



Survey

ADR PREFERENCE AND USAGE

*In Collaboration with Tort Trial and Insurance Practice
Section of the American Bar Association*

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TIPS ADR SURVEY OVERVIEW

Purpose

The purpose of the TIPS ADR survey was to assess the usage and preferences regarding negotiation, mediation and other forms of alternative dispute resolution (ADR) among the membership of the TIPS Section of the ABA.

The survey goals were:

- (i) To determine which features of negotiation, mediation and other forms of ADR the members of TIPS find most effective in serving their client cases,
- (ii) To identify the needs of TIPS members that would allow them to effectively use ADR for client cases and
- (iii) To obtain a baseline of importance for further study of the members' use of ADR for their client cases.

Survey Sample

The entire membership of the TIPS Section of the ABA was eligible to participate in the survey (population > 36,000), and all members with email permissions were sent an email invitation to participate in the survey plus a follow-up reminder email approximately ten days later (n~17,000). The survey was conducted from September 12th-23rd, 2005.

Survey Instrument

The instrument was composed of sixteen questions in multiple choice and text comment format.

The instrument was designed in four parts to elicit:

- (1) quantitative metrics regarding current ADR usage and practice area,
- (2) qualitative feedback regarding aspects of ADR,
- (3) attitudes and behaviors in the functional stages of negotiation and settlement and
- (4) open ended question designed to elicit comments about ADR usage.

Survey Administration

The survey was reviewed and finalized by the TIPS Section of the American Bar Association and the National Arbitration Forum (FORUM) and was administered by the independent survey company Surveys and Ballots, Inc.

The survey was posted online at the Surveys and Ballots, Inc. survey site, and the data was collected and reported by Surveys and Ballots, Inc.

EXECUTIVE SUMMARY OF KEY FINDINGS

I. Current Usage and Views of ADR

Nearly half (47%) of ABA TIPS respondents resolved more than five cases through ADR last year, with 8% resolving over 25 cases through ADR.

A decided majority (nearly 90%) of ABA TIPS respondents believe that their clients' interests are at least sometimes best served by offering ADR solutions.

More than half of respondents also believe that: (1) their practice will include offering ADR solutions in the future; (2) offering ADR solutions is an ethical obligation as a practitioner; and (3) ADR use will increase in the future.

II. Mediation

Regarding mediation, more than 80% of ABA TIPS respondents value mediators who are lawyers or former judges.

- While all ABA TIPS respondents, regardless of practice area, highly rated having mediators who are lawyers or former judges, Staff Counsel and Consumer Law practitioners were unanimous (100%) on this point.

More than 40% of ABA TIPS respondents resolved six or more cases through mediation last year.

ABA TIPS respondents are most likely to mediate a case when the amount in dispute is between \$100,000 and \$500,000.

Practice areas impacted the amount in controversy that respondents would most likely submit to mediation. For instance:

- Of respondent Health and Disability practitioners, 44.4% indicated that they were most likely to submit matters to mediation where the amount in dispute is \$25,000 or less.
- Of respondent Employee-Employer Relations practitioners, 43.8% indicated that they were most likely to submit matters to mediation where the amount in dispute is between \$25,000 and \$100,000.
- Of respondent In-House Counsel and Staff Counsel, 46.2% and 66.7%, respectively, indicated that they were most likely to submit matters to mediation where the amount in dispute is between \$100,000 and \$500,000.
- On average, only 27% of all practitioners were most likely to submit matters to mediation where the amount in dispute is over \$500,000 or over \$1,000,000. However, 52% of Products Liability practitioners indicated that they would most likely submit matters to mediation if the disputed amount is over \$500,000 or over \$1,000,000.

III. Arbitration

Regarding arbitration, the overwhelming majority of ABA TIPS respondents (83.8%) value arbitrators who are learned in the law (attorneys/former judges) as opposed to lay arbitrators and arbitrators who are required to apply substantive law (61.5%).

The data revealed some differences based on practice area in valuing certain elements of arbitration:

- While all respondents, regardless of practice area, highly rated having arbitrators trained in the law (lawyers and former judges), practitioners in Business Litigation and Intellectual Property were unanimous (100%) on this point.
- Similarly, while all respondents, regardless of practice area, highly rated having arbitrators required to apply the substantive law, Plaintiff-Personal Injury practitioners and Outside-Insurance Defense practitioners rated this 94% and 91%, respectively.

Nearly 10% of ABA TIPS respondents resolved more than five cases last year by arbitration, while most (90.9%) resolved five or fewer cases by arbitration last year.

A wide range of features would encourage ABA TIPS respondents to use arbitration more frequently: More than two-thirds of ABA TIPS respondents would use arbitration more often where arbitrators are required to follow the law (67.5%) and where arbitrators are lawyers or former judges (53.8%).

- While all respondents, regardless of practice area, highly rated having arbitrators apply the substantive law, practitioners in Consumer Law and Intellectual Property were unanimous (100%) on this point.

ABA TIPS respondents are about equally split on their likelihood of arbitrating cases whether the amount in dispute is higher or lower than \$100,000. However, respondents' practice areas impacted the amount in dispute that they would most likely submit to arbitration. For instance:

- Of respondent Health and Disability practitioners and Plaintiff-Personal Injury practitioners, 50% indicated that they were most likely to submit matters to arbitration where the amount in dispute is \$25,000 or less.
- Of respondent Consumer Law practitioners and Outside-Insurance Defense practitioners, 40% and 35.8%, respectively, indicated that they were most likely to submit matters to arbitration where the amount in dispute is between \$25,000 and \$100,000.
- Of respondent Employee-Employer Relations practitioners and In-House practitioners, 46.7% and 46.2%, respectively, indicated that they were most likely to submit matters to arbitration where the amount in dispute is between \$100,000 and \$500,000.
- Fidelity/Surety practitioners were nearly twice as likely as the average to most likely submit matters to arbitration where the amount in dispute is over \$500,000 (20% versus 11%) and over \$1,000,000 (40% versus 17%).

IV. Current Settlement Practices and Impediments

Most ABA TIPS respondents initiate settlement efforts during discovery. Not surprisingly, settlement is rarely initiated once a trial has commenced, or while awaiting verdict, or after the verdict is rendered.

The data revealed differences based on respondents' practice area about when settlement negotiations are most commonly initiated:

- Business Litigation practitioners and In-House counsel are somewhat more likely than other practice areas to initiate settlement negotiations immediately after becoming aware of the dispute.
- Consumer Law practitioners predominantly (40%) initiate settlement negotiations upon filing the dispute.
- Practitioners in the areas of Outside-Insurance Defense, Products Liability, Health and Disability and Intellectual Property are somewhat more likely than other practice areas to initiate settlement negotiations during discovery than any other time.
- Staff Counsel respondents indicated that they initiate settlement negotiations during discovery, followed by the pre-trial conference.

Nearly two thirds (65%) of ABA TIPS respondents rely on face-to-face negotiations or facilitated mediation for the *biggest* impact to settle cases. The telephone is the next most-cited form of communication.

The data revealed differences based on respondents' practice area about which communication method is relied on most for the biggest impact to settle cases:

- Health and Disability practitioners rely *most* on the telephone (44%) and U.S. Mail (22%).
- Consumer Law practitioners also rely *most* on the telephone (40%) and U.S. Mail (20%).
- Business Litigation, In-House, Staff Counsel and Products Liability practitioners rely *most* on face-to-face negotiations.
- Intellectual Property and In-House/Insurance Company practitioners rely *most* on facilitated mediation.

Most ABA TIPS respondents (52%) indicated that "evaluation of the claim" is the biggest impediment to settling more cases. Initiating the negotiation process was cited by almost 13% of respondents as the largest impediment to settling more cases. Actually negotiating the settlement was the largest impediment for 27% of respondents.

The data revealed differences based on respondents' practice area about what presented the largest impediment to settling more cases:

- Respondents in three practice areas – Health/Disability, Fidelity/Surety and In-house (insurance company) – were two to three times more likely to indicate that “identification of issues” is the largest impediment to settling more cases.
- Consumer Law practitioners were more likely (40%) than average to indicate that “initiating the negotiation process” is the largest impediment to settling more cases.
- Respondents in three practice areas – Employer/Employee Relations, Health/Disability and Plaintiff-Personal Injury – were somewhat more likely than average to select “negotiating the settlement” as the largest impediment to settling more cases.

V. Demographics

ABA TIPS respondents represent all major practice areas represented by TIPS Committees.

Nearly 60% of ABA TIPS respondents have more than 25 cases “open” and at some stage of litigation or alternative dispute resolution.

1. Usage Of ADR In The Most Recent Year

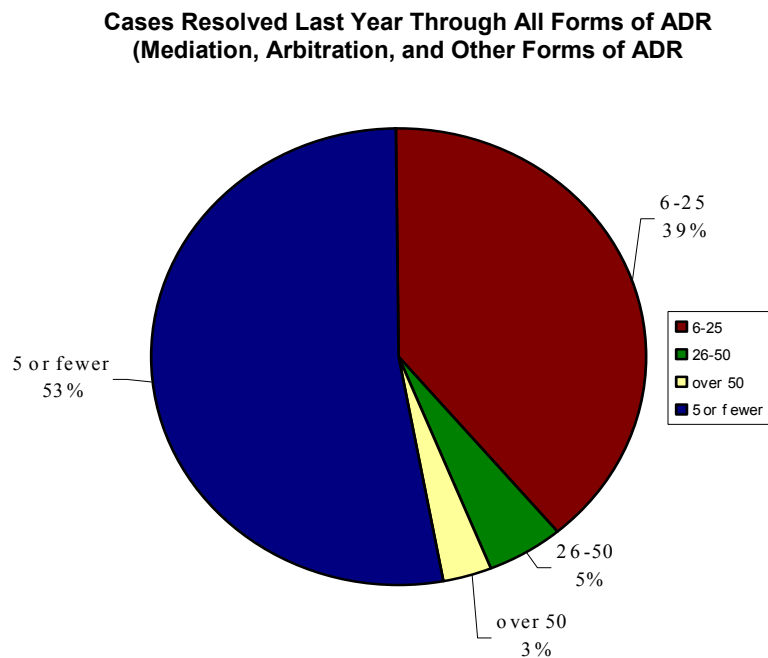
<i>In your role as client counsel, how many cases did you resolve through ADR last year (mediation, arbitration, and other forms of ADR)?</i>	
Response:	Percent
5 or fewer	53.2
6-25	39.0
26-50	4.5
over 50	3.4
Total	100.0

(Q3-5 n=444)(Q3-4-5 combined results: Each respondent is counted only once. Highest response for each respondent across the three categories is reported.)

Key Findings

Nearly half (47%) of ABA TIPS respondents resolved more than five cases through ADR last year, with 8% resolving over 25 cases through ADR.

These results are illustrated in the chart below.



2. Views On Alternative Dispute Resolution

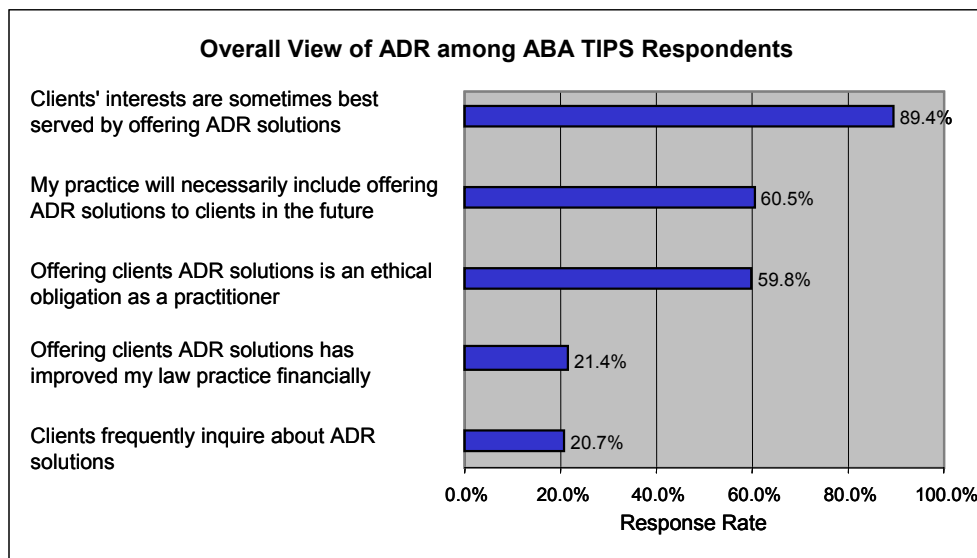
<i>Overall View of ADR among TIPS Respondents</i>	
Response:	Percent
Clients' interests are sometimes best served by offering ADR solutions	89.4%
My practice will necessarily include offering ADR solutions to clients in the future	60.5%
Offering clients ADR solutions is an ethical obligation as a practitioner	59.8%
ADR use will increase in the future	59.8%
Offering clients ADR solutions has improved my law practice financially	21.4%
Clients frequently inquire about ADR solutions	20.7%

(Q.11 n=425)

Key Findings

A decided majority (nearly 90%) of ABA TIPS respondents believe that their clients' interests are sometimes best served by offering ADR solutions. More than half of respondents also believe that: (1) their practice will include offering ADR solutions in the future; (2) offering ADR solutions is an ethical obligation as a practitioner; and (3) ADR use will increase in the future.

These results are illustrated in the chart below.



The data did not reveal significant differences based on respondents' practice areas in the overall view of ADR among ABA TIPS respondents.

3. Desire For Additional ADR Information Resources

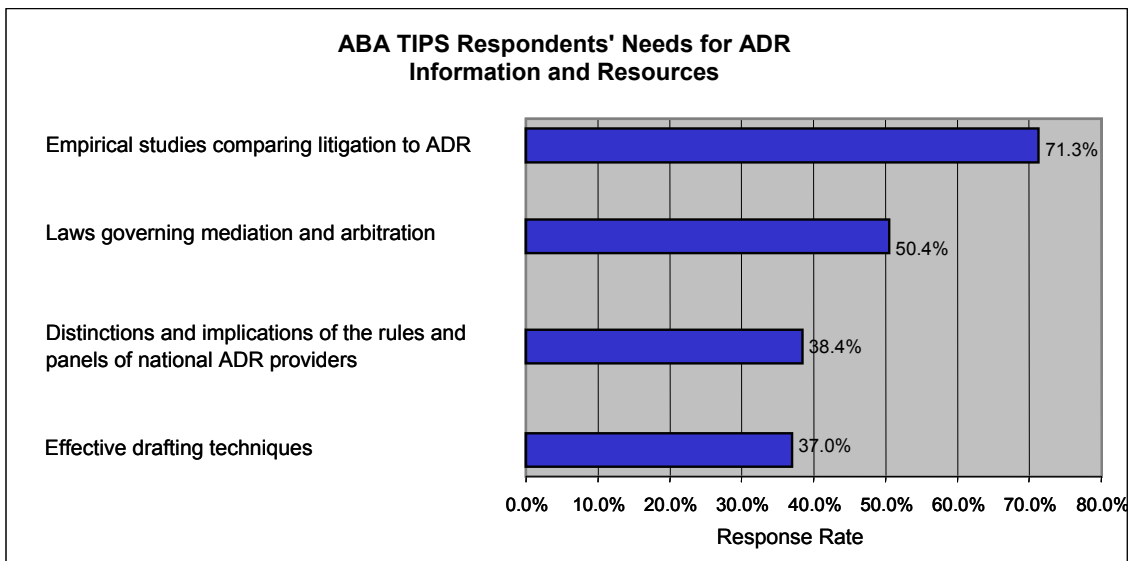
“I would value opportunities to learn more about the following areas:”	
Response:	Percent
Empirical studies comparing litigation to ADR	71.3%
Laws governing mediation and arbitration	50.4%
Distinctions and implications of the rules and panels of national ADR providers	38.4%
Effective drafting techniques	37.0%

(Q.12 n=341)

Key Findings

Most ABA TIPS respondents want additional information about ADR including: empirical studies comparing litigation to ADR; and learning about the laws governing mediation and arbitration. More than one in three ABA TIPS respondents would value opportunities to learn more about the distinctions and implications of the rules and panels of national ADR providers and effective drafting techniques.

These results are illustrated in the chart below.



4. Valued Features Of Mediation

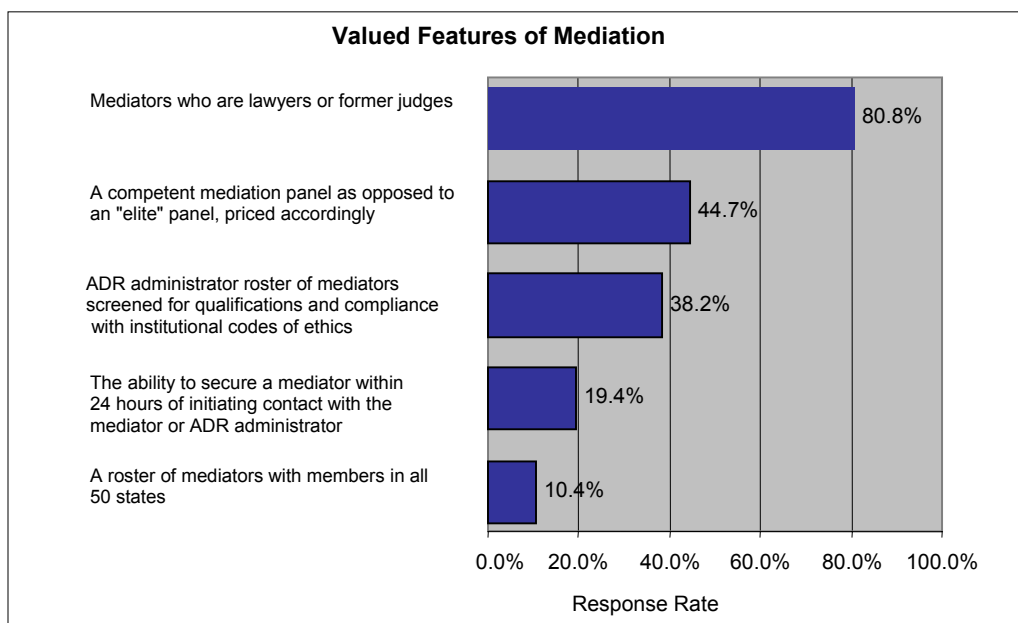
“Which of the following elements of mediation do you value:”	
Response:	Percent
Mediators who are lawyers or former judges	80.8%
A competent mediation panel as opposed to an "elite" panel, priced accordingly	44.7%
The ability to select from a roster provided by an ADR administrator, thereby assuring that the mediator has been screened for qualifications and is in compliance with institutional codes of ethics	38.2%
The ability to secure a mediator within 24 hours of initiating contact with the mediator or ADR administrator	19.4%
A roster of mediators with members in all 50 states	10.4%

(Q.10 n=432)

Key Findings

Regarding mediation, more than 80% of ABA TIPS respondents value mediators who are lawyers or former judges.

These results are illustrated in the chart below.



The data revealed some differences based on practice area in valuing certain elements of arbitration:

- While all respondents, regardless of practice area, highly rated having mediators who are lawyers or former judges, Staff Counsel and Consumer Law practitioners were unanimous (100%) on this point.

5. Cases Resolved by Mediation Last Year

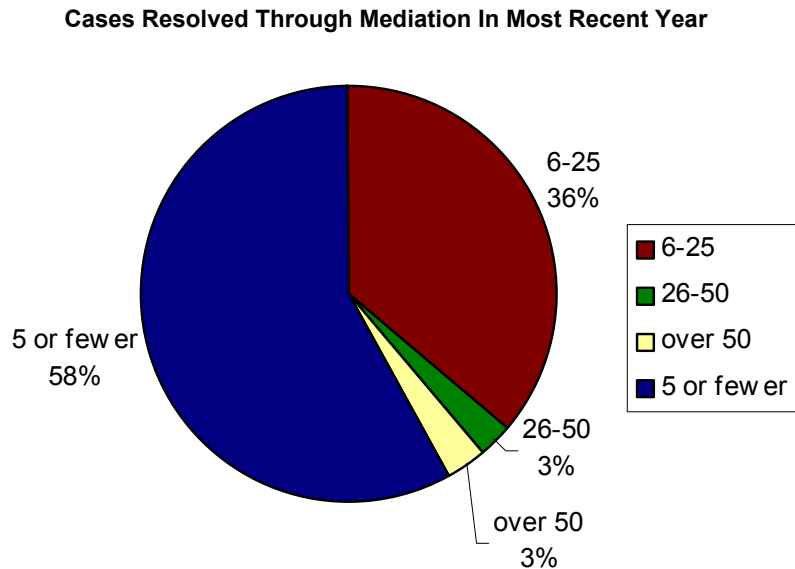
“In your role as client counsel, how many cases did you resolve last year by mediation?”	
Response:	Percent
5 or fewer cases	57.6
6-25 cases	36.1
26-50 cases	2.9
over 50 cases	3.4
Total	100.0

(Q.3 n=443)

Key Findings

More than 40% of ABA TIPS respondents resolved six or more cases through mediation last year.

These results are illustrated in the chart below.



6. Mediation Preference by Amount in Controversy

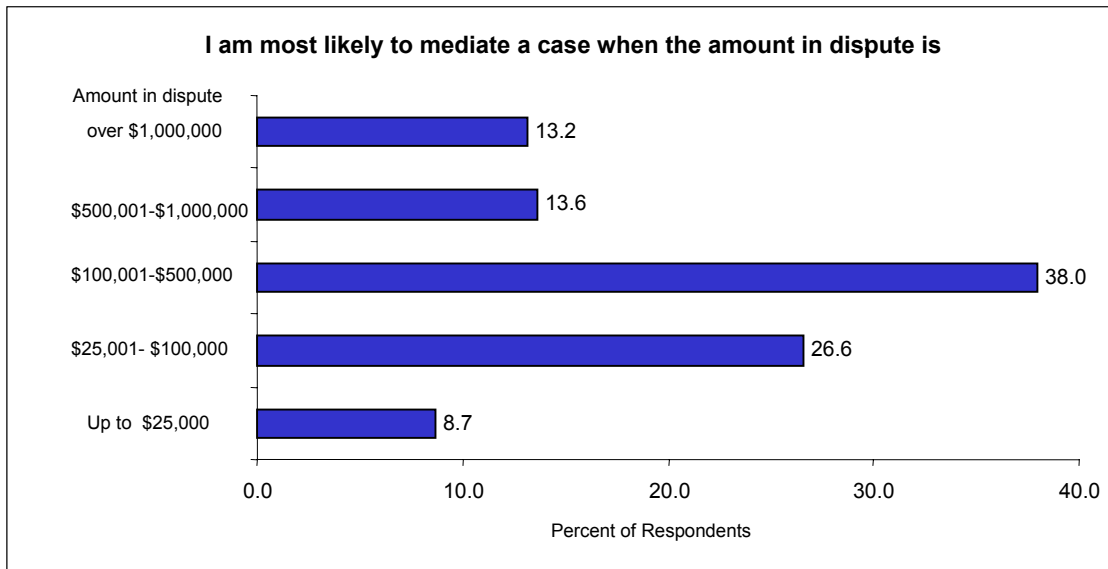
“I am most likely to mediate a case when the amount in dispute is:”	
Response:	Percent
Up to \$25,000	8.7
\$25,001- \$100,000	26.6
\$100,001-\$500,000	38.0
\$500,001-\$1,000,000	13.6
over \$1,000,000	13.2
Total	100.0

(Q.6 n=403)

Key Findings

ABA TIPS respondents are most likely to mediate a case when the amount in dispute is between \$100,000 and \$500,000.

These results are illustrated in the chart below.



Practice areas impacted the amount in controversy that respondents would most likely submit to mediation. For instance:

- Of respondent Health and Disability practitioners, 44.4% indicated that they were most likely to submit matters to mediation where the amount in dispute is \$25,000 or less.

- Of respondent Employee-Employer Relations practitioners, 43.8% indicated that they were most likely to submit matters to mediation where the amount in dispute is between \$25,000 and \$100,000.
- Of respondent In-House Counsel and Staff Counsel, 46.2% and 66.7%, respectively, indicated that they were most likely to submit matters to mediation where the amount in dispute is between \$100,000 and \$500,000.
- On average, only 27% of all practitioners were most likely to submit matters to mediation where the amount in dispute is over \$500,000 or over \$1,000,000. However, 52% of Products Liability practitioners indicated that they would most likely submit matters to mediation if the disputed amount is over \$500,000 or over \$1,000,000.

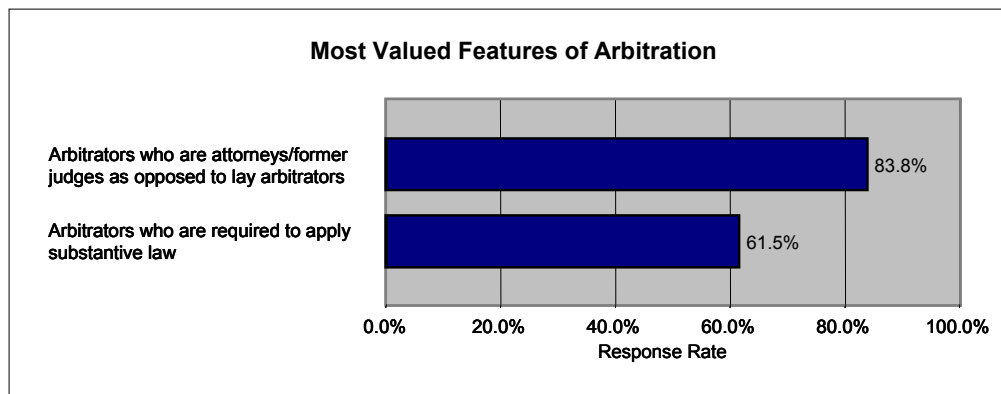
7. Valued Elements of Arbitration

“Which of the following elements of arbitration do you value?”	
Response:	Percent
Arbitrators who are learned in the law (attorneys/former judges) as opposed to lay arbitrators	83.8
Arbitrators who are required to apply substantive law	61.5
Administered arbitration, as opposed to ad hoc arbitration	20.0
Centralized case management, as opposed to decentralized case management	15.2
Other: other (describe)	15.4

(Q.8 n=408)

Key Findings

Regarding arbitration, the overwhelming majority of ABA TIPS respondents (83.8%) value arbitrators who are learned in the law (attorneys/former judges) as opposed to lay arbitrators, and arbitrators who are required to apply substantive law (61.5%). These results are illustrated in the chart below.



The data revealed some differences based on practice area in valuing certain elements of arbitration:

- While all respondents, regardless of practice area, highly rated having arbitrators trained in the law (lawyers and former judges), practitioners in Business Litigation and Intellectual Property were unanimous (100%) on this point.

- Similarly, while all respondents, regardless of practice area, highly rated having arbitrators required to apply the substantive law, Plaintiff-Personal Injury practitioners and Outside-Insurance Defense practitioners rated this 94% and 91%, respectively.

8. Cases Resolved by Arbitration Last Year

“In your role as client counsel, how many cases did you resolve last year by arbitration?”	
Response:	Percent
5 or fewer	90.9
6-25	7.5
26-50	0.5
over 50	1.1
Total	100.0

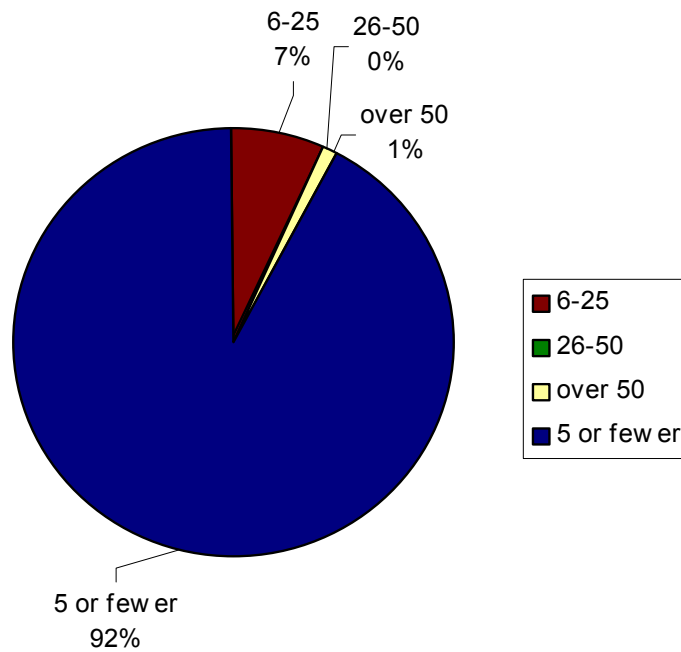
(Q.4 n=441)

Key Findings

Nearly 10% of ABA TIPS respondents resolved more than five cases last year by arbitration, while most (90.9%) resolved five or fewer cases by arbitration last year.

These results are illustrated in the chart below.

Cases Resolved Through Arbitration



9. Features to Use Arbitration More Frequently

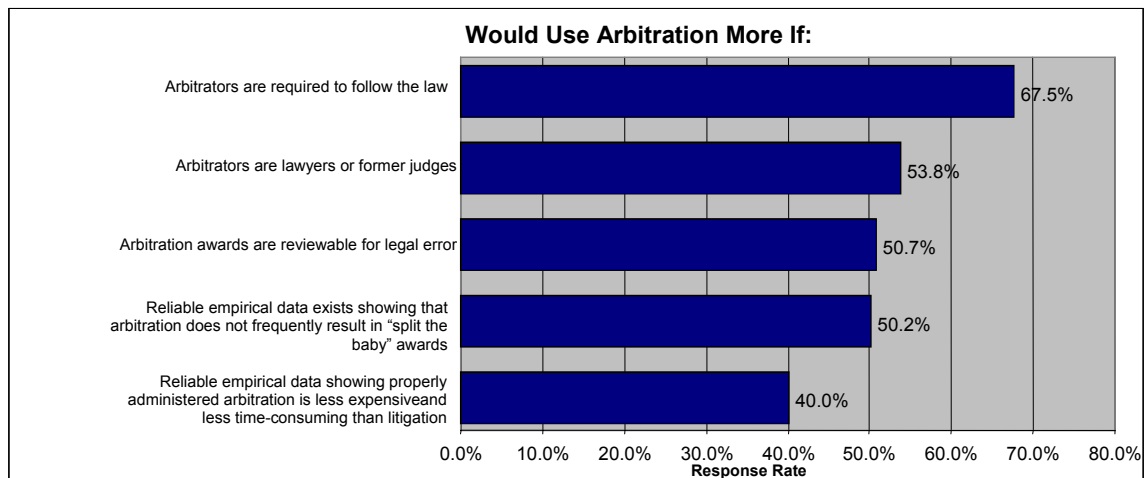
Which features of arbitration would cause you to use arbitration more frequently?	
Response:	Percent
Arbitrators are required to follow the law	67.5%
Arbitrators are lawyers or former judges	53.8%
Arbitration awards are reviewable for legal error	50.7%
Reliable empirical data exists showing that arbitration does not frequently result in "split the baby" awards	50.2%
Reliable empirical data showing properly administered arbitration is less expensive and less time-consuming than litigation	40.0%
Arbitration proceeds under established rules administered by trained case coordinators	28.9%
Statutory and case law strongly favors enforcement of properly drafted arbitration agreements	22.0%
Other: (describe)	10.0%

(Q.9 n=422)

Key Findings

A wide range of features would encourage ABA TIPS respondents to use arbitration more frequently: More than two-thirds of ABA TIPS respondents would use arbitration more often where arbitrators are required to follow the law (67.5%) and where arbitrators are lawyers or former judges (53.8%).

Selected results are illustrated in the chart below.



The data revealed some differences based on practice area in valuing certain elements of arbitration:

- While all respondents, regardless of practice area, highly rated having arbitrators apply the substantive law, practitioners in Consumer Law and Intellectual Property were unanimous (100%) on this point.

10. Arbitration Preference by Amount in Controversy

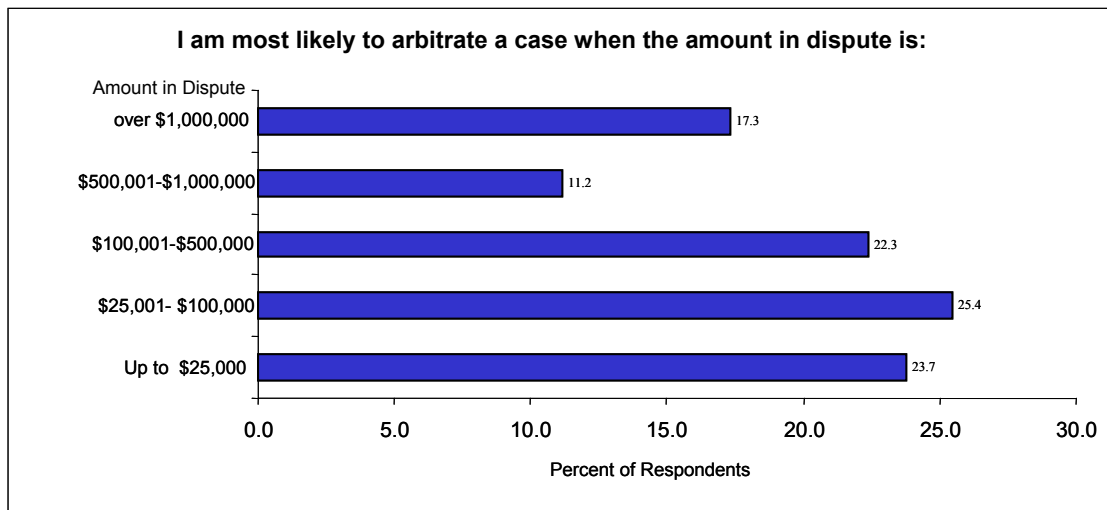
I am most likely to arbitrate a case when the amount in dispute is:	
Response:	Percent
Up to \$25,000	23.7
\$25,001- \$100,000	25.4
\$100,001-\$500,000	22.3
\$500,001-\$1,000,000	11.2
over \$1,000,000	17.3
Total	100.0

(Q.7 n=358)

Key Findings

ABA TIPS respondents are about equally split on their likelihood of arbitrating cases whether the amount in dispute is higher or lower than \$100,000.

These results are illustrated in the chart below.



Respondents' practice areas impacted the amount in dispute that they would most likely submit to arbitration. For instance:

- Of respondent Health and Disability practitioners and Plaintiff-Personal Injury practitioners, 50% indicated that they were most likely to submit matters to arbitration where the amount in dispute is \$25,000 or less.

- Of respondent Consumer Law practitioners and Outside-Insurance Defense practitioners, 40% and 35.8%, respectively, indicated that they were most likely to submit matters to arbitration where the amount in dispute is between \$25,000 and \$100,000.
- Of respondent Employee-Employer Relations practitioners and In-House practitioners, 46.7% and 46.2%, respectively, indicated that they were most likely to submit matters to arbitration where the amount in dispute is between \$100,000 and \$500,000.
- Fidelity/Surety practitioners were nearly twice as likely as the average to most likely submit matters to arbitration where the amount in dispute is over \$500,000 (20% versus 11%) and over \$1,000,000 (40% versus 17%).

11. Initiating Settlement Negotiations

“When do you most commonly initiate settlement negotiations?”	
Response:	Percent
Immediately on learning of the dispute	26.8
Upon filing the dispute	5.6
During discovery	56.4
Pre-trial conference	10.3
During Trial	0.0
Awaiting verdict	0.2
After verdict	0.7
Total	100.0

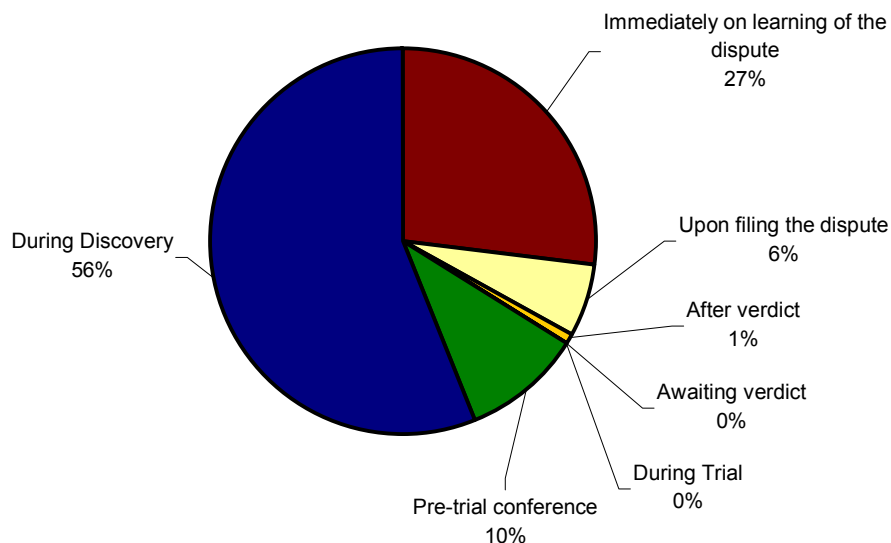
(Q.14 n=429)

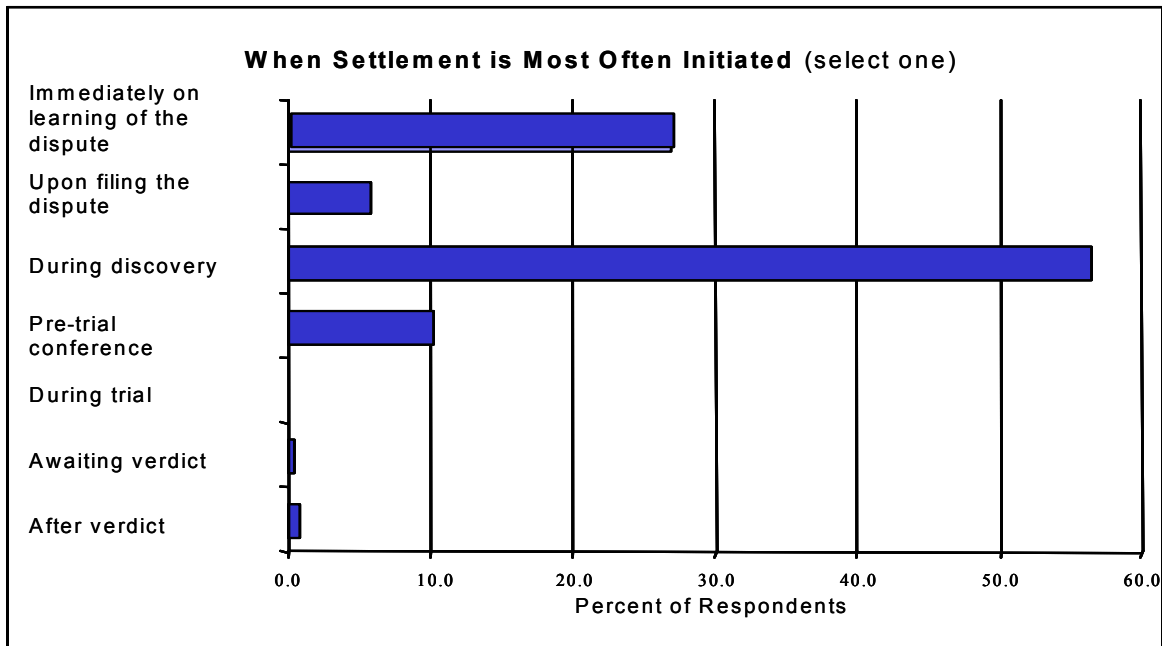
Key Findings

Most ABA TIPS respondents initiate settlement during discovery. Not surprisingly, settlement is rarely initiated once a trial has commenced, or while awaiting verdict, or after the verdict is rendered.

These results are illustrated in the charts below.

When Settlement Is Most Often Initiated





The data revealed differences based on respondents' practice area about when settlement negotiations are most commonly initiated:

- Business Litigation practitioners and In-House counsel are somewhat more likely than other practice areas to initiate settlement negotiations immediately after becoming aware of the dispute.
- Consumer Law practitioners predominantly (40%) initiate settlement negotiations upon filing the dispute.
- Practitioners in the areas of Outside-Insurance Defense, Products Liability, Health and Disability, and Intellectual Property are somewhat more likely than other practice areas to initiate settlement negotiations during discovery than any other time.
- Staff Counsel respondents indicated that they initiate settlement negotiations during discovery, followed by the pre-trial conference.

12. Most Relied-upon Form of Settlement Communications

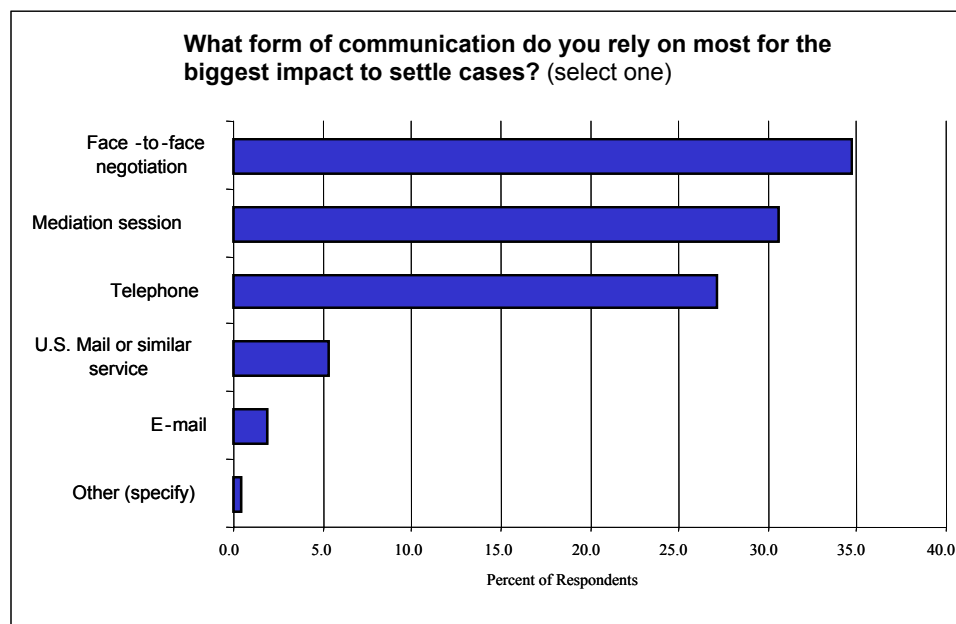
“What form of communication do you rely on most for the biggest impact to settle cases?”	
Response:	Percent
Face-to-face negotiation	34.7
Facilitated mediation session	30.6
Telephone	27.2
U.S. Mail or similar service	5.3
Electronic mail	1.8
Other (specify)	0.5
Total	100.0

(Q.15 n=438)

Key Findings

Nearly two thirds (65%) of ABA TIPS respondents rely on face-to-face negotiations or facilitated mediation for the *biggest* impact to settle cases. The telephone is the next most-cited form of communication.

These results are illustrated in the chart below.



The data revealed differences based on respondents' practice area about which communication method is relied on most for the biggest impact to settle cases:

- Health and Disability practitioners rely *most* on the telephone (44%) and U.S. Mail (22%).
- Consumer Law practitioners also rely *most* on the telephone (40%) and U.S. Mail (20%).
- Business Litigation, In-House, Staff Counsel and Products Liability practitioners rely *most* on face-to-face negotiations.
- Intellectual Property and In-House/Insurance Company practitioners rely *most* on facilitated mediation.

13. Impediments to Settling More Cases

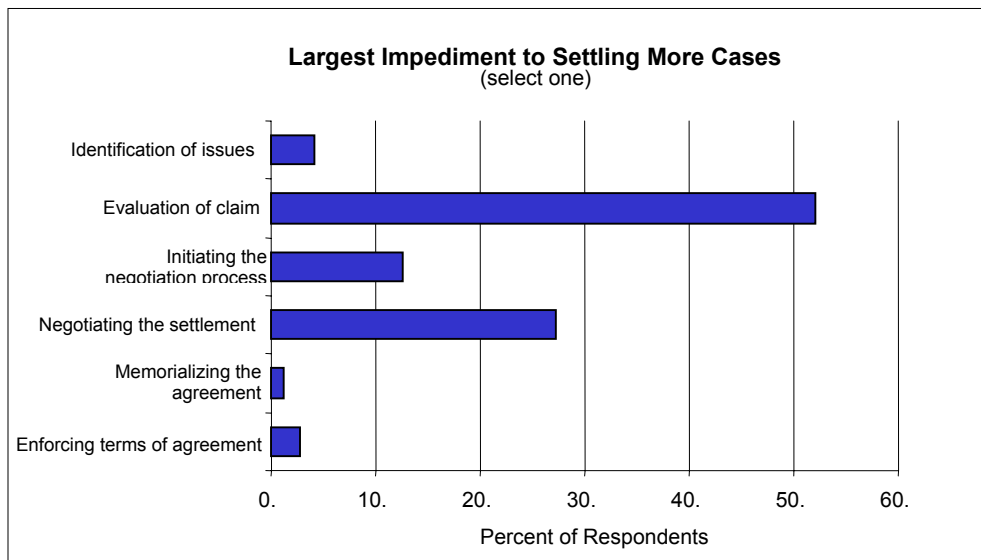
“Indicate the largest impediment that prevents you from settling more cases:”	
Response:	Percent
Identification of the issues	4.1
Evaluation of the claim	52.1
Initiating the negotiation process	12.6
Negotiating the settlement	27.2
Memorializing the agreement	1.3
Enforcing the terms of the agreement	2.8
Total	100.0

(n=390)

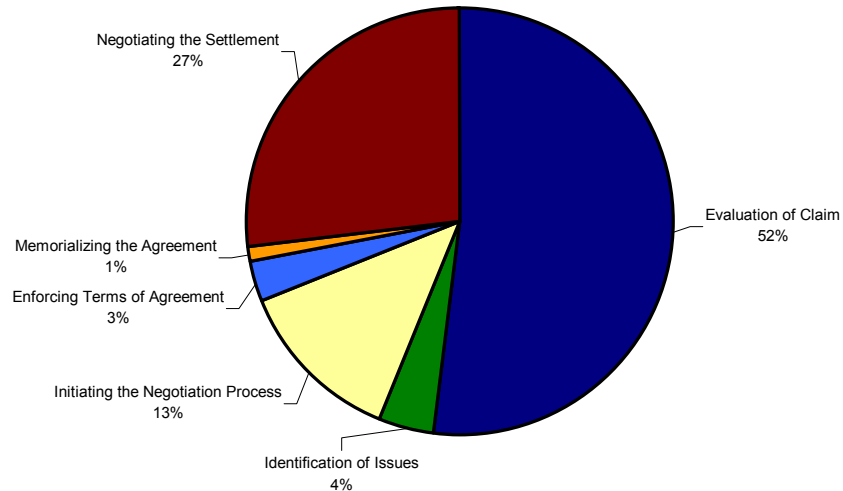
Key Findings

Most ABA TIPS respondents (52%) indicated that “evaluation of the claim” is the biggest impediment from settling more cases. Initiating the negotiation process was cited by almost 13% of respondents as the largest impediment to settling more cases. And actually negotiating the settlement was the largest impediment for 27% of respondents.

These results are illustrated in the charts below.



Largest Impediment To Settling More Cases



The data revealed differences based on respondents' practice area about what presented the largest impediment to settling more cases:

- Respondents in three practice areas – Health/Disability, Fidelity/Surety and In-house (insurance company) – were two to three times more likely to indicate that “identification of issues” is the largest impediment to settling more cases.
- Consumer Law practitioners were more likely (40%) than average to indicate that “initiating the negotiation process” is the largest impediment to settling more cases.
- Respondents in three practice areas – Employer/Employee Relations, Health/Disability, and Plaintiff-Personal Injury – were somewhat more likely than average to select “negotiating the settlement” as the largest impediment to settling more cases.

Method and Demographics

Sample

The entire membership of the TIPS Section of the ABA was eligible to participate in the survey (population > 36,000), and all members with email permissions were sent an email invitation to participate in the survey plus a follow-up reminder email approximately ten days later (n=~17,000).

Instrument

The survey instrument was a multi-question survey posted online at a secure third-party survey site. The online survey was administered by SURVEYS and BALLOTS, Inc. The survey instrument was jointly reviewed and finalized by the ABA TIPS Section and FORUM, the survey sponsor. The instrument was designed in four parts to elicit (1) quantitative metrics regarding current ADR usage and practice area, (2) qualitative feedback regarding aspects of ADR, (3) attitudes and behaviors in the functional stages of negotiation and settlement, and (4) open ended question designed to elicit comments about ADR usage.

Respondent Demographics

Primary Practice Area

“What is your primary area of practice?”	
Responses	Percent
Business litigation	22.9
In-house (other)	3.4
Intellectual property	0.2
Employee-employer relations	3.9
Health and disability	2.1
Fidelity surety	4.1
Products liability	6.0
Consumer law	1.1
Staff counsel	0.7
In-house (insurance company)	7.3
Plaintiff personal injury	8.5
Outside insurance defense	20.6
Other (please specify)	19.0
Total	100.0

(n=436)

Key Findings

ABA TIPS respondents covered all major practice areas represented by TIPS Committees.

Caseload

“What is your typical case load - in other words, on any given day, how many cases are considered "open" and are at some stage of litigation or ADR?”	
Response:	Percent
25 or fewer cases	40.8
26-50 cases	28.5
51-100 cases	21.1
over 100 cases	9.6
Total	100.0

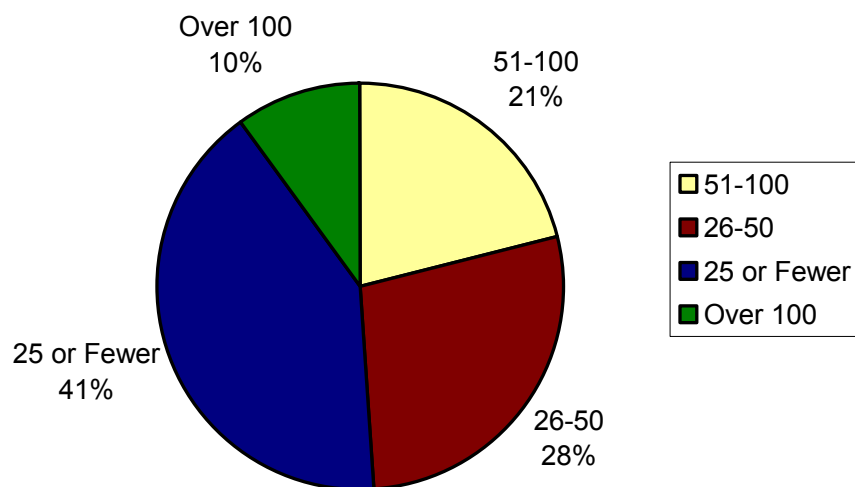
(n=446)

Key Findings

Nearly 60% of ABA TIPS respondents have more than 25 cases “open” and at some stage of litigation or alternative dispute resolution.

These results are illustrated in the chart below.

Typical Case Load of Respondents
On any given day, how many cases do you have that are considered “open” and are at some stage of litigation or ADR?



APPENDIX: ABA TIPS MEMBERSHIP SURVEY 2005: DISPUTE RESOLUTION

I. Questions Designed To Elicit Quantitative Metrics

1. What is your primary area of practice?
 - Business Litigation
 - In-House Counsel
 - Intellectual Property
 - E-Commerce
 - Employee-Employer Relations
 - Health and Disability
 - Fidelity Surety
 - Products Liability
 - Consumer Law
 - Staff Counsel
 - Other (specify)

2. What is your typical case load – in other words, on any given day, how many cases are considered “open” and are at some stage of litigation or ADR?
 - 0-25
 - 26-50
 - 51-100
 - Over 200

3. In your role as client counsel, how many cases did you resolve last year by mediation?
 - 0-5
 - 6-25
 - 26-50
 - Over 50

4. In your role as client counsel, how many cases did you resolve last year by arbitration?
 - 0-5
 - 6-25
 - 26-50
 - Over 50

5. In your role as client counsel, how many cases did you resolve through other forms of ADR?
 - 0-5
 - 6-25
 - 26-50
 - Over 50

6. I am most likely to mediate a case when the amount in dispute is:
 - \$0-\$25,000
 - \$25,001-\$100,000
 - \$100,001-\$500,000

- \$500,001-\$1,000,000
- Over \$1,000,000

7. I am most likely to arbitrate a case when the amount in dispute is:

- \$0-\$25,000
- \$25,001-\$100,000
- \$100,001-\$500,000
- \$500,001-\$1,000,000
- Over \$1,000,000

II. Questions Designed To Elicit Qualitative Feedback

8. Which of the following elements of arbitration do you value? (Check all that apply.)

- Arbitrators who are required to apply substantive law
- Administered arbitration as opposed to ad hoc arbitration
- Arbitrators who are learned in the law (attorneys/former judges) versus lay arbitrators
- Centralized case management versus decentralized
- Other (describe)

9. Which of the following would cause you to use arbitration more frequently? (Check all that apply.)

Assurance that:

- Arbitration awards are reviewable for legal error
- Arbitrators are required to follow the law
- Arbitrators are lawyers or former judges
- Arbitration proceeds under established rules administered by trained case coordinators
- Reliable, empirical data exists showing that properly administered arbitration is less expensive and less time-consuming than litigation
- Reliable, empirical data exists showing that arbitration does not frequently result in “split the baby” awards
- Statutory and case law strongly favors enforcement of properly drafted arbitration agreements
- Other (describe)

10. Which of the following elements of mediation do you value? (Check all that apply.)

- Mediators who are lawyers or former judges
- The ability to negotiate/mediate on-line
- The ability to select from a roster provided by an ADR administrator, thereby assuring that the mediator has been screened for qualifications and is in compliance with institutional codes of ethics
- A panel with members in all 50 states
- The ability to secure a mediator within 24 hours of initiating contact with the mediator or ADR administrator
- A competent mediation panel as opposed to an “elite” panel, priced accordingly

11. Which of the following expresses your view? (Check all that apply.)

- Offering clients ADR solutions has improved my law practice financially
- Offering clients ADR solutions is an ethical obligation as a practitioner
- Clients' interests are sometimes best served by offering ADR solutions
- Clients frequently inquire about ADR solutions
- My practice will necessarily include offering ADR solutions to clients in the future
- ADR use will increase in the future

12. I would value opportunities to learn more about the following areas. (Check all that apply.)

- Distinctions between and implications of the rules and panels of the national ADR providers
- Laws governing mediation and arbitration
- Effective drafting techniques
- Empirical studies comparing litigation to ADR

III. Questions Designed To Elicit Settlement Procedural Data

13. Check The Largest Impediment That Prevents You From Settling More Cases

Identification of issues

- Evaluation of Claim
- Initiating the negotiation process
- Negotiating the settlement
- Memorializing the agreement
- Enforcing the terms of the agreement

14. When Do You Most Commonly Initiate Settlement Negotiations?

Immediately after becoming aware of the dispute

- Upon filing the dispute
- During discovery
- At the Pre-trial conference
- During the trial
- While awaiting the verdict
- After the verdict

15. What Form Of Communication Do You Most Commonly Use To Settle Cases?

- Telephone
- U.S. mail or similar service
- Electronic mail
- Face-to-face negotiation
- Other (specify)

IV. Open Ended Questions Designed To Elicit Comment

16. Please describe your most rewarding mediation or arbitration experience.

17. Please offer any other comments on your uses and preferences concerning ADR.