

Virtual Arbitration  
A Two -Year Retrospective Survey  
of the  
Fellows of the College of Commercial Arbitrators  
April 2022

*By Harry P. Trueheart*

In connection with a presentation by a panel of Fellows of the College of Commercial Arbitrators at the Spring Meeting of the ABA Dispute Resolution Section, the College surveyed its membership seeking the individual and collective experiences and opinions of the Fellows regarding arbitrations conducted in whole or in part through remote video technology ('virtual arbitrations'). This is a preliminary summary of the results of that survey. In interpreting survey results any summary necessarily reflects the views of the author. This report is no exception. (The complete survey results appear in Appendix A, *infra*.)

**The Responding Cohort.**

The College membership includes more than 250 arbitrators who become members by invitation based on their experience and reputation in the field. The survey went to all Fellows and 137 completed the survey. Their responses were based on their actual experiences in more than 500 remote video arbitrations, of which the majority were fully virtual.

**The Remote Participants in Virtual Arbitrations**

For the partially virtual arbitrations, the remote participants ranged, in rough order of frequency, from witnesses, to parties and party representatives, to counsel, to members of the arbitration panels. In some cases the panel convened in person while other participants appeared by video. In other cases, apparently some sessions were held fully live while other sessions in the same arbitration were held virtually.

Overall, virtual proceedings were used in whole or in part in every aspect of the arbitration process including in rough order of frequency, witness testimony, preliminary hearings, closing arguments and plenary hearings.

### **Who Decided to Conduct Virtual Proceedings**

In general, it appears that the decisions to conduct fully remote virtual proceedings were made more often by agreement of the parties but with a significant number made by the arbitrators. It can be inferred from the responses that the decision process was collaborative and dynamic as between the parties and the arbitrators in many cases, but where there was disagreement the arbitrators decided the issue.

### **The Reasons for Conducting Virtual Proceedings**

In the vast majority of cases the reason for conducting virtual proceedings was the pandemic, with witness availability and cost running second and third in importance. Various convenience factors played a role in some cases. The reasons for conducting partially remote proceedings followed a similar pattern.

### **Barriers to Conducting Virtual Proceedings**

The survey explored the question of possible barriers to conducting virtual proceedings. Only fifteen percent of the respondents viewed the arbitration clause as presenting any difficulty. Where there was a perceived barrier, the most frequent reasons cited were the apparent requirement of in person hearings, hearings required to be in a specific location and lack of explicit authorization. The other eighty-five percent of responders said the arbitration clauses were not a problem.

Over ninety percent of respondents did not view arbitration rules as presenting a barrier to virtual proceedings. For those arbitrators who thought the rules presented a problem, it was the lack of specific authorization in the rules for virtual proceedings.

Very few respondents saw the law of the seat of the arbitration as presenting a barrier. Those that did noted the lack of specific authorization as the primary issue.

### **Who Should Decide If Arbitral Proceedings Should Be Held Virtually**

The survey asked the questions: if arbitration clauses, institutional rules and the law were to authorize virtual proceedings as an option, how should the decision to conduct virtual proceedings be made? In order of frequency of the responses, in all cases the responses were: by agreement of the parties, by decision of the arbitrators, by decision of the arbitral institution, by the courts, with the last three options increasingly distant third, fourth and fifth choices. There was a distinct preference for keeping the issue out of the courts.

### **How Do Virtual Proceedings Impact the Performance of the Participants**

Much has been said based on experience and / or opinion or both about how virtual proceedings affect the arbitration process. The survey asked a number of questions probing the Fellows' view based on their actual experiences. In each case the question was how did virtual proceedings affect the particular aspect of the proceedings compared to in person proceedings. Here are the results in terms of general responses and representative comments.

- **Degree and Quality of Party Participation:** Forty percent said virtual hearings had a significantly positive impact. Sixty percent said it had no impact either way. The comments noted positives such as permitting cases to proceed in face of pandemic restrictions; significantly reducing costs; significantly improved efficiency and increased scheduling options.
- **Witness Participation:** The question of the effect of virtual proceedings on assessing witness testimony drew mixed responses. Some respondents felt that their ability to hear and see the witness close-up improved with video. The effect of video on credibility assessment drew mixed views. Some felt it was improved by close-up video which others preferred in person testimony.

assessing credibility grounds and effectiveness of cross examination and felt video appearances were not as effective.

- **Performance of Counsel:** Seventeen percent thought virtual proceedings improved performance of counsel. Eighty- two percent said it did not make a difference either way. One respondent said it was a negative. One comment may have summed up the overall impacts as follows: “Good lawyers were better and bad lawyers were worse.” More specific positives were perceptions that counsel were better prepared and focused and in general virtual hearings encouraged to make more efficient use of hearing time. The negatives focused on counsel who were not comfortable with the technology and the issue of cross-examination and witness assessment where both sets of views were expressed.

### **Best Practices in Virtual Arbitration Proceedings**

The survey asked the responders for their views on the best practices employed by counsel in virtual proceedings. The following were most frequently mentioned:

- Familiarity with quality technology by counsel and witnesses.
- Use of an experienced hosting firm to run the technology.
- Efficient document/exhibit handling.
- Cooperative planning among counsel for all parties in terms of hearing arrangements, documents handling, scheduling, and process matters in general.
- Witness training to increase familiarity with the technology.
- Use of virtual break out rooms.
- Adapting speaking style to the technology.
- Close camera placement.

## **Significant Mistakes By Counsel Related to Virtual Proceedings**

The survey asked the responders for their views on the significant mistakes counsel made. Some of the responses paralleled the types of mistakes counsel make in live hearings. Others were specific to virtual proceedings.

- Technology: lack of familiarity by counsel; lack of training provided by counsel for witnesses; apparent lack of trial runs to assure effectiveness.
- Document handling within the virtual world. The mistakes noted were around lack of skills in presenting exhibits using the technology.
- Poor facilities: lighting, microphones, camera positioning; inadequate connection speeds.
- Not leveraging the technology to enliven the proceedings with visuals, etc.
- Some tendency to inappropriate informality displayed by counsel.

## **Effects on Possible or Actual Settlement.**

Eighty-five percent of responders said there was no impact. The positive and negative comments, as opposed to the conclusions, were equally divided. The comments reported what would be expected: in general arbitrators are not involved in or privy to settlement discussions; and speculation that lack of personal contact among counsel might inhibit settlement discussions in connection with the hearings.

## **Effect on the Performance of the Arbitrators.**

The question presented was how do virtual proceedings affect your performance as an arbitrator?

- Twenty-one percent said it helped.
- Six percent said it hindered performance.
- Seventy-three percent said it had no impact.
- The comments frequently mentioned that the responder missed the opportunity for personal interactions with panel members and counsel. In some comments this was noted as negative to the process, in as many others it was noted as just a recognition of

reduction in collegial interactions.

- Zoom fatigue was mentioned.
- Some saw a negative in the reduction of arbitrator time to interact and deliberate. Others saw the technology as enabling deliberations, particularly when the arbitrators would otherwise not have been able to do effectively connect.
- Positives included efficiency in scheduling, timely hearings and ability to make prompt decisions.
- Overall the consensus view is of a neutral to positive impact on arbitrator performance.

### **Preliminary Conclusions**

Overall, virtual proceedings were viewed very positively. The reasons for and benefits of virtual proceedings go well beyond avoiding pandemic related risks and problems and include efficiency, cost savings, and more expeditious scheduling. In general, there were few if any major negative impacts on the process or participants of conducting virtual proceedings with the exception of a minority but consistent view that virtual hearings impacted the assessment of witnesses. It is a reasonable inference from the survey that arbitration clause, institutional rules and laws should be revised where necessary to explicitly authorize virtual hearings where the parties agree or where the arbitrators order them.

If the responding cohort of arbitrators views are representative of the broader community of arbitrators, we can expect the arbitration community to encourage virtual proceedings into the future and that virtual arbitrations will continue to be an attractive choice even after the end of the pandemic.

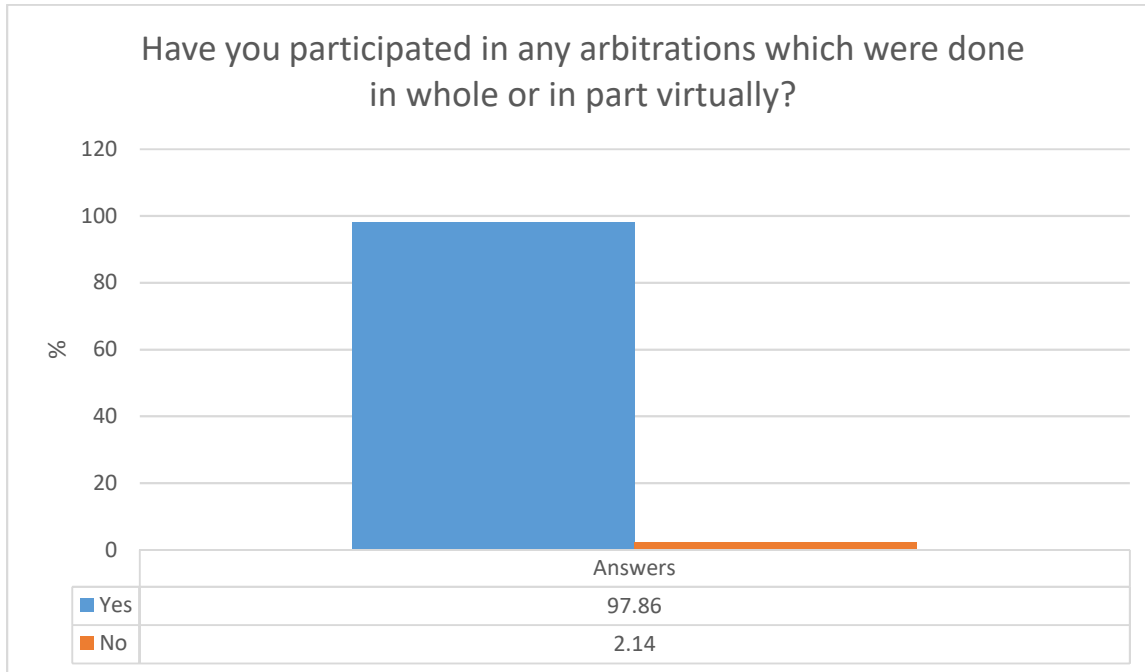
## **Acknowledgements**

I would like to acknowledge the very helpful input from a number of our Fellows, Cecelia Flores Rueda, David Evans, Roy De Barbieri, Jonathan Fitch, and John Holsinger, and Bill Seward for assisting with the survey technology.

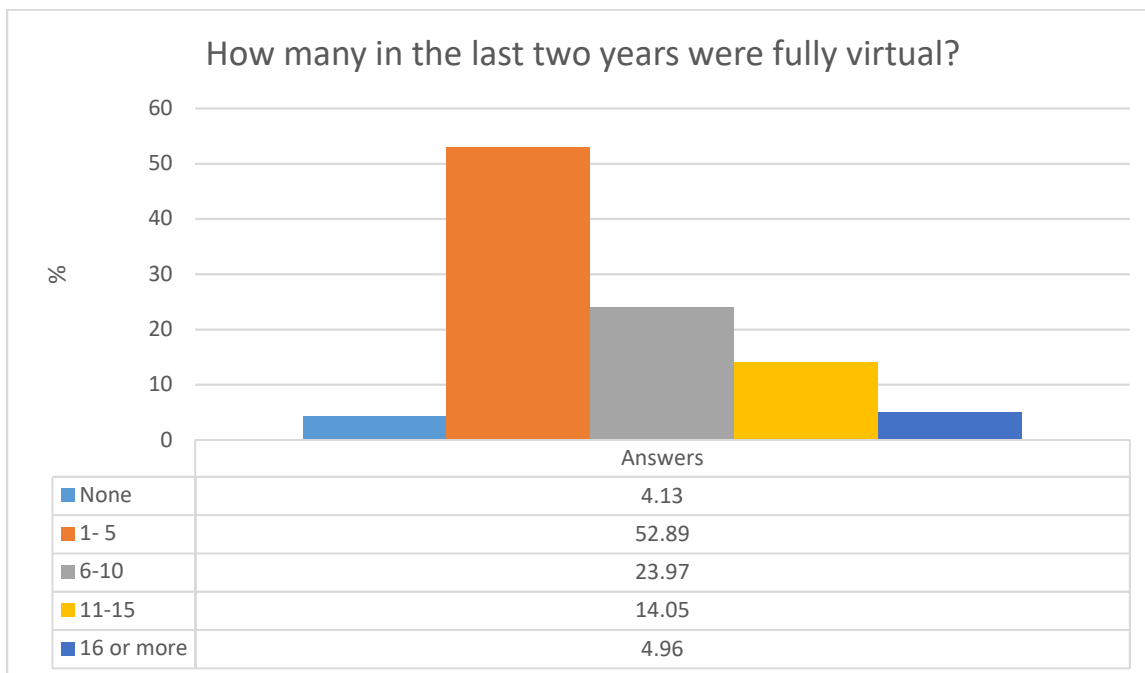
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Appendix A  
Survey results

I. Question 1 (140 answers)

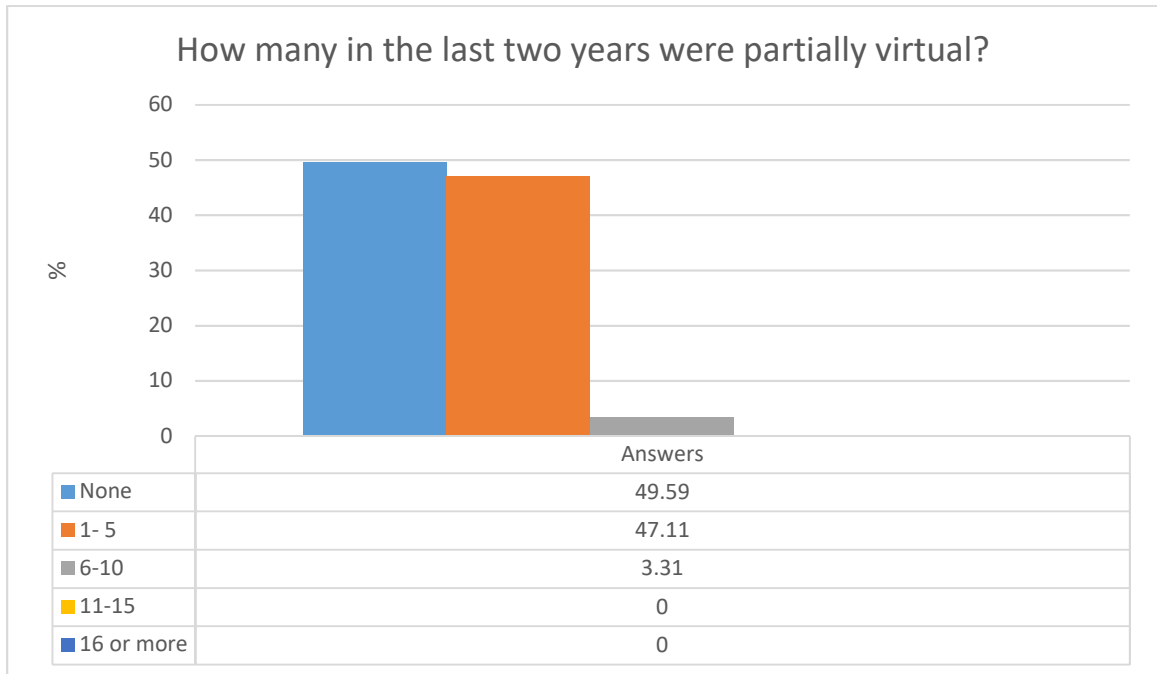


II. Question 2 (121 answers)

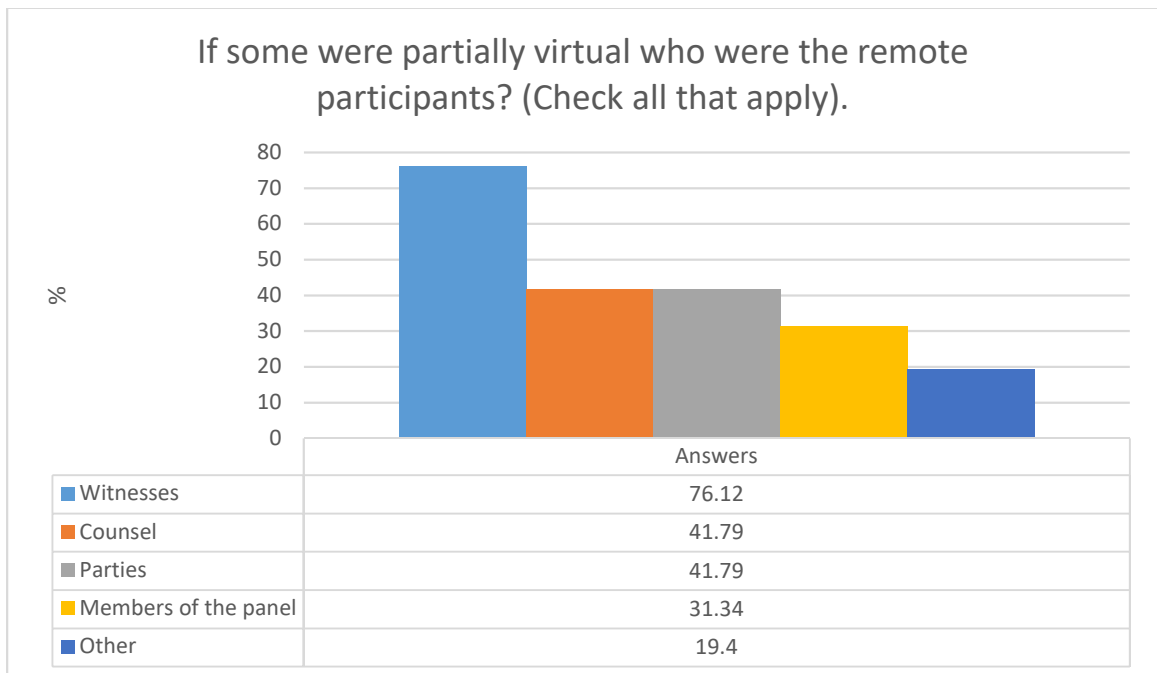




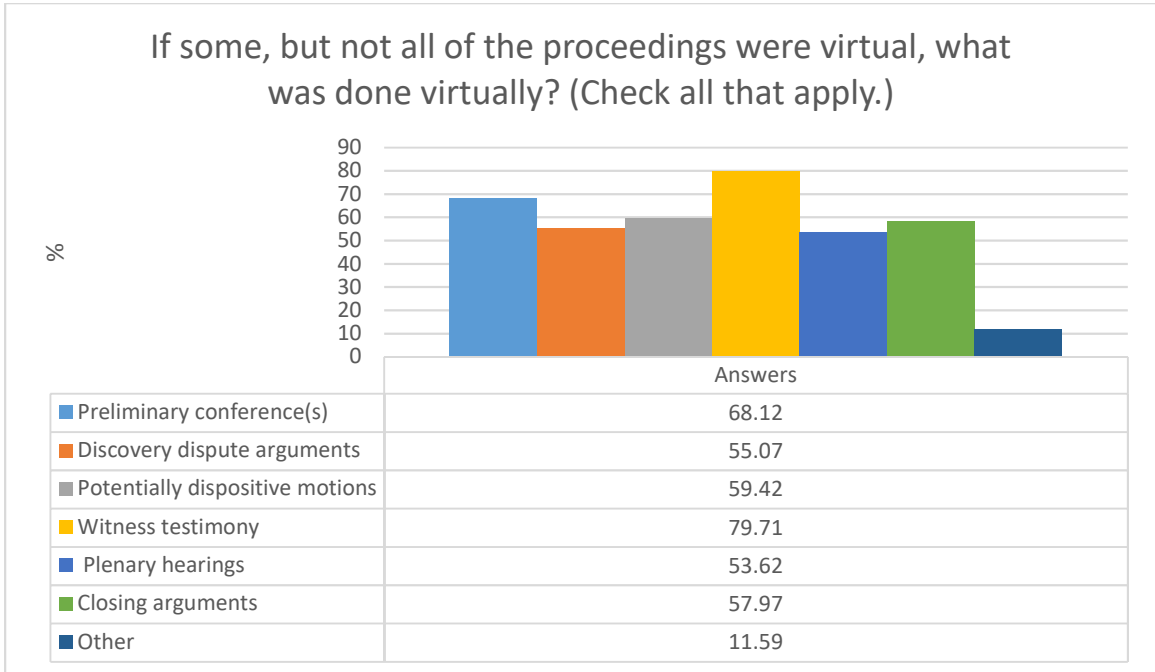
**III. Question 3** (121 answers)



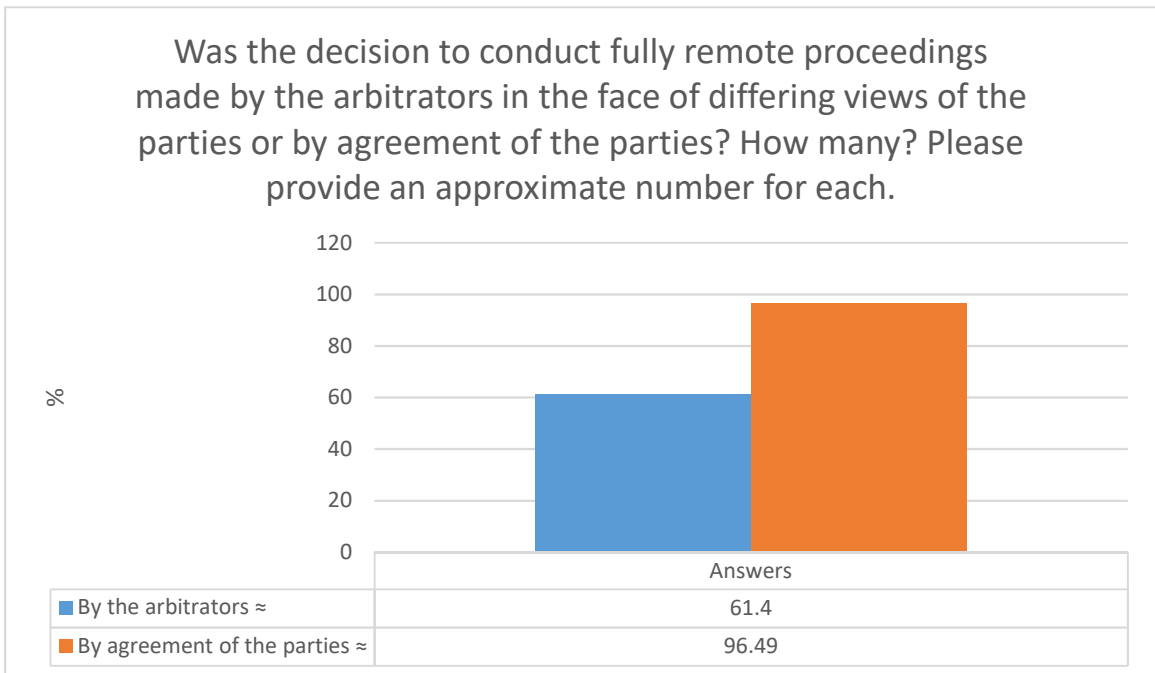
**IV. Question 4** (67 answers)



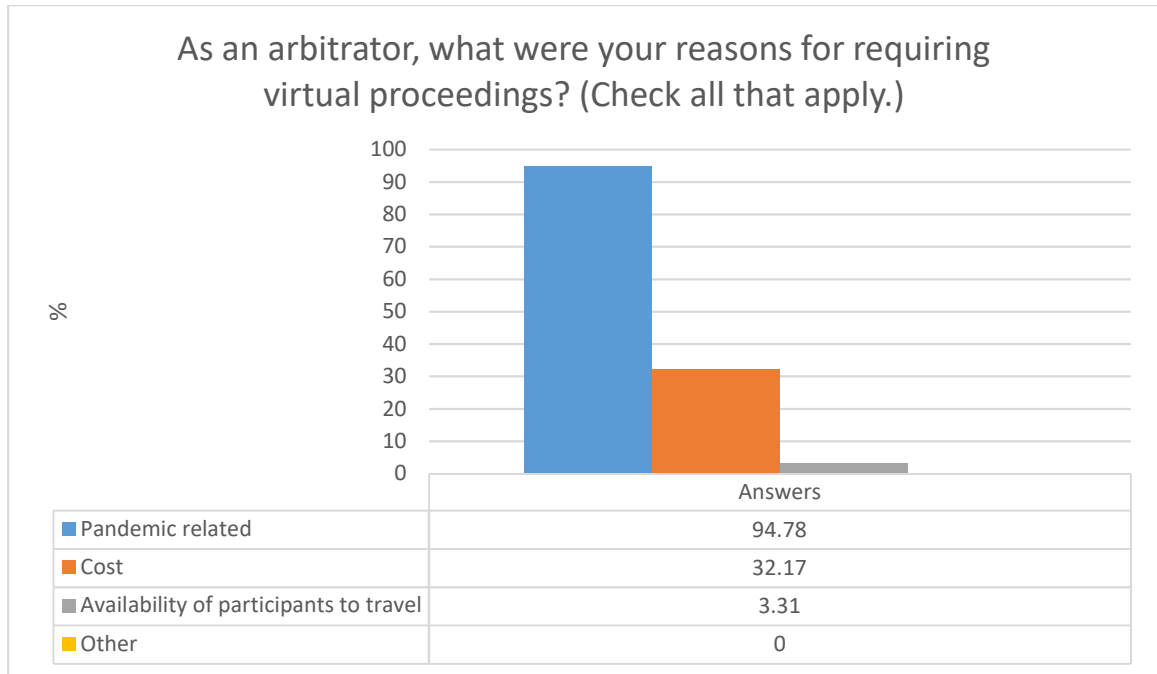
**V. Question 5 (69 answers)**



**VI. Question 6 (114 answers)**

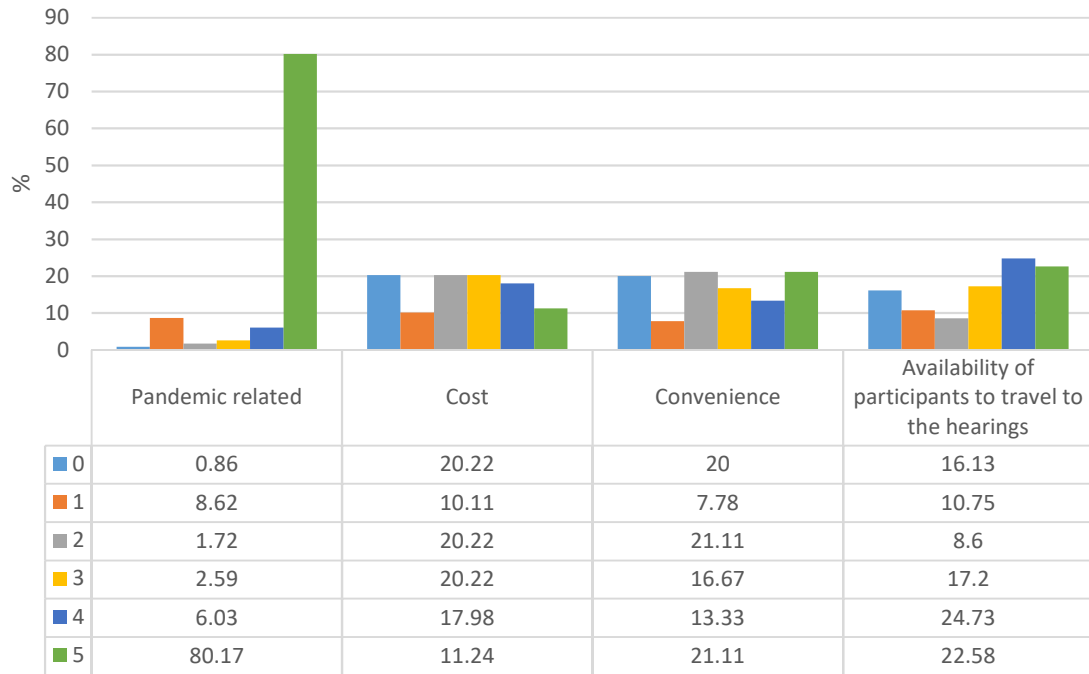


**VII. Question 7 (115 answers)**

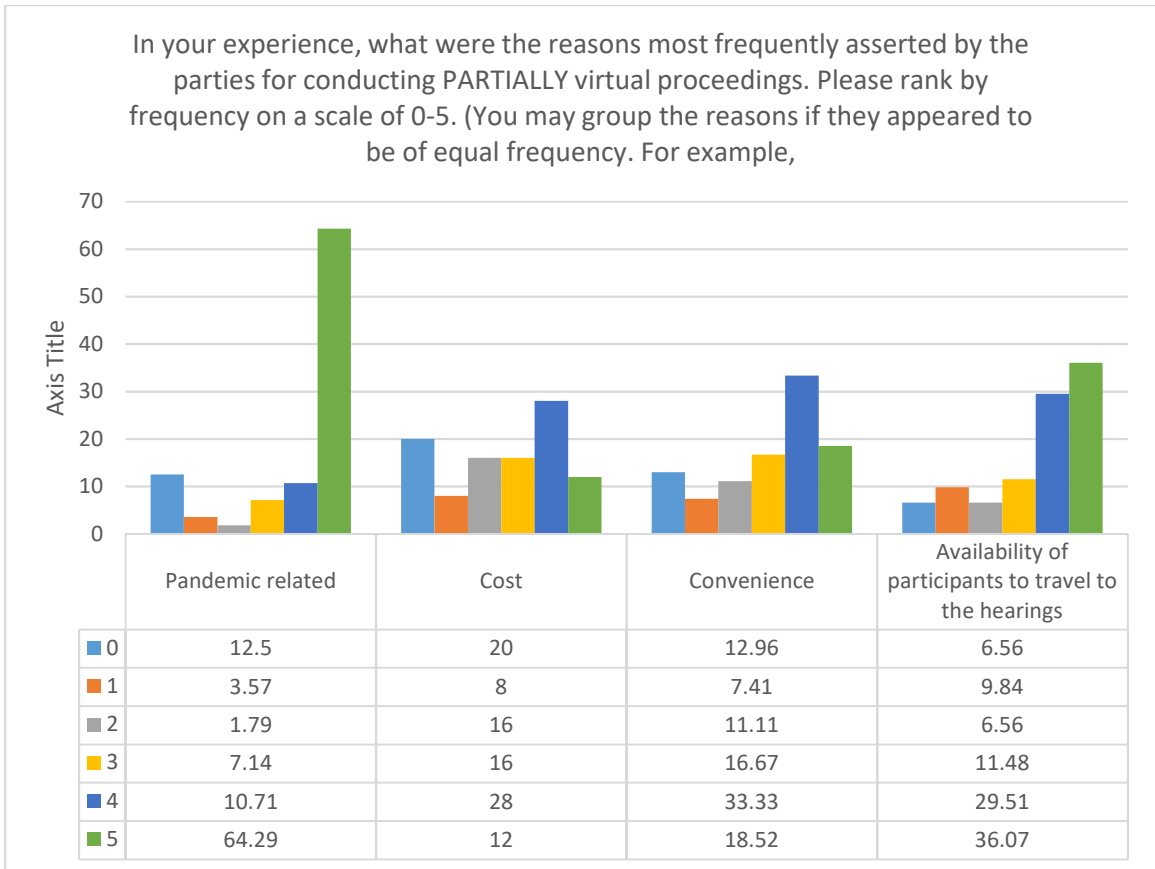


**VIII. Question 8 (119 answers)**

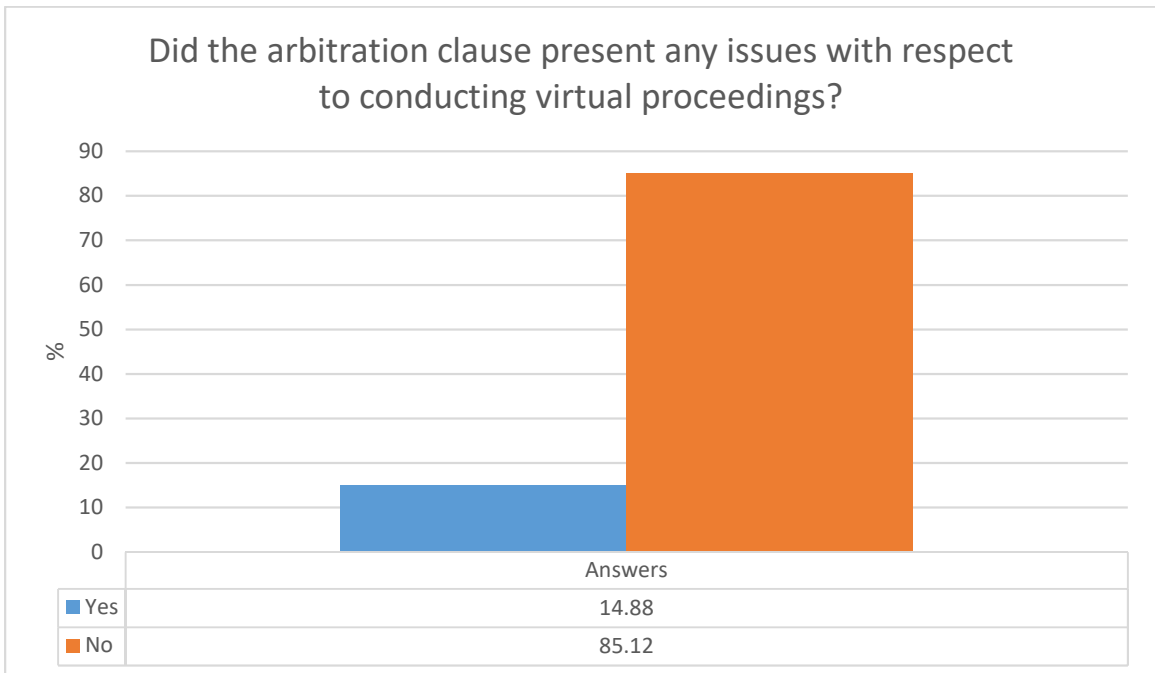
In your experience, what were the reasons most frequently asserted by the parties for conducting FULLY virtual proceedings. Please rank by frequency on a scale of 0-5. (You may group the reasons if they appeared to be of equal frequency. For example, if s



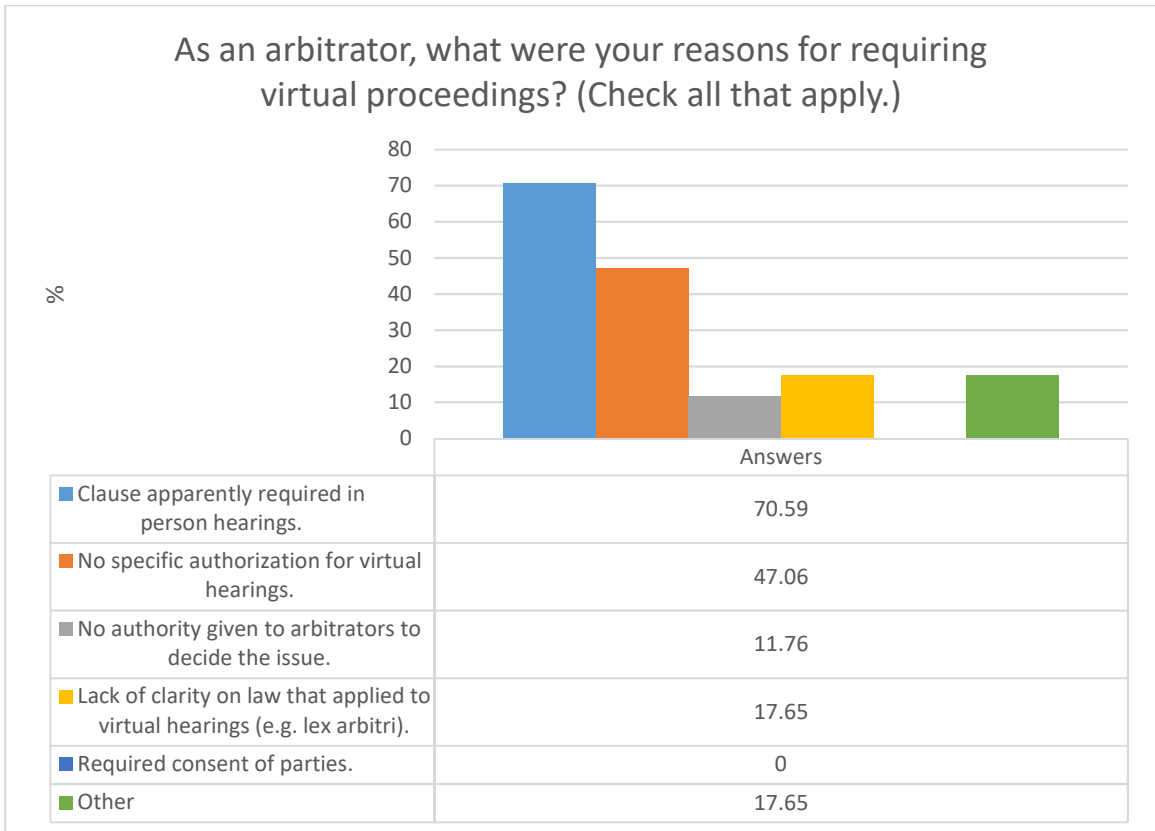
**IX. Question 9 (68 answers)**



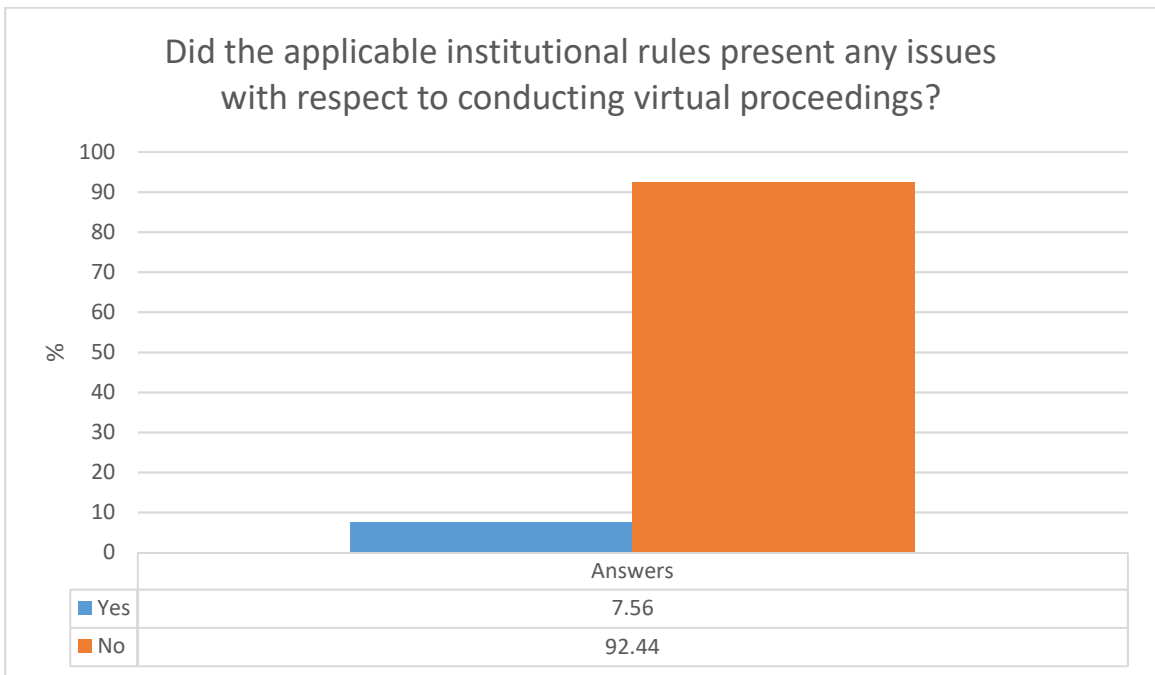
**X. Question 10 (121 answers)**



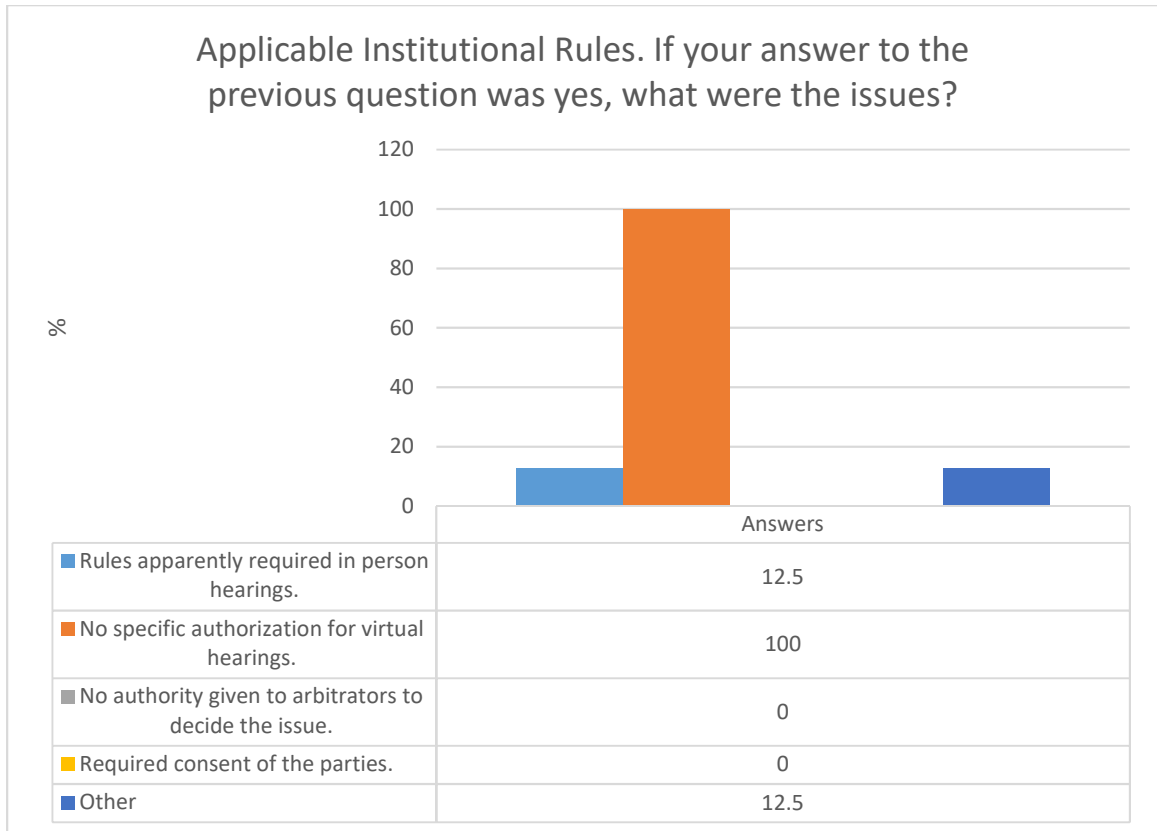
**XI. Question 11 (17 answers)**



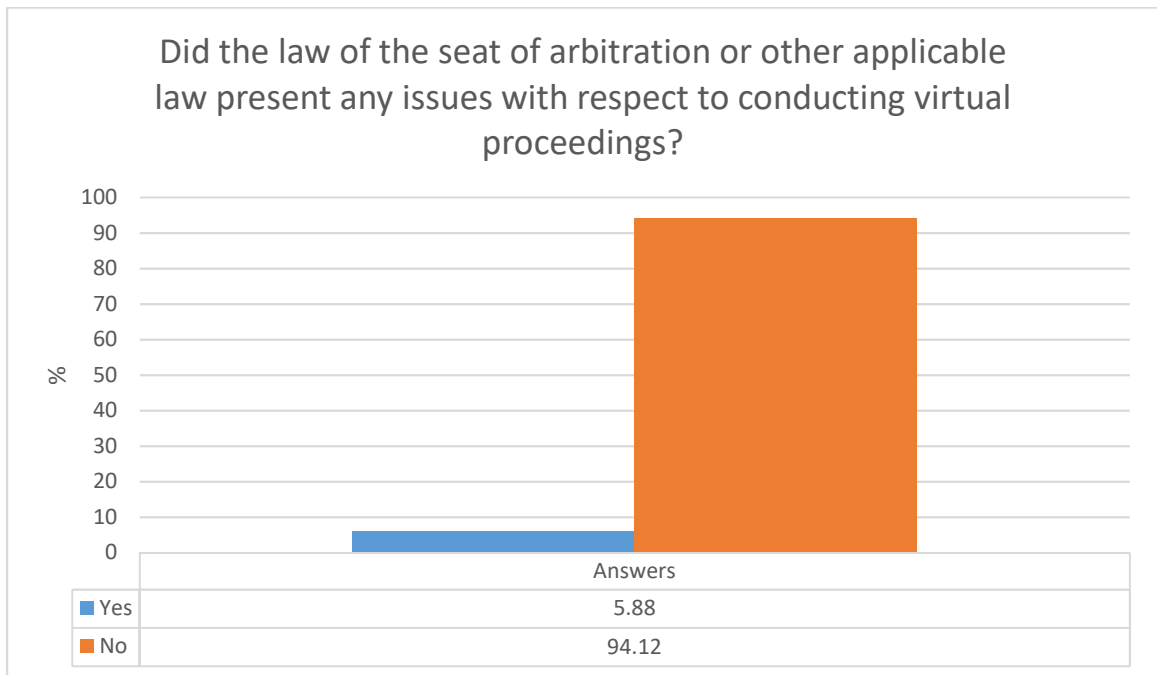
**XII. Question 12 (119 answers)**



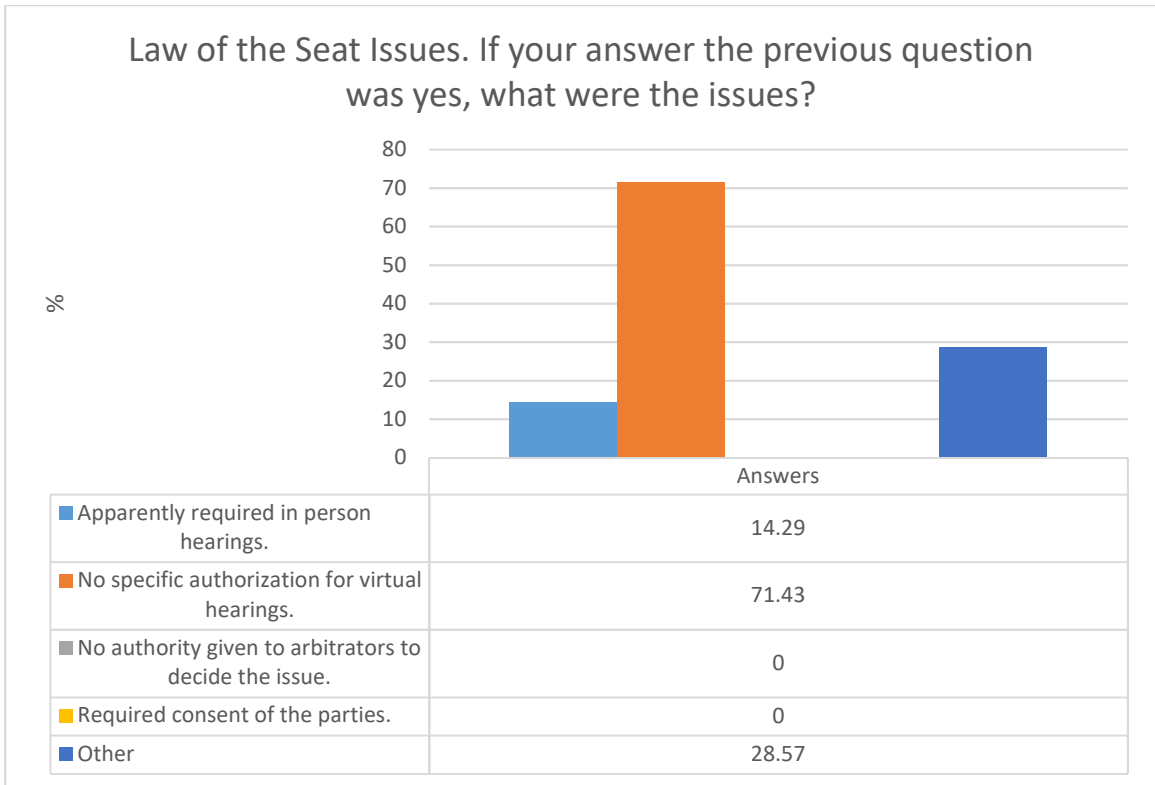
**XIII. Question 13 (8 answers)**



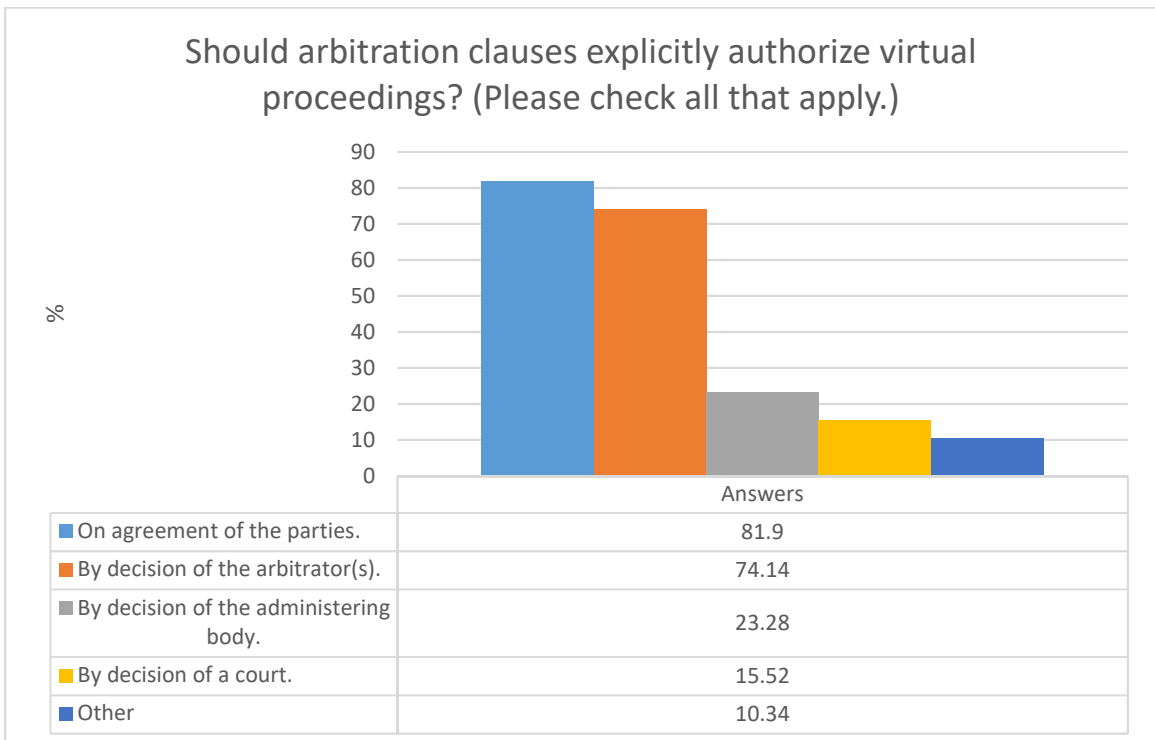
**XIV. Question 14 (119 answers)**



**XV. Question 15 (7 answers)**

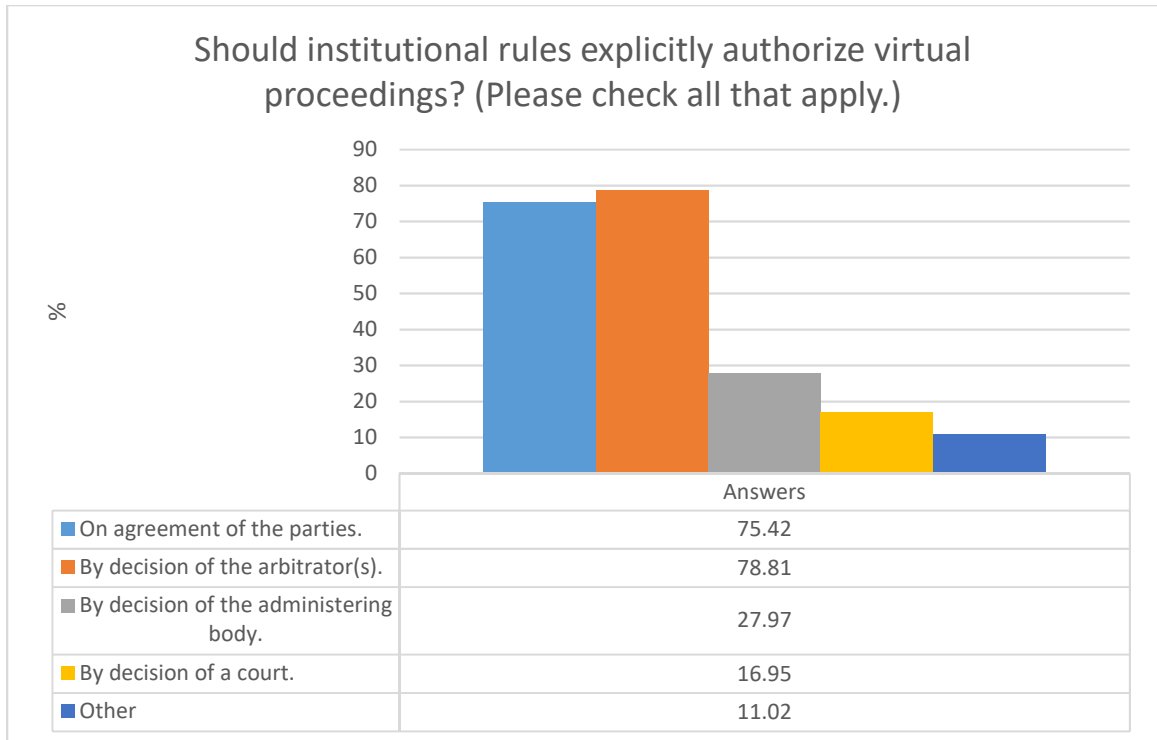


**XVI. Question 16 (116 answers)**

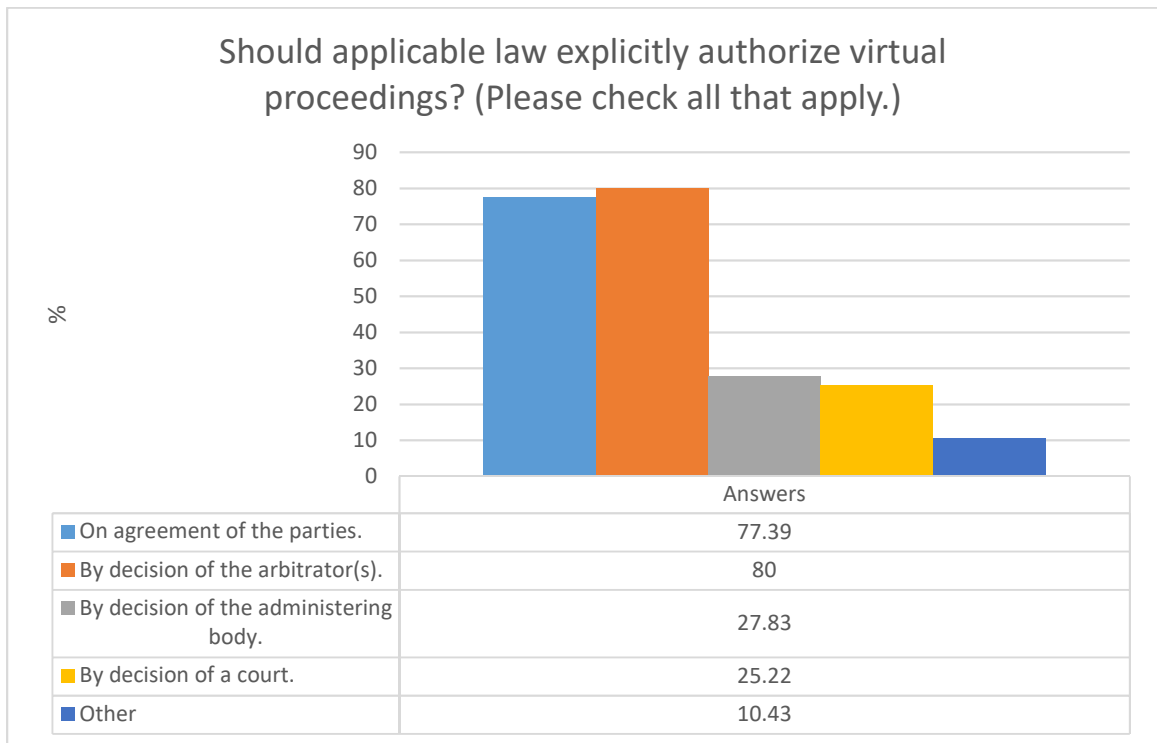


**XVII. Question 17 (118 answers)**

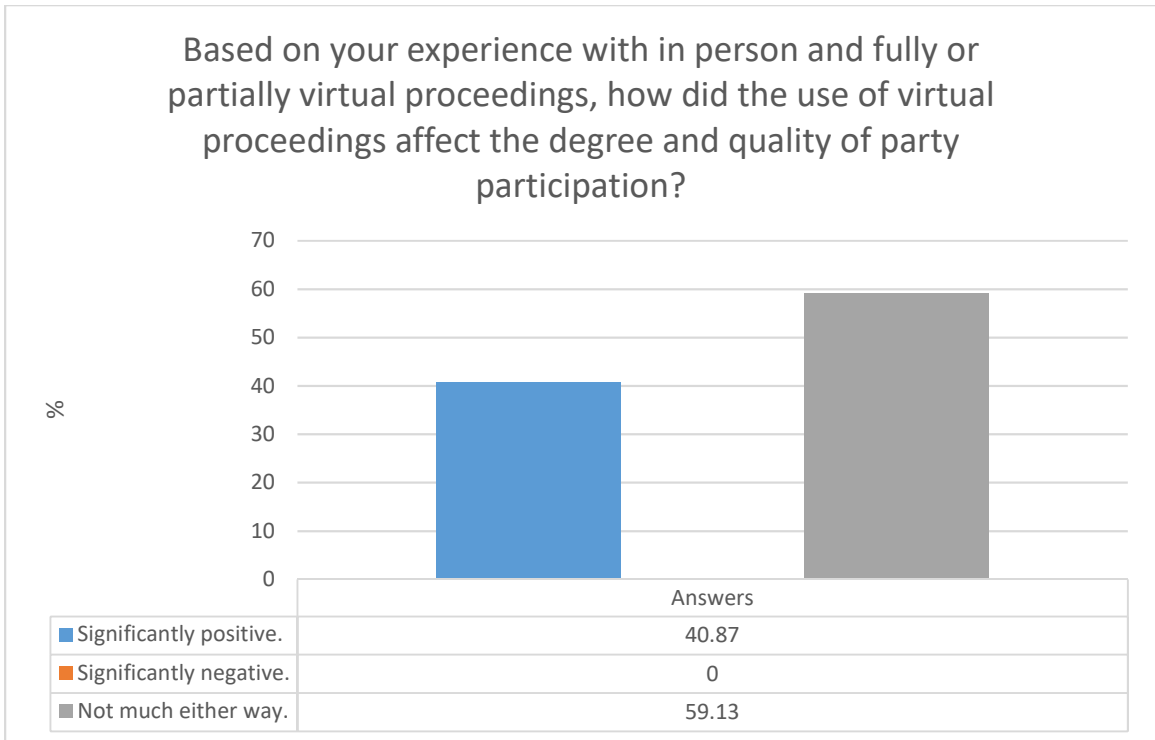




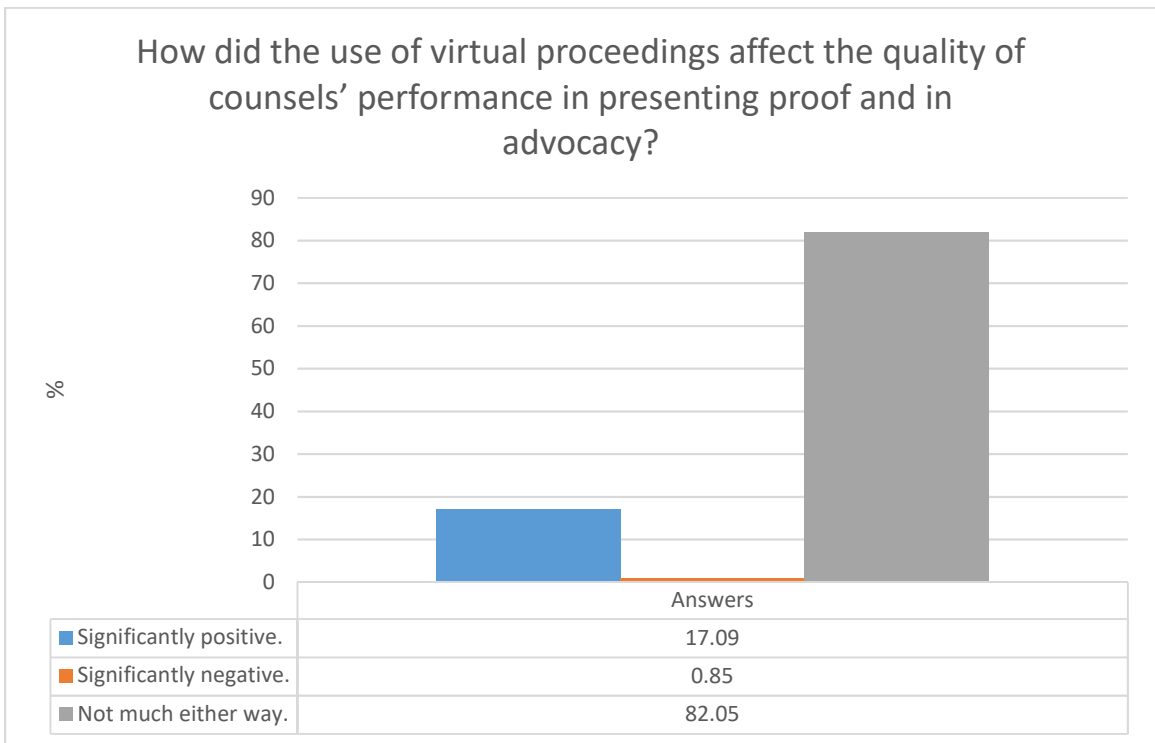
**XVIII. Question 18 (115 answers)**



**XIX. Question 19 (115 answers)**



**XX. Question 20 (117 answers)**



**XXI. Question 21**

What were the best practices you observed in how counsel handled virtual proceedings? (Please list separately and in a few words if possible.)

A (93 answers)	B (53 answers)	C (32 answers)
<ul style="list-style-type: none"> <li>• Same as live</li> <li>• Accommodating technology video, audio, pace</li> <li>• Use of a technical assistant</li> <li>• They prepared witnesses for the technology challenges of virtual hearings</li> <li>• Handling of exhibits with screen share</li> <li>• Respectful Communication</li> <li>• Having a technician involved to handle hearing mechanics</li> <li>• Efficiency</li> <li>• Screen sharing</li> <li>• Varied</li> <li>• Great demonstrative aids</li> <li>• Good use of screen sharing.</li> <li>• Agreement with opposing counsel on detailed schedule</li> <li>• Greater Cooperation in advance of hearing</li> <li>• Organization of materials</li> <li>• Independent host to handle document presentation</li> <li>• Handled exhibits efficiently</li> <li>• Had a technician manage document presentation</li> <li>• Control of exhibits</li> <li>• Speaking clearly and one person at one time.</li> </ul>	<ul style="list-style-type: none"> <li>• Using tech that best facilitates document handling</li> <li>• They practiced the presentation of digital evidence beforehand</li> <li>• Making sure their witnesses had good video and audio</li> <li>• Well organized in presentation of evidence</li> <li>• Counsel not talking over one another</li> <li>• Document presentation</li> <li>• Integration of case manager's operation of virtual platform</li> <li>• Skillful use of exhibits.</li> <li>• Use of Document Management Platforms</li> <li>• Promptness of start/stop times</li> <li>• Important clauses in documents called out through highlighting</li> <li>• Availability of witnesses</li> <li>• Using 3rd parties to administer tech issues.</li> <li>• Use of document consultants to aid with exhibits</li> <li>• Pretty much have it down by now</li> <li>• They tended to reach agreements on process matters</li> <li>• Cross examination of witnesses who had the chance to review</li> </ul>	<ul style="list-style-type: none"> <li>• The tested the technology beforehand</li> <li>• Speaking clearly while looking at the camera</li> <li>• No theatrics</li> <li>• Courtesies extended more readily</li> <li>• Time</li> <li>• Arbitrator 's ability to use the virtual platform</li> <li>• They were able to be more flexible with scheduling witness examination and other scheduling issues</li> <li>• Using headsets or dedicated microphones to improve sound quality</li> <li>• More efficient</li> <li>• Cooperation re screen sharing and exchange of exhibits</li> <li>• More prepared arguments</li> <li>• Arbitrator 's ability to use the virtual platform</li> <li>• Joint exhibits</li> <li>• Using a 3rd party tech firm</li> <li>• Experienced platform operator</li> <li>• Had emergency tech number to deal with tech issues</li> <li>• Some had practiced using the technology to become familiar with it.</li> <li>• Close-up instead of entire room</li> <li>• More efficient use of cross examination</li> <li>• Agreeing to shorter days</li> </ul>

<ul style="list-style-type: none"> <li>● Increased cooperation pre-hearing led to better hearings</li> <li>● Efficient handling of exhibits</li> <li>● Preparation</li> <li>● They tended to be well prepared, perhaps based on concern for the unknown</li> <li>● Presentation of testimony.</li> <li>● Advance technology testing and training</li> <li>● All on time</li> <li>● Developing a workable protocol for virtual hearings</li> <li>● Screen share for exhibits</li> <li>● Ensured in advance that witnesses have the exhibits</li> <li>● Nothing in particular</li> <li>● Screen share</li> <li>● Gather client reps and witnesses in one location to extent possible.</li> <li>● Prepared and not doing as much on the fly</li> <li>● Use of screen sharing</li> <li>● Use of virtual demonstratives</li> <li>● Cooperation in use of service providers to handle technical aspects including breakout rooms, exhibits and witnesses</li> <li>● Using tech assistants to display exhibits</li> <li>● Being organized and prepared</li> <li>● Copies of exhibits in advance of the hearing.</li> <li>● Skill in sharing screens to show exhibits</li> </ul>	<p>documents, even got-you documents.</p> <ul style="list-style-type: none"> <li>● Not late after breaks</li> <li>● Sharing a common bundle or file of documents to be used</li> <li>● Assistance of IT professionals</li> <li>● More succinct</li> <li>● Advance agreements re admissibility of documents</li> <li>● More fluid with exhibits</li> <li>● Integration of case manager's operation of virtual platform</li> <li>● Attention to technical aspects of witness presentation</li> <li>● Practicing with the video platform</li> <li>● Practice run</li> <li>● No down time waiting for witnesses; witnesses always available by a simple text or email</li> <li>● Tested each witnesses' tech support</li> <li>● Use of private "rooms" for conferring with clients/witnesses.</li> <li>● Good camera</li> <li>● All exhibits organized and available on encrypted thumb drives to panel</li> <li>● Enhanced vitality</li> <li>● Exhibits given to panel in advance</li> <li>● Sequestering of witnesses</li> <li>● Proficient use of screen share feature</li> <li>● Less inclined to try to intimidate witnesses or the arbitrator</li> </ul>	<ul style="list-style-type: none"> <li>● Easier to avoid personality disputes</li> <li>● Presenting witnesses only once, with cross not limited to direct; ease of presenting foreign witnesses</li> <li>● “Single use” of remote connection</li> <li>● Using a reputable third-party platform provider</li> <li>● Work w/opposing counsel re: rules for presentation</li> <li>● Understanding how breakout rooms work</li> <li>● Timely submittal of exhibits.</li> <li>● Effectively cross-examining on a video platform.</li> <li>● Counsel were prepared</li> <li>● Good technology protocol</li> <li>● Good knowledge/ use of technology</li> <li>● Documents</li> </ul>
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<ul style="list-style-type: none"> <li>● Skillful use of screen-sharing for highlighting documents</li> <li>● Screen sharing to display exhibits</li> <li>● Used independent providers to handle video</li> <li>● Had specific tech person to deal with document sharing</li> <li>● Flexibility in scheduling international witnesses in different time zones.</li> <li>● Counsel in some cases were clearly comfortable with videoconference platforms, probably because of sufficient practice, so PRACTICE, PRACTICE, PRACTICE.</li> <li>● Prepared with appropriate equipment and software/app</li> <li>● Showed flexibility in scheduling witnesses to appear</li> <li>● Good lighting</li> <li>● Close connection with computer and information there available.</li> <li>● Recording live</li> <li>● Efficient use of exhibits</li> <li>● Counsel were less likely to ask irrelevant questions demanded by clients because they were not in the same room as the client in most of the cases</li> <li>● Focus on panel</li> <li>● Established order when each witness would appear</li> <li>● Exhibit software</li> <li>● Document handling</li> <li>● Working out in advance the efficient presentation</li> </ul>	<ul style="list-style-type: none"> <li>● Making sure technical issues were resolved in advance.</li> <li>● Developing good “remote hearing protocols” so that they knew precisely how to present documents on cross x to adverse witnesses</li> <li>● Succinct presentations</li> <li>● Effective use of “share my screen” interactive exhibits such as spreadsheets for experts</li> <li>● Pared down presentations</li> <li>● Planning for possible technology issues</li> <li>● Hiring court reporting services with experience or expertise relative to video proceedings</li> <li>● Being capable of screen sharing with minimal fuss</li> <li>● IT people at the hearing to help with logistics and getting docs on screen</li> <li>● Making sure witnesses had proper access.</li> <li>● Learning how to make their oral arguments as effective as a newscaster or persuasive politician.</li> <li>● Increased the speed of the proceeding</li> <li>● Training and provision of equipment to witnesses if necessary</li> <li>● More succinct.</li> <li>● Skilled use of exhibits</li> <li>● Translations/interpreters</li> </ul>
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<p>of documents at the hearing</p> <ul style="list-style-type: none"> <li>● Being skilled at presentation of evidence remotely</li> <li>● Better prepared and organized</li> <li>● Witness alone in room while testifying</li> <li>● Counsel decided the needed witnesses</li> <li>● Exhibit display on screen in real time</li> <li>● Document sharing</li> <li>● Deft use of technology (e.g., shared screens)</li> <li>● Being familiar with the process</li> <li>● Counsel who dressed and acted with formality.</li> <li>● Gathering their own teams in separate conference rooms, with different counsel presenting different witnesses</li> <li>● Shared exhibits on screen</li> <li>● Use of documents</li> <li>● Timeliness</li> <li>● Effective use of highlighted exhibits for direct and cross</li> <li>● Demonstrative Exhibits</li> <li>● Planning ahead for use of exhibits and ppts</li> <li>● Hiring 3rd party to organize and present documentary evidence</li> <li>● Being careful with camera and audio setup</li> <li>● Exhibits circulated in advance and in order of order</li> <li>● Professional technical assistance</li> </ul>		
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<ul style="list-style-type: none"> <li>● Sharing screen facilitates document handling and presentation</li> <li>● Not significantly different from in person hearings</li> <li>● Not speaking at the same time.</li> <li>● Making sure that the arbitrator had the exhibits</li> <li>● Their listening to and following the direction of the Panel/Arbitrator.</li> <li>● Learning how to use the video/audio technology to get their presentation across effectively.</li> <li>● Brevity</li> <li>● Use of court reporter to control the proceedings</li> <li>● Use of electronic, i.e. graphic, renderings to present evidence</li> <li>● More polite.</li> <li>● Efficient time use</li> <li>● Practice technology</li> </ul>		
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**XXII. Question 22**

What were the most significant mistakes you saw counsel make in relation to the virtual proceedings? (Please list separately and in a few words if possible.)

A (76)	B (39)	C (15)
<ul style="list-style-type: none"> <li>● Failure to properly identify exhibits</li> <li>● To interrupt each other.</li> <li>● Too many people in counsel room, so hard to see counsel</li> <li>● No mistakes</li> <li>● They didn't prepare witnesses for the technology challenges of virtual hearings</li> </ul>	<ul style="list-style-type: none"> <li>● They DIDN'T practice the presentation of digital evidence beforehand</li> <li>● Fumbling with exhibits, audio or video</li> <li>● Handling of exhibits.</li> <li>● Counsel talking over one another</li> <li>● Lack of formality</li> <li>● Inattention to technological matters</li> </ul>	<ul style="list-style-type: none"> <li>● They DIDN'T test the technology beforehand</li> <li>● Poor lighting, not looking at the camera</li> <li>● Lack of discipline in questioning witnesses.</li> <li>● Failing to apologize upon making a forgivable mistake</li> <li>● Poor camera position</li> <li>● Not paying attention and staying focused</li> </ul>

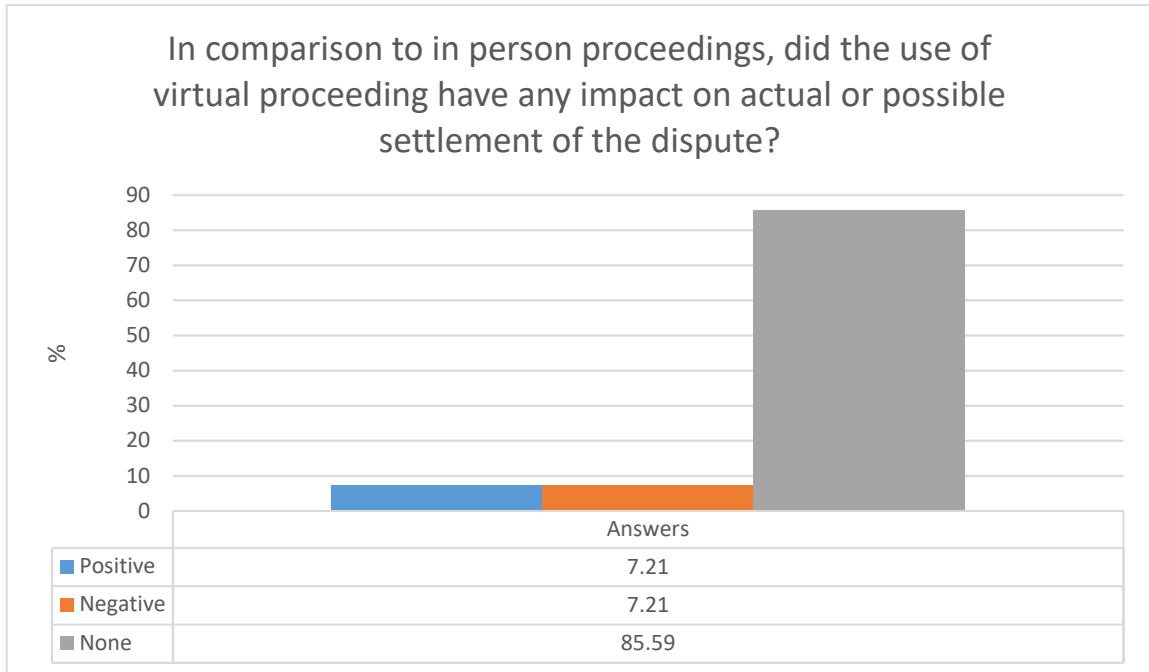
<ul style="list-style-type: none"> <li>● Not prepping their witnesses on zoom</li> <li>● Technical confusion.</li> <li>● Assuming arbitrator would not give full opportunity to make points</li> <li>● Unprepared or unfamiliar with medium</li> <li>● Not ensuring that client wasn't texting answers to a witness</li> <li>● Varied.</li> <li>● Nothing new. Just amplified the typical mistakes</li> <li>● The wrong slide it document</li> <li>● Bad use of time</li> <li>● Inattention to witness availability to access documents</li> <li>● None, really</li> <li>● None</li> <li>● N/a</li> <li>● Lack of familiarity with presentation of documents virtually</li> <li>● N/a</li> <li>● Inadequate attention to how documents would be introduced</li> <li>● Poor handling and designation of exhibits</li> <li>● Technical trouble</li> <li>● Time management</li> <li>● Not doing the items listed above</li> <li>● Poor lighting</li> <li>● Didn't arrange for witness to have exhibits</li> <li>● Nothing in particular</li> <li>● Lack of familiarity with tech</li> <li>● Unfamiliarity with virtual platform</li> </ul>	<ul style="list-style-type: none"> <li>● Connection issues resulting in delays</li> <li>● Poor sound quality on counsel's end.</li> <li>● Cannot view entire room</li> <li>● Poor camera quality</li> <li>● Poor technical setup - either witness and counsel not visible or too far away</li> <li>● Discomfort due to lack of familiarity with tech</li> <li>● Witnesses inadequately prepared in advance</li> <li>● Harder to coordinate witnesses on zoom</li> <li>● Lack of formality</li> <li>● Tendency by some counsel to treat the proceedings with less decorum because of the absence of physical facility and personnel, including arbitrators</li> <li>● Having inadequate facilities (microphones, lighting, etc.)</li> <li>● Witnesses who had not practiced</li> <li>● Not knowing how to use zoom, particularly screen sharing</li> <li>● Occasional distraction of home environment</li> <li>● Document confusions</li> <li>● Some appeared uncomfortable with the platform.</li> <li>● Inept use of Zoom features</li> <li>● Technology issues</li> <li>● There seemed to be more leading questions on direct</li> <li>● Doing too little to relieve tedium</li> <li>● Document handling</li> <li>● Use of a conference room with multiple people but</li> </ul>	<ul style="list-style-type: none"> <li>● Inadequate preparation of witnesses for virtual proceeding</li> <li>● Connectivity</li> <li>● Some occasionally forgot that their microphones were live....</li> <li>● Failure to prepare witnesses for the technology</li> <li>● Difficulty with handling of exhibits</li> <li>● Excessive reliance on verbal explanations where an exhibit would have been more effective.</li> <li>● Trying to handle the platform themselves</li> <li>● Inability to use screen sharing</li> <li>● Mumbling, inaudible commentary.</li> </ul>
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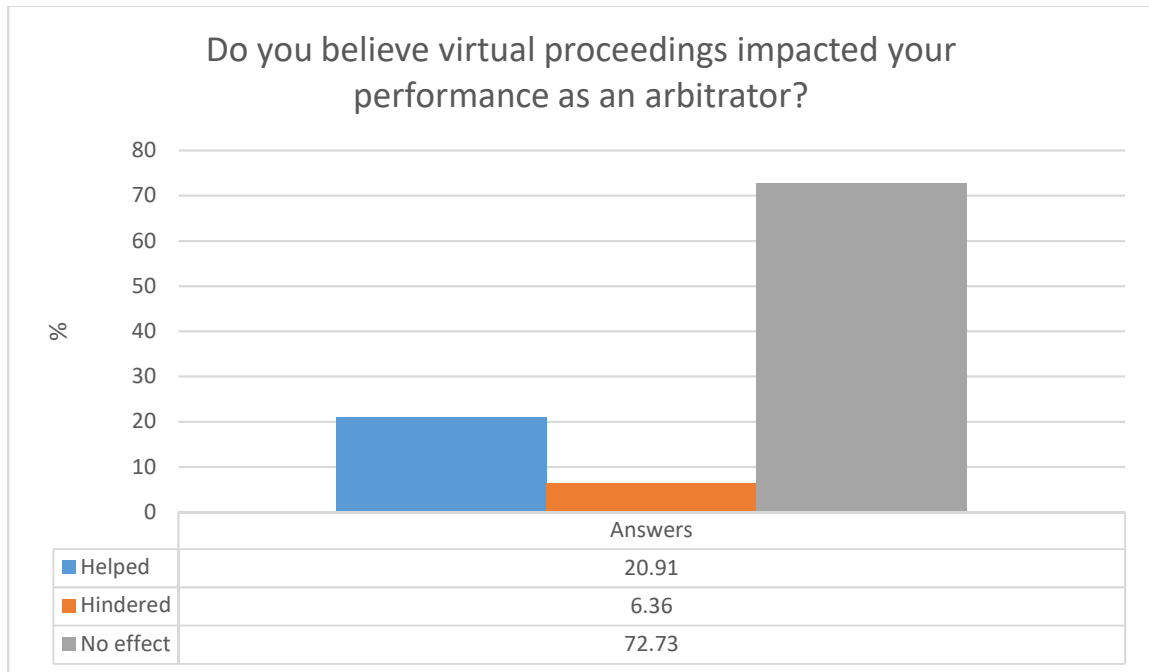
<ul style="list-style-type: none"> <li>● Witnesses not familiar with technology</li> <li>● The wrong slide it document</li> <li>● Loss of control of experts, who tend to cross the line between expert testimony and advocacy.</li> <li>● Disorganization with exhibits</li> <li>● Witnesses without exhibits</li> <li>● None</li> <li>● Allowing clients to speak with witness during cross</li> <li>● Ineffective and cumbersome use of separate web-based repository for exhibits</li> <li>● Hadn't considered difficulty or ease of conferring with client</li> <li>● None</li> <li>● Failure to prepare witnesses</li> <li>● Some were unfamiliar with the technology.</li> <li>● Not being familiar enough with using videoconference platform.</li> <li>● None</li> <li>● Bad lighting; bad camera</li> <li>● None related to virtual format</li> <li>● Time lapse in getting next witness up before panel</li> <li>● Counsel seemed less prone to return to the hearing "locale" on a timely basis</li> <li>● Failing to focus on panel</li> <li>● Witness not ready at scheduled time</li> <li>● None</li> <li>● Equipment malfunctions</li> <li>● Inefficient handling of exhibits via videoconference</li> </ul>	<p>only one camera and microphone</p> <ul style="list-style-type: none"> <li>● Interpretation of foreign language</li> <li>● Not preparing witnesses properly for this format</li> <li>● Not agreeing on how to handle whether counsel can speak to his/her own witness on "cross" if called for direct by an adverse party</li> <li>● Aggressive cross-examination came across as bullying</li> <li>● Not planning ahead for technology issues</li> <li>● Failure to properly prepare for video proceedings</li> <li>● Poor camera placement</li> <li>● Interruptions</li> <li>● Late submittal of hard copy exhibits.</li> <li>● Whining about virtual technology.</li> <li>● Boring, stilted oral arguments.</li> </ul>	
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<ul style="list-style-type: none"> <li>● Not making eye contact with arbitrator</li> <li>● Ineffective cross examination</li> <li>● Single monitor</li> <li>● Cross examination</li> <li>● Awkward use of technology</li> <li>● Not understanding the process</li> <li>● Relying too much on “pre-canned” power point scripts and not having the actual documents in front of them when they were referred to and parts shown on screen share</li> <li>● Poor use of available time</li> <li>● More than one person using the same remote connection</li> <li>● Demeanor (whispering, not paying attention when he/she wasn't the speaker</li> <li>● Not planning ahead</li> <li>● Poor or faulty equipment</li> <li>● Audio problems, especially echo or varying volumes</li> <li>● Unable to locate exhibits, putting the wrong ones on the screen</li> <li>● Even with tech help, tech problems are inevitable</li> <li>● None</li> <li>● Speaking at the same time.</li> <li>● Lack of experience with virtual technology.</li> <li>● Lack of focus in putting forth case. Not looking directly into camera.</li> <li>● Technical issues</li> <li>● Concise organized presentations matter more</li> <li>● Unsophisticated technology.</li> </ul>		
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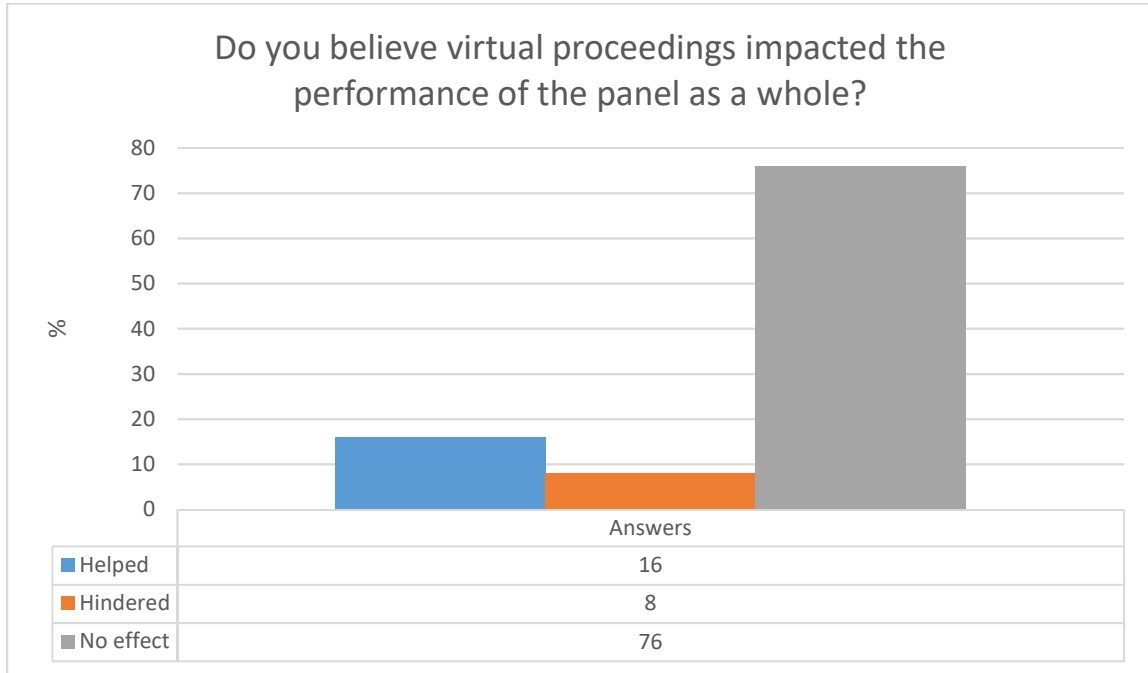
**XXIII. Question 23** (111 answers)



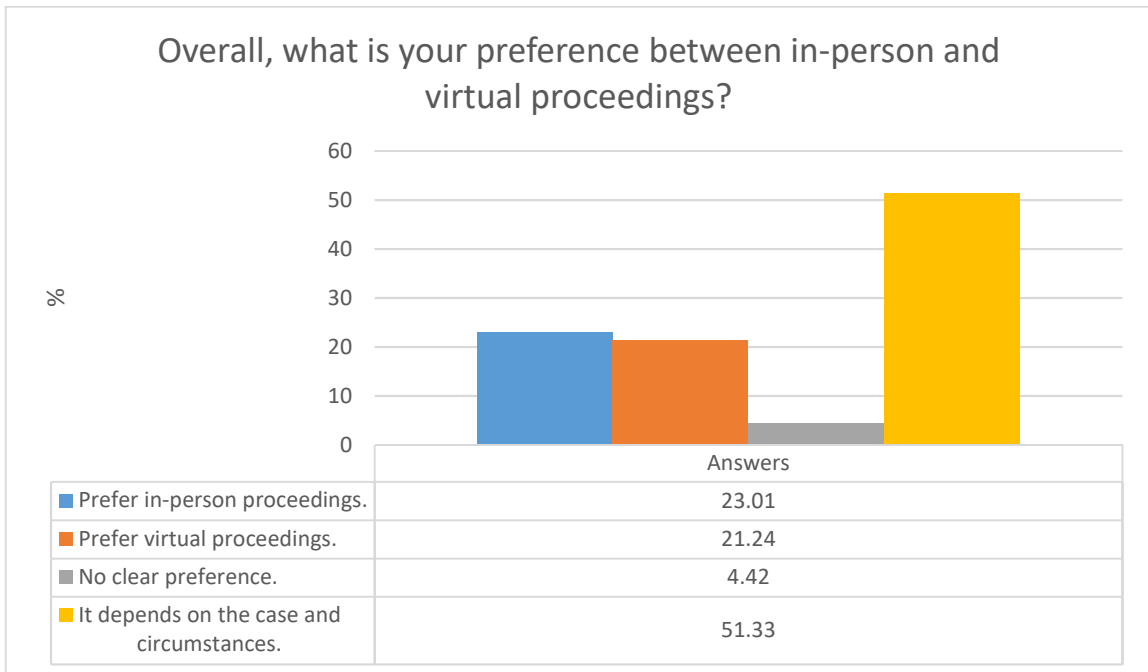
**XXIV. Question 24** (110 answers)



**XXV. Question 25** (100 answers)



**XXVI. Question 26** (113 answers)



**XXVII. Question 27** (40 answers)

Have you had a bad experience/horror story from a remote arbitration that you are willing to share? If so, please enter your name and provide a quick summary of the experience in your response.

- One side had a camera placement that made the witness look miles away. This was rectified but reluctantly by the offending party.
- None
- I learned the hard way to create a separate room for the arbitrators to "lounge in" during virtual arbitration hearings when one of the arbitrators began a seemingly innocuous discussion with a witness during a break. The witness reminded the arbitrator that the witness had appeared before him years earlier and the arbitrator then said "Let's do drinks when this is over...", which caused ALL KINDS of problems, disclosures, etc. Best to sequester arbitrators during breaks to avoid these kinds of spontaneous interactions.
- Carol Heckman - A witness testified from her bed using a cell phone zoom connection, with an unsteady camera and dressed in pajamas
- None.
- None.
- No
- Had no bad experience.
- Bill Crosby- The only downside is that it is easier for counsel to be discourteous in a virtual proceeding. I had once case where I had to threaten to mute the mic of one counsel because he kept interrupting. With that said, the fact that I could mute his mic was a powerful tool that kept counsel in check.
- Not really
- All good so far.
- Aside from a few issues with the presentation of documents and a few connectivity issues, I haven't had any really bad experiences with virtual hearings.
- No
- N/a
- No.
- None
- No
- Not applicable
- None.
- No
- No, and I'll wager all "horrors" were preventable and fixable.
- None
- No
- Just technological mishaps of various sorts
- No horror stories. All my remote arbitrations have proceeded smoothly and without negative incidents.
- No.

- Third party witness in a restaurant franchise case testifying from the restaurant kitchen while cooks are working in the background
- No
- Nothing really that bad
- None.
- None. I am a big proponent of remote hearings as a way to save costs and arbitrator time, with no loss of ability to decide the case fully and fairly
- No
- Just tech problems
- One witness had to use his cell phone to join because the set up in his office was not working. The cell phone is a great backup.
- Tech difficulties are inevitable and disruptive/ annoying
- No.
- None; zero; bupkis.
- No
- None
- NA

**XXVIII. Question 28** (41 answers)

Tell us what you want us to know on the general topic of virtual proceedings that we have not asked you about?

- I would like feedback from the litigants as to the level of performance by the arbitrator.
- They should be an option if both parties agree.
- They should be a commonly used option, easily accessible under relevant rules and laws. Practitioners should have reasonable training/ experience and access to reliable tech. Use should be based on practical choices related to cost, availability and related rather than simply "preference" without substantive reasons. Where parties cannot agree, the arbitrator, administrative body or in worst case court should make the decision on the above standards.
- Arbitration Organizations like the AAA need to update their rules to expressly allow virtual hearings. In ad hoc arbitrations, arbitrators need to know how to handle the technology on their own, especially if it will be digitally recorded to create a record. You don't want parties, their counsel or their IT staff responsible for taking and preserving the record. If a hearing is recorded to create a record, then serious consideration needs to be given to cyber-security issues.
- Some lawyers think that cross examination is less effective in virtual proceedings. I would ask if arbitrators they agree or disagree with that view
- Change is inevitable.
- When all counsel choose virtual, for whatever reason, they will make the format work smoothly

- Partially "virtual" arbitrations are not new. Arbitrators have been hearing testimony via videoconference from witnesses in countries outside the seat for years. Fully virtual hearings could be difficult in many respects for lawyers and panel members. Issues include that fatigue and stress may be higher because there are no interludes of social downtime. Technical staff is more likely to be necessary, increasing cost. Some physical exhibits cannot be effectively presented and a real site visit is impossible.
- Overall, I strongly believe all arbitrations, particularly international arbitrations should tilt towards or be virtual arbitrations. As virtual proceedings are a GREAT EQUALIZER and COST REDUCER.
- I think they are very useful and should continue to be used now that lawyers and arbitrators have become accustomed to them.
- Saves money, time. Easy to use.
- Nothing beyond what you have already asked about.
- During the pandemic and as it recedes, virtual proceedings have the potential to massively increase access to dispute resolution processes to many more disputing partners. It needs to be evaluated as an access to justice issue because it has the potential to significantly reduce the cost of the process and increase diverse participation.
- You've covered things from my perspective.
- It's here to stay, whether total or partial virtual proceedings
- How virtual proceedings affect, benefit, or detract from the parties or public
- The economic cost savings are gargantuan. I believe that they are here to stay for that reason, and because there is little degradation in quality, if any.
- The institutional rules should be adapted to encourage hybrid hearings where appropriate and develop guidelines for their conduct.
- Should be encouraged if only for the economy to the parties.
- A recent law review article cites statistics purporting to show that individual claimants win fewer cases in virtual than in-person proceedings, but the article appears deeply flawed. (David Horton, "Forced Remote Arbitration," 108 Cornell L. Rev. [upcoming])
- Did absence of geographic considerations expand the pool of potential arbitrators such that we may have more diversity in selection of arbitrators
- Not applicable
- They are here to stay and may be more common than in person in future
- No more anecdotal stories about being able to judge the credibility of witnesses better in person. Let's see data and research over the last three -5 years
- They have their time and circumstances; probably the "best" solution in many cases is the hybrid model, combining virtual for pre-hearing activities, and then in-person hearings where feasible, supplemented by including some witnesses remotely, where necessary or helpful.
- Nothing
- None
- Virtual proceedings now are more likely to be used as a useful alternative, especially for remote witnesses or for cost reasons.
- In my opinion virtual hearings offer the arbitrators at least as good a way to assess witness credibility as in person hearings.
- Virtual proceedings are very intense and it is important to have regular breaks.

- I think it would be good to have specific courses on how to manage and conduct virtual proceedings, including the use of various remote platforms, tips for handling exhibits, break-out rooms, etc.
- How can we convince more counsel and parties to continue to use remote access hearings even after the pandemic ends? And, absent a pandemic, must we have hearings live if at least one party wants it? How do we fairly decide the issue if one party wants a remote hearing to save on costs and time, and the other opposes it?
- Survey is too long.
- None
- Virtual proceedings are here to stay and, over time, participants will develop new tools to increase their effectiveness. Eliminating, or reducing, the constraints of travel and concomitant expense will become even more compelling factors as time goes on.
- Adequate preparation of counsel parties and witnesses is a sine qua non to a successful proceeding.
- The use of a qualified third-party host is essential so arbitrators can concentrate on the counsel, witnesses and evidence being presented.
- The cost savings in multi-party arbitrations justifies their being held virtually. Counsel, party representatives, arbitrators do not have to incur travel, lodging and related expenses which are significant. Additionally, the "safe" practices are more-or-less a joke. They are a complete crapshoot as to whether they will be effective or not.
- They are here to stay, especially for short and simple arbitrations. They are much more cost effective and convenient. They are not a substitute for in-person hearings in large, complex disputes. They will be used for addressing procedural matters. There is absolutely no need to meet in-person for such procedural matters. Much more cost effective and convenient.
- Technical training and rehearsal in advance is a must
- The way documents are provided to the panel and witnesses is a critical element