

FDRP

2017
Annual Report
to the
Administrative Board of
the Courts

New York State Attorney-Client Fee Dispute Resolution Program

nycourts.gov/feedispute

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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.

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 2017, the Board welcomed new members Mark V. Collins, appointed by Chief Judge Janet DiFiore; Susan L. Bender, Esq. and Eric C. Hsueh, CAIA appointed by Hon. Peter Tom, then-Acting Presiding Justice, Appellate Division, First Department; and Louis B. Cristo, Esq. and Peter K. Cutler, both appointed by Hon. Gerald J. Whalen, Presiding Justice of the Fourth Department. The Board appreciates hearing from the new members who can provide a fresh look at issues that affect the program.

2017 Appointments

Susan L. Bender, Esq.
Mark V. Collins
Louis B. Cristo, Esq.
Peter K. Cutler
Eric C. Hsueh, CAIA

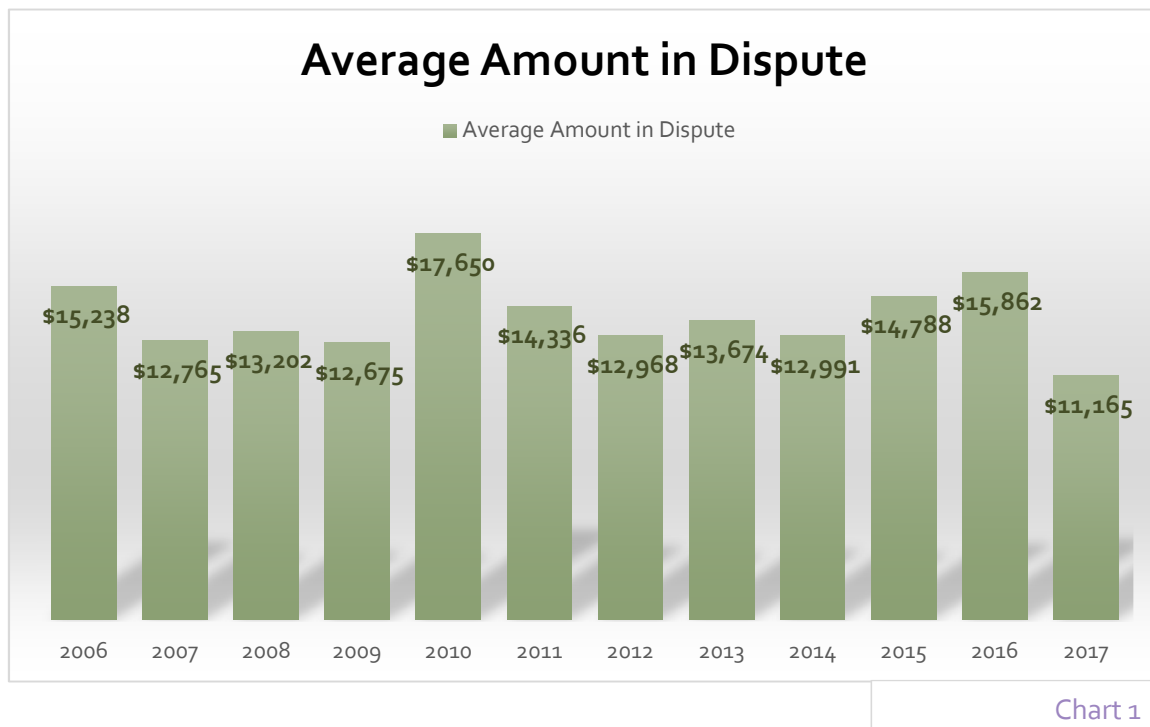
This year also saw the reappointment of existing Board member, Linda J. Clark, Esq., by Hon. Karen K. Peters, then-Presiding Justice of the Third Department. The Board values the input of

members who are reappointed because they provide valuable institutional knowledge about the program.

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, 2017, the Fee Dispute Resolution Program has closed 12,878 cases. During 2017, local programs closed 834 cases, which is 255 cases fewer than the 1,089 cases closed in 2016. Statewide, the average amount in dispute was \$11,165, a decrease of \$4,697 from the average amount in dispute in 2016 cases. [Chart 1](#)



Of the 834 cases closed in 2017, 461 were arbitrated; arbitrators issued awards in 335 of those cases. Two hundred forty-four cases were either dismissed for lack of jurisdiction or withdrawn by the filing party. One hundred twenty-nine cases were resolved outside of arbitration. Cases resolved outside of arbitration included 122 cases settled prior to arbitration or mediation and 7 mediated cases. [Chart 2](#)

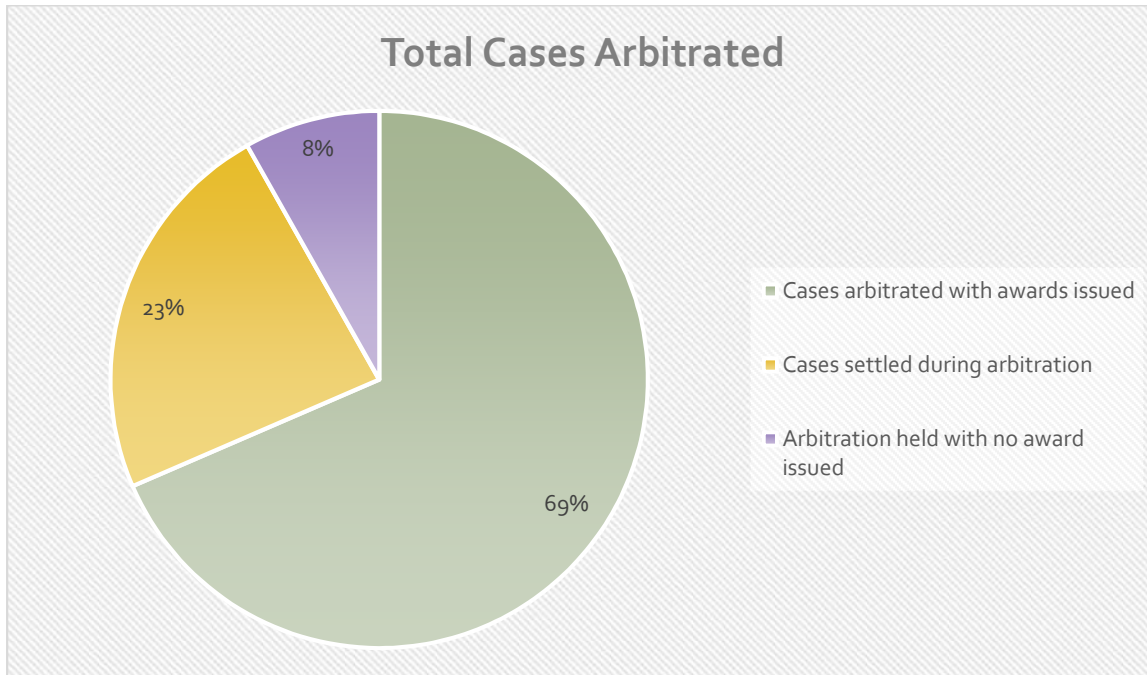


Chart 2

Arbitrations using a single arbitrator, where less than \$10,000 was in dispute, numbered 300, while 3-person panel arbitrations, where \$10,000 or more was in dispute, totaled 161. 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 3](#)

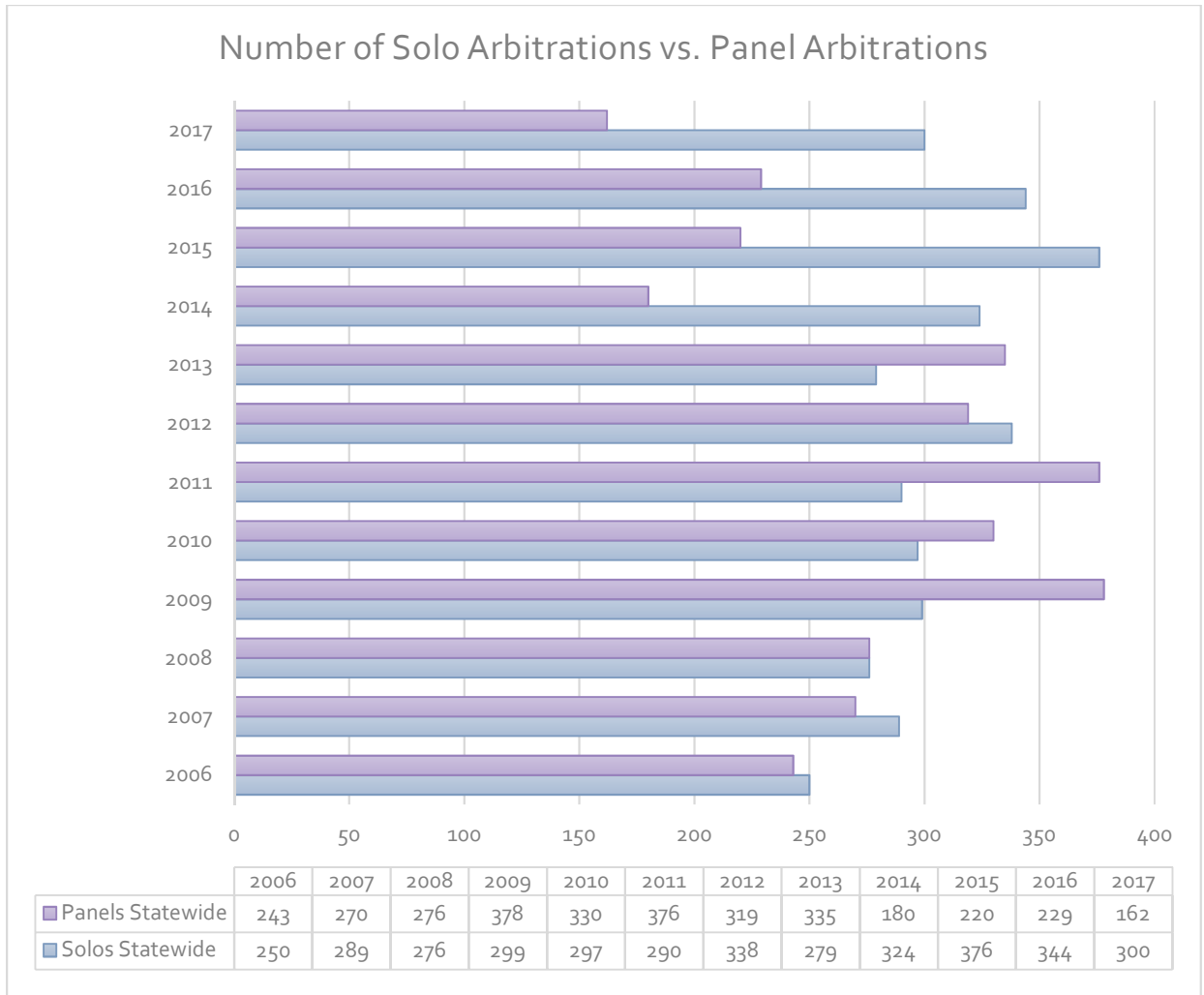
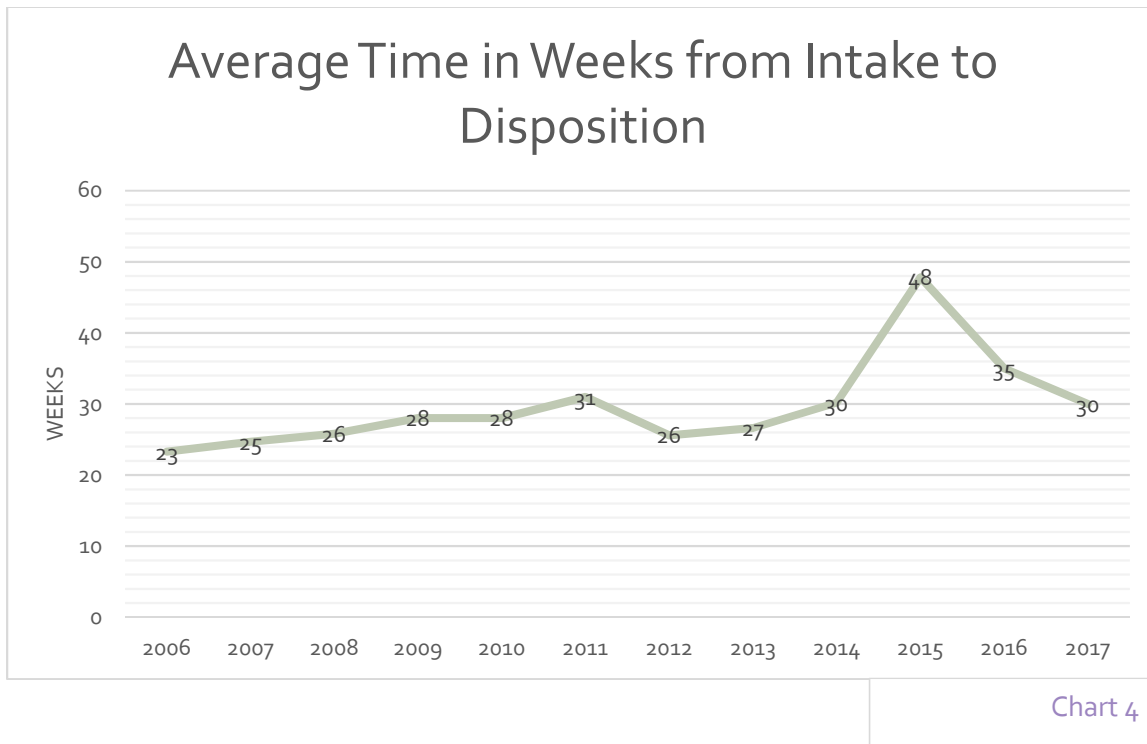


Chart 3

The average number of weeks from intake to disposition for Part 137 cases was 30 weeks in 2017, which represents a decrease of 5 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 two subsequent years, the time to disposition has in fact decreased. 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. [Chart 4](#)



Fee disputes stemming from representation in matrimonial matters continue to be the majority case type handled by the program, numbering 399 cases. Real Estate/ Property/ Landlord & Tenant continues to be the second most handled case type, numbering 75 cases.

Chart 5

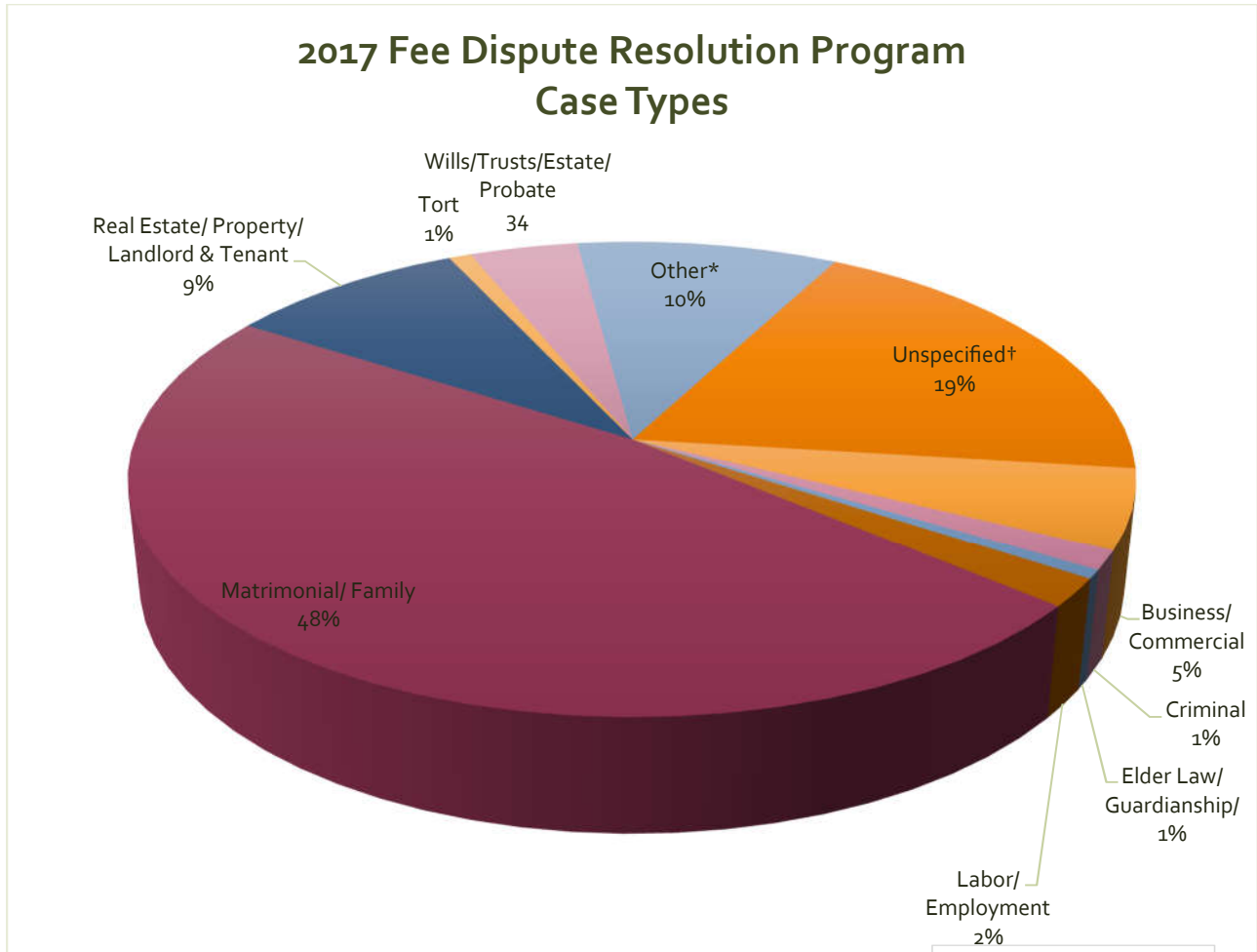


Chart 5

* "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 2017 where over 60 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 60 NEW VOLUNTEER
ARBITRATORS WERE TRAINED IN
2017

The 2017 new arbitrator trainings were conducted on the following dates and locations:

June 26

Tenth Judicial District Suffolk County Bar Association and the District Administrative Judge's Office for Nassau held a combined training at the Suffolk County Bar Association in Hauppauge, NY

September 14

Eleventh Judicial District Administrative Judge's Office held a training at the Queens County Bar Association in Jamaica, NY

Diversity and Inclusion in Training

In 2017, the UCS OCA Office of Workforce Diversity, headed by Director S. Anthony Walters, assisted the Board by sending out training notices and inviting potential arbitrators to the Part 137 new arbitrator trainings from diverse bar associations, civic associations, student associations, and many other organizations. The Board greatly appreciates these efforts in promoting diversity and inclusion on Part 137 rosters and looks forward to collaborating with Mr. Walters and his staff on future trainings.

New FDRP Case Management System and Database

In 2017, the ADR Office partnered with the Unified Court System's Department of Research and Technology (DoT), headed by Director Chip Mount, to develop a new case management system for the program. The former system's efficiency had declined over the years and the need for tech resources had increased, requiring an upgrade and DoT support.

The new system allows programs to schedule cases, to print forms, and to track cases. Program administrators also enter other case information which serves as the basis for data used to compile

these annual reports and for analysis by the Board of Governors. Although the functionality is similar, the new system is web based and managed by DoT providing greater data security and tech support.

The Board is very grateful to Mr. Mount and his staff in the small systems group, particularly Alan Simms, Leo Godin and Michael Metzger, for all the effort they put into developing this new program.

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 2017, 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, 2017- March 31, 2018: BAEC - \$9,557; NYCLA - \$ 83,624; OCBA - \$ 14,336; MCBA - \$ 18,338.

Board Composition

as of March 15, 2018*

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>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
<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>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

Program Approval Status- Statewide Overview

As of December 31, 2017

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
Disposition Information							
Total Cases Closed	834	147	44	14	39	22	8
Average Weeks from Intake to Disposition	30.01	27.74	27.93	31.00	169.67	46.52	21.69
Total Cases Arbitrated	461	85	18	2	4	15	4
Cases Arbitrated with Awards Issued	335	73	6	2	4	11	3
Cases Settled During Arbitration	114	12	4	0	0	4	1
Arbitration Held with No Award Issued	12	0	8	0	0	0	0
Cases Arbitrated by One Arbitrator	300	57	12	2	3	13	1
Cases Arbitrated by Three Arbitrators	161	28	6	0	1	2	3
Total Cases Resolved Outside Of Arbitration	129	31	6	4	0	5	3
Total Number of Settled Cases	122	24	6	4	0	5	3
Settlements Prior to Arbitration	122	24	6	4	0	5	3
Settlements Prior to Mediation	0	0	0	0	0	0	0
Total Number of Mediated Cases	7	7	0	0	0	0	0
Cases Meditated to Agreement	7	7	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	244	31	20	8	35	2	1
Cases Withdrawn	11	1	1	0	0	1	0
Cases Dismissed for Lack of Jurisdiction	233	30	19	8	35	1	1
Financial Information							
Total Admin. Fees Collected From Parties	\$67,910.00	\$29,950.00	\$12,950.00	\$0.00	\$0.00	\$1,500.00	\$0.00
Average Amount in Dispute	\$11,164.55	\$13,113.05	\$6,007.68	\$6,496.14	\$4,588.69	\$4,086.68	\$12,716.50

	7th JD	8th JD	9th JD	10th JD- Nassau	10th JD- Suffolk	11th JD	13th JD
Disposition Information							
Total Cases Closed	26	45	90	206	145	43	5
Average Weeks from Intake to Disposition	10.72	17.61	25.83	20.80	20.77	10.10	50.68
Total Cases Arbitrated	13	25	53	112	103	23	4
Cases Arbitrated with Awards Issued	9	16	41	72	80	16	2
Cases Settled During Arbitration	4	9	12	36	23	7	2
Arbitration Held with No Award Issued	0	0	0	4	0	0	0
Cases Arbitrated by One Arbitrator	9	19	36	58	66	22	2
Cases Arbitrated by Three Arbitrators	4	6	17	54	37	1	2
Total Cases Resolved Outside Of Arbitration	6	6	9	35	20	4	0
Total Number of Settled Cases	6	6	9	35	20	4	0
Settlements Prior to Arbitration	6	6	9	35	20	4	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	7	14	28	59	22	16	1
Cases Withdrawn	2	0	2	1	3	0	0
Cases Dismissed for Lack of Jurisdiction	5	14	26	58	19	16	1
Financial Information							
Total Admin. Fees Collected From Parties	\$2,560.00	\$5,550.00	\$0.00	\$0.00	\$15,000.00	\$0.00	\$400.00
Average Amount in Dispute	\$4,797.84	\$8,269.44	\$11,630.29	\$14,643.94	\$10,926.52	\$9,050.63	\$15,052.40

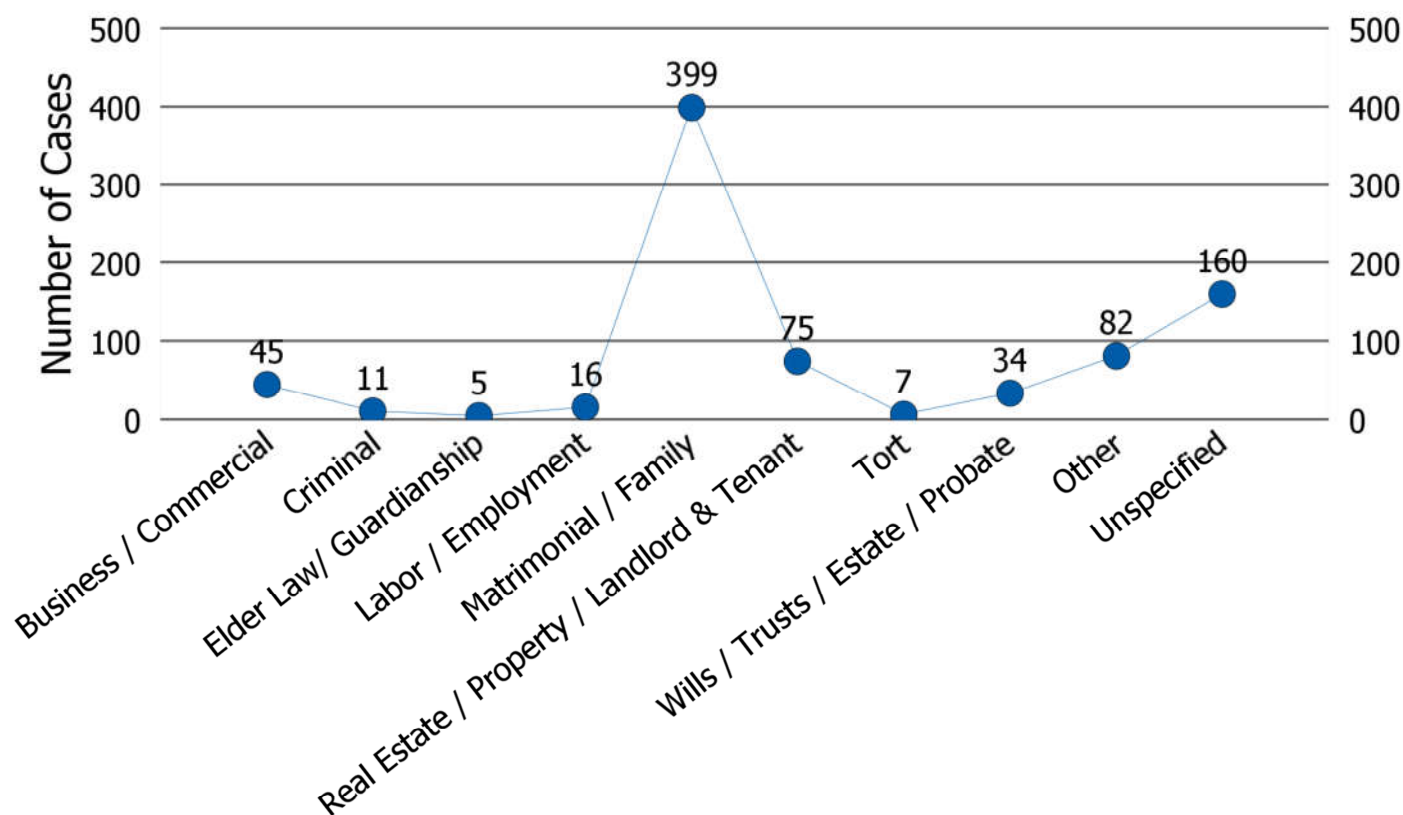
Quarterly Activity Report: 2017

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Cases Closed	200	258	189	187	834
Average Number of Weeks from Intake to Disposition	21.6	46.2	22.4	24.5	30.0
<u>Cases Arbitrated or Settled During Arbitration</u>					
Cases Assigned to One Arbitrator	56	83	66	95	300
Cases Assigned to Three Arbitrators	38	58	28	37	161
Total Admin. Fees Collected from Parties	\$14,880.00	\$23,210.00	\$15,800.00	\$14,020.00	\$67,910.00
Average Amount in Dispute (All Cases)	\$12,100.52	\$12,965.26	\$11,295.77	\$7,546.50	\$11,164.55

Filing Parties

Attorney	Client	Not Reported
127	567	140

Case Type Information



Disposition Information

	Number of Cases
Arbitration - Award Issued	335
Arbitrated - No Award Issued	12
Mediated - Settlement Reached	7
Mediated - No Settlement Reached	0
Settled During Arbitration	114
Settled Prior to Arbitration or Mediation	122
Claim Withdrawn	11
Lack of Jurisdiction	232
Others	1
Total	834

Cases Dismissed for Lack of Jurisdiction

	Number of Cases
Amount in Dispute > \$50,000	6
Amount in Dispute < \$1,000	6
Services Provided Outside Local Program Geographic Jurisdiction	17
Referred to Grievance Committee for Noncompliance with Part 137	1
Referred to Grievance Committee for Apparent Attorney Misconduct	2
Substantial Legal Question	14
Other	186