

FDRP

2016
Annual Report
to the
Administrative Board of
the Courts

New York State Attorney-Client Fee Dispute Resolution Program

nycourts.gov/feedispute

feedispute@nycourts.gov

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Introduction

The Unified Court System Alternative Dispute Resolution Office administers the New York State Fee Dispute Resolution Program. Oversight 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 co-counsel from the ADR Office, the Board supports their efficient operation by providing funding, training 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.

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. In 2016, the Board welcomed new members Robin S. Abramowitz, Esq., appointed by Hon. Randall Eng, Presiding Justice, Appellate Division, Second Department; Elizabeth Jane Cahill and Michelle L. Haskin, Esq., appointed by Hon. Karen K. Peters, Presiding Justice, Appellate Division, Third Department; and Shari Jo Reich, Esq., appointed by Hon. Gerald J. Whalen, Presiding Justice, Appellate Division, Fourth Department.

The Board looks forward to hearing from the new members who can provide a fresh look at issues that affect the program.

This year also saw the reappointment of existing Board members, who provide valuable institutional knowledge about the program. The Chief Judge of the State of New York, Hon. Janet DiFiore, reappointed Simeon H. Baum, Esq., Gene A. Johnson, Jr., and Abigail A. Wickham, Esq. Hon. Peter Tom, then-Acting Presiding Justice, Appellate Division, First

2017 Appointments

As of the publication of this 2016 Annual Report, Hon. Peter Tom, then-Acting Presiding Justice, Appellate Division, First Department, appointed new members Susan L. Bender, Esq. and Eric C. Hsueh, CAIA in 2017.

Department, reappointed William J. Dockery, Esq.; and Hon. Randall Eng, Presiding Justice, Appellate Division, Second Department, reappointed Stephen W. Schlissel, Esq.

The Chair and the Board are very grateful to the Administrative Board for their thoughtful appointments of members whose insight and experiences will benefit the program.

Statistical Highlights

From January 1, 2002 through December 31, 2016, the Fee Dispute Resolution Program has closed 12,044 cases. During 2016, local programs closed 1,089 cases, which is just slightly fewer than the 1,097 cases closed in 2015. Statewide, the average amount in dispute was \$15,862, an increase of \$2,871 from the average amount in dispute in 2015 cases. [Chart 1](#)

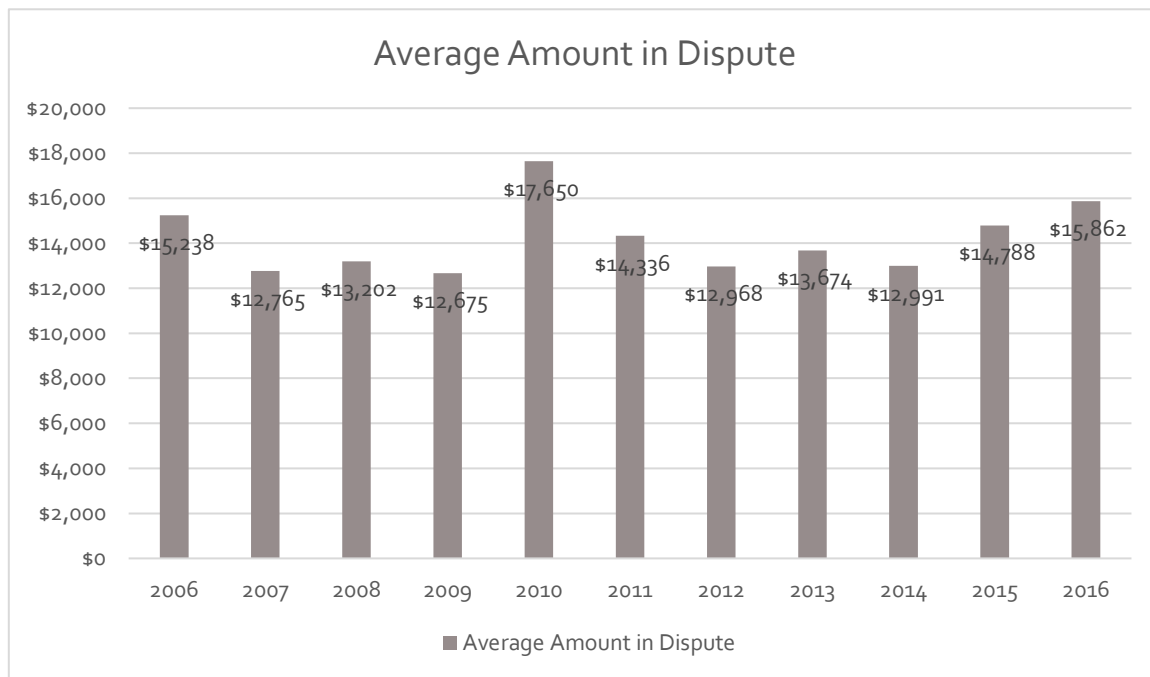
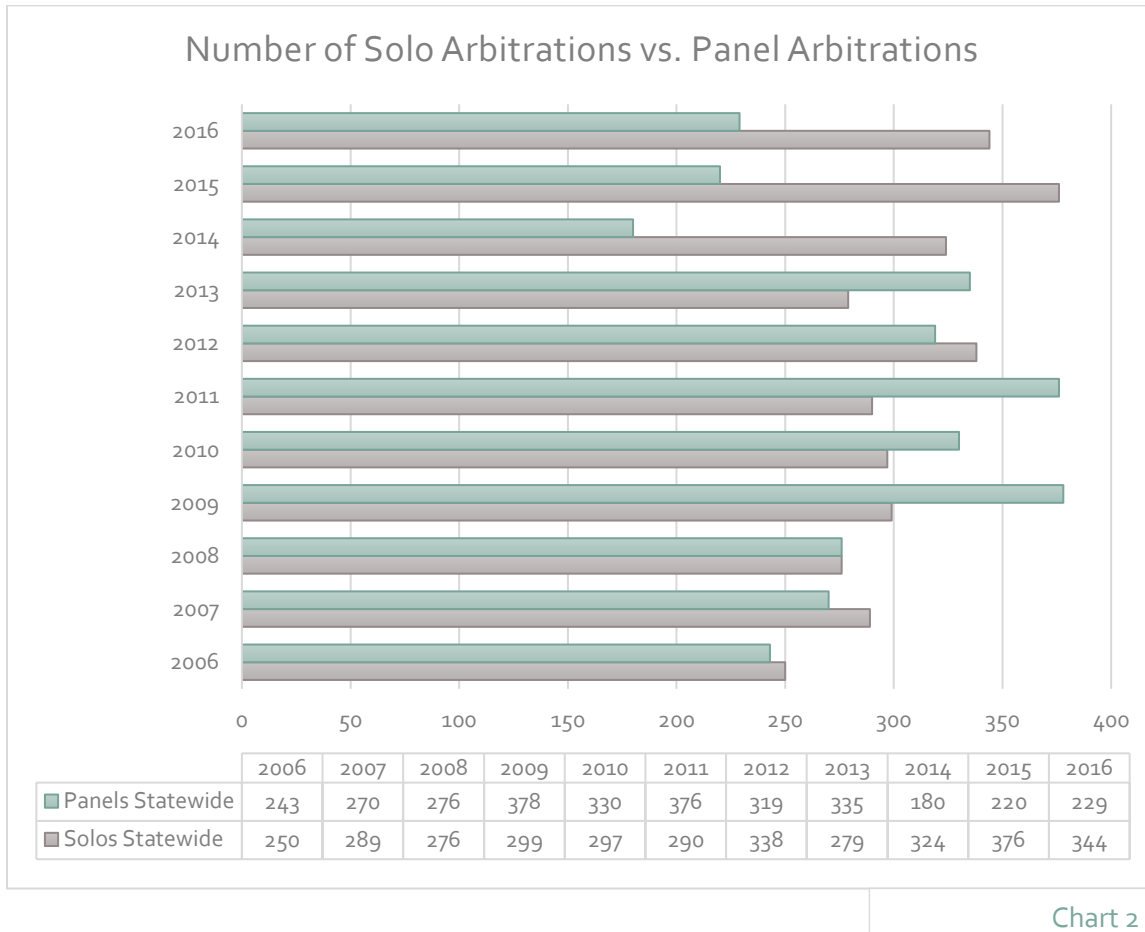


Chart 1

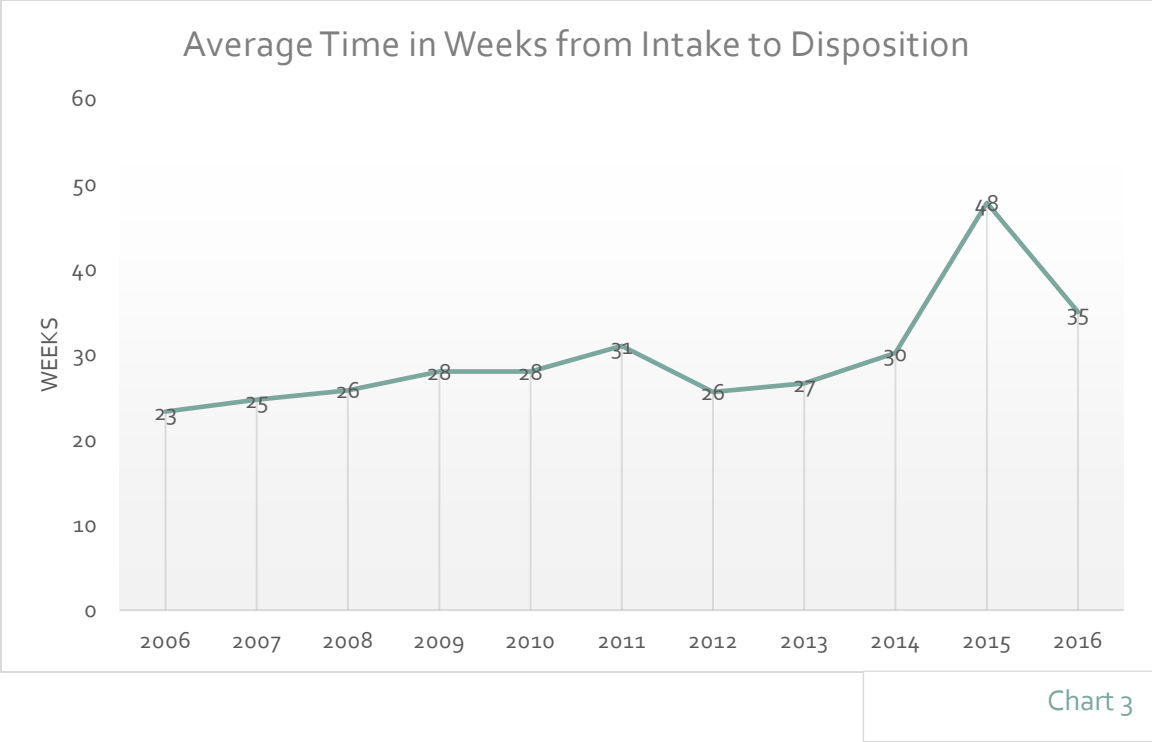
Of the 1,089 cases closed in 2016, 573 were arbitrated; arbitrators issued awards in 416 of those cases. Three hundred forty-eight cases were either dismissed for lack of jurisdiction or withdrawn by the filing party. One hundred sixty-four cases were resolved outside of arbitration. Cases resolved outside of arbitration included 149 cases settled prior to arbitration or mediation and 15 mediated cases.

Arbitrations using a sole arbitrator, where less than \$10,000 was in dispute, numbered 344, while 3-person panel arbitrations, where \$10,000 or more was in dispute, totaled 229. The

number of panel arbitrations has remained less than the number of solo arbitrations since the panel threshold was increased in January 2014 from \$6,000 to \$10,000. [Chart 2](#)



The average number of weeks from intake to disposition for Part 137 cases was 35 weeks in 2016, which represents a decrease of 13 weeks from the prior year. The spike in average time to disposition in 2015 (48 weeks) appears to be an outlier that the Board anticipates will resolve in the coming years. The Board has looked at certain statistics affecting that increase and will continue to monitor these figures. 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. [Chart 3](#)



Fee disputes stemming from representation in matrimonial matters continue to be the majority case type handled by the program, numbering 551 cases. Real Estate/ Property/ Landlord & Tenant continue to be the second most handled case type, numbering 165 cases.

Chart 4

2016 Fee Dispute Resolution Program Case Types

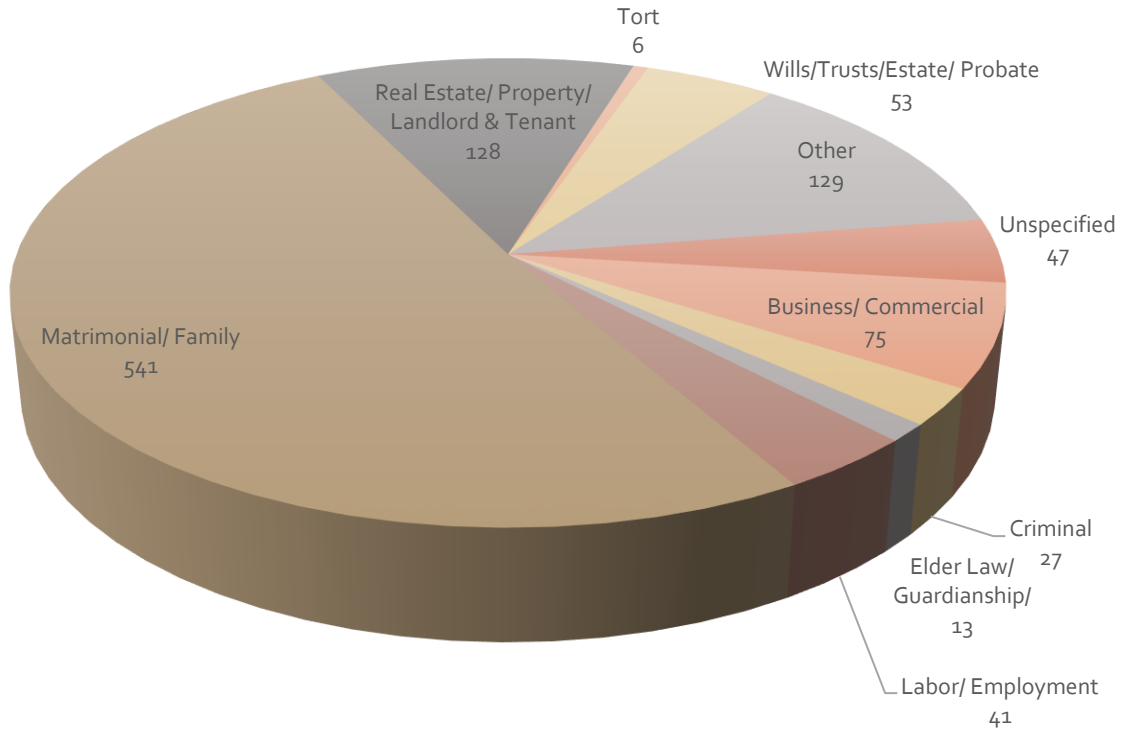


Chart 4

* "Other" includes but is not limited to the following subjects: immigration, bankruptcy, collection, Medicaid, nursing home, school issues, civil contracts, tax, retirement planning and pension, stock, patent law, defamation, lobbyist.

† "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.

Two arbitrator trainings were held in 2016 where over 40 new arbitrators were trained. 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 40 NEW VOLUNTEER
ARBITRATORS WERE TRAINED IN
2016

The 2016 new arbitrator trainings were conducted on the following dates and locations:

JUNE 22

Second Judicial District **Brooklyn Bar Association**

DECEMBER 15

Ninth Judicial District Administrative Judge's Office **White Plains, 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 2016, programs were granted a 1% budget increase for the fiscal year. The following is a breakdown of the funding available to each program during the period April 1, 2016- March 31, 2017: BAEC - \$9,370; NYCLA - \$ 81,985; OCBA - \$ 14,055; MCBA - \$ 17,979.

More Highlights from 2016

NEW YORK STATE UNIFIED COURT SYSTEM OFFICE OF COURT ADMINISTRATION



RECOGNIZING THOSE WHO VOLUNTEER THEIR TIME

145 volunteer arbitrators were honored for their dedication and service to the program with certificates of recognition.

Many local programs held ceremonies and luncheons to mark the occasion.

A TIME-SAVER FOR VOLUNTEER ARBITRATORS

In keeping with the goal of efficiency, the Board added a *counterpart with digital signature clause* to the award form. The clause allows arbitrators to sign awards after the arbitration has ended without having to reconvene.

Affirmation from UCS 137-12 Arbitration Award Form:

...

This award may be executed in any number of counterparts and may be executed by way of facsimile or electronic signature, and if so, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Local Program Administrators met with Co-counsel and Board members on November 2nd for the annual meeting.

SHARING IDEAS

The group discussed determining jurisdiction; resolving venue issues; accommodating language access needs of parties; and many other ideas and questions raised by administrators.

Board Composition

as of April 26, 2017*

Member Appointment

Member	Appointment
<i>Martha E. Gifford, Chair</i>	Chief Judge Jonathan Lippman
<i>Simeon H. Baum, Esq.</i>	Chief Judge Jonathan Lippman
<i>Gene A. Johnson</i>	Chief Judge Jonathan Lippman
<i>Paul M. Hassett, Esq.</i>	Chief Judge Jonathan Lippman
<i>Abigail A. Wickham, Esq.</i>	Chief Judge Janet DiFiore
<i>Vacant</i>	Chief Judge
<i>Susan L. Bender, Esq.</i>	Acting Presiding Justice Hon. Peter Tom
<i>William J. Dockery, Esq.</i>	Acting Presiding Justice Hon. Peter Tom
<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
<i>Vacant</i>	Presiding Justice (App. Div. 2d Dept.)
<i>Michelle L. Haskin, Esq.</i>	Presiding Justice Karen K. Peters
<i>Linda J. Clark, Esq.</i>	Presiding Justice Karen K. Peters
<i>Elizabeth Jane Cahill</i>	Presiding Justice Karen K. Peters
<i>Katherine S. Bifaro</i>	Presiding Justice Henry J. Scudder
<i>Linda M. Campbell, Esq.</i>	Presiding Justice Henry J. Scudder
<i>Shari Jo Reich, Esq.</i>	Presiding Justice Gerald J. Whalen

Program Approval Status- Statewide Overview

As of December 31, 2016

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 to cover 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

District	Administrator	Status
<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	7th JD
<u>Disposition Information</u>								
Total Cases Closed	1,089	319	13	42	26	9	23	38
Average Weeks from Intake to Disposition	34.69	58.65	16.15	13.85	13.35	68.11	36.13	19.06
Total Cases Arbitrated	573	145	6	6	8	9	15	19
Cases Arbitrated With Awards Issued	416	121	2	5	4	6	13	13
Cases Settled During Arbitration	128	17	1	1	2	3	1	6
Arbitration Held But No Award Issued	29	7	3	0	2	0	1	0
Cases Arbitrated by One Arbitrator	344	73	2	5	5	7	9	15
Cases Arbitrated by Three Arbitrators	229	72	4	1	3	2	6	4
Total Cases Resolved Outside of Arbitration	164	57	0	1	2	0	2	6
Total Number of Settled Cases	149	42	0	1	2	0	2	6
Settlements Prior to Arbitration	142	36	0	1	2	0	2	5
Settlements Prior to Mediation	7	6	0	0	0	0	0	1
Total Number of Mediated Cases	15	15	0	0	0	0	0	0
Cases Mediated to Agreement	15	15	0	0	0	0	0	0
Cases Mediated With No Agreement	0	0	0	0	0	0	0	0
Total Cases Withdrawn and Dismissed for Lack of Jurisdiction	348	117	7	35	16	0	6	10
Cases Withdrawn	61	35	0	0	3	0	0	0
Cases Dismissed for Lack of Jurisdiction	287	82	7	35	13	0	6	10
<u>Financial Information</u>								
Total Admin. Fees Collected From Parties	\$83,345.00	\$48,200.00	\$1,750.00	\$0.00	\$0.00	\$375.00	\$0.00	\$4,325.00
Average Amount in Dispute	\$15,861.92	\$23,161.69	\$9,807.23	\$7,062.24	\$9,264.50	\$8,078.33	\$10,707.74	\$8,673.92

	8th JD	9th JD	10th JD - Nassau	10th JD - Suffolk	11th JD	13th JD
<u>Disposition Information</u>						
Total Cases Closed	59	123	201	188	35	13
Average Weeks from Intake to Disposition	22.03	57.61	17.27	18.41	9.43	20.17
Total Cases Arbitrated	30	69	112	124	22	8
Cases Arbitrated With Awards Issued	23	46	69	93	14	7
Cases Settled During Arbitration	7	20	32	30	8	0
Arbitration Held But No Award Issued	0	3	11	1	0	1
Cases Arbitrated by One Arbitrator	23	40	64	74	19	8
Cases Arbitrated by Three Arbitrators	7	29	48	50	3	0
Total Cases Resolved Outside of Arbitration	6	13	37	35	3	2
Total Number of Settled Cases	6	13	37	35	3	2
Settlements Prior to Arbitration	6	13	37	35	3	2
Settlements Prior to Mediation	0	0	0	0	0	0
Total Number of Mediated Cases	0	0	0	0	0	0
Cases Mediated to Agreement	0	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	22	41	52	29	10	3
Cases Withdrawn	2	5	4	11	0	1
Cases Dismissed for Lack of Jurisdiction	20	36	48	18	10	2
<u>Financial Information</u>						
Total Admin. Fees Collected From Parties	\$7,140.00	\$0.00	\$0.00	\$20,355.00	\$0.00	\$1,200.00
Average Amount in Dispute	\$10,390.46	\$18,049.29	\$15,125.09	\$11,948.05	\$8,031.89	\$12,535.00

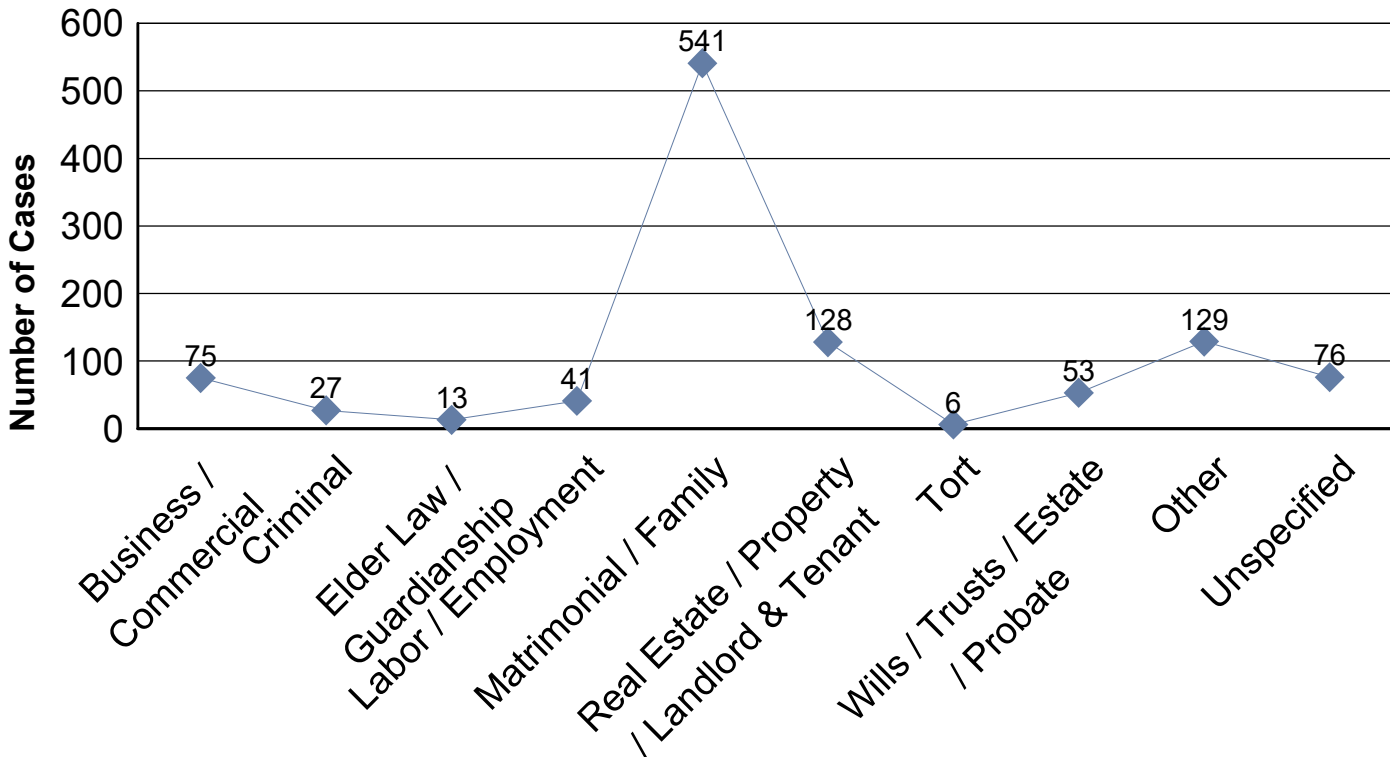
Quarterly Activity Report: 2016

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Cases Closed	384	282	224	199	1,089
Average Number of Weeks from Intake to Disposition	57.5	21.7	23.7	20.6	34.7
<u>Cases Arbitrated or Settled During Arbitration</u>					
Cases Assigned to One Arbitrator	108	90	83	63	344
Cases Assigned to Three Arbitrators	55	64	53	57	229
Total Admin. Fees Collected from Parties	\$31,605.00	\$18,740.00	\$15,540.00	\$17,460.00	\$83,345.00
Average Amount in Dispute (All Cases)	\$16,360.10	\$15,692.26	\$13,765.88	\$17,511.16	\$15,861.92

Filing Parties

Attorney	Client	Not Reported
122	929	38

Case Type Information



Disposition Information

	Number of Cases
Arbitrated - Award Issued	416
Arbitrated - No Award Issued	29
Mediated - Settlement Reached	15
Settled During Arbitration	128
Settled Prior to Arbitration or Mediation	149
Claim Withdrawn	61
Lack of Jurisdiction (see below)	287
Others	4
Total	1,089

Cases Dismissed for Lack of Jurisdiction

	Number of Cases
<i>Amount in Dispute > \$50,000</i>	15
<i>Amount in Dispute < \$1,000</i>	17
<i>Services Provided Outside Local Program's Geographic Jurisdiction</i>	27
<i>Referred to Grievance Committee for Apparent Attorney Misconduct</i>	13
<i>Substantial Legal Question</i>	30
<i>Other</i>	185