

2019

United States District Court Eastern District of New York

ALTERNATIVE DISPUTE RESOLUTION REPORT JANUARY 1, 2019 – DECEMBER 31, 2019

ROBYN WEINSTEIN, ADR ADMINISTRATOR
HON. ROBERT M. LEVY, USMJ, ADR OVERSIGHT JUDGE
DOUGLAS C. PALMER, 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, Tina Priftakis.

MEDIATION PROGRAM

PANEL MEDIATORS

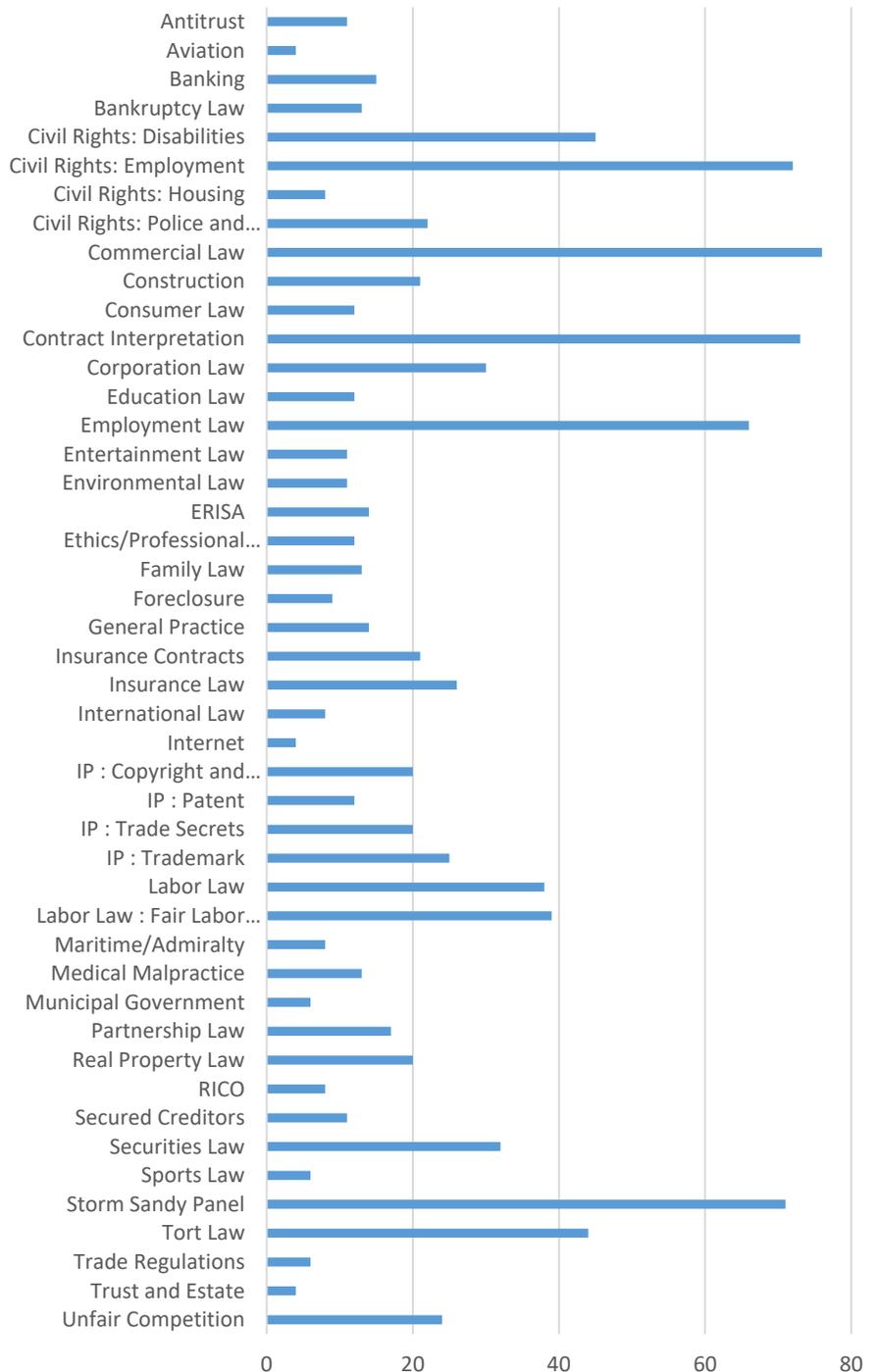
There are 156 mediators on the EDNY Mediation Panel. EDNY litigants may review biographies for EDNY Mediation Panel members on the EDNY ADR Website at: <https://www.nyed.uscourts.gov/adr/Mediation/displayAll.cfm>

The accompanying chart (right) illustrates the number of EDNY panel mediators qualified in each area of expertise. From January 1, 2019 through December 31, 2019, 124 mediators were selected to mediate 594 cases.

Of the 156 mediators on the EDNY panel, 66% were selected to mediate a case. Four percent (4%) of cases referred to the program were mediated by mediators not listed on the EDNY Panel.

The most frequently utilized mediator conducted 44 mediations.

Panel Member Areas of Expertise



MEDIATION CASE REFERRALS

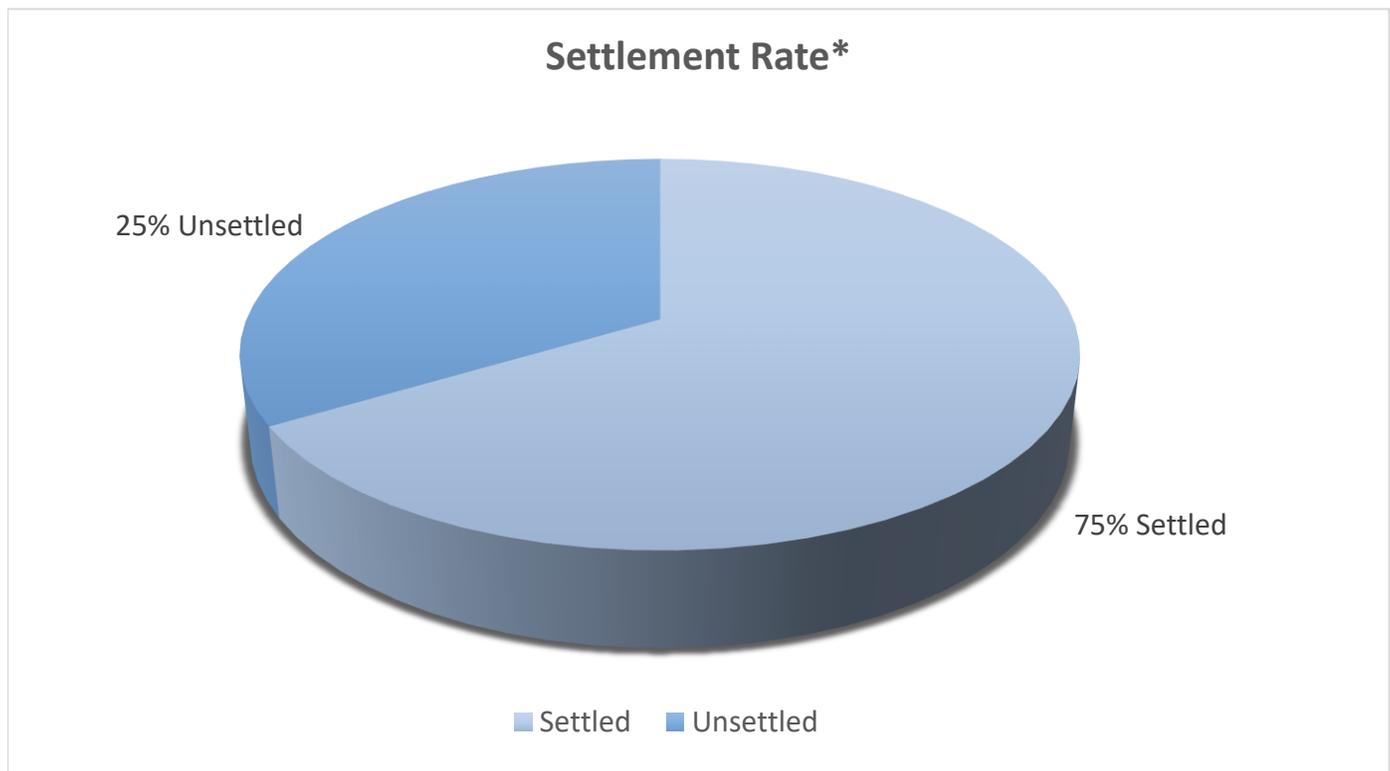
From January 1, 2019 through December 31, 2019, 689 cases were referred to the mediation program. Cases are referred to the mediation program from both the Brooklyn and Central Islip Courthouses. Of the cases referred to mediation, 75% were from the Brooklyn Courthouse, and 25% were referred from the Central Islip Courthouse.

MEDIATION SETTLEMENT RATES AND CASE STATUS

Eighty-seven percent (87%) of cases referred to the EDNY mediation program were referred by Magistrate Judges. District Judges were responsible for 13% of mediation referrals.

Seventy-five percent (75%) of all cases referred to the mediation program were settled. Of those cases referred to the mediation program, a mediation session was completed in 484 cases.

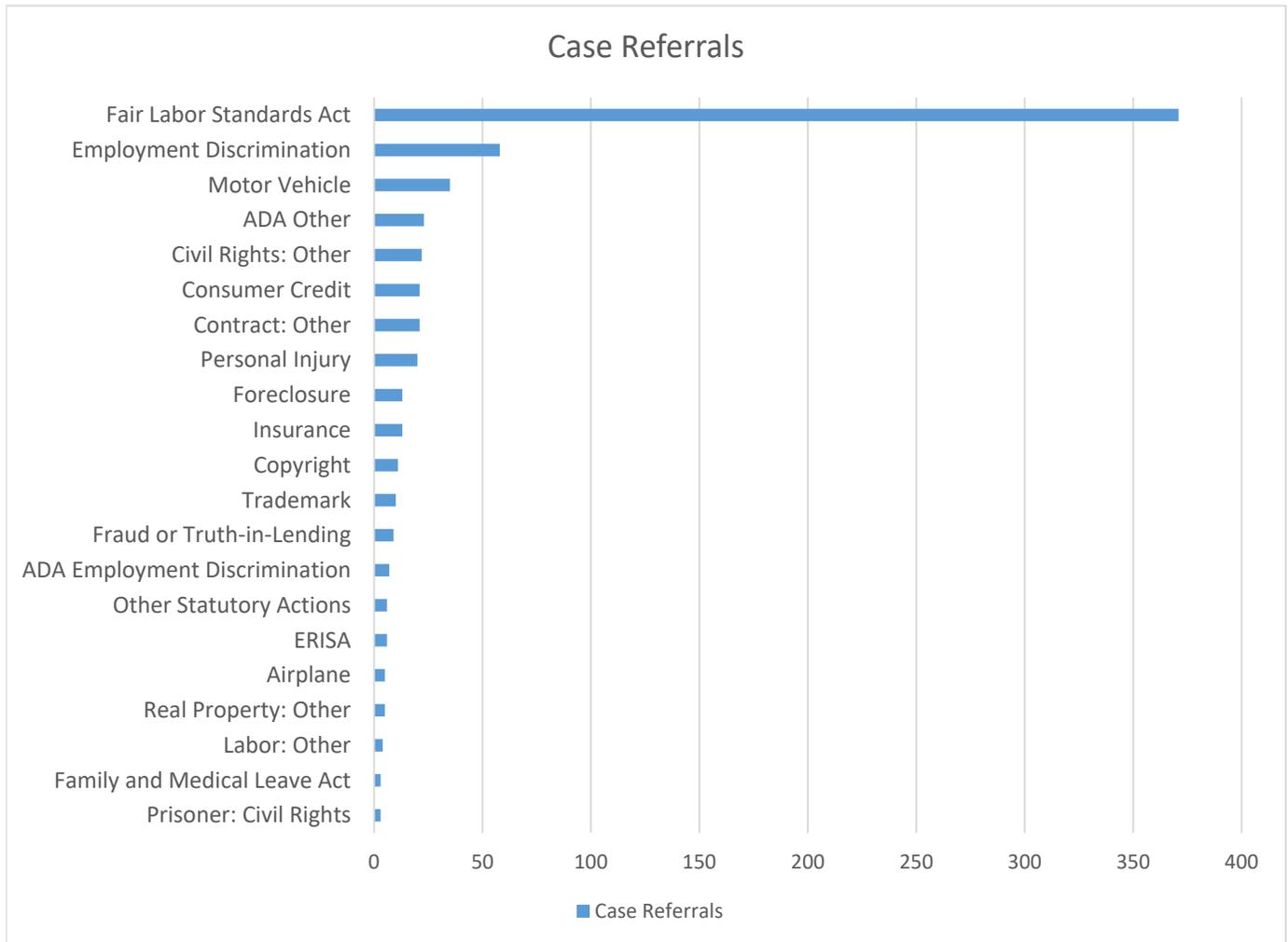
Mediation referrals increased by 37% in comparison to the same reporting period last year.



*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.

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 10% of the total civil filings in the District, and 53% of the mediation referrals. Three hundred and seventy-one (371) cases referred to the mediation program were cases arising under the FLSA. Sixty-six percent (66%) 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 specially trained FLSA Mediation Panel.

Employment discrimination cases are the second most common case-type referred to the EDNY mediation program. During the period of this report, 58 cases referred to the mediation program were employment discrimination matters. From January 1, 2019 through December 31, 2019, 65% 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	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
Contract Actions							
	Contract: Other	57%	8	6	3	4	21
	Contract: Franchise	100%	1	0	0	0	1
	Insurance	55%	5	4	1	3	13
	Marine	100%	3	0	0	1	4
Real Property Actions							
	Real Property: Other	0%	0	3	2	0	5
	Real Property: Foreclosure	58%	7	5	1	0	13
Tort Actions							
	Airplane	66%	2	1	2	0	5
	Motor Vehicles	71%	15	6	8	6	35
	Personal Injury	61%	8	5	6	1	20
	Personal Injury – Medical Malpractice	0%	0	1	0	1	2
	Assault Libel & Slander	100%	1	0	0	0	1
	Personal Injury: Health Care/Pharmaceutical Personal Injury Product Liability	0%	0	0	1	0	1
Personal Property							
	Truth in Lending	66%	4	2	1	2	9
	False Claims Act	100%	1	0	0	0	1
	Personal Property: Other	0%	0	1	0	0	1
Civil Rights							
	Americans with Disabilities: Employment	60%	3	2	1	1	7
	Americans with Disabilities: Other	60%	6	4	12	1	23
	Civil Rights: Accommodations	0%	0	1	0	1	2

Cause of Action	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
Civil Rights Cont'd	Education	100%	1	0	0	0	1
	Employment	63%	29	17	10	2	58
	Prisoner: Civil Rights	100%	3	0	0	0	3
	Other Civil Rights	57%	8	6	5	3	22
Labor Laws							
	E.R.I.S.A.	75%	3	1	0	2	6
	Fair Labor Standards Act	60%	152	98	81	40	371
	Family and Medical Leave Act	100%	2	0	1	0	3
	Labor/Management Relations	100%	1	0	0	0	1
	Other Labor Litigation	100%	3	0	1	0	4
Intellectual Property							
	Copyright	100%	3	0	8	0	11
	Patent	100%	2	0	0	0	2
	Trademark	37%	3	5	1	1	10
RICO							
	RICO	0%	0	1	0	0	1
Securities							
	Securities and Commodities	0%	0	1	0	0	1
Consumer Credit							
	Consumer Credit	77%	7	2	10	2	21
Other Statutory Actions							
	Agricultural Acts	0%	0	0	1	0	1
	Environmental Matters	0%	0	0	1	0	1
	Cable/Satellite TV	0%	0	0	1	0	1
	Other Statutory Actions	40%	2	3	0	1	6
	Taxes	0%	0	0	0	1	1
						Total	689

PARTICIPANT EVALUATION OF EDNY MEDIATORS

The ADR Department requests that all counsel submit a post-mediation evaluation in order to assess each mediator's performance. From January 1, 2019 through December 31, 2019 the EDNY ADR Department received 453 evaluations.

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

- 81% of respondents indicated that the mediation session had been helpful.
- 90% of respondents indicated that they would recommend their mediator to other litigants.
- 94% of respondents indicated that their mediator was prepared.
- 81% of respondents indicated that the mediator was able to help the parties engage in a meaningful discussion of the case.
- 93% of respondents indicated satisfaction with the mediator's knowledge of the law.

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. As of the publication of this report, there are 75 attorneys approved by the court to provide limited scope pro bono legal representation for pro se litigants in employment discrimination mediations.

Between January 1, 2019 and December 31, 2019, 22 cases were referred to MAP and 20 pro se litigants were matched with limited scope counsel for the purpose of mediation.

In addition to placing pro se employment discrimination matters, the ADR Department matched three pro se plaintiffs in section 1983 matters, one pro se defendant in an FLSA matter and one pro se plaintiff in a labor matter with limited scope pro bono counsel.

All MAP cases that proceeded to mediation were provided with pro bono mediation services. Sixty-six percent (66%) of the employment discrimination cases referred to MAP resolved. Seventy-five (75%) percent of the non-employment discrimination cases referred to MAP resolved. The overall resolution rate for cases referred to MAP is 72%.

The EDNY ADR Department conducts bi-annual mediation advocacy trainings in order to recruit attorneys to participate as advocates in the EDNY MAP. On September 19, 2019 the EDNY ADR Department conducted a Mediation Advocacy Training at the EDNY Brooklyn Courthouse with sixty (60) attorneys in attendance. On September 20, 2019 the EDNY ADR Department conducted a second Mediation Advocacy Training at the EDNY Central Islip Courthouse at which twenty-four (24) attorneys were trained.

PRO BONO MEDIATION

Under EDNY Local Civil Rule 83.8 each EDNY mediator is required to conduct two pro bono mediations annually in order to remain on the EDNY Mediation Panel. During the period of this report, thirty (30) 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.

During the period from January 1, 2019 through December 31, 2019, the following EDNY Mediation Panel members provided their mediation services pro bono: Adam Halper, Barry J. Peek, Chaim B. Book, David J. Reilly, Deborah Reik, Dina R. Jansenson, Felicia Farber, Henry L. Saurborn, Jr., Hon. Viktor Pohorelsky, Joseph DiBenedetto, Michael Starr, Noah Hanft, Richard I. Janvey, Robert J. Kheel, Terri Solomon, Usher T. Winslett, and Virginia Futterman.

MEDIATION PANEL ADMISSIONS

In 2019, the following individuals were competitively selected for admission to the EDNY Mediation Panel:

Anthony DiCaprio, Felicia Farber, Genesis Fisher, Amanda Fugazy, Linda Gerstel, Barry S. Gold, Philip Goldstein, Michael T. Grosso, Adam Halper, Noah Hanft, Jacqueline James, Peter Mastaglio, Margaret McIntyre, Barry J. Peek, David J. Reilly, Royce Russell, Debra Wabnik, Richard Weil.

ADR DIVERSITY INITIATIVES AND MEDIATOR INCUBATOR PILOT

The EDNY ADR Department is committed to increasing the admission and selection of diverse neutrals serving on the Mediation and Arbitration panels. In 2017 the EDNY ADR Advisory Council established a diversity subcommittee whose members include Deborah Reik and Cynthia Boyce.

The EDNY Advisory Council and its Diversity Subcommittee assisted the ADR Department in drafting and distributing a voluntary and anonymous demographics survey to the EDNY Mediation and Arbitration panels. Seventy-five panel members responded to the survey, and their responses serve as a baseline from which the ADR Department can work to promote greater diversity among EDNY neutrals.

The EDNY ADR Administrator also maintains membership in the ADR Inclusion Network (<https://www.adrdiversity.org/>) as well as the Diversity Sub-Committee of the New York City Bar Association Alternative Dispute Resolution Committee.

In 2019 EDNY ADR Advisory Council members Richard P. Byrne and David J. Weisenfeld worked with the EDNY ADR Administrator to develop and launch a new pilot program, entitled the EDNY Mediator Incubator. The goal of the Pilot Mediator Incubator is to offer talented junior attorneys, with a wide range of cultural, linguistic and professional backgrounds, with an opportunity to gain practical experience mediating federal cases.

To be eligible to apply, applicants must be admitted to practice in the Eastern District of New York, admitted to the Bar of the State of New York for at least five (5) years and must have completed a total of twenty-four (24) hours of mediation training. The required twenty-four (24) hours of mediation training may be the result of attendance at several distinct programs, or at one twenty-four (24) hour training.

After admission to the program, incubator candidates are required to attend an initial training and orientation session, observe a minimum of three (3) EDNY mediations, and co-mediate at least three (3) EDNY mediations

with an experienced EDNY Mediation Panelist. Any observations or co-mediations done through the EDNY Mediator Incubator will be done on a pro bono basis. Each incubator candidate will be matched with an experienced mentor. After successful completion of the EDNY Mediator Incubator, candidates will be eligible for, but not guaranteed, admission to the EDNY Mediation Panel.

The following individuals were accepted to the Mediator Incubator Pilot Program in 2019:

Alexander Bachuwa, Cyrus Dugger, Tiffany Ma, Jacquelyn Moran, Miles Orton, and Olga Pettigrew.

As of the date this report was published, the program was placed on hold due to the Covid-19 pandemic. All Mediator Incubator candidates have completed their initial training and orientation and have completed several observations. Once the Incubator resumes, candidates will complete their observations and continue conducting co-mediations under the supervision of experienced EDNY Mediation Panel members.

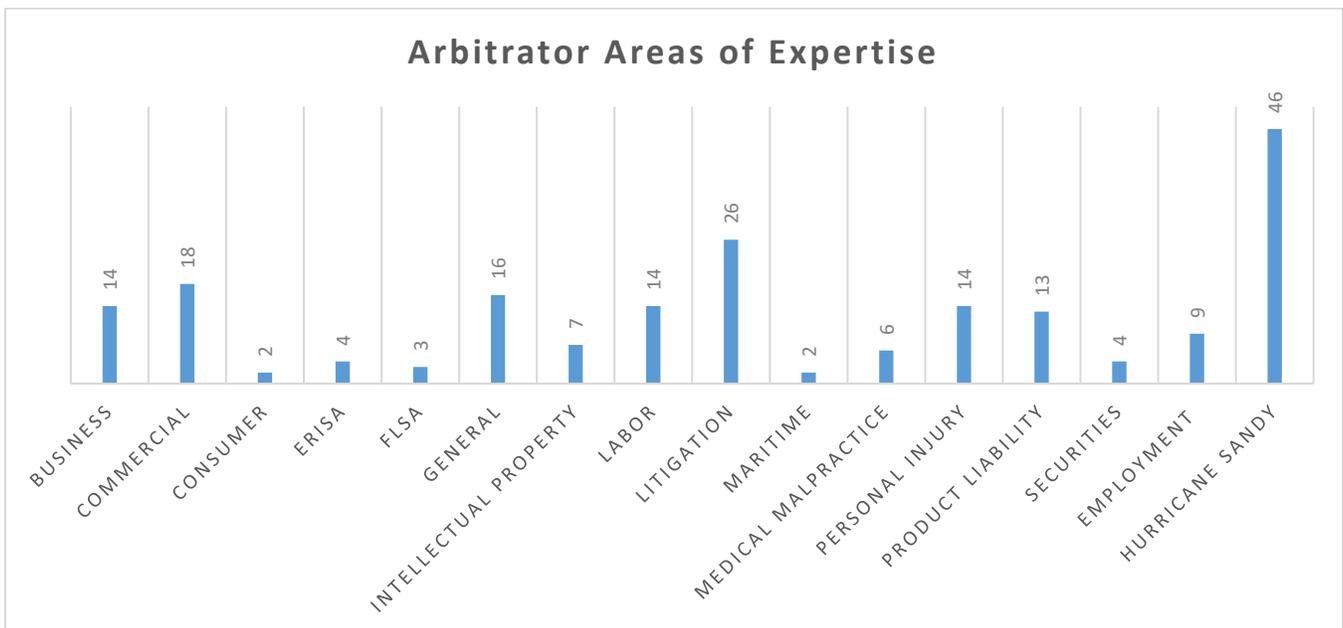
EDNY ARBITRATION PROGRAM

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 fifty-eight (58) 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/Arbitration/displayAllArb.cfm>

During the period from January 1, 2019 through December 31, 2019, 13 EDNY Panel Arbitrators were selected to arbitrate, and 6 arbitrators conducted 7 arbitration hearings.



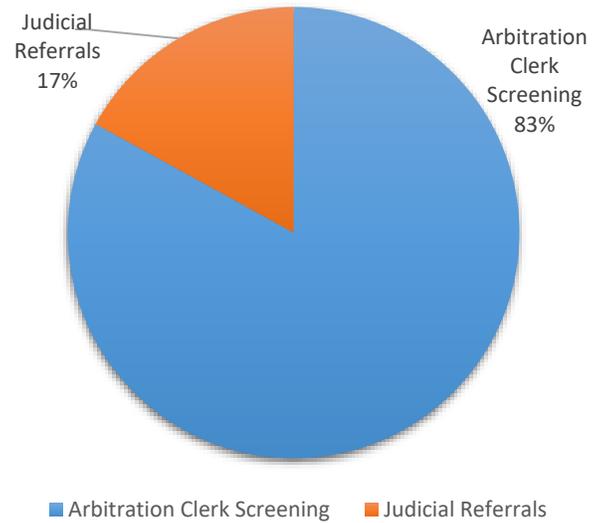
ARBITRATION CASE REFERRAL SOURCES

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 only are being sought in an amount not in excess of \$150,000.00 exclusive of interest and costs.

One hundred and fifty-three (153) cases were referred to the EDNY court-annexed arbitration program between January 1, 2019 and December 31, 2019. Seventy percent (70%) of arbitration referrals were from the Brooklyn courthouse, and 30% were from the Central Islip courthouse.

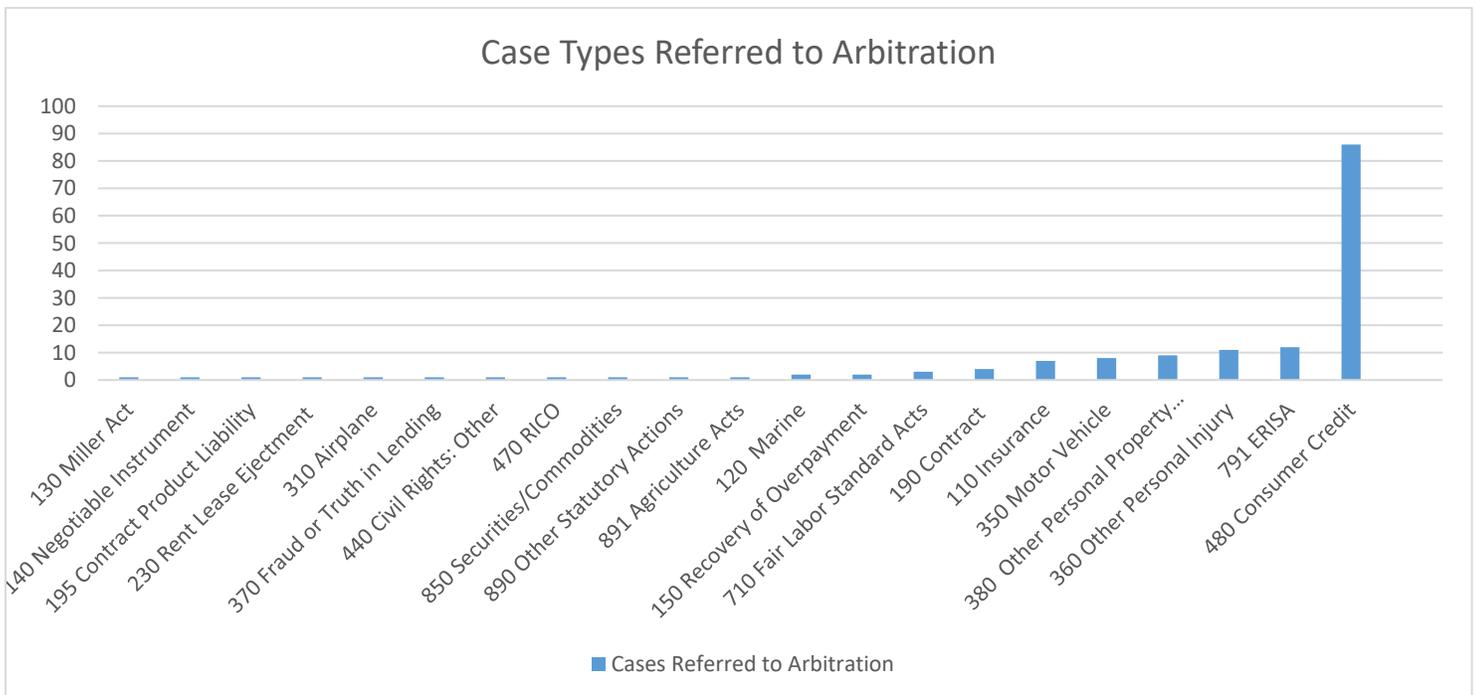
Eighty-three percent (83%) of the referrals into the arbitration program were made by the EDNY Arbitration Clerk, who screens each civil case filed in the EDNY for eligibility for the arbitration program. The remaining 17% of arbitration referrals were issued by the assigned District Judge or Magistrate Judge on a case-by-case basis.

Arbitration Referral Source



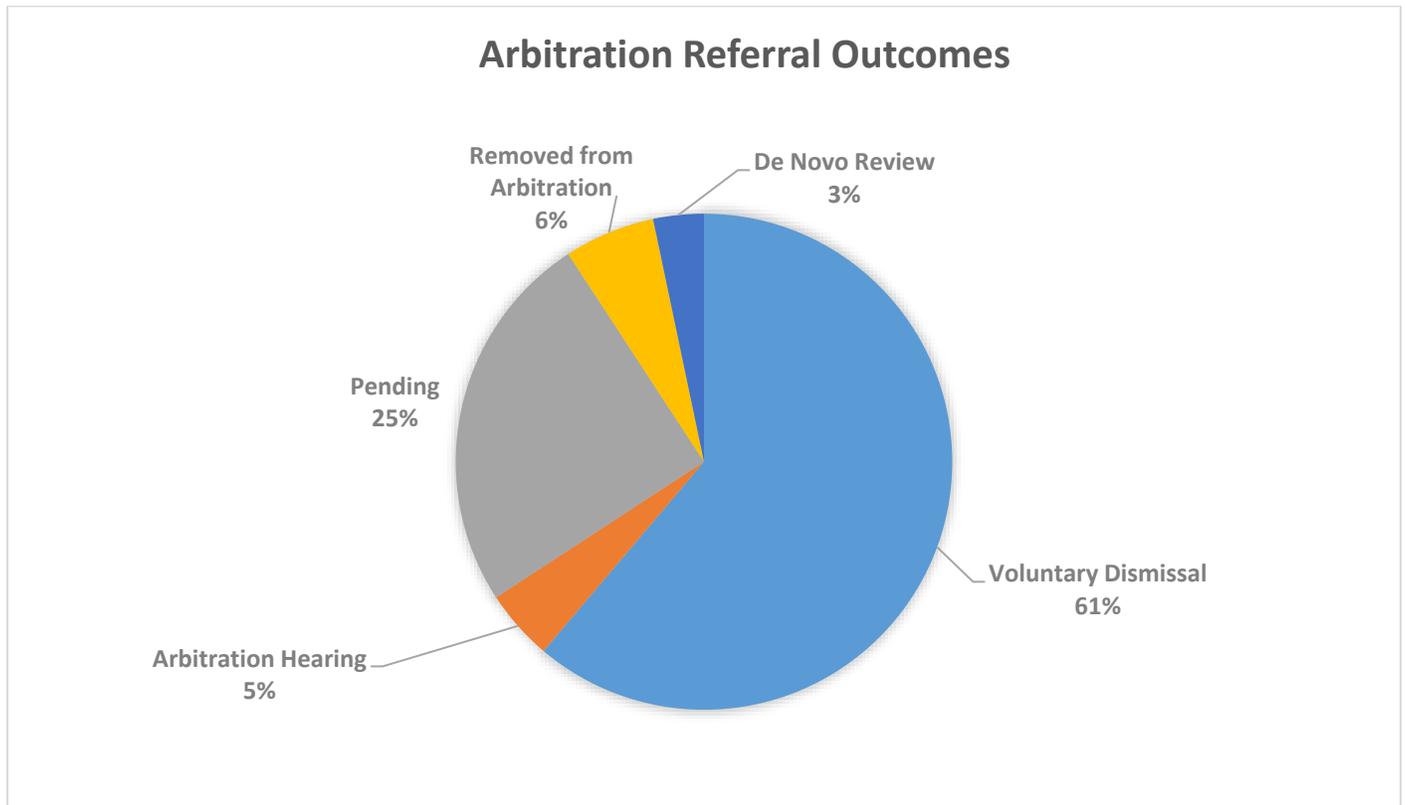
ARBITRATION REFERRALS BY CAUSE OF ACTION

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



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, 61% were voluntarily dismissed prior to the administration of the arbitration hearing. As of the publication of this report, 5% of referred cases proceeded to an arbitration hearing and 25% of referred cases are pending.



ARBITRATION PANEL ADMISSIONS

In 2019, the following individuals were selected for admission to the EDNY Arbitration Panel:

Joseph DeMarco, Philip Maier, Terrance J. Nolan, Jon Michael Probst, Royce Russell, and Usher T. Winslett.

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 10, 2019 Hosted delegation of law students from ISDE Law Business School, Madrid, Spain via Columbia Law School, EDNY Brooklyn Courthouse

March 12, 2019 Presented to Columbia Law School Mediation Clinic, New York, NY

March 28, 2019 A Mediator's Ethical Responsibility in Cases Involving Sexual Harassment, EDNY ADR Department/Columbia Law School Ethics Colloquium, EDNY Brooklyn Courthouse

March 29, 2019 A Mediator's Ethical Responsibility in Cases Involving Sexual Harassment, EDNY ADR Department/Columbia Law School Ethics Colloquium, EDNY Central Islip Courthouse

April 22, 2019 Moving Beyond Emotion: Fostering Logic & Reason in Mediation Practice, American Bar Association, Minneapolis, MN

June 19, 2019 Perspectives on Practice Development in the Arbitration World, New York State Bar Association, Cardozo Law School, New York, NY

June 19, 2019 Should Court ADR Programs Evaluate Long Term Outcomes?, American Bar Association, Court ADR Committee Webinar

July 11, 2019 Careers in the Federal Judiciary, Sonia and Selina Sotomayor Judicial Internship Program, EDNY Brooklyn Courthouse

July 15, 2019 Careers in ADR, South East Asian Bar Association and Asian American Bar Association, New York, NY

July 16, 2019 Presented to delegation of judges visiting from the Hubei Higher People's Court at Cardozo Law School, New York, NY

August 20, 2019 Hosted visiting attorneys from University of Fortaleza, Brazil via Columbia Law School, EDNY Brooklyn Courthouse

September 10, 2019 Diverse Arbitration and Mediation Panels: Wall Street Meets Main Street, Practicing Law Institute, New York, NY

September 19, 2019 Mediation Advocacy Training, EDNY Brooklyn Courthouse

September 20, 2019 Mediation Advocacy Training, EDNY Central Islip Courthouse

October 18, 2019 Emphasis on Mediation Advocacy Skills and the Importance to the Courts, Mediation Choices for Effective Representation and Advocacy, New York State Bar Association, New York Law School, New York, New York

October 22, 2019 Presented to Columbia Law School Mediation Clinic, New York, NY

October 23, 2019 Mediation Manipulation, EDNY ADR Department/Columbia Law School Ethics Colloquium, EDNY Brooklyn Courthouse

October 29, 2020 Preparing for Mediation and Selecting the Mediator, Mediation Choices for Effective Representation and Advocacy, New York State Bar Association, New York Law School, New York, New York

November 1, 2019 Mediation Manipulation, EDNY ADR Department/Columbia Law School Ethics Colloquium, EDNY Central Islip Courthouse

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 initiatives, and creating a vision for the future of the Department. EDNY ADR Advisory Council Members serve a two-year term and attend six meetings annually.

Members of the 2019 EDNY Advisory Council include:

Vivian Berger (2017-19)
Cynthia L. Boyce (2017-19)
Richard Brewster (2019-21)
Alida Camp (2017-19)
Pamela R. Esterman (2017-19)
David Paul Horowitz (2019-21)
Andrew Kimler (2019-21)
Patrick Michael McKenna (2017-19)
Mark C. Morril (2019-21)
Deborah Reik (2017-19)
James G. Ryan (2017-19)
Michael Starr (2017-19)
David J. Weisenfeld (2017-19)
Usher T. Winslett (2017-19)
Vivien B. Shelanski (2019-21)