



2019
Annual Report
to the
Administrative Board of
the Courts

New York State Attorney-Client Fee Dispute Resolution Program
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Introduction

The Unified Court System Alternative Dispute Resolution Office (ADR Office) administers the New York State Fee Dispute Resolution Program. The administration of the Program is guided by the Board of Governors, with the goal of ensuring that attorneys and clients have access to cost-effective, high-quality methods of resolving fee disputes.

The Board continues to monitor local programs across New York State. Working with counsel from the ADR Office, the Board supports their efficient operation by overseeing the training of and approving volunteer arbitrators, promoting the Program and responding to substantive and operational questions from staff of local programs as well as attorneys and clients. The Board regularly reviews questions arising under Part 137 of the Rules of the Chief Administrative Judge and the Board's Standards and Guidelines to promote consistent practices where appropriate. The Board also reviews the UCS website for the Program to ensure that parties and local programs have access to the information and forms they need.

Board Appointments, Reappointments, and Term Expirations

The Board is chaired by Martha E. Gifford, a member of the Board since the Program was established in 2001, who was appointed to her current position by then-Chief Judge Hon. Jonathan Lippman on December 30, 2015. Ms. Gifford has since been reappointed by Chief Judge Janet DiFiore effective December 29, 2018.

In 2019, the Board of Governors welcomed three new members: Anthony D. Mancinelli, appointed by Chief Judge Janet DiFiore and Debra A. Devine and Joseph Williams, Esq. appointed by the Presiding Justice for Third Department, Hon. Elizabeth Garry.

There were also several reappointments of existing members: Susan L. Bender, Esq., Eric C. Hsueh, CIAIA, and William J. Dockery, Esq. were reappointed by the Presiding Justice for the First Department, Hon. Rolando T. Acosta; Robin S. Abramowitz, Esq. and Stephen W. Schlissel, Esq. were reappointed by the Presiding Justice for the Second Department, Hon. Alan

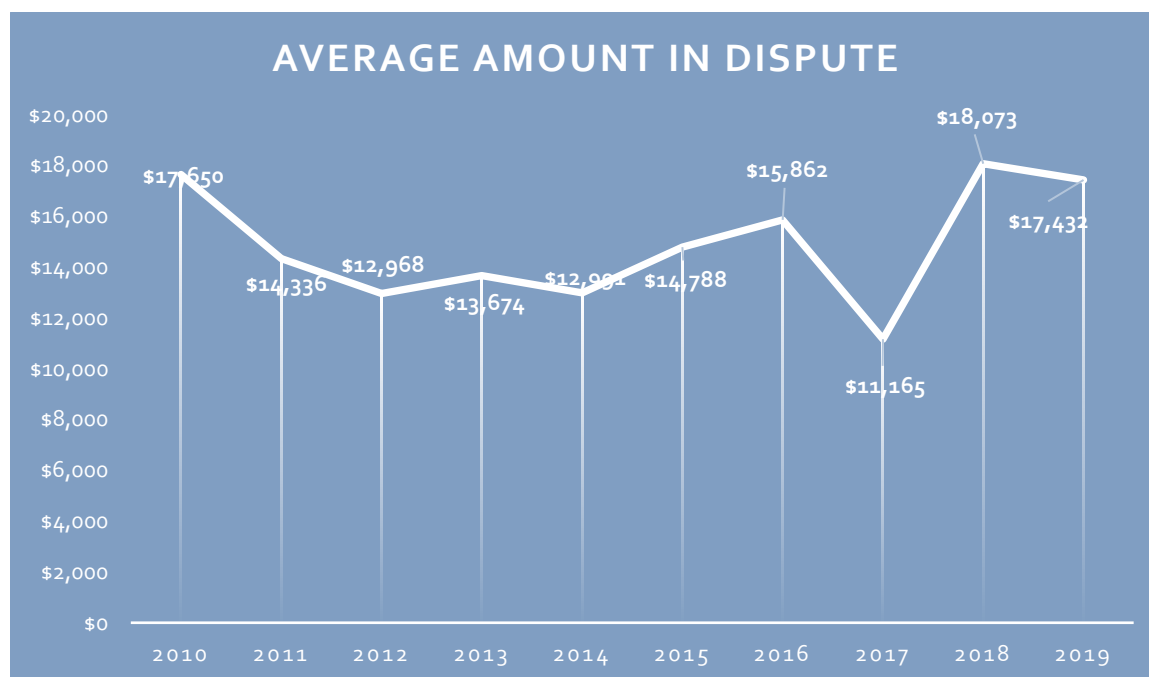
Scheinkman; and Shari Jo Reich, Esq. was reappointed by the Presiding Justice for the Fourth Department, Gerald J. Whalen.

Elizabeth J. Cahill and Michelle L. Haskin, Esq., both of whom were appointed by the former Presiding Justice for the Third Department, Hon. Karen K. Peters, completed their terms in 2019. The Board is very grateful for their contributions to the program over the years.

Statistical Highlights

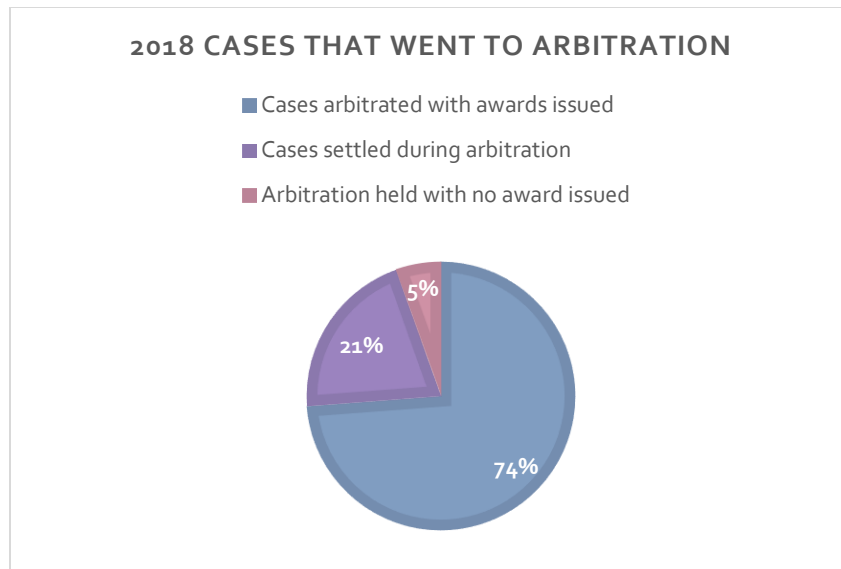
From January 1, 2002 through December 31, 2018, the Fee Dispute Resolution Program has closed 13,705 cases. During 2019, local programs closed 770 cases, which is 55 cases fewer than the 825 cases closed in 2018. Statewide, the average amount in dispute was \$17,432, a decrease of \$641 from the average amount in dispute in 2018 cases.

Average Amount in Dispute

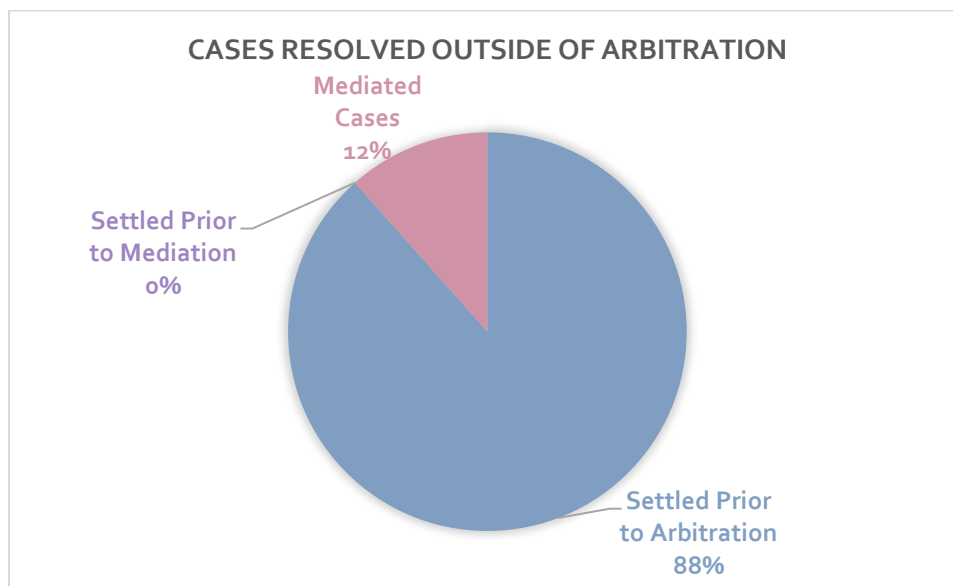


Of the 768 cases closed in 2019, **464 went to arbitration.**

- arbitrators issued awards in 343 of the 464 cases that went to arbitration;
- 96 of the cases that went to arbitration settled during the arbitration;
- 25 of the cases that went to arbitration had no award issued.



One hundred twenty-two cases were resolved outside of arbitration. Cases resolved outside of arbitration included 108 cases settled prior to arbitration or mediation and 14 mediated cases.



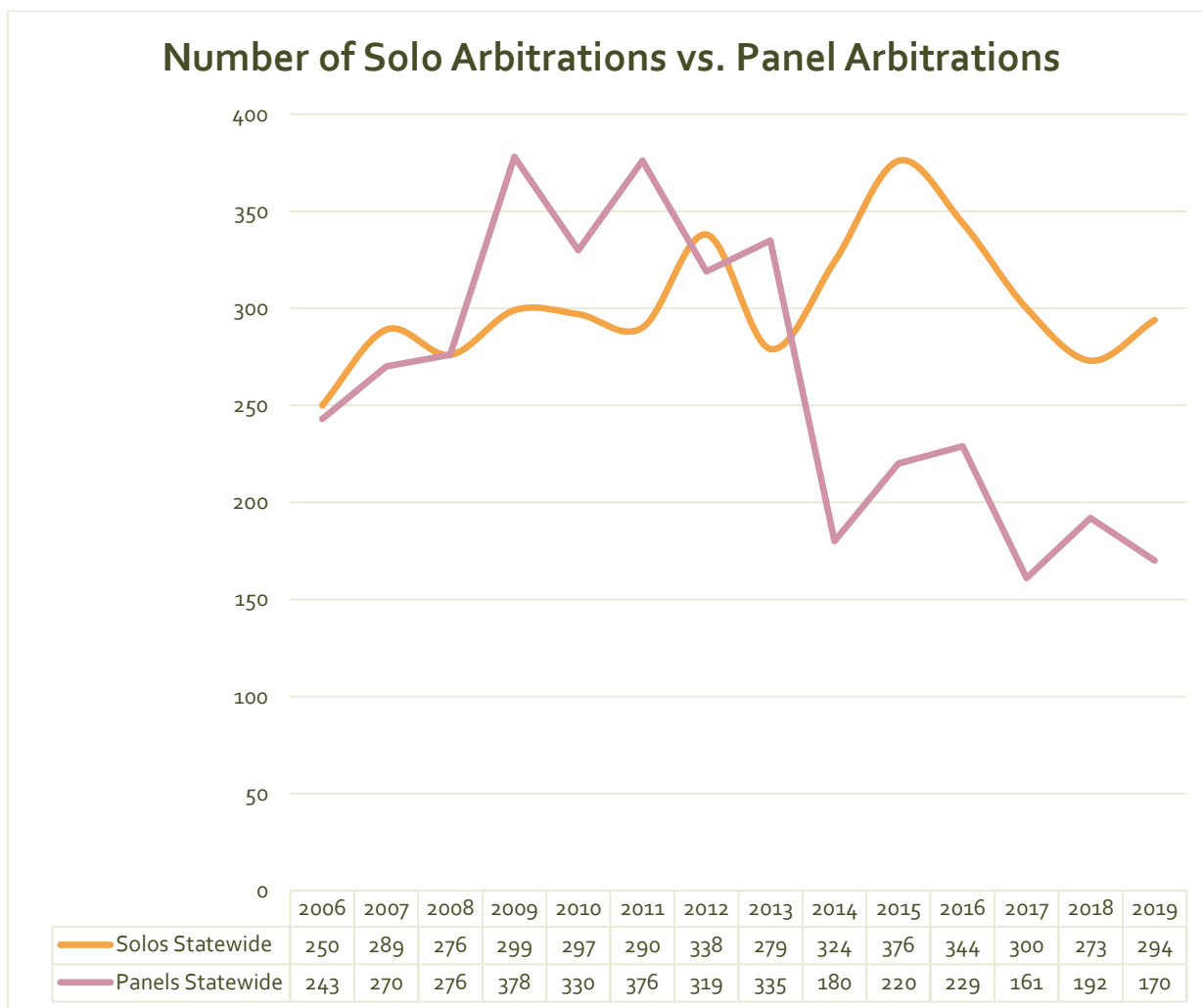
A total of one hundred seventy cases were either dismissed for lack of jurisdiction (151 cases) or withdrawn by the filing party (19 cases).

Reasons for Lack of Jurisdiction	Percent
Attorney not admitted in NY and no NY Office or No Services Performed in NY	1%
Client Filed Later than 30 Days	6%
Criminal Matter	3%
Damages or Affirmative Relief	0%
Fee Determined by Statute, Rule, or Court Order	7%
No Attorney's Services for More than 2 Years	13%
Outside the Rule's Monetary Jurisdiction	11%
Referred to Grievance Committee	0%
Request made by Non-Client or Legal Representative of the Client	3%
Services Provided Outside Local Program Geographic Region	11%
Substantial Legal Question, Malpractice, Misconduct Allegations	10%
Other*	35%*

* Other includes: party deceased; party incarcerated; party did not respond; transfers for reasons other than incorrect venue; party bankruptcy; concurrent action pending in court for same relief.

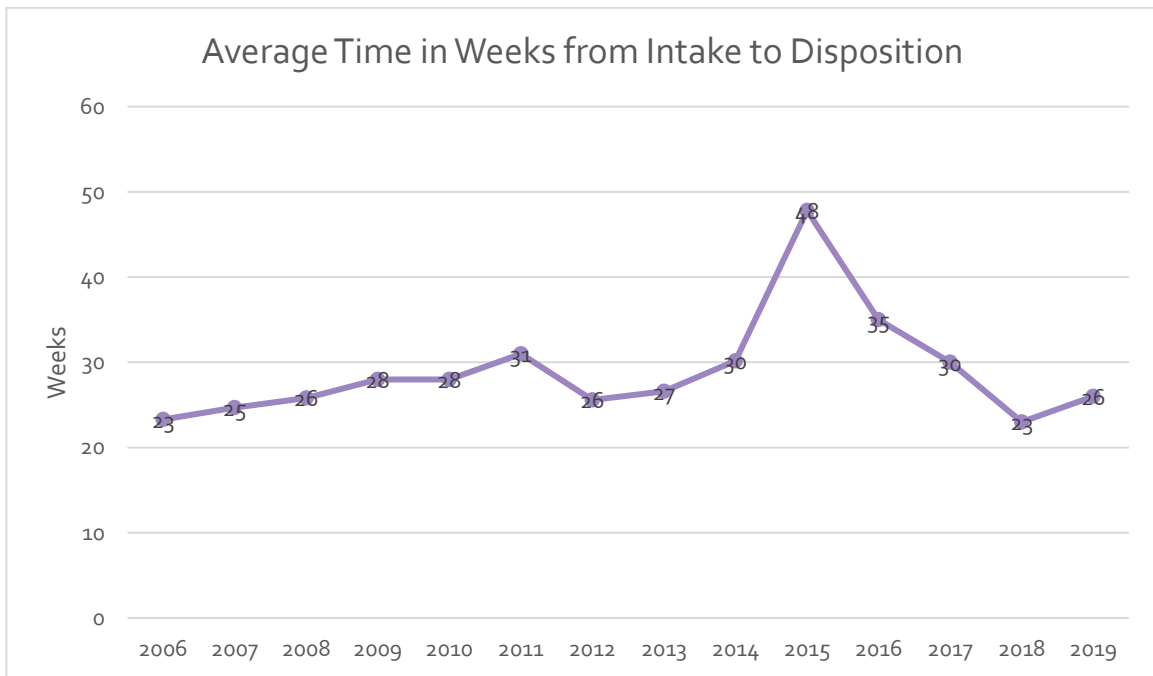
Panel Arbitrations Compared to Solo Arbitrations

Arbitrations using a single arbitrator, where less than \$10,000 was in dispute, numbered 294, while 3-person panel arbitrations, where \$10,000 or more was in dispute, totaled 170. The number of panel arbitrations statewide has remained less than the number of solo arbitrations since the panel threshold was increased in January 2014 from \$6,000 to \$10,000.



Time from Intake to Disposition

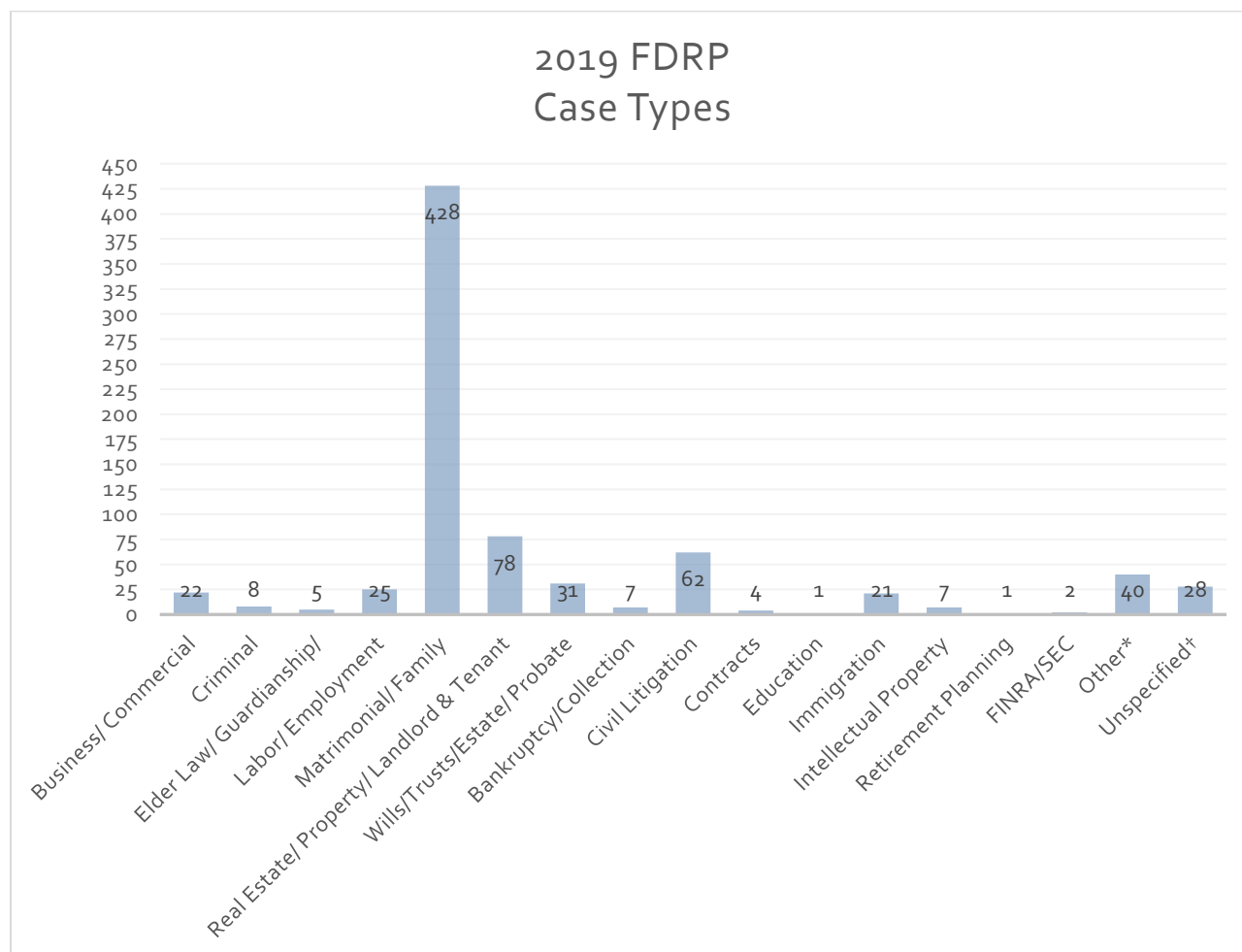
The average number of weeks from intake to disposition for Part 137 cases was 26 weeks in 2019, which represents an increase of 3 weeks from the prior year. 2015 had seen a spike in average time to disposition of 48 weeks. The Board has looked at certain statistics affecting that increase and inferred that it was an outlier and expected it to correct itself. In the three subsequent years, the time to disposition has in fact decreased with only a slight uptick in between 2018 and 2019. The Board will continue to monitor the average life span of cases, anticipating that the time frame will return to its previous average of about 30 weeks. The Board also continues to analyze the trend of fewer panel arbitrations as compared to solo arbitrations and will look to see whether it affects the disposition time and the preservation of volunteer resources.



FDRP Case Types

Fee disputes stemming from representation in matrimonial matters continue to be the majority case type handled by the program, numbering 375 cases. Real Estate/ Property/ Landlord & Tenant continues to be the second most handled case type, numbering 75 cases.

Chart 5



* "Other" includes but is not limited to the following subjects: construction litigation, debt consolidation, Medicaid, multiple/ various legal matters, tax, political consultation, and small claims defense.

† "Unspecified" is generally used as a temporary place-holder until the administrator receives more information in order to designate a case type or to determine that the program lacks jurisdiction.



New Arbitrator Trainings

Both attorney and non-attorney volunteers are assigned to Part 137 cases. Arbitrations where the amount in dispute is less than \$10,000 are heard by one arbitrator, who must be an attorney. However, where the amount in dispute is

\$10,000 or greater, the local program assigns a panel of three arbitrators. Panels must include one non-attorney arbitrator and one attorney who serves as the chair.

The new arbitrator training program is an all-day event; participants learn the background and basics about the Part 137 rule and program during the first part of the day and complete the day by learning the skills needed as an arbitrator. After participating in the training, potential arbitrators apply to a local program. The program submits a résumé or biography for review by the Qualifications, Training and Review Committee of the Board. Once an arbitrator is approved to join a roster, he or she must submit a notarized oath or affirmation to arbitrate faithfully and fairly, which the local program keeps on file.

OVER 50 NEW VOLUNTEER
ARBITRATORS WERE TRAINED IN
2019

The 2019 new arbitrator trainings were conducted on the following dates and locations:

June 18	October 17	October 28
Fifth Judicial District Onondaga County Bar Association Syracuse, NY	Tenth Judicial District Administrative Judge's Office Mineola, NY	Seventh Judicial District Monroe County Bar Association Rochester, NY

Funding

The Office of Court Administration continues to fund the following programs in order to help defray costs: The Bar Association of Erie County (BAEC); the New York County Lawyers Association (NYCLA), which administers the Joint Committee on Fee Disputes and Conciliation in Bronx and New York Counties; the Onondaga County Bar Association (OCBA); and the Monroe County Bar Association (MCBA). Beginning in 2007, all funding to bar associations occurs pursuant to the terms of negotiated multi-year contracts based on a fiscal year.

In 2018, programs were granted a 2% budget increase for the fiscal year. The following is a breakdown of the funding available to each program during the period April 1, 2018- March 31, 2019: BAEC - \$9,884; NYCLA - \$ 86,483; OCBA - \$14,826; MCBA - \$18,965.

Board Composition

<i>Member</i>	<i>Appointment</i>
<i>Martha E. Gifford, Chair</i>	Chief Judge Janet DiFiore ¹
<i>Simeon H. Baum, Esq.</i>	Chief Judge Jonathan Lippman
<i>Gene A. Johnson</i>	Chief Judge Jonathan Lippman
<i>Anthony D. Mancinelli, Esq.</i>	Chief Judge Janet DiFiore
<i>Abigail A. Wickham, Esq.</i>	Chief Judge Janet DiFiore ²
<i>Mark V. Collins</i>	Chief Judge Janet DiFiore
<i>Susan L. Bender, Esq.</i>	Acting Presiding Justice Hon. Peter Tom
<i>William J. Dockery, Esq.</i>	Acting Presiding Justice Hon. Peter Tom ³
<i>Eric C. Hsueh, CAIA</i>	Acting Presiding Justice Hon. Peter Tom
<i>Robin S. Abramowitz, Esq.</i>	Presiding Justice Randall Eng
<i>Stephen W. Schlissel, Esq.</i>	Presiding Justice Randall Eng ⁴
<i>Vacant</i>	Presiding Justice (App. Div. 2d Dept.)
<i>Linda J. Clark, Esq.</i>	Presiding Justice Karen K. Peters
<i>Debra A. Devine</i>	Presiding Justice Elizabeth Garry
<i>Joseph R. Williams, Esq.</i>	Presiding Justice Elizabeth Garry
<i>Louis B. Cristo, Esq.</i>	Presiding Justice Gerald J. Whalen
<i>Peter K. Cutler</i>	Presiding Justice Gerald J. Whalen
<i>Shari Jo Reich, Esq.</i>	Presiding Justice Gerald J. Whalen

¹ Initial Appointment by Chief Judge Judith S. Kaye.

² Initial Appointment by Presiding Justice A. Gail Prudenti.

³ Initial Appointment by Presiding Justice Joseph P. Sullivan.

⁴ Initial Appointment by Presiding Justice A. Gail Prudenti.

Program Approval Status- Statewide Overview

As of December 31, 2019

District	Administrator	Status
<i>First (Manhattan)</i>	Joint Committee on Fee Disputes and Conciliation	Joint program of New York County Lawyers Assn, Bronx County Bar Assn, and New York City Bar Assn. Program operates out of NYCLA headquarters. Approved to administer program as of 3/4/2002
<i>Second (Kings)</i>	Brooklyn Bar Assn	Approved to administer program as of 8/20/2002
<i>Third (Albany, Schoharie, Rensselaer, Greene, Columbia, Ulster, Sullivan)</i>	District Administrative Judge's Office. (Program covers entire District)	Approved to administer program as of 7/23/2002
<i>Fourth (Schenectady, Saratoga, Montgomery, Fulton, Washington, Warren, Hamilton, Essex, St. Lawrence, Franklin, & Clinton)</i>	District Administrative Judge's Office (Program covers entire District)	Approved to administer program as of 5/1/2005
<i>Fifth (Onondaga, Herkimer, Jefferson, Lewis, Oneida, Oswego)</i>	Onondaga County Bar Assn, in partnership with the District Administrative Judge's Office (Program covers entire District)	Approved to administer program as of 7/24/2002
<i>Sixth (Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga & Tompkins)</i>	District Administrative Judge's Office (Program covers entire District)	Approved to administer program as of 4/16/2003
<i>Seventh (Monroe, Cayuga, Livingston, Ontario, Seneca, Steuben, Wayne & Yates)</i>	Monroe County Bar Assn, in partnership with the District Administrative Judge's Office (Program covers entire District)	Approved to administer program as of 10/1/2002
<i>Eighth (Erie, Allegany, Cattaraugus, Chautauqua, Genesee, Niagara, Orleans & Wyoming)</i>	Bar Assn of Erie County (Program covers entire District)	Approved to administer program as of 2/6/2002
<i>Ninth (Westchester, Dutchess, Orange, Putnam, Rockland)</i>	District Administrative Judge's Office (Program covers entire District)	Approved to administer program as of 2/24/2003
<i>Tenth (Nassau)</i>	District Administrative Judge's Office (Program covers Nassau County)	Approved to administer program as of 2/24/2003

<i>District</i>	<i>Administrator</i>	<i>Status</i>
<i>Tenth (Suffolk)</i>	Suffolk County Bar Assn (SCBA Pilot program ran from Feb. 28, 2003 to Nov. 22, 2004 to arbitrate disputes of \$3000 and above only in Suffolk County; District Administrative Judge's Office arbitrated disputes between \$1,000 and \$3,000. The SCBA now handles all Part 137 fee disputes.)	Approved to administer program as of 10/9/2002
<i>Eleventh (Queens)</i>	District Administrative Judge's Office	Approved to administer program as of 4/24/2003
<i>Twelfth (Bronx)</i>	Same as First District	Same as First District
<i>Thirteenth (Staten Island)</i>	Richmond County Bar Assn	Approved to administer program as of 1/9/2003

Appendix A Caseload Data

	Statewide	1st & 12th JDS	2nd JD	3rd JD	4th JD	5th JD	6th JD
<u>Disposition Information</u>							
Total Cases Closed	770	131	60	29	16	21	9
Average Weeks from Intake to Disposition	26.27	28.77	36.57	29.83	22.27	23.37	16.56
Total Cases Arbitrated	464	88	41	3	8	18	2
Cases Arbitrated with Awards Issued	343	78	27	3	7	12	2
Cases Settled During Arbitration	96	9	6	0	0	3	0
Arbitration Held with No Award Issued	25	1	8	0	1	3	0
Cases Arbitrated by One Arbitrator	294	47	29	2	3	11	1
Cases Arbitrated by Three Arbitrators	170	41	12	1	5	7	1
Total Cases Resolved Outside Of Arbitration	122	29	4	4	2	1	2
Total Number of Settled Cases	108	15	4	4	2	1	2
Settlements Prior to Arbitration	108	15	4	4	2	1	2
Settlements Prior to Mediation	0	0	0	0	0	0	0
Total Number of Mediated Cases	14	14	0	0	0	0	0
Cases Meditated to Agreement	13	13	0	0	0	0	0
Cases Meditated with No Agreement	1	1	0	0	0	0	0
Total Cases Withdrawn and Dismissed for Lack of Jurisdiction	170	13	15	21	5	2	5
Cases Withdrawn	19	1	0	0	1	2	0
Cases Dismissed for Lack of Jurisdiction	151	12	15	21	4	0	5
<u>Financial Information</u>							
Total Admin. Fees Collected From Parties	\$78,605.00	\$27,825.00	\$12,775.00	\$0.00	\$0.00	\$4,500.00	\$0.00
Average Amount in Dispute	\$17,431.75	\$33,120.88	\$12,888.93	\$8,095.88	\$16,746.94	\$8,043.45	\$8,502.67

Part 137 - Annual Report 2019						Report Date: 11/17/2020	
	7th JD	8th JD	9th JD	10th JD- Nassau	10th JD- Suffolk	11th JD	13th JD
<u>Disposition Information</u>							
Total Cases Closed	25	47	73	154	163	27	15
Average Weeks from Intake to Disposition	9.18	22.65	24.73	25.28	24.52	19.63	47.42
Total Cases Arbitrated	13	27	41	86	114	15	8
Cases Arbitrated with Awards Issued	10	14	33	51	89	11	6
Cases Settled During Arbitration	3	12	8	29	20	4	2
Arbitration Held with No Award Issued	0	1	0	6	5	0	0
Cases Arbitrated by One Arbitrator	10	22	22	57	74	12	4
Cases Arbitrated by Three Arbitrators	3	5	19	29	40	3	4
Total Cases Resolved Outside Of Arbitration	7	10	6	19	32	4	2
Total Number of Settled Cases	7	10	6	19	32	4	2
Settlements Prior to Arbitration	7	10	6	19	32	4	2
Settlements Prior to Mediation	0	0	0	0	0	0	0
Total Number of Mediated Cases	0	0	0	0	0	0	0
Cases Meditated to Agreement	0	0	0	0	0	0	0
Cases Meditated with No Agreement	0	0	0	0	0	0	0
Total Cases Withdrawn and Dismissed for Lack of Jurisdiction	5	9	24	43	17	6	5
Cases Withdrawn	3	0	5	1	3	0	3
Cases Dismissed for Lack of Jurisdiction	2	9	19	42	14	6	2
<u>Financial Information</u>							
Total Admin. Fees Collected From Parties	\$3,300.00	\$9,080.00	\$0.00	\$0.00	\$19,725.00	\$0.00	\$1,400.00
Average Amount in Dispute	\$7,738.48	\$11,786.72	\$14,346.78	\$14,458.76	\$17,859.75	\$9,008.26	\$16,382.24

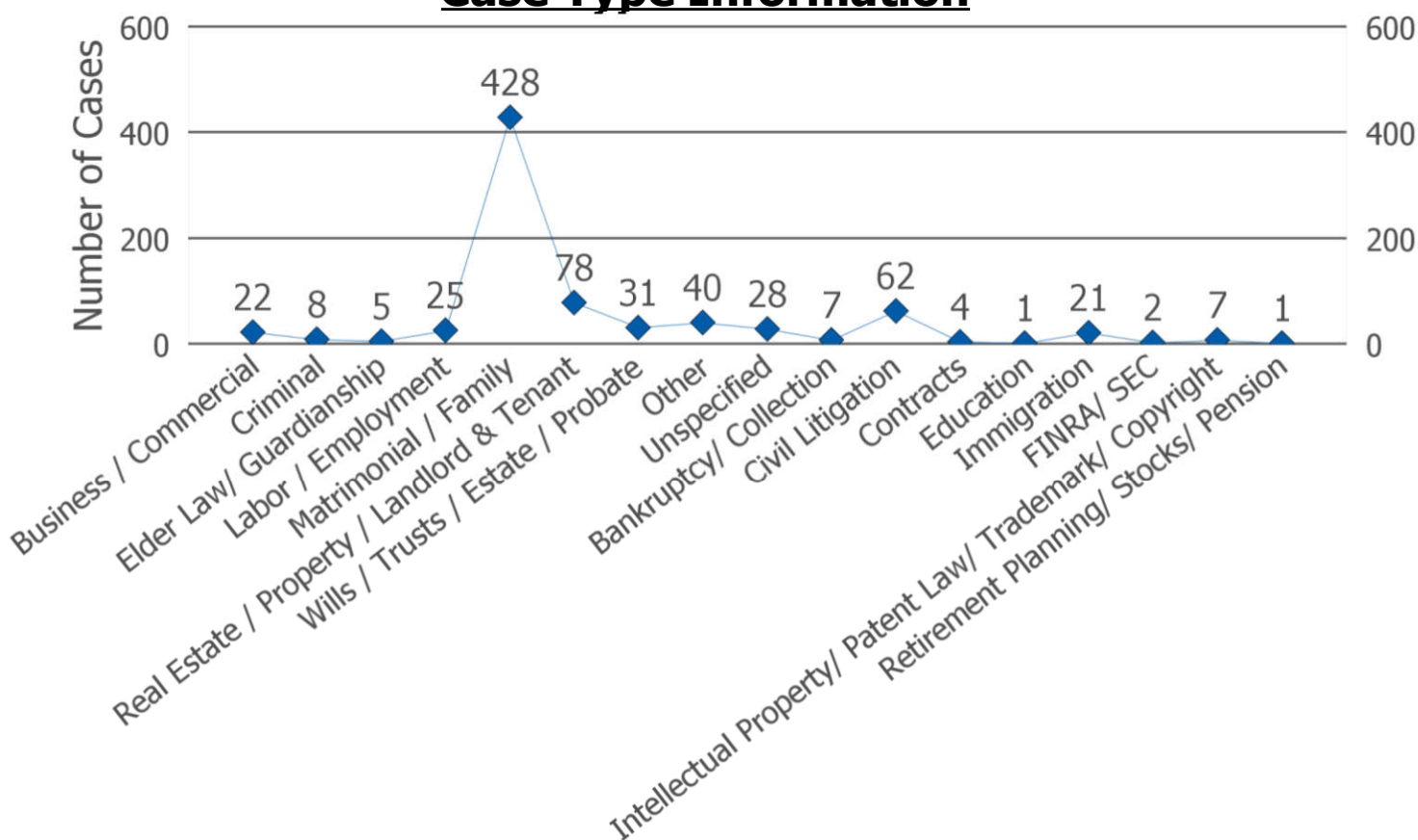
Quarterly Activity Report: 2019

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Cases Closed	197	233	178	162	770
Average Number of Weeks from Intake to Disposition	32.1	22.6	24.9	26.0	26.3
<u>Cases Arbitrated or Settled During Arbitration</u>					
Cases Assigned to One Arbitrator	76	79	72	67	294
Cases Assigned to Three Arbitrators	38	52	39	41	170
Total Admin. Fees Collected from Parties	\$24,680.00	\$17,805.00	\$18,780.00	\$17,340.00	\$78,605.00
Average Amount in Dispute (All Cases)	\$11,530.71	\$26,966.07	\$13,605.68	\$15,098.72	\$17,431.75

Filing Parties

Attorney	Client	Not Reported
116	585	19

Case Type Information



Disposition Information

	Number of Cases
Arbitrated - Award Issued	343
Arbitrated - No Award Issued	25
Mediated - Settlement Reached	13
Mediated - No Settlement Reached	1
Settled During Arbitration	96
Settled Prior to Arbitration or Mediation	108
Claim Withdrawn	19
Lack of Jurisdiction	151
Informational	0
Dismissed - No Activity for More than Two Years	0
Others	14
Total	770

Cases Dismissed for Lack of Jurisdiction

	Number of Cases
Amount in Dispute > \$50,000	10
Amount in Dispute < \$1,000	8
Services Provided Outside Local Program Geographic Region	17
Referred to Grievance Committee for Noncompliance with Part 137	0
Referred to Grievance Committee for Apparent Attorney Misconduct	0
Substantial Legal Question	4
Commenced Prior to January 1, 2002	0
Representation in a Criminal Matter	5
Allegations of Malpractice	11
Allegations of Attorney Misconduct	0
Damages or Affirmative Relief other than Adjustment of the Fee	0
Fee Determined by Statute, Rule, Court Order	10
No Attorneys Services for More than Two Years	19
Request for Arbitration Made by Non-Client or Legal Representative of the Client	4
Client Filed Late	9
Attorney Admitted in Another Jurisdiction and No NY Office or No Material Portion of Services Rendered in NY	2
Other	52