

ELEVATING YOUR ARBITRATION PRACTICE

A Report on the 2023 SWR-NAA Best Practices Survey

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INTRODUCTION

This report presents the results of an online 64-question poll distributed to members of the National Academy of Arbitrators, by member Danielle L. Hargrove, Esq. of Dallas, Texas. The goal of the poll was to elicit information on what contributes to the success of NAA members who have thriving and lucrative practices. What can we learn from them? The survey instrument included the following topics:

- (1) You and Your Practice: Questions 1 through 22.
- (2) Back Office: Questions 23-44.
- (3) Case Management: Questions 45-58; and
- (4) Billing Practices: Questions 59-64.

The poll was conducted in the closing months of 2023, in preparation for a panel presentation at the 2024 Southwest Rockies Region's Annual Labor Management Conference in Dallas. The panelists are National Academy of Arbitrators members Danielle Hargrove, Pilar Vaile, and Brian Clauss and attorney Andrea Stulgies-Clauss.

The survey was first presented to a pre-selected group of NAA Members subjectively perceived by the presenters to be "high performance" or "highly successful." The survey was later sent to all NAA Members. The poll closed December 31, 2023, with 100 responses, representing 24% of NAA active members. Although the results are not presumed to be representative, the results provide insight on the state of the profession as a Labor Arbitrator.

This Report summarizes the results of the survey. Various resources recommended by the respondents are listed in **Appendix A - Resources**. Raw survey results are provided in **Appendix B – Raw Survey Results**. Non-responsive, inapplicable, unclear, or ambiguous responses were eliminated for ease of review.

The first section, *You and Your Practice*, provides a snapshot of the professional characteristics and practices of NAA members. The *Back Office* section aims to primarily address non-case-related administration and marketing practices. The *Case Management* Section aims to address all the pieces that go into getting an award out the door. The final section, *Billing*, addresses the mechanics of invoicing and getting paid.

Although there is some overlap in the questions in the *Back Office*, *Case Management*, and *Billing* sections, the overlap was necessary to provide clear information on different aspects of the practice of arbitration.

I. YOU AND YOUR PRACTICE: Questions 1 through 22

This section aims to provide an overall snapshot of the attributes and practices of NAA members. It looks at such factors as their years of experience, pathway to arbitration, credentials, and how busy they are, how they subjectively view their practice. It also explores the “ideal case load” for respondents, how they measure success, and their professional satisfaction.

The survey results illustrate the following snapshot among respondent NAA members:

- They have **over 15 years of experience** as an arbitrator (54%), with 40% having over 20 years of experience. (Qs 1-2.)
- **Pathway** to becoming a labor arbitrator: the majority became so after having served as a labor or employment law advocate (union or management) (53%). 16% came from academia, 14% from a labor board, and 17% had “other” paths. (Q 15.)
- They serve on a **variety of arbitration panels**, including FMCS (26%), AAA (22%), NMB (12%), permanent party panels (26%), “Other” (13%), and CPR (1%).
- They provide a **variety of ADR services**, with arbitration and mediation having received the largest responses (28% & 20%); and the other ADR services (med-arb, expedited cases, training, and fact-finding) each receiving 11-15% of the responses. (Q 14.)
- However, 82% responded that **pure labor arbitration** constituted more than 75% of their current practice. (Q 16.)
- **Two-thirds or 66% are full-time neutrals and that is “all [they] do”.**
 - Only 19% are part-time or semi-retired, and only 15% are full- or part-time academic faculty or adjuncts (of those, the vast majority are part-time faculty). (Q 3.)
- Asked how to **best describe their neutral or arbitration practice** from a pre-set “check all that apply” list, they responded as follows:
 - **34% see it as a service.**
 - 25% see it as “a specialized legal practice”.
 - 21% see it as “a calling”; and
 - 17% see it as “an entrepreneurial business endeavor”. (Q 4.)

- Perhaps not surprising given this, 74% view other arbitrators more as colleagues than as competition (although 8% do view each other as competitors, and 17% view them as competitors at least sometime). (Q 12.)
- Asked “**how busy**” their neutral or arbitration practice is, more respondents said, “just about right” (44%); but an almost equal number said they are “almost too busy” (40%). 14% said they “could take on more work” although still “fairly busy” and 2% said they needed more work. (Q 5.) This is consistent with the responses comparing actual selections/hearing dates and goals:
 - Number of selections in 2022: more respondents fell into the 26-50 selections for the year category (38%). 16% had 25 or fewer; 19% had 51-75; 8% had 76-100; and 14% had 100+. (Q 6.)
 - Selection goals: answers here aligned to actual 2022 selections, with 36% wanting 26-50 selections a year, although 19% wanted more than 50 selections a month, and only 10% want as many as 100+. (Q 7.)
 - Hearing days in 2022: responses here were like the “number of selections” responses except that a noticeably larger percentage had 25 or less actual hearing days (30%) than the same number of selections (16%), and fewer had 51-75 hearing days (11%) than the same number of selections. (Q 8; cf. Q 6.)
 - Hearing day goals: Most respondents said they do not have a goal for hearings (54%), and other answers varied from 2 to 10 hearing days a month, and/or 24 to 10 hearing days a year. 14% want 8-10 hearings a month/96-120 hearings a year. (Q 9.)
 - Accounts receivables: Here, we were interested in such things as whether the arbitration profession is or can be sustaining, or even attractive from a financial perspective as a career or practice; and what percentage of respondents get enough cases to be financially self-sustaining.

Generally, labor arbitrators are almost all sole practitioners, irrespective of how their business entity is structured (i.e., individual proprietor with DBA, single member LLC, S Corp, etc.) For the purposes of this survey, we found it best to use accounts receivable to measure and compare annual income.

The responses were evenly spread between income ranges. Regardless of the income, we were interested in such factors as whether they actively engaged in marketing, whether they were semi-retired; whether they employed or contracted assistance with administrative work, reviewing files, and/or drafting final Awards; and if so what percentage of their overhead covers such costs; etc. In this manner, additional questioning could flesh out the best practices of those arbitrators earning at the upper ends of the income ranges.

The respondents answers indicate an even split for those whose account receivables are at the highest and lowest ranges of reported incomes -. That is, approximately 15% respondents earn less than \$100,000 annual income or more than \$400,000 annual income. A similarly even split is between the 32% at

\$150,000 and below and the 29% at \$300,000 and above. 36% of arbitrators are within the \$150,000 to \$250,000 range.

A flaw in the question was revealed during data analysis: the \$250,000 to \$300,000 income level was not represented – requiring some to round up or round down. This flaw will be corrected in later surveys.

The survey methodology does not specifically link arbitrators having the highest number of selections with the highest amount of accounts receivable or those hearing a small number of cases with lowest accounts receivable. However, the respondents with less than 25 selections per year and respondents with more than 100 selections per year are relatively evenly split at 15%.

The question has limitations because it measures gross income through accounts receivable absent business costs. Measuring overhead costs against accounts receivable will be addressed in subsequent surveys.



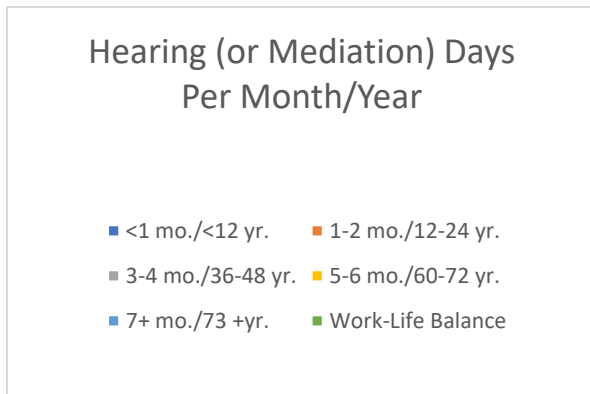
- Despite being a busy group¹, the respondents are still active in a variety of professional activities (Q 17):



¹ 30% of the attorneys indicated they are unable to fulfill their annual CLE requirements. (Q22.)

Responses revealed wide distributions to the questions of “**What does the ideal caseload or workload look like to you?**,” and “**How do you measure the success of your practice?**,” but also indicate NAA Members are largely happy with their practices. (Qs 11 and 20.)

- As to the first question, most respondents described their **ideal case or workload** in terms of number of hearing (or mediation) days a week or month, number of cases heard, or awards issued per year,
- A significant percentage, however, described their ideal workload in terms of interesting work, and maintaining a good work-life balance. This was also consistent with their responses to Q20 regarding measuring success.
 - Counting Q11 “ideal case load” responses by hand after normalizing the data (see note 1) gets the following results:
 - 2 respondents want to hear one case a month, or less.
 - 22 want to hear 1-2/month.
 - 23 want to hear 3-4 /month.
 - 2 want to hear 5-6/month.
 - 11 want to hear 7 or more/month, and
 - 16 spoke in terms of work-life balance.



(Q 11, and Appendix B.)²

- The **total number of cases or awards (29% combined), and work-life balance (28%)** are of primary importance to the respondents. In contrast, professional

² This question had the largest response of any. As to methodology in aligning responses, all numbers were translated into hearings per month/year and rounded up if they fell between the ranges indicated here. At least five (5) responses were struck as non-responsive or unclear, and approximately seven (7) did not fall into any of the numerical or work-life balance categories. These miscellaneous responses were “don’t know”/ “hadn’t thought about it” (2), “I am happy now” (3), “I which I had less work” (1) and expressing a preference to hear only expedited matters (1).

accolades are the least important identified metric at 7%, and even income was not terribly important at only 18%. (Q20.)

- Importantly, 91% of the respondents stated **they enjoy being an ADR professional** all the time, 9% said they enjoy it “most times”!! (Q 13.)



II. BACK OFFICE: Questions 23-44

This section reports the results for marketing, practice administration, case scheduling, and case management.

The survey results demonstrate strong views regarding social media for marketing purposes of their arbitration practice. 36% of Respondents favor marketing their practice through presentations, publishing, and conference attendance. 20% of respondents still use business cards and/or maintain a Linked In presence. Interestingly, most Respondents do not have a website and primarily use conferences and business cards for marketing. (Q25, Q29.)

Q 26 asked why there was no social media presence. This question received 64 responses reflecting the following:

- The majority indicated no need, time, or interest beyond a website or Linked In. (44 respondents)
- 16 responses expressed dislike or even hostility to social media.
- 4 respondents only used social media for personal use, not for marketing.
- Several indicated a lack of time, technical acumen, or familiarity with social media but might consider if just now starting out.
- Some expressed concerns regarding privacy, potential conflict issues or need to disclose.

Practice administration responses indicate a small percentage with a busy practice. Responses indicate a significant percentage considering retirement or reduction in caseload. Responses also indicate that office management technology use is limited to basic office tasks.

Practice management responses indicate that many members have assistance in back-office matters. Although few members have employees perform these tasks and instead use staff categorized as contractors. The high percentage of a simpler business structures and the use of

contractors in lieu of employees suggest that respondents see themselves as self-employed as distinguished from “business owners.”³

Highlights of this section:

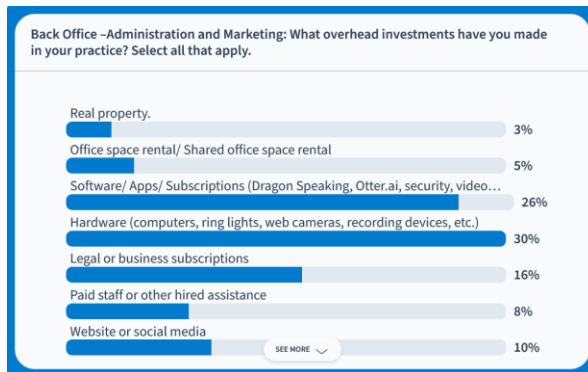
- 66% of respondents are sole proprietors and 17% are S corporations. (Q23)
- 63% of Respondents do not have a website (Q29)
- 54% of Respondents use their home address also as their business address.⁴ (Q38)
- Of the 36% of Respondents that have a website:
 - Nearly all include a biography or CV on the website.
 - Approximately 66% of Respondent also include permanent panels, published awards, publications, information links, and/or other information.
 - 65% of Respondents do not use a scheduling link or online calendar.
 - Approximately 15% have calendars showing availability and/or permits party scheduling.
 - A small group provide additional information such as philosophy, prior awards, endorsements, and an introductory video or media references.
- 53% use a home address as the primary business address and 34% use a Post Office Box or private mailbox service.
- Greater than 52% dedicate between 10-20% of their time to administration, i.e., correspondence, billing, filing, case management, and other back-office tasks. (Q24.)
 - Respondents use a variety of means to keep track of active, inactive, and closed cases:
 - Majority use a spreadsheet, list (paper or electronic) or some type of program or database to manage cases.
- 59% of Respondents use a free email platform such as Yahoo or Gmail
- 90% dedicate less than 10% of time to marketing (Q27)
- Nearly a third of Respondents do not conduct conflicts checks or do not regularly monitor or track potential for conflicts.

³ This is a reference to the simple business model distinction drawn by Robert Kiyosaki in his infamous Cashflow Quadrant in his book, “Rich Dad Poor Dad.” This reference is not meant to be an endorsement of Mr. Kiyosaki, his ideologies, businesses, or his practices.

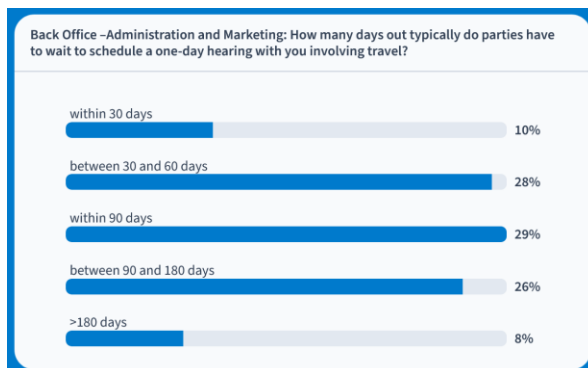
⁴ It is obvious that arbitrators use their home offices; however, this question asked what arbitrators use as their official business address (provided to parties and to the public, on business cards, etc.) which may not be the same as the home office.



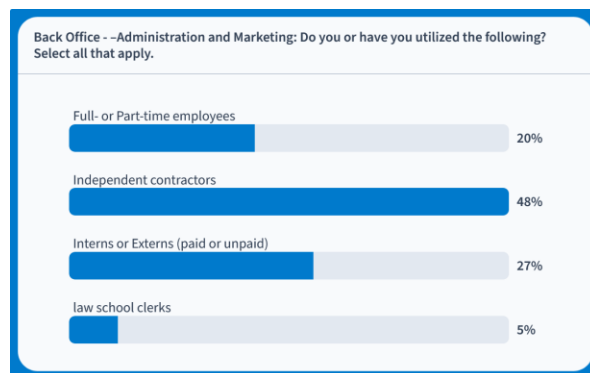
- Those who do utilize the following:
 - 37% search their emails and billing programs for conflicts.
 - 30% check conflicts against a spreadsheet or list. Questions in subsequent surveys may examine the types of information retained in those lists.
- Common overhead investments are hardware (30%), software (26%), legal or business subscriptions (16%), websites (10%), and staff/assistants (8%), Other (3%). (Q39)



- 82% of responses indicate that one-day cases with travel are scheduled between 30 and 180 days from selection. (Q34)

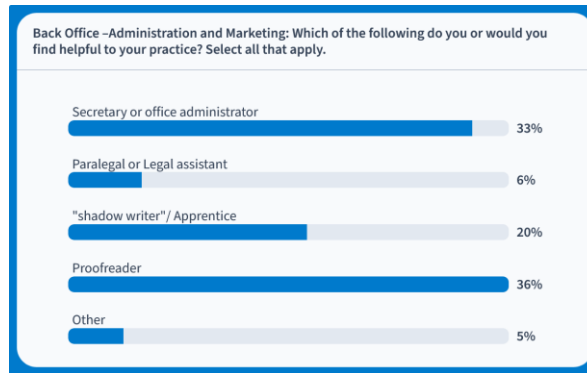


- 57% of respondents maintain one FMCS geographic listing. 43% maintain two or more geographic listings - 19% with two, 10% with three, and 14% with the maximum four geographic listings. (Q37.)
- 81% of Respondents indicated no set age for retirement; yet, they have generally not planned for a significant interruption or sudden end to their practice. Many narrative answers indicated near-term retirement or reduction in practice. (Q40.) Only 11% have a succession plan. (Q36.)
- 100% of Respondents have or have had office assistance at some point. (Q41)
 - A majority use independent contractors (48%) and interns or externs (27%).
 - Most Respondents (81%) report that they do not use others to assist in the drafting of Awards.
 - 20% of Respondents have employees (full or part-time).



- 100% of Respondents outsource or would outsource the following back-office tasks: billing (23%), bookkeeping (19%), scheduling (17%) and other tasks. (Q42)
- Responses show that proofreading, office administration, and billing are popular areas for those who have office assistance or for those who wish they had assistance. (Q43 and Q44)





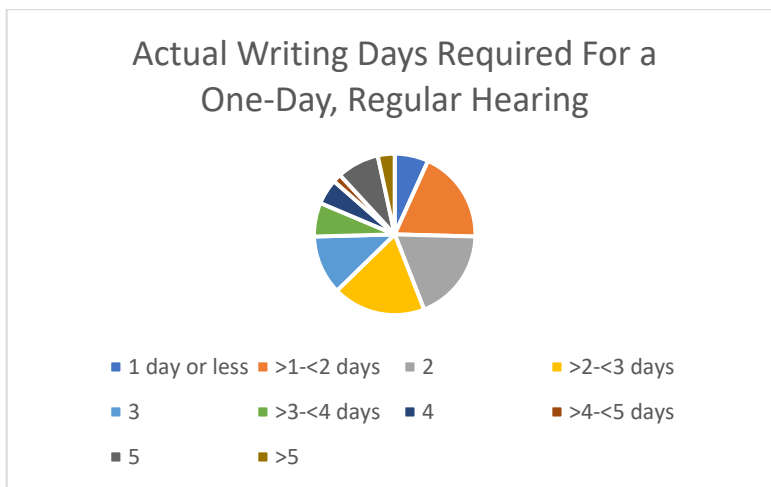
III. CASE MANAGEMENT: Questions 45-58

This section reports the results for questions about staffing, resources, software, and other aspects of case management. The section also reports aspects of hearing format, award drafting timelines, and award drafting process.

Highlights of this section:

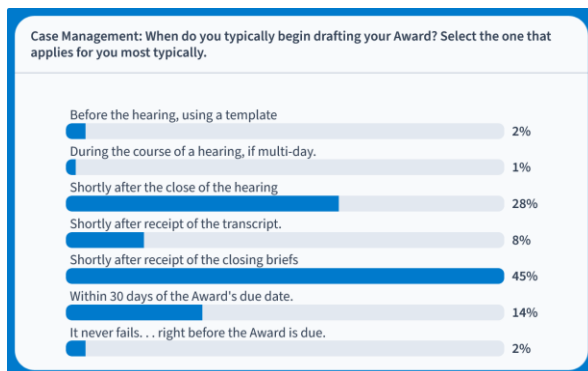
- 81% do not have assistance with drafting awards. (Q47.)
- Those who have assistance in award preparation utilize newer arbitrators (12%), proofreaders (16%), and apprentices (10%) about evenly. (Q51).
- 86% use templates for correspondence. 32% to acknowledge appointments or selections, and 32% for scheduling and orders. (Q46.)
- 35% prefer virtual hearings.
- 25% prefer in-person hearings.
- 15% expressed no preference in the form of the hearing with 25% saying, “It depends.” (Q45)

- On average, depending on the complexity (issue and record) of the case, it takes 2-3 days to write, edit, proof, and submit an Award for a one-day hearing. (Q48)⁵



(Q48 and Appendix B.)

- Respondents typically begin drafting the Award?” “shortly after receipt of the closing briefs” (45%) or “shortly after the close of the hearing (28%) (Q49):



- The open-ended question, “What helps you to get your thoughts organized for an Award?” generated 61 responses, with some common themes (Q51 and Appendix B):
 - Most Arbitrators organize their thoughts by (a) reviewing the evidence and record, (b) starting writing or outlining the issues, and/or (c) reading the briefs.
 - Two distinct approaches are indicated. The First - those who begin with party positions and review the record as needed. The Second - those who first review the record then review Parties’ arguments.

⁵ Although the question asked for an average, the answers approached the question in different ways. The chart considers the different approaches arbitrators use to account for writing time. This is an area for more specificity in subsequent surveys.

- Other answers include isolating themselves for contemplation, awaiting inspiration, or referring to prior awards on similar issues.
- Managing deadlines also yielded a variety of approaches. (Q52) Many Respondents use a calendar or case lists. Answers to the open-ended questions included:
 - Blocking time
 - Reliance on cancellations
 - White boards
 - Calendars, lists, and logs
 - Tickler systems
- When asked what case management practices they plan to start or wish they had started earlier, responses to this open-ended question include (Q52):
 - More use of digital recorders and video hearing
 - Offering available dates farther out
 - Accepting fewer cases
 - Programs such as Quick Books, electronic calendars
 - Blocking out time for writing
 - Setting aside time for collections/invoicing
 - Obtaining assistance with back-office work and drafting
 - Creating an organized, searchable database of own, past Awards, terms, and cases
 - Keeping documents electronically for ready access
 - Familiarizing oneself with more apps and technology
 - Mark Lurie’s tracking system

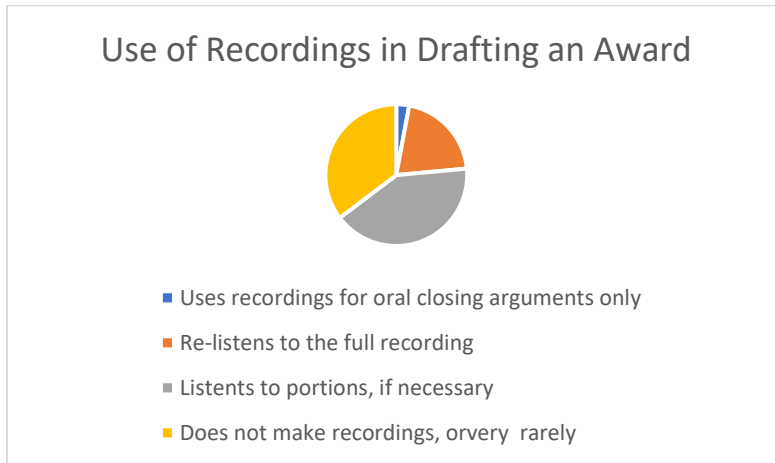
Note taking at hearings is with digital recorders, handwritten notes, or typed notes. Recommended software includes MS One Note, Note Studio and Text Expander.⁶ (Q54)

- Always be prepared with enough pen and paper.
- Several preferred or required a court reporter.
- Use forms to keep track of attendees, exhibits offered, received, or not admitted.
- Use of personal shorthand
- For respondents who record, most do not review the recoding unless notes are unclear or a specific point needs confirmation. A small percentage listen to the entire recording.
- Some make special notations or highlight their notes for ease of reference when writing the Award.
- “If recording, annotate time of certain testimony to revisit when writing Award; highlight/star testimony that I know I want to clarify with a witness during

⁶ According to a Respondent, Note Studio combines” notes with a recording of the evidence; cheap and very efficient. I use TextExpander for keeping all abbreviations that convert to full text. The combination of these two apps is perfect. Both inexpensive.”

testimony and/or to look for in brief. If transcribed, I put in my notes, words to look for from witness for when I go back and do a search in the transcript; lots of Tabs and post-its, pens, and paper.”

- Travel office with exhibit stickers, mini stapler, and paper clips.
- Several mentioned that they record in Zoom and use the transcript function.



More than half of respondents had no recommendations for case management or billing programs. Of those who answered, QuickBooks and Quicken were most mentioned and the remainder were a smattering of individual preferences. (Q57)

70% considered Elkouri & Elkouri, How Arbitration Works to be a valuable reference. 18% cited Brand and Biren, Discipline and Discharge, 13% cited St. Antoine, The Common Law of the Workplace, 8% cited Fairweather’s Practice and Procedure in Labor Arbitration (1991), and the remainder provided a mix of citations.

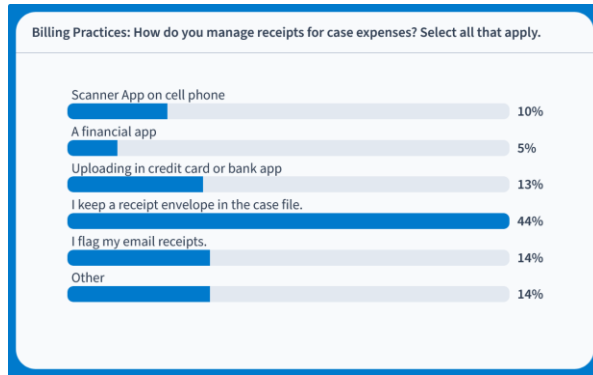
IV. BILLING PRACTICES: Questions 59-64

This section reports the results for questions about billing, cancellation fees, collections, expense management, and payment practices.

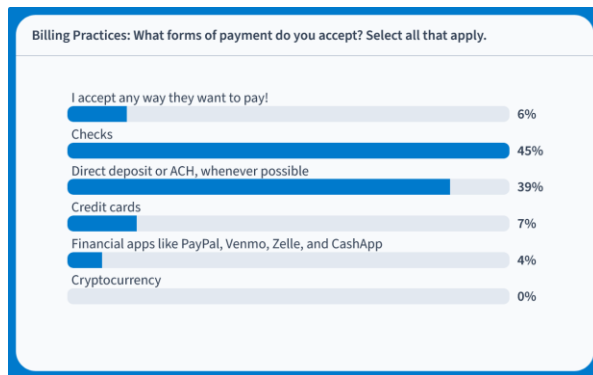
Highlights of this section:

- 30% rarely or never submit interim bills. Respondents that submit interim bills tend to do so for lengthy delays in the case (35%) and multiple hearing days over significant time. (29%)
 - 10% interim bill for cancellations. 9% bill for large travel expenses or when a hearing is bifurcated or otherwise significantly delayed. (Q59)
 - 52% of respondents do not anticipate their annual income. 28% consider cancellation fees as part of estimated income. (Q60.)
 - 79% have never gone to collection. (Q61.)

- 44% manage receipts by storing receipts in the case file. (Q62)



- 84% accept checks and ACH transfers. 11% also accept credit cards or electronic transfer. (Q63)



- Respondents were split between writing off time and billing for all time. (Q64.)

