

**NEW YORK STATE
ATTORNEY - CLIENT
FEE DISPUTE RESOLUTION PROGRAM**



BOARD OF GOVERNORS
ANNUAL REPORT
TO THE
ADMINISTRATIVE BOARD
OF THE COURTS
2005

New York State Fee Dispute Resolution Program Board of Governors

Main Accomplishments

In its third full year of operation, the Board of Governors for the Fee Dispute Resolution Program (FDRP) continued to ensure that attorneys and clients had access to cost-effective, high-quality methods of resolving fee disputes. Whereas the Board had earlier focused on establishing local programs across New York State, it now monitors those programs and supports their efficient operation by providing funding, training volunteer arbitrators, and responding to myriad legal and programmatic questions from staff of local programs as well as attorneys and clients. Below is a brief summary of the FDRP's main accomplishments during 2005. Each item will be discussed in greater detail:

- During 2005, local programs across New York State closed 776 cases concerning disputed attorney fees, an increase of 34% over the number of cases that local programs closed in 2004.
- Local programs added 108 neutrals to their rosters, and a total of 1,210 arbitrators and mediators serve in the program as of December 31, 2005.
- The Board convened a meeting of local program administrators in December 2005 and discussed questions that the administrators had submitted throughout the year.
- The Board refined its database application to help local programs more accurately track and report caseload activity.
- The Board facilitated the smooth transition of the local program serving the Adirondack region to the Office of the Administrative Judge for the Fourth Judicial District.

Subcommittees

The Board of Governors operates with four subcommittees. Subcommittees meet independently of the Board of Governors. The Chair participates in subcommittee meetings. Each subcommittee has an appointed chairperson who makes progress reports to the full Board of Governors. The subcommittees' work and recommendations are subject to review and approval by the full Board of Governors at plenary meetings. The subcommittees have benefitted from the able support of Daniel M. Weitz, Esq., Jeremy A.K. Zeliger, Esq., and Antonio E. Galvao, Esq., who have provided invaluable service as Co-counsel to the Board of Governors. The four subcommittees and their respective chairs are:

- Program Approval (Martha Gifford, Esq.)
- Legal Issues (Paul Michael Hassett, Esq.)
- Qualifications and Training for Neutrals (Stephen Schlissel, Esq.)
- Outreach & Education (Linda Campbell, Esq.)

Program Approval Subcommittee

The Program Approval Subcommittee reviews program proposals submitted to the Board of Governors by bar associations and Judicial District Administrative Judges' Offices. It also monitors approved local programs to ensure compliance with the Standards and Guidelines as well as Part 137.

The Subcommittee presents proposals to the Board of Governors with recommendations for approval or other action. The guiding criteria for the Subcommittee and the full Board is whether the proposed program provides a fair and efficient process for the resolution of attorney-client fee disputes.

The Program Approval Subcommittee works closely with local bar associations and Judicial District Administrative Offices to help them craft proposals that are consistent with the Standards and Guidelines and Part 137. This collaboration minimizes the need to reject proposals outright and affords the Board of Governors the opportunity to learn about unique local needs and conditions. A table of dates that local programs were approved can be found in Appendix B.

The Subcommittee and the Board of Governors have endeavored to avoid a "cookie cutter" approach to developing local programs. There has been a recognition of the need for flexibility with regard to program rules, reflecting the State's diverse legal culture. Review and approval of the many voluminous proposals submitted was a very labor-intensive process, and the Board of Governors is grateful to the members of the Program Approval Subcommittee, so ably led by Martha Gifford, Esq., for all of their hard work.

In May 2005, the full Board of Governors accepted the recommendation of the Program Approval Subcommittee to transfer administration of the local program serving Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady, Warren and Washington Counties. Prior to that time, the Federation of Bar Associations of the Fourth Judicial District operated the local program in those counties. At the request of the Federation, the Office of the Administrative Judge for the Fourth Judicial District proposed a set of local rules that the Program Approval Subcommittee reviewed and ultimately approved.

During December 2004, the Program Approval Subcommittee also recommended that the Board of Governors endorse a request by the New York County Lawyers Association for funding. The Board did so, and the New York County Lawyers Association received a grant to defray the costs of administering the Joint Committee on Fee Disputes and Conciliation, which serves Bronx and New York Counties, during 2005.

Legal Issues Subcommittee

The Legal Issues Subcommittee researches legal questions as they arise and provides guidance to the Board of Governors, local programs and arbitrators. Complex or weighty issues that merit

extended discussion are brought to the attention of the full Board of Governors for consideration. The Board of Governors regularly brings important policy issues to the attention of the Administrative Board of the Courts for guidance and direction, particularly where local programs request amendments to or deviations from Part 137 or other applicable statutes or rules.

During 2005, the Legal Issues Subcommittee examined the following issues:

- What criteria should local programs consider when deciding whether to transfer a case to another local program?
- May an attorney's retainer agreement include an absolute waiver of the client's right to arbitrate fee disputes?
- May a local program accept a case where there are allegations that an attorney has co-mingled funds?
- How should a local program proceed when a complaint is filed against an associate who is no longer employed by the firm that the client employed?
- Does a substantial legal question arise when a client alleges that the attorney promised that the client's former spouse will be responsible for paying the attorney's fee?
- How should a local program respond to a client's request for arbitration when a court has ordered the client and attorney to submit to arbitration the following questions: whether an attorney-client relationship existed and, if so, whether the attorney's fee is reasonable?

In response to requests for clarification from at least one Administrative Judge, the Legal Issues Subcommittee enlisted the assistance of the Office of Court Administration to pursue a technical amendment to § 206 of the Uniform City Court Act so that it comports with corresponding provisions in the NYC Civil Court Act and Uniform District Court Act. Although the Legislature did not enact the proposal, the Legal Issues Subcommittee will likely resubmit the requested amendment to the Office of Court Administration for consideration by the Legislature.

Qualifications and Training Subcommittee

Section 9 of the Standards and Guidelines prescribes minimal training requirements and addresses the qualifications and duties of Part 137 arbitrators. In developing these requirements, the Board sought to assure quality services and preserve local program flexibility without overburdening volunteer arbitrators. In prior years, the Training Subcommittee developed training curricula for arbitrators to implement the Section 9 training requirements, including a 90-minute Part 137 orientation program for experienced arbitrators and a six-hour program for new arbitrators (inclusive of the orientation). The Subcommittee has provided a great deal of assistance to local programs with regard to organizing training programs for new and experienced arbitrators around the State.

The Board of Governors has to date approved two mediation programs (Joint Committee of Fee Disputes and Conciliation and Brooklyn Bar Association), both of which follow generally accepted standards within the mediation field and are utilizing trained mediators whose

credentials and qualifications have been approved under recognized court-annexed or community dispute resolution programs.

The Subcommittee provides logistical and other assistance to local programs in organizing the training sessions for arbitrators. Co-counsel have delivered the majority of these trainings, and members of the Board of Governors frequently attend them and thank the participants for agreeing to serve as volunteers in the Fee Dispute Resolution Program. Over 1,600 volunteers have been trained to arbitrate pursuant to Part 137.

The following trainings were held during 2005:

Jan. 14, 2005	Monroe County Bar Association	6-hour training in Monroe County
Mar. 31, 2005	Administrative Judge, 6 th JD	6-hour training in Broome County
May 14, 2005	Oneida County Bar Association	6-hour training in Oneida County
June 6, 2005	Administrative Judge, 10 th JD	6-hour training in Nassau County
June 21, 2005	Onondaga County Bar Association	6-hour training in Onondaga County
July 14, 2005	The Bar Association of Erie County	6-hour training in Erie County
Nov. 4, 2005	Administrative Judge, 3 rd and 9 th JDs	6-hour training in Dutchess County
Nov. 16, 2005	The Bar Association of Erie County	6-hour training in Erie County

In December 2005, the Board of Governors convened a meeting of local program administrators in White Plains to respond to the administrators' questions and provide additional guidance on statewide policies.

Education and Outreach Subcommittee

This subcommittee's mandate is to educate the general public about the FDRP. With the assistance of the Office of Court Administration, the Education and Outreach Subcommittee created a toll-free telephone number for the program: 1-877-FEES-137 (877-333-7137), along with an e-mail address for the clients and attorneys to submit questions regarding the program at: feedispute@courts.state.ny.us. The subcommittee is in the process of revising and updating the FDRP website, www.nycourts.gov/admin/feedispute.

Board Membership

During 2005, the following members of the Board of Governors were reappointed to three-year terms:

- Martha E. Gifford, Esq.
- Corey B. Kaye, Esq.
- Susan Wernert Lewis
- John Pennock, Esq.
- Steven Schlissel, Esq.
- Susan Valenti

In addition, after three years of generous and exemplary service to the Board of Governors, Andrew Thomas tendered his resignation during the spring of 2005.

Caseload Activity

Since its inception in January 1, 2002, the Fee Dispute Resolution Program has closed 1,680 cases. During 2005, the local programs closed 776 cases, which represents a 34% increase over the 549 cases that local programs closed in 2004.

Two hundred thirty (230) of the 776 cases that local programs closed during 2005 were either dismissed for lack of jurisdiction or withdrawn by the filing party. Of the remaining 546 cases, 147 were settled prior to or during either arbitration or mediation. A total of 332 cases were arbitrated in which an arbitrator (or panel of arbitrators) issued an award. The average amount in dispute was \$11,436.04, and the average amount awarded or settled was approximately half that value, \$5,973.58. A table of caseload activity can be found in Appendix C.

The Board of Governors maintains a Statewide telephone and e-mail presence staffed by members of the UCS Office of ADR Programs. The majority of calls are from clients and attorneys who are requesting information about the FDRP, including where to file requests for arbitration. Many attorneys call seeking clarification of their obligations under Part 137, particularly how to comply with the rule's notice requirements. Local program administrators and staff also call regularly with questions regarding program administration as well as interpretation of both Part 137 and the Standards and Guidelines.

Funding

In late 2004, the New York County Lawyers Association (NYCLA), which administers the Joint Committee on Fee Disputes and Conciliation in Bronx and New York Counties, requested funding from the Board of Governors to help defray the costs of administering that local program. Pursuant to that request, the Administrative Board of the Courts approved a grant of \$50,000 to defray the local program's 2005 costs.

No other approved local programs submitted formal requests for funding to cover expenses incurred during 2005.

In late 2005, the Board of Governors received a request from NYCLA for a substantial increase in funding to defray the costs associated with administering the program during 2006. The Board of Governors endorsed the request for an increase in funding but did not endorse the

specific amount requested by NYCLA. The Administrative Board of the Courts awarded NYCLA \$70,000 for 2006. As of December 31, 2005, none of the other local programs had requested funding to defray its 2006 expenses.

Looking Ahead

The Board of Governors continues to ensure that there are sufficient numbers of well-trained and qualified arbitrators around the State to preside over fee arbitrations in a fair and timely manner. The Board recognizes the importance of continued outreach so that judges, attorneys and clients remain aware of the FDRP.

The Board is cognizant of the fact that its oversight of bar association-administered local programs will likely change as some bar associations receive grant awards. The Board will likely reach out to units within the Office of Court Administration for assistance and guidance with this initiative.

Conclusion

In this third annual report to the Administrative Board of the Courts, the Board of Governors expresses its gratification at the high level of cooperation we have received, almost without exception, from county-level bar associations in New York State and from District Administrative Judges across the State. We have benefitted greatly from the highly motivated and hands-on lawyers and members of the public who have been appointed by you to serve as members of the Board of Governors. Virtually every one of them has evinced great dedication to their task of implementing Part 137 and working with local programs to ensure the success of this Program.

We, the members of the Board of Governors, greatly appreciate the interest, responsiveness and support we have received from the Administrative Board of the Courts. We believe that we continue to provide a process that guarantees the fair and speedy resolution of fee disputes and furthers the interests of the general public and the legal profession.

APPENDIX A - BOARD OF GOVERNORS

Member	Term Expires	Appointed By
Hon. Guy J. Mangano, Esq.	5/31/2006*	Chief Judge Judith S. Kaye
Katherine Bifaro	5/31/2007	Chief Judge Judith S. Kaye
Martha E. Gifford, Esq.	5/31/2008	Chief Judge Judith S. Kaye
Paul M. Hassett, Esq.	5/31/2007	Chief Judge Judith S. Kaye
Corey B. Kaye, Esq.	5/31/2008	Chief Judge Judith S. Kaye
William Dockery, Esq.	5/31/2006*	Presiding Justice Joseph P. Sullivan
Susan W. Lewis	5/31/2008	Presiding Justice Milton L. Williams
Lawrence D. McGovern, Esq.	5/31/2007	Presiding Justice John T. Buckley
Carleton Irish	5/31/2006*	Presiding Justice Gail S. Prudenti
Stephen W. Schlissel, Esq.	5/31/2008	Presiding Justice Gail S. Prudenti
Abigail A. Wickham, Esq.	5/31/2007	Presiding Justice Gail S. Prudenti
James L. Chivers, Esq.	5/31/2006*	Presiding Justice Anthony V. Cardona
John H. Pennock, Esq.	5/31/2008	Presiding Justice Anthony V. Cardona
Linda M. Campbell, Esq.	5/31/2006*	Presiding Justice Eugene F. Pigott, Jr.
Thomas R. Cassano, Esq.	5/31/2007	Presiding Justice Eugene F. Pigott, Jr.
Susan M. Valenti	5/31/2008	Presiding Justice Eugene F. Pigott, Jr.

*Denotes a member whose term expired in May 2006 but who has since been reappointed to the Board of Governors.

APPENDIX B – APPROVED PROGRAMS
PROGRAM APPROVAL STATUS – STATEWIDE OVERVIEW

As of December 31, 2005

District	Administrator	Status
First (Manhattan)	Joint Committee on Fee Disputes and Conciliation. Joint program of New York County Lawyers Assn, Bronx County Bar Assn, and Assn of the Bar of the City of New York. Program operates out of NYCLA headquarters.	Approved to administer program as of 3/4/2002
Second (Kings)	Brooklyn Bar Assn	Approved to administer program as of 8/20/2002
(Staten Island)	Richmond County Bar Assn	Approved to administer program as of 1/9/2003
Third (Albany, Schoharie, Rensselaer, Greene, Columbia, Ulster, Sullivan)	District Administrative Judge's Office. (Program covers entire District)	Approved to administer program as of 7/23/2002
Fourth (Schenectady, Saratoga, Montgomery, Fulton, Washington, Warren, Hamilton, Essex, St. Lawrence, Franklin, & Clinton)	District Administrative Judge's Office (Program covers entire District)	Approved to administer program as of 5/1/2005

Fifth (Onondaga, Herkimer, Jefferson, Lewis, Oneida, Oswego)	Onondaga County Bar Assn, in cooperation with the District Administrative Judge's Office (Program covers Jefferson, Lewis, Oswego, and Onondaga Counties) Oneida County Bar Assn (Program covers Oneida and Herkimer Counties)	Approved to administer program as of 7/24/2002 Approved to administer program as of 10/16/2003
Sixth (Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga & Tompkins)	District Administrative Judge's Office (Program covers entire District)	Approved to administer program as of 4/16/2003
Seventh (Monroe, Cayuga, Livingston, Ontario, Seneca, Steuben, Wayne & Yates)	Monroe County Bar Assn, in cooperation with the District Administrative Judge's Office. (Program to cover entire District)	Approved to administer program as of 10/1/2002
Eighth (Erie, Allegany, Cattaraugus, Chautauqua, Genesee, Niagara, Orleans & Wyoming)	Bar Assn of Erie County. (Program covers entire District)	Approved to administer program as of 2/6/2002

Ninth (Westchester, Dutchess, Orange, Putnam, Rockland)	District Administrative Judge's Office. (Program covers entire District)	Approved to administer program as of 2/24/2003
Tenth (Nassau)	District Administrative Judge's Office (Program covers Nassau County)	Approved to administer program as of 2/24/2003
(Suffolk)	Suffolk County Bar Assn (Pilot program approved as of 2/28/2003 to arbitrate disputes of \$3000 and above only in Suffolk County; District Administrative Judge's Office arbitrates disputes between \$1,000 and \$3,000. The pilot program ended on 11/22/2004; as of that date, the bar association arbitrates all Part 137 fee disputes.)	Approved to administer program as of 10/9/2002
Eleventh (Queens)	District Administrative Judge's Office	Approved to administer program as of 4/24/2003
Twelfth (Bronx)	Same as First District.	Same as First District.

APPENDIX C - CASELOAD DATA

The following pages summarize the caseload data that local programs reported.

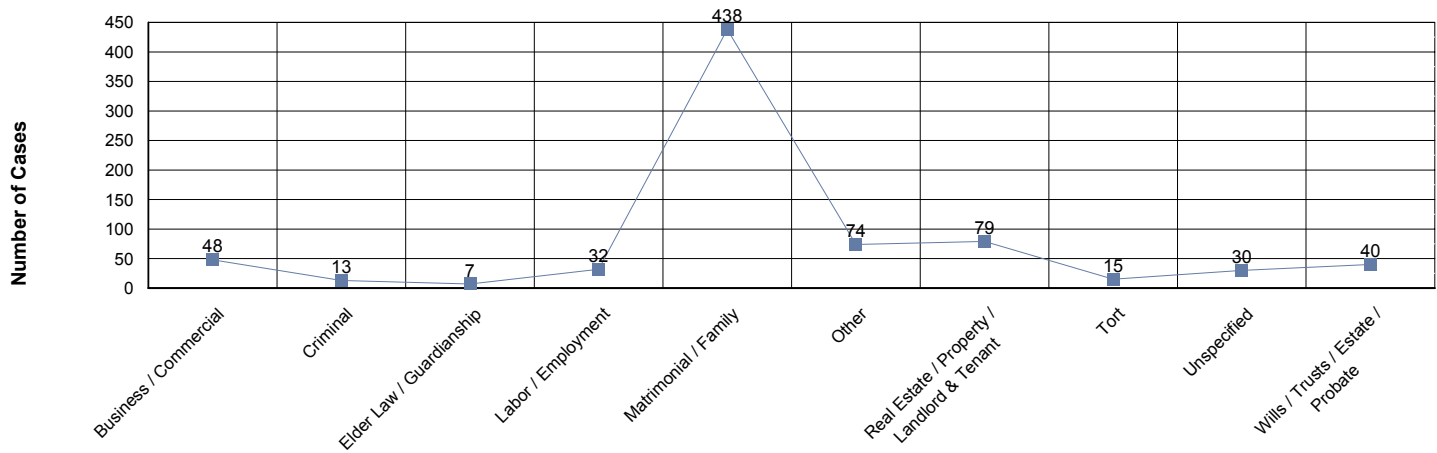
Please note that the statistical table reports only one volunteer for some programs. As of the date that this report was generated, those programs had not yet submitted their roster of arbitrators and mediators. The Board is working with those programs to compile this information.

All Programs

Quarterly Activity Report: 2005

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Cases Closed	179	230	193	174	776
Average Number of Weeks from Intake to Disposition	16.3	17.6	20.0	21.0	18.6
Cases Assigned to One Arbitrator	55	51	66	53	225
Cases Assigned to Three Arbitrators	49	64	50	49	212
Total Admin. Fees Collected from Parties	\$14,000.00	\$13,495.00	\$13,880.00	\$9,775.00	\$51,150.00
Average Amount in Dispute	\$11,777.50	\$7,567.22	\$12,996.76	\$14,502.82	\$11,436.04
Average Amount of Award or Settlement	\$6,805.74	\$5,353.46	\$4,891.42	\$7,075.70	\$5,973.58
Total Amount Awarded or Settled	\$837,106.00	\$765,545.00	\$699,473.00	\$905,689.00	\$3,207,813.00

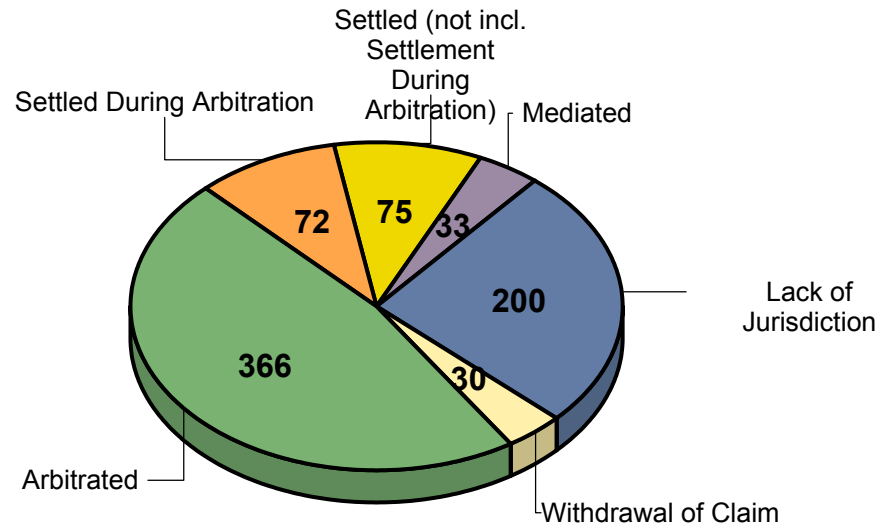
Case Type Information



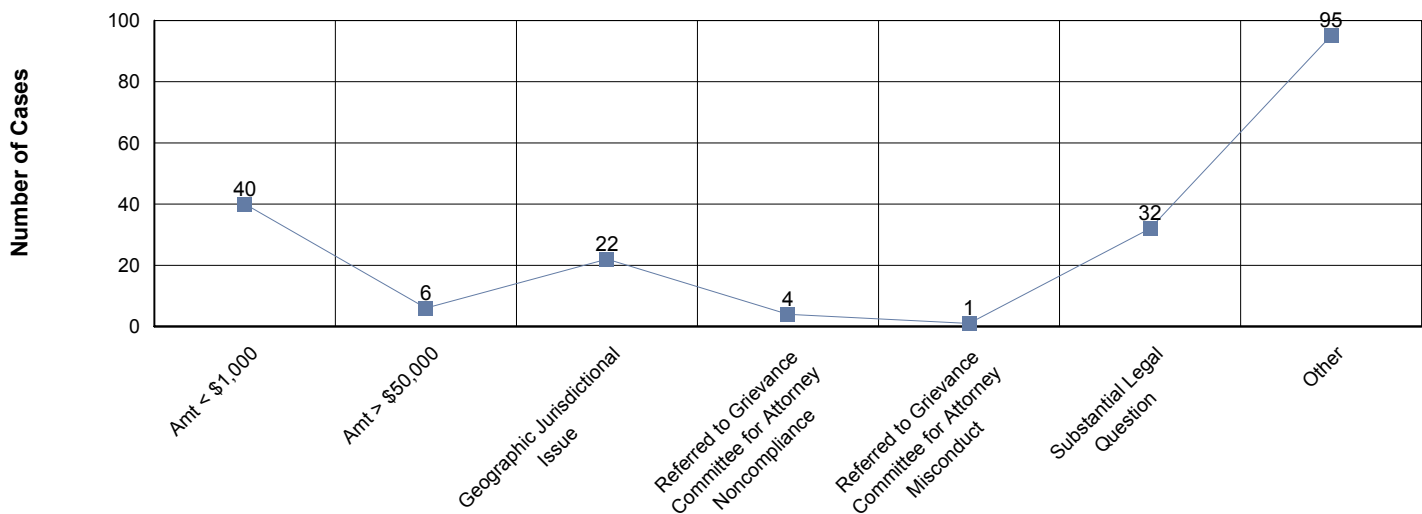
Filing Parties

	Attorney	Client	N/A
Number of Cases	36	712	28

Disposition Information



Cases Dismissed for Lack of Jurisdiction



	Statewide	1st & 12th JDs	2nd JD - Kings	2nd JD - Staten Island	3rd JD	4th JD	5th JD - Jeff/Lewis, Onondaga & Oswego
Disposition Information							
Total Cases Closed	776	135	30	15	50	18	15
Total Cases Arbitrated	438	72	6	9	12	13	13
Cases Arbitrated With Awards Issued	332	56	1	9	7	10	9
Cases Settled During Arbitration	72	4	2	0	2	1	4
Arbitration Held But No Award Issued	34	12	3	0	3	2	0
<i>Cases Arbitrated by One Arbitrator</i>	225	37	5	6	8	11	10
<i>Cases Arbitrated by Three Arbitrators</i>	212	35	1	3	3	2	3
Total Cases Resolved Outside of Arbitration	108	37	4	2	12	2	2
Total Number of Settled Cases	75	11	1	2	12	2	2
Settlements Prior to Arbitration	70	9	0	2	11	2	2
Settlements Prior to Mediation	5	2	1	0	1	0	0
Total Number of Mediated Cases	33	26	3	0	0	0	0
Cases Mediated to Agreement	33	26	3	0	0	0	0
Cases Mediated With No Agreement	0	0	0	0	0	0	0
Total Cases Withdrawn and Dismissed for Lack of Jurisdiction	230	26	20	4	26	3	0
Cases Withdrawn	30	13	1	1	3	0	0
Cases Dismissed for Lack of Jurisdiction	200	13	19	3	23	3	0
Financial Information							
Total Admin. Fees Collected From Parties	\$51,150	\$24,625.00	\$3,150.00	\$1,300.00	\$0.00	\$0.00	\$1,650.00
Average Amount in Dispute	\$11,436	\$19,320.53	\$24,385.24	\$5,385.47	\$4,724.08	\$5,141.28	\$7,325.53
Average Amount of Award or Settlement	\$5,974	\$7,784.95	\$2,183.86	\$5,342.82	\$1,938.33	\$1,638.47	\$6,018.07
Total Amount Awarded or Settled	\$3,207,813	\$879,699.00	\$15,287.00	\$58,771.00	\$46,520.00	\$24,577.00	\$90,271.00

Note: The "4th JD" column summarizes data for cases closed on or after April 26, 2005, which is the date when administration of the local program was transferred from the Federation of Bar Associations to the Office of the Administrative Judge for the Fourht Judicial District; the Federation of Bar Associations did not report any caseload activity for cases closed during 2005.

Also, the Office of the Administrative Judge for the Fifth Judicial District reported that there were no cases closed during 2005 in the program that the Oneida County Bar Association administers, which serves residents in Herkimer and Oneida Counties.

	6th JD	7th JD - MCBA	8th JD	9th JD	10th JD - Nassau JDAO	10th JD - SCBA	11th JD
Disposition Information							
Total Cases Closed	4	21	86	64	163	129	46
Total Cases Arbitrated	0	5	36	36	102	99	35
Cases Arbitrated With Awards Issued	0	5	30	32	73	66	34
Cases Settled During Arbitration	0	0	6	4	18	31	0
Arbitration Held But No Award Issued	0	0	0	0	11	2	1
<i>Cases Arbitrated by One Arbitrator</i>	0	4	23	16	45	37	23
<i>Cases Arbitrated by Three Arbitrators</i>	0	1	13	20	57	62	12
Total Cases Resolved Outside of Arbitration	1	5	5	13	9	10	6
Total Number of Settled Cases	1	4	5	10	9	10	6
Settlements Prior to Arbitration	1	3	5	10	9	10	6
Settlements Prior to Mediation	0	1	0	0	0	0	0
Total Number of Mediated Cases	0	1	0	3	0	0	0
Cases Mediated to Agreement	0	1	0	3	0	0	0
Cases Mediated With No Agreement	0	0	0	0	0	0	0
Total Cases Withdrawn and Dismissed for Lack of Jurisdiction	3	11	45	15	52	20	5
Cases Withdrawn	0	1	2	1	4	1	3
Cases Dismissed for Lack of Jurisdiction	3	10	43	14	48	19	2
Financial Information							
Total Admin. Fees Collected From Parties	\$0.00	\$1,225.00	\$7,020.00	\$0.00	\$0.00	\$12,180.00	\$0.00
Average Amount in Dispute	\$1,108.00	\$4,898.14	\$5,867.64	\$11,292.97	\$11,561.03	\$11,765.95	\$6,183.59
Average Amount of Award or Settlement	\$0.00	\$1,095.50	\$3,271.13	\$10,525.92	\$6,312.93	\$6,104.76	\$4,316.59
Total Amount Awarded or Settled	\$0.00	\$10,955.00	\$124,303.00	\$410,511.00	\$707,048.00	\$671,524.00	\$168,347.00