

2018

United States District Court Eastern District of New York

ALTERNATIVE DISPUTE RESOLUTION REPORT JANUARY 1, 2018 – DECEMBER 31, 2018

ROBYN WEINSTEIN, ADR ADMINISTRATOR
DOUGLAS C. PALMER, CLERK OF COURT
HON. ROBERT M. LEVY, USMJ, ADR OVERSIGHT JUDGE
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, ADR Administrator, Arbitration Clerk, and ADR Department staff.

EDNY MEDIATION PROGRAM

MEDIATION PANEL

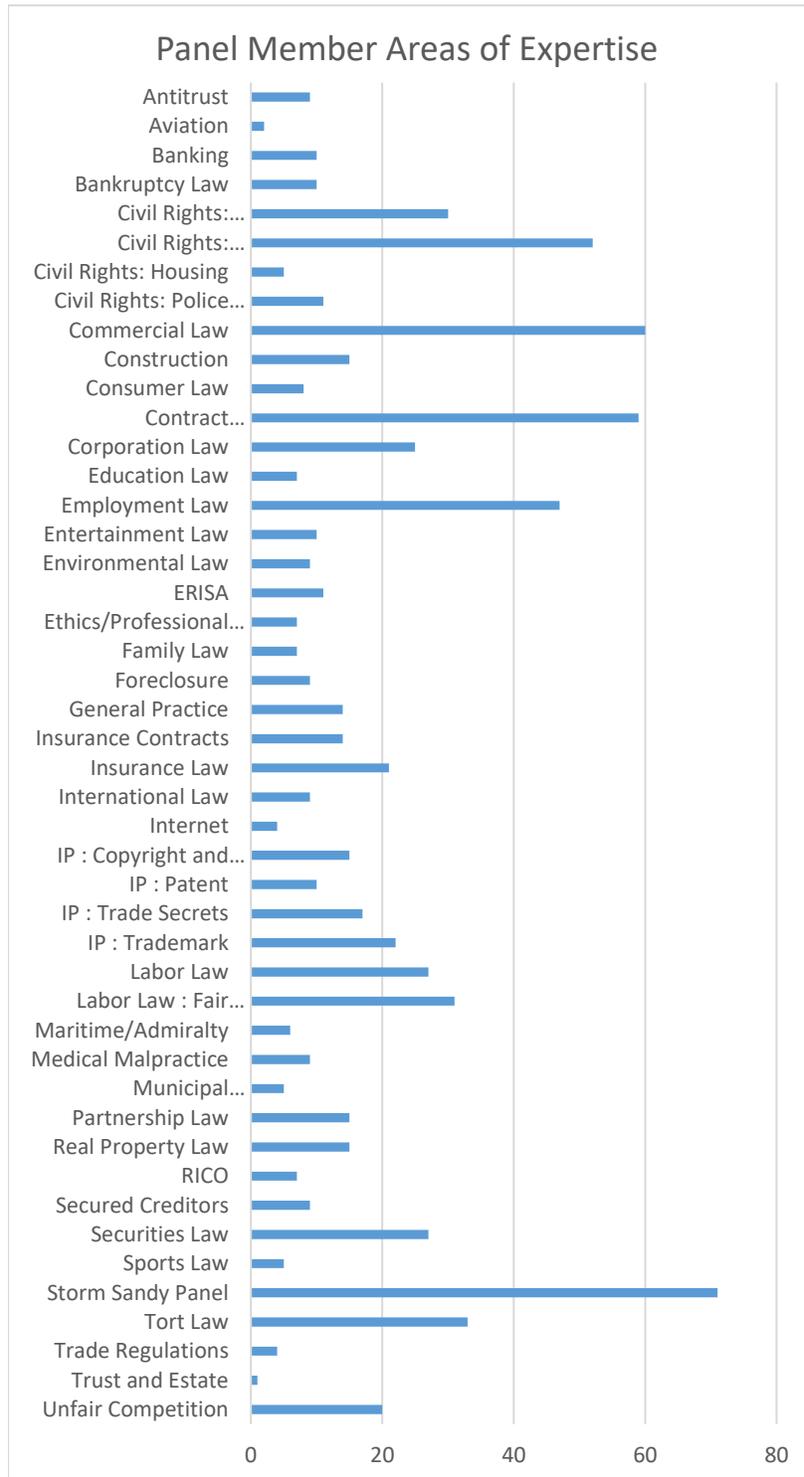
There are one hundred sixty (160) mediators on the EDNY Mediation Panel. EDNY litigants may review biographies for EDNY Mediation Panel members on the EDNY ADR Website at: <https://www.nyed.uscourts.gov/adr/Mediation/displayAll.cfm>.

The EDNY ADR Department also administers the EDNY Hurricane Sandy Mediation Panel, which was established in 2014 to expedite the resolution of claims filed in the aftermath of Hurricane Sandy. There are seventy (70) mediators currently admitted to the EDNY Hurricane Sandy Mediation Panel, of which twenty-one (21) Hurricane Sandy Panel members are admitted solely to the Sandy Panel, and forty-nine (49) are full EDNY Mediation Panel members.

The accompanying chart (right) illustrates the number of EDNY panel mediators qualified in each area of expertise.

Of the one hundred sixty (160) mediators on the EDNY panel, forty-eight percent (48%) were selected to mediate a case. The most frequently utilized mediator conducted 42 mediations.

Two percent (2%) of cases referred to the program were mediated by mediators not listed on the EDNY Panel.



MEDIATION CASE REFERRALS

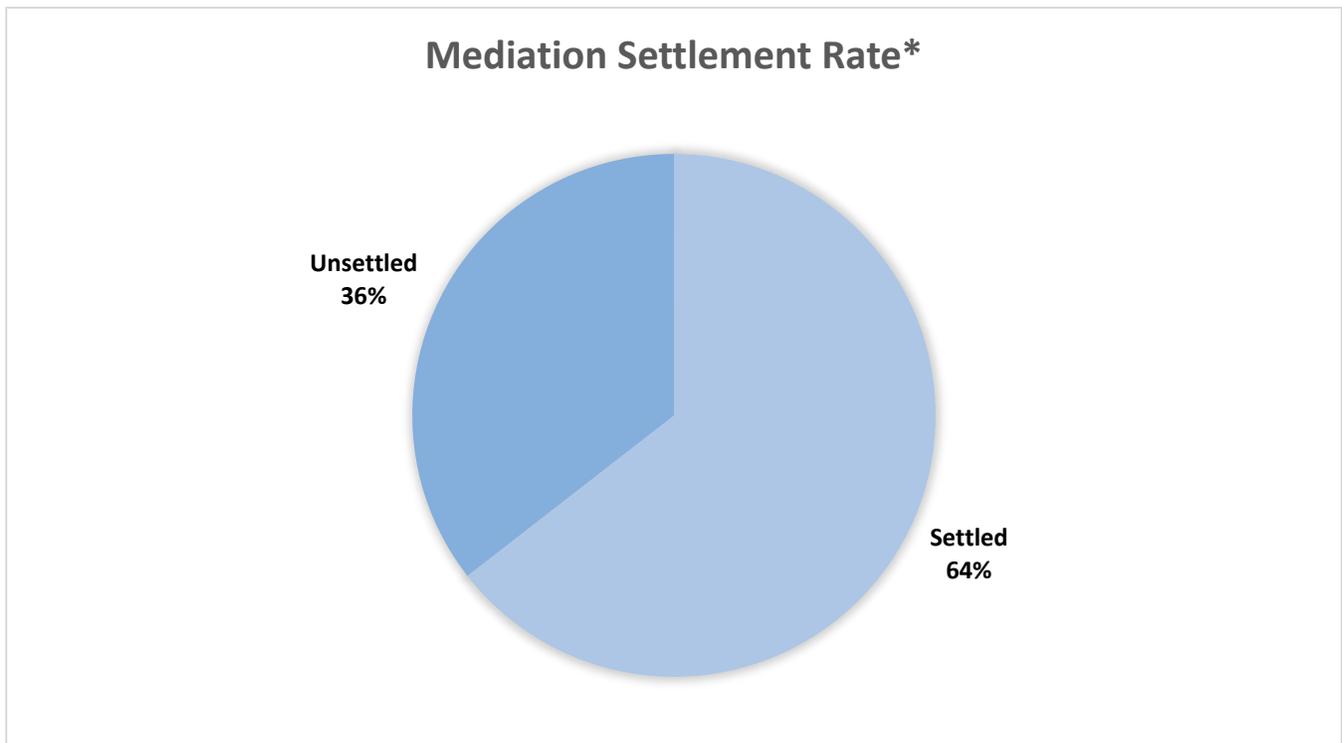
Between January 1, 2018 and December 31, 2018, five hundred one (501) cases were referred to the mediation program. Cases are referred to the mediation program from both the Brooklyn and Central Islip Courthouses. Of the cases referred to mediation, seventy-one percent (71%) were from the Brooklyn Courthouse, and twenty-nine percent (29%) were referred from the Central Islip Courthouse.

Eighty-eight percent (88%) of cases referred to the EDNY mediation program were referred by Magistrate Judges. District Judges were responsible for twelve percent (12%) of mediation referrals.

Mediation referrals increased by forty-three percent (43%) in comparison to this same reporting period last year.

MEDIATION SETTLEMENT RATES AND CASE STATUS

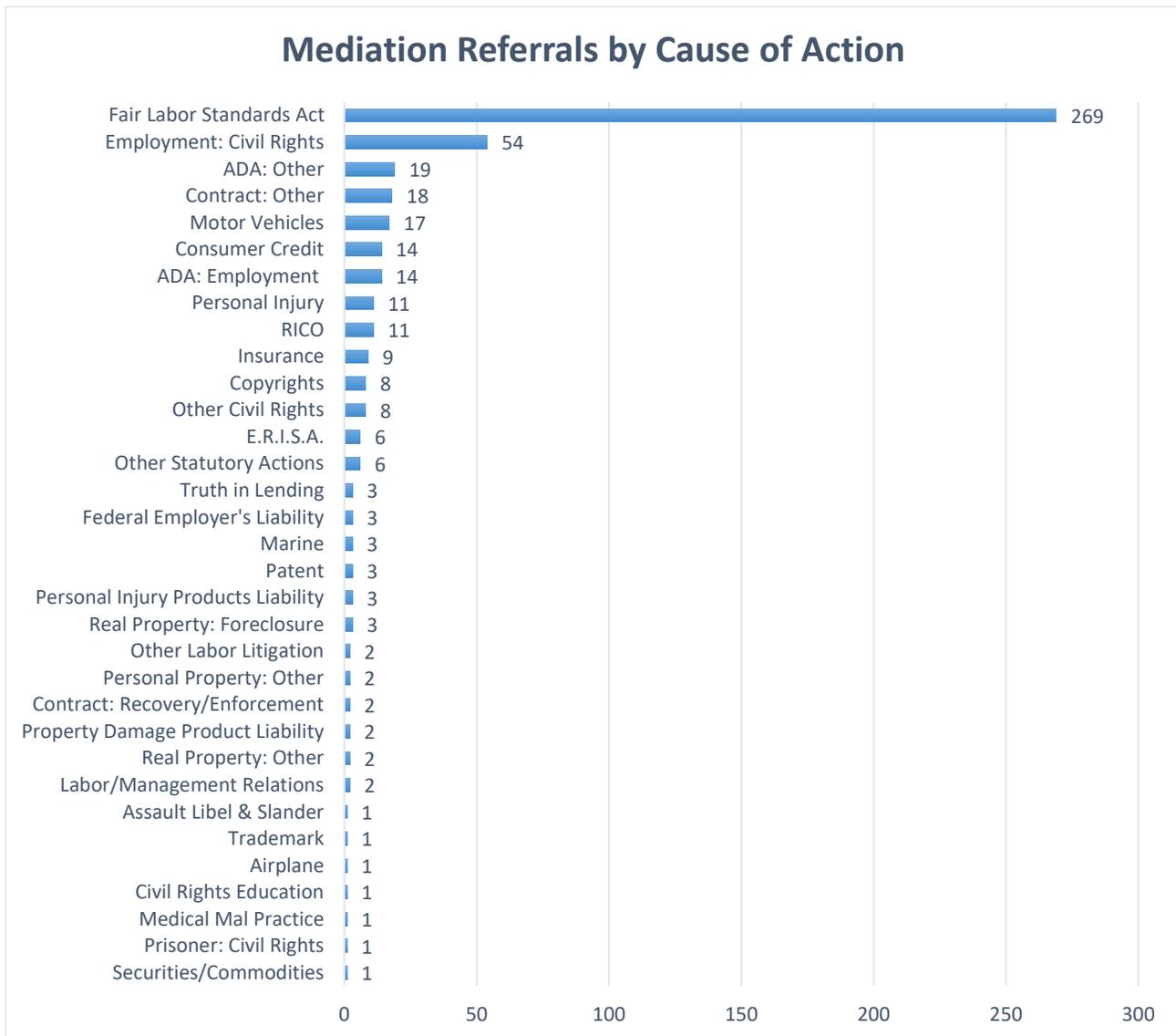
Of those cases referred, a mediation session was conducted in three hundred and ninety-seven (397) cases. Sixty-four percent (64%) of cases referred to the mediation program were resolved.



*This resolution 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 ten percent (10%) of the total civil filings in the District, and fifty-three percent (53%) of the mediation referrals (269 cases) were cases arising under the FLSA. Seventy-two percent (72%) of the FLSA matters referred to mediation during the period of this report were resolved prior to or at a mediation session.

Employment discrimination cases are the second most common case-type referred to the EDNY mediation program. During the period of this report, ten percent (10%) of cases referred to mediation are employment discrimination matters. Between January 1, 2018 and December 31, 2018 fifty-six percent (56%) of counseled employment discrimination matters referred to mediation were resolved. Cases involving pro se Plaintiffs which were referred to the program through the Mediation Advocacy Program resolved at a lower rate.

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	58%	7	5	3	3	18
	Contract: Recovery and Enforcement	0%	0	2	0	0	2
	Insurance	75%	6	2	1	0	9
	Marine	0%	0	2	0	1	3
Real Property Actions							
	Real Property: Other	0%	0	1	1	0	2
	Real Property: Foreclosure	0%	0	0	1	2	3
Tort Actions							
	Airplane	0%	0	1	0	0	1
	Motor Vehicles	83%	10	2	3	2	17
	Personal Injury	71%	5	2	1	3	11
	Personal Injury – Medical MalPractice	0%	0	1	0	0	1
	Personal Injury – Products Liability	100%	3	0	0	0	3
	Assault Libel & Slander	100%	1	0	0	0	1
	Personal Property: Other	50%	1	1	0	0	2
	Property Damage Product Liability	0%	0	1	1	0	2
Personal Property Damage							
	Truth in Lending	0%	0	1	2	0	3
Civil Rights							
	Americans with Disabilities: Employment	33%	4	8	0	2	14
	Americans with Disabilities: Other	72%	8	3	5	3	19
	Employment	48%	19	21	11	3	54
	Prisoner: Civil Rights	0%	0	0	0	1	1

Cause of Action	Sub-Category	Percentage Settled	Settled	Unsettled	Did not Proceed to Mediation	Pending	Total
	Other Civil Rights	33%	2	4	0	2	8
	Civil Rights Education	0%	0	0	0	1	1
Labor Laws							
	E.R.I.S.A.	75%	3	1	2	0	6
	Fair Labor Standards Act	66%	136	71	35	27	269
	Labor/Management Relations	100%	2	0	0	0	2
	Other Labor Litigation	100%	1	0	1	0	2
Intellectual Property Rights							
	Patent	33%	1	2	0	0	3
	Trademark	0%	0	1	0	0	1
	Copyrights	60%	3	2	2	1	8
RICO							
	RICO	20%	1	4	5	1	11
Securities							
	Securities and Commodities	0%	0	0	0	1	1
Consumer Credit							
	Consumer Credit	66%	4	2	7	1	14
Federal Employer's Liability							
	Federal Employer's Liability	100%	2	0	0	1	3
Other Statutory Actions							
	Other Statutory Actions	80%	4	1	0	1	6
						Total	501

PARTICIPANT EVALUATION OF EDNY MEDIATORS

The ADR Department requests that all mediation participants submit a post-mediation evaluation in order to assess each mediator's performance. From the period of January 1, 2018 and December 31, 2018 the EDNY ADR Department received three hundred and sixty-six (366) evaluations.

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

- Seventy-eight percent (78%) of respondents indicated that the mediation session had been helpful.
- Ninety-three percent (93%) of respondents indicated that they would recommend their mediator to other litigants.
- Ninety-six percent (96%) of respondents indicated that their mediator was prepared.
- Eighty-two percent (82%) of respondents indicated that the mediator was able to help the parties engage in a meaningful discussion of the case.
- Ninety-four percent (94%) of respondents indicated satisfaction with the mediator's knowledge of the law.

Overall, the responses to the post-mediation evaluation 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 sixty-one (61) attorneys approved by the court to provide limited scope pro bono legal representation for pro se litigants in employment discrimination mediations.

Between January 1, 2018 – December 31, 2018 fourteen (14) cases were referred to MAP and thirteen (13) pro se litigants were matched with limited scope counsel for the purpose of mediation. Two (2) MAP cases were settled in mediation, eight (8) cases did not settle in mediation, three (3) cases did not proceed to mediation, and one (1) case is still pending. All MAP cases that proceeded to mediation were provided with pro bono mediation services.

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 12, 2018 the EDNY ADR Department conducted a Mediation Advocacy Training at the EDNY Brooklyn Courthouse with thirty-six (36) attorneys in attendance. On September 14, 2018 the EDNY ADR Department conducted a second Mediation Advocacy Training at the EDNY Central Islip Courthouse at which nineteen (19) attorneys were trained.

Under EDNY Local Civil Rule 83.8 each EDNY mediator is required to conduct two pro bono mediations in order to maintain membership on the EDNY Mediation Panel. During the period of this report, thirty (30) cases were referred to the program for pro bono mediation. 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.

EDNY ARBITRATION PROGRAM

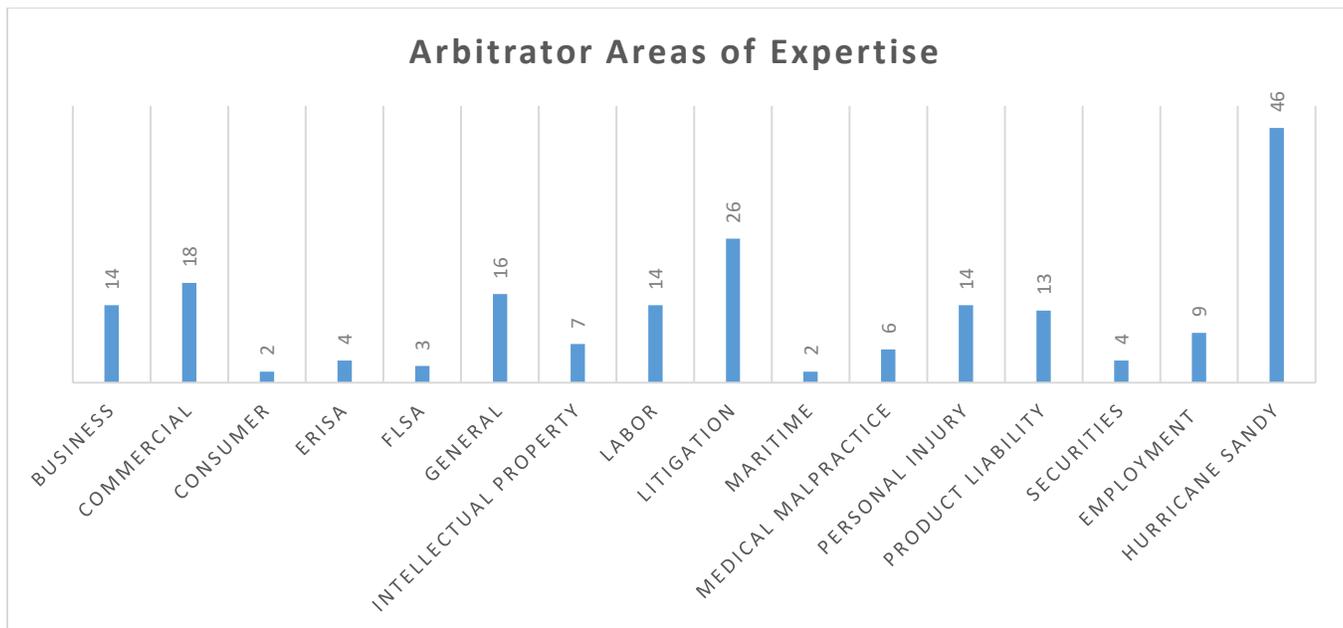
Compulsory arbitration is authorized under EDNY Local Civil Rule 83.7 for cases where money damages do not exceed \$150,000.00 (excluding social security cases, tax matters, prisoners' civil rights cases and any action based on an alleged violation of a right secured by the United States Constitution 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 eighty (80) 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>

The EDNY ADR Department also administers the EDNY Hurricane Sandy Arbitration Panel which was established in 2014 to expedite the resolution of claims filed in the aftermath of Hurricane Sandy. There are forty-six (46) arbitrators admitted to the EDNY Hurricane Sandy Arbitration Panel, twenty-nine (29) Hurricane Sandy Panel members are admitted solely to the Sandy Panel, and seventeen (17) are full EDNY Arbitration Panel members who are also admitted to the Sandy Panel.

During the period of January 1, 2018 – December 31, 2018, sixteen percent (16%) of EDNY Panel Arbitrators were selected to arbitrate a case, and twelve percent (12%) of EDNY Panel Arbitrators conducted an arbitration hearing.

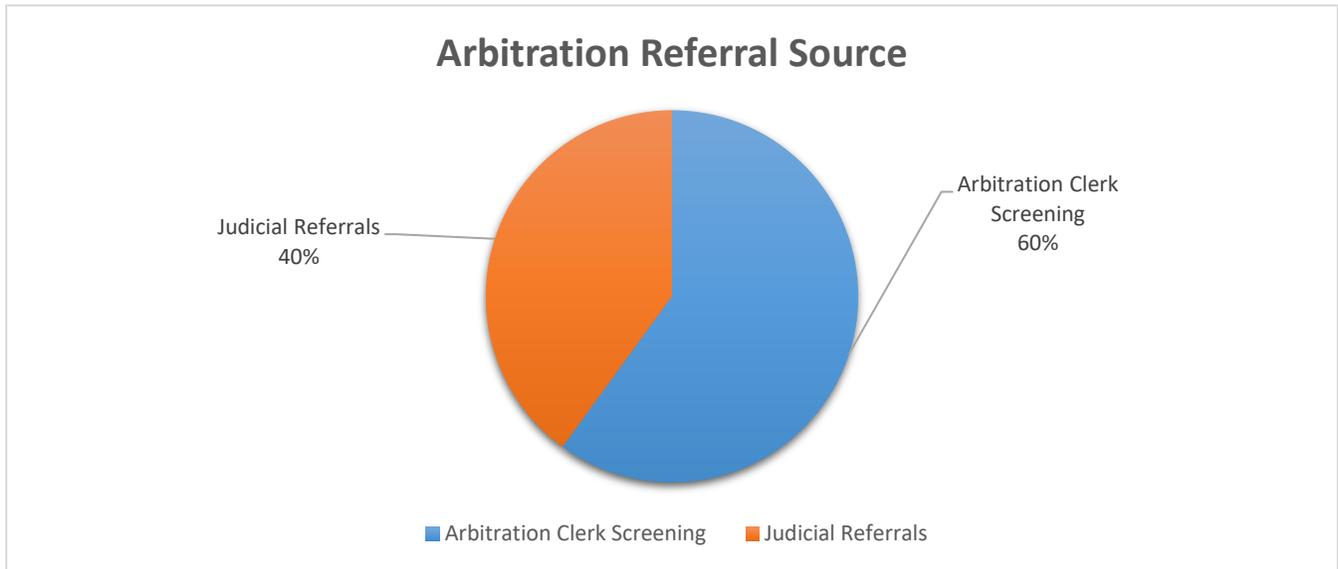


ARBITRATION CASE REFERRAL SOURCES

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.

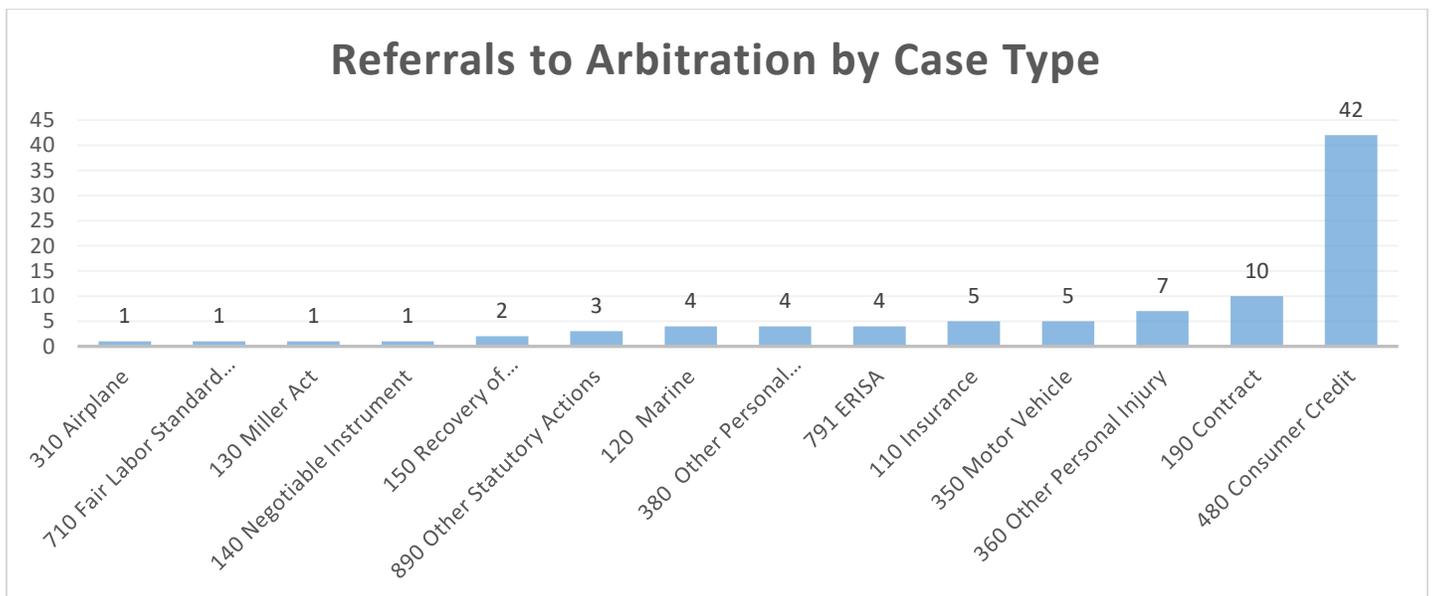
Ninety (90) cases were referred to the EDNY court-annexed arbitration program between January 1, 2018 – December 31, 2018. Sixty percent (60%) of the referrals into the arbitration program were made by the EDNY Arbitration Clerk, who screens each civil case filed in the EDNY for eligibility for the arbitration program. The remaining forty percent (40%) of referrals to arbitration are issued by the assigned District Judge or Magistrate Judge on a case-by-case basis.

During the period of January 1, 2018 – December 31, 2018, seventy-one percent (71%) of arbitration referrals were from the Brooklyn courthouse, and twenty-nine percent (29%) were from the Central Islip courthouse.



ARBITRATION REFERRALS BY CAUSE OF ACTION

The following chart illustrates the types of cases referred into the EDNY Arbitration Program. Consumer Credit cases were the most frequent referral, followed by contract disputes, personal injury, motor vehicle, insurance 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, sixty-six percent (66%) were voluntarily dismissed prior to the administration of the arbitration hearing. As of the publication of this report, seven percent (7%) of the cases proceeded to an arbitration hearing and eleven percent (11%) of cases are still pending.



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 25, 2018	Program on Court and Agency Mediation, NYSBA
February 15, 2018	Presented at ADR in the Eastern District of New York, Suffolk Academy of Law, Suffolk County Bar Association
April 13, 2018	Presented at Natural Disasters, Stakeholder Engagement and Dispute Resolution, Texas A & M University School of Law
April 18, 2018	Presented at EDNY Third Annual FLSA Update, Federal Bar Association
April 4-6, 2018	Presented at ABA Dispute Resolution Section Conference
May 9, 2018	Presented at The Litigative DNA – The Underutilization of Mediation in New York and What Can be Done About It, NYSBA

May 18, 2018	Presented at Mediation and Arbitration Clinic for Advocates and New Lawyers, NYSBA
June 6, 2018	Attended Implicit Bias Program, Federal Bar Association, EDNY
June 20, 2018	Presented at NYSBA Commercial Arbitration Training
September 12, 2018	EDNY Mediation Advocacy Training – Brooklyn Courthouse
September 14, 2018	EDNY Mediation Advocacy Training – Central Islip Courthouse
October 29, 2018	Presented at Mediation Choices and Effective Representation and Advocacy, NYSBA
October 30, 2018	Presented at Understanding the Basics of Representing Federal Pro Se Employment Discrimination Plaintiffs for the Limited Purpose of Settlement, NYCBA
November 1, 2018	EDNY/Columbia Law School Ethics Colloquium: Mediating in the Wake of Trauma – Brooklyn Courthouse
November 5, 2018	EDNY/ Columbia Law School Ethics Colloquium: Mediating in the Wake of Trauma – Central Islip Courthouse
December 12, 2018	Negotiation and Mediation Seminar, DOJ, National Advocacy Center

EDNY ADR ADVISORY COUNCIL

Formed in 2017, the EDNY ADR Advisory Council is comprised of members of the EDNY mediation and arbitration panels. 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 EDNY 2017-2018 Advisory Council include:

Alida Camp
Vivian Berger
Cynthia L. Boyce
Richard P. Byrne
Pamela R. Esterman
Michael A. Levy
Patrick M. Mckenna
Deborah Reik
James G. Ryan
Michael Starr
David J. Weisenfeld
Usher T. Winslett
Stephen P. Younger