

The Commercial and Federal Litigation Section
of the New York State Bar Association

Report on Virtual Procedure Questionnaire

Prepared by the Committee on Federal Procedure:

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I. Introduction

It has been over three years since courts throughout the country were abruptly thrust into conducting virtual proceedings as a result of COVID-19. In that time, practices and procedures that were once considered anathema to the orderly functioning of the courts have become familiar to practitioners of all stripes. Indeed, many lawyers strain to recall the “before times” when conducting a client meeting—let alone a deposition or hearing—via a shiny black rectangle would have seemed the stuff of science fiction. Yet today it is far more common than using a courthouse payphone (if one can even be found). There can be no serious doubt that this technology is here to stay. But do lawyers actually like it?

Seeking to answer this question, the Federal Procedure Committee of the NYSBA Commercial and Federal Litigation Section sent an online survey to all NYSBA members. The survey was open from June 1, 2022 to December 16, 2022, and over that time the Committee received over 170 responses from judges (approximately 21) and lawyers (approximately 158).

Though the Committee’s data collection and analysis methods can hardly be said to be scientific (for example, the survey was entirely voluntary and no efforts were made to obtain a representative sample—respondents were overwhelmingly commercial litigators concentrated in Albany, New York City, and Nassau County, and anyone without access to email and a web browser was entirely cut out¹), the results the Committee received, which are discussed in detail in the following sections, make it clear that many types of virtual proceedings are popular and likely here to stay.

In particular, virtual depositions and status conferences appeared to be widely popular—over 75% of respondents favored both remaining an option in a post-pandemic world. The biggest reason? Efficiency. Overwhelmingly, practitioners responded that having a virtual option for these more quotidian aspects of lawyering frees up their time and allows them to deliver better client service at a lower cost.

That said, the results were not nearly as favorable for virtual hearings or trials. Few respondents reported much experience with these types of virtual proceedings, and many expressed skepticism about their practicality and effectiveness, particularly when it comes to having the ability to confront a witness face-to-face or to present a large number of exhibits.

Ultimately, the key takeaway from our survey appears to be that commercial lawyers in New York have fully embraced virtual proceedings as a new, useful, and cost-effective tool which in many cases may be more suitable than traditional in-person proceedings, but no one wants the option to conduct in-person proceedings to be off the table in any case that demands them.

II. Virtual Depositions

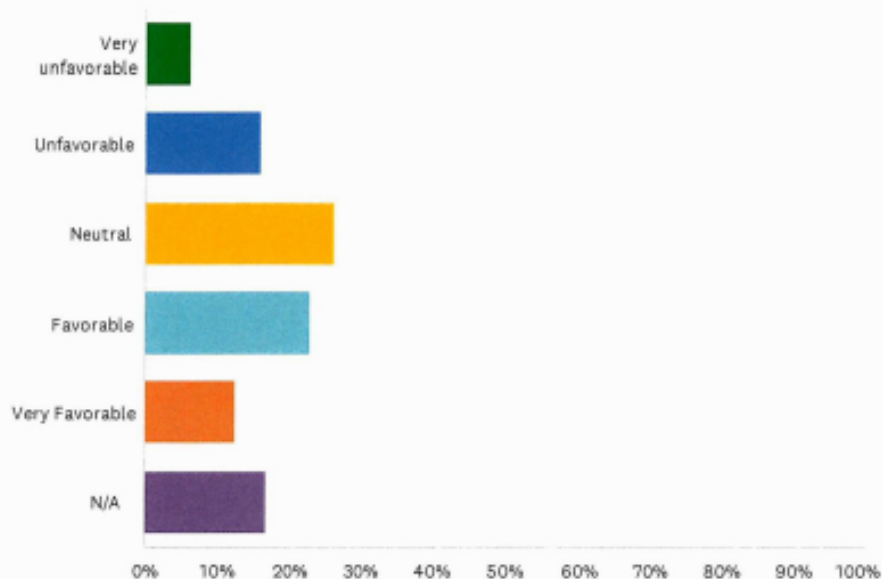
A majority of the attorneys who participated in the survey have conducted between 0-10 virtual depositions since February 1, 2020. According to the results, approximately half of the attorneys described their experiences with conducting, defending, or attending virtual depositions

¹ Of course, at this point in the pandemic, anyone without access to an email and a web browser is probably no longer practicing law . . . even if they themselves do not yet realize it.

as neutral or favorable. This included their experience with the use of technology, stenographers, and the costs associated with conducting a virtual deposition. However, with respect to the utilization of exhibits and whether virtual depositions are more efficient than in person depositions, the results varied, and there was no majority opinion. When asked whether virtual depositions should continue assuming COVID-19 remains sufficiently receded for in-person depositions, approximately 40% of the participants responded with the quintessential lawyer response – sometimes.

Q9 2. Describe your experience conducting remote depositions.

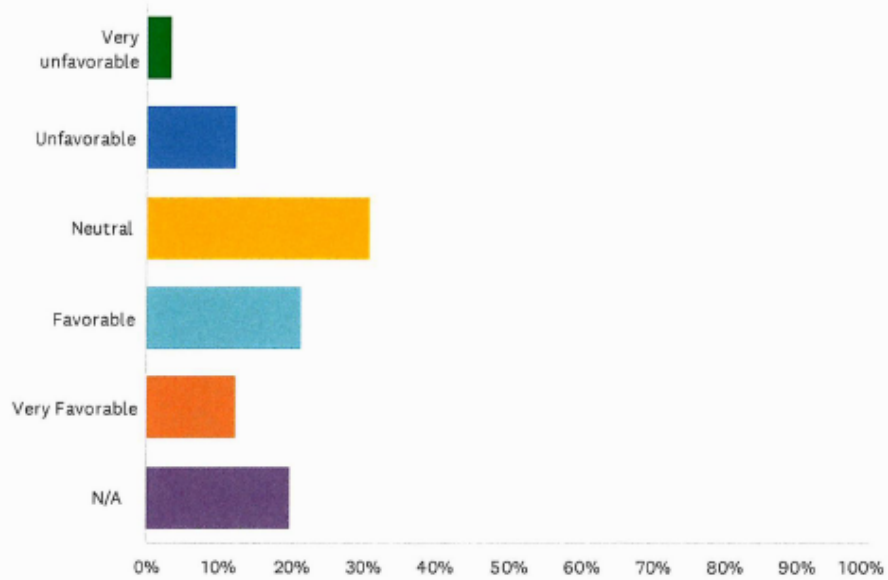
Answered: 145 Skipped: 26



ANSWER CHOICES	RESPONSES	
Very unfavorable	6.21%	9
Unfavorable	15.86%	23
Neutral	26.21%	38
Favorable	22.76%	33
Very Favorable	12.41%	18
N/A	16.55%	24
TOTAL		145

Q10 3. Describe your experience defending remote depositions.

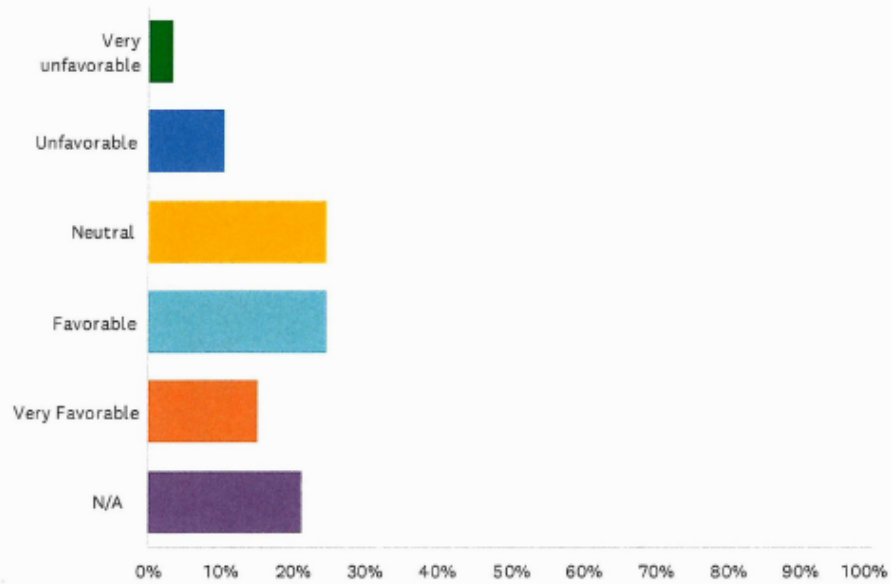
Answered: 146 Skipped: 25



ANSWER CHOICES	RESPONSES	
Very unfavorable	3.42%	5
Unfavorable	12.33%	18
Neutral	30.82%	45
Favorable	21.23%	31
Very Favorable	12.33%	18
N/A	19.86%	29
TOTAL		146

Q11 4. Describe your experience attending remote depositions.

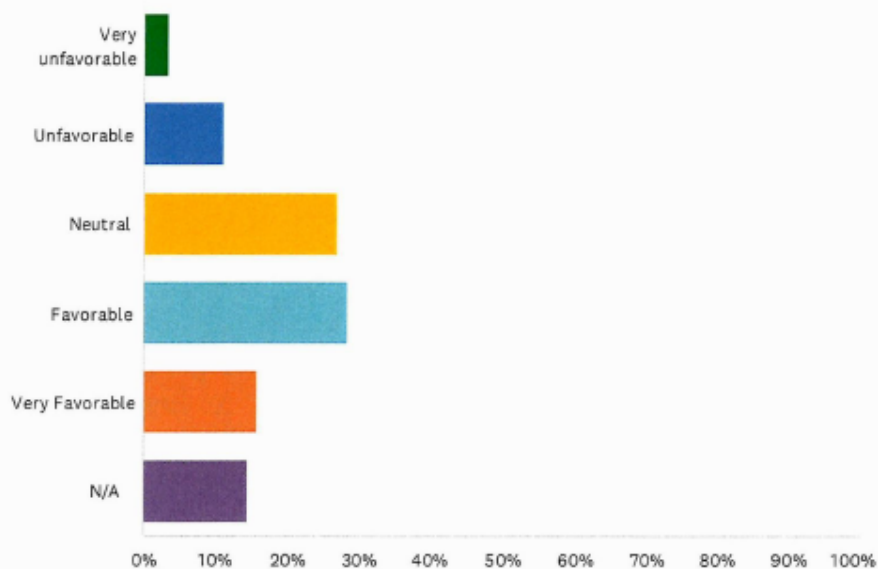
Answered: 145 Skipped: 26



ANSWER CHOICES	RESPONSES	
Very unfavorable	3.45%	5
Unfavorable	10.34%	15
Neutral	24.83%	36
Favorable	24.83%	36
Very Favorable	15.17%	22
N/A	21.38%	31
TOTAL		145

Q12 5. Describe your experience using technology to participate in remote depositions.

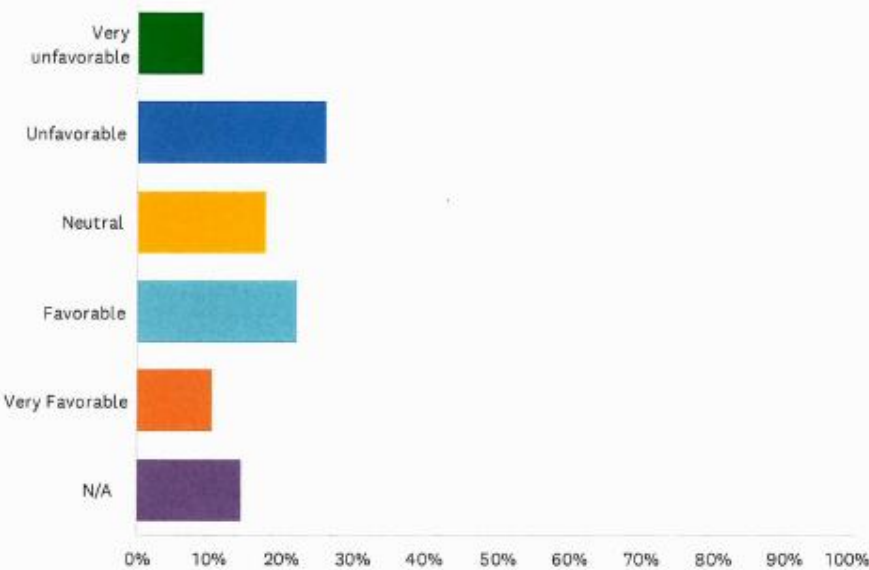
Answered: 145 Skipped: 26



ANSWER CHOICES	RESPONSES	
Very unfavorable	3.45%	5
Unfavorable	11.03%	16
Neutral	26.90%	39
Favorable	28.28%	41
Very Favorable	15.86%	23
N/A	14.48%	21
TOTAL		145

Q13 6. Describe your experience with exhibits in remote depositions.

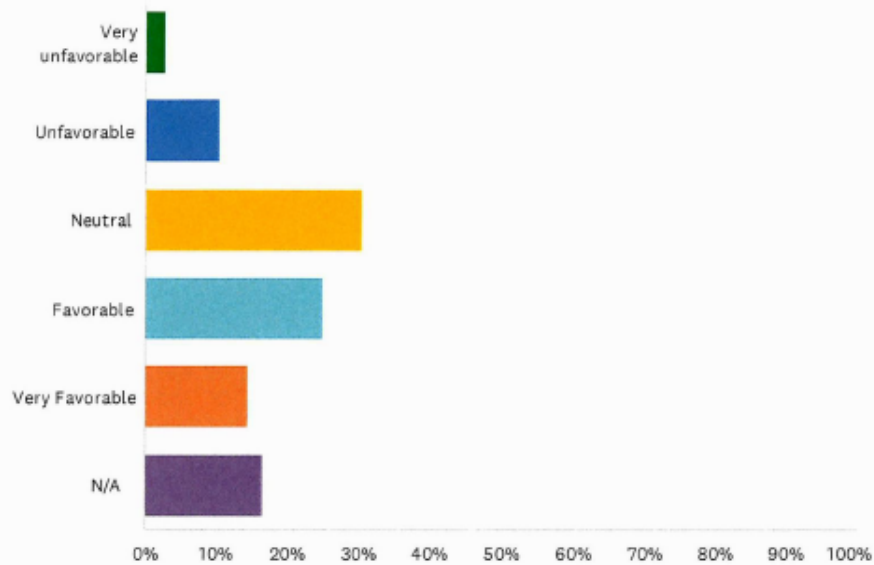
Answered: 145 Skipped: 26



ANSWER CHOICES	RESPONSES	
Very unfavorable	8.97%	13
Unfavorable	26.21%	38
Neutral	17.93%	26
Favorable	22.07%	32
Very Favorable	10.34%	15
N/A	14.48%	21
TOTAL		145

Q14 7. Describe your experience with costs incurred in remote depositions.

Answered: 144 Skipped: 27



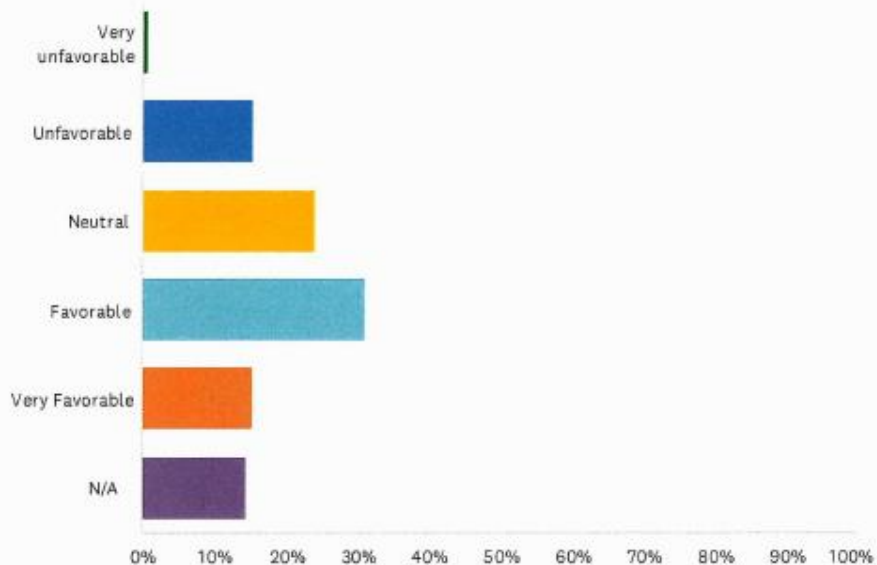
ANSWER CHOICES

RESPONSES

Very unfavorable	2.78%	4
Unfavorable	10.42%	15
Neutral	30.56%	44
Favorable	25.00%	36
Very Favorable	14.58%	21
N/A	16.67%	24
TOTAL		144

Q15 8. Describe your experience with stenographers in remote depositions.

Answered: 146 Skipped: 25



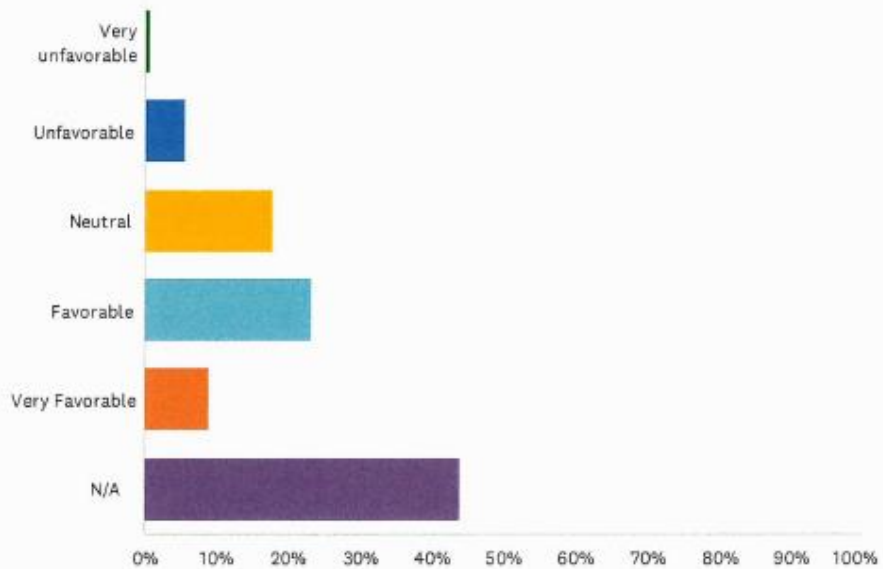
ANSWER CHOICES

RESPONSES

Very unfavorable	0.68%	1
Unfavorable	15.07%	22
Neutral	23.97%	35
Favorable	30.82%	45
Very Favorable	15.07%	22
N/A	14.38%	21
TOTAL		146

Q16 9. Describe your experience with videographers in remote depositions.

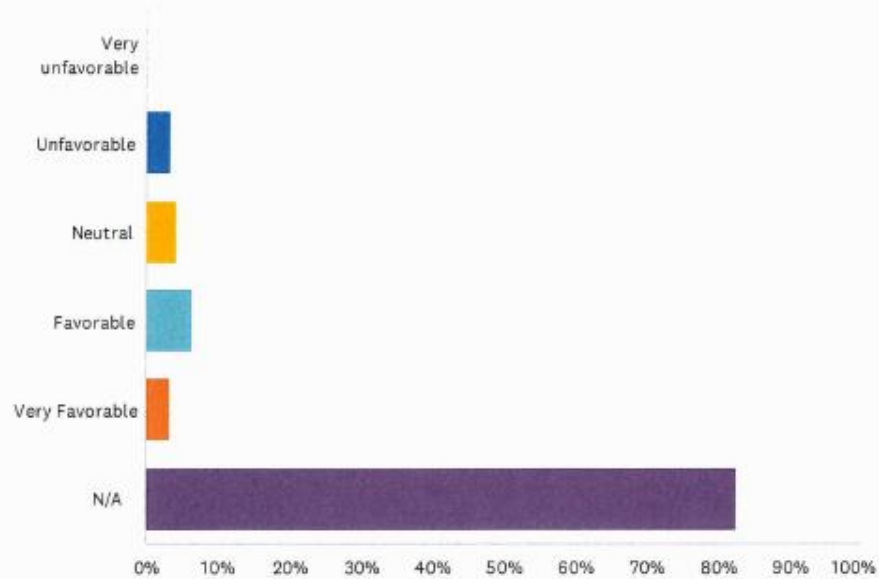
Answered: 146 Skipped: 25



ANSWER CHOICES	RESPONSES	
Very unfavorable	0.68%	1
Unfavorable	5.48%	8
Neutral	17.81%	26
Favorable	23.29%	34
Very Favorable	8.90%	13
N/A	43.84%	64
TOTAL		146

Q17 10. If you have used a concierge to handle exhibits during a remote deposition, describe your experience.

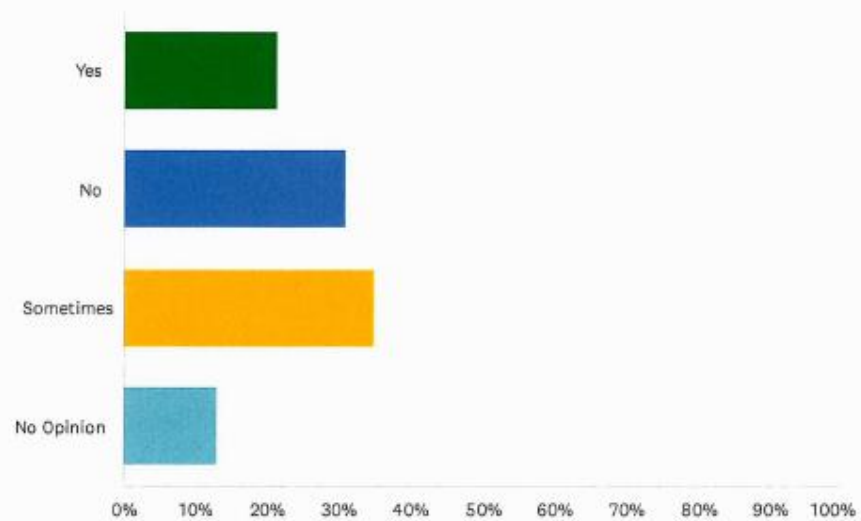
Answered: 143 Skipped: 28



ANSWER CHOICES	RESPONSES	
Very unfavorable	0.00%	0
Unfavorable	3.50%	5
Neutral	4.20%	6
Favorable	6.29%	9
Very Favorable	3.50%	5
N/A	82.52%	118
TOTAL		143

Q18 11. Overall, do you find remote depositions more efficient than in-person depositions?

Answered: 146 Skipped: 25



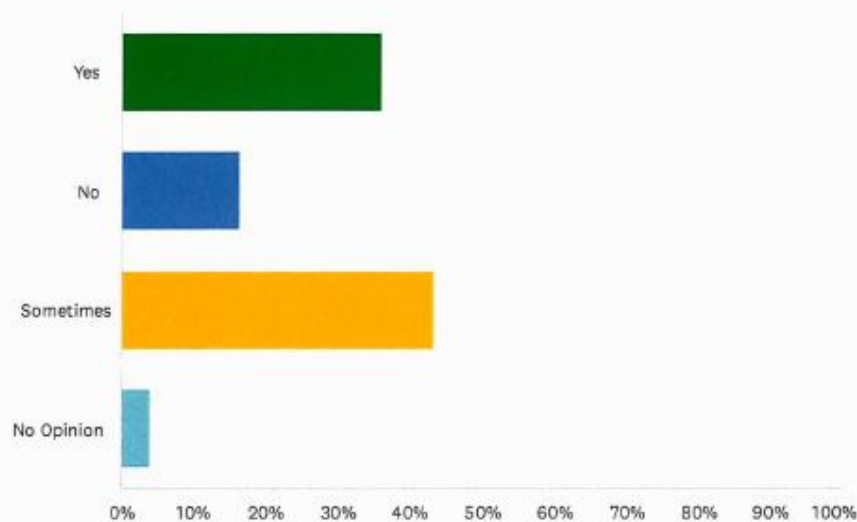
ANSWER CHOICES

RESPONSES

Yes	21.23%	31
No	30.82%	45
Sometimes	34.93%	51
No Opinion	13.01%	19
TOTAL		146

Q19 12. Assuming COVID-19 remains sufficiently receded for in-person depositions, would you wish to continue to conduct remote depositions if allowed?

Answered: 147 Skipped: 24



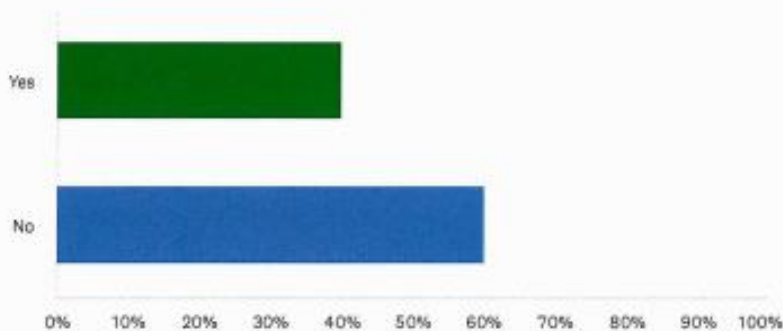
ANSWER CHOICES	RESPONSES	
Yes	36.05%	53
No	16.33%	24
Sometimes	43.54%	64
No Opinion	4.08%	6
TOTAL		147

III. Virtual Conferences

While a majority of respondents had not participated in virtual court conferences before the onset of the pandemic, most have participated in numerous such conferences since. Their experience with the format has been overwhelmingly favorable or very favorable, including with respect to use of technology and the associated monetary costs. Practitioners largely rated their interactions with opposing counsel and judges in virtual conferences favorably as compared to in-person conferences, though judges mostly expressed no view on the matter. Notably, nearly 70% of respondents found virtual conferences both more effective and more efficient than in-person conferences, with the same percentage expressing an interest in continuing in a virtual format even after the pandemic ended.

Q21 III. Court Conferences (for Practitioners & Judges) Please check the appropriate box, and where relevant, specify your answer. The term "remote court conference(s)" refers to a court conference conducted either telephonically or by video conference. 1. Before February 2020, did you participate in remote court conferences?

Answered: 168 Skipped: 3



ANSWER CHOICES

Yes

No

TOTAL

RESPONSES

39.88%

60.12%

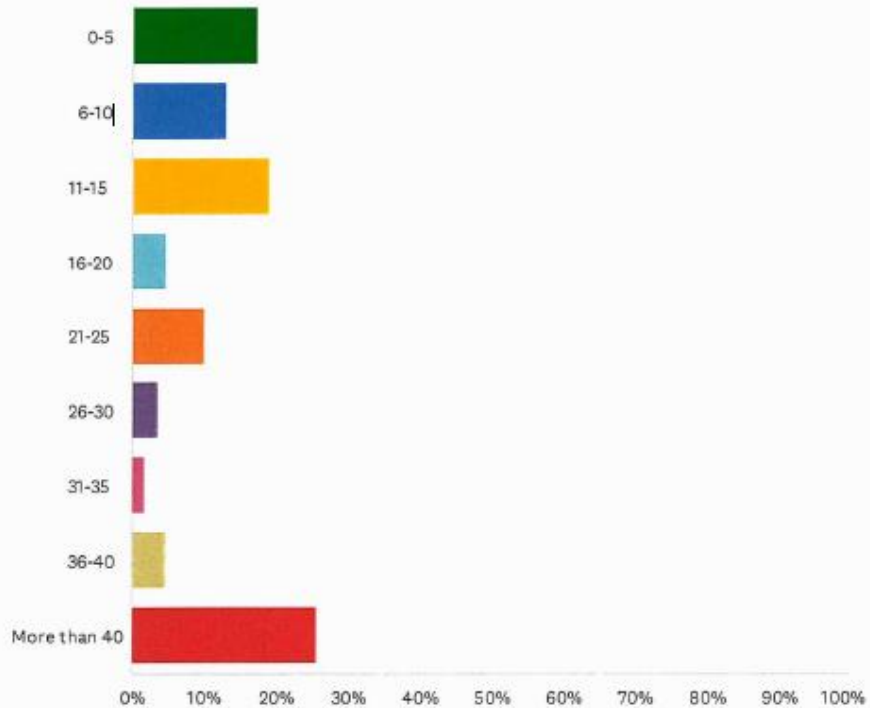
67

101

168

Q22 2. How many remote court conferences have you attended since February 1, 2020?

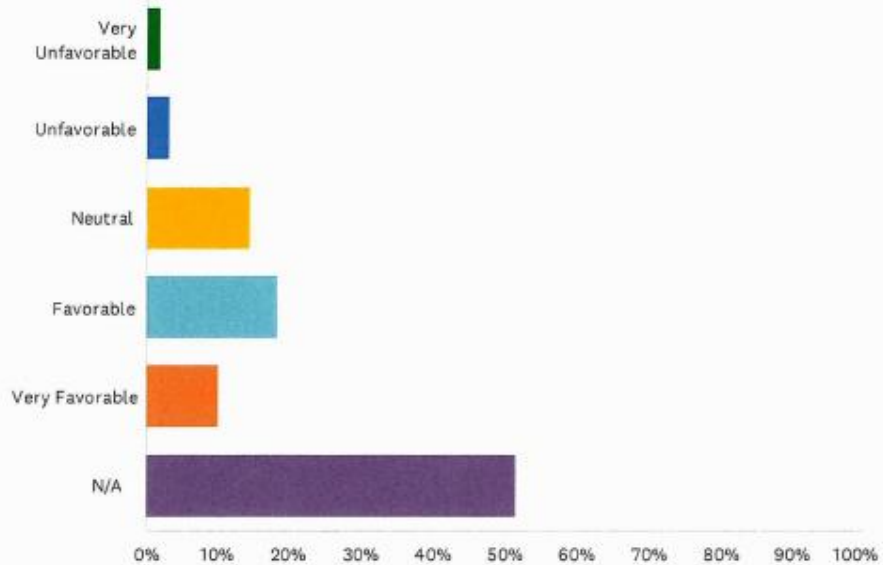
Answered: 168 Skipped: 3



ANSWER CHOICES	RESPONSES	
0-5	17.26%	29
6-10	13.10%	22
11-15	19.05%	32
16-20	4.76%	8
21-25	10.12%	17
26-30	3.57%	6
31-35	1.79%	3
36-40	4.76%	8
More than 40	25.60%	43
TOTAL		168

Q23 3. If you participated in remote court conferences before February 2020, describe your experience.

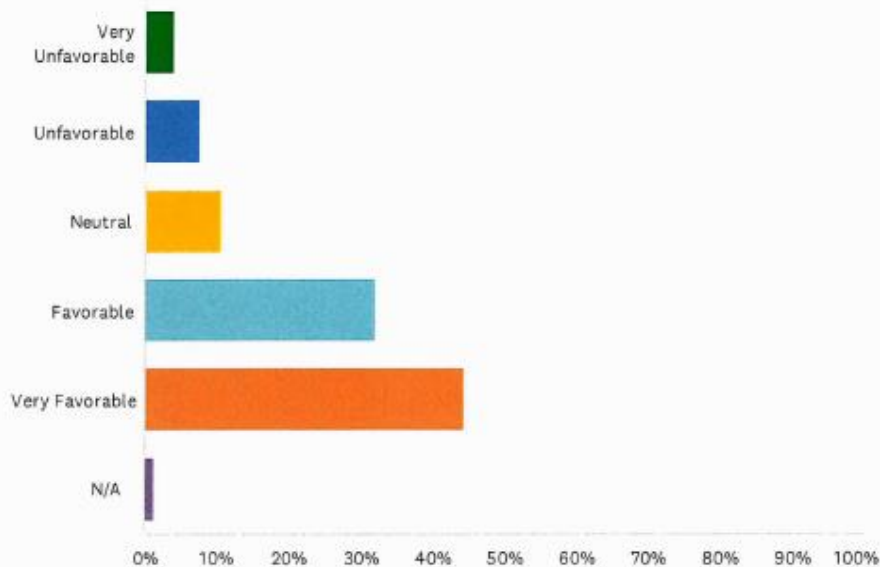
Answered: 157 Skipped: 14



ANSWER CHOICES	RESPONSES	
Very Unfavorable	1.91%	3
Unfavorable	3.18%	5
Neutral	14.65%	23
Favorable	18.47%	29
Very Favorable	10.19%	16
N/A	51.59%	81
TOTAL		157

Q24 4. Describe your experience with remote court conferences since February 2020.

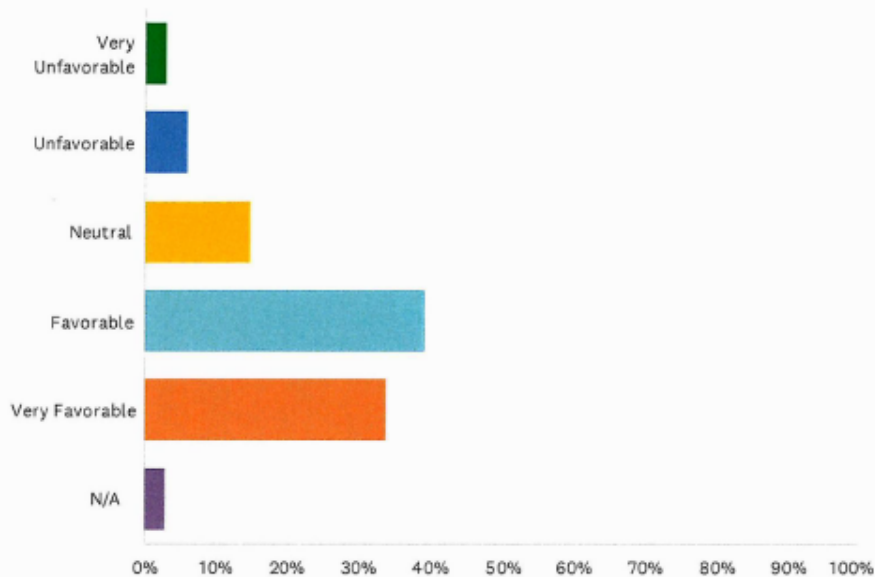
Answered: 169 Skipped: 2



ANSWER CHOICES	RESPONSES	
Very Unfavorable	4.14%	7
Unfavorable	7.69%	13
Neutral	10.65%	18
Favorable	31.95%	54
Very Favorable	44.38%	75
N/A	1.18%	2
TOTAL		169

Q25 5. Describe your experience using technology to participate in remote court conferences since February 2020.

Answered: 168 Skipped: 3



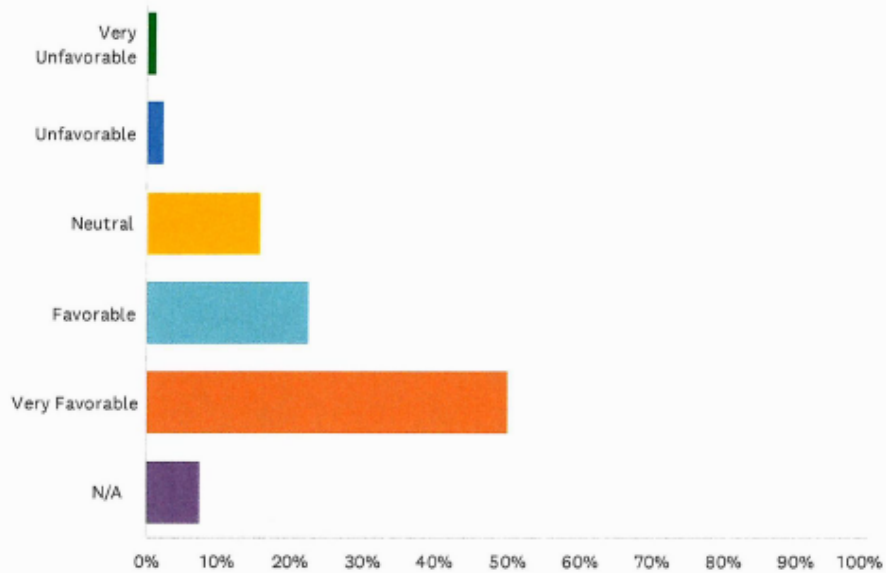
ANSWER CHOICES

RESPONSES

Very Unfavorable	2.98%	5
Unfavorable	5.95%	10
Neutral	14.88%	25
Favorable	39.29%	66
Very Favorable	33.93%	57
N/A	2.98%	5
TOTAL		168

Q26 6. Describe your experience with costs incurred in remote court conferences since February 2020.

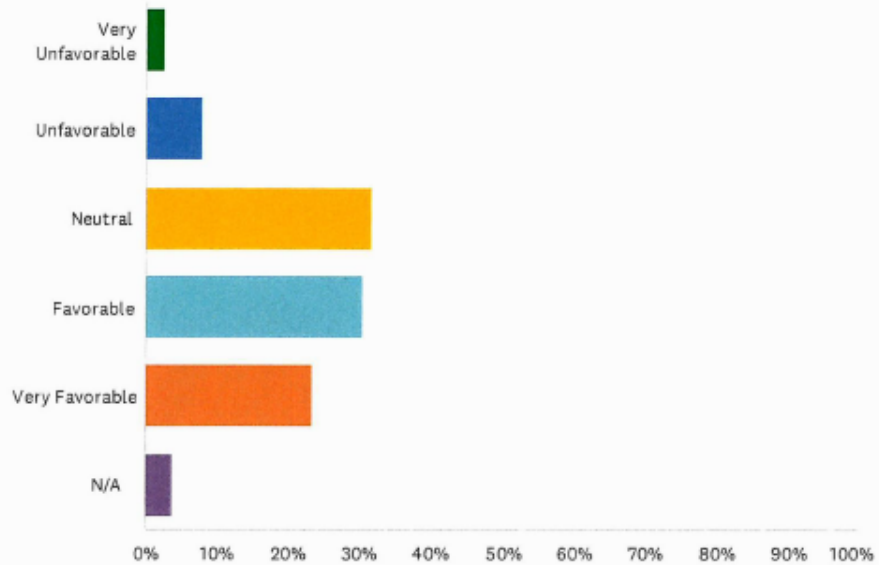
Answered: 168 Skipped: 3



ANSWER CHOICES	RESPONSES	
Very Unfavorable	1.19%	2
Unfavorable	2.38%	4
Neutral	16.07%	27
Favorable	22.62%	38
Very Favorable	50.00%	84
N/A	7.74%	13
TOTAL		168

Q27 7. For Practitioners. Describe your experience with opposing counsel in remote court conferences since February 2020.

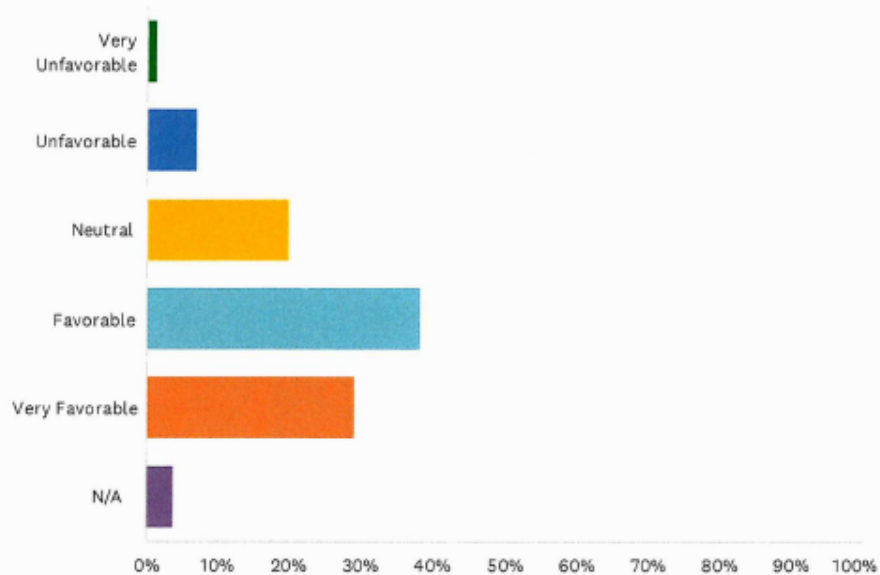
Answered: 154 Skipped: 17



ANSWER CHOICES	RESPONSES	
Very Unfavorable	2.60%	4
Unfavorable	7.79%	12
Neutral	31.82%	49
Favorable	30.52%	47
Very Favorable	23.38%	36
N/A	3.90%	6
TOTAL		154

Q28 8. For Practitioners. Describe your experience with judges in remote court conferences since February 2020.

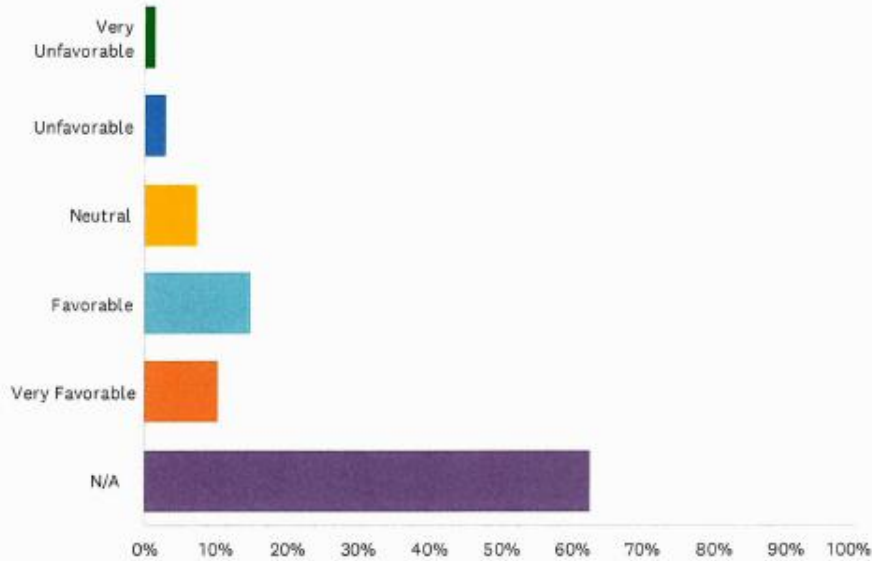
Answered: 154 Skipped: 17



ANSWER CHOICES	RESPONSES	
Very Unfavorable	1.30%	2
Unfavorable	7.14%	11
Neutral	20.13%	31
Favorable	38.31%	59
Very Favorable	29.22%	45
N/A	3.90%	6
TOTAL		154

Q29 9. For Judges. Describe your experience with counsel in remote court conferences compared to in-person conferences.

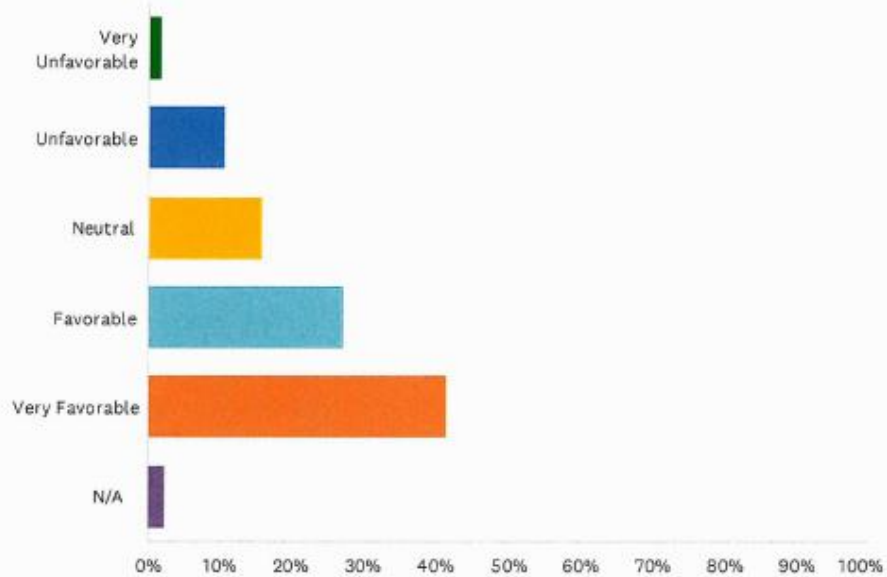
Answered: 67 Skipped: 104



ANSWER CHOICES	RESPONSES	
Very Unfavorable	1.49%	1
Unfavorable	2.99%	2
Neutral	7.46%	5
Favorable	14.93%	10
Very Favorable	10.45%	7
N/A	62.69%	42
TOTAL		67

Q30 10. How effective have you found remote court conferences versus in-person court conferences?

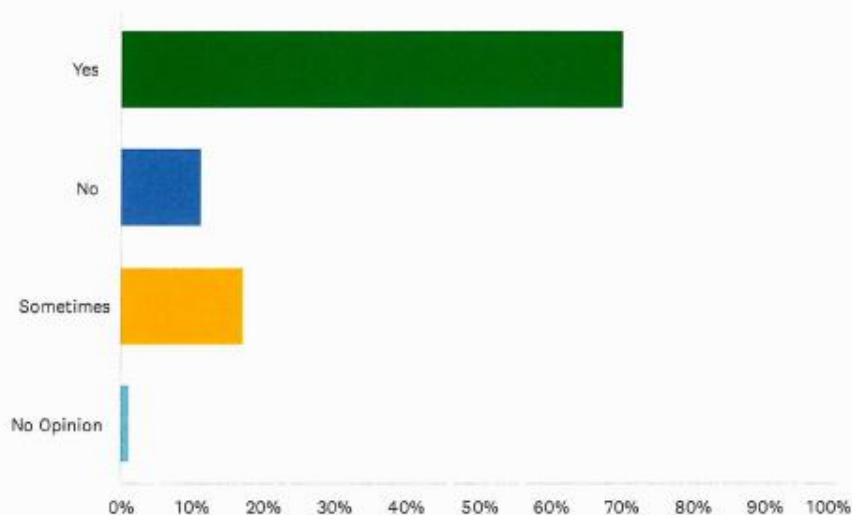
Answered: 168 Skipped: 3



ANSWER CHOICES	RESPONSES	
Very Unfavorable	1.79%	3
Unfavorable	10.71%	18
Neutral	16.07%	27
Favorable	27.38%	46
Very Favorable	41.67%	70
N/A	2.38%	4
TOTAL		168

Q31 11. Overall, have you found remote court conferences more efficient than in-person court conferences?

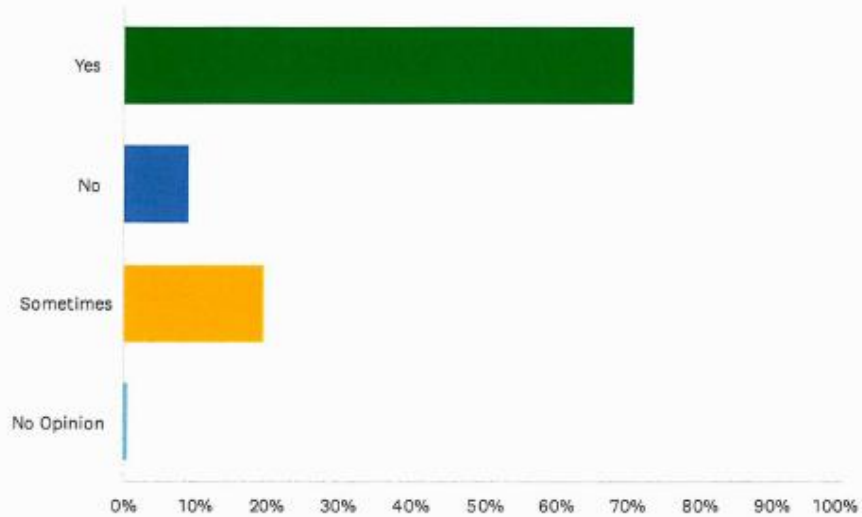
Answered: 168 Skipped: 3



ANSWER CHOICES	RESPONSES	
Yes	70.24%	118
No	11.31%	19
Sometimes	17.26%	29
No Opinion	1.19%	2
TOTAL		168

Q32 12. Assuming COVID-19 remains sufficiently receded for in-person court conferences, would you wish to continue to participate in remote court conferences?

Answered: 168 Skipped: 3



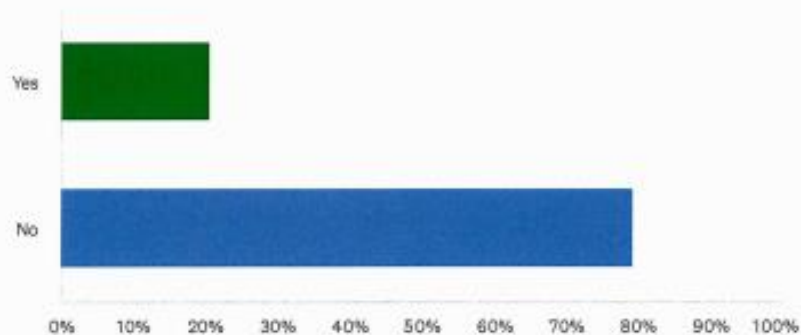
ANSWER CHOICES	RESPONSES	
Yes	70.83%	119
No	8.93%	15
Sometimes	19.64%	33
No Opinion	0.60%	1
TOTAL		168

IV. Virtual Hearings

According to the survey, before COVID-19, hearings were primarily conducted in person and infrequently conducted virtually. Since COVID-19 began, almost all attorneys who answered the survey said that they have participated in at least one virtual hearing and approximately 50% of attorneys surveyed said they have participated in more than six virtual hearings. Most of the attorneys who answered the survey said that their experience using technology was favorable (including using exhibits, eliciting testimony from witnesses and using a court reporter) and cost effective. Most of the judges who answered the survey described their experience as favorable and effective (as compared to in-person hearings). Lastly, the majority of attorneys who answered the survey said that they believe virtual hearings would and should continue after COVID-19 sufficiently receded for in-person court hearings to return unabated.

Q34 IV. Court Hearings (for Practitioners & Judges) Please check the appropriate box, and where relevant, specify your answer. The term "remote court hearing(s)" refers to a court hearing conducted either telephonically or by video conference. 1. Before February 2020, did you participate in remote court hearings?

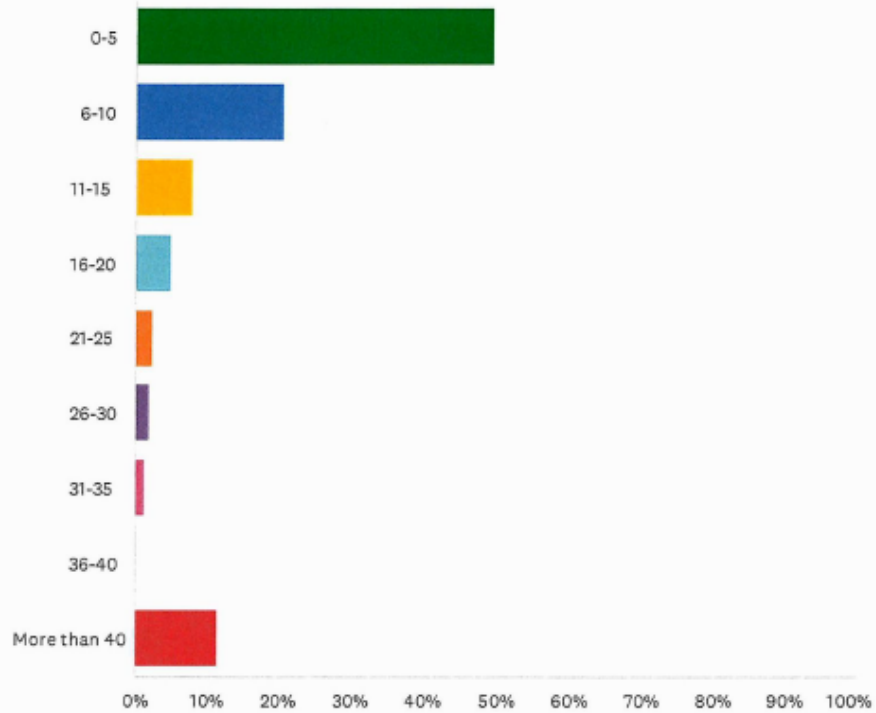
Answered: 165 Skipped: 6



ANSWER CHOICES	RESPONSES	
Yes	20.61%	34
No	79.39%	131
TOTAL		165

Q35 2. How many remote court hearings have you attended since February 1, 2020?

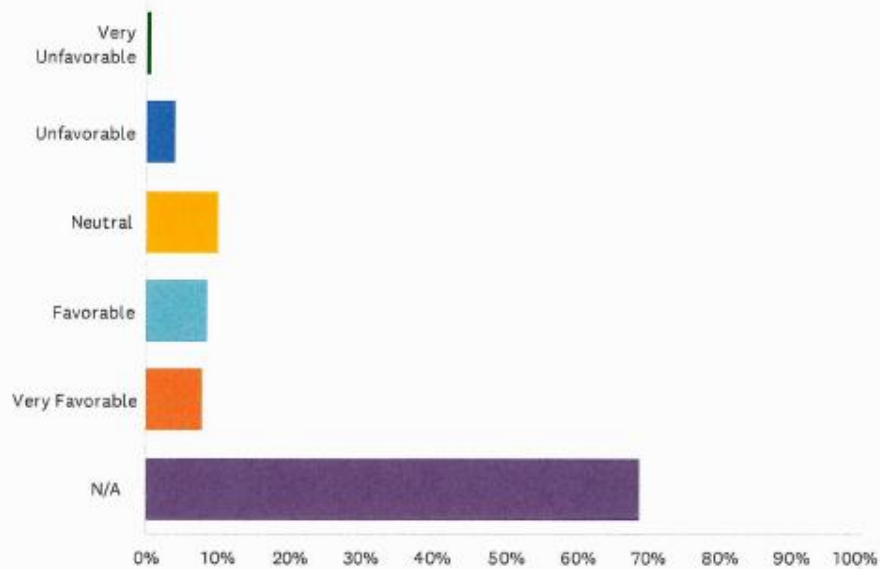
Answered: 164 Skipped: 7



ANSWER CHOICES	RESPONSES	
0-5	49.39%	81
6-10	20.73%	34
11-15	7.93%	13
16-20	4.88%	8
21-25	2.44%	4
26-30	1.83%	3
31-35	1.22%	2
36-40	0.00%	0
More than 40	11.59%	19
TOTAL		164

Q36 3. If you participated in remote court hearings before February 2020, describe your experience.

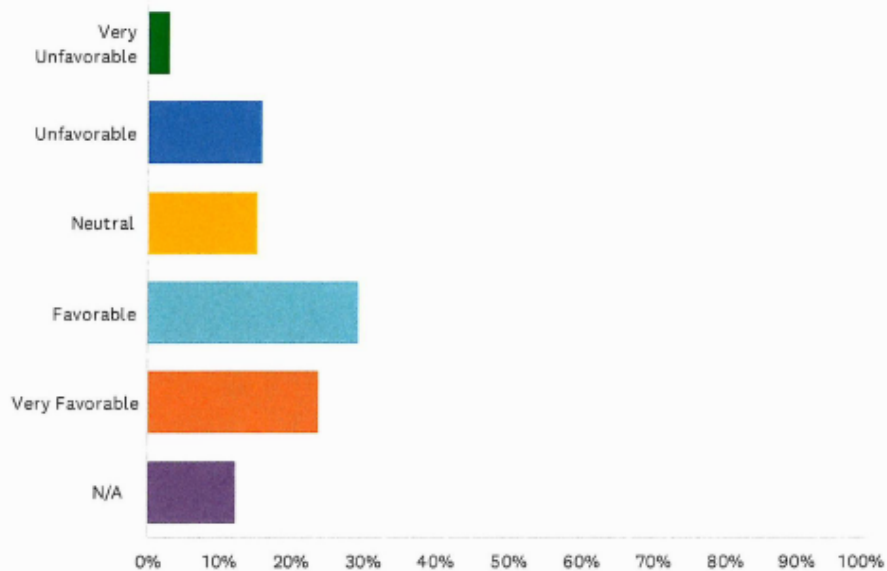
Answered: 151 Skipped: 20



ANSWER CHOICES	RESPONSES	
Very Unfavorable	0.66%	1
Unfavorable	3.97%	6
Neutral	9.93%	15
Favorable	8.61%	13
Very Favorable	7.95%	12
N/A	68.87%	104
TOTAL		151

Q37 4. Describe your experience with remote court hearings after February 2020.

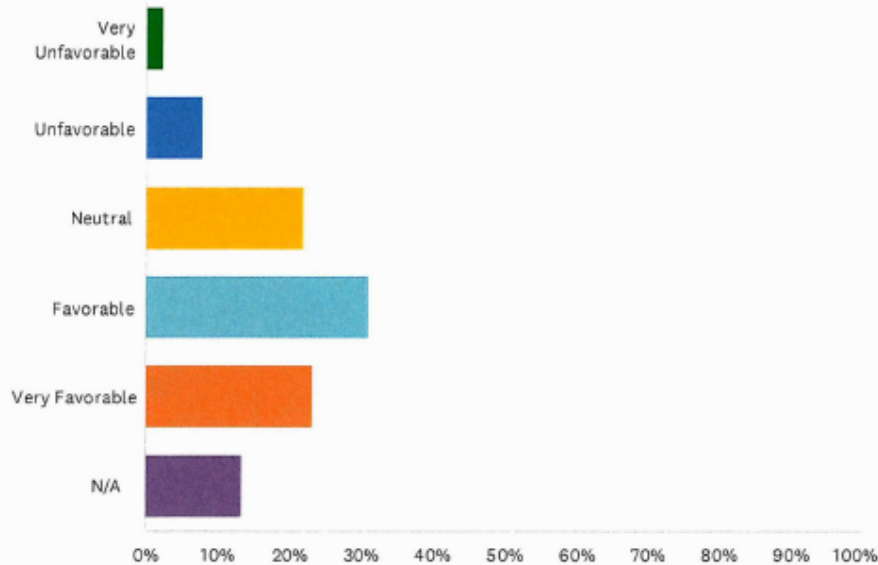
Answered: 163 Skipped: 8



ANSWER CHOICES	RESPONSES	
Very Unfavorable	3.07%	5
Unfavorable	15.95%	26
Neutral	15.34%	25
Favorable	29.45%	48
Very Favorable	23.93%	39
N/A	12.27%	20
TOTAL		163

Q38 5. Describe your experience using technology to participate in remote court hearings after February 2020.

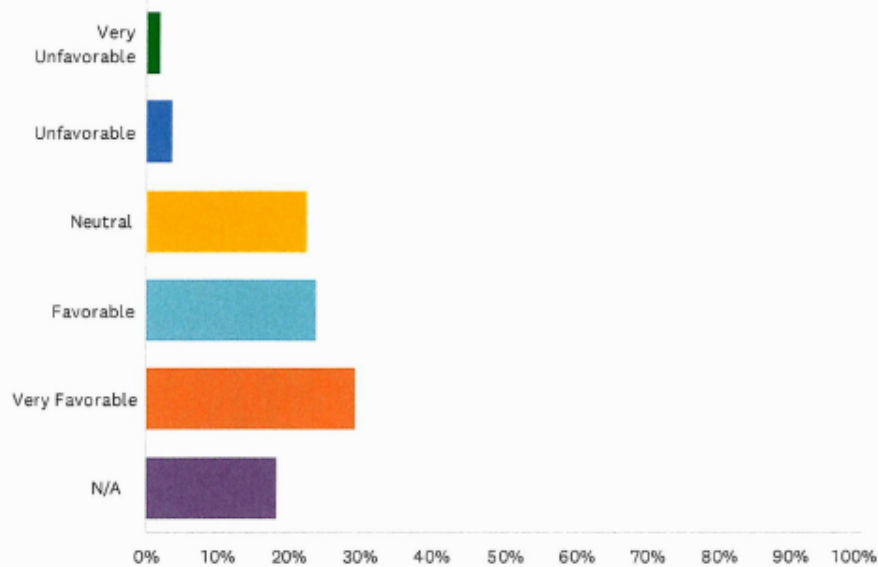
Answered: 164 Skipped: 7



ANSWER CHOICES	RESPONSES	
Very Unfavorable	2.44%	4
Unfavorable	7.93%	13
Neutral	21.95%	36
Favorable	31.10%	51
Very Favorable	23.17%	38
N/A	13.41%	22
TOTAL		164

Q39 6. Describe your experience with costs incurred in remote court hearings after February 2020.

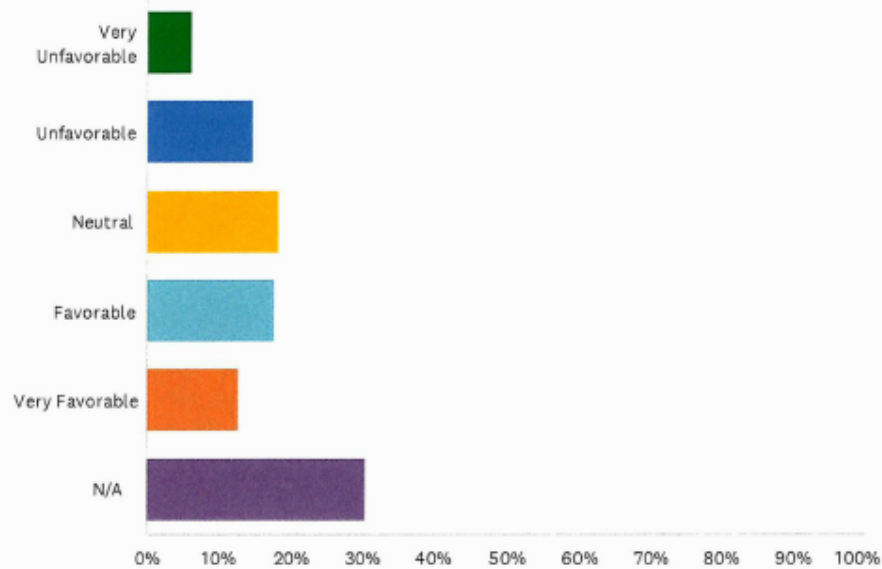
Answered: 163 Skipped: 8



ANSWER CHOICES	RESPONSES	
Very Unfavorable	1.84%	3
Unfavorable	3.68%	6
Neutral	22.70%	37
Favorable	23.93%	39
Very Favorable	29.45%	48
N/A	18.40%	30
TOTAL		163

Q40 7. Describe your experience with exhibits in remote court hearings after February 2020.

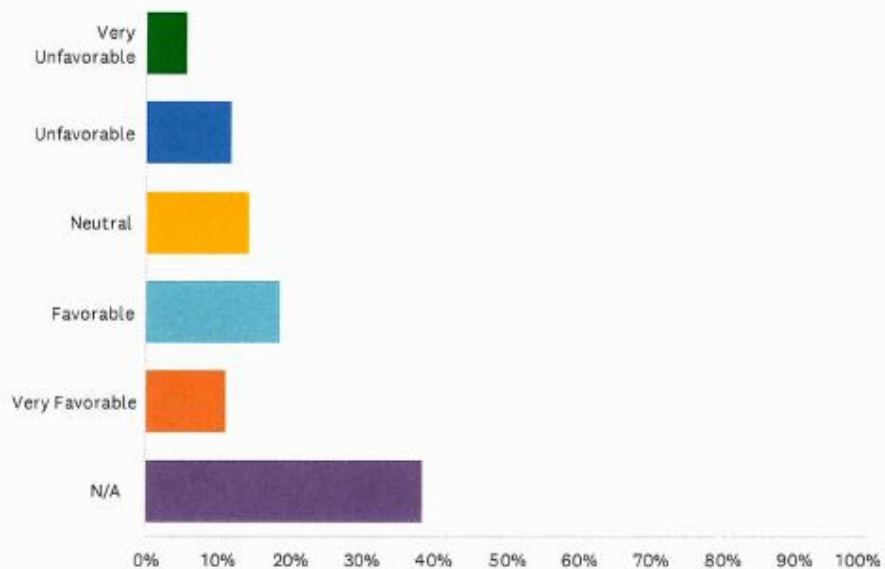
Answered: 164 Skipped: 7



ANSWER CHOICES	RESPONSES	
Very Unfavorable	6.10%	10
Unfavorable	14.63%	24
Neutral	18.29%	30
Favorable	17.68%	29
Very Favorable	12.80%	21
N/A	30.49%	50
TOTAL		164

Q41 8. Describe your experience eliciting testimony from witnesses during remote court hearings after February 2020.

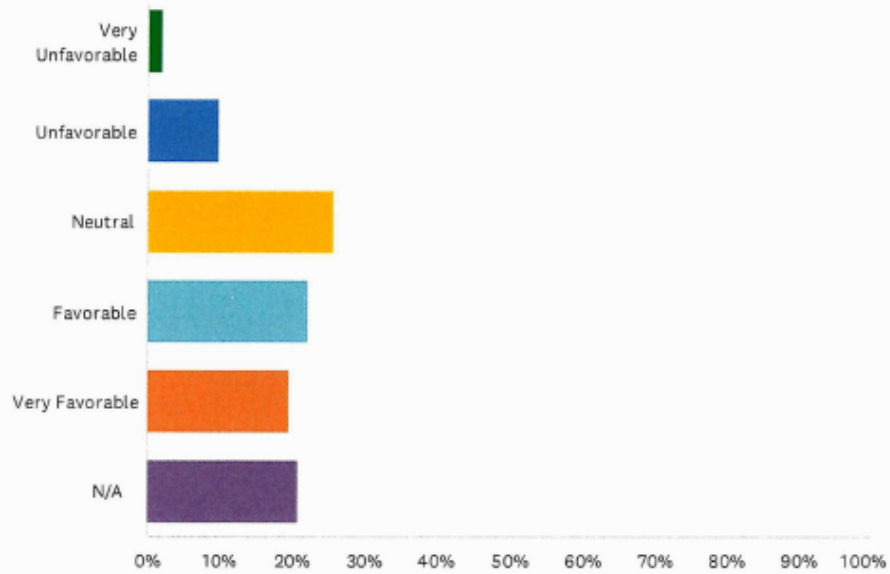
Answered: 161 Skipped: 10



ANSWER CHOICES	RESPONSES	
Very Unfavorable	5.59%	9
Unfavorable	11.80%	19
Neutral	14.29%	23
Favorable	18.63%	30
Very Favorable	11.18%	18
N/A	38.51%	62
TOTAL		161

Q42 9. Describe your experience with court reporters in remote court hearings after February 2020.

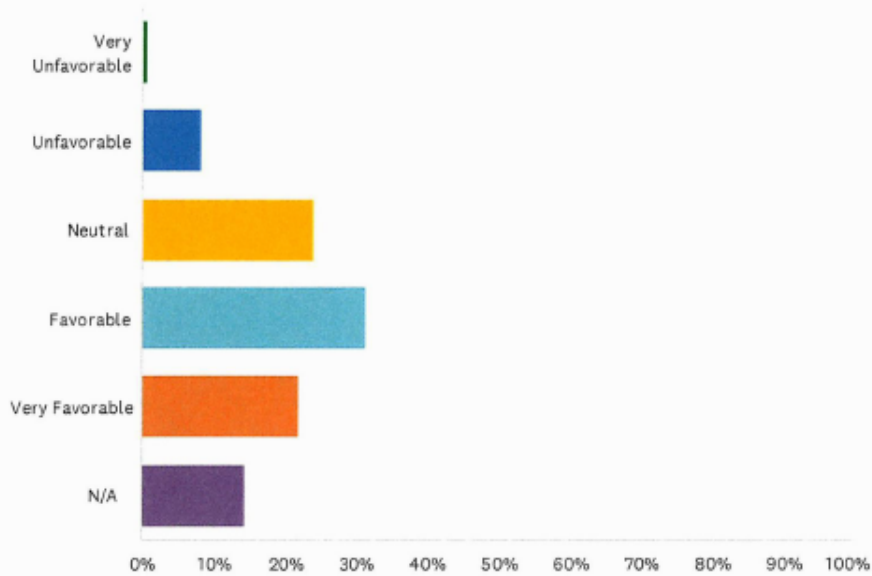
Answered: 163 Skipped: 8



ANSWER CHOICES	RESPONSES	
Very Unfavorable	1.84%	3
Unfavorable	9.82%	16
Neutral	25.77%	42
Favorable	22.09%	36
Very Favorable	19.63%	32
N/A	20.86%	34
TOTAL		163

Q43 10. For Practitioners. Describe your experience with judges in remote court hearings after February 2020.

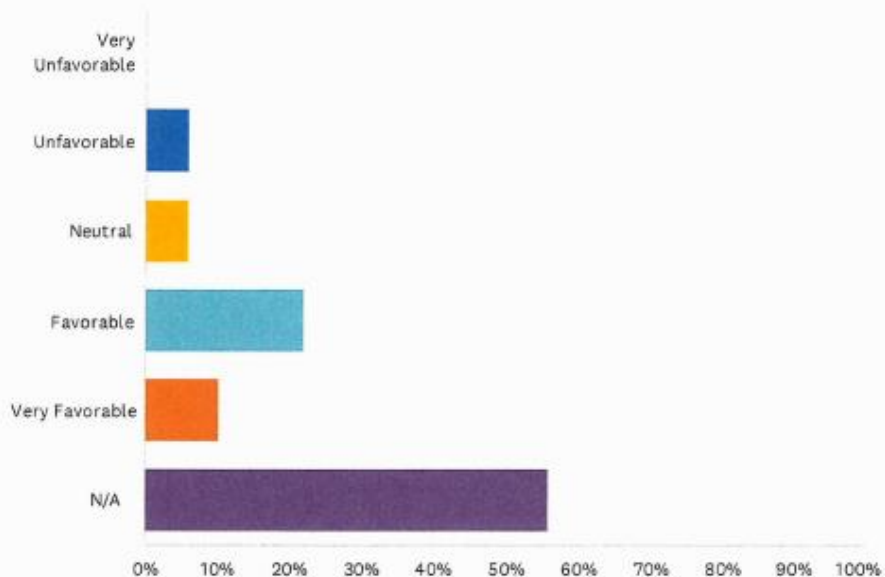
Answered: 147 Skipped: 24



ANSWER CHOICES	RESPONSES	
Very Unfavorable	0.68%	1
Unfavorable	8.16%	12
Neutral	23.81%	35
Favorable	31.29%	46
Very Favorable	21.77%	32
N/A	14.29%	21
TOTAL		147

Q44 11. For Judges. Describe your experience with counsel in remote court hearings after February 2020.

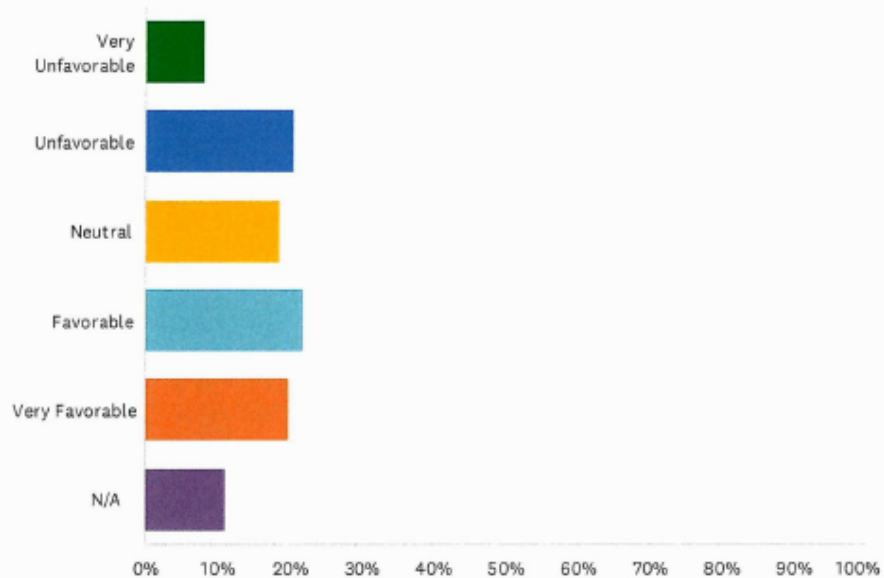
Answered: 68 Skipped: 103



ANSWER CHOICES	RESPONSES	
Very Unfavorable	0.00%	0
Unfavorable	5.88%	4
Neutral	5.88%	4
Favorable	22.06%	15
Very Favorable	10.29%	7
N/A	55.88%	38
TOTAL		68

Q45 12. How effective have you found remote court hearings versus in-person court hearings?

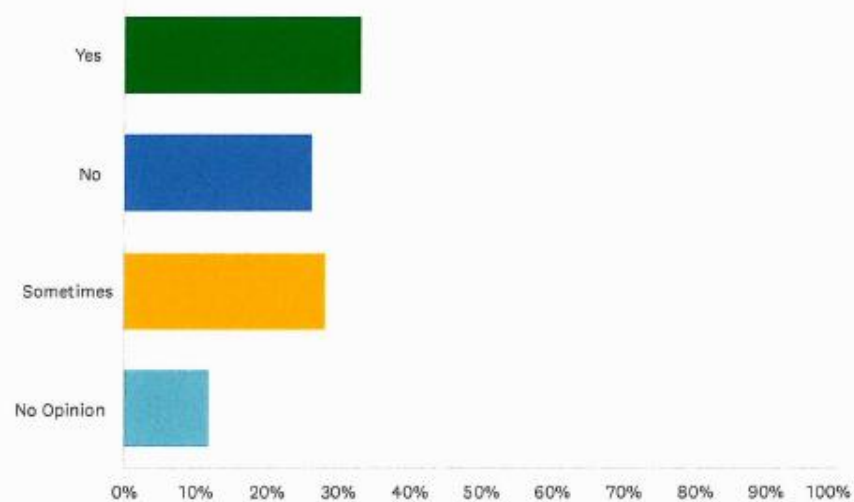
Answered: 161 Skipped: 10



ANSWER CHOICES	RESPONSES	
Very Unfavorable	8.07%	13
Unfavorable	20.50%	33
Neutral	18.63%	30
Favorable	21.74%	35
Very Favorable	19.88%	32
N/A	11.18%	18
TOTAL		161

Q46 13. Overall, have you found remote court hearings more efficient than in-person court hearings?

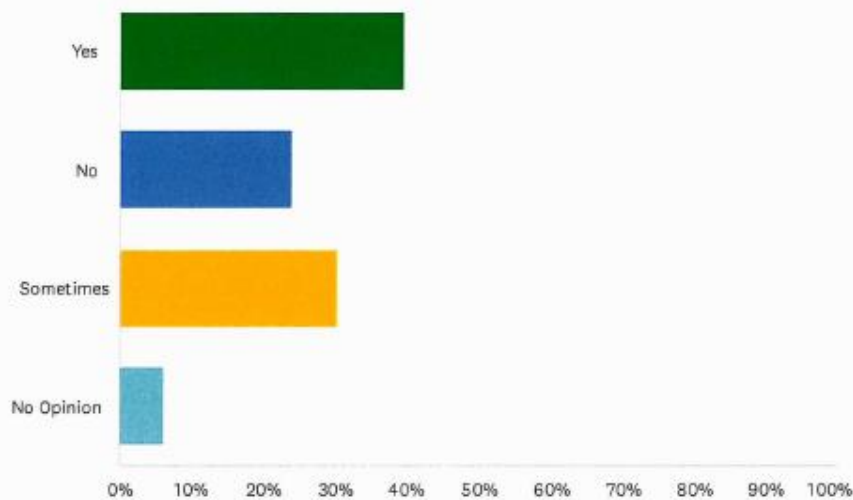
Answered: 159 Skipped: 12



ANSWER CHOICES	RESPONSES	
Yes	33.33%	53
No	26.42%	42
Sometimes	28.30%	45
No Opinion	11.95%	19
TOTAL		159

Q47 14. Assuming COVID-19 remains sufficiently receded for in-person court hearings, would you wish to continue to participate in remote court hearings?

Answered: 159 Skipped: 12



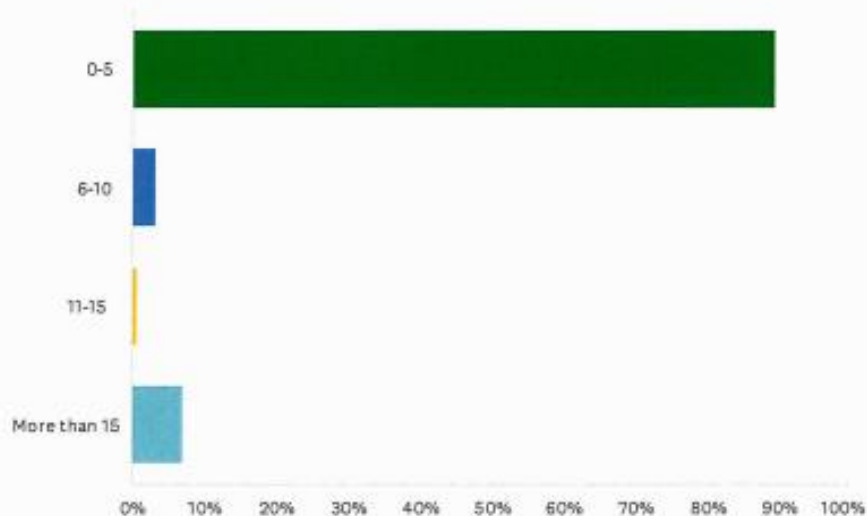
ANSWER CHOICES	RESPONSES	
Yes	39.62%	63
No	23.90%	38
Sometimes	30.19%	48
No Opinion	6.29%	10
TOTAL		159

V. Virtual Trials

Despite there being significant input from the participants on the various other virtual procedures that have been utilized since the onset of COVID-19, unfortunately, few participants have been involved in virtual trials. Indeed, nearly 94% of the participants had no experience with virtual trials (either as a practitioner or as a judge) and, thus, had no opinion on, *inter alia*, use of exhibits, eliciting testimony, or costs.

Q49 V. Trials (for Practitioners & Judges) Please check the appropriate box, and where relevant, specify your answer. The term "virtual trial" whether a bench trial, jury trial, or trial, refers to a trial conducted over video conference. 1. How many virtual trials have you participated in since February 1, 2020?

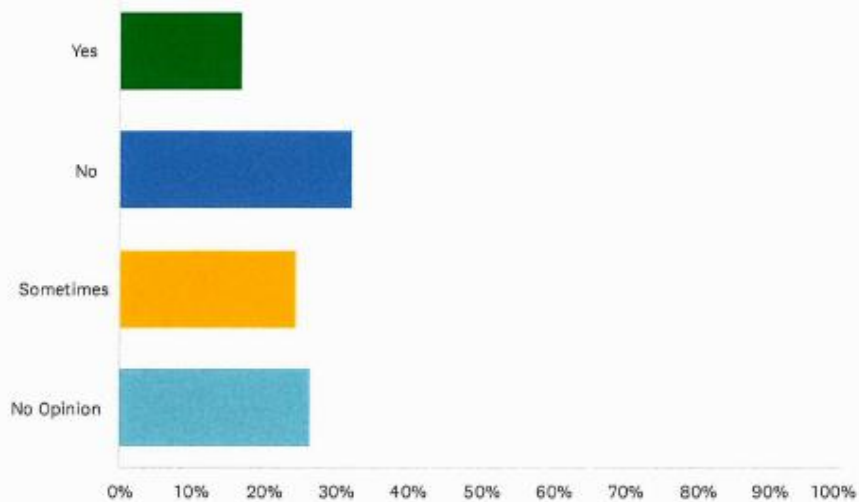
Answered: 158 Skipped: 13



ANSWER CHOICES	RESPONSES	
0-5	89.24%	141
6-10	3.16%	5
11-15	0.63%	1
More than 15	6.96%	11
TOTAL		158

Q60 12. Assuming COVID-19 remains sufficiently receded for in-person bench trials, would you wish to continue to participate in virtual bench trials if allowed?

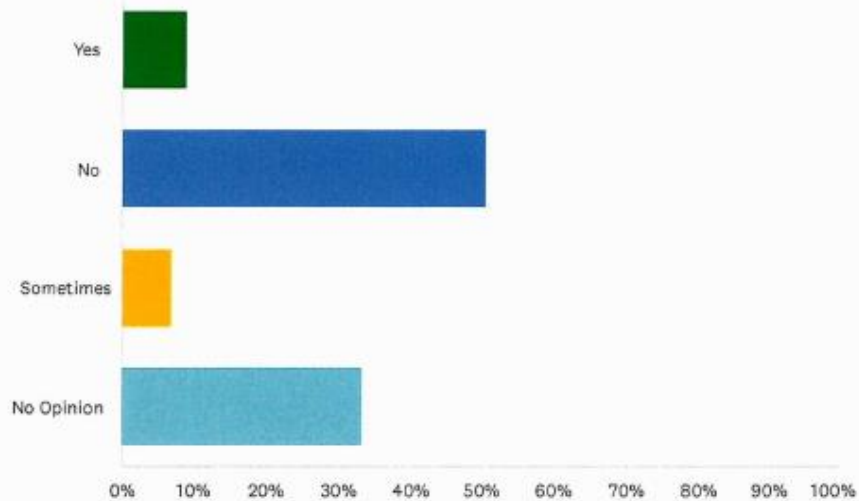
Answered: 155 Skipped: 16



ANSWER CHOICES	RESPONSES	
Yes	16.77%	26
No	32.26%	50
Sometimes	24.52%	38
No Opinion	26.45%	41
TOTAL		155

Q61 13. Assuming COVID-19 remains sufficiently receded for in-person jury trials, would you wish to continue to participate in virtual jury trials if allowed?

Answered: 156 Skipped: 15



ANSWER CHOICES	RESPONSES	
Yes	8.97%	14
No	50.64%	79
Sometimes	7.05%	11
No Opinion	33.33%	52
TOTAL		156

VI. Conclusion

As can be seen from the results of the survey, commercial lawyers in New York recognize that virtual proceedings are a useful tool that can be helpful in certain cases to lower costs and increase efficiency. With that being said, the concept that virtual proceedings will “take over” and in-person proceedings will dissipate completely, is not a concept that individuals who participated in the survey would support. As the COVID-19 pandemic moves into our past, it will be interesting to see how frequently virtual proceedings are used in the future.