

2020 Annual Report

to the
Administrative Board
of the Courts

FDRP

THE NEW YORK STATE ATTORNEY-CLIENT
FEE DISPUTE RESOLUTION PROGRAM



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2020

Twenty-twenty changed the topography of the FDRP and expanded the ways in which the program operates.

The program seamlessly transferred operations online once [Administrative Order 78-20](#), limiting filings to essential matters, was eased in the spring and summer of 2020. Programs had already been using conference calling, Skype-for-Business (The NYS UCS transitioned to Microsoft Teams in late 2020), Zoom, and other similar platforms for hearings as part of the program's theme of offering an informal and expeditious- and accessible- way to resolve fee disputes.

The Board had assembled a working group of its members in 2019 to develop guidelines for hearing cases online and completed the [Part 137 Online Arbitration Guidelines](#) in the spring of 2020.

The Chair of the Board and Counsel met with the program administrators in September 2020 to discuss the state of the program and find out how the administrators were managing operations remotely. In October of 2020, the Unified Court System's (UCS) Department of Technology offered a training dedicated to the UCS administrators of the program on using Teams for arbitration hearings, specifically managing permissions, using the lobby feature, and helping outside users download and use the free Teams app. Administrators were then able to help volunteers schedule hearings for parties using Teams.

Introduction

The Unified Court System Alternative Dispute Resolution Office (ADR Office) administers the New York State Fee Dispute Resolution Program (FDRP). 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

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.

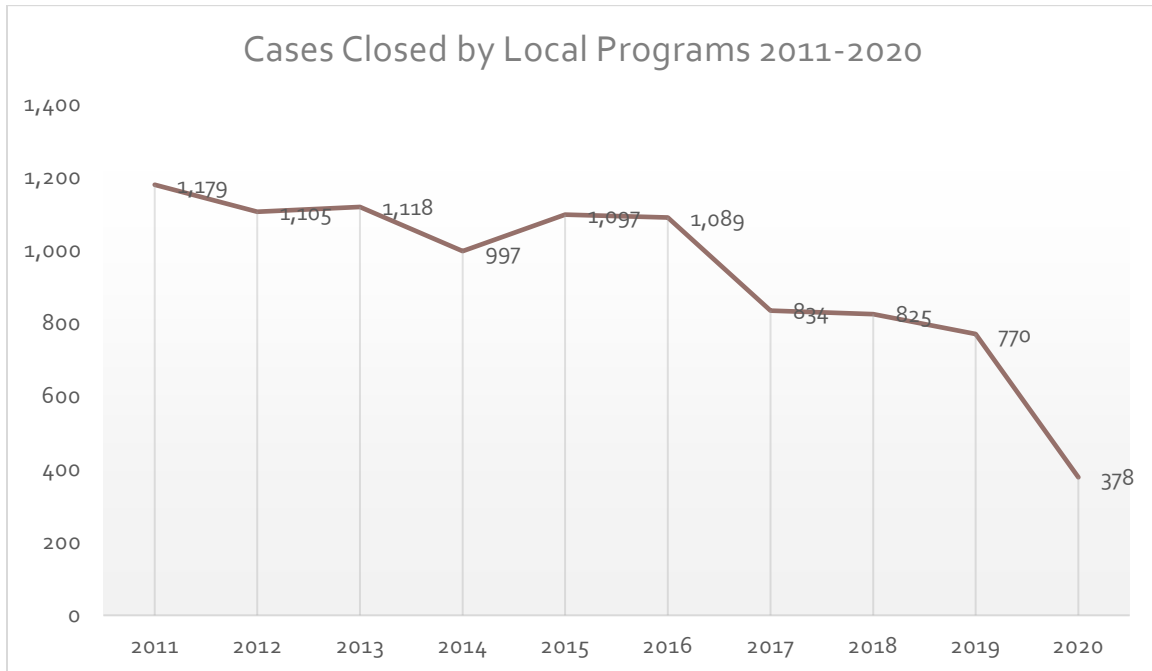
In 2020, Chief Judge Janet DiFiore reappointed Mark Collins for a three-year term and the Board of Governors welcomed new member, Dee Rabady, appointed by the Presiding Justice of the Second Department, Hon. Alan Scheinkman.

Peter K. Cutler, appointed by the Presiding Justice of the Fourth Department, Hon. Gerald J. Whalen, resigned in early 2020, just short of his term expiration.

Statistical Highlights

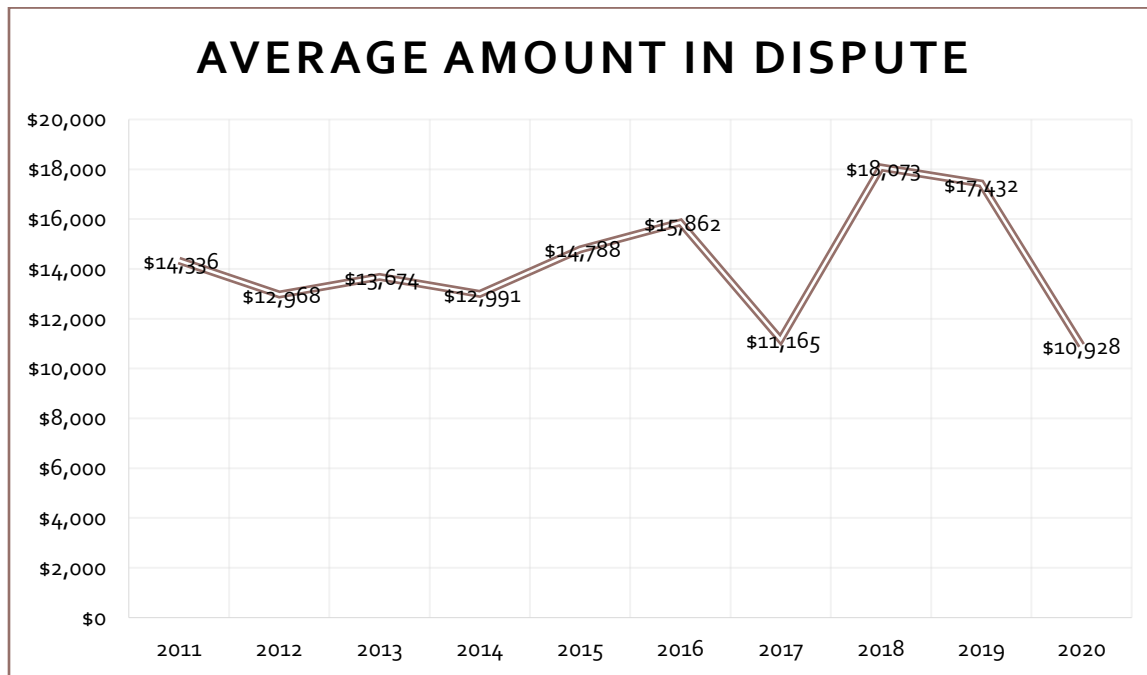
Cases Closed

From January 1, 2002 through December 31, 2020, the Fee Dispute Resolution Program has closed 14,853 cases. During 2020, local programs closed 378 cases, which is 392 cases fewer than the 770 cases closed in 2019. The graph below depicts data from the last 10 years.



Average Amount in Dispute

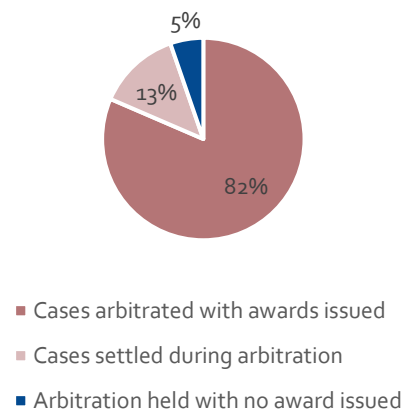
The average amount in dispute for 2020 was \$10,928.

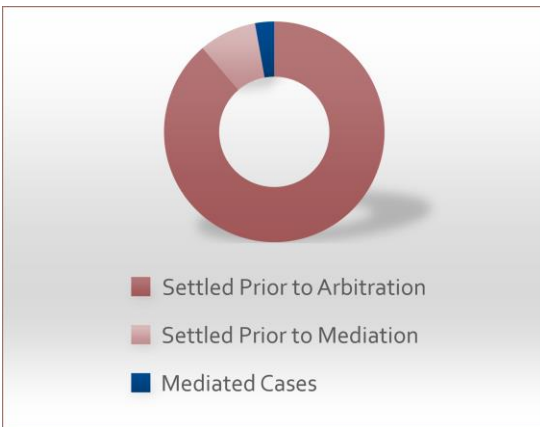


One Hundred Eighty-Nine out of the 378 cases closed went to arbitration

- arbitrators issued awards in 154 of the 189 cases that went to arbitration.
- 25 of the cases that went to arbitration settled during the arbitration.
- 10 of the cases that went to arbitration had no award issued.

2020 Cases that Went to Arbitration





71 cases were resolved outside of arbitration

- **63** cases settled prior to arbitration
- **6** cases settled prior to mediation and
- **2** mediated cases

99 Cases either withdrawn by the filing party or dismissed for lack of jurisdiction

- 9 cases Withdrawn by Filing Party
- 90 cases Dismissed for Lack of Jurisdiction

Reason for Lack of Jurisdiction	Number
Amount in Dispute is Outside of the Program's Monetary Jurisdiction	8
Attorney Admitted in Another Jurisdiction and Does Not Maintain a NY Office or No Material Portion of Services Rendered in NY	2
Client Filed Late	5
Damages or Affirmative Relief Other than Adjustment of the Fee	1
Fee Determined by Statute, Rule, Court Order	1
Legal Services Provided Outside Local Program's Geographic Region	8
No Attorney's services for more than two years	24
Representation in a Criminal Matter	11
Substantial Legal Question, including Allegations of Attorney Misconduct or Malpractice	5
Request for Arbitration made by Non-Client or the Legal Representative of the Client	2
Other*	23
Total	90
* Other includes party deceased; party did not respond; party bankruptcy; concurrent action pending in court for same relief.	

Panel Arbitrations Compared to Solo Arbitrations

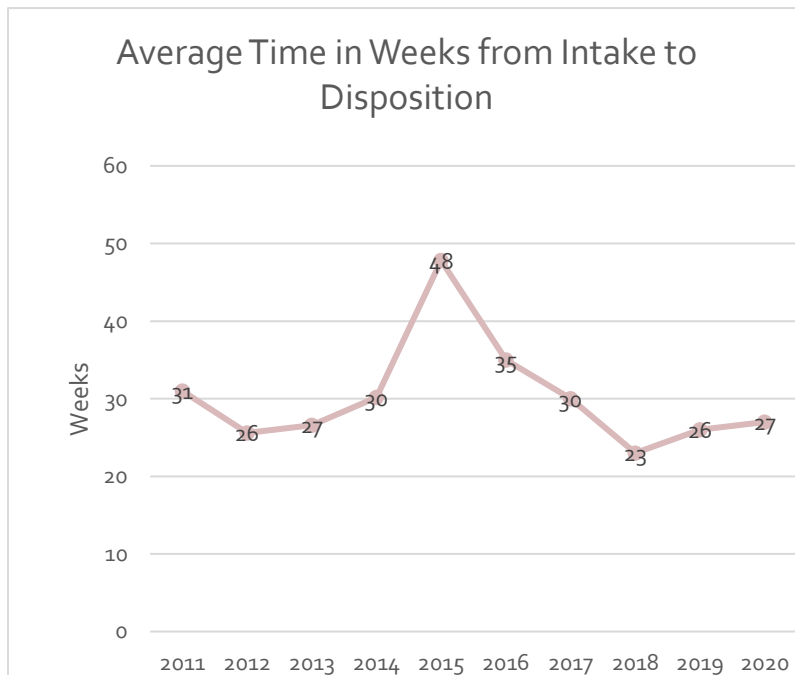
- **71** arbitrations using a single arbitrator where less than \$10,000 was in dispute
- **118** Three-person panel arbitrations where \$10,000 or more was in dispute



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 27 weeks in 2020, which represents an increase of one week from the prior year.



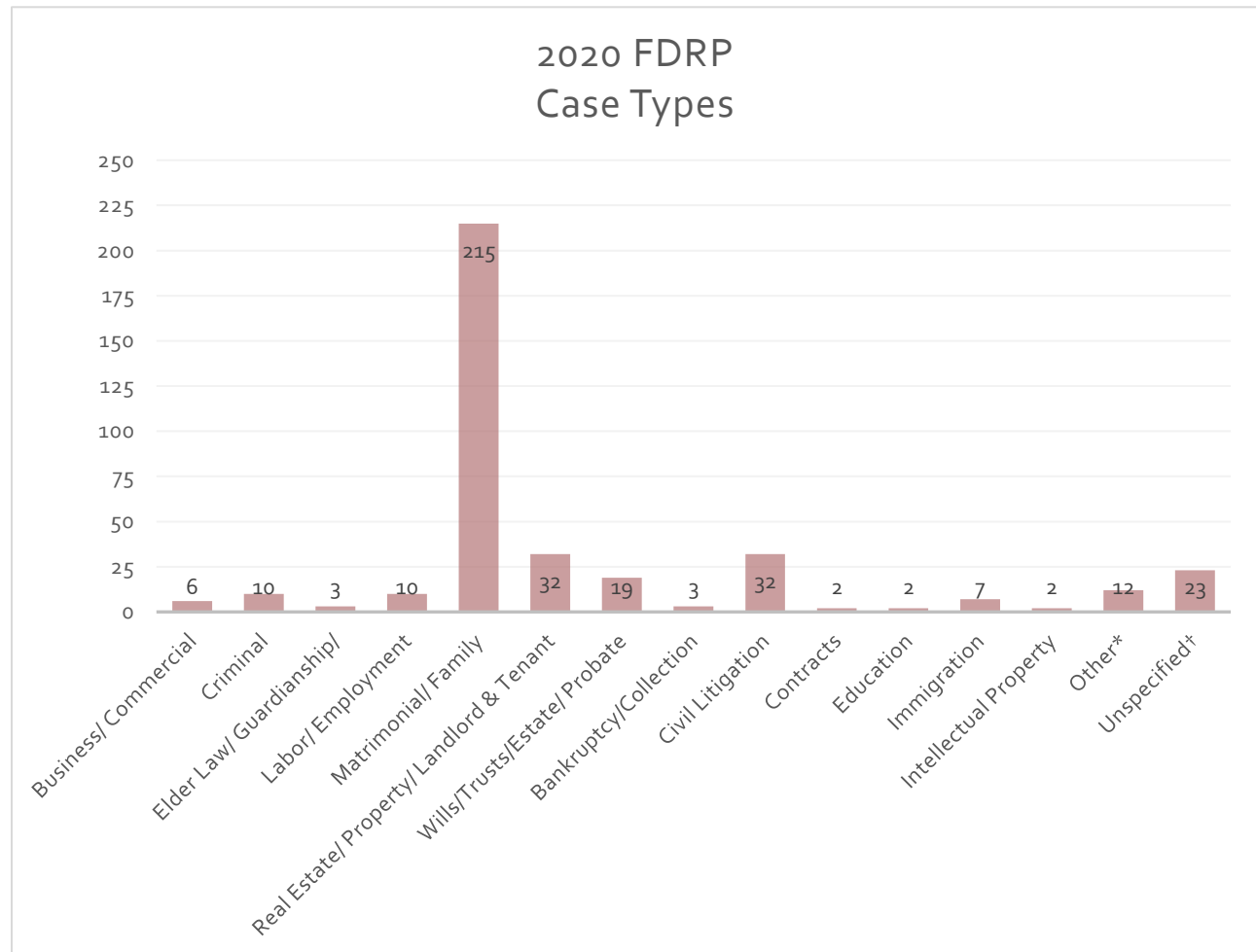
TRENDS

2015 had seen a spike in average time to disposition of 48 weeks. The Board looked at certain statistics affecting that increase and inferred that it was an outlier and, as expected, it corrected itself. 2016-2020 saw an aggregate of about 28 weeks from intake to disposition. The Board will continue to monitor the average life span of cases.

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 215 cases.
- Real Estate/ Property/ Landlord & Tenant and Civil Litigation were the second most handled case types, numbering 32 cases for each category in 2020.



* "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 placeholder until the administrator receives more information in order to designate a case type or to determine that the program lacks jurisdiction.



New Arbitrator Trainings

2020 not only gave the FDRP the opportunity to explore new options for hearing cases, but it also expanded the scope of training prospects.

In December 2020, the board's chair Martha E. Gifford, member Simeon Baum, and counsel Amy Pontillo joined the Joint Committee on Fee Disputes

and Conciliation, and Anthe Bova, administrator for the Joint Committee's Fee Dispute Resolution Program serving New York and Bronx Counties, and several other experienced presenters, in the New York County Lawyers' Association Part 137 Arbitrator and Mediator¹ Training over Zoom. Attendees were encouraged to participate, submitted questions through the chat feature which were answered in real-time by panelists, and used breakout rooms to participate in role-plays.

The Board also continued its practice of accepting the New York State Bar Association's Dispute Resolution Section's "3 Day Commercial Arbitration Training for Arbitrators and Counsel: Comprehensive Training for the Conduction of Commercial Arbitrations Pursuant to Contemporary Best Practices" as a Board Approved Training². Attendees of this program, after watching the Orientation to the Program, were qualified to apply to the Board for approval and acceptance to join a local roster.

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 BOARD APPROVED 32
NEW VOLUNTEER
ARBITRATORS AND
MEDIATORS FROM THE 2020
NEW YORK COUNTY
LAWYERS' ASSOCIATION
ZOOM TRAINING

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

¹ The New York County Lawyers' Association offers mediation in addition to arbitration to resolve fee disputes.

² See Section 10. "Training of Arbitrators" of the [Standards and Guidelines](#) and "[How do I become an arbitrator for Part 137?](#)" on the FAQ's section of the website.

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.

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.

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

As of December 31, 2020

<i>Member</i>	<i>Appointment</i>
Martha E. Gifford, Chair	Chief Judge Janet DiFiore ³
<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 ⁴
<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 ⁵
<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 ⁶
<i>Dee Rabady</i>	Presiding Justice Alan Scheinkman
<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

³ Initial Appointment by Chief Judge Judith S. Kaye.

⁴ Initial Appointment by Presiding Justice A. Gail Prudenti.

⁵ Initial Appointment by Presiding Justice Joseph P. Sullivan.

⁶ Initial Appointment by Presiding Justice A. Gail Prudenti.

† deceased.

* resigned February 2020.

Program Approval Status- Statewide Overview

As of December 31, 2020

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	378	32	19	10	5	2	5
Average Weeks from Intake to Disposition	26.98	32.29	25.15	34.48	30.88	25.50	27.56
Total Cases Arbitrated	189	14	8	3	2	1	0
Cases Arbitrated with Awards Issued	154	13	7	3	1	1	0
Cases Settled During Arbitration	25	1	0	0	1	0	0
Arbitration Held with No Award Issued	10	0	1	0	0	0	0
Cases Arbitrated by One Arbitrator	118	6	6	3	2	1	0
Cases Arbitrated by Three Arbitrators	71	8	2	0	0	0	0
Total Cases Resolved Outside Of Arbitration	71	11	3	3	0	0	2
Total Number of Settled Cases	69	9	3	3	0	0	2
Settlements Prior to Arbitration	63	3	3	3	0	0	2
Settlements Prior to Mediation	6	6	0	0	0	0	0
Total Number of Mediated Cases	2	2	0	0	0	0	0
Cases Meditated to Agreement	2	2	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	99	5	8	4	3	1	2
Cases Withdrawn	9	1	1	0	0	0	0
Cases Dismissed for Lack of Jurisdiction	90	4	7	4	3	1	2
<u>Financial Information</u>							
Total Admin. Fees Collected From Parties	\$30,075.00	\$6,275.00	\$2,450.00	\$0.00	\$0.00	\$300.00	\$0.00
Average Amount in Dispute	\$10,927.86	\$14,405.53	\$15,478.13	\$6,216.22	\$1,576.80	\$27,305.00	\$2,548.36

Part 137 - Annual Report 2020						Report Date: 9/23/2021	
	7th JD	8th JD	9th JD	10th JD-Nassau	10th JD-Suffolk	11th JD	13th JD
Disposition Information							
Total Cases Closed	15	26	17	88	135	21	3
Average Weeks from Intake to Disposition	10.95	19.23	19.49	28.01	27.67	24.87	36.13
Total Cases Arbitrated	6	11	5	42	91	4	2
Cases Arbitrated with Awards Issued	5	10	4	27	78	3	2
Cases Settled During Arbitration	1	1	1	7	12	1	0
Arbitration Held with No Award Issued	0	0	0	8	1	0	0
Cases Arbitrated by One Arbitrator	6	10	2	21	56	4	1
Cases Arbitrated by Three Arbitrators	0	1	3	21	35	0	1
Total Cases Resolved Outside Of Arbitration	3	11	3	13	22	0	0
Total Number of Settled Cases	3	11	3	13	22	0	0
Settlements Prior to Arbitration	3	11	3	13	22	0	0
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	6	4	9	24	22	11	0
Cases Withdrawn	0	0	1	1	5	0	0
Cases Dismissed for Lack of Jurisdiction	6	4	8	23	17	11	0
Financial Information							
Total Admin. Fees Collected From Parties	\$1,850.00	\$5,800.00	\$0.00	\$0.00	\$13,300.00	\$0.00	\$100.00
Average Amount in Dispute	\$4,050.00	\$6,921.44	\$17,089.03	\$13,430.90	\$9,230.28	\$8,086.92	\$13,030.14

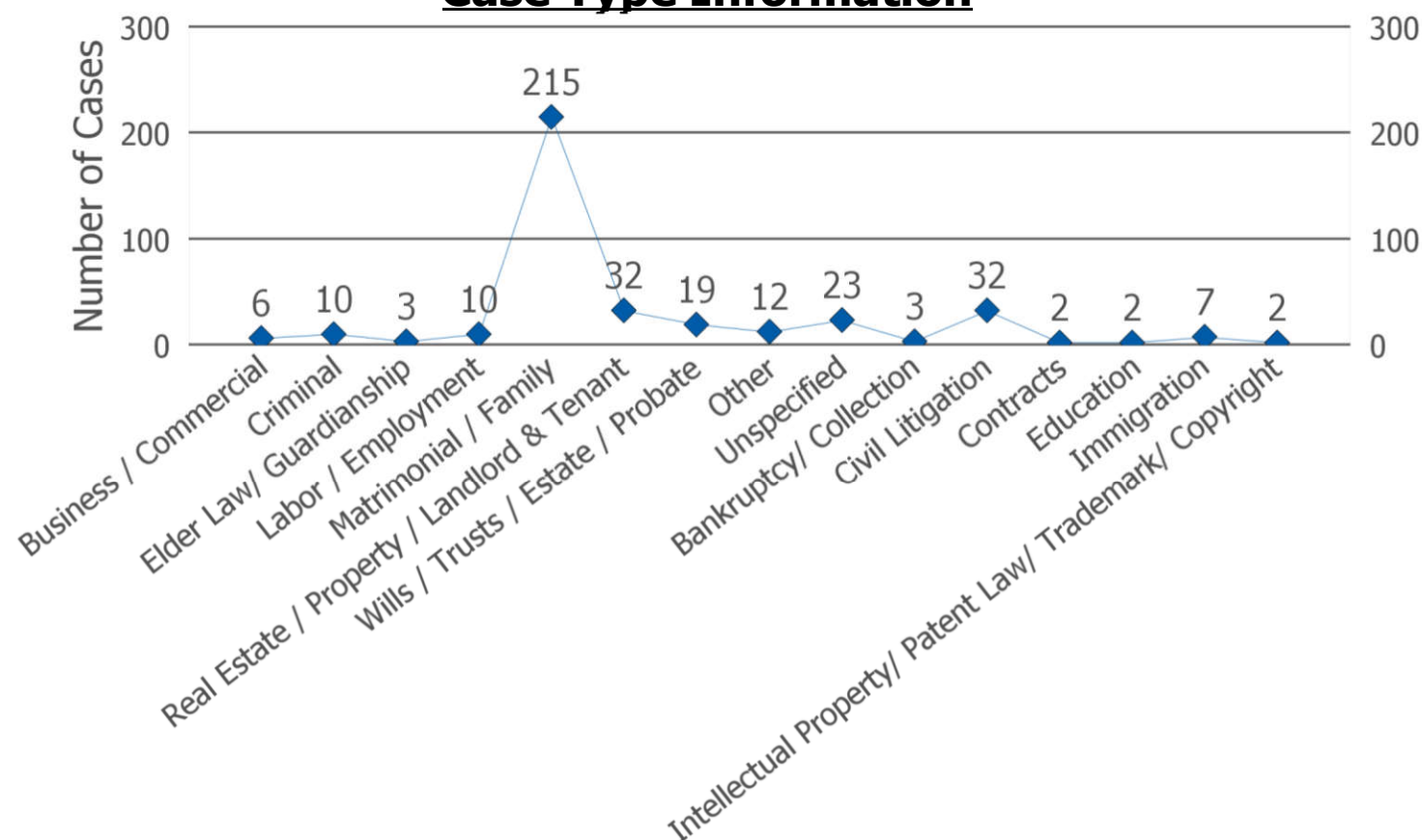
Quarterly Activity Report: 2020

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Cases Closed	170	19	88	101	378
Average Number of Weeks from Intake to Disposition	20.7	31.0	31.8	32.7	27.0
<u>Cases Arbitrated or Settled During Arbitration</u>					
Cases Assigned to One Arbitrator	51	4	26	37	118
Cases Assigned to Three Arbitrators	31	0	18	22	71
Total Admin. Fees Collected from Parties	\$12,990.00	\$1,645.00	\$8,075.00	\$7,365.00	\$30,075.00
Average Amount in Dispute (All Cases)	\$10,551.10	\$9,628.92	\$10,050.92	\$12,570.44	\$10,927.86

Filing Parties

Attorney	Client	Not Reported
76	281	6

Case Type Information



Disposition Information

	Number of Cases
Arbitrated - Award Issued	154
Arbitrated - No Award Issued	10
Mediated - Settlement Reached	2
Mediated - No Settlement Reached	0
Settled During Arbitration	25
Settled Prior to Arbitration or Mediation	69
Claim Withdrawn	9
Lack of Jurisdiction	90
Informational	0
Dismissed - No Activity for More than Two Years	0
Others	19
Total	378

Cases Dismissed for Lack of Jurisdiction

	Number of Cases
Amount in Dispute > \$50,000	4
Amount in Dispute < \$1,000	4
Services Provided Outside Local Program Geographic Region	8
Referred to Grievance Committee for Noncompliance with Part 137	0
Referred to Grievance Committee for Apparent Attorney Misconduct	0
Substantial Legal Question	3
Commenced Prior to January 1, 2002	0
Representation in a Criminal Matter	11
Allegations of Malpractice	1
Allegations of Attorney Misconduct	1
Damages or Affirmative Relief other than Adjustment of the Fee	1
Fee Determined by Statute, Rule, Court Order	1
No Attorneys Services for More than Two Years	24
Request for Arbitration Made by Non-Client or Legal Representative of the Client	2
Client Filed Late	5
Attorney Admitted in Another Jurisdiction and No NY Office or No Material Portion of Services Rendered in NY	2
Other	23