

# STATE OF FLORIDA

## Division of Administrative Hearings

### Office of Judges of Compensation Claims



## 2022-23 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 a comprehensive Annual Report, which provides the Florida Legislature and Governor with statistical measures of the volumes of litigation and details the operations of this Office, section 440.45(5), Fla. Stat. 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, Fla. Stat., 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, section 440.02(17)(b)2., Fla. Stat.

Some employers purchase workers’ compensation insurance from a “carrier.”<sup>5</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 often referred to collectively as “E/SA.” In 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 injured workers. Most workers are provided benefits administratively, without litigation. When necessary, 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>6</sup> Mediation is mandatory<sup>7</sup> in most Florida workers’ compensation claims. There is a limited statutory exception to this requirement in section 440.25(4)(h) for PFBs that only “involve a claim for benefits of \$5,000 or less.” And, the mediation requirement may also be waived in any case upon proper motion.<sup>8</sup>

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>9</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.<sup>10</sup> 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 2020 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 processes, 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 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 video mediation in early 2022. Coincidentally, it became apparent that private mediators had employed such platforms earlier in the pandemic, and the public was very amenable to video. DOAH leadership sought revision of Section 440.44 in the 2022 legislative session.<sup>13</sup> The 17-office mandate was criticized as was the existence of single-judge/mediator offices. There were perceptions that these offices were not economical or efficient for government. 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 was 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 presumptive 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 was 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. The transition was not seamless or uniform. Various mediators transitioned to remote at different pace. Despite the “remote” and Zoom presumption, some mediators continued to work in a District Office at least periodically (hybrid).

The OJCC deployed a transactional tool, SignEasy to accommodate and facilitate remote document completion, review, and execution. It is fair to characterize 2021-22 as a transition year to the video paradigm. Similarly, 2022-23 brought the opportunity to adapt and adjust aspects of the presumptively remote paradigm, and to further acclimate mediators and the public. It was noteworthy that all of the mediators in 2021-22 transitioned from “in-person” district mediation to virtual. However, in 2022-23, the OJCC undertook the new challenge of on-boarding new mediators in that paradigm. That process was engaged four times with Ms. Ranart,<sup>14</sup> Mr. Goshen,<sup>15</sup> Ms. Dunham,<sup>16</sup> and Ms. Gillham.<sup>17</sup> The success of their transitions to the OJCC demonstrated that this virtual process can be sustained.

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 continuance. That allows 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 adopted a standard mediation calendar for use throughout the state. Appointments are at 9:00, 10:00, 11:00, 12:30, 1:30, 2:30, and 3:30. The 2022-23 transition to that singularity was not without challenges, and criticisms. Nonetheless, the consistency is beneficial. The closure of offices around Florida brought the OJCC operations from 17 offices to 9.<sup>18</sup> Panama City was one of those, leaving only Pensacola in the Central Time Zone. In order to better serve the public and to facilitate the single schedule noted above, the Pensacola office operates on Eastern Time.

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. In 2022-23, the 30<sup>th</sup> mediator was added back to the system as petition volume and the new remote process justified additional staff. There are multiple challenges to scheduling petitions for mediation,<sup>19</sup> the primary being the petition volume. As volumes have grown in 2022-23, the mediation scheduling has approached that 130 day mark occasionally. The volume of mediations conducted, however, has decreased slightly. Volume issues will require monitoring and further adjustment to workflow and assignments may be necessitated.

## **Data Collection and Reporting:**

The data in this report is dependent for accuracy upon the efforts of district staff and mediators in the nine District Offices throughout Florida.<sup>20</sup> Before 2001, the OJCC historically struggled with accurate data collection. Significant effort has persisted since 2005-06 to train and facilitate staff accuracy in data collection. This has included frequent and ongoing audit processes, publication of a process manual, and persistent 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 E/C, 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).<sup>21</sup> 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>22</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. It is also not infrequent that one worker will pursue multiple cases simultaneously when causation, compensability, and employer responsibility remain challenged. This is particularly likely in the construction industry where an employee may pursue both the entity that hired her/him and the general contractor associated with the site of the injury. Too frequently, such parallel cases are not consolidated for a single mediation. This frustrates the challenge of calendar congestion, and may skew some of the data in this report.

## **2022 Staff Changes:**

Secondary to uncertainty as to facility closures, and accommodating the untethering of mediators from an “assigned judge” and a specific District office, there was delay in replacing mediators in 2021-22. At the end of that fiscal year, one mediator position remained vacant. Ms. Ranart joined the OJCC in September 2022. During 2022-23, mediators Gordon and Day retired in Jacksonville. The long-vacant mediator position that had been based in Panama City was also re-authorized. Thus, in early 2023 Ms. Dunham was hired to replace Mr. Gordon, and Mr. Goshen was hired in that former Panama City position. In May 2023, Mr. Day retired and Ms. Gillham was hired to undertake his responsibilities in Jacksonville. These hires marked the first OJCC onboarding of remote personnel and their successful accomplishment will undoubtedly prepare the agency for future retirement transitions. The success of the mediation program through the staff changes, untethering, and transition to virtual is directly attributable to the dedication and commitment of all of the OJCC mediators.

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

Although settlements of litigated disputes are generally favored in the law, Florida workers’ compensation settlements were historically reasonably structured, at least according to the letter of the statute. Beginning in the 1970s, there was a legislative constriction on settlement that can only be viewed as paternalistic. For about two decades, settlement was treated with a dose of skepticism or suspicion.<sup>23</sup> In that era of expanding worker benefits, settlement approval required specific findings and often hearings.<sup>24</sup> That skepticism was excised from the statute in the 1990s, affording broader settlement opportunities and less judicial oversight. The oversight eroded further still in the 2001 amendments. 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>25</sup>

Injured workers represented by an attorney may settle their cases without the approval of a judge of compensation claims.<sup>26</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>27</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 micro annual report to the legislature.<sup>28</sup> Notably, there have been a very few instances in which a JCC approved a settlement under the latter (b) without proof 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.

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%
2022-23	\$433,042	-46%	41	-37%

The “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 by December of each year.<sup>29</sup>

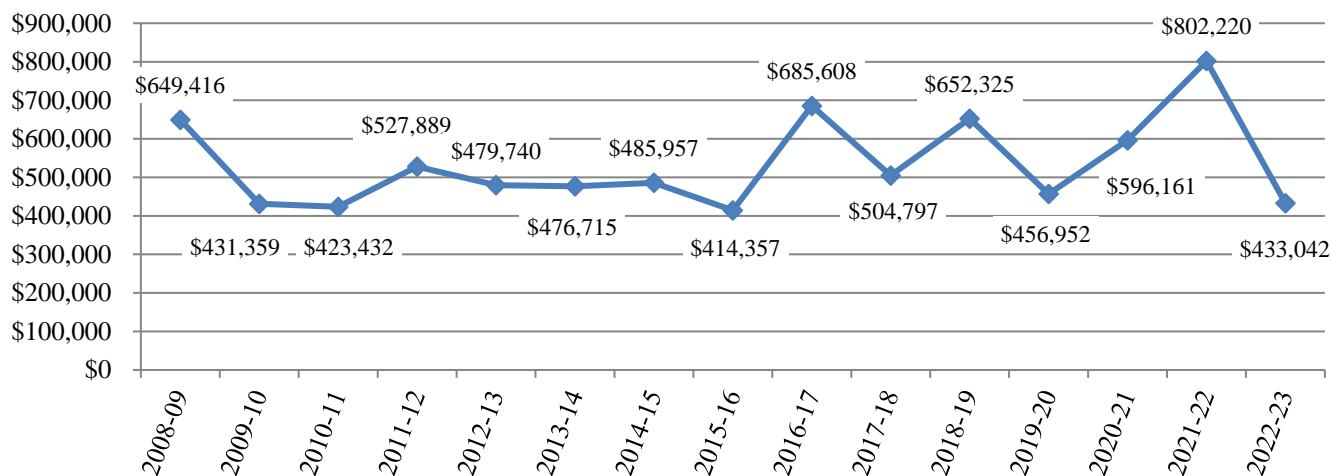
The volume of 11(a) washouts has vacillated notably over the last 15 years, evidenced in the chart (right). While recent years have been generally consistent with each other, the low volume was notable in 2020-21. That was perhaps a product of the pandemic. However, the volume for 2022-23 is the lowest among the 15 years: 46% lower aggregate dollar value and 37% lower settlement volume in this category. The 41 settlements in 2022-23 were well below the 15-year average of 76.

Notably, 2022-23 is the third straight year of markedly below average 11(a) volume. Despite the sentiment to credit some influence to the pandemic, these figures now likely signal a downward trend either in the broad tendency for claim denial or the settlement of those claims. A third potential is that more of those denied claims are being concluded through represented settlements that are not subject to judicial approval or distinctive record keeping.

Despite the decreased volume, the average monetary value has remained above \$10,000, a threshold only breached in 2020-21, and remaining since. It is also possible that the pandemic holds some responsibility for the marked average increase in 2020-21. It is possible that the notable recent inflation has also impacted the value of such settlements. In all, the most notable statistic remains the marked decrease in section 440.20(11)(a) settlement volume. It is that volume decrease that is responsible for the notable 2022-23 change in the following graph.

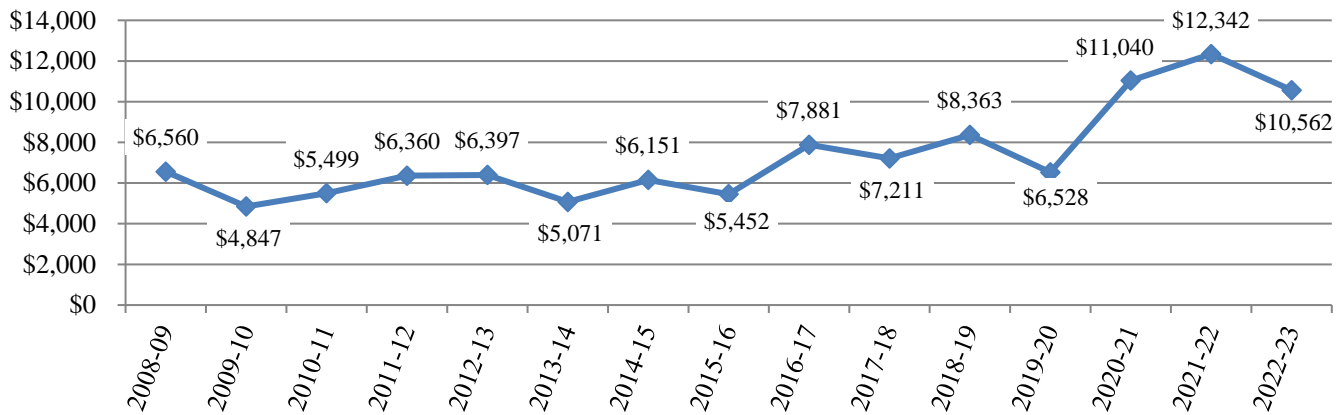
Year	Aggregate Value 11(a) Settlements	Volume of 11(a)	Average 11(a) settlement	Percent change
2008-09	\$649,416	99	\$6,560	
2009-10	\$431,359	89	\$4,847	-26%
2010-11	\$423,432	77	\$5,499	13%
2011-12	\$527,889	83	\$6,360	16%
2012-13	\$479,740	75	\$6,397	1%
2013-14	\$476,715	94	\$5,071	-21%
2014-15	\$485,957	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%
2022-23	\$433,042	41	\$10,562	-14%

### Aggregate Value 11(a) Settlements



The recent trend to increase in average value and the 2022-23 decrease (14.4%) is illustrated further by the following chart depicting the average value of 11(a) washouts over the last fifteen years.

## Average Value 11(a) Settlements



Much might be said about the variety in these figures. There is curiosity perhaps regarding the fluctuation in settlement volume from year to year, the pandemic era increase in average value, and the notable decrease in overall volume in 2022-23. However, it is critical, in any 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 fiscal 2022-23 was 24,928 (a 2% increase over 2021-22; 24,410); the 11(a) washout volume of 41 is about .16% of all settlements. It is suggested that in-depth study of these settlements in a separate report each September serves minimal purpose and that this analysis could be easily merged with the Florida OJCC Annual Report each November. That recommendation has been echoed in each of these settlement reports during the twenty-first century.

The settlements in fiscal year 2022-23 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>30</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 and 2022-23. The absence of misrepresentation might indicate fewer incidents of such allegations, or that such cases perhaps tend to involve attorneys and thus any settlement is outside the parameters of section 440.20(11)(a).

It is reiterated that the presence of any outliers, that is markedly above or below average instances, will have greater impact on averages when the data set is so limited. The 2021-22 Mediation and Settlement Report details examples impacting those results. In the figures represented below, for example, the "high" in "unspecified" is almost four times the average in that category. That one settlement, the "high" in the category, represents half of the aggregate value of that category. Statistical analysis requires large number sets for reliability. The size of this data set renders any persuasive conclusions challenging.

Reason for Denial	Volume	Percent	Aggregate Value	Average Value	High	Low
Causal Connection Lacking	8	19.51%	\$79,000	\$9,875	\$25,000	\$3,000
No Accident Occurred	6	14.63%	\$38,400	\$6,400	\$9,000	\$4,000
Injury Not Timely Reported	2	4.88%	\$17,400	\$8,700	\$12,500	\$4,900
Not in Course and Scope of Employment	7	17.07%	\$48,500	\$6,929	\$13,500	\$3,000
Positive Drug Test	3	7.32%	\$21,000	\$7,000	\$15,000	\$1,000
No injury occurred	6	14.63%	\$37,600	\$6,267	\$12,500	\$600
Unspecified	7	17.07%	\$131,243	\$18,749	\$71,743	\$2,000
Statute of Limitations	1	2.44%	\$55,000	\$55,000	\$55,000	\$55,000
Not an employee	1	2.44%	\$4,900	\$4,900	\$4,900	\$4,900
Misrepresentation on Application for Employment	0	0.00%	0	\$0	0	0
	41		\$433,043			

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

The petition volume in 2002-03 belied the legislative intent in 1994 to decrease litigation. Statutory amendments in 2001 also did not affect filing decreases. The impacts of the 2003 statutory amendments were more readily discerned with petition filing volumes decreasing markedly. Petition volumes notably increased for the first time thereafter in 2015-16 (12.07%) and demonstrated some further increases since. The 2022-23 filing volumes represent the highest in Florida since 2006-07. Conversely, mediation volumes have increased since 2014-15; that trend was interrupted in 2022-23, decreasing minimally (.95%). The incongruity of steadily increasing mediation volumes despite fluctuating petition filing rates is likely best explained by the probability of decreasing frequency of private mediation election by litigants.

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. For four years then, through 2021-22, the volume of mediations increased persistently. It is unknown whether the minimal (.95%) decrease in 2022-23 marks a significant trend change, but the extent of this is worthy of monitoring. It remains possible that the increases in recent years were influenced by COVID-19 and the economic impacts it precipitated. The mediation volumes continue to equate to an average of about 3 mediations per mediator per day.<sup>31</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-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 PFB filing in 2020-21, mediation frequency increased almost 7%. Despite increased PFB filing in 2022-23, mediation volume decreased. These are each difficult to explain in gross terms. However, each PFB may reach mediation 90 to 130 days after filing and fluctuations in PFB filing rates within a fiscal year could thus influence the filing impact. Notably, the volume of PFBs mediated increased in 2022-23 suggesting that more issues are potentially being addressed despite the minimal decrease in mediation volume.

The OJCC also “de-coupled” the judges and mediators in late 2021-22. There were challenges and adjustments to process in 2022-23. However, by year end, the new organization structure was effective and efficient. 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 now randomly receives mediation assignments from throughout the state. However, once an injured worker is assigned to a particular mediator, various efforts will seek to assure future mediations for that worker will return to the same mediator. By year end, the results of the process changes were manifesting in more equitable mediator workload, more ready rescheduling, and increased efficiency. Though there were numerous complaints about the process initially, the volume and vehemence seem to have markedly declined.

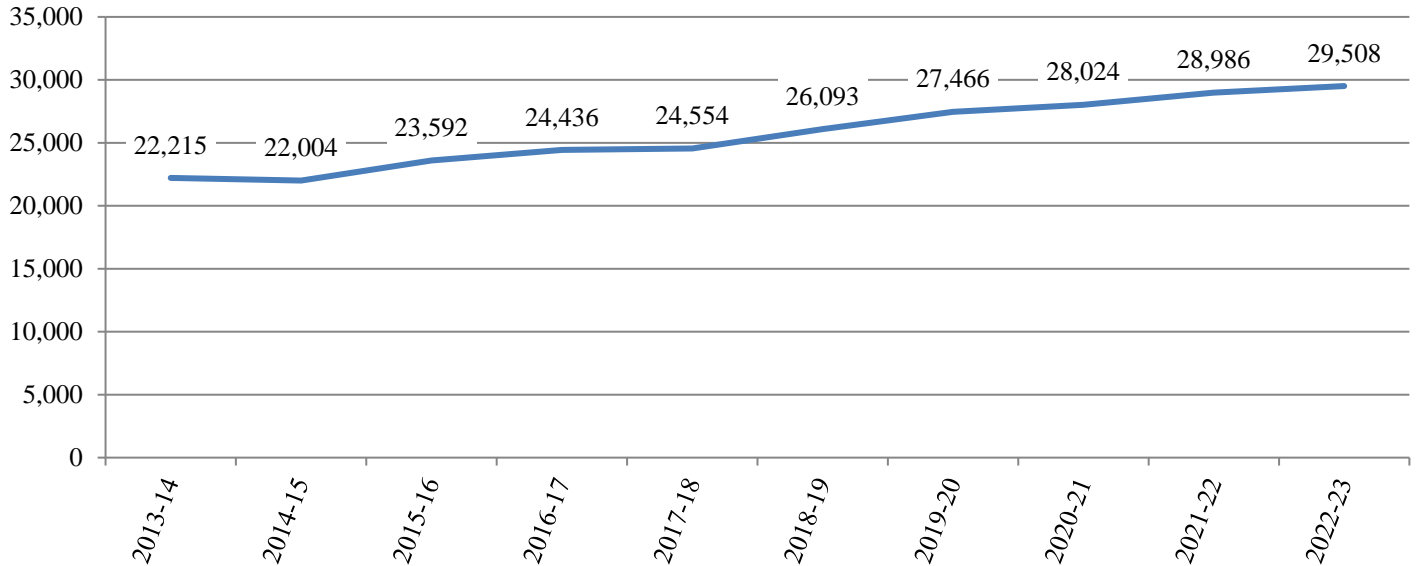
Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
2002-03	151,021		29,253	
2003-04	127,611	-15.50%	28,072	-4.04%
2004-05	107,319	-15.90%	26,410	-5.92%
2005-06	90,991	-15.21%	25,522	-3.36%
2006-07	82,607	-9.21%	22,258	-12.79%
2007-08	72,718	-11.97%	20,021	-10.05%
2008-09	73,863	1.57%	20,812	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%
2022-23	76,633	6.83%	19,917	-0.95%



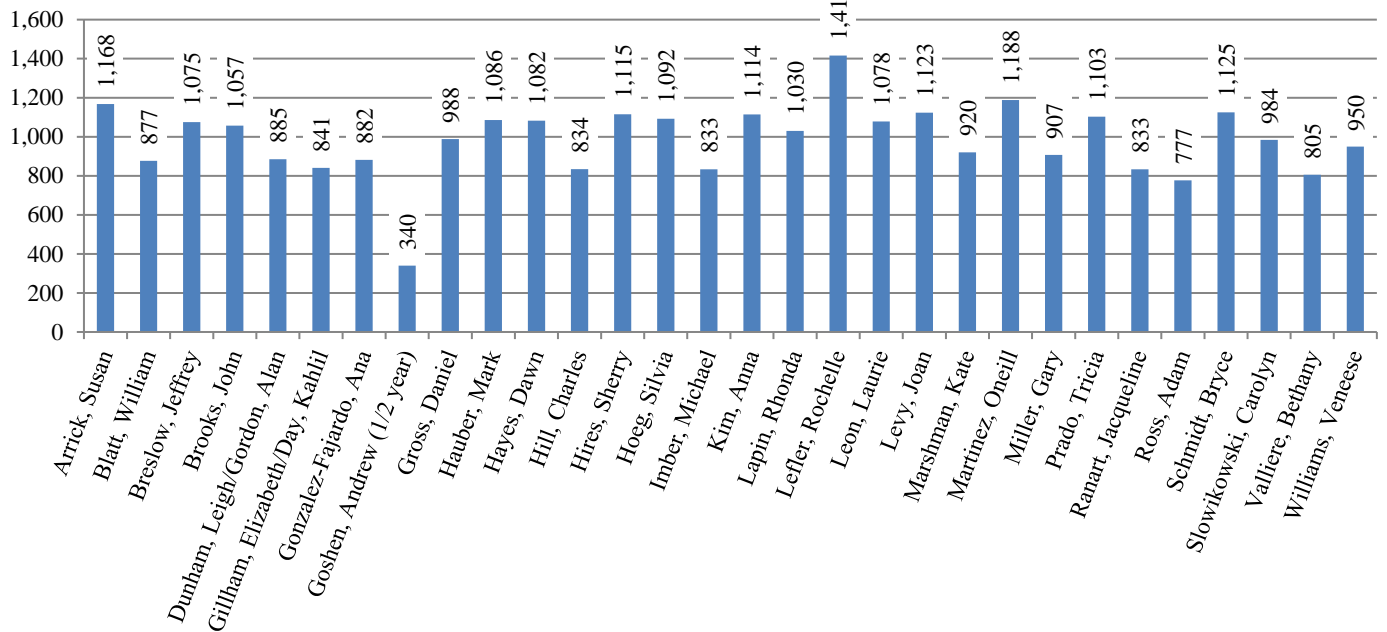
The Florida workers' compensation law requires that PFBs are filed only when benefits are ripe, due, and owing.<sup>32</sup> After a PFB is filed, an OJCC mediation conference is scheduled with the assigned mediator. Thereafter, it is not uncommon for additional PFBs to be filed prior to that mediation. 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. The chart above summarizes the PFB filing volumes and mediation volume over the last 21 years.

These changes render it critical that counsel remain cognizant of notices and assignments. Case consolidation remains an area of concern overall and will receive significant attention in 2023-24. As petition volumes increase, consolidation is an important tool in remaining efficient and avoiding the mandatory referral to private mediation.<sup>33</sup>

## Overall Volume of PFB Mediated



## Volume of PFBs Mediated by Each Mediator 2022-23



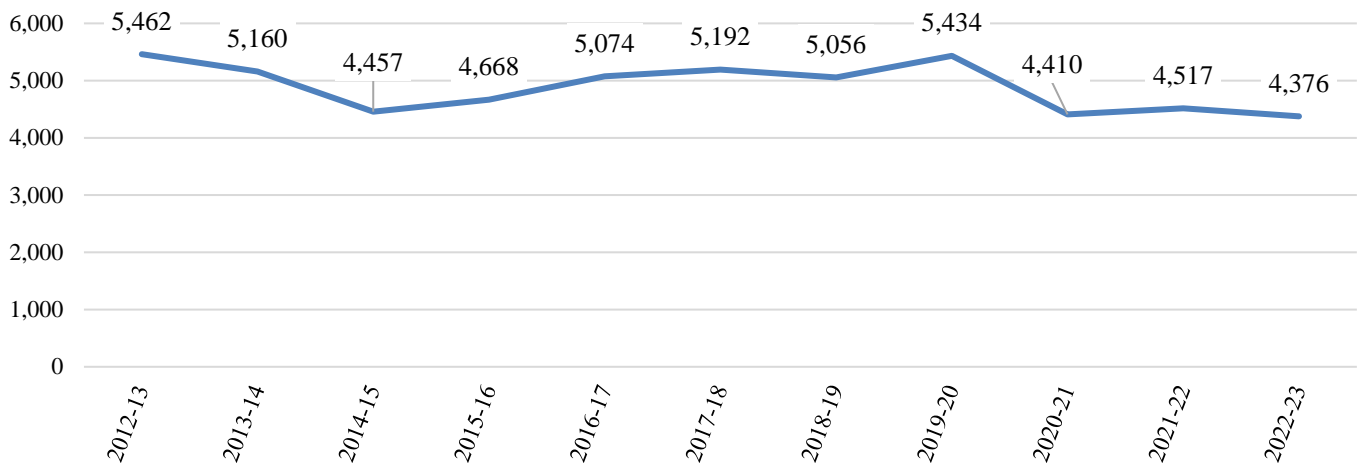
## **Dismissed and Resolved Prior:**

Some volume of PFBs 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. There were 19,917 mediations conducted in 2022-23; a significant volume of others, 16,398 (82% of the volume of mediations conducted) were “resolved or settled prior.” That is a marked increase from 2021-22 when those “resolved or settled prior” were 14,642 (73% of the mediations concluded). This is pertinent in the analysis above regarding increased PFB filing volume compared with the reasonably persistent volume of concluded mediations. A more significant volume of the filed PFBs is being “resolved or settled prior.” An additional 15,203 petitions were dismissed rather than “resolved or settled prior,” a similarity in timing (before mediation), but a distinction of the actual outcome (compromise versus capitulation).

## **Reset Private:**

Like 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 (above). 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. Since the pandemic, however, the volume of OJCC mediations reset for private mediation dropped to the lowest volumes in a decade, and have remained consistently lower for the last three fiscal years. In previous reports, it was suggested 2020-21 might be an anomaly. The last three years of consistent data defies that characterization. It is likely that the convenience of virtual mediation is enhancing demand for OJCC mediation.

### **Reset Private**



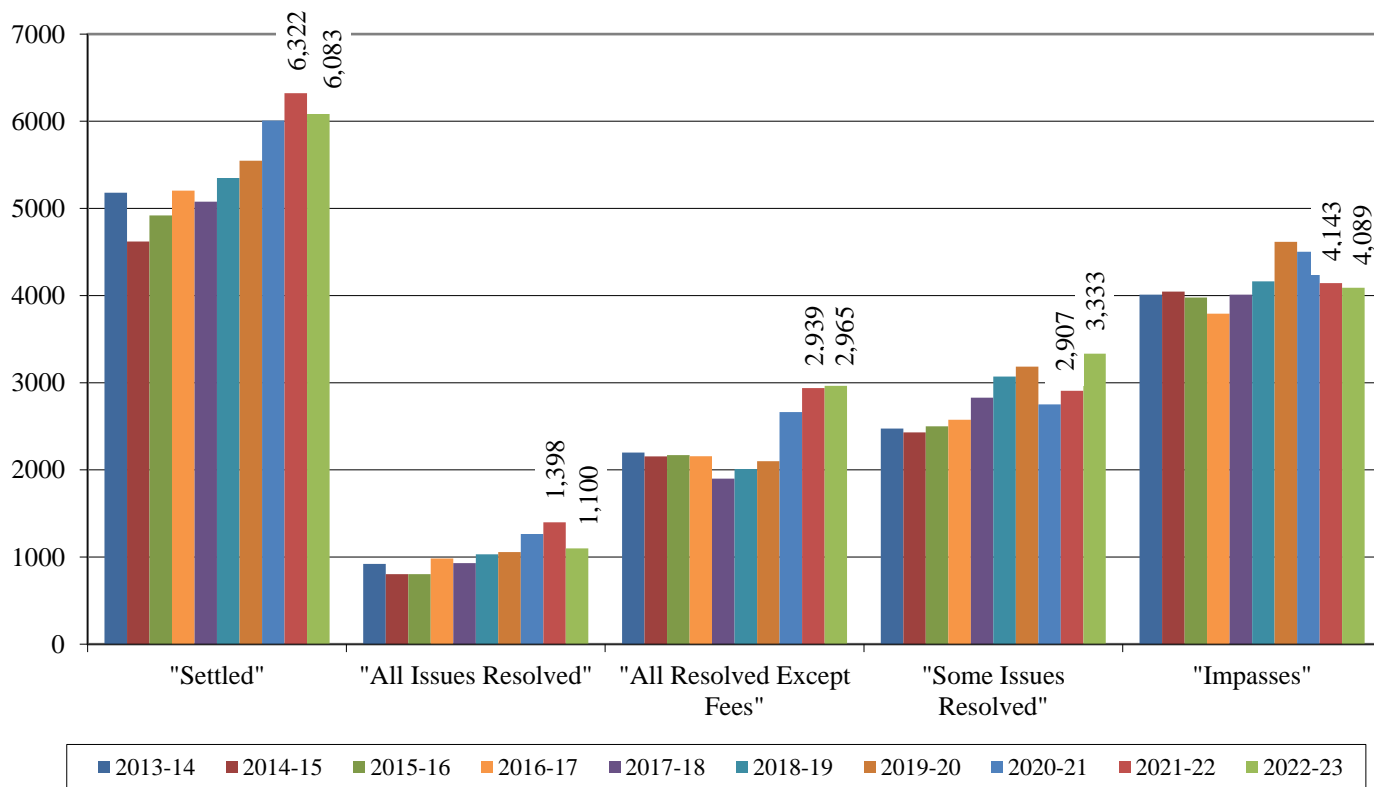
## **Disposition of Mediation Conferences:**

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>34</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>35</sup>

The outcome of mediations is expressed in terms of what was resolved at that particular mediation. The characterization “impassé” is used to reflect that no issues were resolved. 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 “impassé” (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.

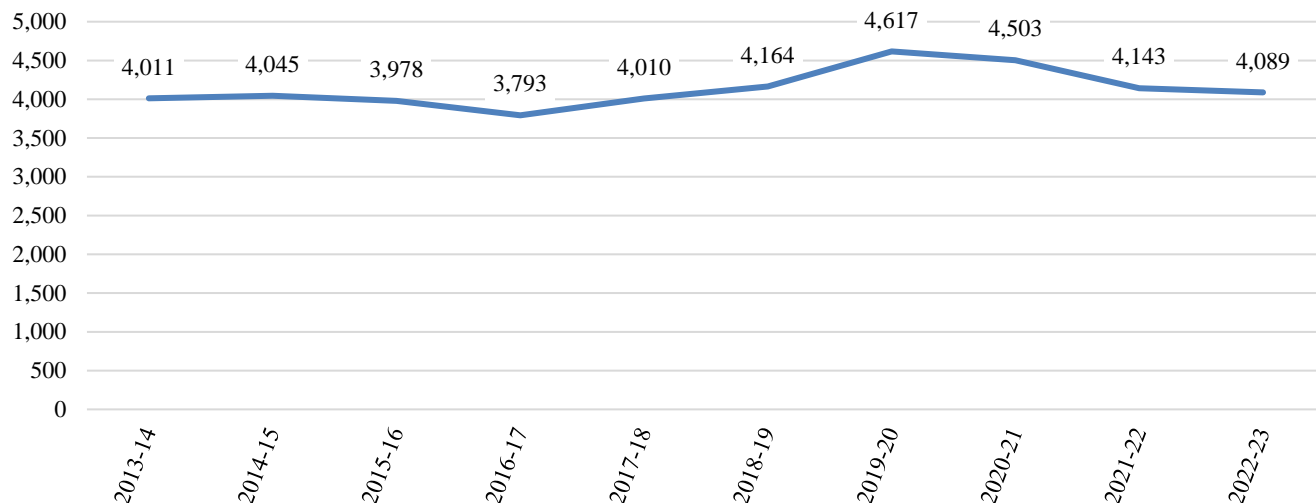
The term “some issues resolved” reflects that some subset of the currently claimed substantive issues has been resolved. The term “all issues resolved except attorney’s fees” reflects that all of the substantive issues and any ancillary penalty and/or interest issues were resolved, but fee/cost entitlement 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 (“impassé”) 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 “impassé” 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 “impassé” 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, returning to historical levels after increases in 2019-20 and 2020-21. As noted in the 2021-22 Mediation and Settlement Report, the impassé volume was trending back to a pre-pandemic baseline. The results in 2022-23 are consistent with that. The volumes in other categories are largely consistent year over year. However, 2022-23 demonstrated a marked (21%) decrease in “all issues

resolved.” While that might cause concern, the increase (15%) in “some issues resolved” is likely a positive correspondence. Perhaps the most critical consideration is resolution generally. In that light, the “impasse” outcome is twenty-one percent (20.5%) in 2022-23, statistically consistent with 2021-22 (20.6%) and notably better than 2020-21 (23.2%). The OJCC mediators have much about which to be proud regarding 2022-23.

### Overall "Impasses"

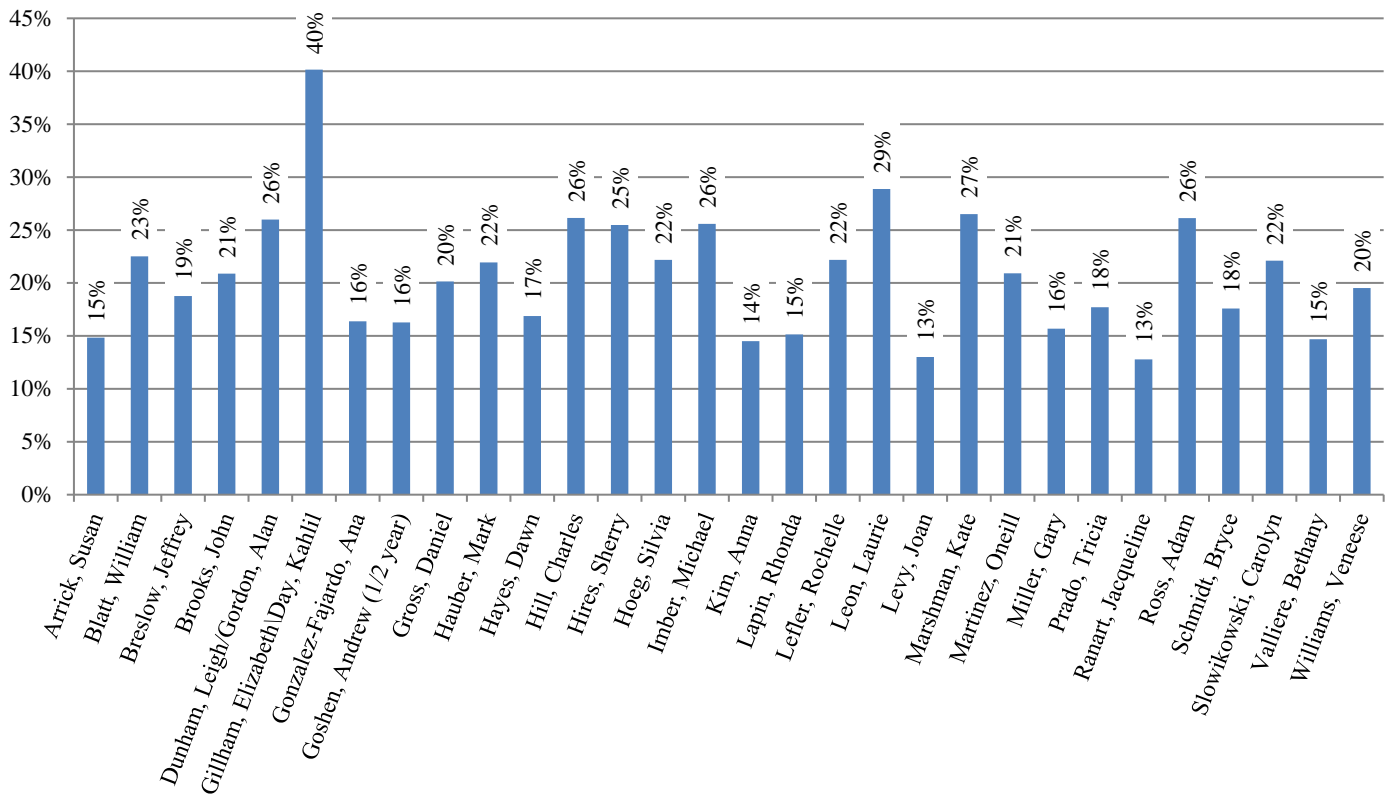


The marked decreases in “impasse” between 2009 and 2013 were illustrative of efforts by the OJCC mediators to resolve at least some aspect of the cases which are presented to them. Individual impasse rates are illustrated below, and for each mediator in the appendices. Impasse increased during the pandemic, but has returned to pre-pandemic levels. Despite significant volumes of mediations overall, the percentages of convened mediations resulting in impasse are 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 recent years to result in the lowest percentage of “impasse” in the last ten years.

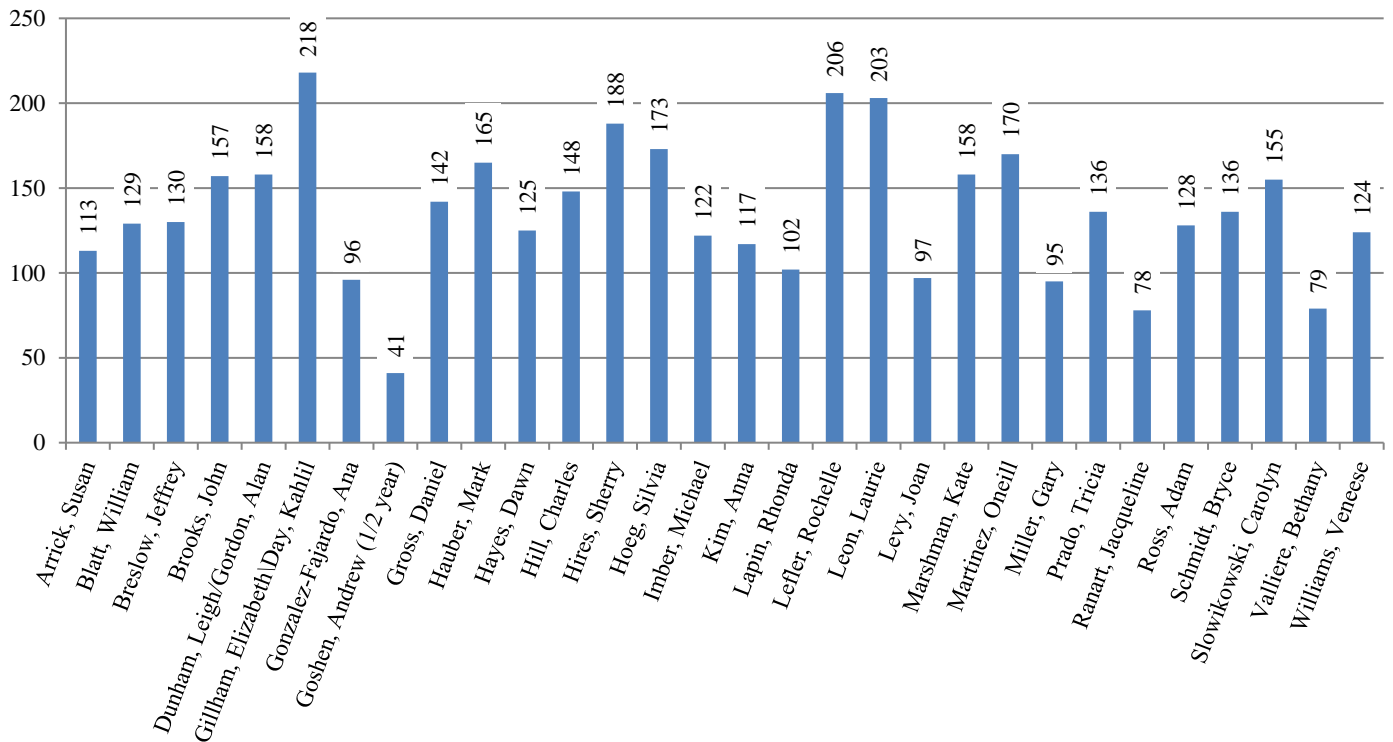
13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	22-23
24.80%	26.20%	25.30%	23.60%	24.80%	24.40%	25.40%	23.16%	20.60%	20.53%

The corollaries of these figures represent the volume of OJCC mediations in which at least some volume of issues was resolved. In approximately seventy-nine percent (79.47%) of 2022-23 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.

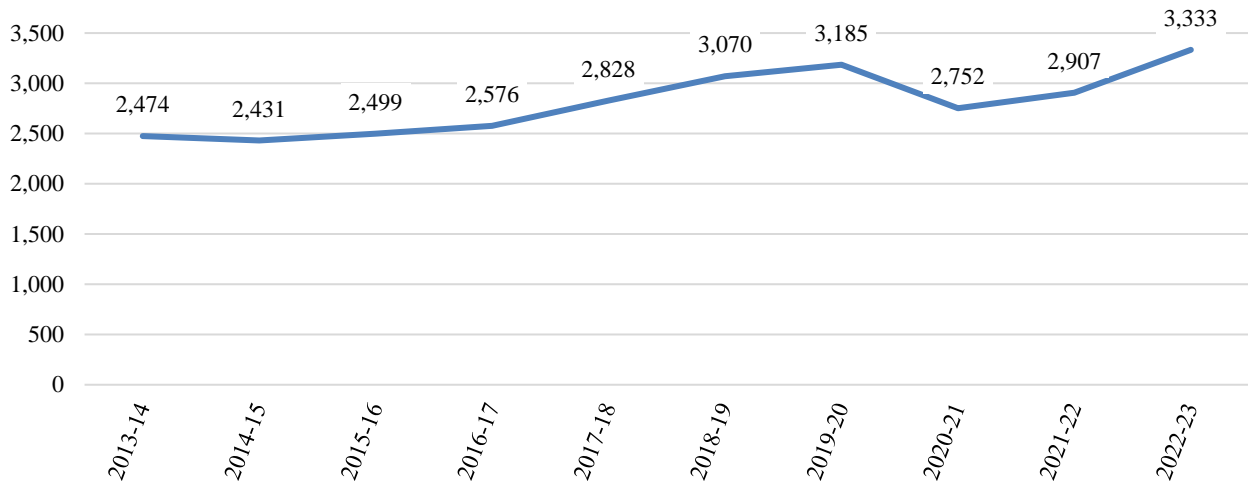
## "Impasse" % by Each Mediator 2022-23



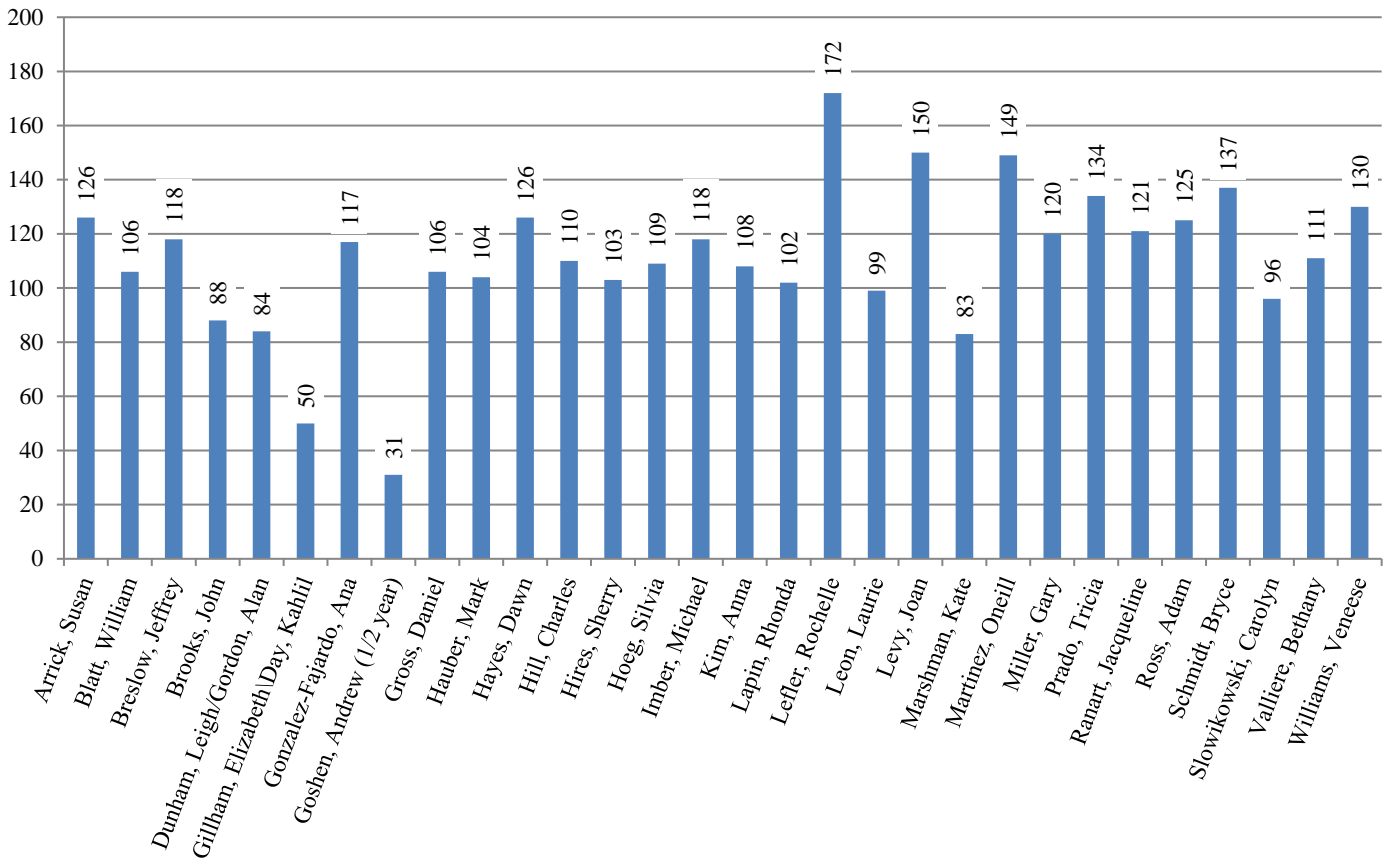
## "Impasse" by Each Mediator 2022-23



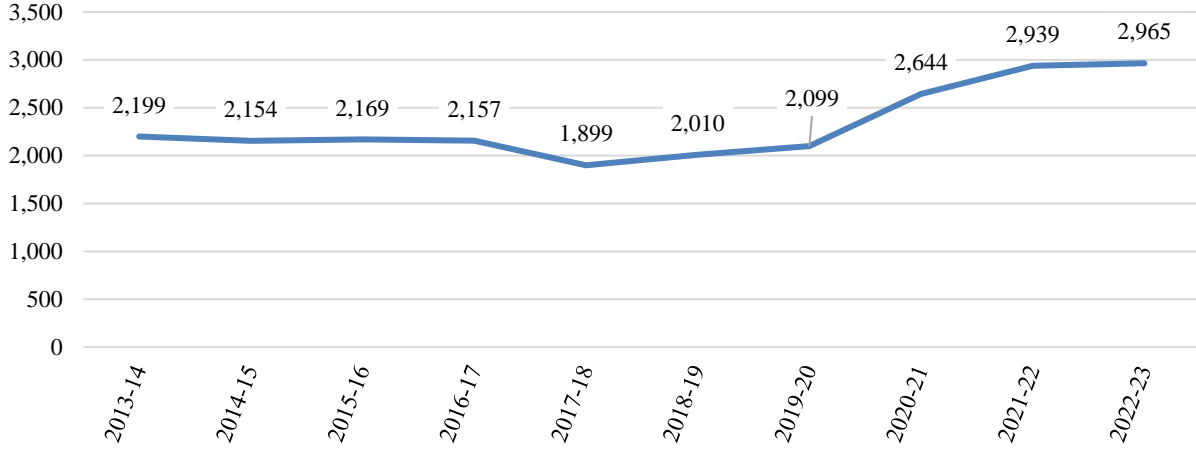
## Overall "Some Issues Resolved"



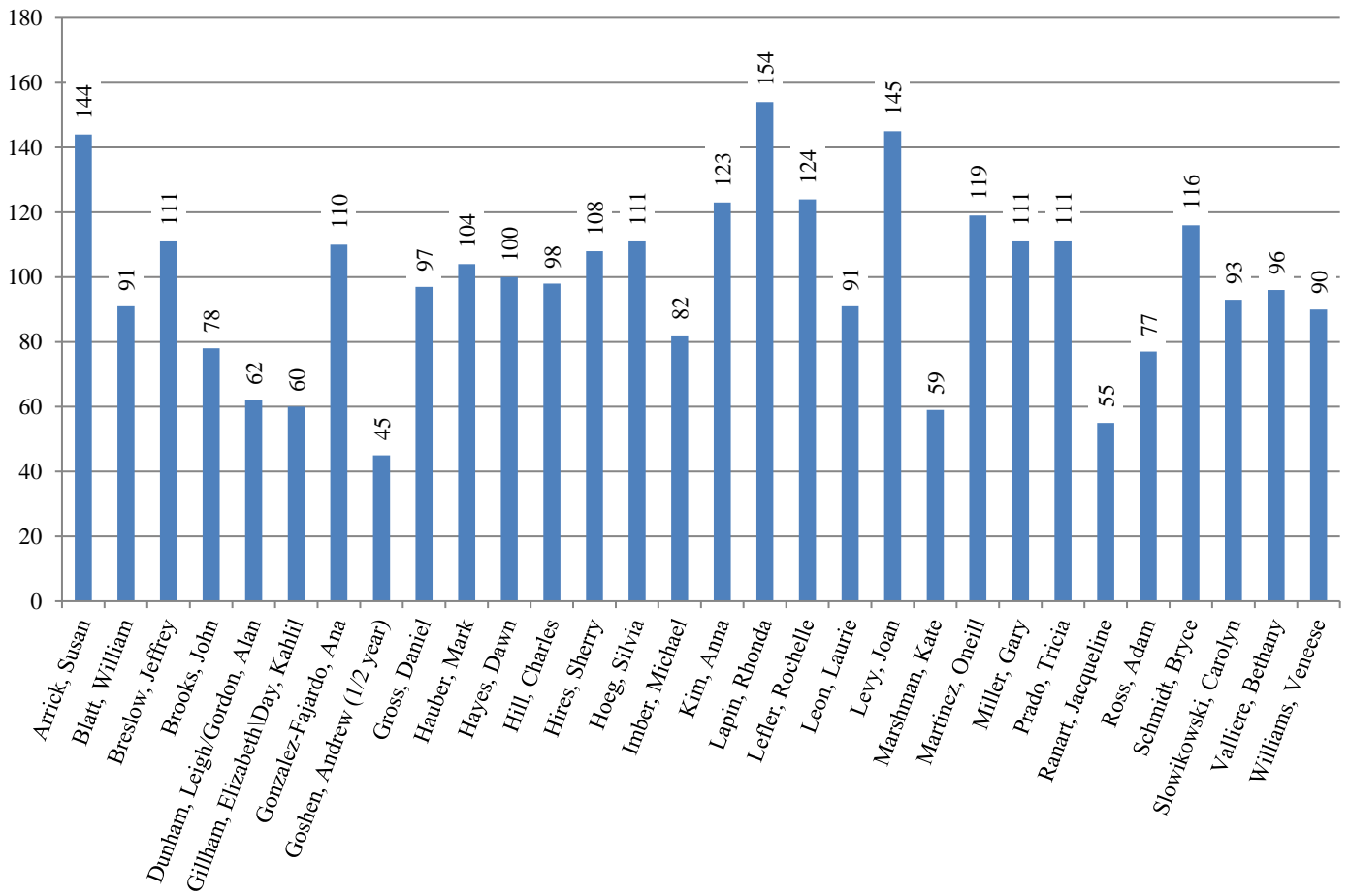
## "Some Issues Resolved" for Each Mediator 2022-23



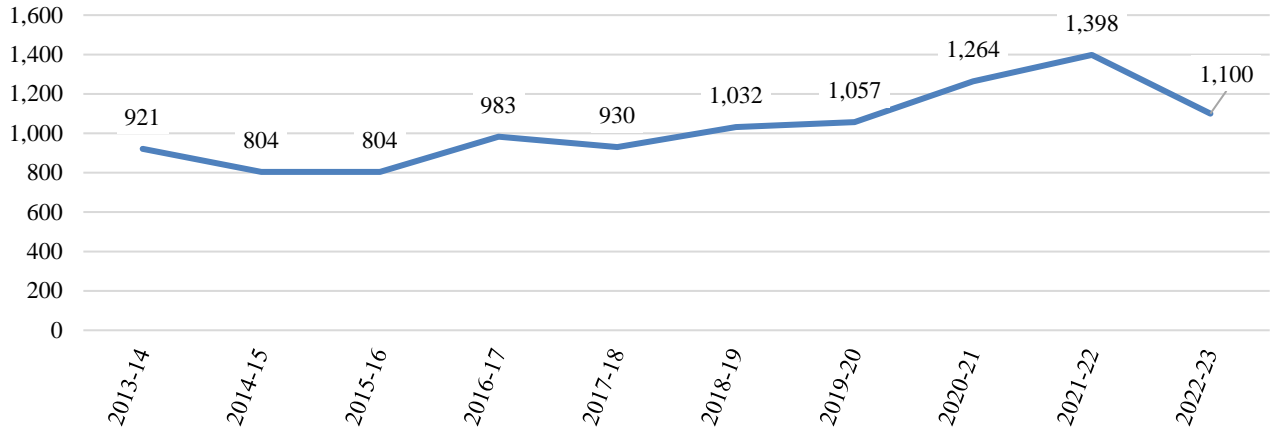
## Overall "All Resolved Except Fees"



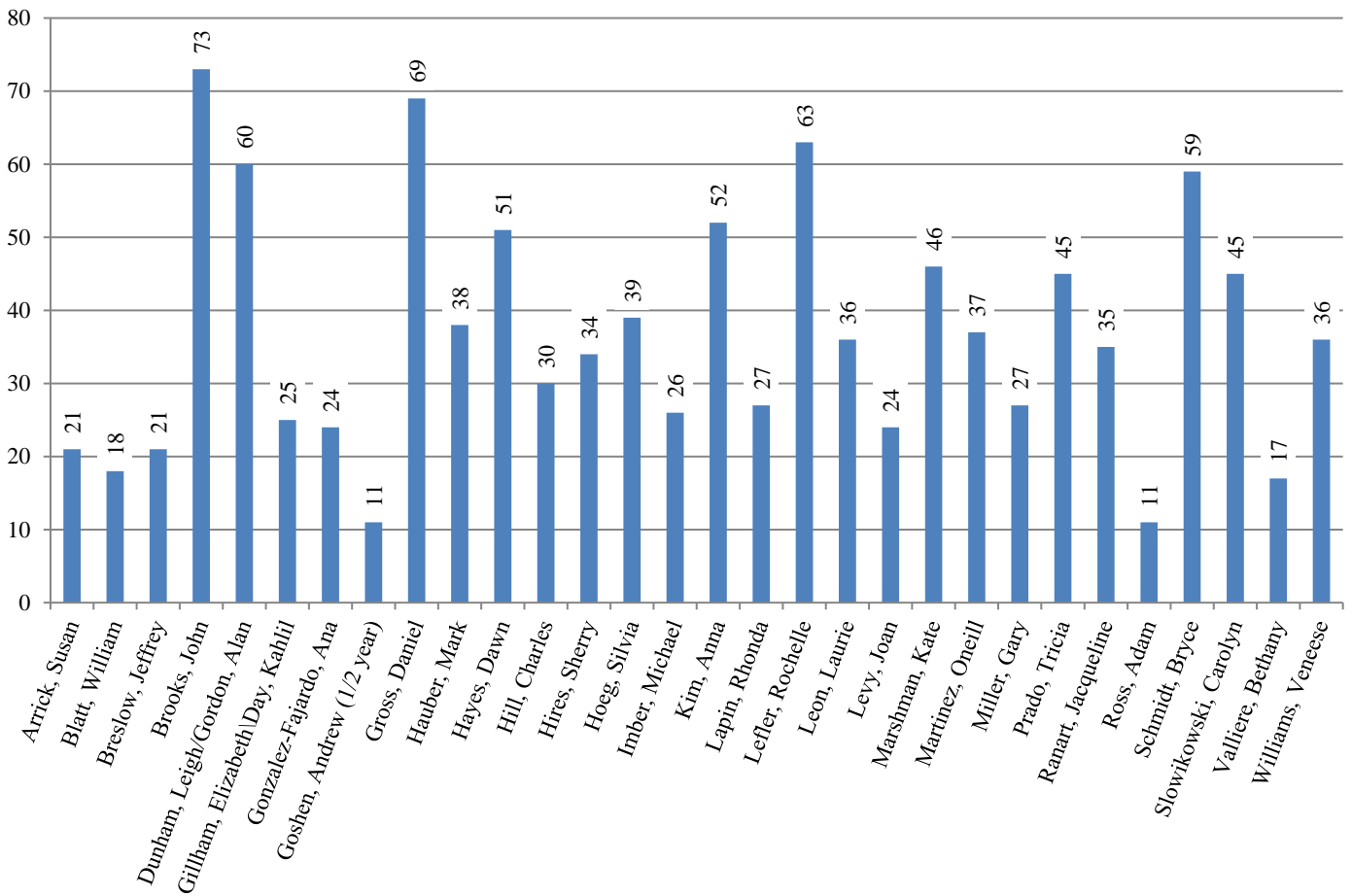
## "All Issues Except Fees" for Each Mediator 2022-23



## Overall "All Issues Resolved"

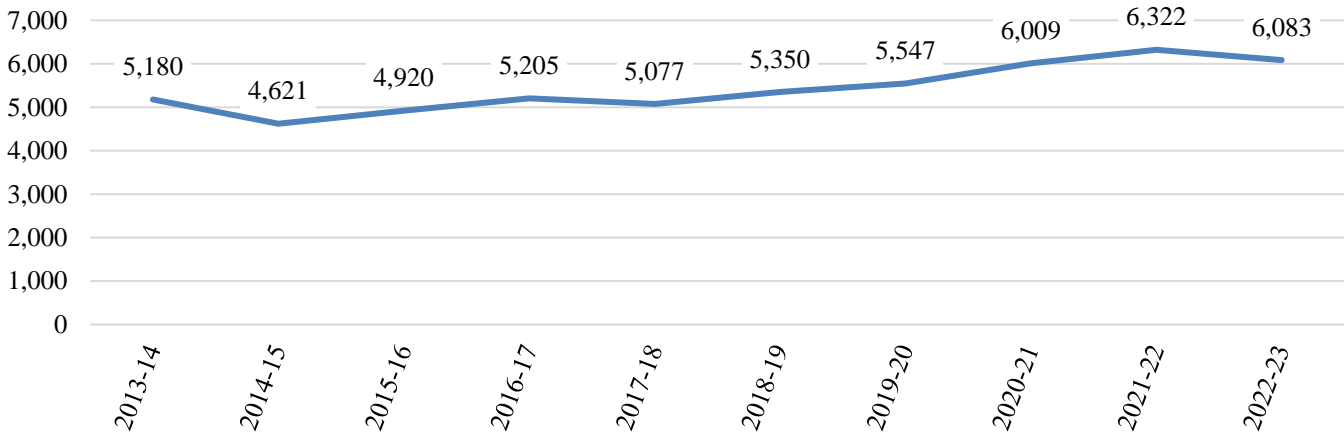


## "All Issues Resolved" for Each Mediator 2022-23

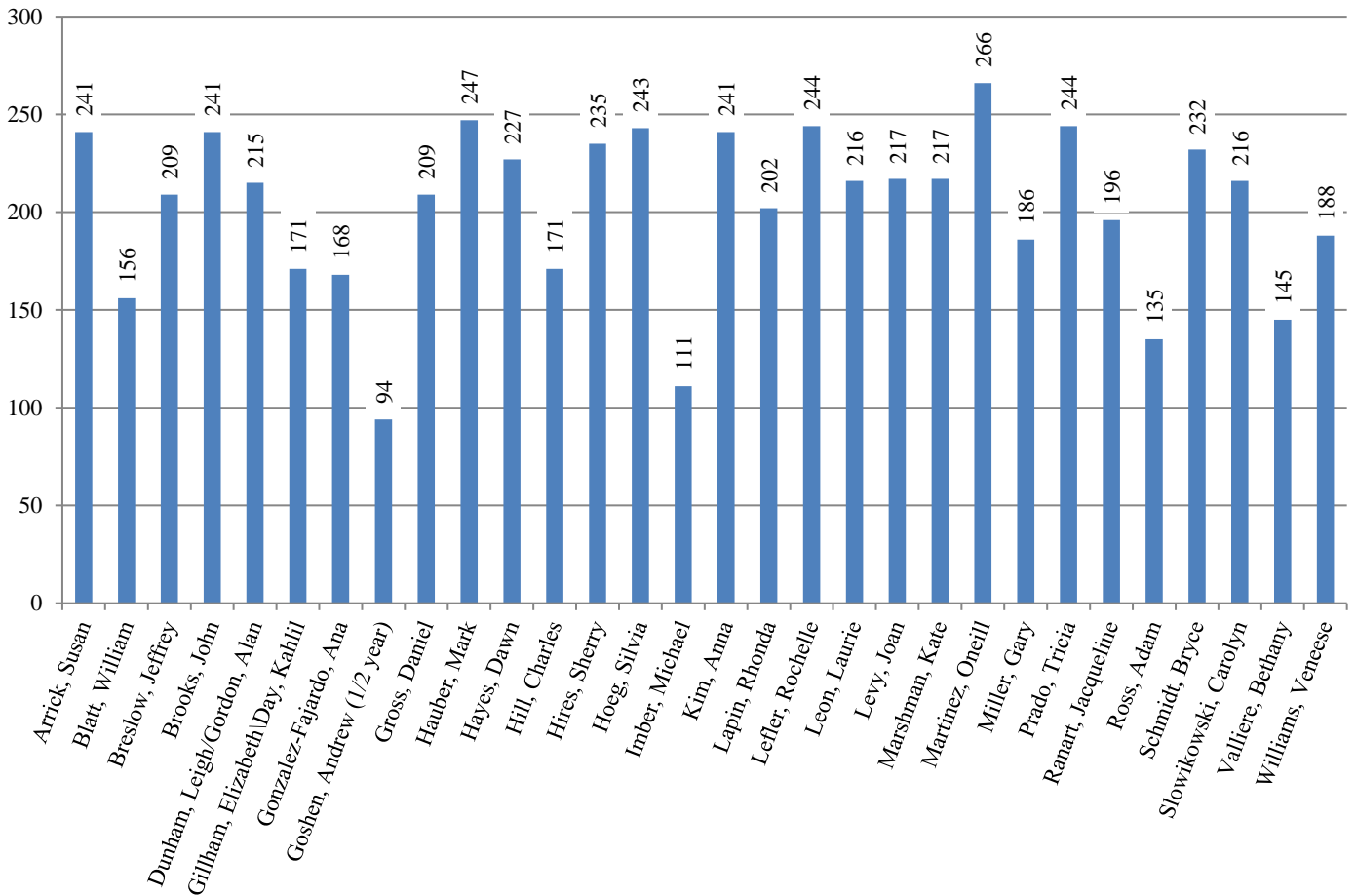




## Overall "Settled"



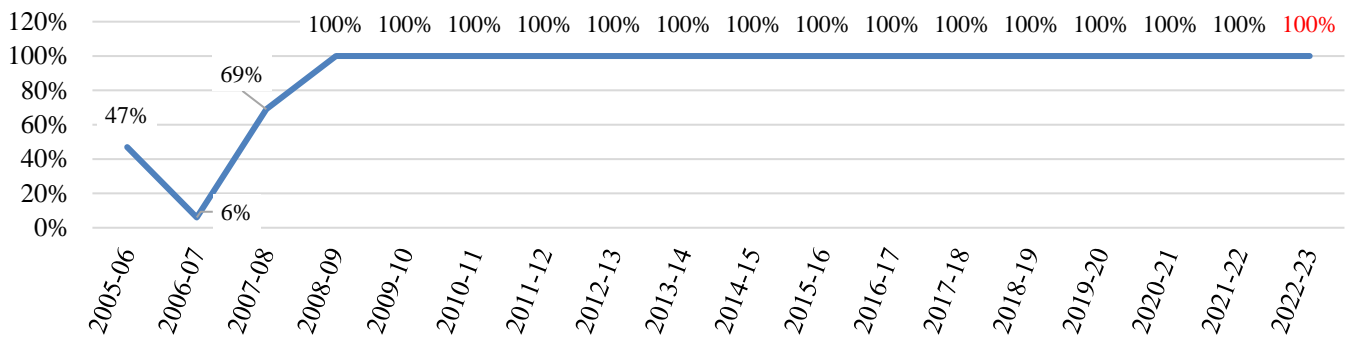
## "Settled" for Each Mediator 2022-23



## Timeliness of Mediations:

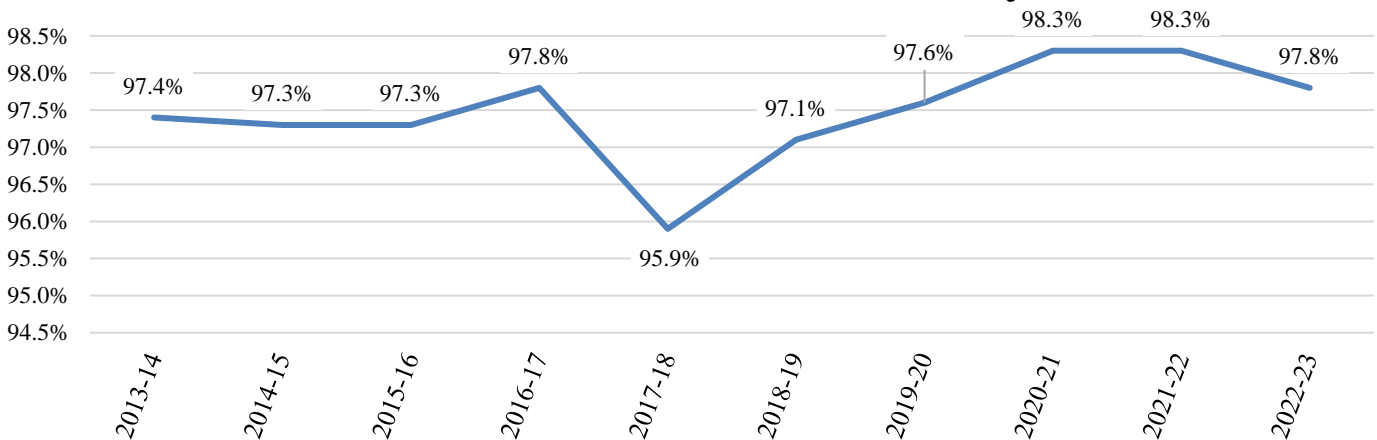
The Florida workers' compensation law requires that mediation occur within 130 days of the PFB filing. There are nonetheless situations in which this parameter cannot be met. In personal injury actions, it is common that mediation is occurring after the rendition of medical modalities and the injured 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 fifteen 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

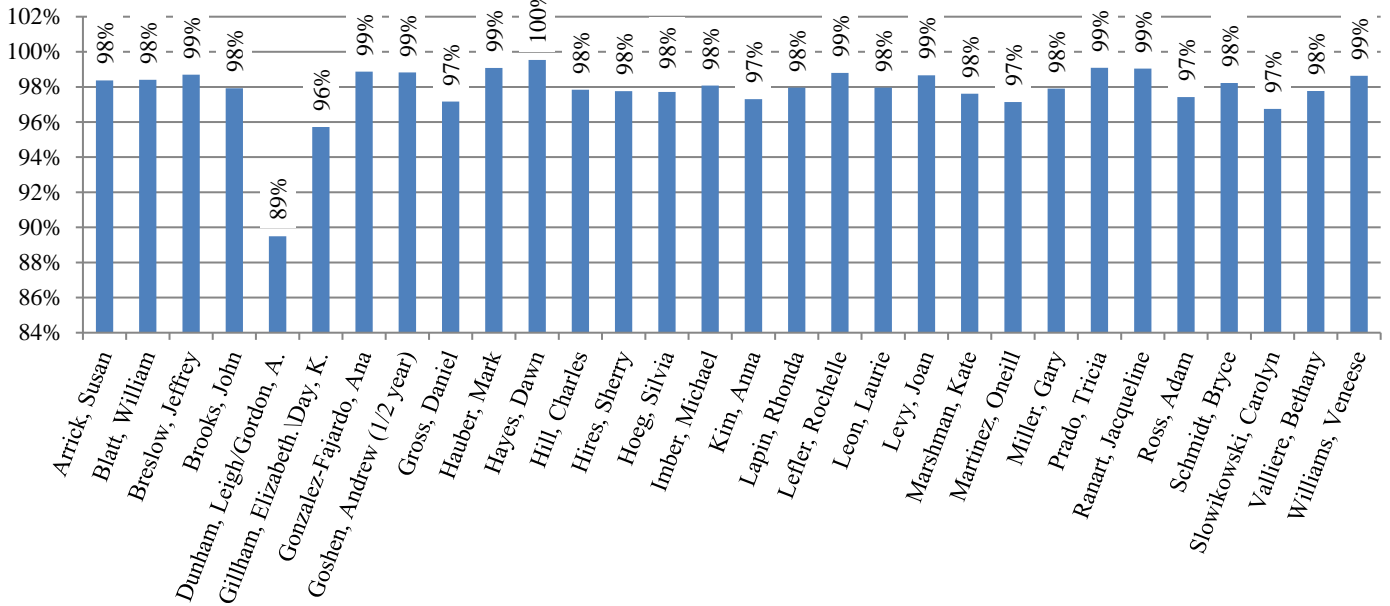


In fact, in 2022-23 the OJCC mediators mediated approximately 97.8% of the PFBs within the 130-day statutory parameter. That is a slight decrease compared to 2021-22. Notably, this is very consistent with the pre-pandemic era. It is fair to characterize the last four years, each approximately 98%, as exemplary in terms of mediation timeliness, despite the challenges the community faced. As the OJCC enters its second year following the random case assignment and presumptively virtual mediation, it is anticipated that the timeliness will remain significantly similar.

### Percent Mediated within 130 Days



## Percent Mediated within 130 days for Each Mediator



### Mediations Continued:

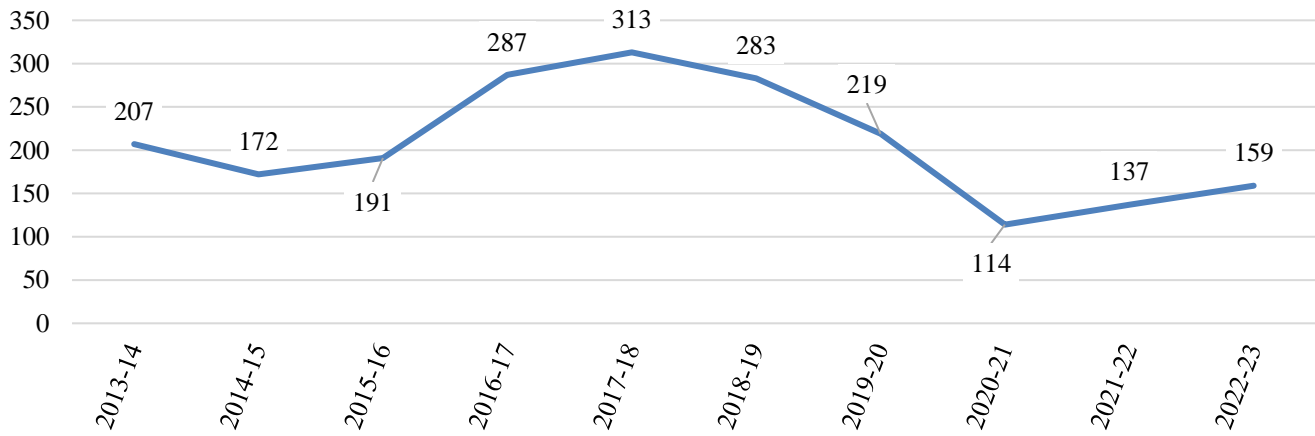
Mediation continuances increased markedly in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. However, those volumes may have been increased by the volume of weather-related office closures that year, as Florida’s cyclone season affected virtually every Florida county. Those 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 was nascent at that time; E-filing, video facilities, and other innovations were just beginning. 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 only slightly increased since.

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. Rule 60Q6.110(2)(a).

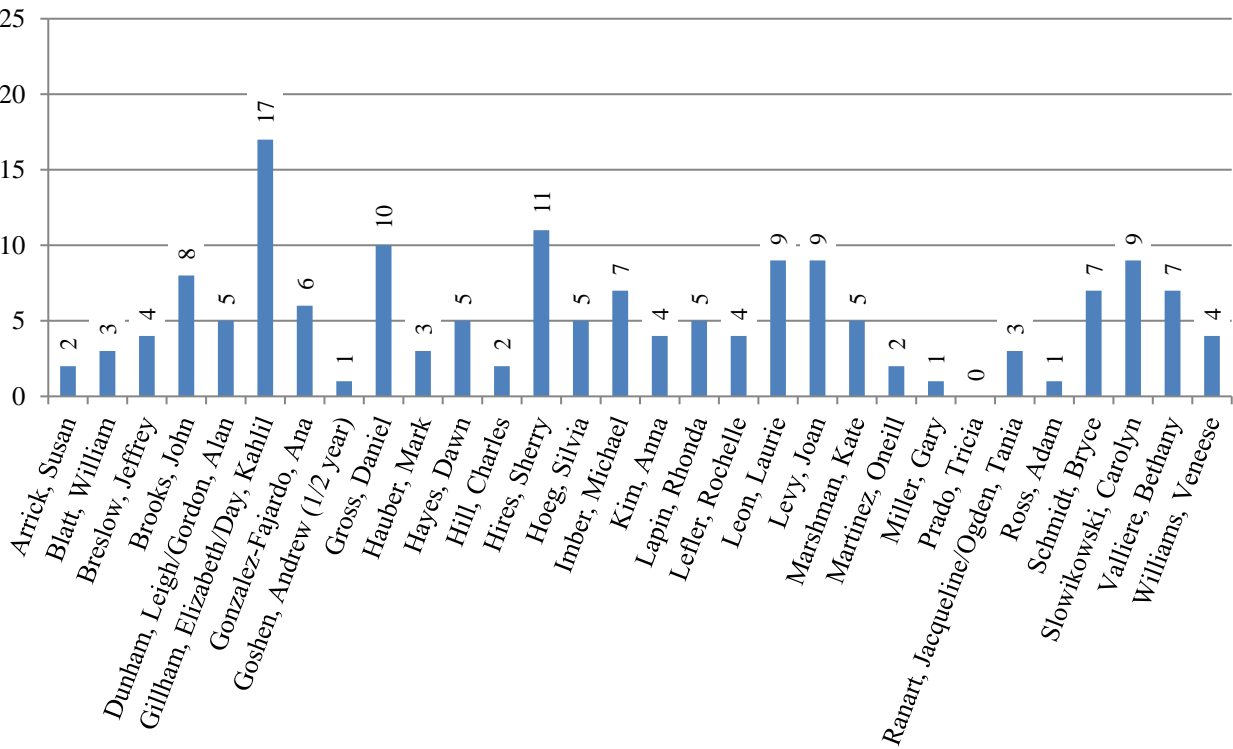
Some portion of both the stabilizing of these figures and the marked decrease in the number of mediation conference continuances had been previously deemed likely attributable to the annually decreasing volume of PFB filings. It was therefore encouraging to see the continuance rate remaining well below one percent despite 2022-23 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%
2022-23	76,633	159	0.21%

## Overall Mediations "Continued"

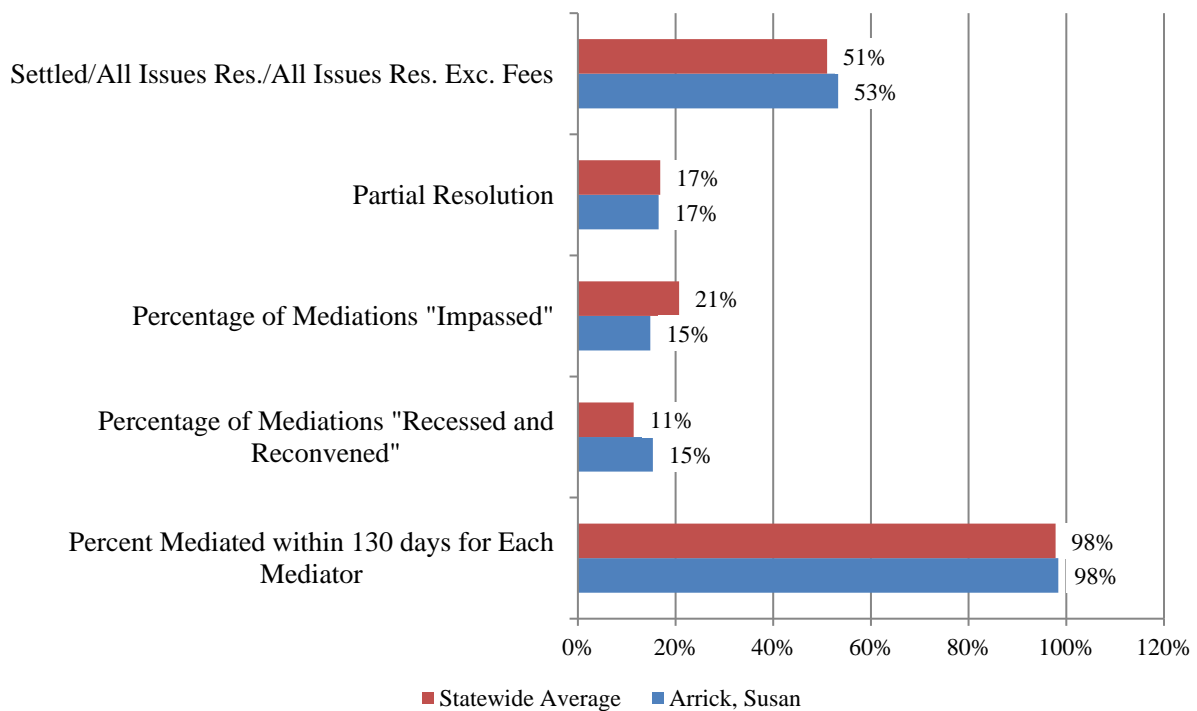
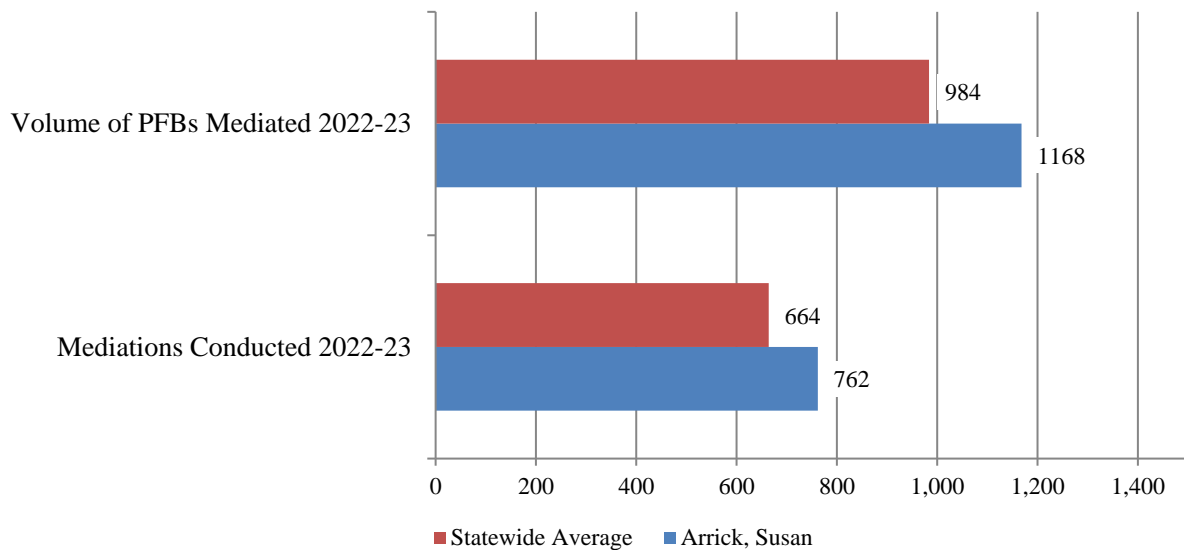


## "Continued" for Each Mediator 2022-23

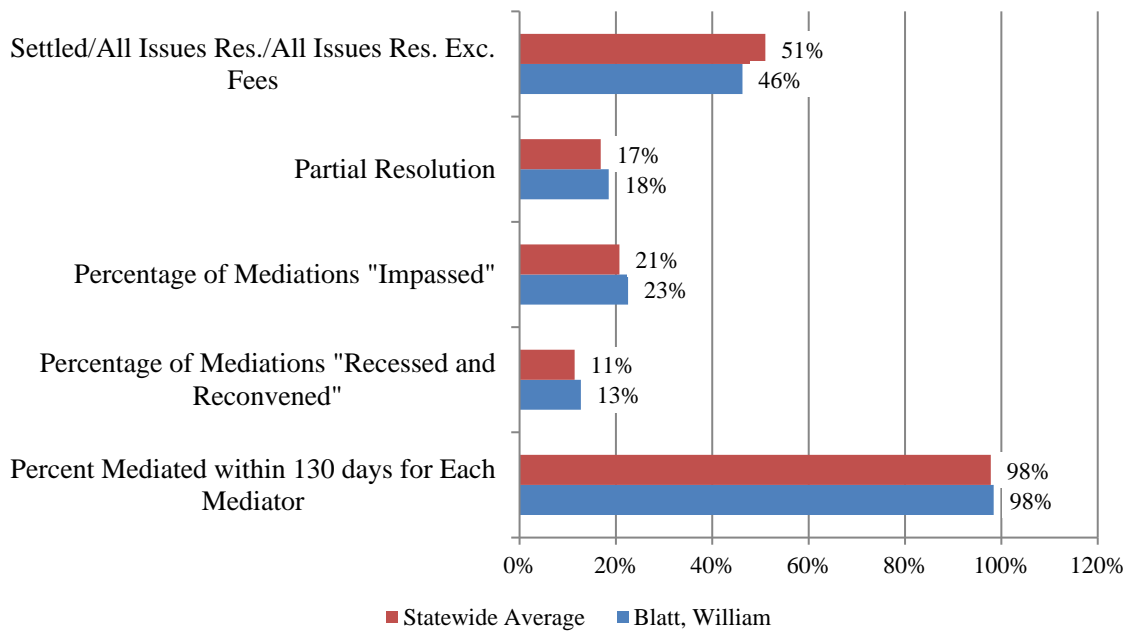
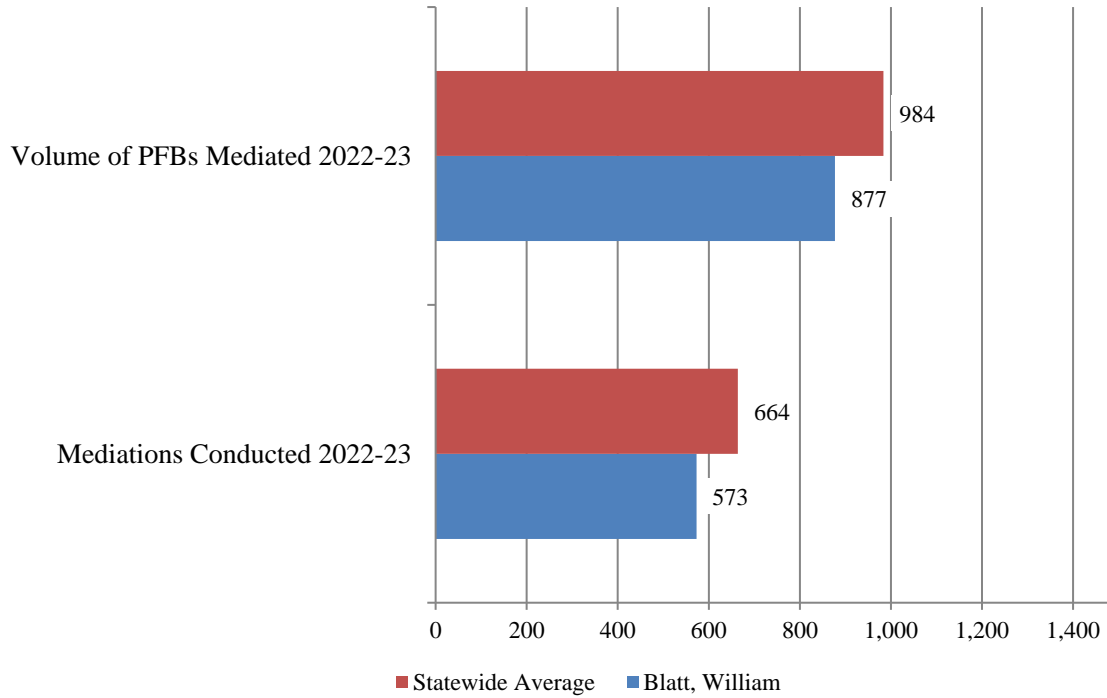


## Individual Mediator Statistics:

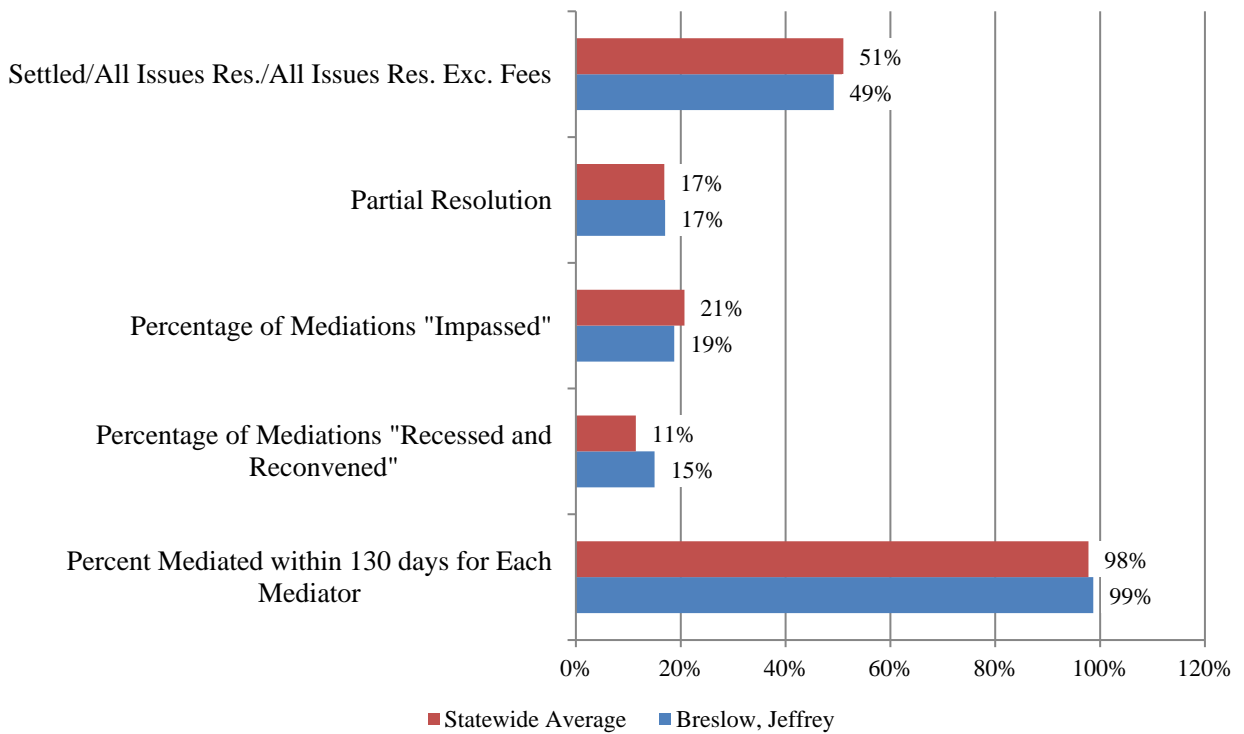
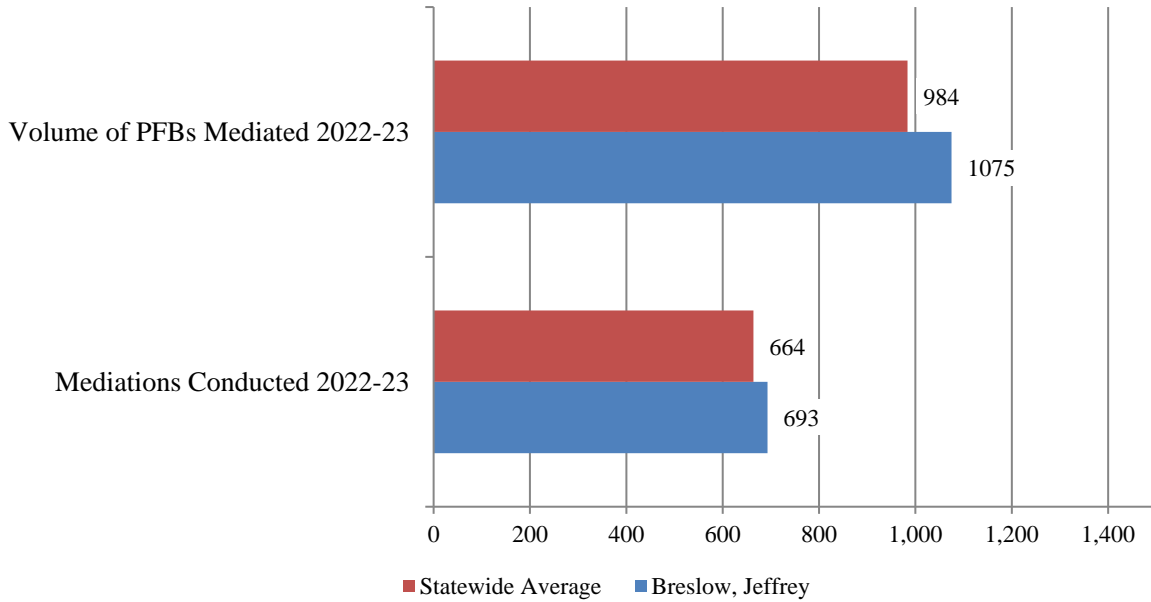
Arrick, Susan



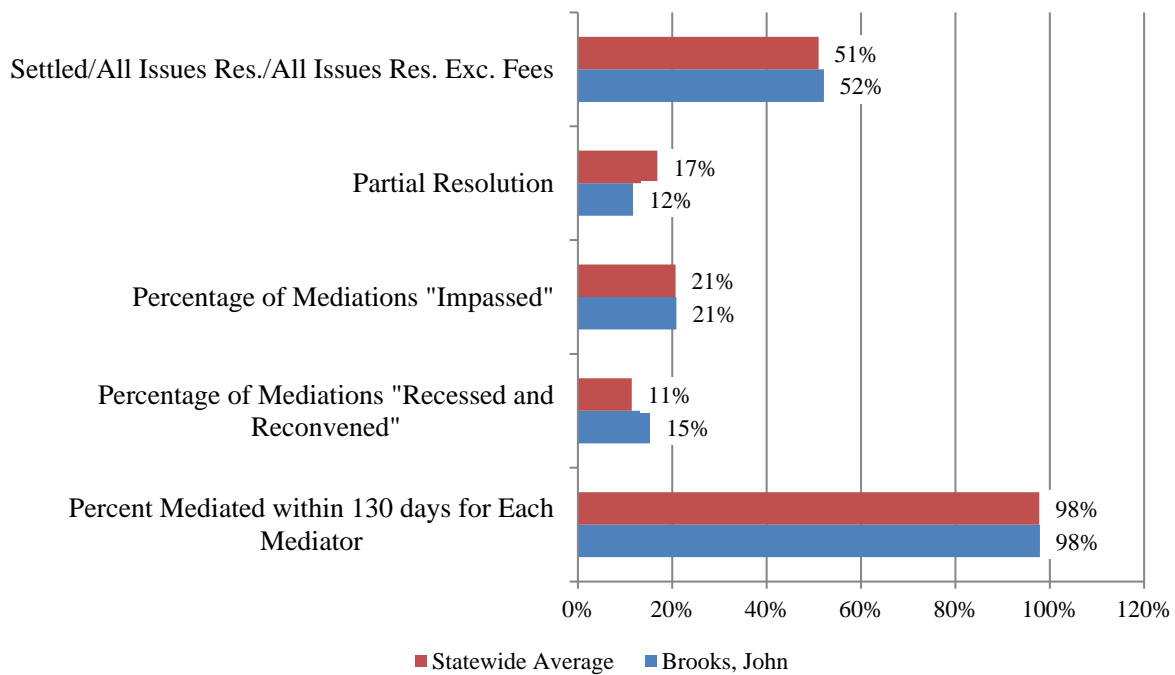
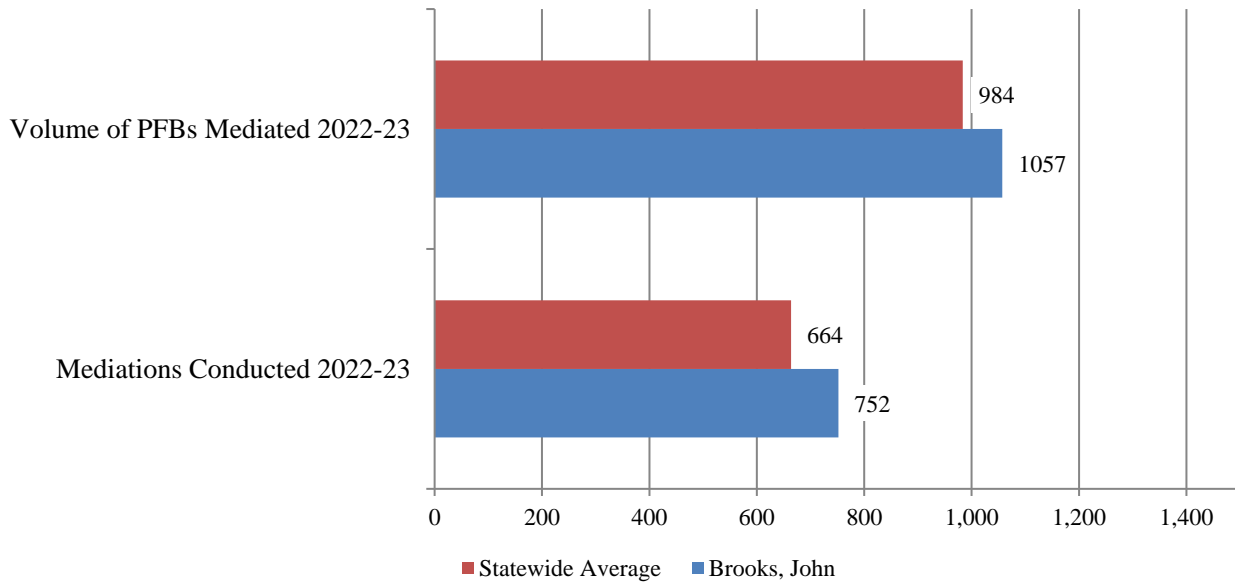
## Blatt, William



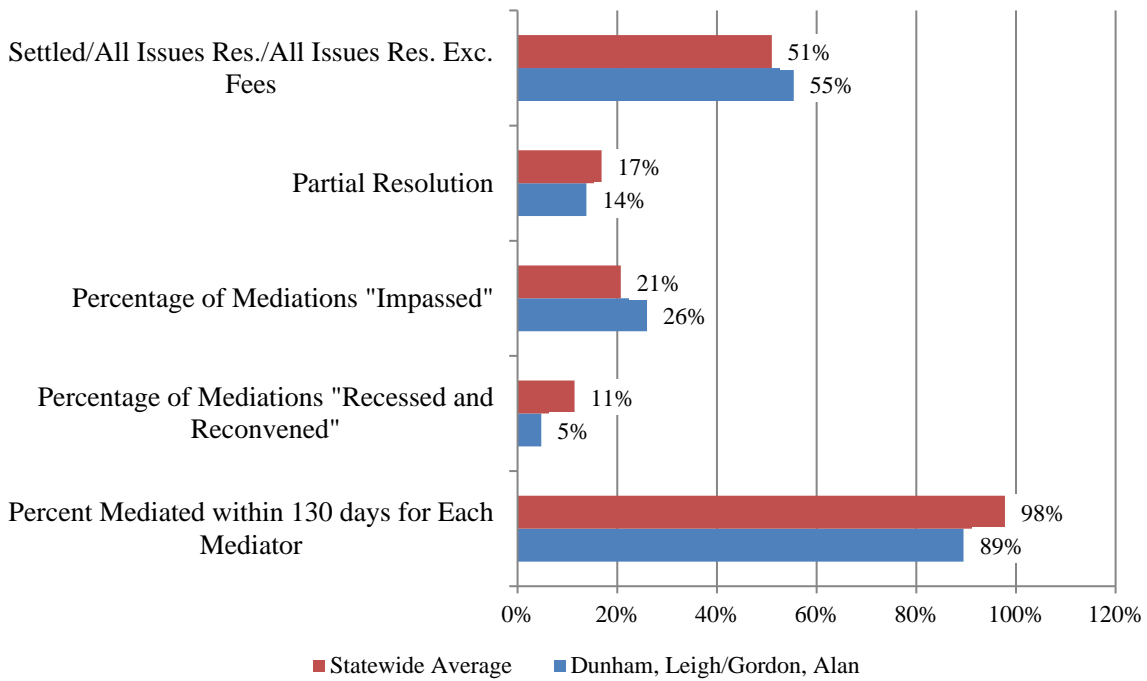
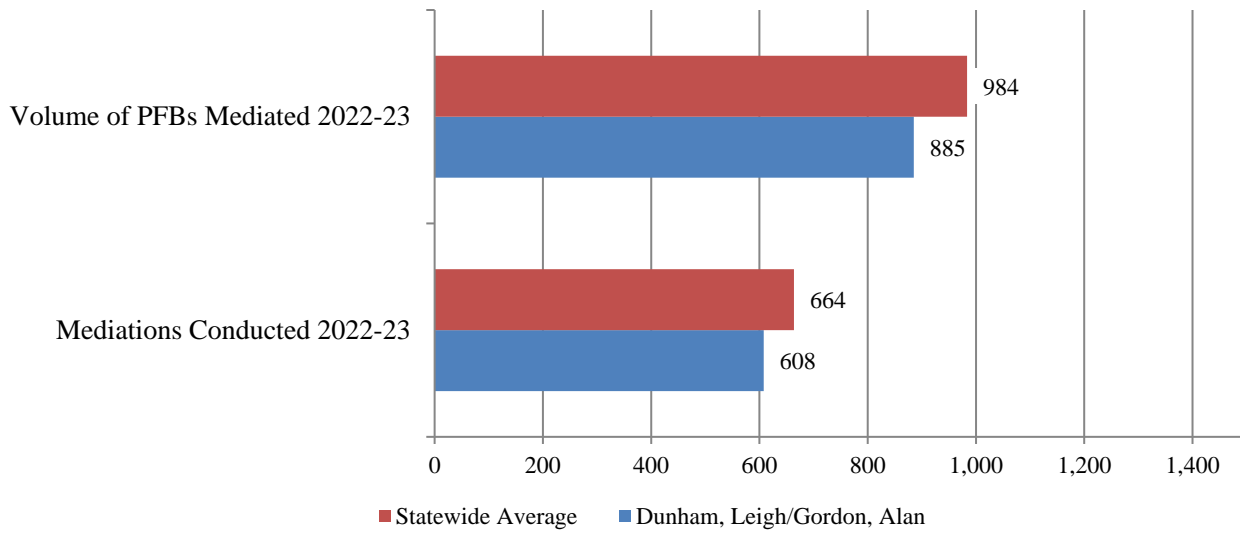
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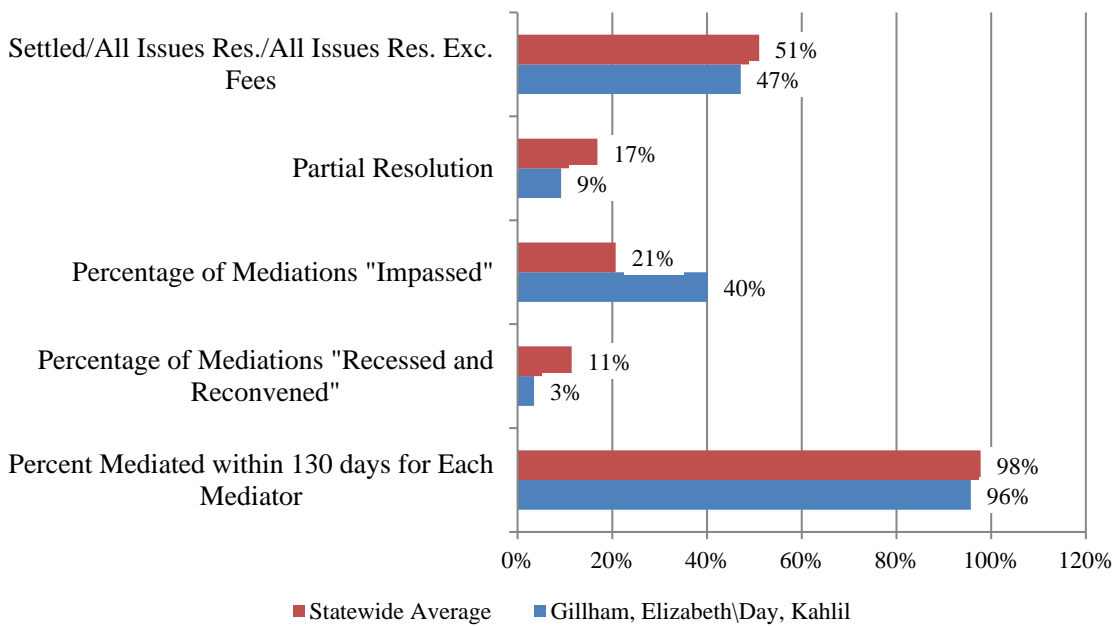
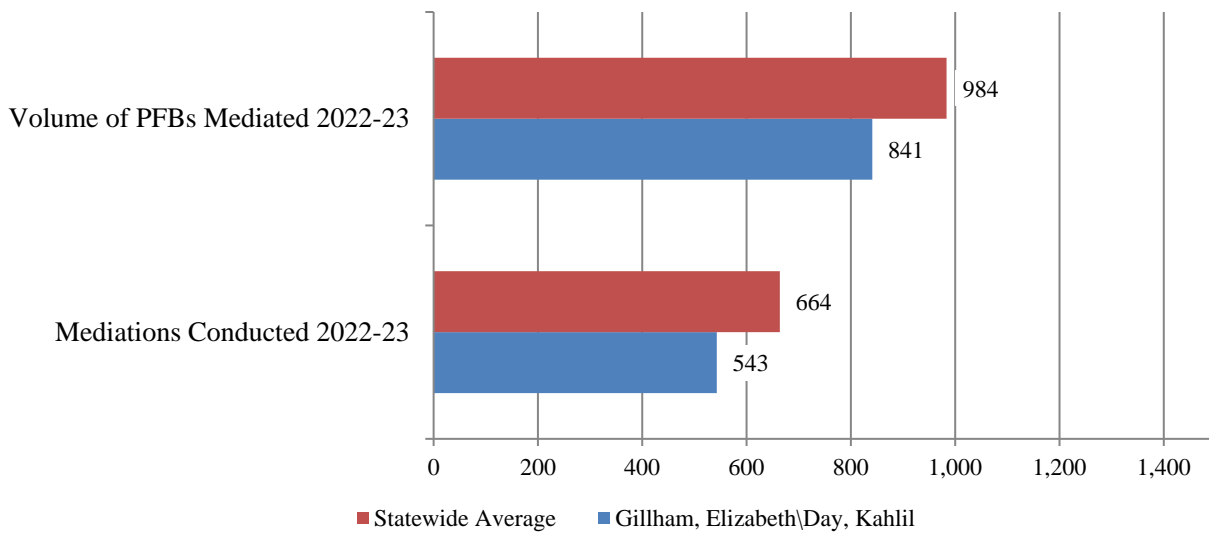


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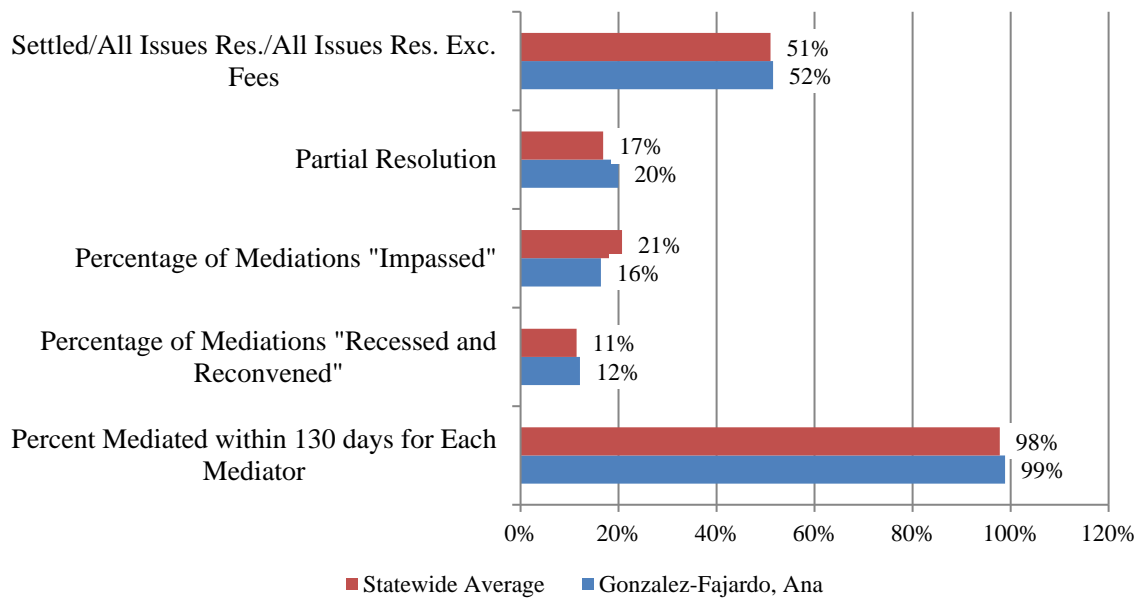
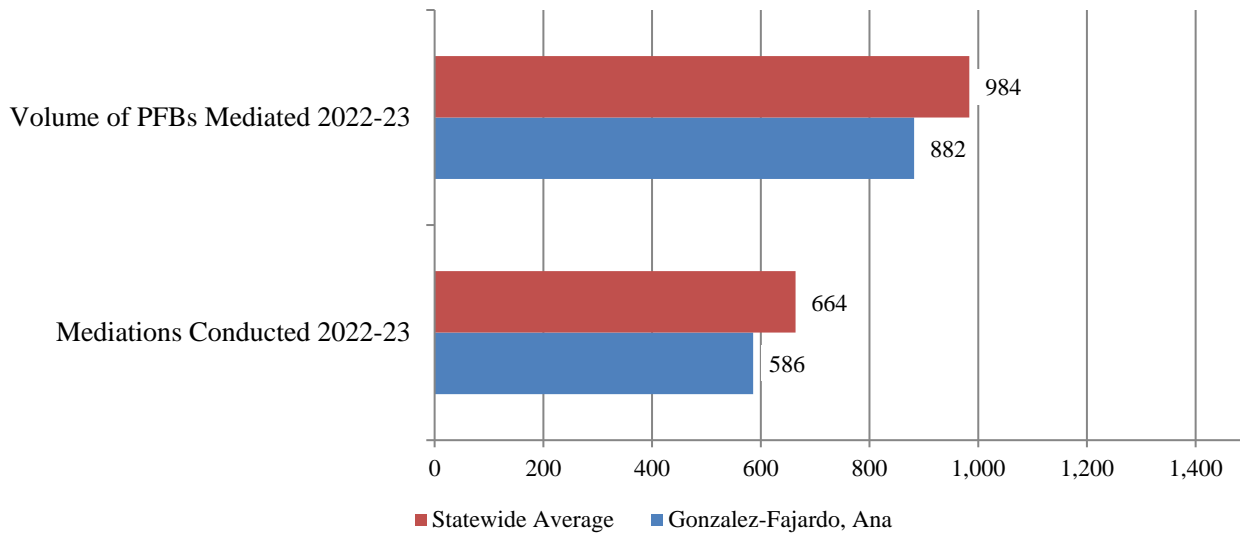


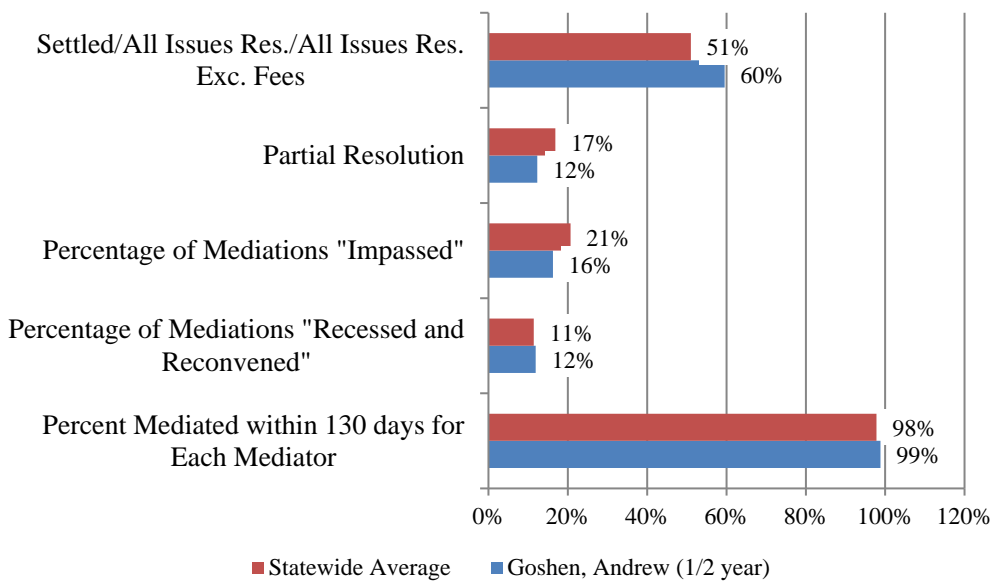
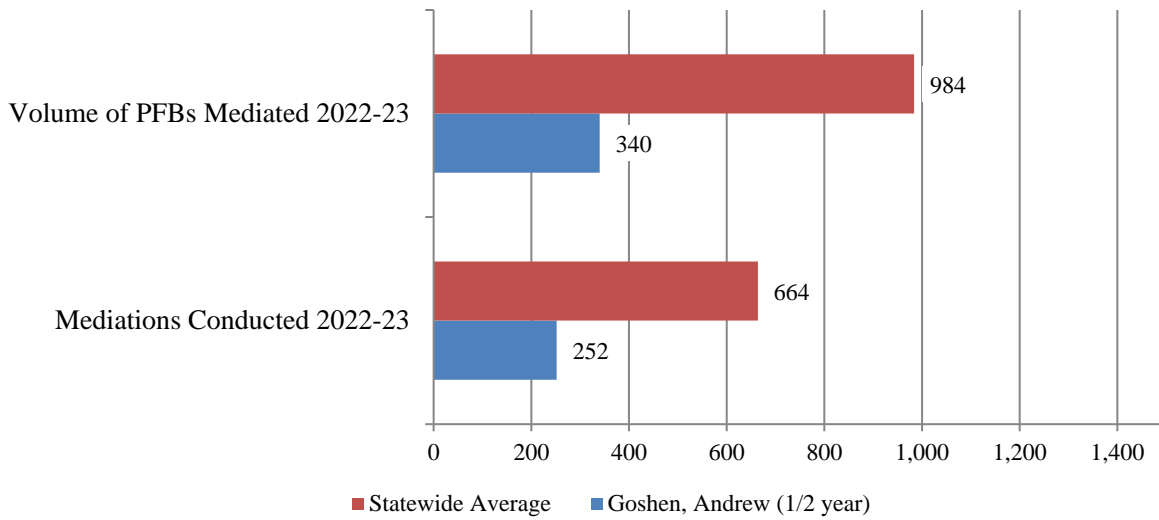


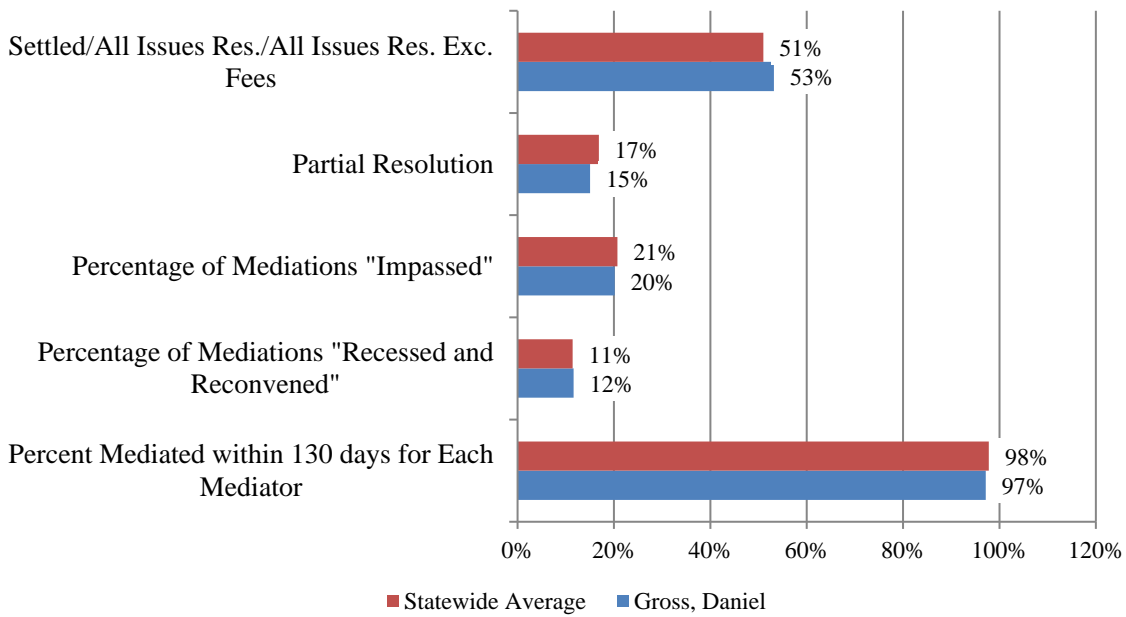
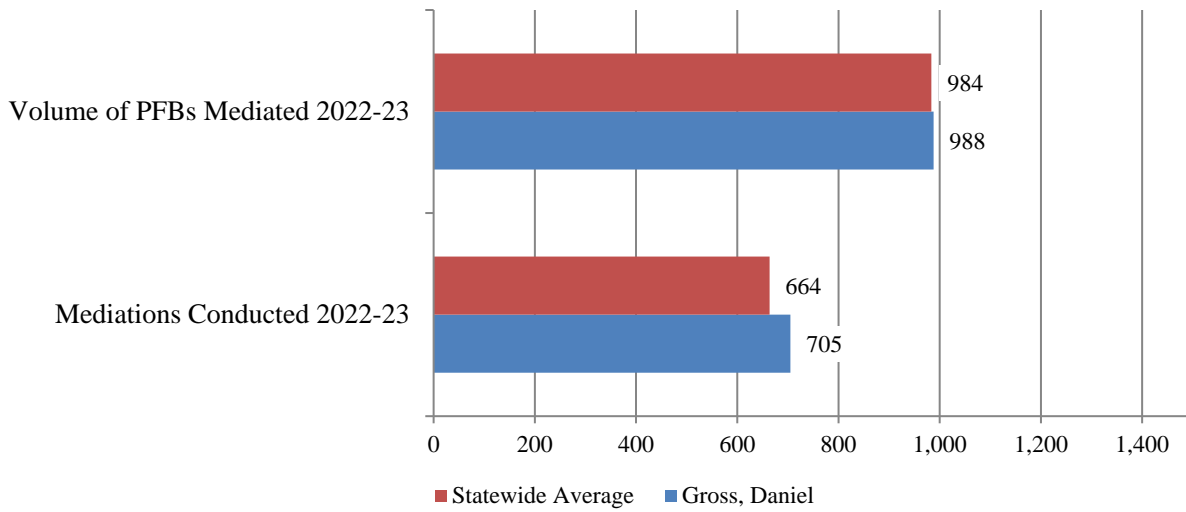


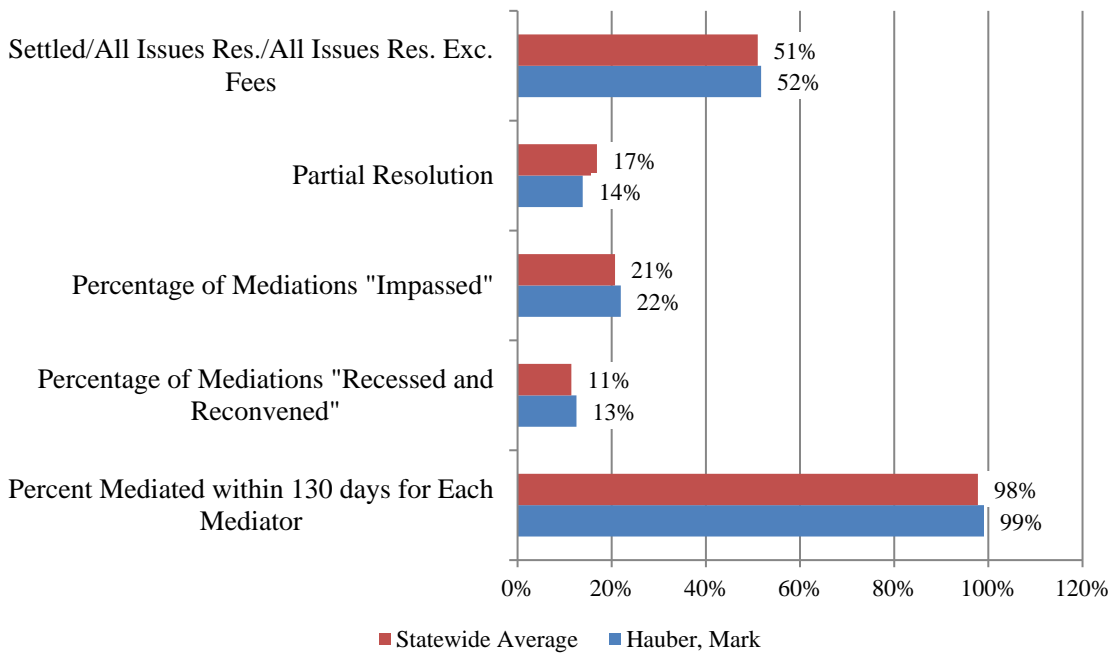
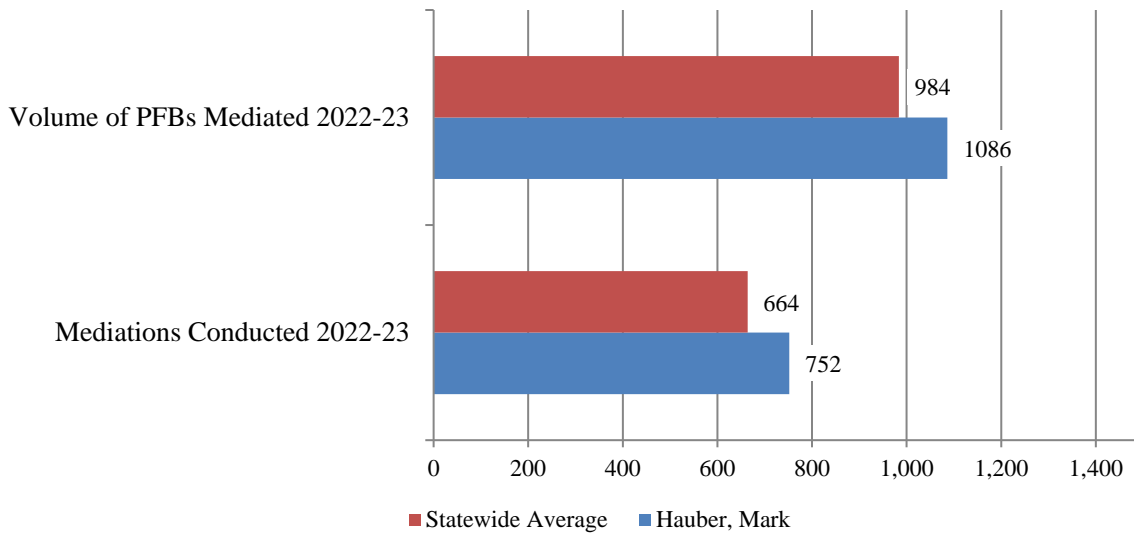


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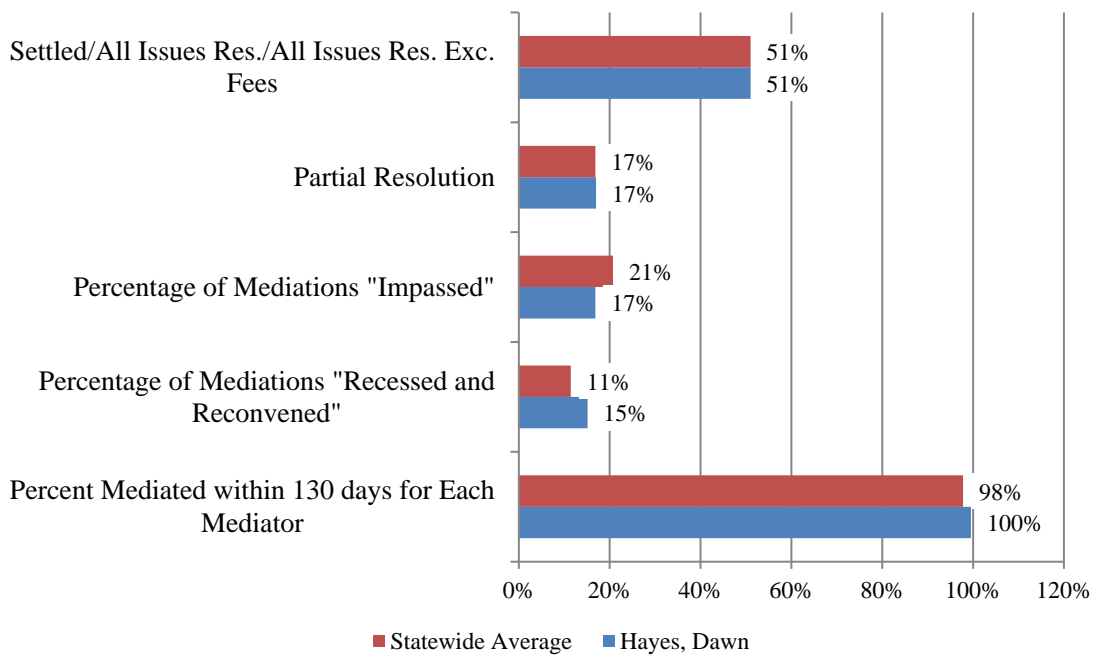
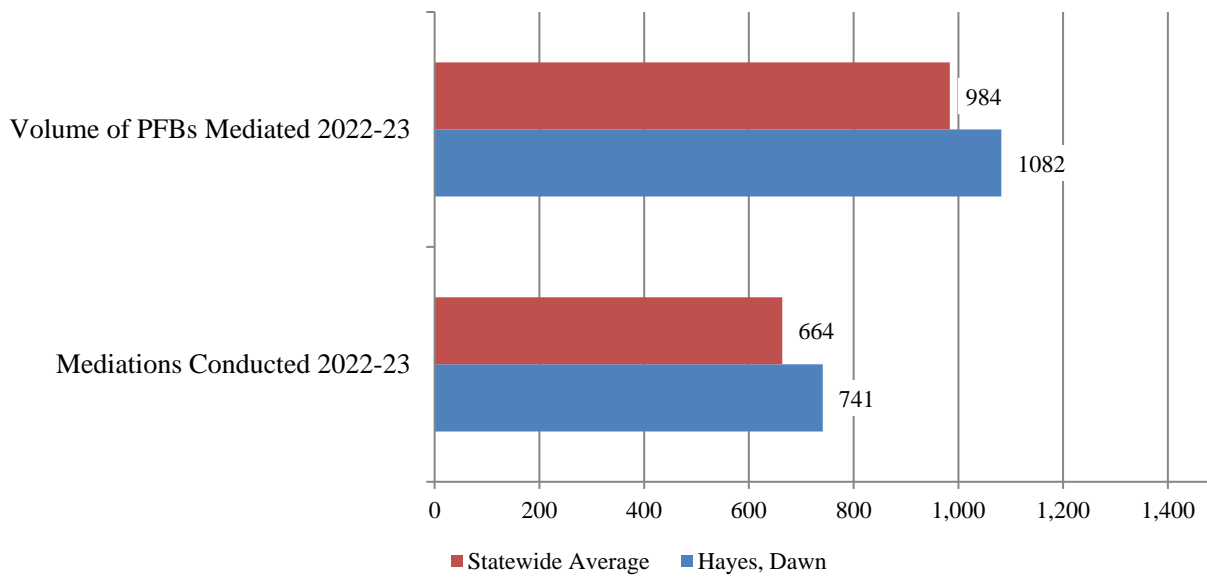




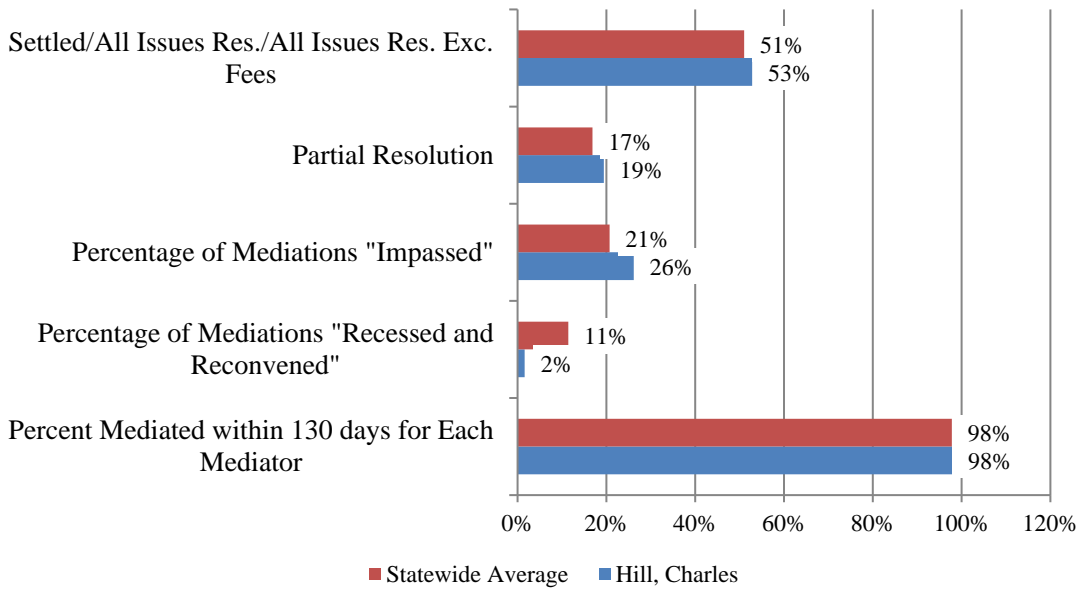
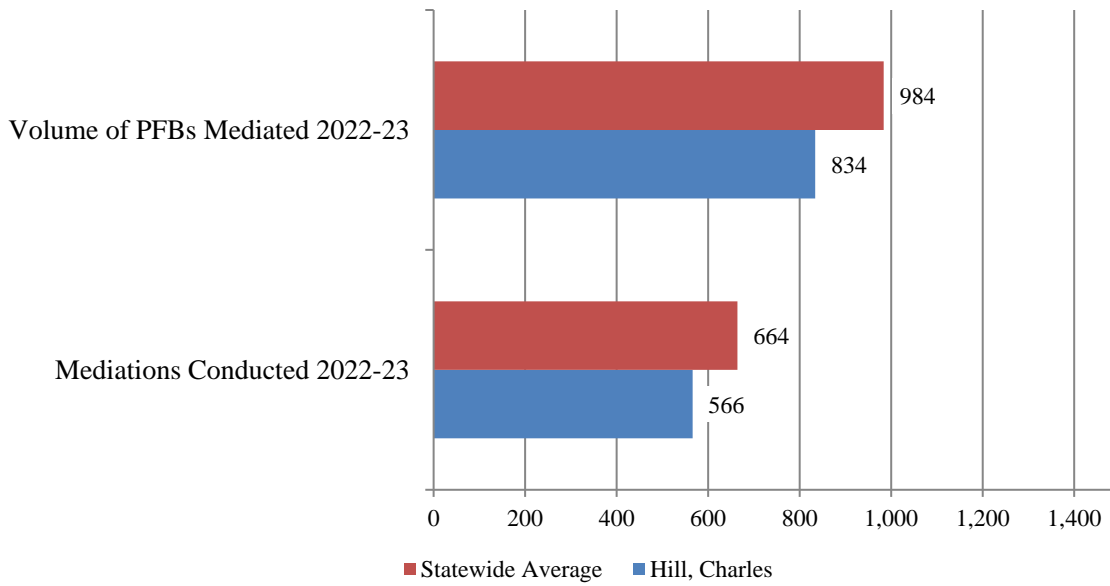




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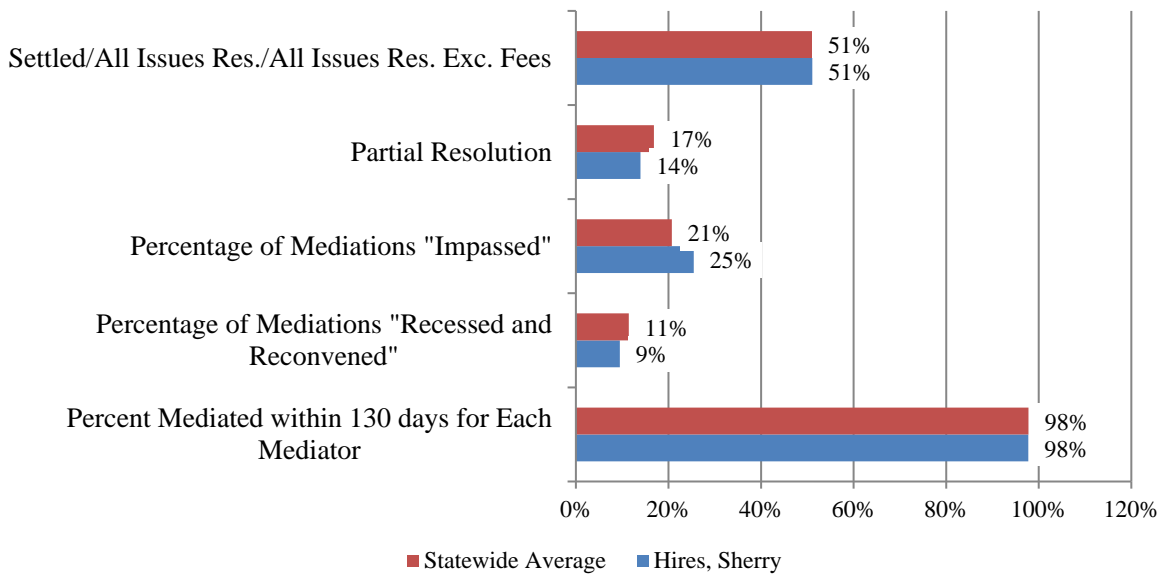
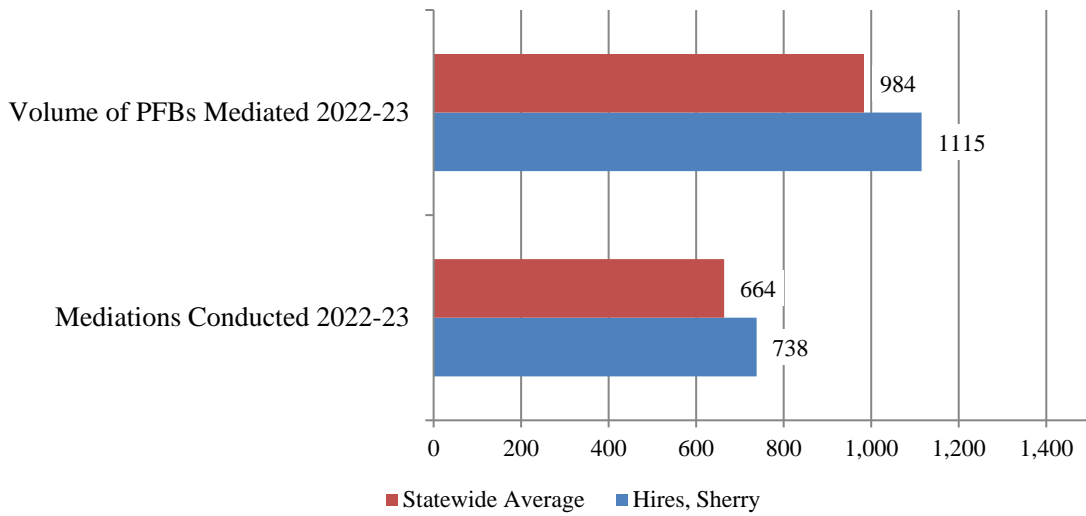


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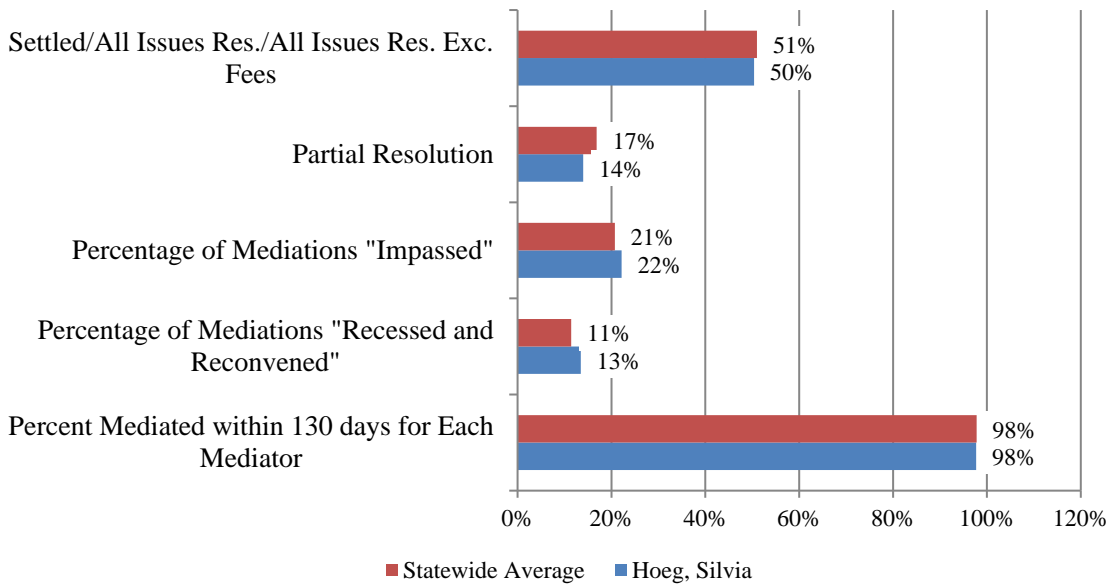
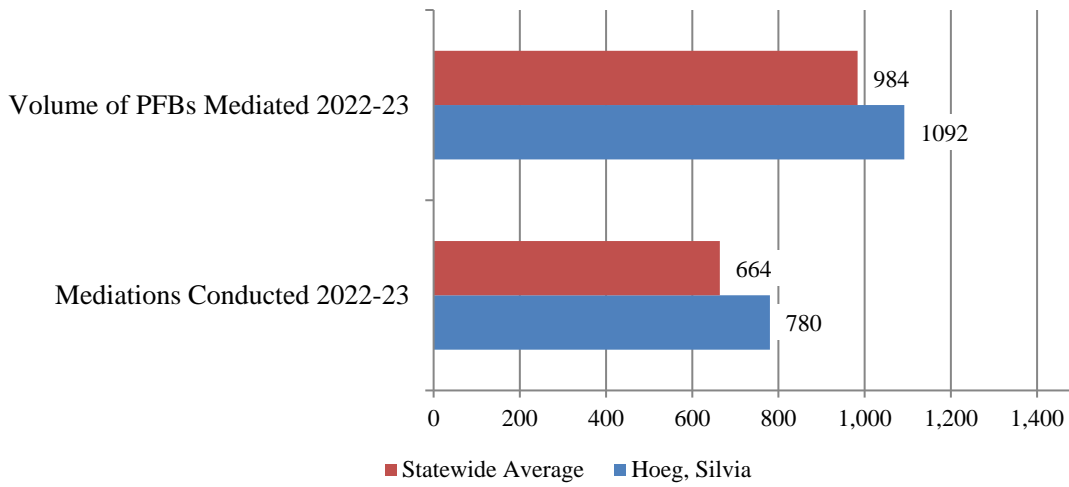


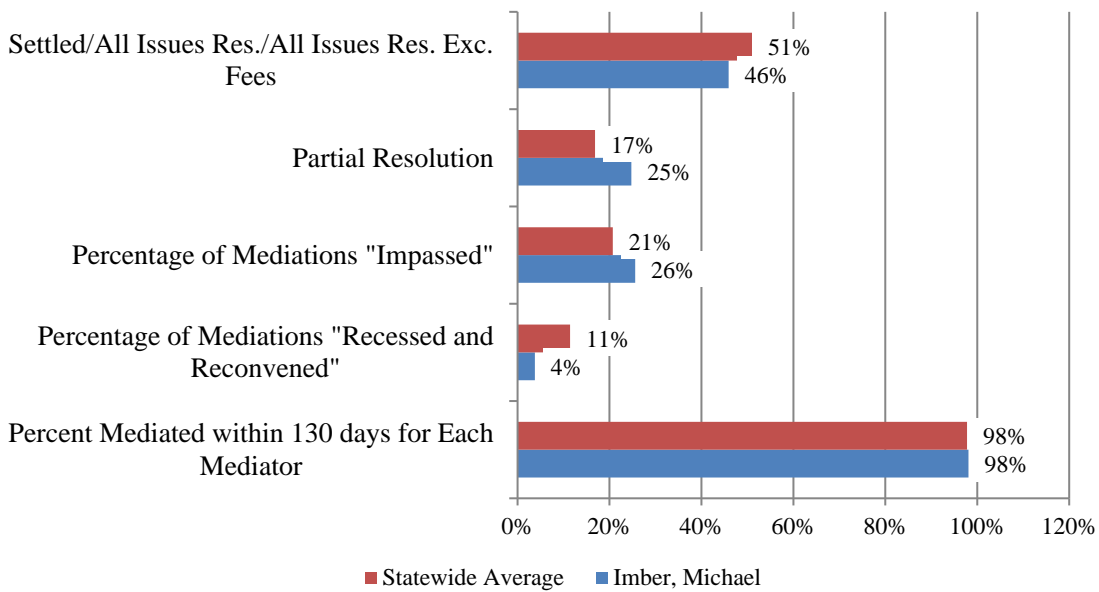
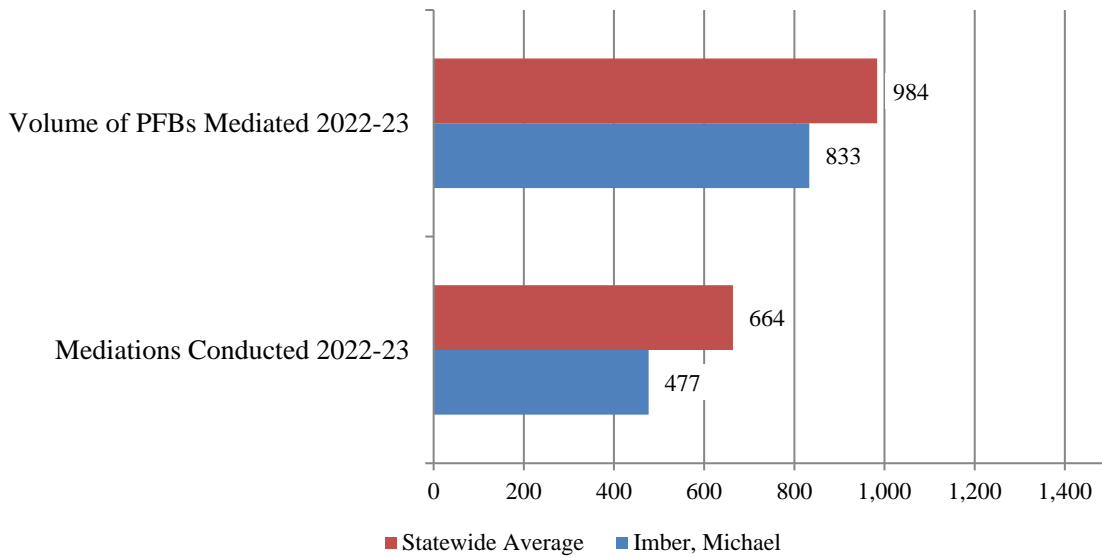


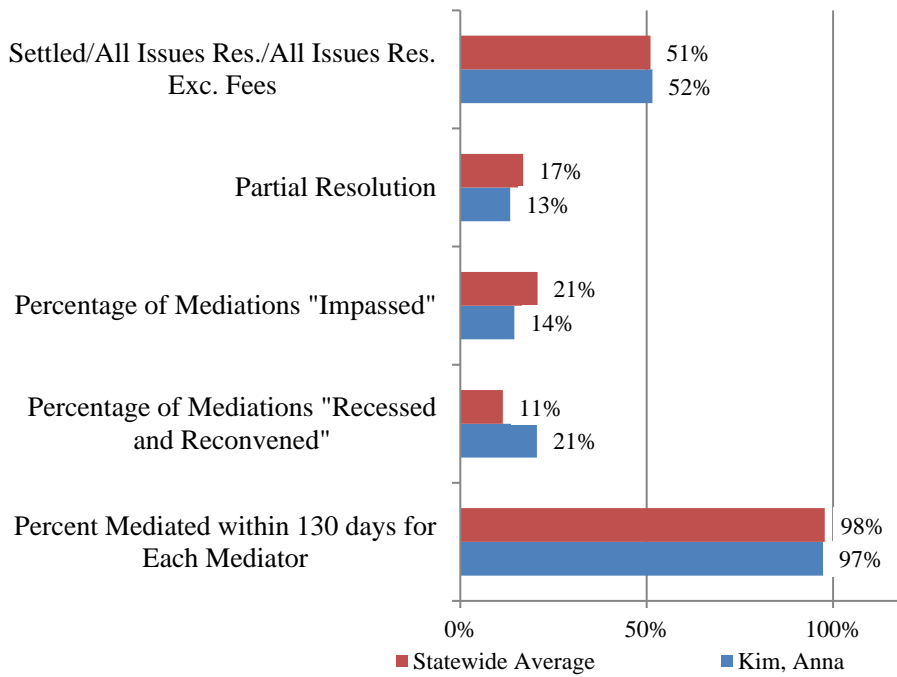
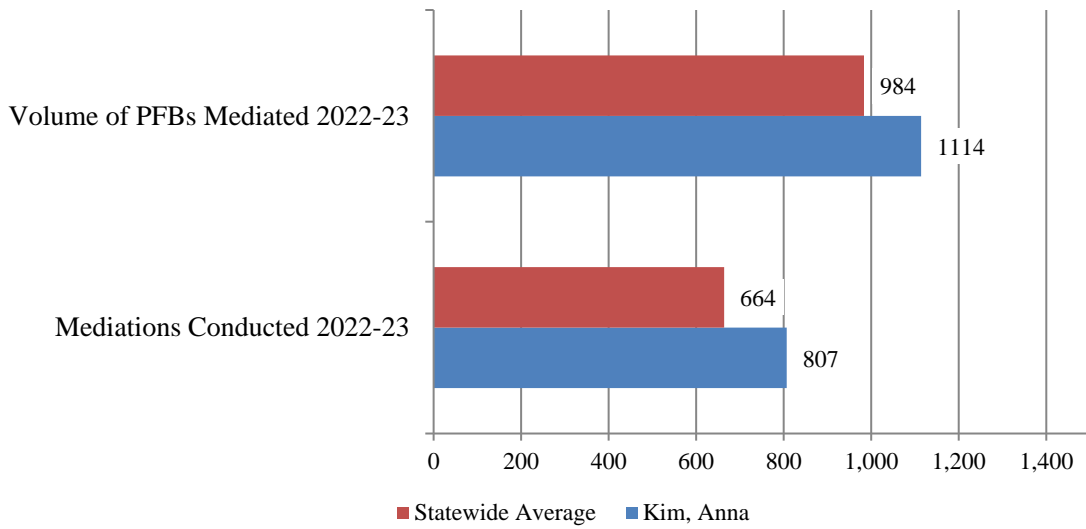
# Hires, Sherry



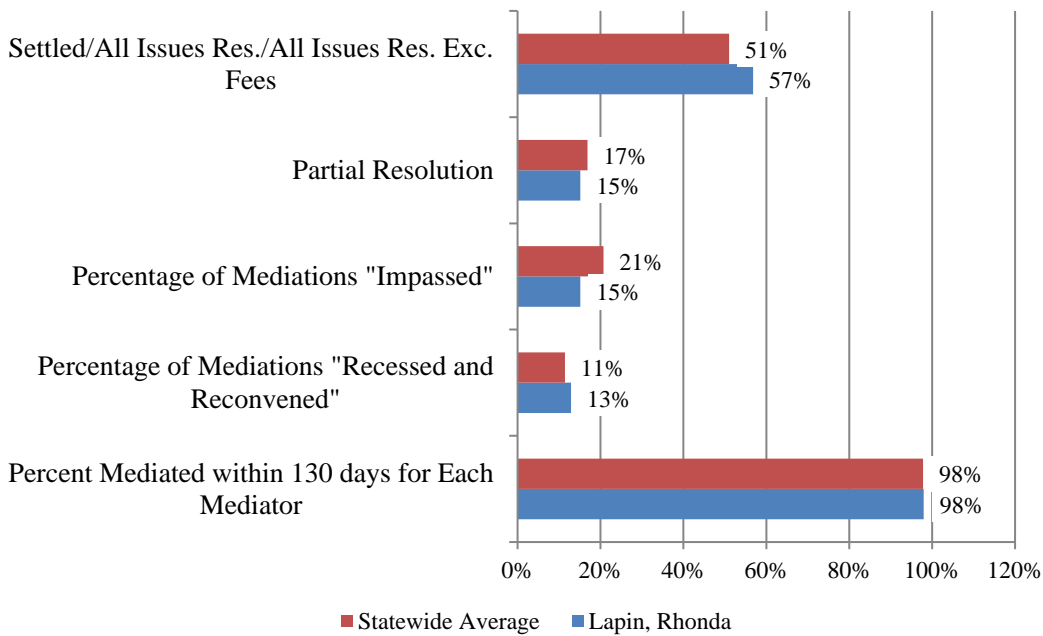
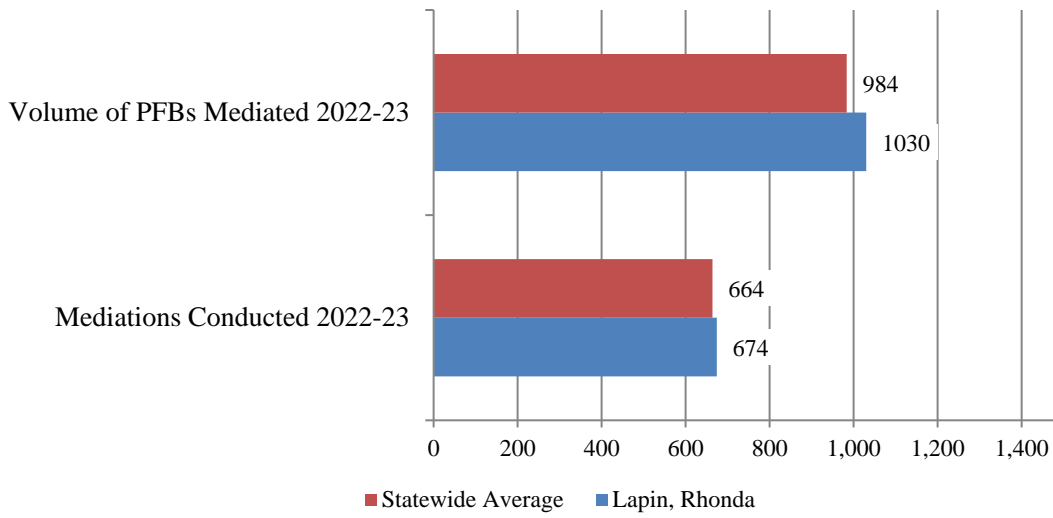
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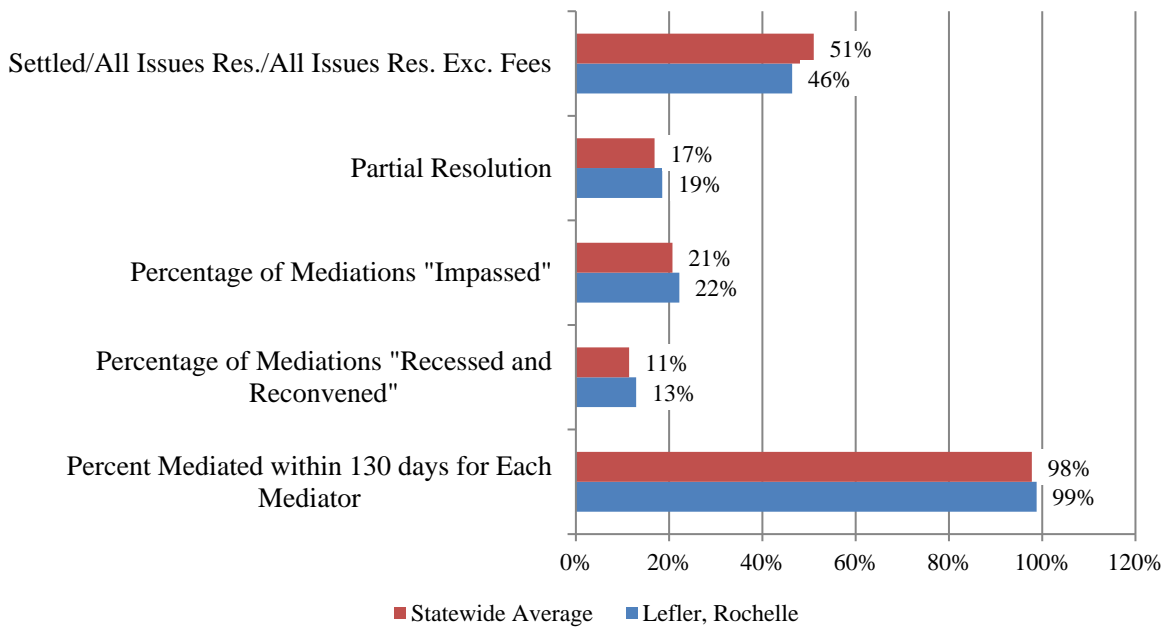
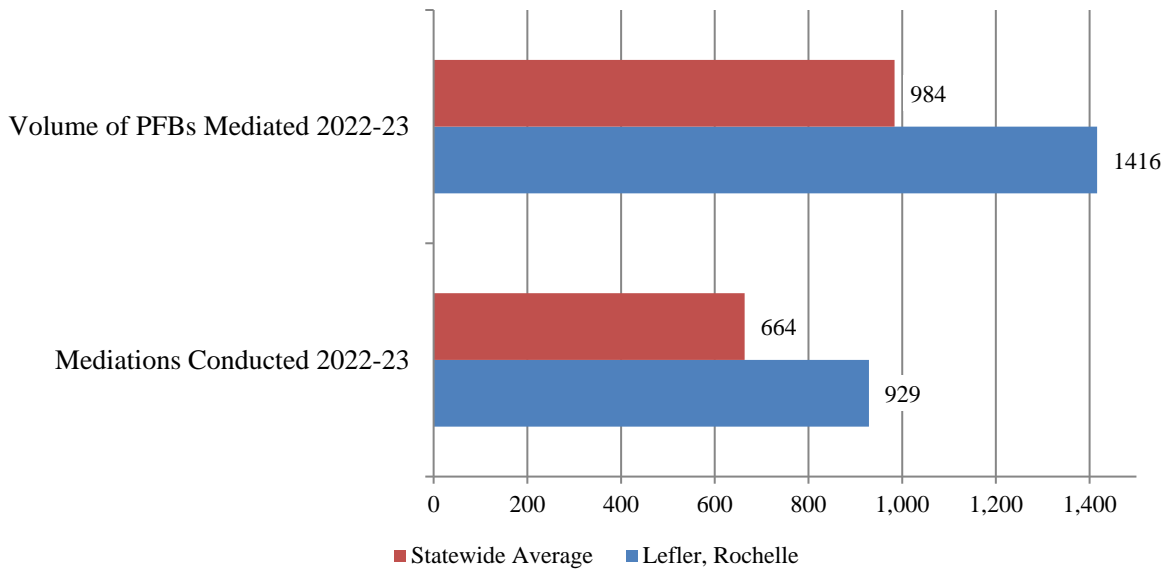




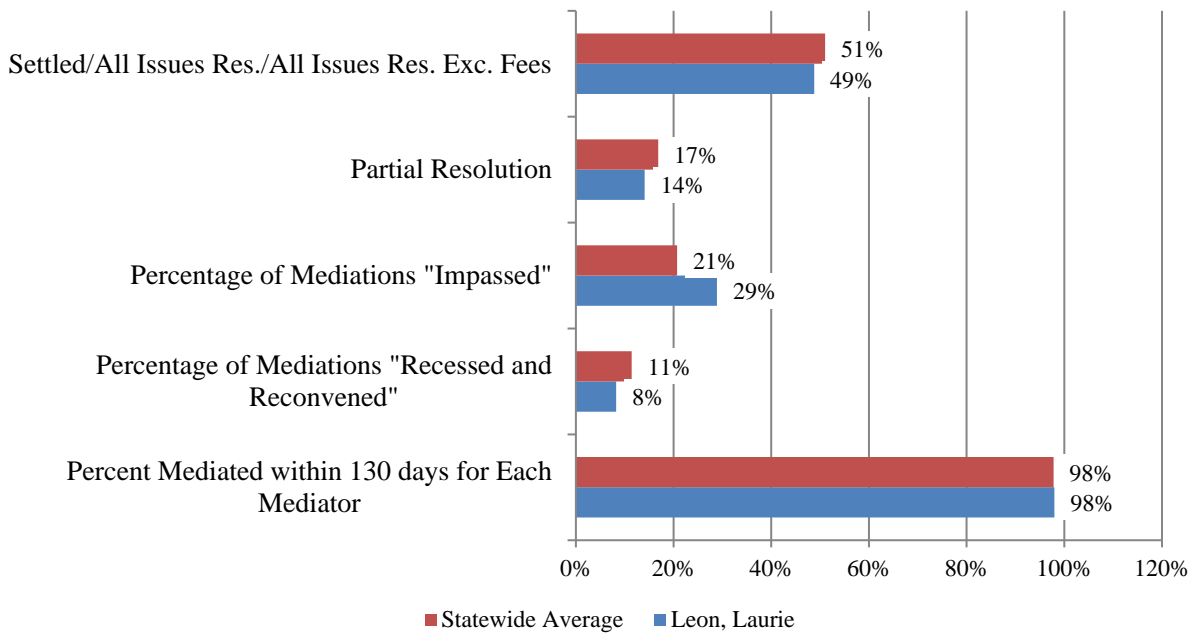
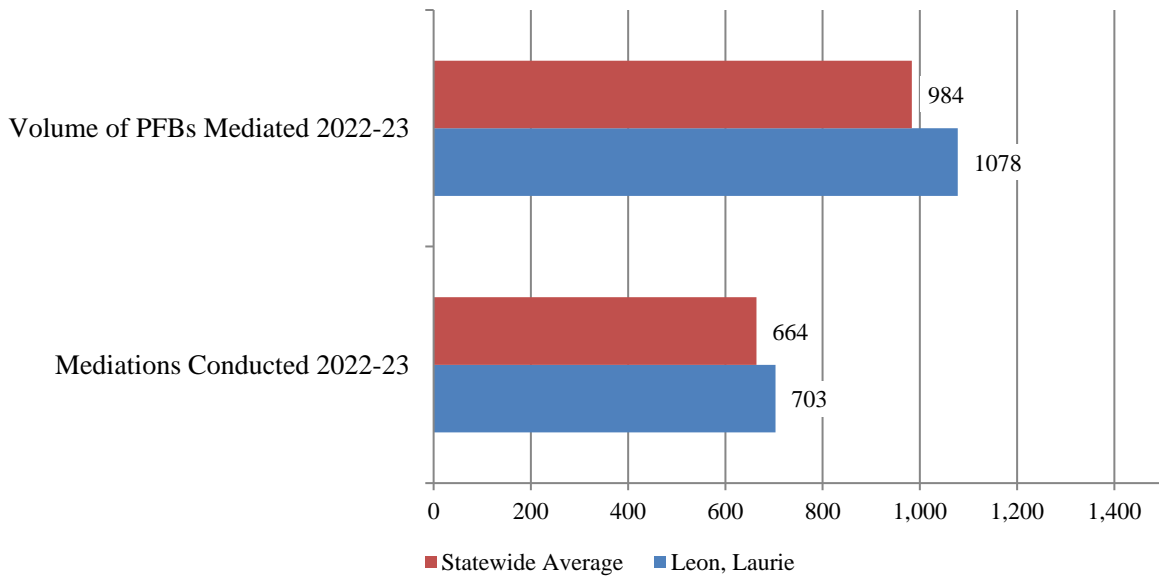


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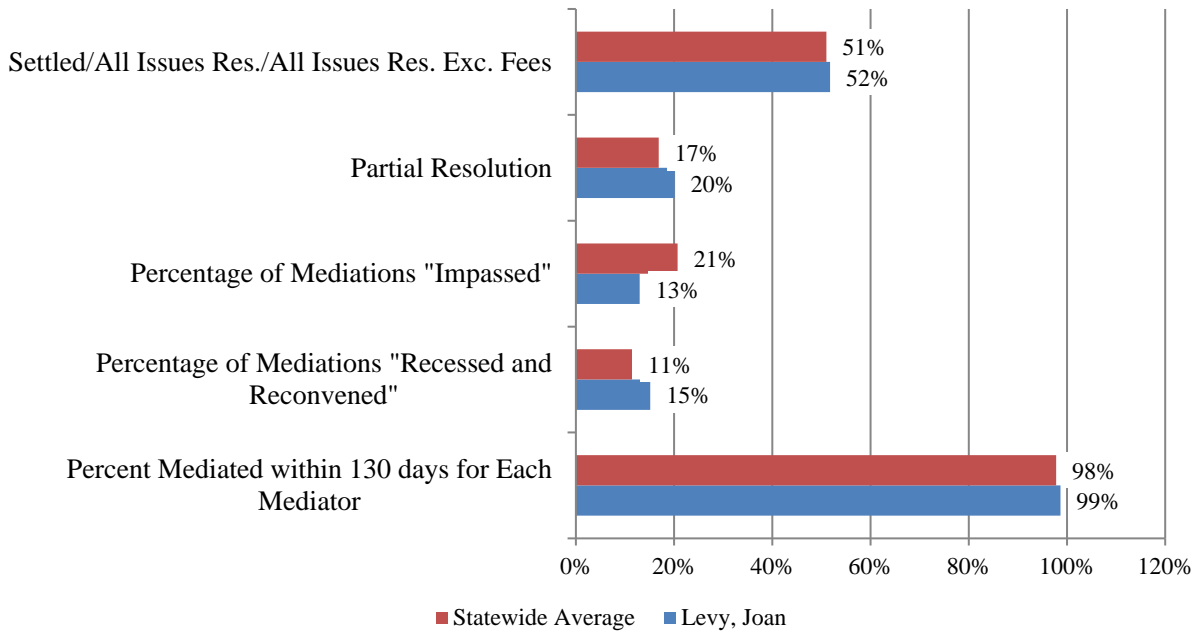
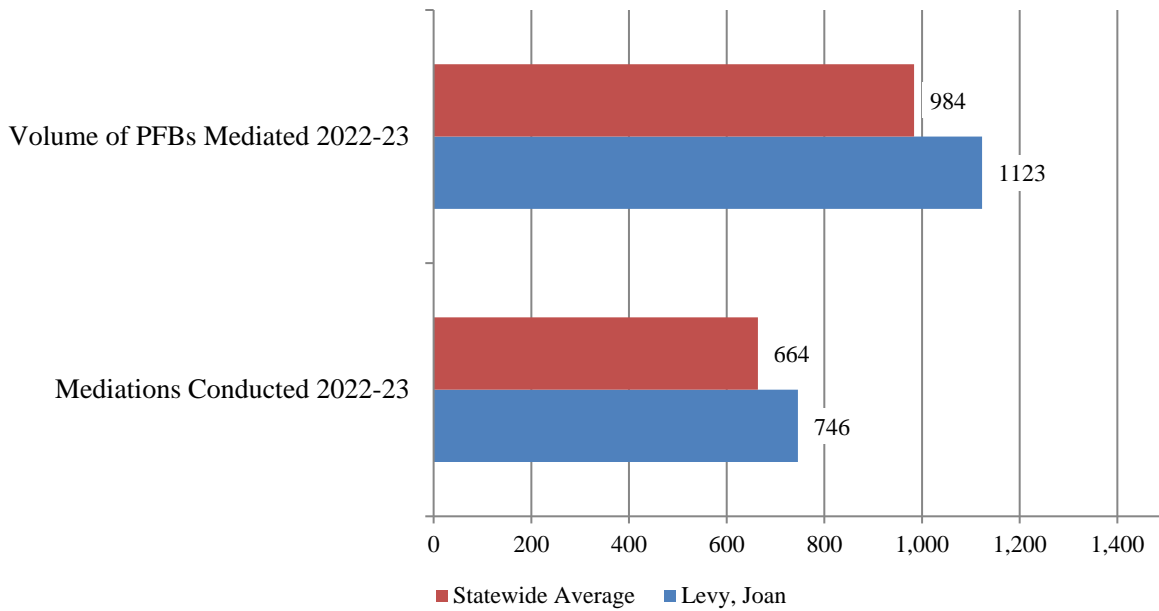




Leon, Laurie

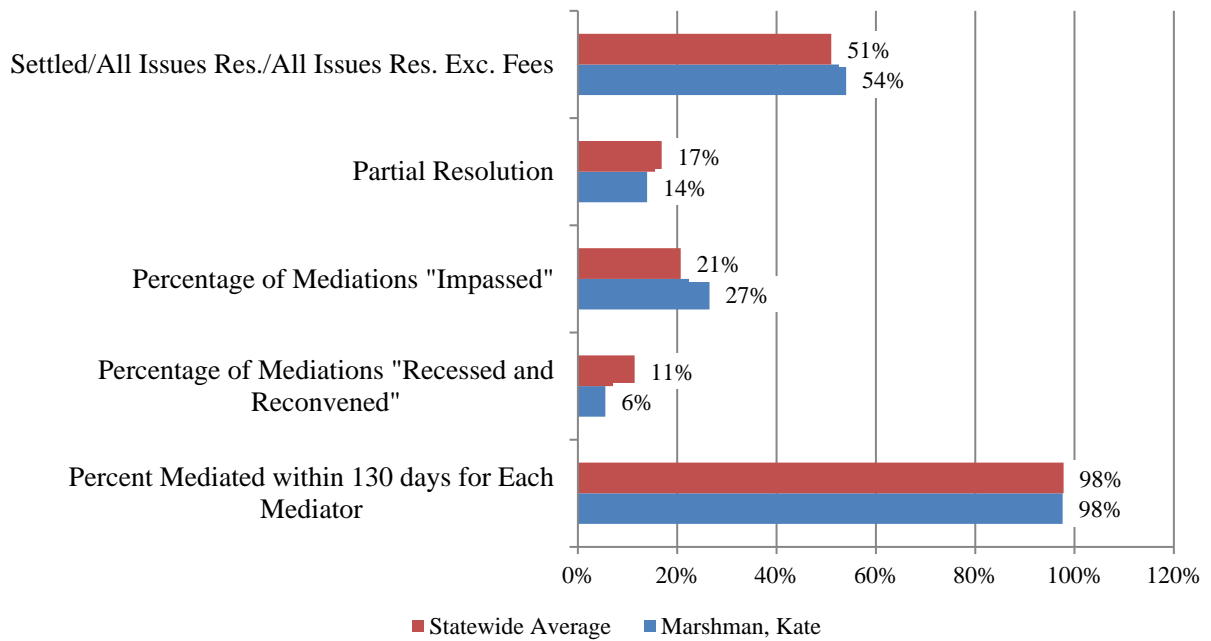
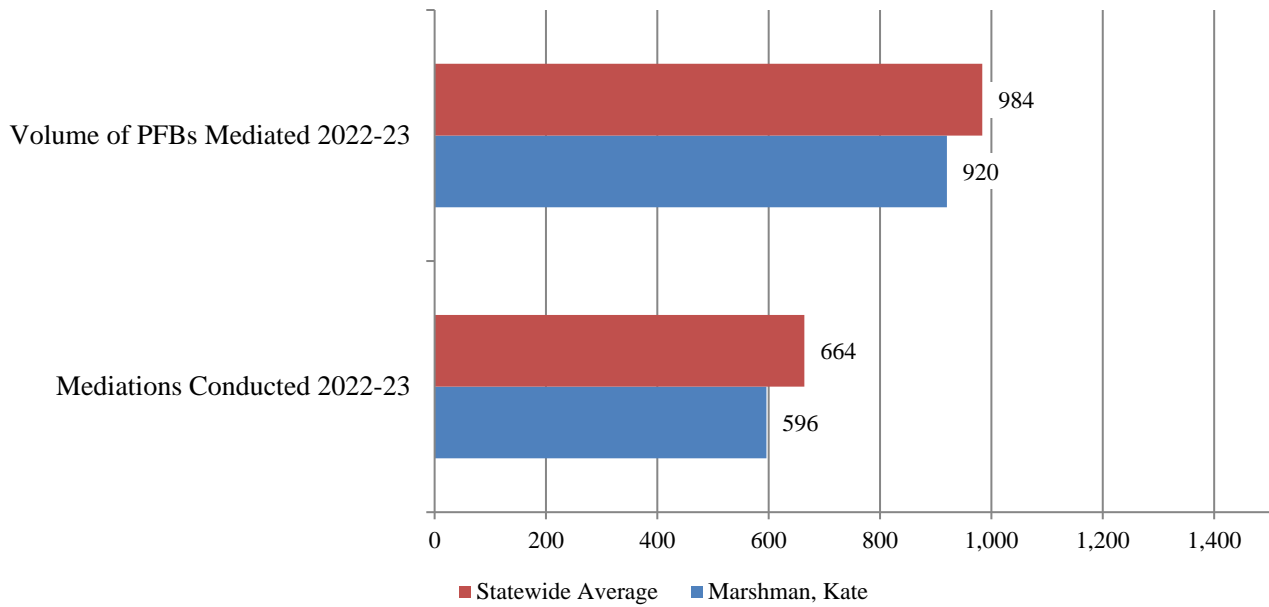


Levy, Joan

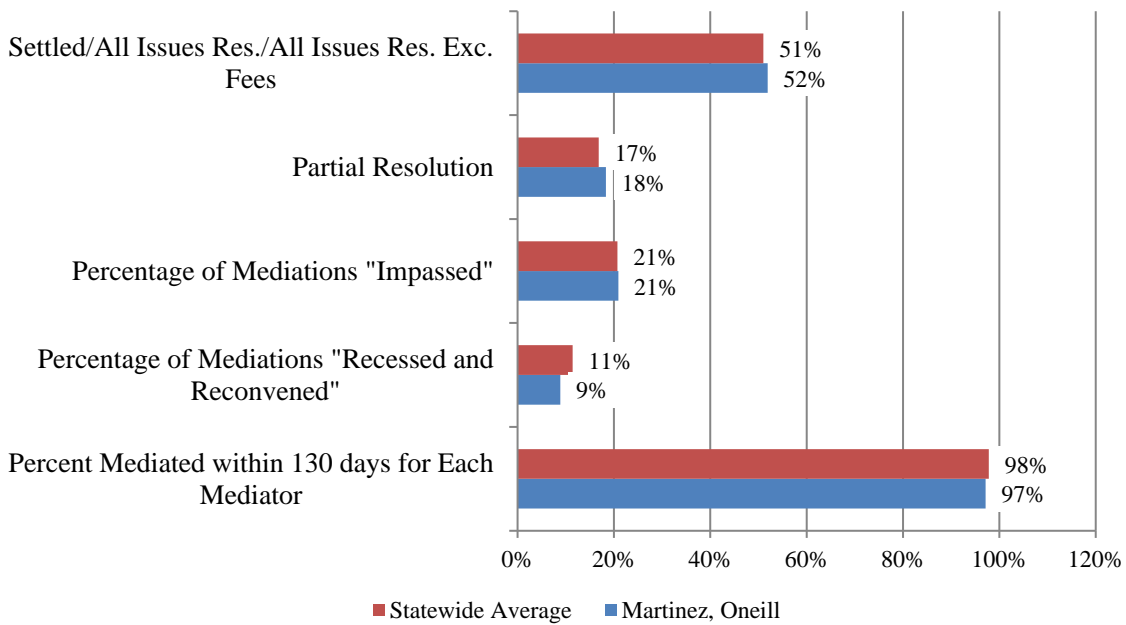
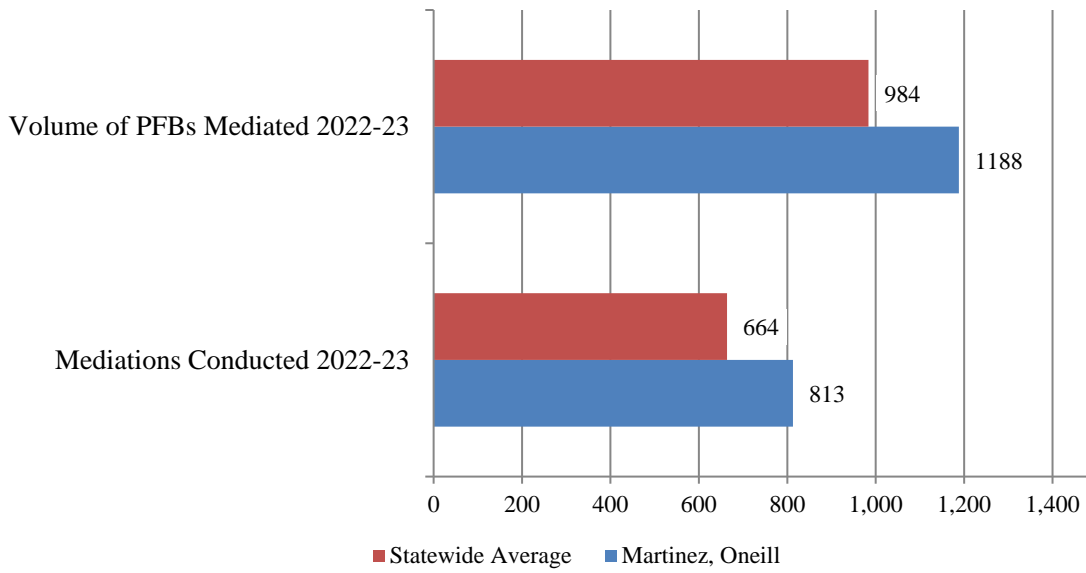




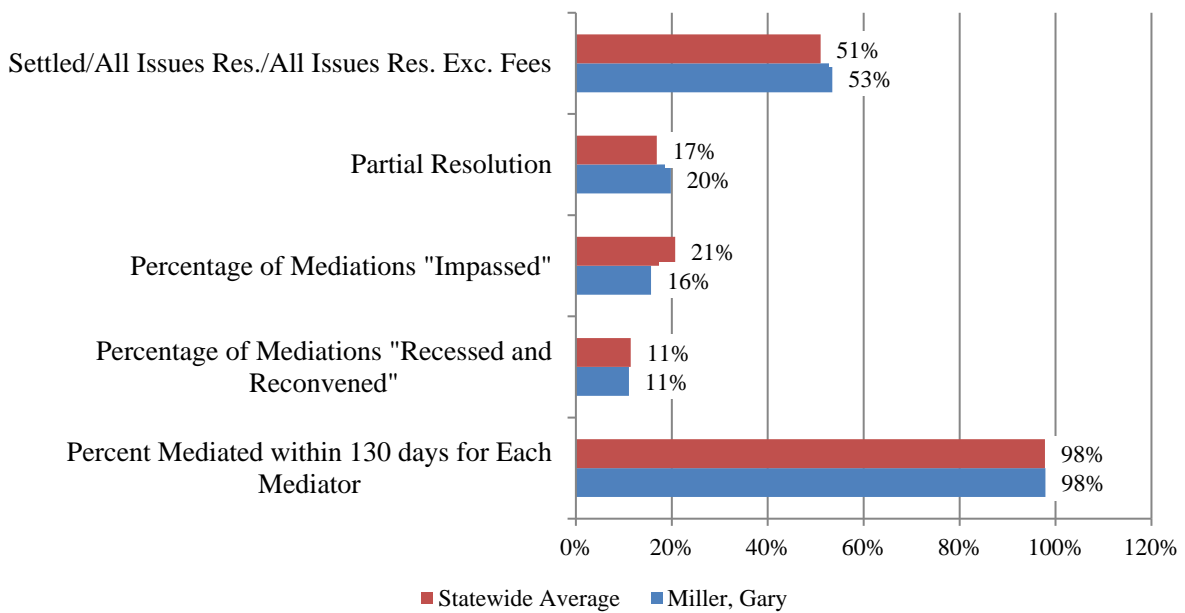
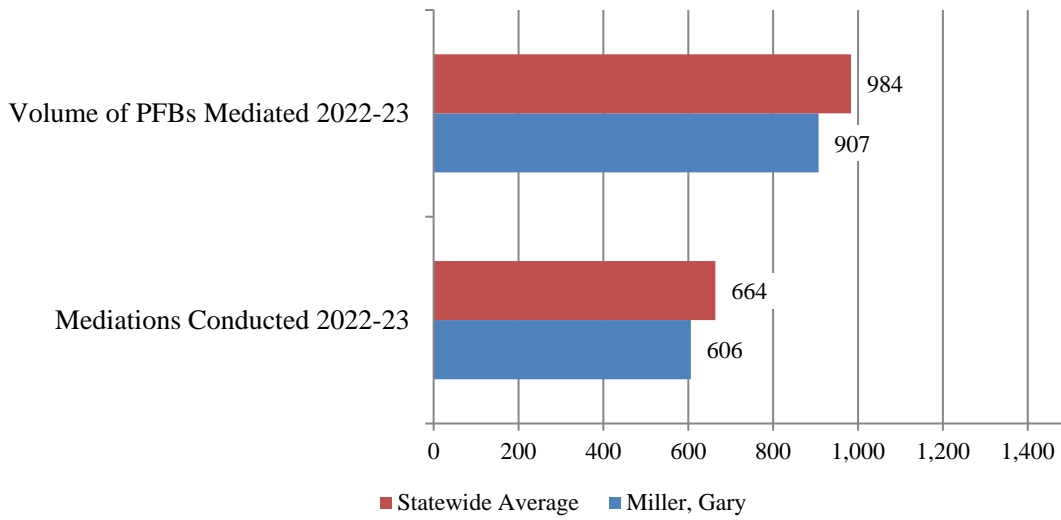
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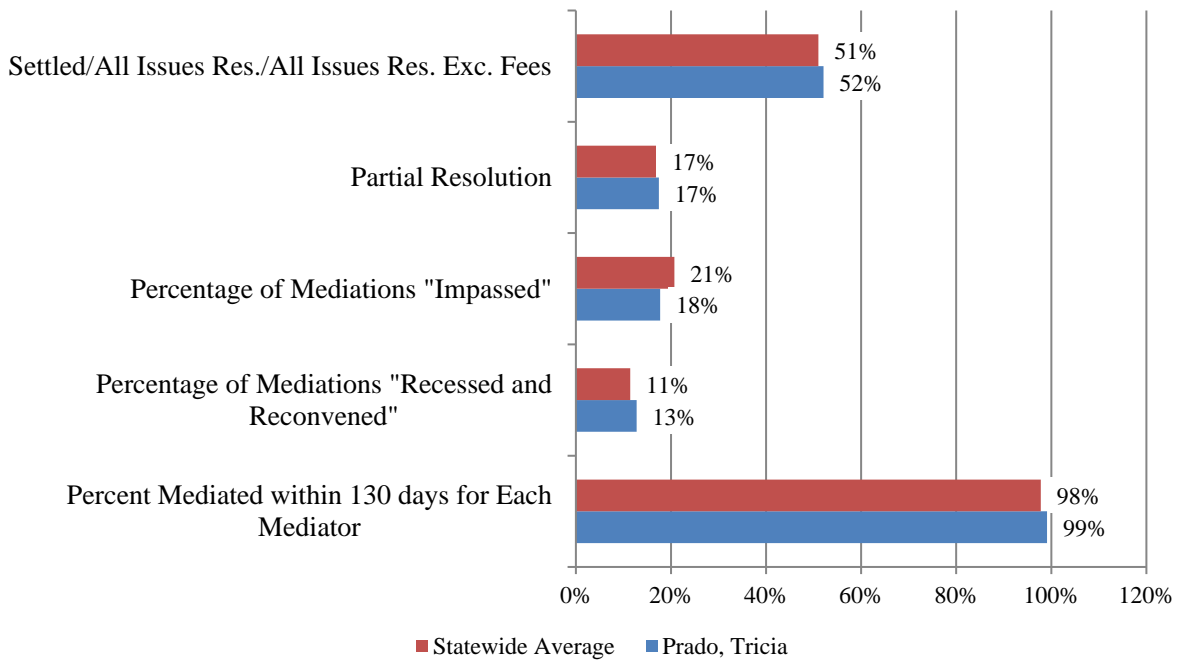
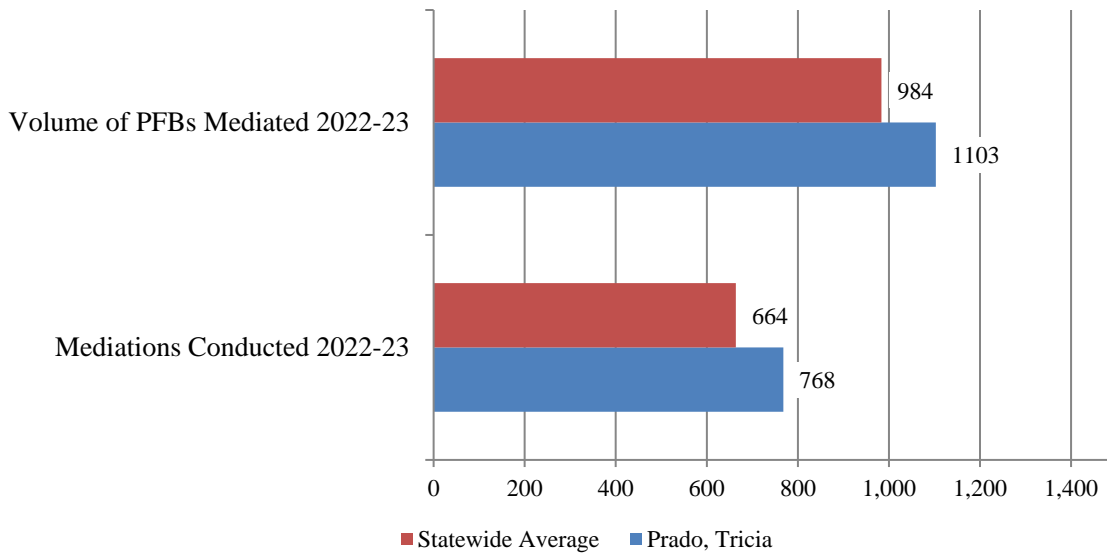


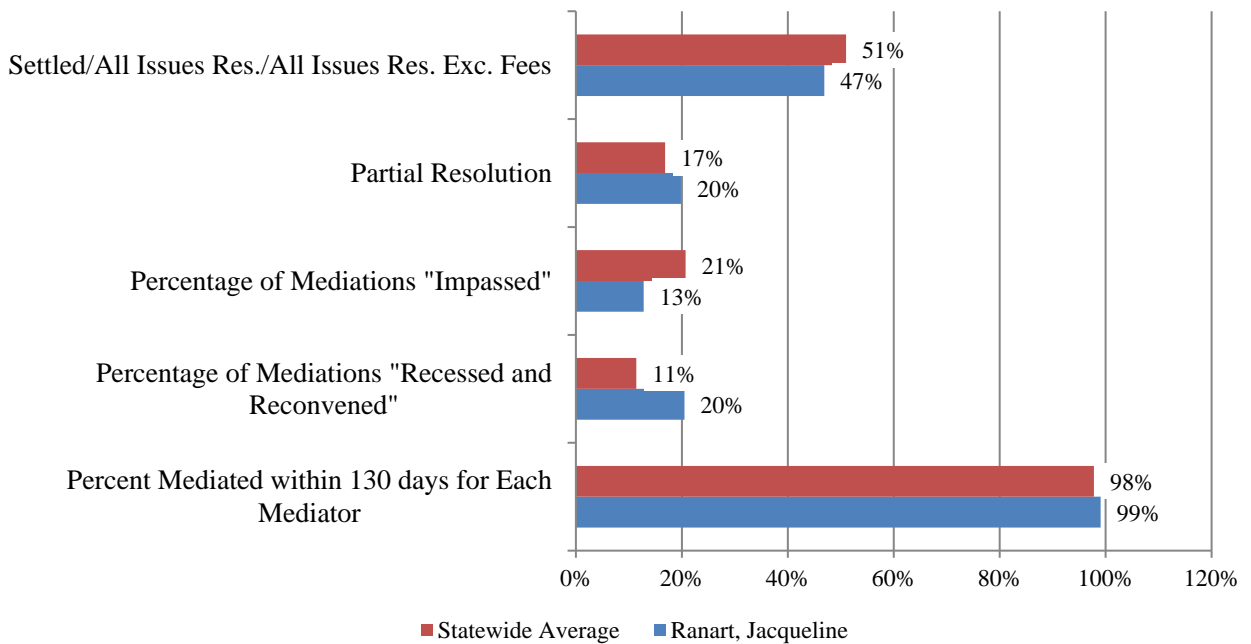
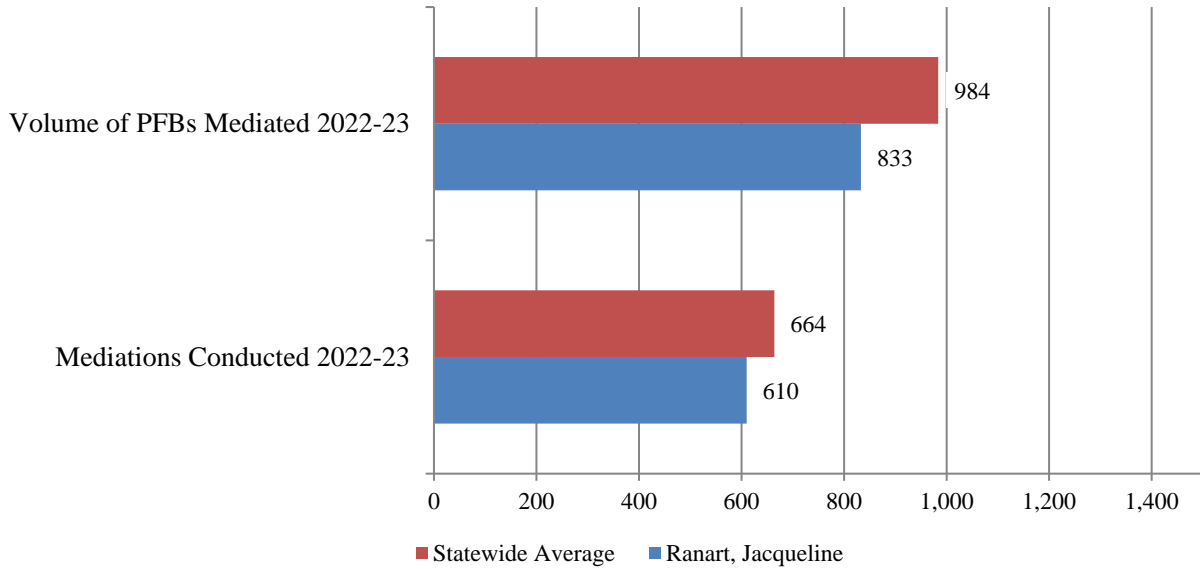
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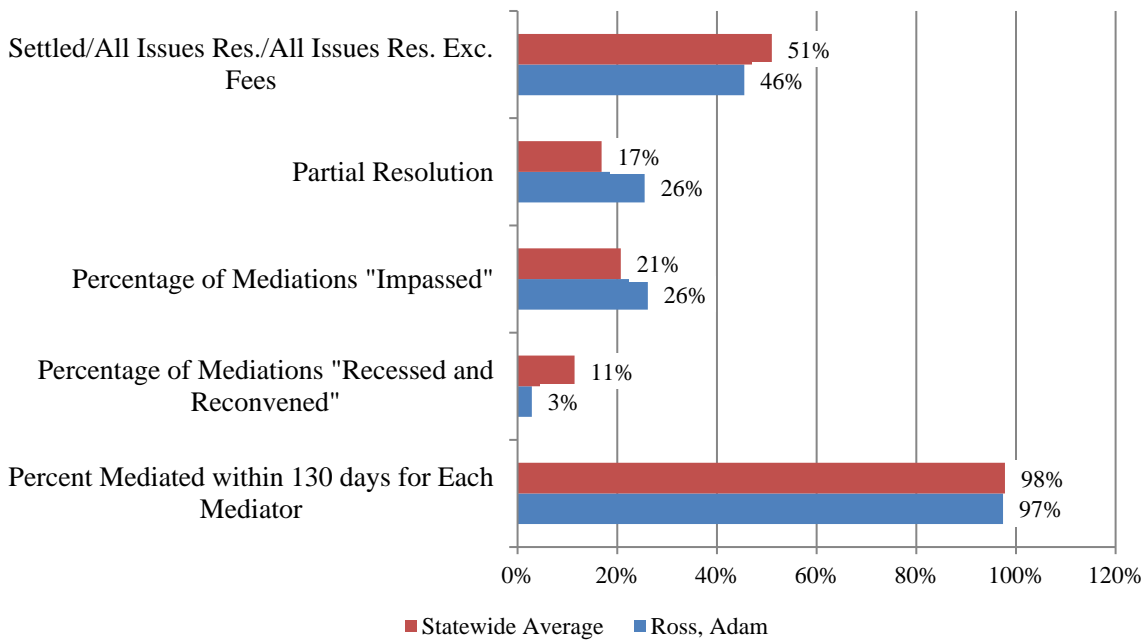
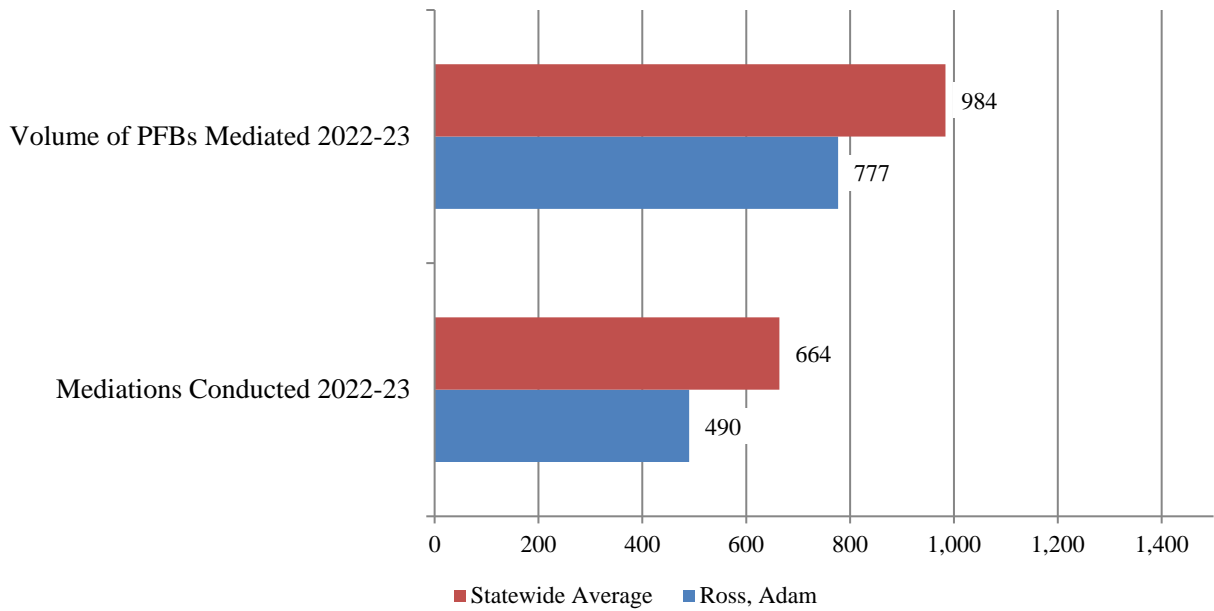
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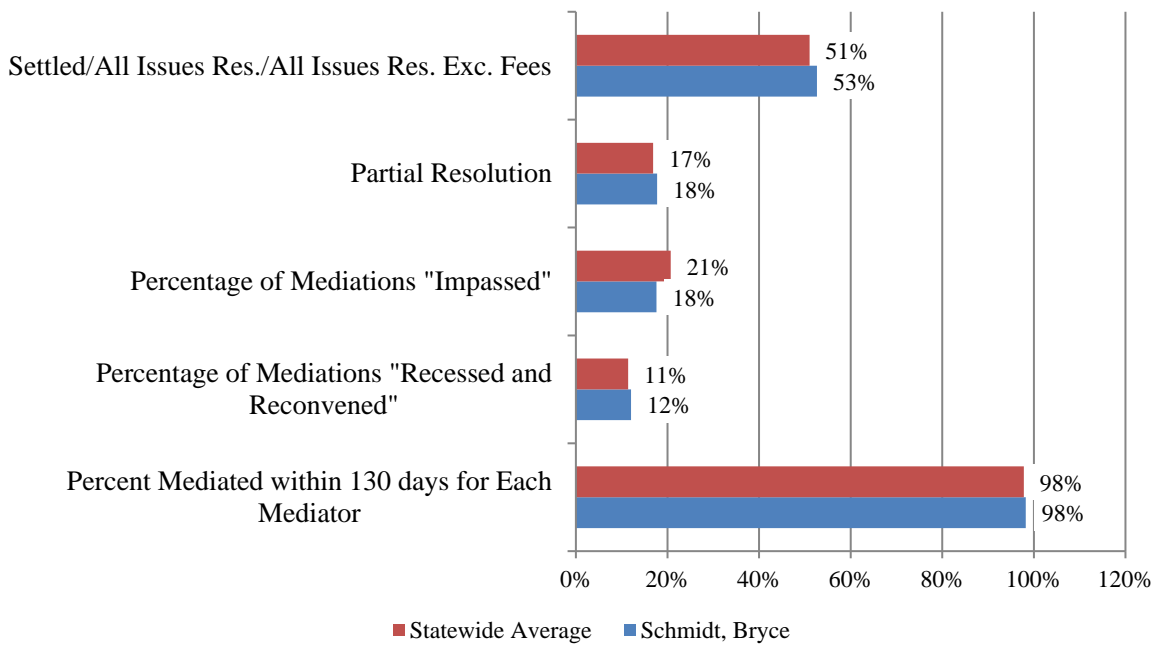
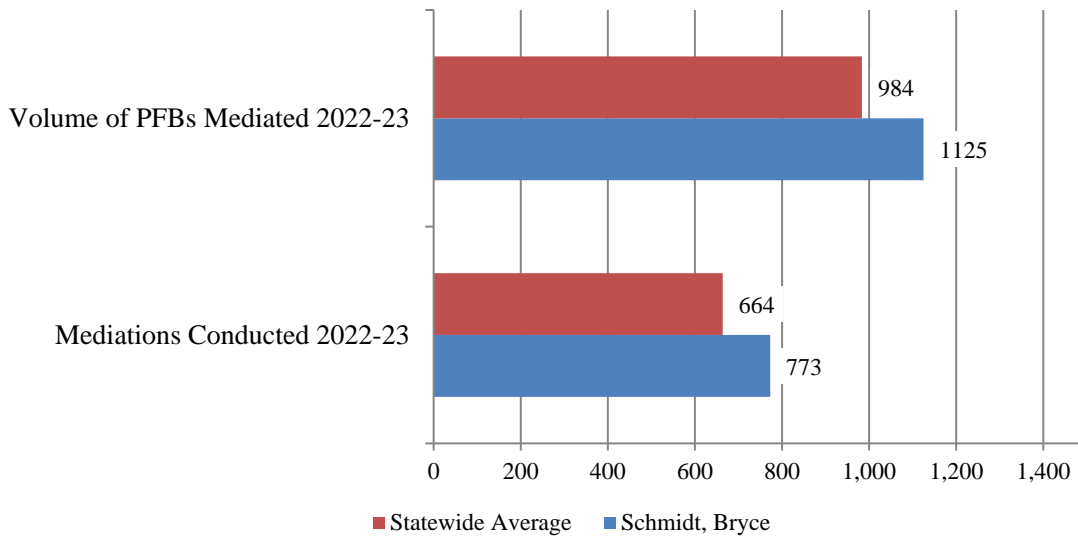




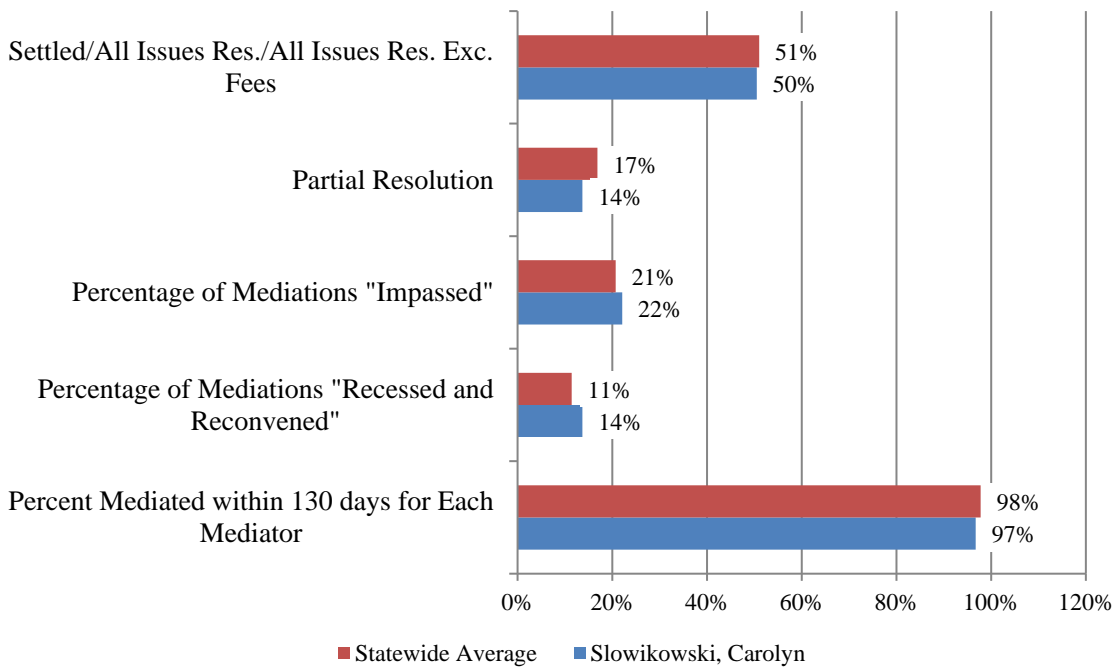
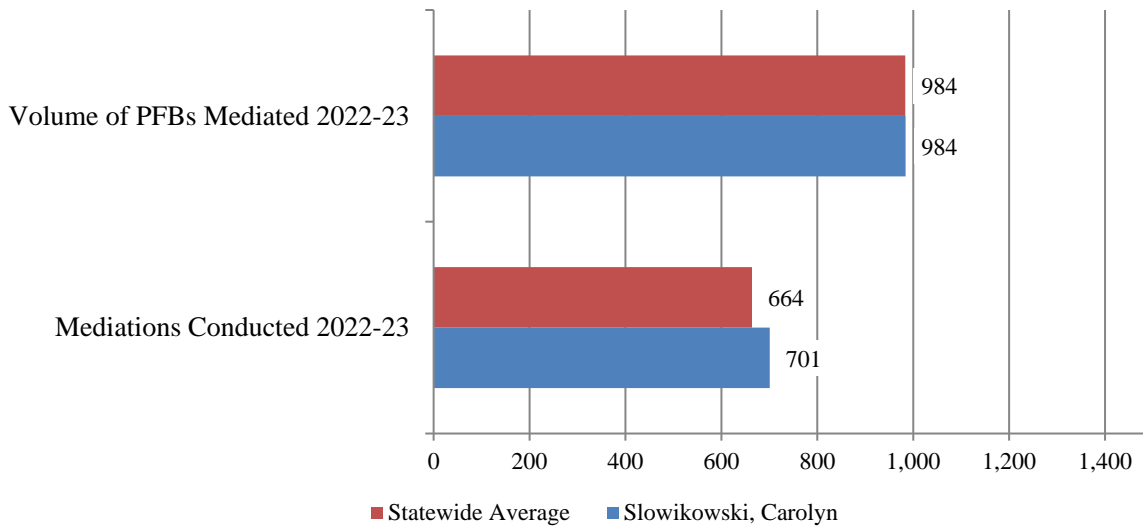
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# Schmidt, Bryce

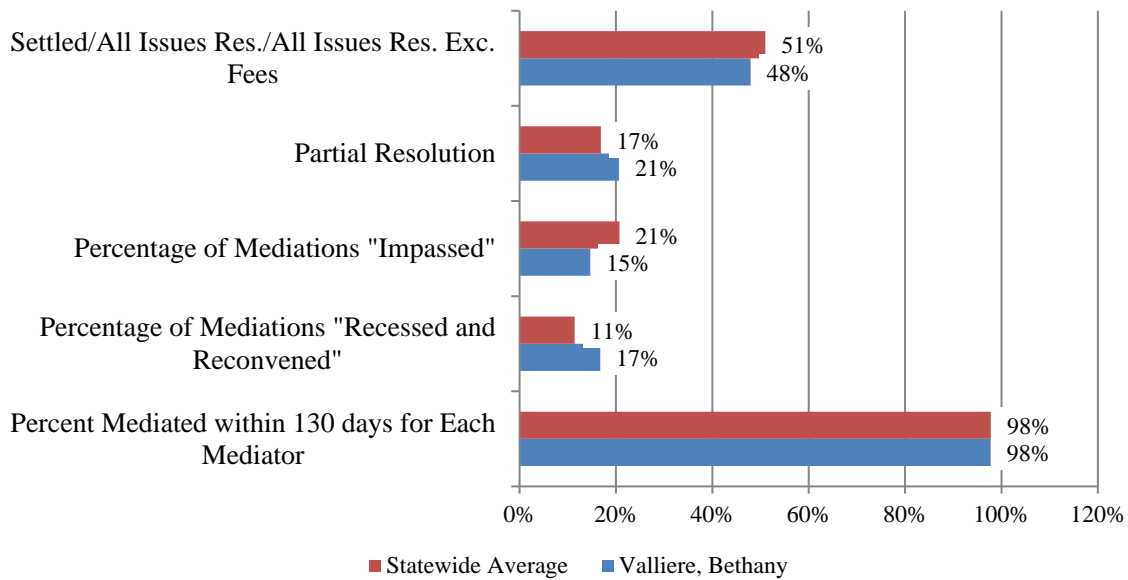
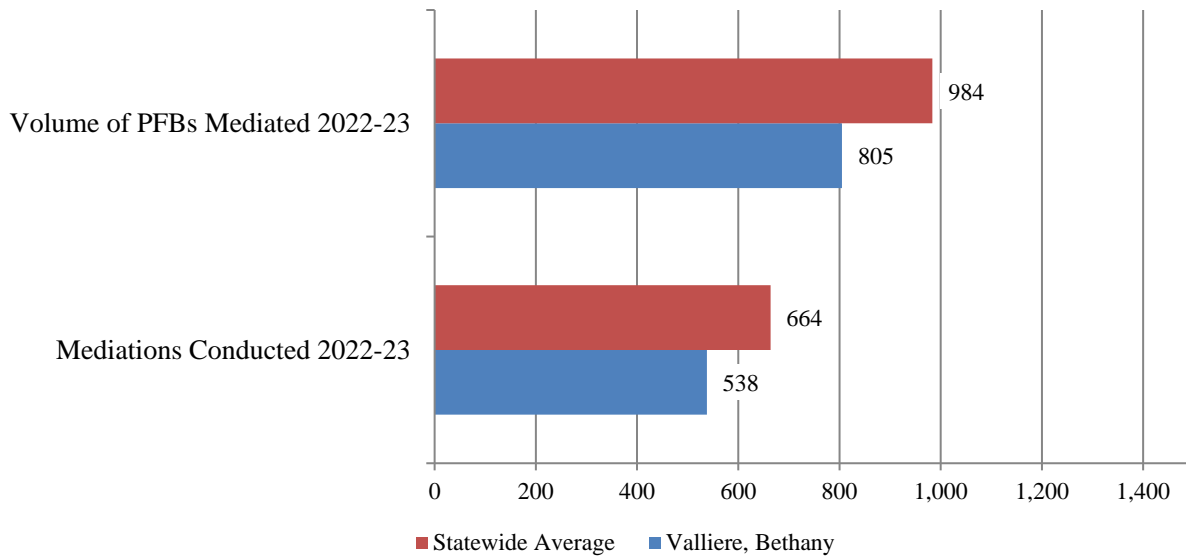


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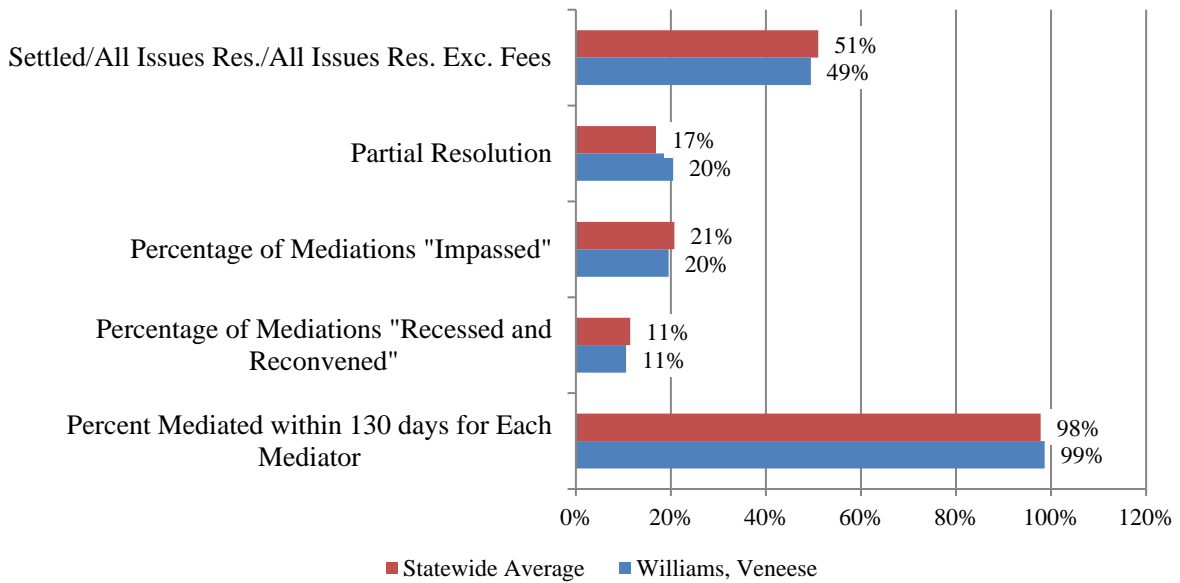
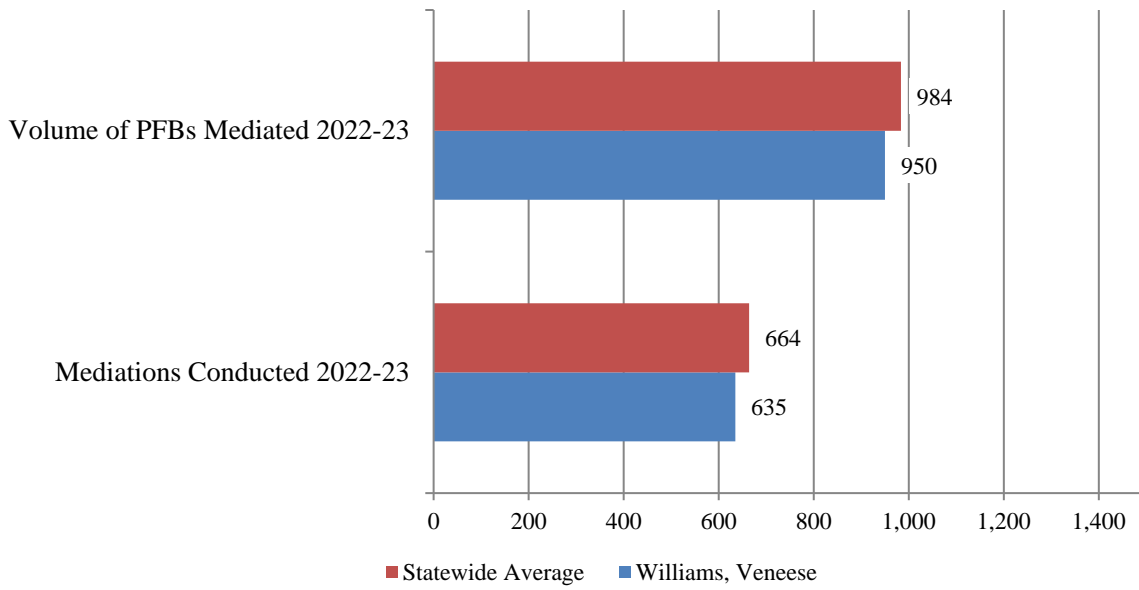




## Valliere, Bethany



# Williams, Venese



## Endnotes Mediation Report

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- <sup>1</sup> Alan Gordon retired effective December, 2022, after a long tenure at the OJCC. Mediator Leigh Dunham joined the OJCC February 6, 2023. This data is a conglomeration of these two.
- <sup>2</sup> Kahlil Day retired in May 2023. Mediator Elizabeth Gillham joined the OJCC on June 1, 2023.
- <sup>3</sup> Andrew Goshen was hired to return the OJCC mediator compliment to 30. He began February 16, 2023.
- <sup>4</sup> Mediator Tania Ogden resigned effective March 4, 2022. Mediator Ranart joined the OJCC September 19, 2022. These figures represent approximately  $\frac{3}{4}$  of the fiscal year.
- <sup>5</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>6</sup> There are a variety of other benefits that could also be claimed. For example, 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>7</sup> Section 440.25(1) Florida Statutes. The mandate compels attendance and attention to the mediator's description of the mediation process. No party is compelled to participate beyond that. Discussion and resolution of issues and case(s) are discretionary with the parties.
- <sup>8</sup> Waiver is available through order of the Deputy Chief Judge, (§ 440.25(2), Fla. Stat.)
- <sup>9</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>10</sup> 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 Tampa position has remained vacant since.
- <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 each 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> *See* note 4.
- <sup>15</sup> *See* note 3.
- <sup>16</sup> *See* note 1.
- <sup>17</sup> *See* note 2.
- <sup>18</sup> In 2021-22, the following offices were closed: Melbourne – consolidated into Orlando and Daytona; Port St. Lucie - consolidated into District WPB; Lakeland – consolidated into District TPA; In 2022-23, the following offices were closed: Panama City – counties consolidated into Districts PNS and TLH; Daytona Beach – consolidated into District ORL; Sarasota – consolidated into District SPT; Gainesville – consolidated into JAX; Tallahassee – consolidated into the overall DOAH facilities.
- <sup>19</sup> These are detailed in the *2021-22 OJCC Annual Report*.
- <sup>20</sup> District Office closures in 2023-24 began in September, 2022 and continued through the first half of the fiscal year. By year end, the closures had concluded, *see* endnote 13.
- <sup>21</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>22</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>23</sup> David W. Langham, *Fla. Work. Comp.; History, Evolution, and Function*, 2023, Chapter 80.
- <sup>24</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. 1st DCA 2013).
- <sup>25</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>26</sup> *Patco Transp., Inc. v. Estupinan*, 917 So. 2d 922 (Fla. 1st DCA 2005).
- <sup>27</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>28</sup> Section 440.20(11)(a), Fla. Stat.

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- <sup>29</sup> Even though § 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 § 440.45(1)(a), Fla. Stat.
- <sup>30</sup> Available from 2010 to present on the OJCC website, <https://www.fljcc.org/JCC/publications/>, under the “reports” tab.
- <sup>31</sup> The current compliment is 30 mediators, with approximately 240 working days per year (52 weeks, or 260 days, minus 10 holidays and two week’s vacation equates to close to 48 weeks or 240 days). Dividing the 19,917 by 30 mediators yields an average mediation volume of 664 mediations per mediator. Dividing that by the approximately 240 working days yields a total of 2.76 (“3”) mediations per day in 2021-22 compared to an average of 289 in 2021-22.
- <sup>32</sup> Section 440.192(1), Fla. Stat.
- <sup>33</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>34</sup> *Supra*, endnote 7.
- <sup>35</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>36</sup> *Supra*, endnote 1.
- <sup>37</sup> *Supra*, endnote 2.
- <sup>38</sup> *Supra*, endnote 3.
- <sup>39</sup> *Supra*, endnote 4.