials.

| Reason for Denial | Volume | Percent | Average | High | Low |
|---|--------|---------|---------|----------|---------|
| Positive Drug Test | 3 | 3.4% | \$1,683 | \$2,350 | \$1,300 |
| Misrepresentation on Application for Employment | 1 | 1.1% | \$3,796 | \$3,796 | \$3,796 |
| No Accident Occurred | 13 | 14.6% | \$3,489 | \$7,400 | \$500 |
| Causal Connection Lacking | 18 | 20.2% | \$5,888 | \$40,000 | \$888 |
| No injury occurred | 6 | 6.7% | \$3,038 | \$5,000 | \$975 |
| Not in Course and Scope of Employment | 28 | 31.5% | \$4,424 | \$40,000 | \$800 |
| Not an Employee | 3 | 3.4% | \$7,583 | \$10,000 | \$3,750 |
| Injury not timely reported | 12 | 13.5% | \$5,403 | \$15,000 | \$2,000 |
| Unspecified | 5 | 5.6% | \$8,295 | \$25,000 | \$777 |

The number of 11(a) washouts continues to be dwarfed by the other types of washout settlements authorized by Fla. Stat. §440.20(11). In fiscal year 2009-10 there were 27,598 settlements. Accordingly, the number of 11(a) washouts is only 0.3% of all settlements approved during the year.

Number of Mediation Conferences Held:

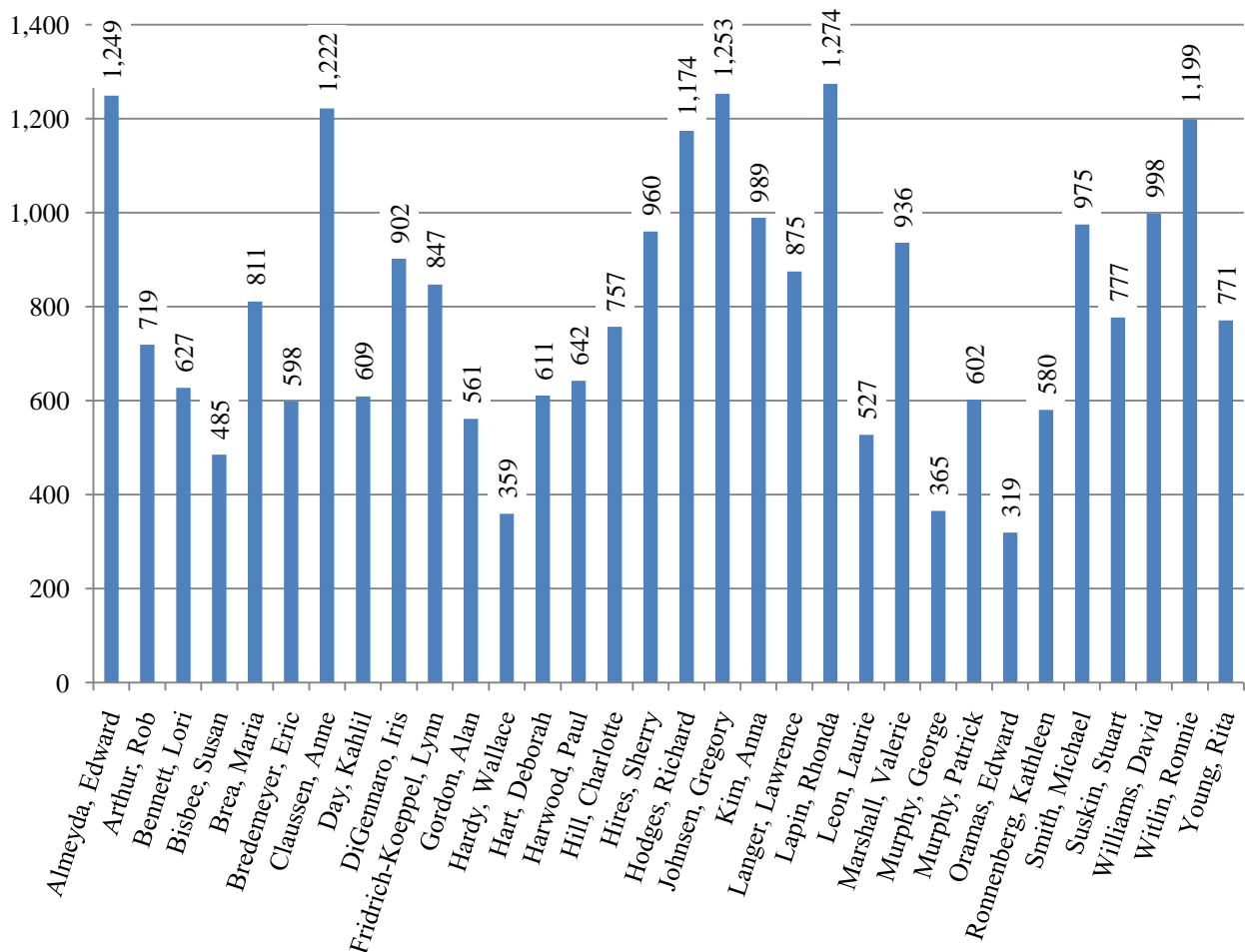
The volume of mediations held each year steadily decreased for five (5) fiscal years between 2003-04 and 2007-08. The rate of decrease in mediations conducted did not match the rate of decrease in PFB filings. This suggests that as PFB volume fell over recent years, OJCC mediators were able to act upon a greater percentage of the remaining volume. It is therefore probable that a smaller volume of PFB were mediated privately in recent years due to the

statutory 130 day mandate. The cost-efficiency of State mediation for parties is obvious. Furthermore, as the volume of mediation increases, the cost of each mediation decreases because the aggregate cost of the state mediation program, primarily mediator salary, physical premises requirements and computer hardware, remains constant regardless of mediation conference volume, within reasonable parameters.

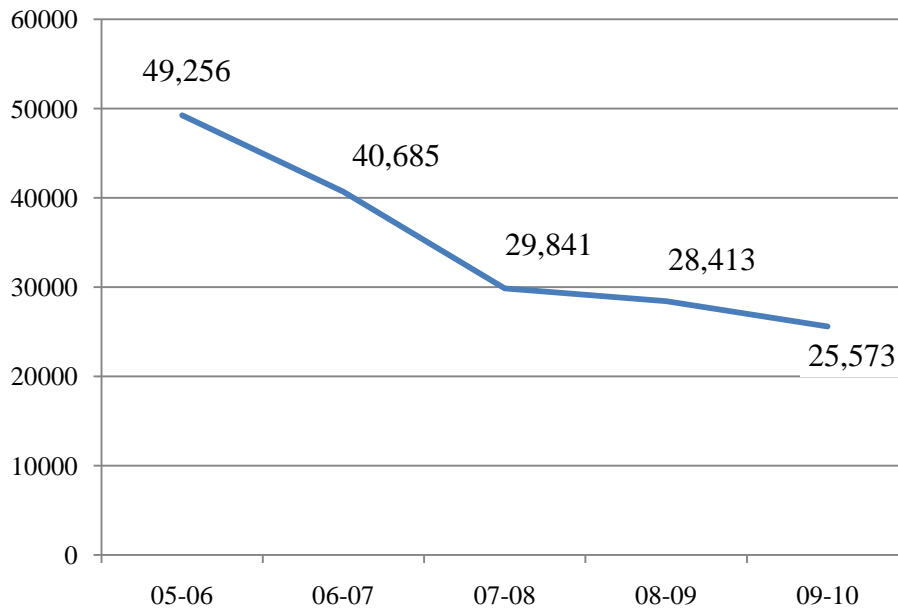
The Florida workers' compensation law requires that PFB are filed only when benefits are ripe, due and owing. After a PFB is filed, an OJCC mediation conference is scheduled with the assigned mediator. Thereafter, it is not uncommon for additional PFB to be filed prior to that mediation. Therefore, the volume of PFB mediated is somewhat higher than the number of mediation conferences actually held as more than one PFB is often mediated simultaneously. The following reflects the volume of PFB mediated in the last five fiscal years.

| Fiscal Year | Petitions Filed | % Change | Mediations Held | % Change |
|-------------|-----------------|----------|-----------------|----------|
| 2002-03 | 151,021 | | 29,253 | |
| 2003-04 | 127,611 | -15.50% | 28,072 | -4.04% |
| 2004-05 | 107,319 | -15.90% | 26,410 | -5.92% |
| 2005-06 | 90,991 | -15.21% | 25,522 | -3.36% |
| 2006-07 | 82,607 | -9.21% | 22,258 | -12.79% |
| 2007-08 | 72,718 | -11.97% | 20,021 | -10.05% |
| 2008-09 | 73,863 | 1.57% | 20,812 | 3.95% |
| 2009-10 | 67,971 | -7.98% | 19,864 | -4.56% |

PFBS MEDIATED



Volume of PFBS Mediated

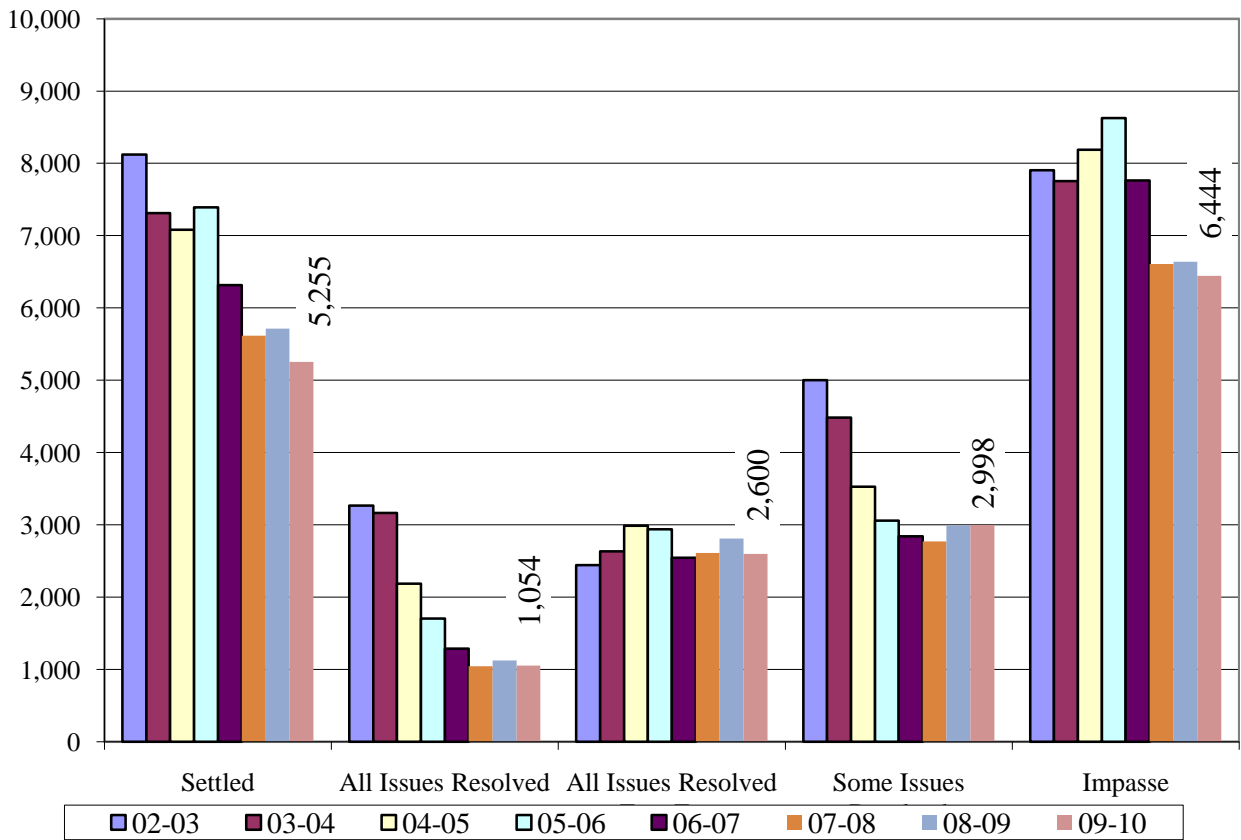


Disposition of Mediation Conferences:

A petition for benefits (“PFB”) may seek only one substantive benefit (i.e. authorization of an orthopedic surgeon), or could contain many issues (i.e. orthopedic authorization, neurological authorization, diagnostic testing authorization, correction of the average weekly wage, payment of temporary total, temporary partial, supplemental benefits, and/or permanent total disability benefits, etc.). Virtually all PFB also include claims for ancillary benefits related to one or more of these substantive benefits, such as penalties and/or interest on late paid indemnity benefits, and attorney’s fees and costs for the prosecution of all claimed benefits in the PFB. Additionally, a mediation may include the issues from one PFB or several.

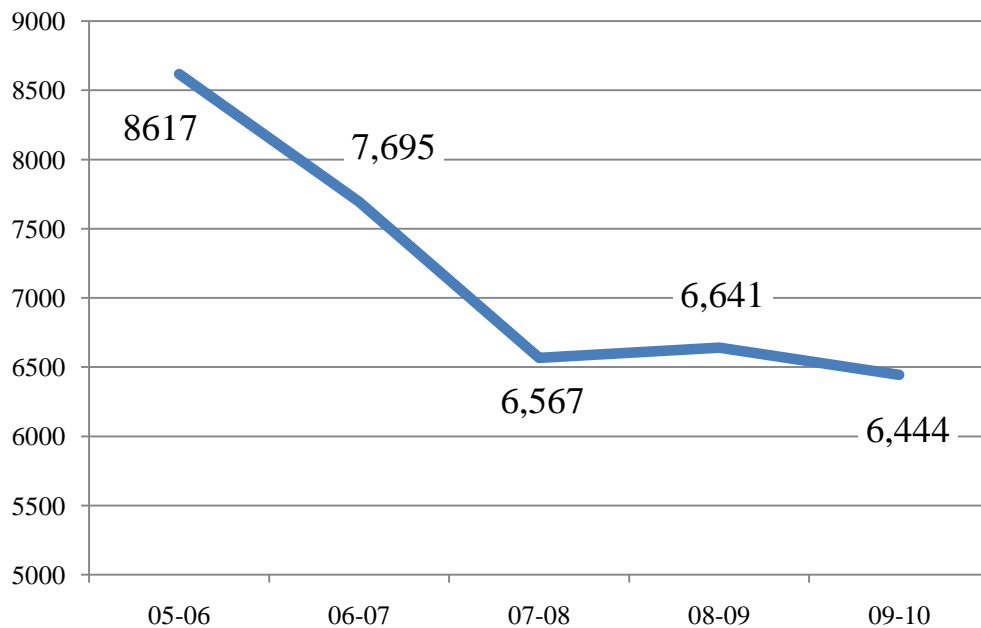
Therefore, the outcome of mediations is expressed in terms of what was resolved at that particular mediation. The characterization “impasse” is used to reflect that no issues were resolved at mediation. The characterization “settled” reflects that the entire case, including the pending issues in the PFB(s) and all future benefits as yet undue and unclaimed, were resolved. Between these two extremes of “impasse” (nothing) and “settled” (all) are a number of “partial” resolution characterizations used by the OJCC. Previously, some mediators mislabeled resolutions that occurred prior to state mediations, characterizing those outcomes as if those cancelled mediations had occurred. That action has undoubtedly resulted in misinterpretation of outcomes in prior OJCC reports. Those erroneously characterized outcomes dictate that comparisons with future data may also be suspect.

The term “some issues resolved” reflects that some subset of the claimed substantive issues has been resolved. The term “all issues resolved except attorney’s fees” reflects that all of the substantive issues and any ancillary penalty and/or interest issues were resolved, but fee/cost entitlement and/or amount issues remained. The term “all issues resolved” reflects that all claimed PFB issues, including all ancillary issues such as attorney’s fees and costs, were resolved. These potential outcomes can be expressed in a continuum ranging from the least resolution (“impasse”) to the most resolution (“settled”). The overall results of mediation are reflected in this graph, illustrating this continuum from “all,” or “settled” on the left side to the least “none” or “impasse” on the right side of the graph. The graph below reflects the last eight (8) fiscal years for each of these outcome characterizations.



Some of these characterizations are likely unfamiliar to mediators and even litigators uninvolved in the Florida Workers' Compensation process. Most attorneys, however, are familiar with "impasse" as that characterization reflects that the mediation has concluded without an agreement. The volume of OJCC mediations concluding with no agreement on any portion of the claims has decreased in recent years.

IMPASSES

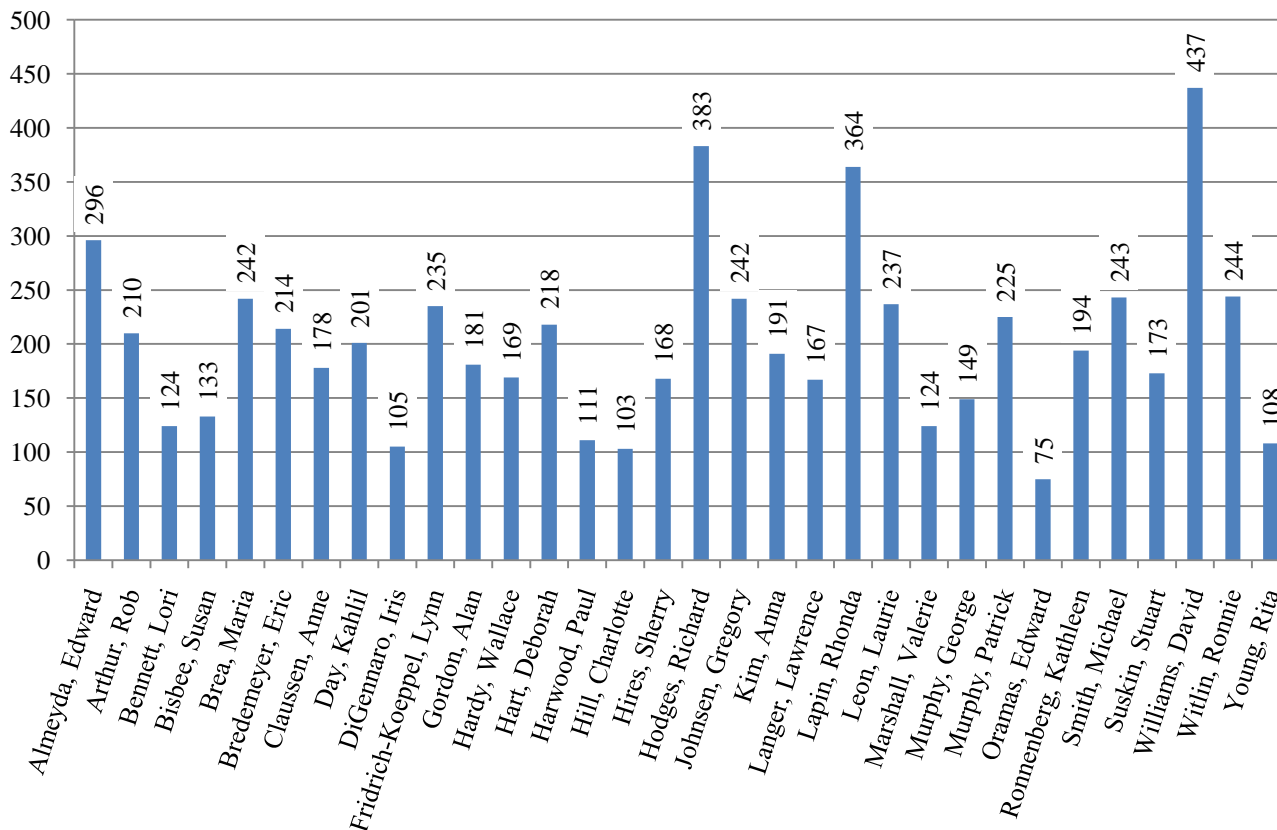


Expressed as a percentage of the mediations held by OJCC mediators, the volume of “impassé” outcomes for the last five years are:

| 05-06 | 06-07 | 07-08 | 08-09 | 09-10 |
|-------|-------|-------|-------|-------|
| 33.8% | 34.6% | 32.8% | 31.9% | 32.4% |

The corollaries of these figures, represents the volume of OJCC mediations in which at least some volume of issues were resolved. In approximately sixty-seven percent (67%) of OJCC mediations, at least some issues are resolved. This is an important fact, more so even than a measure of “settlements,” because workers’ compensation creates an entitlement to a variety of benefits, many of which are interrelated and some of which are dependent upon the results of others. As an example, an injured worker may seek medical care and benefits to replace lost income. Those lost income benefits (“indemnity”) are generally payable when an injury precludes or limits performance of work. Whether an injury precludes or limits work is a medical opinion. Thus, a mediation conference on such a case that resolves only the claim for medical care will potentially lead to a medical opinion that effects the question of whether indemnity benefits are due. Thus, a “some issues resolved” represents an agreement that some disputed benefits will be provided to the injured worker, and represents potential other progress in the determination of remaining issues. Mediations are obviously very effective in resolving issues. Over the last seven (7) years, the convened state mediations have resolved at least "some issues" more than sixty-five percent (65%) of the time. This performance is reasonably consistent, and does not appear to be related to the volume of mediations held.

IMPASSE

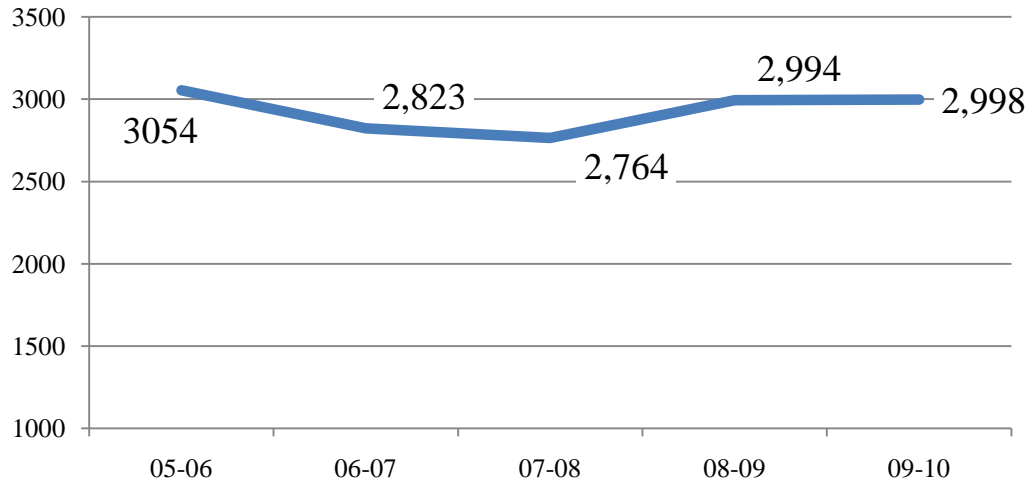


It has been previously noted that each year a very small percentage of mediation outcomes are not recorded in the OJCC database appropriately, but were merely marked as “held.” That characterization provides no information as to what was accomplished in that mediation. The vague nature of that characterization was addressed. In the last two

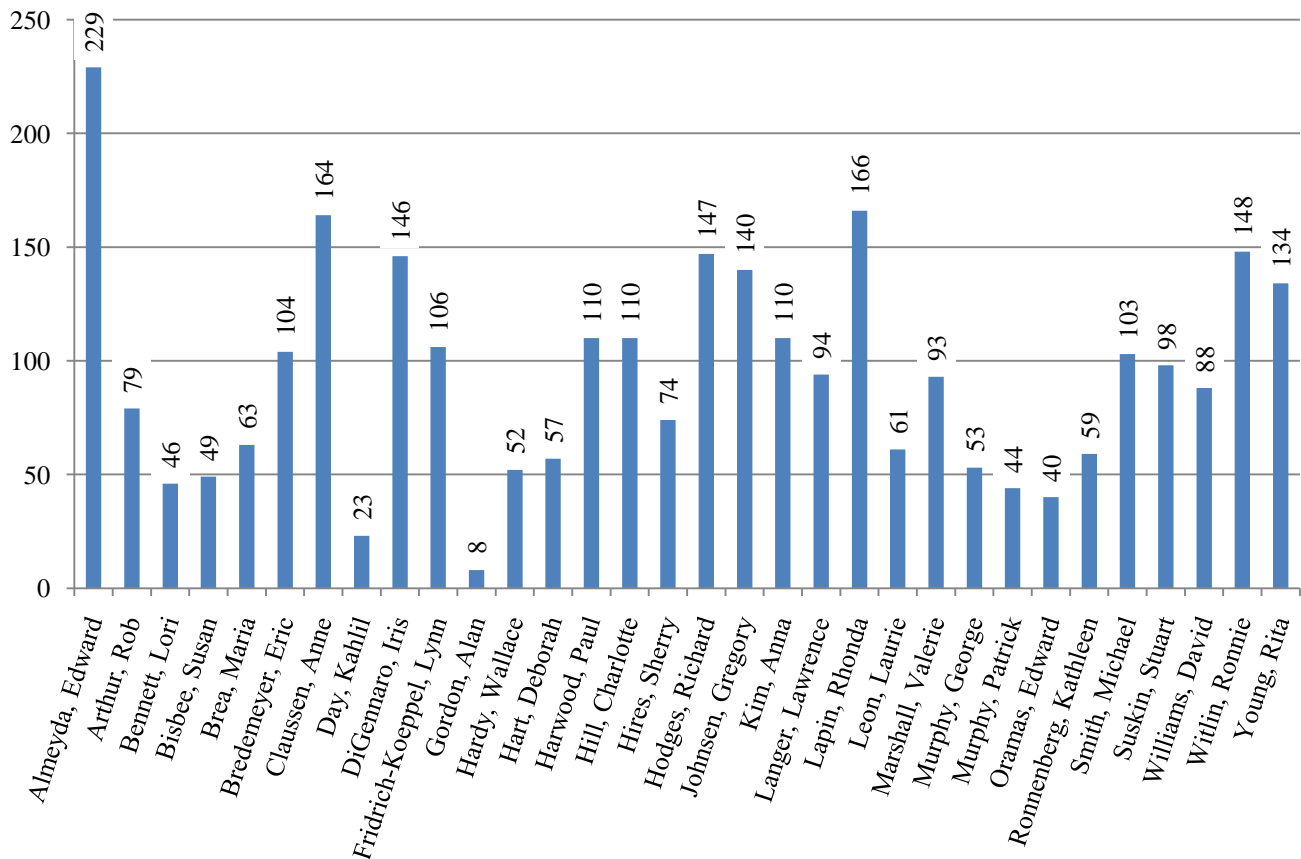
fiscal years, fewer mediation conferences have been characterized in the OJCC database as “held.” This improvement again demonstrates the value of the extensive training which has been provided for District staff since 2006. A small percentage of mediation conferences are left in the database with no characterization of the outcome. This issue is one upon which the OJCC will continue to focus effort.

The degree of resolution potentials discussed above are each expressed in the following:

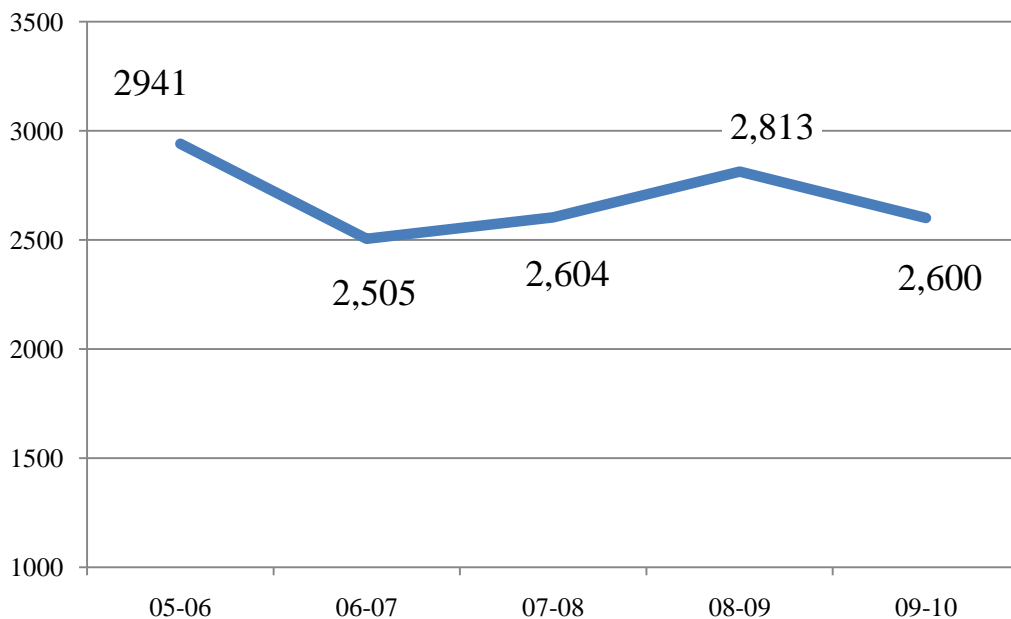
Some Issues Resolved Overall



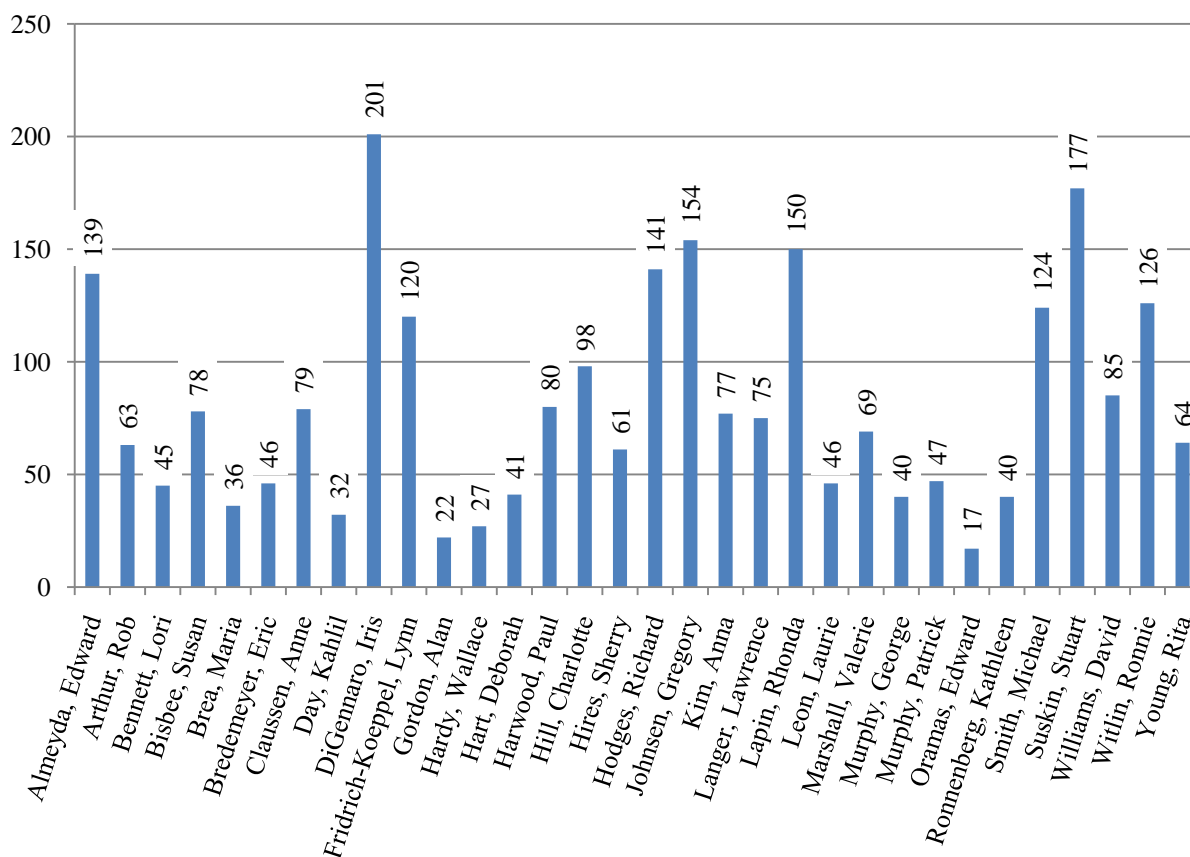
"Some Issues Resolved" for Each Mediator



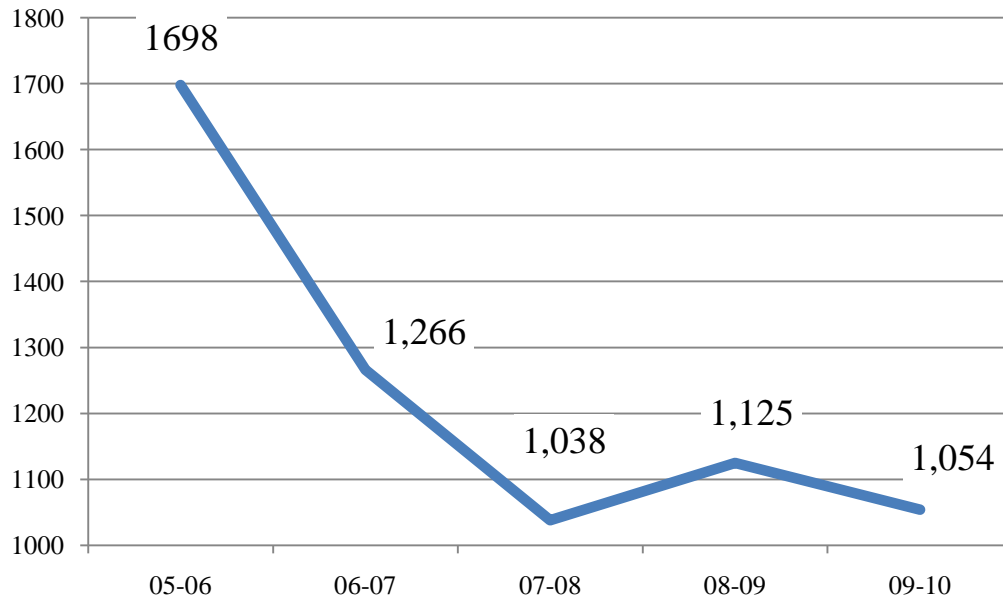
All Issues Except Fees Resolved



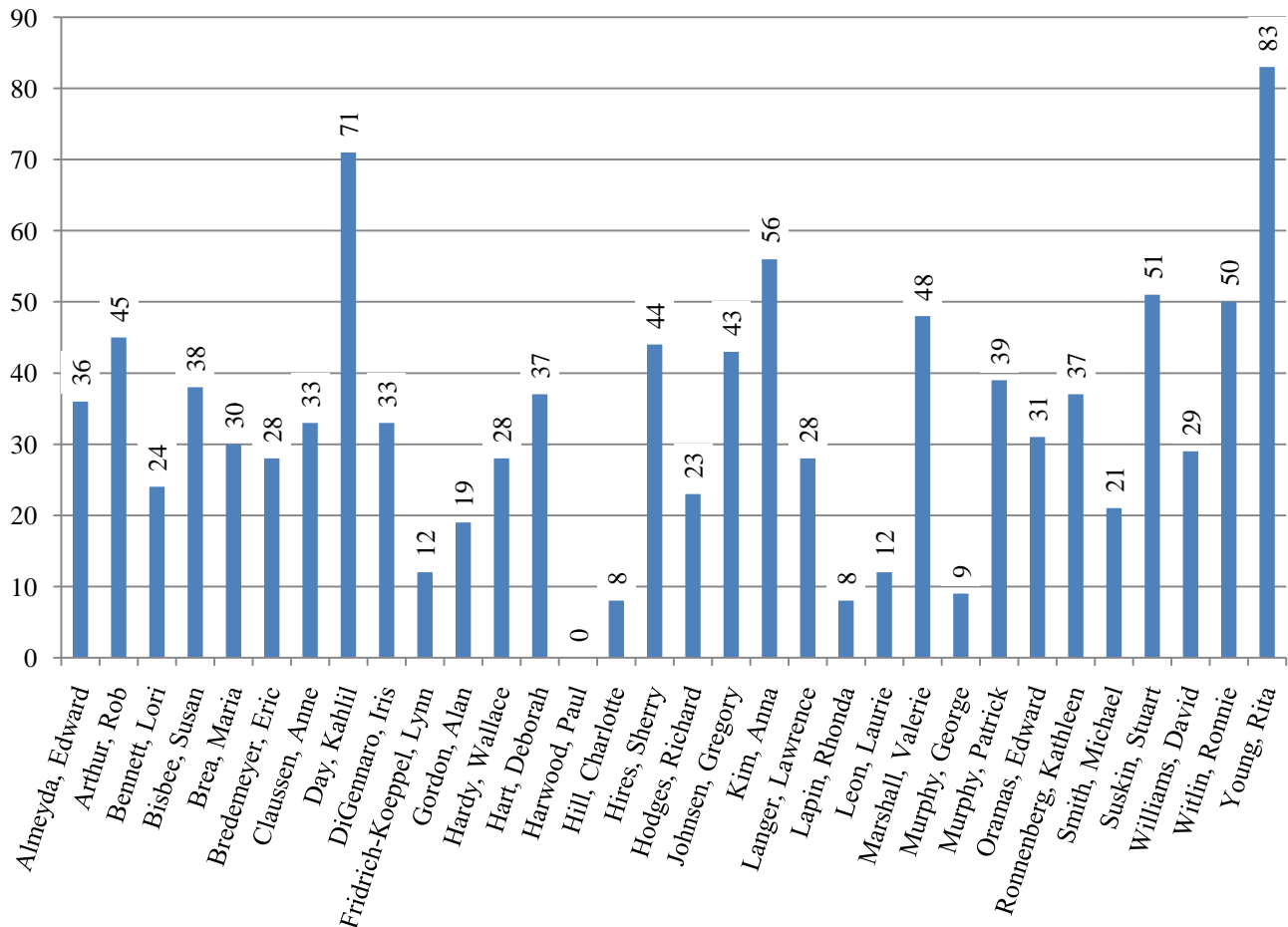
"All Issues Except Fees Resolved" for Each Mediator

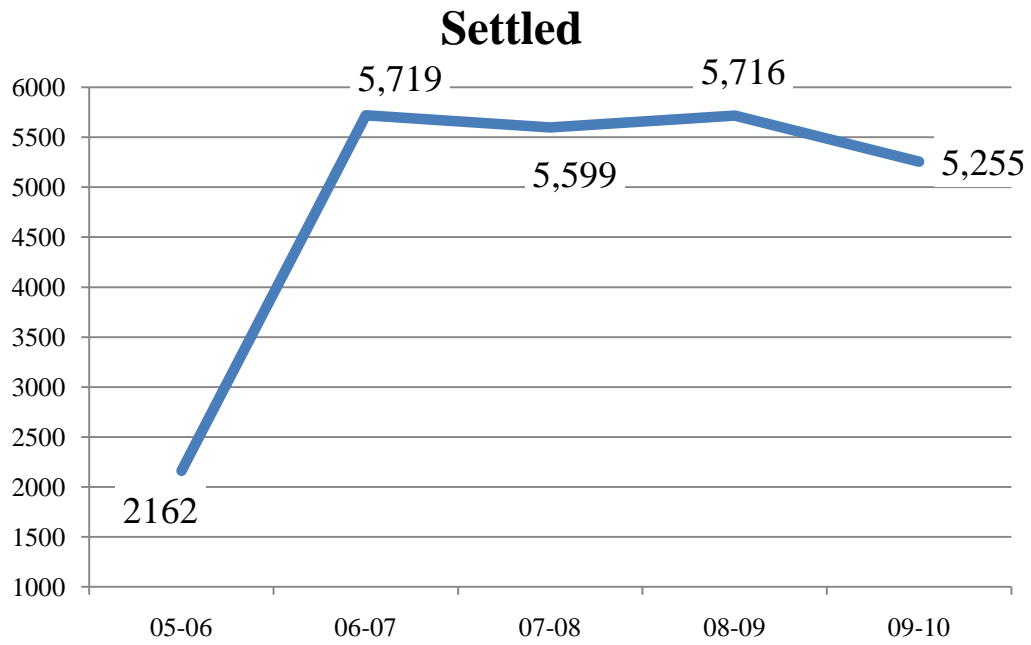


All Issues Resolved

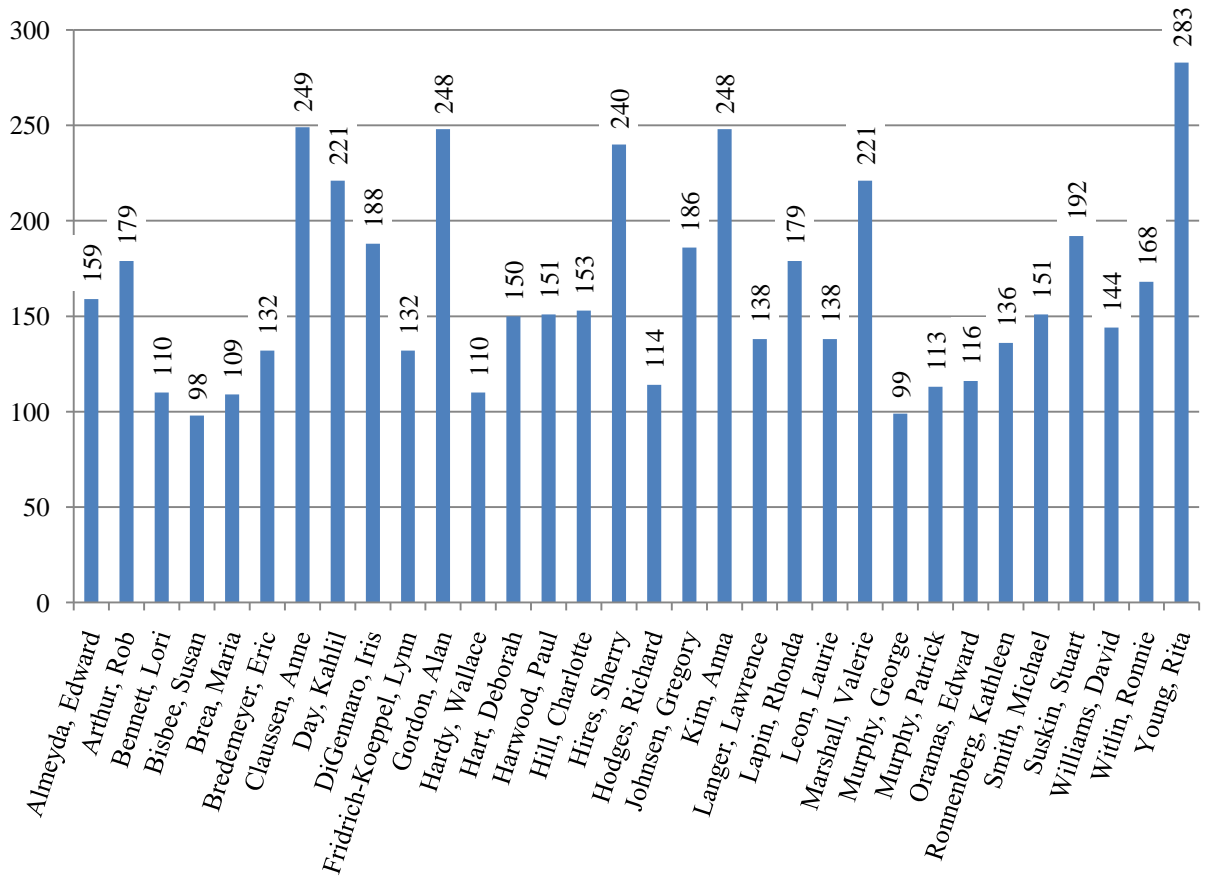


"All Issues Resolved" for Each Mediator





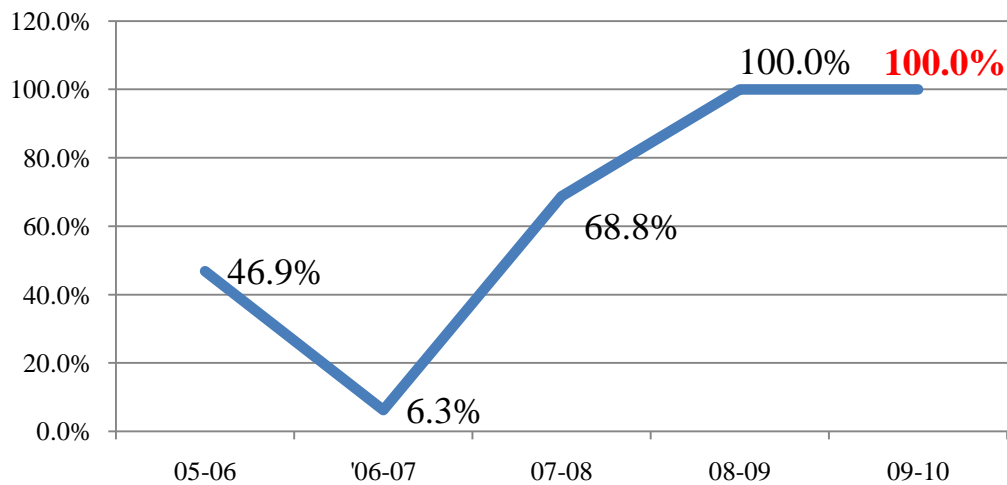
"Settled" for Each Mediator



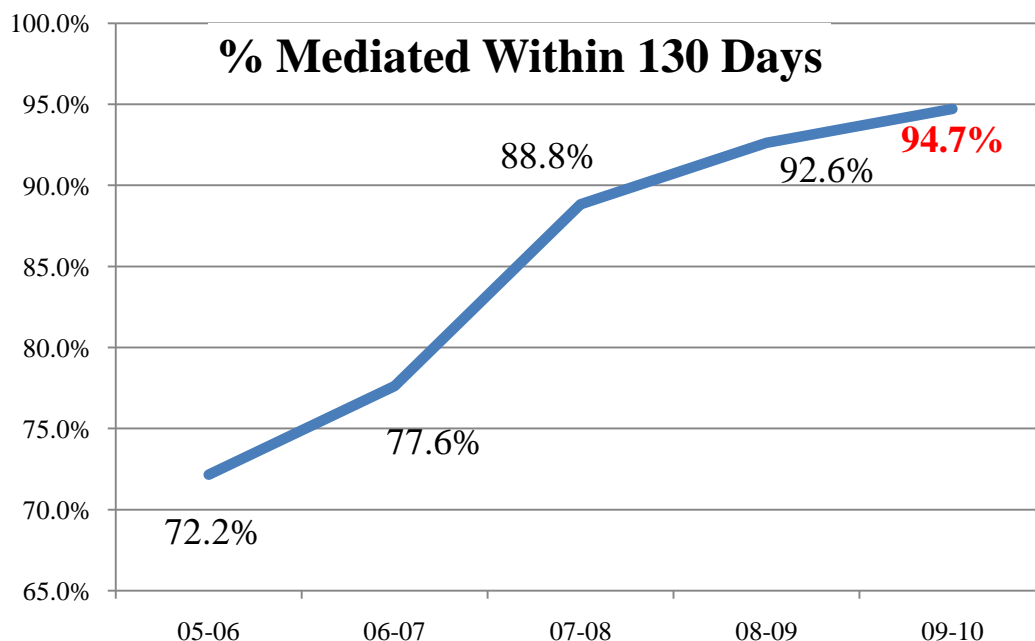
Timeliness of Mediations:

The Florida workers' compensation law requires that mediation occur within 130 days of the PFB filing. There are nonetheless situations in which metric cannot be met. In personal injury actions, it is common that mediation is occurring after the rendition of medical modalities and the injured person has reached maximum medical improvement. Conversely, in workers' compensation cases, it is common that mediation on some benefits is occurring while medical care is ongoing. Therefore rescheduling to accommodate medical treatment appointments, and other exigencies do occur. Of primary concern is whether the mediation process is fulfilling the 130 day requirement generally, and this is most easily measured by consideration of the average days between PFB filing and the first mediation. Considering this matrix, the OJCC mediators have made considerable progress in recent years. In both 2008-09 and 2009-10, all of the OJCC mediators averaged less than 130 days:

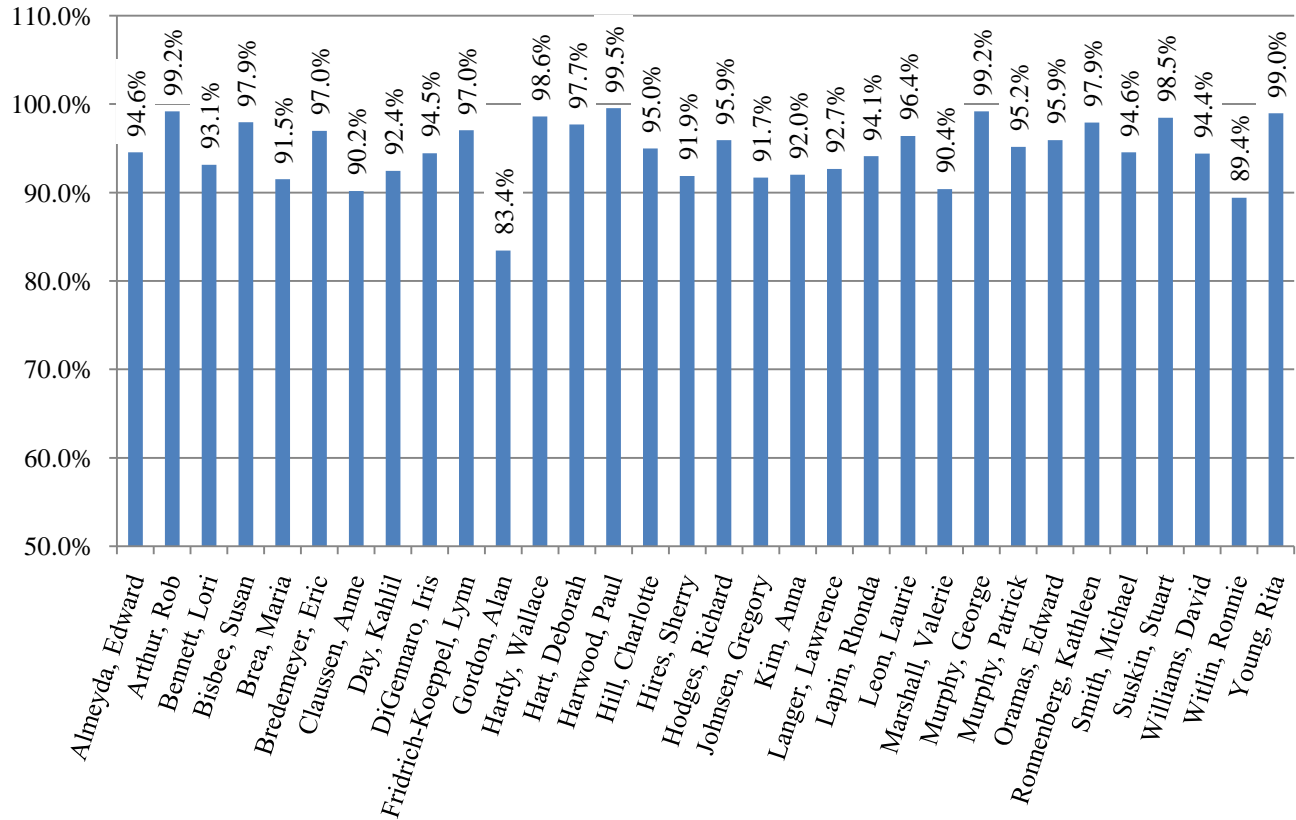
Percent of State Mediators Averaging Less Than 130 Days



In fact, in 2009-10 the OJCC mediated 94.7% of all PFB filed within the 130 day statutory parameter. This marks outstanding improvement over the last five years.



% Mediated within 130 Days for each Mediator

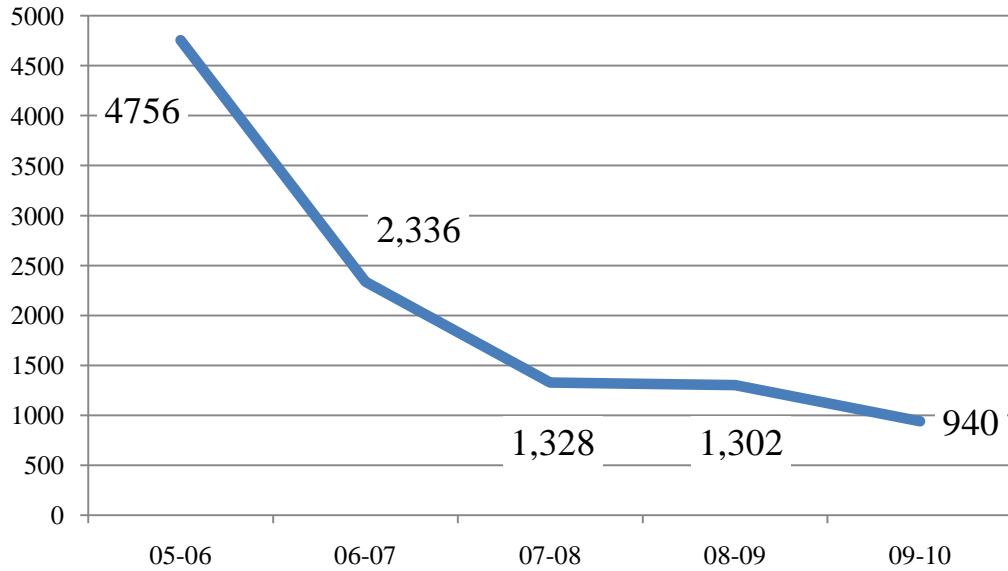


Mediations Continued:

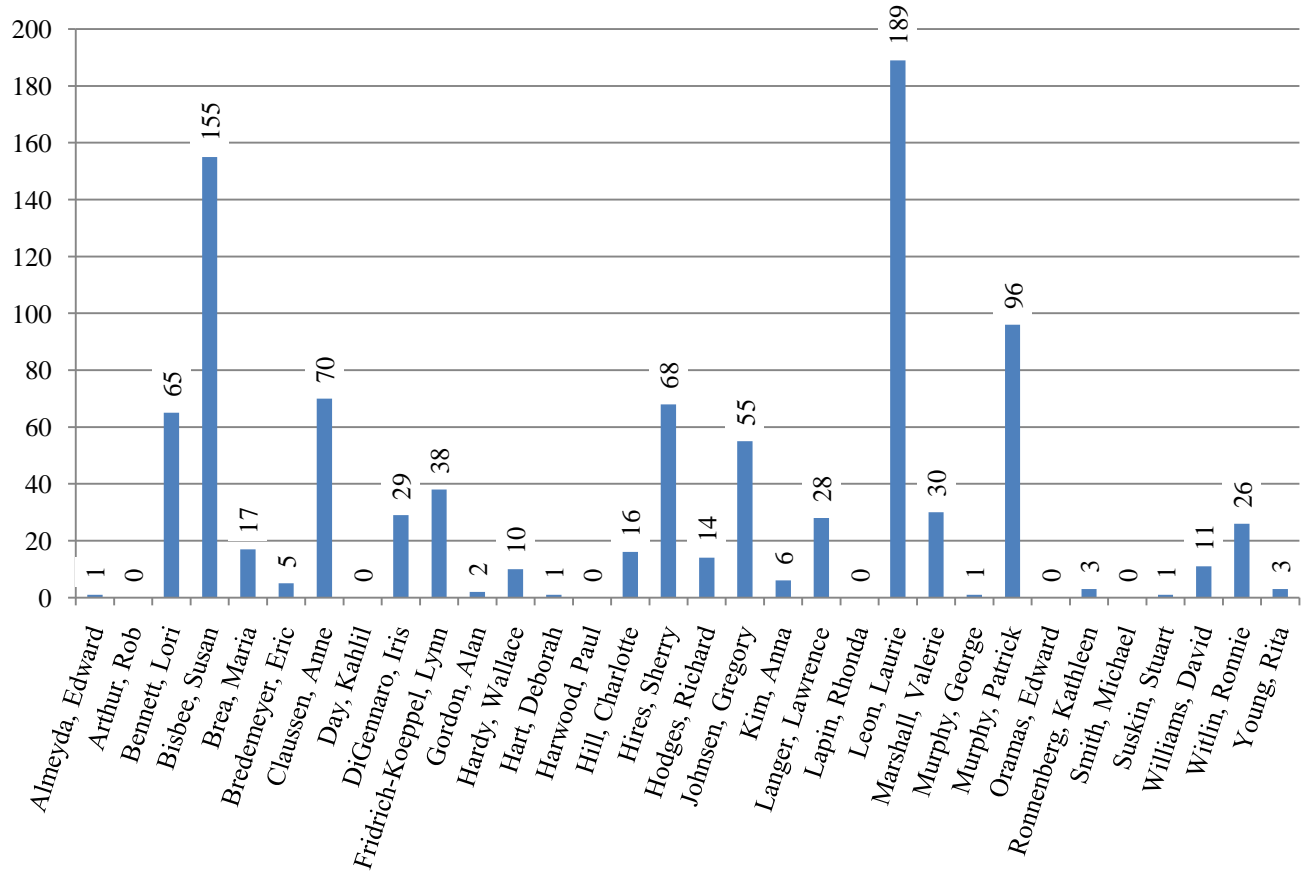
Mediation continuances increased markedly in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. However, those volumes may have been increased by the volume of weather-related office closures that year, as Florida endured serial cyclone landfalls (see endnote 17), which affected virtually every county. Those storms caused Carriers to close offices in central Florida (frustrating mediations in unaffected districts elsewhere) and by closing district offices at which the mediations would otherwise have been held. The mediation continuance trend reversed in 2006-07, and decreased significantly in 2009-10. Some portion of the stabilizing figures is also due in part to the staff training provided by the OJCC since 2006 and the resulting uniformity in the use of the characterization “continued” within the OJCC database. Some portion of both the stabilizing of these figures and the marked decrease in the number of mediation conference continuances is also likely attributable to the decreased volume of PFB filings and the resulting relief upon the mediator’s individual calendars. Some portion may also be attributable to the increased familiarity of counsel with the statutory timelines since they were imposed.

| Fiscal Year | Petitions Filed | Mediations Continued | Med. Cont. v. PFB Filed |
|-------------|-----------------|----------------------|-------------------------|
| 2002-03 | 151,021 | 2,755 | 1.82% |
| 2003-04 | 127,458 | 2,036 | 1.60% |
| 2004-05 | 107,268 | 3,333 | 3.11% |
| 2005-06 | 90,948 | 4,756 | 5.23% |
| 2006-07 | 82,607 | 2,336 | 2.83% |
| 2007-08 | 72,718 | 1,328 | 1.83% |
| 2008-09 | 73,863 | 1,302 | 1.76% |
| 2009-10 | 67,971 | 940 | 1.38% |

Mediations Continued

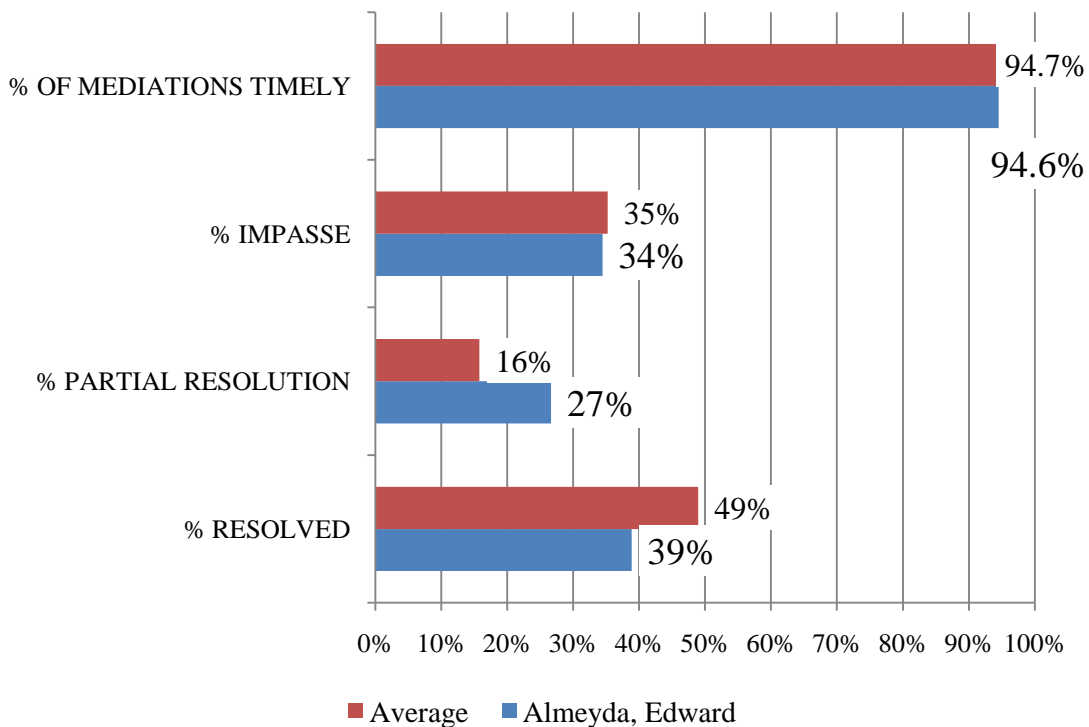
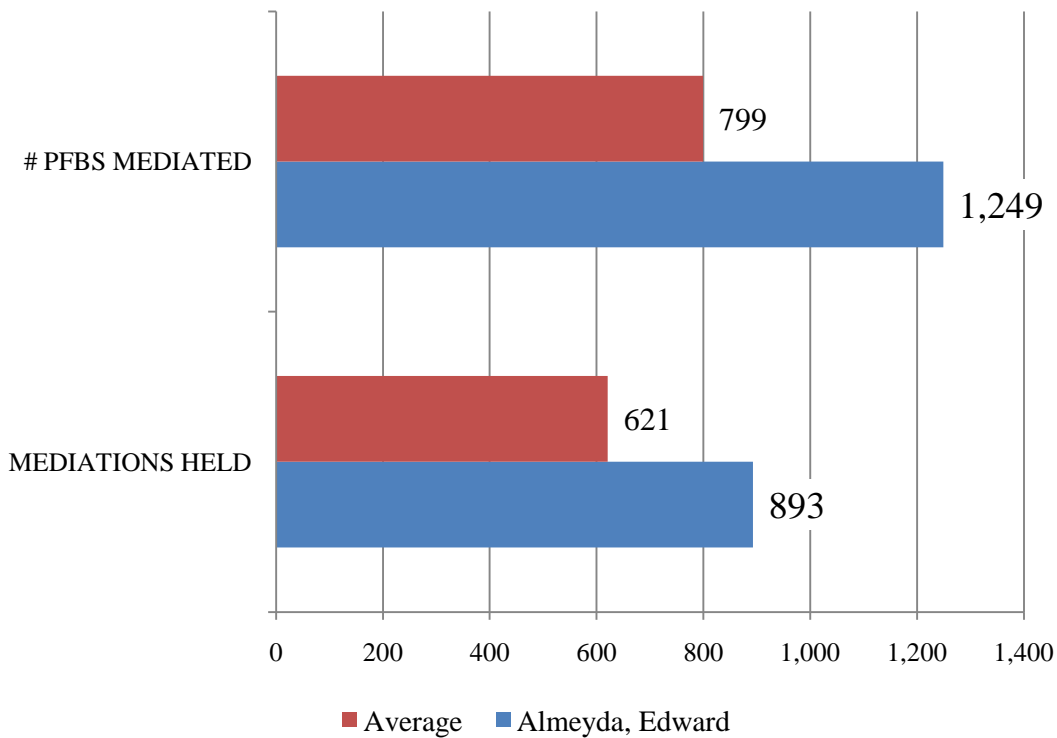


"Mediations Continued" for Each Mediator

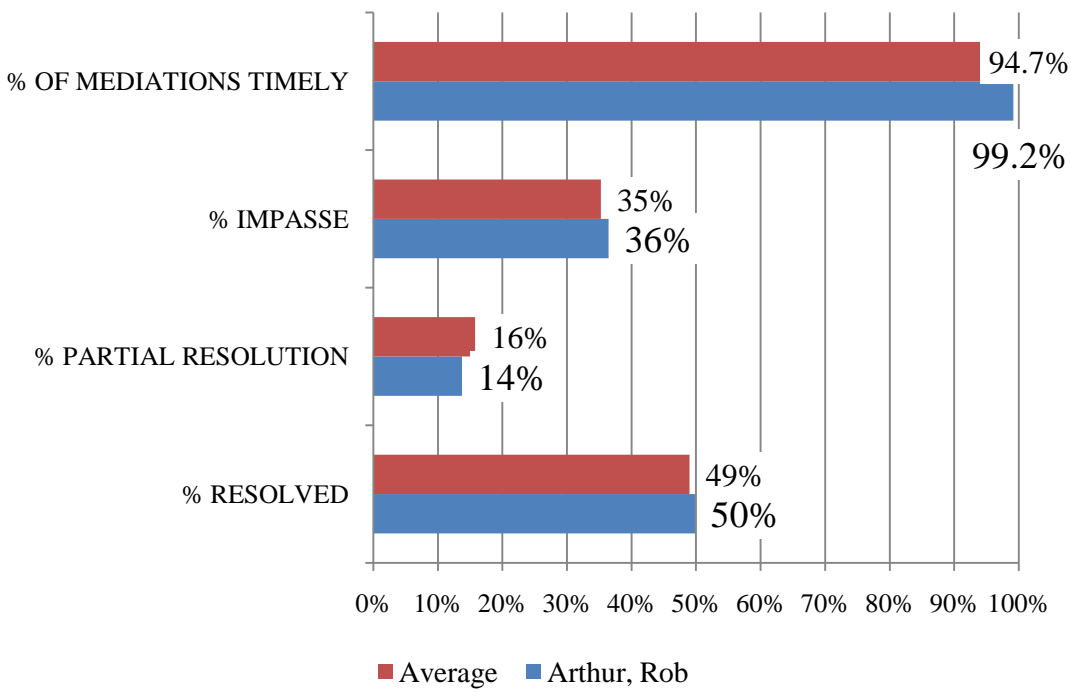
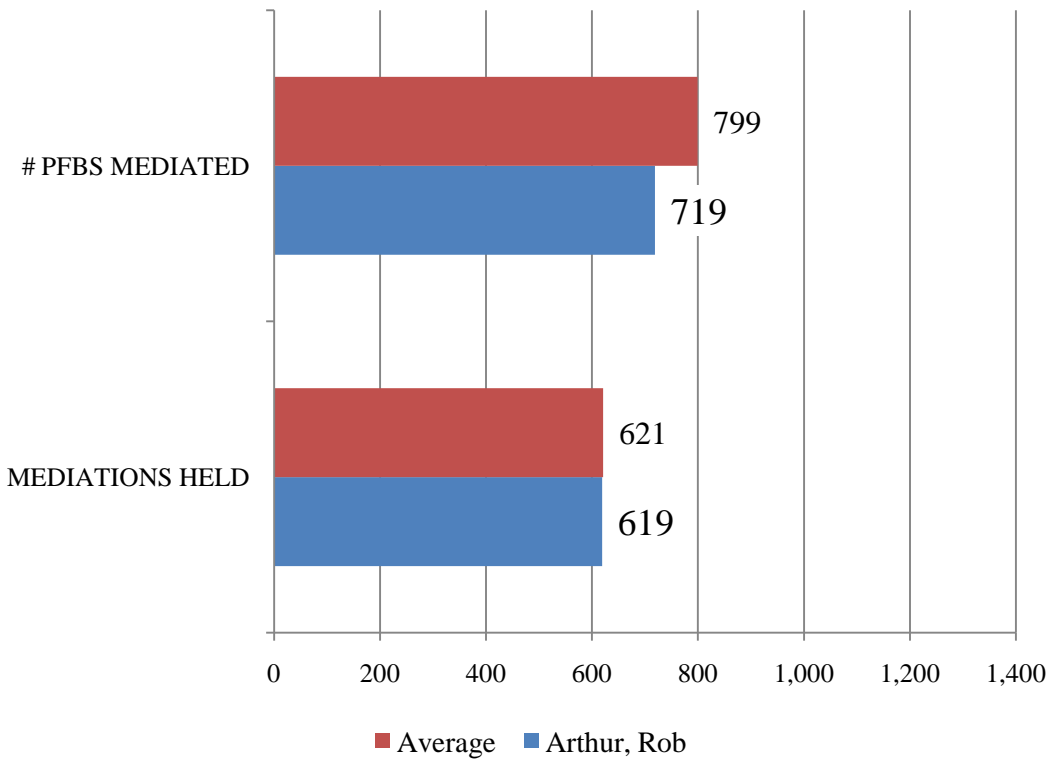


Individual Mediator Statistics:

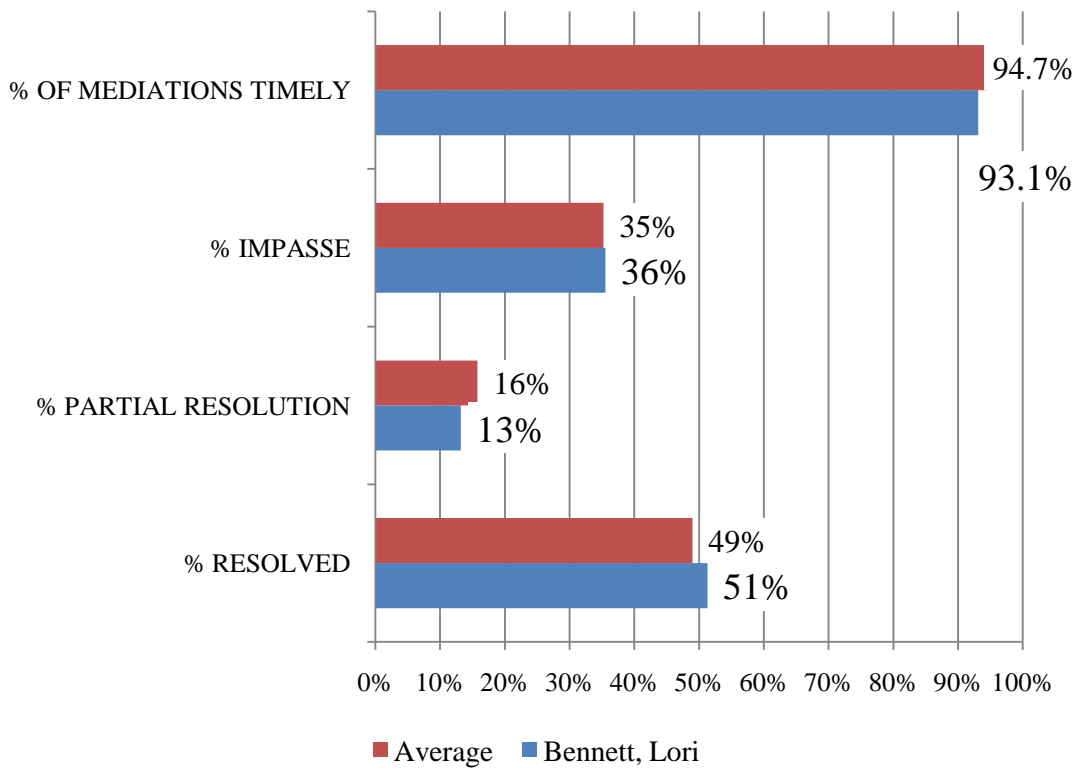
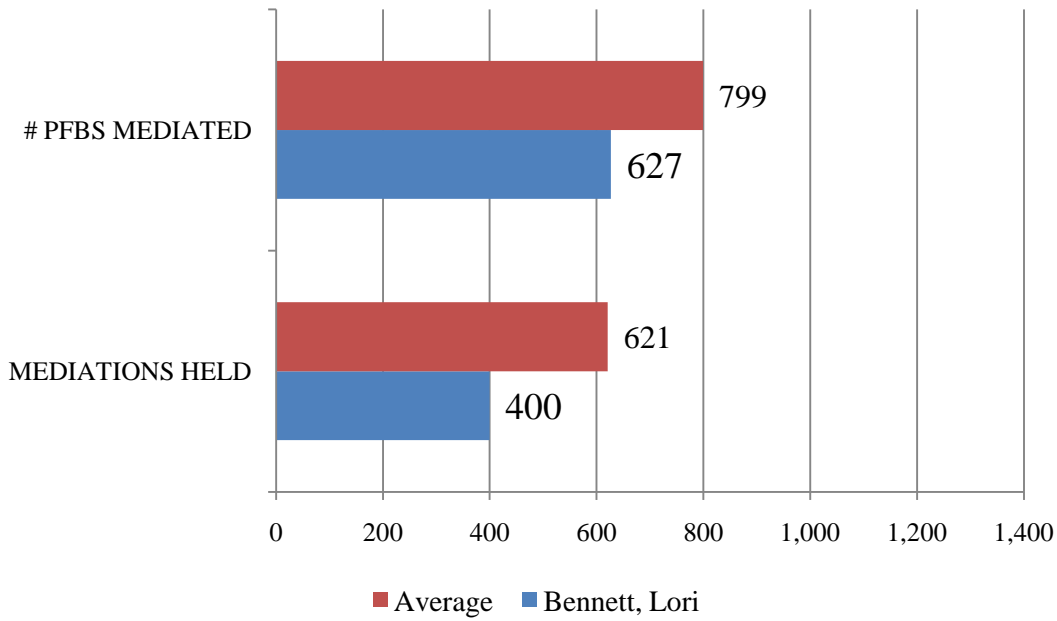
Almeyda, Edward (MIA)



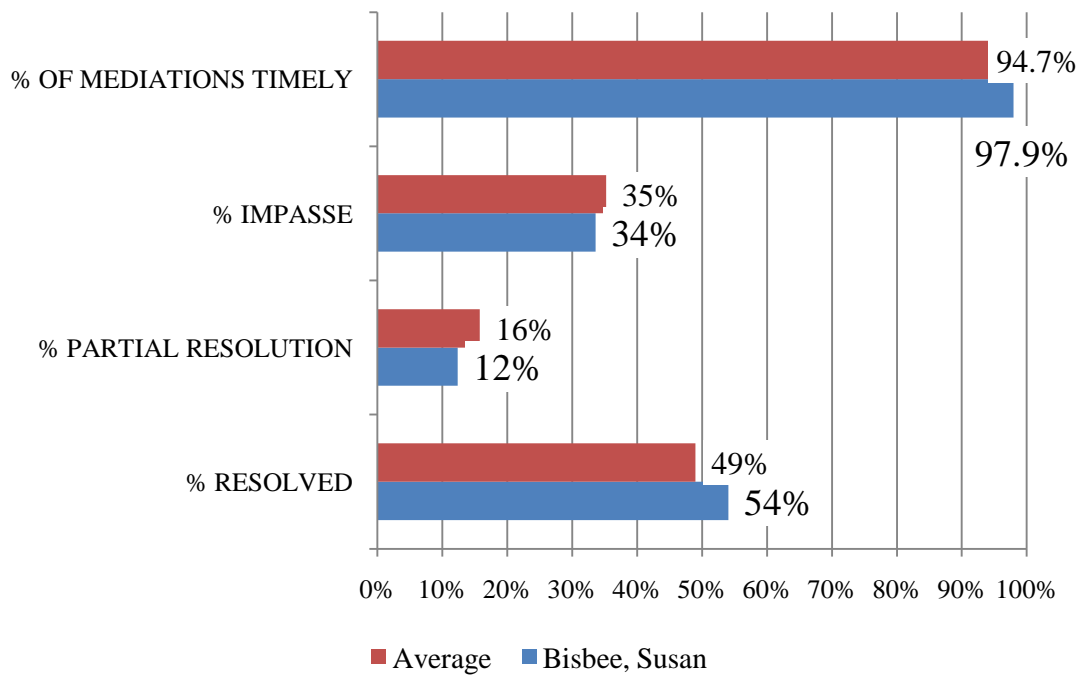
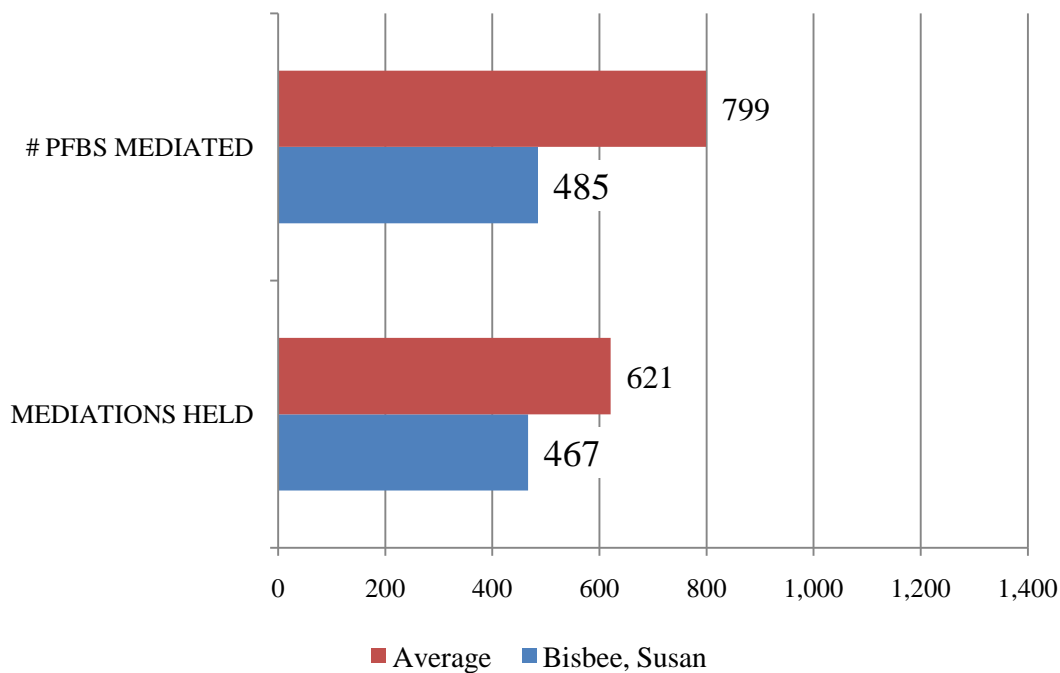
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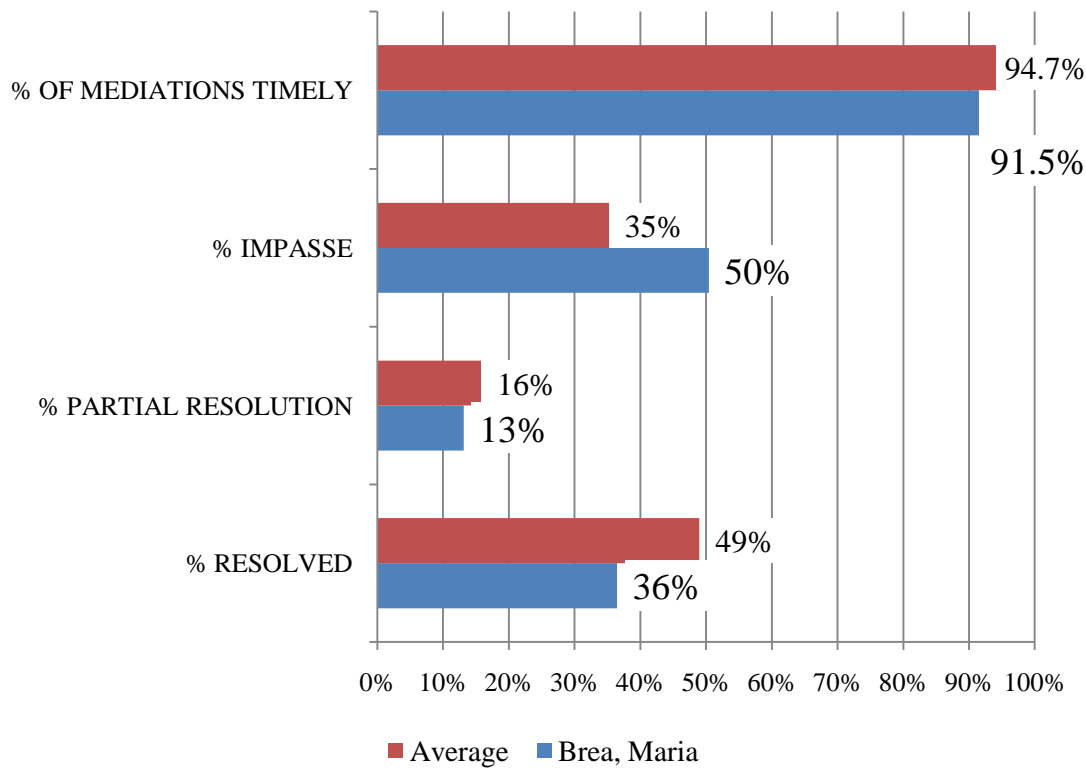
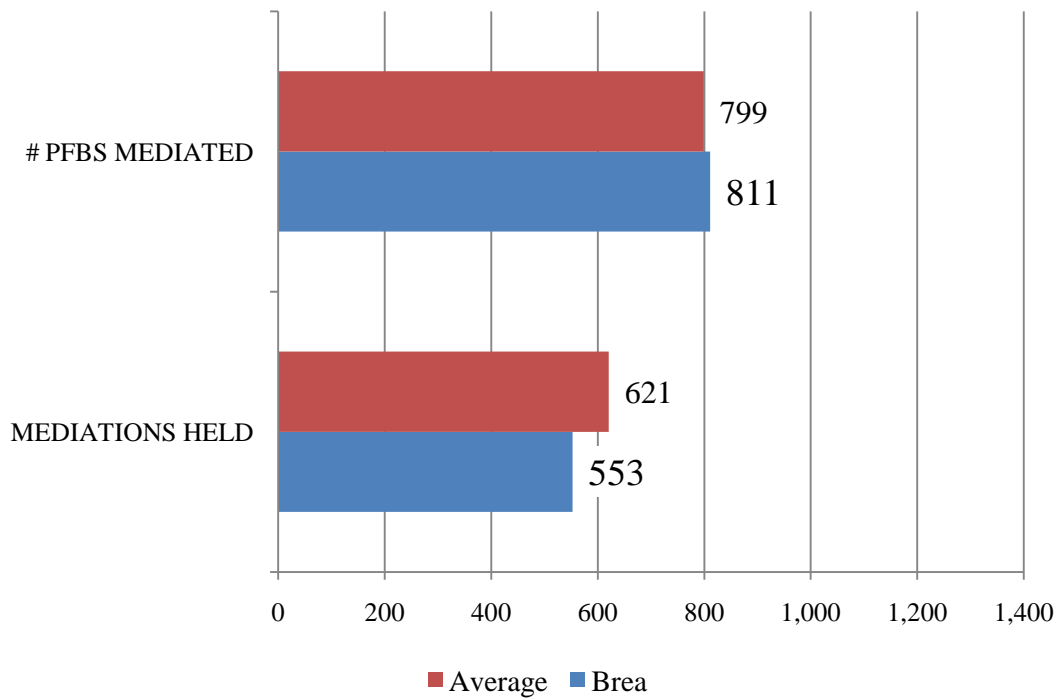
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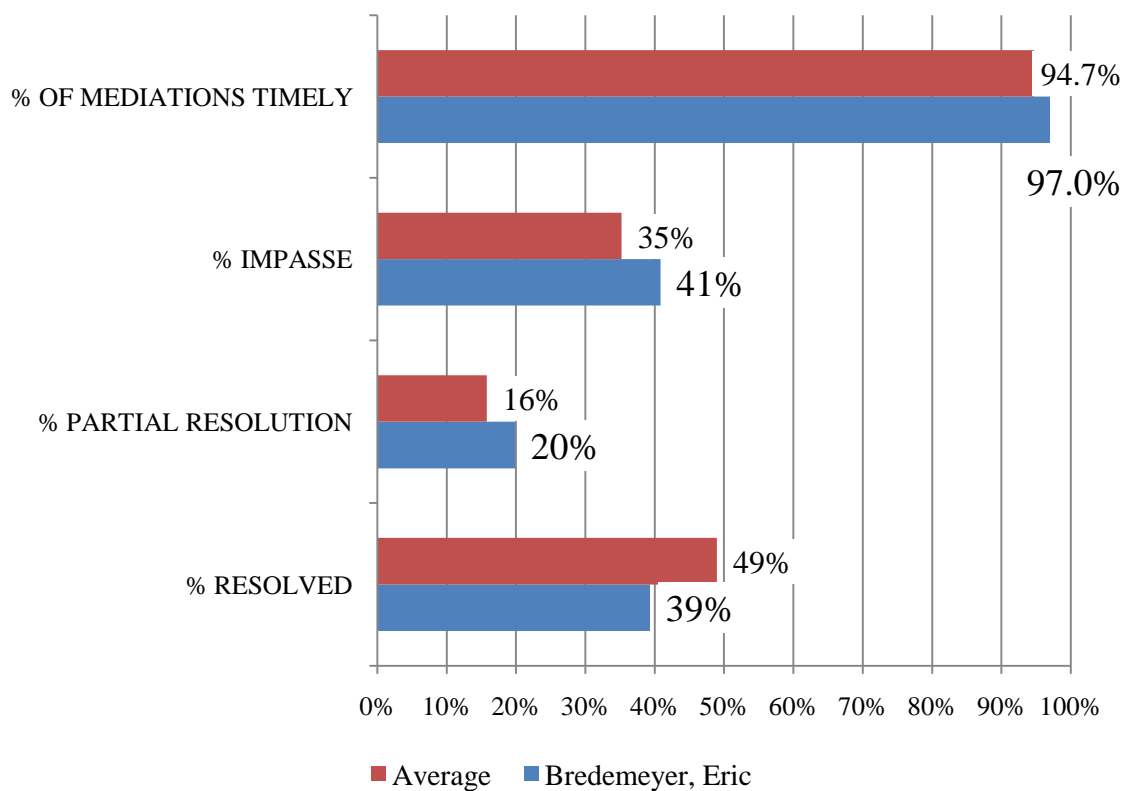
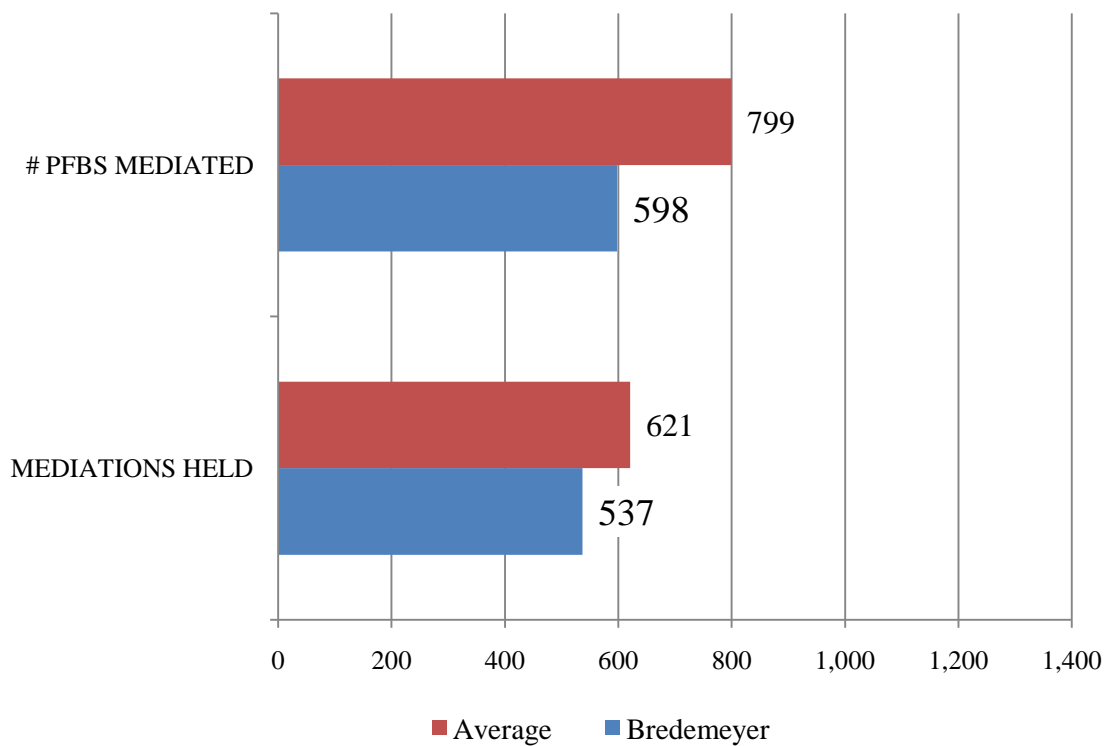
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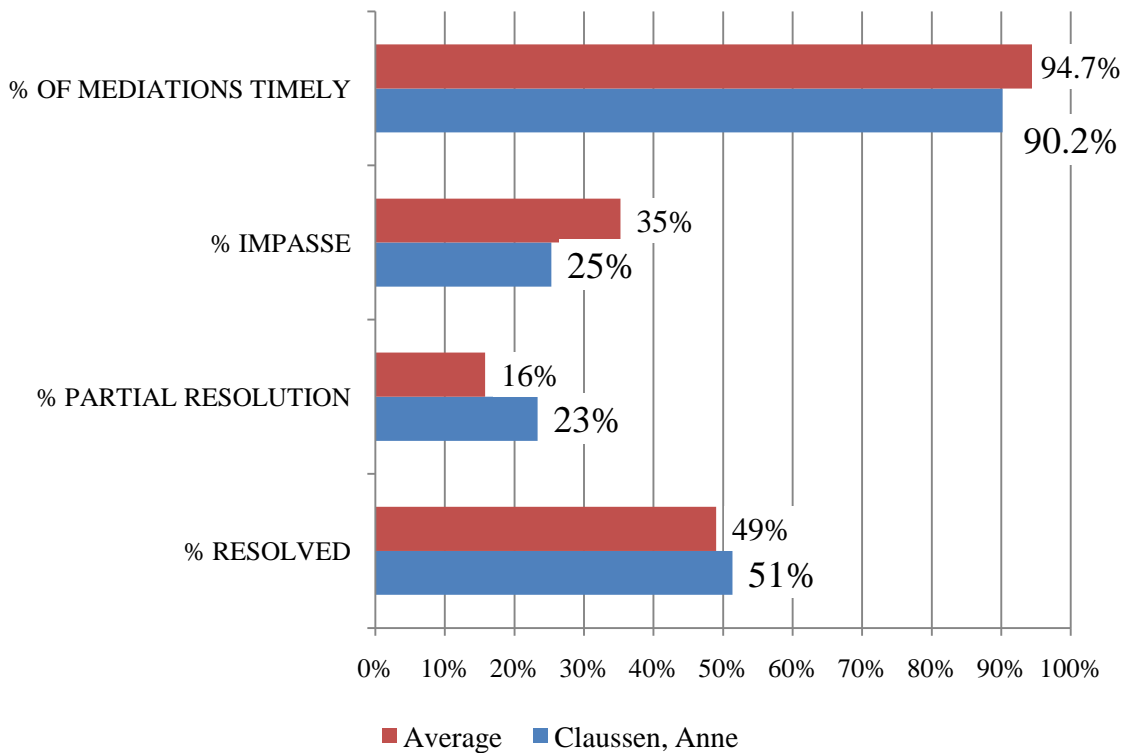
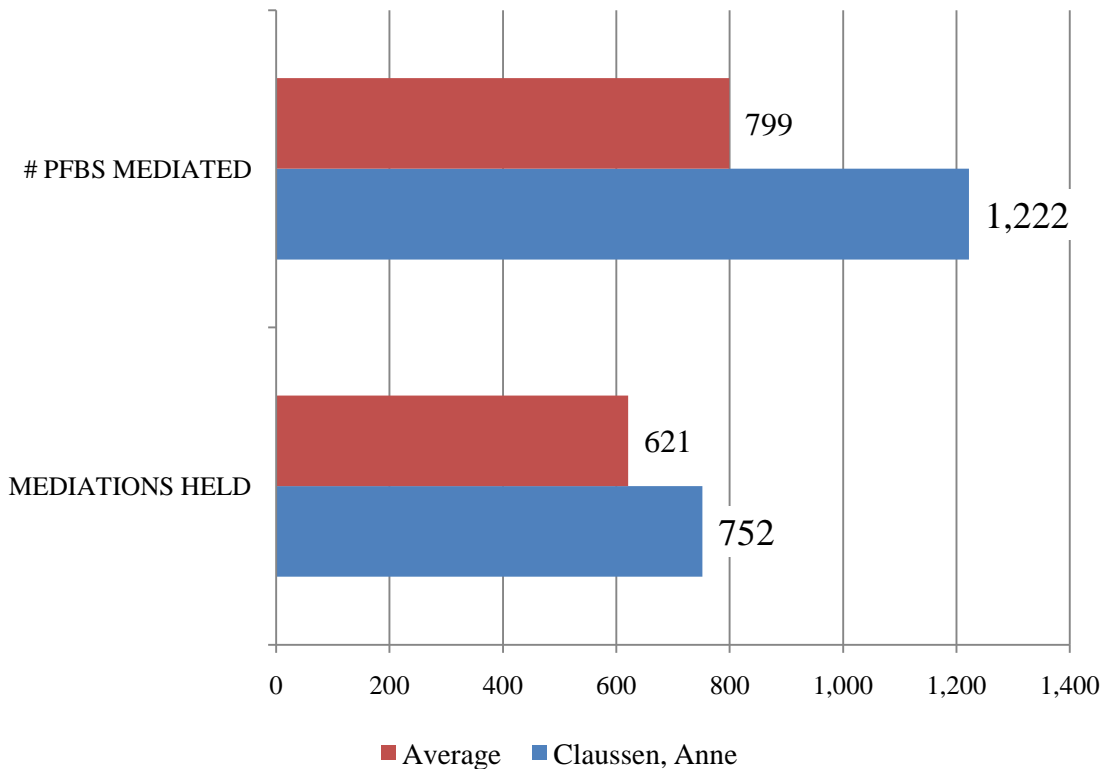
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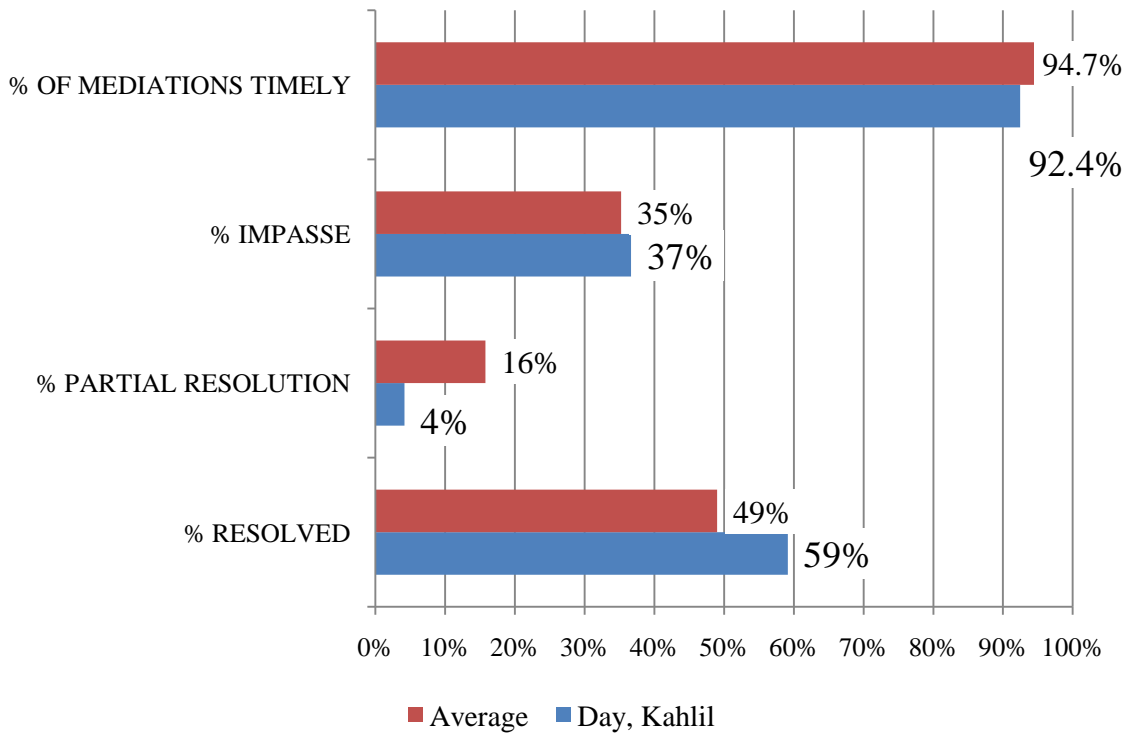
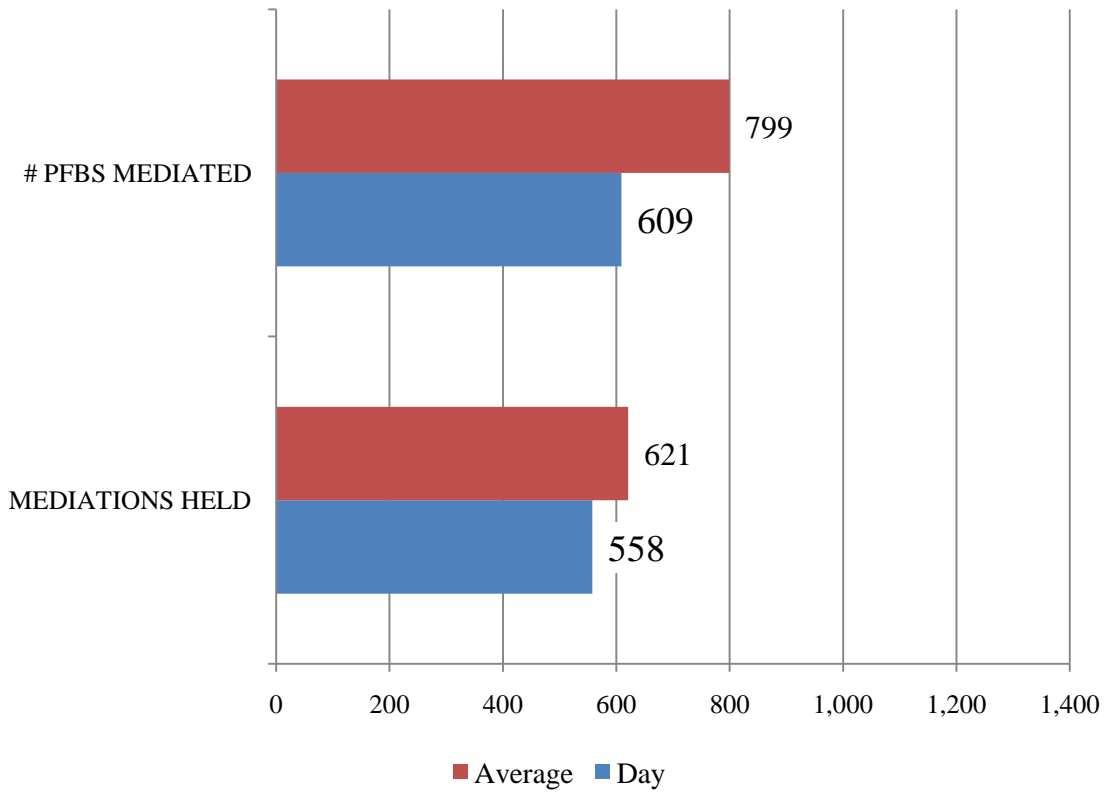
Bredemeyer, Eric (FTM)



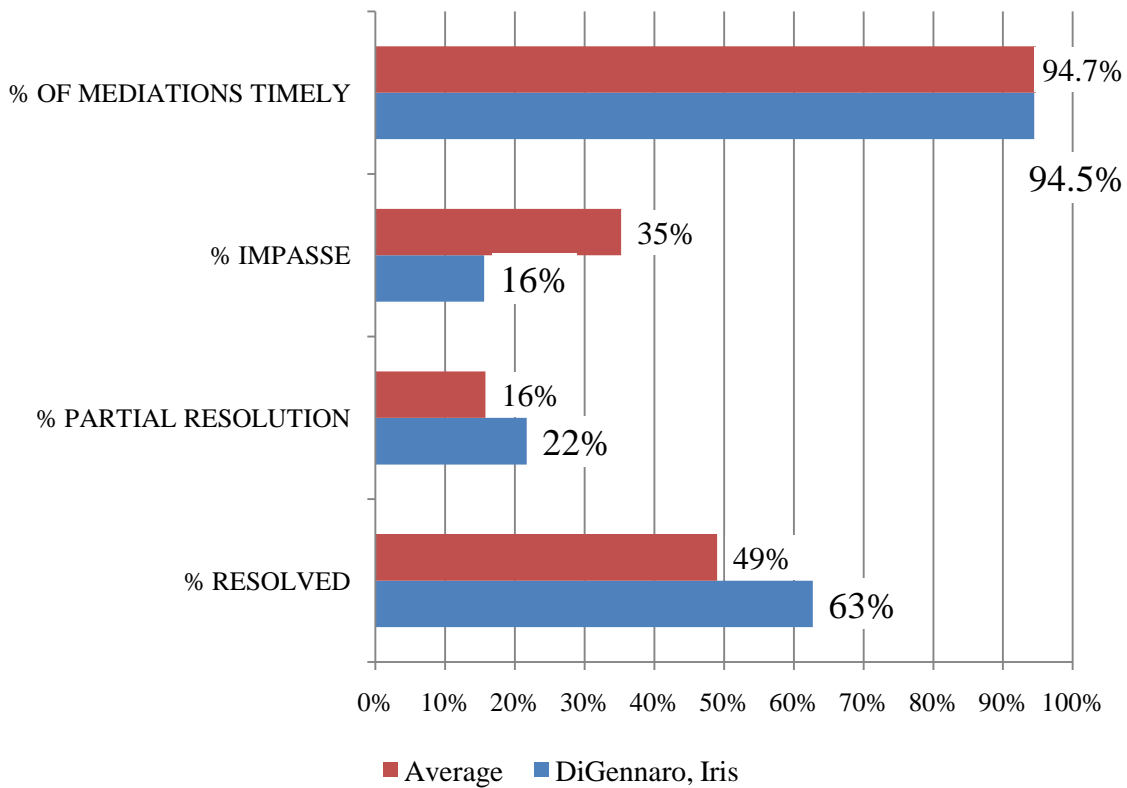
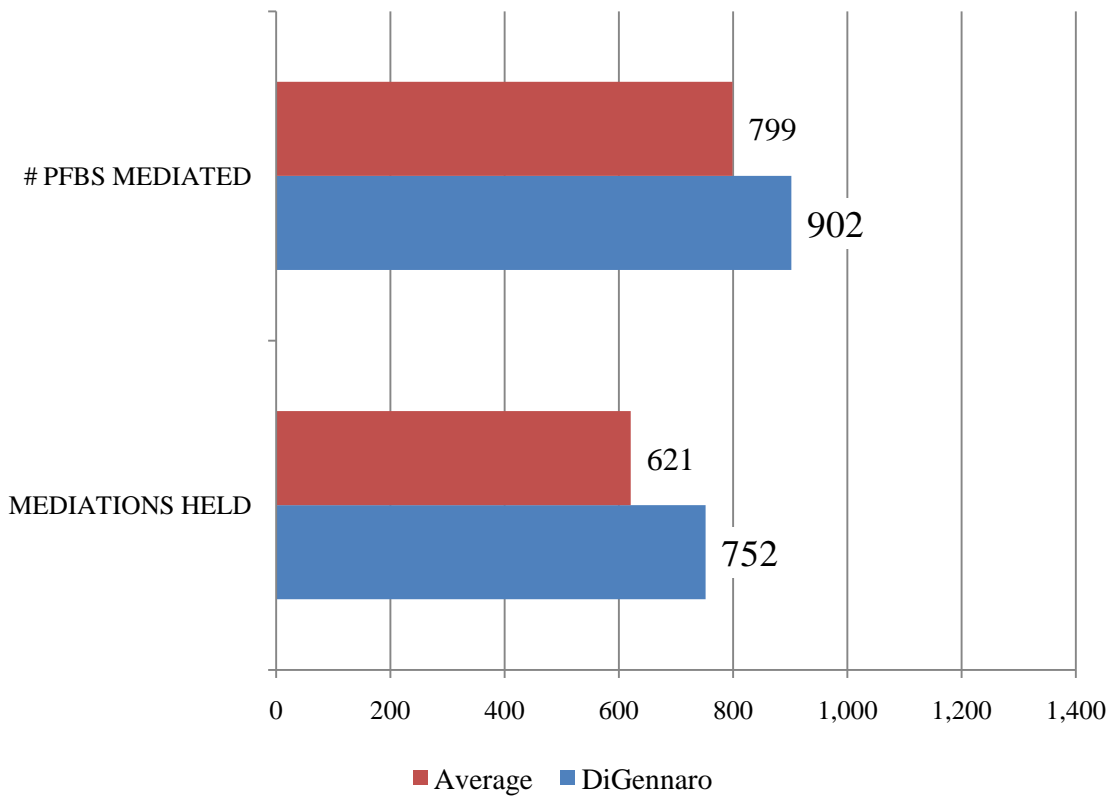
Claussen, Anne (SAR)



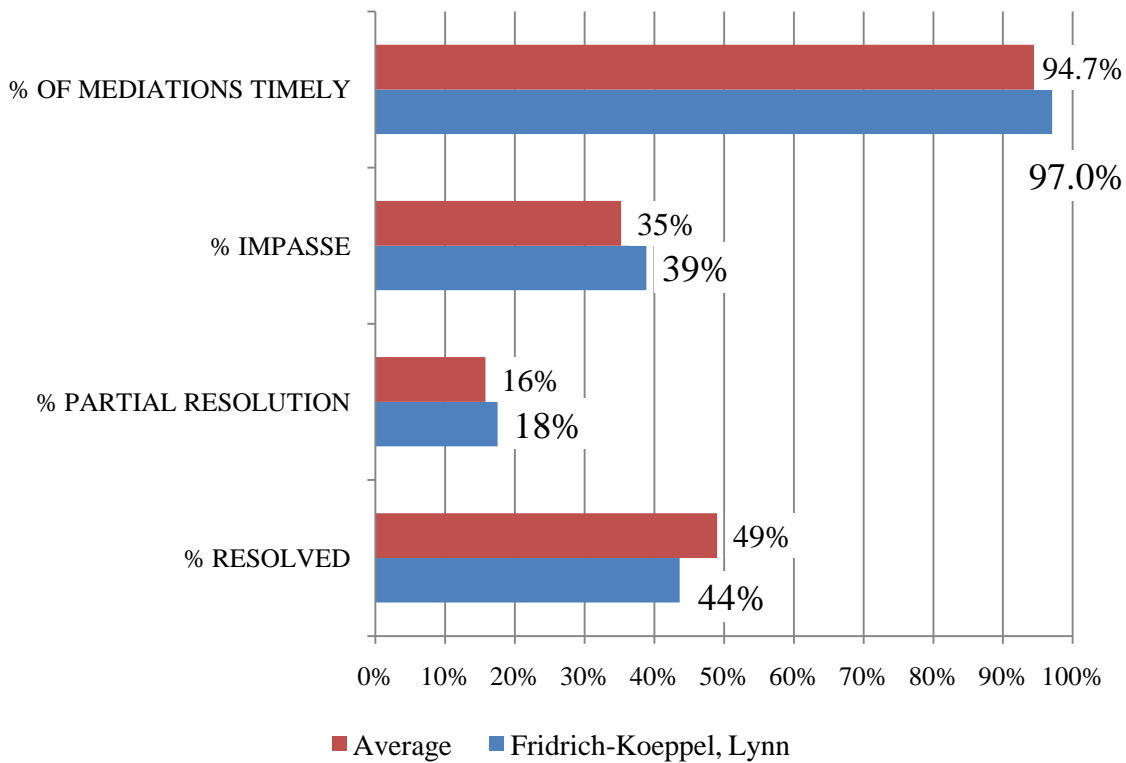
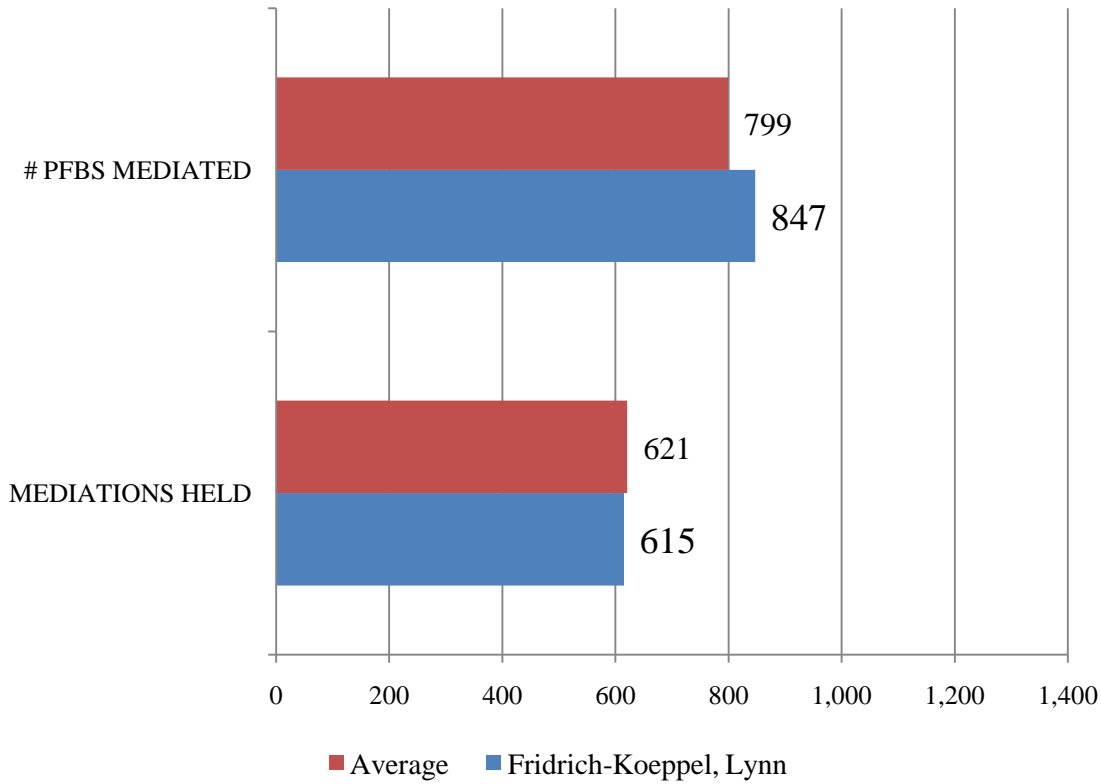
Day, Kahlil (JAX)



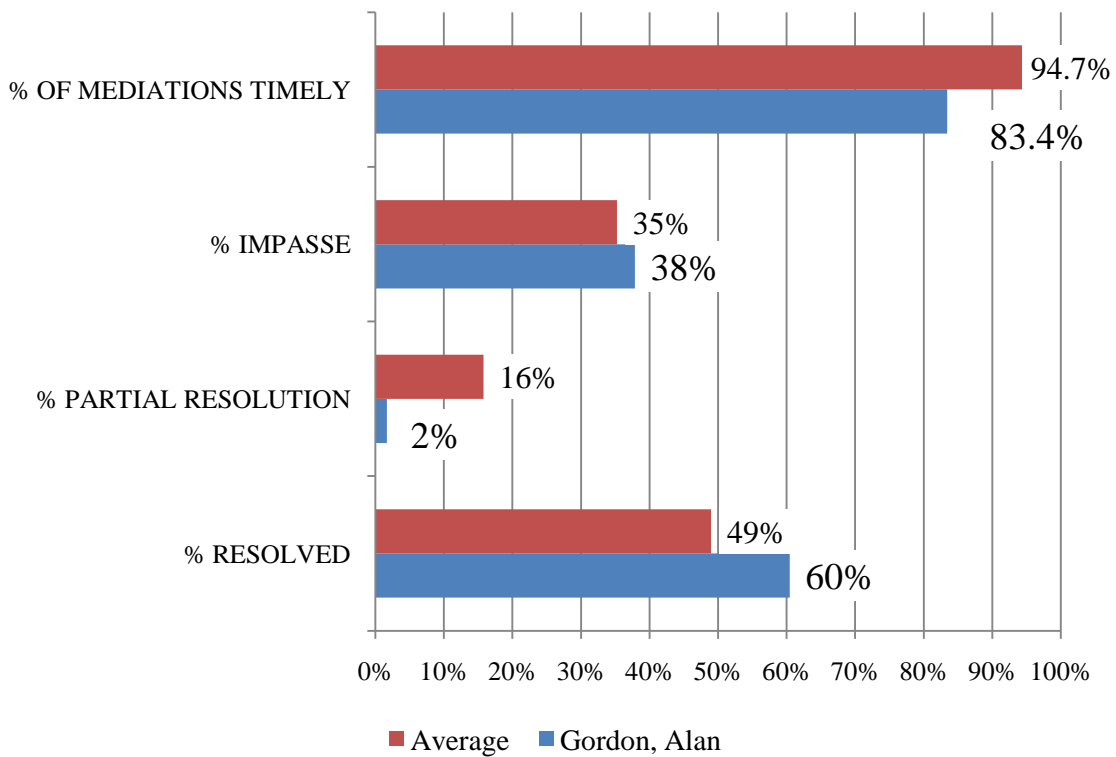
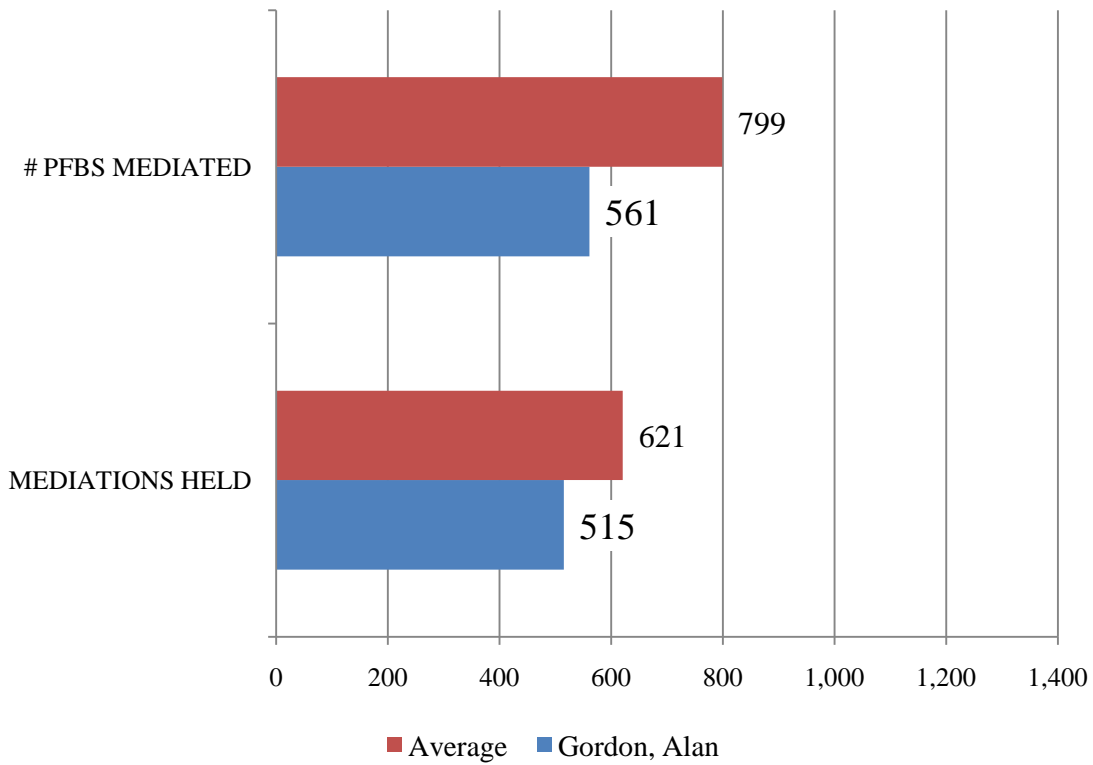
DiGennaro, Iris (FTL)



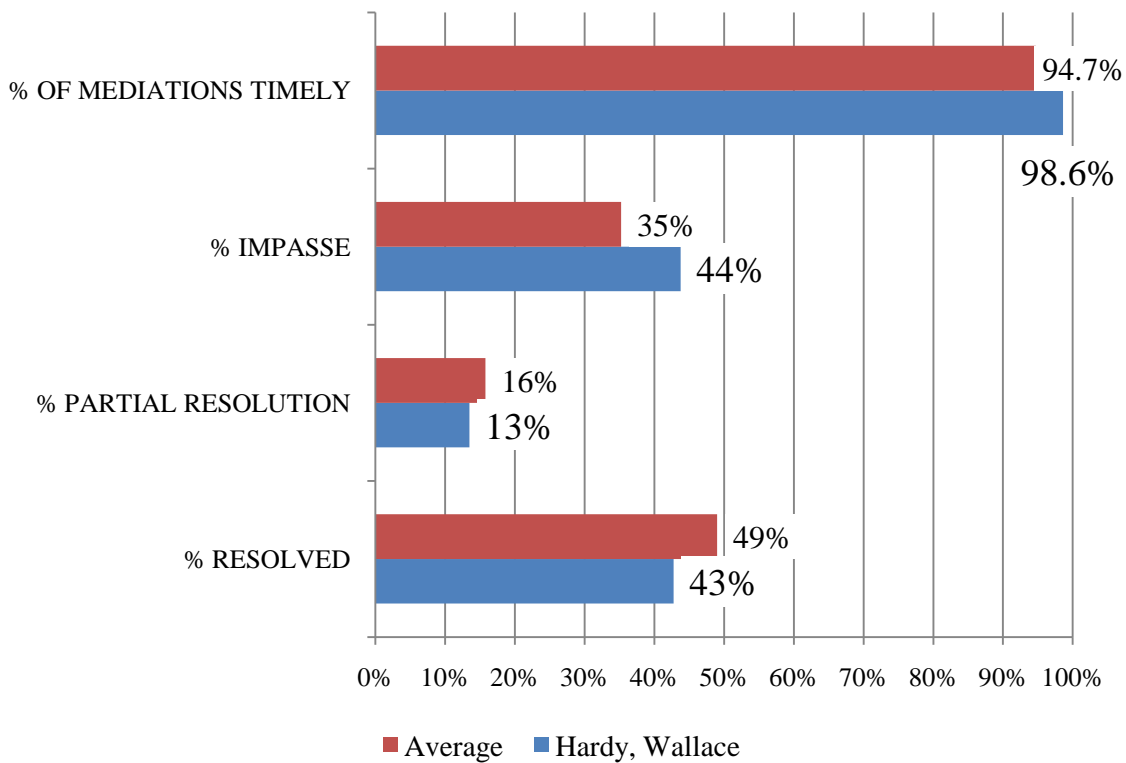
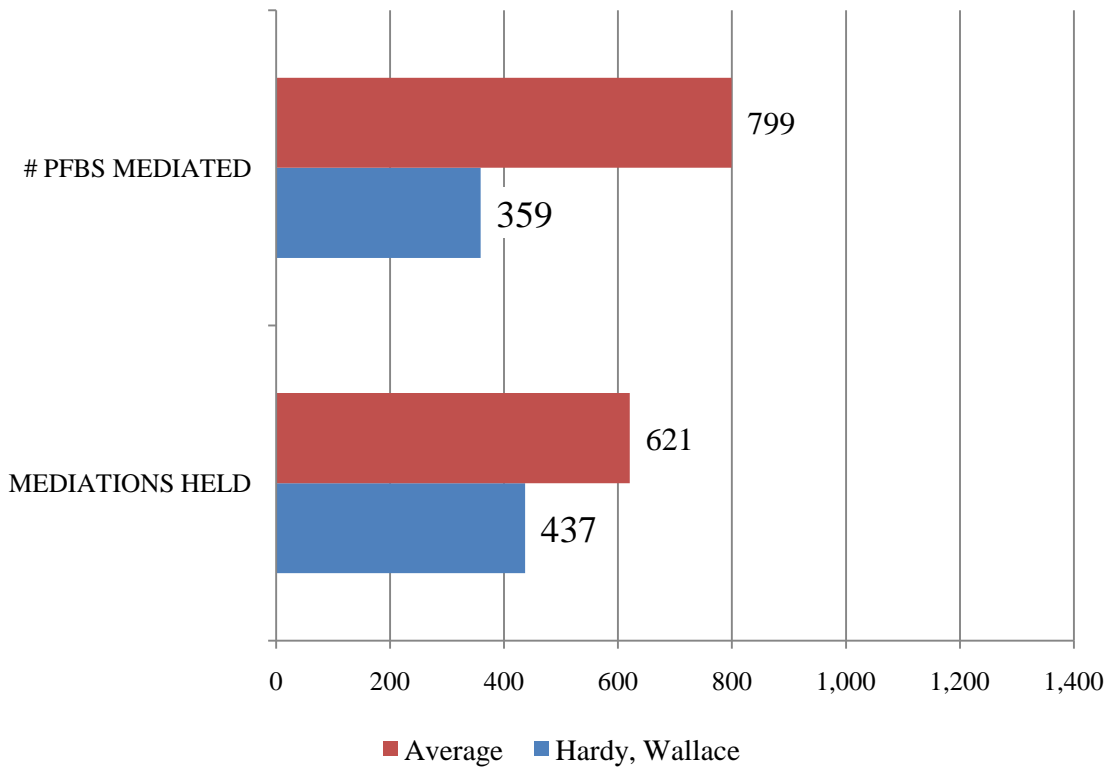
Fridrich-Koeppel, Lynn (FTL)



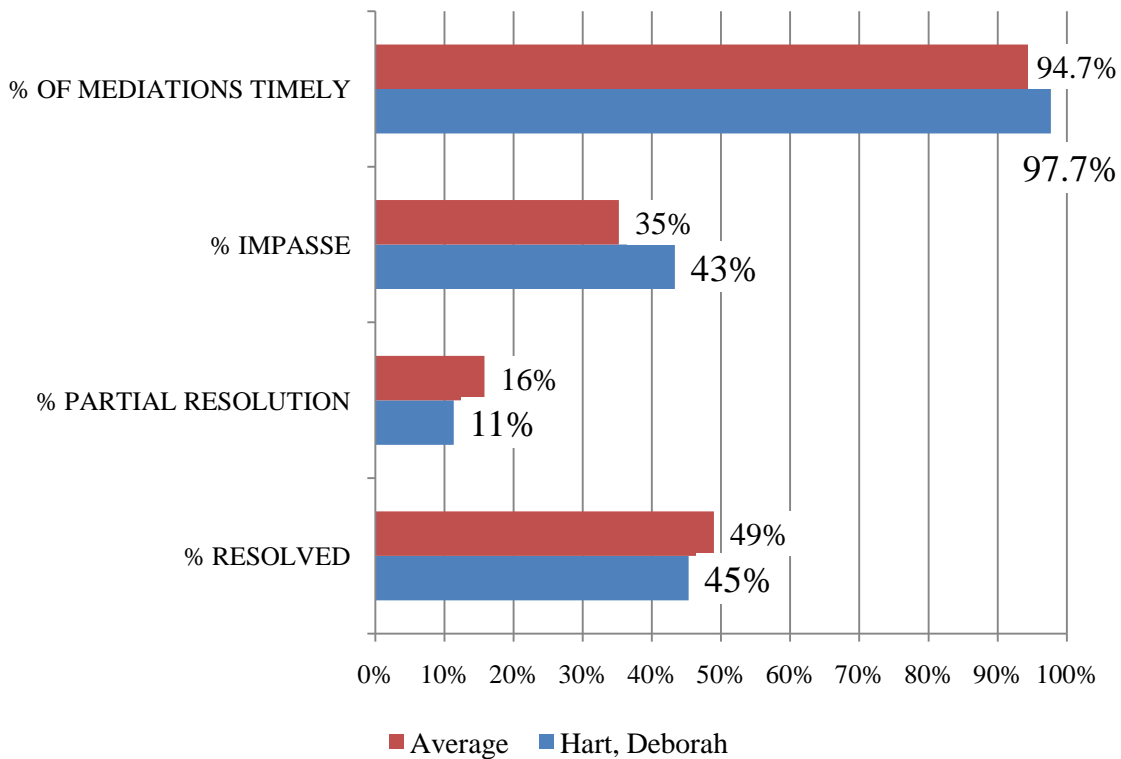
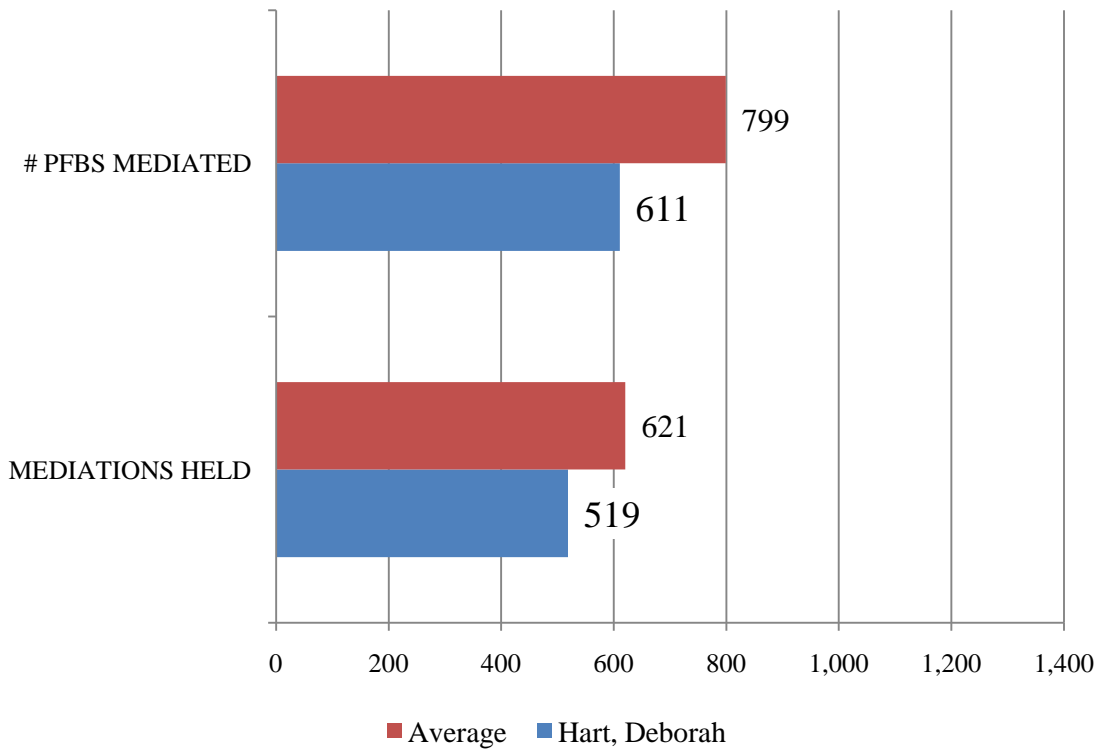
Gordon, Alan (JAX)



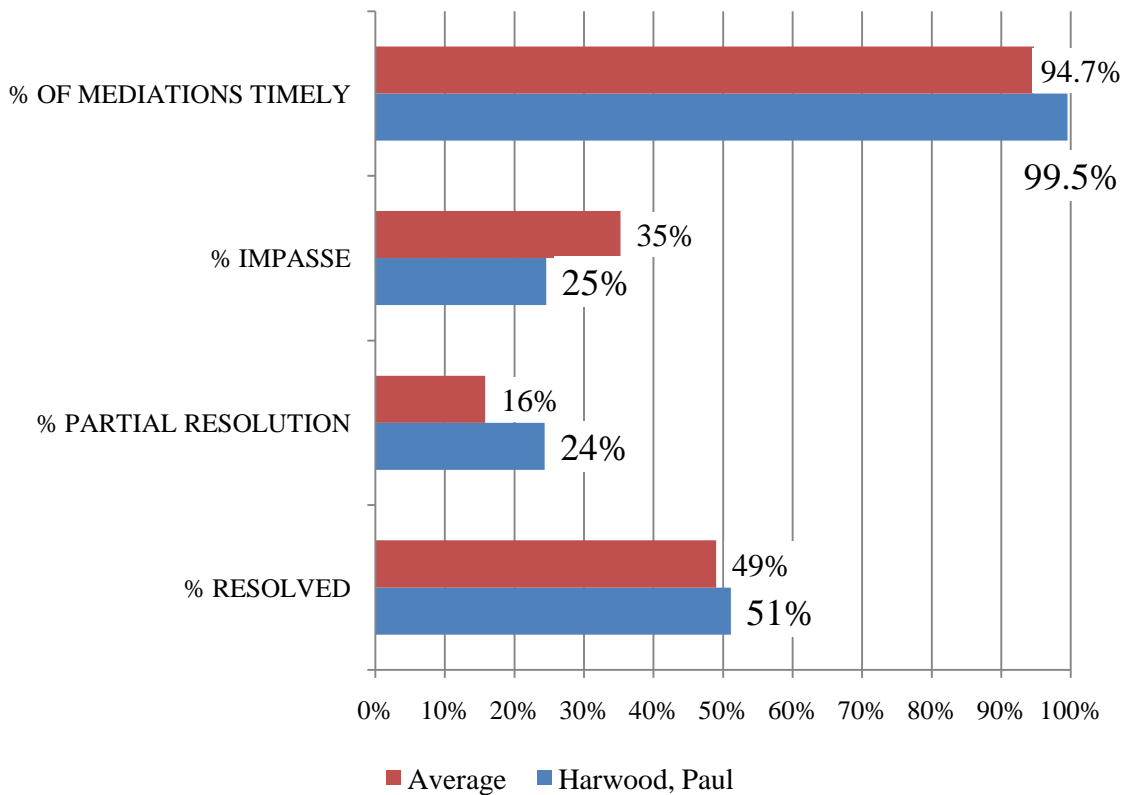
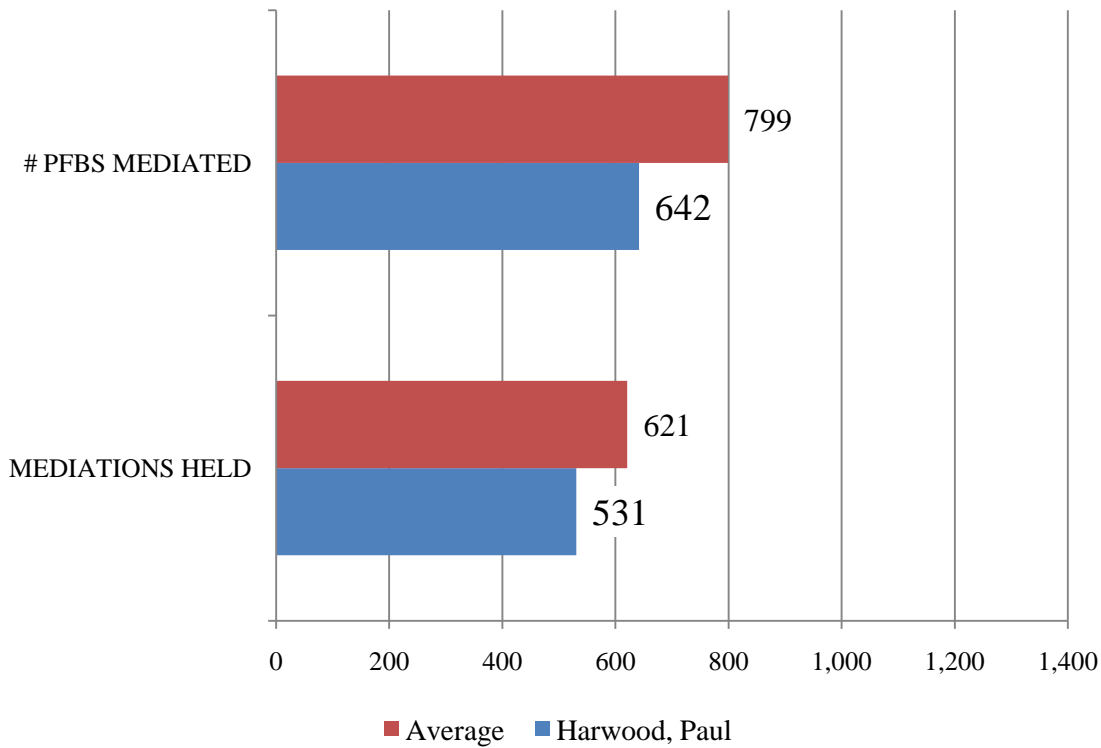
Hardy, Wallace (PNS)



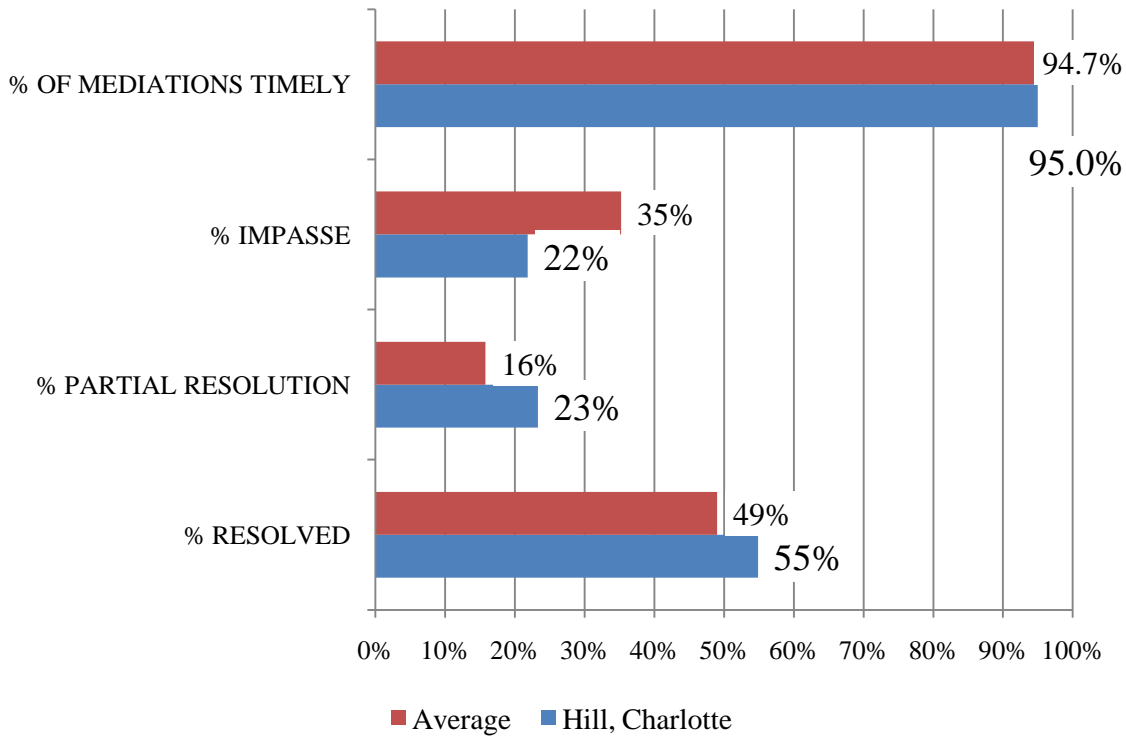
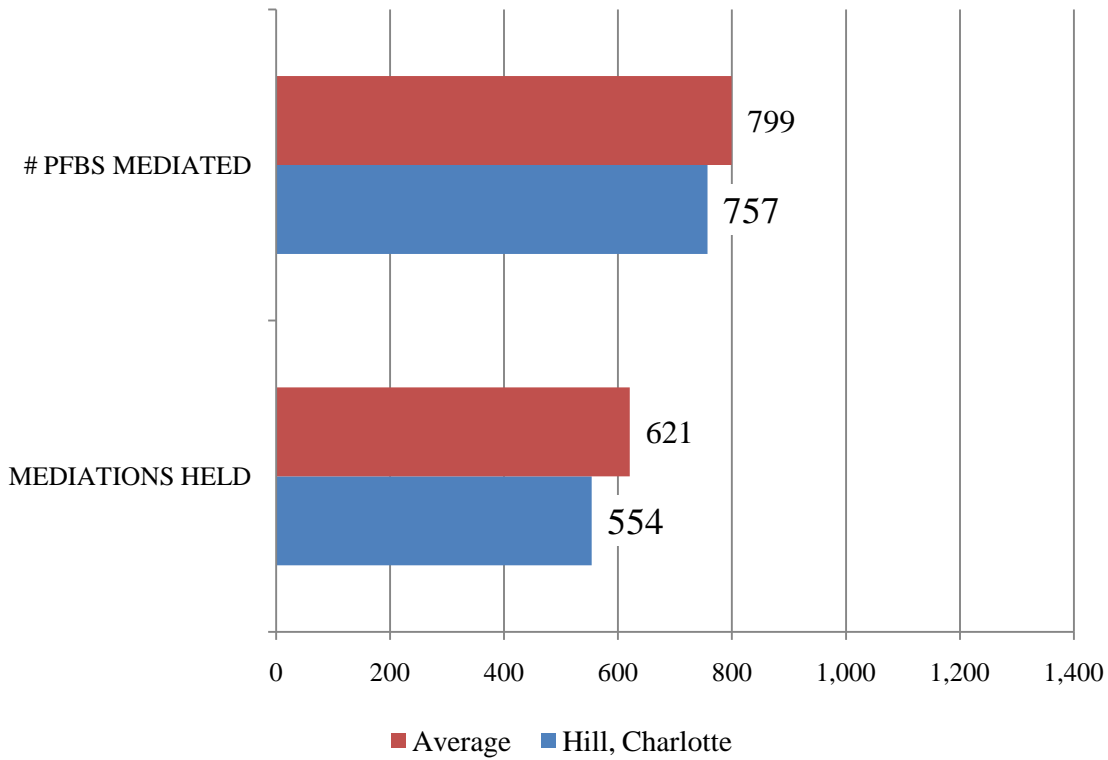
Hart, Deborah (FTM)



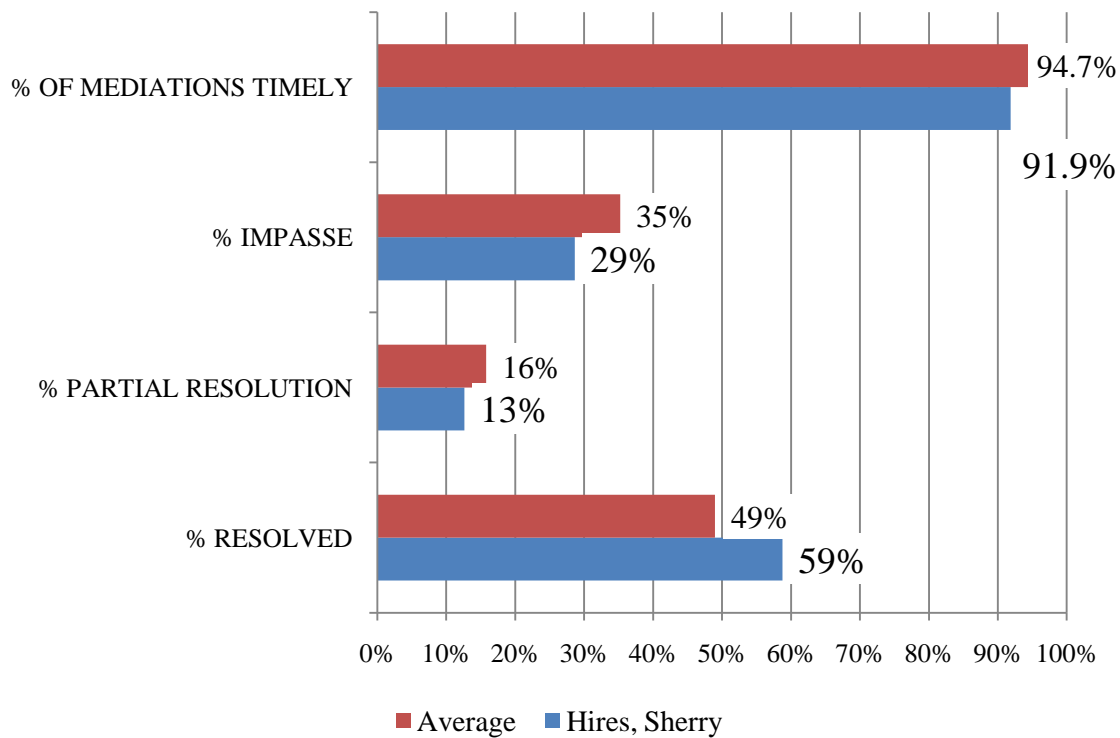
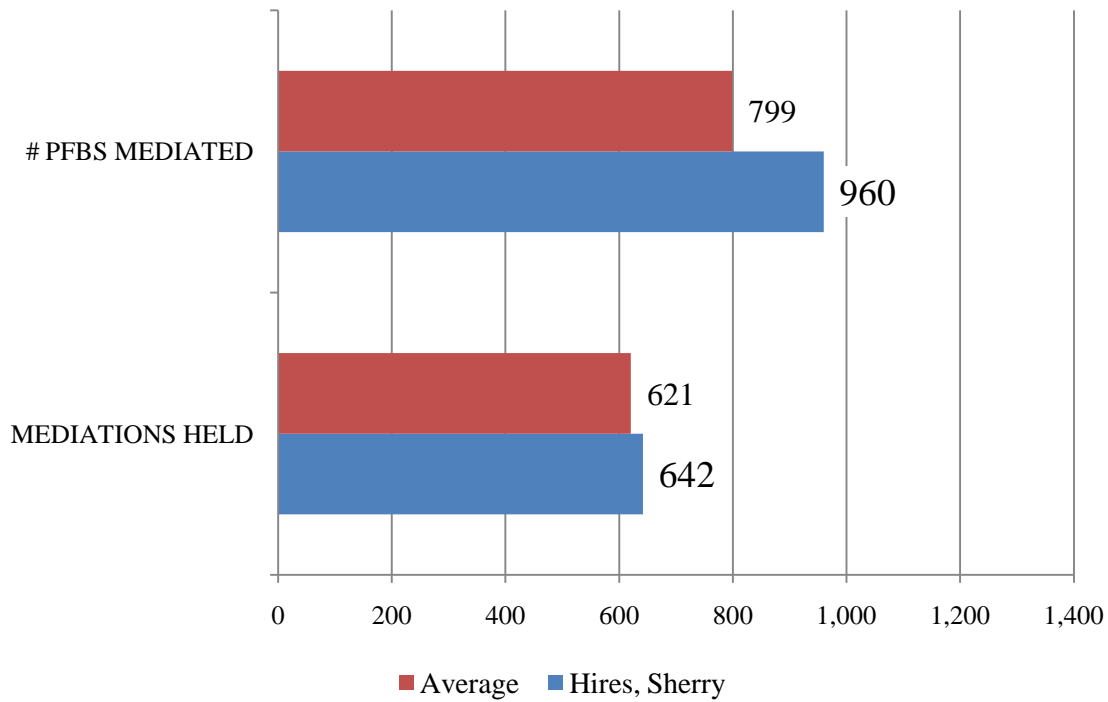
Harwood, Paul (PSL)



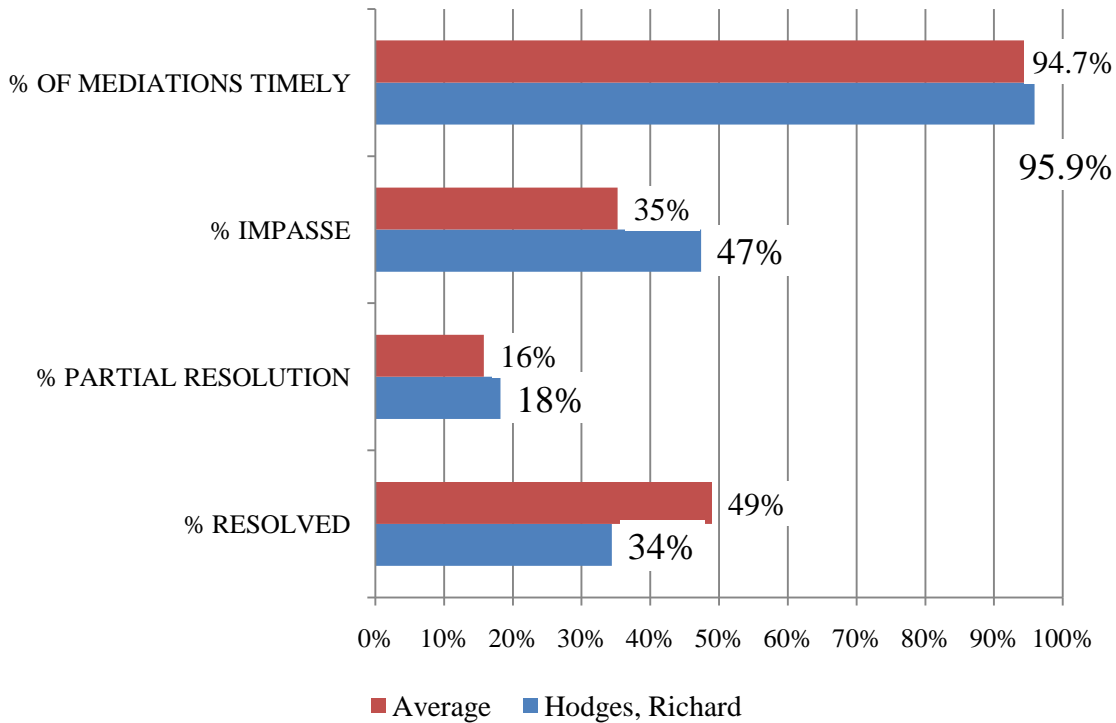
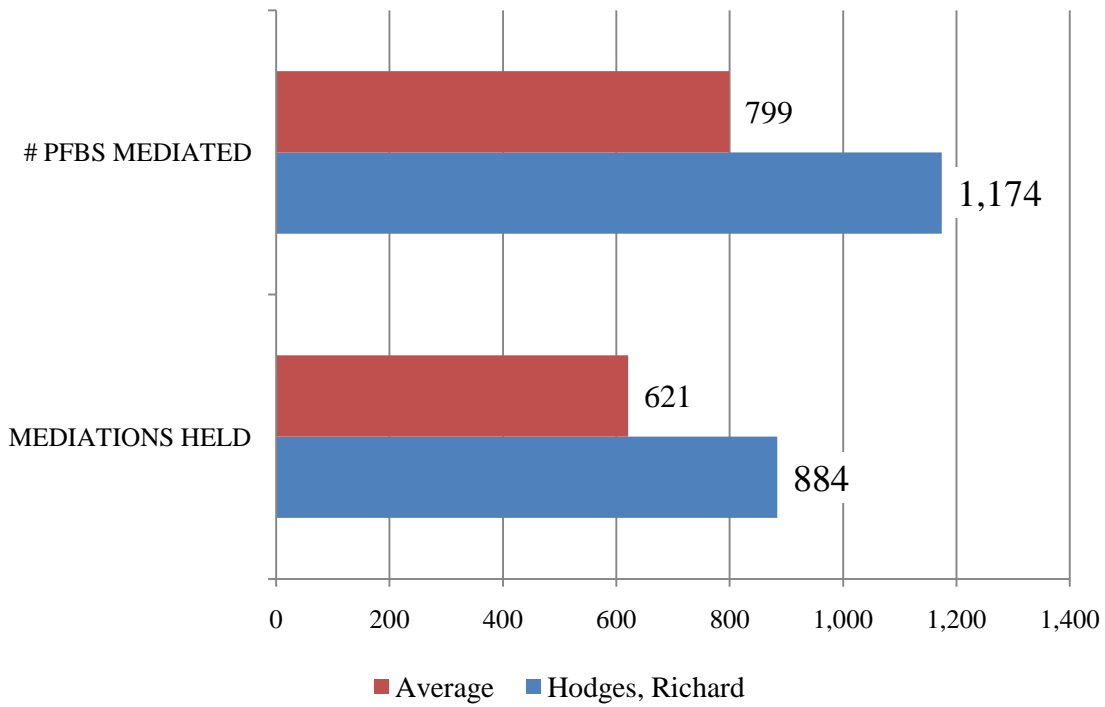
Hill, Charlotte (WPB)



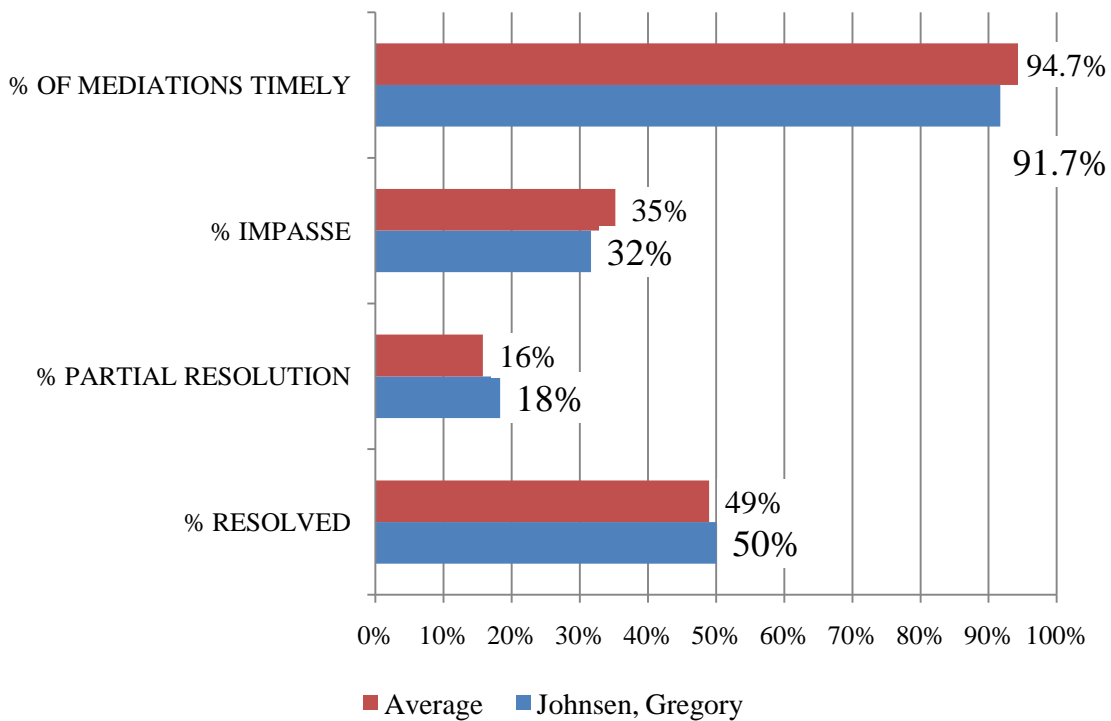
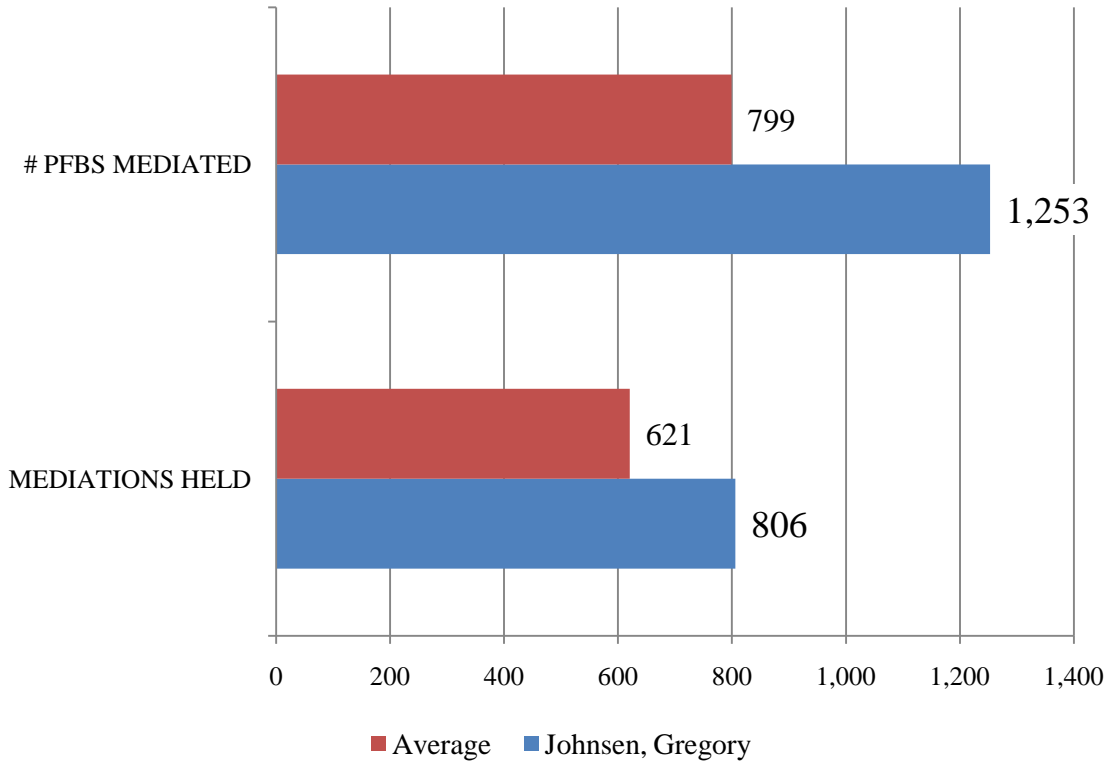
Hires, Sherry (ORL)



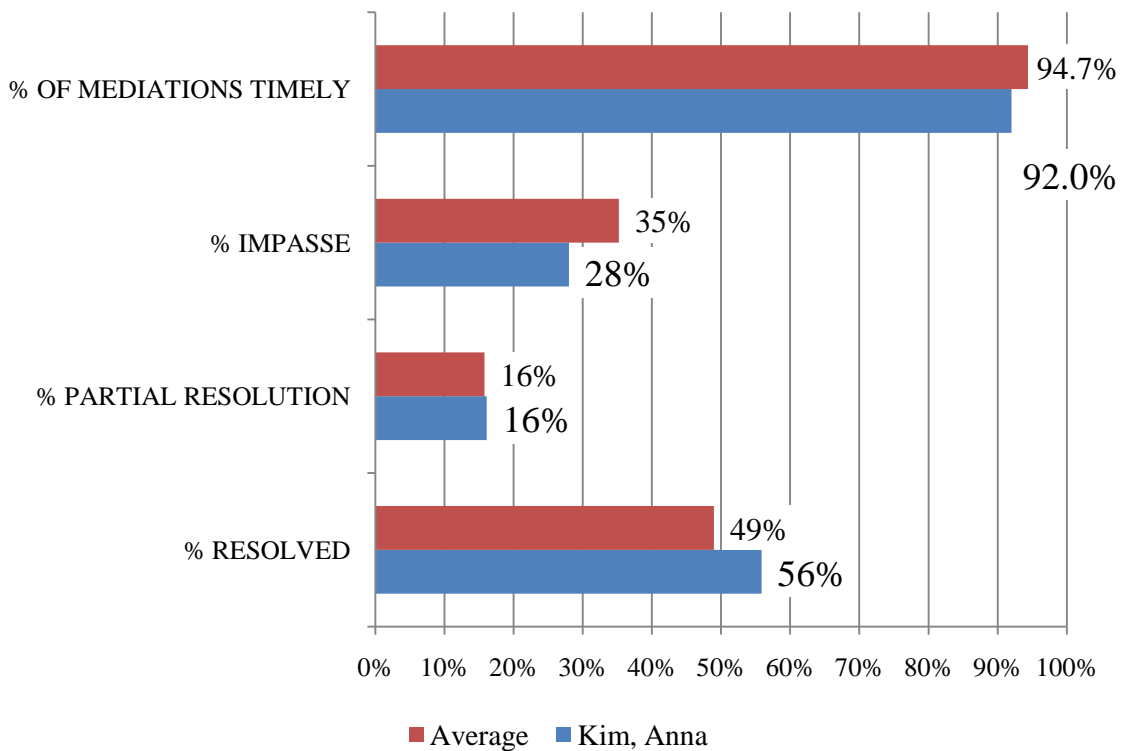
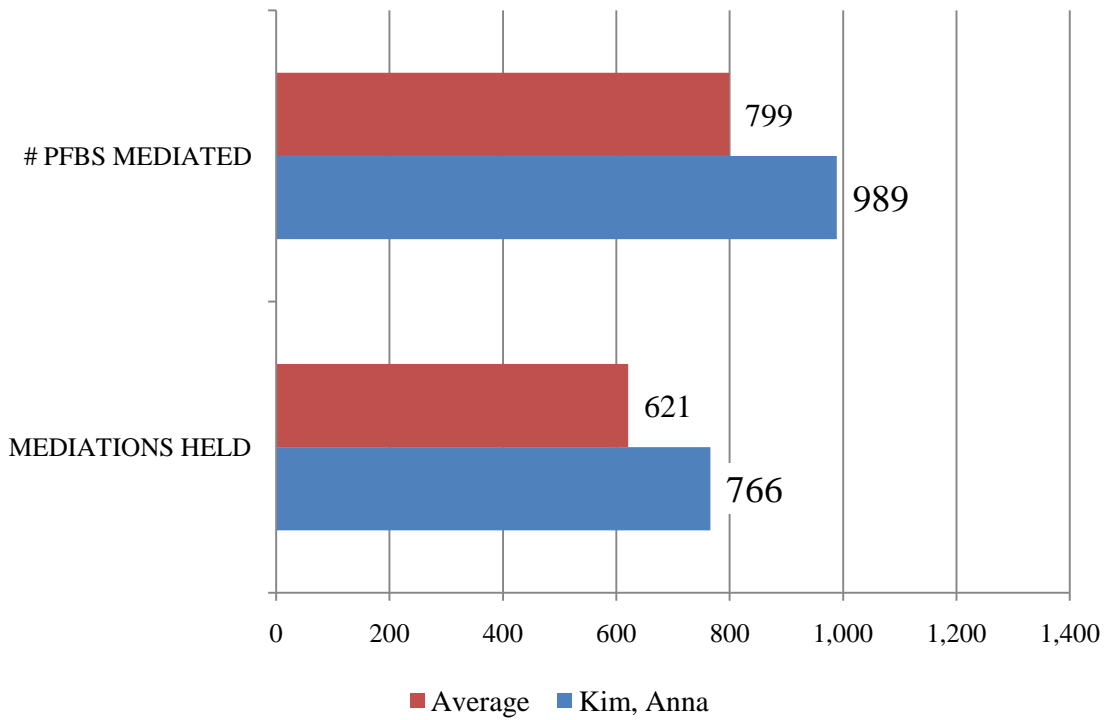
Hodges, Richard (MIA)



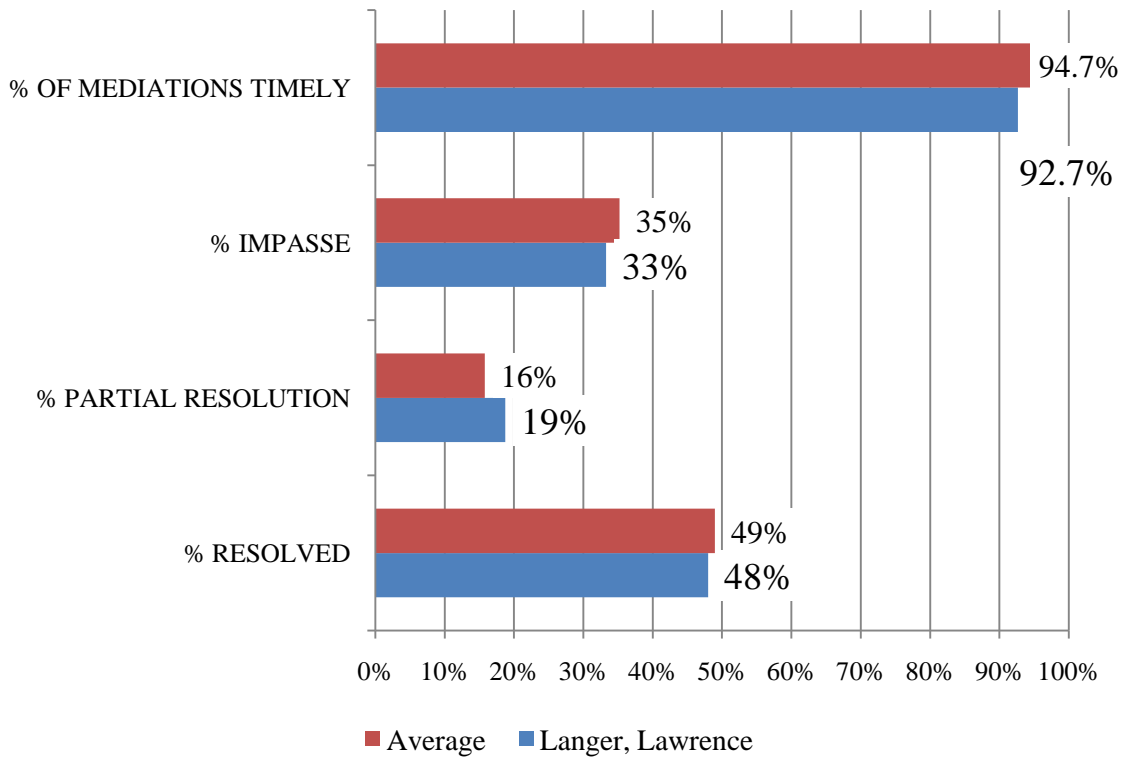
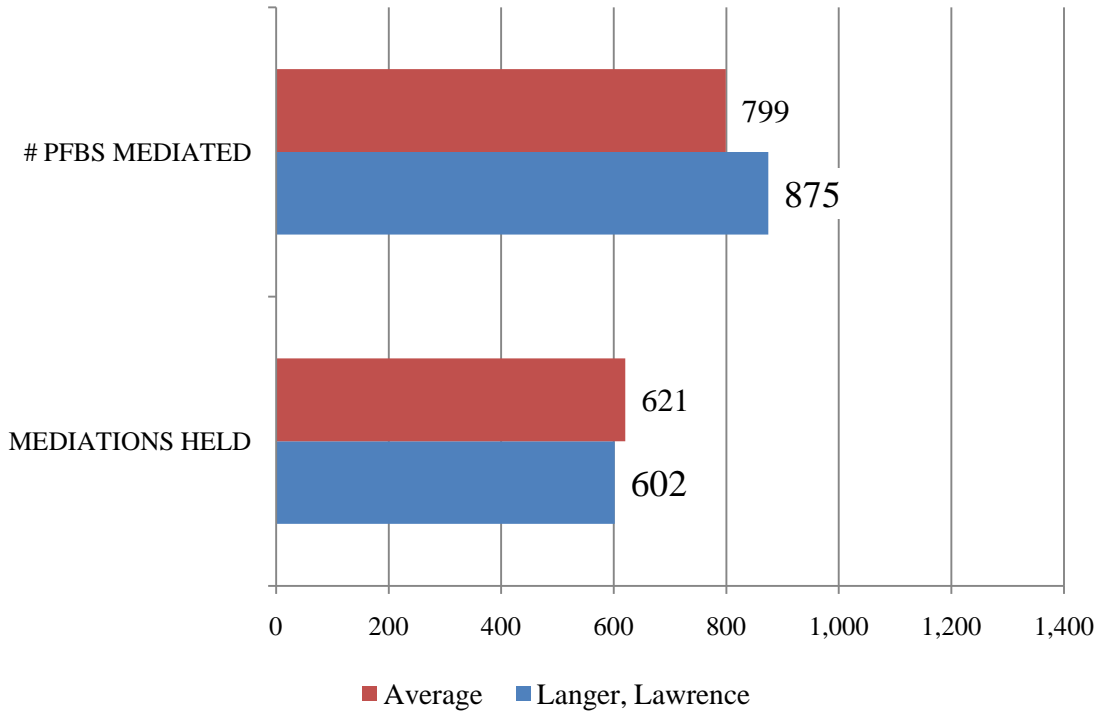
Johnson, Gregory (MIA)



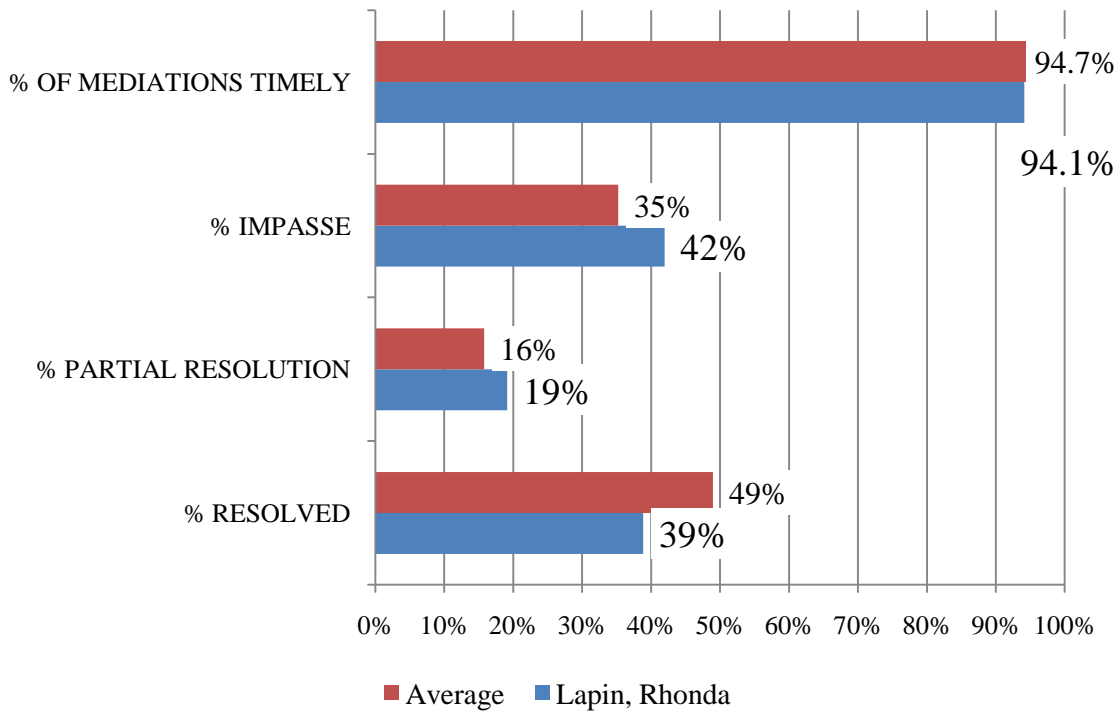
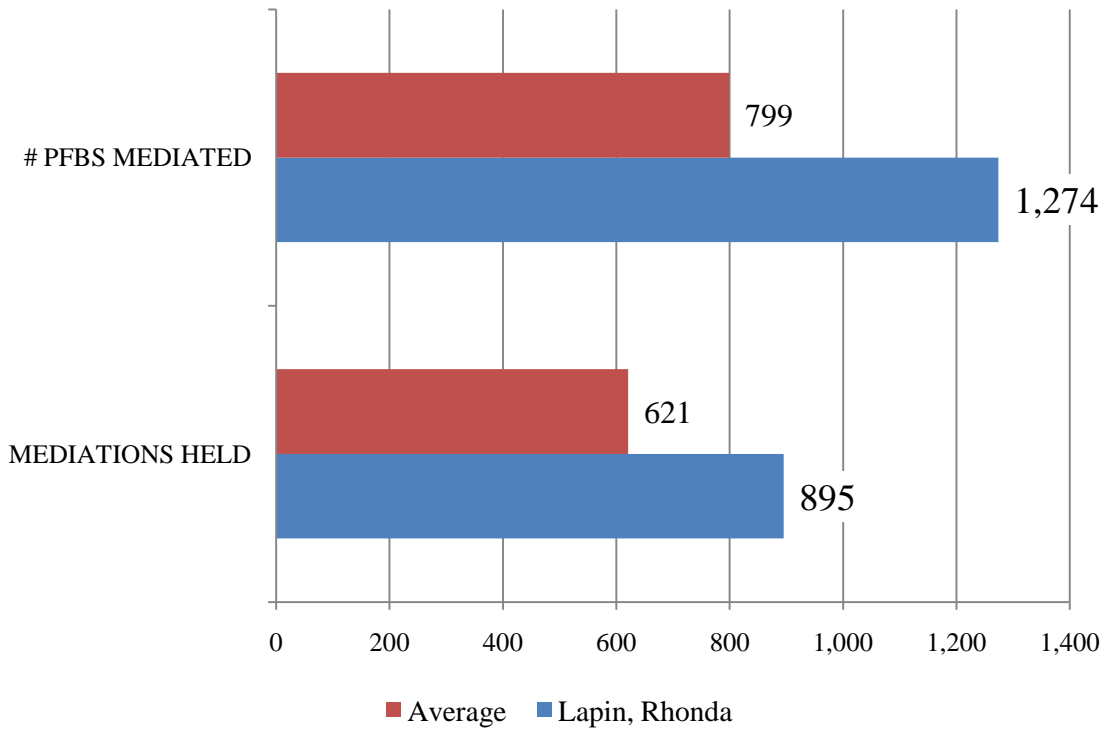
Kim, Anna (ORL)



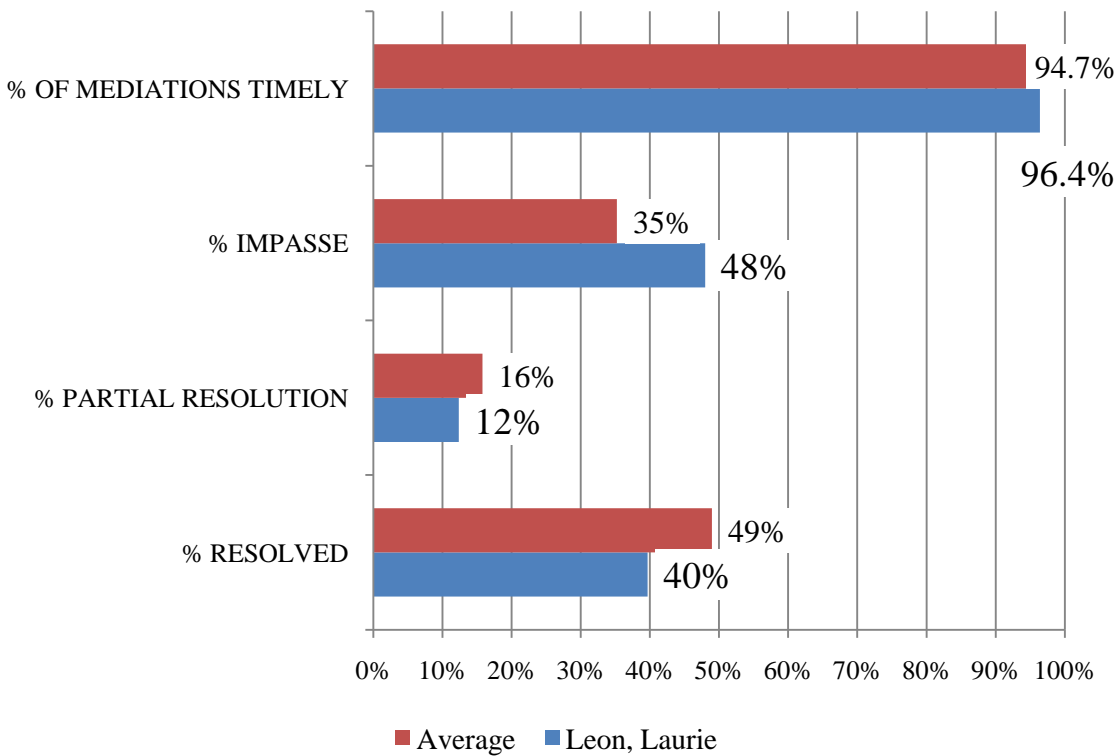
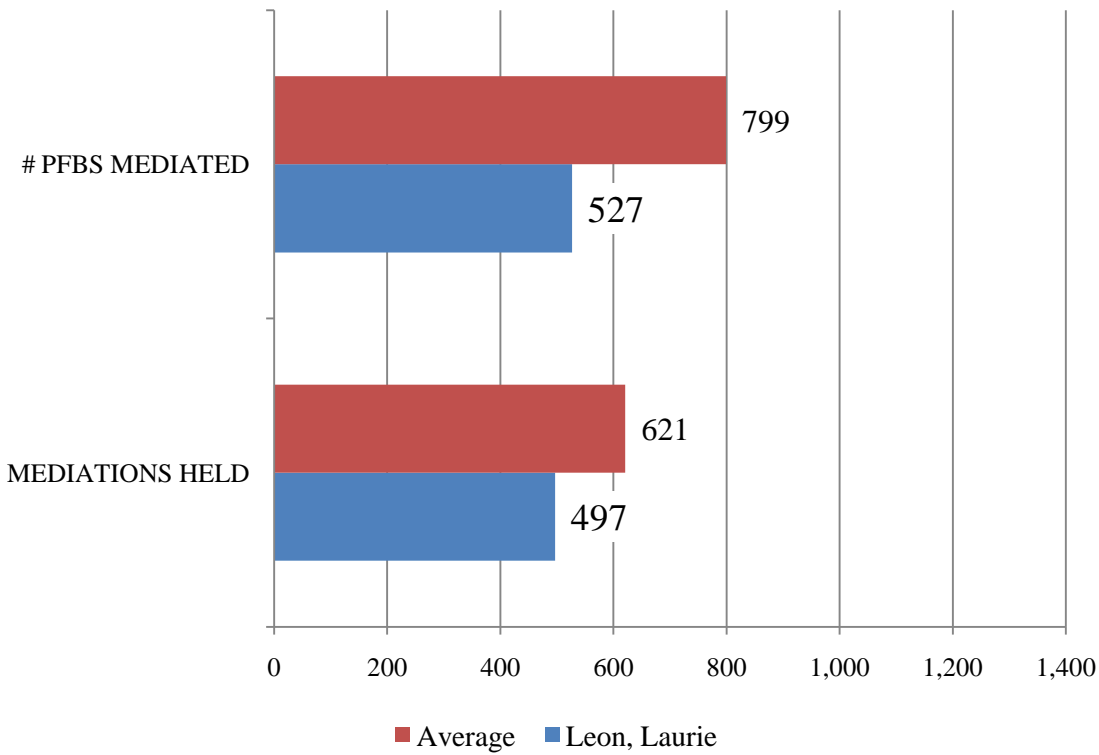
Langer, Lawrence (WPB)



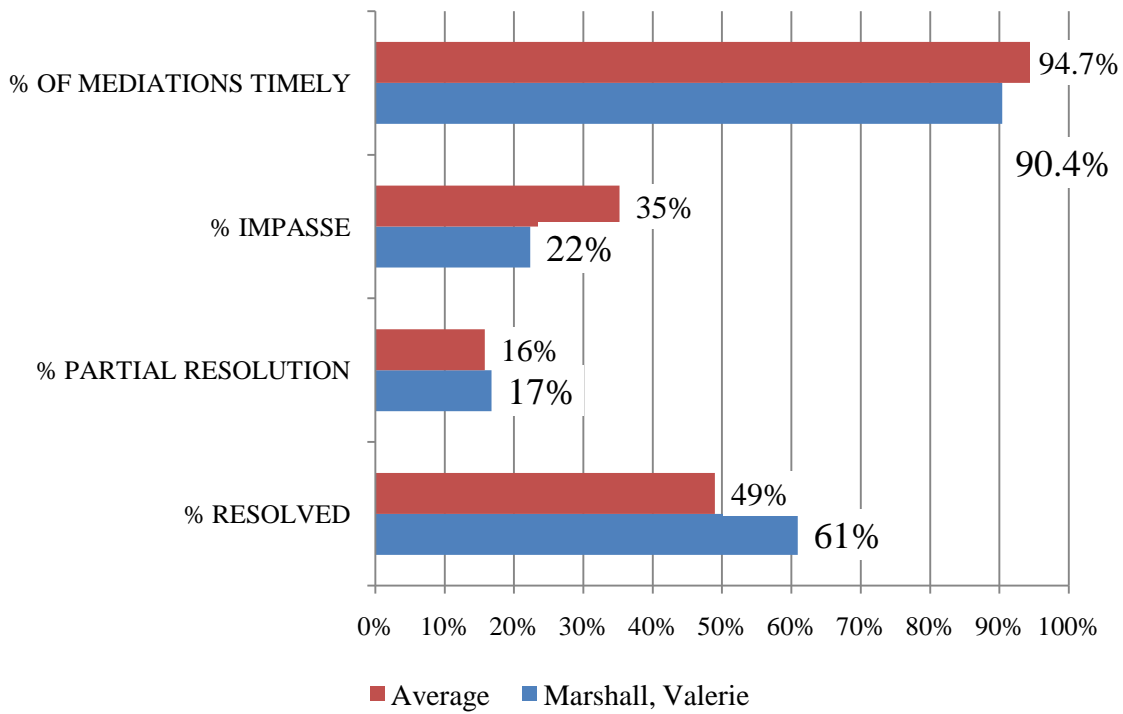
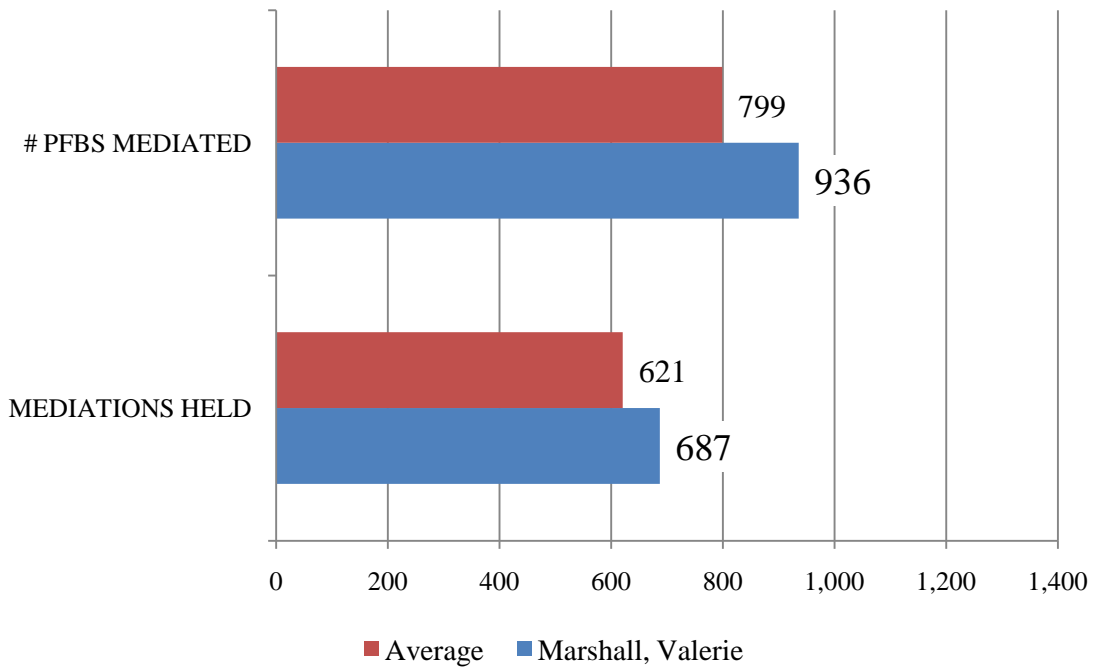
Lapin, Rhonda (MIA)



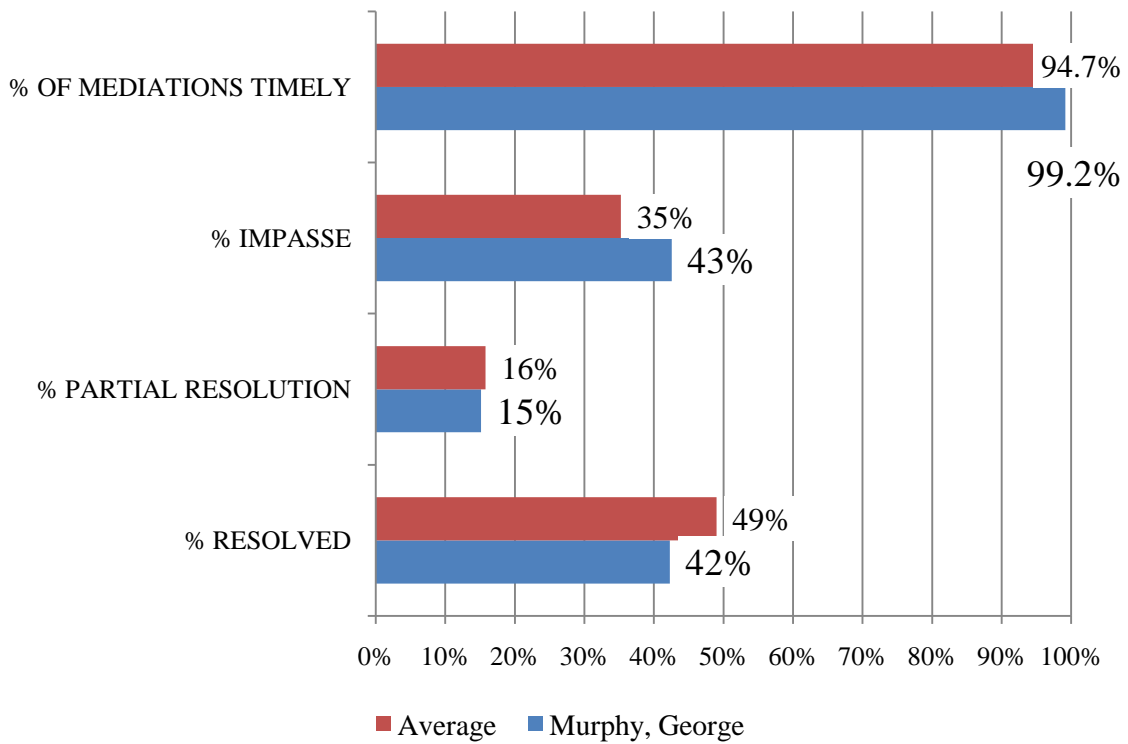
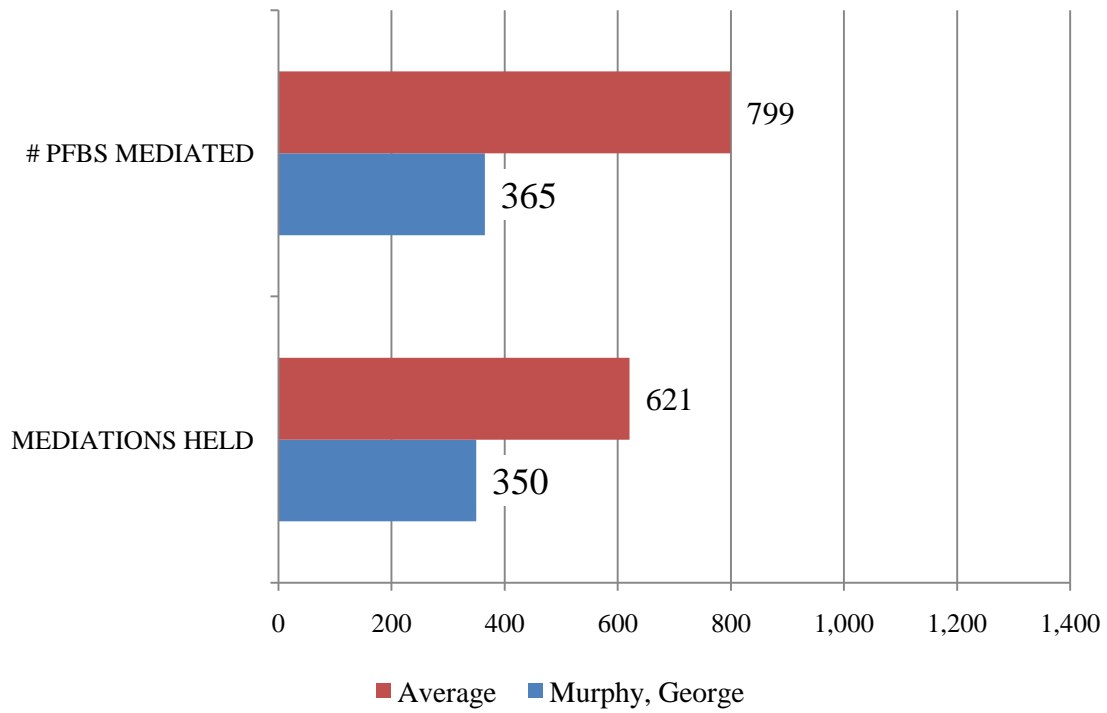
Leon, Laurie (TPA)



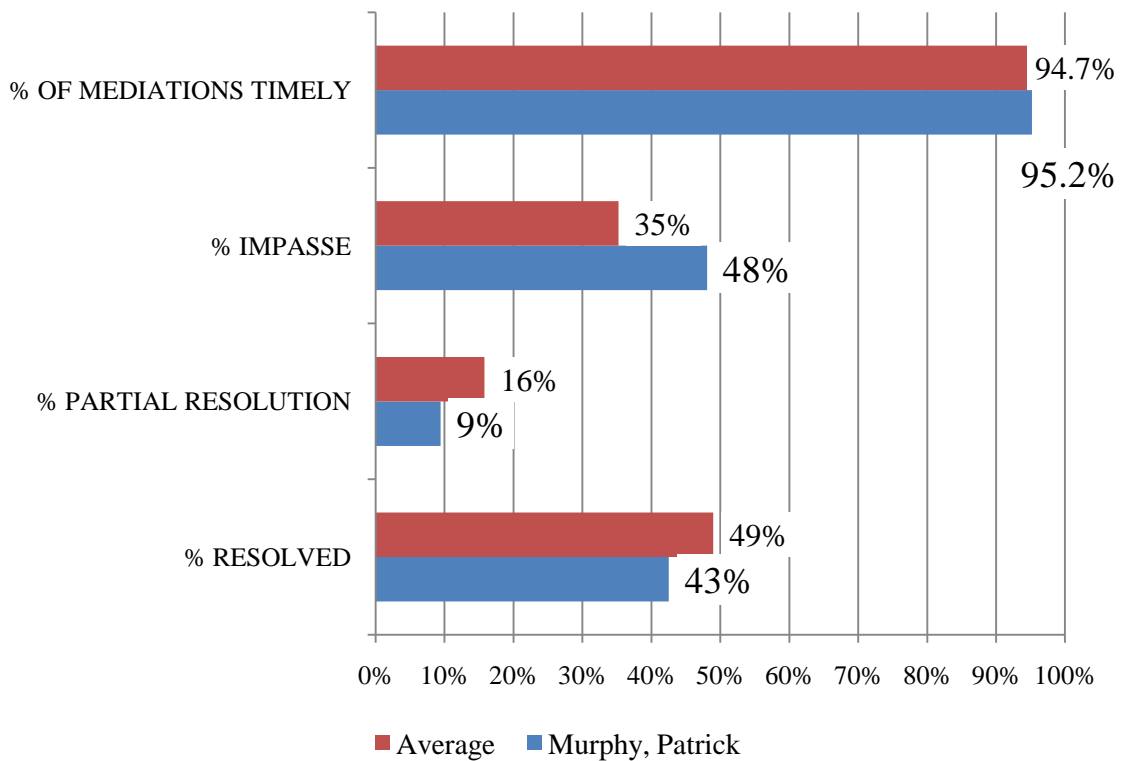
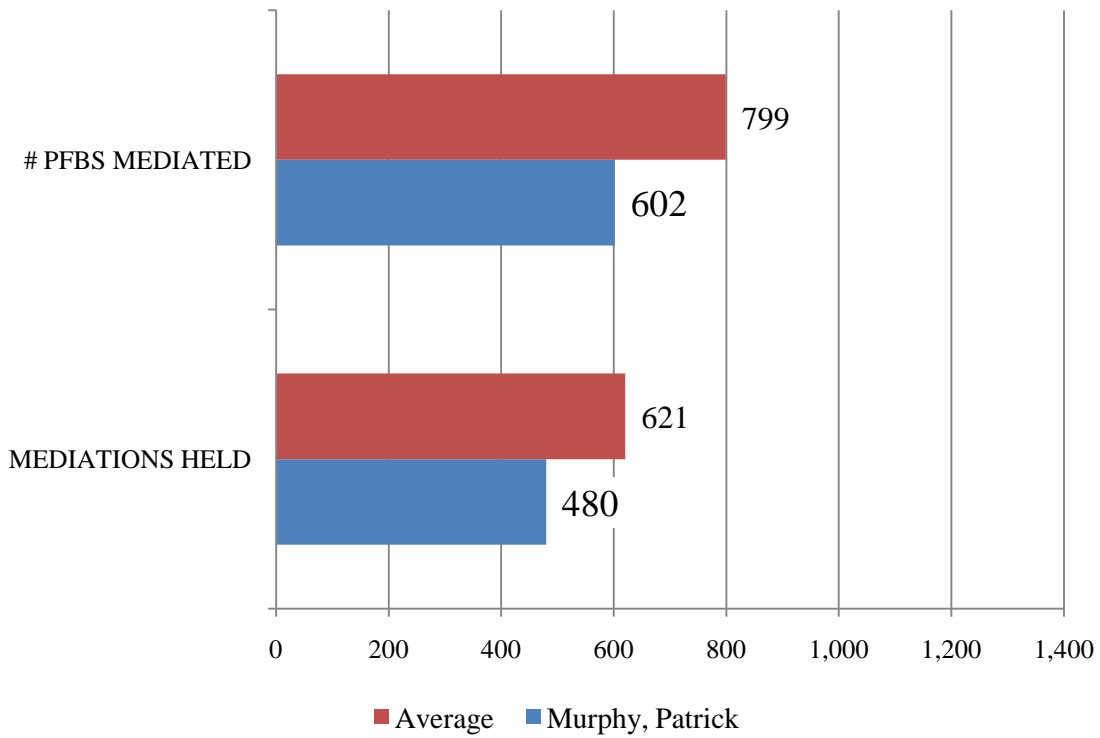
Marshall, Valerie (ORL)



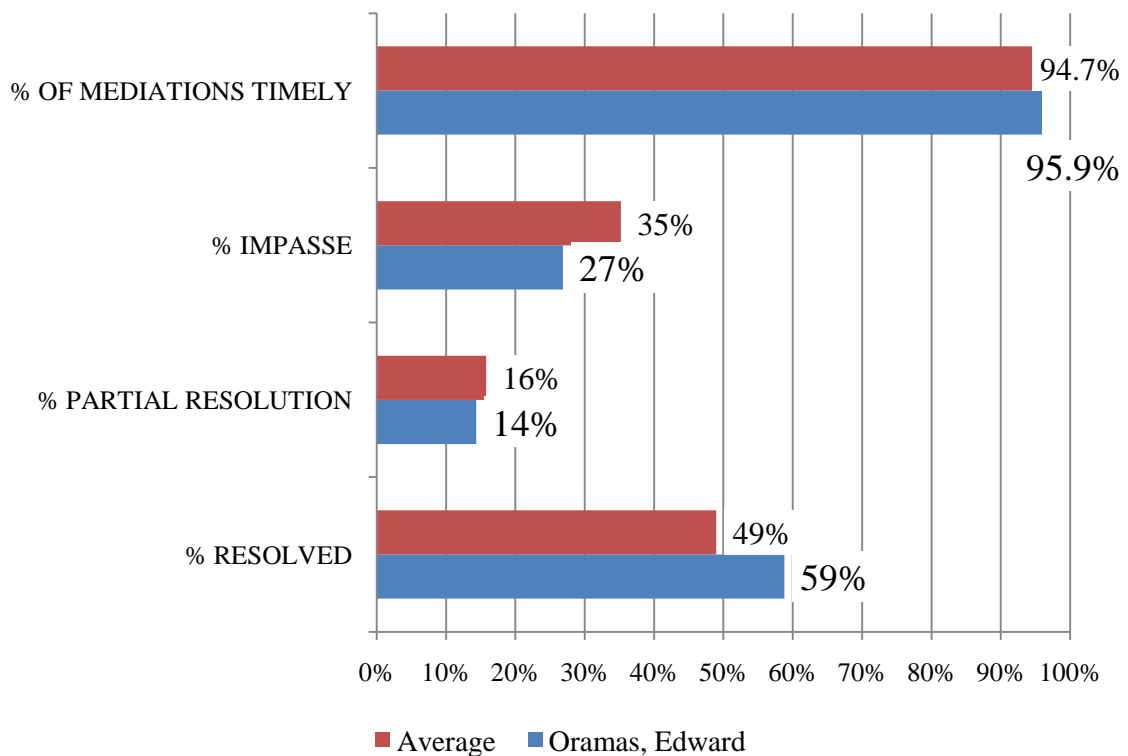
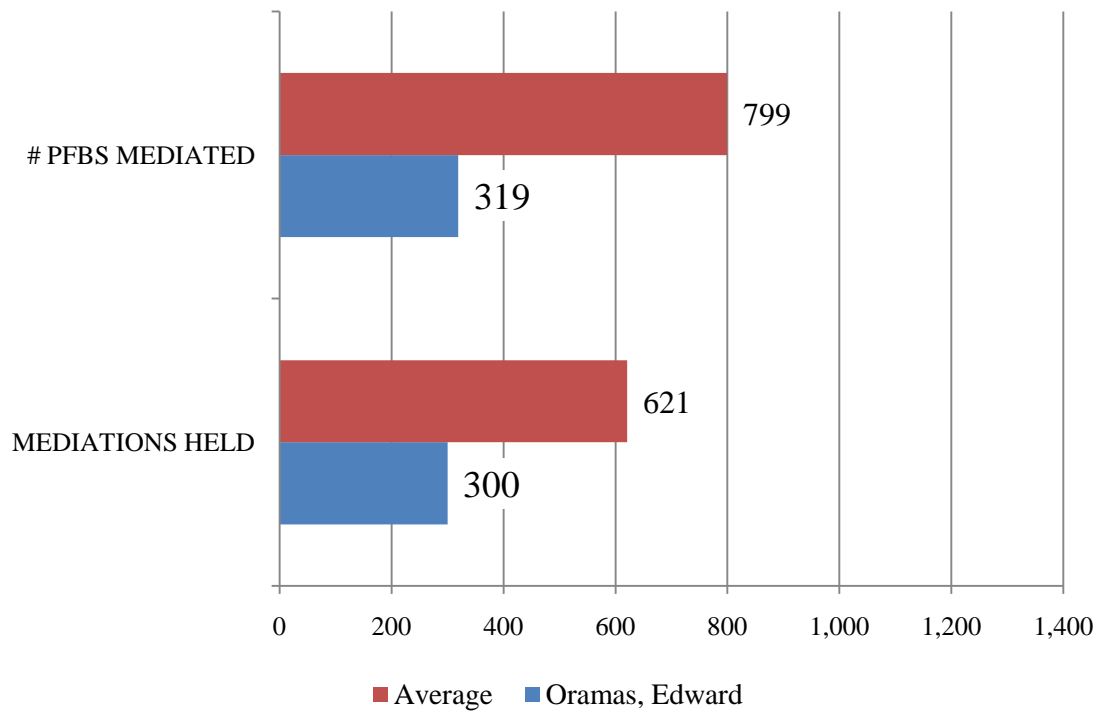
Murphy, George (MEL)



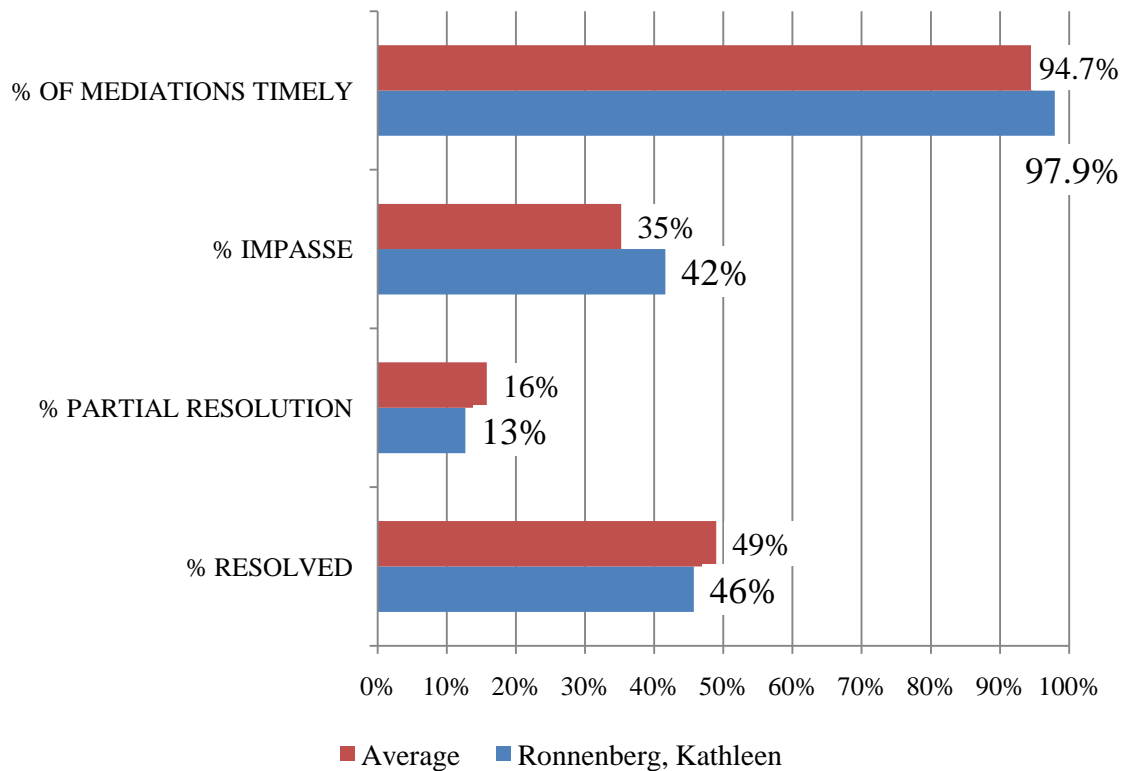
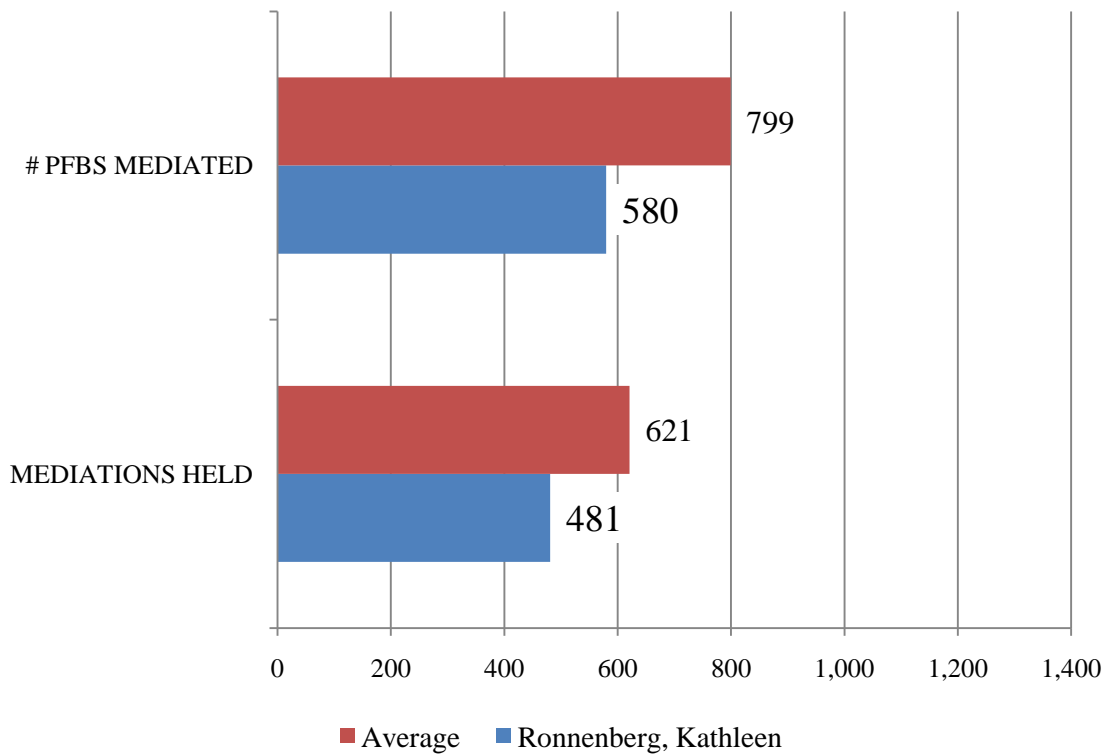
Murphy, Patrick (TPA)



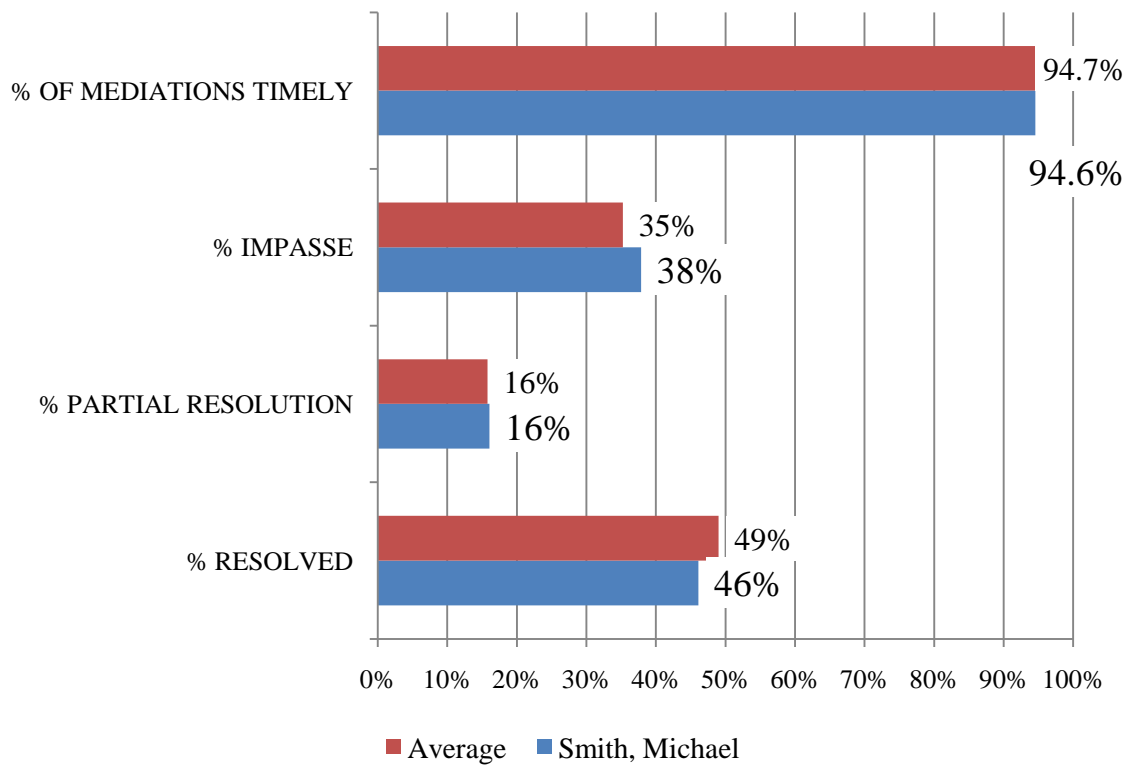
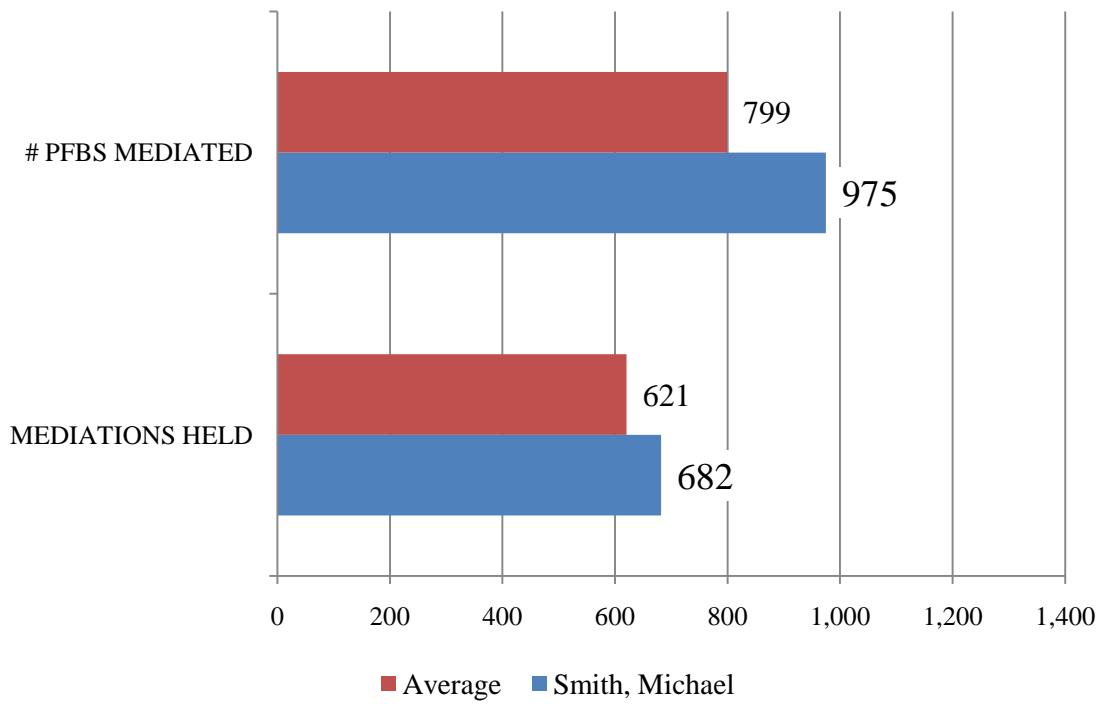
Oramas, Edward (PMC)



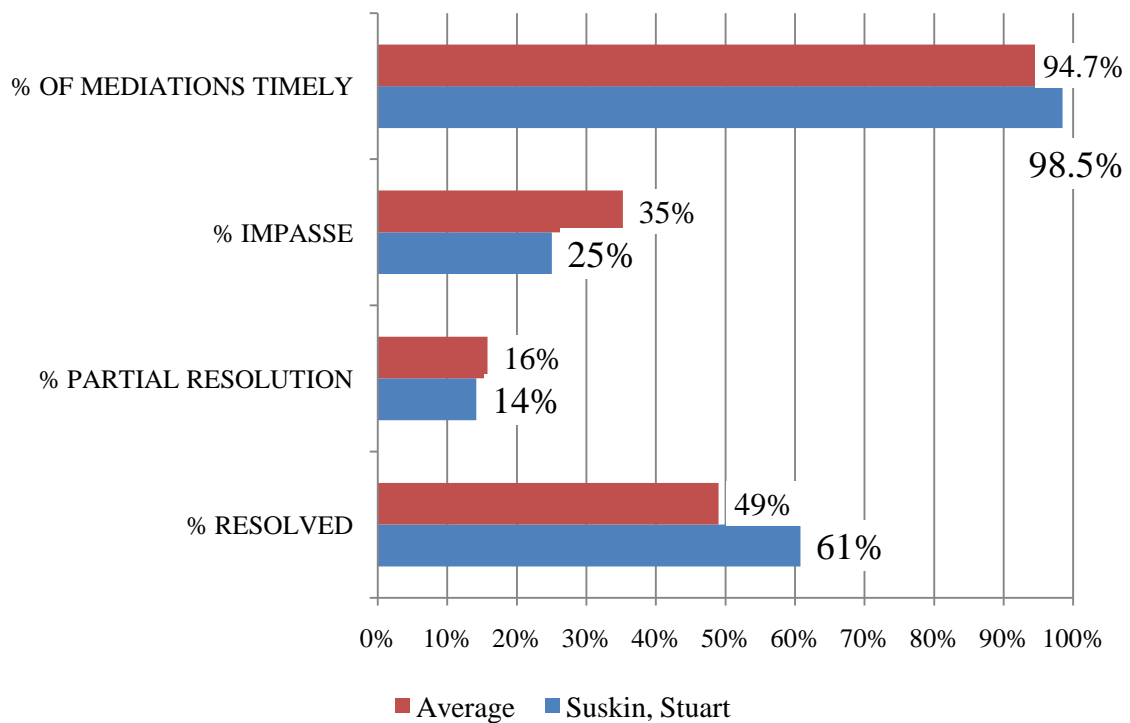
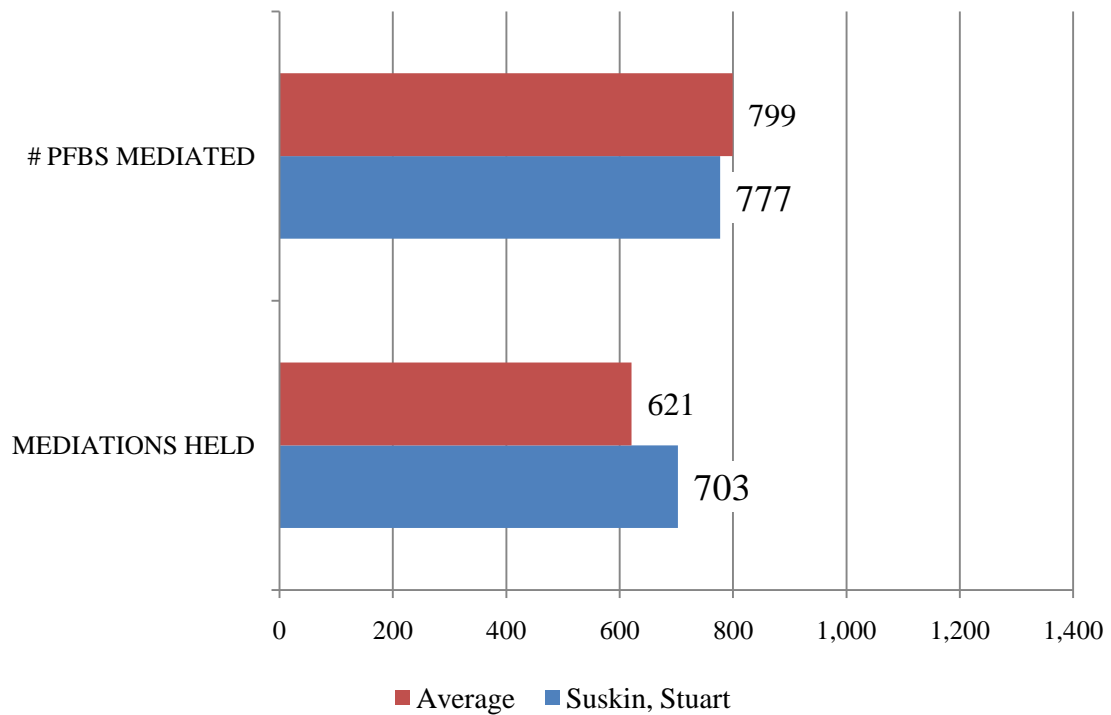
Ronnenberg, Kathleen (TPA)



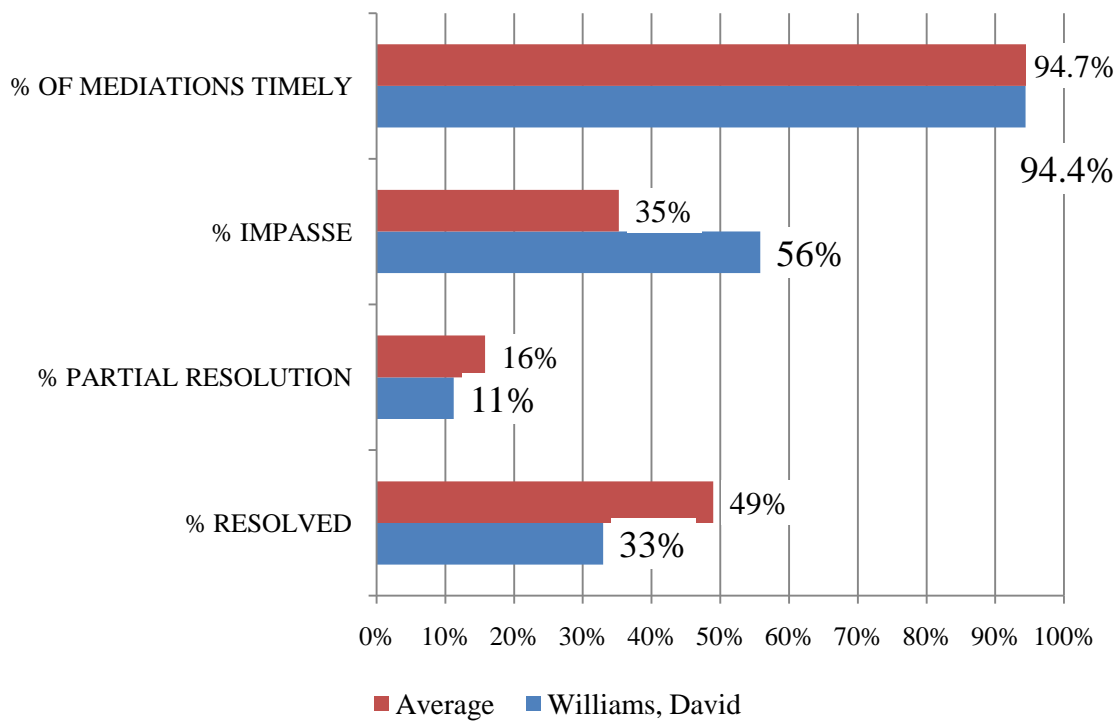
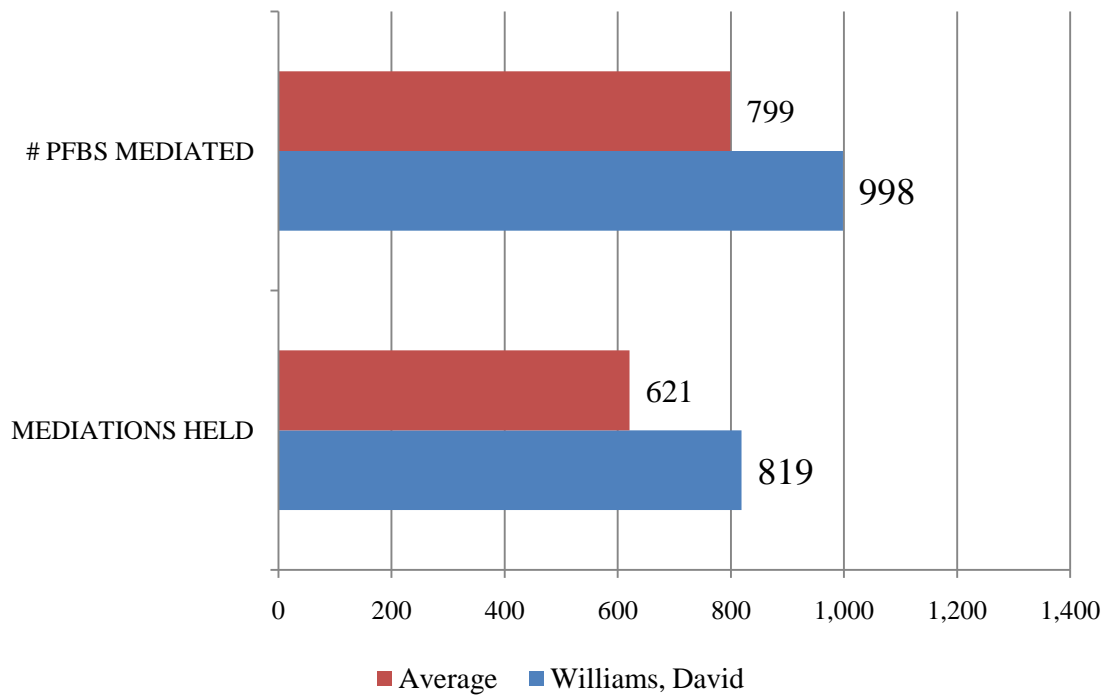
Smith, Michael (FTL)



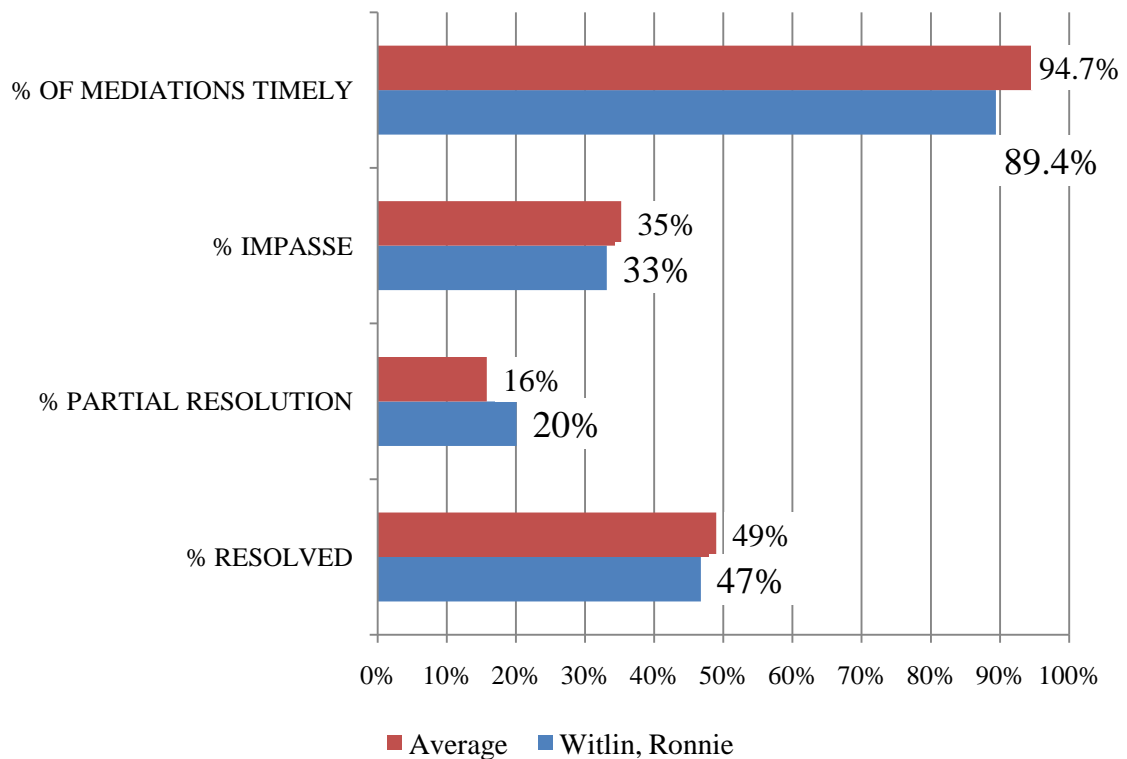
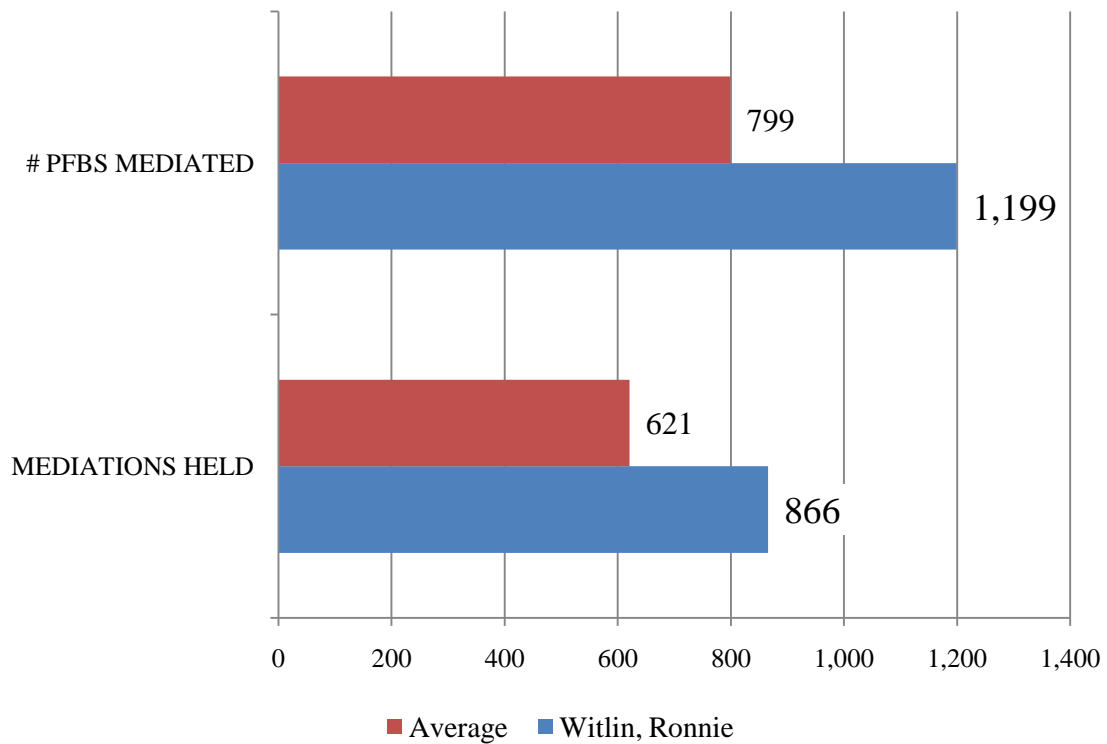
Suskin, Stuart (GNS)



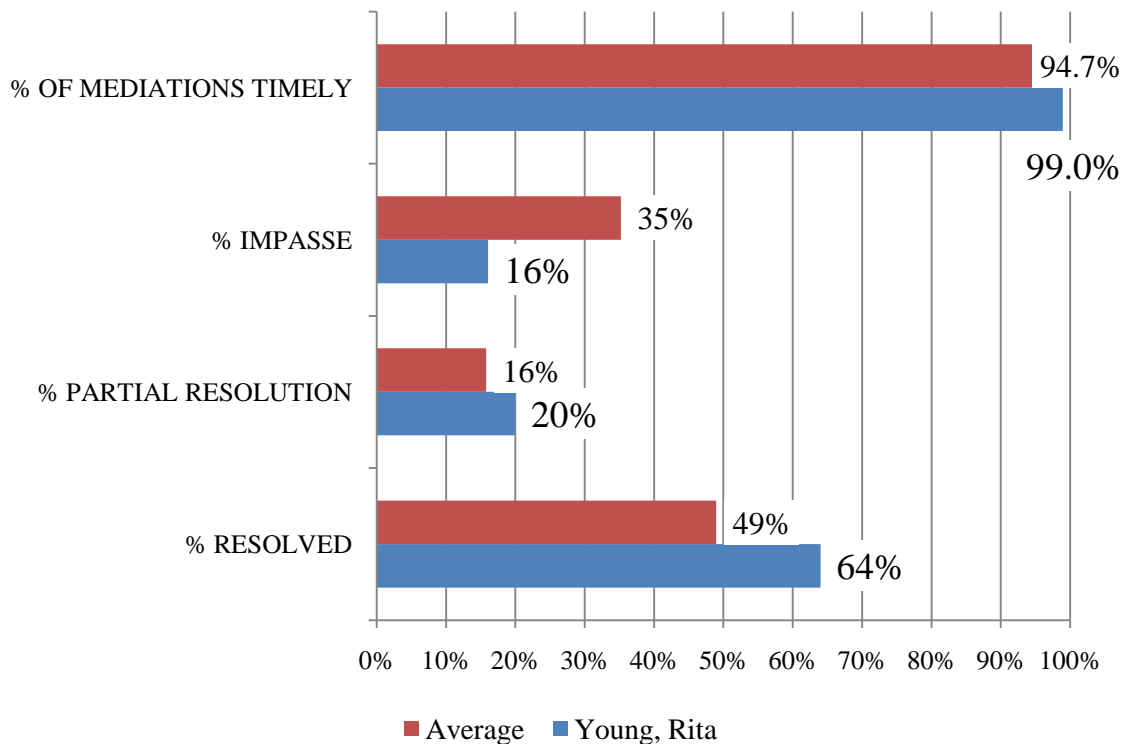
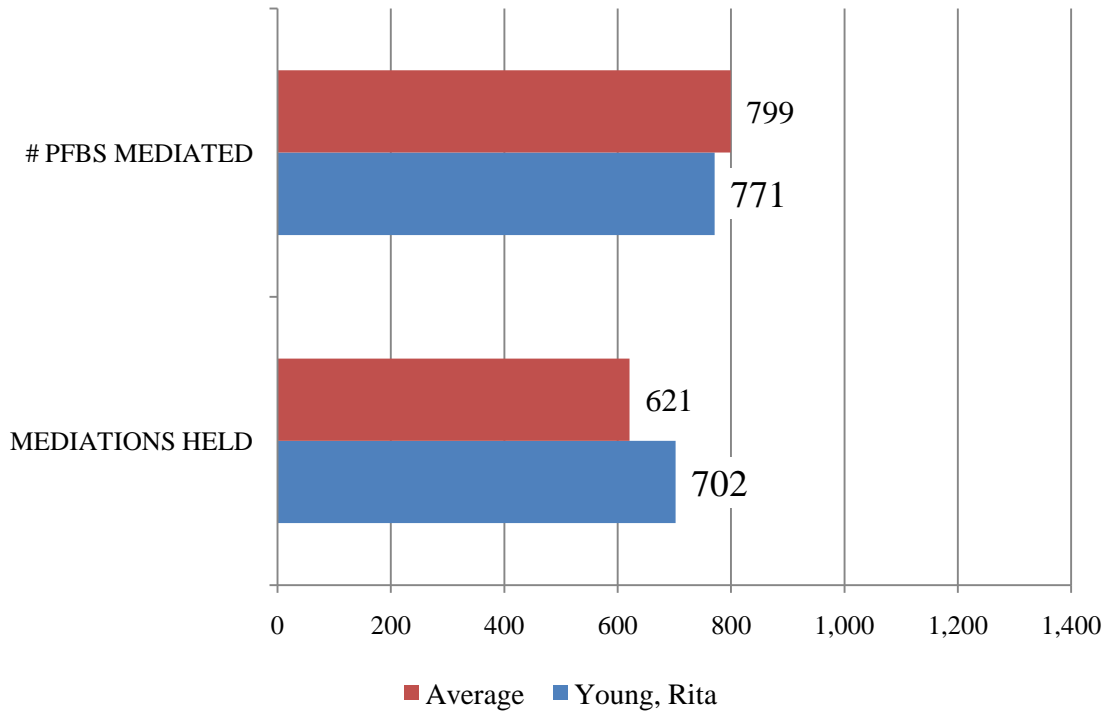
Williams, David (LKL)



Witlin, Ronnie (MIA)



Young, Rita (SPT)



¹ Even though Fla. Stat. §440.20(11)(a), states that the “Chief Judge,” not the Deputy Chief Judge, shall submit this report to the legislature, this reference to the “Chief Judge” has been in the statute long before the OJCC was placed within the Division of Administrative Hearings, and actually refers to the head of the OJCC who is the Deputy Chief Judge under 440.45(1)(a), Florida Statutes.