

# STATE OF FLORIDA

## Division of Administrative Hearings

### Office of Judges of Compensation Claims



## 2021-22 Settlement Report and Mediation Statistics Report

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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 (“DOAH”). Each year, the OJCC publishes an Annual Report, which provides the Florida Legislature and Governor with statistical measures of the volumes of litigation and the operations of this Office, section 440.45(5), Florida Statutes. Those reports are available on the OJCC website, [www.fljcc.org](http://www.fljcc.org), within the “Publications” section under the “Reports” tab.

Florida Workers’ Compensation is a self-executing system defined by Chapter 440, Florida Statutes. 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 a work accident or disease. Chapter 440, Florida Statutes, defines who must participate 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. However, very small employers (less than four employees) and various specific occupations are exempted from mandatory coverage.

Some employers purchase workers’ compensation insurance from a “carrier.”<sup>6</sup> 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.<sup>7</sup> Mediation is mandatory<sup>8</sup> in most Florida workers’ compensation claims, though it can be waived.<sup>9</sup> There is a limited exception to this requirement in section 440.25(4)(h) for petitions that only “involve a claim for benefits of \$5,000 or less.”

Organizationally, the OJCC is comprised of thirty-one Judges. Each is appointed by the Governor for terms of four years. Generally, since mediation became mandatory in 1994, the OJCC has been staffed by an equal number of mediators. That parity was removed by the legislative budget process in 2012.<sup>10</sup> Following that reduction of three mediator positions, the OJCC re-established mediator positions by transitioning staff positions to that status. Through the creation of additional mediator positions, the OJCC retained a one-to-one judge/mediator ratio and mediators were each paired with a judge. By 2021, there were thirty judges (a position in Tampa had remained unfilled following Judge Lorenzen’s retirement in 2019. Shortly after that position was filled, Judge Young transferred to District St. Petersburg upon the retirement of Judge Rosen in 2020, and a vacated Tampa position has remained vacant since. Until 2022, the Judges served in seventeen District Offices throughout Florida.<sup>11</sup> The existence of 17 District Offices was statutorily mandated in the 2001 statutory revisions.<sup>12</sup>

The Great Pandemic brought challenges to all litigation systems, and the OJCC was not immune. However, operations continued throughout. The Deputy Chief Judge mandated mediation occur telephonically beginning in March 2020, an accommodation to the public and OJCC staff. Video trials had long been part of the OJCC, but with expansion from dedicated videoteleconference systems to Internet video platforms such as Zoom it became a more prevalent and consistent process throughout 2020. As the Great Pandemic eased, the OJCC returned to in-person mediation in July 2020, but soon elected to return to mandatory telephonic. In the early months of 2021, the return to normal operations again rendered in-person mediation attendance the default, and those wishing to appear telephonically returned to asking for that accommodation on a case-by-case basis. Despite that availability, there remained marked and persistent resistance to in-person appearance, and the preponderance of mediations persisted in a telephonic manner.

There was therefore a push to experiment with Zoom as a tool for mediation in early 2022. Coincidentally, it became apparent that private mediators had employed such platforms earlier in the pandemic, and that the public was very amenable to it use. Leadership of DOAH sought revision of Section 440.45 in the 2022 legislative session.<sup>13</sup> The 17-office mandate was criticized, as was the existence of single-judge/mediator offices in the system. There were perceptions that these offices were not economical or efficient. As the statute change progressed, plans were discussed for the closure of various district offices. However, the resulting impact on Florida’s employers and employees, particularly in the mandatory mediation process, raised concerns. Any office closure could be anticipated to result in diminished convenience and potentially significant travel associated with the mediation process mandated elsewhere in the statute.

As the potential for District Office closure became increasingly likely, plans were conceived to adopt Zoom (or similar Internet-video platforms) as the primary mediation paradigm. This provides a better mediation experience than the telephonic process to which many sought to adhere in the post-pandemic world. Further, this provides a far more convenient process than lengthy commutes to remaining offices. In 2021-22, the OJCC began allowing state mediators to transition to remote work, utilizing their own premises but equipped with state-provided technology. The intent is for the mediation process to be presumptively video based, with the mediators retaining individual authority to allow telephonic or in-person attendance at her/his discretion.

In 2017, the OJCC began providing public access to mediator calendars. This is an effort to empower parties to more efficiently reschedule mediations and reduce the need for continuances. That effort was undertaken with minimal programming, allowing parties to view the calendars and to perceive potential appointment availability. Each mediator was traditionally afforded significant autonomy in calendar management; however, the resulting variety of mediator calendar practices proved difficult for the public and frustrating to the necessary process of calendar coverage when needed. In conjunction with the transitions to video mediation, telecommuting, and District Office closures, the OJCC has adopted a standard mediation calendar for use throughout the state. Appointments will be at 9:00, 10:00, 11:00, 12:30, 1:30, 2:30, and 3:30. This consistency will be beneficial. Additionally, the OJCC will operate henceforth using Eastern Time for scheduling, even in the two locations situated in the Central Time Zone (Panama City and Pensacola).

Mediation is statutorily mandated to occur within 130 days after the PFB is filed. If no OJCC mediator can accommodate that time restriction, then the PFB must be assigned to private mediation at the expense of the E/C. The efficiency and functionality of the OJCC processes are therefore a paramount goal. As volumes continue to grow, this may be necessitated, or additional state mediator positions or appointment times may be necessary. These potentials are all impacted by the parties' alternative to voluntarily elect to participate in private mediation in lieu of mediation with the assigned OJCC mediator.

## **Data Collection and Reporting:**

The accuracy of data in this report is dependent upon the efforts of district staff and mediators in the seventeen District Offices throughout Florida.<sup>14</sup> Before 2001, the OJCC historically struggled with accurate data collection. Since fiscal year ("FY") 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. Furthermore, the OJCC Central Clerk's office conducts extensive and ongoing auditing to both verify data and reinforce training. 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 PFBs. All pending PFBs filed before the scheduled mediation will be mediated at one time, pursuant to section 440.25(1). Thus, any 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.<sup>15</sup> Therefore, workers' compensation is very different than other litigation that addresses civil damages, which are less serial in nature. Because of the serial nature of workers' compensation benefits, and the resulting potential for periodic ongoing litigation of the issues surrounding entitlement to various benefits, it is not uncommon for a particular case to be mediated, albeit on different benefits, by the same OJCC mediator on more than one occasion.

## **2022 Staff Reductions:**

As noted above, the OJCC had regained mediators since the Legislature's budget cuts for FY 2013. However, in FY 2022, the OJCC lost Ms. Carrier in Sarasota, Ms. Ogden in Ft. Myers, and Mr. Stillson in Ft. Lauderdale. There was notable delay in refilling those positions, largely attributable to the lack of certainty regarding the potential for District Office closures. In April 2022, two new mediators were hired, Mr. Hill and Ms. Marshman. However, one mediator position remained vacant through the end of FY 2021-22 (this was eventually filled in September 2022). It is a tribute to

the dedication and commitment of all of the OJCC mediators that the OJCC, nonetheless, was able to cover the mediation dockets and resorted to ordering cases to private mediators on a minimal basis.

### **Reports of Settlements Pursuant to Section 440.20(11)(a):**

Although settlements of litigated disputes are generally favored in the law, Florida workers’ compensation cases were historically treated differently, with specific findings and often hearings required for settlement approval.<sup>16</sup> It is currently statutorily permissible to settle all of a worker’s rights under the Florida workers’ compensation statute. There are three distinct legal provisions that authorize settlements of workers’ compensation cases, all defined in section 440.20(11), Florida Statutes.<sup>17</sup>

Injured workers represented by an attorney may settle their cases without the approval of a judge of compensation claims.<sup>18</sup> However, unrepresented injured workers 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 reasonably anticipated (maximum medical improvement, “MMI”).<sup>19</sup> Of these settlements by unrepresented claimants, only the former, (a), are required by statute to be reported by judges of compensation claims and summarized in this special annual report to the legislature.<sup>20</sup>

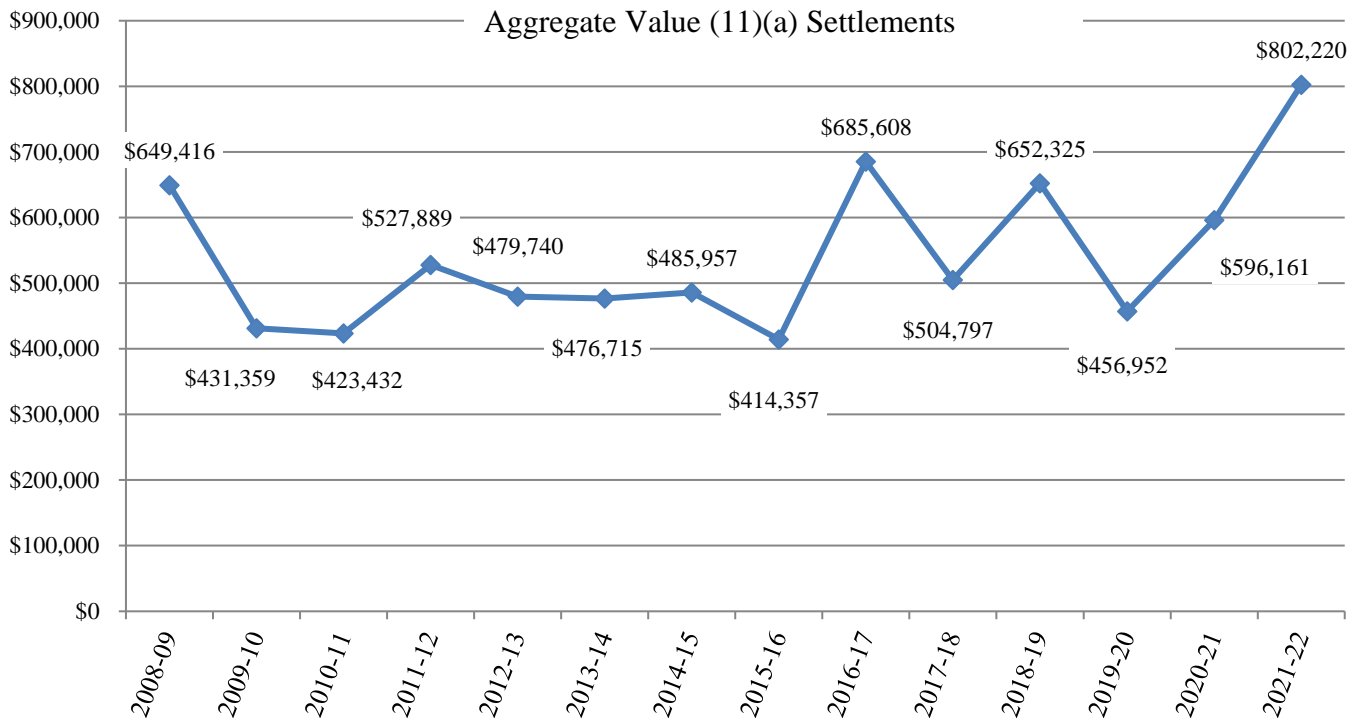
There have been a very few instances in which a JCC approved a settlement under the latter (b) without indicia of MMI. In those instances, the judge or staff made misrepresentations in the state database in order to upload the resulting order without an MMI date. That practice has been discouraged, but has occurred.

These denied case settlements, known as “(11)(a) washouts” because they are authorized by section 440.20(11)(a) and permanently extinguish or “washout” an employer’s liability for a given accident, are the subject of this report (in the vernacular of workers’ compensation, “settlement” and “washout” have become synonymous). Other settlements are reported in the comprehensive Annual Report of the Office of Judges of Compensation Claims (OJCC), published in December of each year.<sup>21</sup> The volume of (11)(a) washouts has vacillated notably over the last 14 years, evidenced in the chart above. The last two years have demonstrated challenging figures. The average volume over the 14-year period is 78 settlements. While four of the last five years has demonstrated less than this mean, the aggregate dollar values have been arguably remarkable. In that range, only 2018-19 was an average volume year. Despite that, the aggregate dollar volume in 2021-22 is the highest in the chart, over \$100,000 higher. And the next two highest, 2008-09 and 2016-17 represented higher volumes of (11)(a) washouts, 99 and 87 respectively. The aggregate value of “(11)(a) settlements” for 2020-21 increased notably (+30%) to \$596,161 and again to \$802,220 in (+35%) in 2021-22. But, the most interesting figure may be the comparison between average (11)(a) settlement, which demonstrates a 69% increase in 2020-21 and a more modest, but still double-digit increase of 12% in 2021-22. There are multiple possible explanations for the notable increase in 2021-22, despite below-average volume. It is possible that even one exceptional settlement of notable value (high or low) might have a profound impact on the figures represented here. This is due to the very small data set (65) that is analyzed, and thus the resulting potential for any one discreet outlier to affect a disproportionate influence on the calculations.

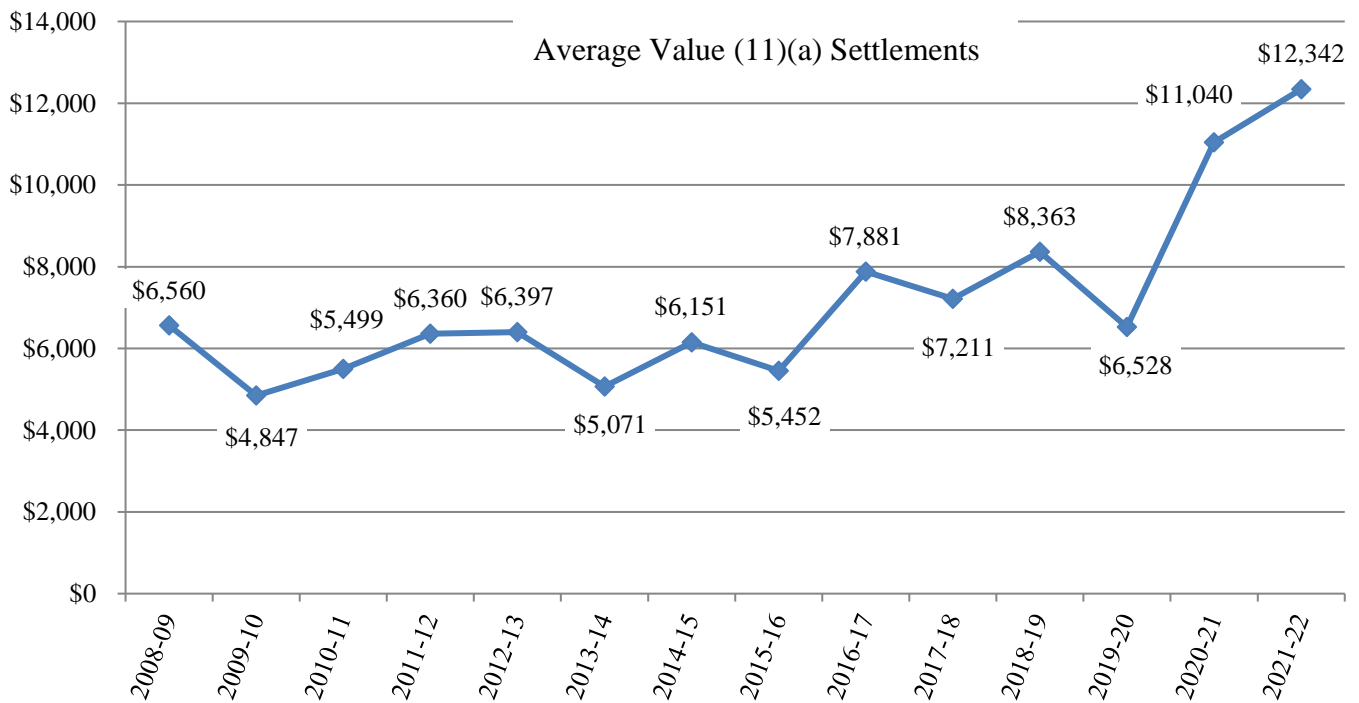
Year	Aggregate Value (11)(a) Settlements	Percent Change	Volume of (11)(a)	Percent Change
2008-09	\$649,416		99	
2009-10	\$431,359	-34%	89	-10%
2010-11	\$423,432	-2%	77	-13%
2011-12	\$527,889	25%	83	8%
2012-13	\$479,740	-9%	75	-10%
2013-14	\$476,715	-1%	94	25%
2014-15	\$485,957	2%	79	-16%
2015-16	\$414,357	-15%	76	-4%
2016-17	\$685,608	65%	87	14%
2017-18	\$504,797	-26%	70	-20%
2018-19	\$652,325	29%	78	11%
2019-20	\$456,952	-30%	70	-10%
2020-21	\$596,161	30%	54	-23%
2021-22	\$802,220	35%	65	20%

Year	Aggregate Value (11)(a) Settlements	Volume of (11)(a)	Average (11)(a) settlement	Percent change
2008-09	\$649,416	99	\$6,560	
2009-10	\$431,359	89	\$4,847	-26%
2010-11	\$423,432	77	\$5,499	13%
2011-12	\$527,889	83	\$6,360	16%
2012-13	\$479,740	75	\$6,397	1%
2013-14	\$476,715	94	\$5,071	-21%
2014-15	\$485,957	79	\$6,151	21%
2015-16	\$414,357	76	\$5,452	-11%
2016-17	\$685,608	87	\$7,881	45%
2017-18	\$504,797	70	\$7,211	-8%
2018-19	\$652,325	78	\$8,363	16%
2019-20	\$456,952	70	\$6,528	-22%
2020-21	\$596,161	54	\$11,040	69%
2021-22	\$802,220	65	\$12,342	12%

The following chart illustrates a notable period of consistency in the aggregate value of “(11)(a) washouts,” a recent period of notable fluctuation, and the more recent trend to notable increase in aggregate value.



The trend to increase is illustrated further by the following chart depicting the average value of (11)(a) washouts over the last fourteen years.



In the FY ending June 30, 2022, there were 65 reported (11)(a) settlements, an increase from the 54 reported in FY 2020-21 (the lowest volume in the last 14 years). It was noted in the 2020-21 Report that the average value increased notably in 2020-21, despite the markedly modest volume (54 settlements). While the 2021-22 volume increased (65), it remains approximately 17% below the fourteen-year average (78). Notably, the marked increase in average (11)(a) settlement value exhibited in 2020-21 (69%) was not only sustained in 2021-22, but increased significantly marking a new high in the fourteen years depicted above.

It is critical, in the analysis of these figures, to reiterate that the data set studied here is exceptionally small. The total volume of workers' compensation settlements in Florida in FY 2021-22 was 24,410; the (11)(a) washout volume of 65 is about one-quarter of one percent of all settlements. It is suggested that an in-depth study of these settlements in a separate report each September serves a minimal purpose and that this analysis could be easily merged with the Florida OJCC Annual Report each November.

The settlements in FY 2021-22 were again classified by the reason stated for denying compensability of the claim. Similar classifications are described in each of the OJCC Settlement and Mediation Statistic Reports.<sup>22</sup> Two of the categories in which settlements occurred in 2019-20 ("Not an Employee" and "Misrepresentation") had no settlements reported for 2020-21, and of these only "Not an Employee" was recorded in 2021-22.

Brief comparison of 2020-21 and 2021-22 is worthwhile in furtherance of the discussion above regarding the potential for outliers to impact these figures, due to the small data set. The overall increase in aggregated value of the (11)(a) settlements in 2021-22 was \$206,059. The 2021-22 "high" example in "Causal Connection Lacking" was \$157,500, but the 2020-21 "high" example in that category was \$50,000. Thus, over half (\$107,500, 52%) of the overall increase in aggregate value might be attributed to that one settlement. Similarly, the 2021-22 "high" example in "Positive Drug Test" was \$75,000, but the 2020-21 "high" example in that category was \$20,000. Thus, approximately 27% of the aggregate increase in 2021-22 (\$206,059) might be attributable to that particular settlement. Thus, two settlements appear plausibly responsible for almost 80% of the aggregate increase in 2021-22. This aptly illustrates the potential for the impact of any one settlement on the aggregate value total, due to the small data set that is analyzed.

Reason for Denial	Volume	Percentage	Aggregate Value	Average Value	High	Low
Causal Connection Lacking	16	25%	\$329,580	\$20,599	\$157,500	\$1,500
No Accident Occurred	10	15%	\$98,240	\$9,824	\$34,840	\$1,000
No injury occurred	10	15%	\$96,800	\$9,680	\$27,500	\$3,000
Not in Course and Scope of Employment	8	12%	\$64,900	\$8,113	\$20,000	\$1,000
Positive Drug Test	8	12%	\$128,500	\$16,063	\$75,000	\$2,000
Injury Not Timely Reported	5	8%	\$40,700	\$8,140	\$15,000	\$2,400
Unspecified	4	6%	\$31,500	\$7,875	\$12,000	\$2,500
Statute of Limitations	3	5%	\$10,500	\$3,500	\$7,500	\$1,000
Not an Employee	1	2%	\$1,500	\$1,500	\$1,500	\$1,500
Misrepresentation on Application for Employment	0	0	0	0	0	0
	65		\$802,220			

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## **Number of Mediation Conferences Held:**

The volume of mediations held each year decreased markedly after the statutory reforms in 2002-03. The rates of decrease in mediations conducted did not mirror the rate of decrease in PFB filings. This suggests that as PFB volume fell, OJCC mediators were able to act upon a greater percentage of the remaining PFB volume. Furthermore, the auto-scheduling of mediations beginning in 2006-07 likely drove timely mediation and thus better docket management. As the volume of state mediation increases, the “unit” cost of each additional mediation conference 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.

In 2012-13 through 2017-18, the annual volume of mediations conducted vacillated, but remained reasonably similar, around 16,000. More recently, the last four years have trended consistently upward. The 20,109 mediations in 2021-22 is the highest volume since 2008-09, and equates to an average of about 3 mediations per mediator per day.<sup>23</sup> As discussed more fully above (Overview of Workers’ Compensation), OJCC mediation operations were mandated to telephonic process by the Deputy Chief Judge in reaction to COVID-19 in March 2020. Though there were attempts to return to more traditional operations, mediation effectively remained mandatorily telephonic until February 2021. Beginning in March 2021, efforts were directed towards in-

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%
2010-11	64,679	-4.84%	17,896	-9.91%
2011-12	61,354	-5.14%	16,881	-5.67%
2012-13	58,041	-5.40%	15,850	-6.11%
2013-14	59,292	2.16%	16,188	2.13%
2014-15	60,021	1.23%	15,421	-4.74%
2015-16	67,265	12.07%	15,703	1.83%
2016-17	70,365	4.61%	16,079	2.39%
2017-18	70,295	-0.10%	16,167	0.55%
2018-19	73,146	4.06%	17,056	5.50%
2019-20	72,086	-1.45%	18,211	6.77%
2020-21	69,676	-3.34%	19,442	6.76%
2021-22	71,733	2.95%	20,109	3.43%

person mediation, but the volume of requests for permission to attend by telephone remained significant. The convenience of telephonic processes and the overall challenges of legal practice in the midst and wake of the pandemic may have influenced volumes and outcomes in both 2020-21 and 2021-22. Despite decreased Petition filing in 2020-21, mediation frequency increased almost 7%. The increases in 2021-22 are perhaps more consistent with both Petition filing and mediations conducted increasing at approximately 3%. This performance is noteworthy because the clear community preference demonstrated for telephonic appearance even after the repeal of mandatory telephonic mediation. Lawyers, adjusters, injured workers, and employers have steadfastly demonstrated a desire for remote mediation proceedings. This community preference, coupled with the great travel distances associated with OJCC District Office closures and consolidations, supports the implementation of mediations using Internet-based video platforms.<sup>24</sup>

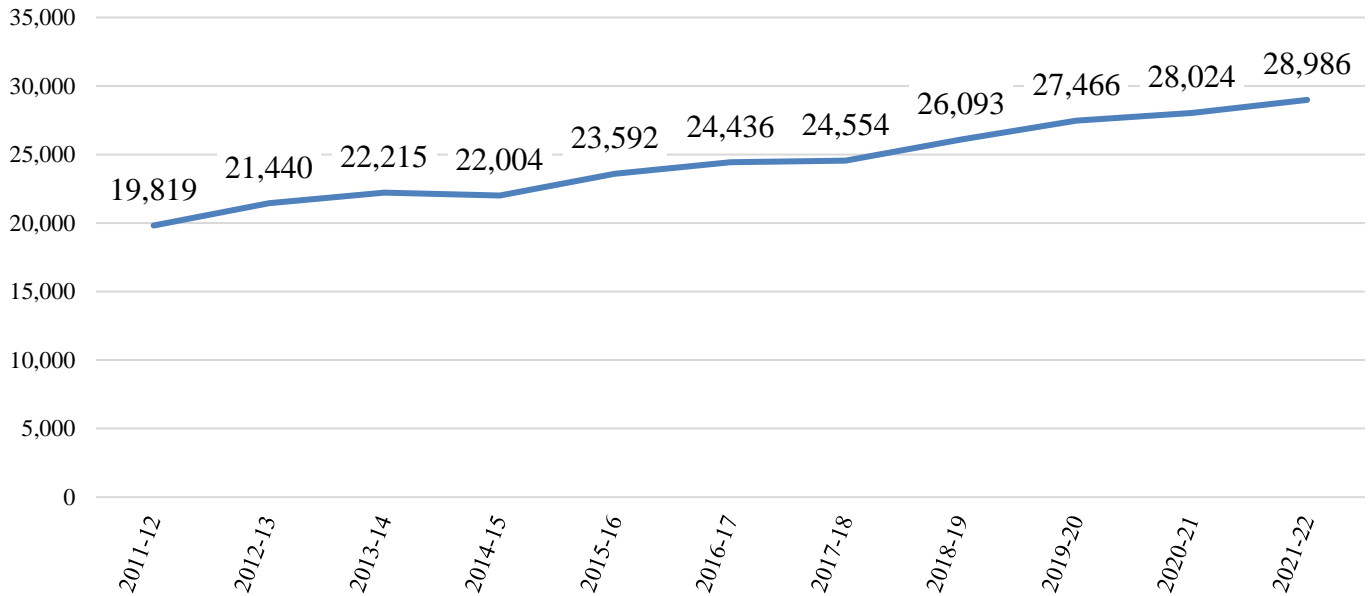
The OJCC also “de-coupled” the judges and mediators in late 2021-22. While it is likely that a one-to-one ratio of mediators and judges will remain necessary for the workload, all OJCC mediators now report to the Deputy Chief Judge rather than a specific judge. This should enhance the perception of mediator independence within the system. Because mediation is presumptively video and remote, mediation assignments began a rotational and random process in the end of 2021-22. Thus, a mediator associated with any particular District Office will randomly receive mediation assignments from throughout the state. With the transition to a presumptive video mediation process, subject to customer requests for traditional mediation in person, the OJCC has also implemented a mandatory scheduling format for all OJCC mediators. The uniformity of all mediator schedules should facilitate re-distribution of workload.

The Florida workers’ compensation law requires that PFBs are filed only when benefits are ripe, due, and owing.<sup>25</sup> After a PFB is filed, an OJCC mediation conference is scheduled with the assigned mediator. Thereafter, it is not uncommon for additional PFBs to be filed prior to that mediation. Therefore, the volume of PFBs mediated is somewhat higher than the number of mediation conferences actually held, as more than one PFB is often mediated simultaneously. This chart summarizes the PFB filing volumes and mediation volume over the last 19 years.

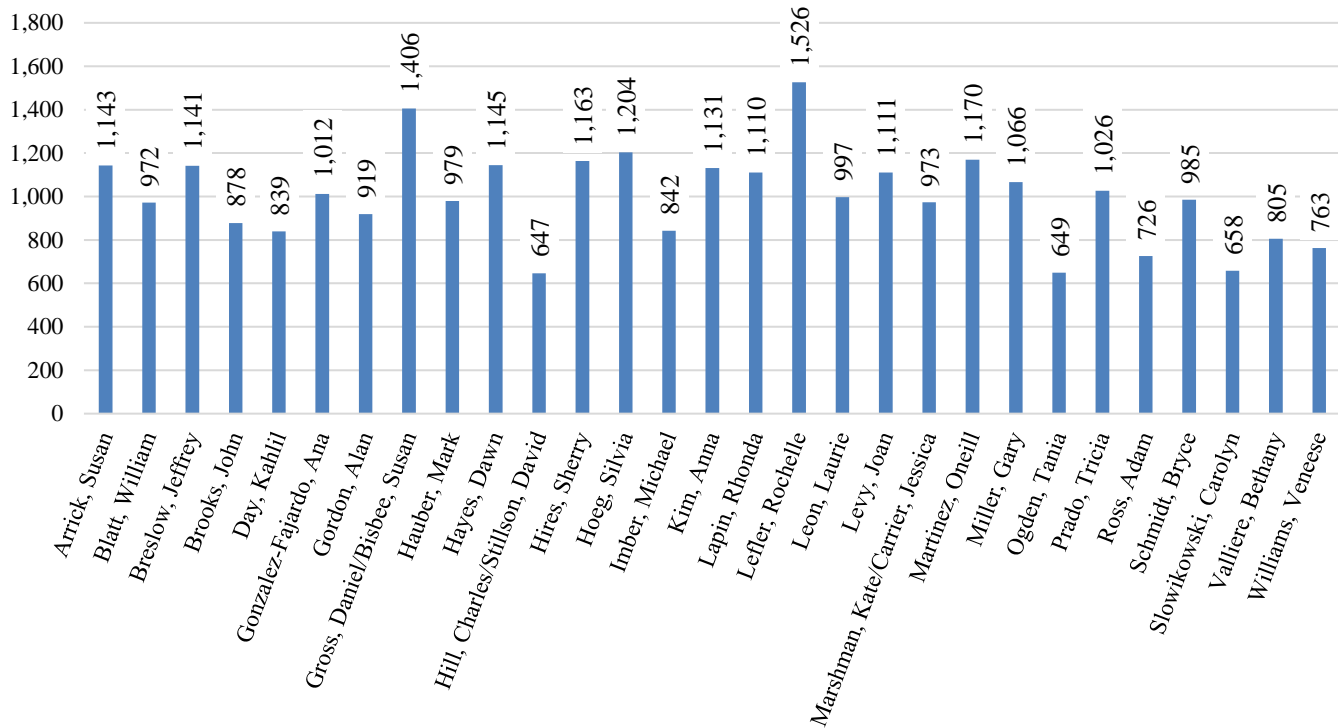
These changes will make it increasingly important that counsel remain cognizant of notices and assignments. Case consolidation will be of critical importance to avoid unintended involvement of multiple mediators, and redundant proceedings, in a particular case.<sup>26</sup>



## Overall Volume of PFB Mediated 2021-22



## Volume of PFBs Mediated by Each Mediator 2021-22

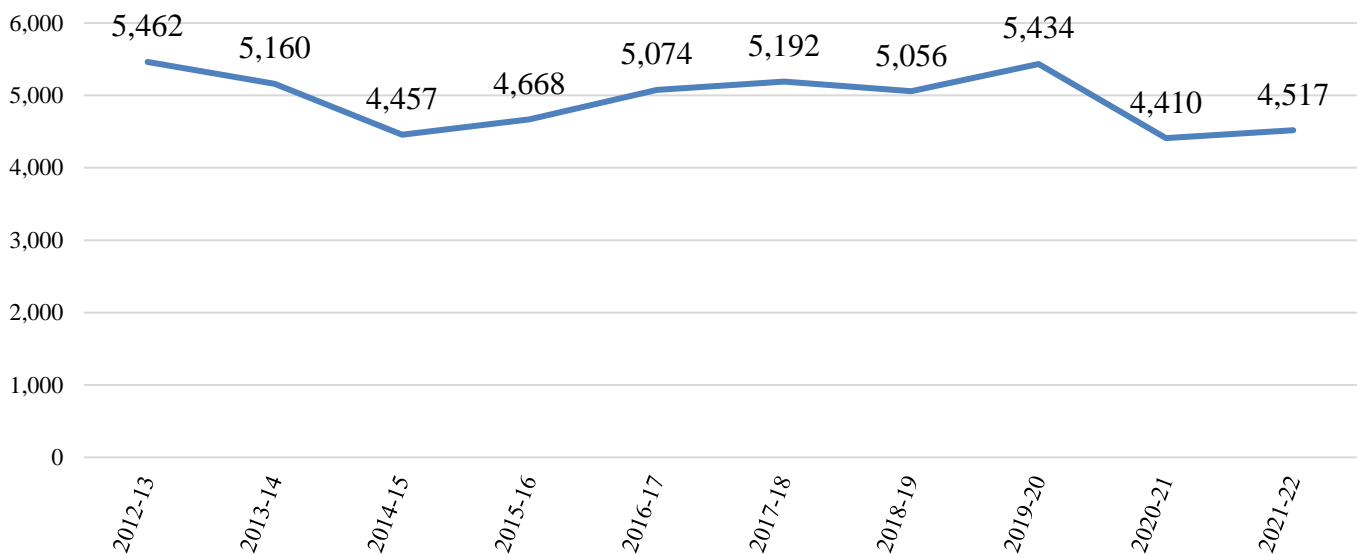


## **Dismissed and Resolved Prior:**

Some volume of petitions for benefits (“PFB”) does not reach the mediation process. These may be dismissed before the mediation conference is scheduled, or after the notice is issued, the parties may report that they have either settled the case or resolved the pending issues prior to the mediation. Still other cases are reset for private mediation. Through various paths, a significant volume of litigation is resolved among the parties after PFB filing, but without state mediation. (20,109 mediations conducted in 2021-22; a significant volume of others, 14,642 [73% of the volume of cases that went to mediation, 20,209], were “resolved or settled prior”). The volume that resolved prior in 2021-22 (14,642) was remarkably similar to the volume in 2020-21 (14,365). The petitions mediated and those dismissed prior to mediation accounted for about 48% of the 71,733 petitions filed that year.

Similar to the decline in state mediations, the volume of PFBs that have been reset for private mediation decreased consistently from 2009-10 through 2014-15. In 2012-13 the volume of PFBs mediated by state mediators began to increase (illustrated in graph on preceding page). However, the volume of cases being set for private mediation continued thereafter to decrease through 2014-15, possibly due to the decreasing overall PFB volume. The volume being privately mediated increased each year 2014-15 through 2017-18; the 2018-19 figure suggested the trend was pausing. However, with the small decrease in PFB filing volume in 2019-20 (-1.45%) came an increase in private mediation volumes, returning to volumes not seen since 2012-13. As the Great Pandemic waned, however, the volume of OJCC mediations reset for private mediation dropped to the lowest volume in a decade in 2020-21; the increase in 2021-22 is nominal (107). This is particularly notable because the PFB volume increased in 2021-22. This may be an anomaly, or may signal that the convenience of virtual mediation is enhancing demand for OJCC mediation.

### **Reset Private 2021-22**



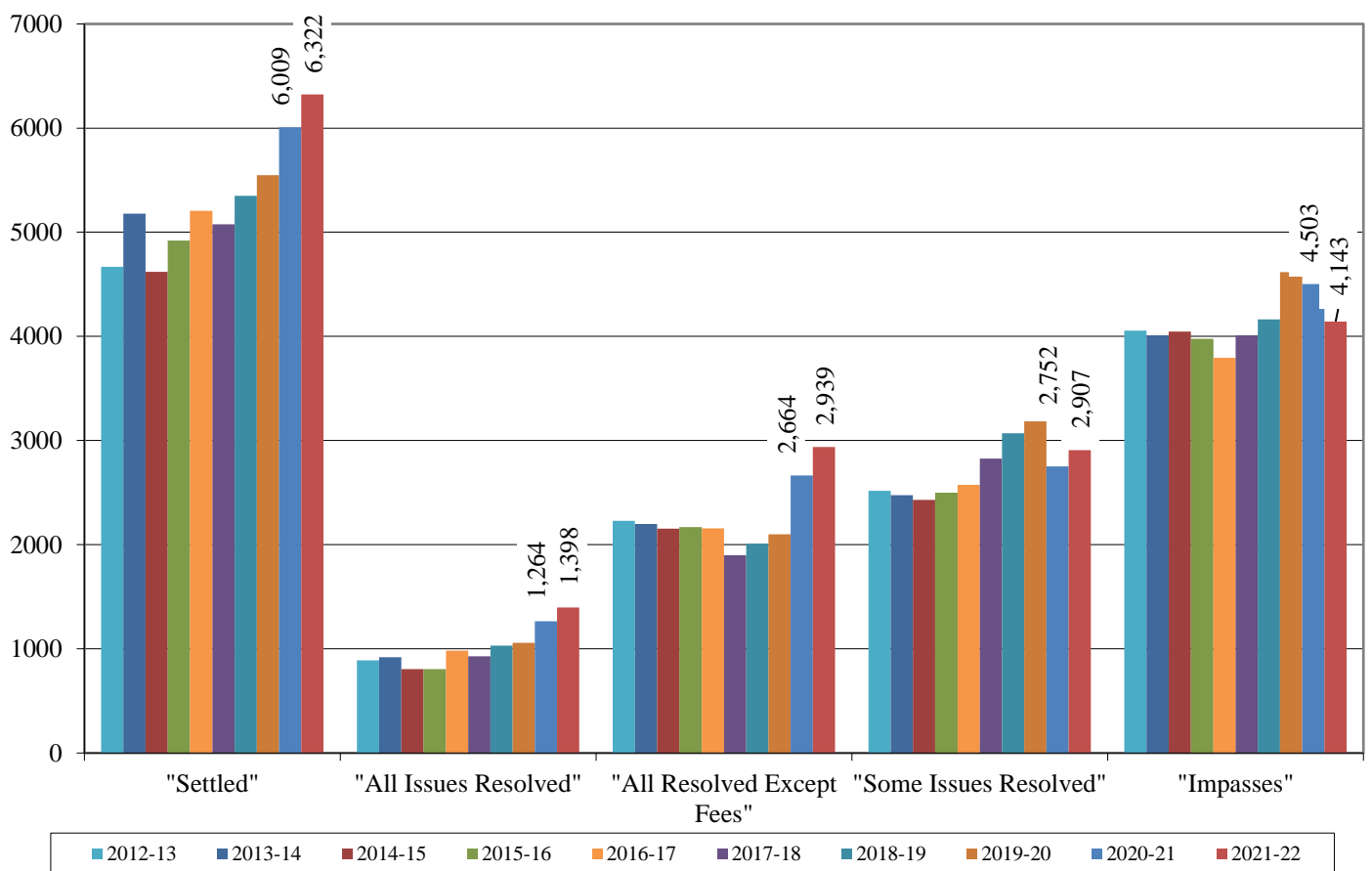
## **Disposition of Mediation Conferences:**

A 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 PFBs 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,<sup>27</sup> and attorney’s fees and costs for the prosecution of all claimed benefits in the PFB. Notably, a mediation conference may include the issues from one PFB or several.<sup>28</sup>

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”

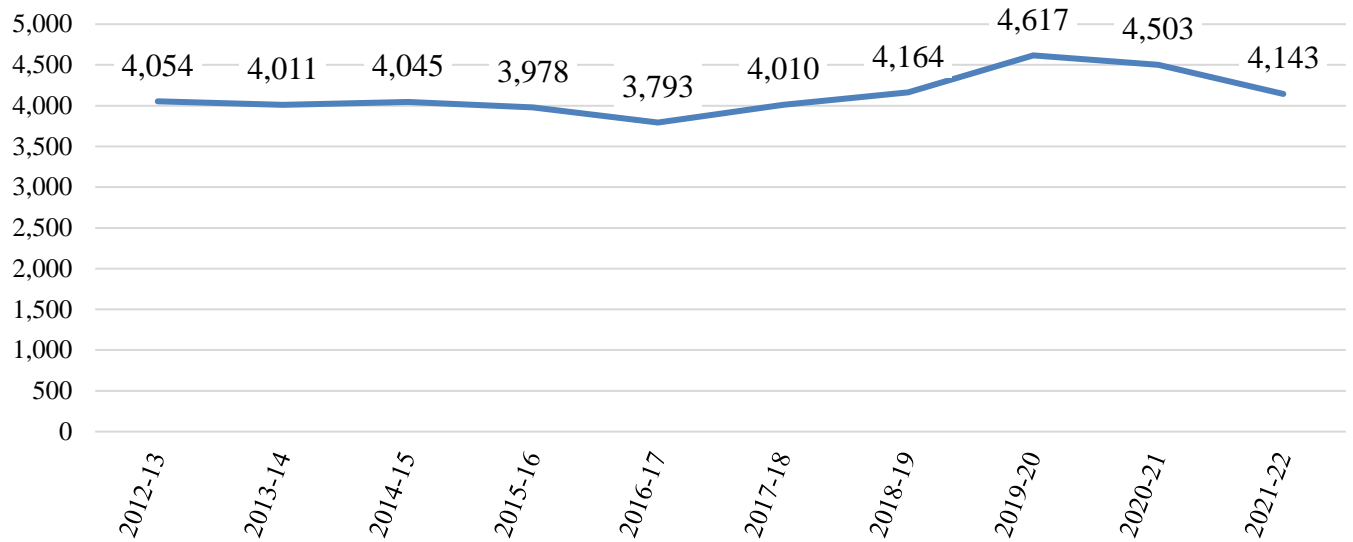
reflects that the entire case, including the pending PFB issues and all future benefits as yet undue and unclaimed, were resolved. Between these two extremes of “impasse” (nothing) and “settled” (all) are a number of “partial” resolution characterizations used by the OJCC. Previously, some mediators 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 (though the data for the last ten years has been monitored for such error). Those erroneously characterized outcomes dictate that comparisons of that historic data with future data may also be suspect.

The term “some issues resolved” reflects that some subset of the currently 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 mediations 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 ten (10) 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 claims process. Most attorneys, however, are familiar with “impasse” as that characterization reflects that the mediation has concluded without any agreement. The volume of OJCC mediations concluding with no agreement on any portion of the claims has a history of reasonable consistency, but has trended upward in recent years. The increase in impasse was notable (+11%) in 2019-20, and while the moderate decrease from that in 2020-21 did not return to prior consistency, the results in 2021-22 moved significantly toward that baseline. Most resolution outcomes increased some in 2020-21, due in part to the notable increase in mediations conducted. However, all resolution outcomes increased notably in 2021-22. There was an increase in the volume of mediations, impasses decreased markedly, and the resolution figures in every category increased. The OJCC mediators have much about which to be proud regarding 2021-22.

## Overall "Impasses" 2021-22



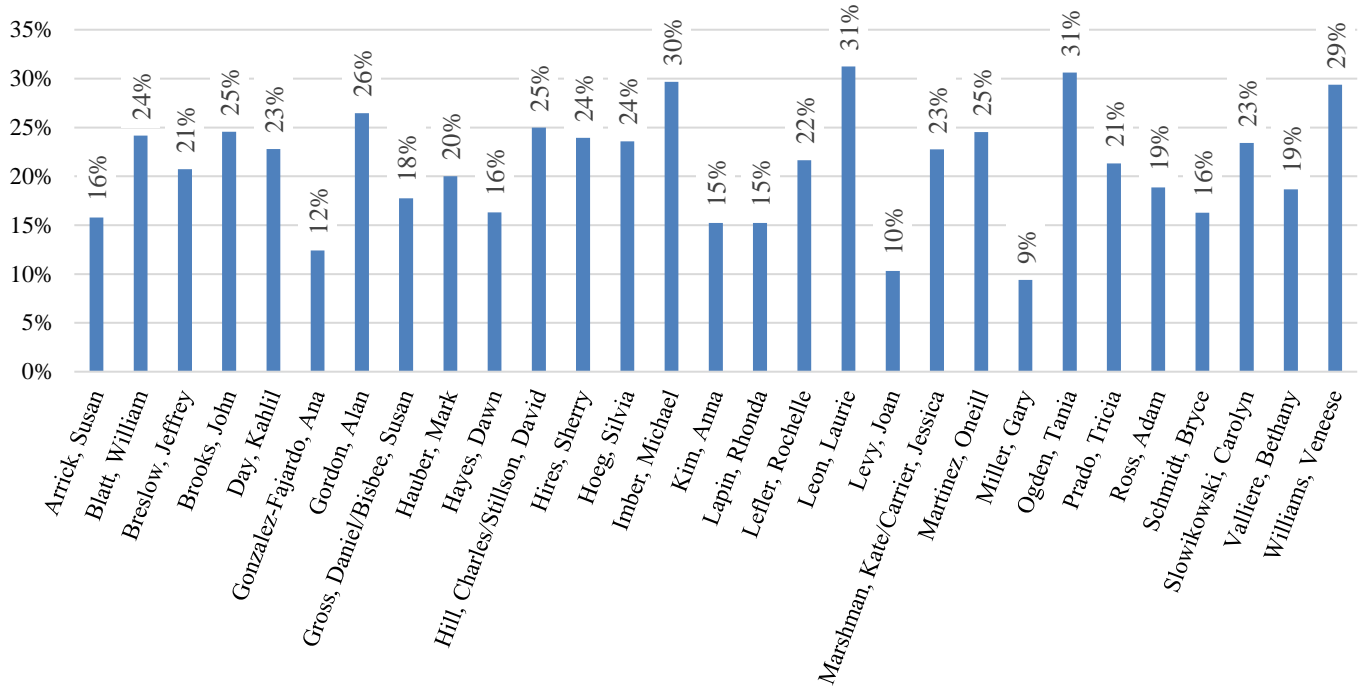
The marked decreases in “impasse” between 2009 and 2013 are illustrative of efforts by the OJCC mediators to resolve at least some aspect of the cases which are presented to them. Individual impasse rates are illustrated below, and for each mediator in the appendices. Despite decreasing volumes of mediations overall, the percentages of convened mediations resulting in impasse were impressive and consistent. This is well illustrated when expressed as a percentage of the mediations held by OJCC mediators. The increasing volume of mediations and the decrease in impasse outcomes have combined in 2021-22 to result in the lowest percentage of “impasse” in the last ten years.

12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22
25.60%	24.80%	26.20%	25.30%	23.60%	24.80%	24.40%	25.40%	23.16%	20.60%

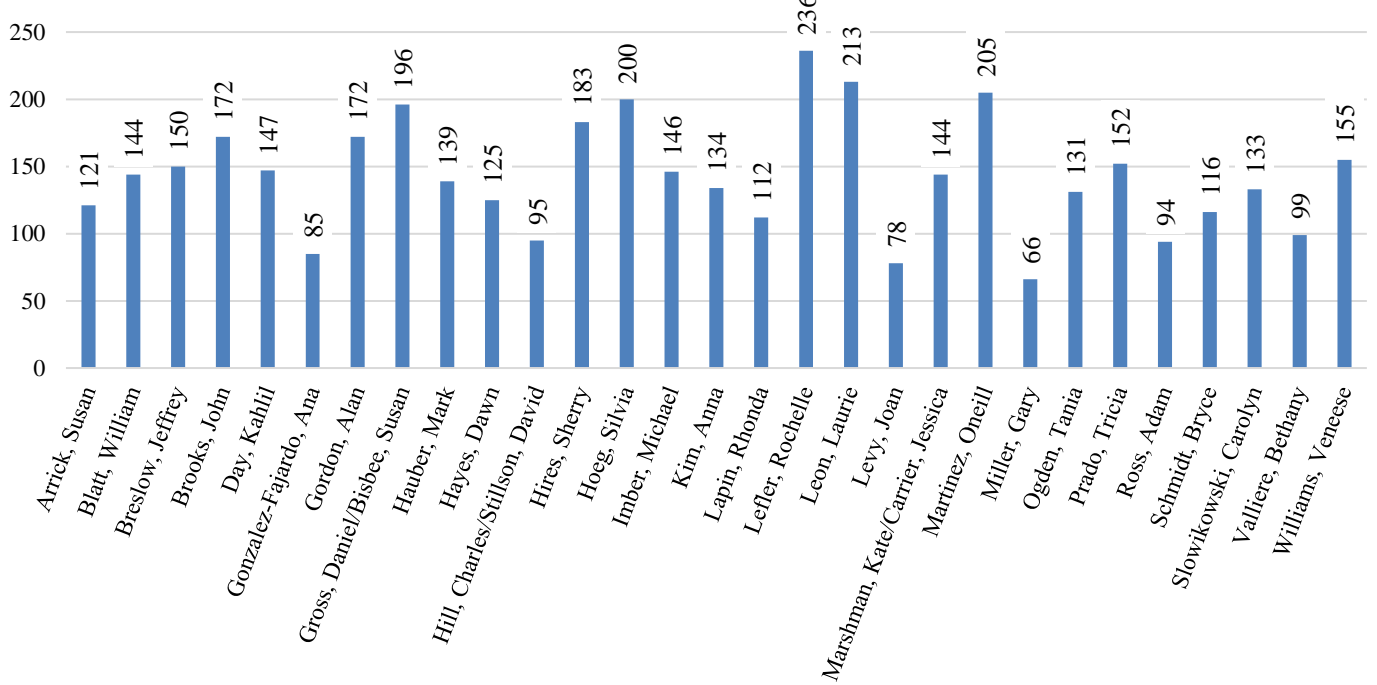
The corollaries of these figures represent the volume of OJCC mediations in which at least some volume of issues was resolved. In approximately eighty percent (79.40%) of 2021-22 OJCC mediations, at least some issues were resolved. This is an important fact, more so even than a measure of “settlements.” It is pertinent because the workers’ compensation statute 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 could potentially lead to a medical opinion that affects or resolves 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.

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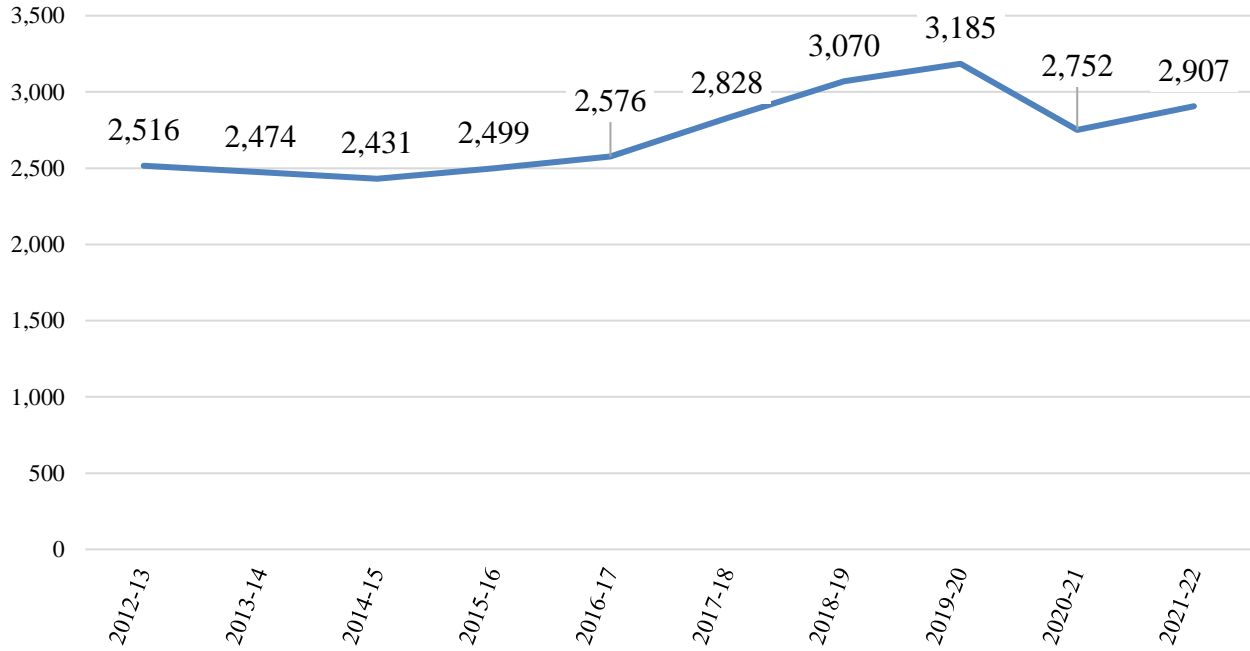
## "Impasse" % by Each Mediator 2021-22



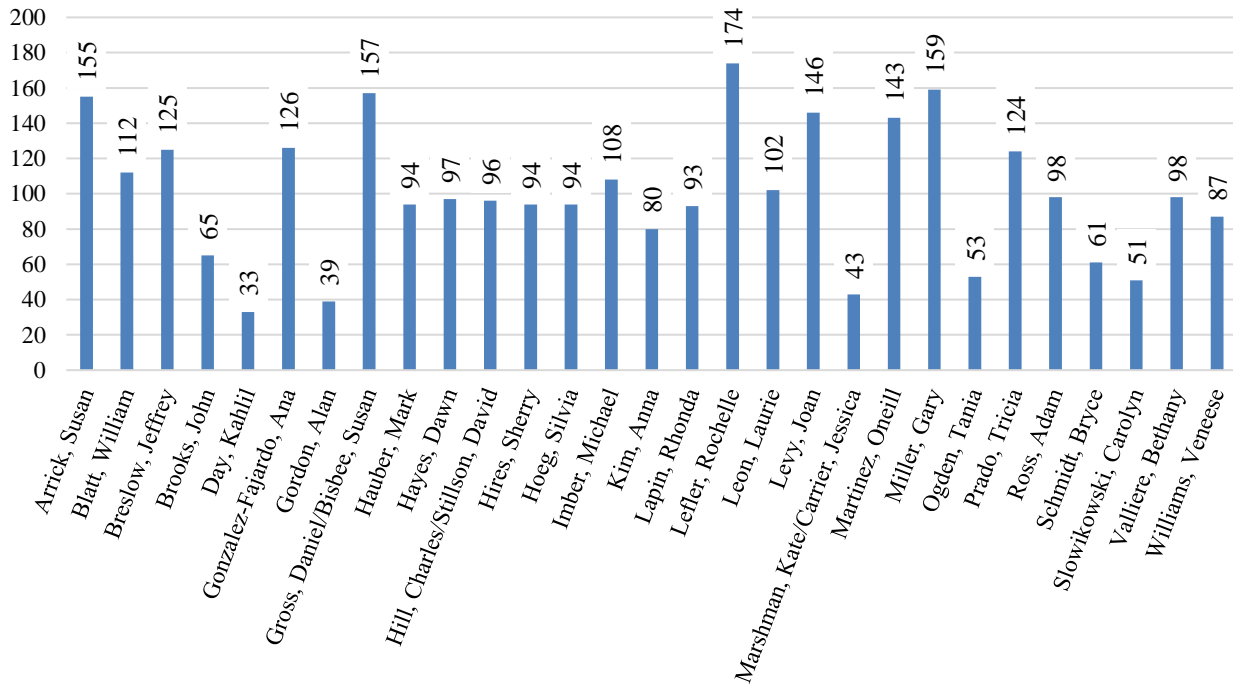
## "Impasse" by Each Mediator 2021-22



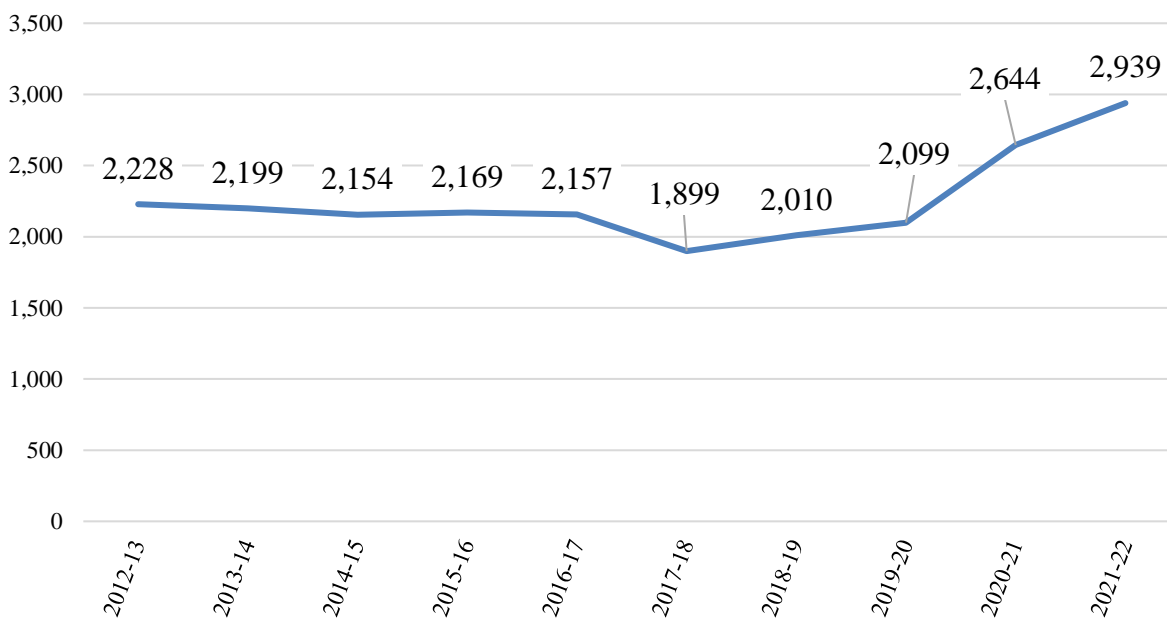
## Overall "Some Issues Resolved" 2021-22



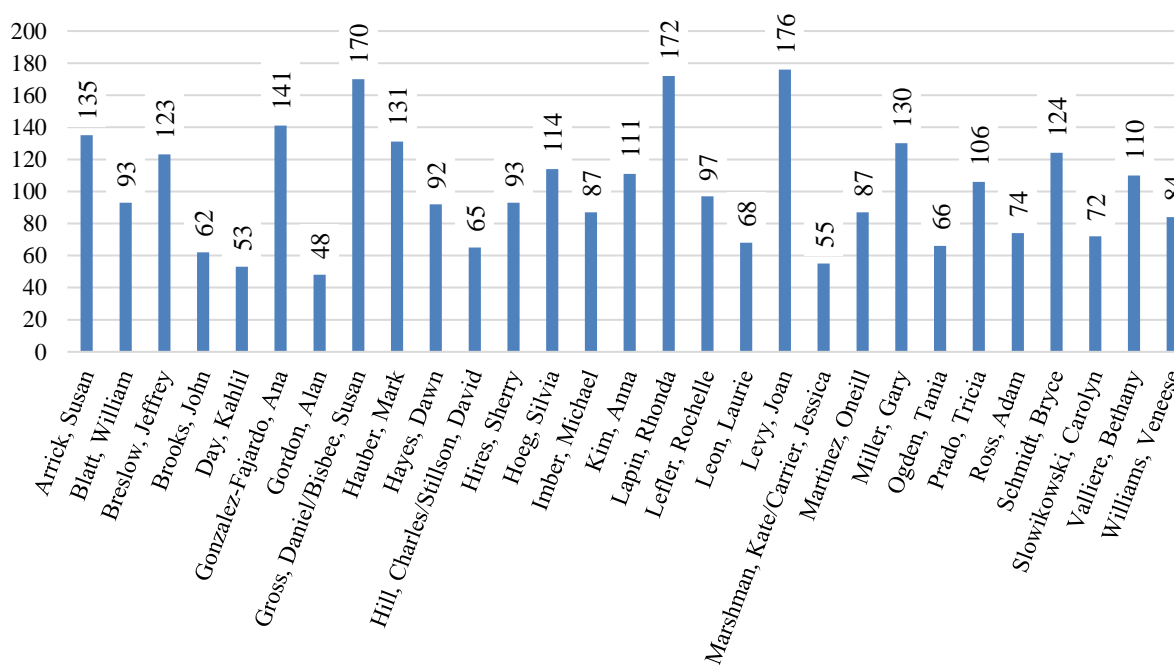
## "Some Issues Resolved" for Each Mediator 2021-22



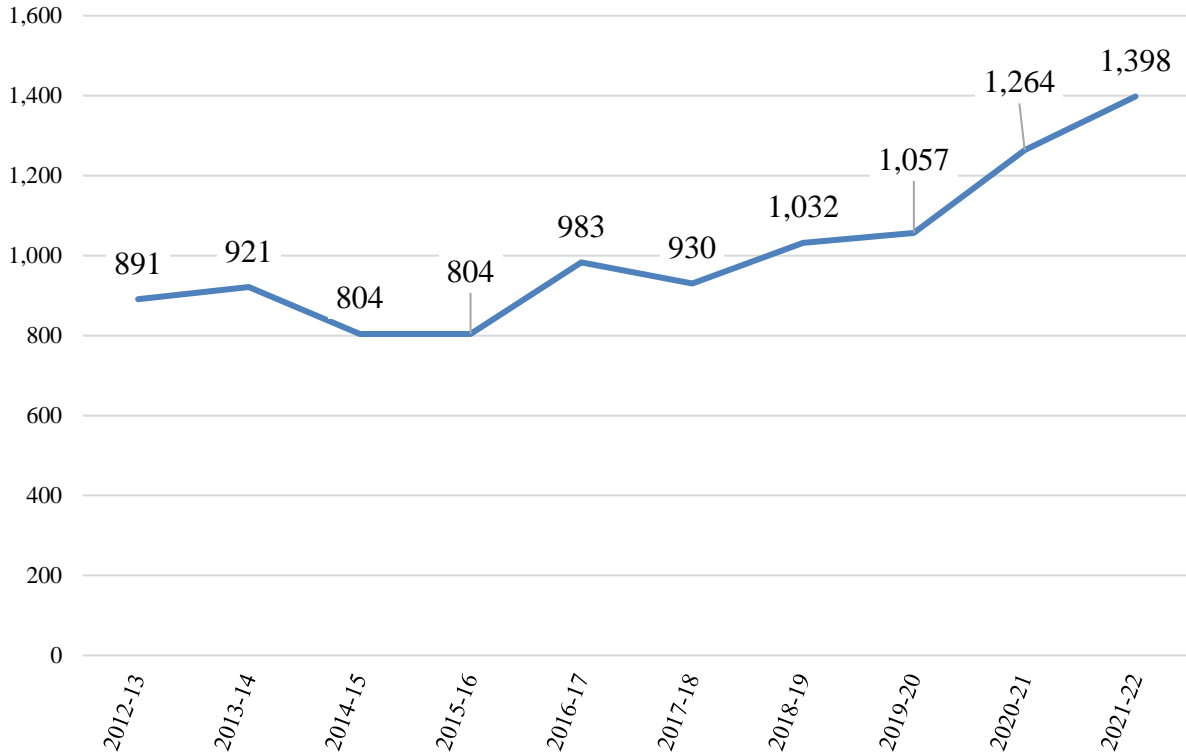
## Overall "All Resolved Except Fees" 2021-22



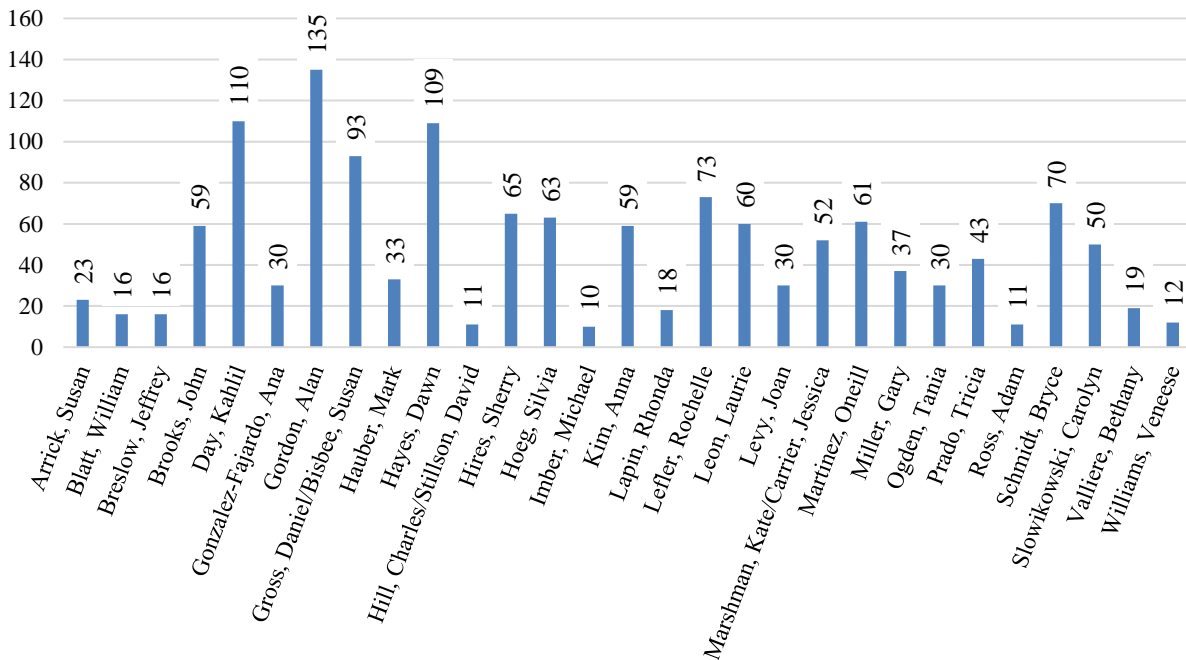
## "All Resolved Except Fees" for Each Mediator 2021-22



## Overall "All Issues Resolved" 2021-22

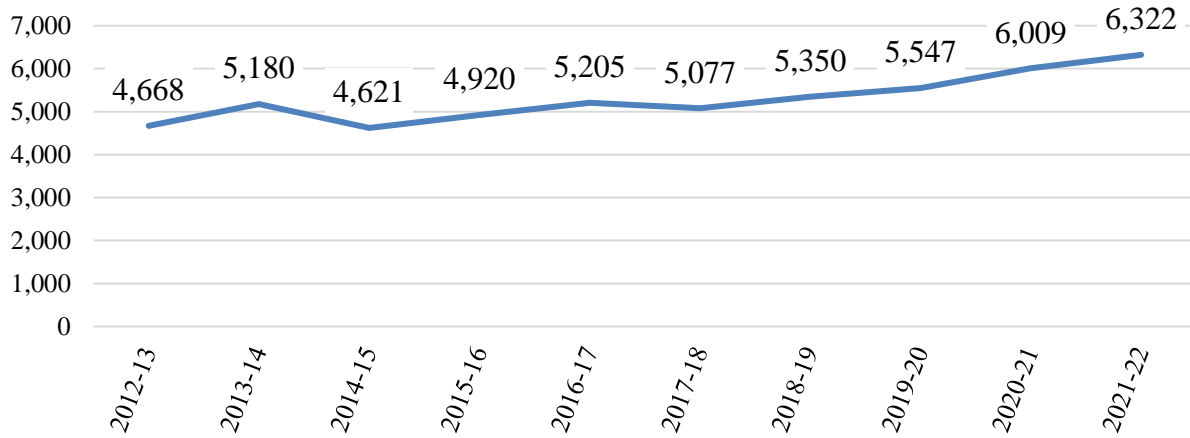


## "All Issues Resolved" for Each Mediator 2021-22

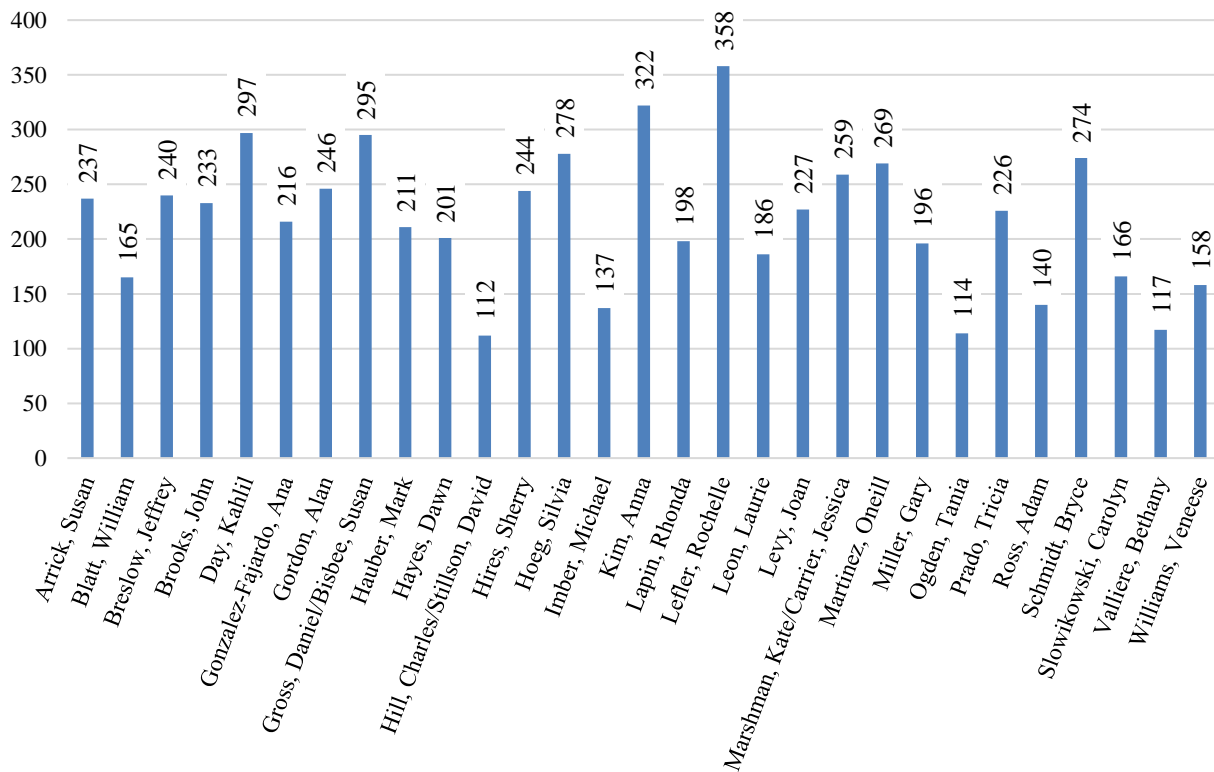




## Overall "Settled" 2021-22



## "Settled" for Each Mediator 2021-22

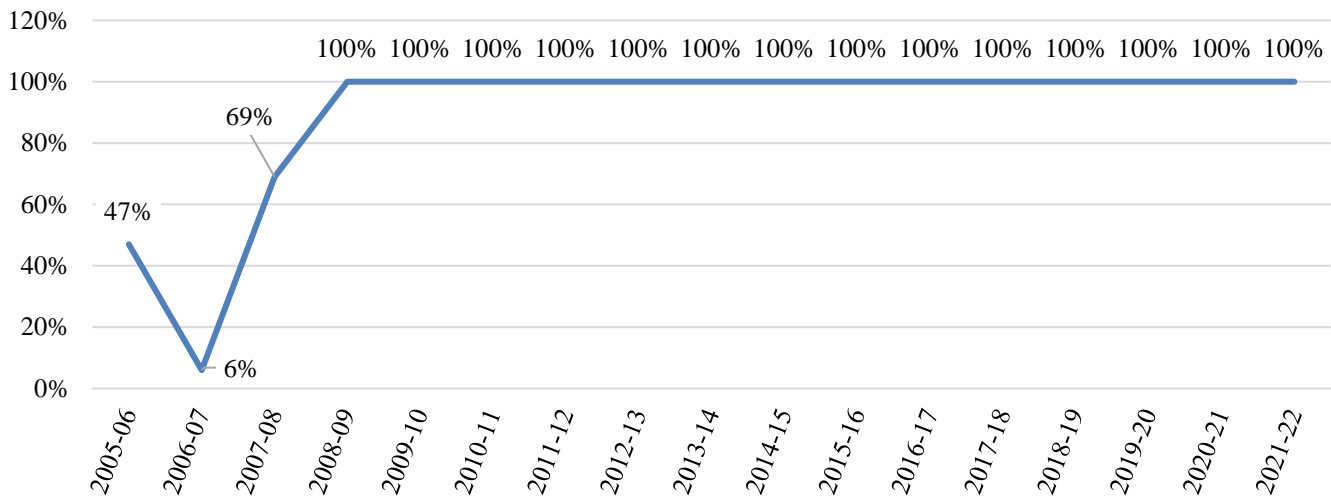


### Timeliness of Mediations:

The Florida workers' compensation law requires that mediation occur within 130 days of the PFB filing. There are nonetheless situations in which this parameter 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 appointments and other exigencies does occur. Of

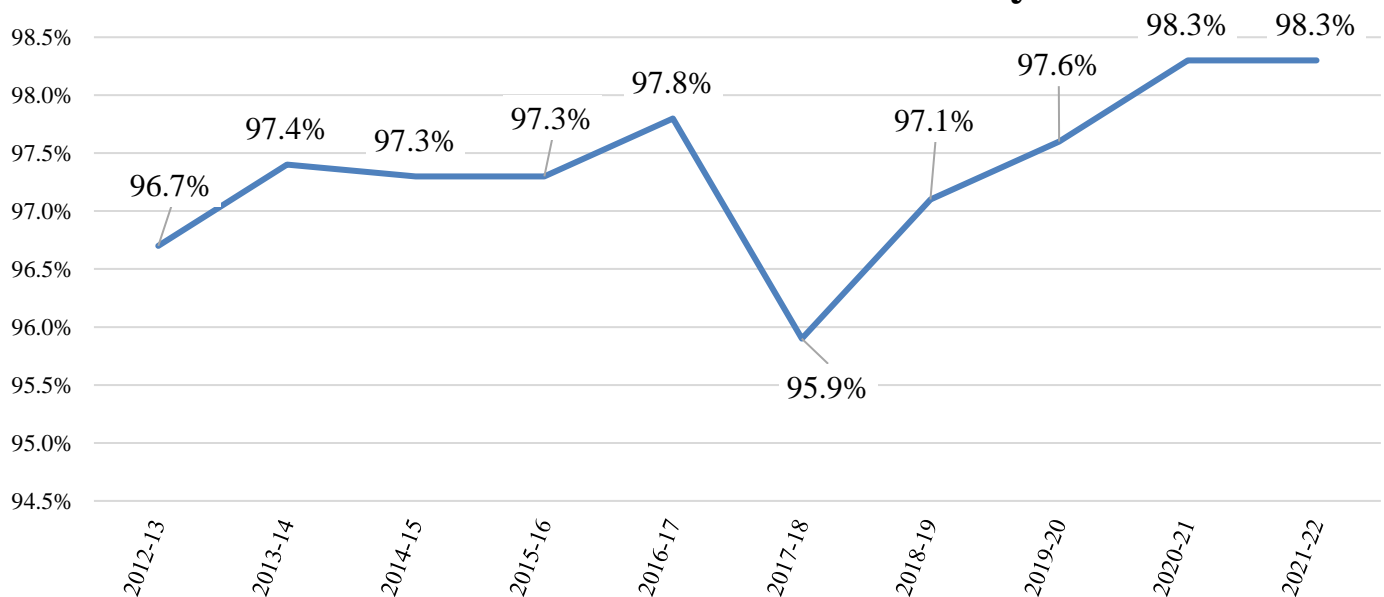
primary concern is whether the mediation process is fulfilling the 130-day requirement generally, and this is most easily measured by consideration of the average days between PFB filing and the first mediation for each mediator. Considering the 130-day parameter (section 440.25(1)) in this context, the OJCC mediators have performed with notable consistency in recent years. In each of the last fourteen fiscal years, all of the OJCC mediators averaged less than 130 days between Petition filing and the initial mediation.

## Percent of State Mediators Averaging Less than 130 Days to First Mediation

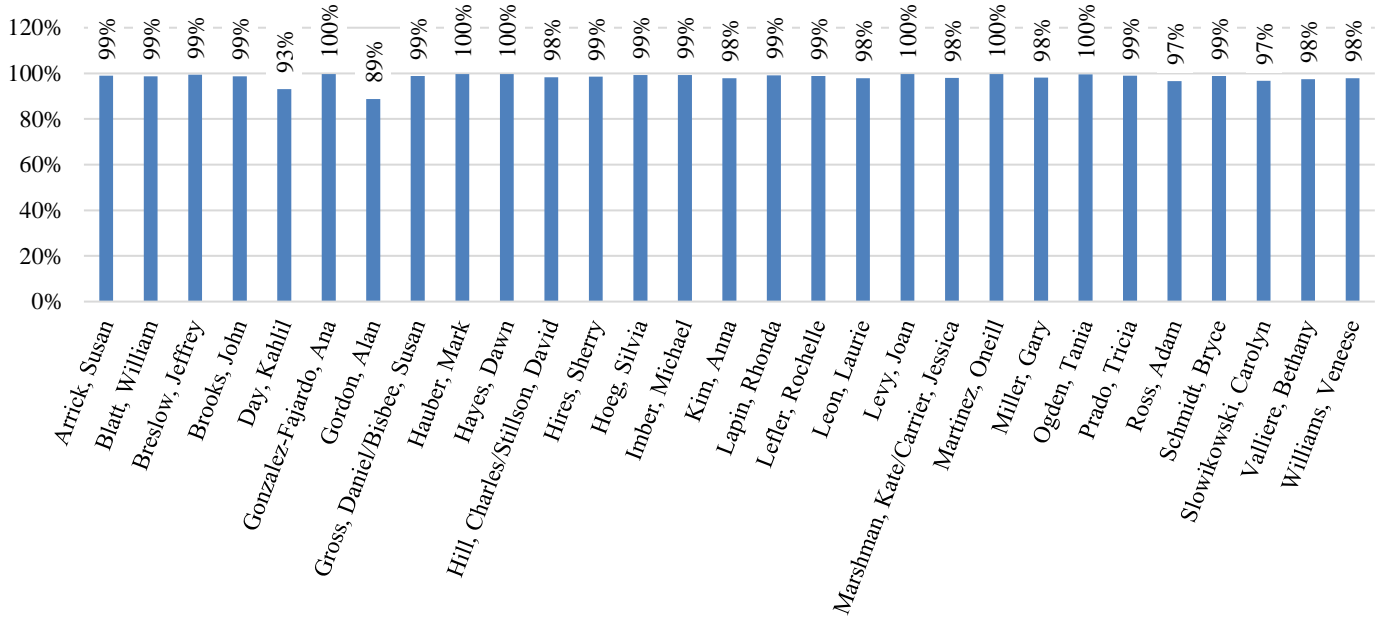


In fact, in 2021-22 the OJCC mediators mediated approximately 98.3% of the PFBs within the 130-day statutory parameter. That is consistent with 2020-21, which was an improvement over 2019-20. It is fair to characterize the last two years as exemplary in terms of mediation timeliness, despite the challenges of the Great Pandemic, the changes in mediation process, office consolidations, and more.

## Percent Mediated within 130 Days



## Percent Mediated within 130 days for Each Mediator



### Mediations Continued:

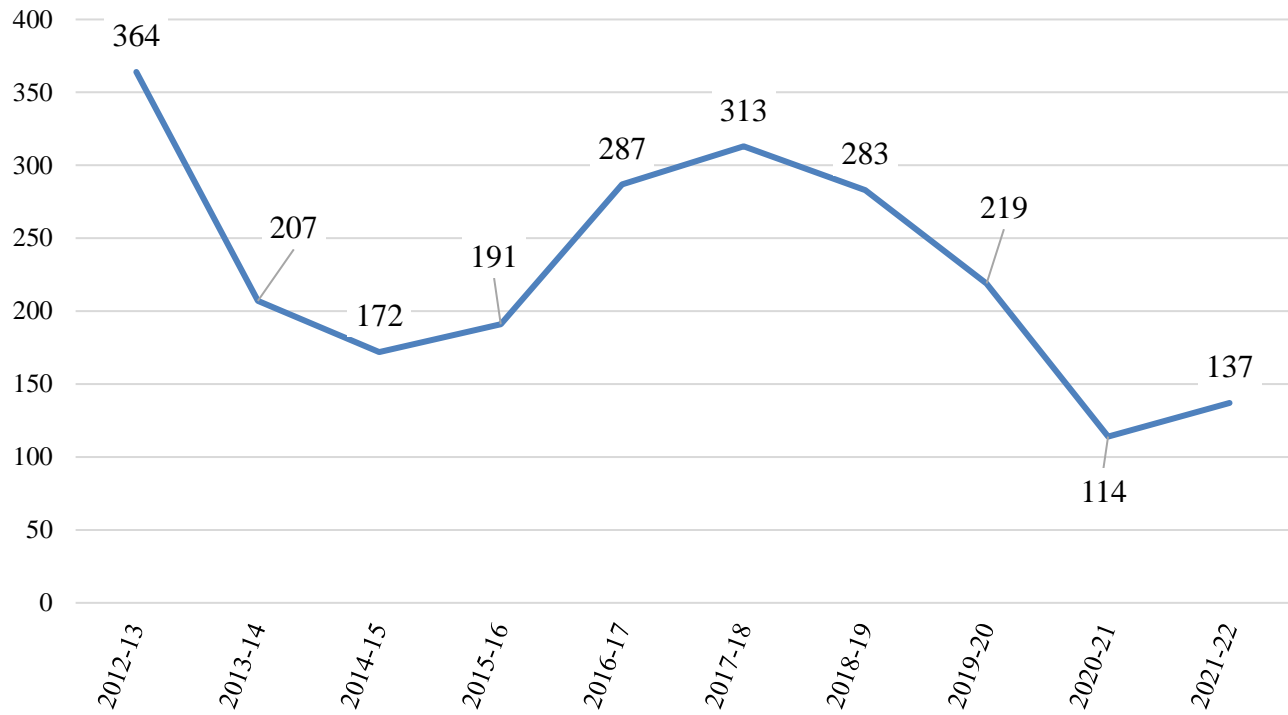
Mediation continuances increased markedly in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. However, those volumes may have been increased by the volume of weather-related office closures that year, as Florida’s cyclone season affected virtually every Florida county. Those 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 digital age had not begun by that time, with e-filing, video facilities, and more. The mediation continuance trend reversed in 2006-07, and decreased steadily over eight years. After stabilizing at around 200 annually, the rate increased in 2016-17 and 2017-18. The figures for 2018-19 (283) and 2019-20 (219) were significant in their return to a downward trend. In the pandemic period of 2020-21, with mediations largely conducted telephonically, the volume of continuances was an all-time low of 114, and has not markedly changed in 2021-22, though a slight increase is demonstrated.

Some portion of the stabilizing figures in recent years is due 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. Mediations whose calendar date is changed after initial scheduling, but for which the new date is within the 130-day statutory requirement are not “continued,” but “rescheduled.” This definition was added to the procedural rules for clarity and transparency.

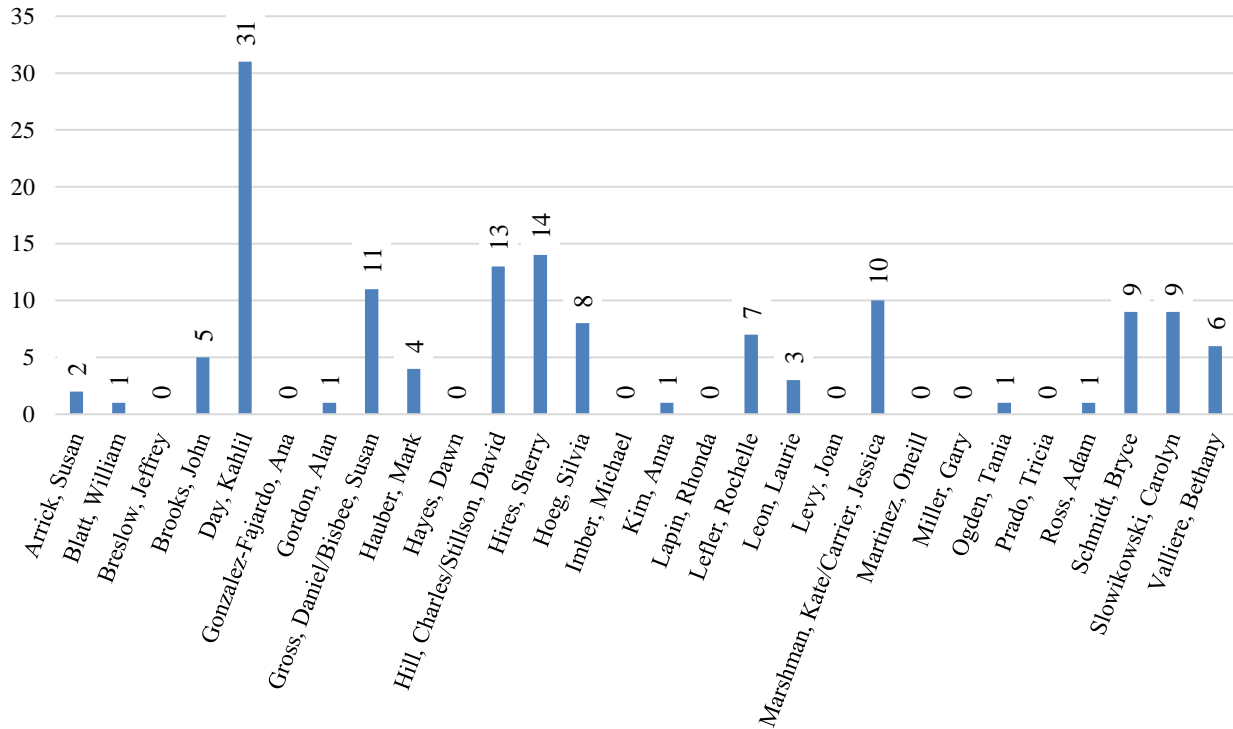
Some portion of both the stabilizing of these figures and the marked decrease in the number of mediation conference continuances had been previously deemed likely attributable to the annually decreasing volume of PFB filings. It was therefore encouraging to see the continuance rate remaining well below one percent despite the recent years of significant increase in PFB filings.

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%
2010-11	64,679	963	1.49%
2011-12	61,354	717	1.17%
2012-13	58,041	364	0.63%
2013-14	59,292	207	0.35%
2014-15	60,021	172	0.29%
2015-16	67,265	191	0.28%
2016-17	70,365	287	0.41%
2017-18	70,295	313	0.45%
2018-19	73,146	283	0.39%
2019-20	72,086	219	0.30%
2020-21	69,676	114	0.16%
2021-22	71,733	137	0.19%

## Overall Mediations "Continued" 2021-22

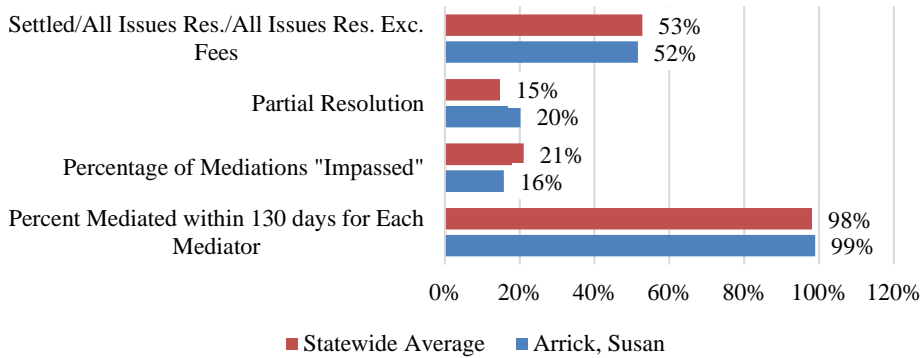
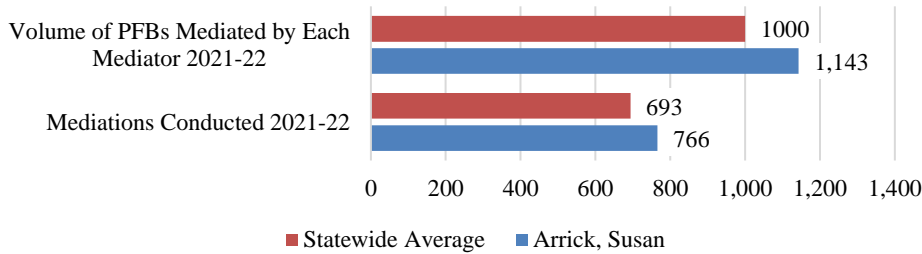


## "Continued" for Each Mediator 2021-22

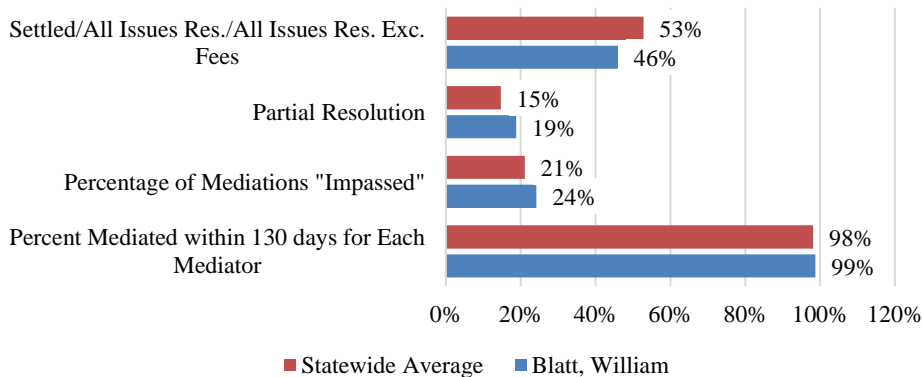
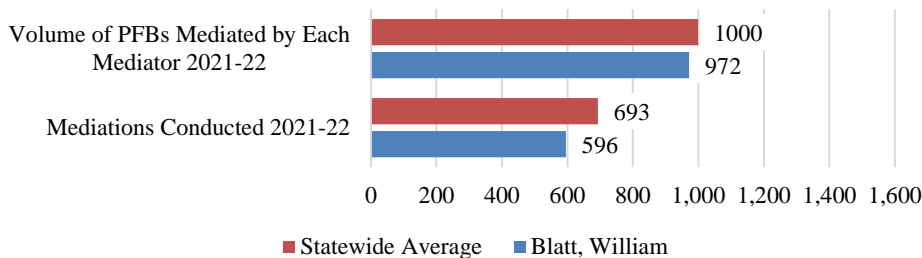


## Individual Mediator Statistics:

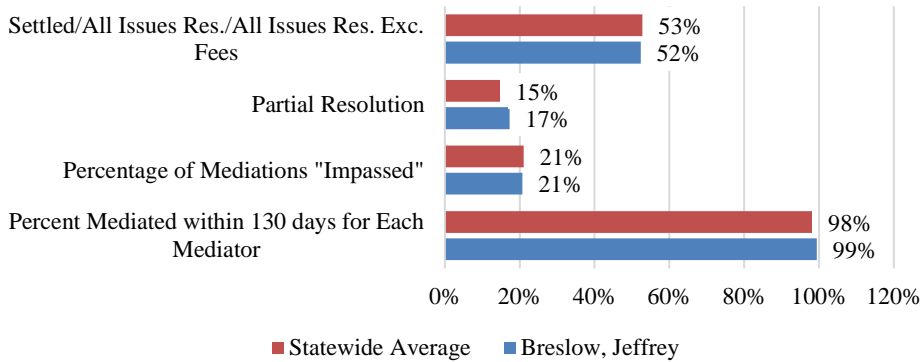
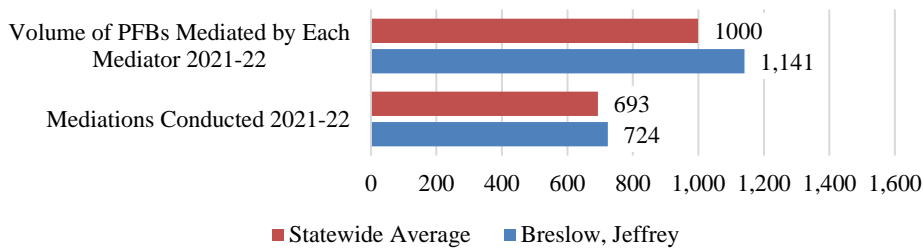
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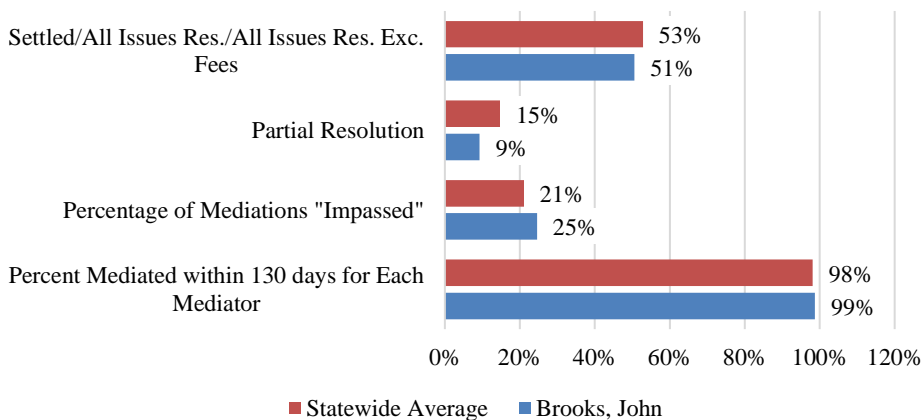
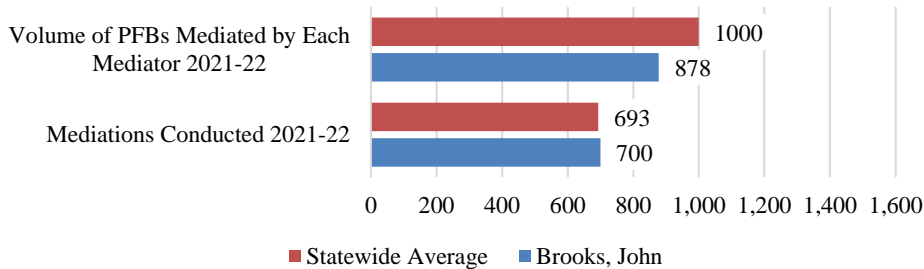
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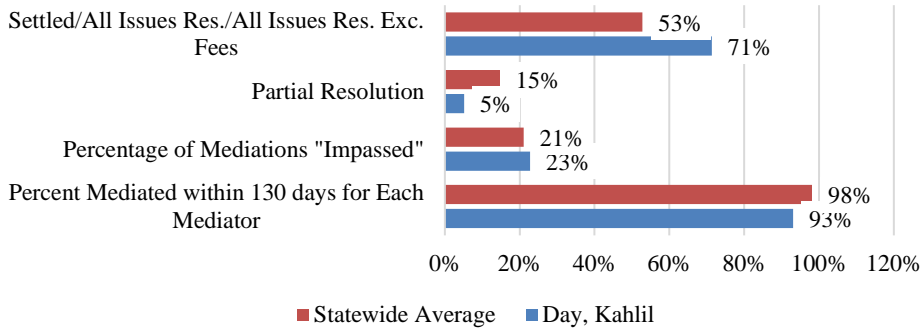
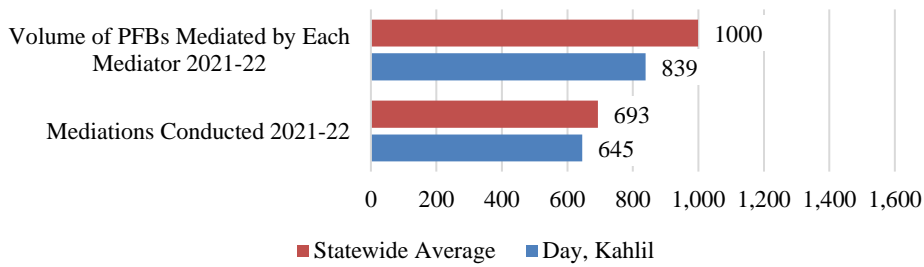
## Breslow, Jeffrey (FTL)



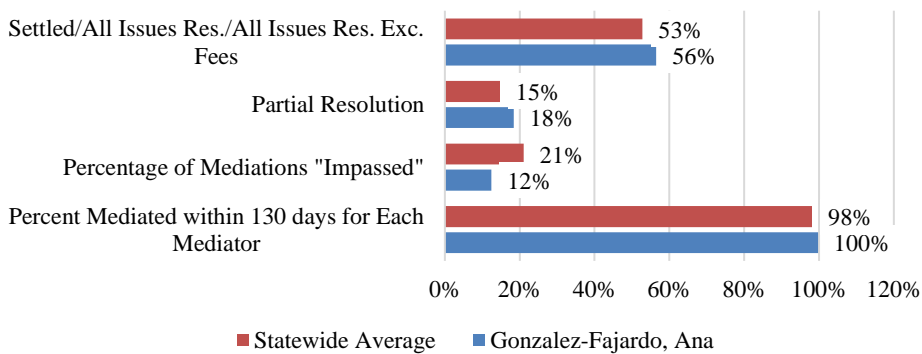
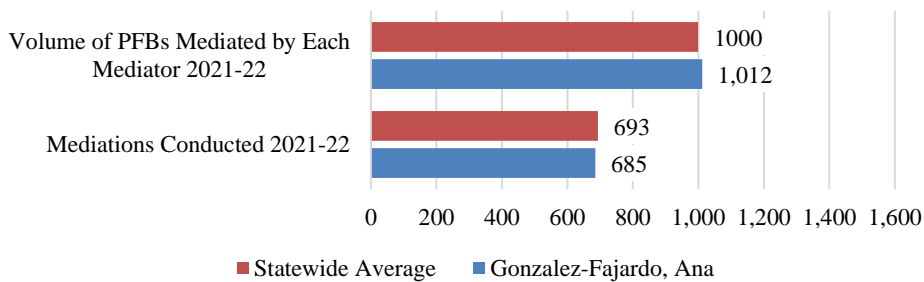
## Brooks, John (DAY)



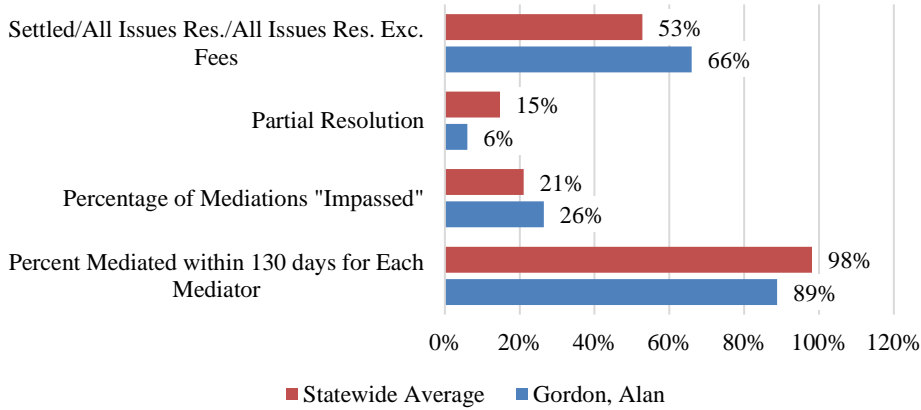
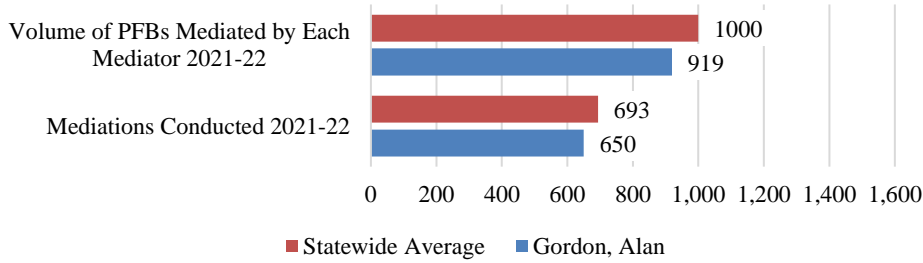
## Day, Kahlil (JAX)



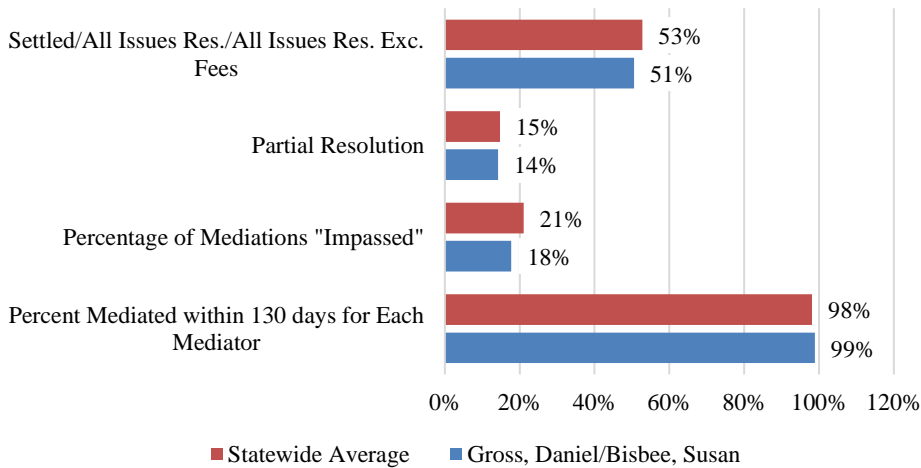
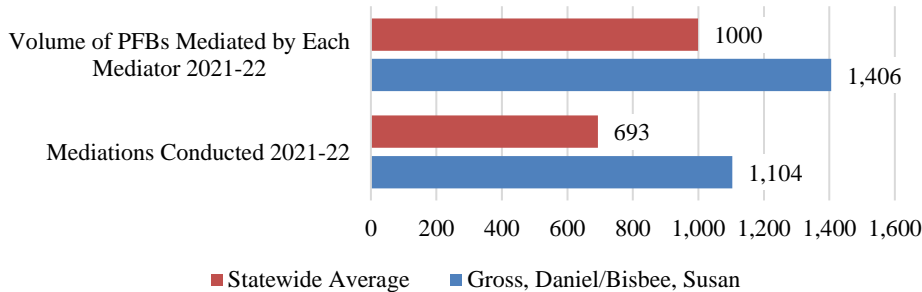
## Gonzalez-Fajardo, Ana (MIA)



## Gordon, Alan (JAX)

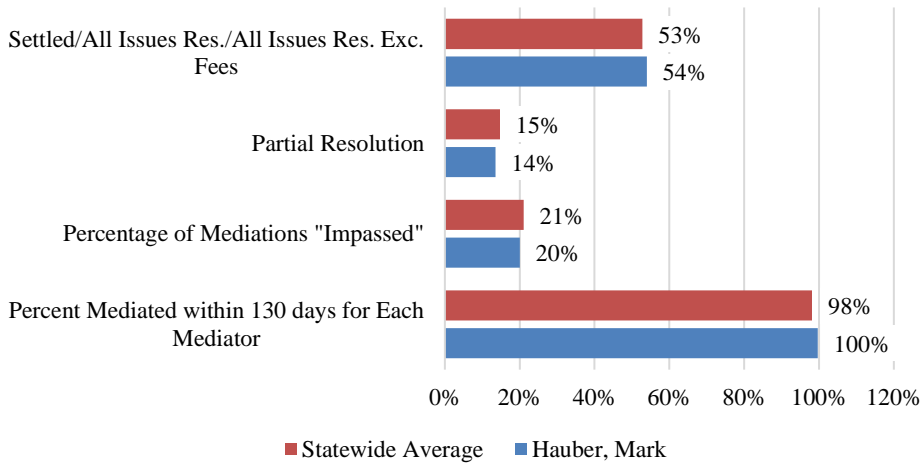
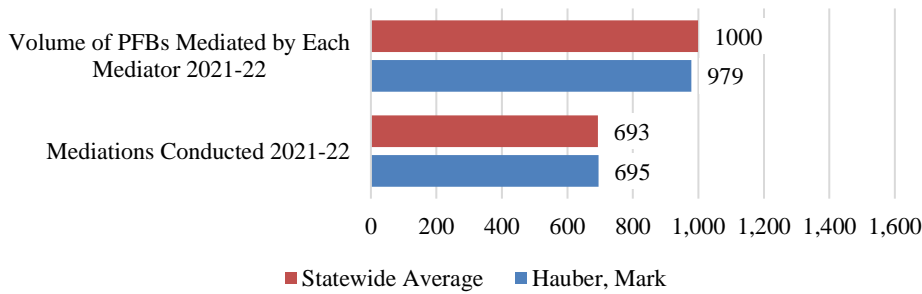


## Gross, Daniel/Bisbee, Susan (TLH)<sup>29</sup>

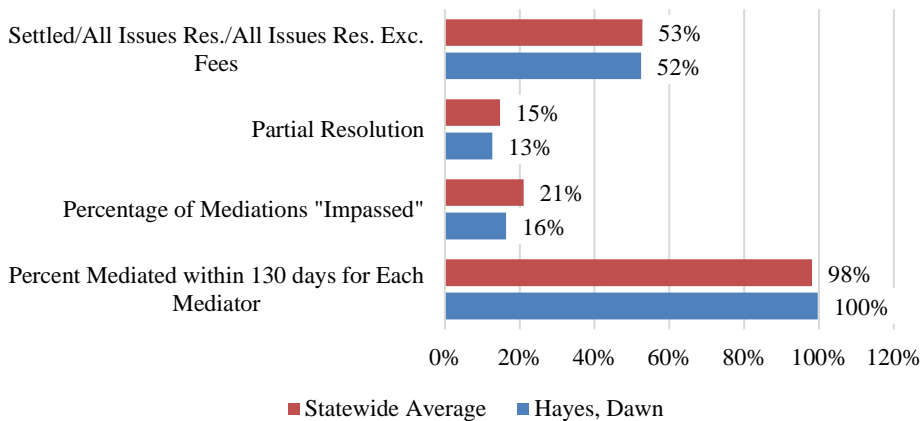
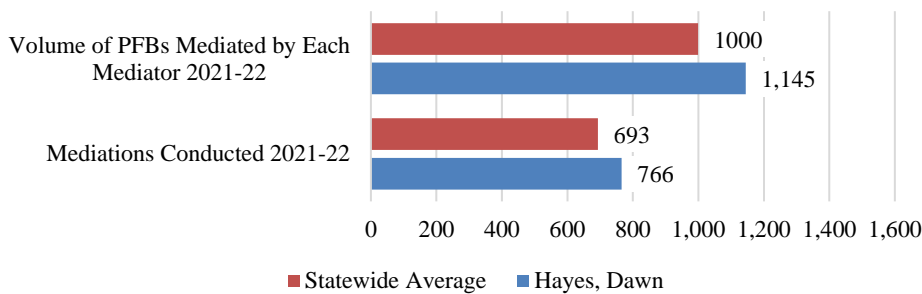




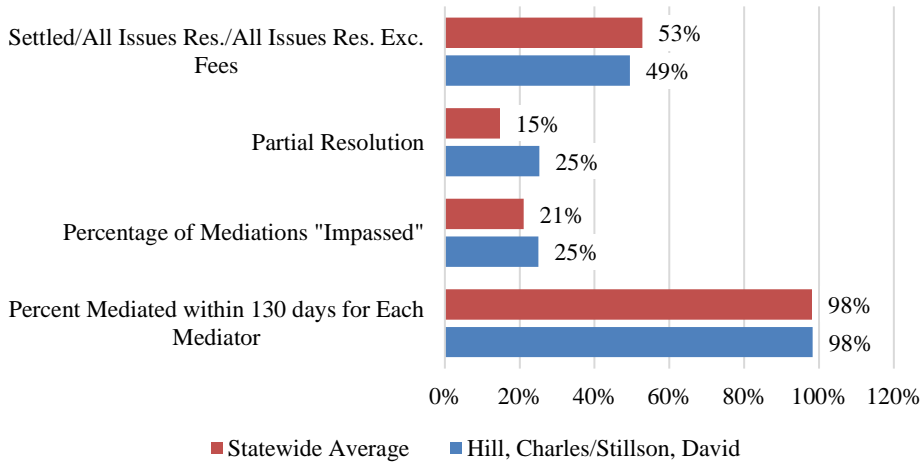
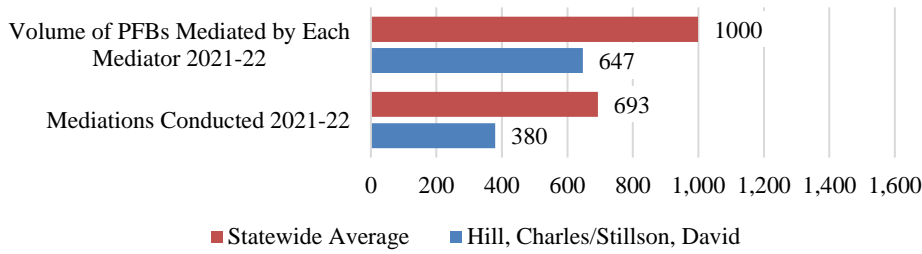
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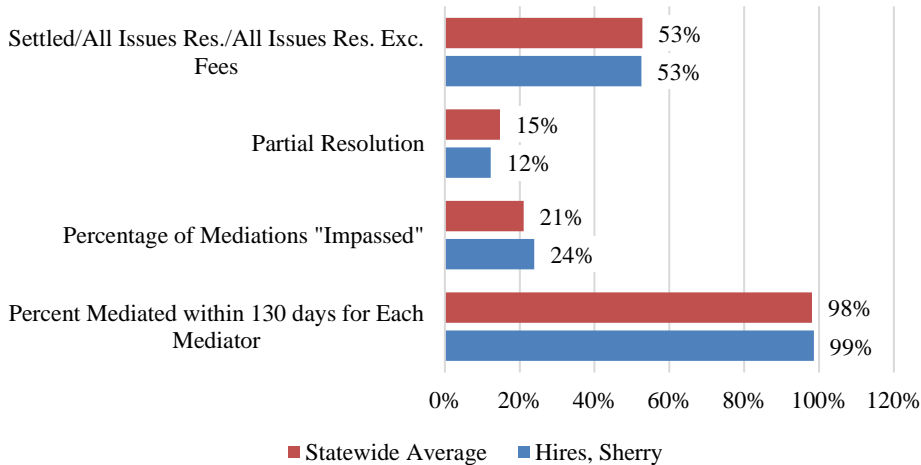
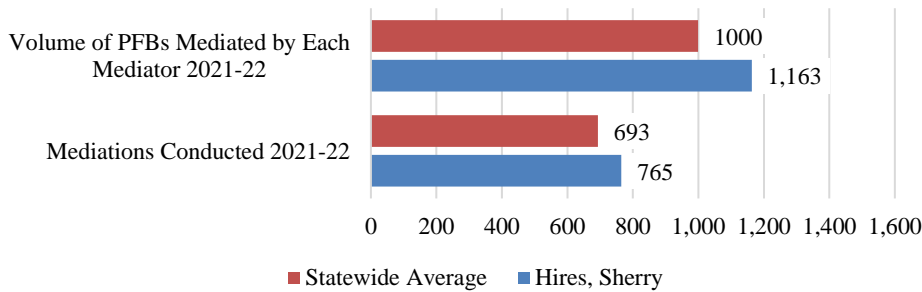
## Hayes, Dawn (PSL)



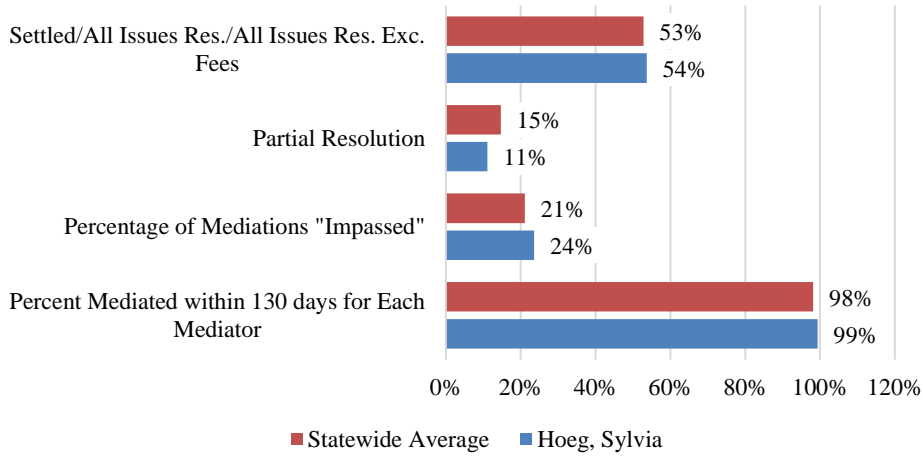
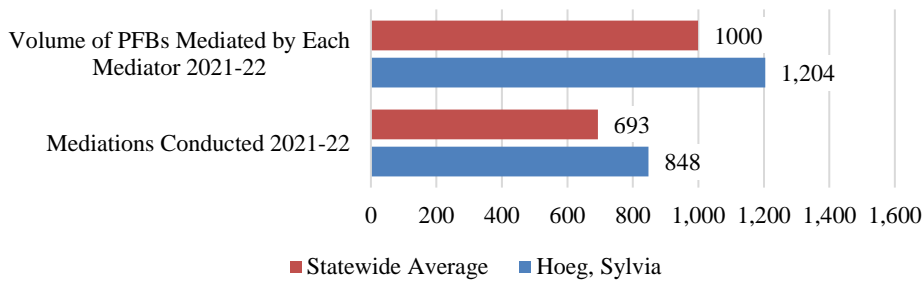
## Hill, Charles/Stillson, David (FTL)<sup>30</sup>



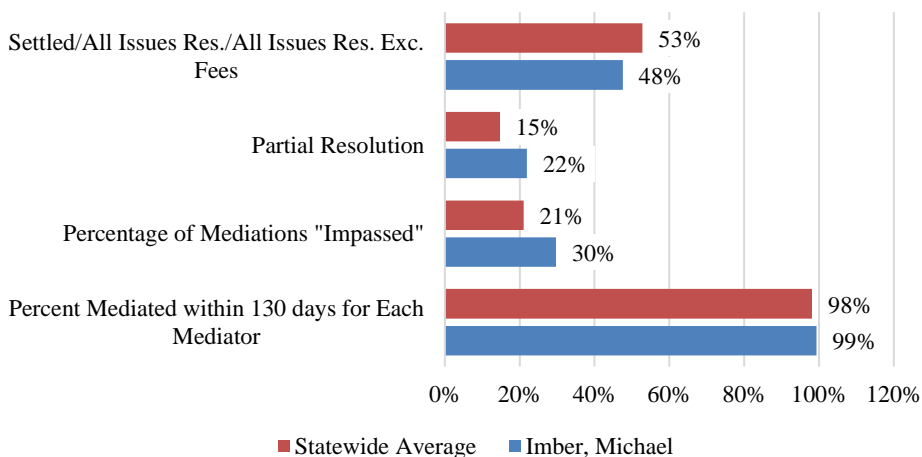
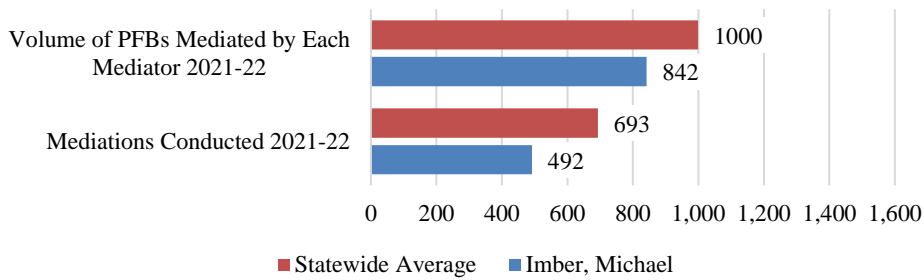
## Hires, Sherry (ORL)



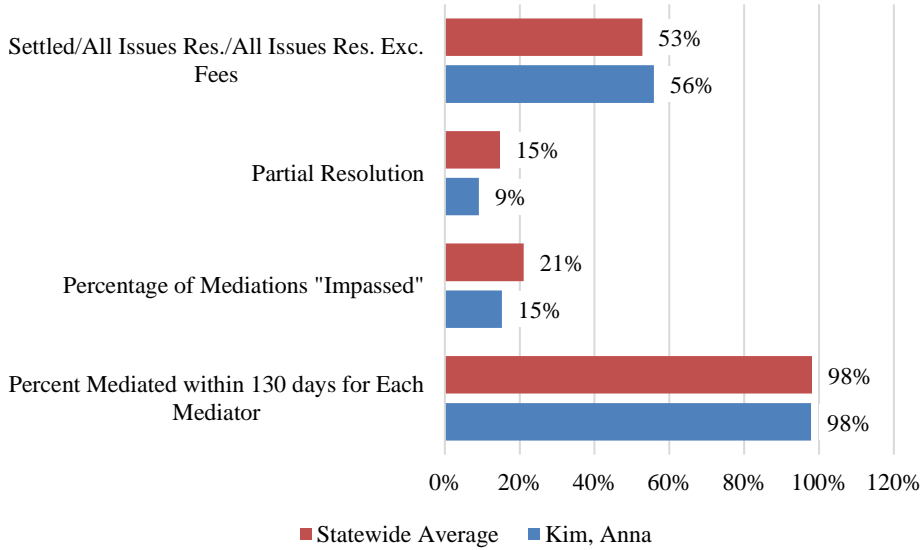
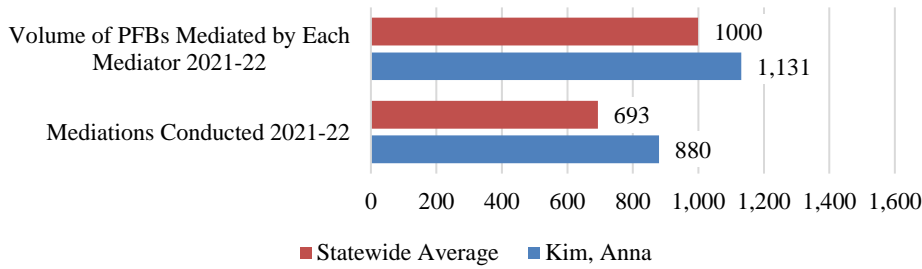
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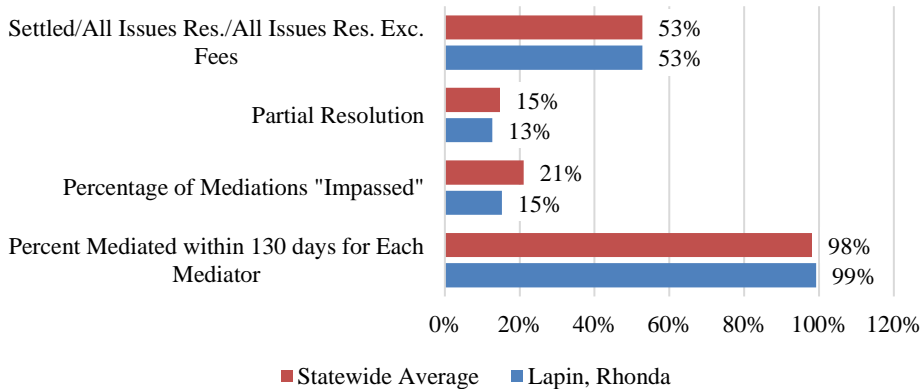
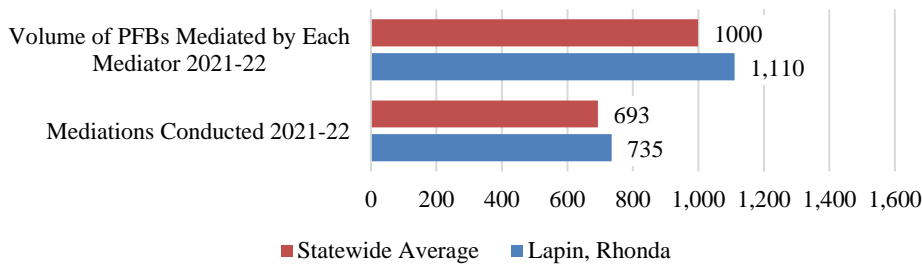
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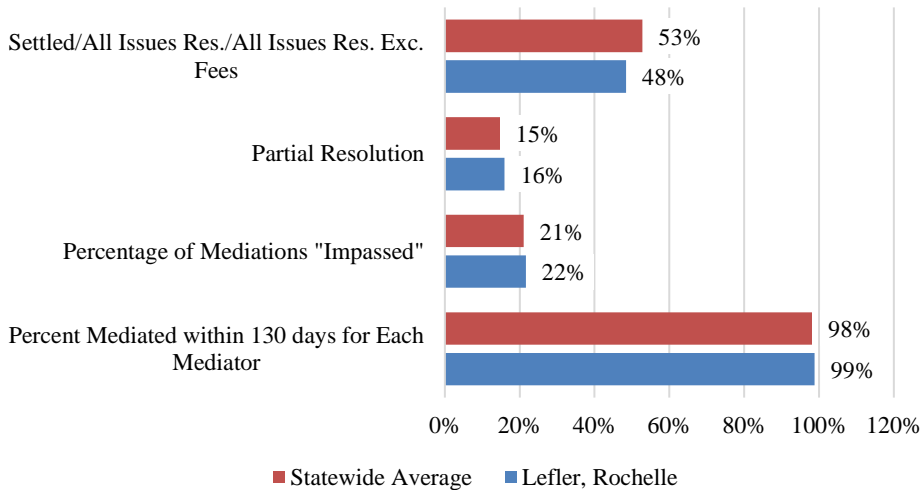
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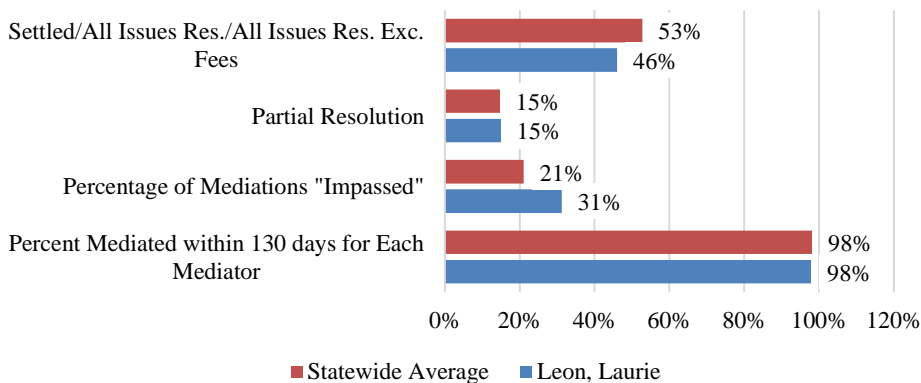
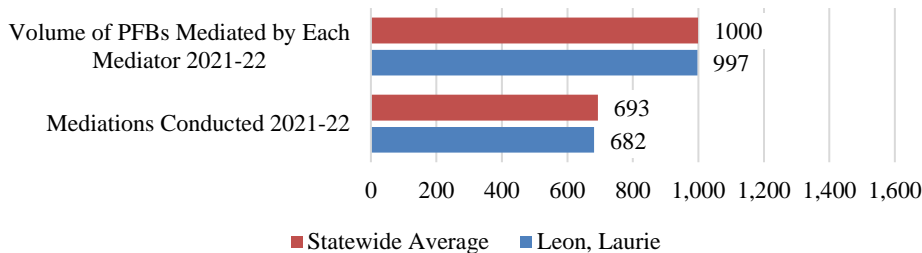
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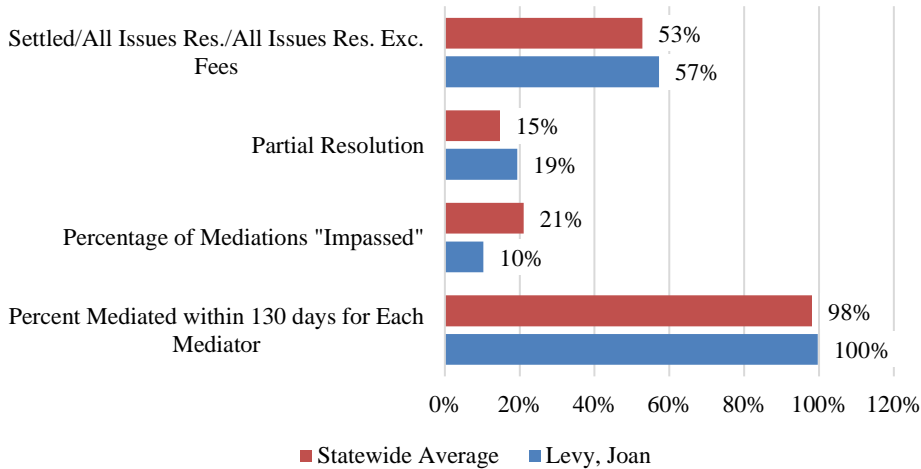
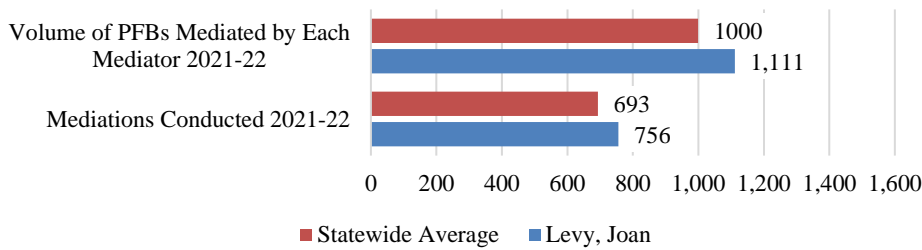
## Lefler, Rochelle (SPT)



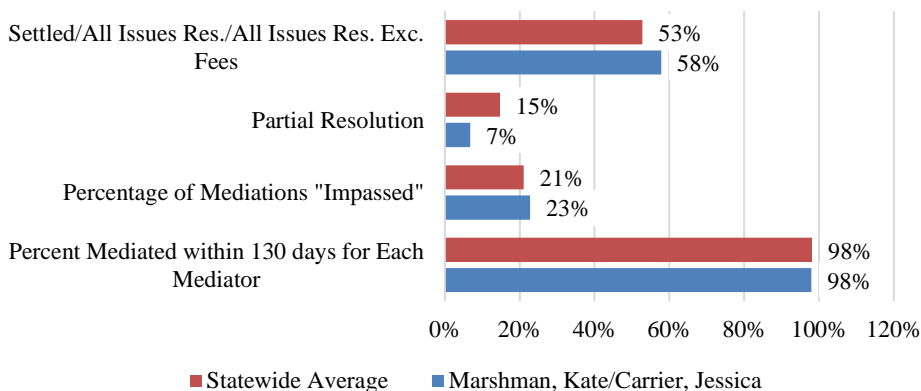
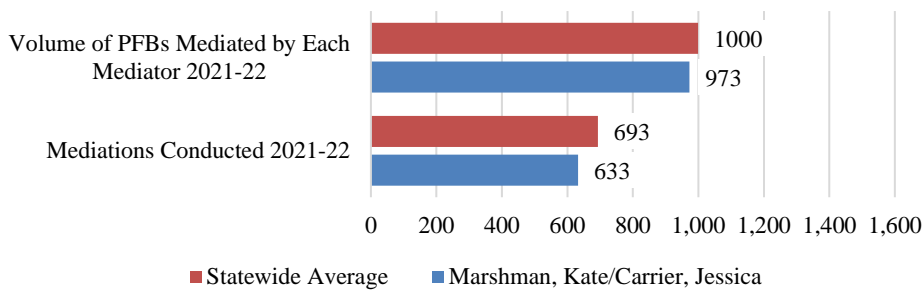
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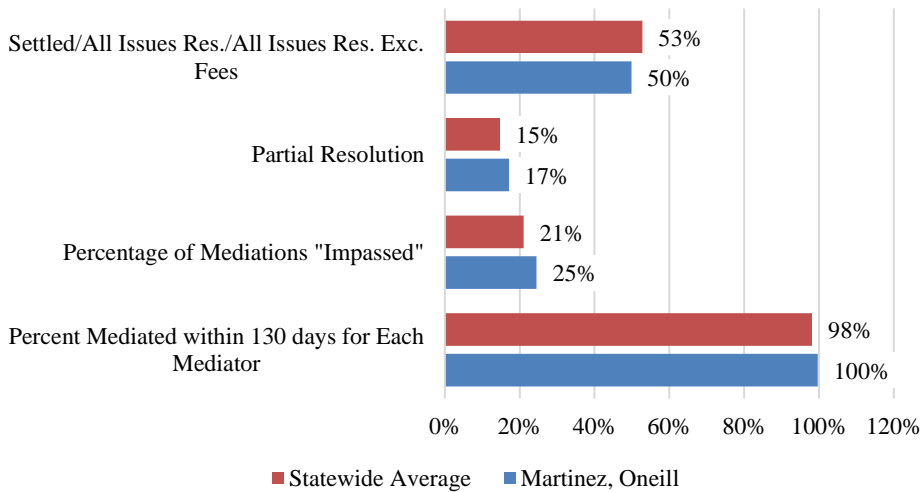
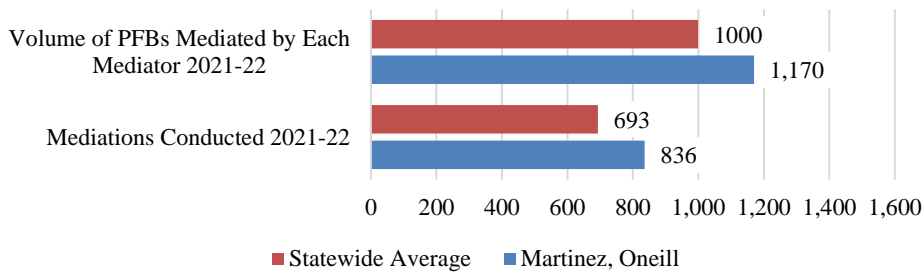
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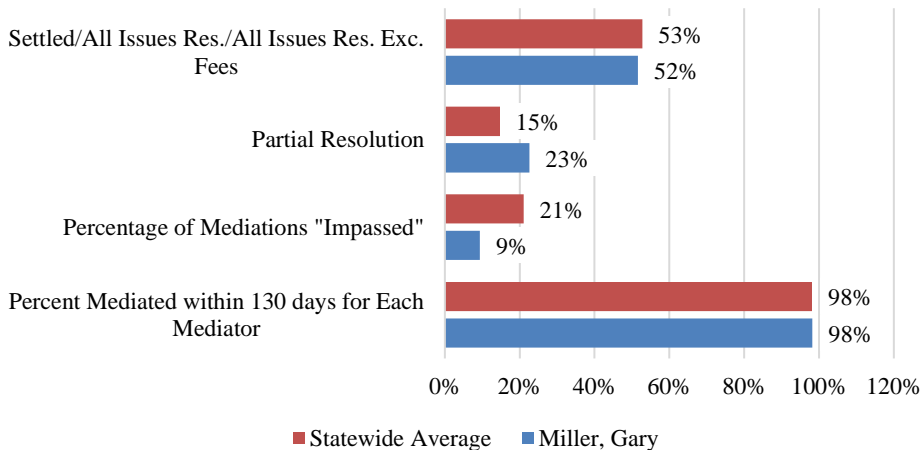
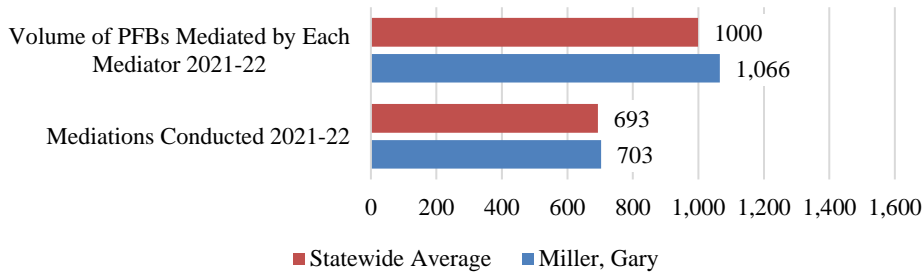
## Marshman, Kate/Carrier, Jessica (SAR)<sup>31</sup>



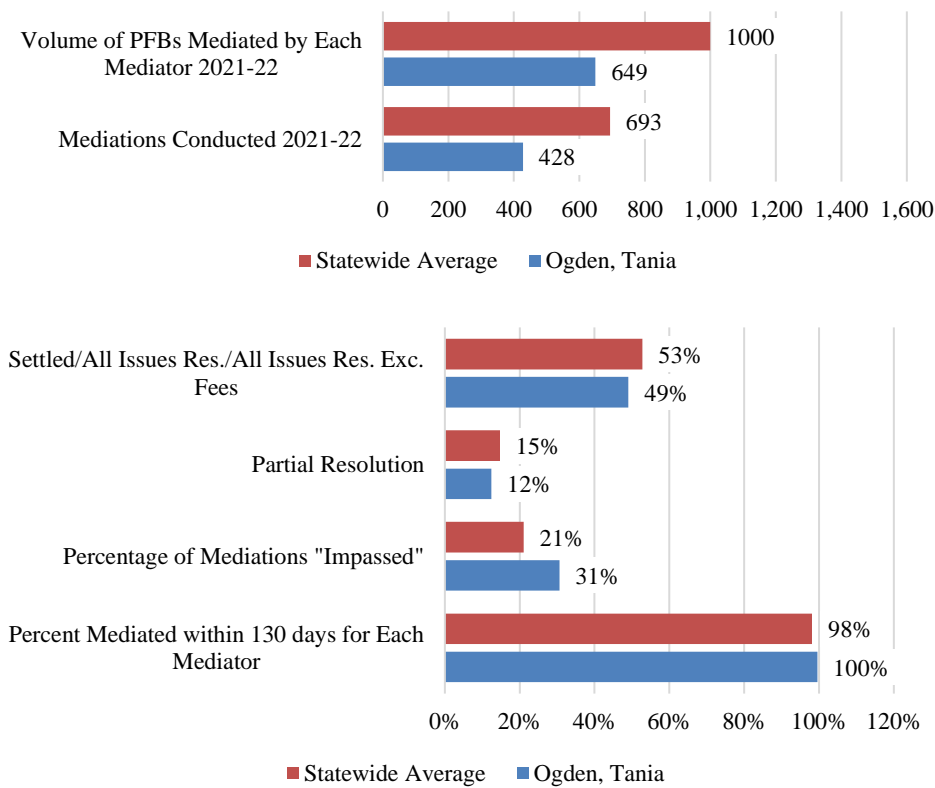
## Martinez, Oneill (LKL)



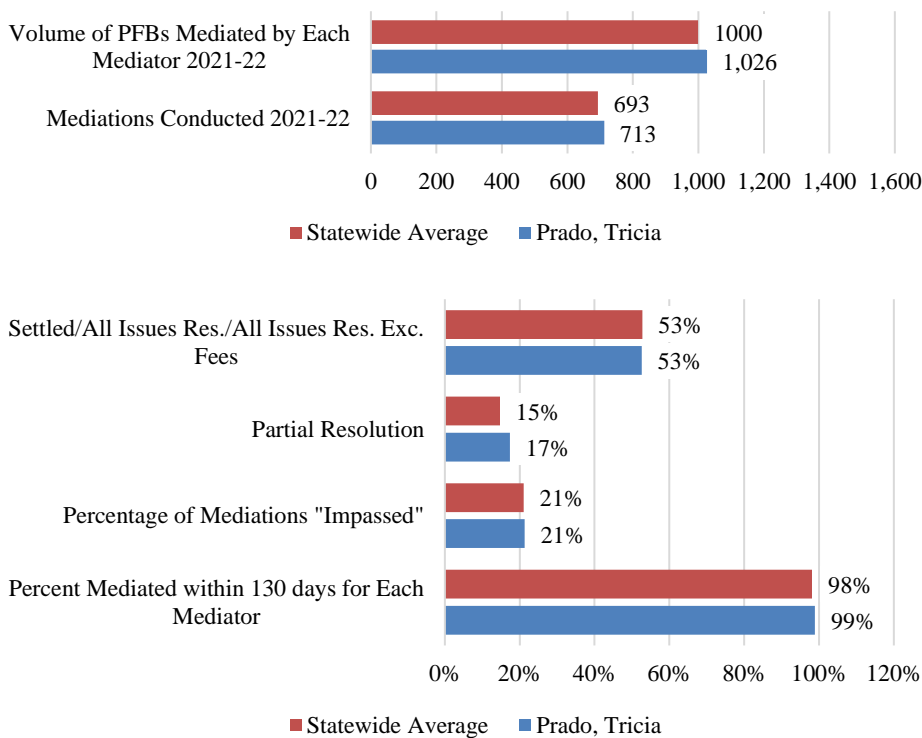
## Miller, Gary (MIA)



### Ogden, Tania (FTM)<sup>32</sup>

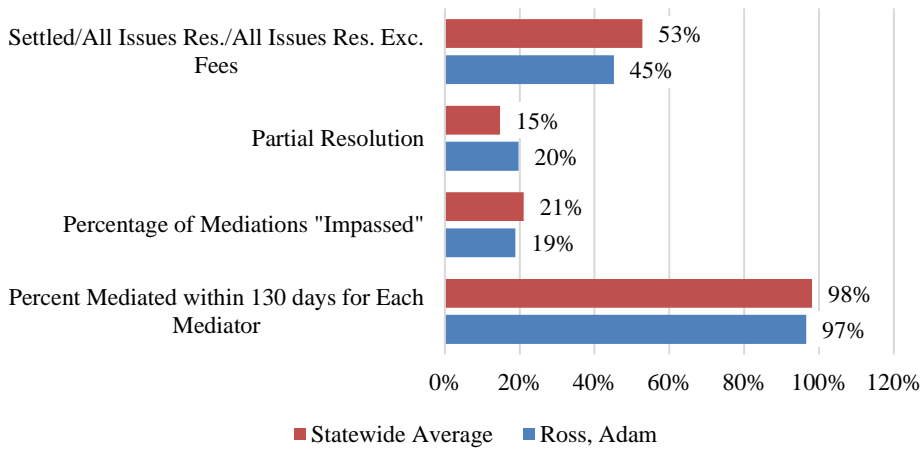
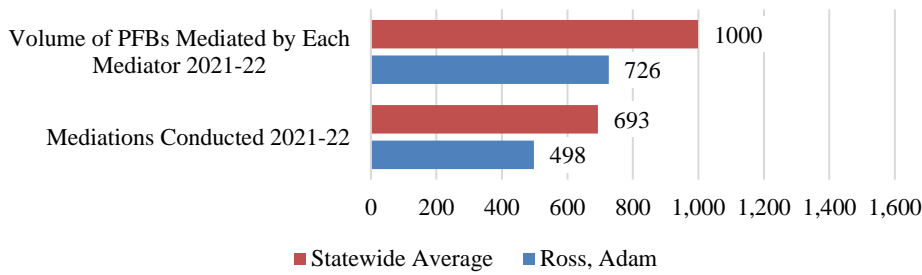


### Prado, Tricia (TPA)<sup>33</sup>

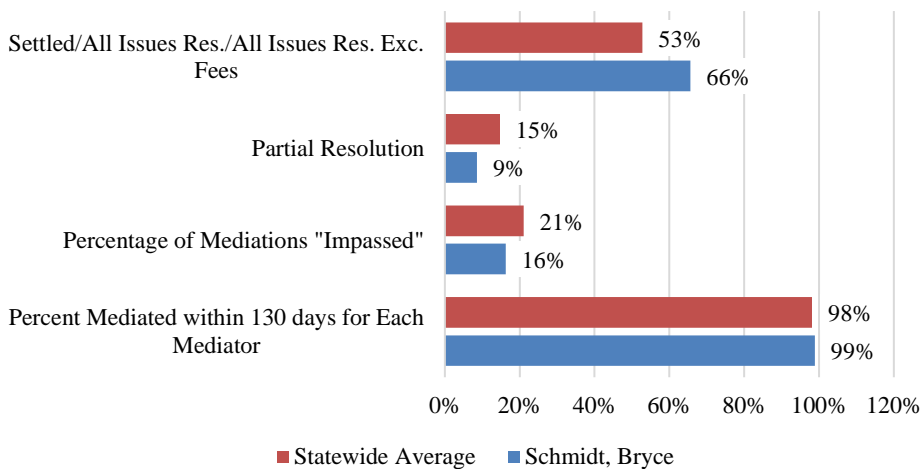
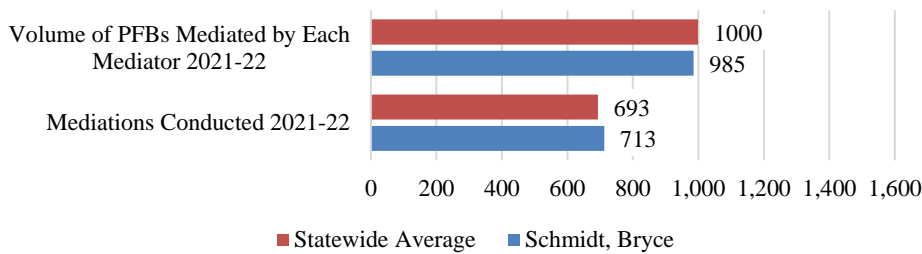




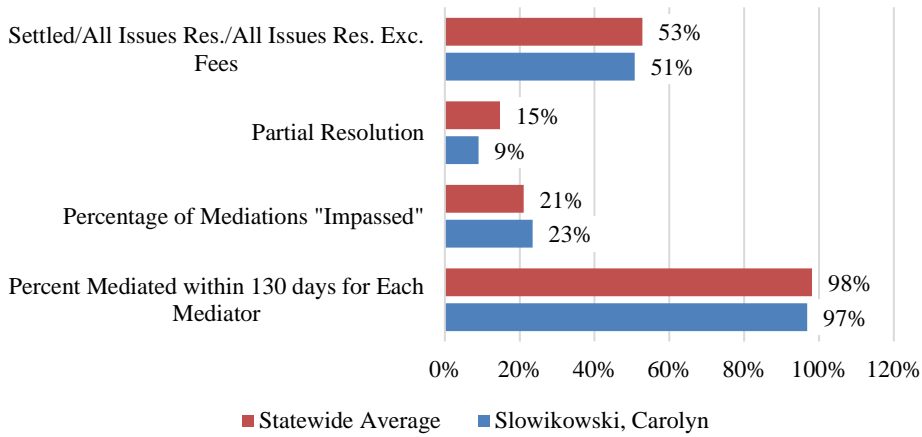
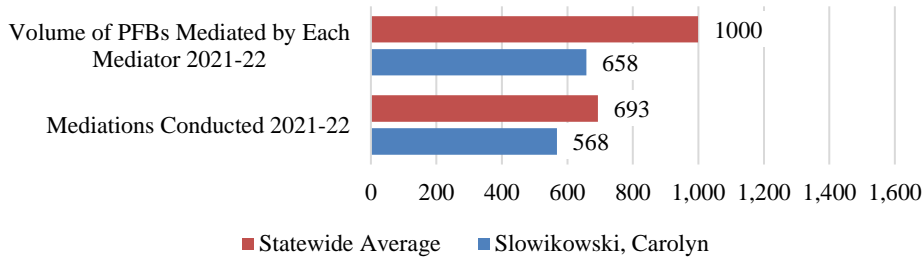
## Ross, Adam (FTL)



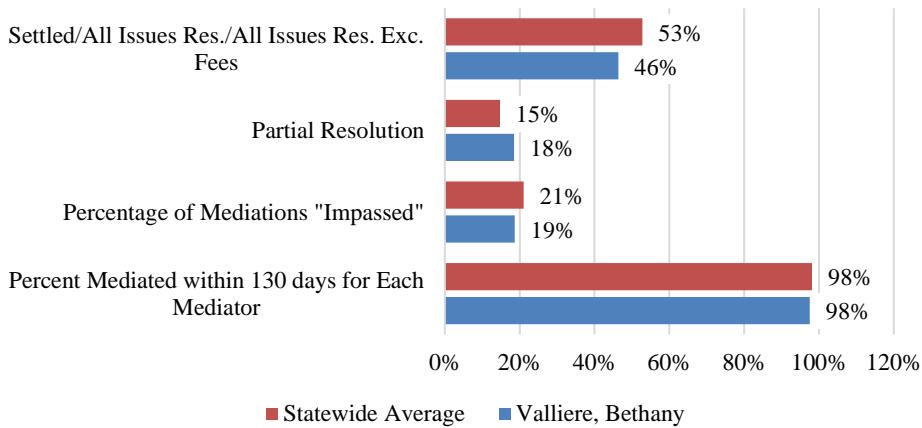
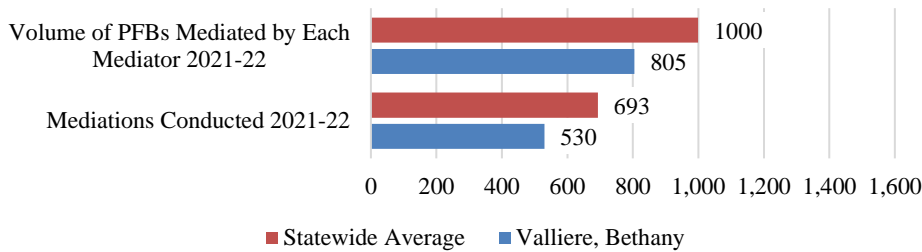
## Schmidt, Bryce (GNS)



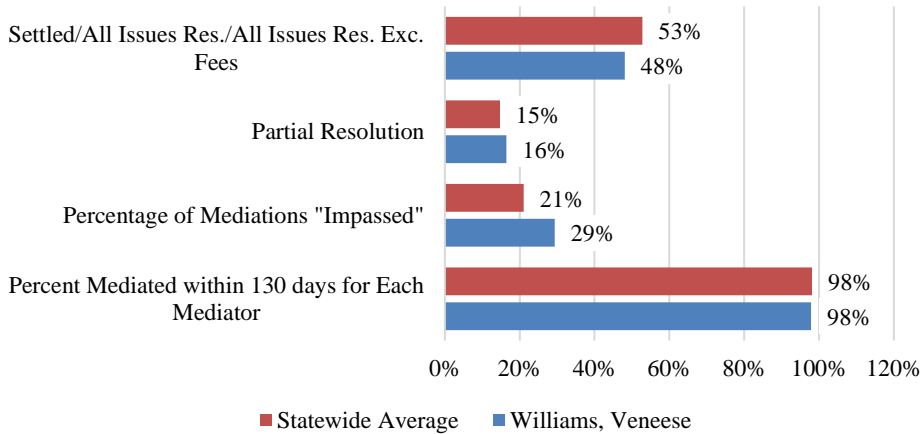
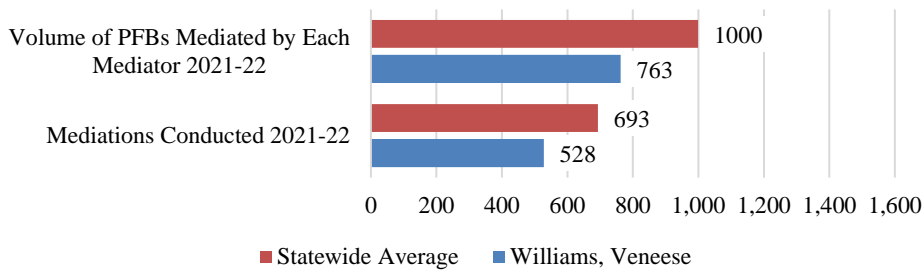
## Slowikowski, Carolyn (PNS)



## Valliere, Bethany (WPB)



## Williams, Veneese (FTM)



- <sup>1</sup> Susan Bisbee retired, effective March 21, 2022, after a long tenure at the OJCC. Mediator Daniel Gross transferred to District TLH to replace her in March 2022.
- <sup>2</sup> David Stillson resigned, effective March 11, 2022. Former JCC Charles Hill replaced him in June 2022.
- <sup>3</sup> Jessica Carrier resigned, effective April 1, 2022. Mediator Kate Marshman replaced her in June 2022.
- <sup>4</sup> Mediator Tania Ogden resigned, effective March 4, 2022. Her position had not been filled as of the end of FY 2022 (June 30 2022).
- <sup>5</sup> Deborah Hart retired in April 2021. She was replaced by Mediator Tricia Prado who began in August 2021, thus, a slightly abbreviated year is represented.
- <sup>6</sup> The law specifically provides for a carrier to become substitute for an employer upon effective contractual transfer of liability (§ 440.41, Fla. Stat.).
- <sup>7</sup> There are a variety of other benefits that could also be claimed. It is common for indemnity claims to be accompanied by claims for penalties (§ 440.20(6)(a), (7), Fla. Stat.) and/or interest (§ 440.20(8)(a), Fla. Stat.). Most benefit claims are accompanied by a claim for attorney fees (§ 440.34, Fla. Stat.).
- <sup>8</sup> Section 440.25(1) Florida Statutes.
- <sup>9</sup> Waiver is available through order of the Deputy Chief Judge (§ 440.25(2), Fla. Stat.).
- <sup>10</sup> David Langham, *Florida Office of Judges of Compensation Claims Annual Report, 2019*; see also David Langham, *2020-2021 Settlement Report and Mediation Statistics Report*; [https://www.fljcc.org/JCC/publications/reports/2021AnnualReport/OJCC\\_AnnualReport2020-21.pdf](https://www.fljcc.org/JCC/publications/reports/2021AnnualReport/OJCC_AnnualReport2020-21.pdf), last visited August 18, 2022.
- <sup>11</sup> The 17<sup>th</sup> District Office was added in 1992, in Sarasota. The 16<sup>th</sup> District Office was added in 1991, in Panama City Beach. The fifteenth was added in 1986 in Port St. Lucie. As of 2022, the other offices had been open for 50 years or more.
- <sup>12</sup> Section 440.44, Fla. Stat.).
- <sup>13</sup> Senate Bill 2516 (2022); [https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=\\_s2516er.DOCX&DocumentType=Bill&BillNumber=2516&Session=2022](https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_s2516er.DOCX&DocumentType=Bill&BillNumber=2516&Session=2022), last visited August 18, 2022.
- <sup>14</sup> Though District Office closures had begun in earnest just prior to the end of the fiscal year, this report presents the data as if all 17 District Offices remained open through June 20, 2022.

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- <sup>15</sup> *Hernandez v. Manatee County Government/Commercial Risk Management, Inc.*, 50 So. 3d 57 (Fla. 1st DCA 2010)(“workers' compensation proceedings are, of necessity, often serial in nature.”).
- <sup>16</sup> *Smith v. Rose Auto Stores*, 596 So. 2d 809, 810 (Fla. 1st DCA 1992)(“This court's precedent prior to 2001 established that a workers' compensation settlement was not binding or enforceable until approved by a JCC.”). *See also Cabrera v. Outdoor Empire*, 108 So. 3d 691 (Fla. 1<sup>st</sup> DCA 2013).
- <sup>17</sup> Section 440.20(11)(a), Fla. Stat. (“not represented by counsel” and “filed a written notice of denial within 120 days”); § 440.20(11)(b), Fla. Stat. (“not represented by counsel” and “has attained maximum medical improvement”); §440.20(11)(c), Fla. Stat. (“represented by counsel”).
- <sup>18</sup> *Patco Transp., Inc. v. Estupinan*, 917 So. 2d 922 (Fla. 1st DCA 2005).
- <sup>19</sup> *See* Section 440.02(10), Fla. Stat.: “‘Date of maximum medical improvement’ means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability.”
- <sup>20</sup> Section 440.20(11)(a), Fla. Stat.
- <sup>21</sup> Even though section 440.20(11)(a), Fla. Stat., 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 which is the Deputy Chief Judge under section 440.45(1)(a), Fla. Stat.
- <sup>22</sup> Available from 2010 to present on the OJCC website, <https://www.fljcc.org/JCC/publications/>, under the “Reports” tab.
- <sup>23</sup> The current compliment is 29 mediators, with approximately 240 working days per year (52 weeks, or 260 days, minus 10 holidays and two weeks’ vacation equates to close to 48 weeks or 240 days). Dividing the 20,109 by 29 mediators yields an average of 693 mediations per mediator. Dividing that by the approximately 240 working days yields a total of 2.89 (“3”) mediations per day on average. Of course, with the resignations and retirements, there was not a full contingent of mediators for much of the last quarter of FY 2021-22, and thus the averages would be somewhat higher than 2.89 per day in a more detailed analysis (*see* endnotes 1-4, *supra*).
- <sup>24</sup> The OJCC has selected Zoom for this purpose. However, as platforms evolve and develop, it is possible other platforms may be considered in the future. Numerous potentials are in the marketplace, such as Google Meets, GoToMeeting, and more. In the current environment, it is practical to believe that some approximation of a “metaverse” may become reality in coming years, and such an environment for mediation conferences will possibly bear consideration. *See* Ben Chodor, *Meetings In The Metaverse: Is This The Future Of Events And Conferences?*, FORBES, January 13, 2022; <https://www.forbes.com/sites/forbescommunicationscouncil/2022/01/13/meetings-in-the-metaverse-is-this-the-future-of-events-and-conferences/?sh=36a27c858a1f>, last visited August 2, 2022.
- <sup>25</sup> Section 440.192(1), Fla. Stat.
- <sup>26</sup> When an injured worker has multiple pending claims against the same employer or a related entity, it is appropriate to consolidate the claims into one case. When this is not done, it has been discerned that multiple recordings of essentially the same mediation conference have occurred in some cases (one mediation appointment recorded as an outcome in more than one case number, thus a redundancy in the data occurring in a small volume of instances).
- <sup>27</sup> *Supra*, endnote 7.
- <sup>28</sup> Section 440.25(1), Fla. Stat. (“If multiple petitions are pending, or if additional petitions are filed after the scheduling of a mediation, the judge of compensation claims shall consolidate all petitions into one mediation.”).
- <sup>29</sup> *Supra*, endnote 1.
- <sup>30</sup> *Supra*, endnote 2.
- <sup>31</sup> *Supra*, endnote 3.
- <sup>32</sup> *Supra*, endnote 4.
- <sup>33</sup> *Supra*, endnote 5.