

# FDRP

2018  
Annual Report  
to the  
Administrative Board of  
the Courts

New York State Attorney-Client Fee Dispute Resolution Program

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## Introduction

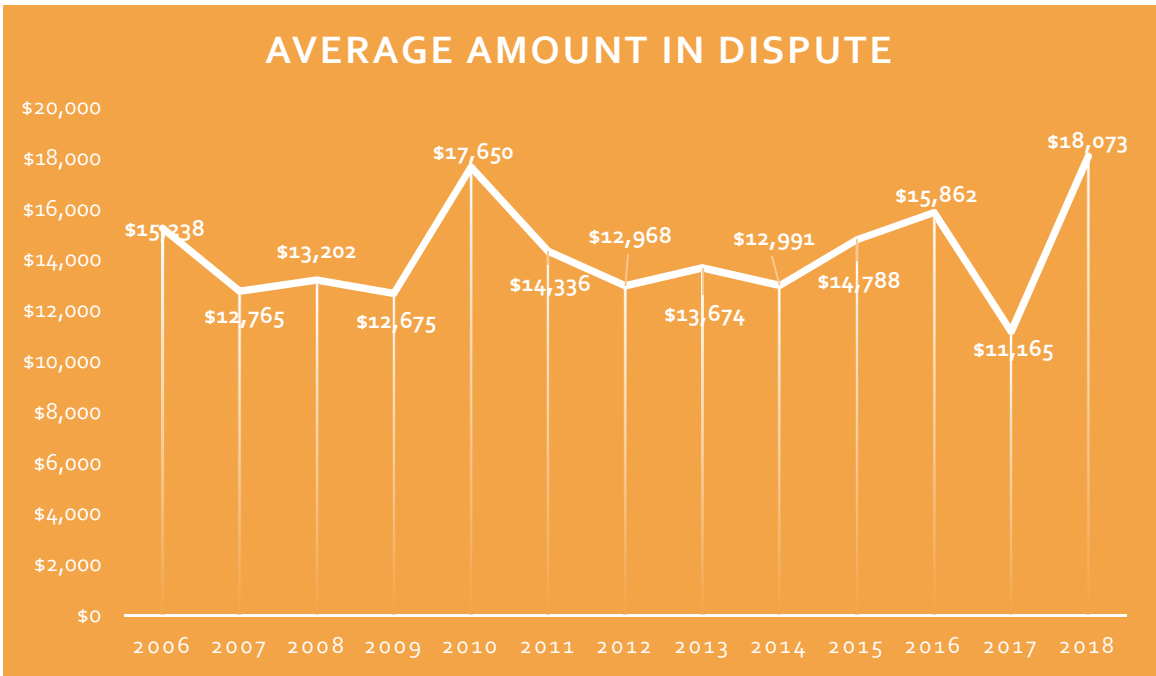
The Unified Court System Alternative Dispute Resolution Office (ADR Office) administers the New York State Fee Dispute Resolution Program. The administration of the Program is guided by the Board of Governors, with the goal of ensuring that attorneys and clients have access to cost-effective, high-quality 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. Ms. Gifford has since been reappointed by Chief Judge Janet DiFiore effective December 29, 2018.

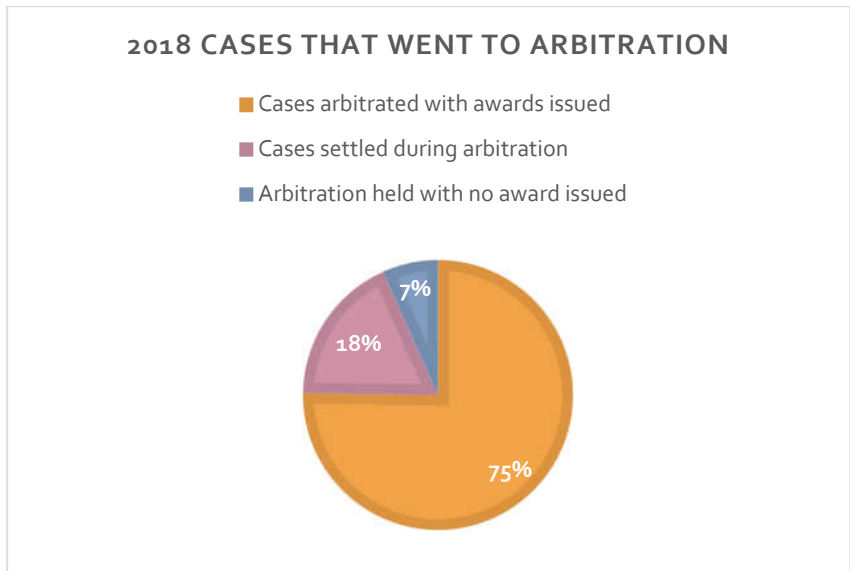
## Statistical Highlights

From January 1, 2002 through December 31, 2018, the Fee Dispute Resolution Program has closed 13,703 cases. During 2018, local programs closed 825 cases, which is nine cases fewer than the 834 cases closed in 2017. Statewide, the average amount in dispute was \$18,073, an increase of \$6,908 from the average amount in dispute in 2017 cases.

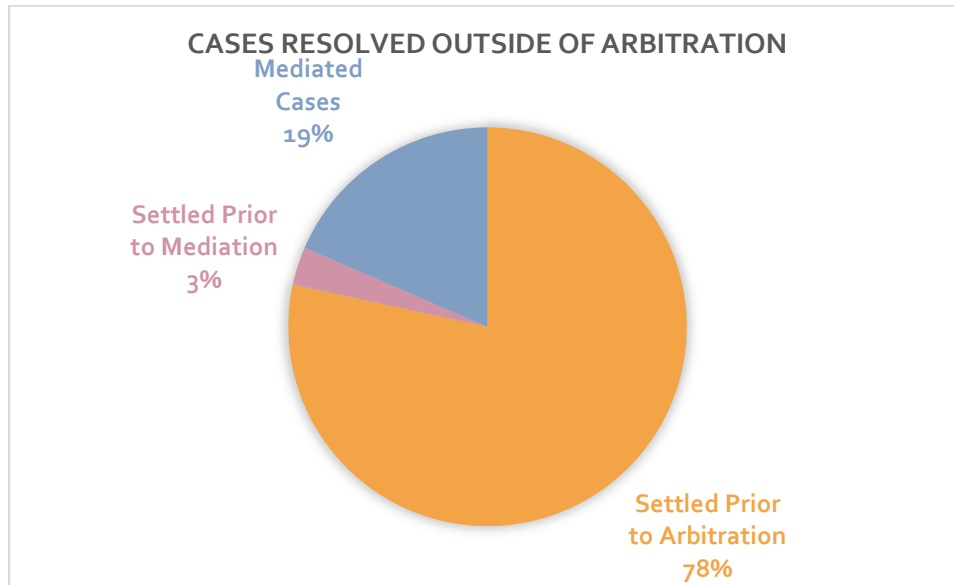


Of the 825 cases closed in 2018, **465 went to arbitration.**

- arbitrators issued awards in 350 of the 465 cases that went to arbitration;
- 84 of the cases that went to arbitration settled during the arbitration;
- 31 of the cases that went to arbitration had no award issued.



One hundred sixty-two cases were resolved outside of arbitration. Cases resolved outside of arbitration included 132 cases settled prior to arbitration or mediation and 30 mediated cases.



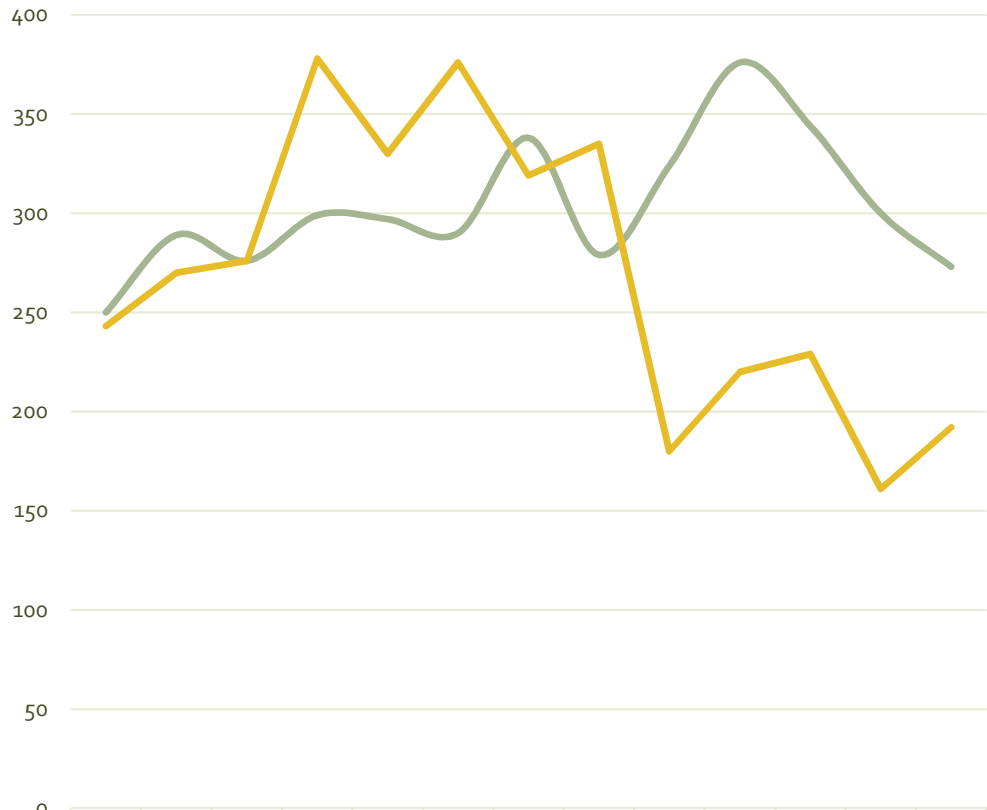
One hundred seventy-five cases were either dismissed for lack of jurisdiction (157 cases) or withdrawn by the filing party (18 cases).

Reasons for Lack of Jurisdiction	Percent
Referred to Grievance Committee for Apparent Misconduct	<1%
Client Filed Later than 30 Days	1%
Request made by Non-Client or Legal Representative of the Client	3%
Misconduct Allegations	3%
Malpractice Allegations	4%
Damages or Affirmative Relief	4%
No Attorney's Services for More than 2 Years	7%
Criminal Matter	7%
Substantial Legal Question	11%
Fee Determined by Statute, Rule, or Court Order	12%
Outside Monetary Jurisdiction	13%
Services Provided Outside Local Program Geographic Region	17%
Other*	18%*

\* Other includes: party deceased; party incarcerated; party did not respond; transfers for reasons other than incorrect venue; party bankruptcy; concurrent action pending in court for same relief.

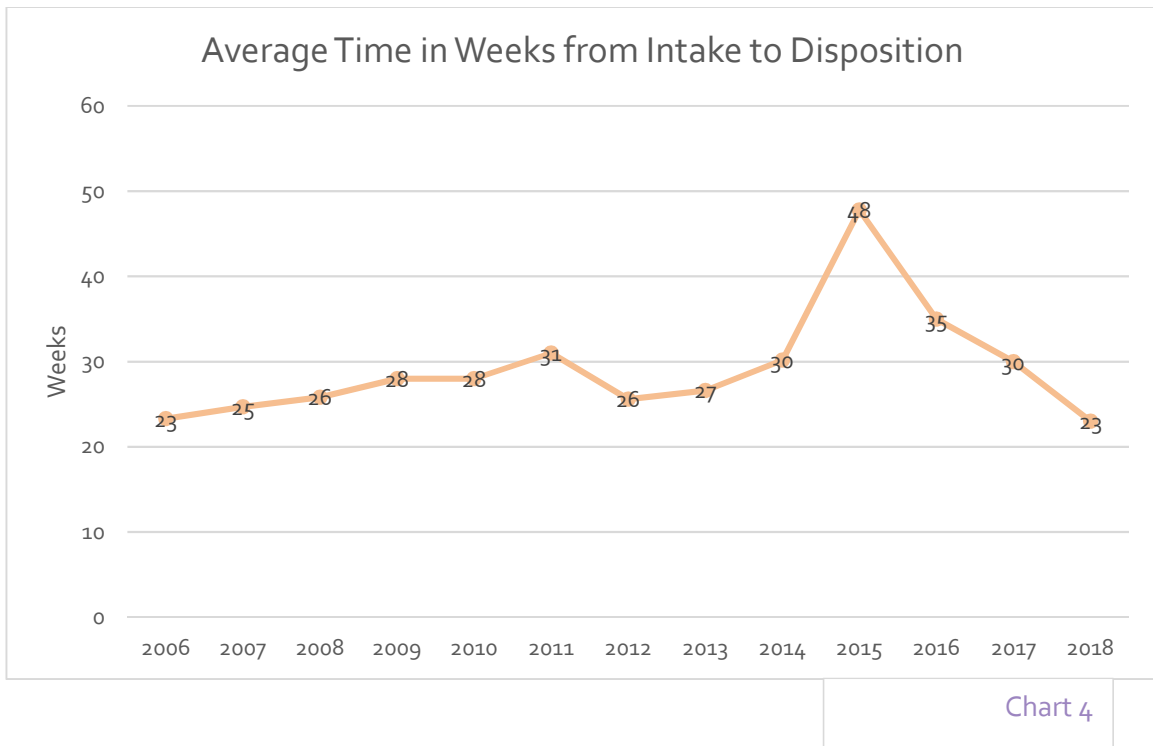
Arbitrations using a single arbitrator, where less than \$10,000 was in dispute, numbered 273, while 3-person panel arbitrations, where \$10,000 or more was in dispute, totaled 192. The number of panel arbitrations statewide has remained less than the number of solo arbitrations since the panel threshold was increased in January 2014 from \$6,000 to \$10,000.

### Number of Solo Arbitrations vs. Panel Arbitrations



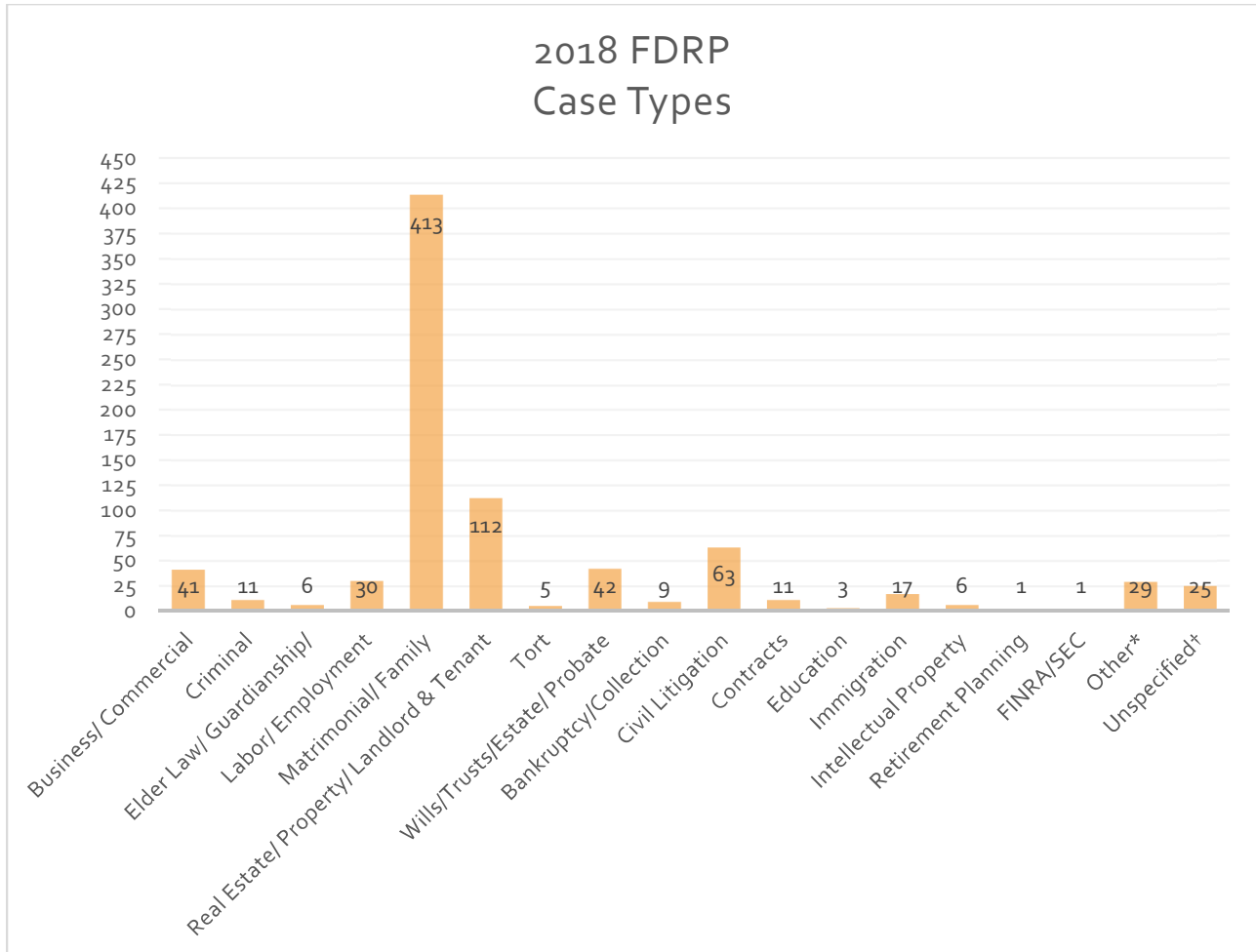
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Solos Statewide	250	289	276	299	297	290	338	279	324	376	344	300	273
Panels Statewide	243	270	276	378	330	376	319	335	180	220	229	161	192

The average number of weeks from intake to disposition for Part 137 cases was 23 weeks in 2018, which represents a decrease of 7 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 three 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.



Fee disputes stemming from representation in matrimonial matters continue to be the majority case type handled by the program, numbering 375 cases. Real Estate/ Property/ Landlord & Tenant continues to be the second most handled case type, numbering 75 cases.

Chart 5



\* "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 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.

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 50 NEW VOLUNTEER  
ARBITRATORS WERE TRAINED IN  
2018

The 2018 new arbitrator trainings were conducted on the following dates and locations:

### September 25

Thirteenth Judicial District Richmond County Bar Association held a training in Staten Island, NY

### December 10

First and Twelfth Judicial Districts Joint Committee on Fee Disputes and Conciliation held a training at the New York County Lawyers' Association in New York, 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 2018, 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 - \$9,690; NYCLA - \$ 84,787; OCBA - \$ 14,535; MCBA - \$ 18,593.



## Board Composition

<b>Member</b>	<b>Appointment</b>
<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>Anthony D. Mancinelli, Esq.*</i>	Chief Judge Janet DiFiore
<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

*\*Appointed March 1, 2019*

## Program Approval Status- Statewide Overview

As of December 31, 2018

<b>District</b>	<b>Administrator</b>	<b>Status</b>
<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, &amp; 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 &amp; 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 &amp; 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 &amp; 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

<b>District</b>	<b>Administrator</b>	<b>Status</b>
<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
<b><u>Disposition Information</u></b>							
<b>Total Cases Closed</b>	<b>825</b>	<b>174</b>	<b>36</b>	<b>37</b>	<b>14</b>	<b>34</b>	<b>13</b>
Average Weeks from Intake to Disposition	23.31	28.29	57.61	13.80	17.15	43.04	24.12
<b>Total Cases Arbitrated</b>	<b>465</b>	<b>105</b>	<b>21</b>	<b>0</b>	<b>6</b>	<b>22</b>	<b>7</b>
Cases Arbitrated with Awards Issued	350	94	15	0	4	15	5
Cases Settled During Arbitration	84	11	2	0	0	3	2
Arbitration Held with No Award Issued	31	0	4	0	2	4	0
Cases Arbitrated by One Arbitrator	273	50	11	0	4	17	4
Cases Arbitrated by Three Arbitrators	192	55	10	0	2	5	3
<b>Total Cases Resolved Outside Of Arbitration</b>	<b>162</b>	<b>48</b>	<b>4</b>	<b>9</b>	<b>2</b>	<b>6</b>	<b>1</b>
Total Number of Settled Cases	132	27	4	9	2	0	1
Settlements Prior to Arbitration	127	27	4	9	2	0	1
Settlements Prior to Mediation	5	0	0	0	0	0	0
Total Number of Mediated Cases	30	21	0	0	0	6	0
Cases Meditated to Agreement	30	21	0	0	0	6	0
Cases Meditated with No Agreement	0	0	0	0	0	0	0
<b>Total Cases Withdrawn and Dismissed for Lack of Jurisdiction</b>	<b>175</b>	<b>21</b>	<b>11</b>	<b>27</b>	<b>5</b>	<b>3</b>	<b>5</b>
Cases Withdrawn	18	2	0	1	1	2	0
Cases Dismissed for Lack of Jurisdiction	157	19	11	26	4	1	5
<b><u>Financial Information</u></b>							
Total Admin. Fees Collected From Parties	<b>\$77,840.00</b>	<b>\$37,575.00</b>	<b>\$8,750.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,875.00</b>	<b>\$0.00</b>
Average Amount in Dispute	<b>\$18,073.47</b>	<b>\$34,366.88</b>	<b>\$13,977.12</b>	<b>\$11,215.75</b>	<b>\$8,180.60</b>	<b>\$9,388.96</b>	<b>\$10,806.63</b>

	7th JD	8th JD	9th JD	10th JD- Nassau	10th JD- Suffolk	11th JD	13th JD
<b><u>Disposition Information</u></b>							
<b>Total Cases Closed</b>	<b>41</b>	<b>51</b>	<b>52</b>	<b>170</b>	<b>149</b>	<b>44</b>	<b>10</b>
Average Weeks from Intake to Disposition	16.80	19.42	22.30	18.85	16.94	13.69	31.34
<b>Total Cases Arbitrated</b>	<b>18</b>	<b>34</b>	<b>28</b>	<b>91</b>	<b>98</b>	<b>31</b>	<b>4</b>
Cases Arbitrated with Awards Issued	12	25	19	60	74	23	4
Cases Settled During Arbitration	4	9	6	20	19	8	0
Arbitration Held with No Award Issued	2	0	3	11	5	0	0
Cases Arbitrated by One Arbitrator	11	26	14	44	71	20	1
Cases Arbitrated by Three Arbitrators	7	8	14	47	27	11	3
<b>Total Cases Resolved Outside Of Arbitration</b>	<b>19</b>	<b>3</b>	<b>6</b>	<b>32</b>	<b>29</b>	<b>3</b>	<b>0</b>
Total Number of Settled Cases	18	1	6	32	29	3	0
Settlements Prior to Arbitration	14	1	6	31	29	3	0
Settlements Prior to Mediation	4	0	0	1	0	0	0
Total Number of Mediated Cases	1	2	0	0	0	0	0
Cases Meditated to Agreement	1	2	0	0	0	0	0
Cases Meditated with No Agreement	0	0	0	0	0	0	0
<b>Total Cases Withdrawn and Dismissed for Lack of Jurisdiction</b>	<b>4</b>	<b>14</b>	<b>17</b>	<b>33</b>	<b>19</b>	<b>10</b>	<b>6</b>
Cases Withdrawn	1	1	4	1	4	0	1
Cases Dismissed for Lack of Jurisdiction	3	13	13	32	15	10	5
<b><u>Financial Information</u></b>							
Total Admin. Fees Collected From Parties	<b>\$4,500.00</b>	<b>\$8,340.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$15,000.00</b>	<b>\$0.00</b>	<b>\$800.00</b>
Average Amount in Dispute	<b>\$4,104.19</b>	<b>\$18,311.46</b>	<b>\$15,134.21</b>	<b>\$16,365.23</b>	<b>\$12,457.81</b>	<b>\$11,260.43</b>	<b>\$22,950.54</b>



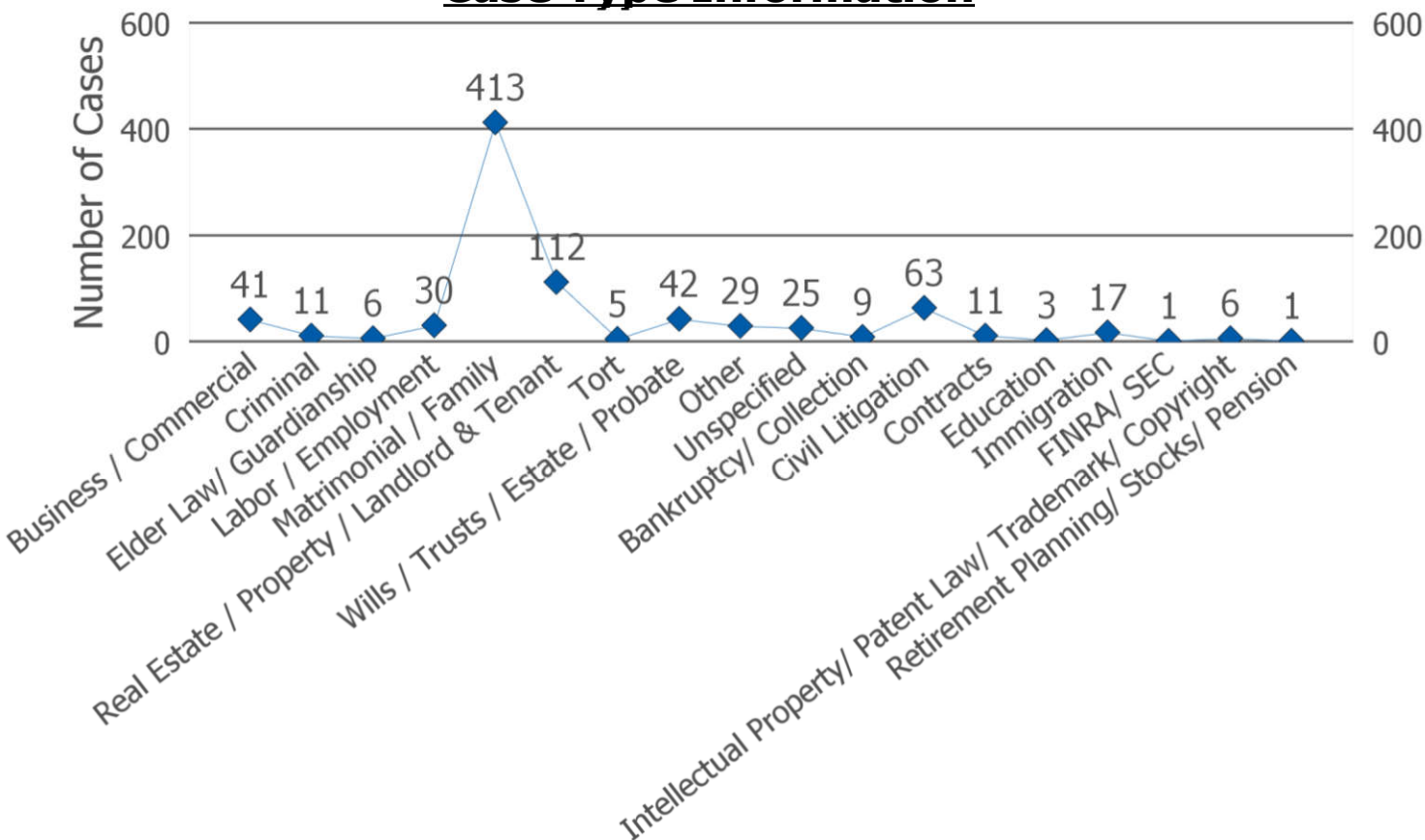
## Quarterly Activity Report: 2018

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Cases Closed	200	213	201	211	<b>825</b>
Average Number of Weeks from Intake to Disposition	20.9	24.1	25.9	22.3	<b>23.3</b>
<u>Cases Arbitrated or Settled During Arbitration</u>					
Cases Assigned to One Arbitrator	60	81	66	66	<b>273</b>
Cases Assigned to Three Arbitrators	35	47	51	59	<b>192</b>
Total Admin. Fees Collected from Parties	\$12,975.00	\$17,130.00	\$27,300.00	\$20,435.00	<b>\$77,840.00</b>
Average Amount in Dispute (All Cases)	\$15,323.70	\$13,583.11	\$18,183.37	\$25,108.11	<b>\$18,073.47</b>

## Filing Parties

Attorney	Client	Not Reported
94	689	28

## Case Type Information



**Disposition Information**

	<u>Number of Cases</u>
Arbitrated - Award Issued	350
Arbitrated - No Award Issued	31
Mediated - Settlement Reached	30
Mediated - No Settlement Reached	0
Settled During Arbitration	84
Settled Prior to Arbitration or Mediation	127
Claim Withdrawn	18
Lack of Jurisdiction	157
Informational	0
Dismissed - No Activity for More than Two Years	0
Others	23
<b>Total</b>	<b>825</b>

**Cases Dismissed for Lack of Jurisdiction**

	Number of Cases
	<hr/>
Amount in Dispute > \$50,000	14
Amount in Dispute < \$1,000	7
Services Provided Outside Local Program Geographic Region	22
Referred to Grievance Committee for Noncompliance with Part 137	0
Referred to Grievance Committee for Apparent Attorney Misconduct	1
Substantial Legal Question	14
Commenced Prior to January 1, 2002	0
Representation in a Criminal Matter	8
Allegations of Malpractice	8
Allegations of Attorney Misconduct	4
Damages or Affirmative Relief other than Adjustment of the Fee	5
Fee Determined by Statute, Rule, Court Order	16
No Attorneys Services for More than Two Years	14
Request for Arbitration Made by Non-Client or Legal Representative of the Client	5
Client Filed Late	4
Attorney Admitted in Another Jurisdiction and No NY Office or No Material Portion of Services Rendered in NY	0
Other	35