

The Effects of Stress & Remote Work on Mediation: Part Two

ABI Mediation Committee

May 26, 2022

Panelists

- Moderator: Hon. Judith K. Fitzgerald (ret.) of Tucker Law in Pittsburgh
- Connor Bifferato of The Bifferato Firm in Wilmington
**introduction of Dr. Rabin at ABI Annual Spring Meeting*
- Judith Elkin of Pachulski Stang Ziehl & Jones in New York
- Michael J. Riela of Tannenbaum Helpert Syracuse & Hirschtritt LLP in New York
- Emily Wall of Cavazos Hendricks Poirer, PC in Dallas

Why We're Here Today

- Mediators are akin to psychologists, using skills of diplomacy and psychology to attempt to bring divergent people to a consensus.
- At the ABI's Annual Spring Meeting, Dr. Bruce Rabin discussed how nearly two years of remote work has taken a psychological toll on people.
- For the legal practice in general and mediation in particular, the toll of remote work has impacted everything from how we do business and how we relate to legal adversaries to how both mediators and mediation parties interact with each other and make decisions.
- To follow up on Dr. Rabin's presentation, the Mediation Committee introduces this webinar to further discuss the impacts and pros and cons of remote mediation.

The Effects of Stress & Remote Work on Mediation: Part Two

- Dr. Bruce Rabin: retired January 2017 as Professor of Pathology at the University of Pittsburgh and Medical Director of the Division of Clinical Immunopathology and the Healthy Lifestyle Program for the University of Pittsburgh Medical Center
- Dr. Rabin discovered early on that stress - a variable in every person's life - exerts a profound influence on the human health. And, from that point forward, his work focused on the effects of stress and the pathways of communication between the brain and the body - the mind/body connection.
- Equally important to his research, he has been instrumental in moving science and research to real-world application by developing programs designed to help people identify, learn and adhere to behaviors that will maintain their wellness and lower their risk of developing serious and potentially life-threatening conditions and diseases.
- As a result of his work, people of all ages, socioeconomic levels, educational backgrounds and lifestyle - are learning more about how to more effectively cope with the stress in their lives; new approaches to disease have been understood; mind-body connections are more widely and universally recognized; and innovative approaches to health care management have emerged.
- His research has yielded more than 300 publications, and his research laboratory has trained over 50 young scientists who are making their own contributions to medicine- which he once described as his single-most significant accomplishment.
- Dr. Rabin has been quoted extensively on the topic of stress by the New York Times, Los Angeles Times, USA Today, Chicago Tribune, Pittsburgh Post-Gazette and Pittsburgh Tribune-Review. He has also been featured in national magazines including, Prevention, Self, First for Women, Redbook, Woman's Day, Health, Harper's Bazaar and Glamour.

Learning Objectives

- Participants will learn how stress impacts decision-making in mediation.
- Participants will evaluate pros and cons of remote mediation.
- Participants will explore and consider the variety of new skills mediators learned to adapt to an environment where the parties were not physically in the same room.
- Participants will learn the results of the Mediation Committee's survey to ABI members regarding remote mediation and whether it is here to stay in some fashion.

Topics

- What difficulties has remote mediation presented?
- What was made easier using remote technology for mediations?
- Observations on how mediation has impacted the decision-making processes for parties.
- Did remote mediation pose unique challenges to reaching settlement?

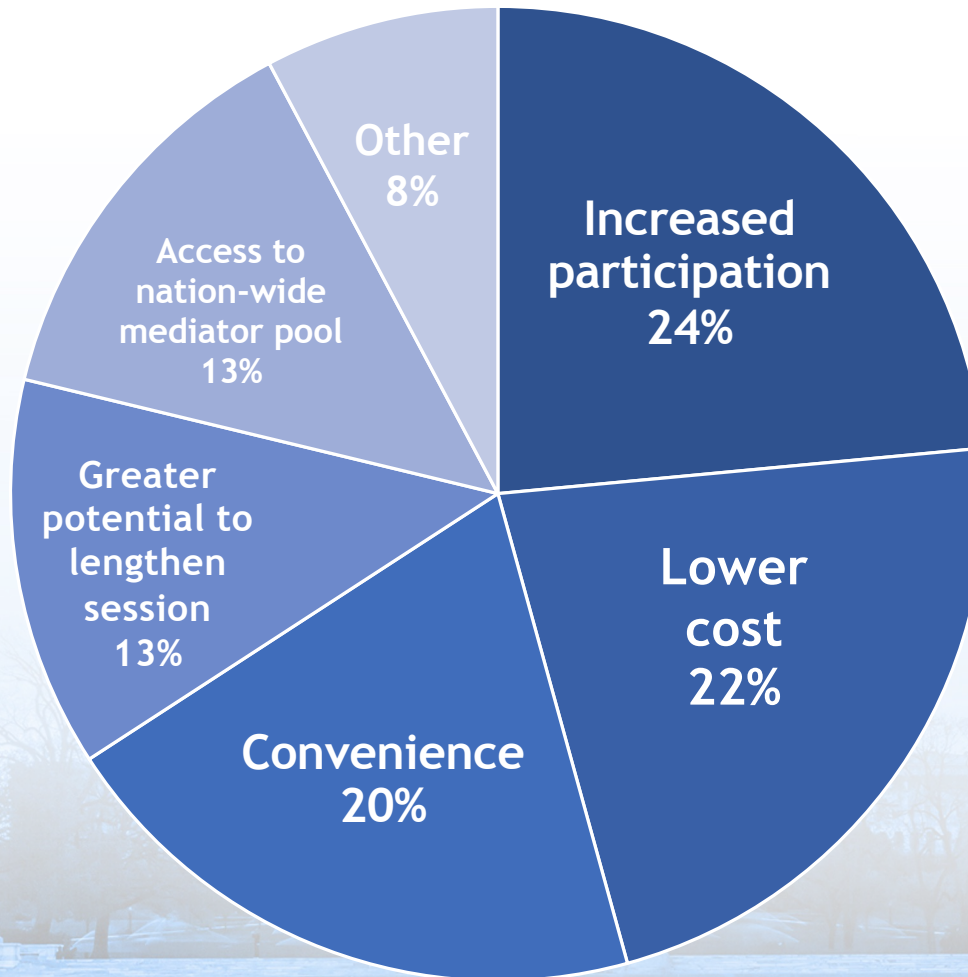


Audience Participation, Please

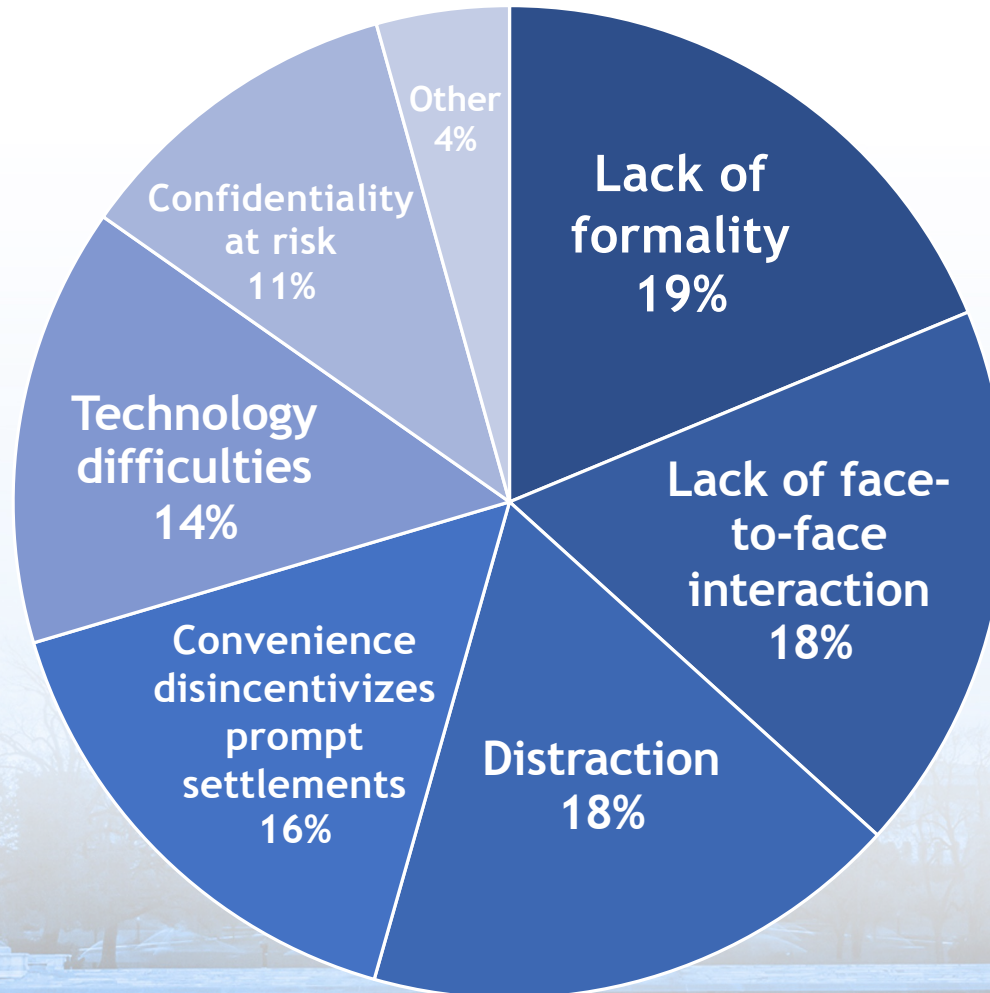
- We welcome your questions in the chat box as we discuss topics.
- We will conduct a brief poll near the end of today's program.



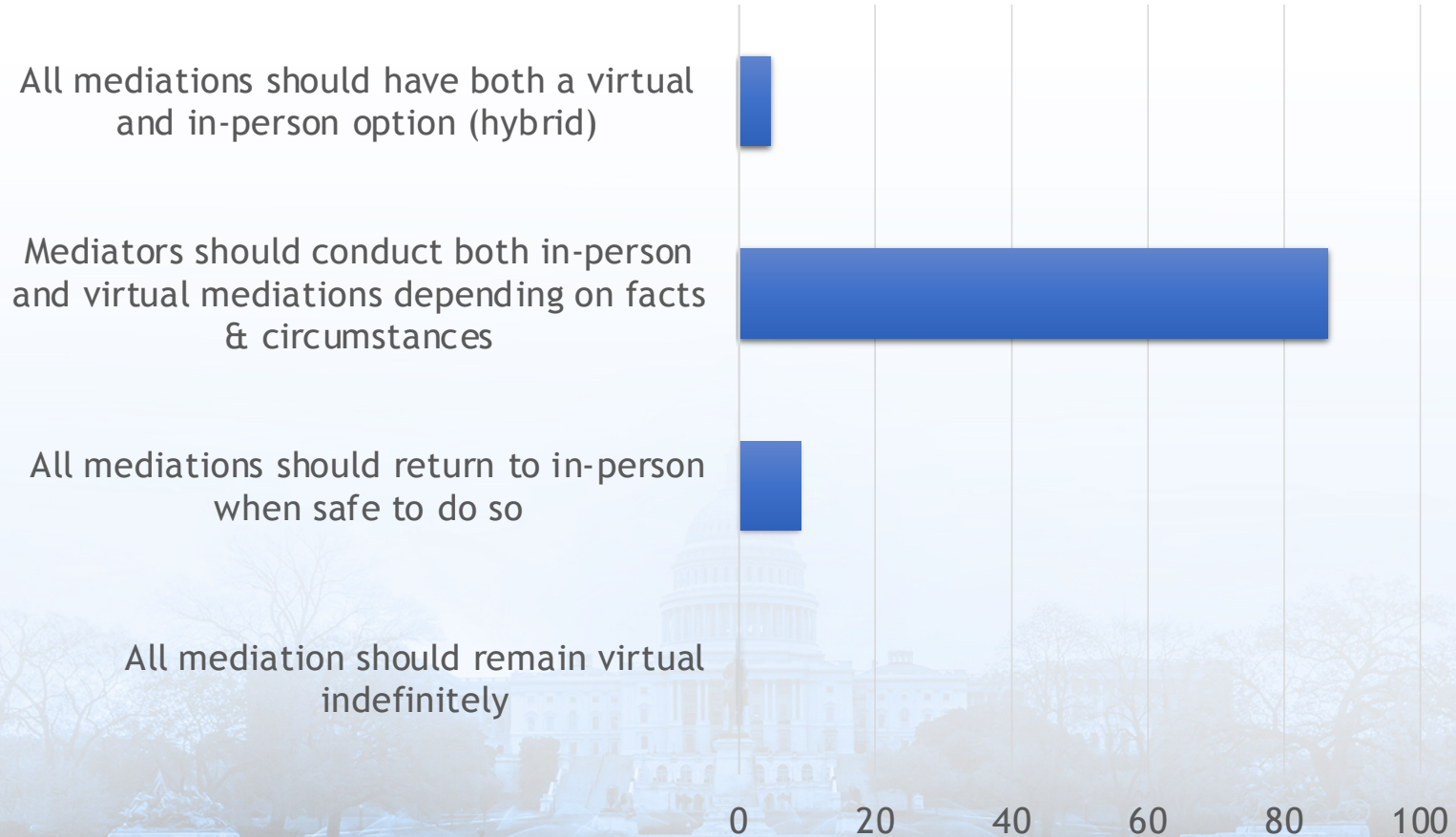
Benefits of Virtual Mediation



Restrictions of Virtual Mediation



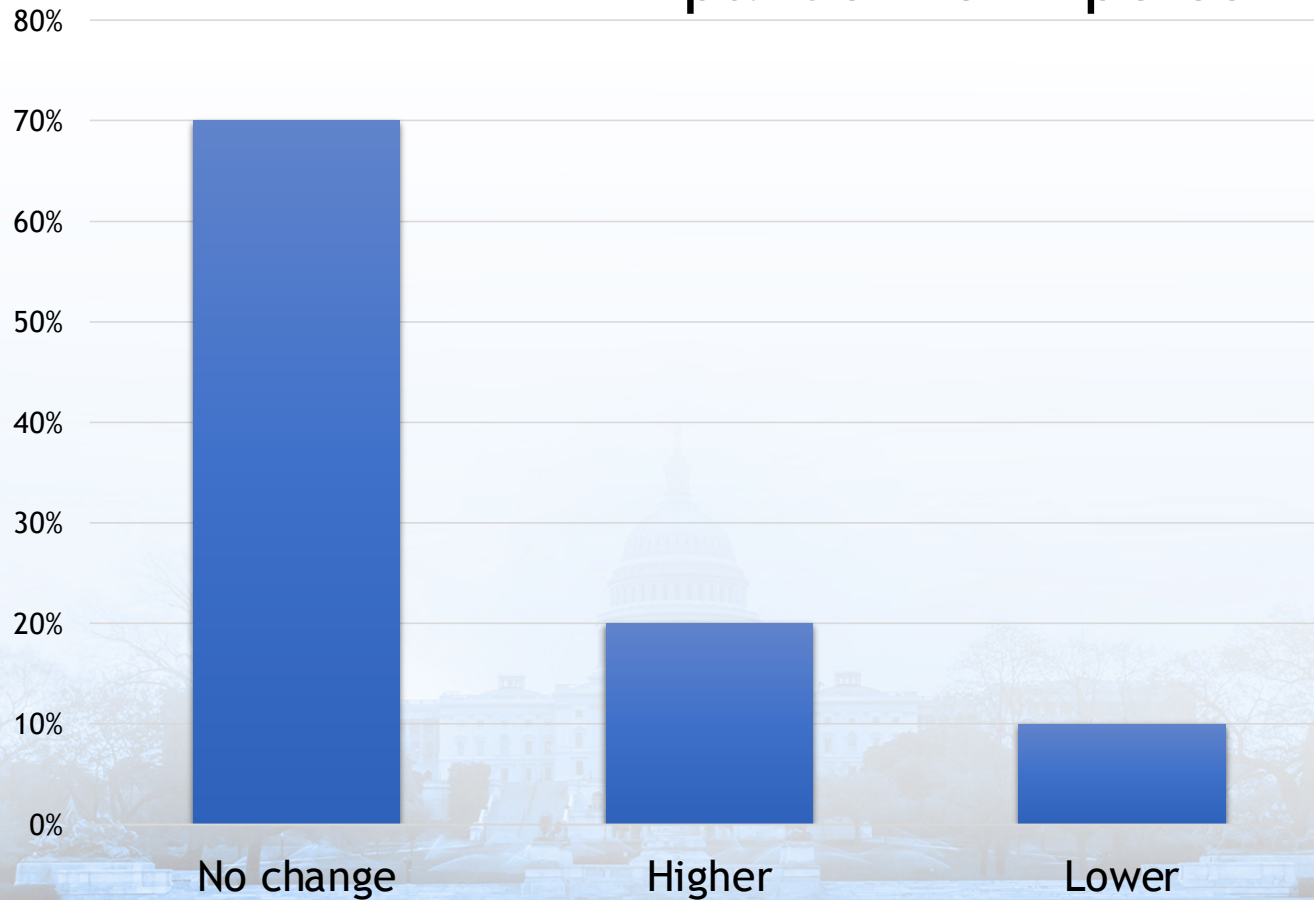
Virtual Mediations Going Forward



What ABI members believe is lost in virtual mediation:

- Lack of face-to-face interaction for all parties
- Ability to read body language of participants
- Ability for the parties to socialize and humanize each other
- Lack of seriousness/formality/engagement
- “Hallway breakthroughs”
- Ability to develop a rapport and build trust
- Defendants approach shifting to “check the box” when major costs, such as travel and time, are reduced/eliminated

Success rate of virtual mediations versus pre-pandemic in-person mediations.





Ways mediators have aided parties in reaching settlement in virtual mediations:

- Effective use of break out rooms
- Mastery of Zoom interface and addressing parties together and in break out rooms seamlessly
- Imposing limitations on outside tech during the mediation
- Keeping parties informed so as to allow parties time to do other things while waiting
- Frequent engagement with all parties
- Quality use of the process - including wide use of caucus
- Virtual joint session

Faculty: The Effects of Stress and Remote Work on Mediation: Part Two

Ian Connor Bifferato is director of The Bifferato Firm in Wilmington, Del., and focuses his practice on alternative dispute resolution, commercial bankruptcy and corporate/commercial litigation. He has mediated well over 1,000 commercial disputes, including appeals from the U.S. Bankruptcy Court for the District of Delaware, secured lender disputes, general corporate litigation, preference litigation and creditors' rights issues. He also frequently serves as an arbitrator for single and panel binding and nonbinding arbitrations. Experienced as lead counsel in complex litigation, Mr. Bifferato also frequently teams with out-of-state lawyers who need access to Delaware's courts. He is admitted to the Delaware Bar, the U.S. District Court for the District of Delaware and the U.S. Third Circuit Court of Appeals. Mr. Bifferato is a member of the Delaware, Federal and American Bar Associations, and a member of the Judge Vincent A. Bifferato Superior Court Trial Practice Forum's Steering Committee, the U.S. Bankruptcy Court for the District of Delaware's Steering Committee, Mediation Panel and Appellate Mediation Panel, the Civil Rules Committee for the Delaware Superior Court, and the U.S. Bankruptcy Court Rules Committee for the District of Delaware. He received his B.A. in 1990 from the University of Delaware and his J.D. in 1994 from Widener University School of Law.

Hon. Judith K. Fitzgerald is a shareholder with Tucker Arensberg, P.C. in Pittsburgh, where she has unique experience in mass tort bankruptcies, having adjudicated more cases involving § 524(g) asbestos trusts than any other bankruptcy judge in the country. She has a trial background and frequently served as a settlement judge and mediator. Judge Fitzgerald retired from her position as a U.S. Bankruptcy Judge for the Western District of Pennsylvania after more than 25 years on the bench, having presided over matters in the Western District of Pennsylvania (where she was chief judge for five years) as well as in the District of Delaware (20 years), the Eastern District of Pennsylvania (eight years) and the U.S. Virgin Islands (9 years). She was the sole judge hearing all chapter 13 cases in the

Western District of Pennsylvania and Delaware for many years. In addition, she has completed several mediation-training courses, including the 40-Hour Bankruptcy Mediation Training course presented by St. John's University and ABI, and courses by the PA Council of Mediators and the Council of Mediators of Western Pennsylvania. She now serves as a mediator and arbitrator in addition to her services as an expert witness and consultant. Judge Fitzgerald is a member of FedArb, an association of former federal judges who provide expert witness, consultation, mediation and arbitration services. In addition to practicing law, she has taught contracts, commercial law and bankruptcy courses at the Indiana Tech Law School as a tenured full professor of law. She now holds the position of Professor in Practice at the University of Pittsburgh School of Law, where she teaches bankruptcy law and advanced bankruptcy law. Before being appointed as a bankruptcy judge in 1987, Judge Fitzgerald was an Assistant U.S. Attorney in the Western District of Pennsylvania, with a concentration in complex frauds and criminal tax cases. She received her B.S. in psychology and B.A. in English writing from the University of Pittsburgh, and her J.D. from the University of Pittsburgh School of Law.

Michael J. Riela, CIPP, CIPM is a partner with Tannenbaum Helpert Syracuse & Hirschtritt LLP in New York, where he advises clients in complex corporate restructuring, bankruptcy, data privacy and cybersecurity matters. He is also an experienced general business attorney, advising clients in general corporate, finance and litigation matters, including negotiating and drafting complex commercial contracts. Mr. Riela has in-depth experience in advising clients in corporate and real estate chapter 11 and 7 bankruptcy cases, out-of-court restructurings, M&A transactions involving distressed sellers, debtor-in-possession (DIP) and bankruptcy exit loan facilities, secondary-market-trading of distressed-debt and trade claims, and insolvency-related litigation. He has particular experience defending complex preference and fraudulent-transfer cases, and in handling professional retention and fee-dispute matters in bankruptcy cases. Mr. Riela focuses on helping clients minimize cost, delay and risk by developing and implementing out-of-court strategies when possible. His clients primarily include distressed companies, officers and directors, indenture trustees, hedge funds, private-equity firms, landlords, professional services firms (including major accounting firms), trade creditors, contract counterparties and

shareholders. Mr. Riela's restructuring and bankruptcy practice spans across numerous different industries, although much of his recent work has been focused on the staffing, real estate, construction, retail, technology and cannabis industries. He is also a panel mediator in the U.S. Bankruptcy Courts for the Southern and Eastern Districts of New York and the District of Delaware. Mr. Riela is a Certified Information Privacy Professional/U.S. Private Sector (CIPP/US), a Certified Information Privacy Professional/Europe (CIPP/E) and a Certified Information Privacy Manager (CIPM), designations awarded by The International Association of Privacy Professionals (IAPP). He also is a member of the Career Committee of the University of Michigan Alumni Association of New York City. Mr. Riela received his B.A. in business economics from the University of California at Los Angeles in 1998 and his J.D. in 2001 from the University of Michigan Law School.

Emily S. Wall is a shareholder at Cavazos Hendricks Poirot, P.C. in Dallas, where she focuses on representing chapter 7 trustees in the liquidation and administration of bankruptcy estates, creditors in chapter 7, 11 and 13 cases, and debtors in chapter 7 and 11 cases. She is an active member of ABI's Mediation Committee and received ABI's Medal of Excellence in 2011. Ms. Wall has been listed as a Texas Super Lawyers "Rising Star" since 2019. She received her B.A. in law, politics and society from Texas A&M University in 2008 and her J.D. from the Mississippi College of Law in 2011.