

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



BOARD OF GOVERNORS
ANNUAL REPORT
TO THE
ADMINISTRATIVE BOARD
OF THE COURTS
2004

New York State Fee Dispute Resolution Program Board of Governors

Main Accomplishments

In its fourth 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 2006. Each item will be discussed in greater detail:

- During 2006, local programs across New York State closed 904 cases concerning disputed attorney fees, an increase of 16.5% over the number of cases that local programs closed in 2005.
- Full-day arbitration trainings were held in Franklin, Queens and Suffolk Counties.
- The Board's Outreach & Education Subcommittee developed a comprehensive outreach plan that the Board approved.
- In January 2007, the Board convened its annual meeting of local program administrators to discuss issues raised during calendar year 2006.

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. Zelig, 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.

On September 25, 2006, the Oneida County Bar Association, whose local program the Board of Governors had previously approved to administer cases in Herkimer and Oneida Counties, entered into a memorandum of understanding with the Onondaga County Bar Association. Pursuant to the terms of that agreement, the Onondaga County Bar Association will administer cases in Oneida County. Accordingly, the Onondaga County Bar Association now administers cases in Jefferson, Lewis, Oneida, Onondaga, and Oswego Counties. As of December 31, 2006, the Herkimer County Bar Association had not yet decided whether to seek approval of a local program that it would administer or whether it would enter into an agreement with the Onondaga County Bar Association for that organization to administer cases in Herkimer County. The Board notes that the Office of the Administrative Judge for the Fifth Judicial District continues to accept filings and screen cases in cooperation with the Onondaga County Bar Association.

The Program Approval Subcommittee reviewed requests for funding from two local programs: the Joint Committee on Fee Disputes and Conciliation, which resolves disputes arising in the Bronx and New York Counties, and the Monroe County Bar Association, which resolves disputes arising in the Seventh Judicial District. With input from the Program Approval Subcommittee, the Board of Governors recommended that the Unified Court System award funding to the Joint Committee on Fee Disputes and Conciliation and the Monroe County Bar Association. For additional information, please see “Funding” on page 6 of this report.

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.

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 2006, the Legal Issues Subcommittee responded to a variety of inquiries from local program administrators, such as:

- Whether attorneys who are suspended from the practice of law are nevertheless required to comply with Part 137 if a former client disputes the attorney's fee?
- Whether arbitrators may hear disputes arising from retainer agreements in which the attorney's fee is calculated as the greater of the following two amounts: a percentage of the amount recovered in the client's action or the product of the number of hours an attorney works on the case multiplied by the attorney's hourly rate?
- What documents must parties file to exercise their right to *de novo* review of fee disputes?

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 high-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 utilize 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. Members of the Board of Governors frequently attend these training sessions and thank the participants for agreeing to serve as volunteers in the Fee Dispute Resolution Program. The Board wishes to express its thanks to Co-counsel Jeremy Zeliger for his work in the development and delivery of these trainings. As of December 31, 2006, local programs list 1,138 neutrals on their rosters of neutrals..

The following trainings were held during 2006:

April 21, 2006	Administrative Judge, 4 th JD	6-hour training in Franklin County
May 17, 2006	Administrative Judge, 11 th JD	6-hour training in Queens County
June 23, 2006	Suffolk County Bar Association	6-hour training in Suffolk County

Education and Outreach Subcommittee

This subcommittee's mandate is to educate the general public about the FDRP.

During 2006, the subcommittee drafted and submitted to the full Board of Governors an outreach plan that established goals to promote the FDRP to attorneys, clients, and judicial and nonjudicial staff.

For judicial staff, the plan recommends that information about the FDRP be included in curricula at the annual judicial seminars and at the seminars for new judges. For nonjudicial staff, the plan recommends that information about the FDRP be included in curricula in the annual seminars for court clerks and court attorneys.

The plan recognizes the need to contact prospective attorneys as well as individuals currently licensed to practice law. The subcommittee recommended that the Board contact professors of New York Practice or professional responsibility courses at each of the 15 law schools in New York State and encourage them to mention the Part 137 program during their courses. It also recommended that the Board contact the Board of Law Examiners and recommend that fee dispute resolution be included among the topics covered by the bar exam.

For established attorneys, the outreach plan recommends that the Office of Court Administration's Attorney Registration Unit either modify existing attorney registration language and require attorneys to affirm that they have read Part 137 of the Rules of the Chief Administrator or include a flyer with each attorney's biennial registration mailing.

The subcommittee also concluded that the need for outreach is greatest among solo and small-firm practitioners; accordingly, the subcommittee proposed the following four courses of action: (1) the Board of Governors should collaborate with the New York State Bar Association to advise those practitioners of their obligations under the Part 137 program; (2) the Board should author articles that local bar associations can easily include in their newsletters; (3) the Office of Court Administration should develop posters and the Board should ask District Administrative Judges to have court clerks display those posters in the various courts; and (4) the Board should ask local bar association presidents to discuss Part 137 with members at annual meetings.

Finally, the subcommittee concluded that the best way to reach clients is to work with the Better Business Bureaus and regional offices of the Attorney General and ask staff to refer appropriate

cases to local FDRP administrators, and the Board should ensure that information on the toll-free telephone line (1-877-FEES-137) and website (www.nycourts.gov/feedispute) is available in Spanish as well as English.

Board Membership

During October 2006, the Honorable A. Gail Prudenti, Presiding Justice of the Supreme Court, Appellate Division, Second Department, appointed Yolanda Walker to the seat formerly held by Carleton Irish. In December 2006, the Honorable Anthony Cardona, Presiding Justice of the Supreme Court, Appellate Division, Third Department, appointed Ferdinand J. Acunto to the seat formerly held by Sherri Townsend.

The Board wishes to express its gratitude to Mr. Irish and Ms. Townsend for their generous service and to welcome Ms. Walker and Mr. Acunto.

Also during 2006, the following members of the Board of Governors were reappointed to three-year terms:

- Hon. Guy J. Mangano, Chair
- Linda Campbell, Esq.
- James Chivers, Esq.
- William Dockery, Esq.

Caseload Activity

Since its inception in January 1, 2002, the Fee Dispute Resolution Program has closed 2,584 cases. During 2006, the local programs closed 904 cases, which represents a 16.5% increase over the 776 cases that local programs closed in 2005.

Two hundred thirty-four (234) of the 904 cases that local programs closed during 2006 were either dismissed for lack of jurisdiction or withdrawn by the filing party. Of the remaining 670 cases, 276 were settled prior to or during either arbitration or mediation. A total of 361 cases were arbitrated in which an arbitrator (or panel of arbitrators) issued an award. The average amount in dispute was \$15,238.21, which represents a 33.25% increase over the average amount in dispute among 2005 cases. 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 Alternative Dispute Resolution and Court Improvement 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 2005, the Board of Governors announced the availability of funding during 2006 to support those bar associations that administer an approved local program. The Board received requests for funding from the New York County Lawyers Association (NYCLA), which administers the Joint Committee on Fee Disputes and Conciliation in Bronx and New York Counties, and the Monroe County Bar Association, which administers the approved local program in the Seventh Judicial District. In response to those requests, the Board of Governors recommended that the Administrative Board of the Courts award funding to NYCLA and the Monroe County Bar Association. The Office of Court Administration awarded \$70,000 to NYCLA and \$14,999 to the Monroe County Bar Association to defray the local programs' 2006 costs.

No other approved local programs submitted formal requests for funding to cover expenses incurred during 2006.

In late 2006, the Board of Governors advised all bar associations that administer approved local programs that beginning in 2007, all future funding would occur pursuant to the terms of negotiated multi-year contracts rather than through the less formal memoranda of understanding that had been used to provide funding during 2004, 2005 and 2006. This change reflects the evolution of the funding process from *ad hoc*, annual memoranda of understanding to a routinized process of negotiated multi-year contracts. As a result of this change, bar associations that obtain funding in support of their local fee dispute resolution programs will submit detailed annual budgets for review and approval, and they will be required to file reconciliation reports on a quarterly basis. The Board of Governors believes that this change will promote greater accountability and that the budget negotiation process will provide an opportunity for local programs and the Board of Governors to address collaboratively any impediments to a fair, expeditious and efficient process for attorneys and clients.

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 and local programs have made great strides in establishing local programs and educating the bench, bar and public of the FDRP. The Board is now turning its attention towards addressing some of the byproducts of that success. In particular, the Board remains concerned that it is taking longer for local programs to bring cases to a conclusion. In 2004, a case took an average of 13.6 weeks to proceed from intake to disposition. In 2006, it took an average of 23.3 weeks for cases to proceed from intake to disposition. The Board will consult with local

program administrators to identify concerns and will work with the Administrative Board of the Courts and the Office of Court Administration to implement solutions to those problems.

Conclusion

In this fourth 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.	5/31/2009	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.	5/31/2009	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
Stephen W. Schlissel, Esq.	5/31/2008	Presiding Justice Gail S. Prudenti
Yolanda A. Walker	5/31/2009	Presiding Justice Gail S. Prudenti
Abigail A. Wickham, Esq.	5/31/2007	Presiding Justice Gail S. Prudenti
Ferdinand J. Acunto	5/31/2007	Presiding Justice Anthony V. Cardona
James L. Chivers, Esq.	5/31/2009	Presiding Justice Anthony V. Cardona
John H. Pennock, Esq.	5/31/2008	Presiding Justice Anthony V. Cardona
Linda M. Campbell, Esq.	5/31/2009	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.

APPENDIX B – APPROVED PROGRAMS
PROGRAM APPROVAL STATUS – STATEWIDE OVERVIEW

As of December 31, 2006

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; voluntarily discontinued its program on 9/25/2006
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.

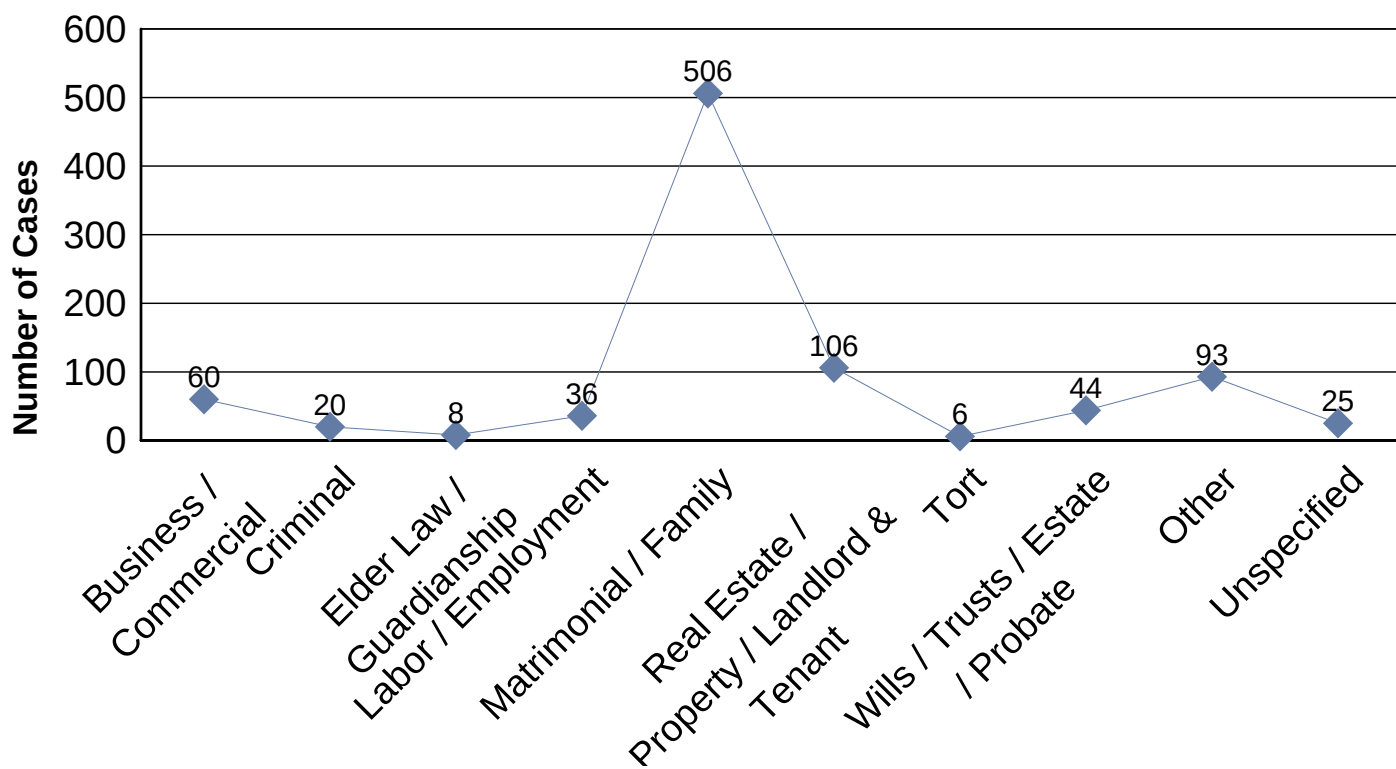
Quarterly Activity Report: 2006

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Cases Closed	174	231	240	259	904
Average Number of Weeks from Intake to Disposition	22.5	20.9	23.9	25.7	23.4
<u>Cases Arbitrated or Settled During Arbitration</u>					
Cases Assigned to One Arbitrator	46	76	61	67	250
Cases Assigned to Three Arbitrators	42	73	65	63	243
Total Admin. Fees Collected from Parties	\$8,895.00	\$15,685.00	\$21,282.00	\$22,515.00	\$68,377.00
Average Amount in Dispute (All Cases)	\$10,492.17	\$10,426.00	\$10,308.49	\$27,437.05	\$15,238.21

Filing Parties

Attorney	Client	Not Reported
54	828	22

Case Type Information



Disposition Information

	Number of Cases
Arbitrated - Award Issued	361
Arbitrated - No Award Issued	31
Mediated - Settlement Reached	34
Mediated - No Settlement Reached	1
Settled During Arbitration	101
Settled Prior to Arbitration or Mediation	141
Claim Withdrawn	32
Lack of Jurisdiction (see below)	202
Others	1
Total	904

Cases Dismissed for Lack of Jurisdiction

	Number of Cases
<i>Amount in Dispute > \$50,000</i>	7
<i>Amount in Dispute < \$1,000</i>	25
<i>Services Provided Outside Local Program's Geographic Jurisdiction</i>	30
<i>Referred to Grievance Committee for Apparent Attorney Misconduct</i>	2
<i>Substantial Legal Question</i>	21
<i>Other</i>	117

	Statewide	1st & 12th JDs	2nd JD - Kings	2nd JD - Staten Island	3rd JD	4th JD	5th JD - Jeff/Lewis, Onondaga & Oswego	6th JD
<u>Disposition Information</u>								
Total Cases Closed	904	184	40	34	40	24	17	17
Average Weeks from Intake to Disposition	23.39	35.82	19.30	22.67	17.13	11.05	22.06	31.69
Total Cases Arbitrated	493	95	16	18	10	12	13	9
Cases Arbitrated With Awards Issued	361	74	0	10	10	9	10	4
Cases Settled During Arbitration	101	7	15	4	0	3	3	2
Arbitration Held But No Award Issued	31	14	1	4	0	0	0	3
<i>Cases Arbitrated by One Arbitrator</i>	<i>250</i>	<i>37</i>	<i>9</i>	<i>11</i>	<i>5</i>	<i>9</i>	<i>9</i>	<i>8</i>
<i>Cases Arbitrated by Three Arbitrators</i>	<i>243</i>	<i>58</i>	<i>7</i>	<i>7</i>	<i>5</i>	<i>3</i>	<i>4</i>	<i>1</i>
Total Cases Resolved Outside of Arbitration	176	51	2	5	8	7	3	2
Total Number of Settled Cases	141	25	0	5	8	7	3	2
Settlements Prior to Arbitration	138	22	0	5	8	7	3	2
Settlements Prior to Mediation	3	3	0	0	0	0	0	0
Total Number of Mediated Cases	35	26	2	0	0	0	0	0
Cases Mediated to Agreement	34	25	2	0	0	0	0	0
Cases Mediated With No Agreement	1	1	0	0	0	0	0	0
Total Cases Withdrawn and Dismissed for Lack of Jurisdiction	234	38	22	11	22	5	1	6
Cases Withdrawn	32	5	1	6	1	0	1	1
Cases Dismissed for Lack of Jurisdiction	202	33	21	5	21	5	0	5
<u>Financial Information</u>								
Total Admin. Fees Collected From Parties	\$68,377.00	\$32,550.00	\$6,650.00	\$2,000.00	\$1,982.00	\$0.00	\$1,650.00	\$0.00
Average Amount in Dispute	\$15,238.21	\$38,465.13	\$10,506.29	\$5,819.79	\$7,912.82	\$4,082.75	\$6,763.88	\$4,347.41

	7th JD	8th JD	9th JD	10th JD - Nassau	10th JD - Suffolk	11th JD
<u>Disposition Information</u>						
Total Cases Closed	37	83	79	189	142	18
Average Weeks from Intake to Disposition	17.46	13.83	36.53	13.48	24.63	13.61
Total Cases Arbitrated	12	33	47	121	95	12
Cases Arbitrated With Awards Issued	12	25	31	82	83	11
Cases Settled During Arbitration	0	8	16	30	12	1
Arbitration Held But No Award Issued	0	0	0	9	0	0
<i>Cases Arbitrated by One Arbitrator</i>	7	20	24	49	54	8
<i>Cases Arbitrated by Three Arbitrators</i>	5	13	23	72	41	4
Total Cases Resolved Outside of Arbitration	13	5	14	34	26	6
Total Number of Settled Cases	6	5	14	34	26	6
Settlements Prior to Arbitration	6	5	14	34	26	6
Settlements Prior to Mediation	0	0	0	0	0	0
Total Number of Mediated Cases	7	0	0	0	0	0
Cases Mediated to Agreement	7	0	0	0	0	0
Cases Mediated With No Agreement	0	0	0	0	0	0
Total Cases Withdrawn and Dismissed for Lack of Jurisdiction	12	44	18	34	21	0
Cases Withdrawn	1	11	3	2	0	0
Cases Dismissed for Lack of Jurisdiction	11	33	15	32	21	0
<u>Financial Information</u>						
Total Admin. Fees Collected From Parties	\$3,925.00	\$6,070.00	\$0.00	\$0.00	\$13,550.00	\$0.00
Average Amount in Dispute	\$9,360.22	\$6,166.28	\$12,401.81	\$11,036.27	\$9,777.45	\$6,924.28