

Mediation Program



Annual Report

January 1, 2013 - December 31, 2013
(Updated January 15, 2014)

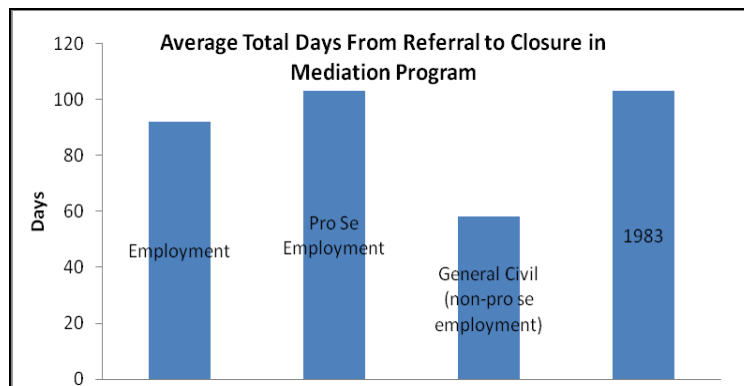
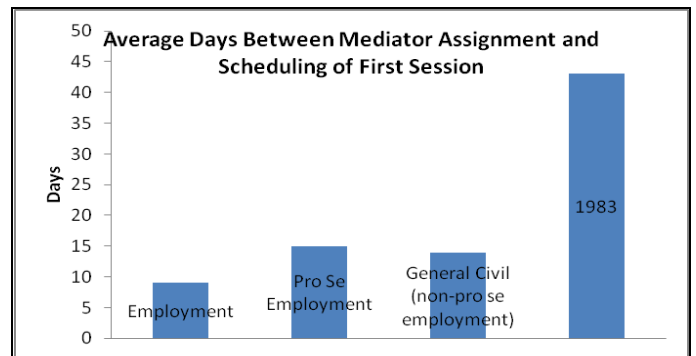
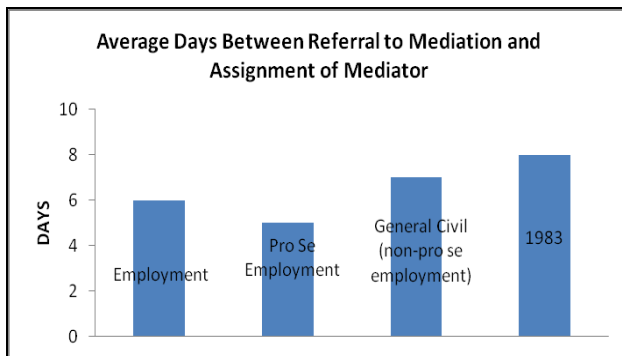
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Introduction

In 2013 a total of 911 cases were referred into the Court's Mediation Program. Cases enter the Mediation Program either through a process of automatic referral or by referral of a specific case from the assigned judge. Since 2011 the SDNY has had automatic referrals of non-*pro se* employment cases and certain § 1983 cases against the NYPD. Both of these programs allow for mediation at the early stages of the litigation process before formal discovery has occurred. Of the cases referred in 2013, 538 have closed with the following rates of settlement: Automatic Employment (43%), Pro Se Employment (68%), Referrals from Individual Judges (non-*pro se* employment) (60%), § 1983 Plan (67%). As of January 15, 2014, 360 of the cases referred in 2013 remain open along with an additional 46 cases that were referred in prior years and are still ongoing. Following are more detailed statistics about the functioning of the Mediation Program in 2013 and some of the initiatives undertaken in 2013.

Statistical Reports

1. The below charts show average timelines for each stage of the mediation process in 2013. Cases that entered the program through referral orders from individual judges or through the program of automatic referral for employment cases all share the same 30-day deadline for scheduling the first session. *Pro se* employment referrals have a deferred deadline for scheduling to allow for appointment of counsel. Cases that enter the program through the Court's pilot Plan for Certain § 1983 Cases have a 60-day deadline for scheduling the first session. Mediators should be assigned within 10 days of the referral to mediation except for *pro se* employment cases where the mediator is assigned within 10 days of the appearance of counsel.



2. The following chart shows the number of cases referred into the Mediation Program for the last three years, as well as detailed information about dispositions. Disposition information is taken from the Final Report of Mediator which is submitted to the Mediation Program at the termination of mediation. That Final report includes the following choices: #1 (full settlement through mediation), #4 (partial settlement through mediation), #5 (no settlement through mediation), #6 (parties settled before initial mediation session), #7 (parties failed or refused to comply with mediation). Since many cases remain open past the calendar year, final settlement statistics are based on the percentages of the above report numbers from the total final reports received. These numbers are updated periodically.

MEDIATION STATISTICS 2011/2012/2013

1983 PLAN (Automatic Referral)

| | TOTAL REFERRALS | TOTAL CLOSING REPORTS | TOTAL SUCCESSFUL OUTCOMES (1/4/6) | SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS | # 1 (full settlement) | # 4 (partial settlement) | #6 (settled before mediation) | # 5 (no settlement) | #7 (parties refused) |
|------|-----------------|-----------------------|-----------------------------------|---|-----------------------|--------------------------|-------------------------------|---------------------|----------------------|
| 2011 | 2 | 2 | 2 | 100% | 1 | 0 | 1 | 0 | 0 |
| 2012 | 449 | 382 | 266 | 70% | 133 | 7 | 126 | 113 | 3 |
| 2013 | 418 | 233 | 160 | 69% | 97 | 0 | 63 | 71 | 2 |

Employment (Automatic Referral)

| | TOTAL REFERRALS | TOTAL CLOSING REPORTS | TOTAL SUCCESSFUL OUTCOMES (1/4/6) | SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS | # 1 (full settlement) | # 4 (partial settlement) | #6 (settled before mediation) | # 5 (no settlement) | #7 (parties refused) |
|------|-----------------|-----------------------|-----------------------------------|---|-----------------------|--------------------------|-------------------------------|---------------------|----------------------|
| 2011 | 364 | 307 | 131 | 43% | 107 | 2 | 22 | 176 | 0 |
| 2012 | 321 | 278 | 104 | 37% | 88 | 0 | 17 | 171 | 3 |
| 2013 | 347 | 209 | 91 | 44% | 82 | 1 | 8 | 116 | 2 |

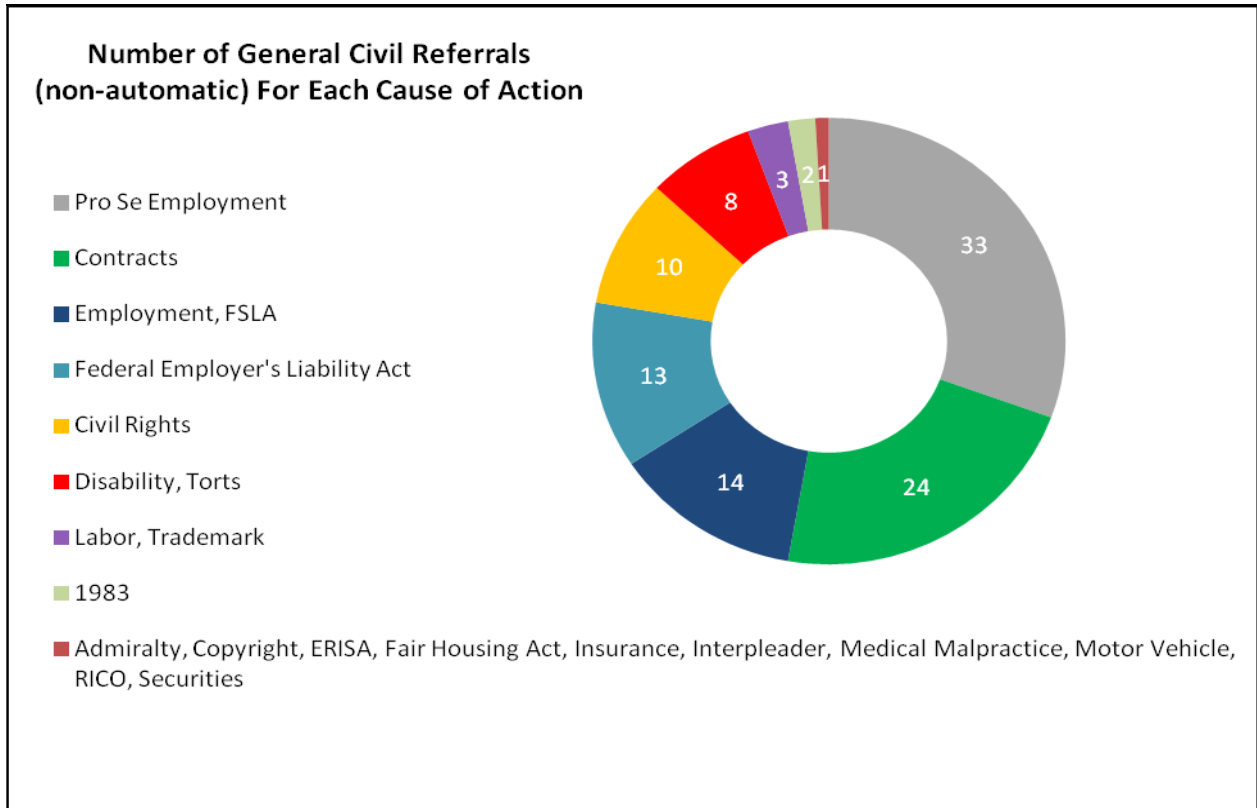
General Civil (Referred by Individual Judges)

| | TOTAL REFERRALS | TOTAL CLOSING REPORTS | TOTAL SUCCESSFUL OUTCOMES (1/4/6) | SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS | # 1 (full settlement) | # 4 (partial settlement) | #6 (settled before mediation) | # 5 (no settlement) | #7 (parties refused) |
|------|-----------------|-----------------------|-----------------------------------|---|-----------------------|--------------------------|-------------------------------|---------------------|----------------------|
| 2011 | 168 | 146 | 95 | 65% | 76 | 3 | 16 | 51 | 0 |
| 2012 | 136 | 119 | 63 | 53% | 53 | 0 | 10 | 56 | 0 |
| 2013 | 113 | 79 | 47 | 60% | 36 | 1 | 10 | 31 | 1 |

Pro Se Employment (Referred by Individual Judges)

| | TOTAL REFERRALS | TOTAL CLOSING REPORTS | TOTAL SUCCESSFUL OUTCOMES (1/4/6) | SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS | # 1 (full settlement) | # 4 (partial settlement) | #6 (settled before mediation) | # 5 (no settlement) | #7 (parties refused) |
|------|-----------------|-----------------------|-----------------------------------|---|-----------------------|--------------------------|-------------------------------|---------------------|----------------------|
| 2011 | 23 | 20 | 13 | 65% | 10 | 0 | 3 | 7 | 0 |
| 2012 | 47 | 40 | 18 | 45% | 17 | 0 | 1 | 21 | 1 |
| 2013 | 33 | 17 | 12 | 71% | 11 | 0 | 1 | 5 | 0 |

3. The following chart shows the number of referrals of general civil cases (non-automatic) for each cause of action.



4. As of December 31, 2013, there were 396 mediators on the SDNY mediation panel. The following chart lists the number of mediators who identify as having specific areas of expertise. Employment is the only category of expertise where the Court has established a baseline level of knowledge or experience.

| Expertise | # of Mediators | Expertise | # of Mediators |
|---------------------------|-----------------------|------------------|-----------------------|
| Employment Discrimination | 300 | Aviation | 8 |
| 1983 | 233 | Libel/Slander | 8 |
| Commercial | 174 | Healthcare | 7 |
| Securities | 92 | Accounting | 6 |
| Contracts | 90 | Admiralty | 6 |
| Labor Law | 82 | Landlord/Tenant | 6 |
| Intellectual Property | 55 | Family | 5 |
| General Business | 48 | Probate | 5 |
| Insurance | 46 | Energy | 4 |
| Corporate | 45 | Media | 3 |
| Antitrust | 43 | Taxation | 3 |
| Civil Rights | 41 | Foreclosure | 2 |
| Real Estate | 39 | Veterans Claims | 2 |
| Personal Injury | 36 | | |
| Finance | 34 | | |
| Torts | 33 | | |
| Product Liability | 32 | | |
| Copyright | 29 | | |
| Construction | 27 | | |
| Trademark | 26 | | |
| Bankruptcy | 24 | | |
| Professional Liability | 21 | | |
| Banking | 20 | | |
| International | 20 | | |
| Patent | 18 | | |
| Environment | 16 | | |
| Disability Act | 14 | | |
| Medical Malpractice | 13 | | |
| Shareholder Disputes | 13 | | |
| Class Actions | 12 | | |
| Entertainment | 12 | | |
| ERISA | 12 | | |
| Education | 11 | | |
| Maritime | 11 | | |
| Mergers and Acquisitions | 11 | | |
| Municipal | 10 | | |
| Trusts and Estates | 10 | | |
| Legal Malpractice | 9 | | |

Selected Initiatives 2013

1. This past summer we trained 19 new mediators and provided an orientation to nine additional mediators who were able to waive the training requirement. These mediators have since been participating in a mentorship program where they observe two-to-three mediations conducted by SDNY mediators and then mediate a case under observation before taking cases independently.
2. A mediator advisory committee was formed. This committee of 13 panel mediators has been working on several projects including a mediator assessment pilot, several training initiatives, and different strategies for increasing mediation referrals. They have also been very helpful in the mentoring program (mentioned above), in providing advice on ethical issues, and providing their perspectives on the new rule and procedures.
3. This past year there was significant work on the Court's Pilot Plan for certain § 1983 cases. As directed by the Board of Judges, a public hearing was held to solicit feedback and comments on the Plan. Additionally, a study was conducted to compare § 1983 cases in a pre-Plan year with comparable cases that went through the Plan. Based on the results of that study, and the comments received in the public hearing, the Plan was revised. The revised Plan was presented to the Board of Judges and has been approved for rulemaking.
4. Local Civil Rule 83.9 was revised to allow for more flexible administration of the mediation program. Procedures were developed to guide the day-to-day operations of the program. The revised rule, and the accompanying procedures, became effective on January 1, 2014.
5. Mediation staff conducted outreach to various educational institutions, bar associations, service providers, and affinity groups including: NYS and NYC Bar Association ADR Committees, the annual conference for the Association of Conflict Resolution for Greater NY, JAMS, CPR, local community dispute resolution centers, and other State and Federal ADR programs.
6. In addition to the basic training offered this summer, the mediation program also conducted or hosted in-house trainings for mediators and one joint training event with the EDNY and the Federal Judicial Center. A taskforce on employment mediation has developed a half-day CLE for panel mediators which will be offered seven times in 2014. This training is a mandatory requirement for mediators of employment matters who did not meet the criteria for a training waiver.