STATE OF FLORIDA
Division of Administrative Hearings

2019-20 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.

Table of Contents and Summary

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 2019-20 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 clearly remains 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 2019-20 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 eighteen 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 of the twentieth century 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 twelve fiscal years (2008-09 through 2019-20) 100% of the OJCC mediators achieved an average time to mediation within that 130 day statutory parameter, though some individual cases required more time. 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 period. With the more restrictive 2016 definition of "trial," trial orders were entered within the 30 day parameter 94.18% of the time in 2019-20.

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 OJCC receipt of U.S. Mail is now uncommon.[8]

Electronic service[9] 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. In fiscal 2019-20, the "registered employer" process was added to the database. This rolled out with three employers[10] and is expected to expand rapidly in 2020-21.

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 2019-20. 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.[11] 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.

When pandemic struck Florida in 2020, the existence of the VTS facilities was not sufficient. There was reluctance to attend any proceeding in an office environment. The world of business shifted to an Internet-based videoteleconference paradigm virtually overnight. The OJCC adopted the ZOOM[12] platform. The community familiarity with the VTS likely eased the transition to this Internet platform. In the final months of 2019-20, the majority of trials conducted by Judges of Compensation Claims were through ZOOM or similar technological tools.

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 53-54.

The OJCC is an adjudicatory system, a "tribunal," situated within the Executive branch.[13] The OJCC is funded entirely by assessments on the workers' compensation industry, through the Workers' Compensation Administrative Trust Fund[14] (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 Offices[15] 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 foundation for these is an interactive database with integrated case management, electronic filing/service, and a robust website presence. 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 approximately $1.7 million overall.[16] By comparison, other states have developed systems through special appropriations, deploying less robust processes, at a far greater cost.[17]

Currently, the eJCC system provides electronic service (eService) of filed documents[18] to all insurance carriers and servicing agents, contemporaneously with filing. EService for employers has begun and marked growth of that new process is predicted in 2020-21. The completion of the employer service deployment 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 mandatory certified mail expense in Florida workers' compensation will be minimized.[19]

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.[20] 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;[21] 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.

COVID-19, Pandemic, and Pivot

One focus of this report is the rate at which claims are filed seeking adjudication of workers' compensation benefit entitlement. There have been events in each of the last three years that impacted filing rates. When viewed in the context of annual figures, the petition filing rates over the last three years are similar. However, there are indicia those volumes would have demonstrated increase but for significant events such as weather and the COVID-19 pandemic.

In 2019-20, petition volumes were trending upward through the first three quarters. In the fourth quarter, however, there was a dramatic downturn in litigation activity. The impact of COVID-19/SARS-CoV-2 was immediate and profound. As of March 31, 2020, 56,587 Petitions had been filed compared to 54,240 the same period in 2018-19 (4.3%). However, April 2020 filings were down 23% and May was down 29% compared to the year prior. In the final month of the fiscal year, petition filing increased 1%; a minor fluctuation by comparison. Thus, although the overall minimal annual decrease (1.4%) for petition filing might be seen as an indicator of stability, the impact of COVID-19/SARS-CoV-2 is clear. Had the pandemic not occurred, it is logical that 2019-20 petition filings would likely have been notably increased.

The impact on litigation appears to be ongoing. Petition filings in July 2020 were down 7% from July 2019; August 2020 filings were down 16% from 2019. It is possible that the COVID influence is waning, as petition volumes increased some (3%) in September 2020. It is also possible that month could illustrate a fluctuation rather than a new trend.

Anecdotally, there were businesses which closed in the spring of 2020 secondary to health concerns and government directives beginning with Executive Order 2020-51 on March 1, 2020.[22] Through the remainder of fiscal 2019-20, various counties and municipalities imposed restrictions on business, defined essential businesses, and impacted the operations of physicians, lawyers, claims professionals, and others. This coupled with the closure of schools and challenges experienced by parents and others may support that the occurrence of injury was less frequent, or that law firms' ability to staff and produce pleadings was inhibited.

The Florida Office of Judges of Compensation (OJCC) did not suspend or limit operations as a result of COVID-19, though various process adjustments were undertaken. On March 14, 2020 the OJCC mandated that all mediations be conducted telephonically.[23] Initially, that was through May 31, 2020. Thereafter, the OJCC returned to the operation of Rule 60Q6.110(5)(a),[24] by which telephonic appearance at mediation is within the discretion of the assigned mediator. Based upon the volume of requests for telephonic appearance, and in

recognition of the ongoing nature of the pandemic, the OJCC returned to mandatory mediation on June 28, 2020 and that exception has been ongoing since.[25]

The OJCC began conducting hearings by videoteleconference through a proprietary network in the early 2000s. As a result, the Judges were familiar with, and largely comfortable with such proceedings at the outset of this pandemic. The OJCC elected to provide access to an alternative, Internet-based, videoteleconference platform in March 2020. The use of Zoom was embraced by many of the judges. However, the discretion of each assigned judge regarding proceeding and process has remained intact throughout this challenge. Various judges have proceeded using that platform, the OJCC videoconference facilities in the District Offices, telephone, and in-person proceedings throughout, as they each deemed appropriate.

External limitations have been imposed on proceedings. Two of the OJCC offices are located in state office buildings (Miami and Pt. St. Lucie). Access to those buildings by the public has been constrained and restricted since spring 2020. That has been outside the control of this Office. Thereby, the discretion of judges there to hold in-person proceedings has been effectively foreclosed. In addition, one OJCC office was administratively closed for a day to accommodate disinfecting following reports of a visit by someone known to be infected by COVID-19/SARS-CoV-2.

In terms of staffing, the OJCC afforded some opportunity for telecommuting. The purposes of this reaction included diminishing personal risk of infection and decreasing population density in some offices. The telecommuting effort was principled and focused. At the most, approximately 24% of OJCC employees had telecommuted, pursuant to specific written agreements, for some period.[26]

Anecdotally, there were reports of state agencies closing completely due to COVID-19.[27] On various webinars, state officials across the country explained their efforts to adapt. One described how their agency had "figured out" how to receive exhibits by email for trial. Another explained their adjustments to video hearings. The Florida OJCC experience with videoteleconference rendered such adjustment requirements minimal in Florida. The adaptation of electronic filing early this century likewise positioned the OJCC and Bar readily prepared for "distance" proceedings. There was no "figuring out" how to receive documents electronically; that was conceived in the early 2000s and mandated by the legislature in 2011. What others adapted to in their 2020 response, Florida had long embraced.

A significant volume of Florida workers have reported workplace exposures to COVID-19/SARS-CoV-2. The Division of Workers' Compensation has provided monthly updates regarding the reports of lost-time exposures and the financial impact of those claims.[28] The impact of these claims has been significant, but not as pervasive as some anticipated. Florida is not alone in that regard. For example, research suggested that only one in fourteen COVID-19 infections among working age individuals was reported as work-related in California.[29] This is despite Executive action there and in other states to legislate COVID-19/SARS-CoV-2 presumptions for various classes of workers. It is predicted that such presumptions, and the burdens of proof in workers' compensation for occupational disease, will be the subject of state legislative discussions in 2020-21.

The pandemic has resulted in significant volumes of employees reporting COVID-19/SARS-CoV-2 exposure. In October 2020, the Florida Division reported[30] that 21,221 reports of "lost-time" occupational disease claims have been reported. Of those, 9,365 (44%) were denied at least in part, while 11,856 (56%) were accepted. The total paid on these COVID-19 claims as of September 30, 2020 was 30,793,827, which represented about 7.4% of the total paid on all workers' compensation lost-time claims.

A very small volume of COVID-19 claims had entered litigation according to searches of the OJCC database. The total is believed to be less than 200. Some of those claims are not allegations of compensability of this disease, but claims related to the tangential effects of that disease on other recovery (closed doctor offices, cancellations of elective surgeries, challenges with medical care transportation, and more).

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.[31] 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,[32] *en*

banc,[33] and the Florida Supreme Court;[34] (2) Castellanos v. Next Door Company decided by the First District,[35] and likewise reversed by the Florida Supreme Court;[36] and (3) the First District Court decision in Miles v. City of Edgewater Police.[37] 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. There is anecdotal evidence that issues remained somewhat unsettled through 2018-19.

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 or constrained 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.[38]

These decisions nominally led to a significant workers' compensation premium rate increase in 2016.[39] That was followed by rate decreases in 2017,[40] 2018,[41] 2019,[42] and 2020.[43]A fifth rate reduction is proposed for 2021, but remains pending at the time of this report.[44] It is suggested by some that decreasing frequency of work injuries is responsible for the last five rate decreases. This is despite the perceived impacts of increasing medical costs and attorney fees.

As described in the 2017-18 Annual Report, there remains disagreement in the marketplace as to the breadth of Miles v. City of Edgewater.[45] The Florida First District Court of Appeal 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.[46] The case has been interpreted by some as facial determination, and claimant attorney fees in Florida have been increasing in recent years. The total volume of settlements approved, and dollar value of settlements in the aggregate had not markedly increased through 2018-19. Each demonstrated notable increase in 2019-20. However, the data supports that attorney fees are consuming more significant portions of those settlements.

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.

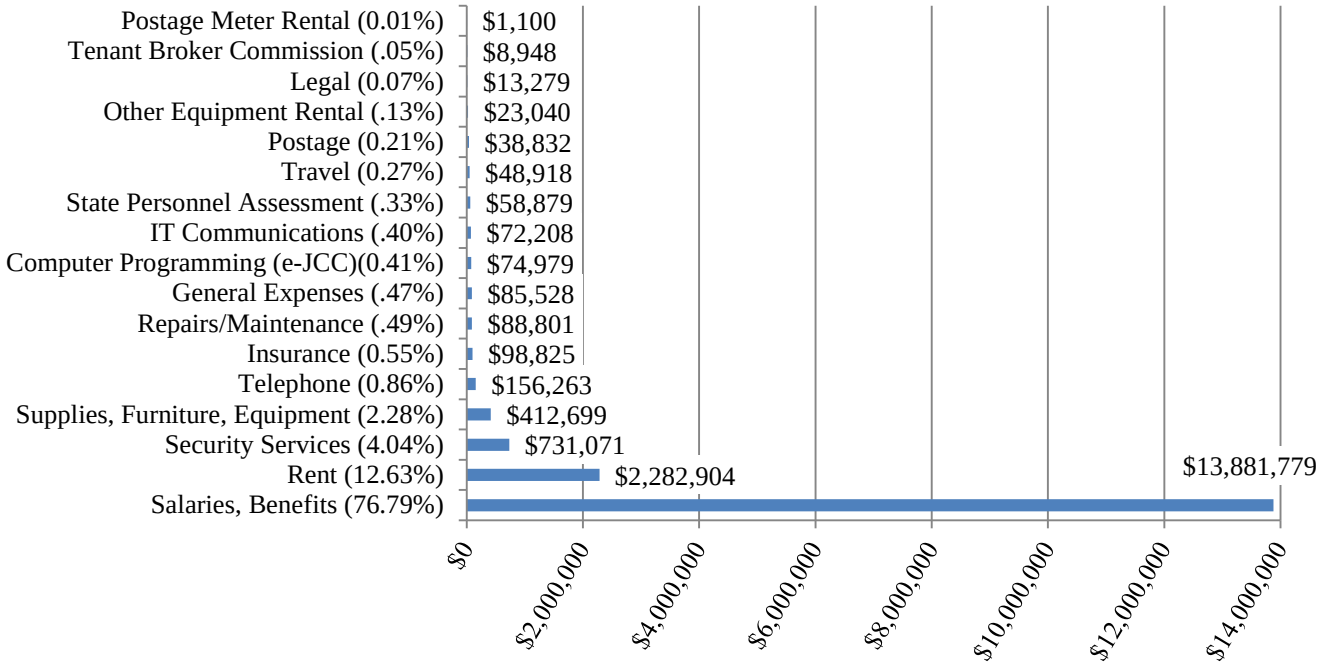
In addition, the advent of the digital age and deployment of end-user attorney and adjuster electronic data-access and e-filing have increased the sophistication and skills necessary to effectively perform paraprofessional functions for the OJCC. In short, the OJCC staff positions continue to demand 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.[47] 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 rates[48] 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 and one-half percent (93.46%) of the agency budget is devoted to salaries/benefits, rent, and security services.[49] As this report is produced, there is a potential for expenditure limitations of 8.5%.[50] There is no method by which this Office could reduce beyond 6.5% without reductions in these three key categories. The statute requires that this Office "maintain" the various district offices, judges, and mediators in parity with the structure in place on June 30, 2001.[51] Therefore, premises security or staff payroll might be viewed as potential areas of savings.

Data Collection and Reporting

This report is produced and published pursuant to statutory mandate. §440.45(5), Florida Statutes.[52] 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[53] described prior data flaws resulting from antiquated 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,[54] and included the publication of an illustrated database user manual, as well as central and regional training. That database user manual was revised periodically[55] 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.[56] A second area of concern is the election by some judges to violate the terms of section 440.25, Florida Statutes, see page 49, Statutory Measures, "Final Hearing Continuance." Anecdotally, some judges note that compliance with that particular statute section 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.

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. It is notable that the filing volumes have increased since the mandate, but the 2011-12 volume demonstrates significant community engagement (65.4)[58] prior to the legislative mandate.

In 2012-13, programming was completed to allow electronic service[59] of pleadings among and between lawyers and insurance carriers. The result is a neatly integrated electronic filing and service system that is exemplary.[60] In 2019, the programming was completed to allow electronic service upon Registered Employers also. This addition likely addresses the final enterprise-deployment of e-service.

In 2018-19, six hundred three thousand four hundred ninety-nine (603,499)

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[57]	461,820	2%
2012-13	502,448	9%
2013-14	521,205	4%
2014-15	522,321	0.21%
2015-16	545,695	4.5%
2016-17	583,485	6.9%
2017-18	582,762	-0.12%
2018-19	601,378	3.19%
2019-20	603,499	0.35%

documents were e-filed with the OJCC. The filing volumes are described in this chart.

Using the parameters described in the 2006-07 OJCC Annual Report,[61] the cumulative end-user savings to date generated by this eFiling system, by the end of fiscal 2019-20, were at least four million nine hundred seventy-four thousand four hundred four dollars ($4,974,404). The total savings to the state is at least six million nine hundred thirty-four thousand three hundred sixty-eight dollars ($6,934,368). The combination is almost twelve million dollars in savings, and the total OJCC investment to date is approximately 1.6 million dollars. The JCC return on investment from eFiling is over 700%.

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[62] due to the ability to serve each other documents electronically. The eService savings, combined with eFiling savings is thus well in excess of nineteen 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.[63] Notably, the Office of Judges of Compensation Claims' success with eFiling and eService has been achieved without any extraordinary budget allocations.

The impact of Registered Employer eService will further enhance those system savings, provide more persistent and regular communication with employers, and better serve the Florida marketplace.

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."[64] Litigation in Florida workers' compensation is usually instigated with a Petition for Benefits ("PFB"). Each PFB might seek a single benefit, or many benefits.[65] 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.[66] 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 2019-20 could seek resolution of an issue regarding an accident that occurred that year or perhaps many years prior.[67]

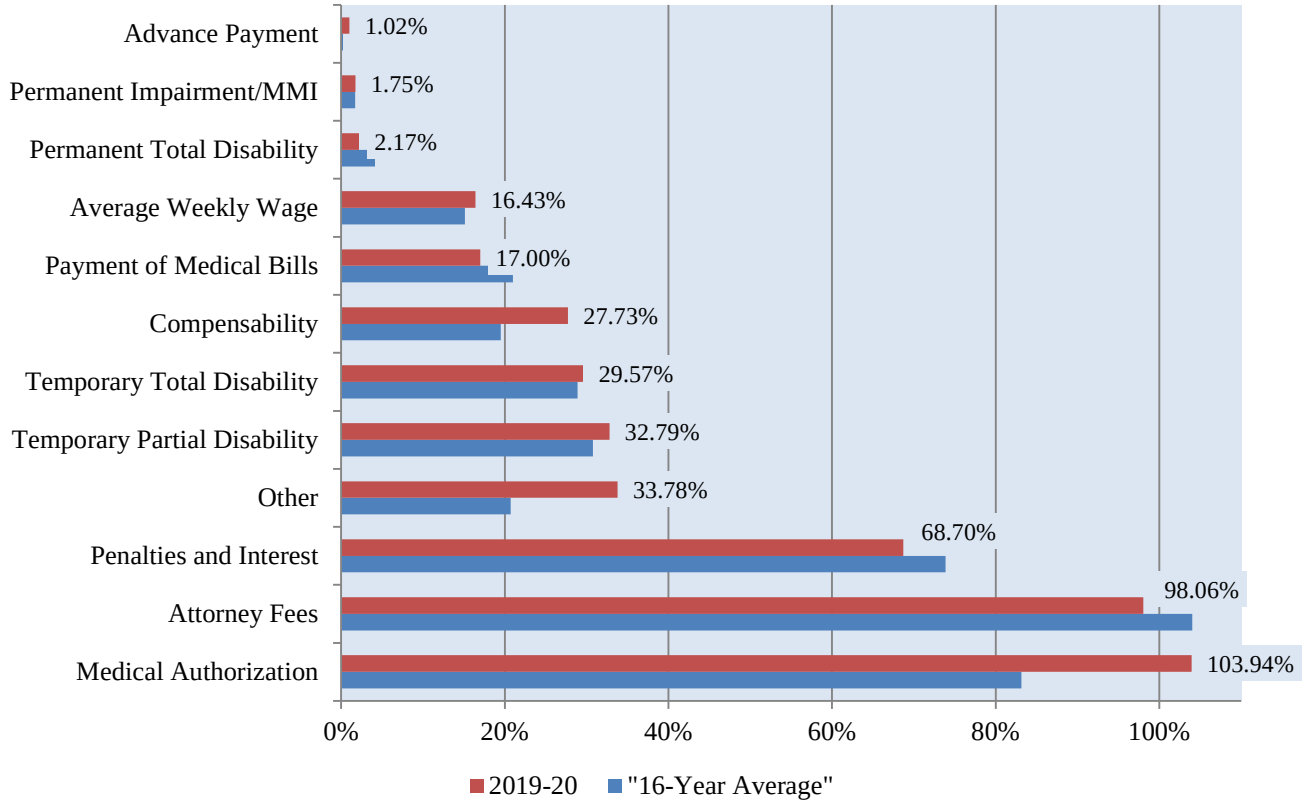
Another viable measure of volume is the "new case" PFBs filed annually. "New case" PFBs may likewise reference a date of accident that is either recent or remote, but each "new case" PFB certainly represents only an accident for that particular injured worker that is new to litigation, i.e. "new" to the OJCC.[68] 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.[69] 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 motions[70] 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.[71]

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 sixteen-year period 2003-04 through 2018-19 (blue bars on the bottom of each category) and the rate of filing for those categories in the current fiscal year, 2019-20 (red bars).The rate of medical authorization claims has been noteworthy for the last nine fiscal years (2011-12 through 2019-20). For the last four years, the rate of medical authorization claims was particularly noteworthy, approaching or exceeding 100% aggregate. The volume of "compensability" and "other" disputes was also notably above average in each of the last eight (2012-13 through 2019-20) fiscal years. However, as reported in the various annual Settlement and Mediation Reports,[72] 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.[73]



Gross Petition for Benefit ("PFB") Filing

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	-0.1%
2018-19	73,146	4.1%
2019-20	72,086	-1.4%

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 (see below, page 15). 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 2012-13 with the sole exception of a slight increase in 2008-09.[74]

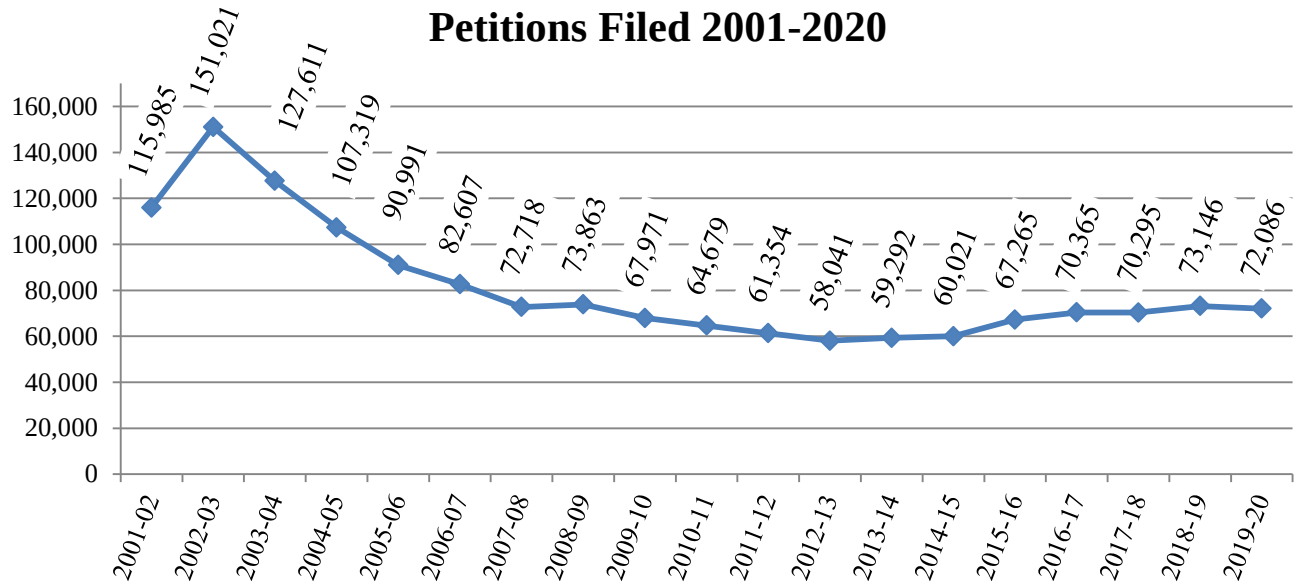
Modest PFB filing increases in 2013-14 and 2014-15 were followed by a marked increase of twelve percent in 2015-16. Questions were raised in 2015-16 regarding the trend potentially suggested by that significant increase. The five percent (4.6%) PFB filing increase in 2016-17 could have perhaps indicated 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.[75] Having paused for a year, the trend returned to increase in 2018-19 with a four percent (4.1%) increase.[76] The extent of weather influence is not known.

2019-20 brought a small (-1.4%) decrease in petition volume. There is an arguable connection between that decrease and the COVID-19. For the first nine months of 2019-20 (July 2019 through March 2020), petition volumes were up 4.3% compared to the same three quarters of 2018-19. Volumes dropped significantly in April (-23%) and May (-29%), but showing a slight increase (1%) in June. The COVID-19 "lockdown" in Florida began April 1, 2020.[77] The state was significantly constrained through the beginning of "phase one" reopening May 4, 2020.[78] "Phase two" of the reopening was instigated in June 2020, but multiple local governments implemented broader restrictions and constraints.[79]

From the outset, the "lockdown" orders did not prohibit the staffing and function of the Florida Office of Judges of Compensation Claims, law offices, and others engaged in the process of Florida workers' compensation.[80] Despite that, anecdotal reports support that many law firms, carriers, and servicing agents transitioned rapidly, and with various challenges, to telecommuting and work-from-home processes. It is suggested that the decrease in petition volumes in the fourth quarter of 2019-20 is attributable to COVID-19 and its impacts on both companies and individuals.[81]

There are those who associate the Pre-COVID-19 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,[82] the 2009 Florida Legislature amendment to again forbid hourly fees,[83] the Florida Supreme Court decision in Castellanos v. Next Door Company[84] and the Florida First District Court of Appeal decision in Miles v. City of Edgewater Police.[85] Perceptions regarding these cases continue to form and refine.

It is possible that perceptions of the outcome of cases, Castellanos or Miles for instance, continue to impact PFB filing volumes currently. However, the OJCC has no foundation to determine what, if any, particular force is driving the trend to increase, or the plateau in 2017-18.[86] The impact of COVID-19 in 2019-20 is seemingly more apparent.



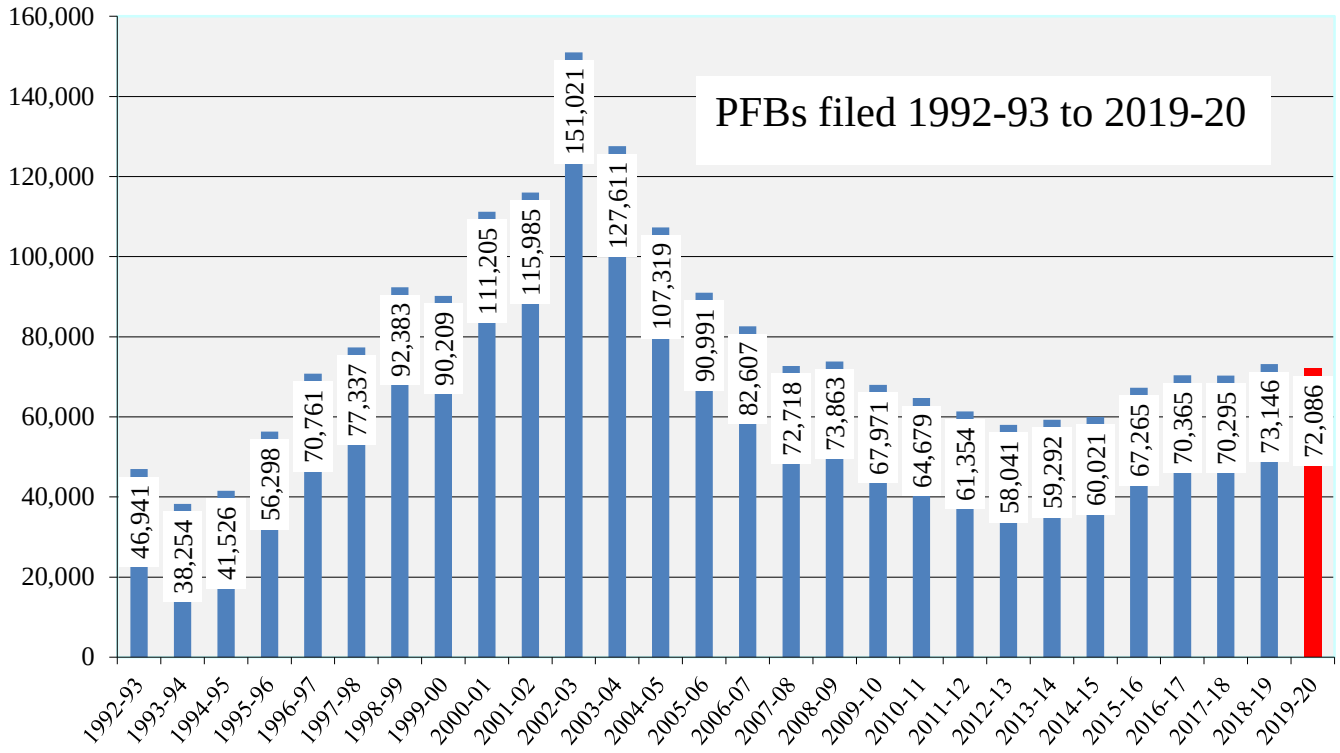
Fiscal Year	PFB change	Premium change
2009-10	-8.0%	-6.80%[87]
2010-11	-4.8%	7.80%[88]
2011-12	-5.1%	8.90%[89]
2012-13	-5.4%	6.10%[90]
2013-14	2.2%	0.70%[91]
2014-15	1.2%	-2.50%[92]
2015-16	12.1%	-5.10%[93]
2016-17	4.6%	14.50%[94]
2017-18	-0.1%	-9.60%[95]
2018-19	4.1%	-13.80%[96]
2019-20	-1.4%	-5.40%[97]
2020-21	Unk.	-6.60%[98]

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 empirically.

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 are reactive to past experience and thus logically relate, if at all, to activity or PFB volumes prior to each described premium change. (See Fee by Accident Year discussion, page 41).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 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 some percentage of all work accidents. Premiums instead relate to losses on the entire population of work accidents. Thus, correlating the PFB sub-population (a sample) to the changes in premium simply has not been demonstrably reliable.

The following graph represents PFB filing since 1992-93.[99] 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, and is trending upward. The 2019-20 petition filings (72,086) remain about 88% higher than in 1993-94 (38,254).

Presuming the accuracy of these DLES volumes,[100] the PFB filing rate in 2012-13 was the lowest in eighteen years, since 1995-96. The trend has now changed, and petition filing is increasing. But for the impact of COVID-19/SARS-CoV-2, the growth in 2019-20 would likely have been over 4%, *see supra*, page 6.



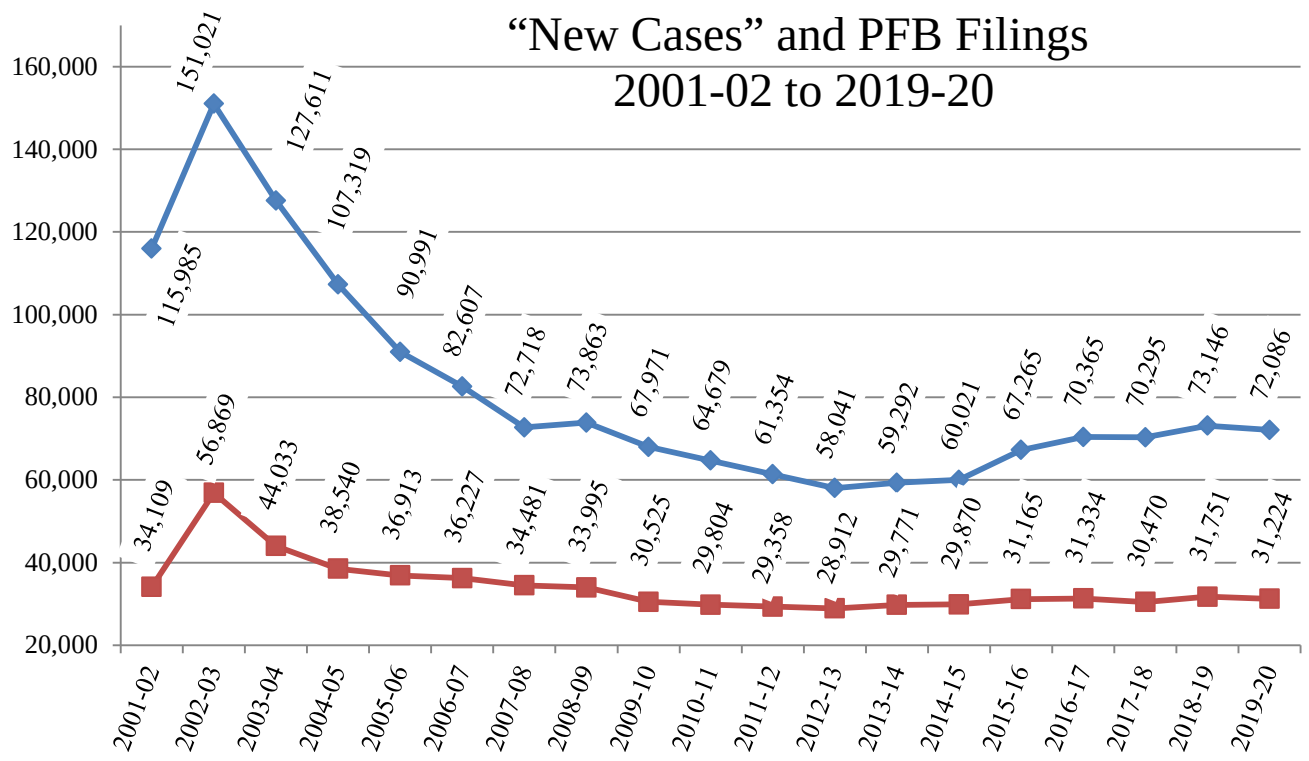
New Case Filing

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,[101] 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 2019-20 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, following an accident, that an injured worker might receive all benefits due, without any need for litigation, for many years.[102] 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 volume of new cases in 2019-20 (31,224) is a 1.6% decrease from the prior fiscal year; though 2017-18 notably demonstrated a marked decrease in "new case" filings, it is notable that the 2019-20 volume (31,224) is markedly similar to the 2015-16 volume (31,165). One might conclude that the "new case" volume has been reasonably consistent for the last five years, despite some fluctuations. 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 the figures for 2001-02 much more rapidly than "new case" filings. While there has been some parallel in the trend each demonstrates, the PFB filings have usually 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 causes range from impacting weather, to pandemic, to shifts in practice process from litigation to conciliation.

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%
2018-19	73,146	31,751	43.4%
2019-20	72,086	31,224	43.3%

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. The relationship has remained remarkably consistent for the last three fiscal years.

In summary, the available data supports several conclusions. First, the trend since 2013-14 has been an increase in PFB volume, with the 2019-20 figures plateauing. Second, the volume of "new cases filed" have 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" seemed to be trending downward, the last three years has demonstrated notable stability. 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 more readily 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 then more lucrative than subsequent litigation. Such a perception might be demonstrated by a willingness to file "new cases,"[103] but reluctance to litigate arguably minor issues thereafter due to fee compression.[104] It is possible that the potential volume of future benefits was sufficient, early in a claim, to accommodate litigation. This might 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 probabilities or potentialities, 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.[105]

Upon that contention, prior reports suggested that Florida might expect to see continuing increases in PFB filing volume with the attorney fee changes.[106] However, since the courts decided Castellanos[107] and Miles[108], neither "new case" nor petition filing volumes have increased dramatically. The data regarding claimants' attorney fees in 2017-18 was 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"[109]) can be determined with reasonable 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 additional *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

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%
2018-19	73,146	3,040	4.16%
2019-20	72,086	2,818	3.91%

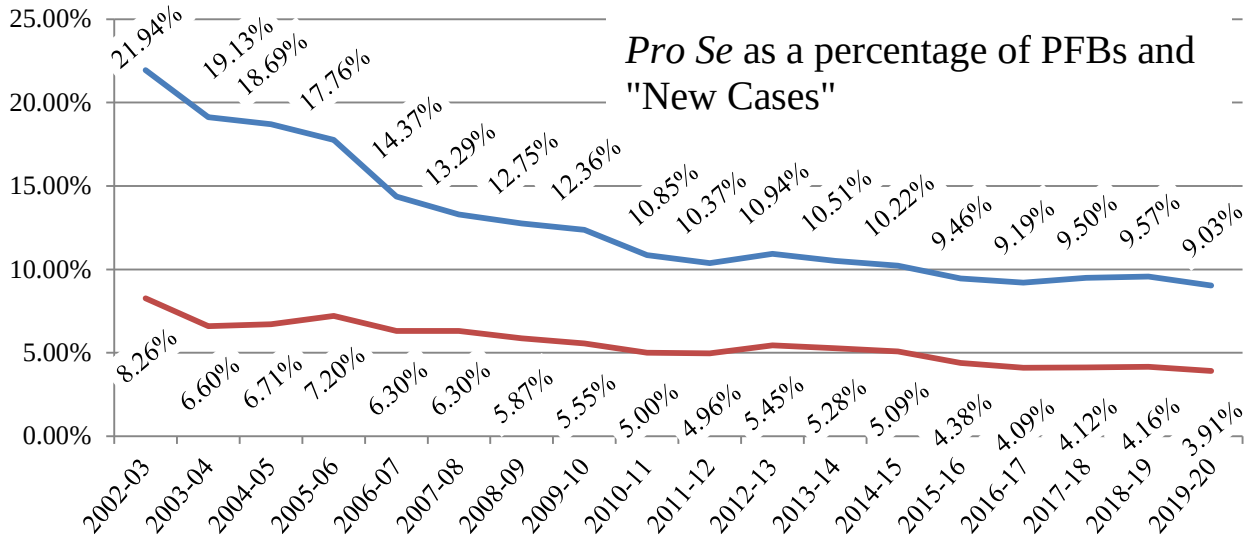
then reflect five "open" PFBs attributable to a "represented" claimant, despite the fact that one of those five was in fact filed *pro se*.

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 (below). Likewise, the OJCC can calculate the percentage of *pro se* cases, compared to the total volume of PFBs filed during the preceding year (above). 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.[110] 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 vacillation 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. This comparison is of potential interest because the "new case" rates have demonstrated less elasticity.

The available data does not support the conclusion that the *pro se* claimant population is increasing.[111] 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 has remained reasonably consistent in recent years.

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%
2018-19	31,751	3,040	9.57%
2019-20	31,224	2,818	9.03%

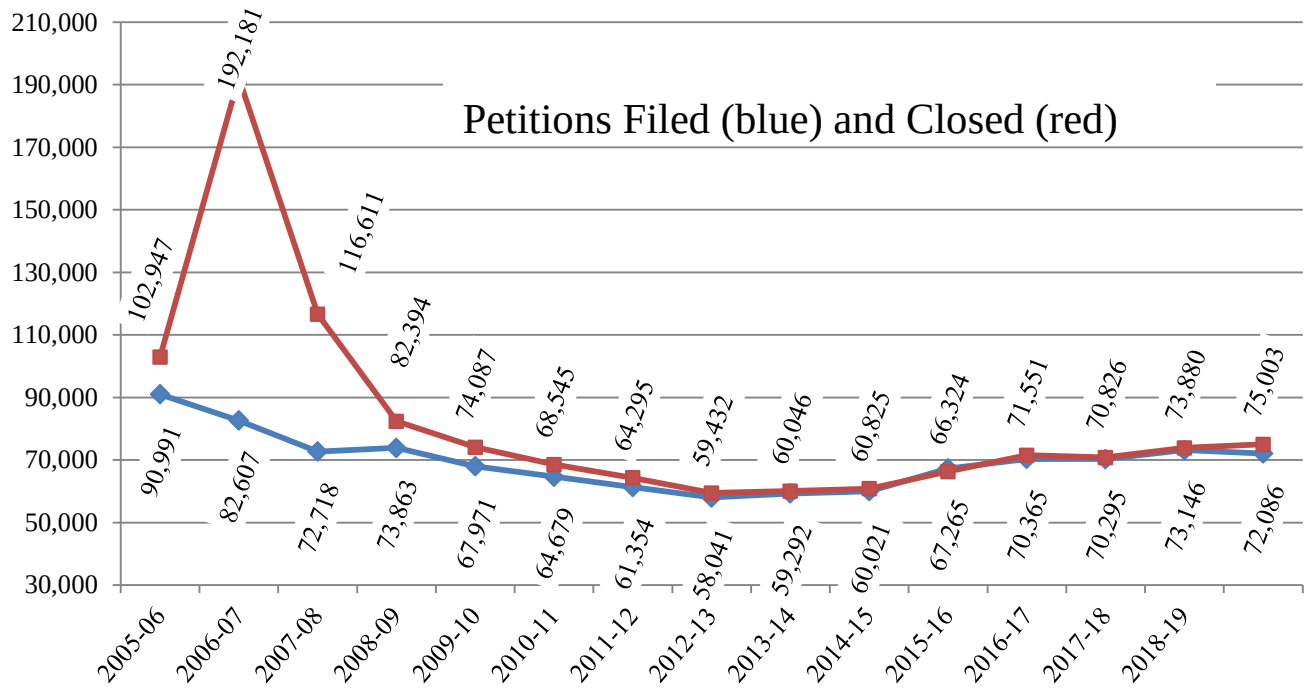


The graph above depicts the ratios of "new cases"(blue) and of the Petitions (red) to the population of *pro se* petitions pending on June 30 of each of the last eighteen (18) fiscal years. These comparisons demonstrate minor fluctuations in *pro se* participation over the last nine fiscal years. The overall trend over the seventeen year period extending back to 2002-03 was generally to decrease until leveling since 2010-11.

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.[112] 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.[113] PFB closure was a difficult issue for the OJCC following the massive influx of PFBs in 2002-03 (151,021).[114] 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 50%, from fourteen million to over twenty-one million people.[115] The OJCC has operated without significant increases in either judges or staff since the addition of the mandatory mediation process in 1994. Since that time, the OJCC has fully integrated the child support information provision process alleviating workload at both the Department of Revenue and Clerks of Courts. The OJCC has further automated and integrated the process for preparation of appellate records. No staff or additional funding was requested for any of these innovations. Despite the significant workload and marked increase in population, the OJCC staff has been reduced in the twenty-first century, including one judge, four mediators, and multiple staff positions.[116] Despite these decreases, the Office remains effective and efficient. However, as discussed below, the extended absence of cost of living pay increases, increasing work volume, and the results on morale continue to challenge and threaten the efficiency and efficacy of this agency.



Most PFBs filed must be mediated.[117] 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.[118] 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.[119] Remaining issues such as the attorneys' fees and costs of the injured worker/claimant may yet be tried upon the later filing of a verified motion.[120] 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 and assuring efficiency.

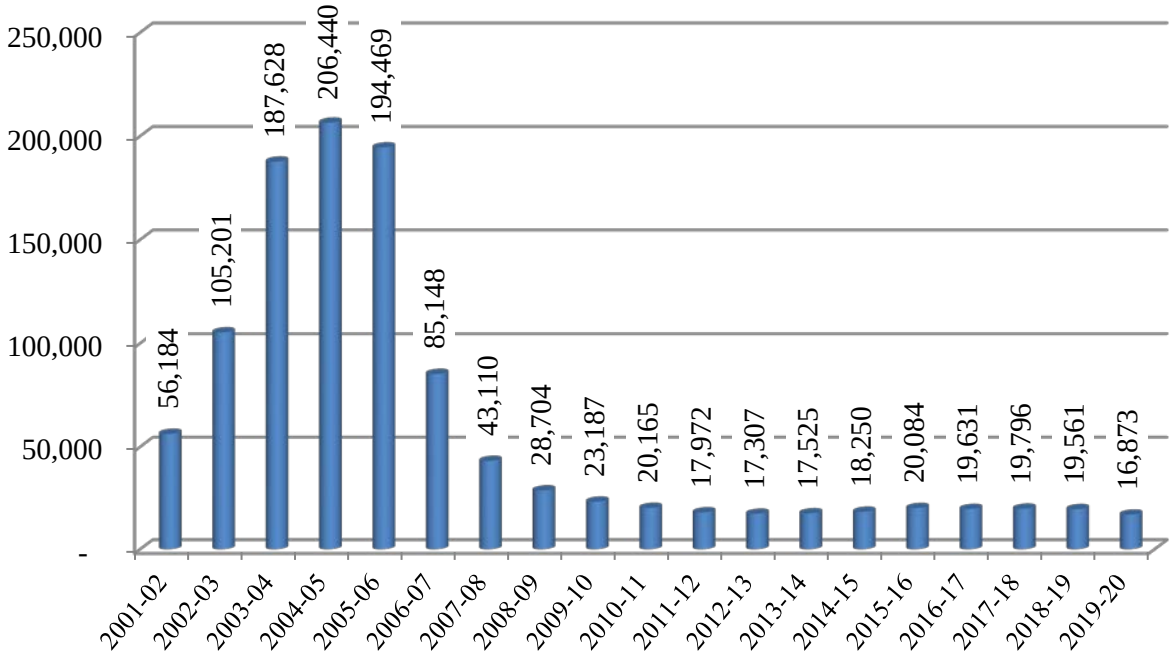
Some Divisions (each judge and her/his respective staff is a "Division") were historically more efficient than others in documenting the closure of PFBs, as noted in previous OJCC Annual Reports (available at www.fljcc.org, under the "publications" and then "reports" tabs). Several Divisions began 2006-07 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 open 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 twelve fiscal years. The closure rate increased in 2020, compared to filings.

The result is seen in the graph above demonstrating a smooth progression in the last twelve 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 filed 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 20,000 with reasonable consistency. The year-end inventory for 2015-16 was perhaps notable in its return to over 20,000. However, the year-end inventory total receded below 20,000 in 2016-17 and has remained consistently below since that time.

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. In 2018-19, a final order was entered in one case 5,900 days after the initial petition was filed.[121] Though petitions were closed in that case, they were never dismissed after the last payments were made in 2005. The employer/carrier alleged the statute had run and that an order closing the file at some point had dismissed all petitions. The employer/carrier, however, did not produce a copy of that order. The injured worker had requested the assigned judge in 2005 to set a trial, but that did not occur. Thus, when the injured worker sought an adjudication the assigned judge in 2019 heard the claims on their merits. This anecdotal example illustrates that in some instances significant delay (16 years) can occur.

However, with the docket management tools now in place, it is believed that those stale cases generally remain pending with the knowledge of the assigned judge, and therefore for appropriately documented reasons. However, there may be instances like that described above in which all petitions appear to be concluded and a file is administratively closed. Periodically, such a case may be brought back to the fore by an injured worker seeking adjudication.



Over the last eighteen fiscal years (2002-03 forward), one million four-hundred thirty thousand six hundred forty-five (1,430,645) PFBs have been filed, and one million four-hundred seventy-three thousand seven hundred seventy-six (1,473,776) PFBs have been closed. This is an approximate overall closure rate of one hundred three percent (103%).

This further supports the conclusion that the OJCC successfully managed the significant 2002-03 PFB filing spike, as discussed above, and continues to demonstrate consistently managed dockets. Significantly, after the focus was brought to closure rates, the OJCC has effectively 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%
2018-19	73,146	73,880	101.0%
2019-20	72,086	75,003	104.0%
Aggregate	1,430,645	1,473,776	103.0%

It is believed that the interruptions and pauses resulting from the COVID-19 pandemic allowed additional focus upon pending petition review in 2019-20. The result of time and focus is seen in the significant increase in PFB closure that year.

Cost of Litigation Resolved

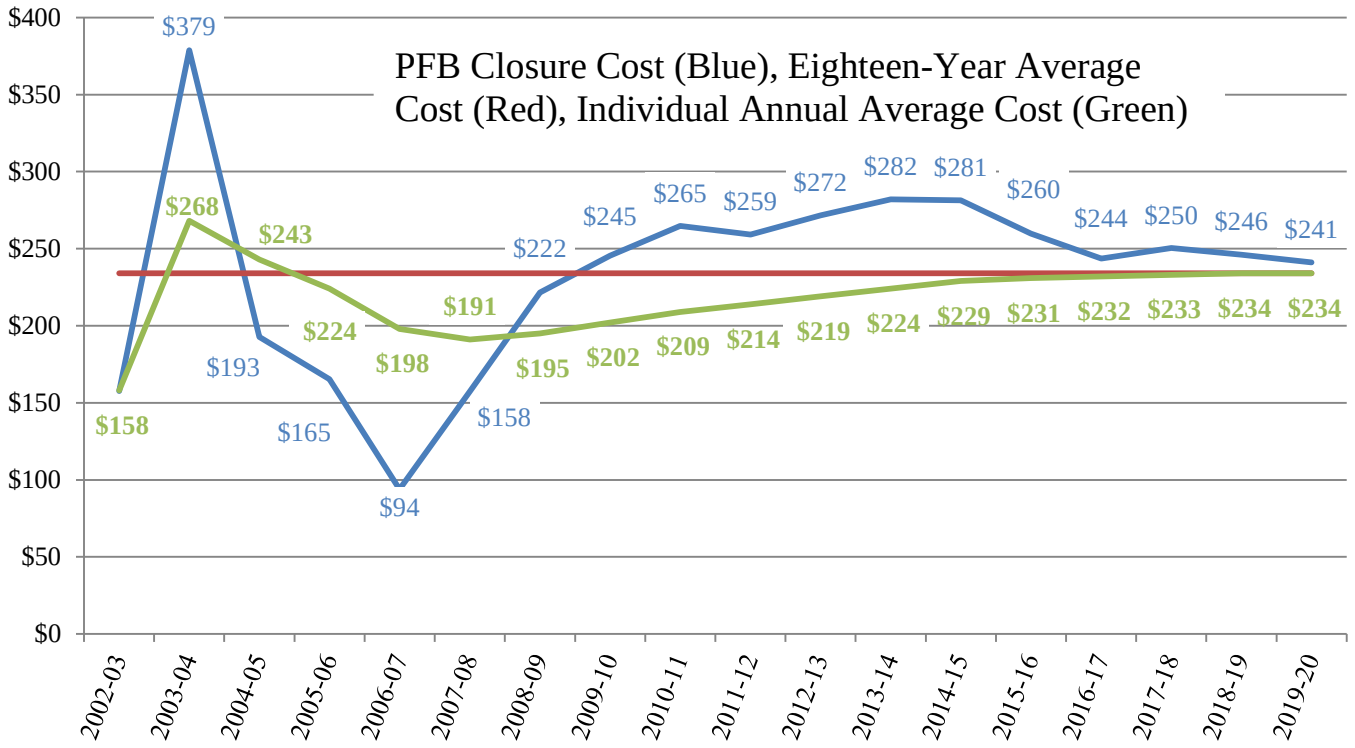
The OJCC budget, divided by the number of petitions for benefits (PFB) closed, reflects that the overall cost per PFB closed historically fluctuated (see chart, right; graph, below), due in large part to the significant fluctuation in PFB closure rates. These figures demonstrate relevance when considered in comparison to filing fees in Florida's Circuit Courts.[122] 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).[123] 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.[124] Over the last fifteen fiscal years, the average cost per petition closed was $234.00, 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
2018-19	$18,179,208	73,880	$246
2019-20	$18,078,053	75,003	$241

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 2006-07. If the 2002-03 budget for inflation alone, the 2019-20 budget of the OJCC would have been $23,872,161 instead of $18,078,053, a difference of $5,794,108, or just over 32%.[125]

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.[126] 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.

[Space intentionally blank]



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.[127] A minimal volume of overdue PFB inventory may remain unaddressed in this litigation system, which appears from available data, to be currently 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.

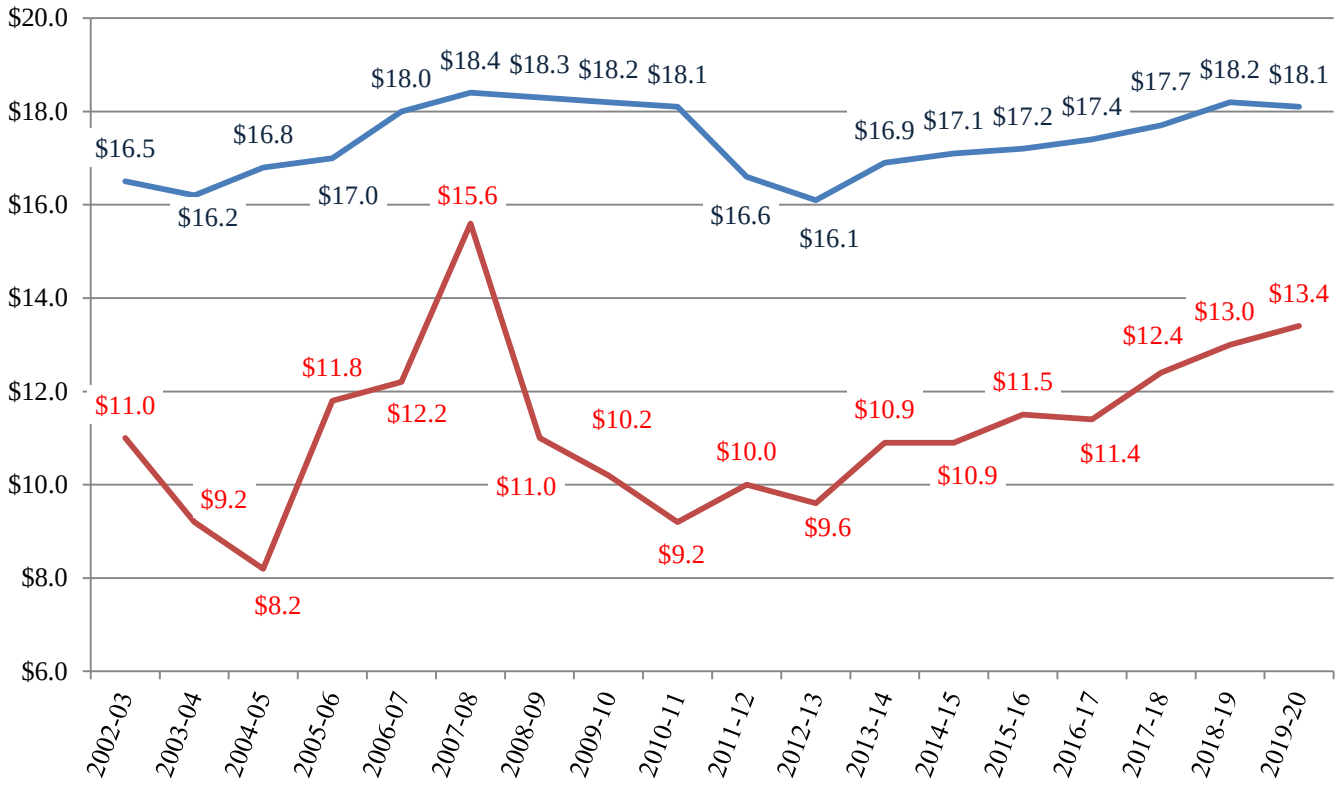
Another illustration of the cost-effectiveness of the OJCC is the volume of child support arrearages collected through the judges' efforts. The Judges of Compensation Claims are statutorily required to ensure that the rights of child support recipients are considered when support payers settle their workers' compensation case.[128] Each judge devotes considerable time and effort to the investigation and verification of child support arrearages when cases are settled. Staff and mediators perform child support searches upon request by parties. This service and innovation has been implemented with no additional funding or personnel.[129]The significant amounts of child support collected through these efforts for the last eighteen (18) fiscal years are represented in this table, which total over $201 million ($201,565,741).

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%
2018-19	$18.2	$13.0	71%
2019-20	$18.1	$13.4	74%

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 services on behalf of child support recipients have been delivered without

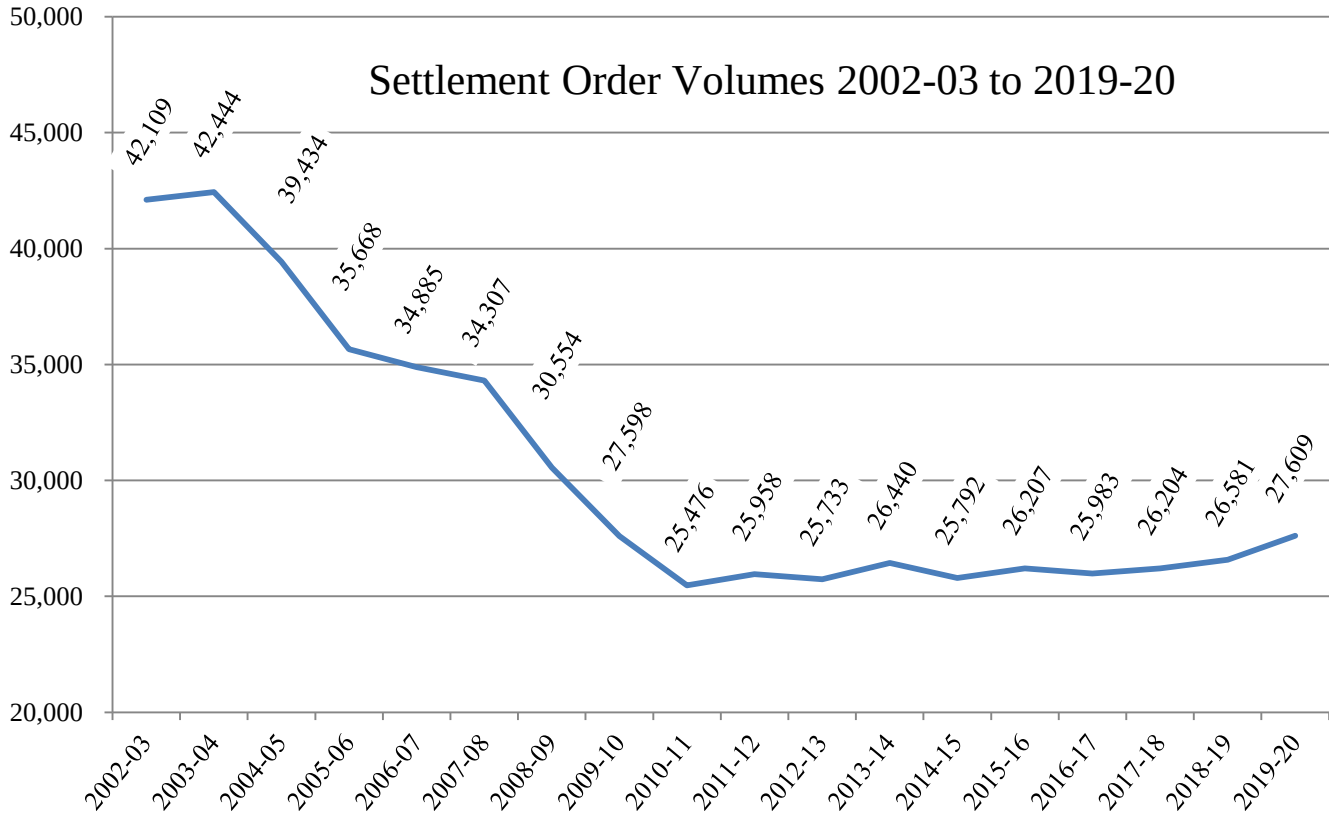
any additional staff or funding for the OJCC operations. Because of the sensitive nature of this data, the burden of investigating these support inquiries has fallen primarily on the OJCC mediators and Commission Clerks. The comparison of child support recovery (red) and the OJCC overall budget (blue) is illustrated in the chart above and graph below (in millions).

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 parties[130] and public[131] 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 eighteen (18) fiscal years, the OJCC has collected an average of 64% 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 ten fiscal years (graph below).

[Space intentionally blank]



Number of Mediation Conferences Held

In Florida workers' compensation, most[132] 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.[133] The OJCC has published that report annually since. All are available at www.fljcc.org under the "Publications" and then "Reports" tabs.[134]

The volume of mediations held each year steadily decreased 2002-03 through 2012-13, with the exception of 2008-09 (+3.95%). The overall rate of decrease in mediations does not match the rate of decrease in PFB filings since 2002-03. Though the mediation volume has fluctuated some since 2013-14, the volume over the next six years is notably consistent: 2013-14 = 16,188 and 2017-18 = 16,167. The volume in 2018-19 was significantly increased, followed by another significant increase in 2019-20. This likely reflects the addition of new mediator positions added to the system capacity in those years.[135] However, the volume of mediations remains significantly lower than in 2002-03. The data suggests that as PFB volume fell, OJCC mediators were

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%
2018-19	73,146	4.1%	17,056	5.50%
2019-20	72,086	-1.4%	18,211	6.77%

able to act upon a greater percentage of the remaining volume, but the overall volume of mediations held nonetheless has decreased by almost half through 2014-15 and has most recently begun to increase.

In 2019-20, approximately eighteen thousand (18,211) mediations were held by state mediators, at an average cost of approximately $175.81; this represents a decrease from the $186.83 per-mediation cost in 2019-20.[136] The cost savings in recent years is partially due to the legislative action reducing the number of state mediators.[137] However, in 2017-18 the OJCC converted a staff position to create a 29th mediator position, and this was repeated in 2019-20 for the 30th mediator. These additions increased overall cost. The volume of mediations held was reasonably consistent, until the notable increases in volume in 2018-19 and 2019-20. Those volume increases are likely due to the increased system capacity added by the two positions. That volume more than covered the increase in cost, leading to an overall lower average cost of mediations held.

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.[138] 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 in 2019-20 of approximately one hundred seventy-six dollars ($175.81). Thus, the cost-efficiency of State mediation is readily apparent, averaging about seventy percent (70.3%) 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.[139] 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, if 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. The addition of a 30th mediator in 2019 also furthered this goal.

There are multiple issues that influence state mediation efficiency. The OJCC is compelled to mediate cases within 130 days of petition filing.[140] However, there is also a statutory prohibition on noticing mediations until 40 days after the petition is filed.[141] 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 likely fulfill constitutional requirements. However, attorneys, adjusters, and workers have schedules; 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) window 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.[142] It is purportedly in hopes that such discovery will lead to rapid 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 after they are noticed. 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 calendar 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. Thus, the practice of the marketplace impairs the efficiency of the OJCC.

Most OJCC mediators are certified by the State of Florida.[143] The requirements and qualifications have been established by The Florida Supreme Court through the Dispute Resolution Center.[144] Certified mediators are governed by Rules for Certified and Court-Appointed Mediators.[145] 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.[146] 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 "farcical, circus-like, a complete waste of time, etc."[147] 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.[148] And as such, the Florida OJCC is not governed by the rules set forth by the Florida Courts pursuant to their constitutional authority.[149] 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.[150] 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.[151] Thus, as the qualifications for Florida mediators have evolved, the workers' compensation statute has not.

Though the "training program approved" for OJCC state mediators has historically been the Supreme Court Mediator Certification program, most 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 123,660.[152] However a more practical volume is likely around 75,570,[153] which is notably very close to the current PFB filing volume.[154] It is projected that the current trend of increased petition filing will increase the probability of petitions being referred to private mediation.[155]

Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
2002-03	151,021		29,253	
2019-20	72,086	-52.3%	18,211	-37.7%

The volume of state mediations conducted has not changed proportionately with the changes in PFB filing volume. Overall, since 2002-03, PFB volume is 52.3% lower and mediation volume is down only 37.7% overall, as illustrated in this chart. There are multiple possible explanations for the marked difference in the rates of change 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.

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 initial mediation in each of the last twelve fiscal years

(2008-09 through 2019-20). This represents 100% average statutory compliance by the OJCC state mediators in twelve 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 mediation[156]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.[157] 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.

The addition of a 30th mediator in 2019-20 alleviated some concern regarding mediation capacity and calendar congestion. Notably, petition volume has plateaued, a probable effect of the COVID-19 pandemic. However, should the Petition filing return to its recent demonstrated growth, the system capacity for mediation may prove insufficient.

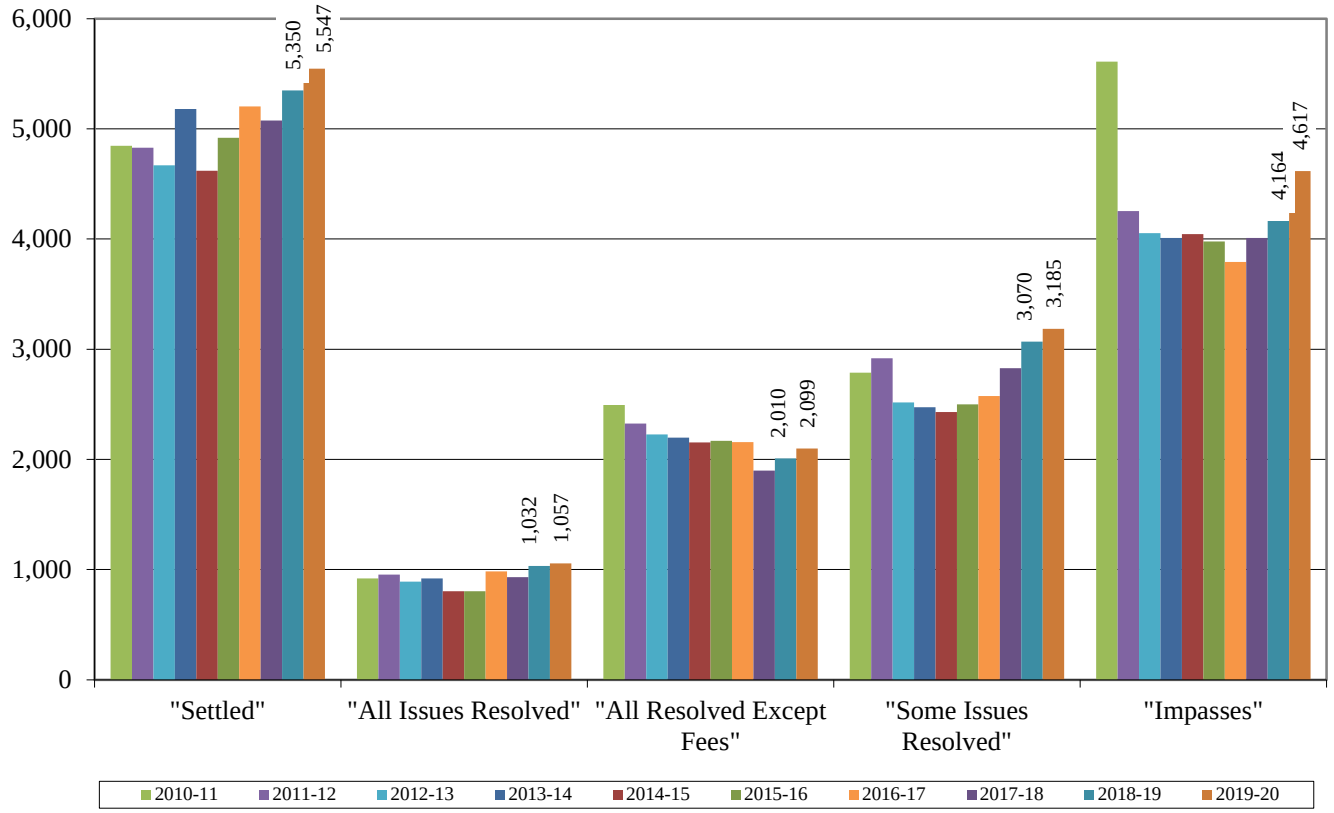
Disposition of Mediation Conferences

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 twelve 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, but leaving open future benefits. 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.[158] 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 preparation of the 2017-18 Annual 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.[159] 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. This is seemingly congruent with the recent increase in volume of mediations held and some increase in the impasse outcome that is more significant than the increases in other 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 (27.8%) of cases mediated resulted in a settlement, compared to approximately thirty-one percent (30.5%) in 2019-20. The “impasse” category was twenty-seven percent (27.02%) in 2002-03 compared to approximately twenty-five percent (25.4%) in 2019-20. State mediations are obviously very effective in resolving issues. Over the last eighteen (18) years, the convened state mediations have resolved at least “some issues” approximately sixty-three percent (63.43%) of the time. In 2019-20, approximately sixty-five percent (65.28) of convened mediations resulted in resolution of some issues,[160] a decrease from the sixty-seven percent (67.20%) in 2018-19. This is consistent with the increase in impasse outcomes illustrated in both the graph and chart. Despite the change, this rate still exceeds the average.

[Space intentionally blank]

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%
2005-06	25,522	28.96%	6.67%	11.52%	11.99%	33.81%	6.62%
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%
2018-19	17,056	31.37%	6.05%	11.78%	18.00%	24.41%	8.38%
2019-20	18,211	30.46%	5.80%	11.53%	17.49%	25.35%	9.36%

Number of Continuances Granted for Mediations

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	0.45%
2018-19	73,146	283[161]	0.39%
2019-20	72,086	219	0.30%

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. Despite the challenges of 2019-20, the continuance volume decreased notably, close (.30%) to that lowest level.

The implementation of the "auto-scheduling" of mediations by the OJCC Central Clerk 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 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 in mediation continuances is also 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.

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. For seven fiscal years thereafter, the average annual volume of continuances per judge was consistently close to 100. The volume for 2018-19 was the lowest in seventeen years; despite the challenges of COVID-19 continuance volume remained reasonably stable in 2019-20, decreasing slightly further.

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
2018-19	2,419	78	6.5
2019-20	2,369	76	6.4

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 perceived as 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.[162]

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.[163]

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 until after the outcome of the mediation process is known. This results in less total trials being scheduled by that particular judge, and less calendar congestion. 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 need 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 six (6.4) per month in fiscal 2019-20. 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. As the PFB filing has recently demonstrated increase, it is possible continuance will

become more prevalent. 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 then continued to avoid the standardized definitions in the OJCC User Manual, and instead utilized their own definition of "continuance." These mischaracterizations historically 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 then scanned and uploaded to the database. This database 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, particularly in the last decade since electronic filing was mandated.

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.[164] 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.

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%
2018-19	73,146	17,025	23%
2019-20	72,086	15,886	22%

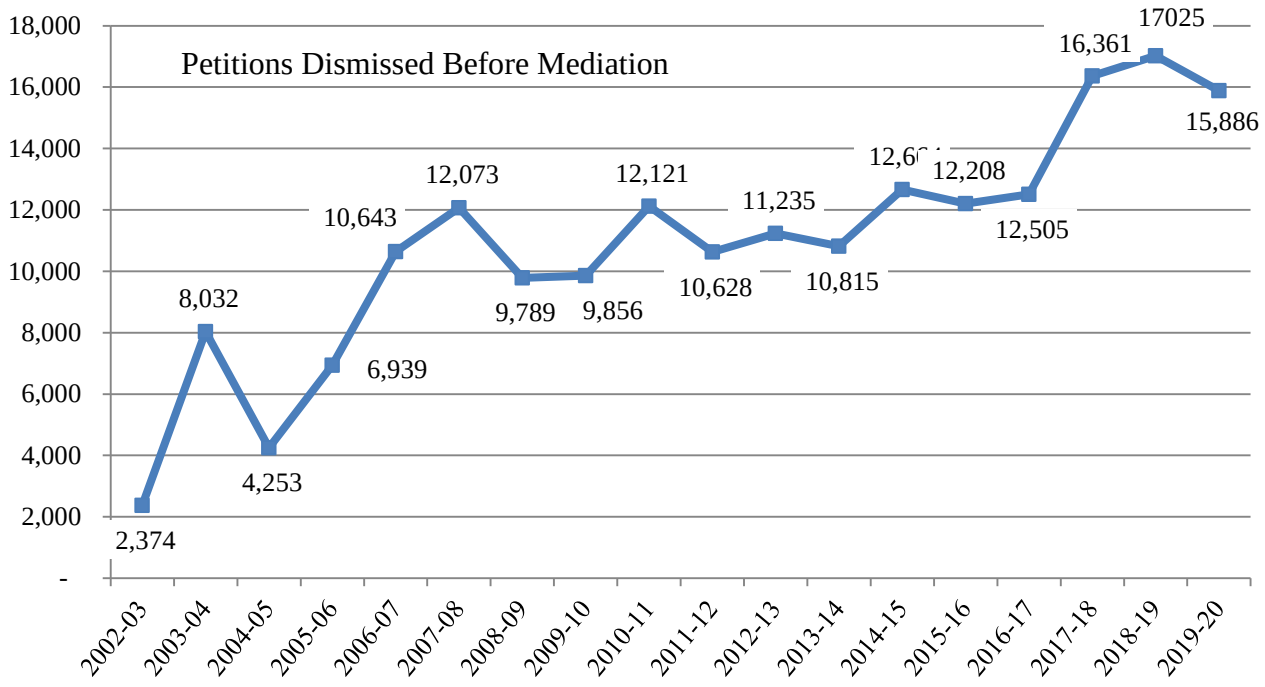
Thus, when the PFB assignment arrives in its assigned Division, a mediation appointment has been automatically scheduled, but no notice has yet been sent to the parties. Statutorily, no notice of mediation is sent thereafter, until forty days following the PFB filing.[165]Although an appointment is "set" 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. The expedited process leads to faster resolution of some issues, which involve relatively minor expense as mediation is not required on claims that are suitable for expedited final hearing.

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.[166]

Notably, 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 toward notable increase over the last few years. Though the 2019-20 volume of dismissed petitions is notably lower than in 2018-19, the decreased volume of filed PFB results in the percentage (22%) remaining reasonably stable.



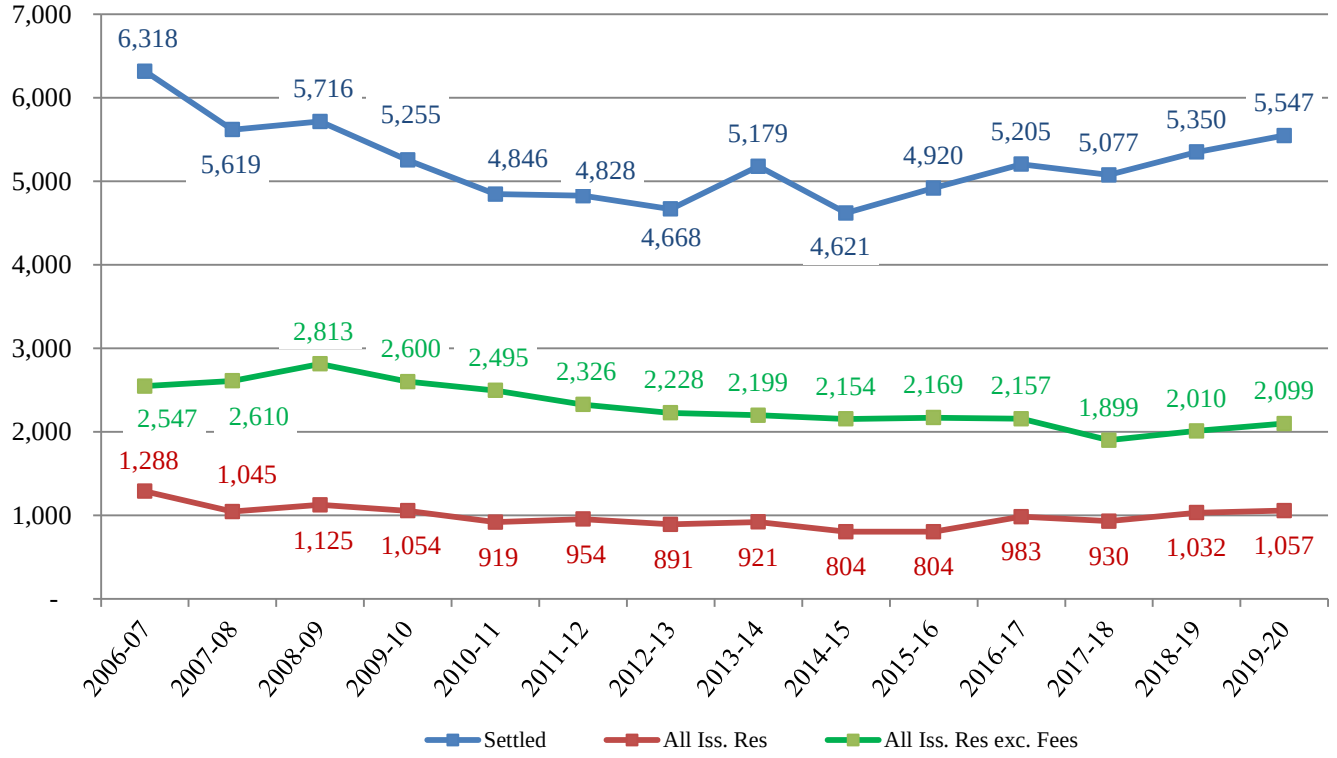
The increase in dismissals, illustrated in this graph, is significant in gross terms. Any petition might be dismissed in the same fiscal year during which it was filed. Similarly, however, a petition might be filed one fiscal year and dismissed in some year subsequent to the filing year. Despite the 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,[167] or perhaps to the imposition of "prevailing party" costs awardable to the employer/carrier by the 2003 legislative amendments. Although the 2003 amendments are seventeen years past, appellate decisions in 2010 and 2011 brought the prevailing party cost issues into clearer focus and consistency.[168] This report has previously noted that following the Supreme Court's Castellanos[169] decision, and the return of hourly fees, the volume of pre-mediation dismissals should be monitored for significant changes. The marked decrease in 2019-20 is not itself likely indicative of any particular trend. The change is notable, and further monitoring of the dismissal rate is warranted.

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 about[170] the fortieth (40th) day 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.[171]

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

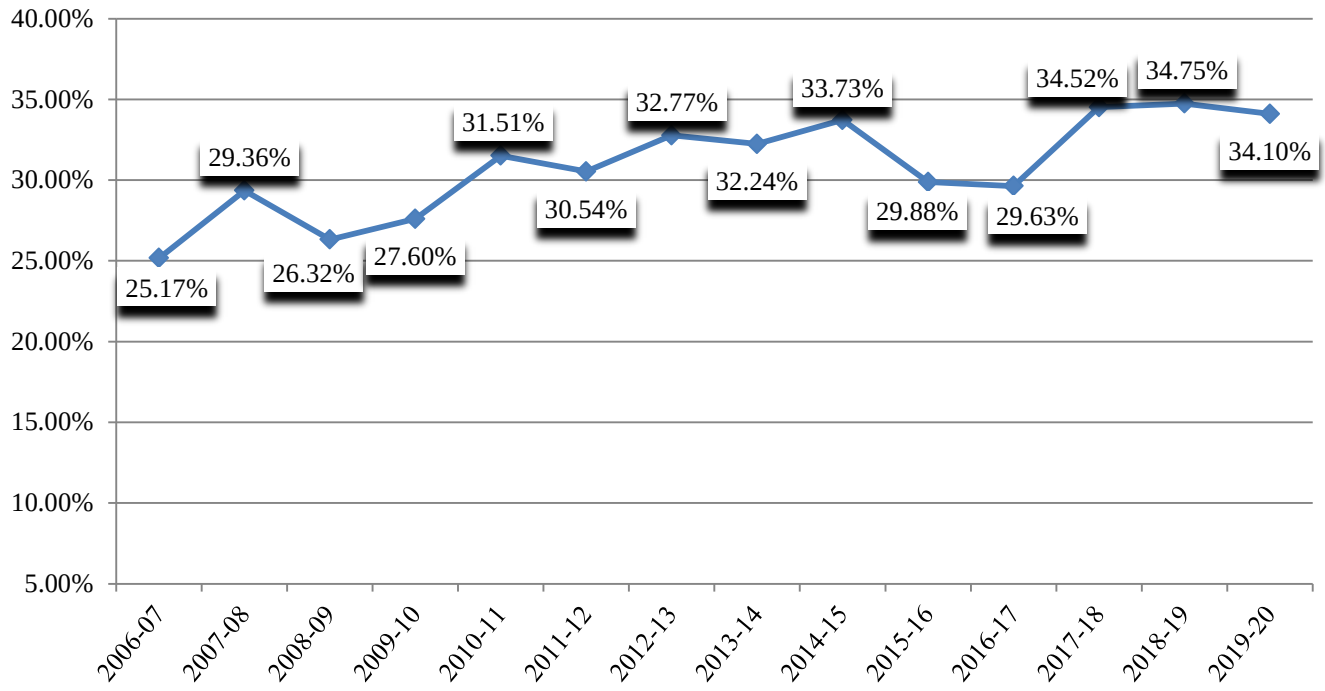
simultaneous notice of all three events is the most efficient process for the OJCC, and likely reduces continuances by maximizing notice.

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 fourteen (14) 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. Furthermore, partial resolutions and other outcomes are discussed more fully herein, see page 29.

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 fourteen (14) 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.[172] 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 2019-20 approximately sixty-six percent (65.90%) of PFBs filed include some issue or issues that remain unresolved at the conclusion of mediation. The sixty-five percent (65.25) reported in 2018-19 was the lowest since this data has been reported. The change in 2019-20 is likely related to the increase in mediation volume and the impasse rate. However, that total is notable and is reasonably consistent with recent years.

An approximate volume of PFB unresolved at conclusion of mediation has consistently been between 65% and 70% over the last ten (10) 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.

[Space intentionally blank]

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.[173]§440.34. Fla. Stat.[174] There is no such specific requirement for the approval of fees paid by employer/carriers for their defense counsel representation.[175] Despite the absence of such a specific requirement for defense fee approval, the broad language of section 440.105(3)(b), Florida Statutes[176] 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. 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.[177]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.[178]

Using the defense fees that are reported pursuant to rule[179] and the actual claimant fees approved, the aggregate fees in the Florida workers' compensation system in fiscal year 2018-19 was five hundred seven million three hundred fifty-five thousand eight hundred thirty-seven dollars ($507,355,837). Aggregate fees were above half a billion dollars in 2019-20 for the first time.

Order Year 2019-20 Attorneys' Fees

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%
2018-19	$216,905,845	9.19%	$257,031,186	0.98%
2019-20	$240,867,847	11.05%	$266,787,990	3.80%

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.[180] Those figures have therefore been corrected in more recent Annual Reports, as noted in the chart here.

During 2019-20, a total of five hundred seven million three hundred fifty-five thousand eight hundred thirty-seven dollars ($507,355,837) was paid in combined claimant attorneys' fees and defense attorneys' fees[181] (and perhaps defense "costs") in the Florida worker's compensation system. This represents a 7% increase from the 2018-19 aggregate fee total of four hundred seventy-three million nine hundred thirty-seven thousand and thirty one dollars ($473,937,031) in 2018-19. The aggregate attorney fee total for the system has increased in each of the last five fiscal years. 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. Though the rate of increase in claimant fees moderated in 2017-18 (7%), the rate of increase was more notable for 2018-19 (9%), and 2019-20 (11%).

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[182] and Miles[183] was significant and was seen as supporting that fee increases were likely. The continued increases in thereafter support that hypothesis. The 2019-20 increase of 11% resulted in the highest claimant attorneys' fee total ($240,867,847) reported by the OJCC.

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. However, the significant increase in Claimant fees in 2016-17, followed by notable growth thereafter coupled with comparatively nominal growth in defense fees has markedly decreased the defense fee percentage over the last 5 fiscal years. Despite that, the defense fees nonetheless remain in excess of 50% in 2019-20.

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%
2018-19	$473,937,031	45.77%	54.23%
2019-20	$507,655,837	47.45%	52.55%

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,[184] the 2002-03 aggregate ($427,359,212), in 2019 inflation-adjusted dollars would have been $604,527,477. This is $97,171,640 more than the actual 2019-20 aggregate of $507,655,837.[185] Adjusted for inflation in 2020 dollars, aggregate attorneys' fees in Florida workers' compensation have *decreased* almost one hundred million dollars in the last seventeen years, despite the marked increases in claimant fees in the last three years. Frankly stated, aggregate attorney fees have not kept pace with inflation, though that difference is decreasing.

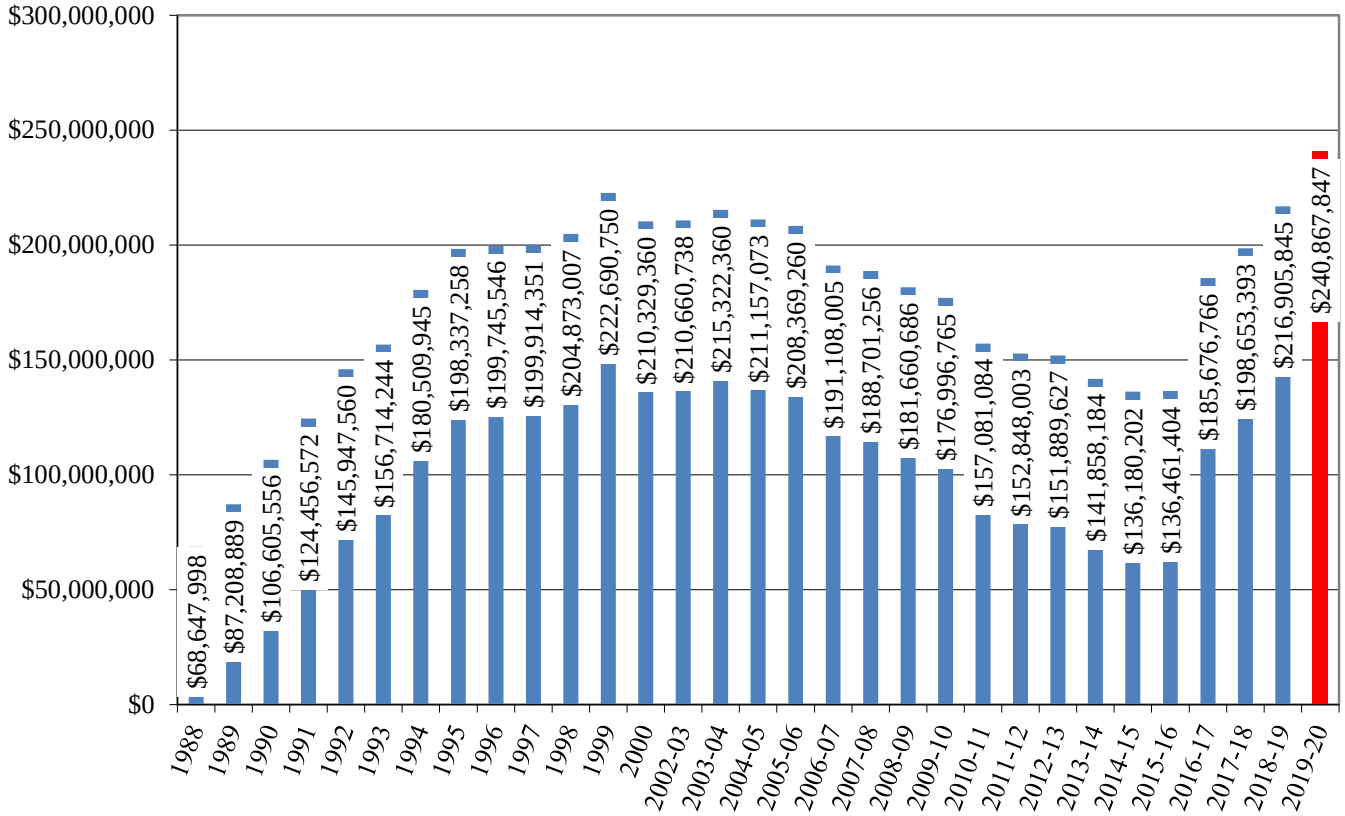
Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	$210,660,738		$216,698,474	
2019-20	$240,867,847	14.34%	$266,787,990	23.11%
Inflation	$297,578,900		$306,107,793	

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 and 2018-19 was instead fueled by claimant-paid attorney fees related to settlements. Over the seventeen years since the 2003 legislative reforms, claimant fees are up about 14% and defense fees are up about 23%. Each remains notable less than had the 2002-03 figures increased consistently with inflation.

It is noteworthy that defense fees nonetheless remain the greater portion of the overall aggregate fees paid, at 52.58%, but also that the two components continue to trend toward 50/50. It is also notable that the aggregate fees in 2019-20 are now the peak aggregate over the seventeen years since 2002-03.

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,[186] 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 2019-20.

The 2019-20 claimant fees are the highest in this illustration period. Over the last four fiscal years, claimant fees have grown notably (36.07%, 6.99%, 9.19%, and 10.91%). If the previous high in 1999 were adjusted for inflation, it would equal $347,426,977 in 2020, significantly more than the actual 2020 figure $240,867,847.

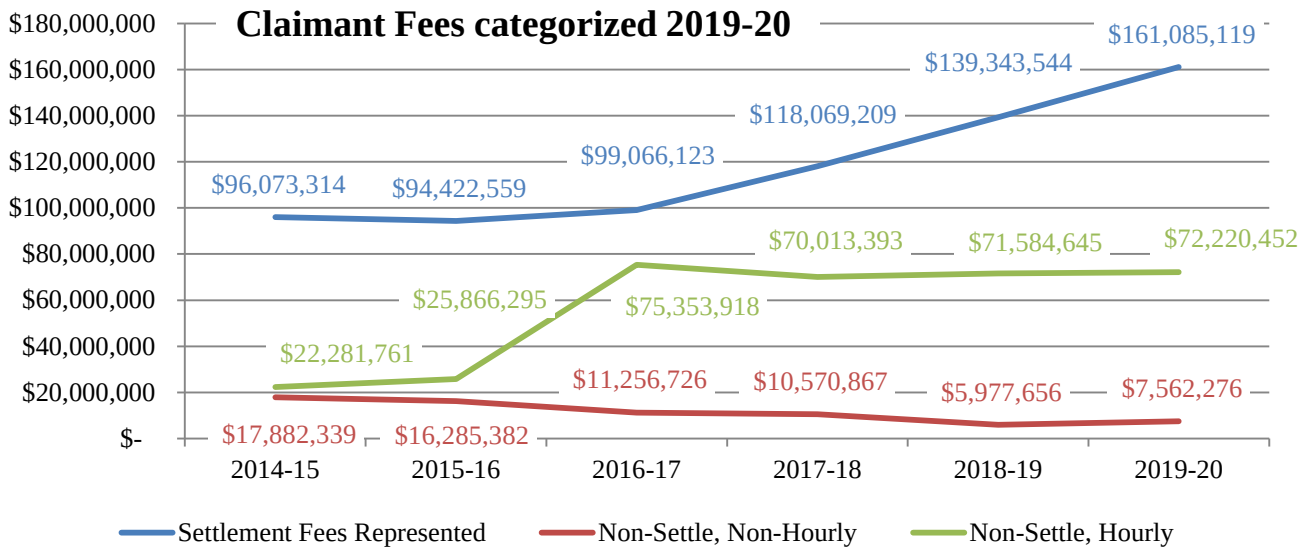


The Castellanos effect

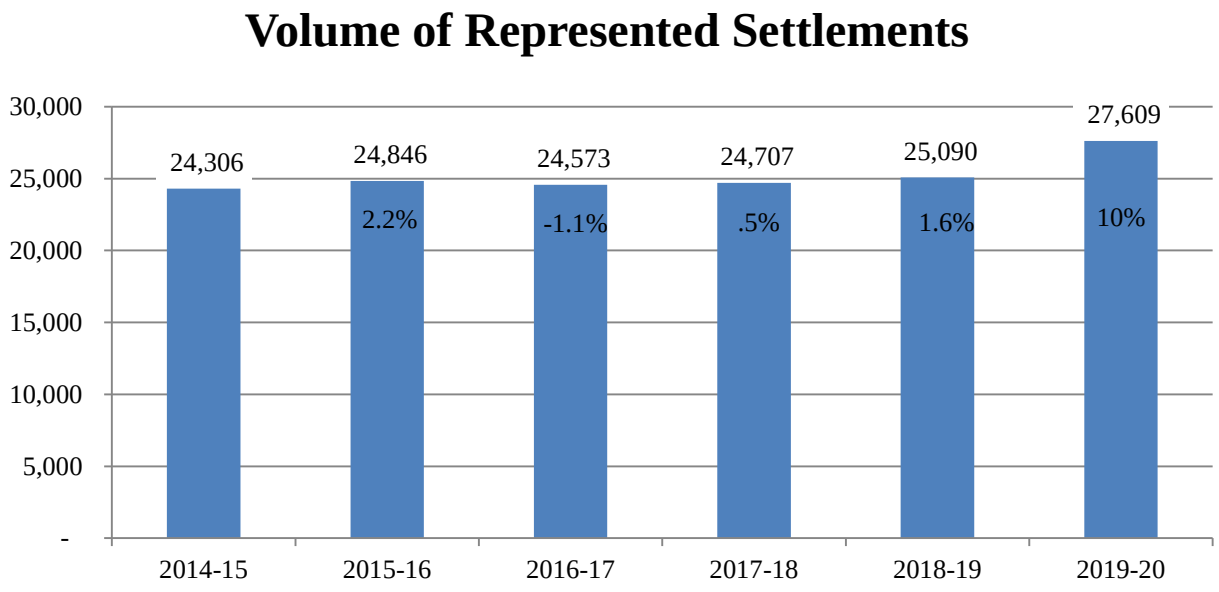
The effects of the Castellanos[187] decision were apparent in the 2016-17 attorney fee figures (non-settlement, hourly fees in green below). Claimant's fees increased 36.07% overall that year. The majority of that increase was in the category "non-settlement hourly" fees. That category (likely E/C-paid) 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[188] (settlement fees in blue below) were comparatively less apparent in 2016-17, but are illustrated better in 2017-18 and 2018-19. In 2017-18, the "non-settlement hourly" fees (Castellanos) decreased from the $75,353,918 in 2016-17 to $70,013,393 (-7%); in 2018-19, there was some increase in that total ($71,584,645; 2%). However, the settlement fees (Miles) increased from $99,066,123 in 2016-17 to $118,069,209 (+19%) in 2017-18; the increase continued at similar pace (18%) up to $139,343,544 in 2018-19. 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.

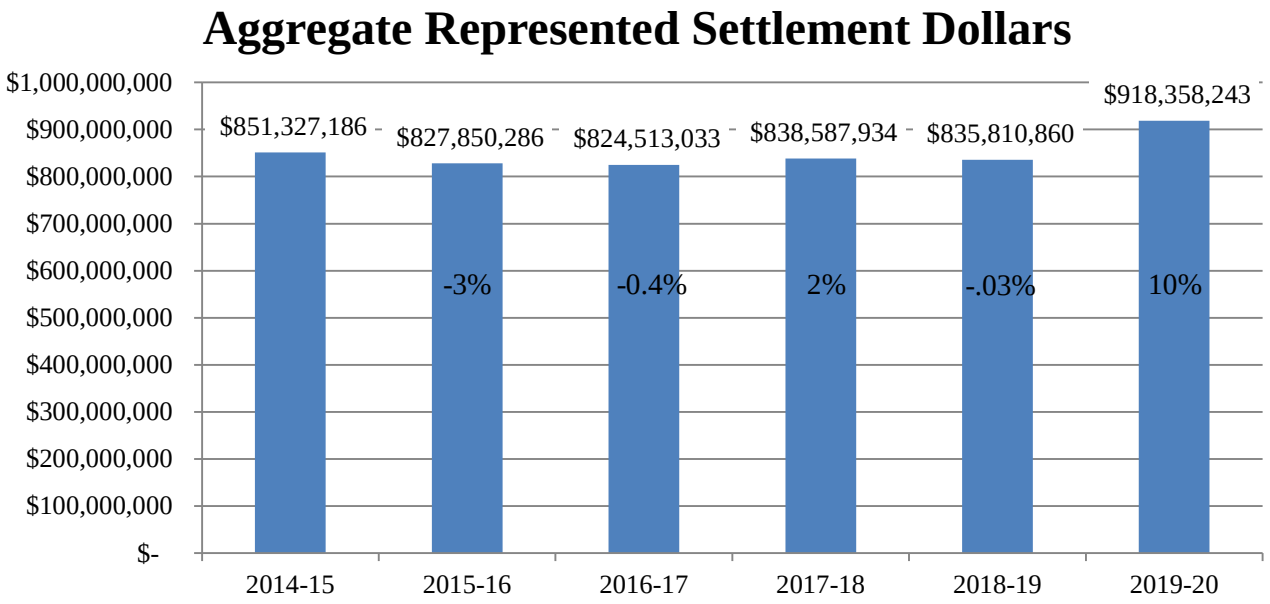


The volume of represented settlements likewise has not changed significantly, until the 10% increase in volume during 2019-20. The changes were: 2015-16 (2.2%), 2016-17 (-1.1%), 2017-18 (.5%), and 2018-19 (1.6%). Therefore, some portion of the increase in "settlement fees represented" in 2019-20 is attributable to increased settlement volume, illustrated below.



The data does not support that the aggregate value of settlements increased significantly in 2017-18 (+1.71%) or 2018-19; however, the volume increased 10% in 2019-20. More cases are being settled

The total aggregate of dollars in represented settlements had also not demonstrated significant change. The changes were: 2015-16 (-2.8%), 2016-17 (-.4%), 2017-18 (1.7%), and 2018-19 (-.33%). There was a 10% increase in settlement value in 2019-20. This is consistent with the increase in the volume of settlement orders (above). The figures for each of the last six fiscal years are illustrated below. Thus, the increase in settlement fees seems appropriately attributed to Miles interpretations through 2018-19, and only partially so last year. That case has been interpreted by some as allowing claimant-paid fees to exceed the statutory formula in section 440.34(1), Florida Statutes.[189] (See infra page 36).



Miles v. City of Edgewater[190] is open to multiple characterizations and interpretations. The Court discussed the interplay or relationship between constitutionally recognized individual rights[191]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.[192] The Court concluded essentially 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."[193] Whether that analysis would remain consistent in consideration of fees in other disputes is unclear.

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.

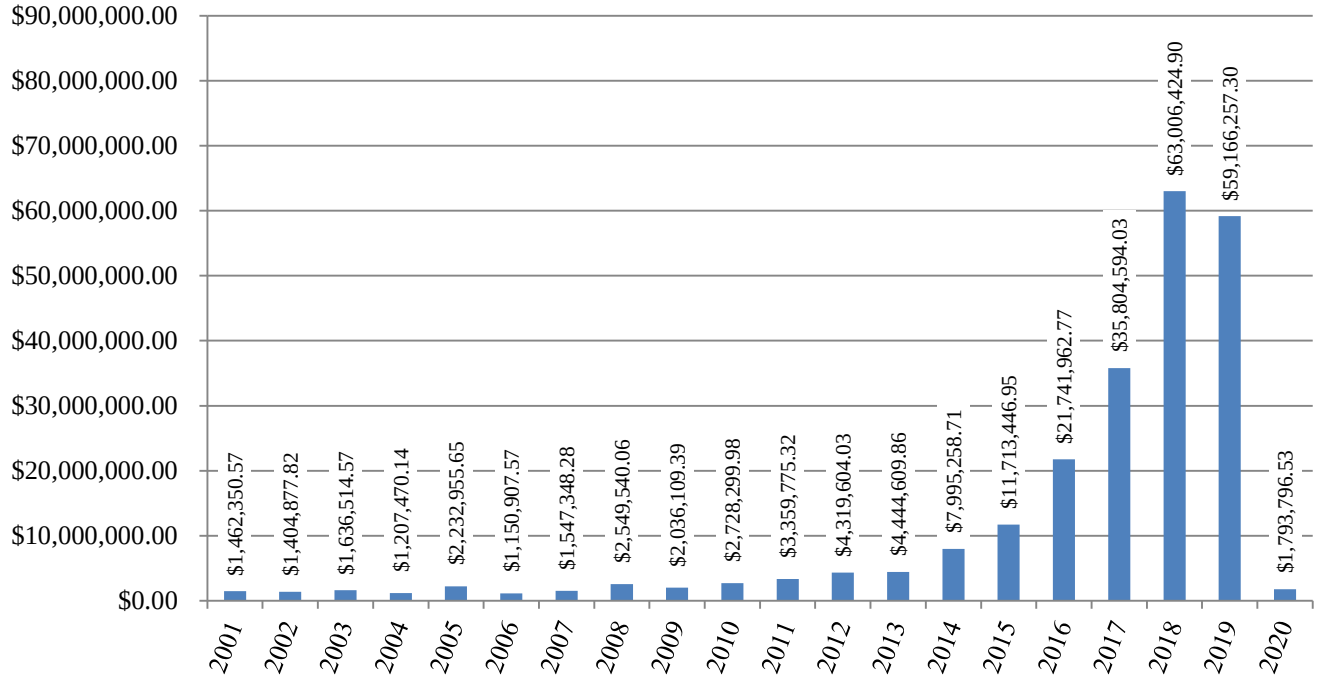
Attorneys' Fees by Accident Year

The figures above represent only the amount of fees "approved" during each respective fiscal year. During any particular fiscal year, fees might be approved for cases for which the date of accident was also during that particular fiscal year. More likely, the approved fee is related to a date of accident prior to that fiscal year, perhaps many years prior. In 2019-20, fees were approved regarding 50 distinct accident-date years. This is reasonably consistent with prior years, in which fees were recorded related to a range of 44 to 51 years.

In 2017-18 attorneys' fees were approved on a 1952 date of accident.[194] This example illustrates the manner in which claims can occur and not come within the OJCC jurisdiction for a significant period. Certainly, there may have been previous litigation on this case, prior to the OJCC becoming part of DOAH. However, the first record that this agency has regarding these cases occurred in 2018 and 2017 respectively. There have also been instances documented in which the date of accident was misrepresented in a petition for benefits or request for assignment of case number. It is believed that these instances generally involve the entry of a workers' date of birth instead of accident date, and a failure of all involved to note and correct that error.[195]

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 the 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 December 31, 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 2019-20 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 generally similar to prior year's data.



The vast majority, approximately eighty-nine percent (89.0%) of the claimant fees approved in 2019-20 related to accident dates in the ten years between January 1, 2010 and December 31, 2019. For comparison, the similar ten year periods reported in fiscal 2016-17, 2017-18, and 2018-19 were each between 88% and 89% This data suggests reasonable consistency in the contribution of the most recent accident years.

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
2018-19	2017	$56,754,841
2019-20	2018	$63,006,425

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 for 2019-20 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 occurs, 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 months[196] 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, until increasing notably in 2013-14. After a three-year period, the volume in that category declined notably in 2016-17 and further decreased in 2018-19.

Fiscal Year	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Fees on Accident dates > 20 years	4%	5%	6%	6%	5%	5%	6%	8%	7%	7%	5%	5%	3%	3%

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."[197] 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.

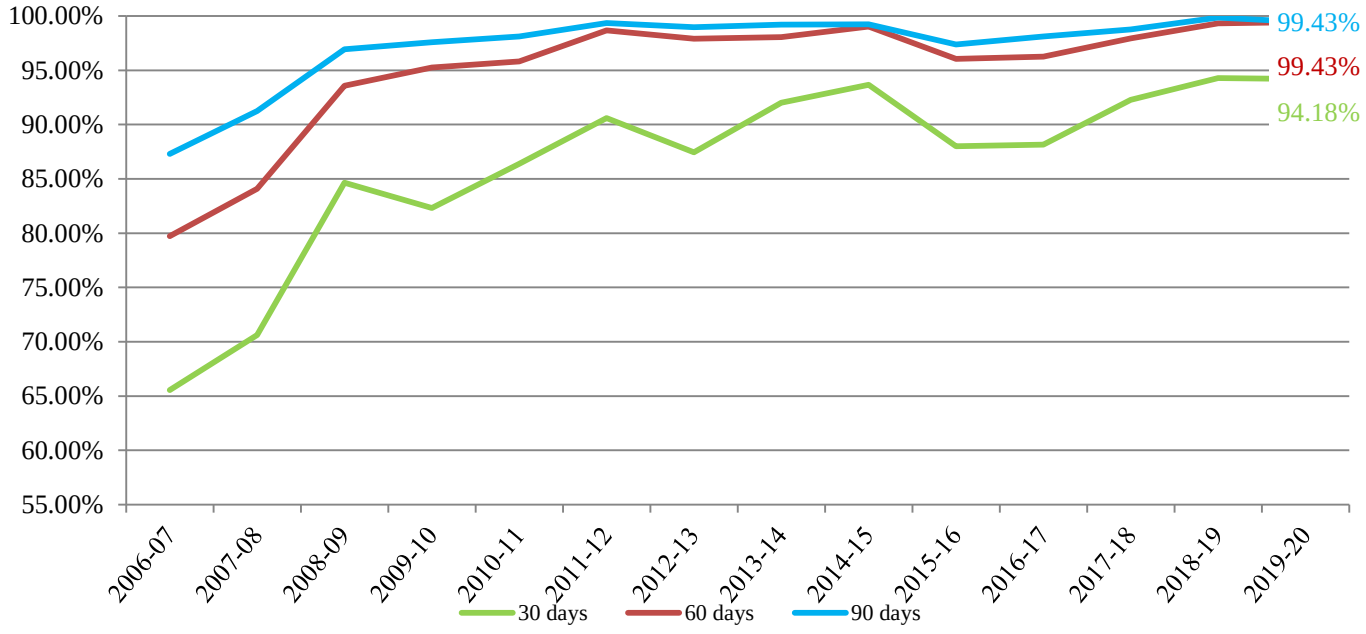
In this regard, the OJCC elects to report conservative figures that cannot overstate performance. Review of all of the final merits orders entered during fiscal 2005-06 through fiscal 2019-20, supports that many final orders were entered on the same day of the final hearing. Overall, the JCCs entered timely (within the 30 days required

by statute[198]) 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 (94.18%) in 2019-20. The chart below illustrates some fluctuation, but a notable overall performance in compliance with the statutory requirement.

Days	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**
30 days	88.01%	88.15%	92.29%	94.29%	94.18%
40	92.40%	91.65%	96.83%	97.42%	97.30%
50	94.59%	94.76%	97.52%	98.91%	99.01%
60 days	96.05%	96.26%	97.93%	99.32%	99.43%
70	96.64%	97.51%	98.48%	99.46%	99.43%
80	97.22%	97.88%	98.76%	99.73%	99.43%
90 days	97.37%	98.13%	98.76%	99.86%	99.43%
100	97.95%	98.63%	98.76%	99.86%	99.57%

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 one hundred percent (99.57%) of the cases in 2019-20. The percentage within 100 days has been consistently over 99% from 2011-12 through 2014-15. That percentage similarly decreased slightly thereafter, most likely due to the change in definition of "trial order,"[199] and has since returned to one hundred percent (99.57%). 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 2019-20, 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 2019-20 the longest period was one hundred ninety-seven (197) days. 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 were able to maintain efficient mediation of the petition volume. However, the petition volume in 2015-16 demonstrated significant increase and petition filing rates have increased in recent years. But for the impacts of Hurricane Irma in 2017-18,[200] Hurricane Michael in 2018-19, and the onset of the COVID-19 pandemic in 2019-20, it is believed the petition volumes would have increased more markedly. As PFB volume increases, mediators will be challenged to find sufficient opportunities to mediate all incoming petitions, despite the unilateral efforts of the OJCC to restore the full complement of state mediators. Delay will become 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 30th mediator position.

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.[201]

The procedural and practical inefficiencies of the Expert Medical Advisor (EMA) process are detailed 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.[202]

> 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.[203] 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."[204] 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.[205] In 2015, a Florida company paid almost $70 million to settle a fraud case involving "physician kickbacks, complicit hospital administrators and negligent financial oversight."[206] A whistleblower provision in Chapter 440, F.S. to empower and compensate the reporting of such activity related

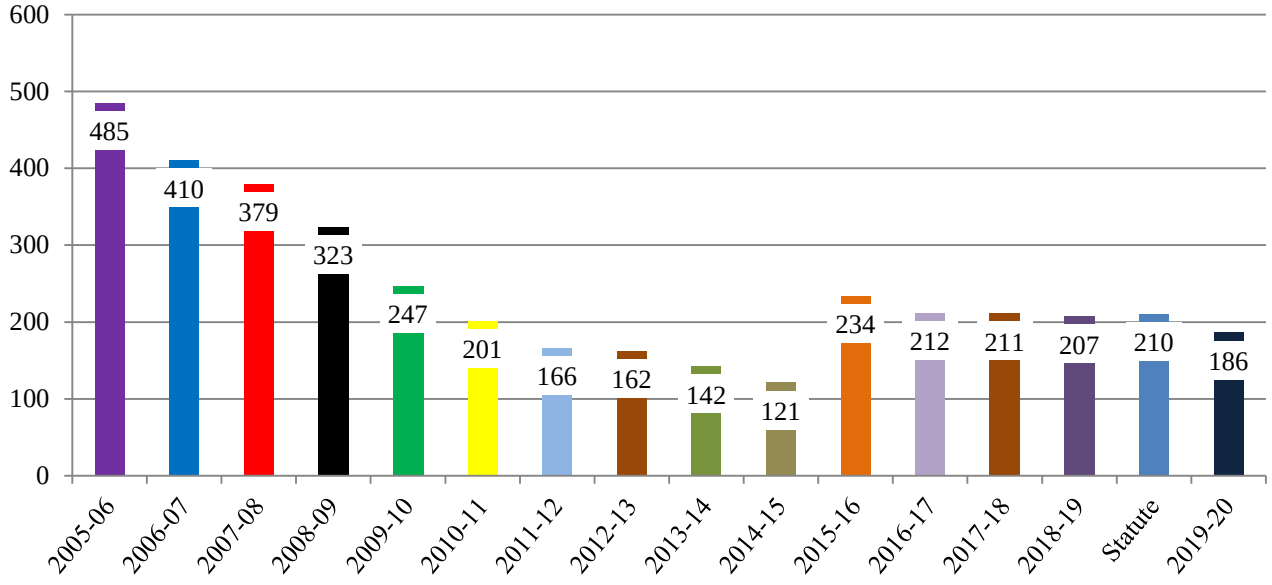
to the care and treatment of Florida's injured workers could aid efforts to control costs and assure delivery of appropriate medical care.

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.

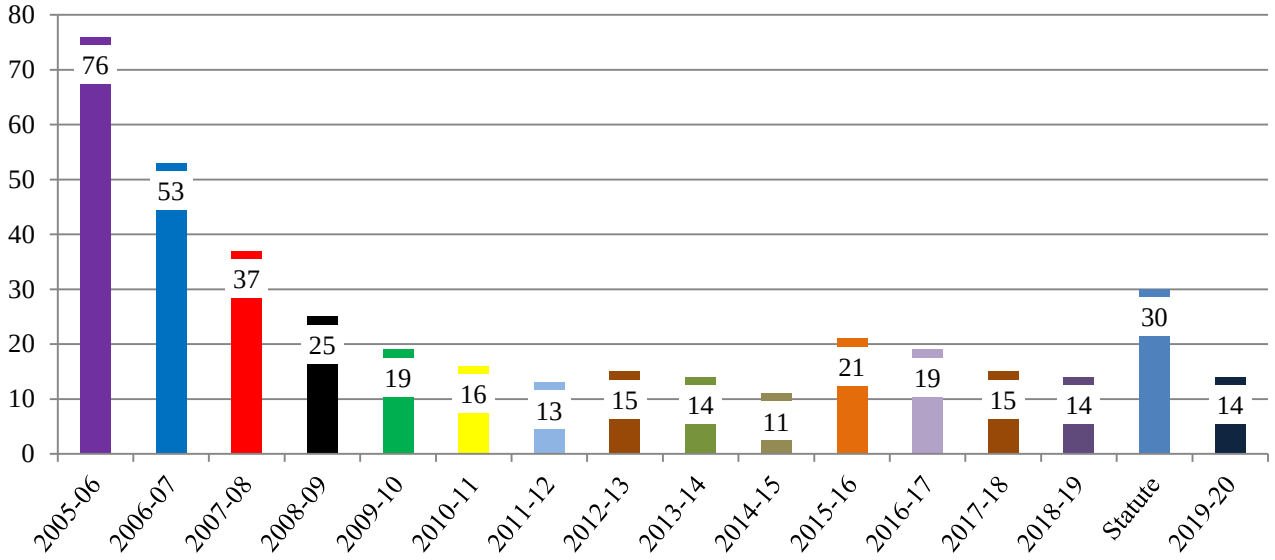
Each statutory requirement can clearly be accomplished in the vast majority of cases. This fact is indisputable and has been proven repeatedly in various districts throughout Florida. There can be no generalized claim that cases "cannot" be tried within two hundred ten (210) days of PFB filing or that 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.[207] 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 fifteen fiscal years (2005-06 through 2019-20) 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 on average until 2010-11, which continued through 2014-15.

With the 2016 change in definition of "trial," the OJCC did not collectively meet all three of these standards again until 2018-19. The time to mediation and time to final order aggregates for the entire OJCC remained within the statutory parameters despite that definitional change. However, following the change in the definition of "trial," the overall average time exceeded the statutory 210[208] days for three fiscal years, but compliance overall has improved in the most recent three fiscal years.



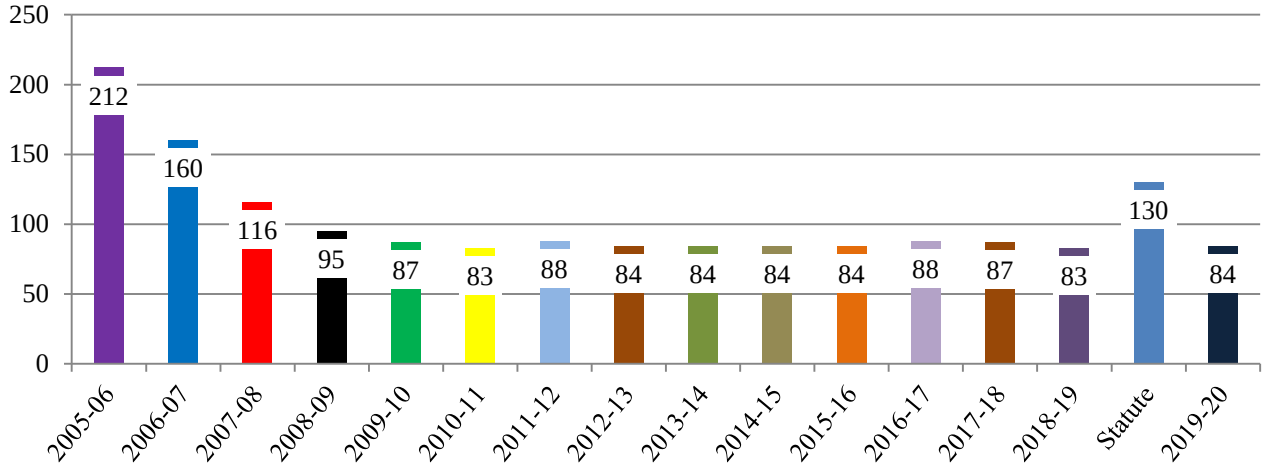
The Office of the Judges of Compensation Claims has also made significant improvement in the average time period between the commencement of the trial and the entry of the final order thereon.[209] The overall statewide

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. Compliance with that measure improved in 2016-17 (90%) and 2017-18 (97%). In 2018-19, for the first time since the OJCC was moved to the DOAH, 100% of the judges averaged less than 30 days between first day of trial and entry of the final order. In 2019-20 that feat was repeated.

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 and more recent consistency are 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 twelve 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,[210] 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,[211] (timely mediation), section 440.25(4)(a), Florida Statutes,[212] (pretrial procedure), section 440.25(4)(b), Florida Statutes,[213] (appropriate continuance grounds and orders), section 440.25(4)(c), Florida Statutes,[214] (timely final hearing notice), section 440.25(4)(d), Florida Statutes,[215] (timely final hearings and final orders), section 440.25(4)(e), Florida Statutes,[216] (final order filing), section 440.34(2), Florida Statutes, (appropriate fee order findings), section 440.442, Florida Statutes,[217] (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 fifteenth 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 overall judicial performance. Any consideration of judicial performance must also include subjective factors, such as judicial demeanor, courtesy to litigants and counsel, and respect for 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.

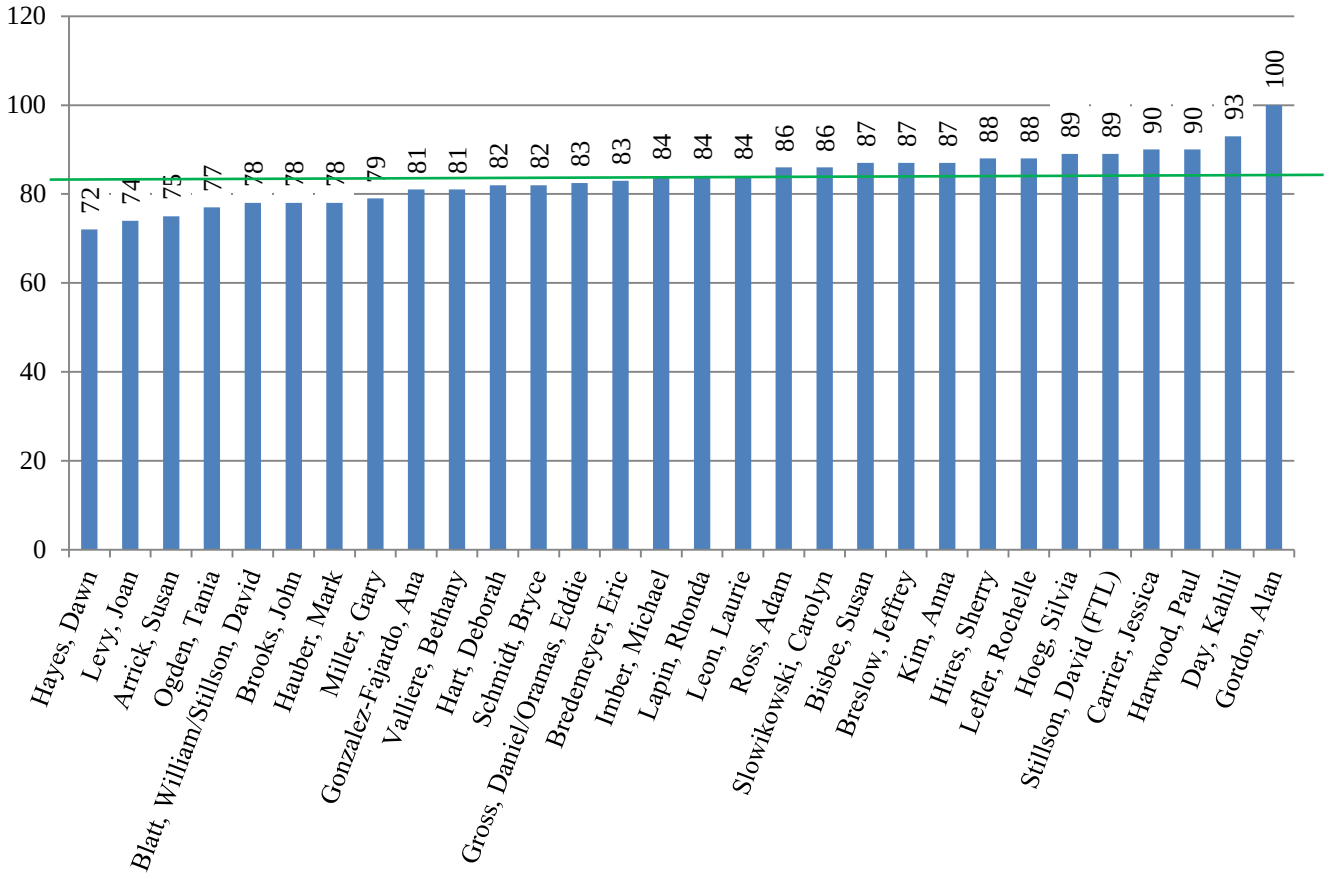
For the purposes of this report, "final hearings" include only final merits hearings regarding claims and issues in petitions for benefits, contested attorney fee/cost hearings resulting in substantive final orders, and Fund Hearings.[218] This is a change from prior years. Until 2015-16, "trials" included: Evidentiary Motion Hearings, Expedited Final Hearings, Fee Amount Hearings, Fee Entitlement Hearings, Final Hearings, and Fund Hearings.[219] "Trial orders" no longer include substantive orders issued after hearings on evidentiary matters. Though inclusion of those orders in the statistics was consistent with the time and effort involved in such orders/hearings, that definition was subject to misinterpretation and abuse, described elsewhere in this report.[220]

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 2019-20, 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 (84) 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 2019-20 Settlement and Mediation Report,[221] 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 84 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,[222] ***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."[223] Any hearing that is characterized as "continued" in the database should have a corresponding continuance order in the case docket.[224] 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 2018-19 (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.[225]

Each order that grants a continuance is required by section 440.25(4)(b)[226] to include the new hearing date. The judges for whom each examined continuance was reflected in a corresponding order that contained such a date were Judges Almeyda, Arthur, Clark, Jacobs, Kerr, Medina-Shore, Owens, Ring, Stanton, Stephenson, and Winn. This is similar to 2018-19. It appears there remains significant failure to comply with this statutory section.

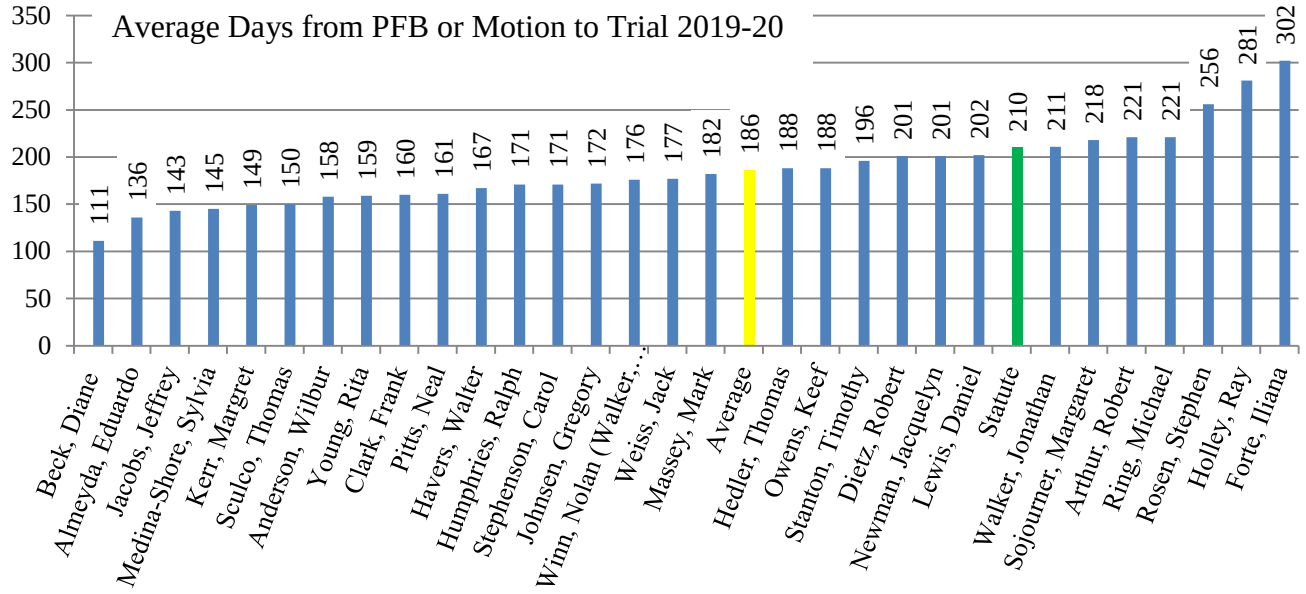
Final Order Filing

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.

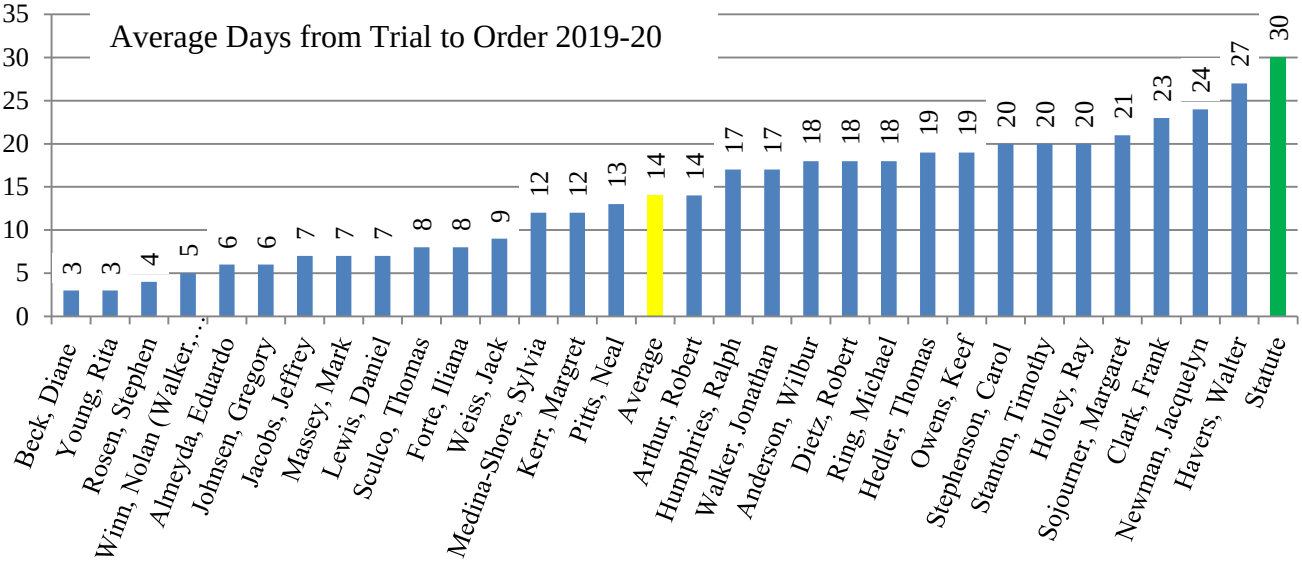
Timely Final Hearings and Final Orders

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 2019-20 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 one hundred eighty-six (186) days in 2019-20.



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 14 days in 2019-20. The green bar represents the 30 day parameter from the statute. Every Judge of Compensation Claims averaged less than 30 days between the trial and entry of the final order in 2019-20. This 100% performance is the second time in agency history (first was 2018-19).



Attorney Fee Orders

Contents of attorney fee orders are addressed in section 440.34(2), Florida Statutes.[227] 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. In 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 thereafter 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.[228] 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 orders[229] 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 2019-20. 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 four 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.

In the course of auditing fee orders in 2019-20, there were multiple instances located in which a particular fee order was not self-sufficient (instead referencing other information in stipulation or motion without restating it). There were also multiple examples found in which attorney's fees were approved without complete attorney fee data sheets, representations of the value of benefits obtained, or representations of the hours invested in the matter for which a fee was approved.

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 2019-20, no violations of the Code were found.

Conclusion

Since 2006-07, the OJCC has made great strides in consistency, uniformity, transparency, and efficiency. The results are demonstrated throughout the metrics reported here. The role of technology cannot be overstated. Florida's workers' compensation litigation process has an enviable, practical, and effective electronic management and filing platform developed and deployed in house for approximately $1.6 million to date. The system saves more than a million dollars annually for the customers of this agency. The adaptation of technology for the success of the OJCC mission is attributable to the DOAH Administrative Services team into which the former IT department was absorbed in 2019. Their vision and engagement have made electronic filing, service, and video teleconference systems (VTS) reality.

The legislative reductions in staff have been a persistent challenge for the OJCC. The pay disparities between this agency and competing employment elsewhere in state and local government has made recruitment and retention difficult. There is suggestion that the COVID-19 challenges may require reduction in agency budgets. It bears reiteration that 93.5% (approx.) of the OJCC budget is office rental, personnel, and security services. This agency has been lean and efficient for decades as Florida's population has grown, responsibilities have increased, and budgets have held fast. The OJCC has striven to fulfill its mission despite these challenges. As petition filing rates increase, and litigation intensity is exacerbated further, the resources of this agency will only be further taxed. It is suggested that cuts to the budget of this agency would affect significant impacts on injured workers, employers, and the community. It is suggested that budgetary cuts be minimal if necessary, and that budget increase should be considered to correct the historical and significant pay equity issues previously identified and discussed.

[Space intentionally blank]

Glossary of Terms:

COVID-19	Refers to a disease caused by a virus. The World Health Organization designated this disease as "19" as it was first identified in 2019. [230]
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, (usually) 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 Administration Commission.
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"), thirty mediators, and approximately one hundred forty support personnel, responsible to the Governor. In 2001 it was transferred from the Department of Labor and Employment Security ("DLES") to the Division of Administrative Hearings ("DOAH").
SARS-CoV-2	This is the name given by the World Health Organization to "severe acute respiratory syndrome coronavirus 2," the virus which causes the disease known as COVID-19.[231]
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.[232]
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.

Appendix "1" District DAY (JCC Anderson):

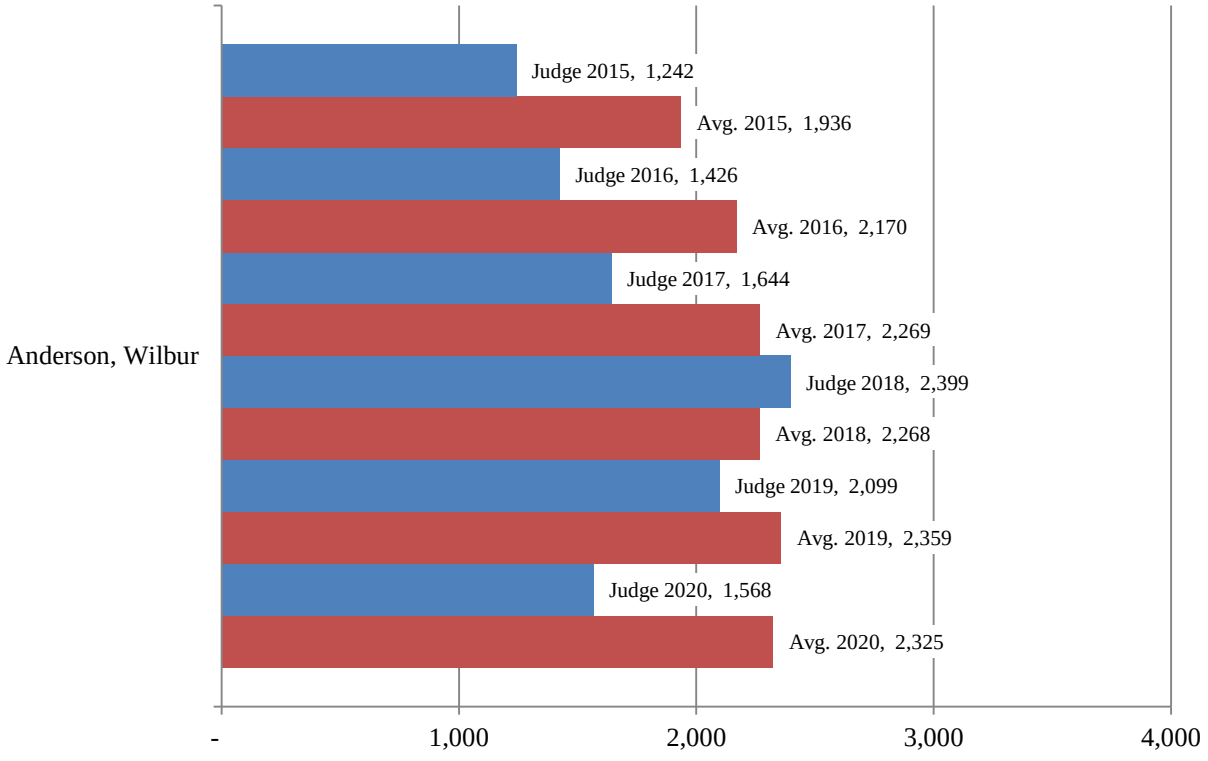
District DAY includes Flagler and Volusia counties. Seminole county was also included in DAY until it was transferred to District ORL in 2006-07; in 2017 Seminole was again transferred to Daytona, but was transferred back in 2018 when the Orlando District Office moved to Seminole County. The movement of Seminole County likely accounts for the above-average "new case" and Petition volumes in 2018. Those figures have returned to below-average in 2019, more consistent with the history of the District, and markedly decreased in 2020.

For 2019-20, case closure rates remain consistent with petition filing volumes, mediation times are consistent with statewide average, and the time to both trial and final order are within the statutory parameters in District DAY. Settlement volumes are close to the average, as are "other hearings" and "other orders."

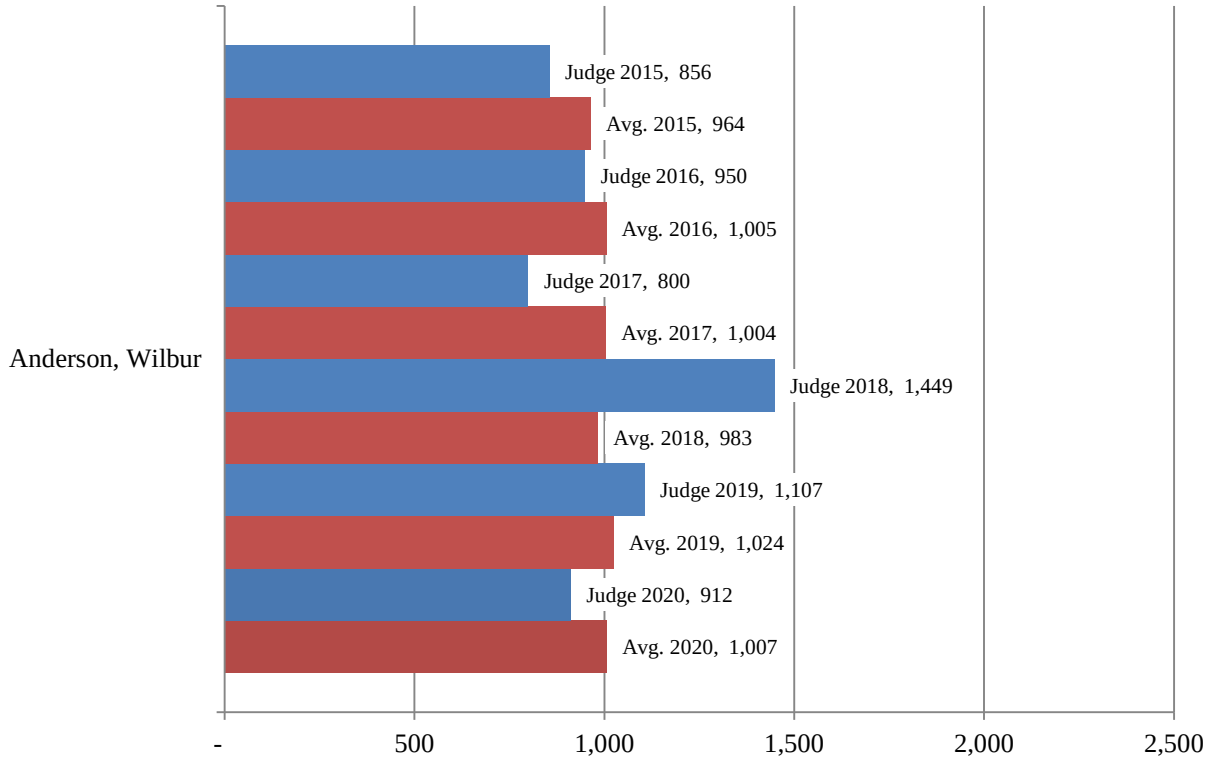
In 2019-2020, Judge Anderson published an article on Affirmative Defenses in Florida Workers' Compensation in the November/December 2019 issue of The Florida Bar Journal. He also continued as an active presenter at a number of continuing education programs. He moderated a panel discussion on workers' compensation appeals at the annual workers' compensation seminar at the First District Court of Appeal, and spoke 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. In addition, Judge Anderson was a guest lecturer on effective oral and written advocacy at Barry University School of Law, and continued as a pupilage group chair of the Judge William Wieland American Inn of Court. He also spoke on practices and procedures at a workers' compensation forum sponsored by the Orange County Bar Association.

John Brooks authored an article for News & 440, Winter 2019: *The Turtle is Still on His Back. A Survey of Pro-Se Litigation*. He participated in the Professional Mediation Institute seminar as panel moderator and topic creator for "Painting by Numbers."

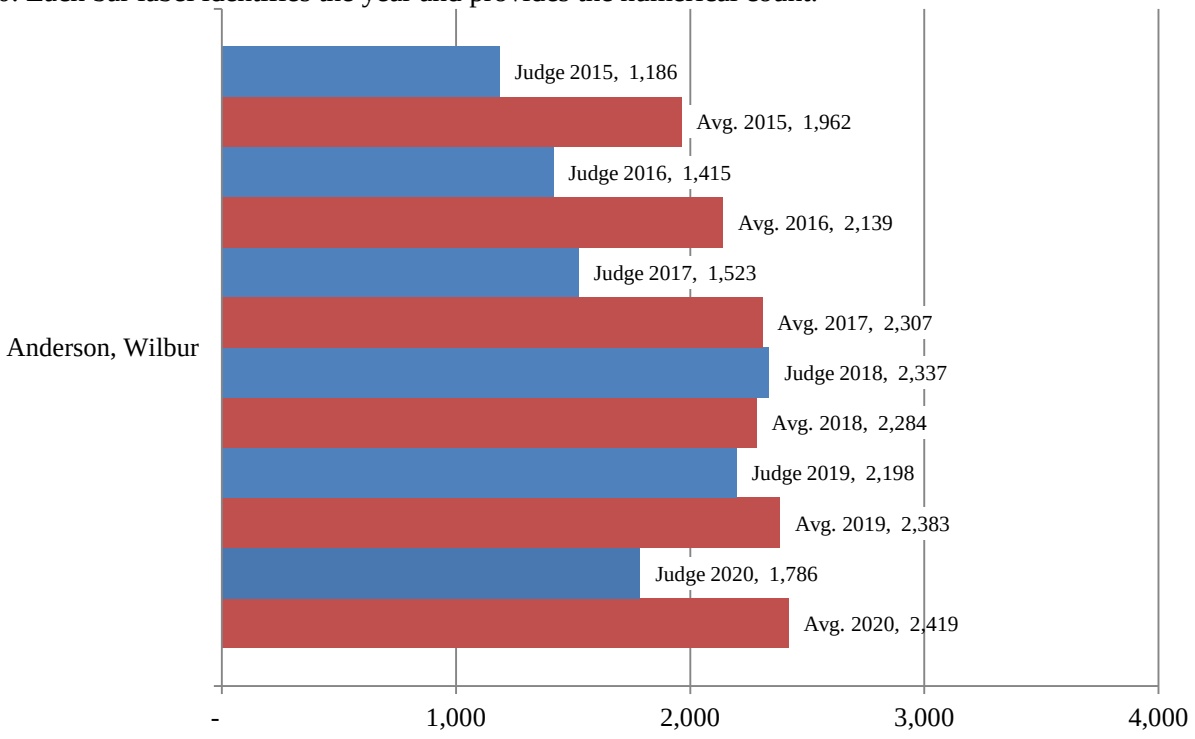
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.

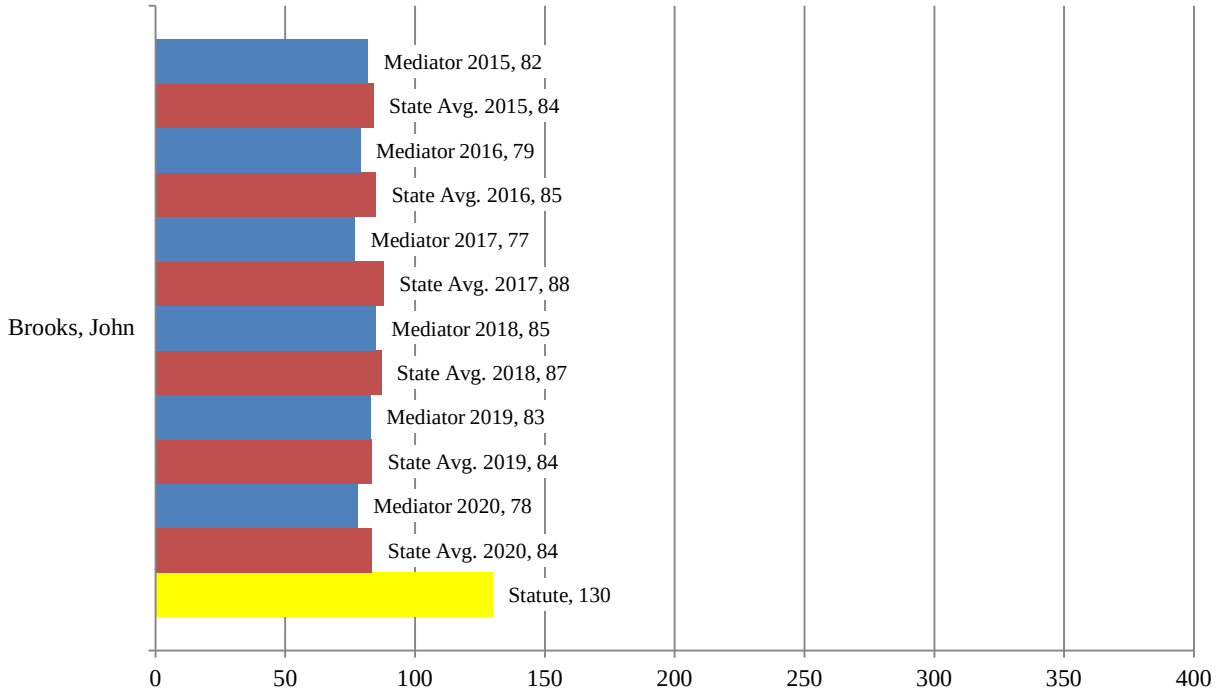


The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.

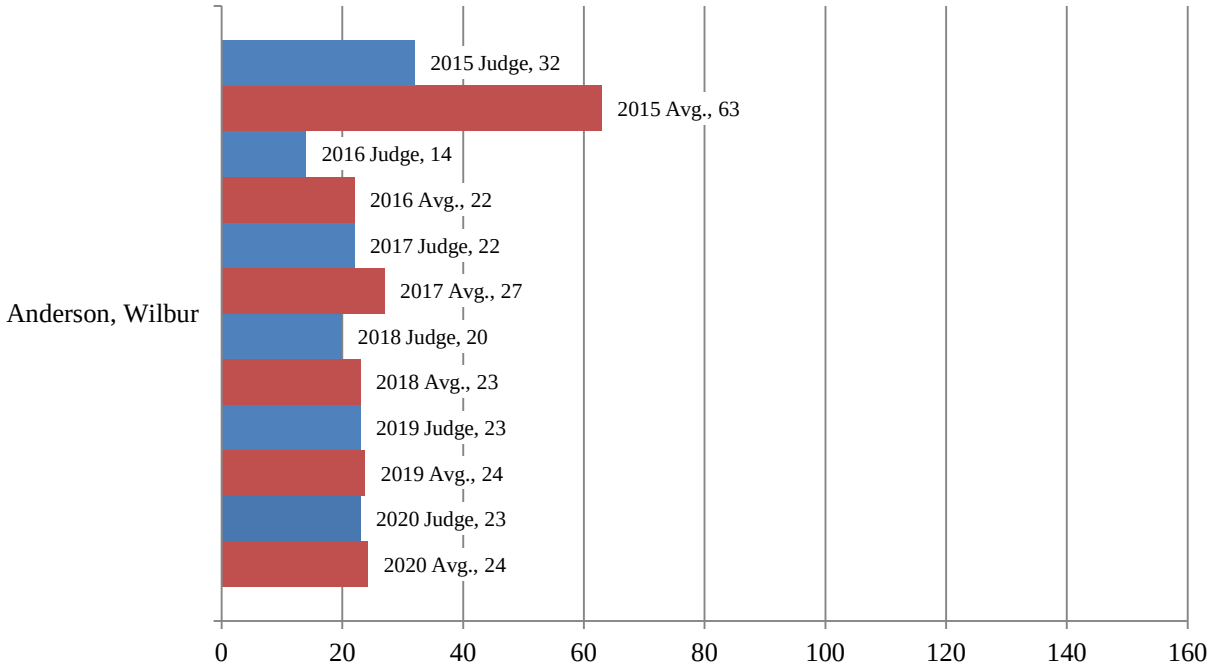


The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.

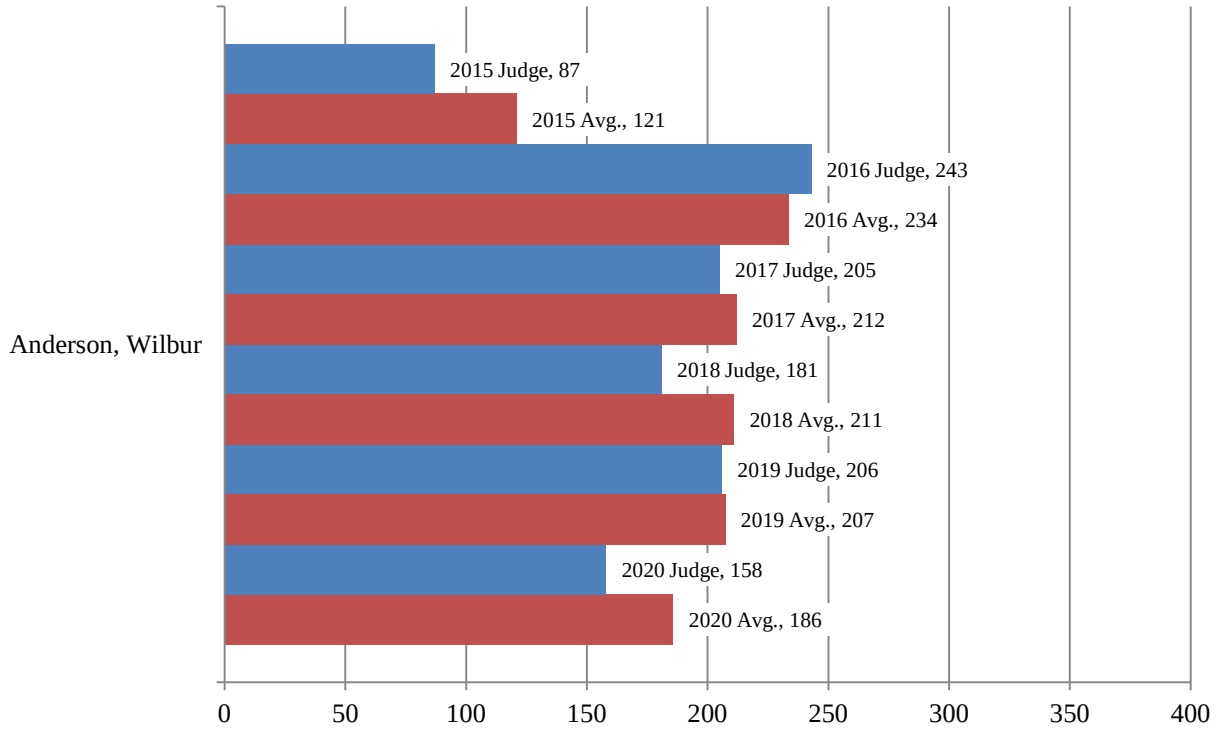
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



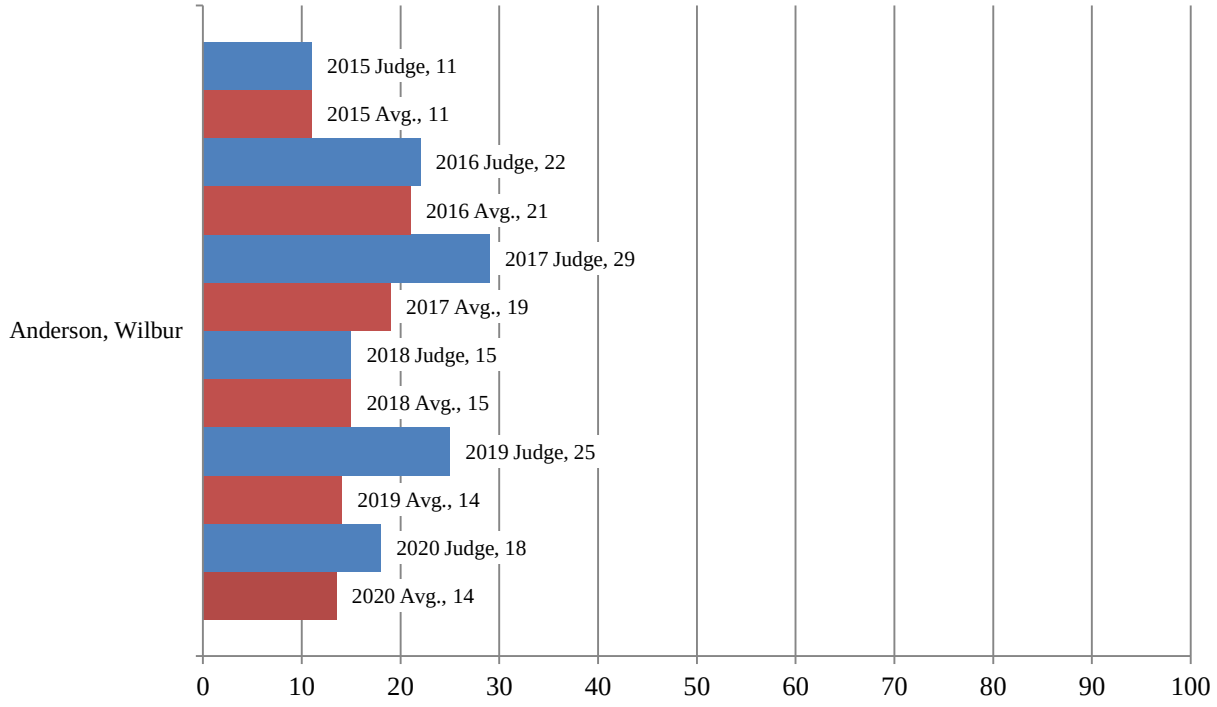
The following graph depicts the total volume of trial orders[233] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



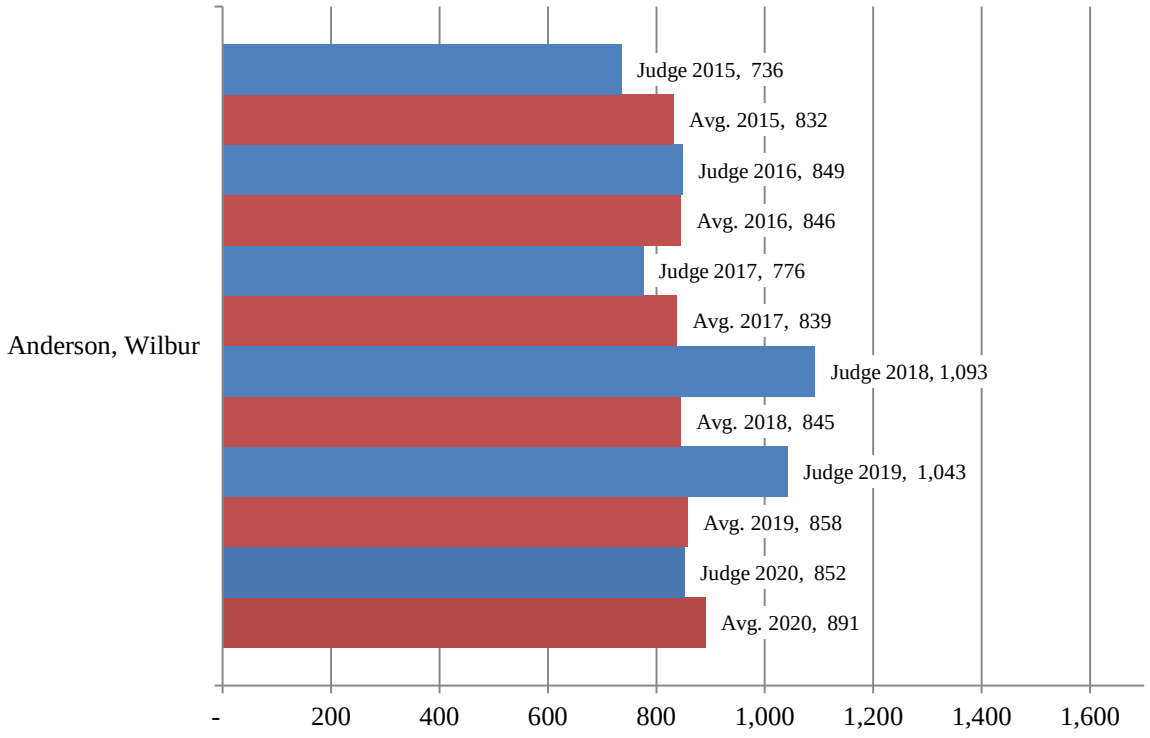
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



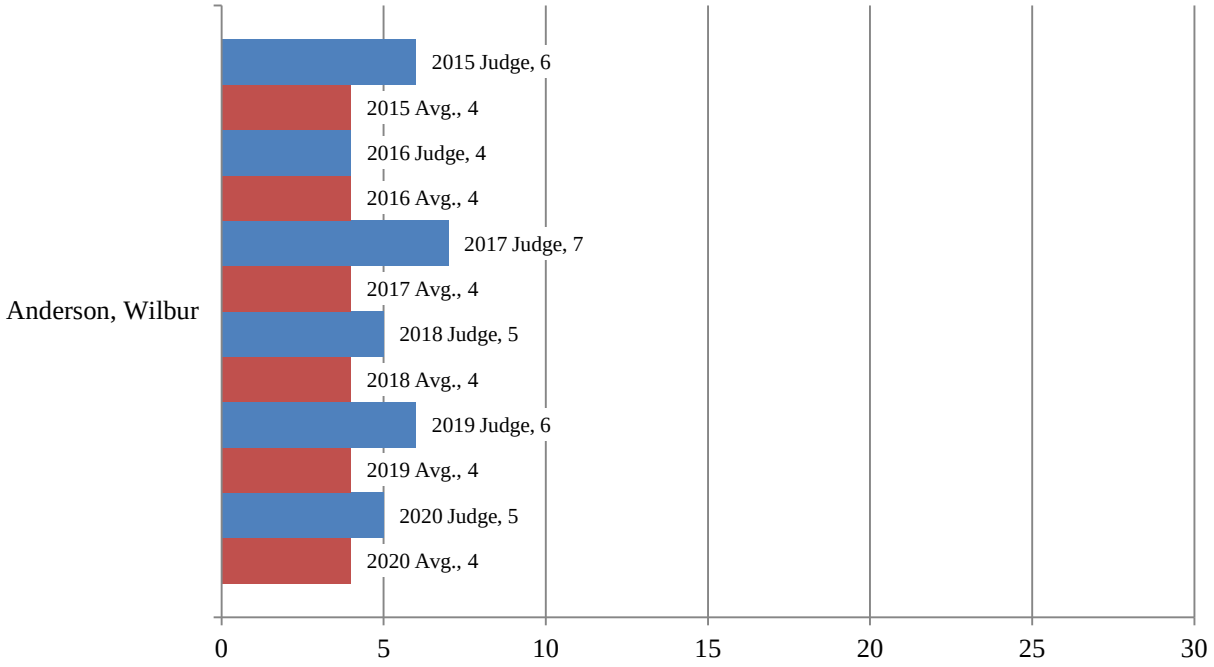
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



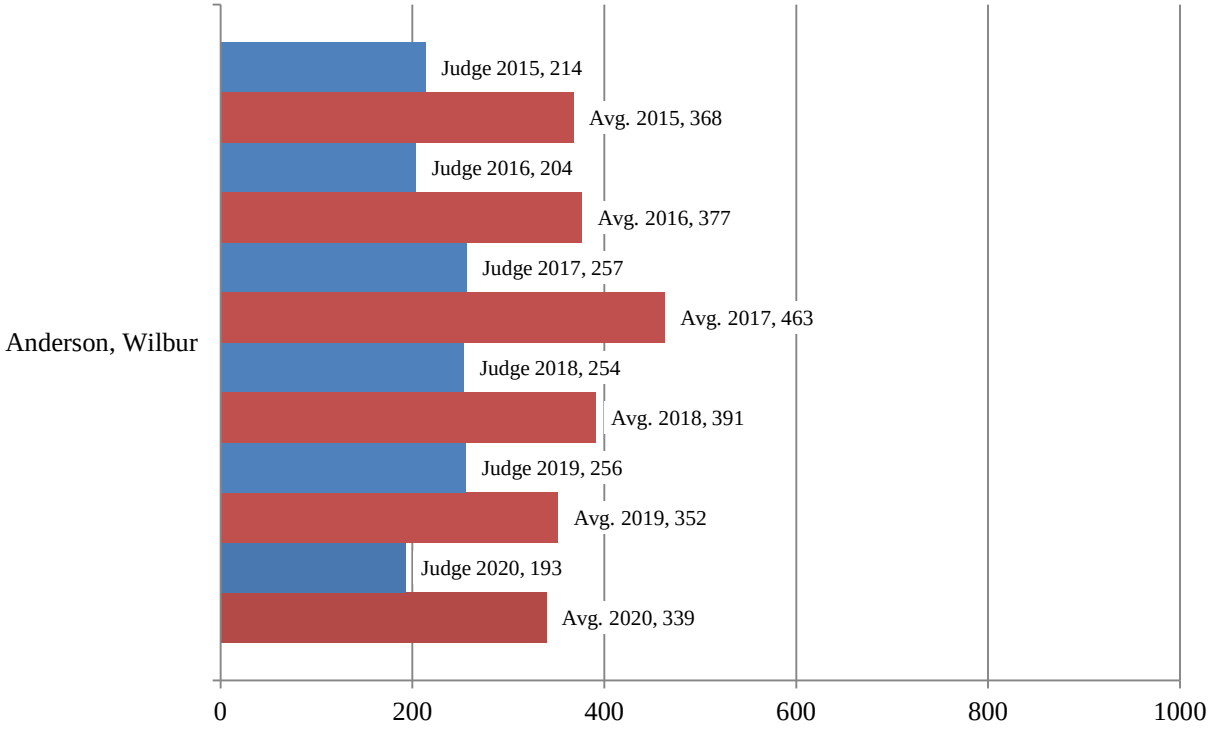
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



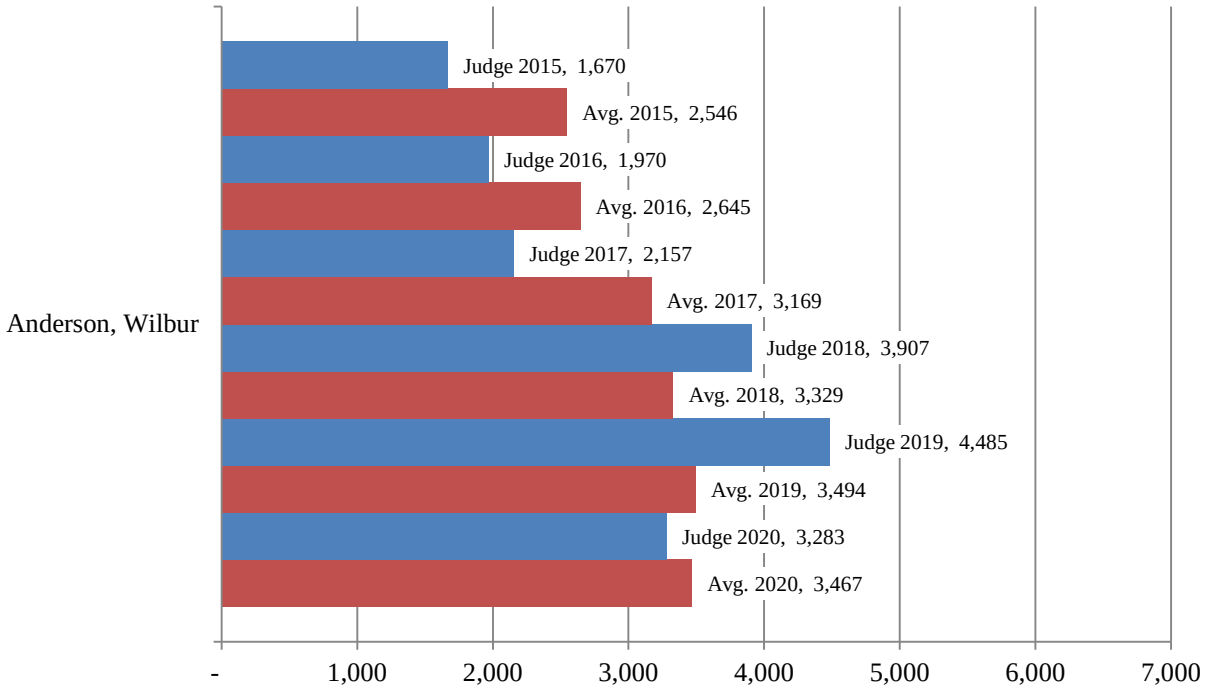
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.

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

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. 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 petition filing volumes well above the statewide average for all three Ft. Lauderdale judges, and the “new cases” close to the average.

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. That position was split between Ft. Lauderdale and West Palm Beach until mid-2019-20. In December 2019, another position was created in West Palm Beach, and Mr. Stillson became dedicated to FTL full time.

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

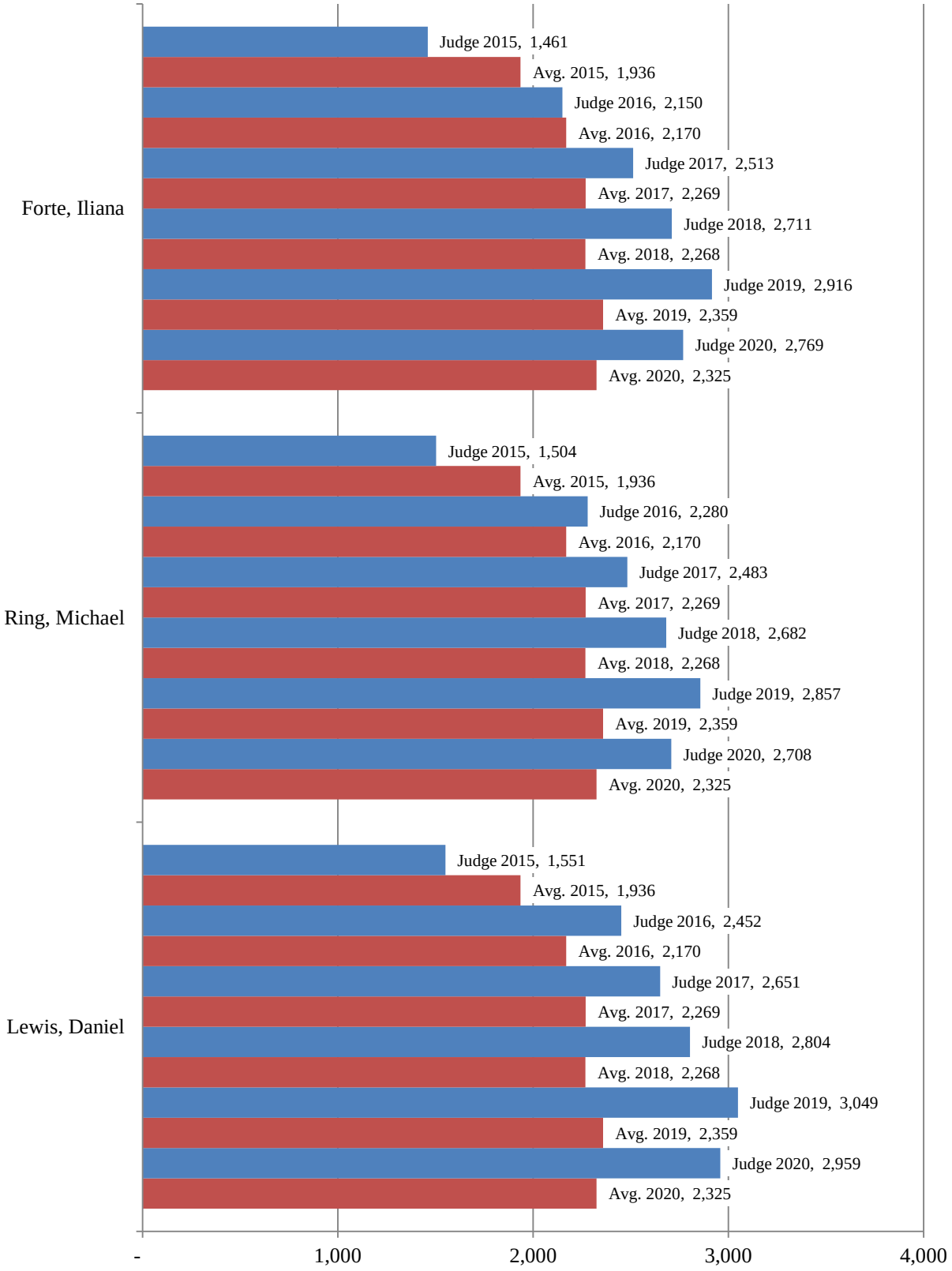
Judge Forte was a speaker at the annual conference of the Florida Association of Self Insured held in Naples Florida. She was also invited to speak at the 2019 West Palm Beach Bar Conference held on October 23, 2019 and at the Broward Bar Conference held on February 28, 2020. On June 20, 2020 along with Judge Ring, Judge Forte participated in the 2019-2020 Florida Bar Workers’ Compensation Section Learn at Lunch Program where emerging issues regarding COVID-19 were discussed. On June 8, 2020 along with Judge Ring and Judge Lewis, Judge Forte participated in a roundtable webinar on Practicing during COVID-19.

In 2019-2020, Judge Lewis remained active in the Broward County Bar Association. On February 28, 2020, he presented a *Question and Answer Session with the Broward JCCs* for the Broward County Bar Association Workers’ Compensation Section Seminar. On June 26, 2020, Judge Lewis presented a webinar entitled *Roundtable Webinar on Practicing during COVID-19 with the Broward JCCs*, also for the Broward County Bar Association Workers’ Compensation Section. On August 11, 2019, 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. 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.

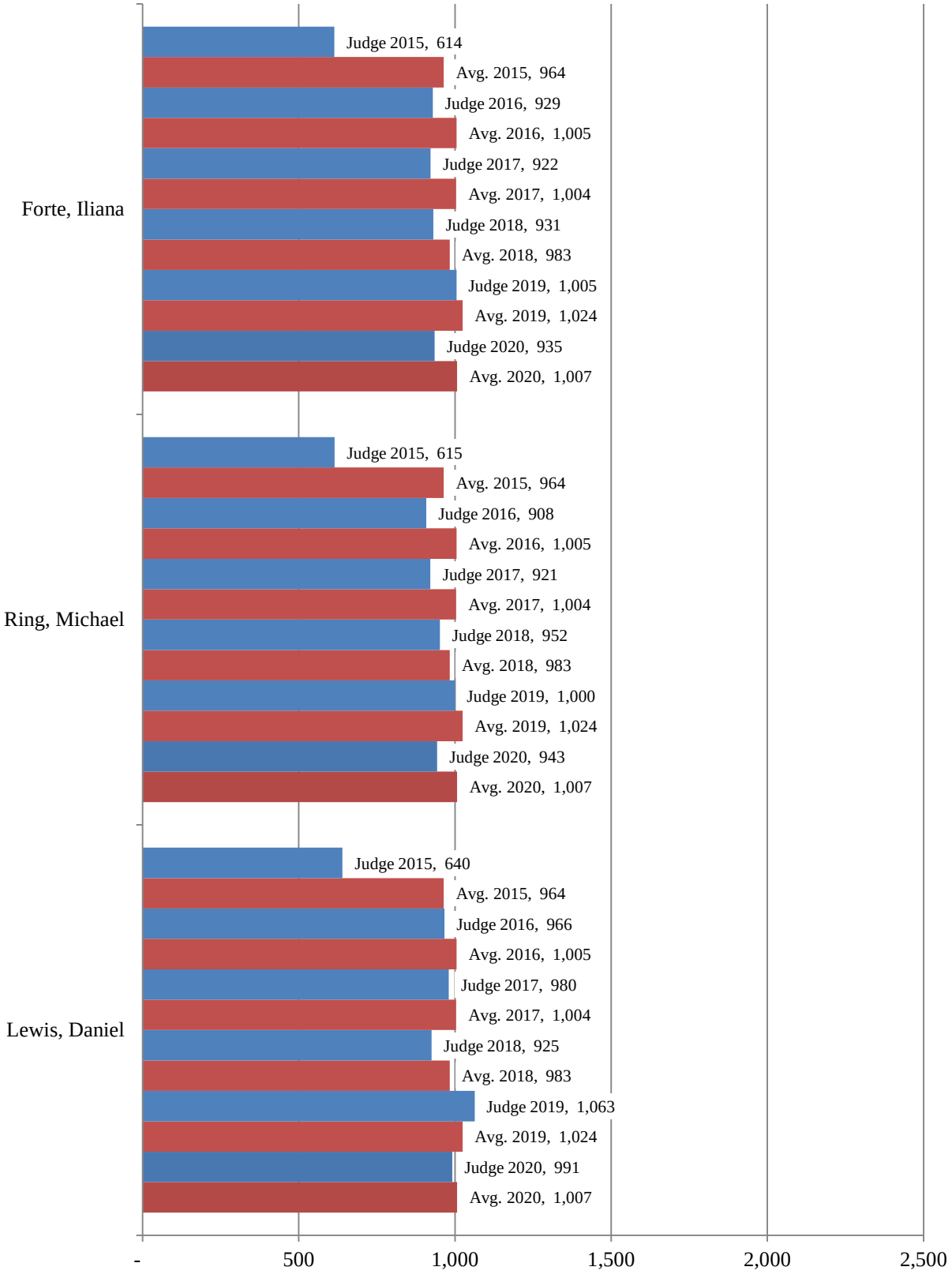
In 2019-2020, Judge Ring was a presenter in a number of continuing education programs. On October 23, 2019 he discussed attorney’s fee issues in workers’ compensation before the Palm Beach County Bar. On February 21, 2020 he addressed the topic of *Proper Pretrial Procedure* before the OJCC/WCI Educational Seminar in Tallahassee. On February 28, 2020, Judge Ring addressed the Broward County Bar Association and discussed *Judicial Assignment of Cases and Proper Jurisdiction*. On June 10, 2020 he addressed the subject of *Novel Workers’ Compensation Issues in the Time of COVID-19* for an audio webcast of the Florida Bar. Lastly, on June 26, 2020 Judge Ring presented the issue of *Practicing in the Time of COVID-19* before the Broward County Bar Association. He also served as a moot court Judge for the annual E. Zehmer Moot Court Competition.

Adam Ross has been on the Board of Directors of the Professional Mediation Institute (PMI) since 2016. The Board oversees and manages PMI and the annual Mediation Institute which is presented in conjunction with the annual conference of the Workers’ Compensation Institute (WCI).

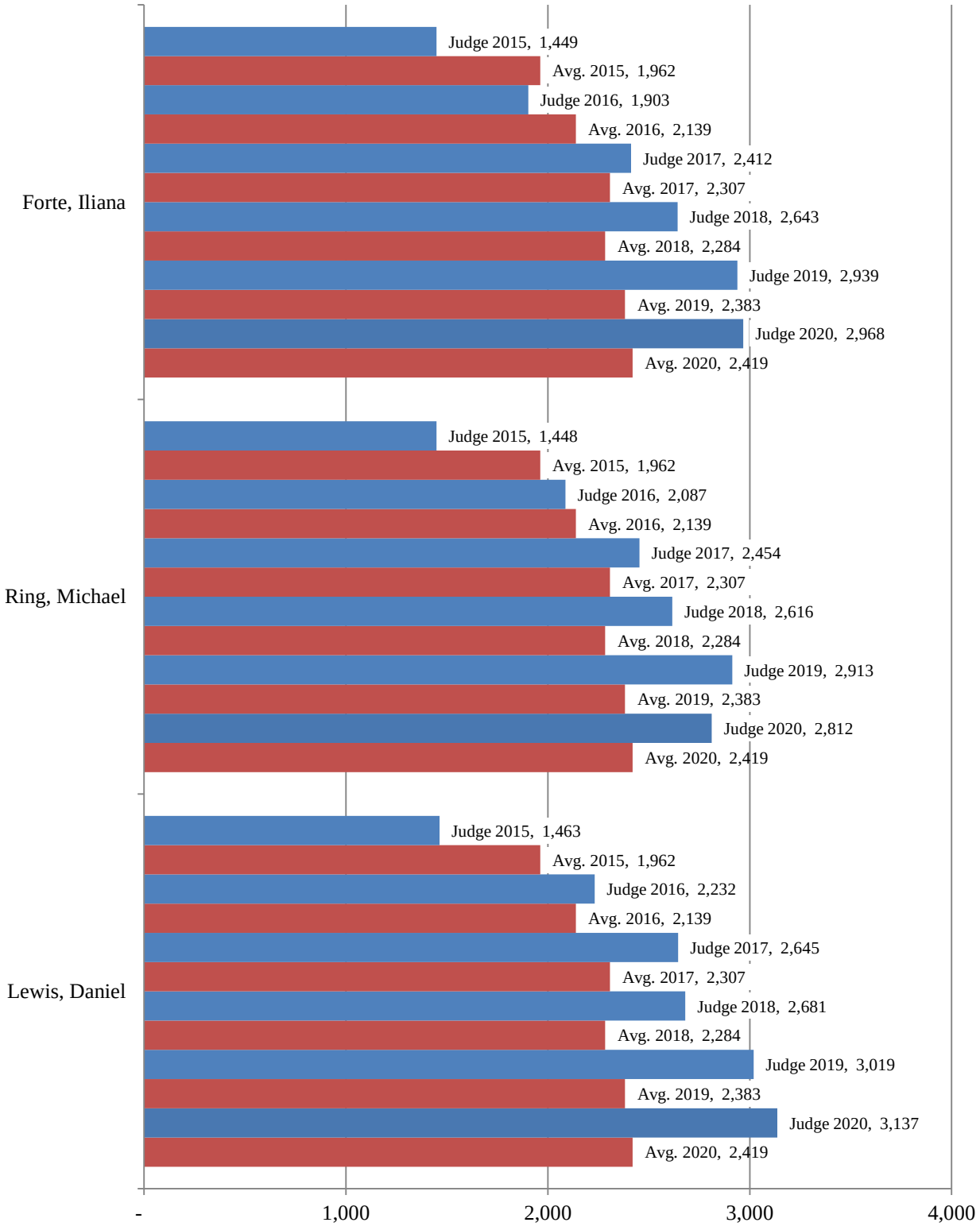
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



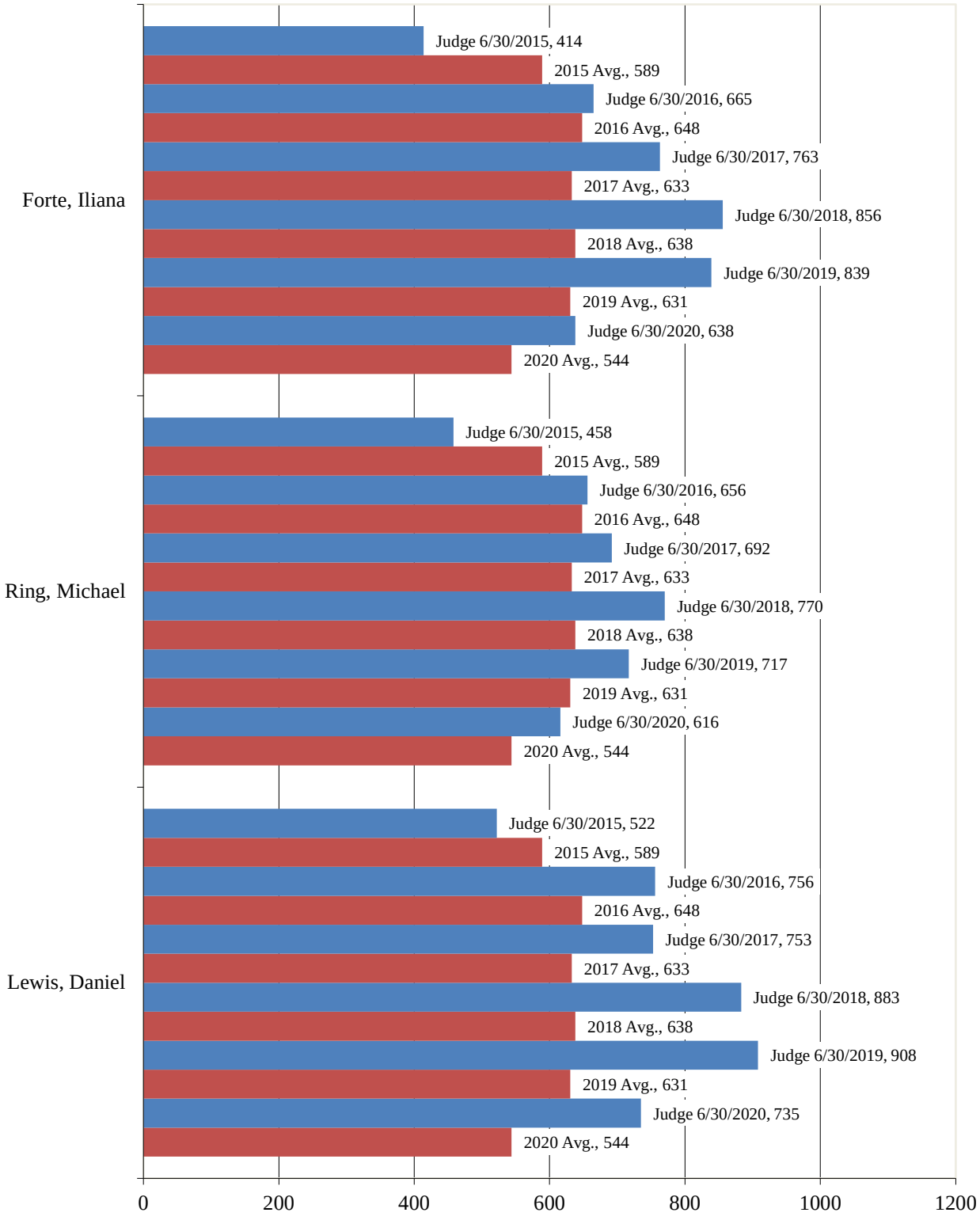
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



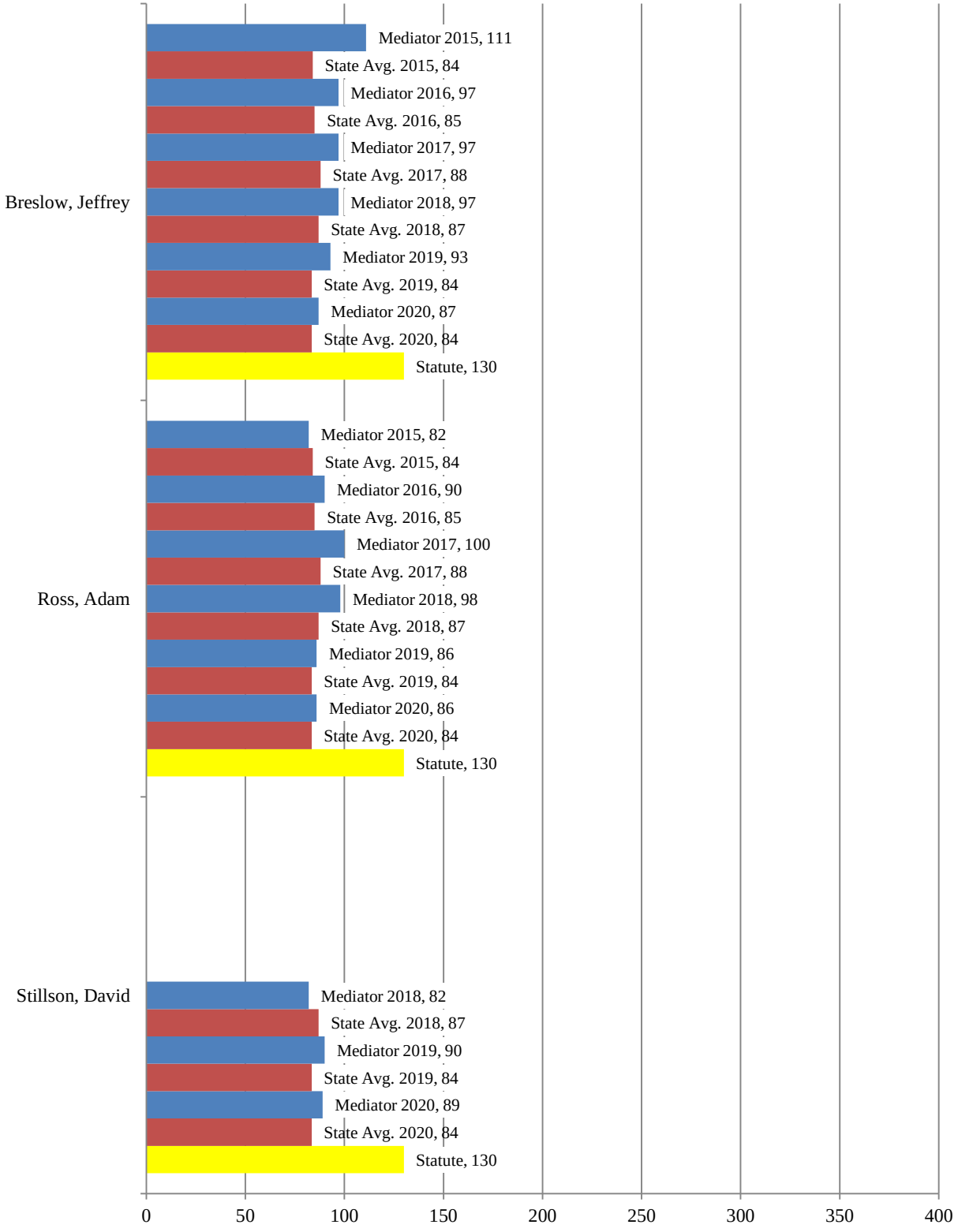
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



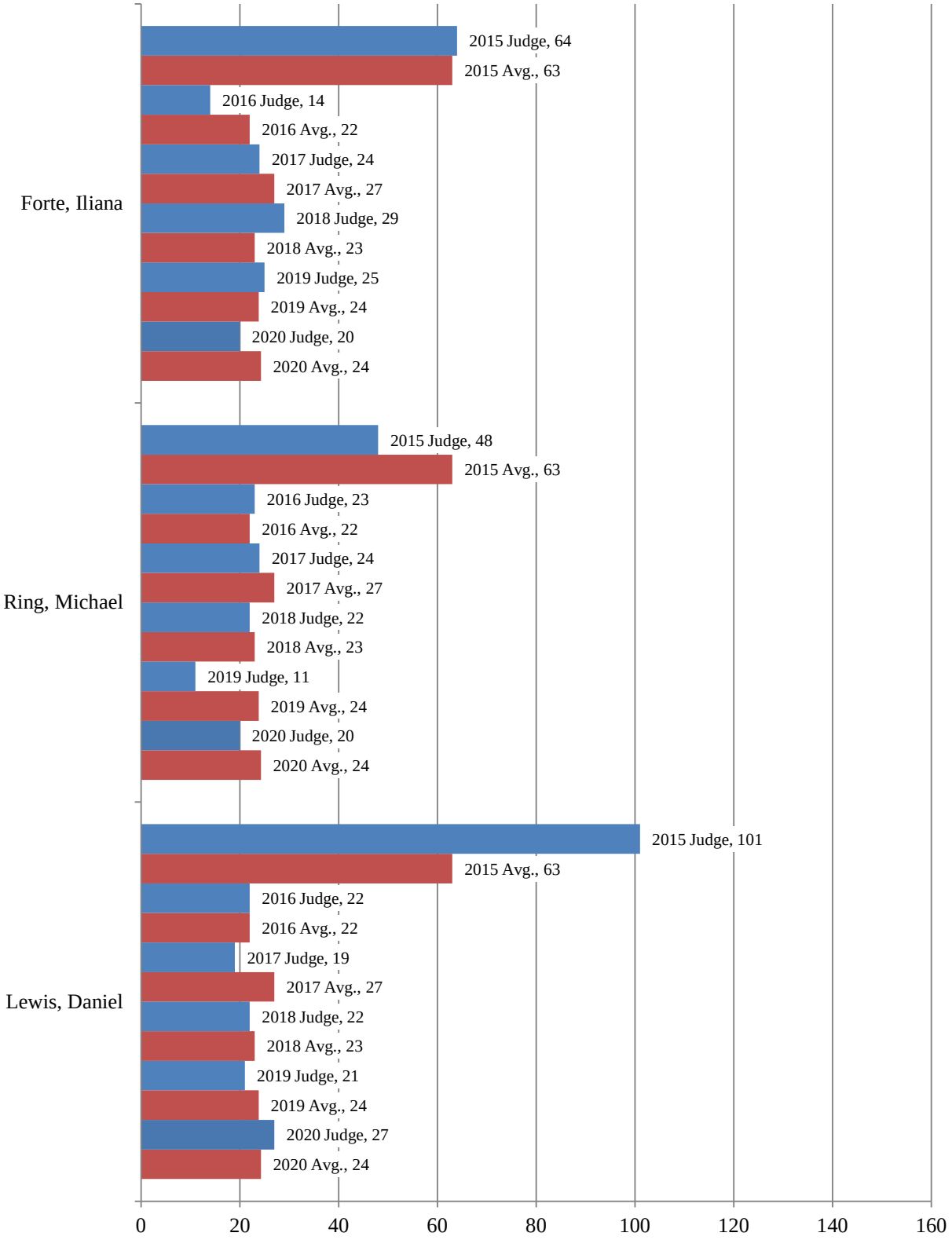
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



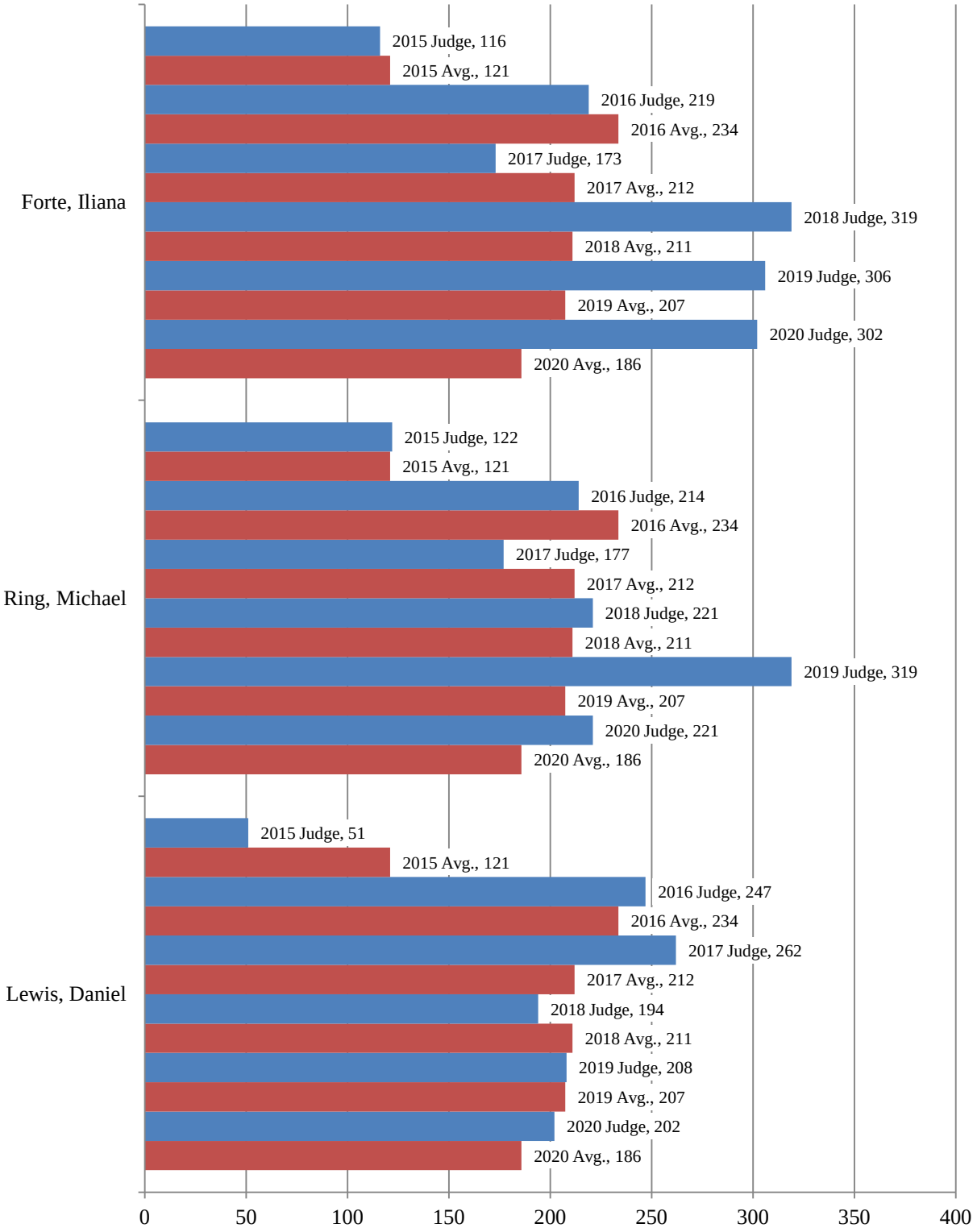
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



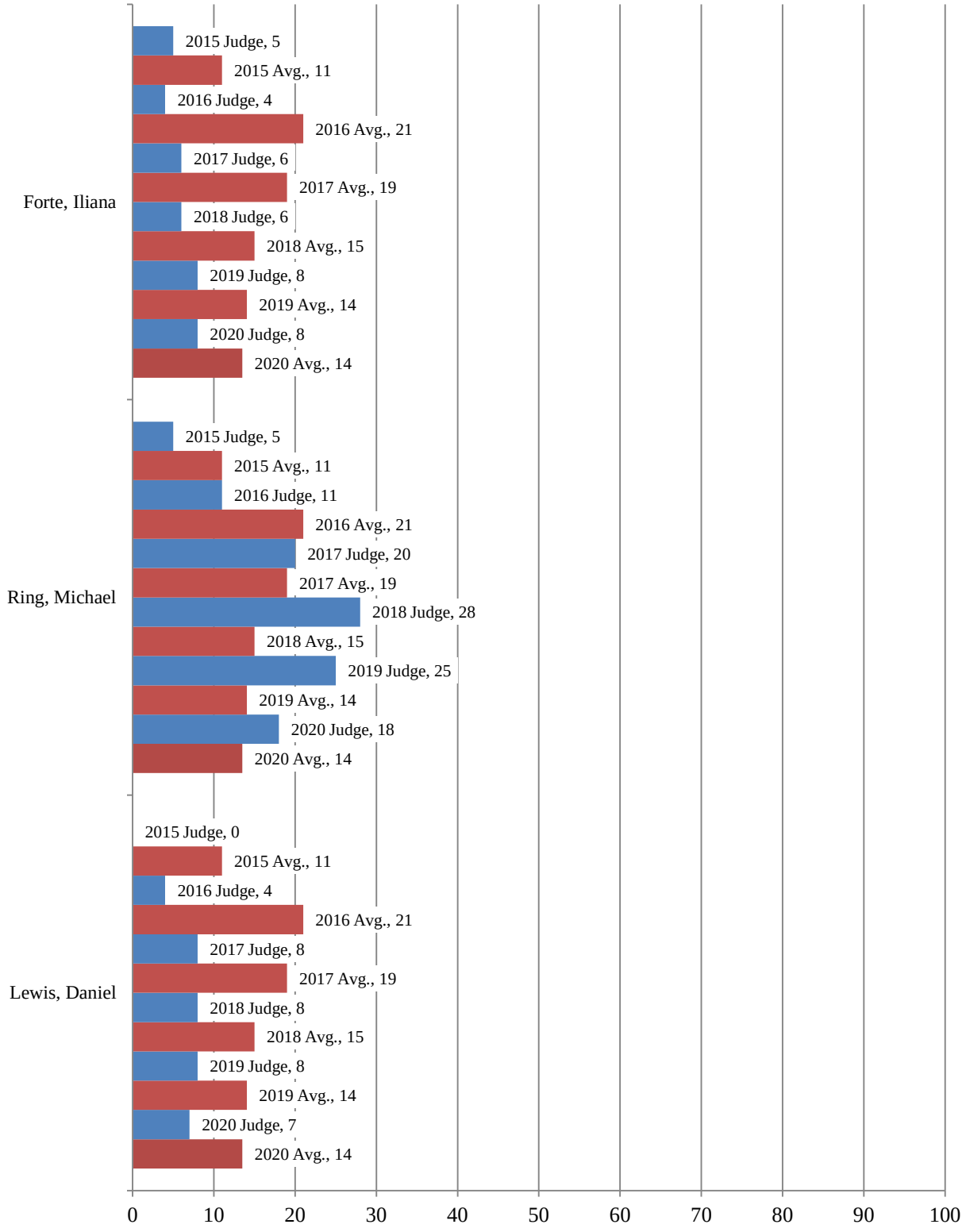
The following graph depicts the total volume of trial orders[234] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



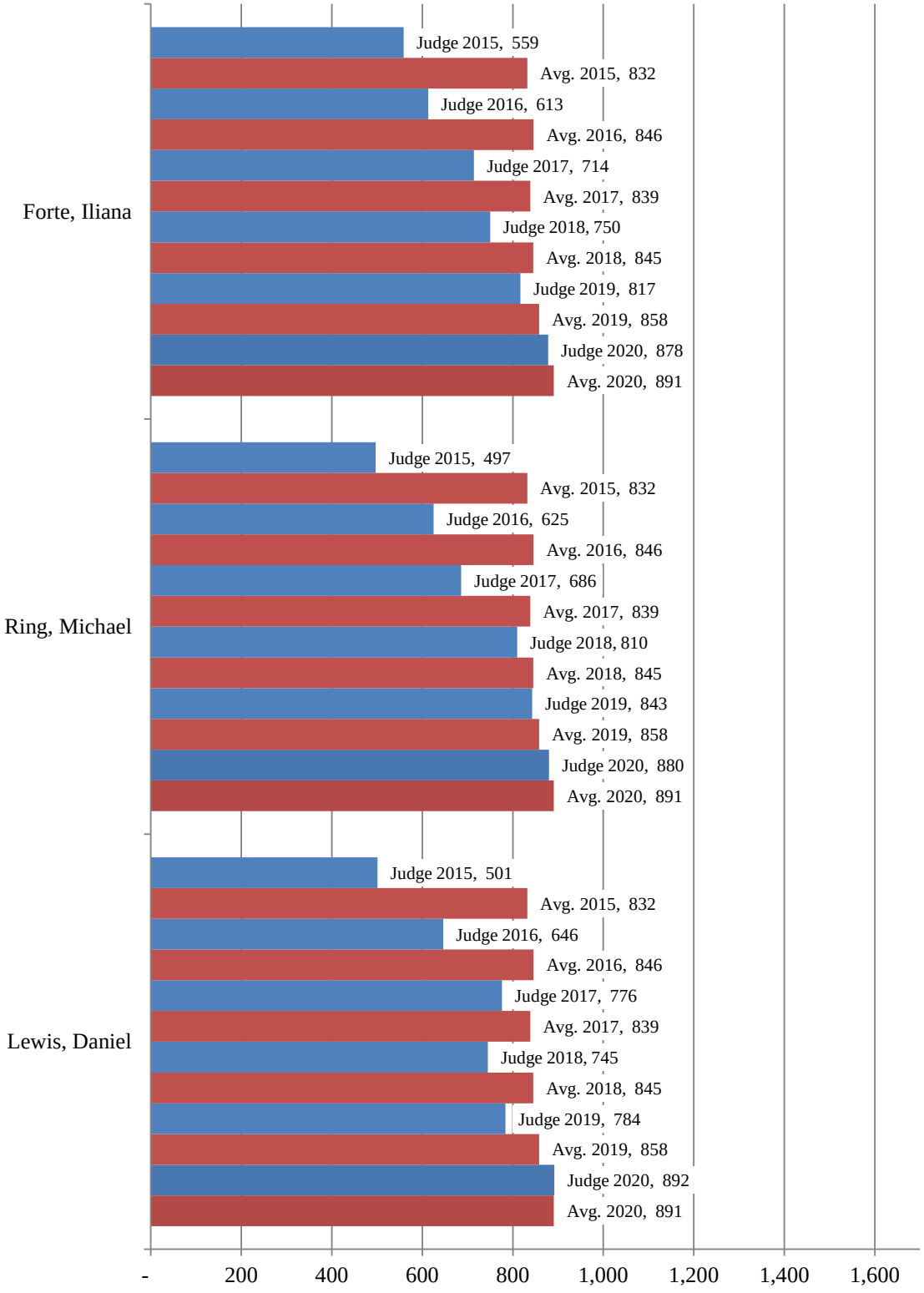
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



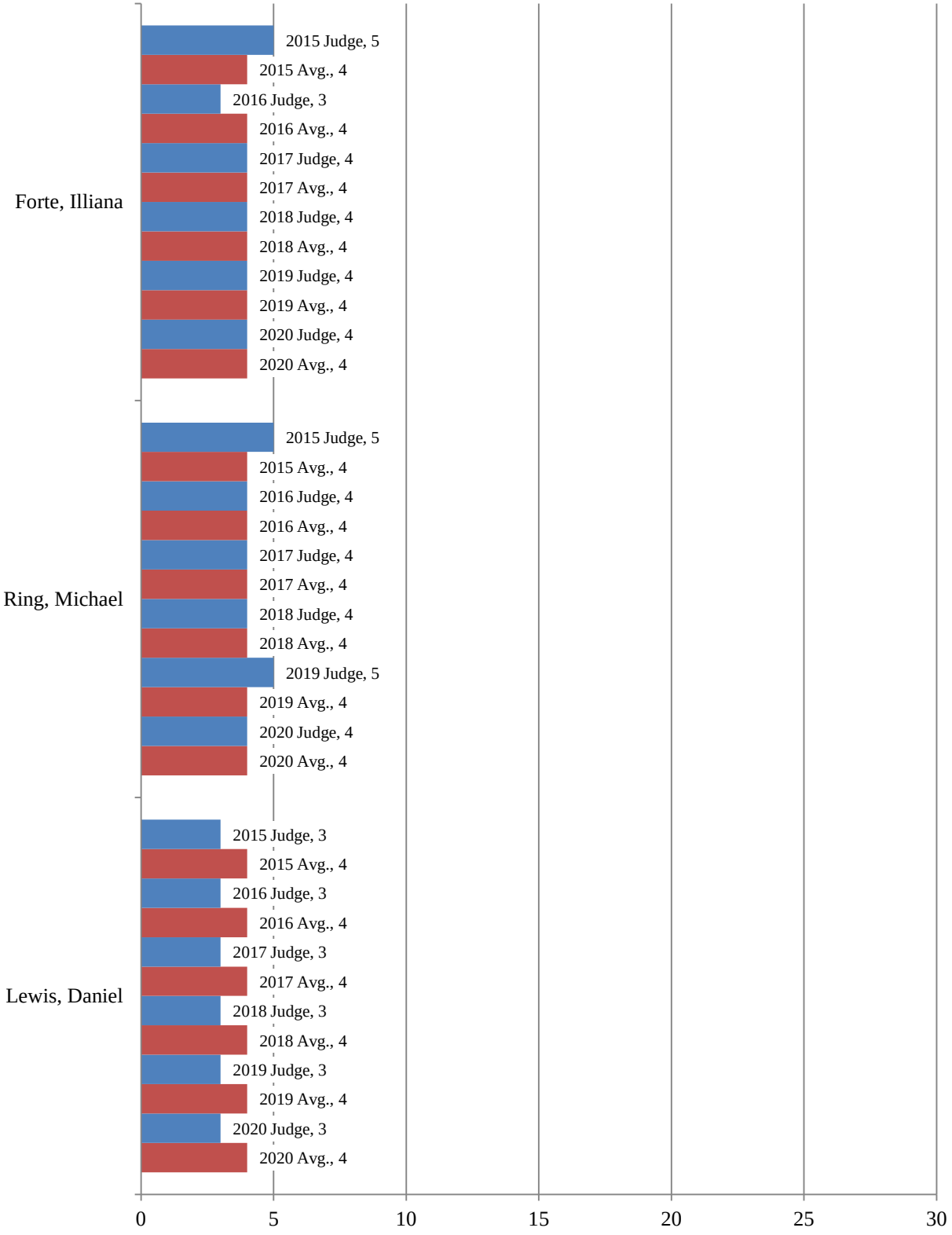
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



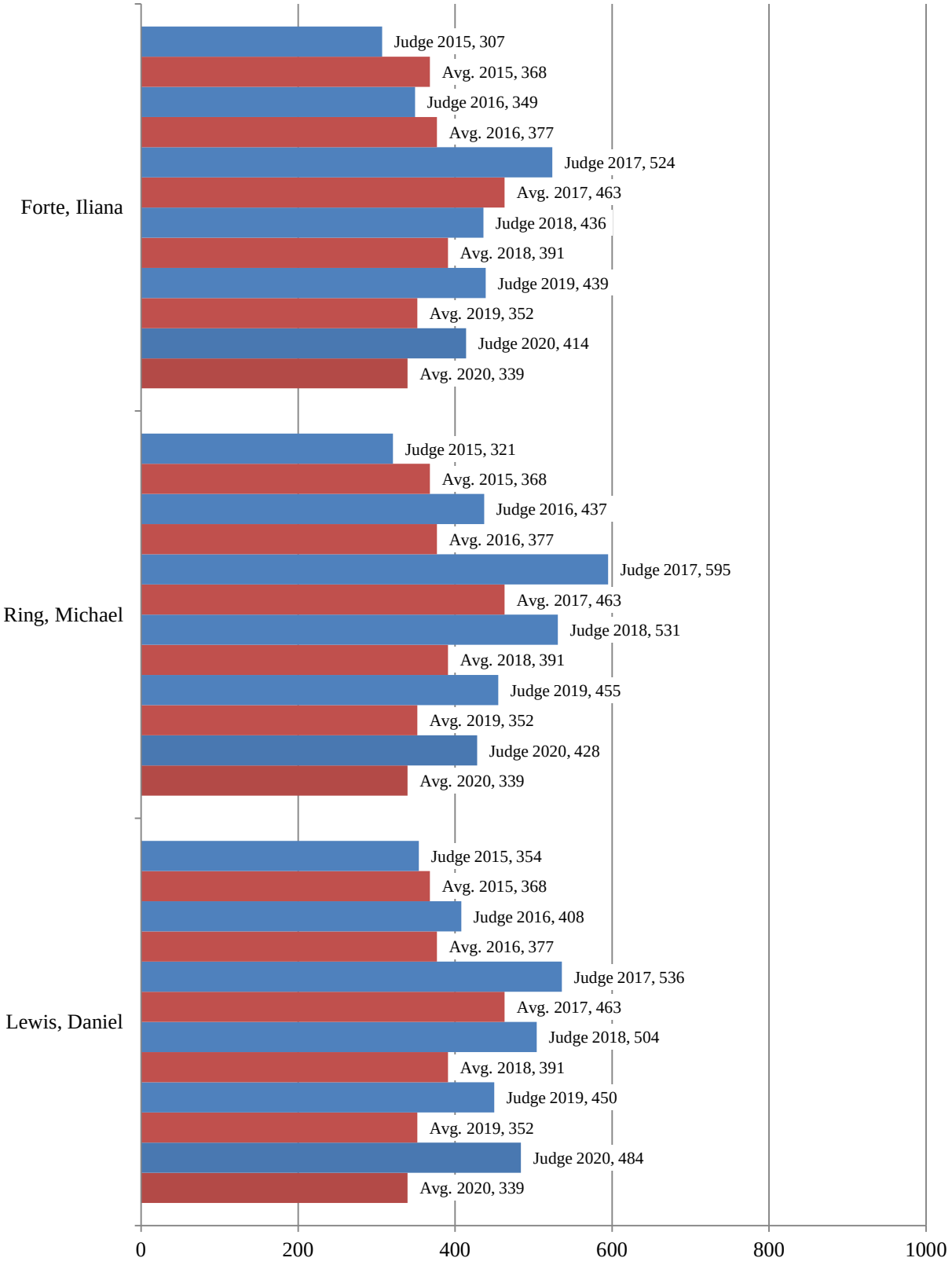
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



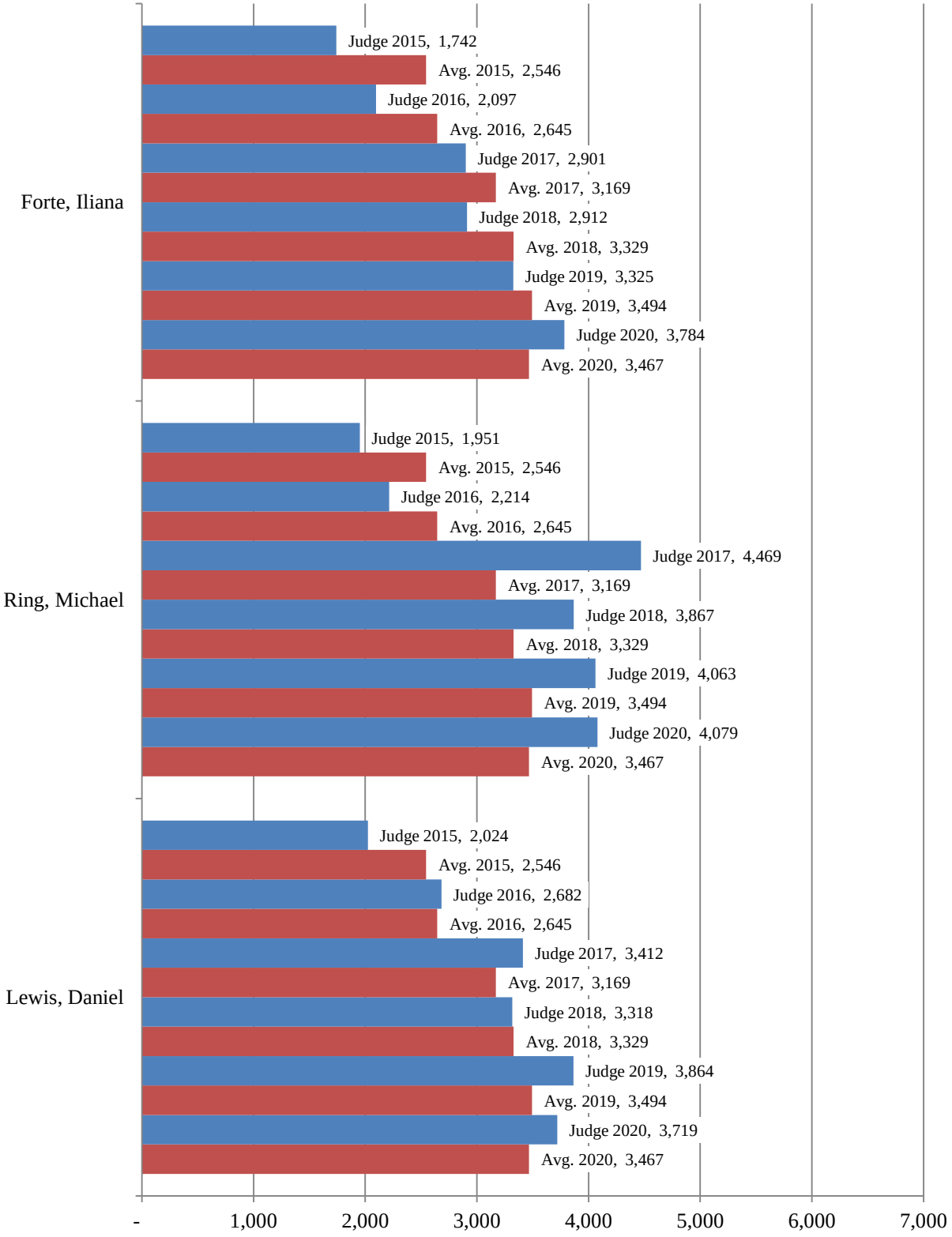
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



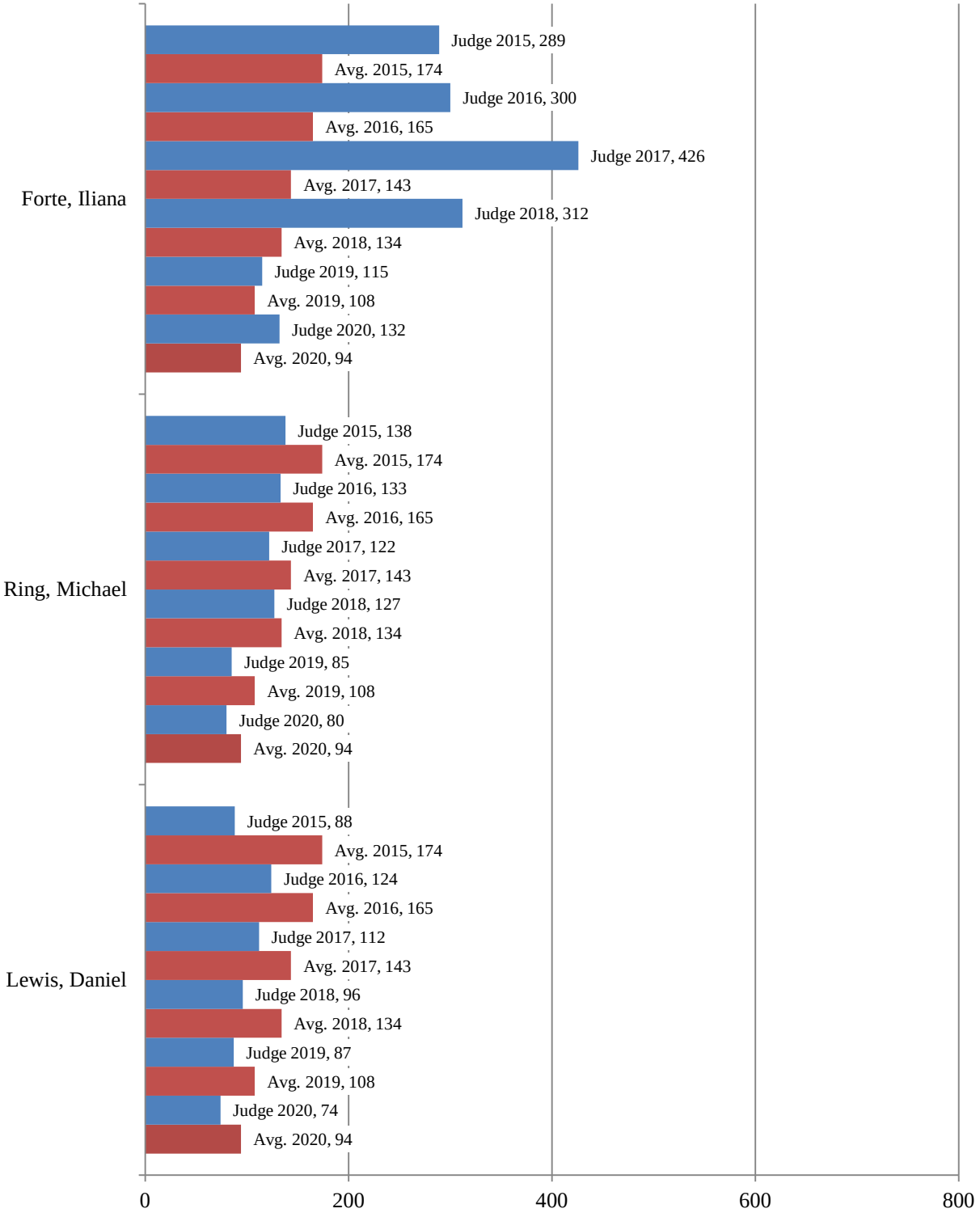
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. 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.

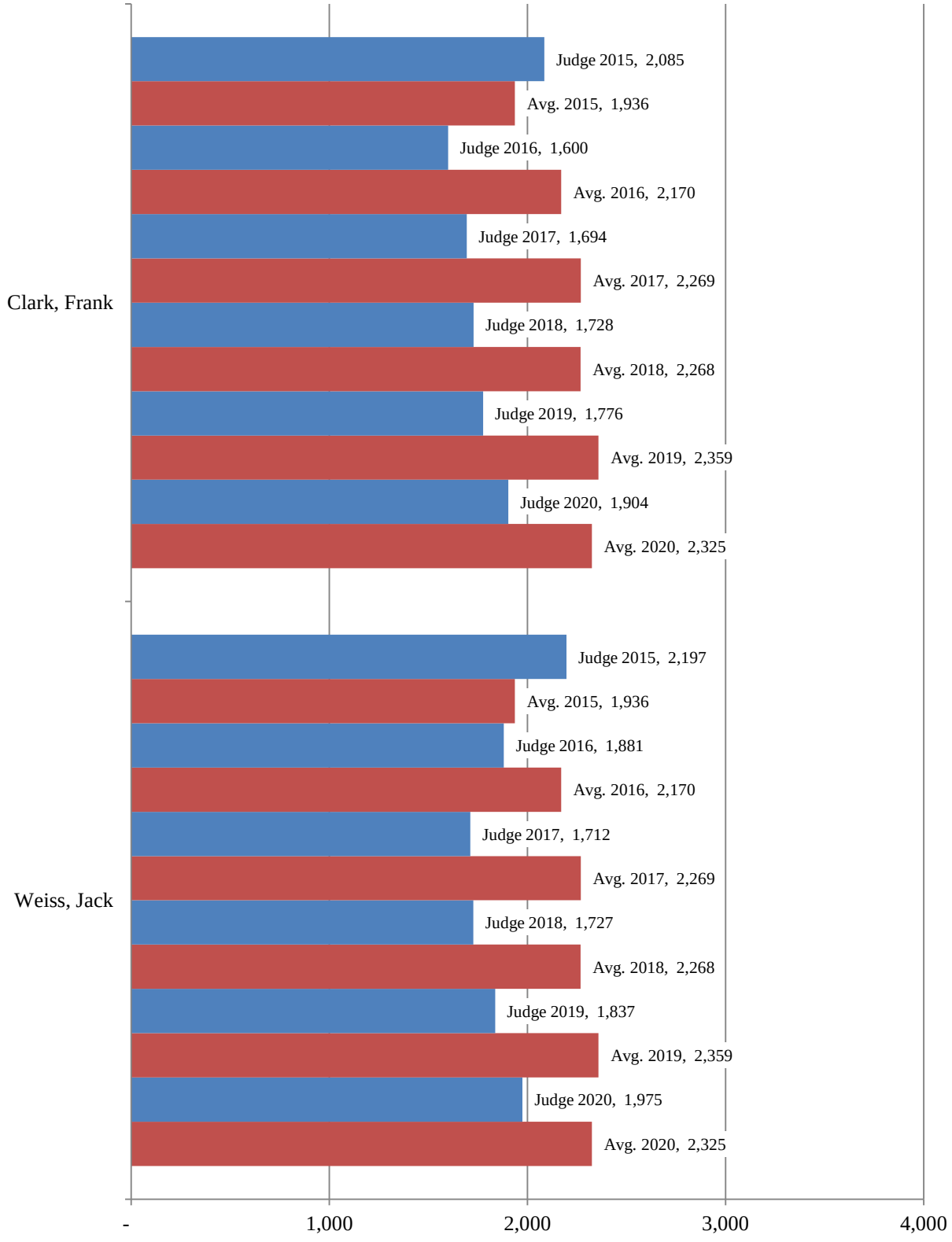
“New case” volume in District FTM is above the statewide average, but petition volume is well below. That is demonstrated with reasonable consistency in this district. This suggests that volume of cases is average, but the breadth of litigation appears less intense. Both divisions in FTM demonstrate below average year-end petition inventory consistently, a likely consequence of the below-average petition filing rates. All three of the statutory parameters for time to mediation, to trial, and to final order are consistently in compliance. Each of the FTM judges enter considerably more “other” orders than the state average, but the difference is less pronounced in one division in 2019-20.

When the second judgeship was re-established in 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 the event that effort is redirected to other districts again, it is likely some of that assistance will come from FTM.

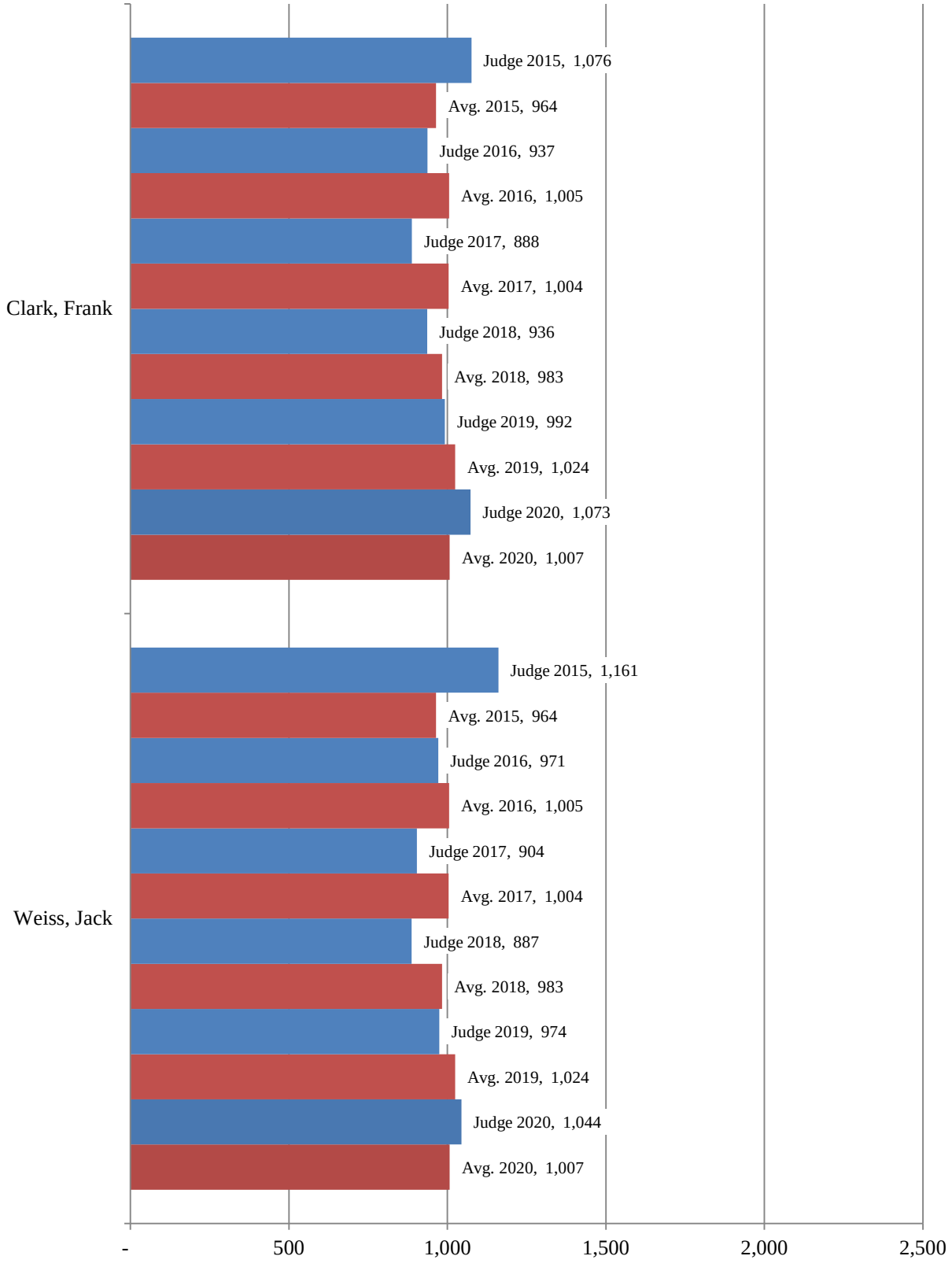
In 2019-2020 Judge Weiss served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition in Orlando, and he was a panelist on “Removing Negative Online Content” in February at the Calusa American Inn of Court. He presented with Judge Clark “How to Win (or Lose) your Case under Major Contributing Cause” for The Florida Bar Workers’ Compensation Section in May. Judge Weiss serves on The Florida Bar’s Standing Committee on Professionalism and Workers’ Compensation Rules Advisory Committee, and the National Association of Workers’ Compensation Judiciary’s Conference Committee, 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 Calusa American Inn of Court and the Lee County Bar Association, and he serves on the board of directors of the Tiger Bay Club of Southwest Florida.

[Space intentionally blank]

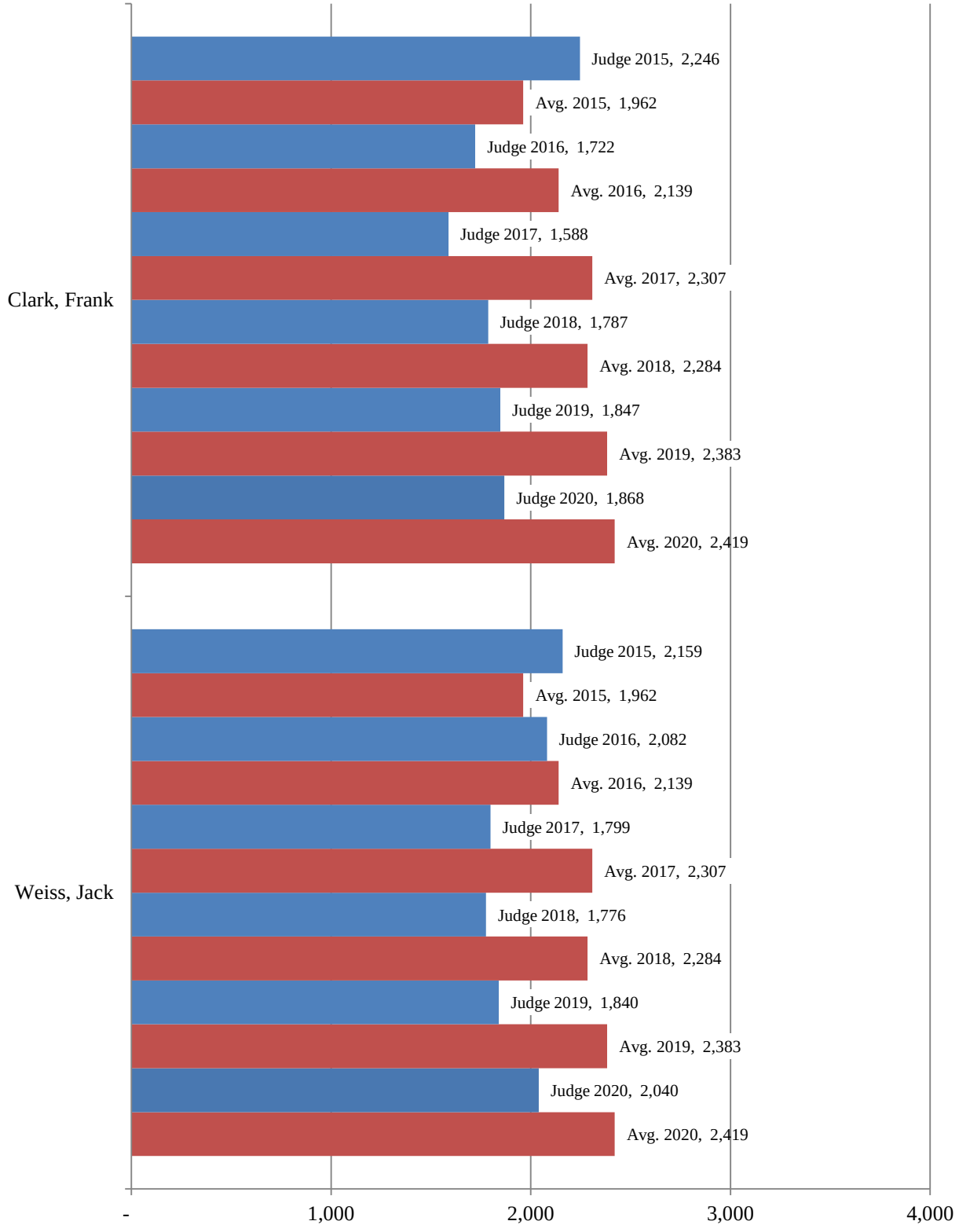
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



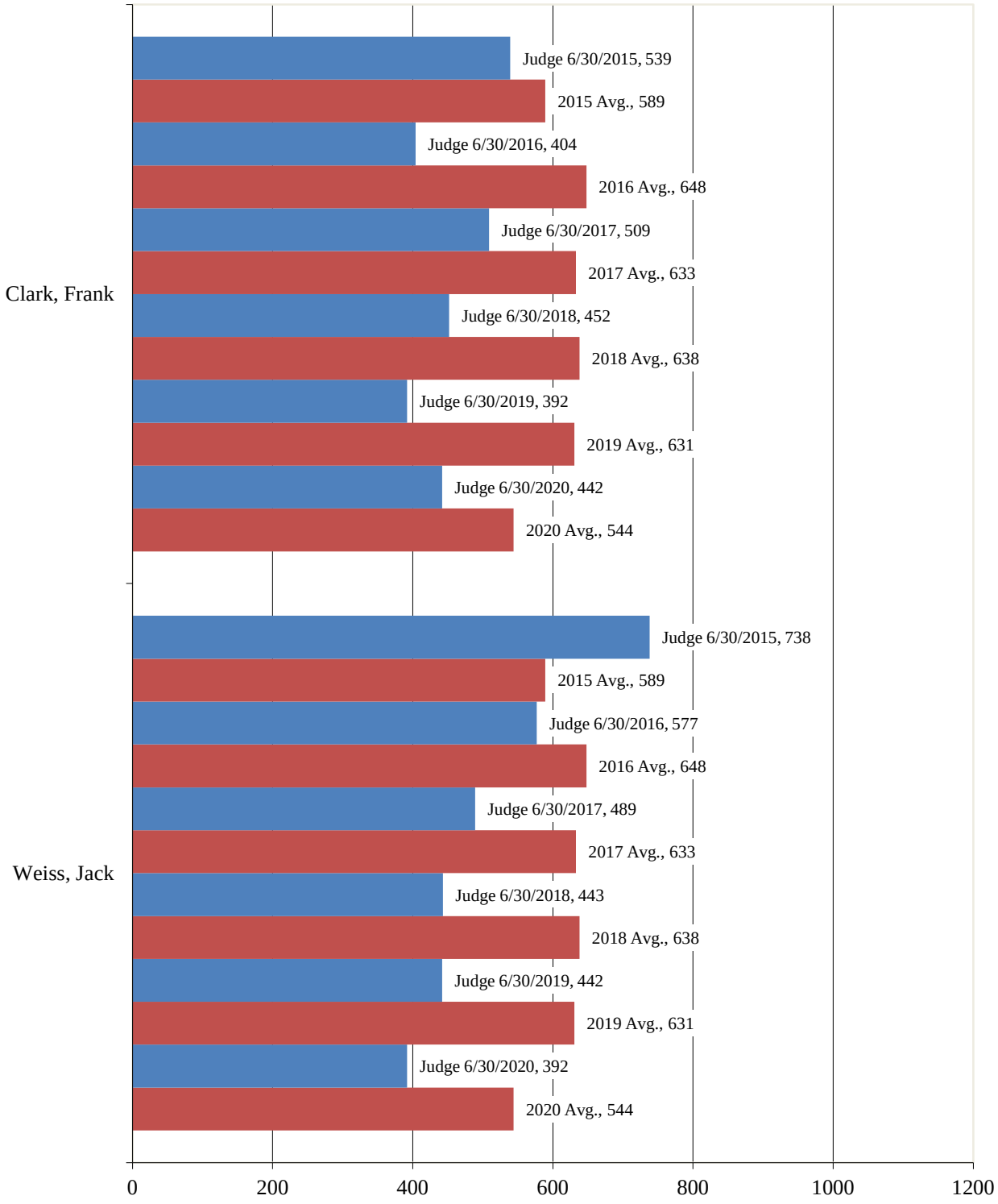
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



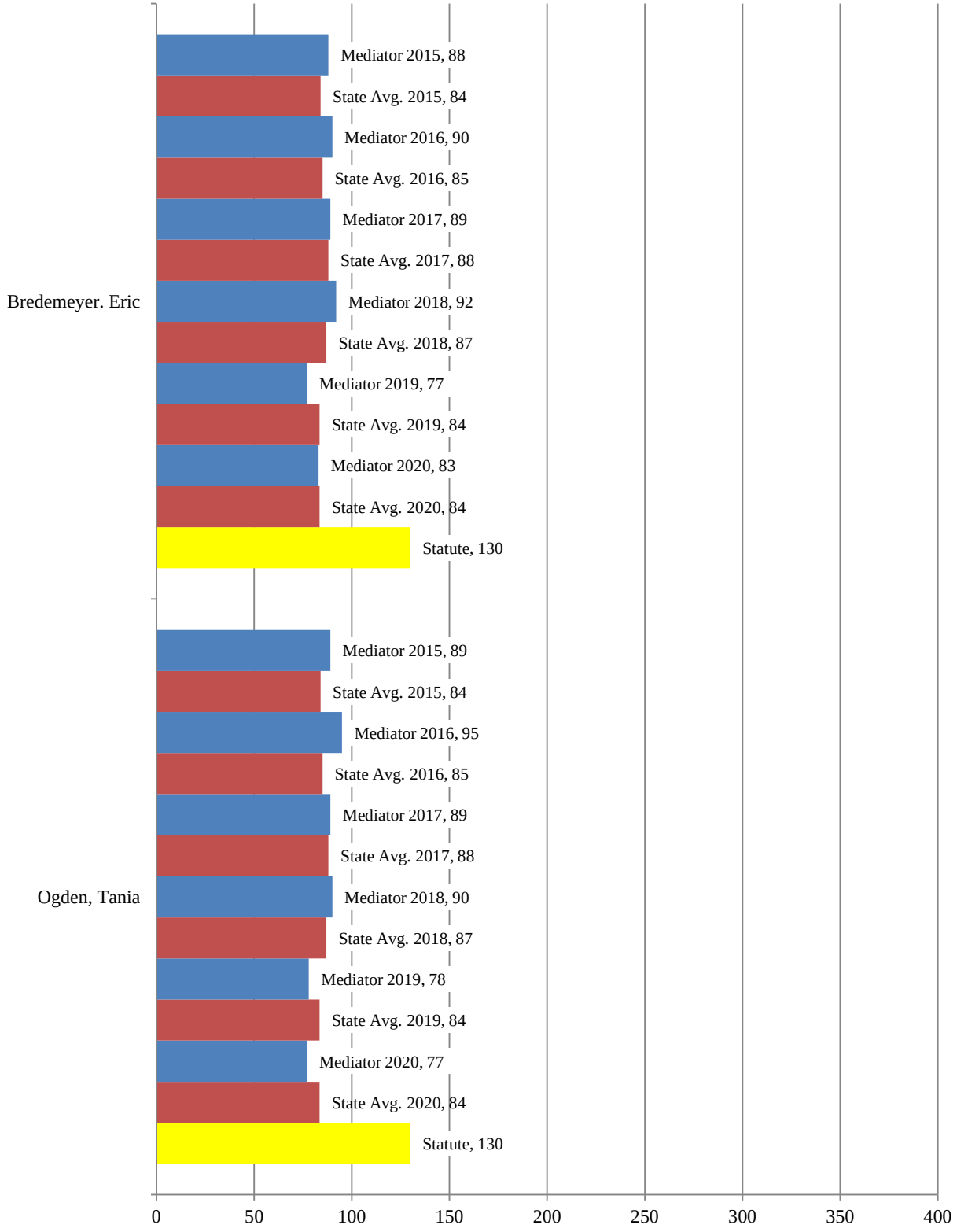
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



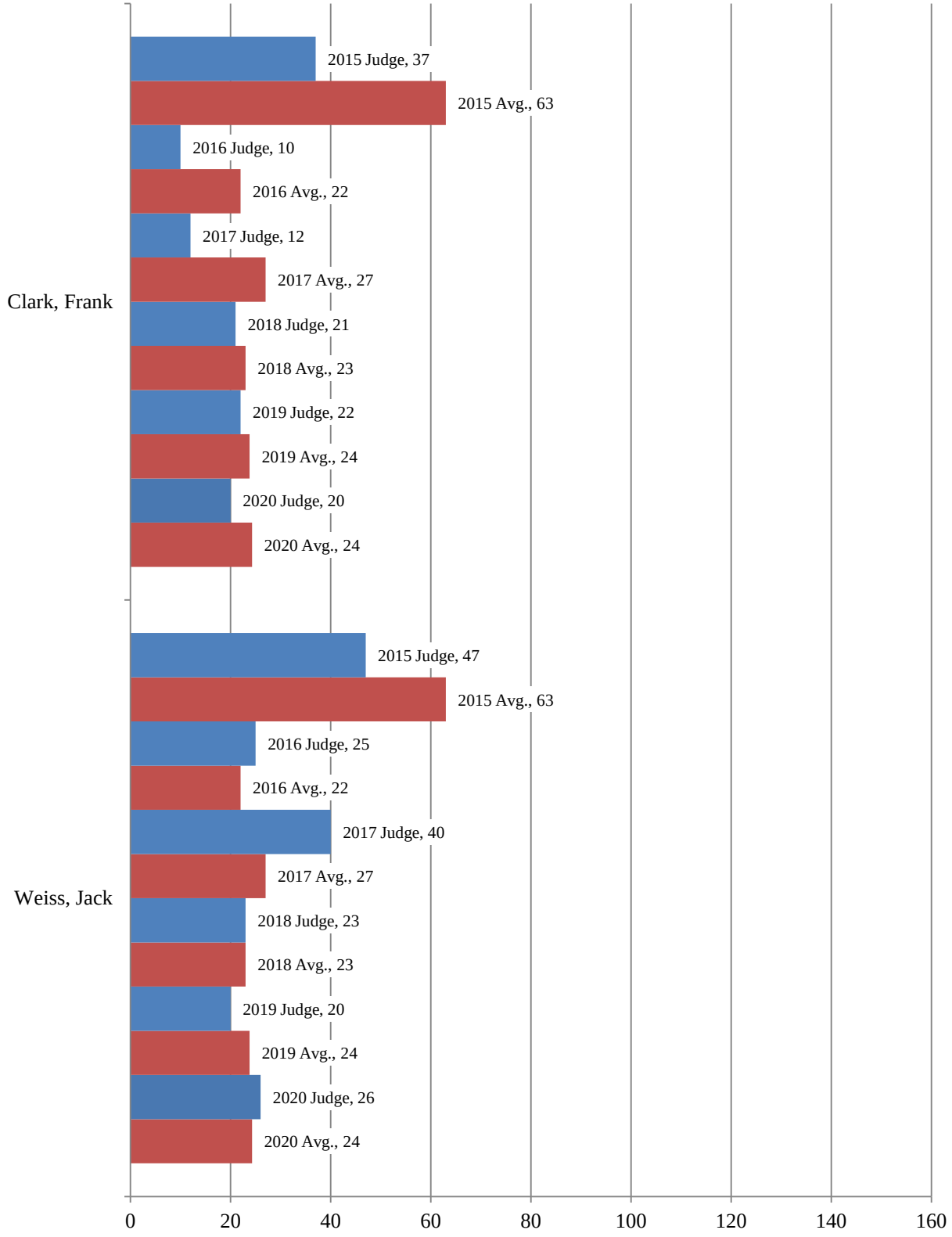
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



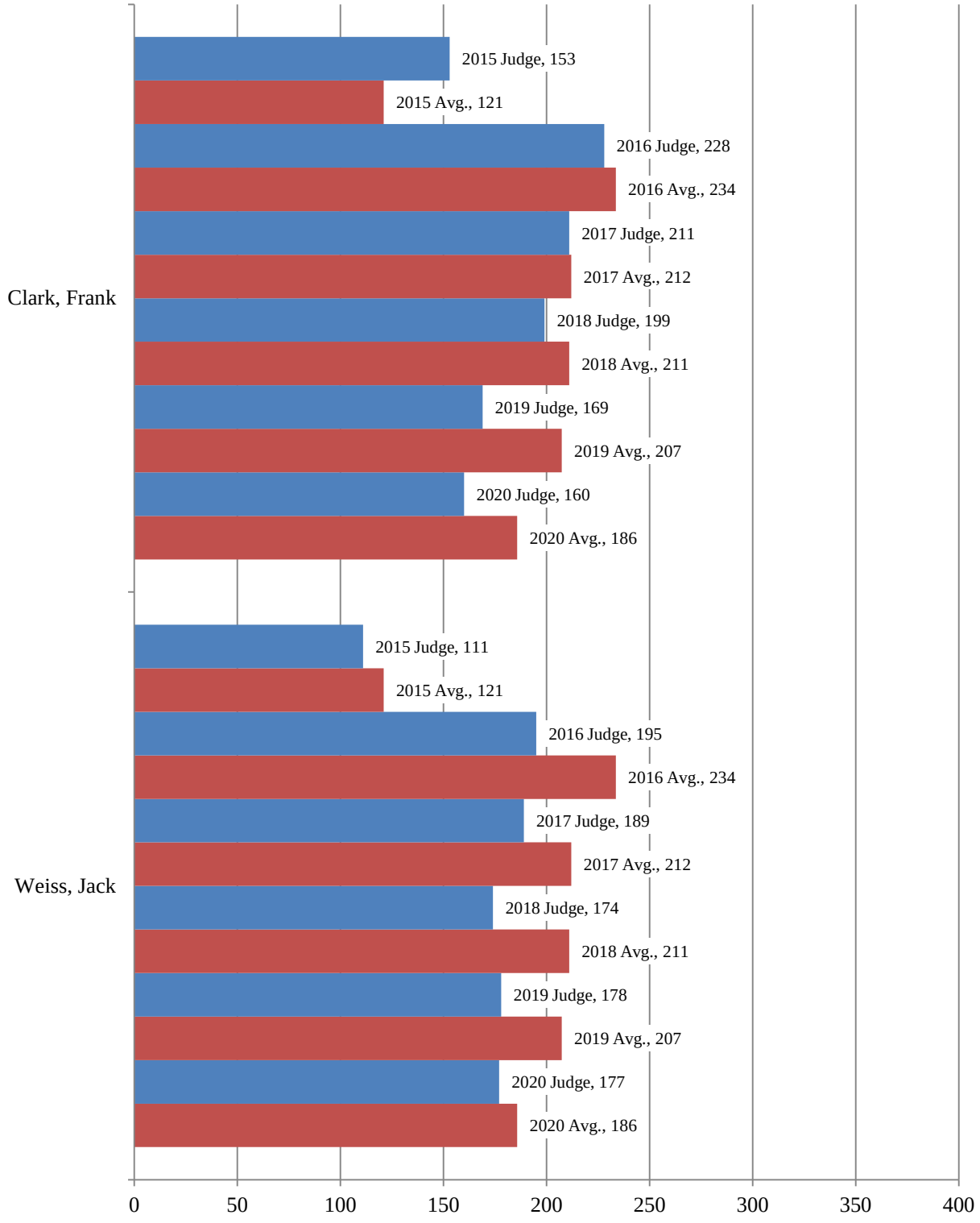
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



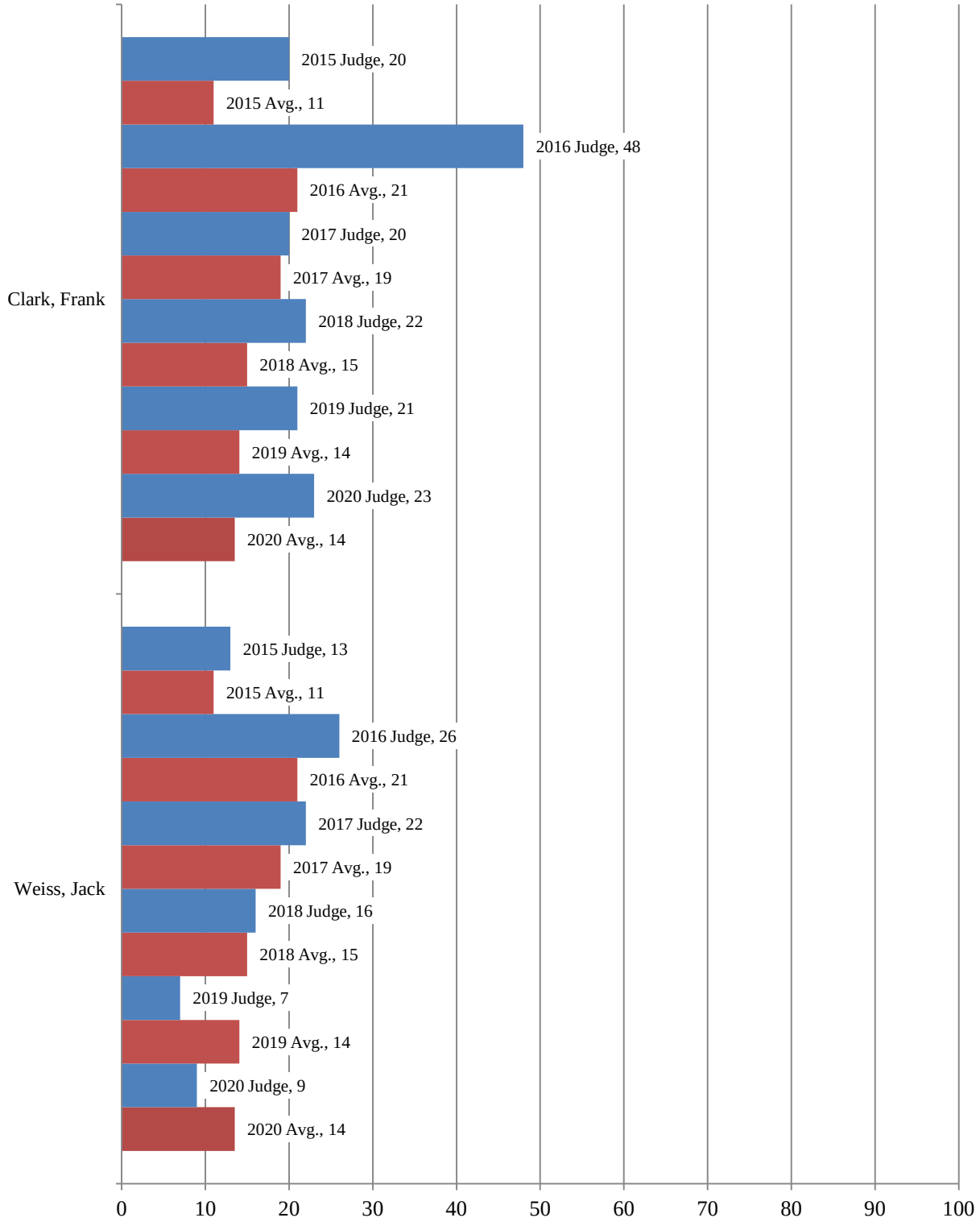
The following graph depicts the total volume of trial orders[235] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



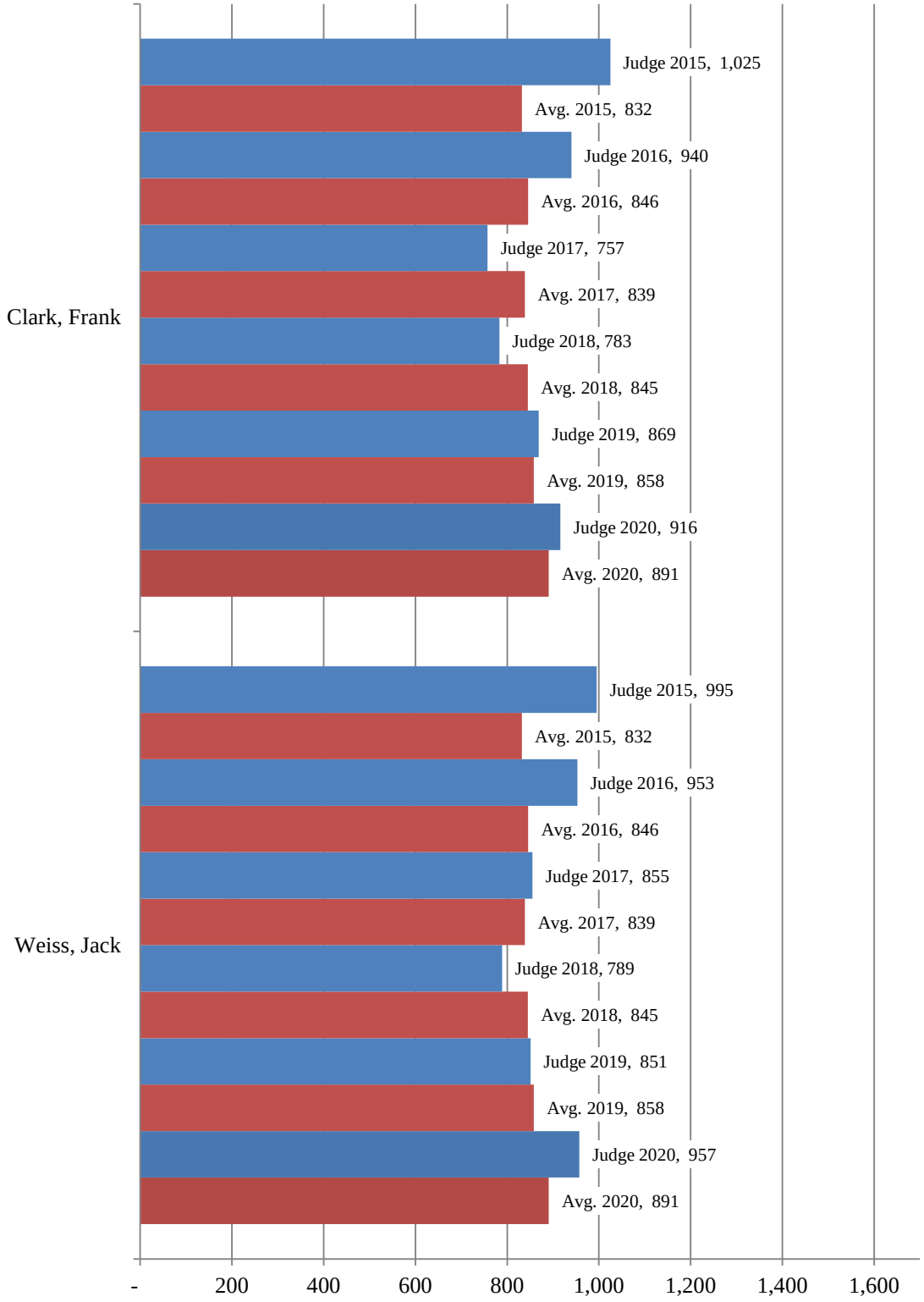
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



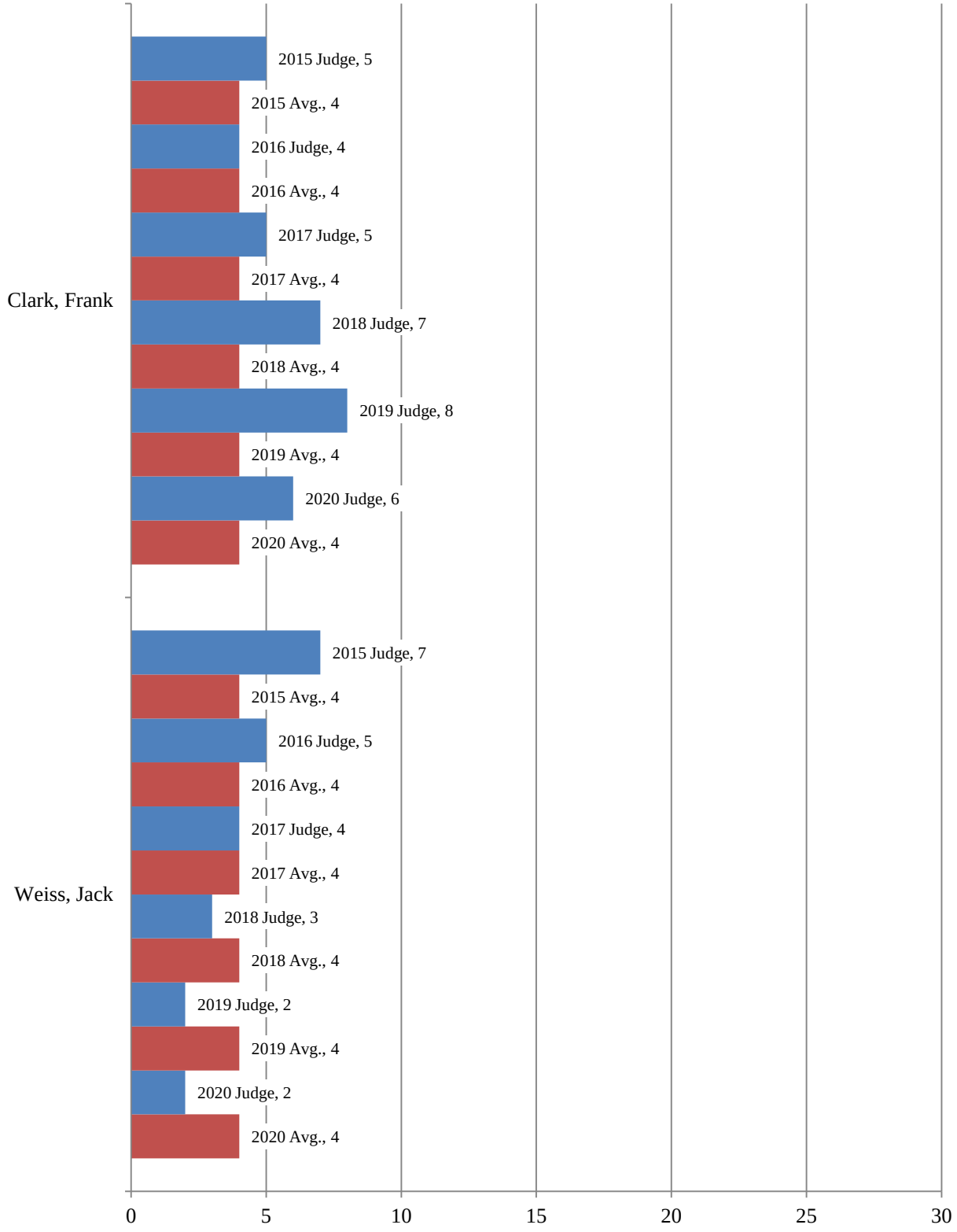
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



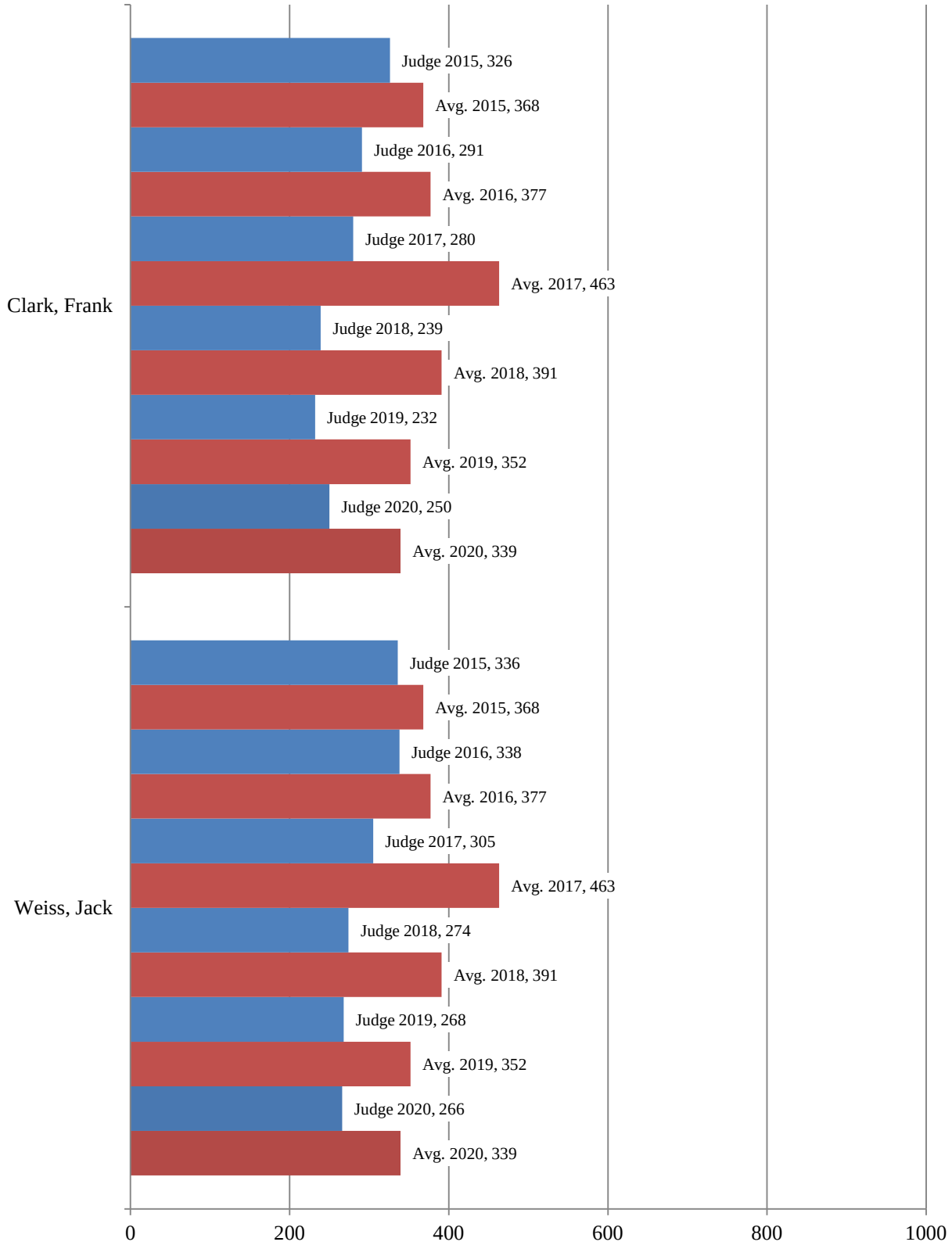
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



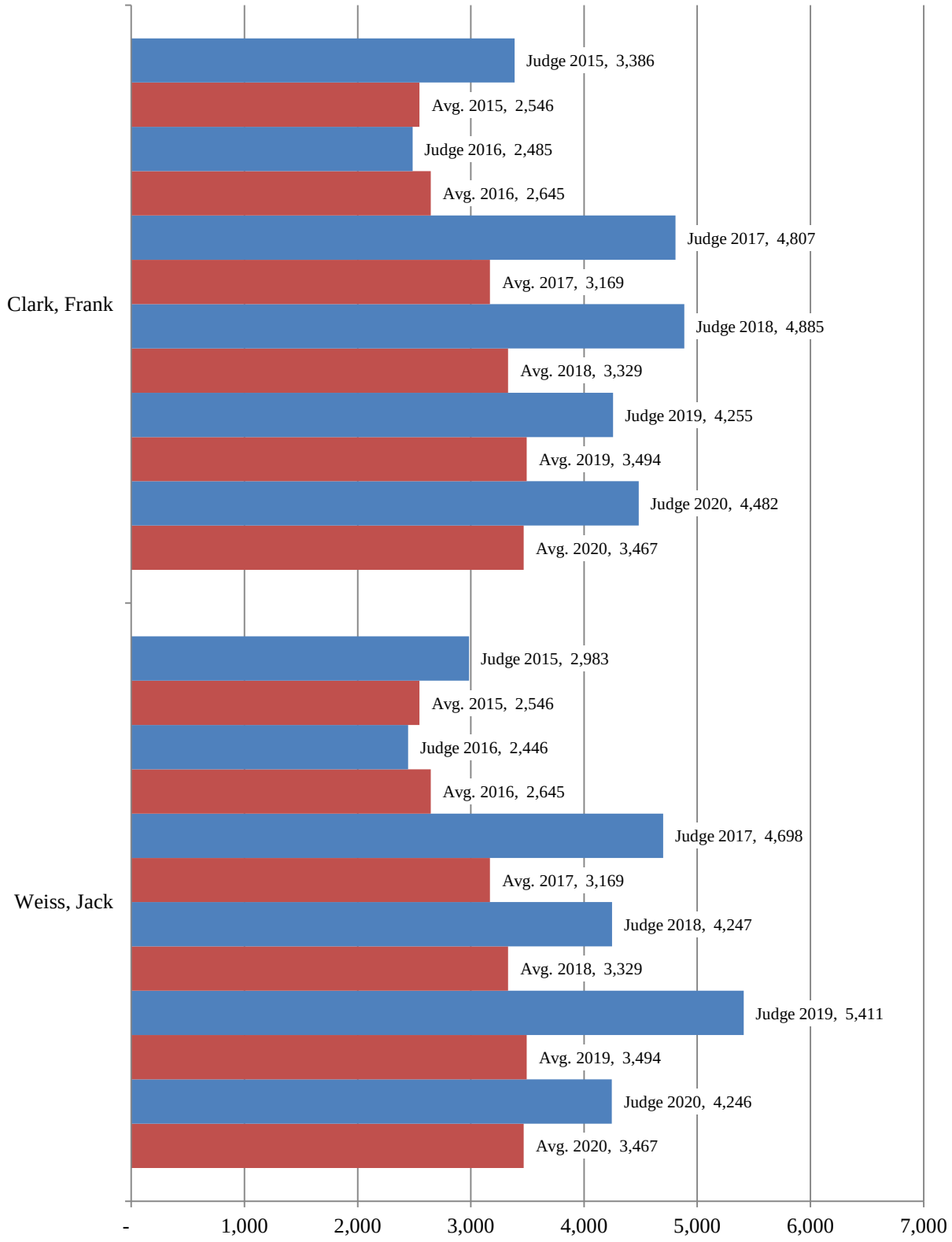
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



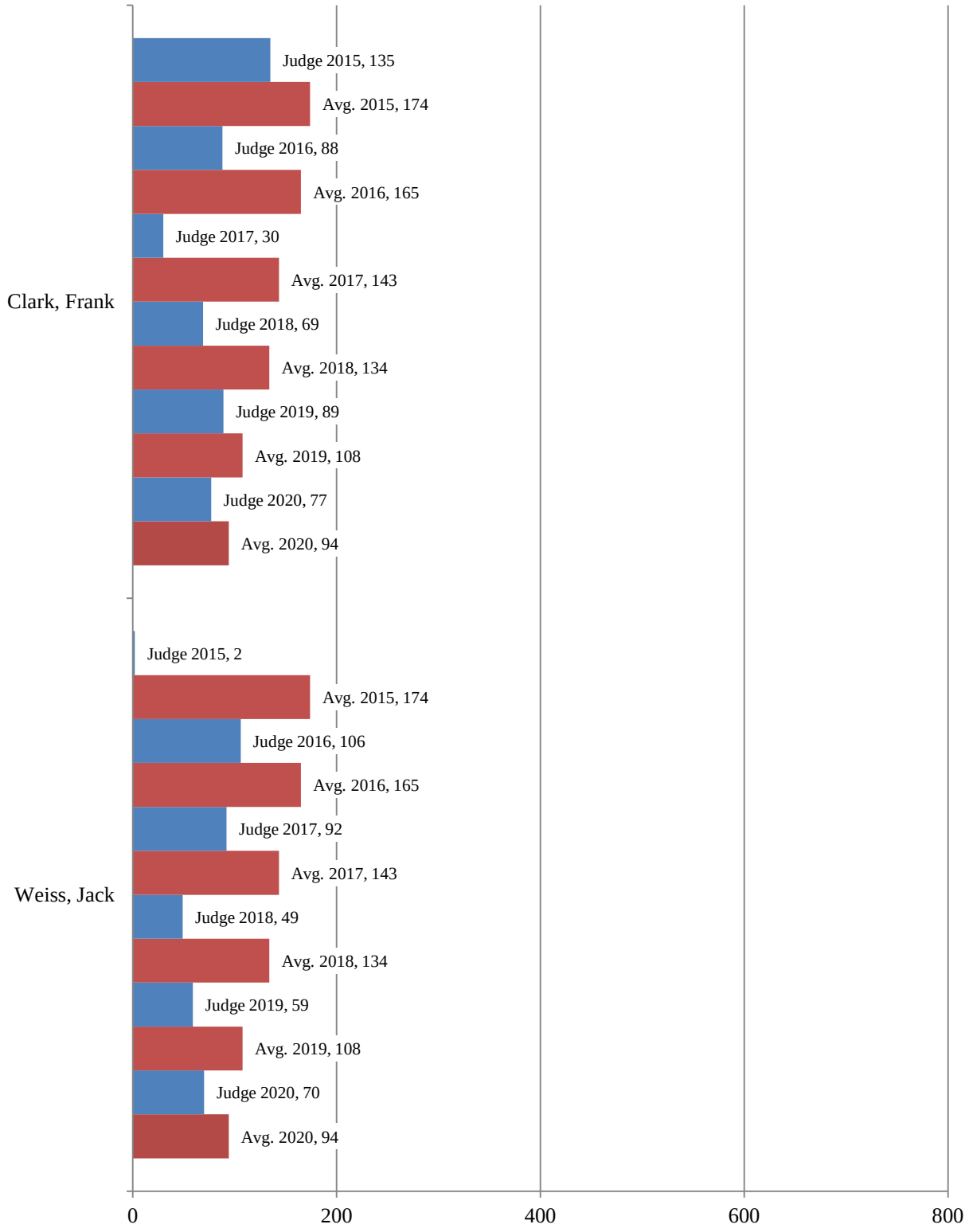
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



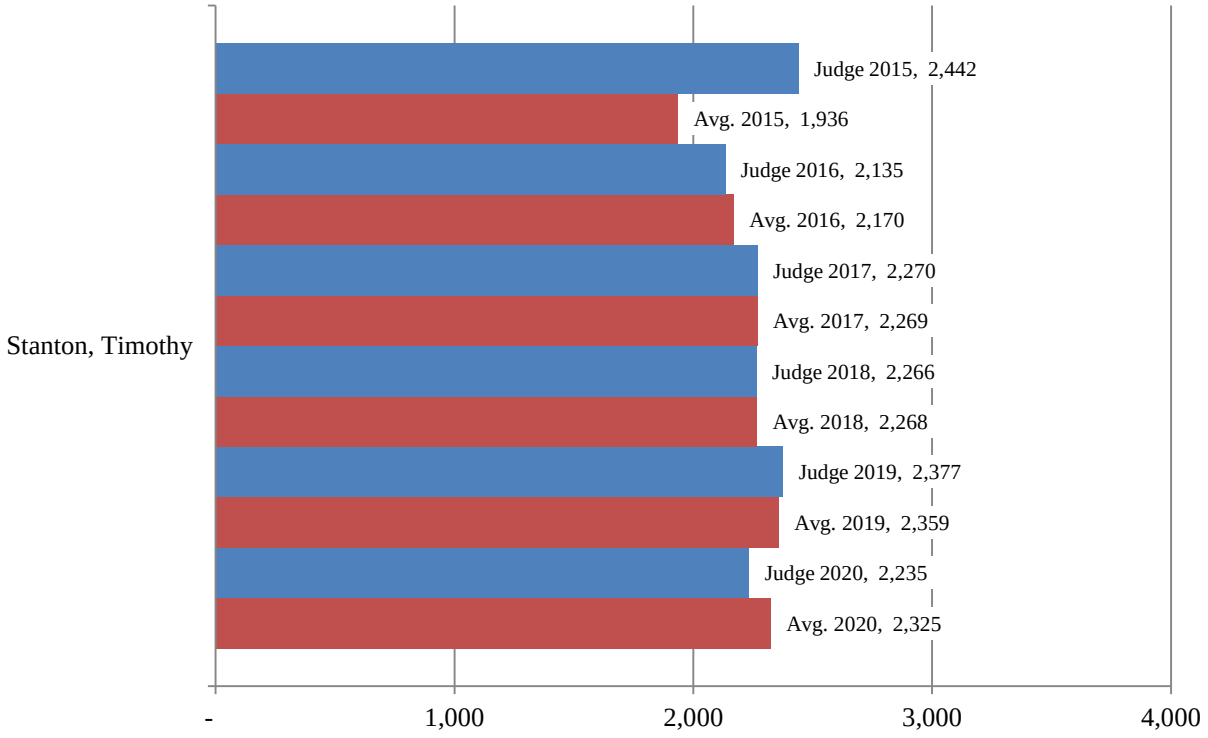
Appendix “4” District GNS (JCC Stanton):

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

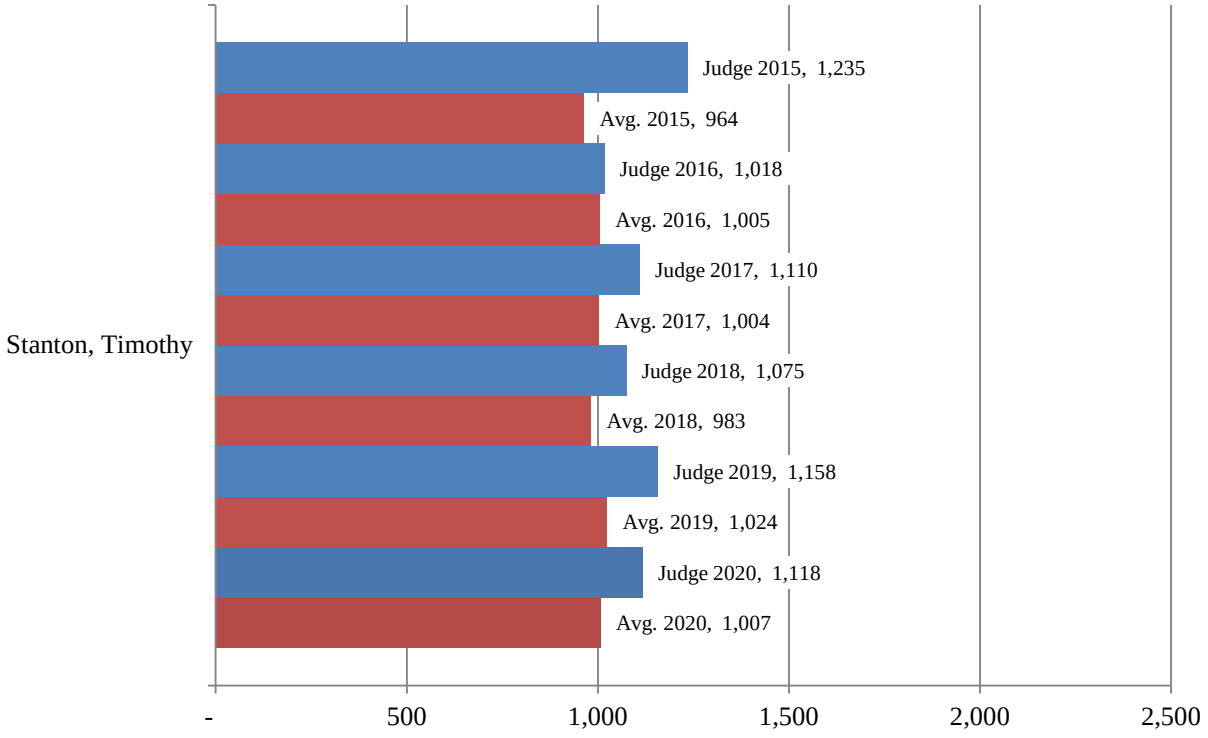
Gainesville recently demonstrates consistent average petition filing rates, with a slight decrease in 2019-20, and above average “new case” filings. The average times to mediation, to trial, and to final order are all within the statutory parameters in Gainesville.

In August 2019, Judge Stanton was honored to serve as a judge for the E. Earle Zehmer National Moot Court Competition in Orlando, Florida. In February 2020, Judge Stanton served as a committee member for the annual Best Practices in Workers' Compensation Seminar held in Tallahassee, Florida. Additionally, Judge Stanton was the moderator for a panel addressing the *Daubert* Standard at that seminar. Stanton is also an Honorary Member in the E. Robert Williams Inn of Court, in Jacksonville, Florida, and in May 2020, he was a speaker on a panel addressing Trials and Procedures. In June 2020, Judge Stanton served as the Moderator for the panel addressing Mediations in the Age of Coronavirus at the 2nd Friday Training for JCCs.

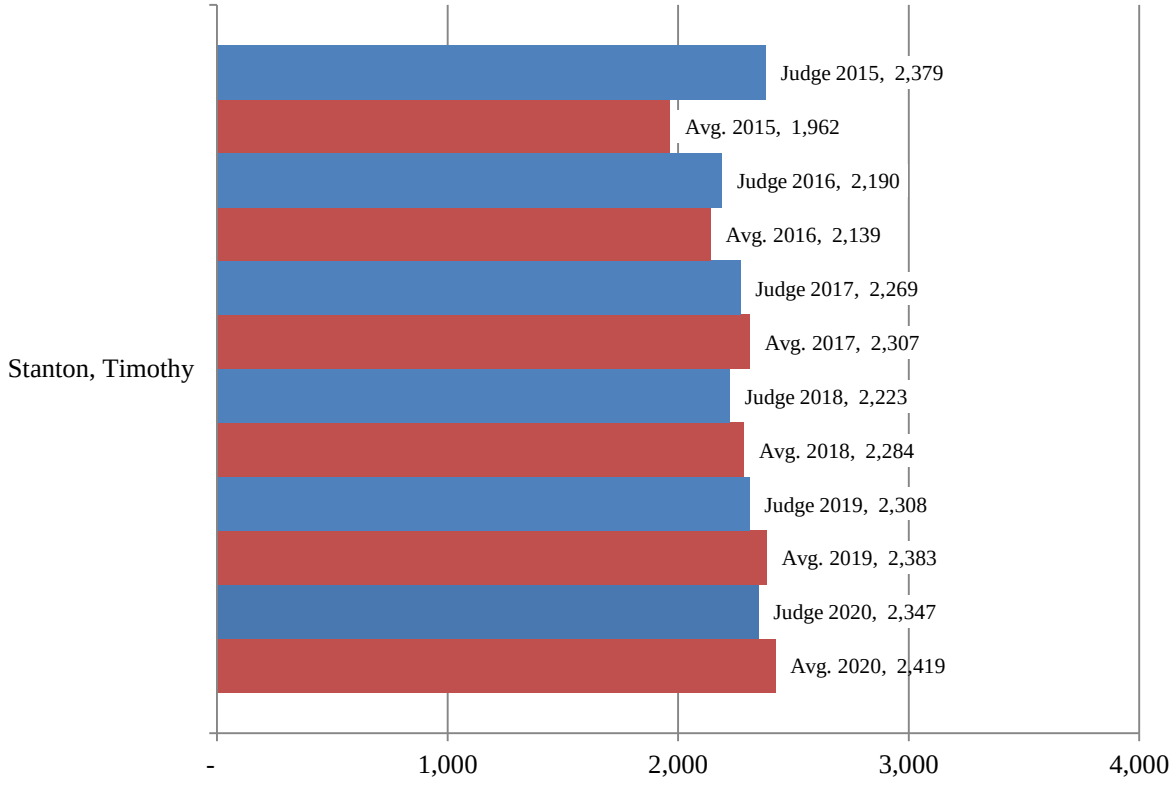
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



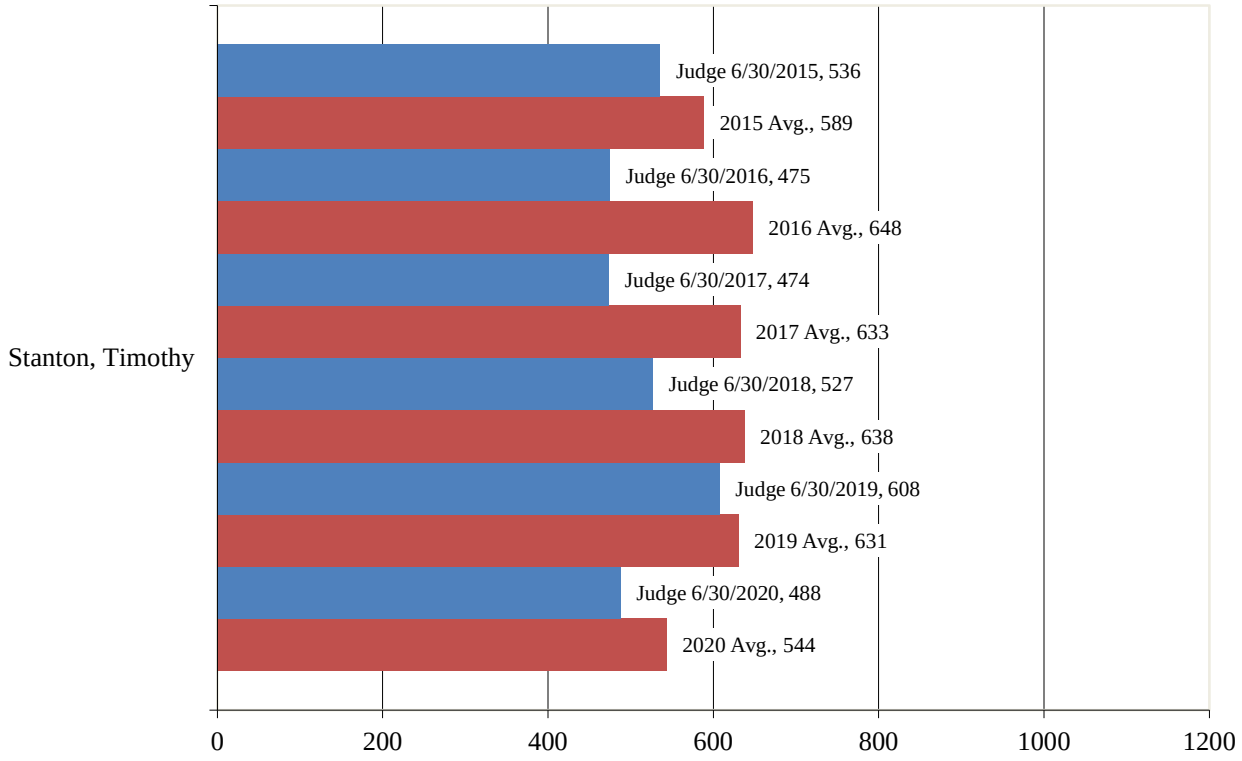
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



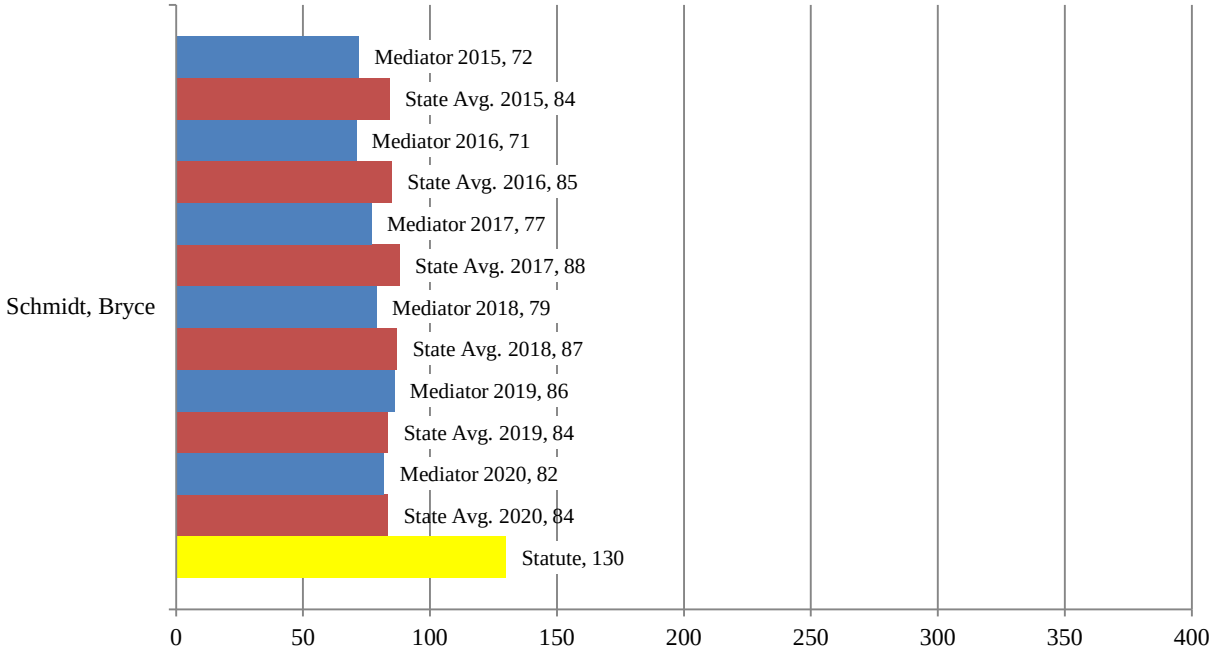
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



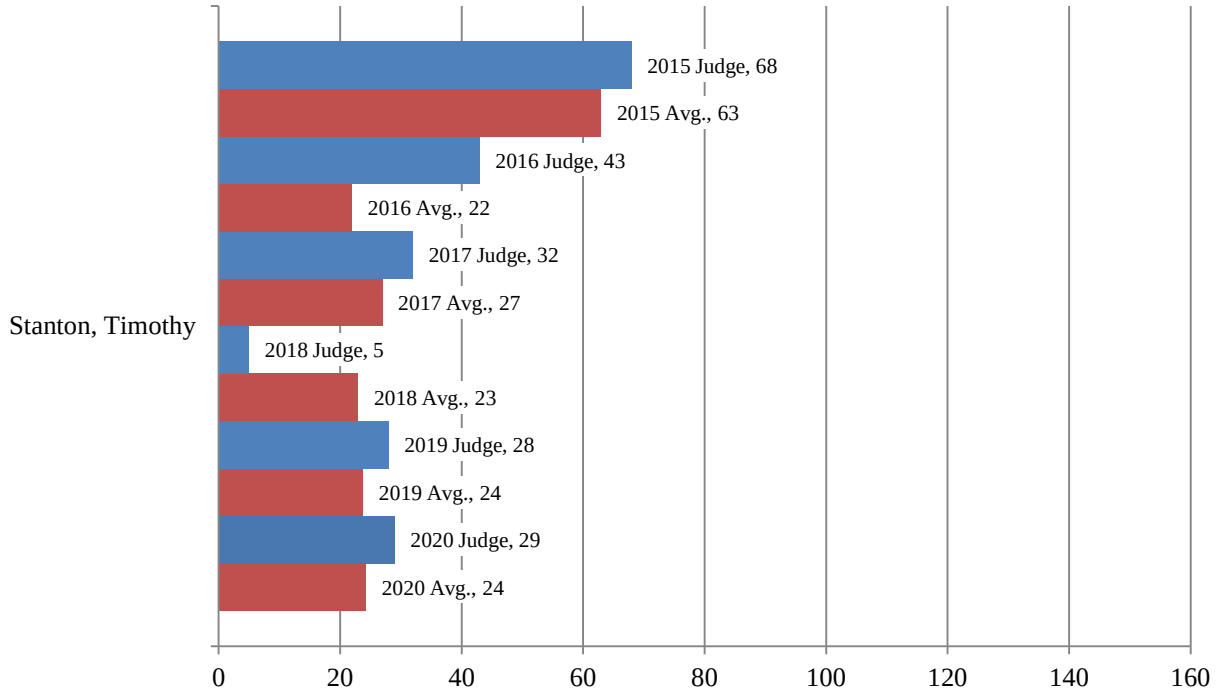
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



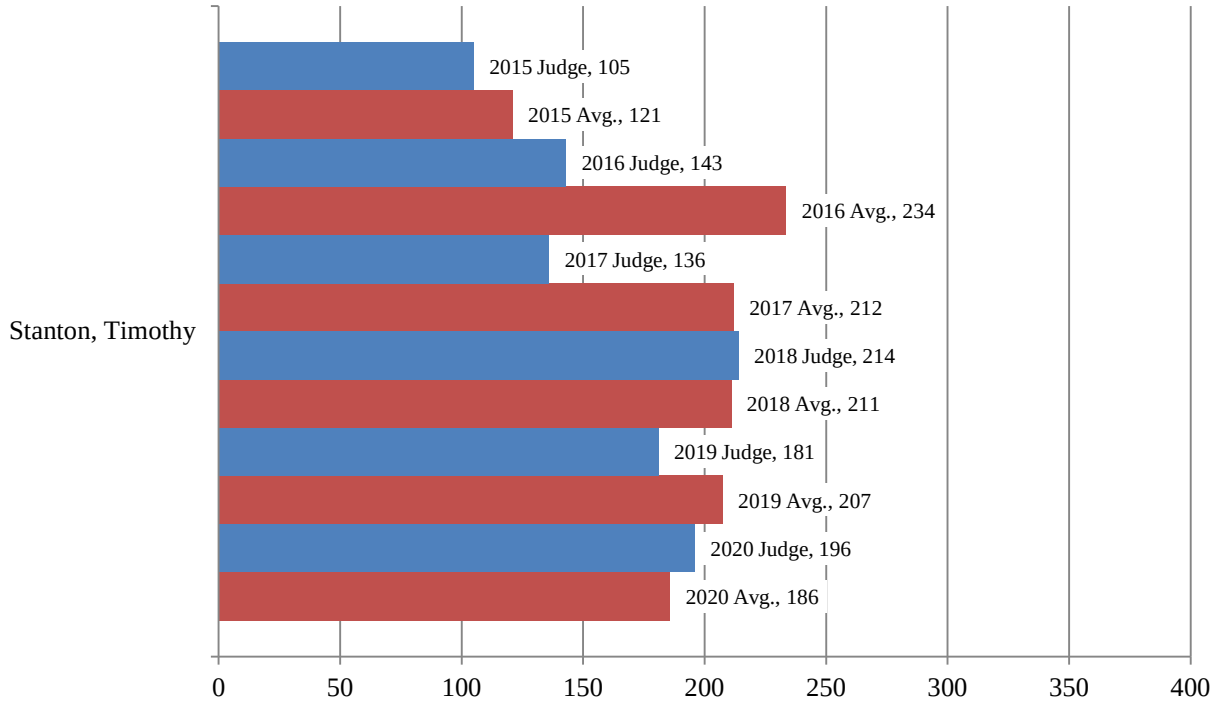
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



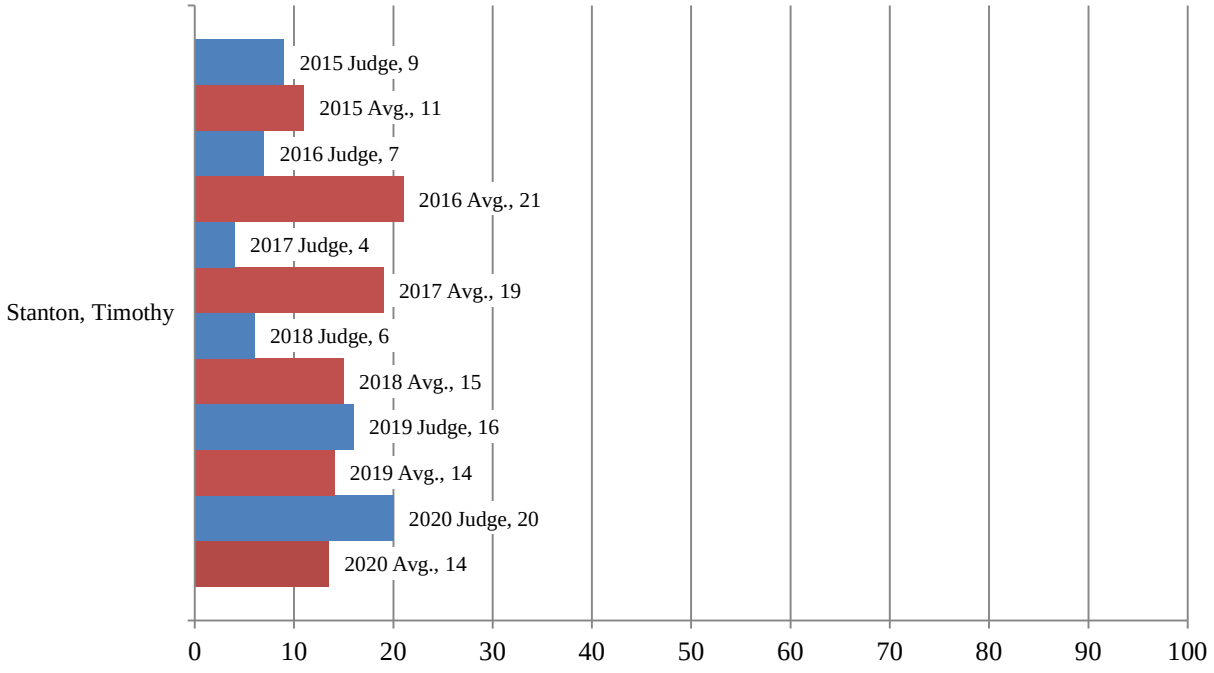
The following graph depicts the total volume of trial orders[236] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



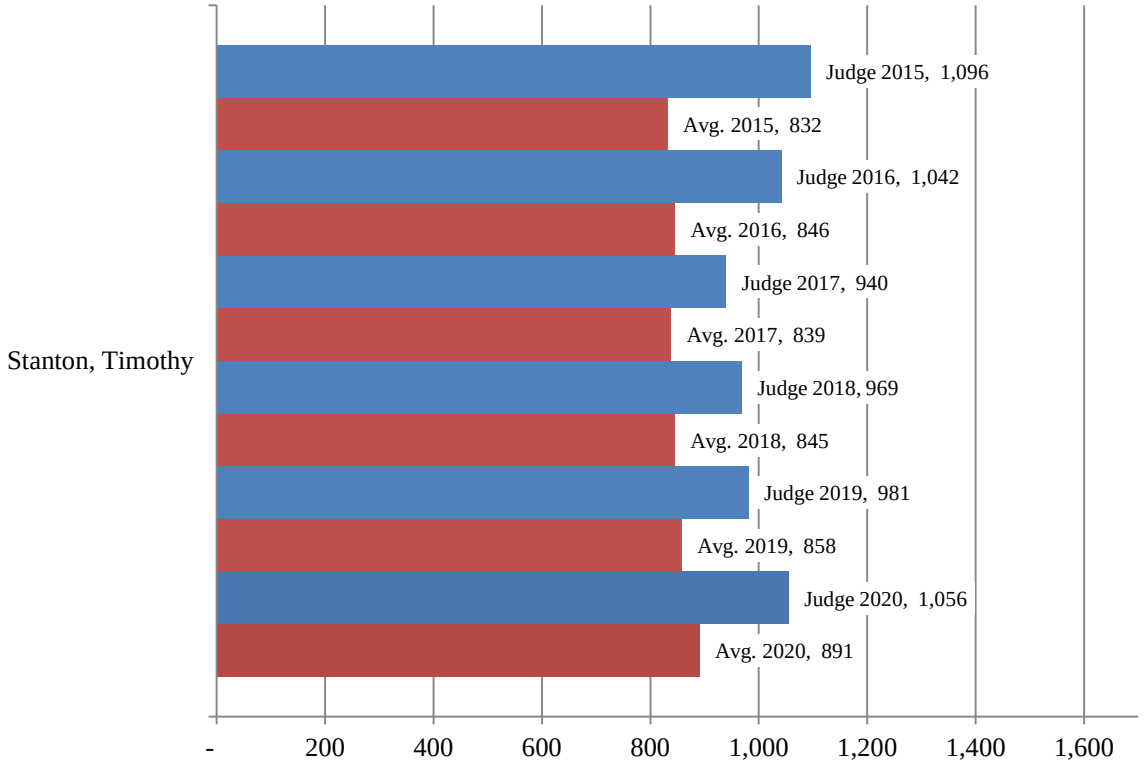
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



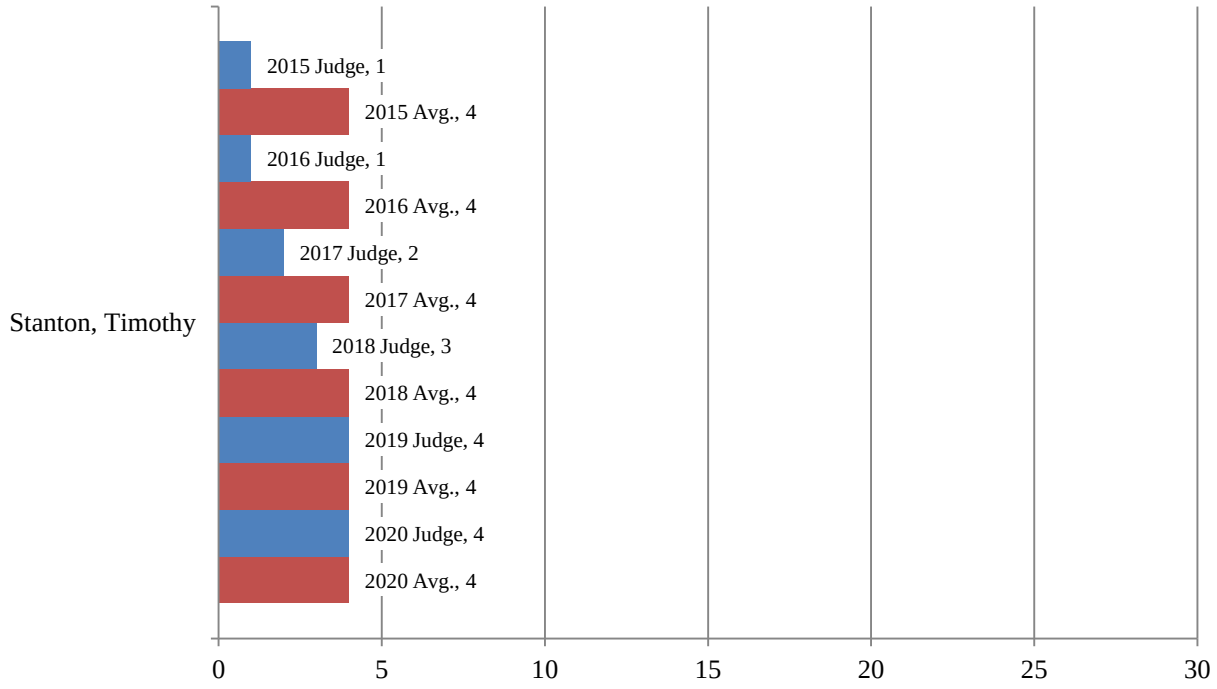
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



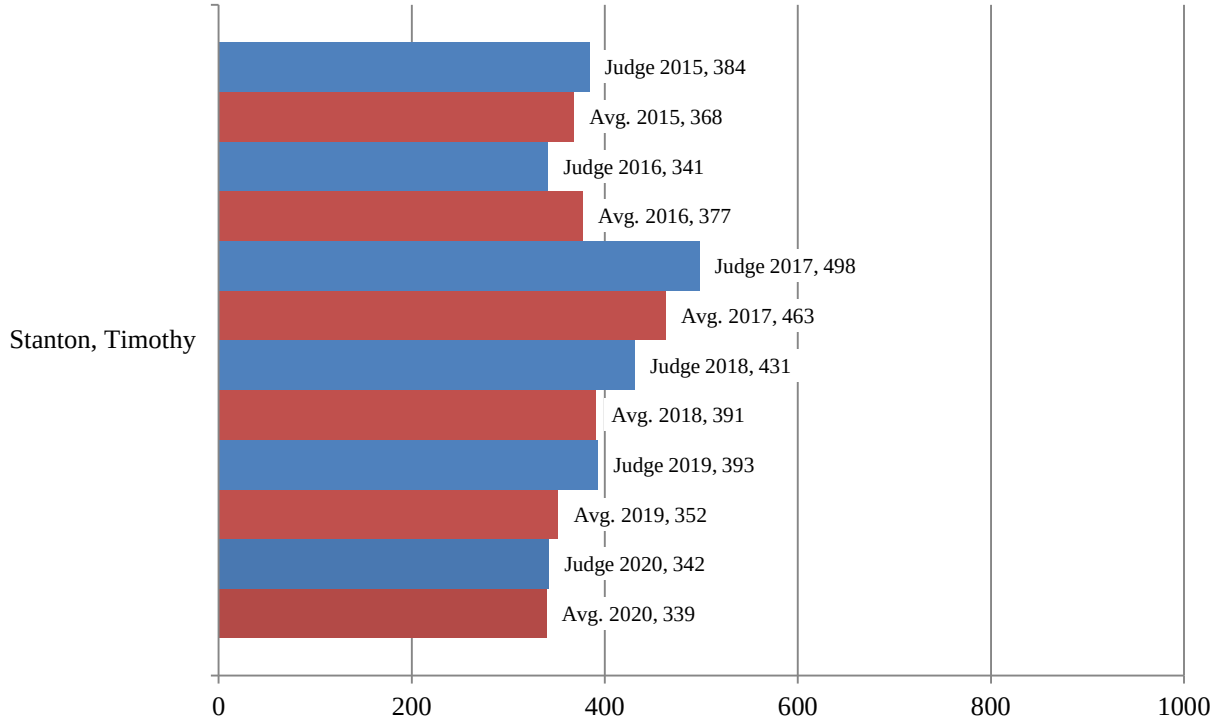
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



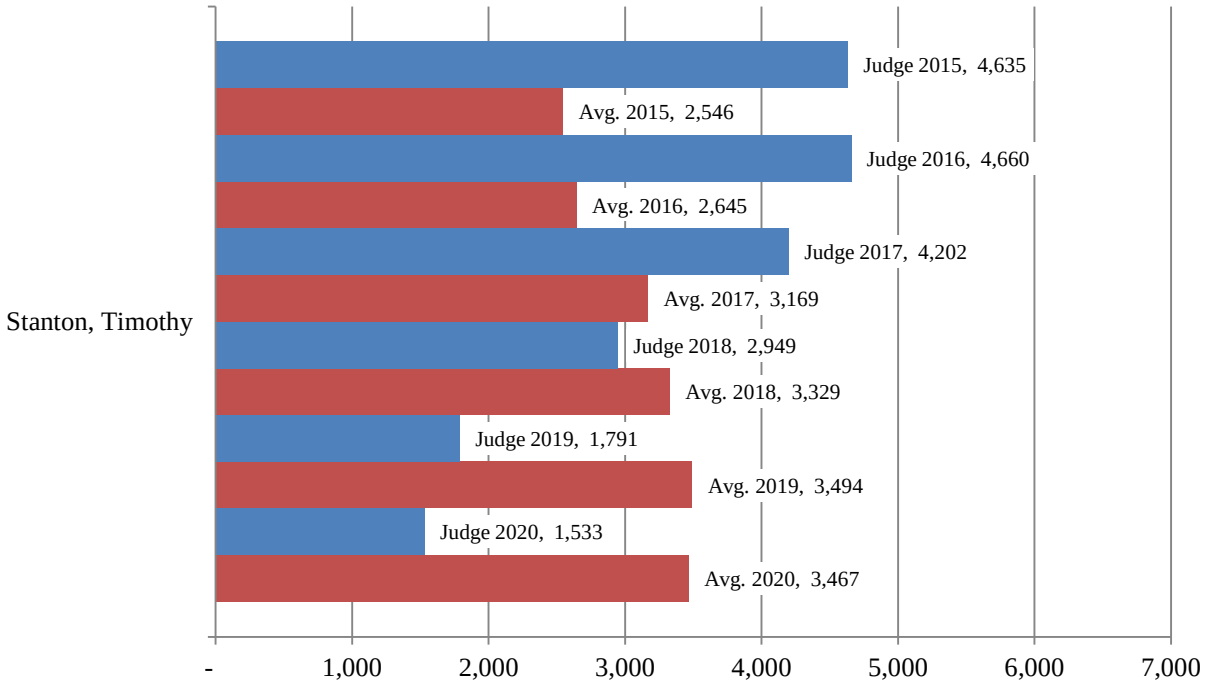
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



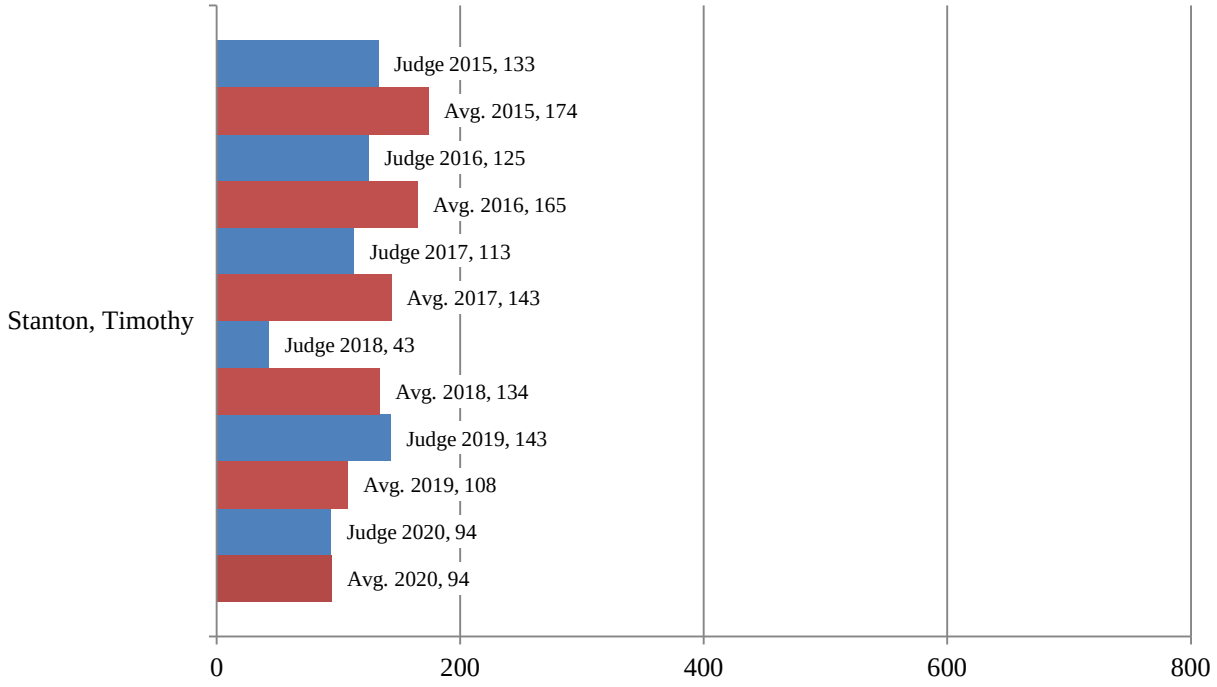
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. 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 has consistently experienced a notable volume of “new cases,” about thirty percent above the statewide average. Despite this, the overall volume of petitions in District Jacksonville usually remained below the statewide average, though in 2019-20 the petition volume was notably close to average. The times to mediation, to trial, and to final order are within statutory parameters except the time to trial in one division that is notably in excess of the 210 day requirement.

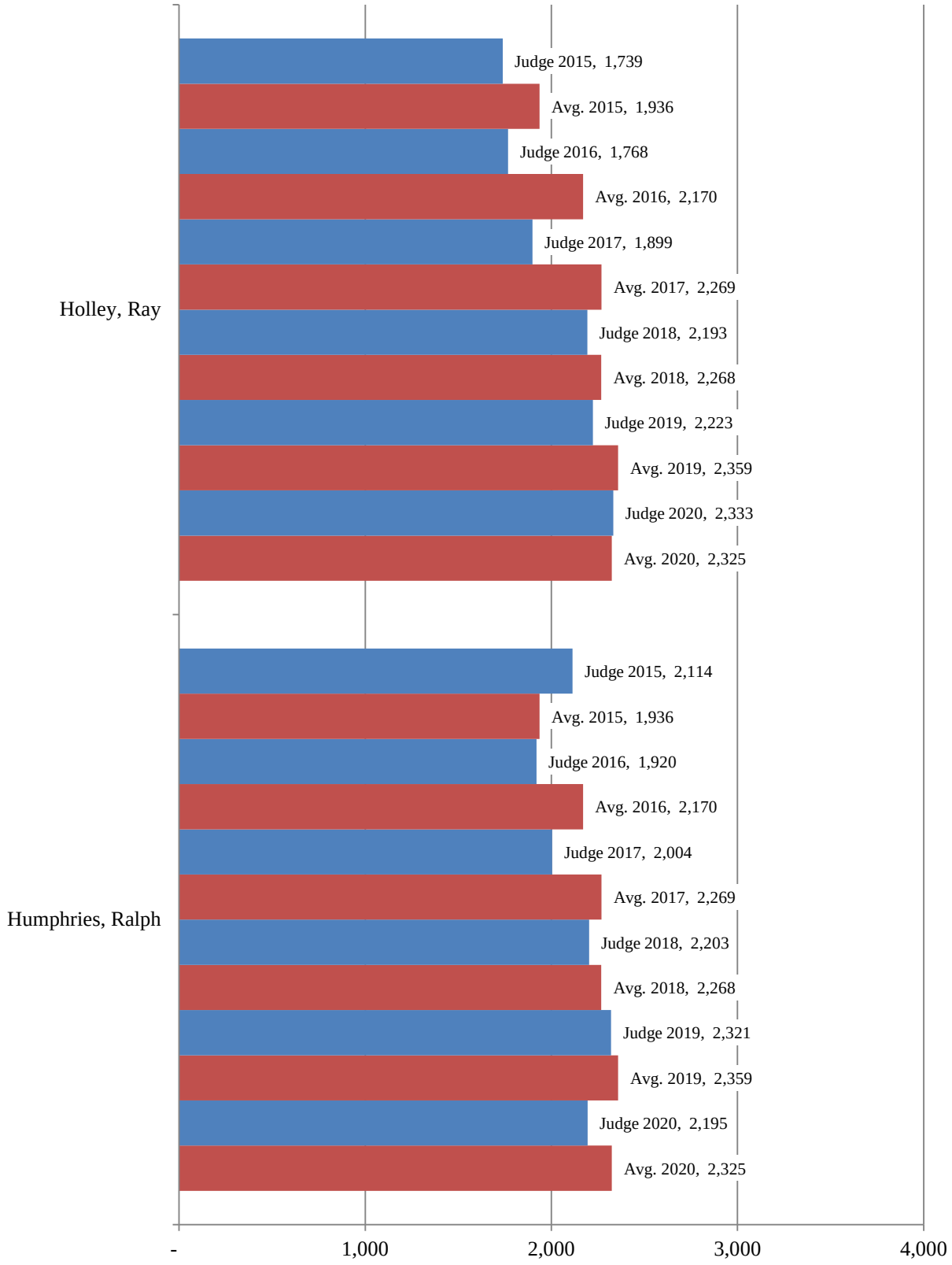
The volume of settlement orders in District Jacksonville well and consistently exceeds the statewide average, while the stipulation order volume is as notably and consistently below the average. The volume of “other orders” is below average in Jacksonville, particularly notable in one Division.

Judge Holley is a Master of the Bench and Past President of the E. Robert Williams Inn of Court. He was the recipient of the 2019 Stetson University Distinguished Service Award and the Richard Sadow Award from the Friends of 440 Scholarship Fund. Judge Holley continues to serve the legal profession through his involvement with the E. Robert Williams Inn of Court’s Executive Committee, Friends of 440 Scholarship Fund (Vice President of Scholarship Selection, and State and local Board member), and Jacksonville Bar Association Appellate and Professionalism Committees (Member). He is actively involved in community service efforts including serving as a Board Member of the Stetson University College of Arts and Sciences Board and Executive Committee member and Past President of the Stetson University Alumni Association. Judge Holley has presented as a speaker, panelist and/or moot court judge on several occasions in the past year.

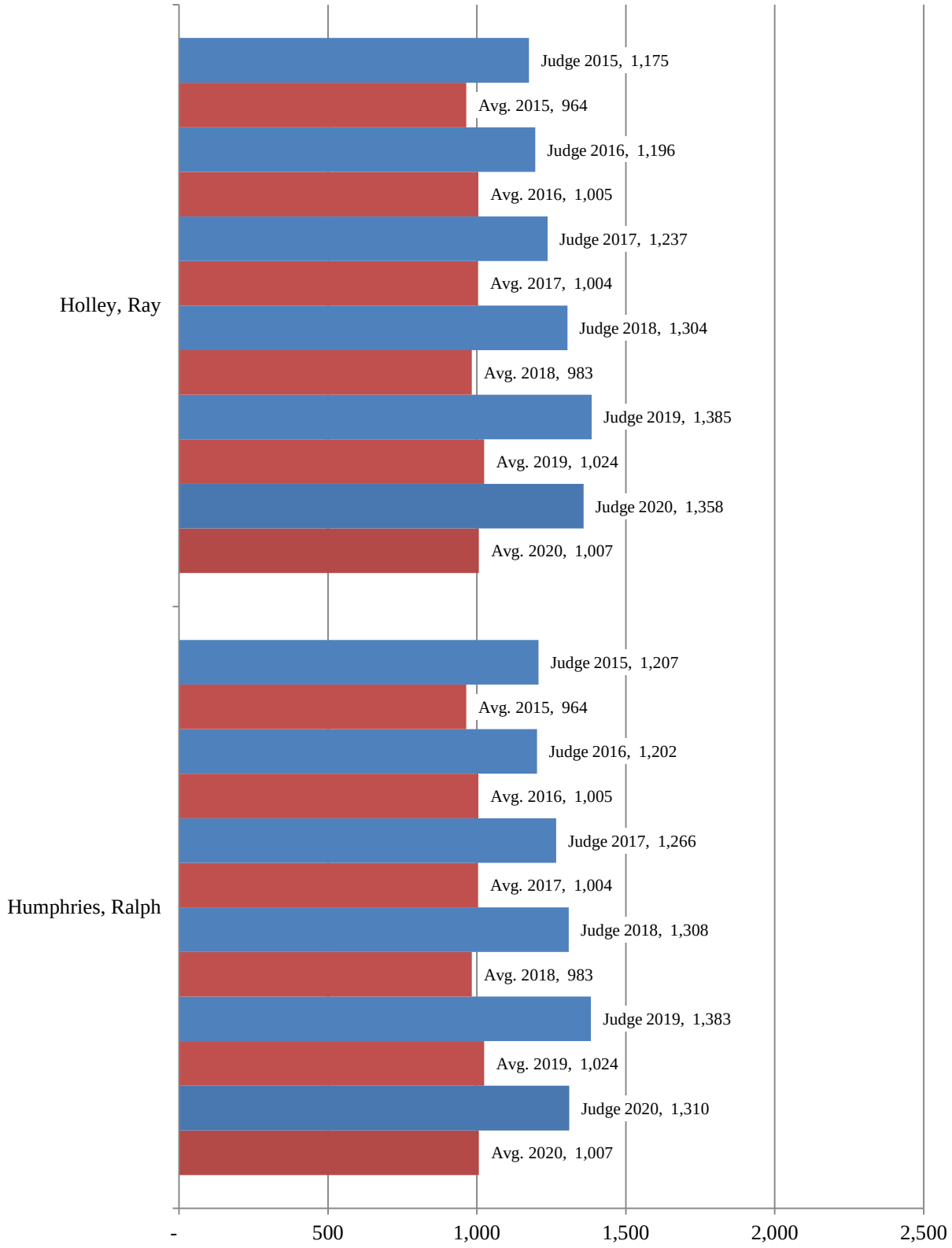
Judge Humphries was a panelist for the Judges of Compensation Claims and state mediators discussing current challenges facing the JCC’s in Florida on a daily basis. He also spoke at the annual seminar at the First District Court of Appeal discussing attorney’s fees post-*Miles* and other considerations factoring in a JCC’s review of fees.

[Space Intentionally blank]

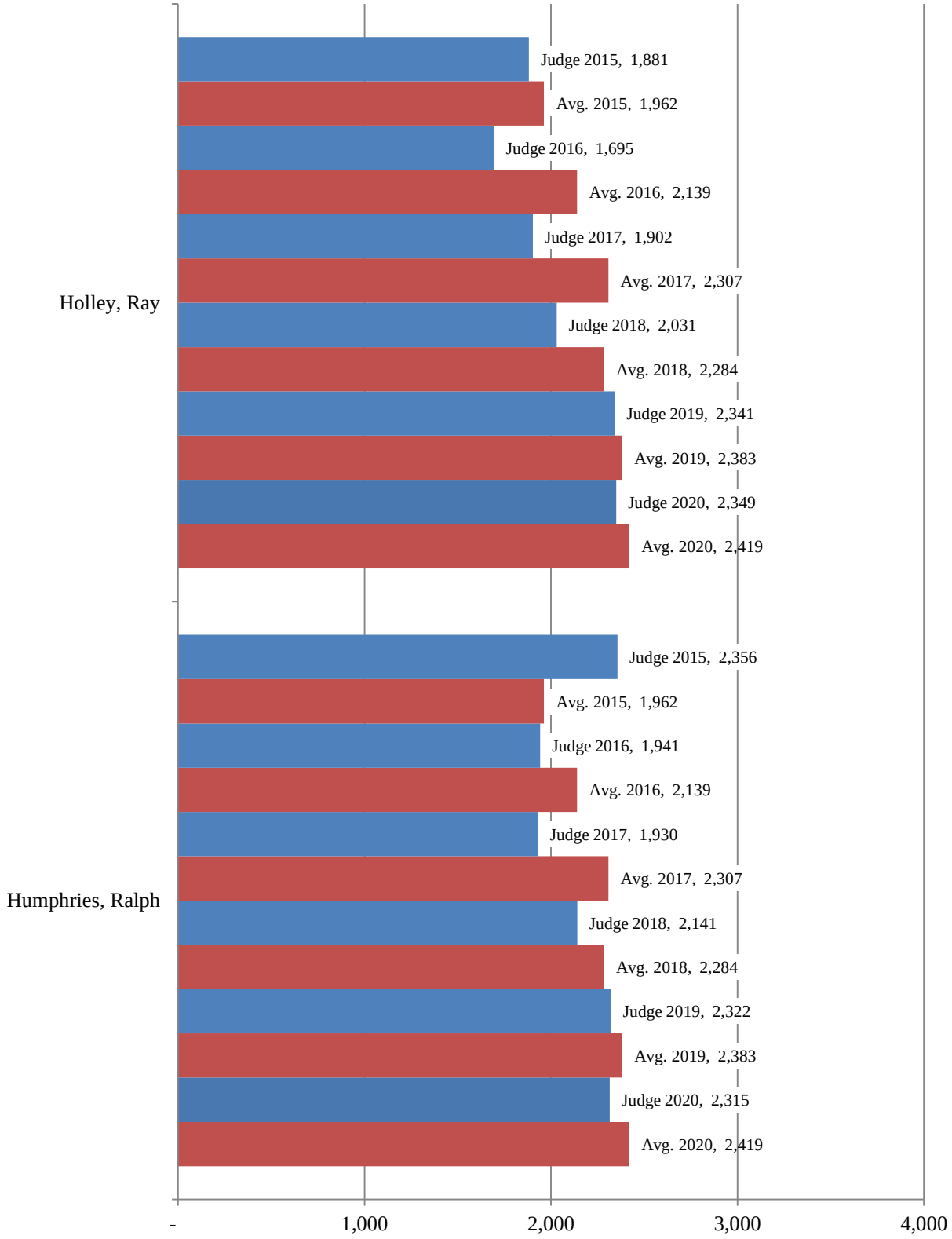
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



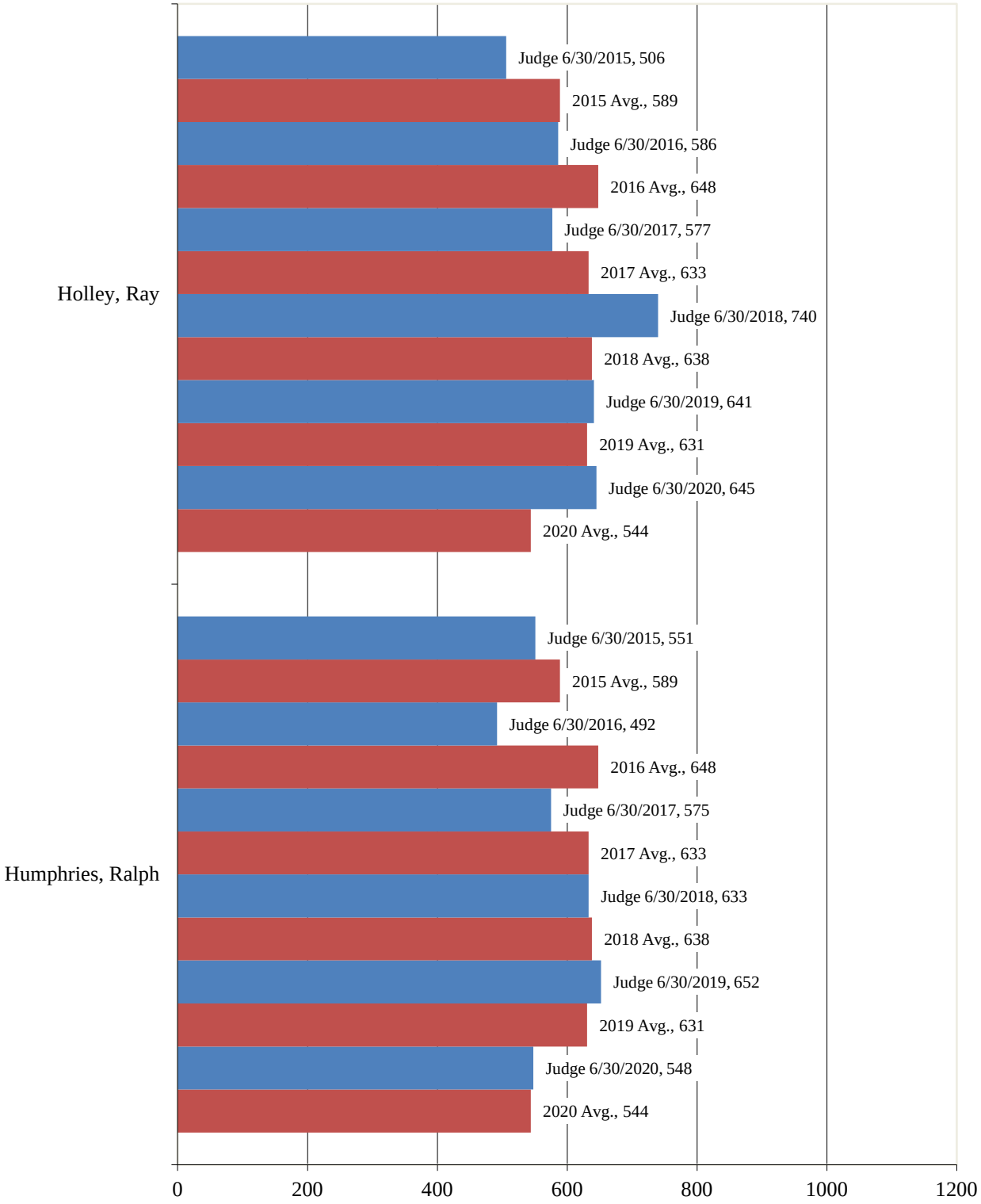
The following depicts the volume of “new cases” filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



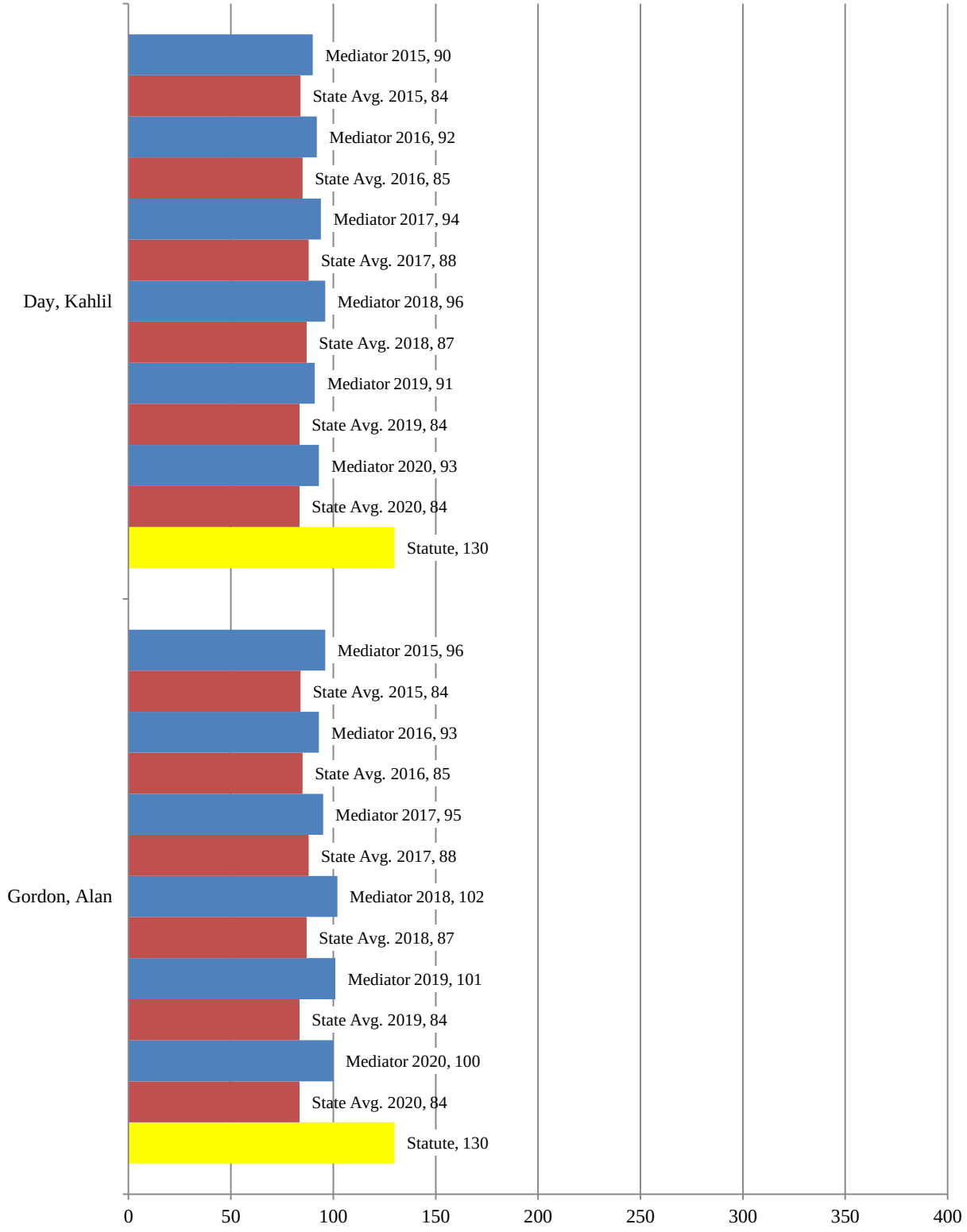
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



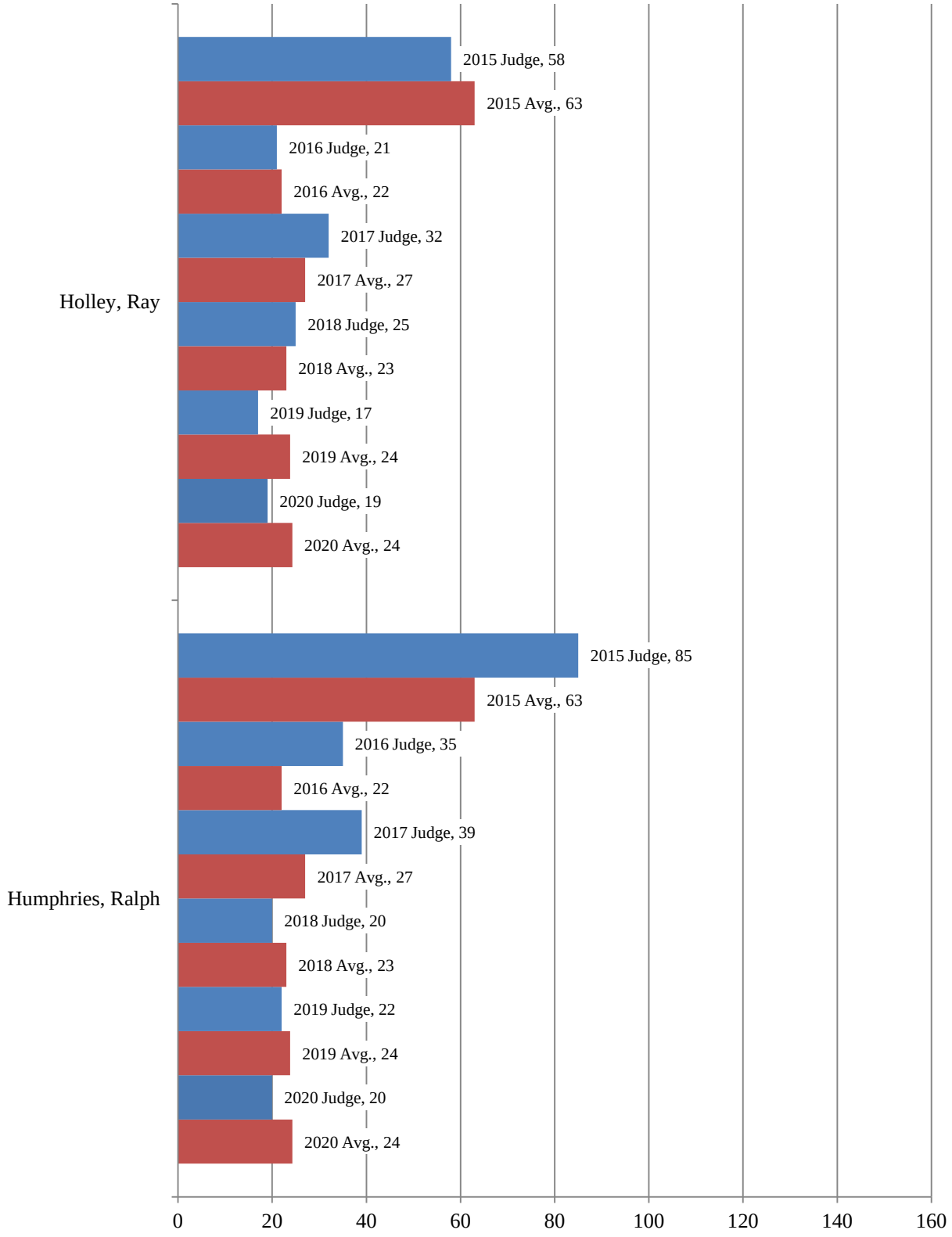
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



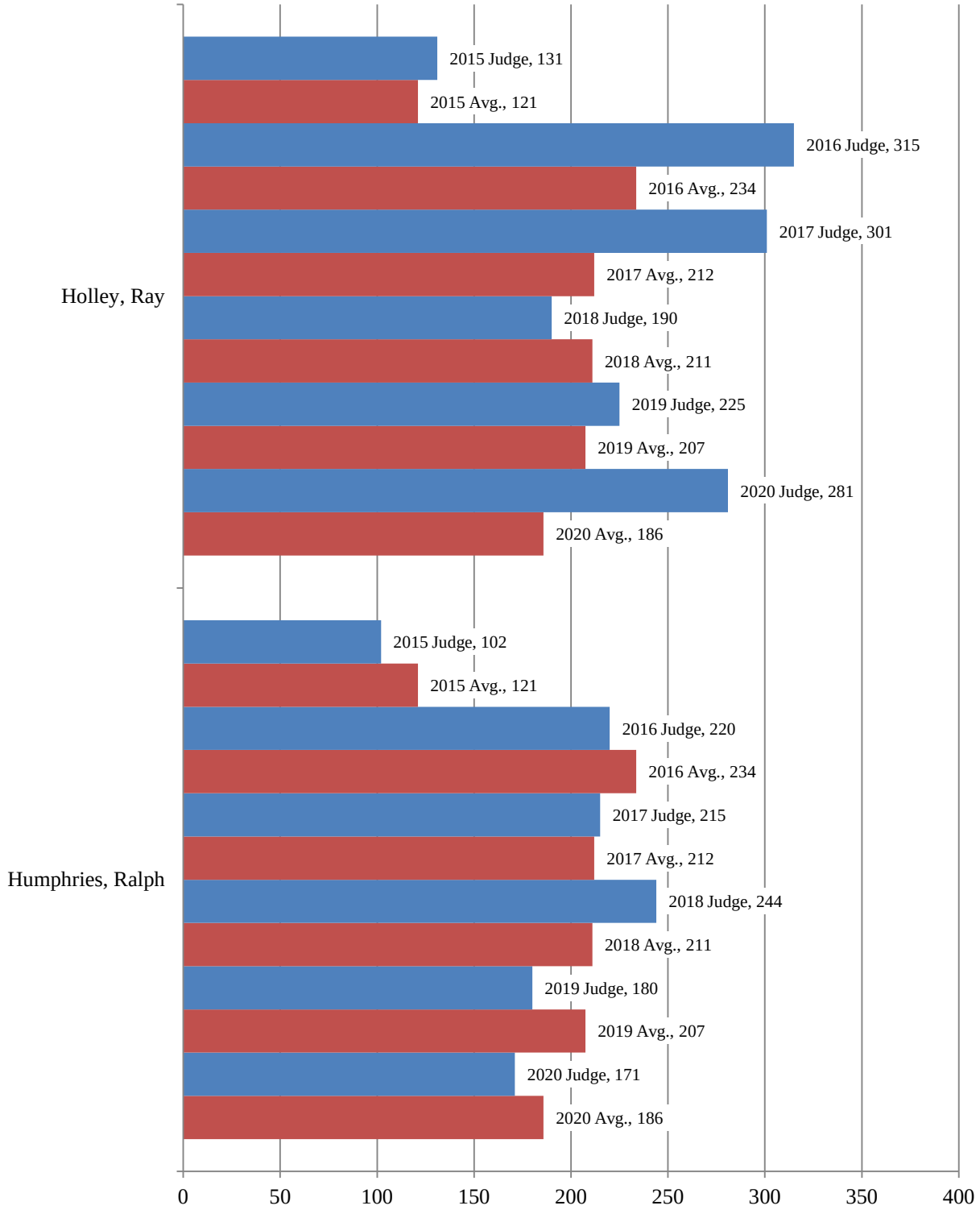
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



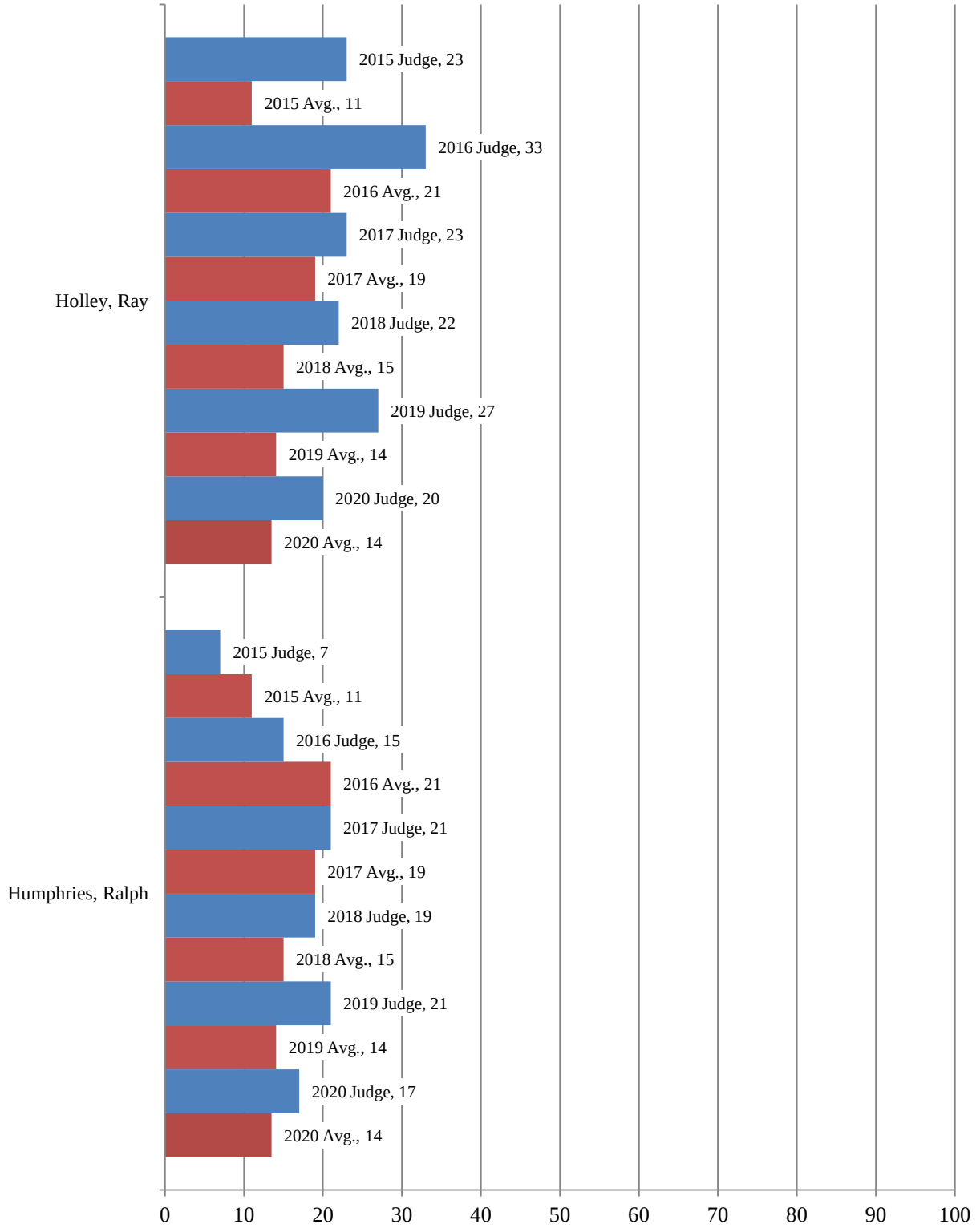
The following graph depicts the total volume of trial orders[237] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



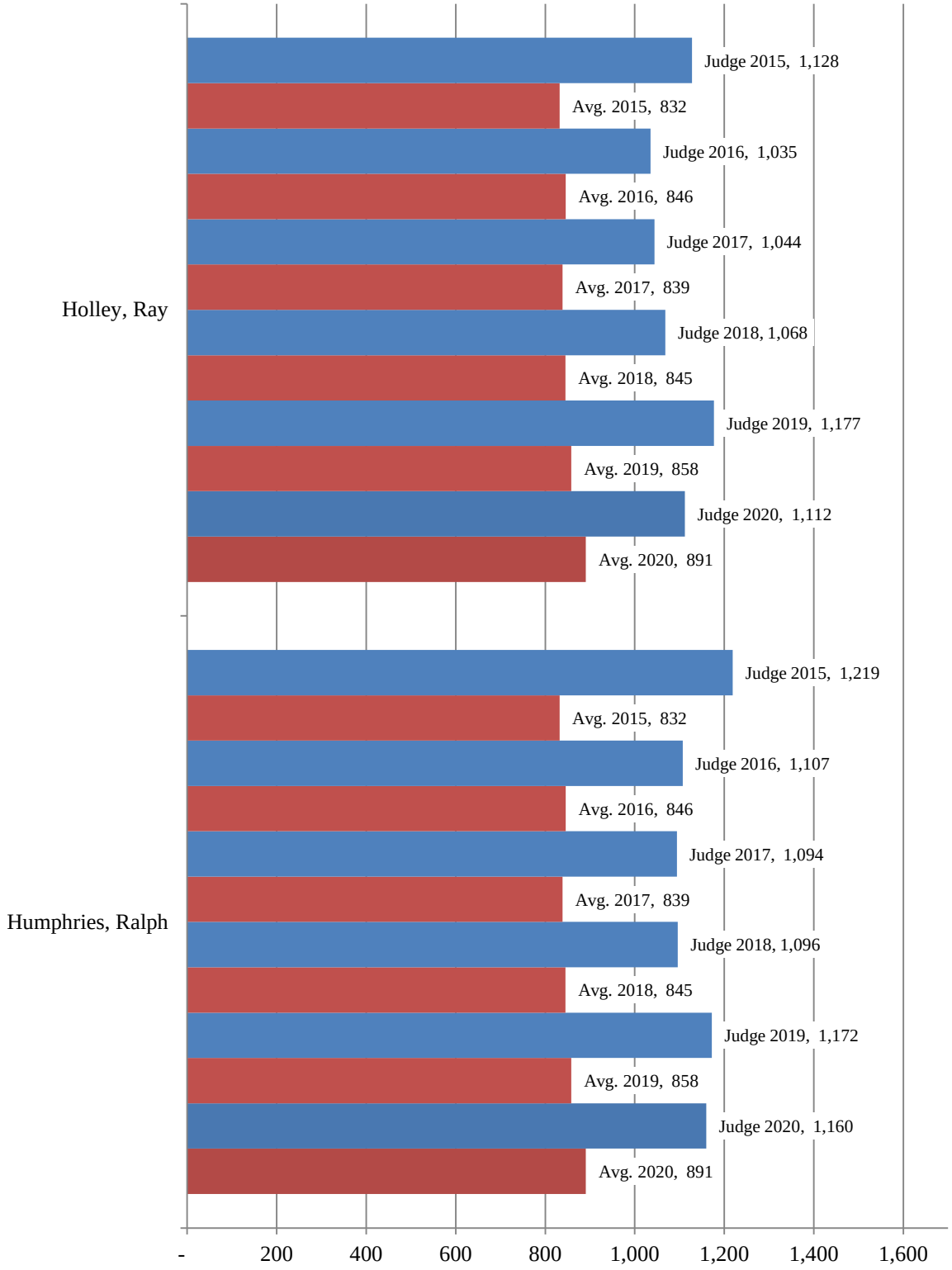
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



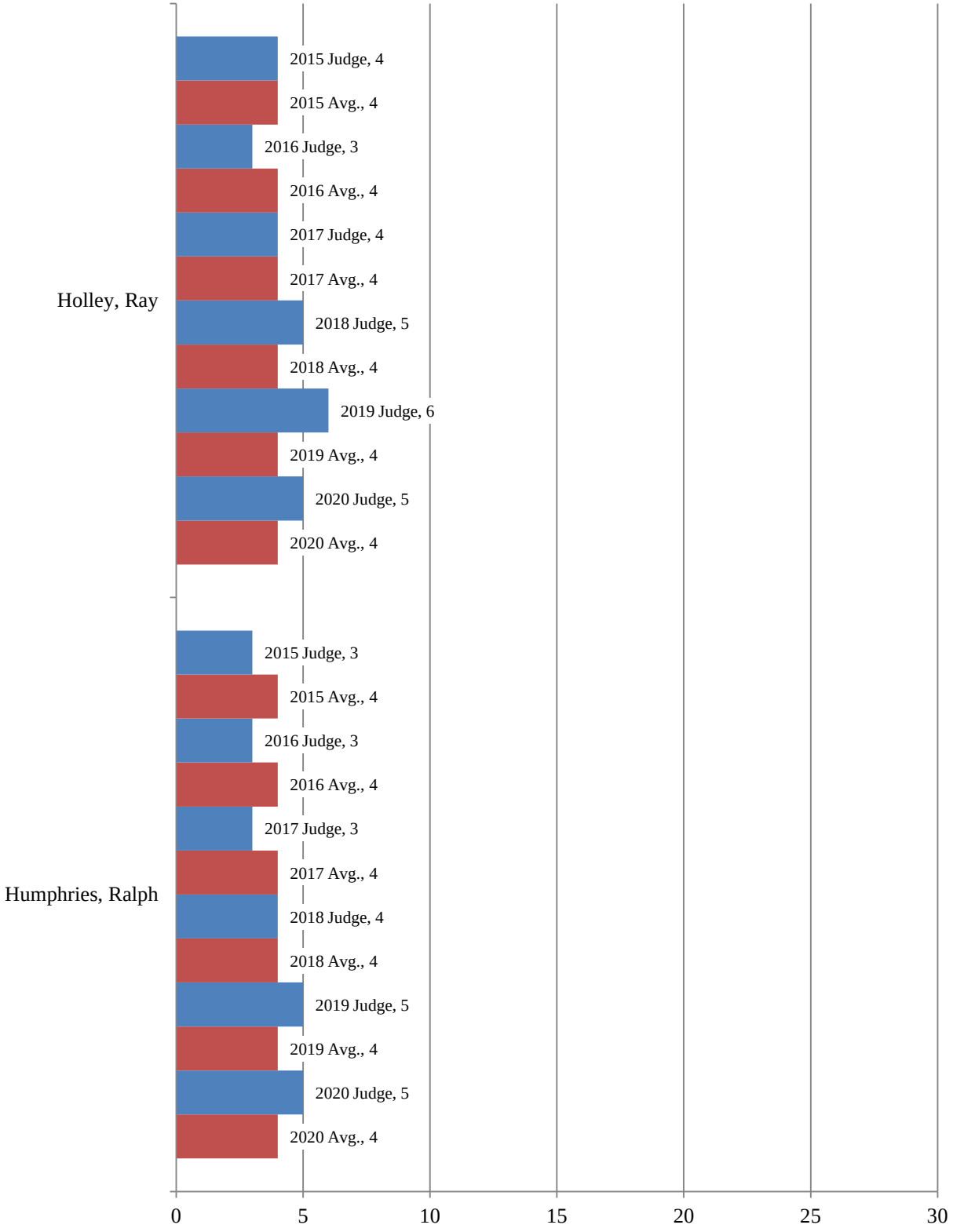
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



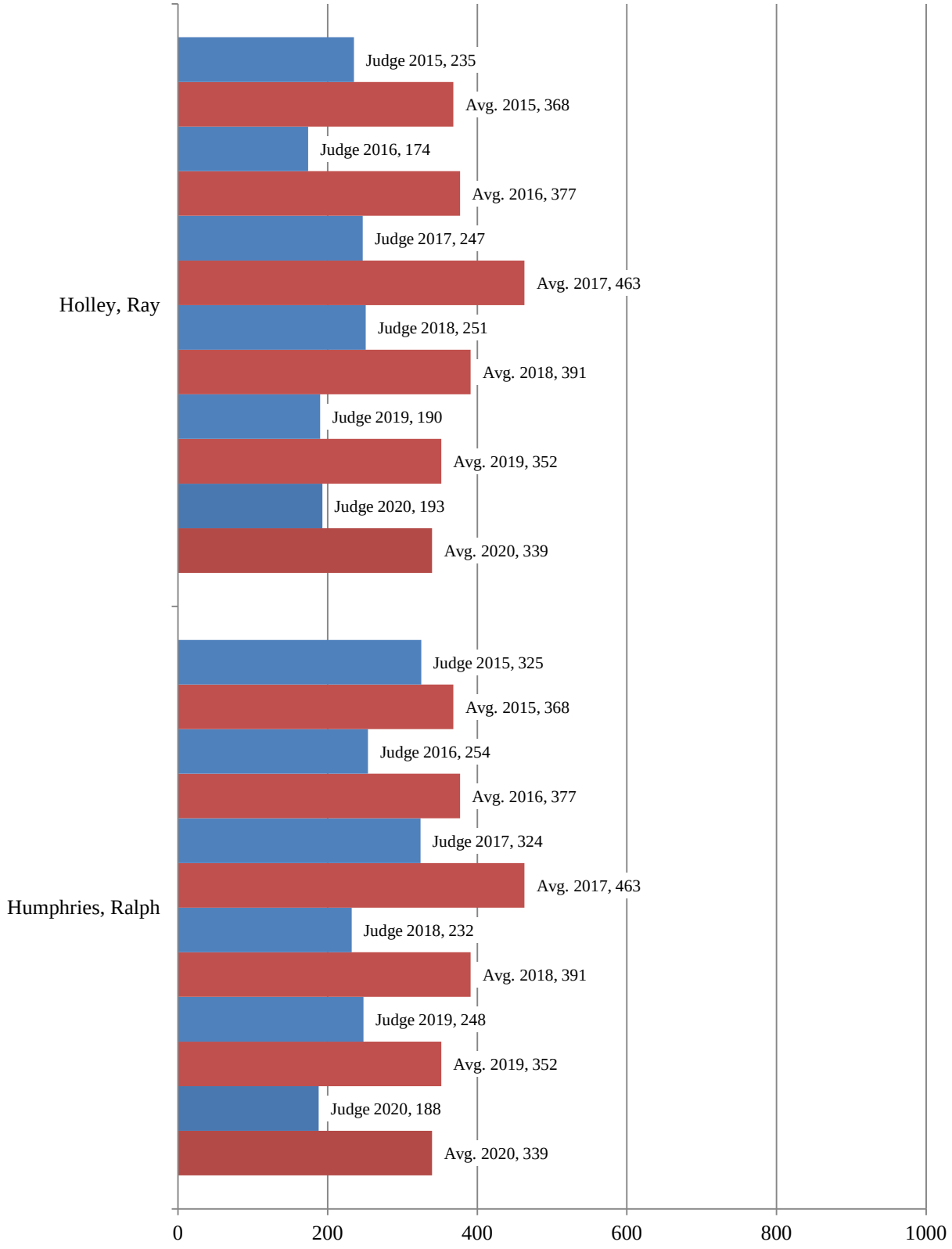
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



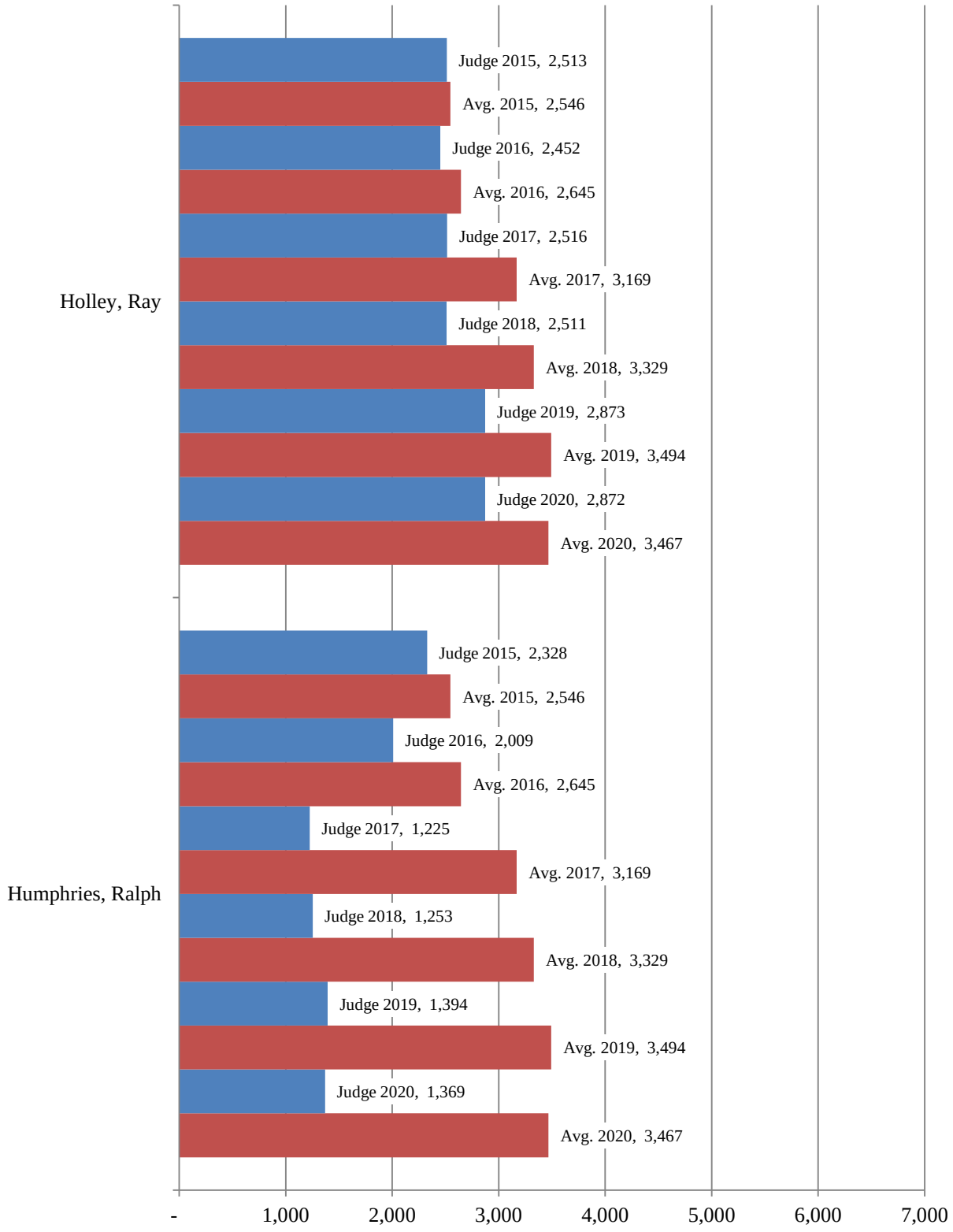
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



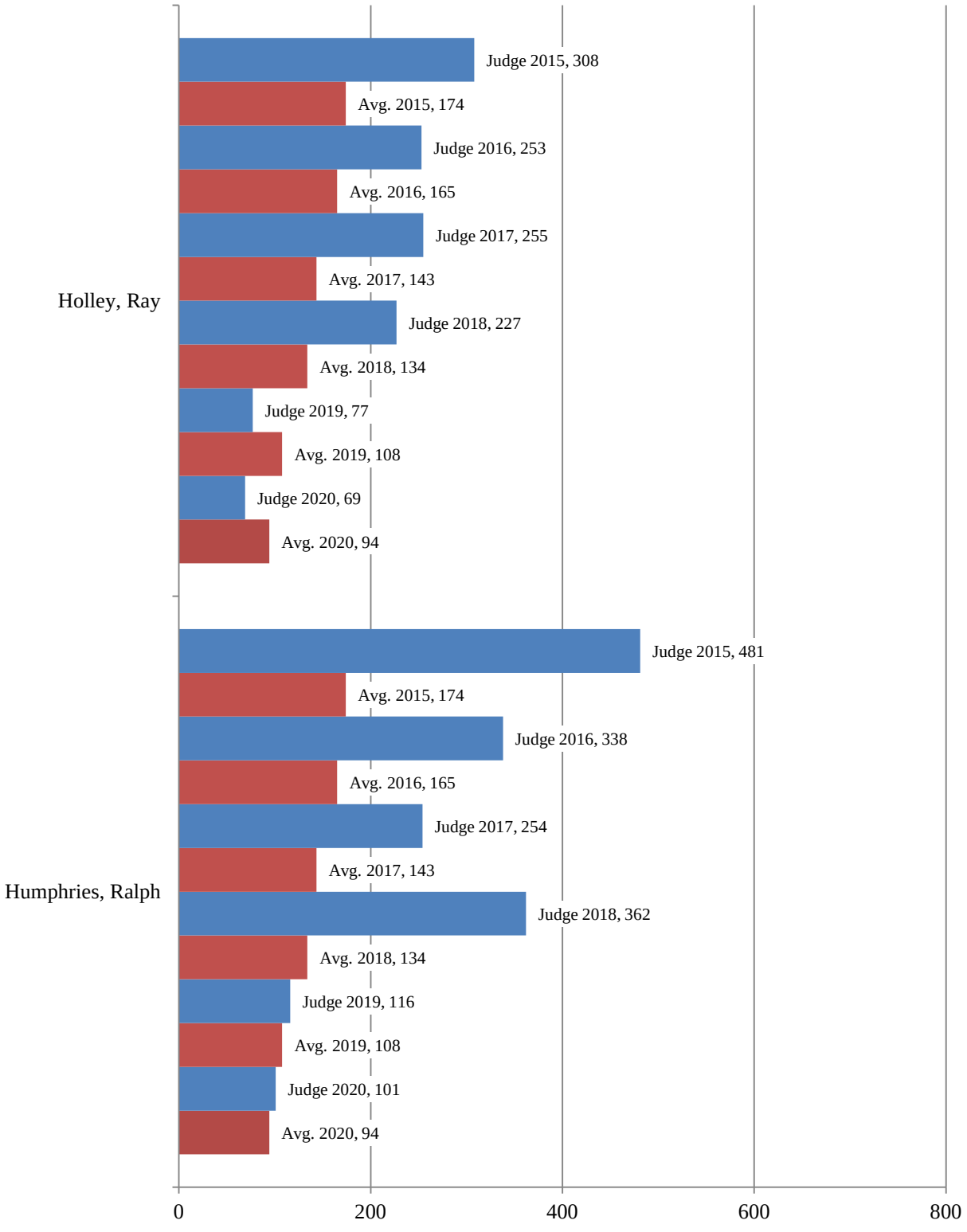
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



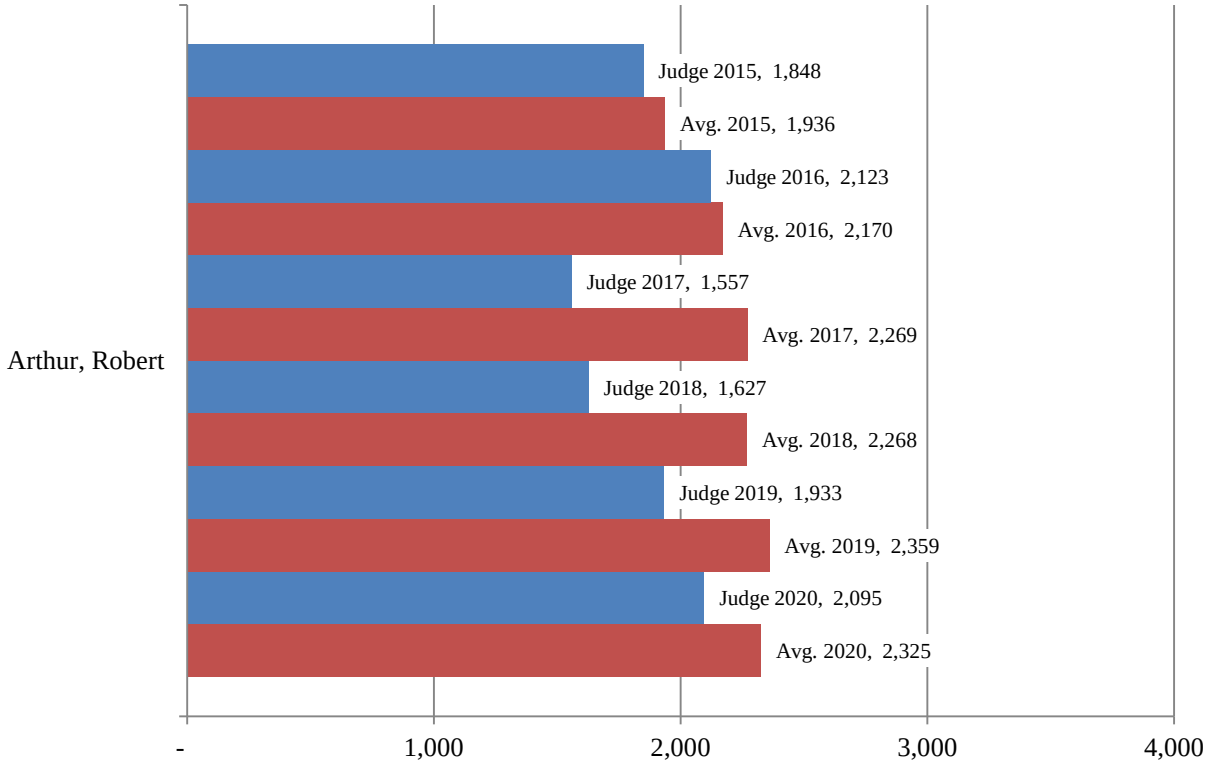
Appendix “6” District LKL (JCC Arthur):

District LKL includes Hardee, Highlands, and Polk counties.

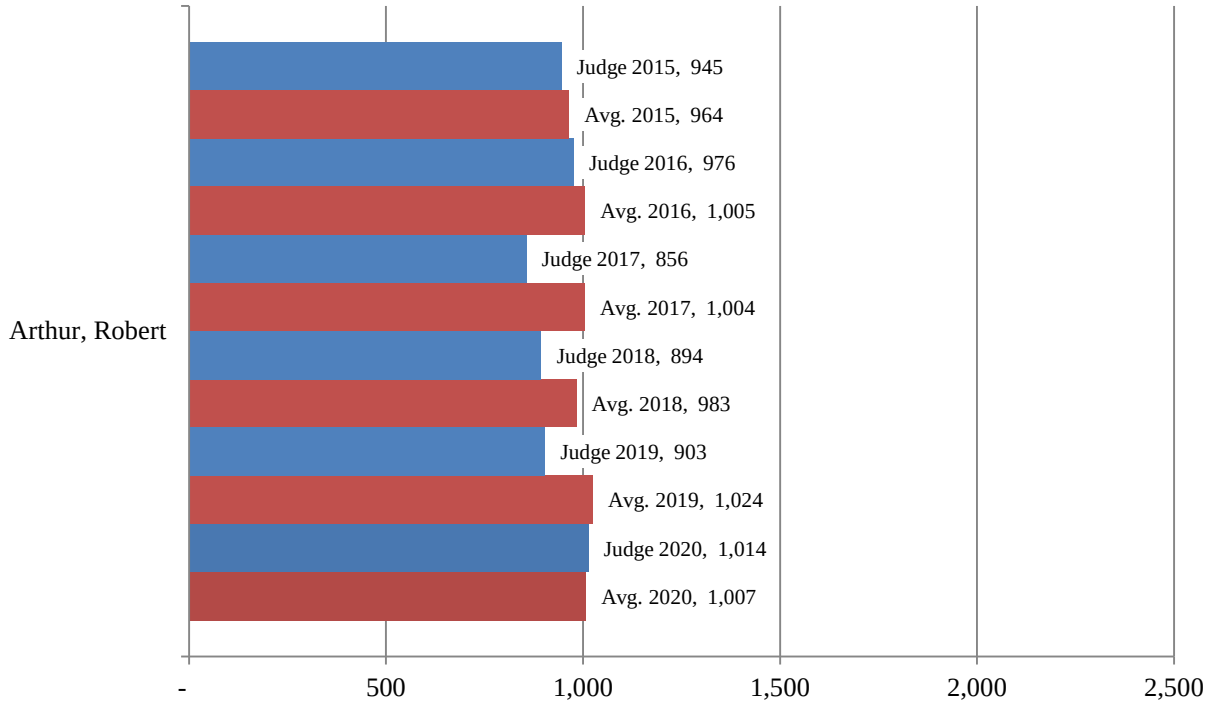
Both “new cases” and Petition volumes in District LKL were below average for three consecutive fiscal years. This may be due in part to the reassignment of cases from LKL due to recusals since the appointment of Judge Arthur in 2017. The volume of each is trending upward however, with “new cases” in LKL exceeding the statewide average in 2019-20. The volume of trials in LKL is notable in 2019-20. The average times to mediation and to order are within the statutory parameters in District LKL. The metrics for hearings, stipulations, and other orders are all below or reasonably consistent with the statewide averages.

As a direct result of the COVID-19 pandemic, Judge Arthur’s activities and contributions to the legal community were more limited than in past years. However, he continued to serve as the President of the Tampa Bay Workers’ Compensation/Disability Inns of Court, an organization that remained active under his leadership through regular meetings via video application. He also served on the executive committee of the Conference of the Judges of Compensation Claims, and as a member of the Second Friday Committee which arranges continuing legal education programs for the Judges of Compensation Claims and State Mediators. Prior to shutdowns and cancellations due to the pandemic Judge Arthur spoke in Tallahassee at the Workers’ Compensation in 2020 Ringing in the New Decade seminar sponsored by the OJCC and the Workers’ Compensation Institute. He was scheduled to speak at several other seminars in the fiscal year which were cancelled due to the pandemic.

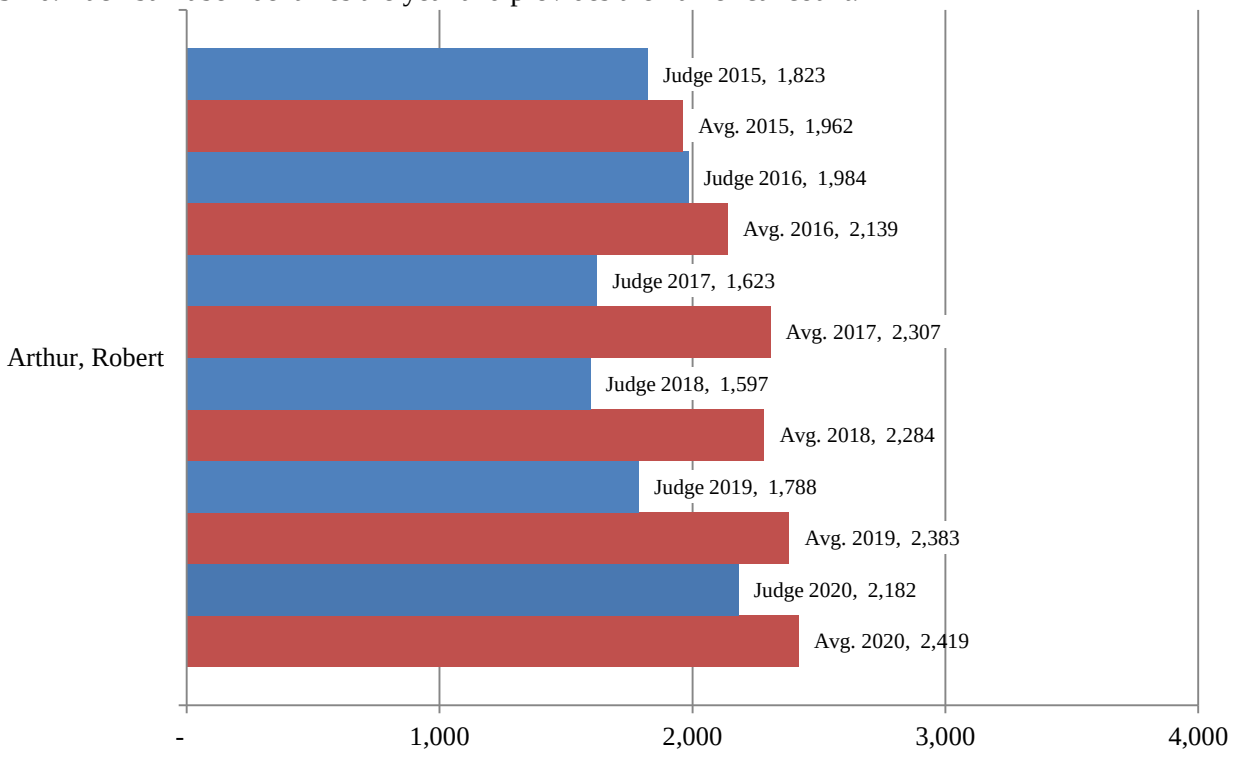
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



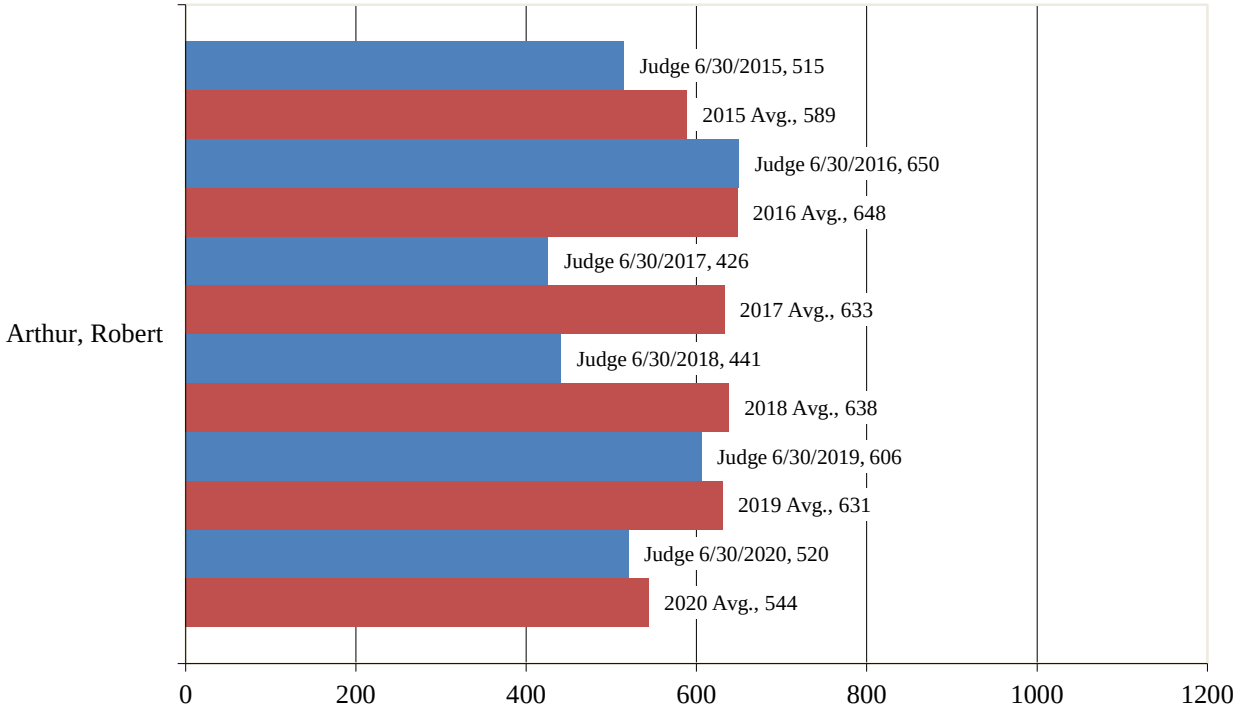
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



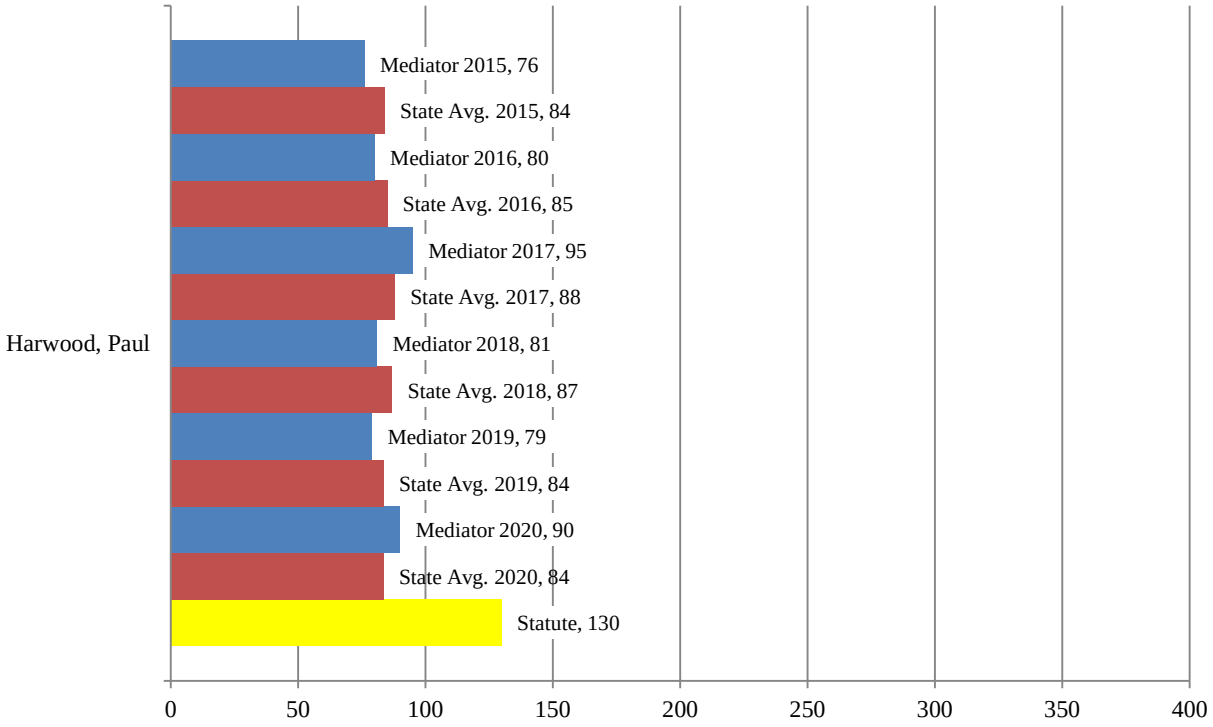
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



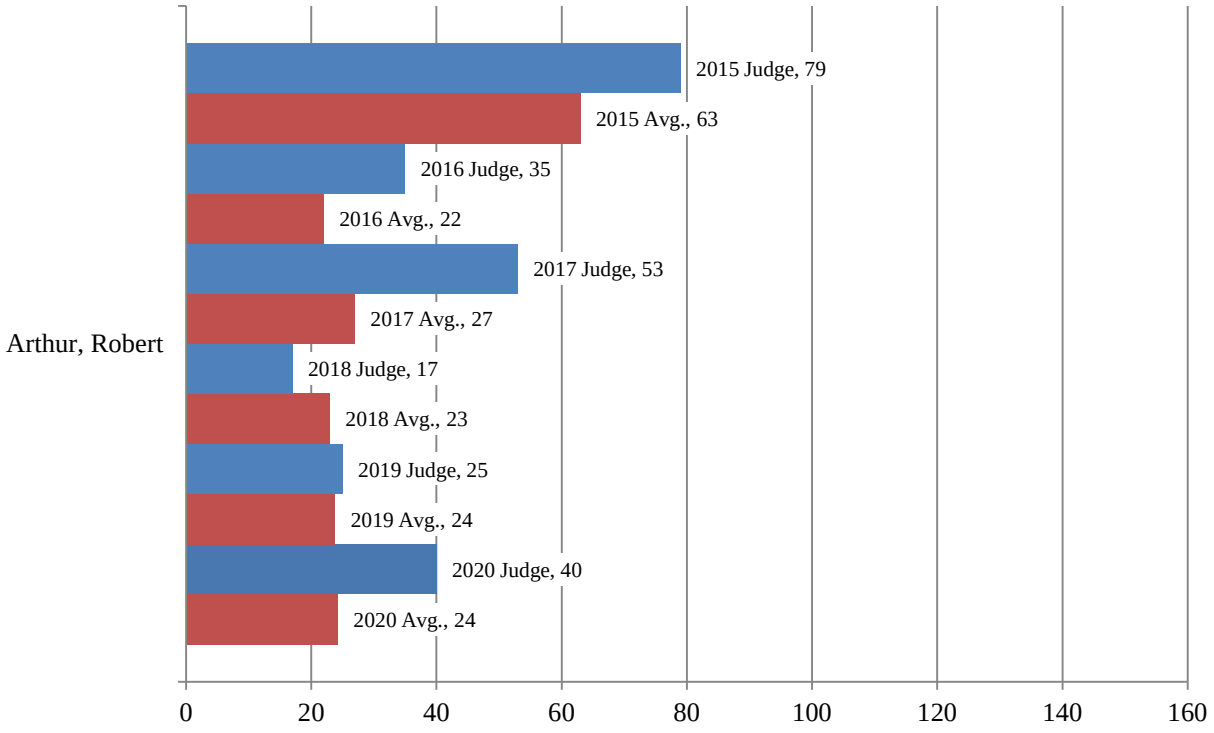
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



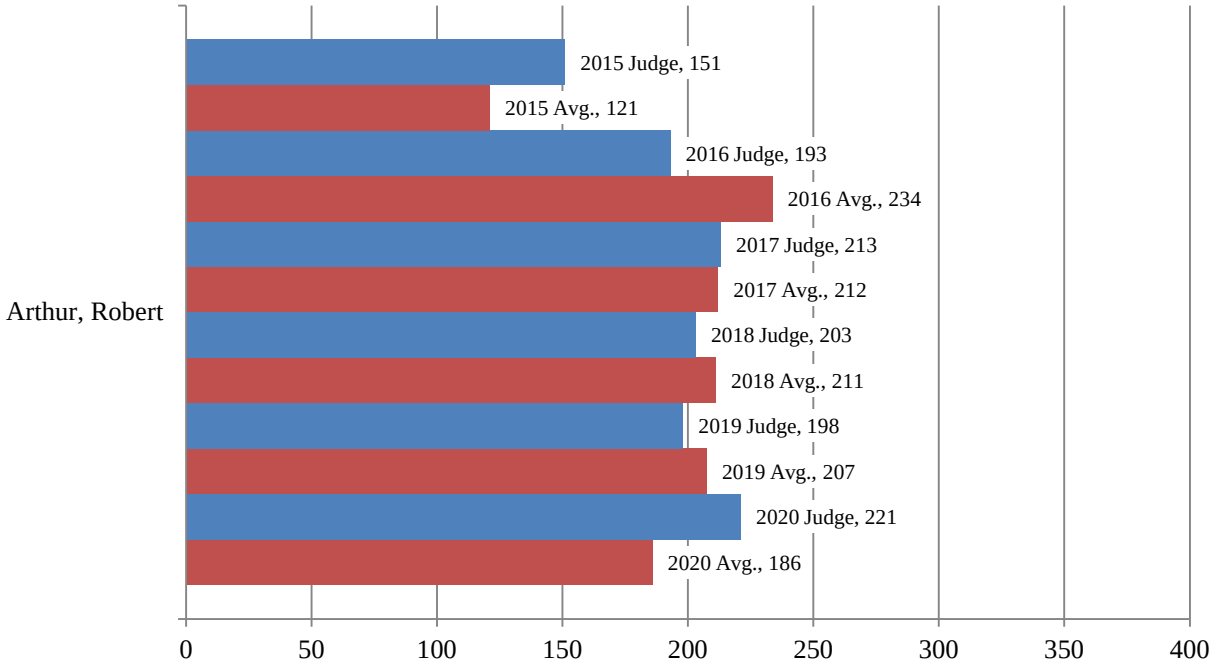
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



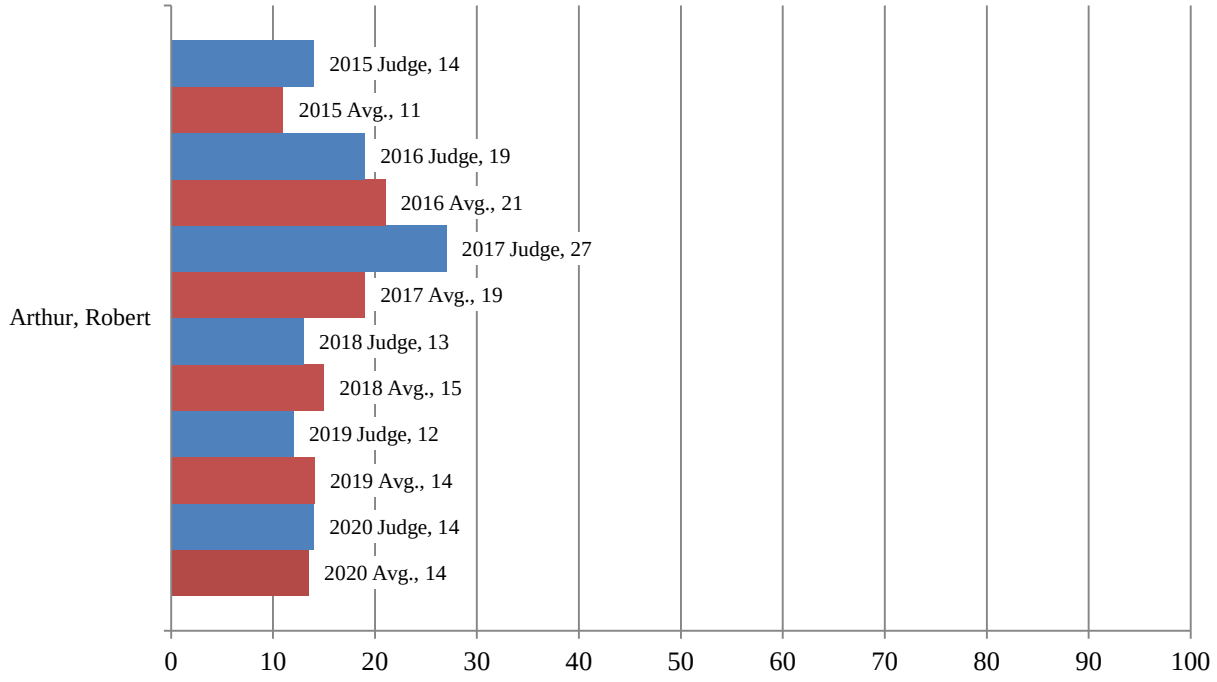
The following graph depicts the total volume of trial orders[238] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



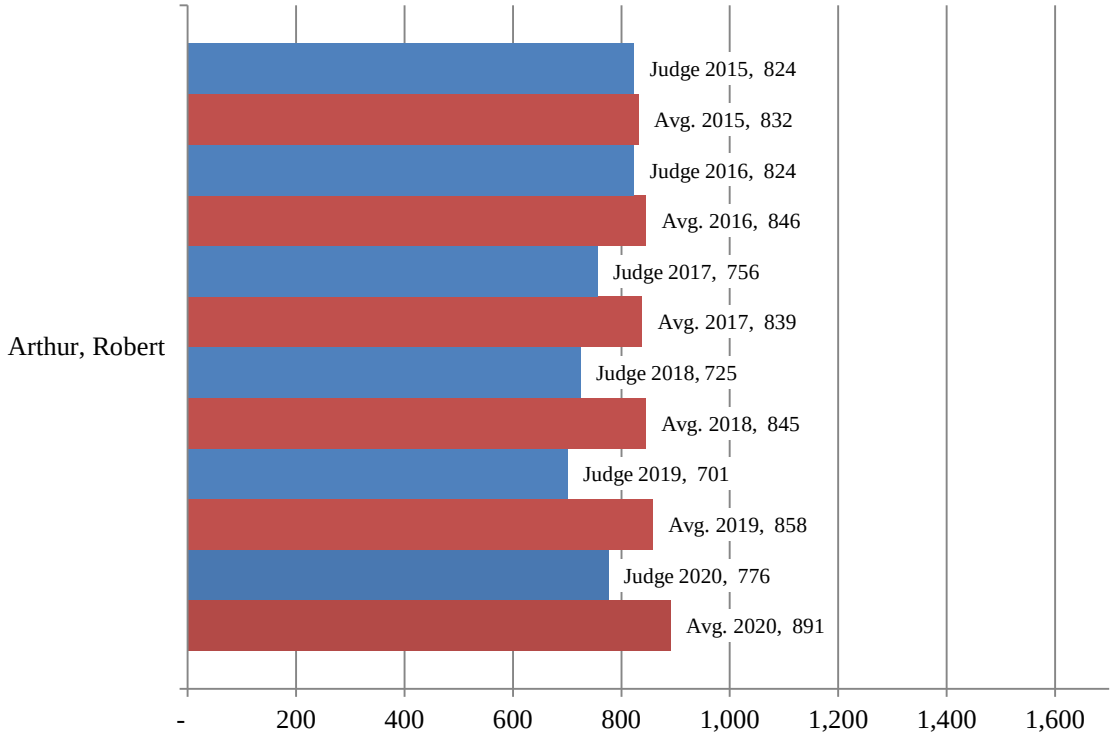
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



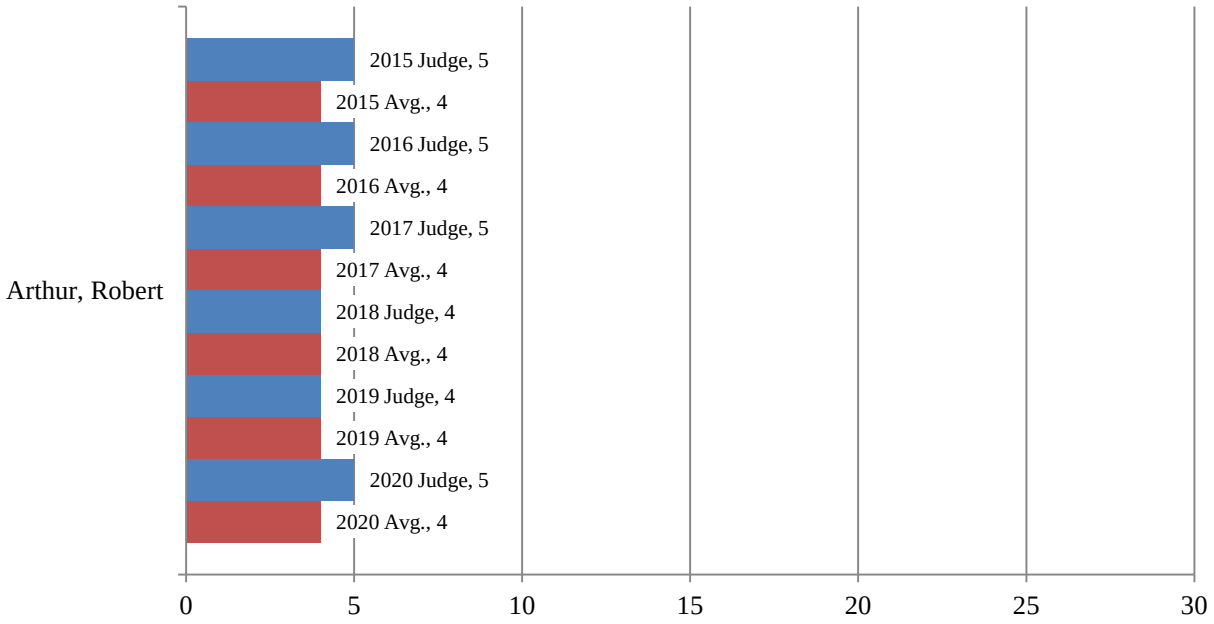
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



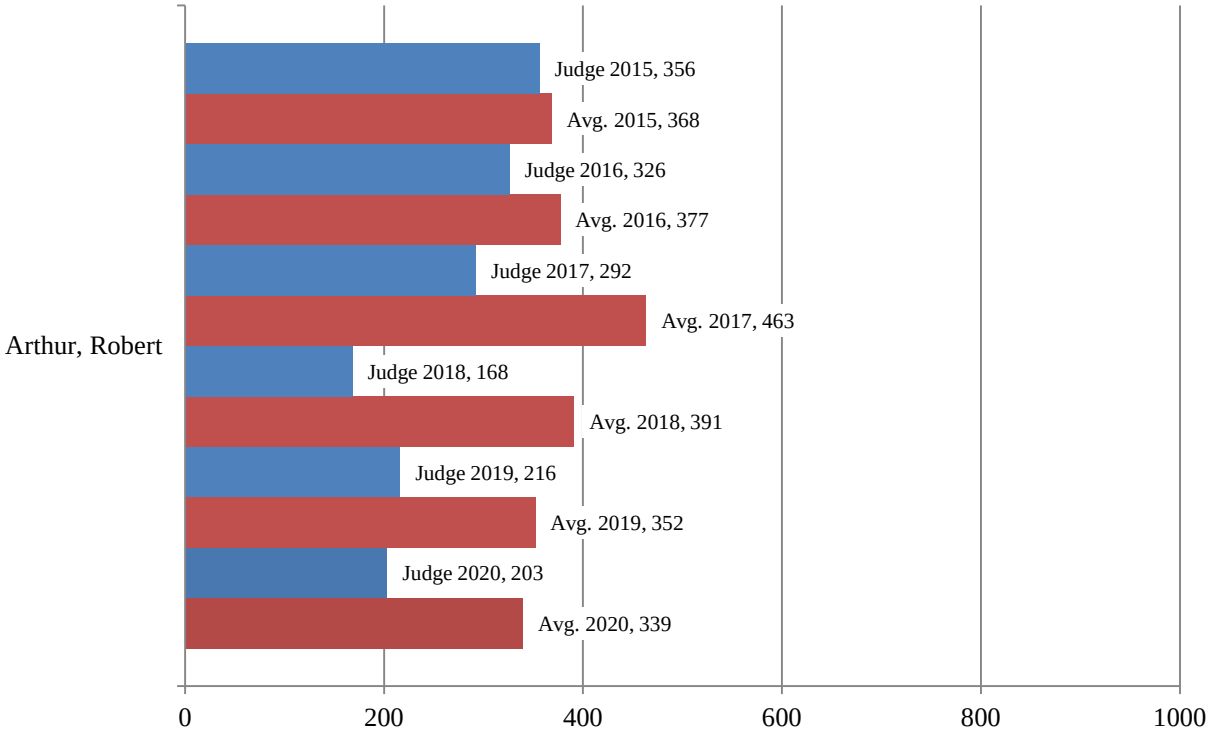
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



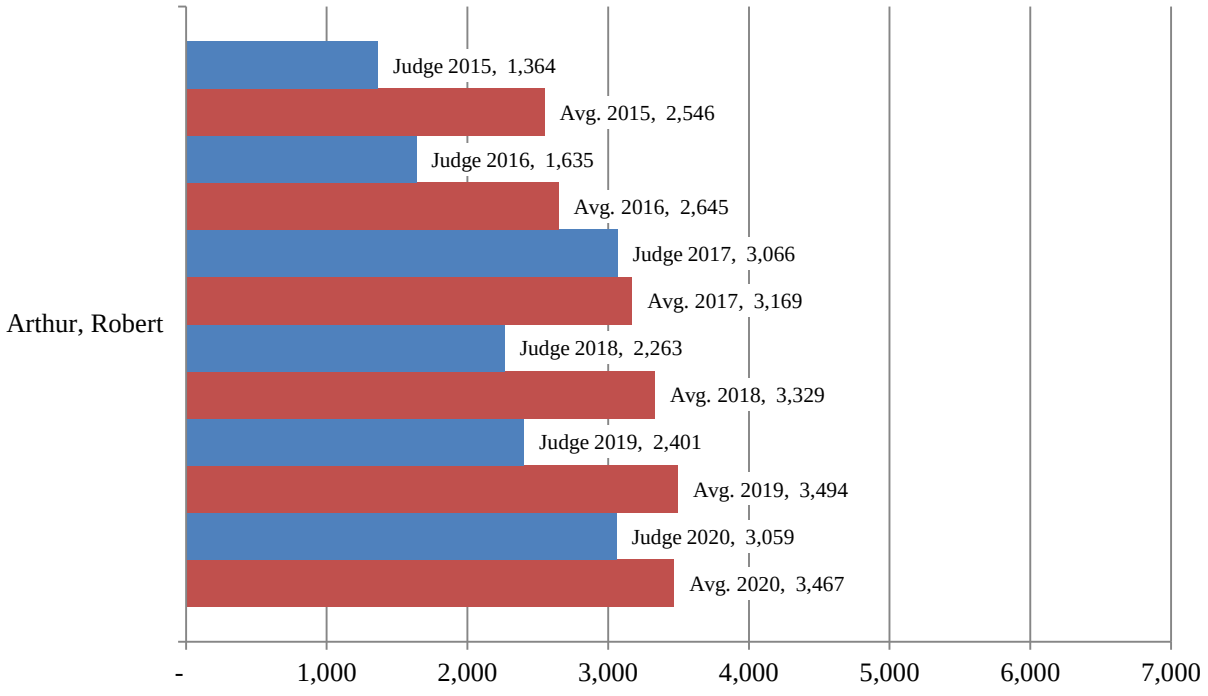
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



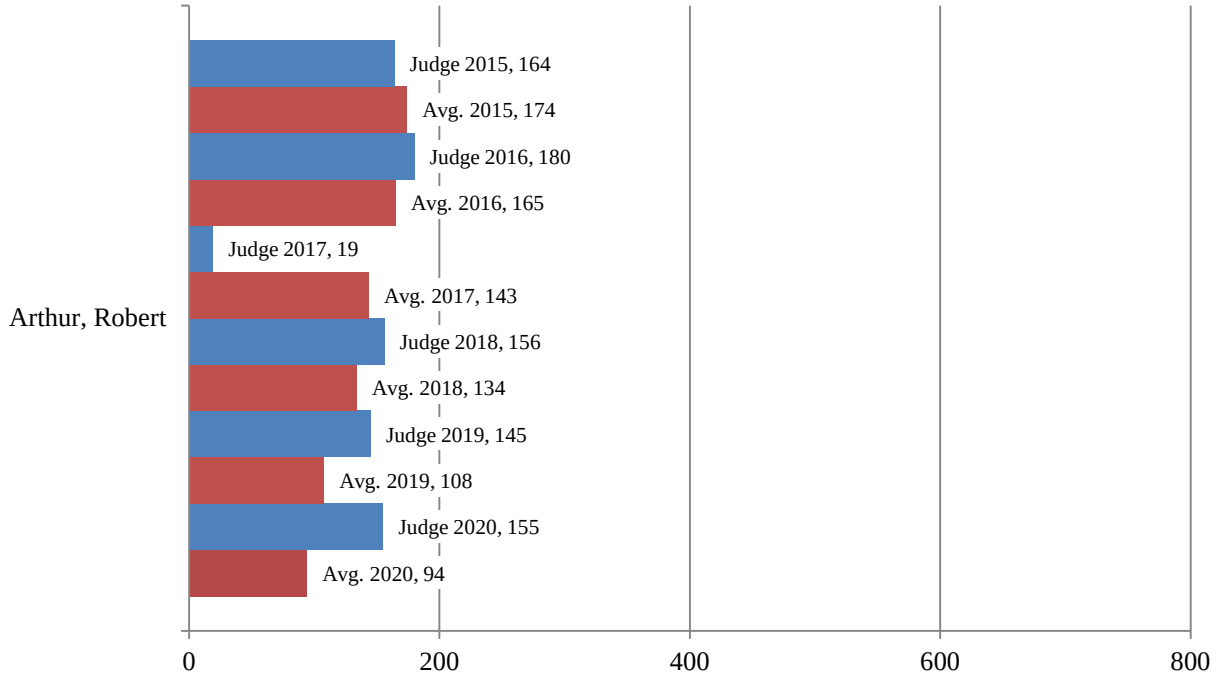
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



Appendix “7” District MEL (JCC Dietz):

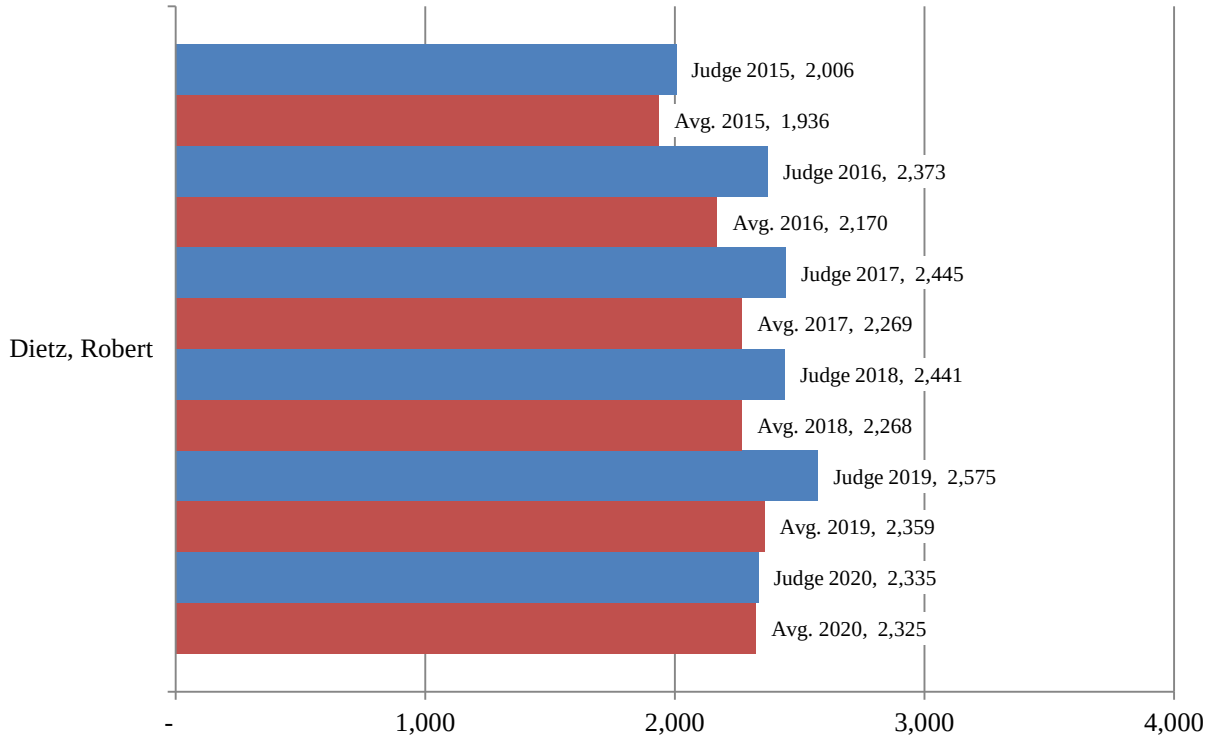
District MEL includes Brevard, Indian River, and Okeechobee counties.

PFB filings and “new case” filings in District MEL have consistently exceeded the statewide average for several years; that continued in 2019-20 as to “new cases,” but the petition volume has moderated. The trial volume there exceeds the statewide average. Despite that, the average times to mediation, to trial, and to final order are within the statutory parameters in 2019-20.

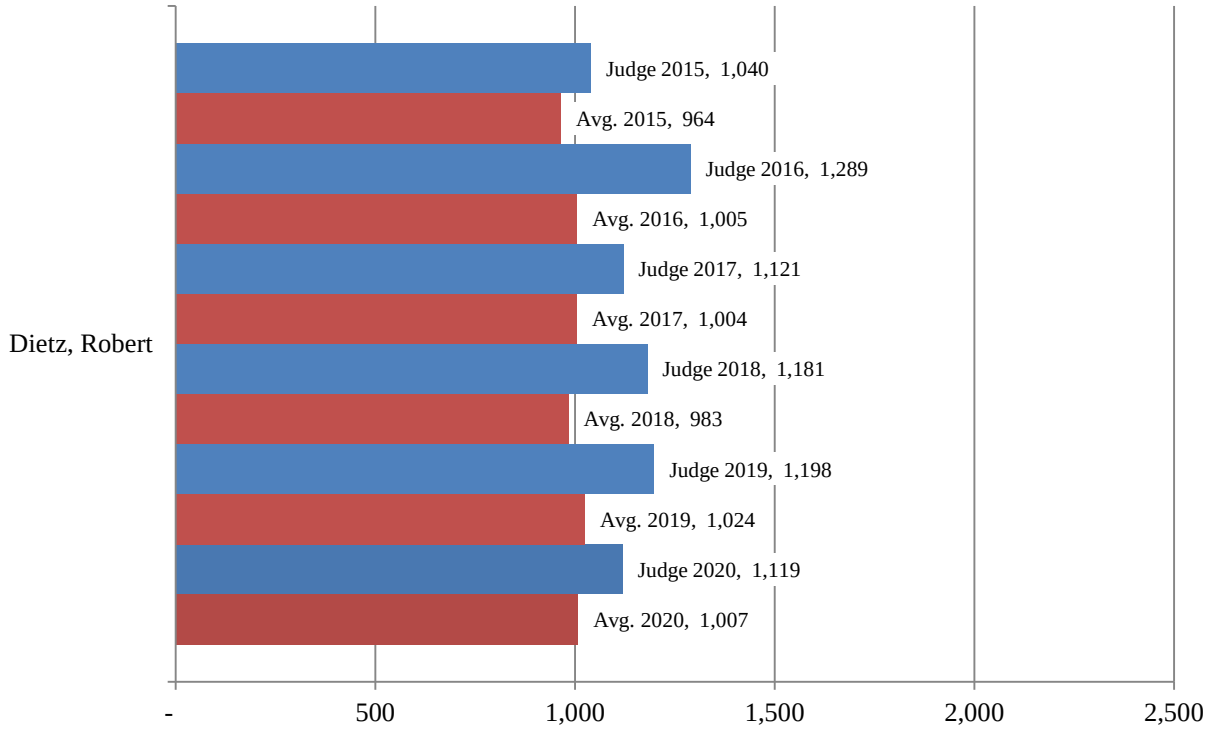
Judge Dietz is a member of the Brevard and Indian River County Bar Associations, the William M. Wieland Inns of Court in Orlando, the Robert D. McAliley Inns of Court on the Treasure Coast, the National Association of Workers’ Compensation Judiciary, the board of the Professional Mediation Institute, a Fellow of the College of Workers’ Compensation Lawyers, the Workers’ Compensation Institute’s Hall of Fame, and Treasurer of the Florida Conference of Judges of Compensation Claims. In 2019-2020, he moderated a panel at the Professional Mediation Institute on Dealing with Mediation Issues from the Judge’s Perspective and the Evidence presentation for the JCCs Second Friday seminar program. Judge Dietz continues to teach the Workers’ Compensation Law course at Barry Law School in Orlando, and chess to elementary and middle school students.

Following Judge Beck’s retirement in District SAR (page 187), Judge Dietz (MEL) and Judge Newman (TLH) provided significant assistance with management of the motion practice and docket there.

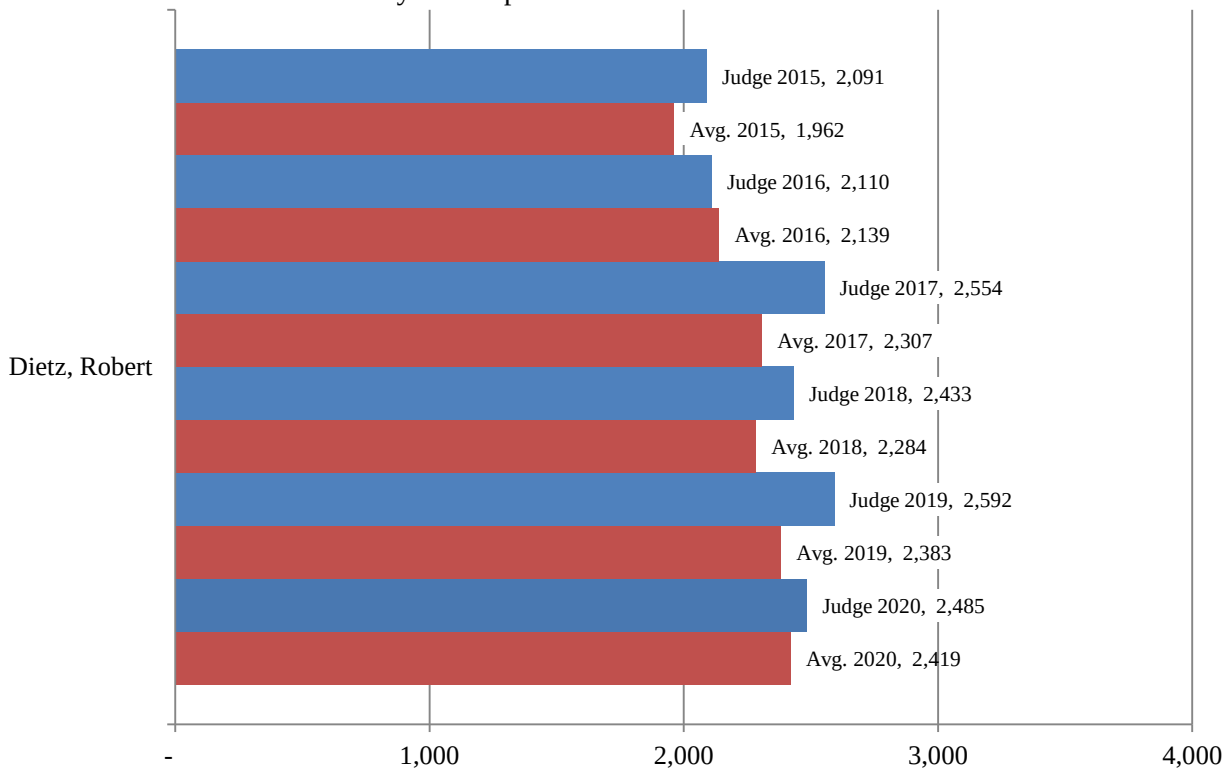
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



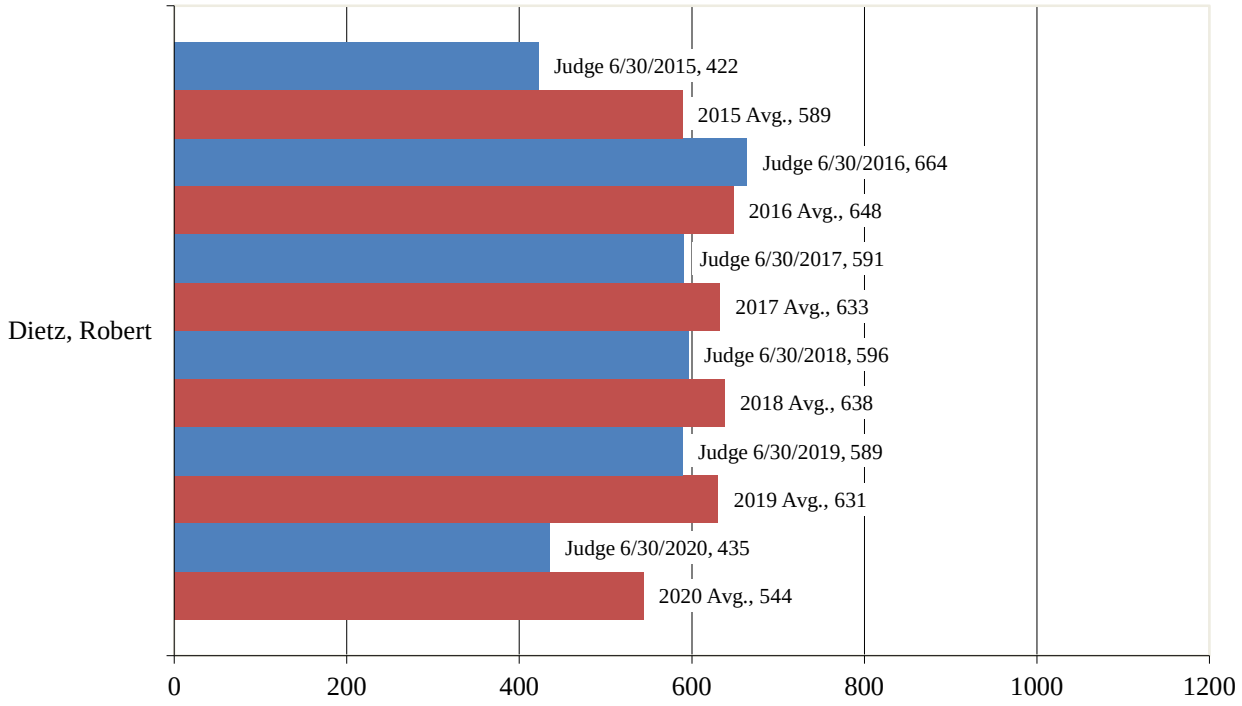
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



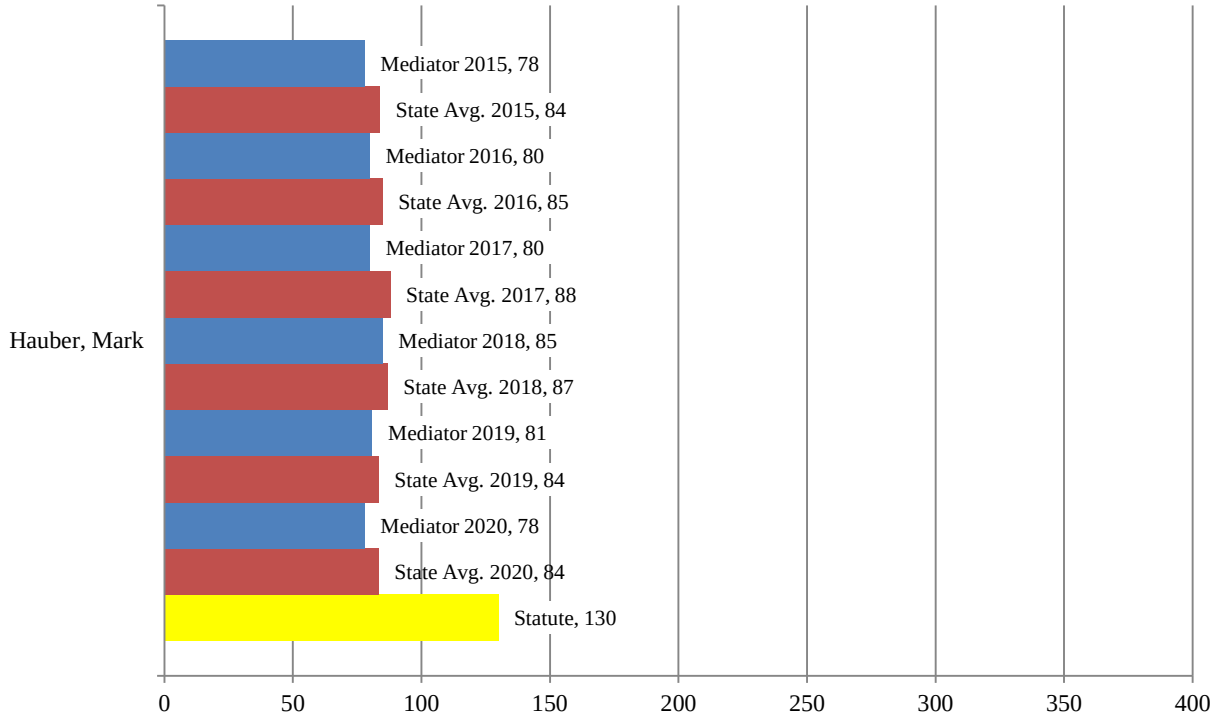
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



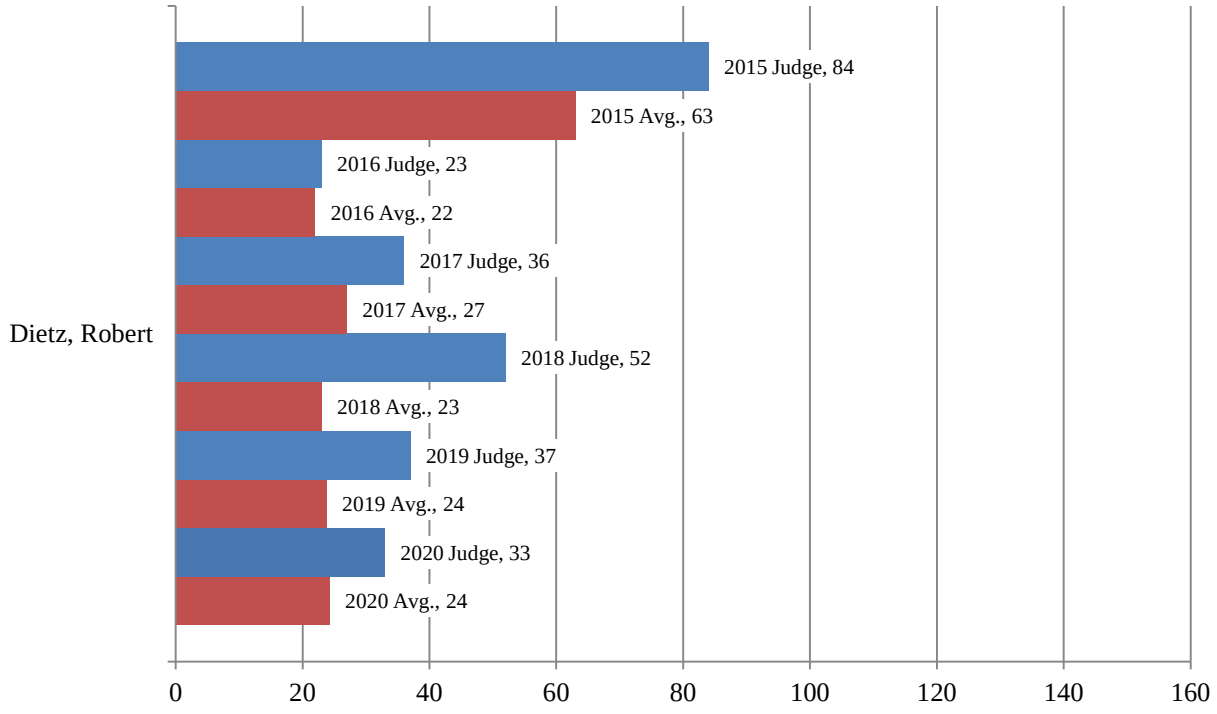
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



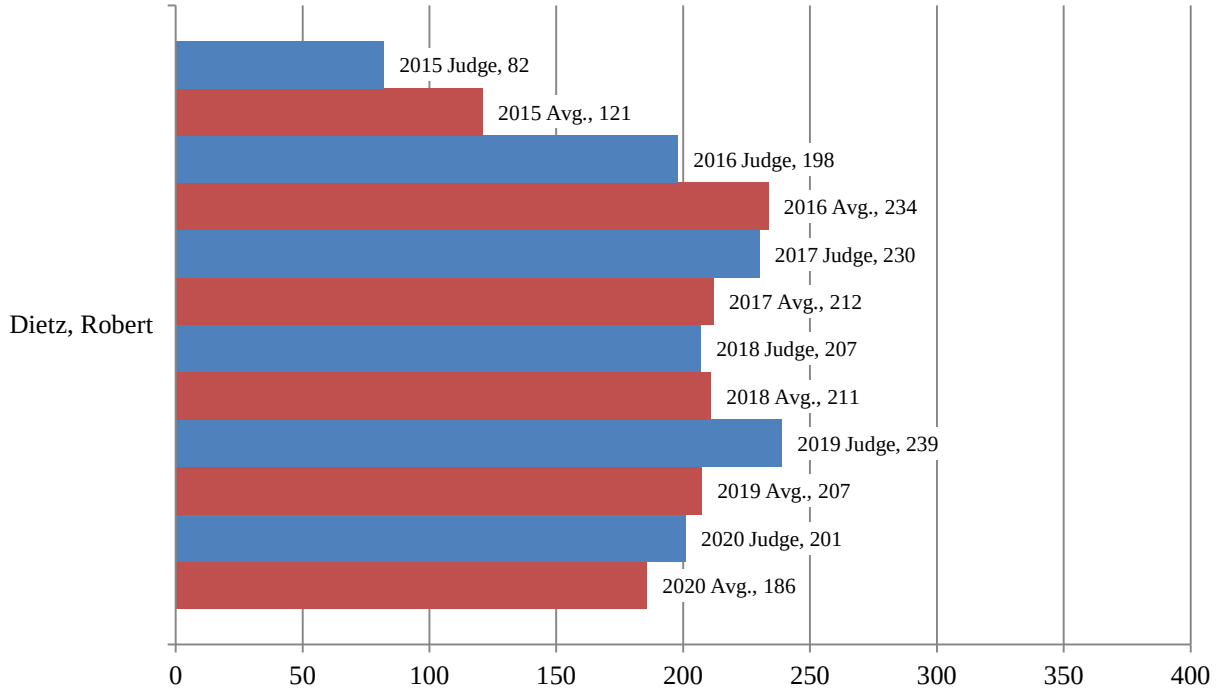
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



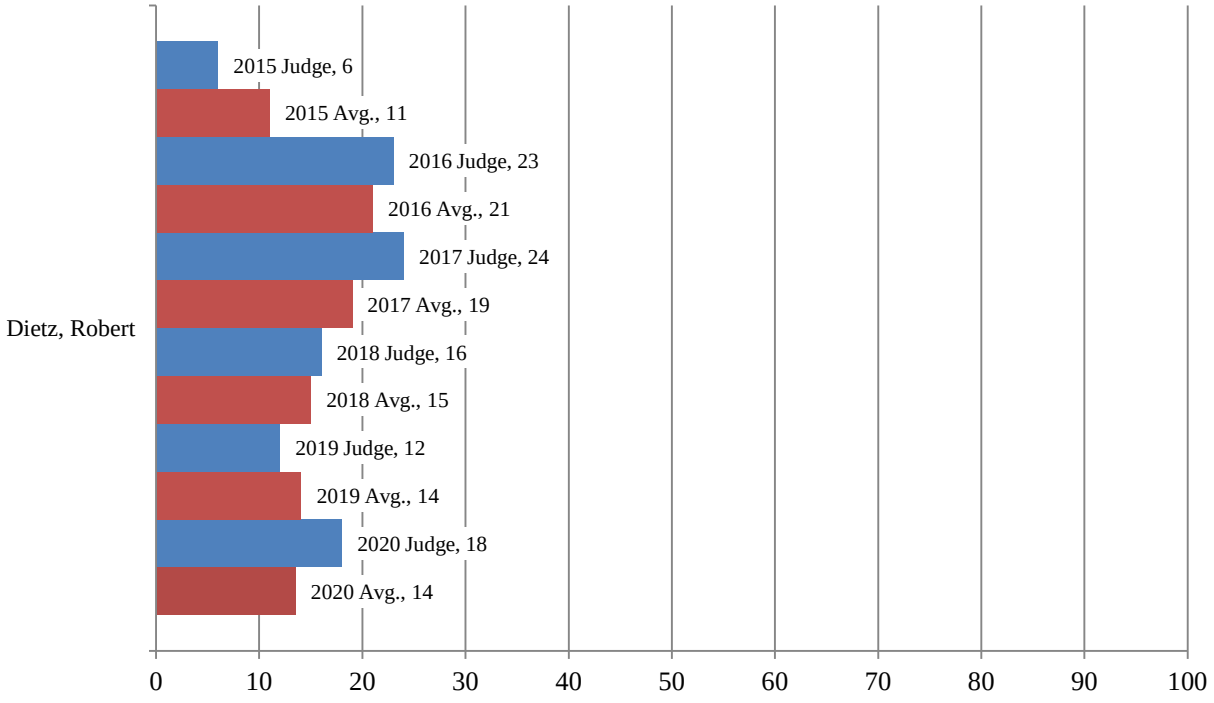
The following graph depicts the total volume of trial orders[239] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



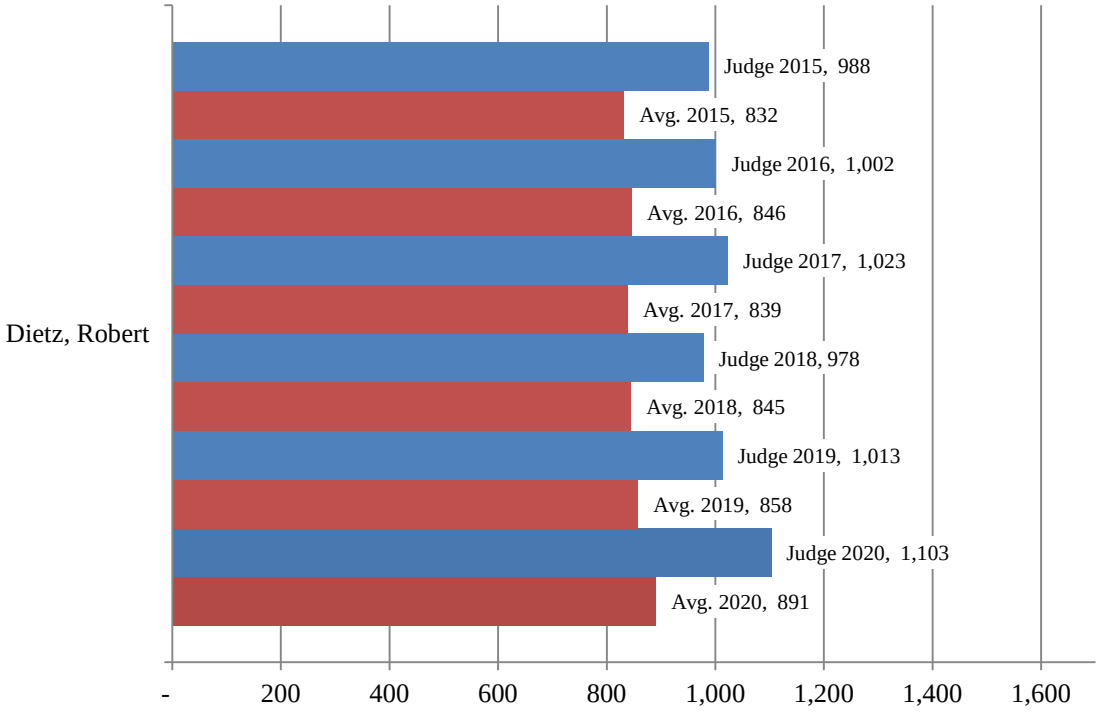
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



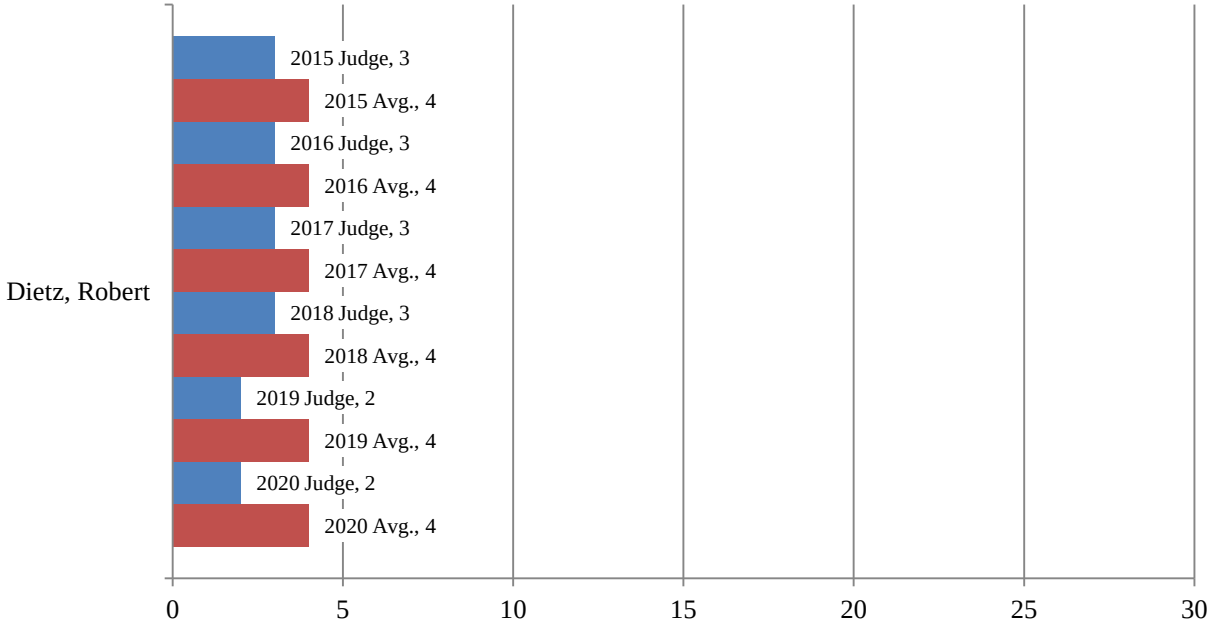
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



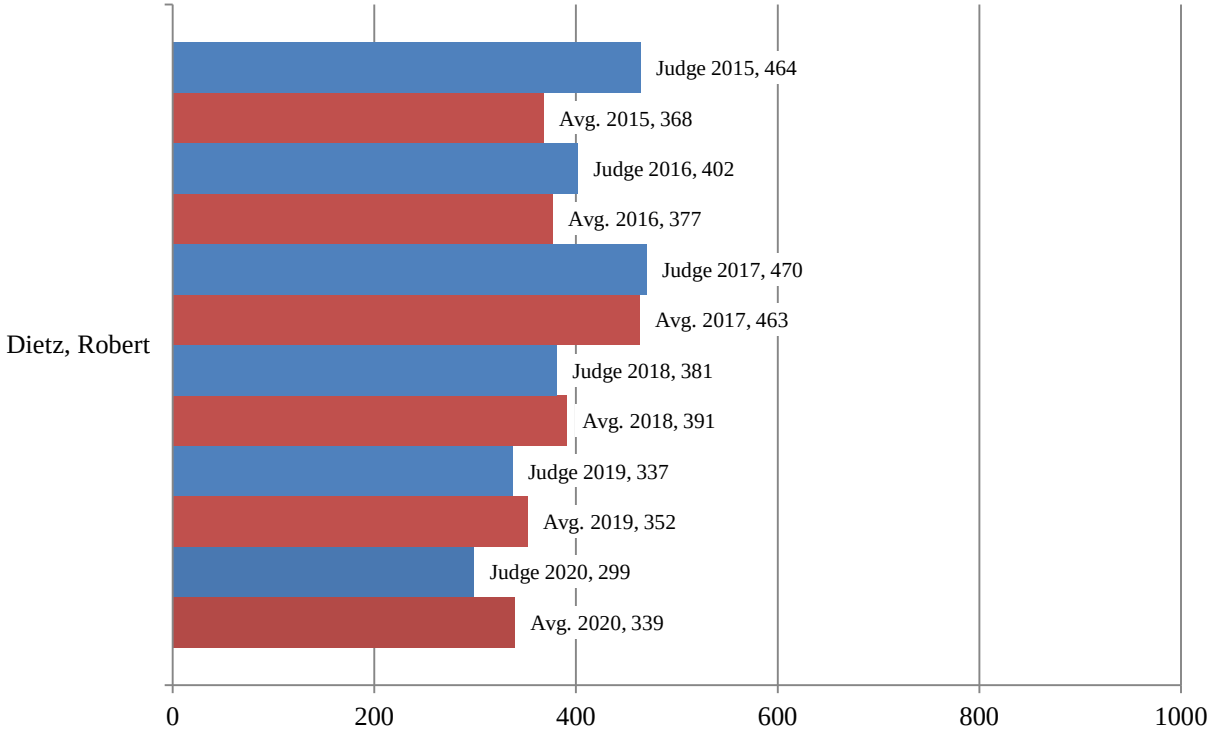
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



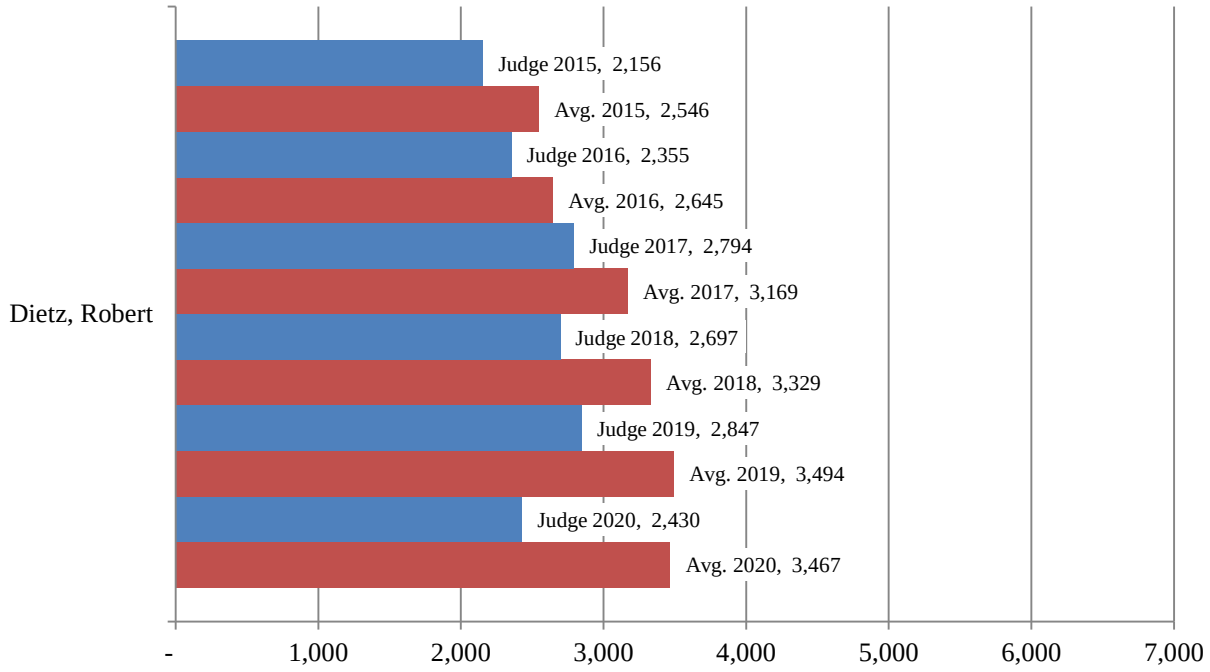
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



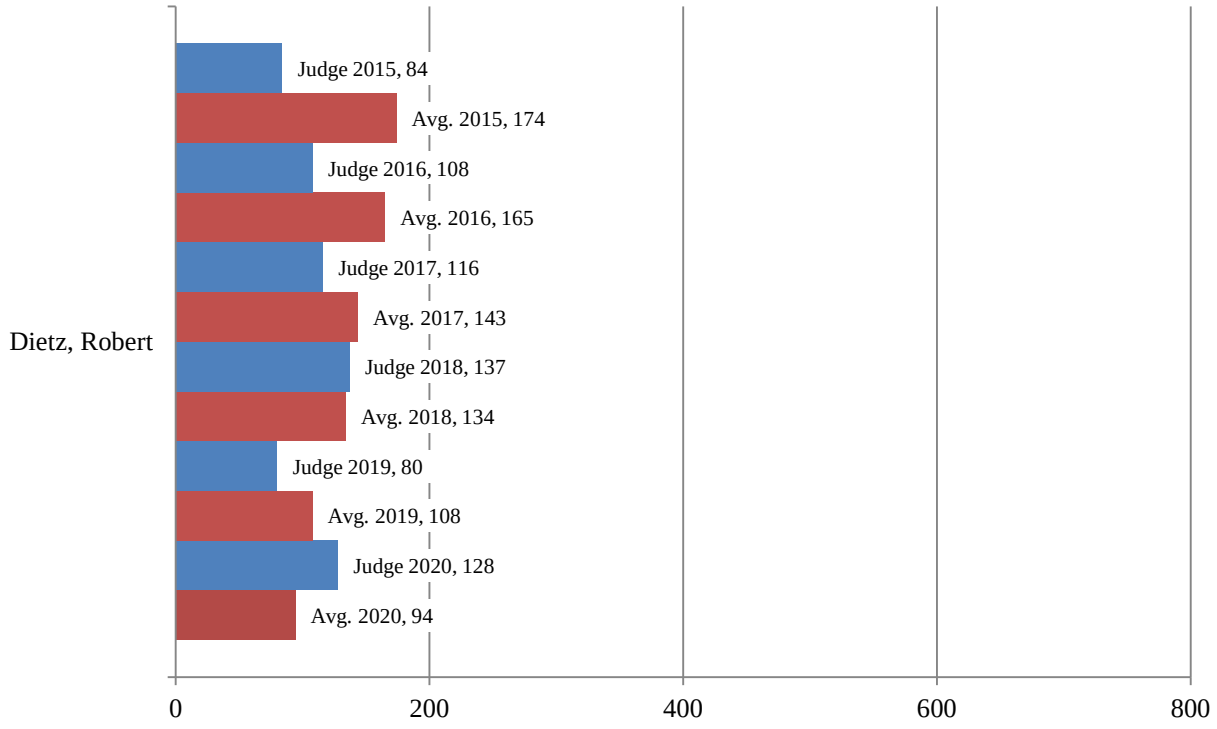
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



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

District MIA includes Dade County.

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.

“New case” volumes have consistently been below the statewide average in District Miami for the last eight 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, but that trend is moderating with several judges’ petition volume close to the statewide average. Prior to 2015-16, 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 in District TPA. This reduced the number of judges to which Miami practitioners were regularly exposed. That process continues currently.

Notably, the times to mediation, to trial, and to trial order are within the statutory parameters in all five Miami divisions again for 2019-20. The overall performance demonstrates consistency, persistence, and teamwork. The extent to which the judges and mediators in this, the largest of OJCC Districts, act in concert and cooperation is notable.

Judge Walter Havers is a member of the Richard A. Sicking Inn of Court and the National Association of Workers’ Compensation Judiciary. At the 74th Annual Workers' Compensation Institute Educational Conference in 2019, Judge Havers presented *Technology: Practical Advice in a Not So Practical World.*

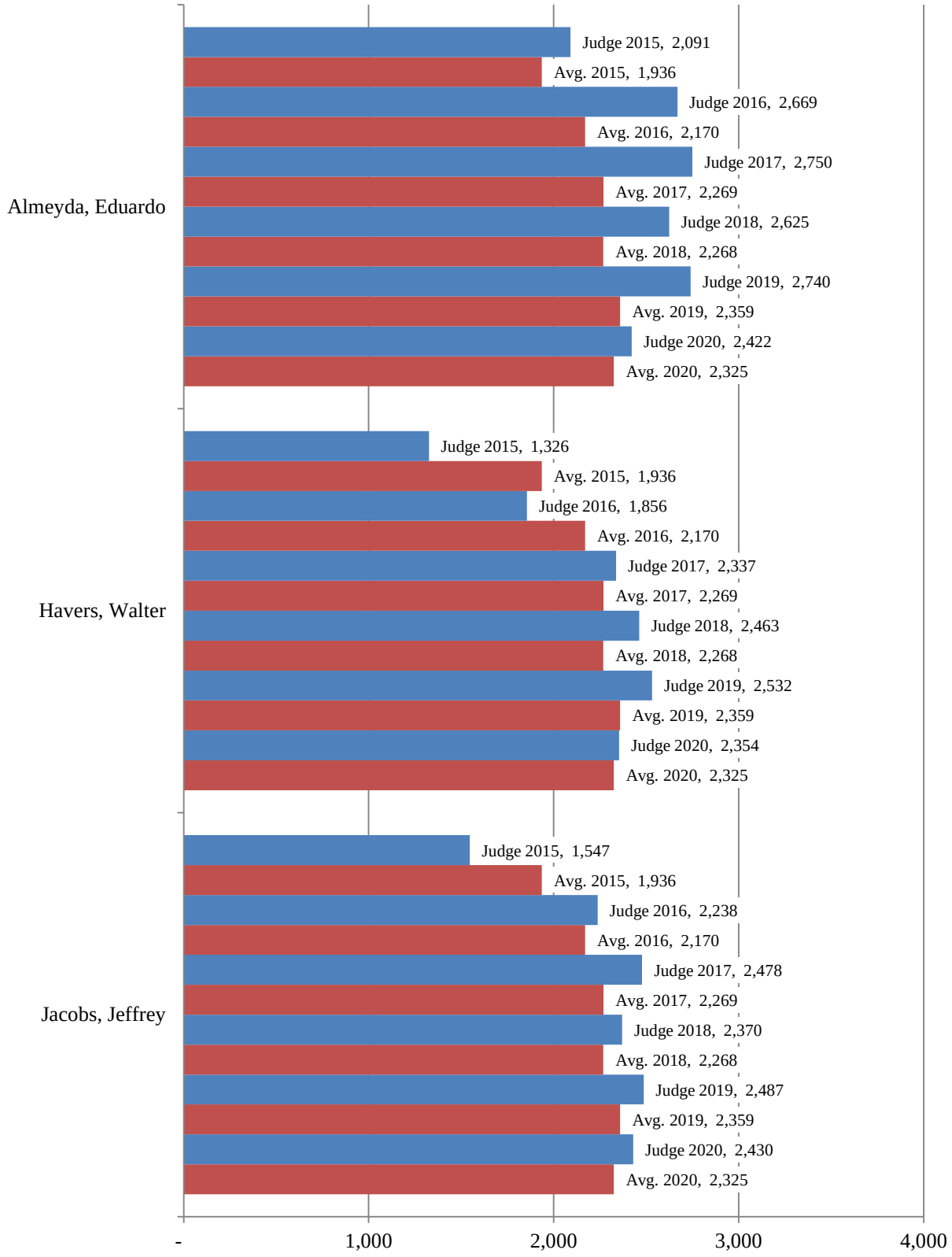
In August 2019 Judge Jacobs spoke on a panel with judges Newman, Stephenson, and Walker at the Workers’ Compensation Conference: Workers’ Compensation Practice from the Judicial Perspective.

In 2019-20, Judge Kerr was a presenter at the Florida Bar Workers’ Compensation Section Audio Webcast Seminar “Raising Objections Properly: When, Where and How.” Judge Kerr currently serves as President of the Richard A. Sicking Inn of Court, on the committee developing the Division of Administrative Hearings Second Friday CLE seminars for the Judges of Compensation Claims and as Secretary of the Conference of JCCs. In addition to her judicial duties, she currently serves as Secretary on the Executive Board for the nonprofit Ukulele Kids Club and is co-chair of the North American Advisory Board for Kingswood School, U.K.

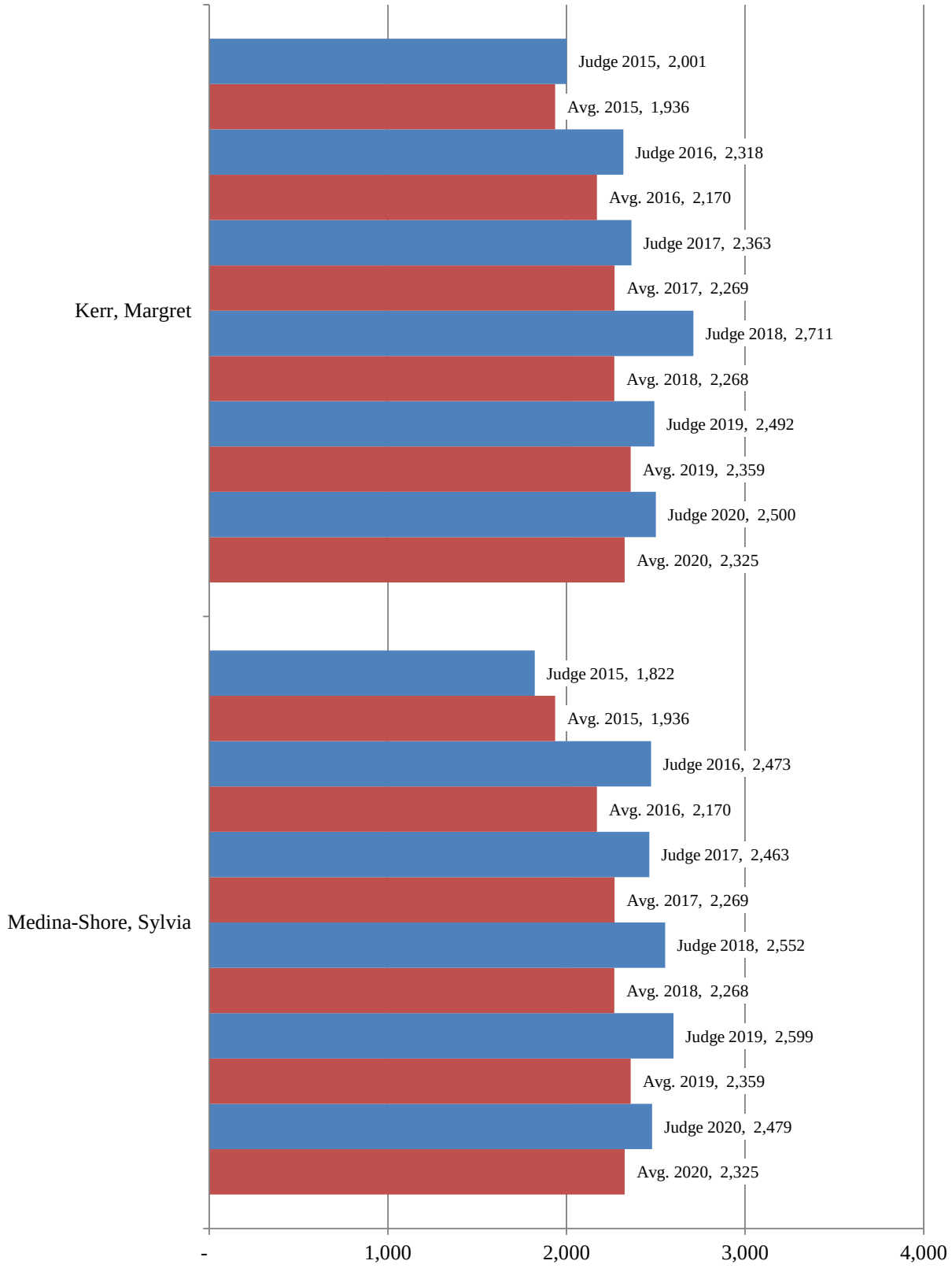
Judge Medina-Shore has been adjudicating workers’ compensation claims for 20 years. She continues to serve as the Administrative Judge for the Miami office, which role she has held for the last 14 years. Judge Medina-Shore oversees the daily operations of the Miami office and its 28 employees. She served as the President of the Conference of JCCs facilitating discussions on issues relating to workers’ compensation, the OJCC, and individual judges. She also lectured on workers’ compensation law at Florida International University.

[Space intentionally blank]

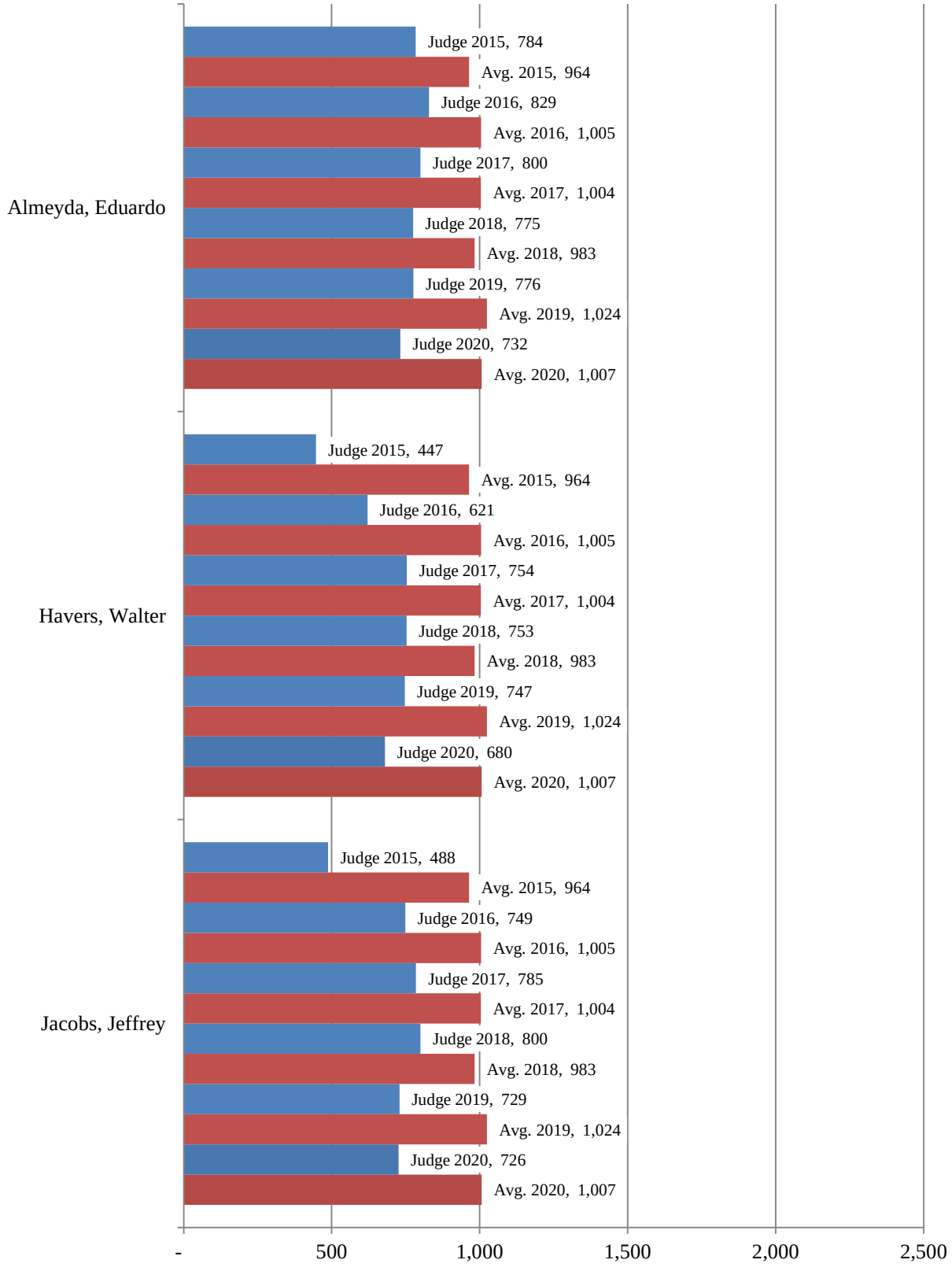
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



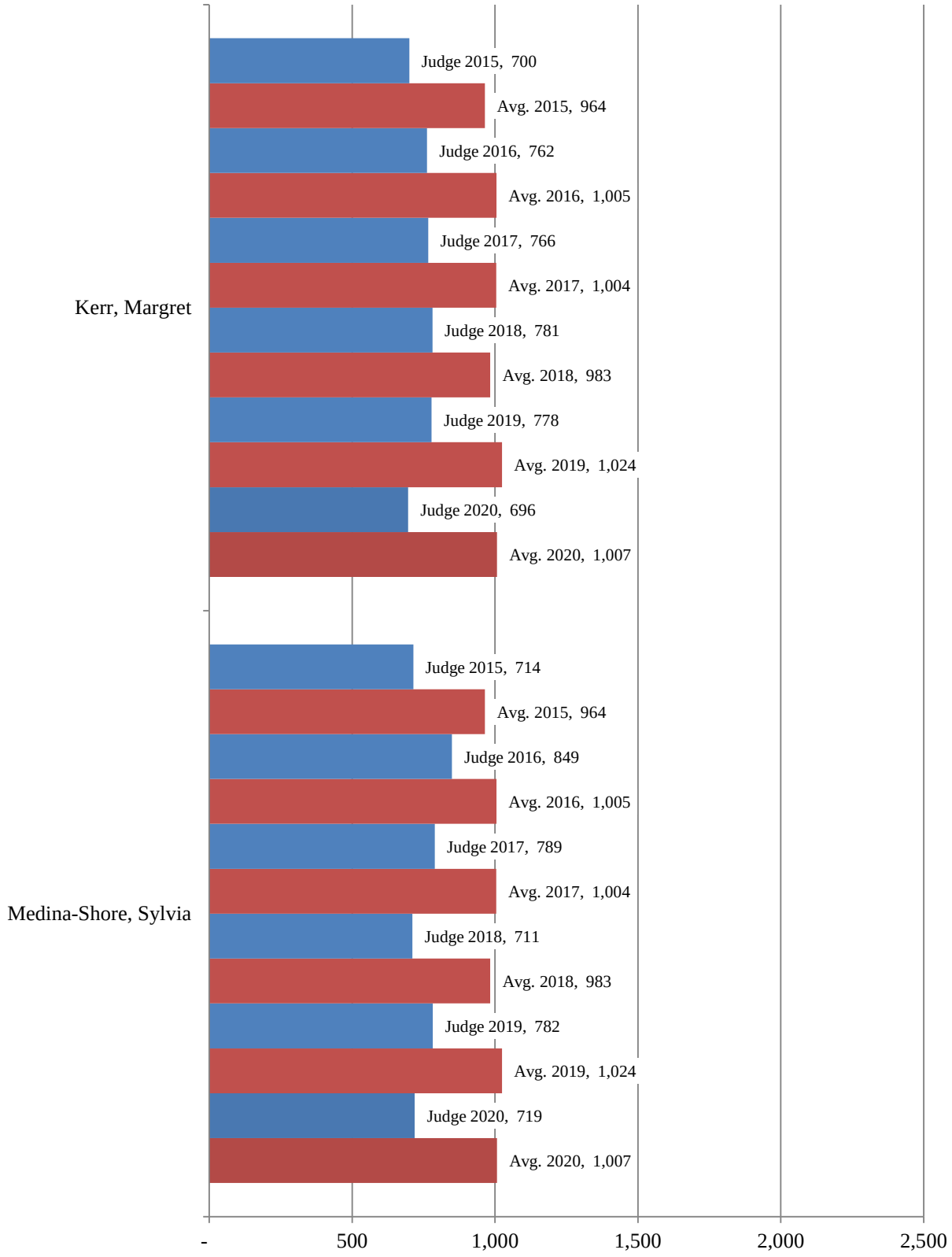
(Continued) The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



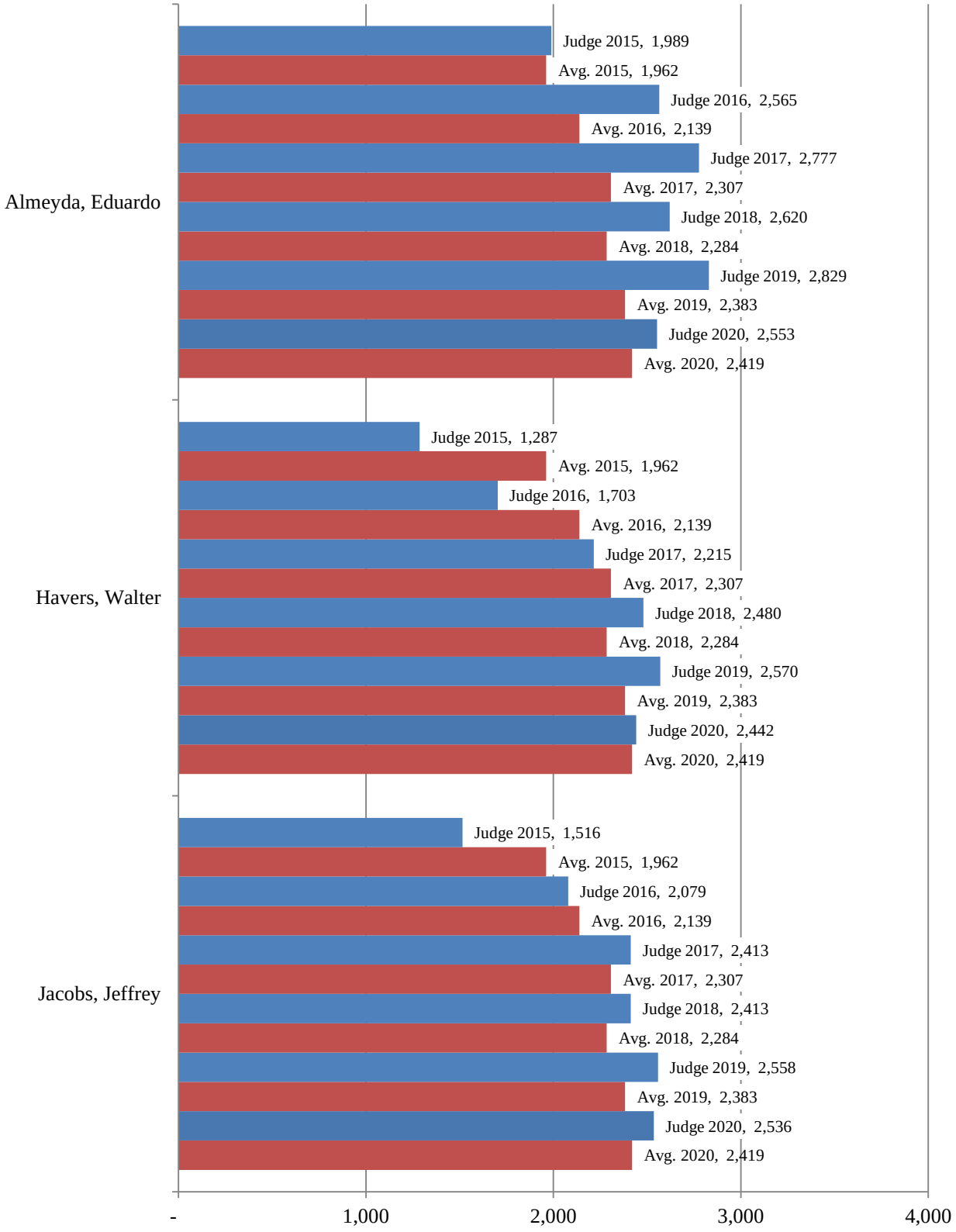
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



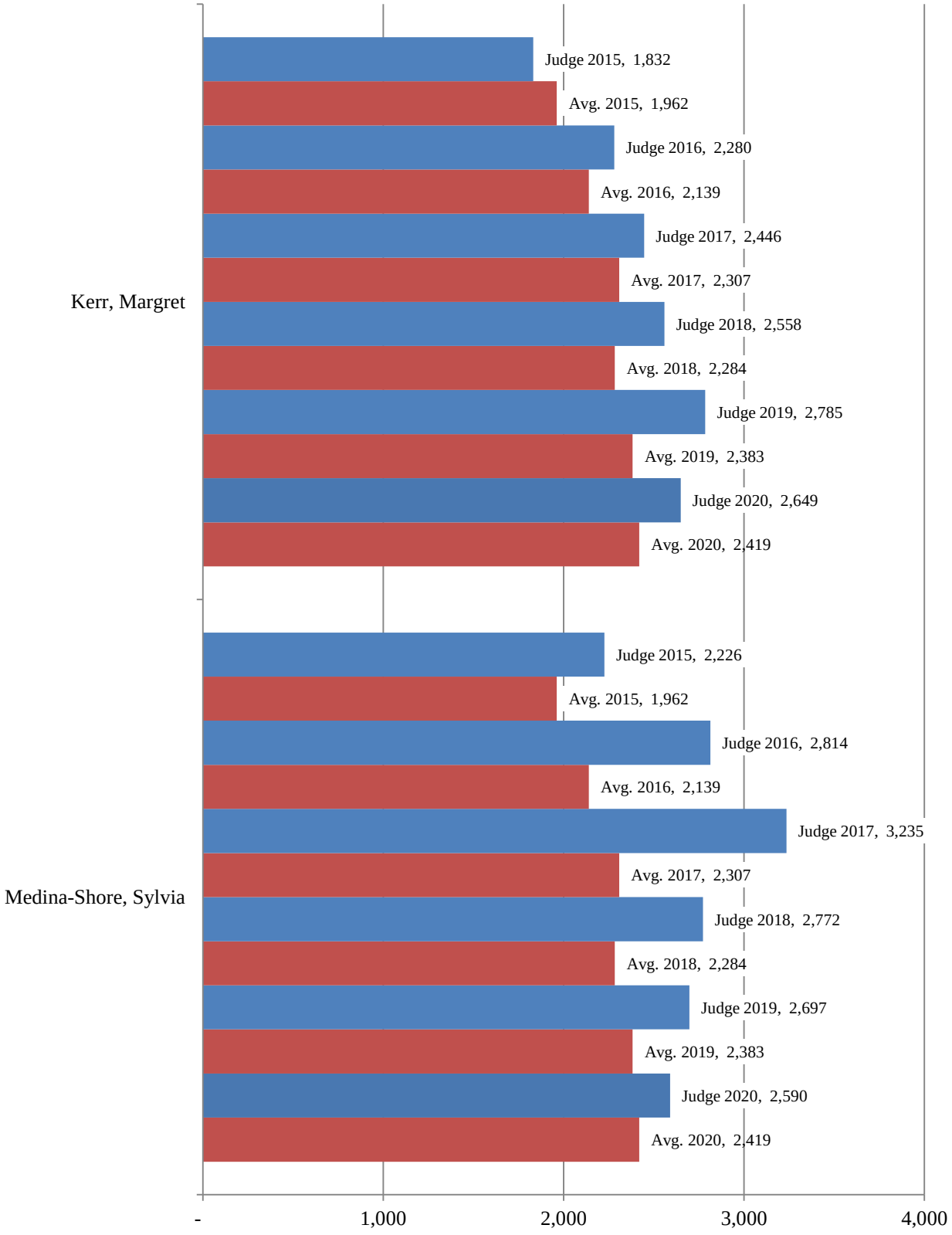
(Continued) The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



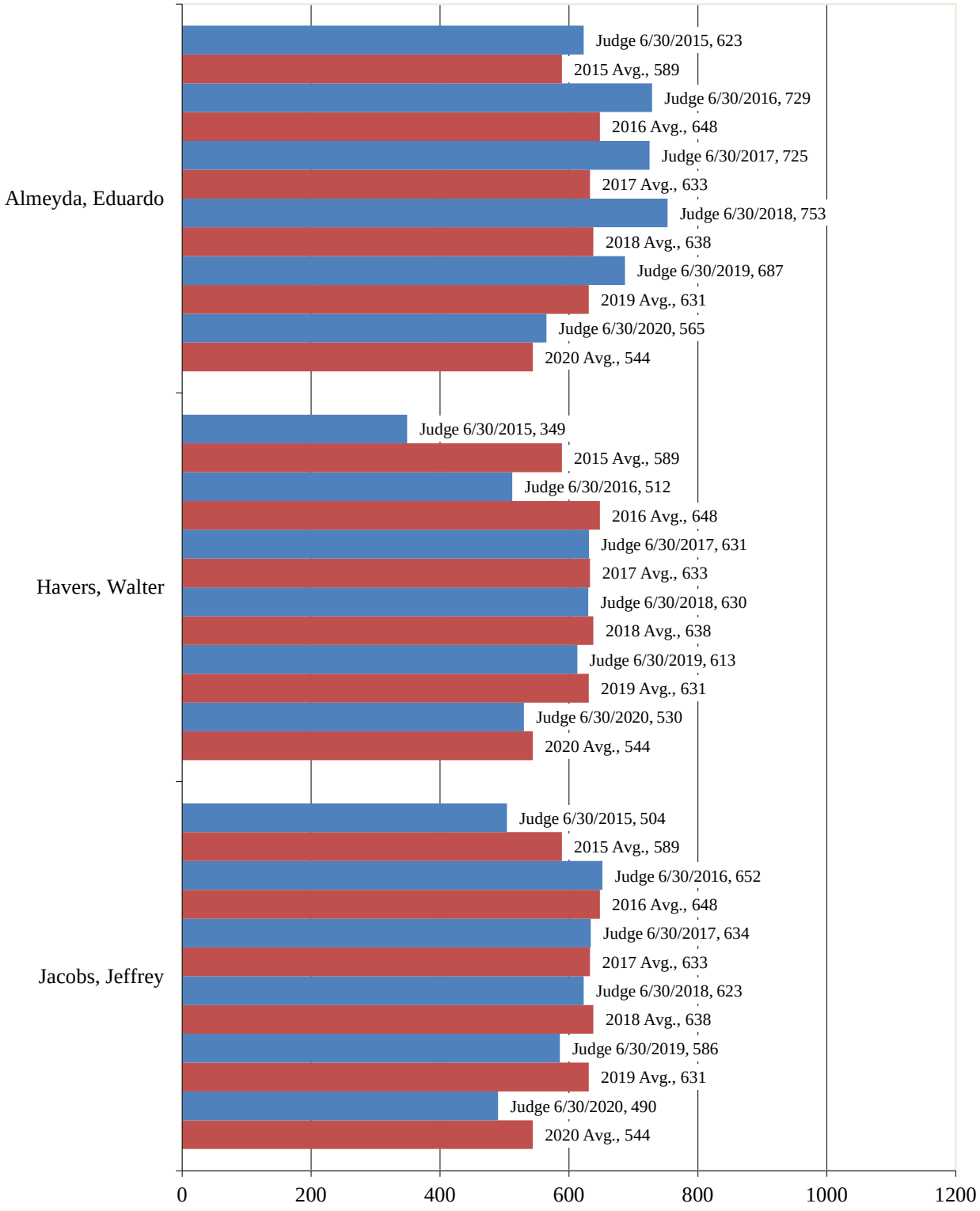
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



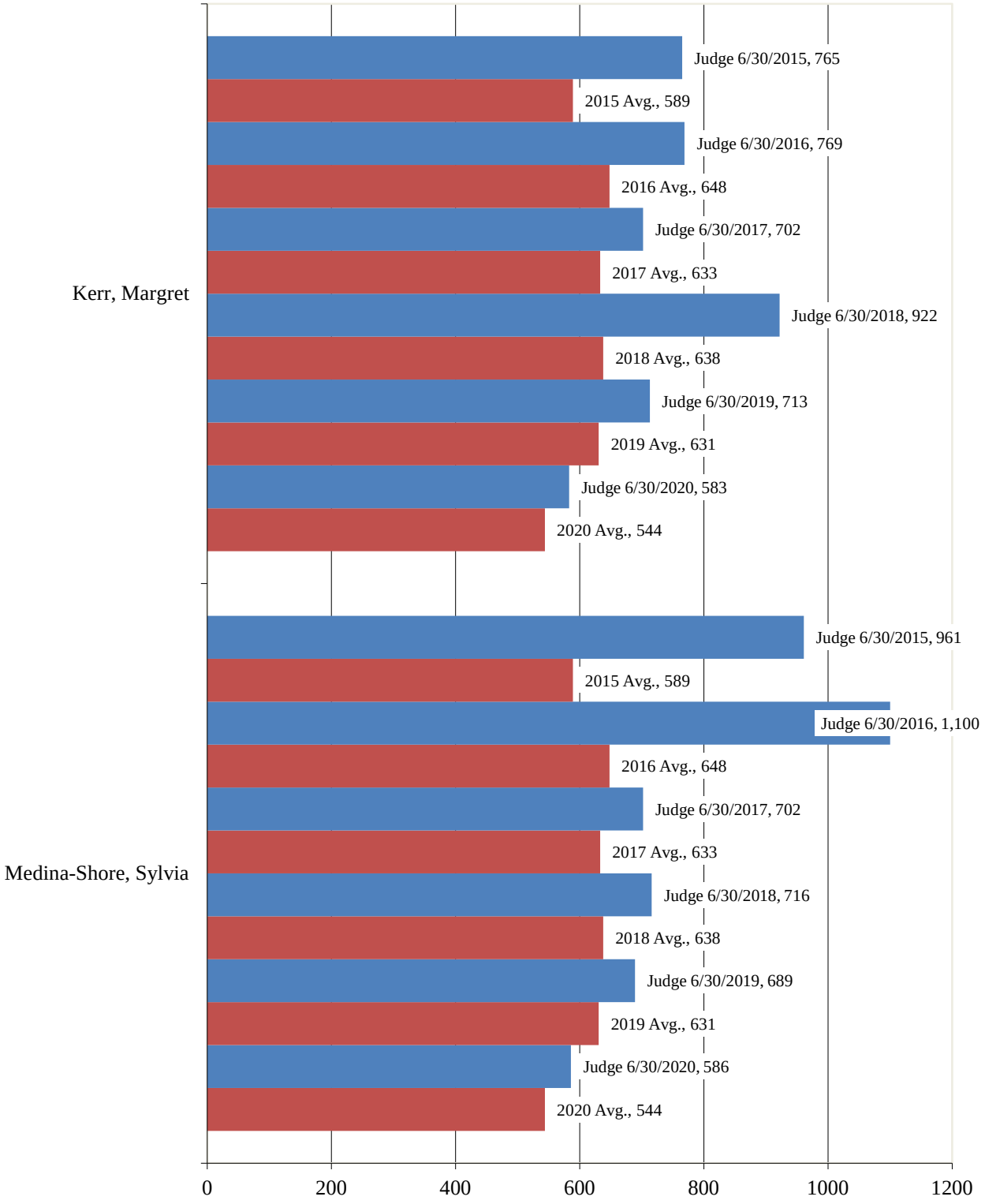
(Continued) The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



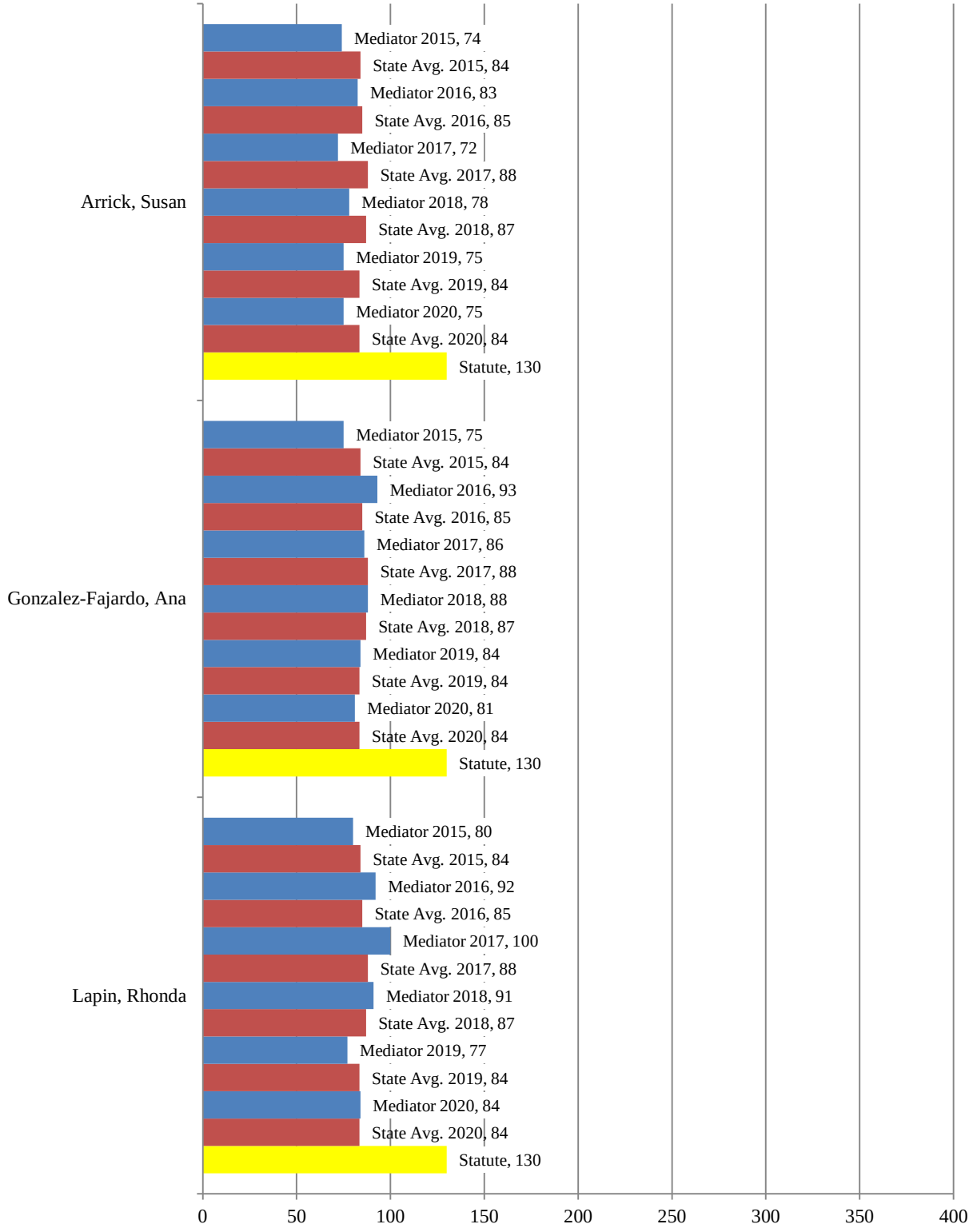
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



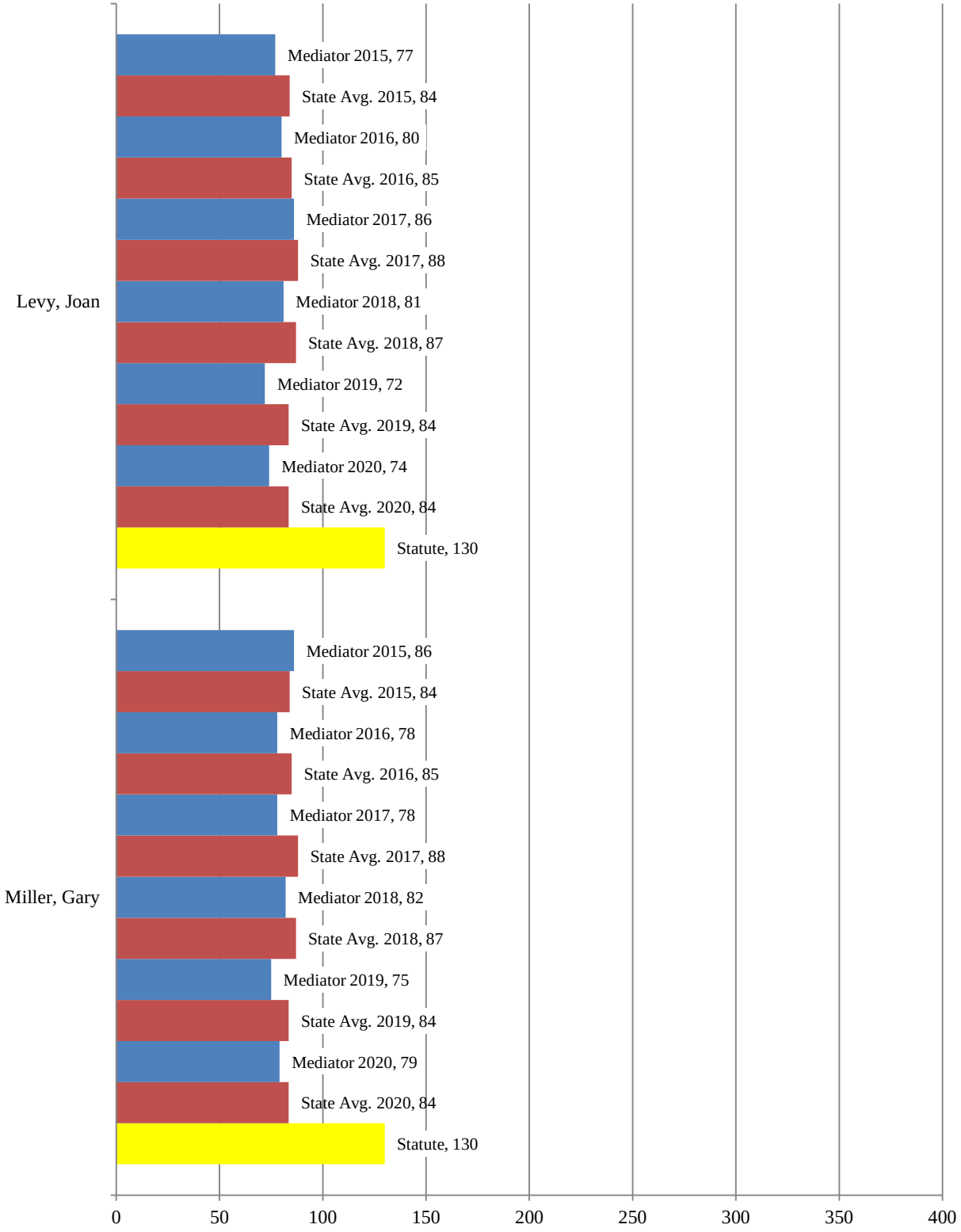
(Continued) The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



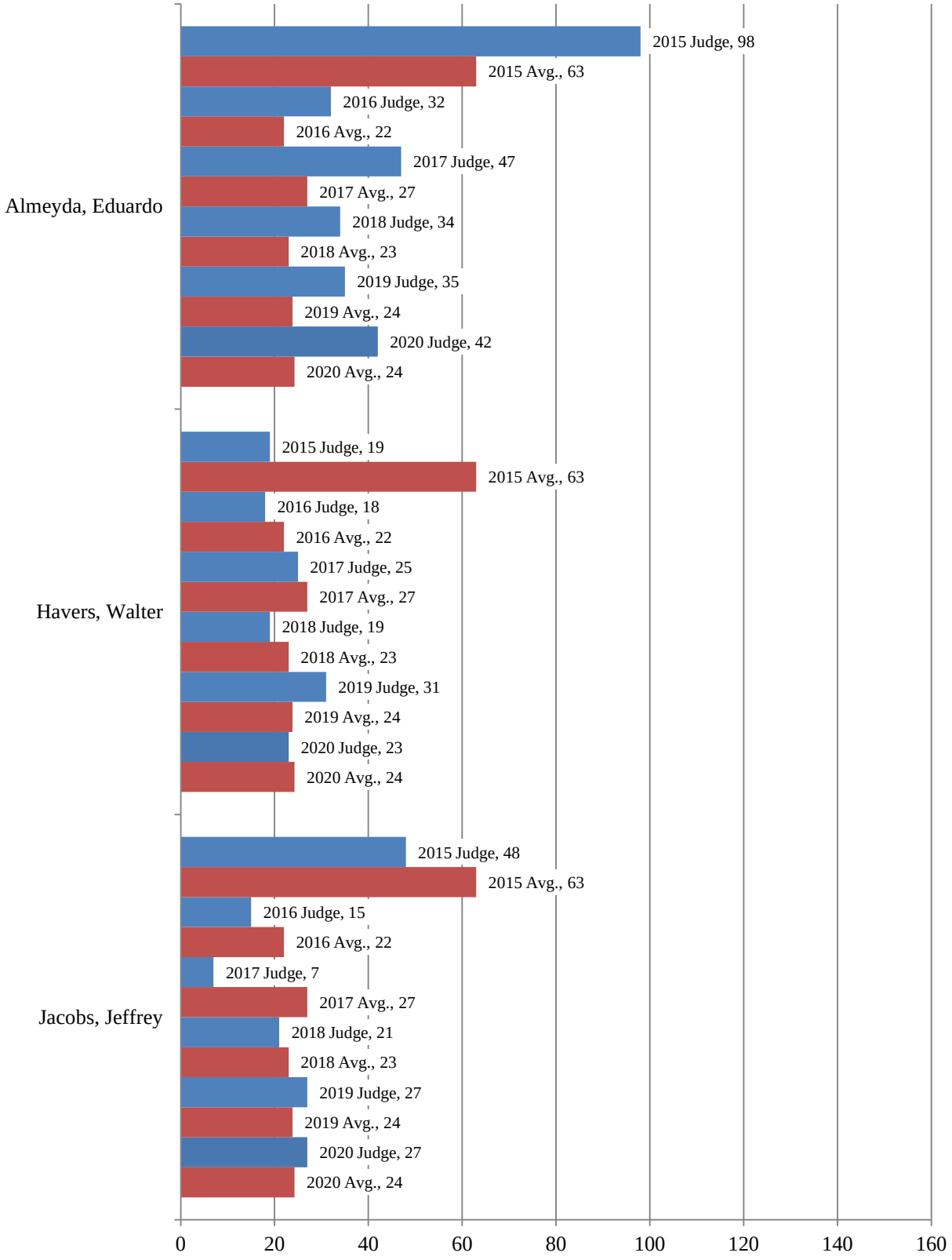
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



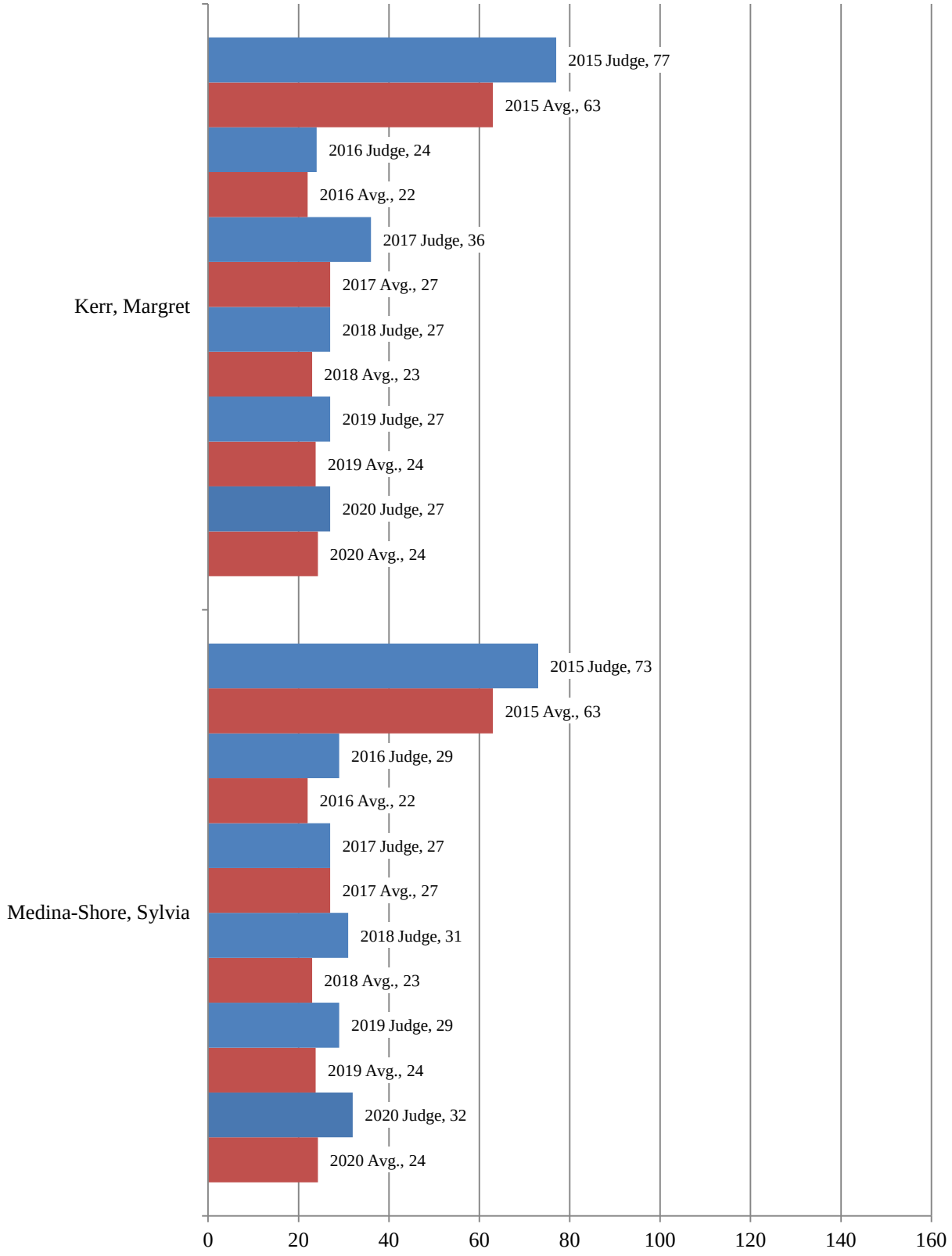
(Continued) The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



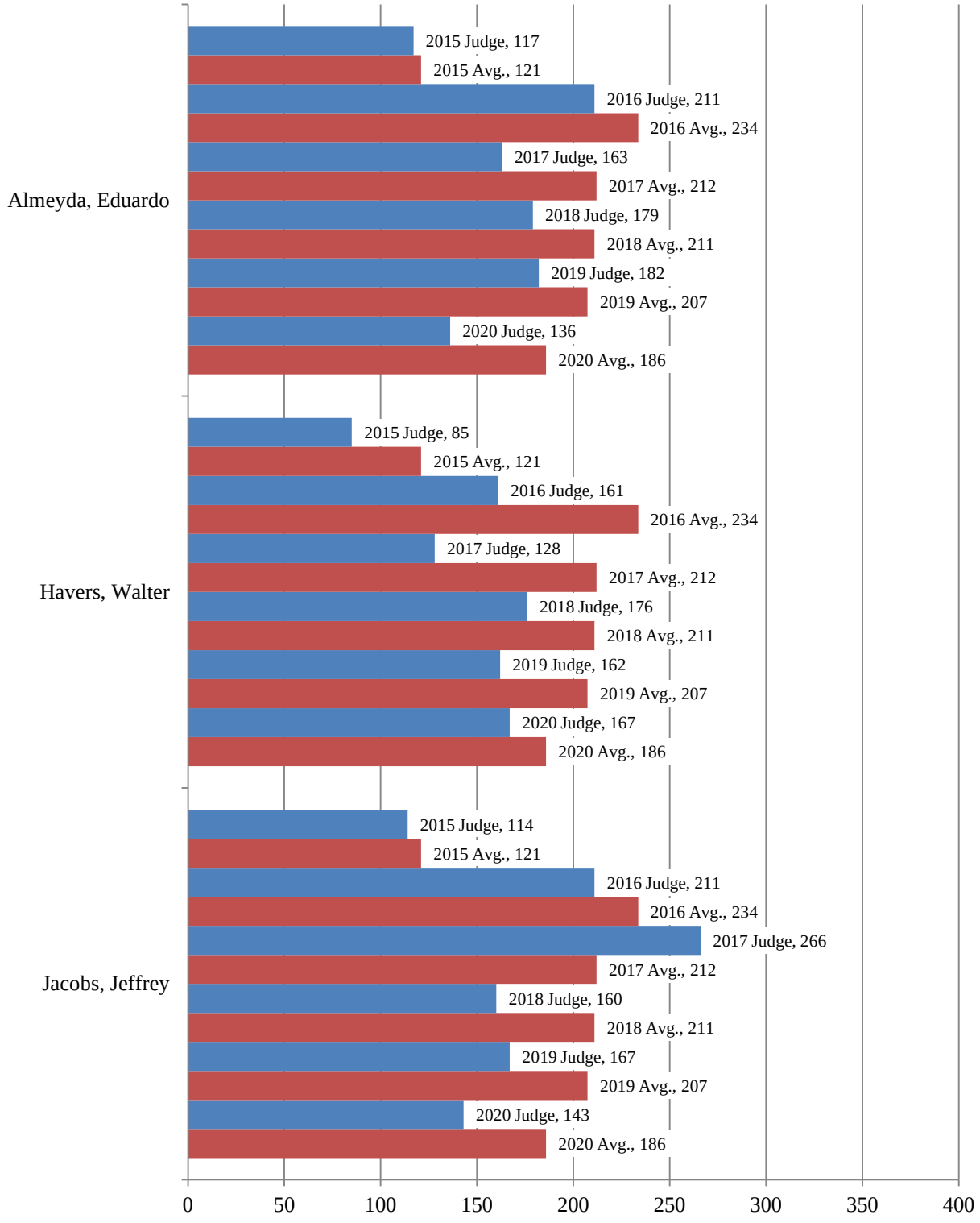
The following graph depicts the total volume of trial orders[240] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



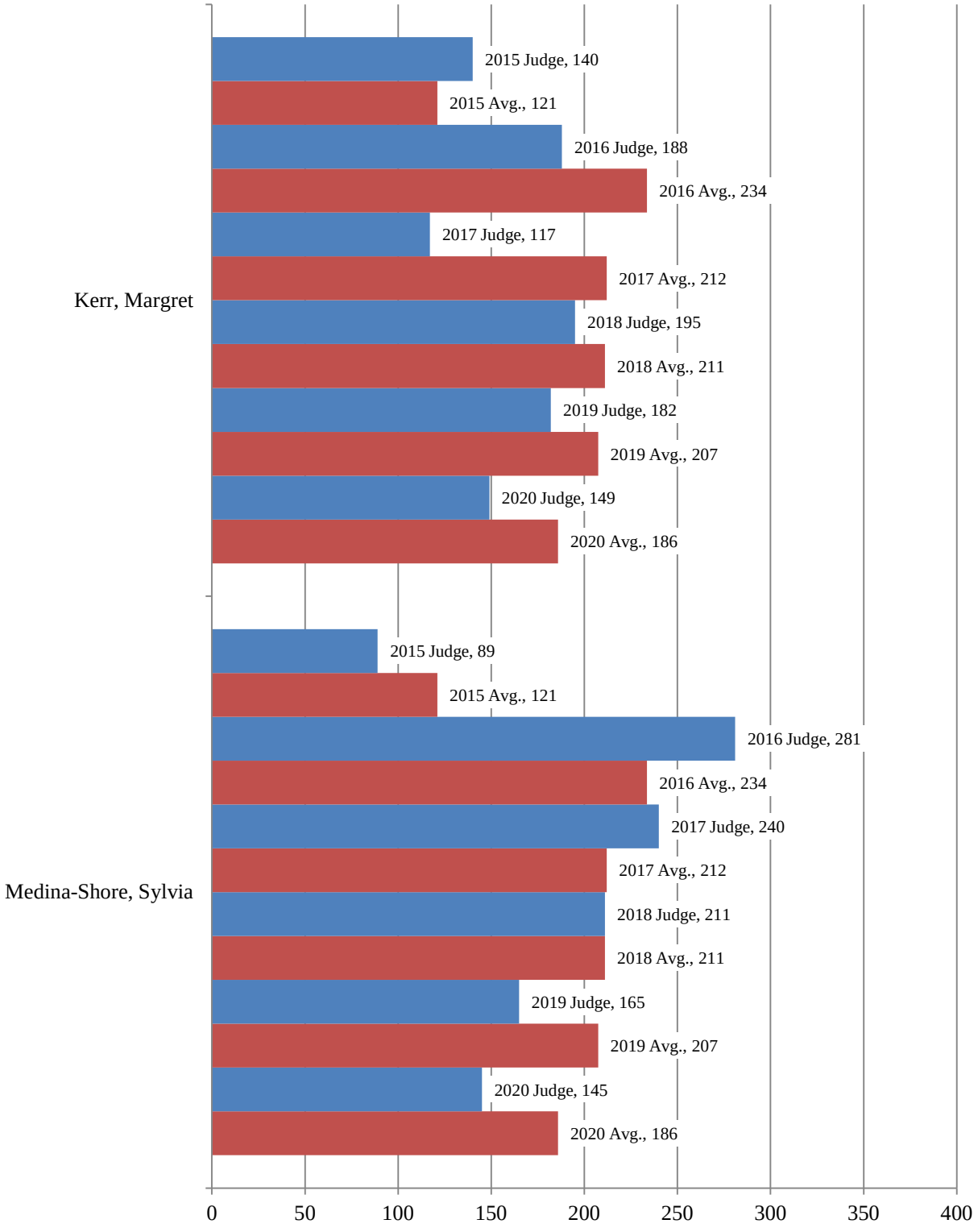
(Continued) The following graph depicts the total volume of trial orders[241] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



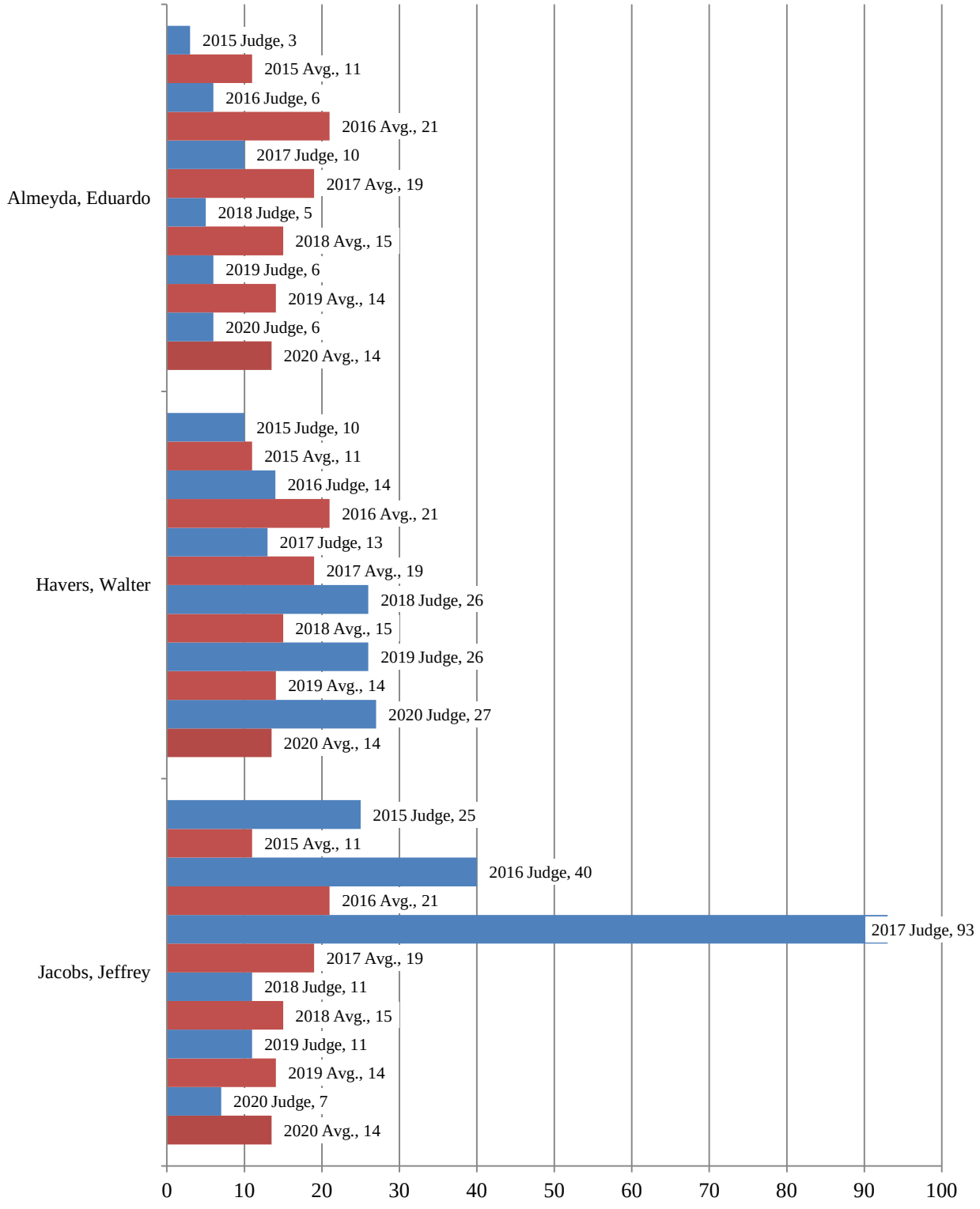
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



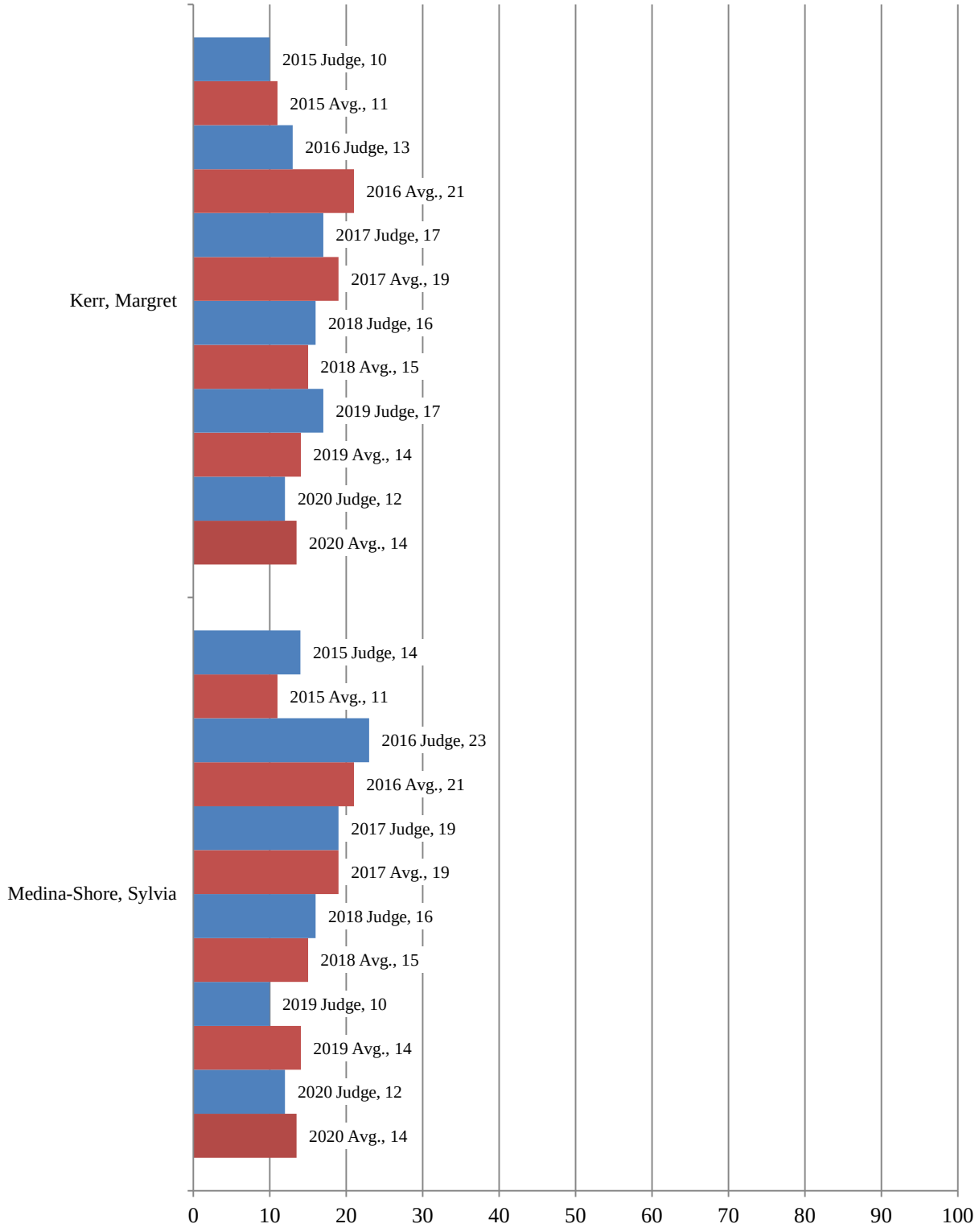
(Continued) The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



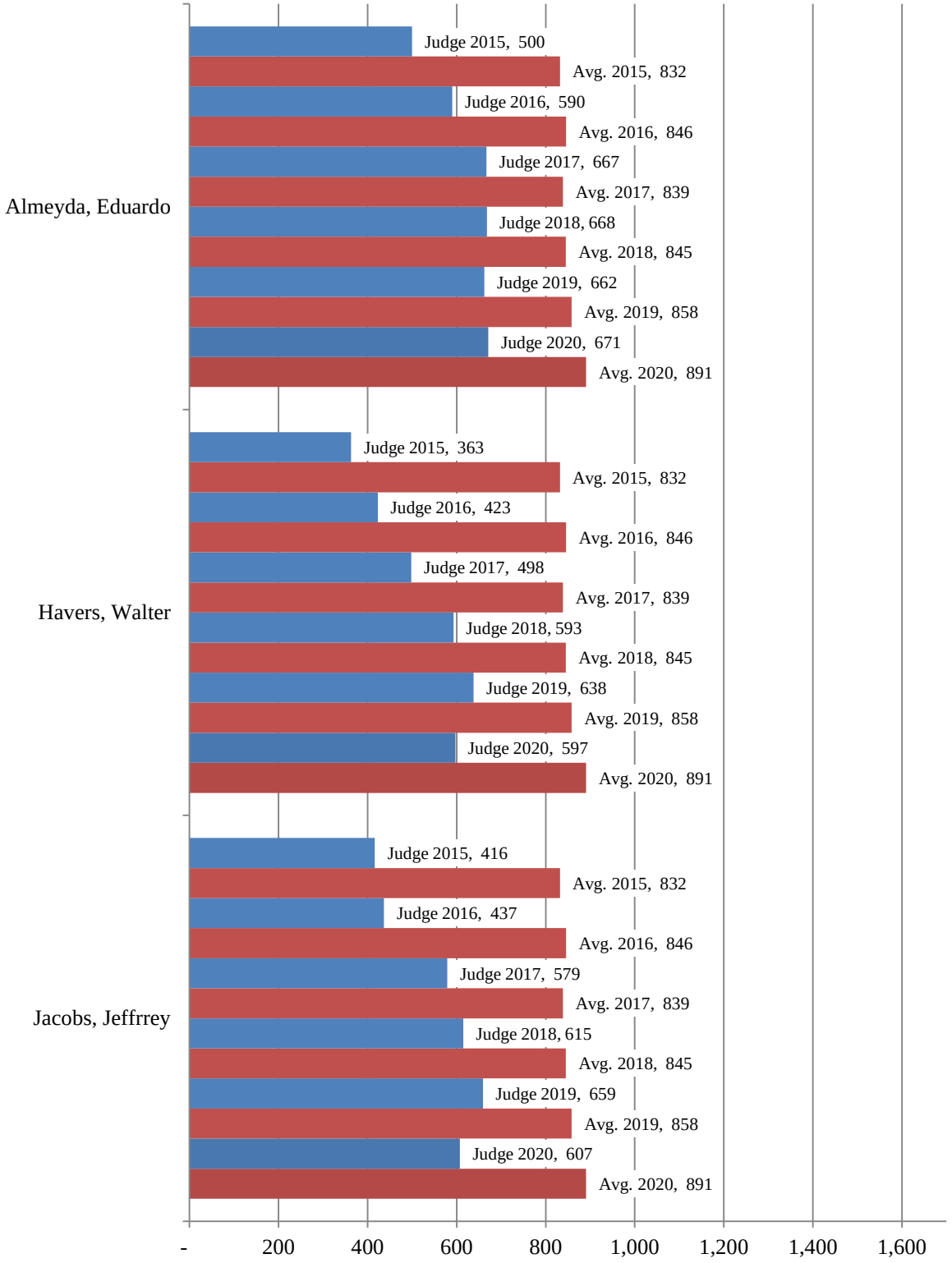
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



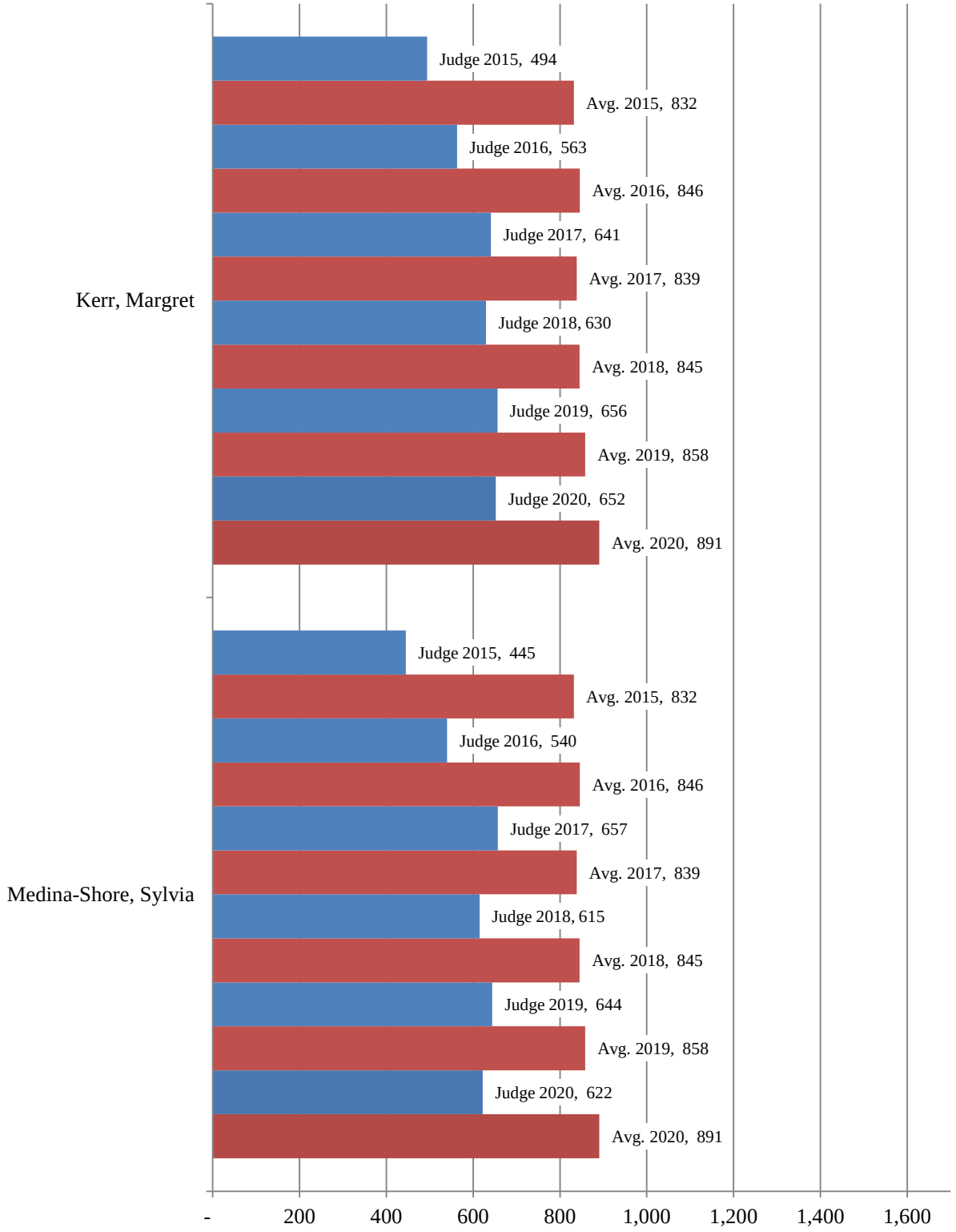
(Continued) The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



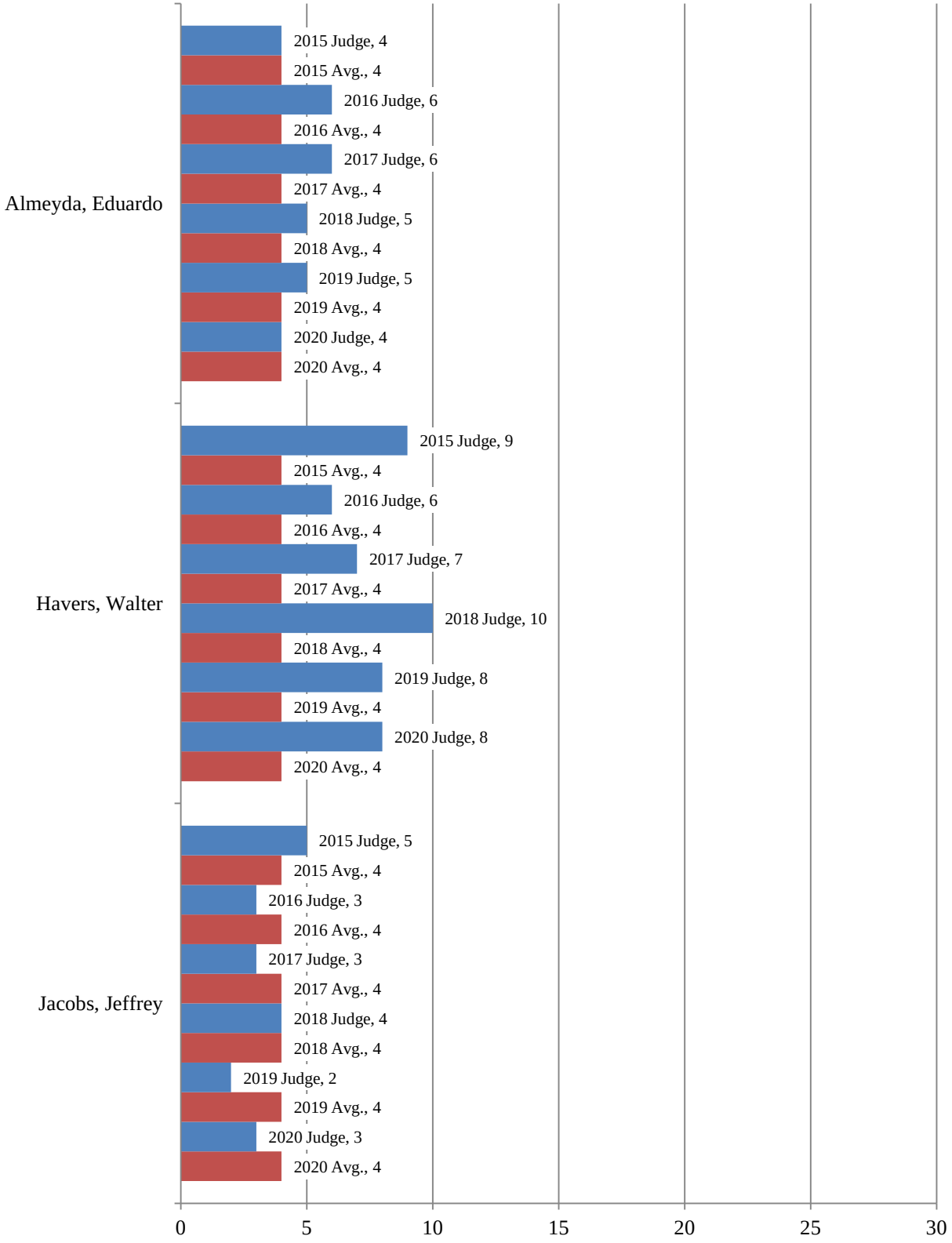
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



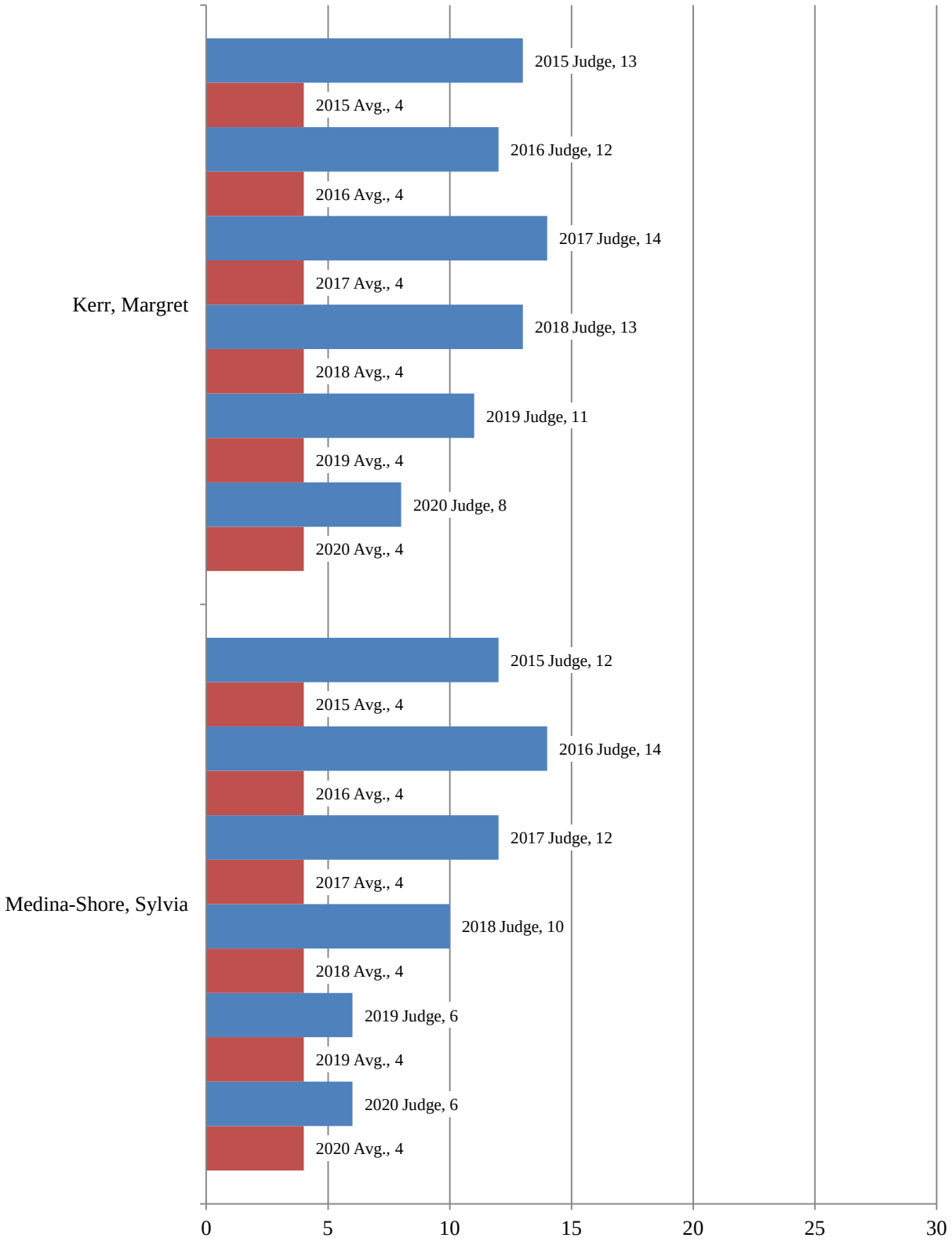
(Continued) The following depicts the volume of settlement orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



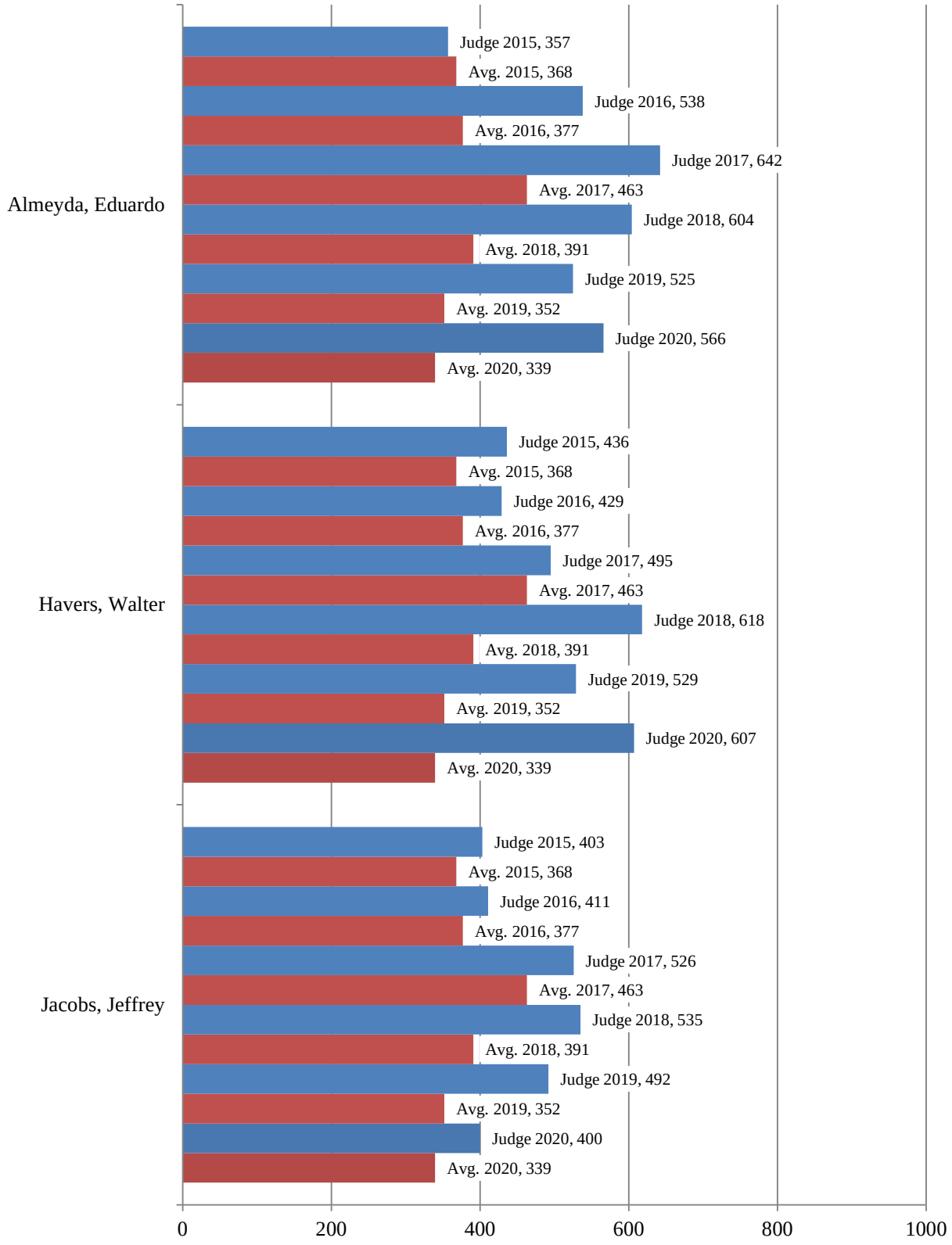
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



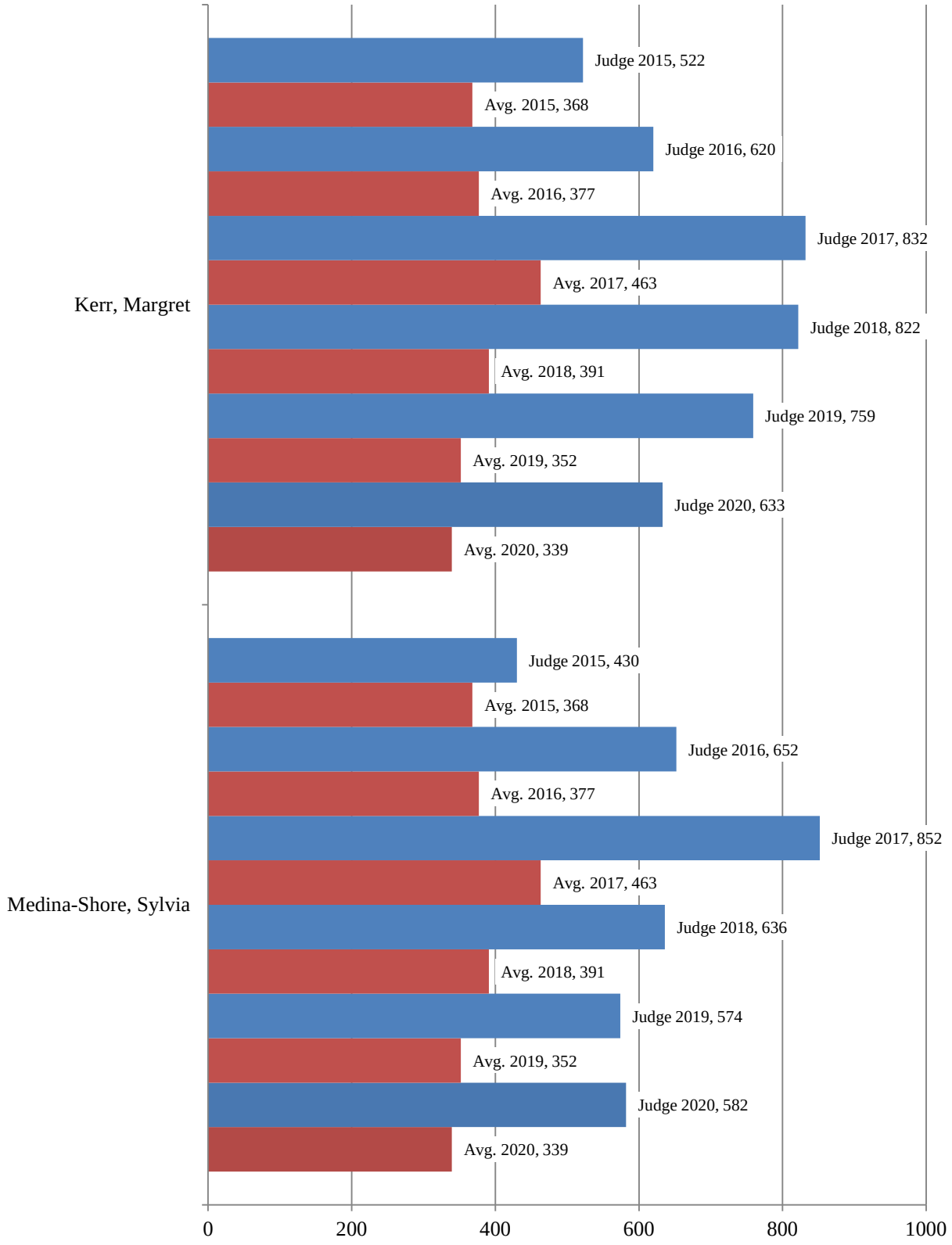
(Continued) The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



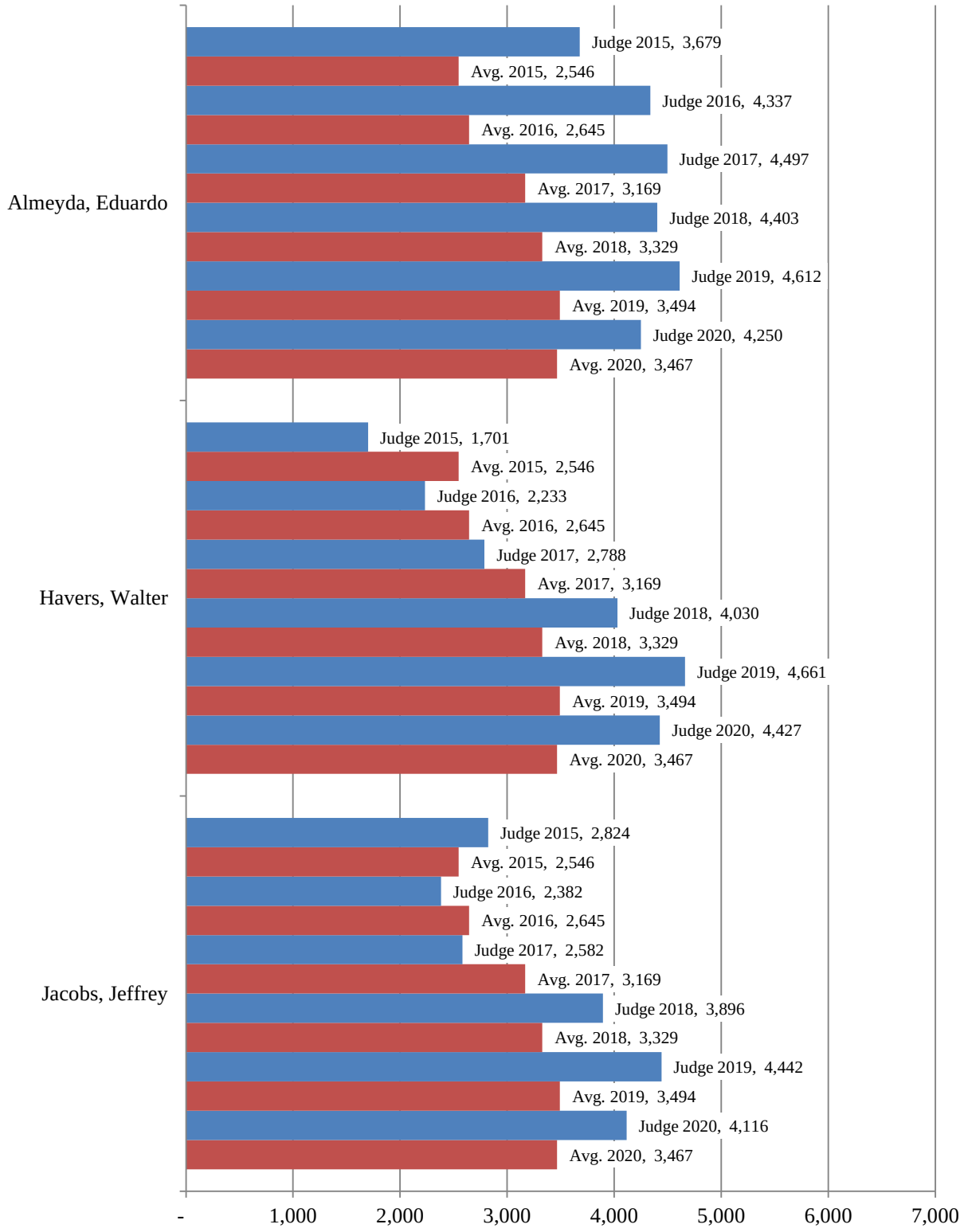
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



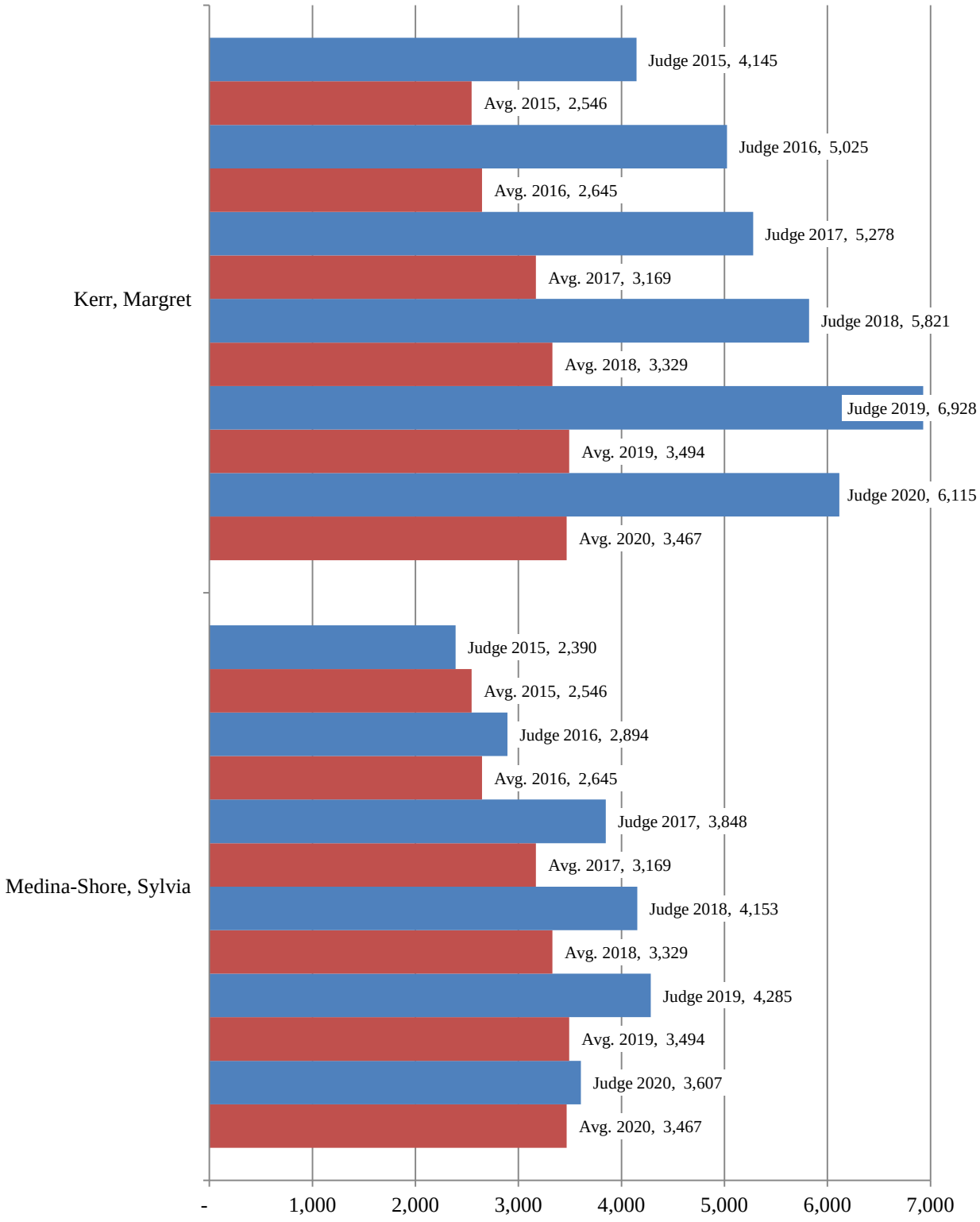
(Continued) The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.

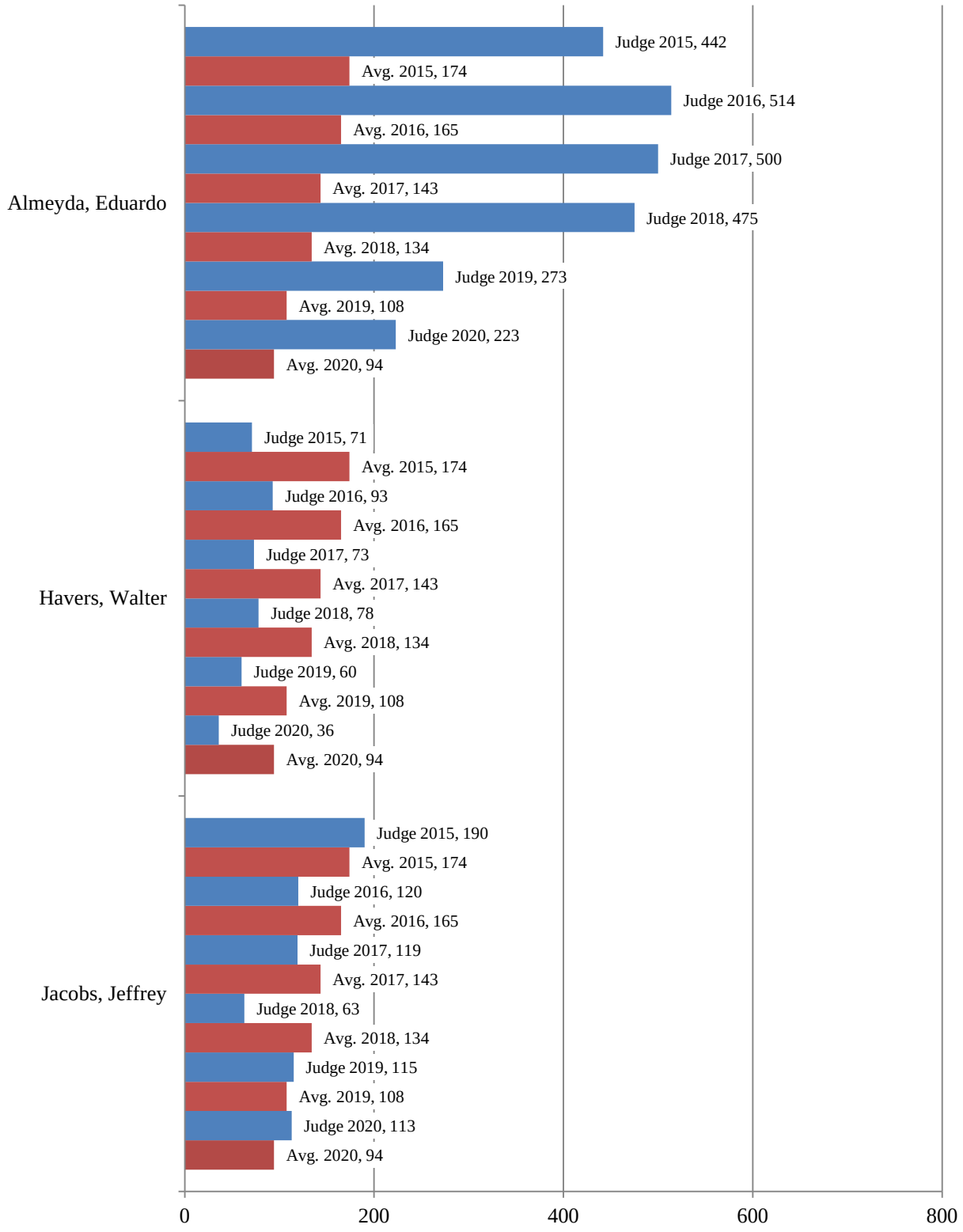


(Continued) The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count

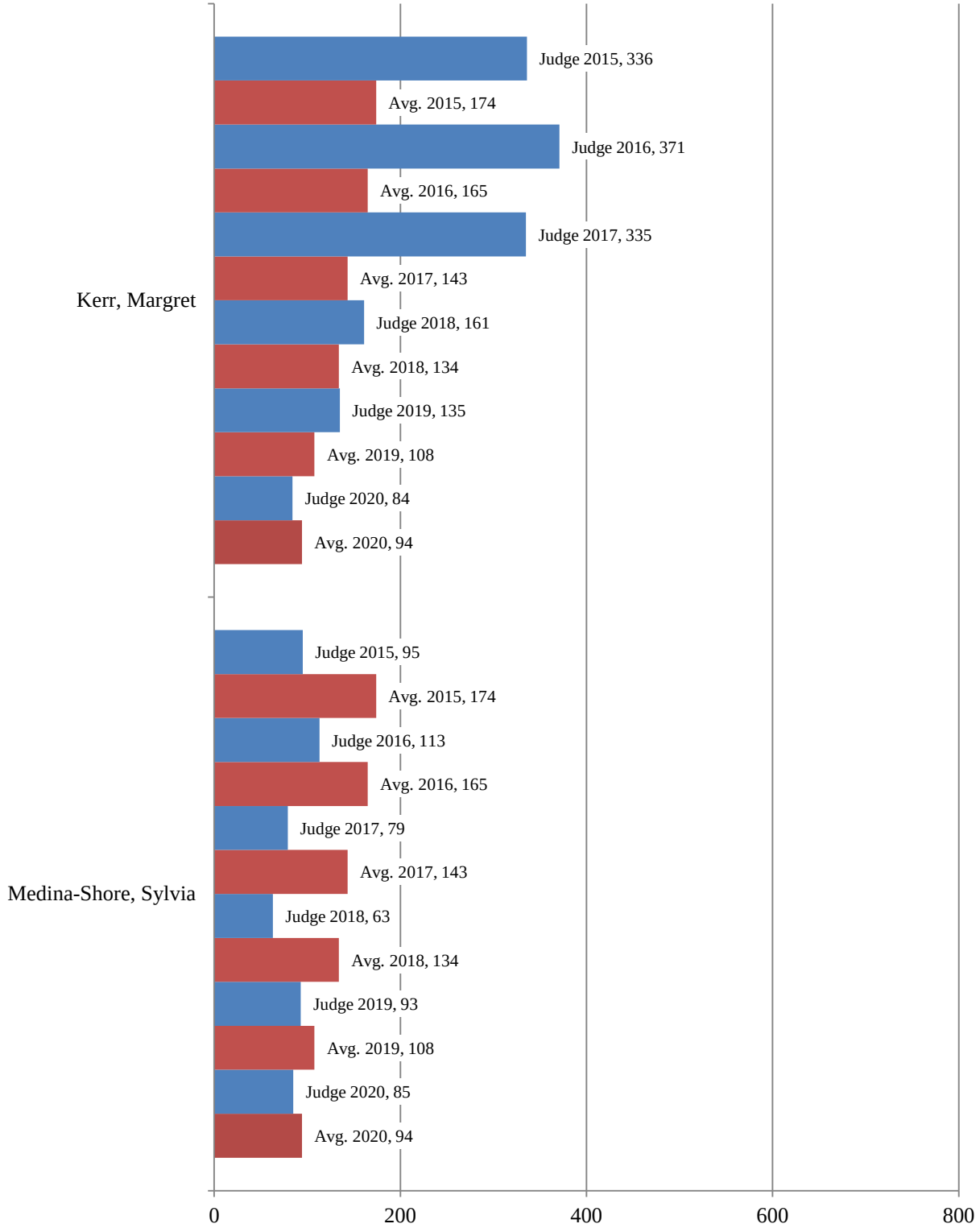


.

The following depicts the volume of "other" (meaning not trials) hearings recorded as "held" by each judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. 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.

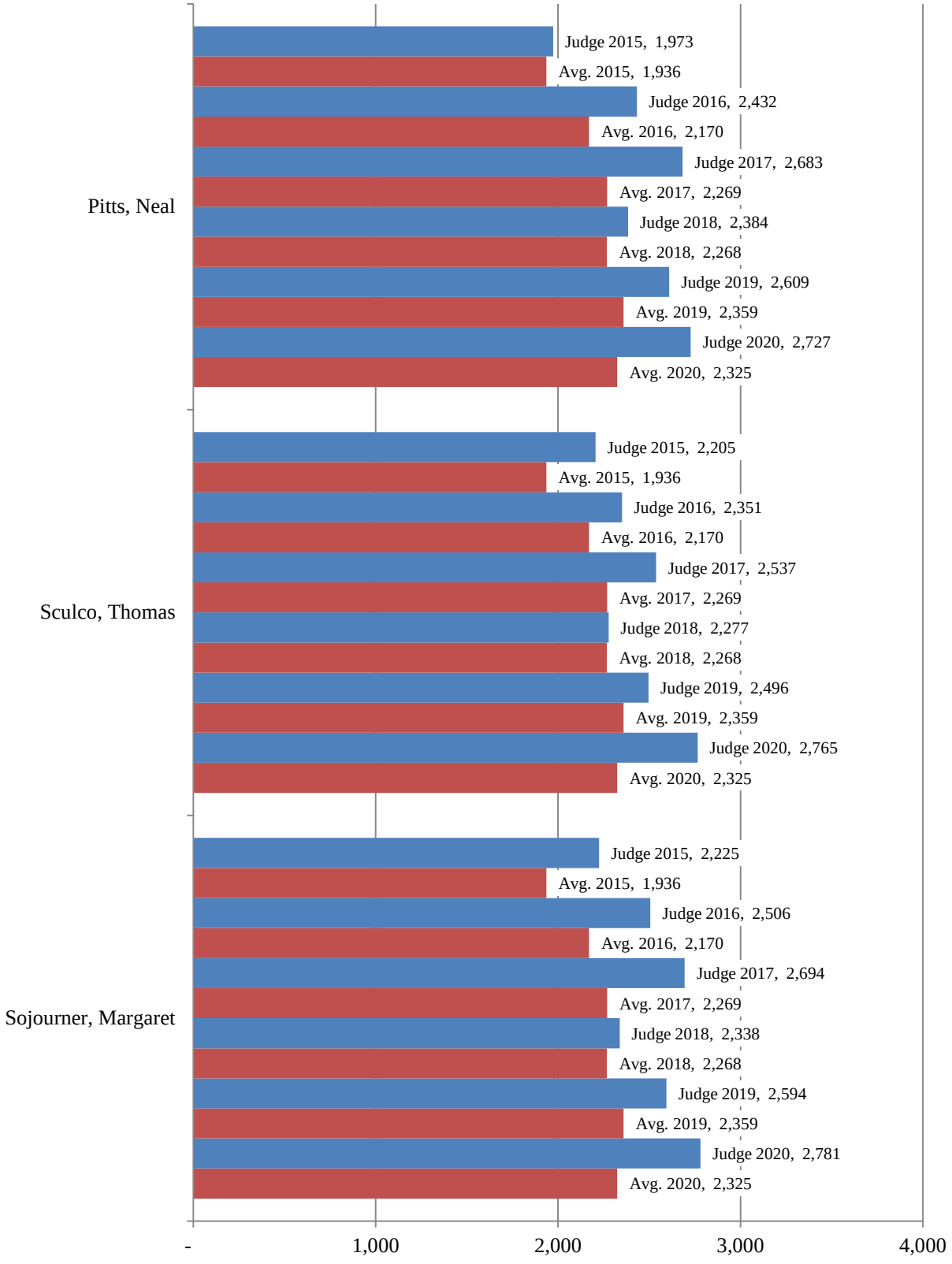
Both “new cases” and Petition filing remain above average in District Orlando in 2019-20. This has been demonstrated with striking consistency over the last 7 years. The figures for 2018 are a notable exception, attributable to the temporary assignment of Seminole county to District DAY, prior to the relocation of the Orlando office to Seminole county.

The times to mediation, to trial, and to final order are within the statutory parameters in all three Orlando divisions, with the sole exception of time to trial being 218 days in one division for 2019-20. This overall consistency with the statutory parameters is notable and praiseworthy.

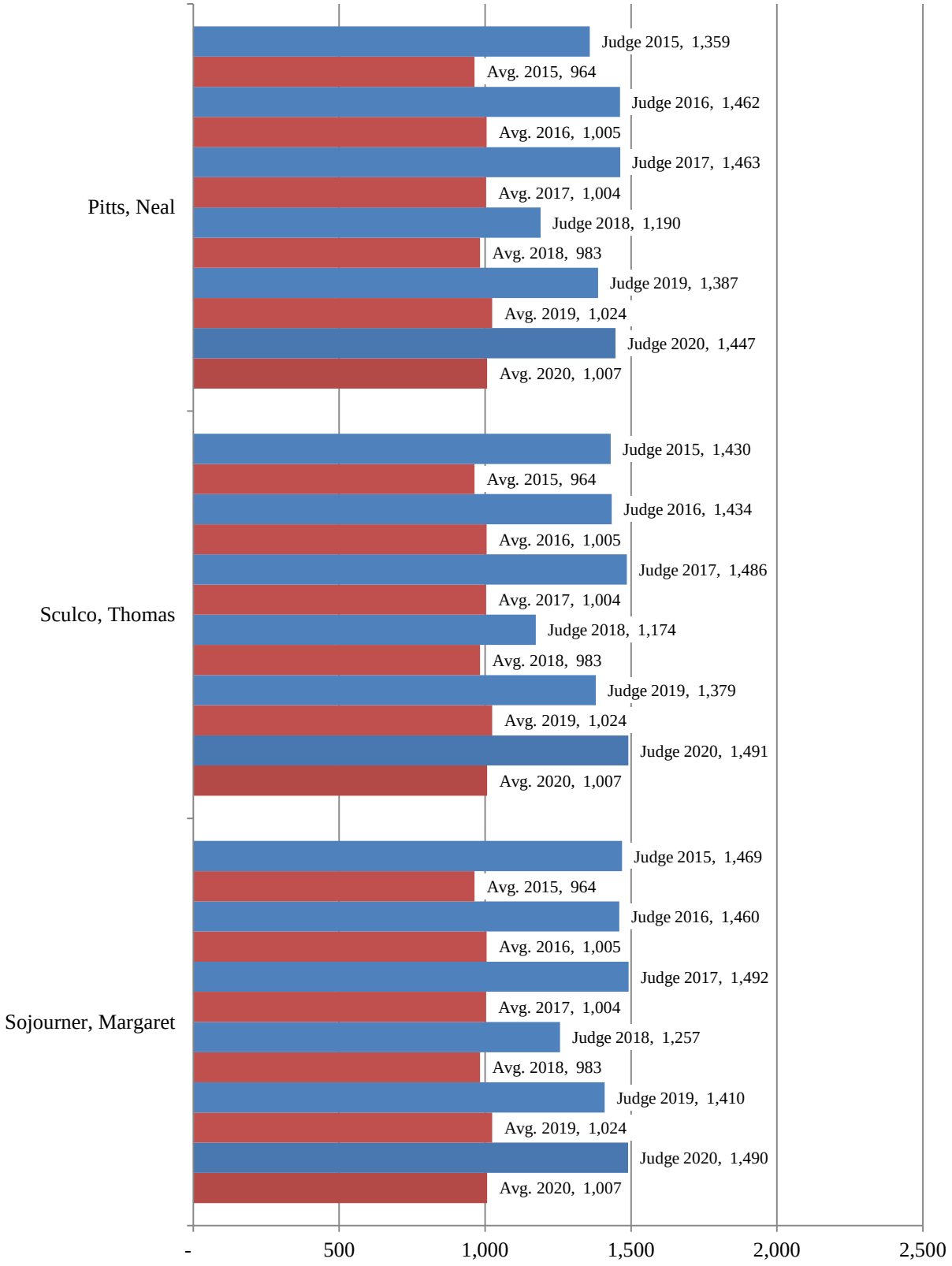
In 2019-20, Judge Sculco continued to serve the Central Florida legal community through the Florida Bar, the Orange County Bar Association, and both the George C. Young and William E. Wieland Inns of Court. Judge Sculco continues to serve as an ad hoc member of the workers’ compensation subcommittee 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 was a presenter on First Responder claims at the 2019 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. Judge Sculco also presented a lunch & learn seminar to Florida Bar members on the interaction between the evidentiary prohibition against bolstering by expert witnesses and the *Daubert* standard for admissibility of expert opinions.

[Space intentionally blank]

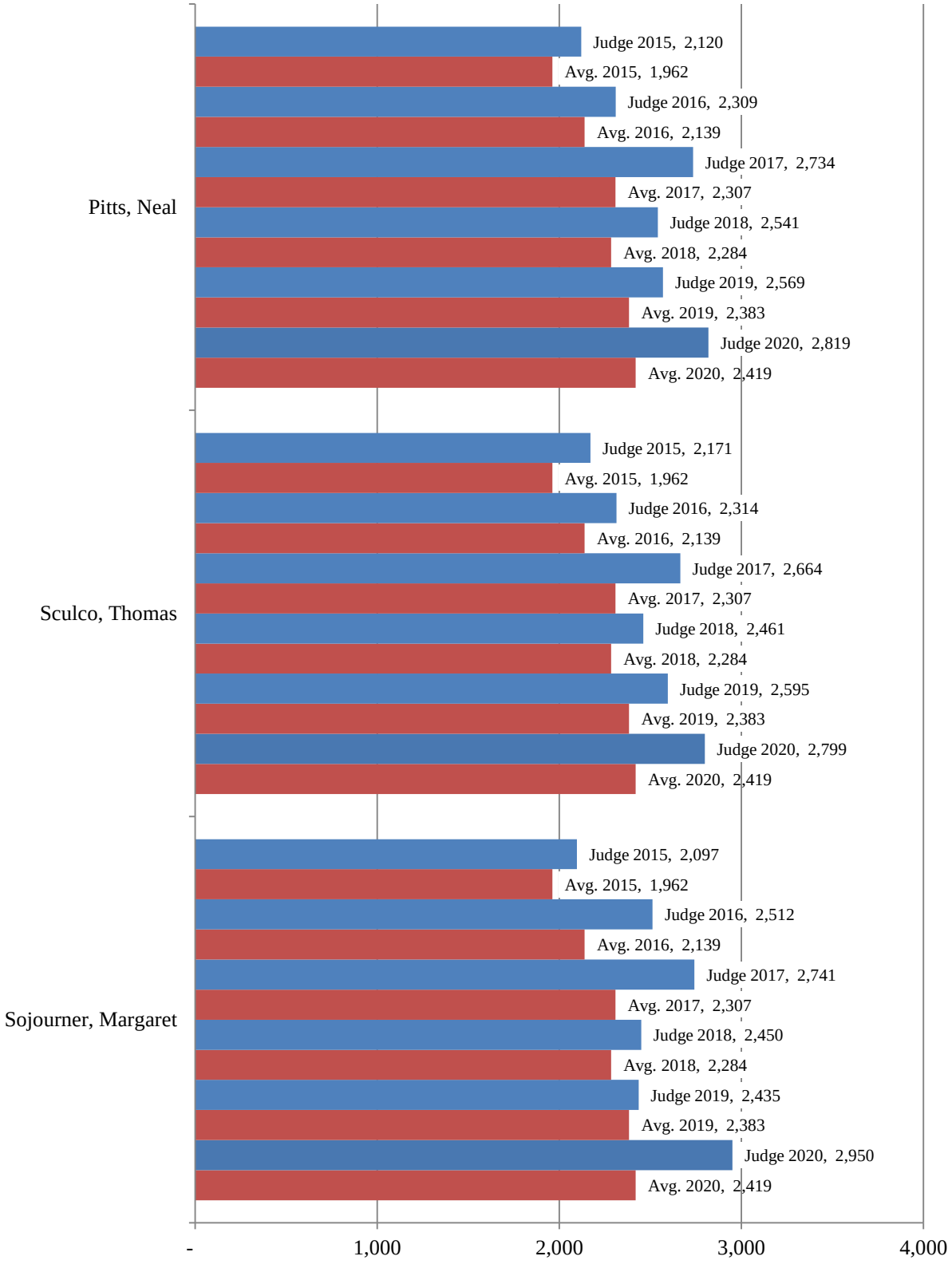
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



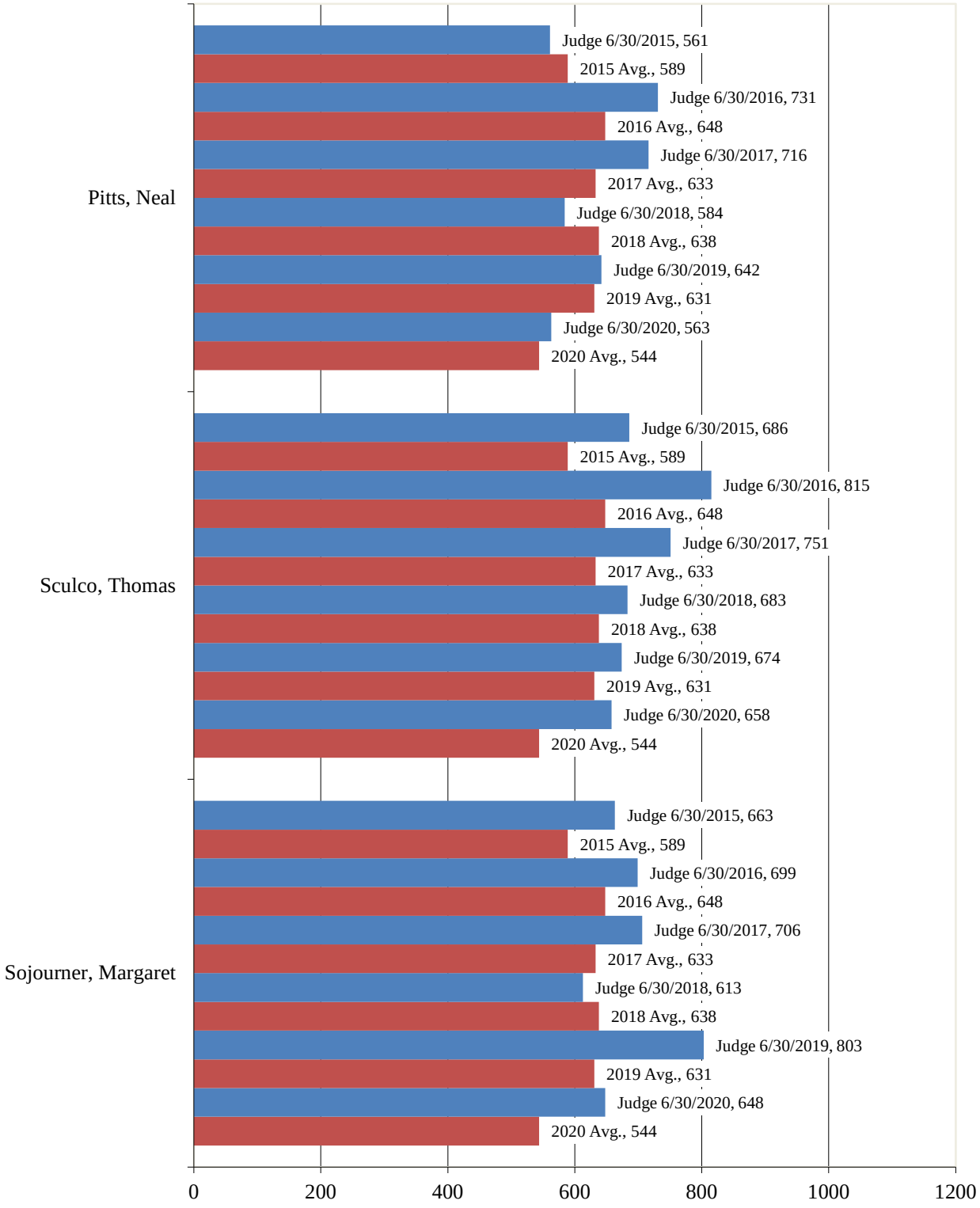
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



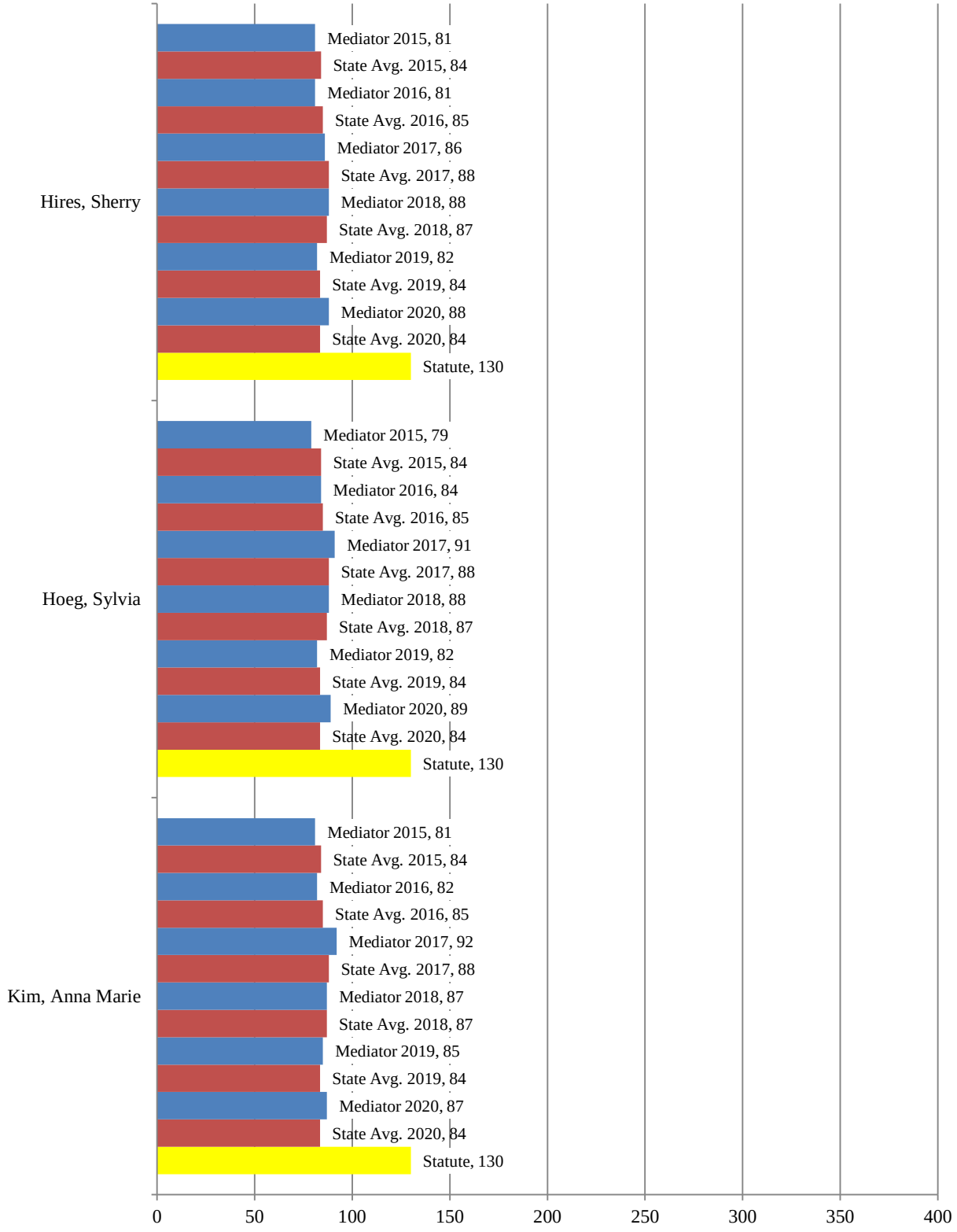
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



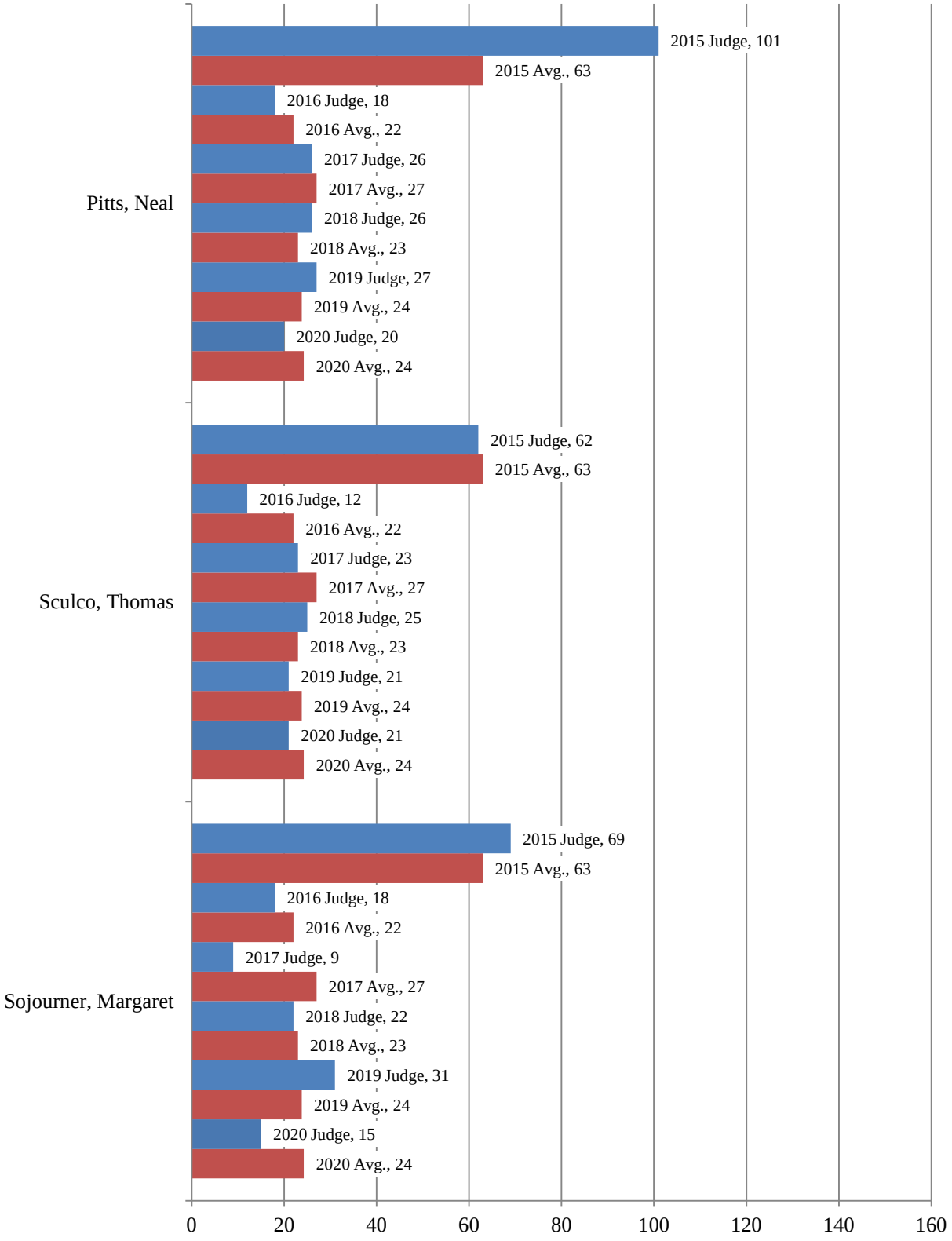
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



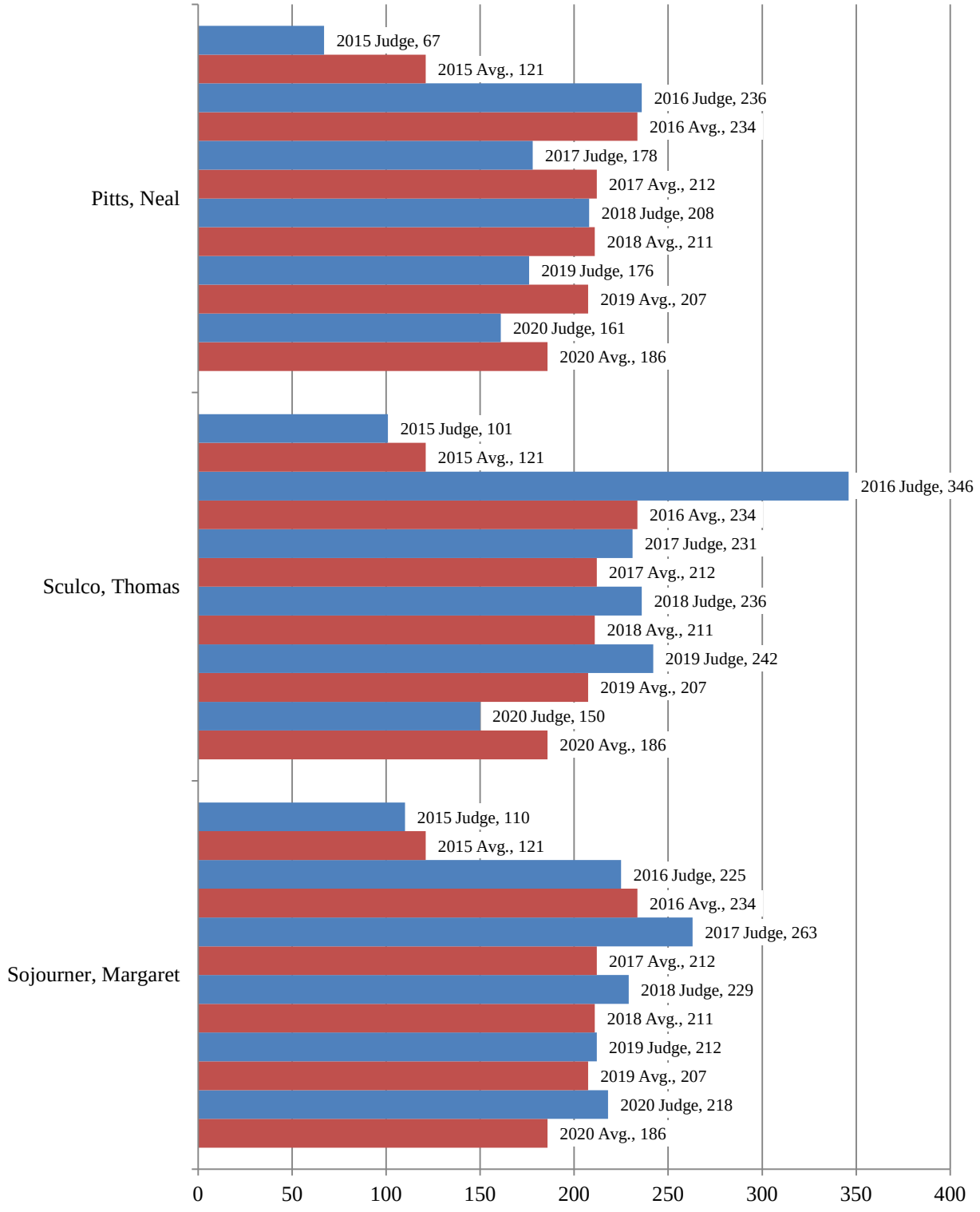
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



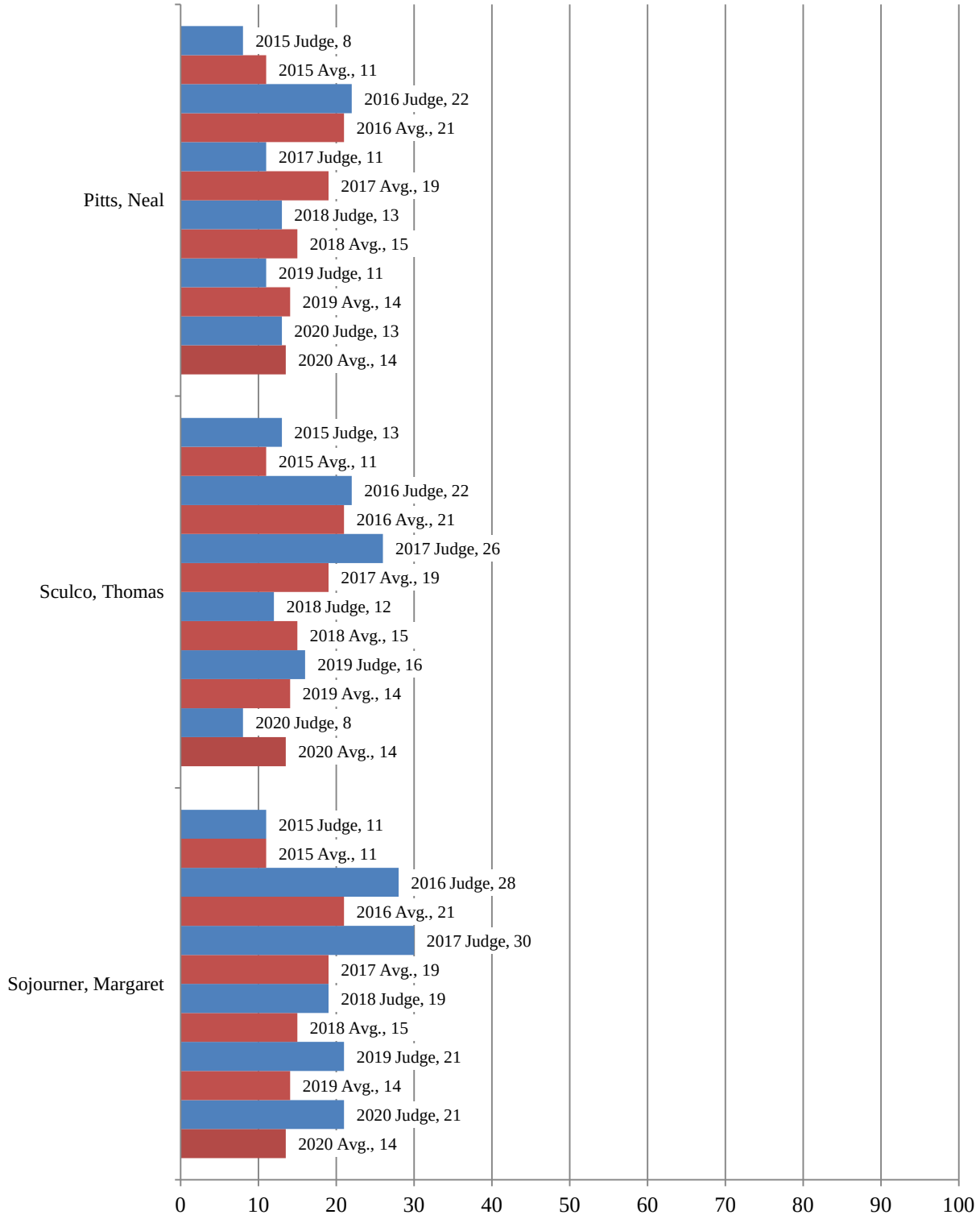
The following graph depicts the total volume of trial orders[242] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



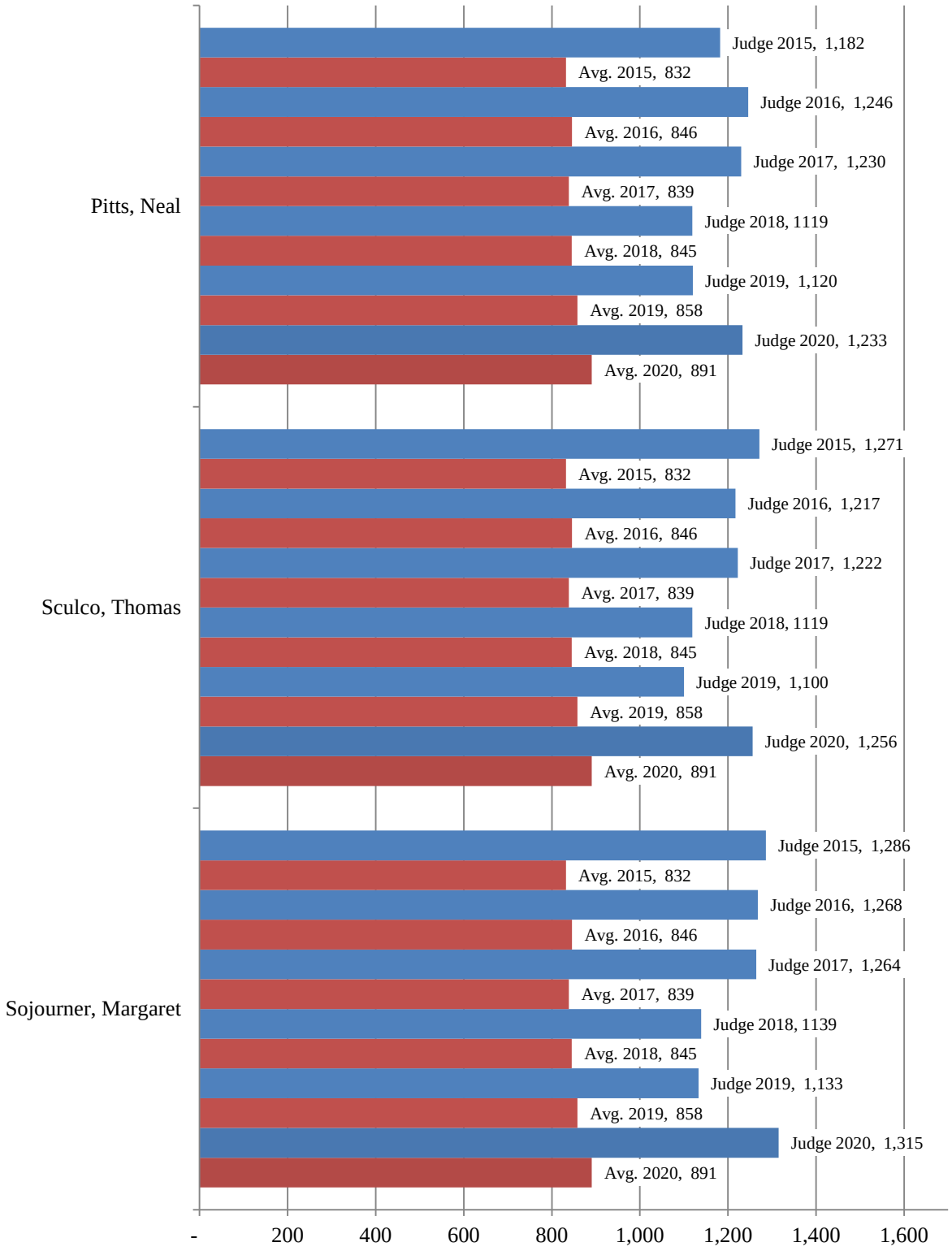
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



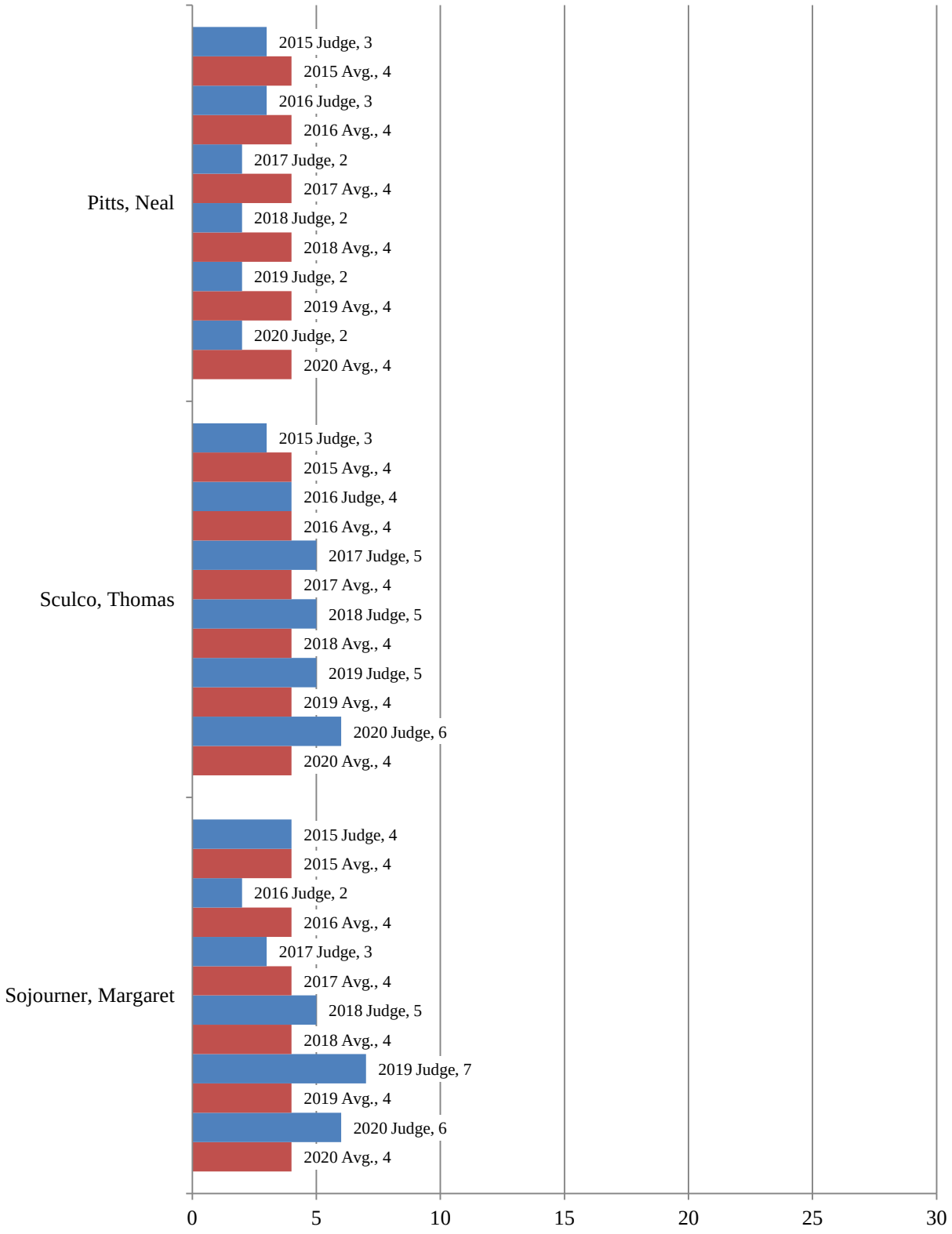
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



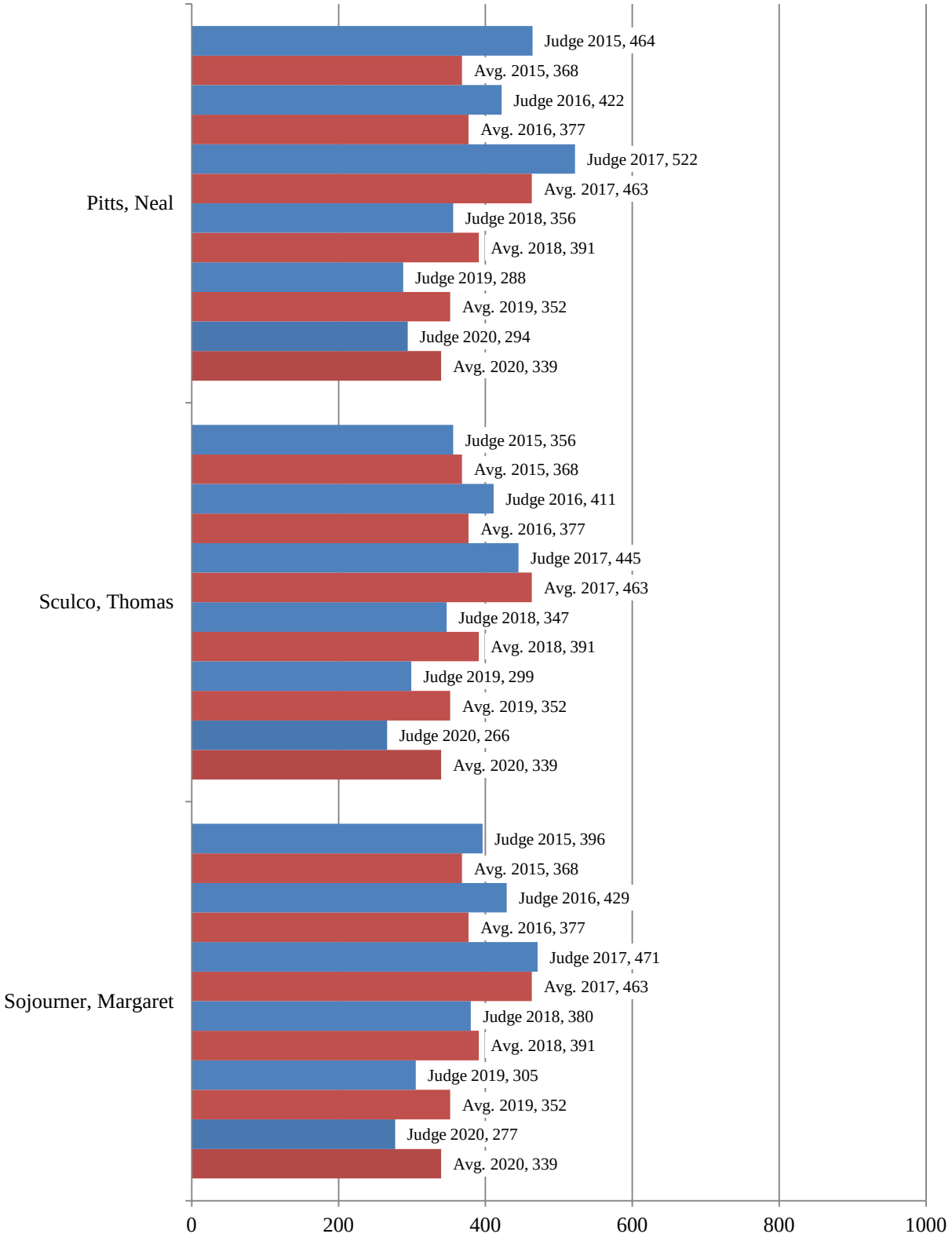
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



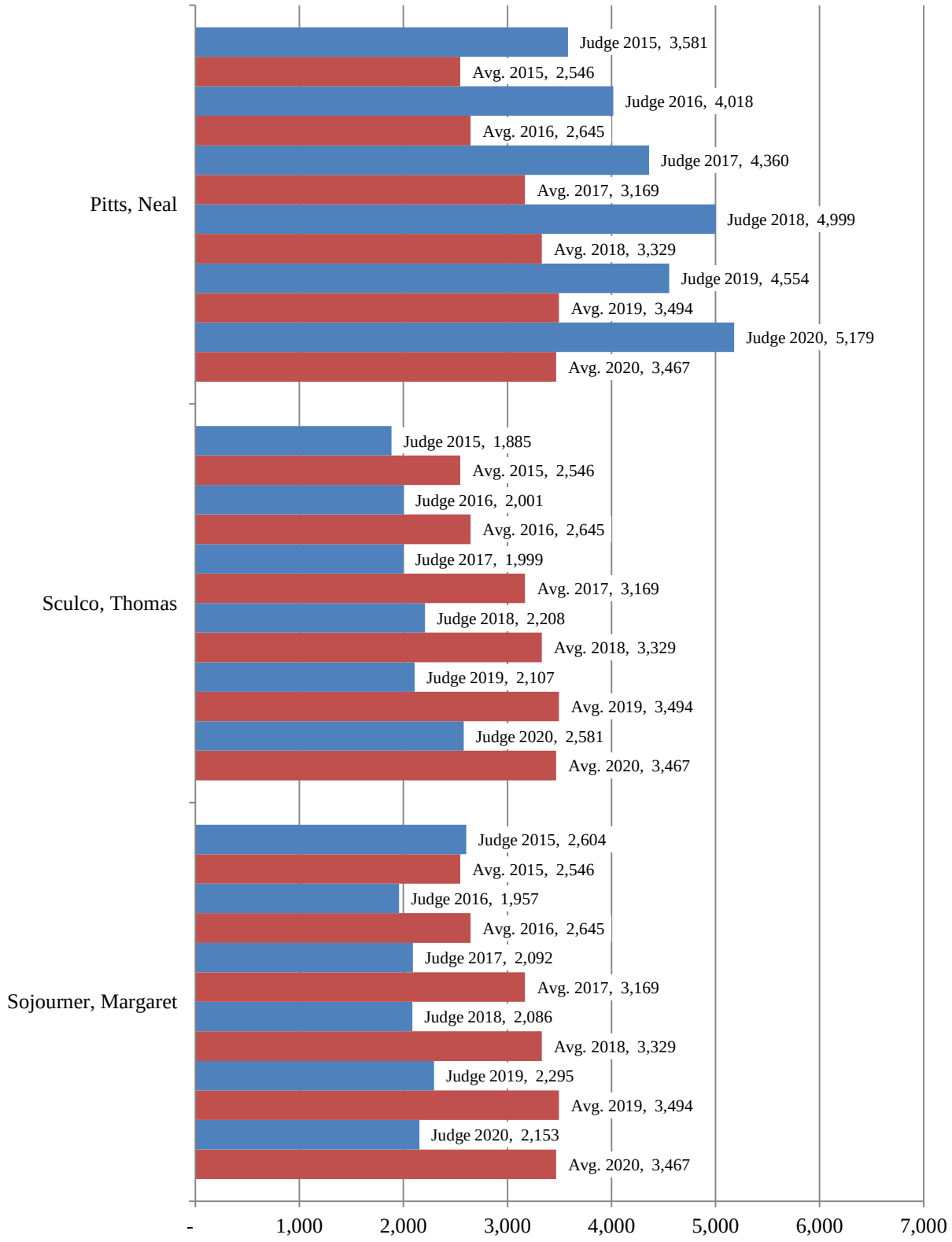
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



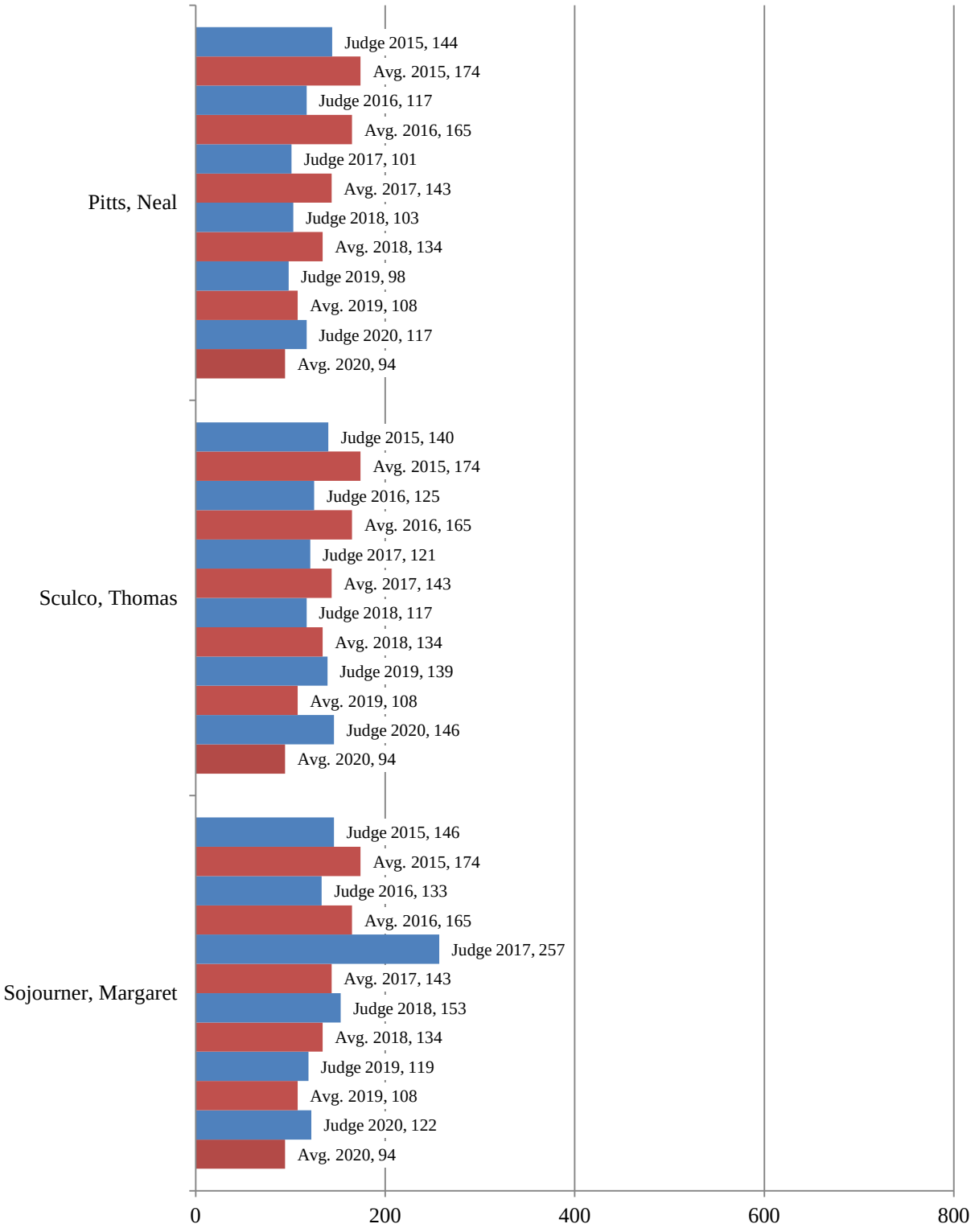
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



Appendix “10” District PMC (JCC Walker):

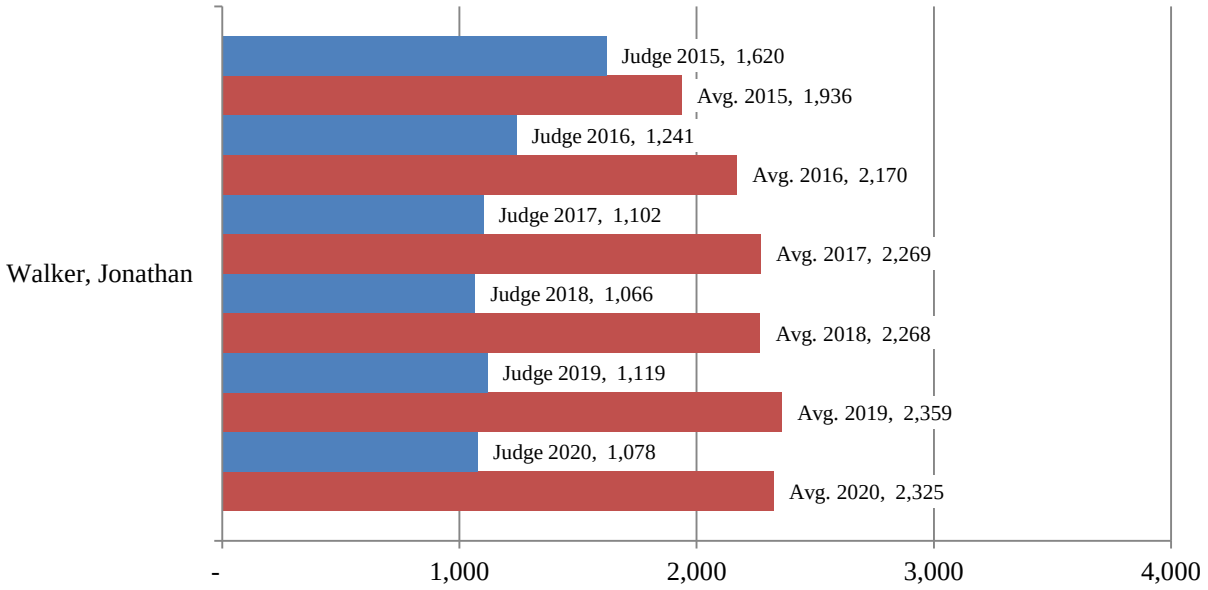
District PMC in Panama City includes Bay, Calhoun, Gulf, Holmes, Jackson, Liberty, Walton, and Washington counties.

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 minutes) and Pensacola (103 miles, 150 minutes). District PMC was significantly impacted by the landfall of Hurricane Michael in October 2018. That storm was of unprecedented strength and its effects upon the community, medical availability, and workforce lingered throughout 2019-20.

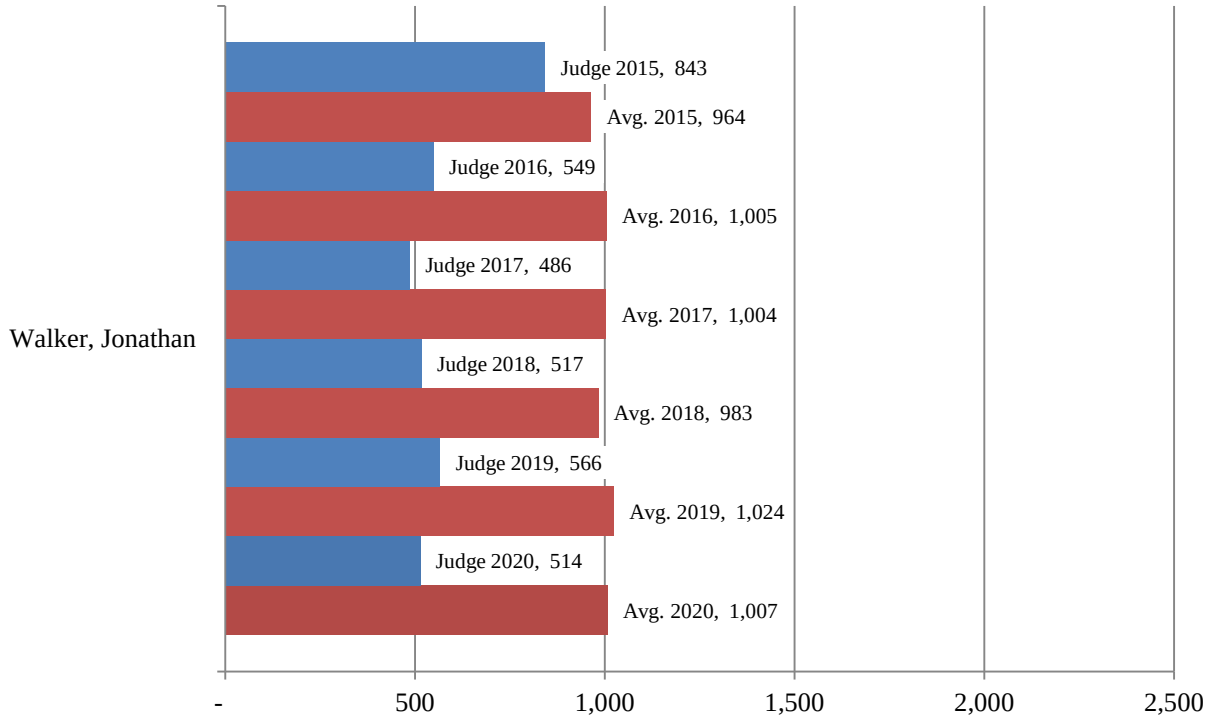
In PMC, the PFB and “new case” filing rates remain well below the statewide averages, approximately half or less. Despite this, the trial volume in District PMC is comparable with the statewide average. The times to mediation and to final order are all within the statutory parameters in Panama City. The time to trial was slightly over the statutory 210 days in 2019-20. The district was challenged in 2019-20 with the retirement of long-serving state mediator, Eddie Oramas, and was fortunate to find Daniel Gross to undertake the mediator duties there.

During the fiscal year, Judge Jonathan Walker served as a panelist for The Florida Bar’s seminar entitled, “Workers’ Compensation Law for the New Practitioner.” He continued to serve as a member of the OJCC Second Friday seminar committee, which coordinates monthly continuing legal education topics for judges and mediators. As part of this program, he served as a moderator in December and January for courses involving judicial procedures and ethics. Judge Walker also served as a committee member for the Spring 2020 Workers’ Compensation Institute Seminar in Tallahassee. In this capacity, he moderated a panel of judges at the seminar that addressed judicial perspectives on litigation. He participated as a moot court judge for the annual E. Zehmer Moot Court Competition held in conjunction with the Workers’ Compensation Judicial College in Orlando. At the annual workers’ compensation conference, Judge Walker served on a judicial panel discussing workers’ compensation practice with practitioners. He also worked as a member of the band boosters at Deane Bozeman High School in Panama City.

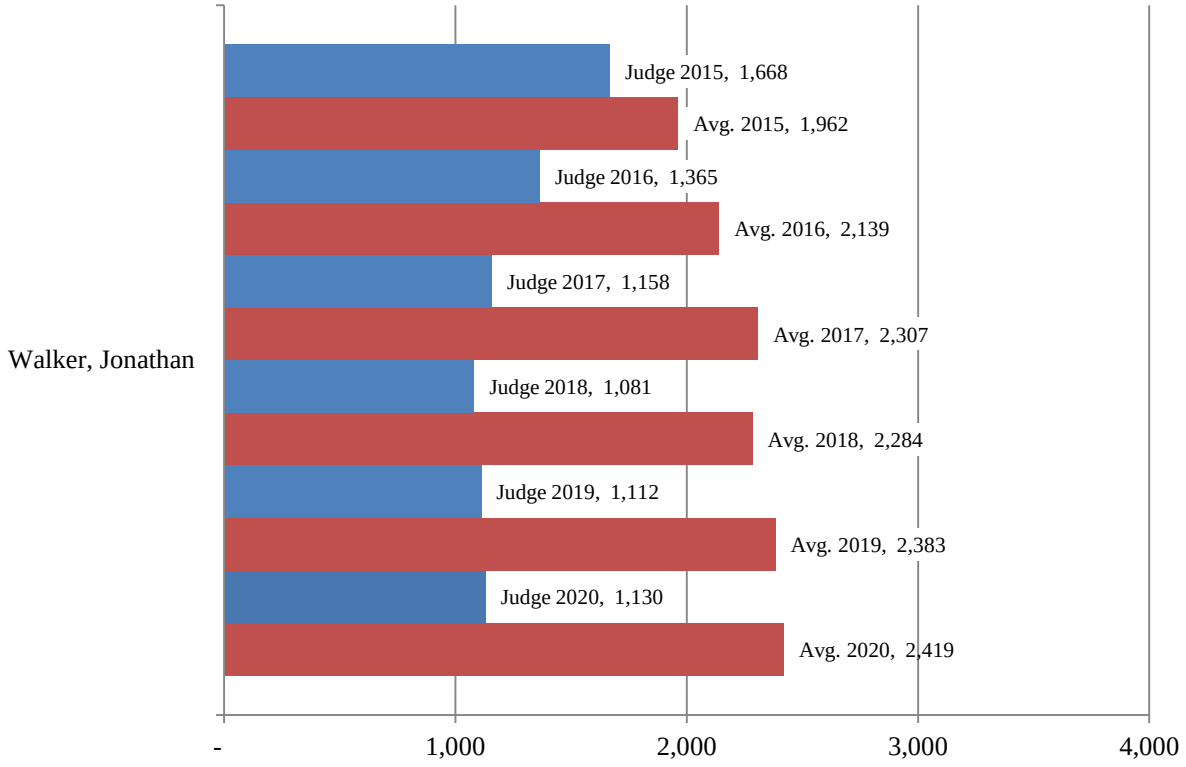
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



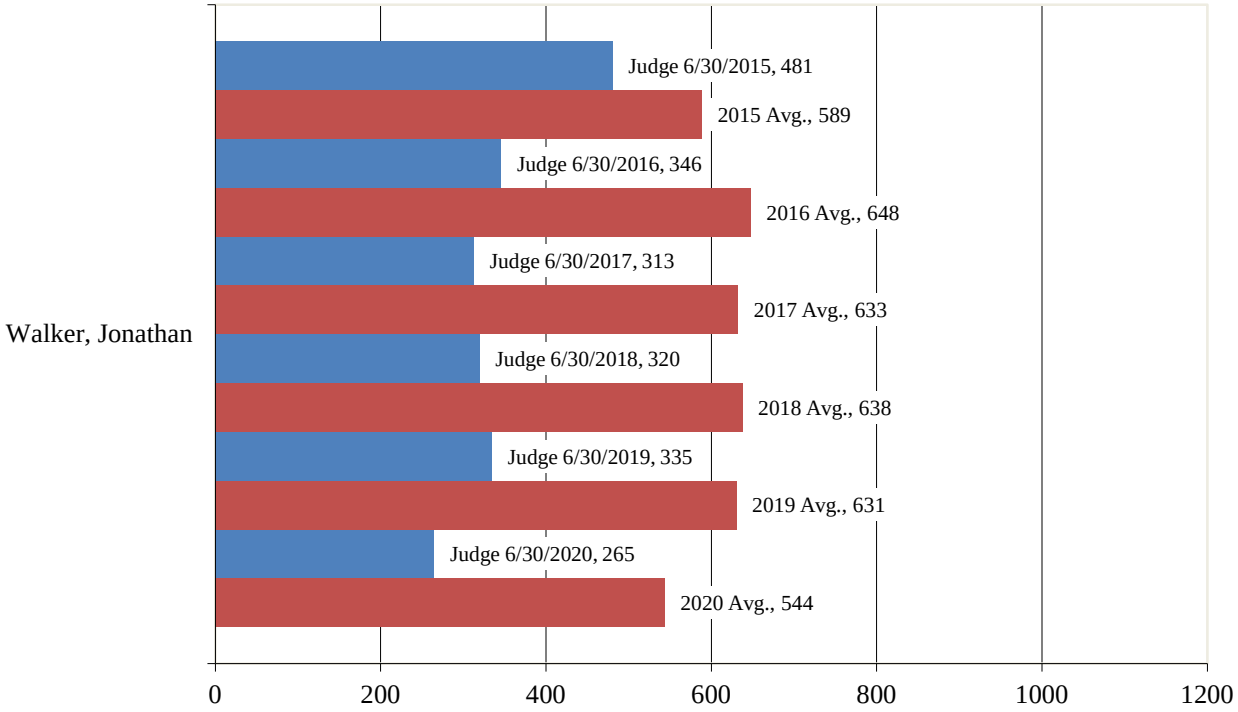
The following depicts the volume of “new cases” filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



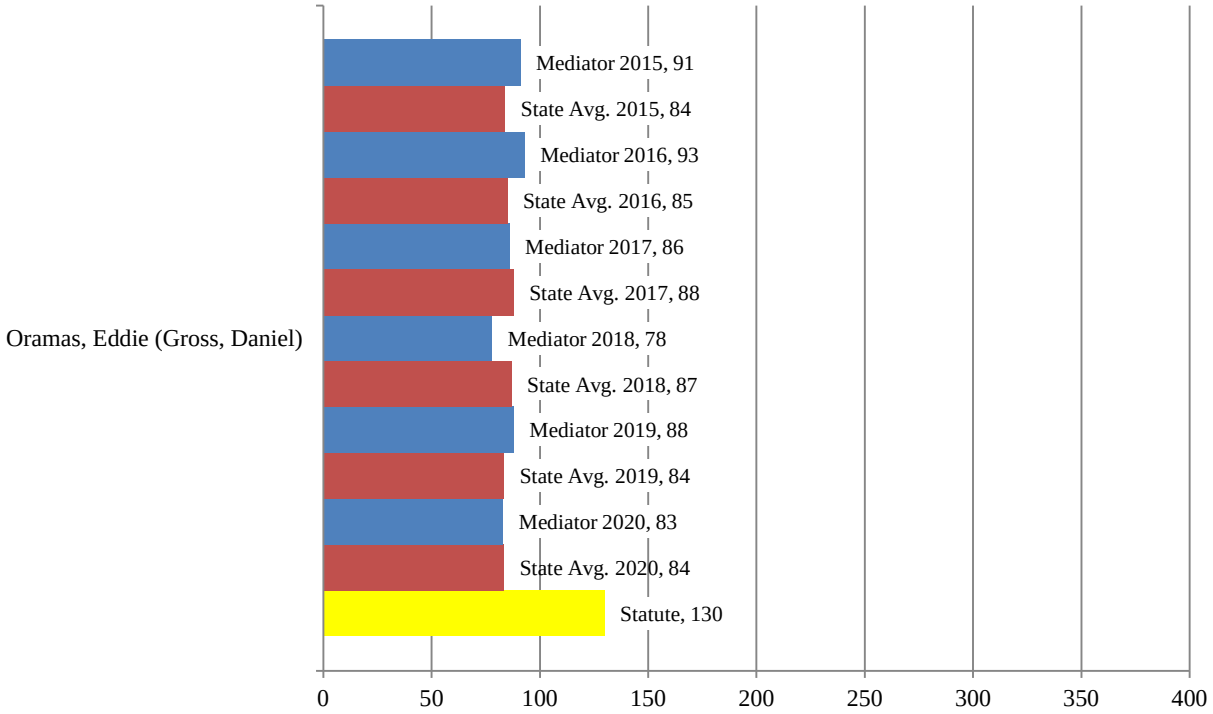
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



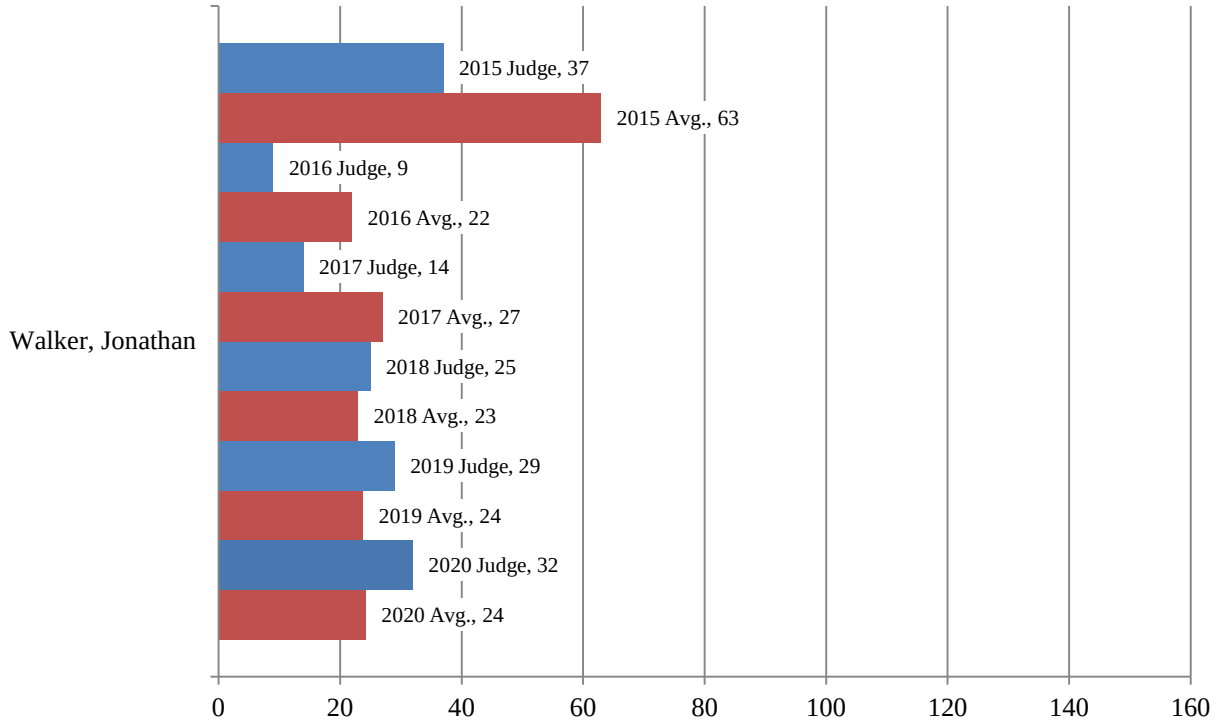
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



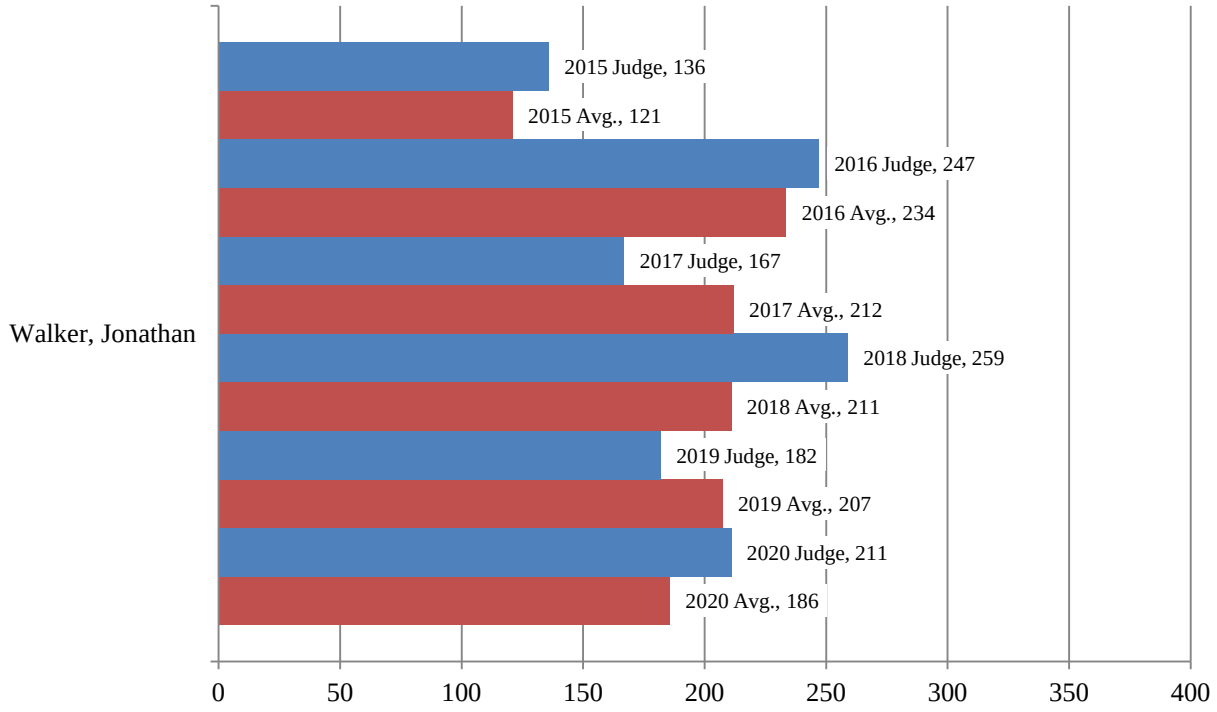
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



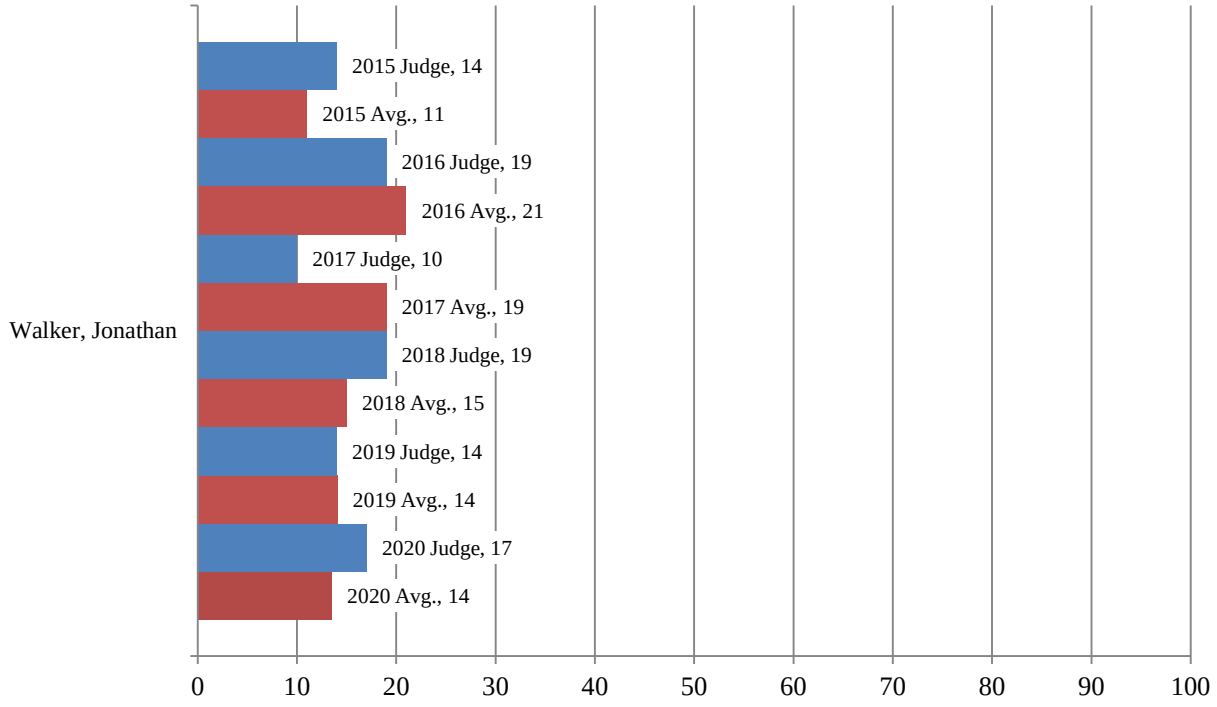
The following graph depicts the total volume of trial orders[243] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



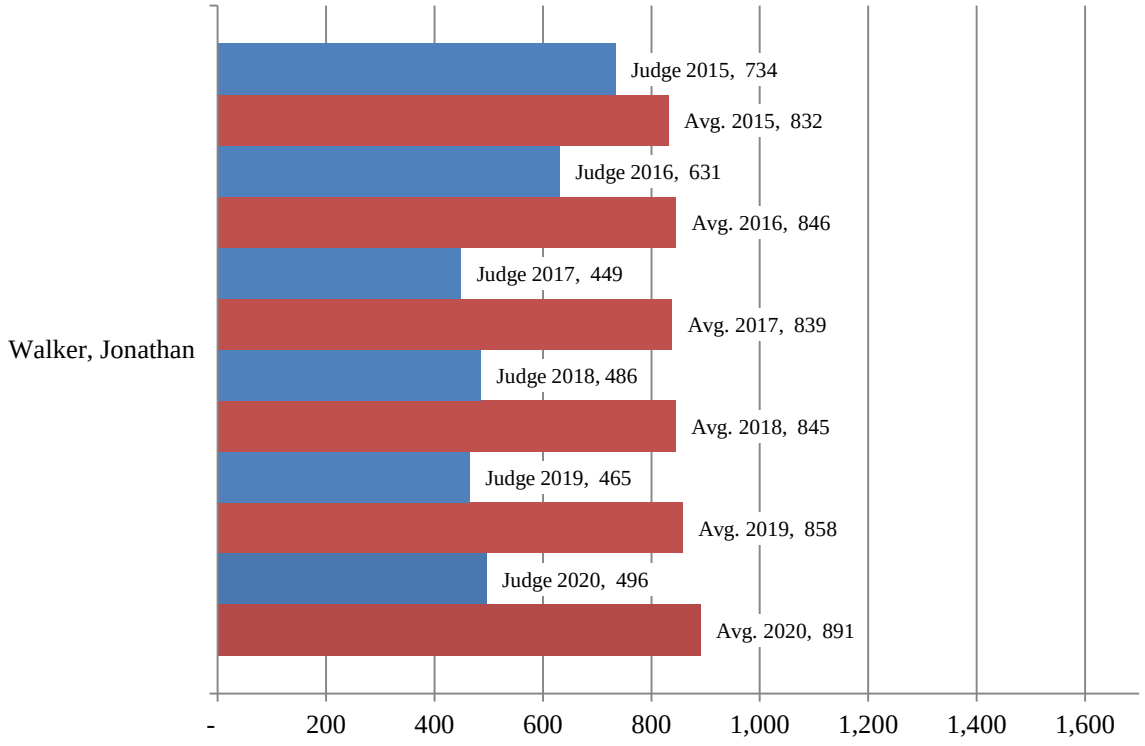
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



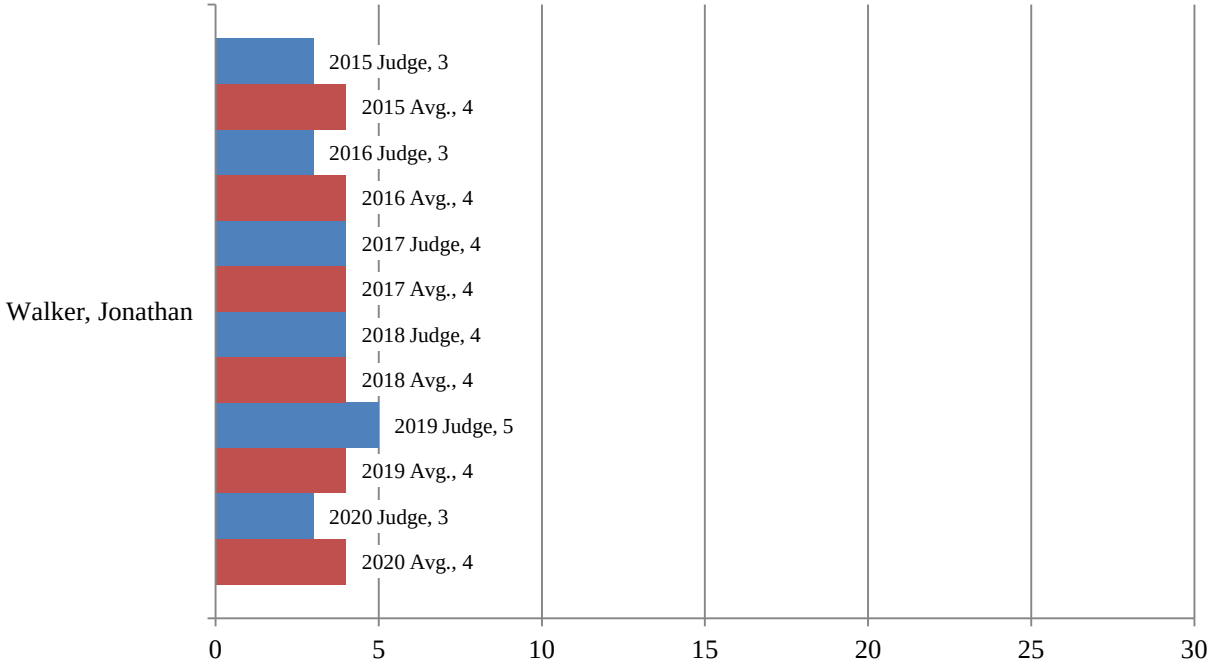
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



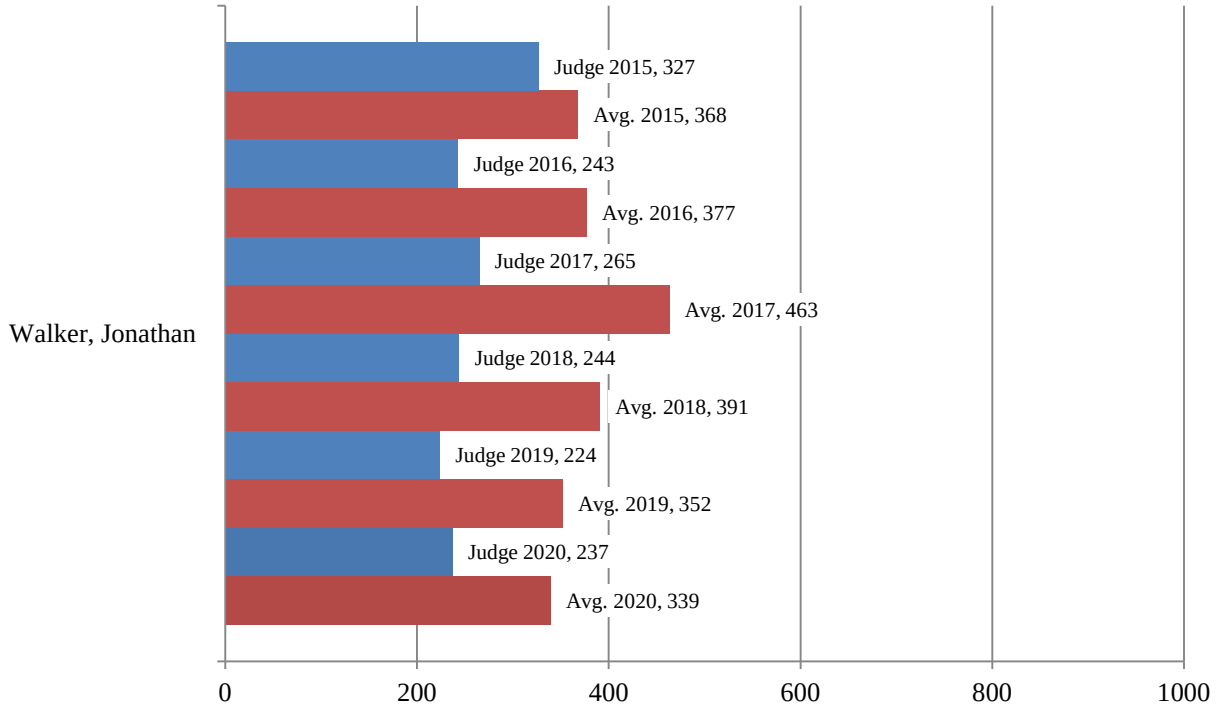
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.

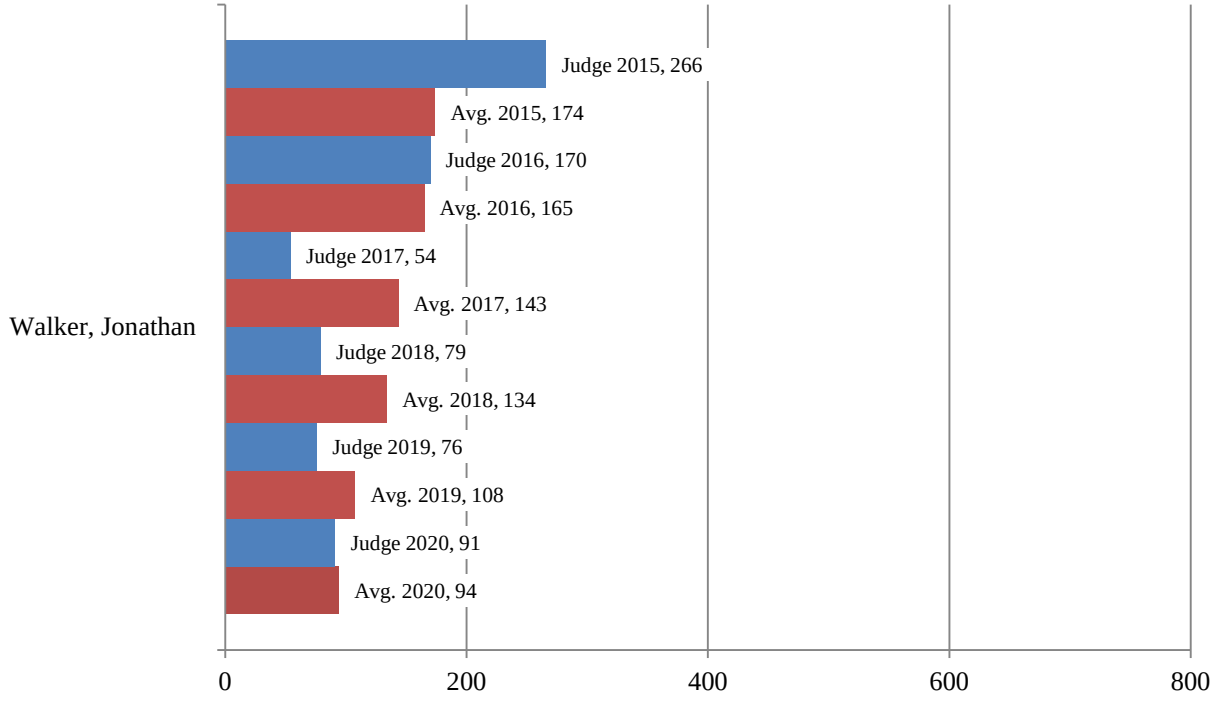


The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



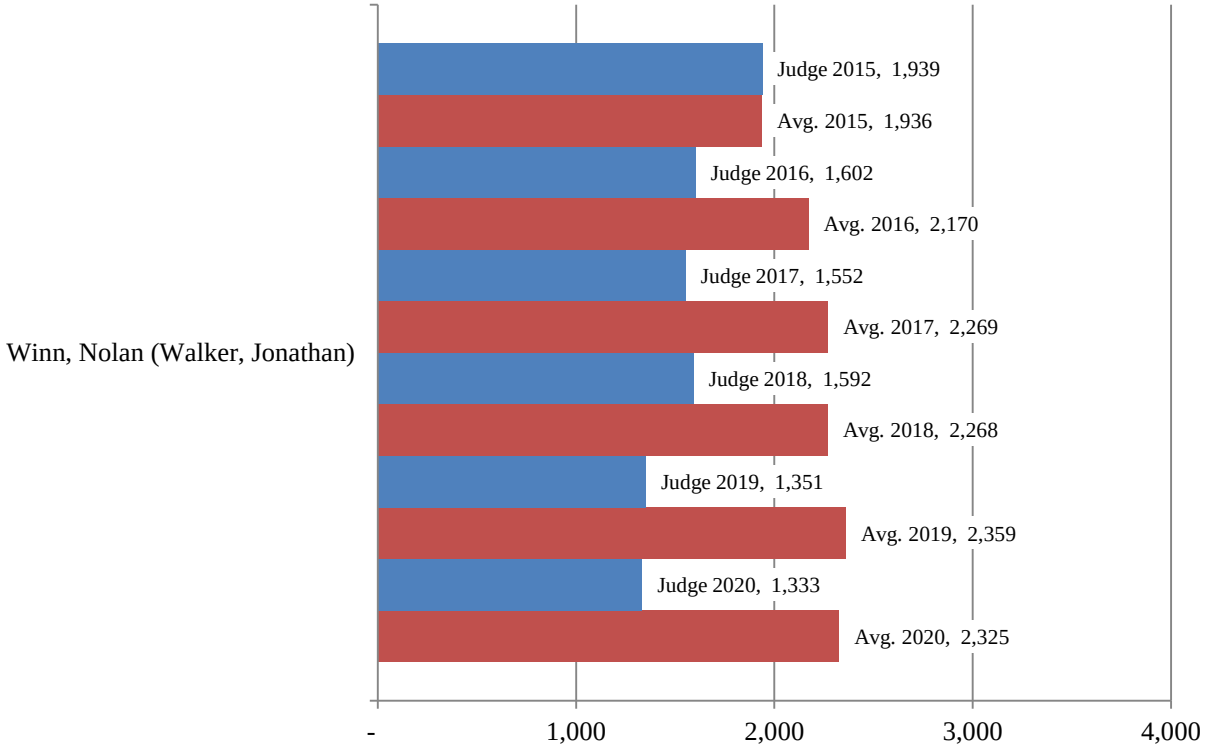
Appendix “11” District PNS (JCC Winn [Walker]):

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

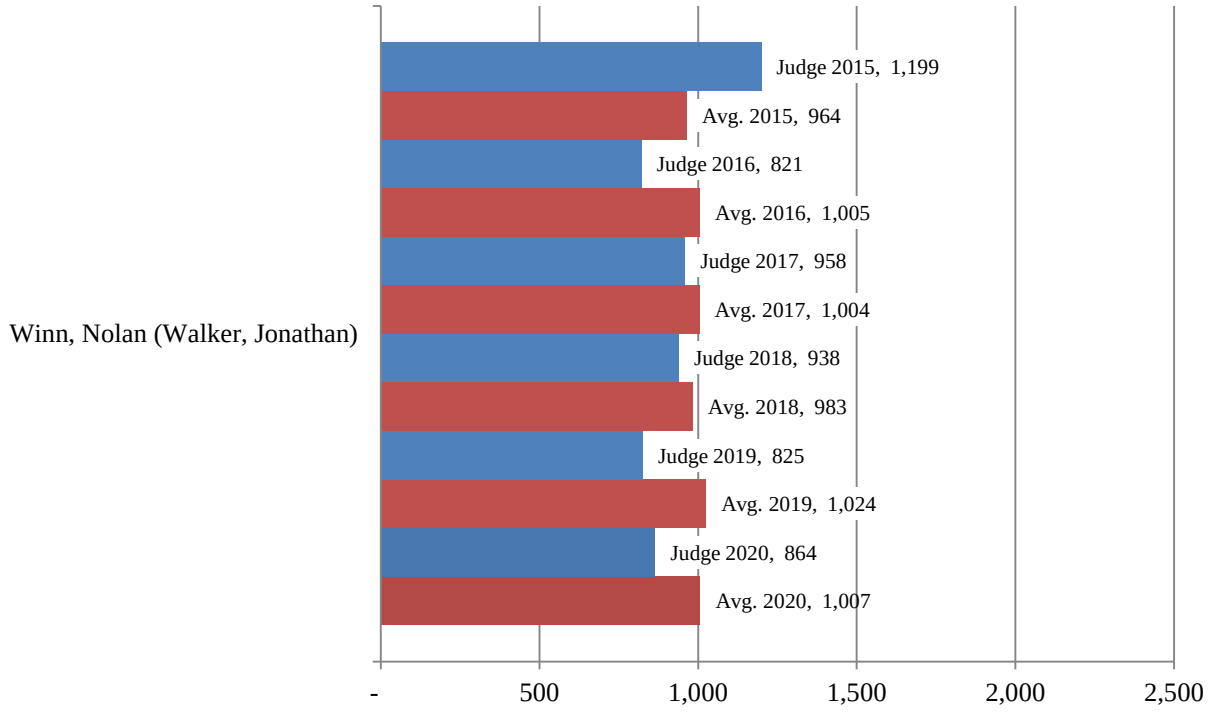
Similarly to Panama City, the Petition filing and “new case” volumes in Pensacola are well below the statewide average. The volumes decreased in 2018-19 and the 2019-20 volumes are similar. There were few trials in District PNS in 2019-20, due primarily to the retirement of Judge Winn in December 2019. Judge Walker transferred to District PNS, and nominations for replacement in Panama City led to appointment of a successor judge there. While that process was ongoing, Judge Walker managed both the Panama City and Pensacola case dockets for the last half of fiscal 2019-20.

[Space intentionally blank]

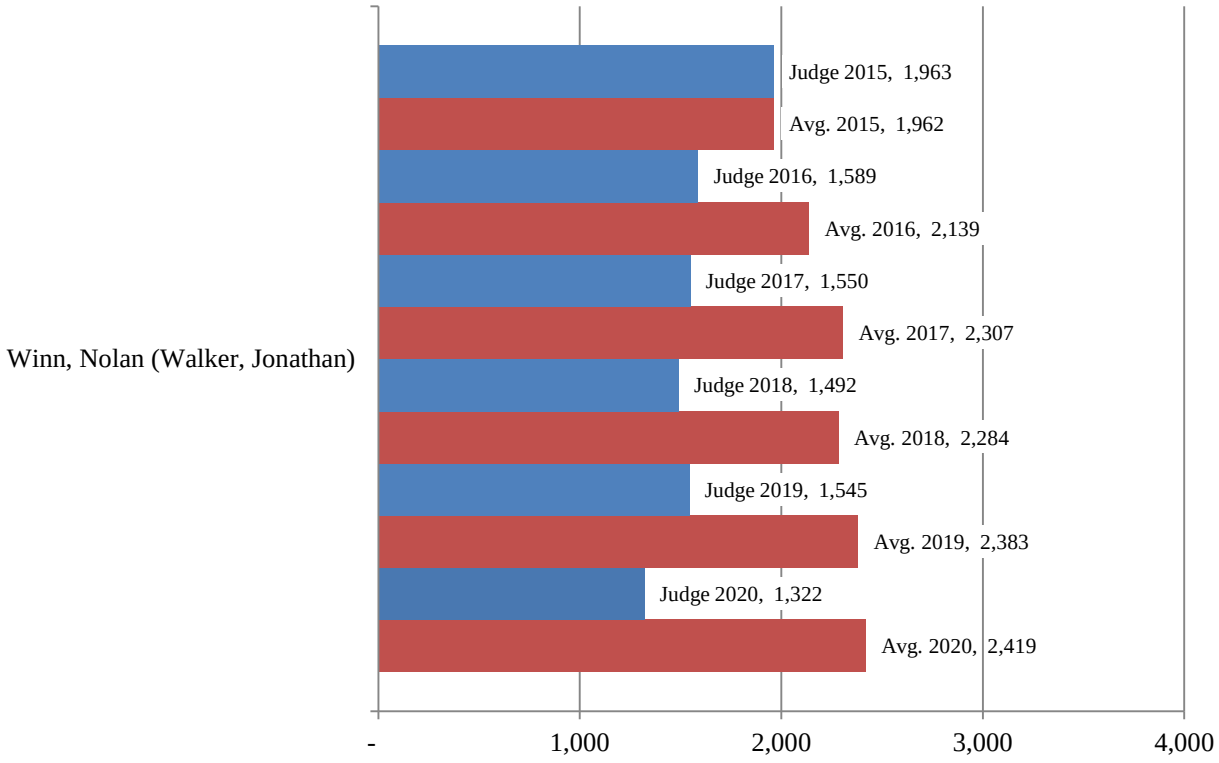
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



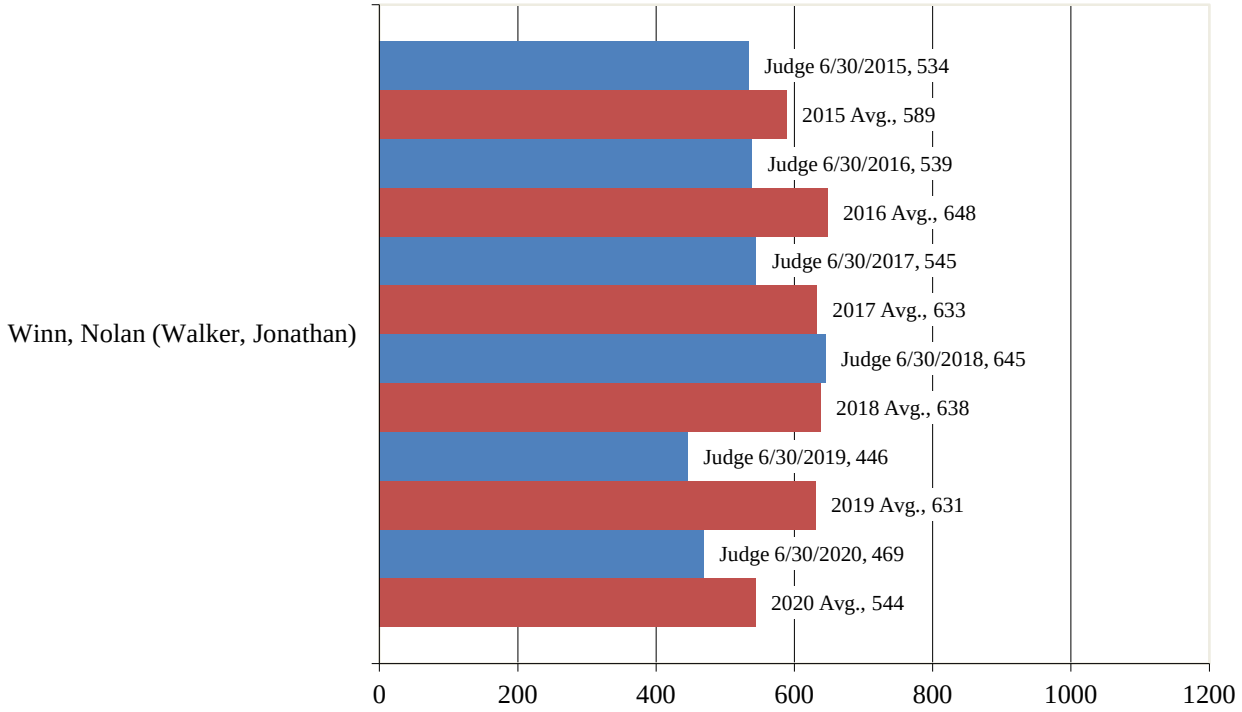
The following depicts the volume of “new cases” filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



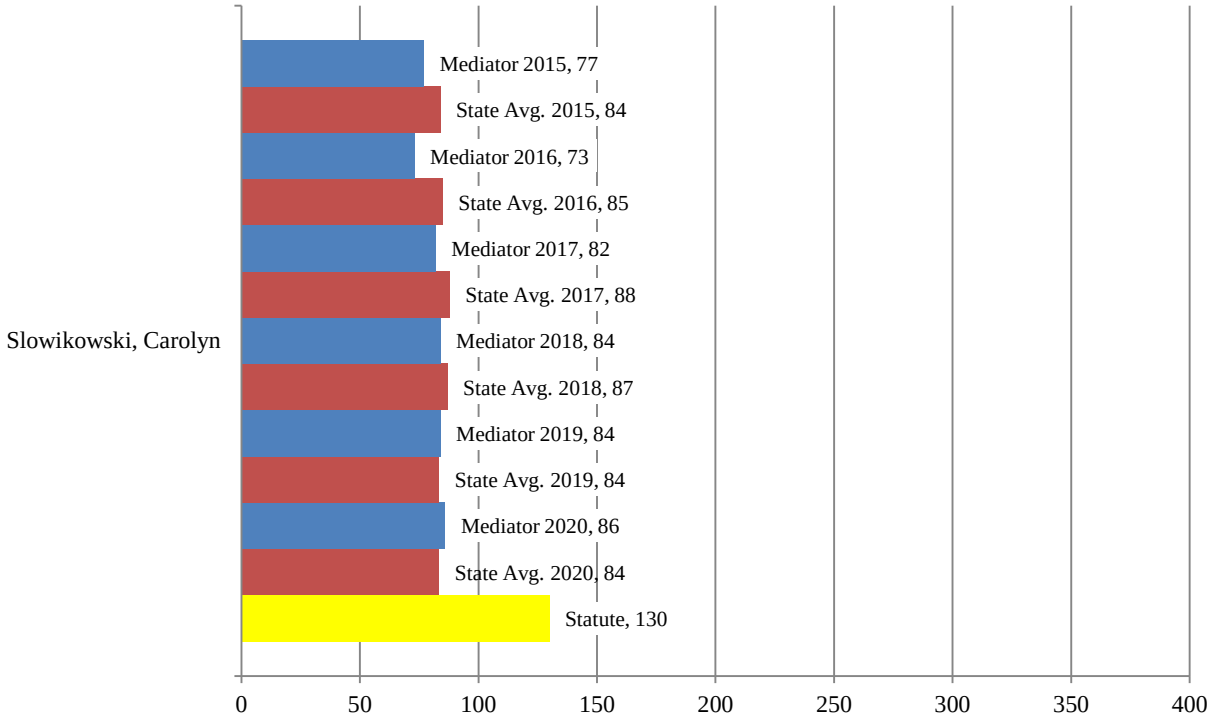
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



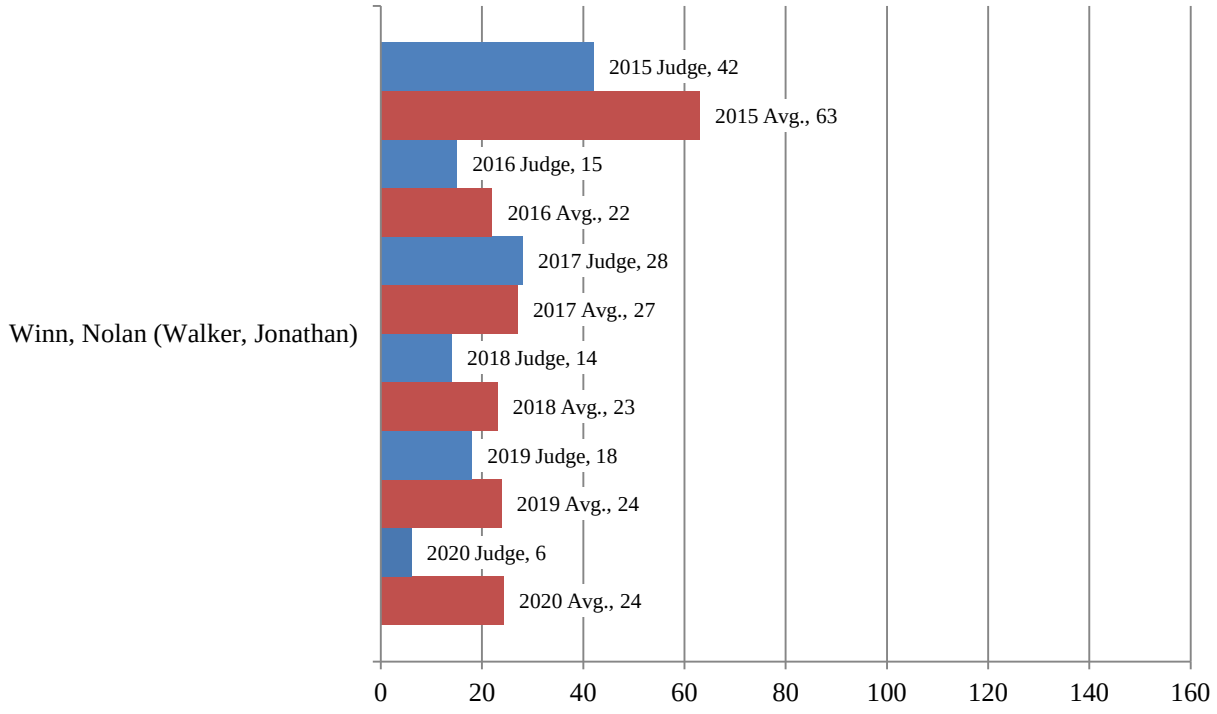
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



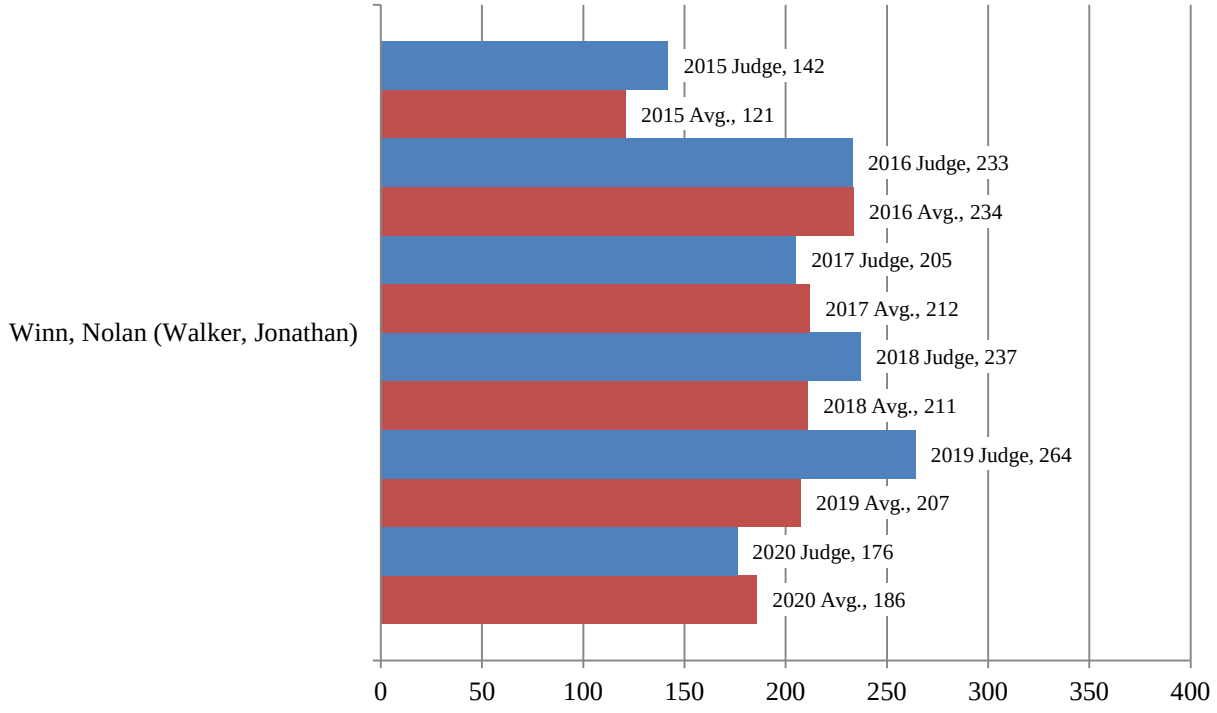
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



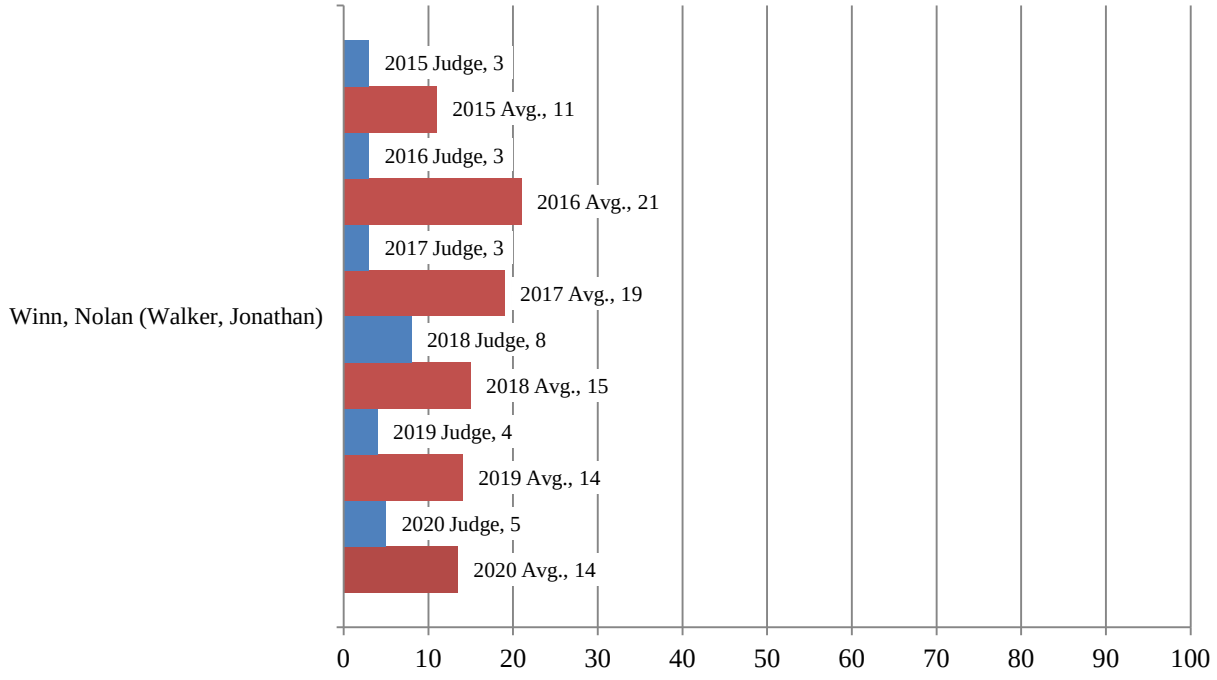
The following graph depicts the total volume of trial orders[244] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



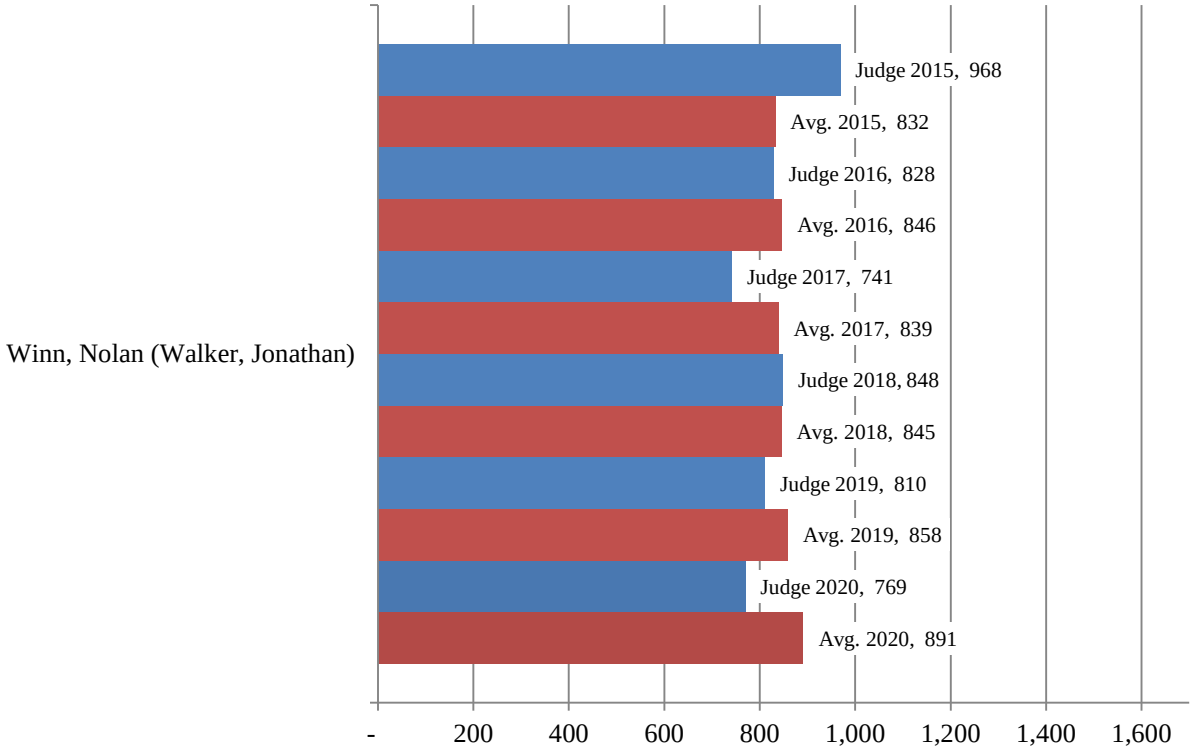
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



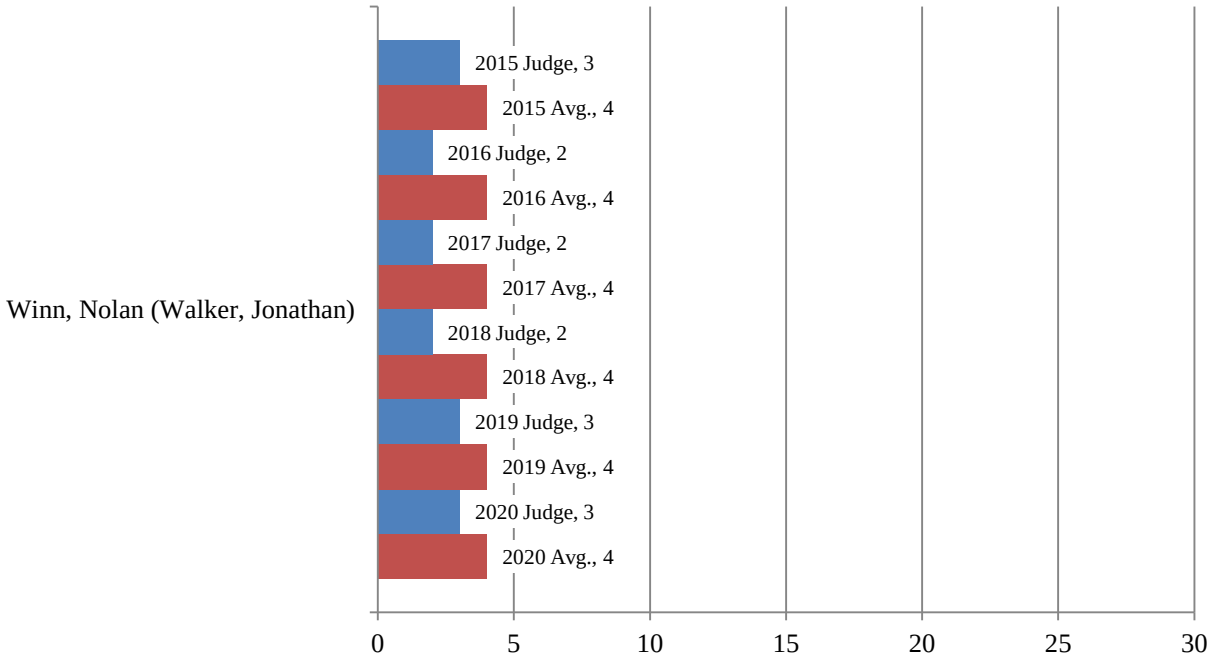
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



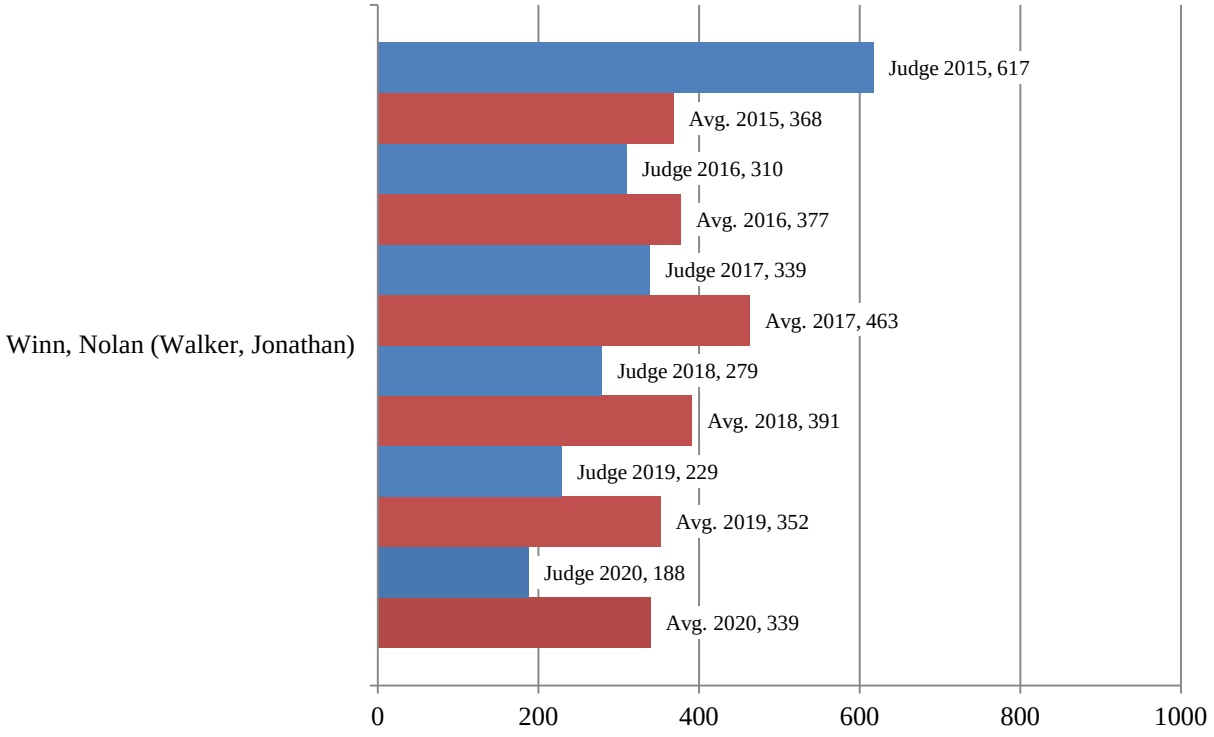
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



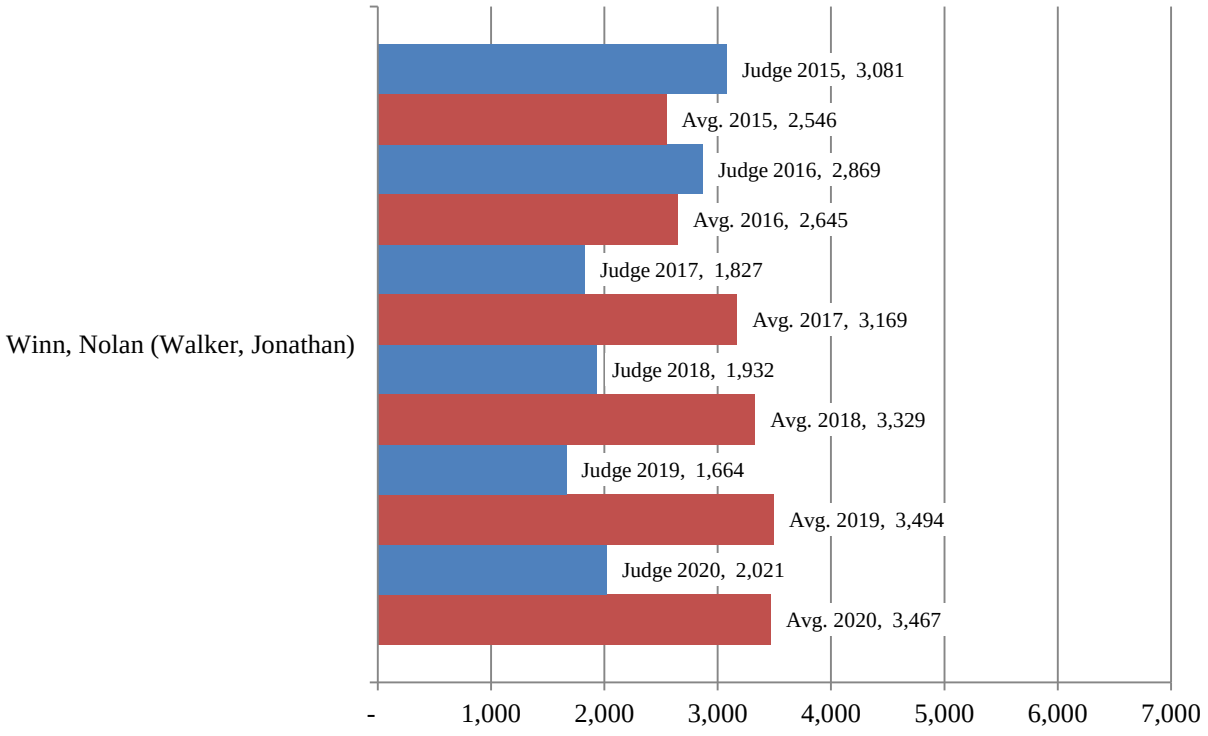
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



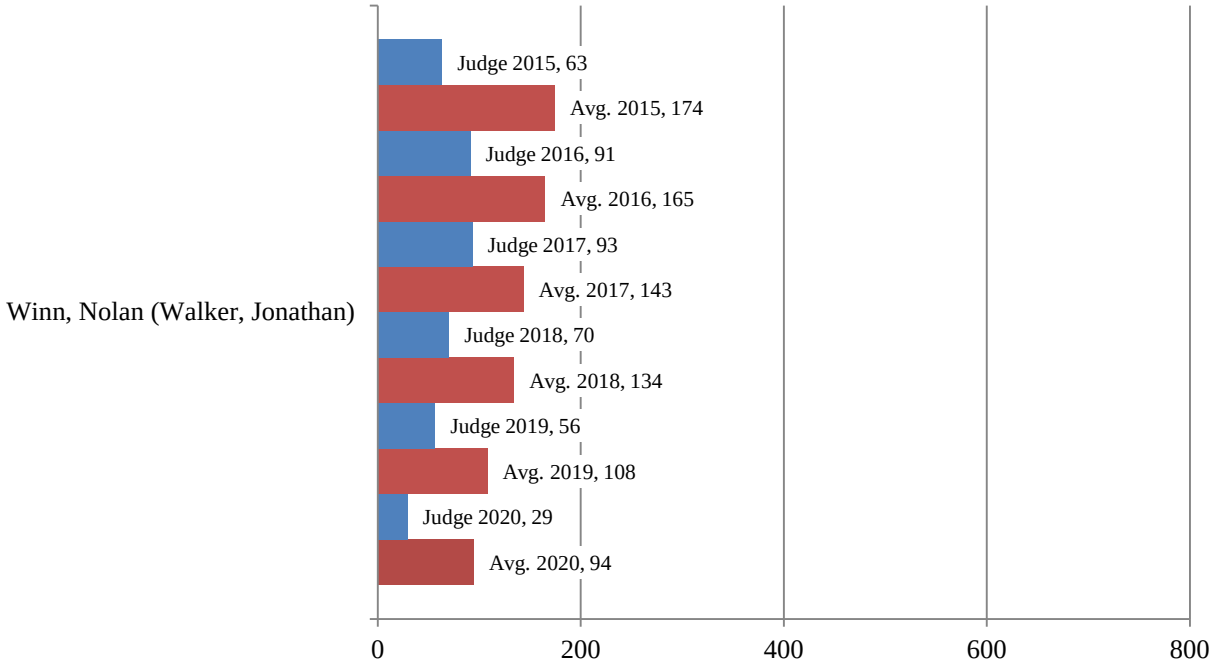
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



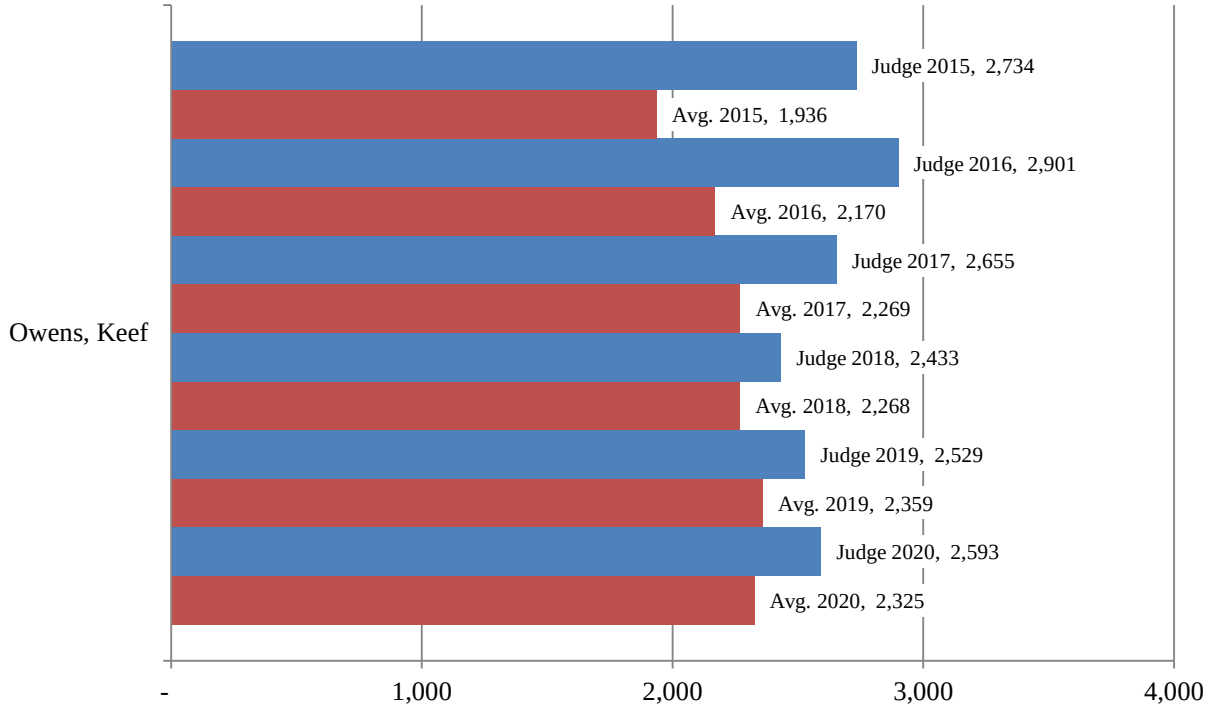
Appendix “12” District PSL (JCC Owens):

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

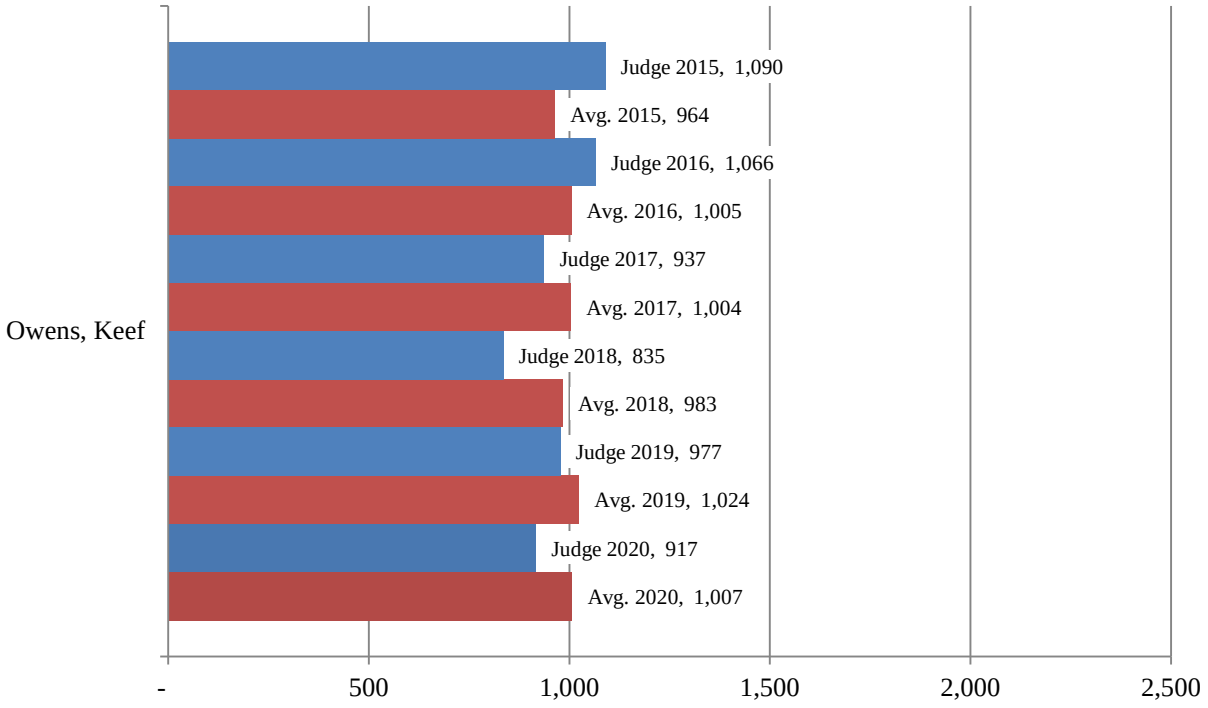
District Port St. Lucie similarly evidences a Petition filing volume exceeding the statewide average, but a “new case” filing volume slightly below the average. The volume of trials in PSL was below average in 2019-20. The times to mediation, to trial, and to final order are all below statewide average and within the statutory parameters. Settlements, stipulations, and “other hearings” are all consistent with statewide averages. The volume of “other orders,” however remains notably above average.

Judge Owens volunteered as a judge for the E. Earle Zehmer National Moot Court Competition at the 74th Annual Workers’ Compensation Educational Conference in August 2019. On October 23, 2019, he spoke at an event organized by the Workers’ Compensation CLE Committee of the Palm Beach County Bar Association. Judge Owens drafted an article *Common Evidentiary Issues in Workers’ Compensation Litigation* which was published in the fall 2019 edition of the News & 440 Report (a publication of the Workers’ Compensation Section of the Florida Bar). Additionally, along with other Judges of Compensation Claims, he spoke regarding workers’ compensation motion practice at a seminar presented by the Office of the Judges of Compensation Claims/Workers’ Compensation Institute at the First District Court of Appeal on February 21, 2020. Finally, Judge Owens has continued to serve as an administrative member of the Friends of 440 and has participated in the organization of the Robert D. McAliley Inns of Court.

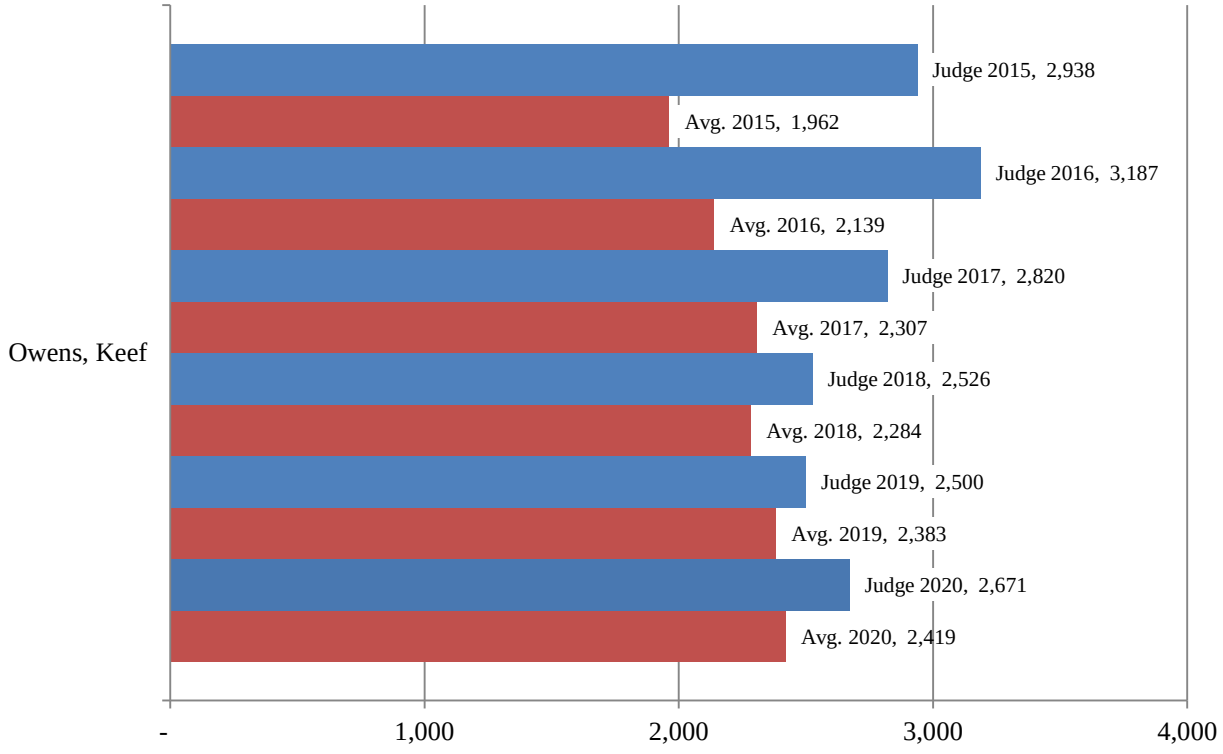
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



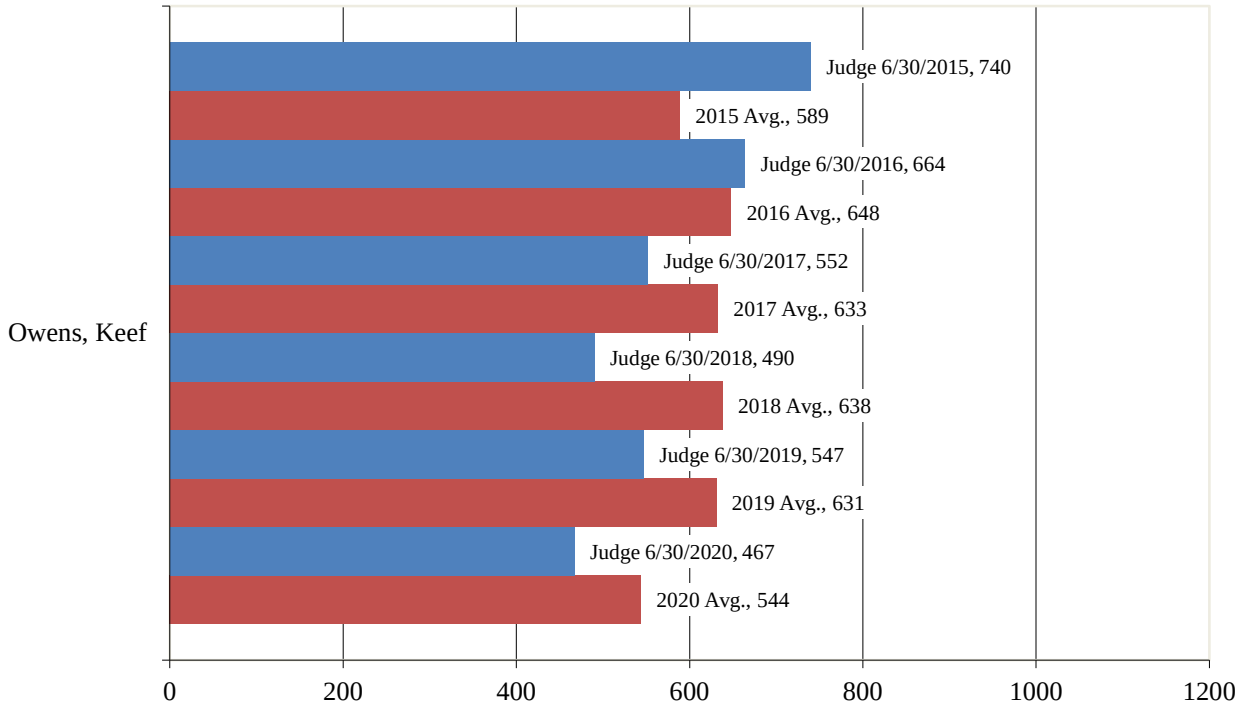
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



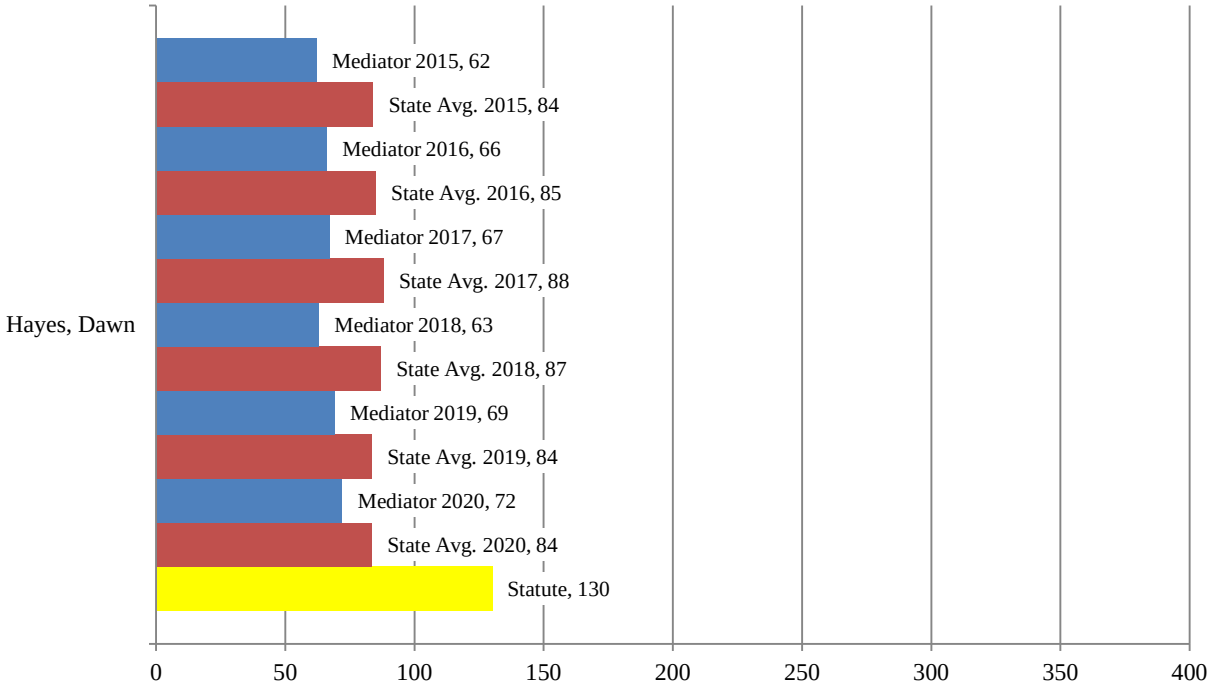
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



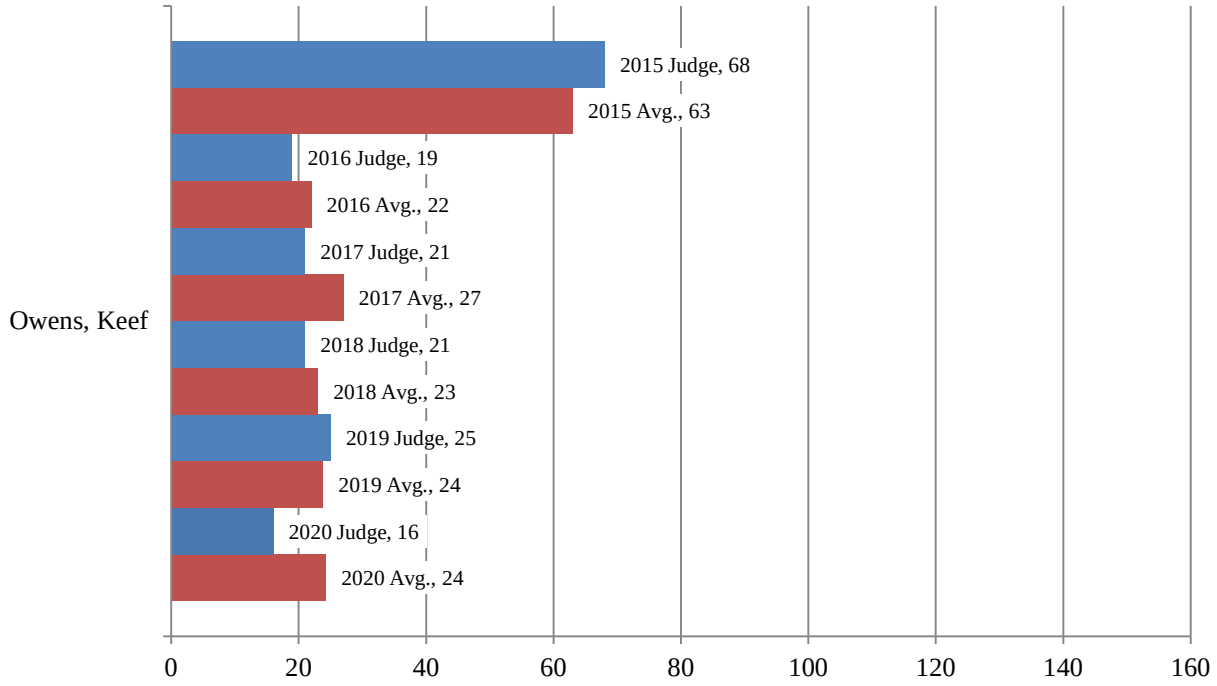
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



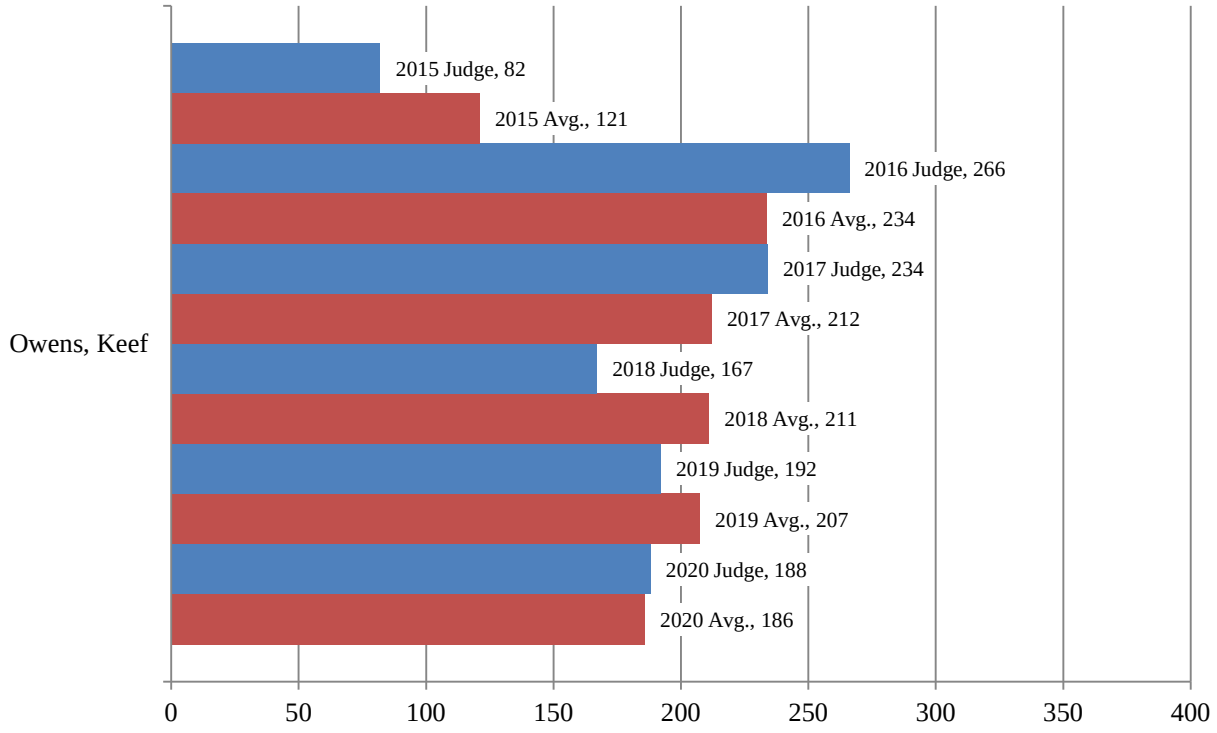
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



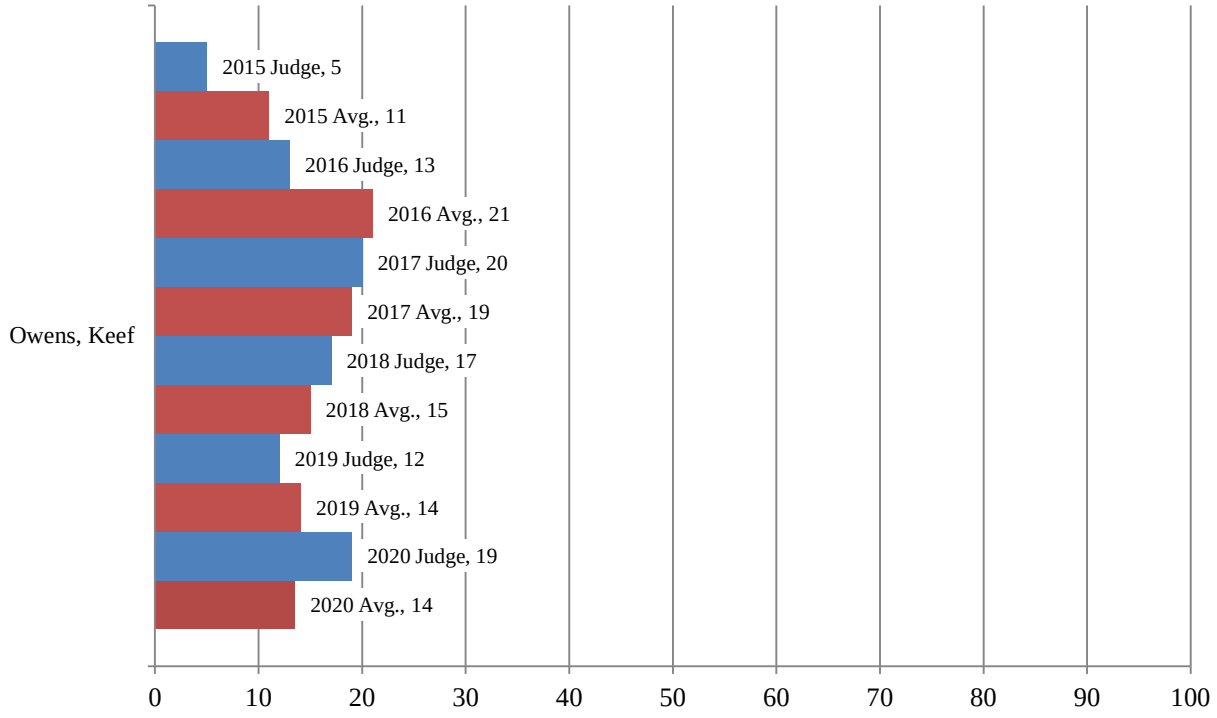
The following graph depicts the total volume of trial orders[245] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



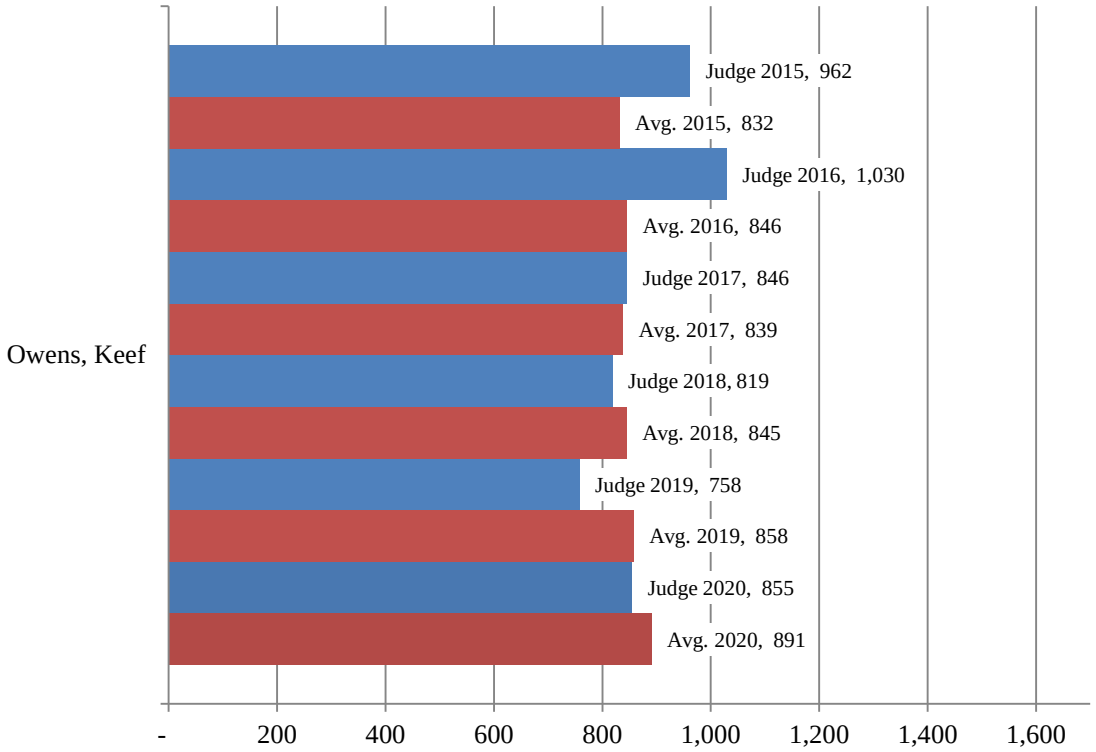
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



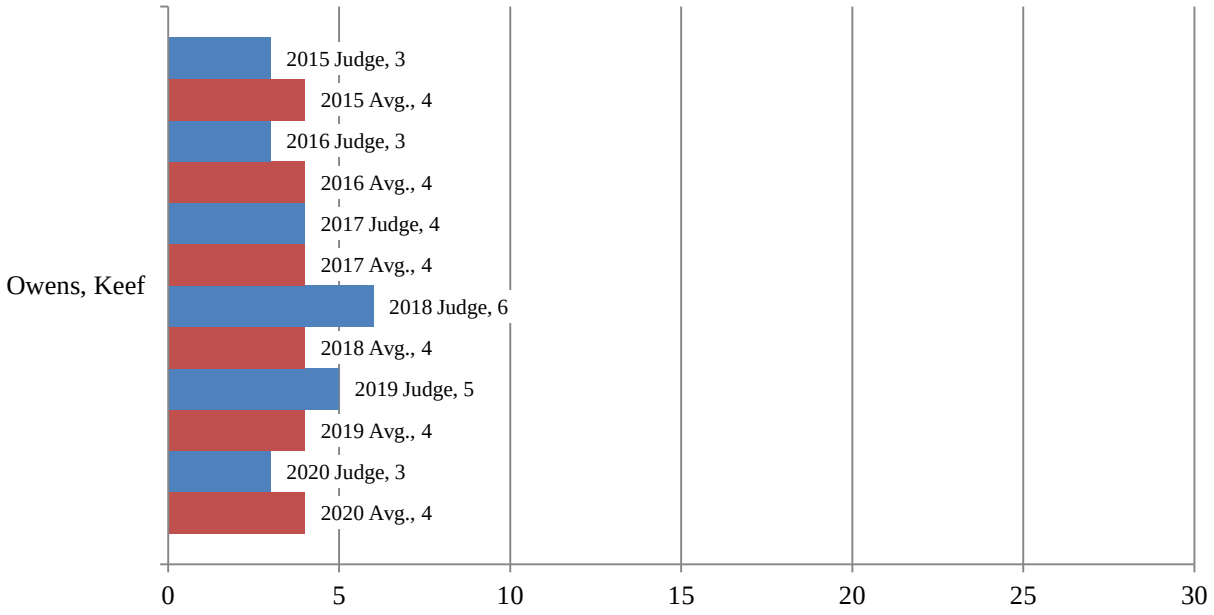
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



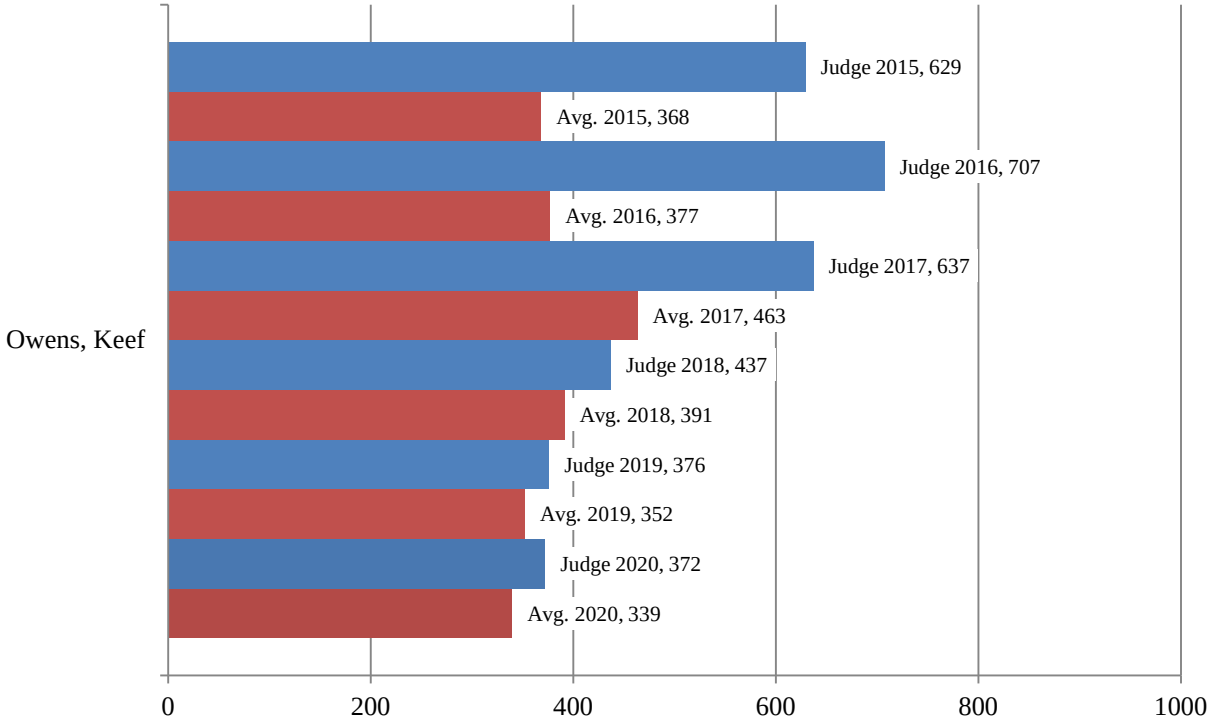
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



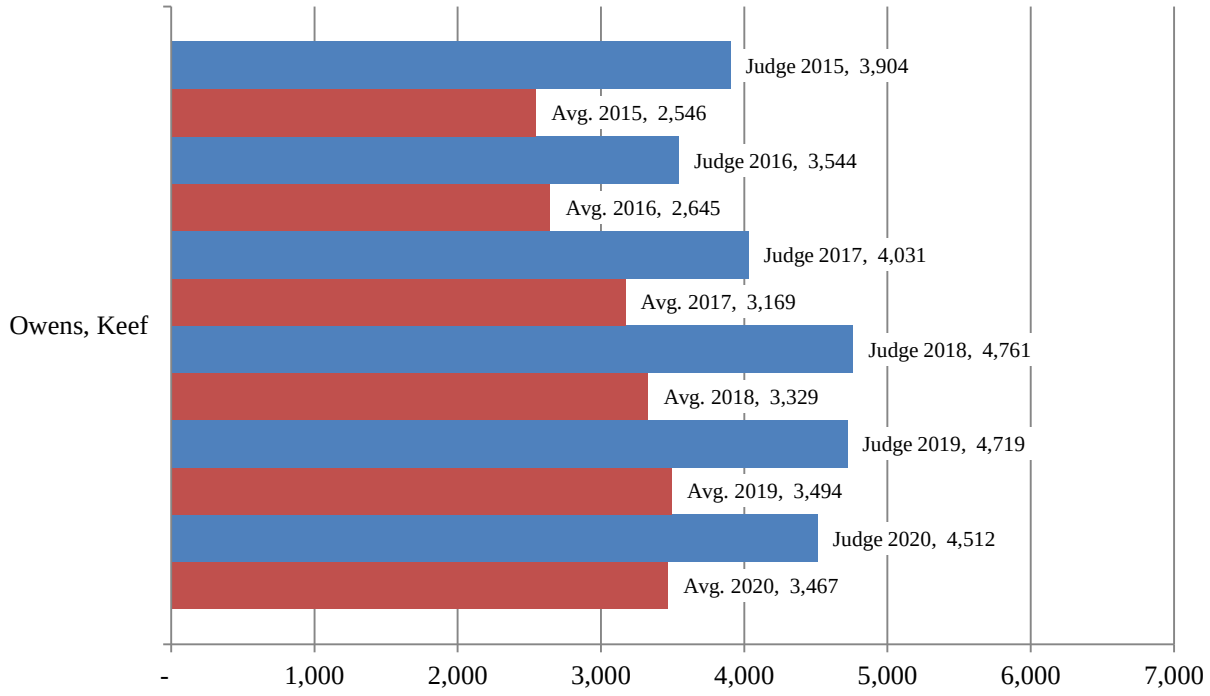
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



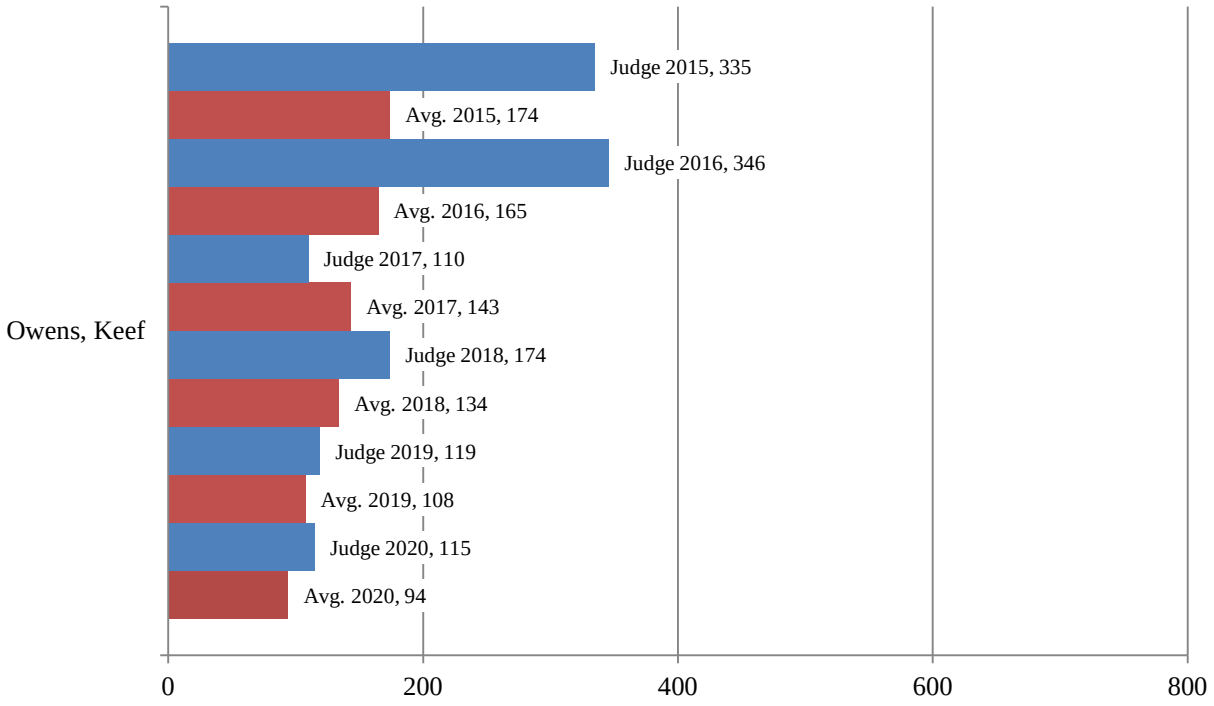
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



Appendix “13” District SAR (JCC Beck):

District SAR includes Manatee and Sarasota counties.

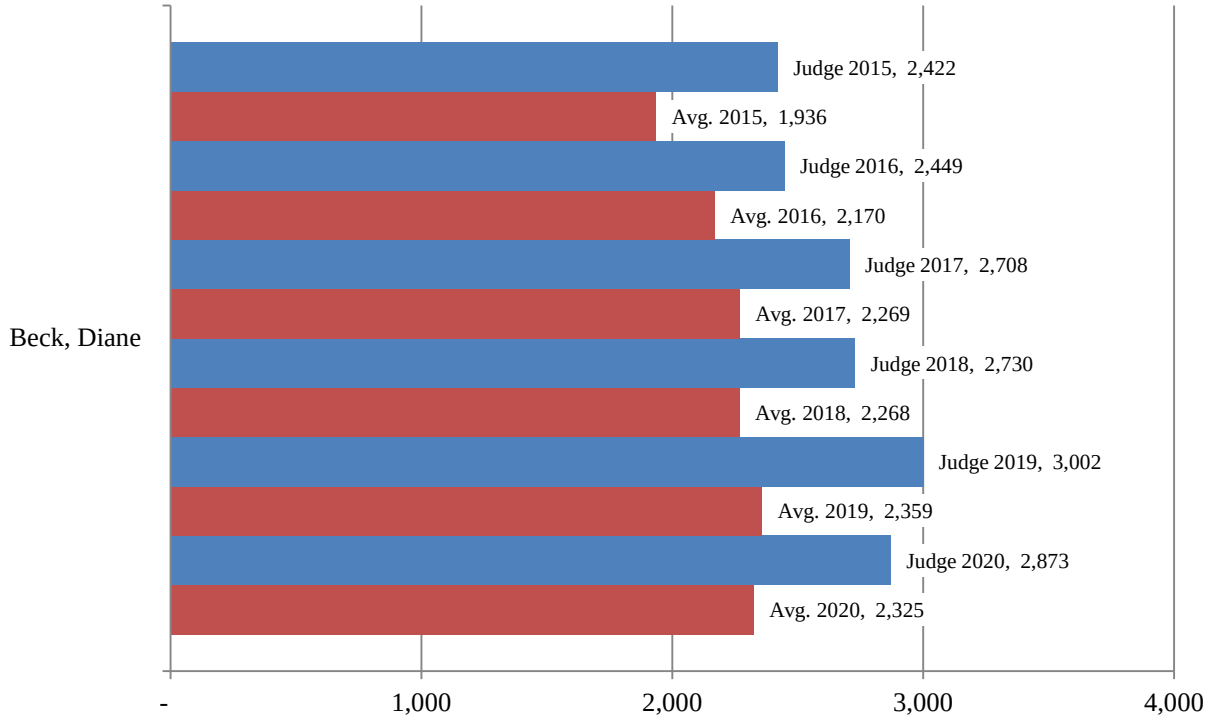
The PFB and “new case” filing volumes in District SAR both have been above the statewide averages for most of the last twelve years. The metrics do demonstrate efficiency and effectiveness. The end-of-year petition inventory was notable in 2018-19, but an above average closure rate in 2019-20 led to a year end petition inventory in 2019-20 that is markedly improved and closer to the statewide average.

Despite the consistently notable filing volumes, the times to mediation, to trial, and to final order are all within or very close to the statutory parameters. The volume of settlement orders is conversely notably above average, but the stipulation volume is slightly below average.

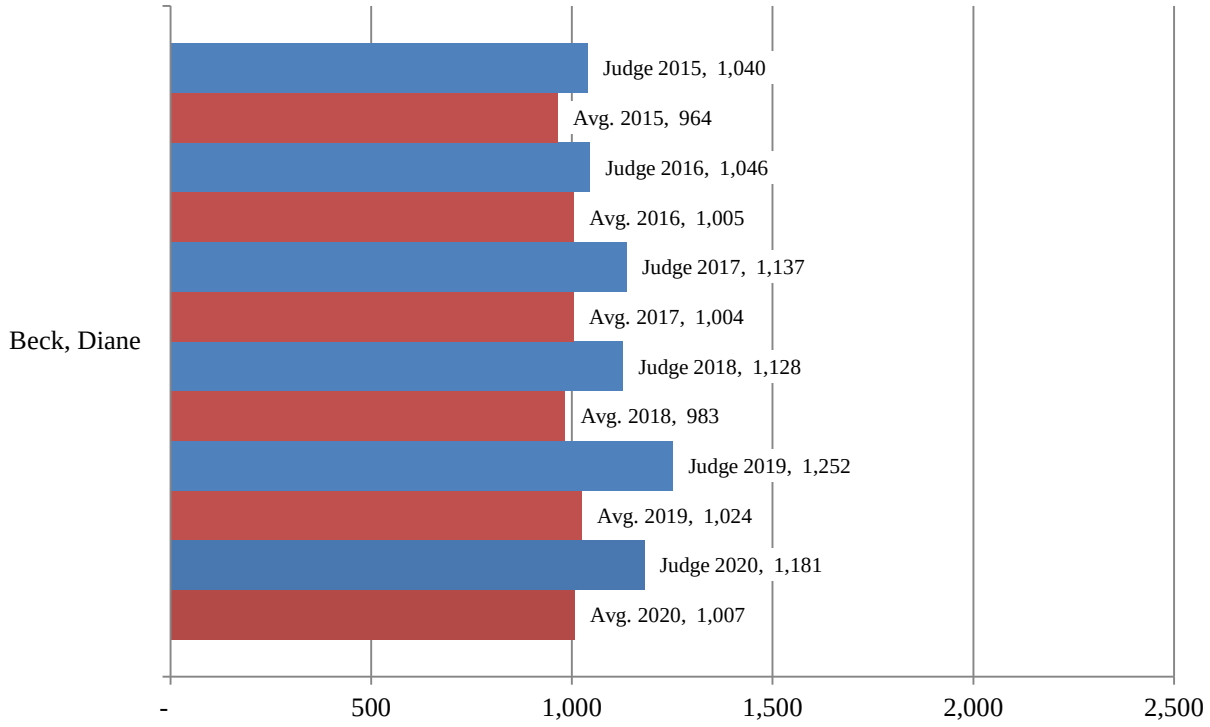
Judge Beck retired in 2019-20, following a tenure that spanned three decades. Her service was responsible for an extended period of stability and predictability in District SAR. A replacement was named close to the end of the fiscal year, and Erik Grindal assumed that position in August, 2020. In the interim, Judges Dietz and Newman provided an exceptional volume of support and assistance in District SAR.

[Space intentionally blank]

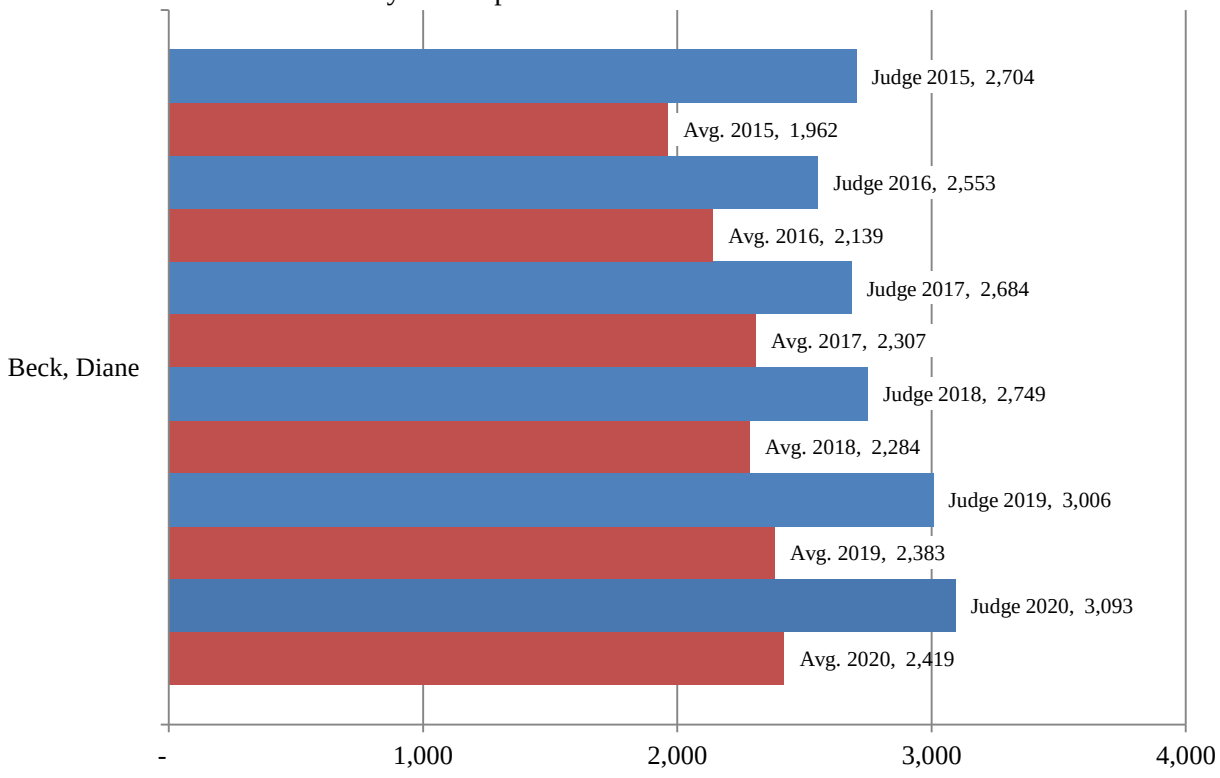
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



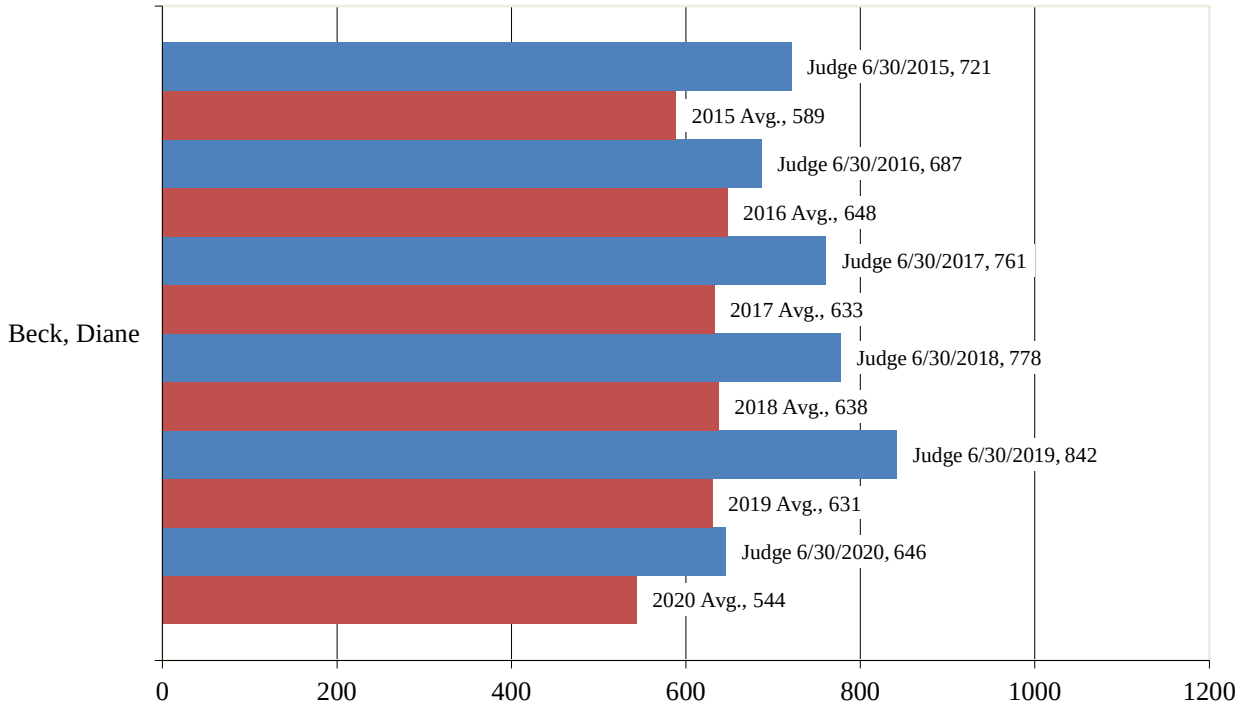
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



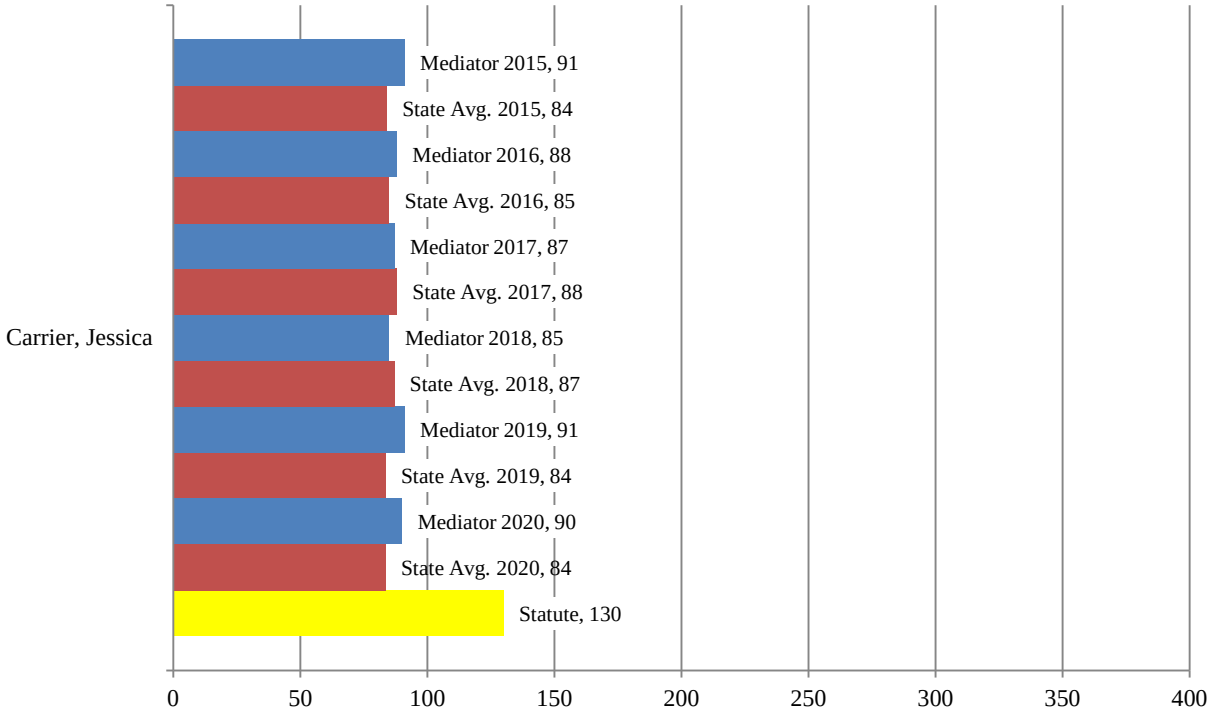
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



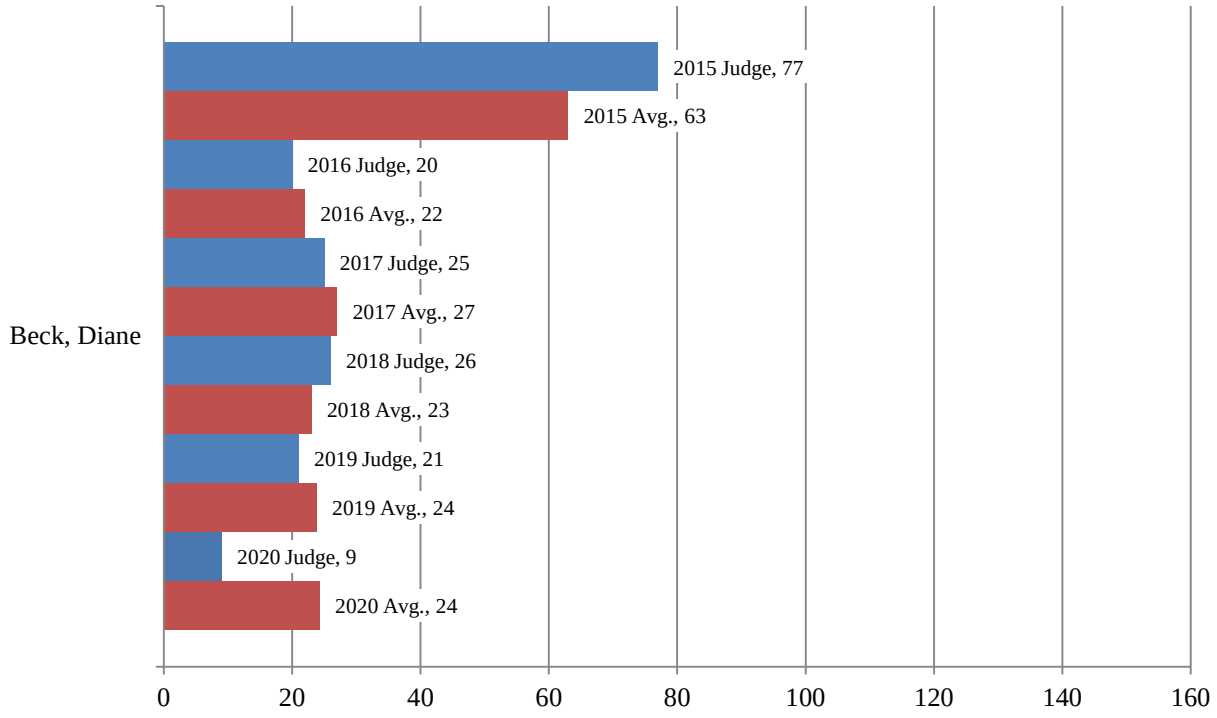
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



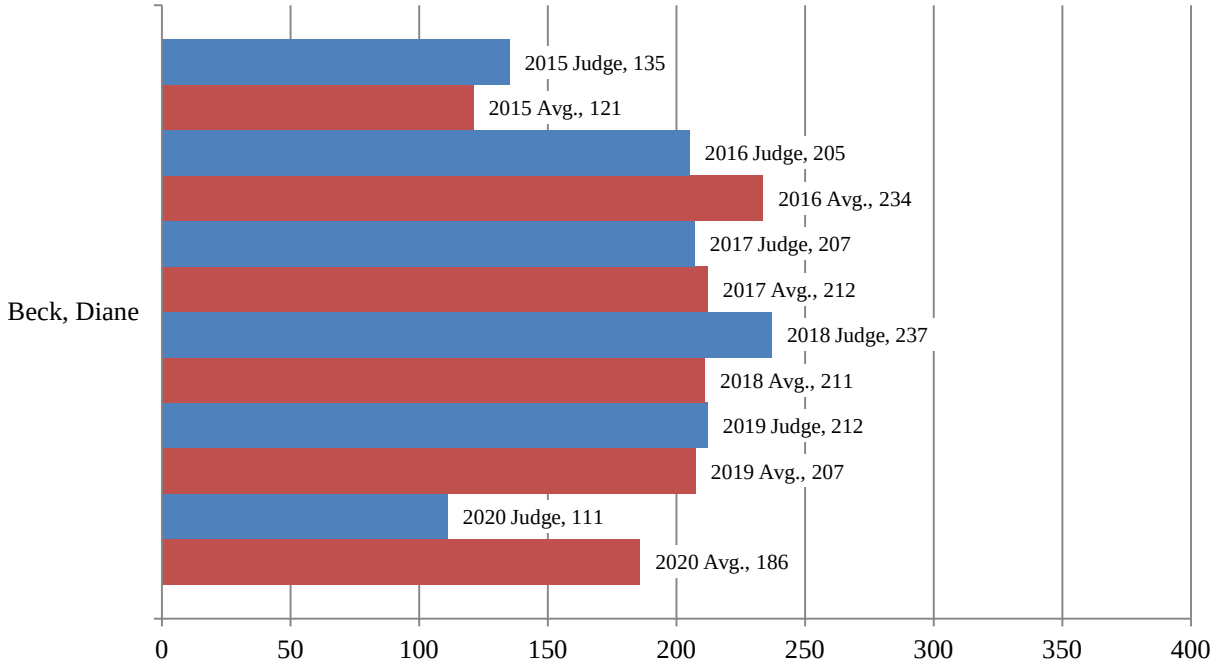
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



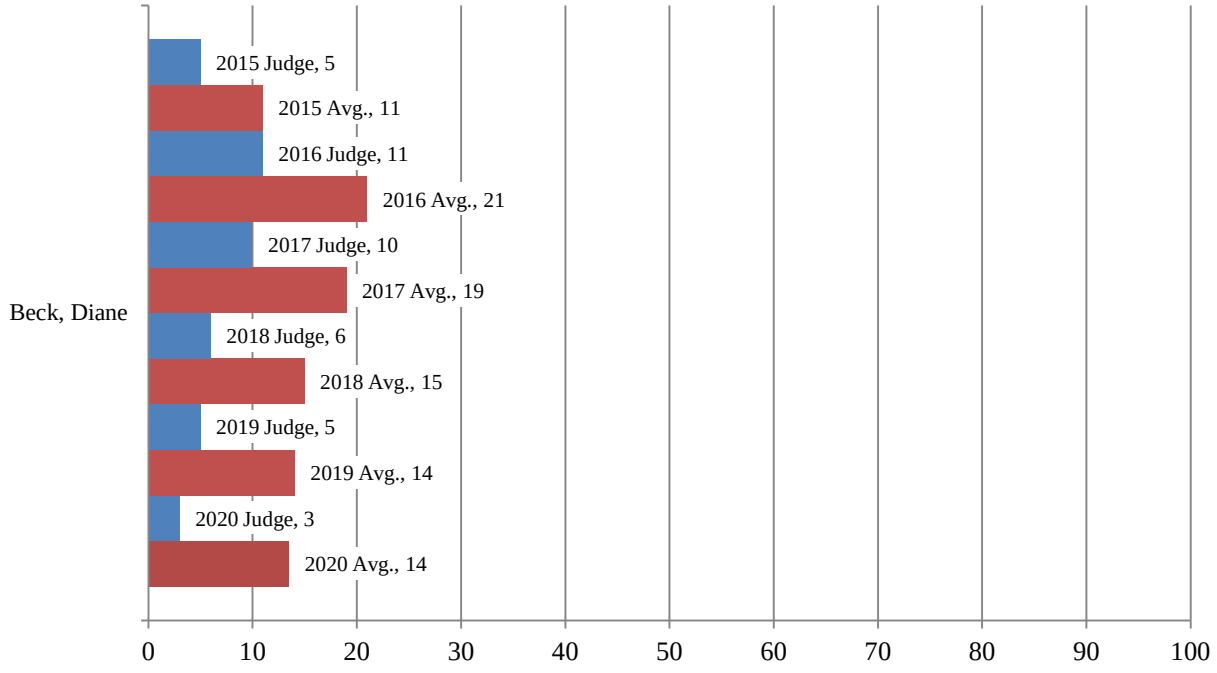
The following graph depicts the total volume of trial orders[246] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



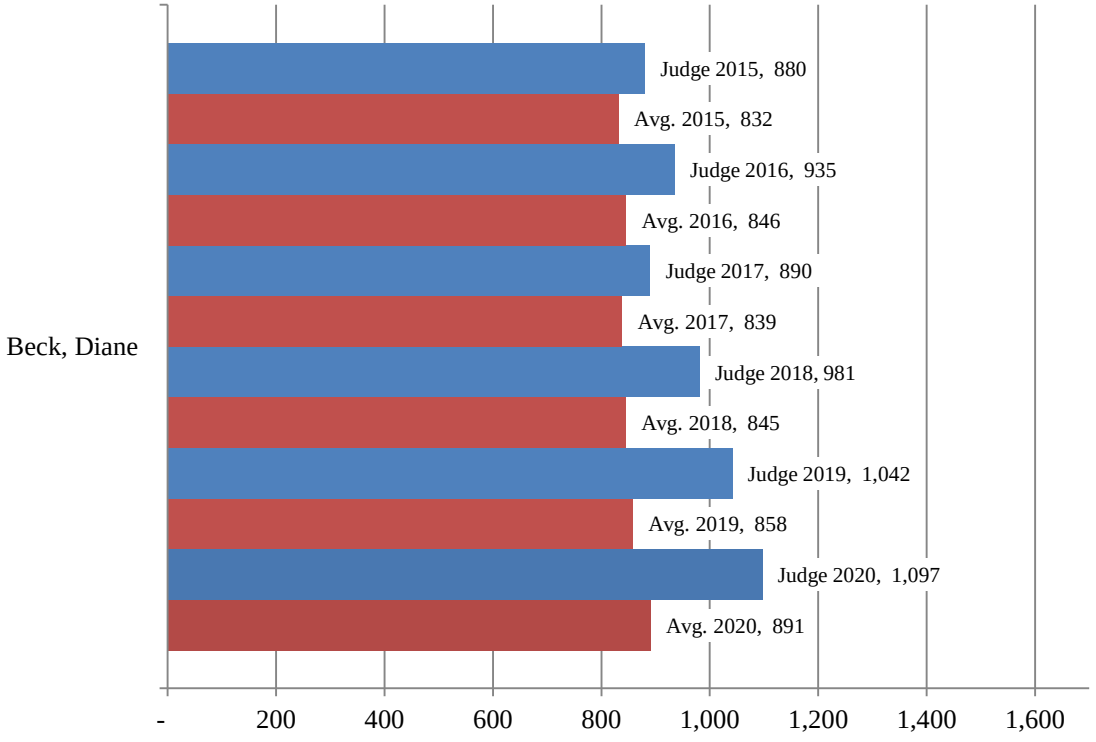
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



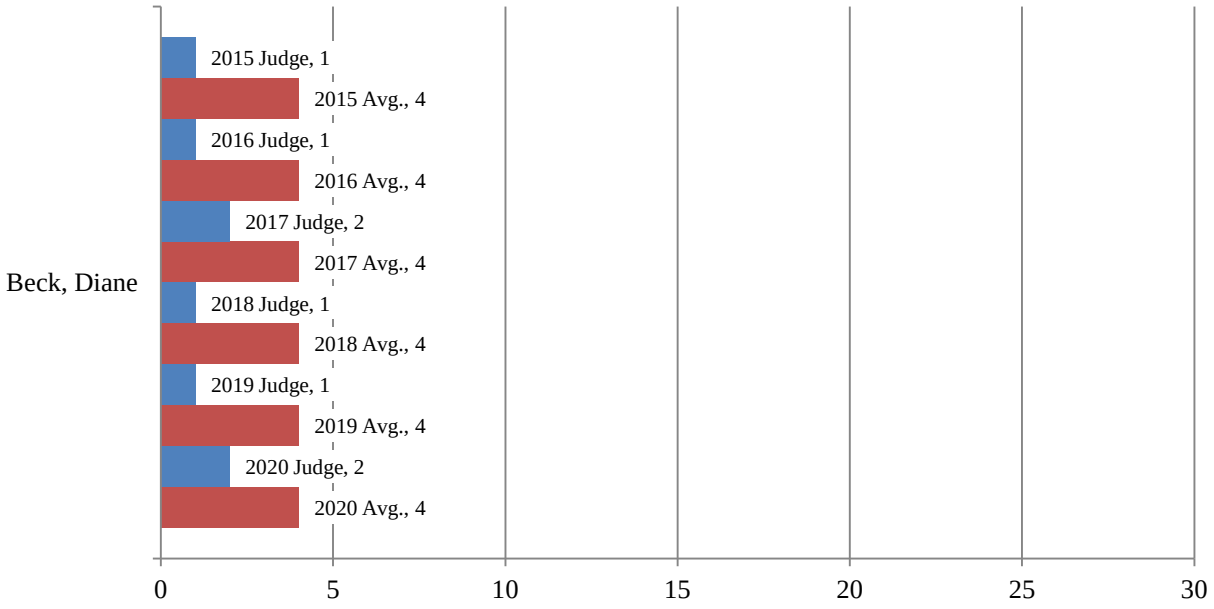
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



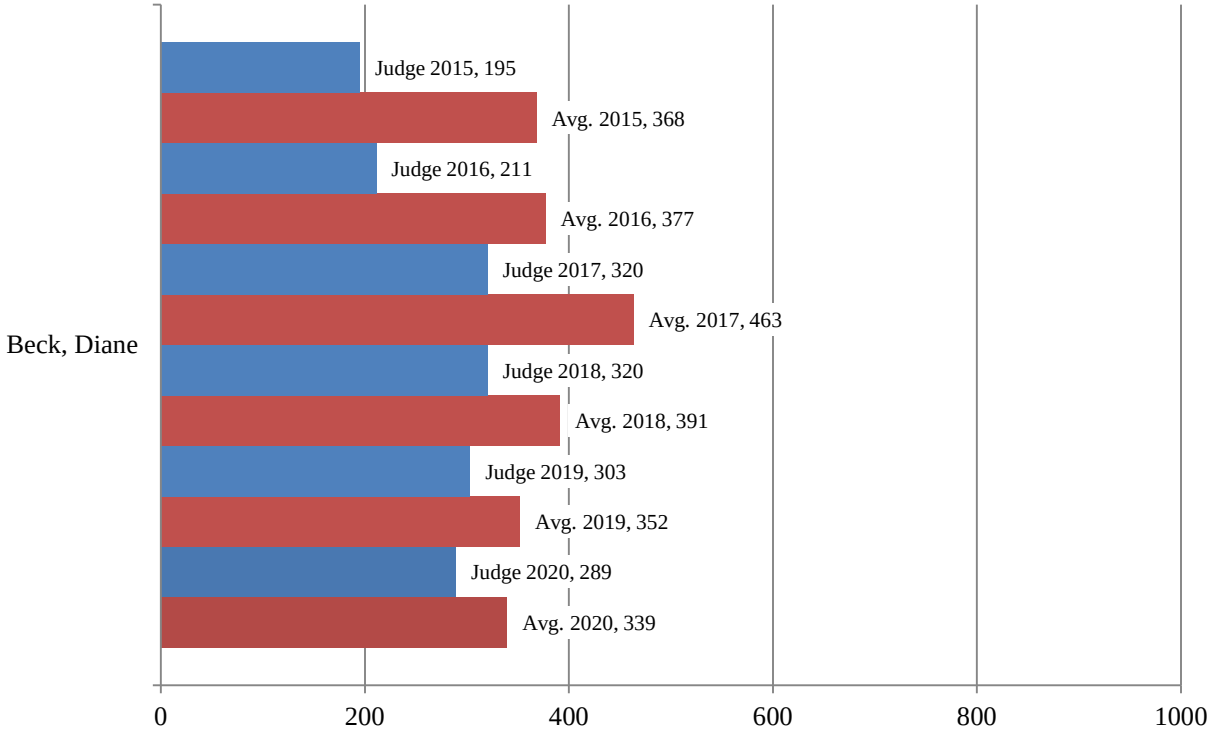
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



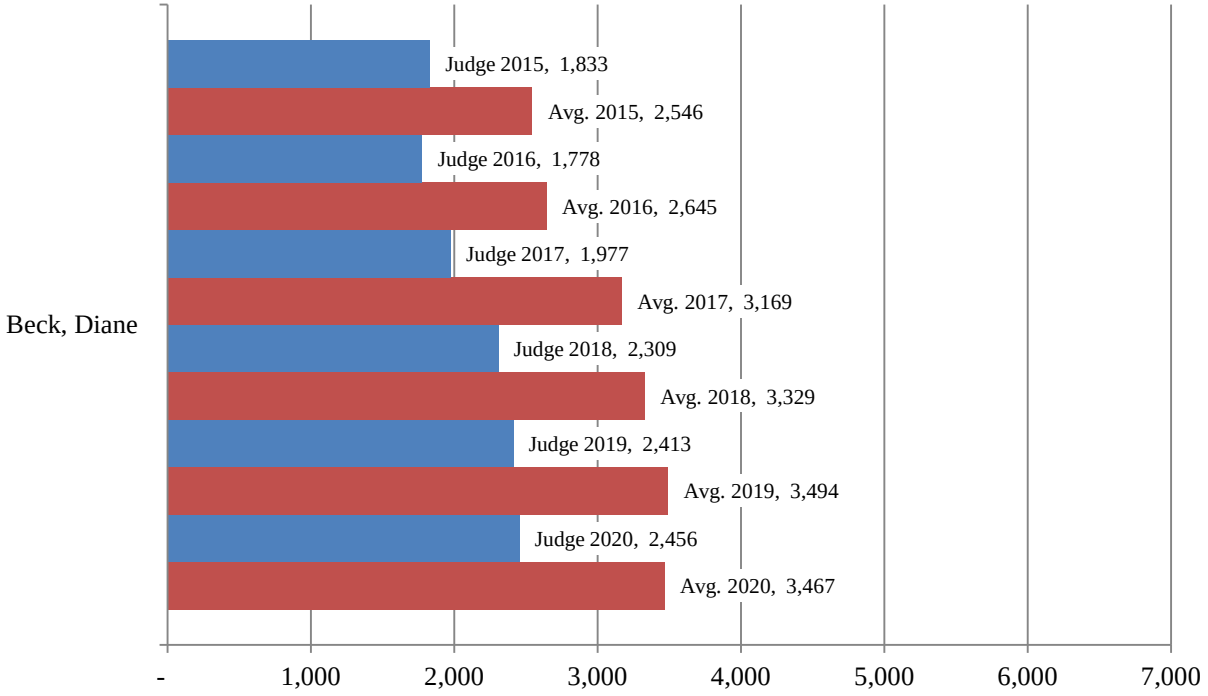
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



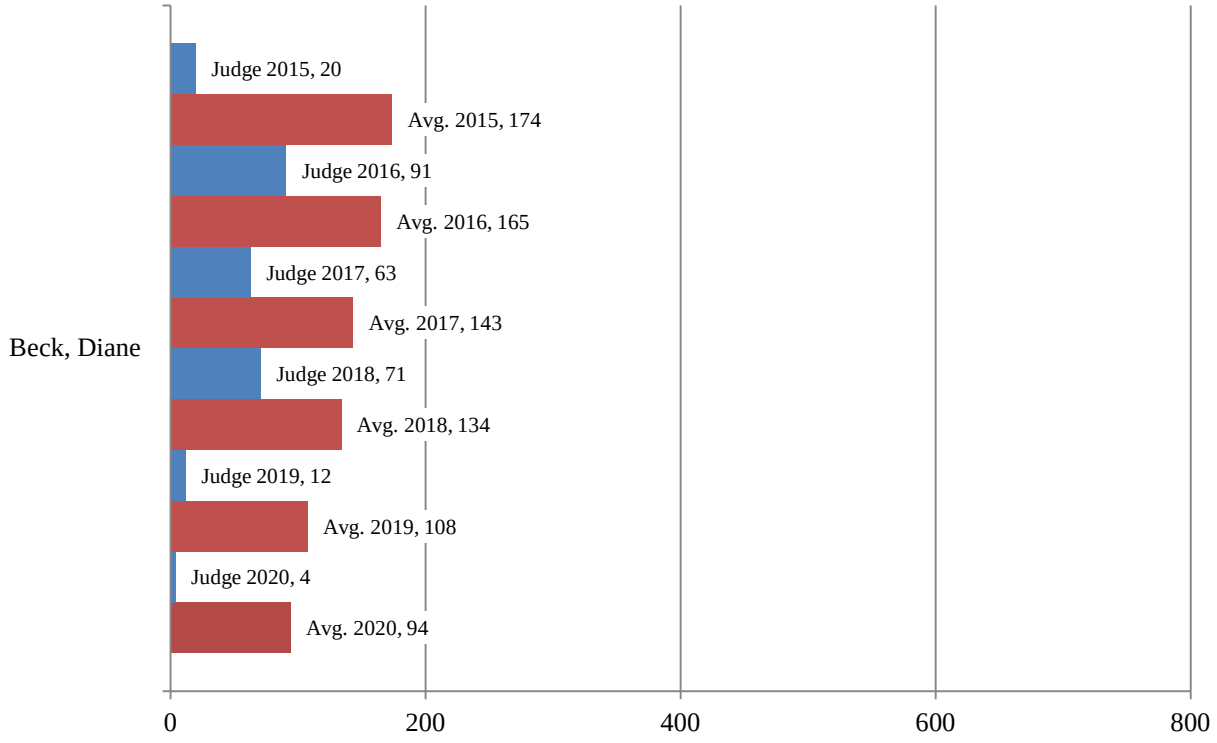
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



Appendix “14” District STP (JCC Rosen):

District STP includes Pasco and Pinellas counties.

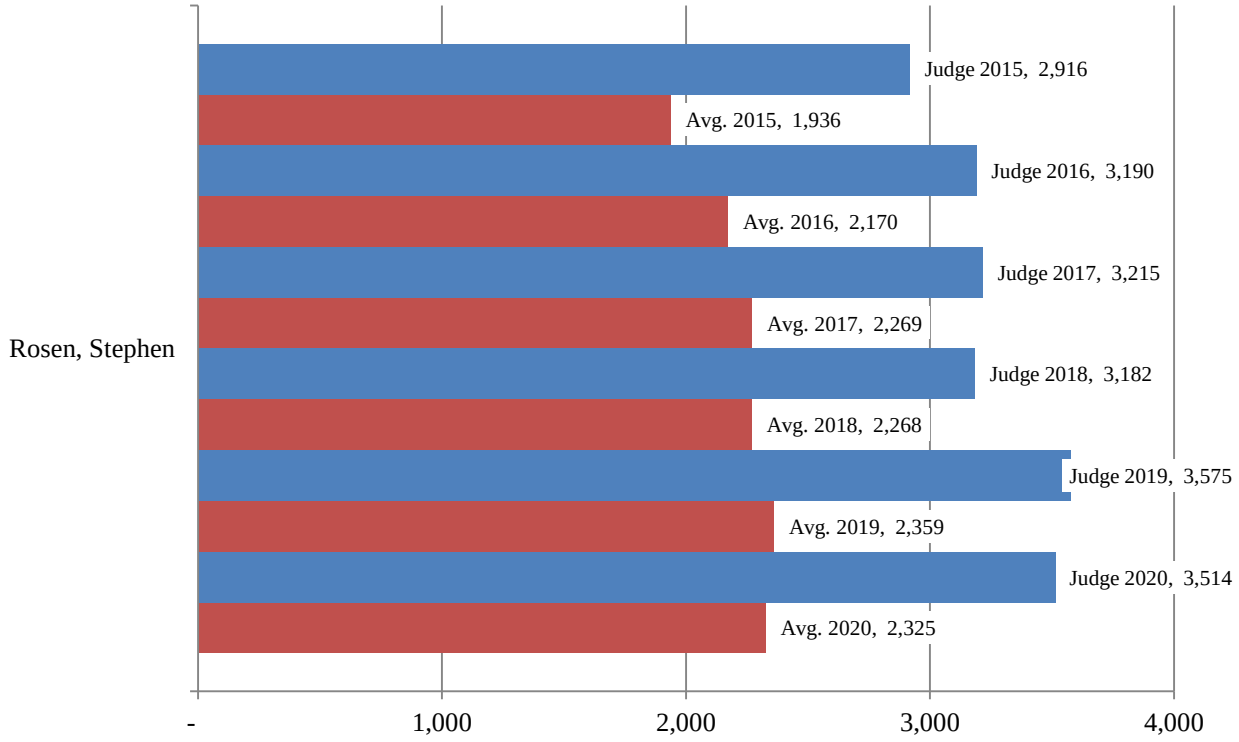
District STP underwent significant change in 2012, becoming a one-judge District for the first time since 1974. The Legislature eliminated a judicial position, and the vacant position in Melbourne was the logical selection to discontinue. A St. Petersburg judge voluntarily transferred from STP to MEL 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 persistently 50% or more above the average. This has been consistent for the last eight years. These volumes are likely not sustainable for a single judge. It is a credit to Judge Rosen that the volume has remained actively managed as long as it has. As Judge Rosen retires, it is likely that efforts of other judges will be required to maintain the timeliness and efficiency of this exceptional office.

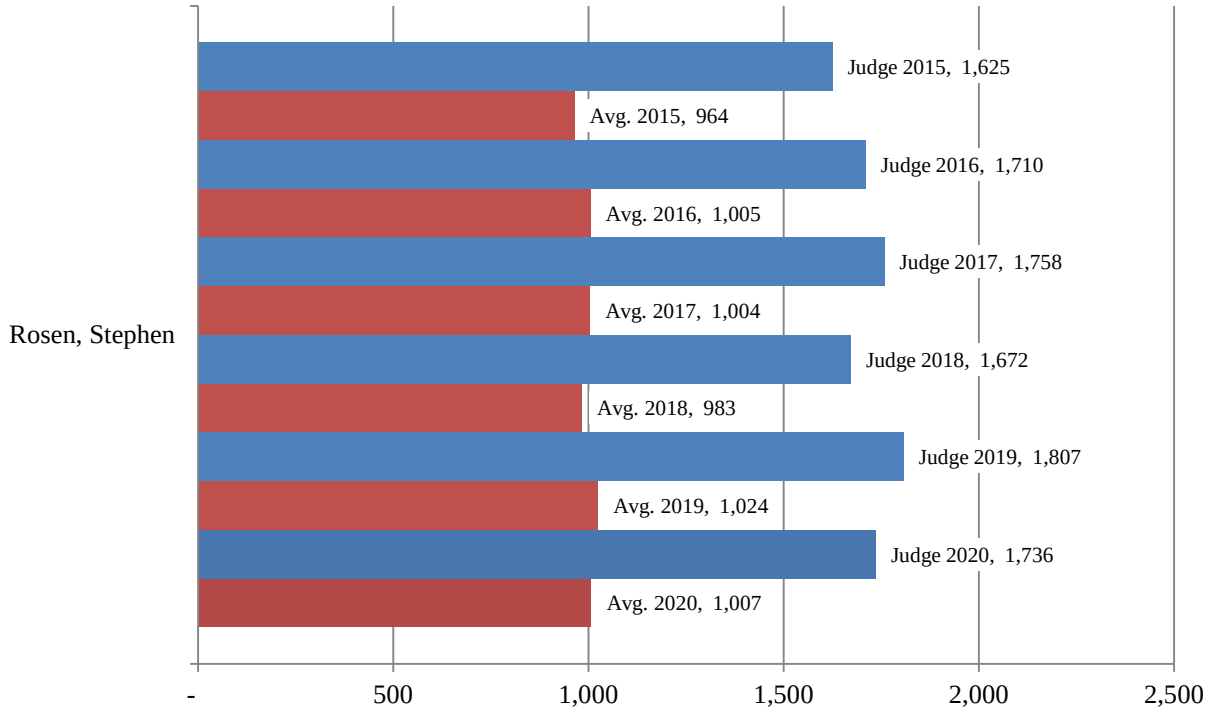
Trial volumes in District SPT remain average, despite the COVID-19 onset and the challenges it brought. The time to trial and time to order have each been within the respective statutory parameters, but the time to trial slipped beyond the 210 days in 2018-19, and more so in 2019-20.

Judge Rosen announced his retirement in 2019-20, to be effective mid-way through 2020-21. He expressed his gratitude for the opportunity to have served the public for 12 years. He characterized it as a unique opportunity to give something back to a Worker's Compensation system that had been good to him in private practice.

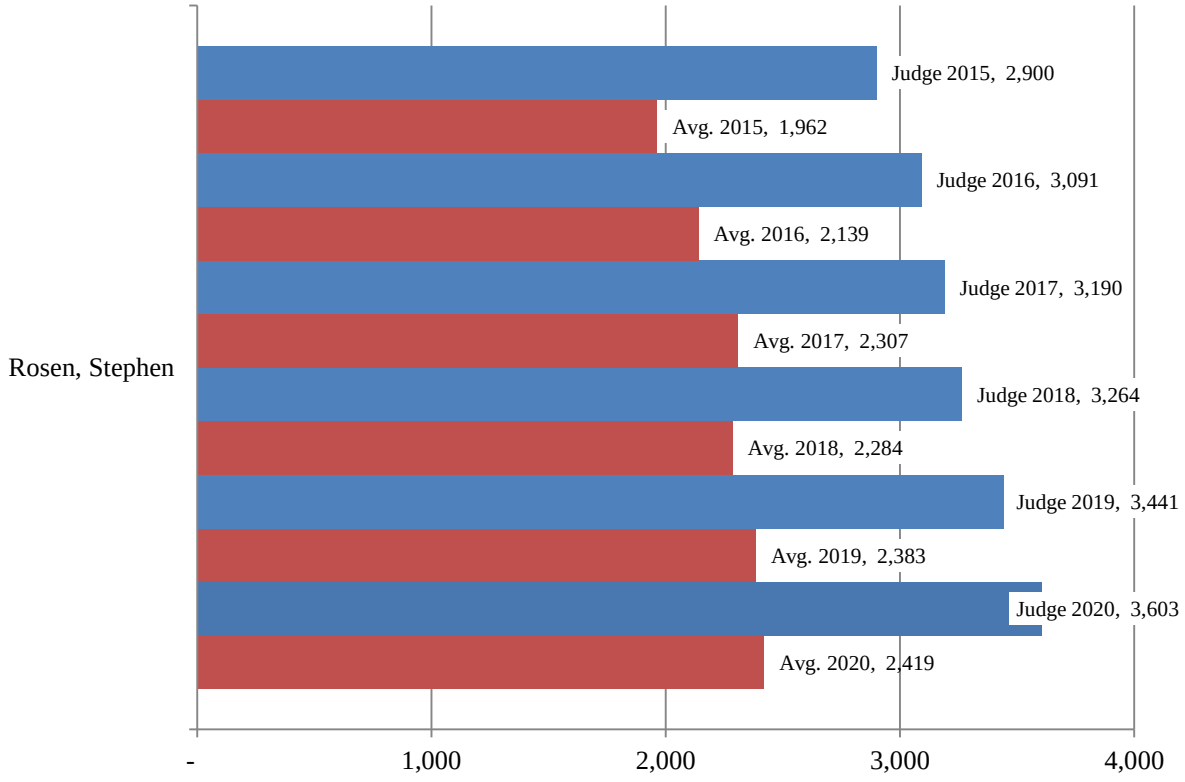
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



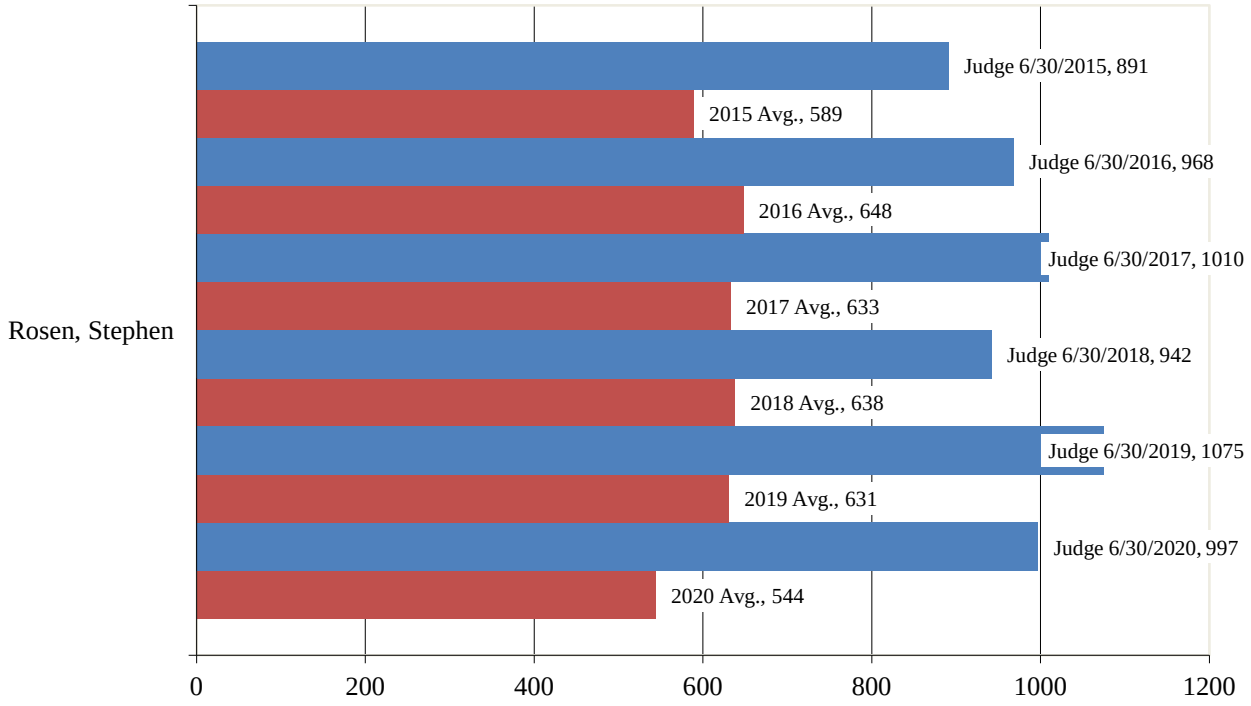
The following depicts the volume of “new cases” filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.

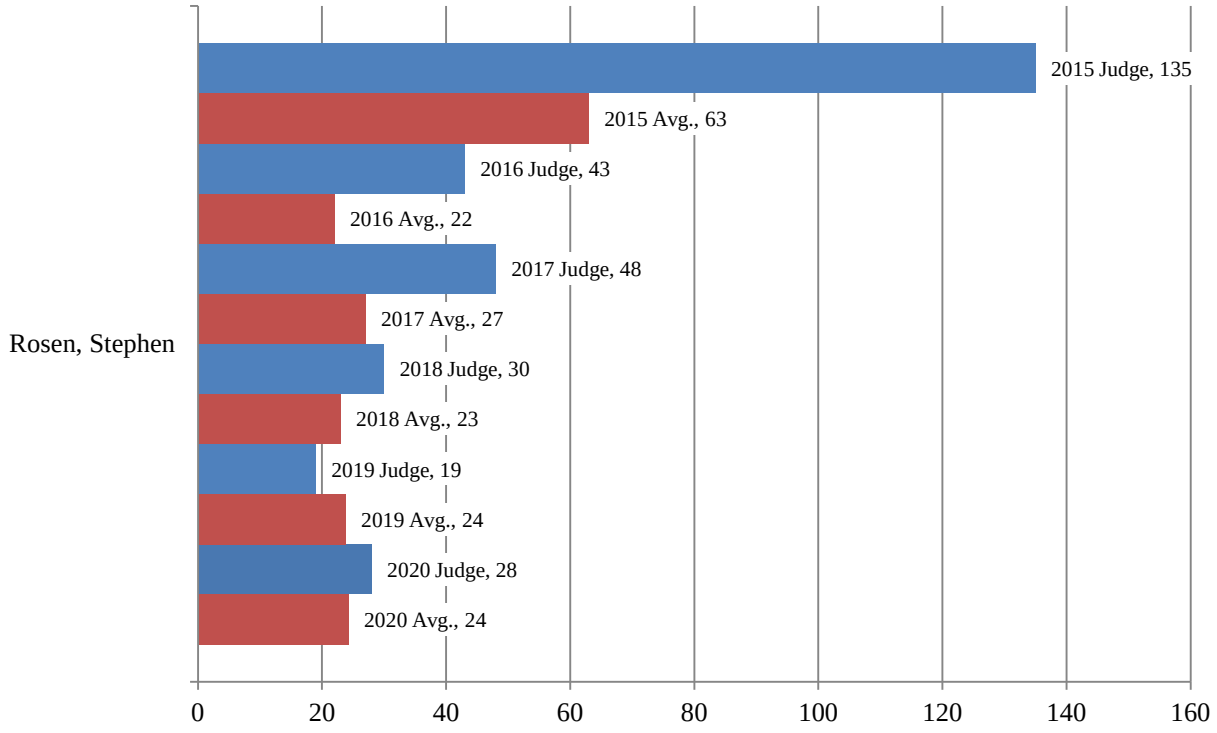


The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.

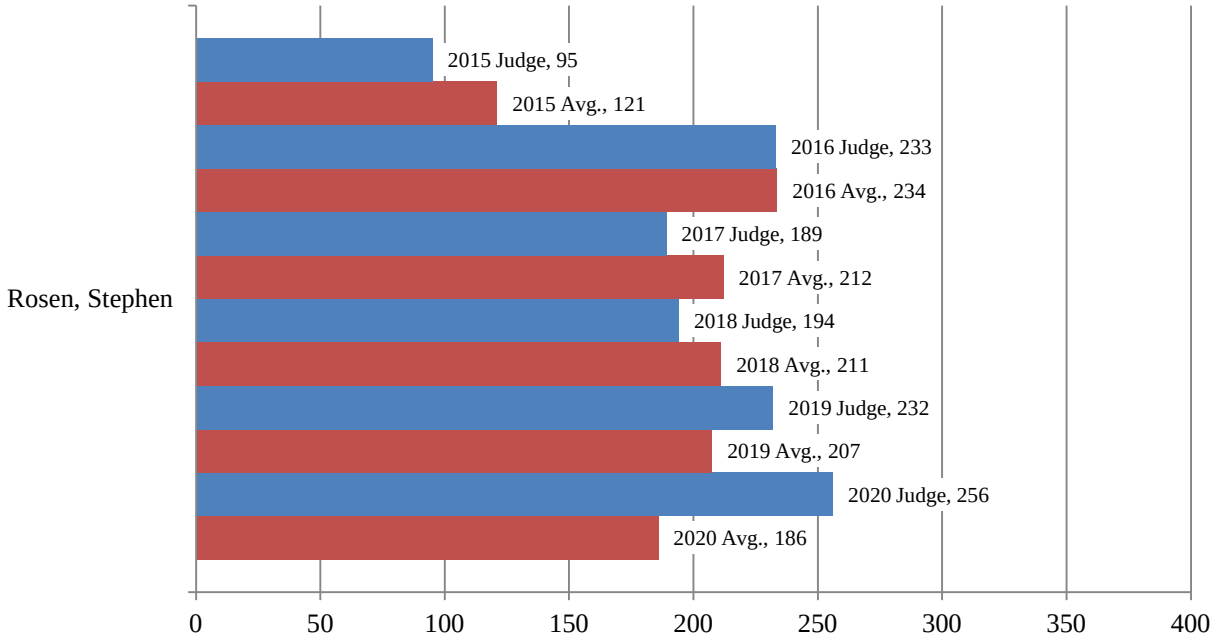


The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.

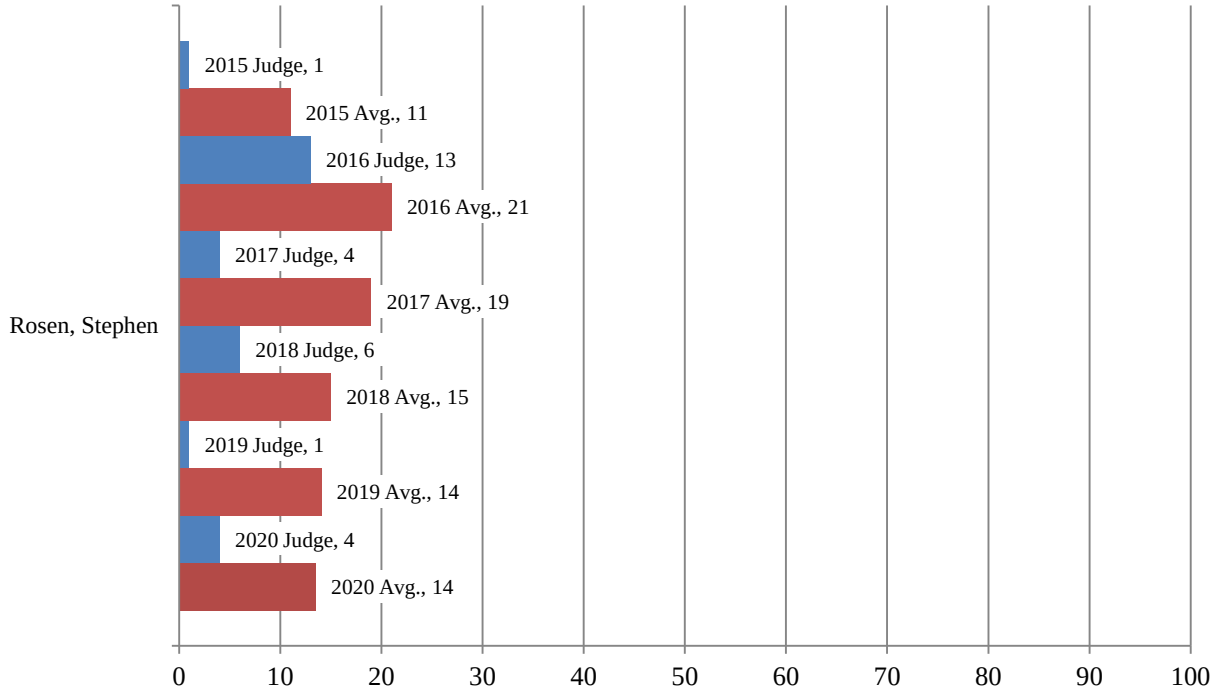
The following graph depicts the total volume of trial orders[247] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



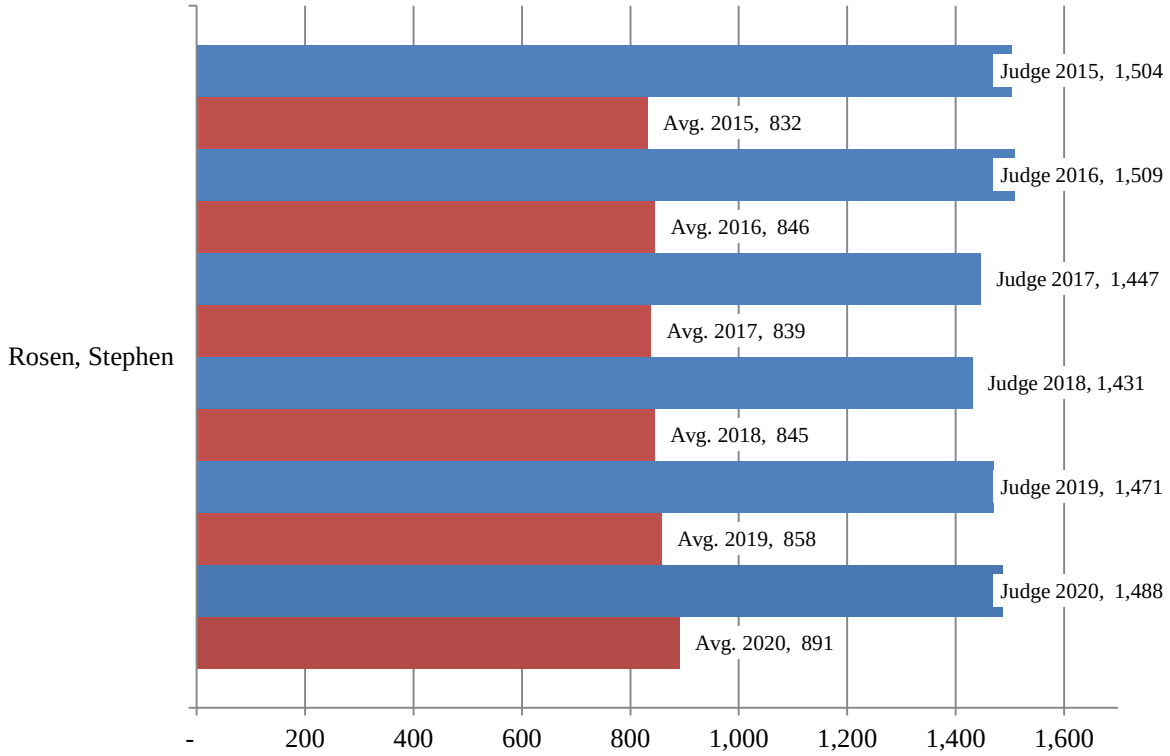
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



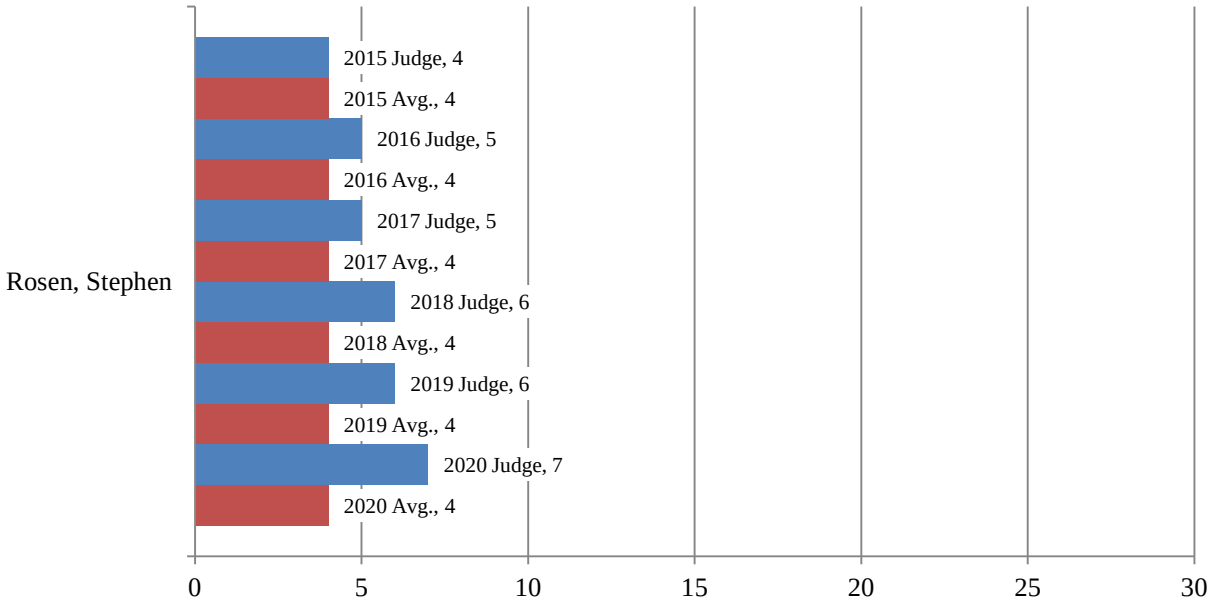
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



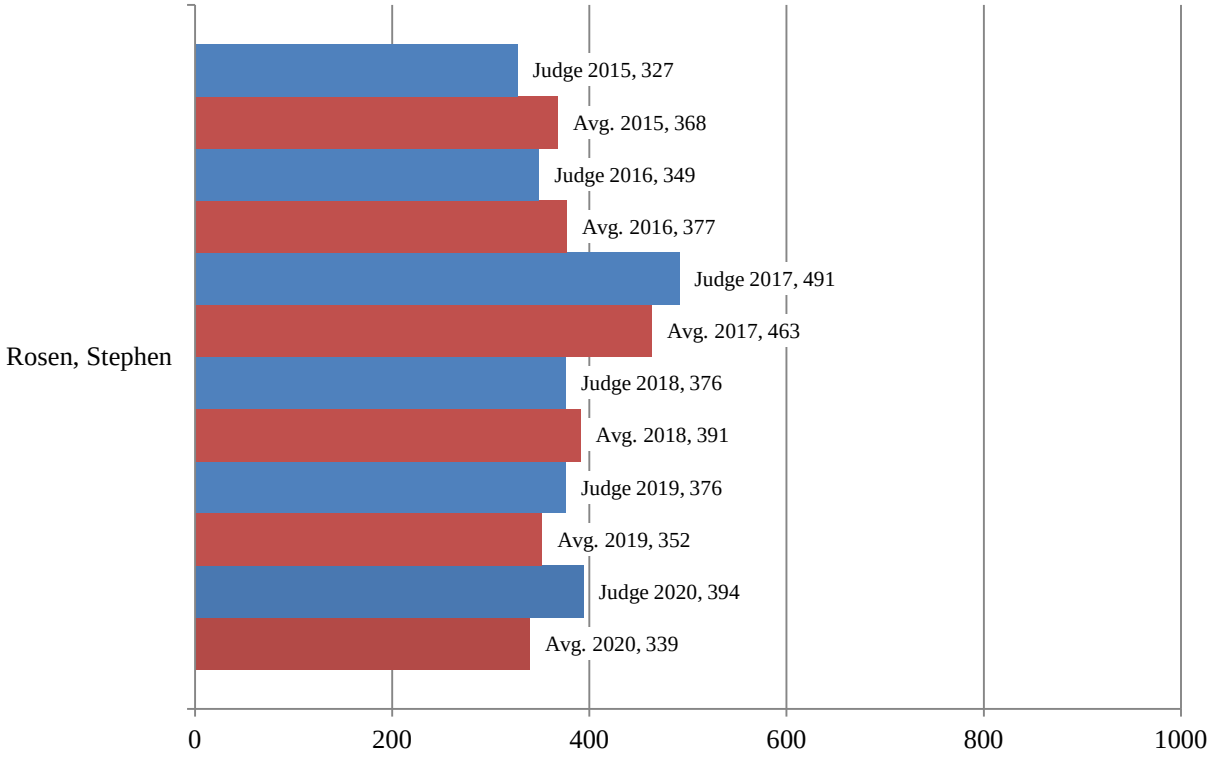
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



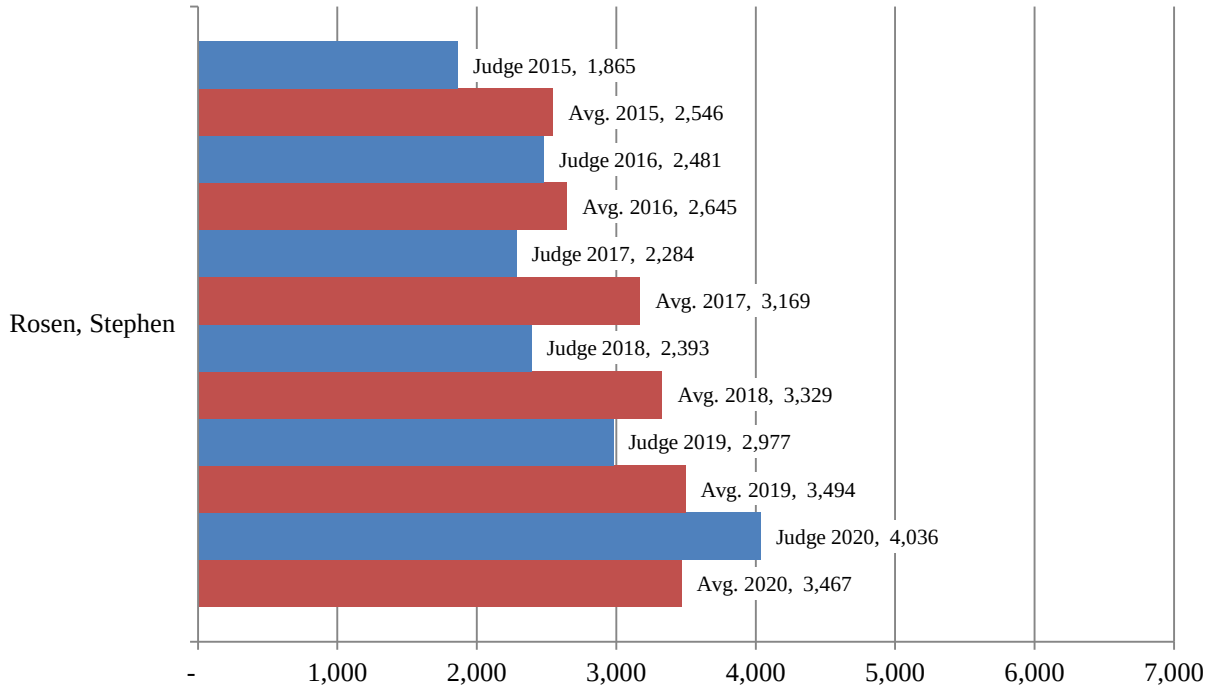
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



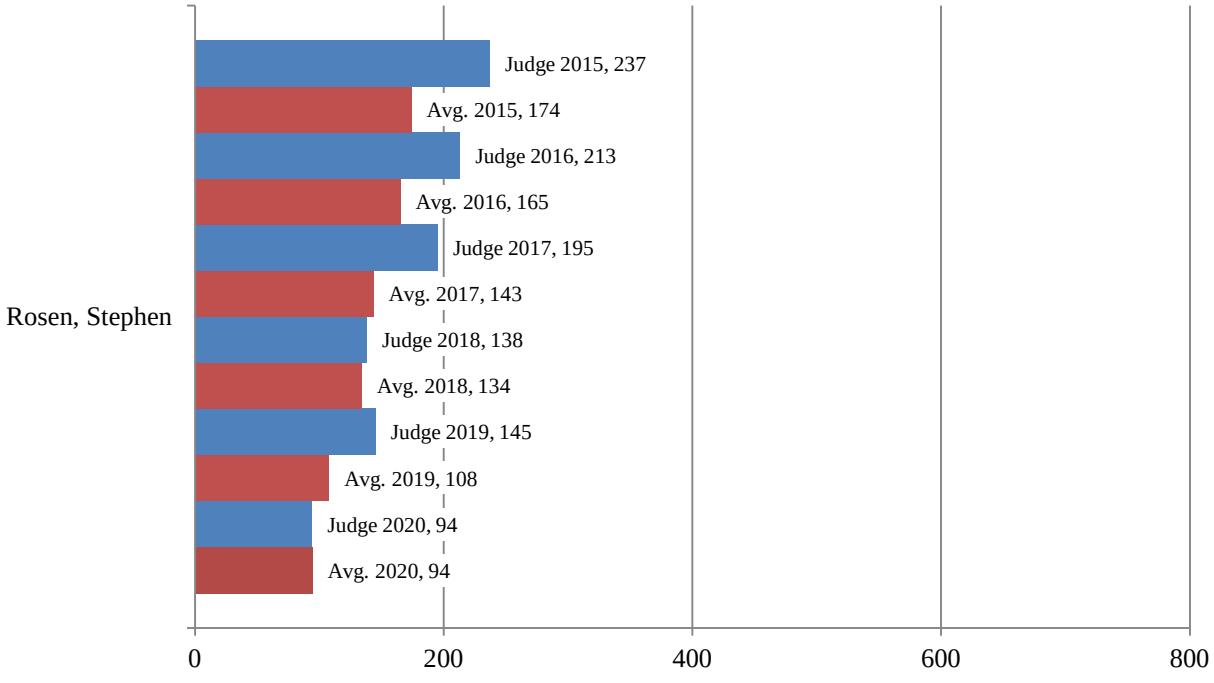
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



Appendix “15” District TLH (JCC Newman):

District TLH is one of the largest geographic Districts, and includes Franklin, Gadsden, Hamilton, Jefferson, Lafayette, Leon, Madison, Suwannee, Taylor and Wakulla counties.

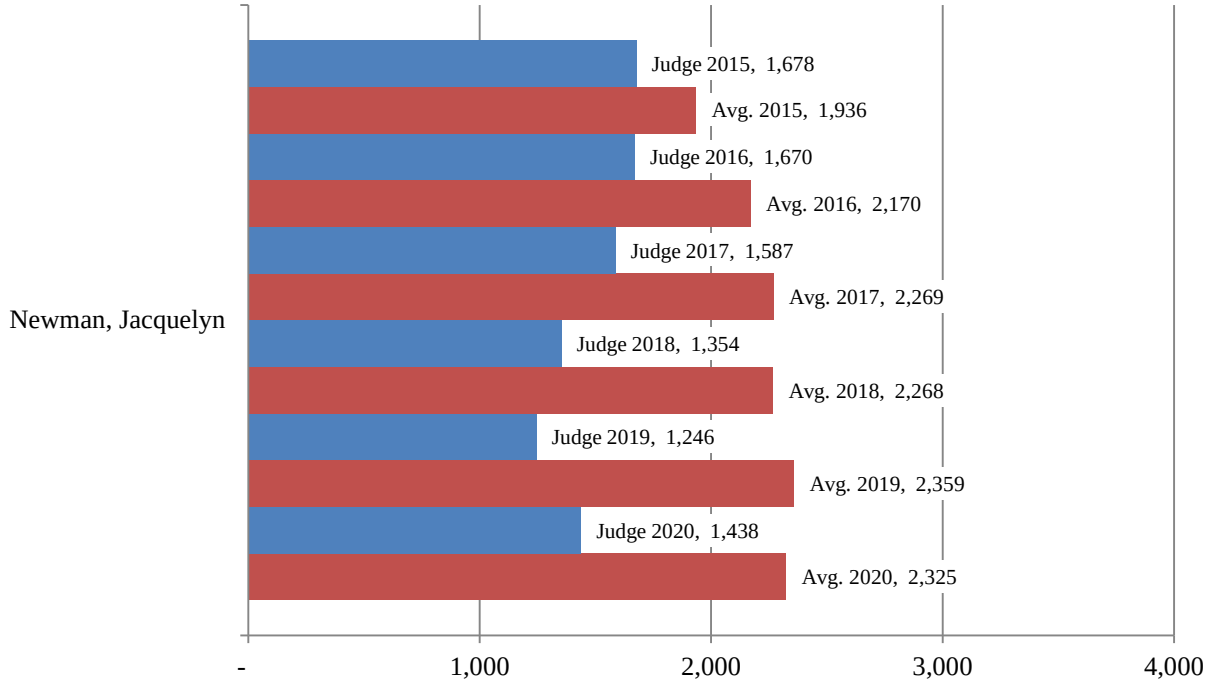
Although some of these counties have low population density, there is an exceptional level of effort required in this District due to the statutory obligation for the hearings to periodically occur in the county in which the accident occurred if requested by the parties. Although some litigants agree to travel to the District Office in Leon County, travel has historically been periodically necessary for trials.

The petition and “new case” volumes in District Tallahassee are markedly below average. The average times to mediation, to trial, and to final order are all within the statutory parameters in Tallahassee. The volumes of settlement, stipulation, “other hearings,” and “other orders” are all below average in Tallahassee.

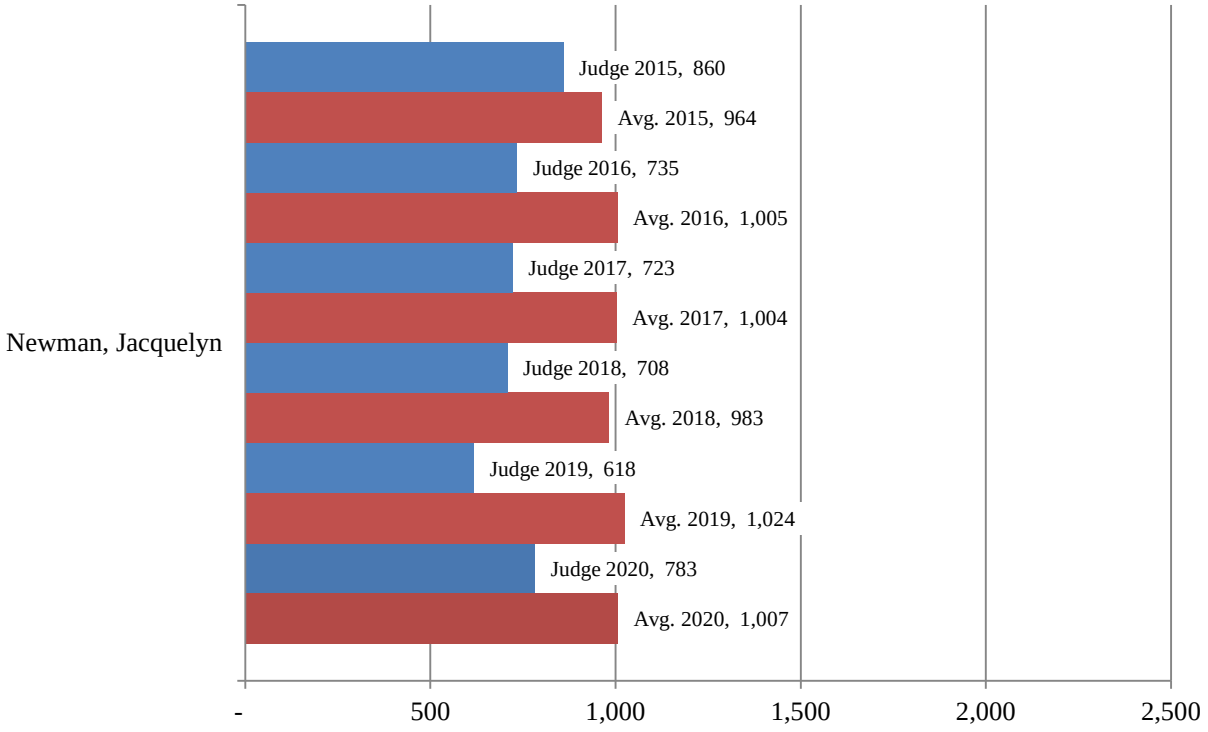
In 2019-2020, Judge Jacquelyn Newman participated in several continuing education events involving the workers’ compensation community. At the Workers’ Compensation Annual Education Conference sponsored by WCI in Orlando, Florida in August of 2019, Judge Newman served as a panelist for “The Workers Compensation Practice from the Judicial Perspective” seminar and volunteered as a judge for the annual E. Earle Zehmer Moot Court Competition. Judge Newman also lead the committee that planned and hosted the seminar “Workers’ Compensation in 2020 – Ringing in the New Decade” sponsored by the Office of the Judges of Compensation Claims and WCI and held at the First District Court of Appeal in Tallahassee, Florida on February 21, 2020. She served as the moderator for a panel discussion on “Professionalism and Collegiality in Workers’ Compensation.” Judge Newman also penned the article *Workers’ Compensation Final Hearings – Observations from the Bench* for the “Judge’s Corner” section of the News and 440 Report issued in February of 2020.

Following Judge Beck’s retirement in District SAR (page 187), Judge Dietz (MEL) and Judge Newman (TLH) provided significant assistance with management of the motion practice and docket there.

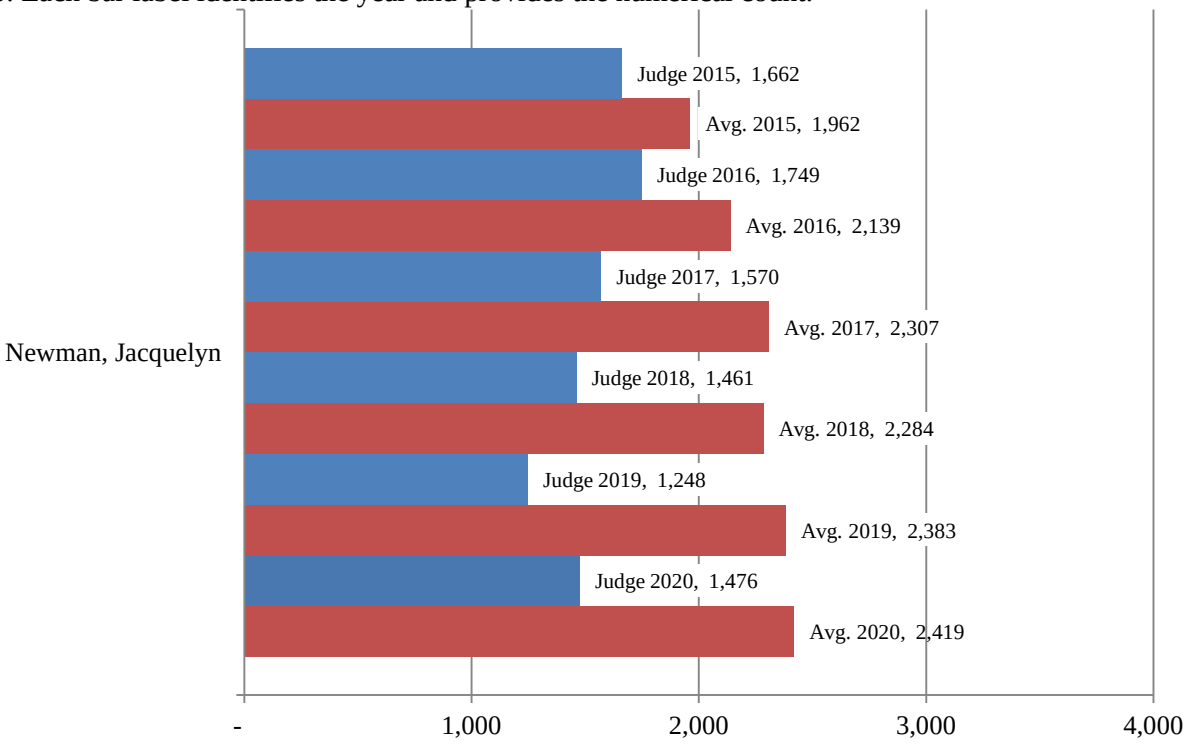
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



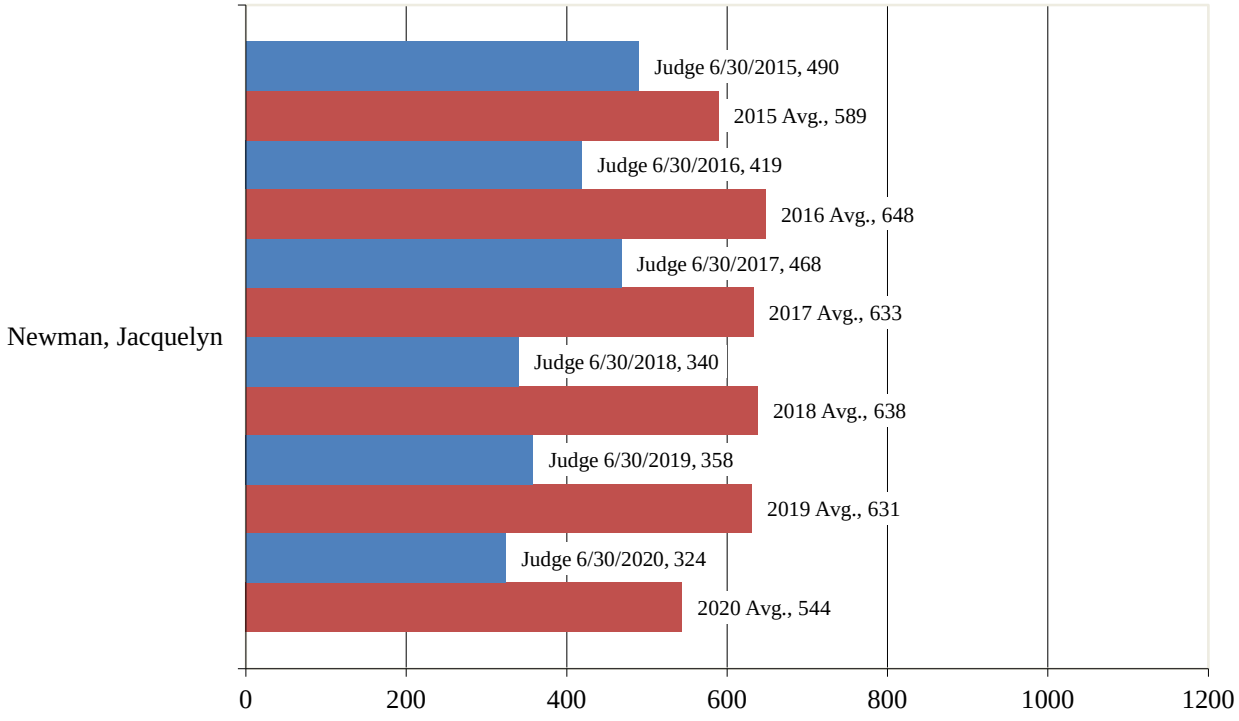
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



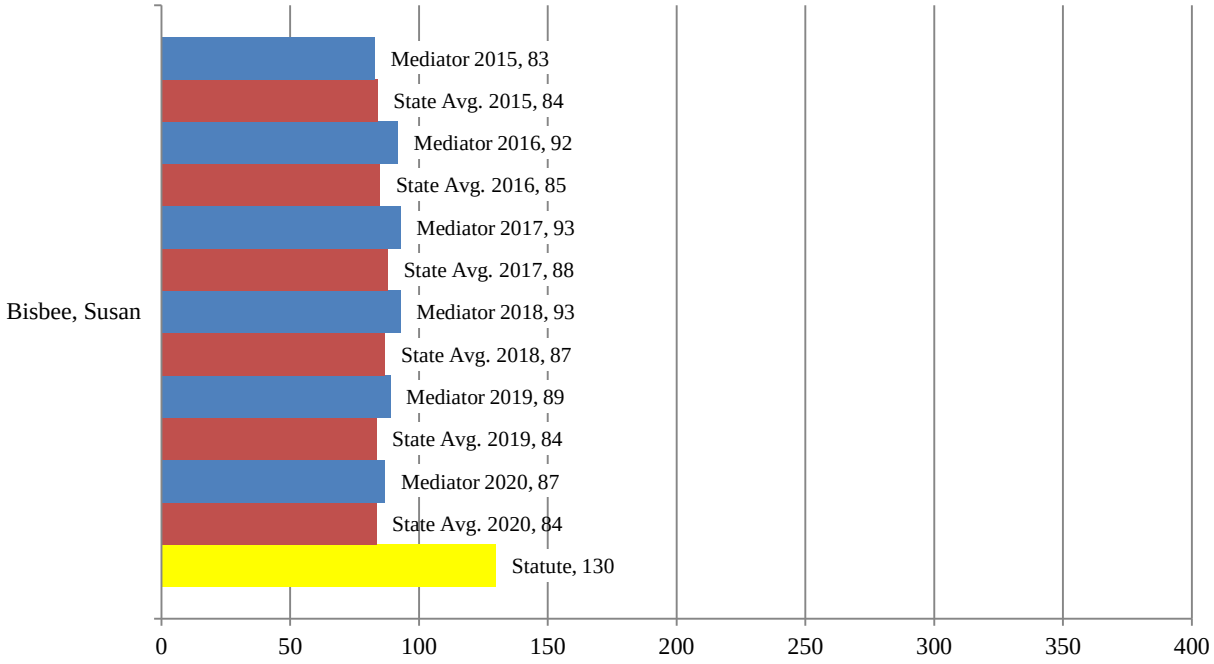
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



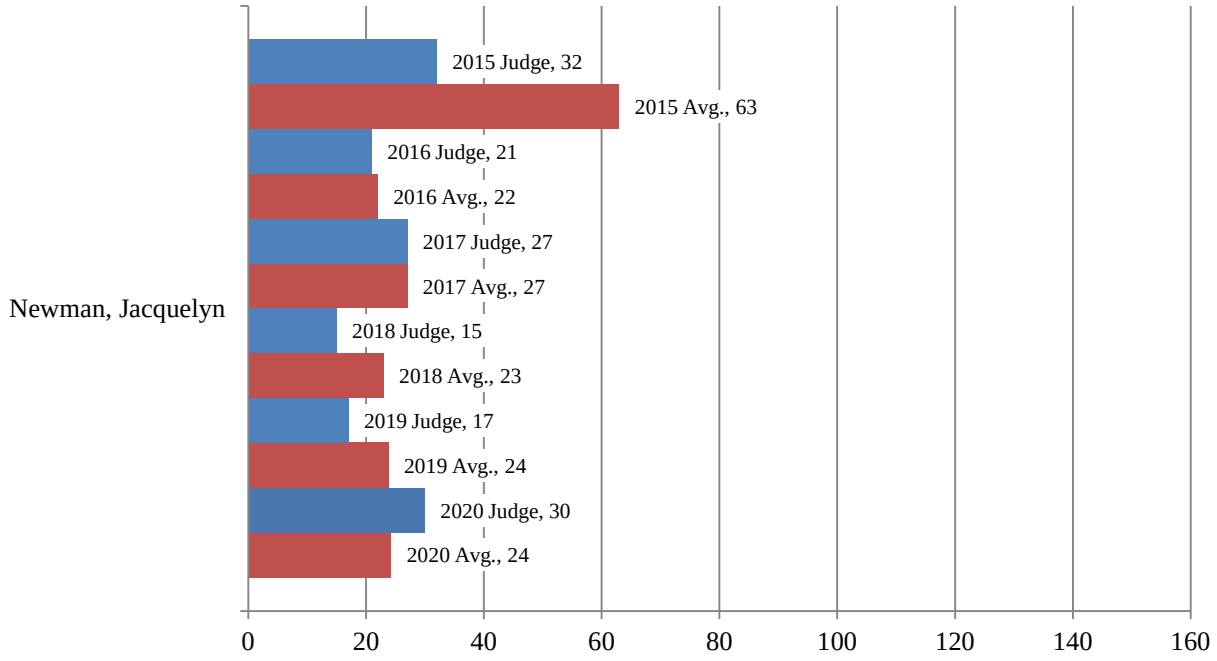
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



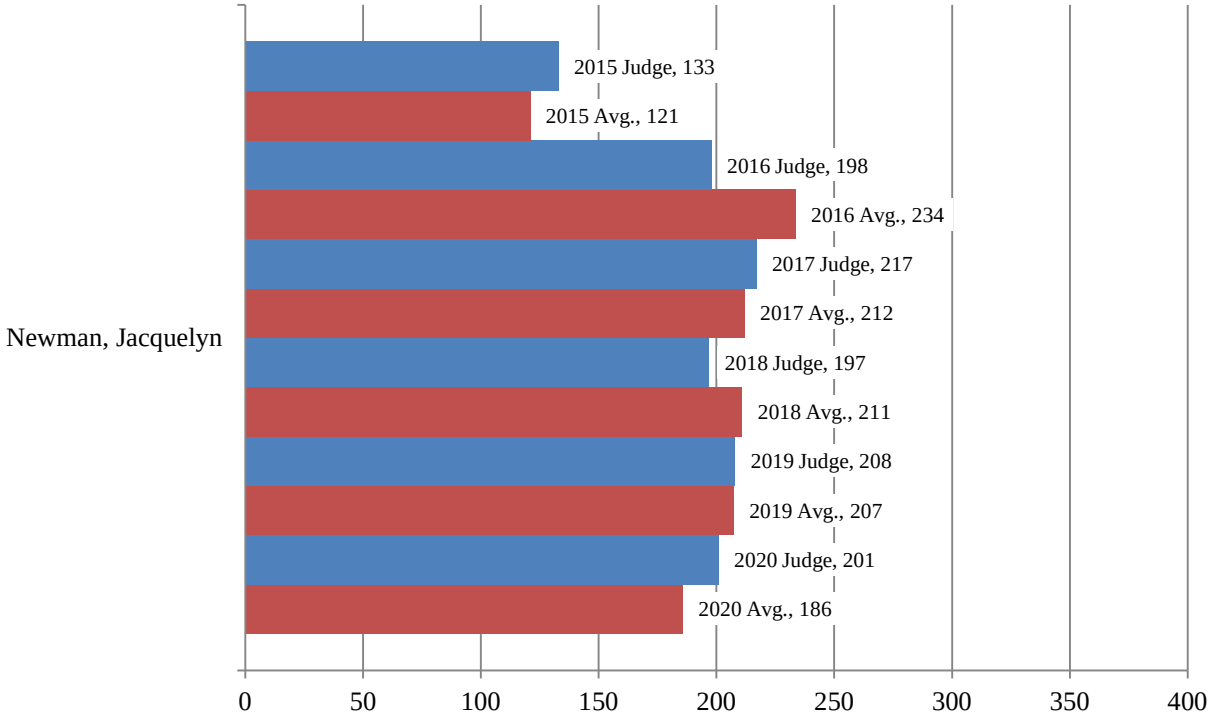
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



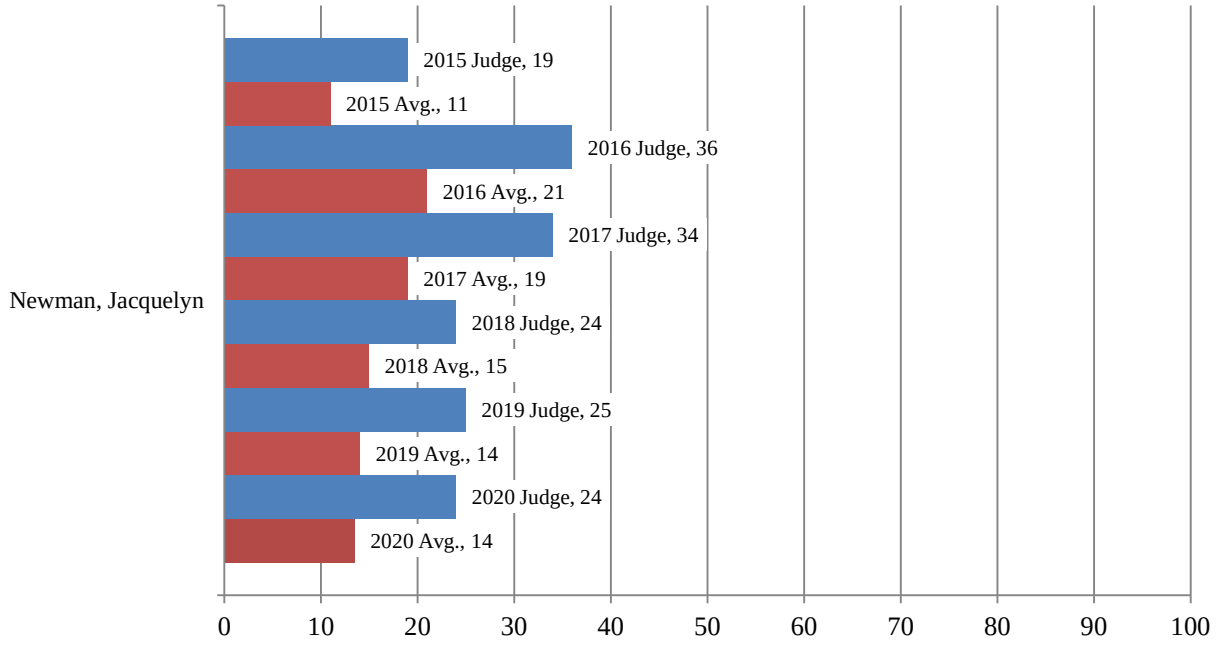
The following graph depicts the total volume of trial orders[248] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



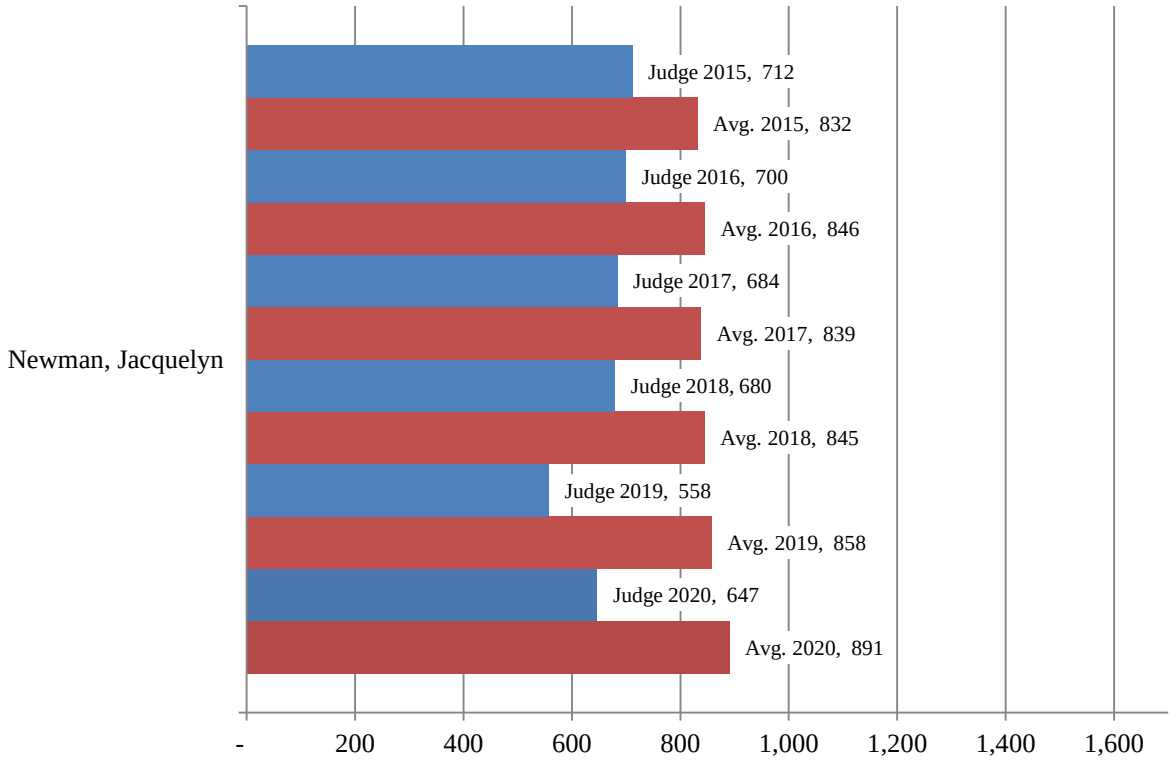
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



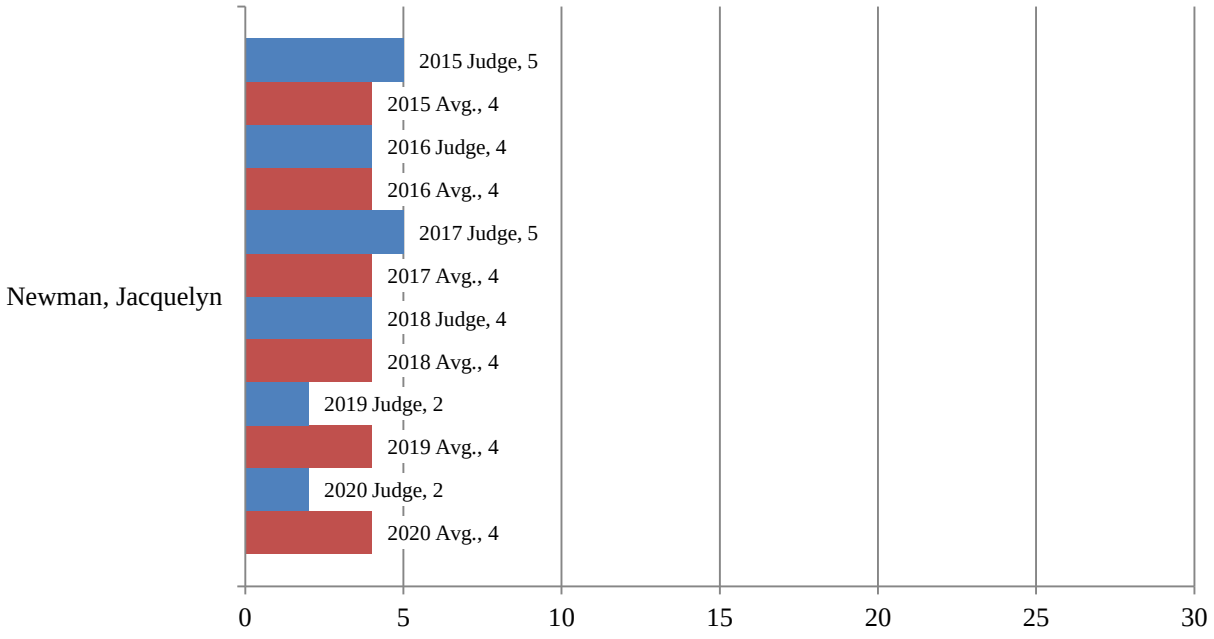
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



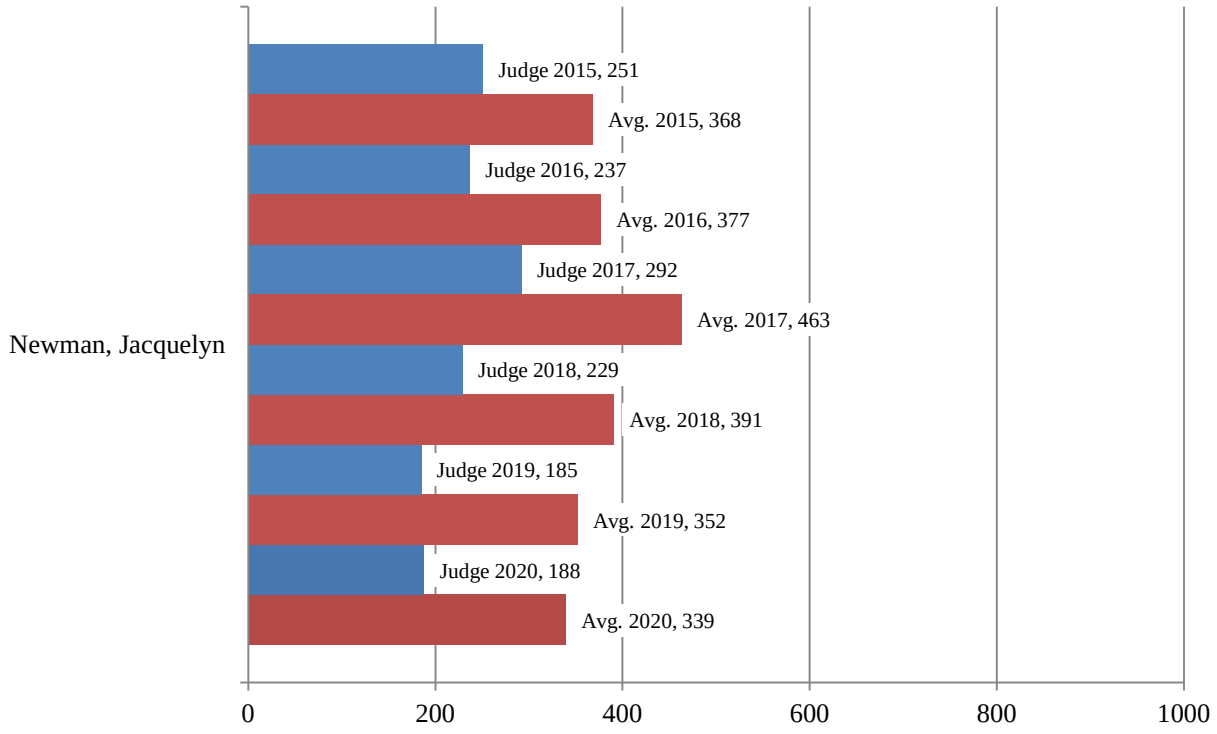
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



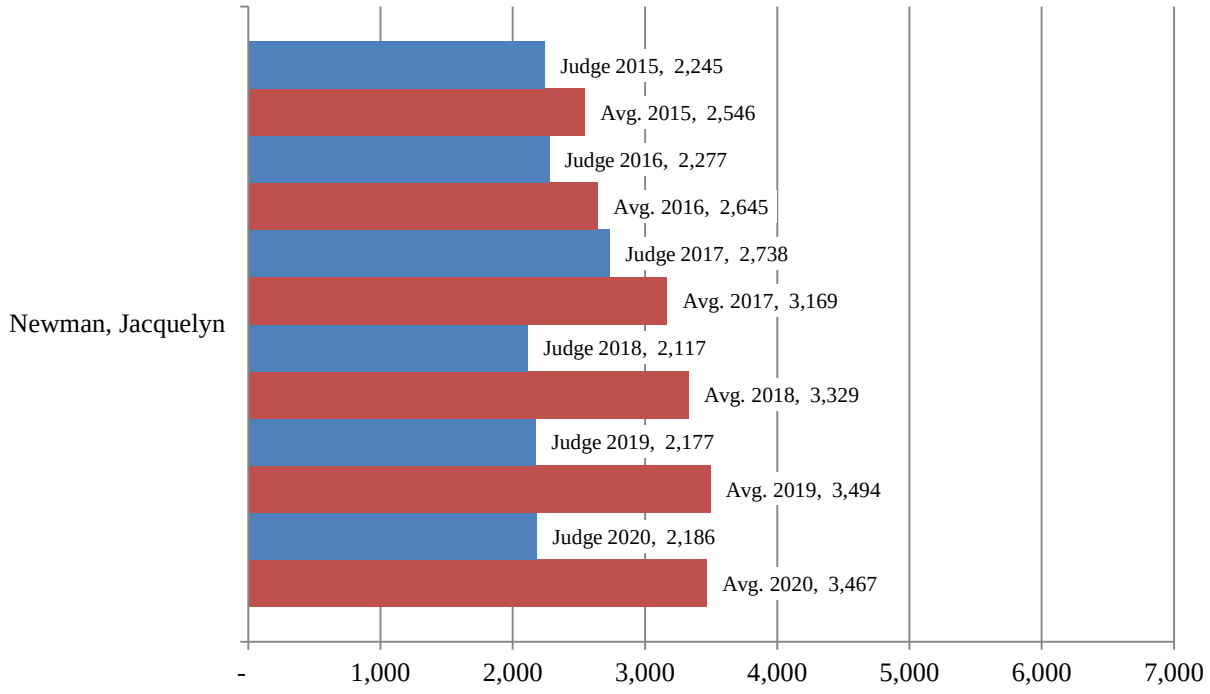
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



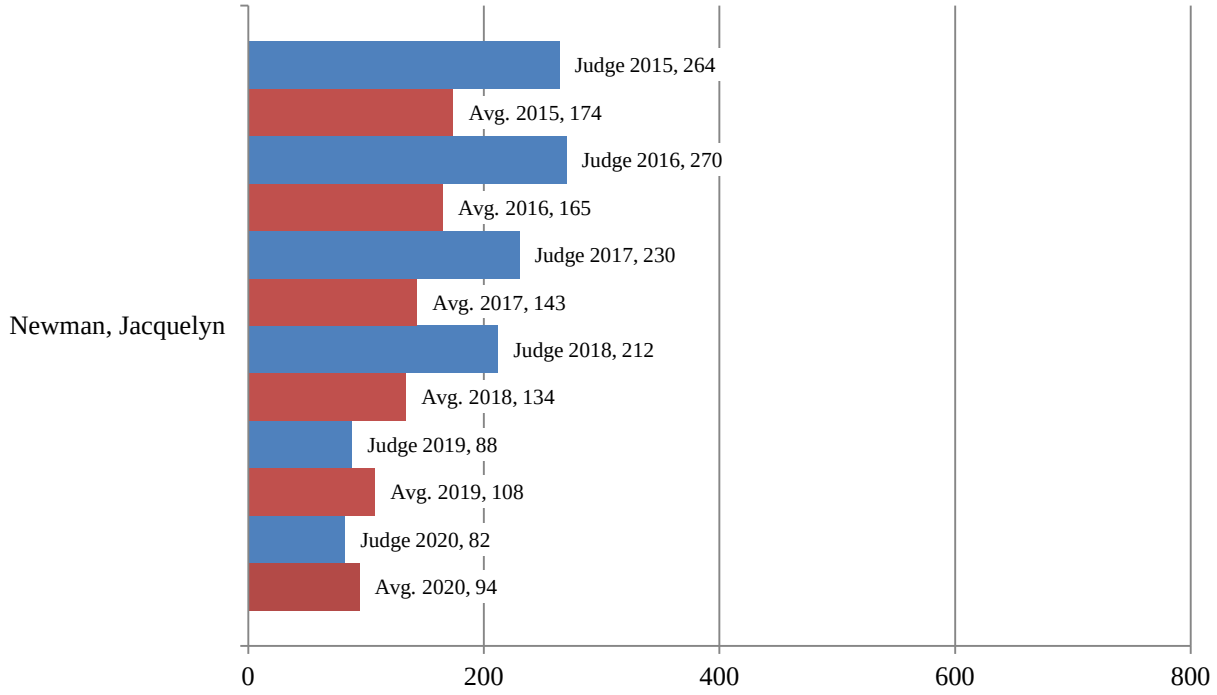
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



Appendix “16” District TPA (JCC vacant, JCC Massey, JCC Young):

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

District TPA has historically been a remarkably stable district. That has facilitated Judges Massey and Spangler managing a significant volume of Miami cases remotely. With the retirement of two long-serving judges (Lorenzen and Spangler) in 2018, the stability was challenged. It is a tribute to Judge Massey that the operations there have proceeded without incident. For many months, he managed multiple dockets, and an unprecedented workload. Without his dedication and focus, the situation in TPA would be untenable. In the spring of 2018, Judge Young was appointed to replace Judge Spangler. Her immediate transition to the bench and team attitude was of marked benefit to TPA. The replacement for Judge Lorenzen was not named until the end of the 2019-20 fiscal year. Many judges have provided assistance in Tampa during this transition. The appointment of a third judge there portends a more manageable workload.

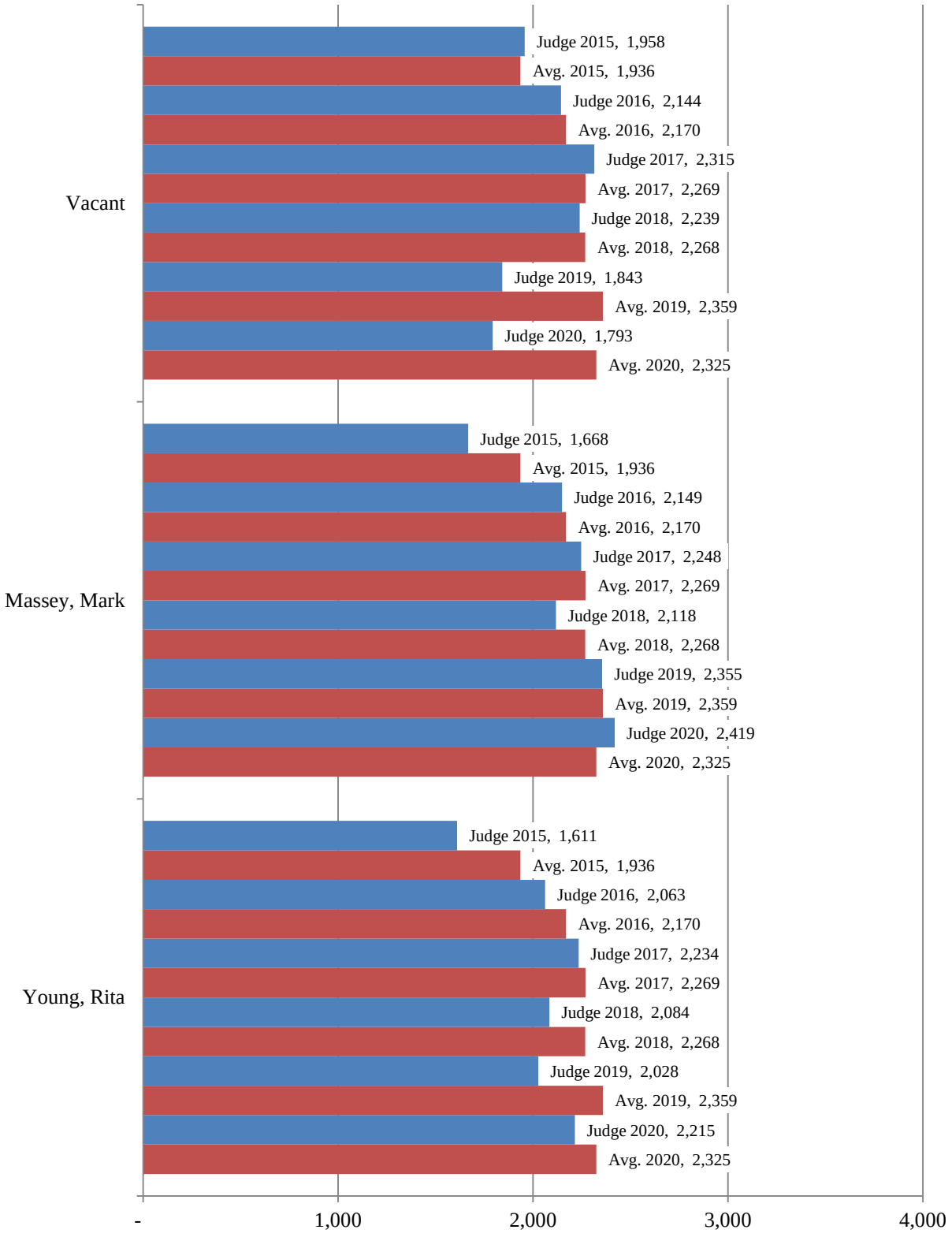
Petition and “new case” volumes are consistent generally with the statewide averages, with recognition that the Miami assignments were shifted primarily to the former Judge Lorenzen Division, and the frequency was tempered during the vacancy there. Despite the volume of litigation in TPA, two mediators consistently handle the workload there, and consistently maintain average days to mediation statistics consistent with the statewide averages and within the statutory parameters.

The TPA times to trial improved as regards the statutory 210 days. The time to mediation, to trial, and to order were all consistent with the statutory parameters in 2019-20.

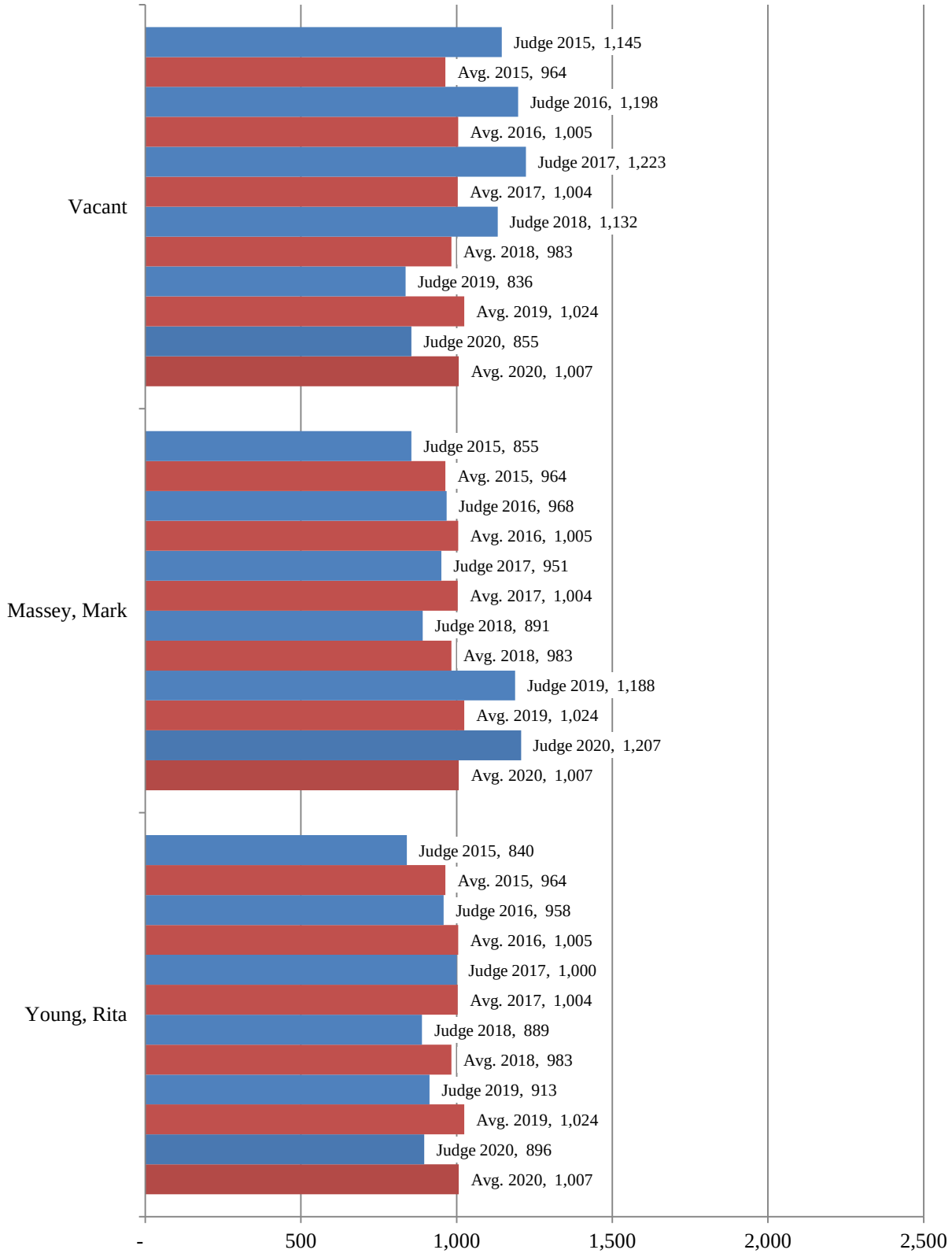
In 2019-2020, Judge Massey continued to serve on the Executive Committee and as President-Elect of the Florida Conference of Judges of Compensation Claims. He spoke on a panel discussing *Daubert* as it applies to workers’ compensation proceedings at the annual First District Court of Appeal seminar. He served as a moot court judge at the annual E. Earle Zimmer moot court competition. Judge Massey has also continued to serve as the administrative judge of the Tampa District office, which has undergone significant changes and adjustments in recent years due to the retirements of two prior judges. He continues to serve as a volunteer judge and mentor for Hillsborough County Teen Court.

In 2019-2020 Rita Young has been leader of a pupilage group in the Tampa Bay Workers' Compensation Disability Inns of Court where she actively participates in quarterly meetings and panel discussions. She co-hosted a panel presentation on Mentoring for the Tampa Bay Inns of Court in February, 2020. Judge Young was a panelist in August, 2019 at the 74th Annual Workers' Compensation Education Conference presenting: *Painting by Numbers: Offers and Demands: Where did you come up with that?* She was a presenting panelist in the August 2019 Bench/Bar Meeting for the Tampa, St. Petersburg, and Lakeland Divisions. Judge Young also volunteered as a judge for the E. Earle Zehmer Moot Court Competition. She co-hosted a luncheon for the Hillsborough County Bar Association Workers' Compensation Section speaking on issues of concern in a question answer session for practitioners.

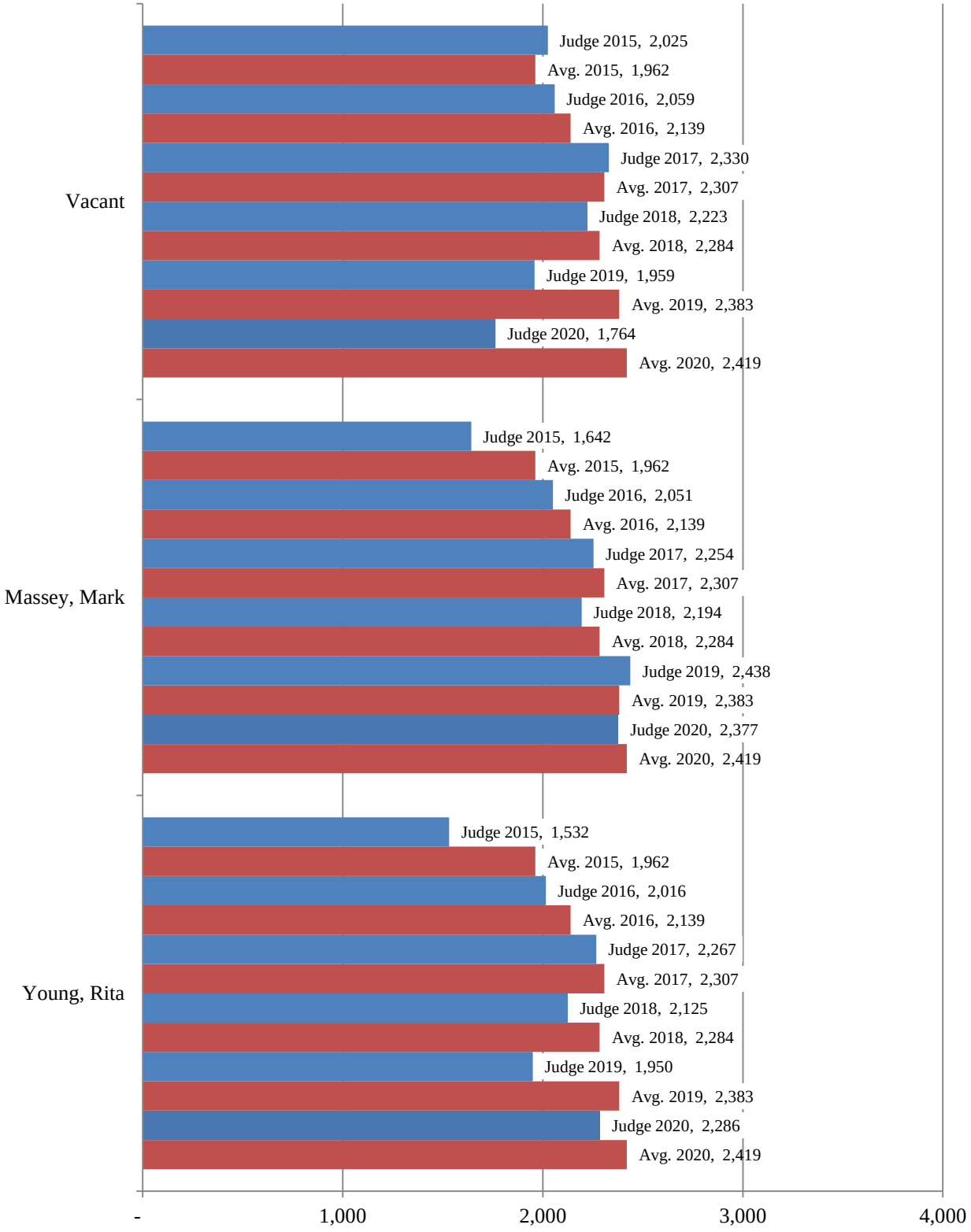
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



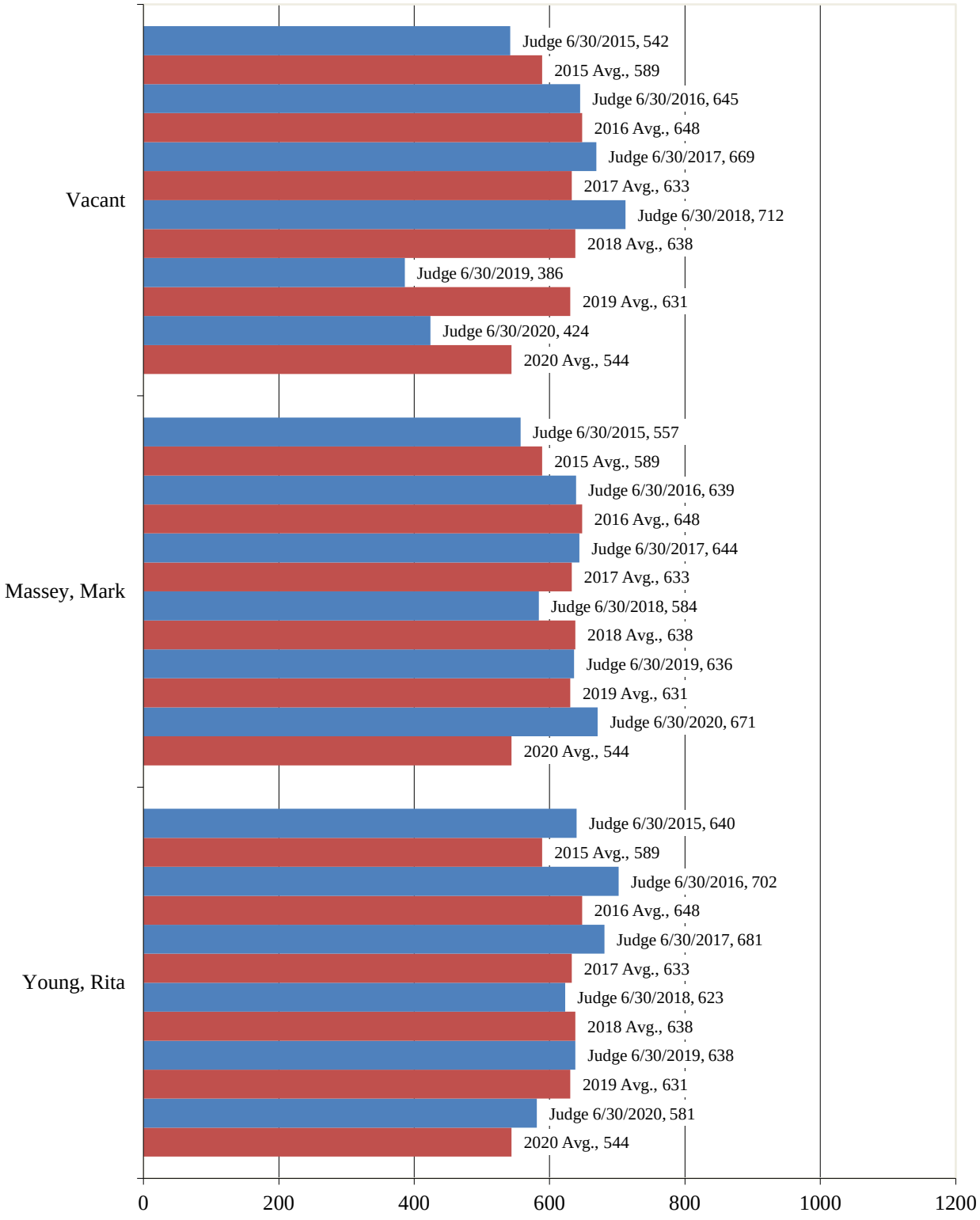
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



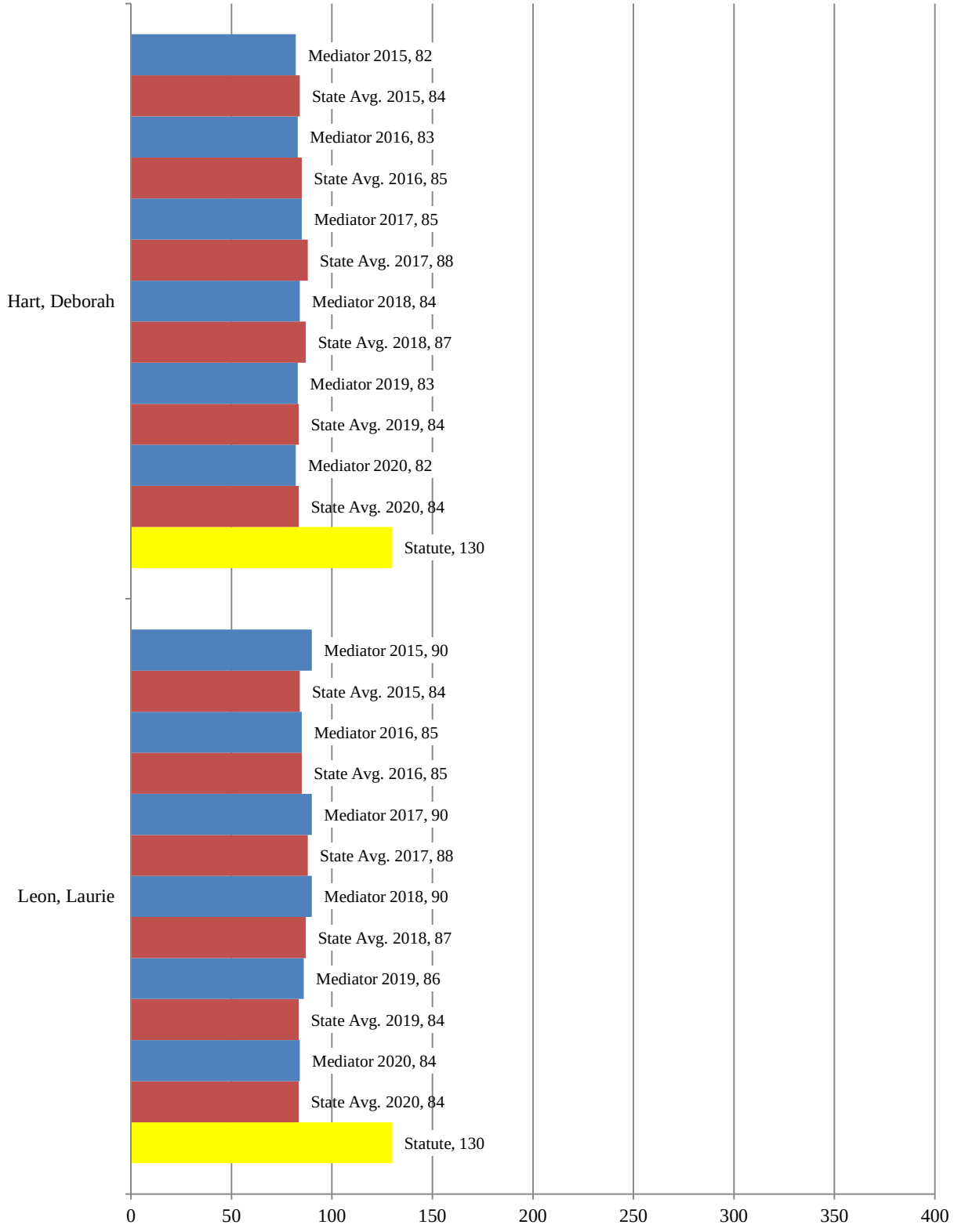
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



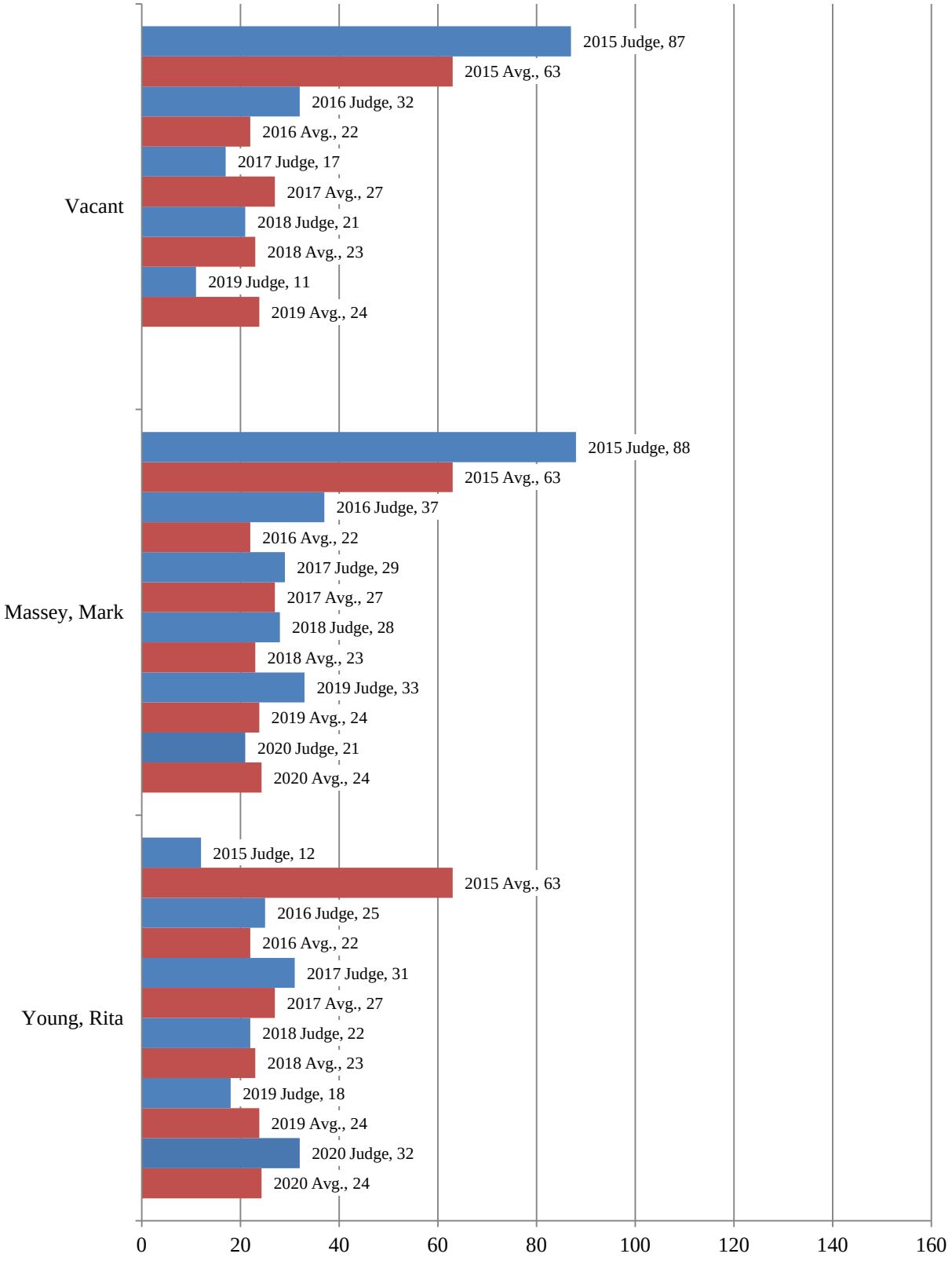
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



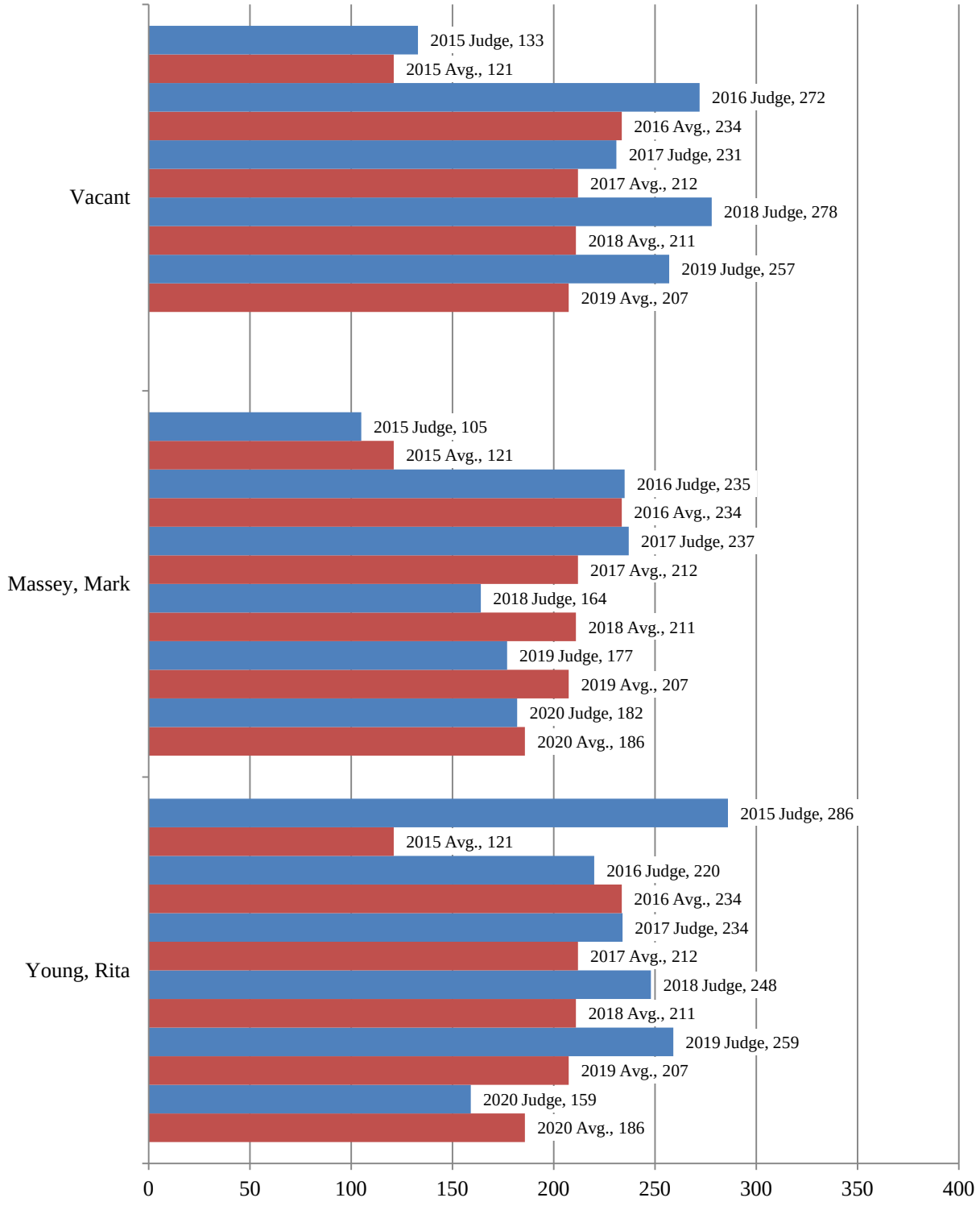
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. (Out of order)



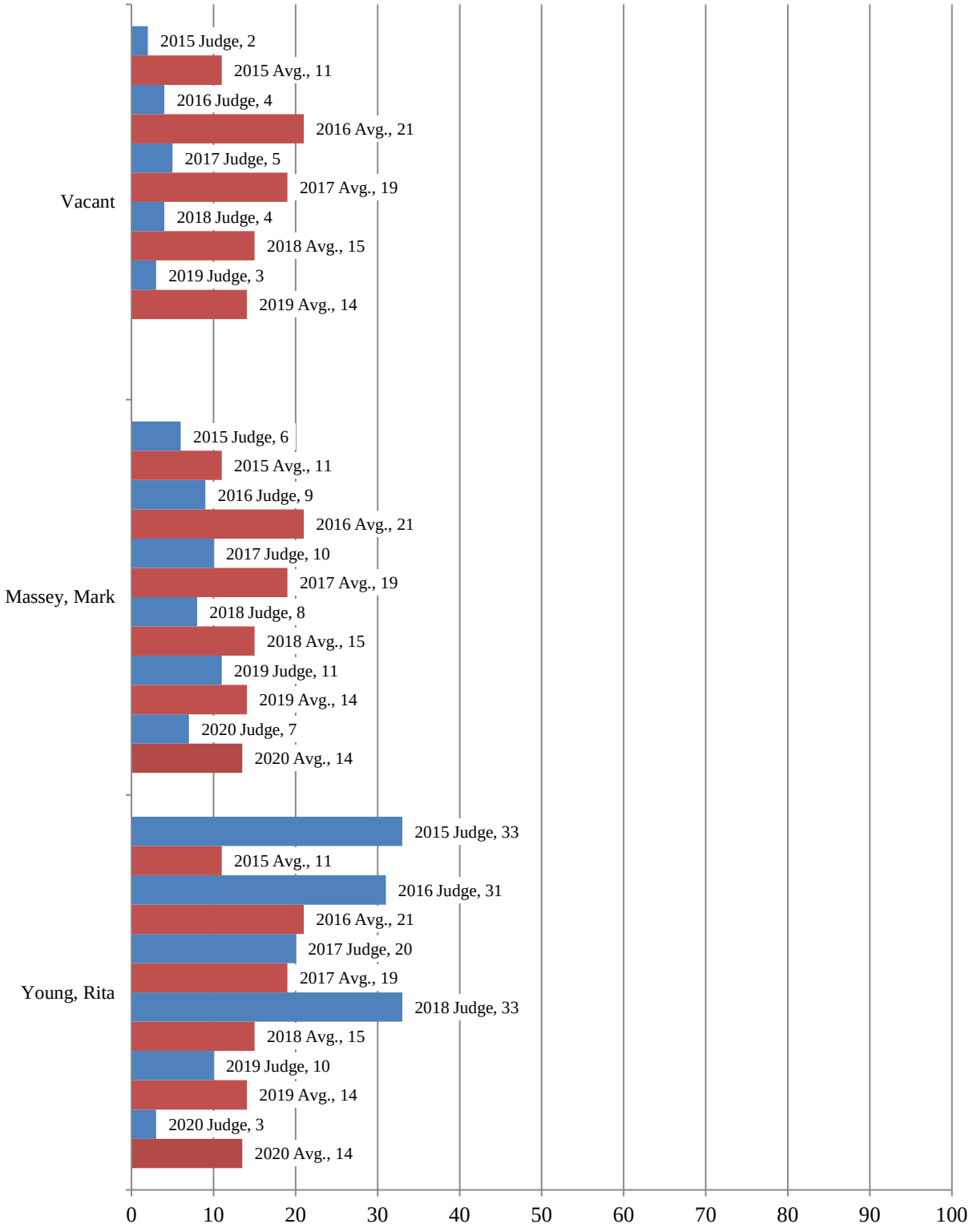
The following graph depicts the total volume of trial orders[249] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



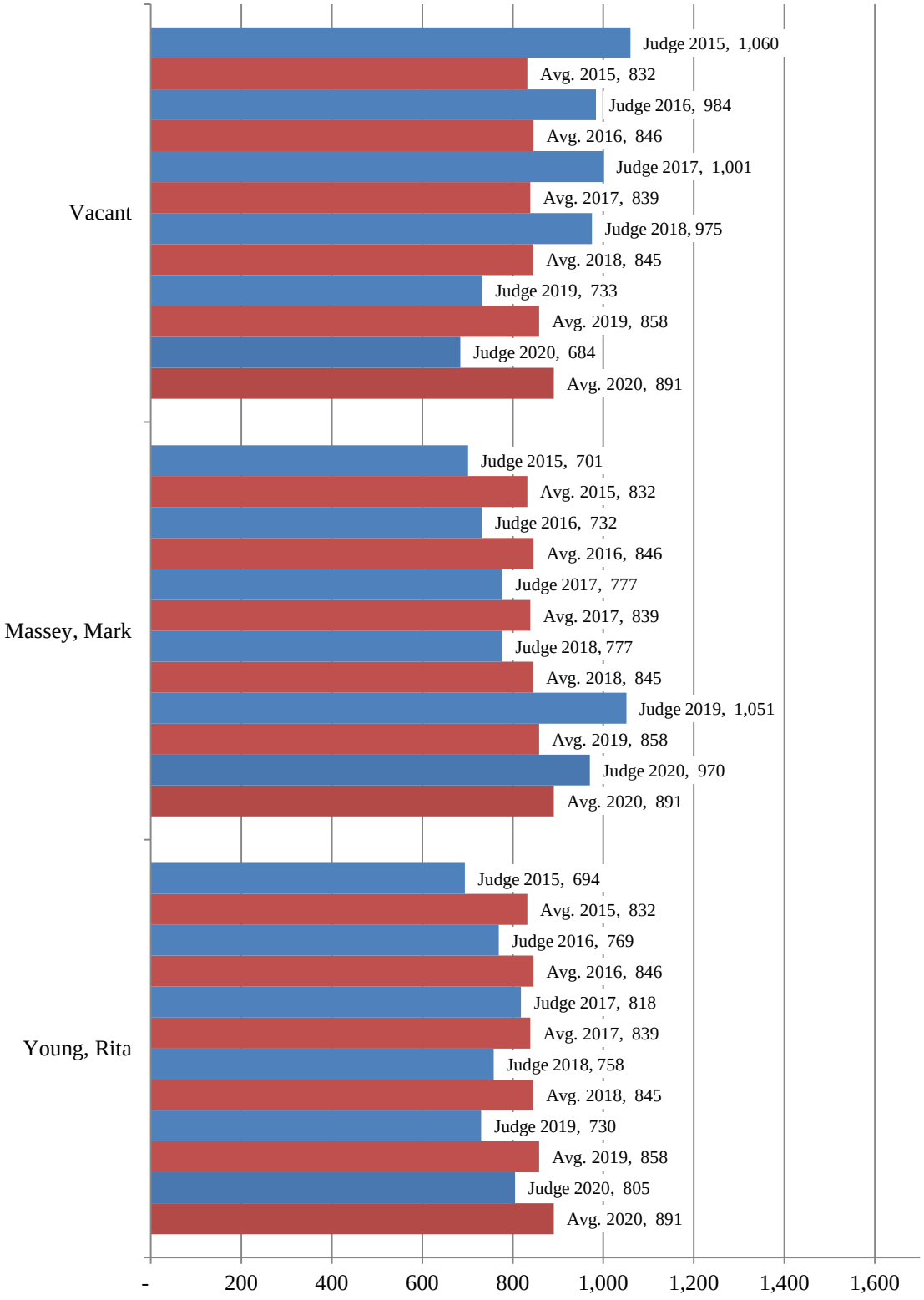
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



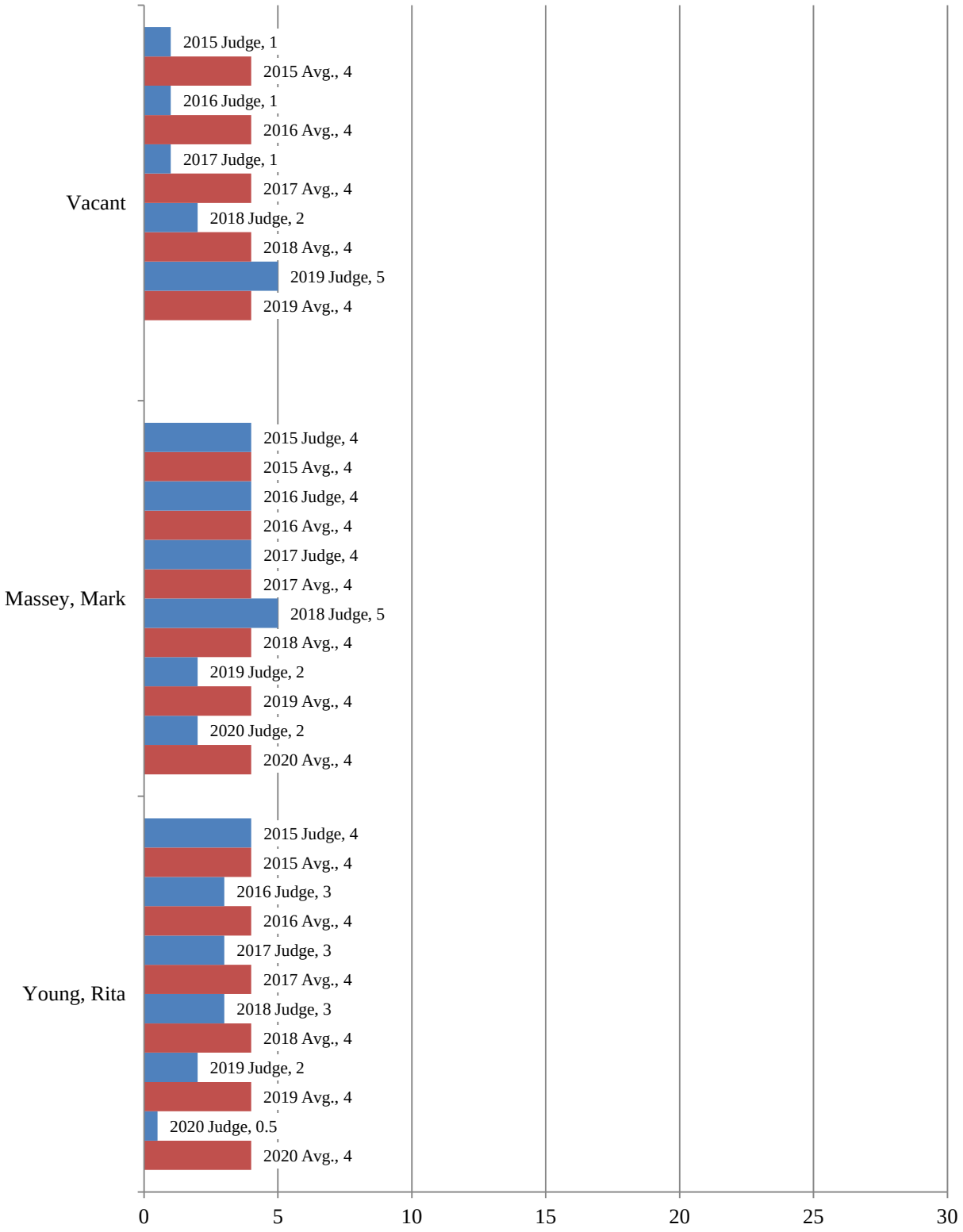
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



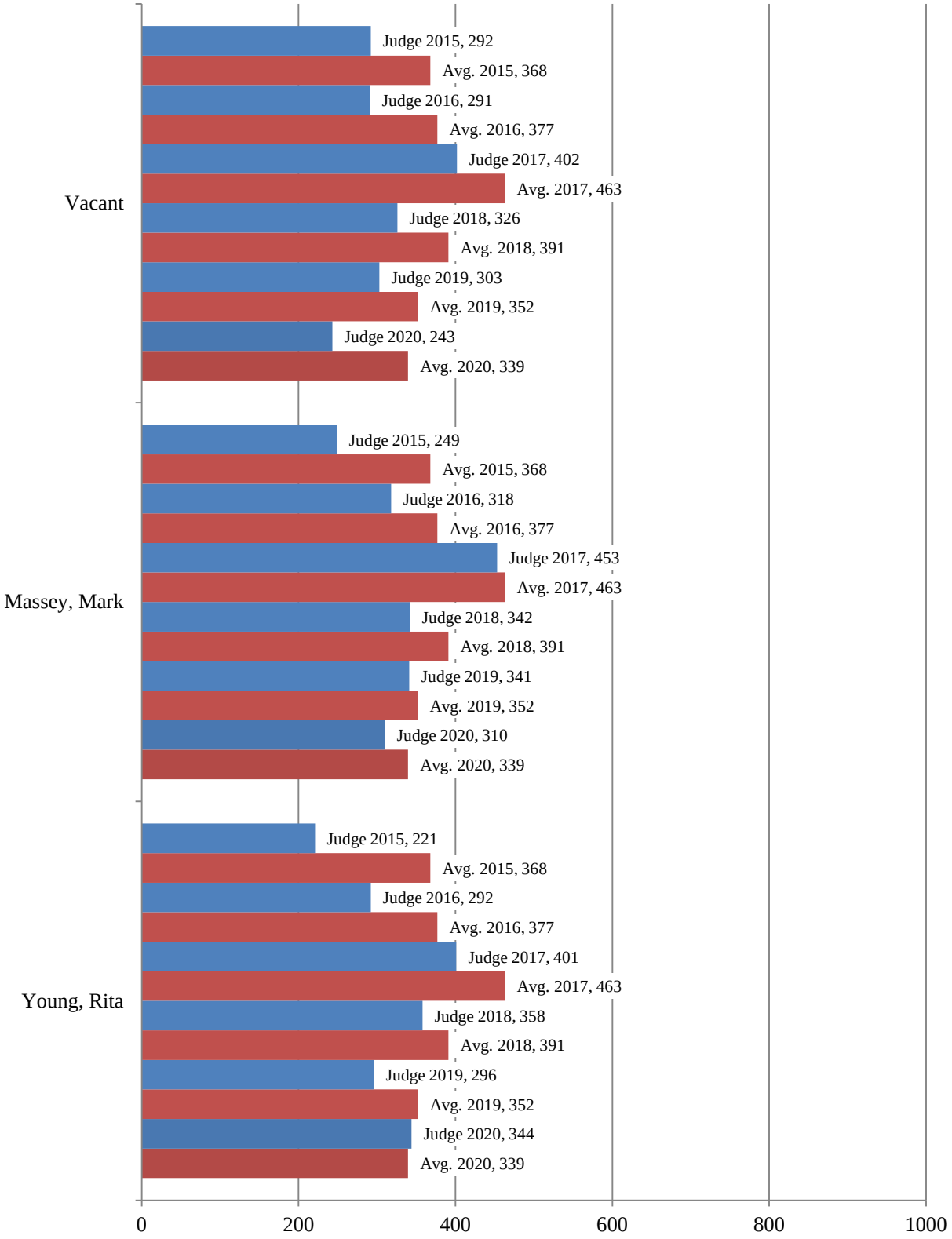
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



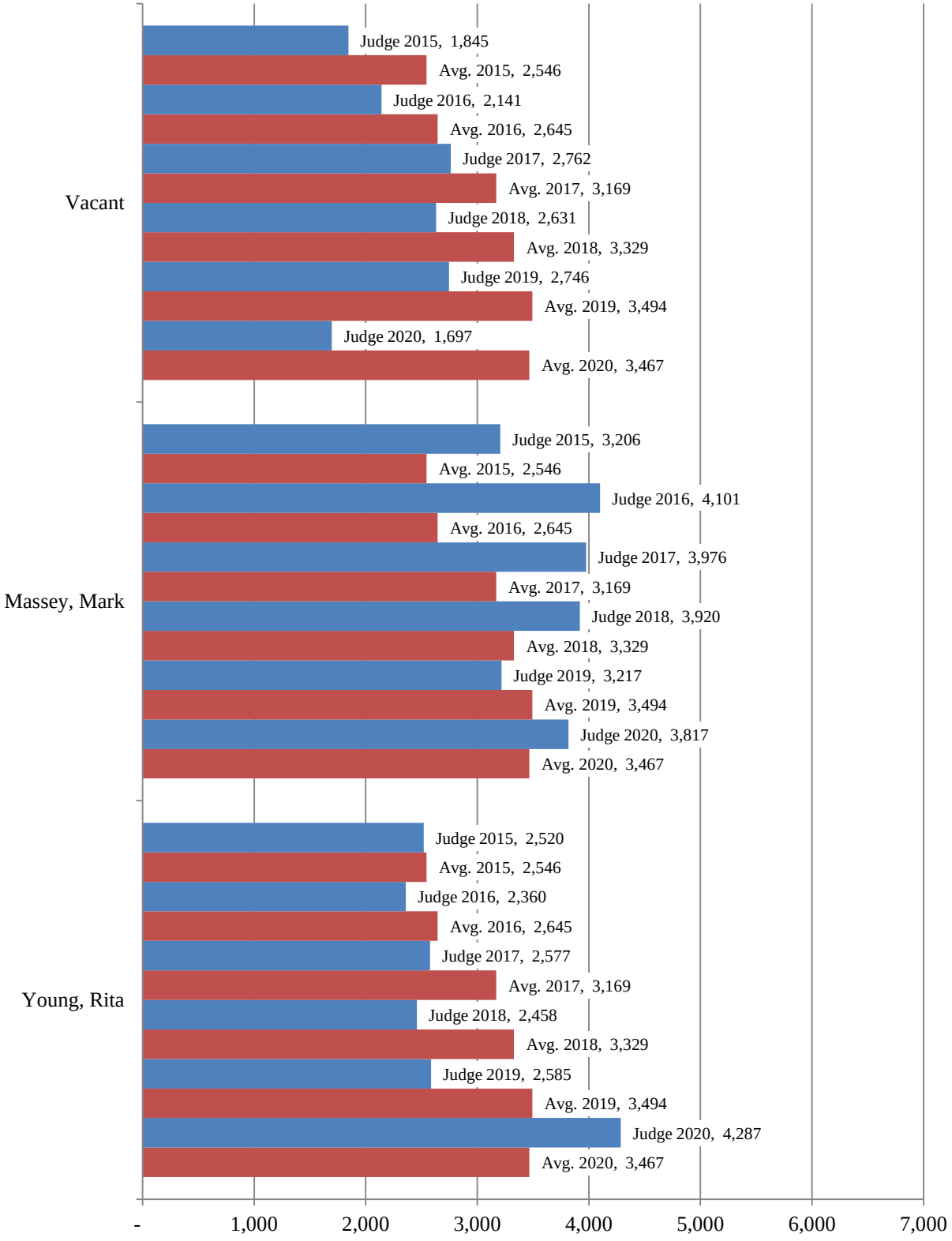
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



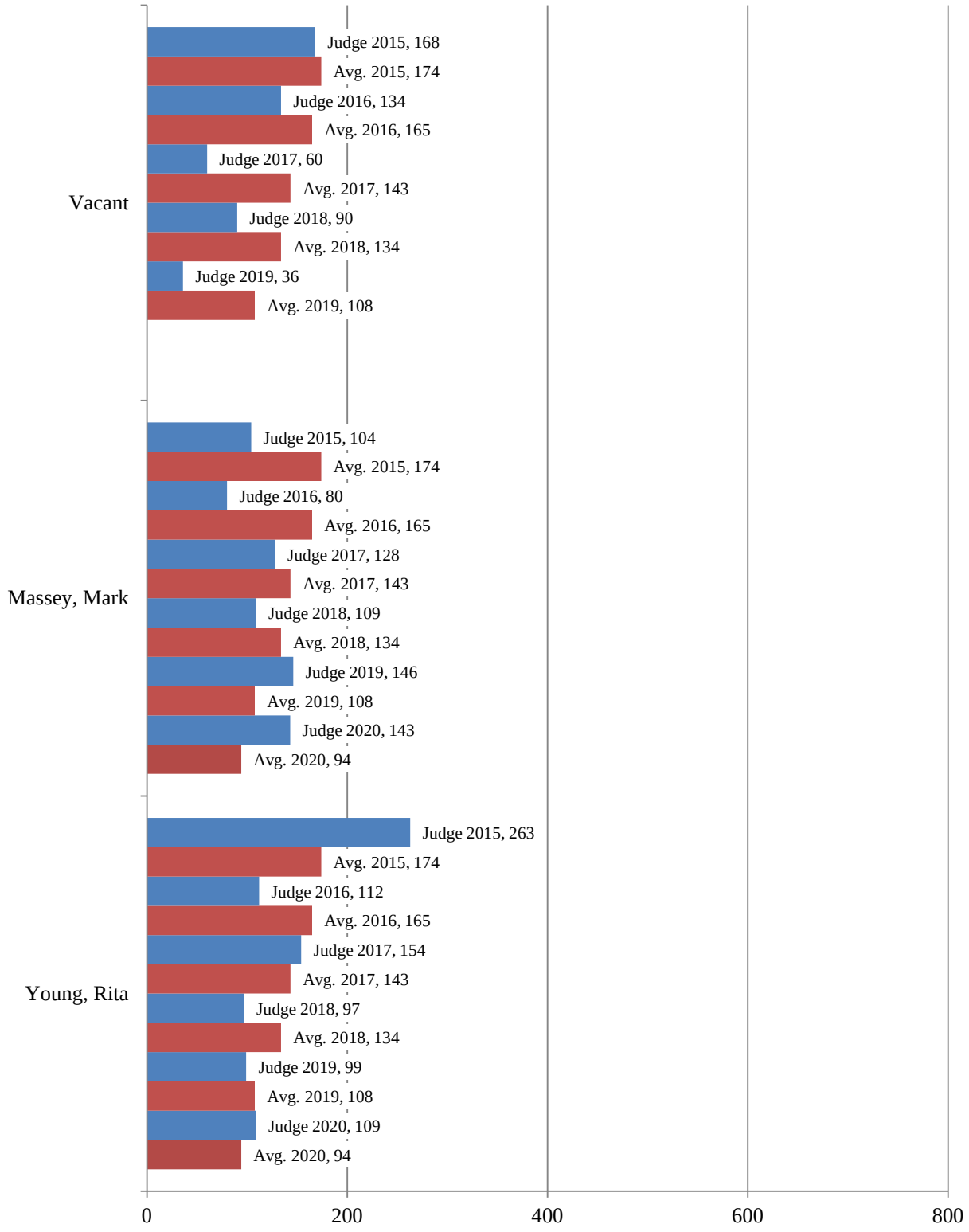
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. 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 petition filing volumes in District WPB remained above average again in 2019-20, but barely so. The “new case” volume in all three WPB Divisions is below average.

The average times to mediation, to trial, and to final order were all within the statutory parameters in District WPB in 2019-20. The settlement volumes are notably below the statewide average, but the stipulation figures are closer to the average. Each of the WPB divisions entered significantly above average volumes of “other orders” in 2019-20, consistent with volumes noted there in recent years.

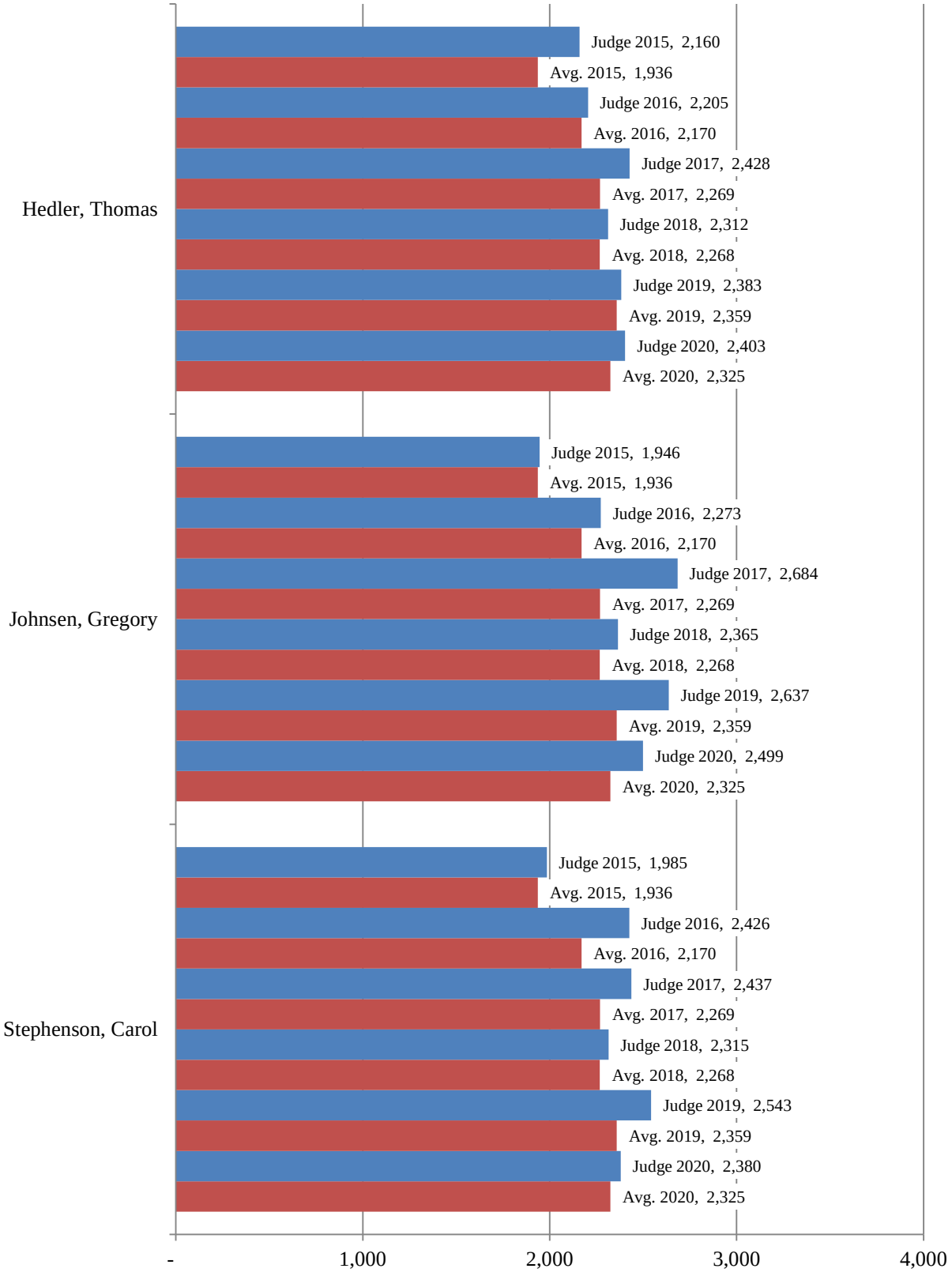
In 2019-20, Judge Thomas Hedler remained active in the Palm Beach County Bar Association, where he served on the committee for the workers’ compensation section. In 2019, the PBC Bar Association presented Judge Hedler with the Kennie Edwards Award. Judge Hedler published an article on the *Frye* v. *Daubert* standard in the winter, 2020 edition of the News and 440 Report from the Workers’ Compensation section of the Florida Bar. Judge Hedler served on the Friends of 440, Treasure Coast, committee and participated in reviewing applications and interviewing applicants for the scholarship fund. On October 23, 2019, he moderated a panel of attorneys discussing MCC and waiver, and presented on a panel of JCC’s at the Palm Beach County Bar Association Workers’ Compensation section annual seminar. On February 21, 2020, he participated in a panel discussion at a seminar sponsored by the OJCC and WCI. On March 1, 2020, he presented a CLE with Judge Johnsen for the Florida Bar Workers’ Compensation section. He also was heavily involved in creating the Robert D. McAliley Inn of Court. And, Judge Hedler served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition. 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 was a judicial panelist at the August 2019 Professional Mediation Institute Conference and spoke on the topic “Dealing with Mediation Issues from the Judge’s Perspective.” In October of 2019 the workers’ compensation section of the Palm Beach County Bar Association held their annual seminar. Judge Johnsen moderated a panel which addressed important issues such as filing a proper petition for benefits, strategies for proper completion of a pretrial stipulation, and motions *in limine*. Judge Johnsen also participated in a question and answer judicial panel at the Palm Beach County Bar Association seminar. In March of 2020 Judge Johnsen teamed up with Judge Hedler to present a telephonic seminar sponsored by the Florida Bar which addressed jurisdiction and the powers of the judges of compensation claims.

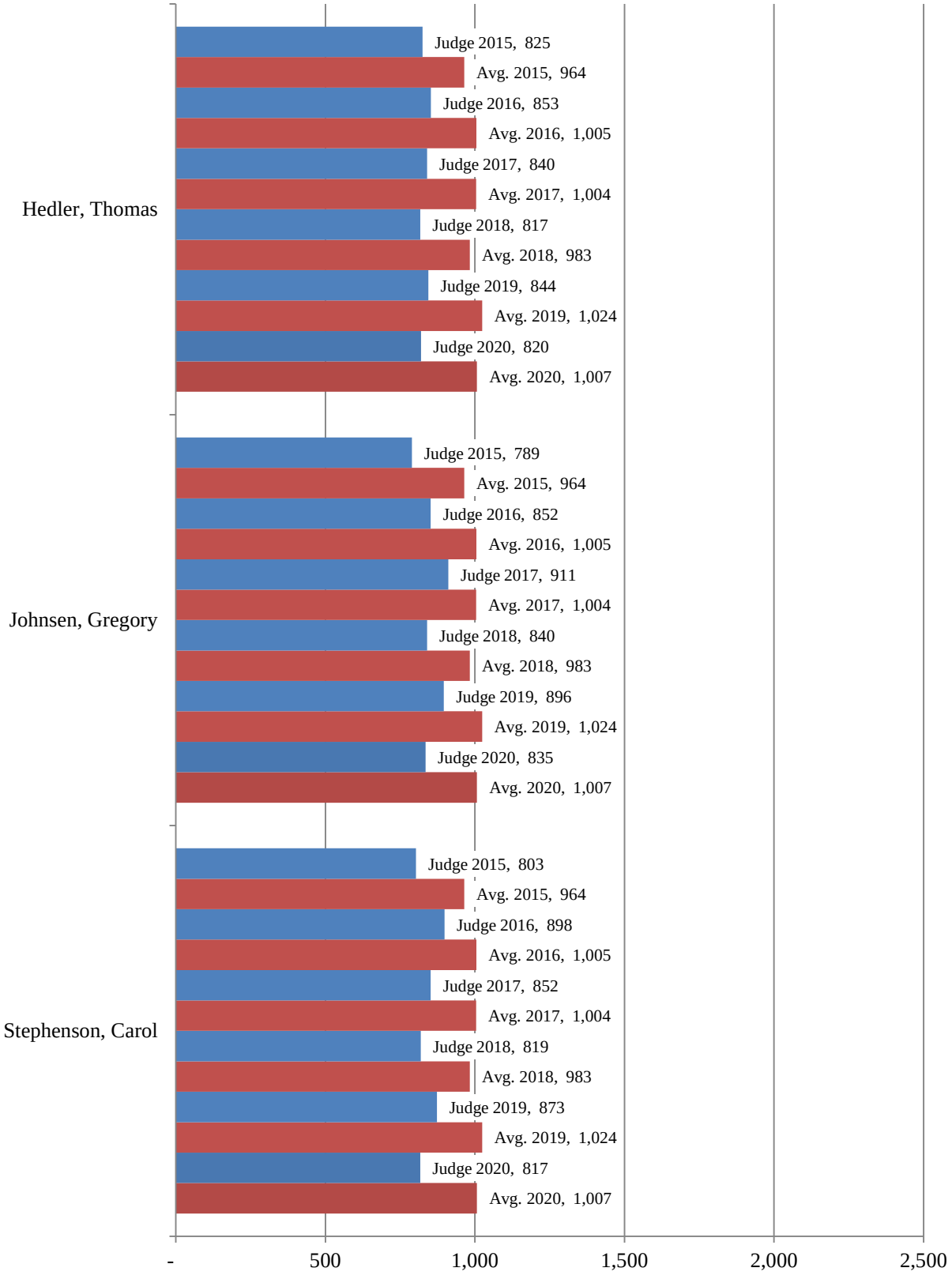
In 2019-2020, Judge Stephenson served as a moot court judge for the annual E. Earle Zehmer Moot Court Competition. She also participated on the judges’ panel during the attorney breakout session at the 2019 WCI Workers’ Compensation Education Conference. She spoke on a judicial panel for the Workers Compensation Section of the Palm Beach Bar Association’s Seminar, *Recipes for Successful Litigation: How to Ensure Your Cases are Ripe and Ready for Trial!* Judge Stephenson continues to actively serve on the Palm Beach County Bar Association’s Workers’ Compensation Section, the Treasure Coast Division of Friends of the 440 Scholarship Fund, and the Robert D. McAliley Inns of Court.

In August 2019, at the Professional Mediation Conference, Mr. Imber participated in an interactive panel discussion on the subject of “Negotiations: The Cornerstone of Winning Mediation Strategies.” The main theme of the presentation was about various strategies employed in order to reach the goal of settlement. Mr. Imber serves on the Board of Directors of the Professional Mediation Institute.

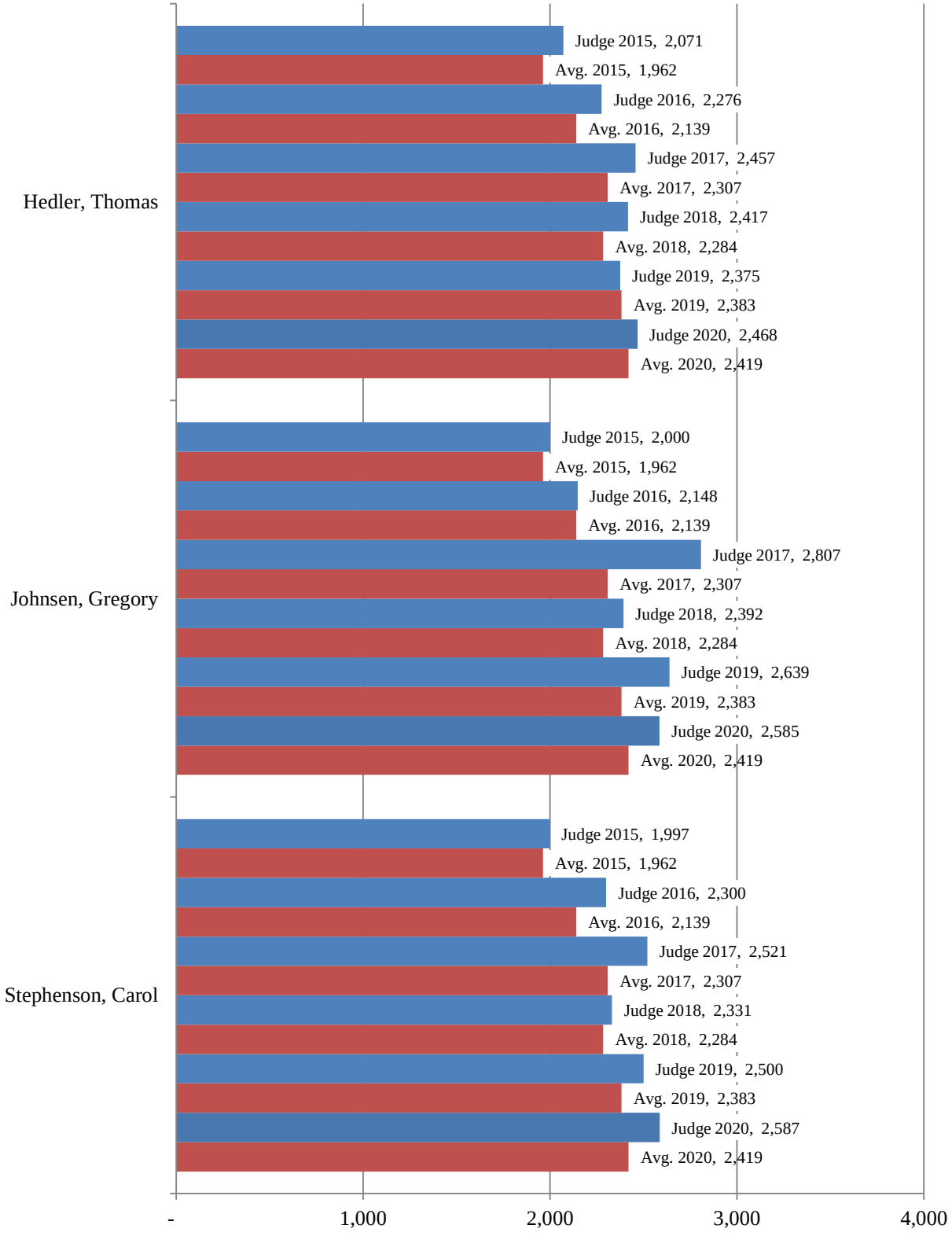
The following depicts the volume of PFBs filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



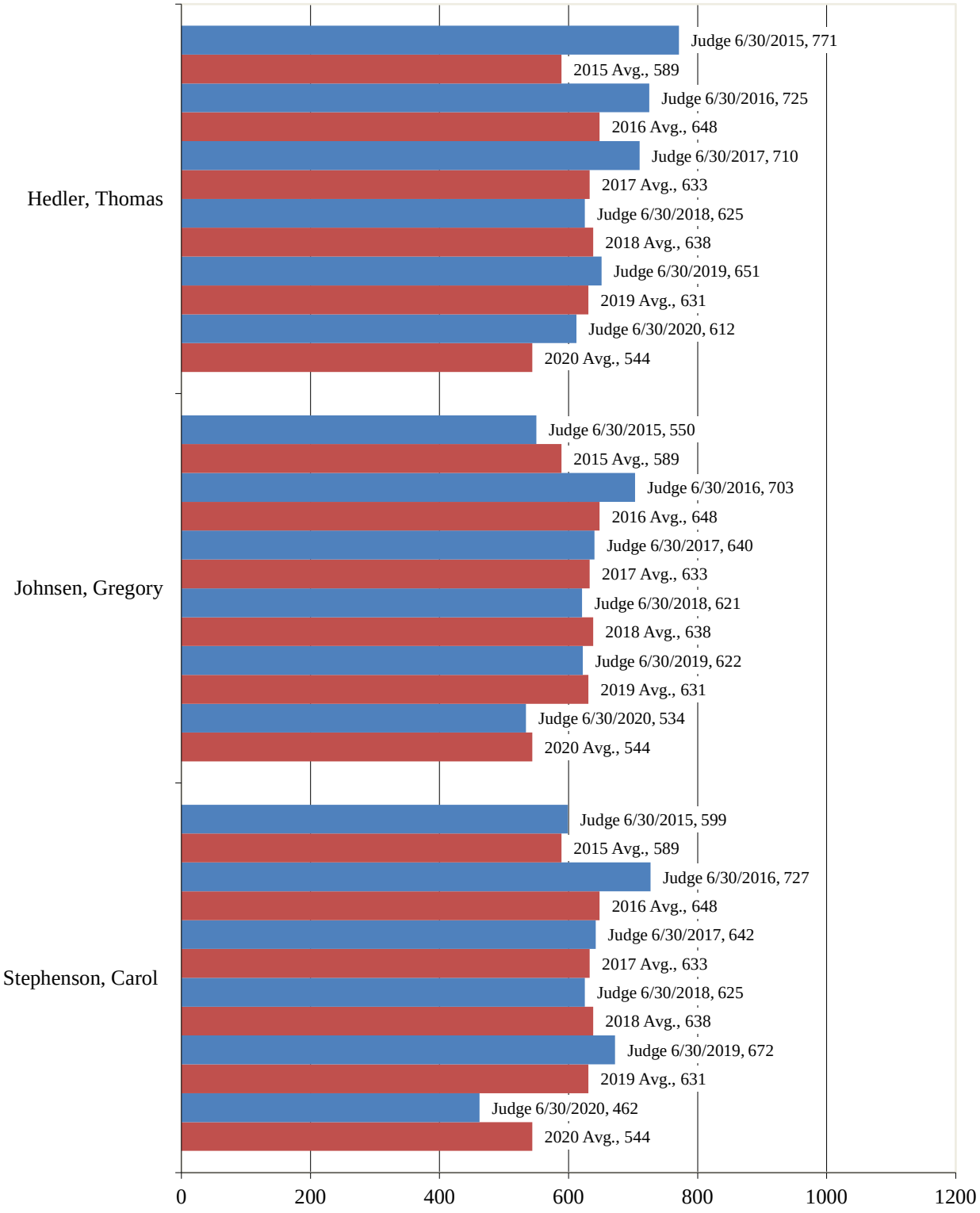
The following depicts the volume of "new cases" filed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



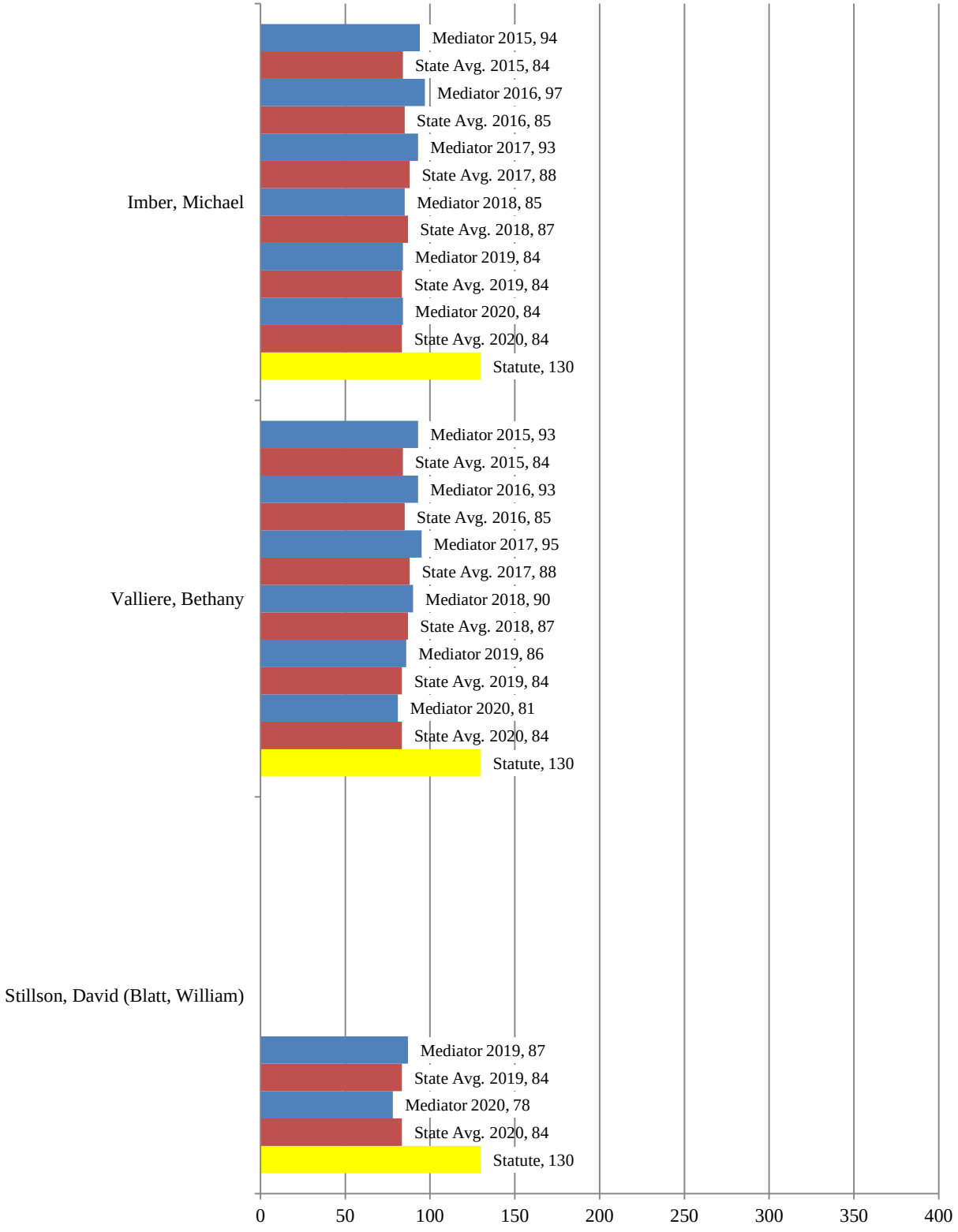
The following depicts the volume of PFBs closed in this District and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



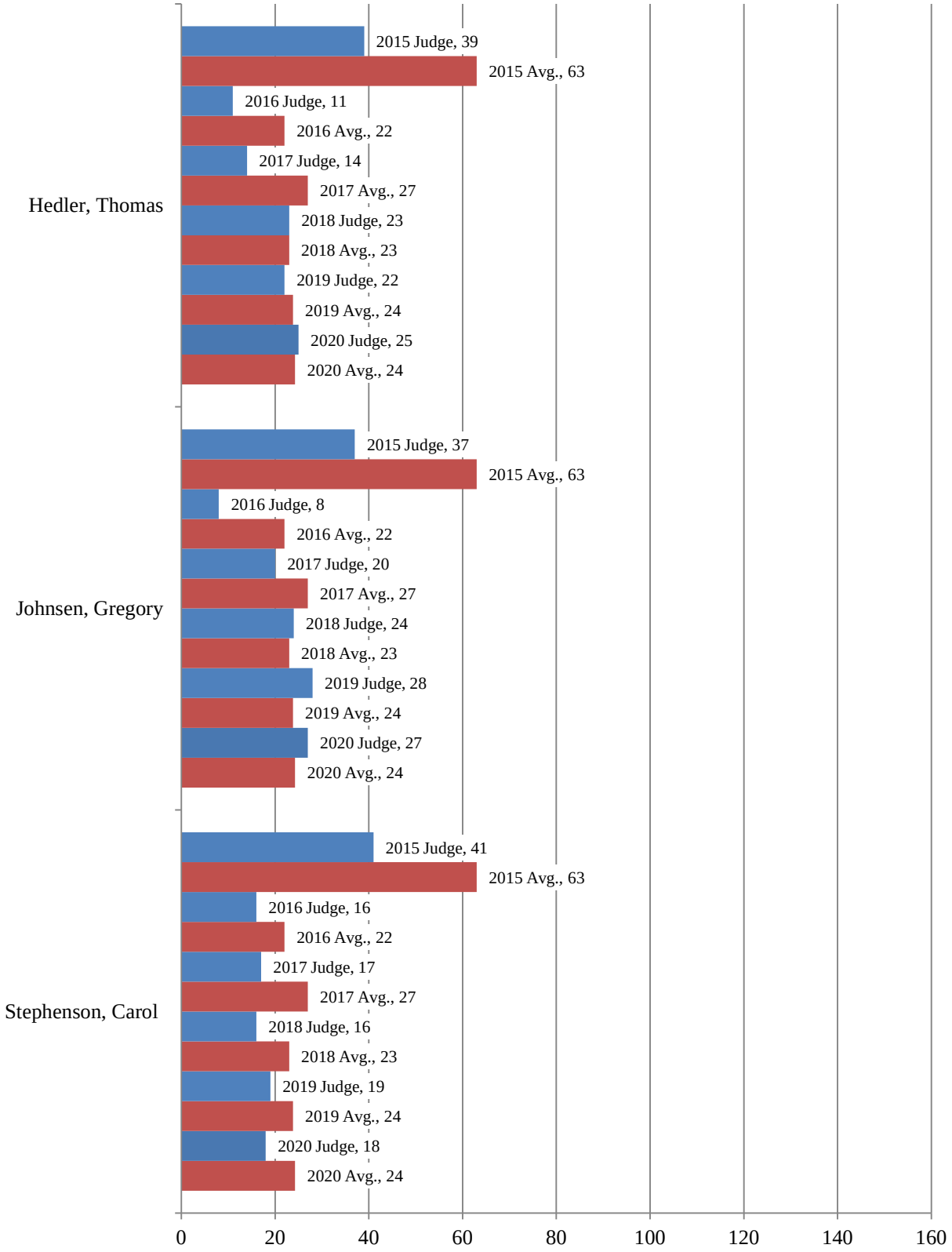
The following depicts the inventory of pending PFBs in this District and the statewide average between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



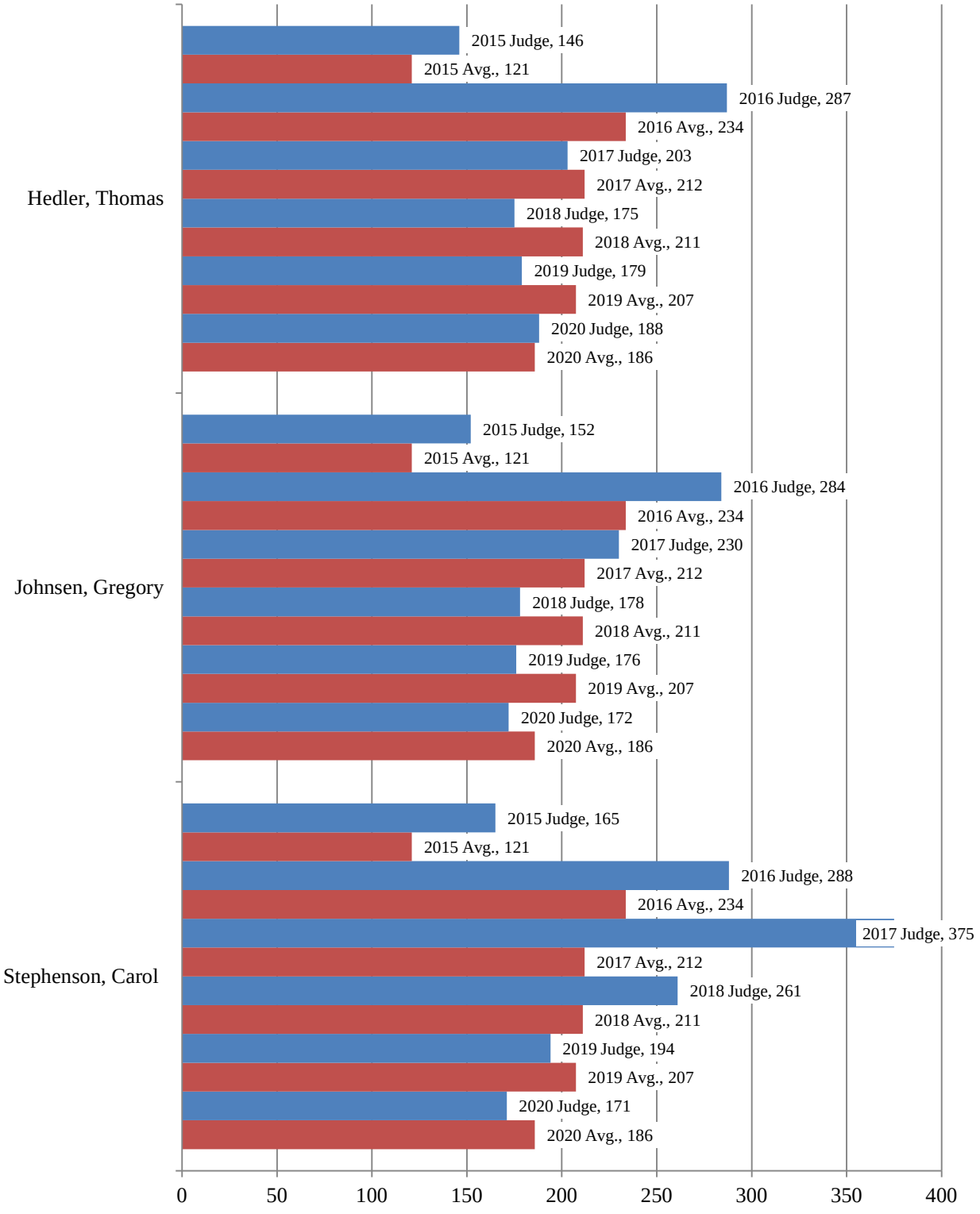
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2014-15 and 2019-20. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days.



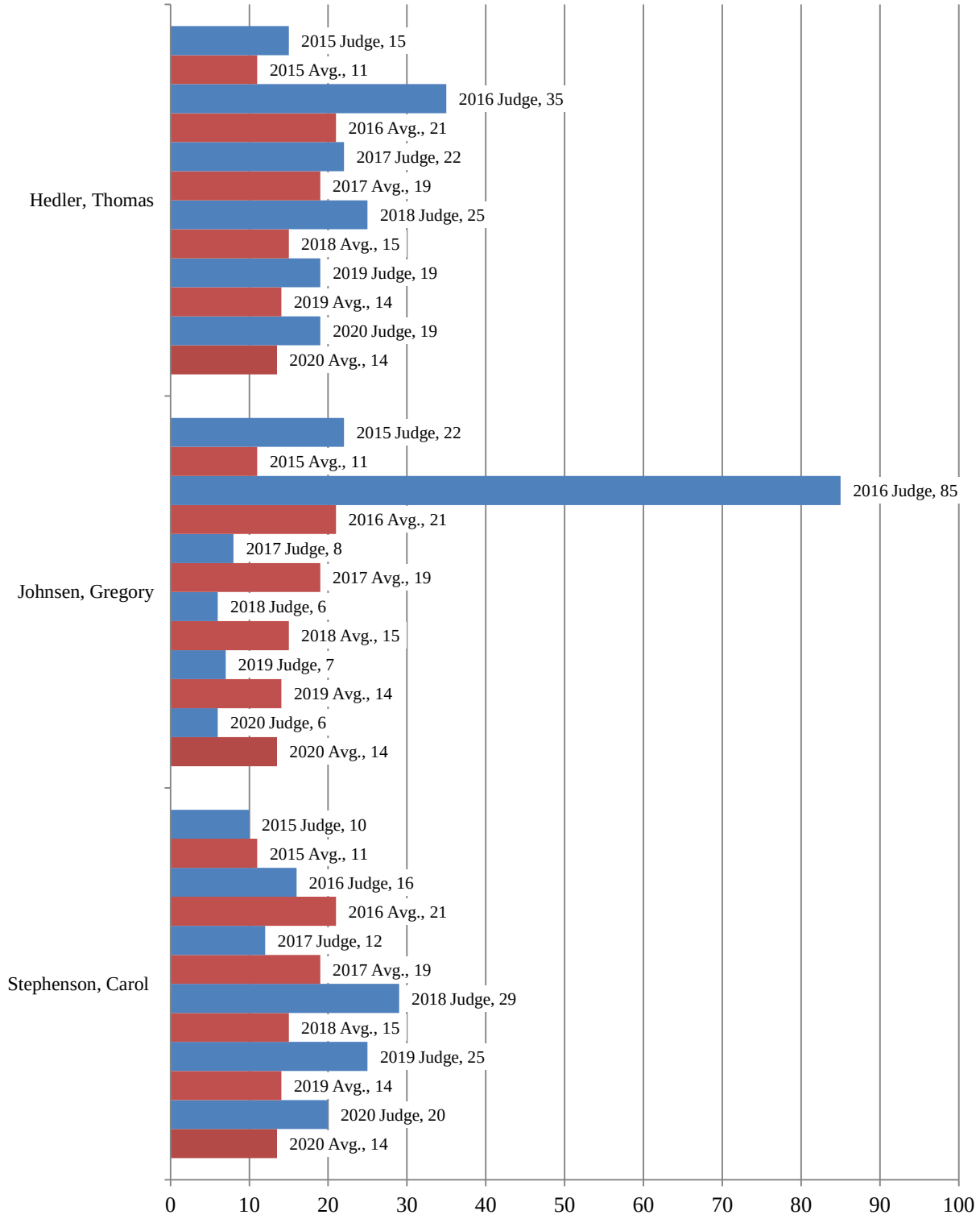
The following graph depicts the total volume of trial orders[250] uploaded in this District and statewide averages between 2014-15 and 2019-20. The identification and values for each year are in each bar label.



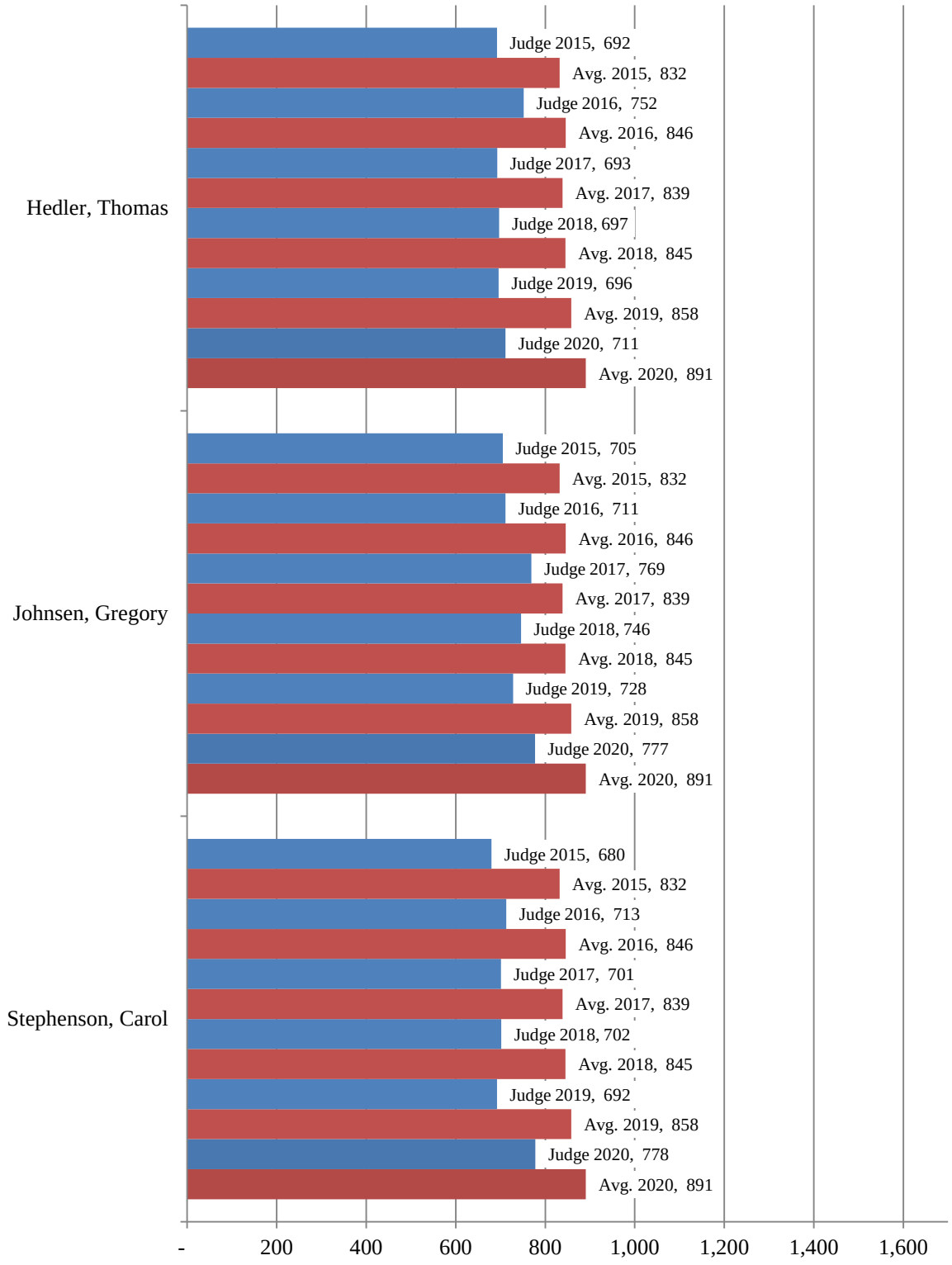
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2014-15 and 2019-20. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count.



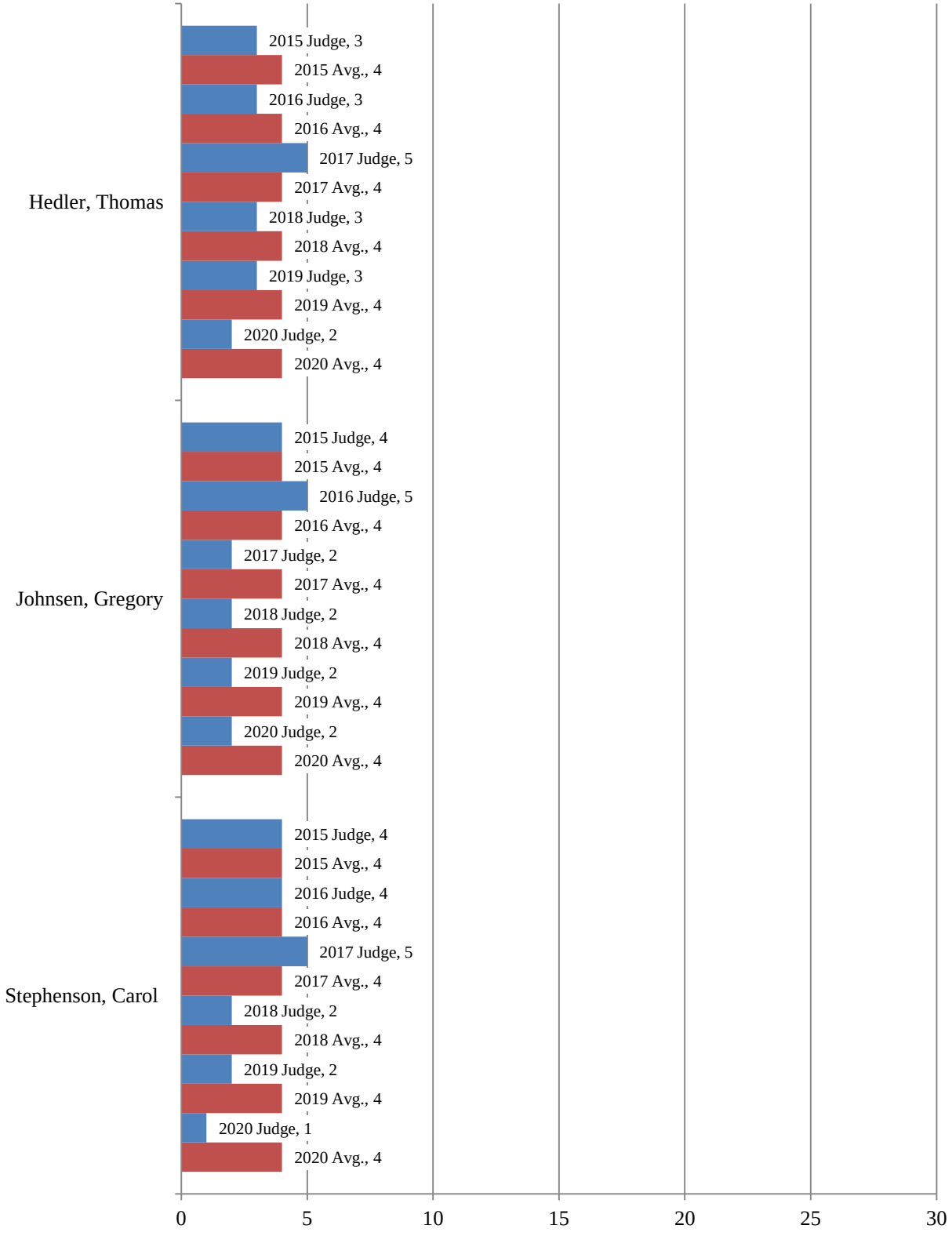
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2014-15 and 2019-20. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count.



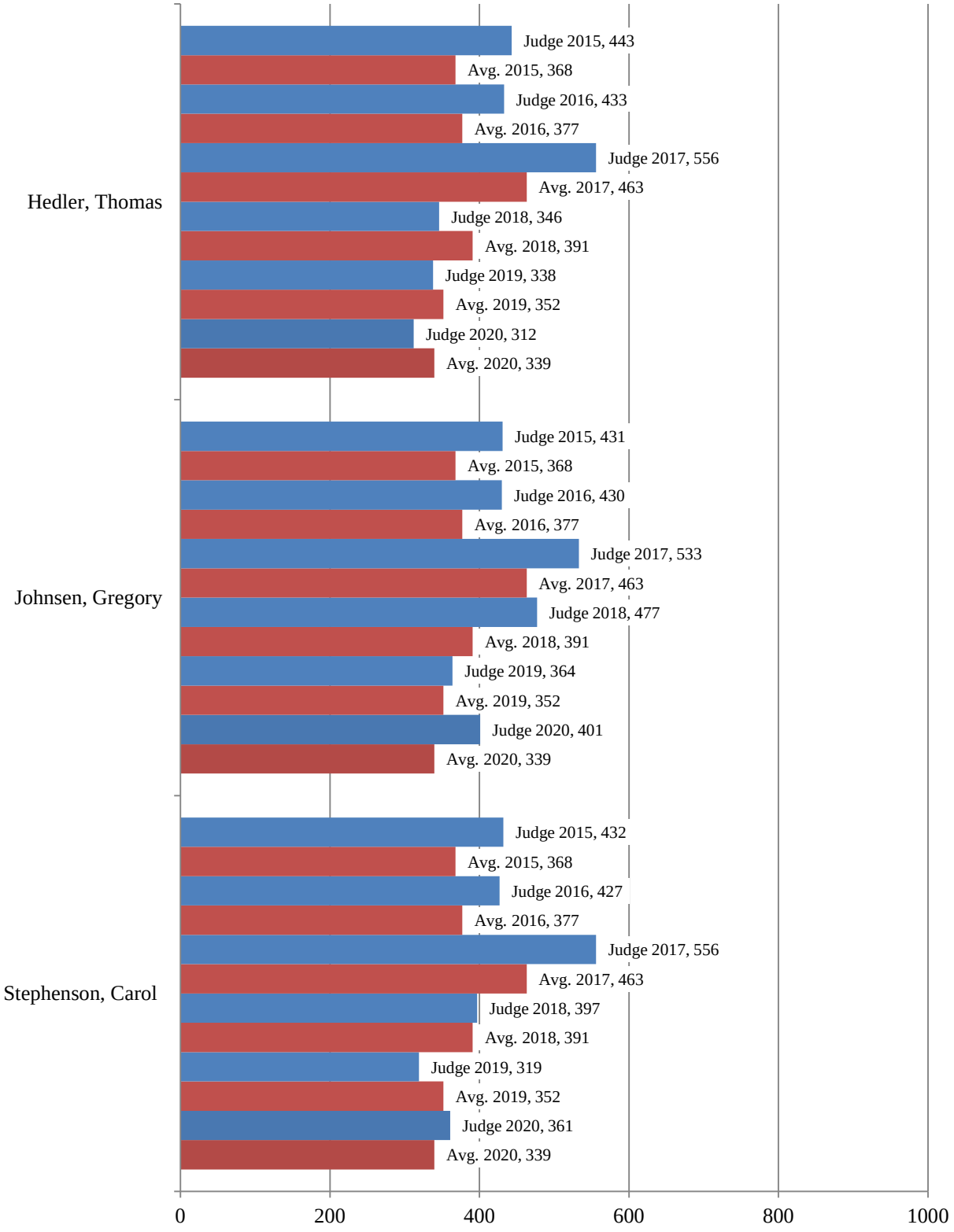
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



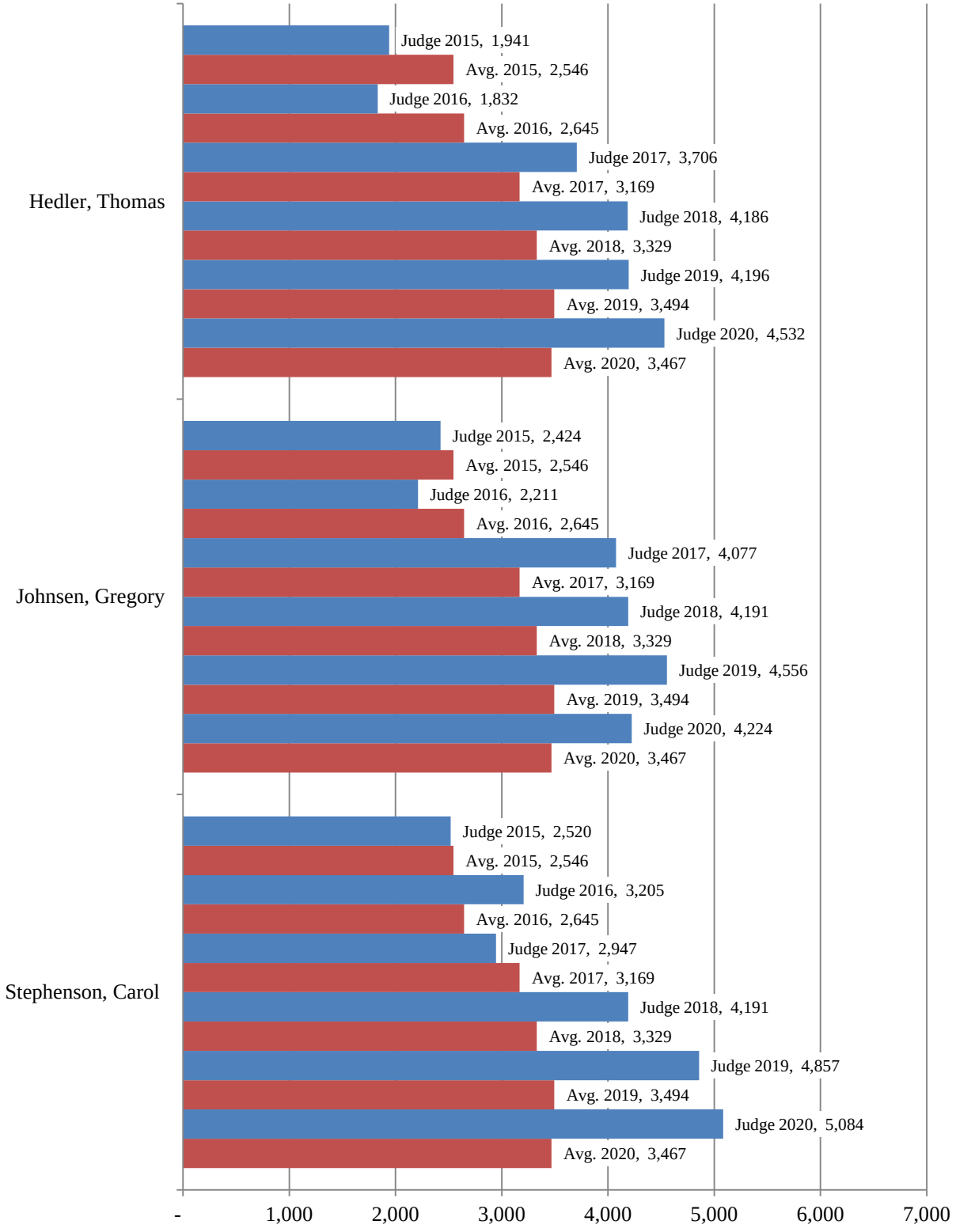
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



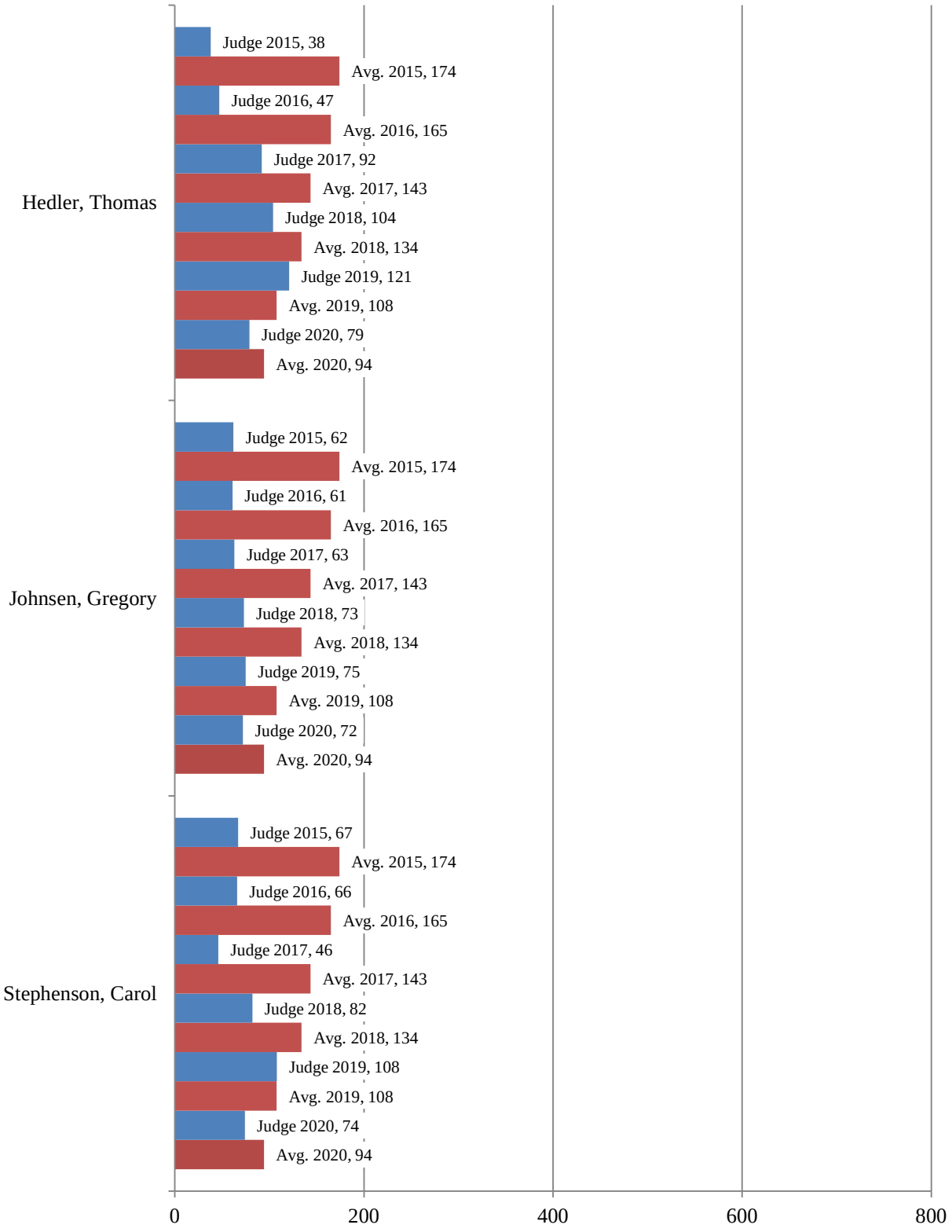
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2014-15 and 2019-20. Each bar label identifies the year and provides the numerical count.



The following depicts the volume of "other" (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2014-15 and 2019-20. 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 2014-15 and 2019-20. 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.

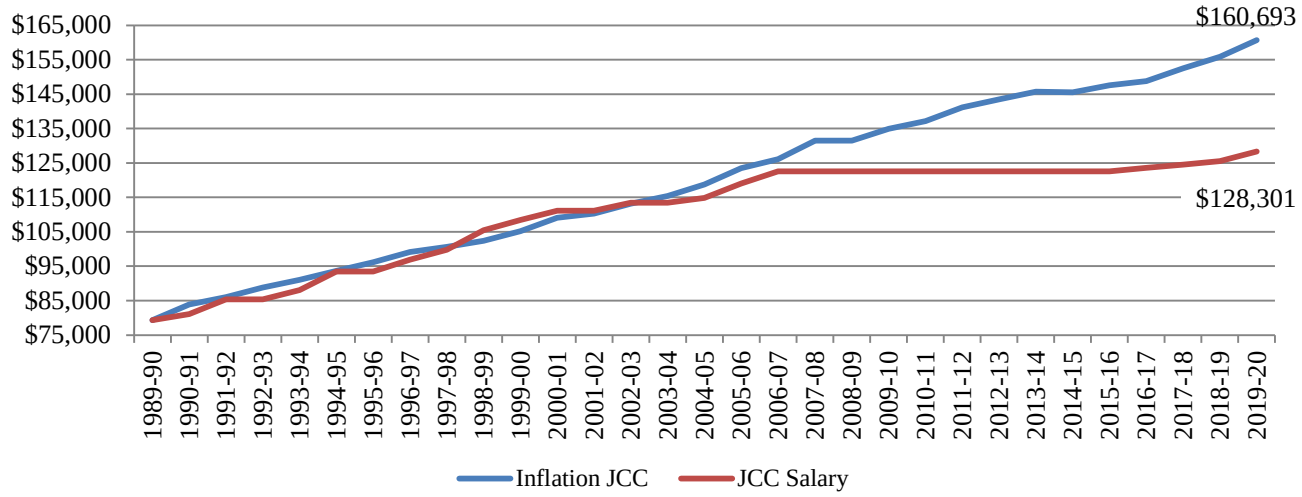
The State of Florida has grown dramatically in the last 28 years. In 1989, the population was 12.64 million,[251] the Florida Office of Judges of Compensation Claims (OJCC) consisted of 31 Judges, and operated 17 offices throughout the state; each judge is responsible for approximately 407,742 Floridians.[252] In 1993, the population had increased to 13.93 million, mediation was gaining acceptance, and the legislature added 31 state mediators and 31 staff to the OJCC team. In 2001, the Judges of Compensation Claims (JCCs) became responsible for monitoring and collecting child support,[253] though no staff or other resources were provided for this additional workload. The OJCC collects an average of about $11 million in child support annually (about 64% of the overall OJCC budget).[254] In 2013, the OJCC budget was decreased by eliminating three state mediator positions (and a judicial position that had been added in 2006). In 2020, the state population is 21.9 million,[255] and the OJCC remains staffed by 31 judges and 30 state mediators in 17 offices.[256] Each JCC is now responsible for approximately 698,263 Floridians.[257] Despite increased responsibility, the OJCC today is staffed with fewer personnel than in 2001.

Judges of Compensation Claims[258] 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).[259] 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 section 440.25(3)(b).[260] 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.[261] A salary increase in the OJCC would have no impact on general revenue expenditures.[262]

According to the Florida Supreme Court, there are "over 900 trial court judges in all 20 circuits."[263] The Circuit Judges have an incorporated Conference to represent their interests.[264] The County Judges have a Conference.[265] The Florida appeals court judges[266] have a Conference.[267] 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).

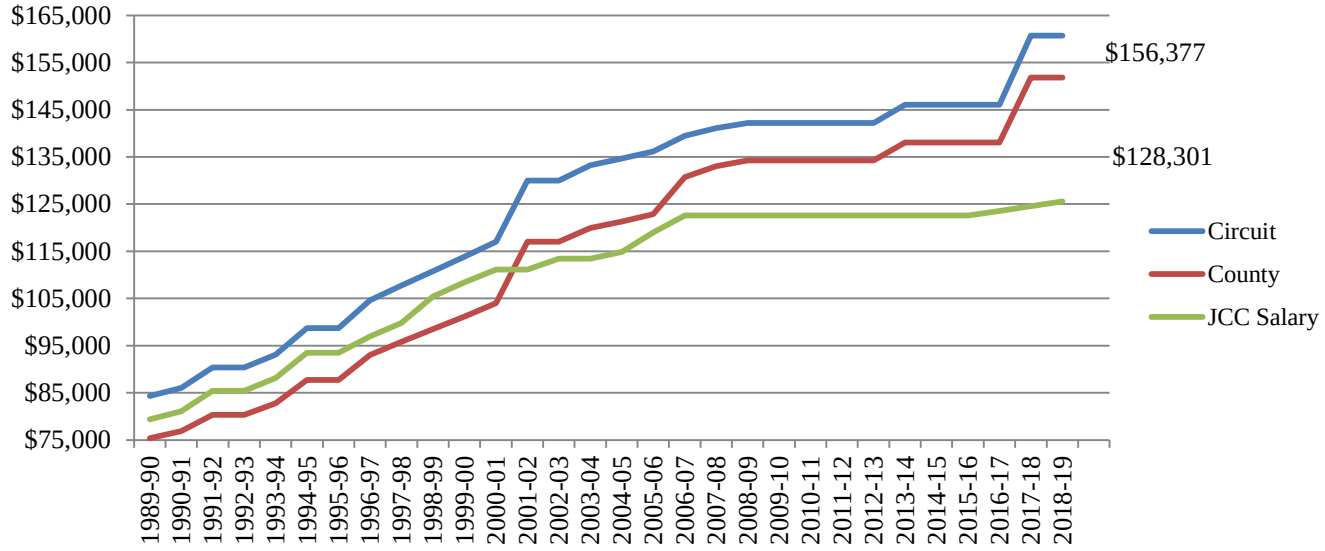
In 1989-90, the salary of a Florida Judge of Compensation Claims was $79,359. That salary was increased thereafter periodically, even after the "tie in" was removed from chapter 440 in 1994. However, that salary has not consistently kept pace with inflation, as illustrated in this chart. The difference between the current salary and the inflation adjusted figure as of 2020 is $32,392.



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 inflation[268] since the early 2000s. The JCC salary, in actual purchasing power, has diminished over $22,000 compared to the Consumer Price Index (CPI).[269]

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."[270] The maximum compensation rate is calculated annually from wages reported by employers across the state and published by the Division of Workers' Compensation.[271] 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 2020, that rate had increased to $971.00, an increase of $609.00 per week.[272] That is an increase of 168%. 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 $212,682. That is $84,381 more than the 2019 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, despite the cost-of-living raise passed in 2020. In 2019-20, JCCs earned $37,208 less than Florida 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.[273] With the 2017 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 $8,597 in October 2020). In 1989, Judges of Compensation Claims were paid about 94% of the Circuit Judge salary, and about 105% of the County Judge salary. In 2019-20, the JCC were paid about 78% of the Circuit Judge salary, and about 82% of the County Judge salary. The JCC's retirement is less than 50% of the Circuit Judge. There have been pay increases for cost of living. In October 2020 all state employees were afforded a 3% increase. As welcome as this recognition of inflation is, it does not address the disparity described above.

The Florida Bar advocated for a salary increase for Article V. judges in 2017-18. Despite that successful effort, and the notable increases in salary for all Article V. judges, Florida judicial salaries are viewed as modest. The President of The Florida Bar recently noted:

> Ensuring justice in Florida requires the highest caliber judges on the bench . . . To bring the best and most diverse talent to the courts of the nation's third-largest state, we must offer pay levels that can compete with the public and private sectors.[274]

The situation regarding judges of compensation claims cannot be said to be less severe. The pay has remained essentially flat for over a decade, has failed to keep pace with inflation, and is not competitive with the public and private sectors.

It is also noteworthy that all Article V. Florida judges enjoy a retirement benefit that is based upon more than 3% of salary.[275] However, the Judges of Compensation Claims' retirement benefit is based upon a calculation using 2% of salary. Circuit Judge retirement benefits are more than 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 = $5,302.70 x 8 years of service = $42,421.63). 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 more than 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.[276]

In order to vest in the state retirement pension, 8 years of service is required.[277] An attorney with exceptional experience and an established practice may be unwilling to assume the risks of appointment as a JCC,[278] 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.[279] Thus, the lack of interest in the recent Tallahassee appointment which 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.[280] In the summer of 2019, the retirement of Judge Beck in Sarasota was announced. There were only two applications submitted for the August Nominating Commission meeting. That meeting was postponed, the vacancy re-advertised, and ultimately three applications were submitted. The 2020 vacancy in Panama City drew only three applicants. Though the most recent vacancy in Tampa drew 5 applicants, only three remained for consideration by the time the Commission met. Only one of the three appeared for the interviews. 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
Panama City	02/10/2020	3[281]
Tampa (Lorenzen)	02/10/2020	5[282]
Sarasota	11/15/2019	3[283]
Sarasota	8/12/2019	2[284]
Tampa (Spangler)	8/20/2018	3 (6)[285]
Tampa (Lorenzen)	8/20/2018	3 (6)[286]
Ft. Lauderdale	8/20/2018	4[287]
Tallahassee	2/26/2018	4[288]
Gainesville	8/7/2017	4[289]
Tallahassee	8/7/2017	1[290]
Miami (Castiello)	2/17/2017	2.5[291]
Miami (Hill)	2/17/2017	2.5[292]
Lakeland	11/1/2016	4[293]
West Palm Beach (D'Ambrosio)	11/1/2016	6[294]
Miami (Castiello)	2/17/2017	1
Miami (Hill)	2/17/2017	2[295]
Reappointments only	8/22/2016	
West Palm Beach (Punancy)	3/21/2016	9[296]
Panama City	3/21/2016	4[297]
Ft. Myers (Sturgis)	9/28/2015	4[298]
Pt. St. Lucie	9/28/2015	8[299]
West Palm Beach (Basquill)	9/28/2015	4[300]
Ft. Myers (Spangler)	2/16/2015	8[301]
Ft. Lauderdale (Pecko)	2/24/2014	6[302]
Melbourne	2/24/2014	9[303]
Miami (Kuker)	8/19/2013	4[304]
Daytona	2/11/2013	9[305]
Miami (Harnage)	8/20/2012	4[306]
Tampa (Murphy)	8/20/2012	5[307]
Melbourne	1/23/2012	Cancelled[308]
Reappointments only	9/27/2011	
Reappointments only	2/7/2011	
Jacksonville (Rosen)	8/16/2010	8.5 (17)[309]
Jacksonville (Pitts)		8.5 (17)[310]
Lakeland (Hofstad)	8/16/2010	11[311]
Reappointments only	4/5/2010	
Gainesville (Thurman)	2/2/2009	13[312]
Reappointments only	4/20/2009	
Jacksonville (Dane)	8/18/2008	10[313]

Gainesville (Thurman)	8/18/2008	
Reappointments only	4/25/2008	
Reappointments only	8/14/2007	
Orlando (Thurman)	6/22/2007	14[314]
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.[315] The data further supports that the applicant pools are recently more consistently small. Where vacancies had attracted as many as ten applicants, recent history has been markedly lower, with three recent efforts (Miami 2016, Tallahassee 2017, and Sarasota 2019) 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 (a mediator posting in 2019 attracted only 4 applicants; another attracted less and had to be re-advertised).

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 440.45(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.[316]

In the 2020 session, the House and Senate each passed a bill to rectify the situation. House Bill (HB) 1049[317] and Senate Bill (SB) 1298 made their way through the legislative process. Eventually, SB 1298 was ordered enrolled by the House on March 9, 2020. It provided essentially similar language as cited above, and included appropriation instructions related thereto. On June 30, 2020, the Governor vetoed the bill.[318] The Governor cited fiscal responsibility and "the changes to our state budget outlook due to the COVID-19 pandemic." It is hoped that the issue will be reconsidered as those pandemic concerns fade in Florida's future.

It is submitted that this statutory language and equitable pay is a critical issue for the efficacy and function of this Office. As this Office is funded wholly through assessments, and the both the Administrative Trust Fund balance and operation are independent of the concerns of Florida's general revenue and taxation, such action would not impact other budgetary concerns.

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 29, 2019. 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 29, 2019.

[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" was 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 (or cost) 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] *See* Glossary, Page 53. *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. Throughout 2018-19 a mediator resident in District FTL provided half-time mediation in each of Districts FTL and WPB. As this report is prepared a similar reclassification of position effort is being implemented to increase the mediator cohort to 30. The staff reductions created conflict with section 440.44(5)("The Office of the Judges of Compensation Claims shall maintain the 17 district offices, 31 judges of compensation claims, and 31 mediators as they exist on June 30, 2001.").

[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 5, 2019.

[10] The OJCC is grateful for the participation of the City of Tallahassee, Publix, and Walmart. These were the initial participants. Since the program rolled out, the St. Johns County School District, City Furniture, Florida Department of Professional Regulation, University of North Florida, Disney World, and W.S. Badcock Corporation have been added. Expansion over the coming months is expected.

[11] 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." The rules surrounding procedure have created some confusion by conflating these two distinct terms.

[12] Found at www.zoom.us. This platform affords free access for limited duration proceedings and a variety of tools. The OJCC elected paid subscription access for multiple judges to enable longer proceedings and a wider array of tools and services.

[13] 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).

[14] This is defined by § 440.50, Fla. Stat.

[15] 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. Rent escalation has continued in 2019-20, but no new relocations have transpired .

[16] The aggregate reached $1 million in 2014-15. The total as of the end of 2019-20 is less than $1.7 million.

[17] The credit due to the DOAH IT staff is substantial. Their efforts have deployed a comparatively inexpensive electronic process and presence. *See* endnote 63 regarding other states' expenditures. Special credit for recent successes in programming and technology leverage is due to the OJCC Central Clerk Office, Stephanie Hayes (former senior counsel), and Julie Hunsaker.

[18] The Rules of Procedure for Workers' Compensation Adjudications requires that all documents filed with the OJCC must 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 5, 2019.

[19] It will likely be impractical to compile a complete database of e-mail contact information for all Florida employers. 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 will be subject to regulatory processes that will require the cooperation of multiple agencies.

[20] 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 administrative burden."

[21] 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.

[22] https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf, last visited October 26, 2020.

[23] https://e-jccupgrade.blogspot.com/2020/03/covid-19-all-ojcc-mediations.html, last visited October 26, 2020.

[24] Rule 60Q6.110(5)(a): "The adjuster, if represented by counsel, may attend the mediation by phone unless an objection is filed with the mediator on the basis of good cause. The mediator shall have discretion to allow any party and/or that party's attorney of record to appear at the mediation conference by telephone upon the party's written request furnished to the mediator and the opposing party or, if represented, the party's attorney of record no fewer than five days prior to the mediation conference. The expense of telephonic attendance shall be borne by the person or party attending by telephone."

[25] As this report was printed, the process had been announced to continue through November 27, 2020.

[26] As of this report being printed in November 2020.

[27] Virginia Workers Comp. Commission to close due to COVID-19, 6 News Richmond, https://www.wtvr.com/news/local-news/virginia-workers-comp-commission-to-close-due-to-covid-19, last visited October 26, 2020.

28 Available for download at https://www.myfloridacfo.com/division/wc/publicationsformsmanualsreports/reports/default.htm, last visited October 26, 2020.

29 Few Virus Cases in Working Age Californians Result in Comp Claims, Insurance Journal, October 23, 2020; https://www.insurancejournal.com/news/west/2020/10/23/587861.htm, last visited October 26, 2020.

30 *Florida Division of Workers' Compensation 2020 COVID-19 Report Data Summary as of September 30, 2020*; https://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/2020-COVID-19-October-Report.pdf, last visited October 26, 2020.

31 2015-16 OJCC Annual Report, https://www.fljcc.org/JCC/publications/reports/2016AnnualReport/files/assets/basic-html/page-1.html#, last visited October 5, 2019.

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

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

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

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

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

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

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

39 Increase was 14.5%; Office of Insurance Regulation press release: http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2179; last visited September 11, 2020. 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 96.

40 Premium level decrease was 9.8%; Office of Insurance Regulation press release: https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2221; last visited September 11, 2020.

41 Premium decrease was 13.4%; Office of Insurance Regulation press release: https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2233; last visited September 11, 2020.

42 Rate level decrease was 13.8%; Office of Insurance Regulation press release: https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2244; last visited September 11, 2020.

43 Rate level decrease was 7.5%; Office of Insurance Regulation press release: https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2277; last visited September 11, 2020.

44 The National Council on Compensation Insurance (NCCI) filing of September 1, 2020 proposed a rate decrease of 5.7%. https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2288; last visited November 6, 2020. On November 4, 2020 the Office of Insurance Regulation issued a press release notifying NCCI that an amended rate decrease of 6.6% would be approved if filed the same day. https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2295; last visited November 6, 2020. WorkCompCentral.com reported that NCCI complied with an amended filing: https://wcc-public-news-storage-4081.s3-us-west-2.amazonaws.com/NCCI%20Fla%20filing%20Nov%204%202020.pdf;; last visited November 6, 2020. It reported that the 6.6% rate reduction was thus approved and explained the calculation adjustment based upon exclusion of "loss data from large deductible policies." *See, Commissioner Again Successful in Demand for Bigger Rate Decrease*, November 6, 2020, https://www.workcompcentral.com/news/article/id/23fe82234146a614434f5bf54dbc571bd238697b; last visited November 6, 2020. *See also, Workers' comp rates could dip 6.6 percent*, Florida Trend, November 5, 2020, https://www.floridatrend.com/article/30227/workers-comp-rates-could-dip-66-percent#:~:text=Florida%20employers%20could%20see%20an,5.7%20percent%20decrease%20in%20August; last visited November 6, 2020.

45 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.

46 Miles, at 178.

47 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.
http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/c6cc17380a7291d285257ccf0042745c!OpenDocument; last visited October 5, 2019. 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. Despite that recognition regarding the constitutional judges, no similar increase has been procured for either judicial or staff positions in the OJCC. It is axiomatic that inflation is detrimentally affecting all employees of this agency, impairing recruitment, and frustrating retention.

48 *See* endnote 15, regarding the 2018 leasing of new office space in Jacksonville, Orlando, and Panama City.

49 Salaries = $13,881,779; Rent = $2,282,904; Security = $731,071; total = $16,895,754; $16,895,754/$18,078,053 = 93.46%.

50 Florida agencies asked to cut 8.5 percent to adjust for COVID-19, Tampa Bay Times, August 12, 2020; https://www.tampabay.com/florida-politics/buzz/2020/08/12/florida-agencies-asked-to-cut-85-percent-to-adjust-for-covid-19/, last visited September 23, 2020.

51 Section 440.44(5)("The Office of the Judges of Compensation Claims shall maintain the 17 district offices, 31 judges of compensation claims, and 31 mediators as they exist on June 30, 2001.").

52 *See* endnote 2.

53 *See* https://www.fljcc.org/JCC/publications/reports/2006AnnualReportAmended.pdf, last visited September 23, 2020.

54 *See* https://www.fljcc.org/JCC/publications/reports/2007AnnualReport.pdf, last visited September 23, 2020.

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

56 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 5, 2019. 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."

57 In 2011-12, the OJCC began to enforce the mandatory use of electronic filing by represented parties.

58 Between 2010-11 (451,649) and 2020 (603,499), the e-filings increased 33.6%. This supports that voluntary use of e-filing was at least approximately 65.4% prior to the legislative mandate. The figure may be notably higher as the petition volume has increased in that time period also (2010-11 to 2019-20), supporting that some portion of the increased e-filing volume in 2020 is litigation growth. Similarly, however, it would be inappropriate to compare the 2010-11 volume only to 2011-12 as enforcement of the mandate only began then and the transition to full compliance was evolutionary over a period of years.

59 "Service," the providing of copies of filed documents to others in the litigation. *See* endnote 9.

60 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 2018, the First, Fourth and Fifth District Courts had 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. In 2019, the state courts deployed a new e-filing platform and retired e-DCA.

61 *See* https://www.fljcc.org/JCC/publications/reports/2007AnnualReport.pdf, last visited September 23, 2020. 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.

62 For example if a pleading is filed, the filer saves postage on sending to the OJCC. That savings is captured in the e-filing calculation. But, that document must also be mailed to opposing counsel ($.50). If it is a petition, then it must be served by certified mail ($3.35 in addition to the first class mail cost). Thus, in 2019-20, there were approximately 603,499 filings. At least $.50 was saved through e-service on each of these ($307,749). Each of the Petitions (74,685) would have to be served by certified mail on the carrier ($3.35 x 74,685 = $250,194). The OJCC

uploaded 312,553 documents that would have been mailed to at least two parties each ($1.00), another $312,553. Additionally, it is conservatively estimated that at least half of the non-petition filings (528,811 x .50 = $264,407) would be served on at least one additional party (commonplace for documents to be served on both defense counsel and the carrier; commonplace for responses to petitions to be served on both claimant and claimant's counsel, etc.); thus, it is conservative to estimate another $132,203 (264,407 x $.50). Without consideration of the benefits in child support reporting and investigations, using the minimum U.S. postage, these figures total $1,002,699.

63 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 approximately $1.5 million.
https://ww3.workcompcentral.com/news/story/id/a0a2e2759c516074e05f1d022d13c444m.

64 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.

65 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.

66 Some have suggested that the PFB volume measures "system intensity," rather than volume per se.

67 This is discussed more fully in the report section on attorney fees by accident years (page 41).

68 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.

69 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.

70 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 69.

71 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).

72 The 2019-20 Settlement Report and Mediation Statistics Report is incorporated in this report and is available at https://www.fljcc.org/JCC/publications/reports/2020SR-MSR.pdf; last visited September 25, 2020.

73 Because of that small data set, the OJCC has long advocated the abolishment of the special and separate "denied claim" settlement report. *See* 2019-20 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/2020SR-MSR.pdf; last visited September 25, 2020.

74 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.

75 Notably, the filing rate in September 2018 (4,319) was a significant decrease (-30%) from September 2017 (6,125). Hurricane Irma made struck in south Florida and affected much of the state. See *Farewell Irma, I Never Liked You*, https://flojcc.blogspot.com/2017/09/farewell-irma-i-never-liked-you.html, last visited September 24, 2020; and, *Tomorrow, Tomorrow, I Love Ya, Tomorrow*, https://flojcc.blogspot.com/2017/09/a-day-late-and.html, last visited September 24, 2020.

76 Whether the hurricane season played any role in the filing of petitions and the minimal change of filings in 2017-18 remains an unknown. The landfall of Hurricane Michael in 2018 was devastating in magnitude but affected a smaller portion of the state, fewer OJCC offices, and fewer attorneys, claims professionals, and others.

77 *Florida Governor Orders Statewide Lockdown*, National Public Radio, April 1, 2020, https://www.npr.org/sections/coronavirus-live-updates/2020/04/01/825383186/florida-governor-orders-statewide-lockdown, last visited September 24, 2020. *See also*, Executive Order Number 20-91, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf, last visited September 24, 2020.

78 *Gov. Ron DeSantis says most of Florida can begin first phase of reopening May 4*, WKMG Orlando, April 30, 2020, https://www.clickorlando.com/news/local/2020/04/29/gov-ron-desantis-says-most-of-florida-can-enter-phase-1-of-reopening-on-may-4/; last visited September 24, 2020.

79 Reopening has begun. Which Florida communities still have lockdown orders in place? FlaPol, June 18, 2020, https://floridapolitics.com/archives/325112-a-round-up-of-which-florida-communities-have-stay-at-home-orders-in-place, last visited September 24, 2020.

80 Executive Order Number 20-89, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-89.pdf, last visited September 24, 2020 ("This order does not affect or limit the operations of Miami-Dade County, any public utility, any municipality, the Miami-Dade County School District, or any State or Federal office or facility"). It also did not affect law firms, which were designated as essential ("Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities"). Arguably, it did not apply to insurance companies and servicing agents ("Businesses that supply other essential businesses with the support or supplies necessary to operate").

81 Preliminary figures for 2020-21 support that the petition filing volumes returned to decrease in the first quarter: July (-7%), August (-16%), and September (3%). The overall comparison of first quarter 2019-20 demonstrates a decrease (-7%).

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

83 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).

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

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

86 It has been suggested that the office closures in the wake of Hurricane Irma might have played a role. The storm made landfall on September 10, 2017. At one point, 11 of 17 District Offices were closed by the storm. The last two to return to function were Miami and Ft. Lauderdale on September 25, 2019. It is notable that the return to normal operations is a struggle for the State. It is likely more so for attorneys in those affected regions. Some suggest that the PFB filing rates in 2017-18 plateaued in part due to the impact of that storm. It is difficult to quantify or assess that supposition, but it bears mention.

87 Press Release from Florida Office of Insurance Regulation, (October 26, 2009): https://www.floir.com/PressReleases/viewmediarelease.aspx?id=1777; last visited September 25, 2020.

88 Press Release from Florida Office of Insurance Regulation, (October 15, 2010): http://www.floir.com/PressReleases/viewmediarelease.aspx?id=1839; last visited September 25, 2020.

89 Ciniceros, 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 September 25, 2020.

90 Press Release from Florida Office of Insurance Regulation, (October 26, 2012): http://www.floir.com/PressReleases/viewmediarelease.aspx?id=1984; last visited September 25, 2020.

91 Press Release from Florida Office of Insurance Regulation, (October 23, 2013): http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2033; last visited September 25, 2020.

92 Press Release from Florida Office of Insurance Regulation, (August 22, 2014): http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2074; last visited September 25, 2020.

93 Press Release from Florida Office of Insurance Regulation, (November 3, 2015): http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2125; last visited September 25, 2020.

94 Press Release from Florida Office of Insurance Regulation, (October 6, 2016): http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2179; last visited September 25, 2020.

95 Press Release from Florida Office of Insurance Regulation, (November 9, 2017): https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2221; last visited September 25, 2020.

96 Press Release from Florida Office of Insurance Regulation, (August 28, 2018)(proposed a 13.4% decrease): https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2233; last visited September 25, 2020; Press Release from Florida Office of Insurance Regulation, (November 9, 2018)(rejected proposed decrease and ordered 13.8% decrease instead, with effective date January 1, 2019), https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2244; last visited September 25, 2020.

97 Press Release from Florida Office of Insurance Regulation, (October 24, 2019): https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2274; last visited September 25, 2020. Order of October 24, 2019: https://www.floir.com/siteDocuments/NCCI252466-19OORF.pdf; last visited September 25, 2020.

98 This was originally proposed as a 5.7% decrease. Press Release from Florida Office of Insurance Regulation, (September 1, 2020): https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2288; last visited September 25, 2020. An amended filing in early November increased the reduction. *See supra*, note 44.

99 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. 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.

100 *Id*.

101 Included in this "new case" volume are cases that are opened initially with a Request for Assignment of Case Number or RACN. This tool is used to establish a case for reasons other than litigation of a petition or claim issue. Examples are needs for judicial enforcement of discovery, consideration of settlement/resolution documents, or other pleadings. In those cases, it may be that an initial petition is later filed, or that the "new case" is resolved without any petition ever being filed.

102 In 2017-18, fees were approved on a 66 year old claim, *see* endnote 121.

103 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.

104 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.

105 *See* endnote 74.

106 *See* endnote 100.

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

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

109 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.

110 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.

111 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.

112 *See* endnotes 210, 212, 213.

113 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.

114 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.

115 The figures for 1994 are derived from Current Population Reports, National and State Population Estimates: 1990 to 1994, U.S. Department of Commerce, Bureau of the Census, Page 17; https://www.census.gov/prod/1/pop/p25-1127.pdf, last visited September 25, 2020; The figure for present population was derived from the Annual Estimates of the Resident Population for the United States, April 1, 2010 to July 1, 2019 (NST-#ST2019-01), U.S. Census Bureau, https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html, last visited September 25, 2020. The 2019 estimate (21,477,737), less the 1994 figure (13,953,000) results in a difference of 7,524,737, which is 54% of the 14 million residents reported for 1994.

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

117 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.

118 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.

119 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).

120 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 September 25, 2020.

121 Marshall v. City of Miami, OJCC Case No. 02-022055ERA; https://fljcc.org/jccdocs20/MIA/Dade/2002/022055/02022055_229_09242018_01041581_i.pdf, last visited September 25, 2020.

122 The $241.00 cost of litigation per petition figure for 2019-20 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 its 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.

123 This example uses the county charges published at http://www.miami-dadeclerk.com/service_fee_schedule.asp; last visited September 25, 2020.

124 *Id*.

125 Calculated with https://www.usinflationcalculator.com/, last visited September 25, 2020.

126 *See* endnotes 254-256.

127 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 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 30 mediators = 540; multiplied by the 229 working days in a year, see note 151 There are 30 full-time mediators presently) would represent the near absolute maximum, and that volume would require pro-forma services, and minimal or non-existent rescheduling opportunities. *See also* endnote 135.

128 § 440.20(11)(d)1, Fla. Stat.: "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."

129 For years, parties to a case had to submit by U.S. mail to both the Department of Revenue and the Clerks of Courts to investigate child support balances. The replies from those inquiries went to the requestor alone. Thus, each party was prone to make requests. The OJCC designed a more streamline process when it gained access to the databases of these two agencies. Currently, anytime a party makes a request, it is e-filed with the OJCC. The search is performed and results are eServed on all parties, which decreases frequency and redundancy of requests. This process was designed and implemented by the OJCC with no special funding or increase in staff.

130 The parties can utilize the OJCC electronic filing system for making requests for information regarding child support.

131 The OJCC undertook this task, streamlined the process, and has delivered this service to Floridians for 8 years without any 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.

132 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 (three mediations in fiscal 2019-20) were waived by order of the Deputy Chief Judge of Compensation Claims.

133 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 September 25, 2020.

134 Notices and Publications, https://www.fljcc.org/JCC/publications/; last visited September 25, 2020.

135 In budget reductions, the third mediator position was removed from District WPB in 2012, see *supra*, note 6. The OJCC created a mediator position from multiple staff positions, and David Stillson began work with the OJCC on January 16, 2018. For a time, he mediated half-time in both Ft. Lauderdale and West Palm Beach. Late in 2019, the OJCC created another mediator position in WPB. William Blatt began with the OJCC on February 3, 2020 in that new position. As such, it is likely that this addition of capacity has impacted the volumes mediated, just as the layoff/reduction in force in 2012 likely contributed to some decrease.

136 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. In 2018-19 the aggregate cost was $3,186,542 (with the addition of a 29th state mediator); divided by 17,056 mediations in 2018-19 yields $186.83. In 2019-20 the 30th mediator was added in WPB, and the total expenditure is estimated at $3,201,719; divided by the 18,211 mediations, in 2019-20 yields $175.81. These figures do not include the costs of staff support or facilities or equipment. Therefore, this is a conservative cost figure.

137 Mediator staff was reduced from 32 to 28 in 2012-13, *see* endnote 6. With the additions back of two mediator positions, the OJCC is currently staffed by 30 state mediators.

138 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 exchange. 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, some issues might instead resolve before trial without mediation.

139 *See* endnote 122. Circuit filing rates.

140 § 440.25(1), Fla. Stat.: "A mediation, whether private or public, shall be held within 130 days after the filing of the petition."

141 § 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."

142 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.

143 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 effectuated by policy by the OJCC until 2006. Since that time, completion of the Florida Supreme Court sanctioned mediator training has been sufficient to qualify. When the Supreme Court training was adopted, one OJCC mediator was already employed and had not completed that training. That individual continues to serve as a state mediator. 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://onlinedocketssc.flcourts.org/DocketResults/CaseDocket?Searchtype=Case+Number&CaseYear=2005&CaseN

umber=998, last visited September 25, 2020. 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.

144 How to Become a Florida Supreme Court Certified Mediator, Revised June 2019, http://www.flcourts.org/core/fileparse.php/549/urlt/HowtoBecomeaMediatorGuide.pdf, last visited September 25, 2020.

145 Rules for Certified and Court-Appointed Mediators, http://www.flcourts.org/core/fileparse.php/422/urlt/Mediator-Rules-Tab-3.pdf, last visited September 25, 2020.

146 MEAC Opinion 2004-002, https://www.flcourts.org/core/fileparse.php/283/urlt/MEAC-Opinion-2004-002.pdf, last visited September 25, 2020.

147 *Id*.

148 *See supra* note 13. 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, 477 (Fla. 2004)("The Office of the Judges of Compensation Claims (OJCC) is not a court of this State.")

149 Art. V. § 15, Fla. Const.

150 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 mediation training program approved by the Deputy Chief Judge."

151 § 440.25(3)(a), Fla. Stat.

152 There are 30 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 (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) per mediator, or 540 opportunities total (18 x 29 mediators). 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 September 25, 2020. Each mediator earns 176 hours of leave annually (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.

153 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 30 mediators equates to 330 per day statewide, multiplied by 229 working days, equals 75,570.

154 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.

155 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.").

156 *Id*.

157 § 440.25(1), Fla. Stat.: "A mediation conference may not be used solely for the purpose of mediating attorney's fees."

158 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* endnote 126), this equates to 4.1 mediations daily.

159 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.

160 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.

161 In 2017-18 three mediators accounted for 47% of the statewide total of mediation continuances. In 2018-19 the volume of mediations decreased, and the distribution was far less focused. Only three mediators had more than 20 continuances. The distribution and volumes are a credit to the entire mediator team and their efforts to serve Floridians.

162 A motion to disqualify filed in 2020-21 alleges such perception specifically.

163 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 have been 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.

164 Though there is "service" (*see supra* endnotes 9 and 59) 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.

165 *See* page 26. 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.

166 See *supra*, note 126.

167 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.

168 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).

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

170 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.

171 With the advent of Employer service through e-JCC, many of these directed at employers will be sent electronically. This is one example of the technology deployment increasing cost savings. See endnote 62.

172 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 1, 2020.

173 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).

174 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 proceeding arising under this chapter, unless approved as reasonable by the Judge of Compensation Claims or court having jurisdiction over such proceedings."

175 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.

176 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."

177 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.

178 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 1, 2020.

179 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 2, 2020: "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.

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

181 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.

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

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

184 http://www.usinflationcalculator.com/, last visited October 2, 2020.

185 Notably, this $97 million is less than the $122,412,555 calculated in this manner comparing the inflation adjusted 2002-03 figure to the actual 2018-19 aggregate of $473,937,031. However, it is still almost $100 million less than inflation would have resulted if all other factors had remained static and consistent.

186 The manner in which the data is represented in the DLES report does not provide clarity as between fiscal or calendar year.

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

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

189 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%. In 2018-19, the shift continued: median was 25%, mean was 20%, and mode was 25%. In 2019-20, the median was 25%, the mean was 21%, and the mode was 25%. This illustrates that a significant volume of settlement fees were being

approved despite failure to comply with the provisions of Section 440.34, Florida Statutes. Further, the analysis lends support to a conclusion that fees from injured workers are increasing.

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

191 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.

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

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

194 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.

195 In 2019-20 three such instances were identified involving misrepresented accident dates of February 10, 1954 (17-007616: Petition for Benefits filed by Adam G. Werner); March 23, 1957 (19-026972: Petition for Benefits filed by Isaac Jerome Theut); and December 9, 1961 (20-001289: Petition for Benefits filed by Steven M. Fried).

196 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.

197 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).

198 *Id*.

199 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.

200 Langham, *Tomorrow, Tomorrow, I Love Ya, Tomorrow*, Florida Workers' Comp Adjudication Blog, September 22, 2017; https://flojcc.blogspot.com/2017/09/a-day-late-and.html; last visited October 19, 2020.

201 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. While that language exists in that case, it remains to be seen whether such compelling interest does not in fact exist or whether it was merely not demonstrated in that litigation.

202 In the 2017-18 OJCC Annual Report, it was noted that only 152 Expert Medical Advisors were available statewide. At the present, there are only 149. *See* Division of Workers' Compensation Expert Medical Advisor List, https://apps.fldfs.com/provider/; last visited October 23, 2019. Of those, 53 were in either Dade or Broward Counties, 31 are in Orlando, and 26 are in Tampa/St. Petersburg. Of the 149, 110 are in six counties. Pensacola has 0, Tallahassee has 0, Lakeland has 1, Daytona has 2, Gainesville has 1, Key West has 0, and Jacksonville has 7. Access to EMA providers is geographically challenging for injured workers. Furthermore, travel to these metropolitan areas for such examination represents a cost to the party requesting such services. A search of the database for preparation of this report revealed only 156 approved EMA's as of October 2020. https://apps.fldfs.com/provider/, last visited October 19, 2020.

203 *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.

204 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.

205 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.

206 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.

207 *See* endnote 202.

208 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.

209 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.

210 § 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).

211 § 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."

212 § 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."

213 § 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."

214 § 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."

215 § 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."

216 § 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."

217 § 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."

218 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.

219 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.

220 *See* endnote 4.

221 https://fljcc.org/JCC/publications/reports/2019SR-MSR.pdf, last visited October 19, 2020.

222 In 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, and 2019-20.

223 Rule 60Q6.110(2)(a), F.A.C. 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.

224 Unless the continuance is granted on the record in the midst of another hearing; even then, the public record would be clearer with documentation in a written order.

225 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 that year 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 2018-19 orders failing to comply were noted for fifteen judges.

226 *Infra*, endnote 196.

227 § 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."

228 *Supra*, page 41.

229 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 53-54. The term "trial order" necessarily means the order resulted from a trial.

230 Naming the coronavirus disease (COVID-19) and the virus that causes it, World Health Organization, https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it, last visited October 26, 2020.

231 *Id*.

232 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 workload holding evidentiary hearings on such procedural matters as motions for continuance, stipulations for appointment of expert medical advisor and more. *See* also endnote 4.

233 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 2019-20 conducted 2,920 (94 average per judge) other hearings, entered 107,594 (3,471 average per judge) other orders, entered orders approving 27,609 (890 per judge) settlements, and 10,531 (340 per judge) stipulations.

234 *Id*.

235 *Id*.

236 *Id*.

237 *Id*.

238 *Id*.

239 *Id*.

240 *Id*.

241 *Id*.

242 *Id*.

243 *Id*.

244 *Id*.

245 *Id*.

246 *Id*.

247 *Id*.

248 *Id*.

249 *Id*.

250 *Id*.

251 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 28, 2020.

252 407,742 Floridians = 12.64 million divided by 31 judges.

253 Section 440.20(11)(d)(2001), 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."

254 *Supra* pages 23-24.

255 http://worldpopulationreview.com/states/florida-population/, last visited October 28, 2020.

256 The mediator positions have not been legislatively returned. Over the years since the reduction, staff positions have been adapted to create these new mediator positions.

257 698,263 Floridians = 21,646,155 million divided by 31 judges. *See* http://worldpopulationreview.com/states/florida-population/, last visited October 28, 2020.

258 Historically also referred to as "Deputy Commissioners" and "Judges of Industrial Claims."

259 "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." Section 440.45(4)(1989).

260 "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." section 440.25(3)(b)(1993).

261 *See* Florida Assessments, http://www.myfloridacfo.com/division/wc/Insurer/Assessments/wcatf.htm, last visited October 28, 2020.

262 According to the Division of Workers' Compensation, the WCATF currently has a balance of $182,674,345. Email from Leah Gardner, October 28, 2019, retained by author. (Decreased from $195,070,196 in November 2019). Email from Leah Gardner, October 28, 2019, 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 five 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 (2017) to $171,042,601 (2018). 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.

263 In Re Certification of Need for Additional Judges, Case No. SC16-2127, December 15, 2016, https://www.floridasupremecourt.org/content/download/323444/2901887/file/sc16-2127.pdf.

264 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, last visited October 28, 2020.

265 *See* http://floridacountyjudges.com/, last visited October 28, 2020.

266 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 October 28, 2020.

267 *See* Florida Judges Hire Lobbyist, *Miami Herald*, December 30, 2015, http://www.miamiherald.com/news/politics-government/state-politics/article52344720.html, last visited October 28, 2020.

268 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 October 28, 2020.

269 The current salary of $128,301 in 2020 would be equal to $86,389.10 in 2000. The difference between 86,389 and the actual 2000 salary paid ($108,408) is $22,019.

270 *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 2/3 percent 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." See, https://www.myfloridacfo.com/Division/wc/pdf/Max-Comp-Rate-2019-Bulletin.pdf; last visited October 28, 2020.

271 Bureau of Monitoring and Audit Statistics, Minimum/Maximum Compensation Rate Table, http://www.myfloridacfo.com/division/wc/Insurer/bma_rates.htm, last visited October 28, 2020.

272 https://www.myfloridacfo.com/division/wc/insurer/bma_rates.htm, last visited October 28, 2020.

273 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/, last visited October 28, 2020.

274 Florida's Judicial Pay Still Lags for District and Trial Court Judges, The Florida Bar News, September 13, 2019; https://www.floridabar.org/the-florida-bar-news/floridas-judicial-pay-still-lags-for-district-court-trial-court-judges/, last visited October 28, 2020.

275 § 121.091, Fla. Stat. (2017).

276 § 440.45(2)(a), Fla. Stat. (2017).

277 § 121.021(3), Fla. Stat. (2017).

278 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.

279 § 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).

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

281 John Brooks, John Moneyham, and Gus Soto.

282 Brian Anthony, Lawrence Anzalone, Mark Capron, Tonya Oliver, Todd Sanders. Of these, only Mr. Sanders presented for interview.

283 Jessica Carrier, Erik Grindal, Jacqueline Steele.

284 Jessica Carrier, Jacqueline Steele.

285 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.

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

287 Jeffrey Breslow, David M. Goehl, Rosalind Rae Milian, Michael James Ring.

288 Stephen Andrews, William Gwaltney, Jacquelyn Newman, Michael Peterson, Todd Sanders.

289 Stephen Armstrong, Laura Buck, Lourdes Sancermi, Timothy Stanton.

290 Robert Wells.

291 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.

292 *Id*.

293 Lawrence Anzalone, Robert Arthur, Mark Capron, Juliana Curtis.

294 Jeffrey Breslow, Jill Forman, Jeffrey Jacobs, Marydeneyse Ommert, Ken Schwartz, Carol Stephenson.

295 This was on the first advertisement for MIA vacancy and two applications were received: Walter Havers, Jeffrey Jacobs.

296 Lawrence Anzalone, Jeffrey Jacobs, Gregory Johnsen, Marydeneyse Ommert, Michael Peterson, Debra Pierce, Ken Schwartz, Carol Stephenson, Janet Tacoronte (withdrew prior to interview).

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

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

299 Lawrence Anzalone, John Paul Brooks, Thomas Hedler, Carrie McAliley, Keef Owens, Debra Pierce, Mary Spagnola, Carol Stephenson.

300 Lawrence Anzalone, Jill Forman, Debra Pierce, Thomas Hedler.

301 George Boring, Eric Bredemeyer, Frank Clark, Kenneth Kugler, Tania Ogden, James Radloff (withdrew prior to interview), Timothy Stanton, Jack Weiss.

302 Iliana Forte, Gregory Johnsen, Roberto Mendez, Kenneth Schwarz, Carol Stephenson, Wendy Sweeny.

303 Robert Dietz, Mark Hill, Keefe Owens, Kenneth Schwartz, Timothy Stanton, Wendy Sweeny, Larry Wang, Michael Wilkes.

304 Eugene Flinn, Gregory Johnsen, Eduardo Almeyda, Stephen Renick.

305 Jane Loewinger, Wilbur Anderson, Robert Dietz, Bruce Epple, Clay Meek, Keef Owens, Steven Pyle, Timothy Stanton, Michael Wilkes.

306 Gregory Johnsen, Margret Kerr, Steve Renick, Arthur Sevak.

307 Deborah Hart, Mark Massey, Lawrence Anzalone, Ya' sheaka Campbell, Hillarey McCall.

308 Applications were submitted, but no appointment was made because of budget reductions, *see supra* note 6.

309 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.

310 *Id*.

311 Don Allen, Robert Arthur, John Brooks, John Darrin, Dawn Hayes, Debra Pierce, Margaret Sojourner, Timothy Stanton, Jack Weiss, Michael Wilkes, James Spears.

312 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.

313 Wilbur Anderson, Douglas Daze, Alan Gordon, Clayton Harland, Marjorie Renee Hill, Lyle Platt, Melanie Rodriguez, Stephen Rosen, Roland Tan, William Wieland.

314 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.

315 In fairness, some volume of vacancy has occurred recently due to non-reappointment.

316 In 2019, the same language was proposed in HB 795 sponsored by Representative Stone and SB 780 sponsored by Senator Simmons.

317 This was sponsored by Representative Stone with a companion Senate bill sponsored by Senator Simmons. https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1049er.docx&DocumentType=Bill&BillNumber=1049&Session=2020, last visited October 28, 2020.

318 https://www.flgov.com/wp-content/uploads/2020/06/Letter-3.pdf, last visited October 28, 2020.

[Space intentionally blank]

STATE OF FLORIDA
Division of Administrative Hearings

2019-2020 Settlement Report and Mediation Statistics Report of the Office of the Judges of Compensation Claims

Table of Contents and Summary:

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, section 440.45(5), Florida Statutes. 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, Florida Statutes 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, Florida Statutes 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.[1] Mediation is mandatory in most Florida workers' compensation claims. § 440.25(1) Fla. Stat.. There is a limited exception to this requirement in section 440.25(4)(h) for petitions that only "involve a claim for benefits of $5,000 or less." And, the mediation requirement can be waived.[2]

Organizationally, the OJCC is comprised of thirty-one Judges. Each is appointed by the Governor for a term of four years. The Judges serve in seventeen District Offices throughout Florida. Between 2012 and 2018, the OJCC employed twenty-eight full-time mediators. Each OJCC mediator was historically assigned to a particular Judge, and for each judge there was one full-time mediator. The 2012 budget cuts altered that paradigm; see below "2012 Staff Reduction." However, in 2018, the OJCC reclassified a staff position to create a 29th mediator position. And in 2019 repeated the process to create a 30th.[3]

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. Before 2001, the OJCC 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 Central 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 PFBs. All pending PFBs filed before the scheduled mediation will be mediated at one 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.[4] Therefore, workers' compensation is very different than other litigation that 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.[5] This has necessitated out-of-district mediation assistance periodically in District West Palm Beach. These efforts are documented more fully in the 2015-2016 Mediation Report.[6] 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.[7] In 2019, a similar reclassification added a full time mediator to West Palm Beach, allowing the formerly hybrid position to focus entirely upon the Ft. Lauderdale docket. District Tampa remains staffed by only two state mediators.

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 role. 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 and reduce the need for continuance. 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; however, the resulting variety of mediator calendar practices has proven difficult for the public.

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

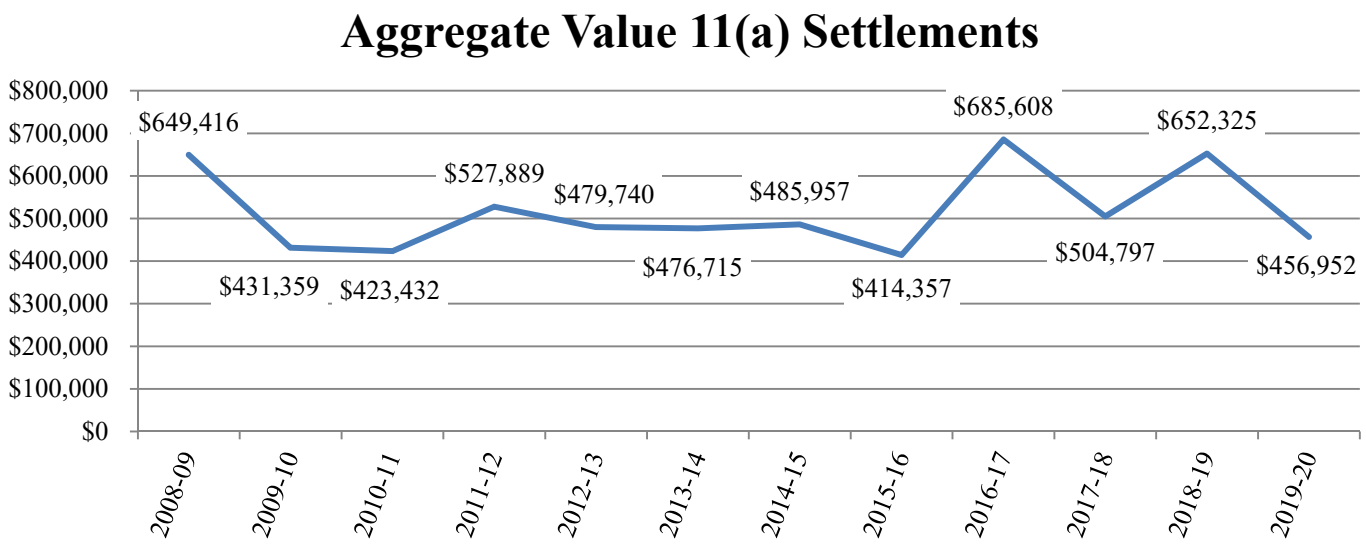
Although settlements of litigated disputes are generally favored in the law, Florida workers' compensation cases were historically treated differently, with specific findings and often hearings required for settlement approval.[8] It is currently statutorily permissible to settle all of a worker's rights under the workers' compensation statute. There are three distinct legal provisions that authorize settlements of workers' compensation cases, all contained in section 440.20(11), Florida Statutes.[9]

Injured workers represented by an attorney may settle their cases without the approval of a judge of compensation claims. However, unrepresented injured workers 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 reasonably anticipated (maximum medical improvement).[10] 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.

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%
2018-19	$652,325	29%
2019-20	$456,952	-30%

These cases, known as "11(a) washouts" because they are authorized by section 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.[11] The "11(a) settlements" for 2019-20 decreased notably to $456,952. In 2018-19, these settlements totaled $652,325, a marked increase over 2017-18.The fluctuations apparent in the last five fiscal years are interesting, but not attributable to any patent causation.

The following chart illustrates both a notable period of consistency in the aggregate value of "11(a) washouts" and the more recent marked fluctuations.



In the fiscal year ("FY") ending June 30, 2020, there were 70 reported 11(a) settlements, a decrease from the 78 reported in FY 2018-19 and equal to the 70 reported in FY 2017-18. Though there has been some fluctuation, the total volume of these settlements has been between 70 and 99 for the last ten fiscal years.

The settlements in fiscal year 2019-20 were classified by the reason stated for denying compensability of the claim. As shown in the chart (below), the largest categories of denial in 2019-20 was "causal connection lacking. The volume of "Positive Drug Test" denials (22% of the total in 2018-19) was only 11.43% in 2019-20. The top three categories in 2018-19 ("Positive Drug Test" 22%, "Causal Connection Lacking" 21%, and "No Accident Occurred" 21%) accounted for approximately 63% of the 11(a) settlements in 2018-19. The top three categories in 2019-20 account for 57%.

Reason for Denial	Volume	Percent	Total	Average	High	Low
Causal Connection Lacking	18	25.71%	$139,740	$7,763	$40,000	$700
No Accident Occurred	13	18.57%	$95,700	$7,362	$25,000	$350
Not in Course and Scope of Employment	9	12.86%	$41,000	$4,556	$16,000	$1,500
Positive Drug Test	8	11.43%	$44,300	$5,538	$14,900	$2,400
No injury occurred	8	11.43%	$28,500	$3,563	$7,500	$1,000
Injury Not Timely Reported	6	8.57%	$21,000	$3,500	$5,000	$500
Unspecified	3	4.29%	$49,900	$16,633	$29,900	$5,000
Not an employee	3	4.29%	$30,312	$10,104	$22,500	$2,000
Misrepresentation on Application for Employment	1	1.43%	$5,000	$5,000	$5,000	$5,000
Statute of Limitations	1	1.43%	$1,500	$1,500	$1,500	$1,500
	70		$456,952			

The number of 11(a) washouts continues to be dwarfed by the other types of washout settlements authorized by section 440.20(11), Florida Statutes. In fiscal year 2019-20 there were 27,609 workers' compensation settlement orders entered. That was an increase of 1,028 (4%) from the 26,581 orders in 2018-19. Accordingly, the number of 11(a) washouts in 2019-20 (70) was only 0.25% (70/27,609) of all settlements approved during the year. The percentage has been relatively similar for the last eight fiscal years. It is again 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 past 15 years.

Number of Mediation Conferences Held:

The volume of mediations held each year has decreased markedly after 2002-03. The rates of decrease in mediations conducted did not mirror 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. 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 18,211 mediations in 2019-20 is the highest volume since 2009-10.

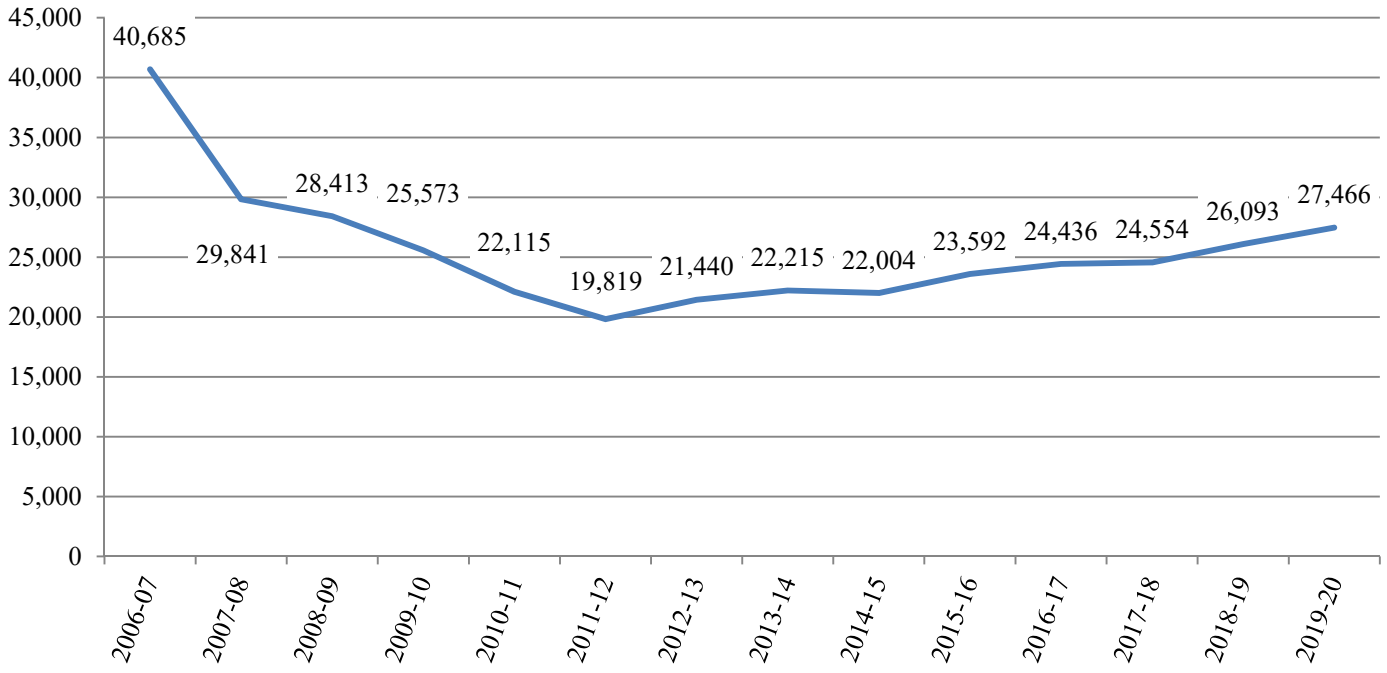
The Florida workers' compensation law requires that PFBs are filed only when benefits are ripe, due, and owing.[12] After a PFB is filed, an OJCC mediation conference is scheduled with the assigned mediator. Thereafter, it is not uncommon for additional PFBs to be filed prior to that mediation. Therefore, the volume of PFBs 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 17 years.[13]

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%
2018-19	73,146	4.06%	17,056	5.50%
2019-20	72,086	-1.45%	18,211	6.77%

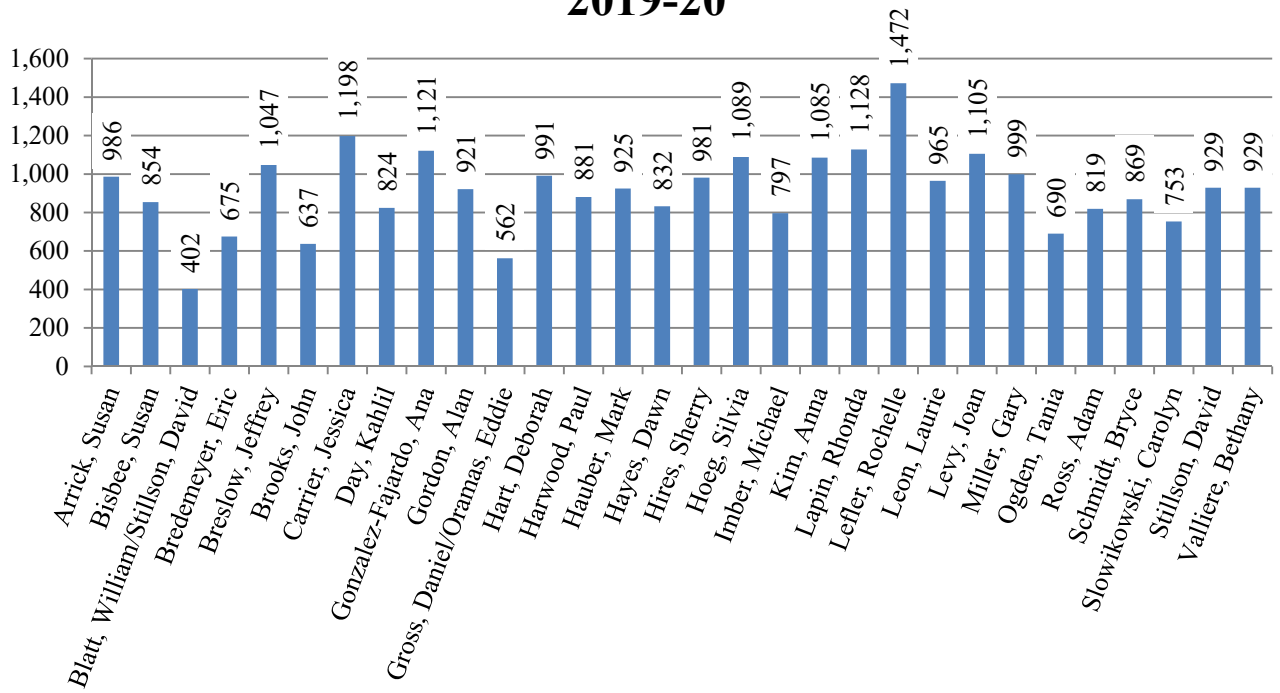
The overall volume of Petitions (PFBs) mediated by state mediators decreased markedly between 2006 and 2012. There followed a period of reasonable consistency, which has trended upward slowly since 2016-17. The total for 2018-19 was a notable increase (6%), followed by another notable increase (7%) in 2019-20. It has been recently discerned that some cases are not being consolidated[14] and thus the outcome of a single mediation appointment being recorded redundantly.

This space intentionally blank

Overall Volume of PFB Mediated 2019-20



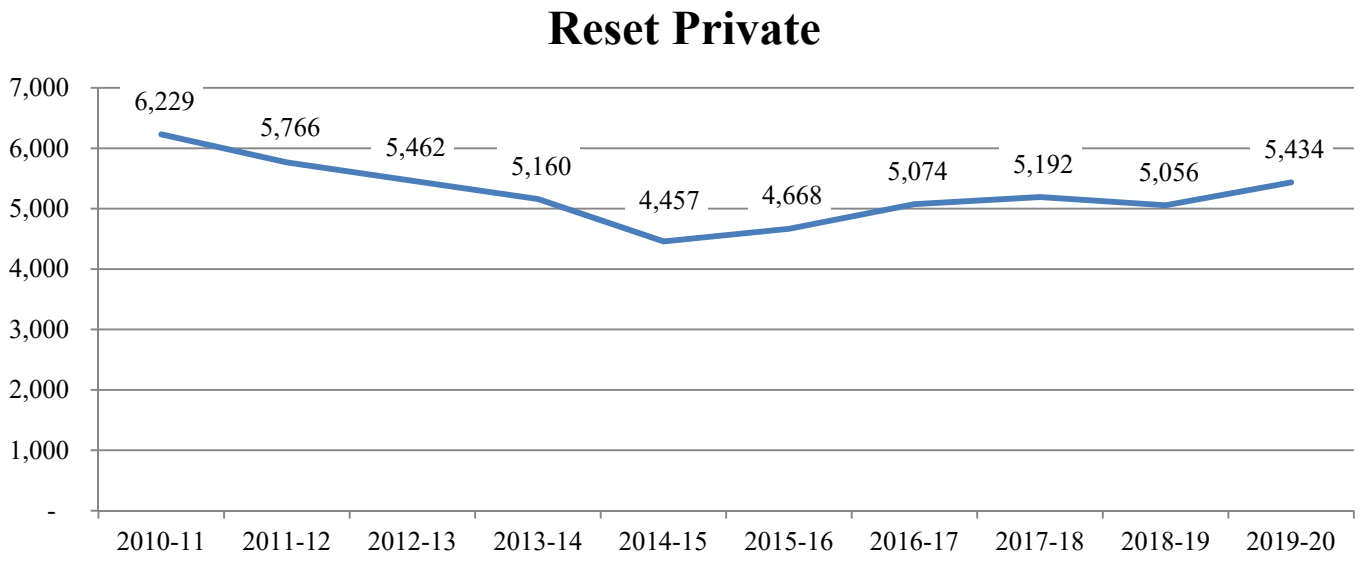
Volume of PFBs Mediated by Each Mediator 2019-20



Dismissed and Resolved Prior

Some volume of petitions does not reach the mediation process. These may be dismissed before the mediation conference is scheduled, or the parties may later 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, a significant volume of litigation is resolved among the parties after PFB filing, but without state mediation. (18,211 mediations conducted in 2019-20; 16,980, an almost equal volume [93% of 18,211], were "resolved or settled prior").

Similarly to the decline in state mediations, the volume of petitions that have been reset for private mediation decreased consistently from 2009-10 through 2014-15. In 2012-13 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 increased each year 2014-15 through 2017-18; the 2018-19 figure suggested the trend was pausing. However, with the small decrease in PFB filing volume in 2019-20 (-1.45%) came an increase in private mediation volumes. It is possible that some of that increase could be attributable to the OJCC shift to mandatory telephonic mediation in March 2020 reacting to the COVID-19 pandemic.



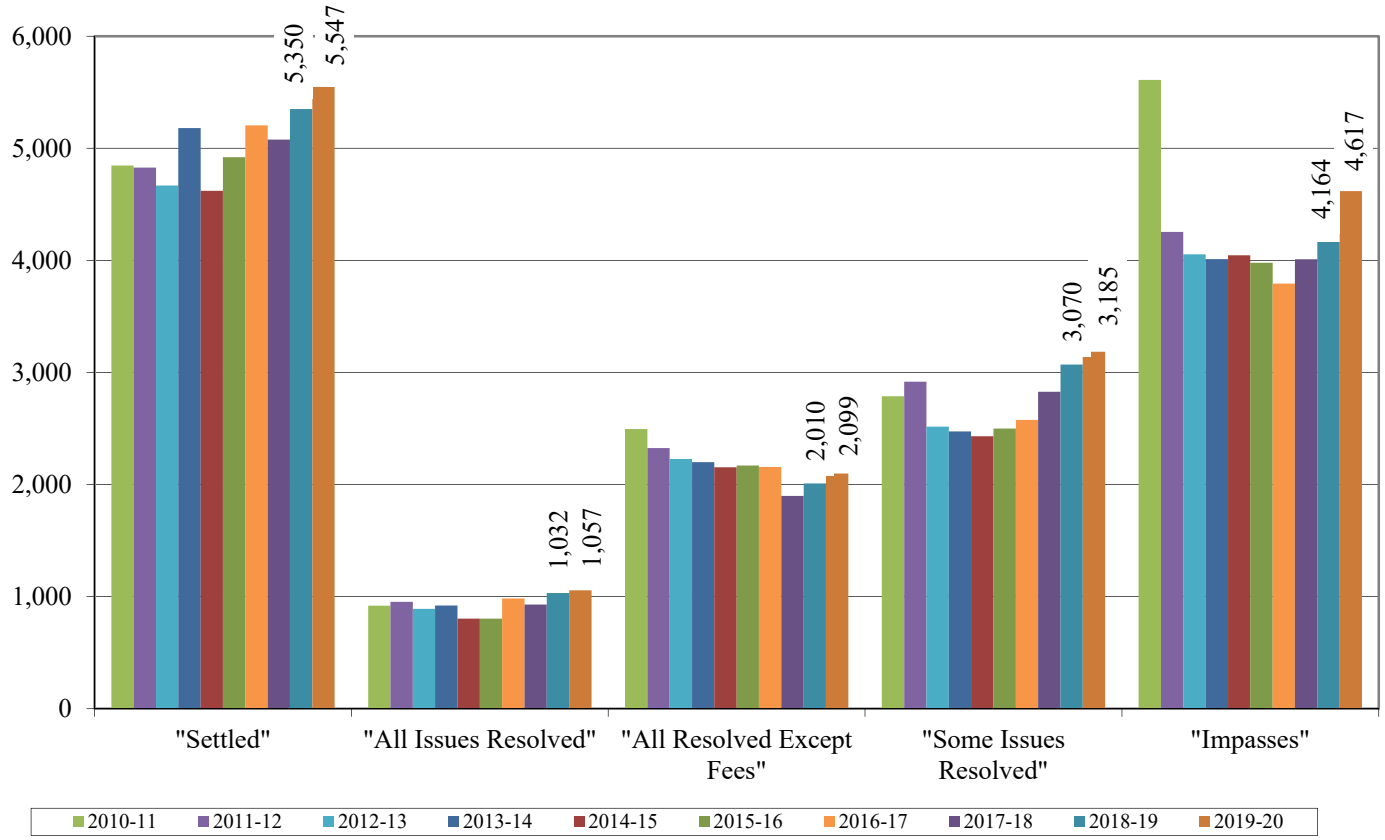
Disposition of Mediation Conferences:

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,[15] 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 of that data with future data may also be suspect.

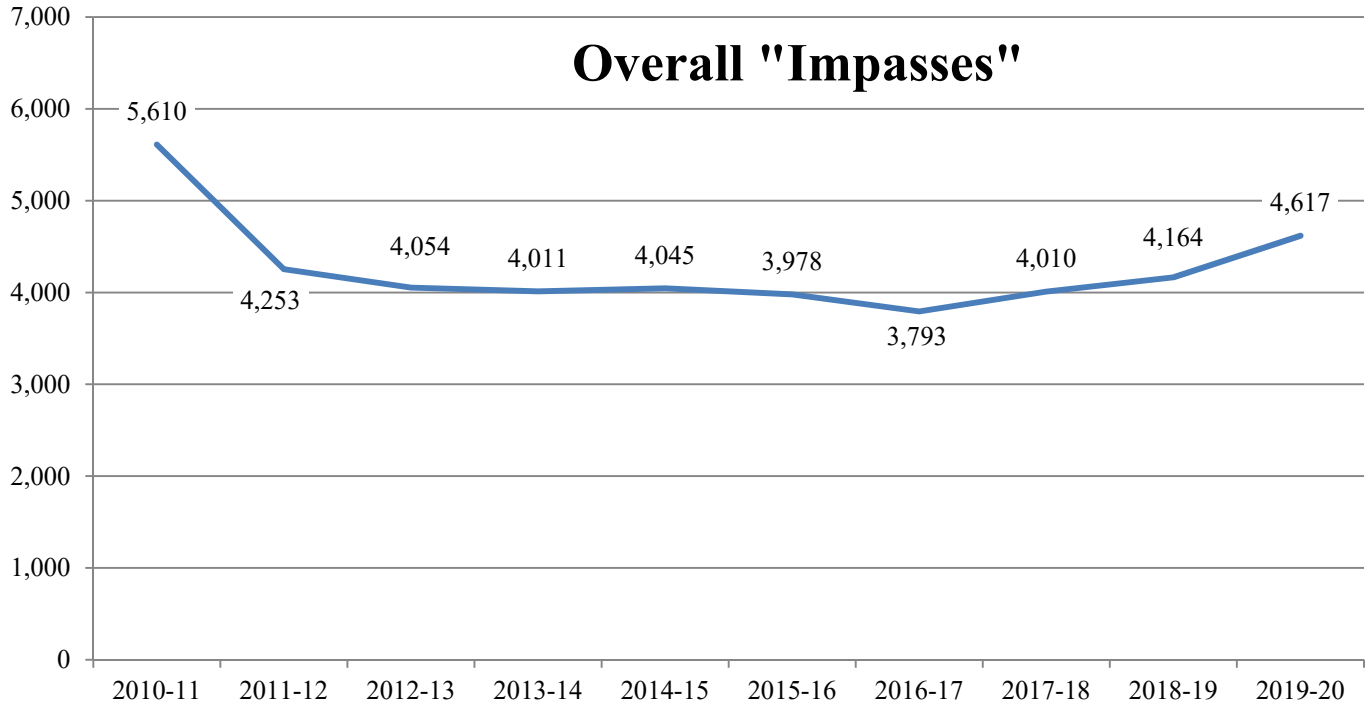
The term "some issues resolved" reflects that some subset of the currently claimed substantive issues has been resolved. The term "all issues resolved except attorney's fees" reflects that all of the substantive issues and any ancillary

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.



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, remaining significantly consistent other than a single notable decrease in 2016-17. All outcome descriptions increased, a product of the increase in mediations conducted. However, the recent increase (11%) in "impasse" is notable in light of that general consistency, other than settlement, which increased 4%. The total increase in mediations was 7%, and the 11% increase in impasse may be notable in that context as well.

This space intentionally blank

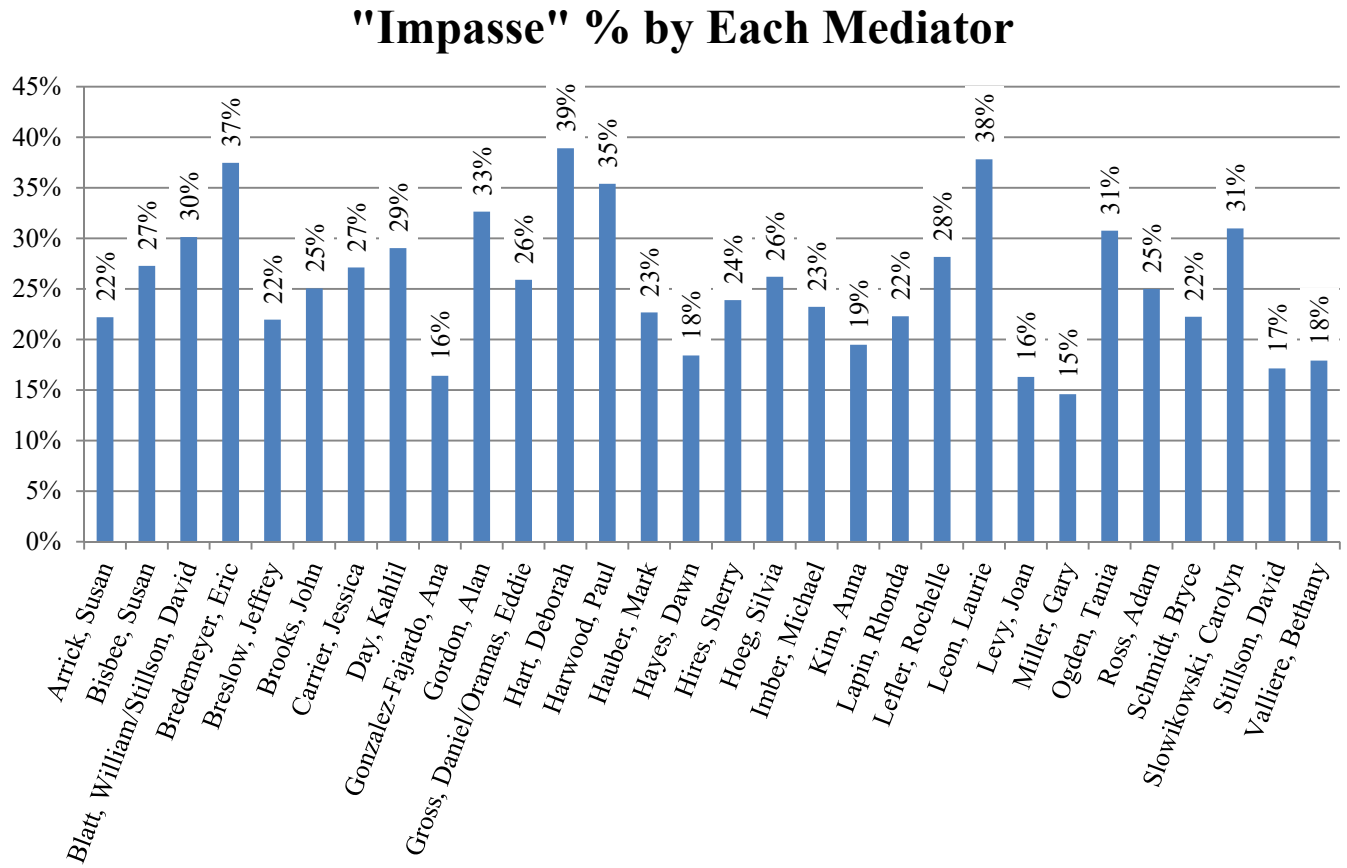


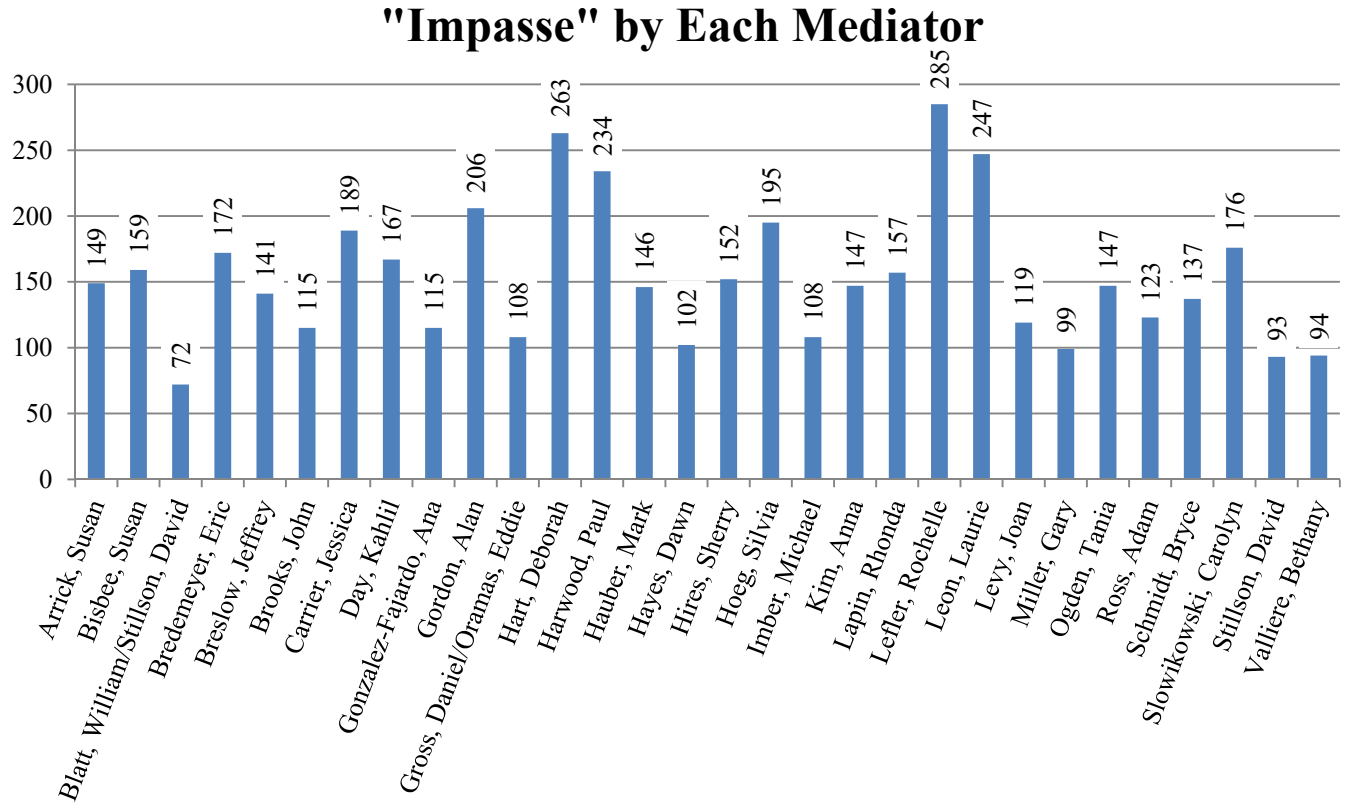
The marked decreases in "impasse" between 2009 and 2013 are illustrative of efforts by the OJCC mediators to resolve at least some aspect of the cases which are presented to them. Despite decreasing volumes of mediations overall, the percentages of convened mediations resulting in impasse were impressive and consistent. Expressed as a percentage of the mediations held by OJCC mediators, the volume of "impasse" outcomes for the last ten years are:

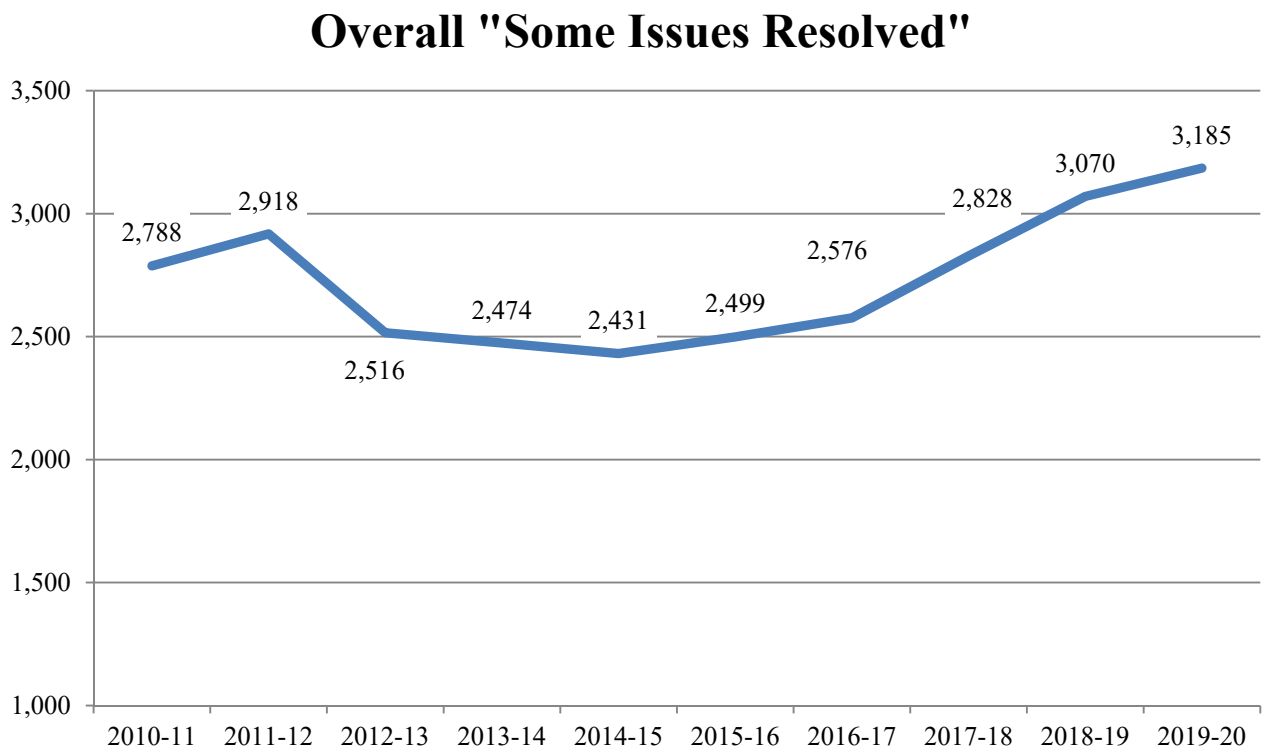
10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
31.3%	25.2%	25.6%	24.8%	26.2%	25.3%	23.6%	24.8%[16]	24.4%	25.4%

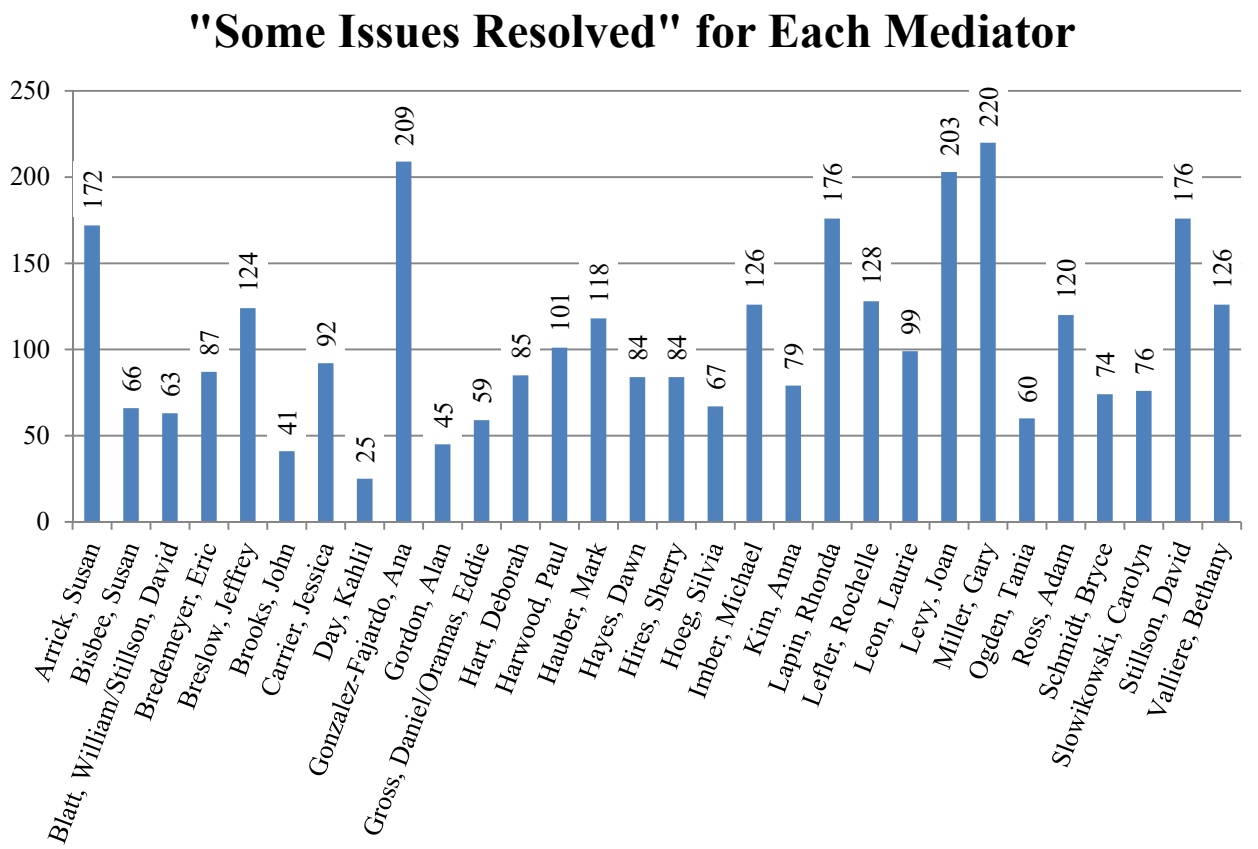
The corollaries of these figures represent the volume of OJCC mediations in which at least some volume of issues were resolved. In approximately seventy-five percent (74.6%) of 2019-20 OJCC mediations, at least some issues were resolved. This is an important fact, more so even than a measure of "settlements," 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 could 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.

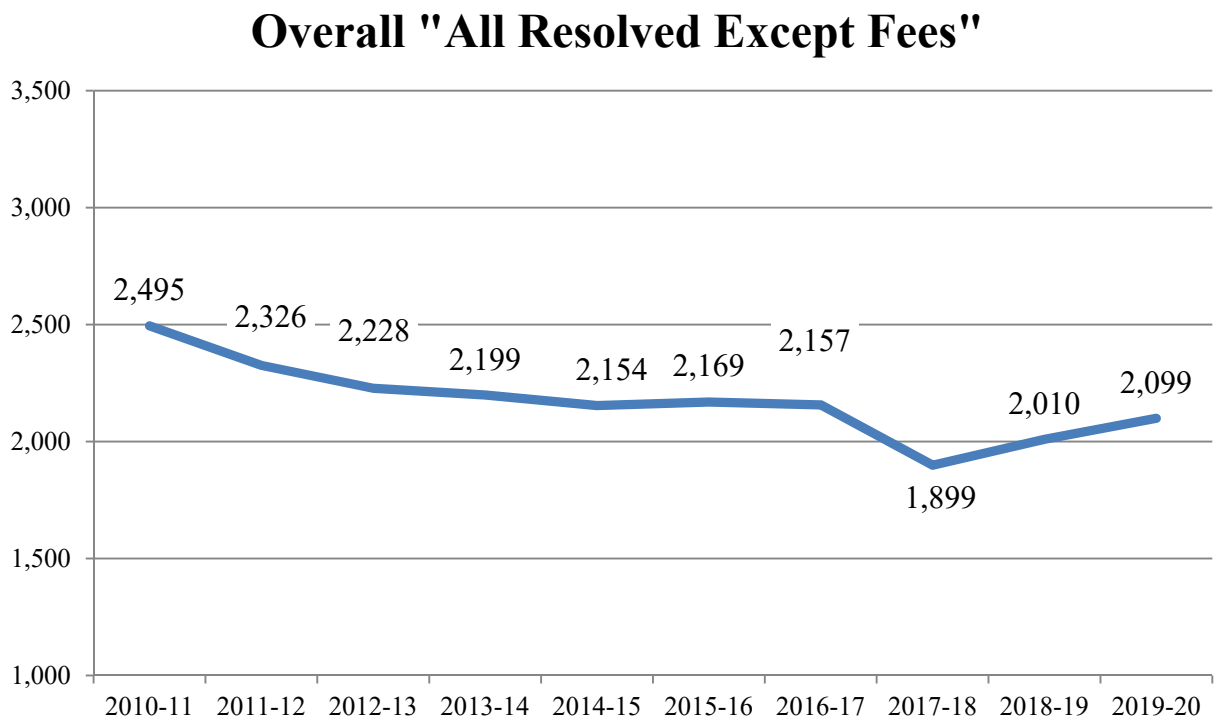
This space intentionally blank

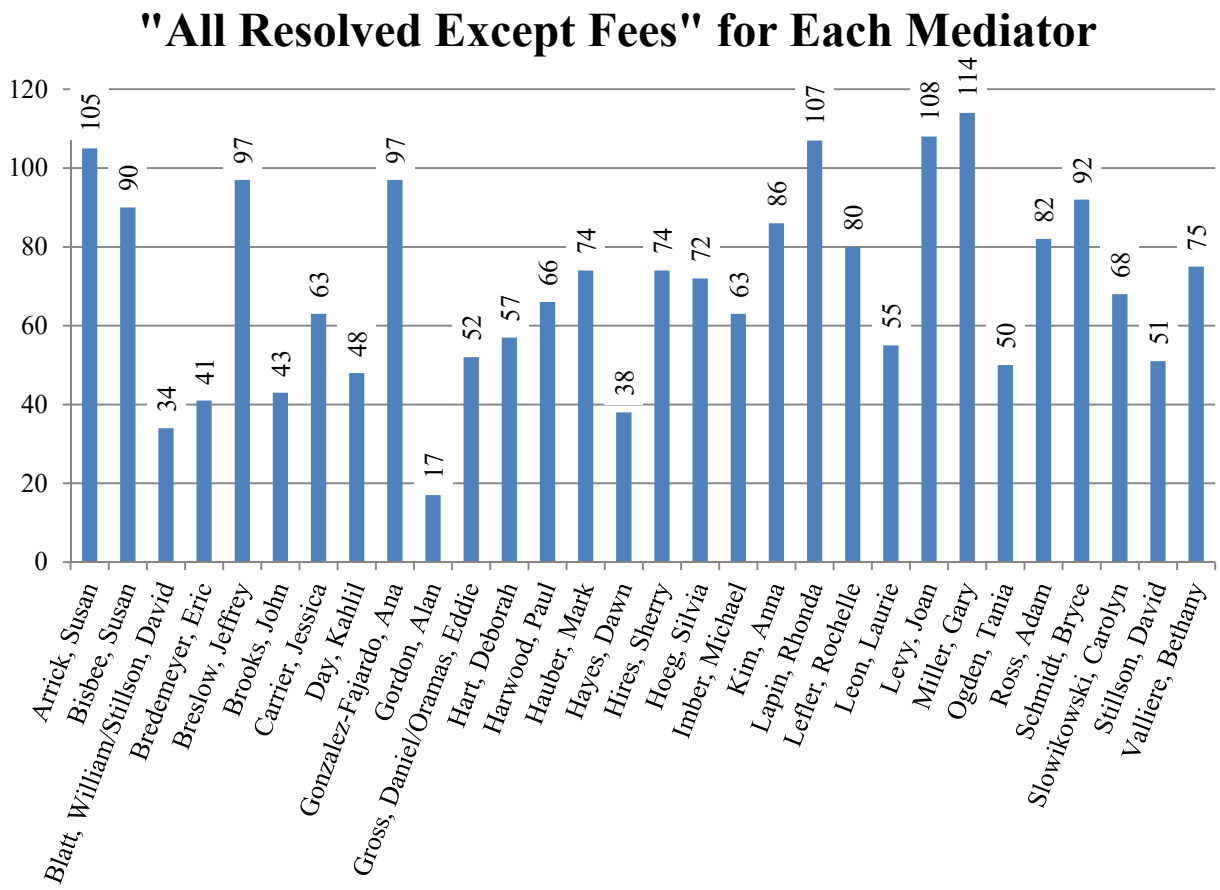

"Impasse" % by Each Mediator
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
22%
27%
30%
37%
22%
25%
27%
29%
16%
33%
26%
39%
35%
23%
18%
24%
26%
23%
19%
22%
28%
38%
16%
15%
31%
25%
22%
31%
17%
18%
Arrick, Susan
Bisbee, Susan
Blatt, William/Stillson, David
Bredemeyer, Eric
Breslow, Jeffrey
Brooks, John
Carrier, Jessica
Day, Kahlil
Gonzalez-Fajardo, Ana
Gordon, Alan
Gross, Daniel/Oramas, Eddie
Hart, Deborah
Harwood, Paul
Hauber, Mark
Hayes, Dawn
Hires, Sherry
Hoeg, Silvia
Imber, Michael
Kim, Anna
Lapin, Rhonda
Lefler, Rochelle
Leon, Laurie
Levy, Joan
Miller, Gary
Ogden, Tania
Ross, Adam
Schmidt, Bryce
Slowikowski, Carolyn
Stillson, David
Valliere, Bethany

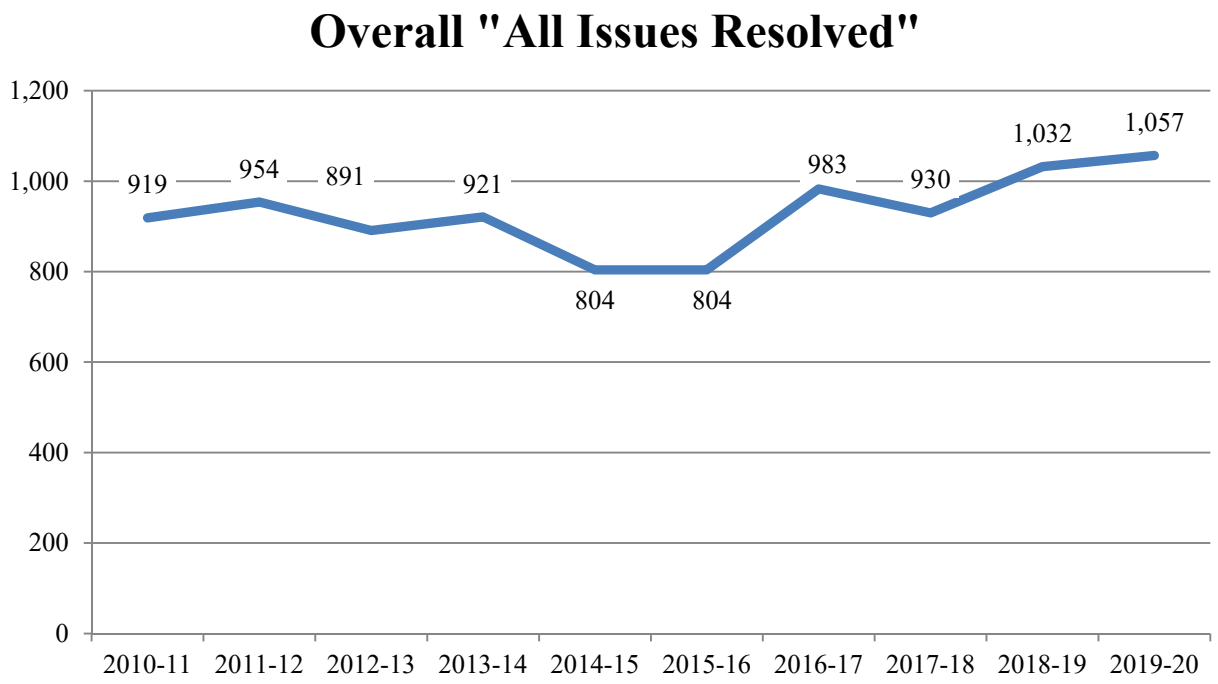

"Impasse" by Each Mediator
300
250
200
150
100
50
0
149
159
72
172
141
115
189
167
115
206
108
263
234
146
102
152
195
108
147
157
285
247
119
99
147
123
137
176
93
94
Arrick, Susan
Bisbee, Susan
Blatt, William/Stillson, David
Bredemeyer, Eric
Breslow, Jeffrey
Brooks, John
Carrier, Jessica
Day, Kahlil
Gonzalez-Fajardo, Ana
Gordon, Alan
Gross, Daniel/Oramas, Eddie
Hart, Deborah
Harwood, Paul
Hauber, Mark
Hayes, Dawn
Hires, Sherry
Hoeg, Silvia
Imber, Michael
Kim, Anna
Lapin, Rhonda
Lefler, Rochelle
Leon, Laurie
Levy, Joan
Miller, Gary
Ogden, Tania
Ross, Adam
Schmidt, Bryce
Slowikowski, Carolyn
Stillson, David
Valliere, Bethany

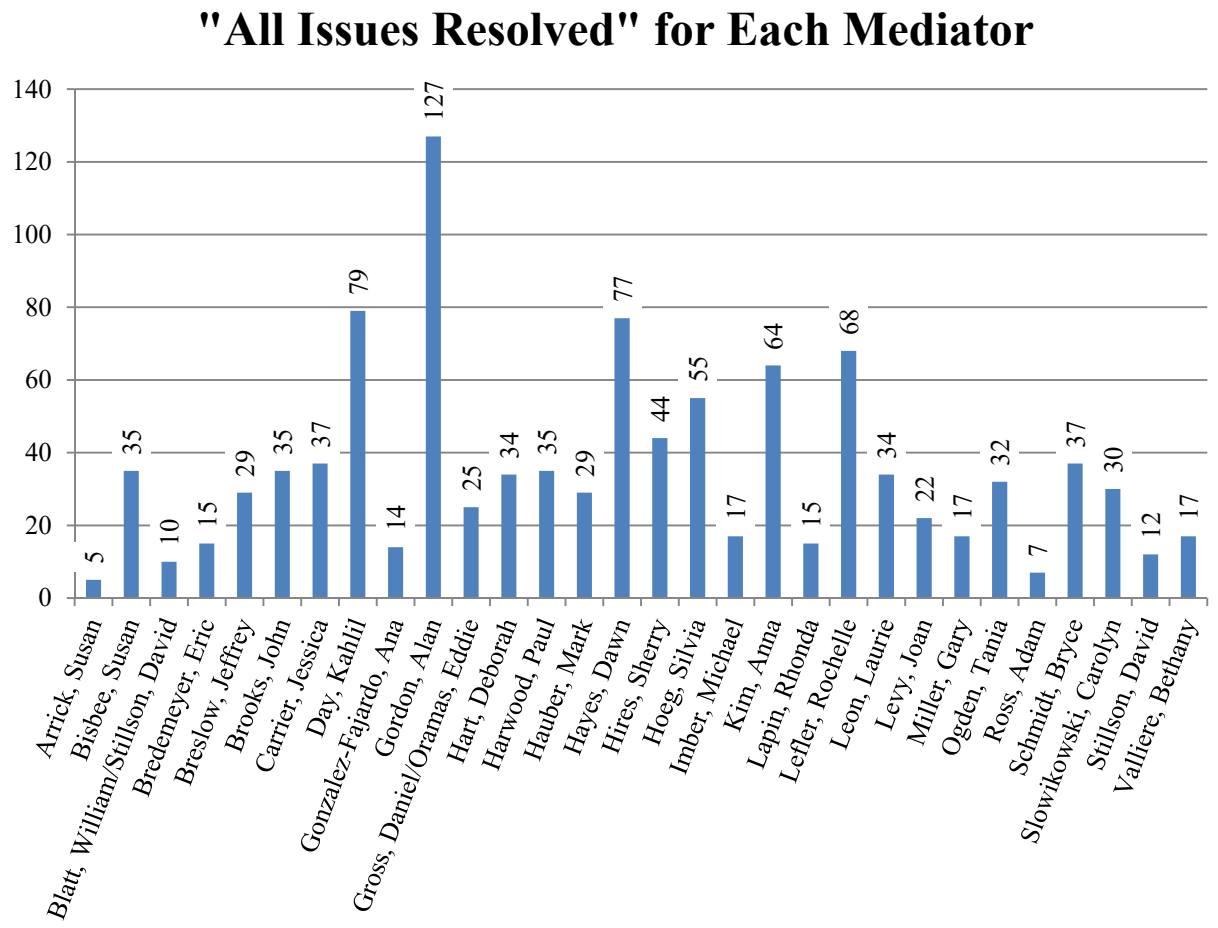

Overall "Some Issues Resolved"
3,500
3,000
2,500
2,000
1,500
1,000
2,788
2,918
2,516
2,474
2,431
2,499
2,576
2,828
3,070
3,185
2010-11
2011-12
2012-13
2013-14
2014-15
2015-16
2016-17
2017-18
2018-19
2019-20

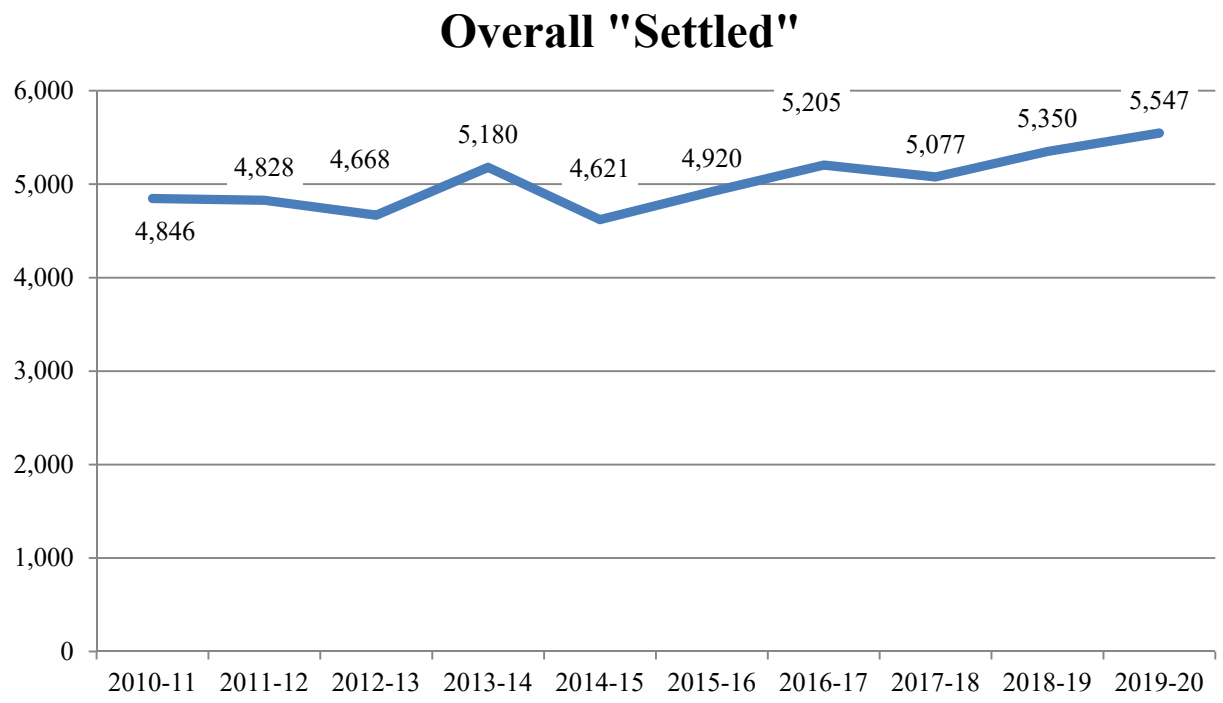

"Some Issues Resolved" for Each Mediator
250
200
150
100
50
0
172
66
63
87
124
41
92
25
209
45
59
85
101
118
84
84
67
126
79
176
128
99
203
220
60
120
74
76
176
126
Arrick, Susan
Bisbee, Susan
Blatt, William/Stillson, David
Bredemeyer, Eric
Breslow, Jeffrey
Brooks, John
Carrier, Jessica
Day, Kahlil
Gonzalez-Fajardo, Ana
Gordon, Alan
Gross, Daniel/Oramas, Eddie
Hart, Deborah
Harwood, Paul
Hauber, Mark
Hayes, Dawn
Hires, Sherry
Hoeg, Silvia
Imber, Michael
Kim, Anna
Lapin, Rhonda
Lefler, Rochelle
Leon, Laurie
Levy, Joan
Miller, Gary
Ogden, Tania
Ross, Adam
Schmidt, Bryce
Slowikowski, Carolyn
Stillson, David
Valliere, Bethany

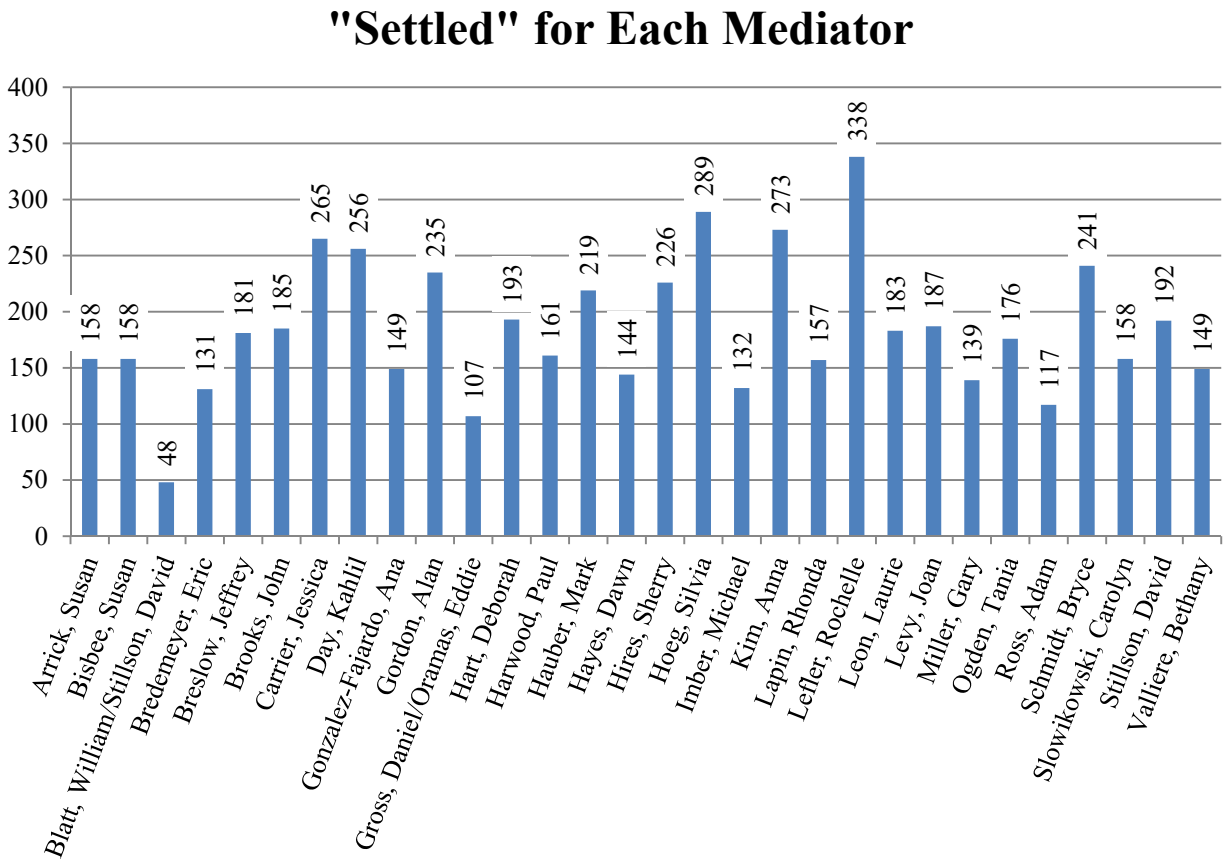

Overall "All Resolved Except Fees"
3,500
3,000
2,500
2,000
1,500
1,000
2,495
2,326
2,228
2,199
2,154
2,169
2,157
1,899
2,010
2,099
2010-11
2011-12
2012-13
2013-14
2014-15
2015-16
2016-17
2017-18
2018-19
2019-20


"All Resolved Except Fees" for Each Mediator
120
100
80
60
40
20
0
105
90
34
41
97
43
63
48
97
17
52
57
66
74
38
74
72
63
86
107
80
55
108
114
50
82
92
68
51
75
Arrick, Susan
Bisbee, Susan
Blatt, William/Stillson, David
Bredemeyer, Eric
Breslow, Jeffrey
Brooks, John
Carrier, Jessica
Day, Kahlil
Gonzalez-Fajardo, Ana
Gordon, Alan
Gross, Daniel/Oramas, Eddie
Hart, Deborah
Harwood, Paul
Hauber, Mark
Hayes, Dawn
Hires, Sherry
Hoeg, Silvia
Imber, Michael
Kim, Anna
Lapin, Rhonda
Lefler, Rochelle
Leon, Laurie
Levy, Joan
Miller, Gary
Ogden, Tania
Ross, Adam
Schmidt, Bryce
Slowikowski, Carolyn
Stillson, David
Valliere, Bethany


Overall "All Issues Resolved"
1,200
1,000
800
600
400
200
0
919
954
891
921
804
804
983
930
1,032
1,057
2010-11
2011-12
2012-13
2013-14
2014-15
2015-16
2016-17
2017-18
2018-19
2019-20

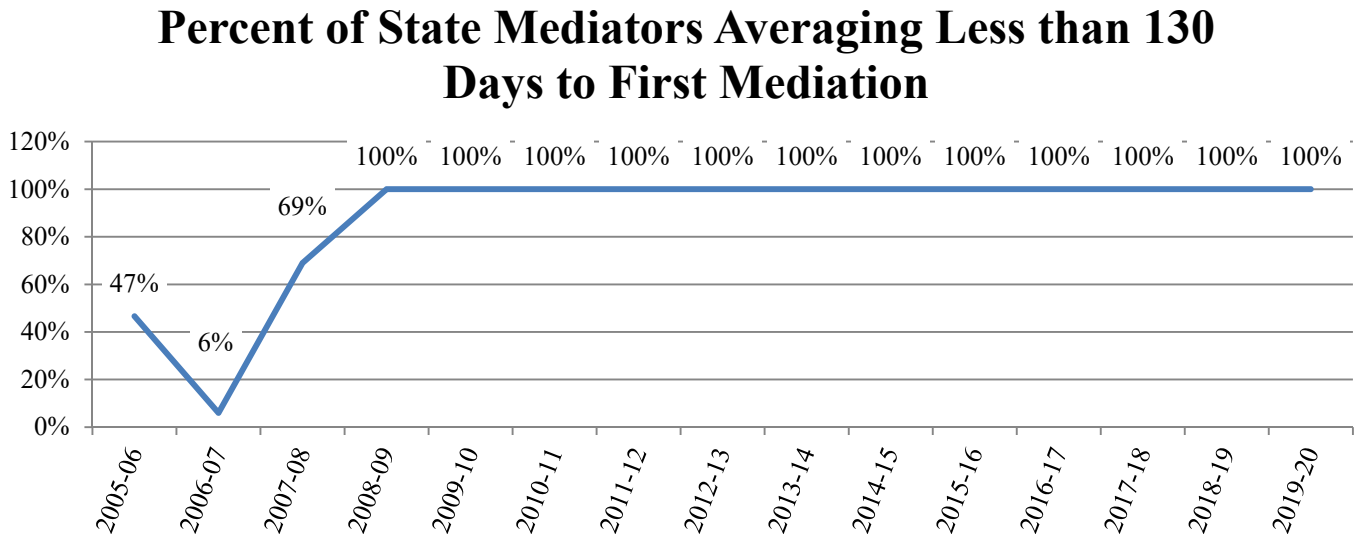

"All Issues Resolved" for Each Mediator
140
120
100
80
60
40
20
0
5
35
10
15
29
35
37
79
14
127
25
34
35
29
77
44
55
17
64
15
68
34
22
17
32
7
37
30
12
17
Arrick, Susan
Bisbee, Susan
Blatt, William/Stillson, David
Bredemeyer, Eric
Breslow, Jeffrey
Brooks, John
Carrier, Jessica
Day, Kahlil
Gonzalez-Fajardo, Ana
Gordon, Alan
Gross, Daniel/Oramas, Eddie
Hart, Deborah
Harwood, Paul
Hauber, Mark
Hayes, Dawn
Hires, Sherry
Hoeg, Silvia
Imber, Michael
Kim, Anna
Lapin, Rhonda
Lefler, Rochelle
Leon, Laurie
Levy, Joan
Miller, Gary
Ogden, Tania
Ross, Adam
Schmidt, Bryce
Slowikowski, Carolyn
Stillson, David
Valliere, Bethany


Overall "Settled"
6,000
5,000
4,000
3,000
2,000
1,000
0
4,846
4,828
4,668
5,180
4,621
4,920
5,205
5,077
5,350
5,547
2010-11
2011-12
2012-13
2013-14
2014-15
2015-16
2016-17
2017-18
2018-19
2019-20

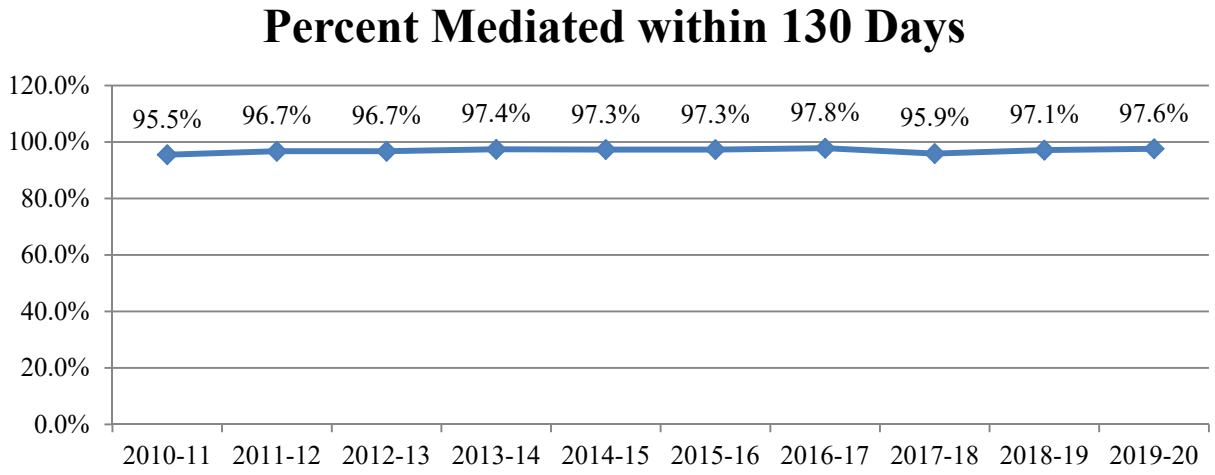

"Settled" for Each Mediator
400
350
300
250
200
150
100
50
0
158
158
48
131
181
185
265
256
149
235
107
193
161
219
144
226
289
132
273
157
338
183
187
139
176
117
241
158
192
149
Arrick, Susan
Bisbee, Susan
Blatt, William/Stillson, David
Bredemeyer, Eric
Breslow, Jeffrey
Brooks, John
Carrier, Jessica
Day, Kahlil
Gonzalez-Fajardo, Ana
Gordon, Alan
Gross, Daniel/Oramas, Eddie
Hart, Deborah
Harwood, Paul
Hauber, Mark
Hayes, Dawn
Hires, Sherry
Hoeg, Silvia
Imber, Michael
Kim, Anna
Lapin, Rhonda
Lefler, Rochelle
Leon, Laurie
Levy, Joan
Miller, Gary
Ogden, Tania
Ross, Adam
Schmidt, Bryce
Slowikowski, Carolyn
Stillson, David
Valliere, Bethany

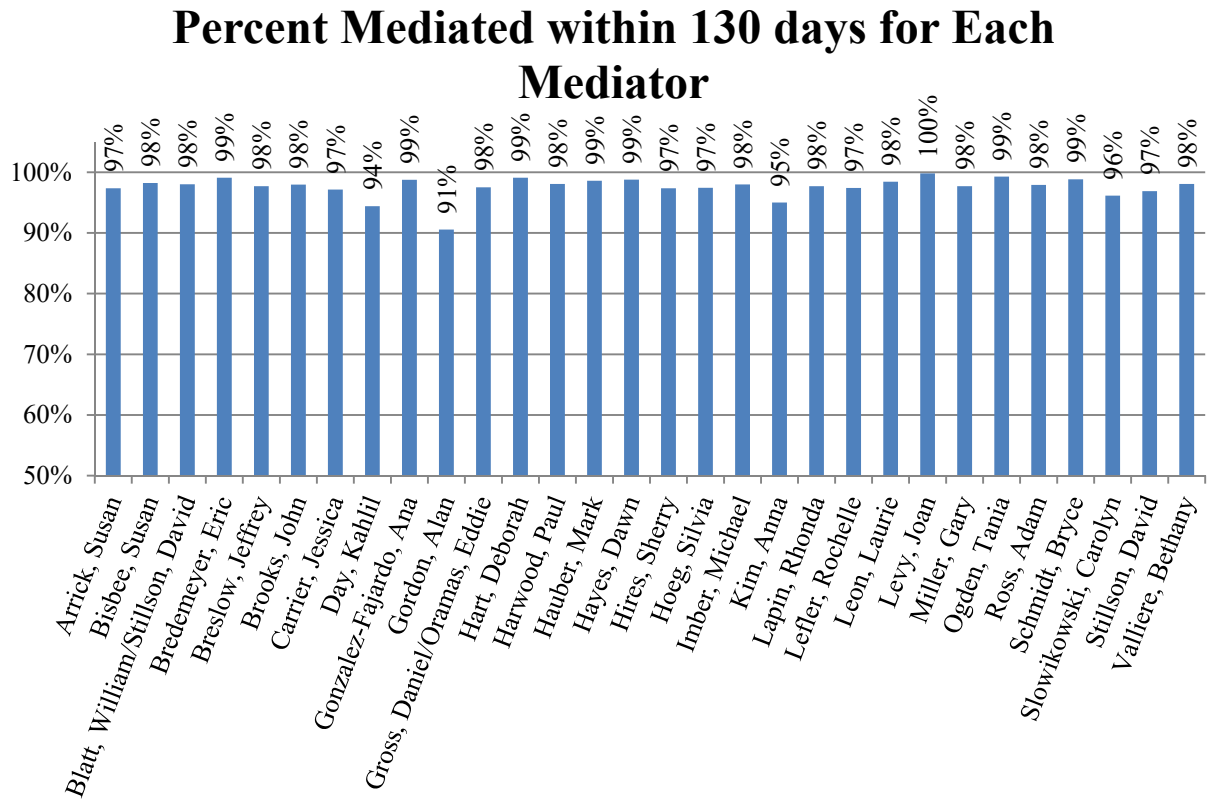
Timeliness of Mediations:

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 performed with notable consistency in recent years. In each of the last twelve fiscal years, all of the OJCC mediators averaged less than 130 days between Petition filing and the initial mediation.



In fact, in 2018-19 the OJCC mediators mediated approximately 98% of the PFBs within the 130 day statutory parameter. That is an improvement over 2018-19, and is reasonably consistent with the overall average in recent years. The persistence of this average compliance is also noteworthy in light of the consistency of petition filing rates (see chart, page 18).





Mediations Continued:

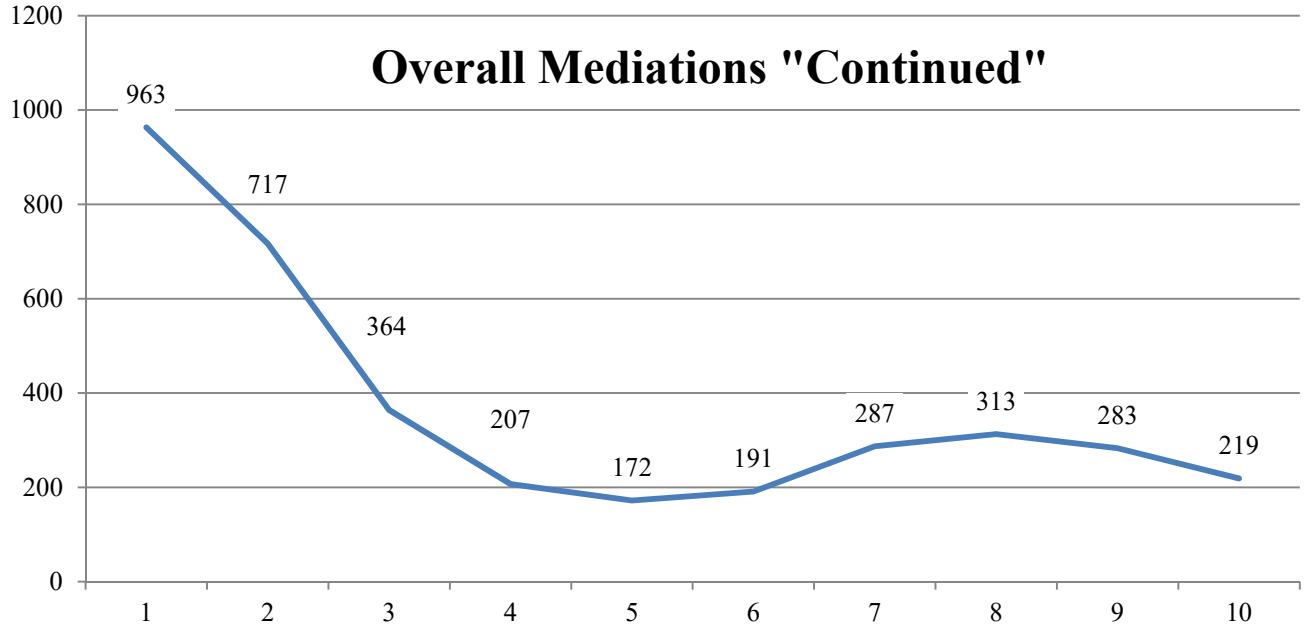
Mediation continuances increased markedly in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. However, those volumes may have been increased by the volume of weather-related office closures that year, as Florida's cyclone season affected virtually every Florida county. Those 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 steadily over eight years. After stabilizing at around 200 annually, the rate increased in 2016-17 and 2017-18. The figures for 2018-19 (283) and 2019-20 (219) are significant in their downward trend and the return to the prior rate of about 200 annually. Notably, the volume has been less than one-half of one percent of petition volume for each of the last 7 years.

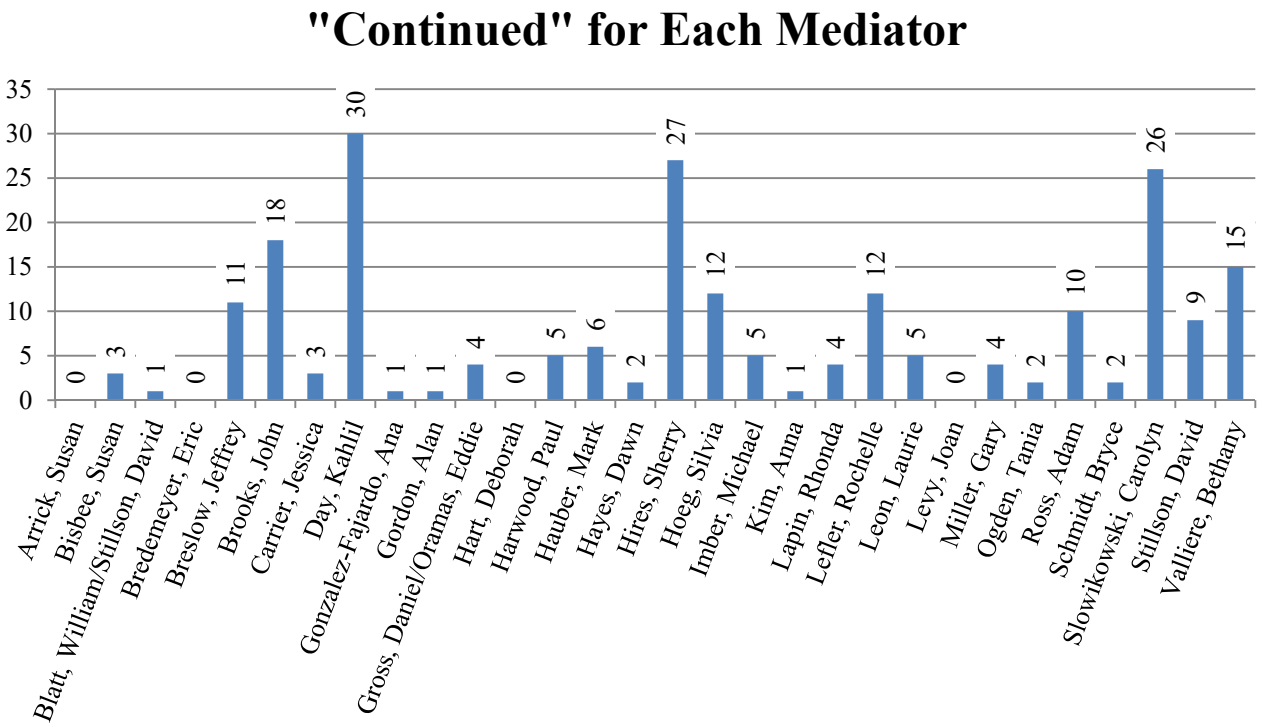
Some portion of the stabilizing figures in recent years is due to the staff training provided by the OJCC since 2006 and the resulting uniformity in the use of the characterization "continued" within the OJCC database. Mediations whose calendar date is changed after initial scheduling, but for which 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

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	0.45%
2018-19	73,146	283	0.39%
2019-20	72,086	219	0.30%

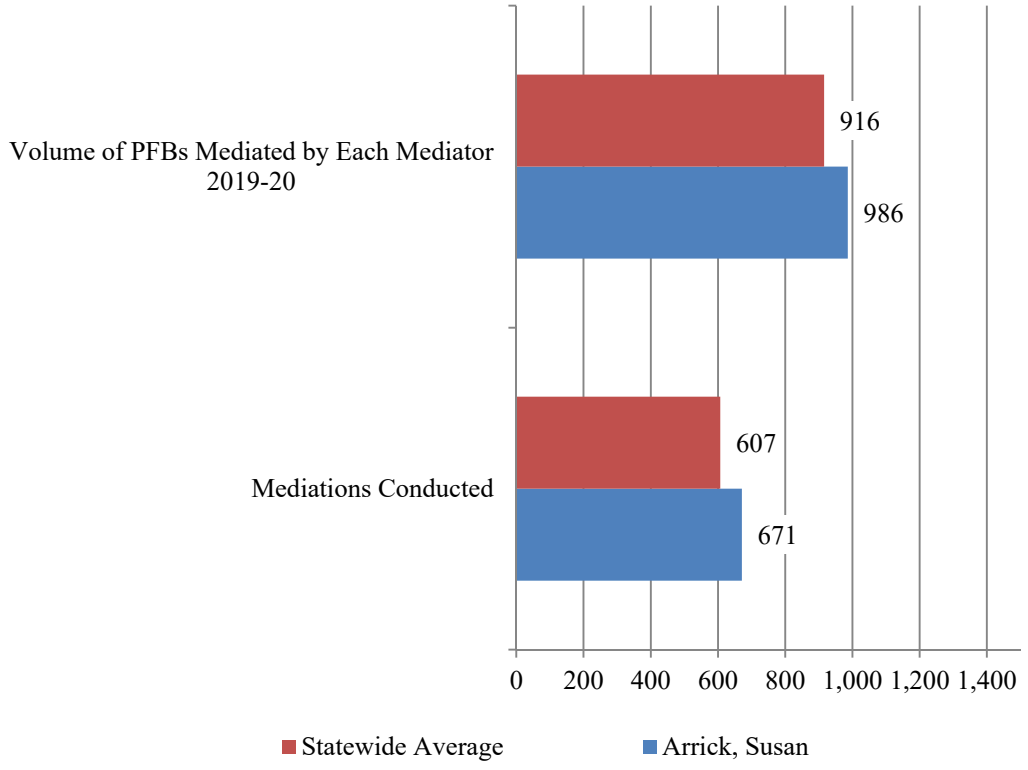
continuances had been previously deemed likely attributable to the annually decreasing volume of PFB filings. It is therefore encouraging to see the continuance rate remaining below one percent despite a significant increase in PFB filings since 2015-16.

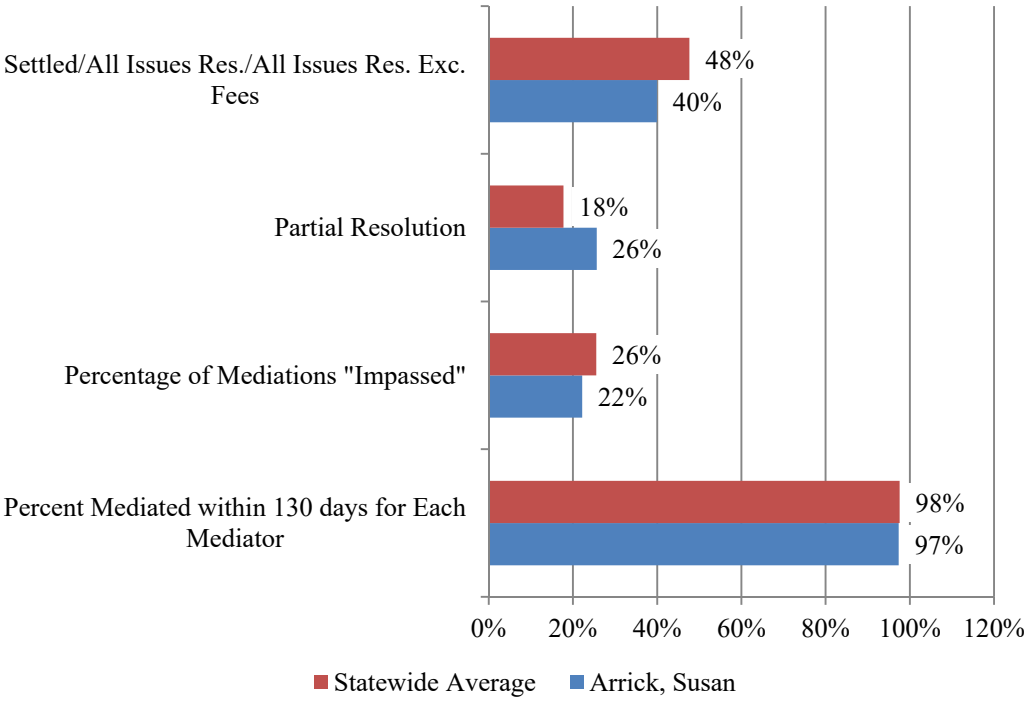




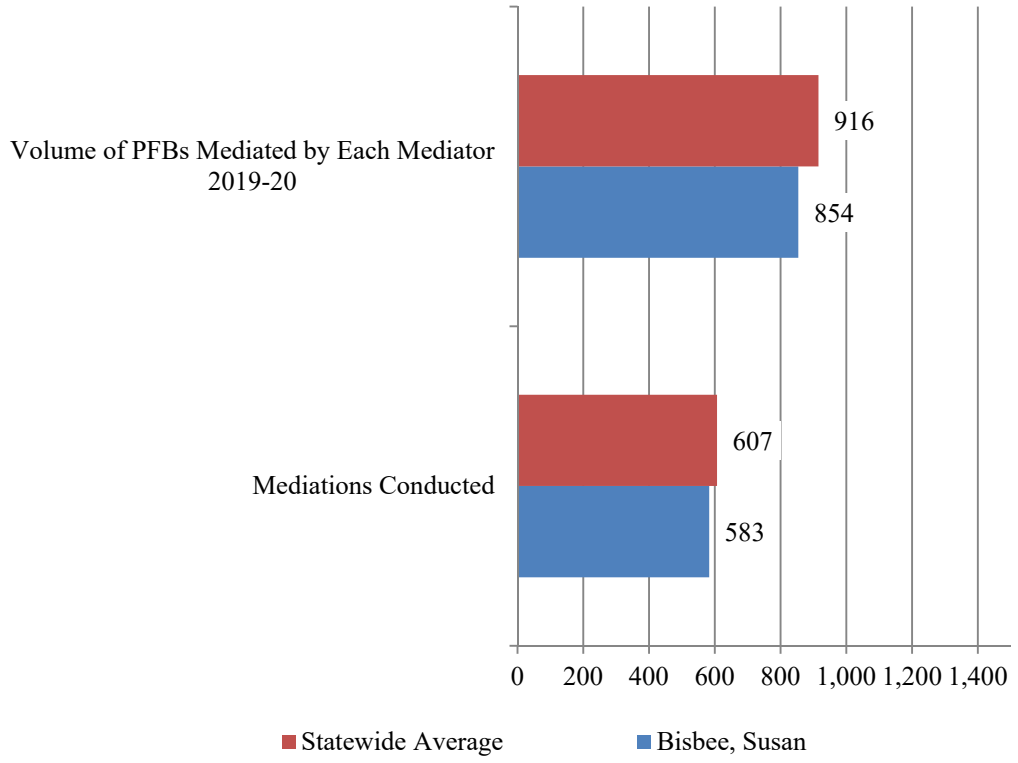
Individual Mediator Statistics:

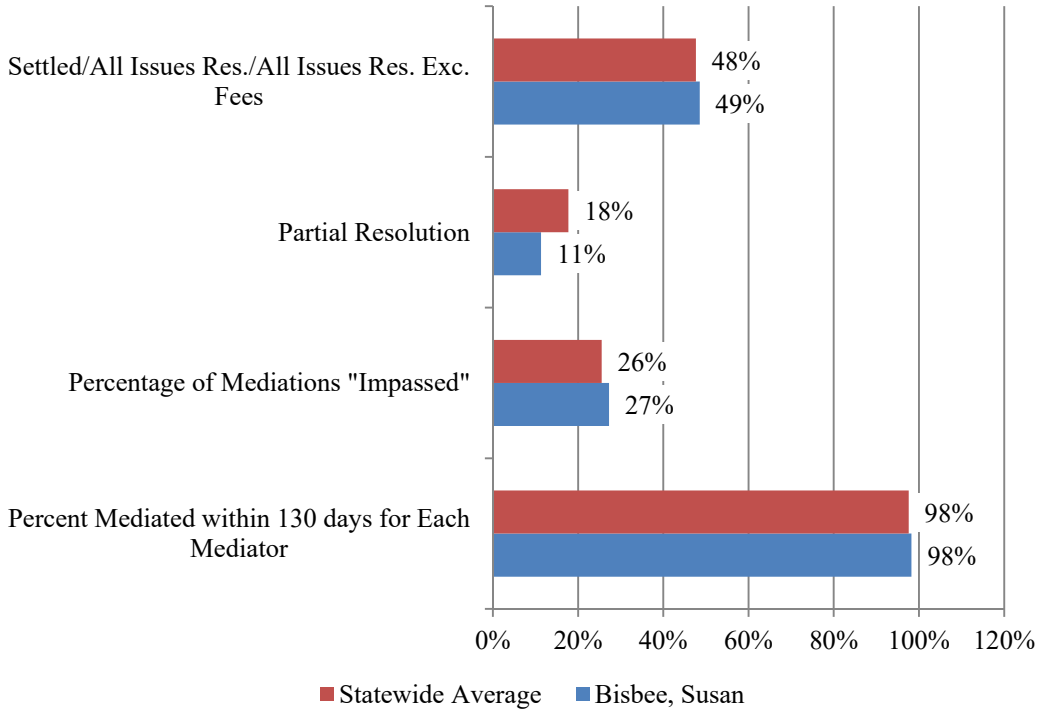
Arrick, Susan (MIA)



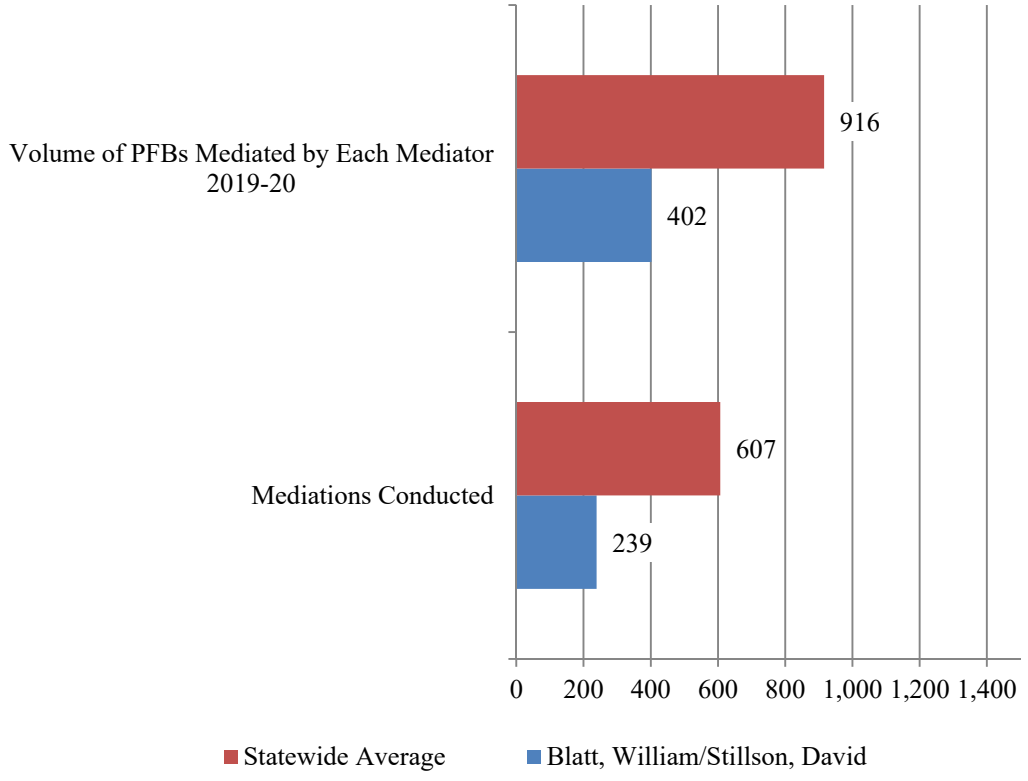


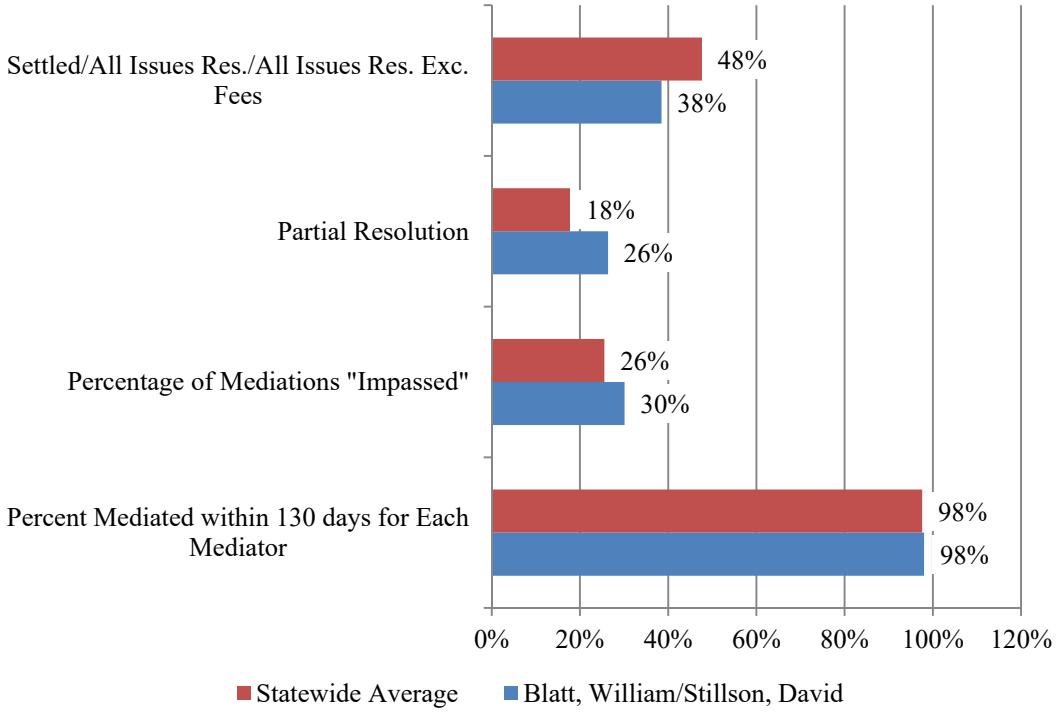
Bisbee, Susan (TLH)



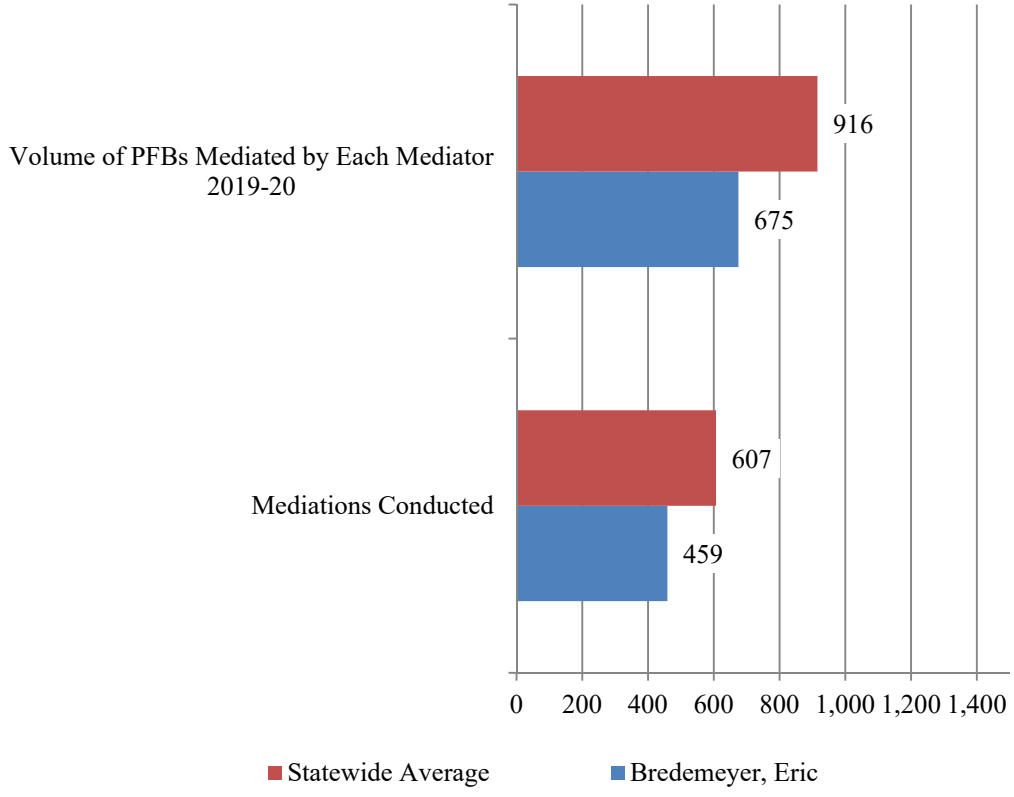


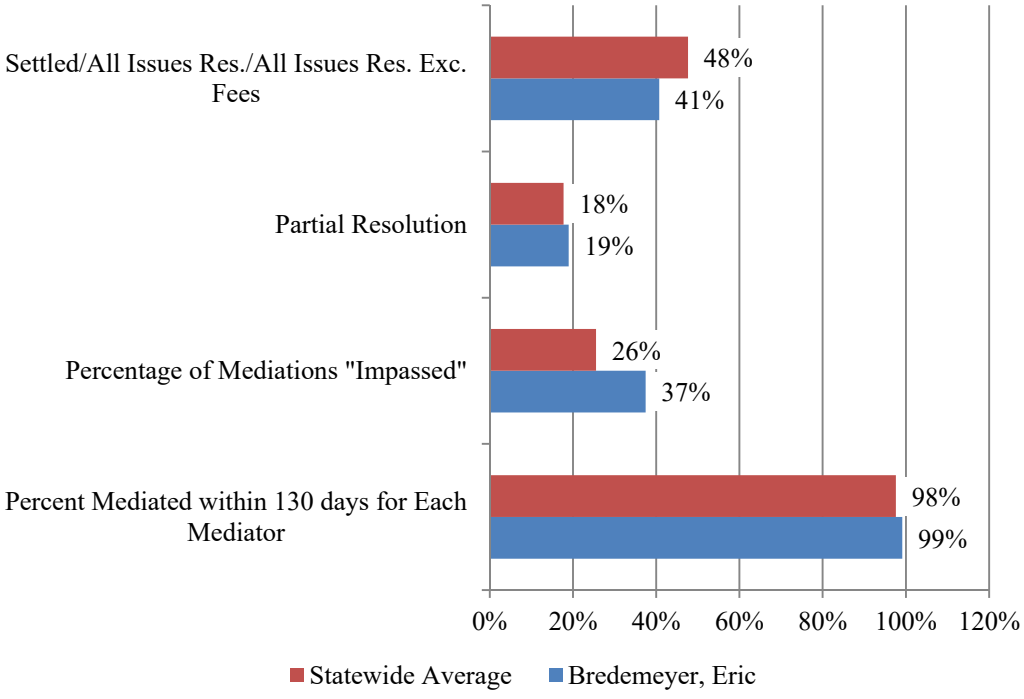
Blatt, William/Stillson, David (WPB)[17]



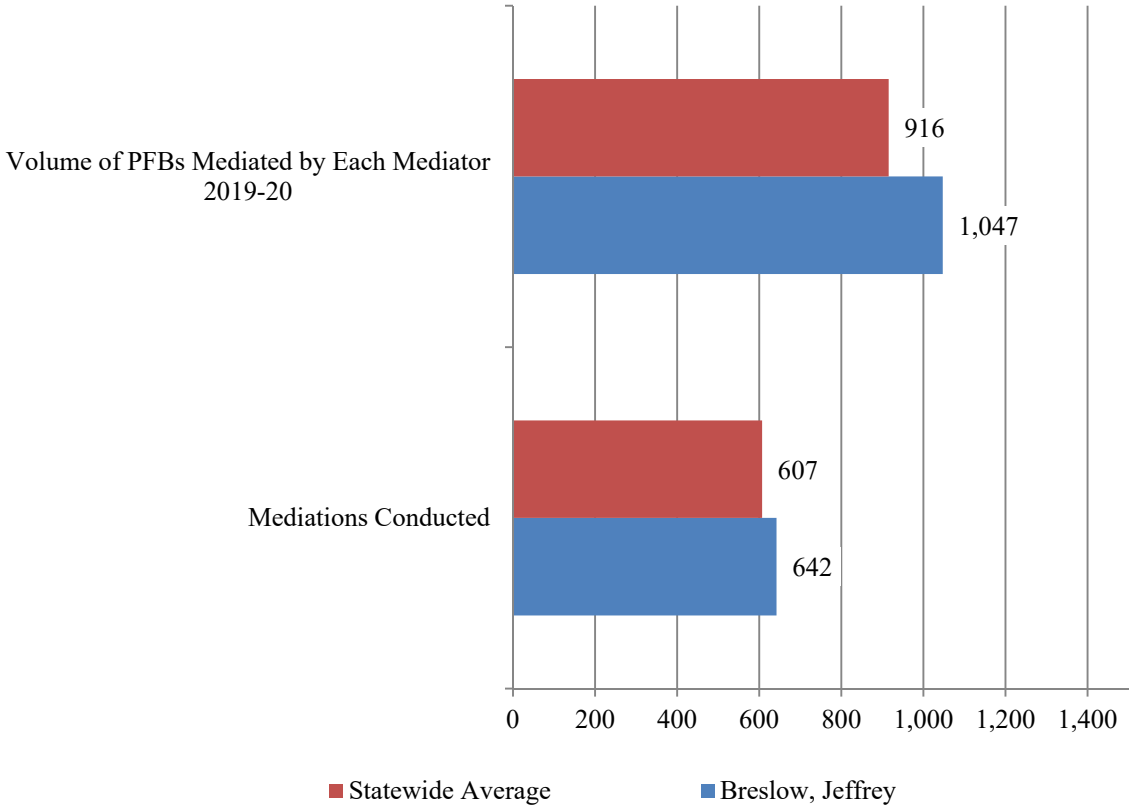


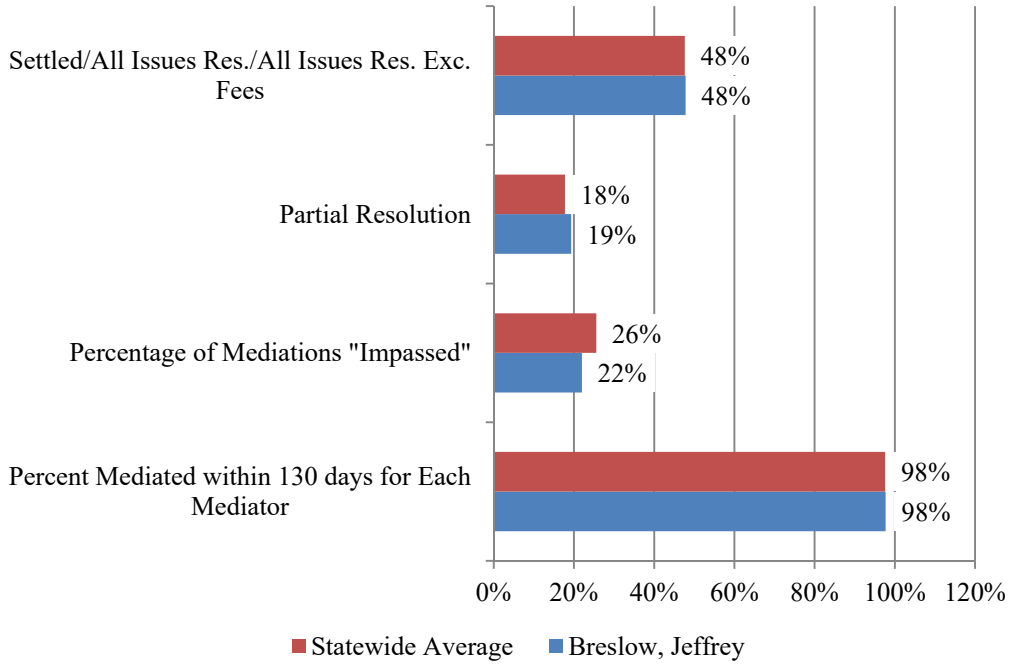
Bredemeyer, Eric (FTM)



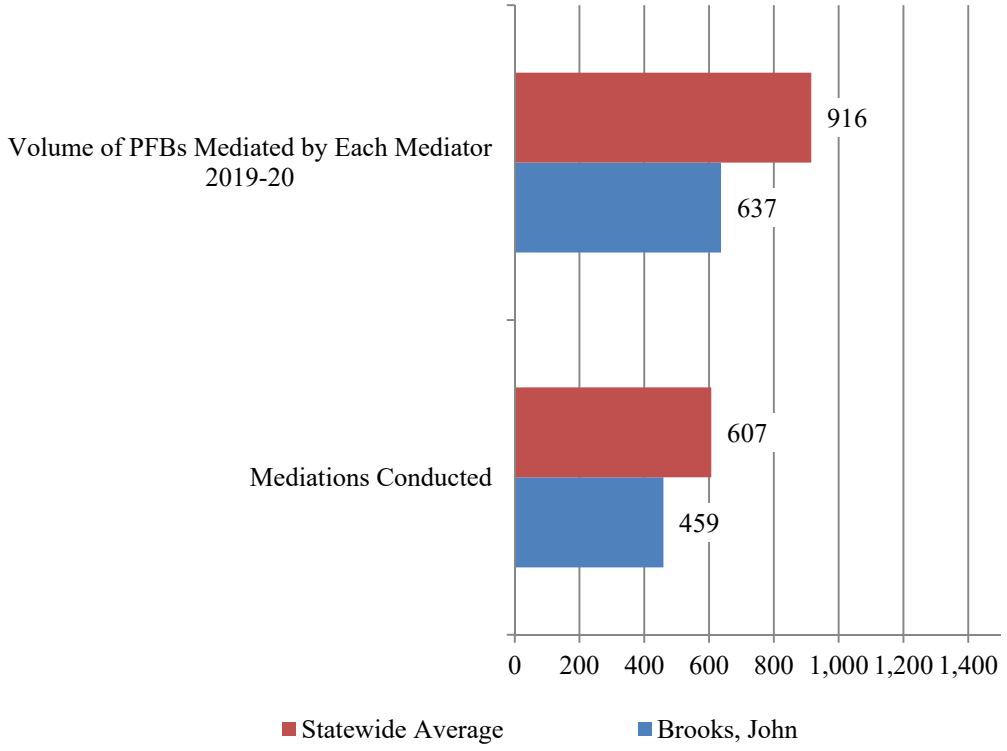


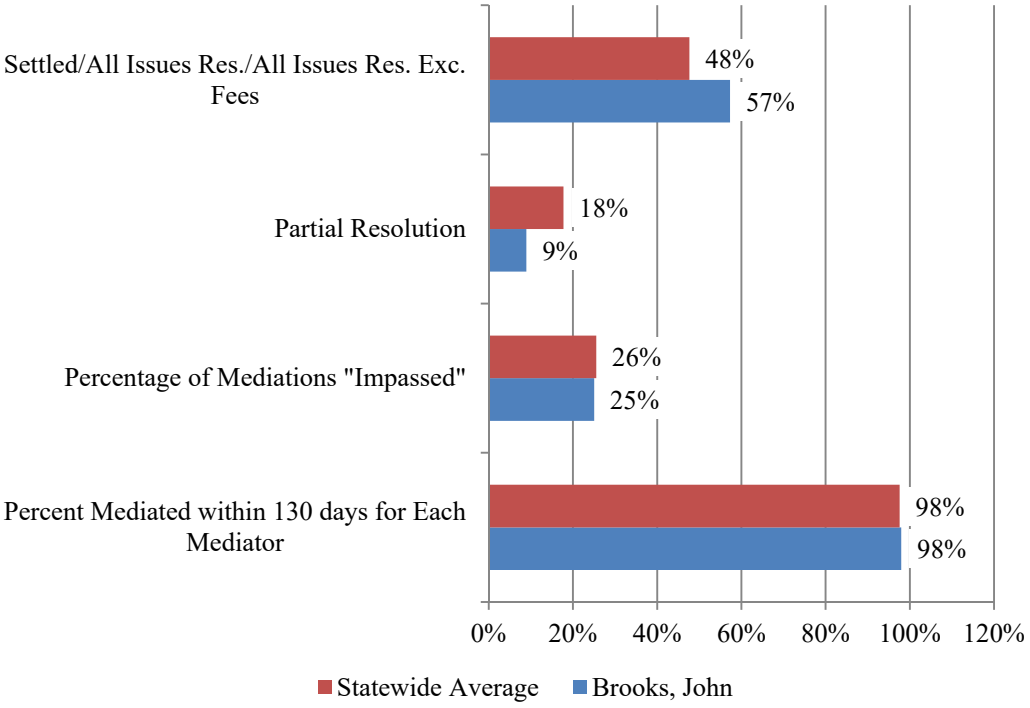
Breslow, Jeffrey (FTL)



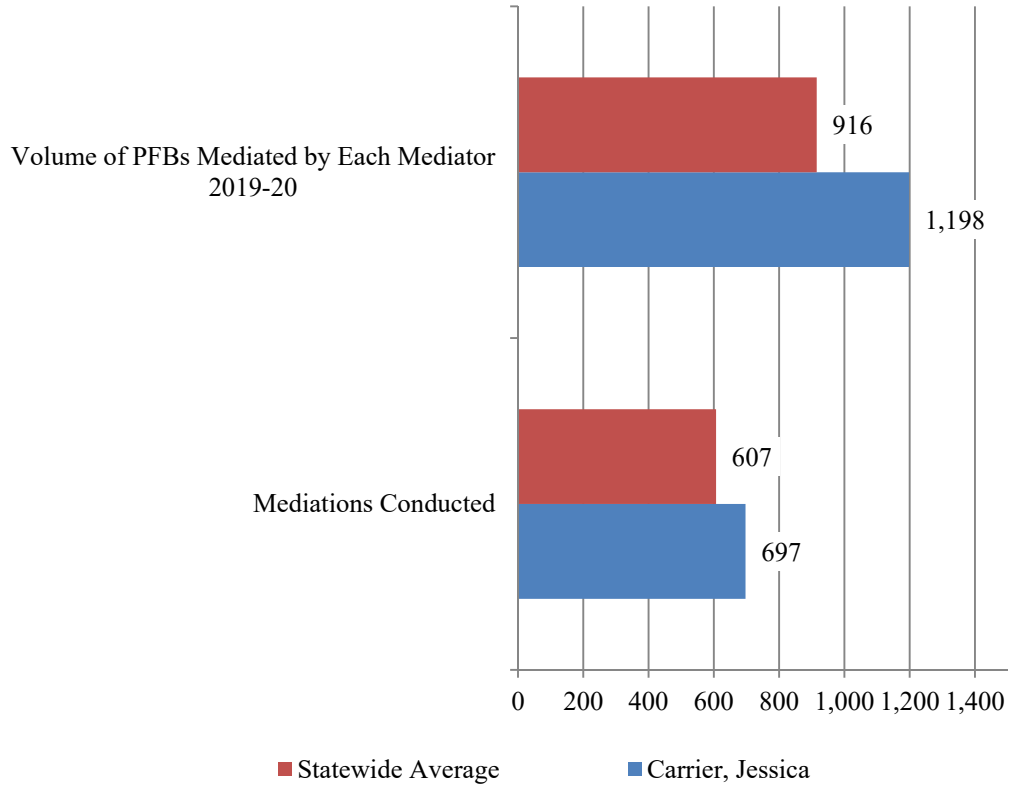


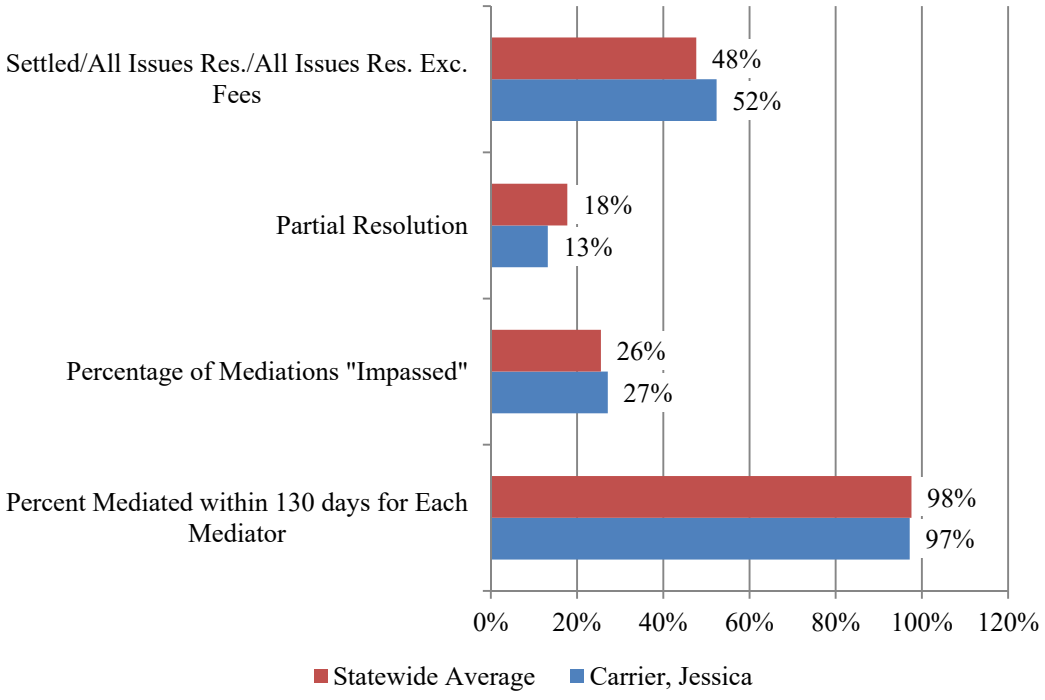
Brooks, John (DAY)



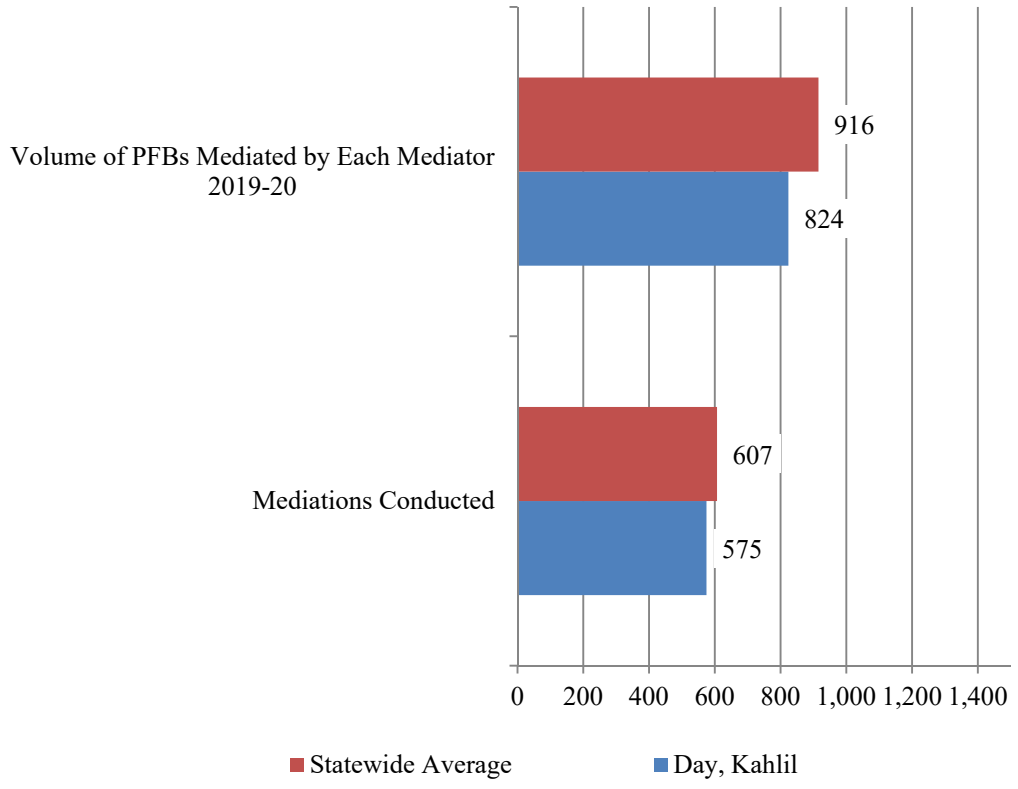


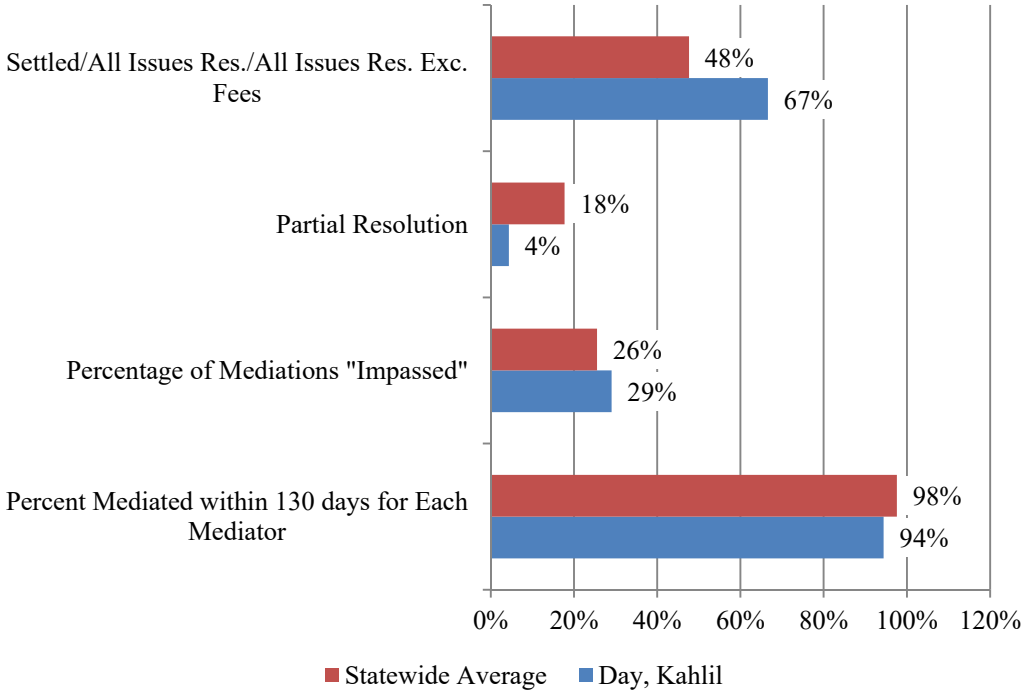
Carrier, Jessica (SAR)



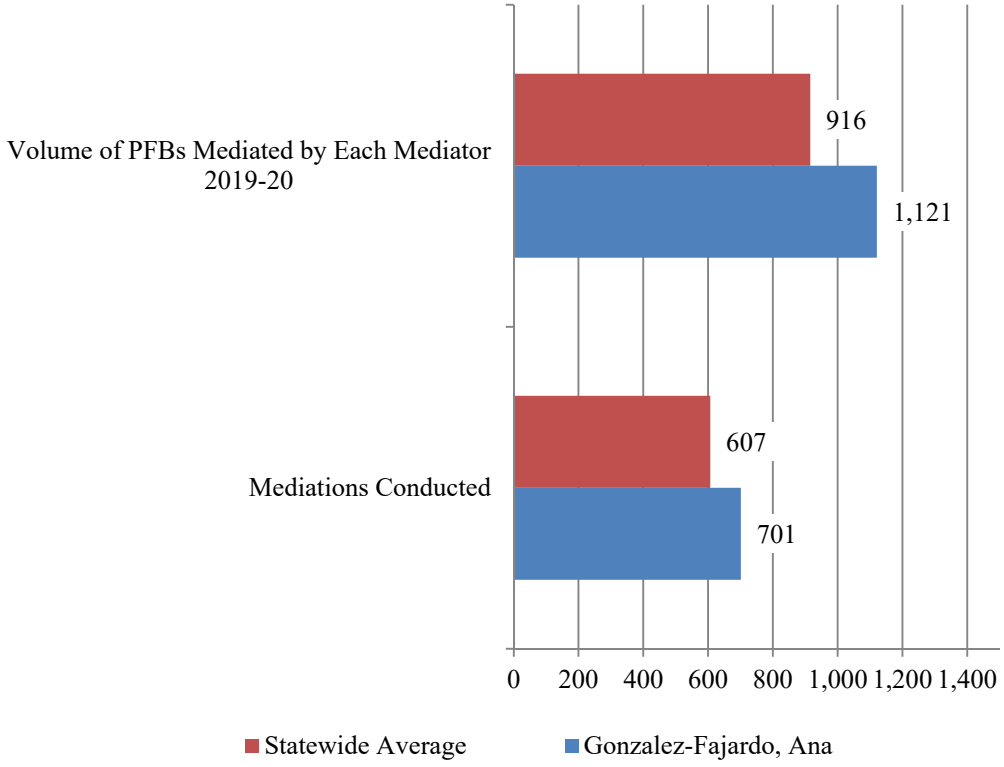


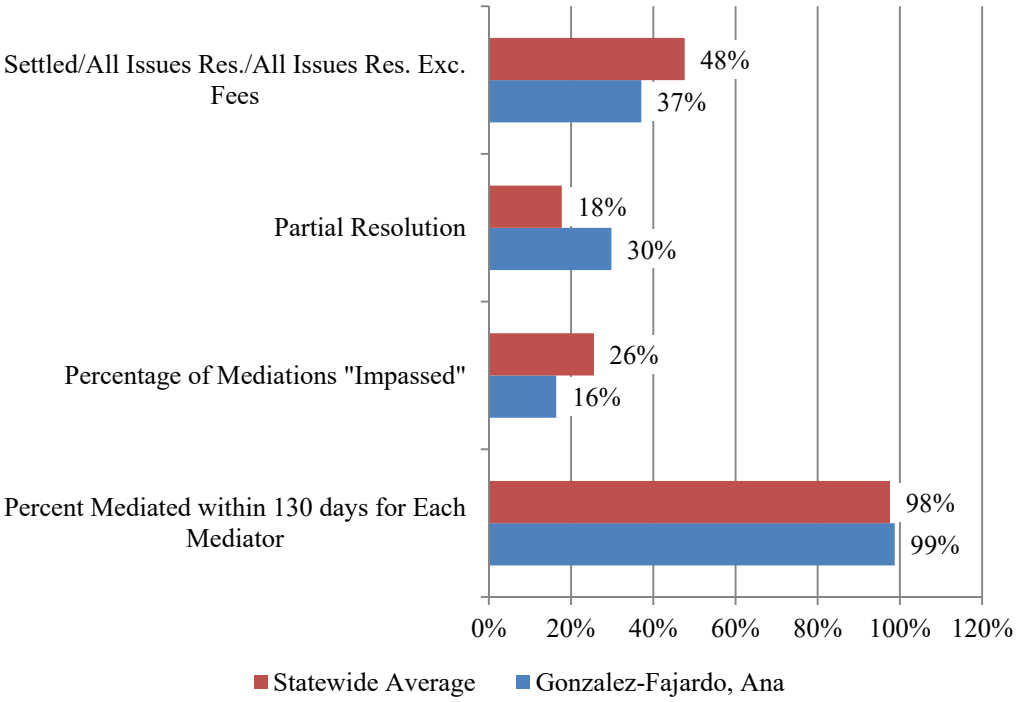
Day, Kahlil (JAX)



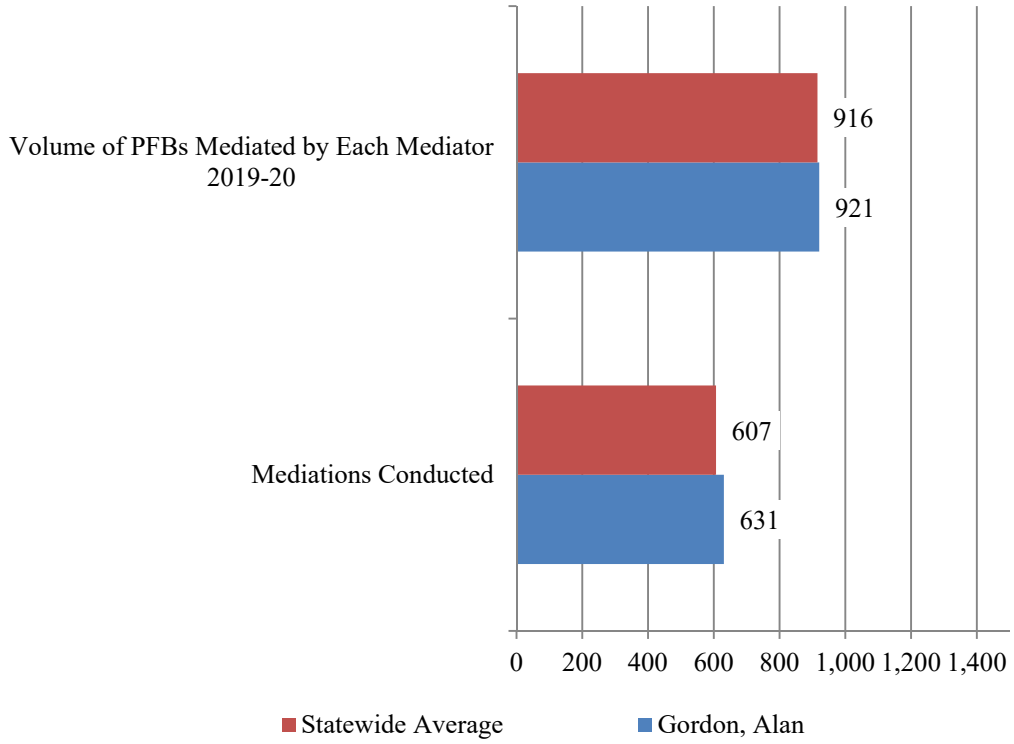


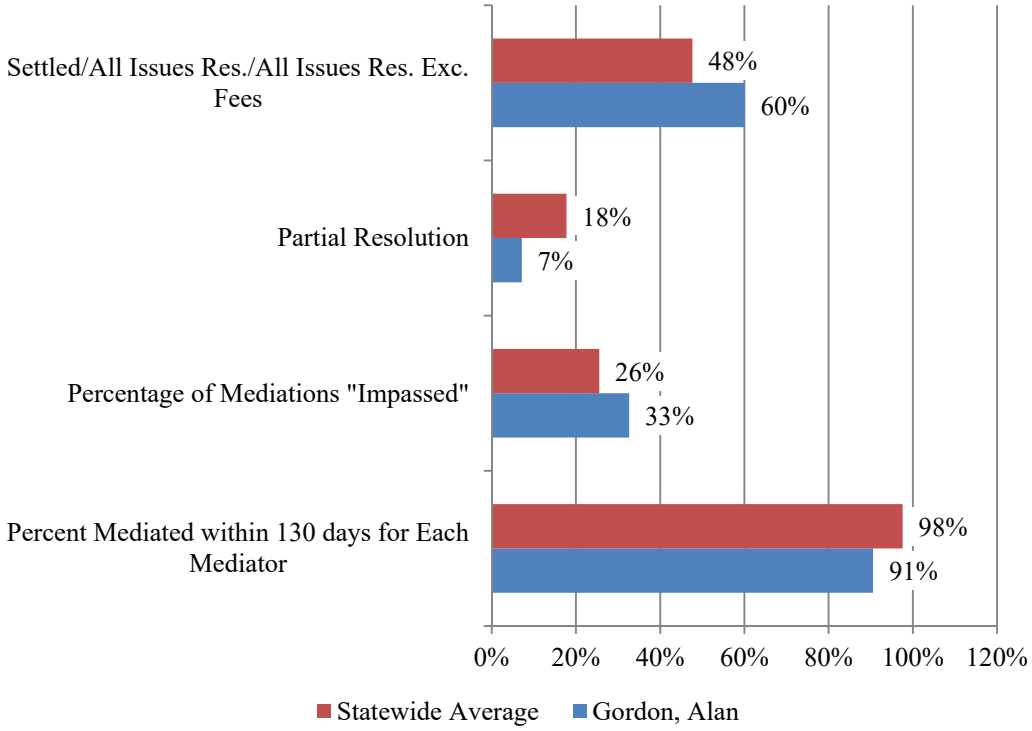
Gonzalez-Fajardo, Ana (MIA)



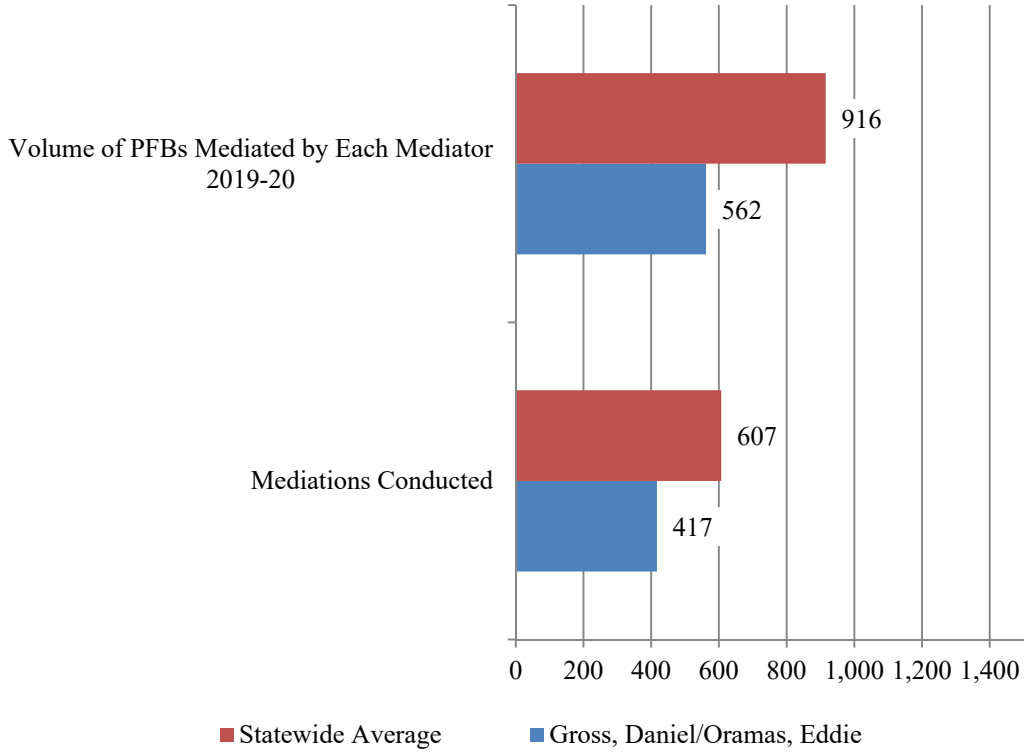


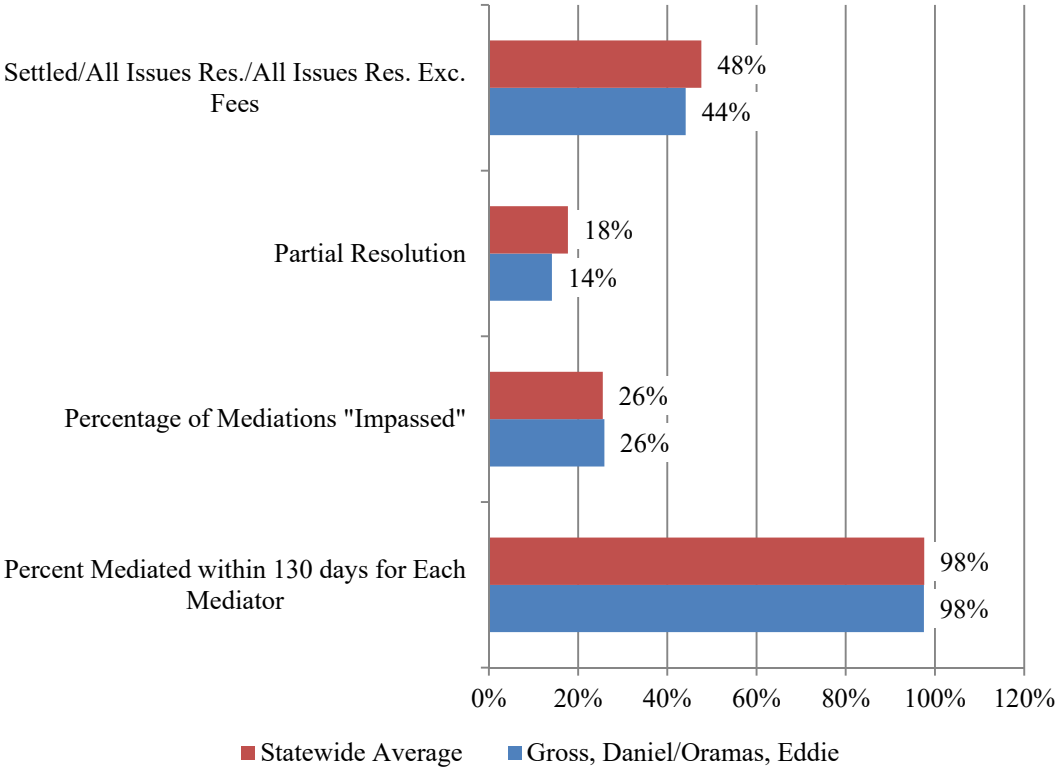
Gordon, Alan (JAX)



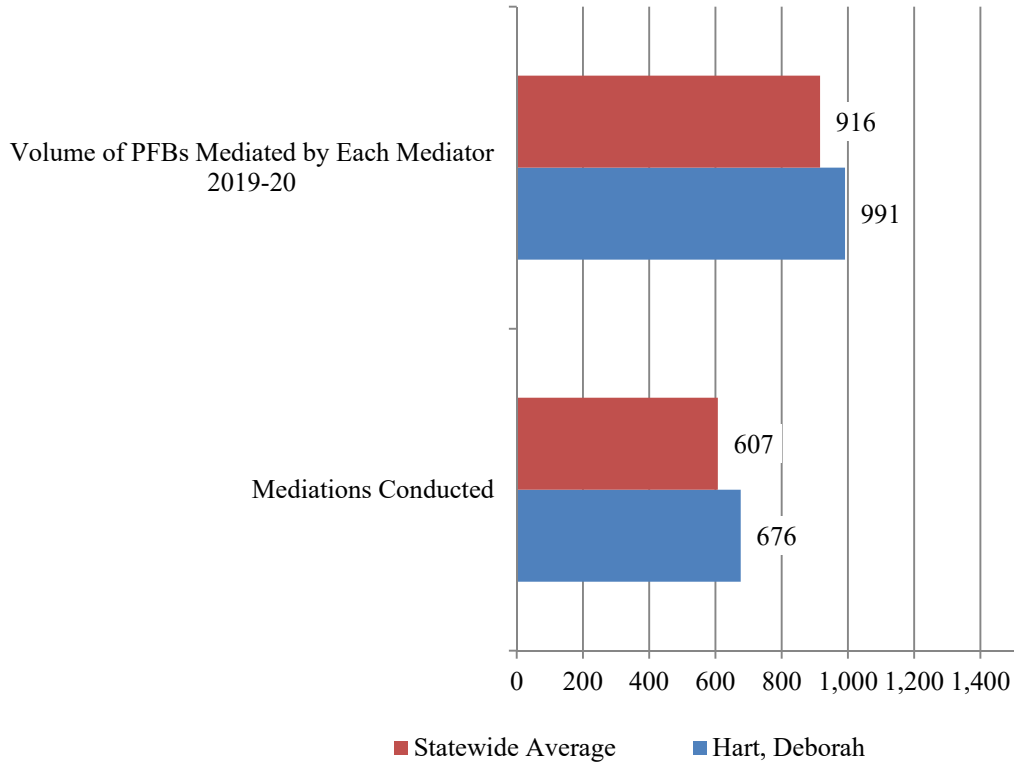


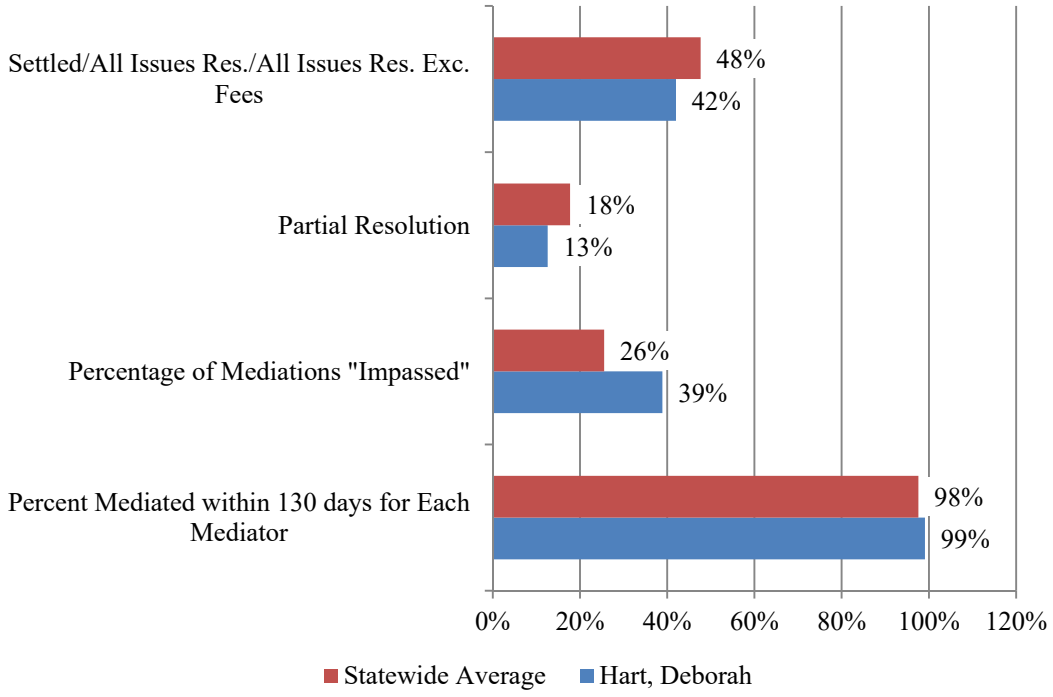
Gross, Daniel/Oramas, Edward (PMC) [18]



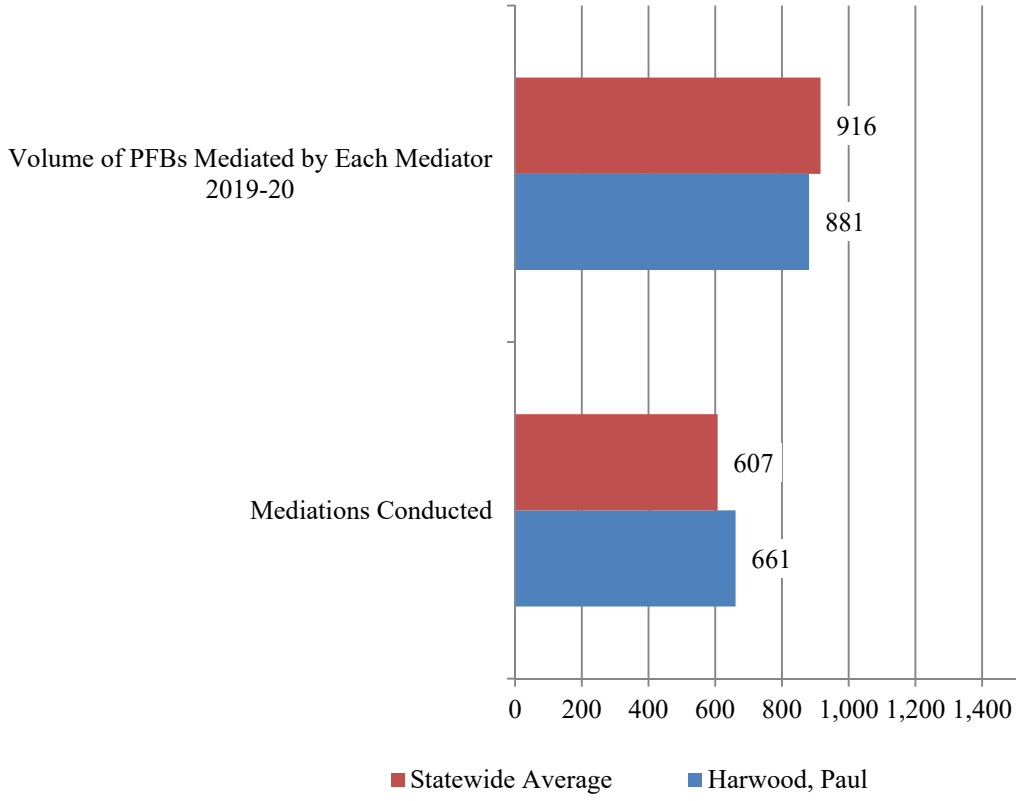


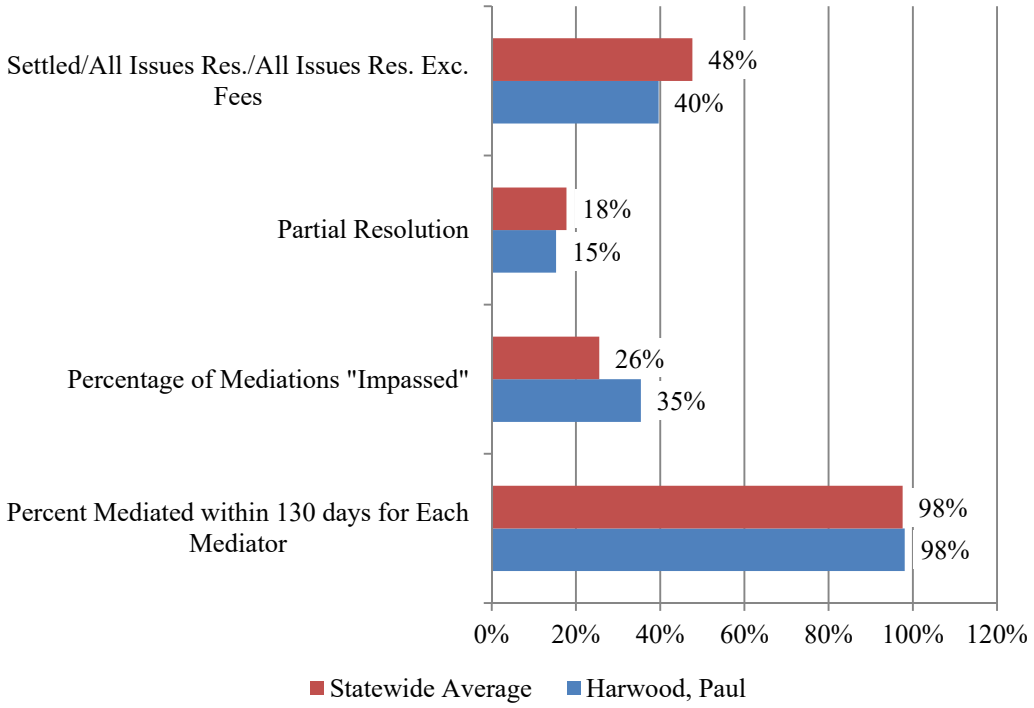
Hart, Deborah (TPA)



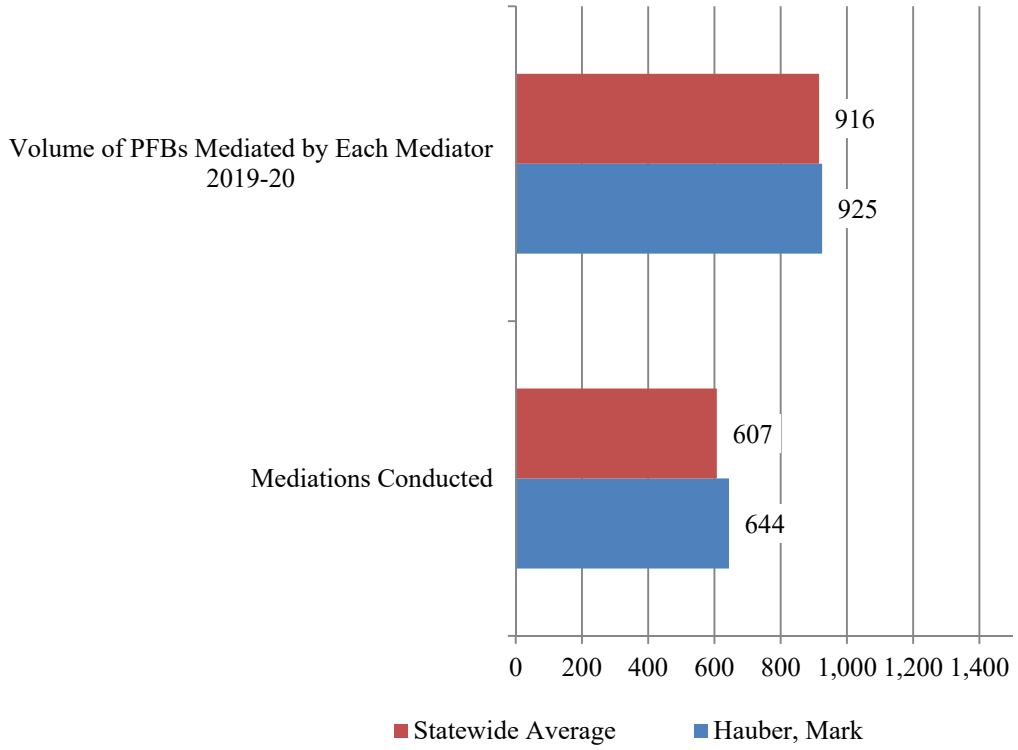


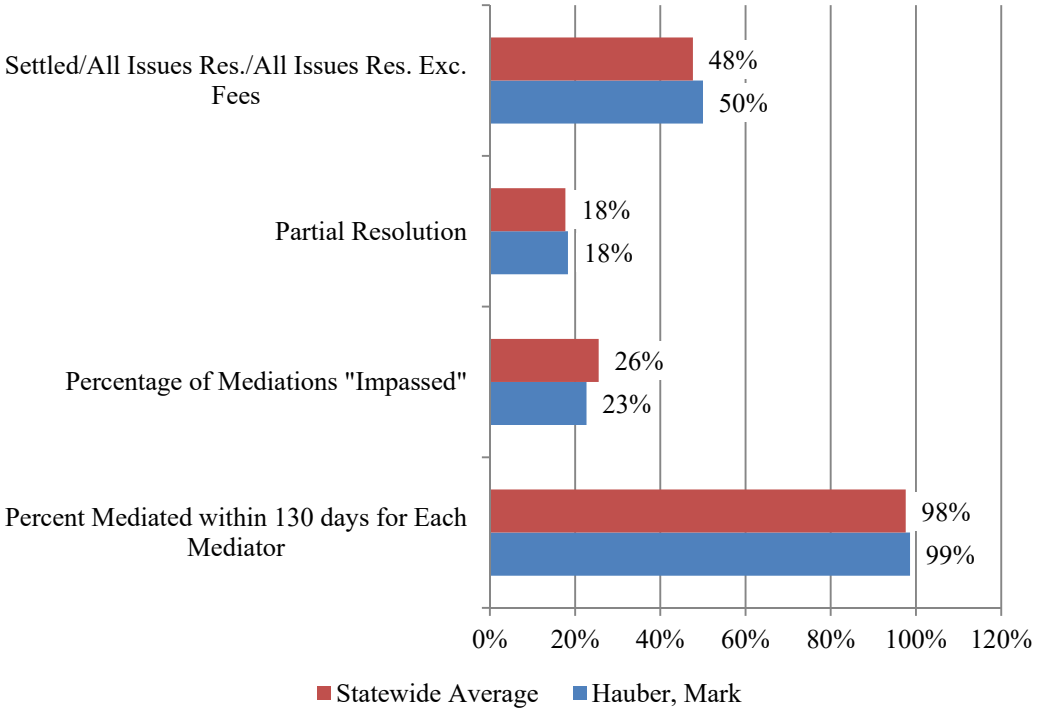
Harwood, Paul (LKL)



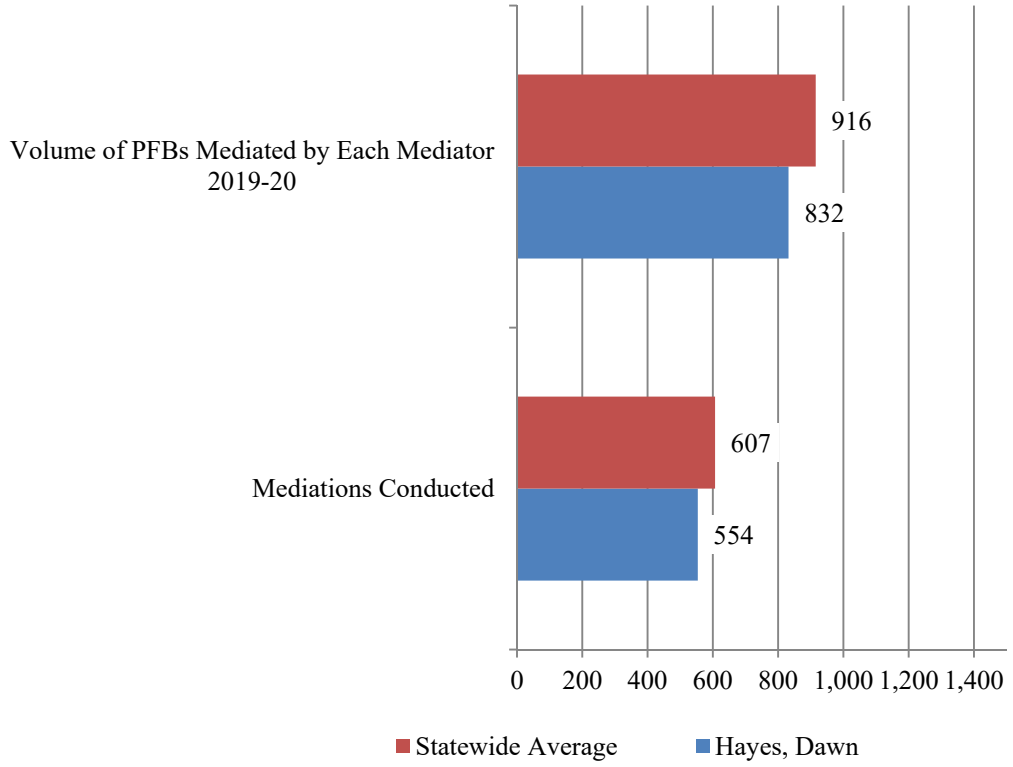


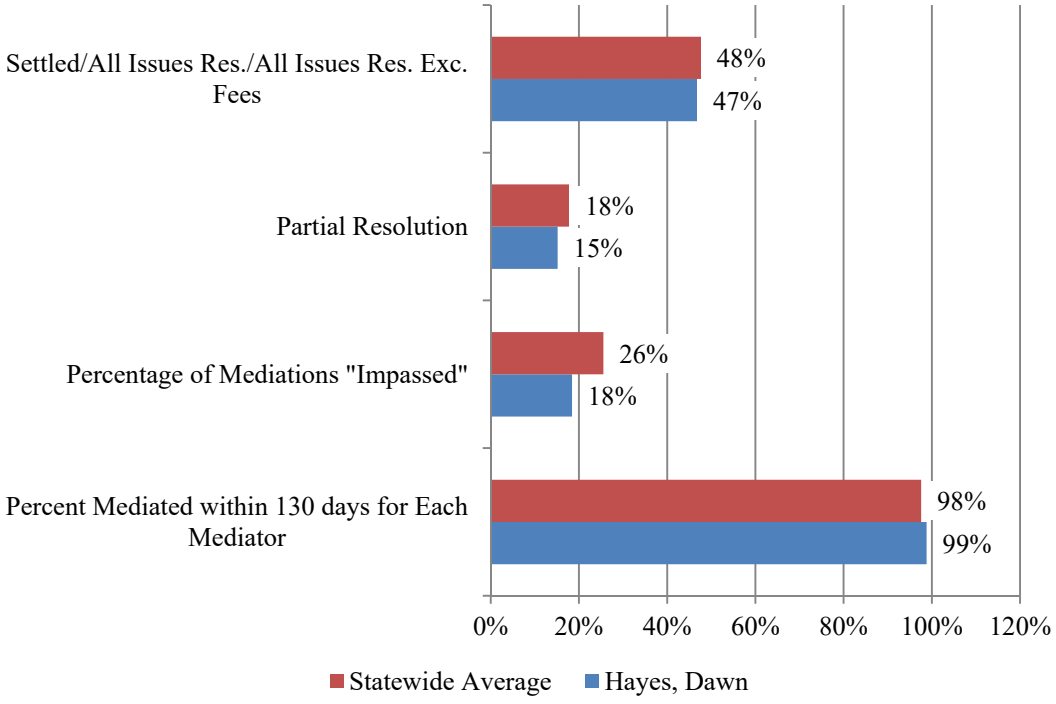
Hauber, Mark (MEL)



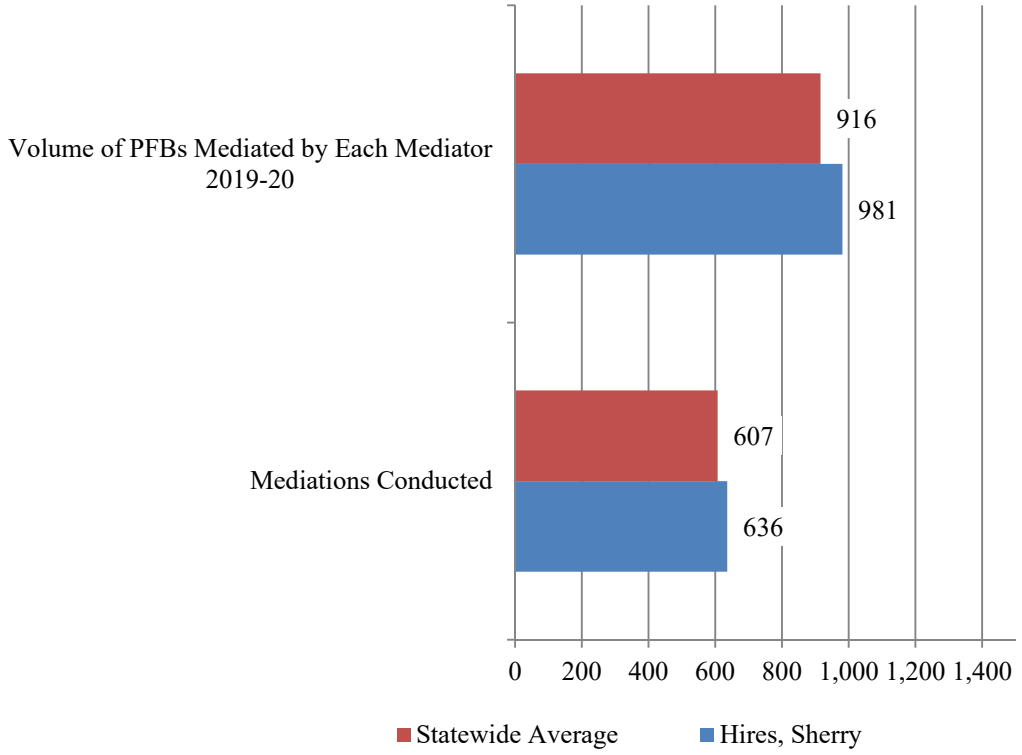


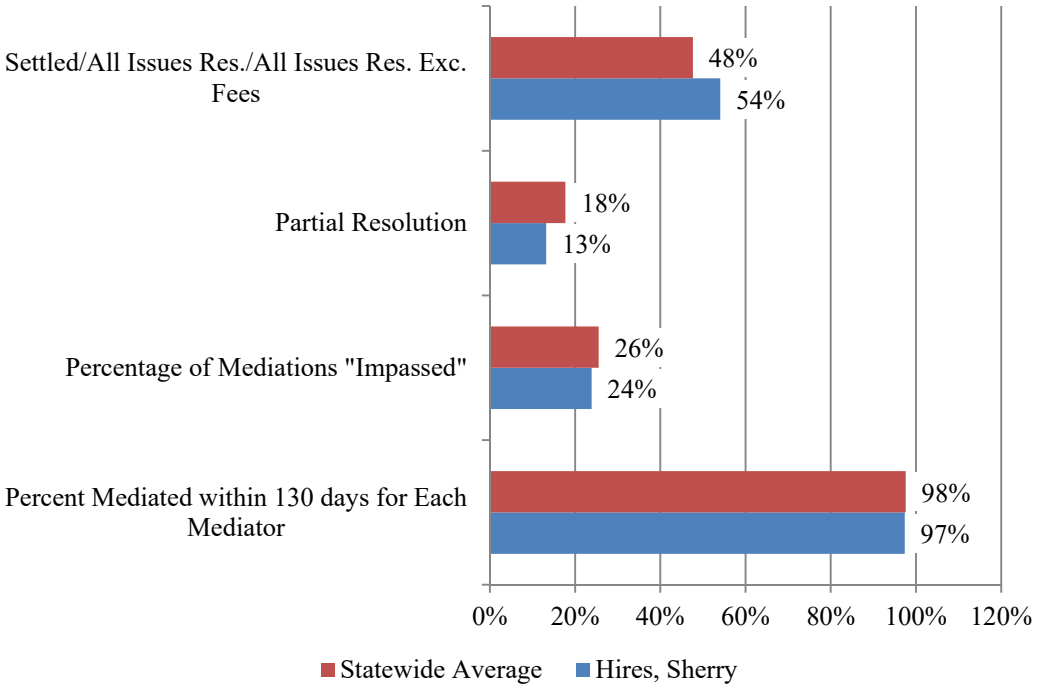
Hayes, Dawn (PSL)



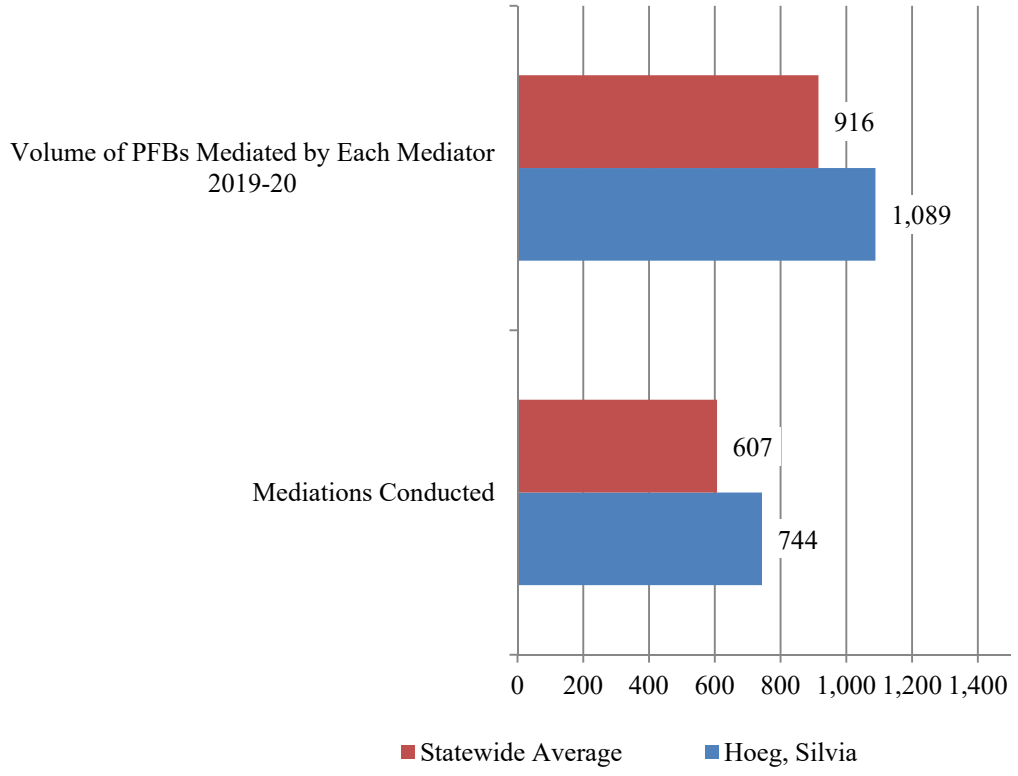


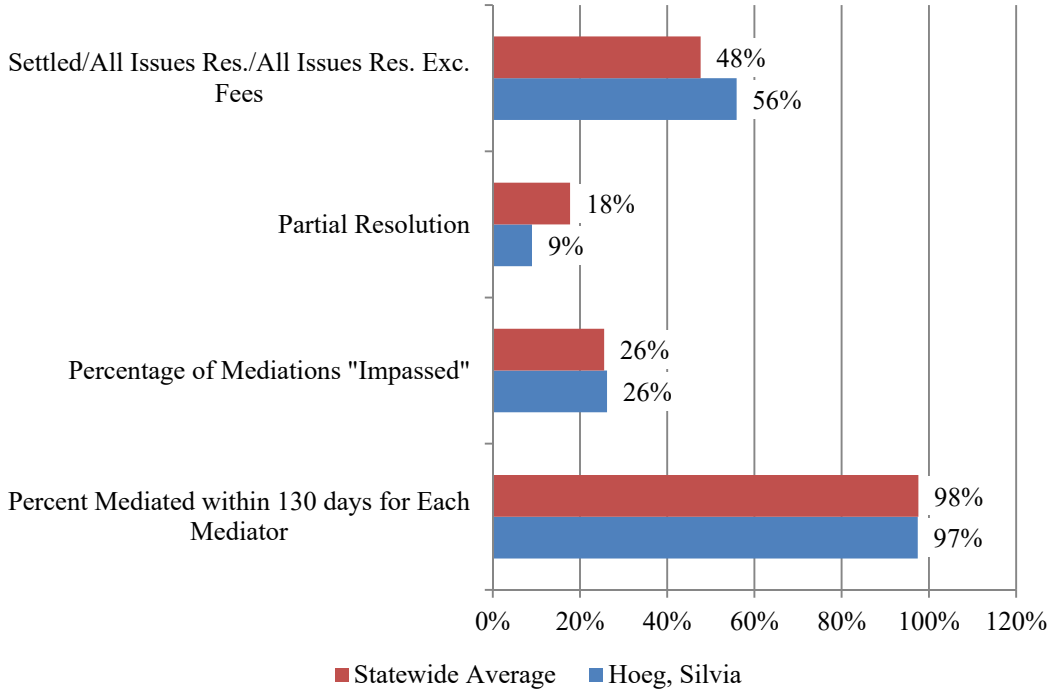
Hires, Sherry (ORL)



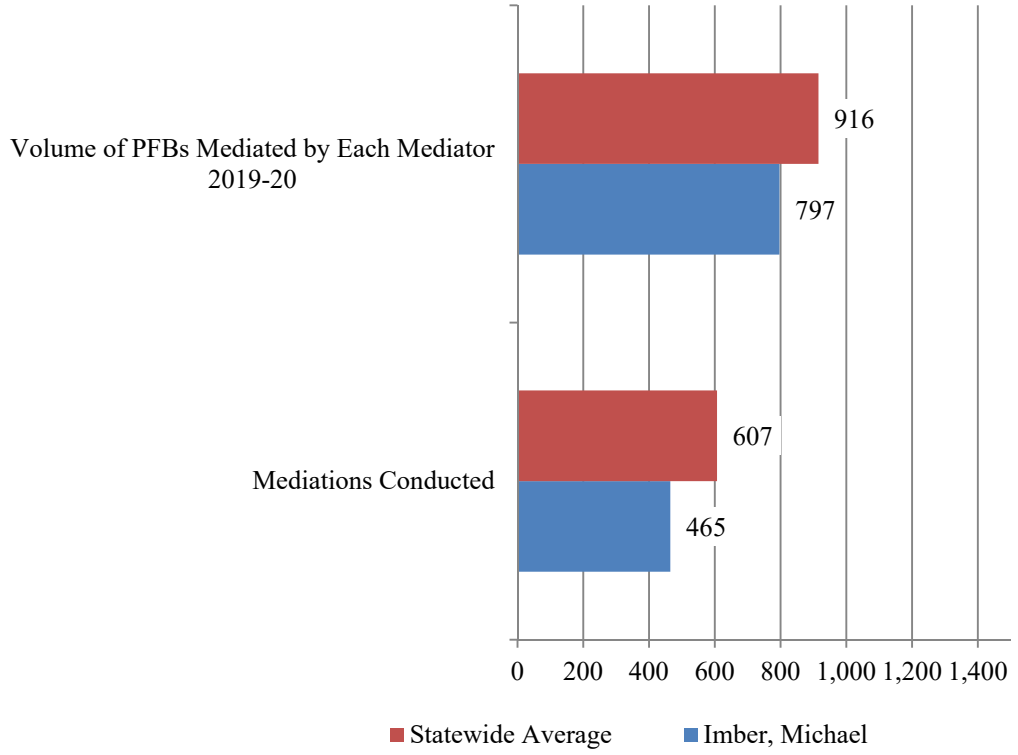


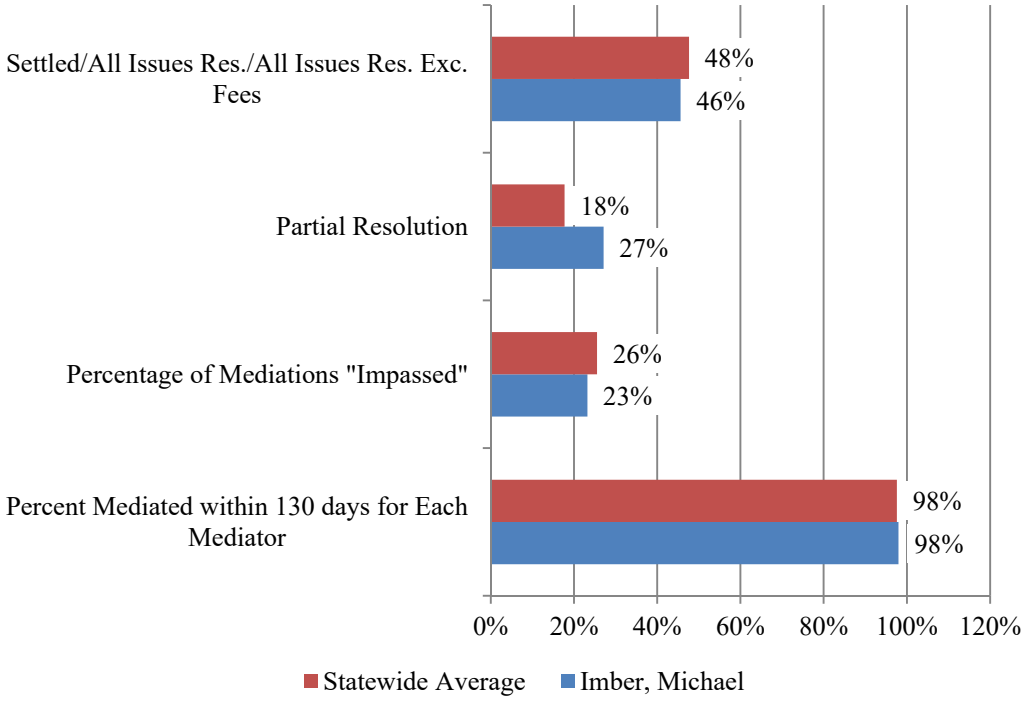
Hoeg, Silvia (ORL)



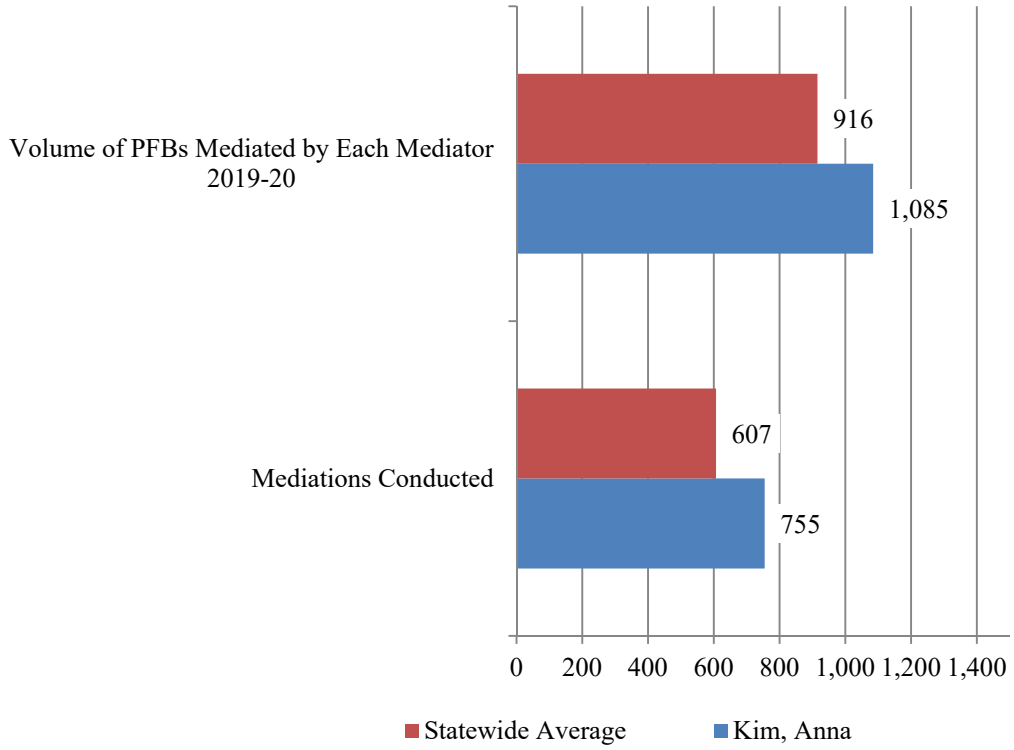


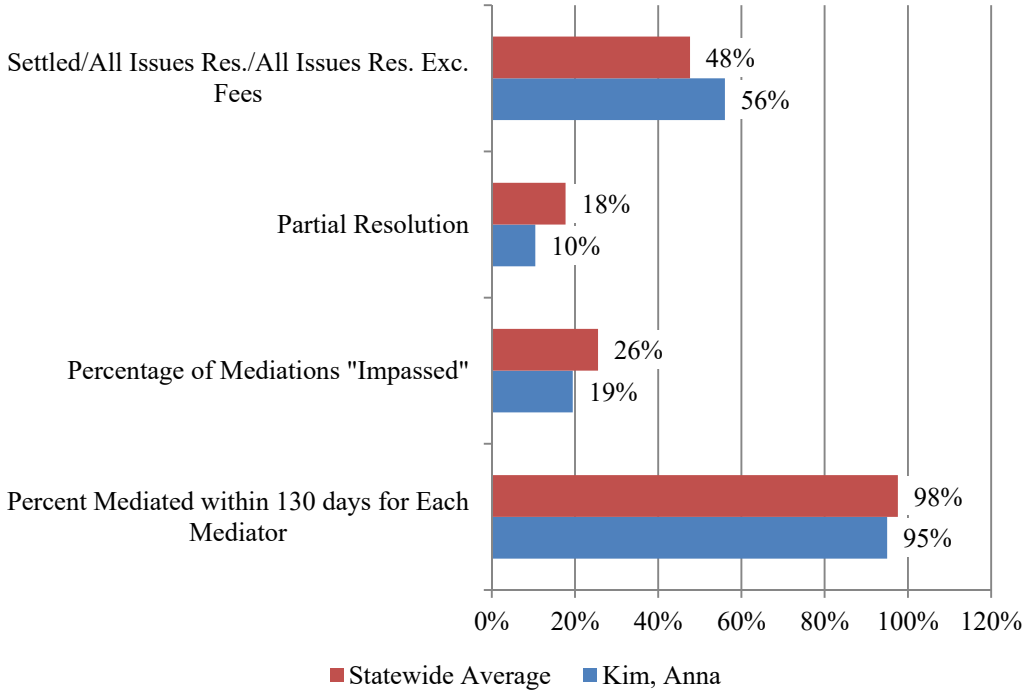
Imber, Michael (WPB)



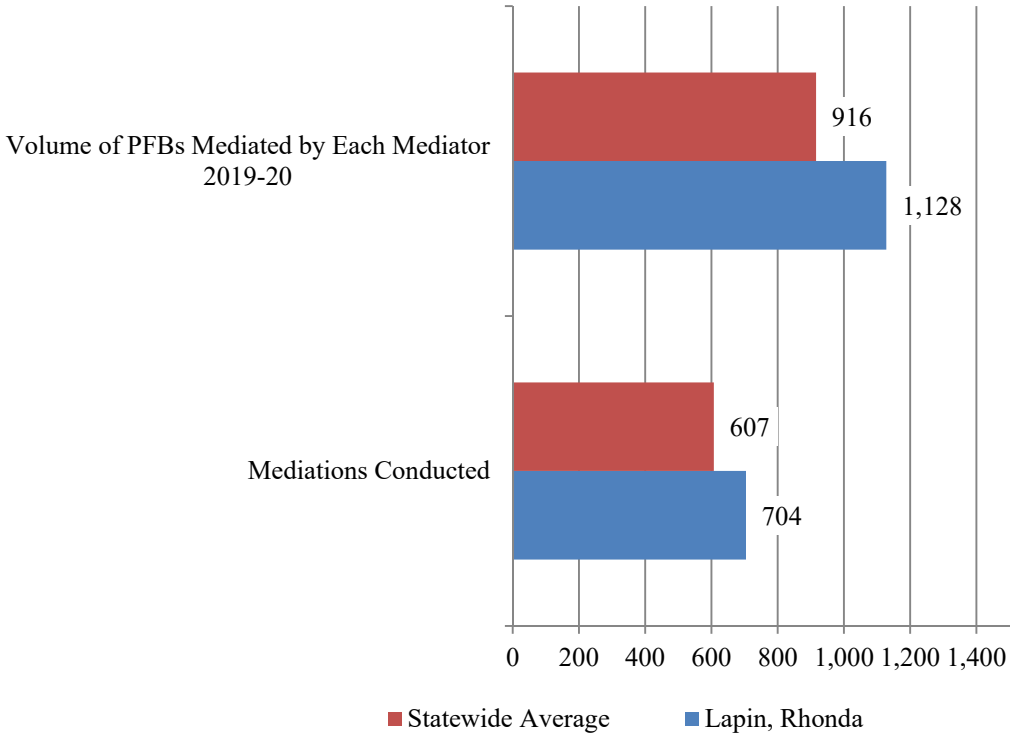


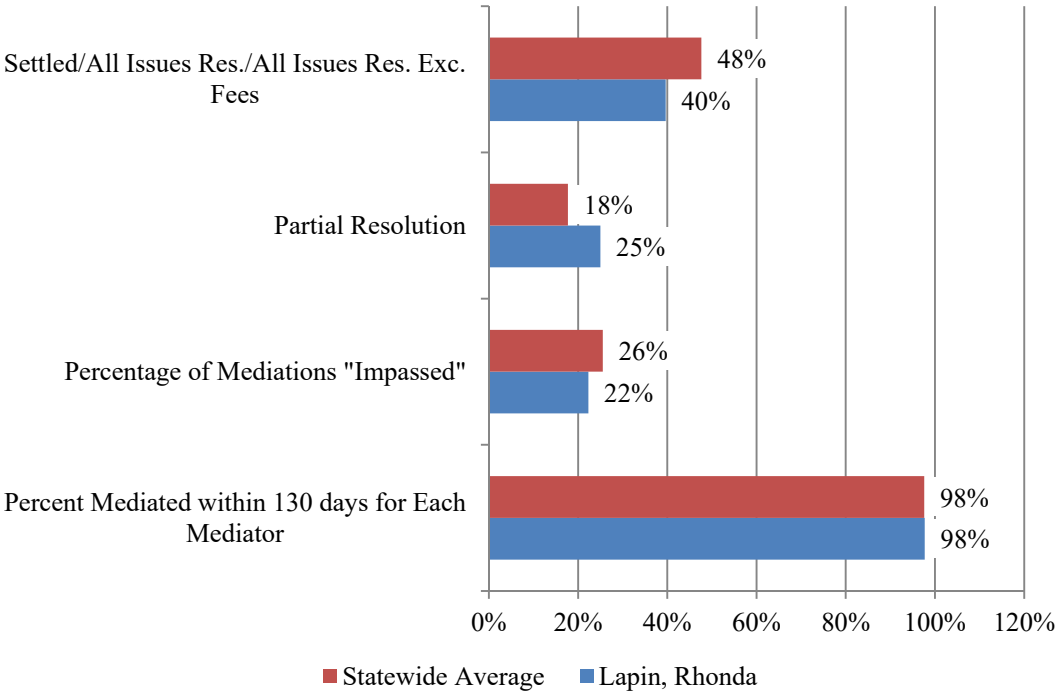
Kim, Anna (ORL)


Volume of PFBs Mediated by Each Mediator 2019-20
916
1,085
Mediations Conducted
607
755
0
200
400
600
800
1,000
1,200
1,400
Statewide Average
Kim, Anna

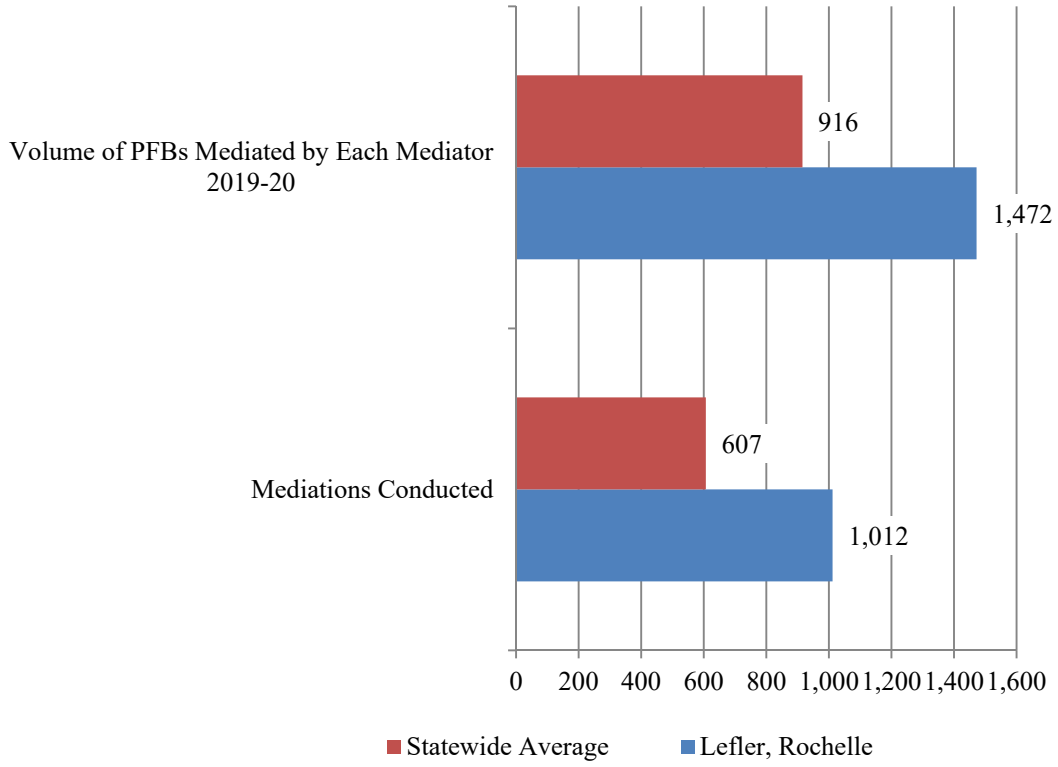

Settled/All Issues Res./All Issues Res. Exc. Fees
48%
56%
Partial Resolution
18%
10%
Percentage of Mediations "Impassed"
26%
19%
Percent Mediated within 130 days for Each Mediator
98%
95%
0%
20%
40%
60%
80%
100%
120%
Statewide Average
Kim, Anna

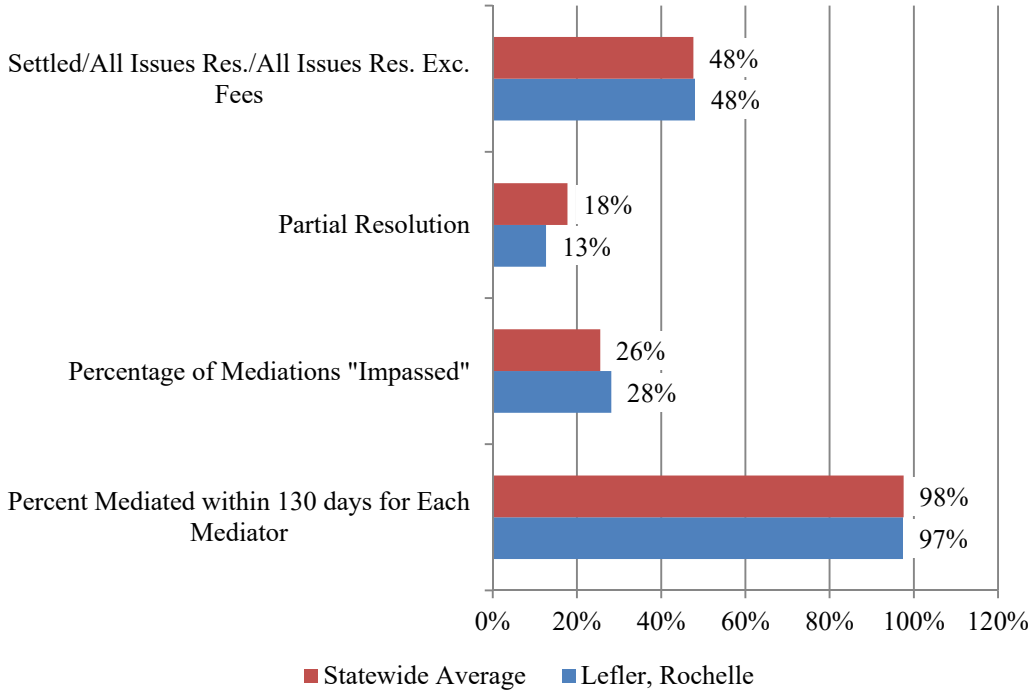
Lapin, Rhonda (MIA)



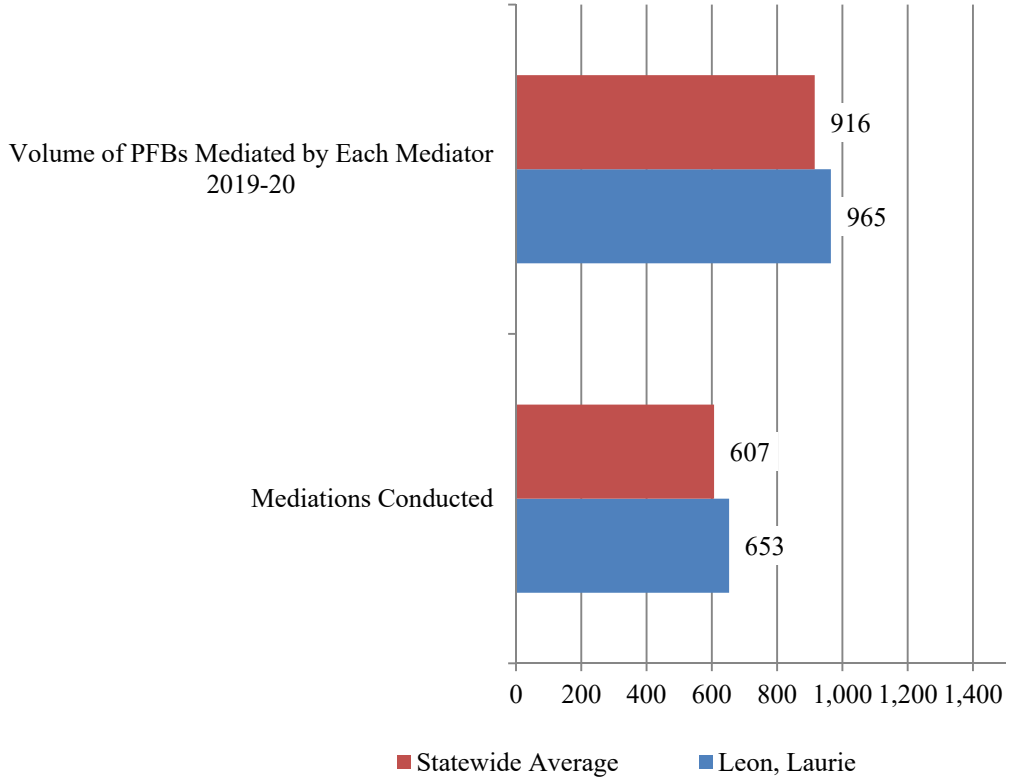


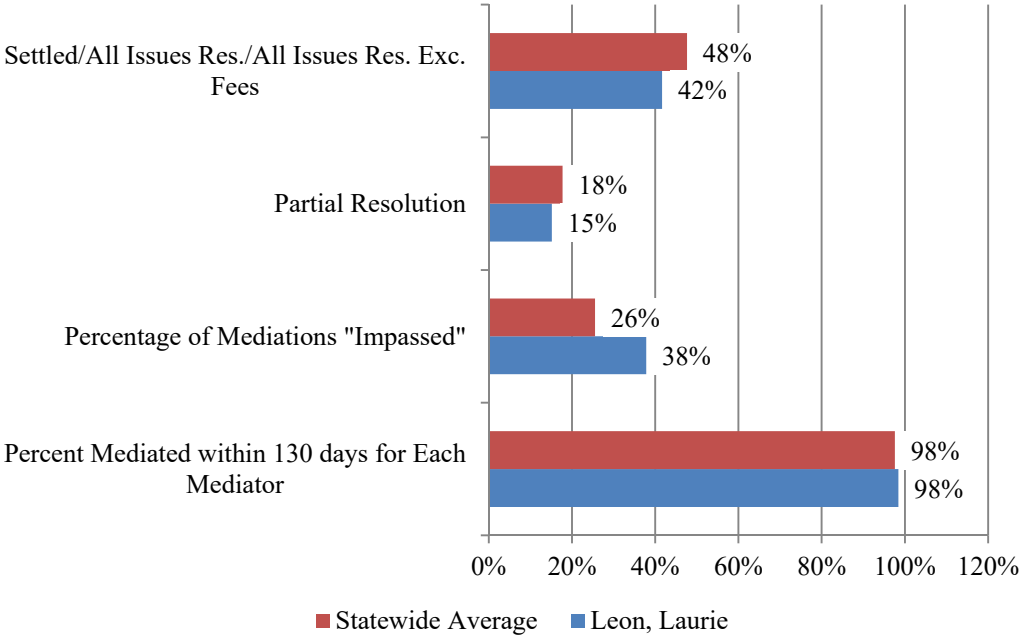
Lefler, Rochelle (SPT)



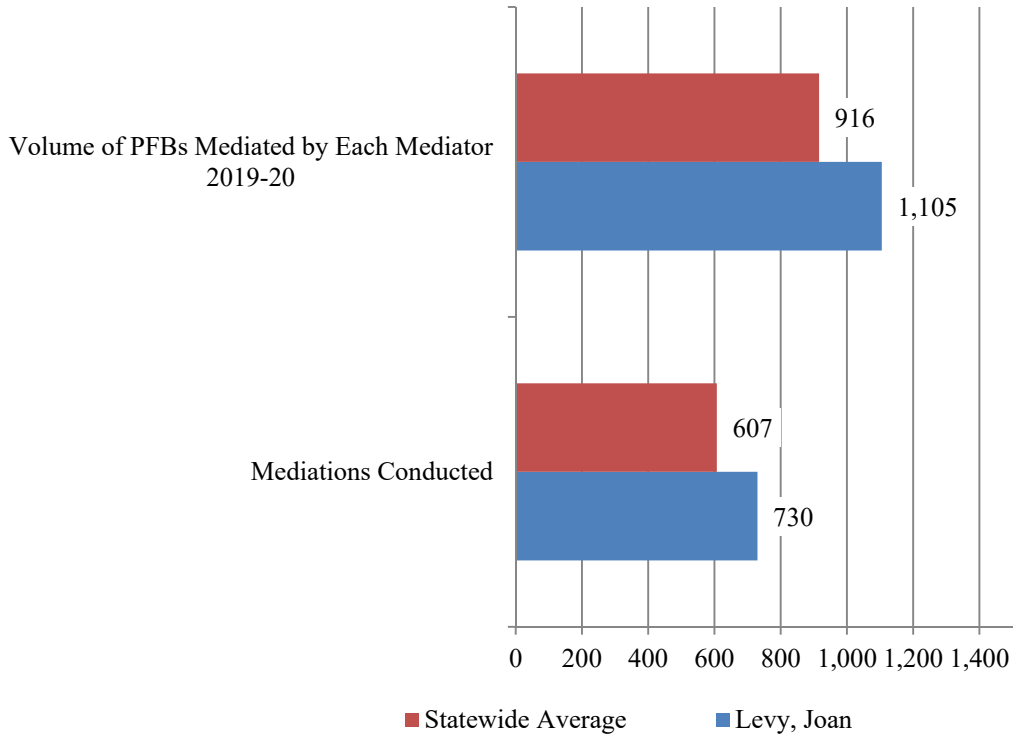


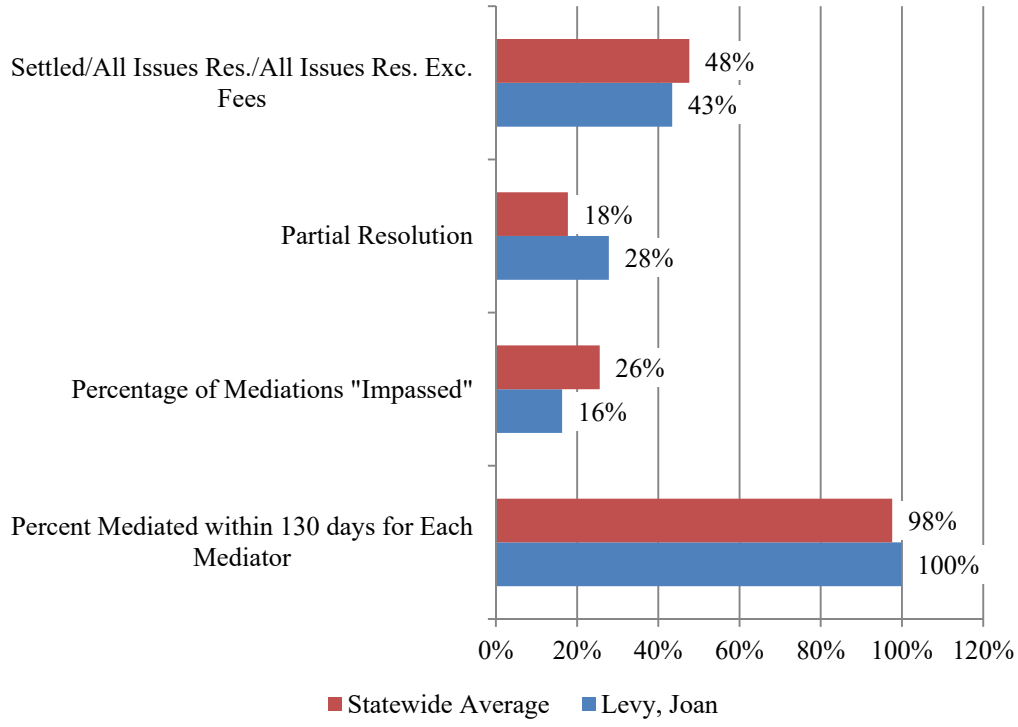
Leon, Laurie (TPA)



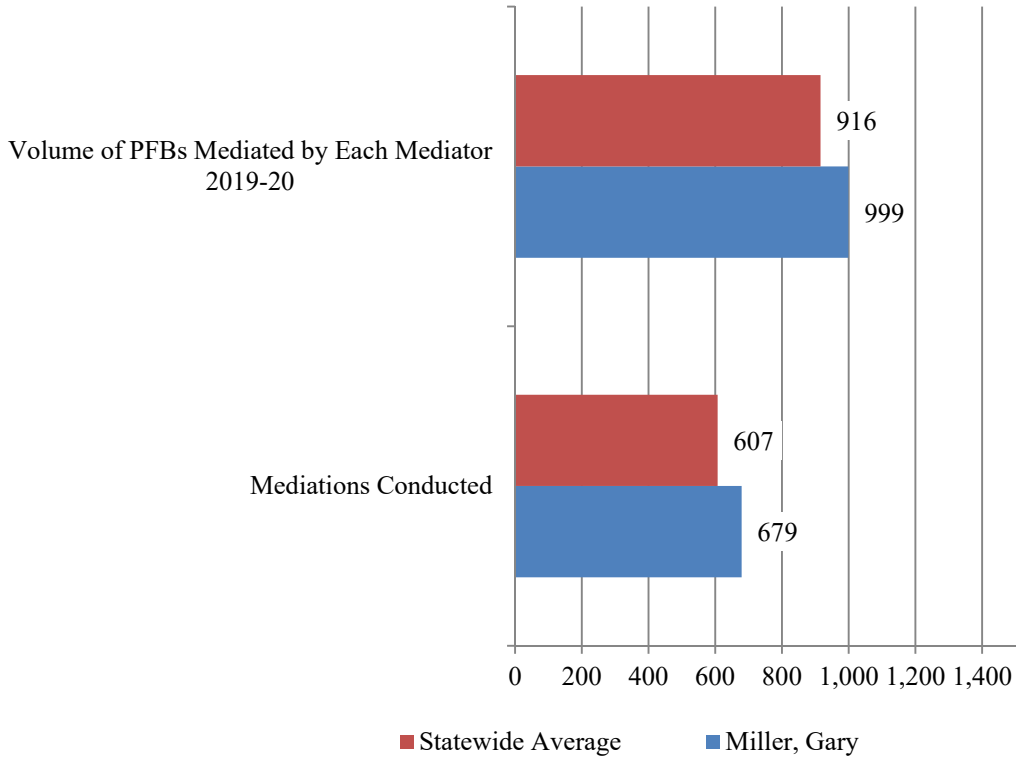


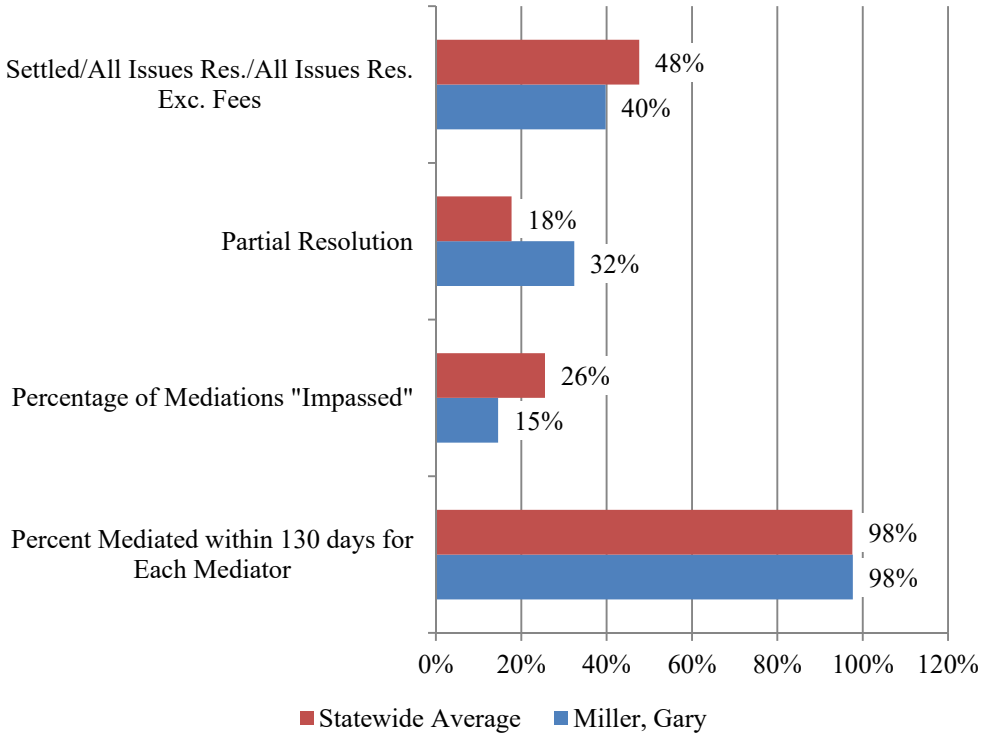
Levy, Joan (MIA)



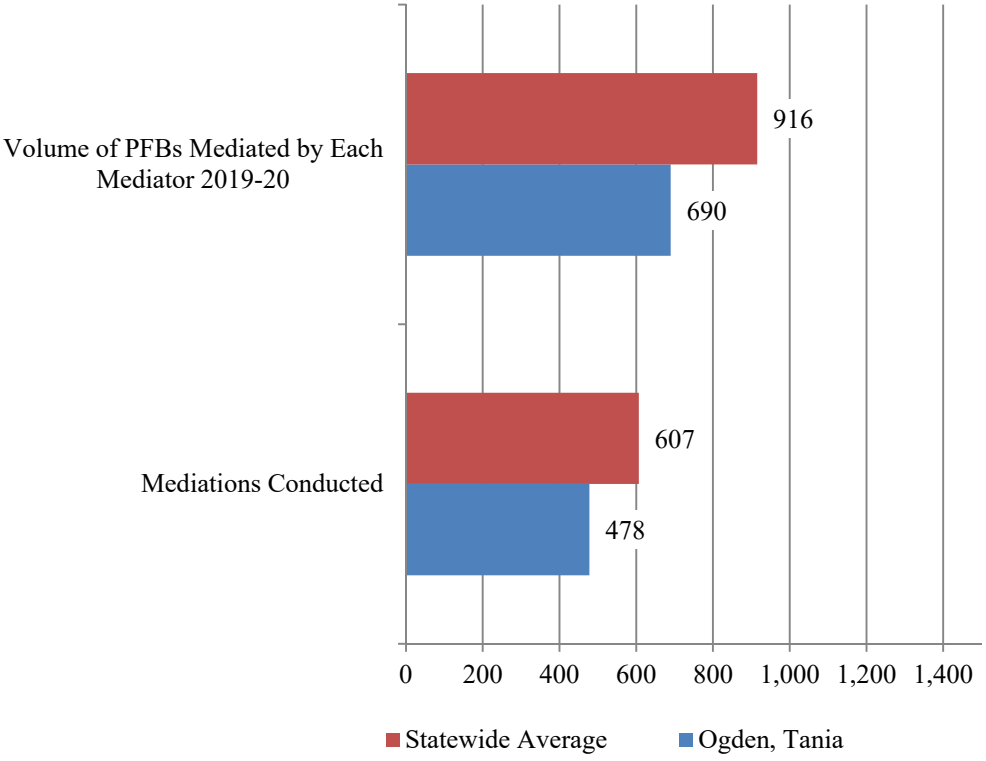


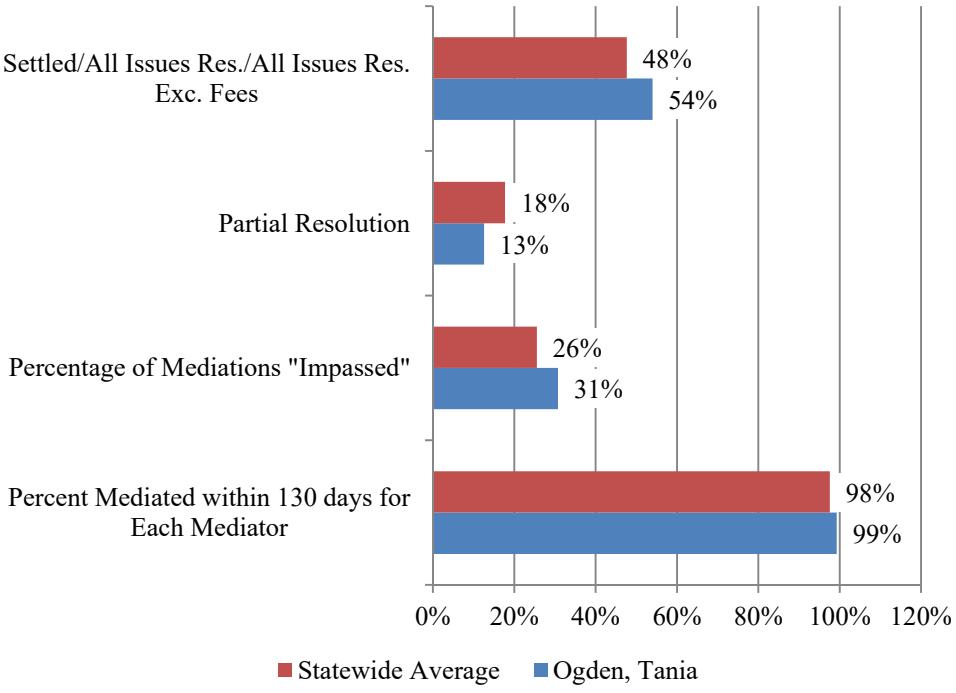
Miller, Gary (MIA)



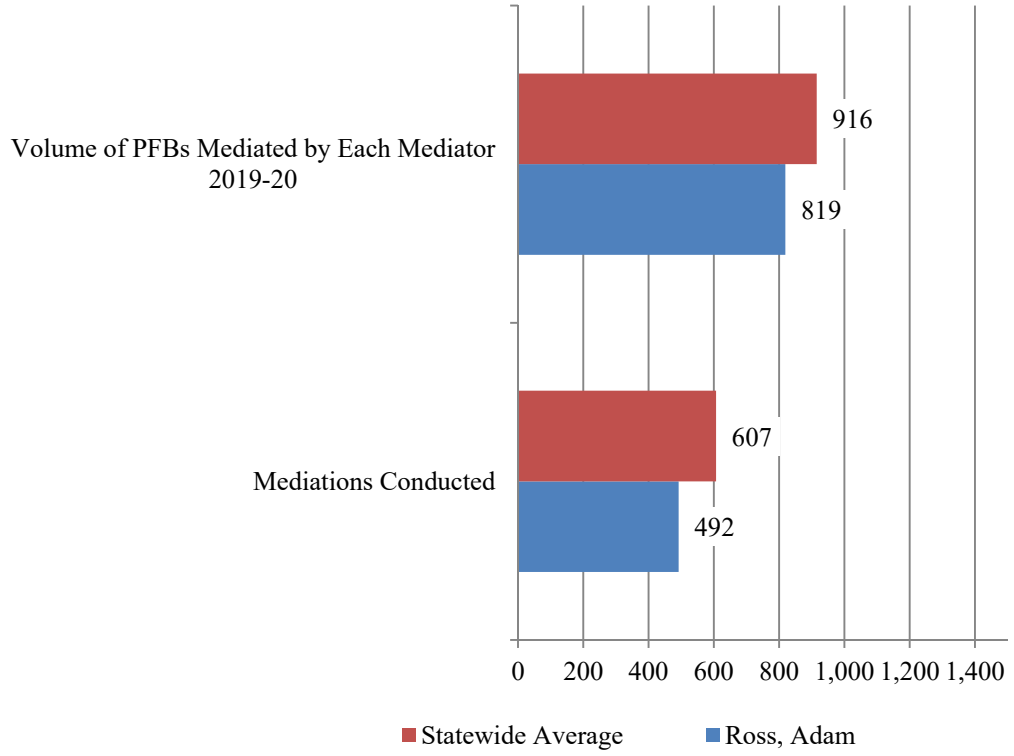


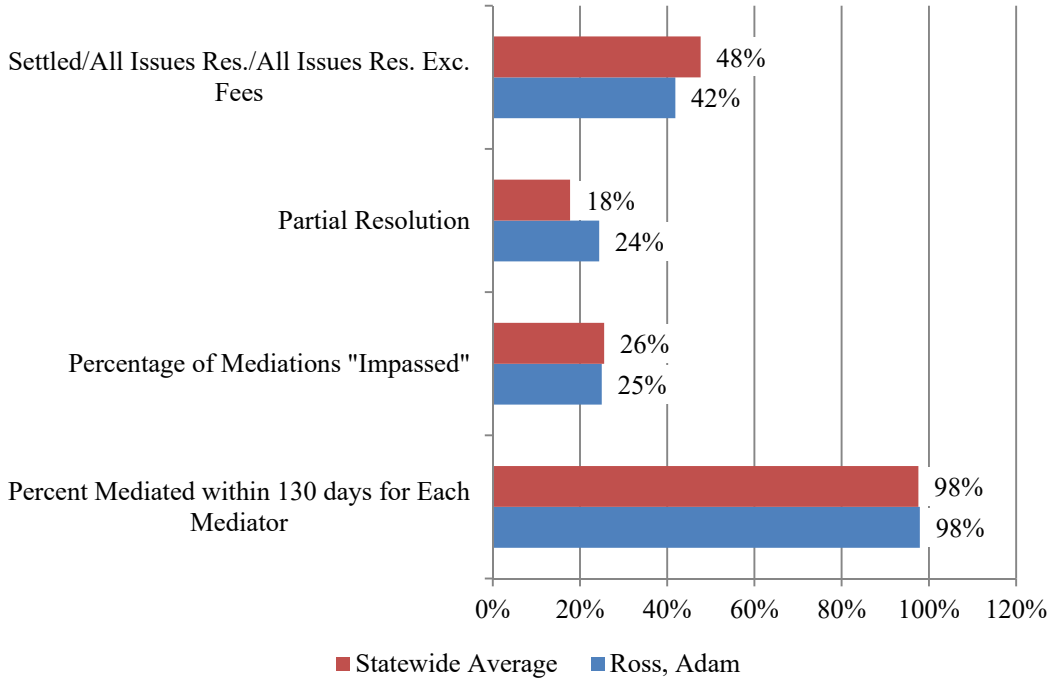
Ogden, Tania (FTM)



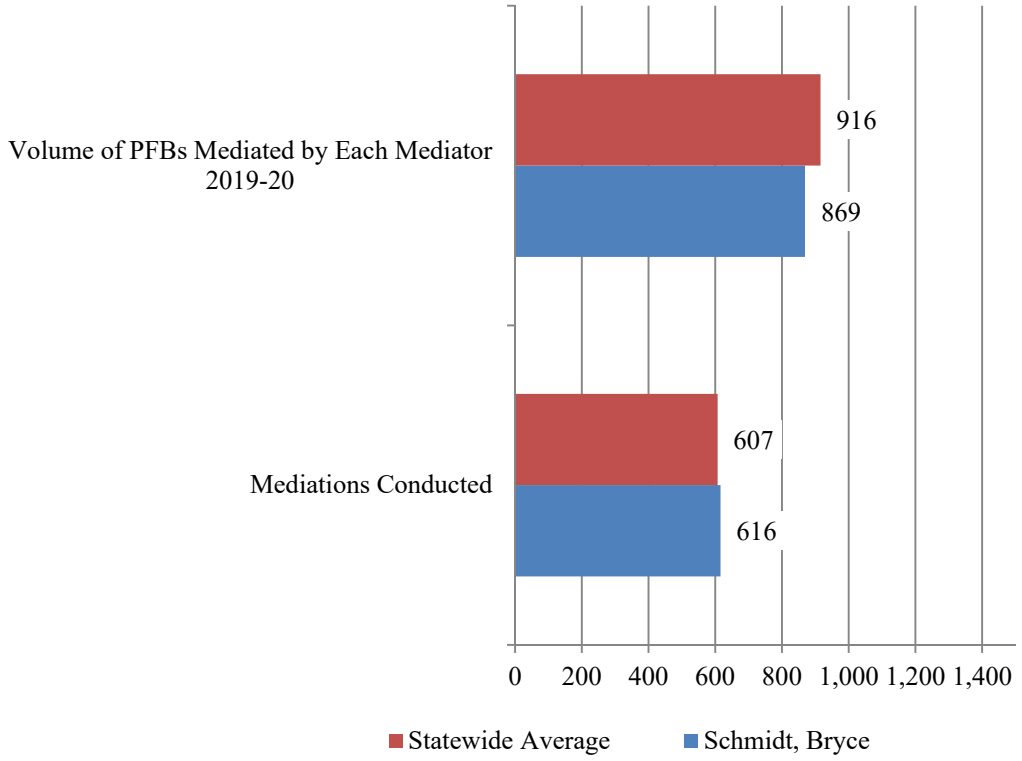


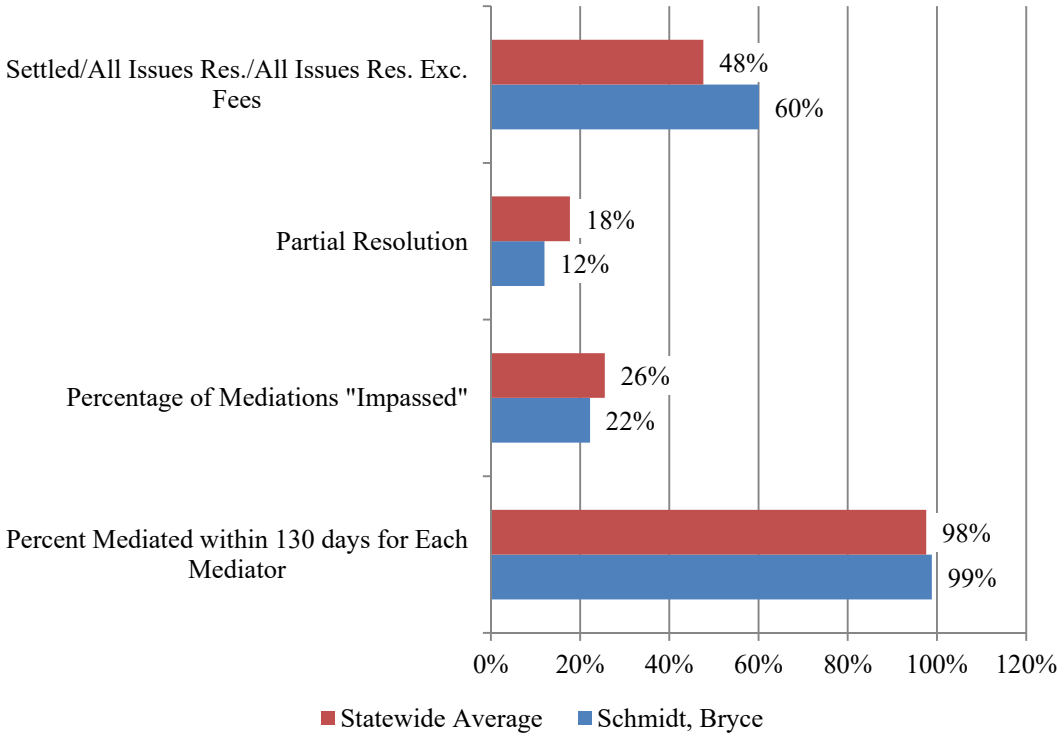
Ross, Adam (FTL)



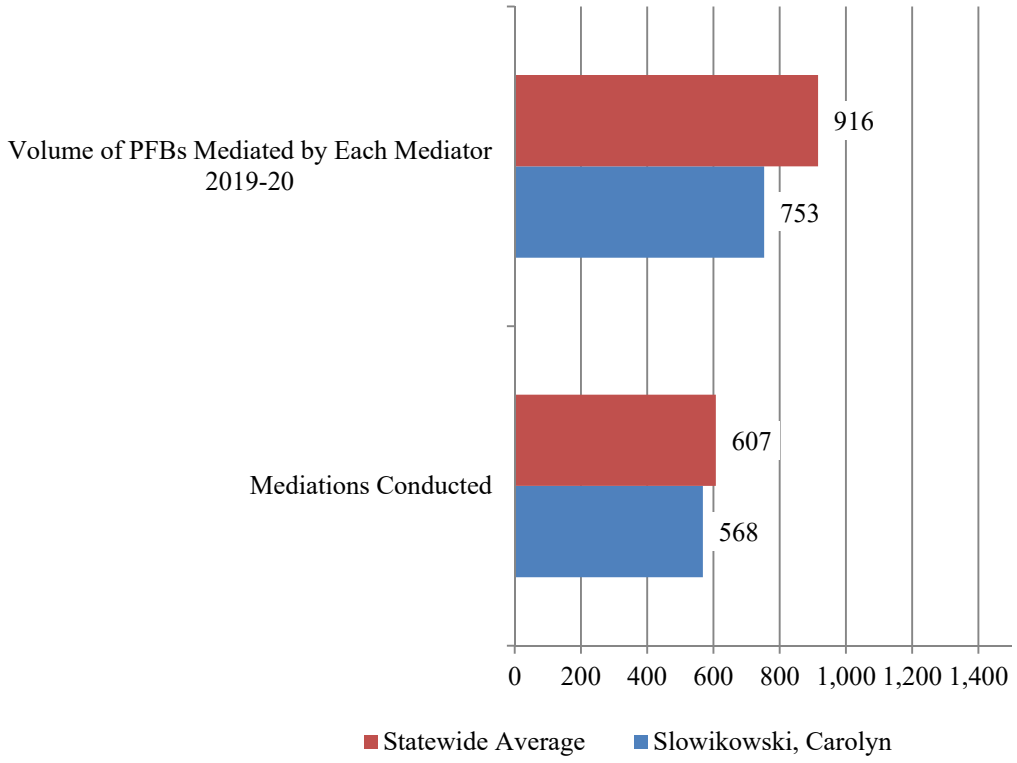


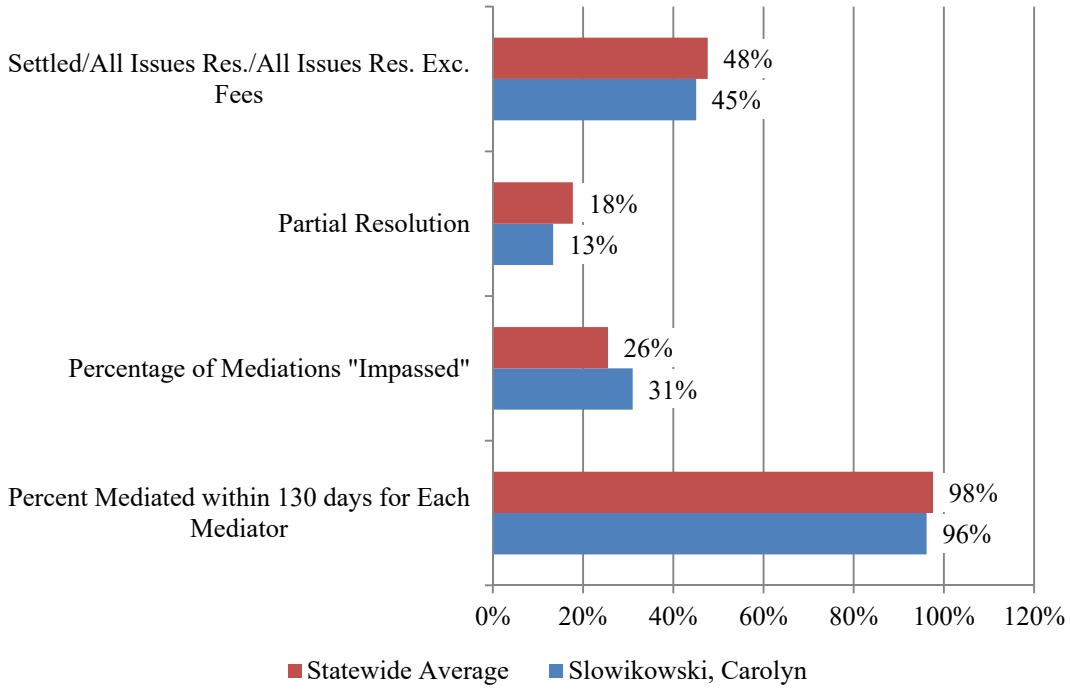
Schmidt, Bryce (GNS)



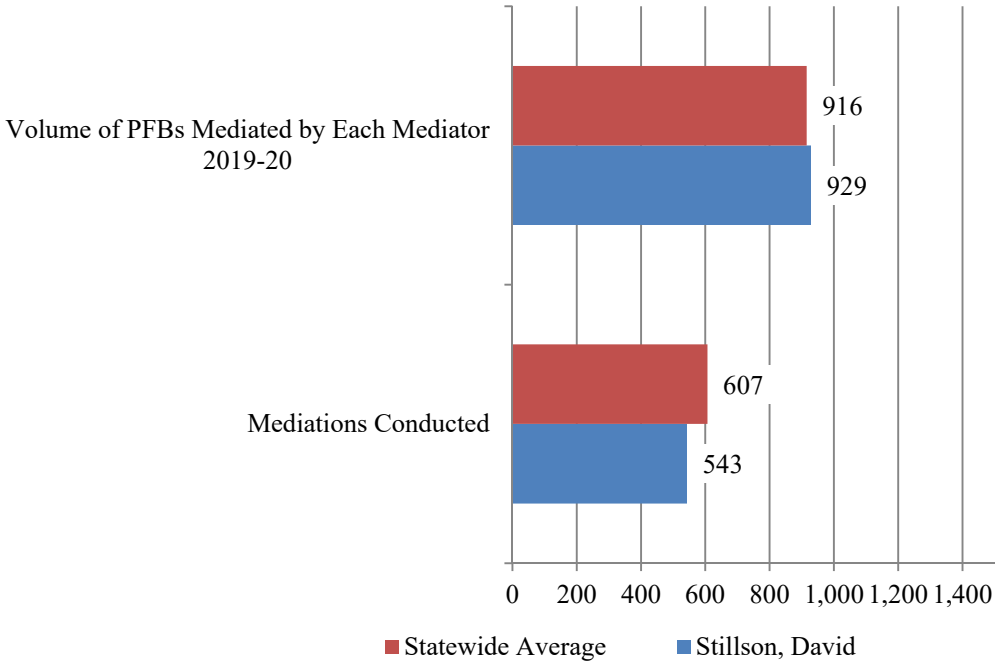


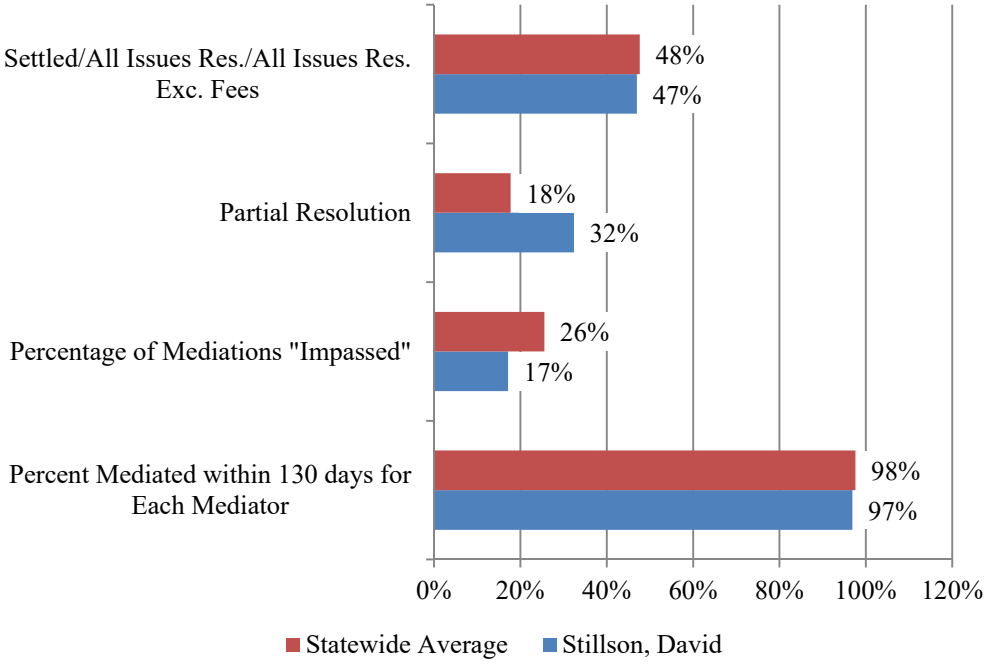
Slowikowski, Carolyn (PNS)



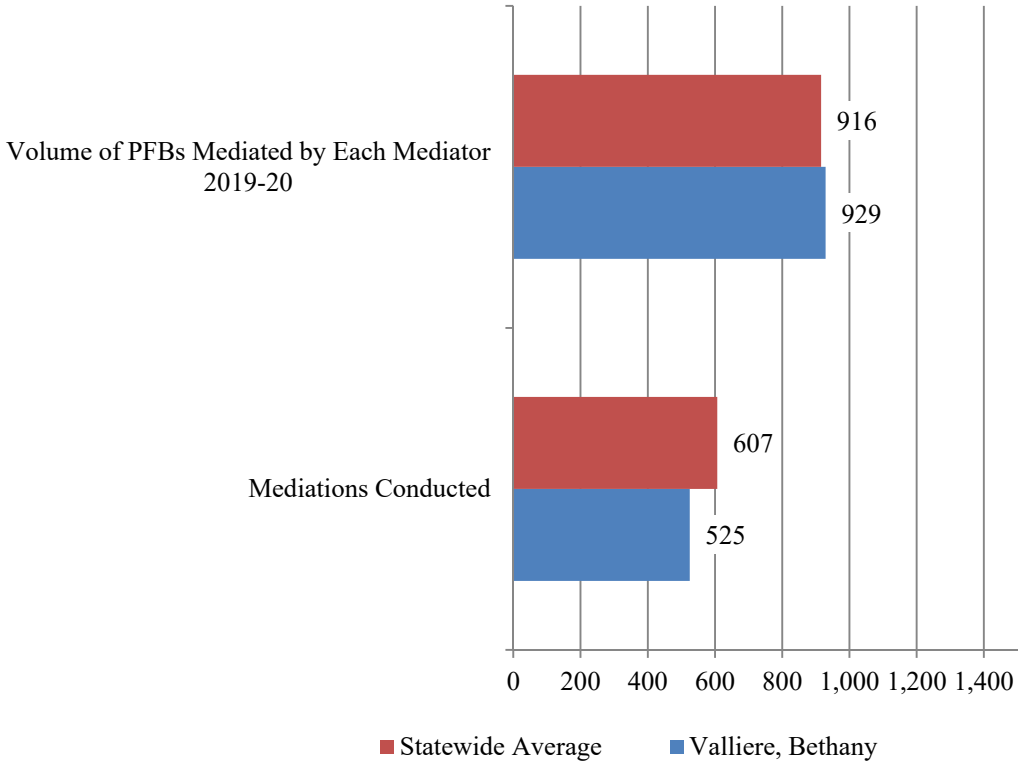


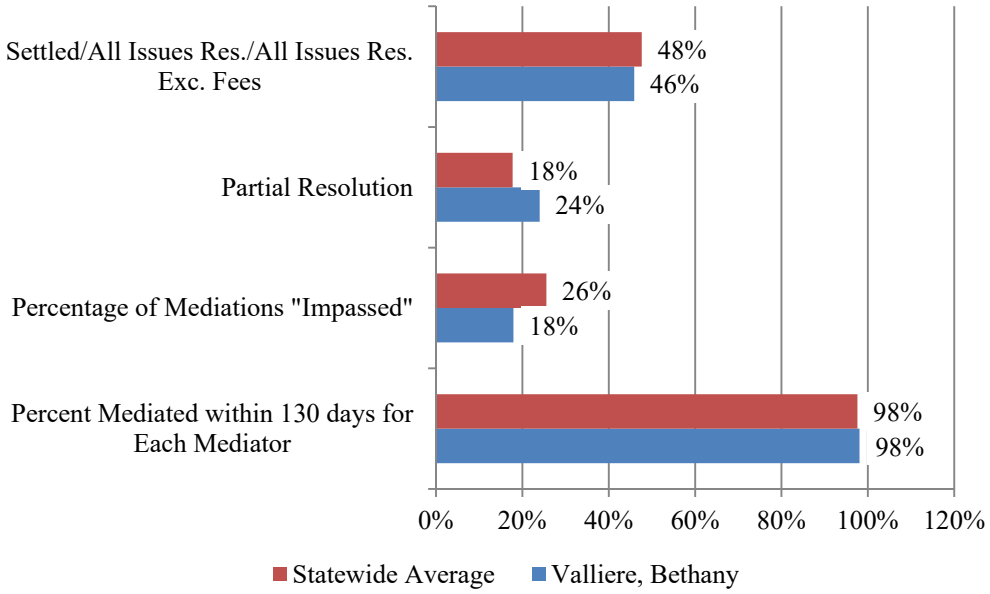
Stillson, David (FTL)[19]





Valliere, Bethany (WPB)





[1] There are a variety of other benefits that could also be claimed. It is common for indemnity claims to be accompanied by claims for penalties (§ 440.20(6)(a), (7), Fla. Stat.) and/or interest (§ 440.20(8)(a), Fla. Stat.). Most benefit claims are accompanied by a claim for attorney fees (§ 440.34, Fla. Stat.).

[2] Waiver is available through order of the Deputy Chief Judge, (§ 440.25(2), Fla. Stat.)

[3] While this has alleviated some congestion on mediator calendars, the increasing PFB filing volumes will overtake that relief and calendars will soon reach capacity in some districts. It appeared likely PFB would be ordered to private mediation in 2019-20 (section 440.25(3)(b), Fla. Stat.). However, the OJCC was able to create a thirtieth mediator position in West Palm Beach in December 2019. That additional capacity and the flattening of PFB filing growth has temporarily forestalled the probability of significant volumes of PFB being ordered to private mediation. It remains probable that day will nonetheless come at some stage following the conclusion of the Novel Corona Virus pandemic (COVID-19).

[4] *Hernandez v. Manatee County Government/Commercial Risk Management, Inc.*, 50 So. 3d 57 (Fla. 1st DCA 2010)("Workers' compensation proceedings are, of necessity, often serial in nature. *See, e.g., Nelson & Co. v. Holtzclaw,* 566 So. 2d 307, 309 (Fla. 1st DCA 1990)").

[5] These districts were Ft. Lauderdale (FTL), Tampa (TPA), and West Palm Beach (WPB). The mediators in TPA were able to cover the additional workload, as were the mediators in FTL. District WPB required out-of-district assistance on a reasonably regular basis, though there were periods during which none was required.

[6] *See*, https://www.fljcc.org/JCC/publications/reports/2016SR-MSR.pdf, last visited August 12, 2020.

[7] Because this position was 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.

[8] *Smith v. Rose Auto Stores,* 596 So. 2d 809, 810 (Fla. 1st DCA 1992)("This court's precedent prior to 2001 established that a workers' compensation settlement was not binding or enforceable until approved by a JCC"). *See also, Cabrera v. Outdoor Empire*, 108 So. 3d 691 (Fla. 1st DCA 2013).

[9] Section 440.20(11)(a), Fla. Stat. ("not represented by counsel" and "filed a written notice of denial within 120 days"); § 440.20(11)(b), Fla. Stat. ("not represented by counsel" and "has attained maximum medical improvement"); § 440.20(11)(c), Fla. Stat. ("represented by counsel").

[10] *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."

[11] Even though § 440.20(11)(a), Fla. Stat., 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), Fla. Stat.

[12] Section 440.192(1), Fla. Stat.

[13] 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.

[14] When an injured worker has multiple pending claims against the same employer or a related entity, it is appropriate to consolidate the claims into one case. When this is not done, it has been discerned that multiple recordings of essentially the same mediation conference have occurred in some cases (one mediation appointment recorded as an outcome in more than one case number, thus a redundancy in the data).

[15] *Supra*, endnote 1.

[16] In the 2017-18 report, this figure was erroneously reported as 26.8%. The correct figure is 24.8%.

[17] In budget reductions, the third mediator position was removed from District WPB in 2012, see supra, note 7. The OJCC created a mediator position from multiple staff positions, and David Stillson began work with the OJCC on January 16, 2018. For a time, he mediated half-time in both Ft. Lauderdale and West Palm Beach. Late in 2019, the OJCC created another mediator position in WPB. William Blatt began with the OJCC on February 3, 2020 in that new position. As such, the statistics here are an amalgam of the efforts of these two.

[18] Mediator Eddie Oramas retired October 31, 2019. Daniel Gross began with the OJCC on January 6, 2020. As such, the statistics here are an amalgam of the efforts of these two.

[19] David Stillson served as mediator in both Ft. Lauderdale (live) and West Palm Beach (telephonic or video) for part of fiscal 2019-20, before a new full time mediator position in WPB afforded the opportunity to focus Mr. Stillson's efforts exclusively in Ft. Lauderdale. [see endnote 7]. As such, the statistics here reflect only his Ft. Lauderdale efforts. His efforts in WPB are reflected in the statistics of Mr. Blatt, page 21.