

2023

United States District Court Eastern District of New York

ALTERNATIVE DISPUTE RESOLUTION REPORT
JANUARY 1, 2023– DECEMBER 31, 2023

DANIELLE SHALOV, ADR ADMINISTRATOR
HON. ROBERT M. LEVY, USMJ, ADR OVERSIGHT JUDGE
BRENNAN B. MAHONEY, CLERK OF COURT

EDNY ADR DEPARTMENT | 225 CADMAN PLAZA EAST BROOKLYN, NY 11201

PROGRAM OVERVIEW

The Eastern District of New York (EDNY) is a trial-level federal court that serves Kings, Queens, Richmond, Nassau and Suffolk Counties, with courthouses located in Brooklyn and Central Islip. The EDNY Alternative Dispute Resolution (ADR) Department administers mediation and arbitration services for civil cases filed in the EDNY. The ADR Department is overseen by the ADR Oversight Judge and the ADR Administrator, as well as Arbitration Clerk, Rita Credle, and ADR Clerk, Julissa Rey.

MEDIATION PROGRAM

PANEL MEDIATORS

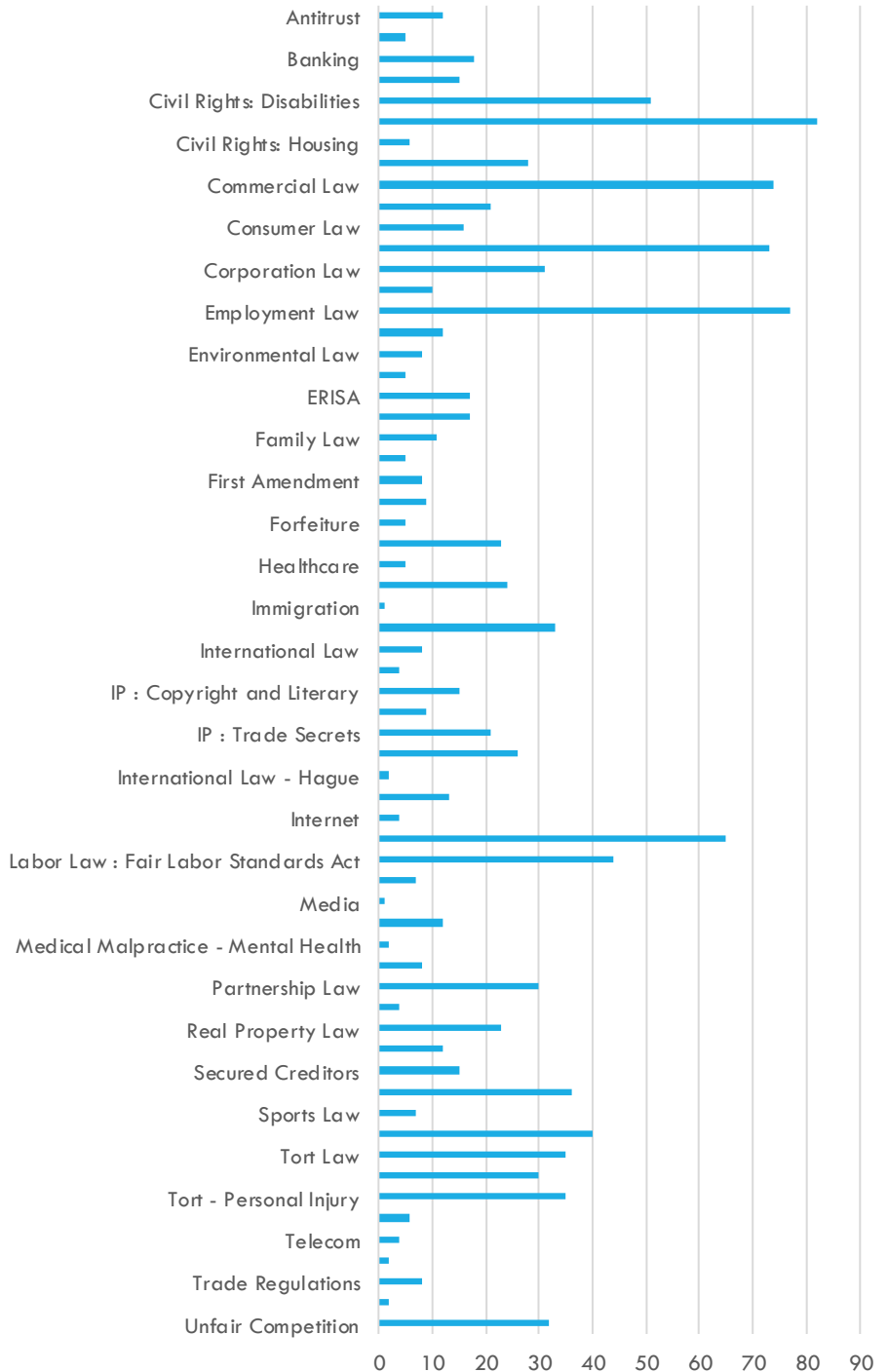
There are 167 mediators on the EDNY Mediation Panel. EDNY litigants may review biographies for EDNY Mediation Panel members on the EDNY ADR Website at: <https://www.nyed.uscourts.gov/adr/>

The accompanying chart (right) illustrates the number of EDNY panel mediators qualified in each area of expertise. From January 1, 2023, through December 31, 2023, 119 mediators were selected to mediate 714 cases. Not all of these cases held an initial mediation session.

Of the 167 mediators on the EDNY panel, 71% were selected to mediate at least one case. Four percent (4%) of cases referred to the program were mediated by private mediators not listed on the EDNY Panel.

The most frequently utilized EDNY mediator conducted 70 mediations.

Panel Member Areas of Expertise

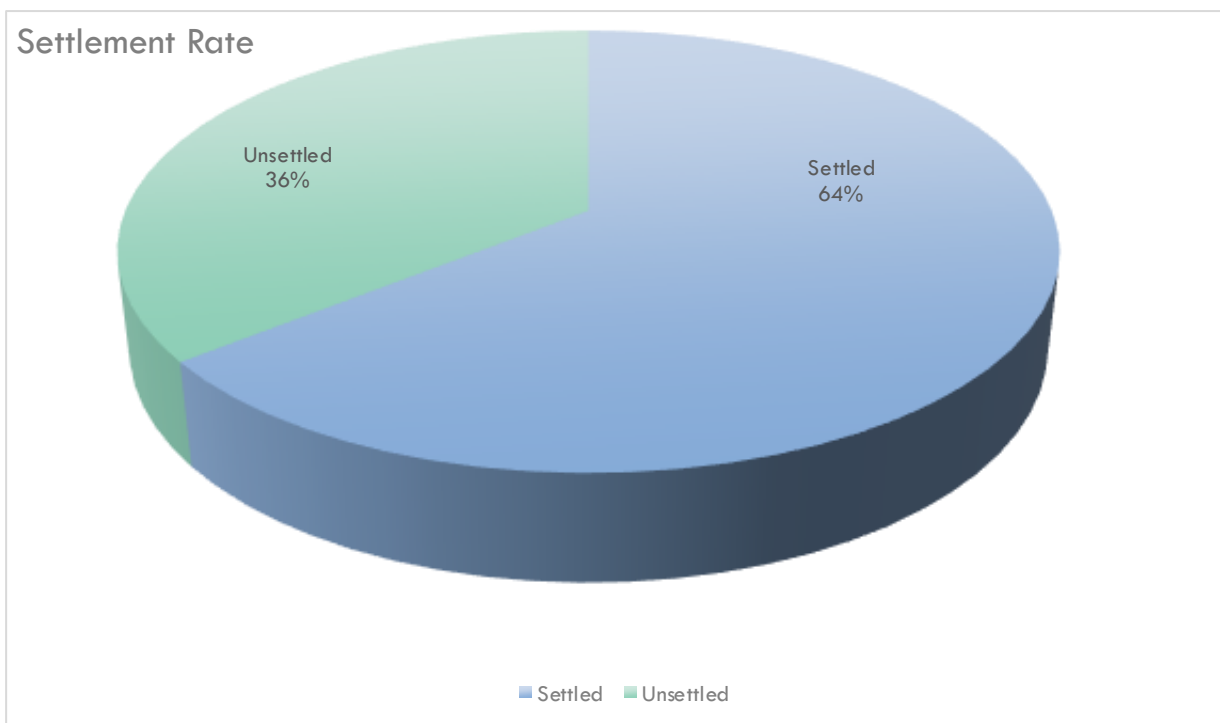


MEDIATION CASE REFERRALS

From January 1, 2023, through December 31, 2023, 868 cases were referred to the mediation program. 77% of mediation referrals were from the Brooklyn courthouse, and 23% were from the Central Islip courthouse. 89% of cases were referred to mediation by Magistrate Judges, and 11% were referred by District Judges. Mediation referrals increased by 10% compared to the same reporting period last year.

MEDIATION CASE STATUS AND SETTLEMENT RATES

Of the 868 cases referred to the mediation program, nine percent (9%) settled before an initial mediation session was held. At least one mediation session was held in 78% of all cases referred. 64% of cases were settled as a result of a mediation referral.



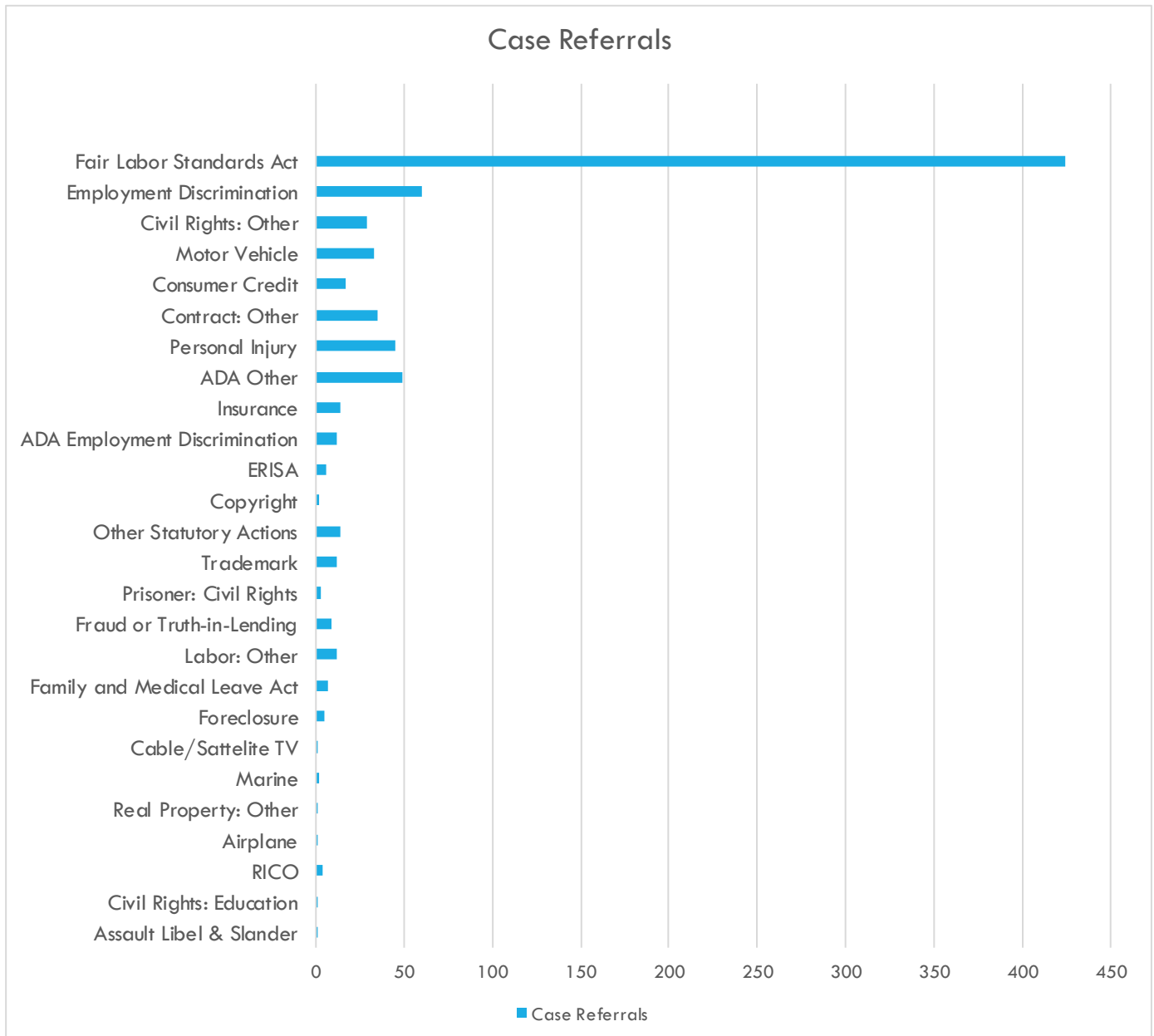
*This settlement rate includes matters that were resolved at the completion of a mediation session, as well as matters that resolved after a referral to the mediation program but prior to a formal mediation session. Some of the matters that resolved prior to a mediation session were resolved with mediator assistance and others were resolved through direct negotiation by the parties.

LOCATION OF MEDIATION

The location of a mediation session was recorded in 65% of cases where at least one mediation session was held. 96% of recorded cases were conducted remotely.

MEDIATION REFERRAL BY CAUSE OF ACTION

The following chart outlines the referrals to the mediation program by cause of action.



Cases filed under the Fair Labor Standards Act (FLSA) constitute about eight percent (8%) of the total civil filings in the Eastern District. In 2023, 768 FLSA cases were filed in the EDNY and 59% of those cases were referred to mediation. FLSA referrals made up 52% of the mediation referrals in 2023.

454 cases referred to the mediation program were cases arising under the FLSA. 65% of the FLSA matters referred to mediation during the period of this report were resolved prior to or as a result of a mediation session. These cases were mediated by members of the EDNY's specialized FLSA Mediation Panel.

Employment discrimination cases are the second most common type of case referred to the EDNY mediation program. During the period of this report, 60 cases referred to the mediation program were employment discrimination matters. From January 1, 2023, through December 31, 2023, 63% of employment discrimination matters referred to mediation were resolved prior to or as a result of a mediation session.

MEDIATION SETTLEMENT RATES BY CAUSE OF ACTION

Cause of Action (Nature of Suit Code)	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
Contract Actions							
110	Insurance	50%	5	5	3	1	14
120	Contract: Marine	N/A	0	0	1	0	1
140	Negotiable Instrument	0%	0	1	0	0	1
150	Contract: Recovery/Enforcement	0%	0	1	1	0	2
160	Stockholders Suits	N/A	0	0	0	1	1
190	Contract: Other	58%	15	11	5	4	35
196	Contract: Franchise	0%	0	1	0	0	1
Real Property Actions							
220	Real Property: Foreclosure	0%	0	4	1	0	5
230	Rent Lease & Ejectment	100%	2	0	0	0	2
290	Real Property: Other	0%	0	1	0	0	1
Tort Actions							
310	Airplane	100%	1	0	0	0	1
320	Assault Libel & Slander	N/A	0	0	0	1	1
330	Federal Employers' Liability	50%	1	1	6	0	8
340	Marine	N/A	0	0	2	0	2
350	Motor Vehicle	47%	9	10	12	2	33
355	Motor Vehicle Product Liability	100%	1	0	0	0	1
360	Personal Injury	57%	12	9	14	1	36
362	Personal Injury: Med Mal	100%	2	0	2	0	4
365	Personal Injury: Product Liability	33%	1	2	2	0	5
Personal Property							
370	Truth in Lending	25%	2	6	1	0	9

380	Product Liability Other	60%	3	2	0	0	5
385	Prop. Damage Product Liability	N/A	0	0	1	0	1
Civil Rights							
430	Banks and Banking	100%	1	0	0	0	1
440	Other Civil Rights (including 1983)	52%	13	12	3	1	29
442	Employment	63%	31	18	9	2	60
443	Housing/ Accommodations	100%	3	0	0	0	3
445	Civil Rights: ADA Employment	58%	7	5	0	0	12
446	Americans with Disabilities: Other	77%	20	6	21	2	49
448	Education	0%	0	1	0	0	1
550	Prisoner: Civil Rights	50%	1	1	1	0	3
Labor & Emp.							
710	FLSA	65%	249	137	58	12	454
720	Labor: Labor/Mgt. Relations	0%	0	1	0	0	1
751	FMLA	83%	5	1	1	0	7
790	Other Labor Litigation	44%	4	5	2	1	12
791	E.R.I.S.A.	50%	2	2	2	0	6
Intellectual Property							
820	Copyright	100%	1	0	1	0	2
830	Patent	0%	0	2	0	0	2
840	Trademark	36%	4	7	1	0	12
RICO							
470	RICO	0%	0	2	2	0	4
Consumer Credit							
480	Consumer Credit	54%	7	6	4	0	17
Other Stat. Actions							
485	Telephone Consumer Protection Act	50%	1	1	2	0	4
490	Cable/Satellite TV	N/A	0	0	1	0	1

880	Defend Trade Secrets Act	100%	2	0	0	0	2
890	Other Statutory Actions	38%	3	8	2	1	14
891	Agricultural Acts	0%	0	2	0	0	2
893	Environmental Matters	0%	0	1	0	0	1
	Totals		408	270	161	29	868

PARTICIPANT EVALUATION OF EDNY MEDIATORS

The ADR Department requests that all counsel submit a post-mediation evaluation to assess each mediator’s performance. From January 1, 2023, through December 31, 2023, the EDNY ADR Department received 495 evaluations.

A review of the post-mediation evaluations revealed the following data:

- 75% of respondents indicated that the mediation session had been helpful.
- 95% of respondents indicated that they would recommend their mediator to other litigants (an increase from the previously reported year).
- 96% of respondents indicated that their mediator was prepared (an increase from the previously reported year).
- 85% of respondents indicated that the mediator was able to help the parties engage in a meaningful discussion of the case (an increase from the previously reported year)
- 96% of respondents indicated satisfaction with the mediator’s knowledge of the law (an increase from the previously reported year).

Overall, the responses to the post-mediation evaluations indicate satisfaction with EDNY mediators’ skills, legal knowledge, and ability to facilitate meaningful discussion.

MEDIATION ADVOCACY PROGRAM AND PRO BONO MEDIATION

The EDNY ADR Department administers the court’s Mediation Advocacy Program (MAP) which seeks pro bono counsel and pro bono mediators for pro se litigants in employment discrimination cases and matters arising under Section 1983. As of the publication of this report, there are 83 attorneys approved by the court to provide limited scope pro bono legal representation for pro se litigants in employment discrimination mediations.

Between January 1, 2023, and December 31, 2023, nine (9) cases were referred to MAP and eight (8) pro se litigants were matched with limited scope counsel for the purpose of mediation.

All MAP cases that proceeded to mediation were provided with pro bono mediation services. 56% of the cases referred to MAP resolved. The following MAP Advocates provided their services pro bono during this period:

William Bell, Elizabeth Dolan, Erin Gleason-Alvarez (The Elisabeth Haub School of Law), Leslie Salzman (The Benjamin N. Cardozo School of Law).

PRO BONO MEDIATION

Under EDNY Local Civil Rule 83.8 each EDNY mediator is required to conduct two pro bono mediations annually to remain on the EDNY Mediation Panel. During the period of this report, fourteen (14) cases were referred to the program for pro bono mediation services. This includes cases that were referred to the Mediation Advocacy Program, as well as cases where a fee waiver was granted to one or both parties by the court. 50% of the cases referred to mediation with a fee waiver resolved.

During the period from January 1, 2023, through December 31, 2023, the following EDNY Mediation Panel members provided their mediation services pro bono:

James Brown, Joseph DiBenedetto, Alan Gettner, Hon. Steven M. Gold (Ret.), Noah Hanft, Jacqueline James, Michael Kreitman, Davida Perry, Hon. Viktor Pohorelsky (Ret.), and Michael Starr.

MEDIATION PANEL ADMISSIONS

In 2023, the following individuals were competitively selected for admission to the EDNY Mediation Panel: Michael Davies, Pierre d'Esclapon, Karen Fernbach, Myrna Barakat Friedman, Jillian Menna, Donald Rose, and Richard Rosen.

EDNY ARBITRATION PROGRAM

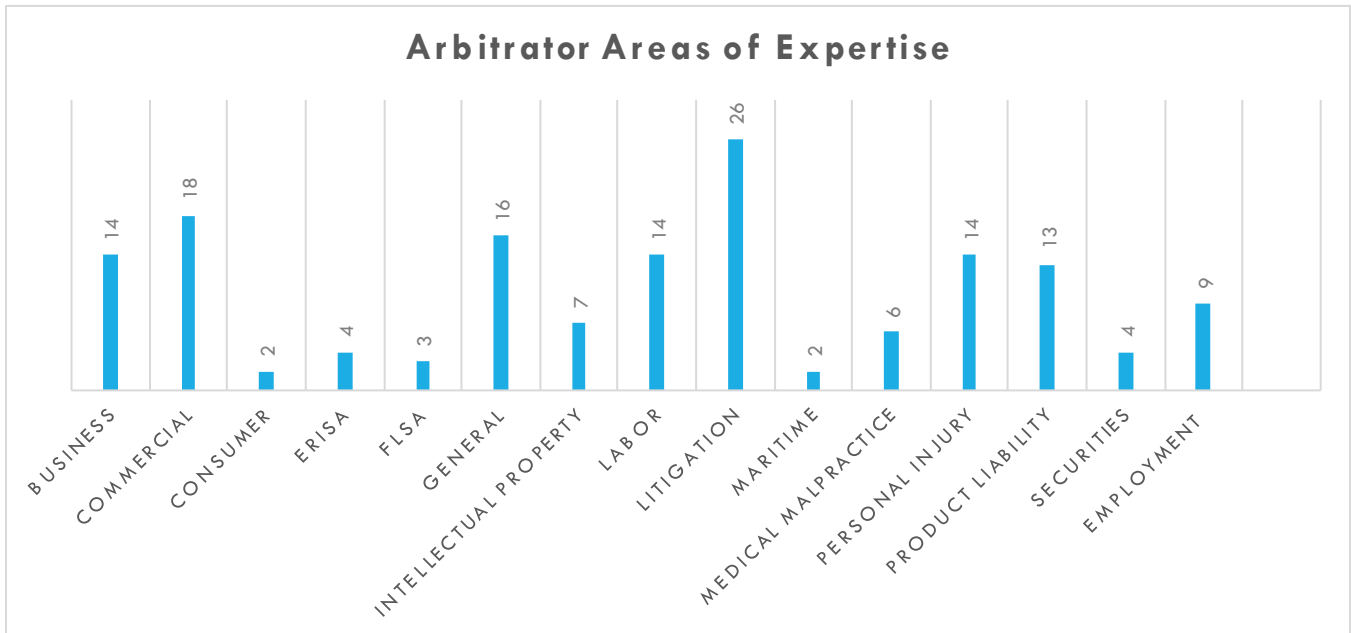
Compulsory arbitration is authorized under EDNY Local Civil Rule 83.7 for cases where money damages do not exceed \$150,000.00 (excluding social security cases, tax matters, prisoner civil rights cases and any action based on an alleged violation of a right secured by the United States Constitution or if jurisdiction is based in whole or in part on Title 28, U.S.C. § 1343). Upon issuance of an arbitration award, there is a thirty-day period during which parties may request a trial de novo.

ARBITRATION PANEL

There are 66 arbitrators on the EDNY Arbitration Panel. EDNY litigants may search for and review biographies for EDNY Arbitration Panel members on the EDNY ADR website at:

<https://www.nyed.uscourts.gov/adr/>

During the period from January 1, 2023, through December 31, 2023, twenty-six (26) arbitration hearings were scheduled, and two (2) hearings were conducted.



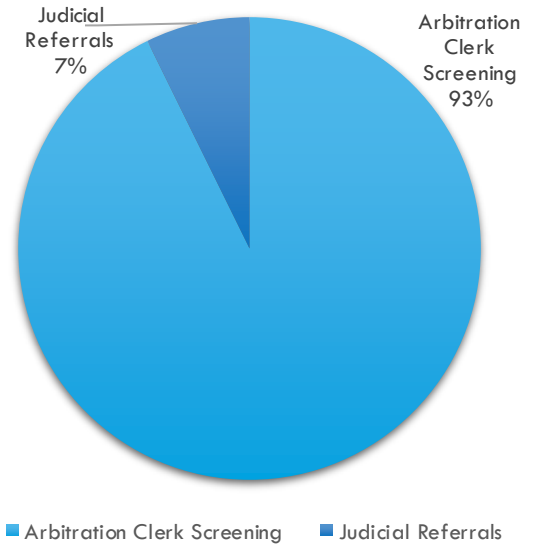
ARBITRATION CASE REFERRAL SOURCES

In accordance with Local Civil Rule 83.7(d), the EDNY Arbitration Clerk designates all civil cases for compulsory arbitration (excluding social security cases, tax matters, prisoners' civil rights cases and any action based on an alleged violation of a right secured by the Constitution of the United States or where jurisdiction is based in whole or in part on Title 28, U.S.C. § 1343), wherein money damages being sought do not exceed \$150,000.00, exclusive of interest and costs.

105 cases were referred to the EDNY court-annexed arbitration program between January 1, 2023, and December 31, 2023. 68% of arbitration referrals were from the Brooklyn courthouse, and 32% were from the Central Islip courthouse.

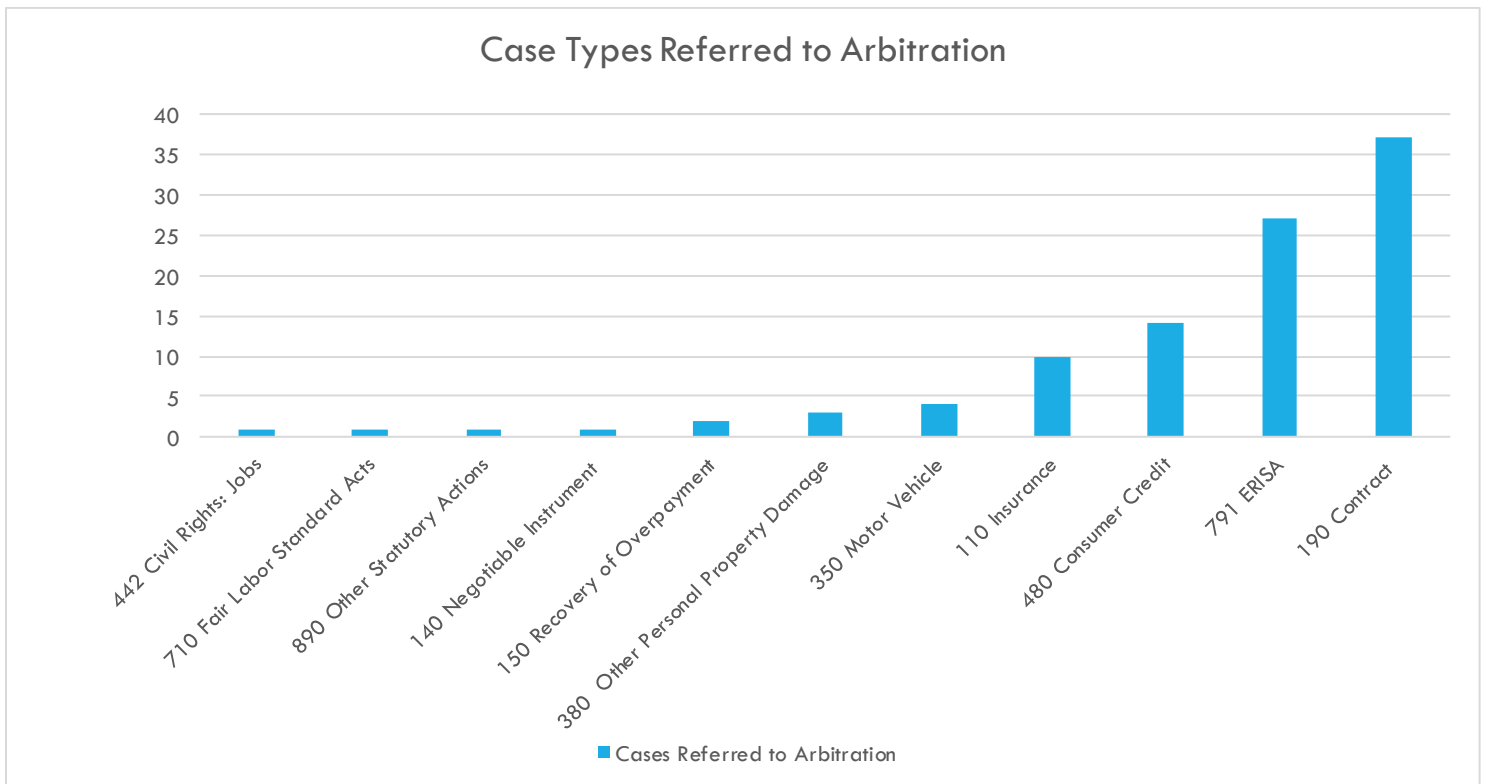
96% of the referrals into the arbitration program were made by the EDNY Arbitration Clerk, who screens each civil case filed in the EDNY for eligibility for the arbitration program. The remaining four percent (4%) of arbitration referrals were issued by the assigned District Judge or Magistrate Judge on a case-by-case basis.

Arbitration Referral Source



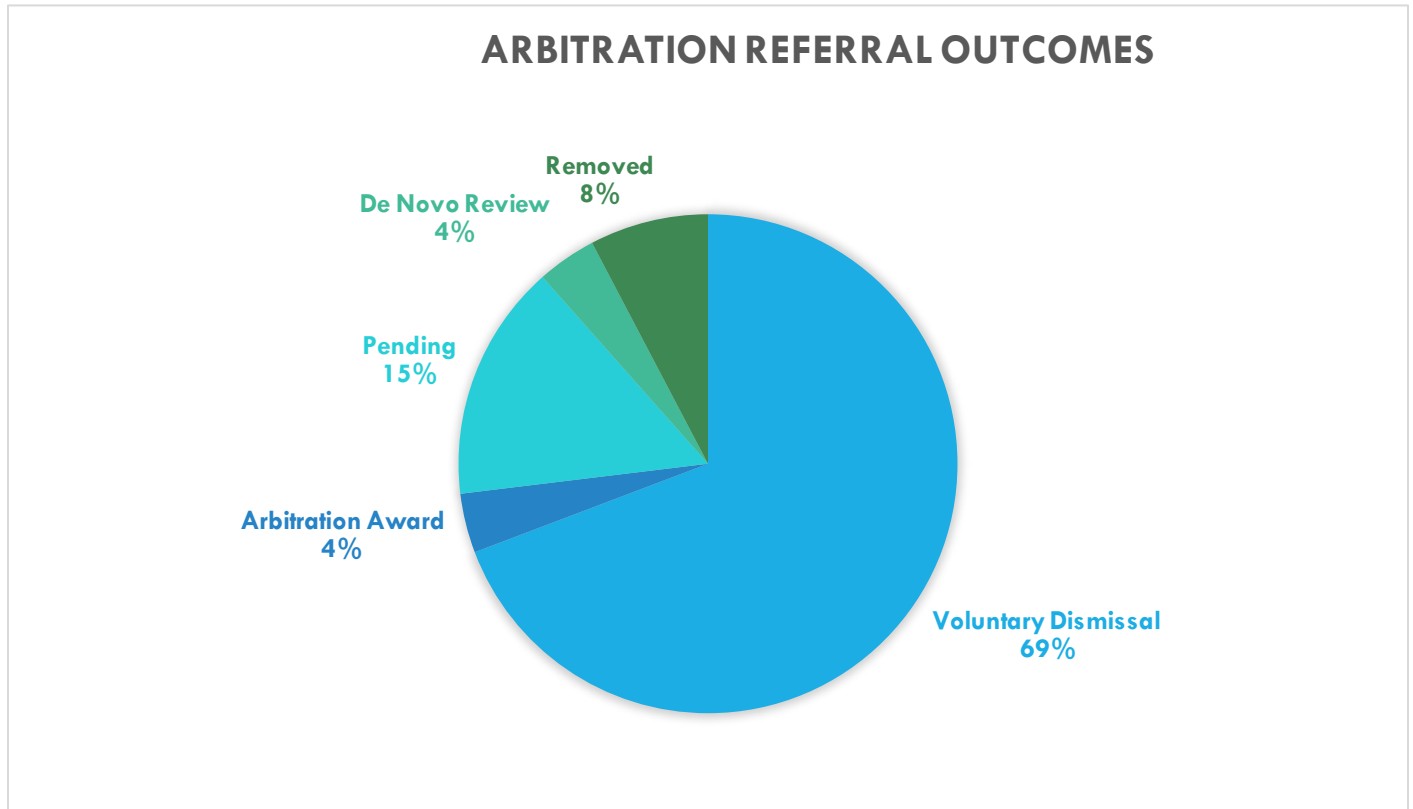
ARBITRATION REFERRALS BY CAUSE OF ACTION

The following chart illustrates the types of cases referred to the EDNY Arbitration Program. Contract, ERISA, and Consumer Credit cases were the most frequent referral, followed by insurance, motor vehicle, and personal property matters.



ARBITRATION OUTCOMES AND CASE STATUS

A referral to the court-annexed arbitration program is effective in encouraging parties to reach early resolution. Of the cases referred to the program where an arbitration hearing was scheduled, 69% were voluntarily dismissed prior to the administration of the arbitration hearing. As of the publication of this report, an arbitration award was issued in two (2) cases, and de novo review was requested in one (1) of those matters. Eight percent of cases (8%) were scheduled but later removed from the program. The outcomes in 15% of scheduled arbitrations are still pending.



ARBITRATION PANEL ADMISSIONS

In 2023, the following individuals were selected for admission to the EDNY Arbitration Panel: Sara Kula, Eoin Ó Muimhneacháin, and Donald Rose.

ADR PROGRAM OUTREACH, TRAINING, AND EVENTS

ADR Department staff planned, participated in, and attended several programs and training events. These outreach efforts include presentations to the legal community, the dispute resolution community, and the EDNY judiciary to raise awareness about EDNY ADR Department programs and initiatives.

- January 1, 2023 Law Clerk Orientation (Central Islip, NY)
- February 8, 2023 Law Clerk Orientation (Brooklyn, NY)
- February 13, 2023 Presentation to Touro Law Students (remote)
- February 15, 2023 Presentation to NYC Bar ADR Committee (remote)

March 3, 2023 Presentation to Brooklyn Law School’s Federal Judicial Externship Seminar (Brooklyn, NY)

March 17, 2023 Court of Claims Basic Mediation Training Guest Trainer (remote)

March 21, 2023 Touro Law School Presentation “Mediation in New York State and Federal Court” (Central Islip, NY)

May 6, 2023 COMFED/DRS Annual Meeting Panel Discussion “ADR in the Courts” (Philadelphia, PA)

May 10, 2023 ABA Dispute Resolution Conference, Presenter “Eligibility and Maintenance of a Court ADR Roster” (Las Vegas, NV)

May 16, 2023 EDNY ADR Pro Se Clinic Presentation in Partnership with the City Bar Justice Center’s Federal Pro Se Litigation Assistance Project (remote)

May 18, 2023 “What Lawyers Want in Mediation” CLE presentation in partnership with NYSdra (remote)

July 19, 2023 NYSBA Commercial Arbitration Training, Panel Member (New York, NY)

July 21-23, 2023 FJC Circuit Mediators Conference (Boston, MA)

June 27, 2023 “ADR at the EDNY” Presentation to Bulgarian judges, lawyers, administrators, and neutrals in advance of the launch of mandatory mediation in Bulgaria (remote)

September 22, 2023 Presentation to Court Attorney Referees at the Judicial Institute (White Plains, NY)

October 17, 2023 30th Anniversary of ADR at the EDNY (Brooklyn, NY)

Oct 25, 2023 NYSdra Conference Presenter “Court Rosters” (remote)

October 30, 2023 Brooklyn Law Clerk Orientation (Brooklyn, NY)

November 1, 2023 EDNY ADR Pro Se Clinic Presentation in Partnership with the City Bar Justice Center’s Federal Pro Se Litigation Assistance Project (remote)

November 9, 2023 “Practical Skills for Working with Pro Se Parties” in Partnership with the City Bar Justice Center’s Federal Pro Se Litigation Assistance Project (remote)

December 4, 2023 Facilitator ACR-GNY’s “Employment and Commercial Law Practice Group” (remote)

December 5, 2023 Speaker at the Women in Dispute Resolution (WIDR) Committee of the ABA Dispute Resolution Section “Practice Building Lunch” (remote)

EDNY ADR ADVISORY COUNCIL

Formed in 2017, the EDNY ADR Advisory Council is comprised of members of the EDNY mediation and arbitration panels. The Council assists the ADR Administrator with panel admissions, the development of ethics guidelines and training for EDNY panelists, designing and implementing diversity, equity, and inclusion initiatives, and envisioning the future of the ADR Department. EDNY ADR Advisory Council Members serve a two-year term and attend six meetings annually.

Members of the 2023 EDNY Advisory Council include:

Howard Adelsberg (2022-2024)
David Berger (2022-24)
Felicia Farber (2021-2023)
Robin Gise (2022-24)
Noah Hanft (2022-2024)
Andrew Kimler (2011-23)
Nancy Kramer (2022-2024)
Sara Kula (2021-2023)
Michael Levy (2022-2024)
Jennifer Lupo (2021-2023)

Patrick “Mike” McKenna (2021-2023)
Elena Paraskevas-Thadani (2022-24)
Paul Radvany (2022-24)
Royce Russell (2022-24)
Vivien B. Shelanski (2022-24)
Martin Siegel (2022-24)
Evan Spelfogel (2022-2024)
Debra Wabnik (2022-2024)
Giulio Zanolla (2021-23)