

STATE OF FLORIDA

Division of Administrative Hearings



2017-18 Annual Report of the Office of the Judges of Compensation Claims

The OJCC Mission:

To maintain a statewide mediation and adjudication system for the impartial, efficient, and timely resolution of disputed workers' compensation claims.

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Pro se cases	9.50% (increase from 9.19%, 2016-17)	16
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Petitions closed	71,826 (1% increase from 2016-17)	
Cost of Litigation Resolved		20
OJCC budget	\$17,738,182 (1.8% increase from 2016-17)	
Per petition closed	\$250.00 (fourteen year avg. = \$233.00)	
Civil court comparison	\$300.00 to \$400.00 Filing Fee	
Number of Mediation Conferences Held		23
Mediations held	16,167 (.55% increase from 2016-17)	
100% of mediators averaged less than 130 days each year 2008-09 to 2017-18)		
Disposition of Mediation Conferences		26
Some resolution	66.39% (decrease from 67.92% in 2016-17)	
Settled case/all issues resolved	38.48% (increase from 36.5% in 2016-17)	
Number of Continuances Granted for Mediations		27
Mediation continuances	313 (increase from 287 in 2016-17)	
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Introduction

This report of the Office of the Judges of Compensation Claims (“OJCC”) is published pursuant to section 440.45(5), Florida Statutes.² It documents that the OJCC continues to develop, innovate, and deliver consistent performance. The measures documented in this report for fiscal year 2017-18 portray an agency which has persistently leveraged technology and methodically transitioned to greater awareness and acceptance of the benefits of digital docket management and document processing. Today, this Office is clearly among the most efficient and proactive Florida agencies.

The OJCC Annual Reports issued since 2002 are maintained for review on the agency website.³ These reports memorialize the struggles this agency historically experienced with data uniformity and reporting. This 2017-18 report reiterates significant improvements in the collection and reporting of data and in the processes involved with adjudication of workers’ compensation disputes in Florida. Despite budget reductions, personnel turnover, and legislative change, this agency has persevered over the last seventeen years, including pioneering electronic filing and electronic service. The OJCC adjudicatory functions are as transparent as any known, and more so than many.

Leadership is critical to exemplary performance. The OJCC historically operated as a loose confederation of independent judges deployed throughout the state. In 2001, the OJCC was moved from the Department of Labor and Employment Security (“DLES”) to the Division of Administrative Hearings (“DOAH”). There are a great variety of cases which the DOAH is charged with processing and adjudicating. By contrast, the OJCC focus is strictly workers’ compensation benefit disputes. Despite these marked jurisdictional differences, there have been significant synergisms affected by the similarity of the core service rendered through each adjudication process. The concepts of docket management, document processing, and the transition to a twenty-first century digital platform, are all areas in which the core missions of the DOAH and the OJCC are significantly similar.

The Florida Legislature requires an OJCC state mediation within 130 days of the filing of a Petition for Benefits (PFB). In each of the last ten fiscal years (2008-09 through 2017-18) 100% of the OJCC mediators achieved an average time to mediation within that 130 day statutory parameter, though some individual cases required a greater period. The overall averages prove that this agency remains effective at processing incoming litigation, providing overall timely delivery of mediation services, and effectively documenting these efforts. The overall effort of the OJCC mediators has been exceptional. The performance reported herein is a clear indication of their team-first attitude, and focus on serving the public.

The Florida Legislature requires final orders to be issued within 30 days of the trial. Extensive efforts have been required to succinctly and uniformly define “trial,” which have been described in prior OJCC Annual Reports. The OJCC defined key terms in 2006, including “trial.”⁴ These efforts toward definition and standardization in the collection and reporting of data resulted in uniformity and consistency. However, abuses by a minority of judges necessitated revision in 2016 of the “trial” definition.⁵ The OJCC data collection is not perfect, and errors are accepted as a consequence of human involvement. However, significant improvement has occurred and continues. In 2006-07, about 58% of trial orders were entered in less than the 30 day statutory parameter. With the more restrictive 2016 definition of “trial,” trial orders were entered within the 30 day parameter 92.29% of the time in 2017-18.

The economy and budget continue to challenge this agency. Consistently, the Legislature calls upon this agency to “do more with less,” and the OJCC has consistently heeded that call. Despite budget and staff reductions,⁶ the OJCC has continued to innovate. The OJCC has been a leader in electronic filing as a service to its customers. In 2011 the Legislature recognized the efficacy of electronic filing and the success of the OJCC filing system. SB170 rendered eFiling mandatory for represented parties in workers’ compensation proceedings. This legislative recognition validates the recommendations for change (electronic service and mandatory eFiling) in the 2008 and 2010 OJCC Annual Reports. Even prior to the legislative mandate, the OJCC had mandated electronic filing in the Rules of Procedure for Workers’ Compensation Adjudications.⁷ As a result, the volume of incoming U.S. Mail dwindled in 2010-11 and receipt of U.S. Mail is now uncommon.⁸

Electronic service⁹ of documents through the OJCC eFiling system became common practice in 2012-13. The savings to our customers were immediate and profound. The combination of eService and eFiling consistently saves system participants, injured workers, employer/carriers, and attorneys about \$1,000,000 annually.

The DOAH pioneered the use of video teleconference systems (VTS) for trials throughout Florida. Their efforts initially utilized equipment in the DOAH Tallahassee facility connected to remote VTS facilities maintained by the Florida Department of Management Services (DMS). In 2006-07, the OJCC and DOAH began jointly deploying

VTS in the 17 OJCC District Offices. The deployment of this equipment has continued through 2017-18. All OJCC District Offices currently have at least one VTS unit installed, and several offices have two or more installed. This technology empowers the OJCC to shift workload among the 31 JCCs, and to accommodate judicial disqualifications and recusals.¹⁰ This innovation is focused, flexible, and delivers value to the people of Florida through reduced travel by JCCs and ALJs from the DOAH, and greater flexibility for redistribution of work among the JCCs.

Overview of Florida Workers' Compensation

The primary participants in this system are Florida's employers and their employees. Some employers purchase workers' compensation insurance from a "carrier." These two are therefore often collectively referred to as the "employer/carrier" or the "E/C." Other employers are "self-insured," but have their claims administered or managed by an outside entity, commonly called a "servicing agent." These are therefore often referred to collectively as "E/SA." For the purposes of this report, references to E/C should be interpreted to refer to all three: employers, carriers, and servicing agents collectively, unless some distinction between insured and self-insured is specifically stated.

The OJCC mission is centered on the impartial processing, mediating and adjudicating of disputes regarding benefits allegedly due to such injured workers. The litigation process for most Florida workers' compensation disputes begins with the filing of a pleading called a Petition for Benefits, or "PFB." That term is used extensively in this report. This and other terms are defined in the Glossary, pages 48-49.

The OJCC is an adjudicatory system, a "tribunal," situated within the Executive branch.¹¹ The OJCC is funded entirely by assessments on the workers' compensation industry, through the Workers' Compensation Administrative Trust Fund¹² (surcharges on workers' compensation insurance premiums). Thus, every expense of operating this unique system is borne by the industry which necessitates it. The OJCC utilizes precisely \$0.00 in general revenue dollars. The vast majority, about ninety-three percent (92.99%), of the OJCC budget is expended on payroll, rent for the seventeen OJCC District Offices¹³ and the OJCC Central Clerks office, and security for those offices for the protection of personnel and the public.

The OJCC and the DOAH have instigated and maintained various tools and resources in recent years, including Internet-based individual case information, as well as Internet dissemination of district information and disaster closure notification. The OJCC developed the OJCC electronic filing system with existing resources over a period of years beginning early this century. The total expense associated with the development and deployment of these tools is just over one million dollars.¹⁴ By comparison, other states have developed systems through special appropriations, deploying less robust processes, at a far greater cost.¹⁵

Currently, the eJCC system provides electronic service (eService) of filed documents¹⁶ to all insurance carriers and servicing agents, contemporaneously with filing. The next step in the eJCC evolution is eService for employers. The completion of that step will eliminate a significant postage expense for attorneys representing injured workers. The law requires that petitions for benefits are sent to employers and carriers by certified mail or approved electronic means. As the adjustments are made to accommodate electronic transmission to employers, the last remaining certified mail expense in Florida workers' compensation will be minimized.¹⁷

The OJCC has invested a great deal of time in the innovative electronic filing and service platforms that have been deployed. Those are saving OJCC customers over one million dollars annually. They are the result of, and are dependent upon, the OJCC's creativity and being able to nimbly address developments and innovation to maximize the effectiveness of the digital world, to the benefit of Floridians.

It is critical to understand that Florida workers' compensation is a self-executing system defined by chapter 440, Florida Statutes.¹⁸ The purpose of workers' compensation is to provide individuals injured at work with certain defined benefits for the treatment of the resulting medical condition(s) and for replacement of a portion of the wages lost as a result of an accident. Chapter 440 defines who participates in the workers' compensation system, and delineates the participant's rights and responsibilities. Some contend that recent history demonstrates an unstable appellate atmosphere;¹⁹ Florida's appellate courts must be consistent and correct. Too many Floridians rely upon workers' compensation for there to exist the vacillation and uncertainty that has been demonstrated.

Court Decisions and Precedent

Florida workers' compensation has been the subject of significant discussion in recent years, as described in the 2015-16 Annual Report.²⁰ System stability was recently affected by three constitutional decisions of note, including: (1) Westphal v. City of St. Petersburg decisions of the Florida First District Court of Appeal panel,²¹ *en banc*,²² and the Florida Supreme Court;²³ (2) Castellanos v. Next Door Company decided by the First District,²⁴ and likewise reversed by the Florida Supreme Court;²⁵ and (3) the First District Court decision in Miles v. City of Edgewater Police.²⁶ The original Westphal opinion was issued February 28, 2013 and the Supreme Court decision was rendered more than three years later on June 3, 2016. During the extended period, there existed some uncertainty regarding Florida law.

The net effect of these decisions expanded the potential duration of temporary benefit entitlement, returned Florida to hourly claimant's attorney fees under section 440.34(1), Florida Statutes, and removed statutory prohibitions on injured worker-paid attorney fees in certain circumstances. This included the imposition of judicially created factors for the determination of "reasonable" attorney fees, first legislated by the Florida Supreme Court in the 1960s.²⁷

These decisions nominally led to a significant workers' compensation premium rate increase in 2016.²⁸ That was followed by rate decreases in 2017²⁹ and 2018.³⁰ As this report was prepared, the National Council on Compensation Insurance (NCCI) filed a proposal for a third, 13.4%, rate decrease in 2019.³¹

There is significant disagreement in the marketplace as to the breadth of Miles v. City of Edgewater.³² In Miles, evidence was adduced at a hearing regarding the nature of that litigation and the economic feasibility of counsel representing that injured worker. The employer/carrier took no position regarding the feasibility of representation or the fees proposed. The assigned judge denied approval of the fee agreements, and an appeal was perfected to the Florida First District Court of Appeal. It concluded that Miles was an "as applied challenge," regarding the injured worker's right to pay counsel of her choosing an hourly rate to prove her medical complaints compensable.³³ As such, that challenge raised an argument that "a law which is constitutional on its face is nonetheless unconstitutional as applied to a particular case or party."³⁴ This phraseology alone suggests the court's conclusion that the challenged statutes are constitutional on their face. Additionally, the court in Miles noted that the Judges of Compensation Claims lack authority to "determine the constitutionality" of any statute.³⁵

The Court noted specifically that Ms. Miles, as well as the injured worker in a prior decision, Jacobson v. Se. Pers. Leasing, Inc.,³⁶ were confronted with a statutory construct limiting attorney fees. The Court noted that each of these cases was a compensability claim. That may be a critical point, because in such a claim there is no compensation or care provided. The employer and carrier are denying all benefits. Thus, in a compensability claim, a worker might be found entitled to some measure of benefits or denied all. The Court noted that in such a situation, "[t]here is no significant governmental interest being served, because there is no 'benefit secured' associated with the fees at issue in this case and, thus, no need to protect such (the benefits) from depletion." In the compensability context, the balancing of the injured worker's rights and the interest of the state was thus found by the court to favor the injured worker.

The Court explained that in Miles, as in Jacobson, "there can be no depletion of benefits where there are no benefits" (referring to arguments of "state interest" as regards section 440.34), Florida Statutes. Applying a strict scrutiny standard of review regarding speech and attorney fees in Miles, the court concluded "applying this test here" (to the facts and circumstances presented in Miles), the provisions of sections 440.105(3)(c) and 440.34 "fail"; the reference again to "here," suggesting an "as applied" rather than "facial" analysis.³⁷ In Miles, there was an evidentiary foundation in the form of "the affidavits of the attorneys" to the effect that claimant "could not secure their representation" based upon economic feasibility in the environment of "a case as complex as an exposure claim."³⁸

The Court also concluded that "without counsel she (Ms. Miles) was in all likelihood destined to fail."³⁹ The Court did not end its analysis there. The Miles court expounded that "to the extent these statutes prohibit a workers' compensation claimant (or claimant's union) from paying," these "statutes are unconstitutional." And, perhaps with that selection of language "*a* workers' compensation claimant" (emphasis added) as opposed to specific reference to Ms. Miles, the decision is seen by some as morphing from an "as applied" constitutional challenge on behalf of Ms. Miles to a facial analysis with broader implications or applications to all Florida injured workers. In that "*a*" language, it is possible that one might rationally conclude that admittedly presented with an "as applied"

constitutional challenge, the court did indeed distend and that both sections 440.105(3)(c) and 440.34 are nonetheless facially unconstitutional violations of free speech and otherwise protected constitutional rights.⁴⁰

Of note, the Florida Supreme Court has also recently addressed the constitutionality of section 440.34, albeit from the perspective of fees paid by the employer/carrier, as opposed to the injured worker as presented in Miles. In Castellanos v. Next Door Co.,⁴¹ the Florida Supreme Court addressed whether section 440.34, Florida Statutes, is facially unconstitutional. It concluded that facial constitutionality in that setting is “immaterial.” It noted however that “the statutory fee schedule (the limitations of section 440.34, Florida Statutes) could, in some cases, result in a constitutionally adequate fee. It certainly could.”⁴² Debate continues however. The statutory fee formula “certainly could” result in a constitutionally adequate employer-paid fee, but some apparently contend the formula as certainly could not so result when the injured worker is paying the fee (arguing that Miles is a facial constitutionality determination). This incongruity perhaps supports the argument that Miles must be an “as applied” conclusion that section 440.34, Florida Statutes, is unconstitutional only as proven so “as applied” to the facts of Ms. Miles’ claim.

A determination of facial constitutional infirmity requires the challenger to “demonstrate that no set of circumstances exists in which the statute can be constitutionally applied.”⁴³ Following that logic, the First District Court has concluded that as such, “A facial challenge to a statute is more difficult than an ‘as applied’ challenge, because the challenger must establish that no set of circumstances exists under which the statute would be valid.”⁴⁴ Such a determination of facial infirmity in Miles therefore seems contrary perhaps to the Supreme Court’s conclusions in Castellanos regarding section 440.34 (“it certainly could”). Following the District Court’s use of broad language (“a” and “an”) in Miles, it returned to specifics in discussion of police powers, supporting its decision there “because the record establishes that Claimant demonstrated that, as applied to her, the restrictions on her right to contract for legal work in workers’ compensation cases do not adequately prevent public harm, no longer promote the health, safety, welfare and morals....”⁴⁵

Having thus concluded its analysis of constitutionality, the Court expounded further on “waiver.” The Court noted that “an individual can waive his or her personal constitutional rights.” The Court concluded that “logically, then, if a person can waive constitutional rights, a person can also waive statutory rights such as those in section 440.34, Florida Statutes.” The Court hypothesized in Miles that “here, we see no reason why a workers’ compensation claimant should not be able to waive a limitation on claimant attorney’s fees and agree to pay her attorney with her own (or someone else’s) funds, subject to a JCC’s finding that the fee is reasonable.”⁴⁶

The Miles Court in “conclusion” however returned again to the generality of “a claimant’s ability,” (emphasis added) addressing the “criminal penalties of section 440.105(3)(c).” The Court also noted in its conclusion the right of “an injured worker” to enter a fee agreement “approved by the JCC.”⁴⁷ That is perhaps a broader pronouncement than only “as applied” to Ms. Miles. It is thus less than clear whether the “as applied” analysis in Miles established constitutional infirmity of claimant-paid fees only “as applied” to Ms. Miles, or whether it instead satisfied the “more difficult” standard of a facial determination, thus invalidating the statutory fee constraints for all injured workers, contrary to the parallel analysis and conclusions of the Supreme Court in Castellanos.

The statistical evidence supports that some population of Florida Judges of Compensation Claims have interpreted Miles in the broadest context, allowing avoidance of section 440.34 altogether. This is discussed in detail on pages 31-36, regarding attorney fees. Until the courts return to analysis of section 440.34, there may remain disagreement regarding the breadth of Miles, and whether the statutory limitation is effective.

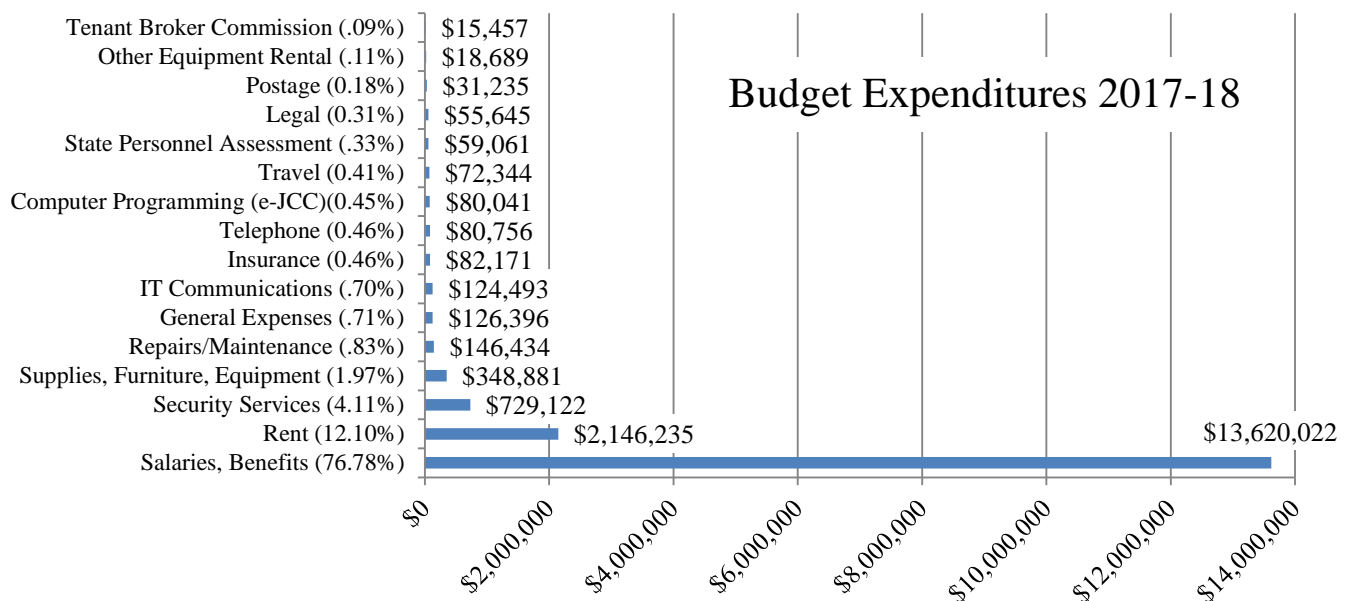
Budget and Training Issues

The duties of OJCC Commission Deputy Clerks, Deputy District Clerks, and Administrative Secretaries are far more similar to duties of paraprofessionals employed in the Florida Courts than to similarly titled employees in other Executive branch departments and agencies. The skills necessary for administering an adversarial litigation adjudication process are not similar to skills needed for general clerical or secretarial work. In addition, the advent of the digital age and deployment of end-user attorney and adjuster electronic data-access and eFiling have increased the sophistication and skills necessary to effectively perform paraprofessional functions for the OJCC. In short, the OJCC staff positions continue to demand ever-increasing technical skills in a litigation-driven environment. The JCC Application database that is the backbone of data collection, electronic filing, and the unprecedented transparency and public data access, is a proprietary system specifically designed to serve the OJCC and its customers. Staff turnover invariably requires extensive training in the optimal use of this software. The Florida court system defined in Article V. is subject to different budgetary constraints and pay rates than the

Executive branch. Article V. Court employees, performing less technical or specialized, and more clerical services in that litigation adjudication system, earn starting annual salaries up to \$7,291.56 more than comparably titled OJCC paraprofessionals.⁴⁸ To be clear, less technically proficient clerical staff in Florida’s court system earn significantly more than the OJCC staff. As a result, the OJCC has continually struggled to retain skilled paraprofessionals. Paraprofessional staff turnover in some portions of Florida has been forty percent (40%) in recent years. Each hour invested in advertising openings, interviewing, hiring, and training new staff represents a significant degradation in the delivery of services to the OJCC customer. OJCC efficiency suffers as a result of the compensation disparity between the OJCC and other adjudicatory systems in Florida, such as the Article V. Courts. Significant increases in the salaries of these paraprofessional staff members will recognize the complexity of their customer service positions, encourage their retention in the Executive branch, and represent zero cost to the Florida taxpayer.

Similarly, the OJCC has made marked improvements in the delivery of timely services to Floridians. The transparency of performance measures documented in this report, and through the internet-based OJCC data access tools is unprecedented. No other judge in Florida is more accountable than a Judge of Compensation Claims. No other judge in Florida is subject to the array of performance measures, such as those imposed by chapter 440, Florida Statutes. The jurisdictional dollar value presented to Judges of Compensation Claims for adjudication is virtually limitless. In this regard, JCCs’ duties are more comparable to Circuit Judges than County Judges. However, the JCCs perform bench trials, which more often last for hours instead of days. In that regard, JCC duties are perhaps more comparable to County Court Judges. However each trial requires preparation and publication of a substantive final order. Some JCCs’ orders are very detailed and require extensive effort and time, often far in excess of the time required for the trial itself. Regardless of these subtleties, the duties of a Judge of Compensation Claims are significant and the salary should be commensurate with these duties (see Appendix 18).

In conclusion, the OJCC has been efficient and effective in managing litigation of workers’ compensation claims in recent years. The cost per Petition closed has been reasonable, and is well below even the filing fee charged by the Article V. Courts. The transition to a digital process and system, and the skill levels required to maintain the electronic platform, justifies adjusting the OJCC budget to allow commensurate compensation for the personnel responsible for the successes described in this and previous iterations of this report. The use of the OJCC budget is illustrated in this chart.



These percentages have not changed markedly in recent years. However, inflation continues to drive lease rates⁴⁹ on premises and sporadic legislative approval of much needed cost-of-living salary adjustments have increased expenditures for salaries and benefits. It is notable that ninety-three percent of the agency budget is devoted to salaries/benefits, rent, and security services.

Data Collection and Reporting

This report is produced and published pursuant to statutory mandate. §440.45(5), Fla. Stat.⁵⁰ The accuracy of the data in this report is dependent upon the efforts of district staff working in thirty-one Divisions in seventeen District Offices throughout Florida. The 2005-06 OJCC Annual Report described prior data flaws resulting from outdated hardware, outdated software, and long neglect of staff training prior to the transfer of the OJCC to the DOAH in 2001. Since fiscal year 2006-07, the OJCC has devoted significant resources to staff training in order to enhance the accuracy of that data entry. Those efforts are described in detail in the 2006-07 OJCC Annual Report, and included the publication of an illustrated database user manual, as well as central and regional training. That database user manual was revised periodically⁵¹ and is now in a biennial review and update cycle under the guidance of the OJCC Central Clerks Office. The Annual Reports since 2006-07 have documented improvements in effectiveness and efficiency that are attributable to educational efforts. It is believed that the data presented in this report is as accurate as possible, but it is likely that flaws persist. Over the last several years, there have been ambiguous allegations as to data accuracy in prior Annual Reports. In the production of this Annual Report, particular attention has been afforded to all data sets in an attempt to identify any potential basis for this ambiguous allegation, but no basis or support has been found. All empirical data used in preparation of this report is public record and is available for review.

Compliance with Procedural Rules:

Consistent compliance with procedural rules and statutes has been noted as a potential issue in prior reports. Those issues primarily regarded the conducting of hearings on procedural motions.⁵² A second area of concern is the election by some judges to violate the terms of section 440.25, Florida Statutes, see page 42, Statutory Measures, “Final Hearing Continuance.” Anecdotally, some judges note that compliance with the statute is difficult or unwieldy, particularly when trial is continued for an Expert Medical Advisor (EMA), and the end-point of that process is difficult or impossible to predict with any certainty.

Judicial independence dictates interpretation of statutes and rules must be left to the individual adjudicator that is presiding in a matter. However, the purpose of statutory requirements and duly adopted rules is that there will be consistency throughout the state in the process of adjudication. That consistency is of value to the parties involved in litigation and to the attorneys that represent them.

Terms and Definitions:

The 2015-16 annual report marked a departure in the methodology of quantifying trials. In 2006, a committee of Judges of Compensation Claims addressed the historical issue that this agency has faced in this regard. Prior to the legislative transfer of the OJCC to the Division of Administrative Hearings (DOAH), there were efforts directed towards gathering and representing data. However, definition and consistency were difficult. There was no definition of “trial” and each of the 31 judges made independent definitions of what event constituted a trial.

There were abuses under this paradigm. One judge was anecdotally known to consider a “trial” to be any event which “raised his blood pressure.” There were instances in which parties, despite having reached an amicable resolution of issues, were required by judges to present for the scheduled trial so that the terms could be recited on the record. Those were counted by some as “trials.” Thus, historically there was intentional manipulation and inconsistency.

In 2006, a committee of judges concluded that it would be appropriate to include the known trial events in the definition. Final Hearings regarding petitions for benefits, and hearings regarding contested attorney fees pursuant to a verified motion or verified petition were included without debate. But, there was recognition that some other evidentiary matters were similar to such proceedings, in that evidence would be required to determine the matter and a substantive order would be required to adjudicate the issue. Thus, the OJCC adopted a definition of “trial” that included merits hearings, contested fee hearings, and substantive evidentiary motion hearings.

For ten years, the reported figures for trial volumes, time to trial, and time to order each included the orders in this definition. Inclusion was not without controversy. Each order entered by a Florida JCC is uploaded to the appropriate case docket. When that filing occurs, the filer characterized the order. Thus, how any order was initially characterized was dependent upon the judgement of the filer, be it judge or staff, at the judge’s direction.

Each year, the “trial orders” were reviewed and audited in the preparation of this report. Many uploaded as “trial orders” were removed annually from the final “trial order” list. These were orders that should not have been characterized in the filing process as “trial orders.” They were non-substantive orders, orders entered without a hearing (no hearing, no “trial”), and orders entered when no evidence was either needed or introduced.

In the course of that process in 2016, a large volume of orders was identified that did not appropriately belong in the “trial order” categorization. Through the audit process critical to this report, various excuses and contrivances were enunciated to excuse the inclusion of these orders in the population of “trial orders.” The most disturbing of the excuses/justifications was that this Office should strive to appear engaged and busy, and these contrived orders would support such a conclusion.

The clear conclusion is the antithesis of that justification. This Office has no obligation to “look” busy, but is instead obligated to effectively and efficiently process, mediate, and adjudicate workers’ compensation claims. The efforts of this office should be measured as required by law. But, those measurements should be accurate and concise, not contrived or concocted. Therefore, the definition of “trial order” was changed in 2016⁵³ to include only Final Hearings regarding petitions for benefits, and hearings regarding contested attorney fees pursuant to a verified motion or verified petition. That change results in lower trial volumes, and longer periods “to trial” and “to order.”

Electronic Filing Initiative:

Having led the way into the twenty-first century in 2005-06 with deployment of electronic filing (“eFiling,” or “eJCC”), the OJCC has continued to revise and leverage this process. In 2011-12, the OJCC began to enforce the mandatory use of electronic filing by represented parties. This meant documents sent to the OJCC by attorneys could no longer be in paper form. In 2011-12 programming was added to afford eFiling access to all users, represented or not. In 2012-13, programming was completed to allow electronic service⁵⁴ of pleadings among and between lawyers and insurance carriers. The result is a neatly integrated electronic filing and service system that is exemplary.⁵⁵

In 2017-18, five hundred eighty-two thousand seven hundred sixty-two (582,762) documents were e-filed with the OJCC. The filing volumes are described in this chart.

Fiscal Year	Filing Volume	Percent Change
2005-06	361	
2006-07	24,133	6585%
2007-08	193,745	703%
2008-09	328,660	70%
2009-10	380,897	16%
2010-11	451,649	19%
2011-12	461,820	2%
2012-13	502,448	9%
2013-14	521,205	4%
2014-15	522,321	0.2%
2015-16	545,695	4.5%
2016-17	583,485	6.9%
2017-18	582,762	-0.1%

Using the parameters described in the 2006-07 OJCC Annual Report,⁵⁶ the cumulative end-user savings to date generated by this eFiling system, by the end of fiscal 2017-18, were at least three million nine hundred forty-eight thousand six hundred seventy-nine dollars (\$3,948,679). The total savings to the state is five million six hundred nine thousand seven dollars (\$5,609,007). The combination is over nine million dollars in savings, and the total OJCC investment to date is approximately 1.3 million dollars. The eJCC return on investment from eFiling is about 760%. Electronic service was added to the eJCC platform in January 2013. This feature allows significant volumes of documents to be served electronically upon opposing counsel and insurance carriers in conjunction with electronic filing. This process change has enabled an additional annual savings to practitioners and carriers in excess of one million dollars due to the ability to serve each other documents electronically. The eService savings, combined with eFiling savings is thus well in excess of ten million dollars. This achievement is particularly gratifying in light of issues and complications experienced by other states’ systems that have expended large special fund allocations building and deploying electronic filing.⁵⁷ Notably, the Office of Judges of Compensation Claims’ success with eFiling and eService has been achieved without any extraordinary budget allocations.

Number of Litigated Cases:

It is difficult to ascertain with absolute certainty how many “cases” are in litigation at a given moment in time. The OJCC developed and uses a proprietary and dynamic database. This includes a powerful case management program, the JCC Application, or “JCCA,” and is also the foundation of all of the electronic filing efforts of the OJCC. Since 2006, the OJCC has invested significant resources in the education of District staff, seeking consistency in operations, and specifically in data management using this system. Recent years have evidenced continual improvements in data management at the District level. This increasing consistency remedies many data issues reported in prior OJCC Annual Reports (www.fljcc.org). The 2008 Annual Report noted an unprecedented level of confidence in the figures expressed therein; it is believed that the statistics in the Annual Reports since that time are worthy of that same confidence.

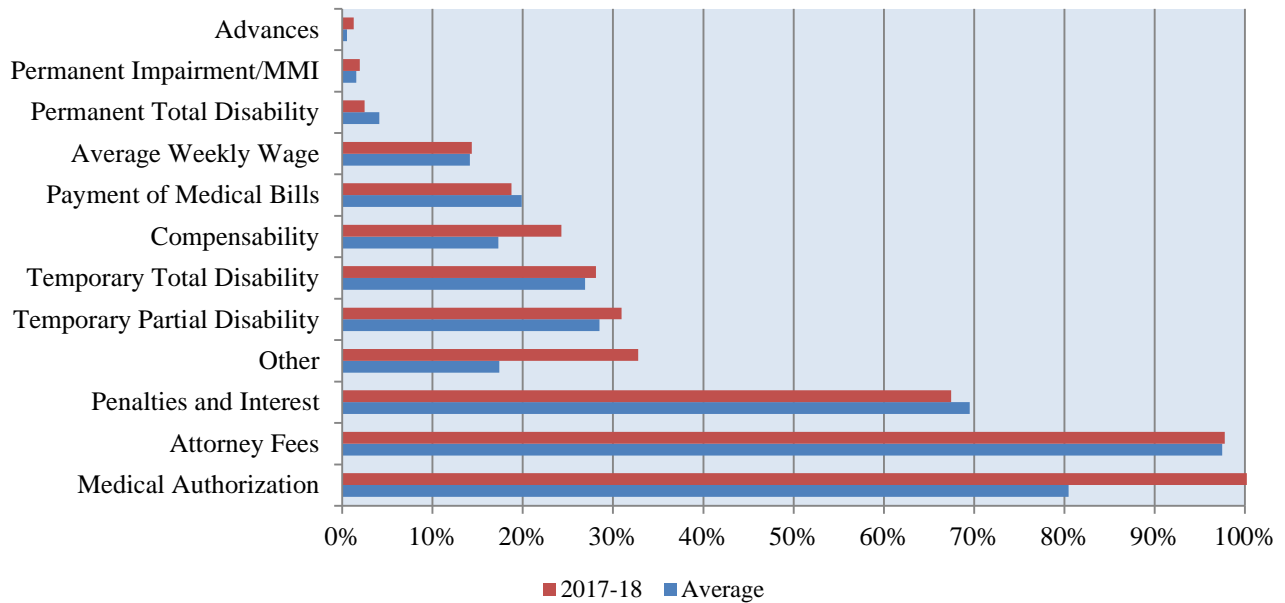
There remains one irreconcilable issue with the reporting of the “number of litigated cases.” In workers’ compensation, there simply is no clear definition for “cases.”⁵⁸ Litigation in Florida workers’ compensation is usually instigated with a Petition for Benefits (“PFB”). Each PFB might seek a single benefit, or many benefits.⁵⁹ A given workers’ compensation trial might decide the issues in one PFB or several PFBs serially filed prior to trial. The overall number of PFBs filed is therefore only one measure of system volume. The very nature of workers’ compensation cases often results in periods of administrative delivery of benefits to a particular injured worker, punctuated periodically with some disagreement that requires the filing of a PFB. Therefore a PFB filed in 2017-18 could seek resolution of an issue regarding an accident that occurred that year or perhaps many years prior.⁶⁰

Another viable measure of volume is the “new case” PFBs filed annually. “New case” PFBs may likewise reference a date of accident that is either recent or remote, but each “new case” PFB certainly represents only an accident for that particular injured worker that is new to litigation, i.e. “new” to the OJCC.⁶¹ This metric measures “new” litigation, but ignores the intensity of litigation. Conversely, the overall PFB number may more accurately reflect litigation intensity.

Therefore, the raw PFB volume and the “new case PFB” volume are each arguably valid methods for measurement of the number of litigated cases. Because definition of “cases” presents these inherent complications, and because there are merits regarding the efficacy of both the “raw PFB” measure and the “new cases” measure, the OJCC calculates and reports each.

Issues may likewise be brought before a Judge of Compensation Claims by a motion.⁶² Notably, each of the available metrics, PFB and “New Cases” ignores the volume of litigated cases that are instigated by motion instead of PFB. Although these motions⁶³ also represent “litigated” cases, it is believed that cases instigated by PFB filing effectively represent litigation volume trends statistically, despite the exclusion from this total of the significant volume of work presented by attorney fee, prevailing party costs, and similar evidentiary motions.⁶⁴

A single PFB could theoretically seek each and every benefit potentially available to an injured worker under the law. An injured worker seeking that same quantum of benefits might instead serially file a multitude of individual PFBs, each seeking one particular benefit. Typically, most PFBs seeking a substantive benefit will also seek related benefits such as penalties and interest related to indemnity claimed, as well as the costs and attorney fees associated with litigating the claimed substantive benefits. The OJCC clerk documents the categories of benefits sought in each PFB. The following chart depicts the average frequency of claims for these various distinct benefits within PFBs filed over the fourteen-year period 2003-04 through 2016-17 (blue bars on the bottom of each category) and the rate of filing for those categories in the current fiscal year, 2017-18 (red bars). The rate of medical authorization claims has been noteworthy for the last seven fiscal years (2011-12 through 2017-18). The rate of medical authorization claims in 2016-17 was particularly noteworthy, approaching 100% aggregate. In 2017-18 it exceeded 100%.⁶⁵ It is fair to say that medical disputes in Florida workers’ compensation are common. The volume of “compensability” and “other” disputes was also notably above average in each of the last six (2012-13 through 2017-18) fiscal years. However, as reported in the various annual Settlement and Mediation Reports⁶⁶, the volume of settlements on denied compensability cases has not fluctuated similarly. This is likely attributable to the very small data set represented by the *pro se* denied cases which are reported there.⁶⁷



Gross Petition for Benefit (“PFB”) Filing

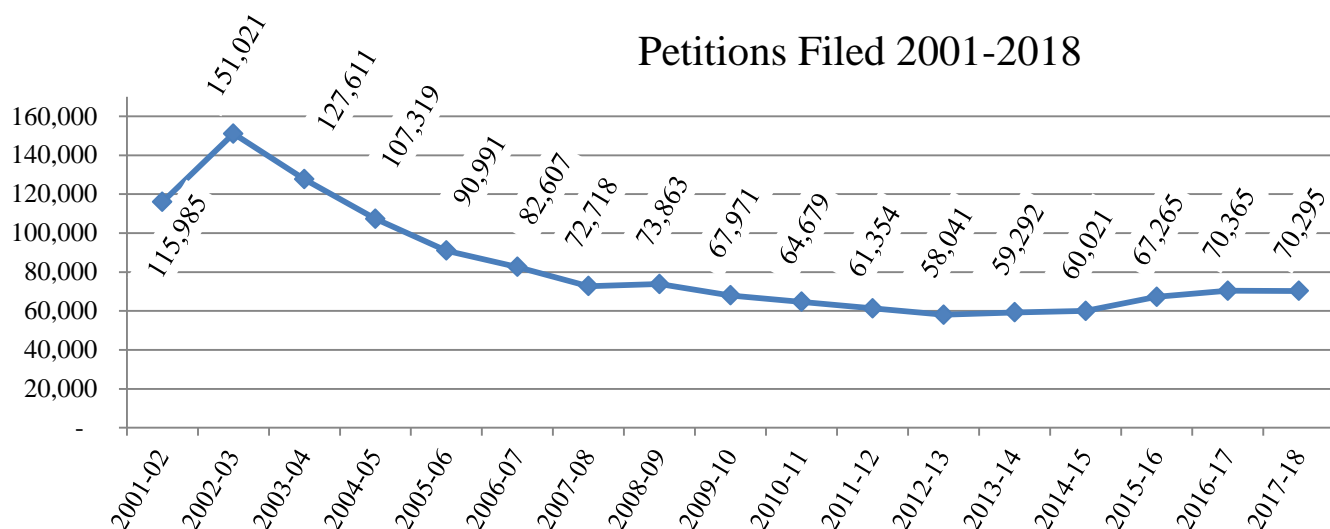
The Florida Legislature enacted significant amendments to the Florida Workers’ Compensation Law in 1994 and again in 2003. After the 1994 reforms, PFB filing volume consistently increased each year. Just prior to the 2003 reforms, annual PFB filings peaked at 151,021. The progressive increase in PFB filings between 1994 and 2003 belies the efficacy of the 1994 reforms’ intent to decrease litigation. Immediately following the 2003 reforms, the PFB filing volume decreased at a consistent annual rate of approximately fifteen percent (15.21% to 15.9%) over each of the next three years, and then continued to decline with reasonable consistency through fiscal 2013 with the sole exception of a slight increase in 2008-09.⁶⁹ Modest PFB filing increases in 2013-14 and 2014-15 were followed by a marked increase of twelve percent in 2015-16. Questions were raised in 2015-16 regarding the trend potentially suggested by that significant increase. The five percent (4.6%) PFB filing increase in 2016-17 may be seen as indicating a continued trend of increased filings. However, the petition filing volume in 2017-18 was virtually unchanged from 2016-17, a decrease of 70 petitions, or one-tenth of one percent. This plateau may be attributed in part to tropical weather, economic changes, employment changes, or other factors.

Fiscal Year	Petitions Filed	% Change
2002-03	151,021	
2003-04	127,611	-15.5%
2004-05	107,319	-15.9%
2005-06	90,991	-15.2%
2006-07	82,607	-9.2%
2007-08	72,718	-12.0%
2008-09	73,863	1.6%
2009-10	67,971	-8.0%
2010-11	64,679	-4.8%
2011-12	61,354	-5.1%
2012-13	58,041	-5.4%
2013-14	59,292	2.2%
2014-15	60,021	1.2%
2015-16	67,265	12.1%
2016-17	70,365	4.6%
2017-18	70,295 ⁶⁸	-0.1%

There are those who associate the changes in petition filing rates to attorney fee constraints under the statute, or the absence thereof. In the 2016-17 OJCC Annual Report there is further analysis of perceptions regarding the potential impacts of the 2003 statutory amendment, the Florida Supreme Court decision in *Murray v. Mariner Health*⁷⁰, the 2009 Florida Legislature amendment to again forbid hourly fees,⁷¹ the Florida Supreme Court decision in *Castellanos v. Next Door Company*,⁷² and the Florida First District Court of Appeal decision in *Miles v. City of Edgewater Police*.⁷³ Perceptions regarding these cases continue to form and refine.

It is possible that perceptions of the outcome of cases, *Castellanos* or *Miles* for instance, are affecting PFB filing volumes currently. However, the OJCC has no foundation to determine what, if any, particular force drove the recent increases in volume or the current stability.

Petitions Filed 2001-2018



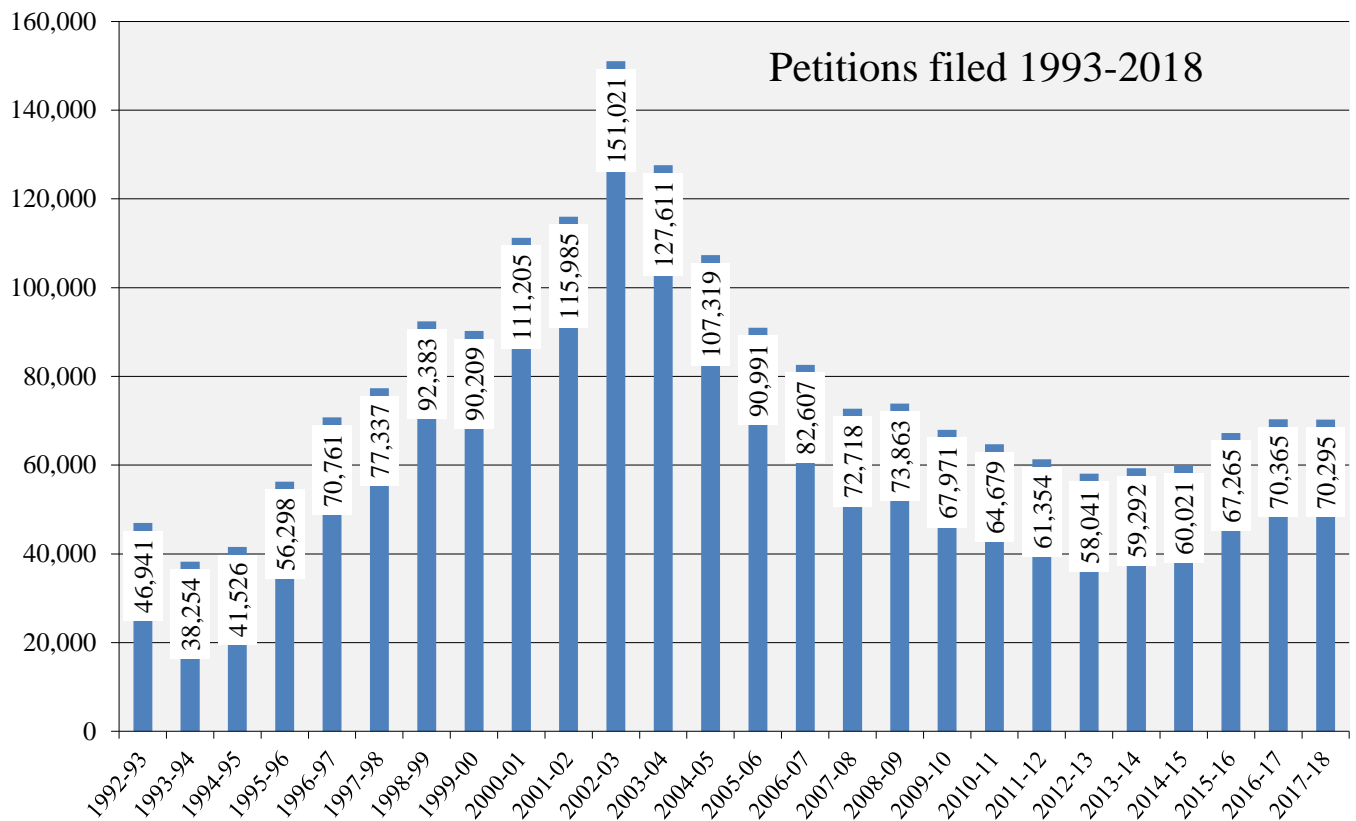
Florida workers' compensation premiums decreased significantly after the 2003 statutory reforms. The cumulative premium decrease through fiscal year 2008-09 was approximately 58%. Interestingly, in that same time period, PFB filings had decreased approximately fifty-two percent (51.85%), which some may have interpreted as a close correlation. However, any perceived correlation between litigation filing rates and insurance rates is difficult to defend.

Despite consistently decreasing PFB filing rates between 2009-10 and 2012-13, workers' compensation rates increased annually as depicted in this chart. Notably, the rate changes are approved in the fall of each year. The rate filings logically relate, if at all, to activity or PFB volumes prior to each described premium change. (See Fee by Accident Year discussion, page 36). The apparent lack of congruity between petition filing and premium rates is logical. First, the effect, if any, of PFBs filed might not become apparent for months or even years after filing. Second, the premium rate is calculated by reference to the losses from work accidents. The vast majority of workers' compensation injuries are administratively managed and paid. Those claims never enter the Office of Judges of Compensation Claims' system for mediation or trial. Thus, the petition filing volume represents a small percentage of all work accidents, and correlating it, as a sample, to the changes in premium simply has not been demonstrably reliable.

Fiscal Year	PFB change	Premium change
2009-10	-8.0%	-6.80% ⁷⁴
2010-11	-4.8%	7.80% ⁷⁵
2011-12	-5.1%	8.90% ⁷⁶
2012-13	-5.4%	6.10% ⁷⁷
2013-14	2.2%	0.7% ⁷⁸
2014-15	1.2%	-2.50% ⁷⁹
2015-16	12.1%	-5.10% ⁸⁰
2016-17	4.61%	14.50% ⁸¹
2017-18	0.10%	-9.60% ⁸²
2018-19	Unk.	-13.80% ⁸³

The following graph represents PFB filing since 1992-93.⁸⁴ The 1994 reforms were intended to curtail litigation. Despite that intention, the PFB filings increased markedly thereafter. Of note, the OJCC was staffed by 31 judges in 1993. Following the 2012 budget/position reductions, the OJCC is again staffed by 31 judges. While the judicial workload has decreased from the demands of the exceptional filings in recent years, it has never returned to the baseline of 1994. The 2017-18 filings (70,295) remain about 84% higher than in 1993-94 (38,254). And, the filing trend has recently been upward.

Presuming the accuracy of these DLES volumes, the PFB filing rate in 2012-13 was the lowest in eighteen years, since 1995-96. Filings have trended to increased filings four of the last five fiscal years.



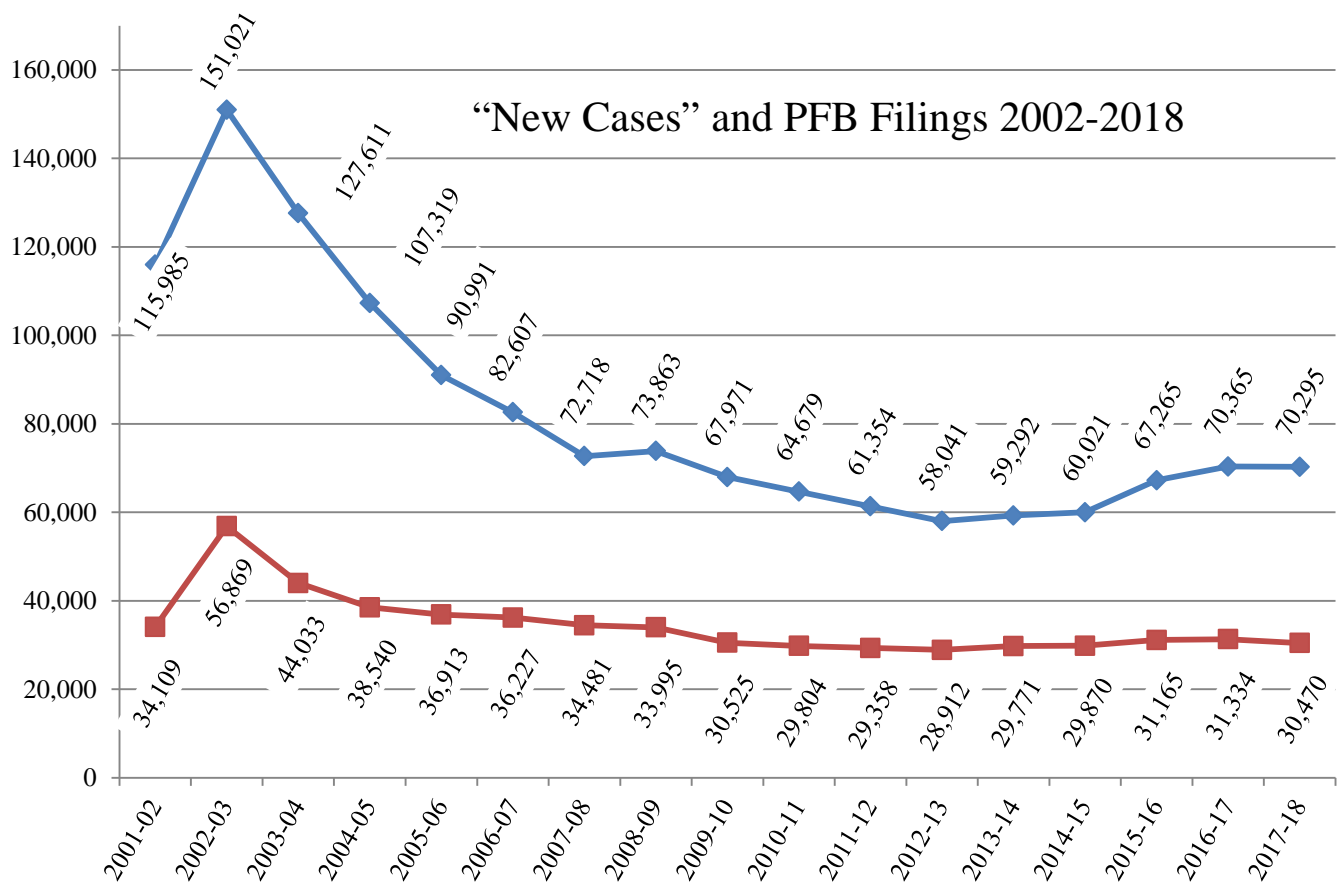
New Case Filing

The volume of “new cases filed” has been tabulated only since the OJCC was transferred to the DOAH in 2001. The term “new cases filed” refers to the volume of PFBs filed, which represent the first PFB in the history of that particular accident by that particular injured worker. Workers’ compensation cases often involve the litigation of multiple, serial PFBs over the course of years. The rate at which “new cases” are filed is indicative of the rate at which cases are entering the OJCC litigation process, and is not affected by the serial nature inherent to workers’ compensation generally, and thus of overall PFB filing.

Generally speaking, this measure is the inverse of the volume of settlements approved in a year, which is similarly statistically indicative of the rate at which cases are permanently leaving the OJCC litigation process. Although cases can be resolved without settlement, those that are not settled may have some potential to return to the litigation process regarding some future claims or issues. The “new case” measure may also arguably be a more accurate indicator of the effect of legislative changes to the substantive benefits provided to Florida employees through chapter 440, Florida Statutes than PFB filing volume.

However, a “new case” filed in 2017-18 could involve an accident that year, or could involve an accident that occurred years prior, even prior to the 2003 statutory amendments. It is possible that an injured worker might receive all benefits due, without any need for litigation, for many years following a work accident.⁸⁵ Such a case may enter litigation after many years of administrative delivery of some benefits. The OJCC has not attempted to delineate the age of accidents that enter the OJCC system as “new cases” each year.

The volume of “new cases” filed steadily declined after 2003 statutory amendments. The rate of decline in “new case” filing was less than the rate of PFB decline in almost every fiscal year since 2003. The following graph depicts the OJCC “new case” filings (red), and the PFB filings (blue).



This comparison has demonstrated that “new case” filings have not been as elastic as PFB filings. The PFB filings returned to similarity with 2001-02 much more rapidly than “new case” filings. While there has been some parallel in the trend each demonstrates, the PFB filings have changed more dramatically. In the 2014-15 Annual Report suggestion was made that the downward PFB trend might be ending. The data since that time substantiates that prediction. However, the extent of that change, as well as duration, still remains to be seen.

The volume of “new cases” filed may also be expressed as a percentage of the gross volume of petitions for benefits (PFB) filed during the same time period. This compares the relationship of each annual “new cases” volume to the corresponding annual overall PFB filing volume. This comparison demonstrates that the percentage of all PFBs that were “new cases filed” initially remained fairly consistent immediately after the 2003 reforms; in fiscal 2003-04 (34.5%) and 2004-05 (35.9%). As overall PFB volumes decreased significantly, and “new case” volumes decreased more moderately, the percentage of “new cases” has remained a significant portion of the overall filing rate, exceeding fifty percent in 2013-14. With recent increases in PFB filing, the “new case” percentage has decreased recently.

In summary, the available data supports several conclusions. First, the trend since 2013-14 has been an increase in PFB volume. Second, the volume of “new cases filed” historically increased or decreased at a much slower rate than PFB filing. Third, the PFB volume remains below the volumes demonstrated before and immediately after the 2003 reforms, despite recent increases. Finally, though the percentage share of “new cases” has moderated notably in the last two years, it continues to decrease and is

Fiscal Year	PFBs Filed	Cases Filed	New/Gross PFB
2001-02	115,985	34,109	29.4%
2002-03	151,021	56,869	37.7%
2003-04	127,611	44,033	34.5%
2004-05	107,319	38,540	35.9%
2005-06	90,991	36,913	40.6%
2006-07	82,607	36,227	43.9%
2007-08	72,718	34,481	47.4%
2008-09	73,863	33,995	46.0%
2009-10	67,971	30,525	44.9%
2010-11	64,679	29,804	46.1%
2011-12	61,354	29,358	47.9%
2012-13	58,041	28,912	49.8%
2013-14	59,292	29,771	50.2%
2014-15	60,021	29,870	49.8%
2015-16	67,265	31,165	46.3%
2016-17	70,365	31,334	44.5%
2017-18	70,295	30,470	43.3%

approaching the 2002-03 level of approximately thirty-eight percent (37.7%). This data does not support that constraints on the litigation process, such as the 2003 statutory amendments, are decreasing the litigation of issues in claims occurring after those revisions. The data appears to support the contrary, that litigation involving new claims remains reasonably consistent, while litigation on previously filed claims has fluctuated over time.

The intuitive conclusion from this analysis might focus on attorneys’ fee payments, as amended in 2003. One might conclude that there was a perception that litigation early in a claim was more lucrative than subsequent litigation. Such a perception might be demonstrated by a willingness to file “new cases,”⁸⁶ but reluctance to litigate arguably minor issues thereafter due to fee compression.⁸⁷ It is possible that the potential volume of future benefits was sufficient, early in a claim, to accommodate litigation. This may be more supported in claims that are completely denied, or in which there are vast disparities in perceptions of the degree of future medical care required, leading to denial of benefits with significant monetary value and thus significant associated fee issues under the statutory formula reiterated in the 2009 legislative session.⁸⁸

Upon that contention, prior reports suggested that Florida might expect to see continuing increases in PFB filing volume with the attorney fee changes.⁸⁹ However, since the courts decided Castellanos and Miles, neither “new case” nor petition filing volumes have increased dramatically. The data regarding claimants’ attorney fees in 2017-18 is suggestive of a recent moderating in aggregate hourly fees and markedly increased fees taken from settlements. The trend may therefore be toward settlement of cases, rather than an increased filing or trial of cases.

Pro se Cases

The Office of Judges of Compensation Claims (OJCC) has been asked whether there is evidence of changes in the volume of *pro se* claimants, or claimants who represent him or herself. This question is fundamentally: “are more or less claimants filing their own cases?” This is a difficult question, which cannot be definitively answered by the JCC Application database as it is currently configured. This database was not designed to answer this question, and cannot be readily or inexpensively adapted to do so. Whether a particular claimant is represented or not at a given moment in time (a “snapshot”⁹⁰) can be determined with accuracy. However, this does not answer whether a particular claimant in fact filed any *pro se* petition(s) for benefits (PFB). For example, a claimant might hire counsel and through that counsel file three PFBs for various benefits. The JCC Application would then reflect three “open” PFBs attributable to a “represented” claimant. If the claimant thereafter ceased to be represented, and filed one *pro se* PFB, the database would then reflect four “open” PFBs attributable to a *pro se* claimant, despite the fact that three of those were in fact filed by (former) counsel. If that same claimant then hired a new attorney, who then filed a fifth PFB, the database would then reflect five “open” PFBs attributable to a “represented” claimant, despite the fact that one of those five was in fact filed *pro se*.

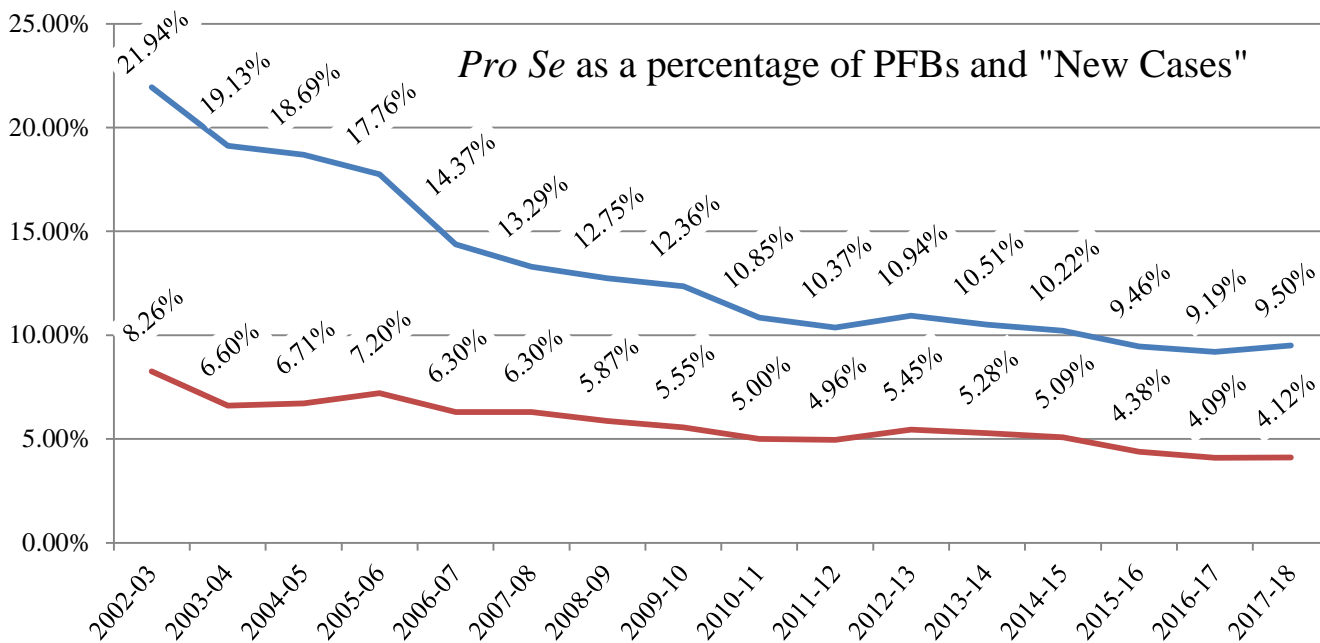
Fiscal Year	PFB	Pro Se June 30	
2002-03	151,021	12,477	8.26%
2003-04	127,611	8,423	6.60%
2004-05	107,319	7,205	6.71%
2005-06	90,991	6,555	7.20%
2006-07	82,607	5,205	6.30%
2007-08	72,718	4,583	6.30%
2008-09	73,863	4,333	5.87%
2009-10	67,971	3,774	5.55%
2010-11	64,679	3,234	5.00%
2011-12	61,354	3,044	4.96%
2012-13	58,041	3,162	5.45%
2013-14	59,292	3,130	5.28%
2014-15	60,021	3,053	5.09%
2015-16	67,265	2,947	4.38%
2016-17	70,365	2,881	4.09%
2017-18	70,295	2,894	4.12%

The JCC Application database can report the total volume of “new cases” opened in a given fiscal year and the percentage thereof on a given day that are “represented” or that are *pro se* cases. Likewise, the OJCC can calculate the percentage of *pro se* cases, compared to the total volume of PFBs filed during the preceding year. Neither of these is necessarily a relevant reflection of the actual population of PFBs that have been filed by injured workers on their own behalf. However, these two calculations are the best answer the OJCC can currently provide to the question of *pro se* litigant volume.⁹¹ The chart above-right depicts the percentage of all PFBs filed each year, to the pending PFB population attributable to *pro se* claimants at the end of that same fiscal year (each ends on June 30).

Notably, if the raw number of PFBs attributable to *pro se* claimants remained static each June 30, the percentage would nonetheless have fluctuated in prior years due to the decrease in overall PFB filings discussed above. This chart depicts the comparison of *pro se* cases to the volume of “new cases” filed in the year.

The available data does not support the conclusion that the *pro se* claimant population is increasing.⁹² The data supports that there is fluctuation in the *pro se* volume and percentages. However, the changes in recent years have not been consistent with any significant trend of increased or decreased *pro se* participation, although 2015-16 through 2017-18 demonstrate lower volumes of *pro-se* pending petitions, the change (5.09% to 4.38% to 4.09% to 4.12%) could be explained wholly by the increased PFB filing volumes. Notably, the actual number of *pro-se* cases increased only 13 from 2016-17 to 2017-18, and PFB filings decreased 70 in the same period. Thus, while the percentage demonstrates change, and small increase, the actual volume of *pro-se* litigants has simply not changed significantly.

Fiscal Year	“New Cases”	Pro Se June 30	
2002-03	56,869	12,477	21.94%
2003-04	44,033	8,423	19.13%
2004-05	38,540	7,205	18.69%
2005-06	36,913	6,555	17.76%
2006-07	36,227	5,205	14.37%
2007-08	34,481	4,583	13.29%
2008-09	33,995	4,333	12.75%
2009-10	30,525	3,774	12.36%
2010-11	29,804	3,234	10.85%
2011-12	29,358	3,044	10.37%
2012-13	28,912	3,162	10.94%
2013-14	29,771	3,130	10.51%
2014-15	29,870	3,053	10.22%
2015-16	31,165	2,947	9.46%
2016-17	31,334	2,881	9.19%
2017-18	30,470	2,894	9.50%

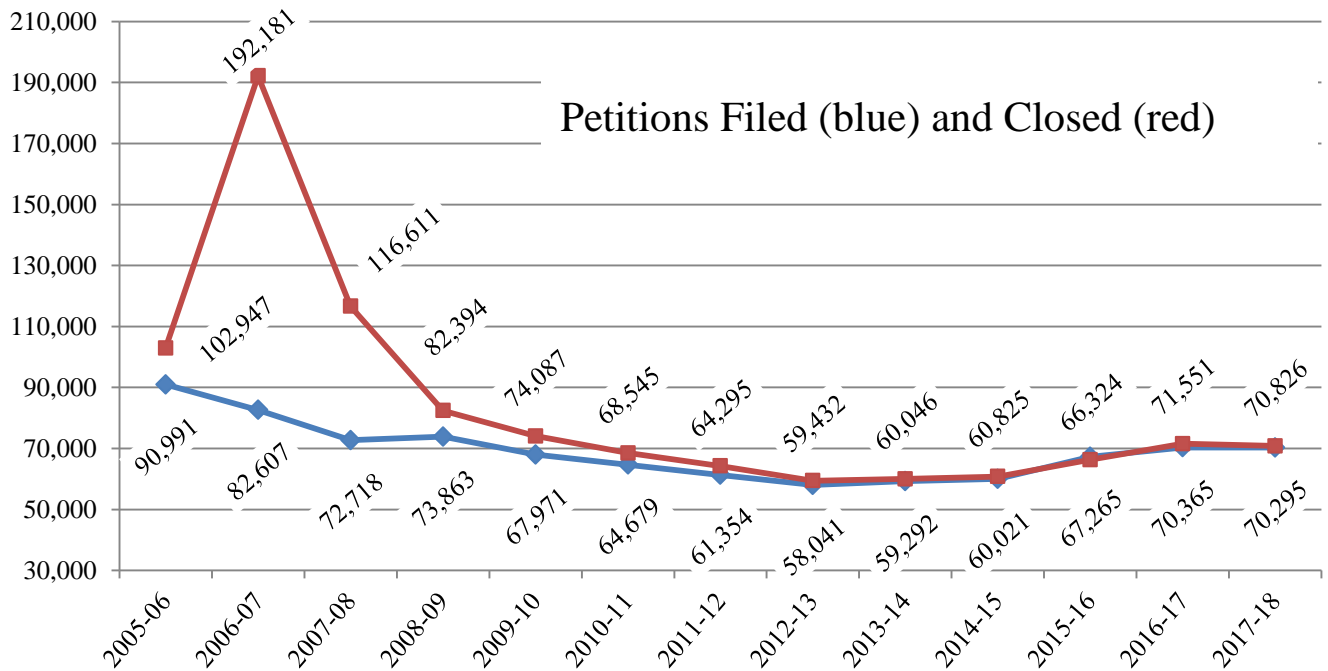


The graph above depicts the ratios of “new cases”(blue) and of the Petitions (red) to the population of *pro se* petitions pending on June 30 of each of the last sixteen (16) fiscal years. These comparisons demonstrate minor fluctuations in *pro se* participation over the last seven fiscal years. The overall trend over the sixteen year period extending back to 2002-03 was generally to decrease until leveling more recently. The slight increase in percentages in 2017-18 appears to be statistically insignificant in light of actual change in *pro se* participation as of June 30, 2018, thirteen additional claimants.

Amount of Litigation Resolved

The OJCC struggled early in the 21st century with the closure of petitions for benefits (PFB). The legislature has defined statutory time parameters for the mediation and trial of PFBs in section 440.25, Florida Statutes.⁹³ This legislative mandate for timely adjudications is inconsistent with a marketplace practice of utilizing petition (and before 1994 “claim”) filing to indefinitely preserve the status quo against the possible effectiveness of the statute of limitations in section 440.19, Florida Statutes. So long as a PFB is “pending,” then the statute of limitations will not run. Anecdotally, there is support for a historical practice of filing PFBs, not necessarily to seek provision of a particular benefit, but instead, to act as an indefinite “tolling” of the statute of limitations.⁹⁴ PFB closure was a difficult issue for the OJCC following the massive influx of PFBs in 2002-03 (151,021).⁹⁵ The sheer volume of PFBs in 2003 markedly affected workload and therefore effectiveness in most districts.

In the context of litigation volumes, it is notable that Florida has grown significantly. Since 1994, Florida’s population grew 33% from fourteen million to over twenty million people.⁹⁶ The OJCC has operated without significant increases in either judges or staff since the addition of the mandatory mediation process in 1994. Despite the significant workload and marked increase in population, the OJCC personnel has recently been reduced, including one judge, four mediators, and multiple staff positions.⁹⁷ Despite these decreases, the Office remains effective and efficient. However, as discussed further below, the extended absence of cost of living pay increases, increasing work volume, and the results on morale are threatening the efficiency and efficacy of this agency.



Most PFBs filed must be mediated.⁹⁸ After a PFB is filed, issues claimed therein may be resolved among the parties before mediation, at mediation, or thereafter any time until a final order is issued. There are even instances in which the parties conduct a trial on the PFB issue(s), but then nonetheless resolve those PFB issues before the assigned judge enters an order adjudicating them.⁹⁹ When all of the substantive issues in a particular PFB are resolved, either by agreement of the parties or adjudication, that particular PFB is then “closed” and the district staff is responsible for accurately entering this information into the JCC Application (database).

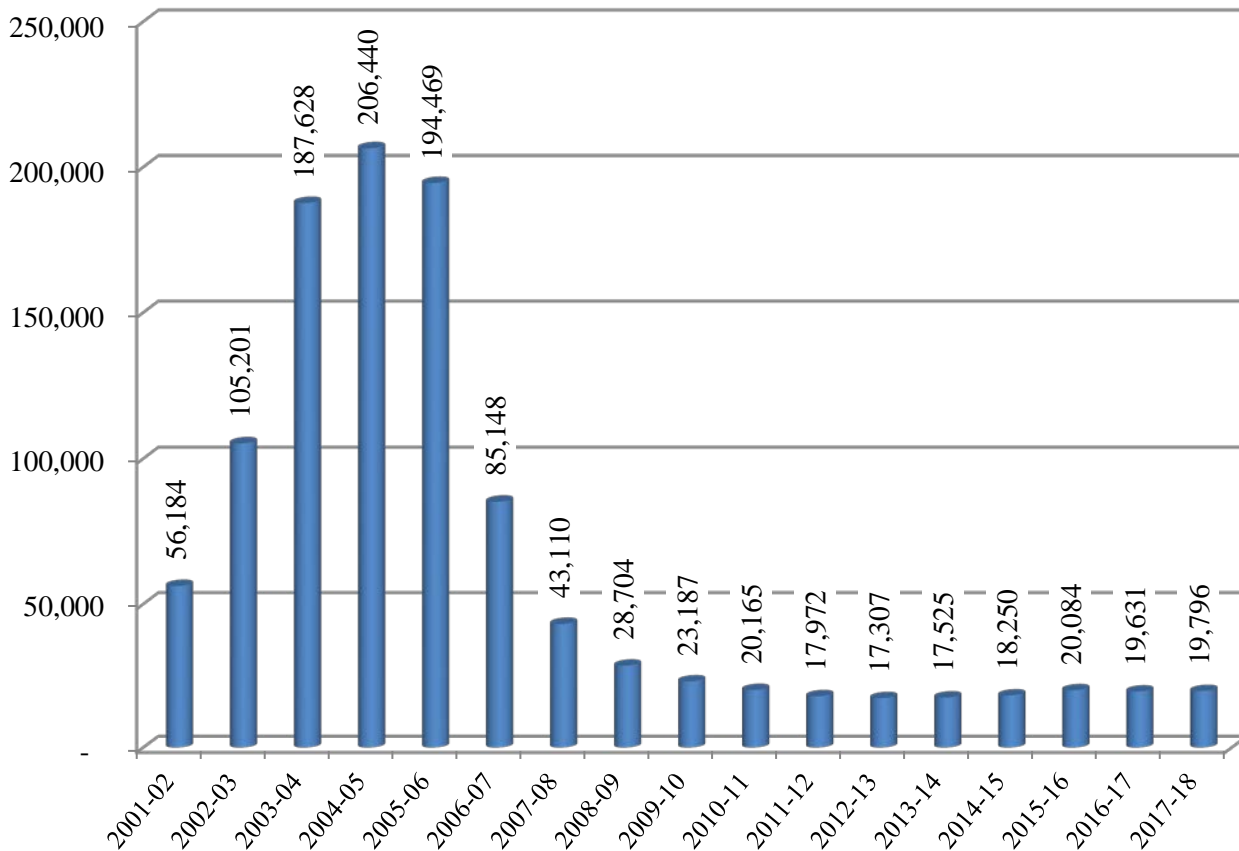
Such closure is administrative. Any undetermined issues that remain are not foreclosed by the administrative closure.¹⁰⁰ Remaining issues such as the attorneys’ fees and costs of the injured worker/claimant may yet be tried upon the filing of a verified motion.¹⁰¹ The usual closure order includes a reservation of jurisdiction over those issues. There have been multiple perspectives expressed regarding the closure process. The advantages of issuing a closure order are primarily focused on notice to the parties of the assigned judge’s perception that the substantive issues have been resolved or adjudicated. Receipt of the closure order may trigger a motion for rehearing based

upon one or more parties having differing perceptions, and thus the order stimulates review by the parties, and engages the parties in promoting accuracy.

Some Divisions (each judge and her/his respective staff is a “Division) were historically more efficient than others in documenting the closure of PFBs, as noted in previous OJCC Annual Reports (available at www.fljcc.org, under the “publications” and then “reports” tabs). Several Divisions began 2006-07 with accurately documented PFB inventories, meaning their inventory included only PFBs that appropriately should have been represented in the database as “open.” Other Divisions began the 2006-07 year with their inventories overstated, including PFBs that should have been previously administratively closed. PFB closures therefore increased dramatically in 2006-07 and 2007-08. The volume moderated in 2008-09 and has remained reasonably consistent the last ten fiscal years.

The result is seen in the graph above demonstrating a smooth progression in the last ten fiscal years to equilibrium in the OJCC system, meaning that in a given year the OJCC will close approximately the same volume of PFBs as are opened that year. The extensive efforts of various judges and staff throughout Florida have dramatically improved the management of pending petitions for benefits. The year-end system-wide OJCC inventory of “pending” PFBs for the last ten fiscal years is represented in the following graph. This depicts that from a peak of 206,440 pending PFBs in the system at the end of fiscal year 2004-05, the OJCC had decreased inventory of pending PFBs to 20,165 at the end of fiscal year 2010-11. Thereafter, the year-end open inventory held between 17,000 and 18,000 with reasonable consistency. The year-end inventory for 2015-16 was perhaps notable in its return to over 20,000. However, the year-end inventories overall since 2010-11 have been remarkably consistent.

These two analyses, PFB closure versus PFB filing and the aggregate year-end inventory, support that the OJCC is continuing to effectively process each year’s incoming claims. Anecdotally, there are still instances of stale PFBs remaining pending, but these are isolated instances. Furthermore, with the docket management tools now in place, it is believed that those stale cases remain pending with the knowledge of the assigned judge, and therefore for appropriately documented reasons.



Over the last sixteen fiscal years (2002-03 forward), one million two-hundred eighty-five thousand four hundred thirteen (1,285,413) PFBs have been filed, and one million three hundred twenty-four thousand eight hundred ninety-three (1,324,893) PFBs have been closed. This is an approximate overall closure rate of one hundred three percent (103.1%).

This further supports the conclusion that the OJCC successfully managed the significant 2002-03 PFB filing spike, as discussed above, and continues to progress to better and more consistently managed dockets. Significantly, the OJCC has simultaneously evaluated the volume of PFBs transferred as “open” from the DLES, and the JCC Application database now accurately represents the actual status of those PFBs.

This chart illustrates the marked increase in closure rates beginning in fiscal 2005-06, followed by more dramatic closure rates in 2006-07 (232.6%) and 2007-08 (160.4%), resulting from staff training. Obviously, when the volume of PFBs closed during a year equals the number of PFBs filed during the same period, the OJCC litigation process would be in equilibrium. For a number of years, until 2003, the steadily increasing PFB filing rates, coupled with the lack of closure documentation, generated a growing inventory (backlog) of PFBs in some Divisions. Staff training and focus since 2006 have overcome that challenge.

Fiscal Year	Petitions Filed	Petitions Closed	Closed %
2001-02	115,985		
2002-03	151,021	104,884	69.4%
2003-04	127,611	42,843	33.6%
2004-05	107,319	87,102	81.2%
2005-06	90,991	102,947	113.1%
2006-07	82,607	192,181	232.6%
2007-08	72,718	116,611	160.4%
2008-09	73,863	82,394	111.5%
2009-10	67,971	74,087	109.0%
2010-11	64,679	68,545	106.0%
2011-12	61,354	64,295	104.8%
2012-13	58,041	59,432	102.4%
2013-14	59,292	60,046	101.3%
2014-15	60,021	60,825	101.3%
2015-16	67,265	66,324	98.6%
2016-17	70,365	71,551	101.7%
2017-18	70,295	70,826	100.8%
	1,285,413	1,324,893	103.1%

Cost of Litigation Resolved

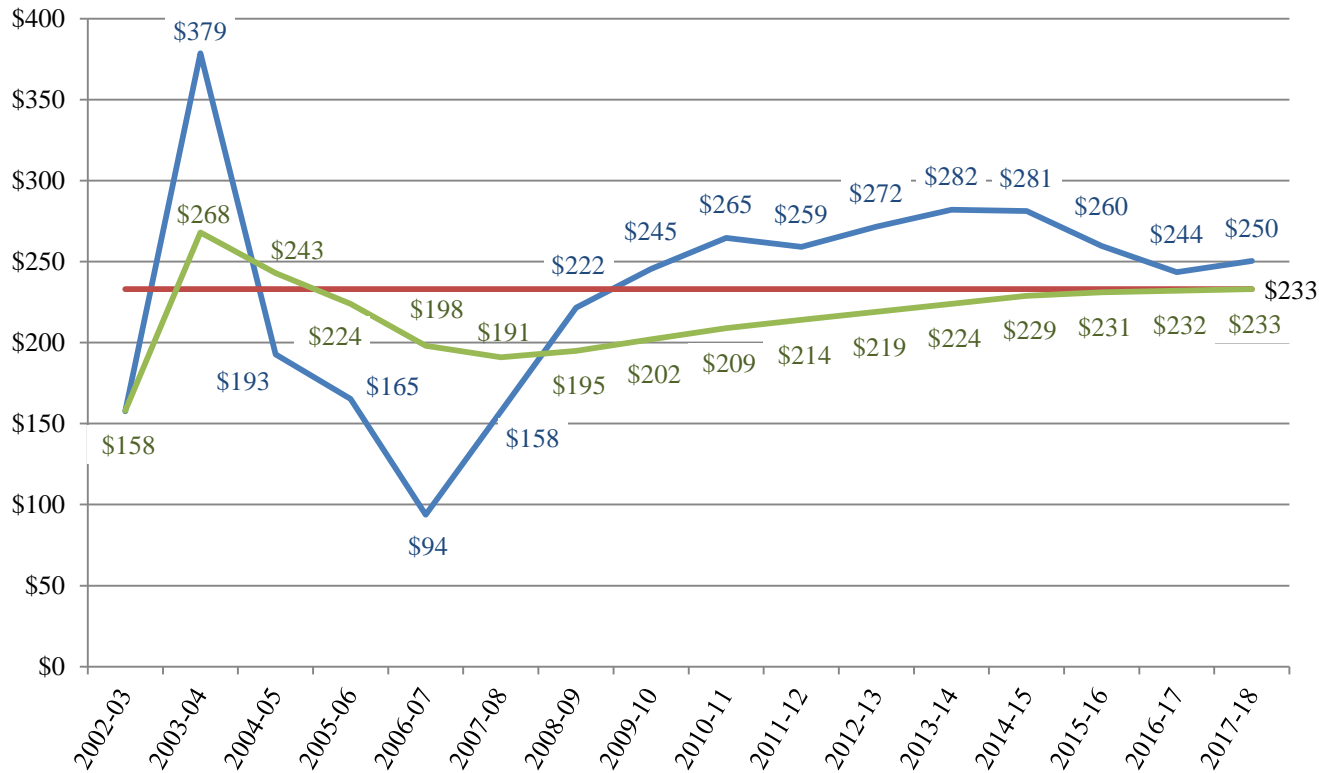
The OJCC budget, divided by the number of petitions for benefits (PFB) closed, reflects that the overall cost per PFB closed fluctuated in recent years (see chart, right; graph, below), due in large part to the significant fluctuation in PFB closure rates. These figures demonstrate relevance when considered in comparison to filing fees in Florida’s Circuit Courts.¹⁰² For “small claims” filings, the Circuit filing fees may be as low as fifty-five dollars (\$55.00), but for civil claims with a value over \$2,500.00, the filing fee is three hundred dollars (\$300.00); for larger claims the Circuit filing fee may be as high as four hundred one dollars (\$401.00).¹⁰³ The OJCC is demonstrably more financially efficient, with a per-petition cost well below the Circuit Court filing fees. Additionally, in the majority of instances, the OJCC cost is inclusive of mediation services, which generally are an additional cost to the parties in other civil litigation (see further on page 24). Over the last fifteen fiscal years, the average cost per petition closed was \$233.00, just above half the comparable Circuit Court filing fee.

Fiscal Yr.	Annual Budget	Petitions Closed	Cost Each
2002-03	\$16,522,910	104,884	\$158
2003-04	\$16,225,513	42,843	\$379
2004-05	\$16,792,731	87,102	\$193
2005-06	\$17,022,942	102,947	\$165
2006-07	\$18,032,059	192,181	\$94
2007-08	\$18,367,869	116,611	\$158
2008-09	\$18,253,550	82,394	\$222
2009-10	\$18,184,779	74,087	\$245
2010-11	\$18,145,746	68,545	\$265
2011-12	\$16,662,329	64,295	\$259
2012-13	\$16,142,140	59,432	\$272
2013-14	\$16,938,037	60,046	\$282
2014-15	\$17,109,499	60,825	\$281
2015-16	\$17,225,245	66,324	\$260
2016-17	\$17,430,852	71,551	\$244
2017-18	\$17,738,182	70,826	\$250

The fluctuations of “per PFB” costs is also attributable in part to the minimal growth in the OJCC annual budget through 2008, followed by five consecutive budget reductions between 2009 and 2013. The OJCC budget has seen minimal growth, periodic reductions, and has not maintained pace overall with inflation. The OJCC today is operating on a budget similar to 2005-06. If the 2002-03 budget was adjusted for inflation alone, the 2018 budget of the OJCC would have been \$22,642,313 instead of \$17,738,182, a difference of \$4,904,131, or just over 27%.¹⁰⁴

The OJCC today is spending less per full-time employee (“FTE”), adjusted for inflation, than in 1992-93. During the significant increase in case filings between 1994 and 2003 the OJCC budget effectively decreased, when adjusted for inflation. Florida’s population has also grown markedly in the last twenty years. However, the number

of judges and staff has remained virtually static over the same period. These facts illustrate that the OJCC has been exceptional at wisely managing the resources provided. In the graph below, the varying cost of PFB closure (blue), sixteen-year average cost (red), and the average calculated as of each year (green) are depicted. The decrease in cost per closed PFB for fiscal 2005-06 through 2007-08 is each overstated due to the extraordinary PFB closure rate during these years.



Petition for Benefit (PFB) closure rates have stabilized and closely follow the current filing rates. There is every reason to believe that trend will continue.¹⁰⁵ A minimal volume of overdue PFB inventory may remain unaddressed in this litigation system, which appears from available data, to be substantially in equilibrium. The resulting cost per PFB closed is therefore likely to increase if PFB filing volumes decrease, and to decrease if volumes increase.

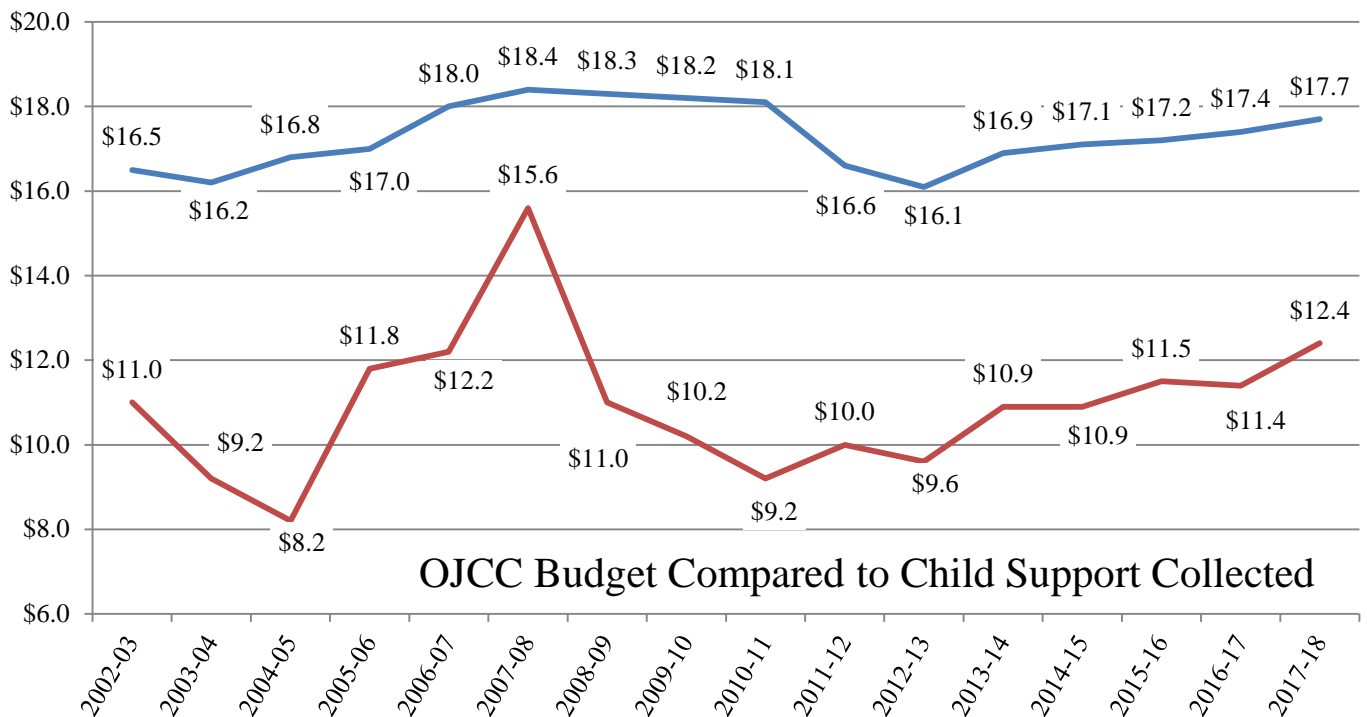
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Another illustration of the cost-effectiveness of the OJCC is the volume of child support arrearages collected through the judges' efforts. The Judges of Compensation Claims are statutorily required to ensure that the rights of child support recipients are considered when support payers settle their workers' compensation case.¹⁰⁶ Each judge devotes considerable time and effort to the investigation and verification of child support arrearages when cases are settled. The significant amounts of child support collected through these efforts for the last sixteen (16) fiscal years are represented in this table, which total over \$175 million (\$175,154,071).

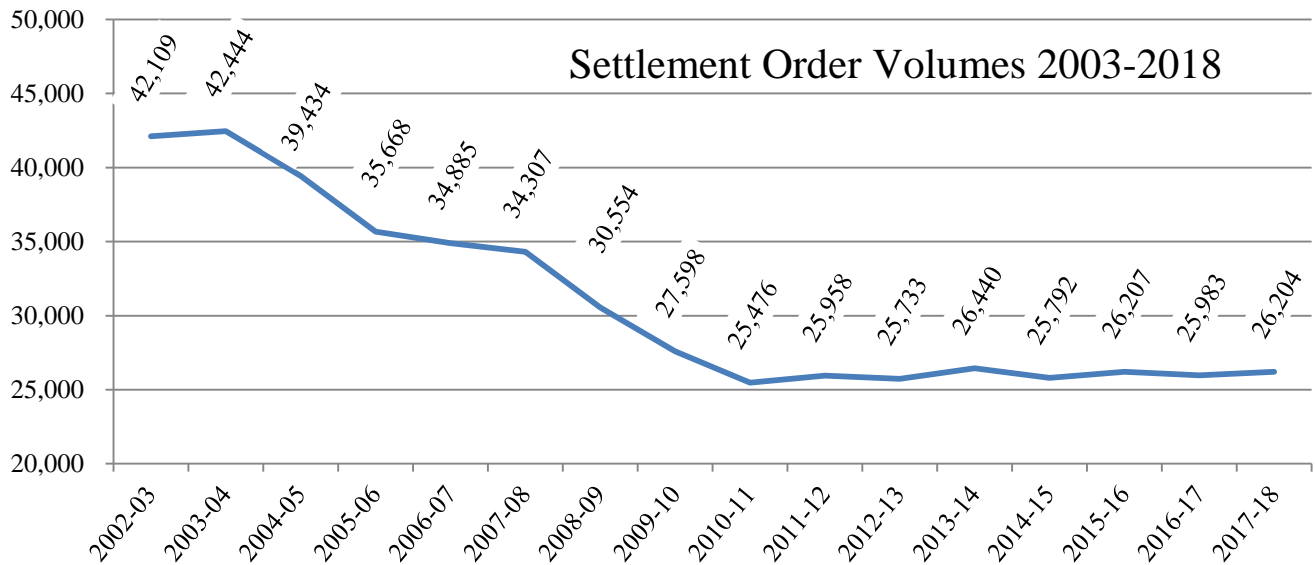
In 2012-13, the OJCC undertook the duties associated with reporting arrearage information on behalf of the Department of Revenue (DOR). In 2013-14 the OJCC integrated the process of reporting Circuit Clerks' arrearage information. This combination eliminated redundancy and waste across the process for all Florida workers' compensation litigants. Litigants in Florida's workers' compensation adjudication system now get all of their required child support arrearage information from the OJCC instead of the DOR and the Circuit Clerks. These tremendous child support services on behalf of support recipients have been delivered without any additional staff or funding for the OJCC operations. Because of the sensitive nature of this data, the burden of investigating these support inquiries has fallen primarily on the OJCC mediators and Commission Clerks. The comparison of child support recovery (red) and the OJCC overall budget (blue) is illustrated in this graph (in millions).

Fiscal Year	Annual Budget	Support Recovered	% of Budget
2002-03	\$16.5	\$11.0	67%
2003-04	\$16.2	\$9.2	57%
2004-05	\$16.8	\$8.2	49%
2005-06	\$17.0	\$11.8	69%
2006-07	\$18.0	\$12.2	68%
2007-08	\$18.4	\$15.6	85%
2008-09	\$18.3	\$11.0	60%
2009-10	\$18.2	\$10.2	56%
2010-11	\$18.1	\$9.2	51%
2011-12	\$16.6	\$10.0	60%
2012-13	\$16.1	\$9.6	60%
2013-14	\$16.9	\$10.9	64%
2014-15	\$17.1	\$10.9	64%
2015-16	\$17.2	\$11.5	67%
2016-17	\$17.4	\$11.4	66%
2017-18	\$17.7	\$12.4	70%

When the judges were given the responsibility for recovering these arrearages, no staff or budget was added to the OJCC to accomplish this task. Furthermore, since that time, the OJCC has taken over the responsibility of responding to public requests for arrearage amounts. That process internalized within the OJCC has saved both the parties¹⁰⁷ and public¹⁰⁸ significant money. The volume of child support arrearages collected is particularly interesting when considered in light of the overall OJCC budget discussed above. Over the last fifteen (15) fiscal years, the OJCC has collected an average of 63% of its overall budget in past-due child support to the benefit and advantage of support recipients throughout Florida.



The decrease in child support collected in 2008-09 was seemingly significant. However, that appearance results primarily from the exceptional collections in 2007-08. Overall, the support volume has remained somewhat similar. Notably, the volume of settlements that were approved by the Judges of Compensation Claims likewise decreased contemporaneously, and has then remained significantly consistent for the last seven fiscal years (graph below).



Number of Mediation Conferences Held

In Florida workers' compensation, most¹⁰⁹ PFBs must be mediated before they may proceed to final hearing. In an effort to provide greater detail regarding mediation efforts of the OJCC, a Settlement and Mediation Statistics Report was first published in August 2010.¹¹⁰ The OJCC has published that report annually since. All are available at www.fljcc.org under the "Publications" and then "Reports" tabs.¹¹¹

The volume of mediations held each year steadily decreased 2002-03 through 2012-13, with the exception of 2008-09 (+3.95%). Though the mediation volume has fluctuated some since 2013-14, the volume over the last six years is notably consistent: 2013-14 = 16,188 and 2017-18 = 16,167. The volume of mediations remains significantly lower than in 2002-03. The overall rate of decrease in mediations does not match the rate of decrease in PFB filings since 2002-03 (PFB 151,021 – 70,295 = 80,726 decrease in PFB, or -53%; mediation 29,253 – 16,167 = 13,086 decrease in mediation, or 45%). This suggests that as PFB volume fell, OJCC mediators were able to act upon a greater percentage of the remaining volume, but the overall volume of mediations held nonetheless has decreased by almost half over the last fifteen years.

Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
2002-03	151,021		29,253	
2003-04	127,611	-15.5%	28,072	-4.04%
2004-05	107,319	-15.9%	26,410	-5.92%
2005-06	90,991	-15.2%	25,522	-3.36%
2006-07	82,607	-9.2%	22,258	-12.79%
2007-08	72,718	-12.0%	20,021	-10.05%
2008-09	73,863	1.6%	20,812	3.95%
2009-10	67,971	-8.0%	19,864	-4.56%
2010-11	64,679	-4.8%	17,896	-9.91%
2011-12	61,354	-5.1%	16,881	-5.67%
2012-13	58,041	-5.4%	15,850	-6.11%
2013-14	59,292	2.2%	16,188	2.13%
2014-15	60,021	1.2%	15,421	-4.74%
2015-16	67,265	12.1%	15,703	1.83%
2016-17	70,365	4.6%	16,079	2.39%
2017-18	70,295	-0.1%	16,167	0.55%

In 2017-18, approximately sixteen thousand (16,167) mediations were held by state mediators, at an average cost of approximately \$188.65, a minimal increase from the 2016-17 figure of \$187.97.¹¹² The cost savings in recent years is due to the legislative action reducing the number of state mediators.¹¹³ In 2017-18 the OJCC converted a staff position to create a 29th mediator position, which increased cost. The volume of mediations held has been reasonably consistent, as cost increases. The cost will adjust upwards unless the volume of mediations

increases or the mediator positions again decrease. With the current volume of petitions, any decrease in the mediator staff would have significant effects on both timeliness and cost.

Cost is relative. Many private mediators charge *hourly* rates well in excess of the OJCC average cost, commonly two hundred fifty dollars (\$250.00) per hour or more.¹¹⁴ Anecdotal evidence also supports that some private mediators charge minimum time commitment (such as a two-hour minimum) for all mediations convened. Therefore services comparable to those delivered by the OJCC mediators, from private mediators, would likely cost an average of approximately five hundred dollars (\$500.00) or more, compared to the OJCC cost of approximately one hundred eighty-nine dollars (\$188.65). Thus, the cost-efficiency of State mediation is readily apparent, averaging about seventy-six percent (75.5%) of the cost of one hour of private mediation. Notably, this cost is included in the overall OJCC budget discussed above. The overall cost per claim for the OJCC, including the mediation process, is far below the Circuit Court filing fees for other civil matters.¹¹⁵ Furthermore, if the volume of mediation increases, the cost of each mediation decreases, because the aggregate cost of the state mediation program remains constant regardless of volume, within reason. Conversely, as the volume of mediations decreases, the unit cost will rise unless further reductions are made in the mediator staffing levels. In fiscal 2018 the OJCC undertook efforts to increase the volume of mediations conducted by the state mediators, with the view towards further increasing efficiency and productivity. The addition of a 29th mediator was part of that effort as well as publishing all state mediator calendars to effectuate parties' scheduling efforts. In fiscal 2019, further efforts toward efficiency and greater efficacy are planned.

There are multiple issues that influence state mediation efficiency. The OJCC is compelled to mediate cases within 130 days of petition filing.¹¹⁶ However, there is also a statutory prohibition on noticing mediations until 40 days after the petition is filed.¹¹⁷ In giving notice of mediation, the OJCC must be conscious of the constraints of due process, that is, reasonable notice for mediation. It has become practice to strive to provide parties with 30 days' notice of mediation. Some shorter notice period could fulfill constitutional requirements. However, attorneys, adjusters, and workers have schedules, and providing less notice could be calamitous to the ability to plan for, and effectively engage in productive mediation. Therefore, there is a 70 day period (40 days in statute, plus 30 days' notice) excised from the 130 day mediation requirement. Effectively, the mediation process must occur within a 60 day (130 days – 70 days) period of availability.

Discovery is a process engaged in by all parties to workers' compensation litigation. After a PFB is filed, the employer/carrier should be engaged in investigation regarding the claimed issues.¹¹⁸ It is purportedly in hopes that such discovery will lead to resolution that the 40 day opportunity is statutorily mandated. Unfortunately, the historical performance supports that a great many mediation appointments are cancelled by the parties. This suggests that the discovery is not being completed in that 40 day period before notice is provided, but in the 30 day (or more) period between notice and the mediation. Cancellation may be because the claimed issues are resolved in some compromise, the benefits are outright provided as claimed, or that the claims are dismissed. Resolution is likely positive. But, when such resolution/cancellation occurs within 30 days of the scheduled mediation, it may prove difficult for a state mediator to schedule some other case for that resulting vacancy, because of the ever-present due process issues. The shorter the notice of such cancellation, the more difficult it is to reuse that time effectively.

OJCC mediators are certified by the State of Florida.¹¹⁹ The requirements and qualifications have been established by The Florida Supreme Court through the Dispute Resolution Center.¹²⁰ Certified mediators are governed by Rules for Certified and Court-Appointed Mediators.¹²¹ Those rules can be interpreted by the Supreme Court in disciplinary matters, similar to the Court's authority to both promulgate and interpret Rules Governing The Florida Bar. In aid of mediator interpretation, there is a Mediation Ethics Advisory Committee (MEAC) which provides guidance on ethical issues and concerns. The rules constrain mediator's activity, and the MEAC advisory opinions assist with interpretation. While those opinions are not binding, they are widely followed.

The specifics of workers' compensation mediation are addressed in MEAC Opinion 2004-002.¹²² That opinion states that a "certified mediator must allow sufficient and appropriate time for completing mediation and should not double or triple book mediations." The mediator that sought this opinion expressed a belief that OJCC mediators engaged in "double booking" and placed "arbitrary time limits" on mediation. The allegation was that this was an effort to "mediate as many as possible each day." The mediator seeking this opinion alleged that such process led to descriptions of the process of "farfical, circus-like, a complete waste of time, etc."¹²³ For clarity, there has never been any OJCC policy limiting the duration of OJCC mediation. However, the appearances of scheduling (a review of a mediator's calendar reflecting mediations set every hour), could have led some observers to conclude such a duration limit was being used by a particular mediator.

The Florida OJCC is not a court.¹²⁴ And as such, the Florida OJCC is not governed by the rules set forth by the Florida Courts pursuant to their constitutional authority.¹²⁵ Furthermore, the authority for determining mediator qualifications in regards to workers' compensation is within the discretion of the Deputy Chief Judge of Compensation Claims, pursuant to section 440.25(3)(a), Florida Statutes.¹²⁶ OJCC mediator qualifications are distinct. There is no longer any general requirement that Certified Mediators must be attorneys; however, OJCC mediators are statutorily required to be attorneys with "at least 5 years" experience, and undergo an approved training.¹²⁷ As the qualifications for Florida mediators have evolved, the workers' compensation statute has not.

Historically, the "training program approved" for OJCC state mediators has been the Supreme Court Mediator Certification program. Therefore, OJCC state mediators are governed by the Supreme Court's ethics rules, and at least somewhat constrained by the advisory opinions of the MEAC. Clearly, the Office of Judges of Compensation Claims could define some other training program for mediators, and abolish the current requirement for Supreme Court Certification for state mediators. That prerogative seems clear from the legislative delegation of authority to this office. Mediators not certified by the Supreme Court would perhaps be less constrained by the rules established by the courts, and the conclusions of the MEAC. In that hypothetical setting, the OJCC might more freely exercise discretion regarding both the scheduling and duration of mediation conferences.

However, the purpose of mediation is consistent in any dispute. The purpose is resolution of differences in a participant-driven environment of discussion and compromise. It is in the best interest of every employee and employer that there is such opportunity for discussion regarding claims and defenses. Such participant-driven processes empower the very individuals for whom workers' compensation was created.

Thus, currently, OJCC mediators are constrained from "double booking." Since 2007, there has been an absolute policy of not limiting the duration of mediations conducted by OJCC mediators. These are both pertinent points because this effectively limits the number of mediation appointments that can be offered by the OJCC to Florida's employers and employees. The annual maximum is likely around 119,538.¹²⁸ However a more practical volume is likely around 73,051,¹²⁹ which is notably very close to the current PFB filing volume.¹³⁰ It is projected that the current trend of increased petition filing will increase the probability of petitions being referred to private mediation.¹³¹

The volume of state mediations conducted has not changed proportionately with the changes in PFB filing volume. Overall, since 2002-03, PFB volume is 53.5% lower and mediation volume is down only 44.7% overall, as illustrated in this chart. There are multiple possible explanations for the marked difference in the rates of decrease in PFB and mediation in recent years. The most likely explanation for this difference is the probability that private mediations were decreasing at greater rates, due to the expense associated with them. Anecdotal evidence supports this hypothesis, but anecdotal evidence is rarely as trustworthy as broader indicators.

Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
2002-03	151,021		29,253	
2017-18	70,295	-53.5%	16,167	-44.7%

As a direct consequence of efforts to comply with the 130 day statutory parameter, all of the State mediators have averaged below 130 days between PFB filing and first mediation in each of the last ten fiscal years (2008-09 through 2017-18). This represents 100% average statutory compliance by the OJCC state mediators in ten consecutive years. The mediation process has thus been both efficient and effective. For details, see the annual Settlement and Mediation Reports at www.fljcc.org (under the "publications" and then "reports" tabs).

The statutory requirement to send cases to private mediation¹³² may have assisted with facilitating more timely mediations in recent years. The action of sending a case to private mediation represents a significant cost to the particular E/C ordered to private mediation. In 2011-12, the OJCC began offering parties the services of the state mediators for voluntary mediation. This allows consensual mediation when there is no pending PFB, and facilitates mediation on subjects such as attorney fees that are not appropriate for mandatory mediation.¹³³ Parties utilizing this service can discuss resolution of issues, facilitate communication, and do so at no cost, effectively using the resources already provided by the OJCC. The voluntary mediation program was recognized by Florida Tax Watch with a Prudential Productivity Award.

It is important to note that the current volume is nearing system capacity. The OJCC needs to increase that capacity, or there will be an increase in the volume of cases being referred to private mediation at the expense of the employer/carrier. Section 440.25(1), Florida Statutes.

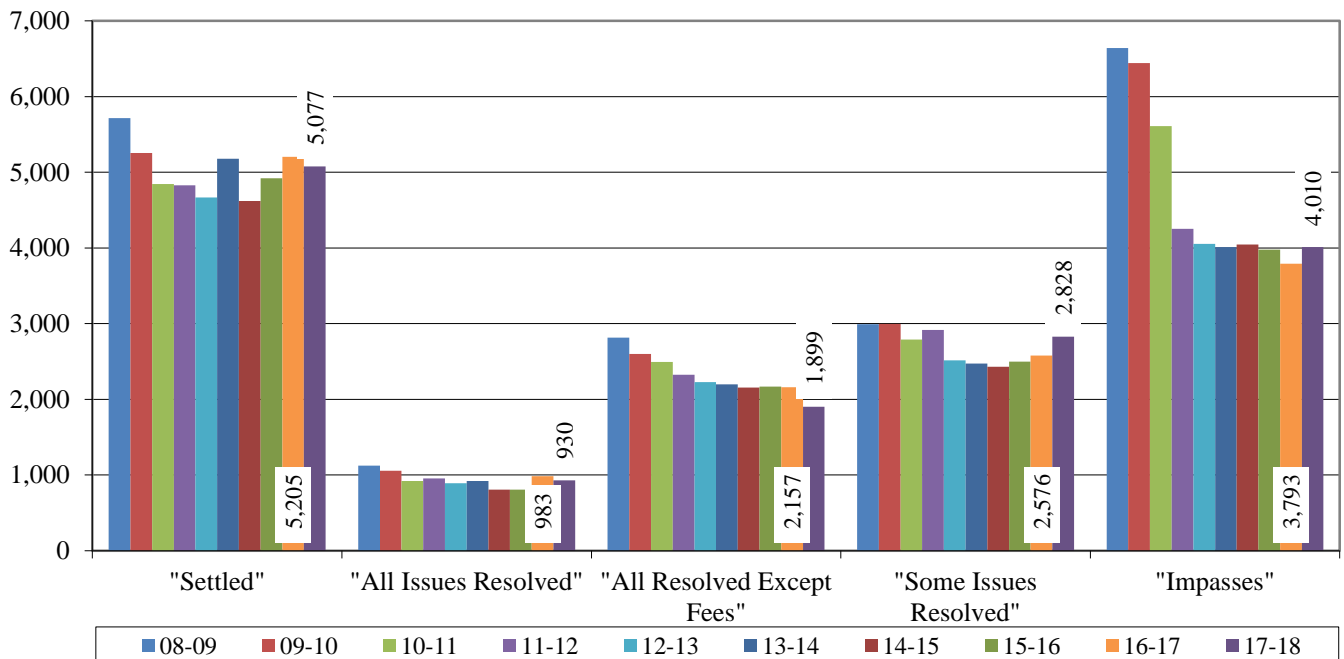
Disposition of Mediation Conferences

A Petition for Benefits (“PFB”) might seek only one substantive benefit (i.e. authorization of an orthopedic surgeon), or could contain many issues (i.e. orthopedic authorization, neurological authorization, diagnostic testing authorization, correction of the average weekly wage, payment of temporary total, temporary partial, supplemental benefits, and/or permanent total disability benefits, etc.). Virtually all PFBs also include claims for related benefits, such as penalties and/or interest on late paid indemnity benefits, and attorneys’ fees and costs for the prosecution of the PFB. A mediation may include the issues from one PFB or several. The various issues claimed, and their frequency, is discussed more fully on page eleven of this report.

The outcome of mediation is expressed in terms of what was resolved at that particular mediation. The characterization “impasse” is used to reflect that no issues were resolved. The characterization “settled” reflects that the entire case, including the pending issues in the PFB(s) and all future benefits as yet undue and unclaimed, were resolved. Between these two extremes of “impasse” (nothing) and “settled” (all) are a number of “partial” resolution characterizations used by the OJCC.

For mediation outcomes, the term “some issues resolved,” reflects that some subset of the claimed substantive issues have been resolved. The term “all issues resolved, except attorneys’ fees” reflects that all of the substantive issues and any ancillary penalty and/or interest issues were resolved, but fee/cost entitlement and/or amount issues remained. The term “all issues resolved” reflects that all claimed PFB issues, including all ancillary issues such as attorneys’ fees and costs, were resolved. These potential outcomes can be expressed in a continuum, ranging from the least resolution (“impasse”), to the most resolution (“settled”). The overall results of mediation are reflected in this graph, illustrating this continuum from “all” or “settled” on the left side, to the least “none” or “impasse” on the right side of the graph. The graph below reflects the last ten (10) fiscal years for each of these outcome characterizations.

Previously, some mediators mislabeled resolutions that occurred prior to state mediations, characterizing those outcomes as if those cancelled mediations had occurred. This may also have artificially inflated the volume of mediations held in a particular year.¹³⁴ Some mediators also mischaracterized results achieved after a mediation conference, inappropriately taking credit for resolutions to which she/he may have contributed, but which nonetheless did not resolve at that mediation. Those actions undoubtedly resulted in misinterpretation of outcomes in prior OJCC reports. During the preparation of this report, an anecdotal example came to light in which a mediator was responsible for three case numbers assigned to a particular claimant, but which had all three been consolidated into one case. This mediator had elected to schedule three separate mediations, rather than a single mediation for the consolidated issues.¹³⁵ Those erroneously characterized outcomes dictate that comparisons with future data may also be suspect. Despite this caveat, the figures reported are accurate representations of the data input into the database during those years.



Notably, the volume of mediations that result in resolution of no issues - “impasse” - increased early in the first decade of the century, and began declining in 2010-11. The most notable of the outcome changes are in “impasse,” suggesting that a significant volume of the decreased number of state mediations were impasse outcomes.

The following table summarizes the percentage of cases in each category of the mediations held during that year. For example, in 2002-03, approximately twenty-eight percent (27.76%) of cases mediated resulted in a settlement, compared to approximately thirty-one percent (31.4%) in 2017-18. The “impasse” category was twenty-seven percent (27.02%) in 2002-03 compared to approximately twenty-five percent (24.8%) in 2017-18. State mediations are obviously very effective in resolving issues. Over the last fourteen (14) years, the convened state mediations have resolved at least “some issues” approximately sixty-three percent (63.08%) of the time. In 2017-18, approximately sixty-six percent (66.39%) of convened mediations resulted in resolution of some issues.¹³⁶

Year	Mediation Held	Settled	All Iss. Res	All Iss. Res exc. Fees	Some Iss. Res	Impasse	R&R
2002-03	29,253	27.76%	11.17%	8.35%	17.10%	27.02%	8.59%
2003-04	28,072	26.04%	11.27%	9.38%	15.97%	27.63%	8.80%
2004-05	26,410	26.81%	8.28%	11.31%	13.35%	31.00%	8.81%
2006-07	22,258	28.39%	5.79%	11.44%	12.77%	34.89%	6.60%
2007-08	20,021	28.07%	5.22%	13.04%	13.85%	33.00%	6.83%
2008-09	20,812	27.46%	5.41%	13.52%	14.39%	31.91%	7.27%
2009-10	19,864	26.45%	5.31%	13.09%	15.09%	32.44%	7.50%
2010-11	17,896	27.08%	5.14%	13.94%	15.58%	31.35%	6.92%
2011-12	16,881	28.60%	5.65%	13.78%	17.29%	25.19%	9.49%
2012-13	15,850	29.45%	5.62%	14.06%	15.87%	25.58%	9.42%
2013-14	16,188	31.99%	5.69%	13.58%	15.28%	24.78%	8.67%
2014-15	15,421	29.97%	5.21%	13.97%	15.76%	26.23%	8.86%
2015-16	15,703	31.33%	5.12%	13.81%	15.91%	25.33%	8.49%
2016-17	16,079	32.37%	6.11%	13.42%	16.02%	23.59%	8.50%
2017-18	16,167	31.40%	5.75%	11.75%	17.49%	24.80%	8.80%

Number of Continuances Granted for Mediations

Mediation continuances increased markedly in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. However, it coincided roughly with a high volume of weather-related office closures, as Florida endured serial cyclone landfalls, which affected virtually every Florida County. Those storms caused carriers to close offices in central Florida (frustrating mediations in unaffected districts elsewhere) and caused District Office closures at which the mediations would otherwise have been held. Those weather-related situations were far fewer in 2005-06 and 2006-07, which suggests that causes other than weather played some significant role in the volume of continuances during the period 2004 through 2006-07. The mediation continuance trend reversed in 2006-07, and after remaining reasonably stable for two years, decreased significantly in 2009-10. The volume reached its lowest recorded level (.28%) in 2015-16.

The implementation of the “auto-scheduling” of mediations by the OJCC Central Clerks Office also coincides generally with the beginning of the upward trend in mediation continuances in fiscal 2003-04. Prior to the implementation of that “auto-scheduling” process, some districts did not schedule mediation when a PFB was

Fiscal Year	Petitions Filed	Mediations Continued	Med. Cont. v. PFB Filed
2002-03	151,021	2,755	1.82%
2003-04	127,458	2,036	1.60%
2004-05	107,268	3,333	3.11%
2005-06	90,948	4,756	5.23%
2006-07	82,607	2,336	2.83%
2007-08	72,718	1,328	1.83%
2008-09	73,863	1,302	1.76%
2009-10	67,971	940	1.38%
2010-11	64,679	963	1.49%
2011-12	61,354	717	1.17%
2012-13	58,041	364	0.63%
2013-14	59,292	207	0.35%
2014-15	60,021	172	0.29%
2015-16	67,265	191	0.28%
2016-17	70,365	287	0.41%
2017-18	70,295	313 ¹³⁷	0.45%

received. Instead, those Divisions left the responsibility to coordinate and schedule a mediation appointment to the litigants.

This lack of active docket-management resulted in significant delay in the mediation of a significant volume of PFBs. When that process changed and mediations were auto-scheduled, the initial reaction seems to have been a higher need for continuance. The effects of not immediately scheduling were similarly seen in the extended average time periods between PFB filing and first mediation, and likely contributed to the very high average time between PFB filing and trial (trial cannot occur until after mediation) in many Divisions. Although the implementation of auto-scheduled mediations likely led, in part, to the increase in mediation continuances initially after implementation, that process ultimately promoted the timely mediation of all PFBs.

As the community adjusted to the auto-scheduling process, continuances decreased and the frequency of timely mediations increased. This culminated in 2008-09 with the announcement that every state mediator (100%) averaged less than the statutory 130 days between PFB filing and initial mediation, and that achievement has been repeated each year since.

Some portion of the decrease is likely attributable to better documentation and uniformity among the District Offices. Historically, some labeled any change to the mediation date a “continuance.” The OJCC defined “continuance” as a postponement of mediation outside of the 130 day statutory period. Despite that definition, some staff had persistently labeled any rescheduling of mediation a “continuance,” but use of that mischaracterization has improved and has likely led to more reliable and consistent statistics.

In 2002-03, two thousand seven hundred fifty-five (2,755) mediations were continued. This equated to approximately two percent (1.82%) of the Petition for Benefits (PFB) volume (see table above). In 2017-18, three hundred thirteen (313) mediations were continued. This was the highest volume since 2012-13.

Fiscal Year	Total Volume	Annual Per JCC	Monthly Per JCC
2002-03	2,755	89	7.4
2003-04	2,036	66	5.5
2004-05	3,333	108	9.0
2005-06	4,756	153	12.8
2006-07	2,336	73	6.1
2007-08	1,328	42	3.5
2008-09	1,302	41	3.4
2009-10	940	29	2.4
2010-11	963	30	2.5
2011-12	717	22	1.9
2012-13	364	12	1.0
2013-14	207	7	0.6
2014-15	172	6	0.5
2015-16	191	6	0.5
2016-17	287	9	0.8
2017-18	313 ¹³⁸	10	0.8

Number of Continuances Granted for Final Hearings

The volume of trial continuances decreased system-wide markedly between fiscal 2003-04 and 2006-07. The volume of continuances, per judge, increased slightly thereafter, but returned to 2006-07 levels in 2009-10. In the last seven fiscal years the average annual volume of continuances per judge has consistently been close to 100.

Anecdotally, attorneys have complained that continuance occurs too infrequently. A perception has been voiced that the reporting of data in this report inappropriately influences judicial performance, with judges allegedly denying continuances for the sole motivation of posting more appealing numbers in this report, either in the volume of continuances, in the measure of days between PFB filing and trial, or otherwise.

The figures support that continuance of final hearings remains reasonably consistent over the last seven fiscal years. The empirical data does not support that it is either impossible or impractical to obtain a continuance pursuant to statutory standards and in the appropriate circumstances.¹³⁹

Some judges schedule trial on each Petition for Benefits (PFB) as soon as that PFB arrives in the judge’s office. This results in scheduling trial on some quantity of PFBs that will be resolved or otherwise dismissed by the time mediation is concluded. Other judges do not schedule trial

Fiscal Year	Total Volume	Annual Per JCC	Monthly Per JCC
2002-03	6,507	210	17.5
2003-04	6,734	217	18.1
2004-05	5,094	164	13.7
2005-06	5,011	162	13.5
2006-07	4,161	130	10.8
2007-08	4,617	144	12.0
2008-09	4,658	146	12.1
2009-10	4,129	129	10.8
2010-11	3,682	115	9.6
2011-12	3,416	107	8.9
2012-13	3,052	98	8.2
2013-14	3,101	100	8.3
2014-15	3,204	103	8.6
2015-16	3,324	107	8.9
2016-17	3,069	99	8.3
2017-18	2,969	96	8.0

until after the outcome of the mediation process is known. This results in less total trials being scheduled by that particular judge. Whether one method is superior to the other in terms of preparing parties for trial and avoiding the need for continuance is debatable, and the empirical data does not clearly support greater efficacy of either alternative. However, the rate of continuance likely decreases in direct proportion to the amount of advance notice of trial the parties receive. The earlier the trial is noticed, the more time is afforded to prepare and the less likely parties are to require a continuance.

The available data supports that trial continuances per JCC have declined from seventeen and one-half (17.5) per month in fiscal 2002-03, to eight (8.0) per month in fiscal 2017-18. This downward trend is likely attributable to better OJCC case management software, and some relaxation of individual JCC dockets resulting from decreased overall PFB filing rates. Staff training and OJCC definition of the terms “rescheduled” and “continued,” discussed in the 2007-08 OJCC Annual Report, may also be contributing to more accurate and consistent characterizations of event changes in the JCC Application database. A docket audit in the summer of 2008 substantiated that some judges continued to avoid the standardized definitions in the OJCC User Manual, and instead utilized their own definition of “continuance.” These mischaracterizations contributed to some volume of “rescheduled” hearings being reflected erroneously in the database as “continuances.” Therefore these mischaracterizations are known to be responsible in part for the figures reported above, for fiscal years prior to 2008-09.

Outcome of Litigated Cases

When a Petition for Benefits (PFB) is filed, it is usually filed electronically. Self-represented parties may file paper PFBs, which are scanned and uploaded to the database system. This affords anyone with an Internet connection the opportunity to view the PFB. The petition is assigned to a judge, and the JCC Database Application (“JCCA”) “auto-schedules” an appointment for State mediation. The combination of attorneys using eFiling (eJCC) and the described clerk-upload process has resulted in significant postage savings in the last four fiscal years.

The eJCC program (eFiling) informs each judge of new electronic PFB assignments as those documents are provided in the judge’s “daily filings.” Similarly, each eJCC registered attorney may access her or his list of “daily filings” in that program.¹⁴⁰ This allows judges and attorneys to monitor activity in their assigned cases. The portable document format (PDF) image of the PFB, whether e-filed or scanned by the clerk (when filed by an unrepresented party), then becomes the OJCC “original,” and is viewable by any judge in the state.

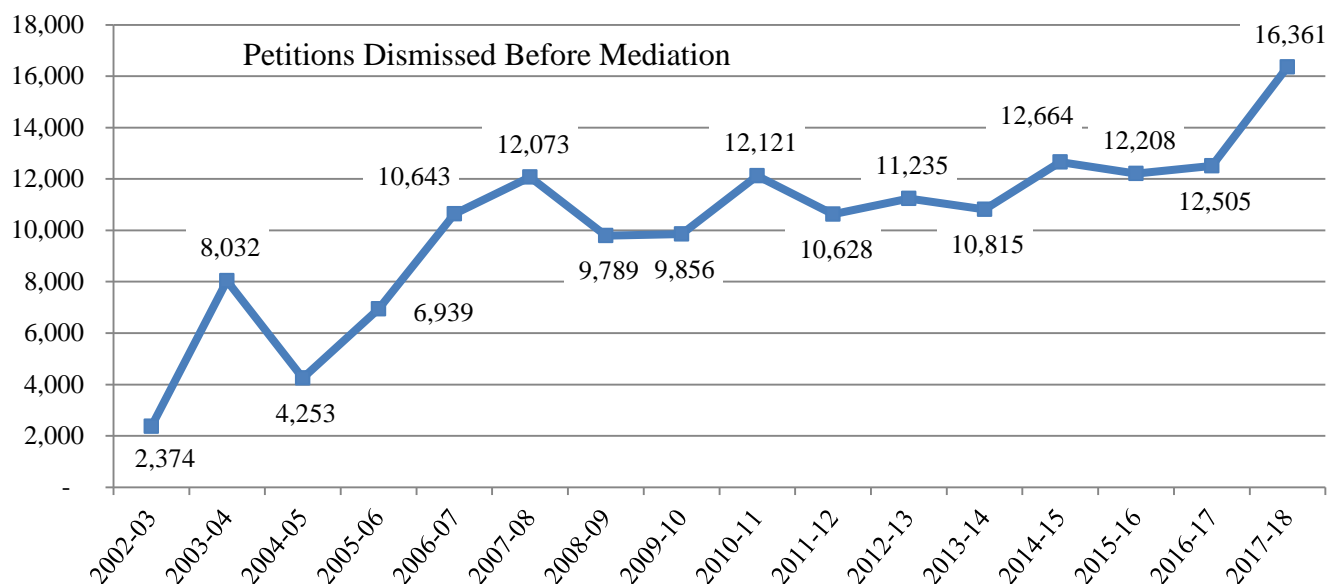
Thus, when the PFB assignment arrives in its assigned Division, a mediation appointment has been automatically scheduled, but no notice has yet been sent to the parties. Statutorily, no notice of mediation is sent thereafter, until forty days following the PFB filing.¹⁴¹ Although an appointment is set when the PFB arrives, attorneys have an ample window of opportunity to call the mediator or staff and select a different date that is convenient, prior to any notice being mailed by the JCC database. Few attorneys consistently avail themselves of the benefit of this opportunity to select their own, convenient, mediation date. However, the use of this process by some savvy attorneys may be decreasing the need to seek continuance of mediation appointments.

Some judges utilize section 440.25(4)(h), Florida Statutes, and schedule “expedited” final hearings on some portion of the petitions for benefits (PFBs) assigned to them. This practice has declined with the decreasing volume of PFB filings, but may be perceived as necessitated with recently increasing volumes. The expedited process leads to faster resolution of some issues, which involve relatively minor expense. Mediation is not required on claims that are suitable for expedited final hearing.

Fiscal Year	PFB Filed	PFB Dismissed Before Mediation	% Dismissed Before Mediation
2002-03	151,021	2,374	2%
2003-04	127,458	8,032	6%
2004-05	107,268	4,253	4%
2005-06	90,948	6,939	8%
2006-07	82,607	10,643	13%
2007-08	72,718	12,073	17%
2008-09	73,863	9,789	13%
2009-10	67,971	9,856	15%
2010-11	64,679	12,121	19%
2011-12	61,354	10,628	17%
2012-13	58,041	11,235	19%
2013-14	59,292	10,815	18%
2014-15	60,021	12,664	21%
2015-16	67,265	12,208	18%
2016-17	70,365	12,505	18%
2017-18	70,295	16,361	23%

Whether a particular PFB is suitable for expedited process is a decision for the assigned judge. No agreement of the parties is necessary. Because all PFBs have already been “auto-scheduled” for mediation by the OJCC Central Clerks Office prior to notification of assignment to the respective District Office, placing a PFB in the expedited process requires cancellation of that mediation date. PFB filing increases may influence judicial decision-making regarding the choice between the expedited hearing process and a private mediation referral.

However, a reasonable volume of PFBs, already scheduled for mediation, will be dismissed prior to that event. The volume of PFBs dismissed prior to mediation had historically fluctuated markedly, as illustrated in this graph, but has trended to reasonable consistency over the last few years.



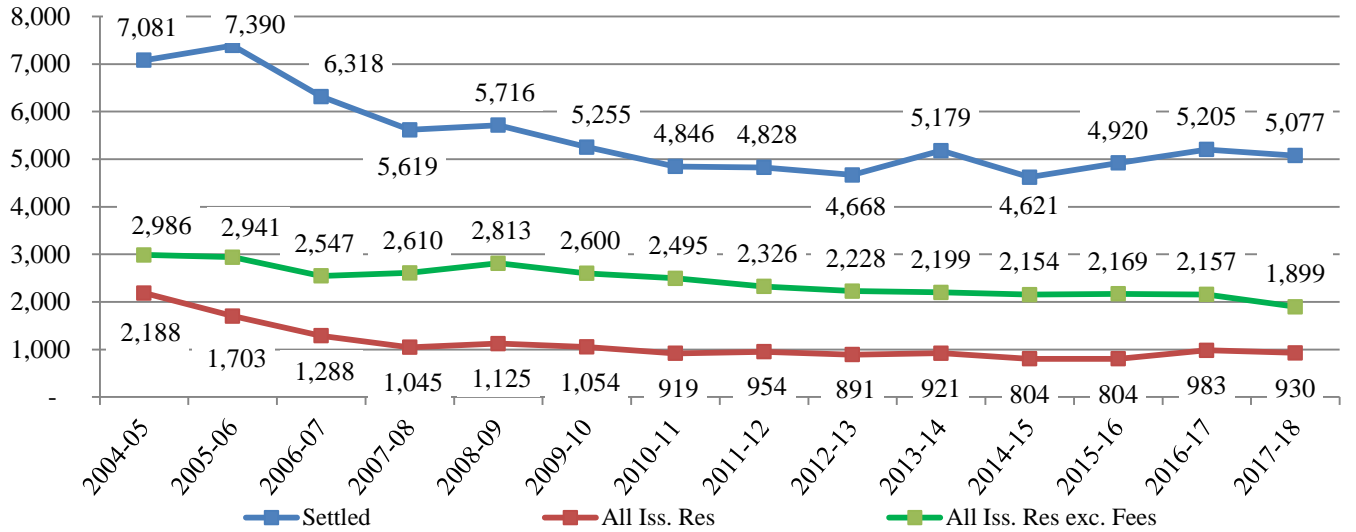
The increase in dismissals, illustrated in this graph, is significant in gross terms. Any petition might be dismissed in the same fiscal year during which it was filed. Similarly, however, a petition might be filed one fiscal year and dismissed in some year subsequent to the filing year. Despite the potentiality of such temporal differences, the comparison between PFB filed and PFB dismissed before mediation, admittedly not a perfect comparison, is nonetheless illustrative of a notable trend of a seemingly increasing propensity to dismiss PFBs. This trend could have been attributable to the attorney fee limitations imposed by the 2009 legislative reaction to Murray,¹⁴² or perhaps to the imposition of “prevailing party” costs awardable to the employer/carrier by the 2003 legislative amendments. Although the 2003 amendments are fourteen years past, appellate decisions in 2010 and 2011 brought the prevailing party cost issues into clearer focus and consistency.¹⁴³ With the Supreme Court’s Castellanos decision, and the return of hourly fees, the volume of pre-mediation dismissals should be monitored for significant changes.

If a particular PFB is not set for expedited hearing, then the assigned JCC will either accept the auto-scheduled mediation appointment or select an alternative date. On the fortieth (40th) day¹⁴⁴ after the PFB is filed, the JCCA database transmits a notice of mediation to the parties and attorneys associated with that case. This was a manual process for many years, with each notice necessitating an envelope and First Class postage. In 2004, the OJCC began generating these notices on automated post-cards, eliminating envelope expense and decreasing postage and labor expense. With the implementation of eService in the OJCC eFiling program, use of postage and envelopes is now minimal, with only self-represented (*pro se*) litigants generally receiving paper copies by U.S. Mail.

Some JCCs schedule and provide notice of the pretrial and final hearing concurrently with mediation notice. This process of a single notice for three hearings affords the parties significant opportunity to plan their litigation calendar months in advance, and minimizes the effort of OJCC district staff in monitoring case status. The simultaneous notice of all three events is the most efficient process for the OJCC, and likely reduces continuances.

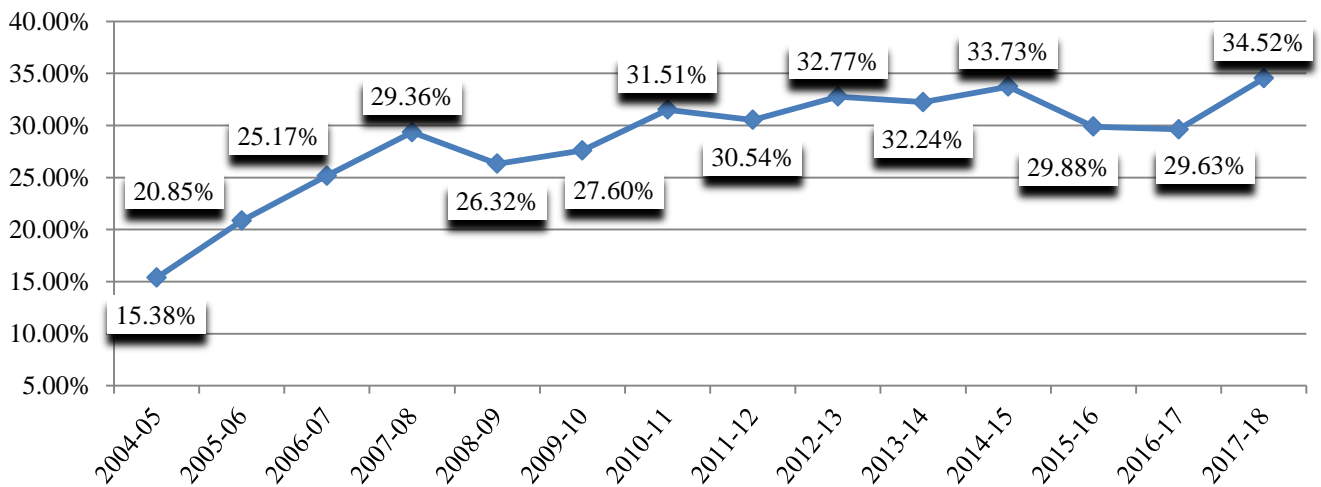
Once a mediation conference is convened, any of the following mediation outcome characterizations would reflect that the pending petitions for benefits (PFBs) have been resolved, and no final hearing would be required (although an attorney fee entitlement and/or amount hearing may be necessary): “Settled,” “All Issues Resolved,”

and “All Issues Resolved Except for Fees.” When these three (3) mediation outcomes are combined, the total reflects the frequency at which the pending PFB(s) are resolved at mediation. The JCC Application does not, however, capture data which reflects whether, in such mediation, one or multiple discrete PFBs were resolved. This graph illustrates the combination of these three (3) outcomes in each of the last fifteen (15) fiscal years.



This measure reflects only the resolution of all substantive issues in that PFB (“settled,” “all issues resolved,” and “all issues resolved except fees”). Thus, this metric measures success at mediation, but since multiple PFBs might be addressed in a single mediation, it is not an accurate measure of PFB closure through mediation.

Often, it is the resolution of small issues that helps to focus much broader disputes. For example, a successful mediation of a discrete claim for a medical evaluation might at first appear to be a small success in a case with many additional PFB issues left unresolved at mediation, such as entitlement to temporary or permanent indemnity payments. If issues remain unresolved at mediation, the remaining PFB issues must then be scheduled (or remain so) for pretrial and final hearing. However, if that medical evaluation then results in information upon which the parties are willing to rely regarding impairment or disability, then those other issues related to loss of earnings may later resolve without trial. Therefore, the success of mediation must be measured with a view to all of the potential impact of small issue resolution. It must also be remembered that these figures have likely been artificially increased by the decision by some mediators historically to mischaracterize some volume of PFBs as resolving at mediations that did not in fact occur. When the total reported volume of PFBs resolved at mediation is expressed as a percentage of the PFBs “filed” during the same fiscal year, the graph below illustrates the overall percentage frequency of resolution at mediation over the last fifteen years.



An important issue for JCCs is the volume of PFBs that remain for resolution or adjudication after mediation has occurred. Those that remain after mediation has concluded must be scheduled for pretrial hearing and final hearing (unless the PFB was already scheduled for these at the time mediation was scheduled). This illustrates the additional staff labor burden affected by monitoring cases for resolution and noticing trial only after mediation. These remaining PFBs are also very likely to contribute to the assigned JCC’s motion volume.¹⁴⁵ Simply stated, the greater the volume resolved by the conclusion of mediation, the less volume that must be further managed, pre-tried and heard. If the volume of PFBs dismissed prior to mediation is combined with the volume of PFBs that resolved at mediation (conservatively presuming one mediation equals one PFB), the graph above illustrates the percentage of PFBs filed that were resolved, either before or at mediation, during the last fourteen (14) fiscal years. This illustrates that in 2017-18 approximately sixty-five percent (65.48%) of PFBs filed include some issue or issues that remain unresolved at the conclusion of mediation. This is the lowest percentage since the OJCC has reported this data, due primarily to the large volume of petitions dismissed prior to mediation in 2017-18. An approximate volume of about two-thirds has been reasonably consistent over the last eight fiscal years. Recognizing that workers’ compensation benefits are “serial” in nature, these outcomes are not unexpected. These macro figures also ignore that many issues in a PFB may be resolved through the course of a mediation conference, and yet the PFB itself remains “unresolved,” due to other pending issues therein. The success of mediation, as a process for narrowing issues and focusing disputes, cannot be adequately measured by the volume of “total” resolutions achieved, but this metric is a significant measure of the trial and motion calendar workload of the OJCC overall.

Amount of Attorneys’ Fees Paid in Each Case According to Order Year and Accident Year

The OJCC is required by law to approve all attorneys’ fees paid by or on behalf of an injured worker.¹⁴⁶ § 440.34. Fla. Stat.¹⁴⁷ There is no such specific requirement for the approval of fees paid by employer/carriers for their defense counsel representation.¹⁴⁸ Despite the absence of such a specific requirement for defense fee approval, the broad language of section 440.105(3)(b), Florida Statutes¹⁴⁹ arguably could require OJCC approval of defense attorneys’ fees. However, this statutory authority has historically not been interpreted to require approval of defense attorneys’ fees, although some claimants’ attorneys and groups have questioned this interpretation.

The OJCC has required insurance carriers to report their respective total annual expenditures for aggregate defense fees.¹⁵⁰ Since fiscal year 2011 the OJCC rules have required that reporting by September 1 of each year (it is reasonably common for stragglers to file during September). Because these defense fee figures are reported in the aggregate, it is impossible to discern whether cost reimbursement to E/C attorneys has been included in the figures reported by the various carriers.¹⁵¹ Furthermore, this information regarding defense fees expended during the fiscal year does not provide any edification regarding the respective dates of accident involved in the cases in which those fees were paid during that fiscal year. The figures set forth herein for 2002-03 through 2013-14 have been amended.¹⁵²

Fiscal Year	Aggregate Fees	Claimant %	Defense %
2002-03	\$427,359,212	49.29%	50.71%
2003-04	\$441,907,794	48.73%	51.27%
2004-05	\$470,178,488	44.91%	55.09%
2005-06	\$498,541,260	41.80%	58.20%
2006-07	\$468,584,023	40.80%	59.20%
2007-08	\$448,862,202	42.04%	57.96%
2008-09	\$450,941,100	40.28%	59.72%
2009-10	\$446,653,869	39.63%	60.37%
2010-11	\$416,404,259	37.72%	62.28%
2011-12	\$395,294,706	38.67%	61.33%
2012-13	\$392,784,121	38.67%	61.33%
2013-14	\$379,222,338	37.41%	62.59%
2014-15	\$370,772,783	36.73%	63.27%
2015-16	\$378,573,902	36.05%	63.95%
2016-17	\$439,609,031	42.24%	57.76%
2017-18	\$453,179,191	43.84%	56.16%

Order Year 2017-18 Attorneys' Fees

Previous OJCC annual reports detailed payment of claimant attorneys' fees based upon the best information available when those reports were prepared. The OJCC gathers claimant attorney fee data through a computer program (part of the system that includes the JCC Application database, electronic filing, and internet publication of data) that simultaneously uploads fee approval orders to the Internet case docket and captures the data regarding claimant fee and cost amounts. The district staff is responsible for the input of the fee and cost amount data for each individual fee approval order entered. The database currently produces different annual totals for claimant attorneys' fees, approved in prior fiscal years, than was reported in OJCC Annual Reports in those years. It is believed that subsequent to the initial calculation of those figures, and issuance of those prior OJCC Annual Reports, additional information was entered by district staff. That is, additional approved orders for a particular fiscal year were input and uploaded after the data query for that particular fiscal year was initially run.¹⁵³ Those figures have therefore been corrected in more recent Annual Reports, as noted in the chart here.

Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	\$210,660,738		\$216,698,474	
2003-04	\$215,322,360	2.21%	\$226,585,434	4.56%
2004-05	\$211,157,073	-1.93%	\$259,021,415	14.32%
2005-06	\$208,369,260	-1.32%	\$290,172,000	12.03%
2006-07	\$191,197,443	-8.24%	\$277,386,580	-4.41%
2007-08	\$188,701,256	-1.31%	\$260,160,946	-6.21%
2008-09	\$181,660,686	-3.73%	\$269,280,414	3.51%
2009-10	\$176,996,765	-2.57%	\$269,657,104	0.14%
2010-11	\$157,081,084	-11.25%	\$259,323,175	-3.83%
2011-12	\$152,848,003	-2.69%	\$242,446,703	-6.51%
2012-13	\$151,889,627	-0.63%	\$240,894,494	-0.64%
2013-14	\$141,858,184	-6.60%	\$237,364,154	-1.47%
2014-15	\$136,180,202	-4.00%	\$234,592,581	-1.17%
2015-16	\$136,461,404	0.21%	\$242,112,498	3.21%
2016-17	\$185,676,766	36.07%	\$253,932,265	4.88%
2017-18	\$198,653,393	6.99%	\$254,525,798	0.23%

During 2017-18, a total of four hundred fifty-three million, one hundred seventy-nine thousand one hundred ninety-one dollars (\$453,179,191) was paid in combined claimant attorneys' fees and defense attorneys' fees¹⁵⁴(and perhaps defense "costs") in the Florida worker's compensation system.¹⁵⁵ This represents a small increase, about 3%, from the 2016-17 aggregate fee total of four hundred thirty-nine million six hundred nine thousand thirty-one dollars (\$439,609,031) in 2016-17. Notably, that figure was a significant increase from the three hundred seventy-eight million, five hundred seventy-three thousand, nine hundred two dollars (\$378,573,902) in 2015-16. Both claimant and defense fees decreased each year from 2010-11 through 2014-15, more significantly on the claimant side. Both figures increased in 2015-16, more significantly on the defense side. Then the 2016-17 figures demonstrated a significant increase of 36.07% in claimant fees with a more modest 5% increase in defense fees.

In the majority of years following 2002-03, claimant attorneys' fees decreased. In 2015-16, that trend reversed for the first time since 2003-04. That increase was modest, and might have proven to be an anomaly. However, the 2016-17 increase following Castellanos and Miles was significant and was seen as supporting that fee increases were likely. The continued increase in 2017-18 supports that hypothesis. The 2017-18 increase of 7% resulted in the highest claimant attorneys' fee total (\$198,653,393) since 2005-06 (\$208,369,260).

The aggregate attorneys' fees in Florida workers' compensation are detailed in this chart. This illustrates the total fees for both claimant and defense, and then provides the percentage that each make of the whole. This delineation was close to 50/50 in the early years of the comparison, see 2002-03, but aggregate claimant fees decreased and employer/carrier fees first increased markedly and then decreased at more moderate pace, resulting in a significant disparity between claimant and defense fees. Beginning in 2009-10, the defense portion exceeded 60% for seven years, peaking at almost 64% in 2015-16.

Fiscal Year	Aggregate Fees	Claimant %	Defense %
2002-03	\$427,359,212	49.29%	50.71%
2003-04	\$441,907,794	48.73%	51.27%
2004-05	\$470,178,488	44.91%	55.09%
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2016-17	\$439,609,031	42.24%	57.76%
2017-18	\$453,179,191	43.84%	56.16%

However, the significant increase in Claimant fees in 2016-17, followed by 7% growth in 2017-18 has markedly decreased the defense fee percentage. Despite that, the defense fees nonetheless remain in excess of 50%.

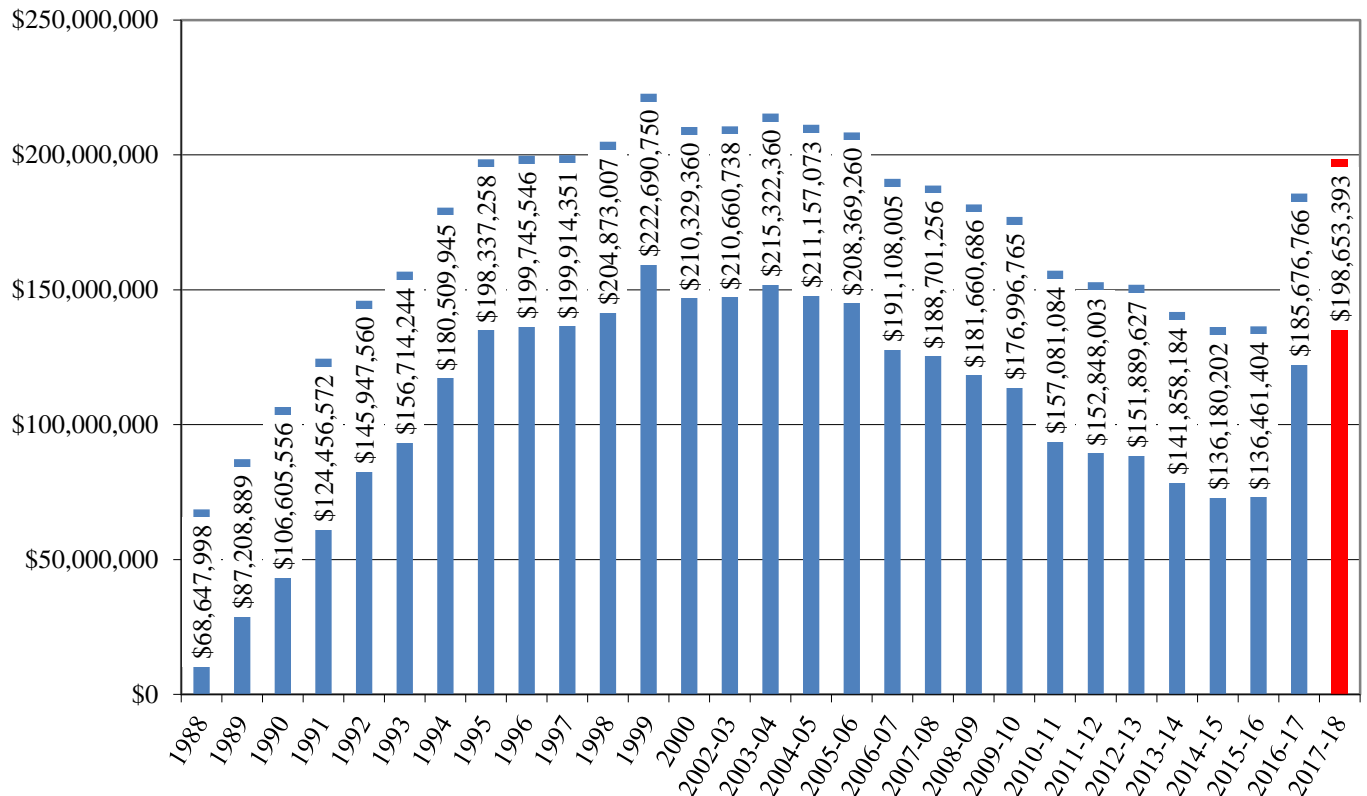
In the 2012 annual report, this Office first noted the inflation effect. Considering inflation over the last decade, this difference is more pronounced. According to the U.S. Inflation Calculator,¹⁵⁶ the 2002-03 aggregate (\$427,359,212), in 2018 inflation-adjusted dollars would have been \$586,315,935. This is \$133,136,744 more than the actual 2017-18 aggregate of \$453,179,191. Adjusted for inflation in 2018 dollars, aggregate attorneys' fees in Florida workers' compensation have *decreased* over one hundred million dollars in the last fourteen years, despite the marked increases in claimant fees in 2016-17 and 2017-18.

The notable increase in claimant attorneys' fees in 2016-17 was mostly attributable to hourly attorneys' fees for litigation of issues. The marked increase in 2017-18 was instead fueled by claimant-paid attorney fees related to settlements.

It is noteworthy that defense fees nonetheless remain the greater portion of the overall aggregate fees paid, at 56.16 percent. It is also notable that the aggregate fees in 2016-17 remained less than the peak aggregate in 2005-06 and significantly lower than the inflation adjusted 2003-04 aggregate. Comparing the two elements, claimant and defense, separately, the claimant fees in 2017-18 remained below the corresponding total in 2002-03. However, the defense fee element remained significantly higher in 2017-18 than the corresponding total in 2002-03, as illustrated in this chart.

Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	\$210,660,738		\$216,698,474	
2017-18	\$198,653,393	-5.70%	\$254,525,798	17.46%

The Department of Labor and Employment Security ("DLES") compiled data regarding the attorneys' fees paid to claimants' counsel for a number of years. In the DLES 2001 Dispute Resolution Report, fees for calendar years 1988 through 2000 were reported. These figures are helpful for broad comparisons with current fees and trends. However, it is important to note that the DLES figures may be for calendar years, not fiscal years. It is further instructive to note that the DLES figures for attorneys' fees paid for claimants' counsel likely include costs, as the ability to easily differentiate fees from costs did not exist until the OJCC database was deployed in 2002. The figures compiled and reported by the OJCC, since October 2001, do not include claimant costs. With those two caveats, the following graph represents the claimant fees (as mentioned, perhaps fees plus costs) paid from 1988 through 2000 and the claimant fees paid from fiscal 2002-03 through 2017-18.

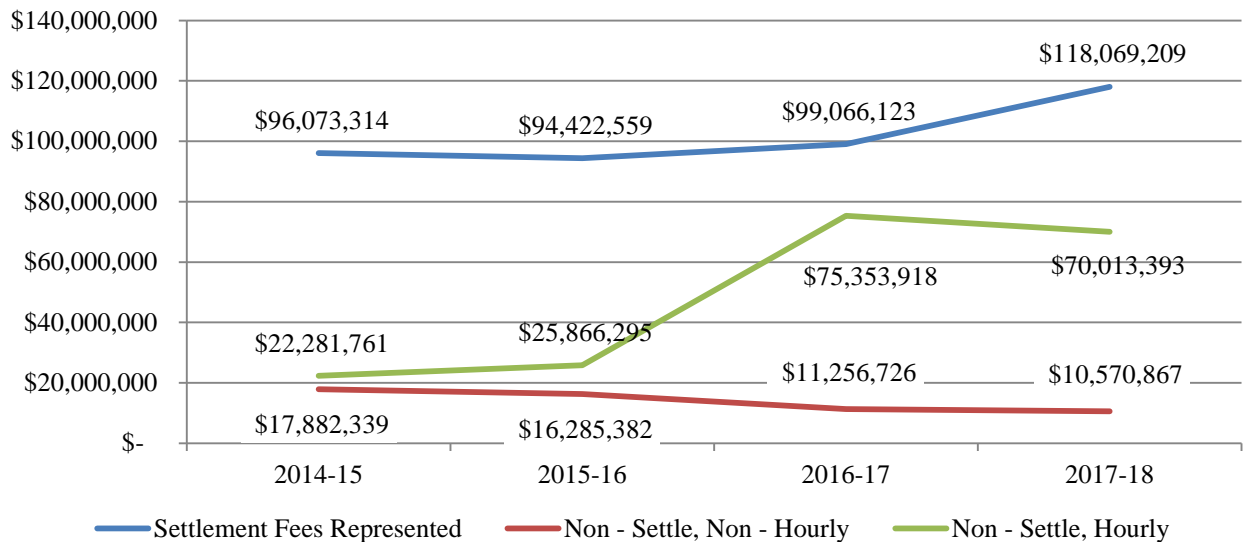


The Castellanos effect

The effects of the Castellanos decision were apparent in the 2016-17 attorney fee figures. Claimant’s fees increased 36.07% that year. The majority of that increase was in the category “non-settlement hourly” fees. That category (likely E/C-paid) increased from \$25,866,295 in 2015-16 to \$75,353,918 in 2016-17, an increase of almost \$50 million (+191%). By comparison, there was a much less significant increase in the settlement fees (likely Claimant-paid) from \$94,422,559 in 2015-16 to \$99,066,123 in 2016-17, an increase of about \$4.5 million (+5%).

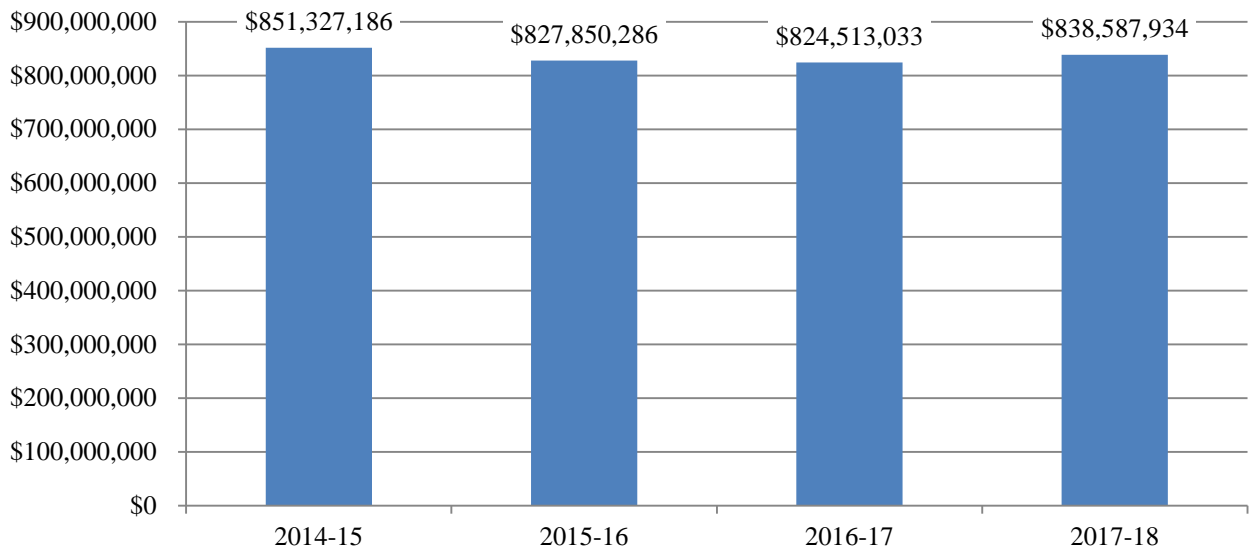
The Miles Effect

The effects of Miles were comparatively less apparent in 2016-17, but are illustrated better in 2017-18. In 2017-18, the “non-settlement hourly” fees (Castellanos) decreased from the \$75,353,918 in 2016-17 to \$70,013,393 (-7%). However, the settlement fees (Miles) increased from \$99,066,123 in 2016-17 to \$118,069,209 (+19%) in 2017-18. Such an increase might be explained by a greater volume of represented settlements, a higher value of those settlements, or a greater portion of those settlements being paid in fees. These changes are illustrated in the following chart.



The data does not support that the aggregate value of settlements increased significantly in 2017-18 (+1.71%), as illustrated in the graph below. The volume of represented settlements likewise did not change significantly, increasing from 24,573 in 2016-17 to 24,701 in 2017-18 (+1%). Thus, this increase in settlement fees seems appropriately attributed to Miles. That case has been interpreted by some as allowing claimant-paid fees to exceed the statutory formula in section 440.34(1), Florida Statutes.¹⁵⁷ (See infra pages 6-7).

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Miles v. City of Edgewater¹⁵⁸ is open to multiple characterizations and interpretations. The Court there discussed the interplay or relationship between constitutionally recognized individual rights¹⁵⁹ and the “governmental interests advanced as the basis for” sections 440.34 and 440.105, Florida Statutes. The analysis was influenced by the conclusion in Miles, and the court’s prior similar ruling in Jacobson v. Se. Pers. Leasing, Inc.,¹⁶⁰ that the government’s “interest in protecting the amount of benefits secured by an injured worker under chapter 440 from depletion to pay a lawyer's bills” was not of persuasive gravity because both of these decisions represented instances in which injured worker’s entitlement to benefits had been completely denied. Thus, the court reasoned that “there can be no depletion of benefits where there are no benefits.”¹⁶¹

Similarly, the Court addressed the more general “interest in lowering the cost of workers' compensation premiums,” concluding it was likewise not persuasive to justify impairing the noted constitutional rights. The Miles Court reasoned “it is Claimant, not the E/C, who would pay the fee implicated by the legal work at issue.” Finally, the court expounded upon the ability of an injured worker to waive constitutionally recognized rights, and concluded that it perceived no preclusion to a person waiving “statutory rights such as those in section 440.34, Fla. Stat.” But, whether that Miles analysis is as applied or more general (“facial”) remains a matter of discussion and opinion.

Attorneys’ Fees by Accident Year

The figures above represent only the amount of fees “approved” during each respective fiscal year. During any particular fiscal year, fees might be approved on cases for which the date of accident was also during that particular fiscal year. More likely, the approved fee might be related to a date of accident prior to that fiscal year, perhaps many years prior. In 2017-18, fees were approved regarding 49 distinct accident-date years. As reflected in this table, that is reasonably consistent with prior years.

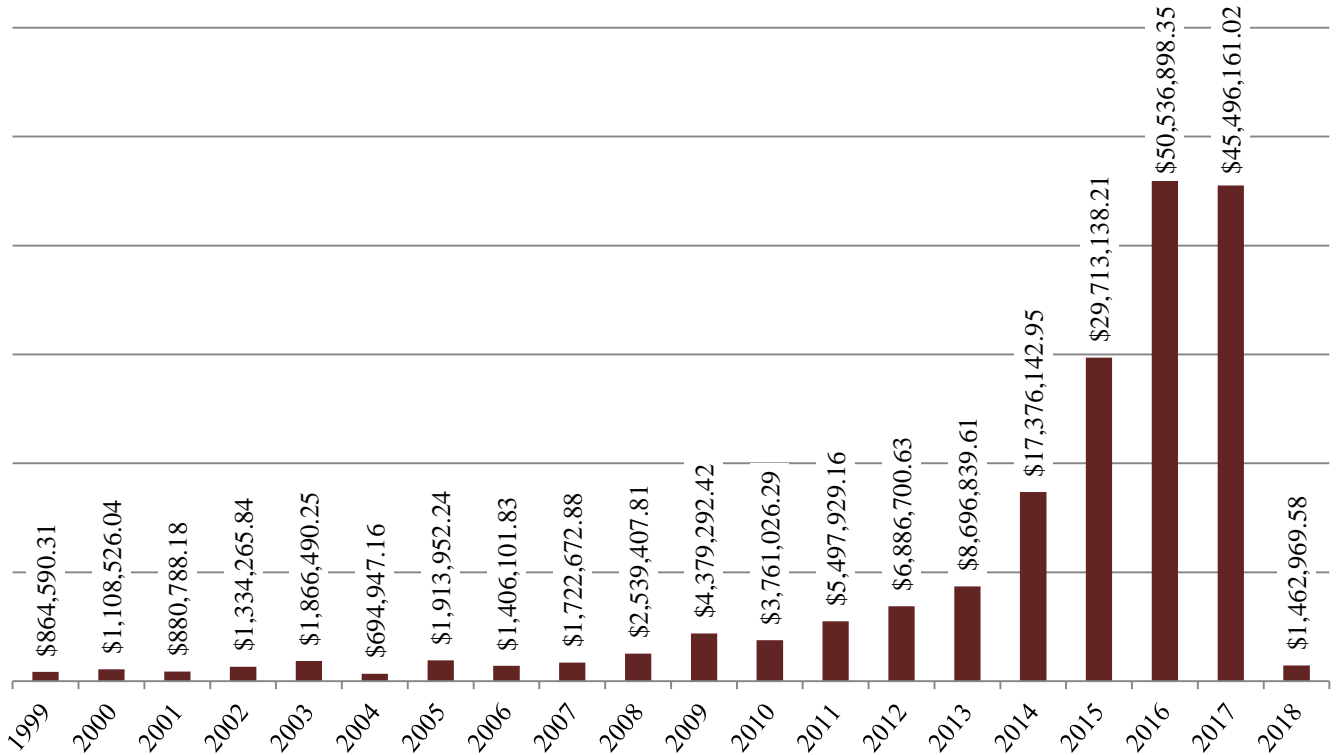
Fiscal Year	Different Years Fees Paid
2006-07	46
2007-08	47
2008-09	47
2009-10	48
2010-11	45
2011-12	47
2012-13	50
2013-14	44
2014-15	48
2015-16	46
2016-17	51
2017-18	49

In 2017-18 attorneys’ fees were approved on a 1952 date of accident.¹⁶² This example illustrates the manner in which claims can occur and not come within the OJCC jurisdiction for a significant period. The 1943 case was opened in 2016 with the filing of a petition for benefits. Certainly, there may have been previous litigation on these cases, prior to the OJCC becoming part of DOAH. However, the first record that this agency has regarding either case was in 2016 and 2018 respectively.

Most fees approved during any particular fiscal year will be associated with accidents that occurred prior to that particular fiscal year. This is because most cases in the OJCC system are not related to accidents in any current fiscal year, and because many cases in the workers’ compensation system remain active, with periodic litigation issues, for many years. Furthermore, it usually requires

more than six months (accident dates are attributable to calendar years, January 1 through June 30, but the OJCC data is defined by fiscal years) to file a claim, resolve a benefit entitlement, file for attorney’s fees, and resolve or litigate that issue. Logically, most litigated cases within the responsibility of the OJCC at a particular time involve dates of accident prior to any current fiscal year.

The claimant fees approved in fiscal 2017-18 for accident dates in the last 20 years are illustrated in this graph. The volume of fees has increased, as noted above, but the distribution illustrated is similar to prior year’s data.



The vast majority, approximately eighty-eight percent (88%) of the fees approved in 2017-18 related to accident dates in the ten years between January 1, 2008 and December 31, 2017. For comparison, the similar ten year period prior to 2016-17 also represented 88%, the ten year period reported in 2015-16 represented 80%, and the ten years prior to 2014-15 represented 79%. This data suggests some increase in the contribution of the most recent accident years, demonstrated consistently in this annual report and the 2016-17 report.

Historically, the highest single “accident date year” in the annual fee analysis is the year two years prior to any particular Annual Report. This remarkable consistency is illustrated again above for 2017-18 in the chart above, and in the comparison table to the right.

This illustrates two points. First, the most recent accidents historically account for the vast majority of claimant attorneys’ fees approved, or awarded each fiscal year; second, the most significant accident year for claimant attorneys’ fees is consistently two years prior to the reporting year. This is overall consistent with the resolution of cases demonstrated above. Petitions are filed, the state mediation process engages, final hearing processes engage, and as resolution occurs, the fee issues are resolved. Despite the notably short statutory time frames for mediation (130 days) and trial (210 days), it is unlikely most cases will reach the point of fee awards or approvals in the first six months¹⁶³ after accident date.

Of the claimant attorneys’ fees approved in 2005-06, only two percent (2%) were for dates of accidents more than 20 years prior to that fiscal year. That percentage rose and then stabilized for much of recent history. However,

Fiscal Year	Highest Fee Accident Year	Dollar Amount
2007-08	2006	\$31,929,514
2008-09	2007	\$32,890,123
2009-10	2008	\$40,364,949
2010-11	2009	\$30,636,291
2011-12	2010	\$27,632,737
2012-13	2011	\$25,875,607
2013-14	2012	\$27,095,077
2014-15	2013	\$25,675,747
2015-16	2014	\$28,119,286
2016-17	2015	\$42,953,079
2017-18	2016	\$50,536,898

the 2017-18 figures represent a volume of only 5%, consistent over the last two fiscal years. This illustrates that claims on dates of accident older than twenty years have also increased in terms of their proportion to the whole, but still do not represent a significant part of the fee awards and stipulations.

Fiscal Year	2005 -06	2006 -07	2007 -08	2008 -09	2009 -10	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15	2015 -16	2016 -17	2017 -18
Fees on Accident dates > 20 years	2%	4%	5%	6%	6%	5%	5%	6%	8%	7%	7%	5%	5%

Number of Final Orders not Issued within 30 Days after the Final Hearing or Closure of the Hearing Record

Many legitimate reasons may require a trial to be reconvened on a second or even third day after the initial trial date. However, anecdotal evidence supports that such a process was historically employed by a minority of judges to delay record closure and artificially extend statutory deadlines for entry of a final order. Determination of the legitimacy of such subsequent proceedings in any particular case would require forensic examination of each case, which is not practical with the current resources of the OJCC. Recognizing the limitations of case auditing, and the legitimate need for such “reconvene” hearings in a very small minority of cases, the OJCC reports the number of cases in which the final order is entered within thirty days of the final hearing initially convening. This calculation undoubtedly slightly understates the number of final orders entered within thirty days of legitimate “closure of the hearing record.”¹⁶⁴ However, this calculation also permits no overstatement of achievement by inappropriate employment of the “reconvene,” and presents an illustration of performance that is consistent across the various Districts and Divisions. It is believed that the contrived “reconvene” practice has decreased markedly or ceased as a result of the consistent publication of the data in this report.

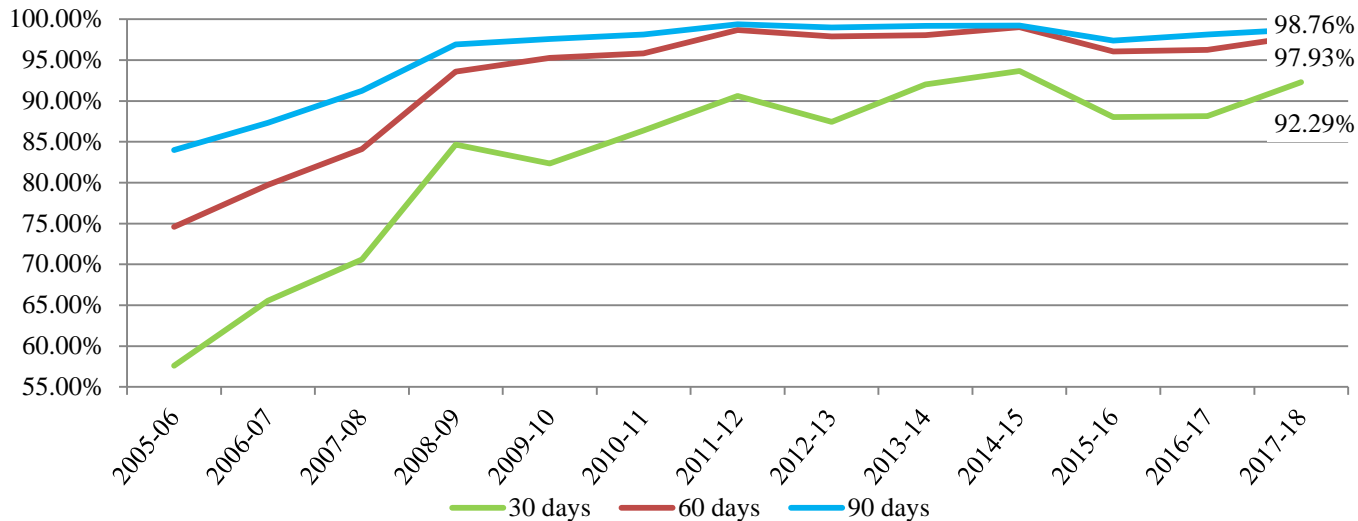
In this regard, the OJCC elects to report conservative figures that cannot overstate performance. Review of all of the final merits orders entered during fiscal 2005-06 through fiscal 2017-18, supports that many final orders were entered on the same day of the final hearing. Overall, the JCCs entered timely (within the 30 days required by statute¹⁶⁵) final orders approximately fifty-eight percent (57.6%) of the time in fiscal 2005-06. This increased steadily thereafter, and was approximately ninety-four percent (93.67%) in 2014-15. The rate decreased in 2015-16 and 2016-17, but returned to over ninety-two (92.29%) in 2017-18.

Days	2013-14	2014-15	2015-16	2016-17	2017-18
30 days	92.03%	93.67%	88.01%	88.15%	92.29%
40	95.67%	96.55%	92.40%	91.65%	96.83%
50	97.15%	98.15%	94.59%	94.76%	97.52%
60 days	98.06%	99.02%	96.05%	96.26%	97.93%
70	98.80%	99.23%	96.64%	97.51%	98.48%
80	99.03%	99.23%	97.22%	97.88%	98.76%
90 days	99.20%	99.23%	97.37%	98.13%	98.76%
100	99.20%	99.23%	97.95%	98.63%	98.76%

Final orders were entered in under one hundred (100) days in approximately eighty-six percent (85.5%) of all cases in 2005-06, and in ninety-nine percent (99.20%) of the cases in 2013-14. That percentage similarly decreased slightly thereafter, but returned to almost ninety-nine percent (98.76%) in 2017-18. The decrease in 2015-16 was also most likely due to the change in definition of “trial order.”¹⁶⁶ Overall, the improvement in order timeliness since 2005-06 is a tribute to the professionalism and focus of the judges currently serving Florida in the OJCC.

For final orders entered during fiscal 2006-07 through 2016-17, the shortest period between final hearing and final order has consistently been zero (0) days. During fiscal 2006-07 the longest period between trial and final order was two thousand, nine hundred eleven (2,911) days, or approximately eight years. In 2017-18 the longest period was two hundred forty-six (246) days.¹⁶⁷ This represented a marked decrease in the historical longest time to order. With the current statutory mandates in place regarding appointment of expert medical advisors (EMA), there

will likely continue to be some volume of orders that are entered after what would otherwise appear to be an inordinate period of time. The EMA process is time consuming, and delay of decisions is inherent within that procedural process. However, the OJCC continues to perform significantly within this measure.



Recommended Changes or Improvements to the Dispute Resolution Elements of the Workers’ Compensation Law and Regulations

The workers’ compensation adjudication team should be returned to full strength. In 2012, the Florida Legislature eliminated one judicial position and three mediators from the Office of Judges of Compensation Claims. The remaining 28 mediators have been able to maintain efficient mediation of the petition volume. However, the petition volume in 2015-16 demonstrated significant increase and the 2017-18 data reflects that the trend is towards maintaining the current volumes or for further increase. The 2018-19 first quarter data (July, August, and September) supports that PFB filing rate increase is likely to continue.¹⁶⁸ As PFB volume increases, mediators will be challenged to find sufficient opportunities to mediate all incoming petitions. Delay is inevitable, and it is probable that some portion of petition volume may have to be referred to private mediation despite the costs entailed. It is respectfully submitted that the best interests of the State, its workers, and their employers are all best served by the restoration of the previously eliminated three mediator positions.

The disparate salary and benefit issues for Judges of Compensation Claims, OJCC mediators and staff were detailed in the 2008-09 OJCC Annual Report. These disparities continue to frustrate the efficient operation of this agency and are wasteful of resources. The disparities lead inexorably to staff turnover and significant time and financial costs involved in recruiting, acclimating, and training replacements. The pay equity recommendations in the 2008-09 report are reiterated.

- Judicial pay should be increased and tied to County Court salaries (See Appendix 18).
- State mediator pay should be increased.
- Resources should be provided to establish pay equity for OJCC staff.

The history of judicial consideration of “costs” is discussed at length in the 2006-07 OJCC Annual Report. The suggestions and recommendations therein remain important and are mentioned here to reiterate.

Judicial approval of stipulated/agreed attorneys’ fees and cost reimbursements should be eliminated when all parties are represented by counsel. This is further supported by the recent conclusions of the Florida First District Court of Appeal in Miles v. City of City of Edgewater Police.¹⁶⁹

The procedural and practical inefficiencies of the Expert Medical Advisor (EMA) process are described in detail in the 2005-06 OJCC Annual Report. The detrimental effect of EMAs on timely adjudications remains. This

process remains problematic for the Judges of Compensation Claims' efforts at efficient and timely adjudication of disputes. This process has consistently been prone to gamesmanship and manipulation. That characterization is exacerbated by the continued decline in the population of certified EMA providers.¹⁷⁰

Use of EMA provisions should be discretionary rather than mandatory.

The OJCC again recommends further consideration of these previously expressed areas of concern.

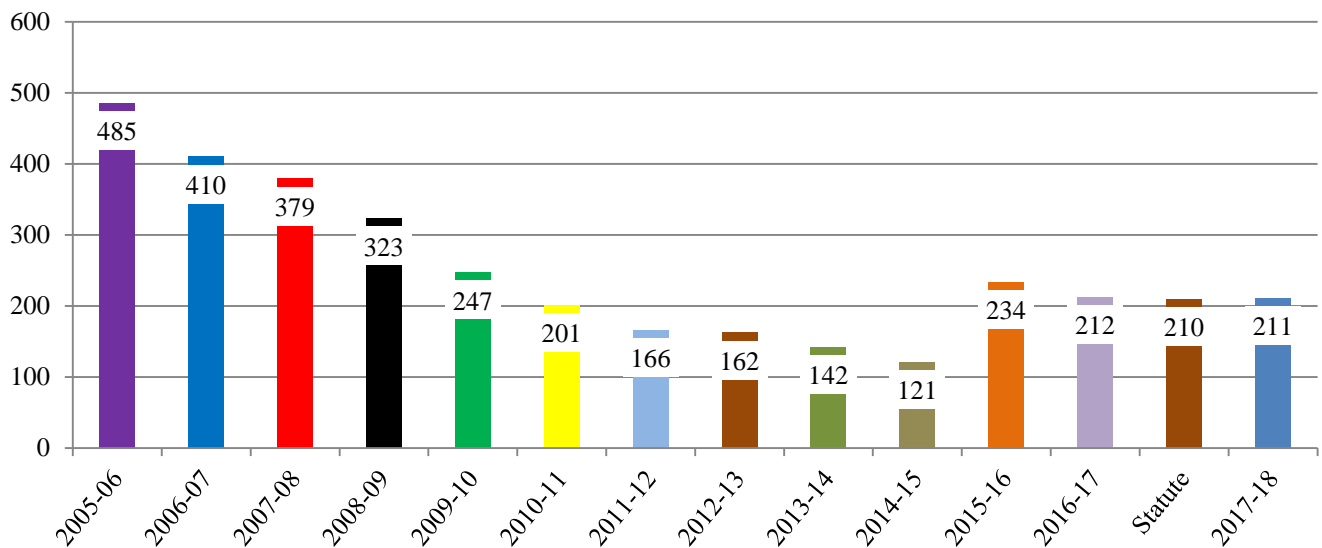
The Centers for Medicare and Medicaid Services (CMS) notes that significant fraud or abuse exists in the delivery of medical care.¹⁷¹ There are federal statutory provisions to empower whistleblowing regarding allegations of inappropriate behavior. In 2014 a Florida hospital settled a "federal whistleblower lawsuit that accused it of Medicare fraud and kickbacks."¹⁷² The allegations in that suit resulted in reimbursement to Medicare of about \$80-\$90 million. In 2015, a medical company agreed to repay the U.S. government and other entities \$118.7 million in a fraud case in central Florida.¹⁷³ In 2015, a Florida company paid almost \$70 million to settle a fraud case involving "physician kickbacks, complicit hospital administrators and negligent financial oversight."¹⁷⁴ A whistleblower provision in Chapter 440, F.S. to empower and compensate the reporting of such activity related to the care and treatment of Florida's injured workers could aid efforts to control costs and assure delivery of appropriate medical care.

Are Judges Generally Unable to Meet a Particular Statutory Requirement for Reasons Beyond Their Control?

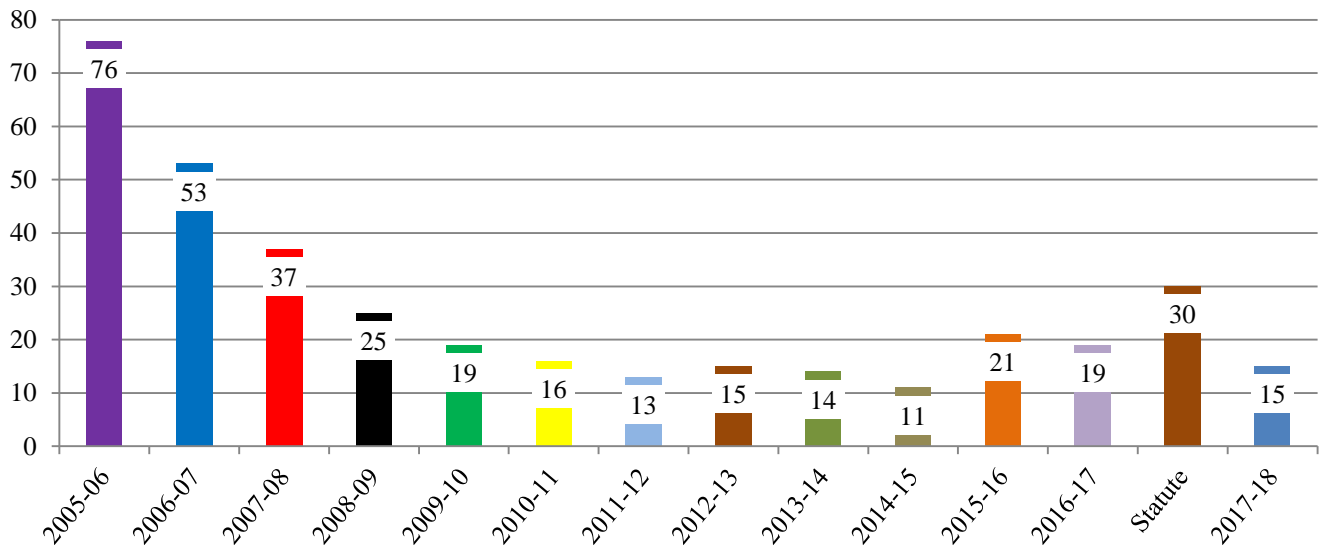
There are three main statutory requirements for the Judges of Compensation Claims. Judges are expected to have their assigned cases proceed to mediation within 130 days and to trial within 210 days. These two are somewhat within the control of the presiding judge, although there are many circumstances that can extend the required time, such as carrier bankruptcy, expert medical advisor ("EMA") appointment, scarcity of qualified physicians within the geographic area and others. The final statutory requirement is that trial orders are issued within 30 days of trial. This is a parameter that is more consistently within the control of the assigned judge.

Each statutory requirement can clearly be accomplished in the vast majority of cases. This fact is indisputable and has been proven repeatedly in various districts throughout Florida. There can be no generalized claim that cases "cannot" be tried within two hundred ten (210) days of PFB filing or that final orders "cannot" be issued within 30 days of trial. In individual exceptional cases, however, these standards may be unreasonable, due to the facts of that particular case.¹⁷⁵ In recognition that such exceptional cases exist, the OJCC reports only the overall average time to trial and time to order for each JCC. In each of the last thirteen fiscal years (2005-06 through 2017-18) one hundred percent (100%) compliance with these requirements was achieved by some individual judges and their respective staff. Overall, the OJCC did not meet all of these measures until 2010-11, which continued through 2014-15. With the 2016 change in definition of "trial," the OJCC has not collectively met all three of these standards. The time to mediation and time to final order aggregates for the entire OJCC have remained within the statutory parameters. However, following the change in the definition of "trial," the overall average time to trial increased to 234 days in 2015-16. There has been improvement since, and in 2017-18 the overall average time to trial was 211 days, one day more than the statutory 210.¹⁷⁶

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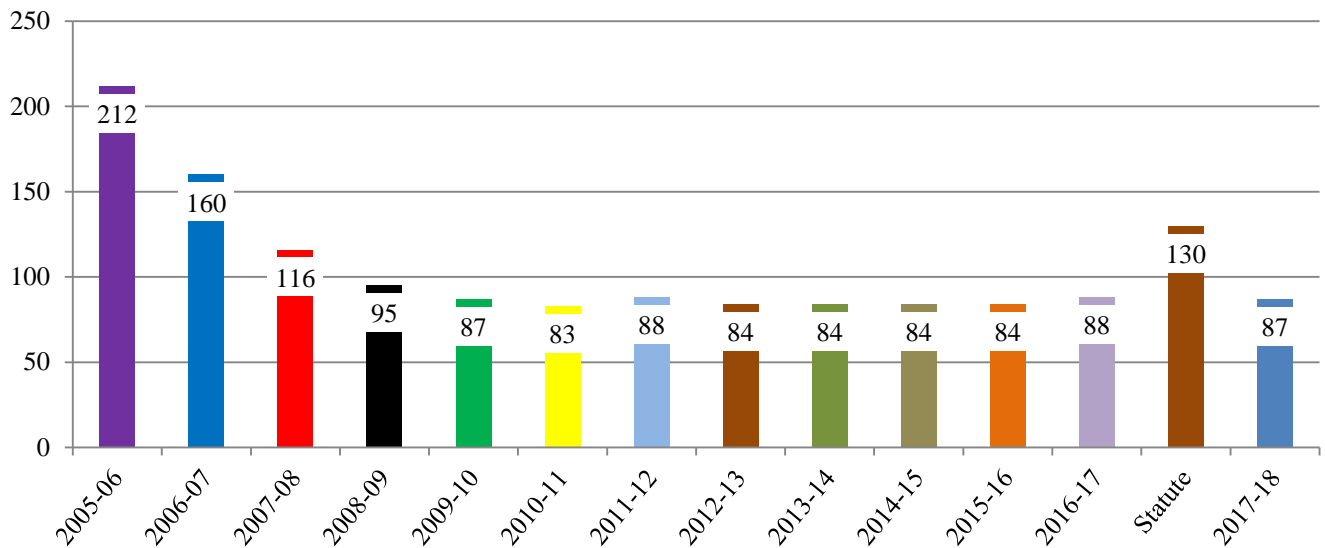


The Office of the Judges of Compensation Claims has also made significant improvement in the average time period between the commencement of the trial and the entry of the final order thereon.¹⁷⁷ The overall statewide average period, from trial to the entry of the trial order, has decreased markedly since 2005-06, and remains well within the statutorily defined 30 days, as illustrated in the following graph.



For the three fiscal years 2008-09 through 2010-11, 85% of the judges averaged less than 30 days to final order entry. In 2011-12, this increased to over ninety-seven percent (97%), and remained consistent at that level through 2014-15. After the 2016 change in the definition of “trial” that figure dropped to seventy-eight percent (77.50%), in some part due to the diminished volume of orders included in the definition and in part due to the nature of the orders that remained in the definition being more uniformly PFB determinations. However, in 2016-17 this measure returned to ninety percent (90%) compliance and in 2017-18 to over ninety-seven percent (97%).

Another impressive improvement is the marked reduction, in the overall statewide average time period, between petition filing and the first mediation conference held thereon. This improvement is illustrated in the following graph. This achievement is compelling evidence of better record keeping, better customer service, and the professionalism of our judges and mediators. It bears repeating here, that 100% of state mediators averaged less than the statutory 130 days to mediation in each of the last ten fiscal years. Clearly, the OJCC efforts are improving the value that the OJCC brings to the lives of Floridians.



Statutory Measures

Judges of Compensation Claims (JCCs) are appointed by the Governor for a term of four (4) years. A JCC may thereafter be re-appointed by the Governor for successive four year terms. The re-appointment process is to be initiated approximately six (6) months prior to the expiration of the JCC’s terms with review of the judge’s performance by the Statewide Judicial Nominating Commission (SNC). Section 440.45(2)(c), Florida Statutes,¹⁷⁸ mandates that the SNC consider “the extent to which the judge has met the requirements of this chapter, including, but not limited to” the following eight specific statutory provisions: section 440.25(1), Florida Statutes,¹⁷⁹ (timely mediation), section 440.25(4)(a), Florida Statutes,¹⁸⁰ (pretrial procedure), section 440.25(4)(b), Florida Statutes,¹⁸¹ (appropriate continuance grounds and orders), section 440.25(4)(c), Florida Statutes,¹⁸² (timely final hearing notice), section 440.25(4)(d), Florida Statutes,¹⁸³ (timely final hearings and final orders), section 440.25(4)(e), Florida Statutes,¹⁸⁴ (final order filing), section 440.34(2), Florida Statutes, (appropriate fee order findings), section 440.442, Florida Statutes,¹⁸⁵ (compliance with Code of Judicial Conduct). Despite the clear statutory mandate for such reporting, these statutory measures were not previously reported by the OJCC until 2006. This Annual Report marks the eleventh consecutive OJCC effort at fulfillment of this reporting requirement. The 2006-07 OJCC Annual Report documented four of the eight parameters for each JCC (timely mediation, timely final hearings and final orders, final order filing, compliance with Code of Judicial Conduct). Since 2007-08 the OJCC Annual Report has provided data regarding each of the eight.

Although the reporting of these specific measures is mandated by statute, these measures do not completely evaluate the volume of work required of a JCC. Therefore, it is also appropriate to quantify variations in work-load between and among judges and districts. Furthermore, these statutory measures and workload volumes document certain activities, but do not necessarily reflect judicial performance. Any consideration of judicial performance must also include subjective factors, such as judicial demeanor, courtesy to litigants and counsel, and respect of the Office and the responsibilities it embodies. In an effort to evaluate these non-empirical factors, the OJCC worked with the Workers’ Compensation Section of The Florida Bar in 2007-08 to deploy the first Judicial Survey of the JCCs on a statewide basis. That survey process has been repeated annually since. The results of each are available on the OJCC website (www.fljcc.org), under the “Publications,” and then “Reports” tabs.

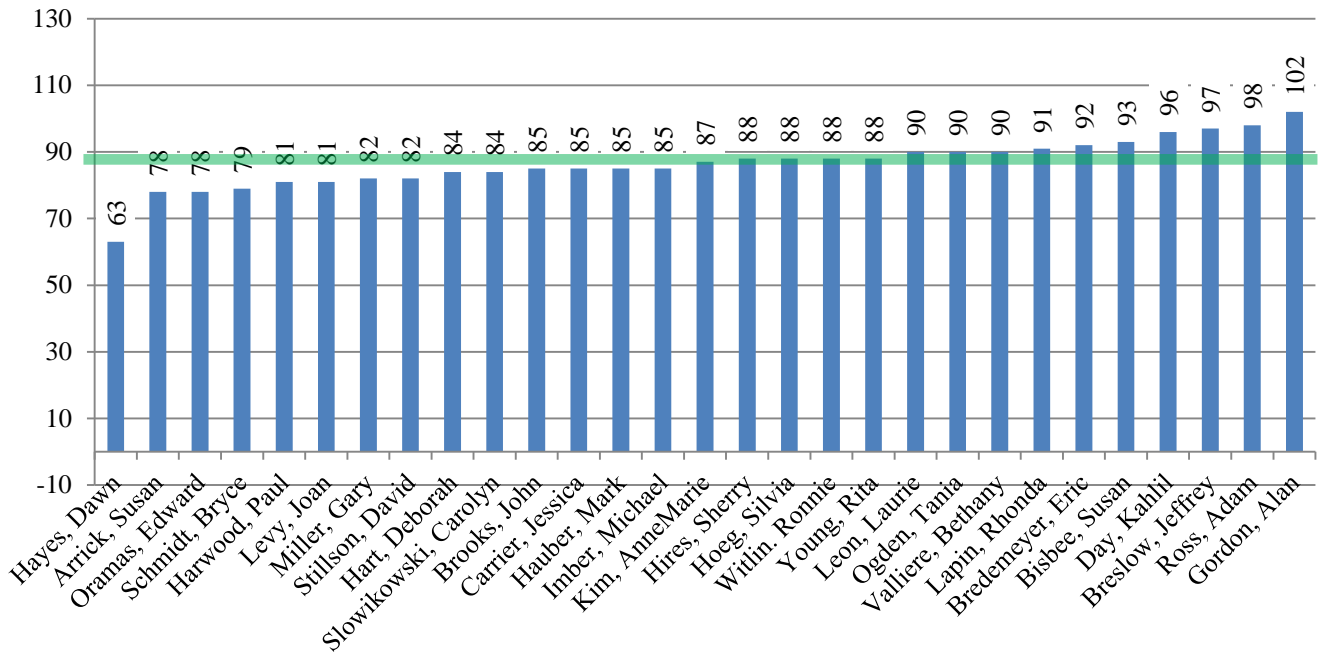
For the purposes of this report, “final hearings” include only final merits hearings regarding claims and issues in petitions for benefits, contested attorney fee/cost hearings resulting in substantive final orders, and Fund Hearings.¹⁸⁶ This is a change from prior years. Previously, “trials” included: Evidentiary Motion Hearings, Expedited Final Hearings, Fee Amount Hearings, Fee Entitlement Hearings, Final Hearings, and Fund Hearings.¹⁸⁷ “Trial orders” no longer include substantive orders issued after hearings on evidentiary matters, where inclusion of that order in the statistics was consistent with the time and effort involved in that order/hearing, but which standard was subject to misinterpretation and abuse.

Pretrial Hearing

The timeliness of pretrial hearings is addressed in section 440.25(4)(a), Florida Statutes. This statutory measure requires that the JCC conduct a pretrial hearing, and that the JCC provide the parties with fourteen days’ notice of such hearing. The JCC Application is capable of generating notices of any of the events common to the processing of a Petition, including pretrial hearings, mediations, and final hearings. When the Application is used to schedule such an event, the issuance and mailing of that notice is also automatically posted in the electronic case docket. In the Divisions that are utilizing that Application function, an audit for 2015-16, supported that appropriate notice is being provided for pretrial proceedings. The anecdotal evidence, and an absence of any complaints or allegations of insufficient pretrial notice, also supports that the OJCC complies with this statutory measure.

Mediation

Timeliness of mediation is addressed in section 440.25(1), Florida Statutes. This legislative measure requires that mediation on each PFB be held within 130 days of the PFB being filed. This statute also requires that mediation is continued only if the parties agree or if good cause is shown. The following graph depicts the average number of days between PFB filing and the first mediation for each OJCC mediator (“Mediator Average”) in the state (blue bars). The statewide average (87) is also depicted (horizontal green line). All figures are below the 130 day statutory parameter. The average days between PFB filing and the first mediation is also provided for the mediators within each district in the district appendices at the end of this report. Greater detail regarding the success of state mediation within the OJCC is provided in the 2017-18 Settlement and Mediation Report,¹⁸⁸ available under the “publications” and then “reports” tabs on the OJCC website, www.fljcc.org.



The data for this measure indicates consistent effectiveness in the frequency of timely mediation. Since fiscal year 2005-06, the statewide average for all state mediators has decreased from 212 days to 87 days. In 2007-08 twenty-two (69%) of the state mediators had an average of less than 130 days (the statutory period) from PFB filing to the first mediation; in each fiscal year since 2007-08,¹⁸⁹ **one hundred percent (100%)**, of the state mediators had an individual average that was within the 130 days.

Final Hearing Notice

Timely notice of final hearing is mandated by section 440.25(4)(c), Florida Statutes. This statutory measure requires that the judge provide the parties with fourteen (14) days' notice of final hearings. The issuance of timely notices for final hearing is difficult to measure accurately. Some Divisions utilize the automatic notice generation process in the JCC Application, as discussed above, regarding pretrial hearings. When this process is employed, the database generates the notice and automatically documents the production in the electronic case docket. The available data supports that timely notice is being provided for all final hearings. Some case dockets do not contain automatic docket remarks because that particular judge has elected not to utilize the database function which uses automation for producing the trial notice. As mentioned above, the absence of any complaints of untimely final hearing notices also anecdotally supports that appropriate statutory notice is being provided. The OJCC continually monitors and audits to assure compliance with this requirement.

Final Hearing Continuance

Continuance of final hearings is addressed in section 440.25(4)(b), Florida Statutes. This statutory measure requires that the judge generally only grant a continuance in defined circumstances.

In this context, the meaning of "continuance" is worthy of reiteration. Many cases cannot be mediated or tried on the date upon which they are initially scheduled. This is often known before or fairly soon after the hearing or mediation is initially noticed. If the parties seek to change that initial date, and an alternate date can be agreed upon within the applicable statutory period (trial = 210 days; mediation = 130 days), the hearing or mediation is "rescheduled" not "continued." This characterization is a logical differentiation that recognizes both the statutory parameters, and that many times the new hearing or mediation date is prior to the originally scheduled event. Any hearing that is characterized as "continued" in the database should have a corresponding continuance order in the case docket. The order should document the circumstances. The order shall also set forth the new event (trial or mediation) date.

Ten continued final hearings were randomly selected for each judge during 2017-18 (except those judges whose assignments demonstrated less than 10 continuances overall). Each selected case docket was searched for a corresponding order "continuing" that hearing. Previous such audits have been documented. In 2012-13 many (23 of 31) judges were not consistently complying with the statute in this regard. In 2013-14 six judges periodically issued notice of a new hearing date instead of an appropriate continuance order. Seven judges continued cases without an order or notice appearing in the docket. Seven judges entered continuance orders with no hearing date expressed. In 2016-17 orders failing to comply with the law were noted for nine judges.

In 2017-18, an issue came to light regarding the filing of continuance waivers. Section 440.25(4)(b), Florida Statutes¹⁹⁰ requires that any continuance after an initial continuance must be consented to (objection "waived") by the injured worker. Of 649 subsequent continuance orders analyzed, such "waivers" could not be located for 102 (15.7%) of those. The judges for whom all waivers could be located were Judges Hedler, Hill, R. (Stanton), Lazzara (Newman), Owens, and Walker. Of the 102 that could not be located, 26 were in one Division.

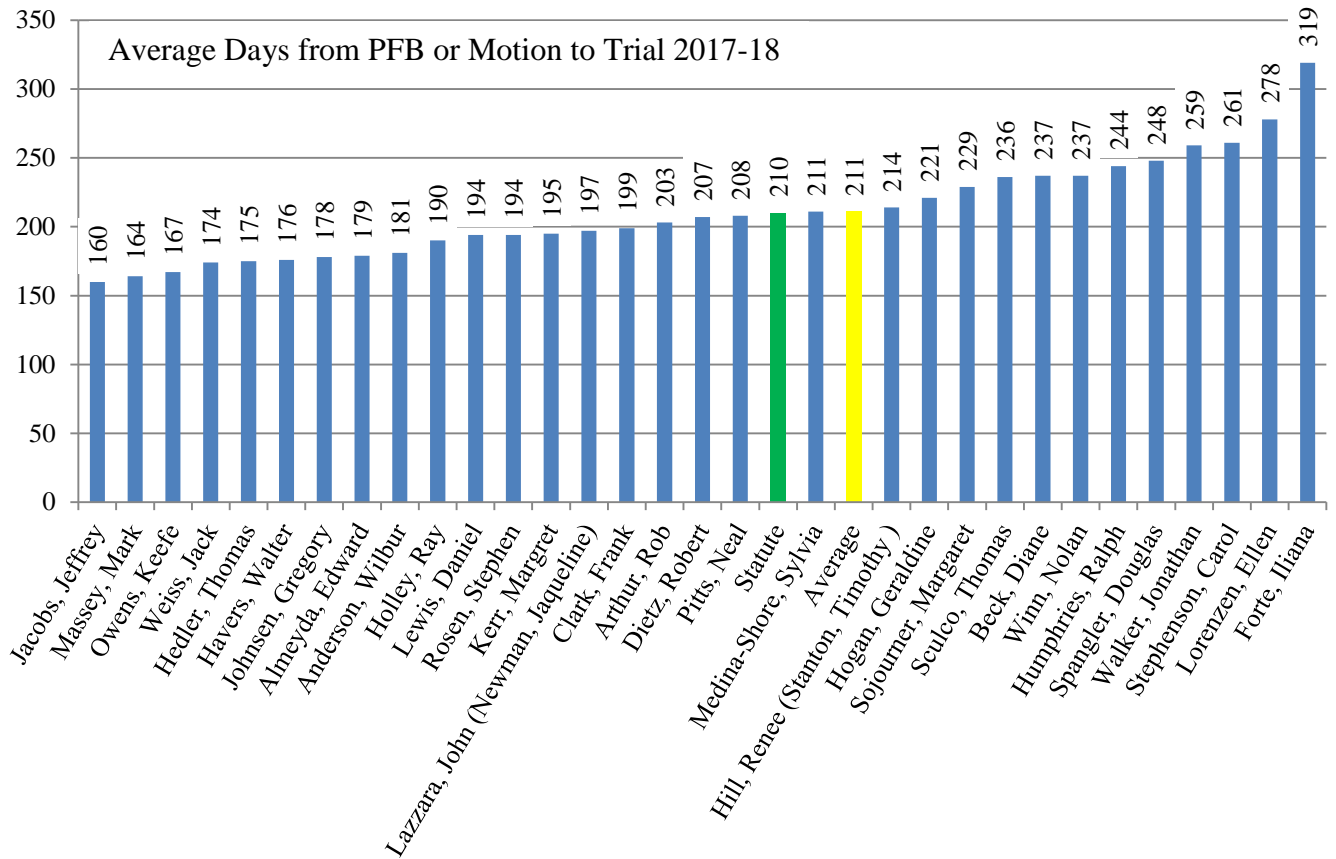
Each order that grants a continuance is required by section 440.25(4)(b)¹⁹¹ to include the new hearing date. The judges for whom each examined order contained such a date were Judges Forte, Hedler, Hill, R. (Stanton), Jacobs, Lazzara (Newman), Owens, and Weiss. Additionally, Judge Johnsen's only instances of not expressing the new date, in violation of the statute, were related to judicial continuances related to appointment of an Expert Medical Advisor (EMA). The omission of new hearing dates from continuance orders has been addressed in multiple OJCC Annual Reports. There has been significant failure to comply with this statutory section documented.

Final Order Filing

The filing of final orders in Tallahassee, Florida is mandated by section 440.25(4)(e), Florida Statutes. This statutory measure requires that the judge file all final orders with the Office of the Judges of Compensation Claims in Tallahassee, Florida. The data supports that all of the JCCs are in complete compliance with this statutory requirement. As an aid to the public, the OJCC initiated a program in 2009-10 which provides a list of "recent trial orders" to the public on the OJCC website, www.fljcc.org. This listing is automatically updated each time a Division complies with this statutory requirement and uploads a trial order.

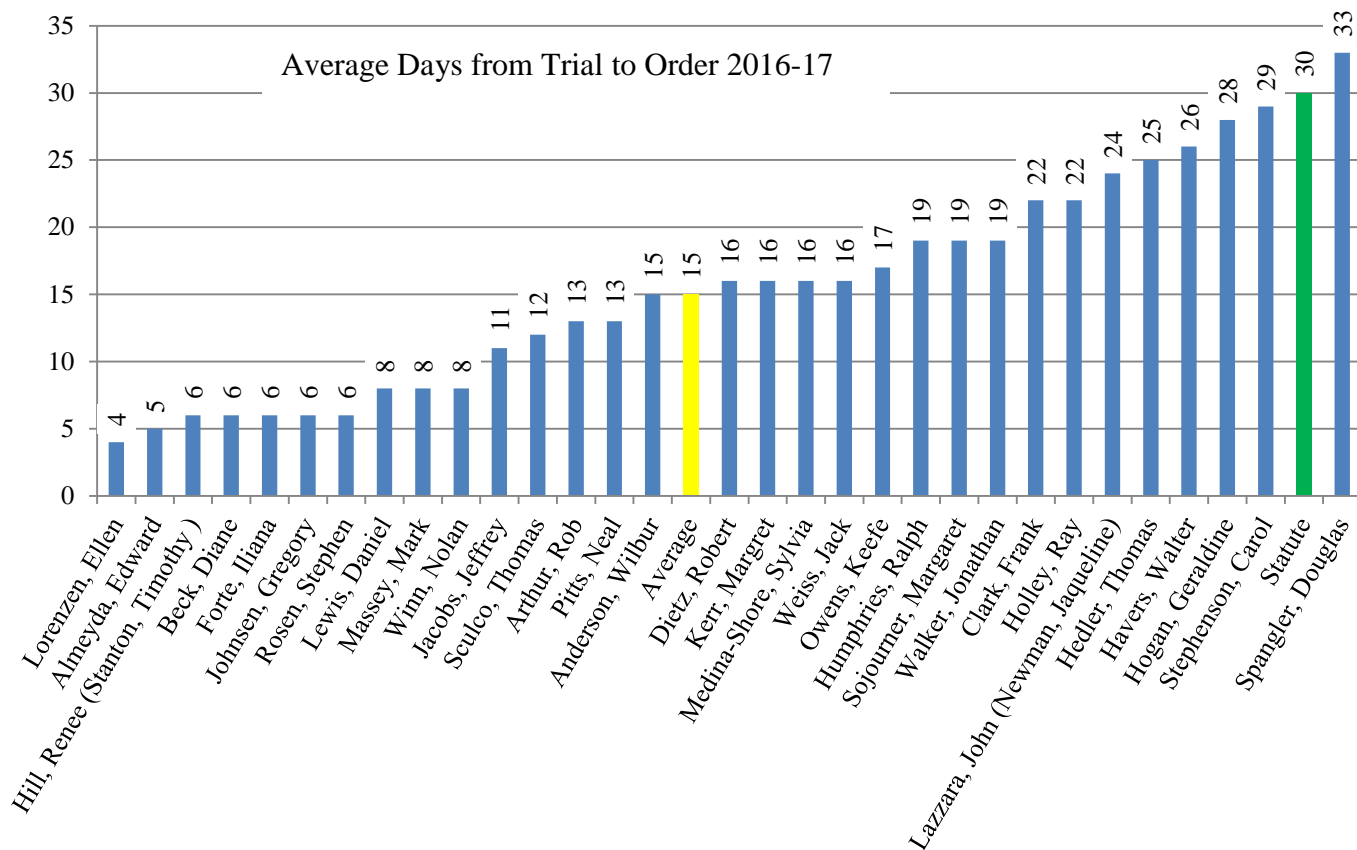
Timely Final Hearings and Final Orders

Timely final hearing proceedings are defined by section 440.25(4)(d), Florida Statutes. This legislatively mandated measure requires that the judge conduct a final hearing within two hundred ten (210) days of PFB filing. This statute also mandates that the resulting final order be published and served within thirty (30) days of the final hearing. Each trial order entered by each JCC during the 2017-18 fiscal year was reviewed. For each judge, this report states the average number of days between PFB and trial, and the average number of days between trial commencing and final order. The following graph depicts each JCC's average number of days between PFB filing and the first day of trial (blue bars), and the statewide average for all judges (yellow bar), which was two hundred eleven (211) days in 2017-18.



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Each JCC’s average is also set forth in the district appendices that follow this report. The following graph depicts the average number of days between the commencement of trial and the entry of a final order for each JCC (blue bars) and the statewide average for all judges (yellow bar), which was 15 days in 2017-18. The green bar represents the 30 day parameter from the statute.



Attorney Fee Orders

Contents of attorney fee orders are addressed in section 440.34(2), Florida Statutes.¹⁹² This statutory measure requires the JCC to identify the amount, statutory basis, and type of benefits obtained through legal representation which shall be listed on all orders awarding attorneys’ fees. Claimant attorneys’ fees must be approved by the assigned judge. There has been some argument advanced that the applicable statutory provisions should be interpreted to require the same scrutiny and approval for fees paid to counsel for the employer/carrier. The operative statutory language was added to Chapter 440, Florida Statutes, in 1994. Then Chief Judge Walker interpreted the law as applying to only claimant attorneys’ fees, and a notice of that interpretation was published. The current OJCC leadership does not construe anything in Chapter 440, Florida Statutes, as sufficient authority for the Deputy Chief Judge to issue such legal interpretations purportedly to control or influence the independent decision making of the 31 various Judges of Compensation Claims.

Within the current process of claimant fee determinations, fee issues can be contested in terms of entitlement to fees and/or the amount of fees. Entitlement to attorneys’ fees and/or costs is generally pleaded in the Petition for Benefits that seeks a statutory benefit for the injured claimant, such as a change in physician or a period of indemnity. In a general sense, it is common that fee or cost entitlement is not litigated simultaneously with the litigation of entitlement to the underlying claimed benefit. It is therefore common that parties will agree or stipulate to the provision/acceptance of some benefit, such as a new physician authorization, and will “reserve jurisdiction” for later determination of attorneys’ fees and/or costs that flow from previously obtaining that benefit. When issues

are tried, the “final order” will grant or deny the claimed issues, and will usually address entitlement to fees and costs associated with any benefits awarded.

Thus, after a claimant has received a benefit through agreement, entitlement and/or amount of fees and costs may remain pending. After an award of such a benefit, entitlement to fees and costs is usually adjudicated, leaving only the issues of the appropriate amounts. Such entitlement or amount issues are pleaded for adjudication in a motion or petition for attorneys’ fees and/or costs. The subject motion or petition is sometimes filed years after the underlying benefit is provided or awarded. This is one of the reasons that fees awarded or approved, in each fiscal year often include fees for dates of accident in the reasonably remote past. The OJCC regularly holds hearings on attorney fee issues that are divided into two main categories, fee entitlement hearings and fee amount hearings. The trial orders¹⁹³ resulting from such hearings are filed with the OJCC in Tallahassee.

Throughout this process of fee determination, it is common for the parties to resolve/stipulate the issues involved. This sometimes occurs in conjunction with a settlement of the claimant’s entire case. Those instances are commonly referred to as a “side stipulation” resolving some fee for previously obtaining some benefit through the efforts of the claimant’s attorney. In other instances, without any settlement of the claim, the parties may agree to the fee to be paid to claimant’s counsel either by the employer/carrier (commonly referred to as an “interim” fee) or by the claimant (commonly referred to as an “ex parte” fee). Thus, five kinds of OJCC orders address claimant attorneys’ fees: case settlement fees, side stipulations, appellate fees, ex-parte fee, and adjudicated (awarded) fees.

The OJCC audited JCC orders awarding contested attorneys’ fees for fiscal 2017-18. This audit revealed overall compliance with the statutory requirements for order content found in section 440.34(2), Florida Statutes. The same conclusion was reached following audits of the last three fiscal years. As the OJCC progresses with the ability to collect and report data, further scrutiny will be addressed to compliance in the four fee “agreement” orders.

Compliance with the Code of Judicial Conduct

JCC judicial conduct is controlled by section 440.442, Florida Statutes. This legislatively mandated measure requires that the Judge of Compensation Claims comply with the Code of Judicial Conduct. Complaints regarding failure to comply with this Code are investigated by the Director of the Division of Administrative Hearings (DOAH). In 2017-18, no violations of the Code were found.

Conclusion

The OJCC made great strides in 2006-07 to bring uniformity and consistency to performance. The efforts directed toward defining terms and consistent data entry throughout the Districts resulted in better overall data for analysis in the years since.¹⁹⁴ The success of that process remains patently clear again in the 2017-18 data output which demonstrates the general consistency and marked improvement in the OJCC’s overall performance. The OJCC recognizes the integral role that technology will play in the future of all litigation, and has embraced the benefits of electronic filing, web-based information dissemination, electronic mail for service, and video teleconference system (VTS) technology.

Legislation to require use of OJCC electronic filing was passed in 2011. The OJCC has adjusted processes to facilitate compliance with this requirement. Enforcement of these requirements began in 2011-12, and has met with great success. The OJCC currently receives virtually no daily U.S. Mail.

In 2010-11, the Legislature eliminated sixteen OJCC staff positions, approximately seven percent of the Office. In 2011-12, the Legislature removed four mediator positions and one judge position from the OJCC.¹⁹⁵ Answering the Legislature’s call, the OJCC has done more with less again, in each of the last seven fiscal years. However, petition filing rates are increasing. Mediation calendars are already congested in several districts, where the filings of three judges are handled by only two mediators. While that extra effort facilitated the staff decrease, the filings now justify the return of the three mediator positions. Without them, mediation services will certainly be affected, and some population of claims will likely be referred to private mediation at the expense of employer/carriers.

The effort and dedication of OJCC staff should be recognized by the Legislature, and adequate funding should be appropriated from the industry-supported trust fund to provide adequate staff, mediator and judicial salaries in 2018-19.

Glossary of Terms:

CCIS	The Comprehensive Case Information System is a database maintained by the State of Florida, primarily for the benefit of the state court system. This database contains records of child support arrearage. The OJCC has had access to this database since 2012-13, for the purpose of providing litigants information about child support to simplify OJCC collection efforts.
District	The OJCC operates seventeen offices throughout Florida. Each office is responsible for adjudication of disputes regarding accidents in one or more counties in that vicinity. These groups of counties are “districts,” and the offices are referred to as “District Offices.”
Division	A subdivision of the Office of Judges of Compensation Claims (“OJCC”) managed by a judge, and consisting of that judge, a state mediator, and various clerical personnel.
DFS	The “Department of Financial Services” is an autonomous department of the Executive branch which is under the authority of the Chief Financial Officer.
DLES	The “Department of Labor and Employment Security” was an autonomous portion of the Executive branch of Florida government until 2001. While that Department existed, the OJCC and the DWC were both part of it. When it was dissolved, the OJCC was transferred to the DOAH and the DWC was transferred to the DFS.
DOAH	The “Division of Administrative Hearings” is an autonomous Division, which is part of the Department of Management Services, and part of the Executive branch of Florida government responsible to the Governor.
DOR	The “Department of Revenue” is responsible for collection and documentation of child support arrearages. This agency therefore maintains records of such arrearages. Since 2012-13, the OJCC has been privileged to share access to that data, to simplify OJCC collection efforts.
DWC	The “Division of Workers’ Compensation” or DWC is part of the Department of Financial Services (“DFS”), and part of the Executive branch of Florida government responsible to the Chief Financial Officer (“CFO”).
E/C	An insured “employer” and their “carrier” from who disputed workers’ compensation benefits are sought, are generally referred to collectively as the “employer/carrier” or E/C.
eJCC	The “electronic JCC” is an internet-based computer program that allows attorneys and adjusters to electronically file documents in workers’ compensation disputes pending before the OJCC.
ePFB	A web-form available to users of the eJCC system. This form allows preparation and filing of an “electronic Petition for Benefits.”
eRACN	A web-form available to users of the eJCC system. This form allows preparation and filing of an “electronic request for assignment of case number,” and provides virtually instantaneous assignment.
eResponse	A web-form available to users of the eJCC system. This form allows adjusters to prepare and file an “electronic response to Petition for Benefits.”
eService	An electronic mail alternative to the U.S. Postal Service, which allows users of the eJCC system to serve copies of pleadings on other users through e-mail.
E/SA	Many self-insured “employers” utilize companies to facilitate payment of workers’ compensation benefits to injured workers. These “employers” and these “servicing agents” are generally referred to collectively as the “employer/servicing agent” or E/SA.

iJCC	An electronic portal similar to the eJCC system. This system is used by OJCC District Office staff to upload orders to the electronic OJCC docket. This program also permits internet data access to judges and mediators through the Internet.
JCC	The “Judge of Compensation Claims” is an individual appointed by the Governor for a term of four years. Each JCC is the head of one of the thirty-one Divisions in the OJCC.
JCC Application	The case management program used by the OJCC to document pleadings filed, orders entered, hearings scheduled or conducted, and other case activity. This Application is also a database from which statistics for this report are generated.
Mediation	A process of informal dispute resolution in which an independent intermediary works with all litigants in a case to find compromise solutions to disputes. Mediation has been mandatory in Florida workers’ compensation cases since 1994.
OJCC	The “Office of Judges of Compensation Claims” is a small State organization comprised of a Deputy Chief Judge, thirty-one Judges of Compensation Claims (“JCC”), twenty-eight mediators, and approximately one hundred forty support personnel. In 2001 it was transferred from the Department of Labor and Employment Security (“DLES”) to the Division of Administrative Hearings (“DOAH”).
PFB	A pleading called a “Petition for Benefits” or PFB is the document that usually invokes the jurisdiction of the Office of Judges of Compensation Claims (“OJCC”) and begins the litigation of some dispute regarding workers’ compensation benefits.
Time to Trial	The “time to trial” begins on the PFB (or other operative pleading such as a motion for fees or motion for contribution) filing date and runs through the first day of trial.
Time to Order	The “time to order,” runs from the first day of trial (the trial date), and ends on the date the final order was entered. In the instances where an abbreviated final order was the conclusion of the process, it was counted as the “final order.” In instances in which that abbreviated order, or any final order, was later vacated, and another final order was then entered, the date of entry of the last “final order” was counted as the final order and the conclusion of the process for that PFB or trial.
Trial	A “trial” for the Office of Judges of Compensation Claims, such that the resulting order is counted in statistics as a “trial order,” means a final hearing or evidentiary hearing regarding attorney’s fees/costs. ¹⁹⁶
VTS	Video teleconference system, an electronic two-way video communication medium used by the DOAH for judges to conduct trials in remote locations without associated travel expense.

2017-18 Appendices Notes

Since 2006-07, the Annual Report has included an appendix for each District Office. The practice has been to represent district data in column graphs. A significant volume of data has been accumulated, and column graphs became difficult to format for readability. Since 2011-12, the column format was abandoned and replaced with bar graphs, representing the data vertically.

There are no longer 32 Divisions. The Florida Legislature in 2012 reduced the funding for judges from 32 to 31. The funding was also cut from 32 mediator positions to 28 (the OJCC converted a staff position in 2017-18 to restore a 29th mediator). Thus, there are areas in the district graphs which appear incongruent. For example, in Tampa, there are representations for three judges’ statistics, but in the time to mediation graph only the two remaining mediators are represented. Likewise, for example, there are years for which there is no time to mediation in the LKL district, where the OJCC had no full-time mediator for two years.

Appendix “1” District DAY (JCC Anderson):

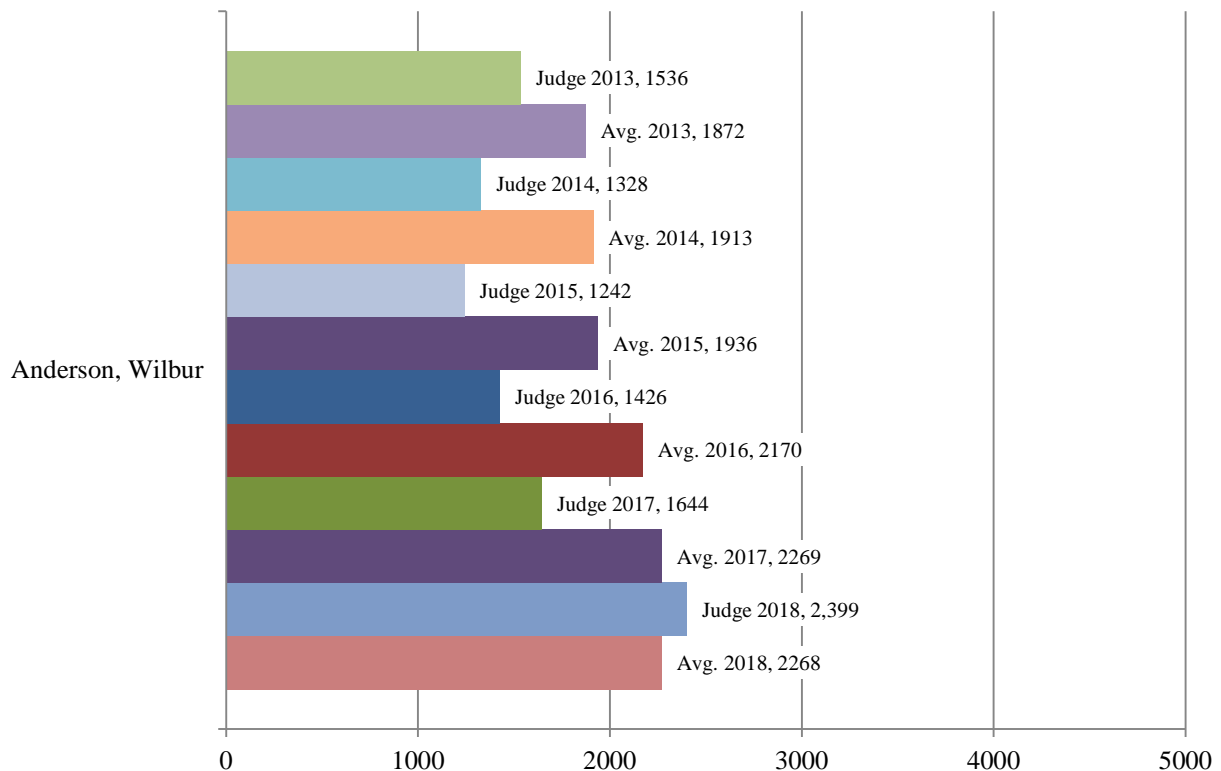
District DAY includes Flagler and Volusia counties. Seminole county was also included in DAY until it was transferred to District ORL in 2006-07, in 2017 Seminole was again transferred to Daytona, but was transferred back in 2018 when the Orlando District Office moved to Seminole County.

“New case” and Petition volumes were markedly above average in Daytona in 2017-18. As a result, the year-end ending petition inventory was somewhat increased compared to prior years. The times for Petition to trial and from trial to entry of final order are both within the statutory parameters. District DAY experienced a significant increase in the volume of settlement orders entered in 2017-18, well exceeding the prior year and the statewide average for settlement orders. The statics also evidence a significant volume of “other orders,” but a volume of stipulation orders well below the statewide average.

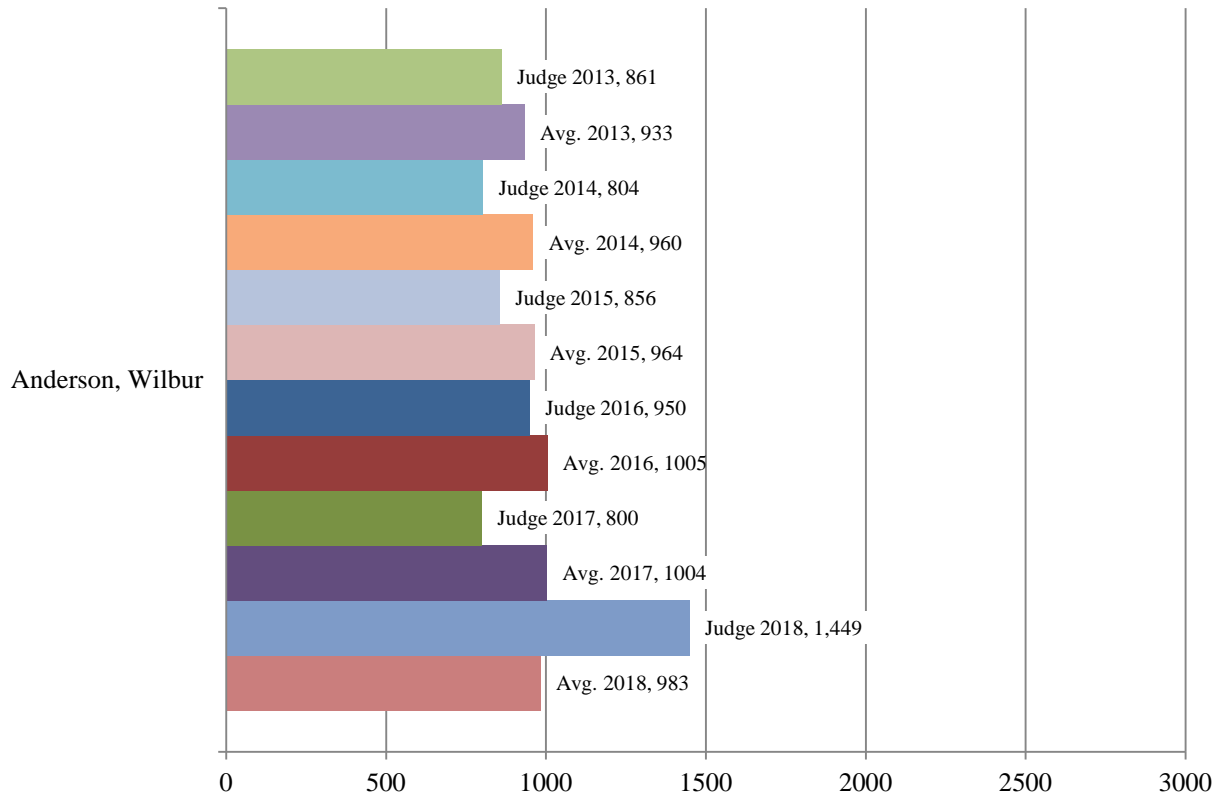
In 2017-2018, Judge Anderson continued as an active presenter at a number of continuing education programs. He chaired a roundtable discussion sponsored by the workers’ compensation section of the Volusia County Bar Association, spoke at a workers’ compensation forum sponsored by the Orange County Bar Association, was on the planning committee and moderated a panel discussion at the annual workers’ compensation seminar at the First District Court of Appeal, and spoke on mediation at the annual conference of the Professional Mediation Institute in Orlando. He also served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition held at the Workers’ Compensation Educational Conference. In addition, Judge Anderson continued as a pupilage group chair of the Judge William Wieland American Inn of Court.

Mediator John Brooks is a member of Workers’ Compensation Rules Advisory Committee and the William Weiland Inns of Court, Orlando. He serves on the Board of Directors Professional Mediation Institute.

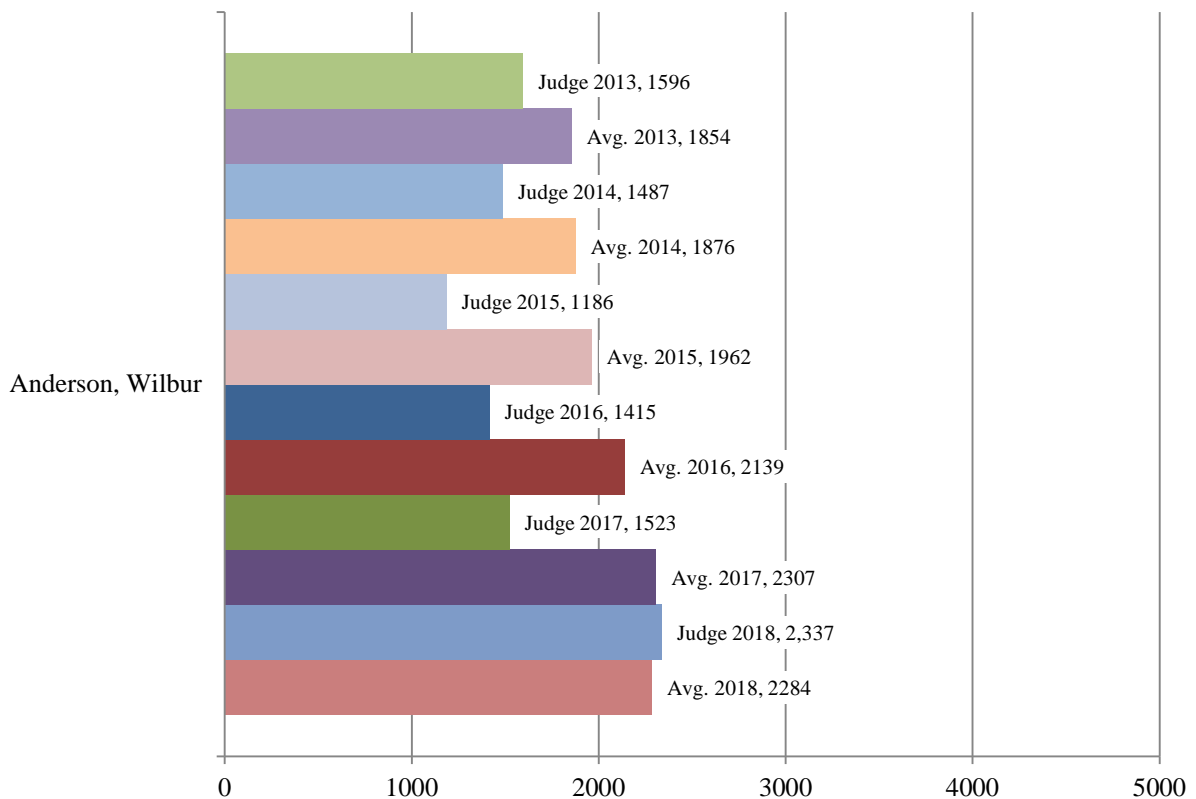
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



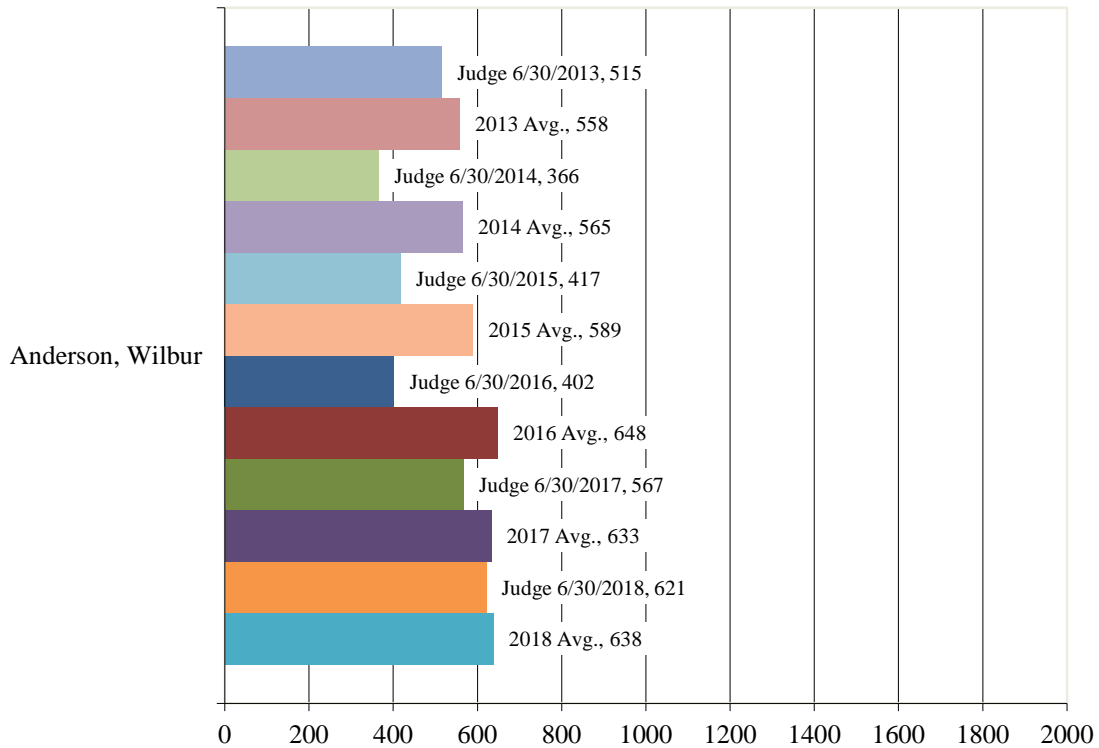
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



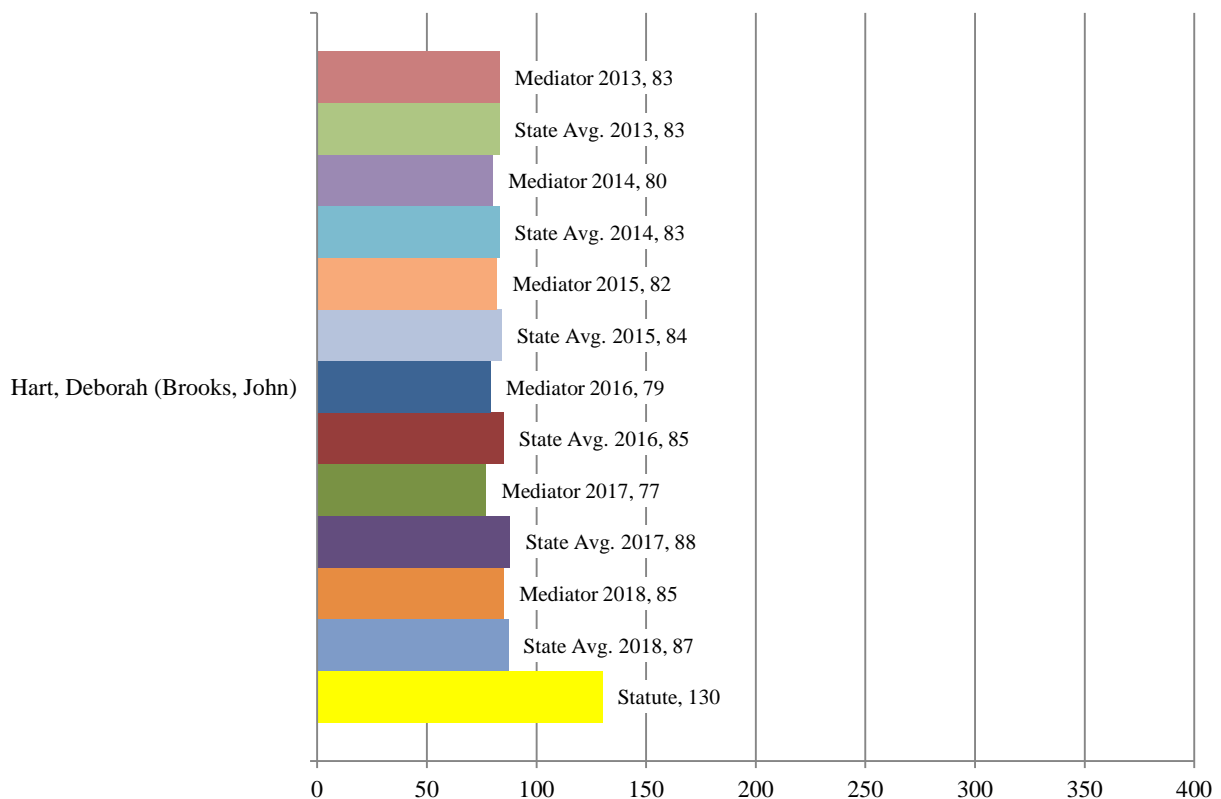
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



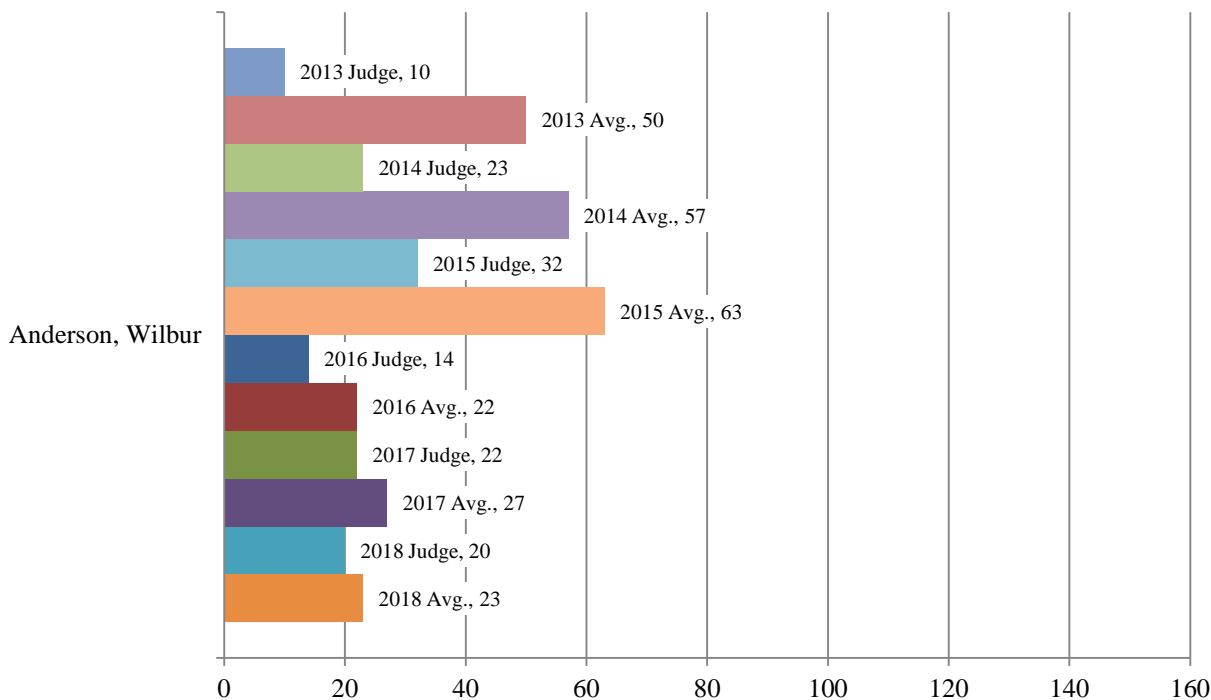
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



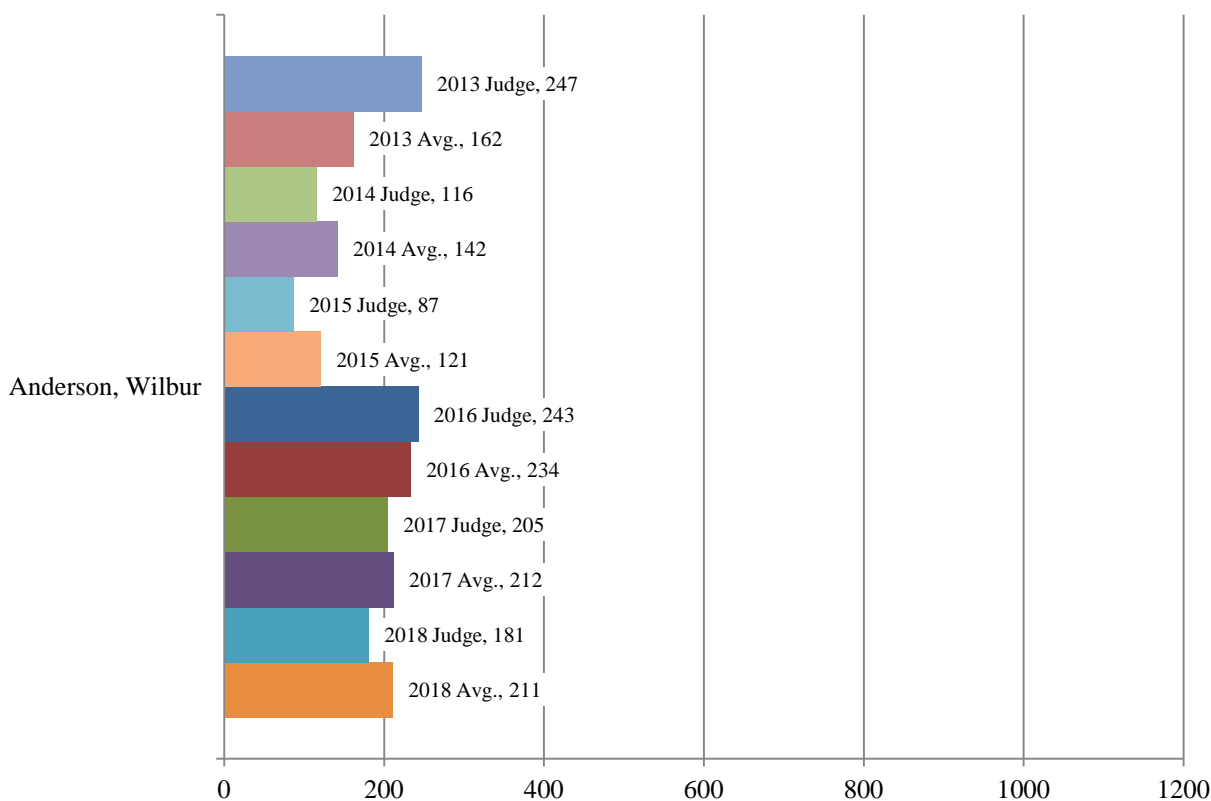
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



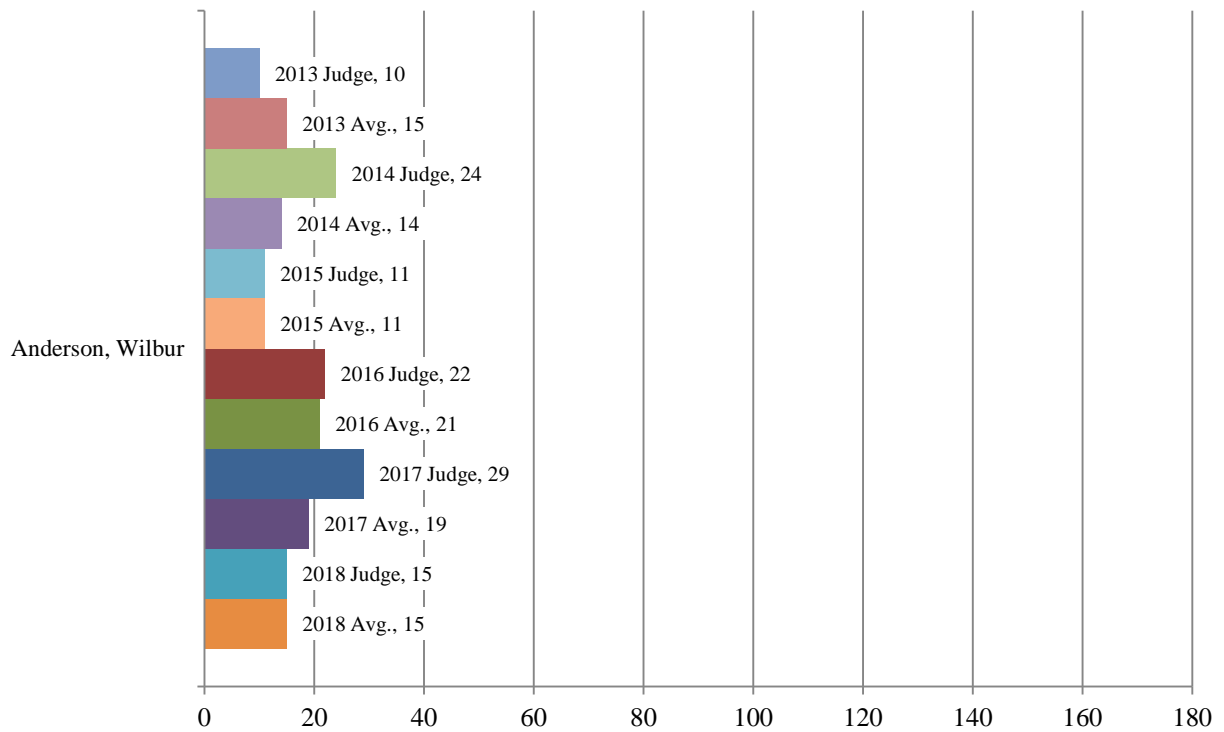
The following graph depicts the total volume of trial orders¹⁹⁷ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



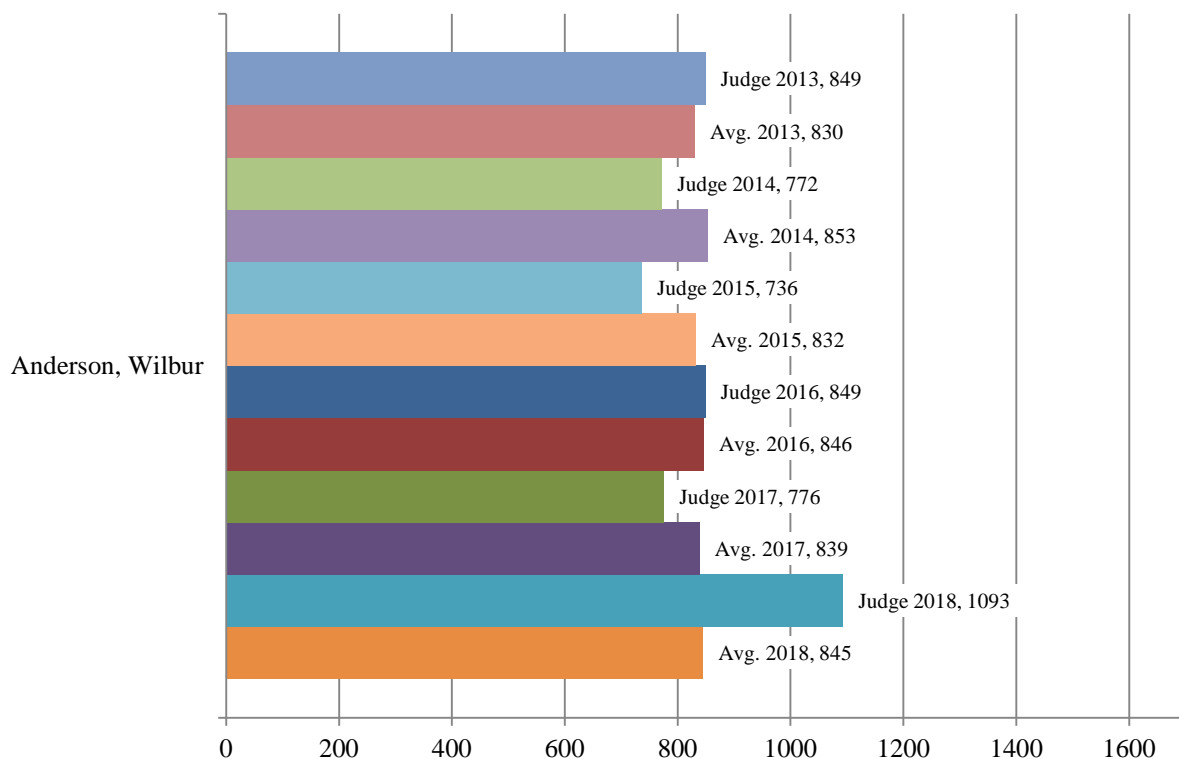
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



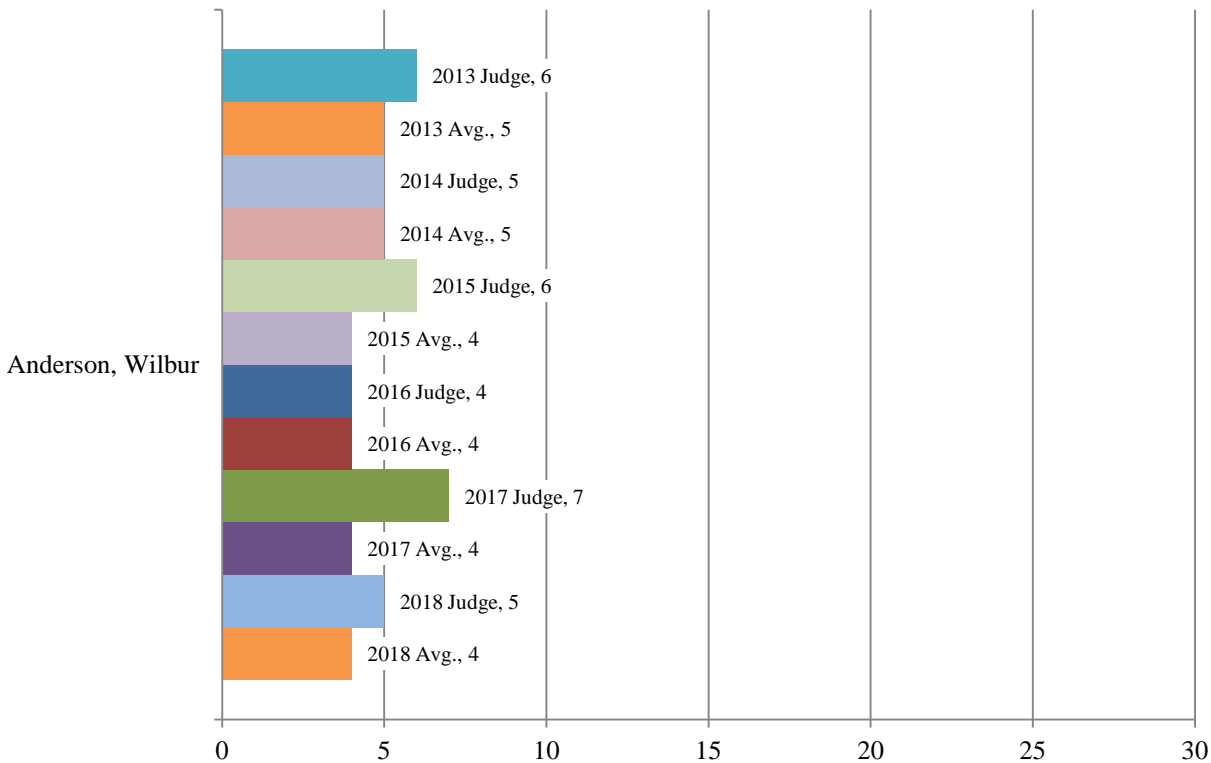
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



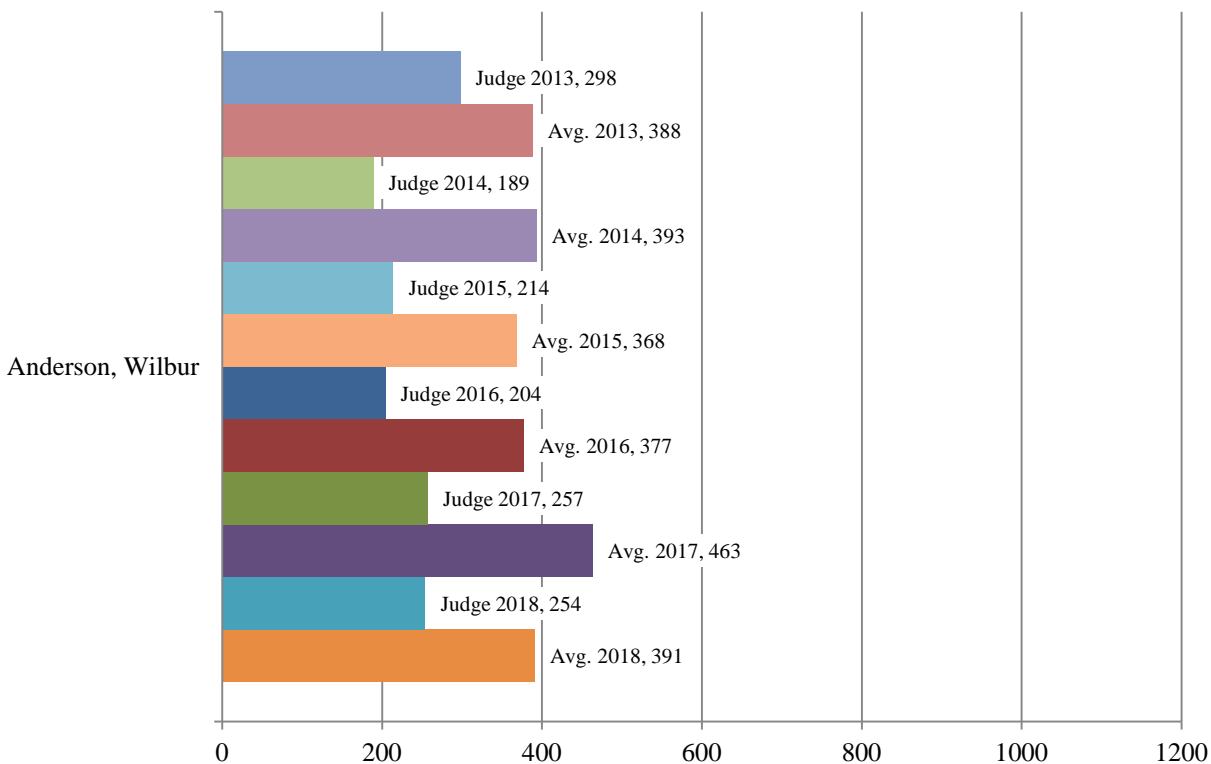
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



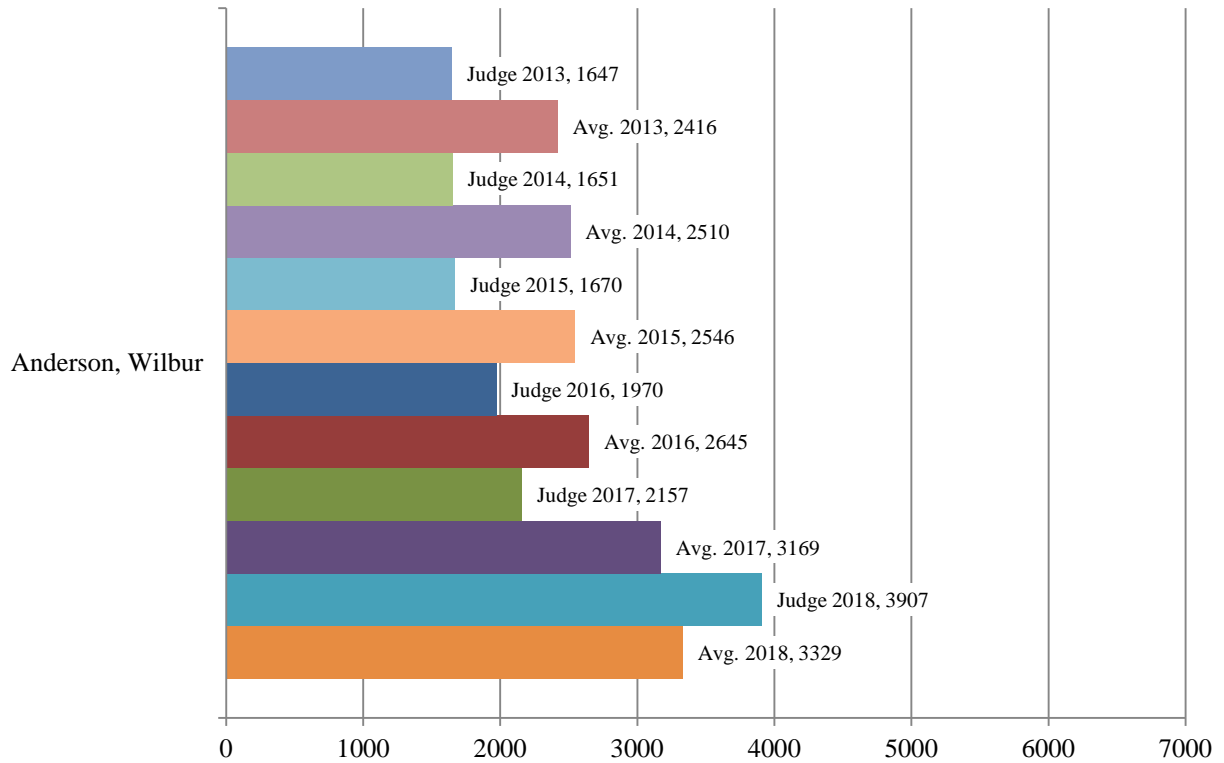
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



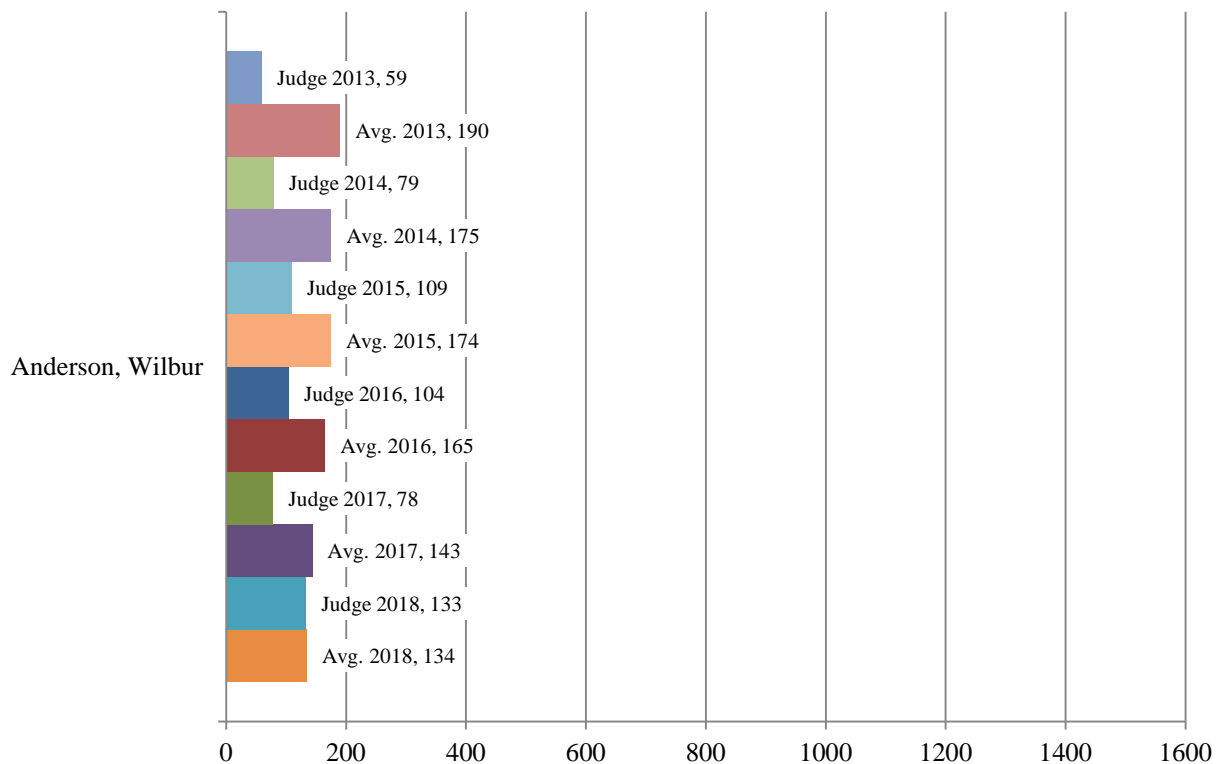
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-8. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-8. Each bar label identifies the year and provides the numerical count.



Appendix “2” District FTL (JCC Forte, JCC Hogan, JCC Lewis):

District FTL includes only Broward County.

PFB and “new case” filings in District FTL have increased in recent years, since the “out of district” assignment process ceased. For a number of years, various judges around the state were assigned FTL cases that were managed remotely. The out of district judges included Judges Holley (JAX), Lazzara (TLH), Roesch (PMC) and Winn (PNS). Since the cases stopped being assigned in that manner, at the end of 2014-15, the “new case” and petition filing volumes increased. This brought the “new case” volumes in FTL up close to the statewide average. The petition volume change was more profound, increasing to well in excess of the statewide average for the last three fiscal years. The effect of this is seen in the volume of petitions closed, and in the high volume of pending petitions in inventory at the end of the fiscal year. That inventory has been growing steadily in all three FTL Divisions.

FTL was one of the three District Offices to lose a mediator in the 2012 budget cuts discussed above. In 2017-18, the OJCC added a mediator position, bringing the mediation team from 28 to 29. This position is currently split between Ft. Lauderdale and West Palm Beach. David Stillson handles calendars in both Offices. This arrangement is expected to continue until such time as resources afford the opportunity to fully re-staff the mediation team. Despite the significant petition volume, the average time to mediation in District FTL has remained below 100 days. While this exceeds the statewide average, it is well within the 130 day statutory requirement.

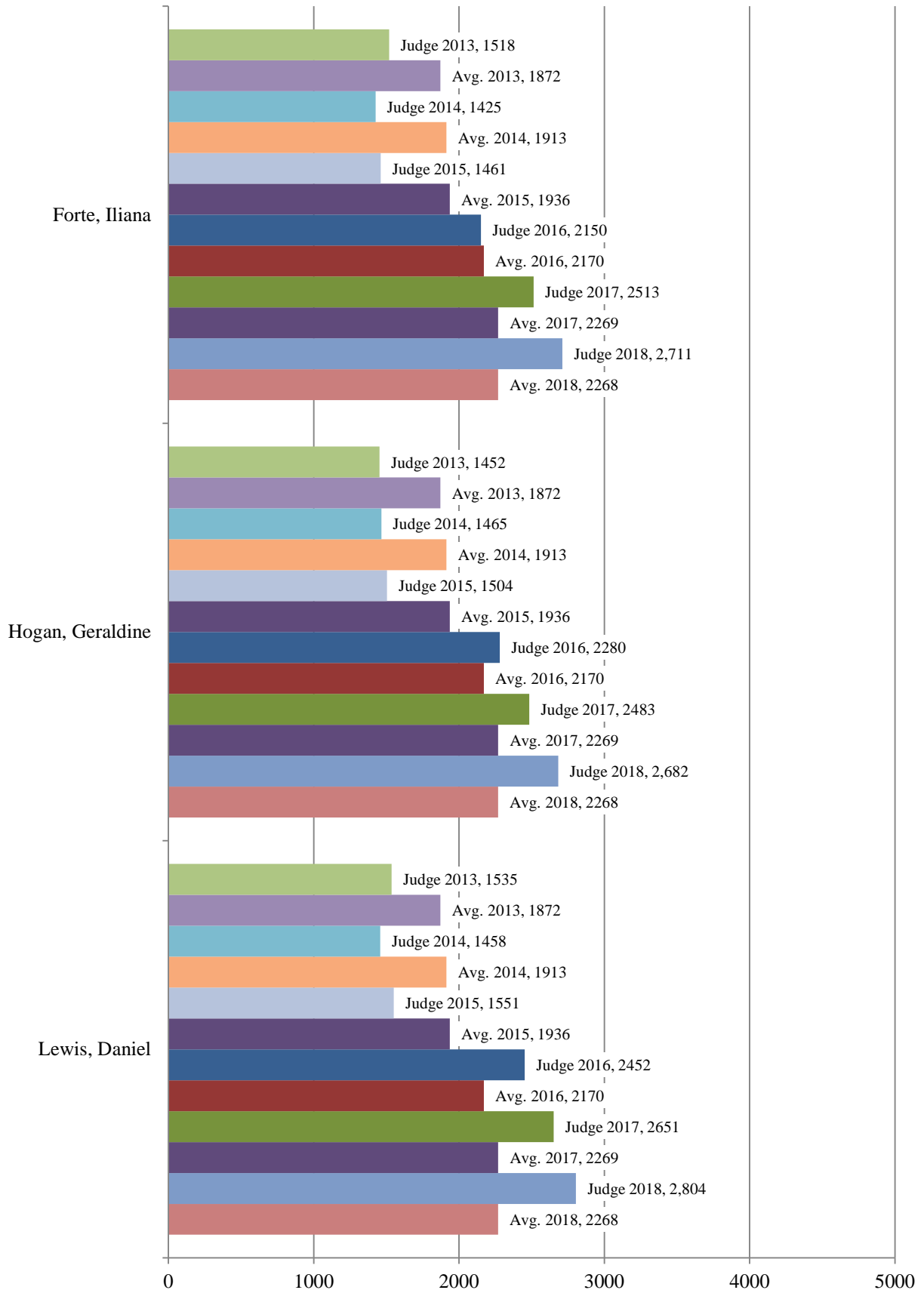
Time to trial in FTL ranges from within the statutory parameter to well in excess. The time to order, however, is within the statutory 30 days in all three FTL Divisions. Each of the FTL judges enters stipulation orders more frequently than the statewide average.

In 2017-2018, Judge Lewis remained active in the Broward County Bar Association (BCBA). On February 23, 2018, he presented a "Question and Answer Session with the Broward JCCs" for the BCBA's Workers' Compensation Section Seminar, "Updates and Strategies for the Workers' Compensation Practitioner." On August 6, 2017, Judge Lewis served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition held at the Workers' Compensation Educational Conference in Orlando, Florida. Judge Lewis also participates in interviewing scholarship applicants for the Broward County Selection Committee of the Friends of 440 Scholarship Fund. In addition to his docket and case responsibilities, Judge Lewis serves as the Administrative Judge in District Fort Lauderdale (FTL), handling premises, equipment, security and personnel issues.

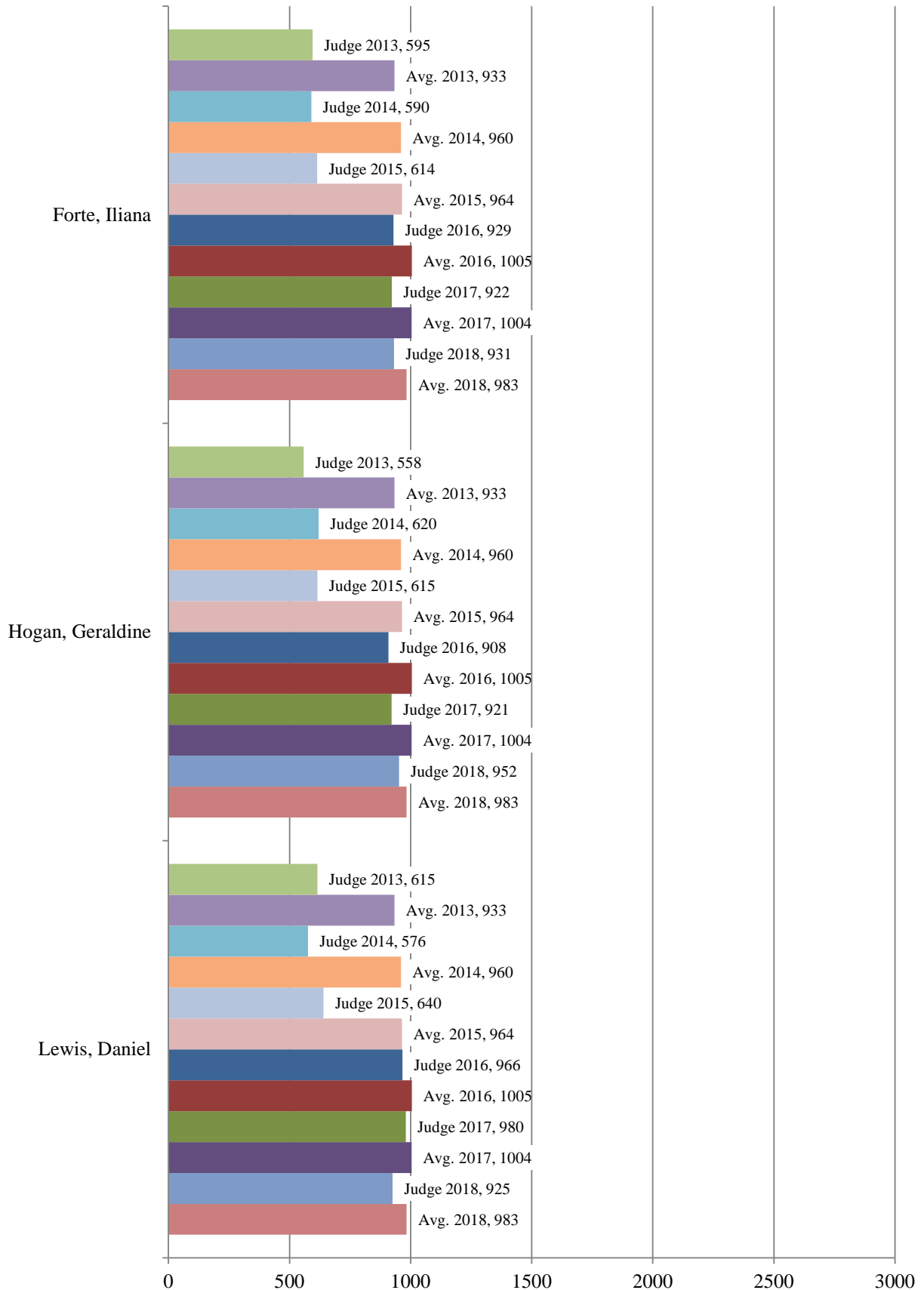
Judge Hogan presented a “Question and Answer Session with the Broward JCCs” for the Broward County Bar Association’s Workers’ Compensation Seminar. She also served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition held at the Workers’ Compensation Educational Conference in Orlando, Florida.

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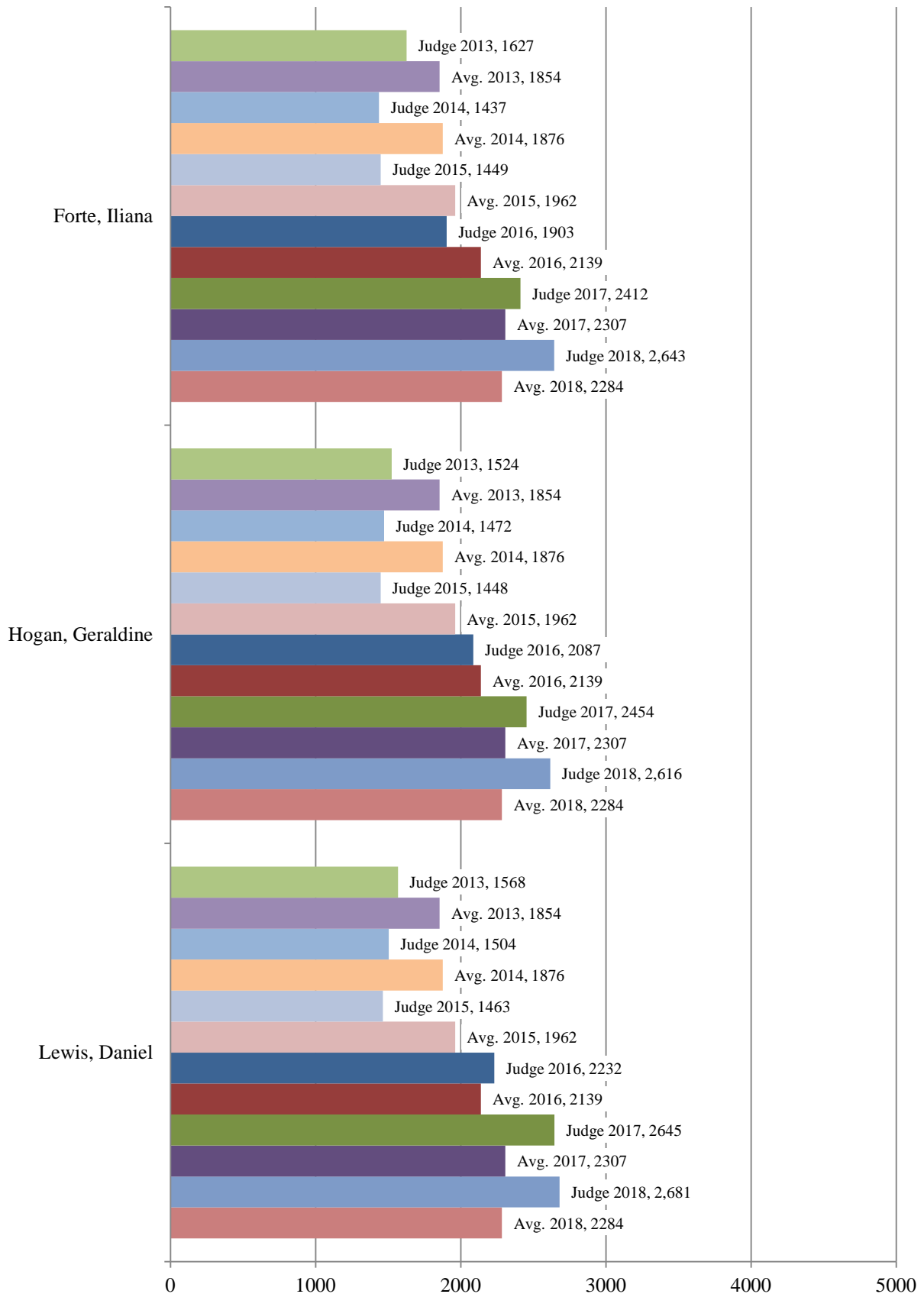
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



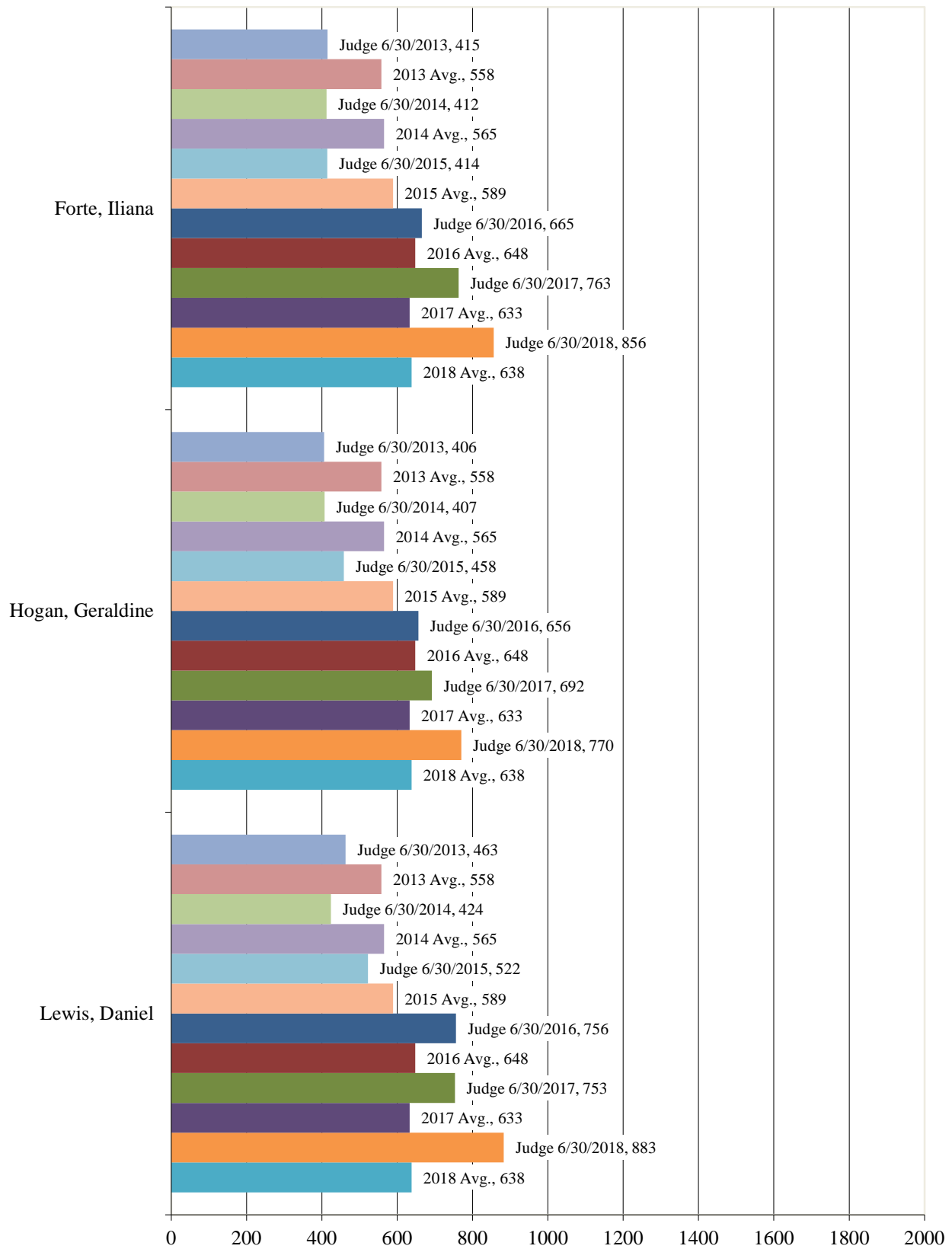
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



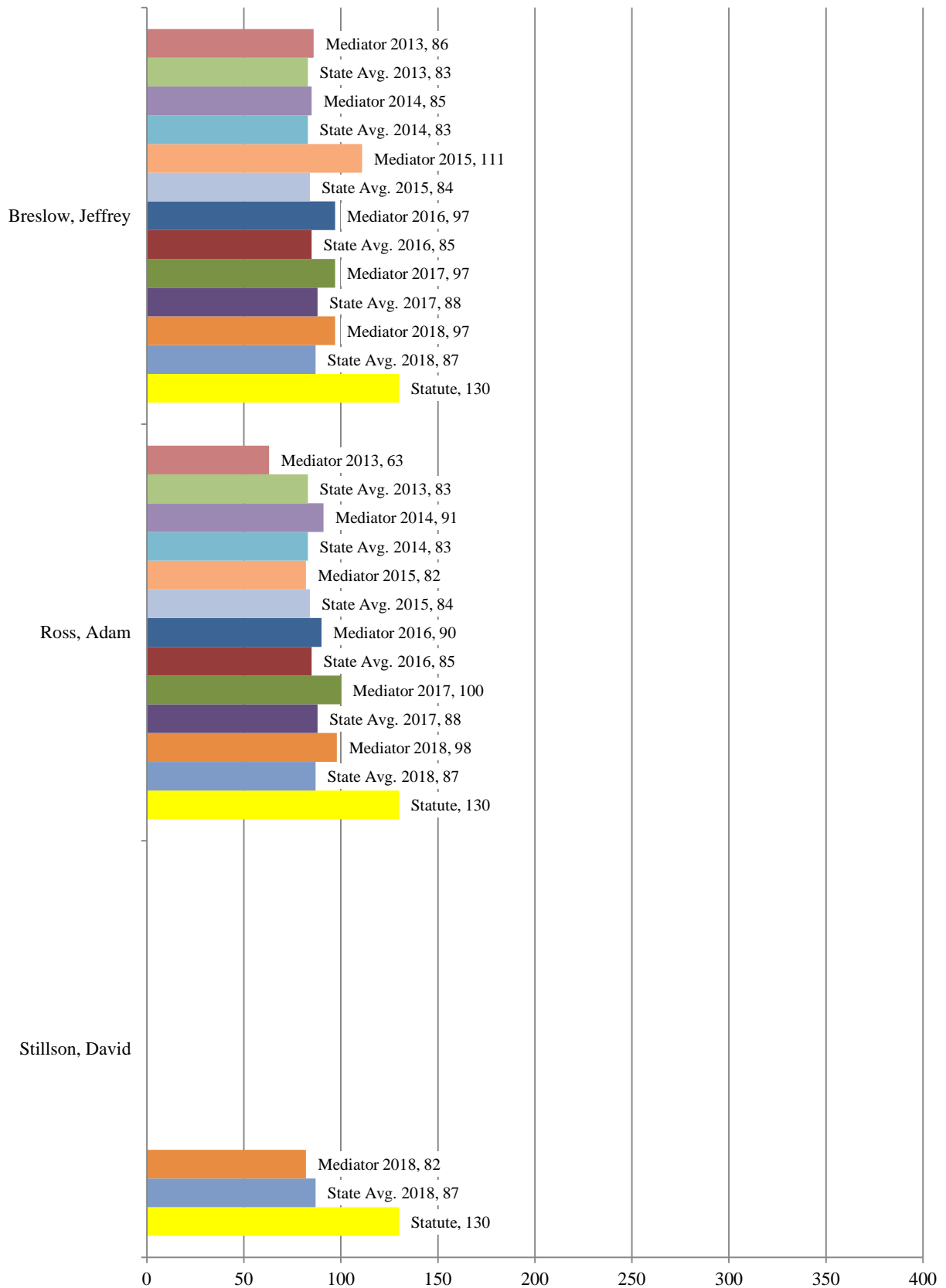
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



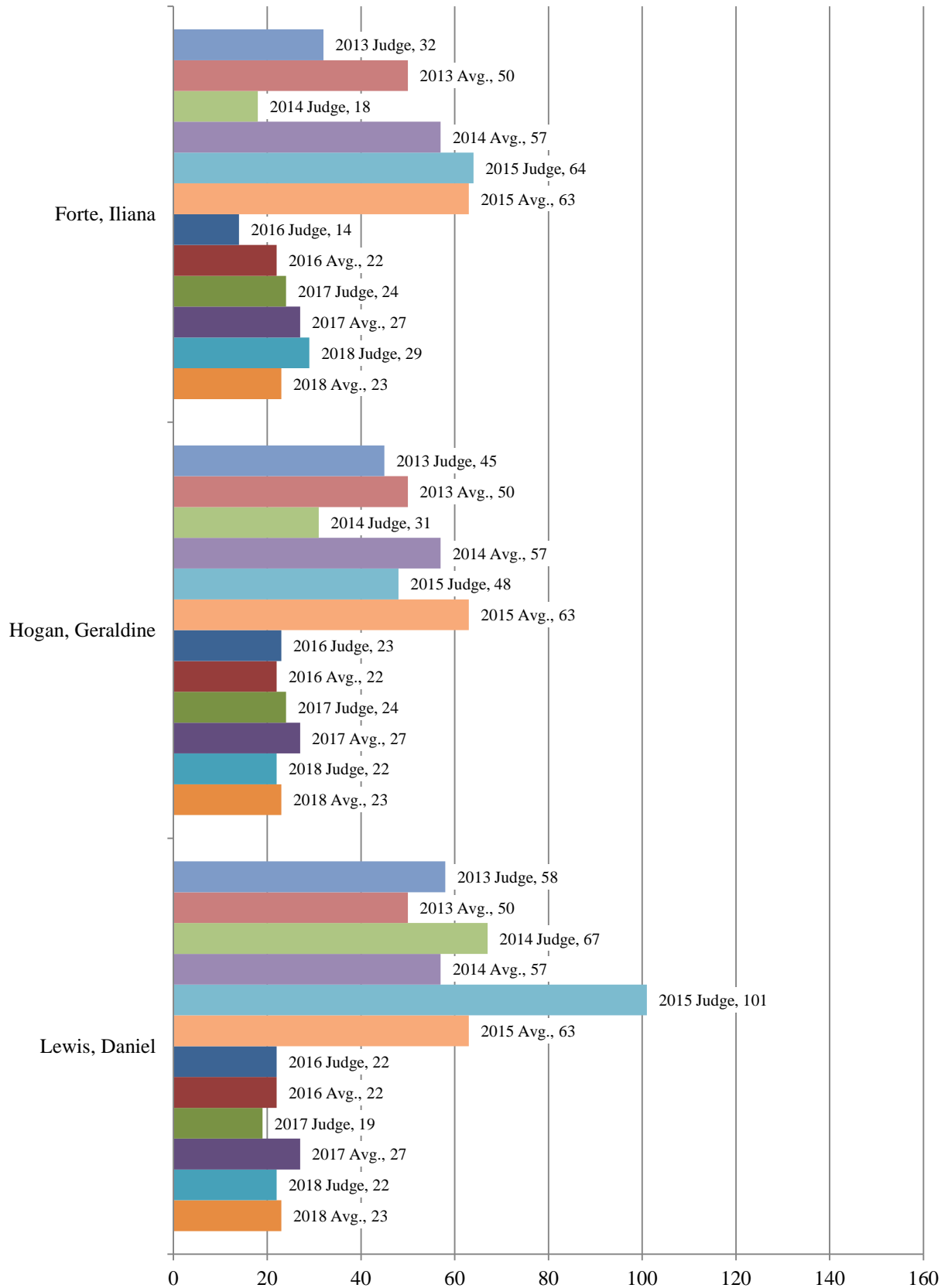
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



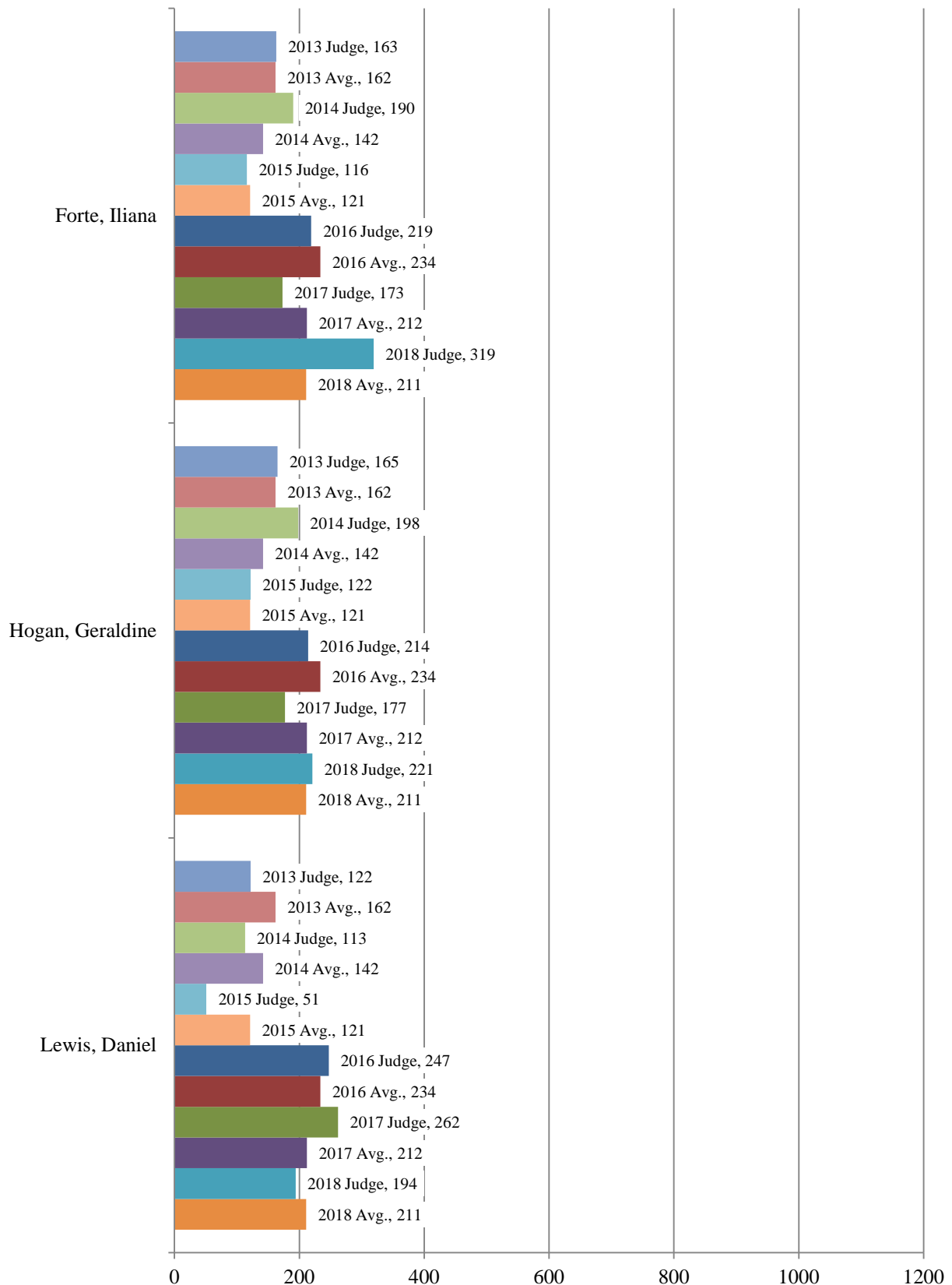
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



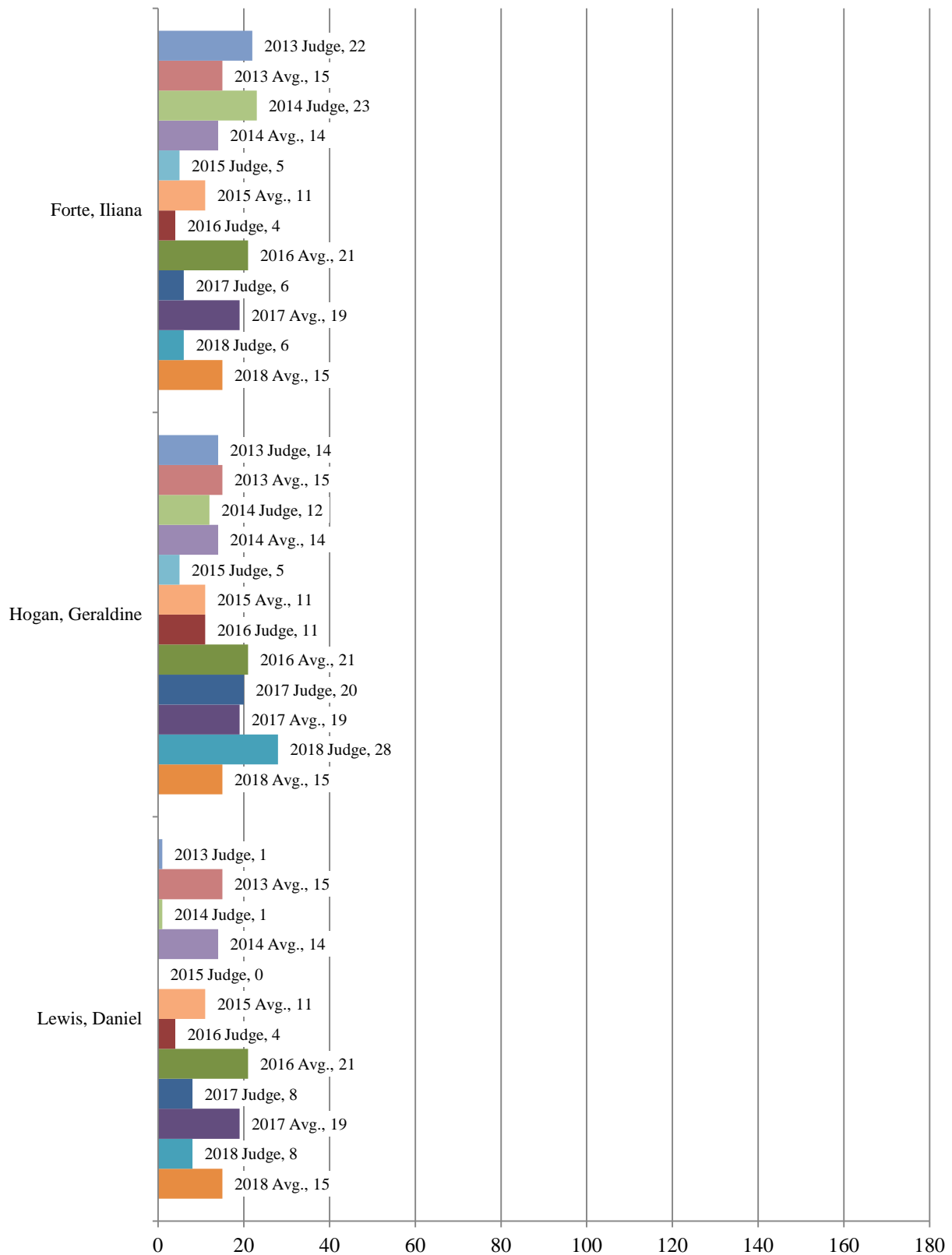
The following graph depicts the total volume of trial orders¹⁹⁸ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



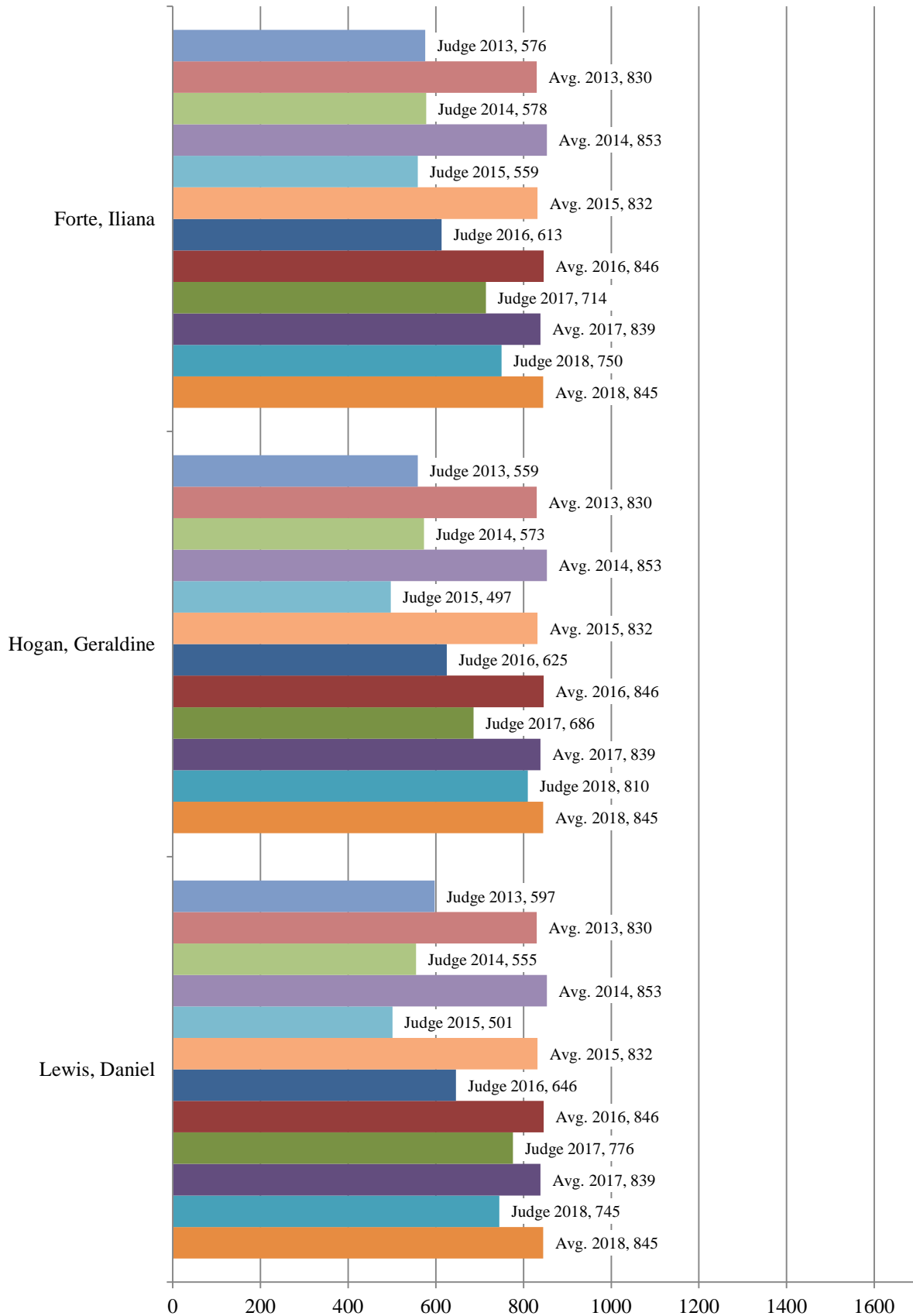
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



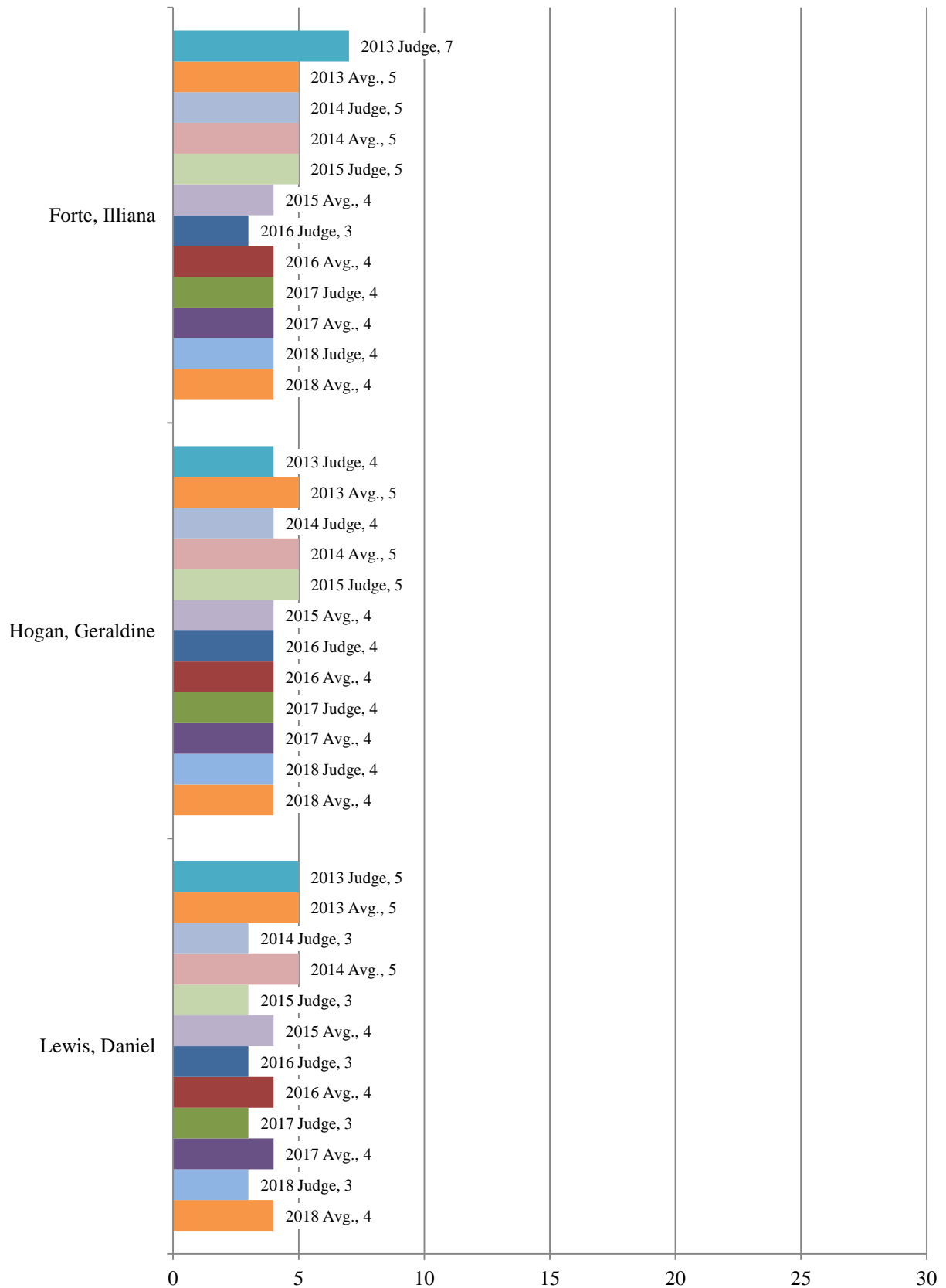
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



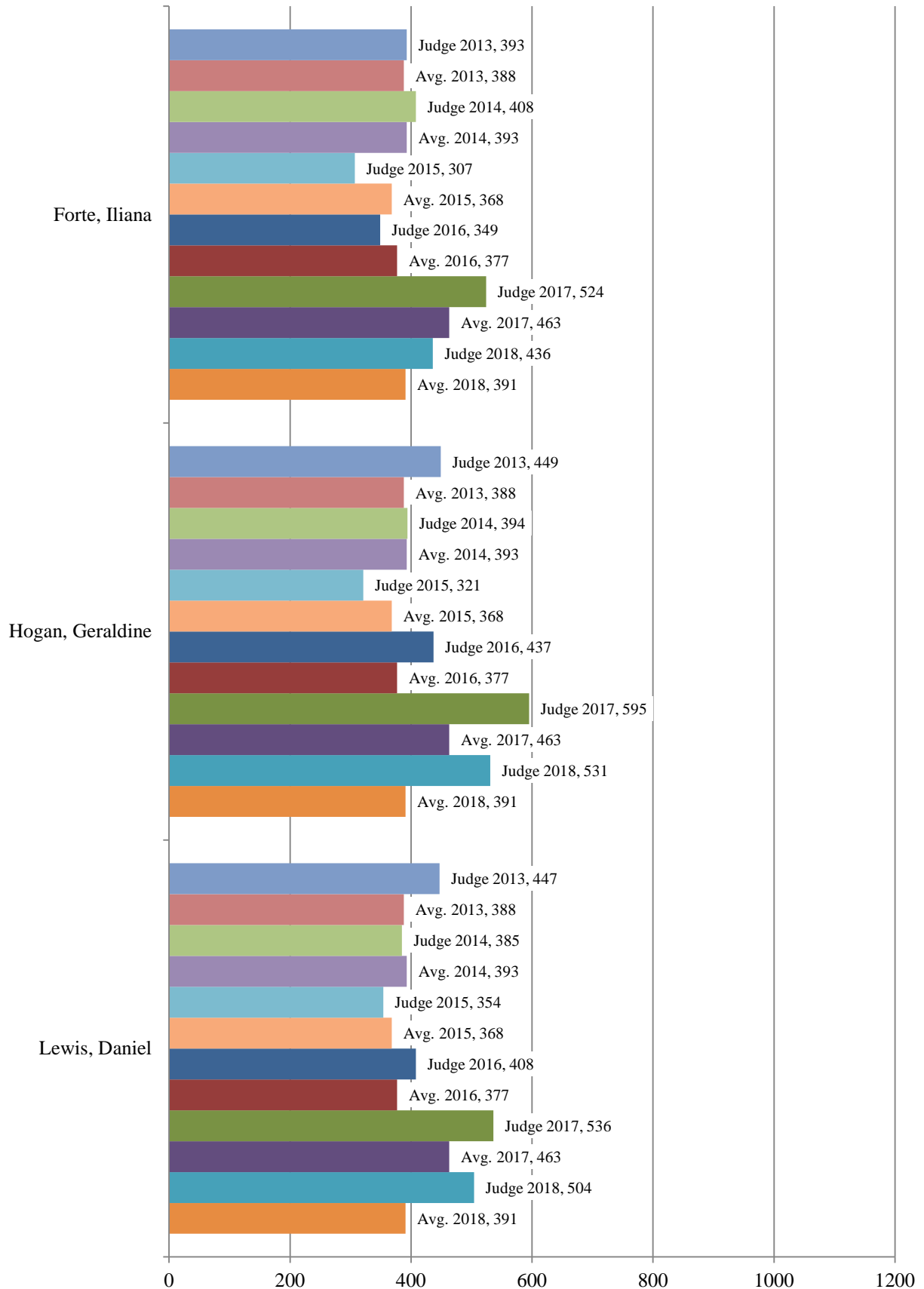
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



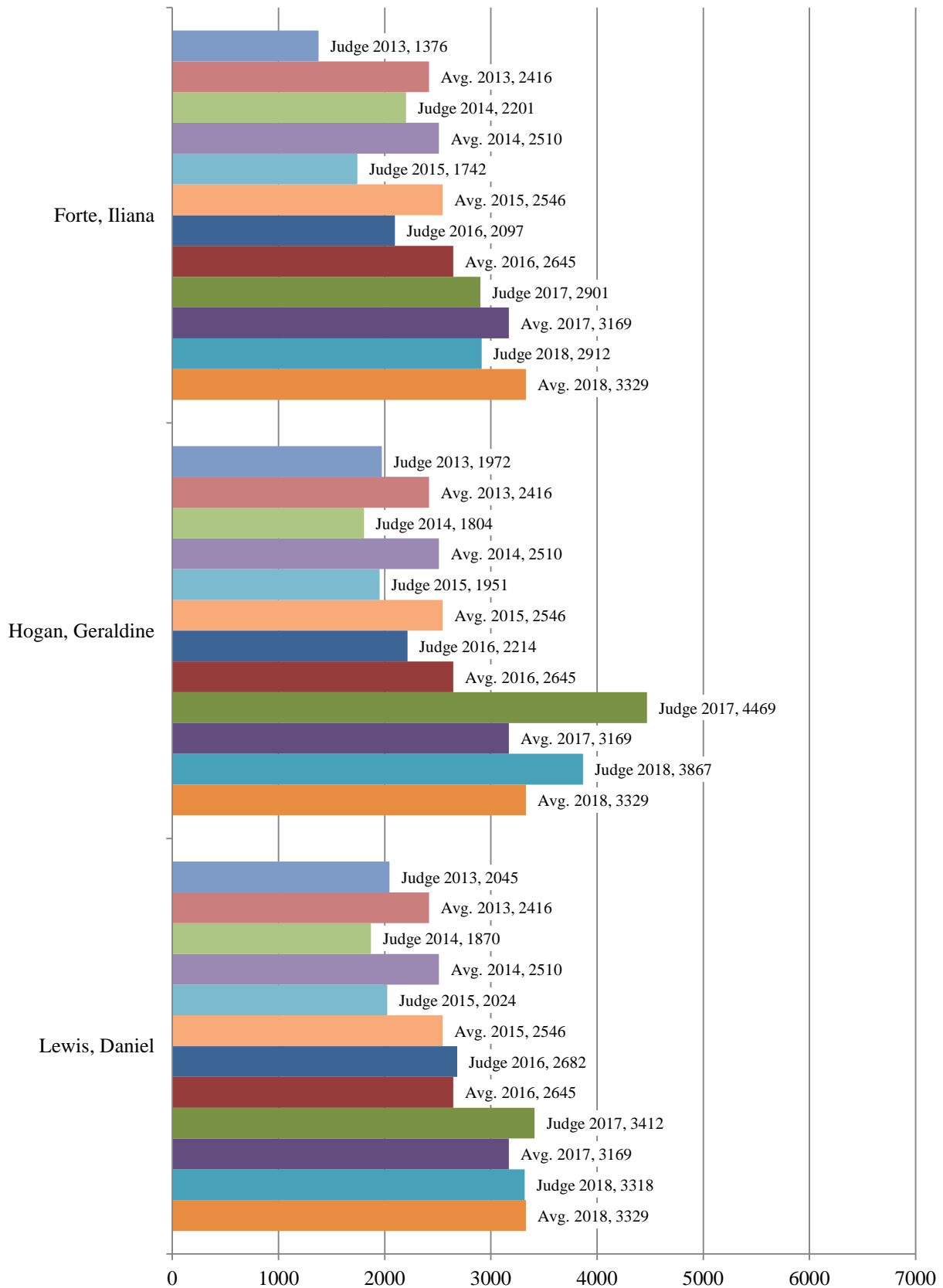
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



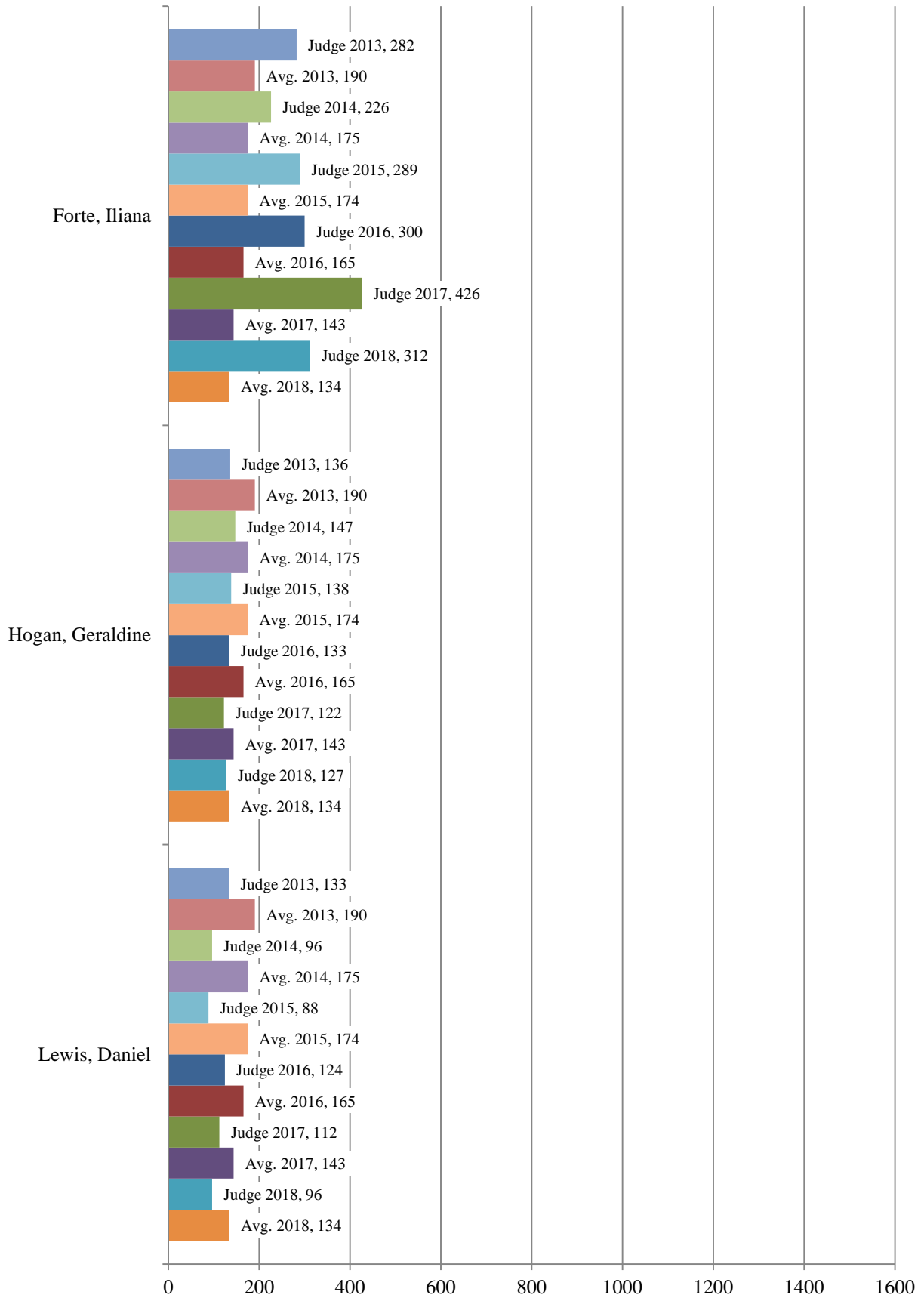
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “3” District FTM (JCC Clark, JCC Weiss):

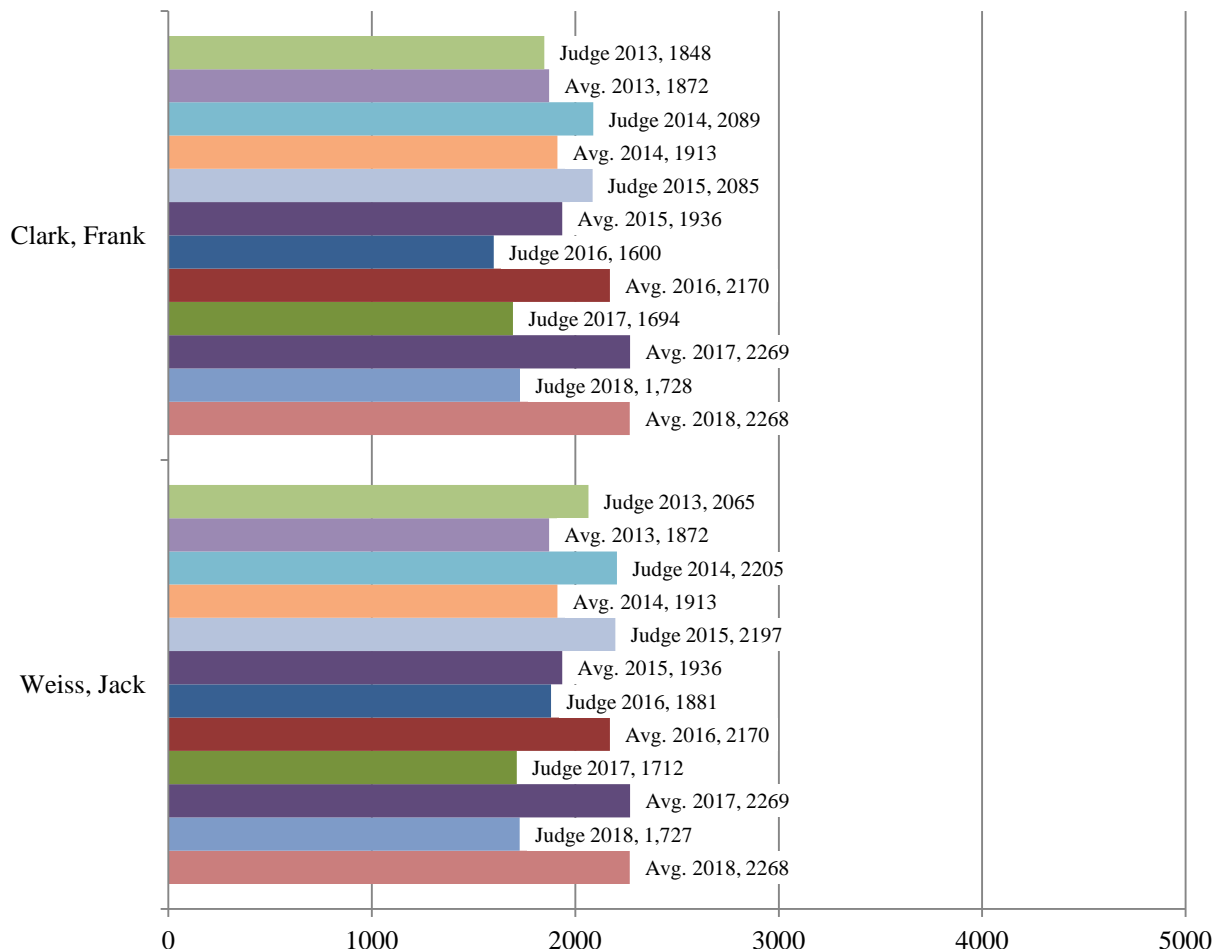
District FTM includes Charlotte, Collier, DeSoto, and Lee counties.

“New case” volume in District FTM is close to the statewide average, but petition volume is well below. This suggests that volume of cases is average, but the breadth of litigation appears less intense. The consequence of the lower petition volume is a similarly lower petition closure volume and lower year end petition inventory. In FTM, trial volume is average, and the time from petition to trial and from trial to order each remain within the statutory parameters. Both stipulation and settlement order volumes are below the state averages.

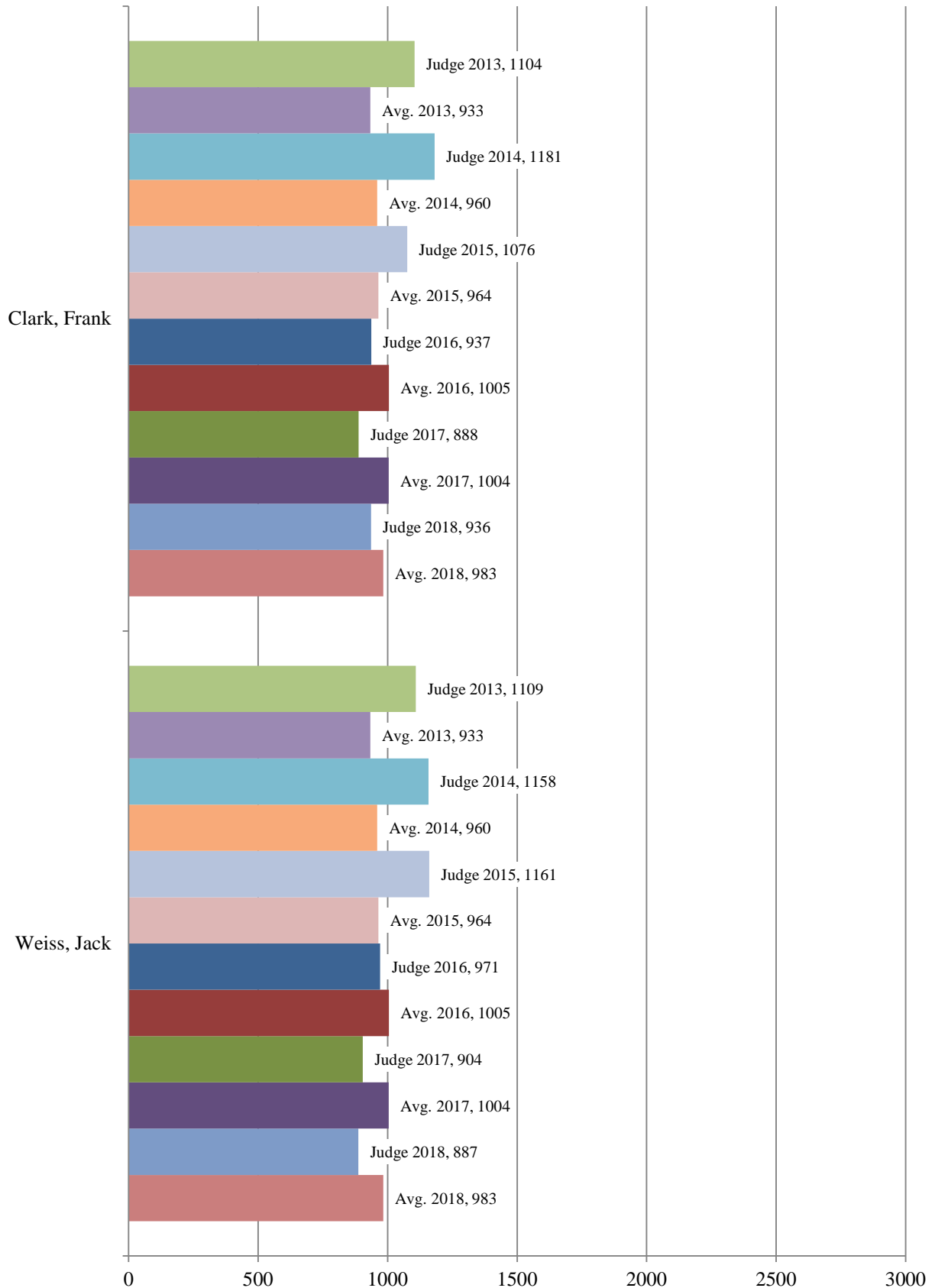
Each of the FTM judges enter considerably more “other” orders than the state average, one thousand orders or more in excess. When the second judgeship was added to FTM in 2006-07, the judges there were also assigned out-of-district cases in Lakeland. As that workload diminished, with the Lakeland assignments eventually ceasing, the local FTM workload has maintained volume.

In 2017-2018 Judge Weiss served as a moot court judge for the E. Earle Zehmer Moot Court Competition in Orlando, as well as a mock trial judge for the Lee County High School Mock Trial Competition in Fort Myers. He spoke as a panelist at the November OJCC Second Friday seminar, the OJCC-WCI Emerging Trends in Workers’ Compensation Seminar in Tallahassee, and the Florida Workers’ Advocates Annual Educational Conference in Orlando. Judge Weiss also serves on The Florida Bar’s workers’ compensation rules advisory committee, he was appointed to serve on the Standing Committee on Professionalism, and he served on the Executive Committee of The Florida Conference of Judges of Compensation Claims. In the community Judge Weiss is an active member of the Lee County Bar Association and he serves on the board of directors of the Tiger Bay Club of Southwest Florida and the Gulf Coast Symphony.

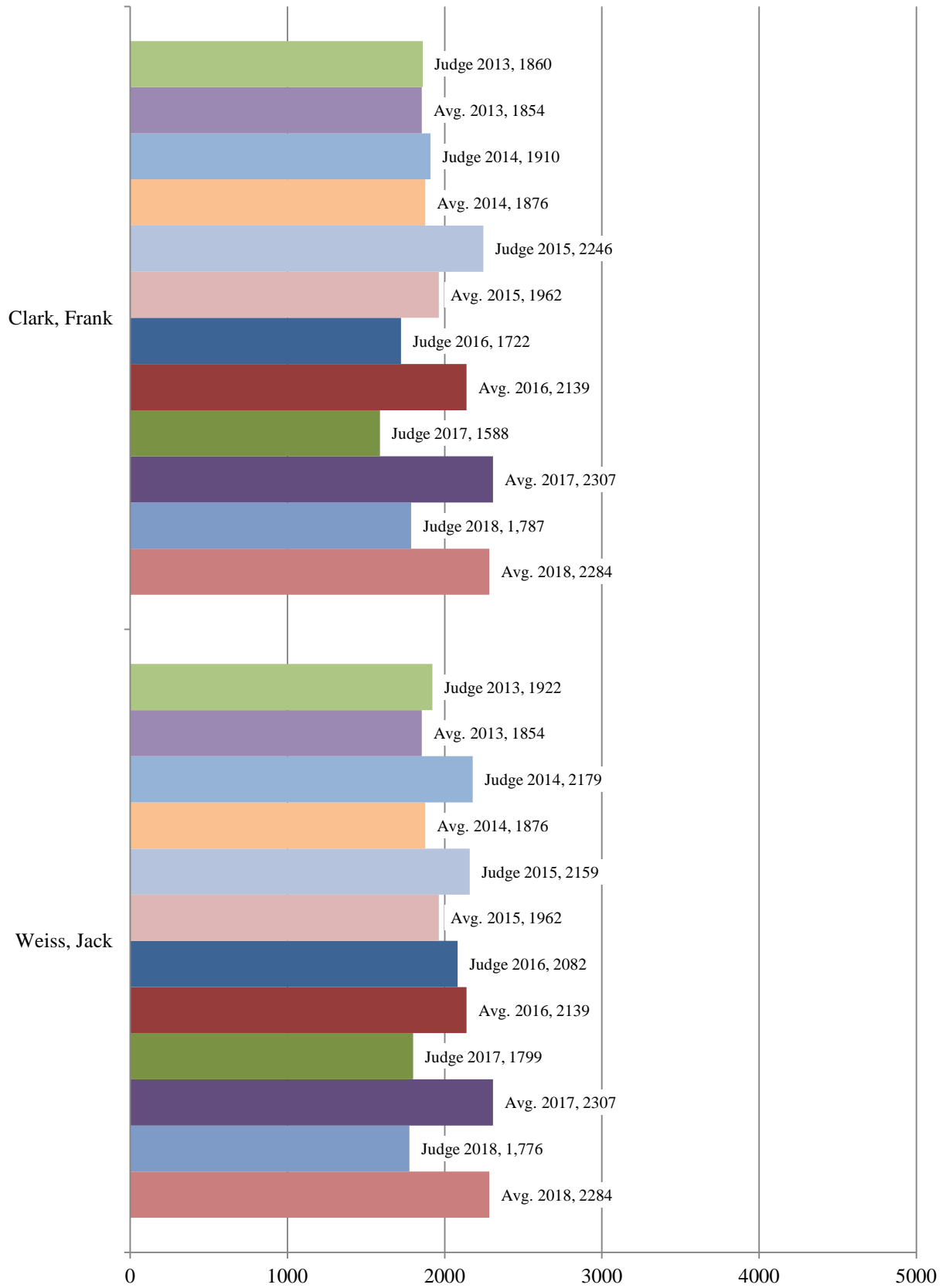
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



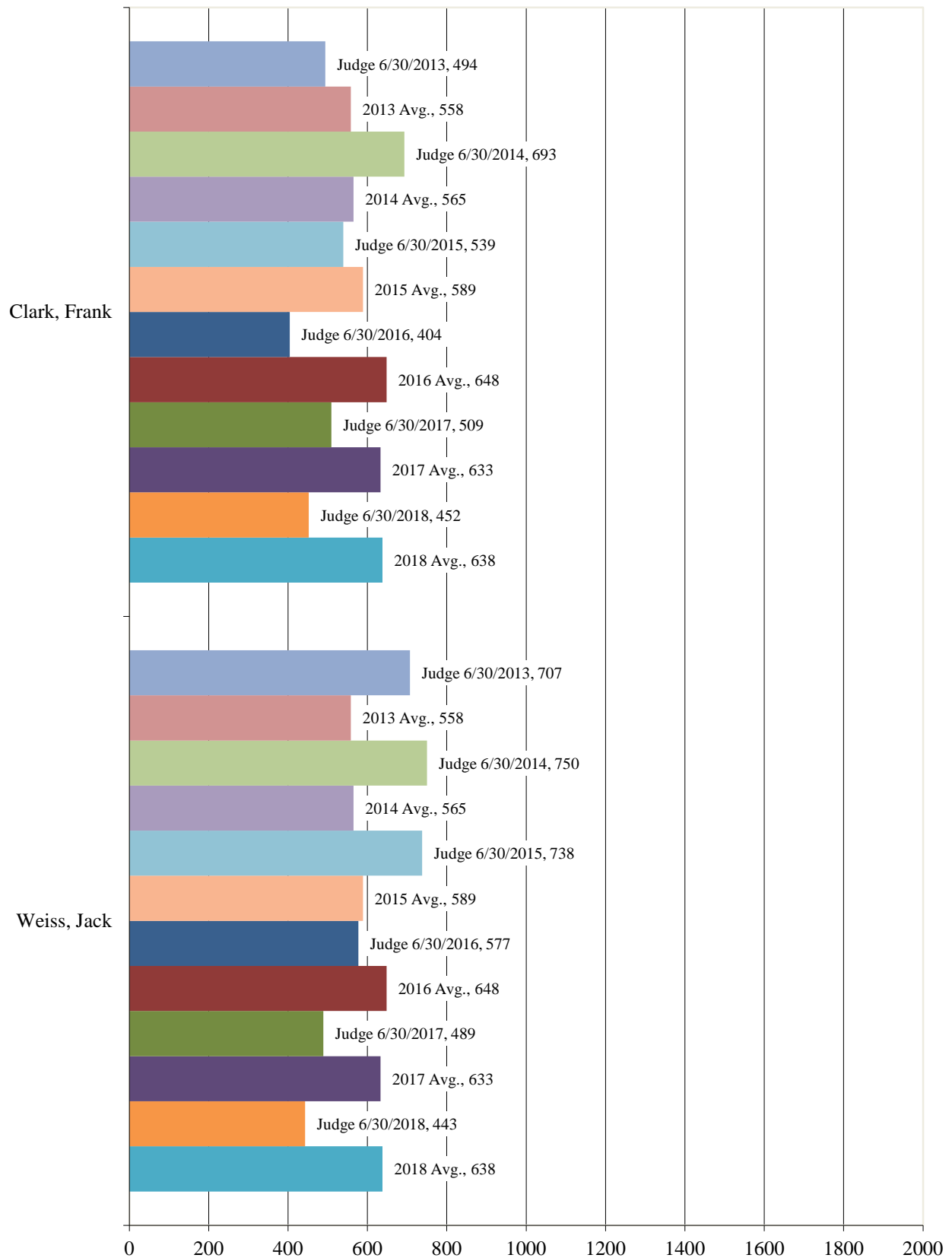
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



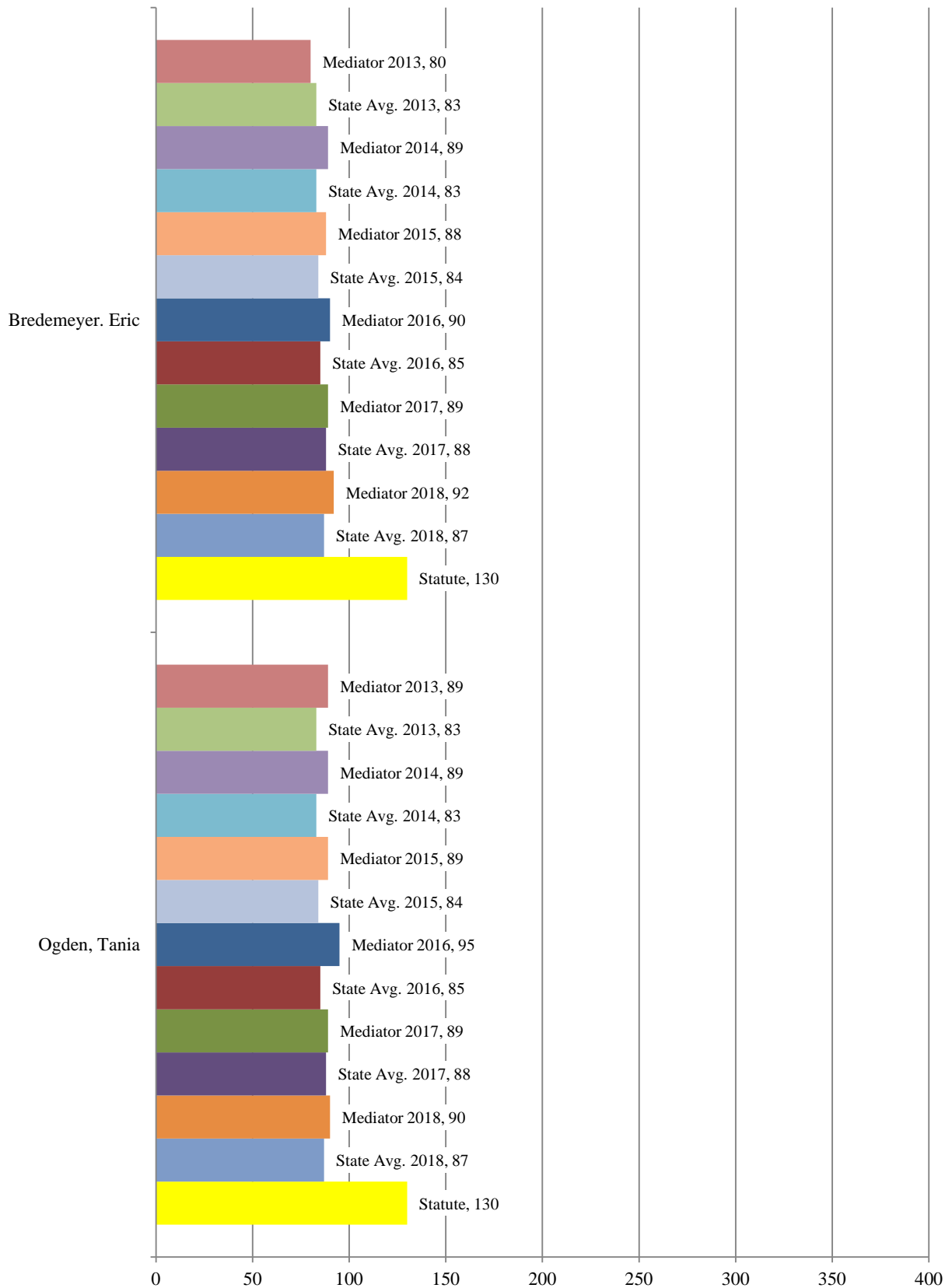
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



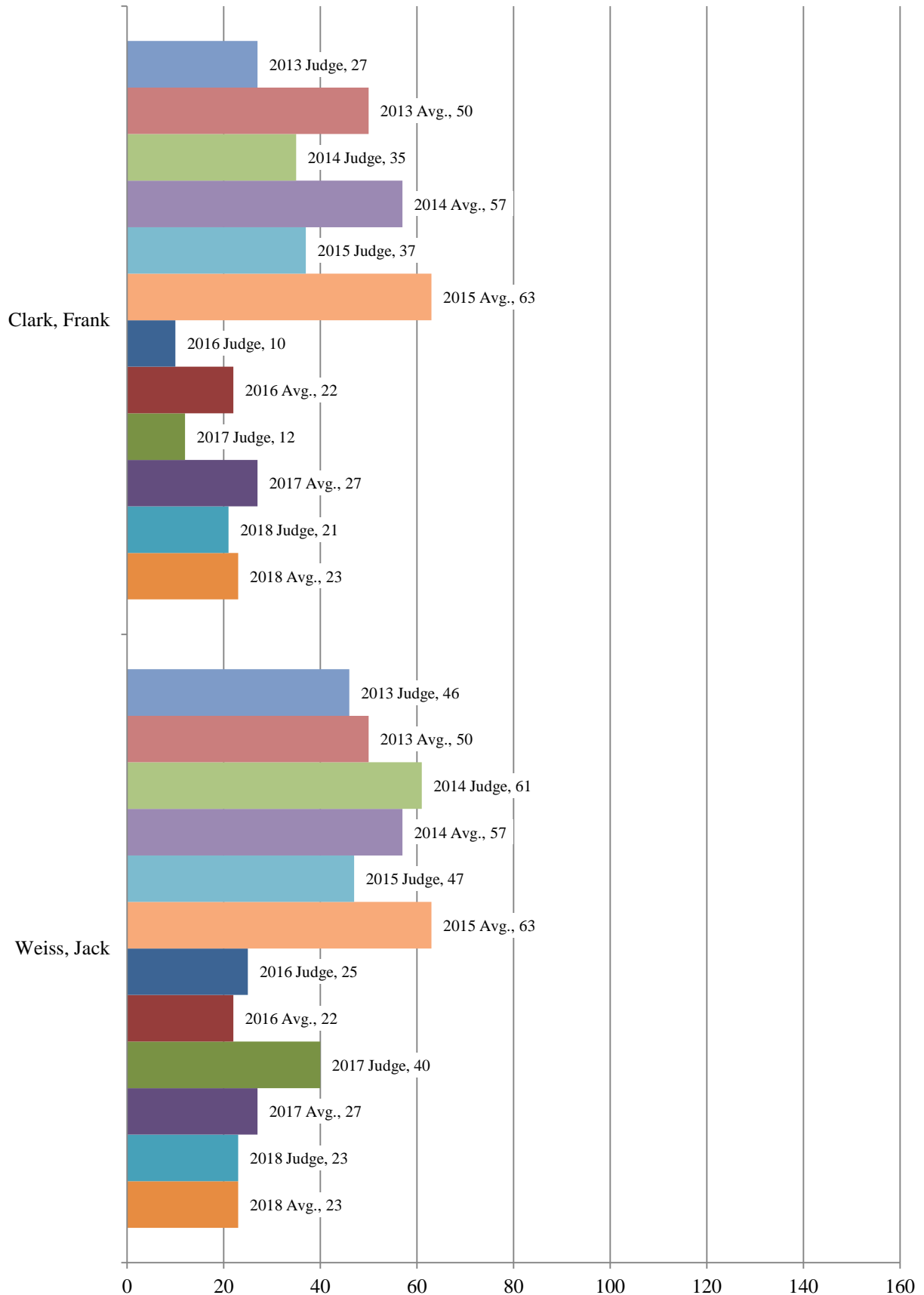
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



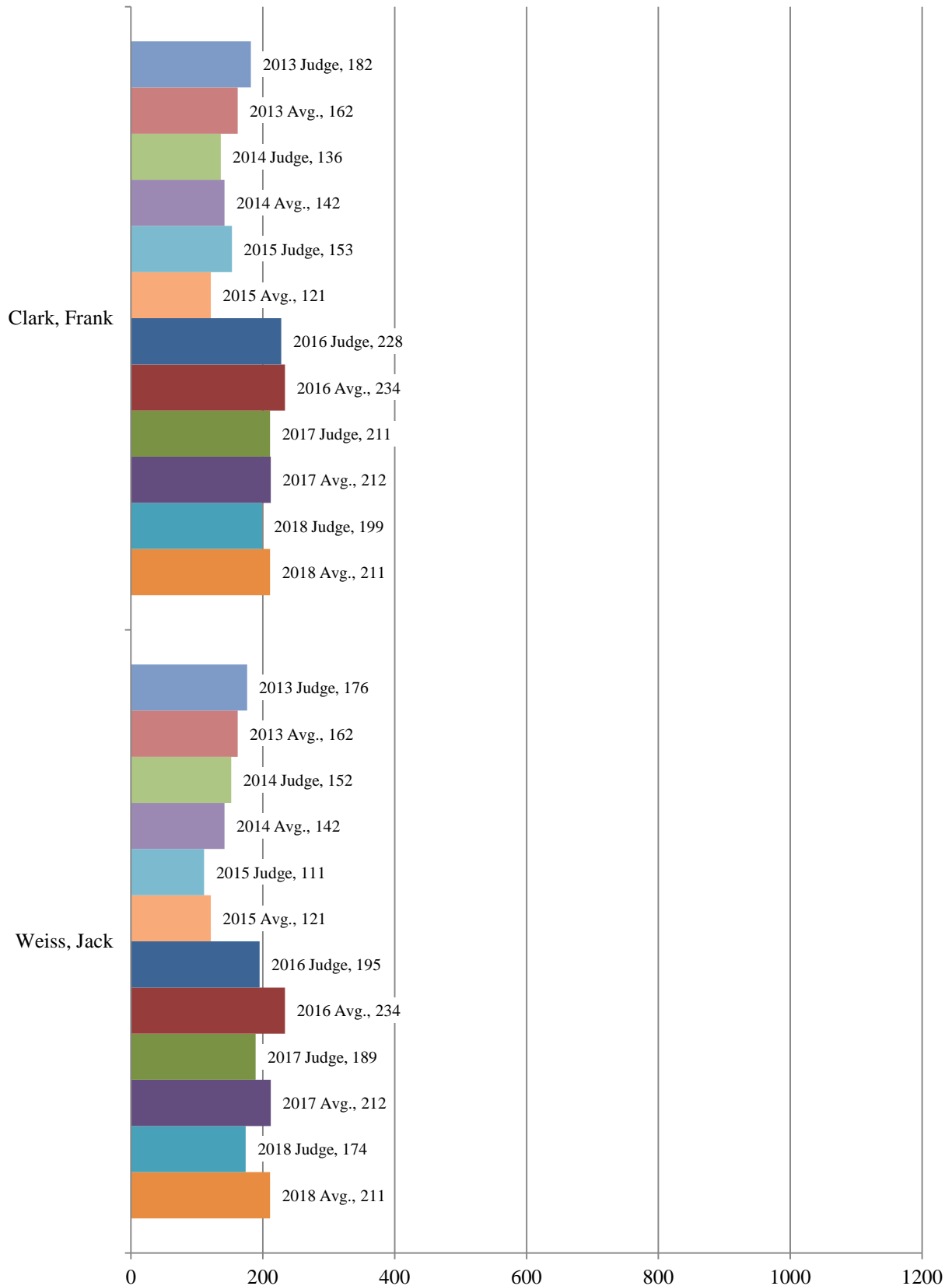
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



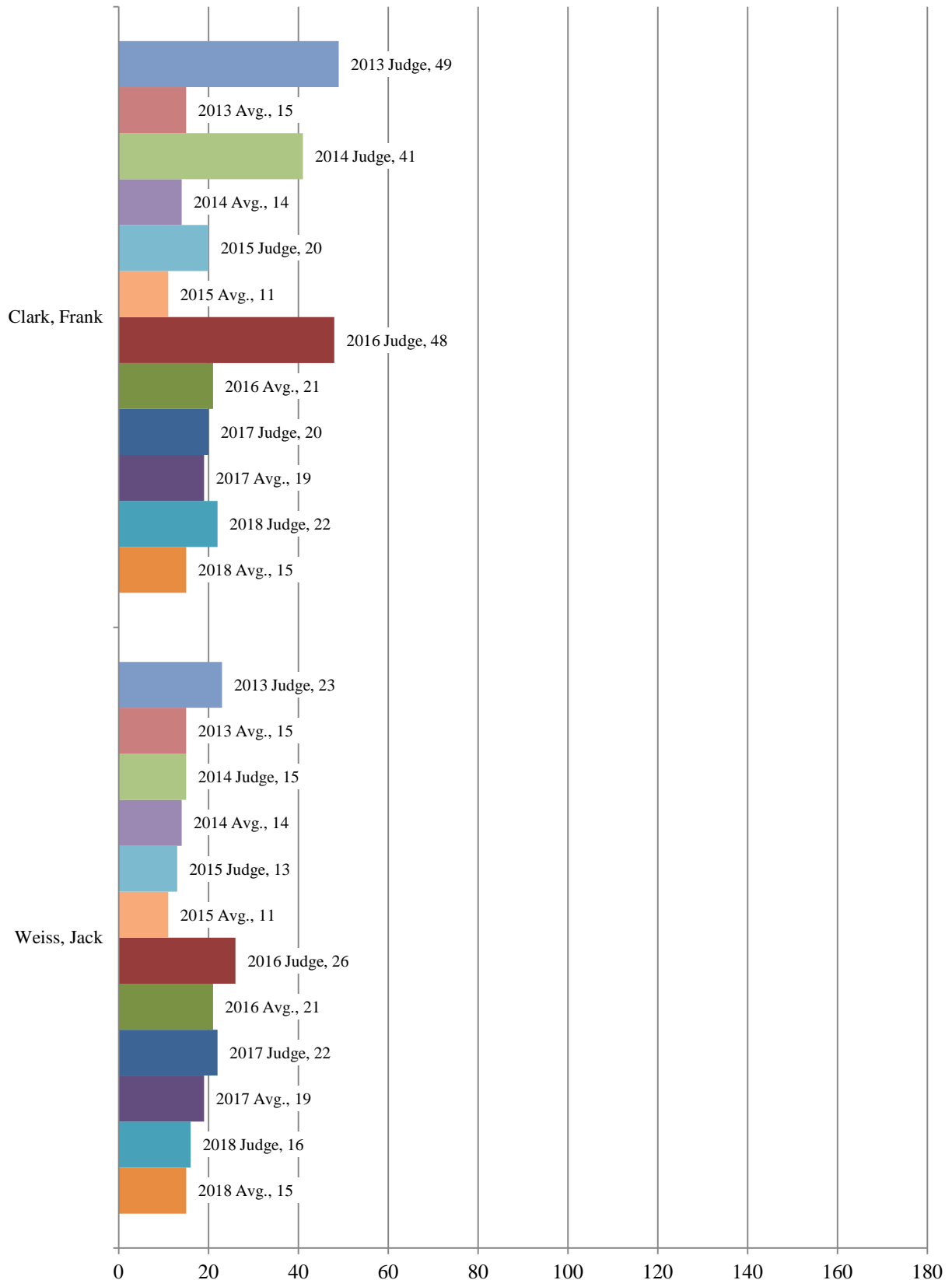
The following graph depicts the total volume of trial orders¹⁹⁹ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



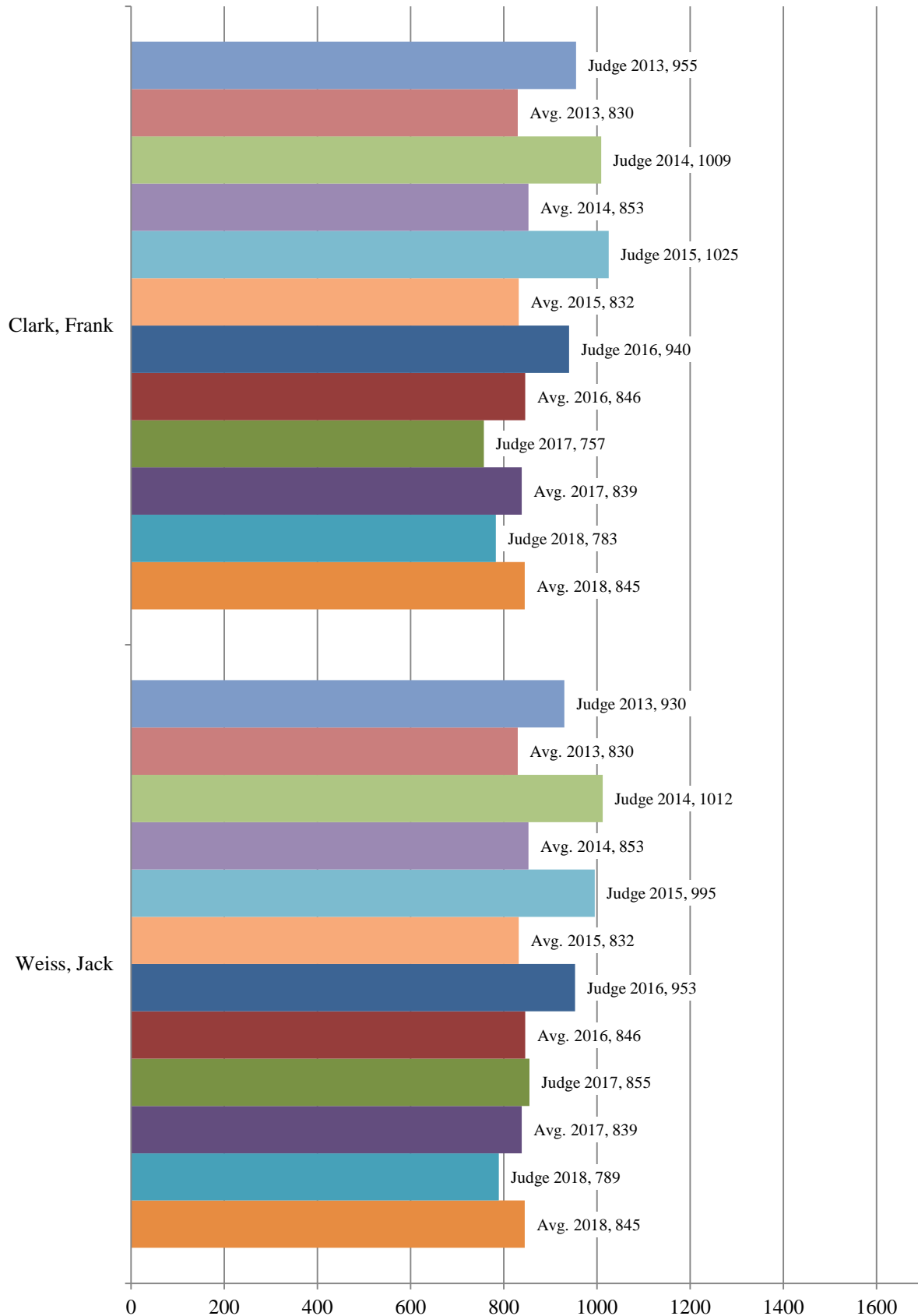
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



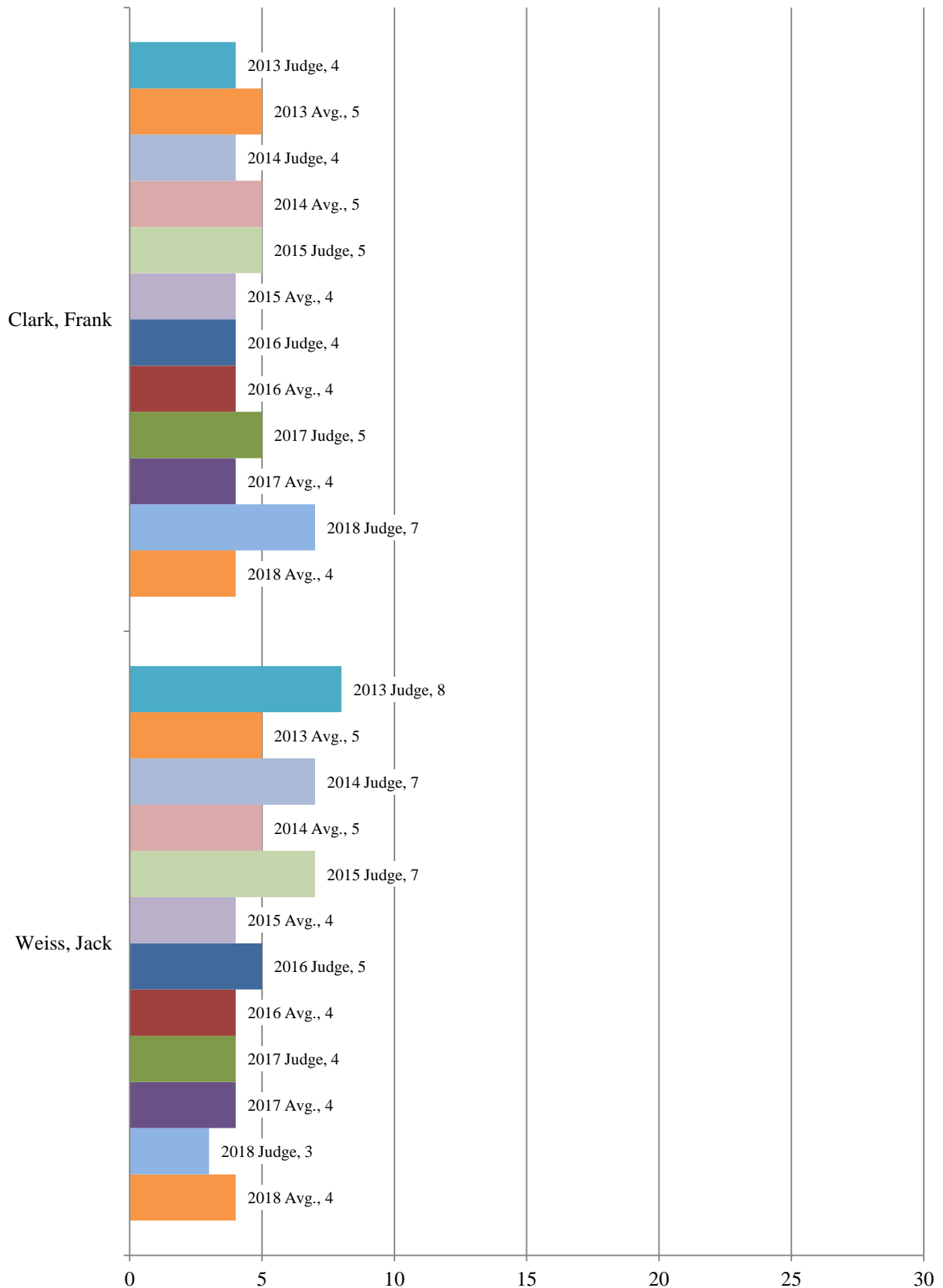
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



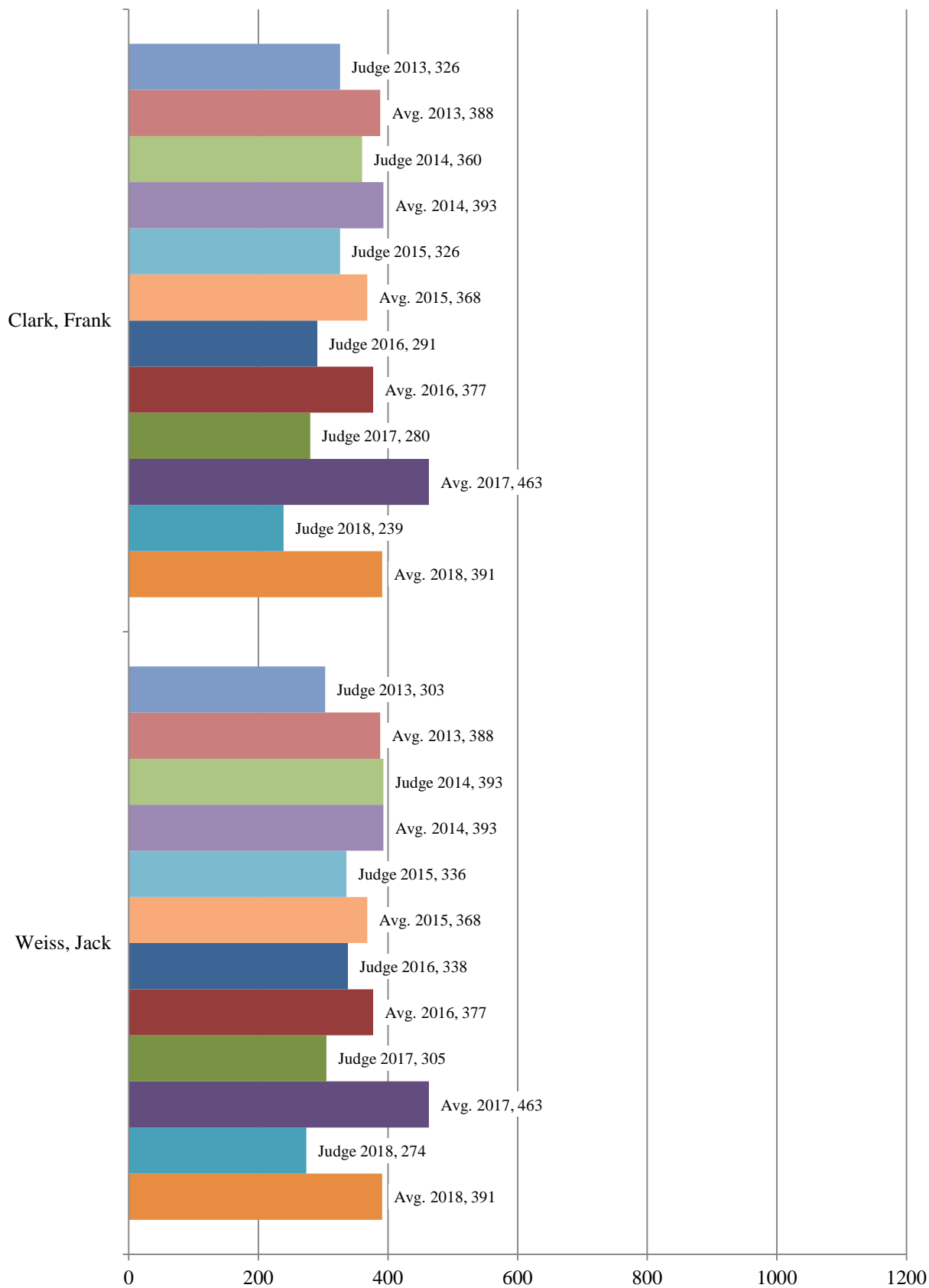
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



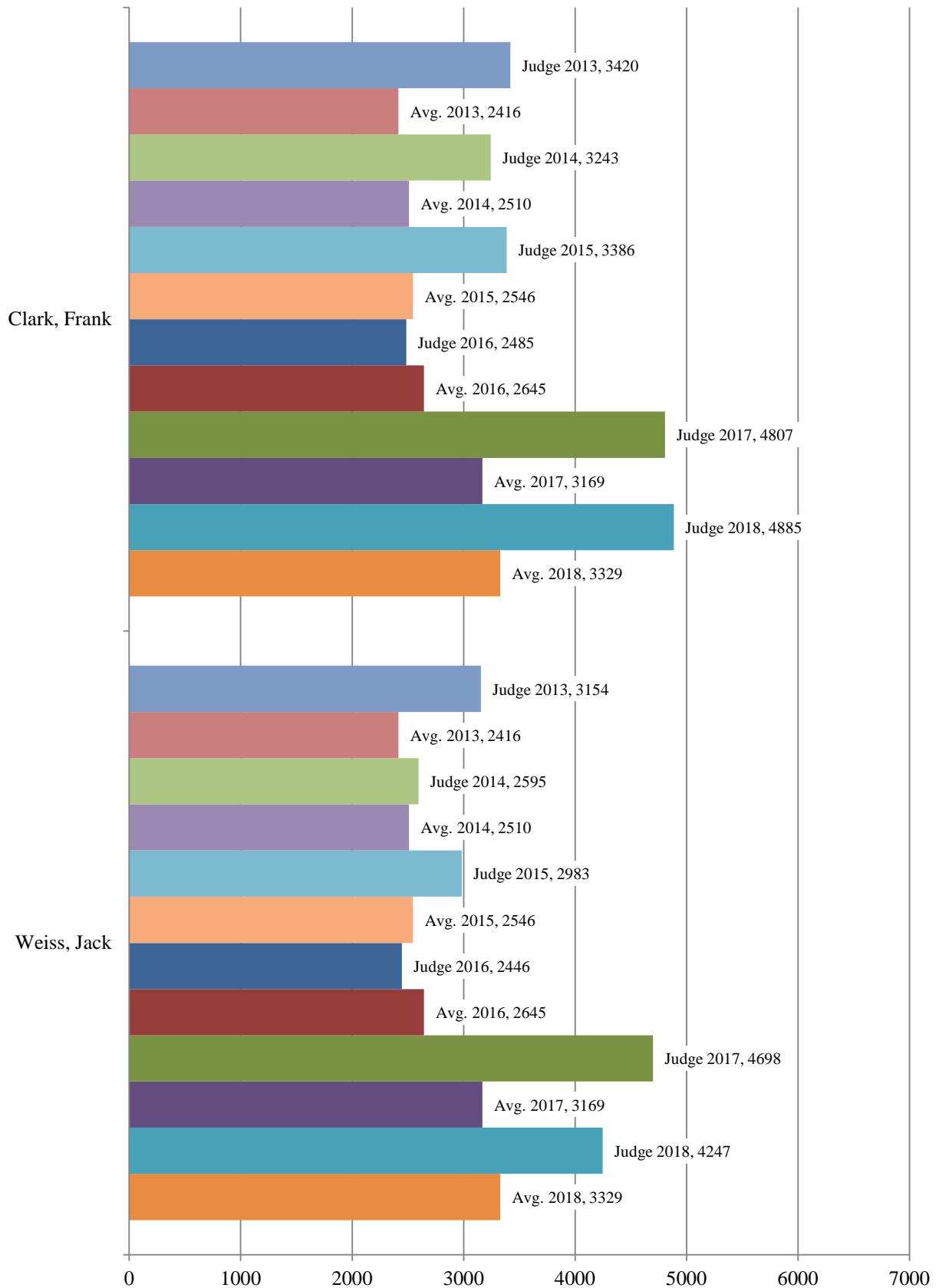
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



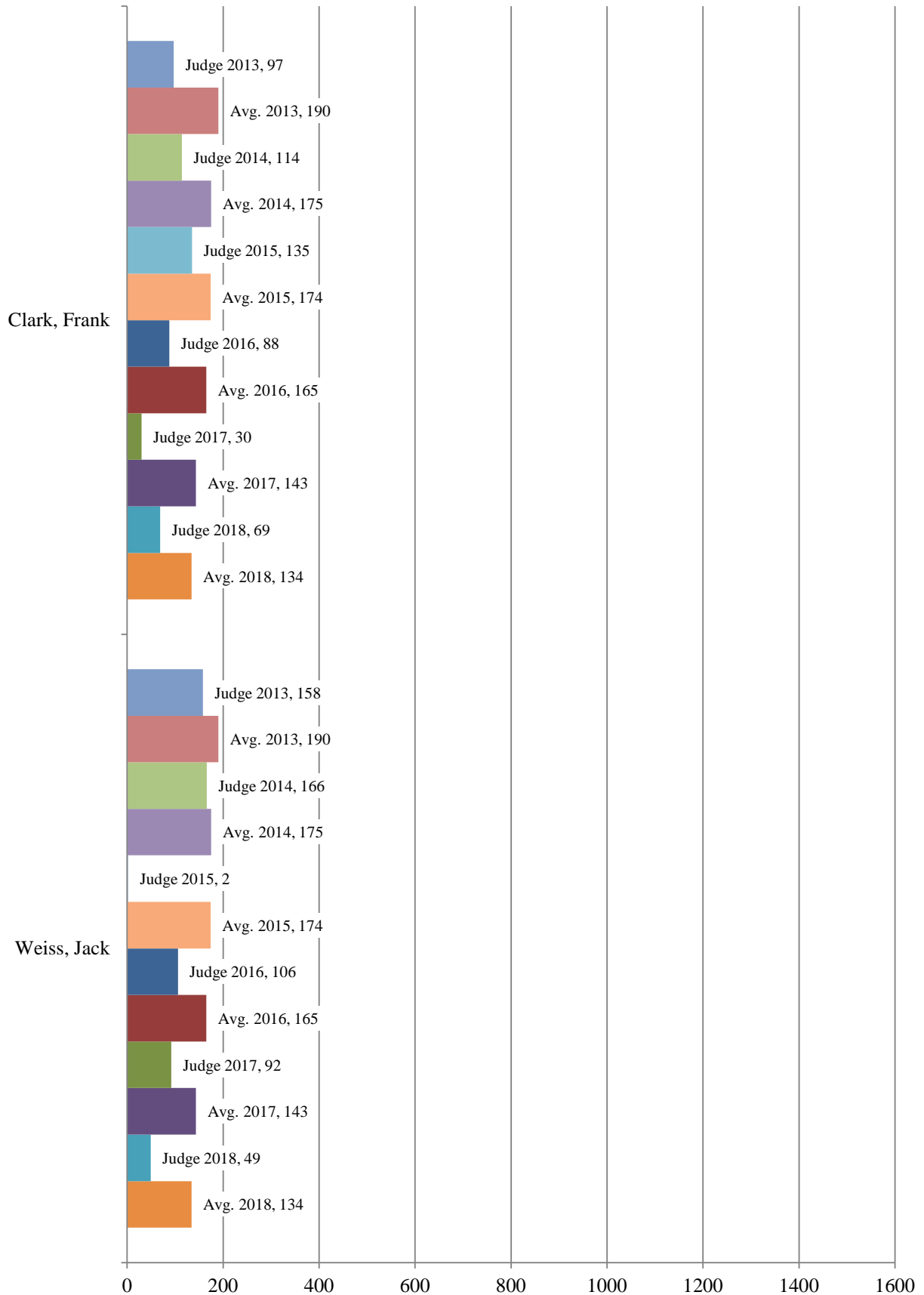
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “4” District GNS (JCC Hill, R [Stanton]):

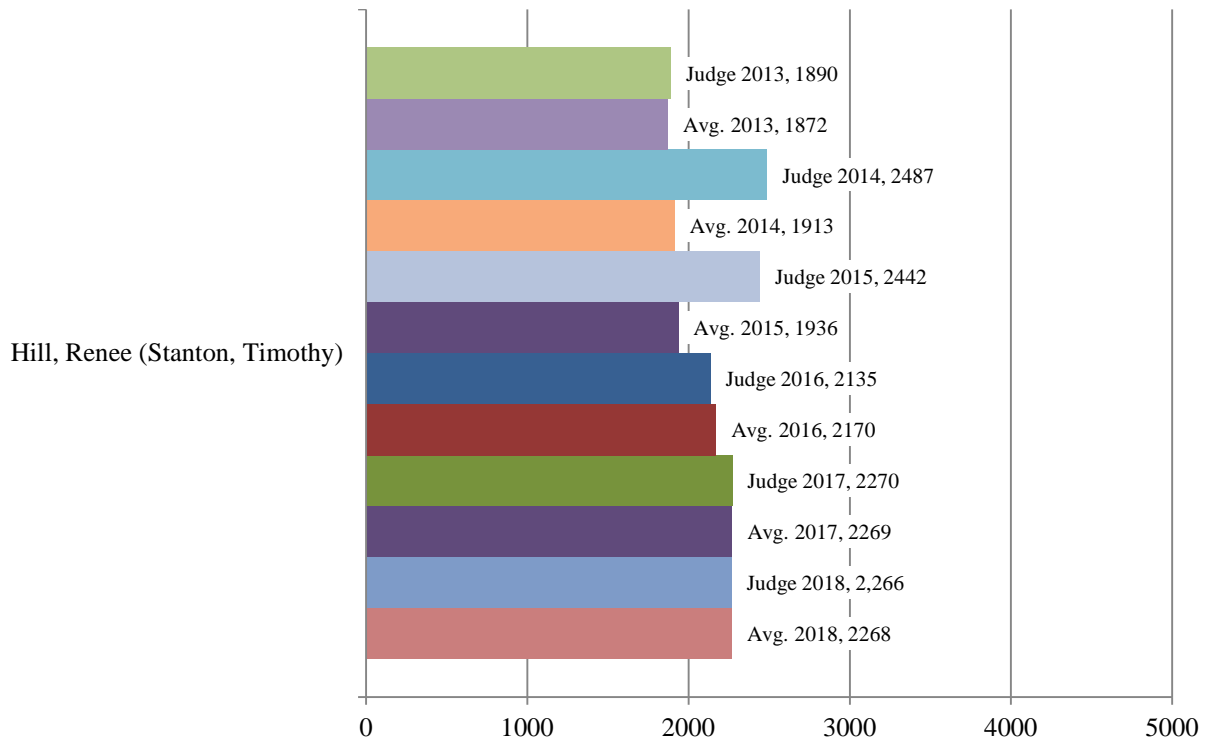
District GNS includes Alachua, Columbia, Dixie, Gilchrist, Levy, and Marion counties.

District GNS experienced change yet again in 2017-18. Since Jonathan Ohlman was appointed to the Circuit bench in 2005-06, the District was presided over by Judge Thurman, followed by the appointment of Judge M. Renee Hill in 2009. Judge Hill left the OJCC in November 2017. For several months, the trial and motion calendars there were managed by Judge Ralph Humphries (JAX). In April 2018, Judge Timothy Stanton, formerly an OJCC Mediator in Tampa, was appointed to fill the Gainesville vacancy. The change in judges coincided with the retirement of mediator Stuart Suskin who had worked in District GNS since 1994. Thus, in 2017-18 both the mediator and judge in GNS changed.

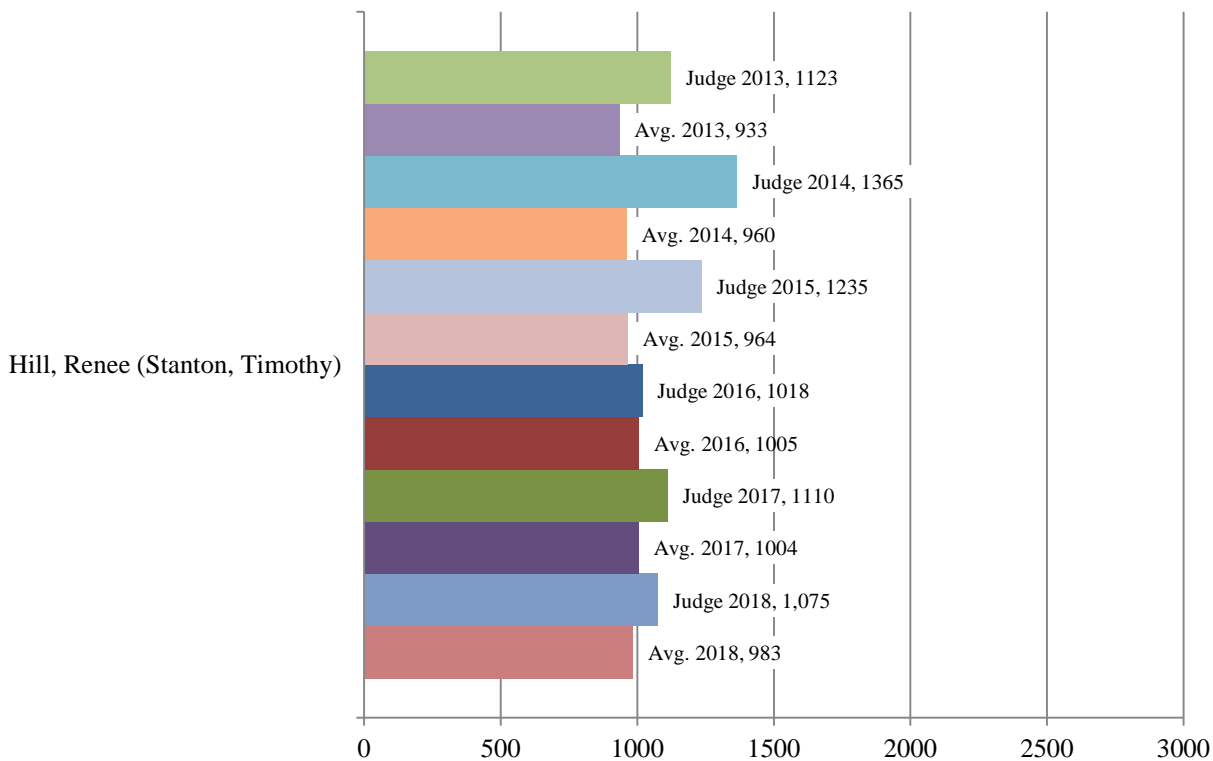
Petition filing and closure volumes in GNS are on par with the statewide averages. “New case” volumes there have been slightly above the statewide average for the last two years. Despite those filing rates, the year-end inventory of pending petitions in GNS has remained well below average for the last three years. Trial volume was very low in GNS in 2017-18, likely secondary to Judge Hill’s departure, and the 5 months during which Judge Humphries and others covered that docket. The time to trial in GNS was slightly over the 210 day statutory requirement but the time to order was well with the 30 days allowed. For several years, District GNS far exceeded the statewide average for “other orders,” but that moderated some in 2017. In 2017-18, the volume of “other orders” was below the statewide average for the first time in the last six years.

District GNS experienced significant change in 2017-18. Judge Timothy Stanton was appointed in April 2018 to replace Judge Renee Hill. In June, Mr. Bryce Schmidt replaced mediator Stuart Suskin, who retired after serving as state mediator there since 1994.

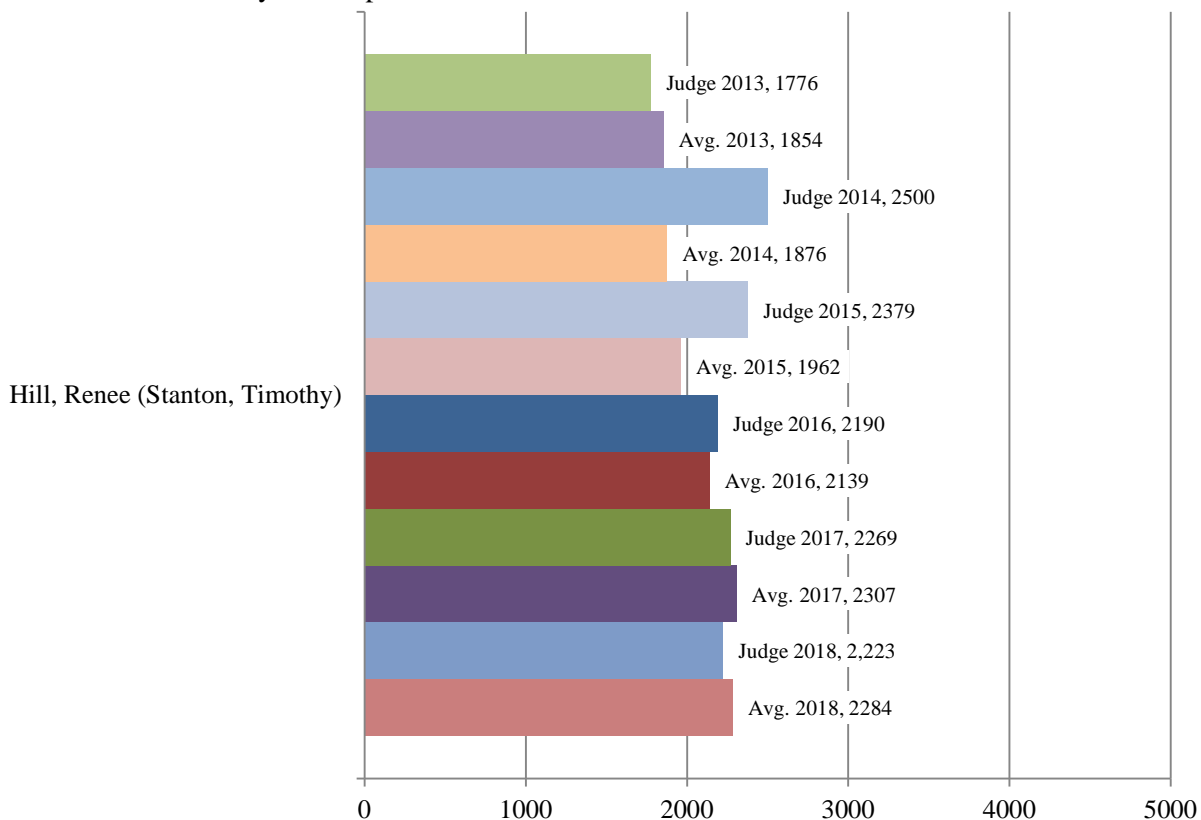
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



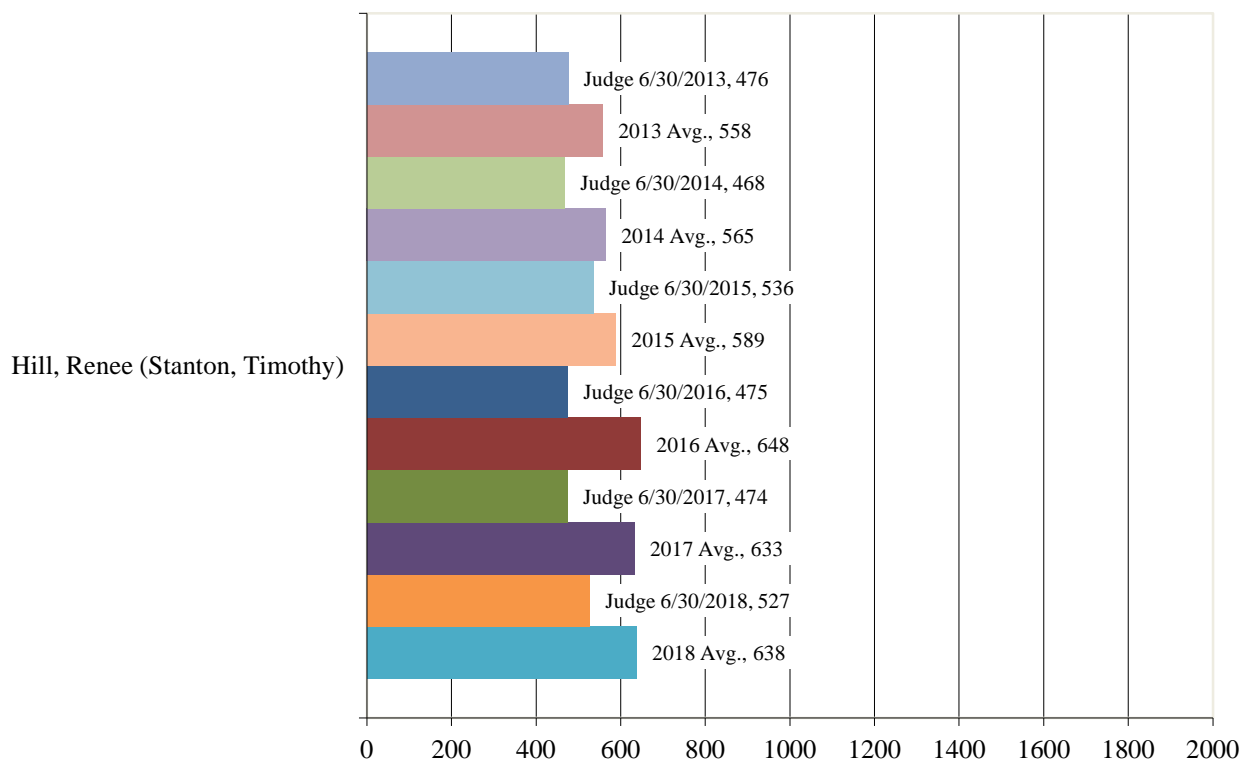
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



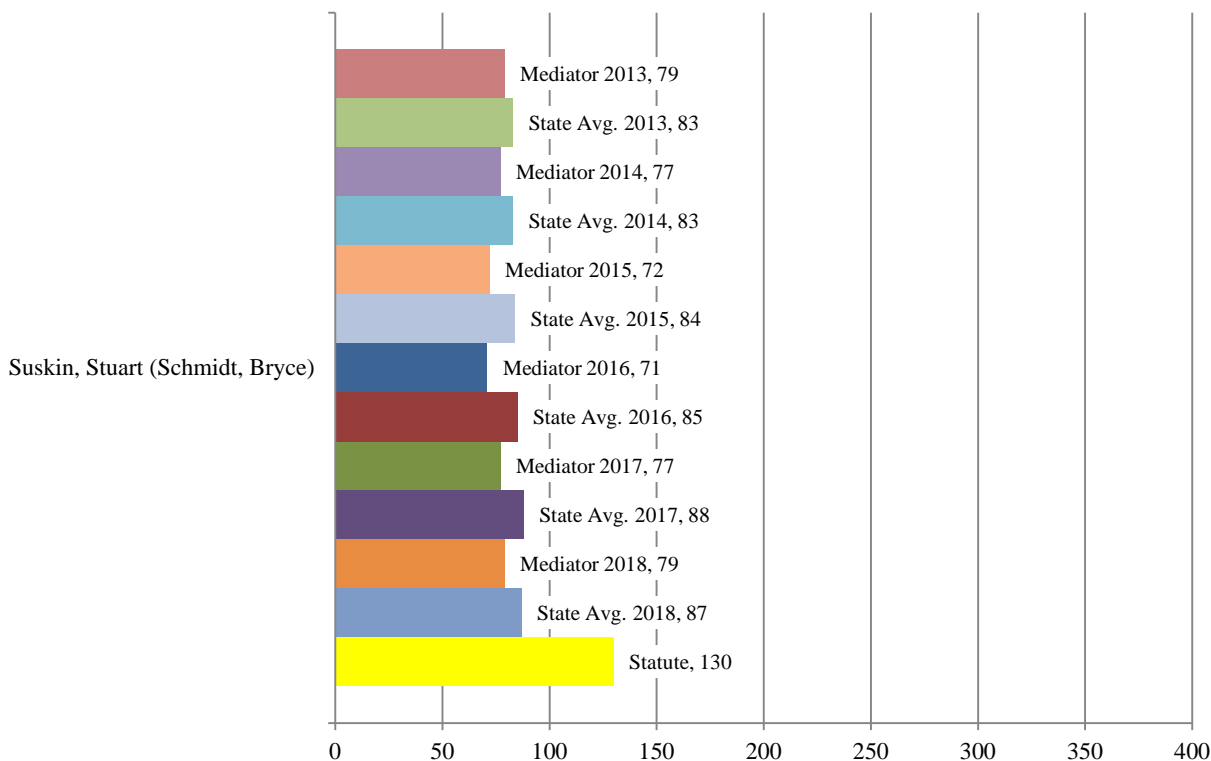
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



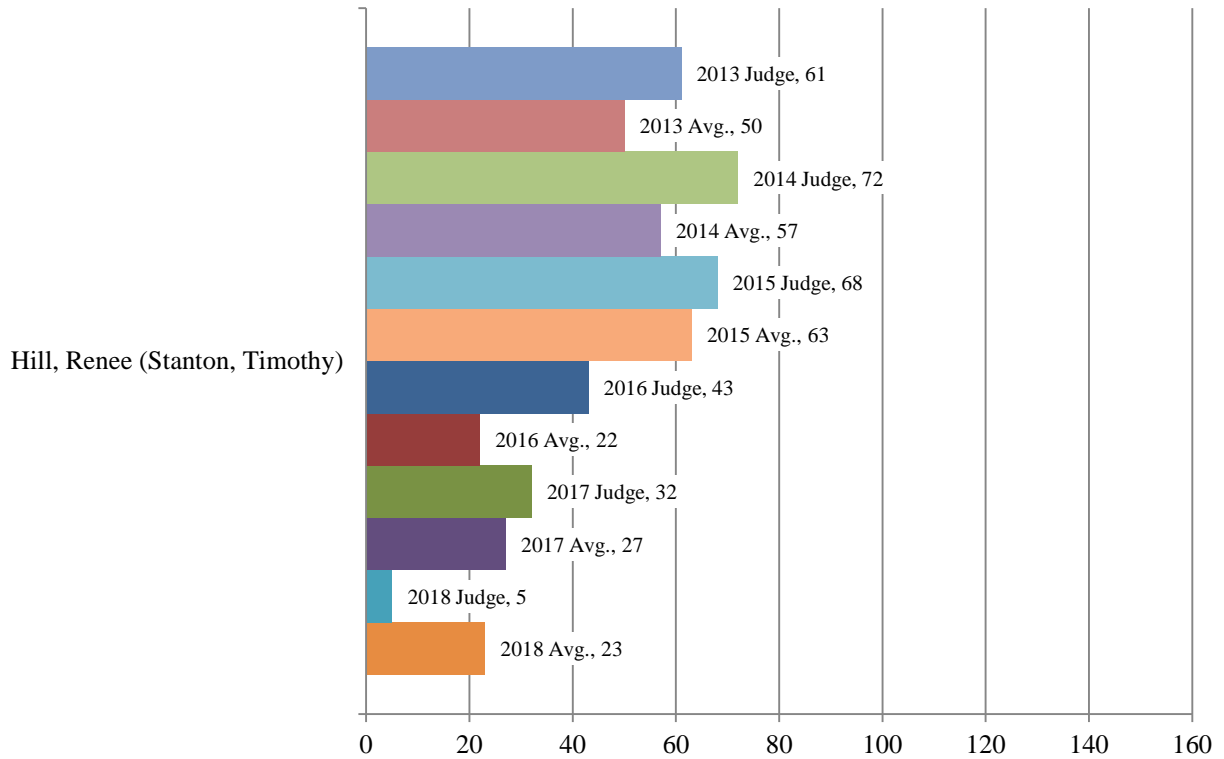
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



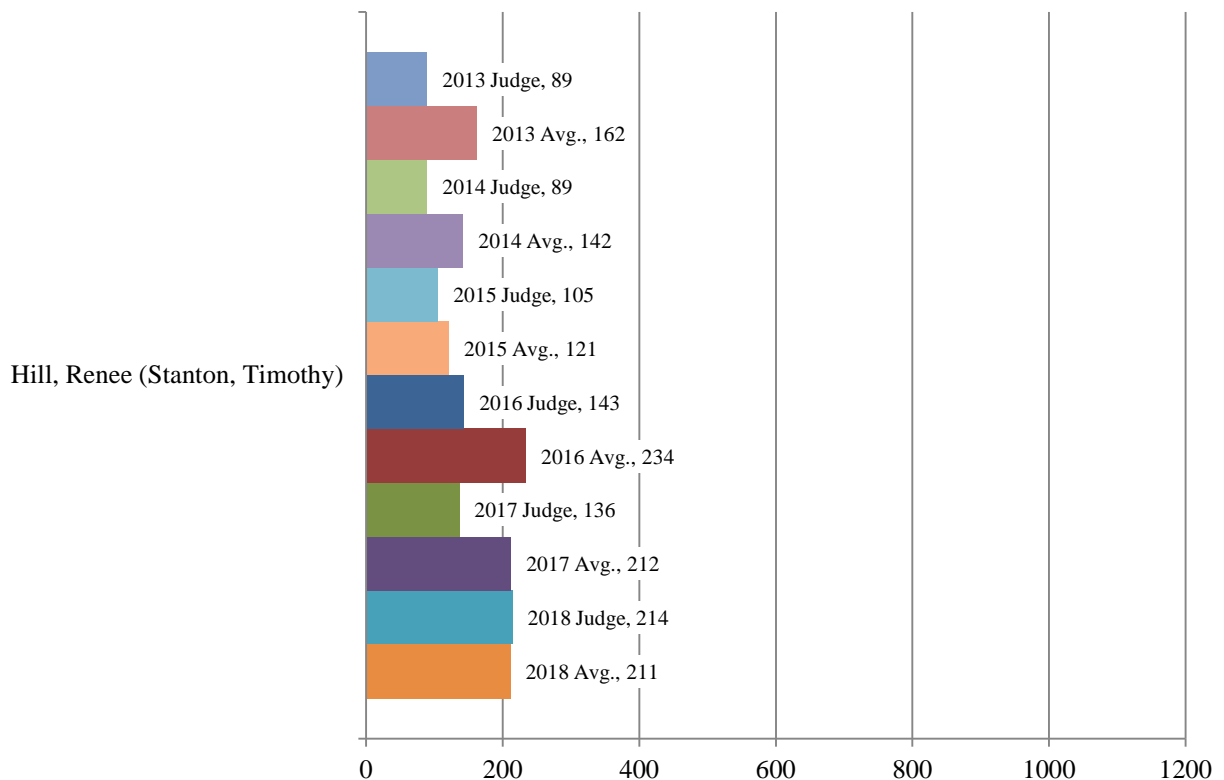
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



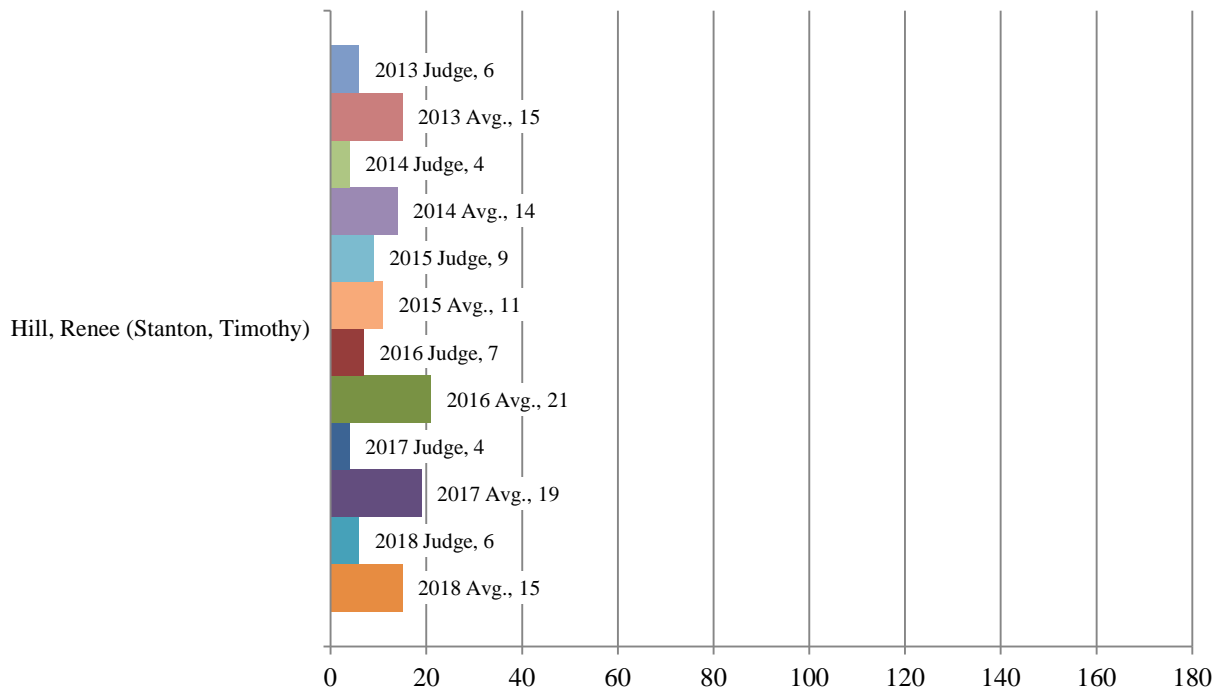
The following graph depicts the total volume of trial orders²⁰⁰ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



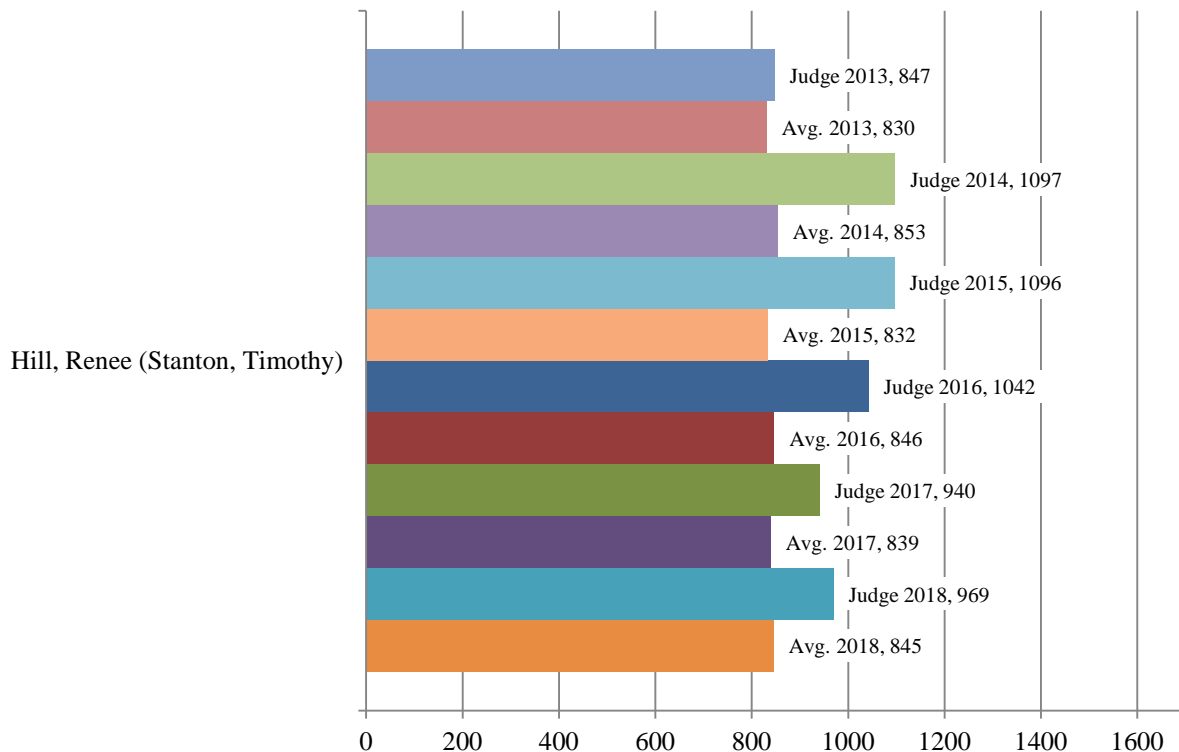
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



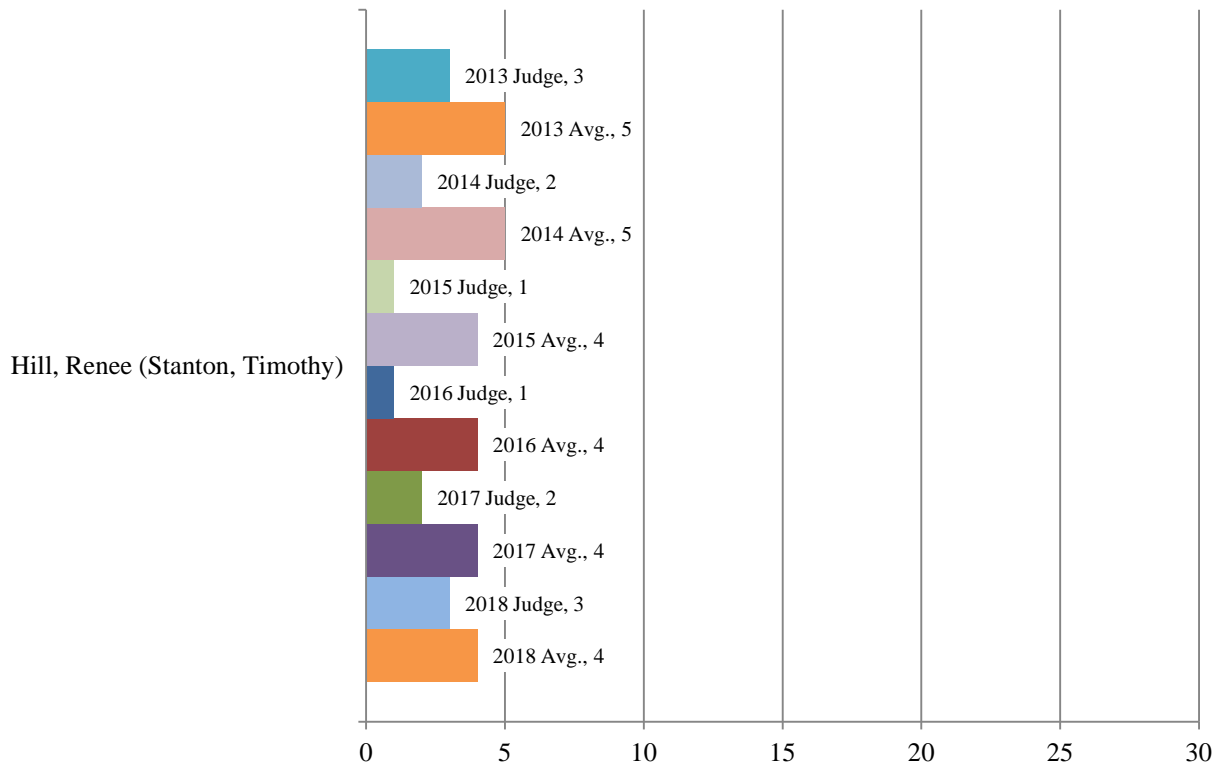
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



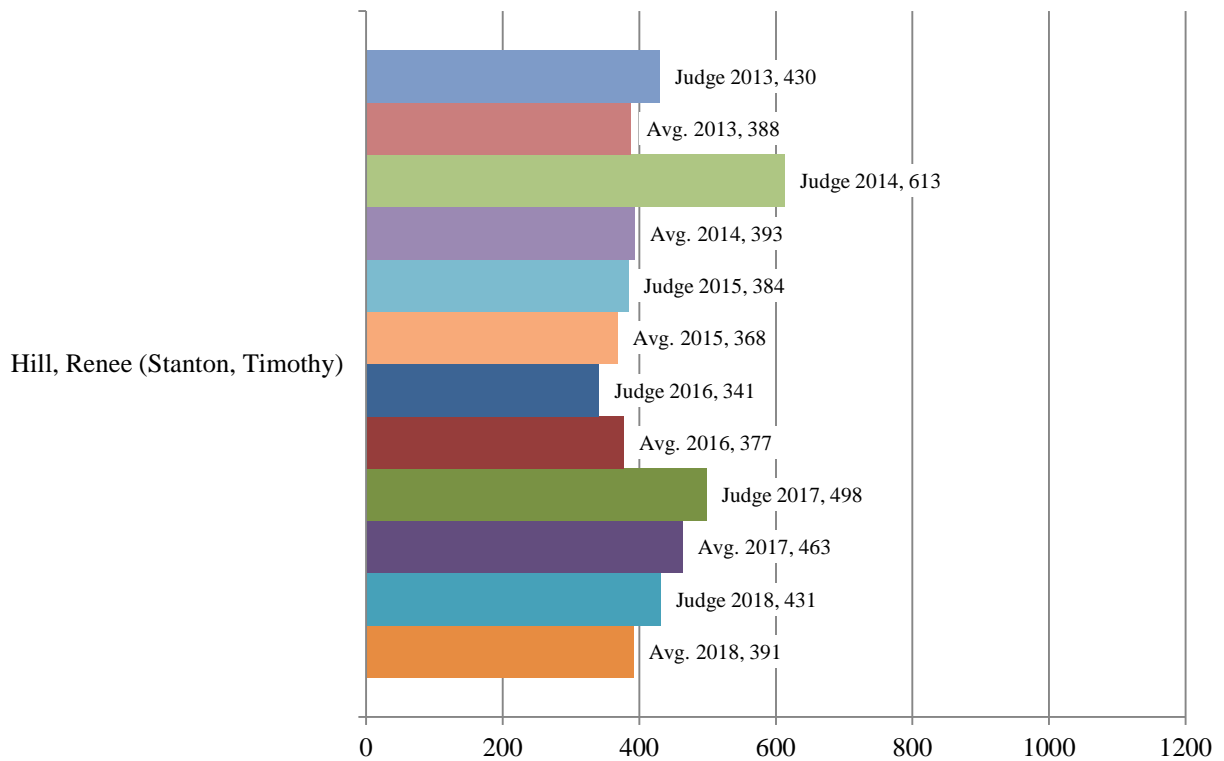
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



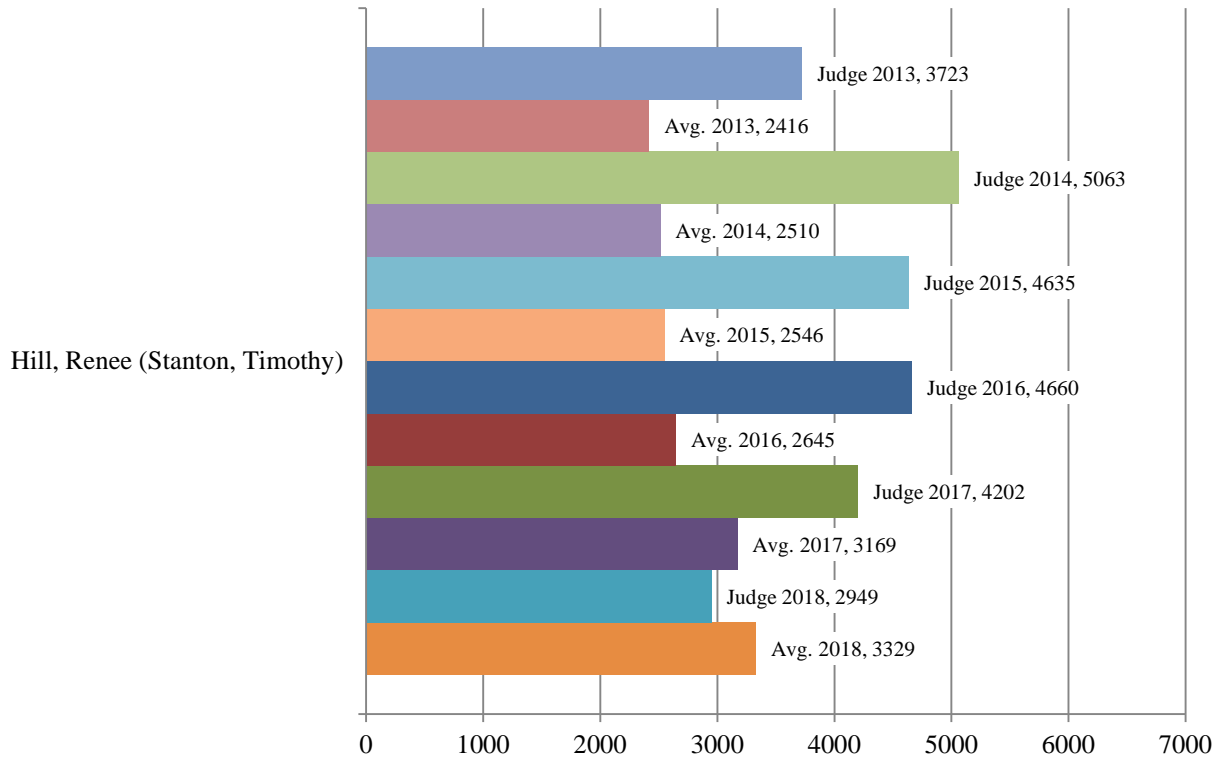
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



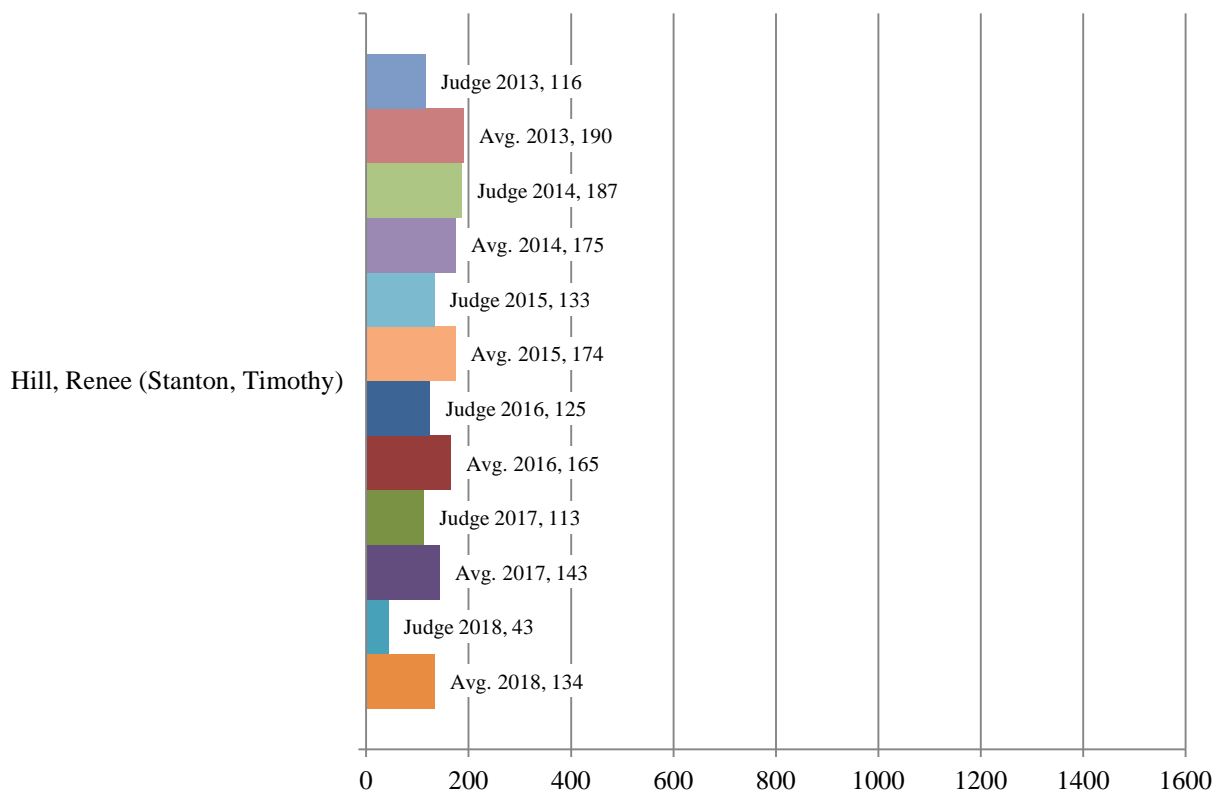
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “5” District JAX (JCC Holley, JCC Humphries):

District JAX includes Bradford, Clay, Duval, Nassau, Putnam, St. Johns, and Union counties.

District JAX continues to experience a notable volume of “new cases,” about thirty percent above the statewide average. This has been consistent for several years, and increased in 2017-18. Despite this, the overall volume of petitions in District Jacksonville has remained below the statewide average, though increases are tightening that distribution in 2017-18. One of the Jacksonville Divisions demonstrated a notably above average year end petition inventory this year. Time to trial in one Division is notably above the statutory 210 days in one Division and comfortably below in the other. Time to order is comfortably within the 30 day statutory period in both.

Also of note, the volume of settlement orders in District Jacksonville well exceeds the statewide average, while the stipulation order volume is as notably below the average. The volume of “other orders” is below average in Jacksonville, particularly notable in one Division. However, the volume of “other hearings” is as notably higher than the statewide average in both Divisions.

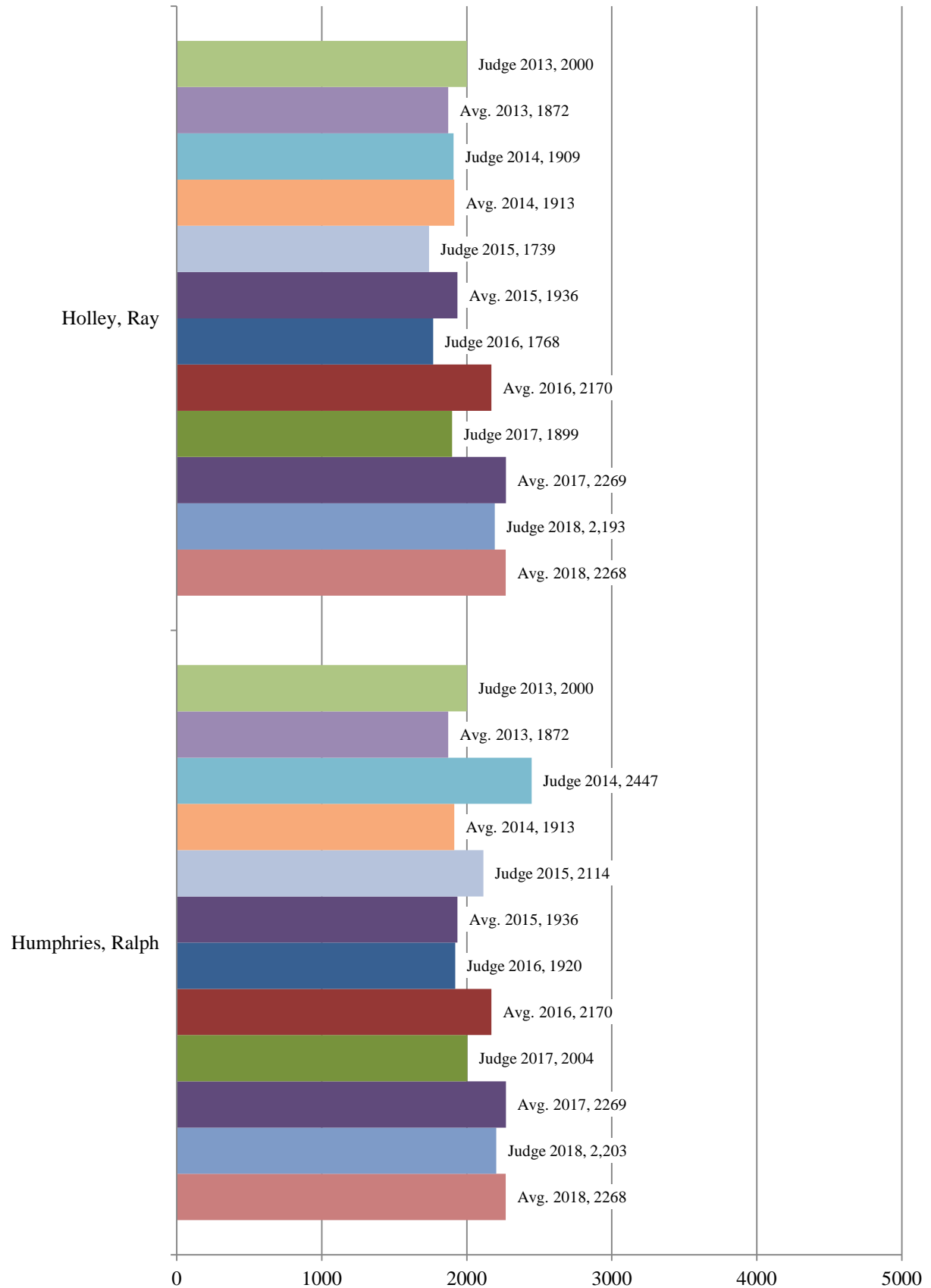
Judge Holley is a Master of the Bench and Past President of the E. Robert Williams Inn of Court. Holley continues to serve the legal profession through his involvement with the ERW Inn of Court’s Executive Committee, Friends of 440 Scholarship Fund (State and local Board member and Scholarship Selection Committee), the Florida Bar Voluntary Bar Liaison Committee (Member), and Jacksonville Bar Association Appellate and Professionalism Committees (Member). He is actively involved in community service efforts including serving as President of the Stetson University Alumni Association, Board Member of the Stetson University Board of Trustees, and Event Chair of Leadership Stetson 2017-2019. Judge Holley has presented as a speaker, panelist and moot court judge on several occasions in the past. Additionally, he has volunteered his time as a judicial faculty member since 2013 to assist with the Workers’ Compensation Trial Advocacy Program. He is also an event chair for the Northeast Florida Joint Inn of Court Meeting scheduled in February 2019.

Mediator K.A. Day completed six years of service on the Florida Bar Grievance Mediation Fee and Arbitration Committee where he served as a Committee vice chair and Forms committee chair and he began a term as a member of the Florida Bar Media and Communications Law Committee. Kahlil continued as a Florida Bar Grievance mediator and remained a contributing Fellow of the Florida Bar Foundation and American Bar Foundation. Kahlil also continued as an Honorary Master of the E. Robert Williams American Inn of Court and a Fellow of the Royal Society for the Arts. This year Kahlil completed twenty five years of service to the State of Florida. He is presently working on revisions to his workbook *Disrupting Disputation- the Art of getting Along*.

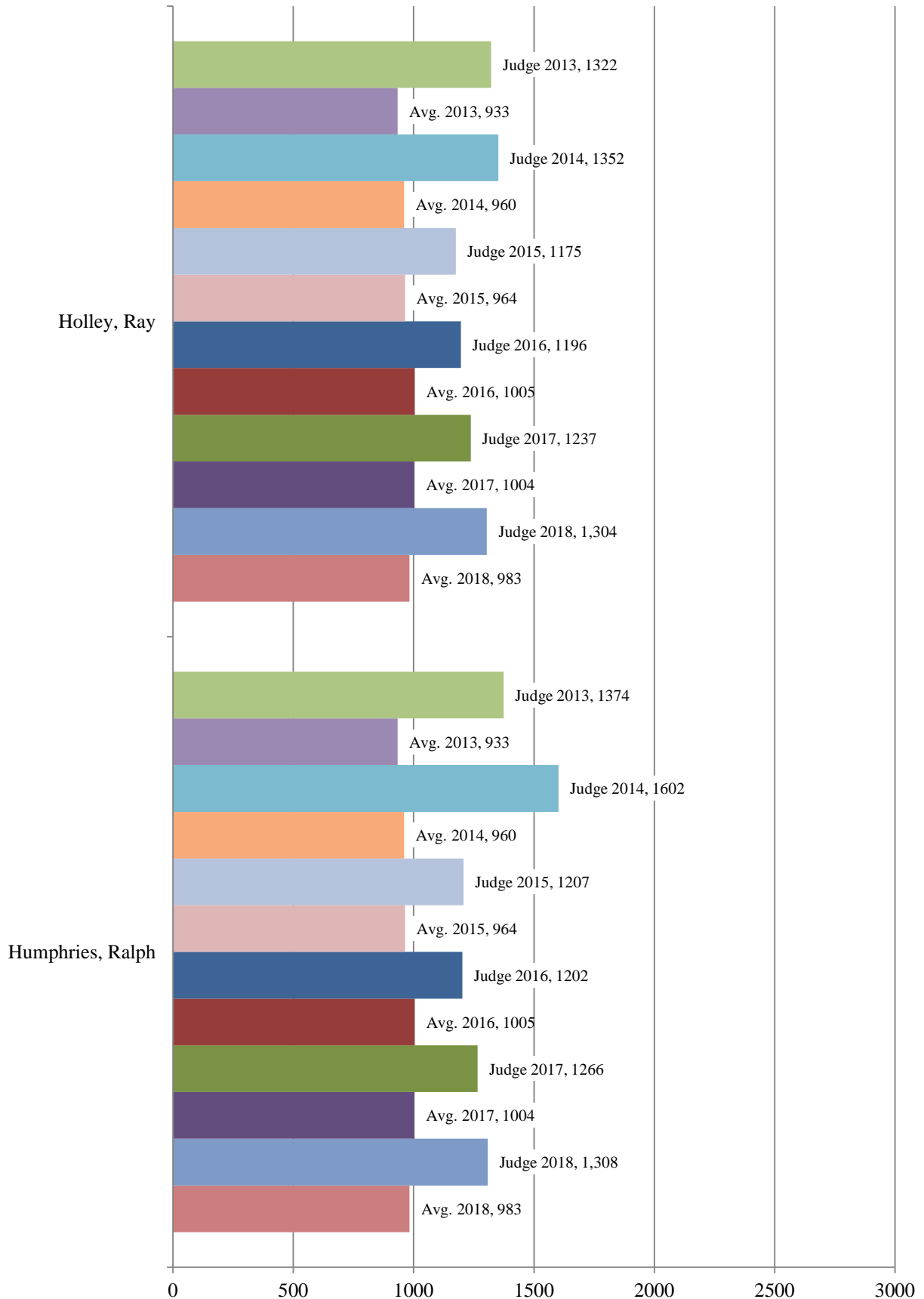
Mediator Alan Gordon continues to receive an AV rating from Martindale-Hubbell, and remains active in the E. Robert Williams Inn of Court in Jacksonville.

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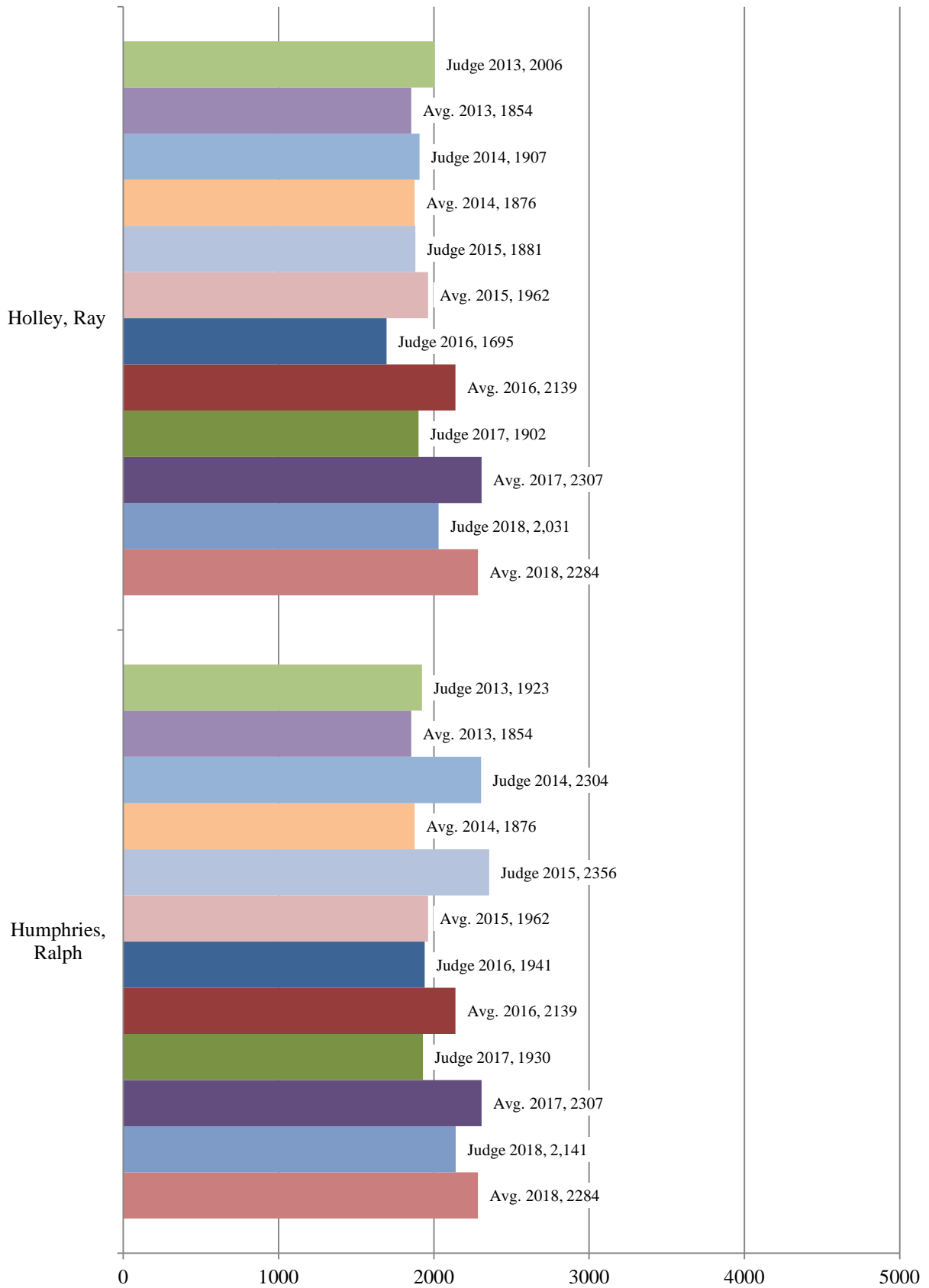
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



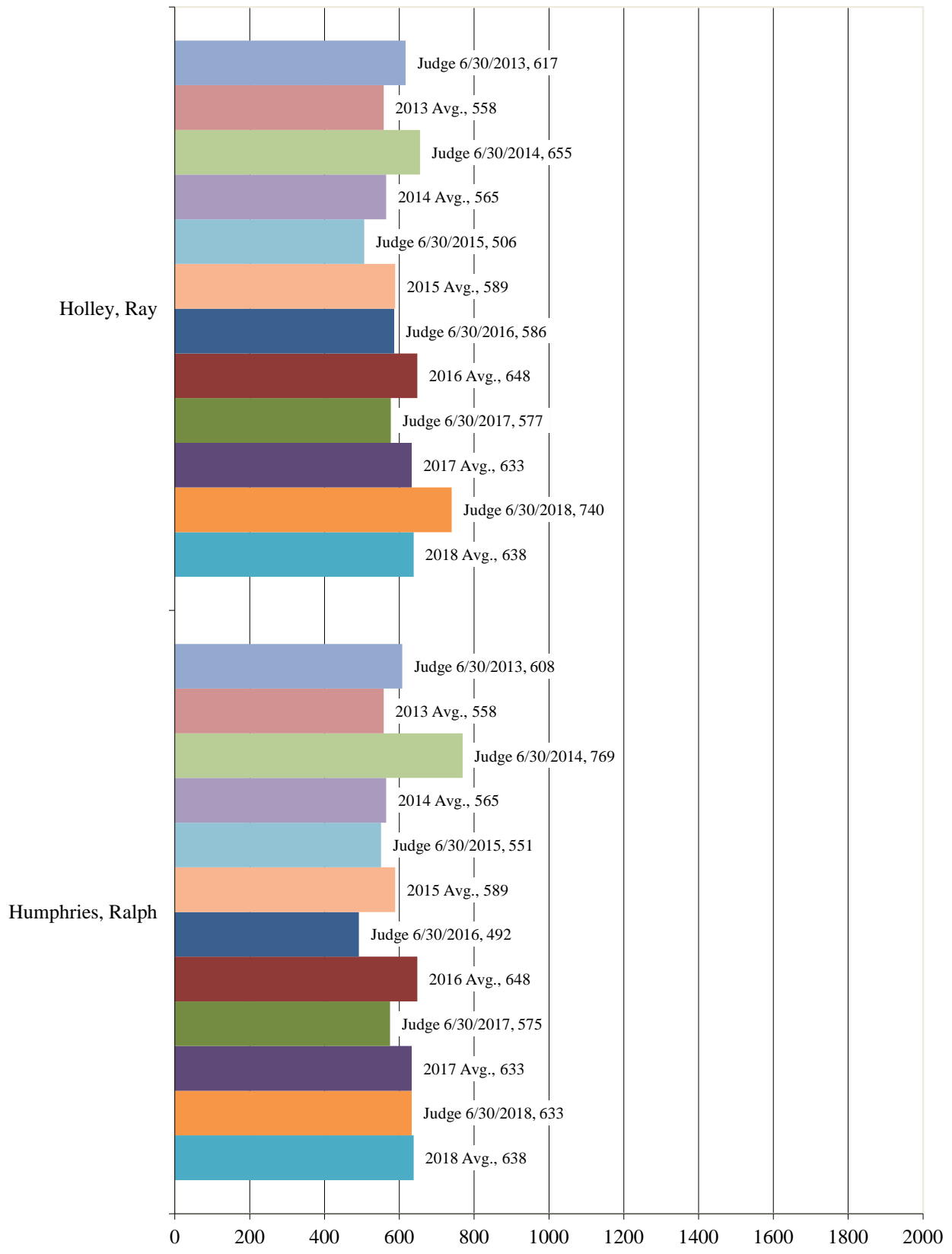
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



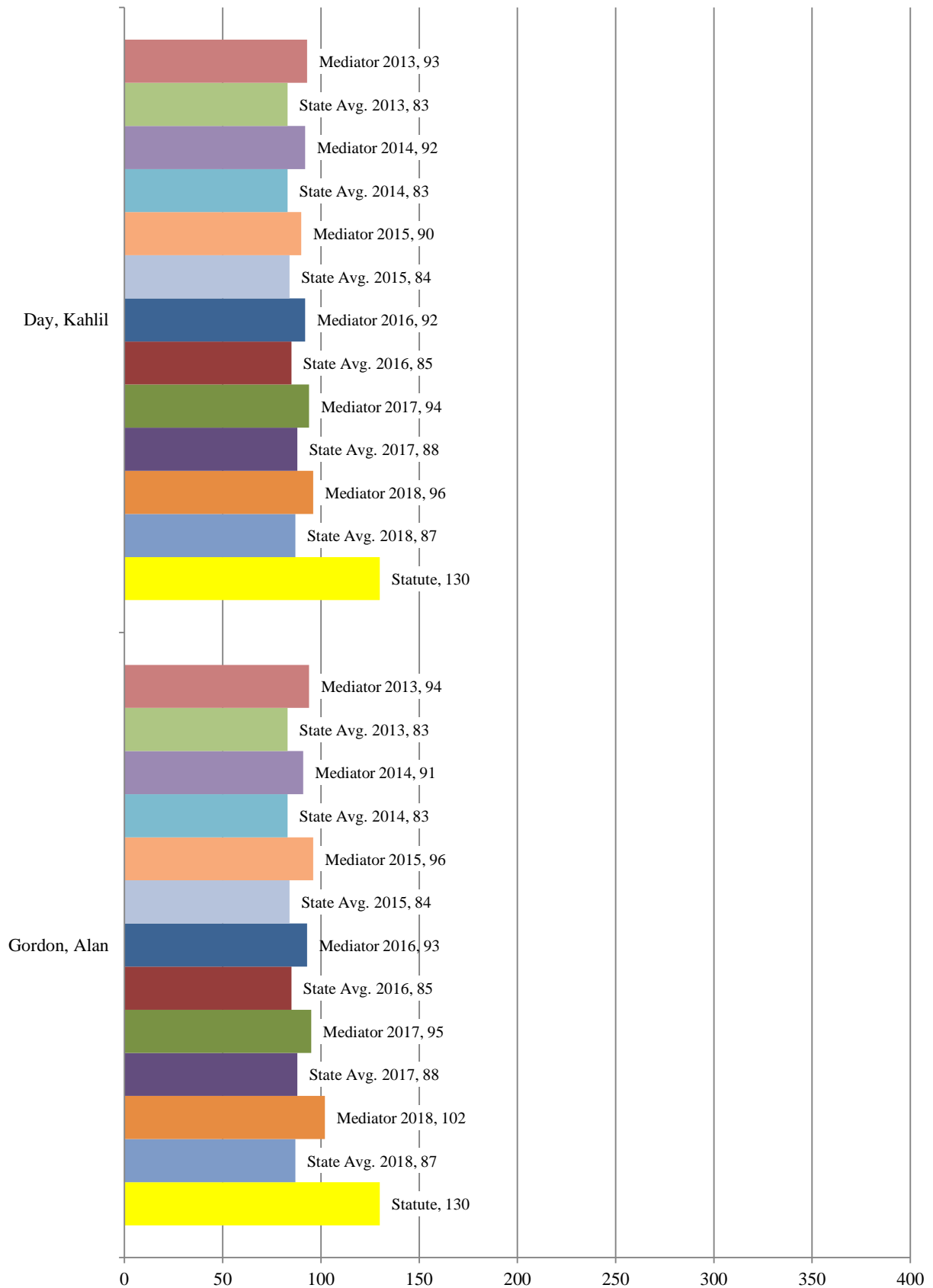
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



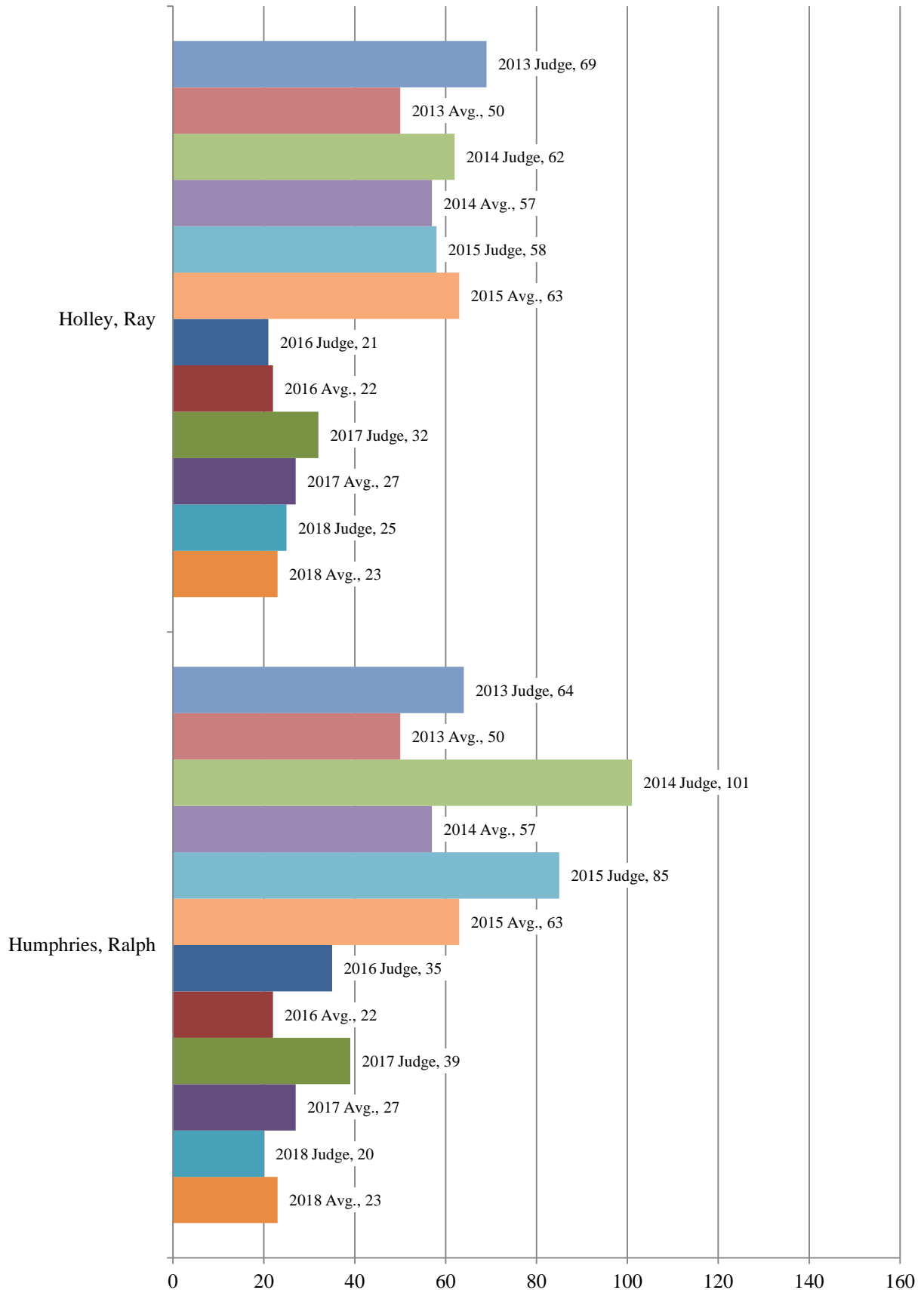
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



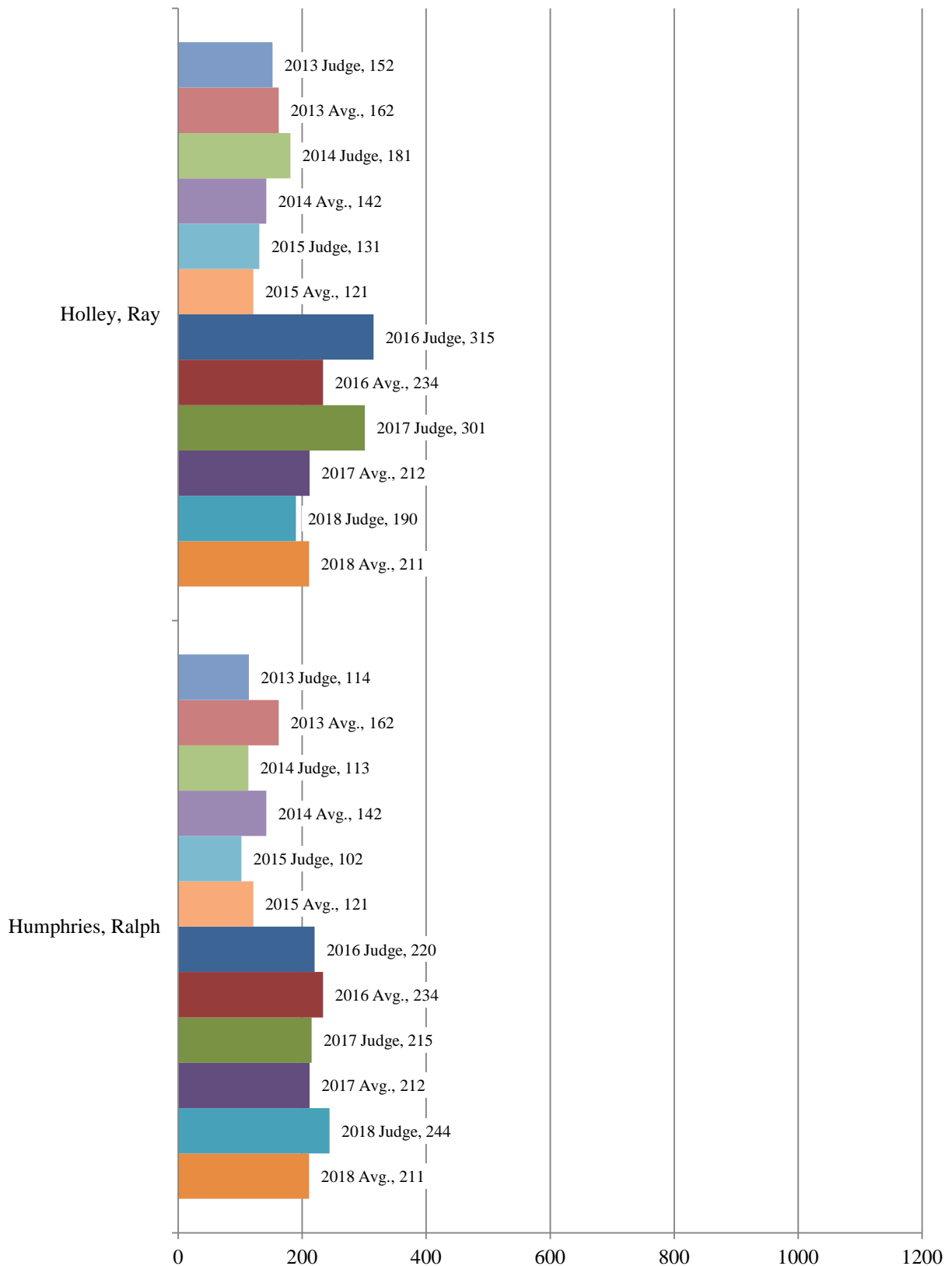
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



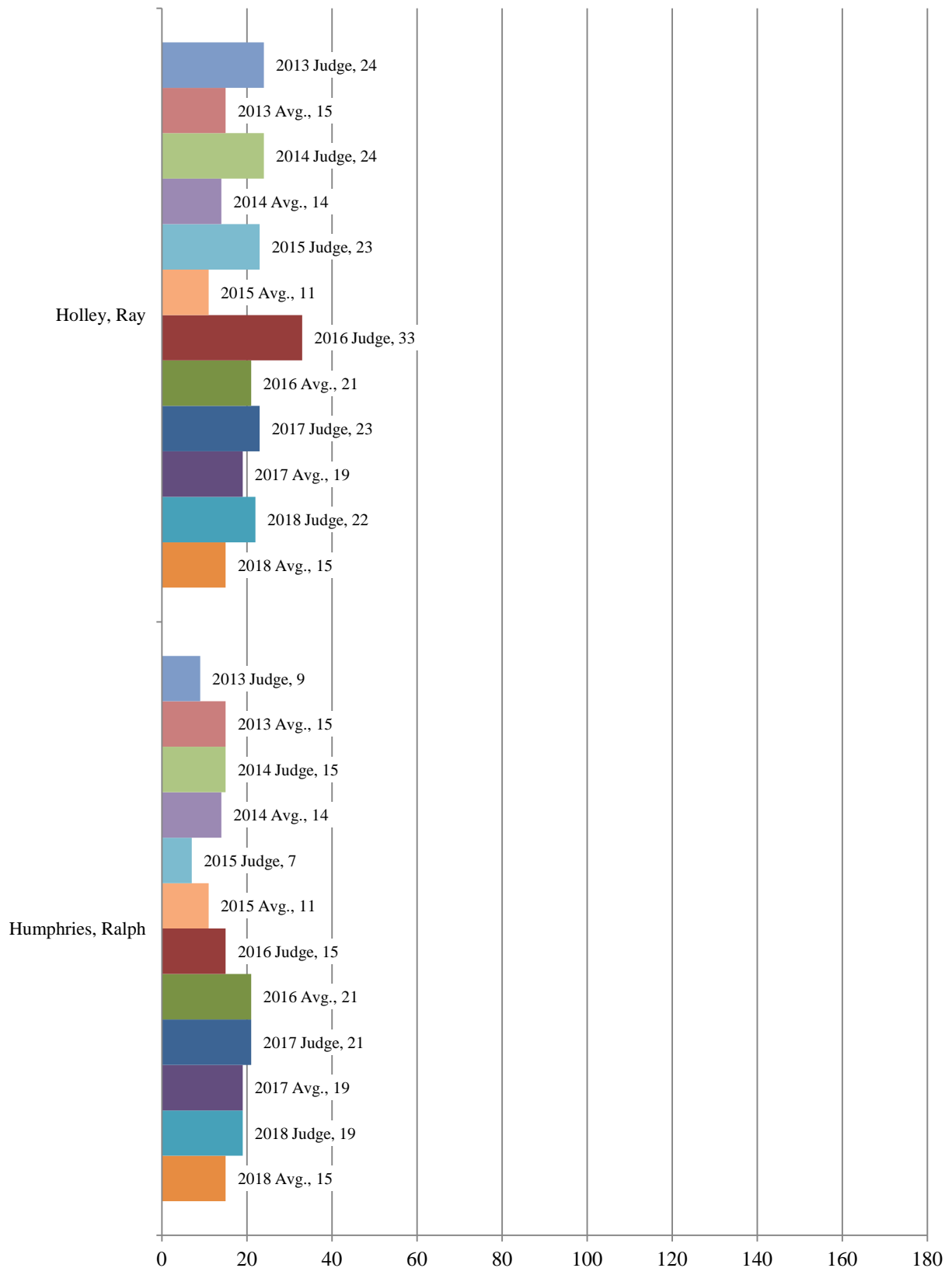
The following graph depicts the total volume of trial orders²⁰¹ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



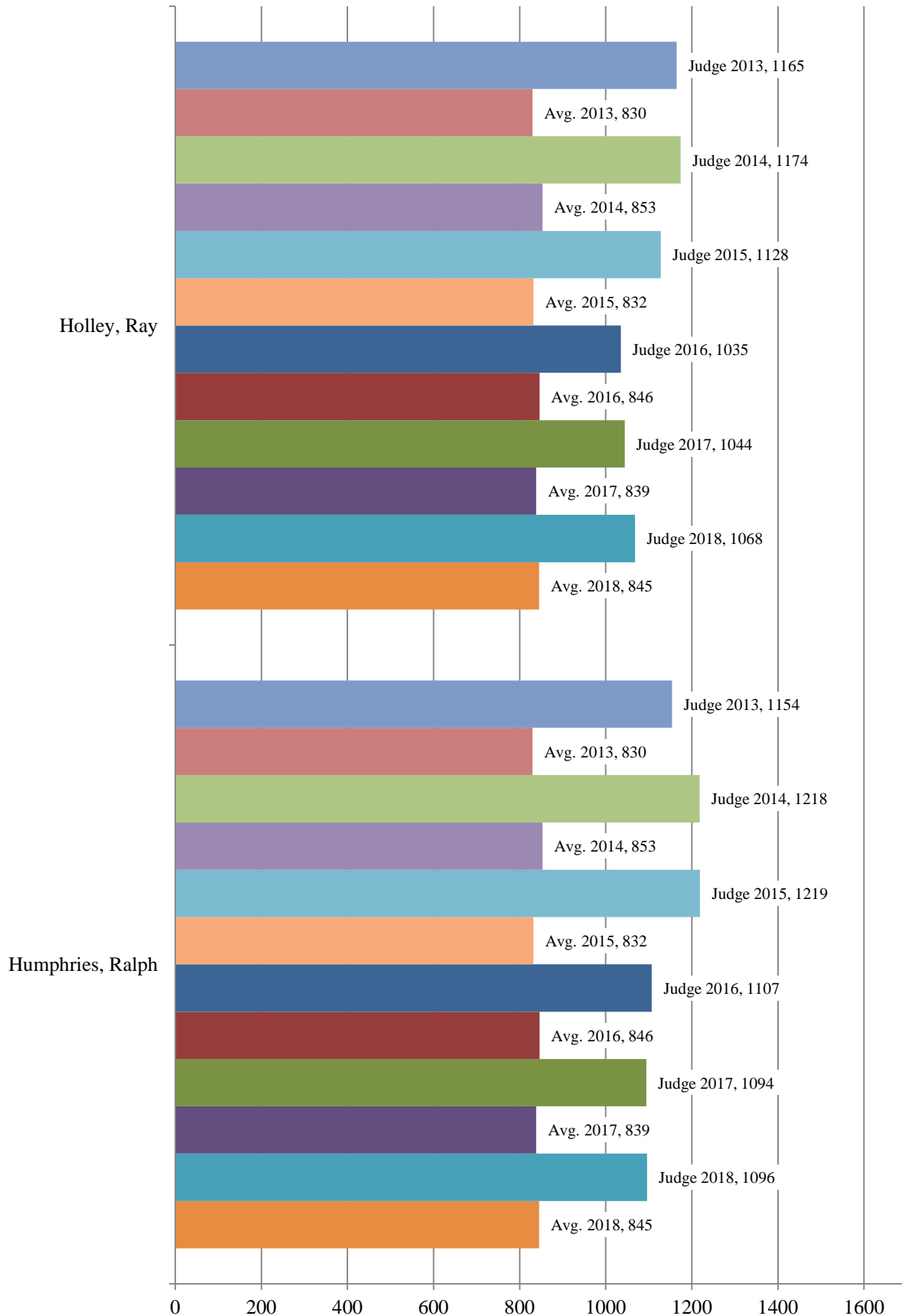
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



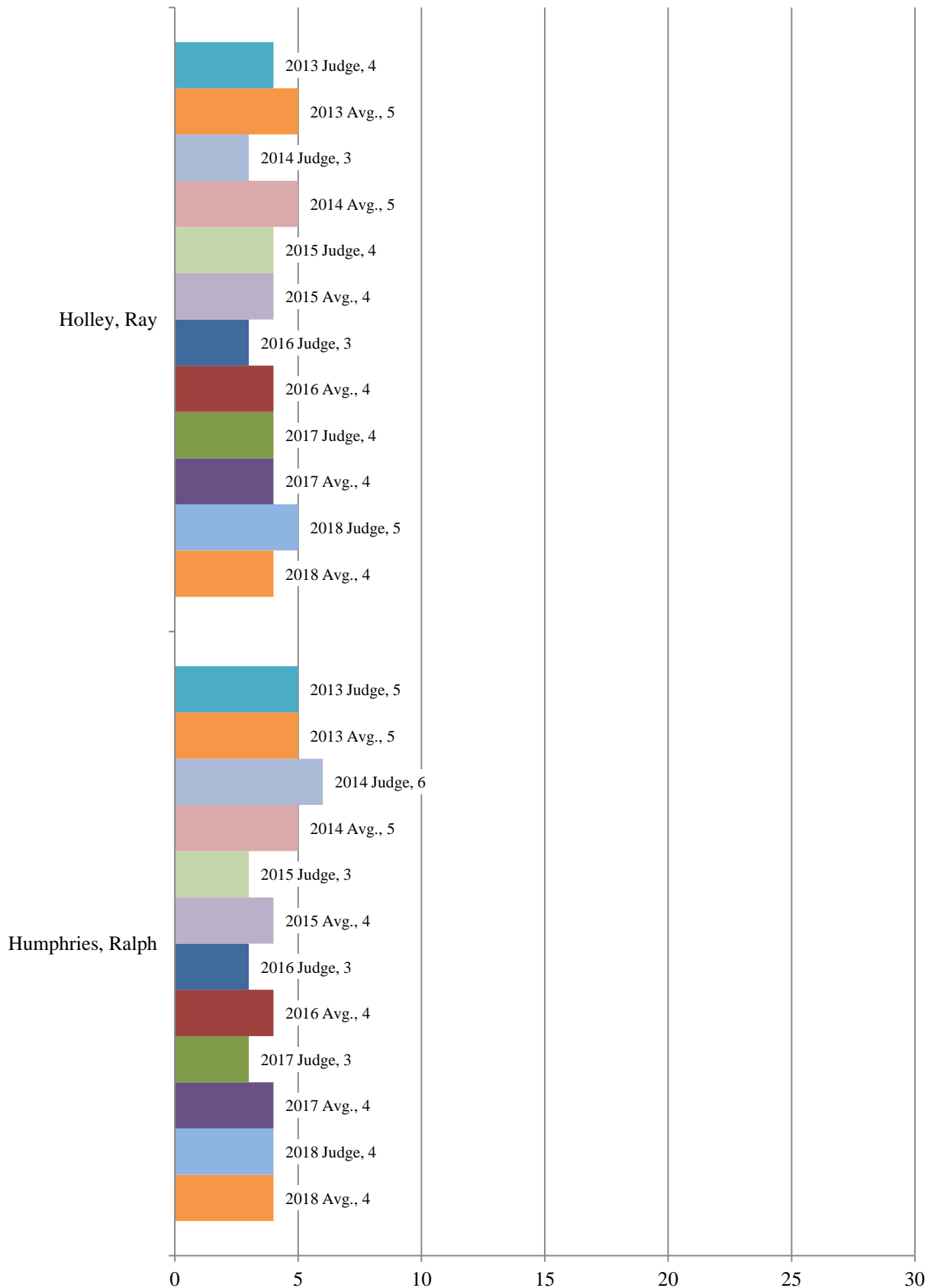
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



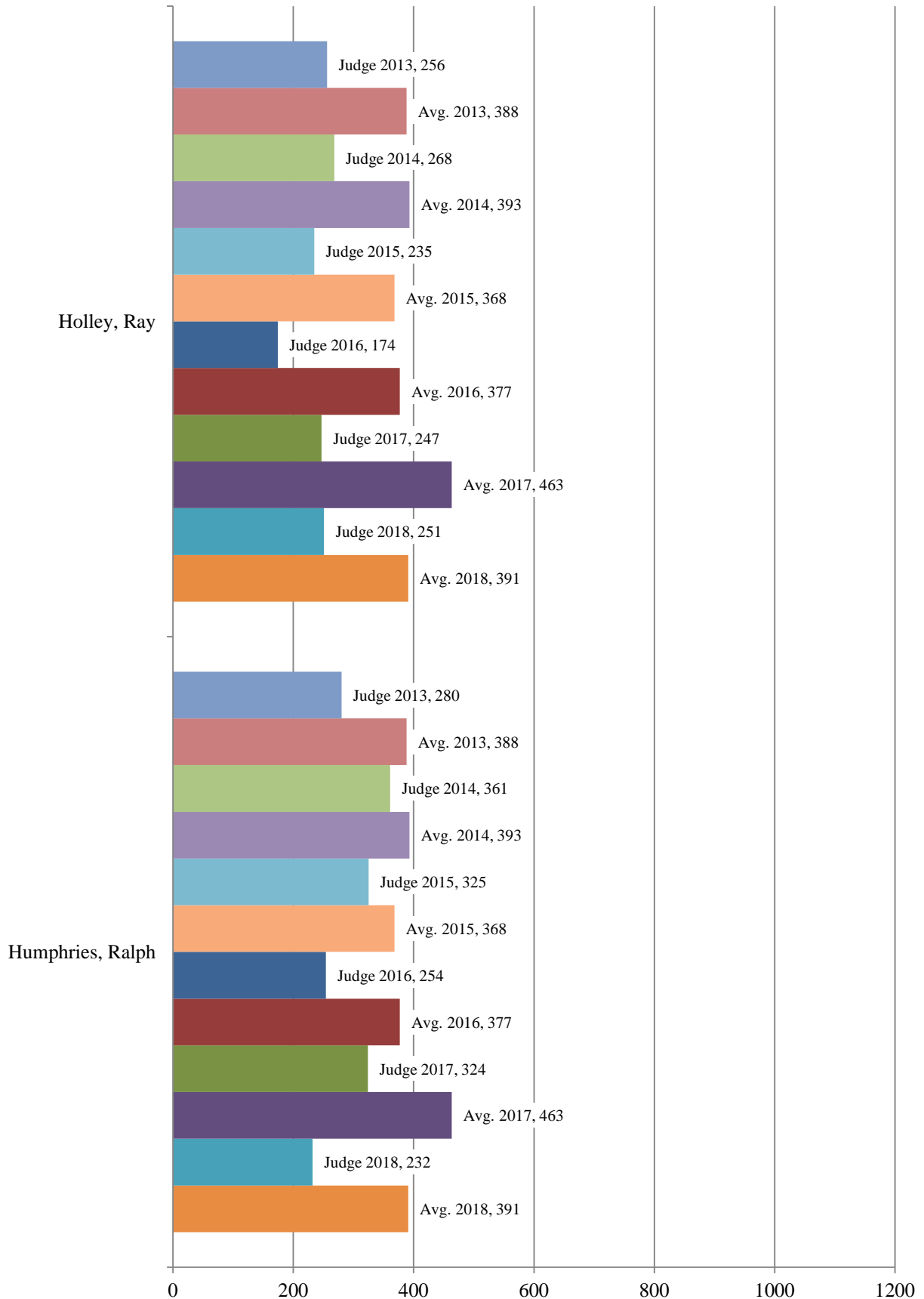
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



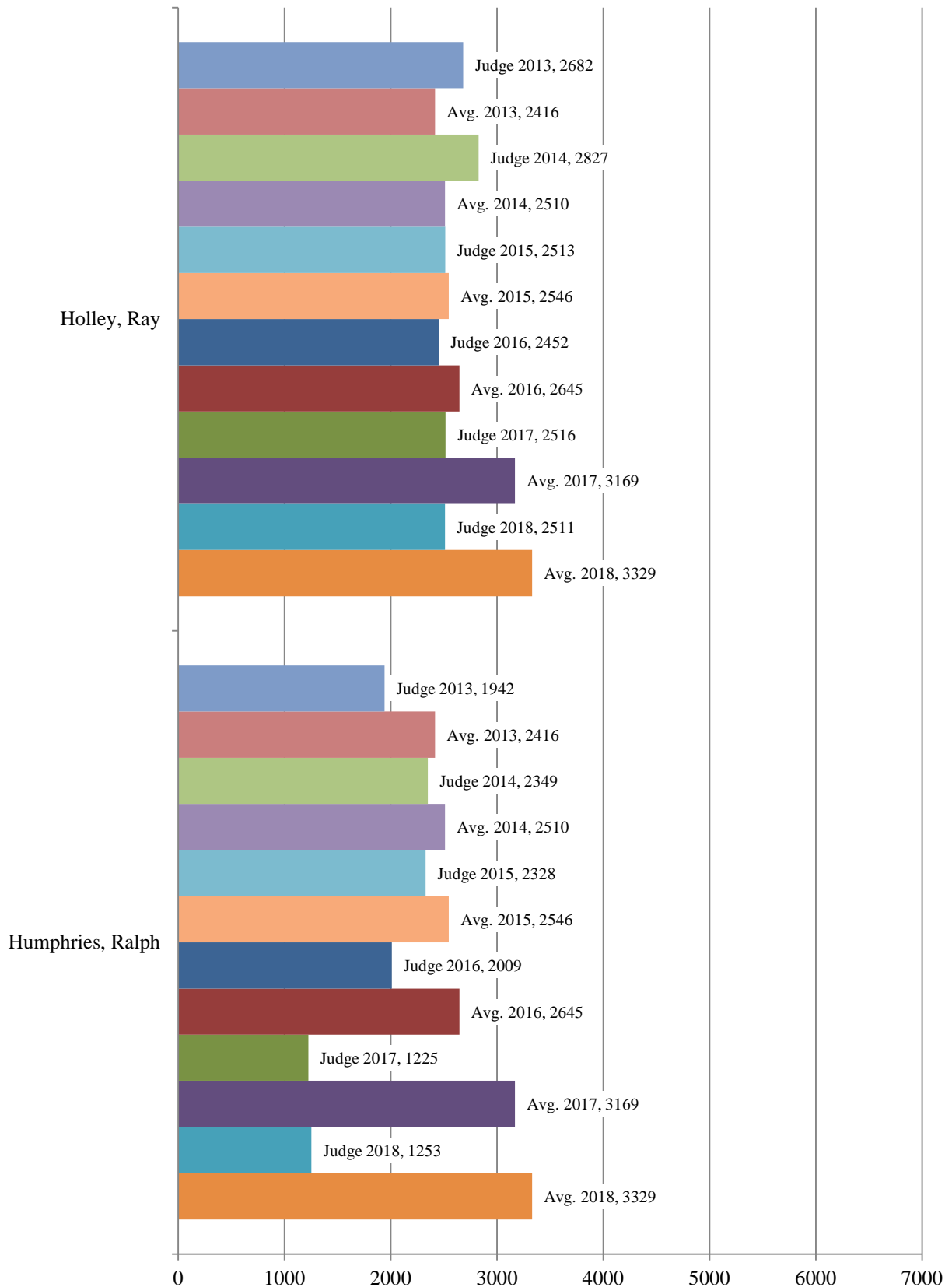
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



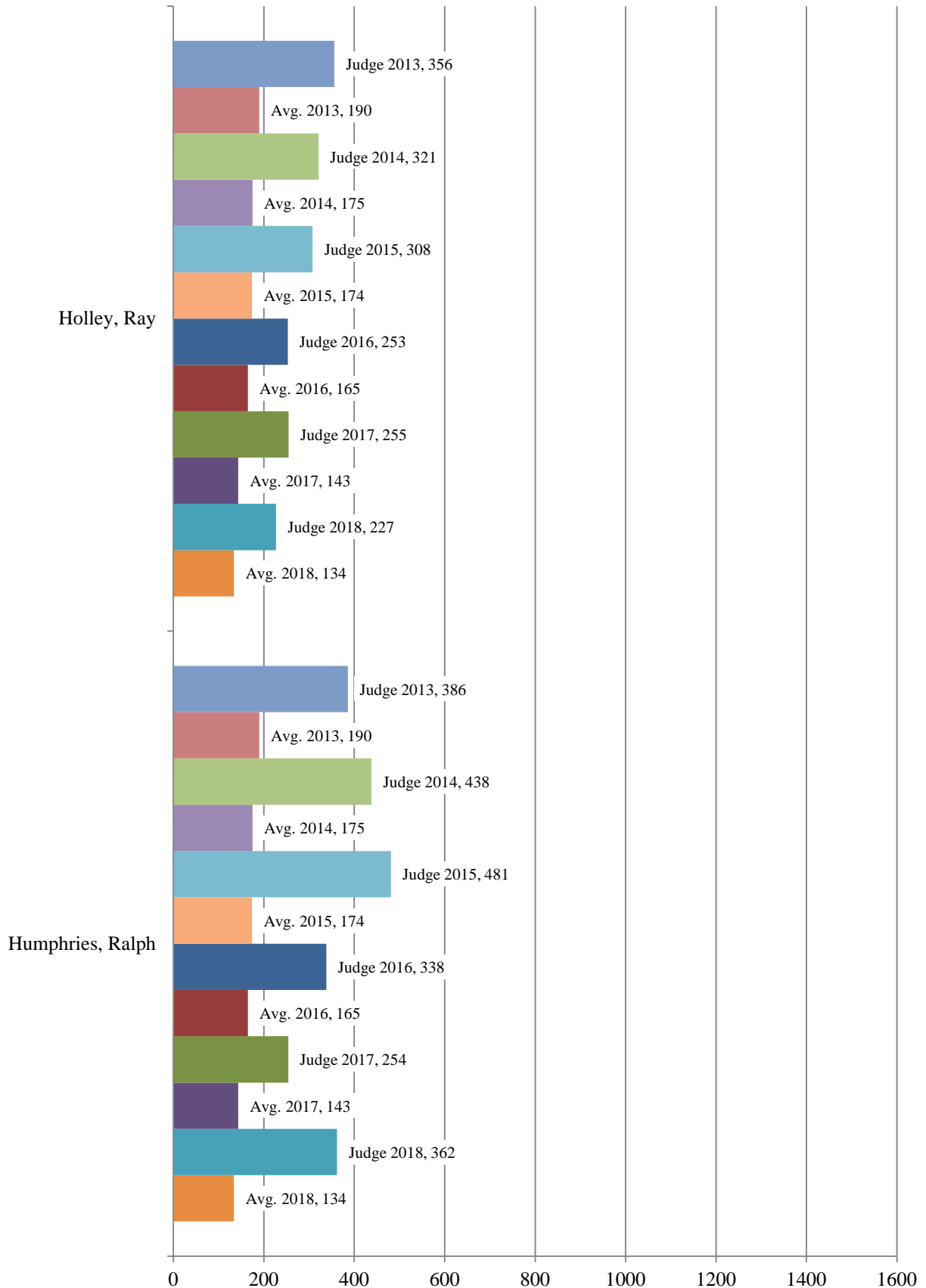
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



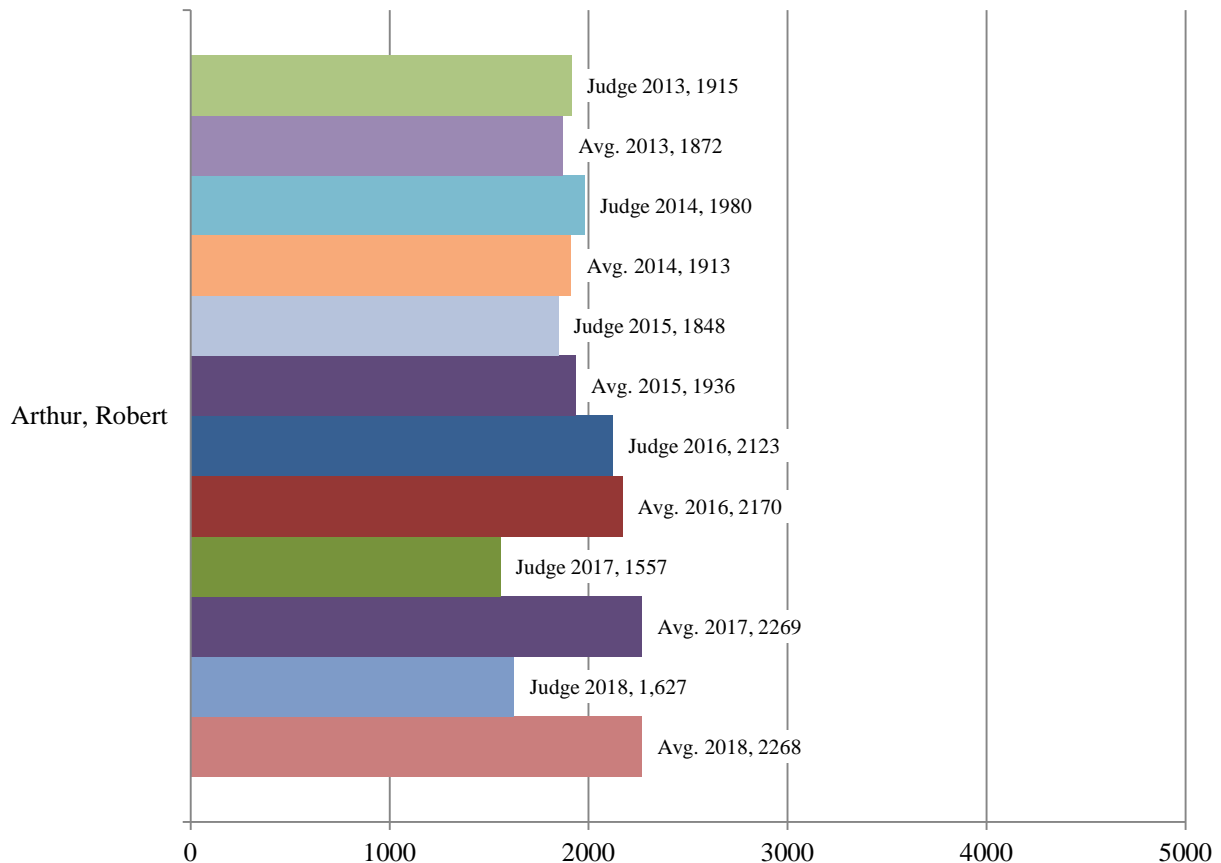
Appendix “6” District LKL (JCC Arthur):

District LKL includes Hardee, Highlands, and Polk counties.

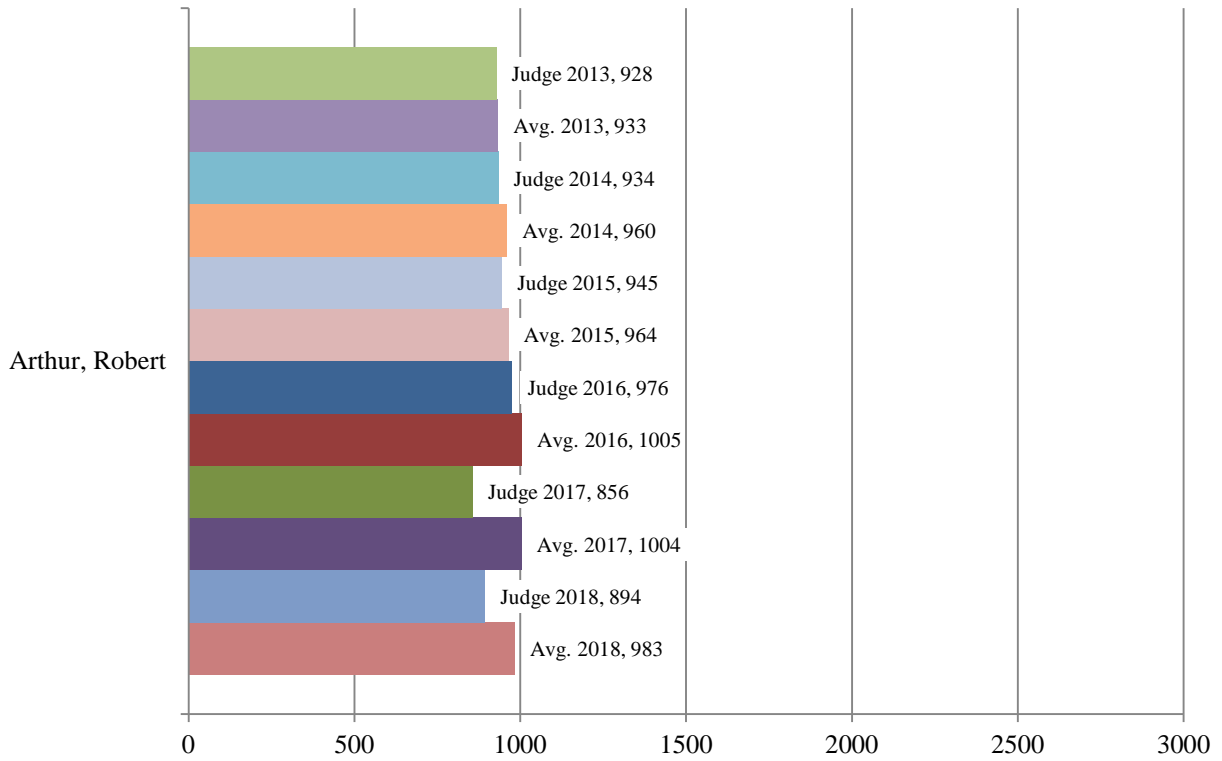
Both “new cases” and Petition volumes in District LKL have been below average the last two years. The reason for the decline is not readily discernable. The effect of these is seen in the year-end pending petition inventory, which is also markedly below average. The time to trial and time to trial order are both within the statutory parameters in District LKL. The volume of settlements is near average, while the volume of stipulation orders is well below the statewide average. Notably, the Lakeland workload at one time required the contributions of multiple out-of-district judges. That became unnecessary during Judge Sojourner’s tenure, and so far remains so under Judge Arthur.

In 2017-2018 Judge Robert Arthur presented at multiple continuing education seminars including hosting “A Breakfast with the Judges” in November 2017 in which Judge Arthur lead a discussion with judges from the Tampa and Orlando District Offices for attorneys, paralegals and staff on the topic of practices and procedures of the OJCC. Judge Arthur also spoke on the topic the “120 rule” for the Florida Bar at a Lunch-n-Learn seminar in February 2018. In June 2018 Judge Arthur once again participated in a panel discussion along with judges from the Orlando, Daytona, Sebastian, and Gainesville District Offices as part of the Orange County Bar Associations “Best Practices Seminar.” He also volunteered as a judge for the E. Earle Zehmer Moot Court Competition, is a member of the committee of JCC’s who organize and present “Second Friday” continuing legal education seminars for the JCC’s and State Mediators and is working with judges from two other District Offices to update and improve the Pre-trial Stipulation Form recommended by the OJCC. Judge Arthur is also the current President of the Tampa Bay Workers’ Compensation, Disability Inns of Court.

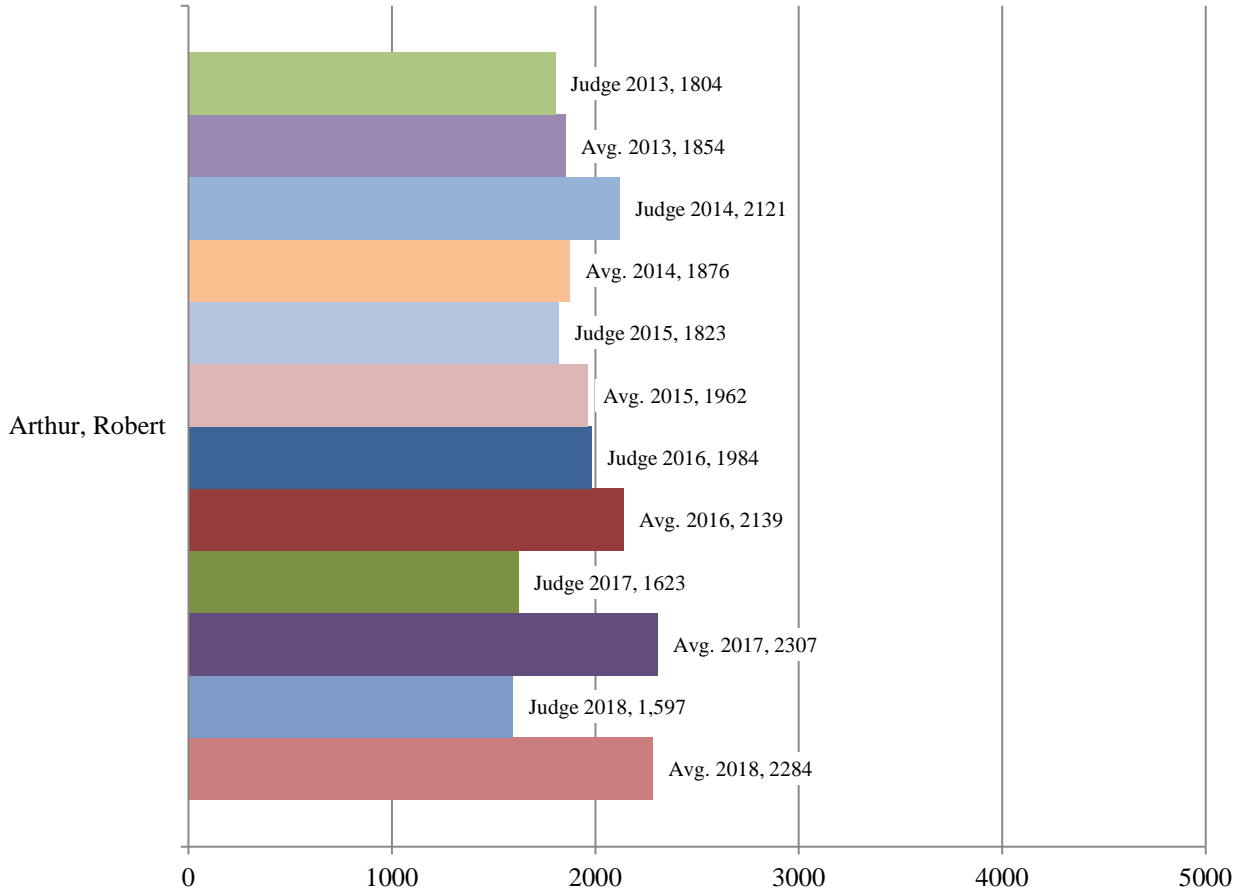
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



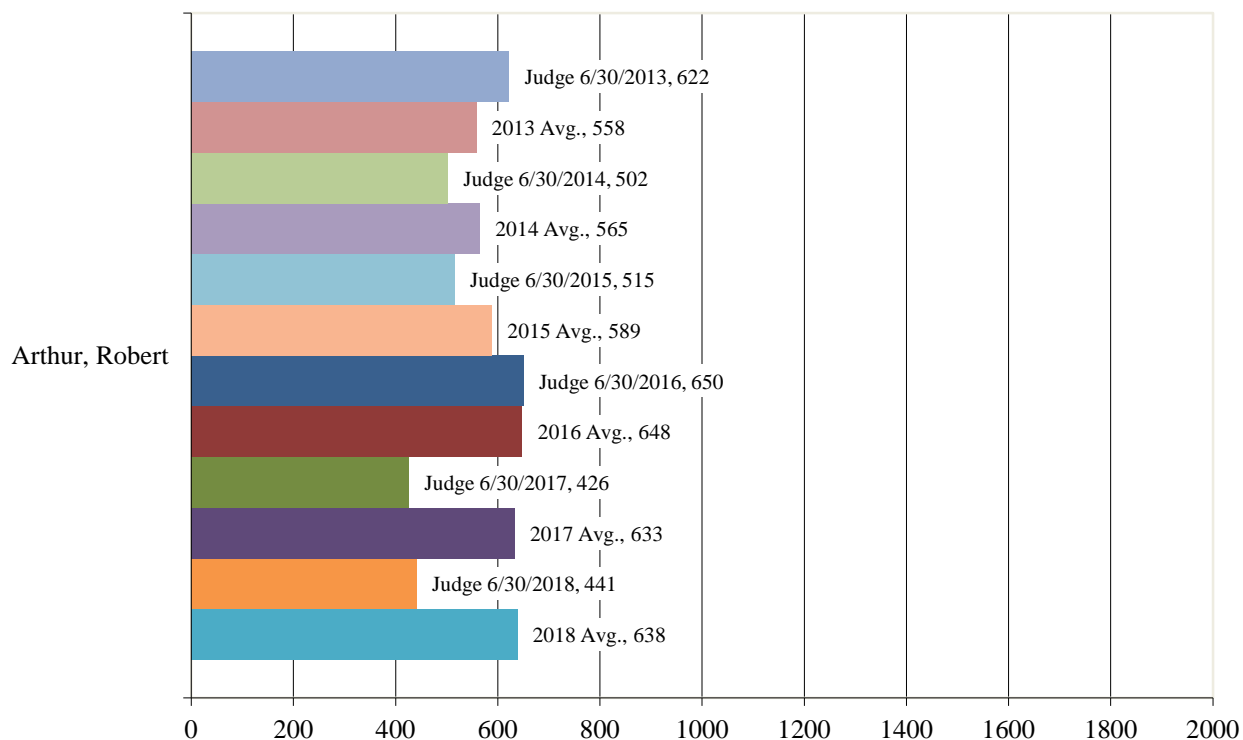
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



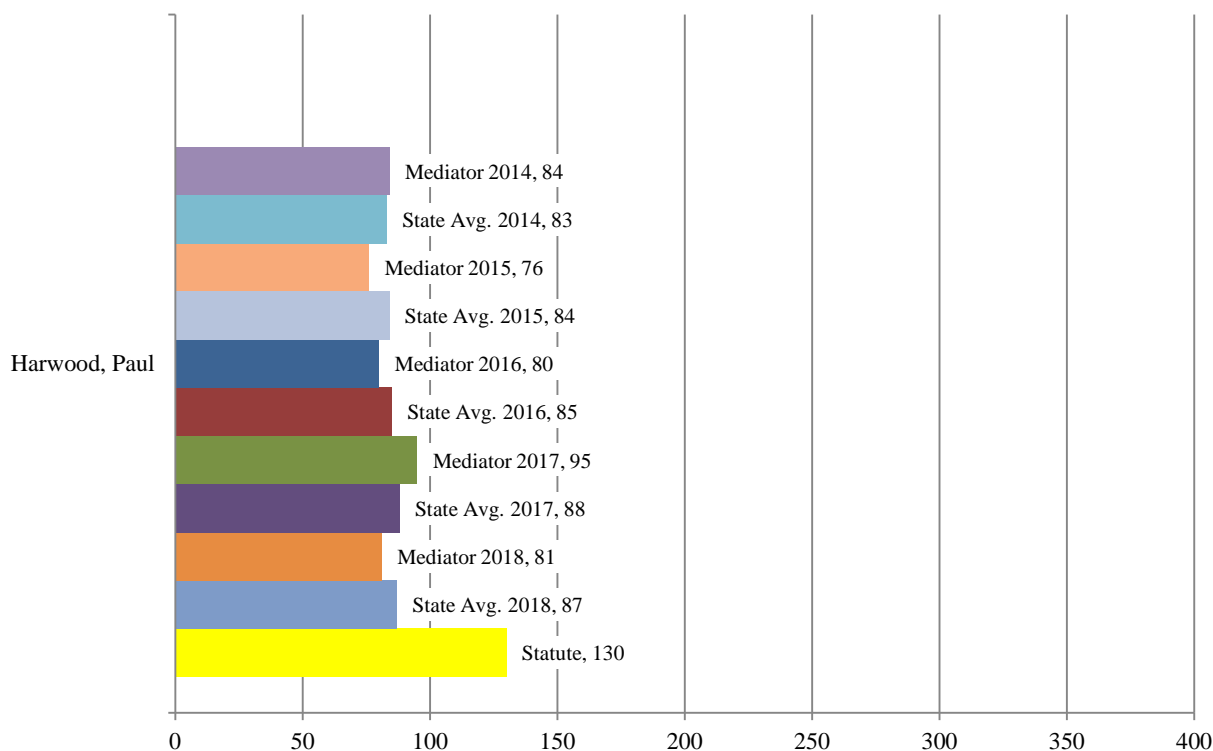
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



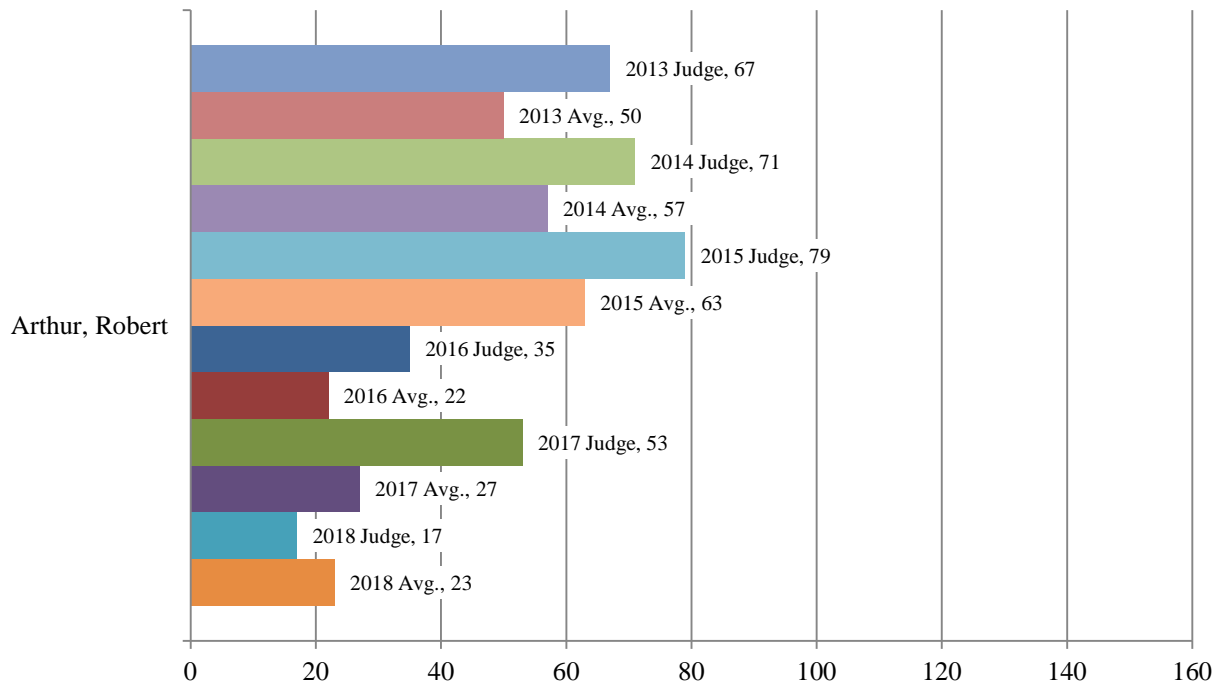
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



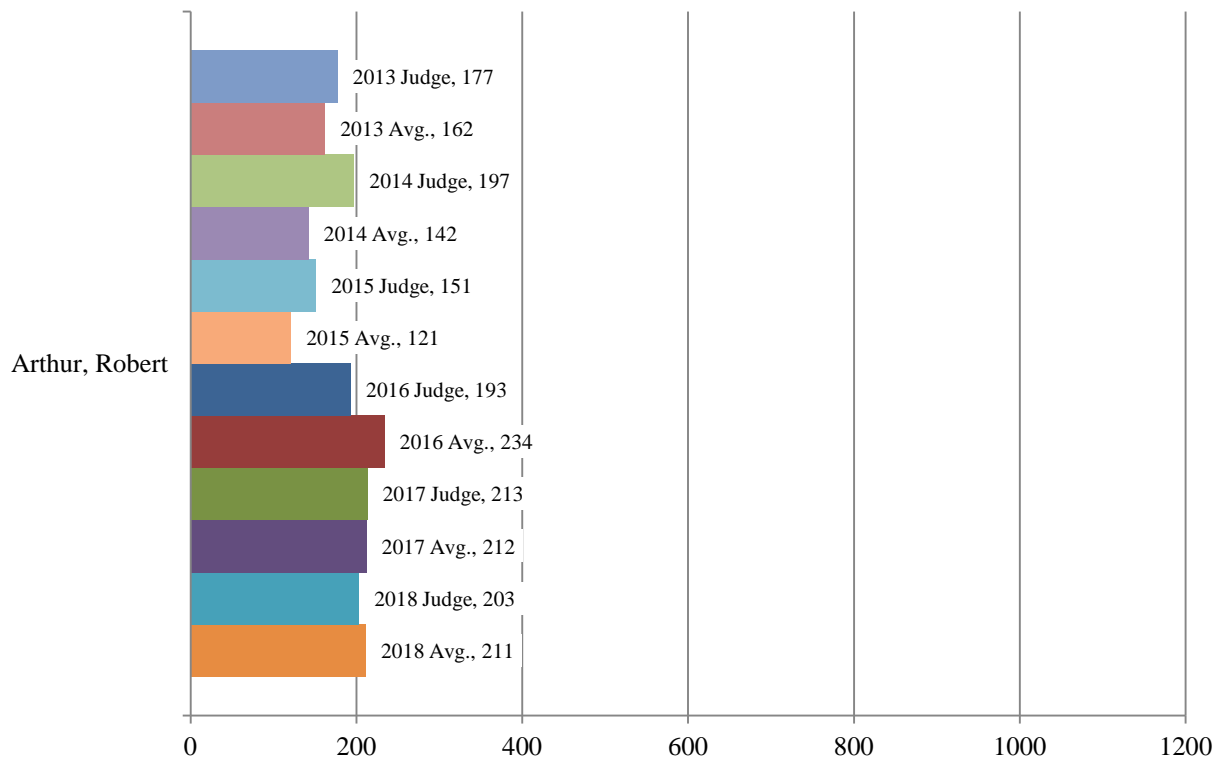
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.²⁰²



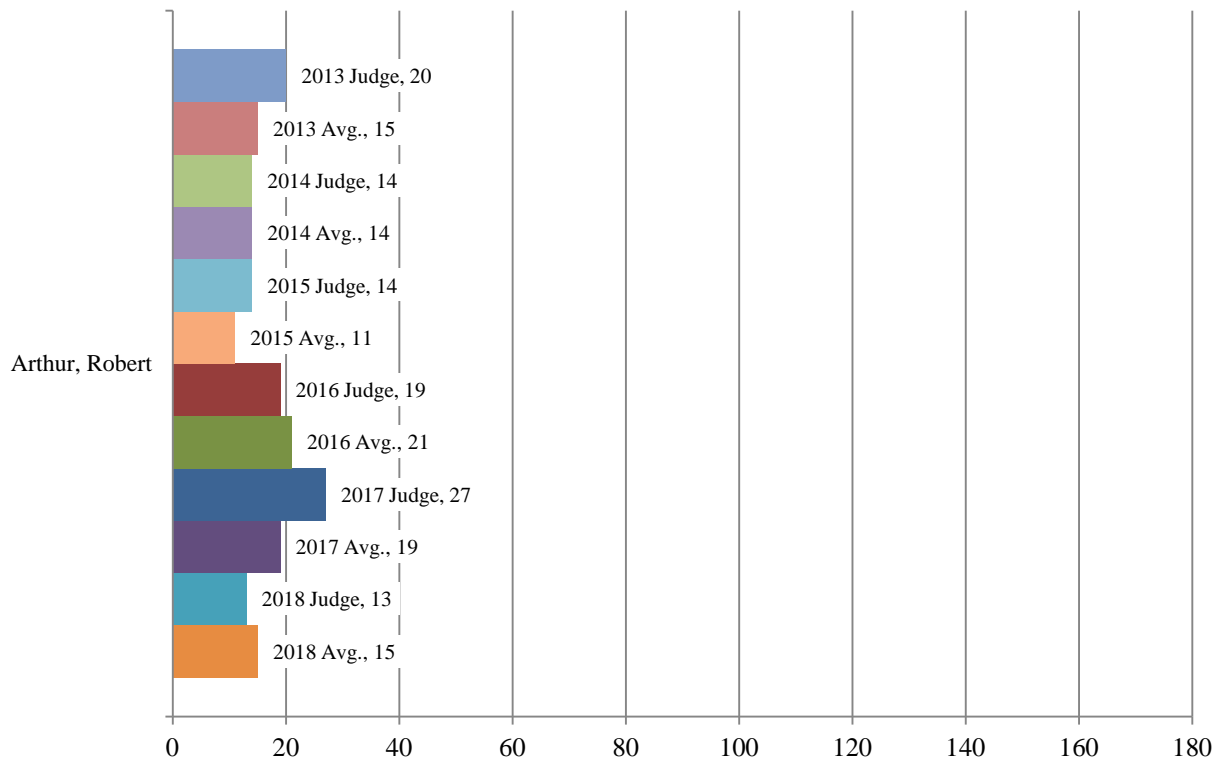
The following graph depicts the total volume of trial orders²⁰³ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



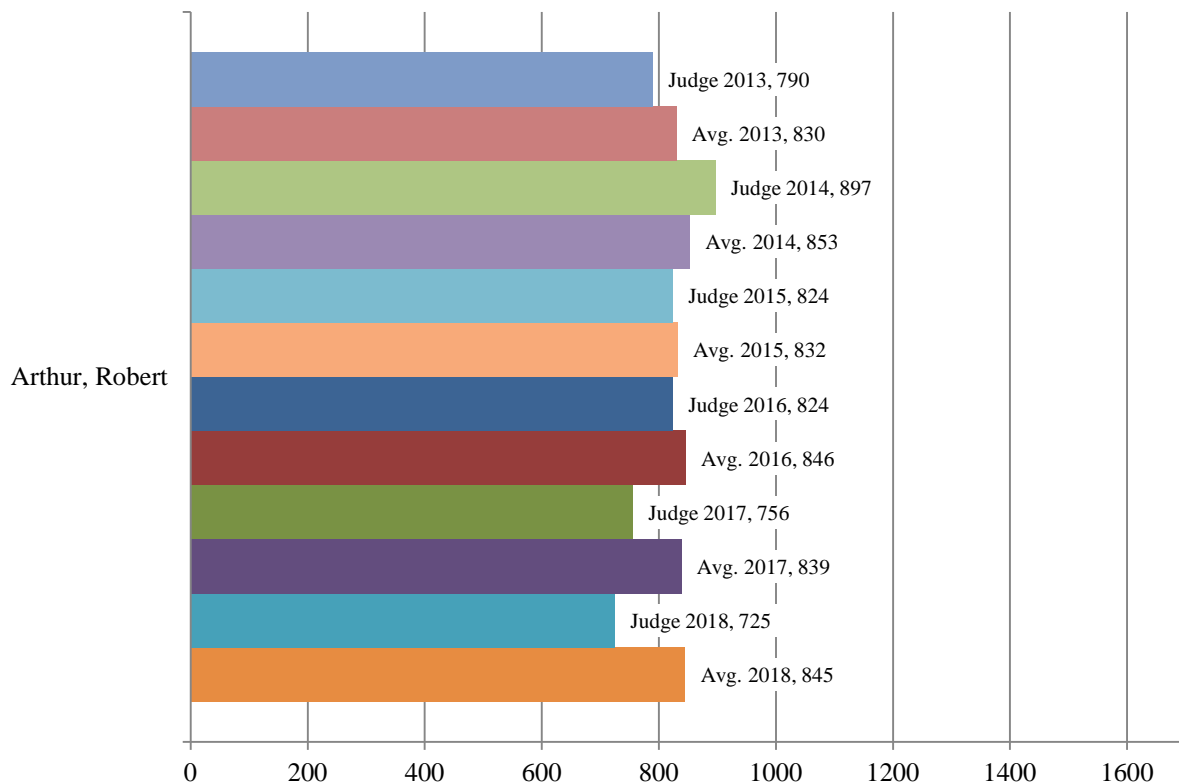
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



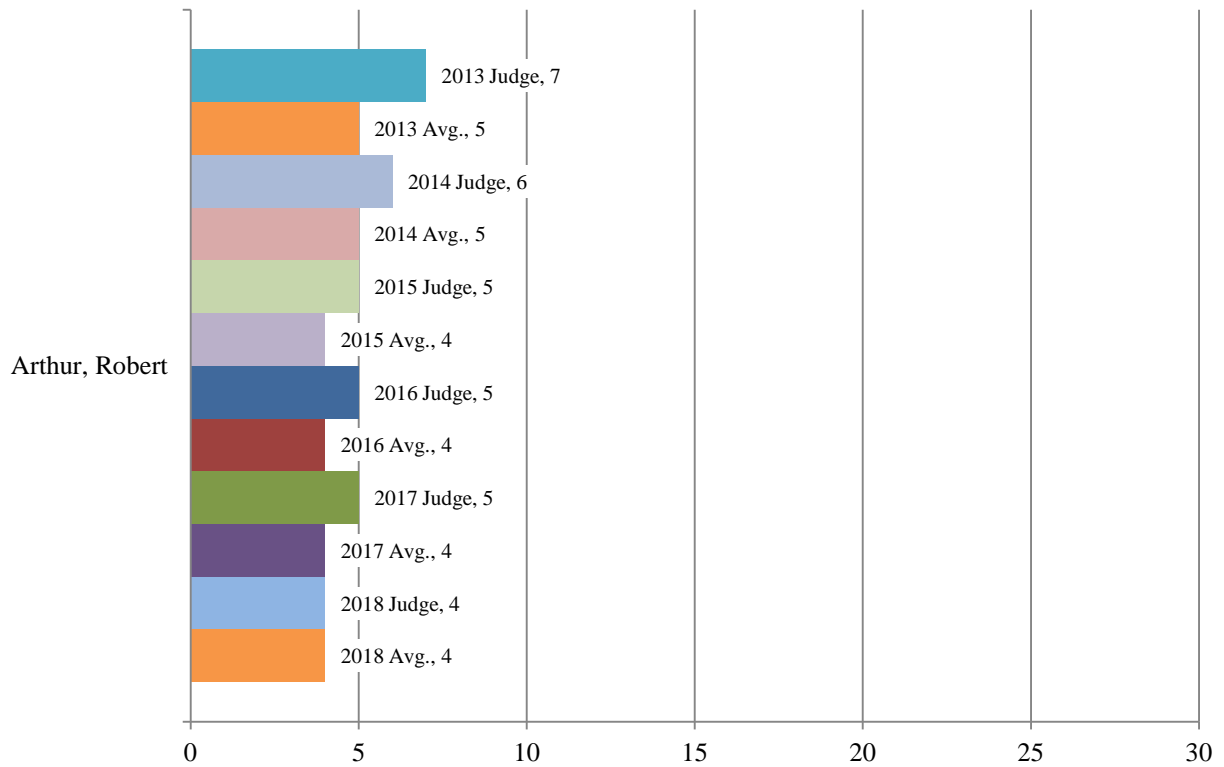
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



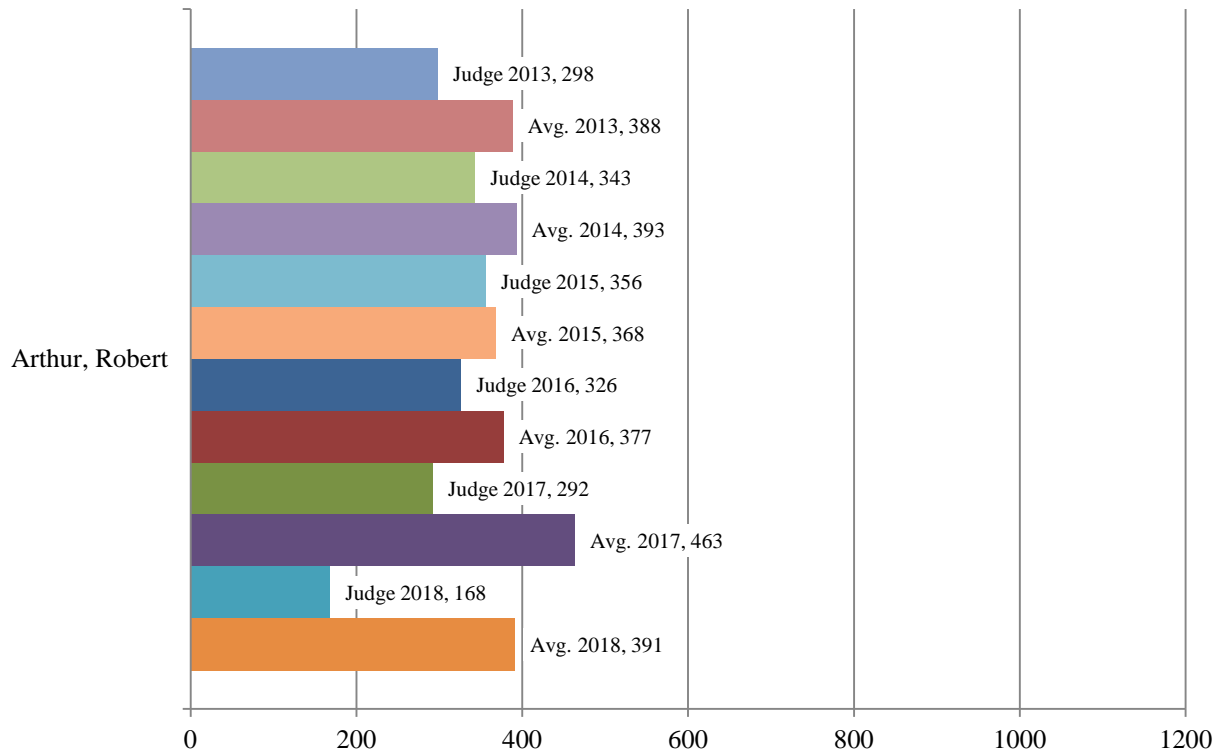
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



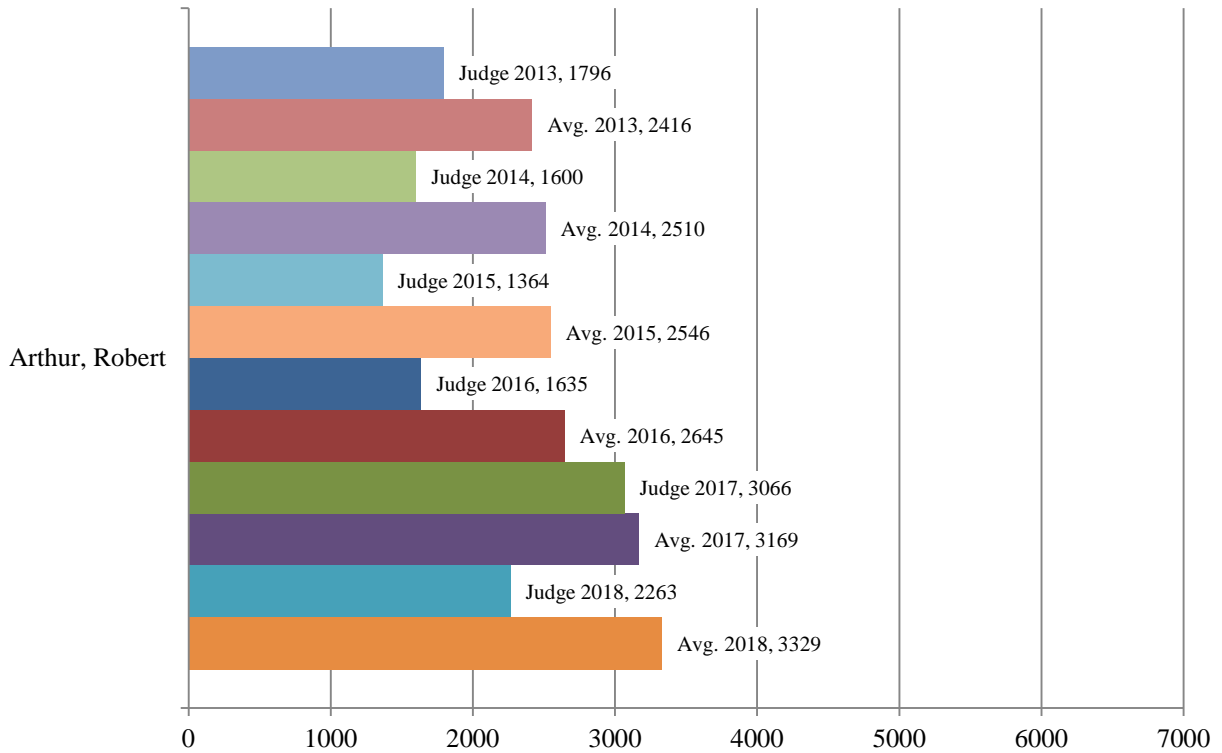
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



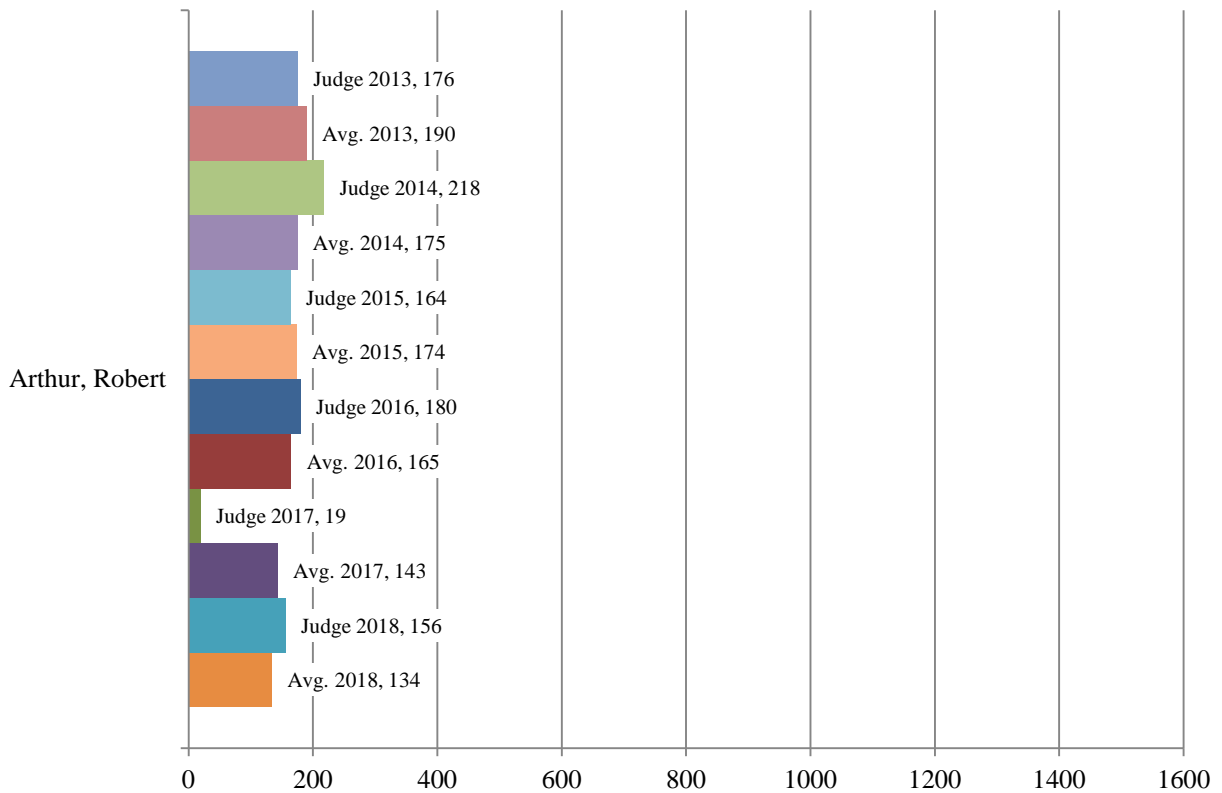
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



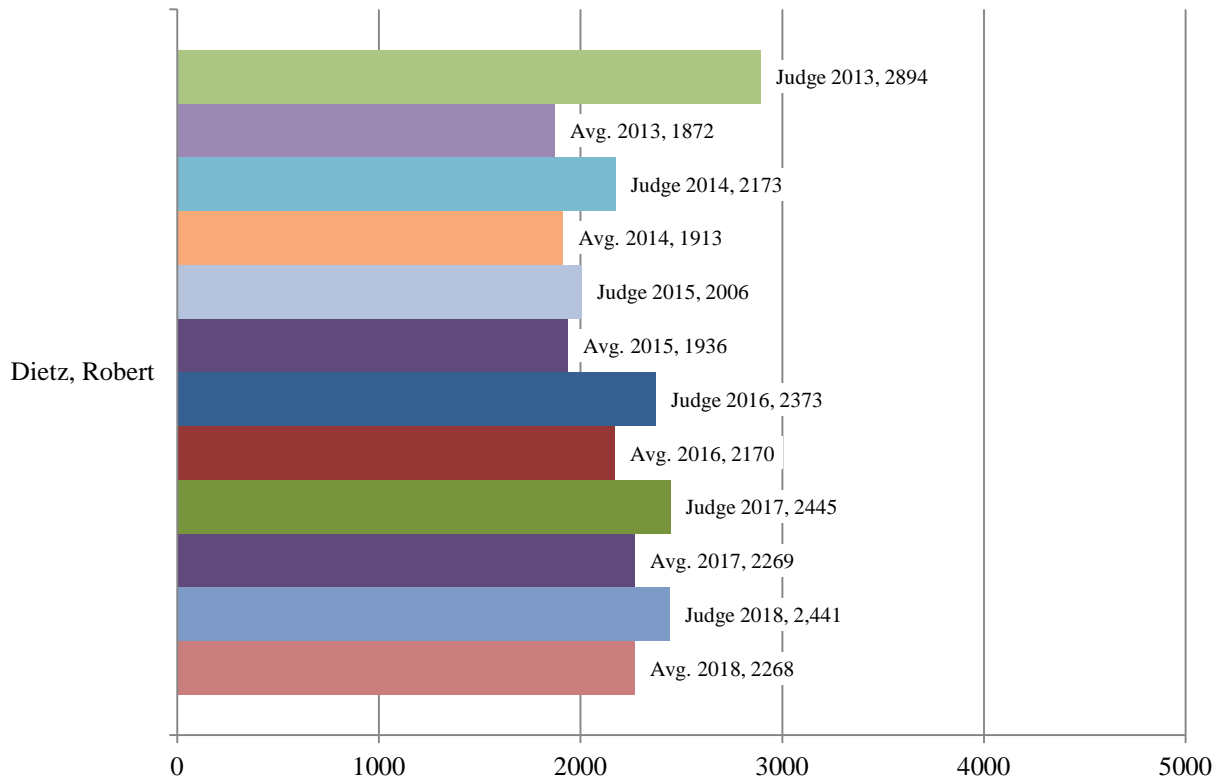
Appendix “7” District MEL (JCC Dietz):

District MEL includes Brevard, Indian River, and Okeechobee counties.

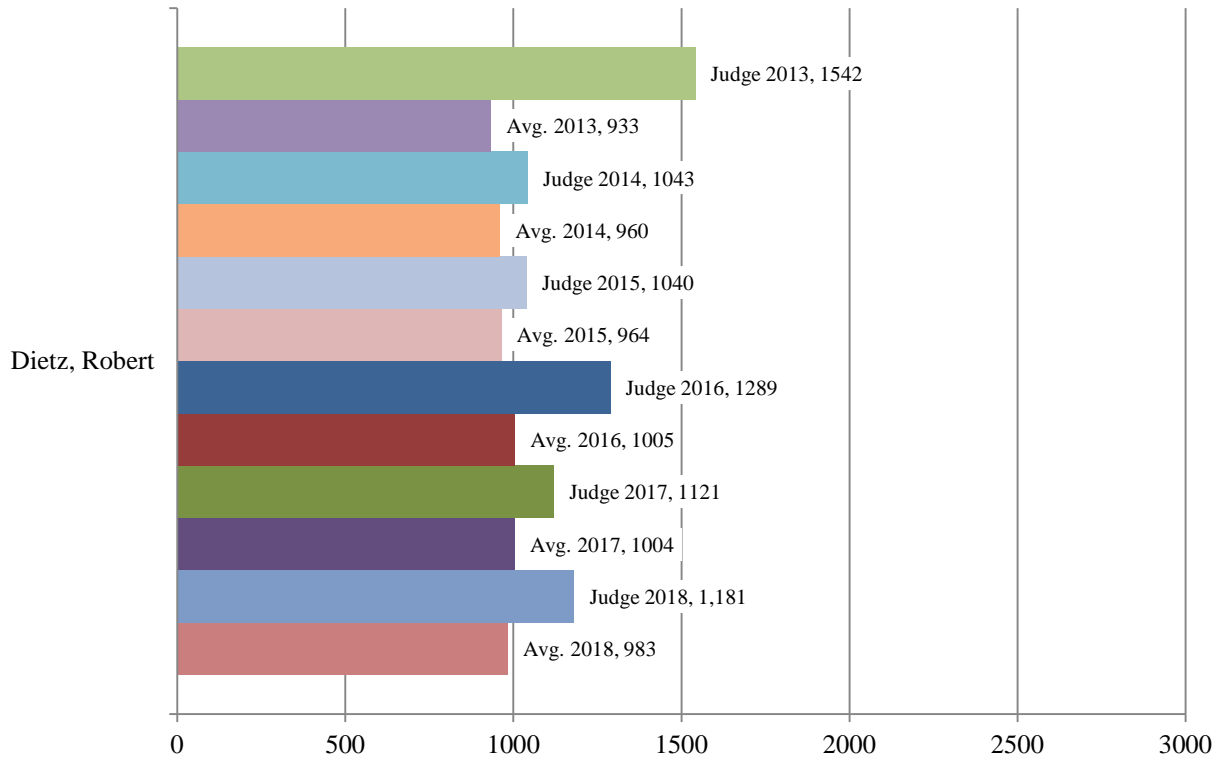
PFB filings and “new case” filings in District MEL have consistently exceeded the statewide average for the last two years. This seems to portend an increasingly busy docket there, which is borne out by the trial volume there in 2017-18. Despite the volumes, the year-end pending petition volume is below the statewide average. Settlement order volume is above the statewide average, while stipulation orders are close to average. The volume of “other orders” and other hearings are both consistent with effective docket management and adherence to the procedural rules.

Judge Dietz is a member of the Brevard and Indian River County Bar Associations, the William Wieland Workers’ Compensation Inns of Court of Central Florida, the National Association of Workers’ Compensation Judiciary, the Board of the Professional Mediation Institute, the WCI Hall of Fame, and a Fellow of the College of Workers’ Compensation Lawyers. In 2017-2018, he chaired the WCI First District Court of Appeal Seminar *Emerging Trends in Workers’ Compensation* in Tallahassee. He moderated panels at the Professional Mediation Institute, the WCI First District Court of Appeal Spring Seminar, The Florida Bar Workers’ Compensation Section Webinar on prosecuting attorney’s fee claims, and two Office of JCCs Second Friday programs. He has spoken at Bench/Bar programs in Sebastian, Orlando, and West Palm Beach, at the National Association of Workers’ Compensation Judiciary Judicial College on mediation, and at the Florida Defense Lawyer Association annual meeting on the constitutional challenges to Section 440 in the 2016 holdings of the Florida Supreme Court and First District Court of Appeal. He served as a judge at the E. Earle Zehmer Moot Court Competition and was an Adjunct Professor of Workers’ Compensation Law and Writing and Arguing for the Win in Front of the Judge at Barry Law School. Judge Dietz was active in the community through Give Kids the World Work Day, Operation Inasmuch, and Friends of 440, moderating trivia competitions in Melbourne and West Palm Beach. He is an instructor for Title 1 elementary and middle school chess clubs and had four students in the top 15 of the Orange County elementary and middle school tournament (2nd, 3rd, 10th and 14th).

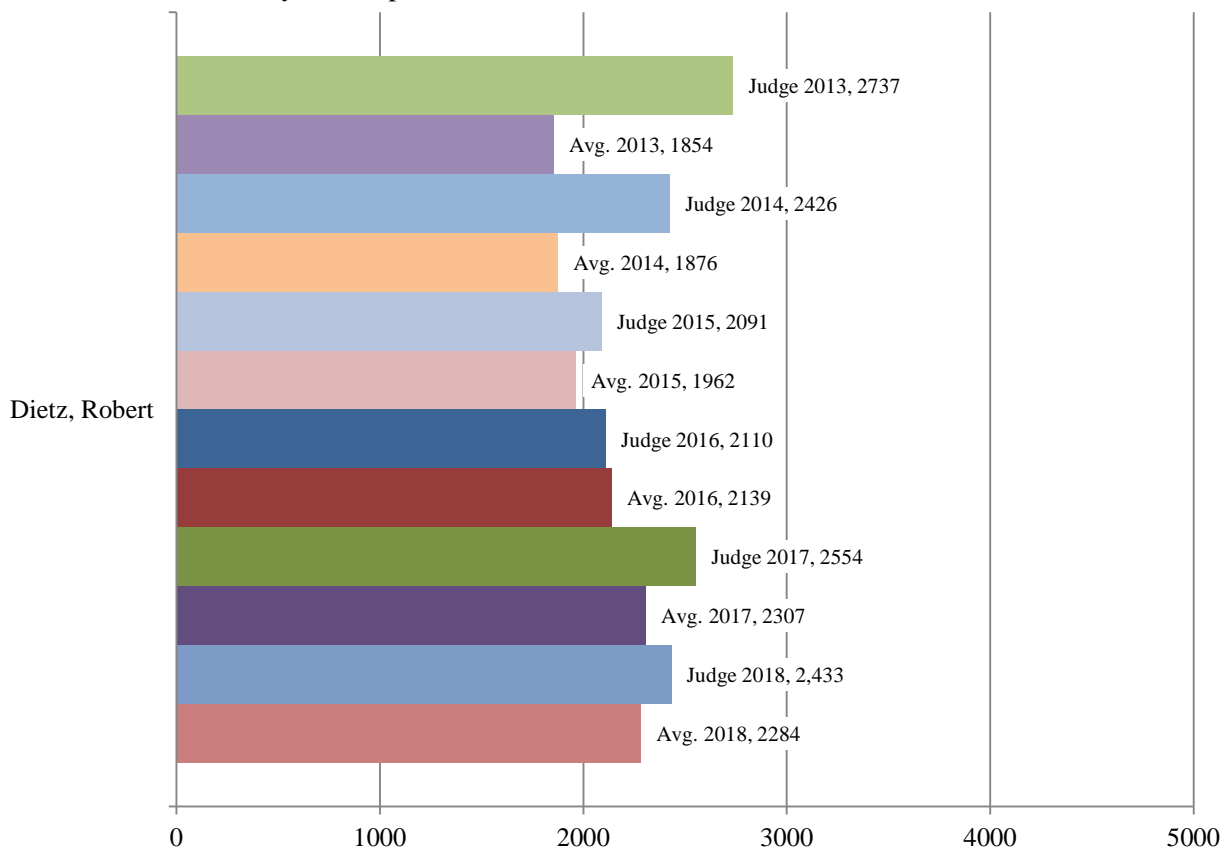
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



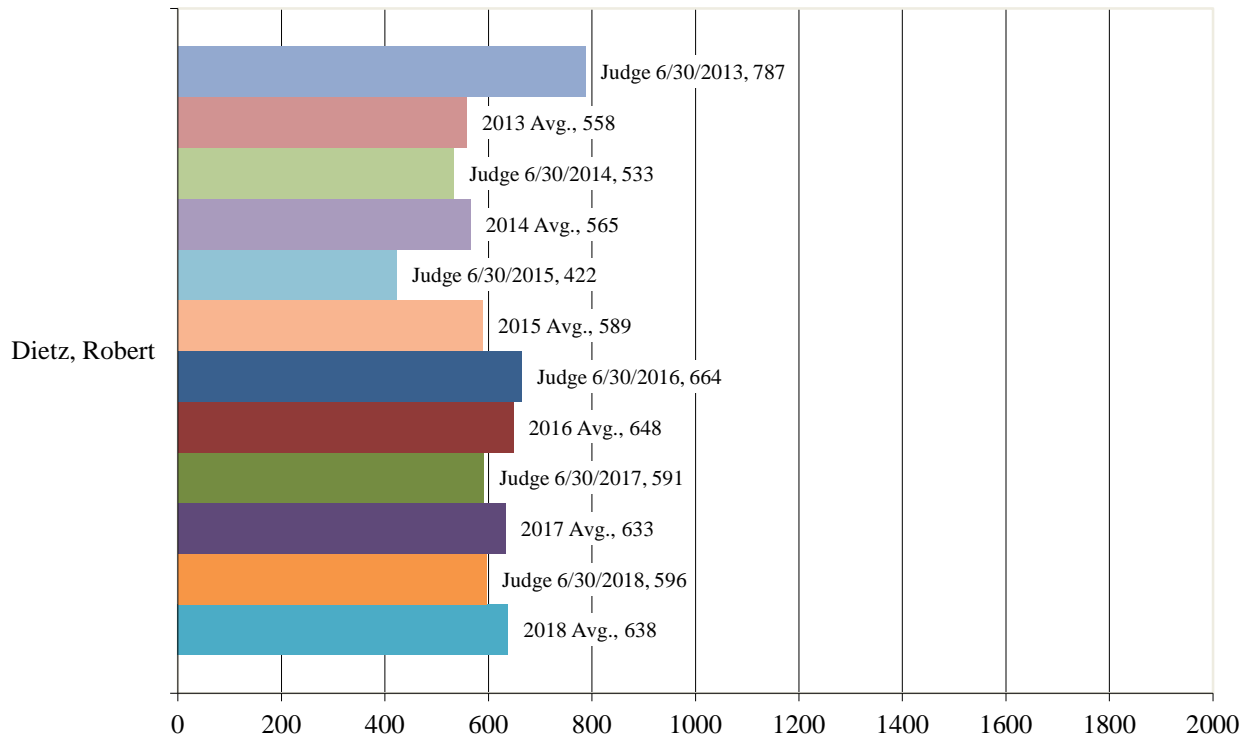
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



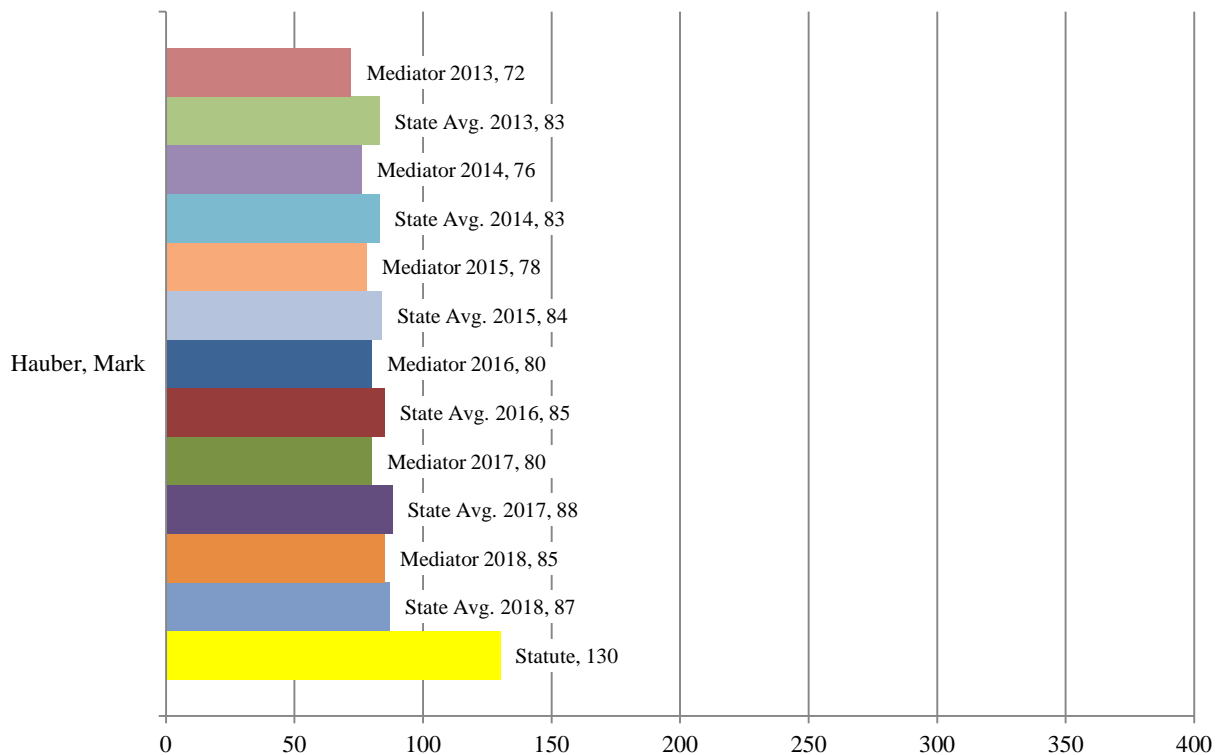
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



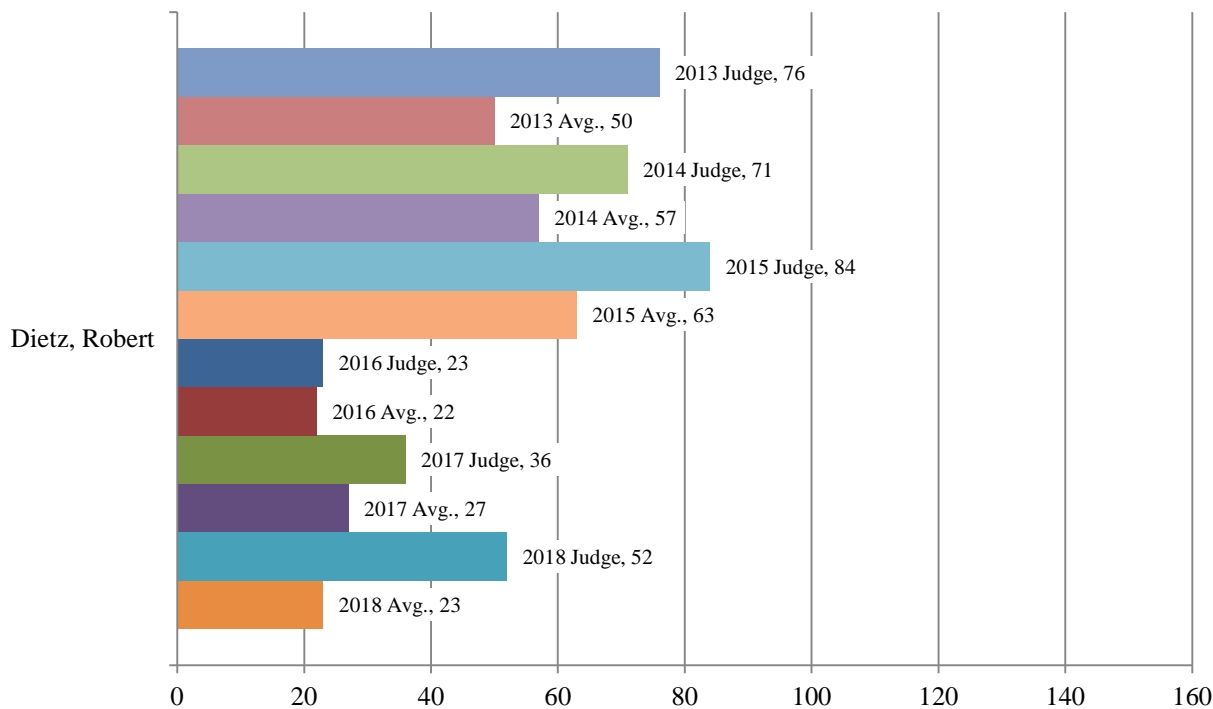
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



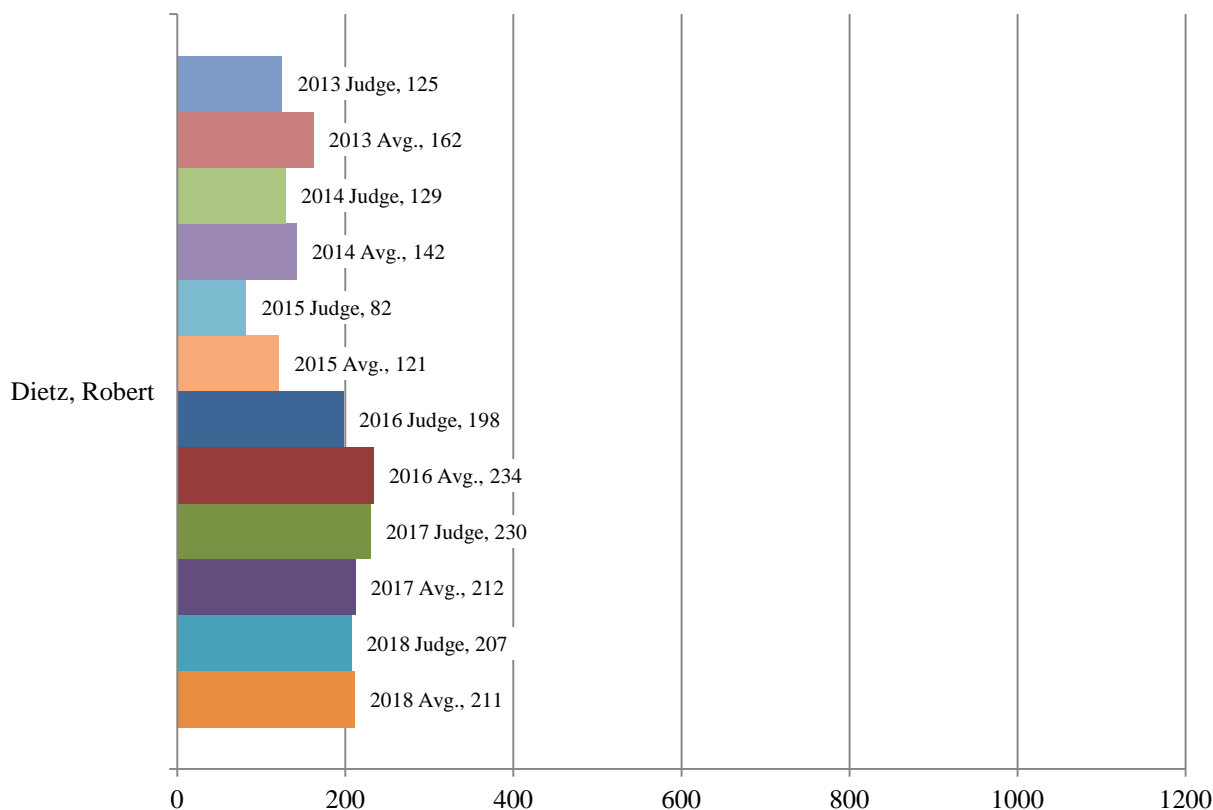
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



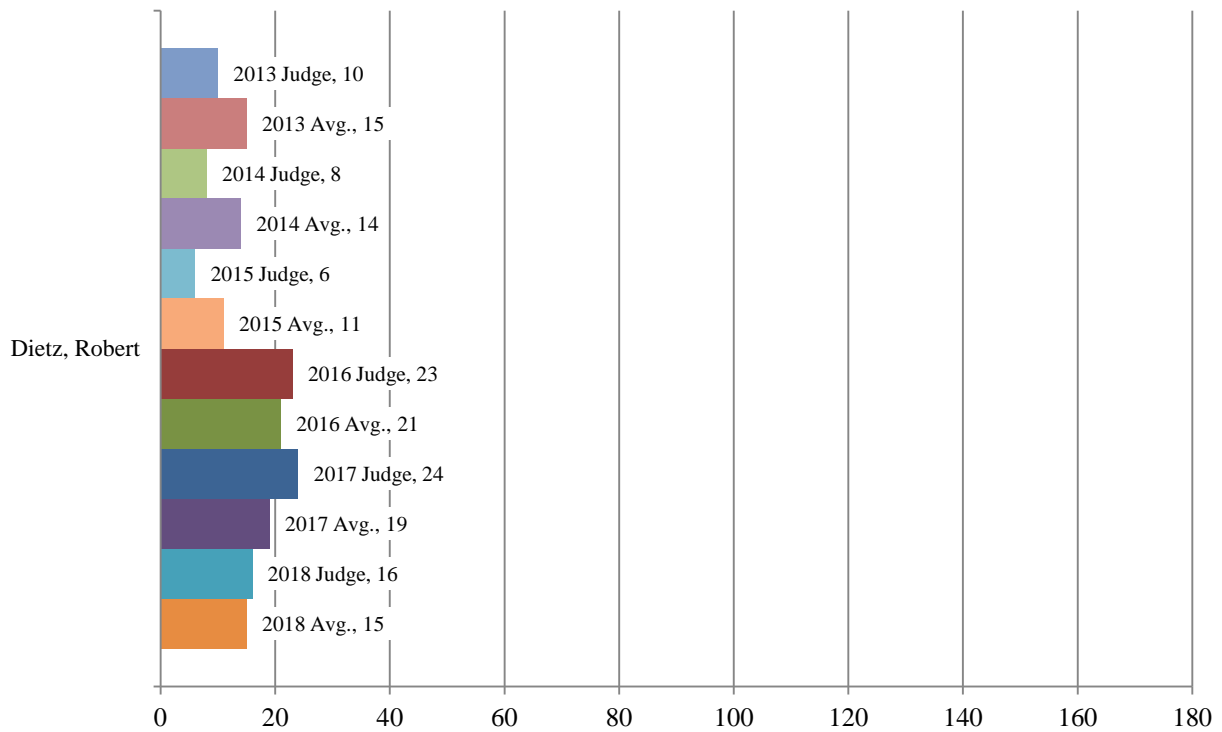
The following graph depicts the total volume of trial orders²⁰⁴ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



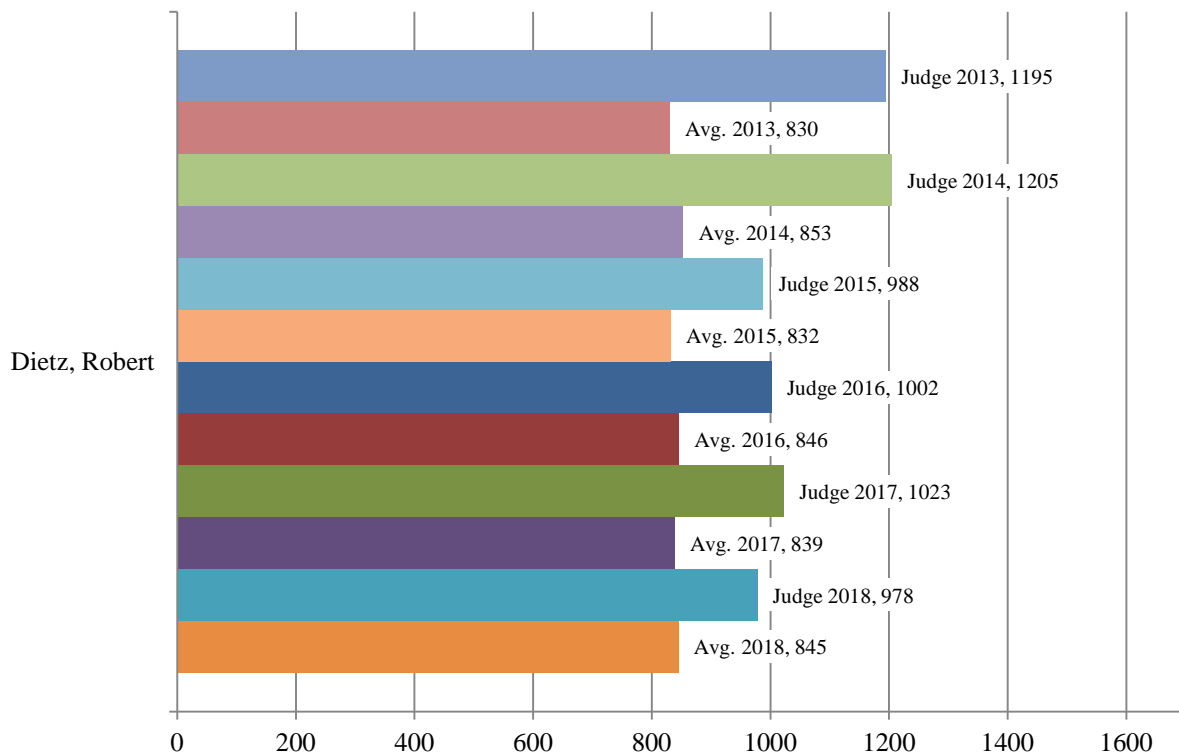
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



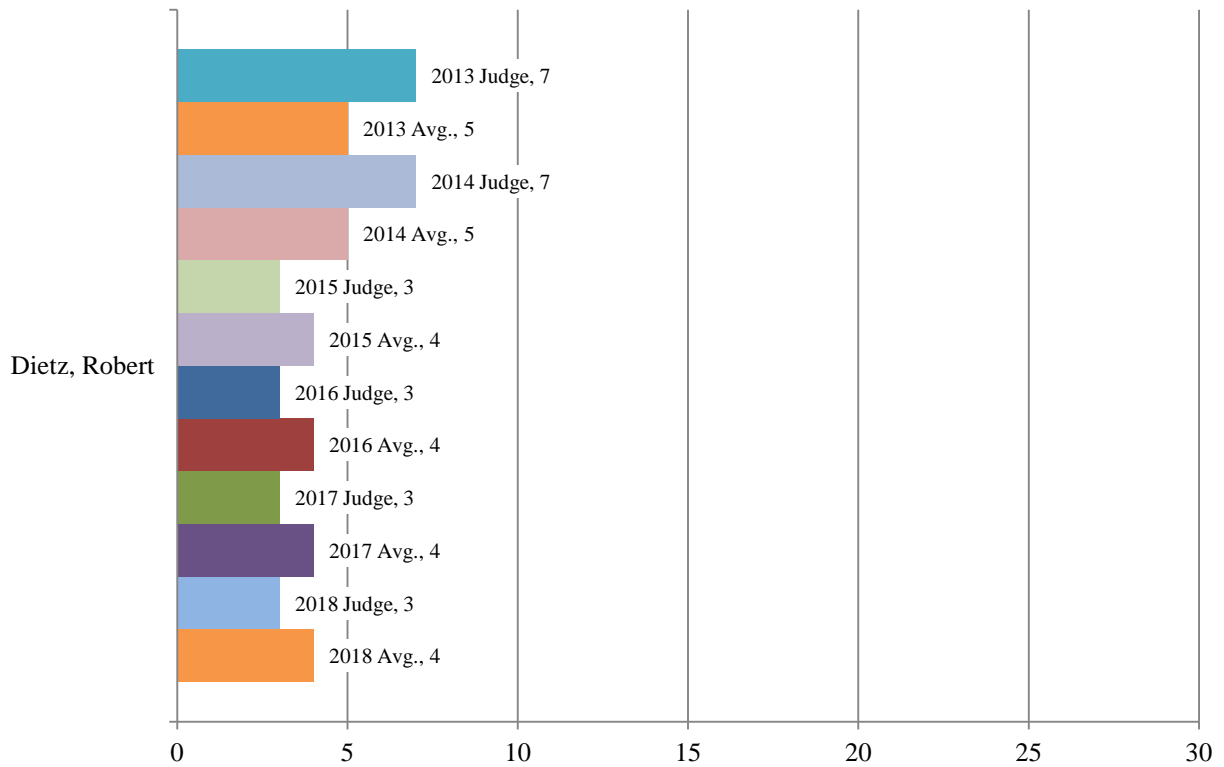
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



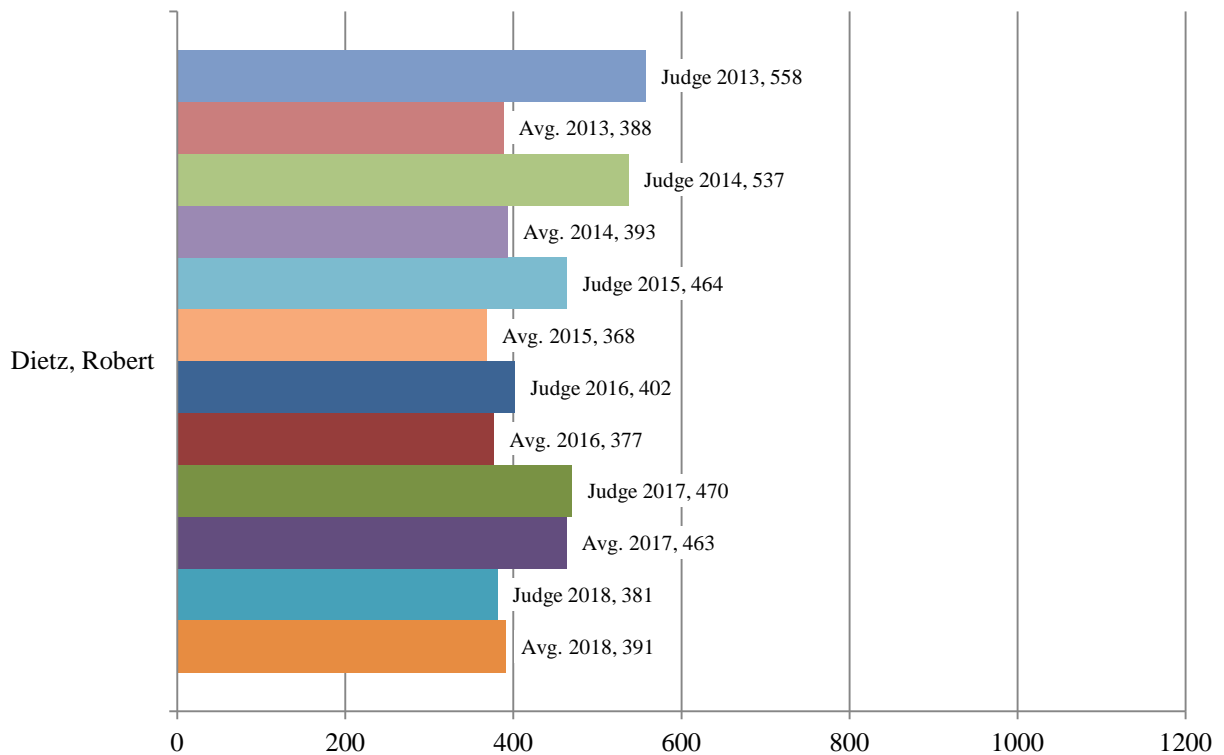
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



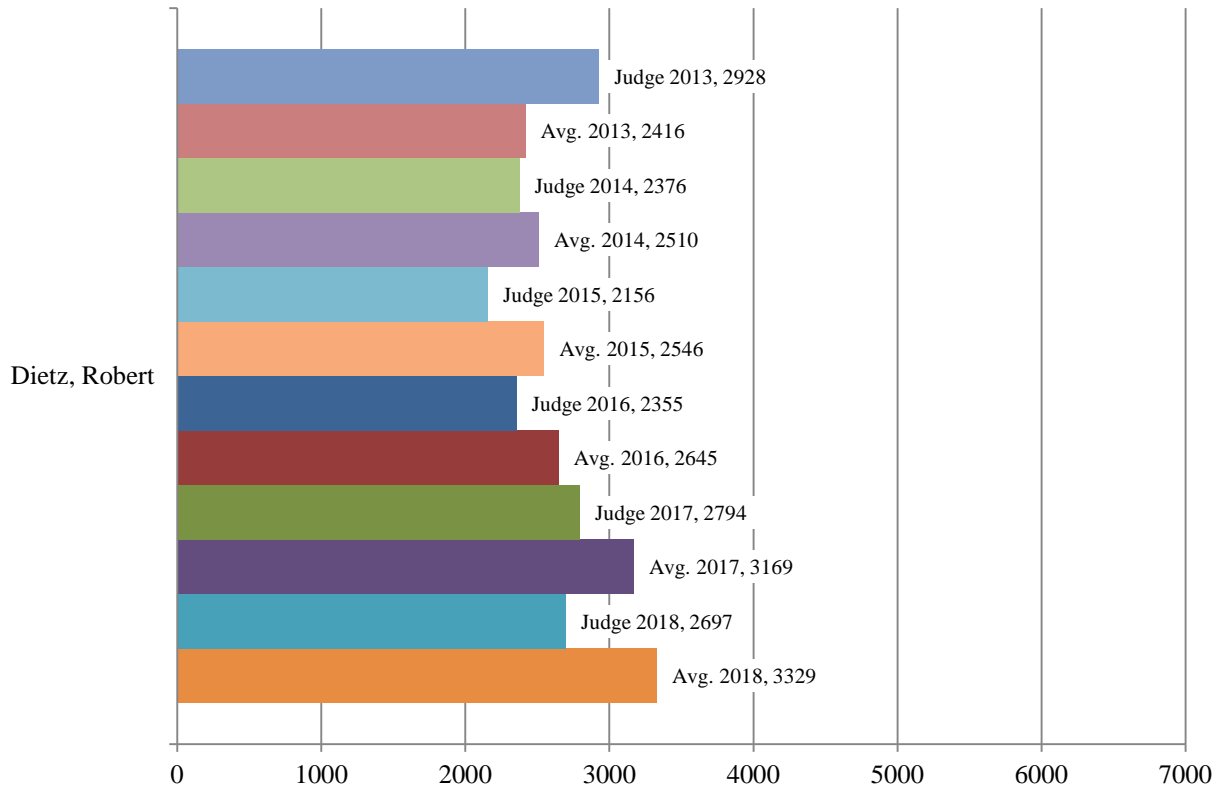
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



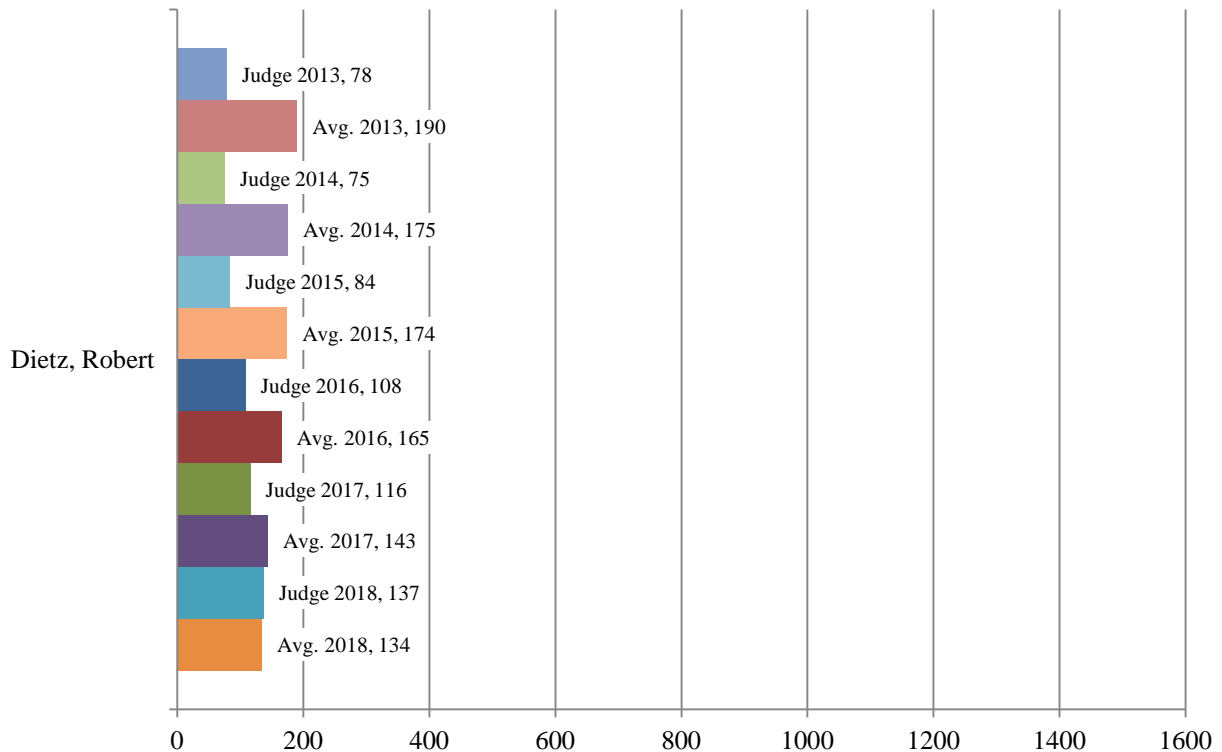
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “8” District MIA (JCC Almeyda, JCC Havers, JCC Jacobs, JCC Kerr, JCC Medina-Shore):

District MIA includes Dade County.

District MIA had two new judges appointed in 2017-18. Judge Walter Havers replaced Judge Castiello and Judge Jeffrey Jacobs replaced Judge Charles Hill.

District MIA historically included Dade and Monroe counties. In 2011-12, Monroe County was transferred to District Panama City briefly and in 2012-13 to District Port St. Lucie, to alleviate disparity in workloads. Since that time, all Monroe County cases were assigned to Judge Robert McAliley until his retirement in 2016, and thereafter to Judge Keef Owens.

“New case” volumes have consistently been below the statewide average in District Miami for the last six years. Conversely, the Petition volume has been consistently above the statewide average since the out-of-district judge reassignment process was amended in 2015-16. Prior to that time, a volume of “new cases” had been assigned to Judges Humphries (JAX), Massey (TPA), Pitts (ORL), Spangler (TPA), and Sturgis (FTM). In 2015-16, the process was reformed with new MIA cases being assigned outside of Miami only to Judges Massey and Spangler. This reduced the number of judges to which Miami practitioners were regularly exposed.

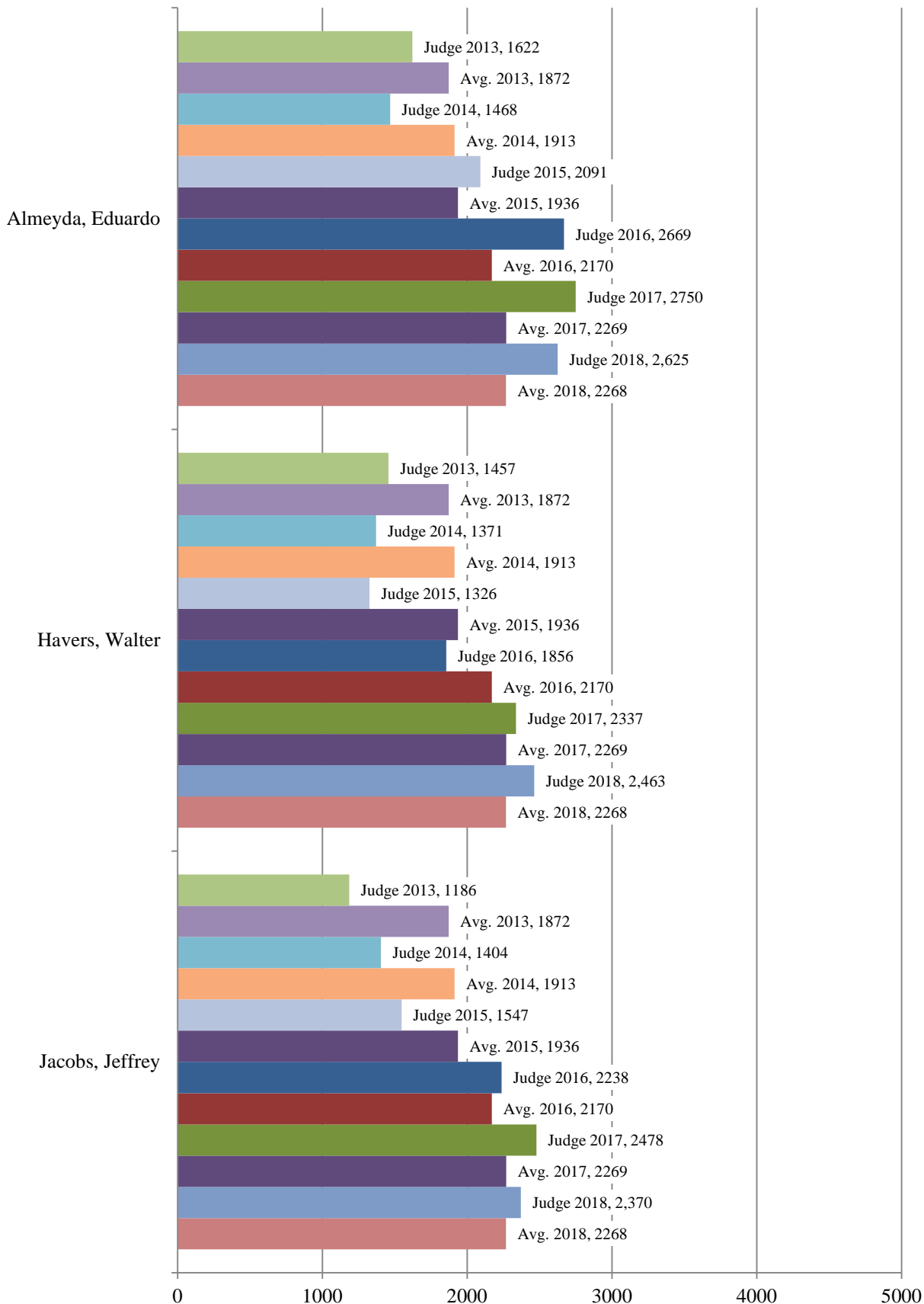
That the MIA “new case” volumes have been below average for many years, and the Petition filing volume markedly above average, suggests that the Miami district is one in which litigation is more intense, albeit on a smaller population of cases. That may correlate with the statistical evidence that Miami has a notably lower volume of settlements than the statewide average. Pending petition volumes at the end of the fiscal year range from compatibility with statewide average, to notably exceeding the average. The time to trial in District Miami is within the statutory parameter, or very close, in all Divisions. The time to trial order is within the 30 day parameter in all Divisions. The stipulation and “other order” statistics are indicative of above average reliance on both of these in most Miami Divisions, notably in some instances.

On January 11 and 12, 2018, Judge Jacobs served a judge for the Miami-Dade County Public Schools “We the People Constitution Completion.” On February 1, 2018, he gave a civics presentation to Cub Scout Pack 280 in Miami. On February 9, 2018, Judge Jacobs spoke at the First District Court of Appeal seminar as a member of a panel discussion for the topics “Preparing For and Attending Trial” and “What Non-Attorney’s Should Do to Prepare the Case for Trial.” On February 15 and 16, 2018, he served a judge for the Miami-Dade County Public Schools Annual High School Mock Trial Competition. On April 12, 2018, Judge Jacobs spoke at the 2018 Florida Bar Workers’ Compensation Forum as a member of a panel discussion entitled “A View from the Bench” with Judge Gregory Johnsen and Judge Keef Owens. On June 13, 2018, Judge Almeyda, Judge Havers and Judge Jacobs presented “Avoiding Common Evidentiary Mistakes” in an audio webcast for The Florida Bar Workers’ Compensation Section. On August 19, 2018, Judge Jacobs served as a judge for the annual E. Earle Zehmer Moot Court Competition held at the Workers’ Compensation Educational Conference.

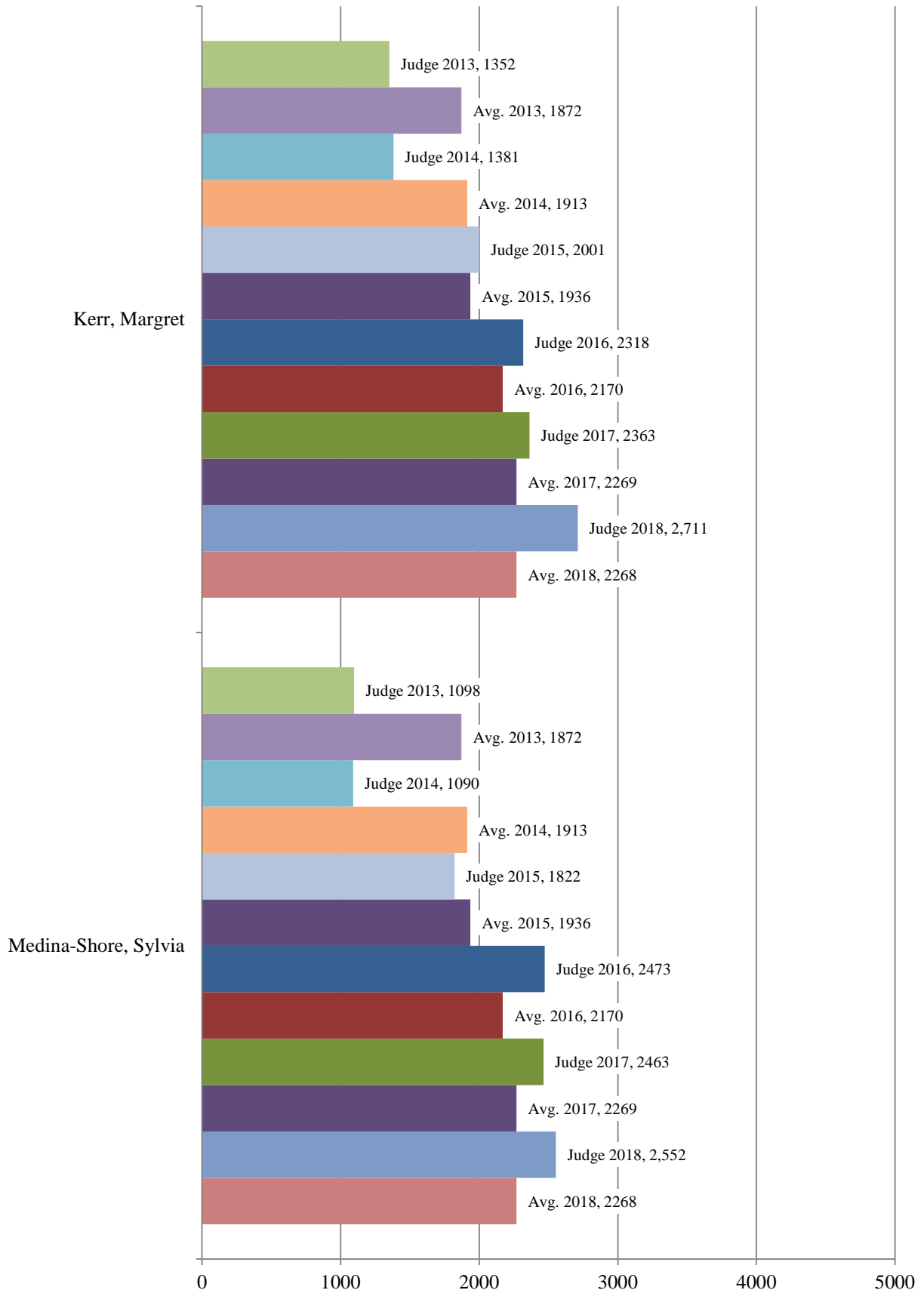
In 2017-2018, Judge Kerr served as a judge for the Florida High School Mock Trial Competition on February 15, 2018, and was a presenter at the Florida Bar Workers’ Compensation Section Audio Webcast Seminar “Professionalism on the Precipice” on March 14, 2018. At the 2018 Florida Bar Workers’ Compensation Section Spring Forum on April 12, 2018, Judge Kerr served on a panel “Current Trends in Workers’ Compensation.” Judge Kerr currently serves on the committee developing the Division of Administrative Hearings Second Friday CLE seminars for the Judges of Compensation Claims and On August 20, 2018 served as moderator for the panel for new judges on “Order writing from an Appellate Perspective” at the National Association of Worker’s Compensation Judiciary. In addition to her judicial duties, she is currently serving as parish representative on the Trinity Episcopal Cathedral Chapter, the Cathedral Church of the Episcopal Diocese of Southeast Florida.

In 2017-2018, Judge Medina-Shore partook in the “Ethics and Professionalism” panel at the Florida Bar Workers’ Compensation Section Forum. She also served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition held at the Workers’ Compensation Educational Conference in Orlando, Florida. Judge Medina-Shore continues to educate college and high school students on the workers’ compensation law. She was a guest speaker at Florida International University addressing the role of workers compensation in the education field. Judge Medina-Shore explained the U.S. government system, concentrating on the judicial branch to high school students at Miami-Dade Public Schools. Judge Medina-Shore has been the Administrative Judge for the Miami office for the last 11 years, overseeing the daily operations of the office and its 28 employees. She continues to hold Bench-Bar seminars at the Miami office on the Second Tuesdays of every month.

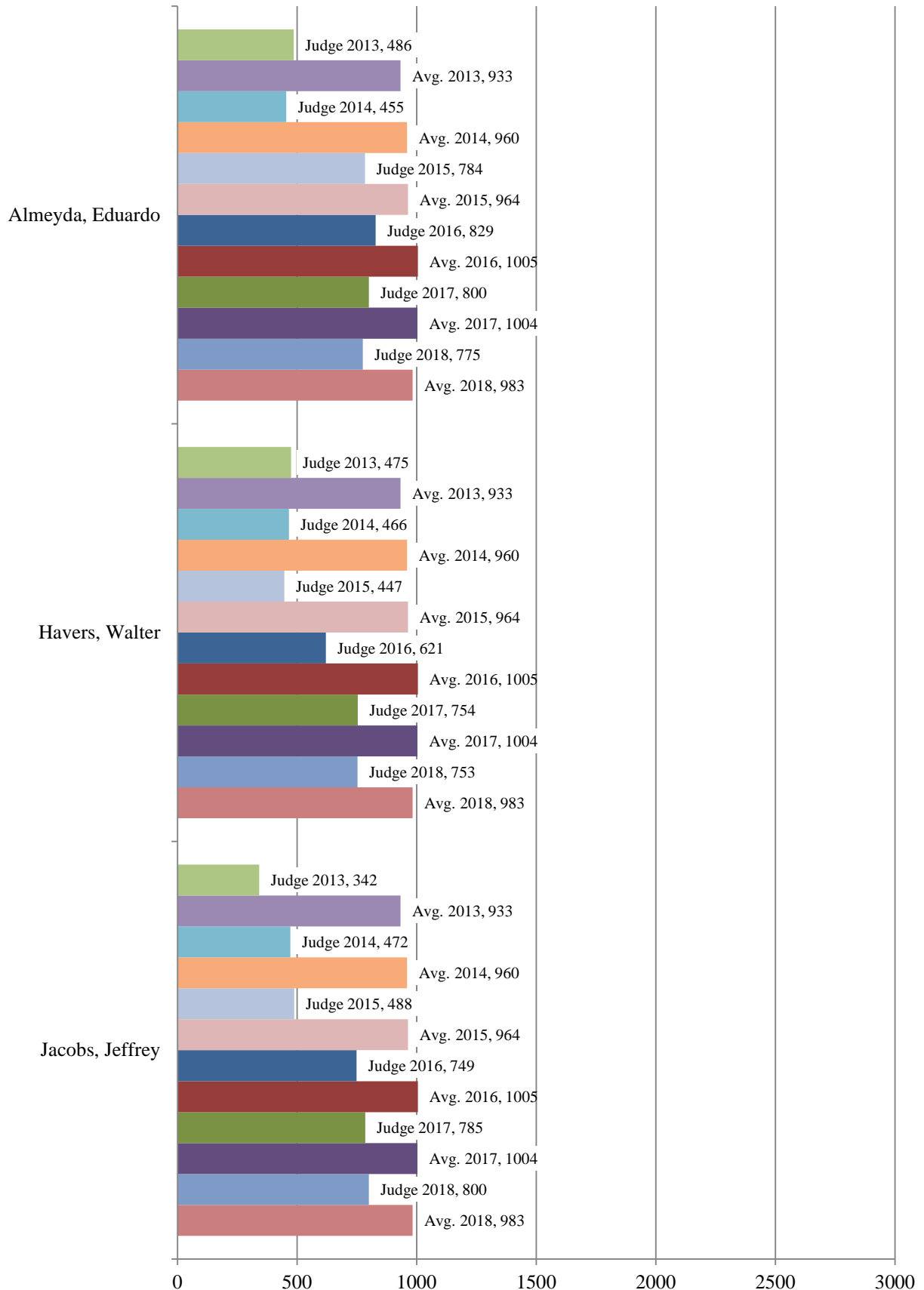
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



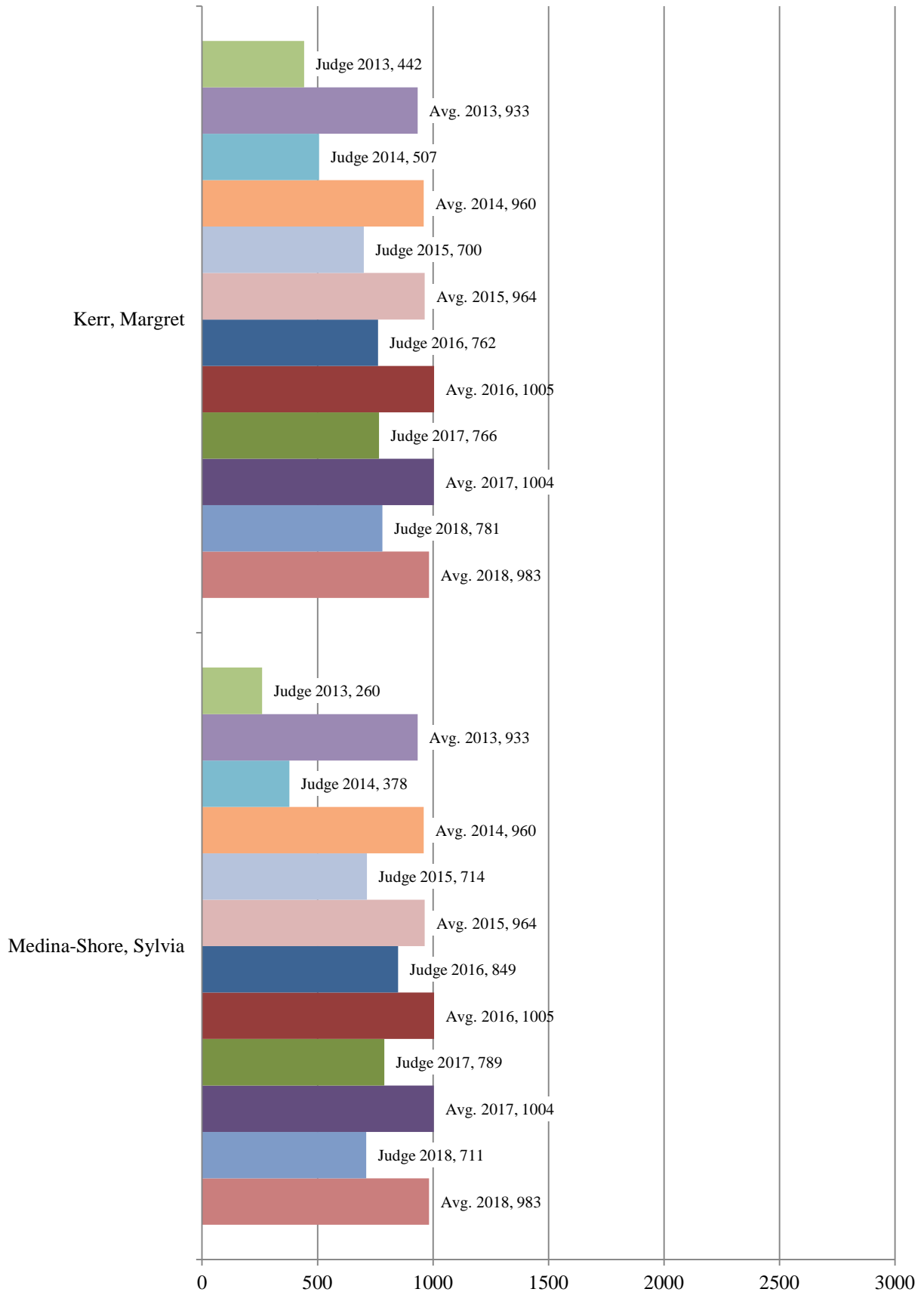
(Continued) The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



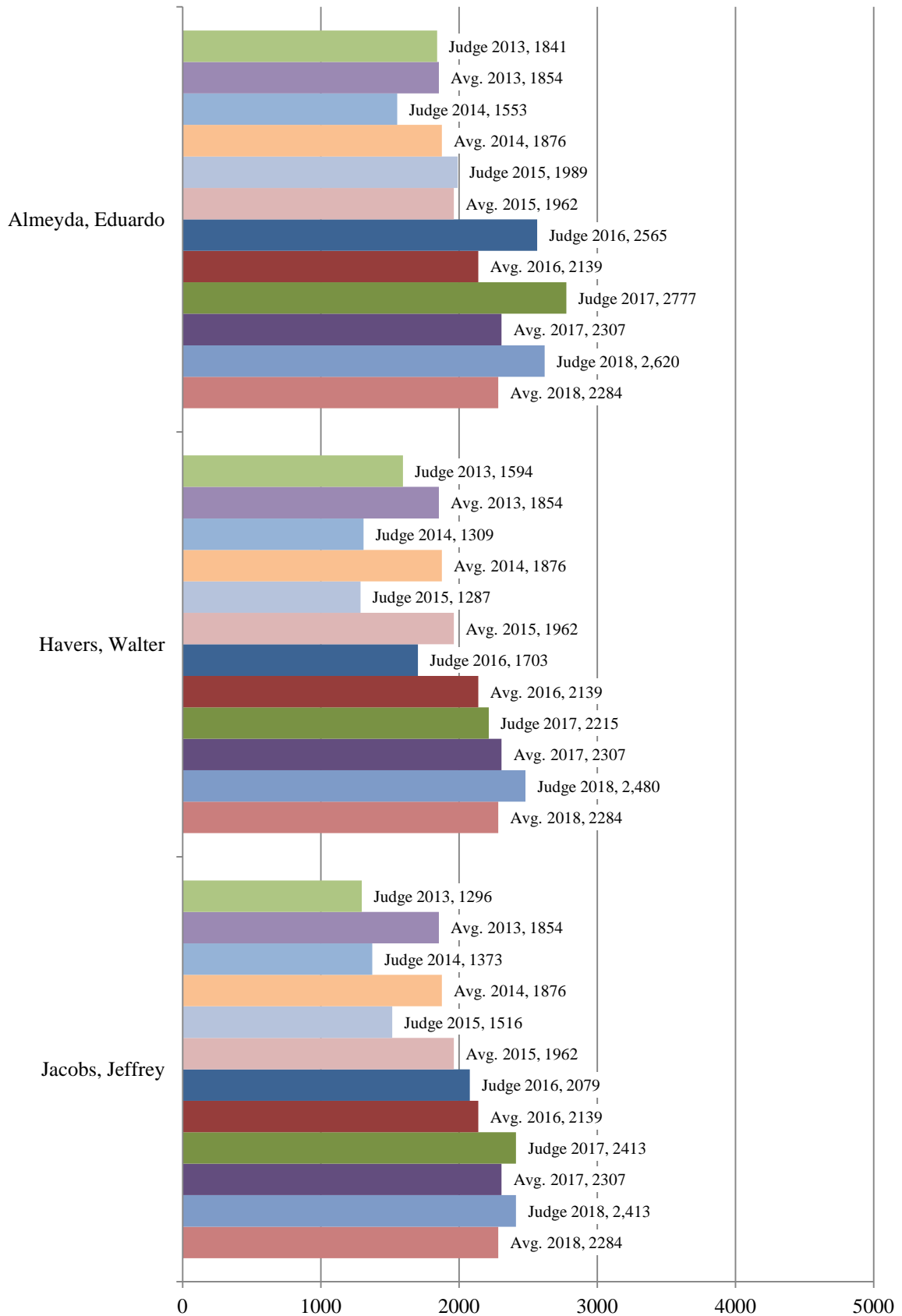
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



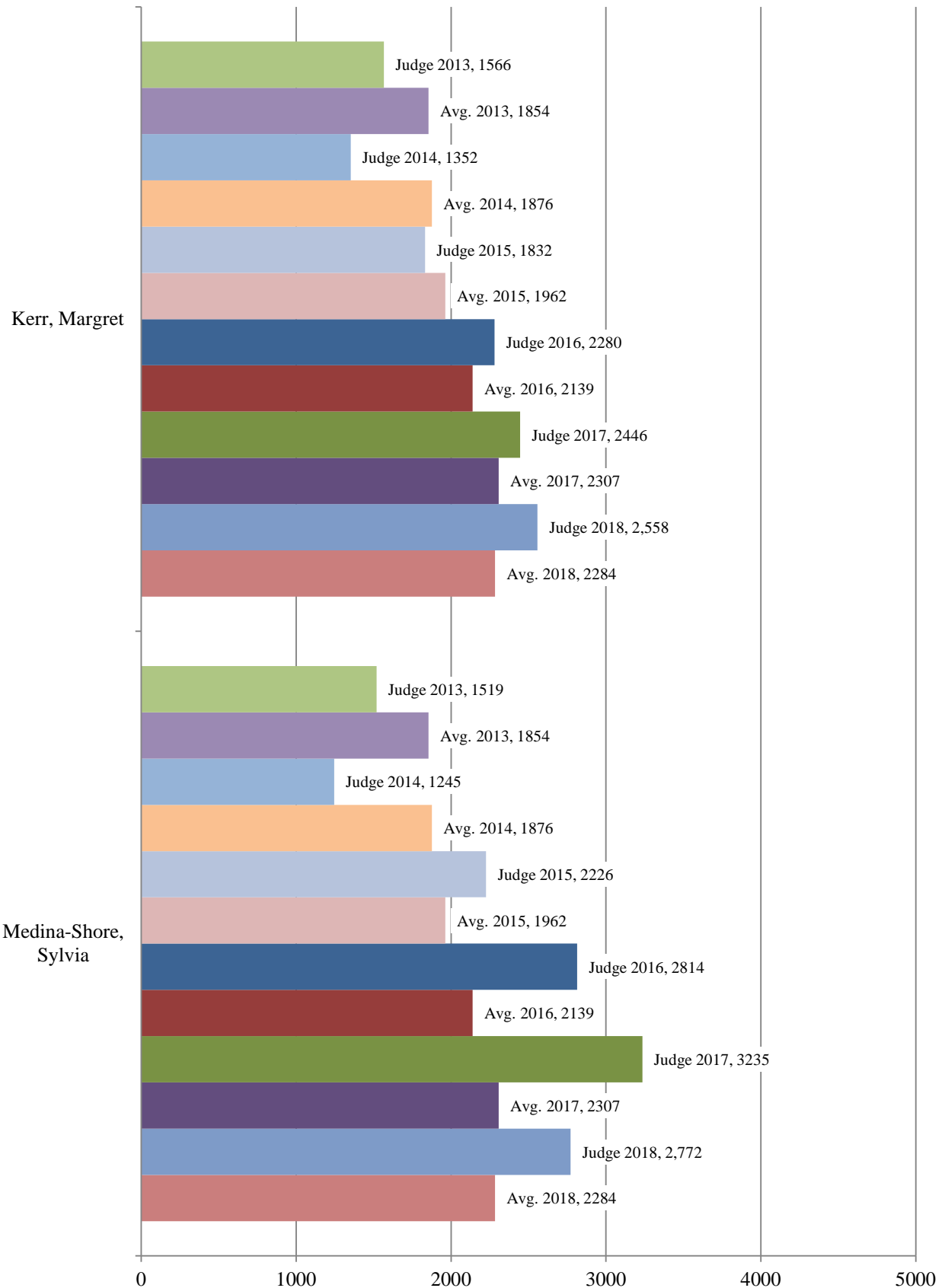
(Continued) The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



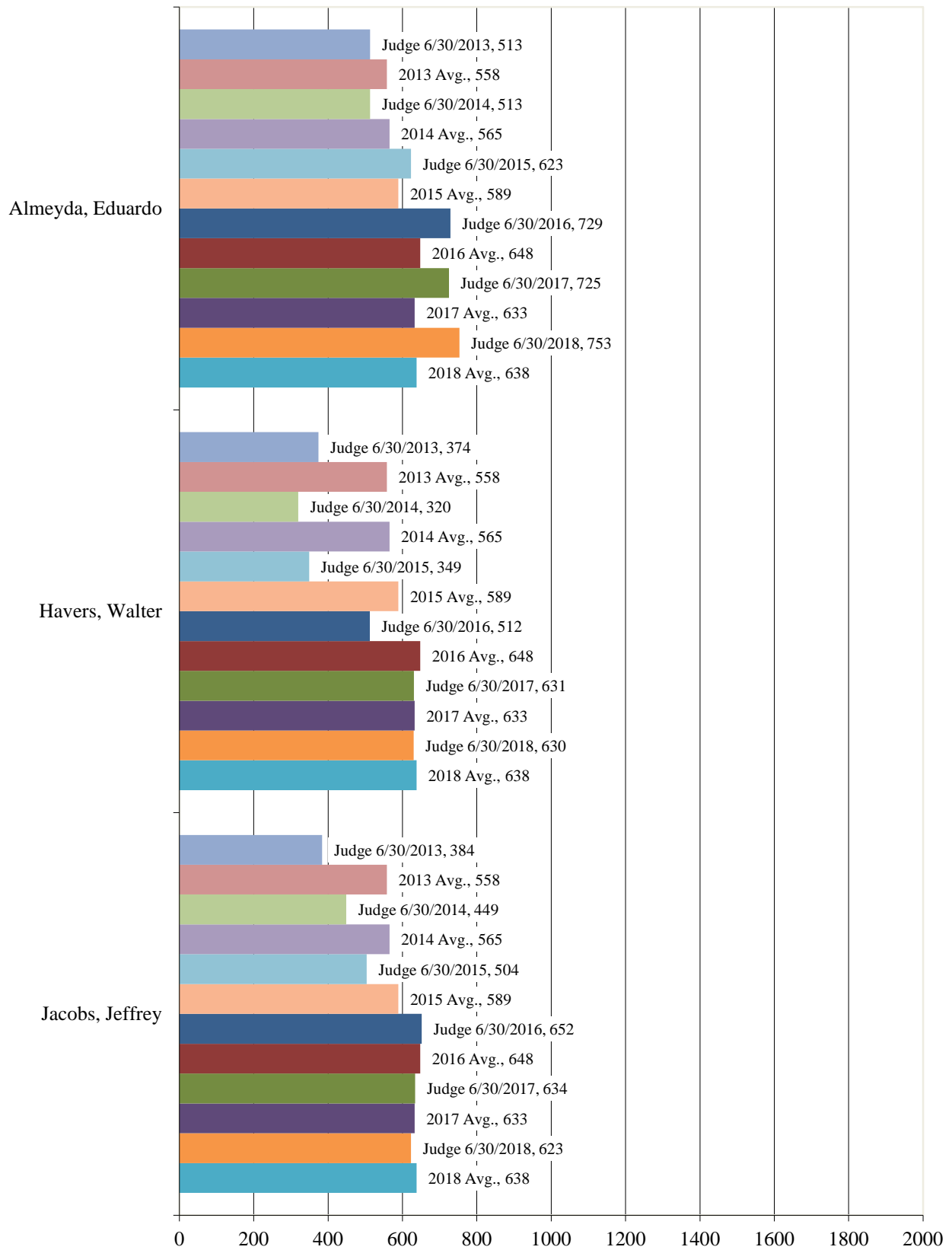
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



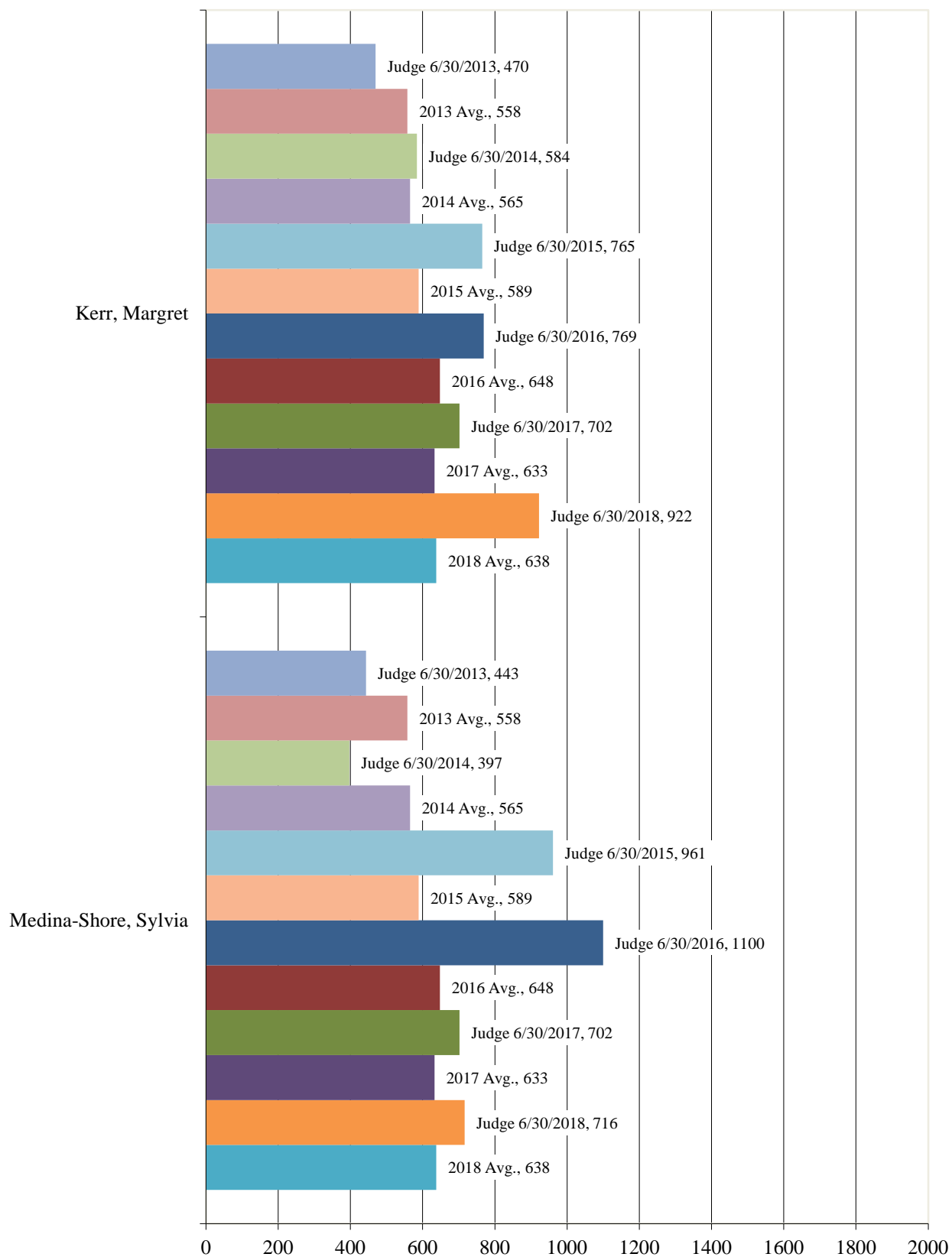
(Continued) The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



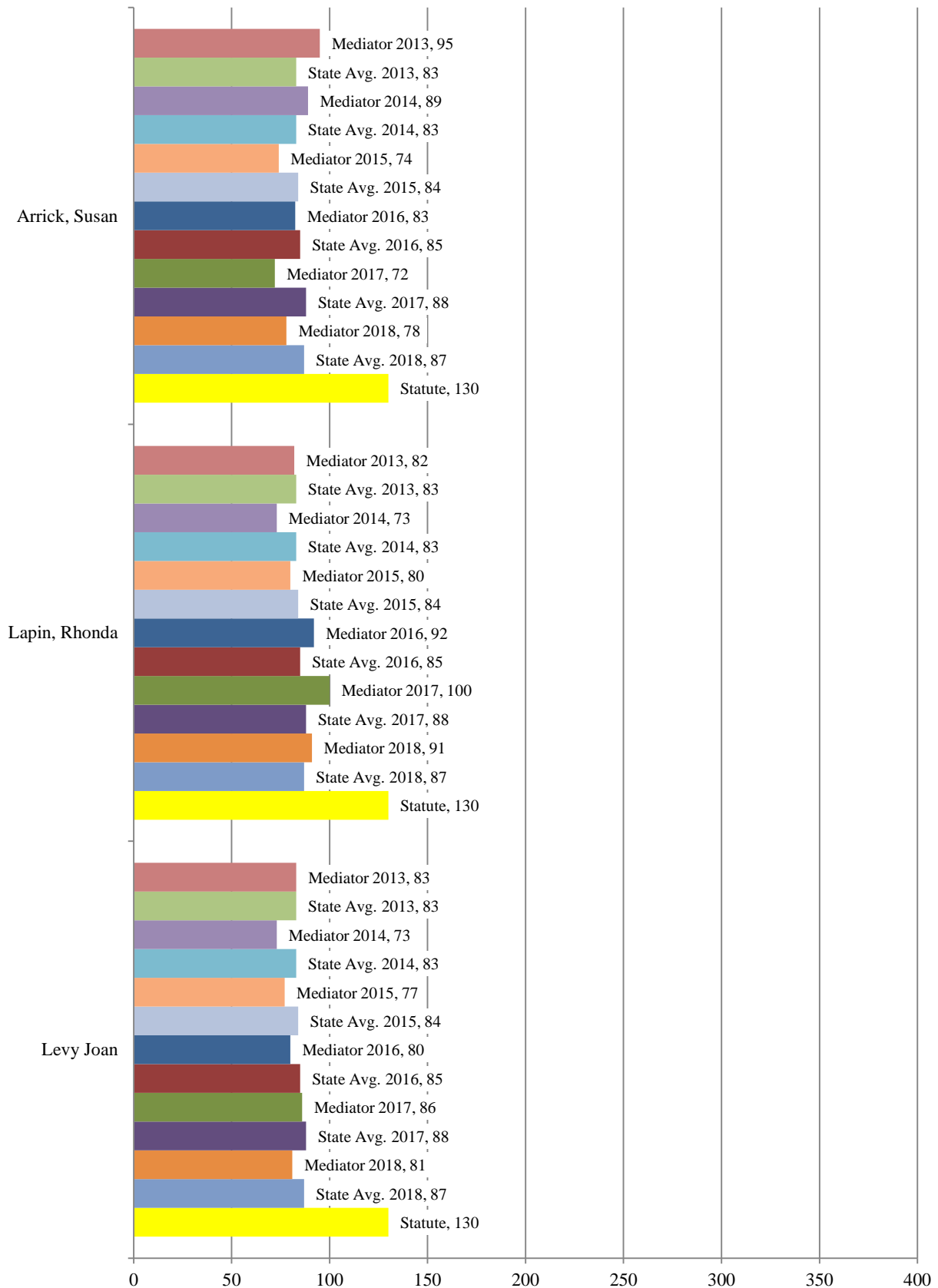
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



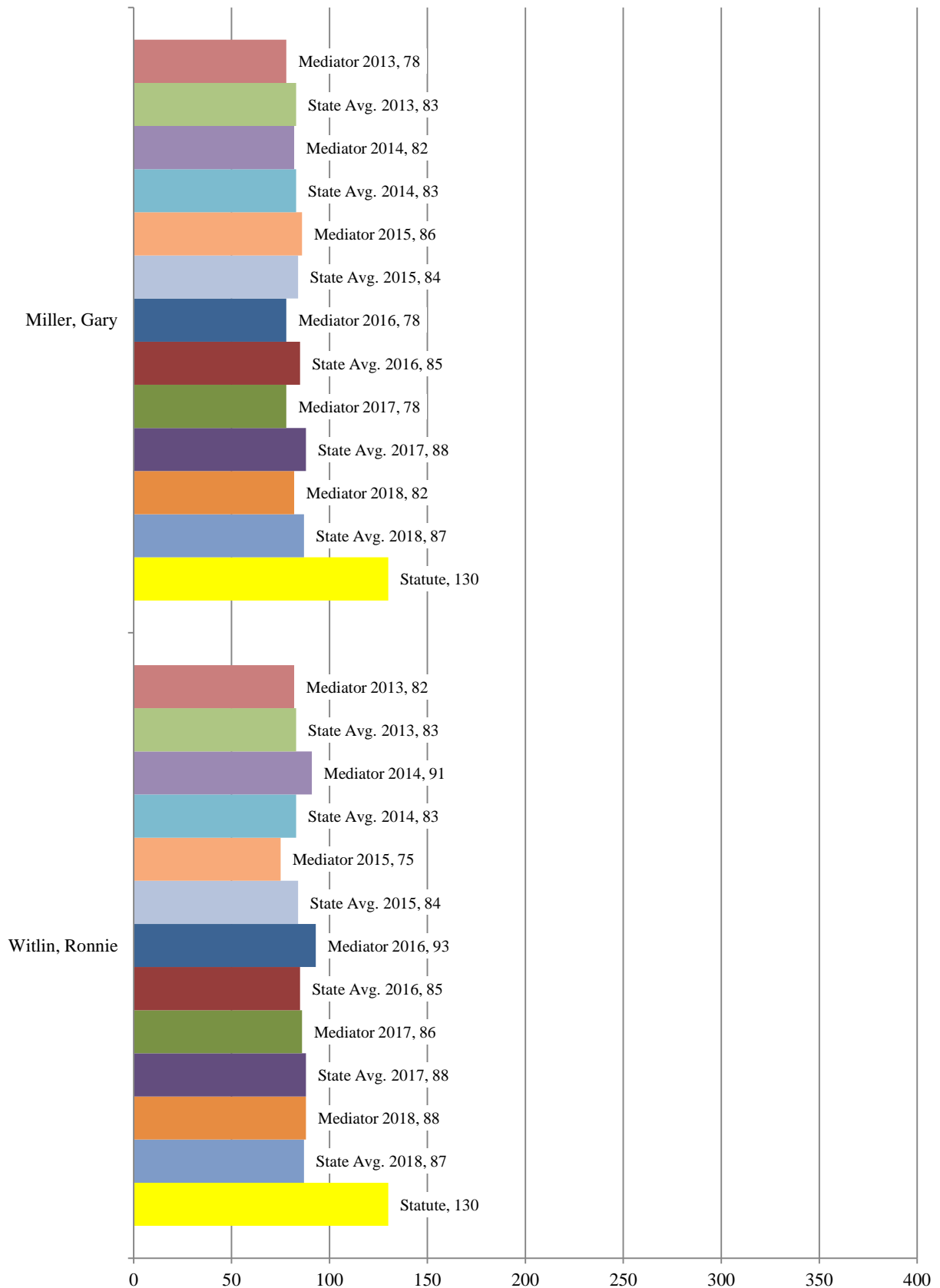
(Continued) The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



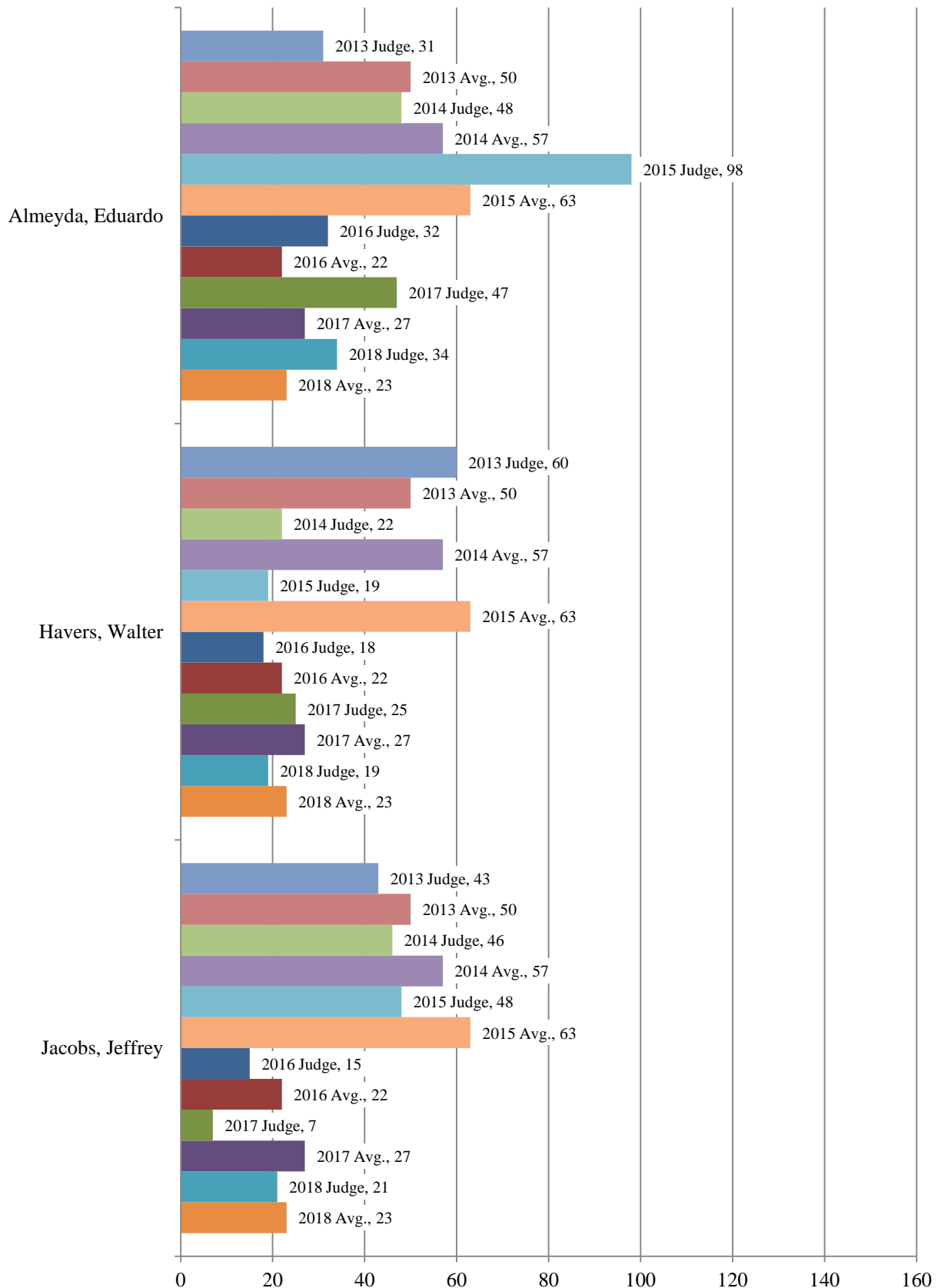
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



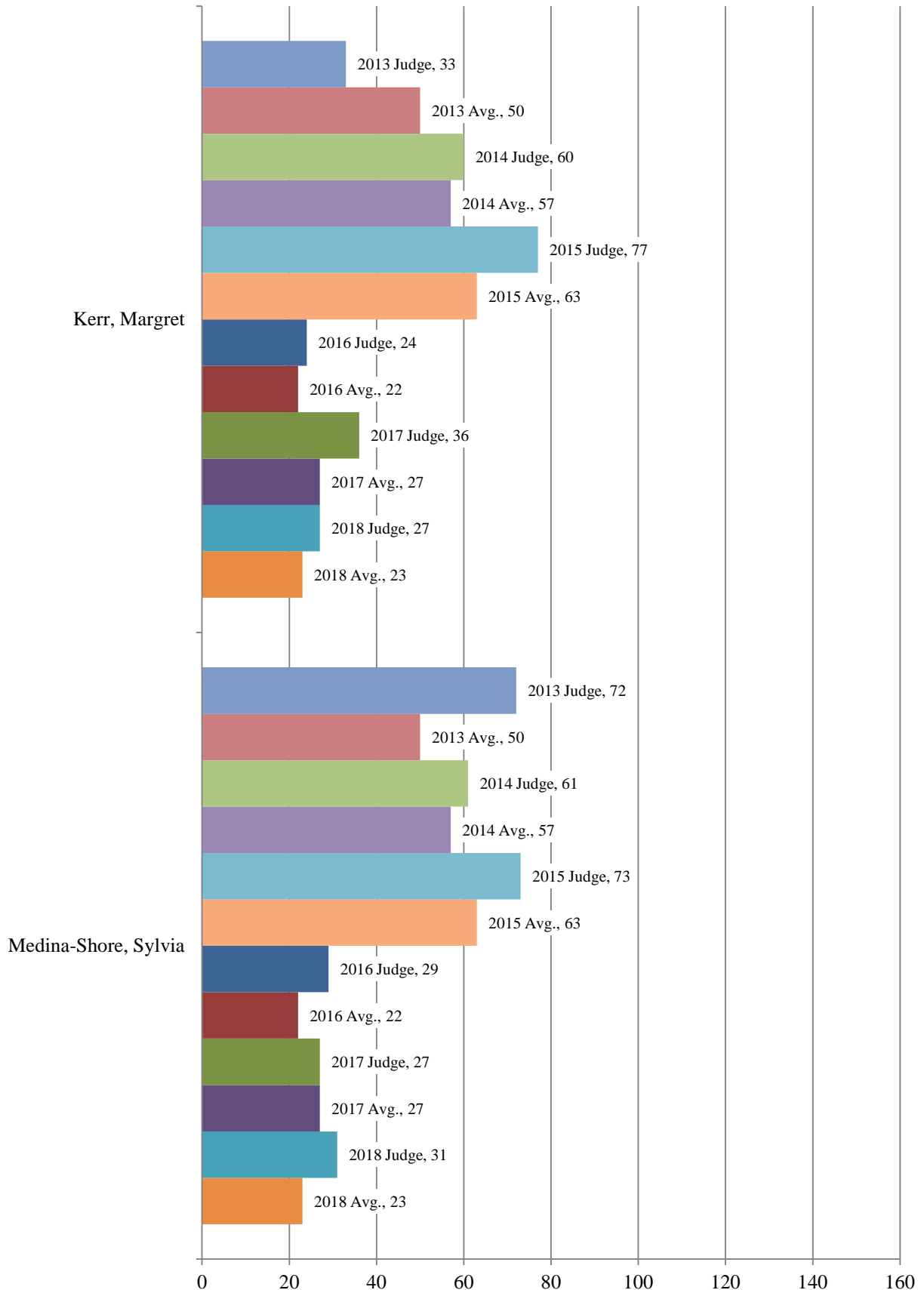
(Continued) The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



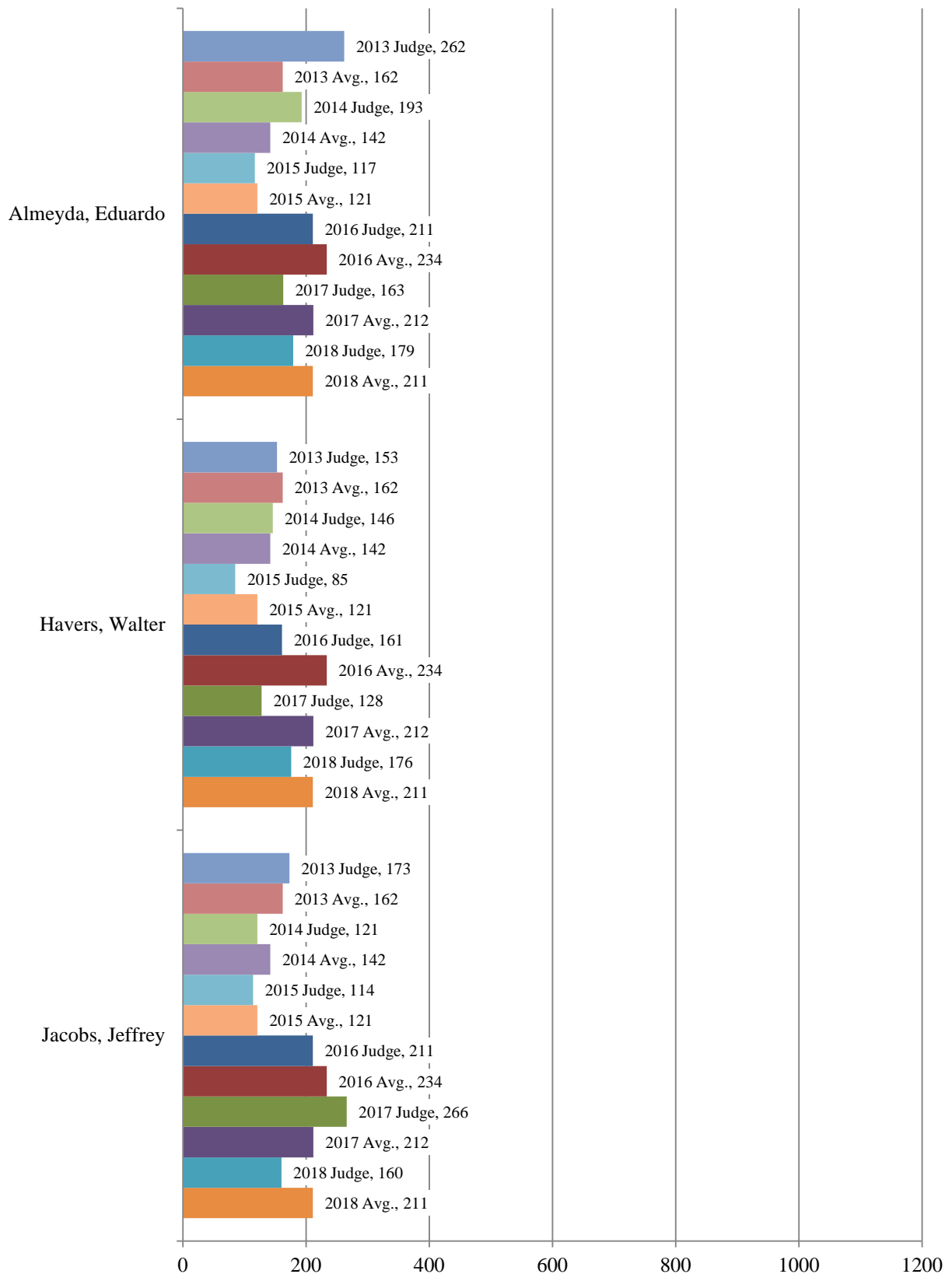
The following graph depicts the total volume of trial orders²⁰⁵ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



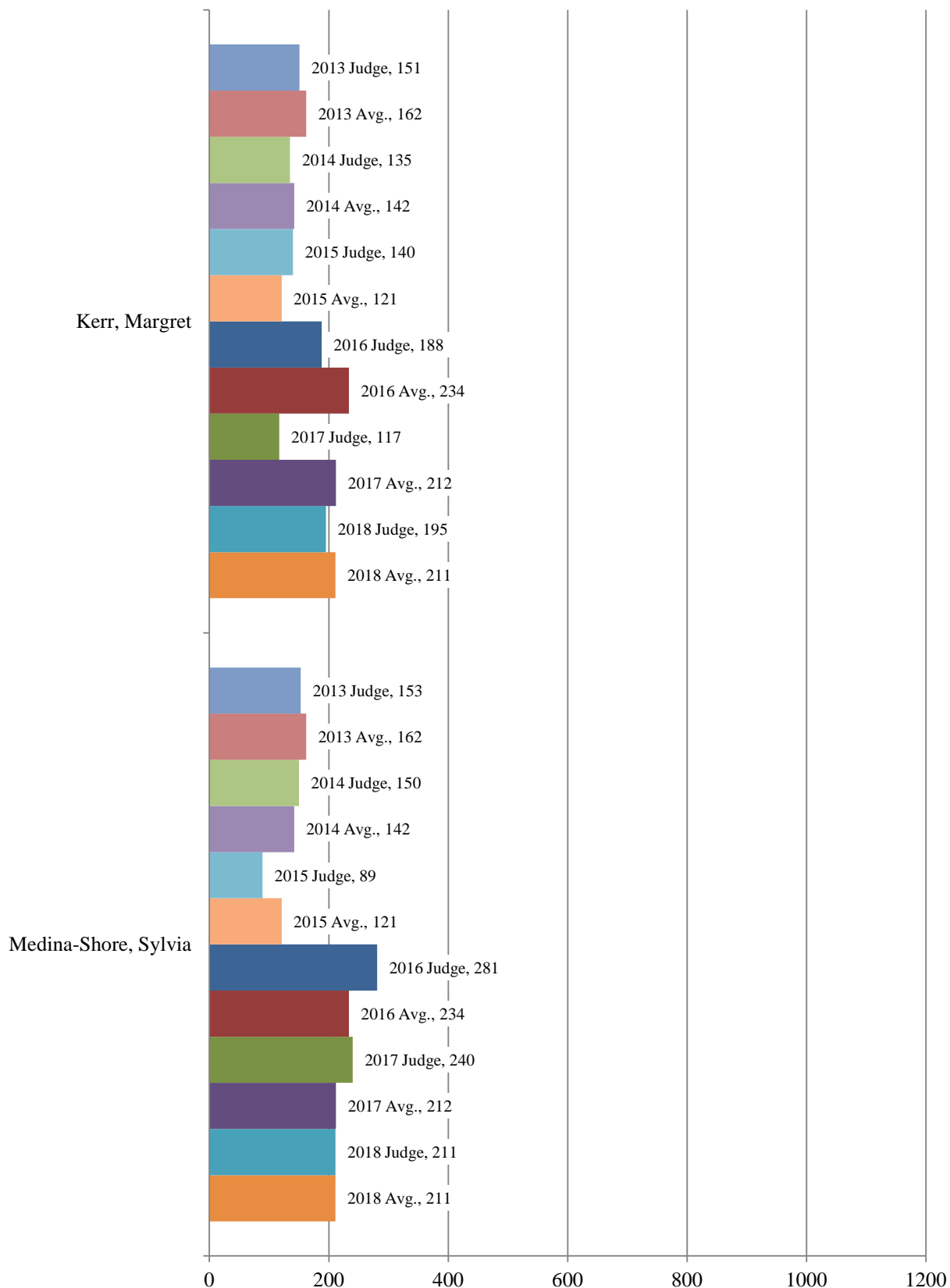
(Continued) The following graph depicts the total volume of trial orders²⁰⁶ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



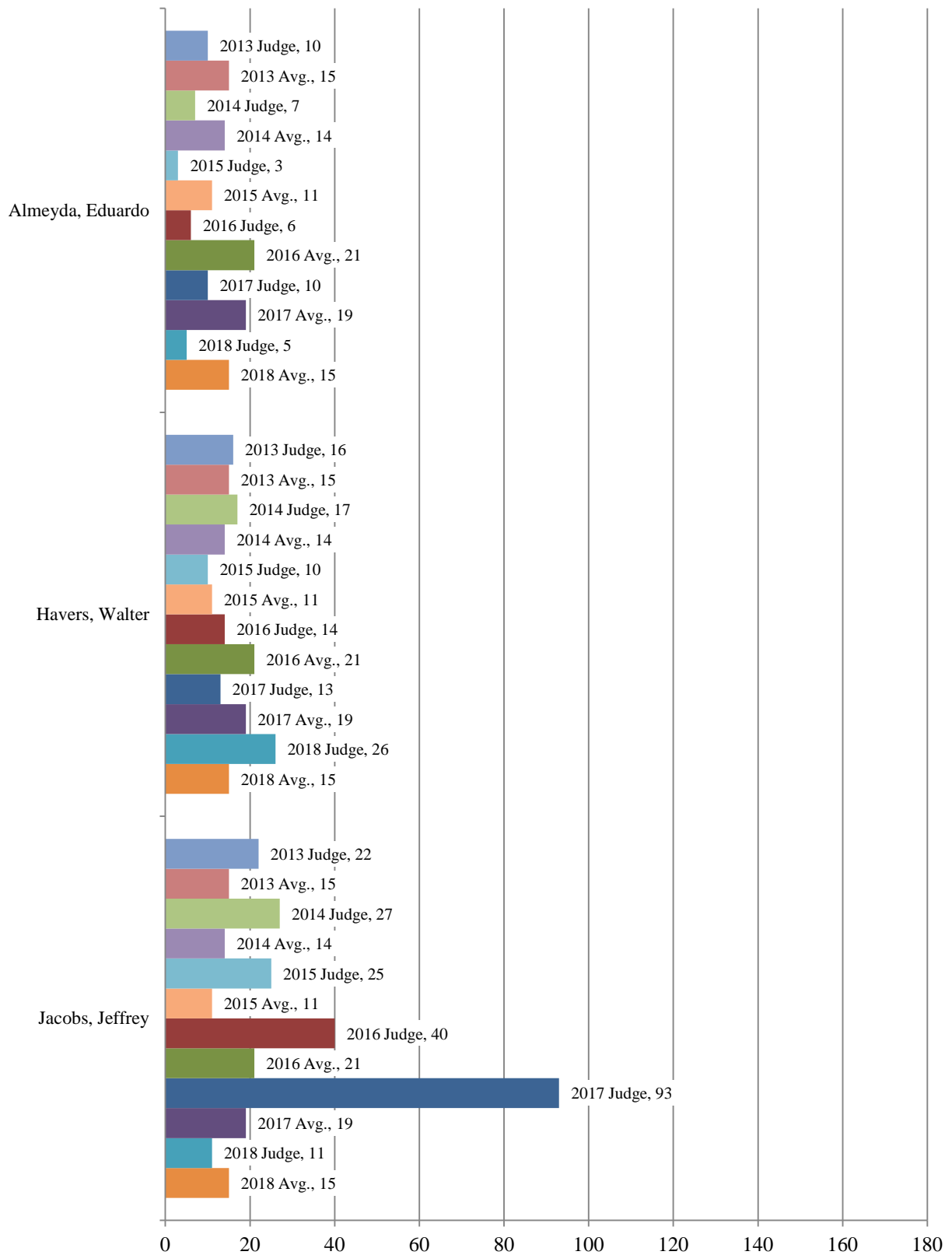
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



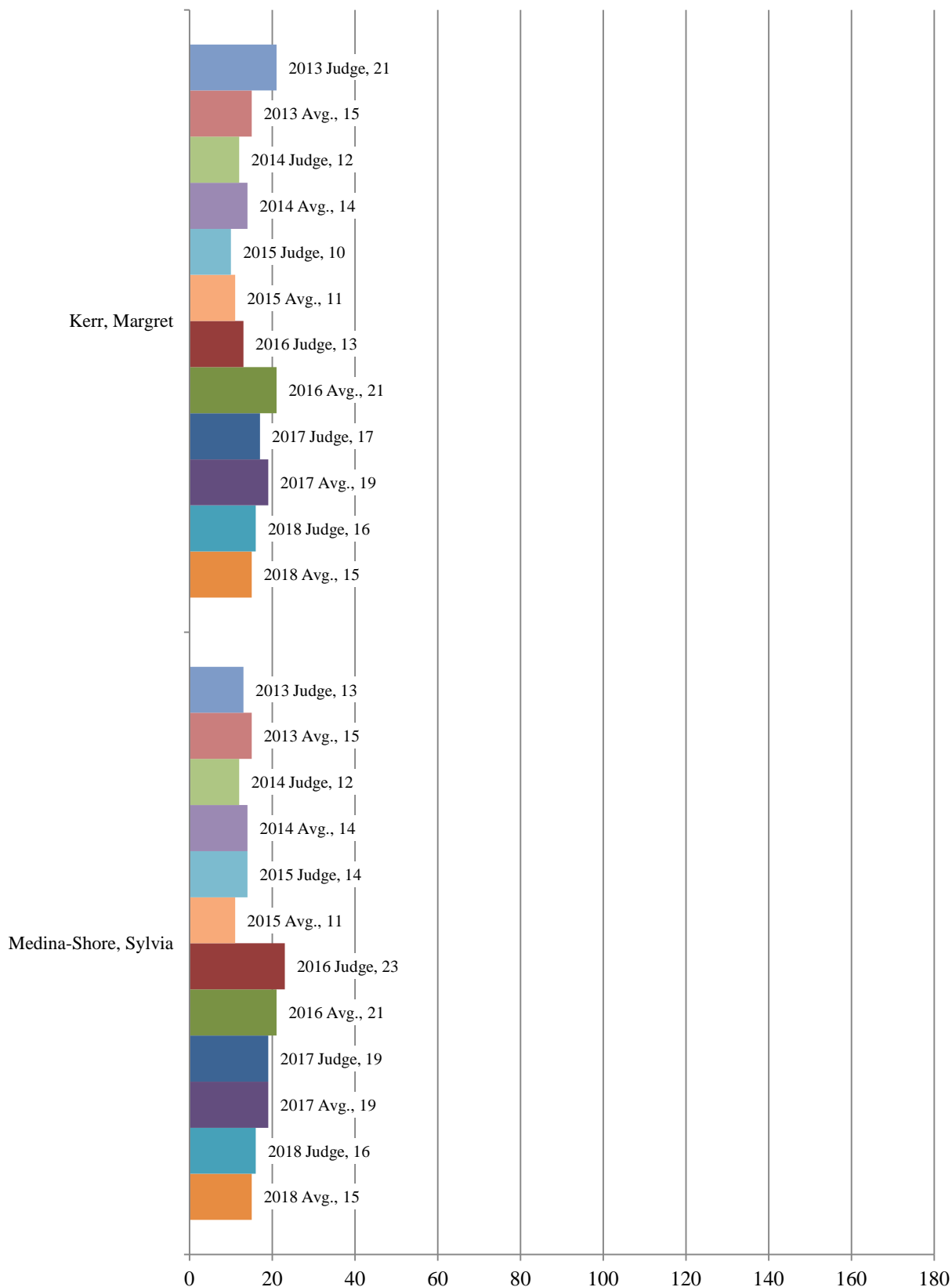
(Continued) The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



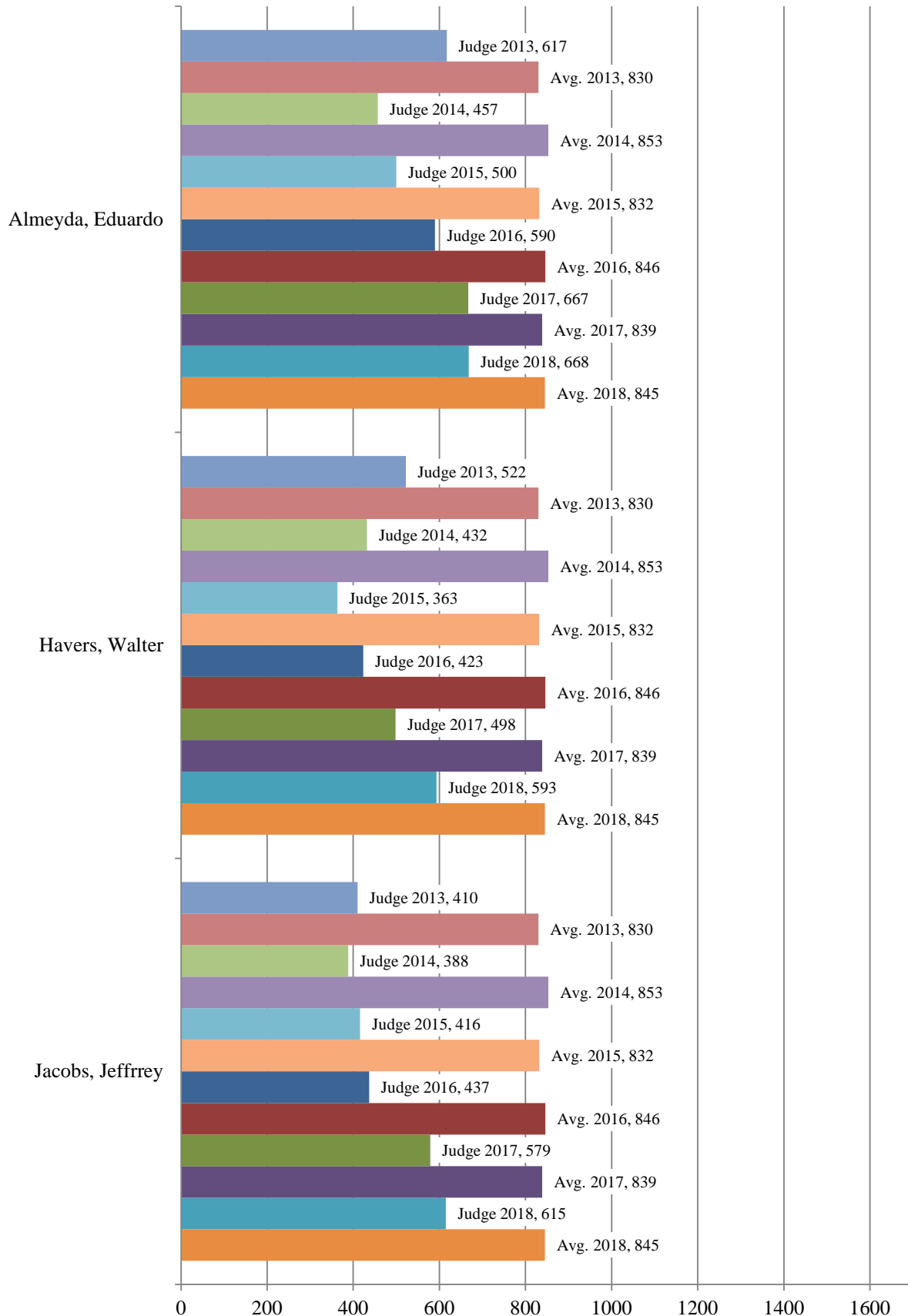
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



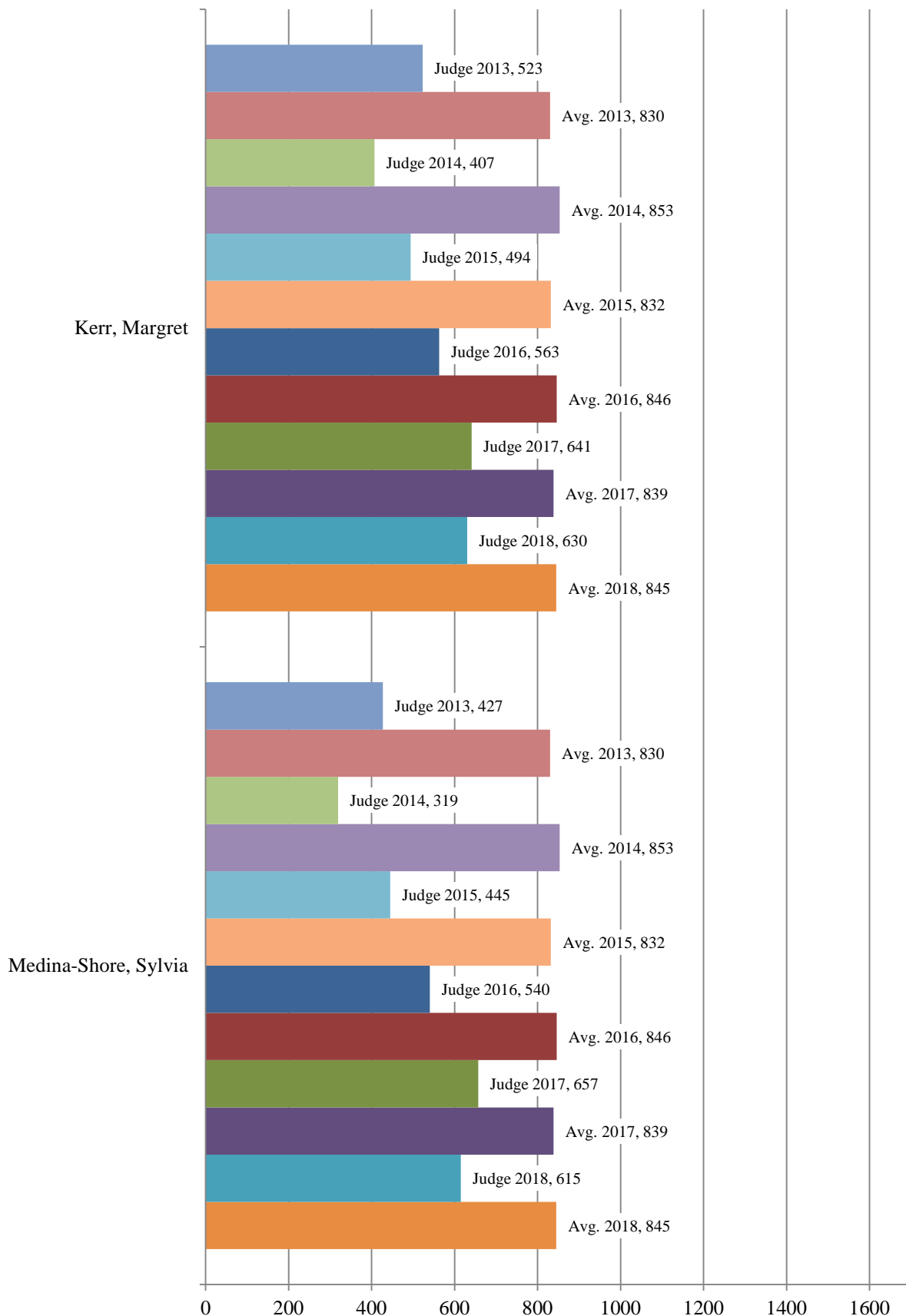
(Continued) The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



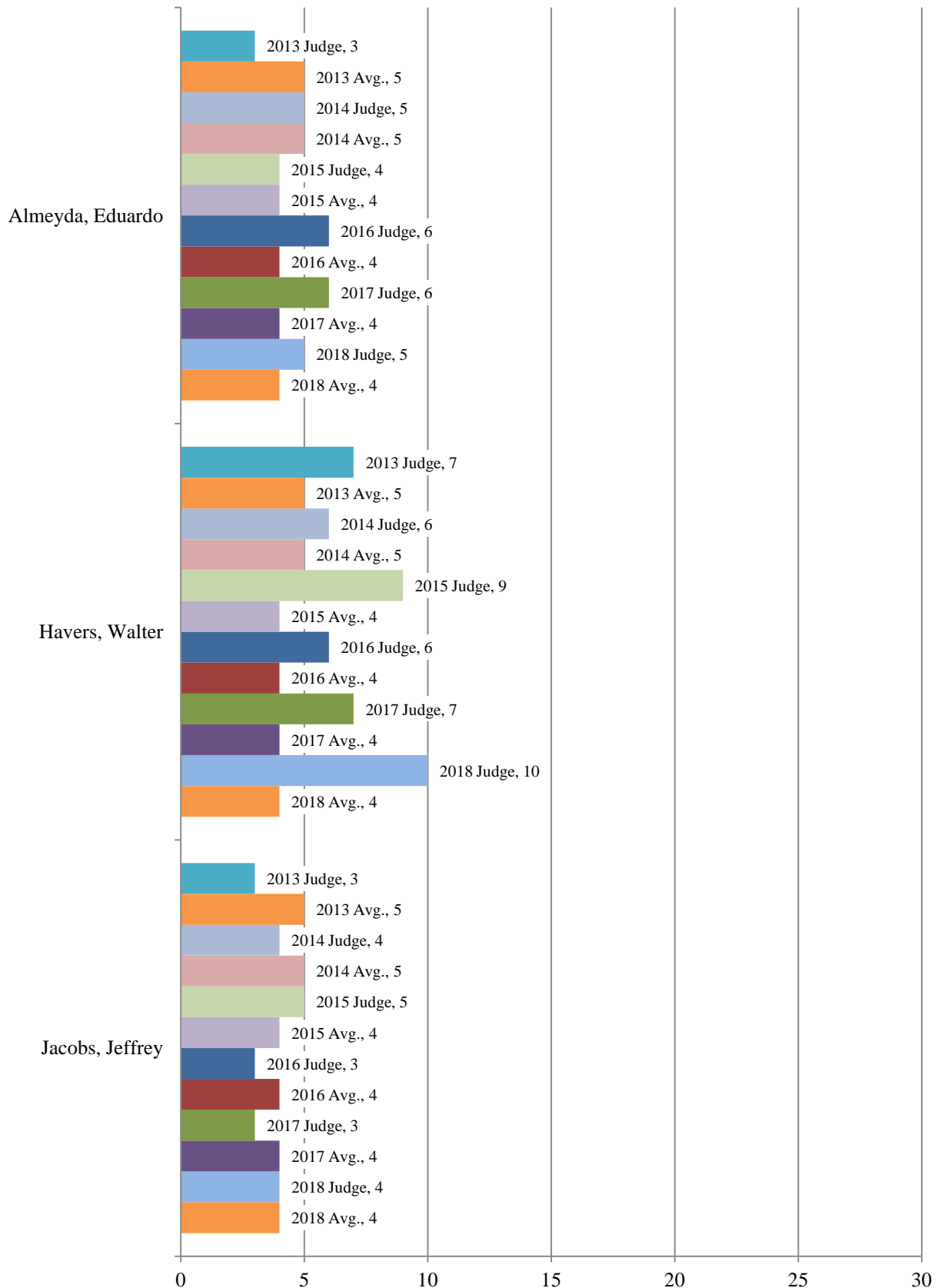
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



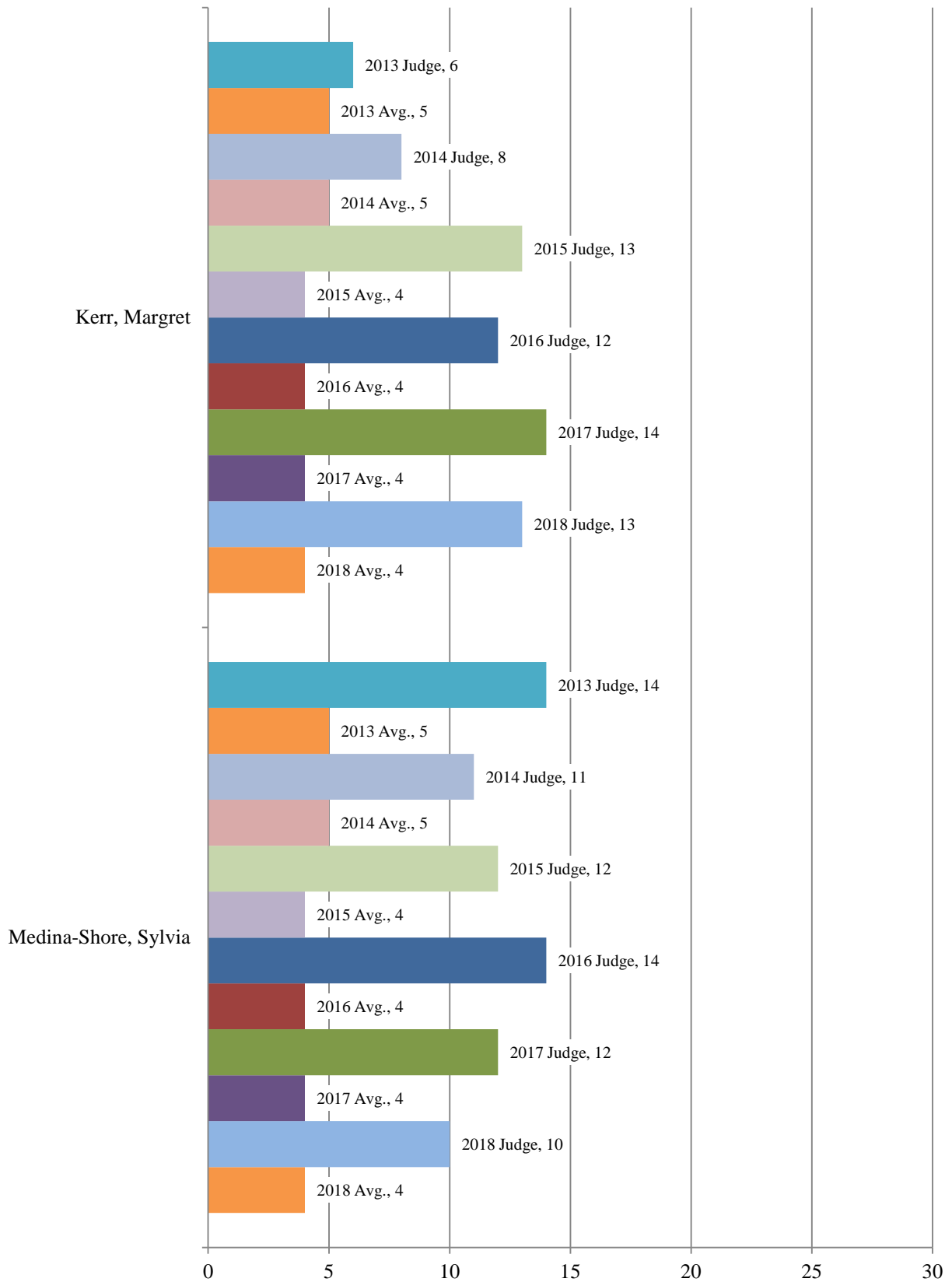
(Continued) The following depicts the volume of settlement orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



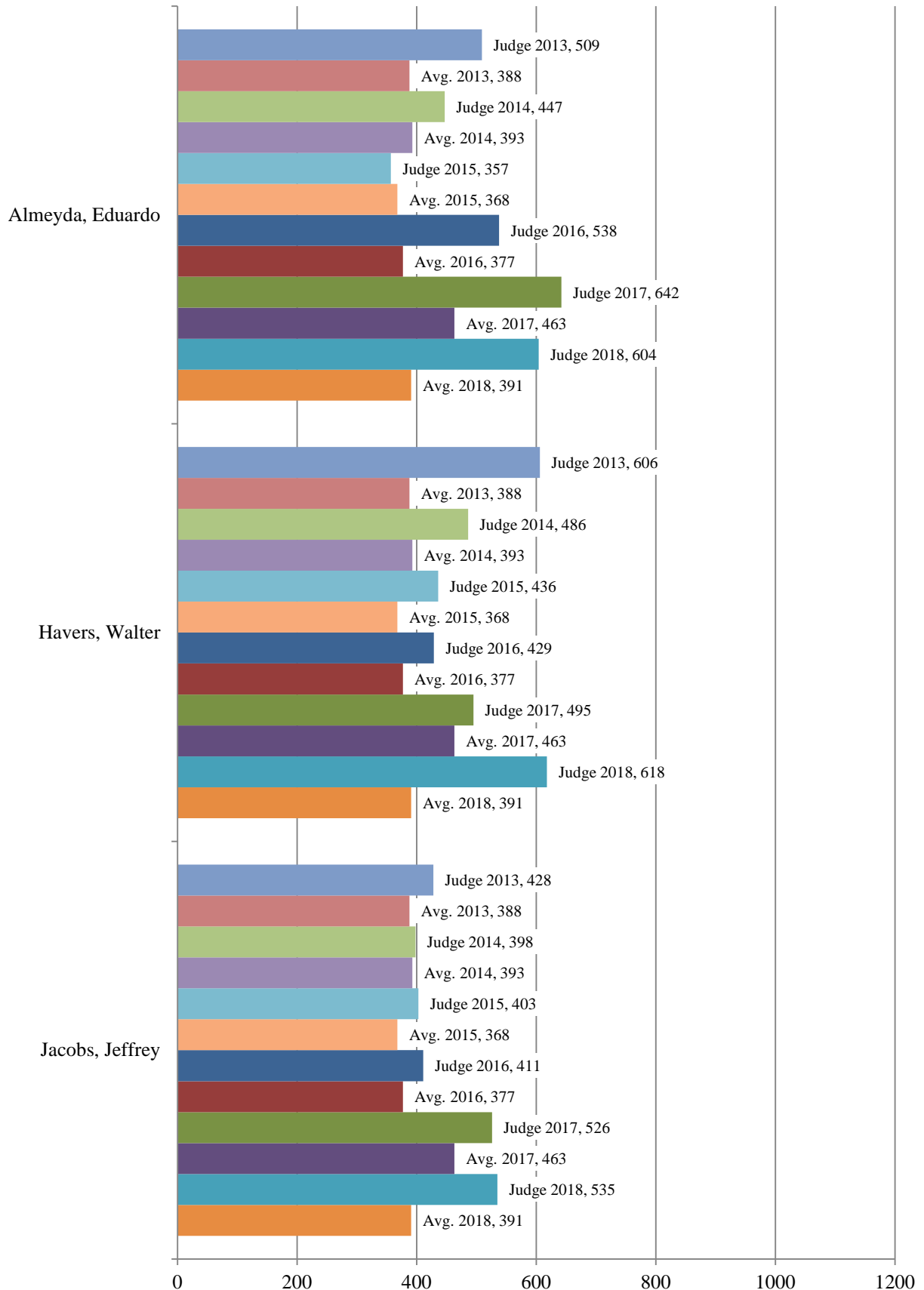
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



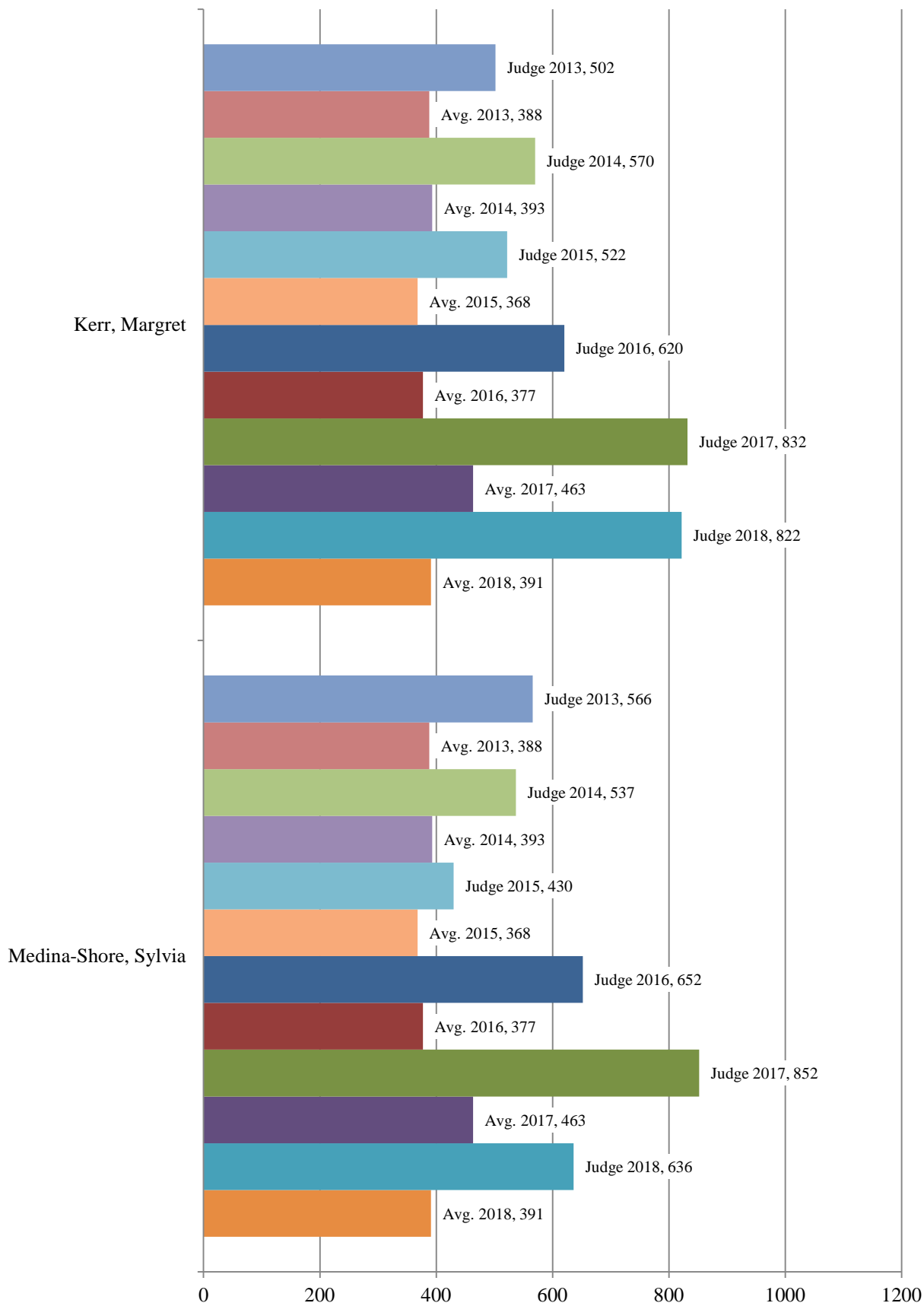
(Continued) The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



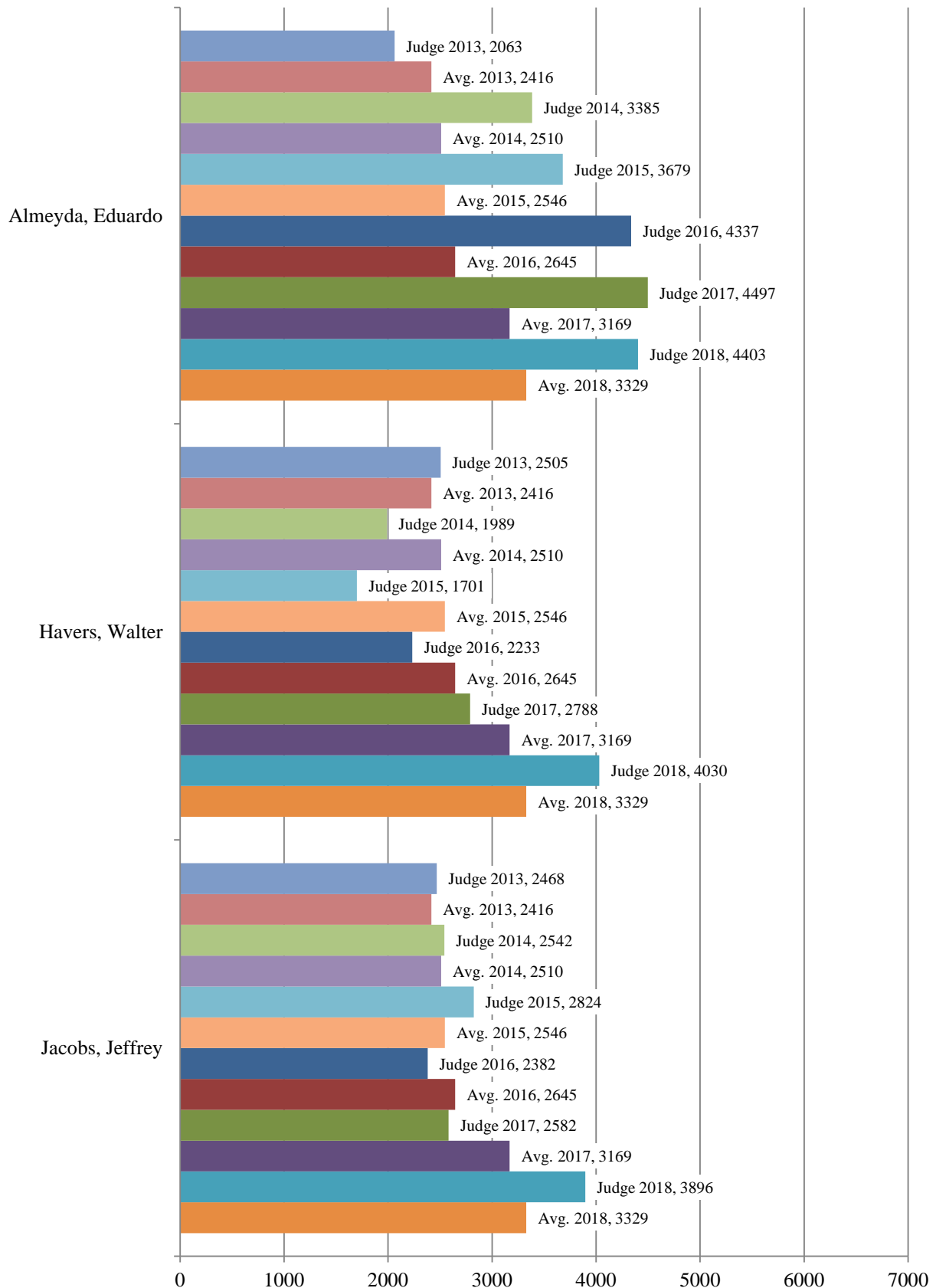
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



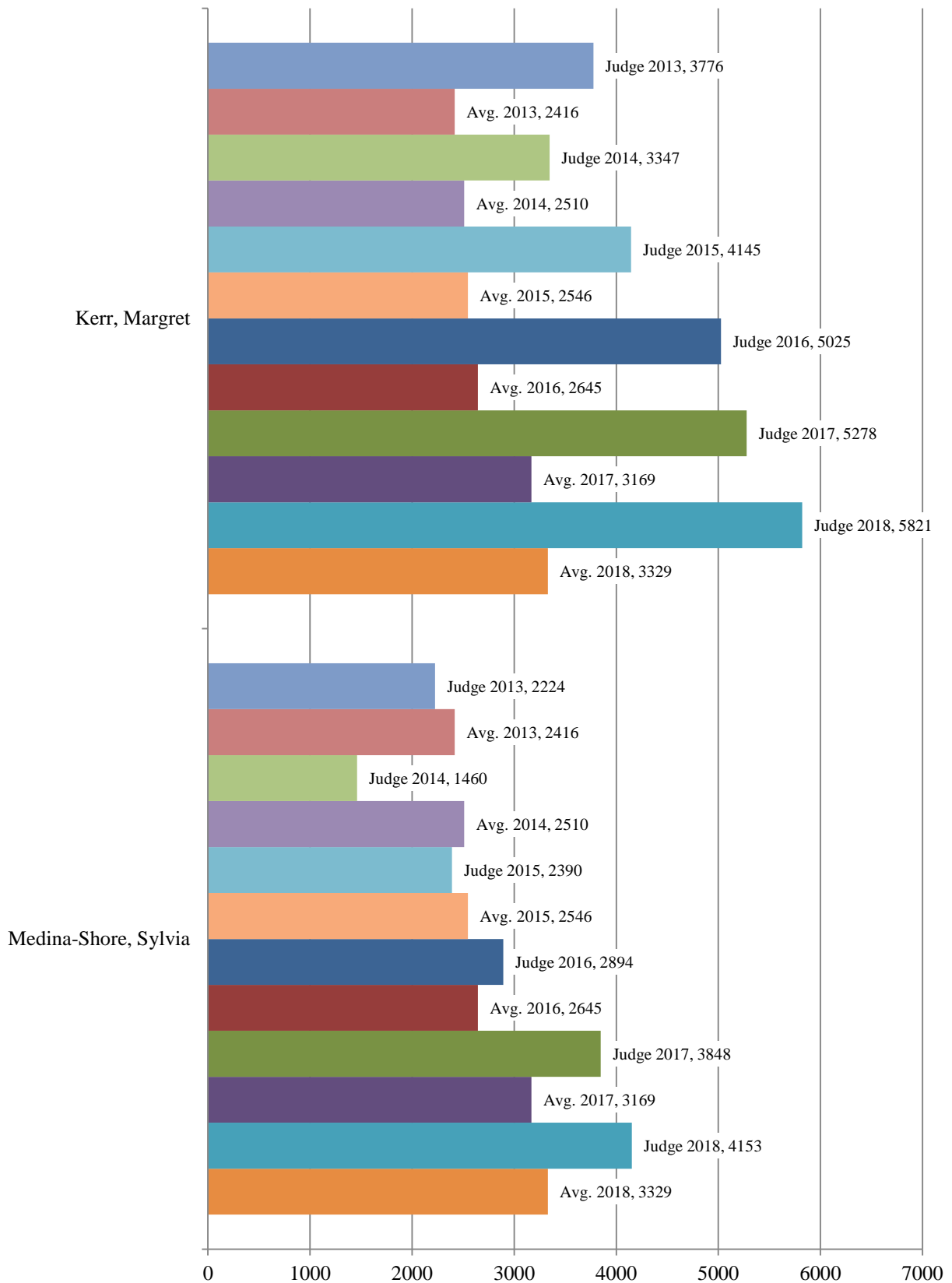
(Continued) The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



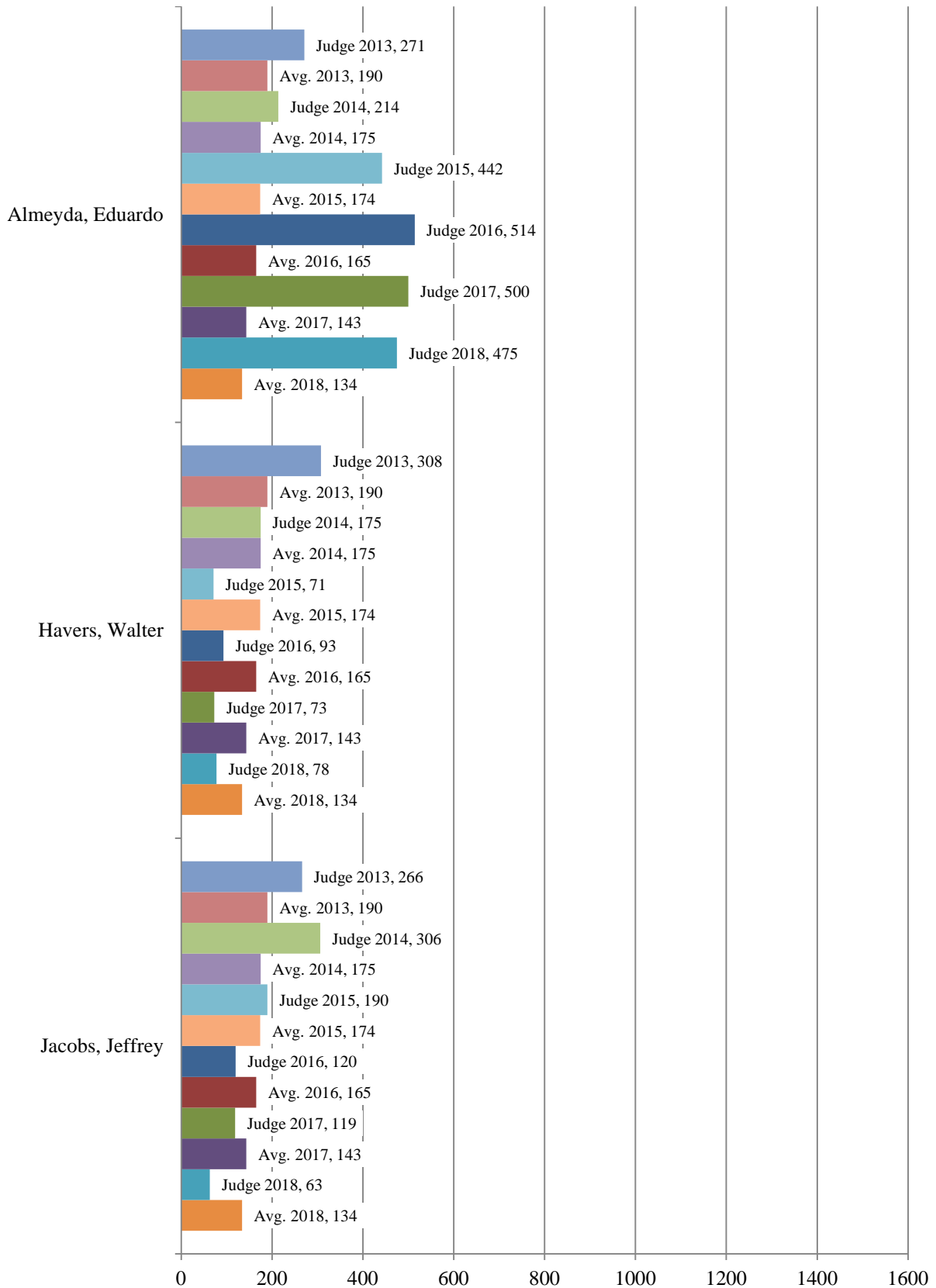
The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



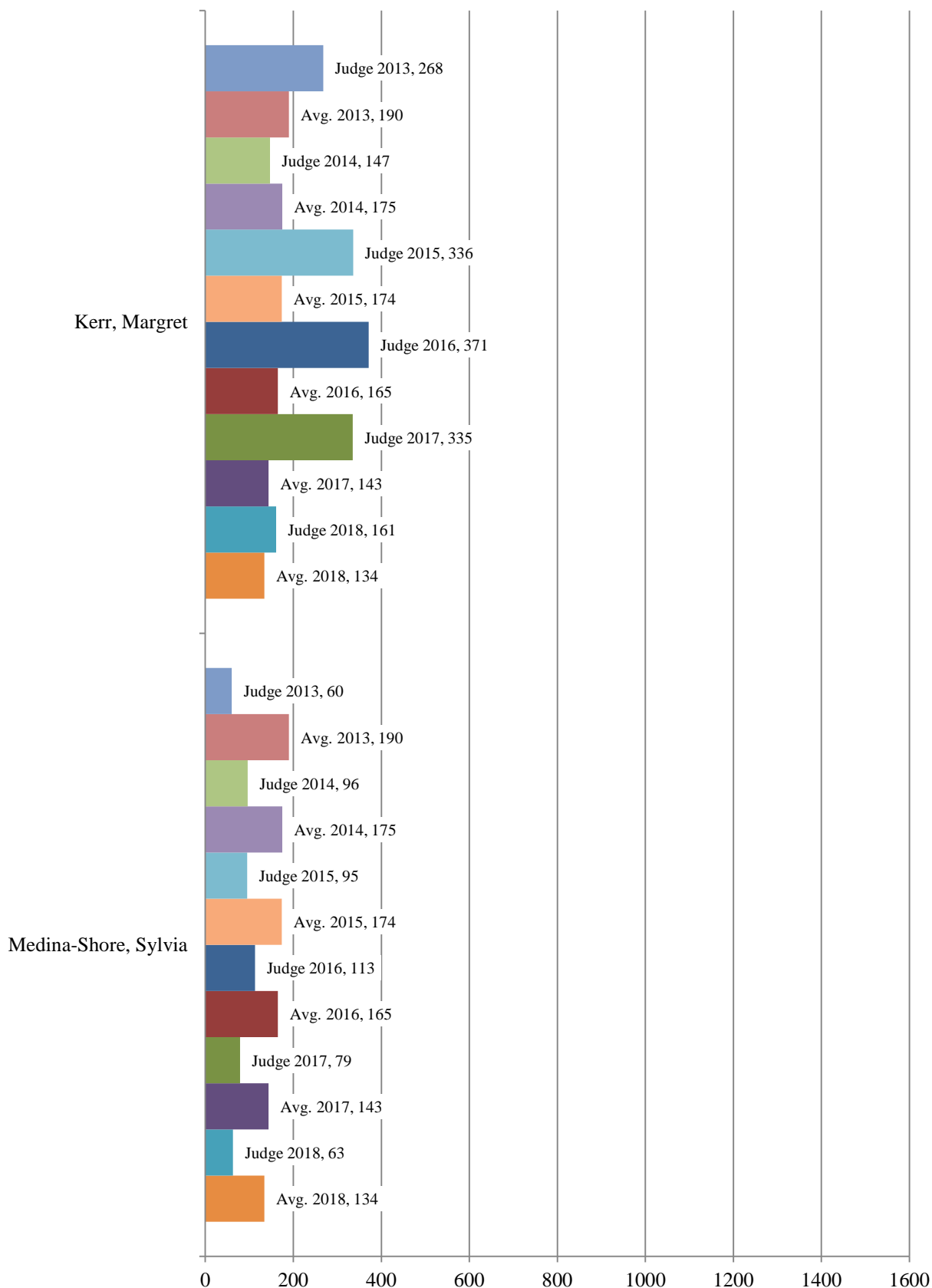
(Continued) The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



(Continued) The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each Judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “9” District ORL (JCC Pitts, JCC Sculco, JCC Sojourner):

District ORL includes Orange and Seminole counties.

Both “new cases” and Petition filing remain above average in District Orlando in 2017-18. Despite that, the Petition closure volumes remain similar to filing, leading to year-end pending inventories that are close to the statewide average, lower even in two of the three Divisions. The time to trial in District Orlando ranges from just below the statutory 210 day requirement to 236 days. The time to order remains below the statutory 30 days in all three Divisions.

Settlement Orders in District Orlando well exceed the statewide average, while stipulation orders are commensurate with the average. There is a notable disparity in the volume of “other orders” in Orlando, with two Divisions well below the statewide average in recent years, and the third Division consistently well in excess of the average.

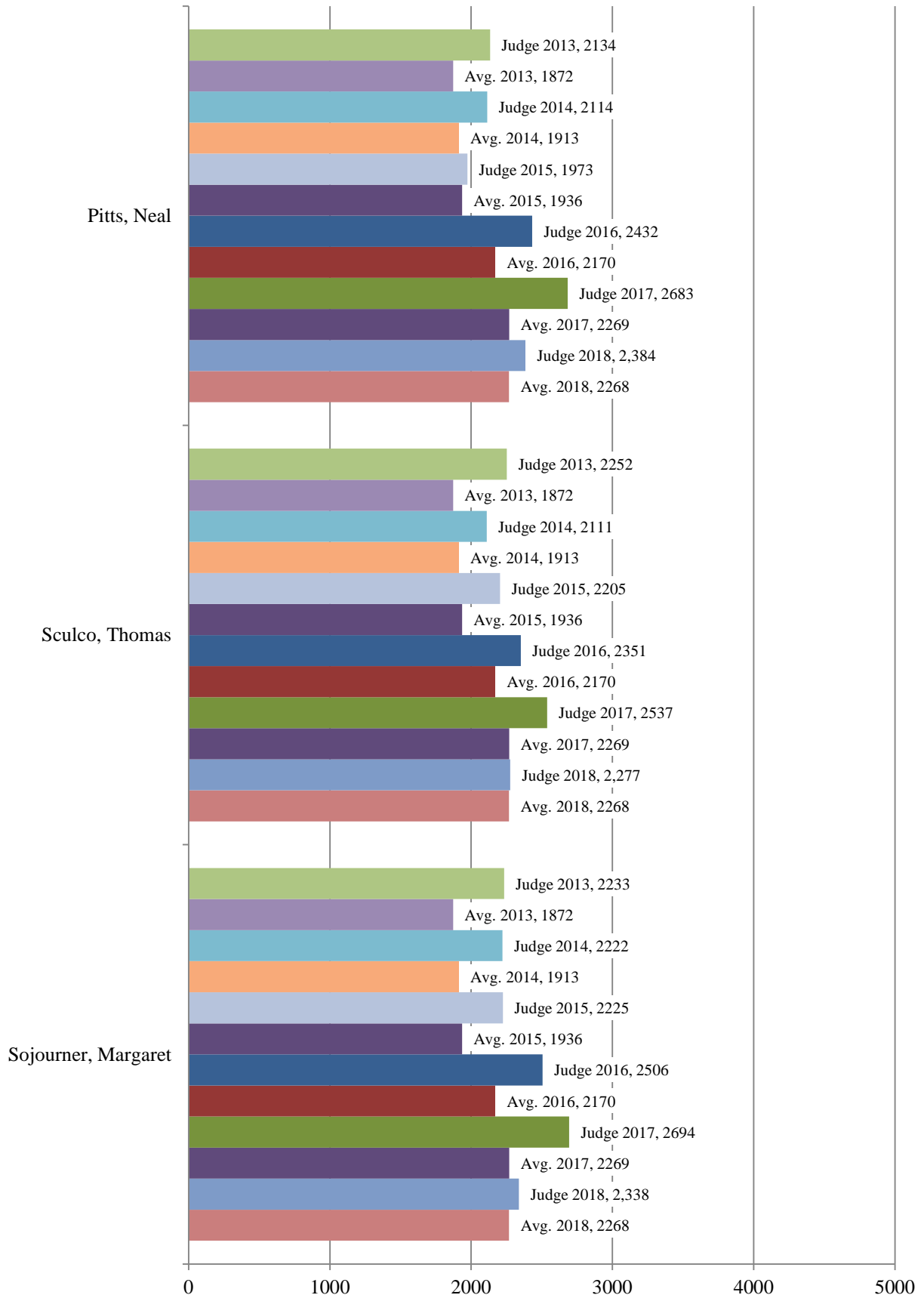
During 2017-2018, Judge Pitts participated as a speaker on the evidence panel at the 2018 National Association of Workers’ Compensation Judiciary College (NAWCJ). He spoke on a panel on the Heart/Lung Presumption panel and the Professionalism and Ethics at the Workers’ Compensation Institute (WCI) Conference. He served as a speaker on adjuster and attorney ethics at The Florida Bar Workers’ Compensation Forum. He served as a speaker on Professionalism and Ethics at the Office of Judges of Compensation Claims seminar in Tallahassee. Judge Pitts served as a moot court judge for the NAWCJ/WCI E. Earle Zehmer Moot Court Competition. Judge Pitts serves on the conference and the curriculum committees of the NAWCJ, a national organization devoted to judicial education. In August, 2018, he was elected to serve on its Board of Directors. In addition to active involvement in legal and judicial education, Judge Pitts has been involved in the American Inns of Court. He is past-president of the Judge William Wieland Inn of Court, devoted to the specialty of workers’ compensation, and the recipient of its first David A. Hammond Professionalism award. He also assists the Tampa and Miami Inns of Court. Judge Pitts received the Frierson-Colling Professionalism award from The Florida Bar Workers’ Compensation Section in April, 2018. He is the first sitting JCC to receive this award. Judge Pitts also received the John “Jake” Schickel Professionalism award presented by the joint Inns of Court at its annual luncheon in August, 2018.

In 2017-18, Judge Sculco continued to serve the Central Florida legal community through the Florida Bar, the Orange County Bar Association, and both the George C. Young and William E. Wieland Inns of Court. Judge Sculco continues to serve as an ad hoc member of the workers’ compensation subcommittee to the appellate rules committee of the Florida Bar. As an active member of the Appellate Practice Committee of the OCBA, Judge Sculco spoke about workers’ compensation appeals at a seminar on appellate practice at the OCBA. Also at the OCBA, along with other JCC’s in the Central Florida region, he presented on practice and procedure tips for workers’ compensation attorneys. Judge Sculco continued as an adjunct professor of law at the FAMU College of Law, teaching “Advanced Appellate Advocacy” in the spring of 2018. He was a presenter on First Responder claims at the annual workers’ compensation convention in Orlando, and served as a volunteer judge for the Earle K. Zehmer moot court competition that was held at the convention.

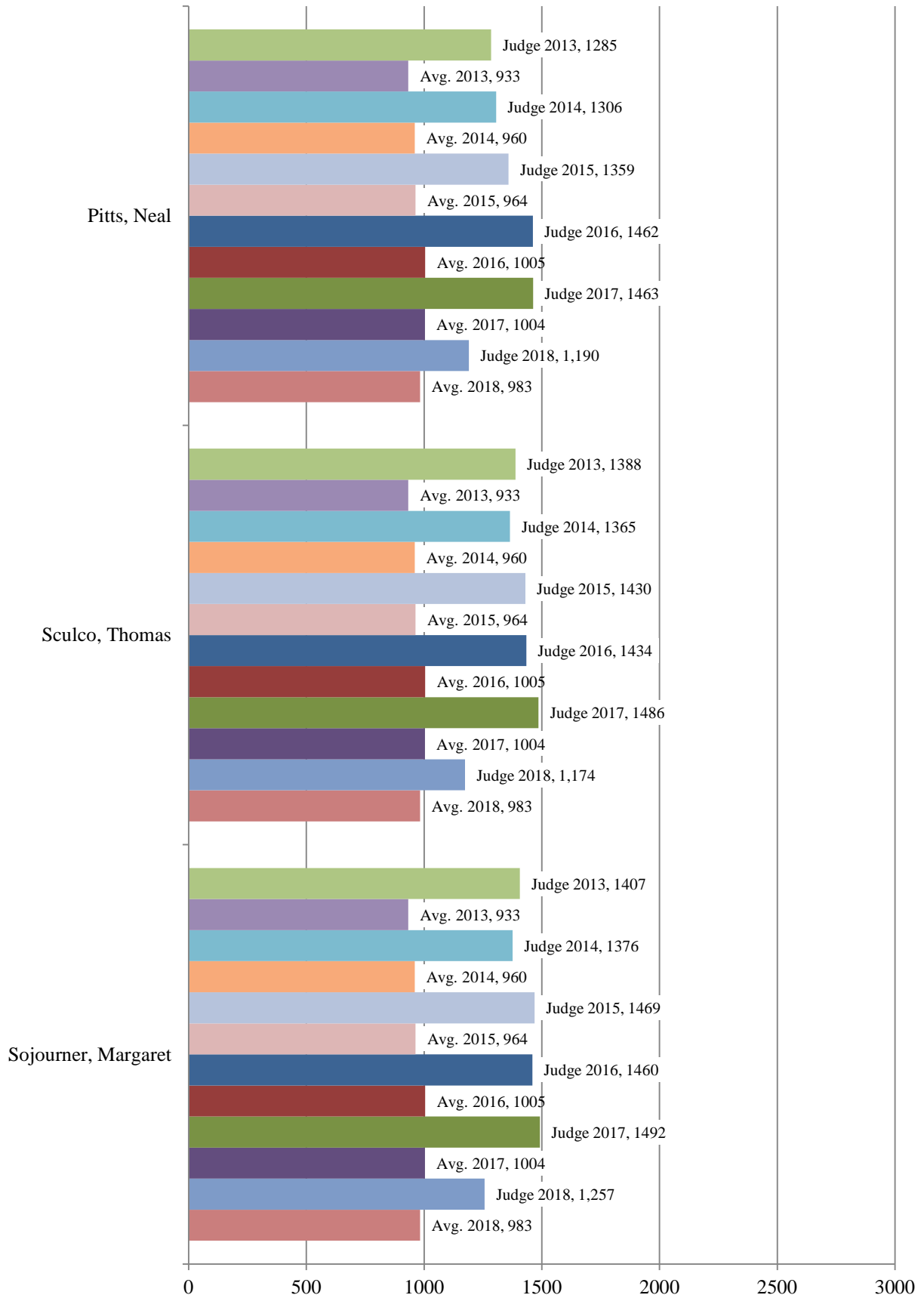
Sherry Davis Hires is an active member of the Judge William Wieland American Inn of Court organization. In September 2018 she was a co-presenter of a continuing legal education session concerning futuristic technology that will impact the practice of law.

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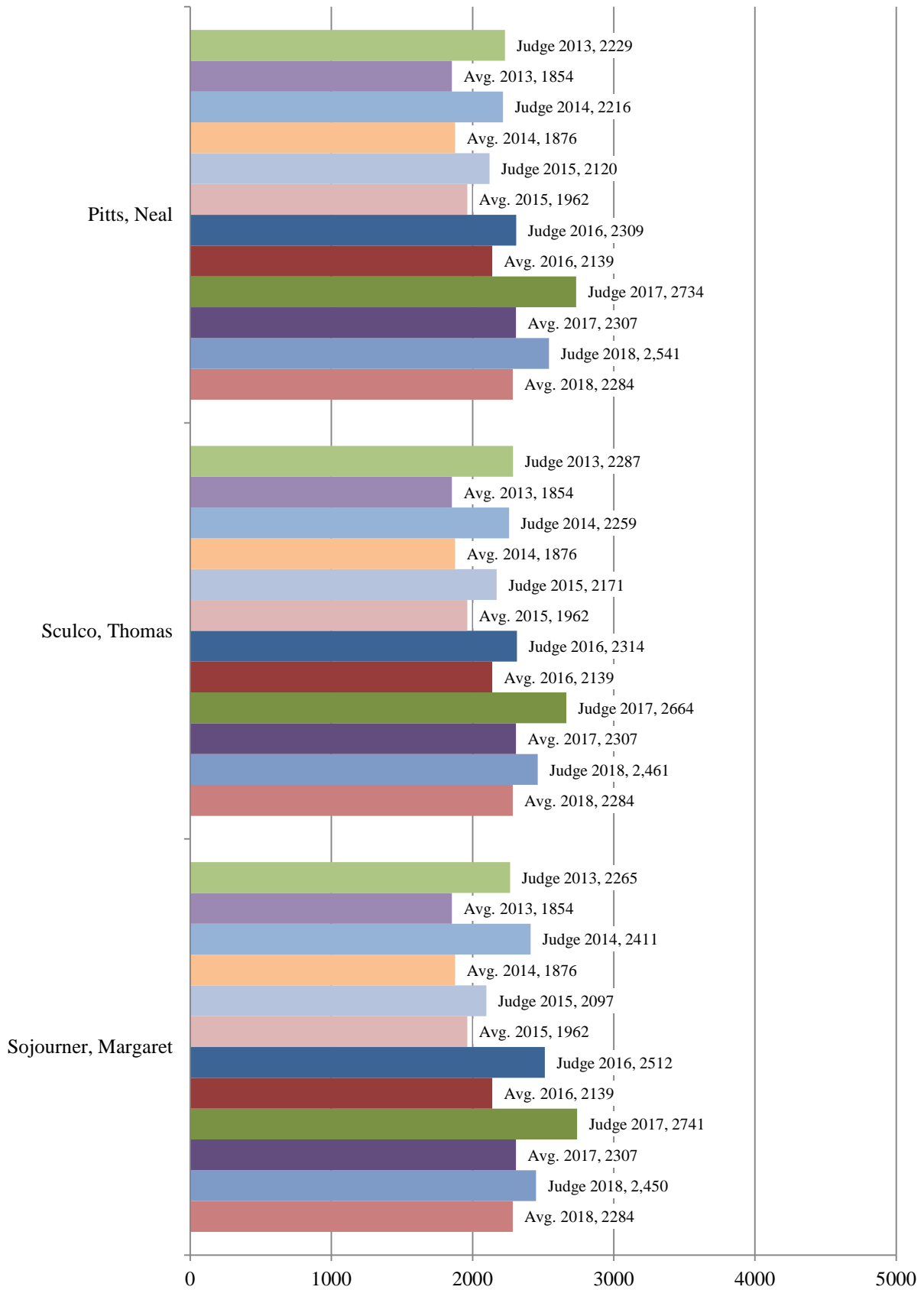
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



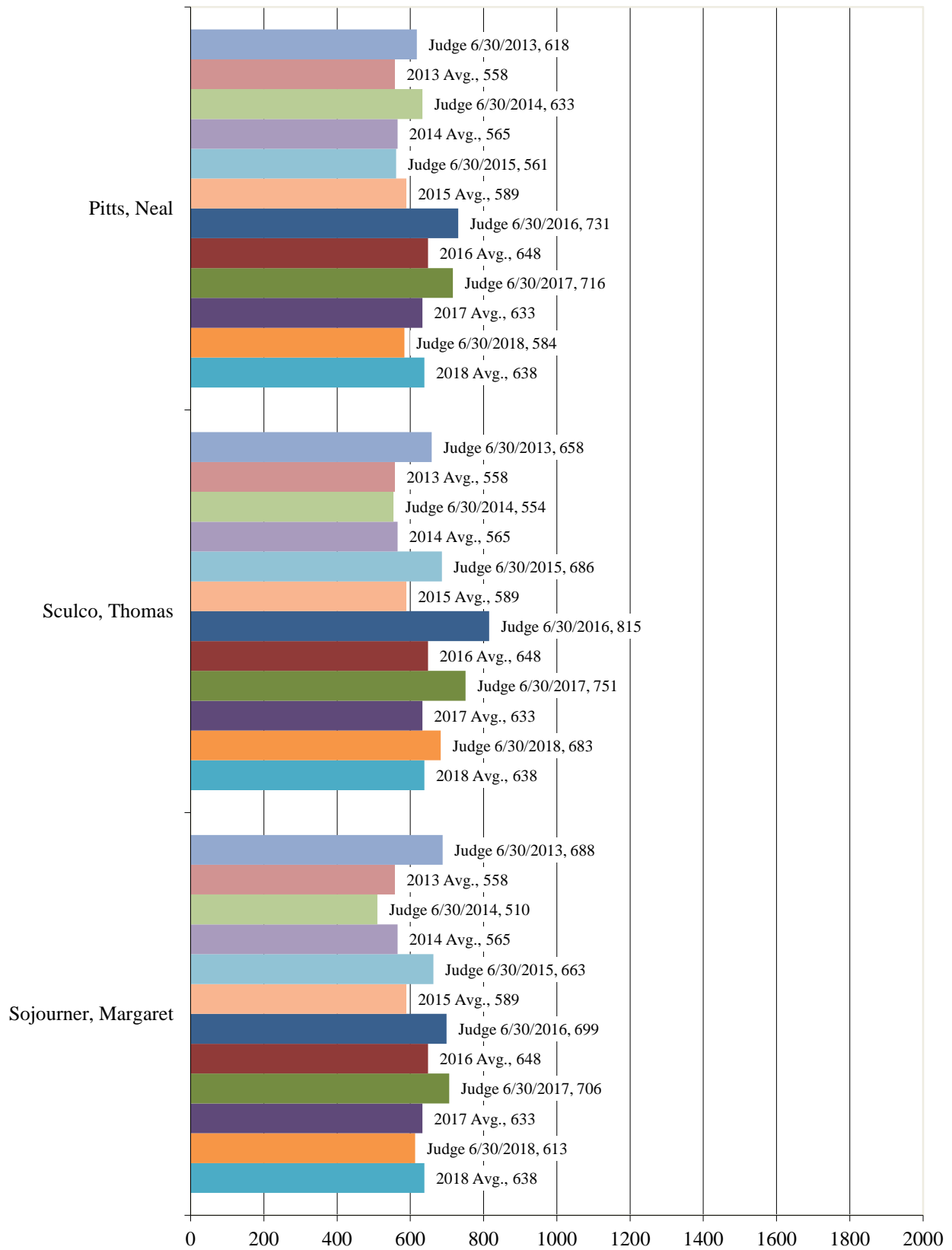
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



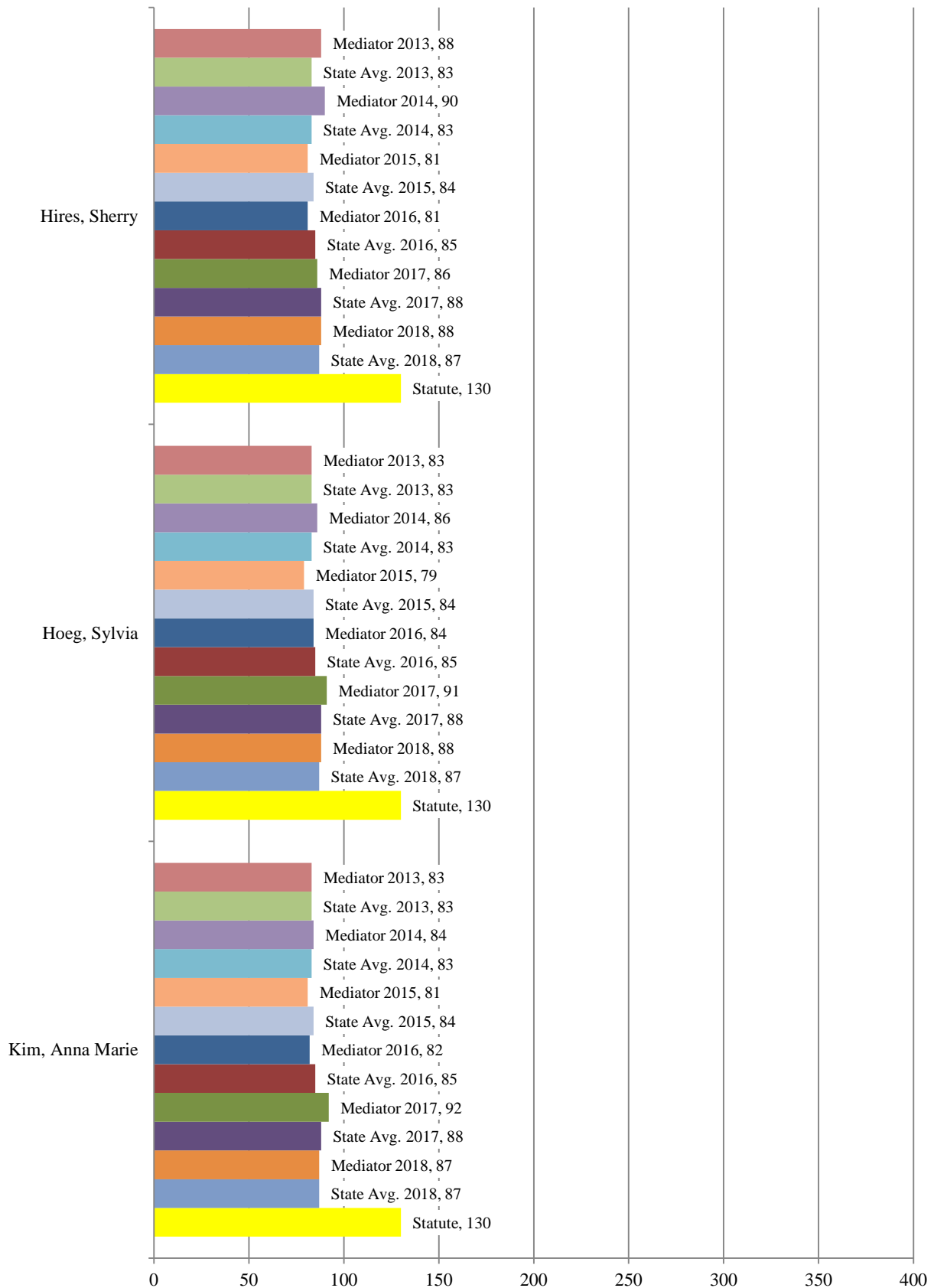
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



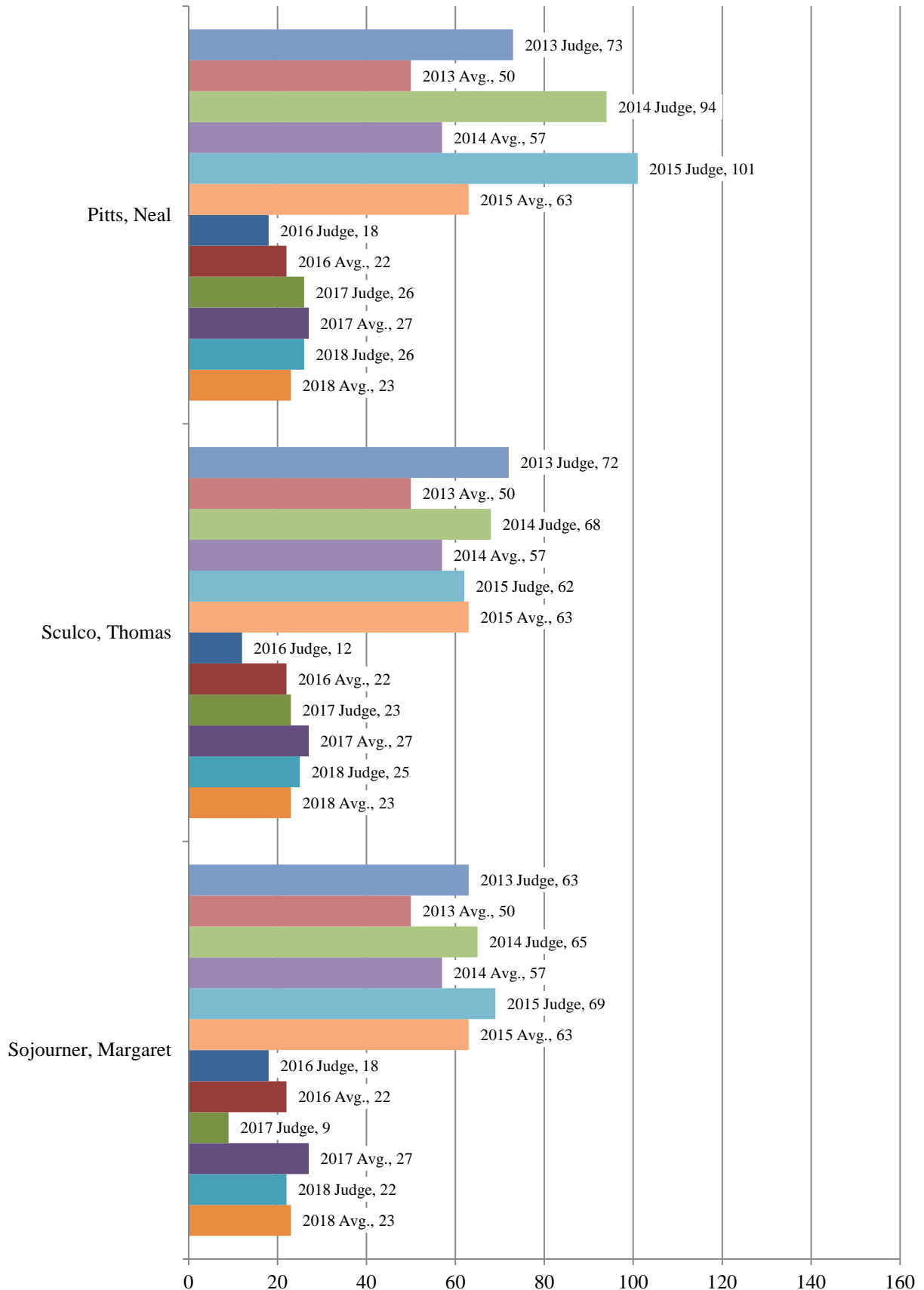
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



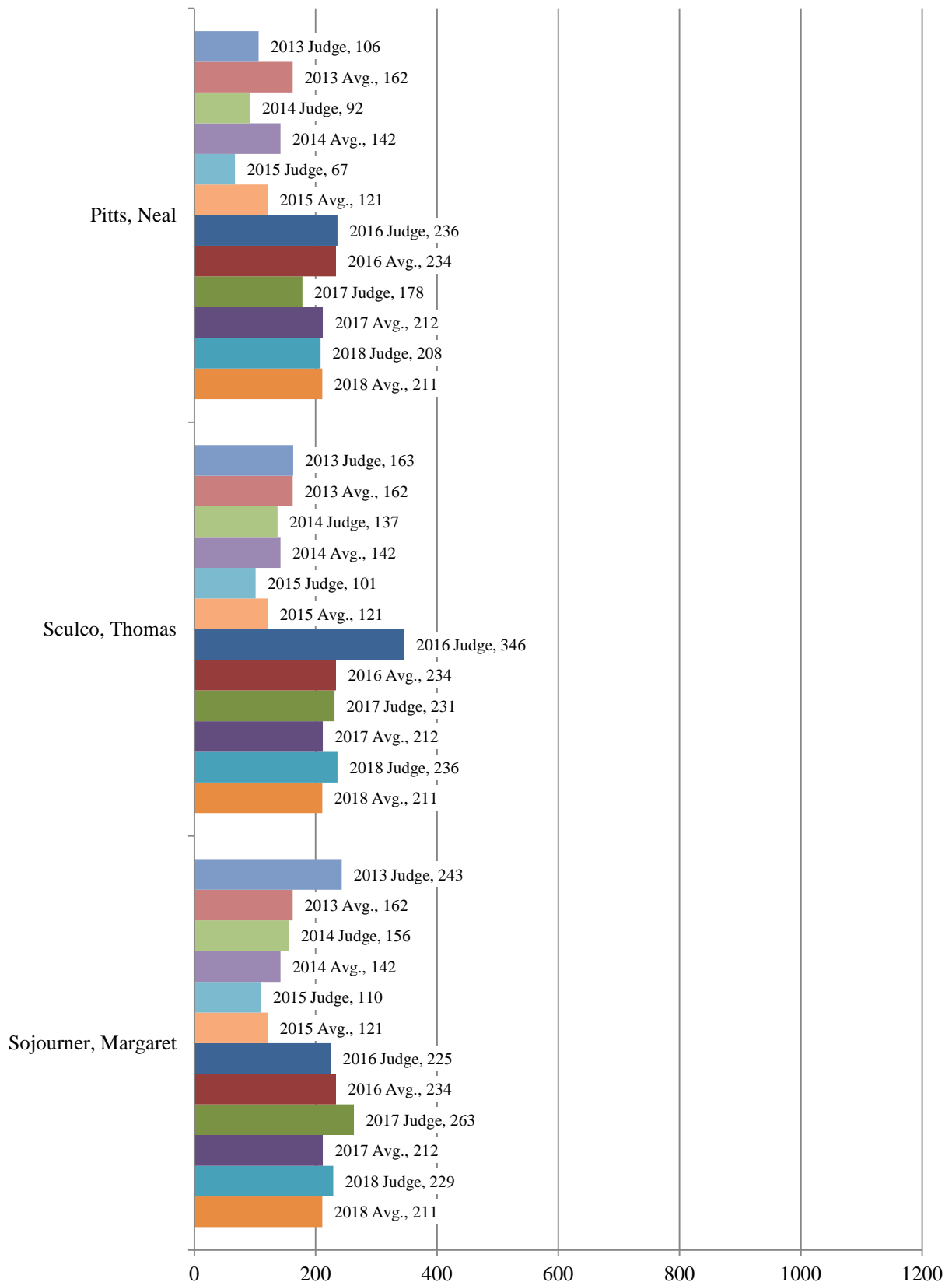
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



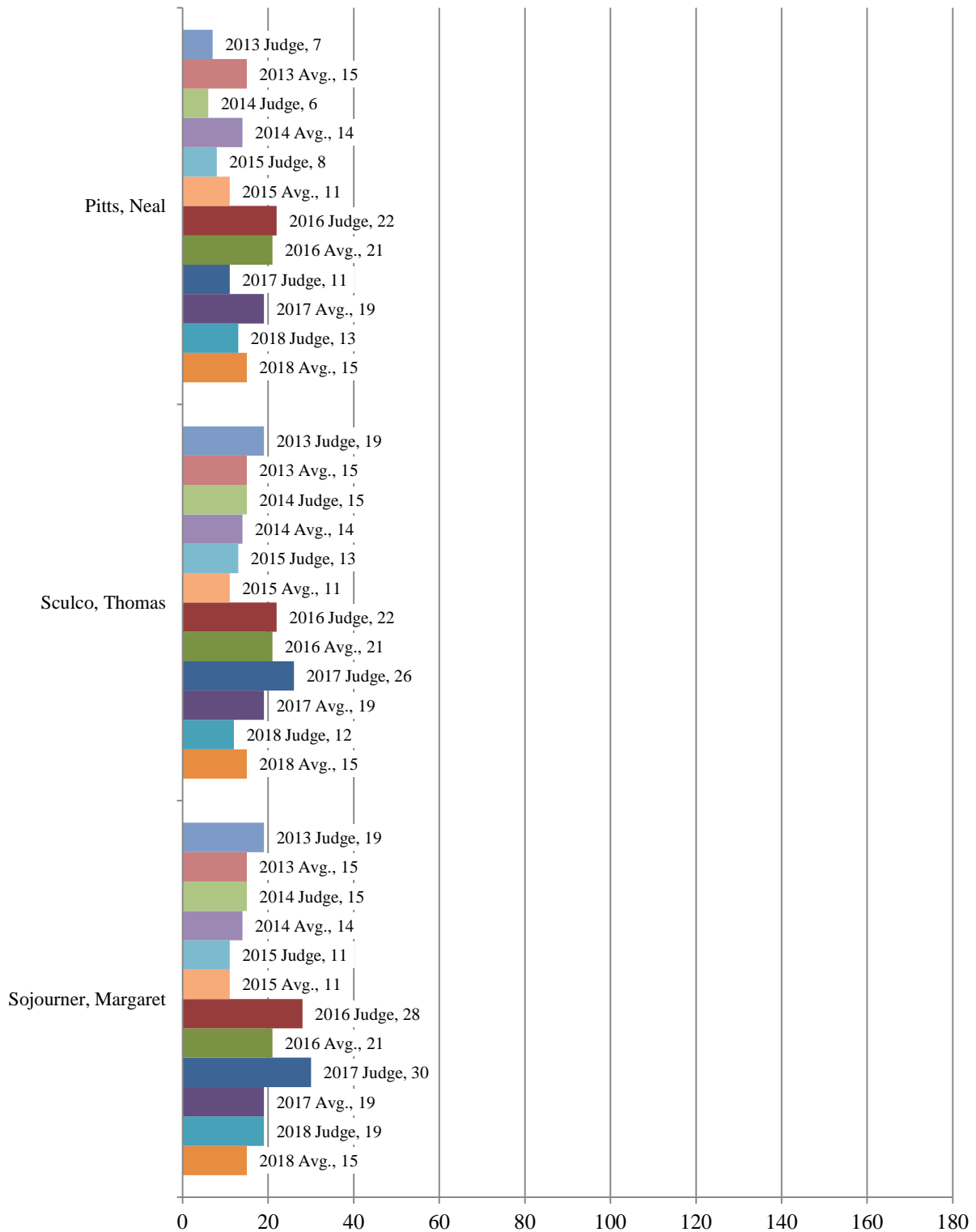
The following graph depicts the total volume of trial orders²⁰⁷ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



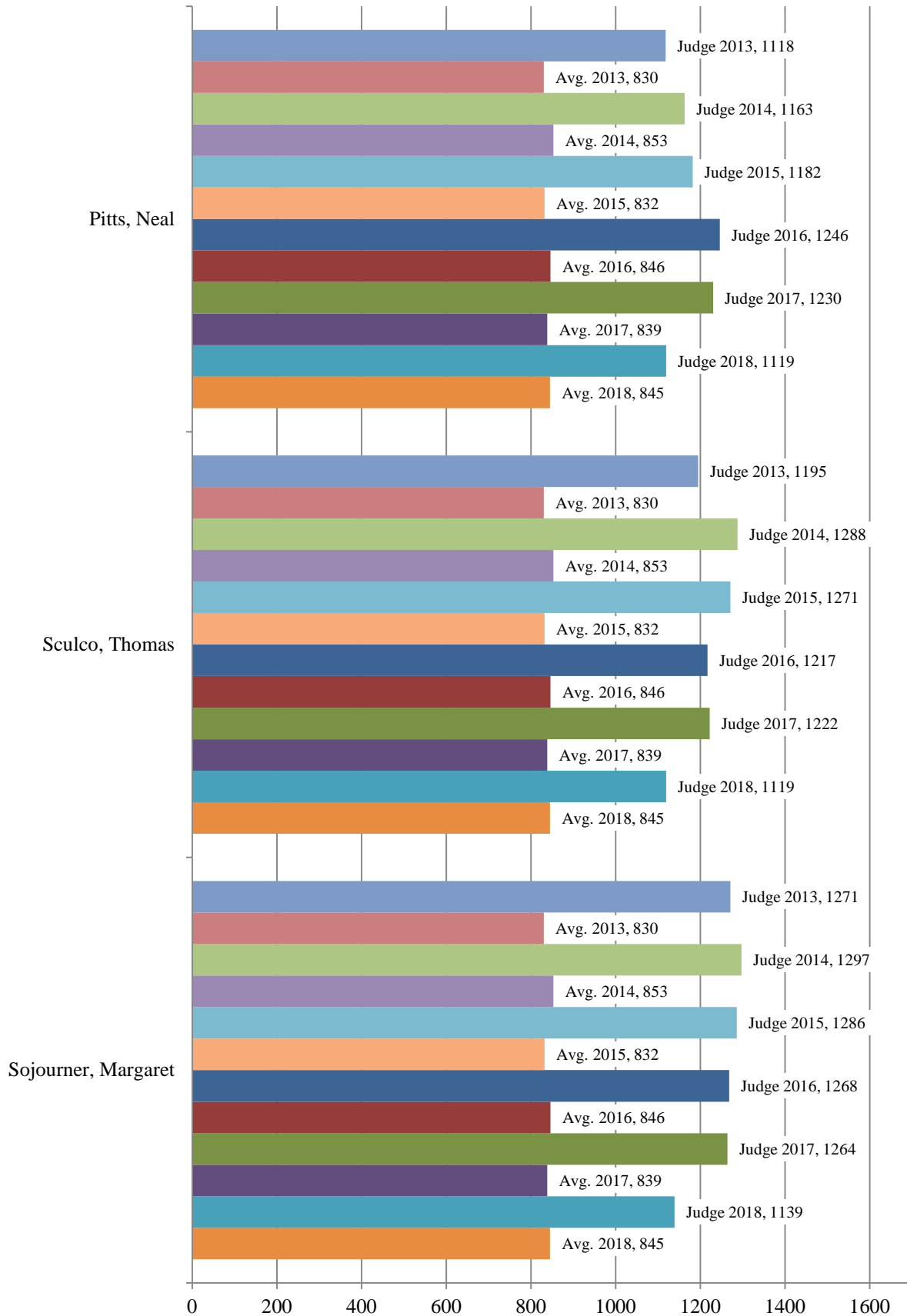
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



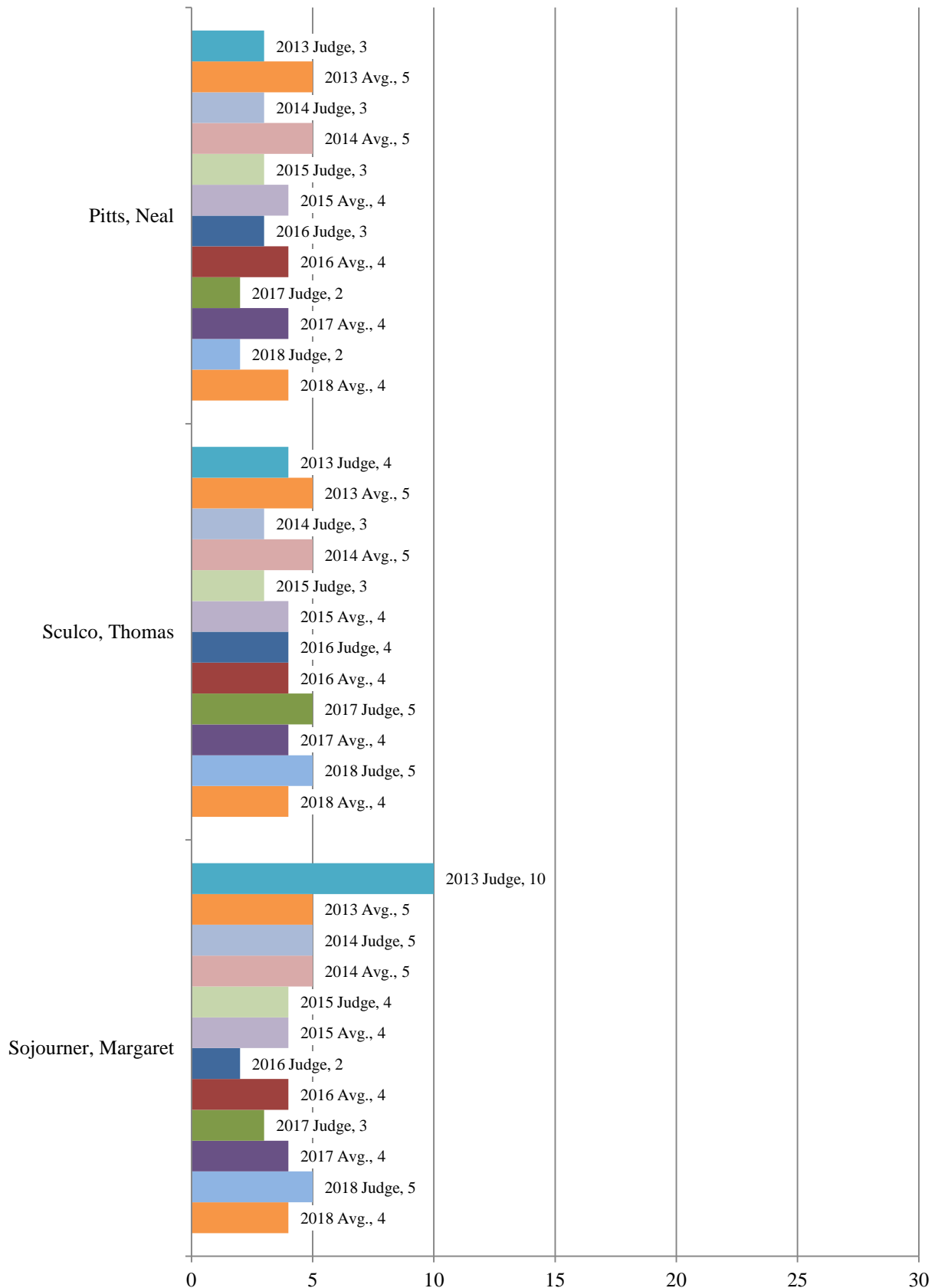
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



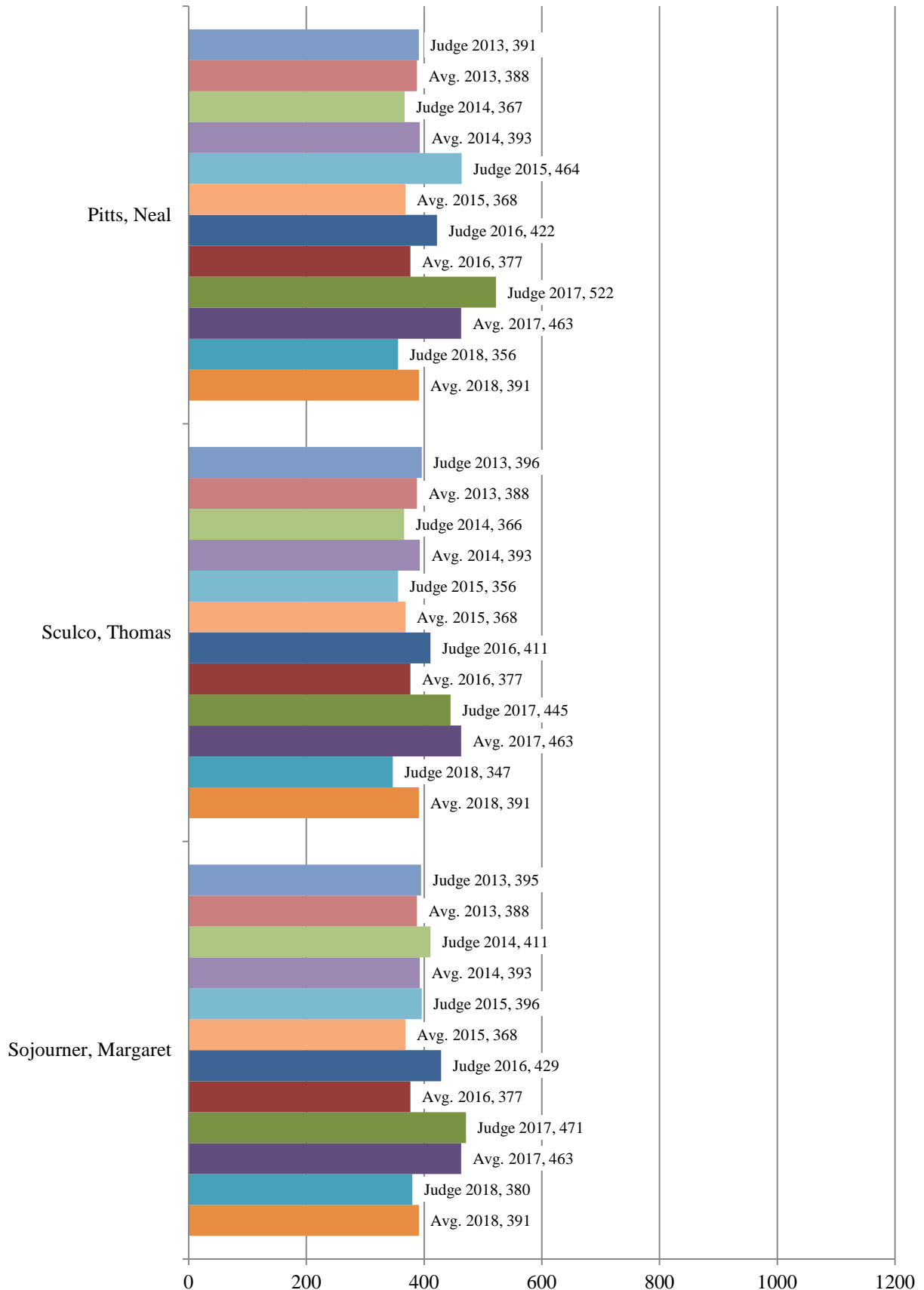
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



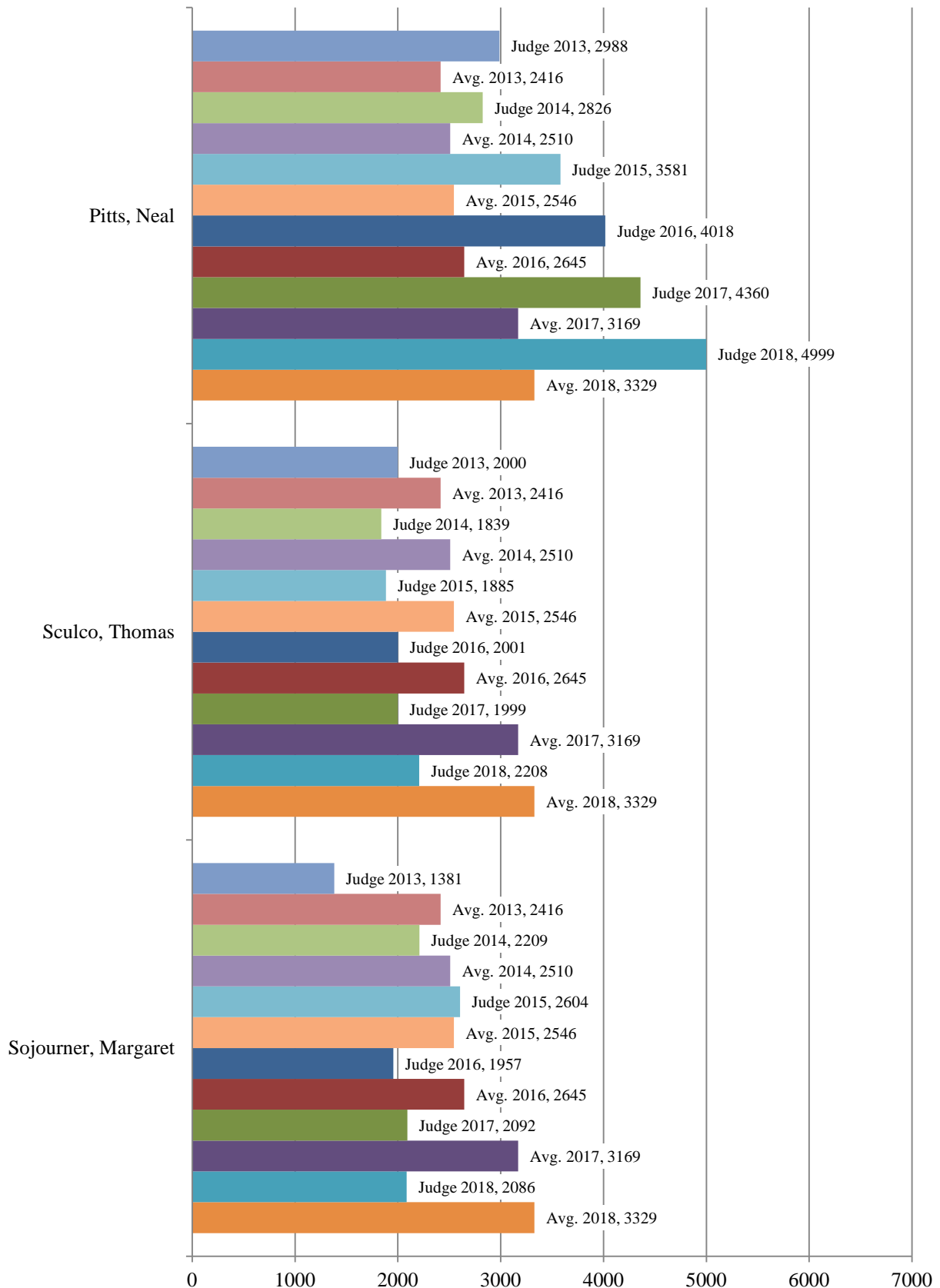
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



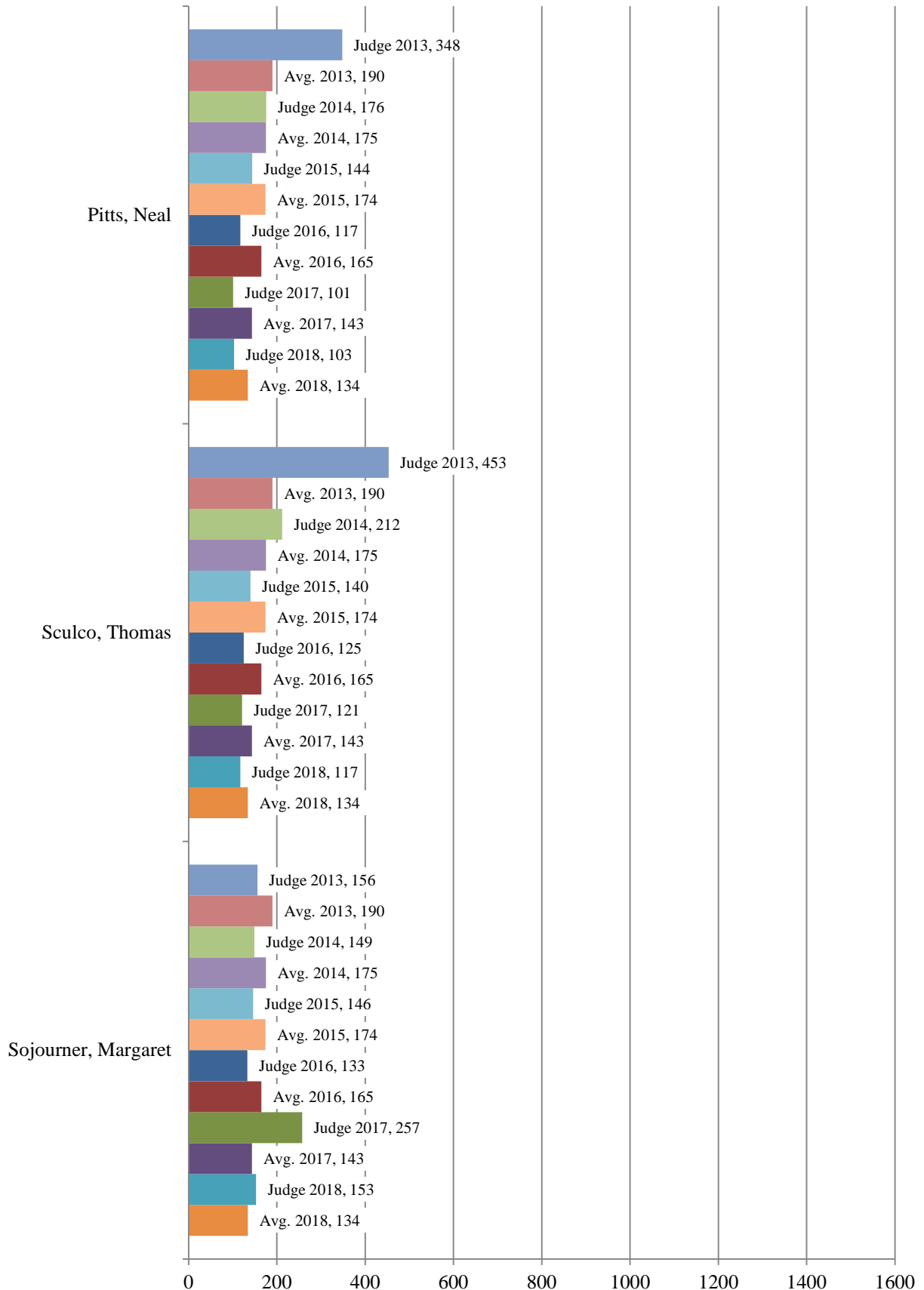
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “10” District PMC (JCC Walker):

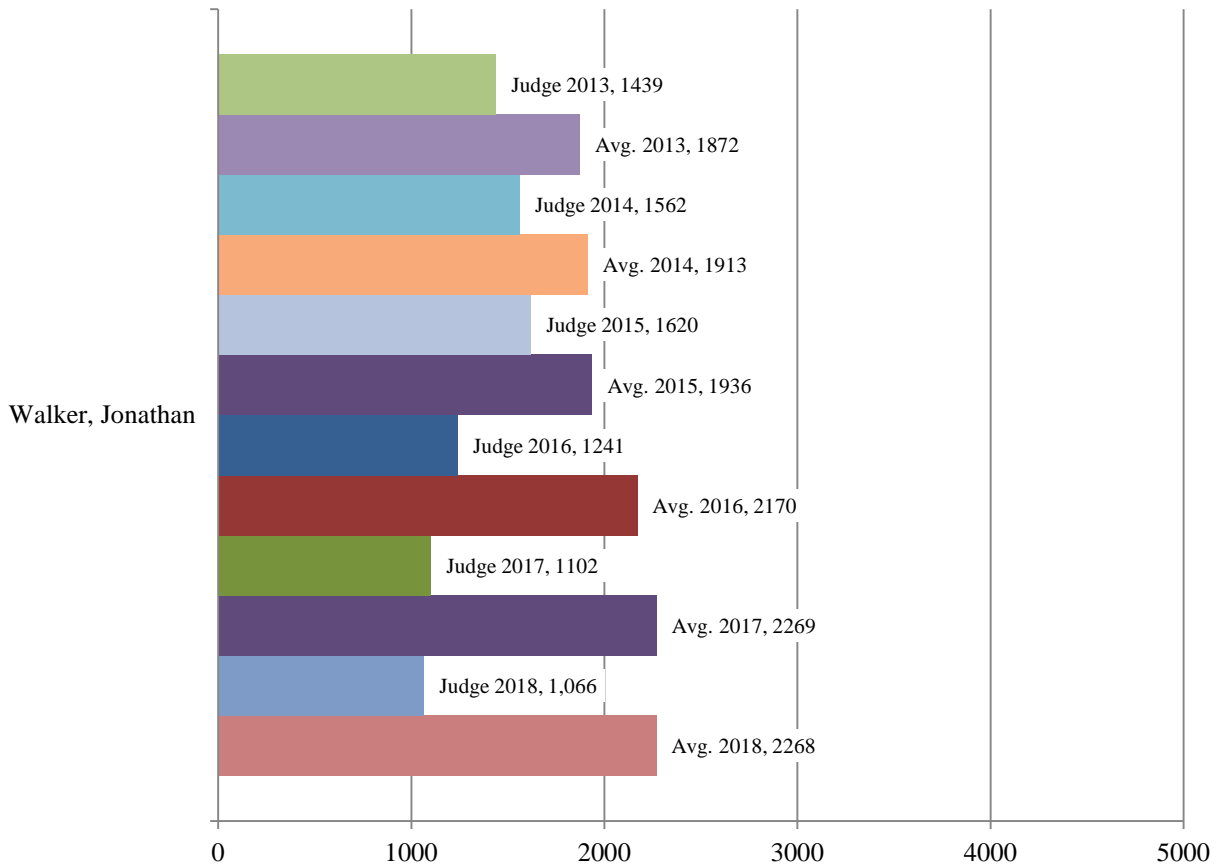
District PMC in Panama City includes Bay, Calhoun, Gulf, Holmes, Jackson, Liberty, Walton, and Washington counties.

District PMC is one of the largest geographic Districts in the state. While most parties will usually agree to travel to the District Office, there are occasions when trials are held remotely, by Judge Walker, throughout this very large geographic area. The population center is Panama City, which is a significant travel from either of the next closest Districts, Tallahassee (98 miles, 126 minute drive-time) and Pensacola (103 miles, 150 minute drive-time).

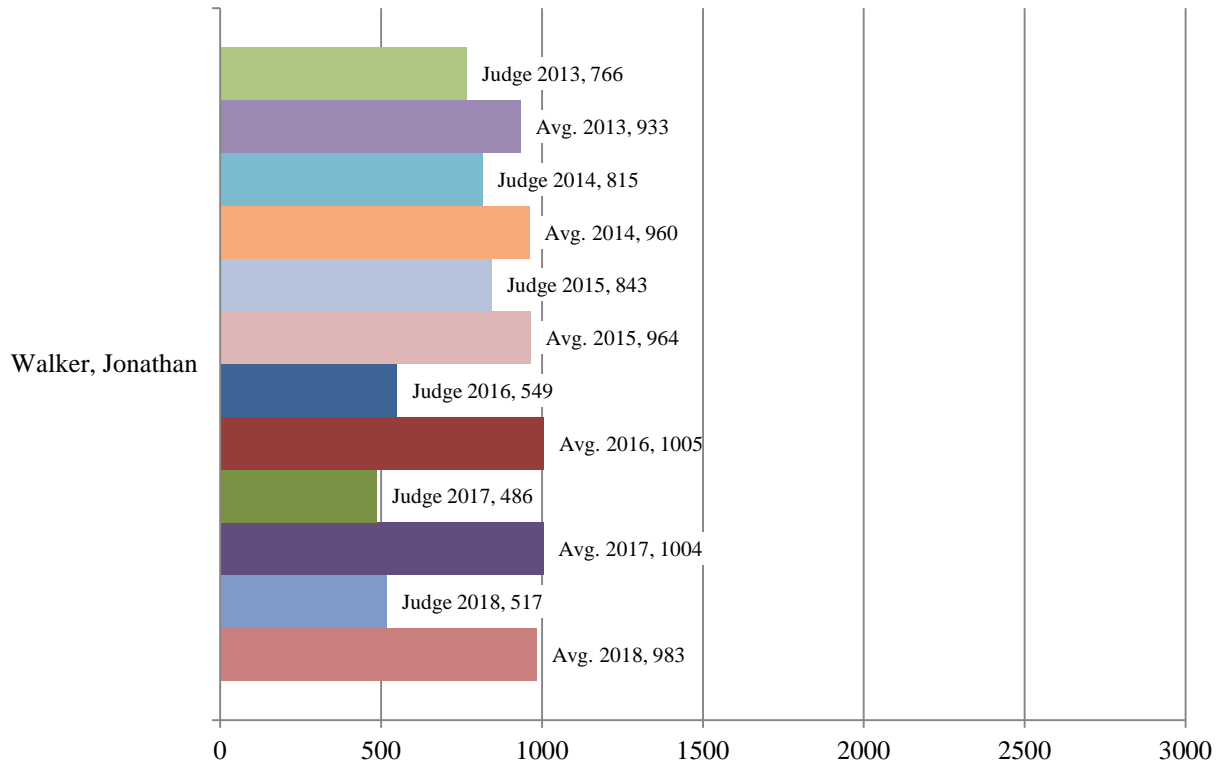
In PMC, the PFB and “new case” filing rates remain well below the statewide averages, approximately half. Despite this, the trial volume in District PMC is comparable with the statewide average, and the time to trial exceeds the statutory 210 days. The time to order, however, remains within the 30 day statutory parameter. The volume of settlements, stipulations, and other orders all are well below the statewide average.

During the fiscal year, Judge Walker participated as a presiding judge in two moot court competitions. In August 2017, he served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition at the Workers’ Compensation Educational Conference in Orlando. On February 7, 2018, he was the presiding judge at one of the preliminary rounds of the Florida High School Mock Trial Competition in Pensacola. At the August 2017 Orlando conference, he served on a judge panel discussing attorney’s fees in light of recent cases with members of the bar. Judge Walker was also a panelist for the topic, “Little Known Rules Your Malpractice Carrier Would like You to Know About,” at the Spring 2018 Workers’ Compensation Institute Seminar in Tallahassee. He was the guest speaker at the Deane Bozeman School law day event on May 16, 2018 in Panama City. He also serves on the parent advisory board for the Deane Bozeman School.

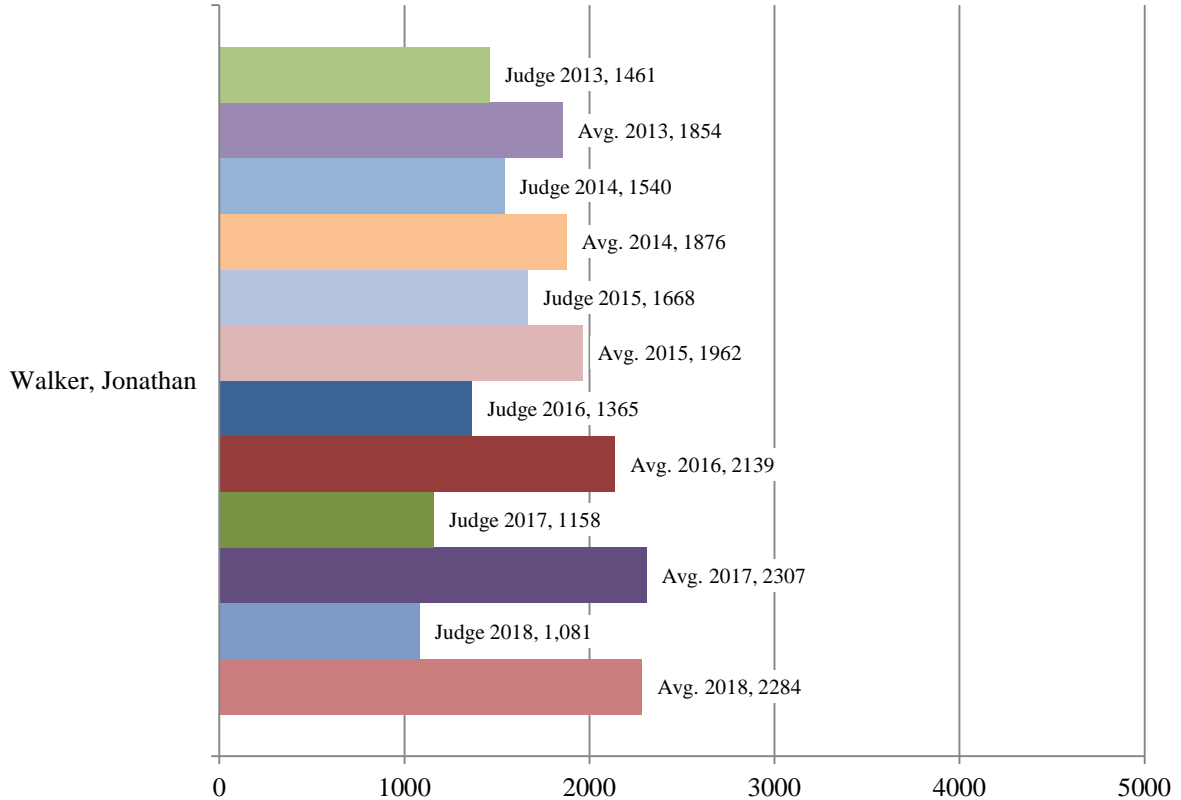
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



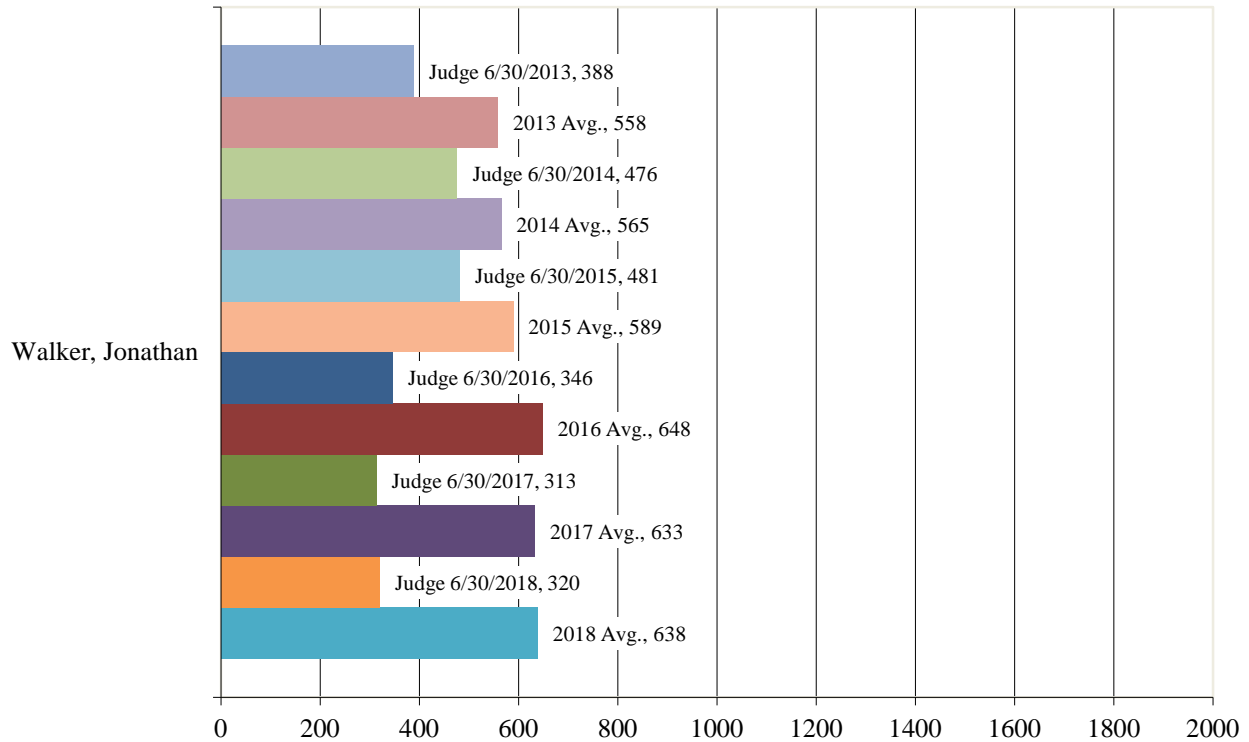
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



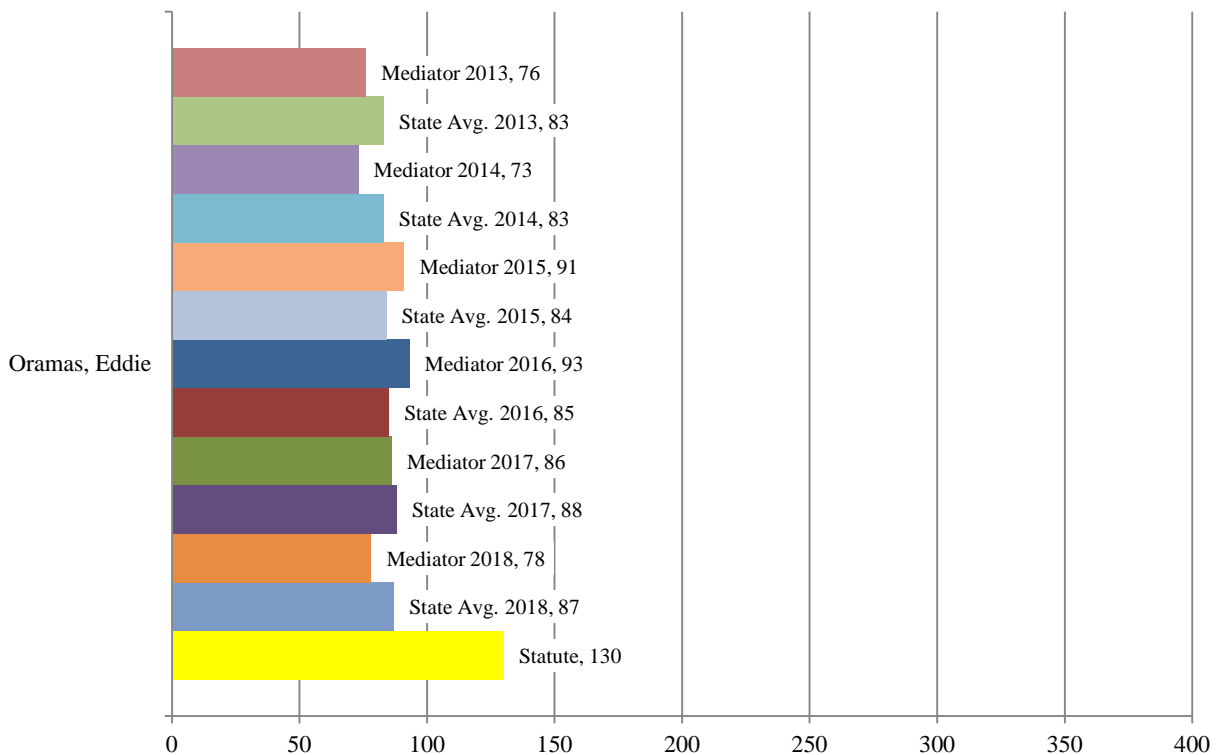
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



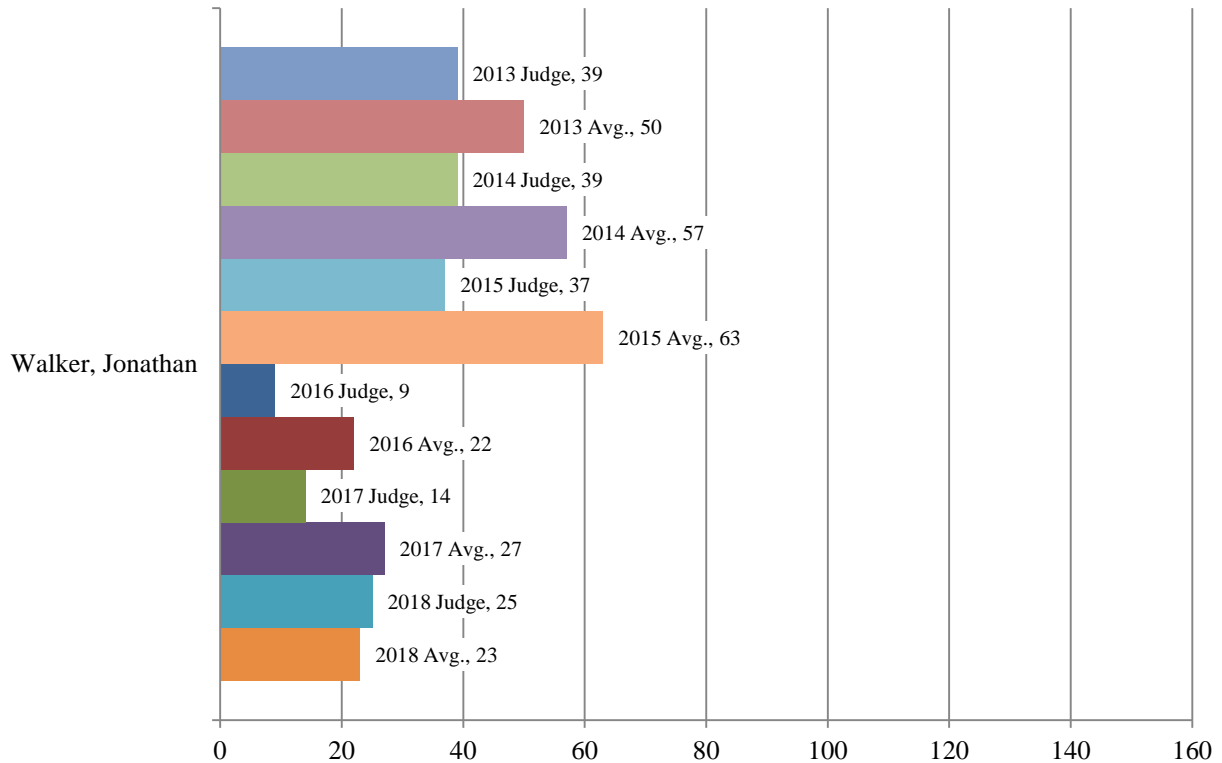
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



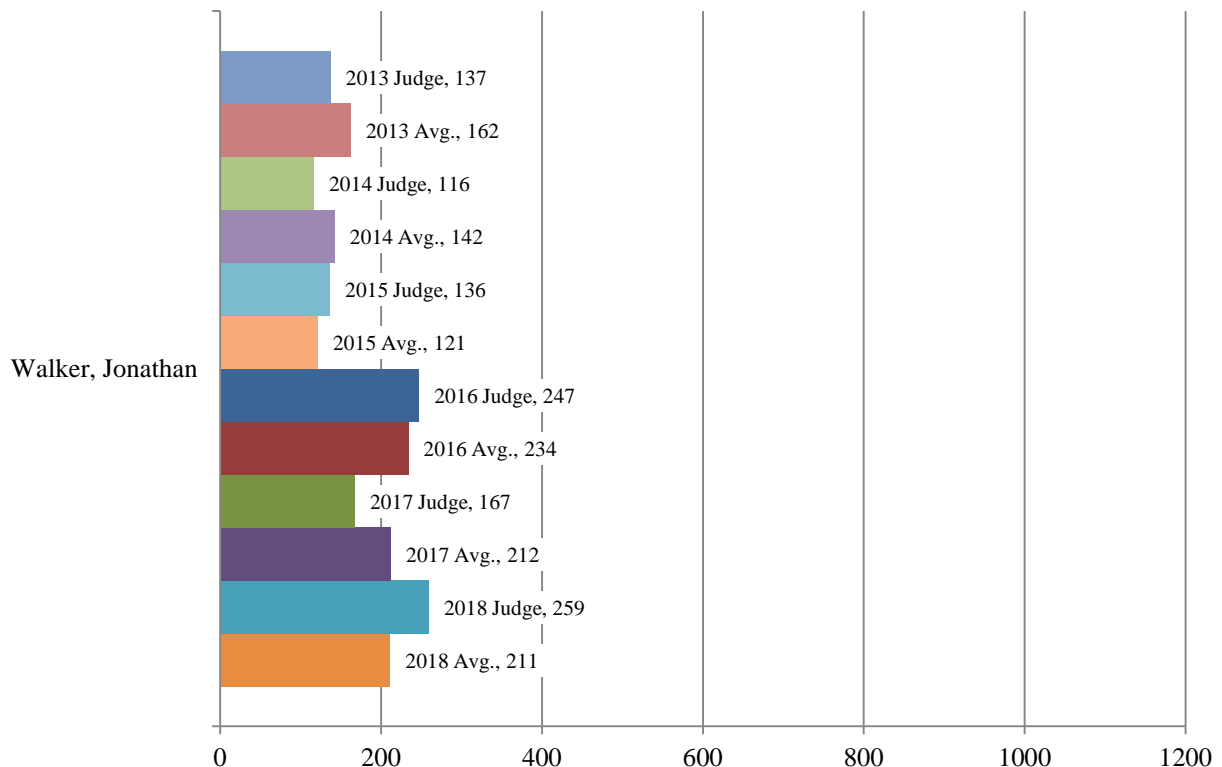
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



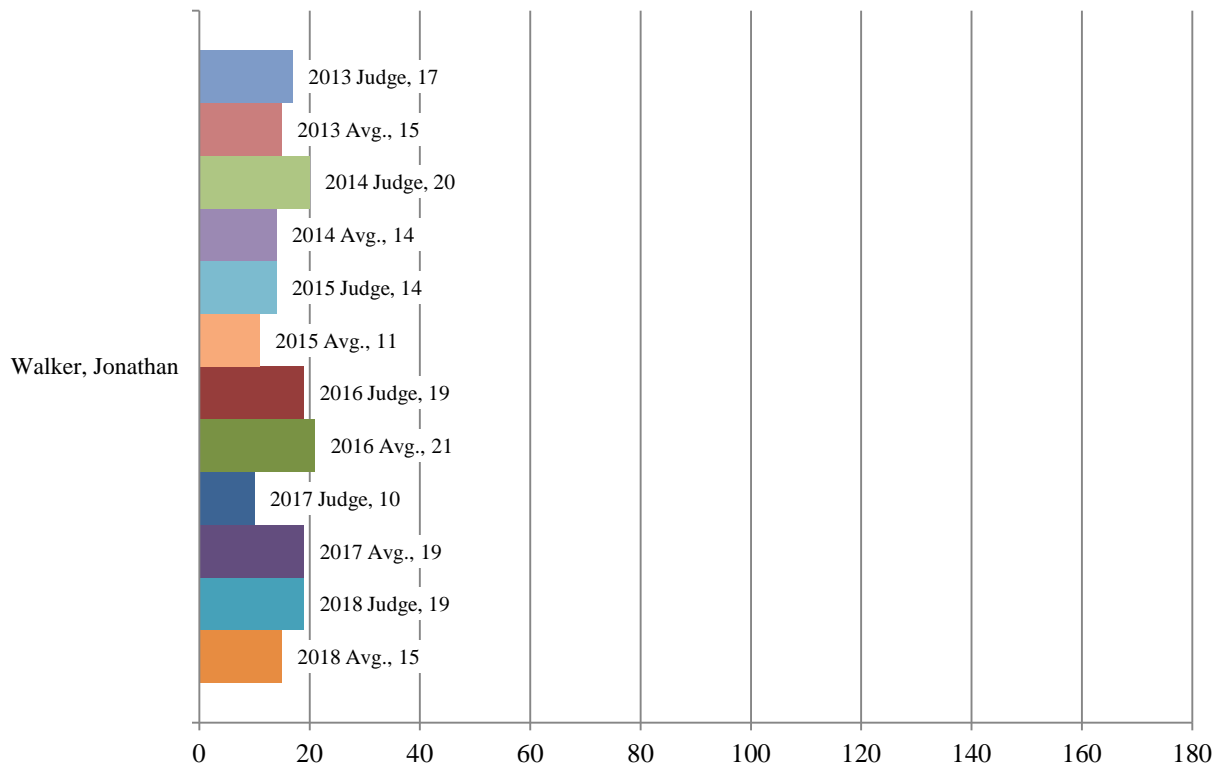
The following graph depicts the total volume of trial orders²⁰⁸ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



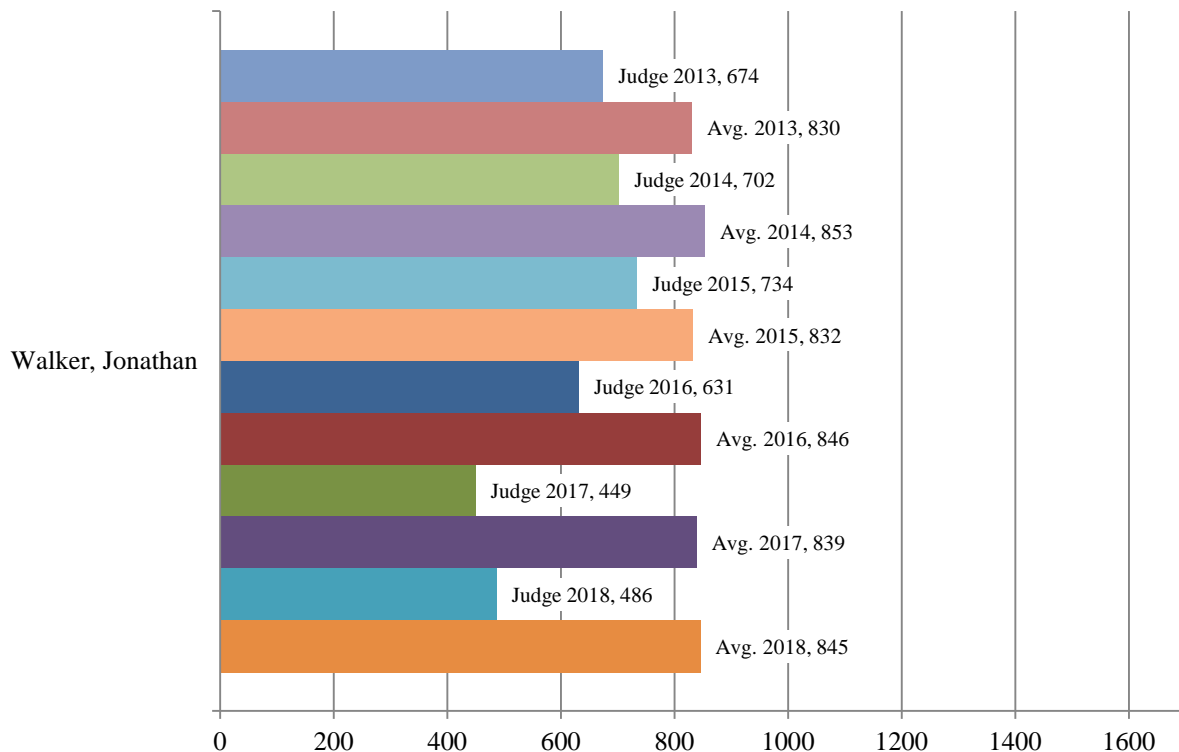
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



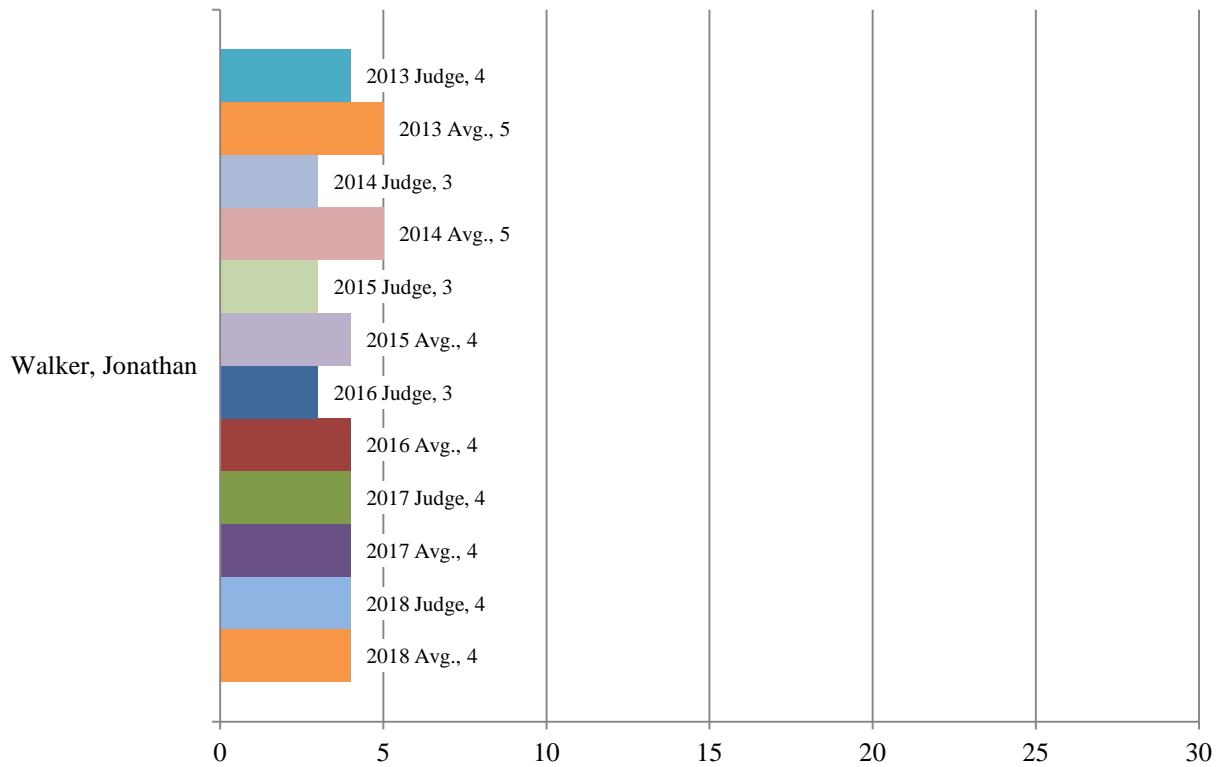
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



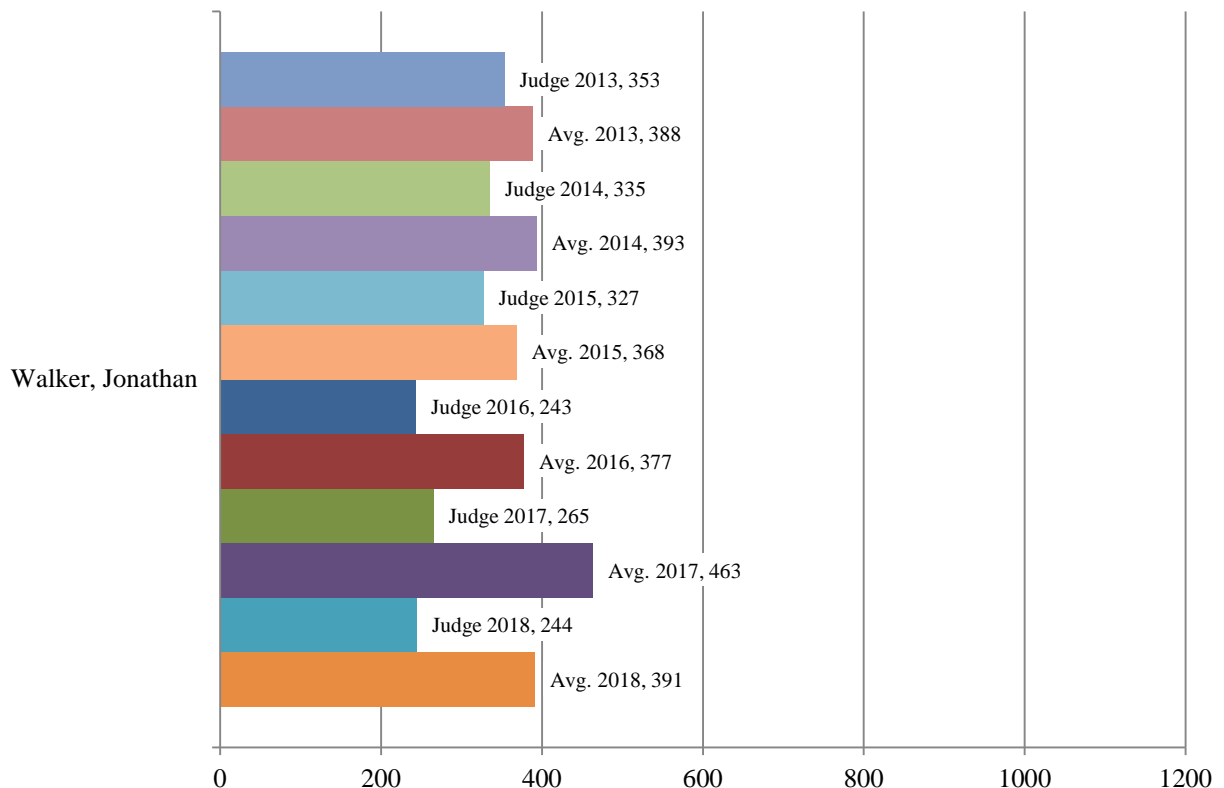
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



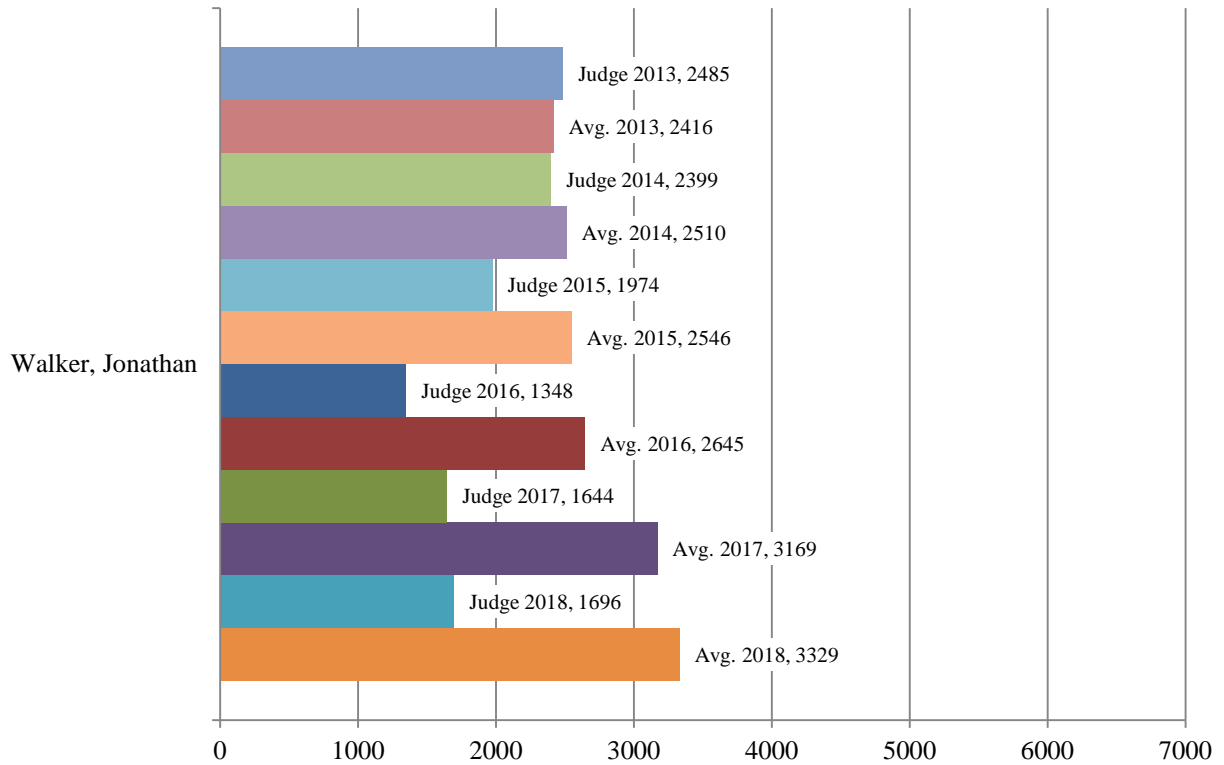
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



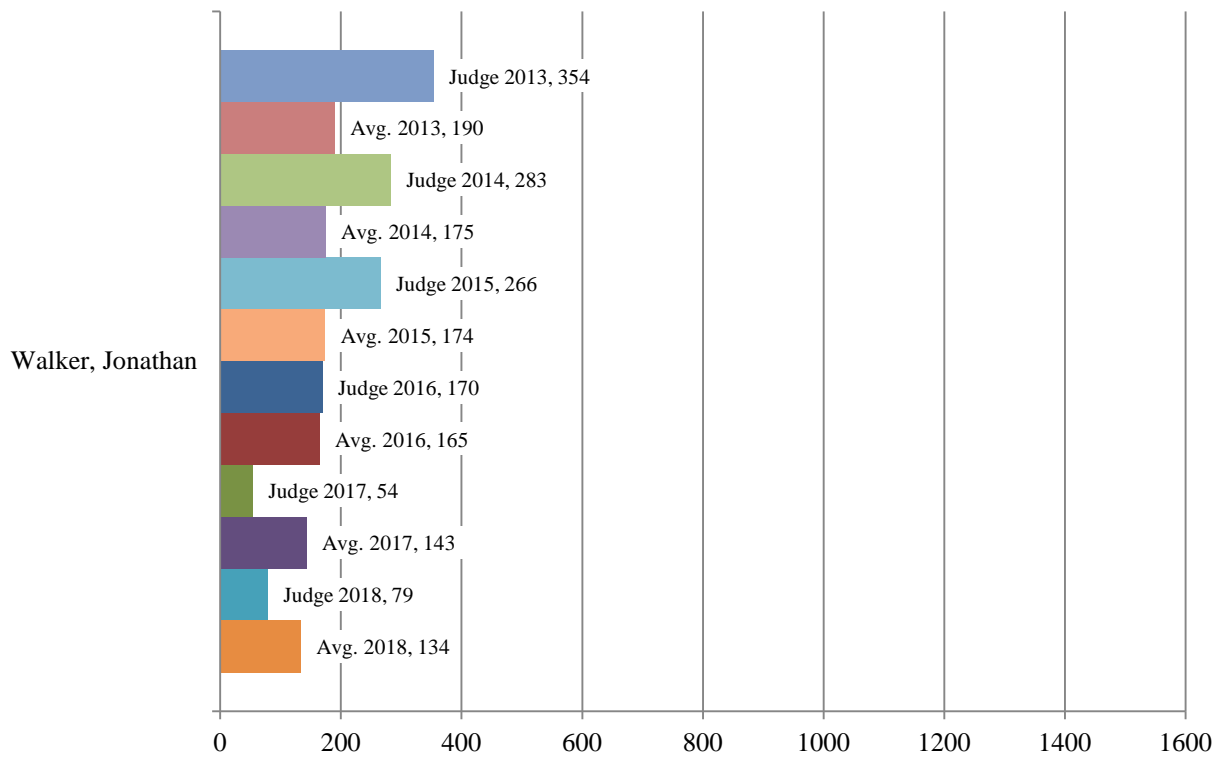
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



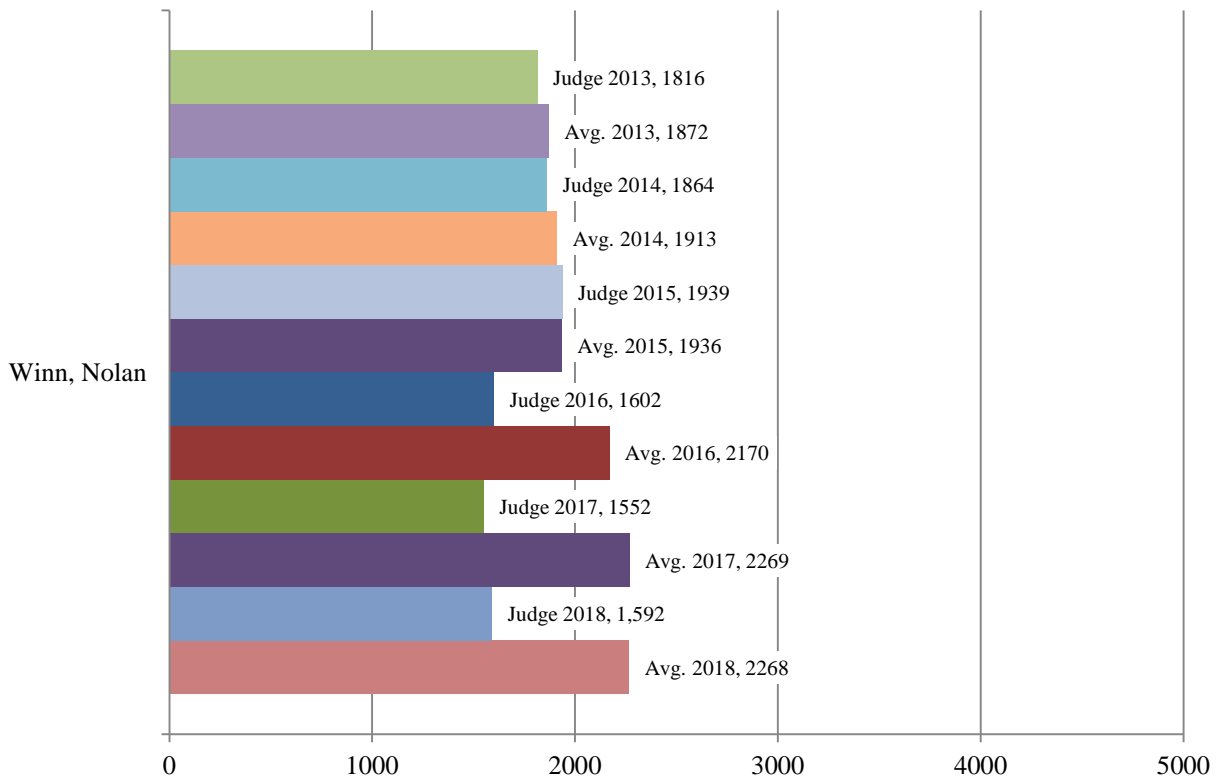
Appendix “11” District PNS (JCC Winn):

District PNS includes Escambia, Santa Rosa, and Okaloosa counties.

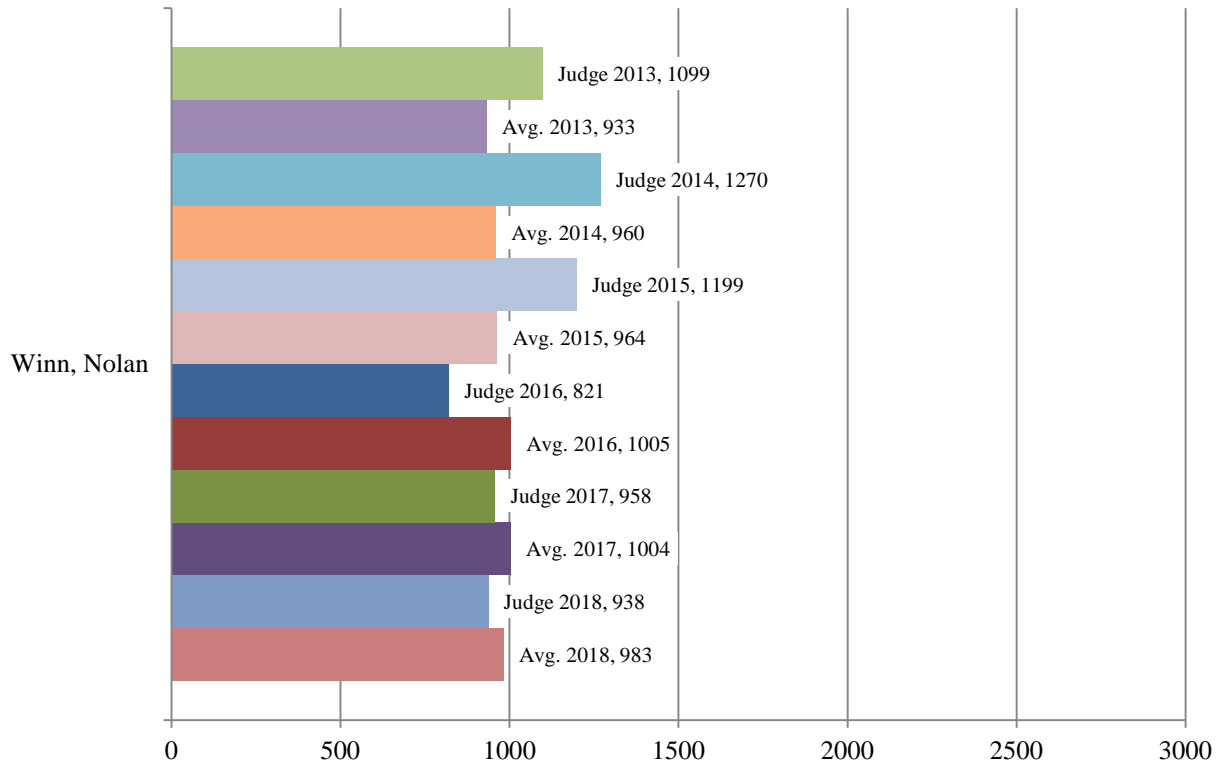
Similarly to Panama City, the Petition filing volume in Pensacola is well below the statewide average. However, the “new case” volume is average. Despite the more significant petition filings, the year-end pending petition inventory is likewise consistent with the statewide average. For some reason, “new cases” enter the District Pensacola process in more significant volumes, but the intensity of litigation is less.

The days to trial in Pensacola exceeds the statutory 210 days and has done so two of the last three years. Conversely, the time to order has consistently remained within the 30 day statutory parameter. Settlement volume is consistent with the statewide average, while stipulation volume is below the average. District Pensacola evidences a significantly lower volume of “other orders” than the statewide average.

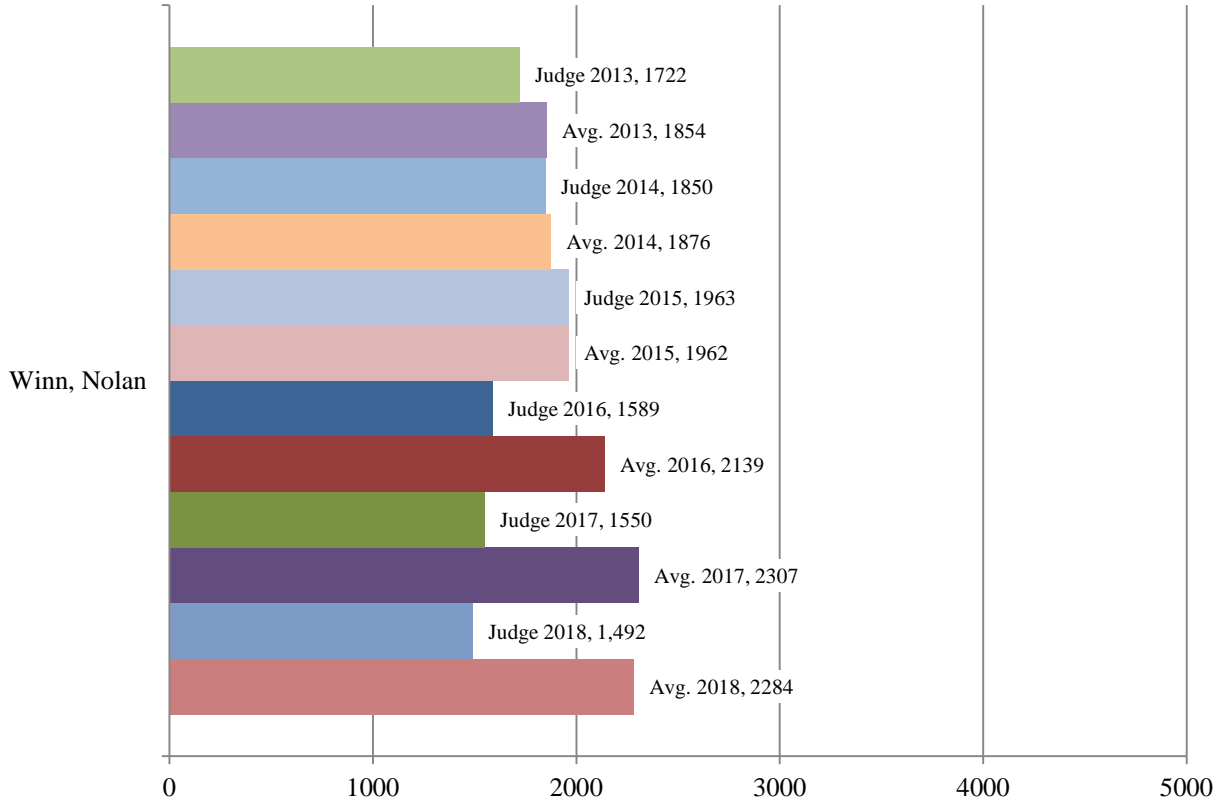
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



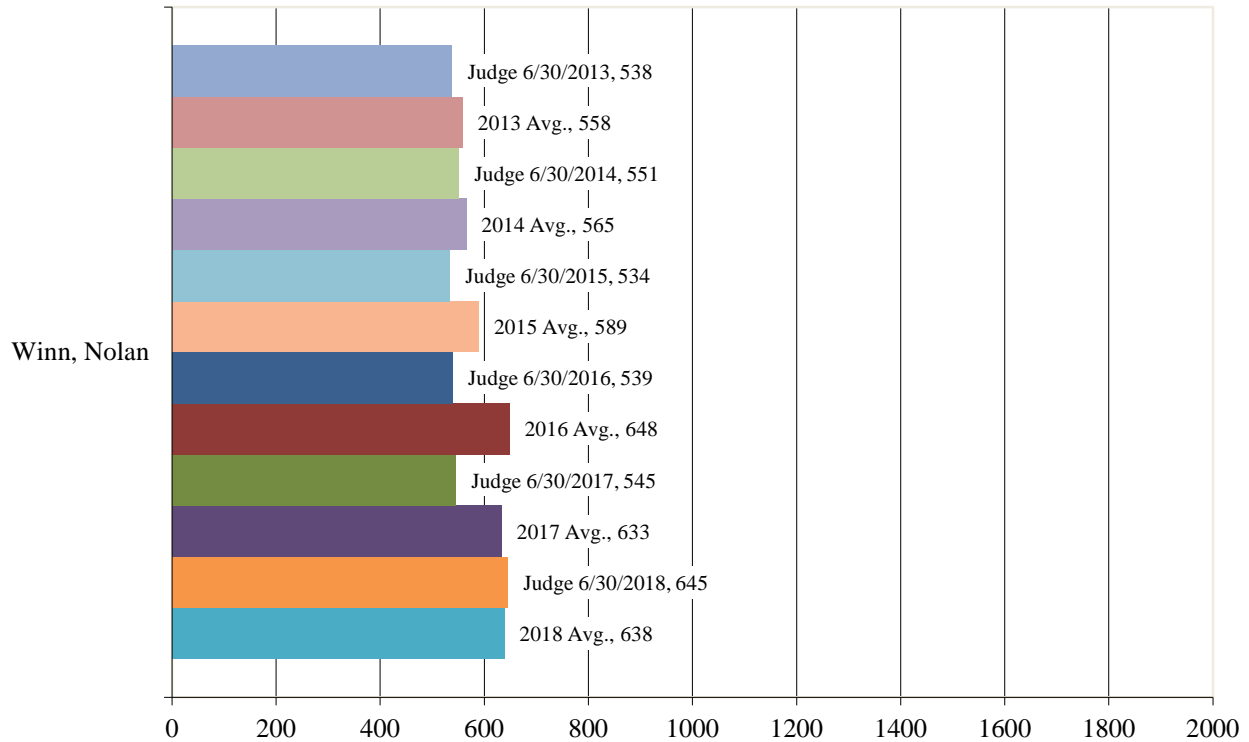
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



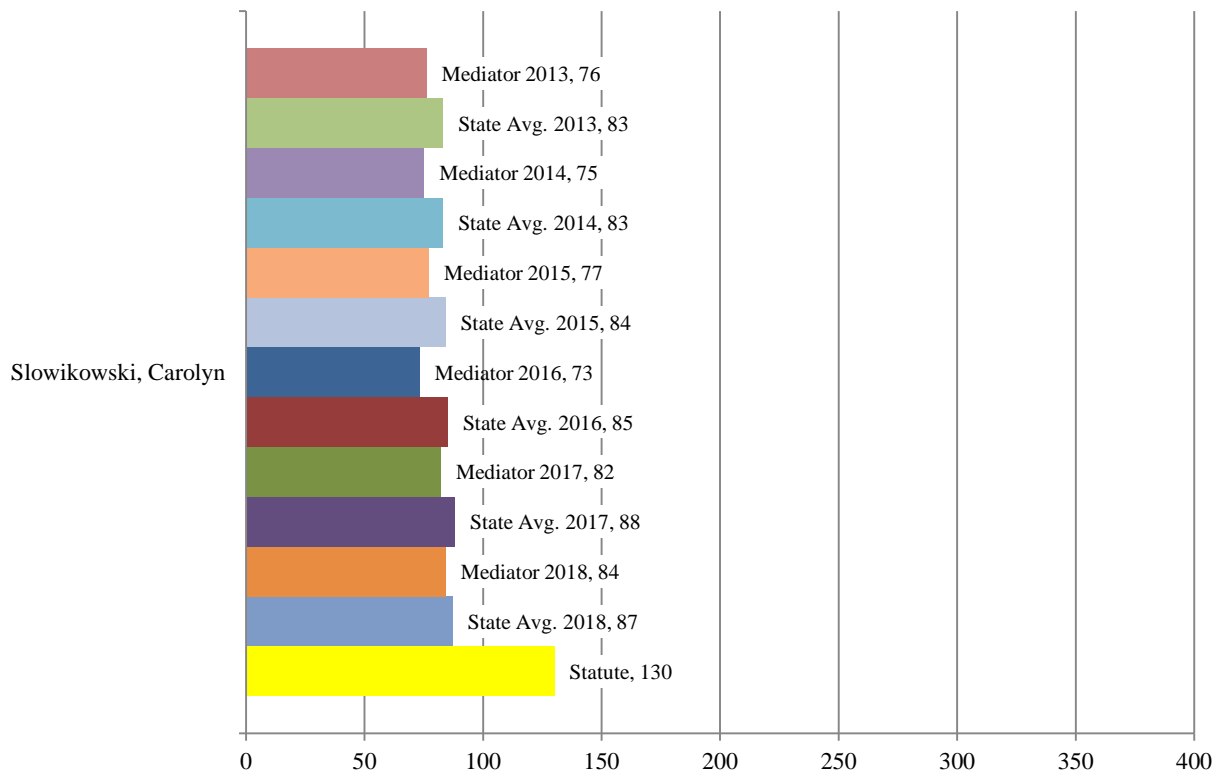
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



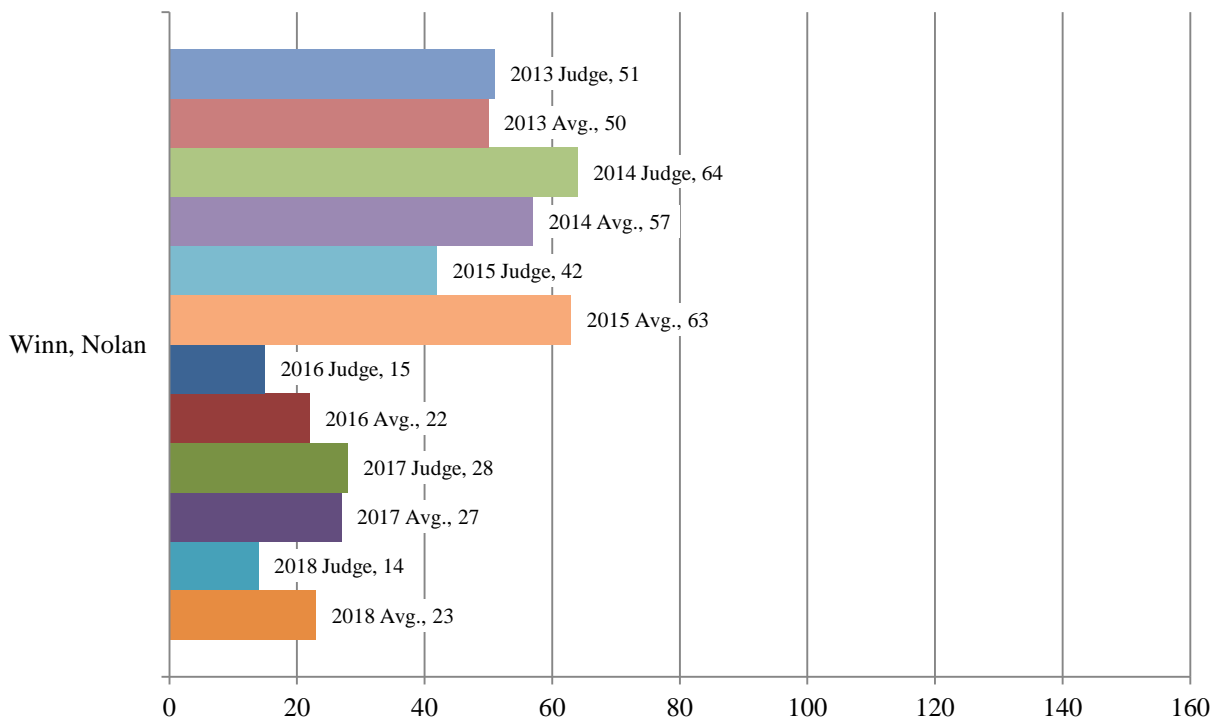
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



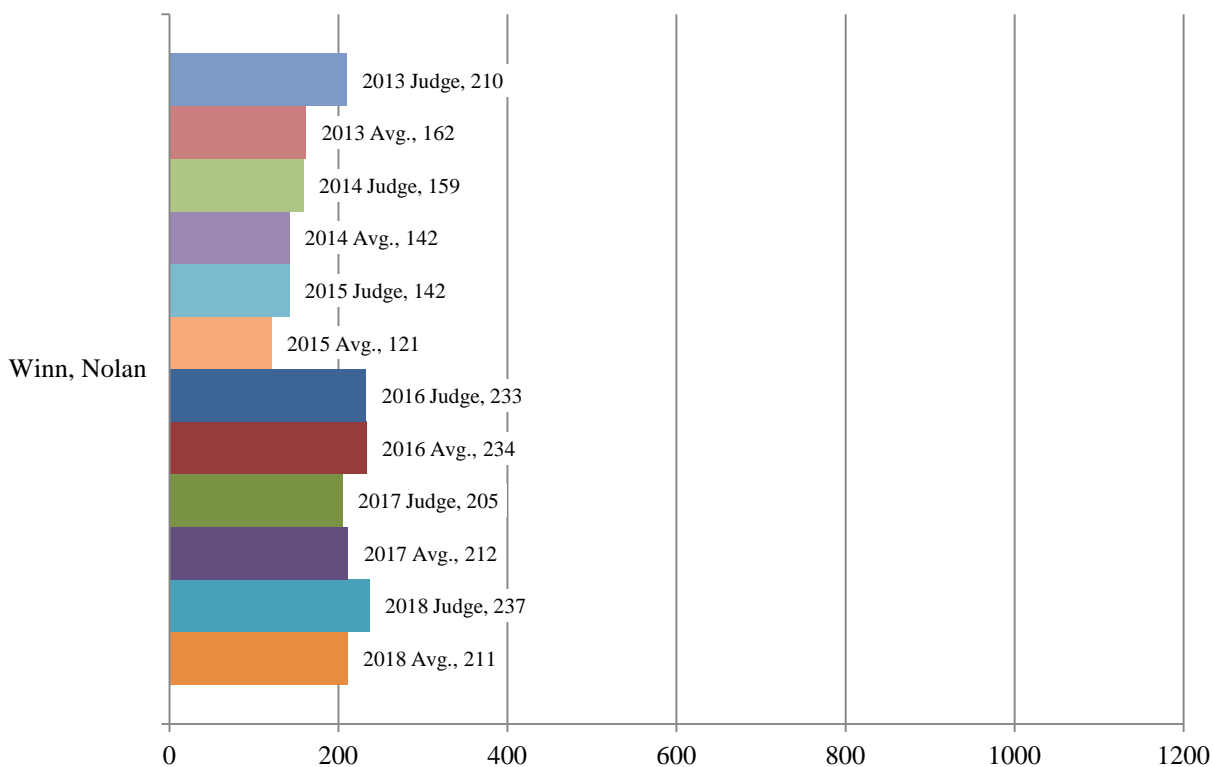
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



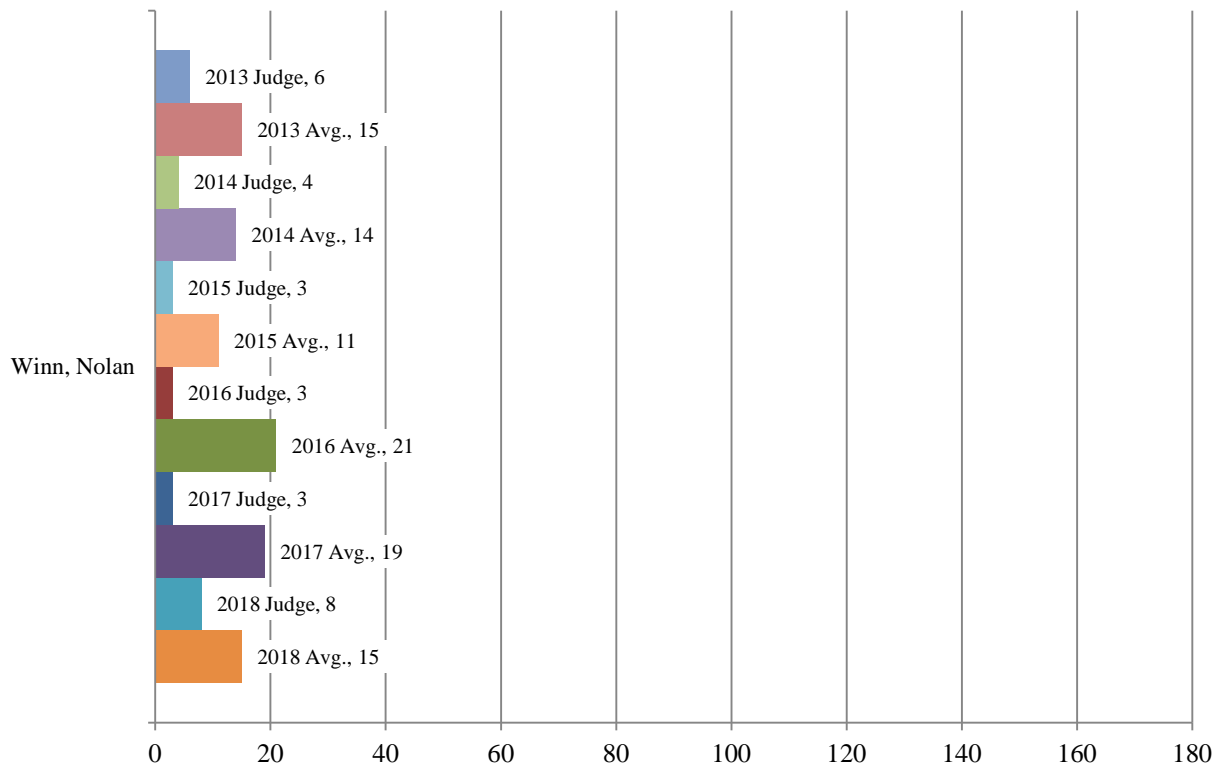
The following graph depicts the total volume of trial orders²⁰⁹ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



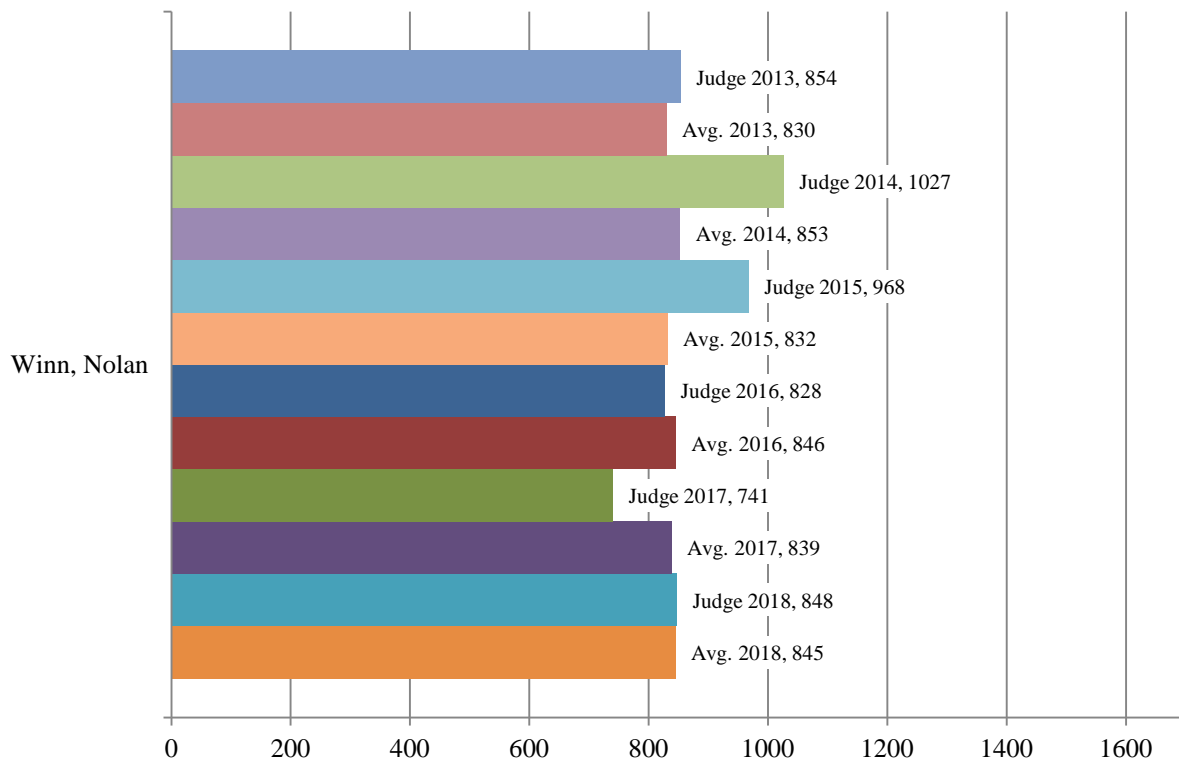
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



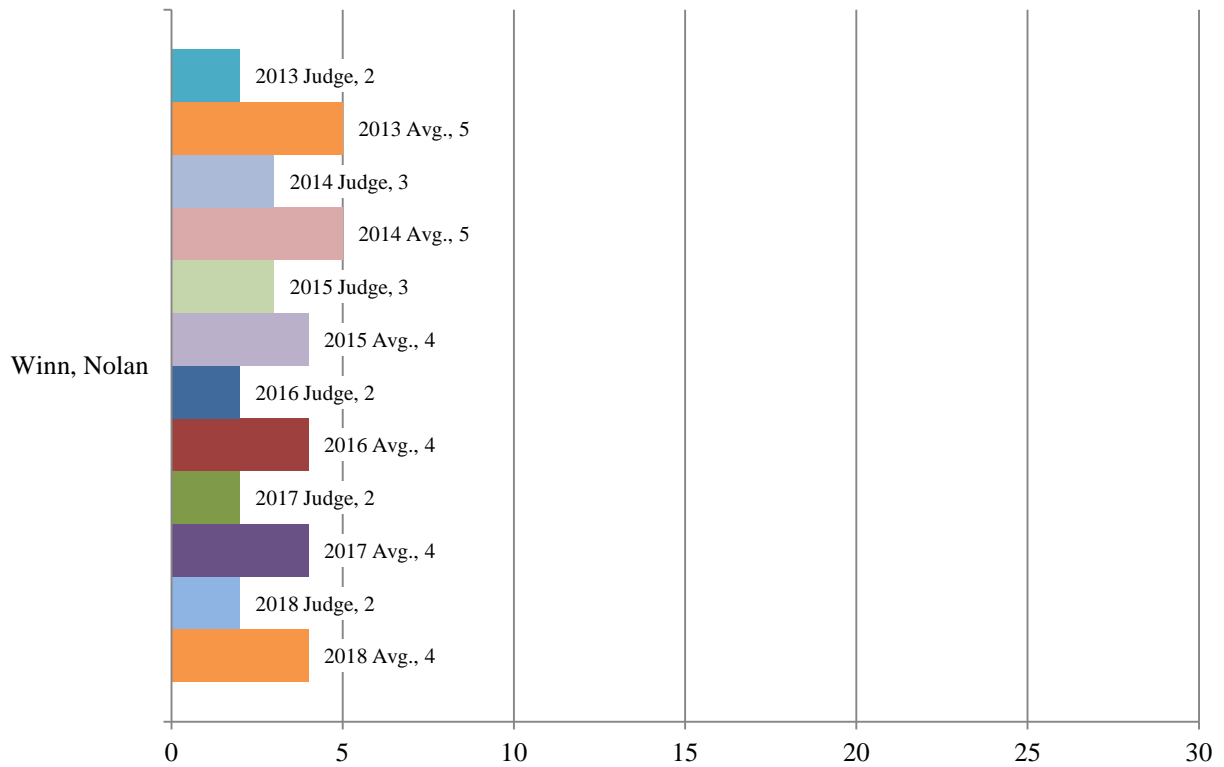
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



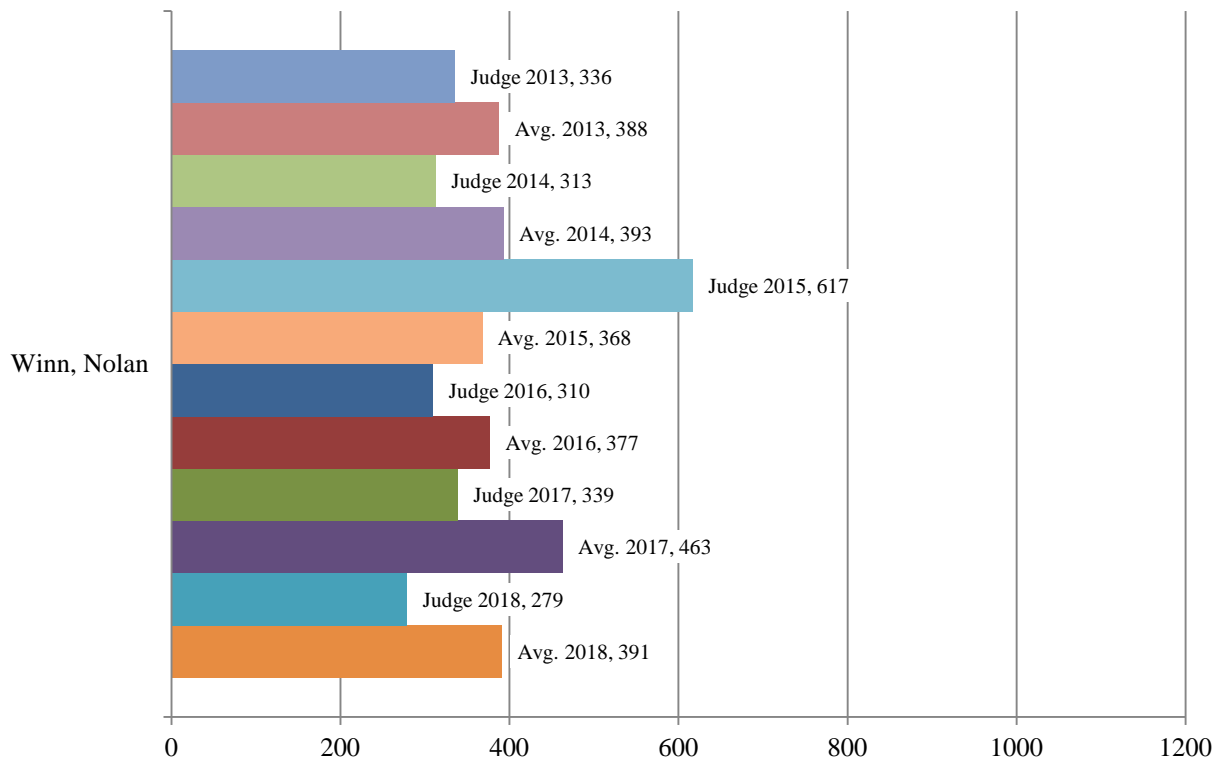
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



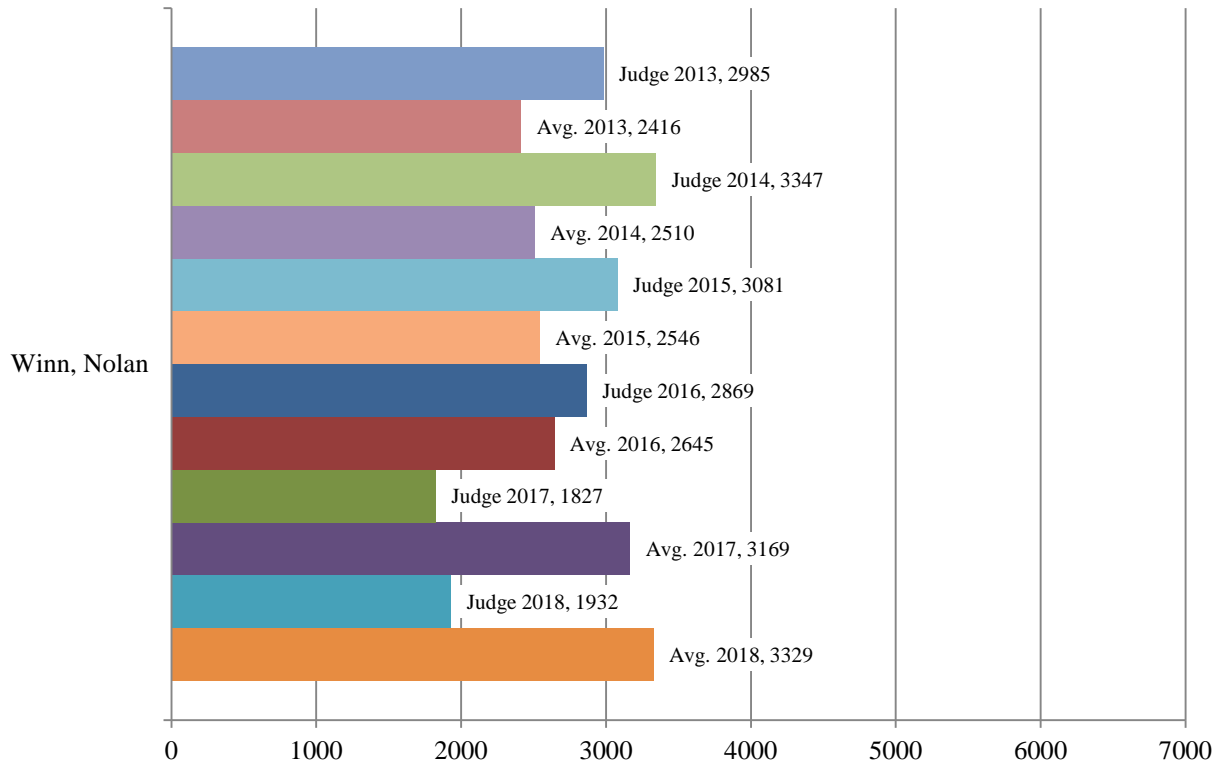
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



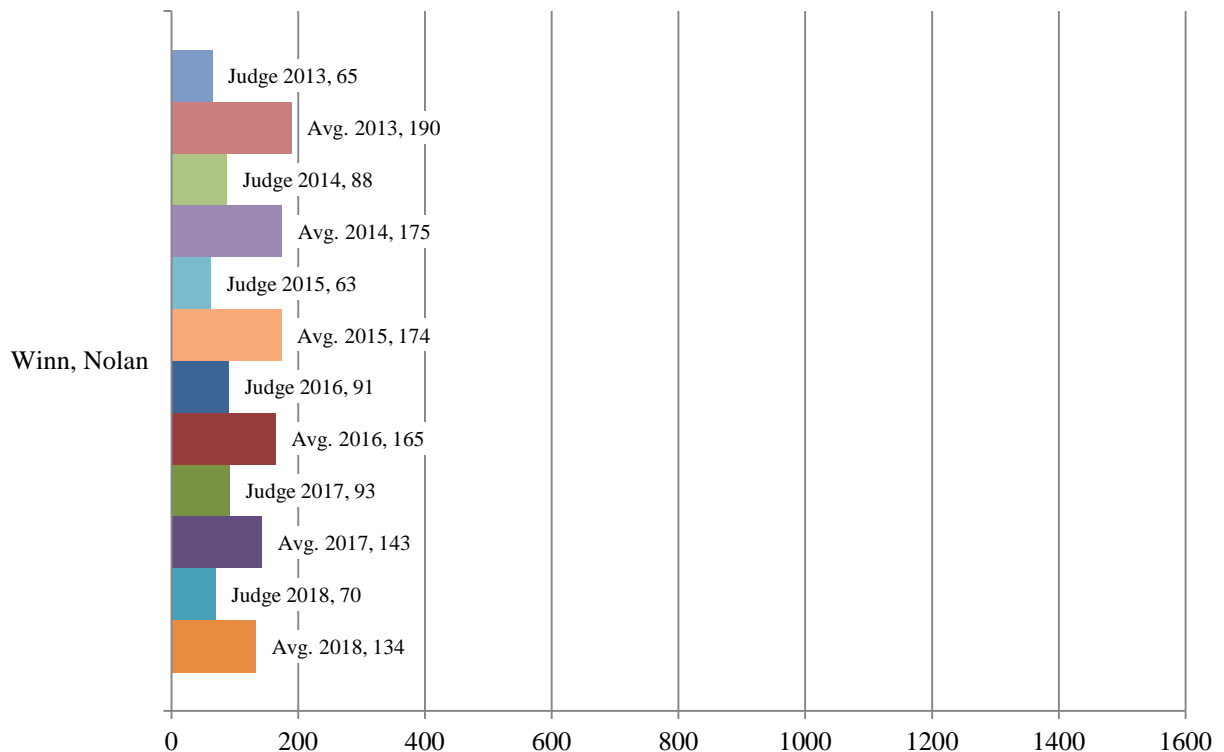
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



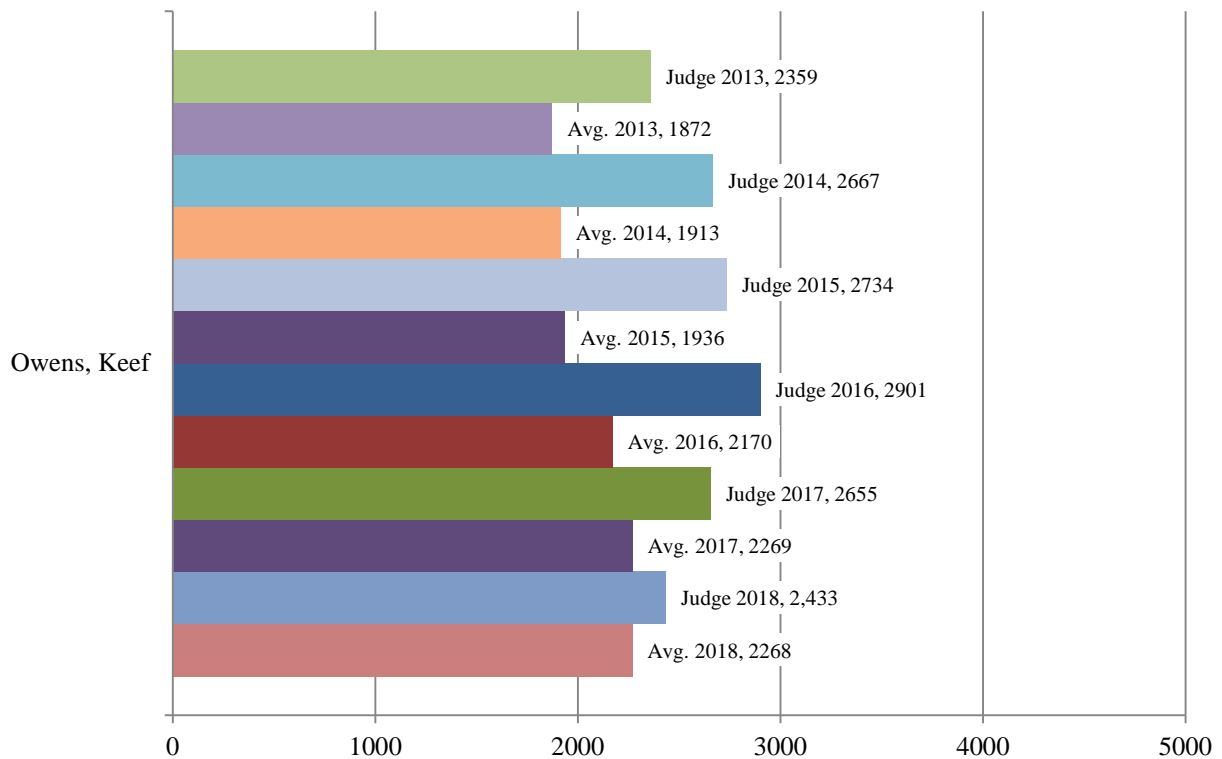
Appendix “12” District PSL (JCC Owens):

District PSL includes Martin, Monroe, and St. Lucie counties.

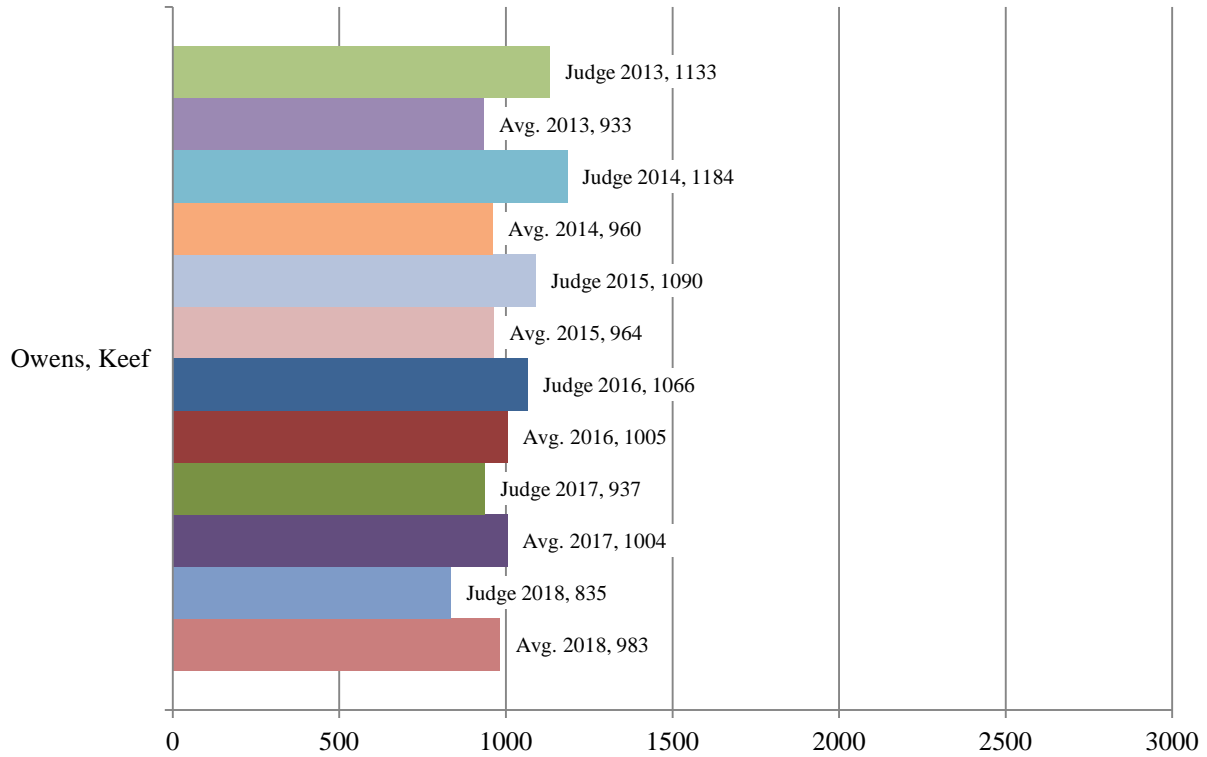
District Port St. Lucie similarly evidences a Petition filing volume exceeding the statewide average, but a “new case” filing volume below the average. The year-end pending petition inventory is markedly below the statewide average despite the notable volume of petitions filed. Both the time to trial and the time to order are within the respective statutory parameters, 210 days and 30 days. District PSL has consistently entered significantly above average volumes of “other orders; that continued in 2017-18.

Judge Owens wrote *An Introduction to Workers’ Compensation Law* for the summer 2017 edition of Friendly Passages, a publication of the Friends of the Rupert J. Smith Law Library of St. Lucie County. He spoke at the 72nd Annual Workers’ Compensation Educational Conference regarding workers’ compensation practice from the judicial perspective. On October 25, 2017, Judge Owens spoke at the Workers’ Compensation Committee of the Palm Beach County Bar Association. Judge Owens presented a seminar titled Practice Tips from the Bench to the Friends of 440. On April 12, 2018, he spoke at The Florida Bar Workers’ Compensation Forum. Judge Owens, a member of the Workers’ Compensation and Appellate Practice sections of the Florida Bar, presented a seminar through the Workers’ Compensation Section on May 9, 2018, regarding workers’ compensation appellate procedure and practice. He also spoke at the annual educational conference of the Florida Workers’ Advocates on June 7, 2018.

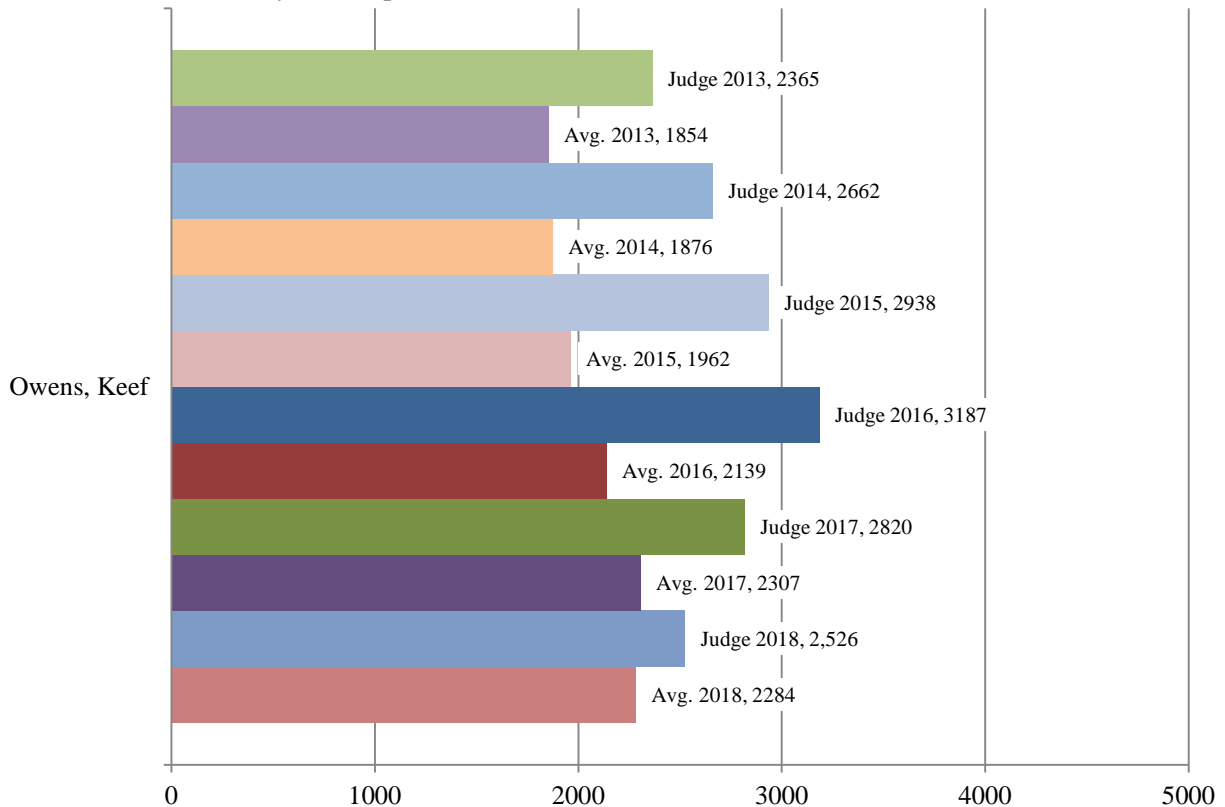
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



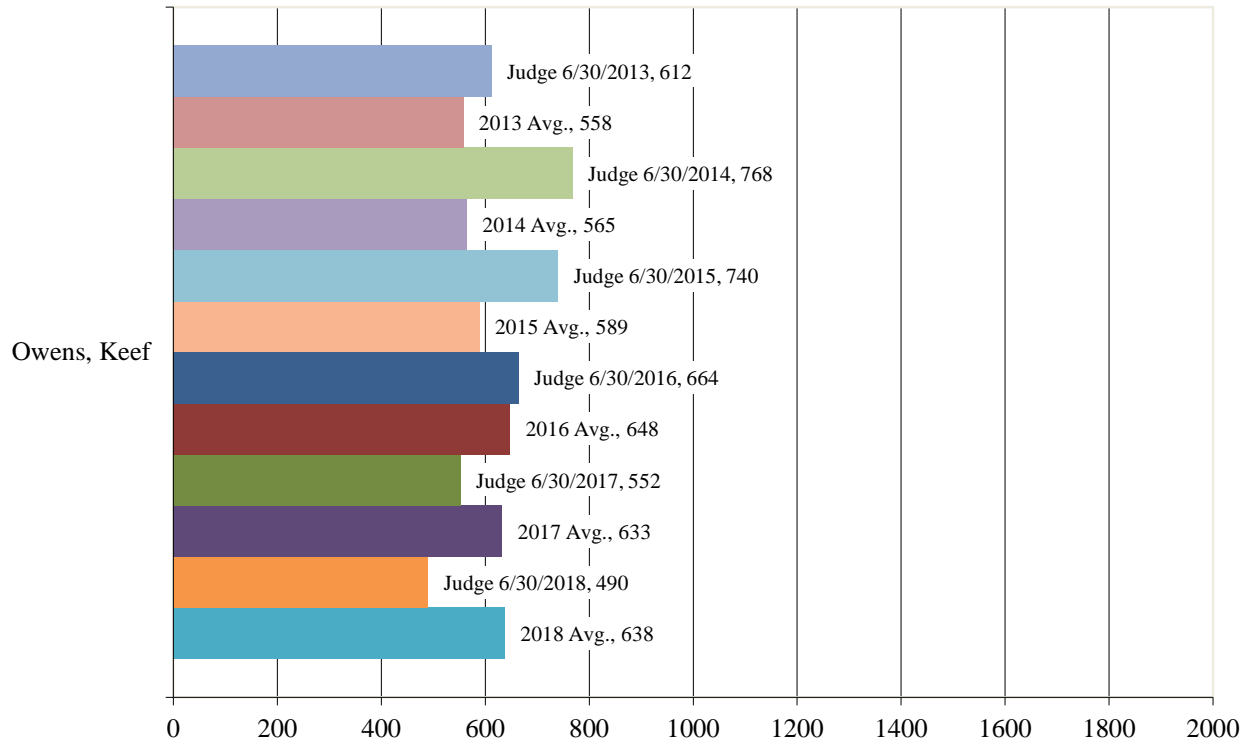
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



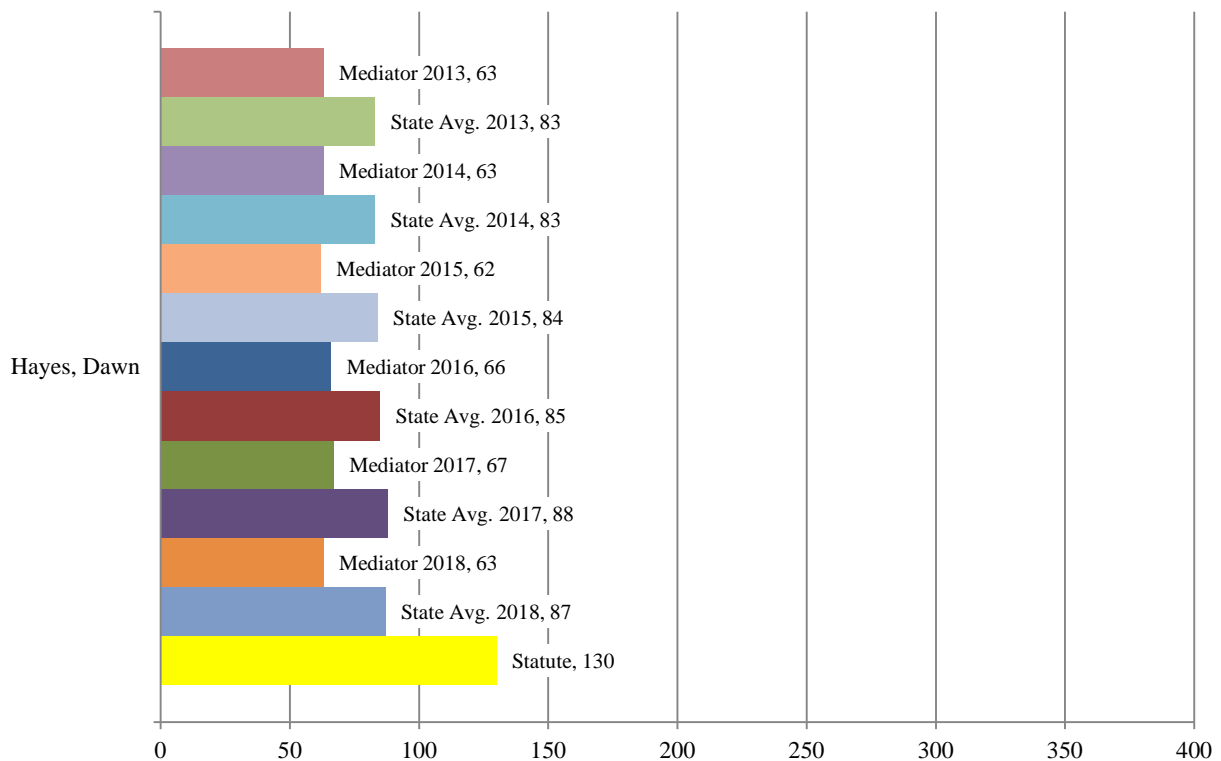
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



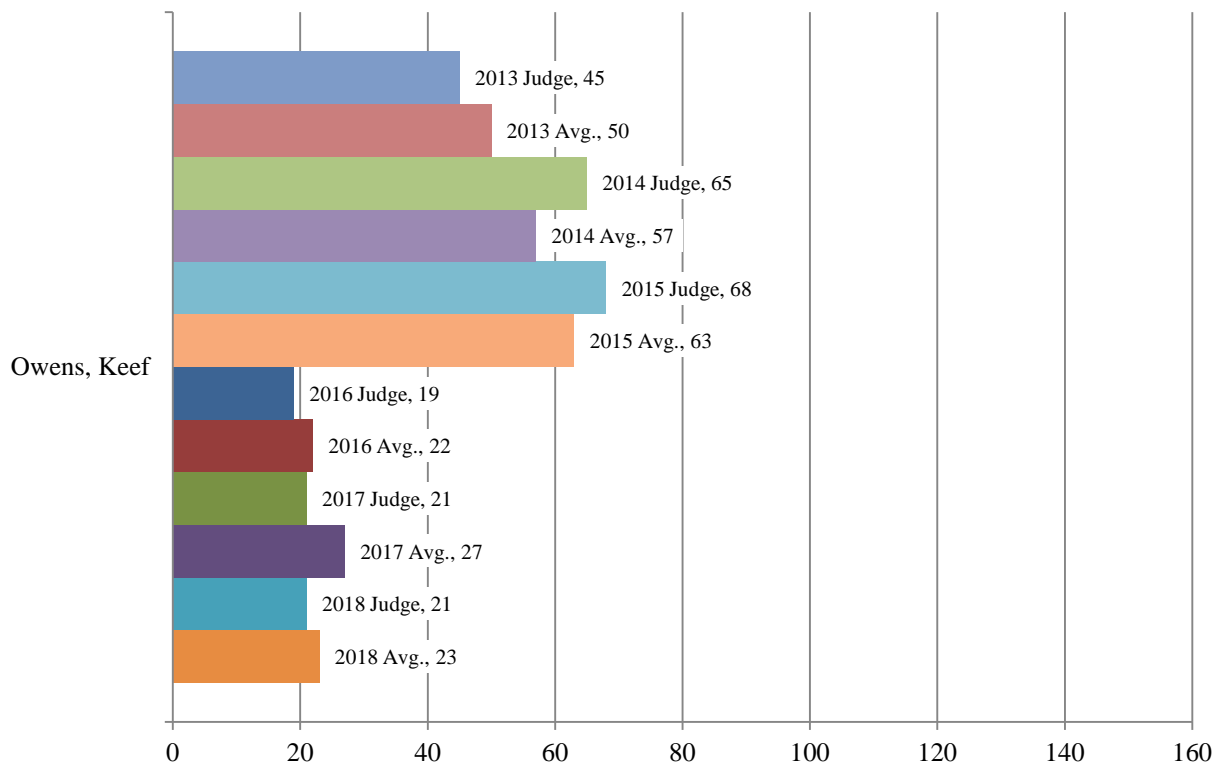
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



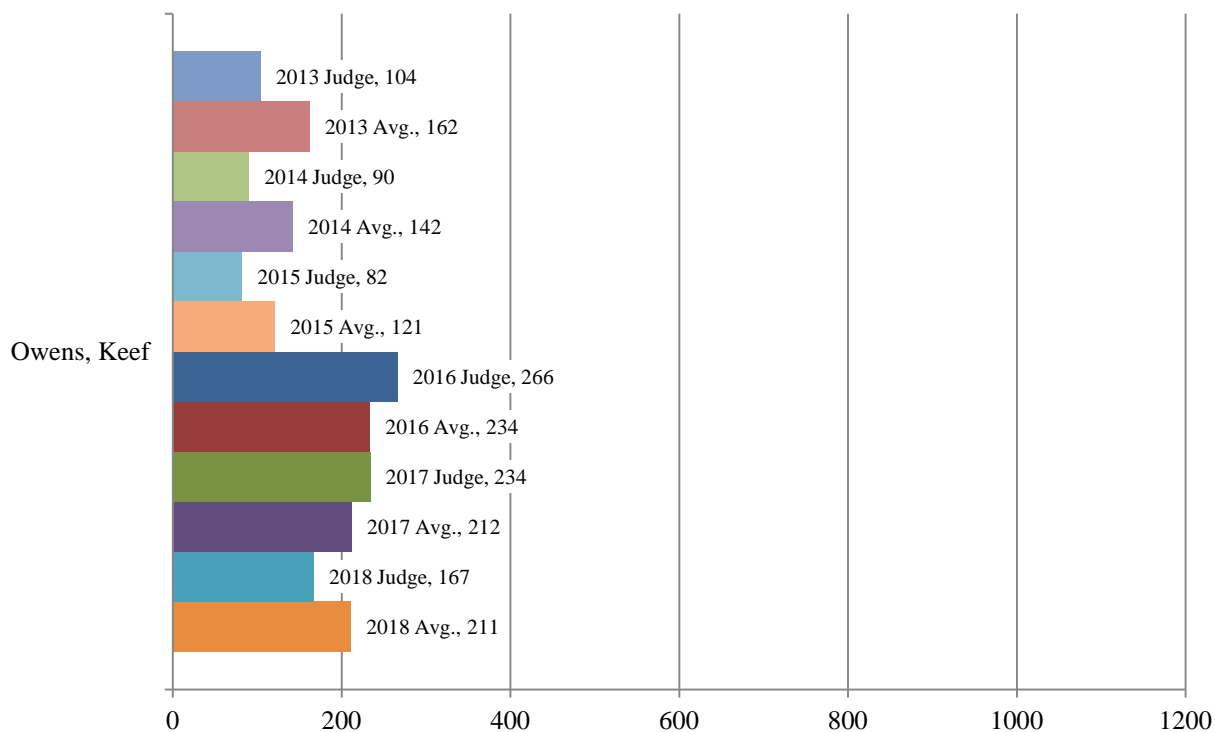
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



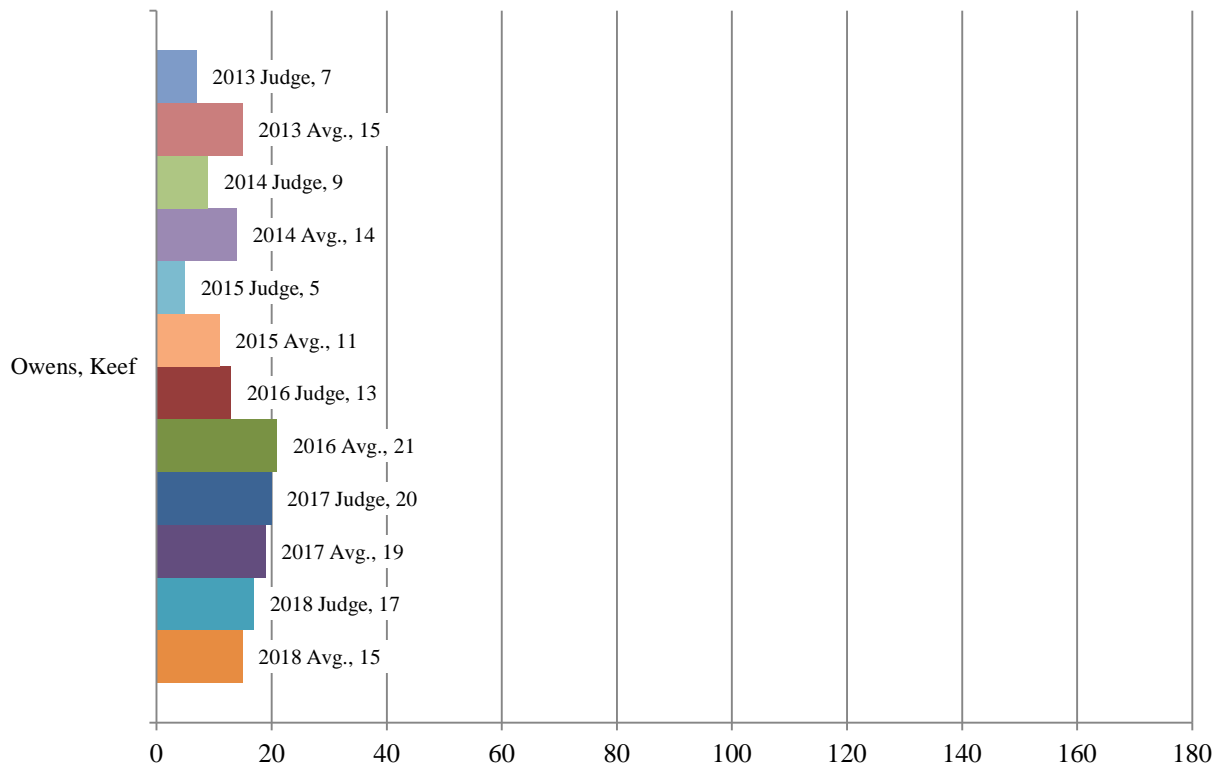
The following graph depicts the total volume of trial orders²¹⁰ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



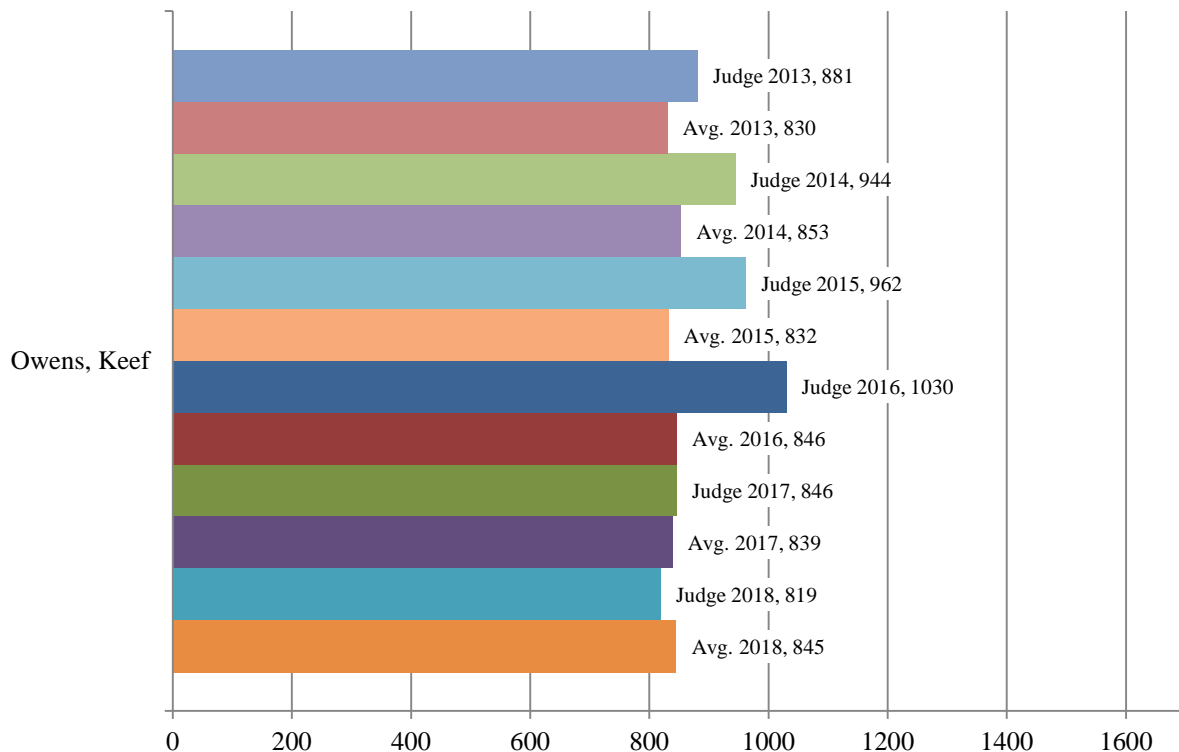
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



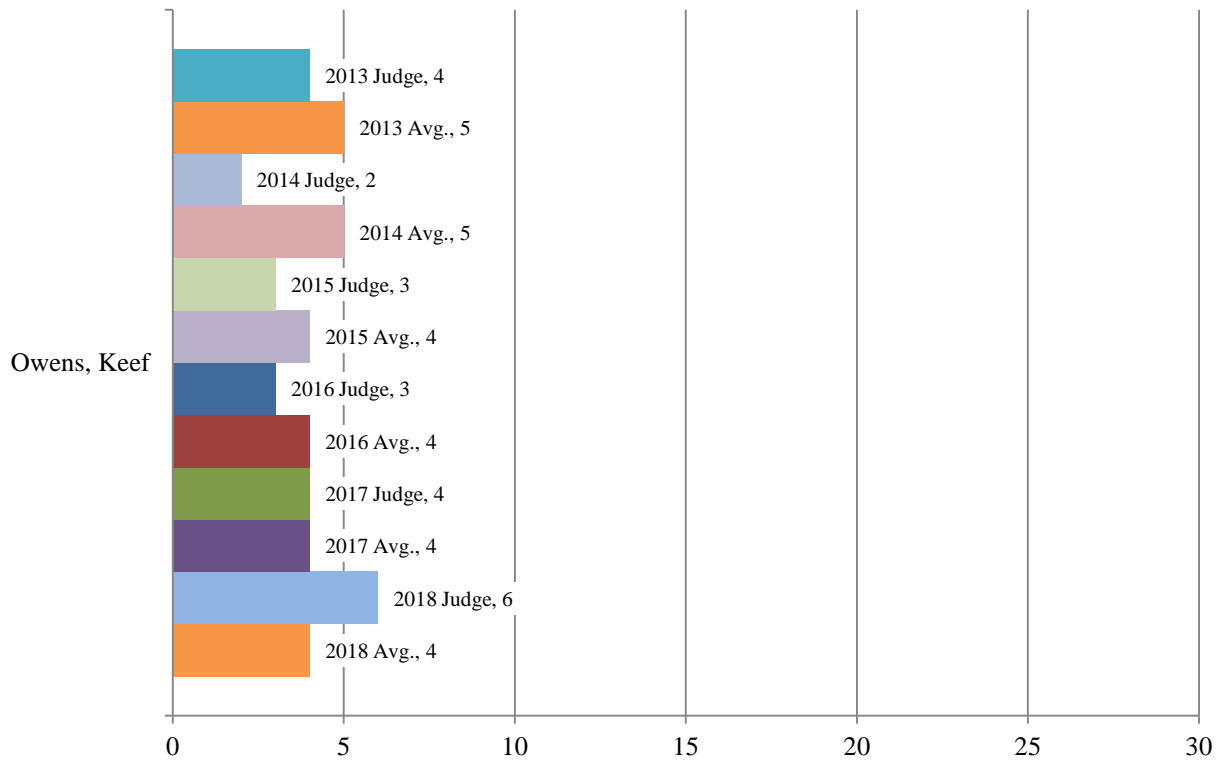
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



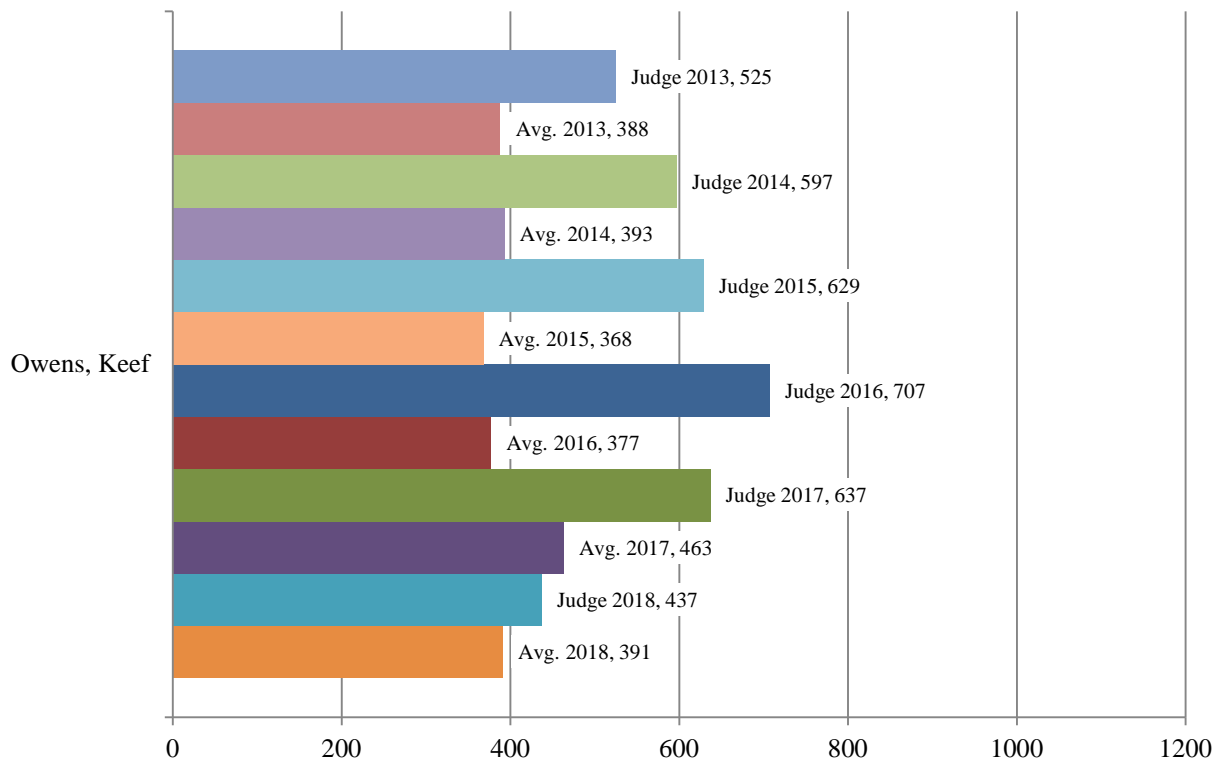
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



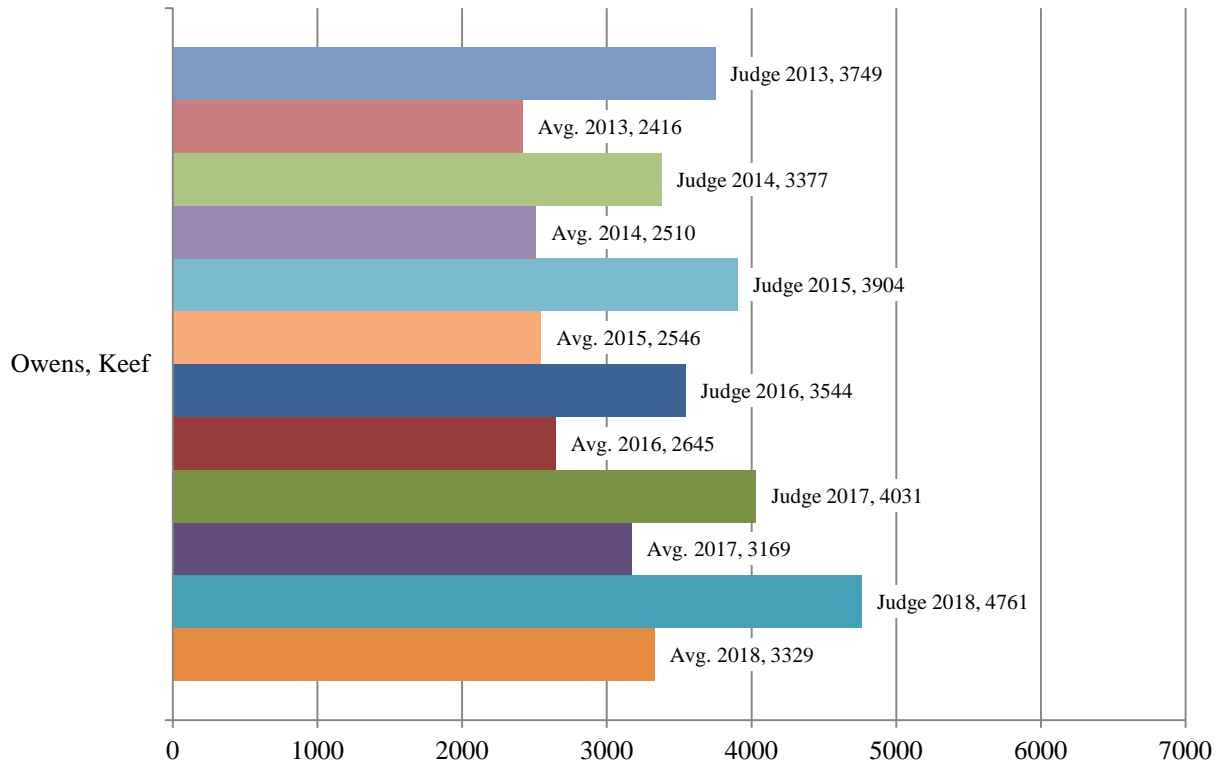
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



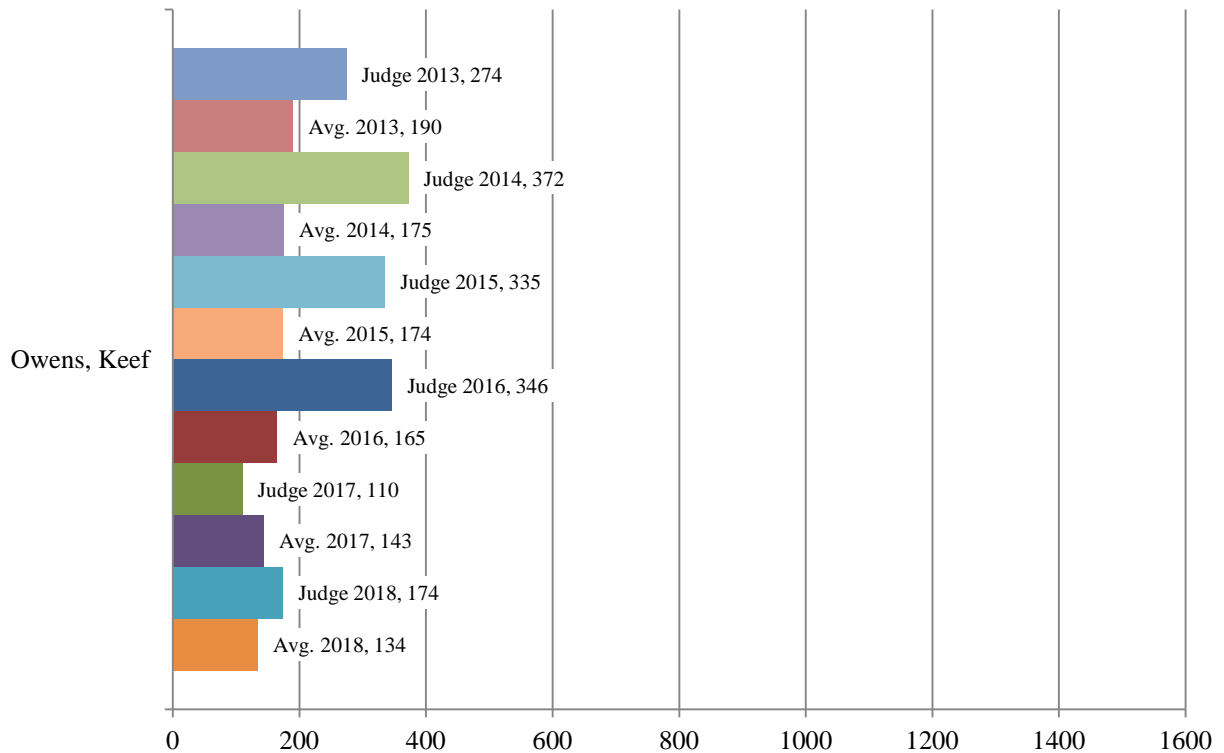
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “13” District SAR (JCC Beck):

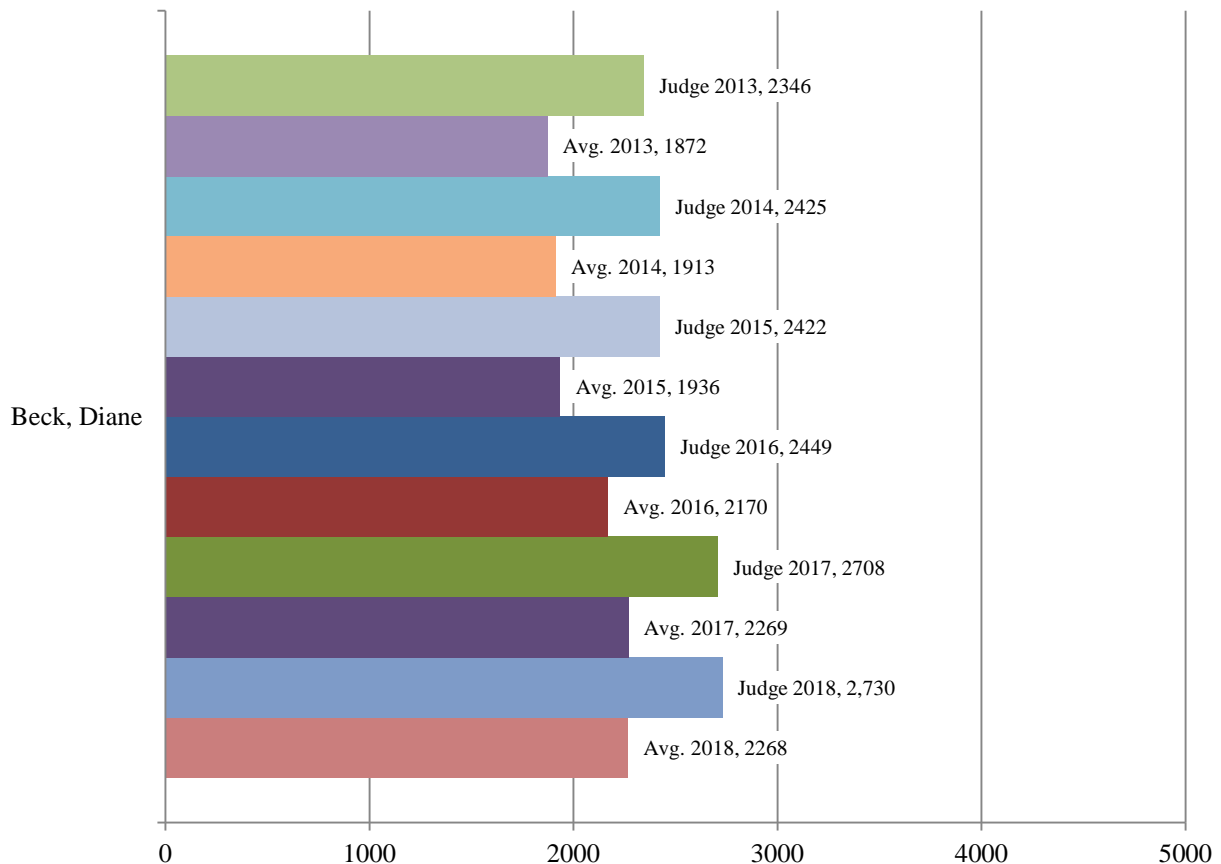
District SAR includes Manatee and Sarasota counties.

The PFB and “new case” filing volumes in District SAR both have been above the statewide averages for most of the last ten years. That continued in 2017-18. The similarity between petition filing volume and petition closure volume demonstrate a District under consistent docket management and in equilibrium, a state where incoming volumes are reasonably consistent with claim closures. However, the year-end pending petition inventory in SAR in 2017-18 was significant, notably exceeding the statewide average for the last two years. Time to trial in District Sarasota exceeds the 210 day parameter, but time to order is well within the 30 day statutory requirement.

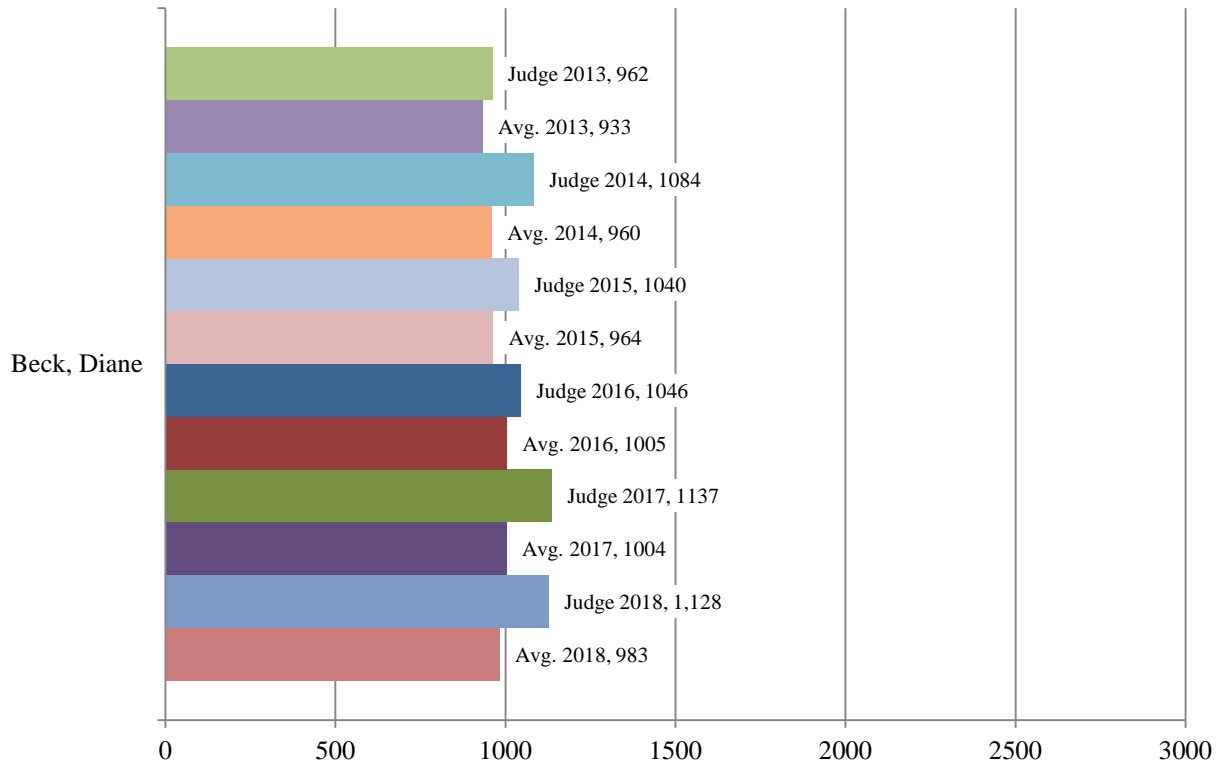
Settlement order volume exceeds the statewide average, while the volume of stipulation orders is consistent with average. The volume of “other orders” is below average, demonstrating an efficient and effective process.

Judge Beck served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition held at the Workers’ Compensation Educational Conference in Orlando, Florida. On April 6, 2018 Judge Beck participated as a panelist at the Workers’ Compensation Institute’s Spring Forum in Orlando, Florida where the panel presented “A View from the Bench.” She is a member of the Manatee County and Sarasota County Bar Associations, and the Tampa Bay Area Workers’ Compensation Inns of Court. In addition to docket and case responsibilities, Judge Beck serves as the Administrative Judge in District Sarasota, handling premises, equipment, security, and personnel issues.

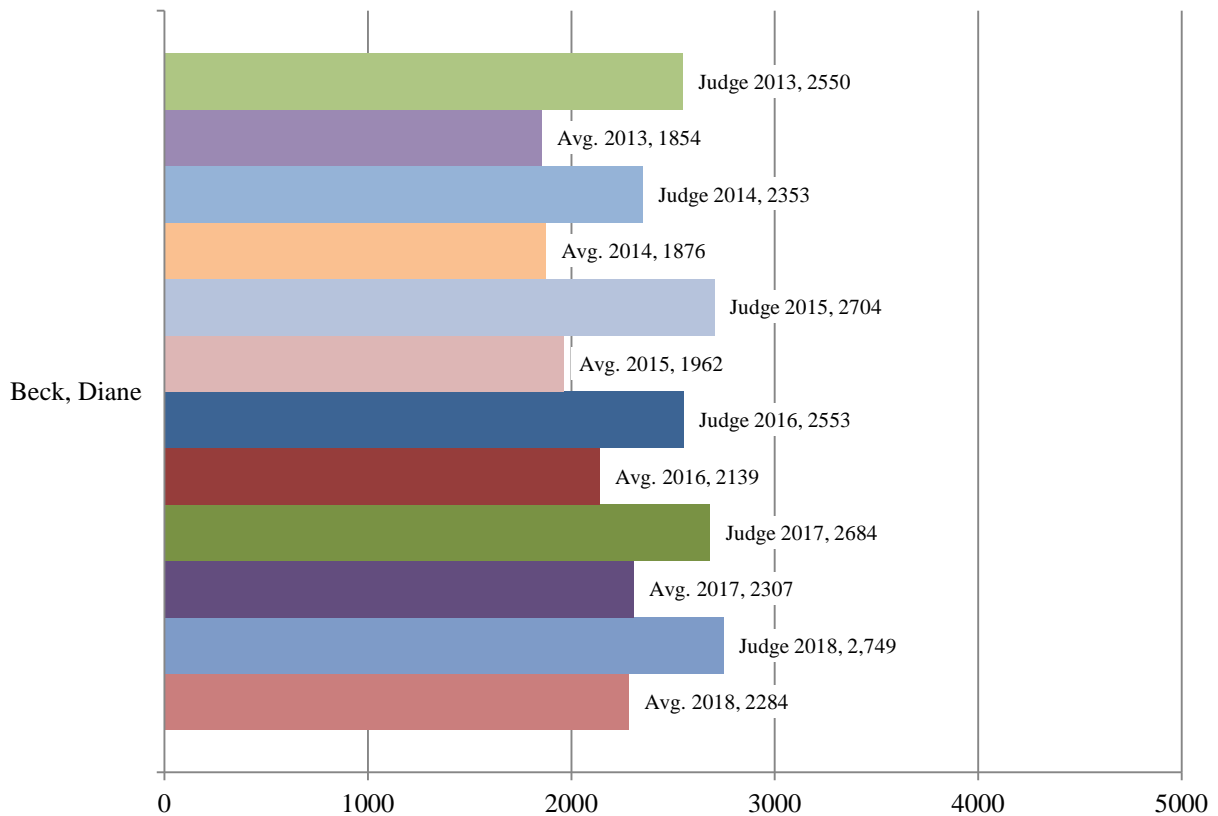
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



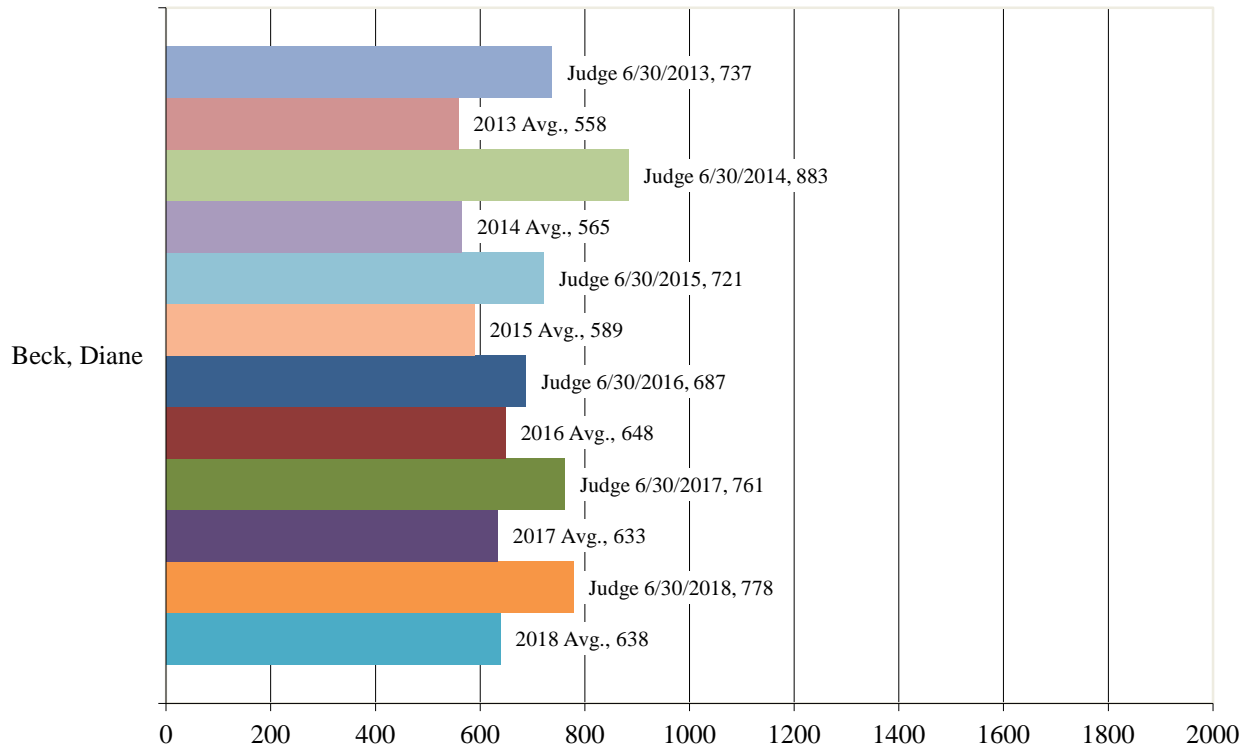
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



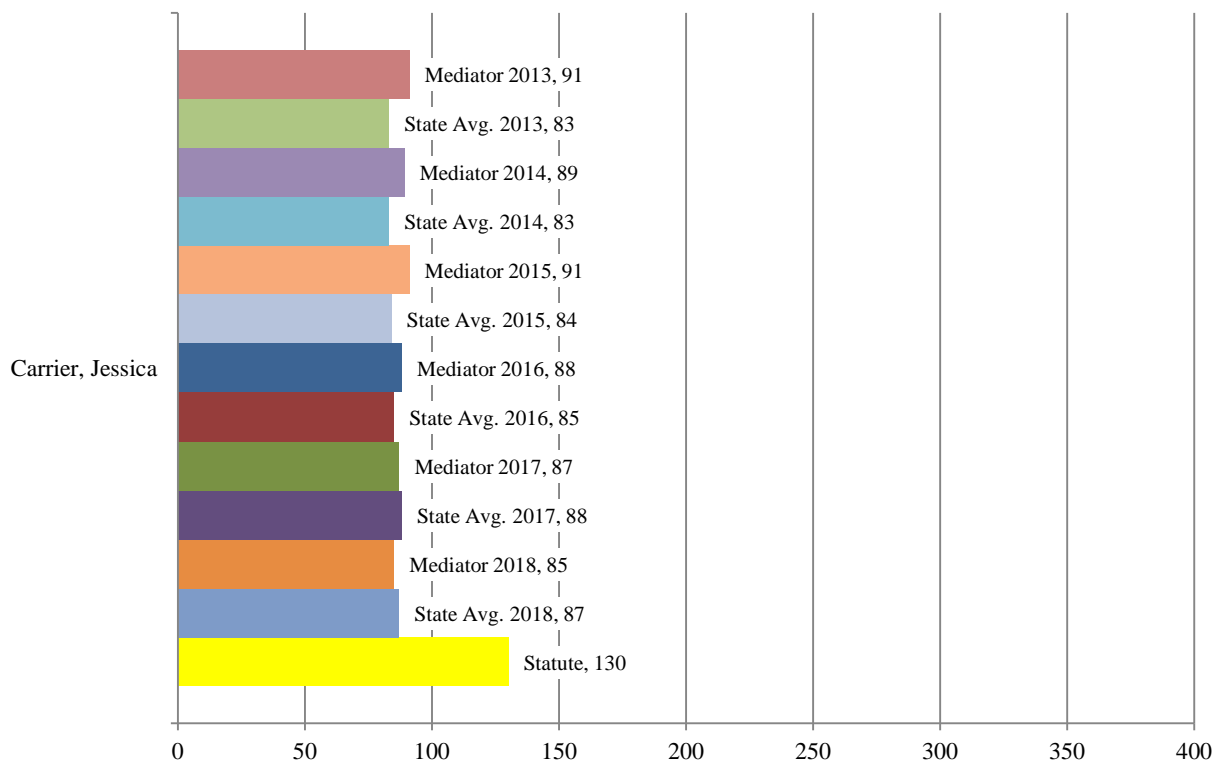
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



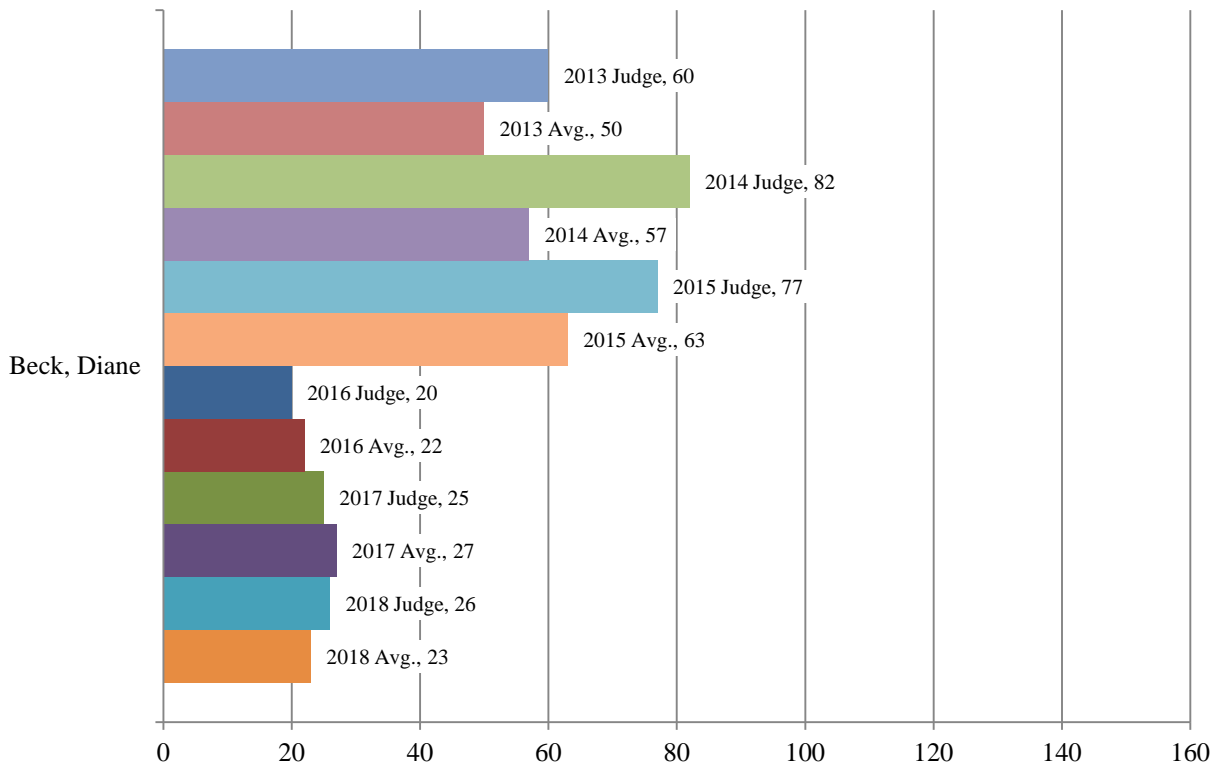
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



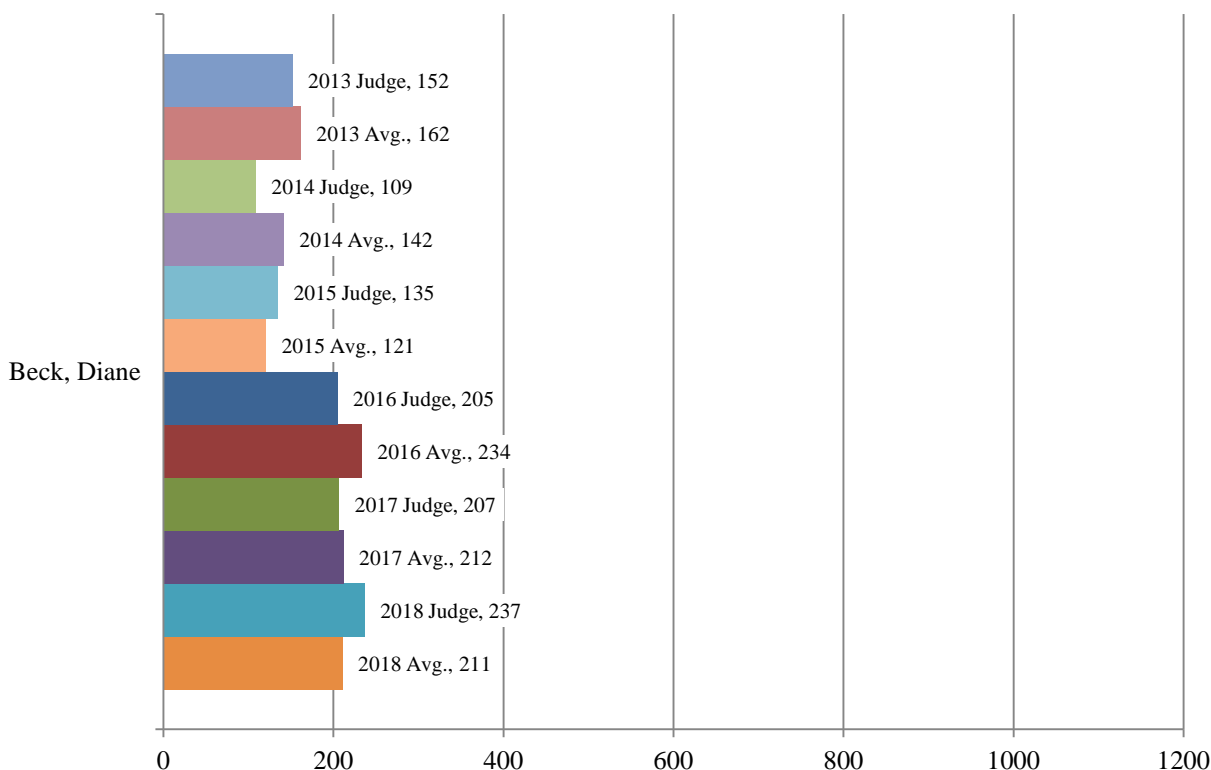
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



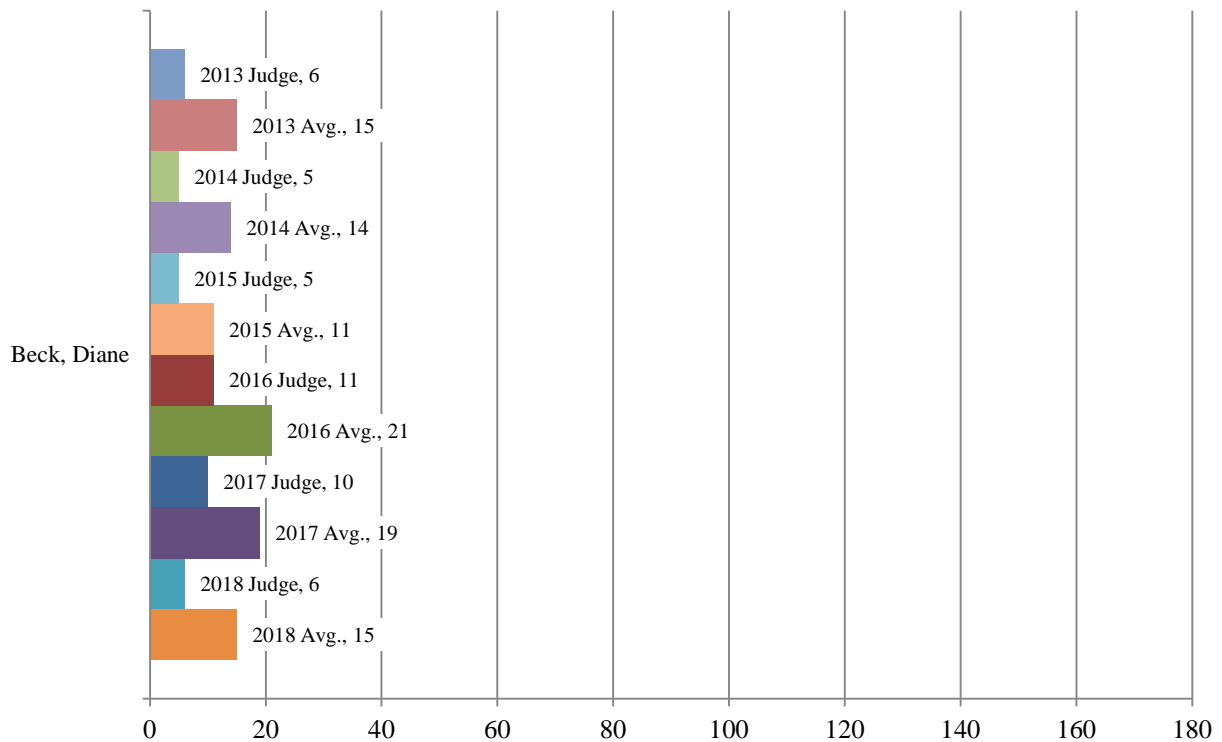
The following graph depicts the total volume of trial orders²¹¹ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



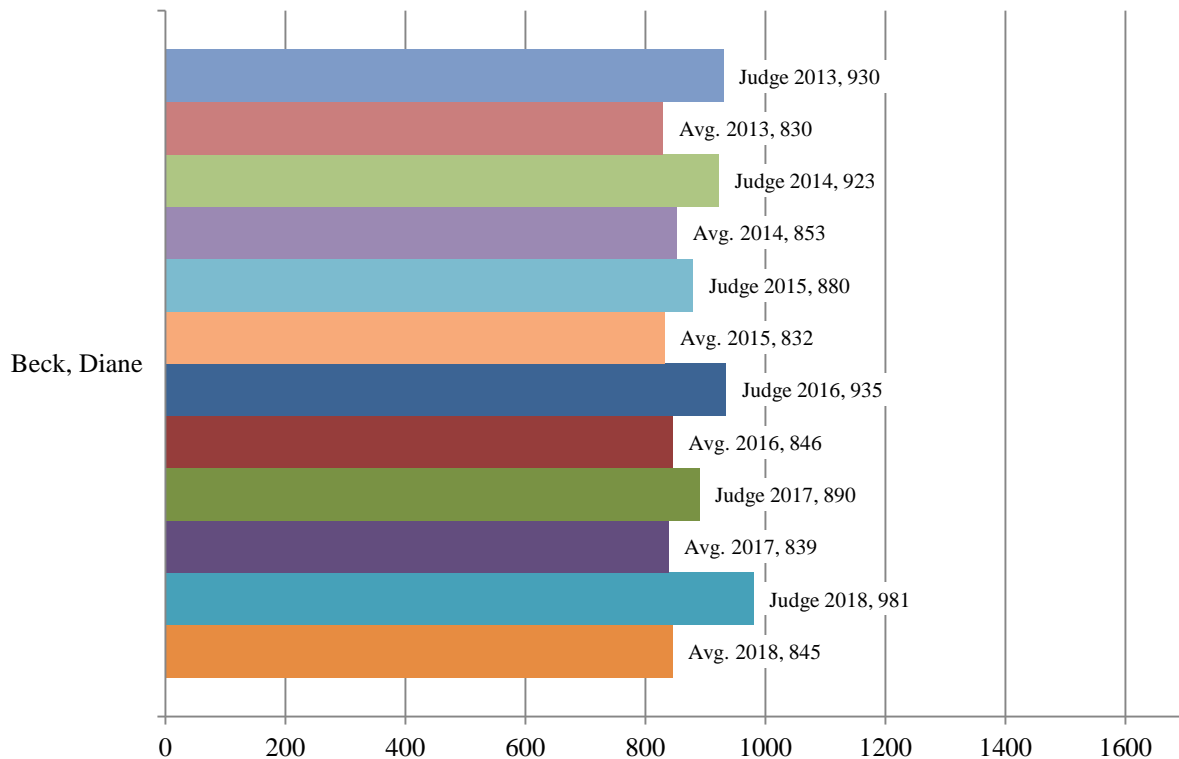
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



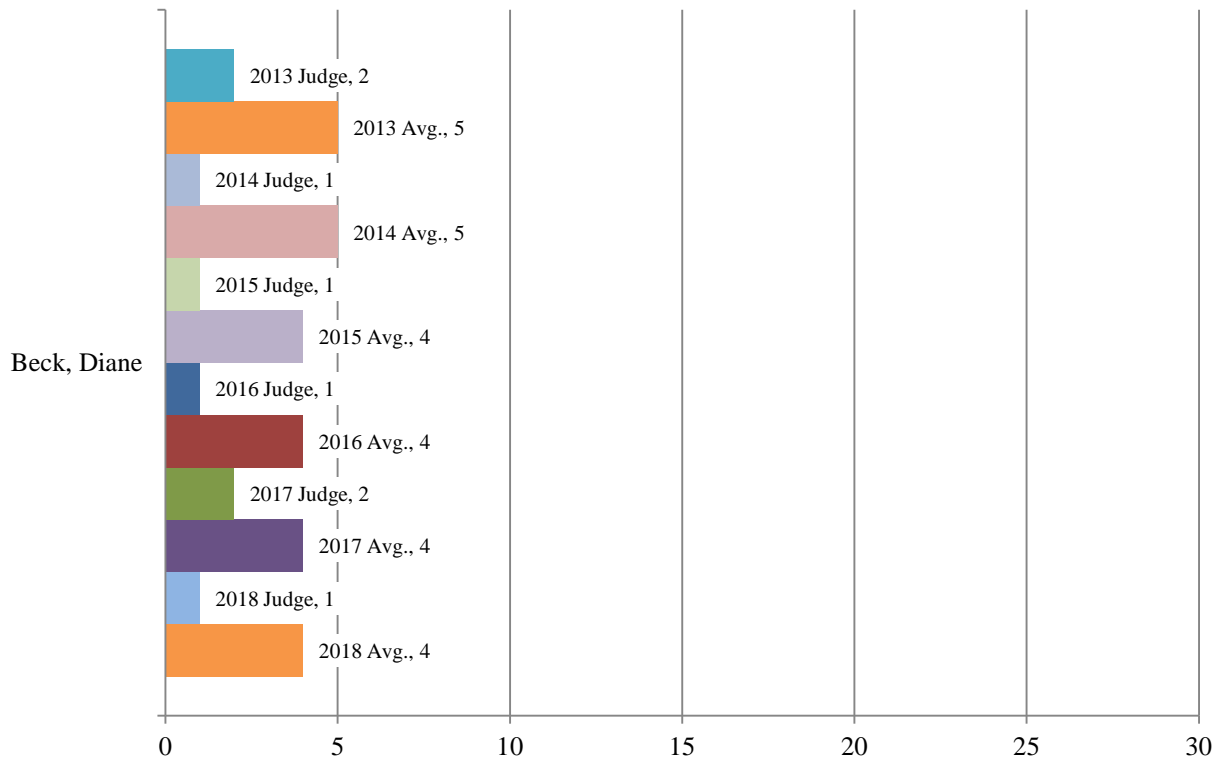
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



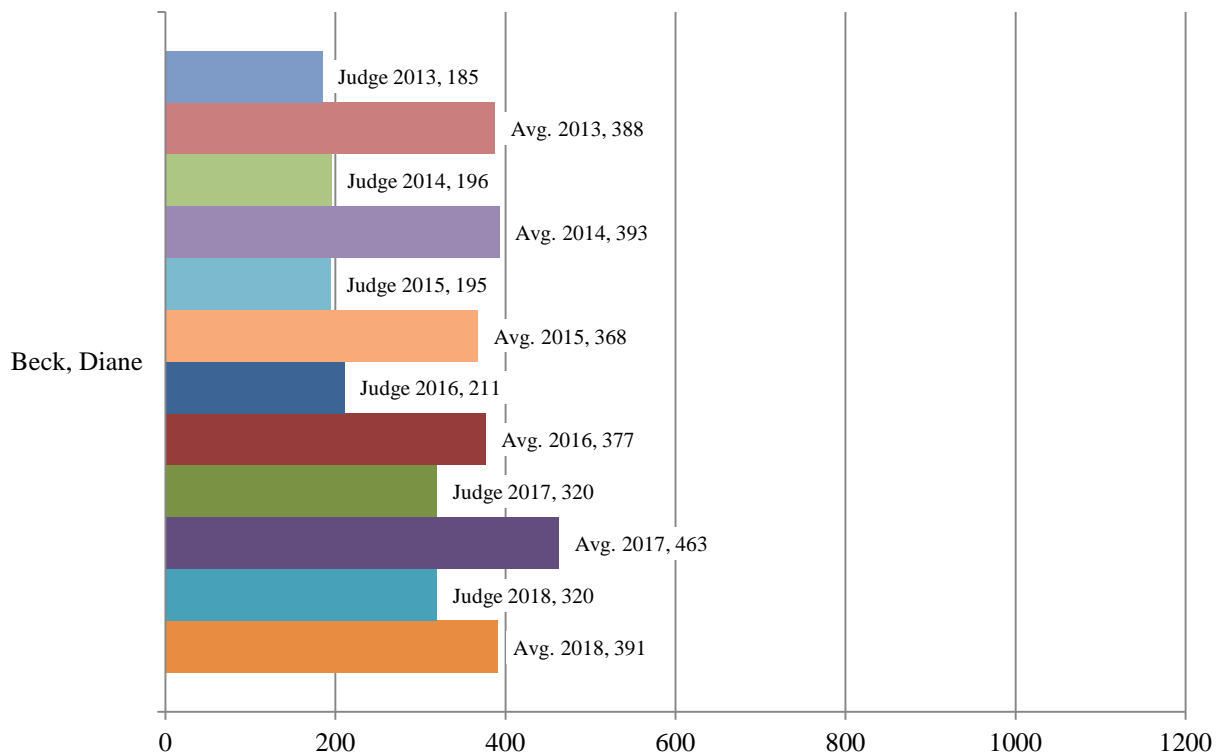
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



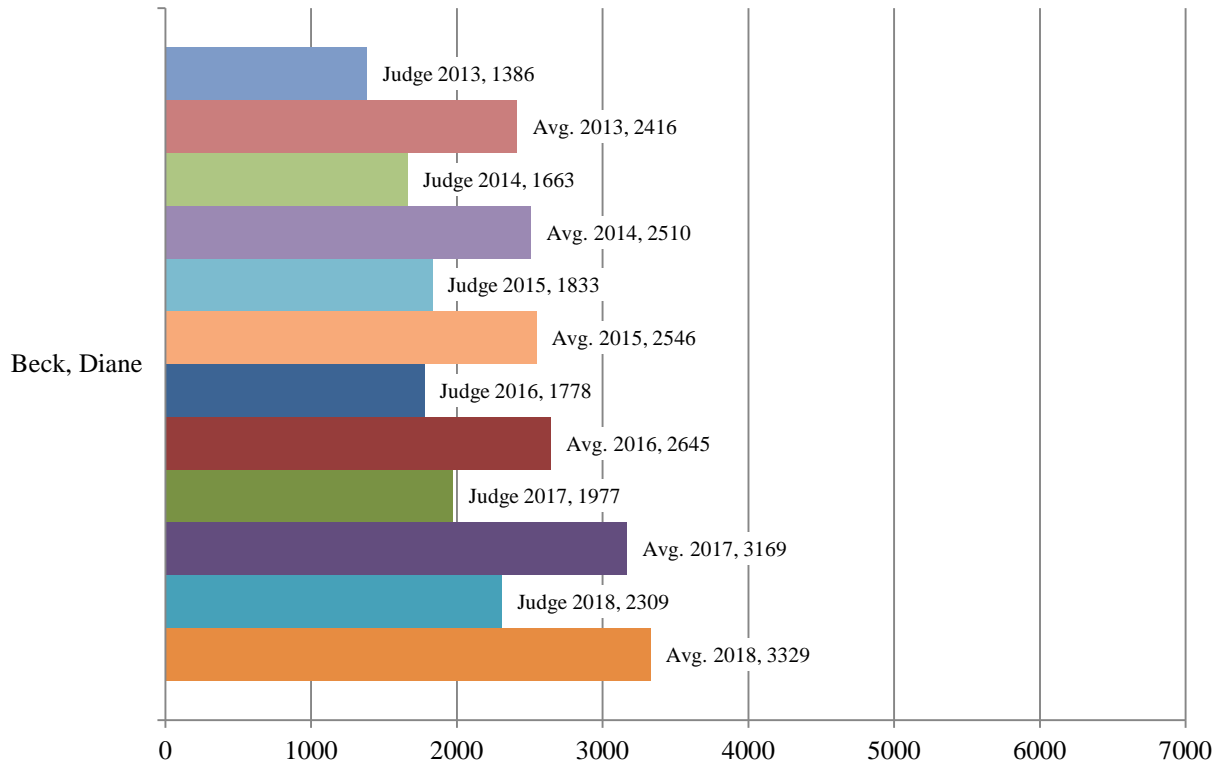
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



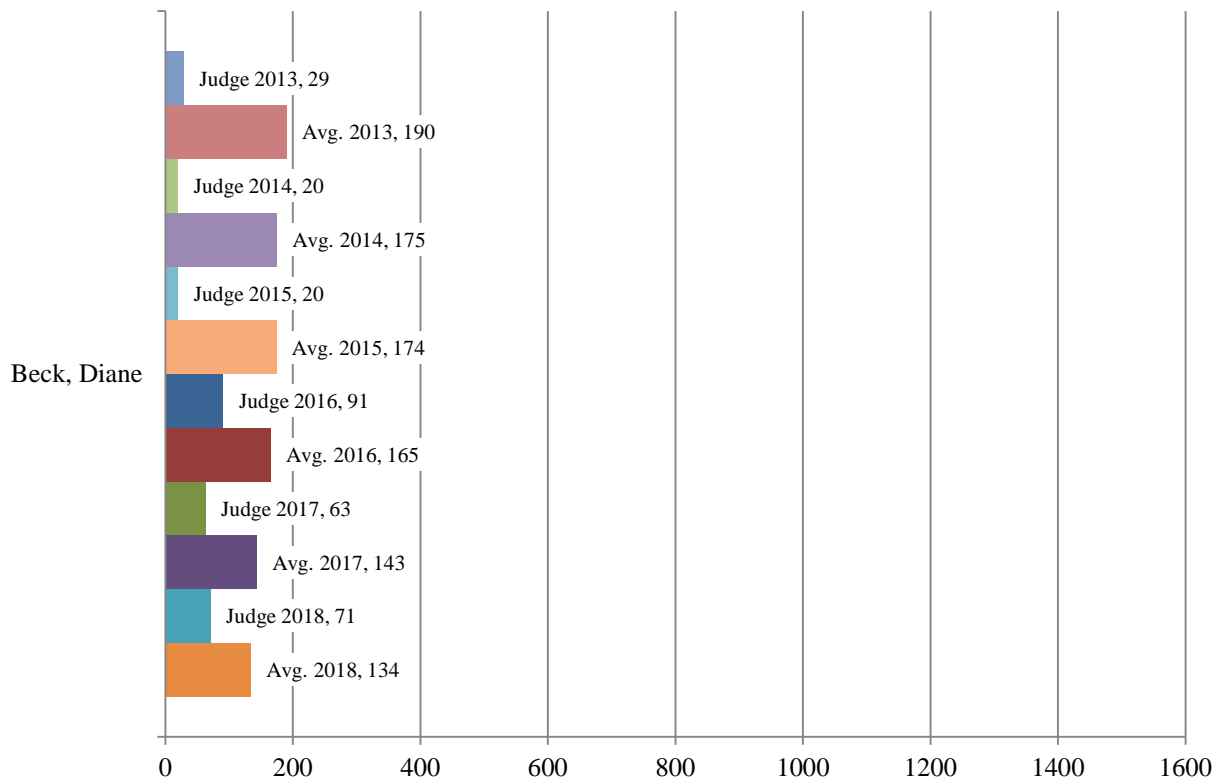
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “14” District STP (JCC Rosen):

District STP includes Pasco and Pinellas counties.

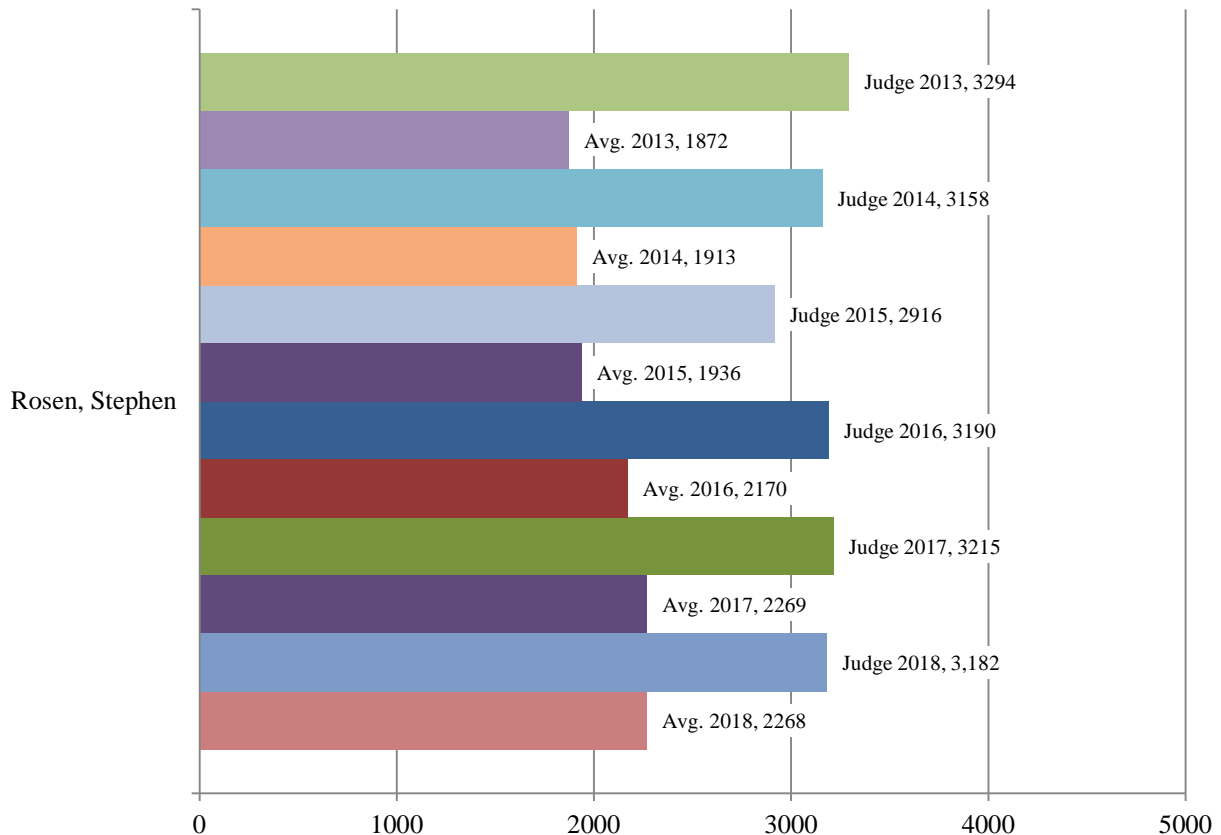
District STP underwent significant change in 2012, becoming a one-judge District for the first time since 1974. The Legislature eliminated a judicial position, and the vacant position in Melbourne was the logical selection to discontinue. Judge Remsnyder voluntarily transferred from STP to MEL to fill that void. Since then, SPT has remained essentially a two judge district in terms of volumes, but with one judge.

Petition and “new case” volumes are dramatically above the statewide average in District STP. Each is 50% or more above the average. This has been consistent for the last six years. The “new case” volume increased in 2015-16 and 2016-17, suggesting the potential for a developing trend of increase. The volume in 2017-18 however, returned to that demonstrated in 2014-15. Whether that represents a pause in ongoing volume growth, or a return to normal after years of exceptional volume remains to be seen. The high filing volumes are likewise reflected in significantly above statewide average year-end pending petition inventory.

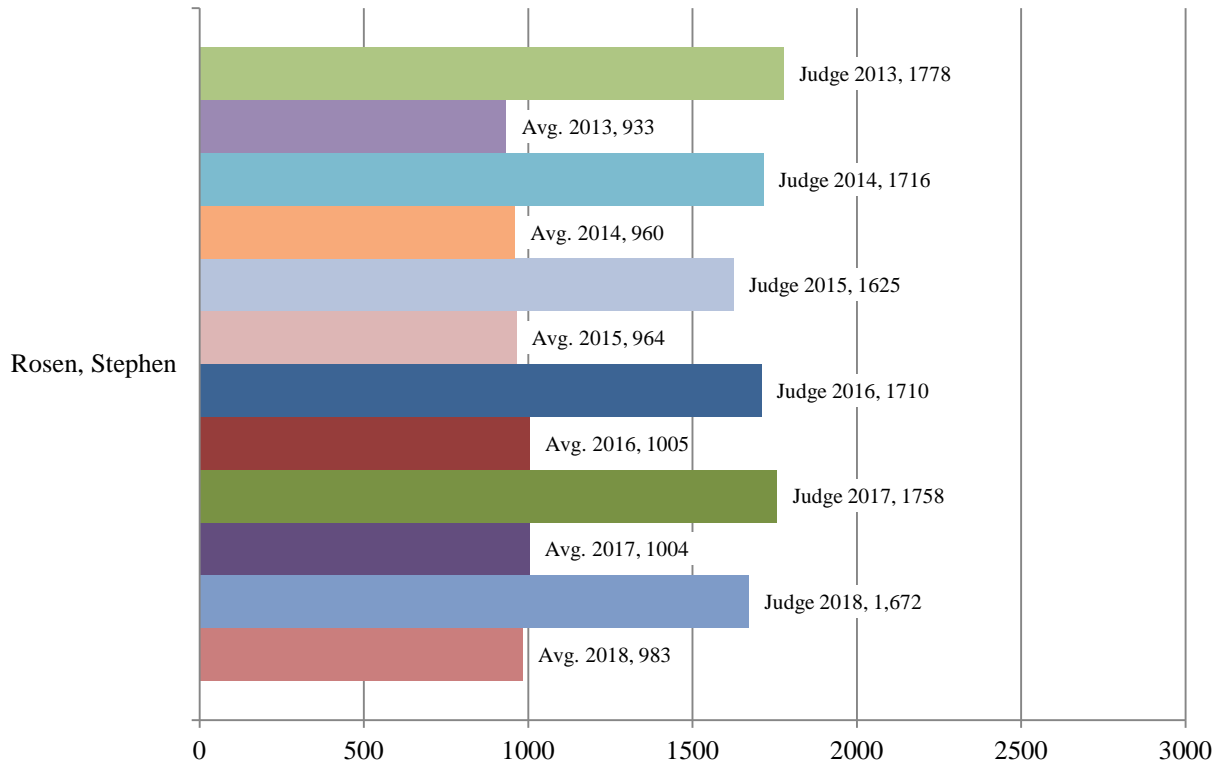
Trial volumes in District SPT are average. The time to trial and time to order are each within the respective statutory parameters, 210 days and 30 days. District St. Petersburg processed almost twice the statewide average of settlements in 2017-18, but was very close to the average for stipulations. Despite the significant petition volume the “other order” volume in District St. Petersburg has been consistently below average, evidencing effective docket management and efficiency.

Judge Rosen has been licensed to practice law in the state of Florida since 1974. He is a member of the Hillsborough County in Pinellas County Bar Association. Judge Rosen presented The “Judicial Perspectives” panel at the Workers Compensation Educational Conference in Orlando Florida in August 2018. Judge Rosen proctored the Florida Bar Examination in July 2018. Judge Rosen authored an article entitled “Workers Compensation: The Heart of Professionalism” published in the Florida Justice Association Journal in the fall of 2018.

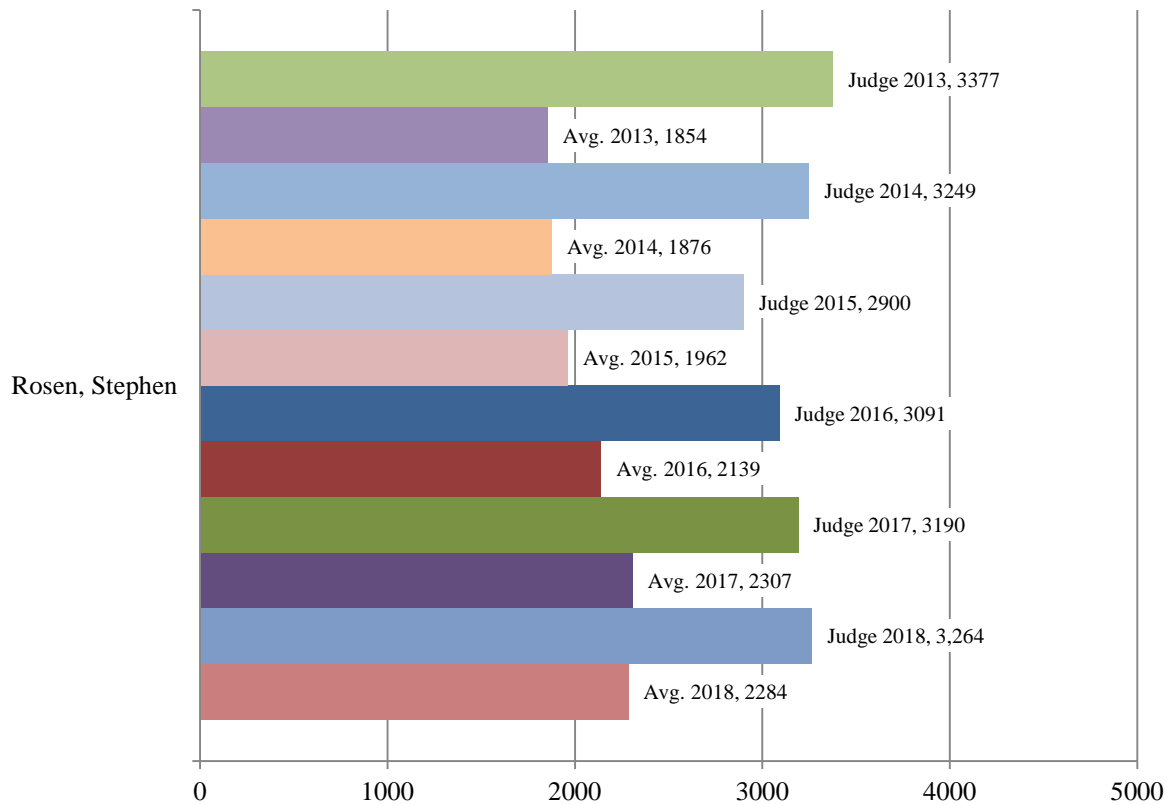
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



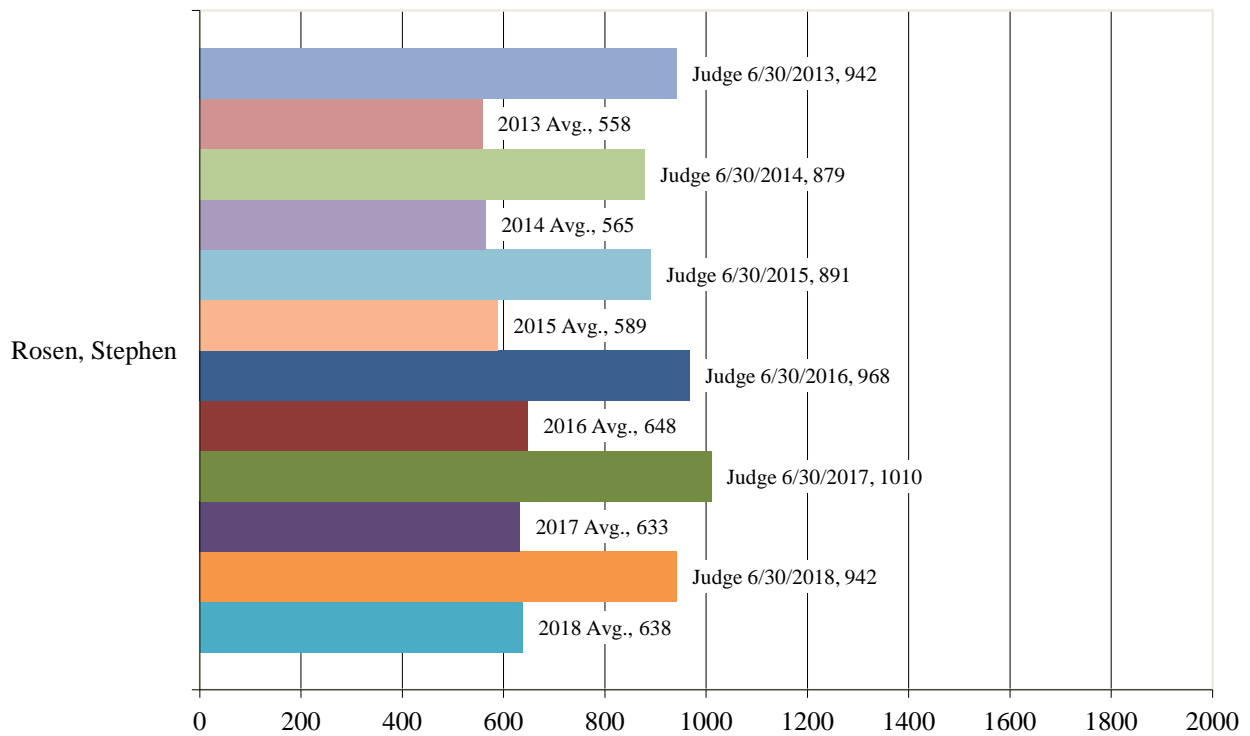
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



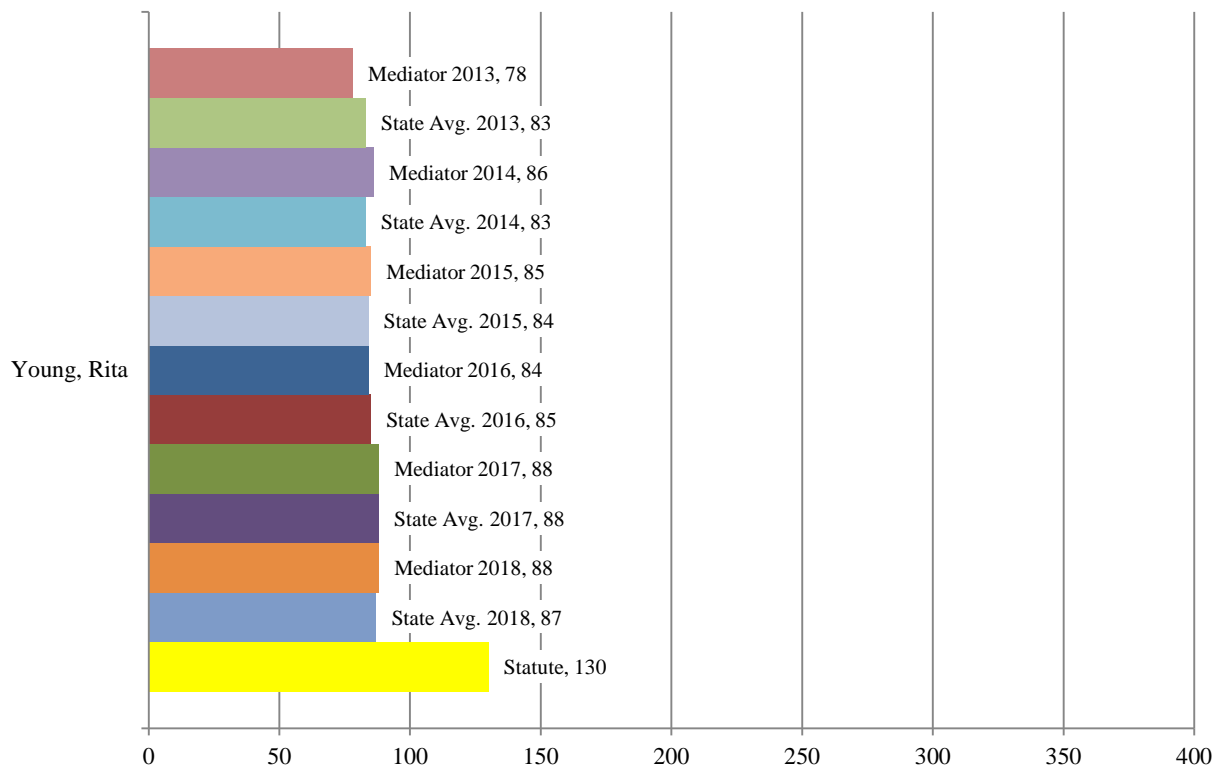
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



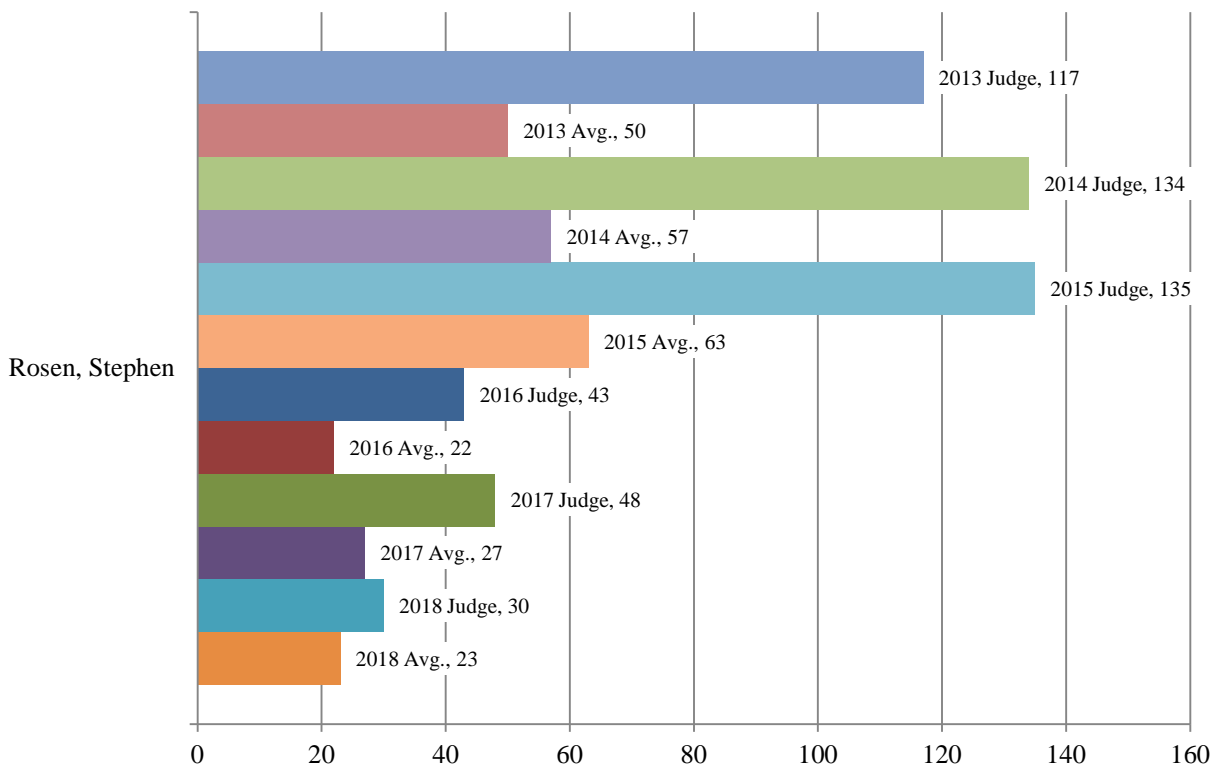
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



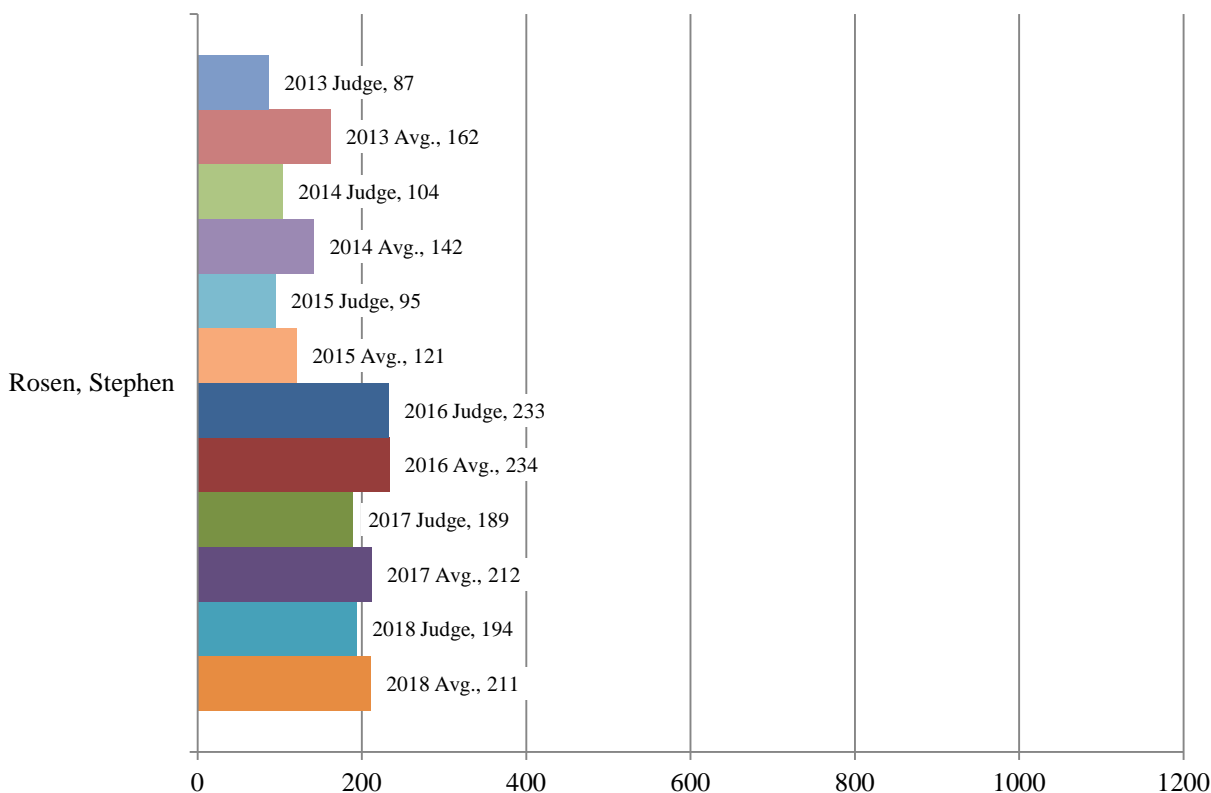
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



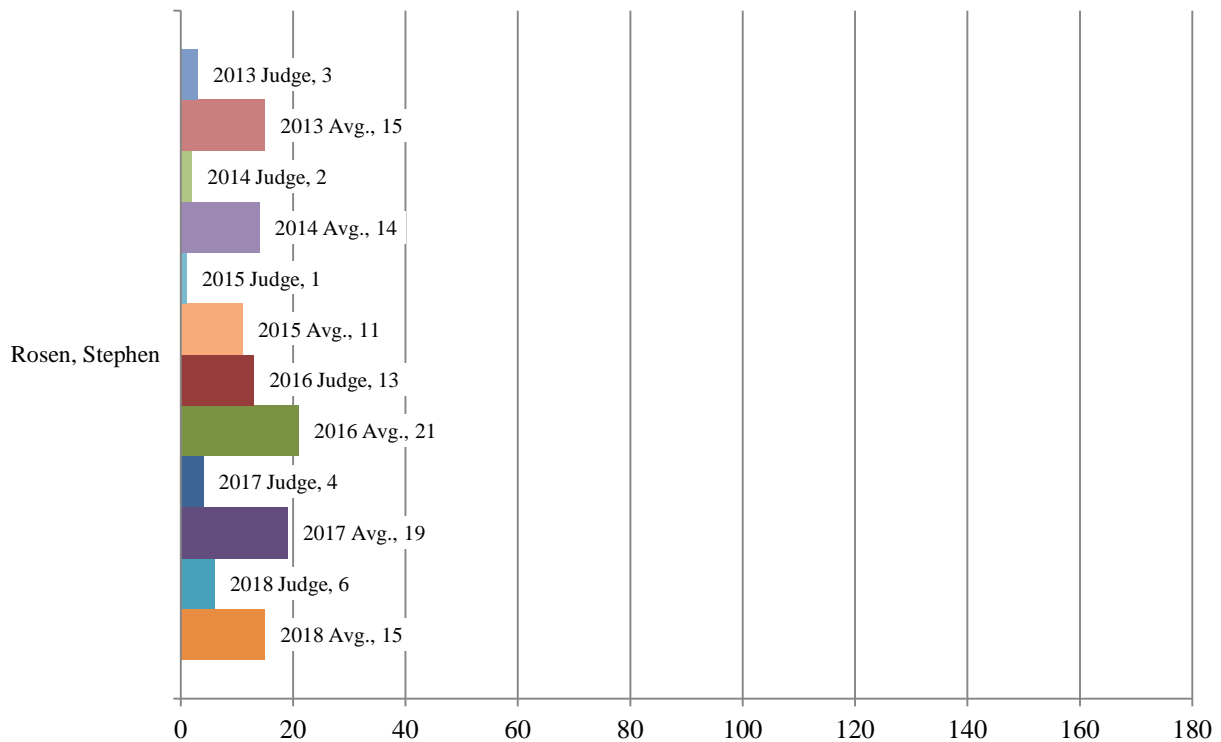
The following graph depicts the total volume of trial orders²¹² uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



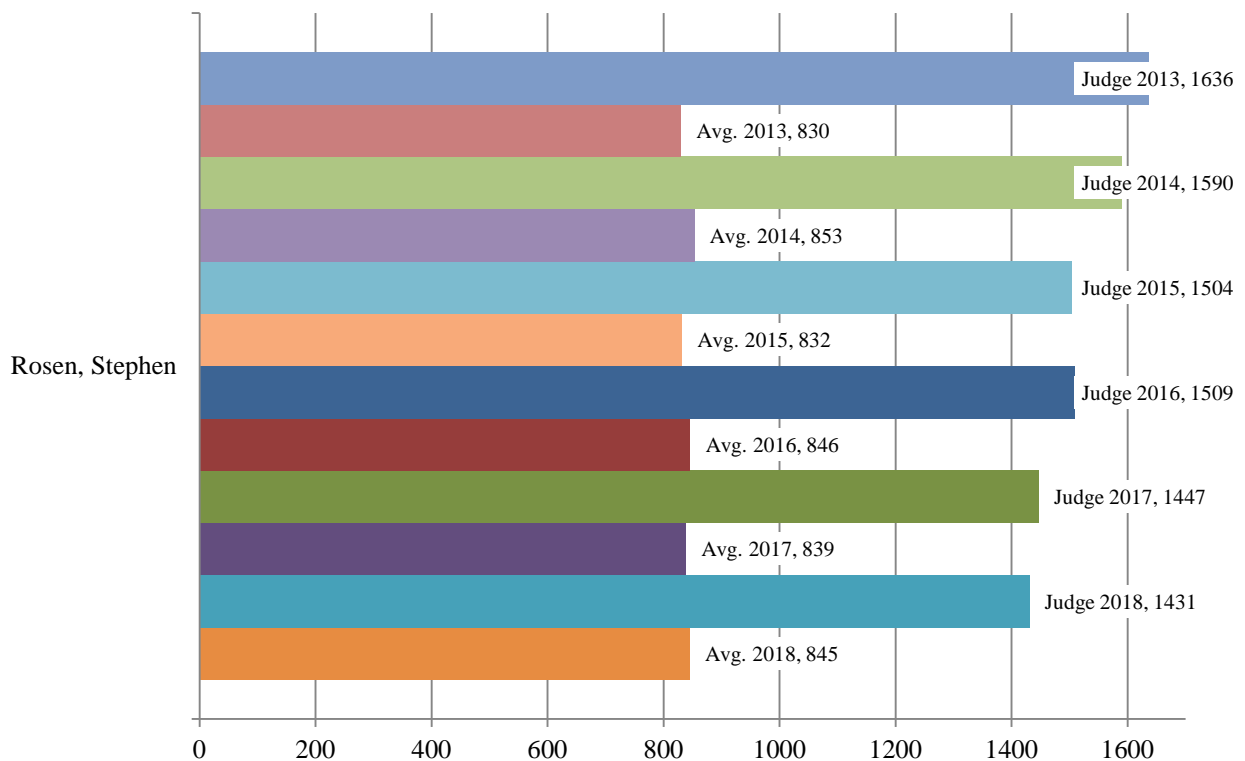
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



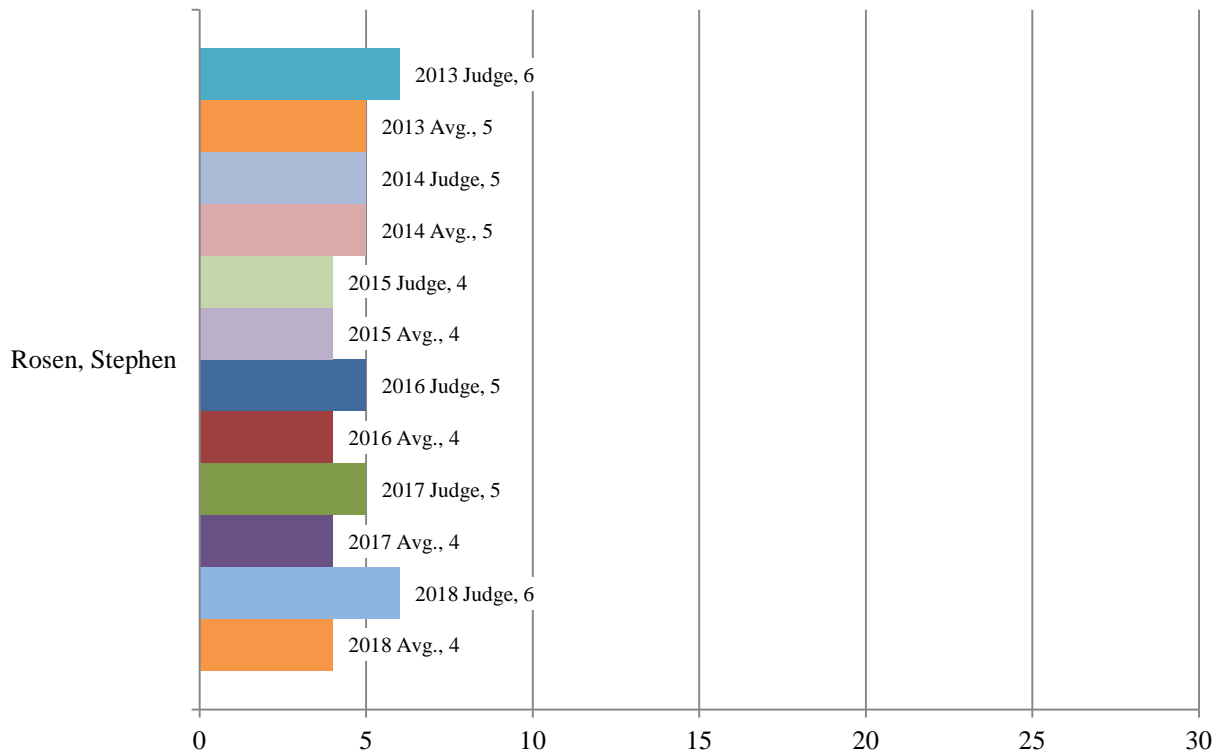
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



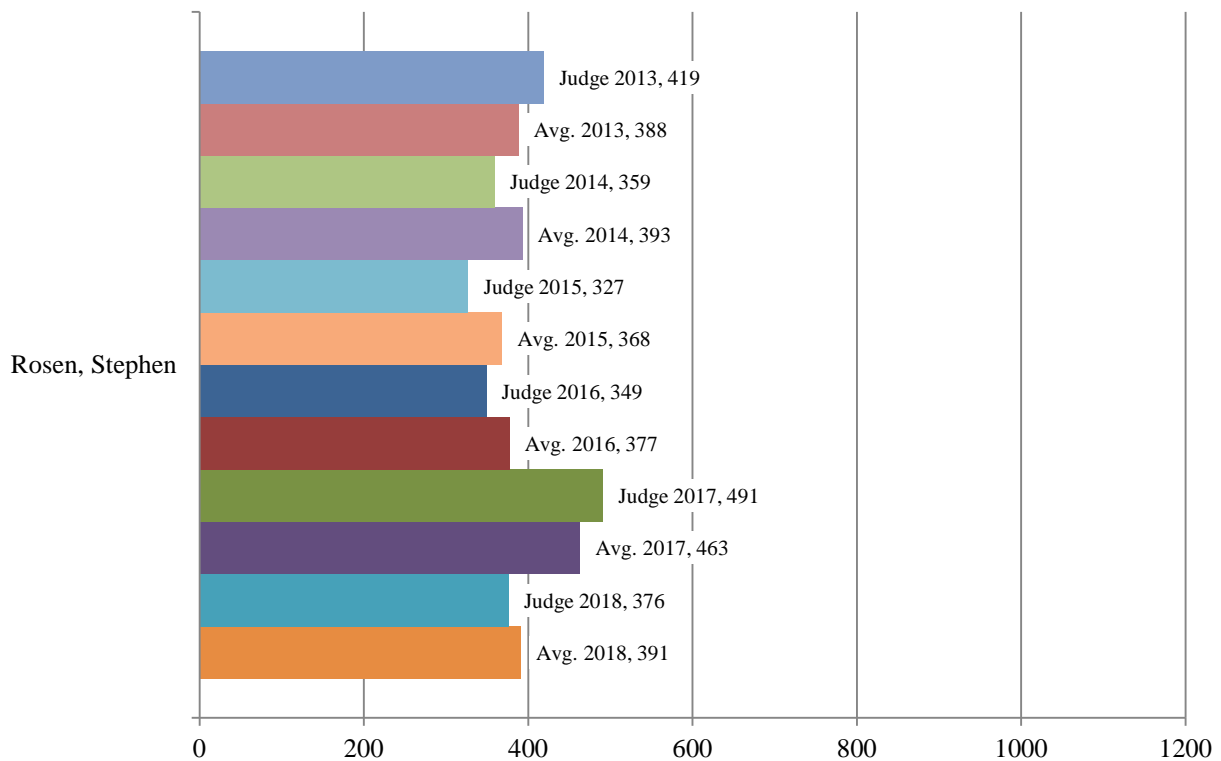
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



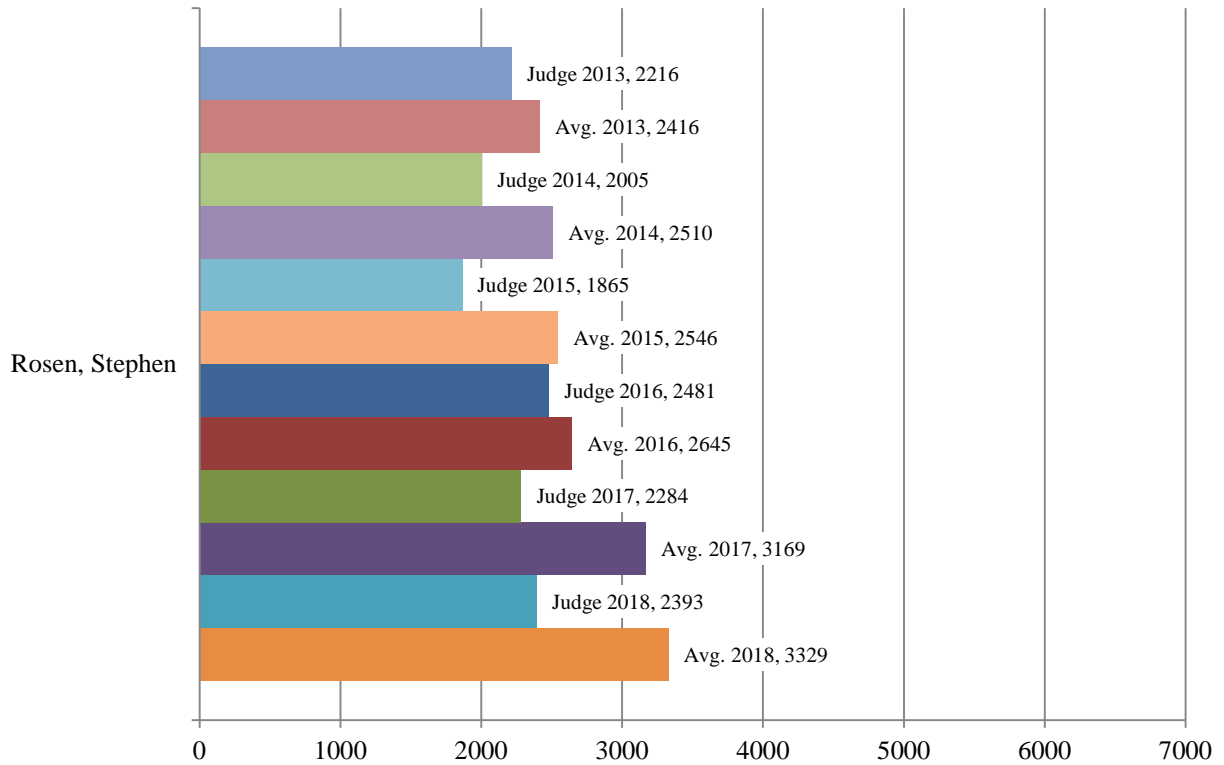
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



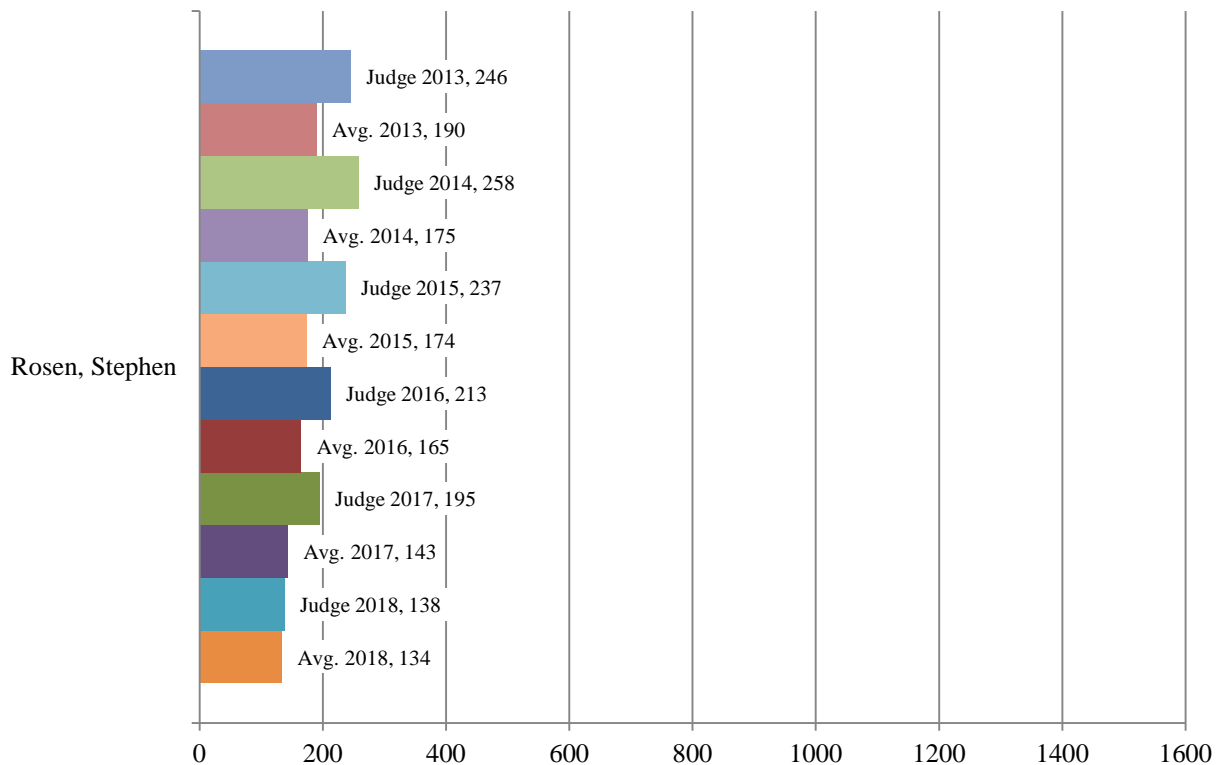
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



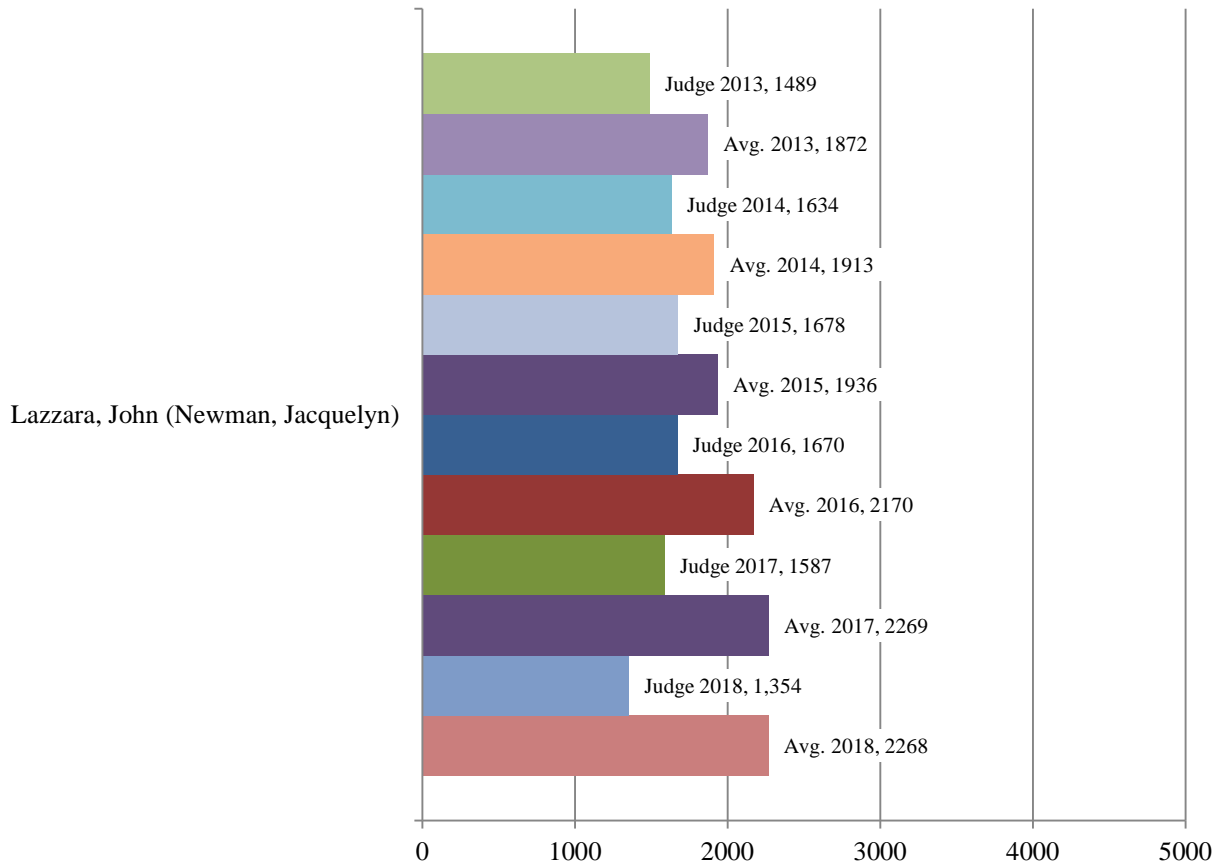
Appendix “15” District TLH (JCC Lazzara [Newman]):

District TLH is one of the largest geographic Districts, and includes Franklin, Gadsden, Hamilton, Jefferson, Lafayette, Leon, Madison, Suwannee, Taylor and Wakulla counties. Although some of these counties have low population density, there is an exceptional level of effort required in this District due to the statutory obligation for the hearings to occur in the county in which the accident occurred if requested by the parties. Although some litigants agree to travel to the District Office in Leon County, travel is periodically necessary for trials.

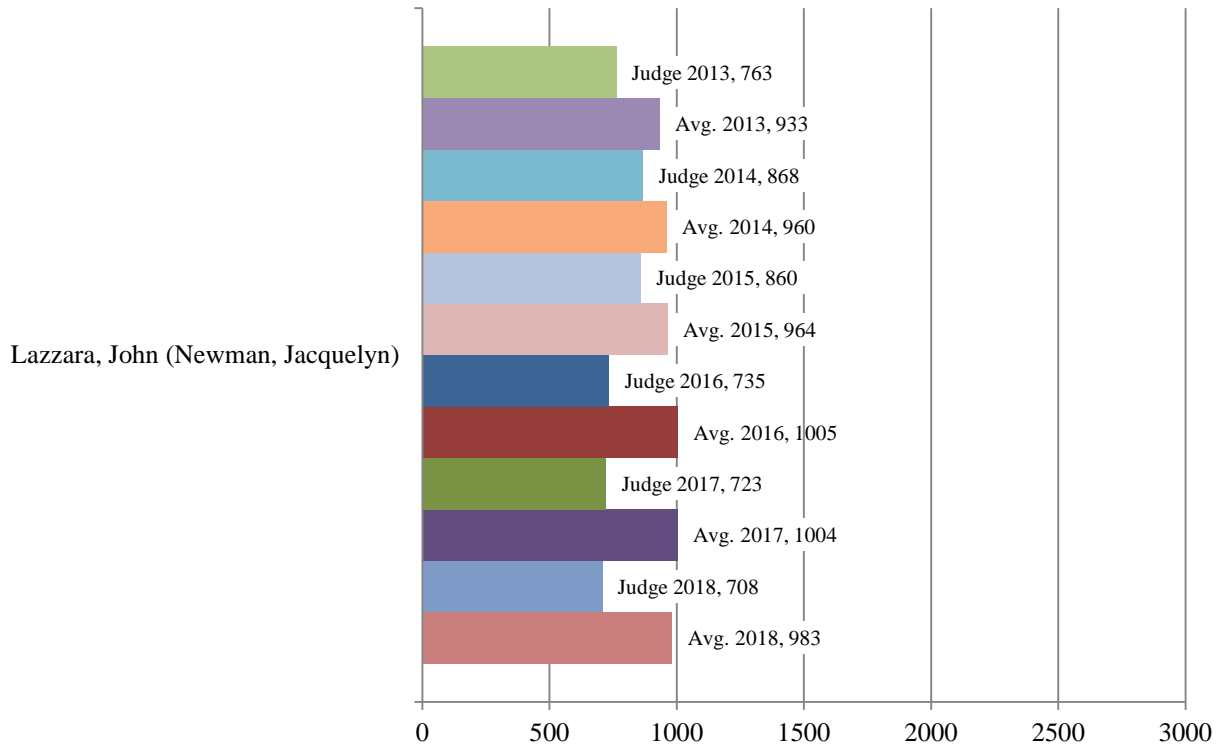
In 2018, Judge Jacquelyn Newman was appointed to replace Judge Lazzara following his retirement. Judge Lazzara had served since 1990.

The volume of PFB and “new case” filings in TLH remain significantly below the statewide averages in 2017-18. Each of these has fluctuated over recent years, but each has been consistently below average. The time to trial and time to order were both within the respective statutory requirements in 2017-18. The volume of settlement orders is close to the statewide average, while the stipulation order volume is well below average. The volume of “other orders” is below average evidencing an efficient and well-managed process.

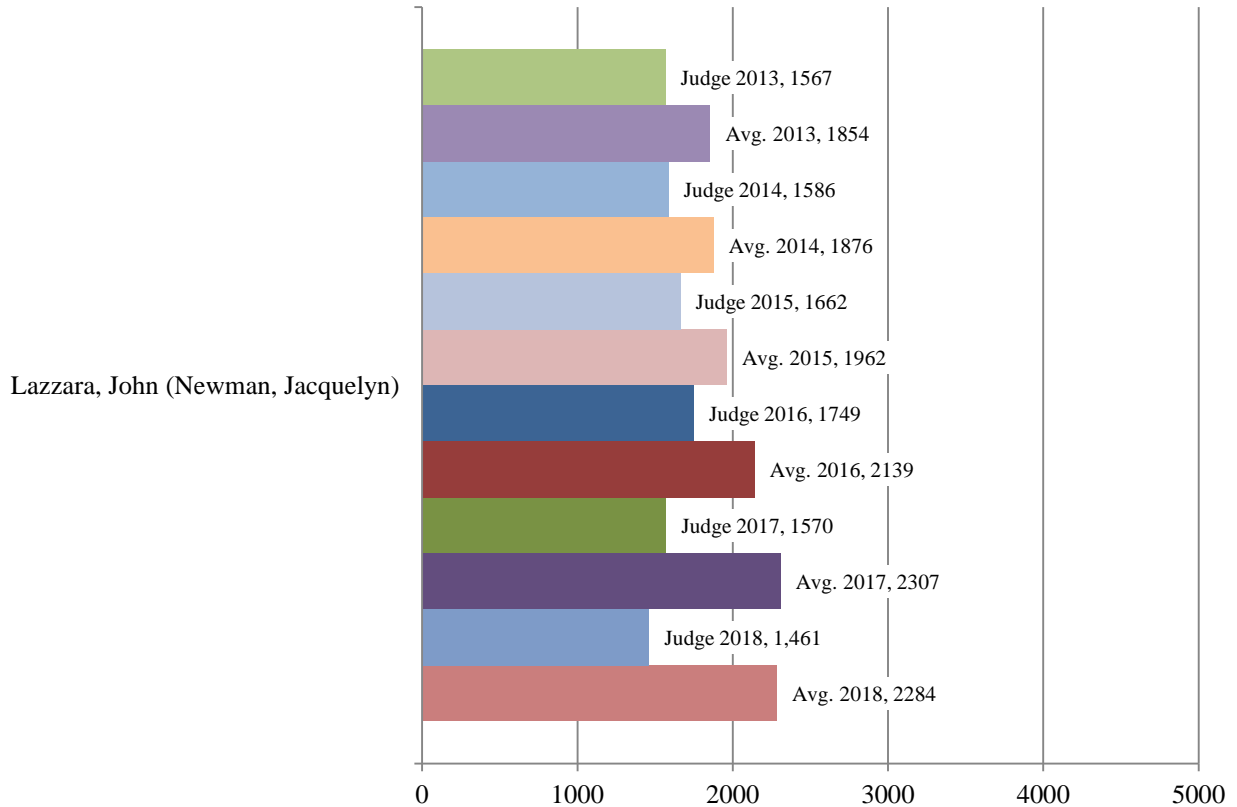
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



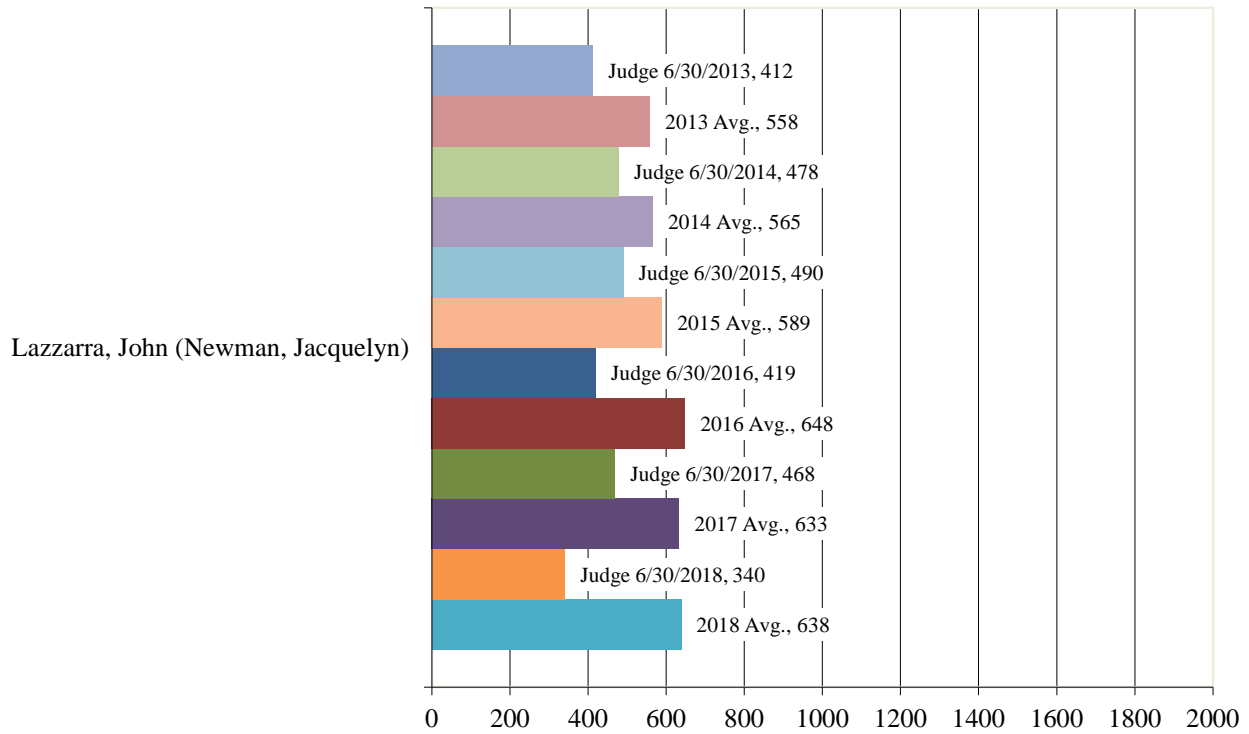
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



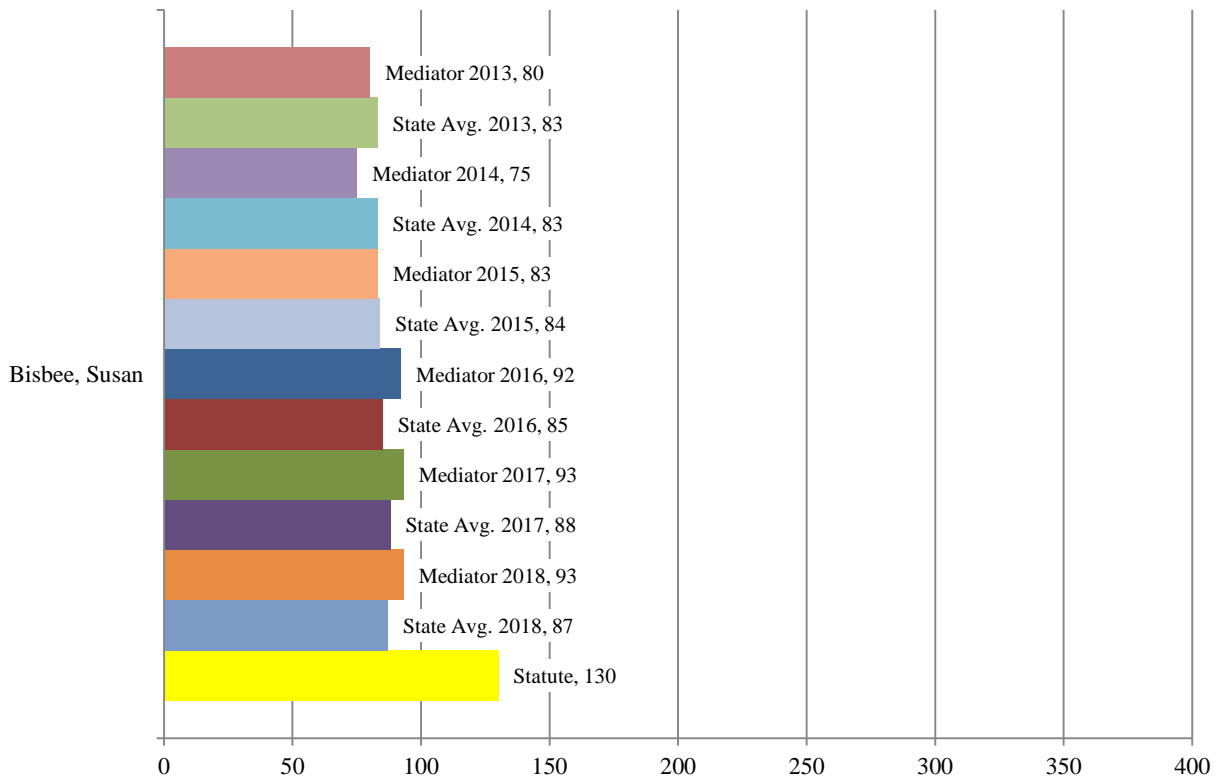
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



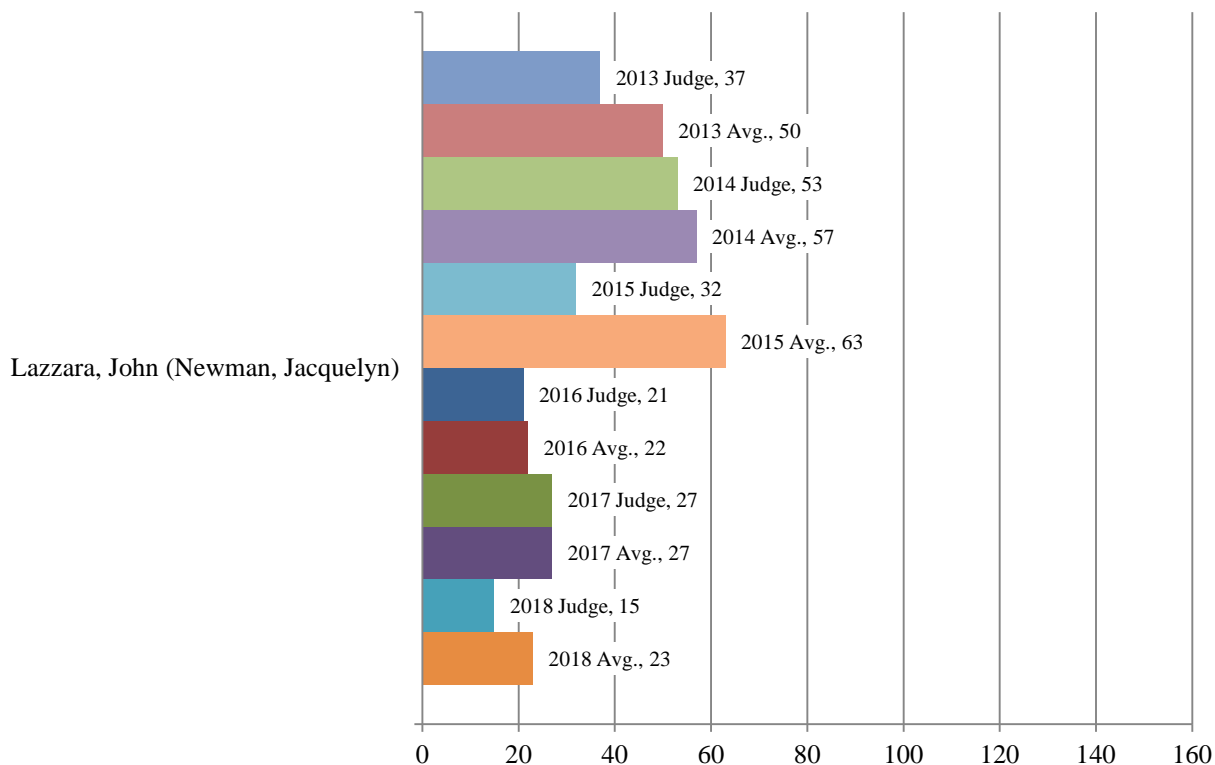
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



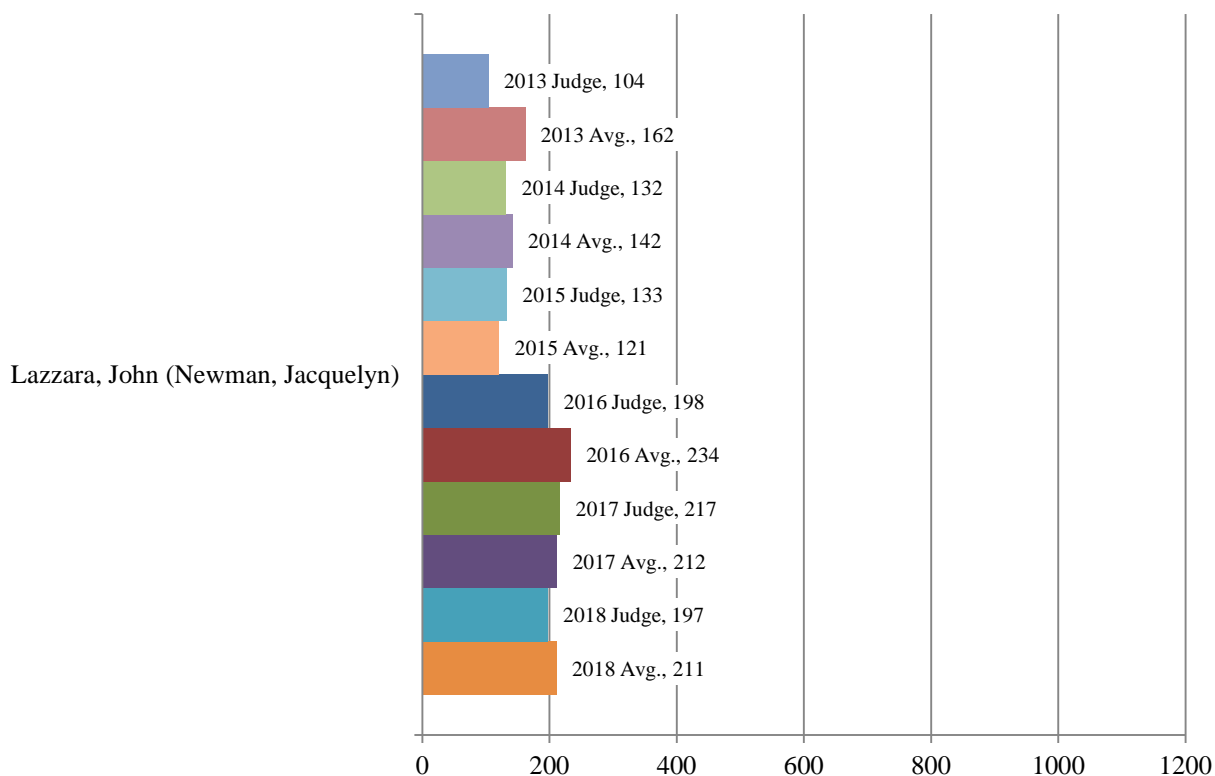
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



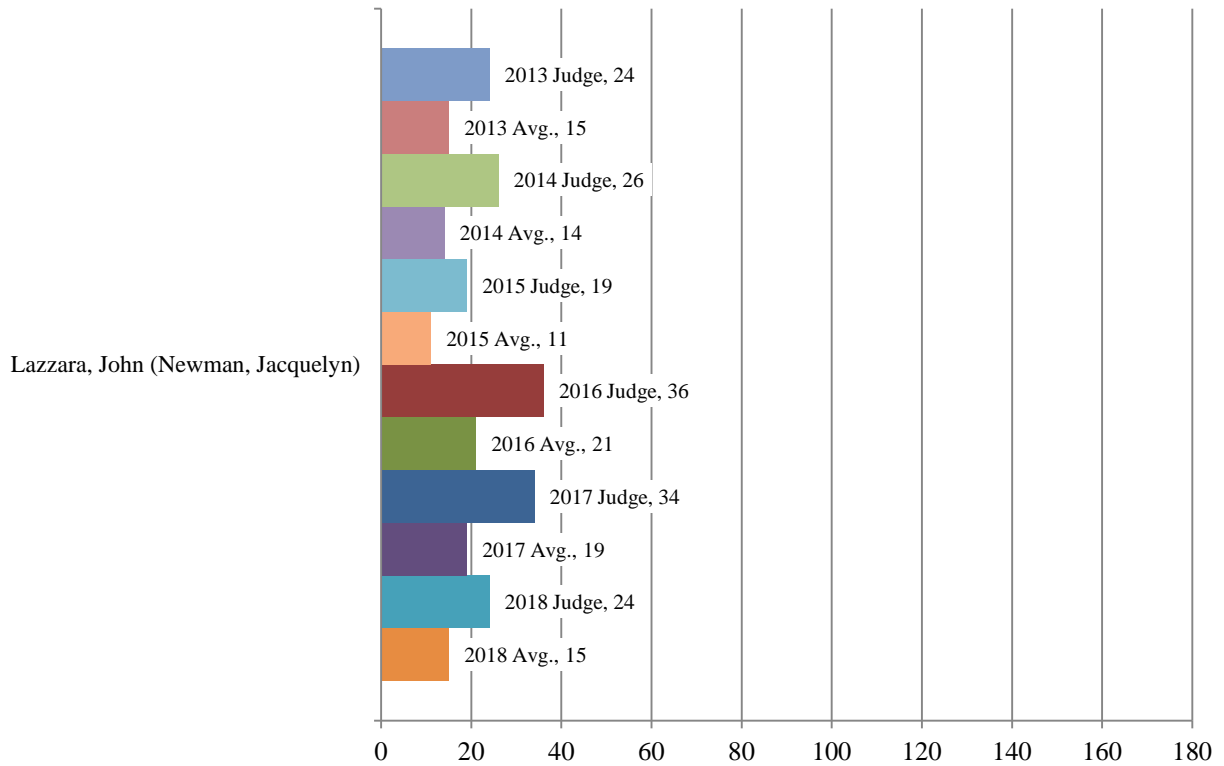
The following graph depicts the total volume of trial orders²¹³ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



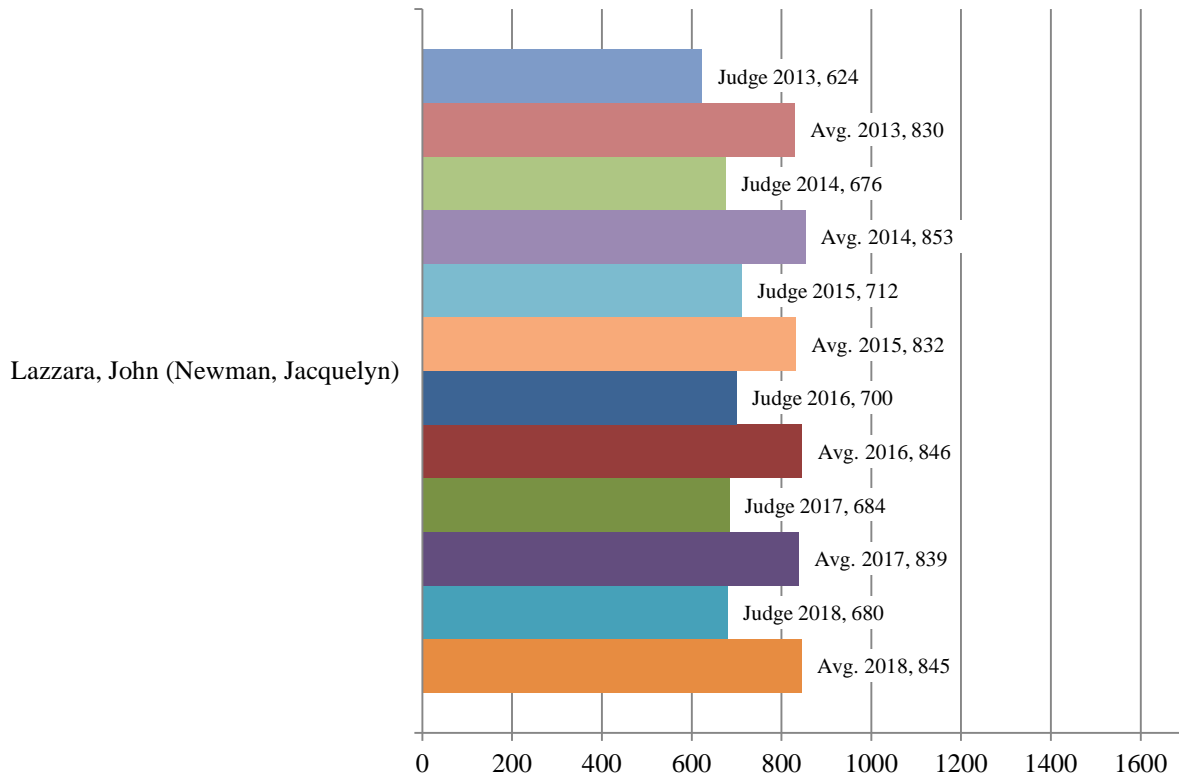
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



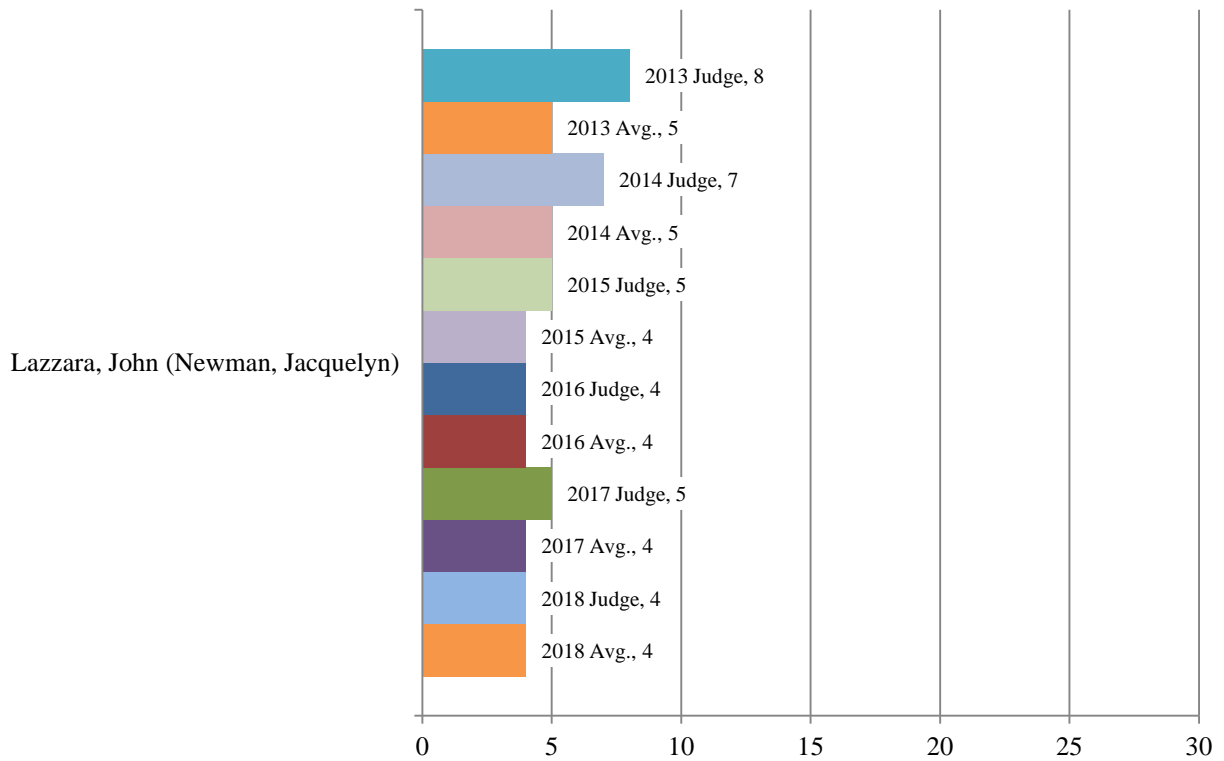
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



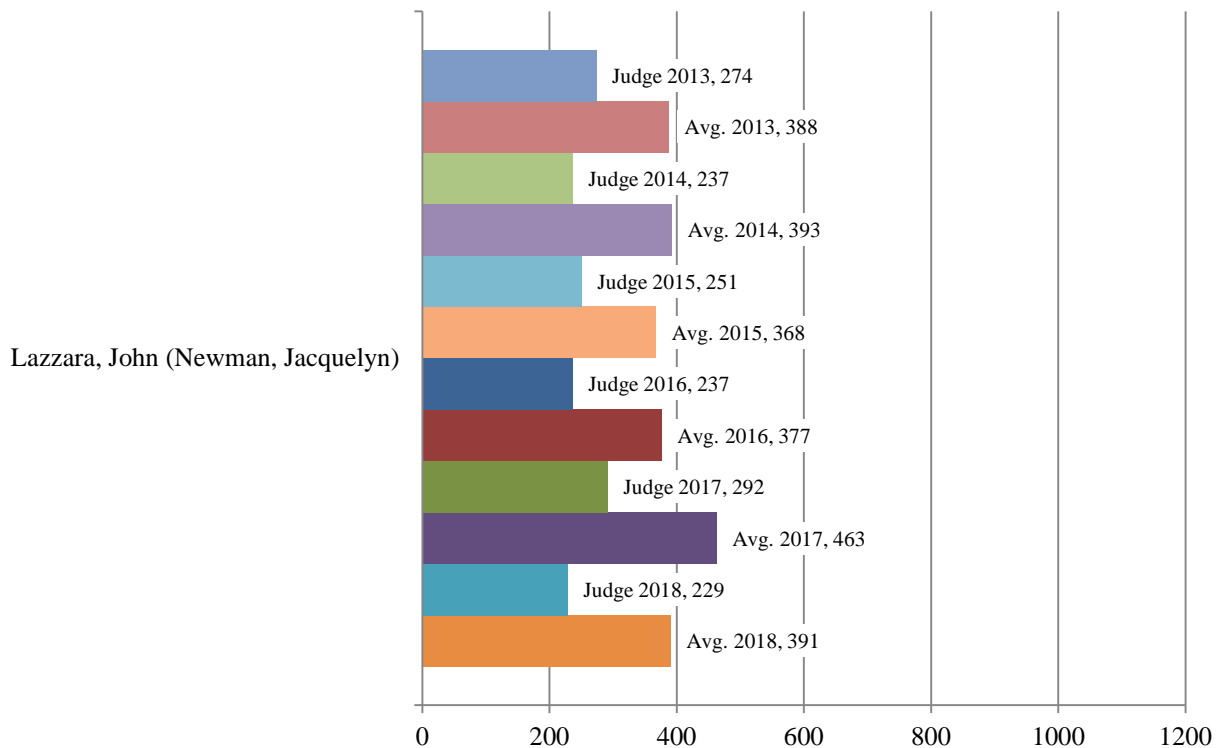
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



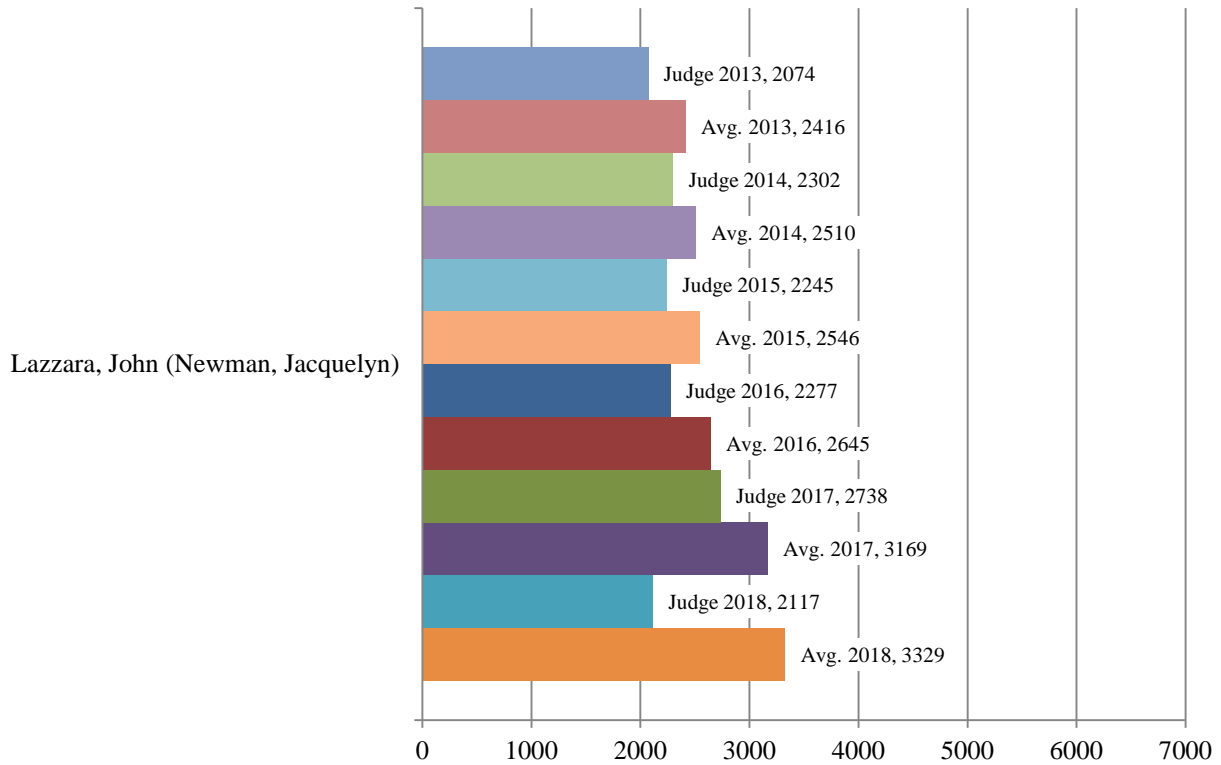
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



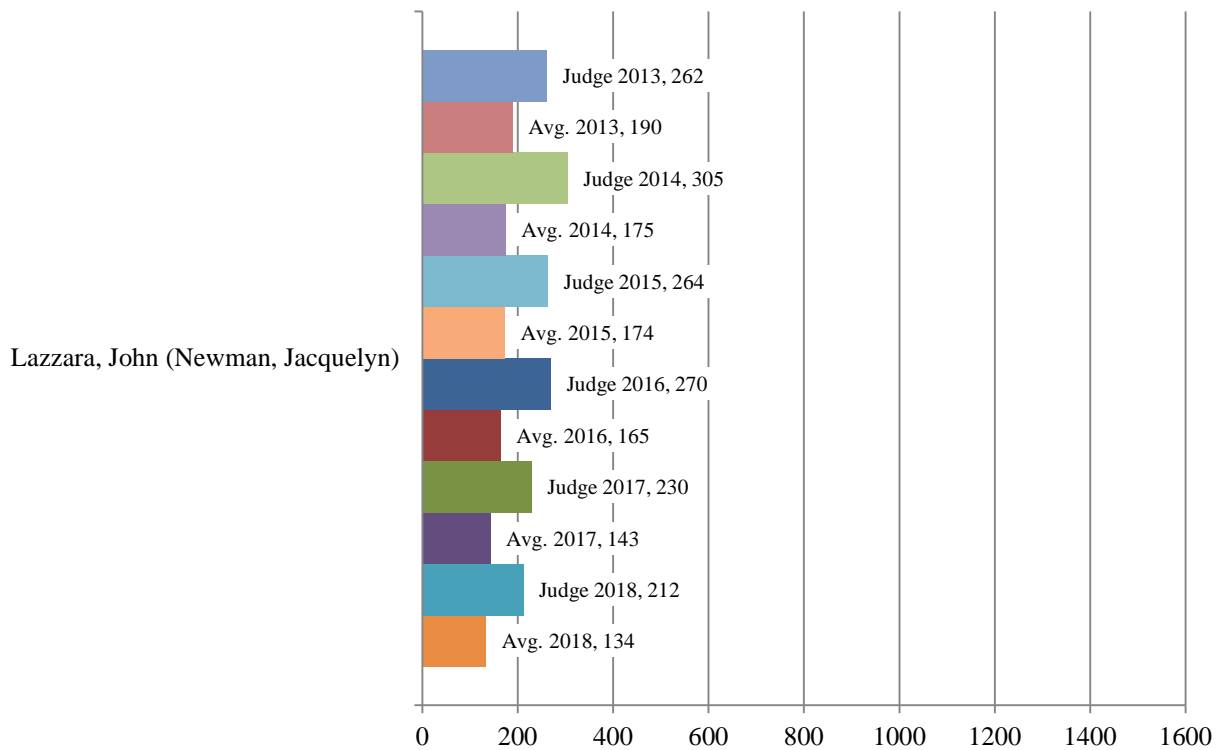
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “16” District TPA (JCC Lorenzen, JCC Massey, JCC Spangler):

District TPA includes Citrus, Hernando, Hillsborough, and Sumter Counties.

District TPA is a remarkably stable district. It is worthy of note that both Judges Massey and Spangler manage a significant volume of Miami litigation, a replacement process to the former out-of-district program suspended in 2014-15. Petition and “new case” volumes in District TPA remain remarkably consistent with the statewide averages, except for Judge Lorenzen. That Division was assigned a significantly higher volume of “new cases” in 2016-17 and 2017-18, because hers is the only TPA Division that is 100% District TPA cases; Judge Massey and Spangler are assigned “new cases” in both District TPA and District MIA. The similarity between petition filing rates and closure rates demonstrates a District in equilibrium, and under effective management.

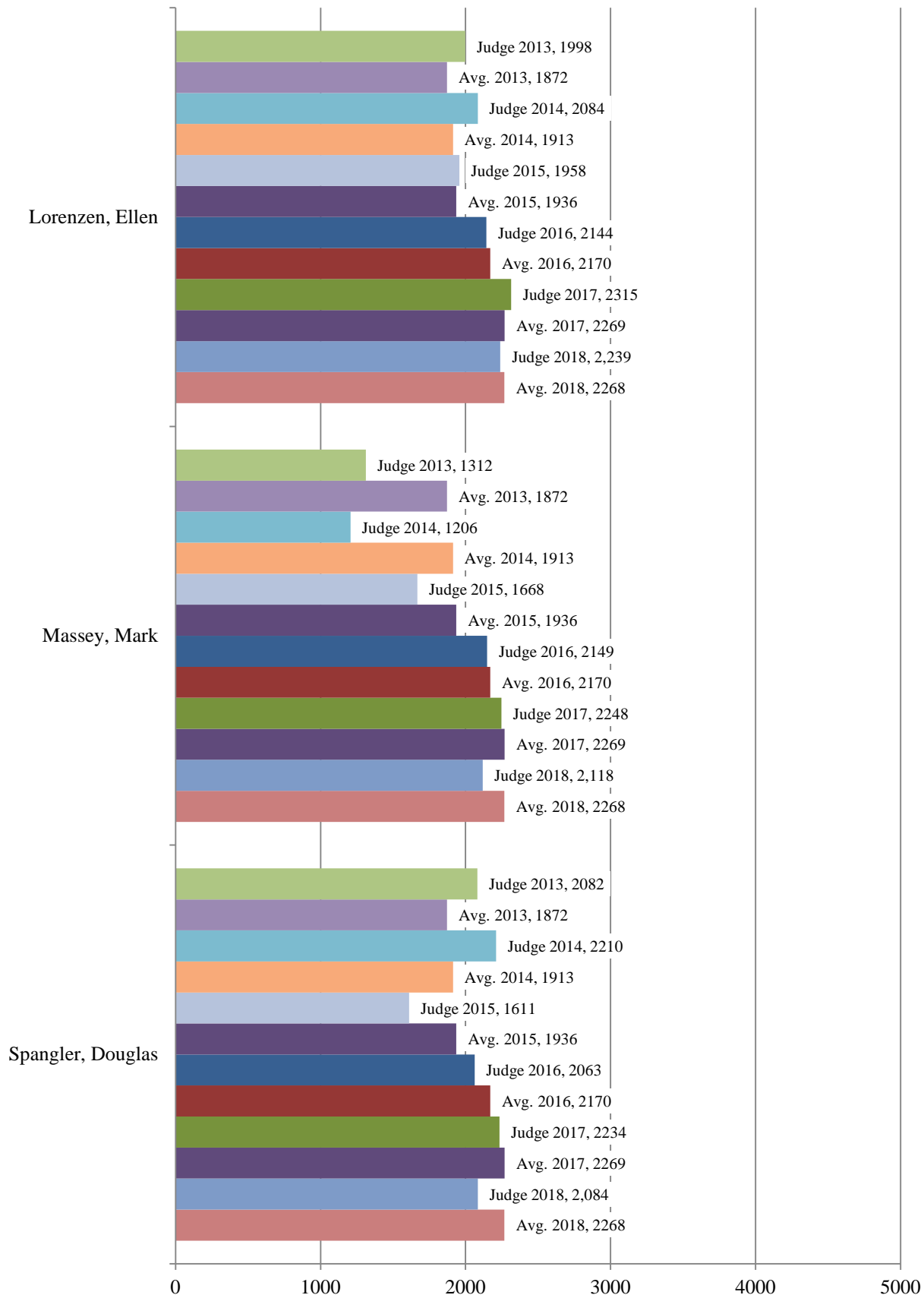
Trial volume in District TPA is reasonably consistent with the statewide average. Two of the three Divisions demonstrated time to trial in excess of the 210 day statutory parameter. The time to order was consistent with the statewide average in two of the three divisions. The volume of “other orders” was also consistent with the statewide average in two of the three Tampa Divisions.

In 2017-18 Judge Spangler remained active in support of the development of the Tampa Bay Worker's Compensation Inn of Court; served as moot court judge at the 2017 Worker's Compensation Educational Conference in Orlando; and continued to serve on the Diocesan Disciplinary Board in the Episcopal Diocese of Southwest Florida.

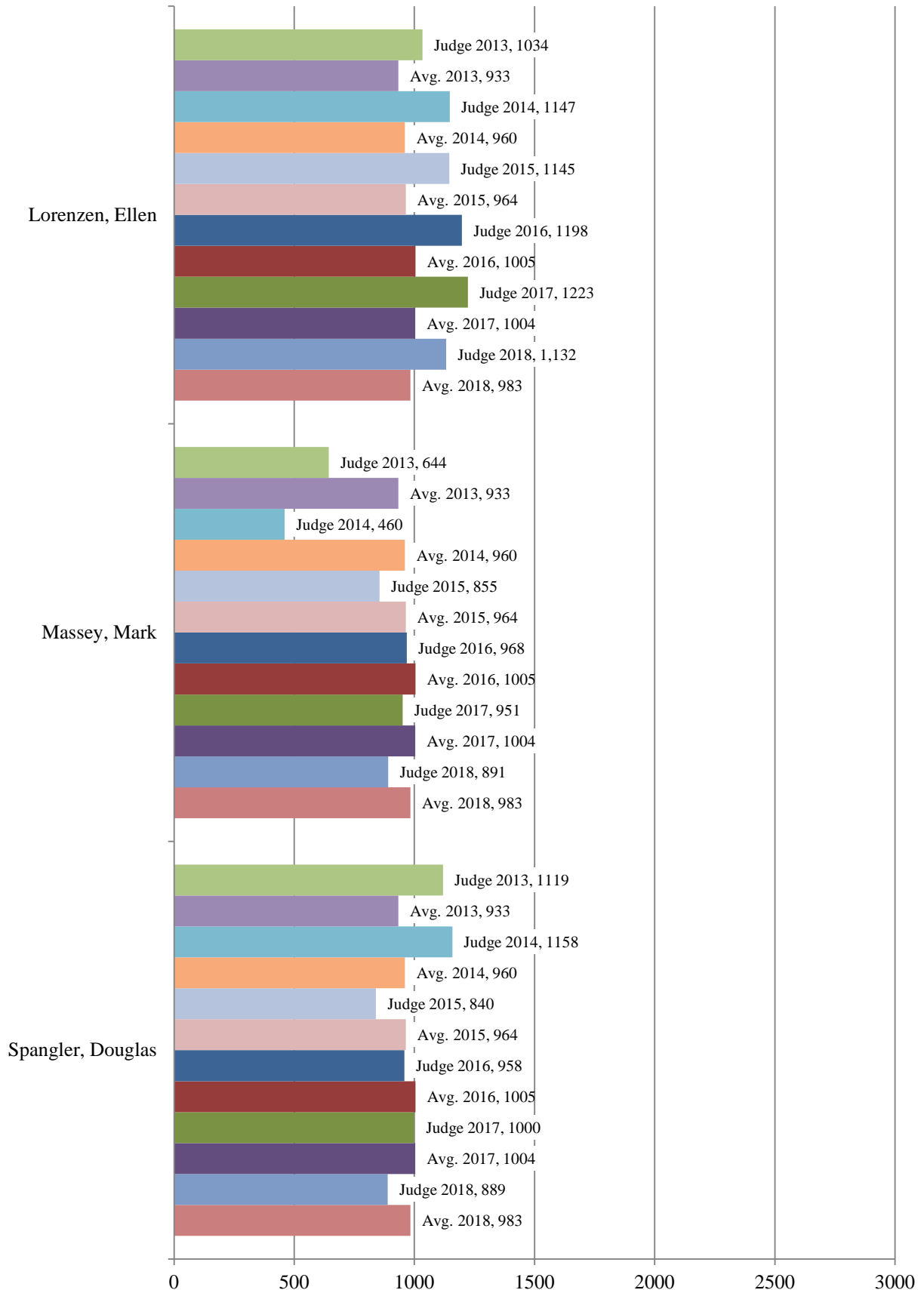
Judge Massey was a panel speaker on “Preparing Your Case for Trial” at the annual First District Court of Appeal seminar in January 2018. He was also a speaker at the Workers’ Compensation Forum in Orlando in April 2018 on Trial Practice and Procedure, and participated in a lunch-and-learn seminar put on by the Hillsborough County Bar Association Workers’ Compensation Section. Recently, Judge Massey assumed the role of administrative judge in the Tampa office managing personnel, security, maintenance, and equipment issues. He also continues to serve as a volunteer judge and mentor for Hillsborough County Teen Court, a juvenile diversion program for first-time offenders.

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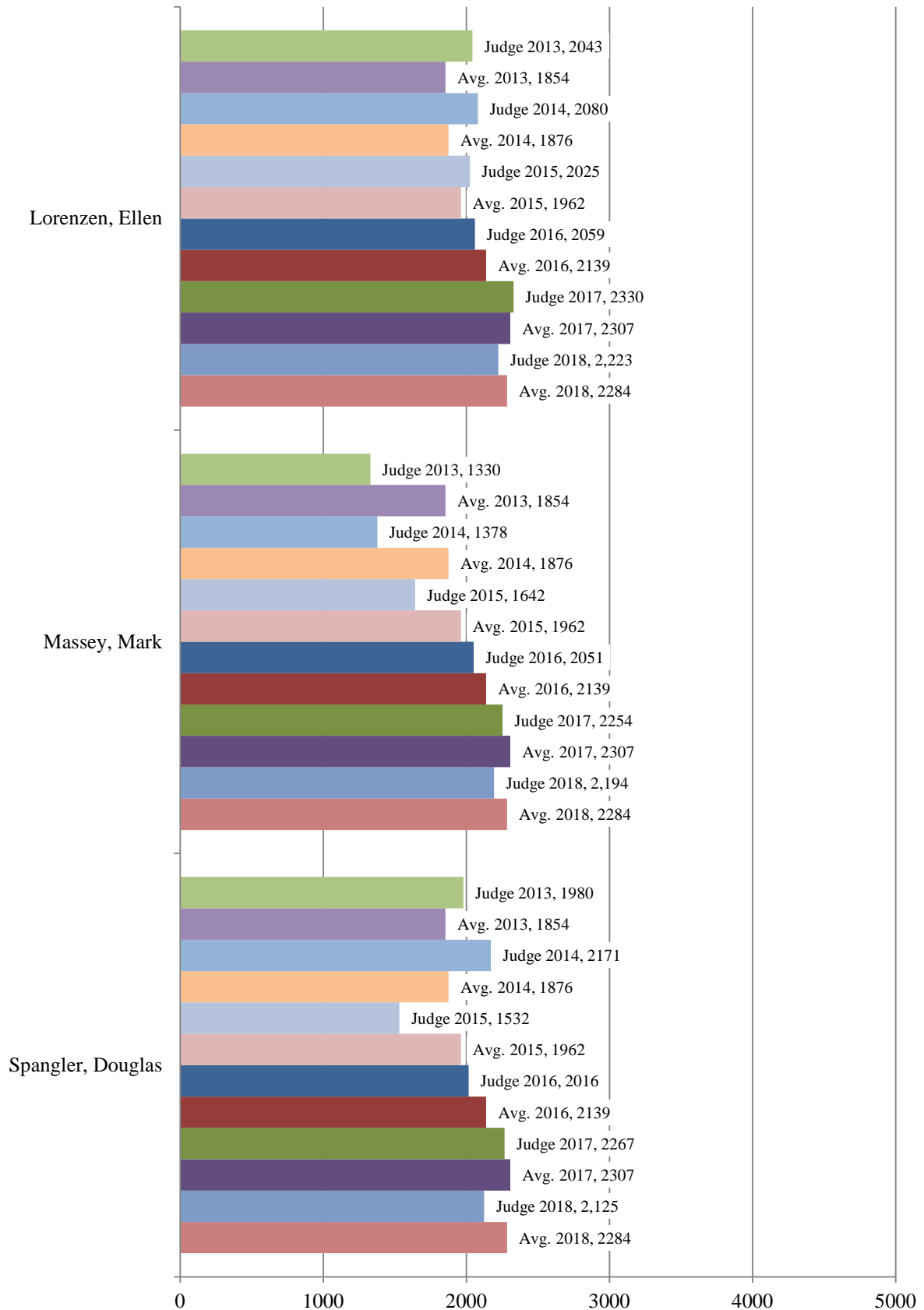
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



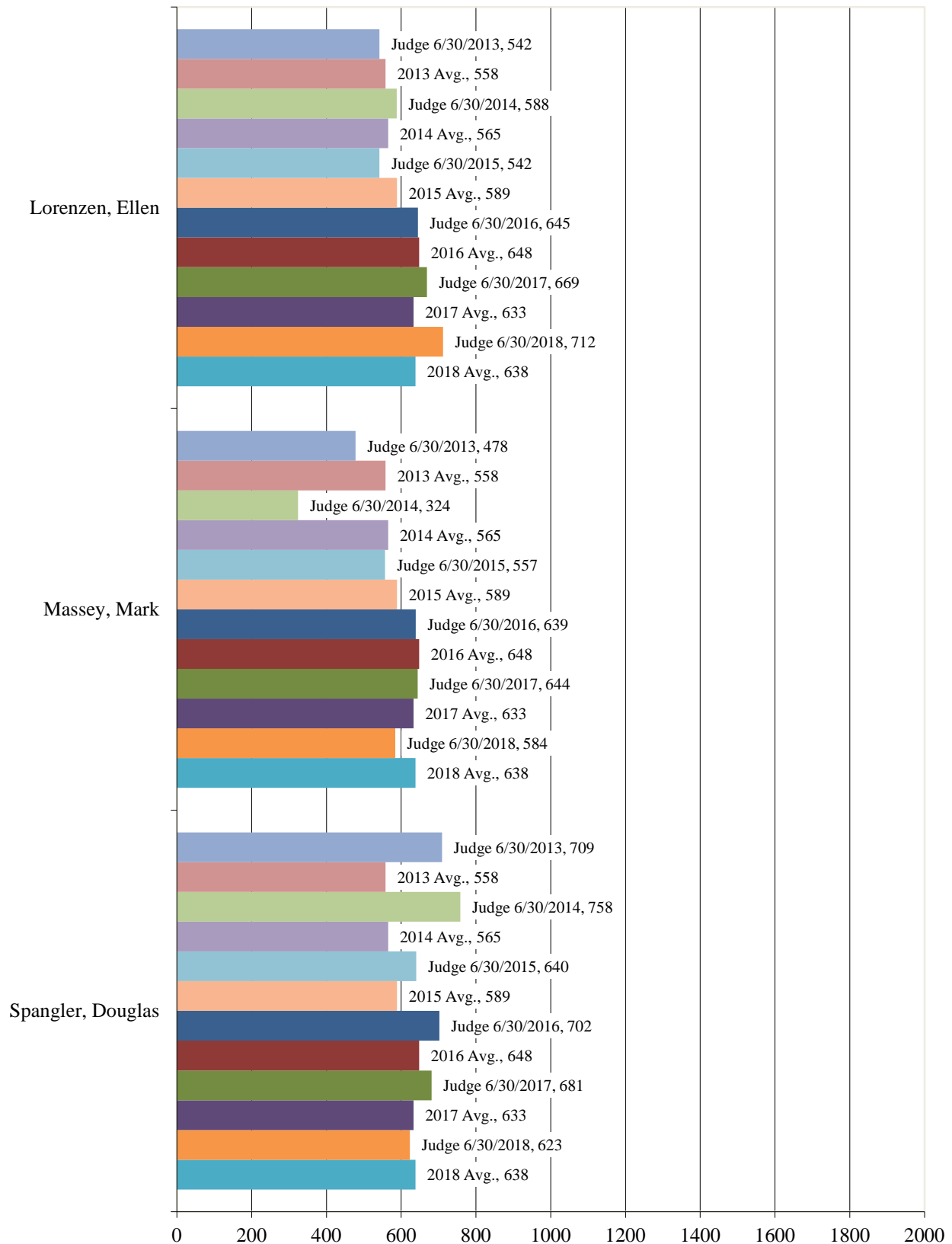
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



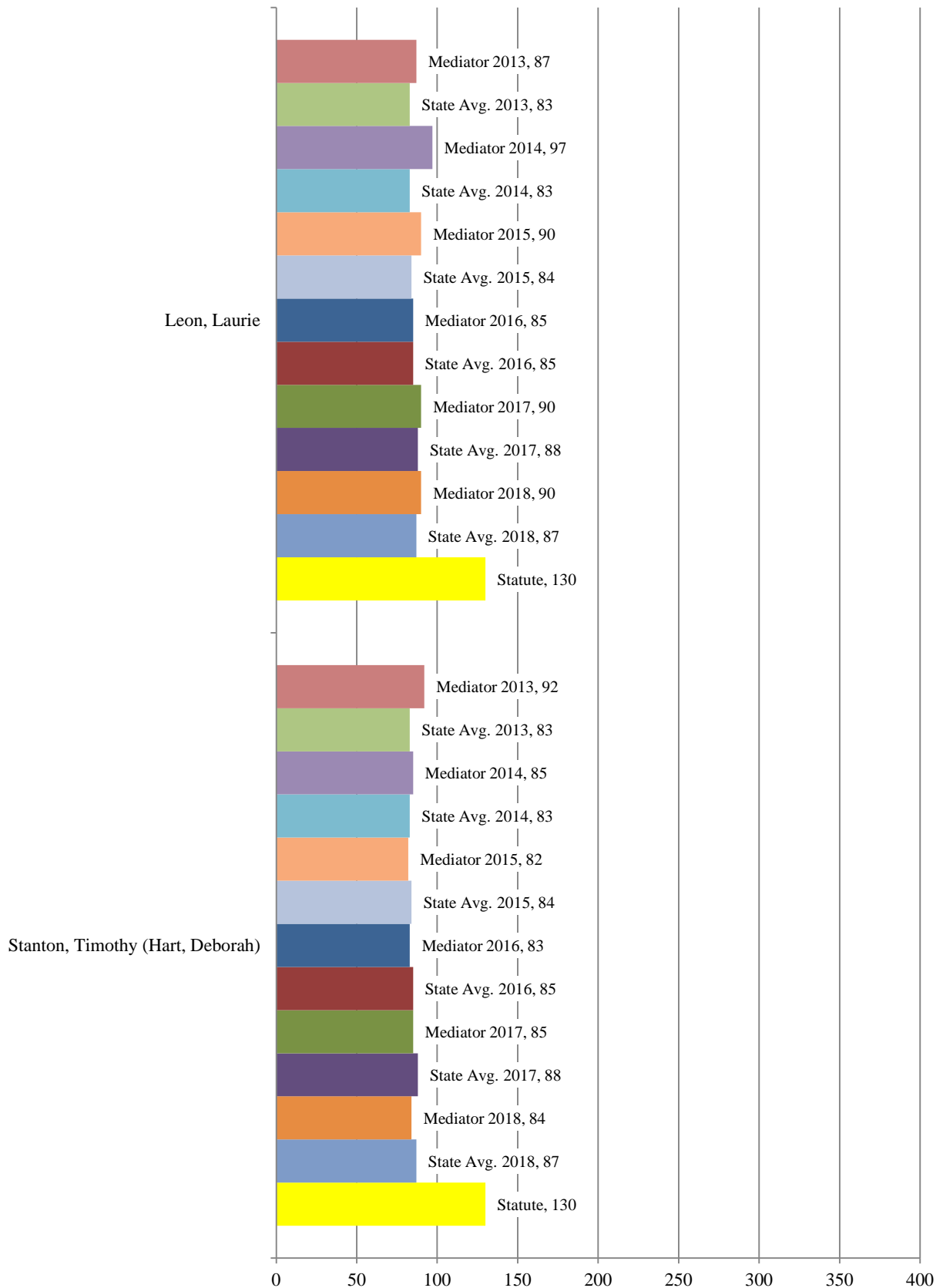
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



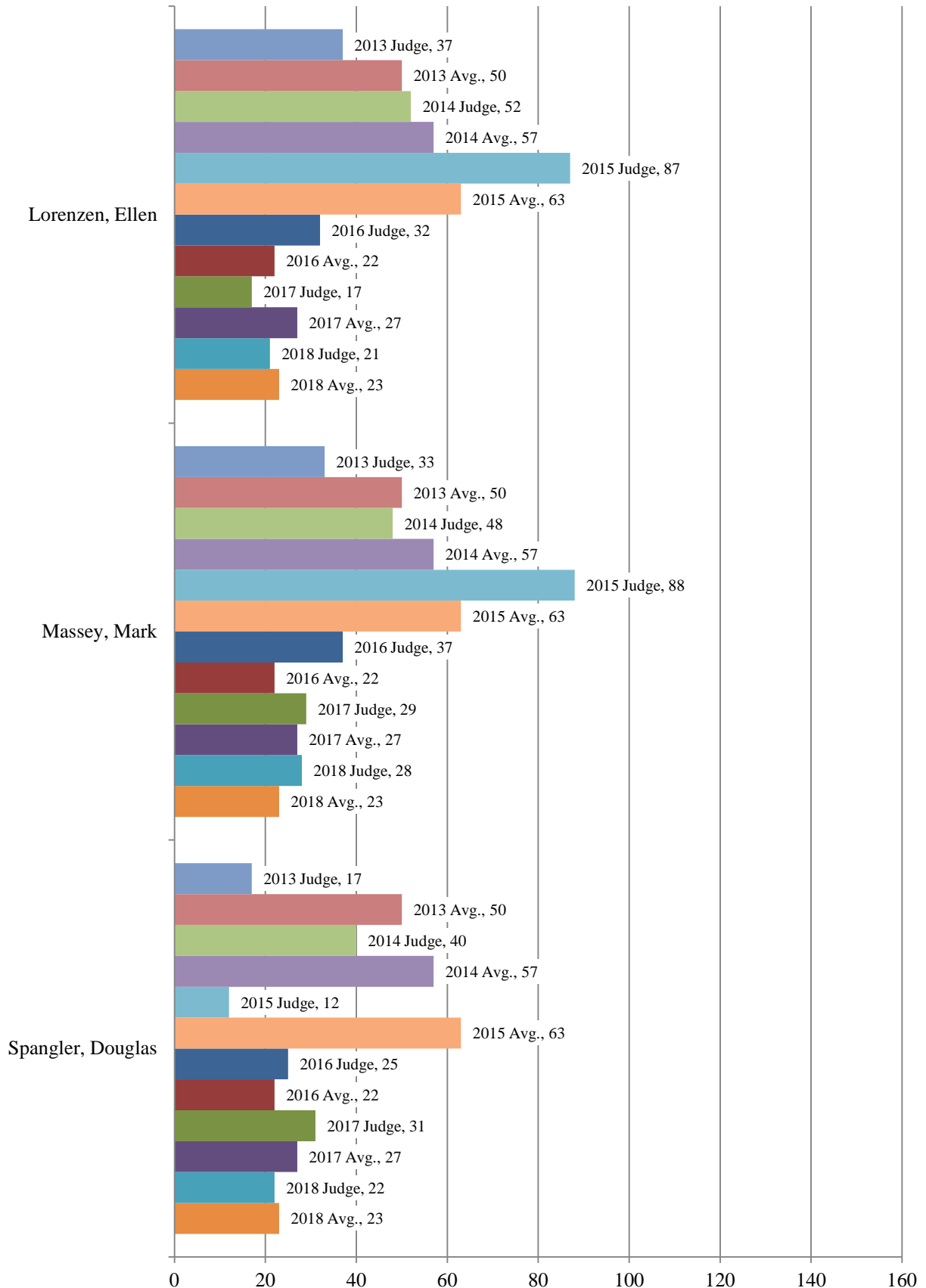
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



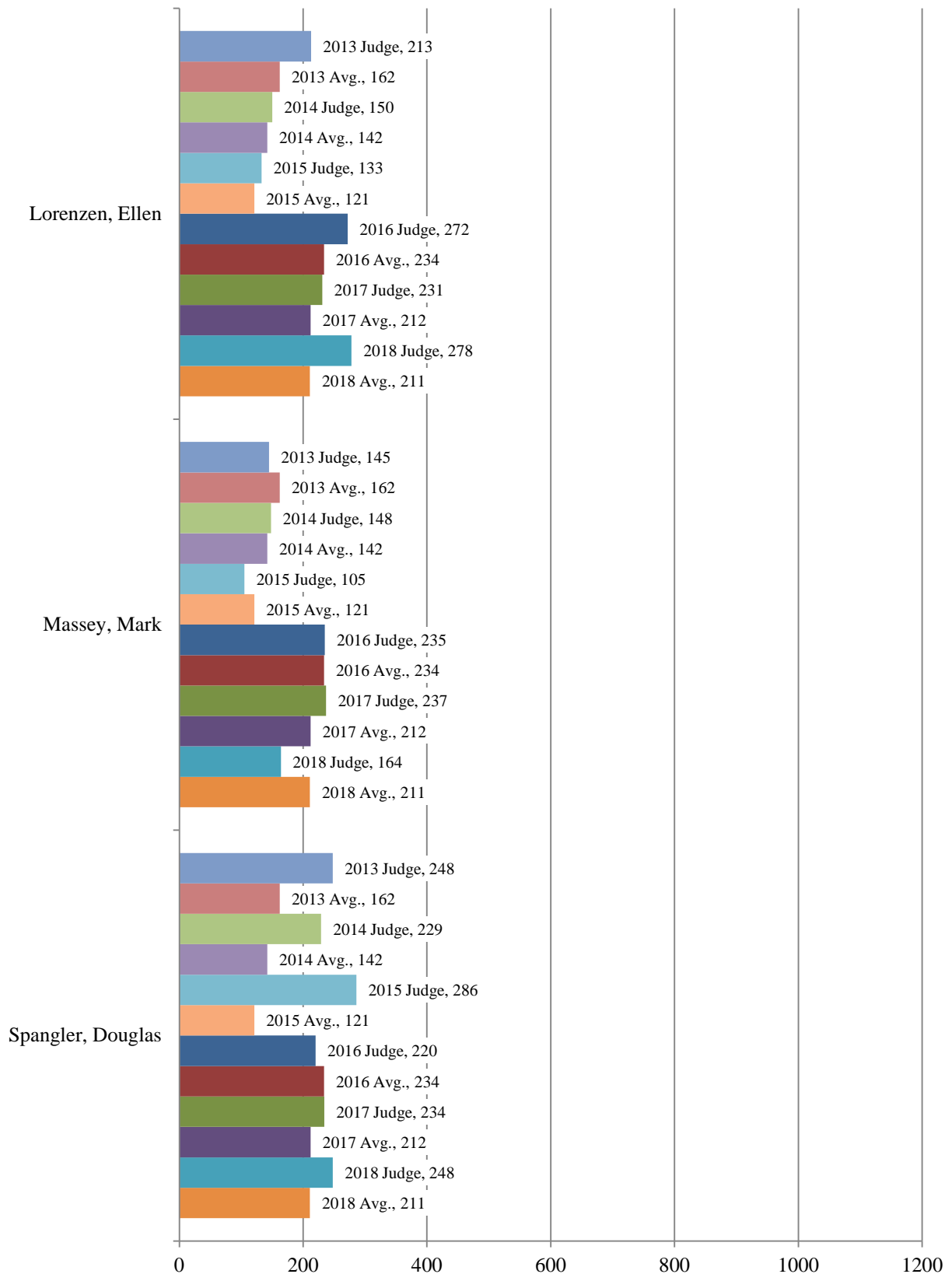
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



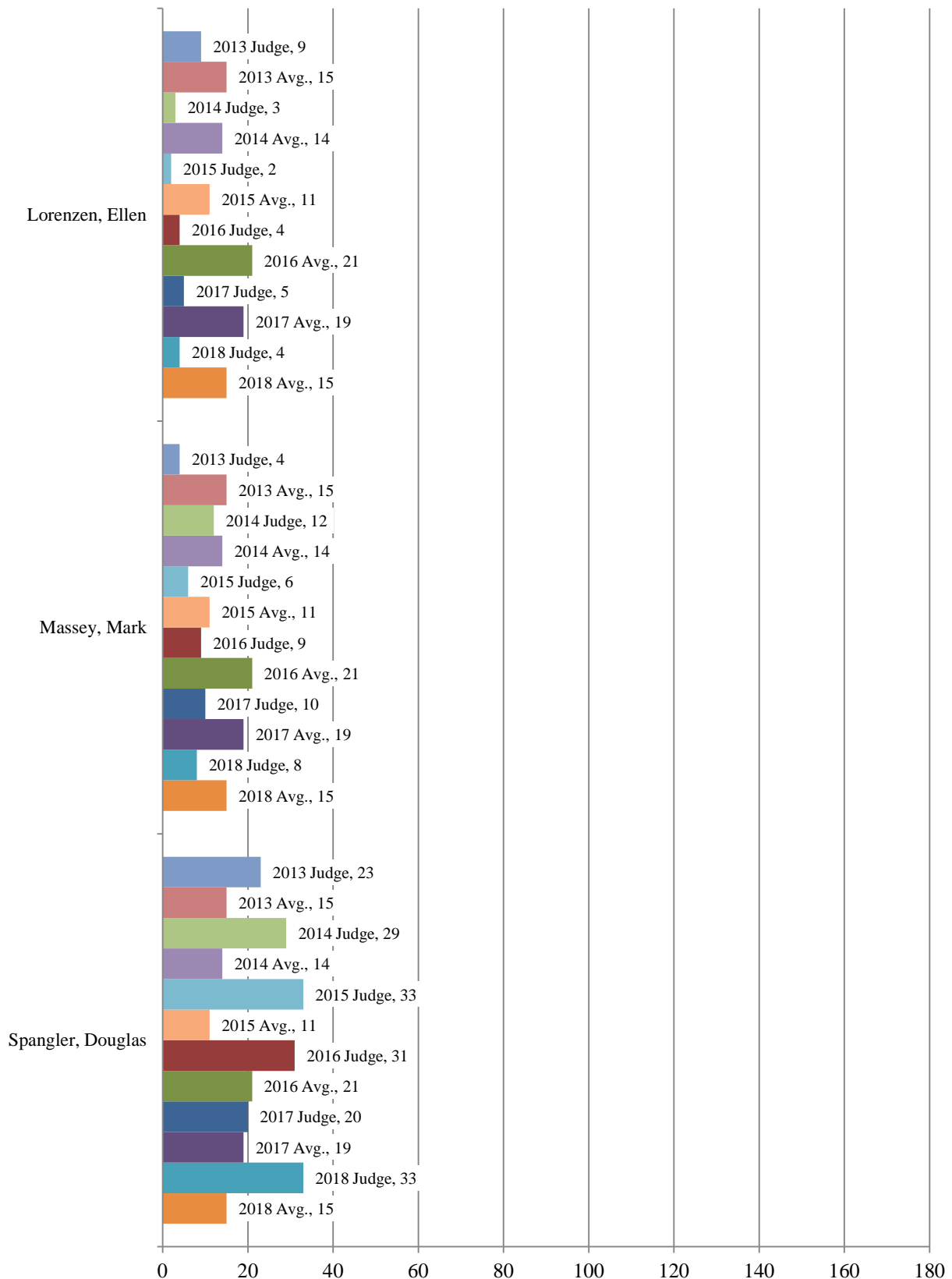
The following graph depicts the total volume of trial orders²¹⁴ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



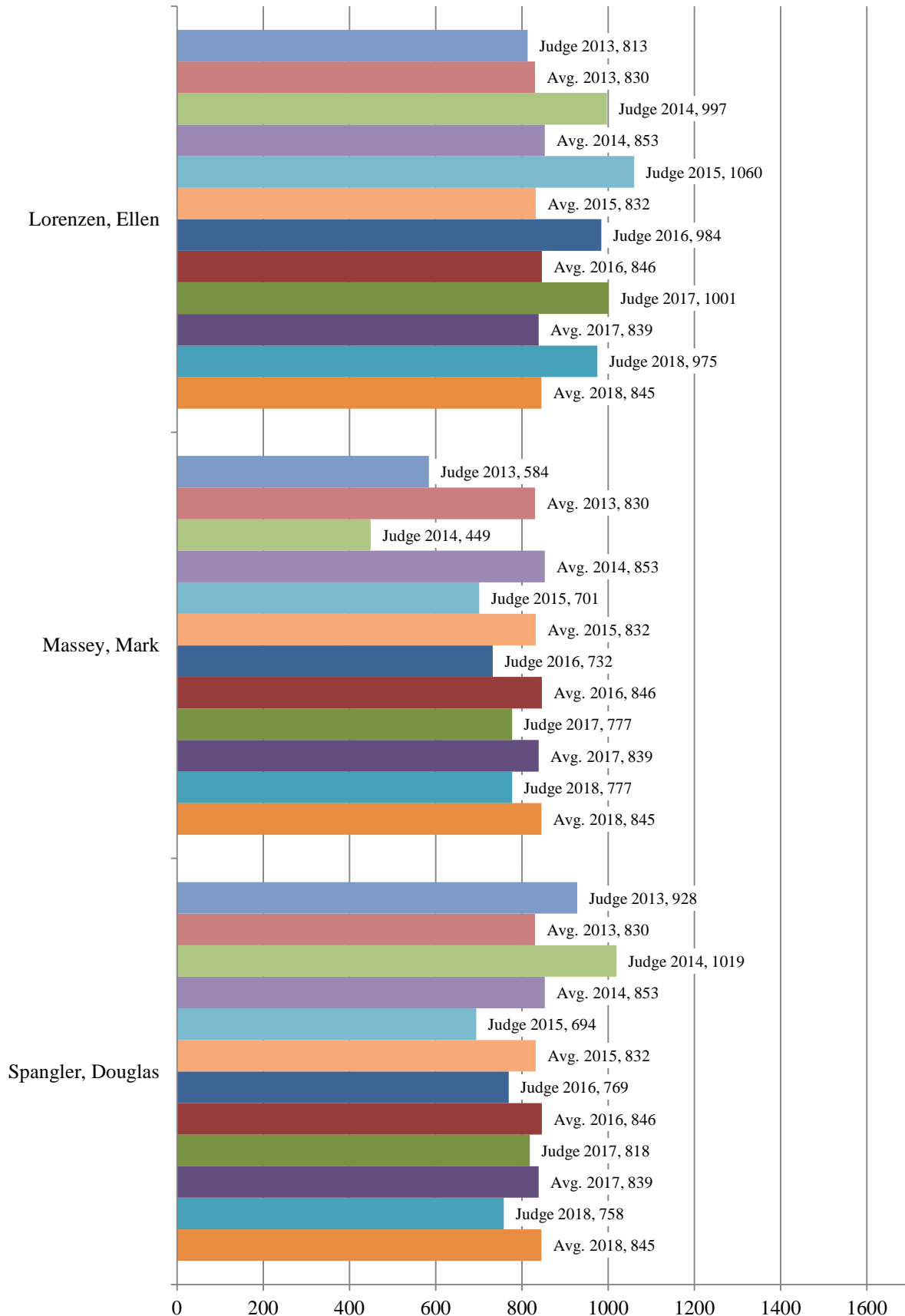
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



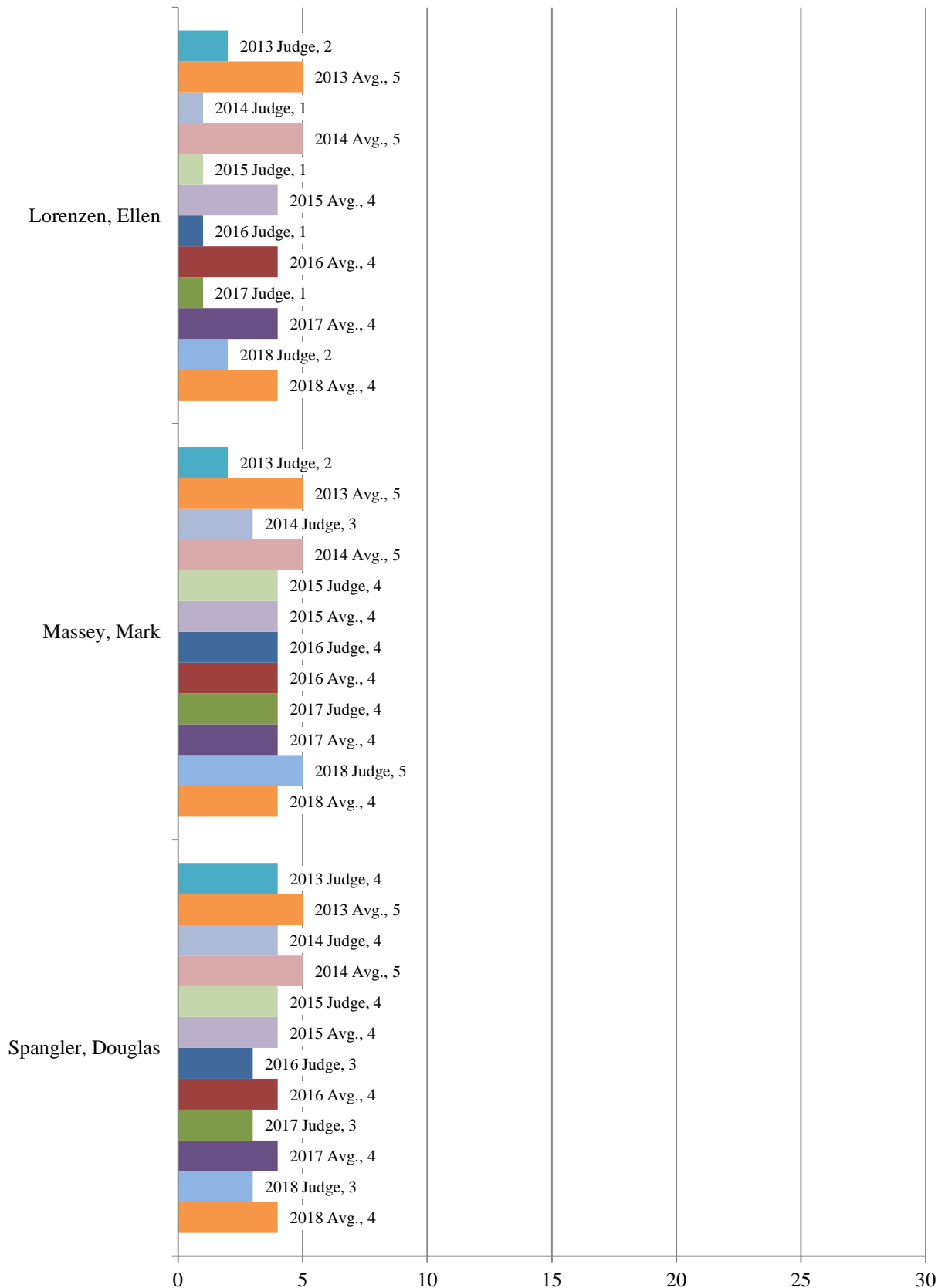
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



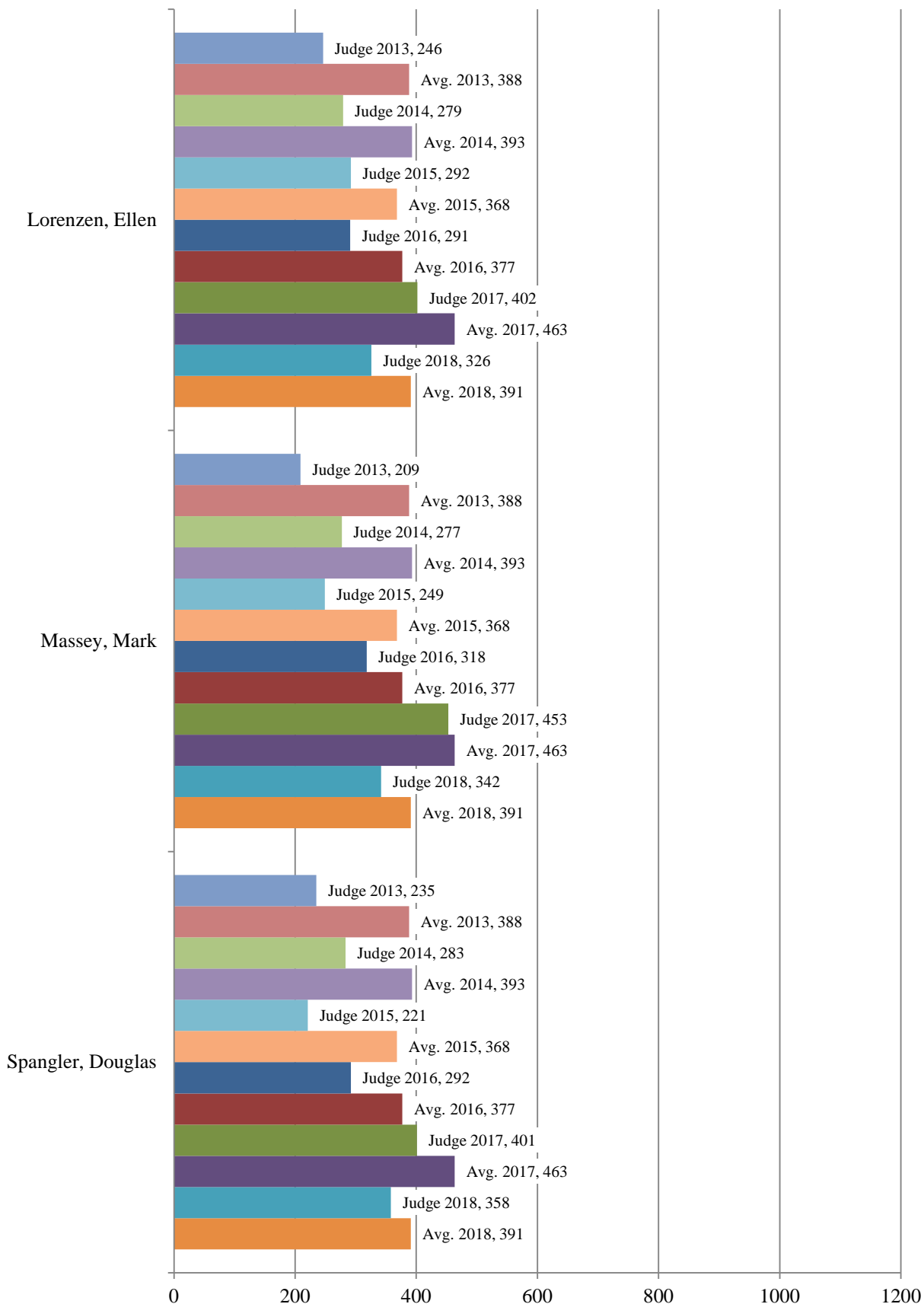
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



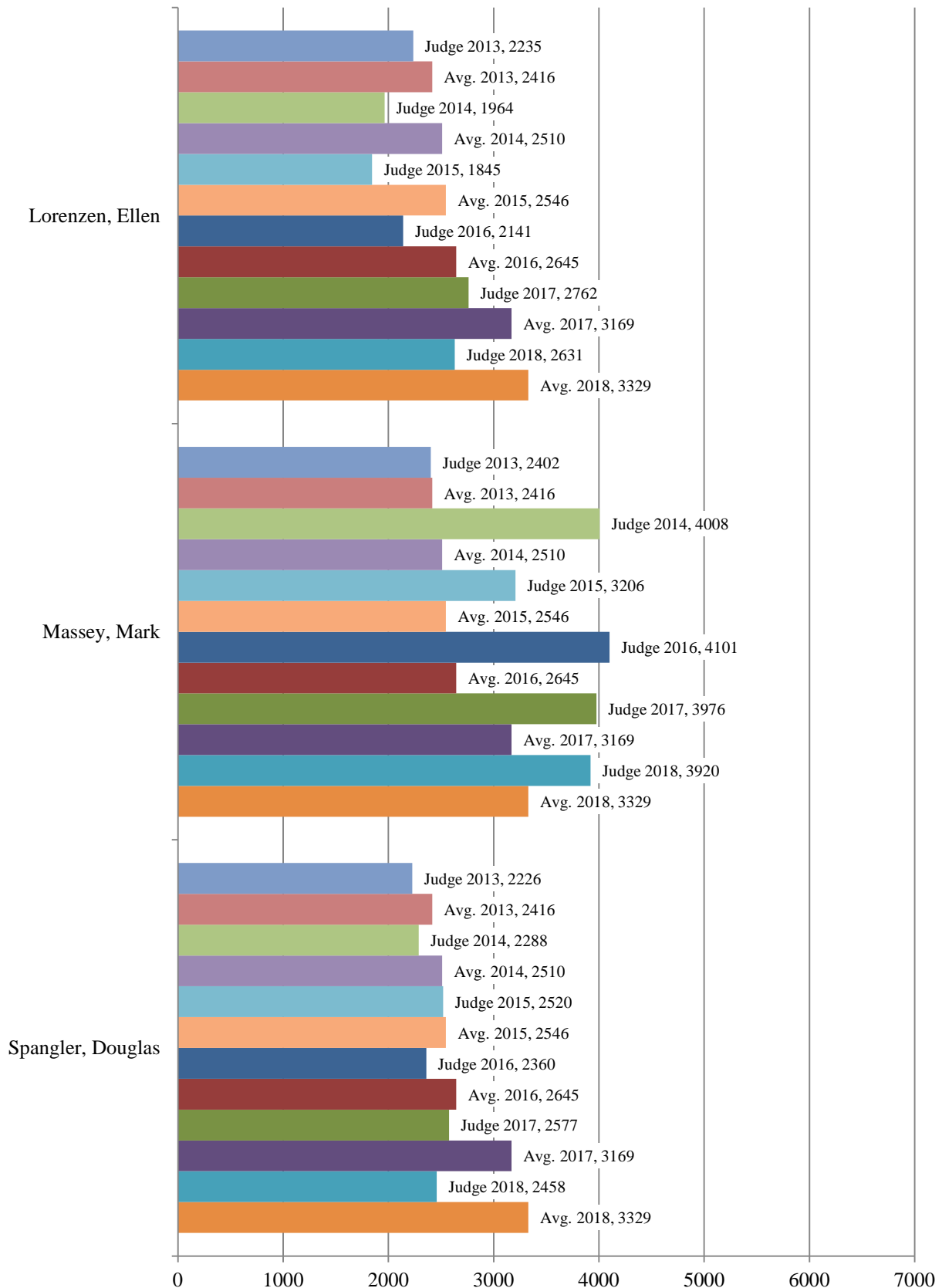
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



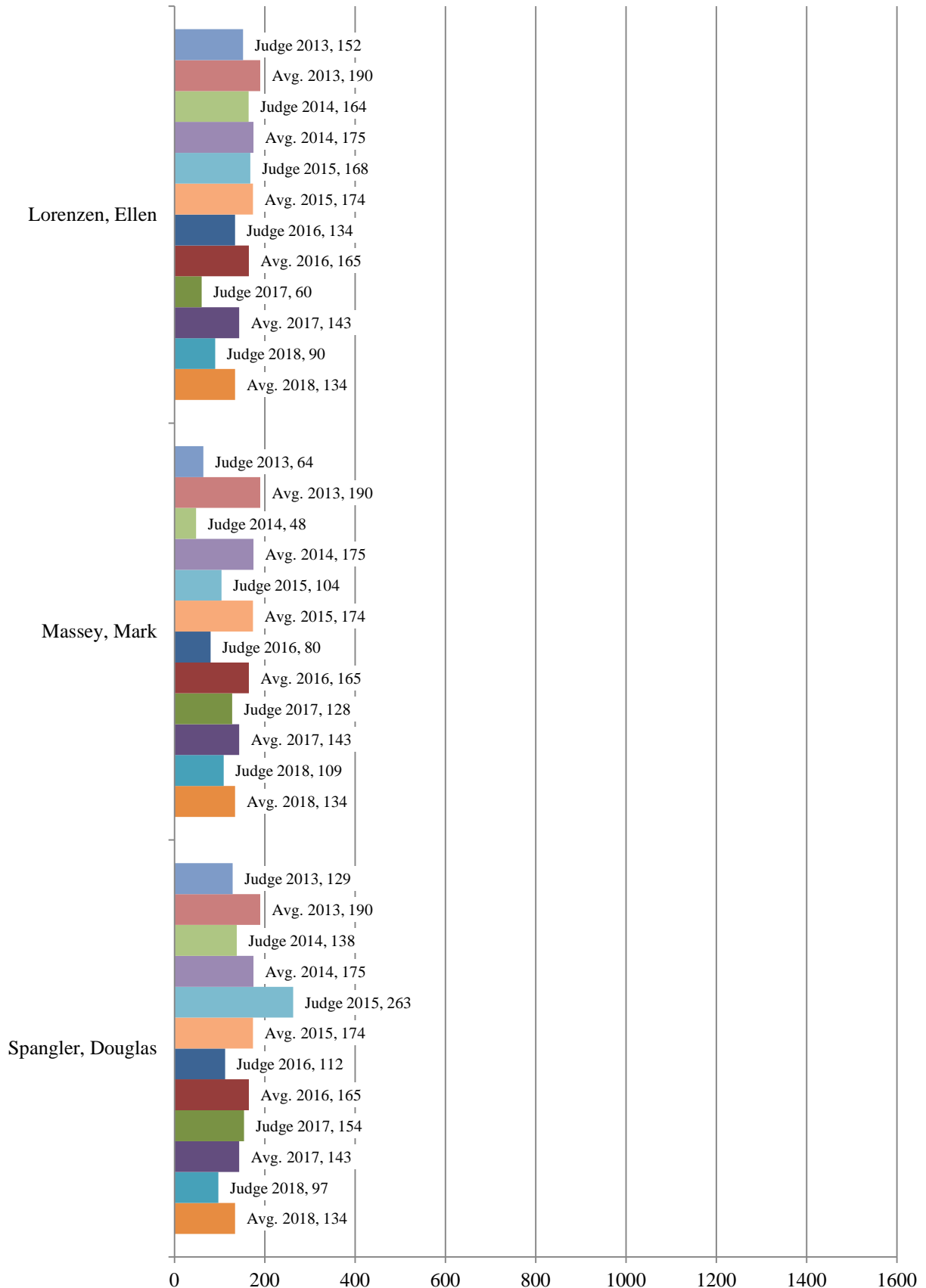
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “17” District WPB (JCC Hedler, JCC Johnsen, JCC Stephenson):

District WPB includes Glades, Hendry, and Palm Beach Counties.

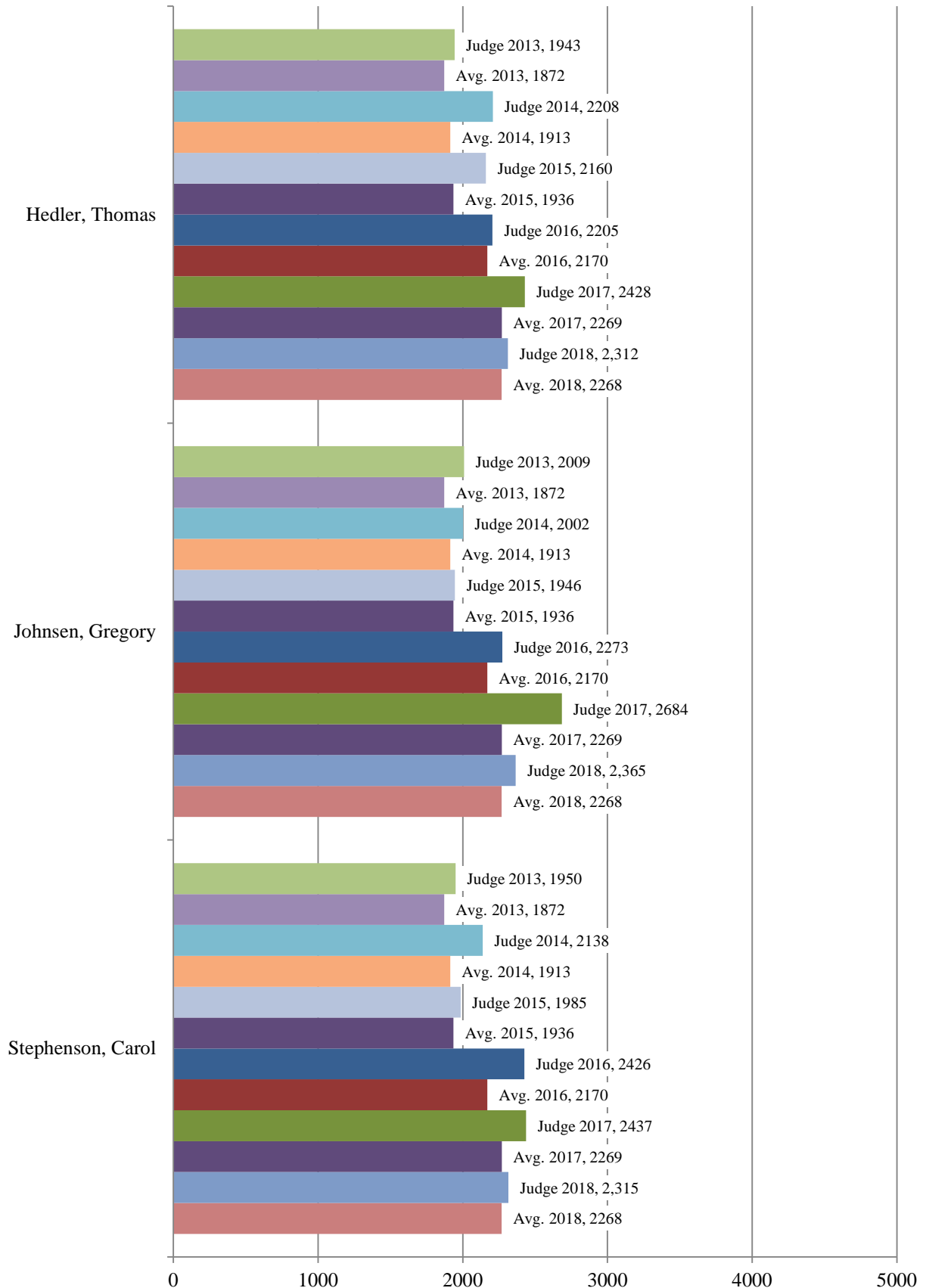
The filing volumes for PFBs in District WPB were slightly above average again in 2017-18. However, the “new case” volumes remained below average. These two trends have been reasonably consistent for the recent past. PFB filing volume and PFB closure remains consistent, yielding an average year-end inventory or pending petitions. Two of the three West Palm Beach Divisions had time to trial within the statutory 210 days in 2017-18; all three had time to order within the thirty day statutory requirement, though two of three Divisions were well above the statewide average time for order preparation. One of three Divisions in West Palm Beach demonstrated a volume of stipulation orders exceeding the statewide average. All three Divisions had a volume of “other orders” that was notably above the statewide average.

In 2017-2018, Judge Hedler remained active in the Palm Beach County Bar Association, where he served on the committee for the workers’ compensation section. He was a member of the Craig S. Barnard American Inn of Court, and further was a member of the winning pupillage group. Judge Hedler served on the Friends of 440, Treasure Coast, committee and participated in reviewing applications and interviewing applicants for the scholarship fund. He participated in a panel discussion at the 2017 Workers’ Compensation Educational Conference. He also served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition. On October 25, 2017, Judge Hedler moderated a panel discussion regarding trial practice, and participated in the “JCC Question and Answer” panel for the Palm Beach County Bar Association Workers’ Compensation section annual seminar. On February 20, 2018, he participated in a panel discussion, “Practice Tips from the Bench.” On April 6, 2018, Judge Hedler participated in a panel discussion at the WCI Spring Forum seminar. On April 11, 2018, he and Judge Johnsen presented “A Judicial Perspective of Best and Worst Practices” for The Florida Bar Workers Compensation section lunch and learn. In addition to his docket and case responsibilities, Judge Hedler serves as the Administrative Judge in the West Palm Beach District handling premises, equipment, security, and personnel issues.

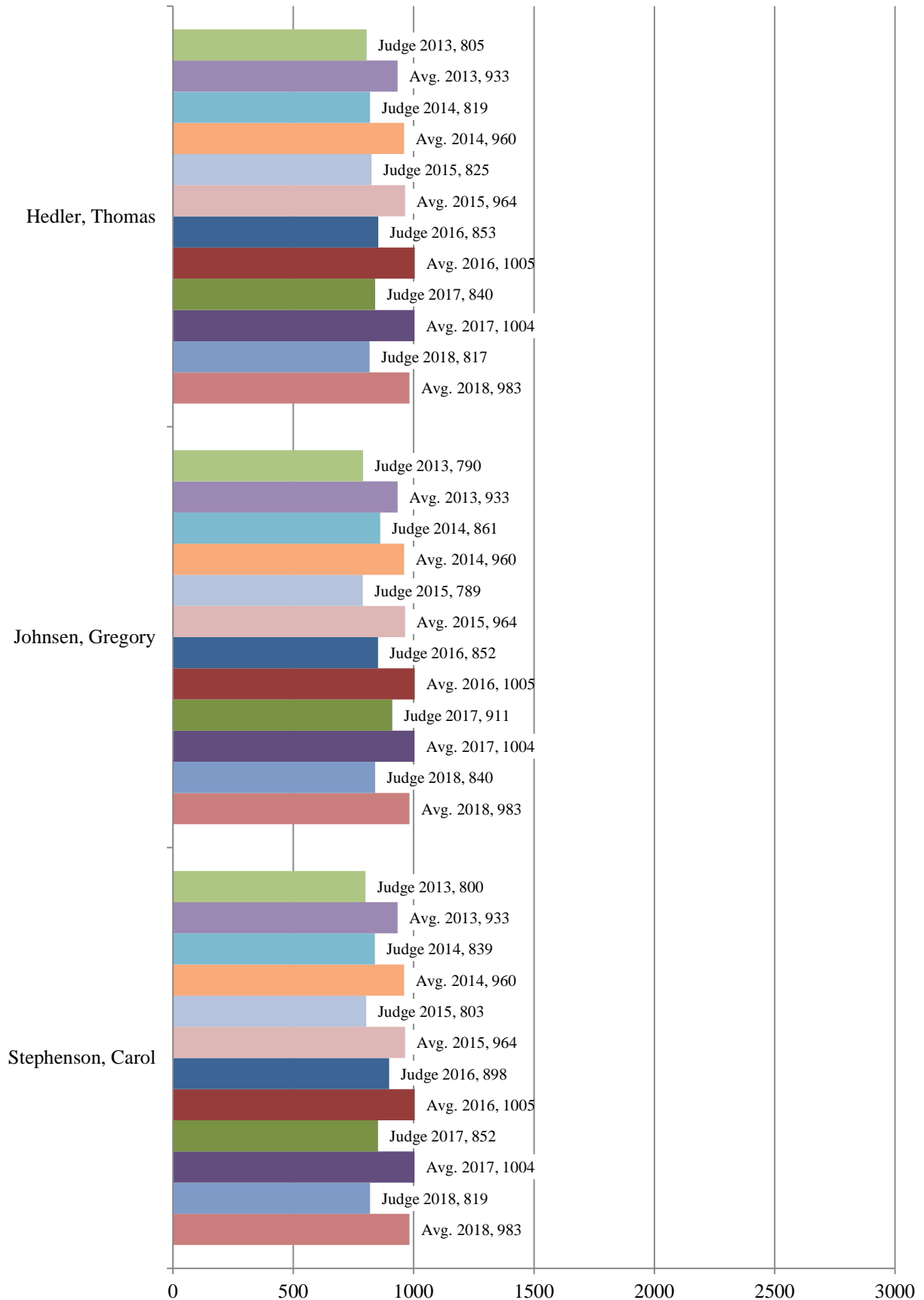
Judge Johnsen spoke at multiple conferences including: 2017 PMI Conference: “Dealing with Buyer’s Remorse and the Arrival of the Subpoena,” 2017 WCI Conference: “The Workers’ Compensation Practice from the Judicial Perspective,” 2017 Palm Beach County Bar Association Worker’s Compensation seminar: “Formulating your Strategy for Battle – Depositions & Evidence and Making Uneasy Alliances,” 2018 Workers’ Compensation Section telephonic seminar “Light v. Dark; A Judicial Perspective of Best and Worst Practices,” 2018 Workers’ Compensation Forum A View from the Bench, and was involved in interviewing scholarship applicants for the Dade County Scholarship Selection Committee of the Friends of 440 Scholarship Fund

Throughout 2017-2018, Judge Stephenson was active with the Palm Beach Bar Association and Treasure Coast Division of the Friends of 440. In October 2017, she moderated a panel on motion and pretrial procedure as well as served as a judicial panelist for the Workers’ Compensation CLE Committee of the Palm Beach Bar Association’s seminar: “How to Reach the Iron Throne-A Workers’ Compensation Claim from Start to Finish!” In January 2018 she took part in the Red Mass along with other Palm Beach County and Circuit Court Judges. February 2018 saw Judge Stephenson giving fresh perspectives from the bench at the First District Court of Appeal seminar and then offering practice tips at the Friends of 440 CLE presentation. In June 2018 she served on a judicial panel at the Florida Workers Advocate’s annual conference.

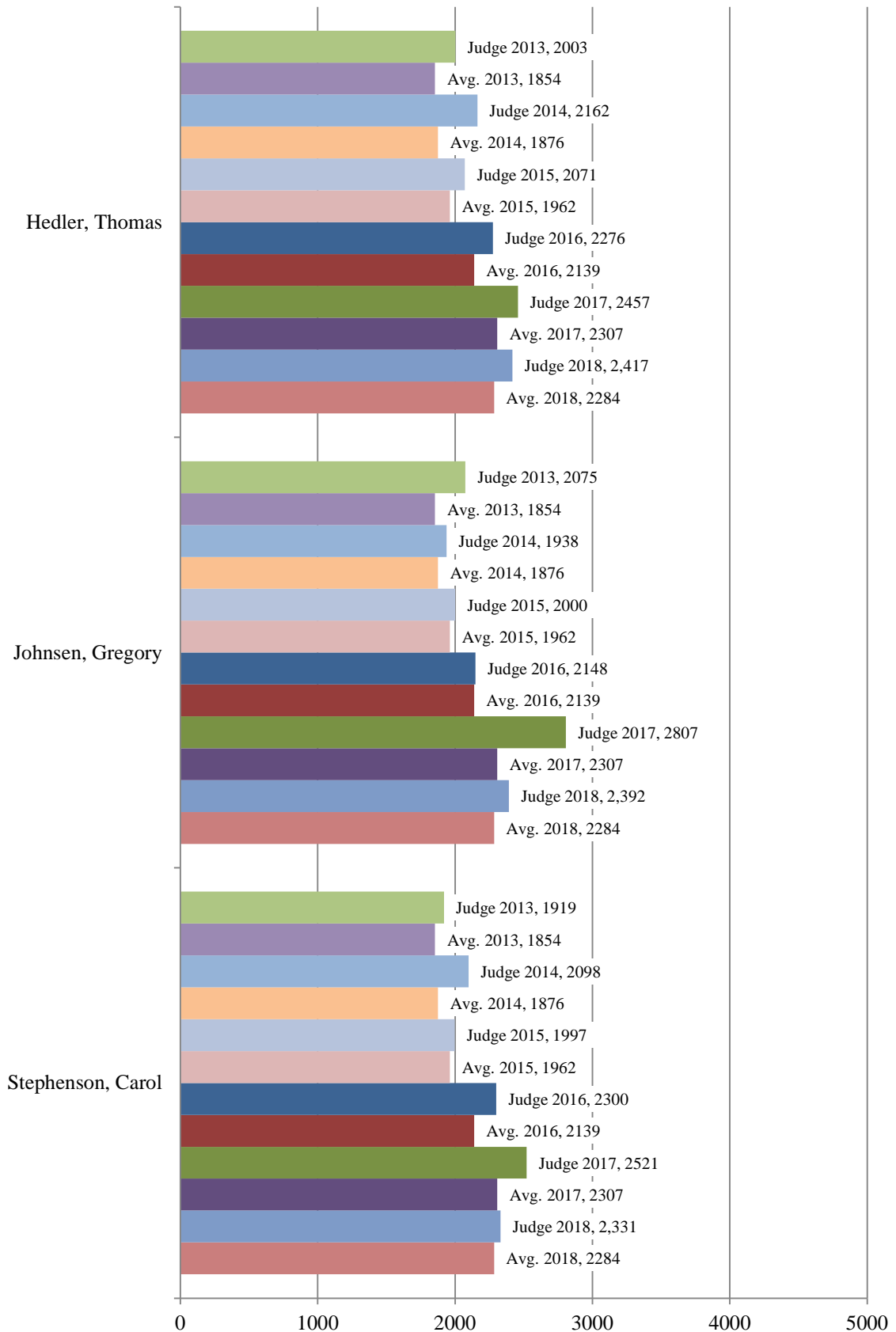
The following depicts the volume of PFBs filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



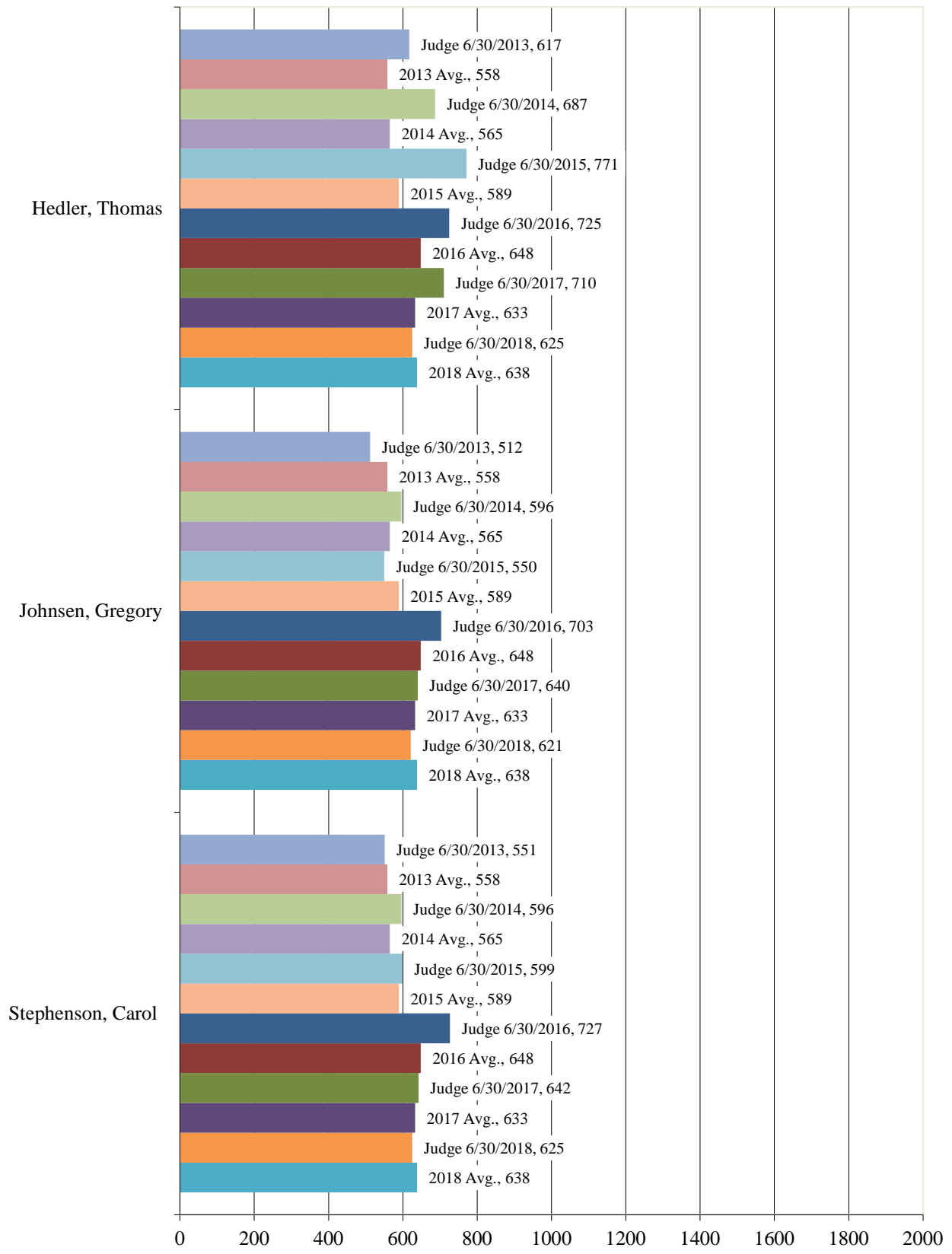
The following depicts the volume of “new cases” filed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



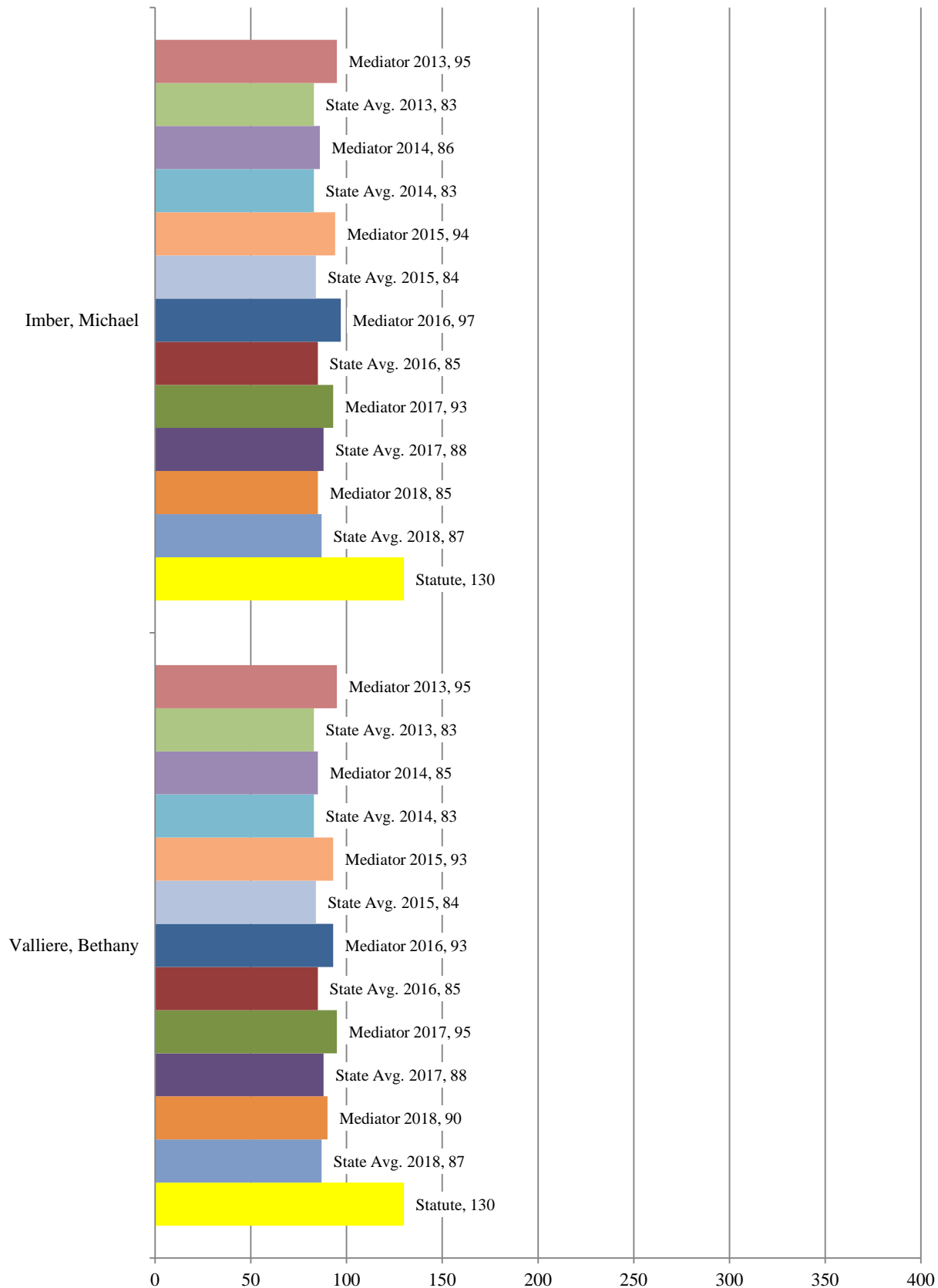
The following depicts the volume of PFBs closed in this District and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



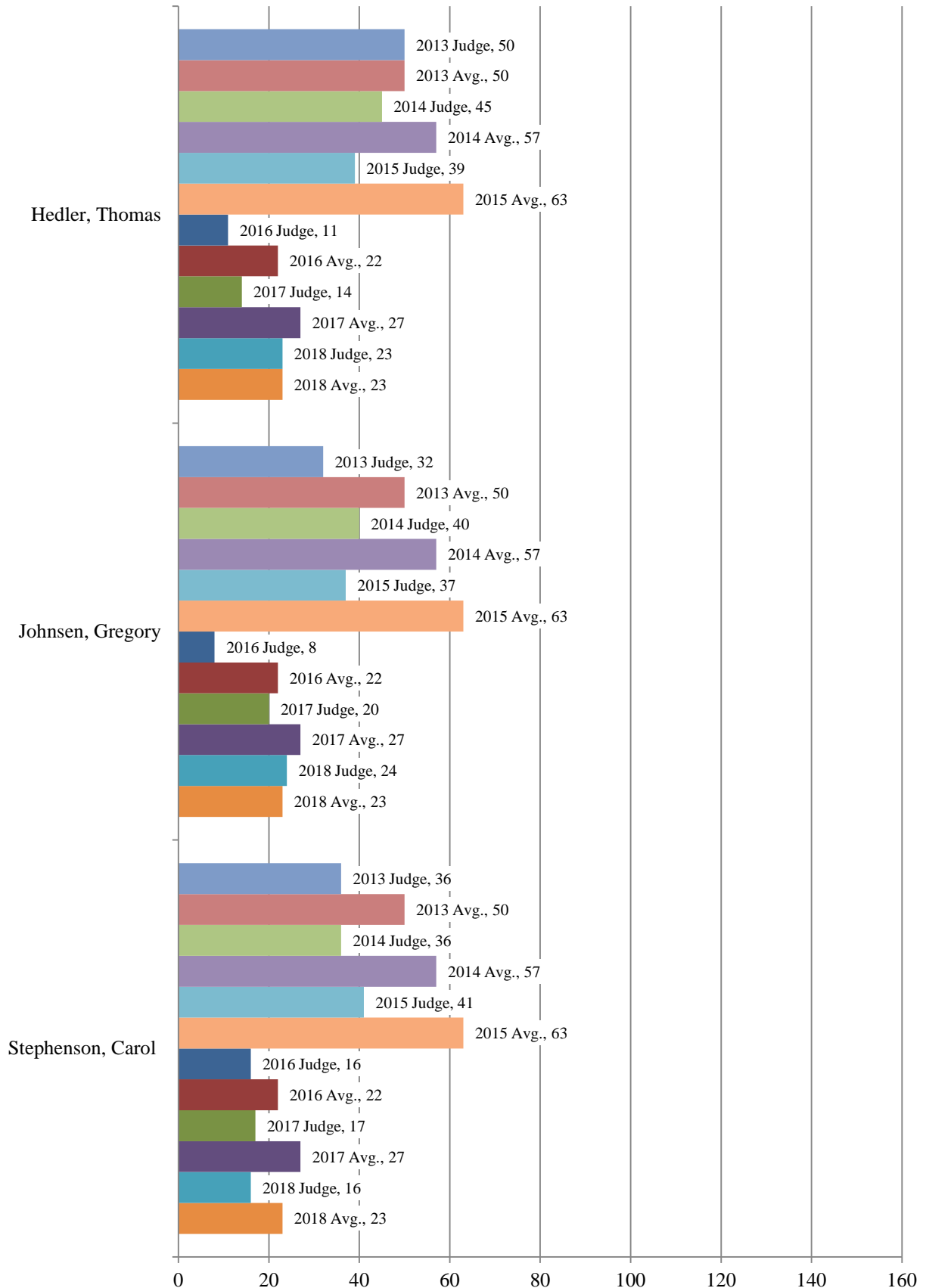
The following depicts the inventory of pending PFBs in this District and the statewide average between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



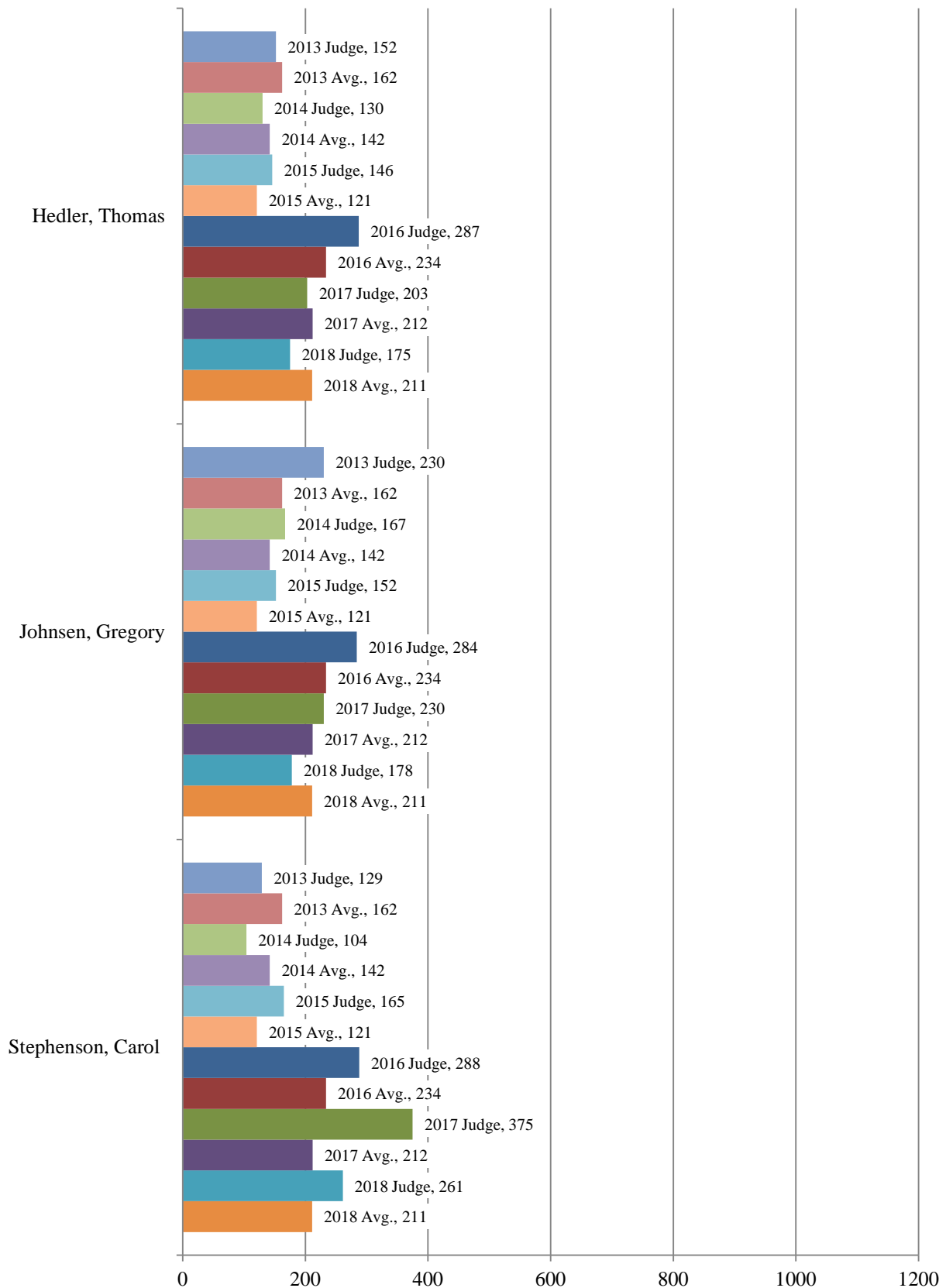
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2012-13 and 2017-18. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



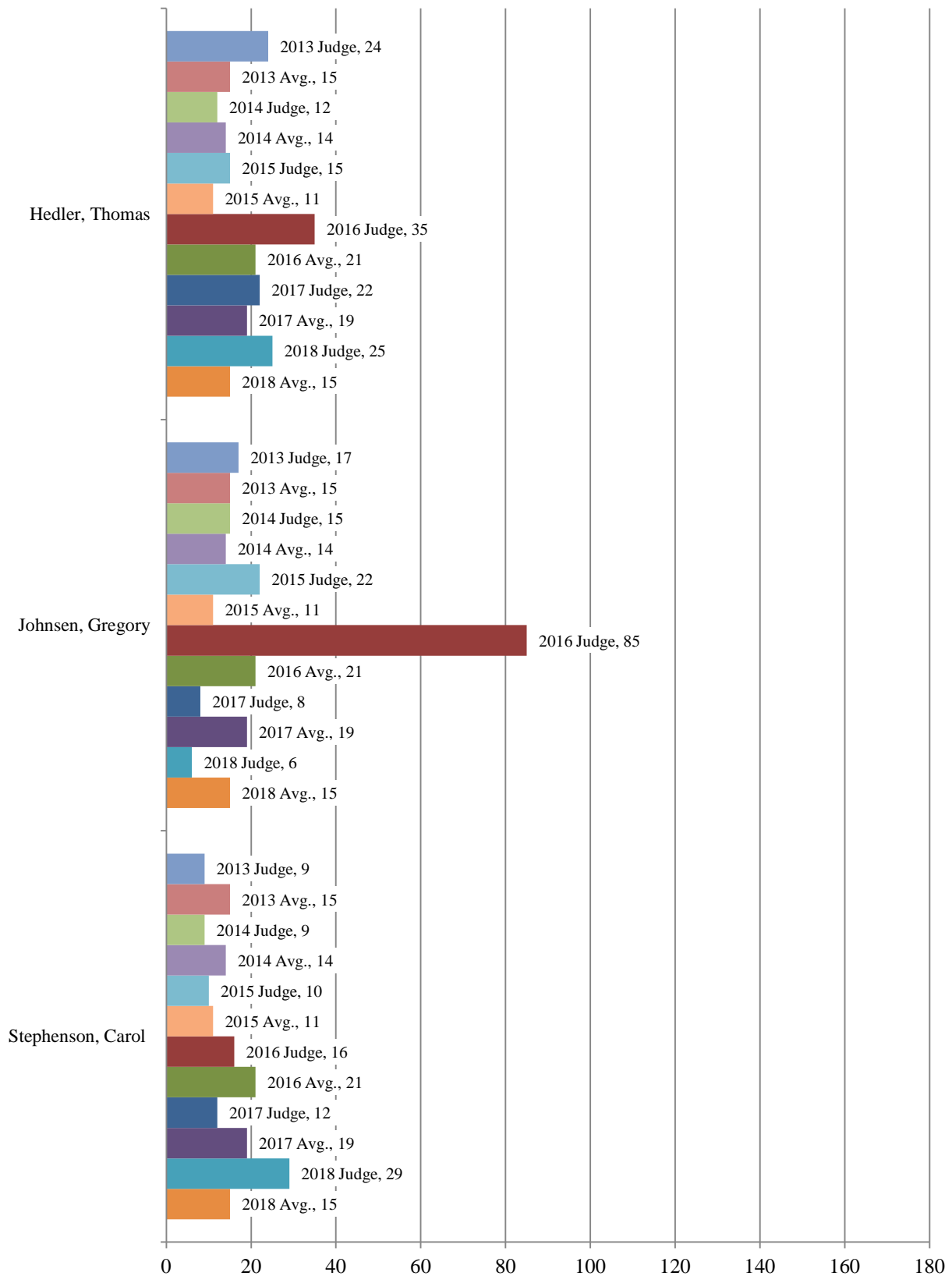
The following graph depicts the total volume of trial orders²¹⁵ uploaded in this District and statewide averages between 2012-13 and 2017-18. The identification and values for each year are in each bar label.



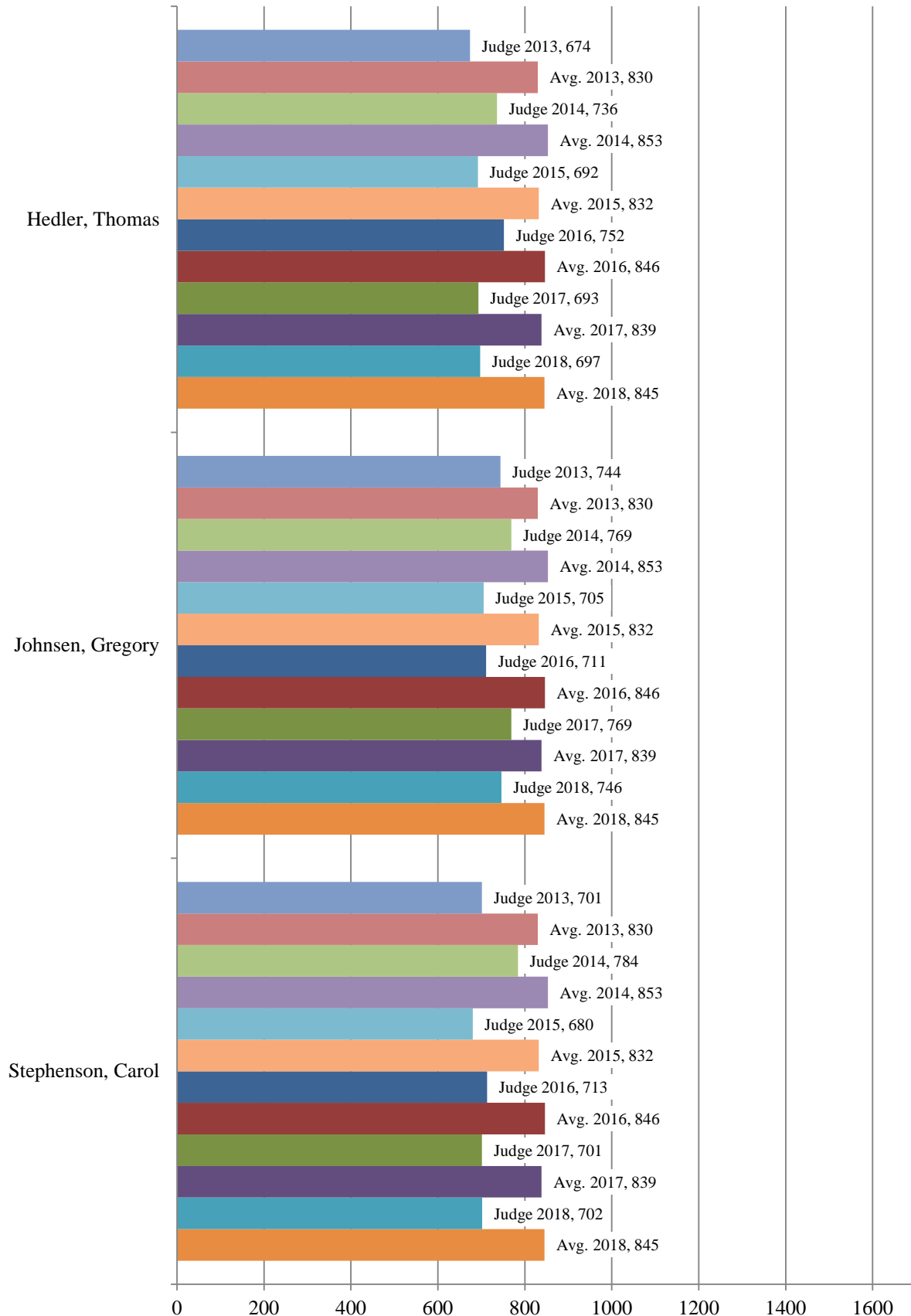
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2012-13 and 2017-18. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



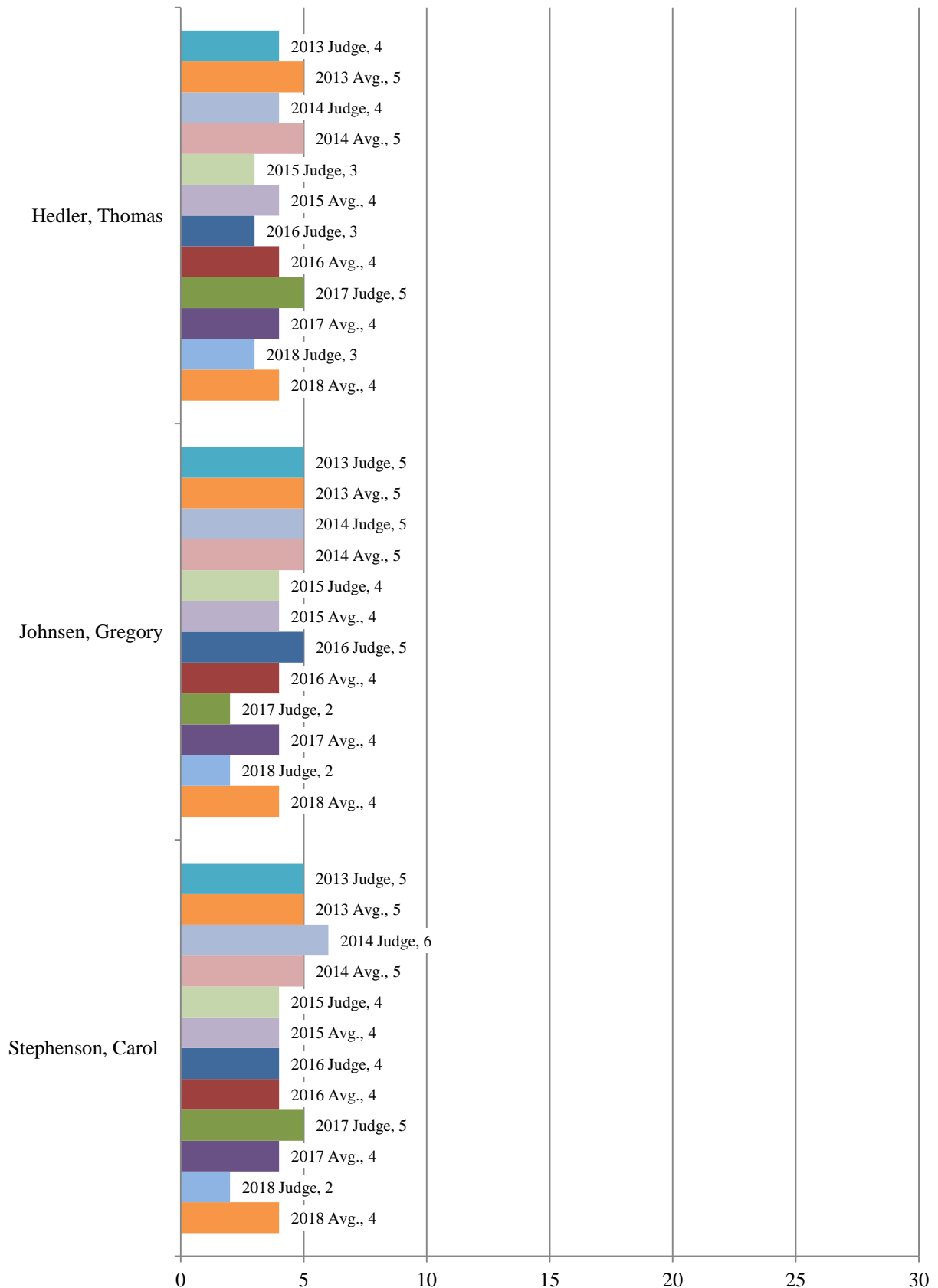
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2012-13 and 2017-18. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



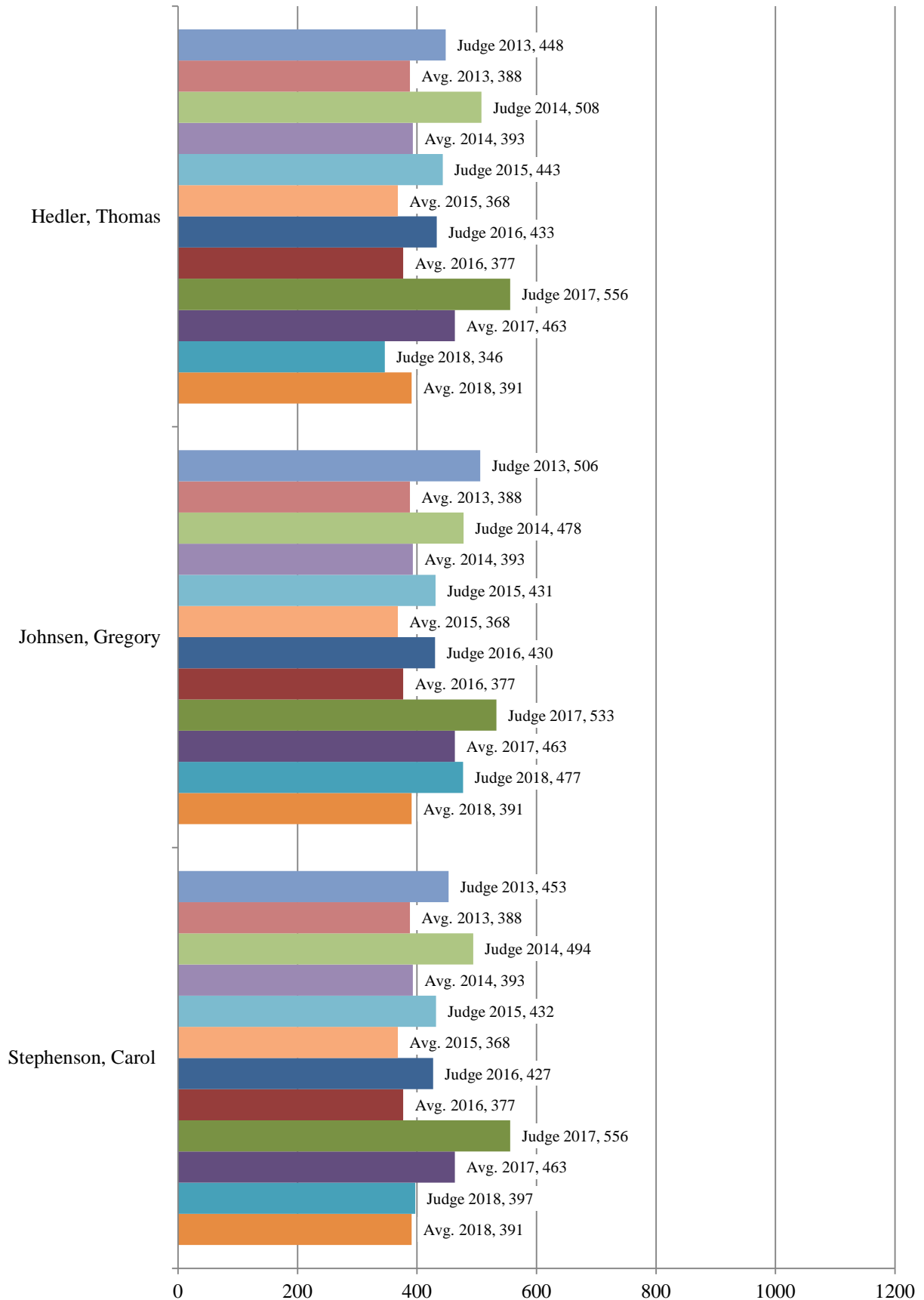
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



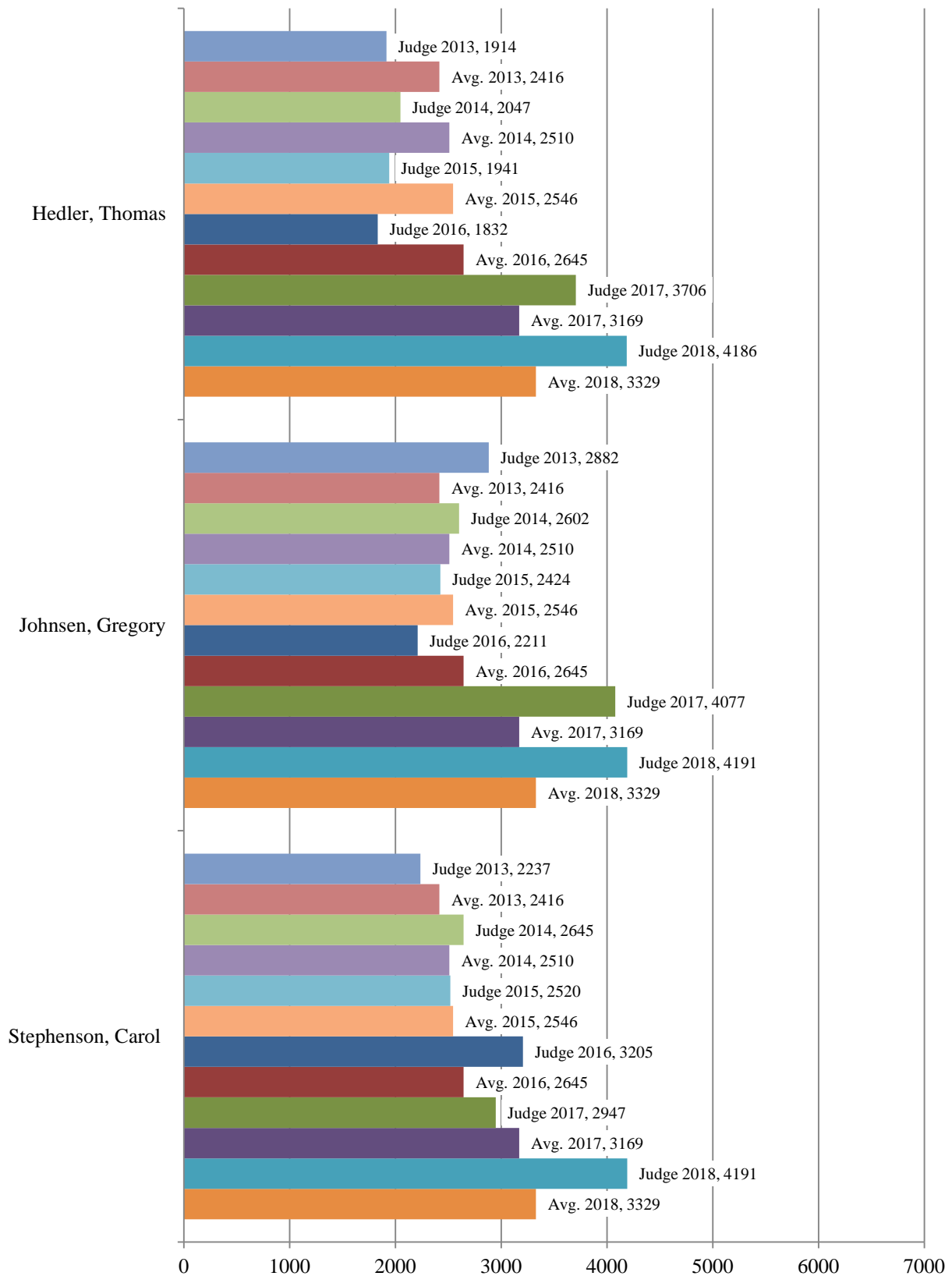
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



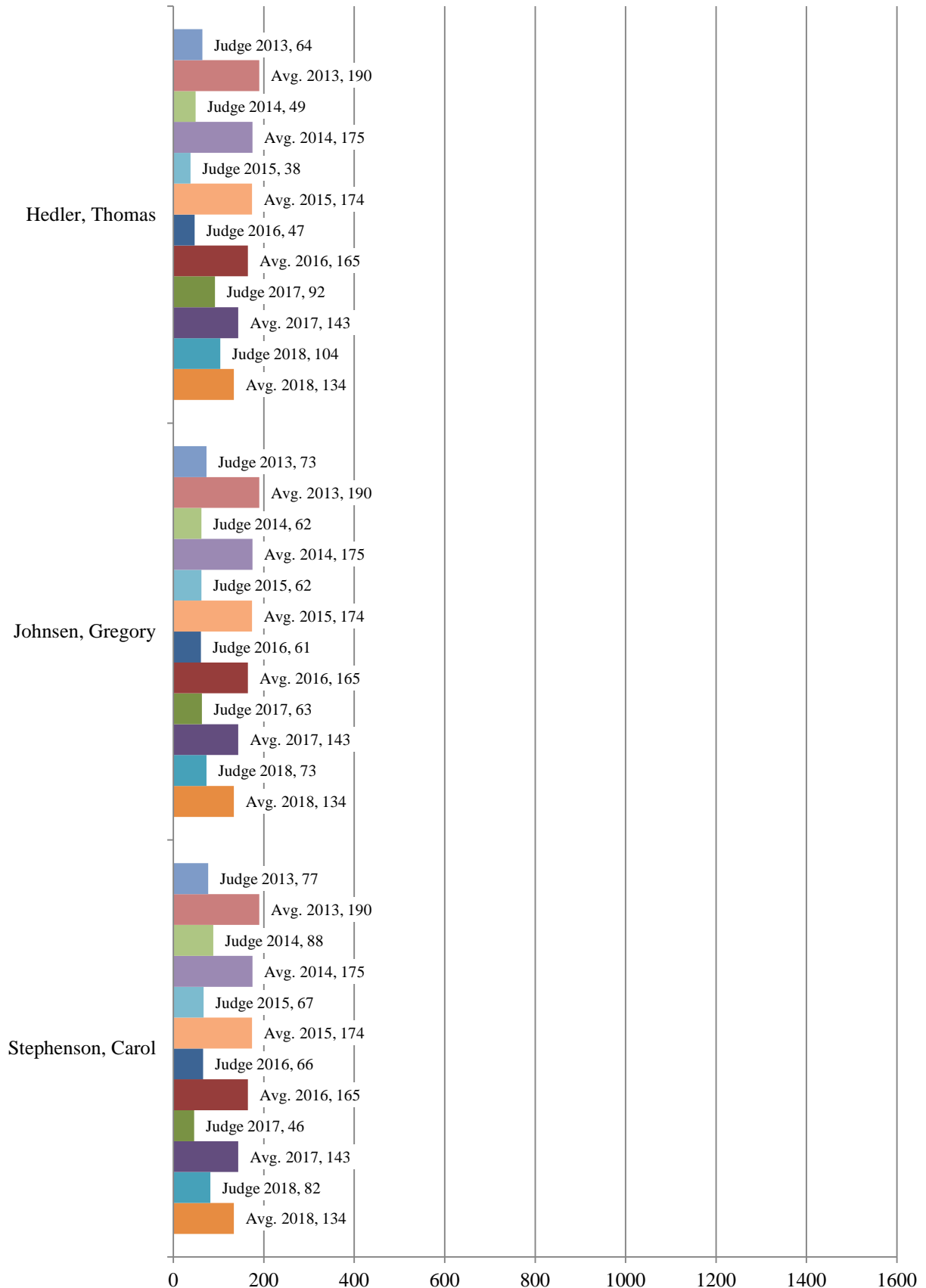
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2012-13 and 2017-18. Each bar label identifies the year and provides the numerical count.



Appendix “18” Judge of Compensation Claims Salary Analysis

There is a wide disparity in compensation for Florida’s Judges of Compensation Claims. Compensation has not kept pace with inflation, has become increasingly inadequate compared to other judges, and when coupled with a less generous retirement calculation is no longer adequate to encourage the application of the best and brightest.

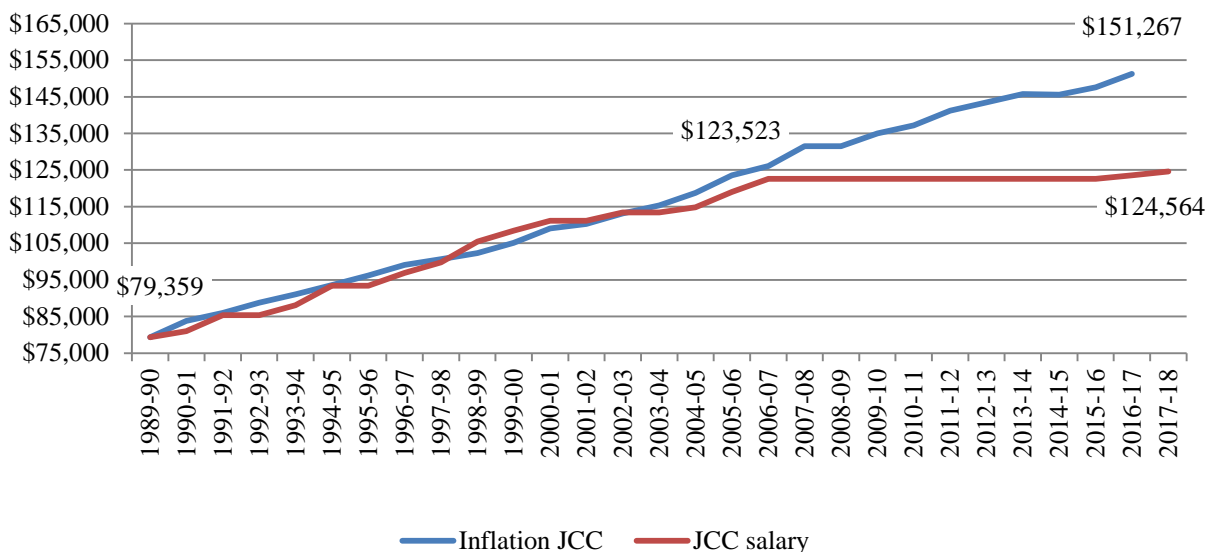
The State of Florida has grown dramatically in the last 28 years. In 1989, the population was 12.64 million,²¹⁶ the Florida Office of Judges of Compensation Claims (OJCC) consisted of 31 Judges, and operated 17 offices throughout the state; each judge responsible for approximately 407,742 Floridians.²¹⁷ In 1993, the population had increased to 13.93 million, mediation was gaining acceptance, and the legislature added 31 state mediators to the OJCC team. In 2001, the Judges of Compensation Claims (JCCs) became responsible for monitoring and collecting child support,²¹⁸ though no staff or other resources were provided for this additional workload. The OJCC collects about \$10 million in child support annually.²¹⁹ In 2013, the OJCC budget was decreased by eliminating three state mediator positions (and a judicial position that had been added in 2006). In 2018, the state population is 21 million,²²⁰ and the OJCC remains staffed by 31 judges and 28 state mediators in 17 offices. Each JCC is now responsible for approximately 677,419 Floridians.²²¹ Despite increased responsibility, the OJCC today is staffed with fewer personnel than in 2001.

Judges of Compensation Claims²²² were originally part-time positions. In 1989, after the positions were changed to full-time, the pay of JCCs was codified in section 440.45(4).²²³ That section requires all OJCC salaries to be paid from the Workers’ Compensation Administrative Trust Fund (WCATF). When workers’ compensation mediation became mandatory in 1993, the state mediator salary was similarly set statutorily in 440.25(3)(b).²²⁴ These provisions set JCC salary by reference to other payroll (JCCs tied to Circuit Court and mediators tied to the JCCs). These were referred to as “tie-in” statutes, and both tie-ins were removed from chapter 440 in 1994. Although there is conjecture regarding the reason for removal, no official justification for removing the tie-ins has been found.

The WCATF is funded 100% by assessments on workers’ compensation premiums and contributions by self-insured employers. No general revenue is contributed to the WCATF. All of the expenses of the OJCC, including all salaries, are paid from the assessments in the WCATF.²²⁵ A salary increase in the OJCC would have no impact on general revenue expenditures.²²⁶

According to the Florida Supreme Court, there are “over 900 trial court judges in all 20 circuits.”²²⁷ The Circuit Judges have an incorporated Conference to represent their interests.²²⁸ The County Judges have a Conference.²²⁹ The Florida appeals court judges²³⁰ have a Conference.²³¹ In all, there are about 1,000 Article V. judges in Florida. This body has a collective voice and established organizations to assure attention to their needs. There is no such incorporated body to similarly represent the interests of the Judges of Compensation Claims, a body of only 31 judges (3% of the population of Article V. Judges).

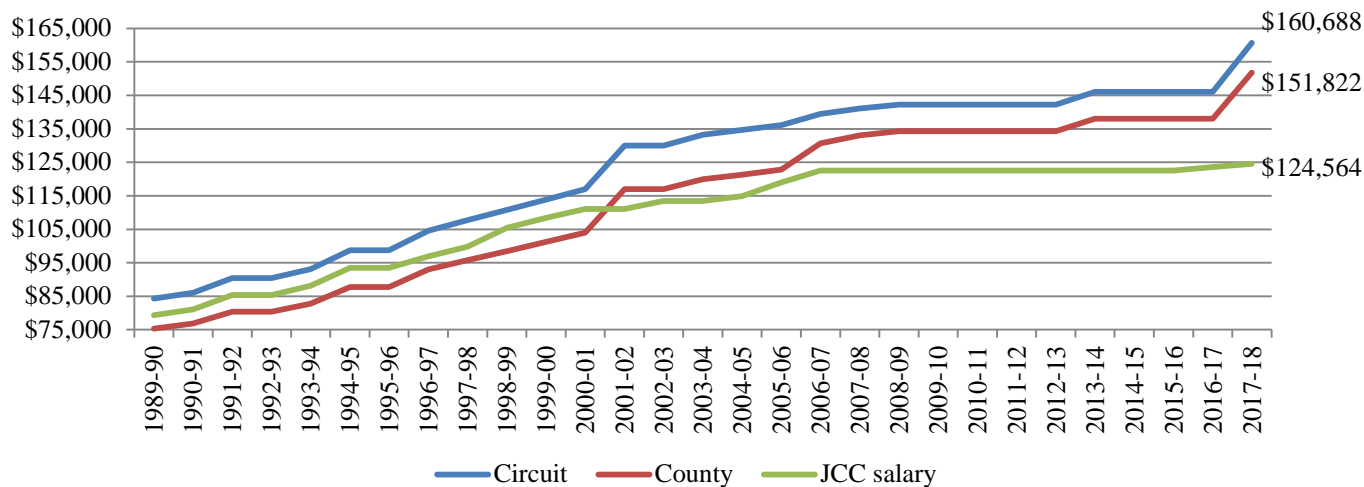
In 1989-90, the salary of a Florida Judge of Compensation Claims was \$79,359. That salary was increased thereafter periodically, even after the “tie in” was removed from chapter 440 in 1994. However, that salary has not consistently kept pace with inflation, as illustrated in this chart.



This illustrates the trend of JCC salary remaining reasonably consistent with inflation until the early part of this century. However, the salary has markedly failed to keep pace with inflation²³² since the early 2000s. The JCC salary, in actual purchasing power, has diminished over \$27,000 compared to the Consumer Price Index (CPI).

This illustration of the effects of inflation is persuasive. However, it is based upon the CPI, a national averaging of prices and costs. Inflation in Florida is demonstrably more significant than the CPI illustrates. Workers' compensation benefits in Florida are subject to a maximum allowable amount, commonly referred to as the "maximum compensation rate."²³³ The maximum compensation rate is calculated annually from wages reported by employers across the state and published by the Division of Workers' Compensation.²³⁴ In 1990, the statewide average weekly wages of Floridians resulted in a maximum compensation rate of \$362.00 calculated from the average wage paid by Florida business the prior year. As of 2018, that rate had increased to \$917.00, an increase of \$524.00 per week. That is an increase of 145%. If the 1989-90 JCC salary (\$79,359) had been increased using the same process statutorily adopted for determination of statewide average weekly wage, the 2017 JCC salary would be \$201,028. That is \$75,464 more than the 2018 JCC salary in actuality.

The JCC salary has also not kept pace with the Circuit Judges. With the 2017 increases in Article V. judge compensation, that gap has recently widened even more. In 2017-18, JCCs earned \$36,124 less than Circuit Court Judges.



The effect of eliminating the statutory tie-in for JCCs has been profound. That stark difference has been significantly amplified by the 2017 ten percent pay raise for Article V. Judges.²³⁵ With the recent pay increase for Article V. judges, the difference between a Circuit Court judge and a Judge of Compensation Claims in October 2017 was \$36,124. This is compared to the \$4,000 difference in 1989 under the statutory tie-in (adjusted for inflation, that \$4,000 in 1989 would be about \$7,888 today). In 1989, Judges of Compensation Claims were paid about 94% of the Circuit Judge salary, and about 105% of the County Judge salary. In 2017-18, the JCC were paid about 78% of the Circuit Judge salary, and about 82% of the County Judge salary. The JCC's retirement is roughly 50% of the Circuit Judge.

It is also noteworthy that all Article V. Florida judges enjoy a retirement benefit that is based upon 3% of salary.²³⁶ However, the Judges of Compensation Claims' retirement benefit is based upon a calculation using 2% of salary. Circuit Judge retirement benefits are roughly double the retirement of a Judge of Compensation Claims.

To illustrate this retirement point, compare two judges, each appointed at the end of 2017, and each serving eight years with no further pay increases. The Circuit Judge retirement would be \$39,565.12 (\$160,688 x .03 = 4,820.64; x 8 years of service = \$39,565). The Judge of Compensation Claims retirement would be 19,930.24 (\$124,564 x .02 = 2,491.28; x 8 years of service = \$19,930.24). The Circuit Judge retirement is roughly double the Judge of Compensation Claims.

The Judges of Compensation Claims are gubernatorial appointees, selected from a list submitted by the Statewide Judicial Nominating Commission for Judges of Compensation Claims (SWJNCJCC). Applicants seek this job out of academic interest and a sense of public service. To apply, an attorney must have been practicing law for five years, and have significant experience in workers' compensation.²³⁷

In order to vest in the state retirement pension, 8 years of service is required.²³⁸ An attorney with exceptional experience and an established practice may be unwilling to assume the risks of appointment as a JCC,²³⁹ based upon the historical salary stagnation, notable pension calculation differential, and comparison of compensation overall to private practice.

In 2017 the Office of Judges of Compensation Claims noticed two judicial vacancies for application, Gainesville and Tallahassee. Four attorneys applied for Gainesville, and only one for Tallahassee. The appointment process requires at least three applicants for any vacancy.²⁴⁰ Thus, the lack of interest in the current Tallahassee appointment required that vacancy be re-advertised, and the applicants interviewed at another Commission meeting. For the Gainesville vacancy, the Commission's role was to eliminate one of the four applicants from consideration. Upon the retirement of Judge Hogan in Ft. Lauderdale, the vacancy drew only four applicants. With Judges Lorenzen and Spangler each retiring in Tampa, a total of six applications were submitted. The Commission deemed four of those names worthy of submission to the Governor.²⁴¹ The demonstrated tepid applicant interest has been illustrated in other application cycles, as illustrated in this chart.

City (OJCC District Office)	JNC Meeting Date	Applicants
Tampa (Spangler)	8/20/2018	3 (6) ²⁴²
Tampa (Lorenzen)	8/20/2018	3 (6) ²⁴³
Ft. Lauderdale	8/20/2018	4 ²⁴⁴
Gainesville	8/7/2017	4 ²⁴⁵
Tallahassee	8/7/2017	1 ²⁴⁶
Miami (Castiello)	2/17/2017	2.5 ²⁴⁷
Miami (Hill)	2/17/2017	2.5 ²⁴⁸
Lakeland	11/1/2016	4 ²⁴⁹
West Palm Beach (D'Ambrosio)	11/1/2016	6 ²⁵⁰
Miami (Hill)	11/1/2016	2 ²⁵¹
Reappointments only	8/22/2016	
West Palm Beach (Punancy)	3/21/2016	9 ²⁵²
Panama City	3/21/2016	4 ²⁵³
Ft. Myers (Sturgis)	9/28/2015	4 ²⁵⁴
Pt. St. Lucie	9/28/2015	8 ²⁵⁵
West Palm Beach (Basquill)	9/28/2015	4 ²⁵⁶
Ft. Myers (Spangler)	2/16/2015	8 ²⁵⁷
Ft. Lauderdale (Pecko)	2/24/2014	6 ²⁵⁸
Melbourne	2/24/2014	9 ²⁵⁹
Miami (Kuker)	8/19/2013	4 ²⁶⁰
Daytona	2/11/2013	9 ²⁶¹
Miami (Harnage)	8/20/2012	4 ²⁶²
Tampa (Murphy)	8/20/2012	5 ²⁶³
Melbourne	1/23/2012	Cancelled
Reappointments only	9/27/2011	
Reappointments only	2/7/2011	
Jacksonville (Rosen)	8/16/2010	8.5 (17) ²⁶⁴
Jacksonville (Pitts)	8/16/2010	8.5 (17) ²⁶⁵
Lakeland (Hofstad)	8/16/2010	11 ²⁶⁶
Reappointments only	4/5/2010	
Gainesville (Thurman)	2/2/2009	13 ²⁶⁷
Reappointments only	4/20/2009	
Jacksonville (Dane)	8/18/2008	10 ²⁶⁸
Gainesville (Thurman)	8/18/2008	

Reappointments only	4/25/2008	
Reappointments only	8/14/2007	
Orlando (Thurman)	6/22/2007	14 ²⁶⁹
Reappointments only	4/2/2007	

This data supports that there have been more vacancies to fill in recent years, which may illustrate a retention issue.²⁷⁰ The data further supports that the applicant pools are recently more consistently small. Where vacancies had attracted as many as ten applicants per vacancy, recent history has been markedly lower, with two recent efforts (Miami 2016 and Tallahassee 2017) not even attracting three applicants. Retention of incumbents and attraction of the best available attorneys may not be illustrated by this data. The mediator salary level also poses similar problems, with experienced State Mediators leaving to return to private practice for financial reasons, and there is diminished interest in and application for vacancies.

These compensation disparities are marked and serious. The nature of this system is dependent upon the service of judges who are timely, dedicated and efficient. There is no justification for the serious and widening pay gap between Florida Judges of Compensation Claims and the remainder of Florida’s judges. It is suggested that the most expedient method of correcting the salary deterioration would be a statutory tie-in similar to that previously removed in 1994. Progress was made in that direction in the 2018 Legislative Session. Senator Simmons sponsored SB1412 Office of the Judges of Compensation Claims. This provided section 550.45(2)(f) would be added:

(f) All full-time judges of compensation claims shall receive a salary equal to that of a county court judge. The Deputy Chief Judge shall receive a salary of \$1,000 more per year than the salary paid to a full-time judge of compensation claims. The salaries for the judges of compensation claims must be paid out of the Workers’ Compensation Administration Trust Fund established under s. 440.50.

A related bill was introduced in the House of Representatives, HB 687, sponsored by Representative Cord Byrd. The Senate bill progressed somewhat, however the House companion bill did not proceed from the Oversight, Transparency and Administration Committee.

It is submitted that this statutory language and equitable pay is a critical issue for the efficacy and function of this Office.

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Endnotes

- ¹ This calculation is based upon 251 days: fifty-two weeks with five business days each, 260 days, less the nine weekdays that are “observed” state holidays for the executive branch. See, https://www.dms.myflorida.com/workforce_operations/human_resource_management/for_state_personnel_system_hr_practitioners/state_holidays, last visited October 20, 2018. The “statutory holidays” are more extensive, see § 683.01, Fla. Stat., Legal Holidays. http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0600-0699/0683/Sections/0683.01.html, last visited October 20, 2018.
- ² Section 440.45(5), Florida Statutes, states: “Not later than December 1 of each year, the Office of the Judges of Compensation Claims shall issue a written report to the Governor, the House of Representatives, the Senate, The Florida Bar, and the statewide nominating commission summarizing the amount, cost, and outcome of all litigation resolved in the previous fiscal year; summarizing the disposition of mediation conferences, the number of mediation conferences held, the number of continuances granted for mediations and final hearings, the number and outcome of litigated cases, the amount of attorneys’ fees paid in each case according to order year and accident year, and the number of final orders not issued within 30 days after the final hearing or closure of the hearing record; and recommending changes or improvements to the dispute resolution elements of the Workers’ Compensation Law and regulations. If the Deputy Chief Judge finds that judges generally are unable to meet a particular statutory requirement for reasons beyond their control, the Deputy Chief Judge shall submit such findings and any recommendations to the Legislature.”
- ³ The website is www.fljcc.org. Reports are under the “publications” and then “reports” tabs.
- ⁴ The definition for “trial” had to be amended in 2016, following questionable mischaracterization and misrepresentation regarding “trial orders.” The definition now includes only final merits orders following a hearing on petitions for benefits and attorney fee orders following a hearing on a verified motion for attorneys’ fees/costs. In 2006, the OJCC defined “trial” to include evidentiary motion hearings (motion), expedited final hearings (petition), fee amount hearings (motion), fee entitlement hearings (motion), final hearings (petition), and fund hearings (petition). The parentheticals for each represent whether each is likely to result from the filing of a motion or a petition for benefits (petition). This definition resulted in various orders being included in the definition of “trial order.” This also impacted time parameters in terms of reaching trial (“to trial”) and producing orders (“to order”). There were those who were critical of this approach, asserting that these definitions, by the inclusion of trials that are not the result of a PFB, artificially alter the volume and times reported. As the times for “to trial” of 210 days and “to order” of 30 days are statutory benchmarks, those critical of the inclusion aver that the OJCC reporting of “to trial” should include only trials that result from PFBs. In 2016, it became apparent that a minority of Judges of Compensation Claims were reporting multiple procedural and stipulated matters, resulting in minimalistic orders, as “trials.” Based upon their abuse of the process, and the dangers presented when misrepresentations are either endorsed or published, the definitional change was made. This change removes the characterization discretion and provides for an objective standard regarding trial orders.
- ⁵ Discussed more fully on page 9, in “Terms and Definitions.” See Glossary, Page 48. See also endnote 4.
- ⁶ The OJCC staff was reduced by one judge and three mediators beginning with the budget for 2012-13. Between that time and 2016-17, there were 28 full time state mediators. In late 2017-18, the OJCC reclassified a clerical position to increase the mediator cohort to 29. In the spring of 2018, Mr. David Stillson was hired, resident in District FTL, but mediating half-time each in Districts FTL and WPB.
- ⁷ Fla. Admin. Code R. 60Q6.108(1)(a)(2010); Fla.R.Pro.Work.Comp. 60Q6.108(1)(a); https://fljcc.org/JCC/rules/History/CH60Q-6Rules_Eff20101031.pdf, last visited October 22, 2018.
- ⁸ An interesting consequence came to light in 2016. Discovering outgoing mail not retrieved at a District Office, inquiry ensued. The U.S. Postal carrier confirmed that he occasionally forgets to visit that District Office as it “never” receives any incoming mail.
- ⁹ When a litigation document is filed with this office, and often times even when such a document is sent to others involved in litigation, those documents must be provided by the drafting party to all other parties. This is referred to as “service,” and is controlled by Fla. Admin. Code R. 60Q6.108 (2014); Rule 60Q6.108, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.108>, last visited October 25, 2018.
- ¹⁰ There are occasions in which a Judge determines that it is not appropriate to hear a case. This may be because of a conflict of interest or some perception of conflict. Instances in which a party requests this, and the Judge agrees, are called “disqualification.” Instances in which a Judge removes him or herself, without a party’s request, are called “recusals.”
- ¹¹ The Florida Office of Judges of Compensation Claims however is not a “court.” *Jones v. Chiles*, 638 So. 2d 48 (Fla.1994); See also, *In Re Florida Rules of Workers' Compensation Procedure*, 891 So. 2d 474 (Fla. 2004).
- ¹² This is defined by § 440.50, Fla. Stat.
- ¹³ The cost of real estate has been increasing due to market forces. In 2018, the OJCC was obligated to move from the Hurston Building in Orlando secondary to insufficient parking for OJCC customers. In addition, leases in Jacksonville and Panama City expired. The cost of procuring new space was markedly more expensive than the previous space in all three instances.
- ¹⁴ The aggregate reached \$1 million in 2014-15. The total as of the end of 2016-17 is less than \$1.5 million.

15 The credit due to the DOAH IT staff is substantial. Their efforts have deployed a comparatively inexpensive electronic
16 process and presence. See endnote 57 regarding other states' expenditures. Special thanks are due to DOAH IT Director
Susan Brown for her leadership on this process and the success of the eJCC platform.

17 The Rules of Procedure for Workers' Compensation Adjudications requires that all documents filed with the OJCC must
18 also be "served," meaning sent to all other parties or their attorney. Fla. Admin. Code R. 60Q6.108(1)(b)(2014); Rule
60Q6.108, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.108>, last visited October 25, 2018.

19 It will likely be impractical to compile a complete database of e-mail contact information for all Florida employers.
20 Therefore, the probability remains that initial petitions in some volume of new cases will require certified mail transmission
even after eService is fully implemented. There are potential processes that might minimize or eliminate that expense, but
21 will be subject to regulatory processes that will require the cooperation of multiple agencies.

22 The Florida Statutes are available online at: <http://www.flsenate.gov/Statutes/>. Section 440.015, Florida Statutes, expresses
the self-executing nature, "an efficient and self-executing system must be created which is not an economic or
23 administrative burden."

24 Illustrated by the District Court's analysis of temporary indemnity in Matrix Employee Leasing v. Hadley, 78 So. 3d 621
(Fla. 1st DCA 2011)(*en banc*), followed by the same court's declaration of constitutional infirmity regarding the temporary
benefits statute, construing "natural law" in the Westphal panel decision, followed by the District Court's decision in
Westphal, en banc (2013), followed by the Florida Supreme Court's striking of the temporary indemnity statute on non-
"natural law" constitutional grounds in 2016. For several years, the marketplace and injured workers watched the analysis
pendulum swing about, dragging the rights and obligations of system participants behind it.

25 2015-16 OJCC Annual Report, [https://www.fljcc.org/JCC/publications/reports/2016AnnualReport/files/assets/basic-
html/page-1.html#](https://www.fljcc.org/JCC/publications/reports/2016AnnualReport/files/assets/basic-html/page-1.html#), last visited October 1, 2018.

26 Case number 1D12-3563; 38 Fla. L. Weekly D504 (Fla. 1st DCA 2013); 2013 WL 718653;
27 <http://opinions.1dca.org/written/opinions2013/02-28-2013/12-3563.pdf> (opinion withdrawn).

28 Westphal v. City of St. Petersburg, 122 So. 2d 440 (Fla. 1st DCA 2013).

29 Westphal v. City of St. Petersburg, 194 So. 3d 311 (Fla. 2016).

30 Castellanos v. Next Door Co., 124 So. 3d 392 (Fla. 1st DCA 2013).

31 Castellanos v. Next Door Co., 192 So. 3d 431 (Fla. 2016).

32 Miles v. City of Edgewater, 190 So. 2d 171 (Fla. 1st DCA 2016).

33 Lee Engineering & Constr. Co. v. Fellows, 209 So. 2d 454 (Fla. 1966).

34 Office of Insurance Regulation press release: <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2179>; last
visited October 30, 2018.

35 Office of Insurance Regulation press release: <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2221>; last
visited October 30, 2018.

36 Office of Insurance Regulation press release: <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2233>; last
visited October 30, 2018.

37 The increase in 2016 was based on "change in the law" based upon the court analyses in Castellanos, and Westphal. See
Order of September 27, 2016. <https://www.floir.com/siteDocuments/NCCI191880-16-OORF.pdf>; last visited October 30,
2018. Thus, this filing was based upon actuarial belief or prediction as to how costs would be affected by the court
decisions. Regular annual filings regarding rates are predicated instead upon historical experience in the marketplace. Thus,
annual filings are retrospective while a "law only filing" is prospective and admittedly based upon beliefs, projections, and
estimates. The increase proposal filed August 28, 2018 was rejected. The Office of Insurance Regulation approved a 13.8%
decrease. See endnote 83.

38 Miles v. City of Edgewater, 190 So. 2d 171 (Fla. 1st DCA 2016). There, the court considered a factual situation in which
occupational exposure was alleged. In pursuit of benefits therefore, the injured worker's attorney submitted two retainer
agreements for approval by the assigned judge: one between claimant and counsel; a second between a union and counsel.
The effect of these two agreements was the union would pay for the first 15 hours of attorney time expended in
representation of claimant (\$1,500 for 15 hours, or \$100.00 per hour) and that thereafter claimant would be responsible to
pay an hourly attorney fee for time expended by counsel.

39 Miles, at 178.

Id.

Id.

Jacobson v. Se. Pers. Leasing, Inc., 113 So. 3d 1042(Fla. 1st DCA 2013).

A "facial" conclusion is that there is no circumstance in which a statute can be constitutionally applied and thus the statute
is stricken and inapplicable in any context or construct. An "as applied" conclusion applies only to the parties in the case
that is determined by the court.

Miles, at 180.

Miles, at 180 (The evidentiary foundation for this finding has not been located).

40 Though not cited specifically herein in the interest of space, there are multiple other examples of seemingly broader
41 language in the decision.

42 Castellanos v. Next Door Co., 192 So. 2d 431 (Fla. 2016).

43 Castellanos, at 434.

44 Abdool v. Bondi, 141 So. 3d 529, 538 (Fla. 2014); Cashatt v. State, 873 So. 2d 430, 434 (Fla. 1st DCA 2004).

45 Accelerated Benefits Corp. v. Dep't of Ins., 813 So. 2d 117, 120 (Fla. 1st DCA 2002).

46 Miles, at 183-84 (Emphasis added).

47 Miles, at 184.

48 Some have noted that this curiously contradicts the statute, section 440.34(1), Fla. Stat.: “The judge of compensation claims
is not required to approve any retainer agreement between the claimant and his or her attorney.”

The Article V. Courts in Florida sought additional funding in its 2014-15 budget for a “competitive salary increase.” They
noted that “a 3.5 percent adjustment in the next fiscal year is a critical step in addressing the impact the inflation rate has
had on [employees’] buying power.” Their request asserted that there are retention issues, leading to employees leaving the
judiciary “for higher paying jobs in the other two branches of government.” This is incongruous with the anecdotal
experience of the OJCC. The Legislature allocated \$8.1 million to the courts in 2014 for this need.

49 [http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/c6cc17380a7291d285257ccf](http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/c6cc17380a7291d285257ccf0042745c!OpenDocument)
50 [0042745c!OpenDocument](http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/c6cc17380a7291d285257ccf0042745c!OpenDocument); last visited October 18, 2018. The disparity between OJCC payroll and court payroll has been
mentioned in previous annual reports of this Office. In 2017, all Florida judges except those in DOAH received significant
pay raises in 2017, a recognition of retention and recruitment issues with the bench.

51 See endnote 13, regarding the 2018 leasing of new office space in Jacksonville, Orlando, and Panama City.

52 See endnote 2.

53 The user manual was revised in 2013-14, and 2017-18.

54 Fla. Admin. Code R. 60Q-6.115(2014); Rule 60Q-6.115, Fla.R.Pro.Work.Comp., [https://www.fjcc.org/JCC/rules/#60Q-](https://www.fjcc.org/JCC/rules/#60Q-6.115)
55 [6.115](https://www.fjcc.org/JCC/rules/#60Q-6.115), last visited October 25, 2018. Motion Practice, “(1) . . . The judge shall not hold hearings on motions except in
exceptional circumstances and for good cause shown in the motion or response.”

56 See endnote 4.

57 “Service,” the providing of copies of filed documents to others in the litigation. See endnote 9.

58 In 2009-10, the OJCC participated in supporting the deployment of electronic filing at the Appellate Courts and remains
proud of the electronic progress of the First District Court of Appeal. As of this report, the First, Fourth and Fifth District
Courts have deployed the e-DCA electronic filing platform which was adapted from the eJCC platform developed and
deployed by the Office of Judges of Compensation Claims.

59 These parameters assign value to the inbound filings based upon postage and supplies saved by the filer. There is also an
associated savings to the state because staff no longer has to open envelopes, remove and straighten documents, and then
file the paper documents for future use.

60 According to Workcompcentral.com, these states have spent far more money developing their case management and
litigation platforms. Notably, their systems are for all workers’ compensation claims in their respective states, while the
OJCC system is for litigated claims only. Pennsylvania is reported to have spent \$45.1 million initially, and contracted for
three years of support and maintenance at \$5.1 million per year. California has reportedly spent \$61 million to deploy their
case management and electronic filing platform. The OJCC has deployed its eFiling, eService, and case management
platforms using existing budget funds. The total expenditures to date are less than \$1 million.

61 <https://ww3.workcompcentral.com/news/story/id/a0a2e2759c516074e05f1d022d13c444m>.

62 In this same regard, there is no clear definition of many of the terms that are drawn upon for statistical analysis. See
endnote 4 regarding the definitions for “trial” and thus the foundation for calculations.

For example, it is common for a PFB to contain a claim for past medical care (payment for care by a medical provider or
providers) and a claim for future medical care (authorization of a particular medical provider or specialty, i.e. orthopedic
surgeon) and a claim for some form of lost-wage (“indemnity”) benefit, such as temporary total or temporary partial
disability benefits. Many PFBs seek payment of attorneys’ fees and costs, and penalties and interest are commonly claimed
when any form of indemnity is sought.

This is discussed more fully in the report section on attorney fees by accident years (page 36, and endnote 163).

This means “new” since the move of the OJCC to the Division of Administrative Hearings. It is perfectly possible that
litigation may have occurred on a case prior to 2001, and those records remain with the Florida Division of Workers’
Compensation. When the OJCC transitioned to the DOAH, all “active” cases then pending were migrated to the OJCC
database system. Cases that had been litigated and closed prior to that time were not migrated. Thus, a case might have
been litigated in the 1990s or before, been closed and archived by the Department of Labor prior to 2001, and therefore
later appear as a “new case” if a petition were filed post 2001 with the OJCC.

Motions for attorneys’ fees, advances, and appointment of an expert medical advisor are commonplace examples in Florida
workers’ compensation. Motions for contribution or modification are also heard, though they are not as common as other
motions.

63 The appropriate method to seek determination of attorney fee entitlement or amount is usually by verified motion. Fla. Admin. Code R. 60Q6.124(2014); Rule 60Q6.124, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.124>, last visited October 25, 2018. The same is true for certain motions seeking appointment of an expert medical advisor, prevailing party costs, and otherwise. Therefore, a significant volume of each JCCs workload comprises these significant motions that require evidentiary hearings. See endnote 62.

64 Because of the effort that is involved in determining many motion issues, the OJCC previously included the determination of some motions in the definition of “trial.” A “trial” for the Office of Judges of Compensation Claims, such that the resulting order is counted in statistics as a “trial order” means that there must have been a substantive order entered, including findings of fact and conclusions of law, following a hearing that included the presentation of evidence (see endnote 4).

65 These statistical measures count the number of times each issue is pled. Therefore, some logical conclusions are practical and bear discussion. Obviously, if a claim is totally denied, the injured worker would seek “compensability.” As that is a singular dispute, there would be no probability for that issue to be pled more than once in a petition, and the same might be equally expected as to issues such as “temporary total” or “permanent total” benefits. However, the “medical authorization” issue is amenable to logical and appropriate repetition in a single petition. An injured worker might very well seek authorization for a medical test, a medical provider in some new recommended specialty, and a medical procedure (surgery) in a single petition. If only one petition were filed in a fiscal year, and it sought those three medical benefits, then the rate of inclusion of “medical authorization” for that fiscal year would be 300%.

66 The 2018 Settlement Report and Mediation Statistics Report is incorporated in this report and is available at <https://www.fljcc.org/JCC/publications/reports/2018SR-MSR.pdf>; last visited October 30, 2018.

67 Because of that small data set, the OJCC has long advocated the abolishment of the special and separate “denied claim” settlement report. See 2017-2018 Settlement Report and Mediation Statistics Report of the Office of the Judges of Compensation Claims, page 5. “It is respectfully submitted that a special report of the volume and descriptions of these settlements is not necessary and these statistics could be easily incorporated into the OJCC Annual Report, published each November.” <https://www.fljcc.org/JCC/publications/reports/2018SR-MSR.pdf>; last visited October 30, 2018.

68 There was a notable decrease (-29.49%) in petition filing in September 2017. On September 10, 2017 Hurricane Irma made landfall in Florida. The impact was immediately severe, and there were after-effects that were similarly notable. With multiple regions within the state affected, the decrease from 6,125 petitions in September 2016 to 4,319 in September 2017 should not be surprising. There was likewise an increase (15.56%) in from 5,335 petitions in October 2016 to 6,165 in October 2017. However, the overall total for the two months combined in 2017 remained almost one thousand (976) petitions lower than the two months combined in 2016. It is likely fair to conclude that Hurricane Irma affected petition filing volumes to some degree.

69 In October 2008, the Florida Supreme Court decided Murray v. Mariner Health, 994 So. 2d 1051 (Fla. 2008). The Supreme Court’s interpretation of section 440.34 differed from the DCA decisions, and effectively restored entitlement to hourly attorneys’ fees for cases with a date of accident after 2003. It is possible the marginal increase (1.6%) in 2008-09 was related to the Murray decision.

70 Murray v. Mariner Health, 994 So. 2d 1051 (Fla. 2008).

71 The Florida Legislature reacted to the Murray v. Mariner Health, 994 So. 2d 1051 (Fla. 2008) decision in 2009, passing further amendment to section 440.34, Florida Statutes, with the apparent intention of legislatively overruling Murray. The effects of the Court’s action and the Legislature’s action are not however identical. The Court’s decision results in the potential applicability of hourly attorney fees for all cases between October 1, 2003, and June 30, 2009. Those cases are controlled by the Court’s interpretation of section 440.34, Florida Statutes (2003) in Murray. Thus, that decision in October 2008 effected a change applicable to a population of filed and potential cases for dates of accident in the past. The Legislature’s action amending the statute in 2009 applies only to cases in which the accident occurs after the effective date of that legislation. Thus, the legislative action in 2009 affects only a prospective change for accidents after June 30, 2009. Thus, the Murray analysis of the 2003 law will continue to control and hourly fees remained payable for claims on dates of accident between October 1, 2003, and June 30, 2009. That distinction is less relevant since the court decisions in Miles v. City of Edgewater, 190 So. 2d 171 (Fla. 1st DCA 2016) and Castellanos v. Next Door Co., 192 So. 3d 431 (Fla. 2016).

72 Castellanos v. Next Door Company, 192 So. 3d 431 (Fla. 2016).

73 Miles v. City of Edgewater Police, 190 So. 3d 171 (Fla. 1st DCA 2016).

74 Press Release from Florida Office of Insurance Regulation, (October 26, 2009):

75 <https://www.flair.com/PressReleases/viewmediarelease.aspx?id=1777>; last visited October 2, 2018.

76 Press Release from Florida Office of Insurance Regulation, (October 15, 2010):

77 <http://www.flair.com/PressReleases/viewmediarelease.aspx?id=1839>; last visited October 2, 2018.

78 Cinicerros, Business Insurance, Florida Insurance Commissioner Approves 8.9% Workers Compensation Rate Hike,

<http://www.businessinsurance.com/article/20111024/NEWS08/111029952>, October 24, 2011; last visited October 2, 2018.

79 Press Release from Florida Office of Insurance Regulation, (October 26, 2012):

<http://www.flair.com/PressReleases/viewmediarelease.aspx?id=1984>; last visited October 2, 2018.

78 Press Release from Florida Office of Insurance Regulation, (October 22, 2013):
http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2033; last visited October 2, 2018.
79 Press Release from Florida Office of Insurance Regulation, (August 22, 2014):
http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2074; last visited October 2, 2018.
80 Press Release from Florida Office of Insurance Regulation, (November 3, 2015):
http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2125; last visited October 2, 2018.
81 Press Release from Florida Office of Insurance Regulation, (October 6, 2016):
http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2179; last visited October 2, 2018.
82 Press Release from Florida Office of Insurance Regulation, (November 9, 2017):
https://www.flair.com/PressReleases/viewmediarelease.aspx?id=2221; last visited October 2, 2018.
83 Press Release from Florida Office of Insurance Regulation, (August 28, 2018)(proposed a 13.4% decrease):
https://www.flair.com/PressReleases/viewmediarelease.aspx?id=2233; last visited November 6, 2018; Press Release from
Florida Office of Insurance Regulation, (November 2, 2018)(rejected proposed decrease and ordered 13.8% decrease
instead, with effective date January 1, 2019): <https://www.flair.com/PressReleases/viewmediarelease.aspx?id=2242>; last
visited November 6, 2018.

84 The filing volume figures for periods prior to 2001 (the transfer of the OJCC from the DLES to the DOAH) are based upon
data previously published by the DLES. The reliability of these statistics can no longer be independently verified. The
conclusions reached by the DLES have previously been published. These conclusions are available for analysis. However,
none of the raw source data used for those analyses was provided to the DOAH when the OJCC was transferred in 2001.
The statistics published by the DLES are therefore expressed in this report for illustrative comparison only. Some question
as to the validity of these figures is raised by the fact that the Petition for Benefits (PFB) process was not added to chapter
440, Florida Statutes, until the 1994 statutory amendments, and the DLES figures nonetheless reflect “PFB” filing prior to
that time. This could be indicative of an actual flaw in the data, or the figures prior to 1994 may represent the filing of
“Claims for Benefits.” Prior to the PFB process, “claims” were filed to put an E/C on notice of a dispute, but the
jurisdiction of the OJCC was not invoked until a separate pleading, an “Application for Hearing,” was filed. The current
statutes’ PFB is therefore effectively a combination of the prior “Claim” and “Application.” Because of this distinction, it
may or may not be appropriate to compare “Claim” or “Application for Hearing” filing to the PFB process.

85 In 2016-17, fees were approved on a 74 year old claim filed against a company that went out of business in 2001, see
endnote 163.

86 Some suggest that the availability of an alternative, hourly fee for medical only claims in section 440.34(7), Florida
Statutes, might contribute to a perception that fees are more lucrative early in a claim. This fee, however, is limited to ten
hours at a rate of up to \$150.00 per hour, a maximum of \$1,500.00. This fee is only available once during the life of a
claim. Therefore, exhaustion of this fee entitlement might affect the propensity for litigation over relatively minor medical
issues later in a case.

87 Possibly, that was influenced by the “one-time” only fee exception in section 440.34(7), Florida Statutes in which a
restricted hourly fee was allowed despite the statutory formula restrictions of section 440.34(1), Florida Statutes.

88 See endnote 71.

89 See endnotes 72 and 73.

90 In the last century, this term commonly referred to “an informal photograph taken quickly, typically with a small handheld
camera,” and was used in the business sense to reflect a representation of figures or facts in the current moment. A more apt
term in the modern vernacular might be “selfie,” a term coined to reflect that the “snapshot” was being created by the
person pictured, but a “snapshot” nonetheless.

91 As with other figures in this report, the fact that this answer does not precisely answer the question posed, “how many *pro*
se litigants file petitions,” does not alter the fact that this is the best answer that the OJCC can currently provide. The
inability to answer the precise question is conceded, explained, and the best possible answer is provided.

92 It is notable that some portion of the “new cases” filed each year are not filed because there is a petition issue, or need for
filing a petition. Some “new cases” filed each year are created for the purpose of filing a motion for determination of some
discovery or other pretrial dispute or for the purpose of filing a Joint Petition to settle the case.

93 See endnotes 177, 178, 182-85.

94 The Petition for Benefits which claims attorneys’ fees and costs is effective to toll the statute of limitations, despite the
dismissal of the other substantive claims therein. Administrative closure of a petition by the OJCC does not obviate that fee
or cost issue.

95 Effective management of the PFB volume early this century was further hindered by a lack of effective data management
tools to identify PFBs based upon age. At the end of fiscal 2005-06 (06.30.06), the JCC Application database reflected one
hundred eighty-six thousand seven hundred sixty-five (186,765) “open” PFBs. It was later discovered that this figure was
understated by the database, and the actual volume was re-calculated as one hundred ninety-four thousand four hundred
sixty-nine (194,469); the 2006-07 OJCC Annual Report provides details. During fiscal year 2006-07, the OJCC worked to
identify “active” PFBs, whose status should have previously been changed to reflect a “resolved” or “closed” status. This

effort included providing the judges with access to database reports that identified aging PFBs. The inventory of “pending” PFBs for many judges improved dramatically in 2006-07, and thereafter. The following chart illustrates the OJCC is close to equilibrium in terms of the PFBs being filed (blue line) and the PFBs being closed (red line) each year.

96 These figures are from the estimate of the United States Census Bureau for 2014,
97 <http://quickfacts.census.gov/qfd/states/12000.html>.

98 The reduction of staff was made effective for fiscal year 2013, which began July 1, 2012.

Mediation may already be scheduled, on a previous PFB, at the time a subsequent PFB is filed. The OJCC Procedural Rules require that all pending PFBs are to be mediated at any mediation. Therefore, a distinct mediation does not necessarily occur for each PFB, and mediation of multiple PFBs at one mediation is common. Some PFBs are scheduled for an expedited final hearing. These PFBs regard issues that are of a moderate financial value (\$5,000.00 or less), and mediation is not required for these PFBs.

99 There is anecdotal evidence that some divisions historically exhibited significant delays in the entry of final orders following trials. It is believed that this pattern has been described and publicized, and as a result is currently quite rare. Each Judge’s average time for entry of an order is illustrated in the appendices to this report. A 2006 audit of final orders entered by all Judges of Compensation Claims demonstrated average delays of over one year between trial and entry of a corresponding final order in some Divisions. Such delays may have effectively forced parties to reach settlements, from sheer frustration with the ineffectiveness of a particular judge. In other instances, the outcome of evidentiary rulings during trial may be sufficiently illuminating to the parties to allow meaningful analysis of the probable outcome of a given case and may result in a negotiated resolution before even a prompt and timely order may be entered. The timeliness of trial orders is a service to Floridians, and is a statutory obligation of all Judges of Compensation Claims.

100 The Court has concluded that the administrative closure of a PFB does not foreclose the entitlement to attorneys’ fees related to benefits claimed therein. Black v. Tomoka State Park, 106 So. 3d 973 (Fla. 1st DCA 2013); Longley v. Miami-Dade County School Board, 82 So. 3d 1098 (Fla. 1st DCA 2012). This is consistent with the Court’s earlier pronouncement of fee entitlement analysis in Allen v. Tyrone Square, 731 So. 2d 699 (Fla. 1st DCA 1999).

101 Fla. Admin. Code R. 60Q6.124(2014); Rule 60Q6.124, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.124>, last visited October 25, 2018.

102 The \$250.00 cost of litigation figure for 2018 is a valid comparison to the Article V. Courts’ filing fees. However, it is worthy of note that the judicial branch does not cover its complete costs. In that system, the filing fees offset only a part of the revenues needed to fund the state courts. The OJCC, on the other hand, covers our entire operations through non-general revenues sources, relying on the premium assessment. Thus, the cost of litigation in this administrative process is accomplished for less than similar court action filing fees, without any contribution of general revenue funds, and provides outstanding additional benefits to system participants and the public such as included mediation services and the collection of millions of dollars in child support arrearages.

103 This example uses the county charges published at http://www.miami-dadeclerk.com/service_fee_schedule.asp; last visited October 2, 2018.

104 Calculated with <https://www.usinflationcalculator.com/>, last visited October 2, 2018.

105 Of course, that supposition presumes that OJCC staffing levels will remain unchanged, and that petition filing growth rate remains reasonable. The OJCC would not be able to provide mediation opportunities for all petitions at some volume. The statutory mandate precludes the OJCC from noticing mediations for forty days after filing, and the requisites of due process require a reasonable notice of mediation appointments. This has traditionally been defaulted at 30 days’ notice, but that is not to say that some shorter period would not be sufficient in due process terms. If that period were fourteen days, then the “window” for mediation would be between 44 days and 130 days of the PFB filing, a period of 86 days, or 12 weeks. With each week including two non-business days, that would leave 62 days (86 - 24). If a mediator set a mediation every half-hour, the maximum volume of appointments per day would be 18. Not every PFB filed would require a new mediation appointment, as some petitions might be in cases for which an appointment exists at the time of filing (section 440.25(1) “shall consolidate all petitions into one mediation.”) However, once a mediator’s calendar was filled, then the passage of each day in this hypothetical essentially opens the 18 vacancies on the next calendar day (what today is the 131st day tomorrow becomes the 130th). Thus, a volume of 18 petitions per day would certainly be sufficient to push some volume of PFB to private mediation. Of course, what on a given Friday is the 131st day, on Monday becomes the 128th and thus each weekend might result in 54 new appointment openings. However, that effect is simultaneously eliminated by the fact that the appointment days 130 days from the filing day are equally as likely to themselves be a Saturday or Sunday, thus negating the seemingly created appointment surplus. Thus, when PFB filings exceed 18 per day per mediator (ignoring holidays and annual leave or mediator illness), or 522 PFB per day system wide, then there will be no conceivable method for the OJCC to schedule even minimal mediation services, and the petition volume will necessarily overflow into the private market per the private mediation mandate of section 440.25 (3)(b) “the parties shall hold a mediation conference at the carrier’s expense within the 130-day period set for mediation.” The annual filing rate of 126,000 Petitions (18 PFB per day times 29 mediators = 522) would represent the near absolute maximum, and that volume would require pro-forma services, and minimal or non-existent rescheduling opportunities. See also endnote 128.

106 § 440.20(11)(d)1, Fla. Stat.: “A judge of compensation claims must consider at the time of the settlement, whether the
107 settlement allocation provides for the appropriate recovery of child support arrearages.”
108 The parties can utilize the OJCC electronic filing system for making requests for information regarding child support.
The OJCC undertook this task, streamlined the process, and has delivered this service to Floridians for 6 years without any
109 additional personnel or budget. This relieved both the Circuit Clerks and the Florida Department of Revenue of that
reporting responsibility, freeing personnel in both agencies to perform other work.
Some percentage of PFBs may be excused from the mediation process by the assigned JCC if the issues are instead
scheduled for expedited final hearing pursuant to section 440.25, Florida Statutes. A very small percentage of mediations
110 (three mediations in fiscal 2016-17) were waived by order of the Deputy Chief Judge of Compensation Claims,
2009-2010 Settlement Report and Mediation Statistics Report of the Office of Judges of Compensation Claims,
<https://www.fljcc.org/JCC/publications/reports/2010SR-MSR.pdf>; last visited October 30, 2018.
111 Notices and Publications, <https://www.fljcc.org/JCC/publications/>; last visited October 30, 2018.
112 Before fiscal year 2012-13, there were 32 state mediators. The aggregate cost of salary, taxes and benefits for those 32 state
mediators was \$3,112,736.65. This figure divided by the 16,881 mediations conducted in 2011-12 yielded the cost per
mediation of \$184.39. With the reduction of staff by four mediators, the 28 mediators employed in 2012-13 had an
aggregate cost of approximately \$2,723,645. Dividing this by the 16,188 mediations in 2013-14 yielded \$168.25; dividing
by the 15,421 mediations in 2014-15 yields \$176.62; dividing by the 15,703 mediations in 2015-16 yields \$173.45. In
2016-17 the aggregate cost increased to \$3,022,307; dividing by the 16,079 mediations in 2016-17 yields \$187.97
(erroneously reported in 2016-17 as \$169.39 due to unadjusted aggregate cost figures). In 2017-18 the aggregate cost
increased to \$3,049,905; divided by the 16,167 mediations in 2017-18 yields \$188.65. These figures do not include the
costs of staff support or facilities or equipment. Therefore, this is a conservative cost figure.
113 Mediator staff was reduced from 32 to 28 in 2012-13, see endnote 112.
114 An attorney suggested that the value of state mediation would be aptly expressed by multiplying the 16,167 state
mediations by the \$500.00 that each would likely cost in private mediation (\$250 per hour times a two hour minimum).
That would total \$8,083,500. Accepting that math, it is important to also consider whether all of those mediations would
justify an expenditure of \$500, in a classic cost-benefit analysis. It is probable that some volume of mediations conducted
by the OJCC is for benefits whose monetary value might not justify that expense in a free market. It is also possible that in
the absence of a mandatory state mediation process, which is delivered to the parties at no per-use cost, that issues might
instead resolve before trial without mediation.
115 See endnote 102.
116 § 440.25(1), Fla. Stat.: “A mediation, whether private or public, shall be held within 130 days after the filing of the
petition.”
117 § 440.25(1), Fla. Stat.: “Forty days after a petition for benefits is filed under s. 440.192, the judge of compensation claims
shall notify the interested parties by order that a mediation conference concerning such petition has been scheduled.”
118 This is, after all, a “self-executing” law that is intended to deliver appropriate benefits in a timely manner, without the need
for litigation. § 440.015, Fla. Stat.
119 Statutorily, the “mediator must be a member of The Florida Bar for at least 5 years and must complete a mediation training
program approved by the Deputy Chief Judge.” That terminology was not reduced to policy by the OJCC until 2006. Prior
to that time, completion of the Florida Supreme Court sanctioned mediator training was sufficient to qualify. In 2006, the
OJCC implemented policy that state mediators shall be certified by the Supreme Court to perform mediations. The Supreme
Court process has changed over the years also. When the certification process was instigated in 1987, the Court required all
mediators to be a member of The Florida Bar, with five years of practice experience. That requirement was eliminated in
2003. See http://www.floridasupremecourt.org/pub_info/summaries/briefs/05/05-998/05-998_Petition.pdf, last visited
October 3, 2018. The statutory requirement in workers’ compensation is likely attributable to that Supreme Court
requirement that existed when mandatory workers’ compensation mediation was codified in 1994. However, the ongoing
necessity of that statutory language is certainly questionable at this time. This issue is raised for the legislature in this
annual report.
120 How to Become a Florida Supreme Court Certified Mediator, Revised August 2017,
<http://www.flcourts.org/core/fileparse.php/549/urlt/HowtoBecomeaMediatorGuide.pdf>, last visited October 2, 2017.
121 Rules for Certified and Court-Appointed Mediators, [http://www.flcourts.org/core/fileparse.php/422/urlt/Mediator-Rules-
Tab-3.pdf](http://www.flcourts.org/core/fileparse.php/422/urlt/Mediator-Rules-Tab-3.pdf), last visited October 25, 2018.
122 MEAC Opinion 2004-002, <https://www.flcourts.org/core/fileparse.php/283/urlt/MEAC-Opinion-2004-002.pdf>, last visited
October 2, 2017.
123 Id.
124 See, supra note 15. The Florida Office of Judges of Compensation Claims is not a “court” however. Jones v. Chiles, 638
So. 2d 48 (Fla. 1994); See also, In Re Florida Rules of Workers' Compensation Procedure, 891 So. 2d 474 (Fla. 2004).
125 Art. V. § 15, Fla. Const.

126 Section 440.25(3)(a), Fla. Stat.: “A mediator must be a member of The Florida Bar for at least 5 years and must complete a
127 mediation training program approved by the Deputy Chief Judge.”
128 § 440.25(3)(a), Fla. Stat.
There are 29 full-time OJCC mediators. At best, each might schedule every thirty minutes, with the anticipation that
cancellations and prior resolutions would create sufficient additional time for the mediations that proceed. Without a
programmed lunch period, that would effectively create 18 potential appointments daily per mediator, or 522 opportunities
total (8:00, 8:30, 9:00, 9:30, 10:00, 10:30, 11:00, 11:30, 12:00, 12:30, 1:00, 1:30, 2:00, 2:30, 3:00, 3:30, 4:00; 4:30). Thus,
as petition volumes increase, the availability of state mediation may well decrease. There are approximately 229 available
work days for mediation (fifty-two weeks per year, including two weekend days, thus times 5 work days is 260 days. There
are nine state holidays, according to the Department of Management Services,
http://www.dms.myflorida.com/workforce_operations/human_resource_management/for_state_personnel_system_hr_practitioners/state_holidays, last visited October 2, 2018. Each mediator earns 176 hours of leave (divided by 8 hours is 22 days). If a mediator took no time for illness or injury, this leaves 229 days (260-9-22). Thus, the projected maximum volume of petitions that could be scheduled for mediation is approximately 119,538 (522 x 229). While the PFB volumes are not even approaching this volume, the trend is toward increased volumes, and thus decreased opportunities for state mediation generally.

129 The 29 full-time OJCC mediators more likely could schedule 11 potential appointments (8:00, 8:45, 9:30, 10:15, 11:00,
11:45, 12:30, 1:15, 2:00, 2:45, 3:30, 4:15). Multiplied by the 29 mediators equates to 319 per day statewide, multiplied by
229 working days, equals 73,051.

130 Many mediation sessions involve more than one PFB, see section 440.25(1), Fla. Stat. (“if additional petitions are filed
after the scheduling of a mediation, the judge of compensation claims shall consolidate all petitions into one mediation.”).
And, some volume of PFB is dismissed within the 40 day period, alleviating the need to schedule a mediation. Therefore, it
is suggested that this comparison of PFB filing volumes to mediation potentials does not represent impending crisis.
However, it appears an apropos time for consideration of the potential impacts of increased filing volumes.

131 Section 440.25(3)(b), Florida Statutes, requires the employer/carrier to provide private mediation at its expense if
“mediators are not available” at the OJCC. (“[I]f mediators are not available under paragraph (a), pursuant to notice from
the judge of compensation claims, to conduct the required mediation within the period specified in this section, the parties
shall hold a mediation conference at the carrier’s expense within the 130-day period set for mediation.”). See also endnotes
105 and 132.

132 § 440.25(3)(b), Fla. Stat.: “[I]f mediators are not available under paragraph (a), pursuant to notice from the judge of
compensation claims, to conduct the required mediation within the period specified in this section, the parties shall hold a
mediation conference at the carrier’s expense within the 130-day period set for mediation.”

133 § 440.25(1), Fla. Stat.: “A mediation conference may not be used solely for the purpose of mediating attorney’s fees.”

134 If 29,253 mediations were actually held in 2002-04, that means that the 31 state mediators employed that year each
conducted 943 (29,253/31=) mediations. With approximately 229 working days (see endnotes 87 and 88), this equates to
4.1 mediations daily.

135 That anomaly has been noted and described to the state mediators and judges. It is believed to be either a singular error or
to represent a small volume of cases in which the volume of mediation may have been over-stated.

136 It has been previously noted that each year a very small percentage of mediation outcomes are not recorded in the OJCC
database appropriately, but were merely marked as “held.” That characterization provides no information as to what was
accomplished in that mediation. The vague nature of that characterization was addressed, and compliant record keeping
improved.

137 Of the total of 313 mediation continuances in 2017-18, three mediators accounted for 47% of the statewide total: Jeffrey
Breslow (54), Gary Miller (51), and Carolyn Slowikowski (42).

138 Id.

139 Anecdotally, there is evidence that many attorneys do not understand the continuance restrictions in section 440.25, Florida
Statutes. There is a persistent failure to plead or prove that circumstances requiring continuance are beyond the moving
party’s control. The actual cause of denied continuances may well be more attributable to this ineffective practice and
pleading. There is, however, anecdotal evidence suggesting some judges are motivated more by statistical analysis and
figures than by performing an exemplary job as adjudicator. That evidence is disheartening, but does not excuse this
Office’s statutory duty to report these various facts and figures.

140 Though there is “service” (see endnotes 9 and 54) when documents are filed, the “best practice” for all attorneys is to
diligently monitor their “daily filings” to assure that no documents are missed in the process of litigation. This is not
dissimilar from the widely accepted practice of maintaining multiple event calendars so as to avoid missed mediations and
hearings. Redundancy is a necessity for effective litigation.

141 Some Judges interpret the 40 day period differently, seeing that date as a deadline for transmission of a notice. While the
JCCA database transmits notice on or shortly after the 40th day, these judges prepare manual notices and transmit them
prior to that time.

142 Lundy v. Four Seasons Ocean Grand Palm Beach, 932 So. 2d 506 (Fla. 1st DCA 2006); Campbell v. Aramark, 933 So. 2d 1255 (Fla. 1st DCA 2006); Wood v. Fla. Rock Indus., 929 So. 2d 542 (Fla. 1st DCA 2006); Murray v. Mariners Health/ACE USA, 946 So. 2d 38 (Fla. 1st DCA 2006). See also, endnote 71.

143 Aguilar v. Kohl's Dep't Stores, Inc., 68 So. 3d 356 (Fla. 1st DCA 2011); Punsky v. Clay County Bd. of County Comm'rs, 60 So. 3d 1088(Fla. 1st DCA 2011); F.A. Richard & Assocs. v. Fernandez, 975 So. 2d 1224 (Fla. 1st DCA 2008); Hernandez v. Manatee County Gov't, 50 So. 3d 57 (Fla. 1st DCA 2010).

144 This is not an exact measure. The notice is not transmitted prior to the 40th day, but due to holidays or weekends, the actual transmittal may be more than 40 days after petition filing.

145 Procedural disputes in preparation of a case for trial often need to be resolved by the assigned judge. The appropriate mechanism for seeking that judicial intervention is a motion filed with the judge. Fla. Admin. Code R. 60Q-6.115(2014); Rule 60Q-6.115, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.115>, last visited October 25, 2018.

146 That may not always occur however. If an injured worker is represented by an attorney, settlement of a third party claim (against an employer for personal injury protection or other liability) may simultaneously extinguish the workers' compensation claim. The fee in such a situation would be, at least in part, for the consideration regarding workers' compensation liability but would not be approved by a Judge of Compensation Claims. See, Patco Transport, Inc. v. Estupian, 917 So. 2d 922 (Fla. 1st DCA 2005). This could not occur with an unrepresented workers' compensation claimant. See, Cabrera v. Outdoor Empire, 108 So. 3d 691 (Fla. 1st DCA 2013).

147 Section 440.34(1), Florida Statutes, provides in part: "A fee, gratuity, or other consideration may not be paid for services rendered for a claimant in connection with any proceedings arising under this chapter, unless approved as reasonable by the Judge of Compensation Claims or court having jurisdiction over such proceedings."

148 The issue of defense fee approval has been discussed in a variety of forums in recent years. Although there is the implied penalty provision in section 440.105(3)(b), Florida Statutes, the Deputy Chief Judge has not found statutory authority upon which the OJCC could require submission of employer/carrier attorney fee billings for pre-approval by the assigned JCC. This investigation has included consultation with the Workers' Compensation Section of The Florida Bar and the leadership of the Florida Workers' Advocates. Substantial time has also been invested in legal research and analysis by this Office.

149 Section 440.105(3)(c), Florida Statutes provides: "It shall be unlawful for any attorney or other person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Chief Judge of Compensation Claims."

150 Fla. Admin. Code R. 60Q6.124(2006); Rule 60Q6.124, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.124>, last visited October 25, 2018: "No later than October 1 of each year, all self-insurers, third-party administrators, and carriers shall report by electronic transmission to the OJCC the amount of all attorneys' fees paid to their defense attorneys in connection with workers' compensation claims during the prior July 1 through June 30 fiscal year." The revisions of the OJCC procedural rules effective October 31, 2010, altered that requirement to require reporting no later than September 1 of each year. The publication of the 2010-11 Annual Report was significantly delayed by the failure of multiple carriers to report as required. No such delays occurred thereafter with all carriers reporting timely, despite the earlier deadline imposed by rule. In 2014, some third party administrators, or "servicing agents" elected to discontinue reporting on behalf of their self-insured clients. Those clients should therefore self-report, but in multiple instances did not. Letters were sent to all self-insured clients known to the OJCC in an attempt to facilitate reporting. It is believed that the majority have now reported.

151 Anecdotal evidence has been presented that some carriers include payments for mediation services in the category "defense fees." It is impractical to determine how widespread that practice may be. In fact, it is possible that the anecdotal evidence provided may represent singular and erroneous payment worthy of no further consideration or thought.

152 In the preparation of the 2013-14 Annual Report, a discrepancy was noted in the reporting by Sedgwick CMS. Investigation revealed that this servicing agent had erroneously over-reported defense fees in each of the years 2003-04 through 2012-13. The Sedgwick CMS over-reporting aggregate was \$120,082,482.28. The corrections are all detailed in the 2013-2014 Annual Report of the Office of Judges of Compensation Claims, page 32;

<https://www.fljcc.org/JCC/publications/reports/2014AnnualReport/files/assets/basic-html/page-32.html>; last visited October 30, 2018.

153 Though these figures were once reported inaccurately, they were not "false," but merely the best data recorded as of that time. That the new figures are different, based upon a greater volume of available data, are likewise not "false," despite being different.

154 The OJCC requires reporting of defense fees pursuant to statute. In 2007-08, the OJCC received inquiries that identified a potential flaw in defense fee data. A self-insured county inquired as to how to report defense fees inasmuch as all defense of their claims is provided through the efforts of some member of the county attorneys' office. A carrier, similarly, inquired as to how services of in-house counsel could be captured for reporting. In each of these instances, the attorneys providing services are involved in workers' compensation and other legal services for the particular carrier (such as general liability or automobile issues). Therefore, no rational basis may exist to attribute the salary expenditures of carriers or counties or

municipalities because of these complications. It is suspected that the defense fees aggregate reported annually by the OJCC understates the actual volume of, or value of, defense fees.

In 2018, one previously reporting entity did not eventually report fee figures, Toys R Us. In previous years, that entity reported defense fees of: \$106,032.82 (2026-17); \$28,261.31 (2015-16); \$13,459.98 (2014-15); \$23,175.21 (2013-14); \$80,858.12 (2012-13). The five year mean was \$50,357.49.

<http://www.usinflationcalculator.com/>, last visited October 25, 2018.

There are three methods of determining “average,” the “mean,” “median,” and “mode.” The mean is determined by adding all data elements and dividing by the volume of data elements. The median is determined by listing the data elements in value order (ascending or descending), and identifying the element that is in the middle of that range. The mode is defined as the element that appears most often in that data distribution. In each year, 2014-15, 2015-16, and 2016-17, both the mean and median percentage of settlement that was paid in fees was sixteen percent (16%) and the mode was 20%. In 2017-18, the median was 18%, the mean was 19% and the mode was 25%. This mode illustrates that a significant volume of settlement fees are being approved despite failure to comply with the provisions of Section 440.34, Florida Statutes.

Miles v. City of Edgewater, 190 So. 2d 171 (Fla. 1st DCA 2016).

These include the First Amendment “freedom of speech, association, and to petition for redress of grievances.” Miles, at 178. These also include the “right to contract.” Miles, at 182. See *infra*, pages 6-7.

Jacobson v. Se. Pers. Leasing, Inc., 113 So. 3d 1042, 1048 (Fla. 1st DCA 2013).

Miles v. City of Edgewater, 190 So. 2d 171, 179 (Fla. 1st DCA 2016).

This case was a “new case” to the Office of Judges of Compensation Claims in 2018. The case number was assigned pursuant to a Request for Assignment of Case Number on February 22, 2018, almost 66 years after the accident. The purpose for requesting a case number was to submit a motion for approval of attorney fees in conjunction with a represented settlement.

This is six months instead of twelve because the date of accident is documented with the Julian calendar (January 1 through December 31), and the reporting of this Office is for the State of Florida Fiscal Year (July 1 through June 30). Thus, an accident might occur on January 1 of a calendar year, but any reported fee related to that accident would have to be approved by June 30 of that year to be reported as associated with that fiscal year.

Section 440.25(4)(d), Fla. Stat., requires “The final hearing shall be conducted by a judge of compensation claims, who shall, within 30 days after final hearing or closure of the hearing record, unless otherwise agreed by the parties, enter a final order on the merits of the disputed issues.” (Emphasis added).

Id.

In the 2014-15 OJCC Annual Report, it was noted that the mix of final hearings (on PFB issues) and final evidentiary hearings (on motions) might have influenced these statistics. Some observers expressed that this report should only document final merits orders (“FMO”), i.e. trials that result from a Petition for Benefits. As noted then, such a calculation would ignore the significant similarity of a variety of other final evidentiary motion proceedings, which result in final evidentiary orders (“FEO”). However, in light of the work required to audit those other orders, and the perception of imaginative manipulation of some judges for the sake of statistical measure, this Office elected to change the definition of “trial” in 2016 to include only the hearings on Petition issues and on contested attorney fees.

After trial was completed on July 25, 2017, the assigned judge “deemed it necessary to consider the involvement of an Expert Medical Advisor (EMA).” After a conference with counsel, the judge appointed an EMA on September 1, 2017. The EMA issued an opinion on October 4, 2017, requesting a diagnostic test. That test was completed October 31, 2017, and the EMA issued his final opinions November 20, 2017. Further clarification was sought by the judge, and an addenda report was issued November 29, 2017. The EMA was deposed on January 22, 2018, and a hearing reconvened on February 19, 2018. The final order was entered 37 days later on March 28, 2018. The majority of the delay between trial commencing and the entry of the final order (246 days) is attributable to the EMA statute which makes appointment of an EMA mandatory upon the Judges of Compensation Claims, see section 440.13(9).

Increase was indicated in both July and August. September 2017 filing volumes were markedly decreased however. This is thought to be related to landfall of Hurricane Irma and the disruption it caused to businesses and legal practitioners. Keeping that in mind, the PFB filing for the first quarter of 2018-19 is nonetheless over 16% higher than those three months of 2017-18.

In Miles v. City of Edgewater Police, 190 So. 3d 171 (Fla. 1st DCA 2016), the Florida First District Court of Appeal concluded that “the right to hire and consult an attorney” is protected by the United States Constitution, Amendment I, a “guarantee of freedom of speech, association, and to petition for redress of grievances.” The Court further recited horn book authority that “to survive strict scrutiny, a law ‘[a] must be necessary to promote a compelling governmental interest and [b] must be narrowly tailored to advance that interest,’ and ‘[c] accomplishes its goal through the use of the least intrusive means.’” And, concluded that the state has not demonstrated any such compelling interest as regards supervision of claimant’s attorney fees.

There are currently 152 Expert Medical Advisors available for the entire State of Florida. See Division of Workers’ Compensation Expert Medical Advisor List, <https://apps.fldfs.com/provider/>; last visited October 30, 2018. Of those, 59 are

in either Dade or Broward Counties, 34 are in greater Orlando, and 19 are in Tampa/St. Petersburg. Of the 152, 112 are in six counties. Pensacola has 0, Tallahassee has 0, Lakeland has 1, Daytona has 2, Gainesville has 2, Key West has 2, and Jacksonville has 7. Access to EMA providers is geographically challenging for injured workers.

See Medicare Fraud & Abuse: Prevention, Detection, And Reporting, https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud_and_Abuse.pdf, last visited October 18, 2018.

Reuters, Florida hospital settles part of whistleblower suit –lawyer, March 3, 2014, <https://www.yahoo.com/news/florida-hospital-settles-part-whistleblower-suit-lawyer-005915321.html>, last visited October 18, 2018.

Adventist settles health-care-fraud case for \$118.7 million, *Orlando Sentinel*, September 22, 2015,

<https://www.orlandosentinel.com/health/os-adventist-settles-fraud-case-20150922-story.html>, last visited October 18, 2018.

Broward Health pays nearly \$70 million to settle fraud case; whistleblower named, *Miami Herald*, September 15, 2015, <https://www.miamiherald.com/news/health-care/article35356422.html>, last visited October 18, 2018.

See endnotes 167 and 170.

The 210-day parameter applies by definition to the trial of PFB. Because the effort involved in trial of many other evidentiary matters are equally involved, the OJCC had defined “trial” to include hearings on PFBs, attorney fee motions/petitions, SDTF reimbursement and other significant evidentiary motion hearings. That definition was changed for 2015-16 (see endnote 4). The OJCC measures “time to trial” from the filing of the operative pleading (PFB/Motion) to the first day of trial. The time periods between the filing of these significant motions/petitions and the trial thereon are included in the averages for OJCC aggregates and for the various Judges’ charts included herein.

The 30-day parameter applies by definition to the entry of final orders on PFBs. For the same reason that the OJCC includes attorney fee/costs hearing as well as PFB hearings in the “trial” definition, the OJCC likewise includes the resulting orders in the definition of “trial orders.” The time to order is measured from the first day of trial through the ultimate entry of a final order. An abbreviated order is counted as the final order unless it is subsequently vacated, in which case the ultimately entered final order is counted. The time periods between the hearing of these attorney fees/cost motions/petitions and order thereon are included in the averages for OJCC aggregates and for the various Judges’ charts included herein.

§ 440.45(2)(c), Fla. Stat.: “Each Judge of Compensation Claims shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause. Prior to the expiration of a judge’s term of office, the statewide nominating commission shall review the judge’s conduct and determine whether the judge’s performance is satisfactory. Effective July 1, 2002, in determining whether a judge’s performance is satisfactory, the commission *shall* consider the extent to which the judge has met the requirements of this chapter, including, but not limited to, the requirements of sections 440.25(1) and (4)(a)-(e), 440.34(2), and 440.442. If the judge’s performance is deemed satisfactory, the commission shall report its finding to the Governor no later than 6 months prior to the expiration of the judge’s term of office.” (Emphasis added).

§ 440.25(1), Fla. Stat.: “Forty days after a PFB is filed under section 440.192, the judge of compensation claims shall notify the interested parties by order that a mediation conference concerning such PFB has been scheduled unless the parties have notified the judge of compensation claims that a private mediation has been held or is scheduled to be held. Mediation, whether private or public, shall be held within 130 days after the filing of the PFB. Such order must give the date the mediation conference is to be held. Such order may be served personally upon the interested parties or may be sent to the interested parties by mail. If multiple PFBs are pending, or if additional PFBs are filed after the scheduling of mediation, the judge of compensation claims shall consolidate all PFBs for one mediation. The claimant or the adjuster of the employer or carrier may, at the mediator’s discretion, attend the mediation conference by telephone or, if agreed to by the parties, other electronic means. A continuance may be granted upon the agreement of the parties or if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the party’s control. Any order granting a continuance must set forth the date of the rescheduled mediation conference. A mediation conference may not be used solely for the purpose of mediating attorneys’ fees.”

§ 440.25(4)(a), Fla. Stat.: “If the parties fail to agree to written submission of pretrial stipulations, the Judge of Compensation Claims shall conduct a live pretrial hearing. The Judge of Compensation Claims shall give the interested parties at least 14 days advance notice of the pretrial hearing by mail.”

§ 440.25(4)(b), Fla. Stat.: “The final hearing must be held and concluded within 90 days after the mediation conference is held, allowing the parties sufficient time to complete discovery. Except as set forth in this section, continuances may be granted only if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the party’s control. The written consent of the claimant must be obtained before any request from a claimant’s attorney is granted for an additional continuance after the initial continuance has been granted. Any order granting a continuance must set forth the date and time of the rescheduled hearing. A continuance may be granted only if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the control of the parties. The Judge of Compensation Claims shall report any grant of two or more continuances to the Deputy Chief Judge.”

182 § 440.25(4)(c), Fla. Stat.: “The Judge of Compensation Claims shall give the interested parties at least 14 days’ advance notice of the final hearing, served upon the interested parties by mail.”

183 § 440.25(4)(d), Fla. Stat.: “The final hearing shall be held within 210 days after receipt of the PFB in the county where the injury occurred, if the injury occurred in this state, unless otherwise agreed to between the parties and authorized by the judge of compensation claims in the county where the injury occurred. However, the claimant may waive the timeframes within this section for good cause shown. If the injury occurred outside the state and is one for which compensation is payable under this chapter, then the final hearing may be held in the county of the employer’s residence or place of business, or in any other county of the state that will, in the discretion of the Deputy Chief Judge, be the most convenient for a hearing. The final hearing shall be conducted by a judge of compensation claims, who shall, within 30 days after final hearing or closure of the hearing record, unless otherwise agreed by the parties, enter a final order on the merits of the disputed issues. The judge of compensation claims may enter an abbreviated final order in cases in which compensability is not disputed. Either party may request separate findings of fact and conclusions of law. At the final hearing, the claimant and employer may each present evidence with respect to the claims presented by the PFB and may be represented by any attorney authorized in writing for such purpose. When there is a conflict in the medical evidence submitted at the hearing, the provisions of section 440.13 shall apply. The report or testimony of the expert medical advisor shall be admitted into evidence in a proceeding and all costs incurred in connection with such examination and testimony may be assessed as costs in the proceeding, subject to the provisions of section 440.13. No judge of compensation claims may make a finding of a degree of permanent impairment that is greater than the greatest permanent impairment rating given the claimant by any examining or treating physician, except upon stipulation of the parties. Any benefit due but not raised at the final hearing which was ripe, due, or owing at the time of the final hearing is waived.”

184 § 440.25(4)(e), Fla. Stat.: “The order making an award or rejecting the claim, referred to in this chapter as a ‘compensation order,’ shall set forth the findings of ultimate facts and the mandate; and the order need not include any other reason or justification for such mandate. The compensation order shall be filed in the Office of the Judges of Compensation Claims at Tallahassee. A copy of such compensation order shall be sent by mail to the parties and attorneys of record at the last known address of each, with the date of mailing noted thereon.”

185 § 440.442, Fla. Stat.: “The Deputy Chief Judge and judges of compensation claims shall observe and abide by the Code of Judicial Conduct as adopted by the Florida Supreme Court. Any material violation of a provision of the Code of Judicial Conduct shall constitute either malfeasance or misfeasance in office and shall be grounds for suspension and removal of the Deputy Chief Judge or judge of compensation claims by the Governor.”

186 There is a small population of cases in which an employer/carrier may be entitled to reimbursement from the Special Disability Trust Fund, § 440.49, Fla. Stat. In the event of a dispute regarding the appropriateness of reimbursement, the Office of Judges of Compensation Claims holds a trial and determines the legal and factual sufficiency.

187 That inclusion had been consistent for almost a decade. The description of what constitutes a “trial order” is iterated in various prior Annual Reports. With these descriptions published, the inclusionary nature of the term should be readily apparent. See endnote 4.

188 <https://fljcc.org/JCC/publications/reports/2018SR-MSR.pdf>, last visited October 25, 2018.

189 In 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18.

190 *Infra*, endnote 180

191 *Id.*

192 § 440.34(2), Fla. Stat.: “In awarding a claimant’s attorneys’ fee, the Judge of Compensation Claims shall consider only those benefits secured by the attorney. An attorney is not entitled to attorneys’ fees for representation in any issue that was ripe, due, and owing and that reasonably could have been addressed, but was not addressed, during the pendency of other issues for the same injury. The amount, statutory basis, and type of benefits obtained through legal representation shall be listed on all attorneys’ fees awarded by the judge of compensation claims. For purposes of this section, the term “benefits secured” does not include future medical benefits to be provided on any date more than 5 years after the date the claim is filed. In the event an offer to settle an issue pending before a judge of compensation claims, including attorneys’ fees as provided for in this section, is communicated in writing to the claimant or the claimant’s attorney at least 30 days prior to the trial date on such issue, for purposes of calculating the amount of attorneys’ fees to be taxed against the employer or carrier, the term “benefits secured” shall be deemed to include only that amount awarded to the claimant above the amount specified in the offer to settle. If multiple issues are pending before the judge of compensation claims, said offer of settlement shall address each issue pending and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also unequivocally state whether or not it includes medical witness fees and expenses and all other costs associated with the claim.”

193 The term “trial order” now includes final orders regarding benefits sought through a Petition for Benefits, attorney fee orders on either entitlement or amount, and cost orders. See endnote 4, and the Glossary of Terms, page 48-49. The term “trial order” necessarily means the order resulted from a trial.

194 Despite the definitions, and their transparent representation, there are those who disagree with the definitions. Rather than express disagreement with the published, consistent and transparent definitions, some of those instead have elected to refer

to the statistics in this report as “false.” No evidence has been provided or proffered in support of the “false” characterization. There is no support to conclude that any information in this report is false.

This caused the OJCC to operate in 2011-12 (and since) in contravention of state law which requires the OJCC to maintain the judges, mediators and offices as they were when the legislature moved the OJCC into the DOAH in 2001. As the Legislature added one judge and mediator in 2006, the removal of one judge and mediator in 2012 did not contradict that statute. However, the removal of three additional mediators clearly put the OJCC in violation of that law.

Until 2016, “trial” was defined as “A ‘trial’ for the Office of Judges of Compensation Claims, such that the resulting order is counted in statistics as a ‘trial order,’ means that there must have been a substantive order entered, including findings of fact and conclusions of law, following a hearing that included the presentation of evidence.” That broader definition included evidentiary proceedings on a variety of substantive issues. However, some judges sought to enhance the appearance of their work load holding evidentiary hearings on such procedural matters as motions for continuance, stipulations for appointment of expert medical advisor and more. See also endnote 4.

In addition to “trial orders,” each judge enters an extensive volume of substantive orders. These may result from discovery issues, motions for appointment of an expert medical advisor, attorney’s fees, and other matters that require consideration of evidence and which may require significant time and effort to produce. There are some judges who delegate that responsibility to the attorneys involved in a particular case. However, the need for these orders and the effort required to produce and publish them bears noting. In addition to trials, the judges in 2018 conducted 4,164 (134 per judge) other hearings, entered 103,233 (3,330 per judge) other orders, entered orders approving 26,209 (845 per judge) settlements and 12,134 (391 per judge) stipulations.

Id.

Id.

Id.

Id.

The gap represents the time period during which there was no mediator assigned to District Lakeland. During that time, the mediation responsibilities for that District were divided among various mediators throughout the state.

Infra, endnote 196.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

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Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Public Data, Google,

https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude &met_y=population&idim=state:12000:06000&hl=en&dl=en, last visited October 25, 2018.

407,742 Floridians = 12.64 million divided by 31 judges.

Section 440.20(11)(d), Florida Statutes, was added to the statute, stating “with respect to any lump-sum settlement under this subsection, a judge of compensation claims must consider at the time of the settlement, whether the settlement allocation provides for the appropriate recovery of child support arrearages.”

2015-16 Annual Report of the Office of Judges of Compensation Claims, Page 22. See,

<https://www.fljcc.org/JCC/publications/reports/2016AnnualReport/Index.html>, last visited October 25, 2018.

https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude &met_y=population&idim=state:12000:06000&hl=en&dl=en, last visited October 25, 2018. That figure is generally more than one half of the entire agency budget each fiscal year.

677,419 Floridians = 20.9 million divided by 31 judges. See Suburban Stats, <https://suburbanstats.org/population/how-many-people-live-in-florida>; last visited October 30, 2018.

Historically also referred to as “Deputy Commissioners.”

“Effective July 1, 1989, each full-time judge of compensation claims shall receive a salary in an amount equal to \$4,000 less than that paid to a circuit court judge. The Chief Judge shall receive a salary of \$1,000 more per year than the salary paid to a full-time judge of Compensation Claims. These salaries shall be paid out of the fund established in s. 440.50.”

“The general master shall be employed on a full-time basis by the office of the Chief Judge. The rate of compensation for a general master shall be 60 percent of the salary of a judge of compensation claims.”

225 See, Florida Assessments, <http://www.myfloridacfo.com/division/wc/Insurer/Assessments/wcatf.htm>, last visited October
226 25, 2018.

According to the Division of Workers' Compensation, the WCATF currently has a balance of \$171,042,601.58. Email from
Greg Jenkins, October 29, 2018, retained by author. According to the Division of Workers' Compensation, the WCATF
had a balance at the end of fiscal 2017 of \$160,332,179. Over the last four fiscal years, the year-end balance has increased
from \$58,782,099 (2012) to \$73,261,056 (2013) to 97,142,337 (2014) to \$115,998,066 (2015) to \$136,788,771 (2016) to
\$160,332,179. The WCATF is healthy and fully funded. Email from Andrew Sabolic, Assistant Director of the Division of
Workers' Compensation, July 18, 2017, retained by author.

227 In Re Certification of Need for Additional Judges, Case No. SC16-2127, December 15, 2016,
228 <http://www.floridasupremecourt.org/decisions/2016/sc16-2127.pdf>.

The Conference of Circuit Judge of Florida, Inc. is a Florida Not For Profit Corporation at 215 South Monroe St,
Tallahassee, Florida 32301. See [http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=domnp-
n05000010901-25716128-5af2-49ce-97df-20a328282900&transactionId=n05000010901-e37b2dd7-3553-469e-8b4a-
8e2c14be13cb&formatType=PDF](http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=domnp-n05000010901-25716128-5af2-49ce-97df-20a328282900&transactionId=n05000010901-e37b2dd7-3553-469e-8b4a-8e2c14be13cb&formatType=PDF), last visited October 25, 2018.

229 See: <http://floridacountyjudges.com/>, last visited October 25, 2018.

230 There are 72 appellate court judges in Florida. (Supreme Court, 7; First District, 15; Second District, 16; Third District, 11;
Fourth District, 12, and Fifth District, 11); <http://www.flcourts.org/florida-courts/district-court-appeal.stml>, last visited July
11, 2017.

231 See Florida Judges Hire Lobbyist, *Miami Herald*, December 30, 2015, [http://www.miamiherald.com/news/politics-
government/state-politics/article52344720.html](http://www.miamiherald.com/news/politics-government/state-politics/article52344720.html), last visited October 25, 2018.

232 The calculations were done using the calculator provided by the United States Department of Labor, Bureau of Labor
Statistics, https://www.bls.gov/data/inflation_calculator.htm, last visited July 11, 2017.

233 See, § 440.12(2), F.S. "compensation shall not exceed an amount per week which is: (a) Equal to 100 percent of the
statewide average weekly wage, determined as hereinafter provided for the year in which the injury occurred; however, the
increase to 100 percent from 66 23percent of the statewide average weekly wage shall apply only to injuries occurring on or
after August 1, 1979; and (b) Adjusted to the nearest dollar."

234 Bureau of Monitoring and Audit Statistics, Minimum/Maximum Compensation Rate Table,
http://www.myfloridacfo.com/division/wc/Insurer/bma_rates.htm, last visited July 11, 2017.

235 Florida State Workers to see Pay Raise, Pension Changes, *Palm Beach Post*, May 1, 2017;
[http://www.palmbeachpost.com/news/state--regional-govt--politics/florida-state-workers-see-pay-raise-pension-
changes/pkhE3ugsrMnftprLTHLTCL/](http://www.palmbeachpost.com/news/state--regional-govt--politics/florida-state-workers-see-pay-raise-pension-changes/pkhE3ugsrMnftprLTHLTCL/), last visited July 11, 2017.

236 § 121.091, Fla. Stat. (2017).

237 § 440.45(2)(a), Fla. Stat. (2017).

238 § 121.021(3), Fla. Stat. (2017).

239 There is the risk of government changes in appointment or eligibility through term limits or non-retention. There is the risk
of not vesting in the retirement system. There is often the risk of relocating residence to the geography of the appointment.

240 § 440.45(2)(b), Fla. Stat. (2017): "Except as provided in paragraph (c), the Governor shall appoint a judge of compensation
claims from a list of three persons nominated by a statewide nominating commission." (emphasis added).

241 Two panels of three names each were submitted to the Governor, but each list contained two names also included in the
other list.

242 Brian Anthony, Lawrence Anzalone, Mark Gregory Capron, Tonya Ann Oliver, Merette Leigh Oweis, Rita Lawton Young.
Six applicants in total applied for the two positions, yielding essentially three each. The commission nominated a total of
four people for the two positions, with two of the four nominated twice, once for each position.

243 The same six were eligible for the second position. *Id.*

244 Jeffrey Breslow, David M. Goehl, Rosalind Rae Milian, Michael James Ring.
245 Stephen Armstrong, Laura Buck, Lourdes Sancermi, Timothy Stanton.
246 Robert Wells.

247 Two vacancies were simultaneous for interview. Five total applications (after a sixth withdrew prior to interview) equaled
2.5 per opening: David Goehl, Walter Havers, Jeffrey Jacobs, Michele Ready, Robert Wells.

248 *Id.*

249 Lawrence Anzalone, Robert Arthur, Mark Capron, Juliana Curtis.
250 Jeffrey Breslow, Jill Forman, Jeffrey Jacobs, Marydenese Ommert, Ken Schwartz, Carol Stephenson.

251 This was on the first advertisement for MIA vacancy and two applications were received: Walter Havers, Jeffrey Jacobs.
252 Lawrence Anzalone, Jeffrey Jacobs, Gregory Johnsen, Marydeneyse Ommert, Michael Peterson, Debra Pierce, Ken
Schwartz, Carol Stephenson, Janet Tacoronte (withdrew prior to interview).

253 John Moneyham, Michael Peterson, Tara Said, Jonathan Walker.

254 Lawrence Anzalone, John Paul Brooks, Frank Clark, Timothy Stanton.

255 Lawrence Anzalone, John Paul Brooks, Thomas Hedler, Carrie McAliley, Keef Owens, Debra Pierce, Mary Spagnola,
Carol Stephenson.
256 Lawrence Anzalone, Jill Forman, Debra Pierce, Thomas Hedler.
257 George Boring, Eric Bredemeyer, Frank Clark, Kenneth Kugler, Tania Ogden, James Radloff (withdrew prior to interview),
Timothy Stanton, Jack Weiss.
258 Iliana Forte, Gregory Johnsen, Roberto Mendez, Kenneth Schwarz, Carol Stephenson, Wendy Sweeny.
259 Robert Dietz, Mark Hill, Keefe Owens, Kenneth Schwartz, Timothy Stanton, Wendy Sweeny, Larry Wang, Michael
Wilkes.
260 Eugene Flinn, Gregory Johnsen, Eduardo Almeyda, Stephen Renick.
261 Jane Loewinger, Wilbur Anderson, Robert Dietz, Bruce Epple, Clay Meek, Keef Owens, Steven Pyle, Timothy Stanton,
Michael Wilkes.
262 Gregory Johnsen, Margret Kerr, Steve Renick, Arthur Sevak.
263 Deborah Hart, Mark Massey, Lawrence Anzalone, Yasheaka Campbell, Hillarey McCall.
264 Effectively this was 8.5 per vacancy, a total of 17 applicants: Mark Becker, John Darin, Alan Gordon, William Holley,
Ralph Humphries, Martin Liebowitz, Joy Lordahl, Edward Mallow, Colleen Ortiz, Keef Owens, Debra Pierce, Leesa
Powell, Salisu Richardson, Melanie Rodrigues, Timothy Stanton, Danielle Tharpe, Robert Trumbo, Rita Young.
265 *Id.*
266 Don Allen, Robert Arthur, John Brooks, John Darrin, Dawn Hayes, Debra Pierce, Margaret Sojourner, Timothy Stanton,
Jack Weiss, Michael Wilkes, James Spears.
267 Don Allen, John Brooks, Danielle French, Patrick Helm, Kenneth Hesser, Marjoree Hill, Mark Massey, Lyle Platt, Melanie
Rodriguez, Stephen Rosen, Stuart Suskin, Roland Tan, William Wieland.
268 Wilbur Anderson, Douglas Daze, Alan Gordon, Clayton Harland, Marjorie Renee Hill, Lyle Platt, Melanie Rodriguez,
Stephen Rosen, Roland Tan, William Wieland.
269 Don Allen, Eduardo Almeyda, Kenneth Conner, John Darrin, Joseph Farrell, Thomas Ferrara, James Hurt, Jeffrey Hussey,
AnneMarie Kim, Charles Leo, Patrick Malone, Valerie Marshall, Patrick McGinley, Randall Porcher.
270 In fairness, some volume of vacancy has occurred recently due to non-reappointment.

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STATE OF FLORIDA

Division of Administrative Hearings



2017-2018 Settlement Report and Mediation Statistics Report of the Office of the Judges of Compensation Claims

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Overview of Florida Workers' Compensation:

The Office of the Judges of Compensation Claims ("OJCC") is part of the Division of Administrative Hearings, referred to throughout this Report as DOAH. Each year, the OJCC publishes an Annual Report, which provides the Florida Legislature and Governor with statistical measures of the volumes of litigation and the operations of this Office, Fla. Stat. §440.45(5). Those reports are available on the OJCC website, www.fljcc.org, within the "Publications" section under the "Reports" tab.

Florida Workers' Compensation is a self-executing system defined by Chapter 440, F.S. The purpose of workers' compensation is to provide individuals injured at work with certain defined benefits for the treatment of the resulting medical condition(s) and for replacement of a portion of the wages lost as a result of a work accident or disease. Chapter 440, F.S. defines who must participate in the workers' compensation system, and delineates the participant's rights and responsibilities. The primary participants in this system are Florida's employers and their employees. Some employers purchase workers' compensation insurance from a "carrier." These are therefore often collectively referred to as the "employer/carrier" or the "E/C." Other employers are "self-insured," but have their claims administered or managed by an outside entity, commonly called "servicing agents." These are therefore often referred to collectively as "E/SA." For the purposes of this report, references to E/C should be interpreted to refer to employers, carriers, and servicing agents collectively, unless some distinction between insured and self-insured is specifically stated.

The OJCC mission is centered on the impartial processing, mediating, and adjudicating of disputes regarding benefits allegedly due to such injured workers. The litigation process for most Florida workers' compensation disputes begins with the filing of a pleading called the petition for benefits, or "PFB." A PFB may seek medical care benefits and/or lost income ("indemnity") benefits. Mediation is mandatory in most Florida workers' compensation claims, Fla. Stat. §440.25(1). There is a limited exception to this requirement in Fla. Stat. §440.25(4)(h) for petitions that only "involve a claim for benefits of \$5,000 or less."

Organizationally, the OJCC is comprised of thirty-one Judges. Each is appointed by the Governor for a term of four years. Geographically, the Judges serve in seventeen District Offices throughout Florida. For much of FY 2018 the OJCC employed twenty-eight full-time mediators, each of whom is appointed by the Director of the DOAH. Each OJCC mediator was historically assigned to a particular Judge. Together, each such Judge/Mediator team and staff formed a "Division" of the OJCC. With recent budget changes, this team approach has been altered; see below "2012 Staff Reduction." In 2018, the OJCC reclassified a staff position to create a 29th mediator position.

Mediation is statutorily mandated to occur within 130 days after the PFB is filed. If an OJCC mediator cannot accommodate that time restriction, then the PFB must be assigned to private mediation at the expense of the E/C. Additionally, parties may elect to participate in private mediation in lieu of mediation with the assigned OJCC mediator.

Data Collection and Reporting:

The data in this report is dependent for accuracy upon the efforts of district staff and mediators in the seventeen District Offices throughout Florida. The OJCC has historically struggled with accurate data collection. Since fiscal year 2005-06 extensive effort has been expended to provide all OJCC personnel with training and resources in support of accurate collection of data regarding all OJCC operations, including mediation efforts and mediation outcomes. Furthermore, the OJCC Clerk's office conducts extensive and ongoing auditing to both verify data and reinforce training. It is believed that the data represented herein is accurate as a result of that significant effort.

A petition for benefits ("PFB") is effectively a combination of a "claim for benefits" and an "application for a hearing" on the claimed benefits. Each PFB might seek a single benefit, such as a claim for a change in physician or a medical test, or could seek multiple benefits. When an injured worker believes she or he is entitled to a benefit that is not provided by the Employer or their insurance carrier, the worker files a PFB describing entitlement to that benefit(s). This filing will generally result in the scheduling of an OJCC mediation. Thereafter, as other additional benefits become due, an injured worker may file additional PFB. All pending PFBs filed before the scheduled mediation will be mediated at that time, pursuant to Section 440.25(1). Thus any OJCC mediation could address one benefit or many benefit issues.

Entitlement to various workers' compensation benefits may be litigated before the OJCC over a period of years as those issues arise. Therefore, workers' compensation is very different than other litigation which addresses civil damages, which are less serial in nature. Because of the serial nature of workers' compensation benefits, and the resulting potential for serial litigation of the issues surrounding entitlement to those benefits, it is not uncommon for a particular case to be mediated, albeit on different benefits, by the same OJCC mediator on more than one occasion.

2012 Staff Reductions and Consolidations in OJCC Mediation

The Legislature altered the OJCC budget for Fiscal Year 2013, which began July 1, 2012. In all, five positions were eliminated from the OJCC budget (from 182 total positions to 177). Since that time, the OJCC has made various adjustments. Offices that previously were assigned three mediators and three judges were reduced to two mediators each. This has necessitated out-of-district mediation assistance periodically in District WPB. These efforts are documented more fully in the 2015-2016 Mediation Report.¹ In 2018, the OJCC reclassified a staff position to restore a half-time mediator to each of District Ft. Lauderdale and District West Palm Beach.²

Similarly, with various mediator retirements and resignations, the mediations have been regularly maintained on the OJCC calendar through the efforts of other state mediators and conducted by telephone or video teleconference. The effort illustrates the flexibility of the OJCC generally and of the exceptional people that are serving Florida in this Office. The state mediators have demonstrated a spirit of teamwork and dedication that illustrates the core value of public service.

In 2017, the OJCC began providing public access to mediator calendars. This is an effort to empower parties to more efficiently reschedule mediations, reduce the need for continuance, and convenience parties. That effort was undertaken with minimal programming, allowing parties to view the calendars and to perceive potential availability. Each mediator has traditionally been afforded significant autonomy in calendar management. The variety of mediator calendar practices has proven difficult for the public. In 2019, the OJCC is undertaking to reduce variation and provide greater consistency.

Reports of Settlements Pursuant to §440.20(11)(a):

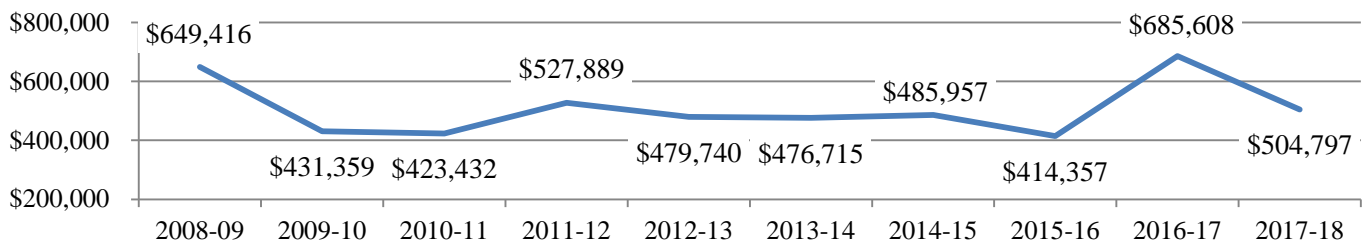
Although settlements of litigated disputes are generally favored in the law, Florida workers' compensation cases were historically treated differently, with specific findings and often hearings required for settlement approval. It is currently statutorily permissible to settle all of a worker's rights under the workers' compensation statute. There are three legal provisions that authorize settlements of workers' compensation cases, all contained in Fla. Stat. §440.20(11).

Injured workers who are represented by an attorney may settle their cases without the approval of a Judge of Compensation Claims. However, unrepresented claimants may settle their cases only if the Judge approves, and that approval can only be granted if (a) the employer has denied compensability of the accident from the outset or (b) the claimant has reached the point where no further improvement of his or her medical condition can be expected (maximum medical improvement).³ Of these settlements by unrepresented claimants, only the former (a) are required by statute to be reported by Judges of Compensation Claims and summarized in this special annual report to the legislature.

These cases, known as "11(a) washouts" because they are authorized by Fla. Stat. §440.20(11)(a) and permanently extinguish or "washout" an employer's liability for a given accident, are the subject of this report. Other settlements are reported in the comprehensive Annual Report of the Office of Judges of Compensation Claims (OJCC), published in December of each year.⁴ The "11(a) settlements" for 2017-18 totaled \$504,797. This represented a significant (-26%) decrease from 2016-17, and a return to the reasonably steady aggregate value that marked 2012-13 through 2014-15. The "11(a)" volume dipped to its lowest volume in recent years in 2015-16, and spiked in 2016-17 to the highest in ten years. The 2017-18 data may suggest that both of those years were exceptions, and not indicative of a changed trend regarding these settlements. The following affords visualization of the last ten years.

Year	Aggregate Value 11(a) Settlements	Percent Change
2008-09	\$649,416	
2009-10	\$431,359	-34%
2010-11	\$423,432	-2%
2011-12	\$527,889	25%
2012-13	\$479,740	-9%
2013-14	\$476,715	-1%
2014-15	\$485,957	2%
2015-16	\$414,357	-15%
2016-17	\$685,608	65%
2017-18	\$504,797	-26%

Aggregate Value 11(a) Settlements



In the fiscal year (“FY”) ending June 30, 2018, there were 70 reported 11(a) settlements, a small decrease from the 87 reported in FY 2017. Though there has been some fluctuation, the total volume of these settlements has been between 70 and 99 for the last eight fiscal years. The overall aggregate dollar volume of these settlements has likewise been remarkably similar overall, as described above.

The settlements in fiscal year 2017-18 were classified by the reason stated for denying compensability of the claim. As shown in the chart (below), the largest categories of denial were “Causal Connection Lacking,” which accounted for approximately 25%, “Injury not Timely Reported” at 14% and “Positive Drug Test” also at 14% of the 11(a) settled cases. These three categories accounted for approximately 53% of the 11(a) settlements in 2017-18.

Reason for Denial	Volume	Percent	Total	Average	High	Low
Causal Connection Lacking	17	24.29%	\$118,350	\$6,962	\$25,000	\$2,500
Injury Not Timely Reported	10	14.29%	\$91,775	\$9,178	\$20,000	\$1,500
Positive Drug Test	10	14.29%	\$46,850	\$4,685	\$13,500	\$1,000
No Accident Occurred	9	12.86%	\$48,247	\$5,361	\$13,500	\$1,500
No injury occurred	8	11.43%	\$30,150	\$3,769	\$10,000	\$500
Not in Course and Scope of Employment	5	7.14%	\$38,750	\$7,750	\$24,000	\$3,000
Unspecified	5	7.14%	\$95,600	\$19,120	\$55,000	\$2,700
Statute of Limitations	4	5.71%	\$8,300	\$2,075	\$5,900	\$400
Not an employee	2	2.86%	\$26,775	\$13,388	\$24,000	\$2,775
	70		\$504,797			

The number of 11(a) washouts continues to be dwarfed by the other types of washout settlements authorized by Fla. Stat. §440.20(11). In fiscal year 2017-18 there were 26,204 workers’ compensation settlements. Accordingly, the number of 11(a) washouts in 2017-18 (70) was only 0.26% (70/26,204) of all settlements approved during the year. The percentage has been relatively similar for the last six fiscal years. It is respectfully submitted that a special report of the volume and descriptions of these settlements is not necessary and these statistics could be easily incorporated into the OJCC Annual Report, published each November. That conclusion has been noted in the statutorily required 11(a) settlement report for the last several years.

Number of Mediation Conferences Held:

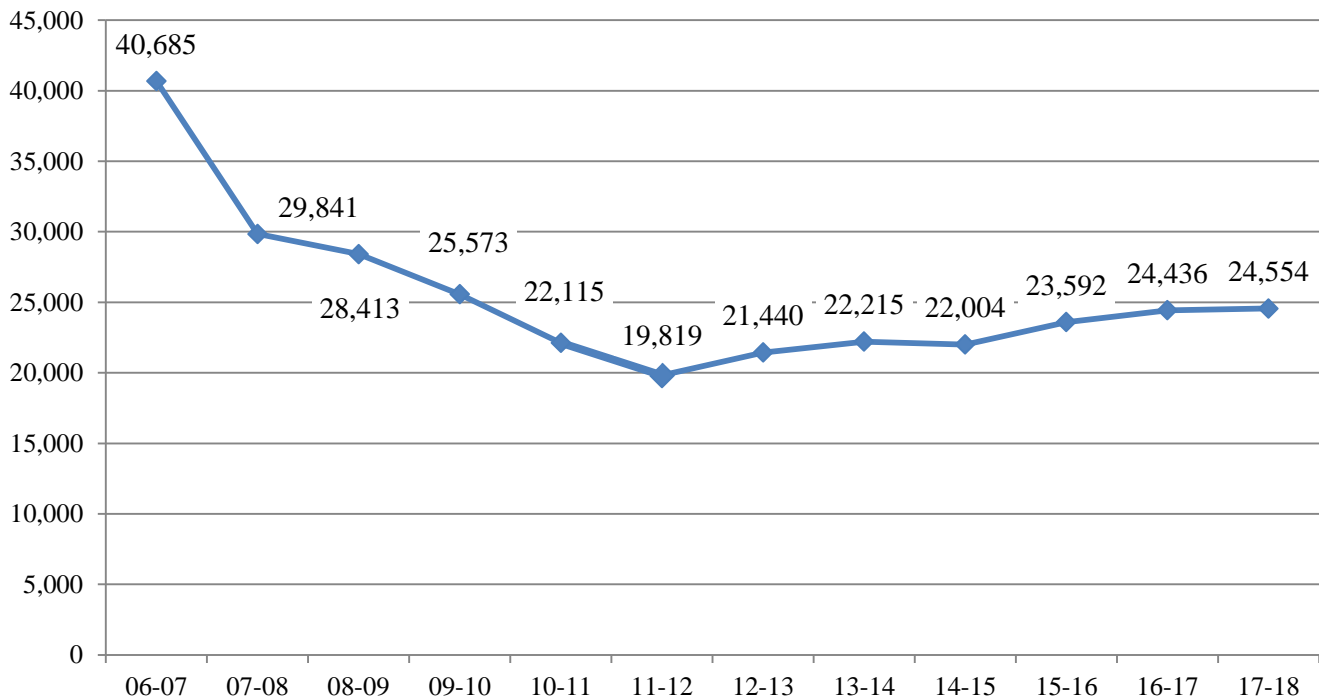
The volume of mediations held each year has decreased markedly since 2002-03. The rates of decrease in mediations conducted did not match the rate of decrease in PFB filings. This suggests that as PFB volume fell, OJCC mediators were able to act upon a greater percentage of the remaining PFB volume. It is therefore probable that a smaller volume of PFB were mediated privately in recent years due to the statutory 130 day mandate. As the volume of state mediation increases, the “unit” cost of each additional mediation conference decreases because the aggregate cost of the state mediation program, primarily mediator salary, physical premises requirements and computer hardware, remains constant regardless of mediation conference volume, within reasonable parameters. In recent years, the volume of mediations conducted has vacillated, but remained reasonably similar around 16,000.

The Florida workers’ compensation law requires that PFBs are filed only when benefits are ripe, due and owing. After a PFB is filed, an OJCC mediation conference is scheduled with the assigned mediator. Thereafter, it is not uncommon for additional PFB to be filed prior to that mediation. Therefore, the volume of PFB mediated is somewhat higher than the number of mediation conferences actually held, as more than one PFB is often mediated simultaneously. The following reflects the PFB filing volumes and mediation volume over the last 16 years.⁵

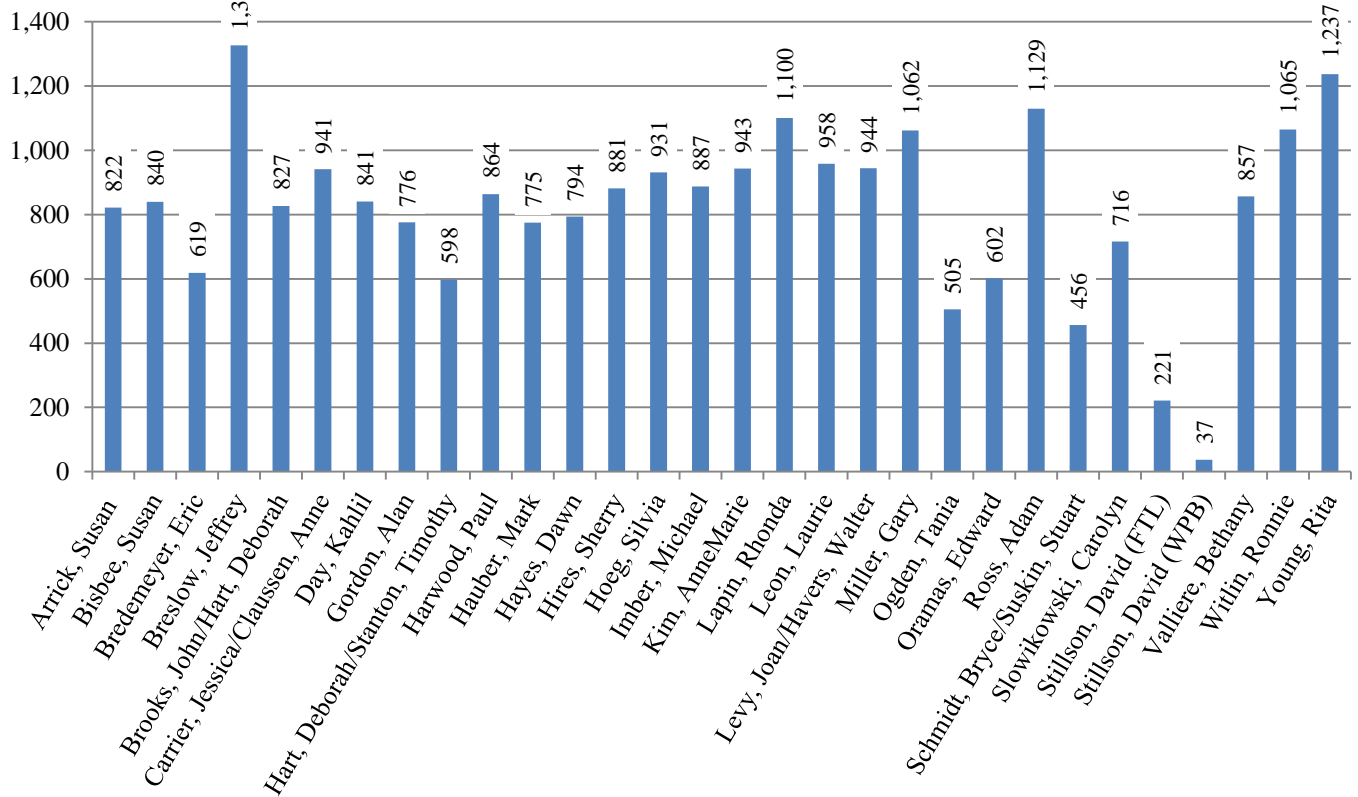
Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
2002-03	151,021		29,253	
2003-04	127,611	-15.50%	28,072	-4.04%
2004-05	107,319	-15.90%	26,410	-5.92%
2005-06	90,991	-15.21%	25,522	-3.36%
2006-07	82,607	-9.21%	22,258	-12.79%
2007-08	72,718	-11.97%	20,021	-10.05%
2008-09	73,863	1.57%	20,812	3.95%
2009-10	67,971	-7.98%	19,864	-4.56%
2010-11	64,679	-4.84%	17,896	-9.91%
2011-12	61,354	-5.14%	16,881	-5.67%
2012-13	58,041	-5.40%	15,850	-6.11%
2013-14	59,292	2.16%	16,188	2.13%
2014-15	60,021	1.23%	15,421	-4.74%
2015-16	67,265	12.07%	15,703	1.83%
2016-17	70,365	4.61%	16,079	2.39%
2017-18	70,295	-0.10%	16,167	0.55%

The overall volume of Petitions (PFB) mediated by State Mediators overall has decreased over the last ten years. The decreases were more pronounced between 2005-06 and 2006-07, followed by a steady decrease through 2011-12. The volume has remained remarkably similar over recent years.

Overall Volume of PFB Mediated



Volume of PFBs Mediated by Each Mediator 2017-18

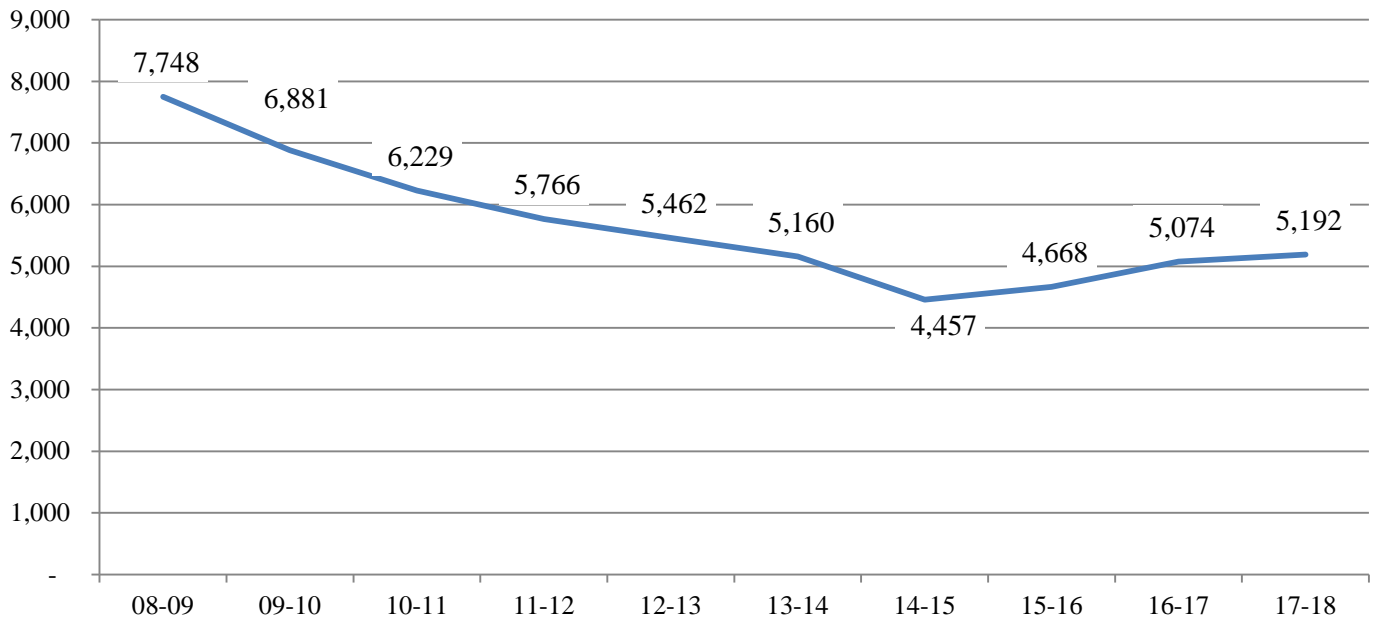


Dismissed and Resolved Prior

Some volume of petitions does not reach the mediation process. These may be dismissed before the scheduled mediation conference, or the parties may report that they have either settled the case or resolved the pending issues prior to the mediation. Still other cases are reset for private mediation. Through various paths significant volume of litigation is resolved among the parties after PFB filing, but without state mediation.

Similarly to the decline in state mediations, the volume of petitions that have been reset for private mediation decreased consistently 2008-09 through 2011-12. In 2013-14 the volume of petitions mediated by state mediators began to increase (illustrated in graph on preceding page). However, the volume of cases being set for private mediation continued thereafter to decrease through 2014-15, possibly due to the decreasing overall PFB volume. The volume being privately mediated has increased each year since 2014-15.

Reset Private

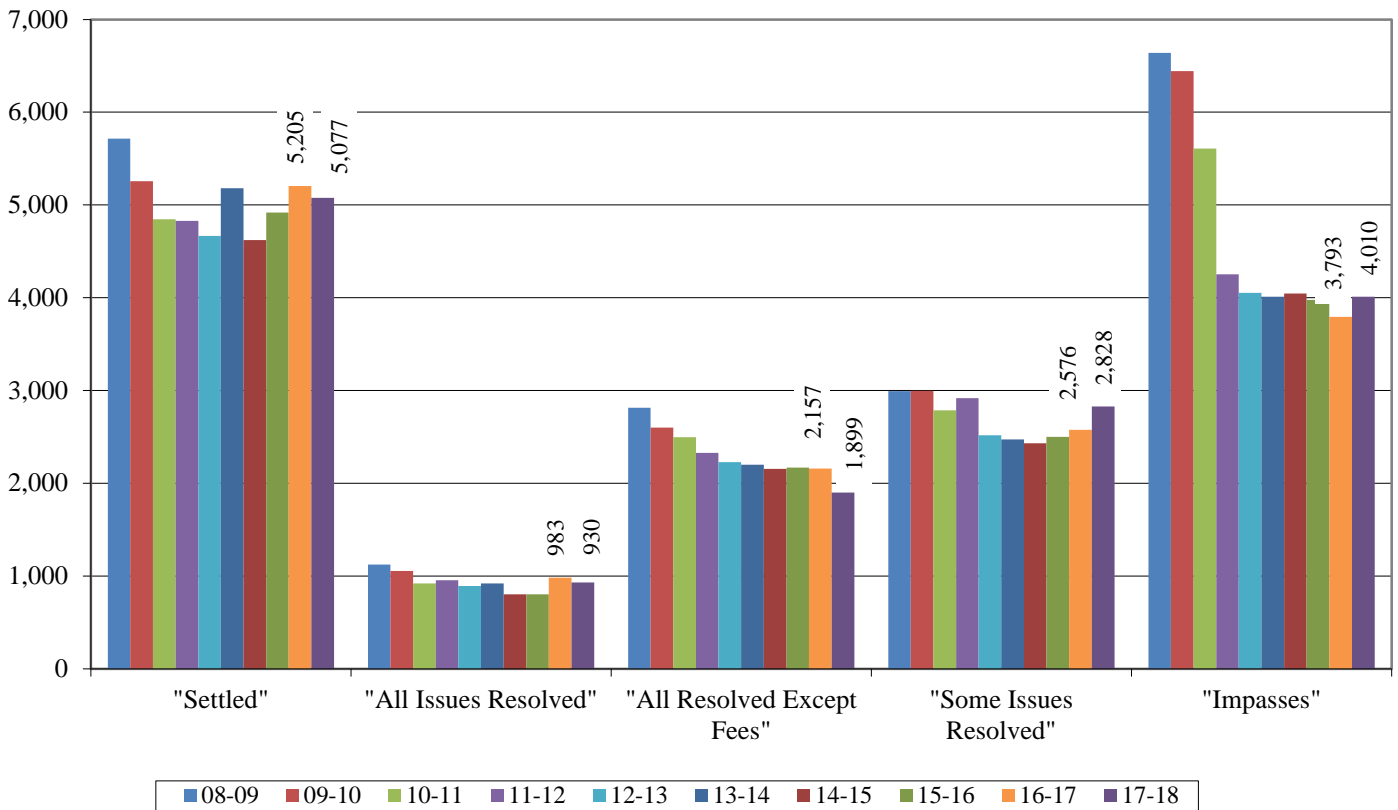


Disposition of Mediation Conferences:

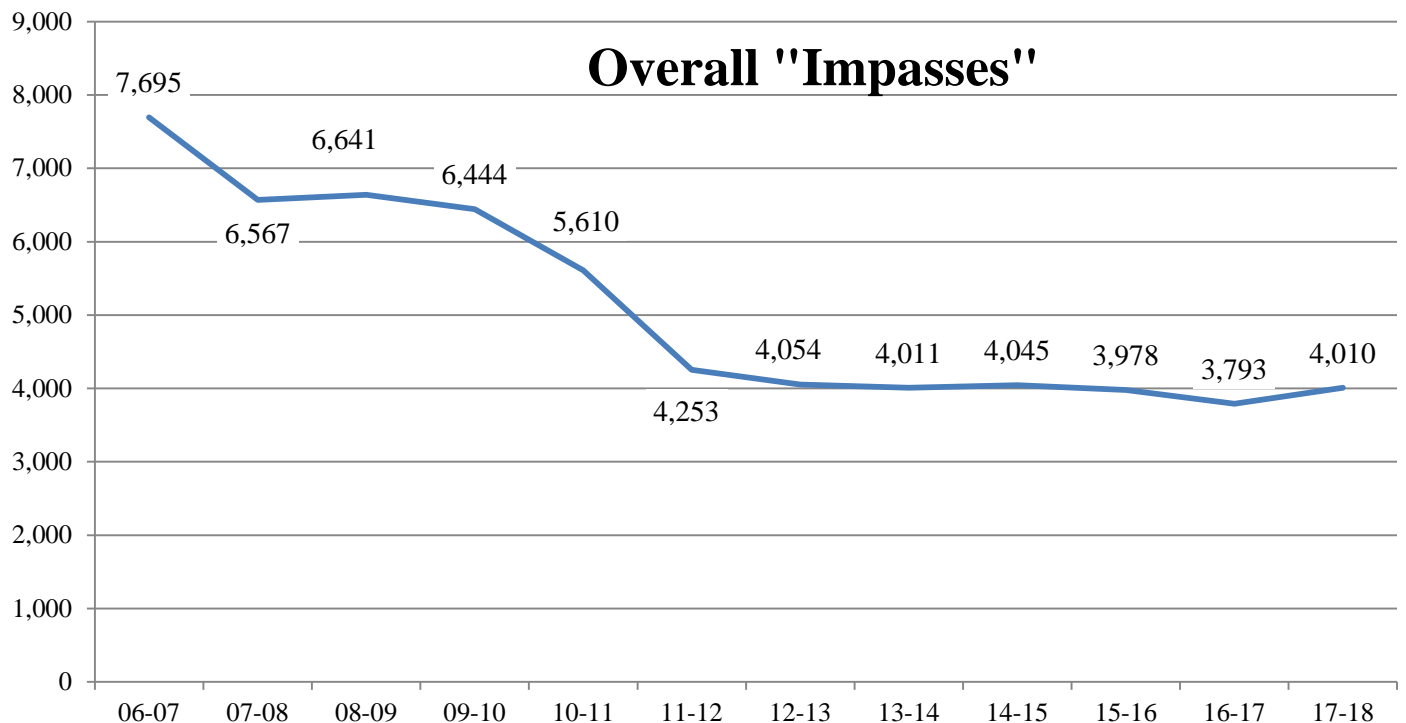
A petition for benefits (“PFB”) may seek only one substantive benefit (i.e. authorization of an orthopedic surgeon), or could contain many issues (i.e. orthopedic authorization, neurological authorization, diagnostic testing authorization, correction of the average weekly wage, payment of temporary total, temporary partial, supplemental benefits, and/or permanent total disability benefits, etc.). Virtually all PFBs also include claims for ancillary benefits related to one or more of these substantive benefits, such as penalties and/or interest on late paid indemnity benefits, and attorney’s fees and costs for the prosecution of all claimed benefits in the PFB. Additionally, a mediation conference may include the issues from one PFB or several.

Therefore, the outcome of mediations is expressed in terms of what was resolved at that particular mediation. The characterization “impasse” is used to reflect that no issues were resolved at mediation. The characterization “settled” reflects that the entire case, including the pending PFB issues and all future benefits as yet undue and unclaimed, were resolved. Between these two extremes of “impasse” (nothing) and “settled” (all) are a number of “partial” resolution characterizations used by the OJCC. Previously, some mediators mislabeled resolutions that occurred prior to state mediations, characterizing those outcomes as if those cancelled mediations had occurred. That action has undoubtedly resulted in misinterpretation of outcomes in prior OJCC reports. Those erroneously characterized outcomes dictate that comparisons with future data may also be suspect.

The term “some issues resolved” reflects that some subset of the claimed substantive issues has been resolved. The term “all issues resolved except attorney’s fees” reflects that all of the substantive issues and any ancillary penalty and/or interest issues were resolved, but fee/cost entitlement and/or amount issues remained. The term “all issues resolved” reflects that all claimed PFB issues, including all ancillary issues such as attorney’s fees and costs, were resolved. These potential outcomes can be expressed in a continuum ranging from the least resolution (“impasse”) to the most resolution (“settled”). The overall results of mediation are reflected in this graph, illustrating this continuum from “all,” or “settled” on the left side to the least “none” or “impasse” on the right side of the graph. The graph below reflects the last ten (10) fiscal years for each of these outcome characterizations. The



Some of these characterizations are likely unfamiliar to mediators and even litigators uninvolved in the Florida workers' compensation claims process. Most attorneys, however, are familiar with "impasse" as that characterization reflects that the mediation has concluded without any agreement. The volume of OJCC mediations concluding with no agreement on any portion of the claims has decreased in recent years, and has remained notably consistent in recent years, other than a marked improvement in 2016-17.

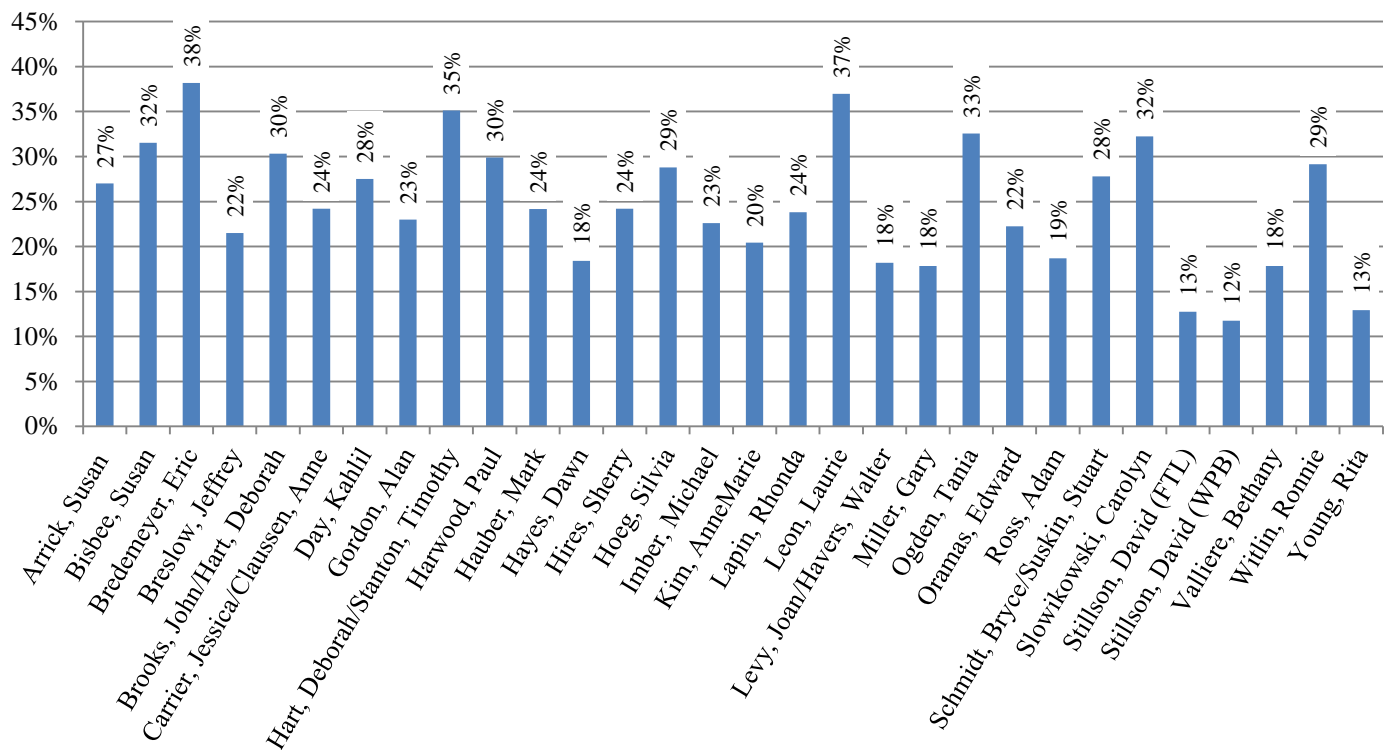


These marked decreases in “impasse” between 2005 and 2013 are illustrative of efforts by the OJCC mediators to resolve at least some aspect of the cases which are presented to them. Despite decreasing volumes of mediations overall, the percentages of convened mediations resulting in impasse were impressive, but have increased notably in 2017-18. Expressed as a percentage of the mediations held by OJCC mediators, the volume of “impasse” outcomes for the last ten years are:

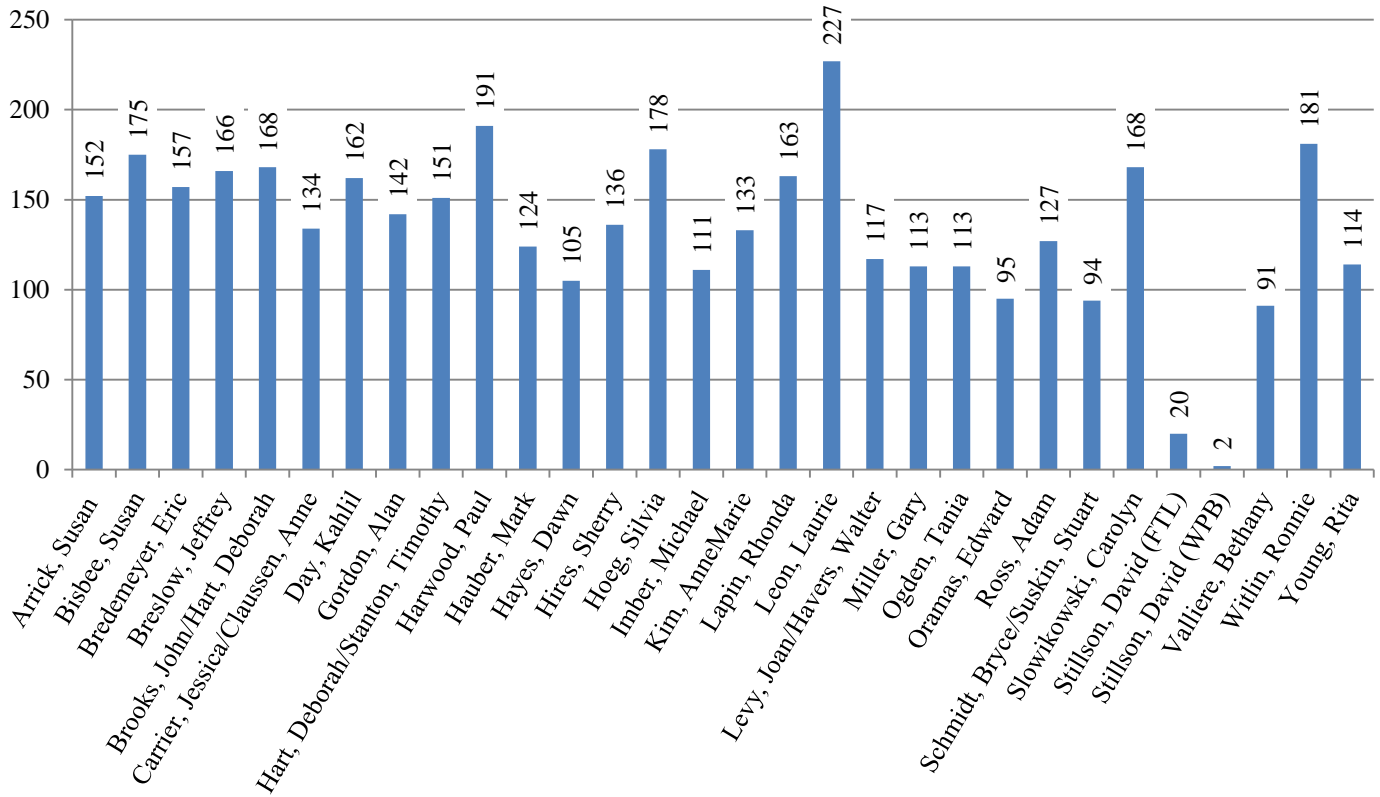
17-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18
32.8%	31.9%	32.4%	31.3%	25.2%	25.6%	24.8%	26.2%	25.3%	23.6%	26.8%

The corollaries of these figures, represents the volume of OJCC mediations in which at least some volume of issues were resolved. In approximately seventy-three percent (73.2%) of 2016-17 OJCC mediations, at least some issues were resolved. This is an important fact, more so even than a measure of “settlements,” because the workers’ compensation statute creates an entitlement to a variety of benefits, many of which are interrelated and some of which are dependent upon the results of others. As an example, an injured worker may seek medical care and benefits to replace lost income. Those lost income benefits (“indemnity”) are generally payable when an injury precludes or limits performance of work. Whether an injury precludes or limits work is a medical opinion. Thus, a mediation conference on such a case that resolves only the claim for medical care will potentially lead to a medical opinion that affects or resolves the question of whether indemnity benefits are due. Thus, a “some issues resolved” represents an agreement that some disputed benefits will be provided to the injured worker, and represents potential other progress in the determination of remaining issues. Mediations are obviously very effective in resolving issues.

Percentage of Mediations "Impassed"



"Impasse" by Each Mediator



It has been previously noted that each year a very small percentage of mediation outcomes are not recorded in the OJCC database appropriately, but were merely marked as “held.” That characterization provides no information as to what was accomplished in that mediation. The vague nature of that characterization led to OJCC policy encouraging avoidance of its use for mediations.

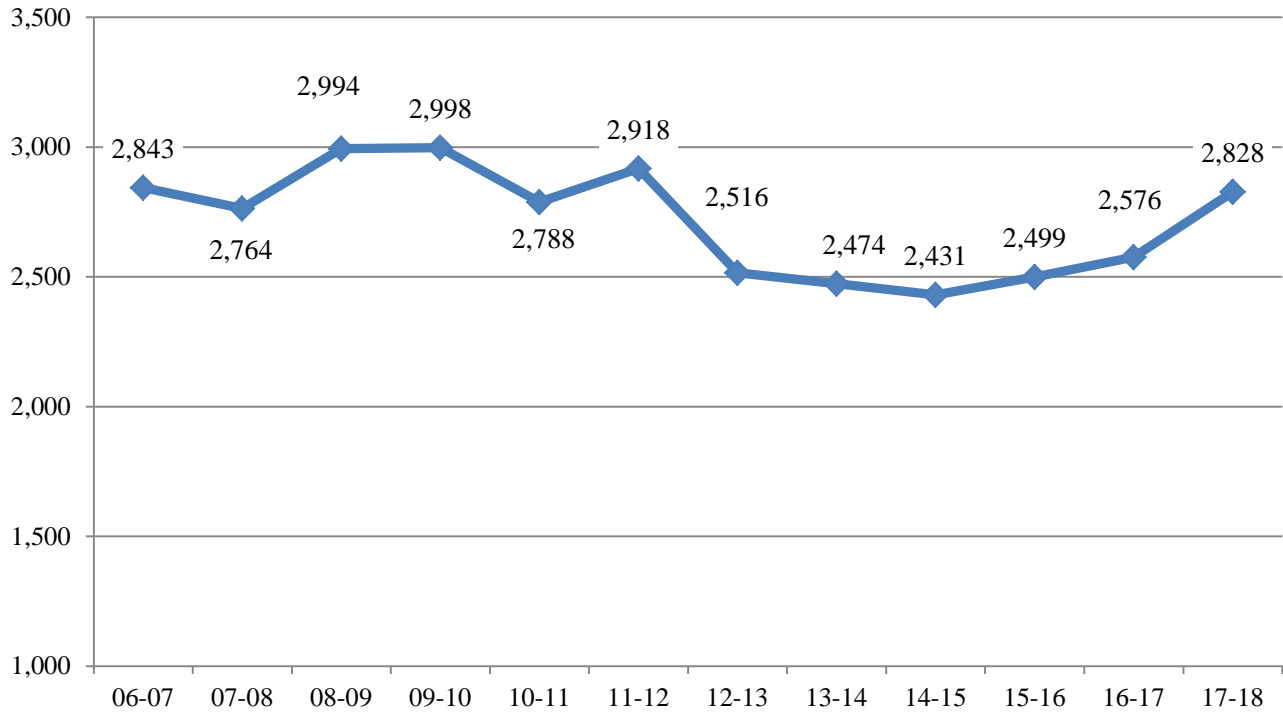
Obviously, with an impasse, no issues are resolved. Conversely, with a settlement, all issues in the case are resolved. Settlement resolutions include the issues that are pending at that moment in time and all issues that could arise in the future. These two characterizations are the polar ends of the spectrum of potential outcomes at a mediation conference, impasse representing nothing and settlement representing everything. Between these two poles are characterizations that represent partial resolution, primarily of the issues currently pending in the case. It is critical to remember that the workers’ compensation litigation process in Florida is separate from the overall workers’ compensation process. The vast majority of accidents that occur in Florida are reported and benefits provided without resort to the litigation process managed by the OJCC. Those claims are “open” in the perspective of the Division of Workers’ Compensation, but are not known to the OJCC. Only when a dispute arises do claims come within the purview of the OJCC, through the filing of a Petition for Benefits.

Most Petitions are scheduled for mediation, and the primary focus of the OJCC mediator is to resolve some portion of the claims, that is the individual workers’ compensation benefit, within that petition. The OJCC tracks the extent of resolution in these statistics and reports. From the least resolution to the most, the continuum is as follows:

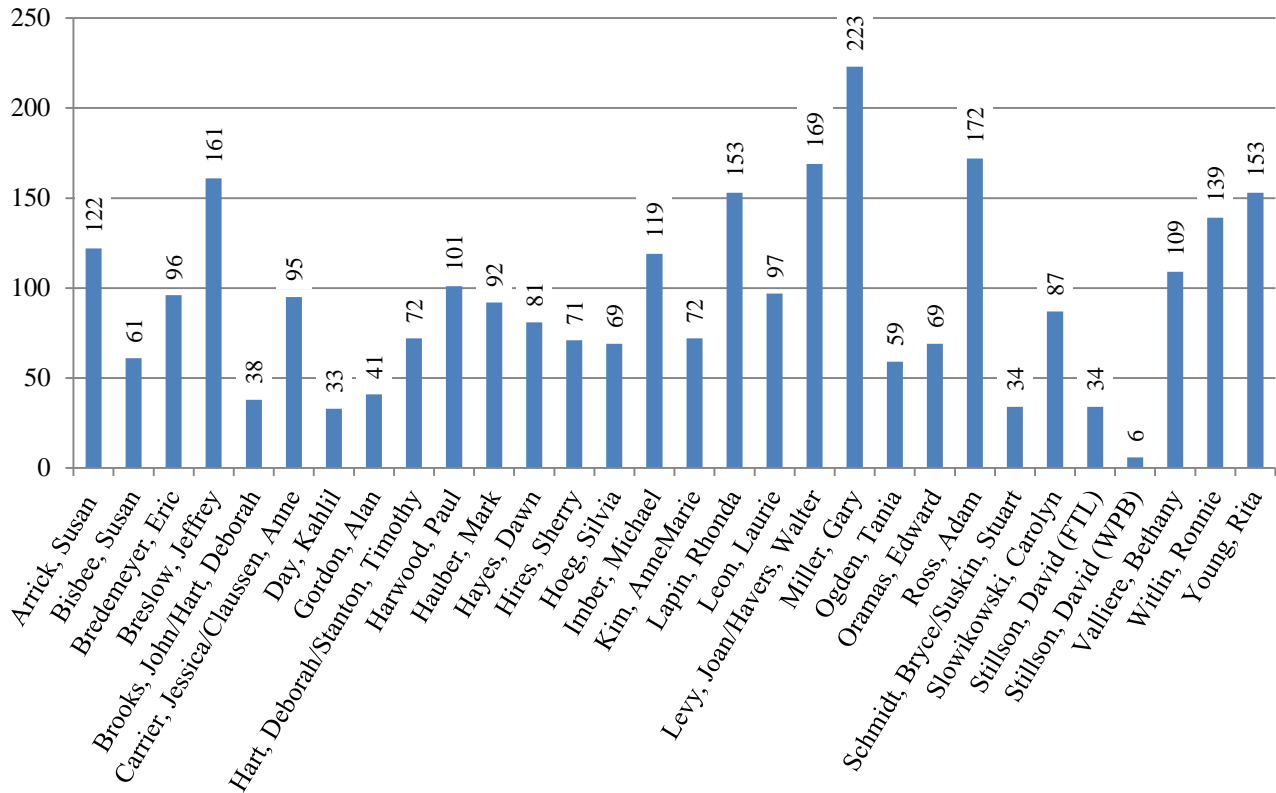
Impasse Some Issues Resolved All Resolved Except Fees All Resolved Settlement

The statistics for impasse are expressed above, and the degree of resolution potentials discussed above are each expressed in the charts on the following pages.

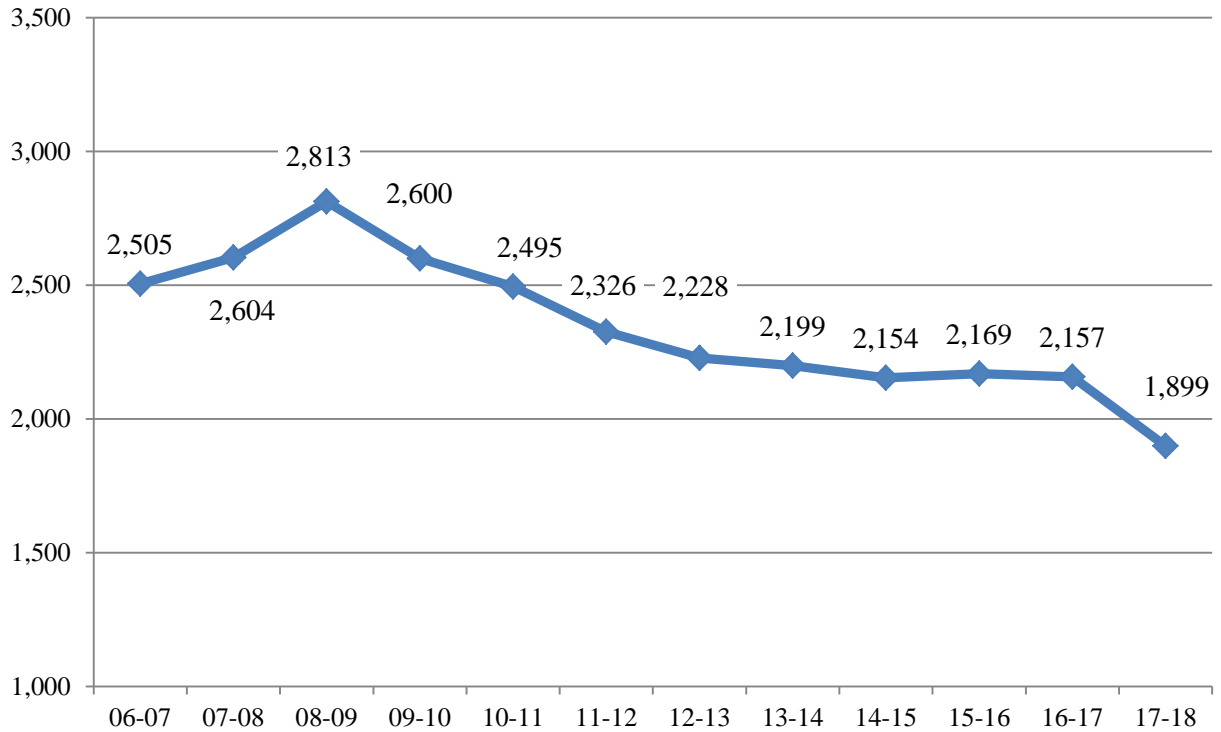
Overall "Some Issues Resolved"



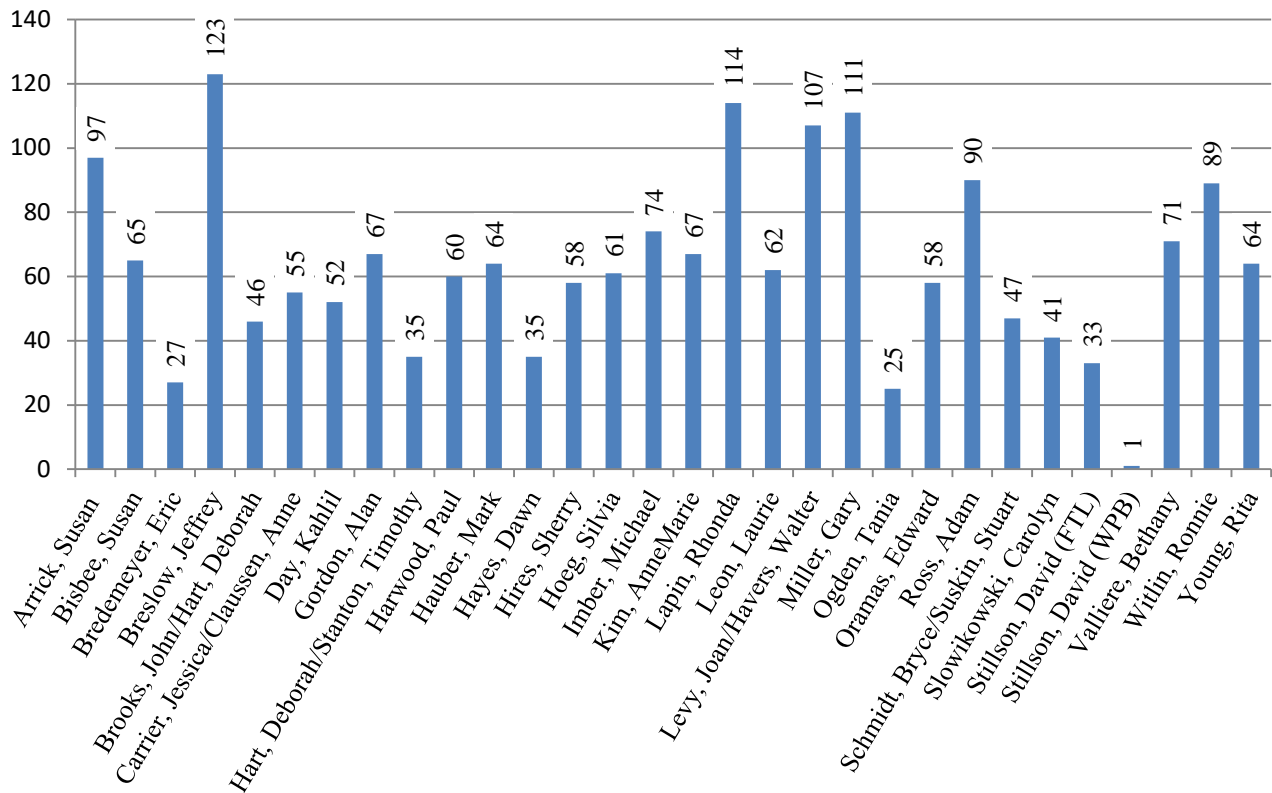
"Some Issues Resolved" for Each Mediator



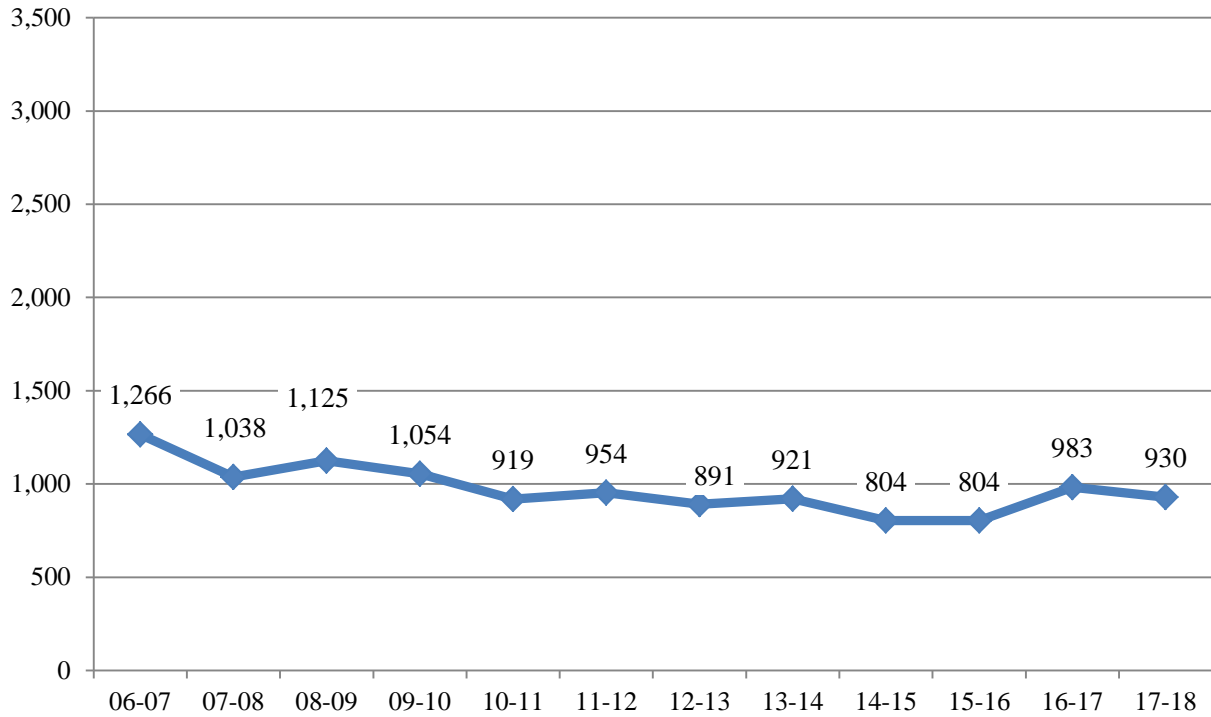
Overall "All Resolved Except Fees"



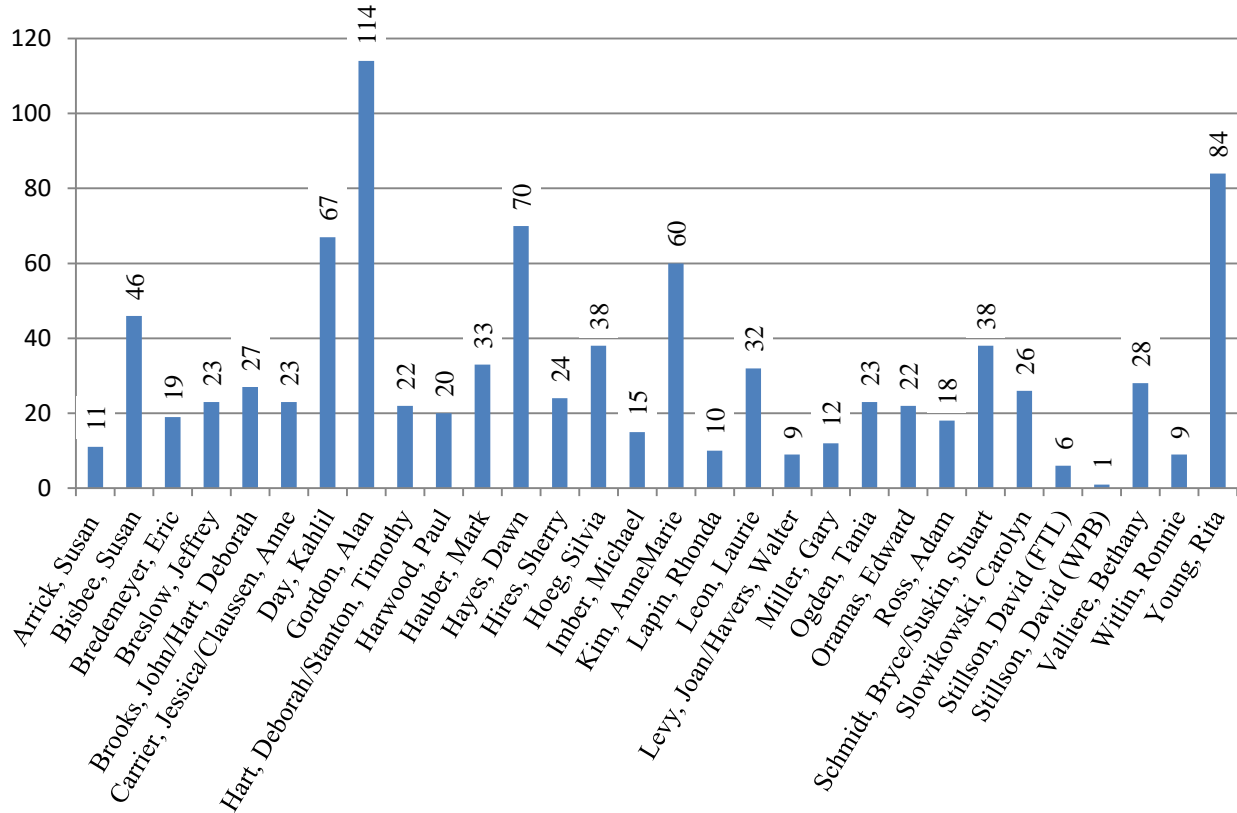
"All Resolved Except Fees" for Each Mediator



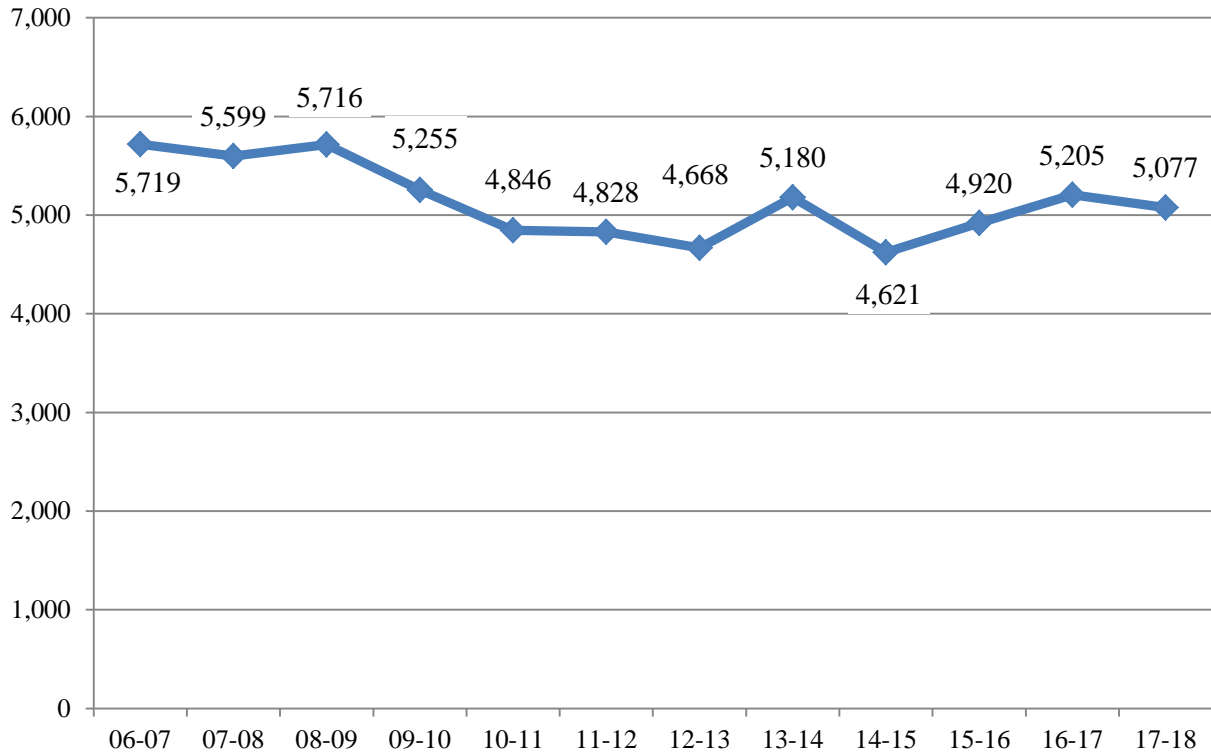
Overall "All Issues Resolved"



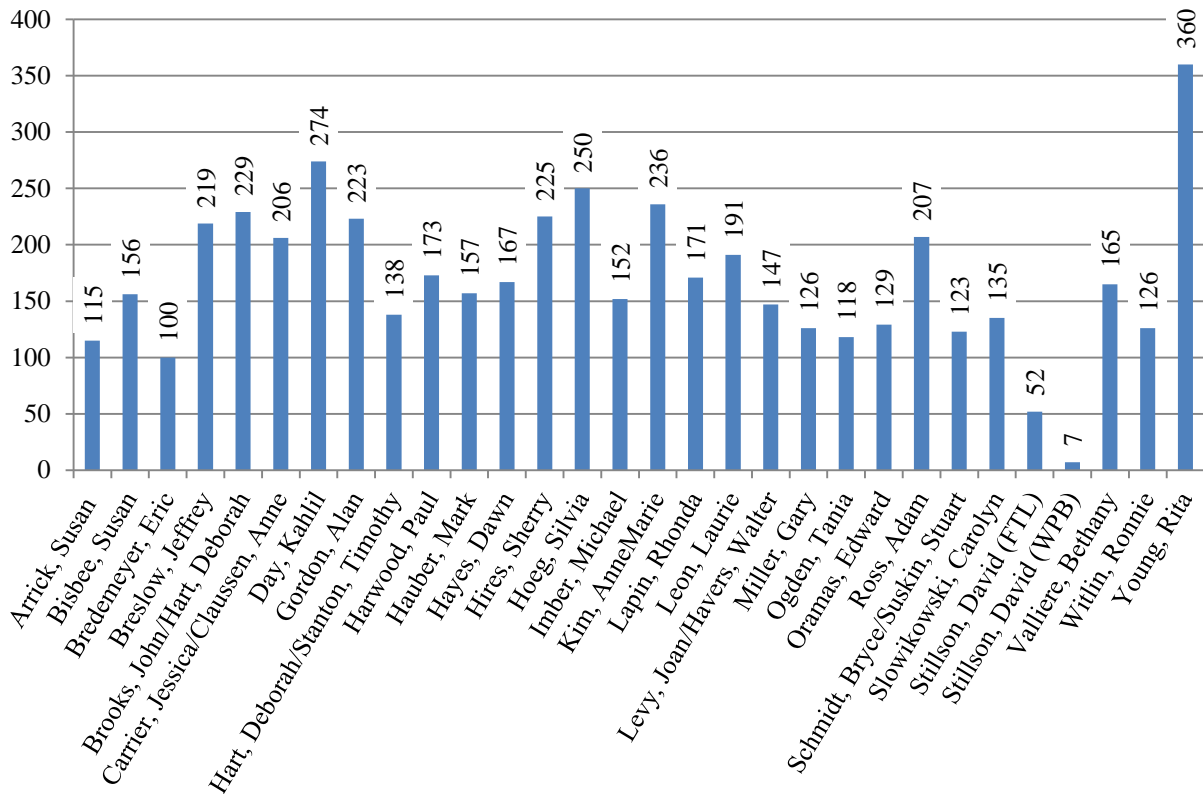
"All Issues Resolved" for Each Mediator



Overall "Settled"



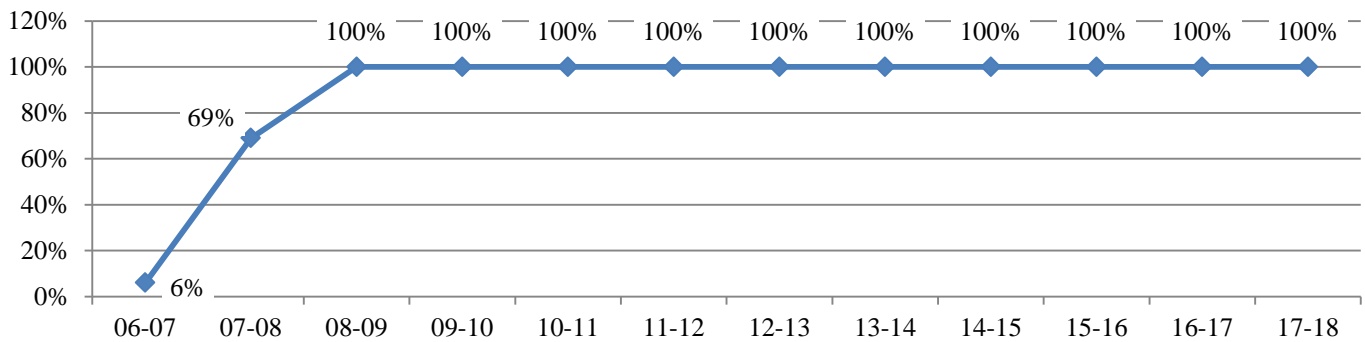
"Settled" for Each Mediator



Timeliness of Mediations:

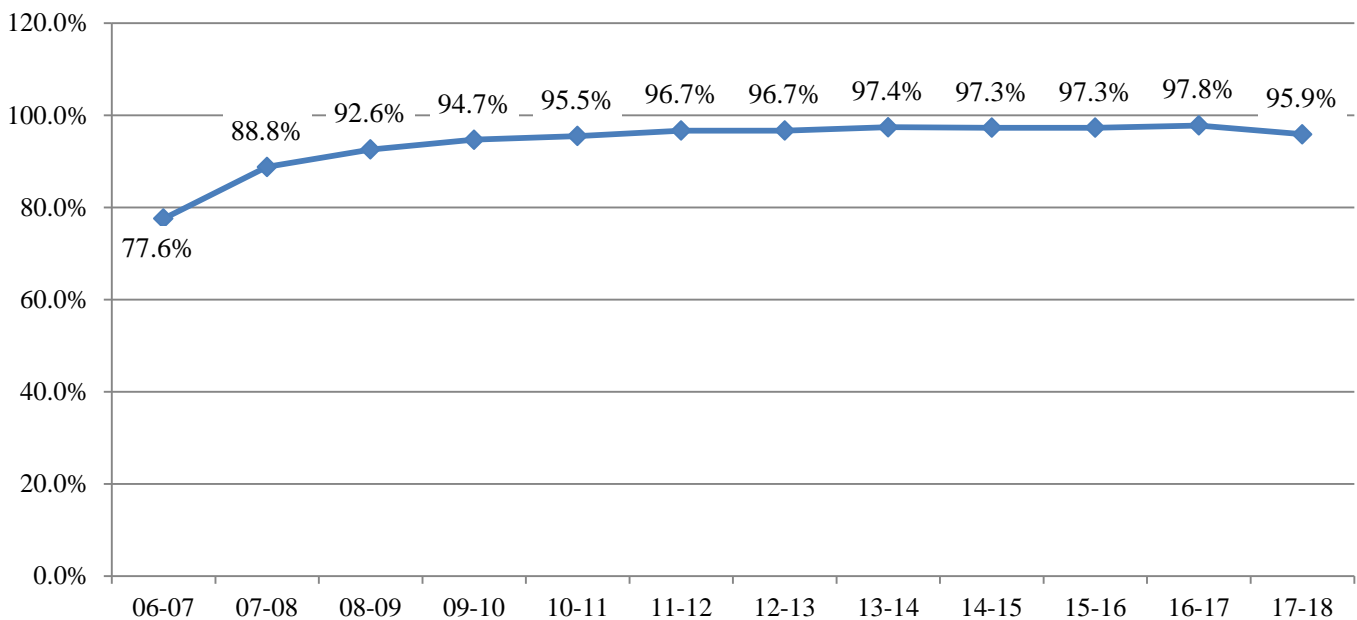
The Florida workers’ compensation law requires that mediation occur within 130 days of the PFB filing. There are nonetheless situations in which this parameter cannot be met. In personal injury actions, it is common that mediation is occurring after the rendition of medical modalities and the injured person has reached maximum medical improvement. Conversely, in workers’ compensation cases, it is common that mediation on some benefits is occurring while medical care is ongoing. Therefore rescheduling to accommodate medical appointments and other exigencies does occur. Of primary concern is whether the mediation process is fulfilling the 130 day requirement generally, and this is most easily measured by consideration of the average days between PFB filing and the first mediation for each mediator. Considering this 130 day parameter in this context, the OJCC mediators have made considerable progress in recent years. In each of the last seven fiscal years, all of the OJCC mediators averaged less than 130 days between Petition filing and the initial mediation.

Percent of State Mediators Averaging Less than 130 Days to First Mediation

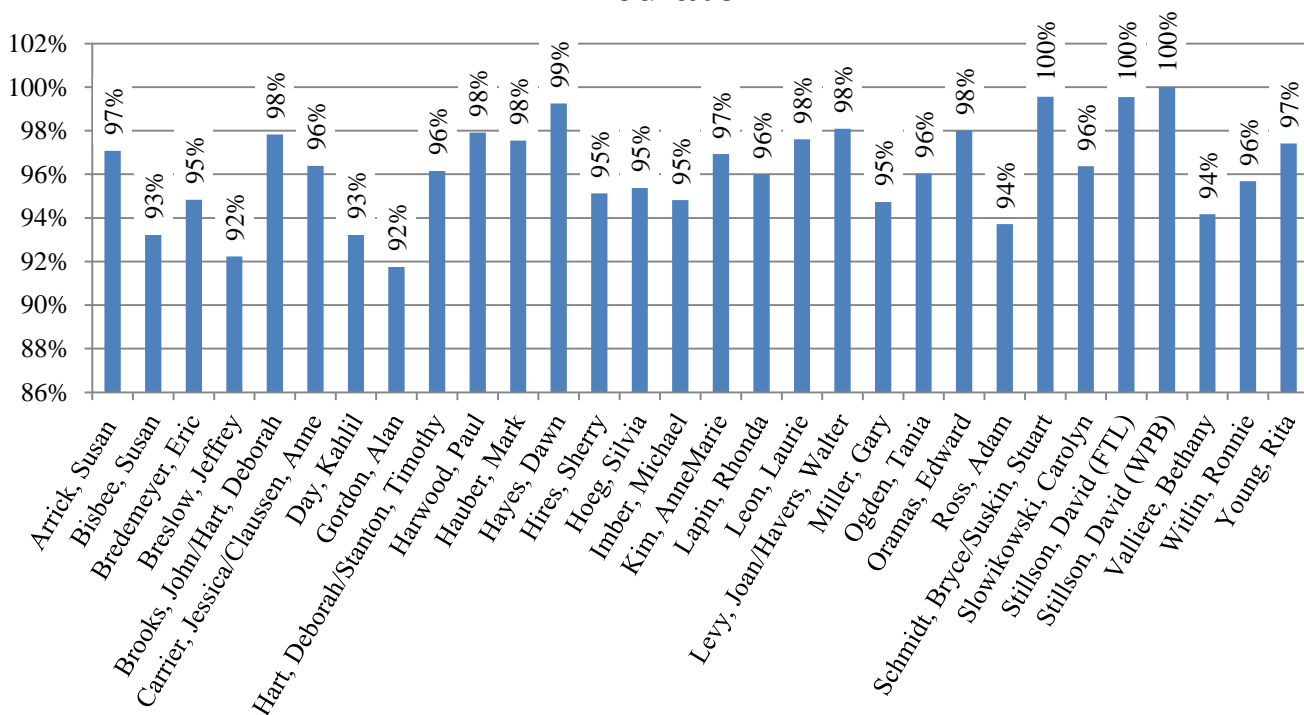


In fact, in 2016-17 the OJCC mediators mediated approximately 98% of the PFBs within the 130 day statutory parameter. That dropped to approximately 96% in 2017-18. In 2016-17, forty-eight percent were mediated within ninety days; that dropped to 45% in 2017-18. The recent decrease in timely mediation percentage is notable. However, the overall figures represent outstanding performance over the last ten years.

Percent Mediated within 130 Days



Percent Mediated within 130 days for Each Mediator



Mediations Continued:

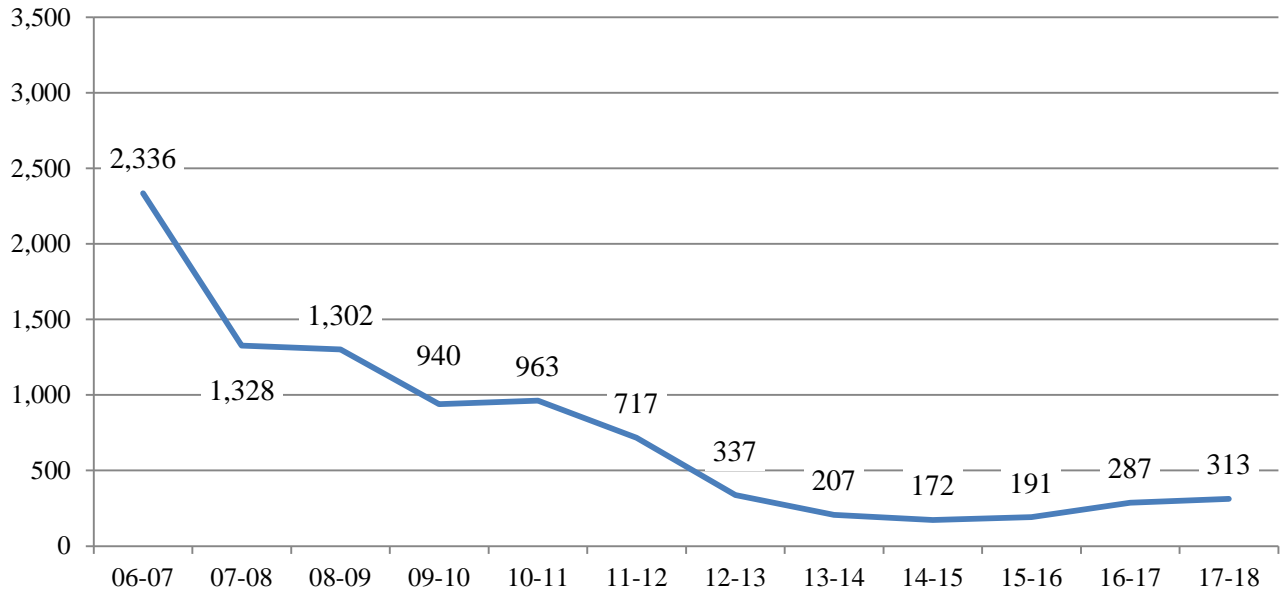
Mediation continuances increased markedly in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. However, those volumes may have been increased by the volume of weather-related office closures that year, as Florida's cyclone season affected virtually every Florida County. Those storms caused Carriers to close offices in central Florida (frustrating mediations in unaffected districts elsewhere) and by closing district offices at which the mediations would otherwise have been held. The mediation continuance trend reversed in 2006-07, and has decreased to a very small rate, below one percent for the last six fiscal years.

Some portion of the stabilizing figures in recent years is due to the staff training provided by the OJCC since 2006 and the resulting uniformity in the use of the characterization "continued" within the OJCC database. Mediations whose calendar date is changed after initial scheduling, but for which the new date is within the 130 day statutory requirement are not "continued," but "rescheduled." Consistency with these characterizations has improved in recent years also.

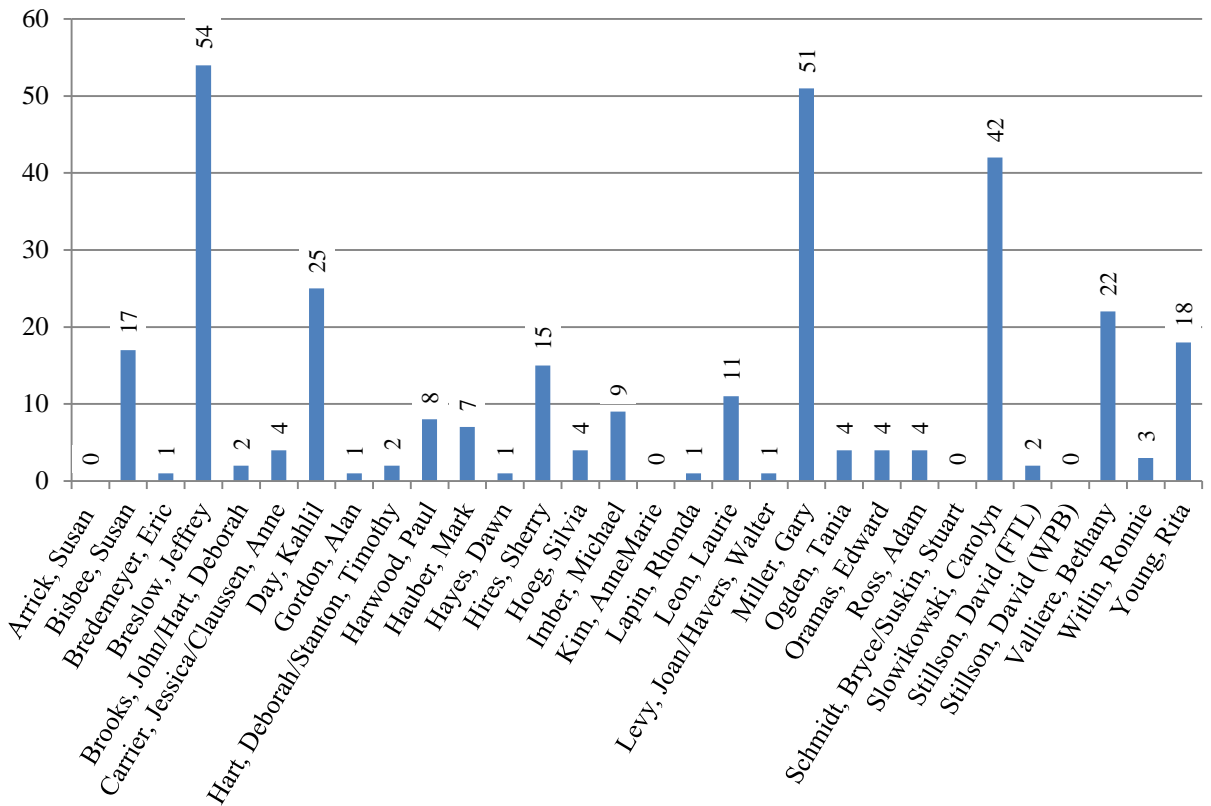
Some portion of both the stabilizing of these figures and the marked decrease in the number of mediation conference continuances has been deemed likely attributable to the annually decreasing volume of PFB filings. It is therefore encouraging to see the continuance rate remaining below one percent despite a significant increase in PFB filings in 2015-17 and 2016-17.

Fiscal Year	Petitions Filed	Mediations Continued	Med. Cont. v. PFB Filed
2002-03	151,021	2,755	1.82%
2003-04	127,458	2,036	1.60%
2004-05	107,268	3,333	3.11%
2005-06	90,948	4,756	5.23%
2006-07	82,607	2,336	2.83%
2007-08	72,718	1,328	1.83%
2008-09	73,863	1,302	1.76%
2009-10	67,971	940	1.38%
2010-11	64,679	963	1.49%
2011-12	61,354	717	1.17%
2012-23	58,041	364	0.63%
2013-14	59,292	207	0.35%
2014-15	60,021	172	0.29%
2015-16	67,265	191	0.28%
2016-17	70,365	287	0.41%
2017-18	70,295	313	0.45%

Overall Mediations "Continued"

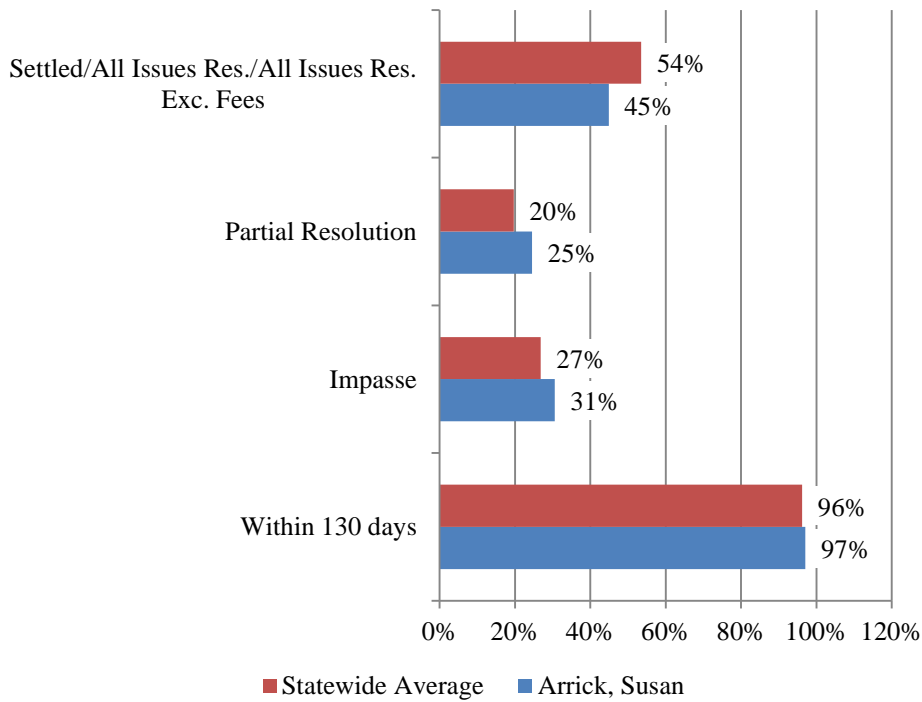
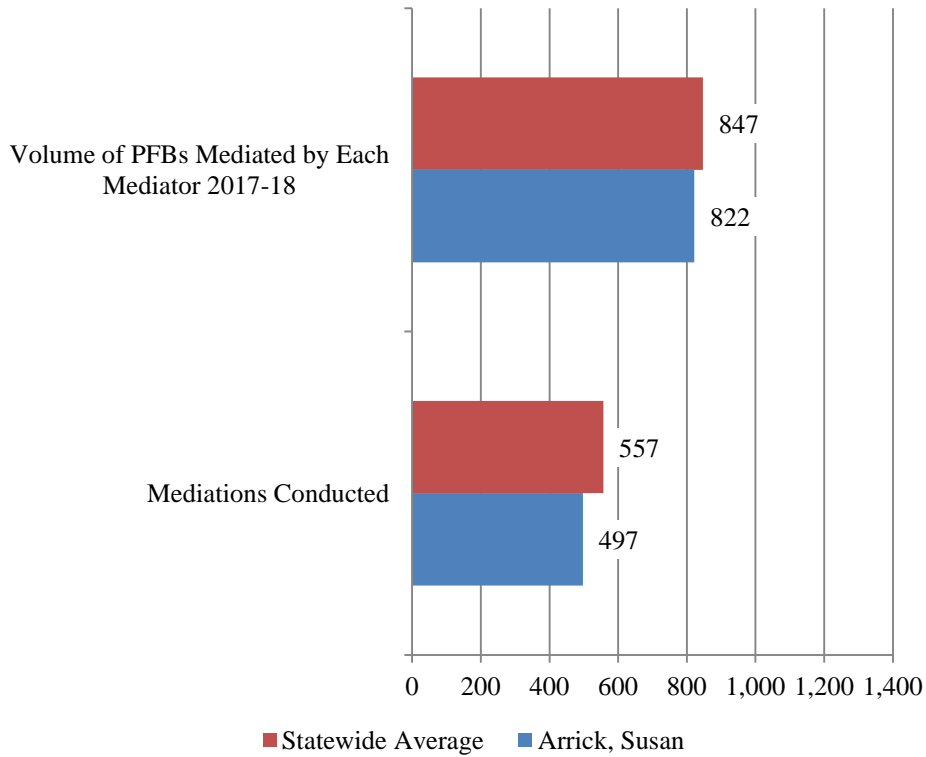


"Continued" for Each Mediator

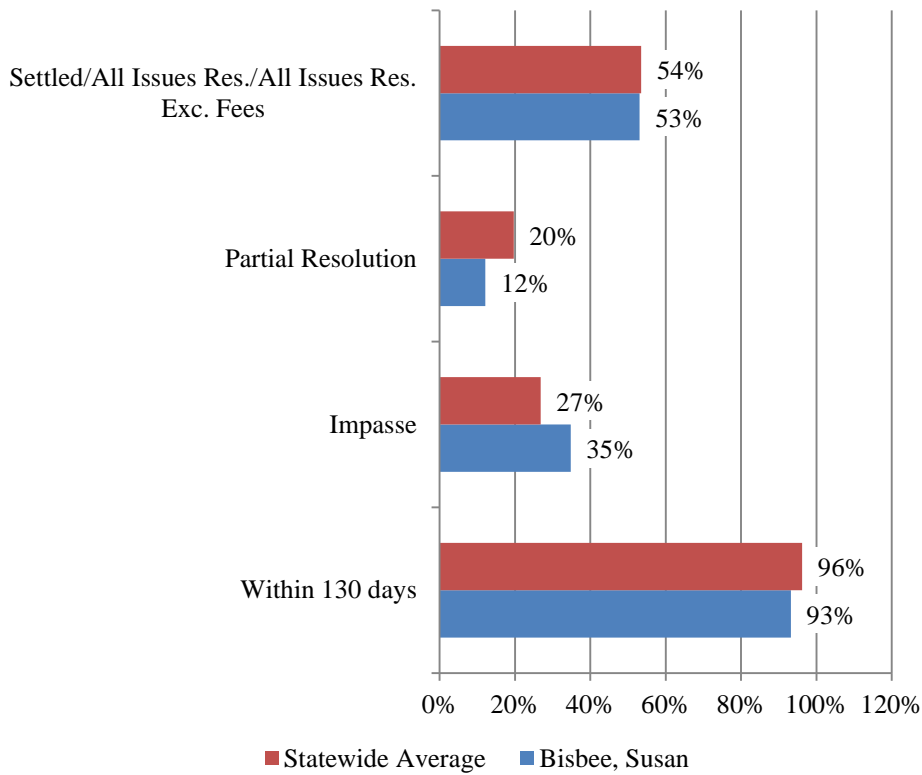
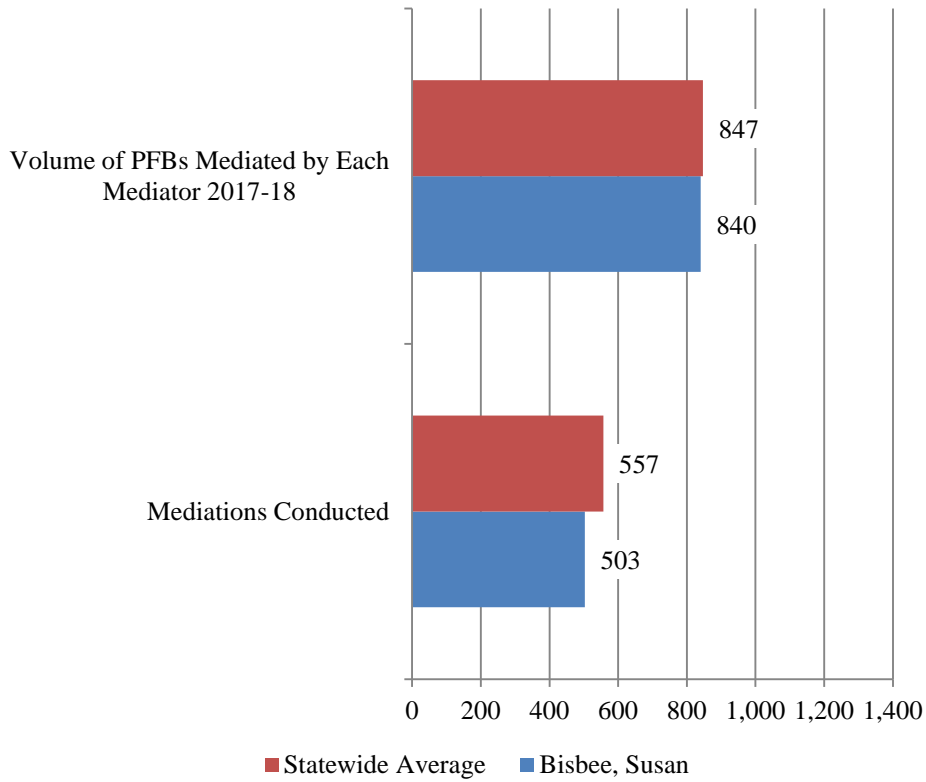


Individual Mediator Statistics:

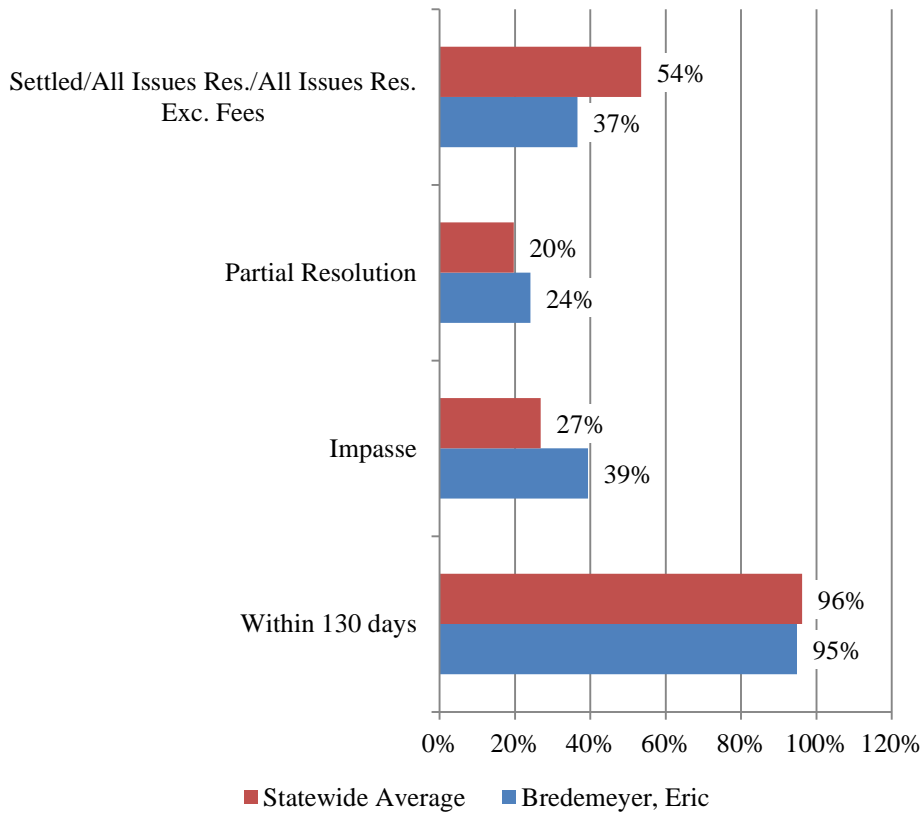
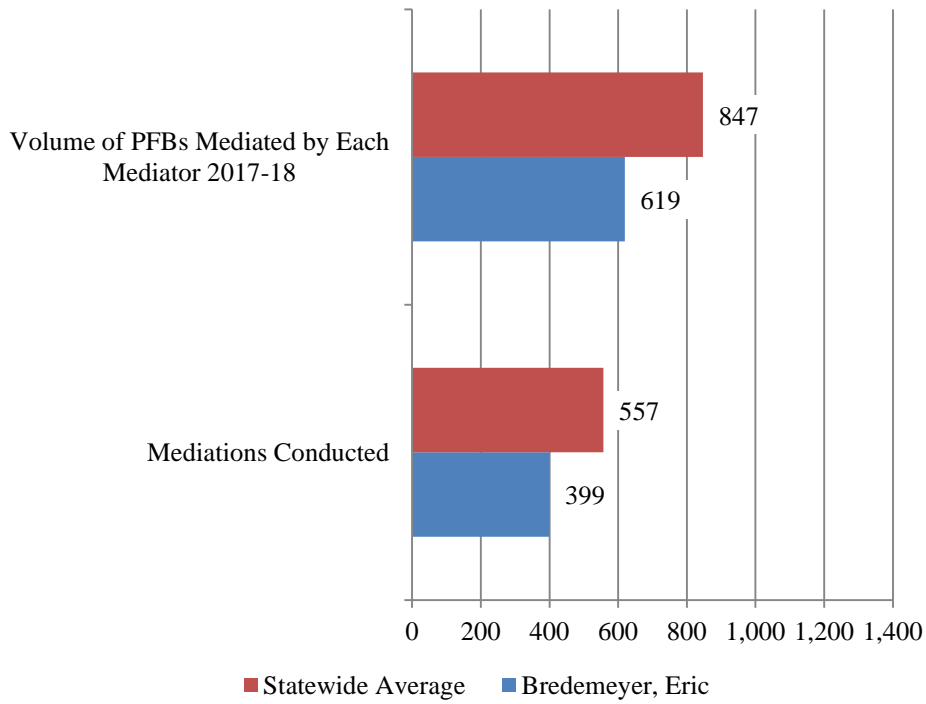
Arrick, Susan (MIA)



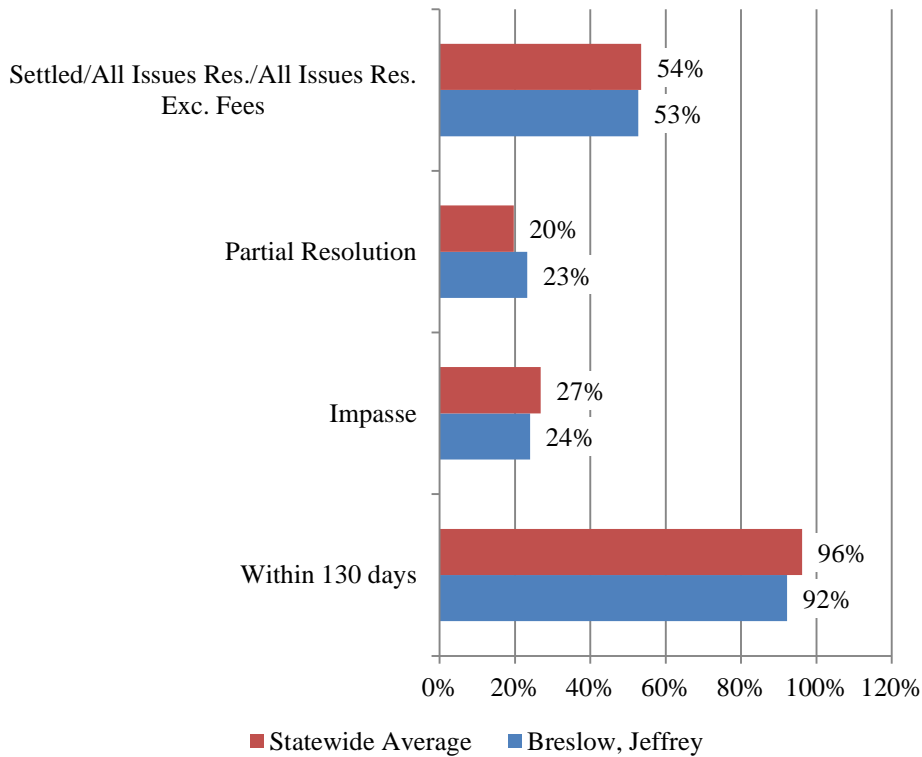
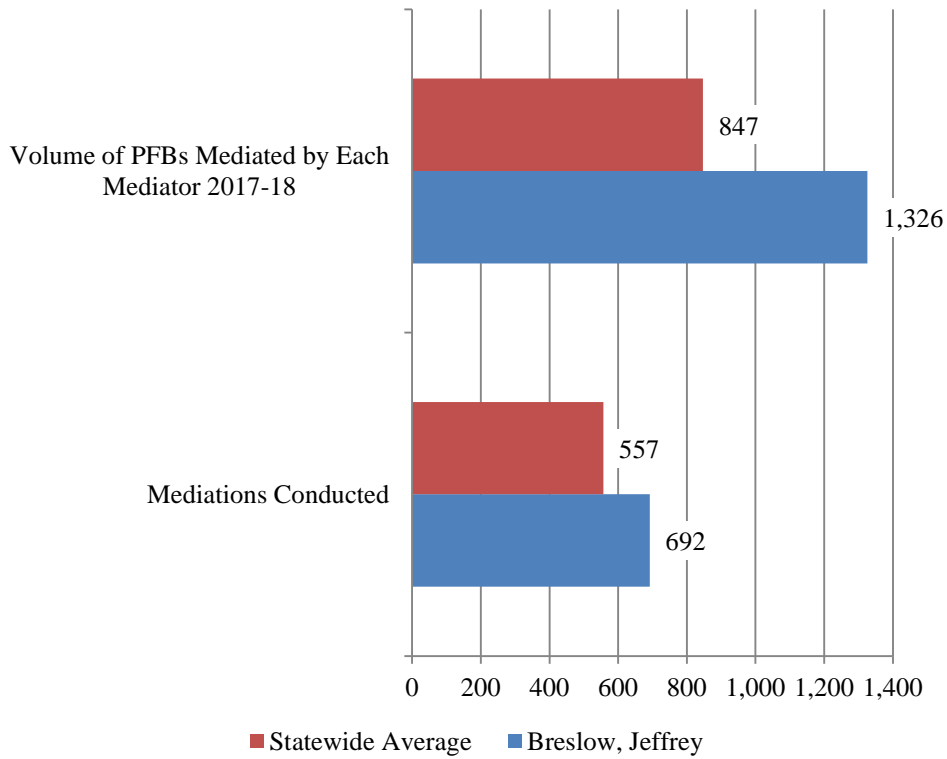
Bisbee, Susan (TLH)



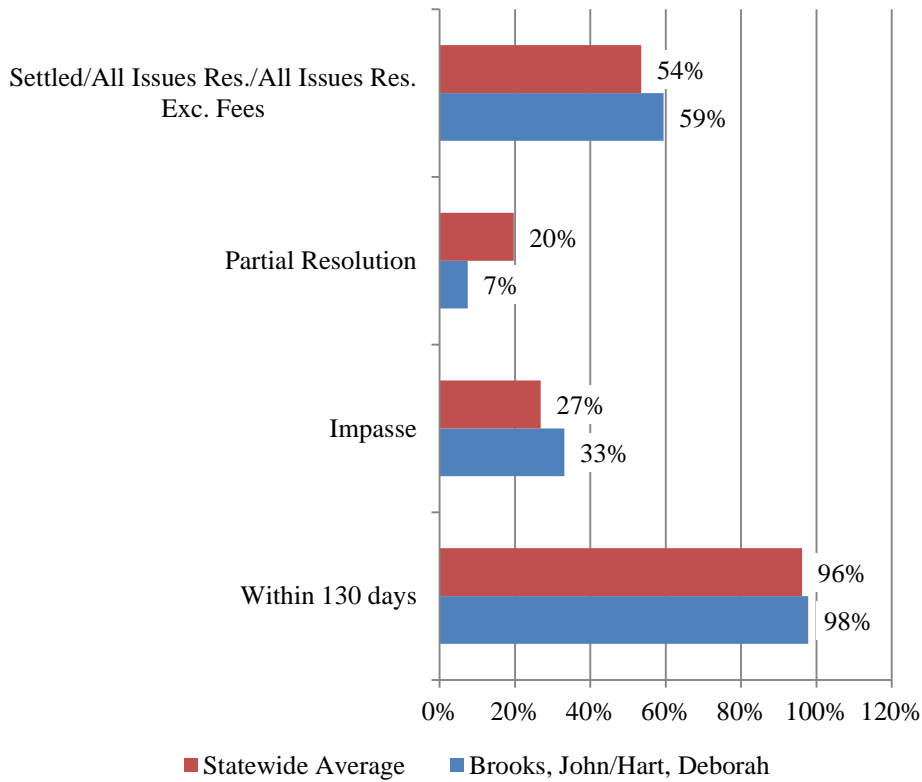
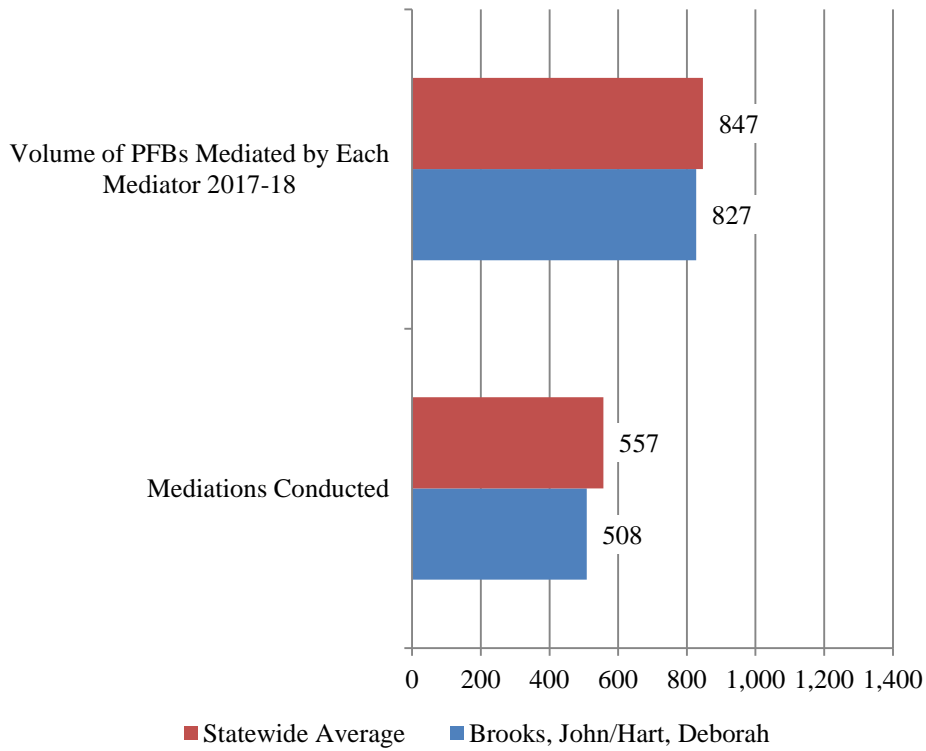
Bredemeyer, Eric (FTM)



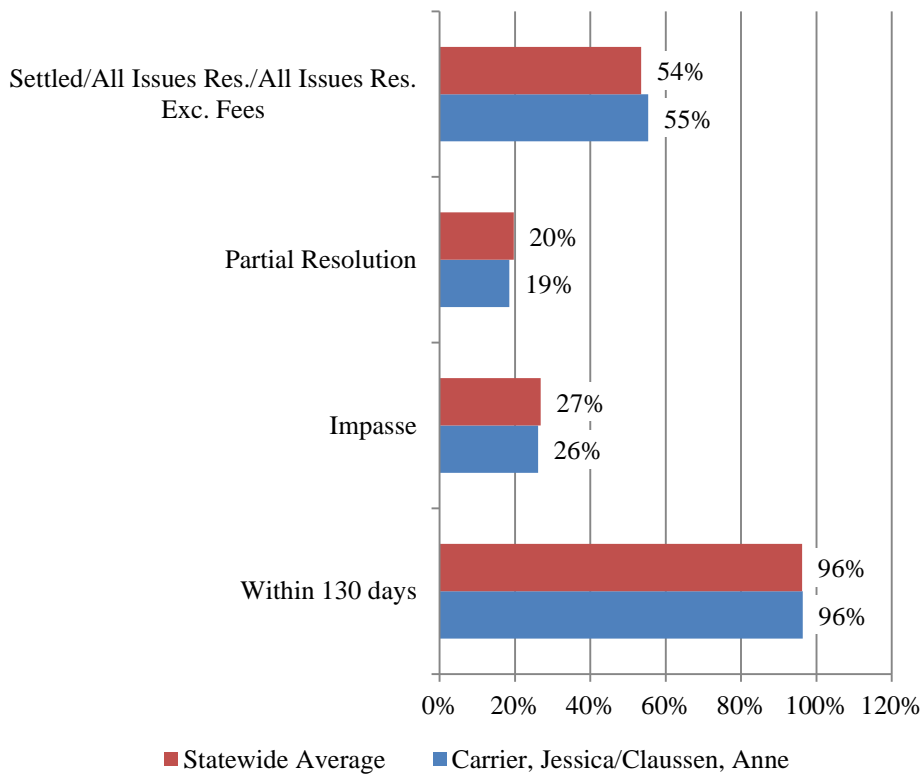
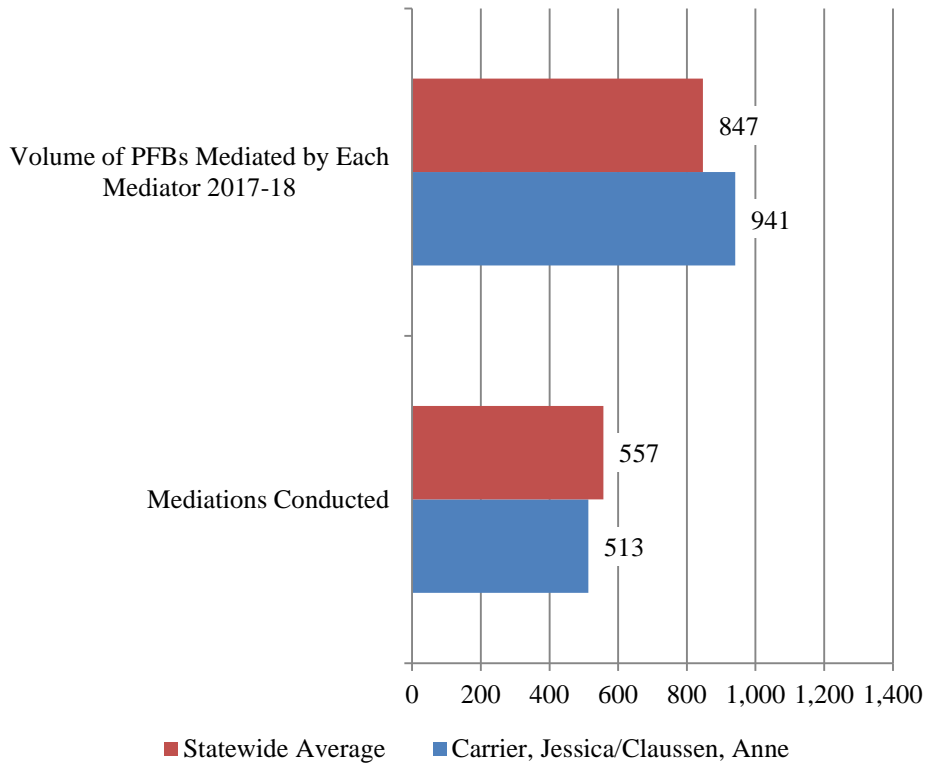
Breslow, Jeffrey (FTL)



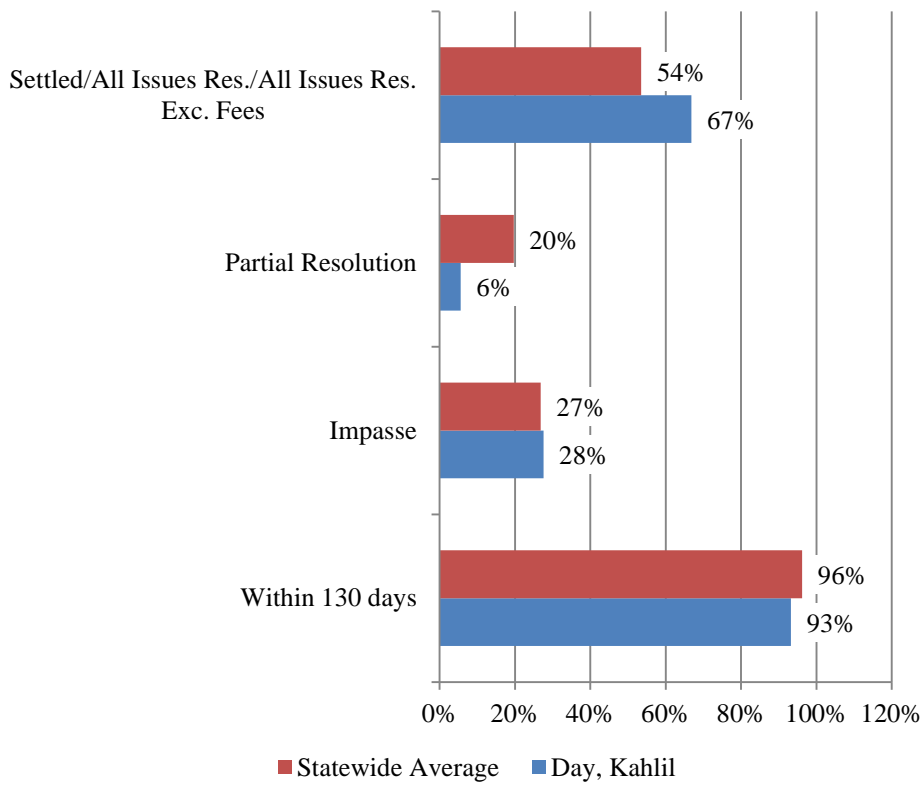
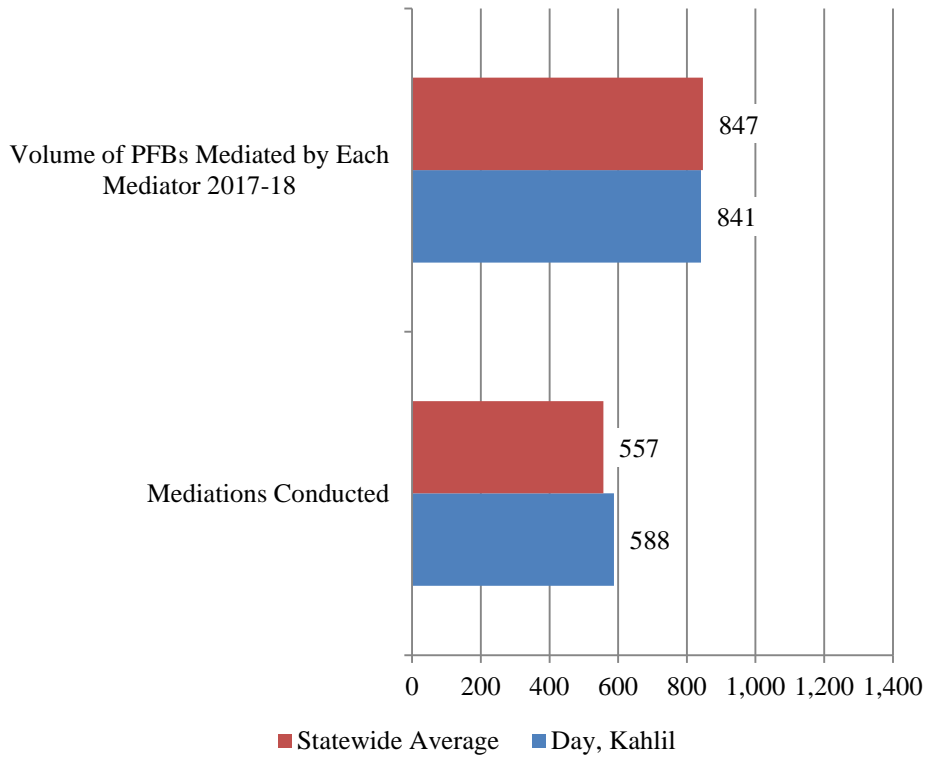
Brooks, John/Hart Deborah (DAY)



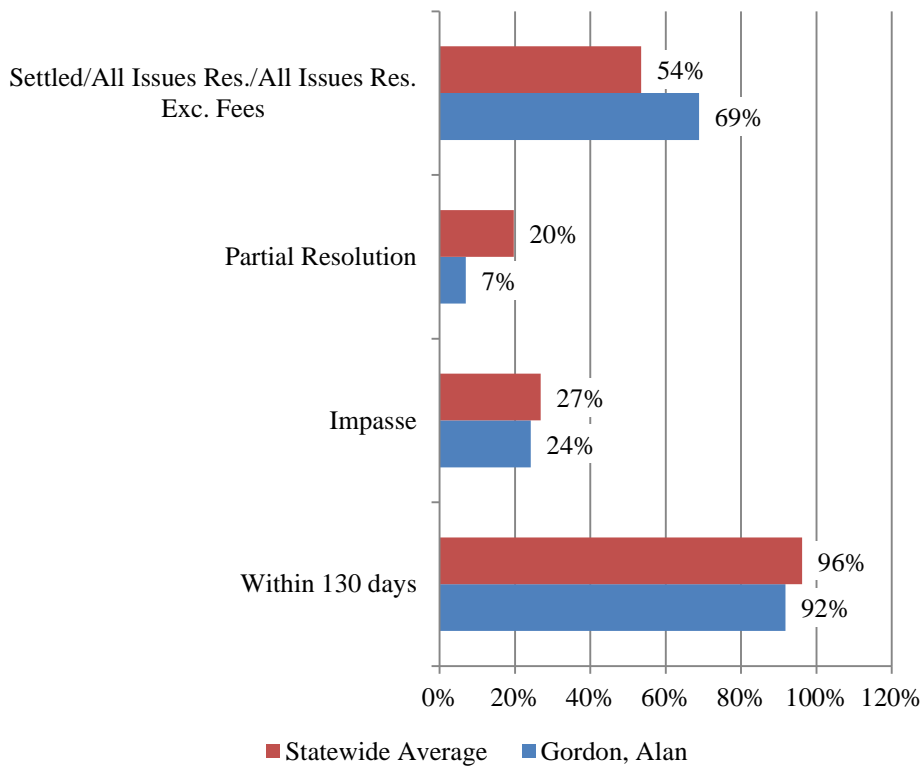
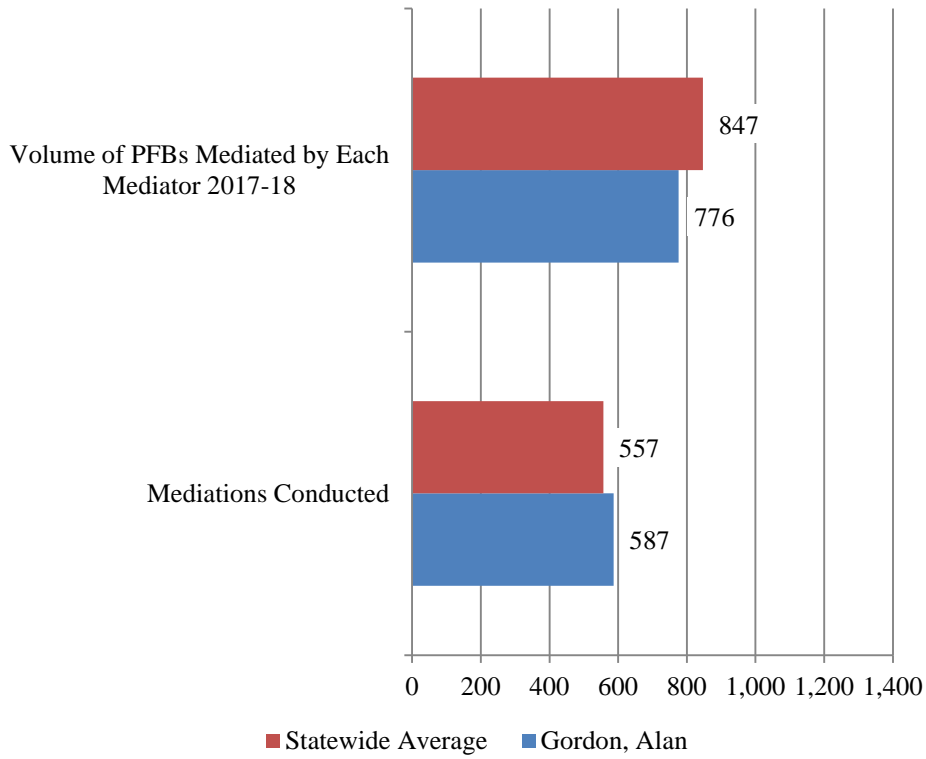
Carrier, Jessica (SAR)



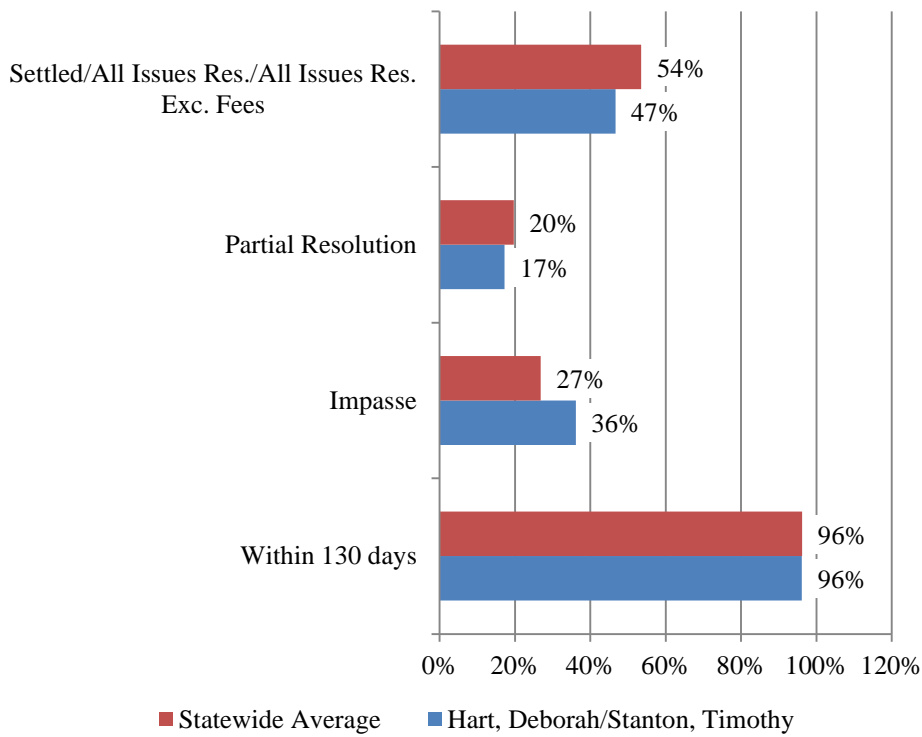
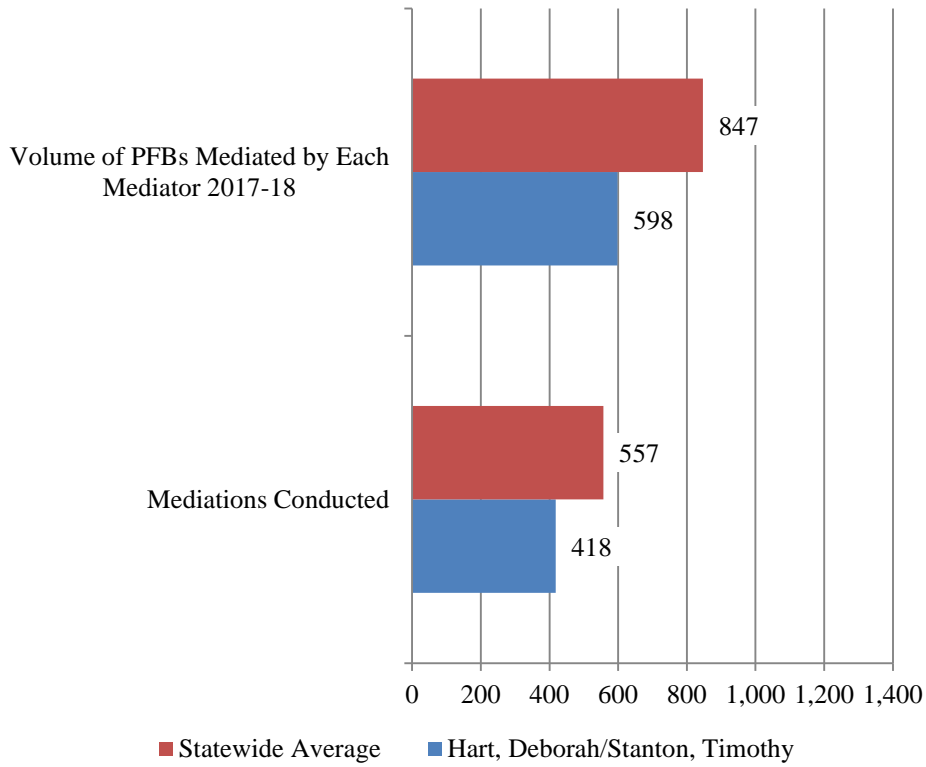
Day, Kahlil (JAX)



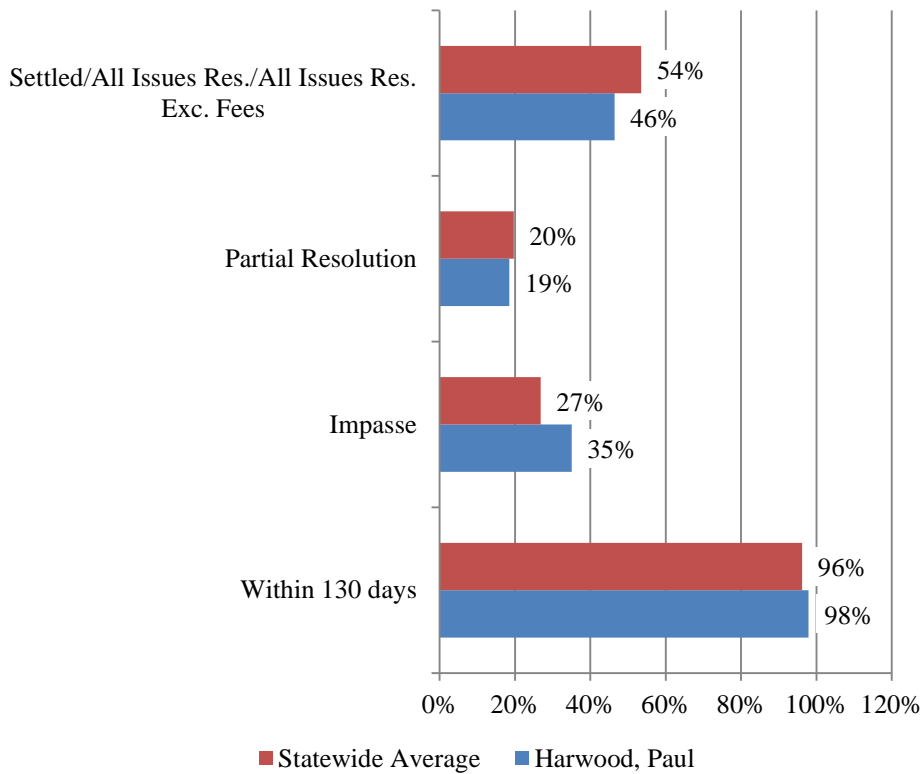
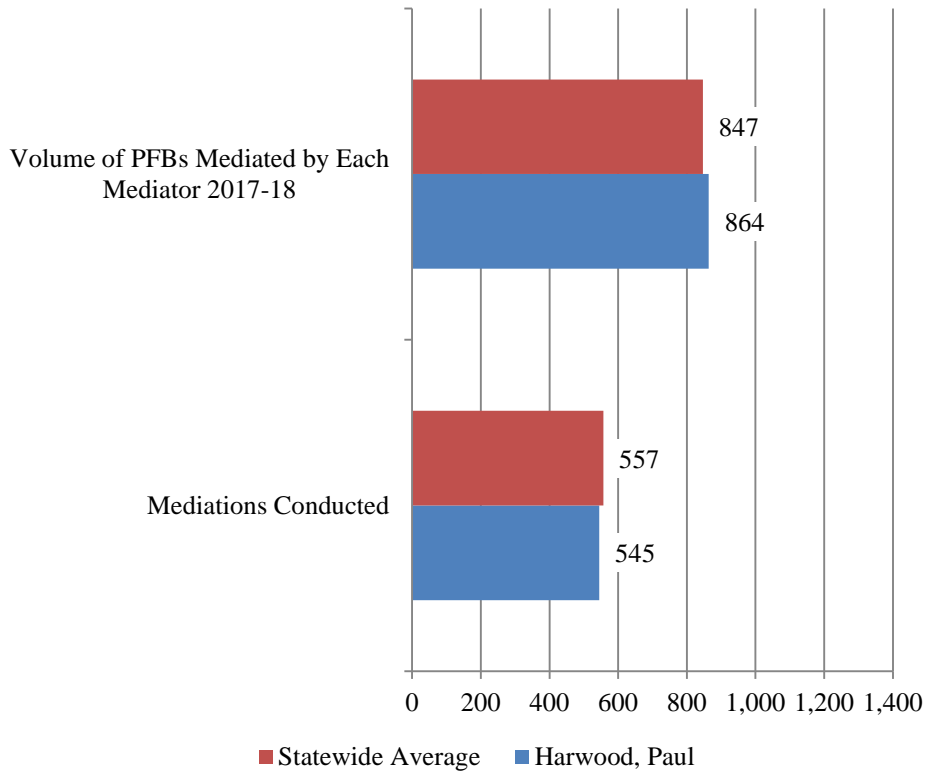
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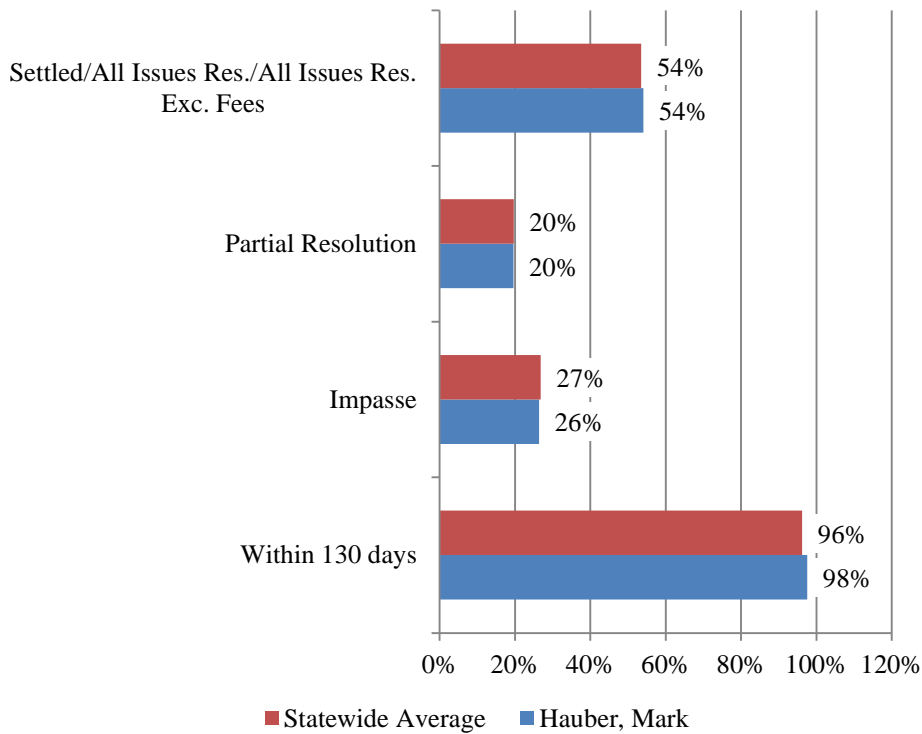
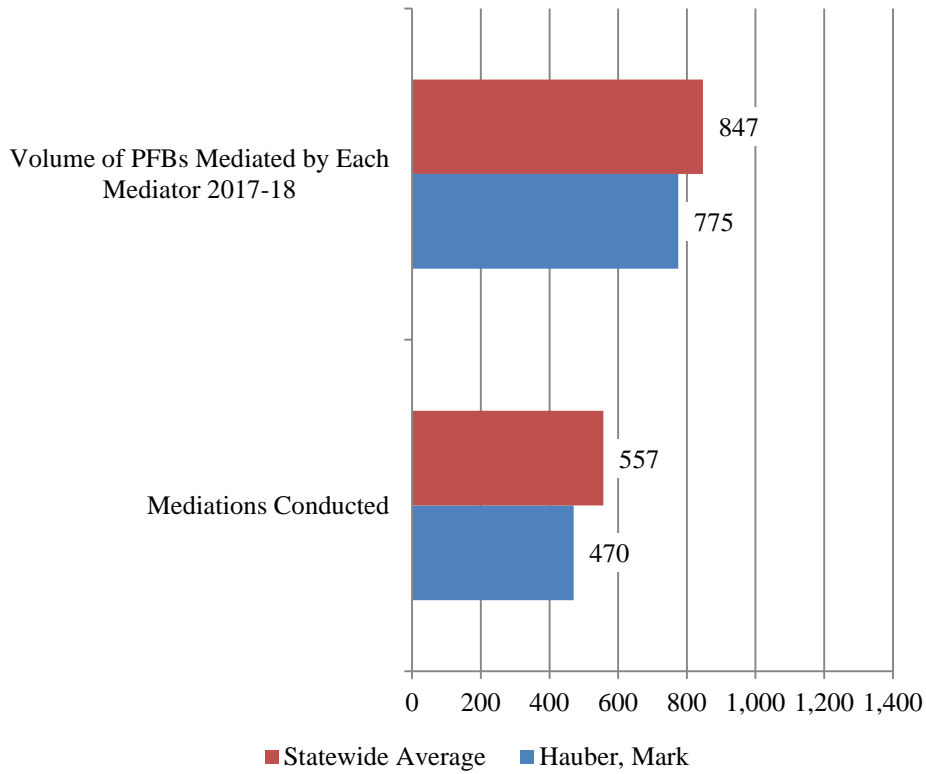
Hart Deborah/Stanton, Timothy (TPA)



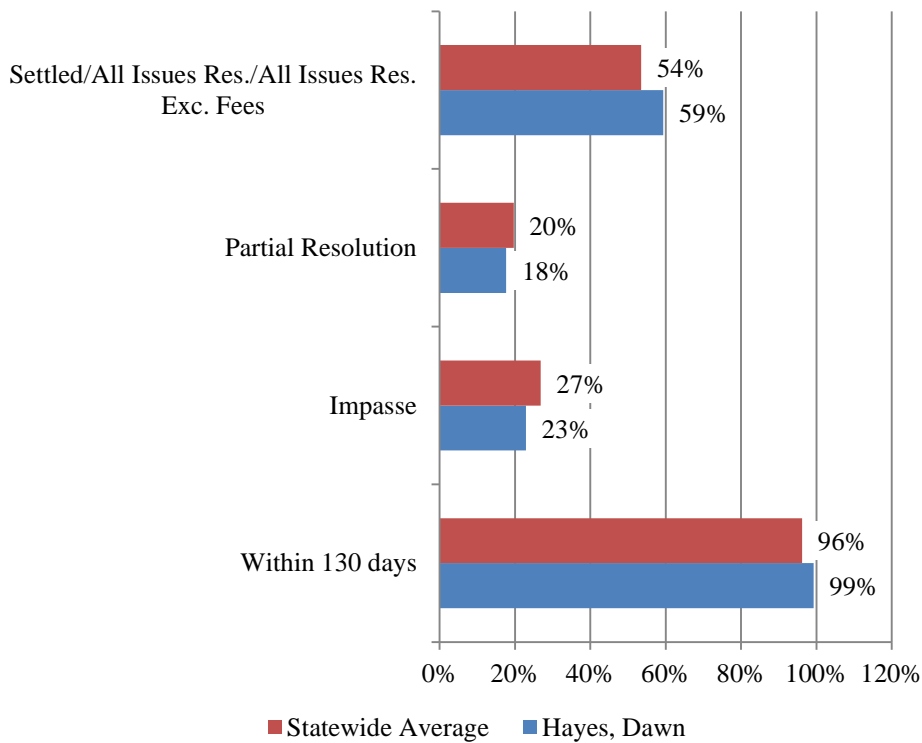
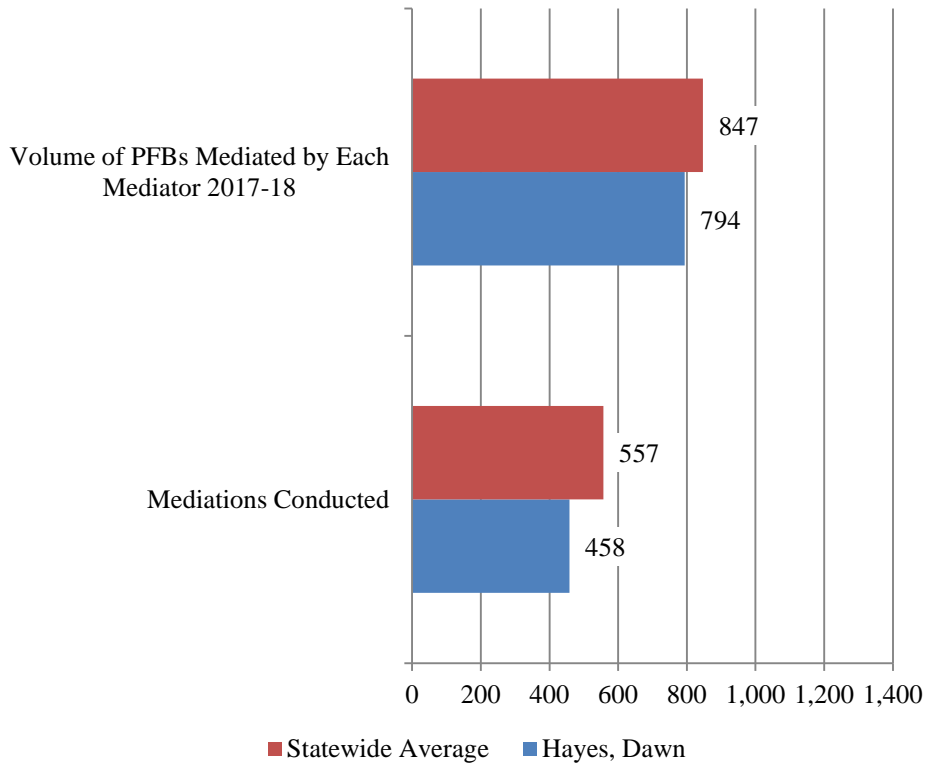
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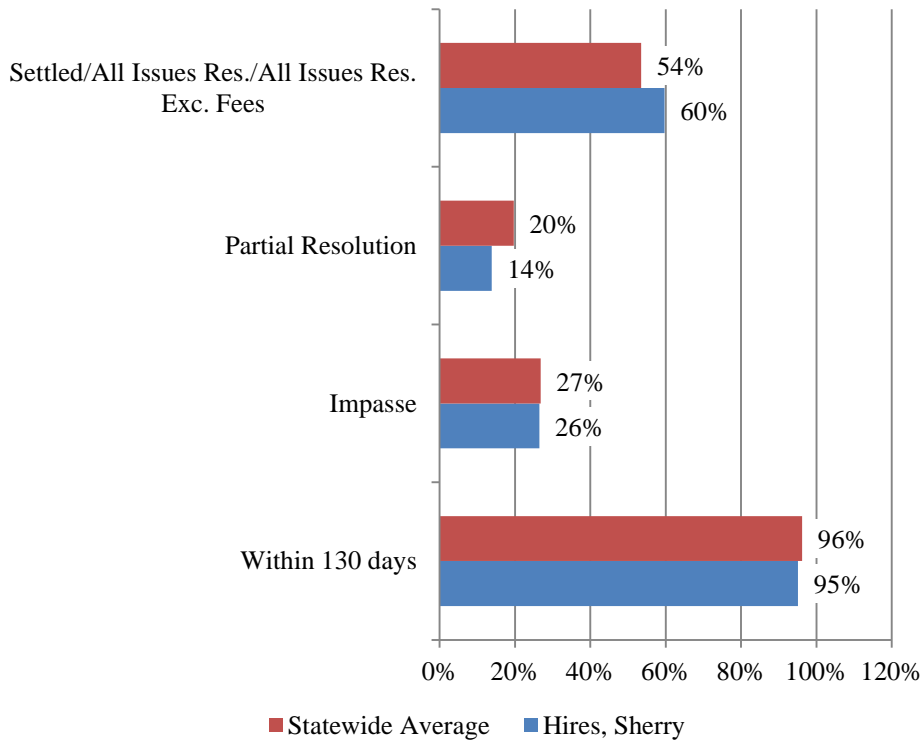
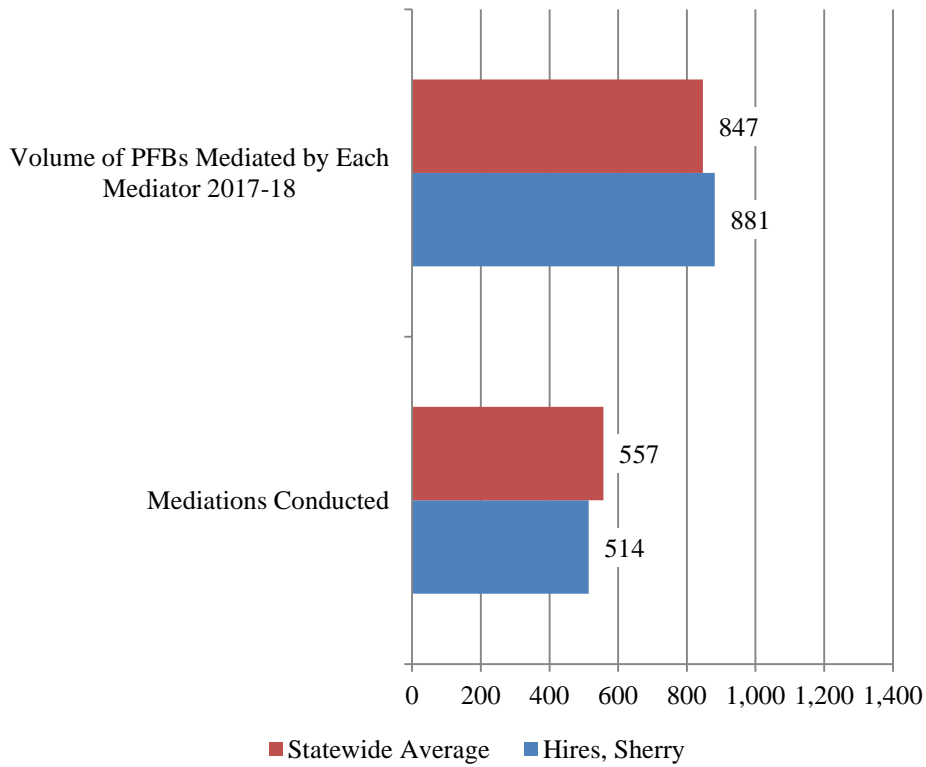
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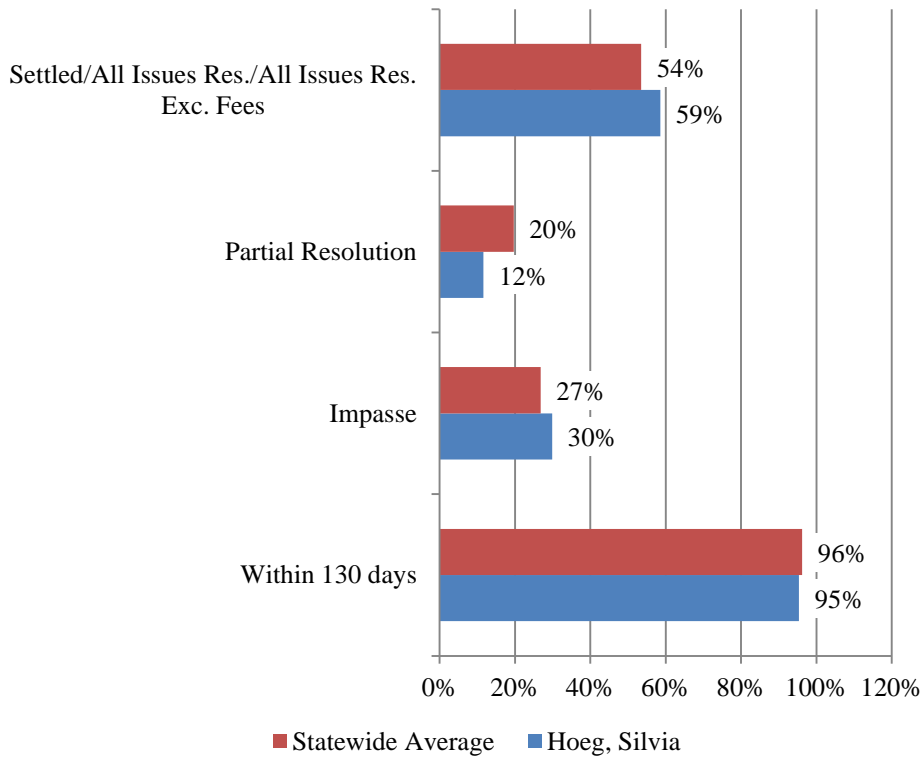
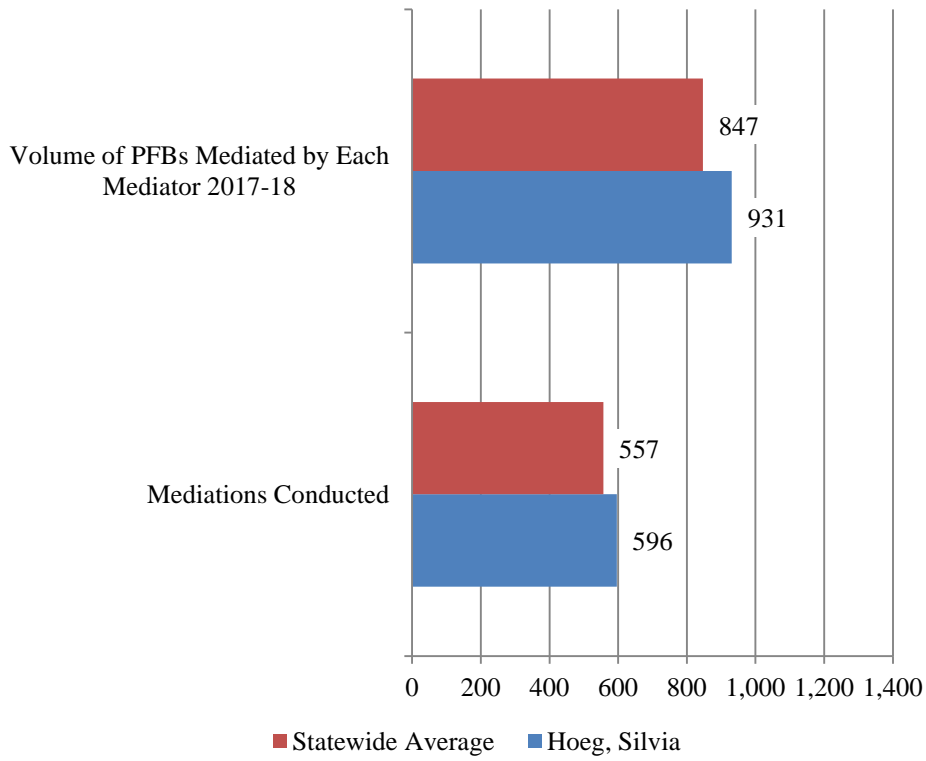
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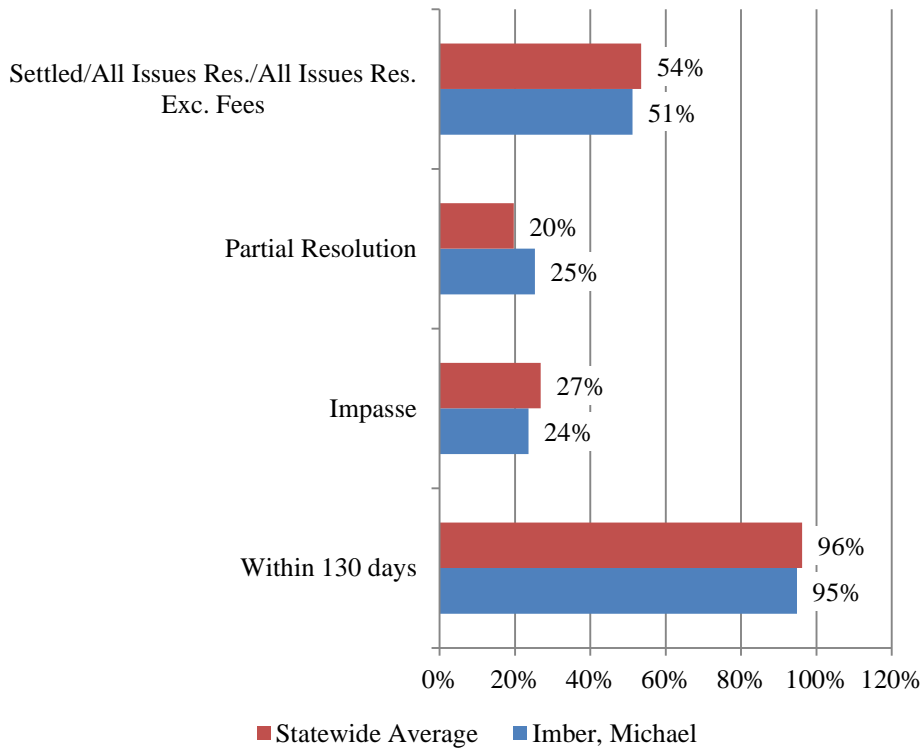
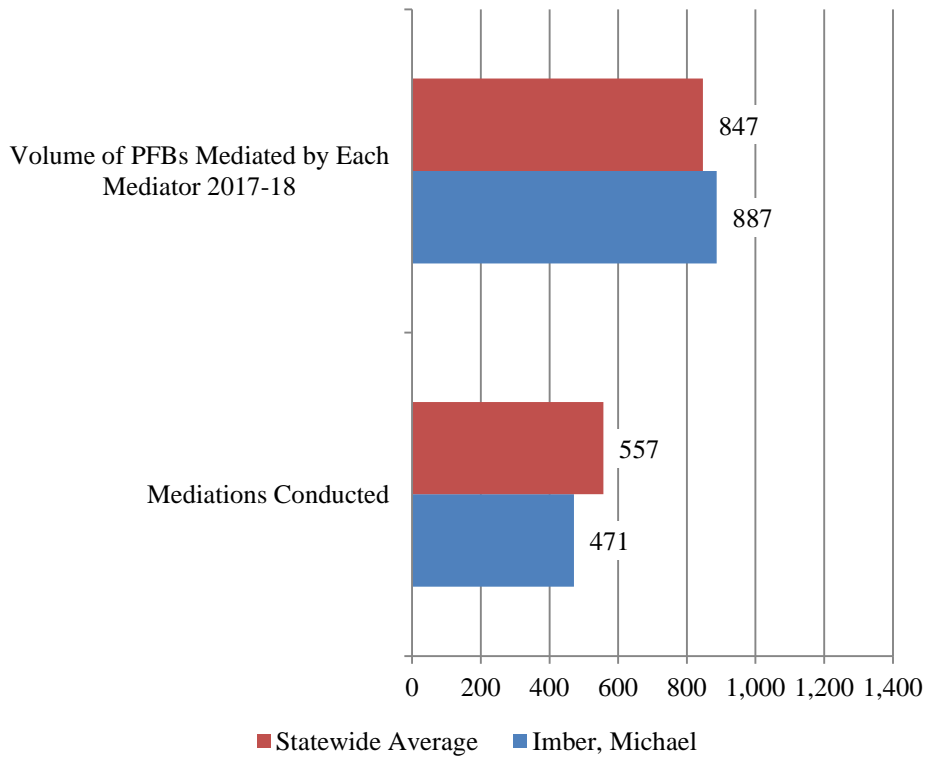
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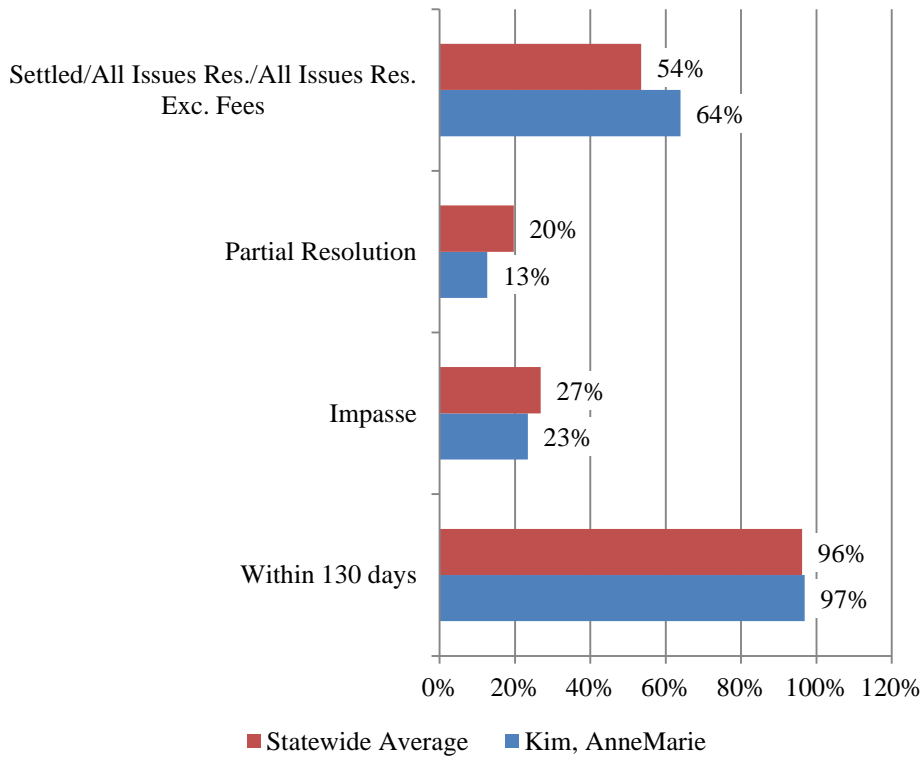
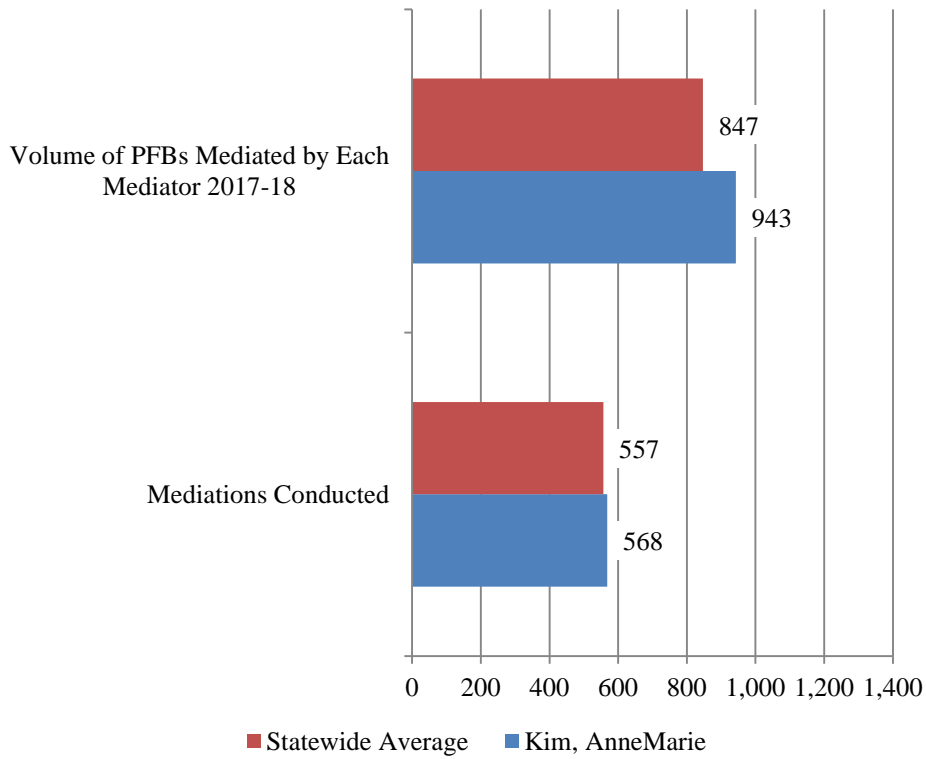
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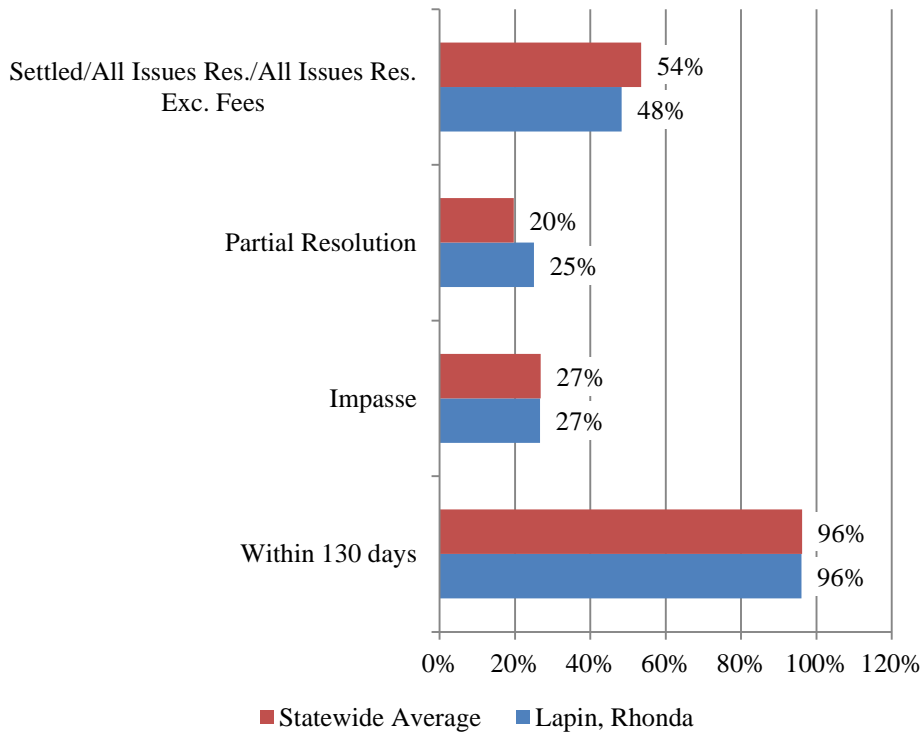
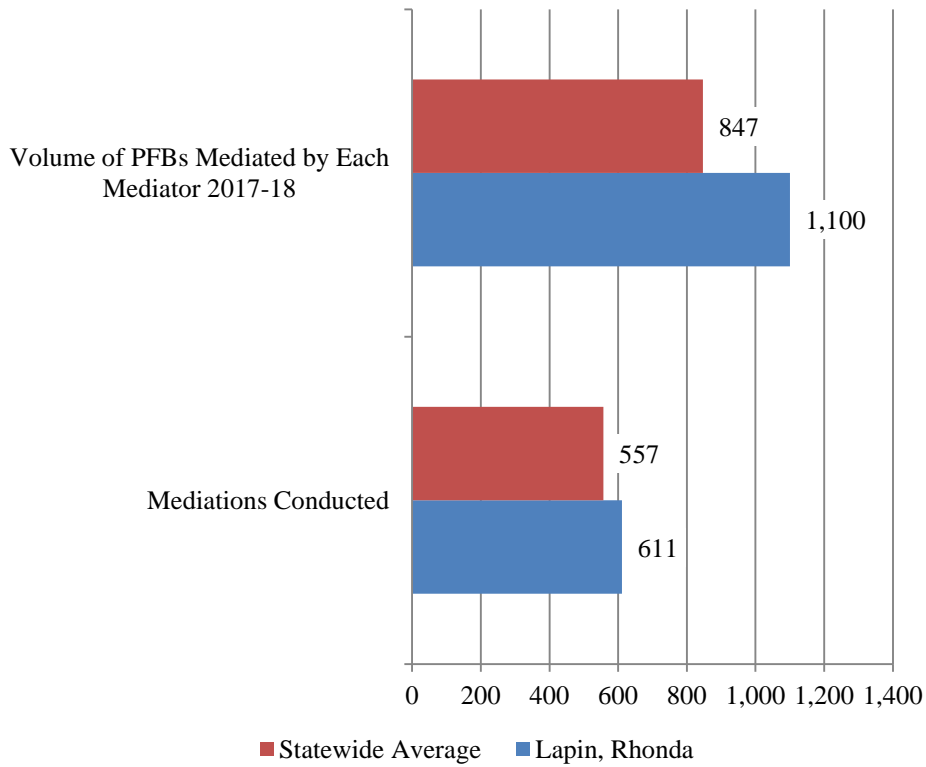
Imber, Michael (WPB)



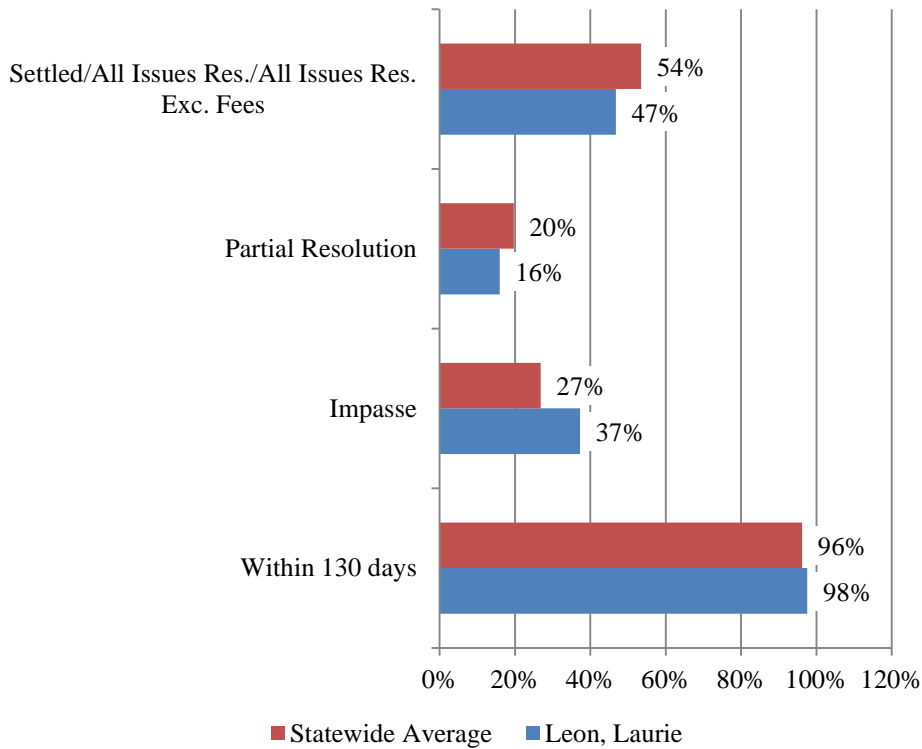
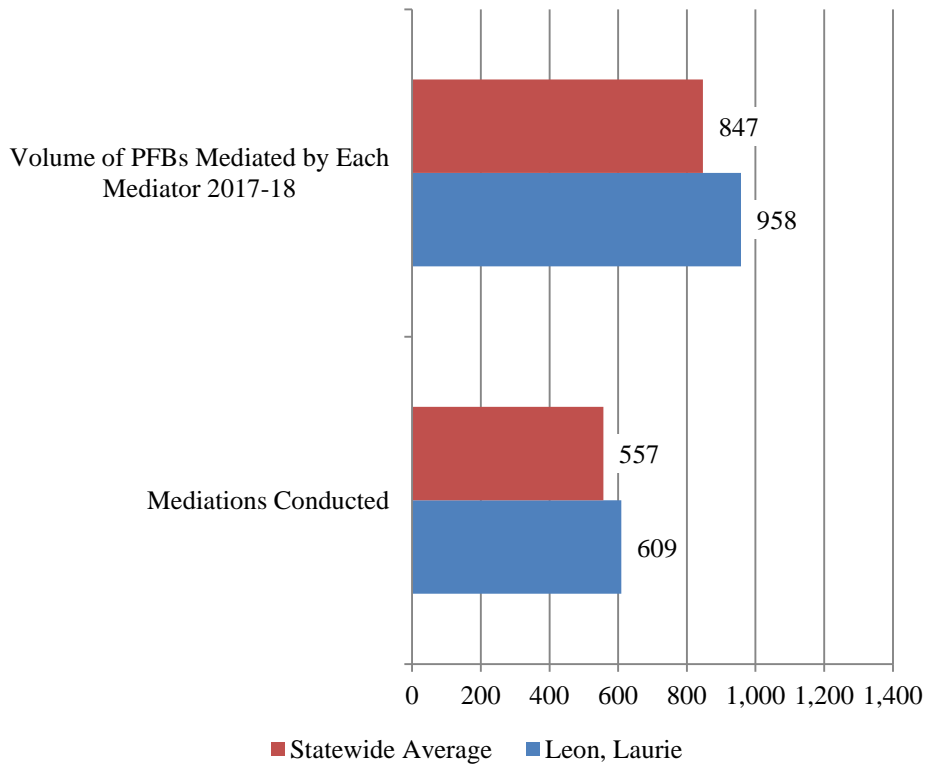
Kim, Anna (ORL)



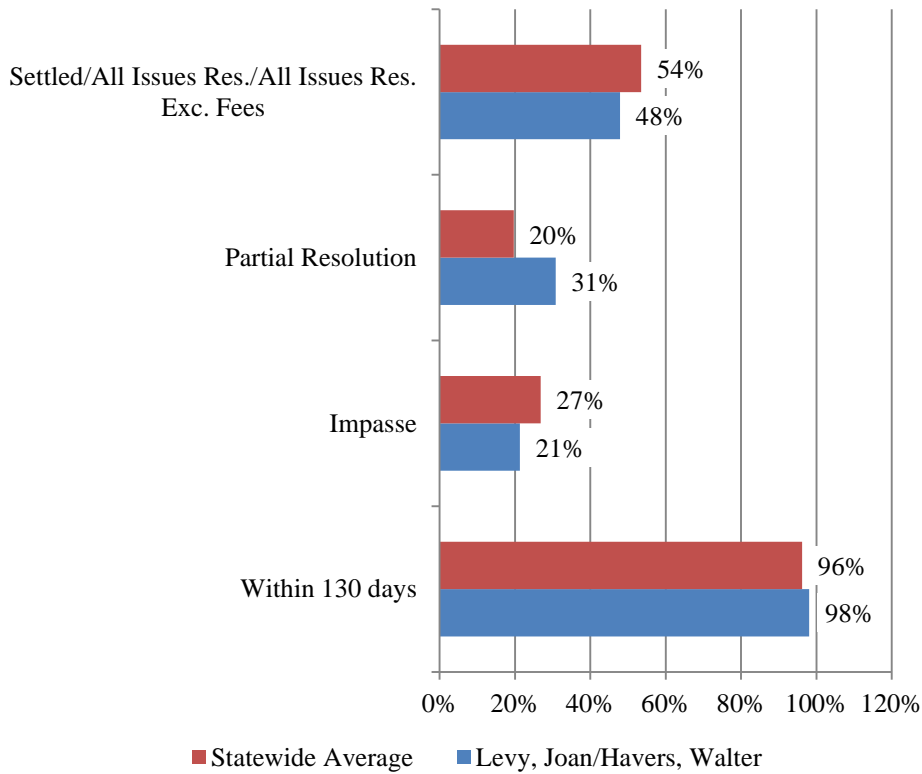
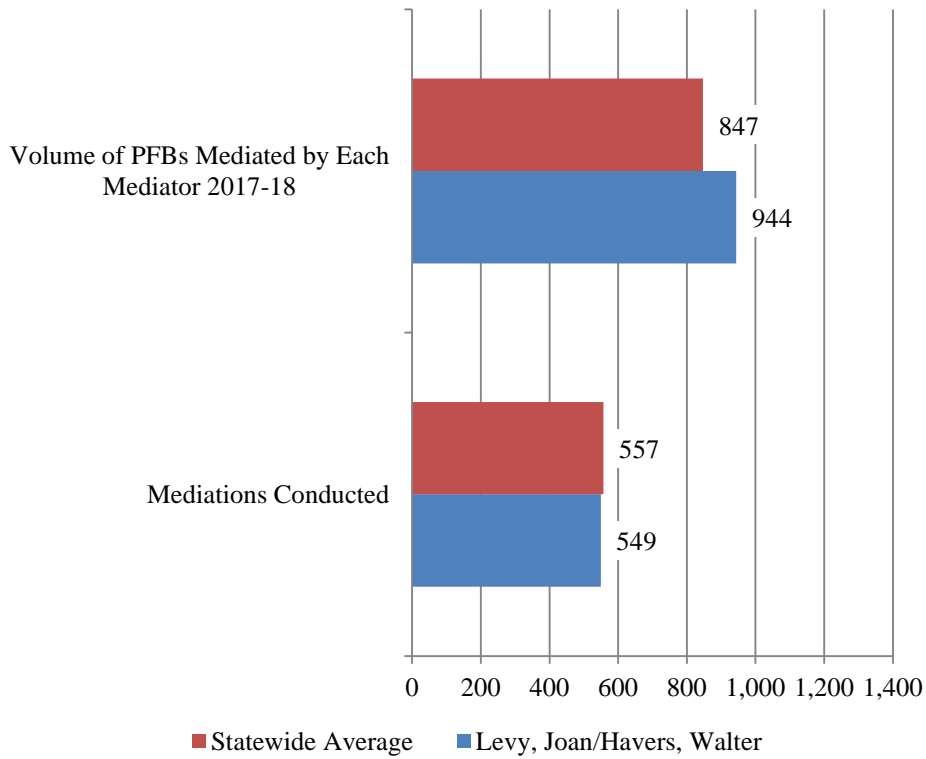
Lapin, Rhonda (MIA)



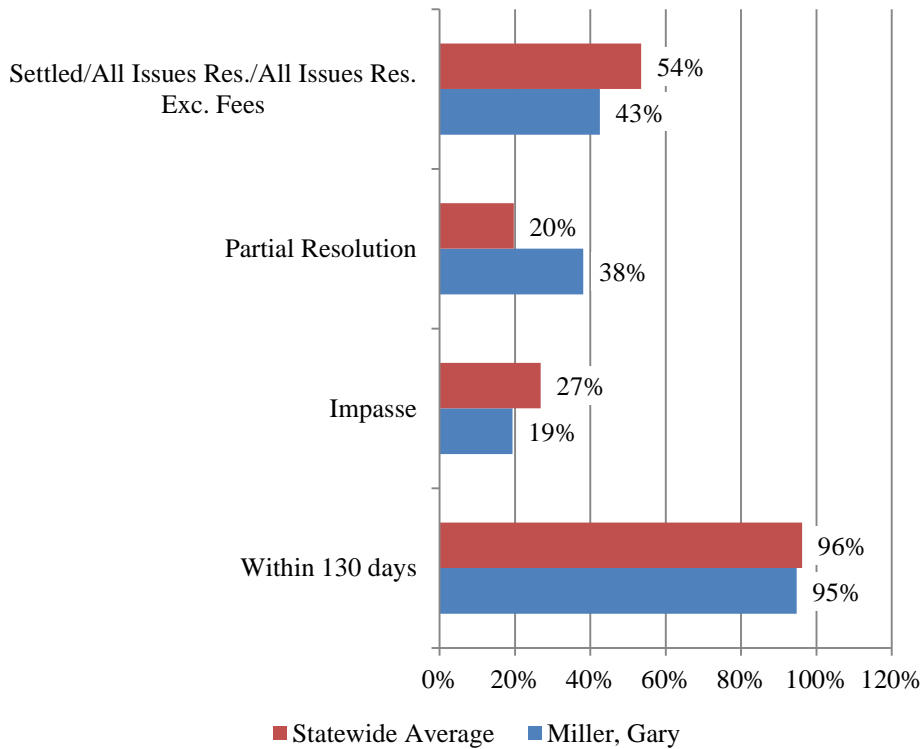
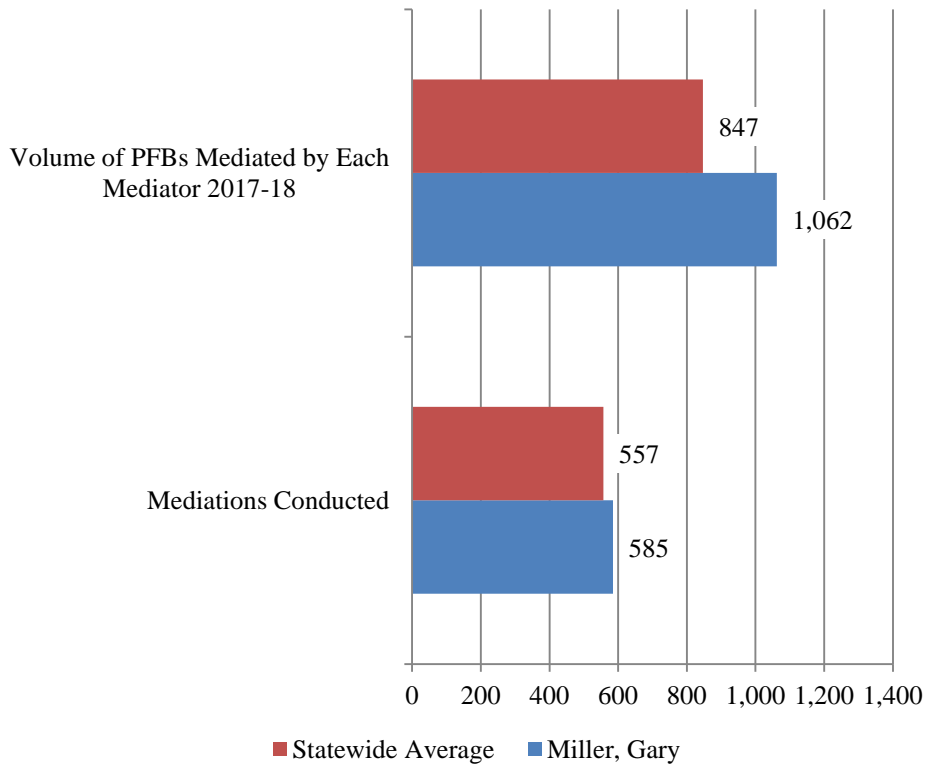
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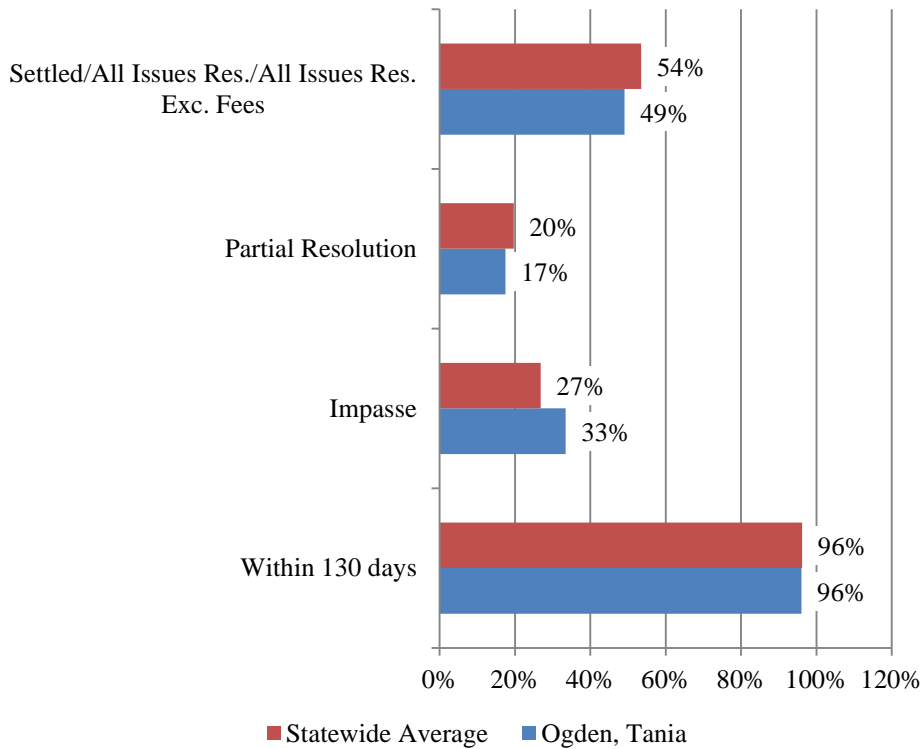
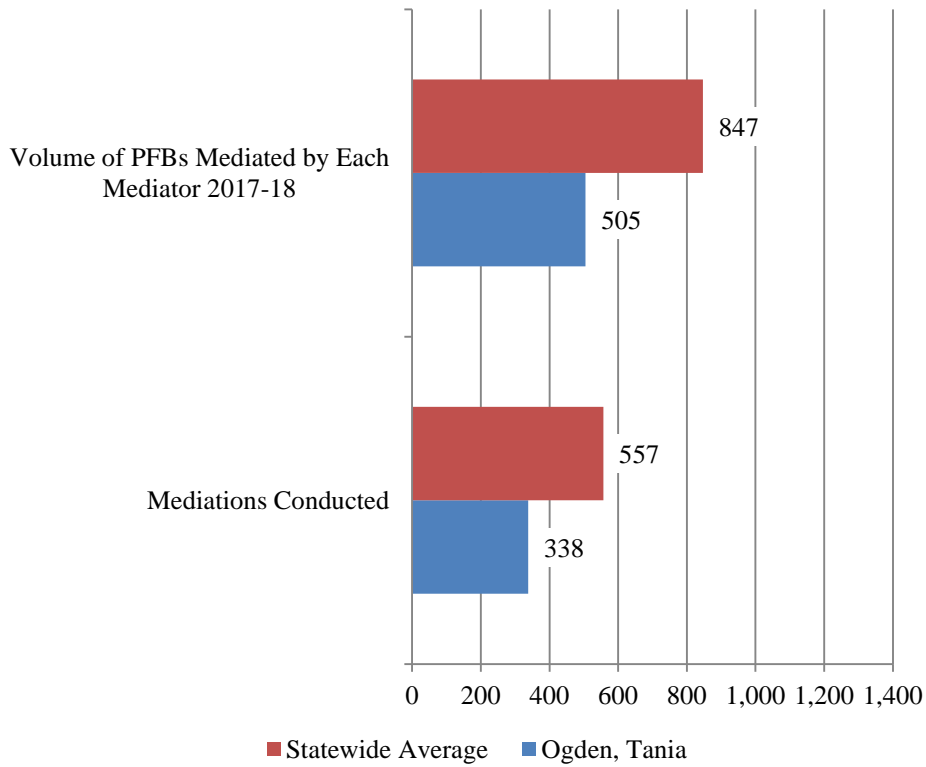
Levy Joan (MIA)



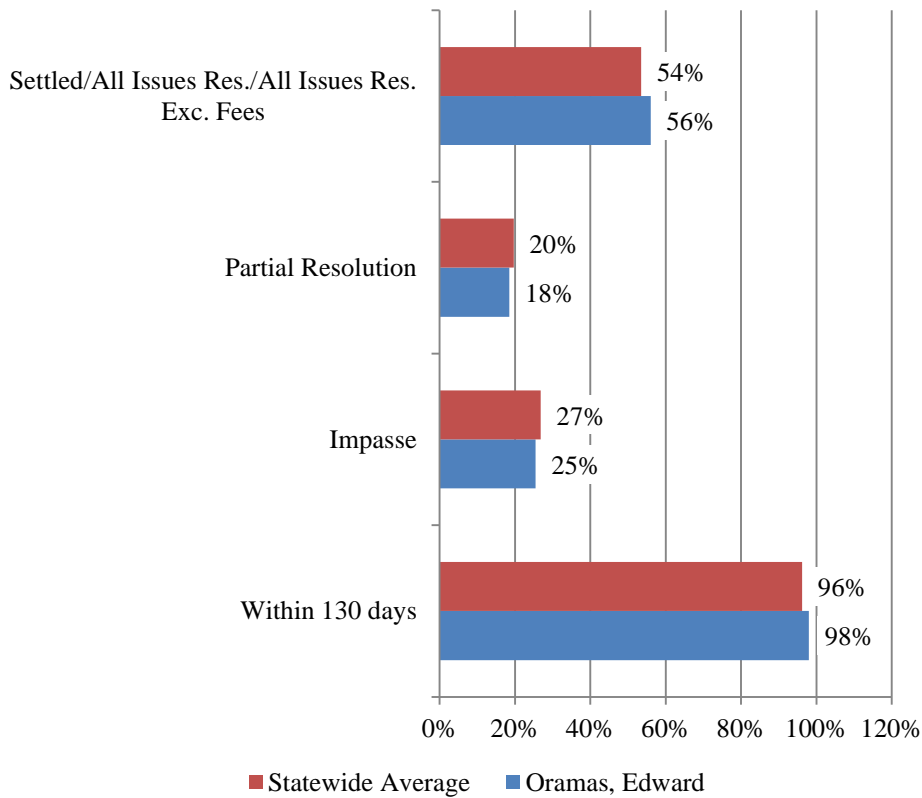
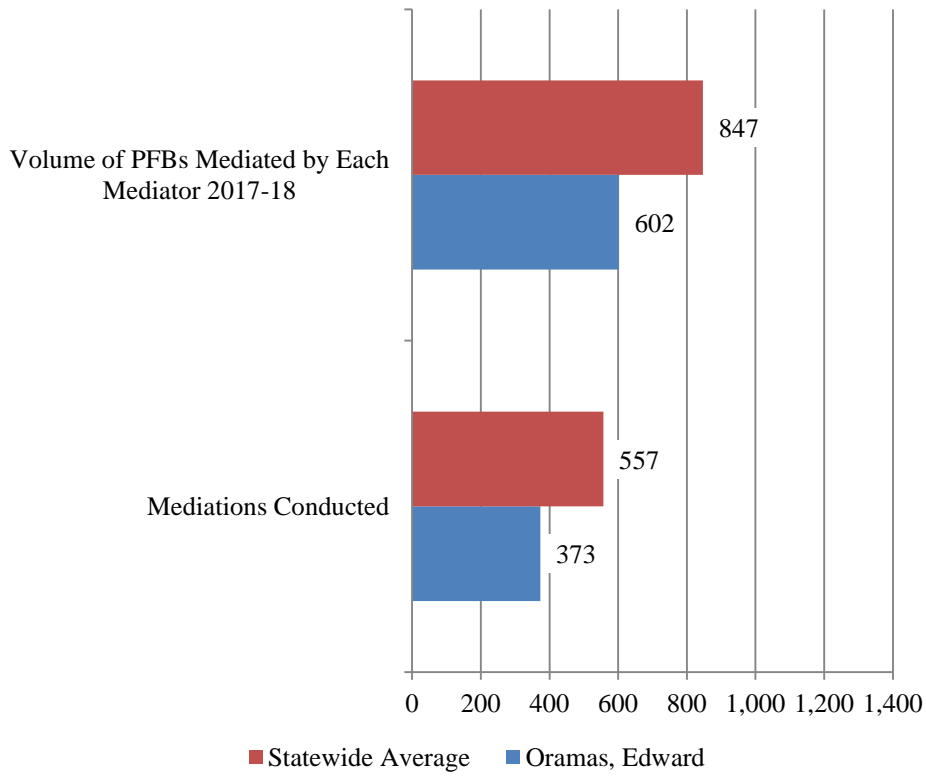
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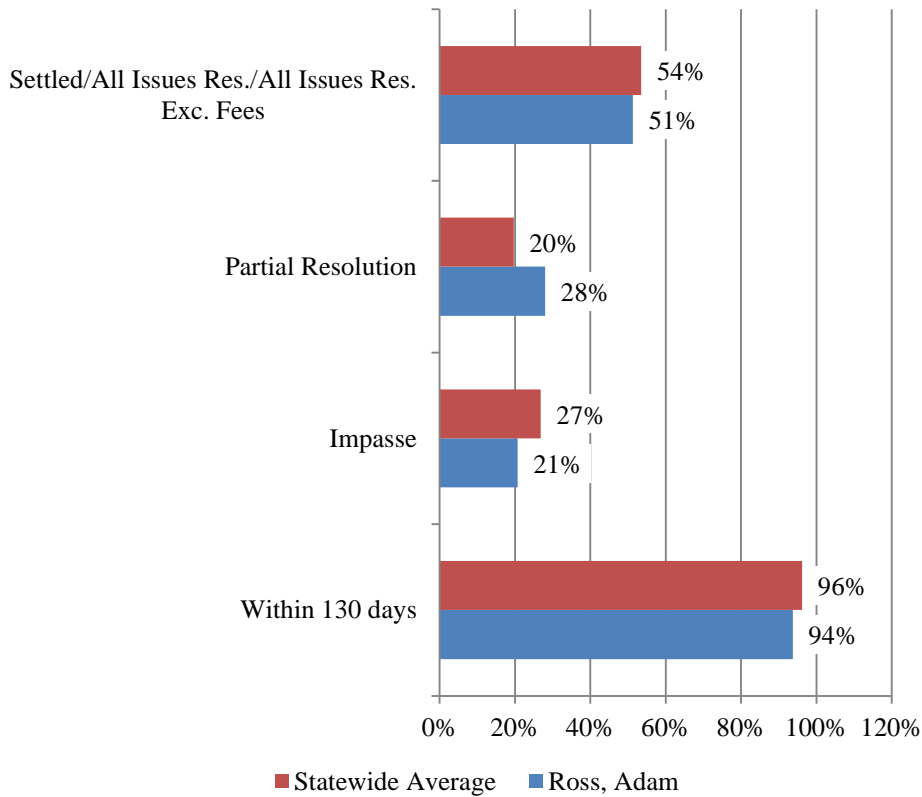
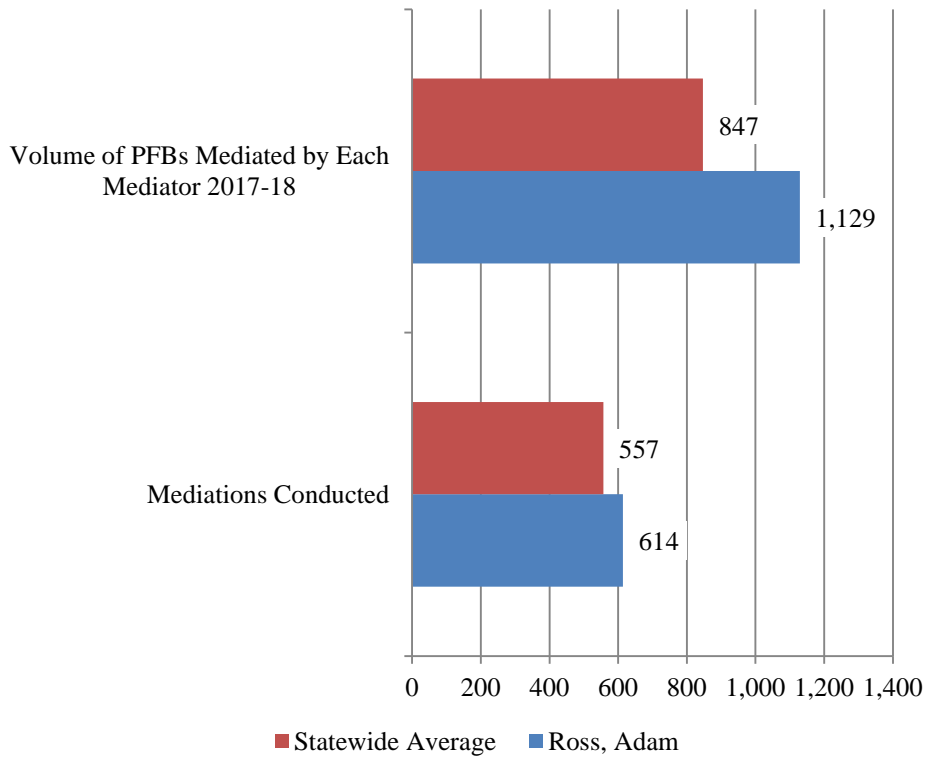
Ogden, Tania (FTM)



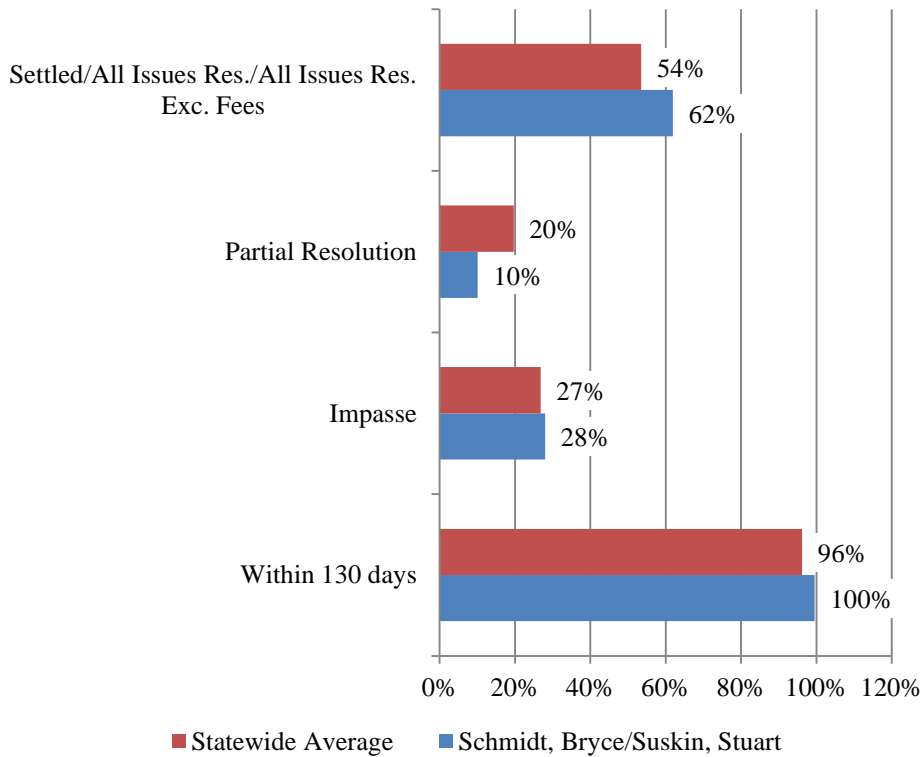
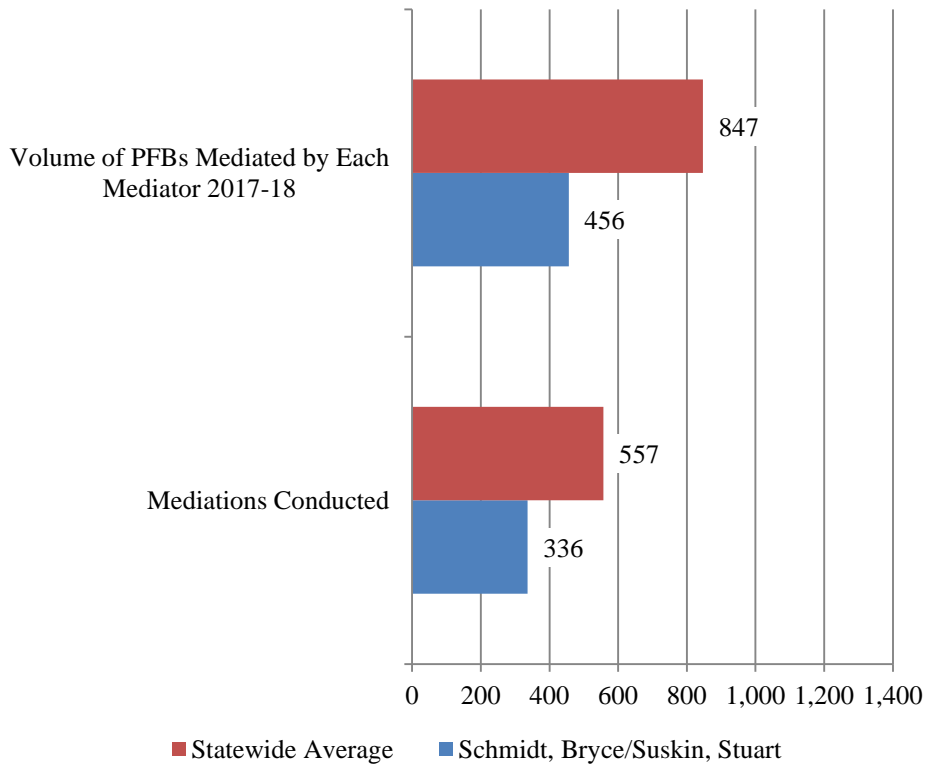
Oramas, Edward (PMC)



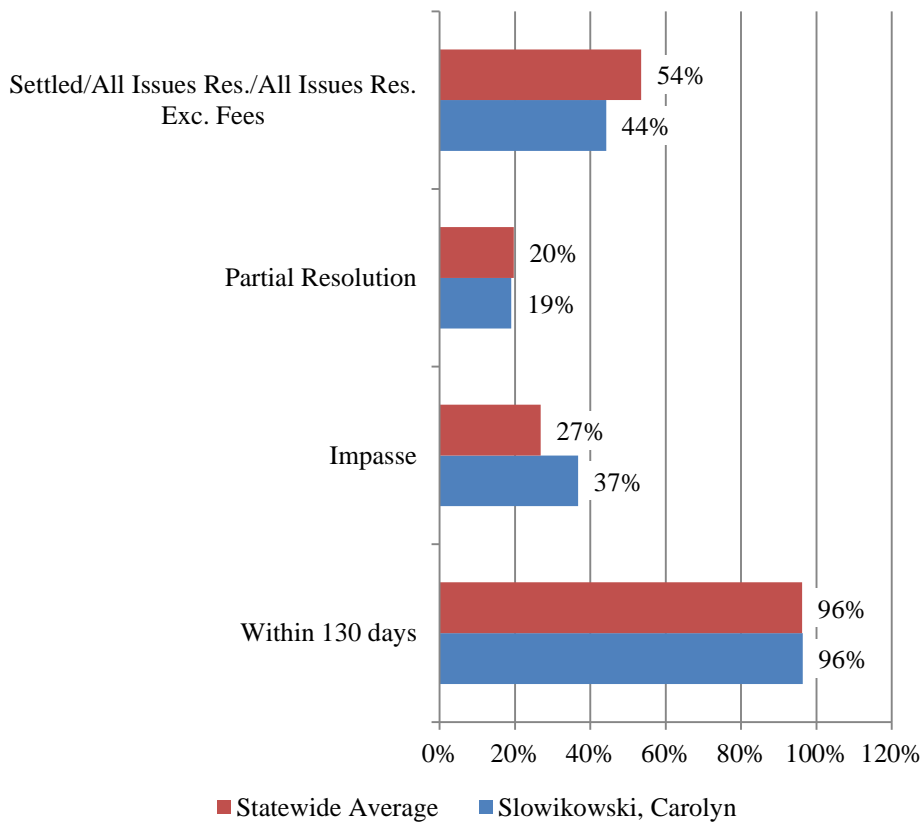
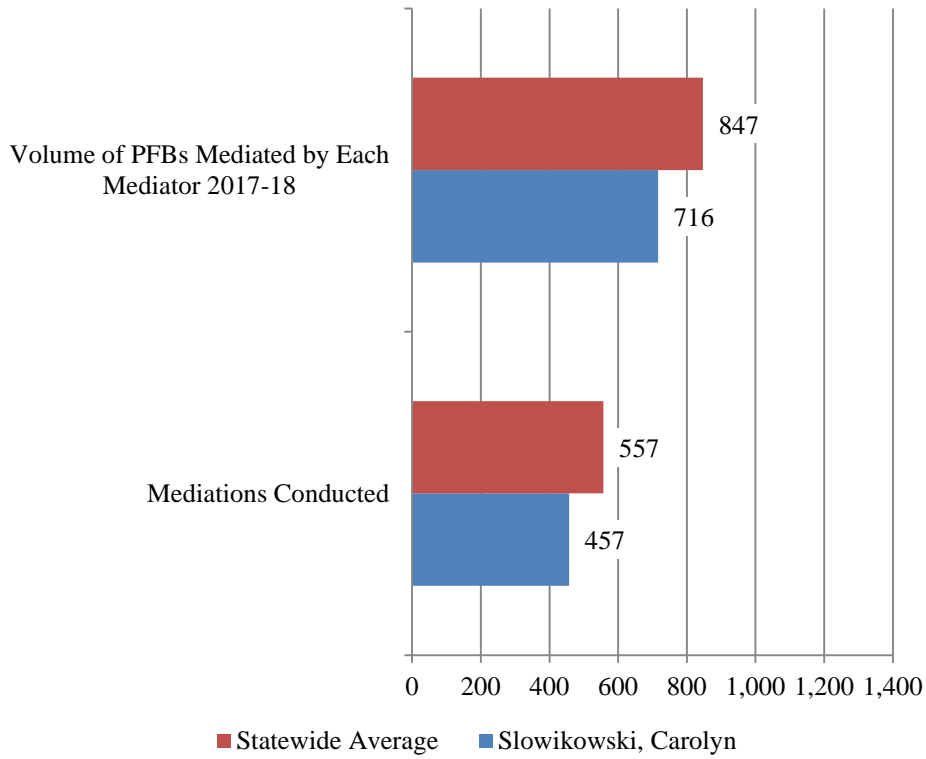
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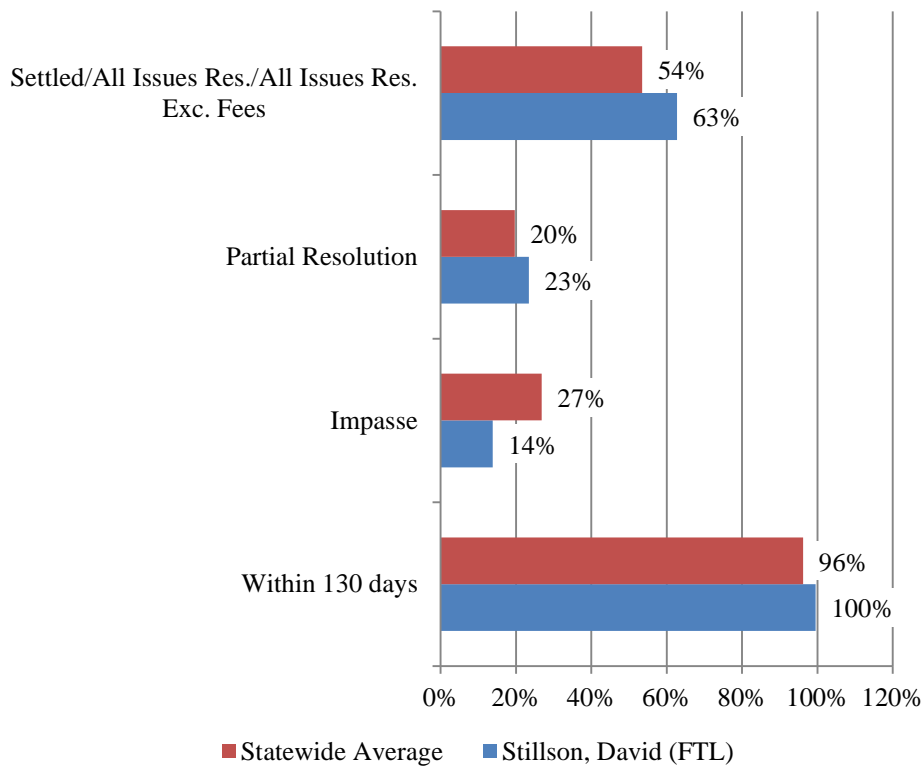
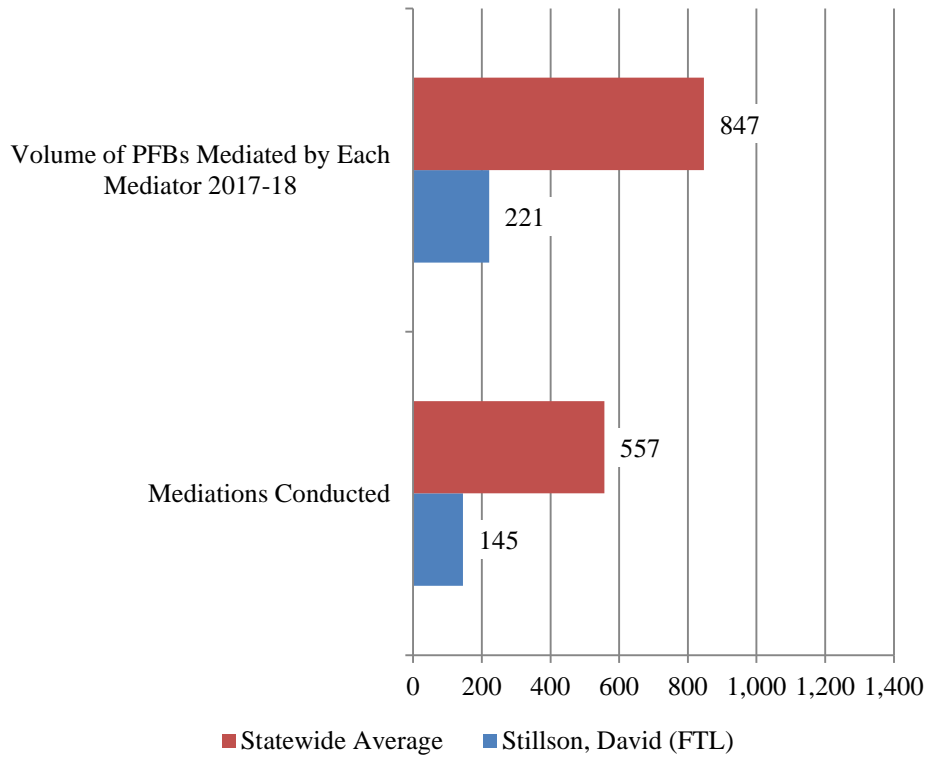
Schmidt, Brice (GNS)



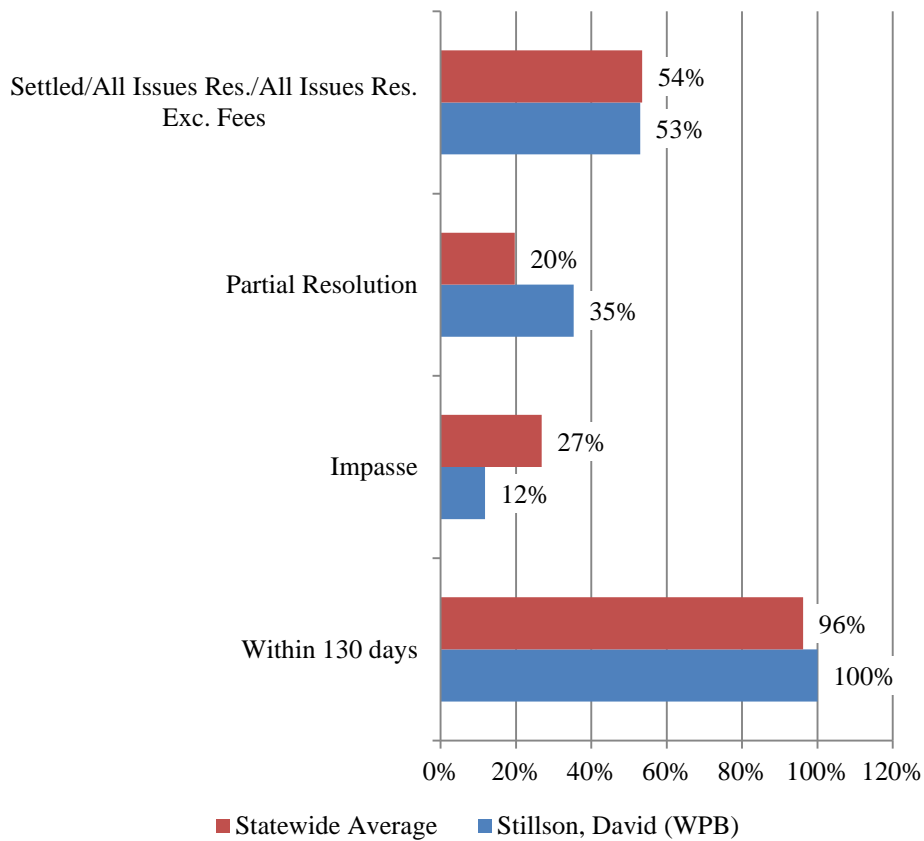
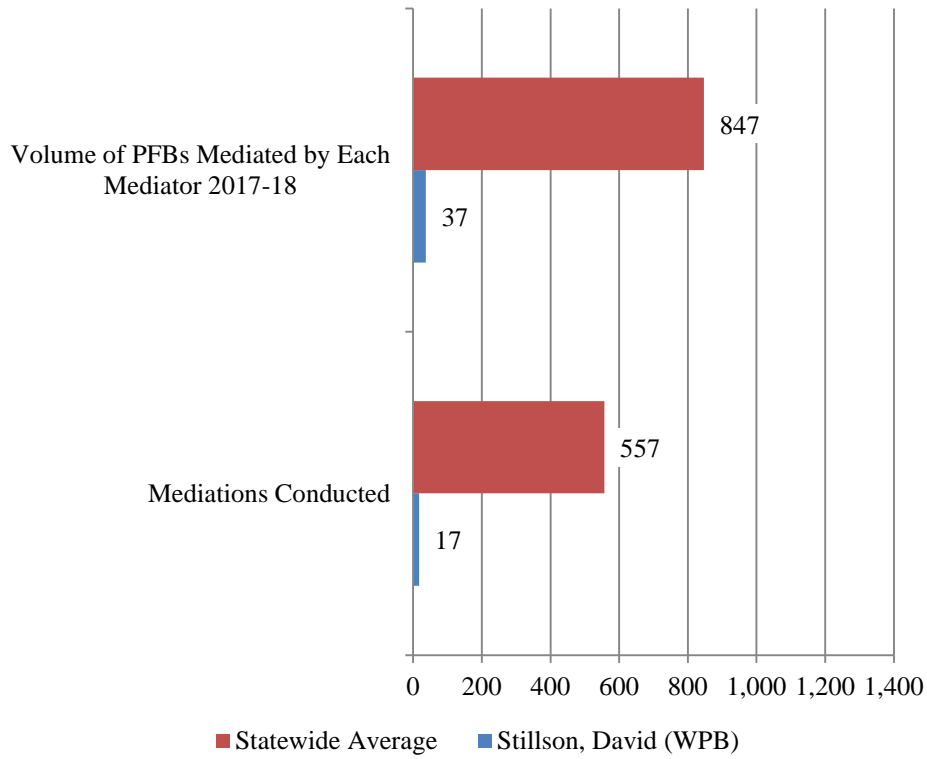
Slowikowski, Carolyn (PNS)



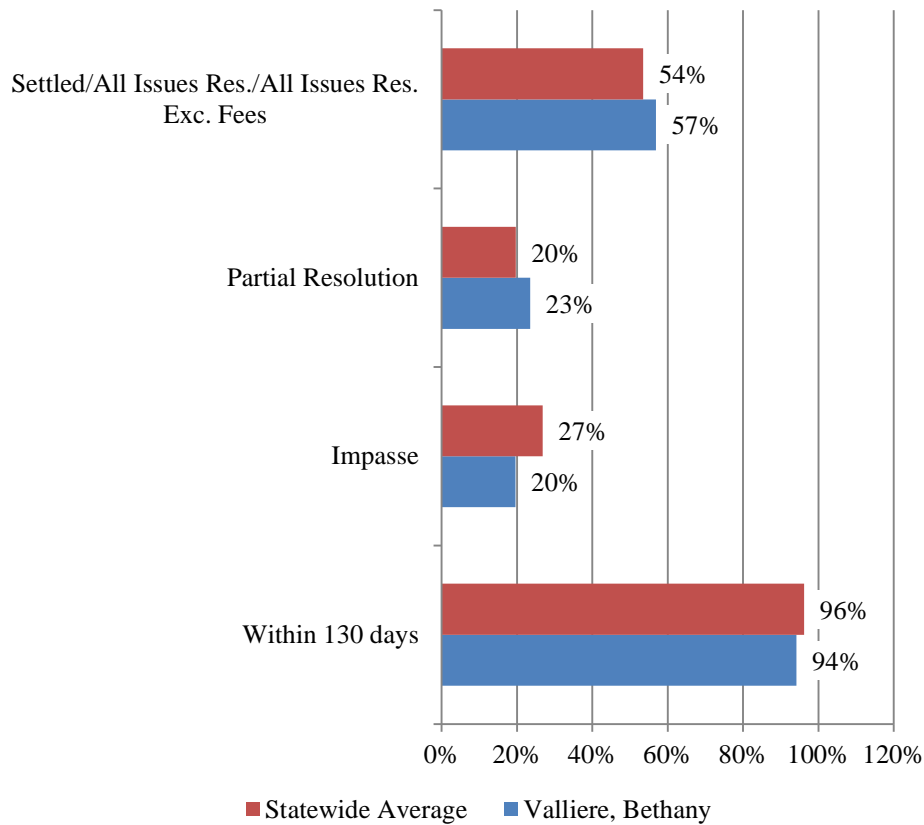
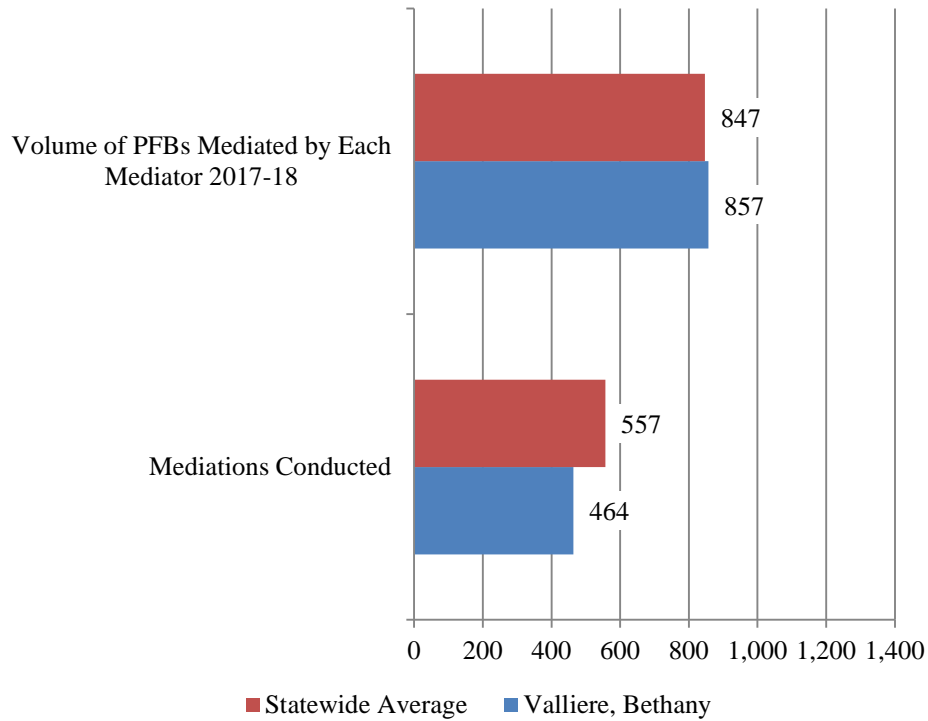
Stillson, David (FTL)



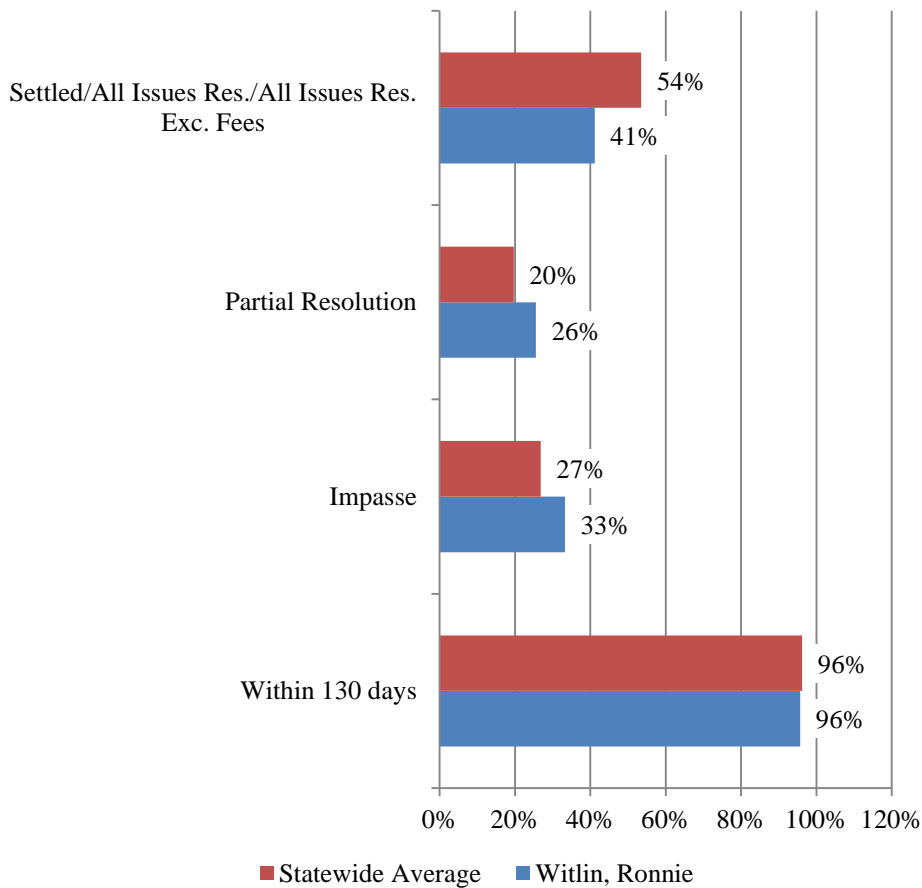
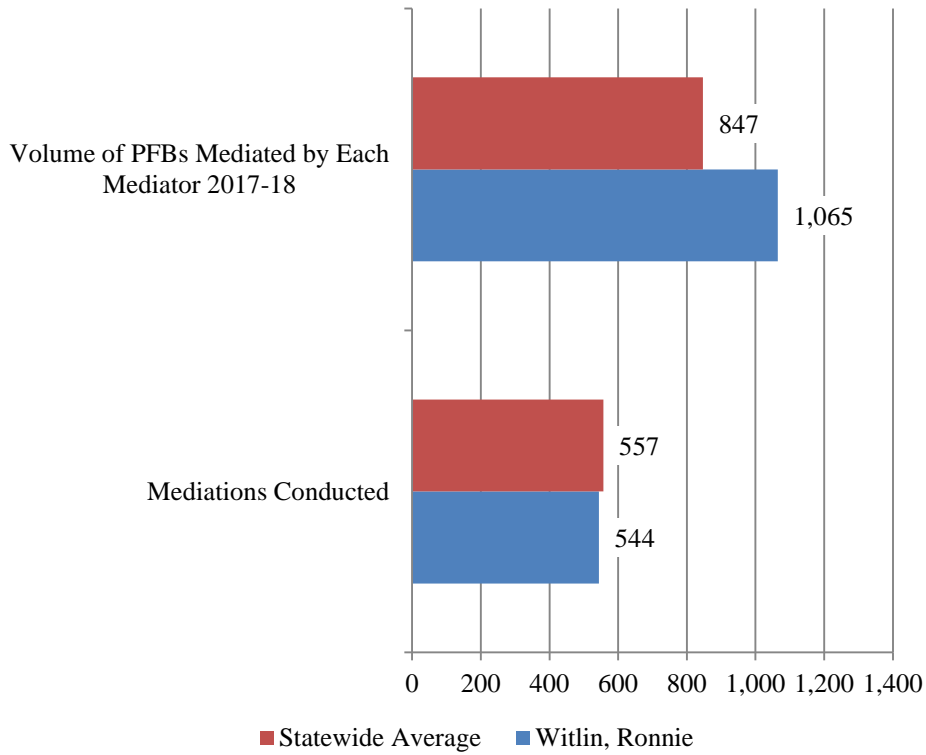
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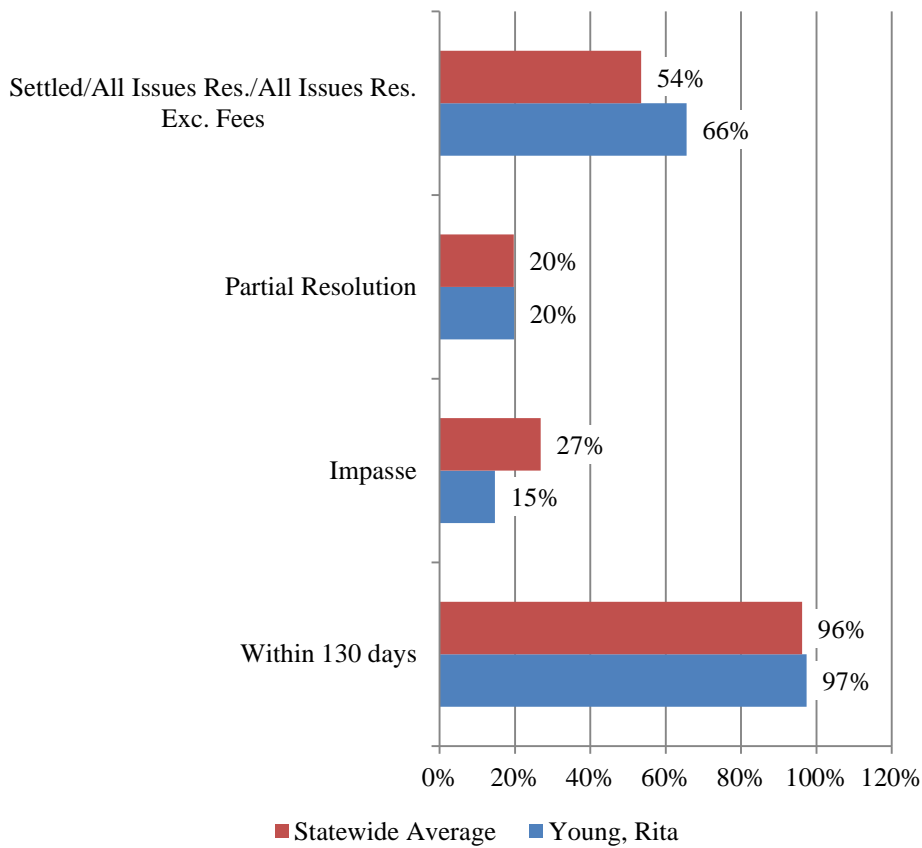
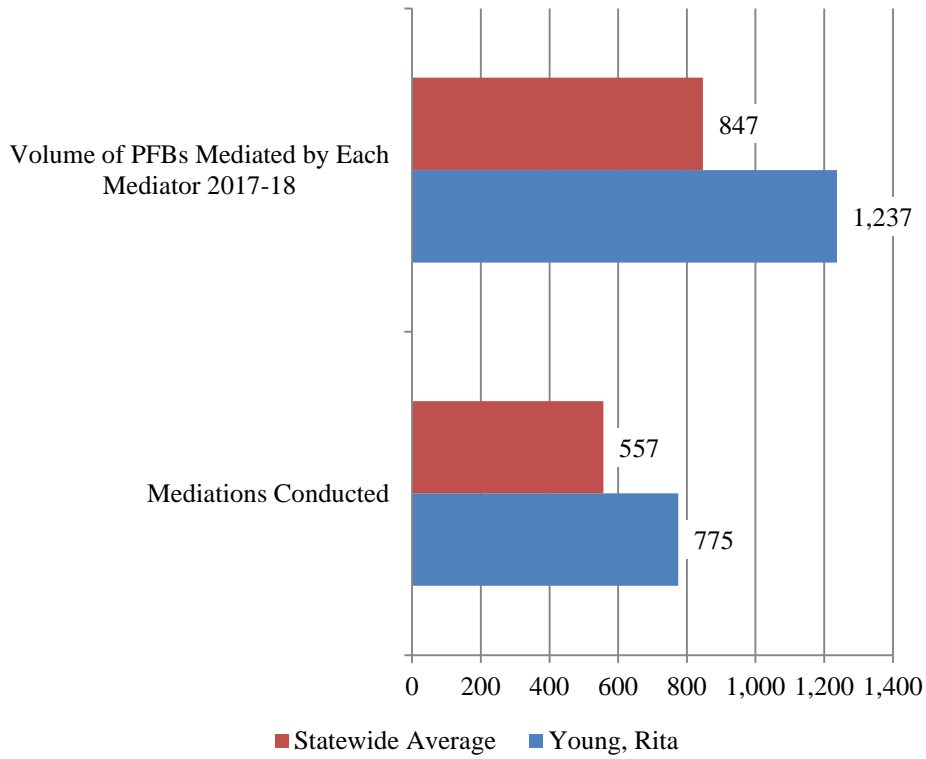
Valliere, Bethany (WPB)



Witlin, Ronnie (MIA)



Young, Rita (SPT)



¹ See, <https://www.fljcc.org/JCC/publications/reports/2016SR-MSR.pdf>, last visited August 18, 2017.

² Because this position is split, and because the potential exists that the position could theoretically be filled by two part-time incumbents, the data for Mr. Stillson is reported herein for each of the two districts separately.

³ See Section 440.02(10), Fla. Stat.: “‘Date of maximum medical improvement’ means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability.”

⁴ Even though Fla. Stat. §440.20(11)(a), states that the “Chief Judge,” not the Deputy Chief Judge, shall submit this report to the legislature, this reference to the “Chief Judge” has been in the statute long before the OJCC was placed within the Division of Administrative Hearings, and actually refers to the head of the OJCC who is the Deputy Chief Judge under 440.45(1)(a), Florida Statutes.

⁵ There is some tendency on the part of attorneys, judges and mediators to fail to consolidate like cases. Consolidation may be appropriate when all of the parties are identical in multiple cases. For example when an employee has suffered multiple injuries to a specific structure (e.g. the left knee), and there is dispute regarding which accident is responsible for the current need for treatment. In that instance, there might be two virtually identical PFB filed, albeit with different accident dates. The habit of some mediators to proceed with two or more mediation appointments in such instances, rather than consolidating those cases together (rendering multiple cases one case), may somewhat overstate the actual volume of mediations held.