

STATE OF FLORIDA

Division of Administrative Hearings



2020-21 Annual Report of the Office of the Judges of Compensation Claims

The OJCC Mission:

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

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Daily eFiling rate	2,229 (7.3% decrease from 2,404 in 2019-20; weekdays ¹)	
Total eFiled documents	559,481 (7.3% decrease from 603,499 in 2019-20)	
Total savings to date	Over \$20 million.	
Number of Litigated Cases		13
Gross Petitions filed	69,676 (3.3% decrease from 2019-20)	14
New cases filed	29,752 (4.7% decrease from 2019-20)	18
<i>Pro se</i> cases	9.04% (statistically unchanged from 2019-20)	20
Amount of Litigation Resolved		21
Petitions closed	68,496 (8.7% decrease from 2019-20)	
Cost of Litigation Resolved		24
OJCC budget	\$18,413,933 (1.9% increase from 2019-20)	
Per Petition closed	\$269.00 (fifteen-year avg. = \$236.00)	
Civil court comparison	\$300.00 to \$400.00 Filing Fee	
Child support collected	\$12.7 million in 2020-21, total to date \$218.8 million.	
Number of Mediation Conferences Held		27
Mediations held	19,442 (7% increase from 2019-20)	
100% of mediators averaged less than 130 days to mediation each year 2008-09 to 2019-20)		
Disposition of Mediation Conferences		30
At least some resolution	65.26% (decrease from 65.28% in 2019-20)	
Settled case/all issues resolved	37.41% (increase from 36.26% in 2019-20)	
Number of Continuances Granted for Mediations		33
Mediation continuances	114 (48% decrease from 219 in 2019-20)	
Number of Continuances Granted for Final Hearings		34
Trial continuances	1,659 (30% decrease from 2,369 in 2019-20)	
Outcome of Litigated Cases		35
Amount of Attorney Fees Paid		39
Claimant fees approved	\$241,105,336 (0.22% increase from 2019-20)	
Defense fees reported	\$253,400,379 (5.02% decrease from 2019-20)	

Attorneys' Fees Paid in Each Case According to Accident Year	46
Number of Final Orders Not Issued Within 30 Days after the Final Hearing	48
Not within 30 days 7.22% (increased from 5.82% in 2019-20)	
97% of judges averaged less than 30 days to final order in 2020-21	
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Average days to mediation was 78 days (7.1% decrease from 84 in 2019-20)	
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Executive Summary

The Office of Judges of Compensation Claims (OJCC) is efficient and effective delivering this critical service to Florida's economy at a 2020-21 cost under \$18.5 million. The office continues to monitor the systemic impact of *Miles v. City of Edgewater*,² which has driven claimant attorney fees higher while the value of settlements has decreased. Throughout the COVID period, the OJCC did not close, suspend proceedings, or delay adjudications. Critical performance data for the 2020-21 are as follows:

Economic Impact

The OJCC authorized worker benefits in excess of **\$2 billion** in 2020-21.³ The exact economic impact cannot be ascertained because the total monetary value of most awards is not discernable for months or even years after adjudication or approval.

Case Filings

New cases filed -- **29,752**
A decrease of 4.7% from 2019-20
Gross Petitions filed -- **69,676**
A decrease of 3.3% from 2019-21

Timeliness of Mediation

Average days to mediation -- **78 days**
Decrease from 84 in 2019-20
Statutory requirement: 130 days.

Timeliness of Trials

Average days to trial -- **199 days**
Increase from 186 in 2019-20
Statutory requirement: 210 days.

Timeliness of Orders

Average days from trial to order -- **17 days**
Increase from 14 in 2019-20
Statutory requirement: 30 days

Child Support Arrearages Collected

\$12.7 million

Electronic Filing Cost Savings to date

Total eFiled documents in 2020-21 -- 559,481
Decrease of 7.29 % from 2019-20
Total user savings -- **\$5,451,000**

Attorney Fees paid

Claimant fees approved -- **\$240,867,847**
An increase of .12% from 2019-20
Defense fees reported -- **\$253,991,725**
A decrease of 5.02% from 2019-20

Introduction

This report of the Office of the Judges of Compensation Claims (“OJCC”) is published pursuant to section 440.45(5), Florida Statutes.⁴ It documents that the OJCC continues to develop, innovate, and deliver consistent performance. The measures documented in this report for fiscal year 2020-21 portray an agency which has persistently leveraged technology; the pandemic of 2020 highlighted that efficacy and efficiency as agencies elsewhere across the country faltered, stalled, and even closed. The OJCC persevered, held mediations, conducted trials, and remained open throughout. 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.⁵ These reports memorialize the struggles this agency experienced with data uniformity and reporting through the early twenty-first century. This 2020-21 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 nineteen years, including pioneering electronic filing and 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 thirteen fiscal years (2008-09 through 2020-21) 100% of the OJCC mediators achieved an average time to mediation within that 130-day statutory parameter, though some individual cases required more time. These averages prove that this agency remains effective at processing incoming litigation, providing overall timely delivery of mediation services, and effectively documenting these efforts. The enterprise 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 Florida’s employees and employers.

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 first defined key terms in 2006, including “trial.”⁶ 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.⁷ 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. In 2020-21, trial orders were entered within the 30-day parameter 92.78% of the time; 97% of the judges averaged less than 30 days between trial commencing and final order.

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,⁸ 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.⁹ Even prior to the legislative mandate, the OJCC had mandated electronic filing in the Rules of Procedure for Workers’ Compensation Adjudications.¹⁰ As a result, the volume of incoming U.S. Mail dwindled in 2010-11 and OJCC receipt of U.S. Mail now remains uncommon.¹¹

Electronic service¹² 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 more than \$1,000,000 annually. In fiscal 2019-20, the “registered employer” process was added to the database. This rolled out with three employers¹³ and has expanded 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 continued through 2019-20. In 2020, the pandemic dictated a new paradigm to allow video appearance without presence in an OJCC District Office. The business world shifted to an Internet-based video teleconference paradigm virtually overnight. The OJCC adopted the Zoom¹⁴ platform and transitioned. 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. That largely continued through the first half of 2020-21, and the system transitioned back to a mixture of live and video proceedings by year’s end.

The cost advantages of the Zoom platform led to a decision to decommission all VTS units in the Florida OJCC in fiscal 2021-22. The Zoom platform similarly affords flexibility to accommodate workload distribution among the 31 JCCs, and to continue to accommodate judicial disqualifications and recusals.¹⁵ This innovation is more accessible by remote users than the prior proprietary VTS system, maintains the flexibility and value to the people of Florida through reduced travel by judges, and is economically superior to the VTS system.

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 in the community 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 59-60.

The OJCC is an adjudicatory system, a “tribunal,” situated within the Executive branch.¹⁶ The OJCC is funded entirely by assessments on the workers’ compensation industry, through the Workers’ Compensation Administrative Trust Fund¹⁷ (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 funds. The vast majority, about ninety-five percent (94.56%), of the OJCC budget is expended on payroll, rent for the seventeen OJCC District Offices¹⁸ 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 cumulative expense associated with the development and deployment of these tools is approximately \$1.9 million overall.¹⁹ By comparison, other states have developed systems through special appropriations, deploying less robust processes, at a far greater cost.²⁰

The eJCC system provides electronic service (eService) of filed documents²¹ to all insurance carriers and servicing agents, contemporaneously with filing. EService is also available for employers that register, also affording such employers full access to litigation details and filed documents. The use of employer service eliminates 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 (eService is the only such approved process). As employers register and enjoy the benefits of eService, the last remaining mandatory certified mail expense in Florida workers' compensation can be minimized.²²

The OJCC has invested a great deal of time in the innovative electronic filing and service platforms that have been deployed. Those programs are now 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 benefit Floridians.

It is critical to understand that Florida workers' compensation is a self-executing system defined by chapter 440, Florida Statutes.²³ The purpose of workers' compensation is to provide individuals injured at work with certain defined benefits for 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. The participants depend upon predictability and consistency in the interpretation of the law. Some contend that recent history demonstrates a periodically unstable appellate atmosphere in this regard;²⁴ Florida's appellate courts must be consistent and correct. Too many Floridians rely upon workers' compensation for there to be perceptions of vacillation and uncertainty.

COVID-19, Pandemic, and Pivot

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

In 2019-20, Petition volumes were trending upward through the first three fiscal 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. That effect was coincident with the onset of Florida infections beginning March 1, 2020, and the circumstances thereafter. The *2019-20 OJCC Annual Report* details pandemic impacts on employment as businesses reacted to SARS-CoV-2, government constraints, and various recommendations from health experts. It is clear that filing volumes in 2019-20 would have been increased but for the pandemic.

The pandemic impact continued through 2020-21. The *Plan for Florida's Recovery* was implemented beginning May 4, 2020, with significant phases thereafter on June 5, 2020 and September 25, 2020.²⁵ Thus, the reopening had begun at the outset of the fiscal year, but continued thereafter. These "phases" were detailed in the *Roadmap for Re-Opening* published by the Re-Open Florida Task Force.²⁶ This provides an overview of the pandemic onset, reactions, and plans. It is fair to say that business re-opening since May 2020 has varied in pace and process depending upon location, industry, inoculation, and more. Without question, vaccination approval has played a critical role in employment, recovery, and return to normalcy. The first SARS-CoV-2 vaccine was deployed in Florida in December 2020.²⁷ The vaccination was not open to all Florida adults until April 2021.²⁸ Therefore, the whole of fiscal 2020-21 has been affected to some degree by the ongoing presence of the virus, the implementation of inoculation, and business efforts to return to pre-pandemic process and production.

Throughout fiscal 2020-21 various businesses in the workers' compensation community continued to rely upon telecommuting and other tactics to minimize viral threats. At the close of 2020-21, anecdotal evidence supported that some insurance carriers, law offices, and others still had not returned to pre-pandemic function. Some voice hopes to resume normalcy early in calendar 2022. The impacts on the medical profession have similarly been profound in terms of facility capacity for worker care and treatment and in a notable shift to telemedicine.

Elective medical procedures in Florida were suspended by Executive Order 20-72. That was retracted by Executive Order 20-112 in early May 2020.²⁹ However, in July 2020, as this fiscal year began, hospitals in Central Florida again began deferring elective surgeries.³⁰ This impacted other portions of the state in July,³¹ including population centers Broward and Dade counties.³² By August, this was impacting most metropolitan areas.³³ Anecdotally, there were periodic reports of doctor office closures, restrictions on patient access, and other care delays related to depositions and document production. Thus, virus reactions and precautions impacted injured workers. By July 2020, the Florida Division of Workers' Compensation reported 27,867 telemedicine billings.³⁴ By the end of fiscal year 2020-21, 83,146 telemedicine billings were reported.³⁵ As the pandemic evolved, there was adjustment in the medical community. Care delivery for injured workers was impacted.

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.³⁶ Initially, that was through May 31, 2020, when the OJCC returned to the operation of Rule 60Q6.110(5)(a),³⁷ by which telephonic appearance at mediation is within the discretion of the assigned mediator. However, the mandate was imposed again on June 28, 2020 due to the ongoing challenges of the virus. That mandate remained until March 1, 2021. As that mandate ended, mediations already noticed by that time largely proceeded thereafter for approximately 90 days telephonically as noticed. Furthermore, following the return to mediator discretion, many parties requested permission to attend mediation telephonically. Significant return to in-person mediation had not occurred by the end of the fiscal year. Despite that adjustment, the OJCC conducted more mediations in 2020-21, and the success of those mediations was notable.³⁸

The OJCC began conducting hearings by video teleconference through a proprietary network in the late 20th century. As a result, the judges and lawyers were familiar, and largely comfortable, with such proceedings at the outset of the pandemic. The OJCC elected to provide access to an alternative, Internet-based, video teleconference 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. Proceedings were held in 2020-21 using that platform, the OJCC District Office videoconference facilities, telephone, and in-person proceedings.

External limitations have been imposed on proceedings. Two of the OJCC offices are located in state office buildings (Miami and Port St. Lucie). Access to those buildings by the public was constrained and restricted beginning in the spring of 2020 through early May 2021. Those restrictions, outside the control of this Office, precluded in-person proceedings in those Districts. Additionally, there were minimal (less than 5) isolated instances in which various District offices were closed briefly for sanitation following potential viral exposures.

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, particularly where mass transit was required. The telecommuting effort was principled and focused. At most, approximately 24% of OJCC employees had telecommuted for some limited period, pursuant to specific written agreements.

There were anecdotal reports of state agencies closing completely due to COVID-19.³⁹ Various workers' compensation officials across the country touted their efforts to shift to video teleconference technology, implement paperless processes, and otherwise leverage technology to adapt. The Florida OJCC required little such adaptation because of its long history with electronic filing, remote proceedings, and existing tools. Thus, operations of this Office remained remarkably consistent and reliable as others struggled to adapt and persevere.

The Division of Workers' Compensation has provided monthly updates regarding the reports of lost-time exposures and the financial impact of those claims.⁴⁰ 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.⁴¹ This is despite Executive action there and in other states to legislate COVID-19/SARS-CoV-2 presumptions for various classes of workers. It was predicted that such presumptions, and the burdens of proof in workers' compensation for occupational disease, would be a significant subject of state legislative discussions in 2020-21. However, the National Council on Compensation Insurance (NCCI) update does not support that a significant number of 2021 bills were enacted.⁴²

A significant volume of Florida workers reported workplace exposures to COVID-19/SARS-CoV-2 in 2019-20 and 2020-21. The Florida Division of Workers' Compensation 2021 COVID-19 Report Data Summary as of

August 31, 2021, reflected 52,636 indemnity claims related to COVID-19. Of these, 40,173 were already closed, representing a total payout of \$52,708,877 (\$1,312.04 per claim average); 12,463 remained “Open Indemnity Claims” at that time with total payout of \$72,061,817 (\$5,782.06 per claim average). The overall total expenditure for open and closed claims was \$124,770,694 (\$2,370.44 per claim average). The 52,636 reported indemnity claims is a significant volume, but a small percentage of working Floridians; the Miami Herald estimates the total Florida workforce at 10.7 million, thus the total indemnity claims equal about one half of one percent.⁴³

An even smaller volume of COVID-19 claims had entered litigation according to searches of the OJCC database. The total as of publication of the 2019-20 OJCC Annual Report was believed to be less than 200. As of October 2021, the total is believed to be less than 560. It is impractical to categorize those claims except by manual review. Notably, however, 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

There has been considerable litigation in the last two years regarding the tests for compensability of workers’ compensation injuries. The District Court in 2019 rendered *Valcourt-Williams v. Sedgwick*,⁴⁴ and provided new insight into the “arising out of” test for compensability. This is an *en banc* decision, thus the conclusions are of broad application and effect.

Historically, compensability was dependent upon two tests: an accident/injury must (1) arise out of, and (2) be in the “course and scope of” employment. These are long-standing parameters, striving to define workers’ compensation entitlement without workers’ compensation coverage “tak(ing) the place of general health and accident insurance.”⁴⁵ Over time, the various discussions of, and holdings regarding, these standards were perceived to be challenging to apply. The “course and scope” is essentially temporal and situational relatedness. To be in the “course and scope,” an injury must occur “at a place where the employee would reasonably be, while fulfilling her (his) duties.”⁴⁶ While there are challenges with that test, it is the “arising out of” that is currently of moment. In 2019, the Court applied the workers’ compensation statute as written, which it had previously declined to do. The *Valcourt-Williams* decision therefore impacted the manner in which accidents and injuries are investigated, compensated, or litigated.

Many were surprised by the *Valcourt-Williams* holding. This is likely related to a volume of interpretations of “arising out of” rendered over decades. When workers’ compensation came to Florida in 1935, the term was left to the courts to define. As statutory reform was considered in the early 1990s, there were those who saw the court interpretations somewhat settled, despite the potential for fact-specific analyses providing case-specific challenges. Then, the legislature redefined “arising out of” in the September 1993 special legislative session. That redefinition was interpreted intriguingly in *Vigliotti v. K-Mart Corp.*⁴⁷ There, the Court was not convinced of the efficacy of that legislative amendment, and critics felt it failed to apply the new statutory definition as written.

The “arising out of” test thereafter continued to be applied consistently with the prior judicial definitions, and in a manner largely deferential to employees. This changed in 2011 with the Court’s decision in *Sentry Ins. Co. v. Hamlin*,⁴⁸ a panel decision by three appellate judges. The *Hamlin* Court was drawn to the statutory “arising out of,” in deciding questions of causation. Thereafter, however, other panel decisions were rendered that eschewed or ignored the *Hamlin* analysis and the statutory definition, continuing instead to apply broader judicial interpretations. The 2019 decision in *Valcourt-Williams* was *en banc*, a decision of the entire District Court. There, the Court explained the statutory definition, distinguished various precedents, recognized the logic of the analysis in *Hamlin*, and relied upon the statutory definition as written in 1993.⁴⁹

The *Valcourt-Williams* decision has been cited in multiple claims since. A search of trial orders located references in 24 trial orders; 15 of those in fiscal 2020-21.⁵⁰ A number of those cases are now pending review by the Court. There is interest in whether this *en banc* decision will be the final word, or whether there will be exceptions to, or modifications of, the analysis of “arising out of.” In part, this doubt is fueled by the factual setting of that case, which involved remote work and an accident that occurred on a work break in the employee’s own kitchen. Some contend these facts distinguish the case from other industrial accidents. Whether

interpretations of “arising out of” will remain consistent with *Valcourt-Williams* is of interest to workers’ compensation because there could be a notable impact on the volume of compensable work accidents following the Court’s analysis. There is also potential, if there are pre-requisites such as negligence construed, for a converse impact on worker lawsuits for tort damages and the protections of exclusive remedy.⁵¹

Budget and Training Issues

The duties of OJCC staff have evolved. Formerly “secretaries” of various descriptions, office staff are now predominantly clerks. Their duties are far more similar to those of paraprofessionals employed in the Florida Courts than to secretarial staff employed 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 clerk 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 therefore invariably requires extensive training in the optimal use of this software.

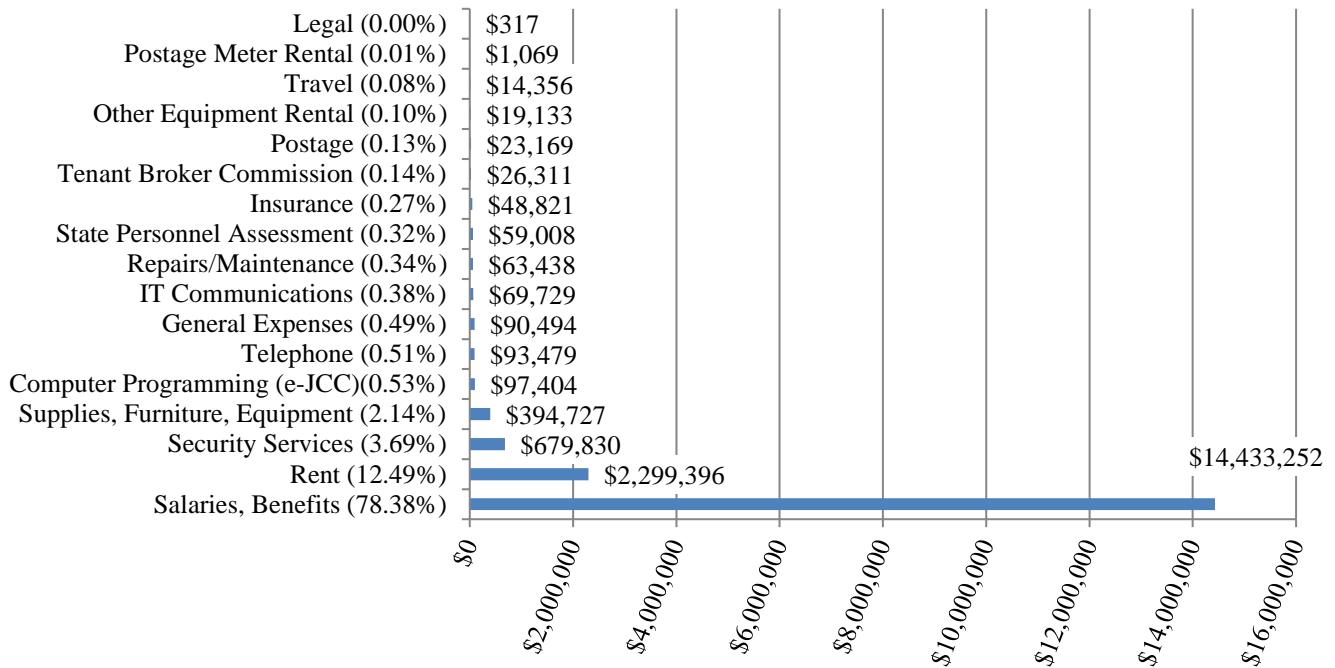
The Florida court system defined in Article V. is subject to different budgetary constraints and pay rates than the Executive branch. Article V. Court employees, performing less technical or specialized, and more clerical services in that litigation adjudication system, earn starting annual salaries up to \$7,291.56 more than comparably titled OJCC paraprofessionals.⁵² 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. Staff turnover in some portions of Florida has been as high as 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 salary increases for 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.⁵³

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 an 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 preside over 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. Virtually all of these orders are time-consuming and involved, requiring more time than is necessary for the trial itself. The issues require resolution of factual disagreements, legal research, drafting, and careful revision. Regardless of the subtle distinctions in responsibility compared to Article V. judges, 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 for two decades. The turn of the century brought new leadership, vibrancy, and focus. The cost per-Petition closed has remained reasonable, and is well below even the filing fee charged by the Article V. Courts. The transition to digital processes and systems, 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 (in horizontal axis) have not changed markedly in recent years. However, inflation continues to drive lease rates⁵⁴ 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-four and one-half percent (94.56%) of the agency budget is devoted to salaries/benefits, rent, and security services.⁵⁵ As the Legislature considers potential budget alternatives, it is critical that the vast majority of this agency’s budget is critical and statutorily mandated.⁵⁶ There is no method by which this Office could reduce budget beyond approximately 5% without reductions in these three critical categories.

Data Collection and Reporting

This report is produced and published pursuant to statutory mandate. See §440.45(5), Florida Statutes.⁵⁷ 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*⁵⁸ 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. Those efforts are described in detail in the *2006-07 OJCC Annual Report*,⁵⁹ and included the publication of an illustrated database user manual, as well as central and regional staff training. That database user manual was revised periodically⁶⁰ 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. In the production of each annual report, particular attention is afforded to all data sets in an attempt to identify any potential basis for such errors or omissions. Corrections are sometimes necessary.⁶¹ All empirical data used in preparation of this report is public record and is available for review, and there is confidence in the accuracy of the figures reported.

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.⁶² A second area of concern is the election by some judges to ignore the terms of section 440.25, Florida Statutes, *see* page 55, Statutory Measures, “Final Hearing Continuance.” Anecdotally, some judges note that compliance, including a new trial date in each continuance order, 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. In one recent exceptional example, a case was continued ten times over a two-year period often without written motions or orders complying with the statute.⁶³ However, all JCCs appoint EMA and face similar challenges. Despite those challenges, many judges nonetheless comply with this statutory requirement.

Judicial independence dictates interpretation of statutes and rules must be left to the individual adjudicator 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. The Florida OJCC continues to strive for greater consistency in the application of statutory and rule requirements.

Electronic Filing Initiative:

Having led the way into the twenty-first century in 2005-06 with deployment of electronic filing⁶⁵ (“eFiling,” or “eJCC”), the OJCC has continued to revise and leverage this process. In 2011-12, the OJCC began to enforce the mandatory⁶⁶ 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 significant 2011-12 filing volume of almost one-half million documents demonstrates significant community engagement even prior to the legislative mandate.

In 2012-13, programming was completed to allow electronic service⁶⁷ (eService) of pleadings among and between lawyers and insurance carriers. The result is a neatly integrated electronic filing and service system that is exemplary.⁶⁸ In 2019, the programming was completed to allow electronic service upon Registered Employers also. This addition likely addresses the final enterprise-deployment of eService.

Since its deployment, the eJCC filing volumes increased persistently, other than a very small decrease in 2017-18 (Hurricane Irma made landfall September 10, 2017. Multiple OJCC offices closed as did many attorney offices throughout Florida). The figures for 2020-21 are the first significant decrease in e-filed documents since the system was deployed. The filings decreased 7.3% in 2020-21, to just over the filing volume in 2015-16. Petition filing also decreased, but not as significantly, *see infra* pages 14-17. The impacts of the pandemic are thus apparent.

Using the parameters described in the *2006-07 OJCC Annual Report*,⁶⁹ the cumulative end-user savings generated by this eFiling system, by the end of fiscal 2020-21, were at least five million four hundred fifty-one thousand six hundred seventy-three dollars (\$5,451,672.53). The additional savings to the OJCC is at least seven million five hundred forty-seven thousand four hundred eighty-eight dollars (\$7,547,488.30). The combination of savings from eFiling alone is therefore almost thirteen million dollars (\$12,999,160.83), and the total OJCC investment to date is only approximately \$1.9 million.

Fiscal Year	Filing Volume	Percent Change
2005-06	361	
2006-07	24,133	6,585%
2007-08	193,745	702.82%
2008-09	328,660	69.64%
2009-10	380,897	15.89%
2010-11	451,649	18.58%
2011-12 ⁶⁴	461,820	2.25%
2012-13	502,448	8.80%
2013-14	521,205	3.73%
2014-15	522,321	0.21%
2015-16	545,695	4.48%
2016-17	583,485	6.93%
2017-18	582,762	-0.12%
2018-19	601,378	3.19%
2019-20	603,499	0.35%
2020-21	559,481	-7.29%

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 eFiling. This process change has enabled an additional annual savings to practitioners and carriers in excess of one million dollars⁷⁰ due to the ability to serve each other documents electronically. The eService savings (\$12,999,160.83), combined with eFiling savings (\$7.5 million = 7.5 years at \$1 million each) is thus well in excess of twenty million dollars. The JCC return on investment from eFiling/eService is over 1,000%.⁷¹ This achievement is particularly gratifying in light of issues and complications experienced by other states' systems that have expended large special allocations to build and deploy electronic filing.⁷² Notably, the Office of Judges of Compensation Claims' success with eFiling and eService has been achieved with no need for 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. 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 OJCC 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 cases."⁷³ In workers' compensation, there simply is no clear definition for "cases."⁷⁴ Litigation in Florida workers' compensation is usually instigated with a Petition for Benefits ("PFB"). Each PFB might seek a single benefit, or many benefits.⁷⁵ 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.⁷⁶ 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 2020-21 could seek resolution of an issue regarding an accident that occurred that year or perhaps many years prior.⁷⁷

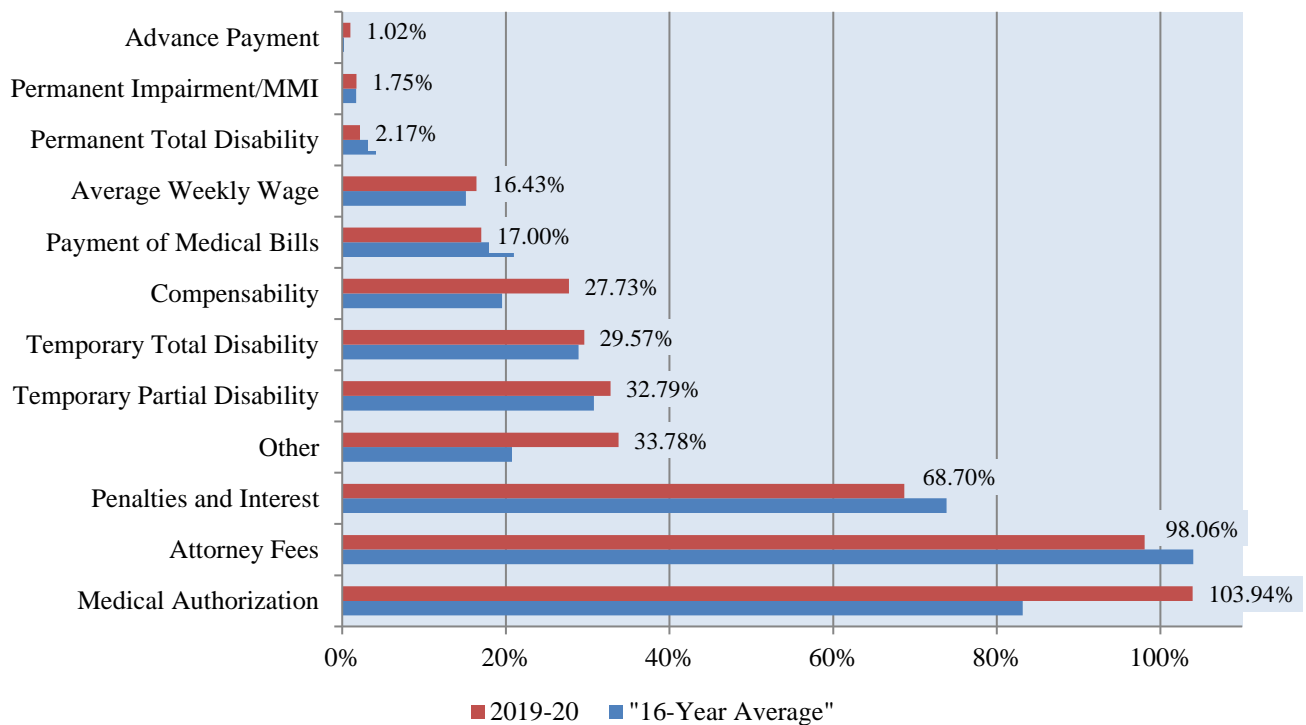
Another viable measure of volume is the "new case" PFBs filed annually. "New cases" may begin with a motion or PFB, which likewise reference a date of accident that is either recent or remote. However, each "new case" PFB certainly represents an accident for that particular injured worker that is new to litigation, i.e. "new" to the OJCC.⁷⁸ This metric measures "new" litigation, but ignores the intensity of litigation. Conversely, the overall PFB volume 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 cases." Because definition of "cases" presents these inherent complications, and because there are merits regarding the efficacy of both the "gross 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;⁷⁹ frequent examples include motions for attorney fees, prevailing-party costs, enforcing agreements, and similar evidentiary motions.⁸⁰ Such motions occur in both existing litigation and in "new cases." Notably, each of the available metrics, PFB and "new cases," largely ignores the volume of litigated cases that are instigated by such motions instead of PFB. Although these motions⁸¹ also represent "litigated" cases, it is believed that cases instigated by PFB filing effectively represent litigation volume trends statistically.

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. Usually, 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 database documents the categories of benefits sought in each PFB. The following chart depicts the average frequency of claims for these various distinct categories within PFBs filed over the seventeen-year period 2003-04 through 2019-20 (blue bars on the bottom of each category) and the rate of filing for those categories in the current fiscal year, 2020-21 (red bars). The rate of medical authorization claims has been noteworthy for the last ten fiscal years (2011-12 through 2020-21). For the last five years, the rate of medical authorization claims was particularly noteworthy, approaching or exceeding 100% aggregate. The exceeding of 100% stems from the potential for a single Petition to plead multiple discreet claims for medical authorization. The volume of “compensability” and “other” disputes was also notably above average in each of the last nine fiscal years (2012-13 through 2020-21). However, as reported in the various annual Settlement and Mediation Reports,⁸² the volume of settlements on denied compensability cases has not fluctuated similarly. This is attributable to the very small data set represented by the denied cases reported there⁸³ and the over-pleading of compensability when it is not necessarily denied.⁸⁴



Gross Petition for Benefits (“PFB”) Filing

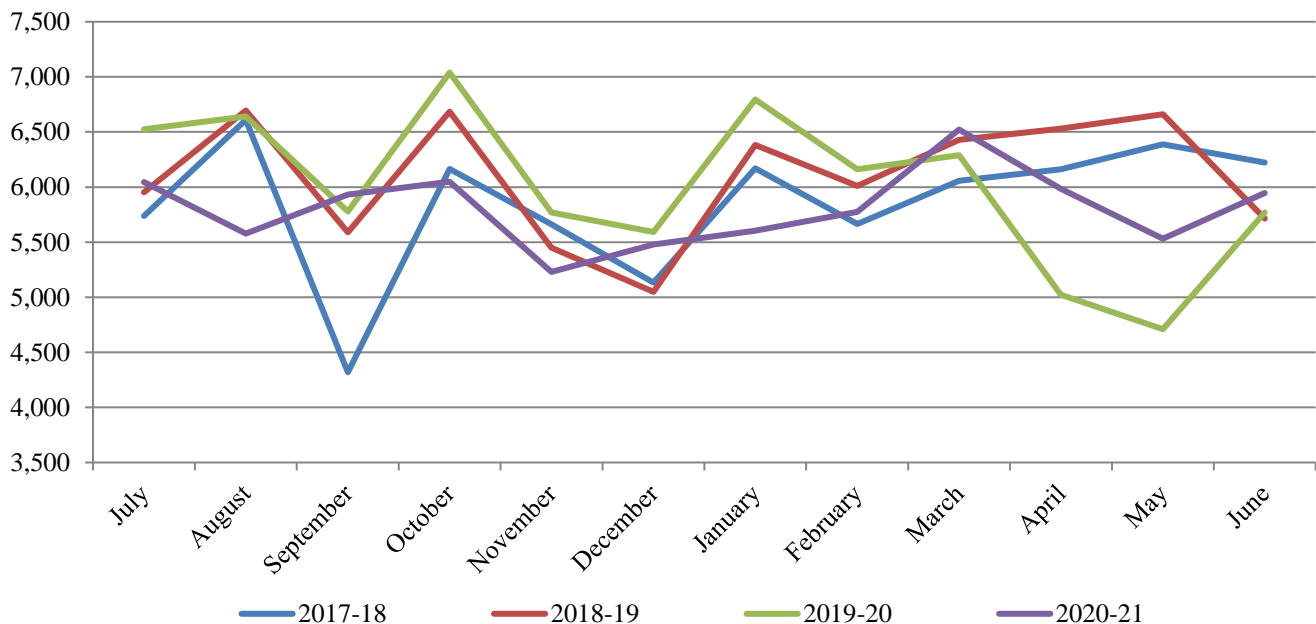
The Florida Legislature enacted significant amendments to the Florida Workers’ Compensation Law in 1994 and again in 2003. After the 1994 reforms, PFB filing volume consistently increased each year (*see infra*, page 17). Just prior to the 2003 reforms, annual PFB filings peaked at 151,021. The progressive 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 over fifteen percent (15.2% to 15.9%) in 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 2008-09.⁸⁵

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 in the wake of the appellate decisions in *Castellanos*⁸⁶ and *Miles*.⁸⁷ 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.⁸⁸ There is some anecdotal support for Hurricane Irma impacting the 2017-18 volumes, secondary to the long post-storm recovery. Having paused for a year, the trend returned to increase in 2018-19 with a four percent (4.1%) increase.⁸⁹

2019-20 brought a small (-1.4%) decrease in Petition volume. The relationship between that decrease and the onset of the COVID-19 pandemic is now clear. 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 drastically in April (-23%) and May (-29%), but then increased slightly (1%) in June. The COVID-19 “lockdown” in Florida coincidentally began April 1, 2020.⁹⁰ The state was significantly constrained through the beginning of “phase one” reopening May 4, 2020.⁹¹ “Phase two” of the reopening was instigated in June 2020, but multiple local governments implemented broader restrictions and constraints.⁹² Thus, the impacts during the fourth quarter of 2019-20 are patent. Furthermore, the statistics for 2020-21 illustrate persistent impact on the volume of litigation, confirming that the 2019-20 fourth-quarter filing decreases resulted from the pandemic.

The following illustrates Petition filing monthly for the last 4 years. The probable Hurricane Irma impact in September (blue, 2017-18) is apparent as is the marked decreases late in 2019-20 (green). The relative consistency of lower filings in 2020-21 is apparent (purple); rarely were 2020-21 filings on par with prior years (September and March were notable exceptions).

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%
2020-21	69,676	-3.3%

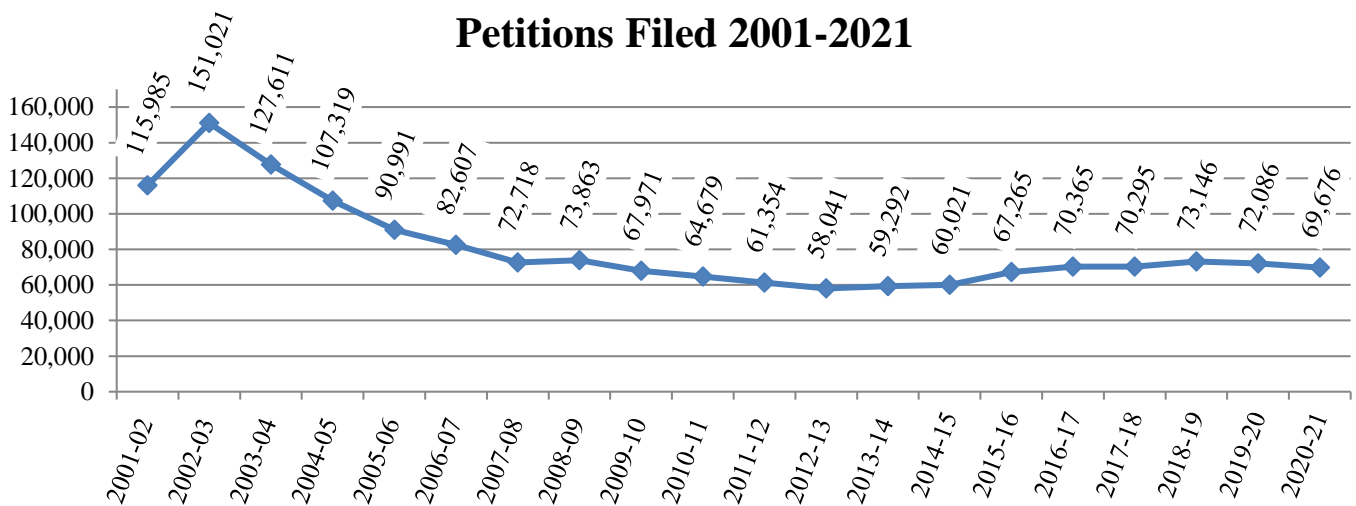


While the 2020-21 PFB filings are decreased over 2019-20 (-3.3%), the overall volume remains significant. The total for 2020-21 (69,676) well exceeded the 2015-16 total (67,265), and was close to the volumes in 2016-17 (+689) and 2017-18 (-619).

Notably, various workers' compensation adjudication systems closed in response to COVID. Some remained closed or restricted through the end of fiscal 2020-21. The Florida OJCC was neither closed nor constrained. This Office maintained operations, held mediations, conducted trials, and issued orders and decisions despite the pandemic. The pandemic impacted operations, but did not interrupt or preclude mediations and adjudications.

There are those who associate the pre-COVID-19 increase in Petition filing rates to attorney fee constraints under the statute, or the subsequent absence thereof. In the 2016-17 OJCC Annual Report there is further analysis of perceptions regarding the potential impacts of the 2003 statutory amendments, the Florida Supreme Court decision in *Murray v. Mariner Health*,⁹³ the 2009 Florida Legislature amendment to again forbid hourly fees,⁹⁴ the Florida Supreme Court decision in *Castellanos v. Next Door Company*⁹⁵ and the Florida First District Court of Appeal decision in *Miles v. City of Edgewater Police*.⁹⁶ Perceptions regarding these cases continue to form and refine. Contrary to predictions, litigation has not returned even close to early 21st century volumes in the wake of the two 2016 attorney fee decisions. Furthermore, while there is demonstrable recent increase in claimant attorney fees, this is not markedly attributable to hourly litigation fees (*see infra*, page 43).

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 drove the post-2016 trend to increase, or the plateau in 2017-18.⁹⁷ The impact of COVID-19 in 2019-20 and 2020-21 is seemingly more apparent.



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 correlation. However, any perceived correlation between litigation filing rates and insurance rates is difficult to defend empirically. Filing volumes and rates are summarized in the chart on the next page.

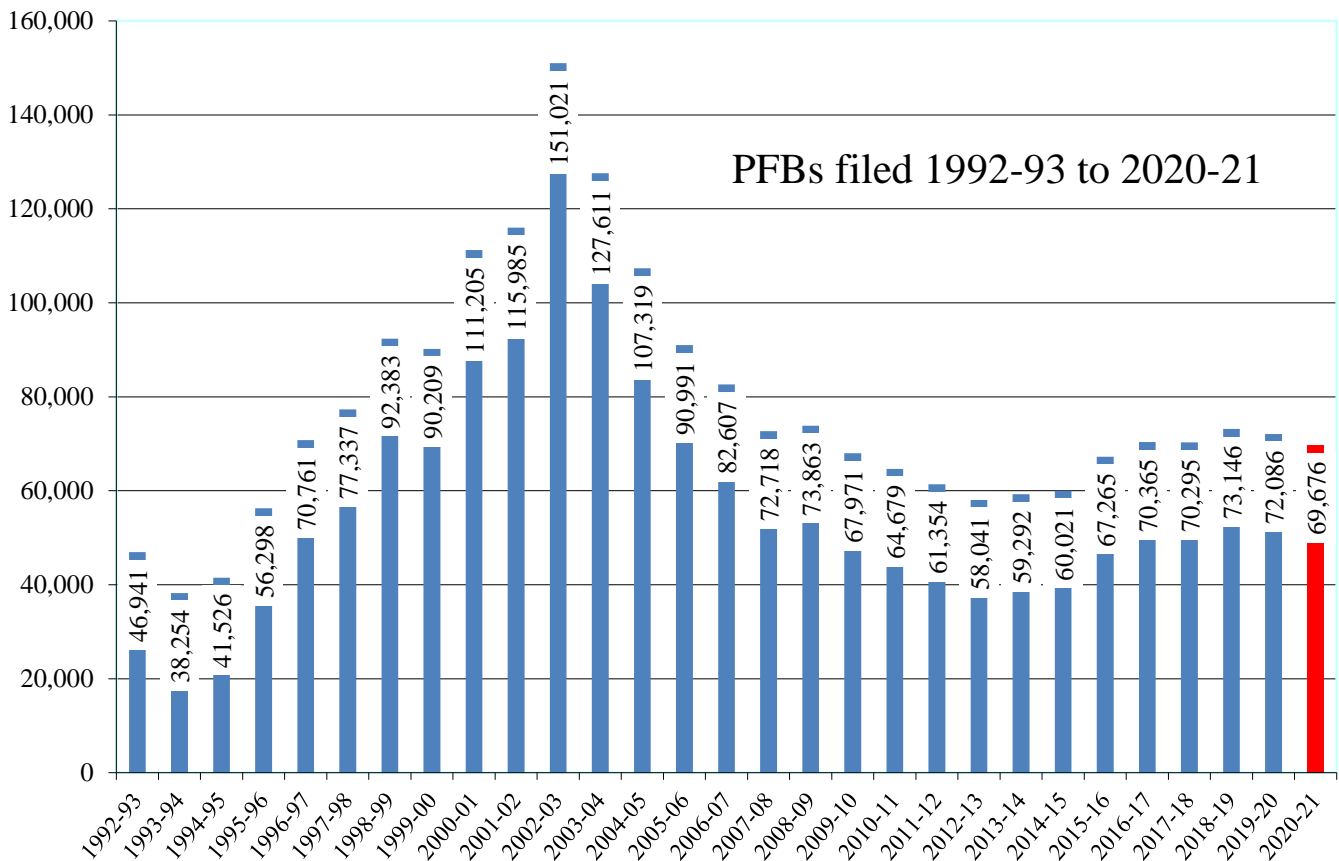
Despite consistently decreasing PFB filing rates between 2009-10 and 2012-13, workers' compensation rates increased annually as depicted in the chart below. Notably, the rate changes are approved in the fall of each year. Such rate changes are reactive to past experience and thus logically relate, if at all, to activity or PFB volumes prior to each described premium change. (*See Fee by Accident Year* discussion, page 46). 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. Thus, the majority of claims never enter the Office of Judges of Compensation Claims' system for mediation or trial. Therefore, the Petition filing volume represents only a percentage of all work accidents. Premiums instead

relate to losses on the entire population of work accidents. 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 1992-93.¹¹¹ This belies the 1994 reform’s intention to curtail litigation. Instead, the PFB filings increased markedly and reasonably steadily 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 (151,021) in recent years, it has never returned to the baseline of 1994, and is again trending upward. The 2020-21 Petition filings (69,676) remain about 82% higher than in 1993-94 (38,254).

Presuming the accuracy of these DLES volumes,¹¹² the PFB filing rate in 2012-13 was the lowest in eighteen years, since 1995-96. The trend recently changed, and Petition filing increased. It appears that would have continued if not for the impact of COVID-19/SARS-CoV-2 in 2019-20.¹¹³ The decrease in 2020-21 is more pronounced, however filing remains significantly higher than demonstrated in the 2012-13 period in which filings reached their 21st century nadir.

Fiscal	PFB	Premium
2009-10	-8.0%	-6.80% ⁹⁸
2010-11	-4.8%	7.80% ⁹⁹
2011-12	-5.1%	8.90% ¹⁰⁰
2012-13	-5.4%	6.10% ¹⁰¹
2013-14	2.2%	0.70% ¹⁰²
2014-15	1.2%	-2.50% ¹⁰³
2015-16	12.1%	-5.10% ¹⁰⁴
2016-17	4.61%	14.50% ¹⁰⁵
2017-18	-0.10%	-9.60% ¹⁰⁶
2018-19	4.1%	-13.80% ¹⁰⁷
2019-20	-1.4%	-5.40% ¹⁰⁸
2020-21	-3.3%	-6.60% ¹⁰⁹
2021-22	Unk.	-4.90% ¹¹⁰



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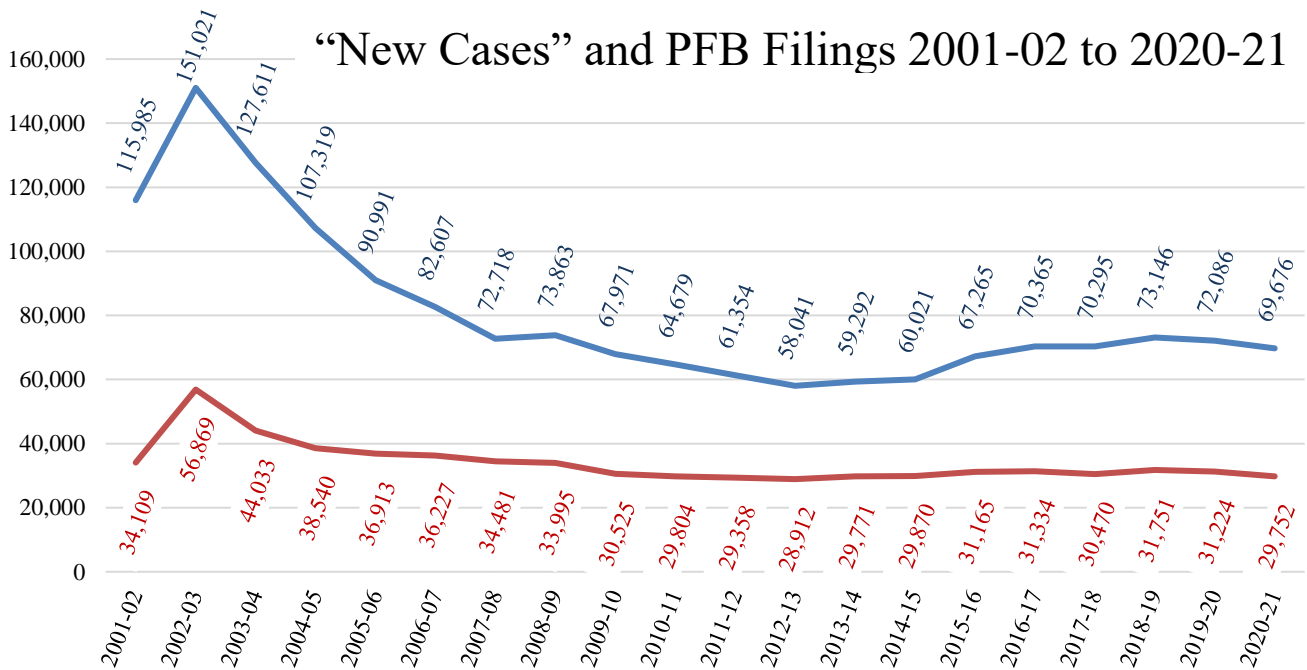
New Case Filing

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,¹¹⁴ which represent the first PFB or substantive motion in the history of that particular accident by that 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, rather than issues, are entering the OJCC litigation process; this is not affected by the serial nature inherent to workers’ compensation generally, and thus of overall PFB filing/issues.

Generally speaking, the “new case” measure is the inverse of the volume of settlements approved in a year, which is indicative of the rate at which cases are permanently leaving the OJCC litigation process. Although individual claims can be resolved without settlement, cases 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 than PFB filing volume of the effect of legislative changes regarding the substantive benefits provided to Florida employees through chapter 440, Florida Statutes.

However, a “new case” filed in 2020-21 could involve an accident that year, or could involve an accident that occurred years prior, even prior to the 1993 or 2003 statutory amendments. It is possible, following an accident, that an injured worker might receive all benefits due for many years, without any need for litigation.¹¹⁵ 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 2020-21 (29,752) is a 4.7% decrease from the prior fiscal year. Despite an increase in Petitions filed, beginning in 2015-16¹¹⁶; the “new case” filings remained relatively similar through 2019-20. Thus, the consistent trend of “new case” filing in recent years is notably interrupted by the decreased 2020-21 volume. This is the third-lowest volume in the last 20 years; as notable are the 29,358 in 2011-12 and 28,912 in 2012-13. The volume in 2020-21 likely reflects an overall decreased frequency of workers’ compensation injury, and pandemic-related interruptions of work generally.¹¹⁷ The following graph depicts the historical OJCC “new case” filings (red), and the PFB filings (blue). The persistent consistency of “new cases” as PFB volume trended upward beginning in 2015-16 seems to support that injury frequency and new litigation remains reasonably stable, but litigation intensity has recently increased.



This comparison has consistently demonstrated that “new case” filings have not been as elastic as PFB filings. Following the 2002-03 peak, 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 OJCC Annual Report*, suggestion was made that the downward PFB trend might be ending. The data thereafter substantiated that prediction, until the pandemic began in 2020. Current conventional wisdom holds that filings will return to that upward trend when COVID-19 impacts are past. However, there are potentials for long-term economic influences after the active pandemic subsides. Considerations may include the extent of workforce retirement,¹¹⁸ occupation change,¹¹⁹ and adaptation of technology.¹²⁰ Other potential impacts include the severity of near-term tropical weather cycles, changes in medical treatment paradigms, and changes in the practice of law and conciliation. There are a multitude of potential factors that may influence how and when normalcy returns.

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 illustrates 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. The relationship remained remarkably consistent for the three fiscal years just prior to the pandemic. The decrease in new case filings in 2020-21, -4.7%, was slightly more pronounced than the Petition volume decrease (-3.3%). This led to the lowest percentage relationship of “new cases” to PFB since 2005-06 (2020-21 42.7% and 2005-06 40.6%), and must be viewed as relevant. The decrease in Petition filing signals less litigation, while the decrease in new cases may well be more related to decreased frequency of injury overall, and more generalized employment influences. The difference between 2020-21 and previous years, though relevant, is likely pandemic-influenced regarding extent, but not extraordinary when considered in light of the downward trend in this ratio beginning in 2014-15, even as “new case” volume increased somewhat.

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 in a willingness to file “new cases,”¹²¹ but reluctance to litigate arguably minor issues thereafter due to fee compression.¹²² It is possible that the potential volume, thus value, of future benefits was sufficient early in a claim to accommodate litigation even in a reasonably strict percentage-fee paradigm. This might be even 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 potential fee issues under the statutory formula reiterated in the 2009 legislative session.¹²³

Upon that contention, prior reports suggested that Florida might expect to see continuing increases in PFB filing volume with the attorney fee changes from court interpretations.¹²⁴ However, since the courts decided *Castellanos*¹²⁵ and *Miles*¹²⁶, 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. That trend appears consistent in 2020-21 (*see* page 43). The data in this regard may support the perception that the trend will increasingly exhibit settlement propensity rather than litigation expansion.

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%
2020-21	69,676	29,752	42.7%

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”¹²⁷) 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 this claimant thereafter ceased to be represented, and filed an 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 this claimant then hired a new attorney, who filed a fifth PFB, the database would then reflect five “open” PFBs attributable to a “represented” claimant, despite the fact that one of those five was in fact filed *pro se*.

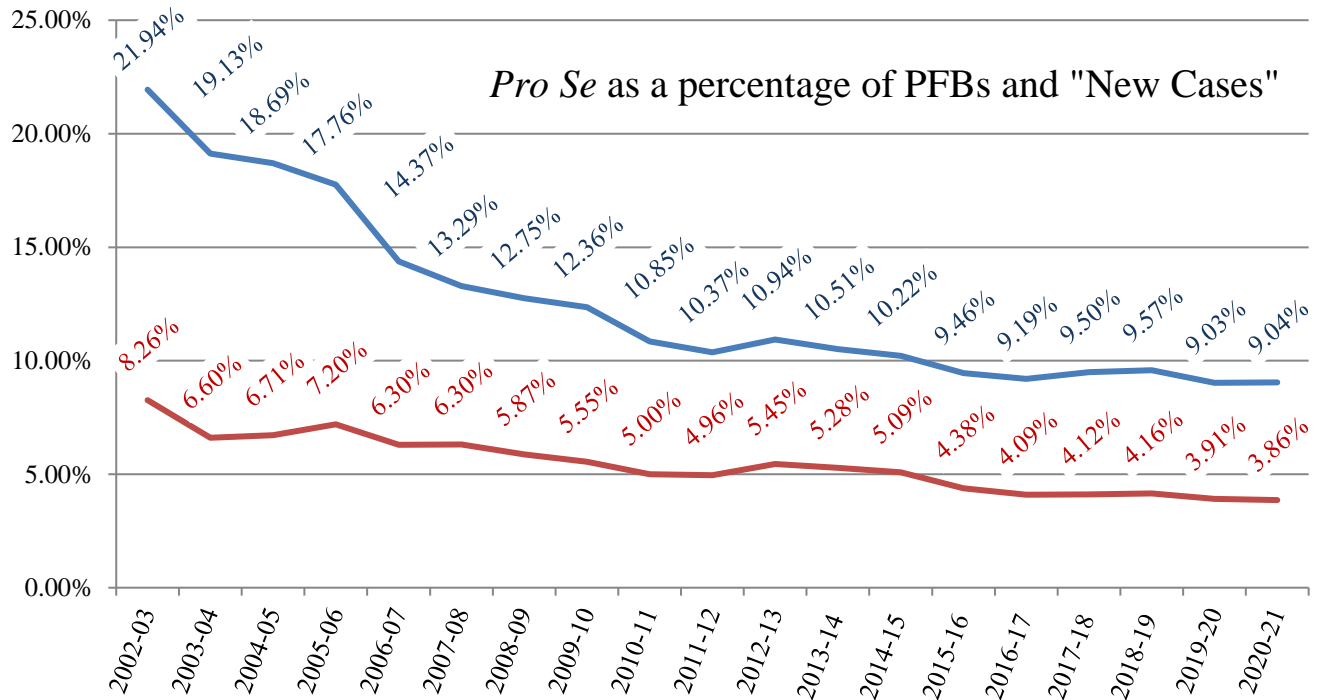
The JCC Application database can report the total volume of “new cases” opened in a given fiscal year and the percentage thereof that are “represented” or that are *pro se* cases (above) on a given day. The chart above depicts the comparison of *pro se* cases to the volume of “new cases” filed in the year. This comparison is of potential interest because the “new case” rates have demonstrated less elasticity than Petitions. (See page 18). Despite this, and the difficulty with a concise answer to how many are *pro se*, the data demonstrates remarkable consistency over time.

Likewise, the OJCC can calculate the percentage of *pro se* cases, compared to the total volume of PFBs filed during the preceding year (right). 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.¹²⁸ The chart (right) depicts the percentage of all PFBs filed each year, and 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.

The available data does not support the conclusion that the *pro se* claimant population is increasing,¹²⁹ or even notably changing. The data supports that there is minimal fluctuation in the *pro se* volume and percentages. However, the trend seems to be towards lower *pro se* participation overall, with reasonable consistency in both comparison of PFB and “new cases” over the last five years. This is further illustrated further in the graph below.

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%
2020-21	29,752	2,689	9.04%

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%
2020-21	69,676	2,689	3.86%



This 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 nineteen (19) fiscal years. The overall trend over the nineteen-year period extending back to 2002-03 was generally to decrease until moderating or even leveling at times. These comparisons demonstrate minor fluctuations in *pro se* participation over the last ten fiscal years, but do not support that there has been any broad challenge to attorney representation at any time. Overall, *pro se* is trending down.

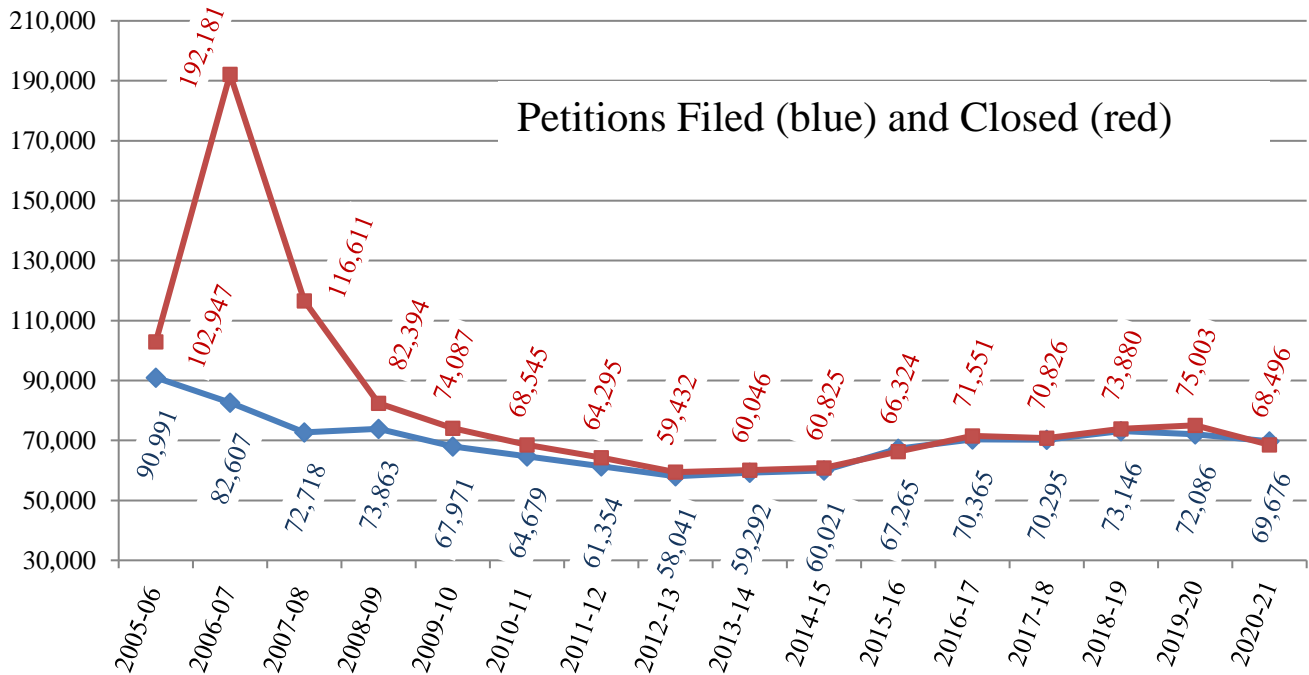
Amount of Litigation Resolved

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.¹³⁰ This legislative mandate for timely adjudications is inconsistent with a prior marketplace practice of utilizing a Petition (and before 1994 a “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,” the statute of limitations will not run,¹³¹ but once dismissed that PFB has no import on the statute of limitations. Anecdotally, there is support for a historical practice of filing PFBs, not necessarily to obtain a particular benefit, but instead, to remain pending indefinitely and act as a “tolling” of the statute of limitations.¹³² Additionally, PFB closure was a difficult issue for the OJCC following the massive influx of PFBs in 2002-03 (151,021).¹³³ 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 over 50%, from fourteen million to over twenty-one million people.¹³⁴ 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 additional staff or 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 in 2012-

13.¹³⁵ In 2020-21, the Division of Administrative Hearings elected not to fill approximately 21 OJCC administrative staff positions as vacancies occurred, and it is anticipated those positions will be removed from the OJCC workforce permanently.¹³⁶ 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 complexity, and the results on morale continue to challenge and threaten the efficiency and efficacy of this agency.

Discussion of litigation resolution begins with reiteration of the Petition for Benefits filings compared to the Petition closures. This graph demonstrates the congruity of these two figures over the last sixteen years.



Most PFBs filed must be mediated.¹³⁷ 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 exceptional instances in which the parties conduct a trial on the PFB issue(s), but then nonetheless resolve them before the assigned judge enters an order adjudicating them.¹³⁸ 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/status into the JCC Application (database).

Such closure is administrative. Any undetermined issues that remain are not foreclosed by the administrative closure.¹³⁹ Remaining issues such as injured worker’s attorney fees and costs may yet be tried upon the later filing of a verified motion.¹⁴⁰ 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 closure order stimulates review by the parties, and engages the parties in promoting accuracy and assuring efficiency. An example where such review might have been beneficial occurred in 2018-19. That year, a final order was entered in a case 5,900 days (16 years) after the initial Petition was filed.¹⁴¹ Though Petitions in that case were reflected in the database as “closed,” they were never dismissed after the last payments were made in 2005.¹⁴² A closure order could have clarified perceptions of status, prompted review and further discussion, perhaps leading to a timelier trial and decision.

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

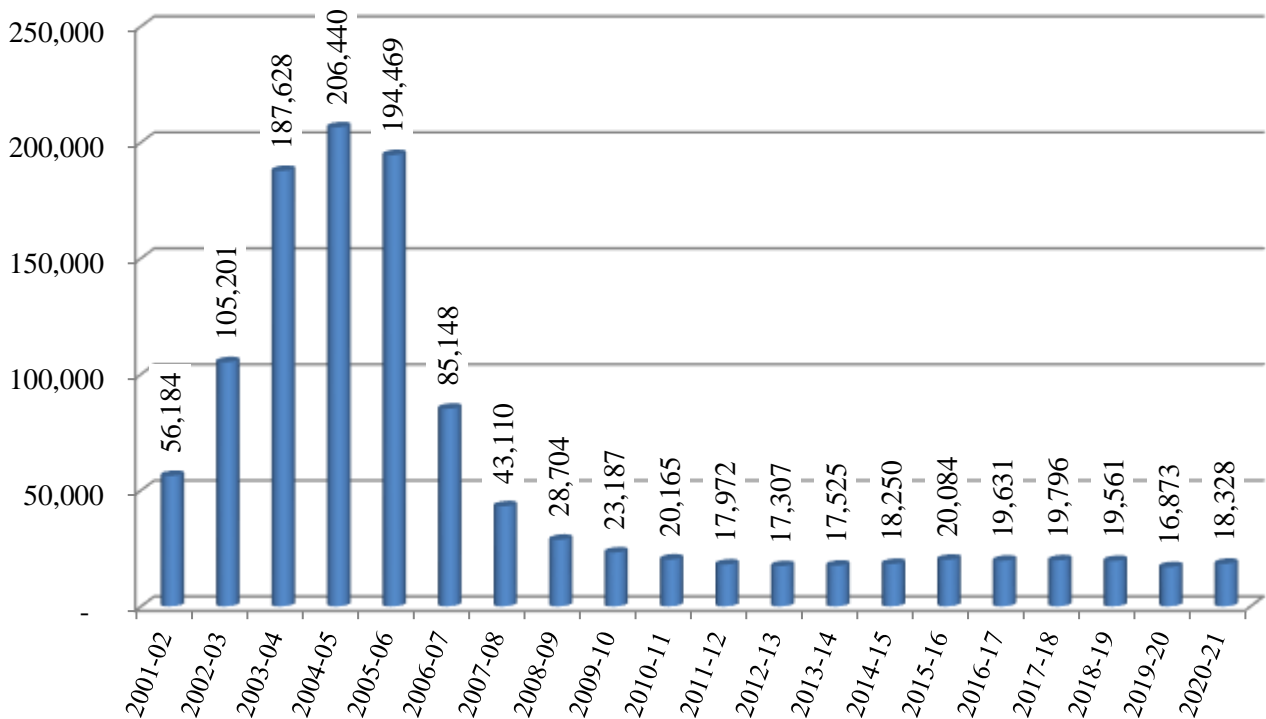
the database as “open.” Other Divisions began the 2006-07 year with their open inventories overstated, including PFBs that should have been previously administratively closed. PFB closures therefore increased dramatically in 2006-07 and 2007-08. The volume moderated in 2008-09 and has remained reasonably consistent the last thirteen fiscal years. The five-year average 2016-17 through 2020-21 was approximately 101%, illustrating a system in balance, and the effective management of incoming litigation.

The result is seen in the graph above demonstrating a smooth progression in the last thirteen 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 demonstrably and 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 brief return to over 20,000. However, the year-end inventory total retreated in 2016-17 and has remained consistently below 20,000 since that time. The notable decrease at the end of 2019-20 should be viewed as a similar anomaly, while the 2020-21 volume is likely related to the decreased Petition filings noted above. It is reasonable to consider the last two years as impacted by SARS-CoV-2 and various actions and reactions related to it.

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 for which judges remain vigilant.

With the docket management tools now in place, it is believed that those stale cases generally remain pending only with the knowledge of the assigned judge, and therefore for appropriately documented reasons, such as carrier bankruptcy stays, expert medical advisor issues, and similar. 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. The potential for those is diminished by regular use of the closure order process that engages all parties in status verification.



Over the last nineteen fiscal years (2002-03 forward), one million five-hundred thousand three hundred twenty-one (1,500,321) PFBs have been filed, and one million five-hundred forty-two thousand two hundred seventy-two (1,542,272) 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.

This chart illustrates the marked increase in closure rates beginning in fiscal 2005-06, followed by significant 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.

It is believed that the interruptions and pauses resulting from the COVID-19 pandemic allowed additional focus upon pending Petition review late in 2019-20. Further, the marked decrease in filings during the fourth quarter of fiscal 2019-20 resulted in some lull of mediation and trial activity in the first half of fiscal 2020-21. The results of both the invested effort and the pronounced declines of April, May, and June 2020 are seen in the significant increase in PFB closure in 2019-20, and the slightly decreased rate in 2020-21.

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%
2020-21	69,676	68,496	98.3%
Aggregate	1,500,321	1,542,272	102.8%

Cost of Litigation Resolved

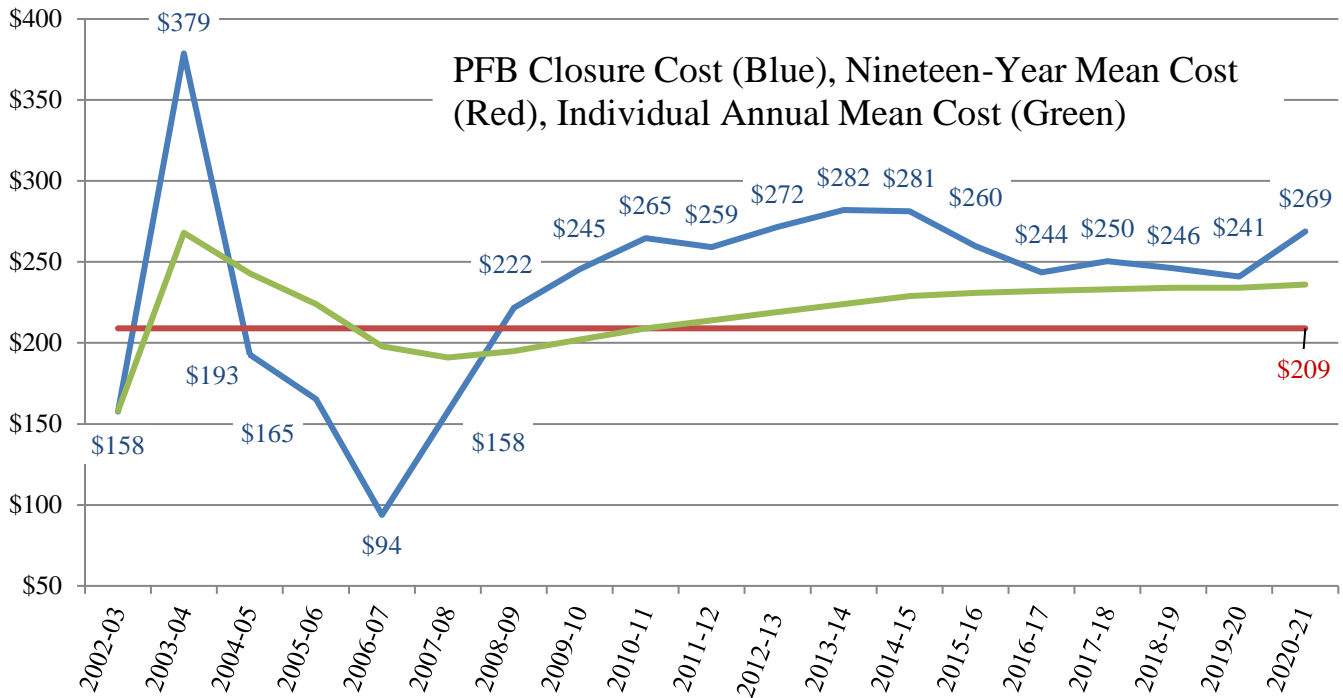
The OJCC budget, divided by the number of Petitions for Benefits (PFB) closed, reflects that the overall cost per PFB closed historically fluctuated (*see* chart, right; graph, below), due in large part to the significant fluctuation in PFB closure rates. Of particular note was 2006-07 following efforts to correct data mischaracterizations, leading to an exceptional volume of Petitions closed that year.

These figures demonstrate relevance when considered in comparison to filing fees in Florida’s Circuit Courts.¹⁴³ For “small claims” filings, the Circuit filing fees may be as low as fifty-five dollars (\$55.00), but for civil claims the filing fee is three hundred dollars (\$300.00) if the case is valued “up to \$15,000”; for larger claims the Circuit filing fee may be as high as four hundred one dollars (\$401.00).¹⁴⁴ The OJCC is demonstrably more financially efficient, with a per-Petition cost well below the Circuit Court filing fees. Notably, those fees do not fully account for the court’s cost of operations, as the cost per Petition does. 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.¹⁴⁵ Over the last eighteen fiscal years, the average cost per Petition closed was \$209.00, 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
2020-21	\$18,413,933	68,496	\$269

The fluctuations of “per PFB” costs are 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 was adjusted for inflation alone, the 2020-21 budget of the OJCC would have been \$23,928,655 instead of \$18,413,933, a difference of \$5,514,722, or approximately 30% of the actual budget.¹⁴⁶ 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.¹⁴⁷ However, the number of judges and staff has remained virtually static over the same period. In fact, as fiscal year 2020-21 concluded, the staff was reduced significantly.¹⁴⁸ These facts illustrate that the OJCC has been exceptional at wisely managing the resources afforded and providing service to Floridians. 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.



Petitions for Benefit (PFB) closure rates have stabilized and closely follow the current filing rates. There is every reason to believe that trend will continue.¹⁴⁹ A minimal volume of overdue PFB inventory may remain unaddressed in this litigation system, but the system currently appears to be substantially in equilibrium. This report has previously posited that cost per PFB closed is likely to increase if PFB filing volumes decrease, and to decrease if volumes increase. That has been demonstrated with the 2020-21 reduction in PFB volume (-3.3%), and the increased cost of closure from \$241 to \$269 illustrated this year.

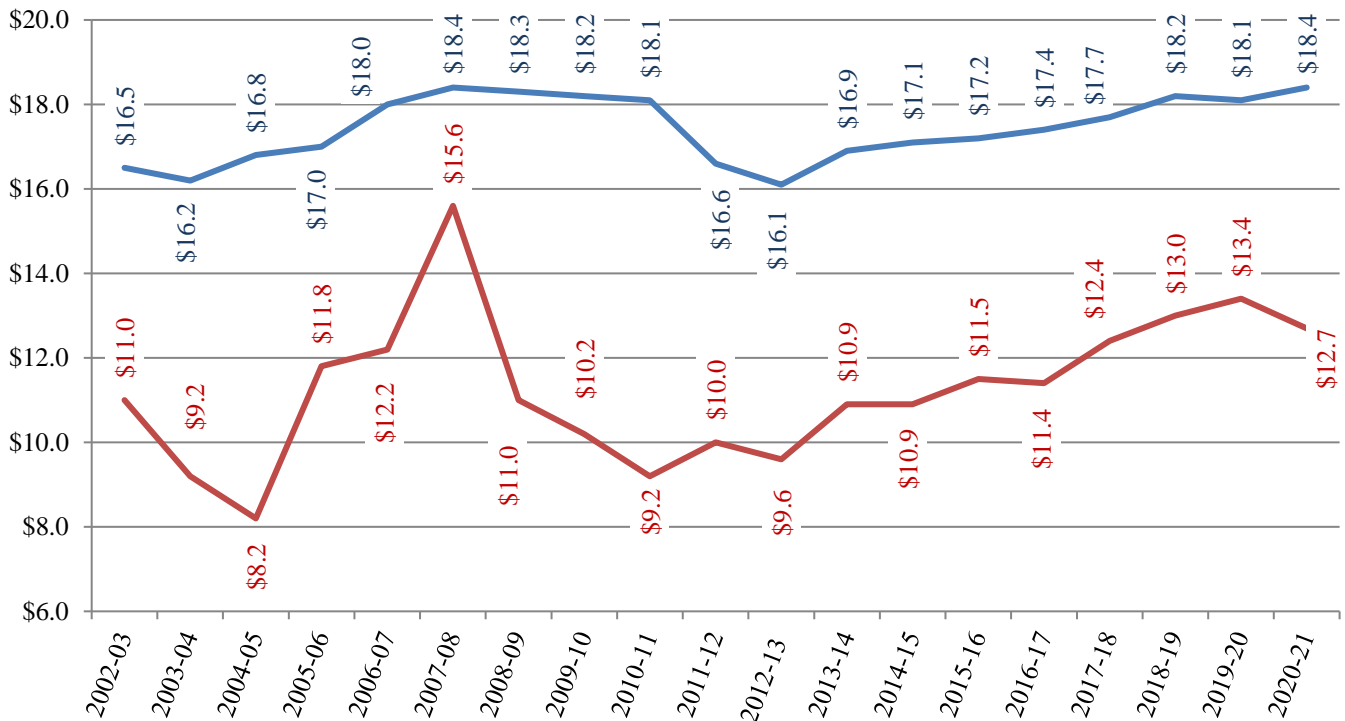
Another illustration of the cost-effectiveness of the OJCC is the volume of child support arrearages collected through the judges’ efforts since statutory authority was enacted in 2001. The Judges of Compensation Claims are statutorily required to ensure that the rights of child support recipients are considered when support payers settle their workers’ compensation case.¹⁵⁰ 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, a notable workload involving even cases that do not settle. The significant amounts of child support collected through these efforts for the last twenty (20) fiscal years are represented in this table, which total over \$218 million (\$218,766,560). The volume of child support arrearages collected is particularly interesting when considered in light of the overall OJCC budget discussed above. Over the last nineteen (19) 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.

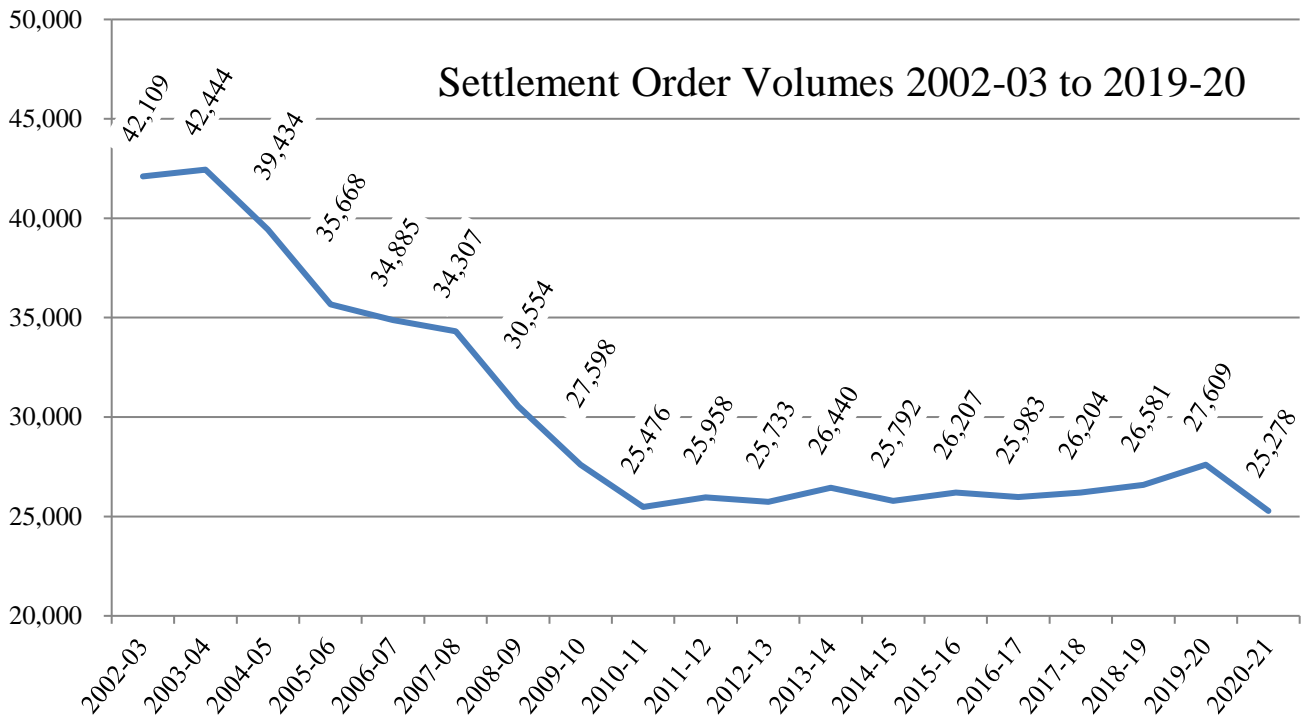
The path toward integration and innovation regarding child support reporting began in 2012-13 when the OJCC undertook the duties associated with reporting arrearage information on behalf of the Department of Revenue (DOR). In 2013-14 the OJCC integrated the process of similarly reporting Circuit Clerks' 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.¹⁵¹ The

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%
2020-21	\$18.4	\$12.7	69%

comparison of child support recovery (red) and the OJCC overall budget (blue) is illustrated in the chart (above) and graph below (in millions). That process internalized within the OJCC has saved both the parties¹⁵² and public¹⁵³ significant money while supporting the recovery of an average of about \$11 million per year.



The decrease in child support collected in 2008-09 was seemingly significant. However, that appearance results primarily from the exceptional collections in 2007-08; recoveries vary year to year. Overall, the volume of collected support has remained reasonably consistent despite a decrease in the volume of settlements over the first decade of the 21st century, and a significantly consistent volume since (graph below). The decrease in settlement order volume is interesting in relation to the steady collection of child support and the changes in claimant fees addressed below (*see* pages 36-44).



Number of Mediation Conferences Held

In Florida workers’ compensation, most¹⁵⁴ 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 2010.¹⁵⁵ The OJCC has published that report annually since. All are available at www.fljcc.org under the “Publications” and then “Reports” tabs.¹⁵⁶

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 remained notably consistent through 2017-18. Since then, the volume has increased, although only nominally as regards 2017-18 (0.55%). The annual increases for the last three fiscal years are notable generally, but the pandemic must be considered regarding the strong growth in 2019-20 and 2020-21. While the volume of mediations nonetheless remains significantly lower than in 2002-03, 2020-21 demonstrated the highest volume in over a decade, since 2009-10. Mediation was almost certainly favored because of the challenges of the pandemic. Further, the convenience of mandatory telephonic appearance¹⁵⁷ was also likely a factor in these figures. Additionally, some of the increase reflects the addition of new mediator positions added to the system capacity in recent years.¹⁵⁸

In 2020-21, over nineteen thousand (19,442) mediations were held by state mediators, at an average cost of approximately \$175.69, a component¹⁵⁹ of the overall cost per Petition closed (*see* page 24); this represents a nominal decrease from the \$175.81 per-mediation cost in 2019-20.¹⁶⁰ The cost savings in recent years is partially due to the legislative action reducing the number of state mediators.¹⁶¹ 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. Thus, the increased volume of mediations has offset that cost and maintained efficient delivery of mediation services.

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.¹⁶² 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 2020-21 of approximately one hundred seventy-six dollars (\$175.69). 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 (*see* pages 10 and 24), thus part of the cost per Petition closed as opposed to an additional cost. The overall cost per PFB for the OJCC, including the mediation process, is far below the Circuit Court filing fees for other civil matters.¹⁶³ Furthermore, if the volume of mediation increases, the cost of each mediation decreases, because the aggregate cost of the state mediation program remains reasonably constant regardless of volume, within reason. Conversely, if the volume of mediations decreases, the unit cost will rise unless reductions are made in the mediator staffing levels. Since fiscal 2018 the OJCC has striven to increase the volume of mediations conducted by the state mediators, with the view towards further increasing efficiency and productivity. The addition of mediators was part of that effort as well as publishing all state mediator calendars to effectuate parties' scheduling efforts.

There are multiple issues that influence state mediation efficiency. The OJCC is compelled to mediate cases within 130 days of Petition filing.¹⁶⁴ However, there is also a statutory prohibition on noticing mediations until 40 days after the Petition is filed.¹⁶⁵ 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, though some shorter notice period could likely fulfill constitutional requirements.¹⁶⁶ 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 essentially a 70-day period (40 days in statute, plus 30 days' notice) excised from the 130-day statutory mediation requirement. Effectively, the mediation process must occur within a 60-day (days 70 through 130) 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.¹⁶⁷ 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 (after the 40 days). This suggests that the discovery, or even investigation, is not being completed in that 40-day period before notice is provided, but is 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 simply dismissed. In any event, resolution is likely positive.

But, when such resolution/cancellation occurs within 30 days of the scheduled mediation, it is difficult for a state mediator to schedule some other case for that resulting calendar vacancy, because of the ever-present due process issues (notice¹⁶⁸). Such cancellation may allow the mediator to assist with another mediator's calendar,

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%
2020-21	69,676	-3.3%	19,442	6.76%

but not to adjust her or his own. The shorter the notice of such cancellation, the more difficult it is to repurpose that time effectively. Thus, the inefficiency of the marketplace impairs the efficiency of the OJCC.

All OJCC mediators are certified by the State of Florida.¹⁶⁹ The requirements and qualifications have been established by The Florida Supreme Court through the Dispute Resolution Center,¹⁷⁰ and essentially adopted by the OJCC in selecting that standard for state mediators.¹⁷¹ Certified mediators are governed by Rules for Certified and Court-Appointed Mediators.¹⁷² 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 also 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 referenced and relied upon.

The specifics of workers' compensation mediation are addressed in MEAC Opinion 2004-002.¹⁷³ 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 "farical, circus-like, a complete waste of time, etc."¹⁷⁴ 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 was being used by a particular mediator and appeared to be a limit. The reality is that mediations proceed as long as necessary, often for several hours, as long as the parties wish to continue to seek resolution; attendance at mediation is mandated, but the process and duration is voluntary. However, this may result in a mediator conducting multiple mediations simultaneously.

The Florida OJCC is not a court.¹⁷⁵ And as such, the Florida OJCC is not governed by the rules set forth by the Florida Courts pursuant to their constitutional authority.¹⁷⁶ 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.¹⁷⁷ OJCC mediator qualifications are distinct. There is no longer any general requirement that Florida 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.¹⁷⁸ Thus, as the qualifications for Florida mediators generally have evolved, the workers' compensation statute has not. Whether that is intent or artifact is not known, but the "attorney requirement" limits the population of potential State mediators, and can impact both recruitment and retention.

Because 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 within this specific statutory construct of mandatory mediation.

However, the purpose of mediation is consistent in any dispute: 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 appointments.¹⁷⁹ However a more practical volume is likely around 75,570,¹⁸⁰ which notably remains close to the current PFB filing volume.¹⁸¹ It is projected that the pre-pandemic trend of increased Petition filing will at some point notably increase the probability of Petitions being referred to private mediation.¹⁸²

The volume of state mediations conducted has not changed proportionately with the changes in PFB filing volume. Overall, since 2002-03, PFB volume is 53.9% lower and State mediation volume is down only 33.5% 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 have decreased at greater rates, due to the expense associated with them. Anecdotal evidence supports this hypothesis, but admittedly anecdotal evidence is rarely as trustworthy as broader indicators.

Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
2002-03	151,021		29,253	
2020-21	69,676	-53.86%	19,442	-33.54%

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 thirteen fiscal years (2008-09 through 2020-21). This represents 100% average statutory compliance by the OJCC state mediators for over a decade. The mediation process has thus been proven 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 mediation¹⁸³ may also 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 employer/carrier ordered to private mediation. Thus, if that becomes a regular occurrence, parties may be more motivated to proactively work on mediation scheduling when a PFB is filed.

In 2011-12, the OJCC began offering parties the services of the state mediators for voluntary mediation.¹⁸⁴ This allows consensual mediation when there is no pending PFB, and facilitates voluntary mediation on subjects such as attorney fees that are not appropriate for mandatory mediation.¹⁸⁵ 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. This voluntary mediation program was recognized by Florida Tax Watch with a Prudential Productivity Award.

Disposition of Mediation Conferences

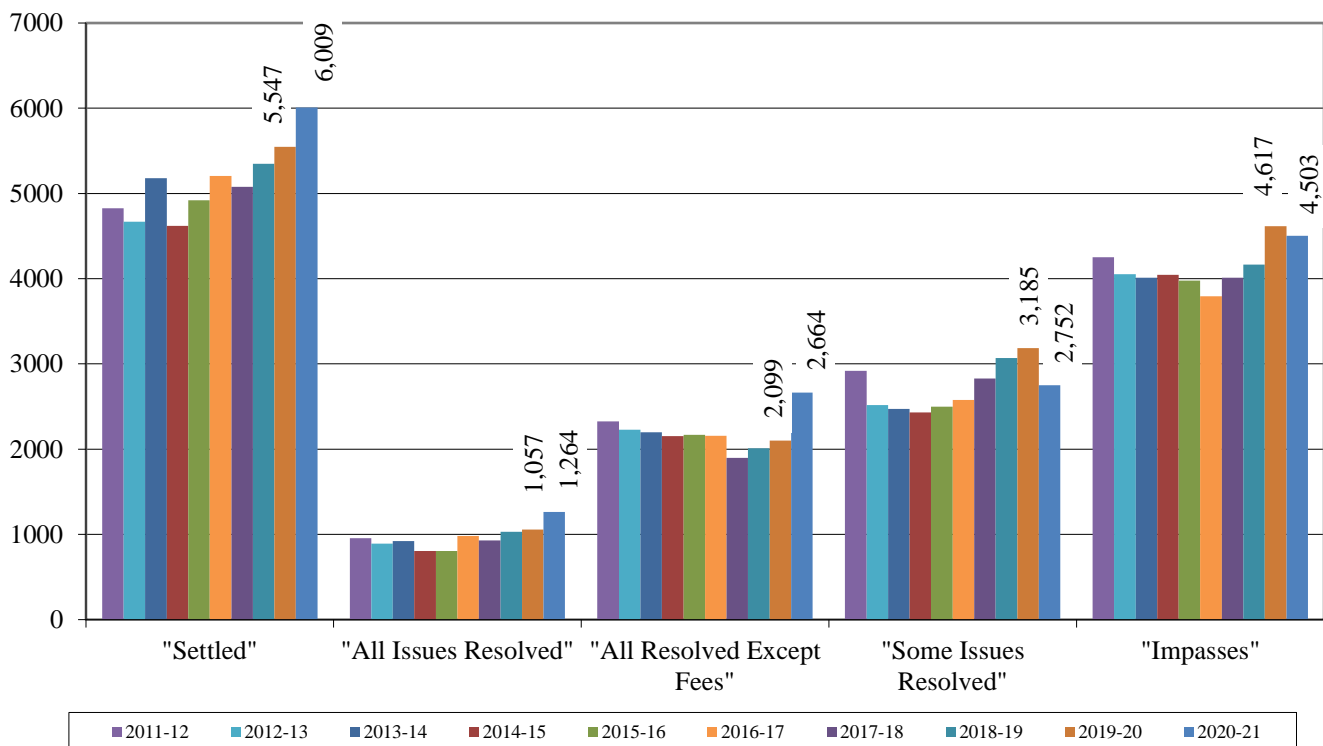
A Petition for Benefits (“PFB”) might seek only one substantive benefit (e.g. authorization of an orthopedic surgeon), or could contain many issues (e.g. orthopedic authorization, neurological authorization, diagnostic testing authorization, correction of the average weekly wage, payment of temporary 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 attorney 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, are discussed more fully on page 14 of this report.

The outcome of mediation is expressed in terms of what was resolved at that particular mediation. The characterization “impassé” 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, was resolved. Between these two extremes of “impassé” (nothing) and “settled” (all) are a number of “partial” resolution characterizations used by the OJCC.

The term “some issues resolved,” reflects that some subset of the claimed substantive issues have been resolved. The term “all issues resolved, except attorney 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 fees and costs, were resolved, but leaving open future benefits. These potential outcomes can be expressed in a continuum, ranging from the least resolution (“impassé”), 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 “impassé” 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.¹⁸⁶ Discontinuation of this practice may be responsible in some part for the decreased mediation volumes since 2006-07. 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 OJCC Annual Report*, an anecdotal example came to light in which a mediator was responsible for three case numbers assigned to a particular claimant, but all three had been consolidated into one case. This mediator had elected to schedule three separate mediations, rather than a single mediation for the consolidated cases/issues.¹⁸⁷ 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. This graph illustrates the changes in various outcomes over the last decade. The changes over the last 19 years, as well as broad averages, are illustrated in the graph below.



Notably, the volume of mediations that result in resolution of no issues - “impassé” - increased early in the first decade of the century, and began declining in 2010-11. In 2019-20 there was a notable increase in the volume of “impassé” outcomes, but any concern about that should be considered in light of the increases in all of the substantive outcomes that year. In 2020-21, the “impassé” volume and the “Some Issues” each declined somewhat, the “some issues” more notably. This is notable in part due to the increase (6.8%) in mediations for 2020-21. However, that increase in total volume might have been expected to result in more “impassé,” and it is encouraging that did not come to pass. Significantly, each of the “resolution” categories other than “some issues” increased notably in 2020-21: “Settled” (+8%), “All Issues Resolved” (+20%), “All Issues Resolved Except Fees” (+27%). With the increase in volume came increased successful outcomes and a decrease in the “impassé” volume from the previous year. This demonstrates the dedication and focus of the state mediators tasked with exceptional challenges in a year eclipsed by the introduction of a SARS-CoV-2 vaccine and the transition back to in-person mediations. (See page 7).

The following table summarizes the percentage of cases in each category of the mediations held during each year, as well as a nineteen (19) year average. This illustrates improvements in mediation success that is less apparent in the raw figures. For example, in 2002-03, approximately twenty-eight percent (27.8%) of cases mediated resulted in a settlement, compared to approximately thirty-one percent (30.9%) in 2020-21. The “impasse” category was twenty-seven percent (27.02%) in 2002-03 compared to approximately twenty-three percent (23.2%) in 2020-21. Resolution is increasing and impasse decreasing.

Over the last nineteen (19) years, the convened state mediations have resolved an average of at least “some issues” approximately sixty-four percent (63.53%) of the time (the sum of outcomes excluding “impasse” and “recess and reconvene”). In 2020-21, approximately sixty-five percent (65.27) of convened mediations resulted in resolution of some issues,¹⁸⁸ which is very consistent with the resolution success in 2019-20. This demonstrated improvement in resolution remains notable as mediation volumes increase, and the challenges of the pandemic were overcome. The “impasse” rate for 2020-21 is well below the nineteen-year average, demonstrating commendable performance by the program and individual mediators.

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%
2020-21	19,442	30.91%	6.50%	13.70%	14.15%	23.16%	11.67%
Average		29.20%	6.41%	12.47%	15.44%	27.97%	8.40%

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Number of Continuances Granted for Mediations

The mediation continuance trend reversed in 2006-07, remained reasonably stable for two years, and then decreased significantly in 2009-10. The volume reached its lowest recorded level (.16%) in 2020-21, following a near-record 0.30% in 2019-20. Despite the challenges of the pandemic, continuances became markedly less commonplace in 2020-21. This is likely attributable to the convenience of the mandatory telephonic process policy,¹⁸⁹ and thereafter through application of the rules. Litigants are spending less time on travel and thus have more time for substantive effort through telephonic mediation. Whether the parties' focus and commitment to telephonic mediation will persist when the pandemic fades remains to be seen.

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 2003-04 through 2006-07.

The implementation of the "auto-scheduling" of mediations by the OJCC Central Clerk's Office also coincides generally with the beginning of the upward trend in mediation continuances in fiscal 2003-04 (*see* page 36). 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 as litigants adapted to the new paradigm and habits changed. 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, noted elsewhere in this report, better resolutions, and less need for continuances.

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%) had that year averaged less than the statutory 130 days between PFB filing and initial mediation. That achievement has been repeated each year since; 13 consecutive fiscal years.

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," even when the appointment date was thereby changed to an earlier date. Use of that mischaracterization has decreased and has likely led to more reliable and consistent statistics.

Fiscal Year	Petitions Filed	Mediations Continued	Med. Cont. v. PFB Filed
2002-03	151,021	2,755	1.82%
2003-04	127,458	2,036	1.60%
2004-05	107,268	3,333	3.11%
2005-06	90,948	4,756	5.23%
2006-07	82,607	2,336	2.83%
2007-08	72,718	1,328	1.83%
2008-09	73,863	1,302	1.76%
2009-10	67,971	940	1.38%
2010-11	64,679	963	1.49%
2011-12	61,354	717	1.17%
2012-23	58,041	364	0.63%
2013-14	59,292	207	0.35%
2014-15	60,021	172	0.29%
2015-16	67,265	191	0.28%
2016-17	70,365	287	0.41%
2017-18	70,295	313	0.45%
2018-19	73,146	283	0.39%
2019-20	72,086	219	0.30%
2020-21	69,676	114	0.16%

Number of Continuances Granted for Final Hearings

The hearing continuance volume for 2020-21 was also the lowest in nineteen years; despite the challenges of COVID-19 continuance volume remained reasonably stable in 2019-20, decreasing slightly. In 2020-21 the OJCC remained open and functional throughout the pandemic and judges retained full discretion as to trial process. Though this consistently offered in-person trial opportunities, a significant volume of trials and procedural hearings were conducted over Internet video platforms, primarily Zoom. It is likely that the convenience of that alternative as well as the decreased Petition volume contributed to this record low volume of continuances.

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.¹⁹⁰ Though one must concede the potential for such influence, it is doubtful any of the current JCCs would be so inclined.¹⁹¹

The figures support that continuance of final hearings remained reasonably consistent until the pandemic. That continuances markedly decreased is likely related to the trial conveniences afforded by technology. 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.¹⁹²

Some judges schedule trial on each Petition for Benefits (PFB) as soon as that PFB arrives in the particular Division. 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 fewer 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 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 plan; thus, the less likely parties are to need a continuance for reasons otherwise within their control, *see* section 440.25(4)(b).

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 five (4.5) per month in fiscal 2020-21. This downward trend is likely attributable to better OJCC case management software, some relaxation of individual JCC dockets resulting from decreased overall PFB filing rates, and the availability of video hearings, flexibility, and convenience.

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 and less so thereafter.

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
2020-21	1,659	54	4.5

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 Internet access the opportunity to view the PFB. This is a great modern convenience. However, in the pandemic, there was anecdotal evidence that some still lack stable Internet access; a subtle reminder that the workers' compensation community is diverse and the OJCC must remain flexible and responsive to various abilities and needs. The Petition is then assigned to a judge and the OJCC Database Application ("JCCA") auto-schedules an appointment for State mediation (*see* page 33). 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 and eService was introduced.¹⁹³

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."¹⁹⁴ This allows judges and attorneys to easily 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, and by registered attorneys and parties associated with each case.

Thus, when the PFB assignment arrives in its assigned Division, a mediation appointment has been automatically scheduled ("auto-set"), 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.¹⁹⁵ 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 emailed by the OJCC 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 (*supra*, page 33).

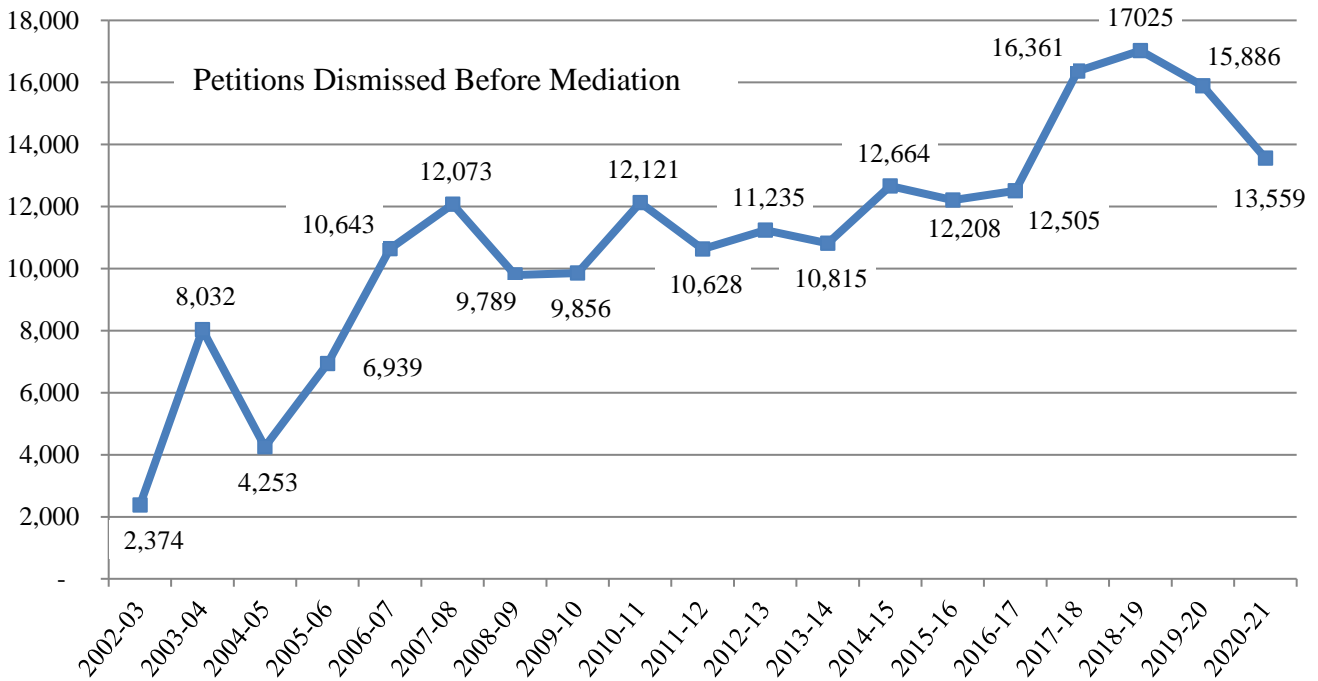
Some judges utilize section 440.25(4)(h), Florida Statutes, and schedule "expedited" final hearings on some portion of the PFBs assigned to them. The expedited process leads to faster resolution of some issues, which involve relatively minor expense as mediation is not required on claims that are suitable for expedited final hearing. However, this practice has declined with the decreasing volume of PFB filings.

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 allows 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.¹⁹⁶

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 was notably lower than in 2018-19, the decreased volume of filed PFB resulted in the percentage (22%)

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%
2020-21	69,676	13,559	19%

remaining reasonably stable. Both Petition volume and pre-mediation dismissals decreased notably in 2020-21, resulting in a lower percentage (19%), more consistent with the era predating *Castellanos*¹⁹⁷ and *Miles*.¹⁹⁸



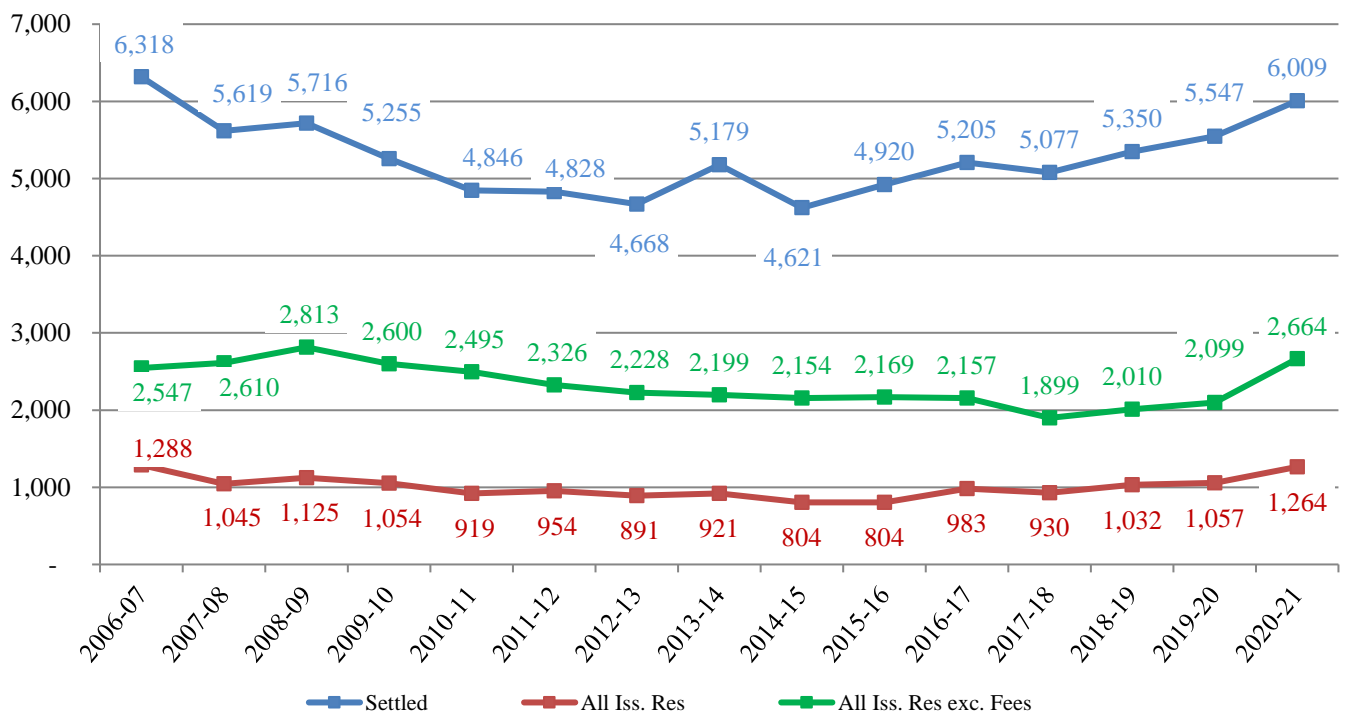
The increase in dismissals, illustrated in this graph, was significant in gross terms. Any Petition might be dismissed in the same fiscal year during which it was filed. Similarly, however, a Petition might be filed one fiscal year and dismissed in some year subsequent to the filing year. Despite the potentiality of such temporal differences, the comparison between PFB filed and PFB dismissed before mediation, admittedly not a perfect comparison, is illustrative of a notable recent trend of a seemingly increasing propensity to resolve issues and dismiss PFBs. It is suggested that the pandemic frustrated such efficiency, leading to more mediation necessity.

Regarding the increase beginning in 2017-18, possibly attorneys may have been more inclined to file Petitions following the judicial interpretations of section 440.34, Florida Statutes, in *Castellanos*;¹⁹⁹ though there are no indicia of any significant similar increase following the *Murray*²⁰⁰ decision in 2008. It is also possible that the imposition of “prevailing party” costs awardable to the employer/carrier by the 2003 legislative amendments play a role in the decisions to dismiss Petitions more readily. Although that 2003 amendment is eighteen years past, 2010 and 2011 appellate decisions brought the issues into clearer focus.²⁰¹ However, there is no indicia of changed dismissal frequency at that time. This report has previously noted that following the Supreme Court’s *Castellanos*²⁰² decision, and the return of hourly fees, the volume of pre-mediation dismissals should be monitored for significant changes. Whether the marked decrease in 2019-20 was itself necessarily indicative of a trend remains unclear even in light of the ongoing pandemic and notable 2020-21 decrease. As Florida emerges from the pandemic, this measure bears continued scrutiny.

If a particular PFB is not set for expedited hearing, then the assigned mediator will either accept the auto-scheduled mediation appointment or select an alternative date. On about²⁰³ the fortieth (40th) day after the PFB is filed, the JCC Application database (the case management program that is the foundation of internal operations, eFiling, and eService) 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 word processing, 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.²⁰⁴

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 (*see* page 34).

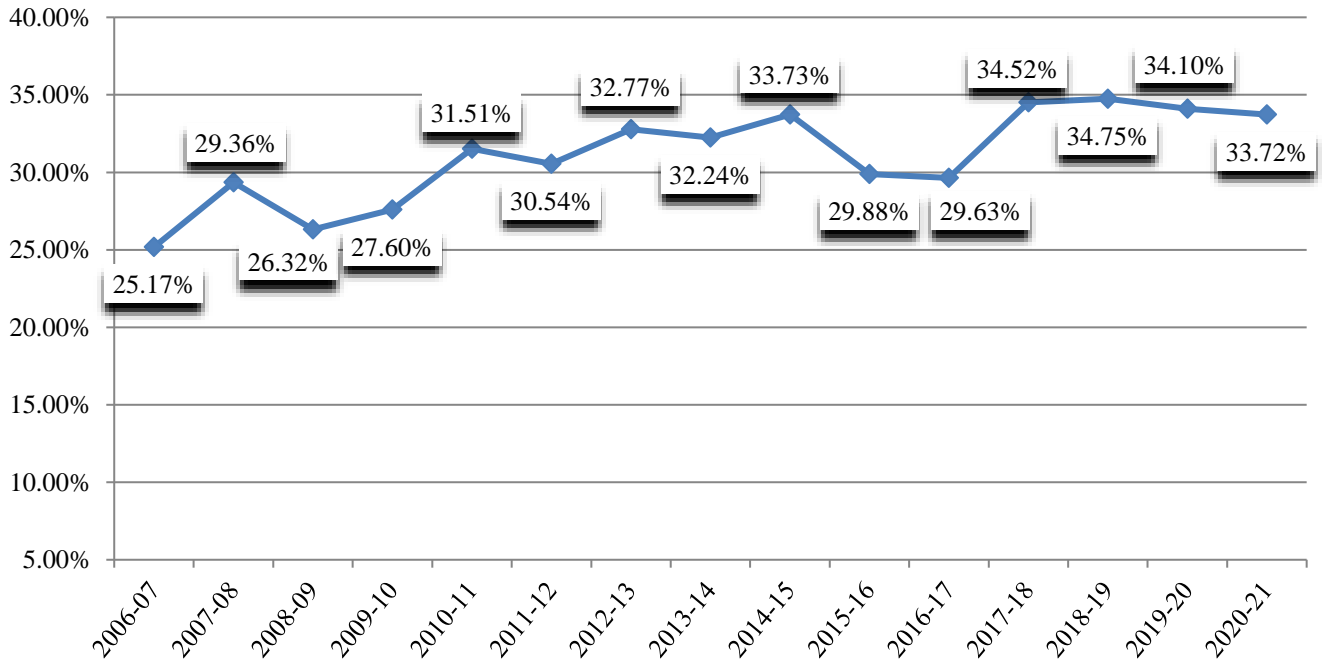
Once a mediation conference is convened, any of the following mediation outcome characterizations would reflect that the pending Petitions for benefits (PFBs) have been resolved, and no final hearing would be required (although an attorney fee entitlement and/or amount hearing may be necessary): “Settled,” “All Issues Resolved,” and “All Issues Resolved Except for Fees.” When these three (3) mediation outcomes are combined, the total reflects the frequency at which the pending PFB(s) are resolved at mediation. The JCC Application does not, however, capture data which reflects whether, in such mediation, one or multiple discrete PFBs were resolved. This graph illustrates the combination of these three (3) outcomes in each of the last fifteen (15) fiscal years. Notably, all three are positive mediation outcomes, and each is trending upward.



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* pages 31-32.

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 of 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. This metric has been remarkably consistent the last four years, of particular note in the midst of the pandemic.



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.²⁰⁵ 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 fifteen (15) fiscal years. This illustrates that in 2020-21 approximately sixty-six percent (66.28%) of PFBs include some issue or issues that remain unresolved at the conclusion of mediation. The year-end total of trial order volume supports that the vast majority of those with remaining issues after mediation nonetheless resolve prior to trial as evidence and arguments become increasingly clear to the parties.

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.

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

The OJCC is required by law to approve all attorney fees paid by or on behalf of an injured worker.²⁰⁶ §440.34, Fla. Stat.²⁰⁷ There is no such specific requirement for the approval of fees paid by employer/carriers for their defense counsel representation.²⁰⁸ Despite the absence of such a specific requirement for defense fee approval, the broad language of section 440.105(3)(b), Florida Statutes²⁰⁹ arguably could require OJCC approval of defense attorney fees. However, this statutory authority has historically not been interpreted to require approval of defense attorney 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 nonetheless file during September). The final reporting in 2020-21 was in mid-October. Some error resulted in a servicing agent initially reporting an inflated figure. Thereafter, it was discerned that servicing agent was the source of other inaccurate figures reported by various of its' clients. The audit and amendment processes necessitated, and the delay, were notable. However, the discovery of those inaccuracies prior to publication prevented a repeat of the corrections necessitated by past errors, which have occurred.²¹⁰ At one point, the figures set forth herein for 2002-03 through 2013-14 were amended after discovery of significant errors subsequent to publication of those annual reports.²¹¹

Because these defense fee figures are reported in the aggregate, it is impossible to consider whether cost reimbursement to E/C attorneys has been included in the figures reported by the various carriers.²¹² 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.

Using the defense fees that are reported pursuant to rule²¹³ and the actual claimant fees approved, the aggregate fees in the Florida workers' compensation system in fiscal year 2020-21 were four hundred ninety-four million five hundred five thousand seven hundred sixteen dollars (\$494,505,715). This is a notable decrease as the aggregate fees in 2019-20 exceeded half a billion dollars for the first time (though that figure in 2021 dollars may have previously been exceeded if adjusted for inflation. *See* page 42, illustrating that claimant fees in 1999, when adjusted for inflation, were \$345,947,273 in 2021 dollars).

Order Year 2019-20 Attorney Fees

Previous OJCC annual reports detailed payment of claimant attorney fees based upon the best information available when those reports were prepared. The OJCC gathers claimant attorney fee data through the JCC Application database. As fee orders are uploaded to the Internet case docket, fee amount data is captured. The District staff is responsible for the input of the fee and cost amount data for each individual fee approval order entered, and their efforts are monitored and audited. The database currently produces different annual totals for claimant attorney fees, approved in prior fiscal years, than was reported in OJCC annual reports for 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 contemporaneously run.²¹⁴ Those figures have therefore been corrected in more recent annual reports, as noted in the chart on the following page.

During 2020-21, a total of four hundred ninety-four million five hundred five thousand seven hundred sixteen dollars (\$494,505,715) was paid in combined claimant attorney fees and defense attorney fees²¹⁵ (and perhaps defense "costs," *see* endnote 212) in the Florida worker's compensation system. This represents a 2.5% decrease from the 2019-20 aggregate fee total of five hundred seven million six hundred fifty-five thousand eight hundred thirty-seven dollars (\$507,655,837)²¹⁶. The aggregate attorney fee total for the system had increased in each of the previous five fiscal years, with 2020-21 representing a significant change in trend, likely pandemic related.

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. 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%). Interrupting this trend, the increase in claimant fees in 2020-21 was nominal, statistically insignificant (0.22%). The notable change in 2020-21 is the 5% decrease in defense fees, the first such decrease since 2014-15 and the most significant decrease since 2011-12. The reported defense fees in 2020-21 were essentially the same as reported in 2016-17. There is probability that defense fees were impacted by travel restrictions, video hearings, telephonic mediation, and other pandemic-related constructs and conveniences. Defense fees are predominantly calculated on a per-hour

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	\$240,867,847 ²¹⁷	11.05% ²¹⁸	\$266,787,990	3.80%
2020-21	\$241,105,336	0.22%	\$253,400,379	-5.02%

basis, and this is therefore more subject to impact from time-saving or time-wasting factors.²¹⁹ It is likely that technology similarly benefited the claimant’s practice during the pandemic, but was less evident in fees because of their predominately contingent (percentage of recovery) nature; approximately 68% of claimant fees in 2020-21 were settlement fees calculated by percentage of recovery rather than hourly compensation.

In the majority of years following 2002-03, claimant attorney 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*²²¹ and *Miles*²²² was significant and was seen then as supporting that ongoing fee increases were likely. The continued increases thereafter support that hypothesis. The 2019-20 increase of 11% resulted in the highest claimant attorneys’ fee total (\$240,567,847) ever reported by the OJCC.²²³ Though the increase in 2020-21 was very modest (0.22%), that total (\$241,105,336) nonetheless is now the highest claimant total ever reported (*but see* page 42 regarding inflation).

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	\$507,655,837 ²²⁰	47.42%	52.58%
2020-21	\$494,505,715	48.76%	51.24%

The aggregate attorney 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 thereafter 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, markedly decreased the defense fee percentage between 2016-17 and 2019-20. The notable decrease in defense fees in 2020-21 has returned the two categories to near balance (48.8%/51.2%), almost identical to that in 2003-04 (48.7%/51.3%).

While defense fees remain the greater portion of the overall aggregate fees paid, at 51.24%, it is notable that the two components continue to trend toward 50/50. It is probable that the reported 2020-21 figures represent significant impacts of quarantines, business closures, and legal practice challenges. It is believed that figures for 2021-22 are both likely to return to growth as employment, work injury, Petition volume, and litigation increase. Notably, the balance between these two is also apparently influenced by the balance between litigation and settlement. Settlement fees on the claimant side are not calculated based upon time expended as defense fees are. As cases tend away from litigation toward settlement, and the time invested in discovery, motions, and more, claimant fees will seemingly remain largely unaffected while defense fees will likely be lower.

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,²²⁴ the 2002-03 aggregate (\$427,359,212), in 2021 inflation-adjusted dollars would have been \$614,815,259.²²⁵ This is \$120,309,544 more than the actual 2020-21 aggregate of \$494,505,715. Adjusted for inflation in 2021 dollars, aggregate attorney fees in Florida workers' compensation have *decreased* over one hundred twenty million dollars in the last eighteen years, despite the persistent and sometimes notable increases in claimant fees in the last five years. Frankly stated, aggregate attorney fees have not kept pace with inflation.

The notable increase in claimant attorney fees in 2016-17 was mostly attributable to hourly attorney fees for litigation of issues. The marked increases in 2017-18 and 2018-19 were instead fueled by claimant-paid attorney fees related to settlements. Hourly claimant fees declined in 2020-21, while percentage fees continued to increase, reinforcing the conclusions above regarding defense and claimant fees. Over the eighteen years since the 2003 legislative reforms, claimant fees are up about 14% and defense fees are up about 17%, though each remains notably less than they would have been had the 2002-03 figures increased linearly consistently with inflation.

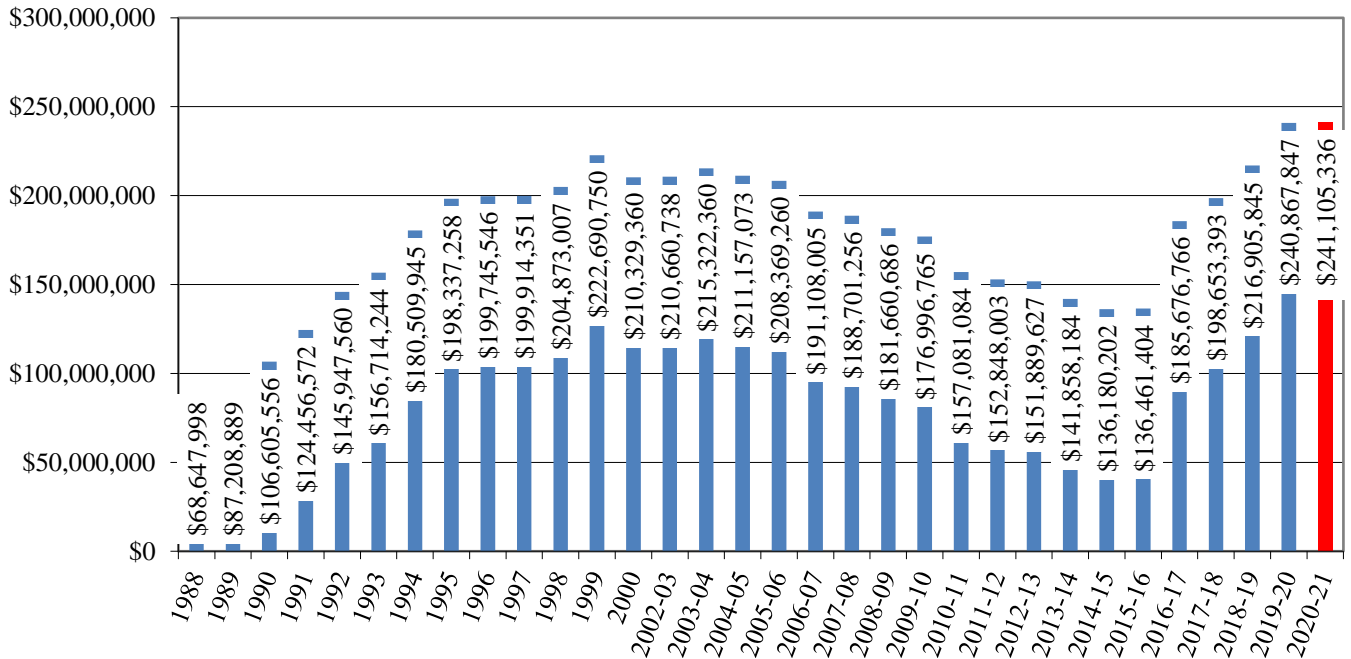
Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	\$210,660,738		\$216,698,474	
2020-21	\$241,105,336	14.45%	\$253,400,379	16.94%
Inflation	\$303,064,571		\$311,750,688	

The Department of Labor and Employment Security (“DLES”) compiled data regarding the attorney 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,²²⁶ not fiscal years. It is further instructive to note that the DLES figures for attorney 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. Conversely, 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 2020-21.

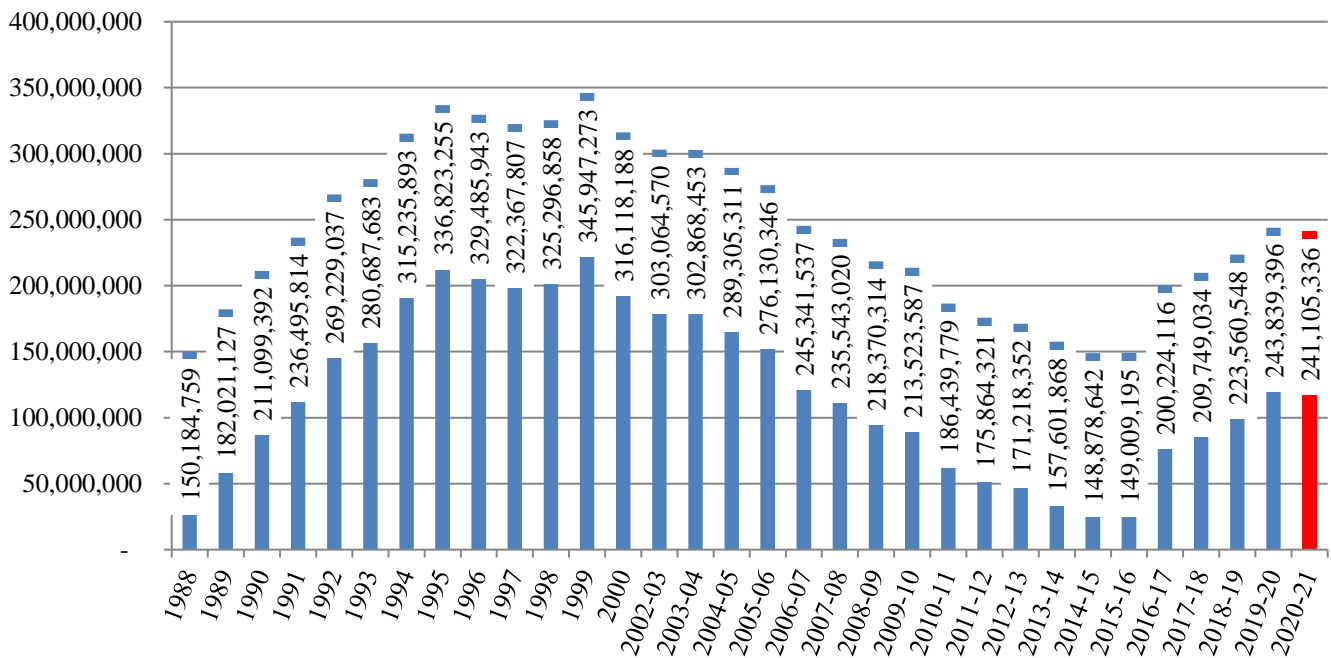
The 2020-21 claimant fees are the highest in this illustration period. Over the four fiscal years following 2015-16, claimant fee annual totals increased notably (36.07%, 6.99%, 9.19%, and 10.91%). However, if the previous high in 1999 were adjusted for inflation, it would equal \$345,947,273 in 2020-21,²²⁷ significantly more than the actual 2020-21 figure \$241,105,336. Thus, reinforcing that while fees are increasing, the figures have not kept pace with inflation (*see* page 42).

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The overall claimant fees in workers' compensation are illustrated in the following graph from 1988 to present. These figures demonstrate fluctuation in fees, but notably a reasonably steady decrease in annual aggregate following the 2003 statutory reforms. The trend changed in 2016-17 coincident with the decisions in *Castellanos*²²⁸ and *Miles*.²²⁹



If the claimant fees were adjusted for inflation, the shape of the distribution curve remains similar. However, the magnitude of fees in terms of decline and growth over the last 33 years is more clearly illustrated, as is the extent to which increases since 2016-17 compare to historical figures in consistent 2021 dollars. Viewed in this inflation-adjusted perspective, aggregate claimant fees are currently close to the 2006-07 total.

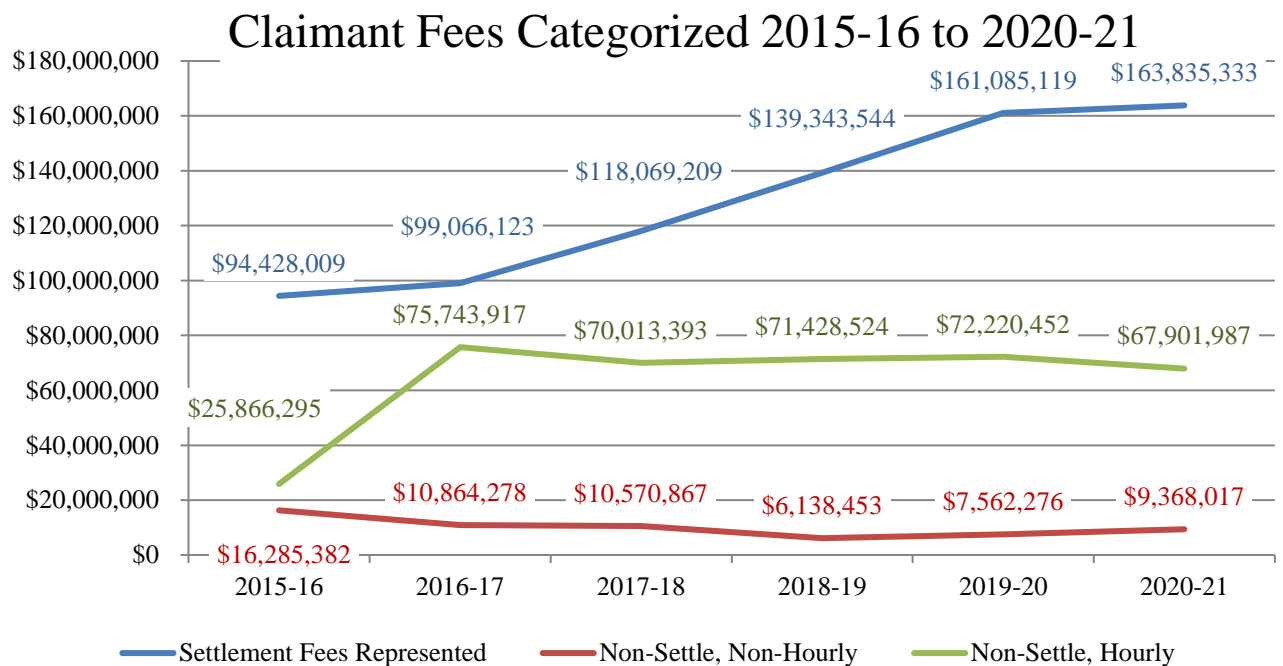


The *Castellanos* effect

The effects of the *Castellanos*²³⁰ 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 \$75,743,917²³¹ in 2016-17, an increase of almost \$50 million (+191%). By comparison, there was a much less significant increase in the settlement fees (at least nominally Claimant-paid) from \$94,428,009²³² in 2015-16 to \$99,066,123 in 2016-17, an increase of about \$4.6 million (+5%). Since 2016-17, the hourly fees have slowly moderated over a four-year period, trending slowly downward.

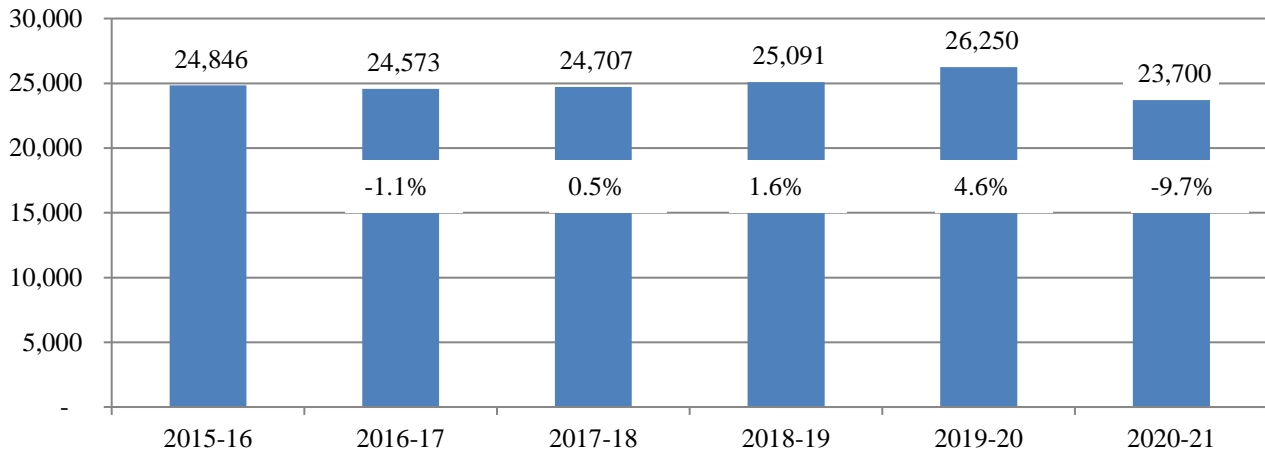
The *Miles* effect

The effects of *Miles*²³³ (settlement fees in blue below) were comparatively less apparent in 2016-17, but are increasingly predominant thereafter. 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 up to \$139,343,544 in 2018-19 (+18%), and further still to \$161,085,119²³⁴ in 2019-20 (+16%). Such increases 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. The settlement fees in 2019-20 were significantly increased (+16%), but the volume of settlements was notably higher as well (+4.6%)²³⁵. However, that caveat is not seen as regards the other years since *Miles*, and despite a 9.7% decrease in the volume of settlements in 2020-21, the settlement fees increased (+1.7%) rather than decreased. These changes are illustrated in the following chart.



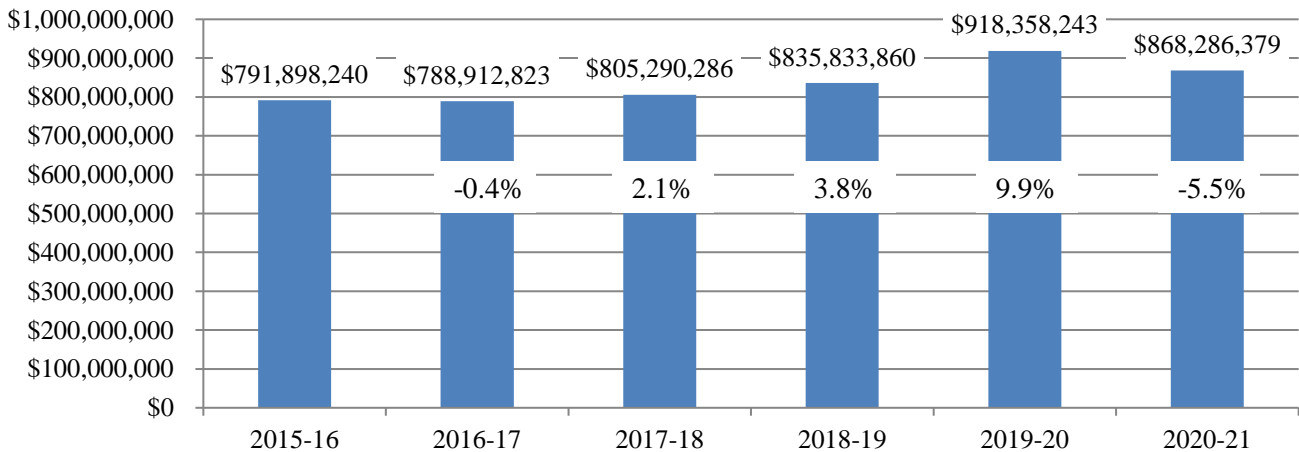
The volume of represented settlements has been reasonably consistent between 2014-15 and 2018-19 (graph next page). In 2019-20 there was a notable increase (4.6%),²³⁶ followed thereafter by an immediate decrease in 2020-21 to the lowest volume of settlements in seven years. Until 2019-20, the changes in settlement volume might be described as minor vacillations: 2016-17 (-1.1%), 2017-18 (+.5%), 2018-19 (+1.6%). And, while the 2019-20 increase and the following decrease may be attributable in part to pandemic influences, this bears careful monitoring. Regardless of cause, the aggregate settlement fee amount increased when the settlement volume increased (2019-20), and increased again when the volume decreased (2020-21). The increase in settlement fees in 2020-21, though modest (+1.7%), cannot be attributed to a higher volume of settlements, and thus illustrates greater fees per settlement. There was some overall increase in the average (mean) settlement amount (4.7%).

Volume of Represented Settlements



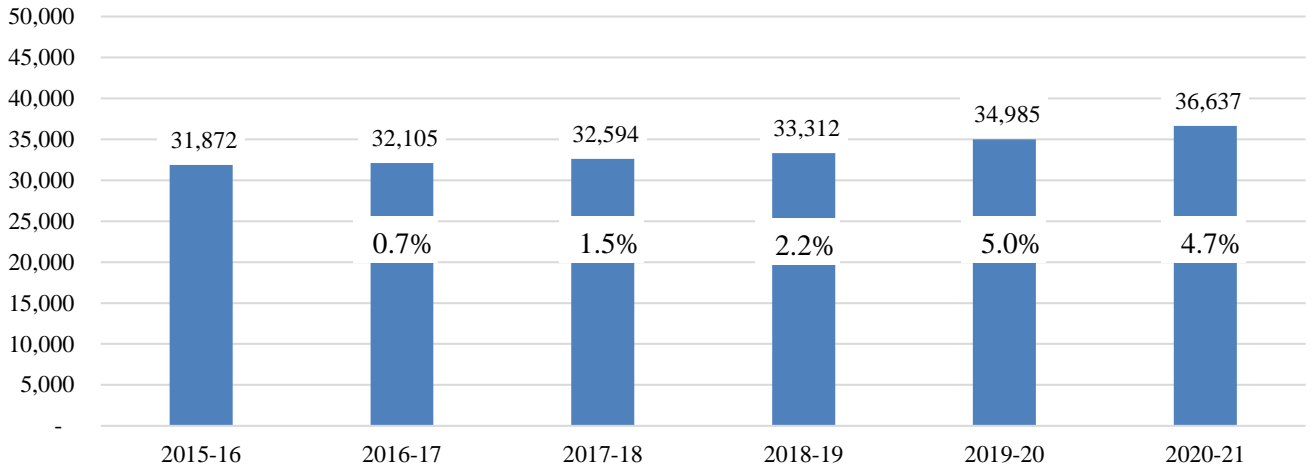
The data does not support that the aggregate value of settlements increased significantly in 2017-18 (+2.1%), though the increase in 2018-19 (3.8%)(graph below) is more significant. Thus, the increase in settlement fees in those years was not demonstrably due only to higher value settlements or settlement volume (above). When settlement order volume increased in 2019-20 (+4.6%), the aggregate value increased more significantly (+9.9%); and, the fees increased even more (15.6%). In 2020-21, the trend reversed. The volume decreased (-9.7%), the aggregate dollar value decreased (-5.5%), approximately \$50 million, but settlement attorney fees increased almost three million dollars (+1.7%). Thus, the increase in settlement fees since 2016 seems appropriately attributed largely to *Miles* interpretations through 2018-19. One *Miles* interpretation held by some essentially equates to more extensive attorney fees in all cases, and abandonment of the statutory formula in section 440.34(1), Florida Statutes.²³⁷ Anecdotally at least, it appears some judges approve fees without substantive consideration of the time invested by counsel or the effective hourly rate.²³⁸

Aggregate Represented Settlement Dollars



However, in addition to the aggregate value of all settlements, which approaches one billion dollars annually, the average (mean) settlement amount has demonstrated notable increase in the last two years. Notably, however, after the 2019-20 increase (+5%) the 2019-20 average increased significantly again. The variations are illustrated in the graph below. The recent trend is clearly to increased average settlements.

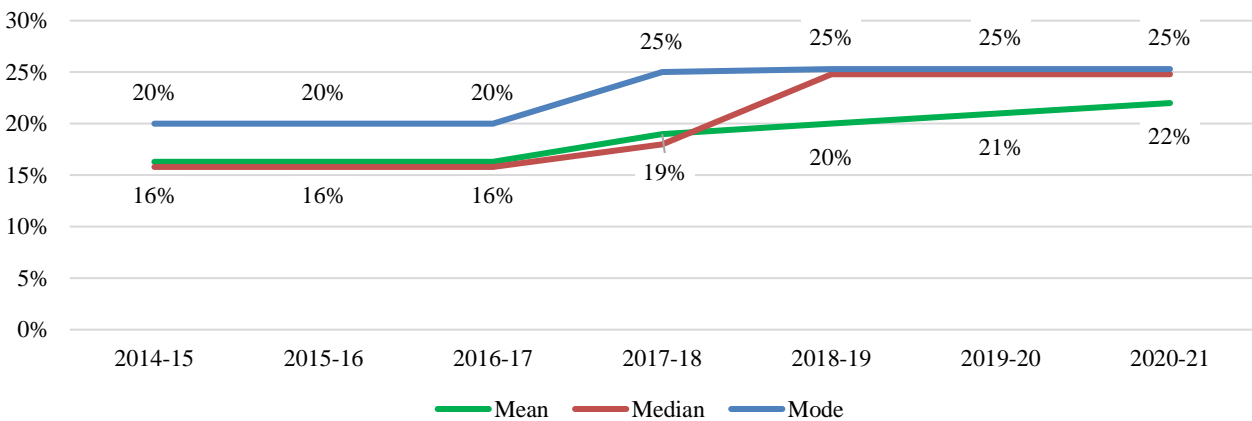
Average (Mean) Value of Represented Settlements



The “average” attorney fee on settlements is increasing. 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 value element that is in the middle of that range. The mode is defined as the discreet value that appears most often in that data distribution. Each is worthy of consideration.

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 twenty percent (20%). In 2017-18, the mean was nineteen percent (19%), the median was eighteen percent (18%), and the mode was twenty-five percent (25%). In 2018-19, the shift continued: mean was twenty percent (20%), median was twenty-five percent (25%), and mode was twenty-five percent (25%). In 2019-20, the mean was twenty-one percent (21%), the median was twenty-five percent (25%), and the mode was twenty-five percent (25%). In 2020-21, the trend to increase continued with the mean reaching twenty-two percent (22%), while the median (25%) and mode (25%) remained consistent. This analysis illustrates that the most frequent fee amount in the distribution is 25% and has been so since 2017-18. The volume of 25% fee outcomes is increasing, thus raising the median to 25% since 2018-19. This trend as regards various volumes of fee outcomes is shifting the mean slowly higher. The distribution demonstrated by the median supports that fees are increasing for more injured workers. The mean illustrates that injured workers in aggregate are paying more of their settlement in fees. These are illustrated in the following graph.

Settlement Attorney Fees



*Miles v. City of Edgewater*²³⁹ is open to multiple characterizations and interpretations. The Court discussed there the interplay or relationship between constitutionally recognized individual rights²⁴⁰ and the “governmental interests advanced as the basis for” sections 440.34 and 440.105, Florida Statutes. The analysis was influenced by the factual conclusions in *Miles*, and the Court’s prior similar ruling in *Jacobson v. Se. Pers. Leasing, Inc.*²⁴¹ 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 Court decisions represented instances in which injured workers’ entitlement to benefits had been completely denied. Thus, the Court reasoned that “there can be no depletion of benefits where there are no benefits.”²⁴² 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.” Thus, there is perhaps a perspective or conclusion that settlement values would remain reasonably static, and that the higher fees will come only from what an injured worker would otherwise have received. Potentially, as injured workers strive for recovery of some net settlement figure, settlement values will be increased to cover the steadily increasing fees, perhaps suggested by the average value of settlements, *see* page 45, though that analysis does not account for inflation. 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.”

Whether that *Miles* analysis is “as applied” or more general (“facial”) may remain a matter of discussion and opinion. However, the statistics support that the case is being applied by trial judges on the premise that the Court’s decision was facial and that the fee constraints of section 440.34 are of no import whatever. The issue of attorney fees and the application of section 440.34 has not returned to the Court since the 2016 decisions.²⁴³

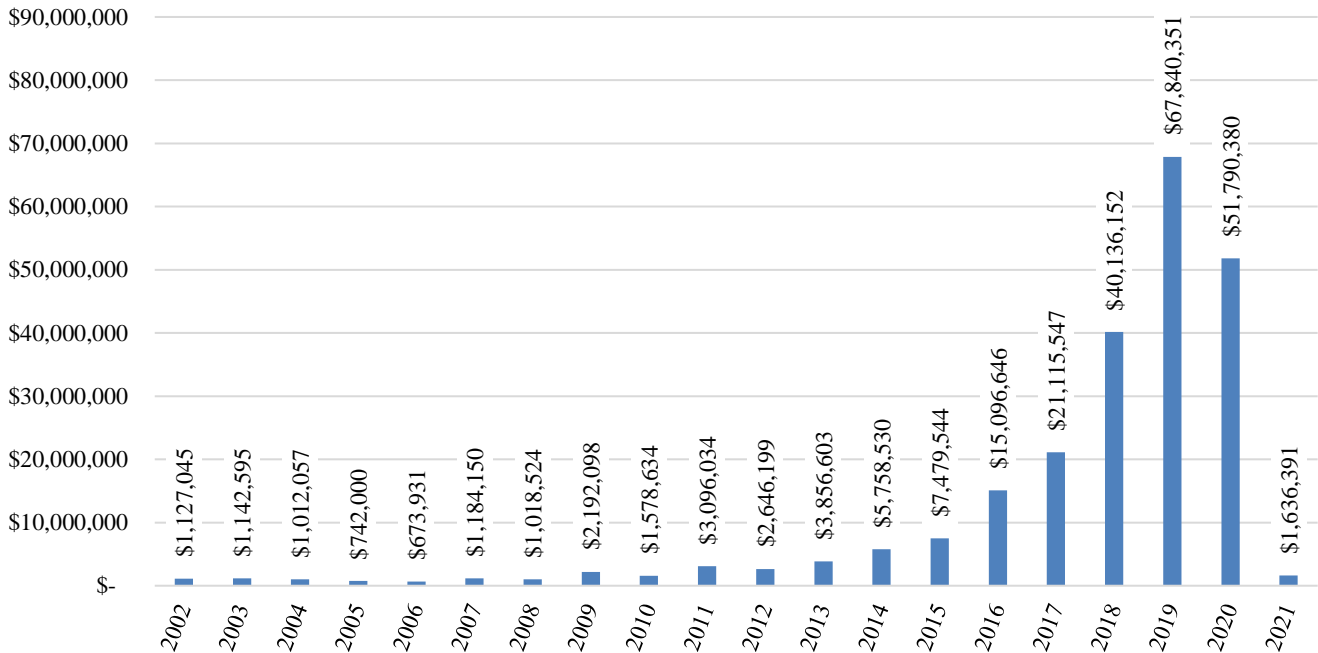
Attorney Fees by Accident Year

The figures above represent only the amount of fees “approved” during each respective fiscal year. During any particular fiscal year, fees might be approved in cases for which the date of accident was also during that particular fiscal year, or even the calendar year in which a fiscal year ends. More likely, the approved fee is related to a date of accident prior to the year in which the fiscal year ends, perhaps many years prior. In 2020-21, fees were approved regarding 49 distinct accident-date years. This is reasonably consistent with prior years, in which fees have been documented in a range of 44 to 51 different calendar years. There have also been instances documented in which the date of accident was misstated in a Petition for Benefits or request for assignment of case number (*see* glossary, page 59). 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 as litigation progresses; these errors are sporadic and rare. Therefore, the possibility for misstatement of accident year could impact the population, e.g. 49 distinct accident-date years in 2020-21, for a particular fiscal year.

In 2017-18 attorney fees were approved on a 1952 date of accident.²⁴⁴ This example illustrates the manner in which claims can occur, and yet 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.²⁴⁵ However, the first record that this agency has regarding this case occurred in 2017-18, 66 years post-accident.

Most fees approved during any particular fiscal year will be associated with accidents that occurred prior to the calendar year in which the fiscal year ends; most fees approved in 2020-21 involved accidents before calendar year 2021. This is because most cases in the OJCC system are not related to accidents in the current 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 2020-21 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 here is generally similar to prior year’s data.



The vast majority, approximately ninety-one percent (91.0%) of the claimant fees approved in 2020-21 related to accident dates in the ten years between January 1, 2011 and December 31, 2020. For comparison, the similar ten-year periods reported in fiscal 2016-17, 2017-18, 2018-19 and 2019-20 were each between 88% and 89%. This data suggests reasonable consistency in the contribution of the most recent accident years, but some increase suggestive that in 2020-21 a larger portion of litigation and settlement was related to the most recent decade of accidents.

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 2020-21 in the graph 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 attorney fees approved, or awarded each fiscal year; second, the most significant accident year for claimant attorney fees is consistently two years prior to the reporting year. This is overall consistent with the resolution of cases discussed 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 months²⁴⁶ after accident date. Thus, the

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
2020-21	2019	\$67,840,351

minimal “same year” fee total is most likely related to resolutions and stipulations, and perhaps a small volume of settlements, occurring reasonably rapidly after an accident.

Of the claimant attorney 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 remains reasonably consistent since. This is illustrated in the table below, and reiterates the conclusion that older cases are not presently a major contributor to the claimant attorney fee total.

Fiscal Year	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	2020-21
Fees on Accident dates > 20 years	5%	6%	6%	5%	5%	6%	8%	7%	7%	5%	5%	3%	3%	4%

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

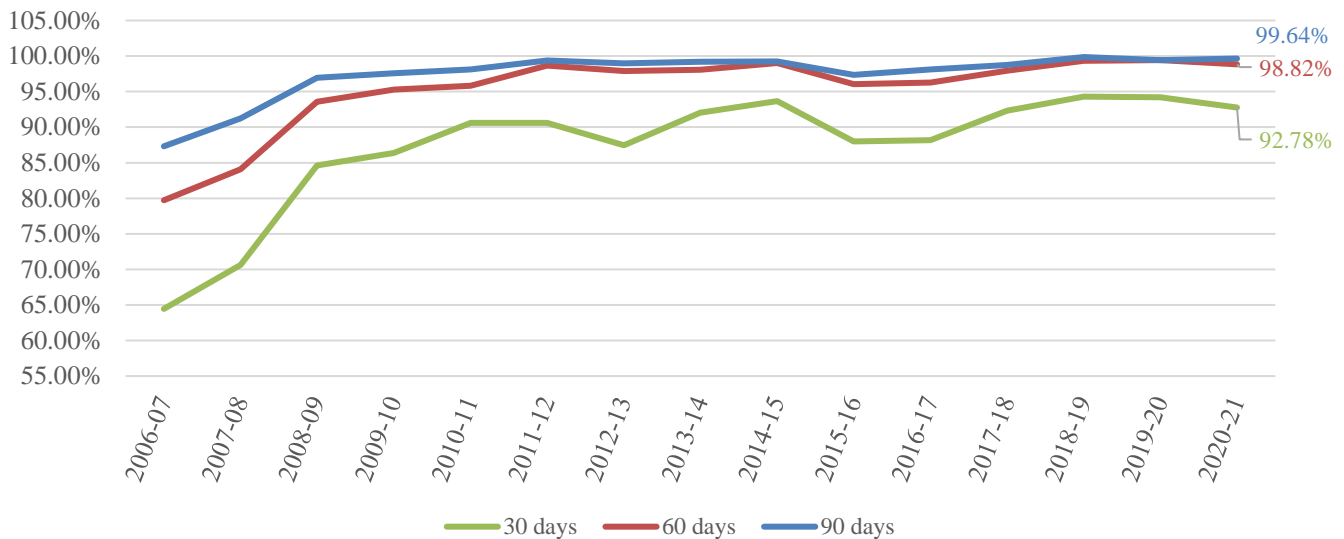
Most Petitions are brought to trial within the 210-day statutory parameter.²⁴⁷ Many legitimate reasons may require a trial to be reconvened on a second or even third day after the initial trial date. However, anecdotal evidence supports that such a reconvene process was historically employed by a minority of judges to delay record closure and artificially extend statutory deadlines for entry of a final order.²⁴⁸ 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.”²⁴⁹ 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 perhaps 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 merit’s orders entered during fiscal 2005-06 through fiscal 2020-21, supports that many final orders were entered within a day of the final hearing (14%). Overall, the JCCs entered timely (within the 30 days required by statute²⁵⁰) final orders approximately fifty-eight percent (57.6%) of the time in fiscal 2005-06. This increased steadily thereafter, and was approximately ninety-three percent (92.78%) in 2020-21. That this decreased slightly from 2019-20 (94.18%) is likely due in part to the adjustments necessitated by the pandemic. The chart below illustrates some fluctuation, but a notable consistent recent performance in compliance with the statutory requirement.²⁵¹

Days	2016-17	2017-18	2018-19	2019-20	2020-21
30 days	88.15%	92.29%	94.29%	94.18%	92.78%
40	91.65%	96.83%	97.42%	97.30%	97.23%
50	94.76%	97.52%	98.91%	99.01%	98.80%
60 days	96.26%	97.93%	99.32%	99.43%	98.82%
70	97.51%	98.48%	99.46%	99.43%	99.28%
80	97.88%	98.76%	99.73%	99.43%	99.40%
90 days	98.13%	98.76%	99.86%	99.43%	99.64%
100	98.63%	98.76%	99.86%	99.57%	99.64%

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 (99.64%) of the cases in 2020-21. 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,”²⁵² and has since returned to over ninety-nine percent (99.64%). 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, abandonment of the “ruling letter” delegation of our history,²⁵³ and judges drafting their own orders.

For final orders entered during fiscal 2006-07 through 2020-21, 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 2020-21 the longest period was two hundred thirty-three (233) days. This evidences far more consistent achievement of the statutory parameter,²⁵⁴ and a greater focus upon timely order issuance. 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 on average to nonetheless perform significantly within the 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 remained thereafter until the pandemic. But for the impacts of Hurricane Irma in 2017-18,²⁵⁵ 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 provide sufficient opportunities to mediate all incoming Petitions²⁵⁶, 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.²⁵⁷ 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 31st 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 all OJCC staff.²⁵⁸

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 attorney fees and cost reimbursements should be eliminated when all parties are represented by counsel. This is further supported by the conclusions of the Florida First District Court of Appeal in *Miles v. City of City of Edgewater Police*,²⁵⁹ and the distinct potential that judicial oversight of such fees has become languid.²⁶⁰

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.²⁶¹

Use of EMA provisions should be discretionary rather than mandatory.

The challenges with waste and fraud were detailed in the *2018-19 OJCC Annual Report*. The Centers for Medicare and Medicaid Services (CMS) notes that significant fraud or abuse exists in the general delivery of medical care.²⁶² 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.”²⁶³ 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.²⁶⁴ In 2015, a Florida company paid almost \$70 million to settle a fraud case involving “physician kickbacks, complicit hospital administrators and negligent financial oversight.”²⁶⁵ 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.

A statutory process for whistleblowing should be added to Chapter 440.

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

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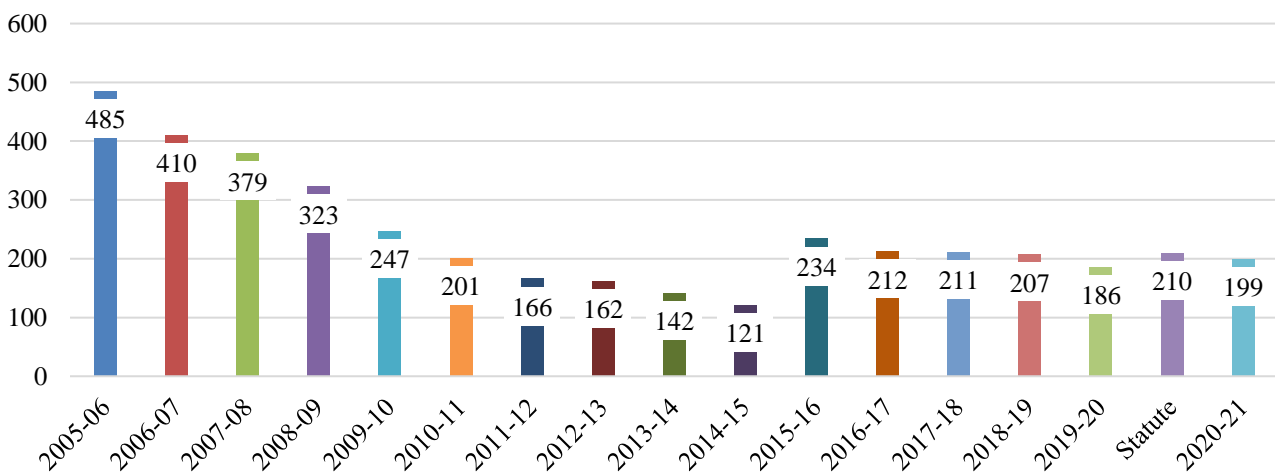
Are Judges Generally Unable to Meet a Particular Statutory Requirement for Reasons Beyond Their Control?

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 days²⁶⁶ and to trial within 210 days.²⁶⁷ 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.²⁶⁸ This is a parameter that is more consistently within the control of the assigned judge, though the EMA issue can influence it also.²⁶⁹

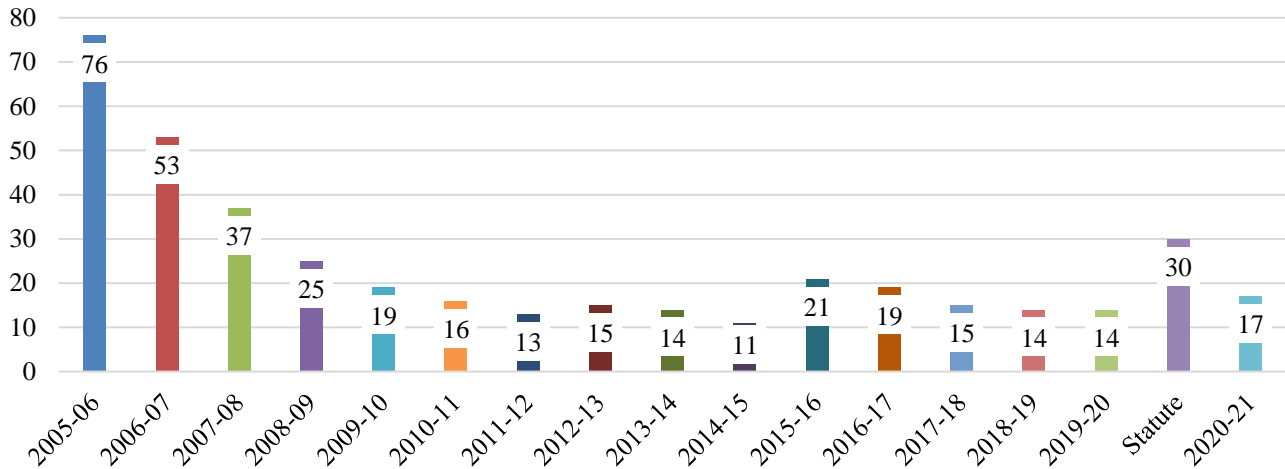
Each statutory requirement can clearly be accomplished in the vast majority of cases. This fact is indisputable and has been proven repeatedly in various Districts throughout Florida. There can be no generalized claim that cases “cannot” be tried within two hundred ten (210) days of PFB filing or that 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.²⁷⁰ 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 sixteen fiscal years (2005-06 through 2020-21) 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 overall statewide average until 2010-11, which continued through 2014-15.

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.²⁷¹ 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.²⁷² “Trial orders,” for the purpose of statistical reporting, 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 generally, that definition was subject to misinterpretation and abuse, described elsewhere in this report.²⁷³

With the 2016 change in definition of “trial,”²⁷⁴ the OJCC did not collectively meet all three of these standards again thereafter 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 barely (234, 212, 211) exceeded the statutory 210²⁷⁵ days for three fiscal years, but compliance overall has improved in the most recent three fiscal years (207, 186, 199).

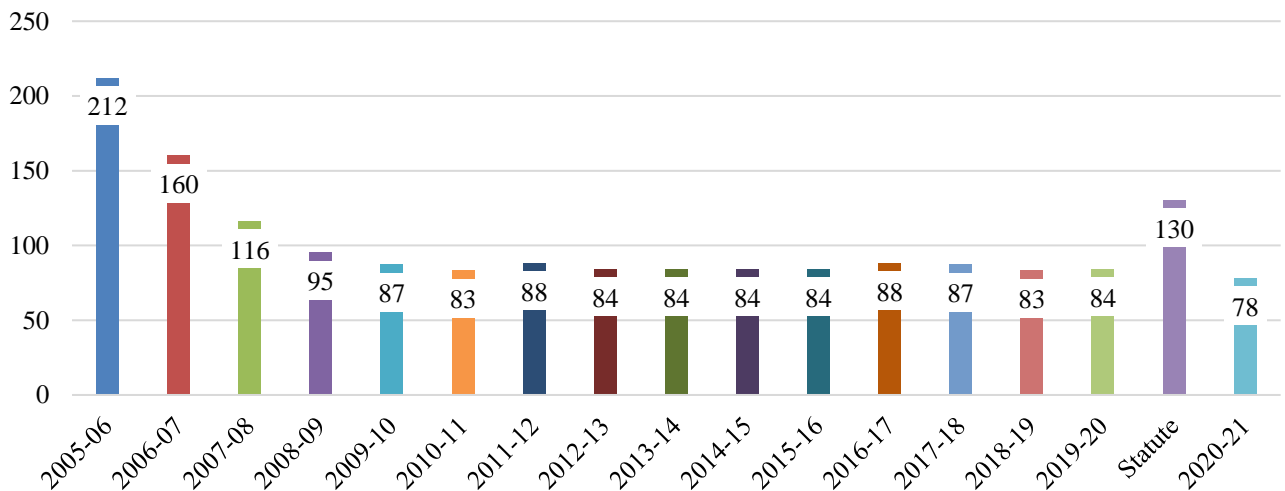


The Office of the Judges of Compensation Claims has also made significant improvement in the average time period between the commencement of the trial and the entry of the final order thereon.²⁷⁶ The overall statewide average period, from trial to the entry of the trial order, has decreased markedly since 2005-06, and remains well within the statutorily defined 30 days, as illustrated in the following graph. The judges demonstrate marked dedication to timely decisions.



For 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. In 2020-21, that performance dropped again to 97%.

Another impressive improvement is the marked reduction, in the overall statewide average time period, between Petition filing and the first mediation conference held thereon. This improvement 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 thirteen 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,²⁷⁷ 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,²⁷⁸ (timely mediation), section 440.25(4)(a), Florida Statutes,²⁷⁹ (pretrial procedure), section 440.25(4)(b), Florida Statutes,²⁸⁰ (appropriate continuance grounds and orders), section 440.25(4)(c), Florida Statutes,²⁸¹ (timely final hearing notice), section 440.25(4)(d), Florida Statutes,²⁸² (timely final hearings and final orders), section 440.25(4)(e), Florida Statutes,²⁸³ (final order filing), section 440.34(2), Florida Statutes, (appropriate fee order findings), section 440.442, Florida Statutes,²⁸⁴ (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 sixteenth 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 analysis 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 workload 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.

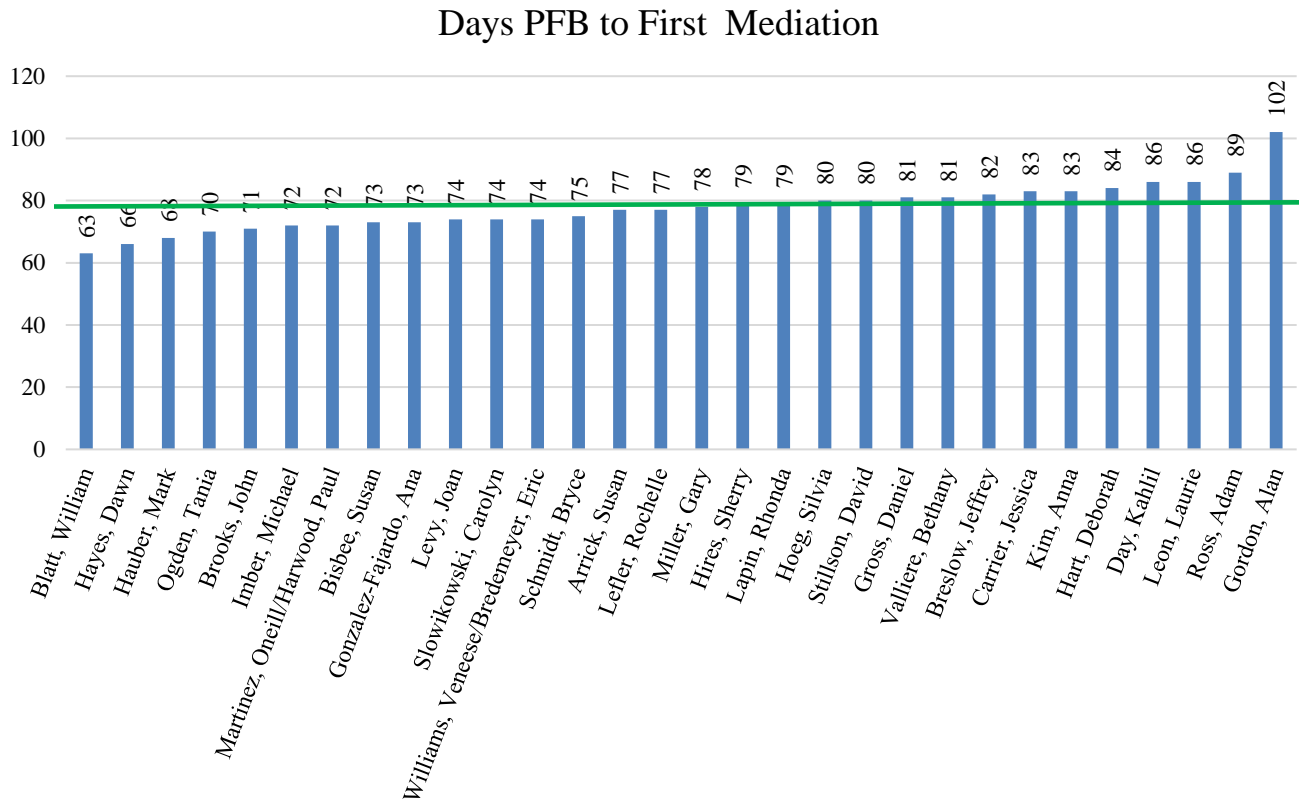
Pretrial Hearing

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.²⁸⁵ 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 2020-21, supported that appropriate notice is being provided for pretrial proceedings. Furthermore, 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 (78 days) 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 individual mediators within each District in the District appendices to this report, *infra*.

Greater detail regarding the success of state mediation within the OJCC is provided in the 2020-21 Settlement and Mediation Report,²⁸⁶ 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 78 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 2007-08,²⁸⁷ **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.²⁸⁸ 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. 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. However, the available data supports that timely notice is being provided for all final hearings. 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. The volume of continuances in 2020-21 was 1,659, the lowest ever reported, an average of 54 per judge for the year.

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.”²⁸⁹ Any hearing that is characterized as “continued” in the database should have a corresponding continuance order in the case docket.²⁹⁰ The order should document the circumstances. The order shall also set forth the new event (trial or mediation) date.²⁹¹

Ten continued final hearings were randomly selected for each judge during 2020-21 (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.²⁹²

Each order that grants a continuance is required by section 440.25(4)(b)²⁹³ to include the new hearing date. The judges for whom each examined continuance was reflected in a corresponding order that contained such a date in 2020-21 were Judges Almeyda, Arthur, Clark, Forte, Havers, Hedler, Humphries, Johnsen, Lewis, Kerr, Medina-Shore, Newman, Owens, Pitts, Ring, Sojourner, Stephenson, Walker, Weiss and Young (65%). This is a marked improvement from 2019-20 audit results and may signal more attention to this statutory requirement.

Final Order Filing

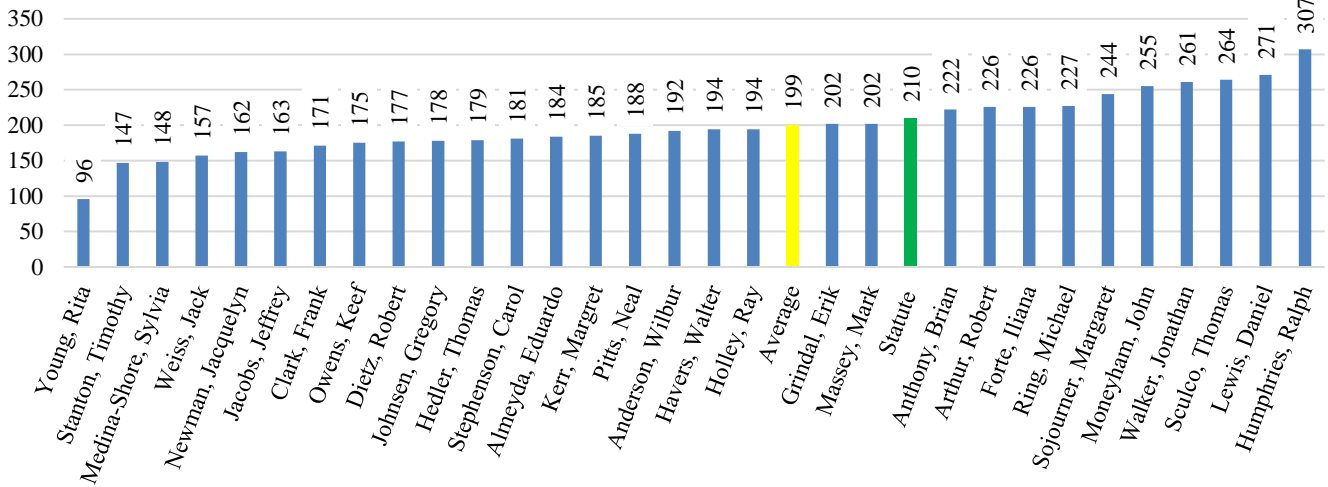
The filing of final orders in Tallahassee, Florida is mandated by section 440.25(4)(e), Florida Statutes. This statutory measure requires that the judge file all final orders with the Office of the Judges of Compensation Claims in Tallahassee, Florida. The data supports that all of the JCCs are in complete 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 2020-21 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 ninety-nine (199) days in 2019-20. Sixty-seven percent of judges averaged less than 210 days in 2020-21.

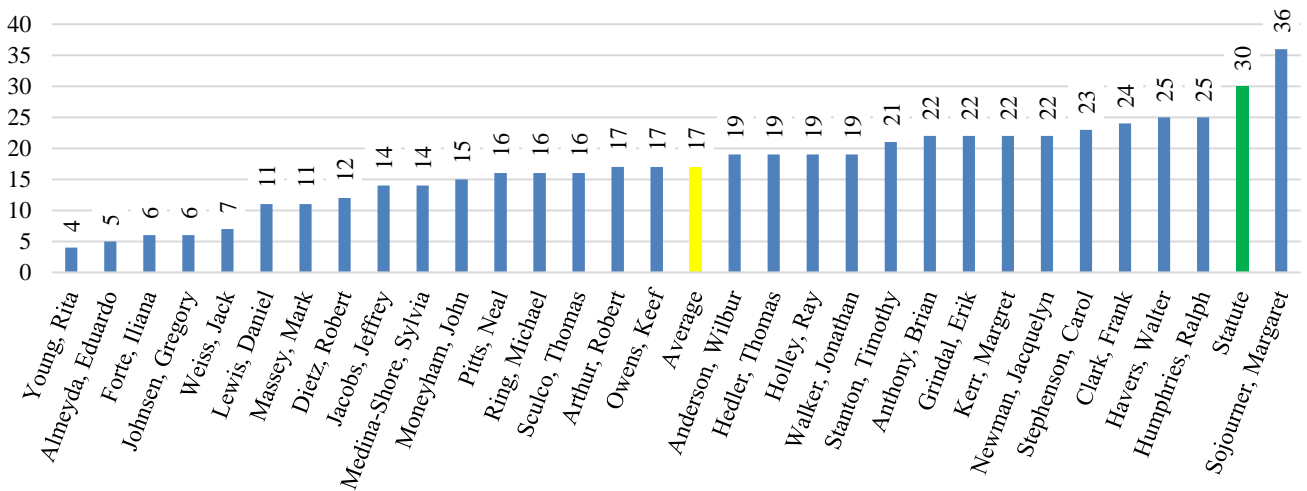
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Average Days from PFB or Motion to Trial 2020-21



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 17 days in 2020-21. The green bar represents the 30-day statutory parameter. Ninety-seven percent of judges averaged less than 30 days in 2020-21.

Average Days from Trial to Order 2020-21



Attorney Fee Orders

Contents of attorney fee orders are addressed in section 440.34(2), Florida Statutes.²⁹⁴ 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 attorney fees. Claimant attorney 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 attorney 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 attorney 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 attorney fees and/or costs that flow from previously obtaining that benefit. Absent such a stipulation, 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. Determinations of fee amount are virtually always reserved for determination thereafter.

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 attorney 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.²⁹⁵ 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 orders²⁹⁶ 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 the 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 attorney fees: case settlement fees, side stipulations, appellate fees, *ex-parte* fee, and adjudicated (awarded) fees.

The OJCC audited JCC orders awarding contested attorney fees for fiscal 2020-21. 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 and 2020-21, 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 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. There are various examples in which a judge concluded a fee was “reasonable,” but for which there was no factual justification regarding the value of benefits obtained or the number of hours invested in obtaining the benefit.²⁹⁷ It is not known what factual justification might support a determination of “reasonable” without any examination of such foundational facts.²⁹⁸

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 2020-21, 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 \$1.9 million to date. The system saves well over 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 Zoom video teleconference systems 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. 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 budget increase should be considered to correct the historical and significant pay equity issues previously identified and discussed.

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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. ²⁹⁹
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. Commonly referred to as “e-filing.”
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. Sometimes called “JCC-A.”
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. ³⁰⁰
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 fees/costs. ³⁰¹
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.
ZOOM	An Internet video teleconference system used to conduct and record hearings.

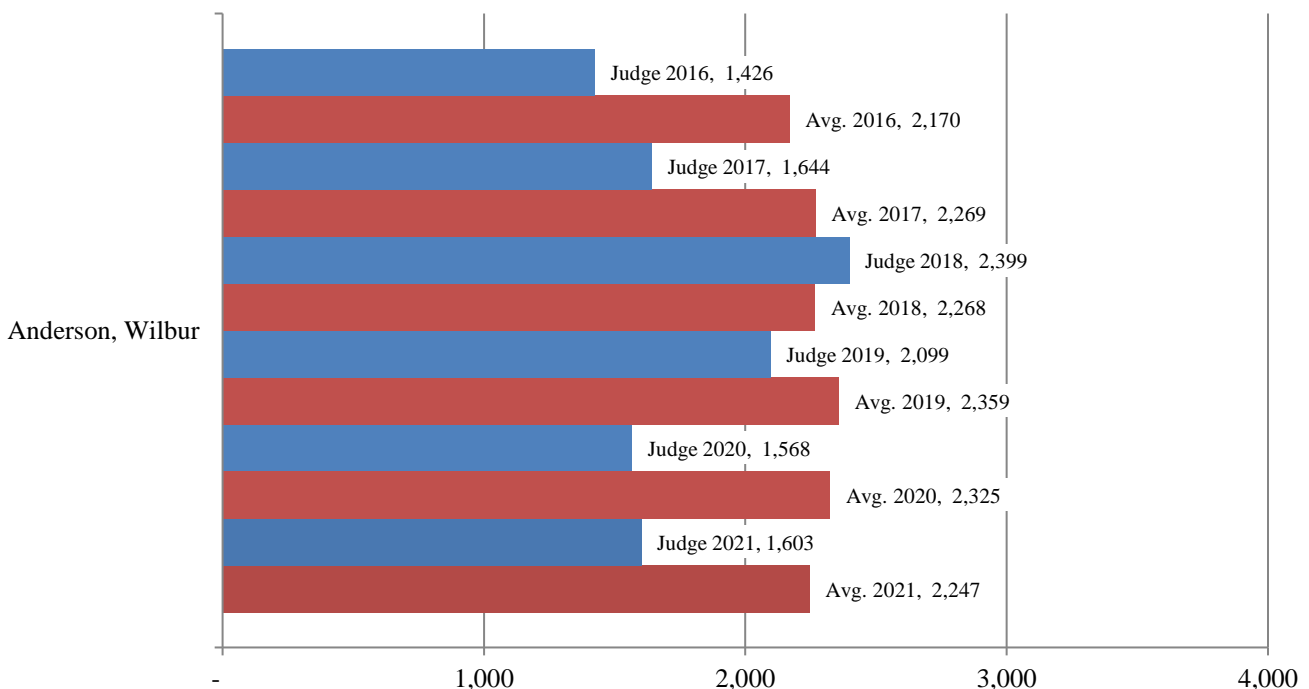
Appendix “1” District DAY (JCC Anderson):

District DAY includes Flagler and Volusia Counties. Seminole County was also included in District Daytona until it was transferred to District Orlando 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.

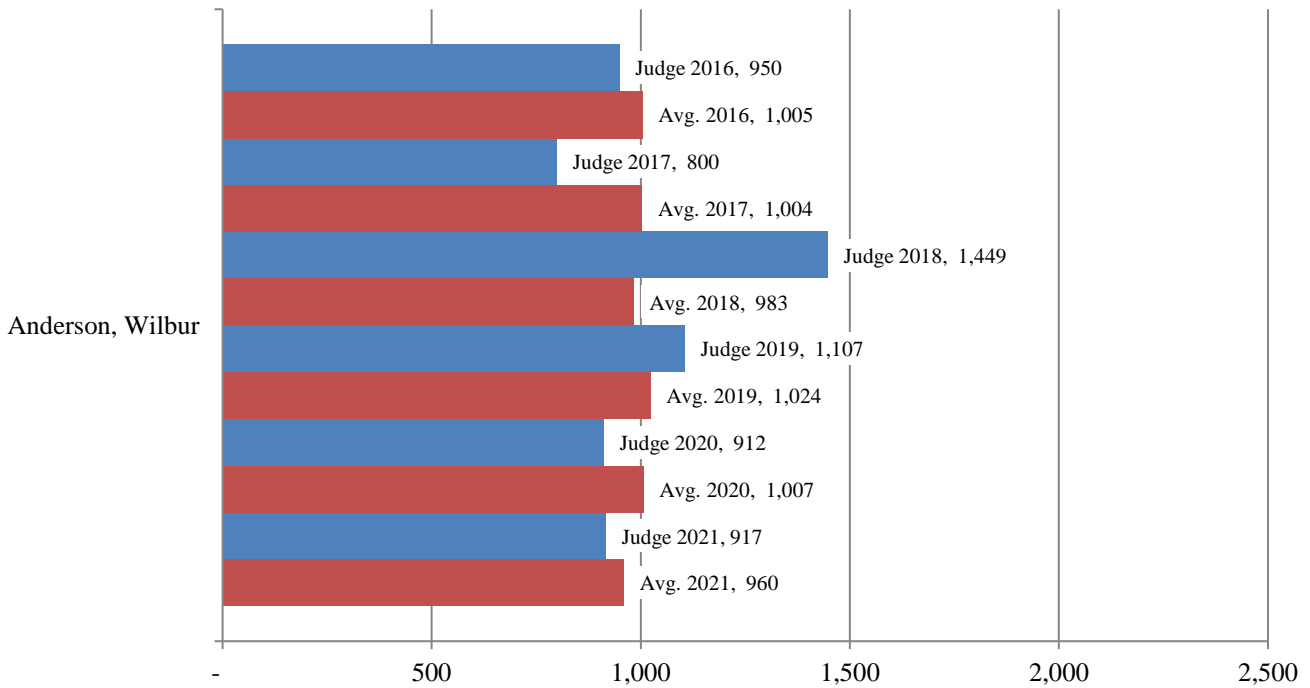
For 2020-21, District DAY continues to exhibit a “new case” volume close to the statewide average. However, Petition filing rates are significantly below average. Trial volume is likewise below average. Mediation times are consistent with statewide average, and the time to both trial and final order are within the statutory parameters. Settlement volumes are close to the average, as are “other hearings” and “other orders.”

In 2020-21, Judge Anderson continued as a pupilage group chair of the Judge William Wieland American Inn of Court, and as a guest lecturer on effective oral and written advocacy at Barry University School of Law. He participated in a panel discussion on evidence and objections at the annual Workers’ Compensation Winter Seminar sponsored by the OJCC and the Workers’ Compensation Institute. He also spoke at a Judicial Town Hall sponsored by the Workers’ Compensation Section of The Florida Bar, and he continued as an active member of the National Association of Workers’ Compensation Judiciary and the Volusia County Bar Association.

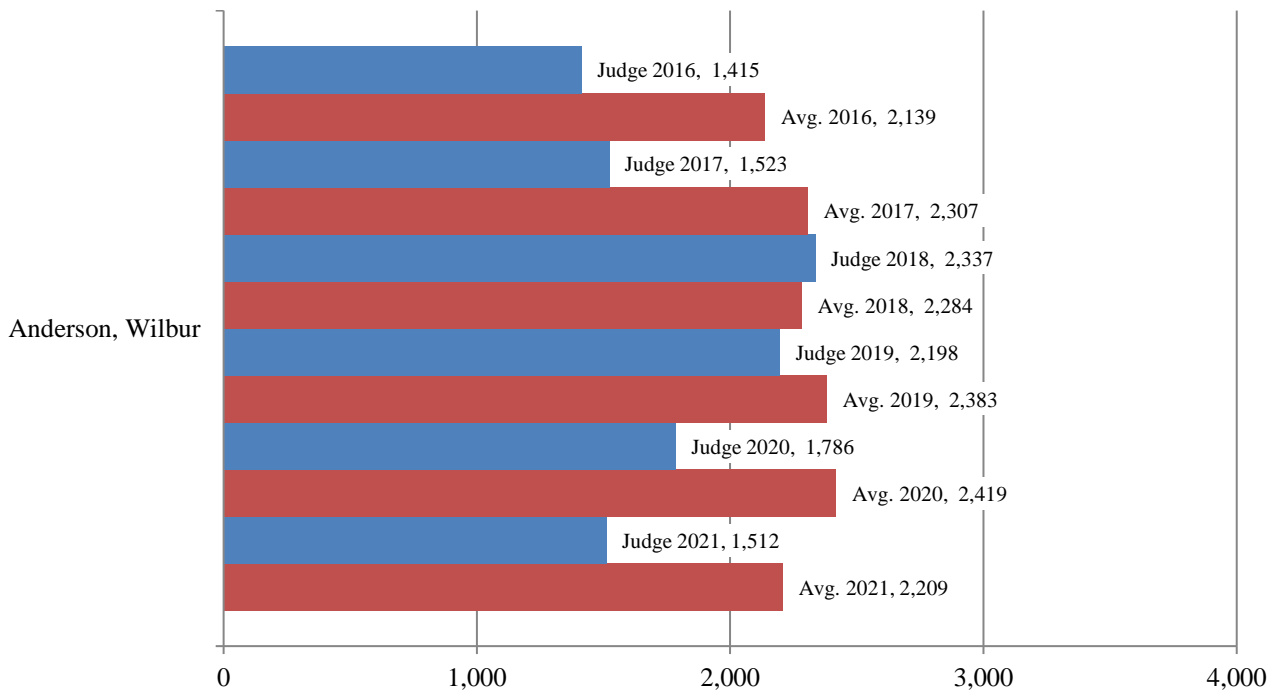
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



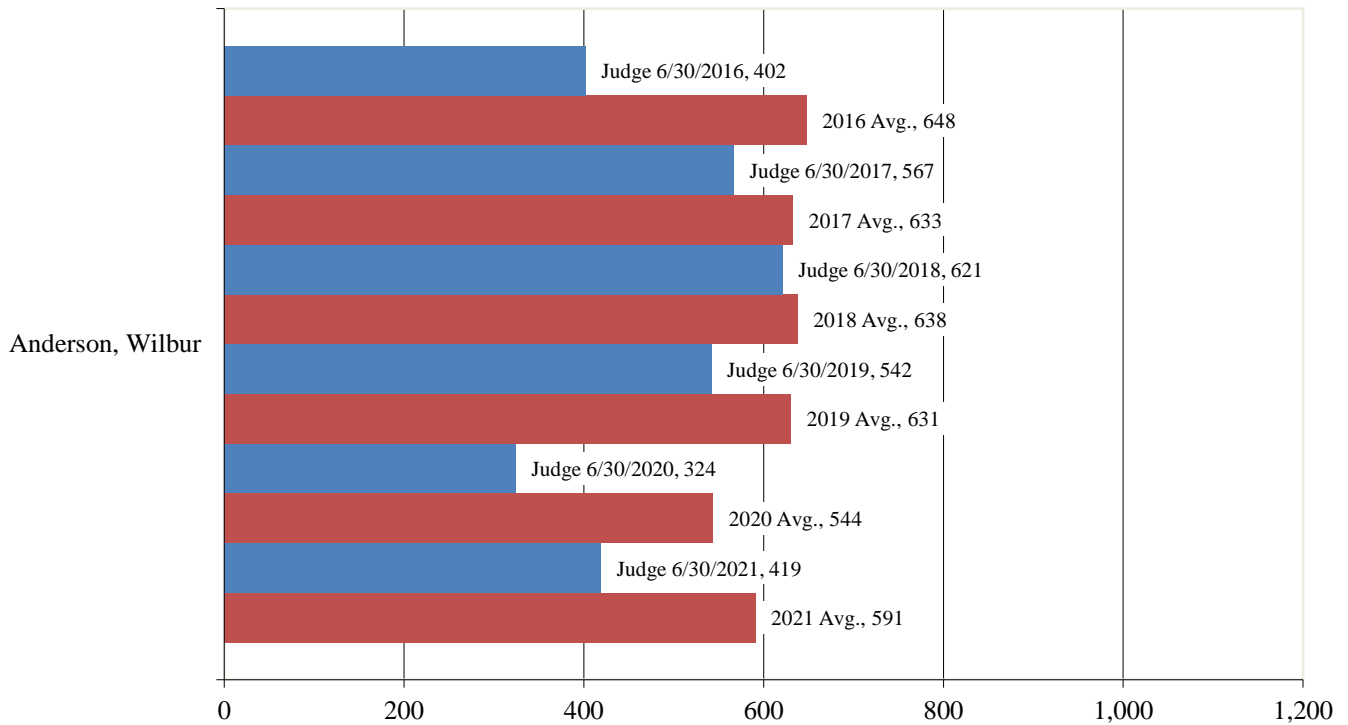
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



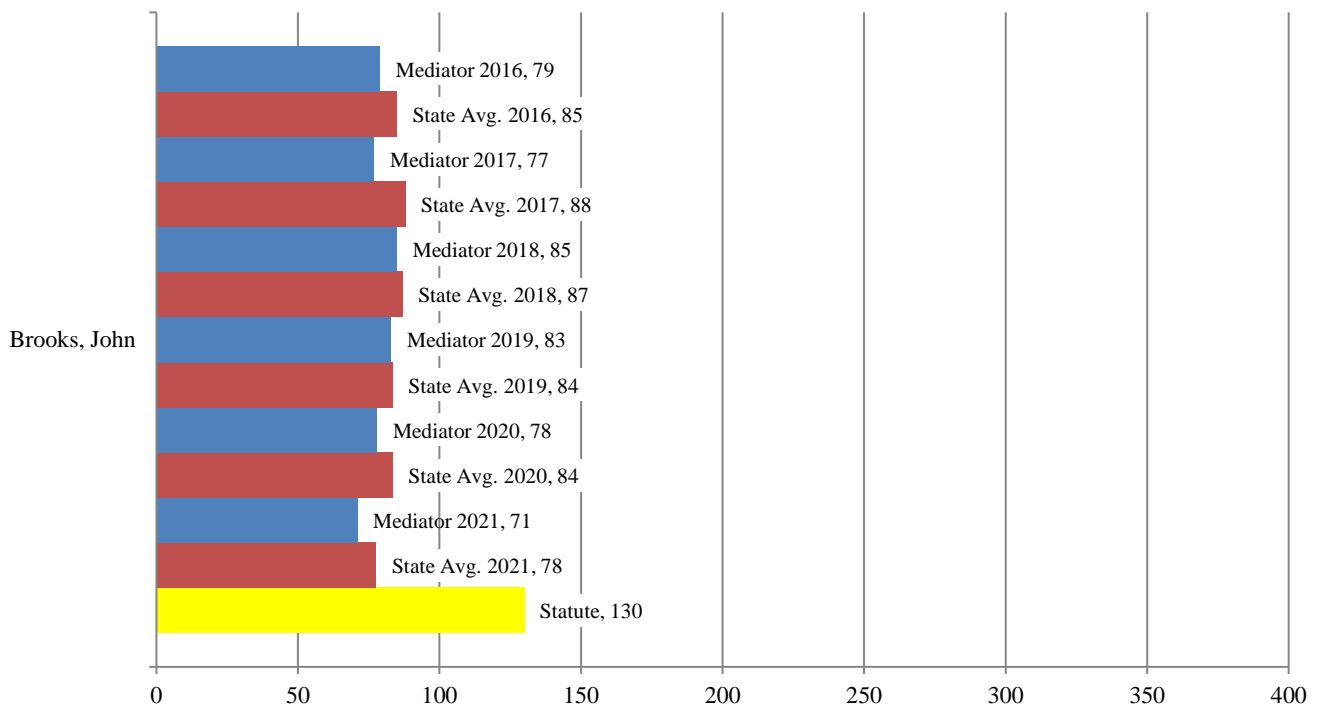
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



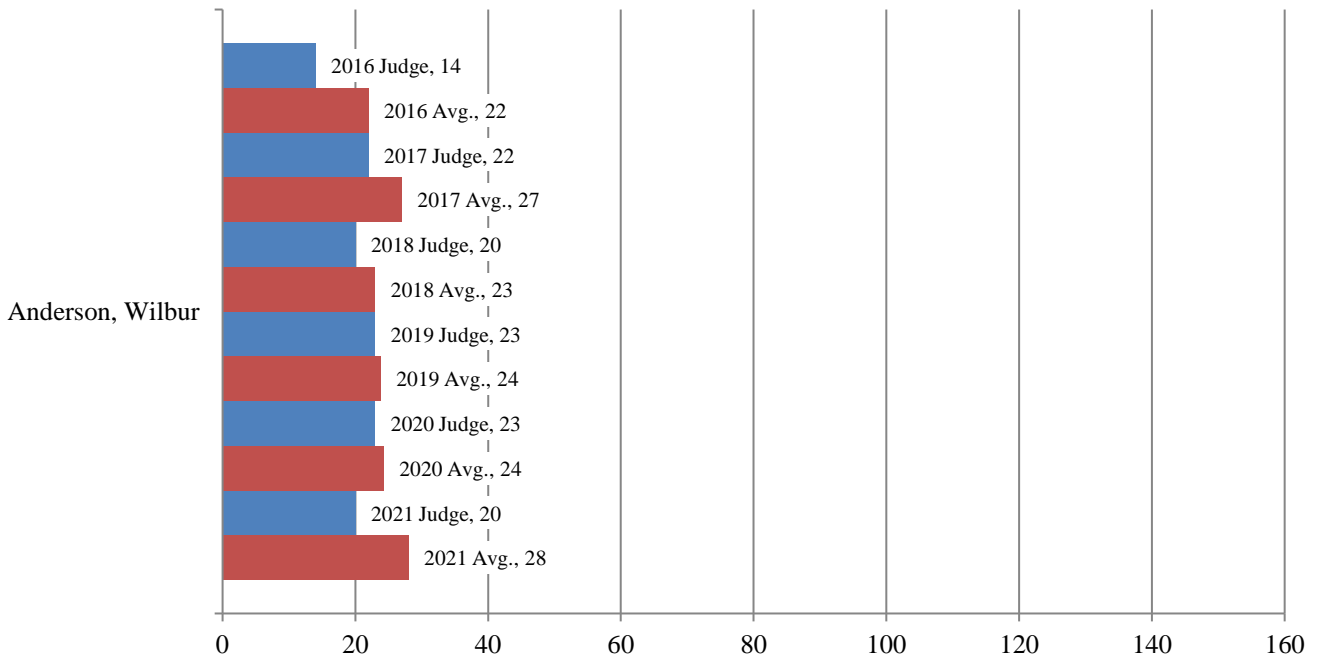
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



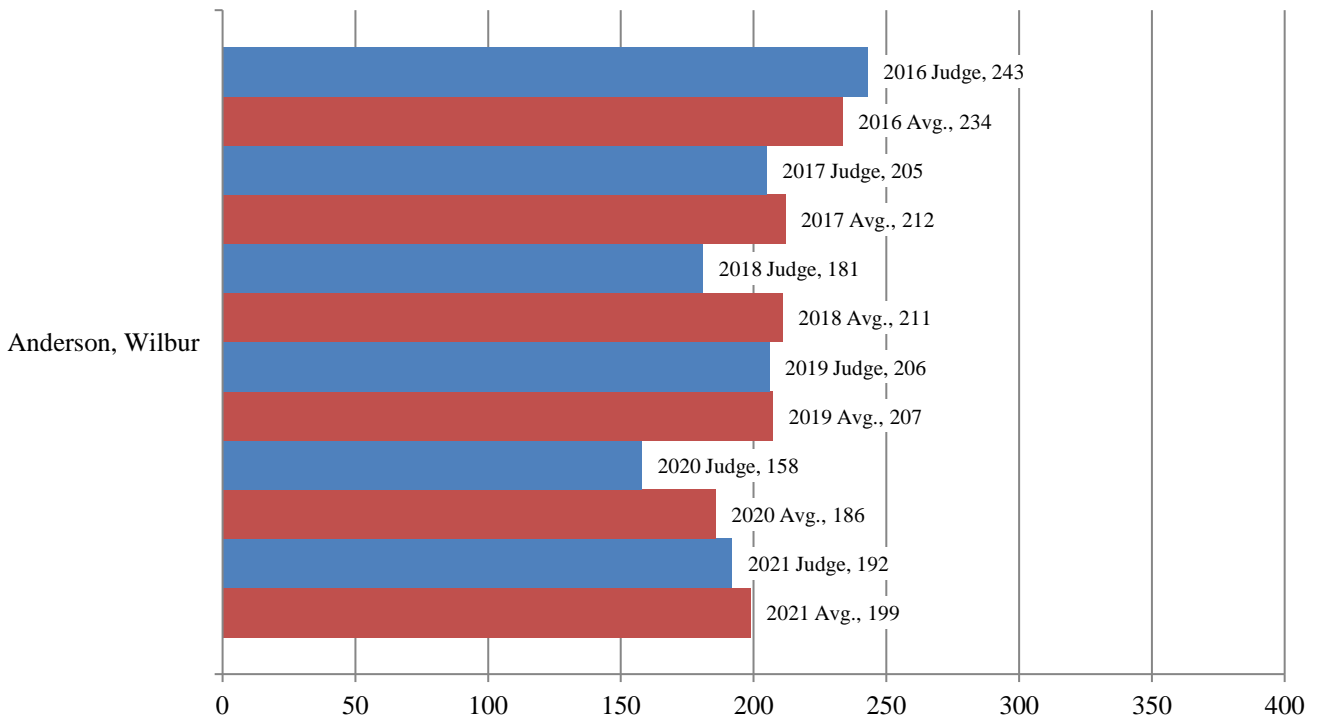
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



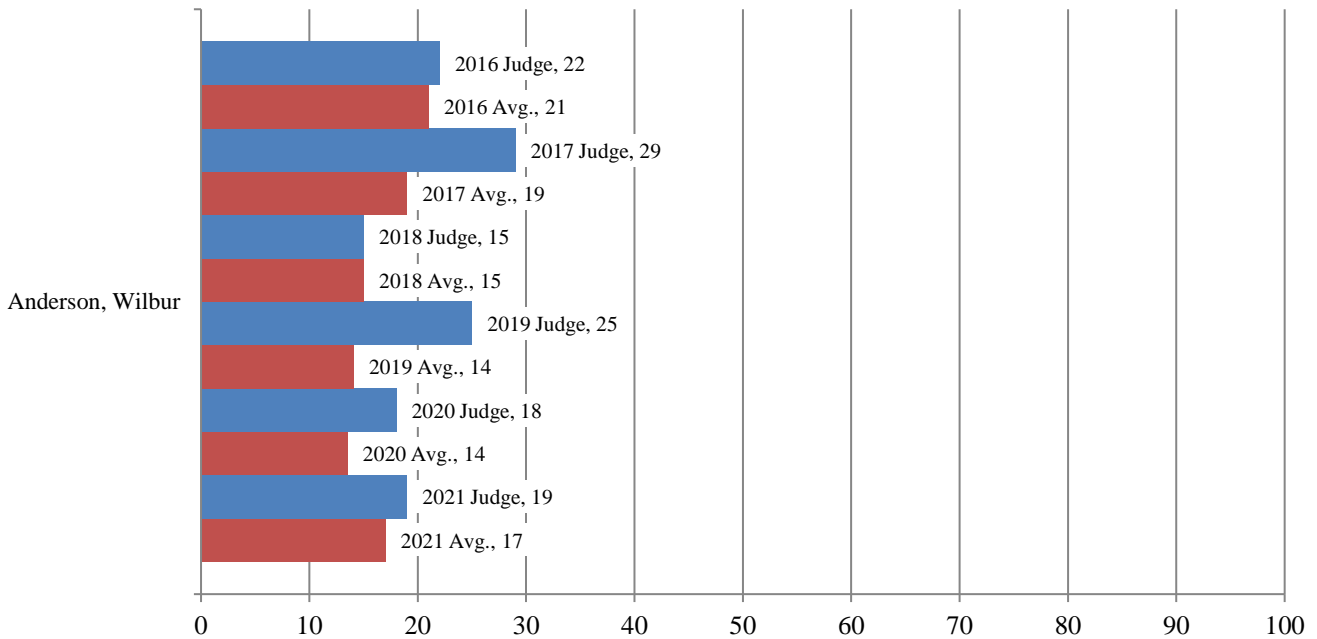
The following graph depicts the total volume of trial orders³⁰² uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



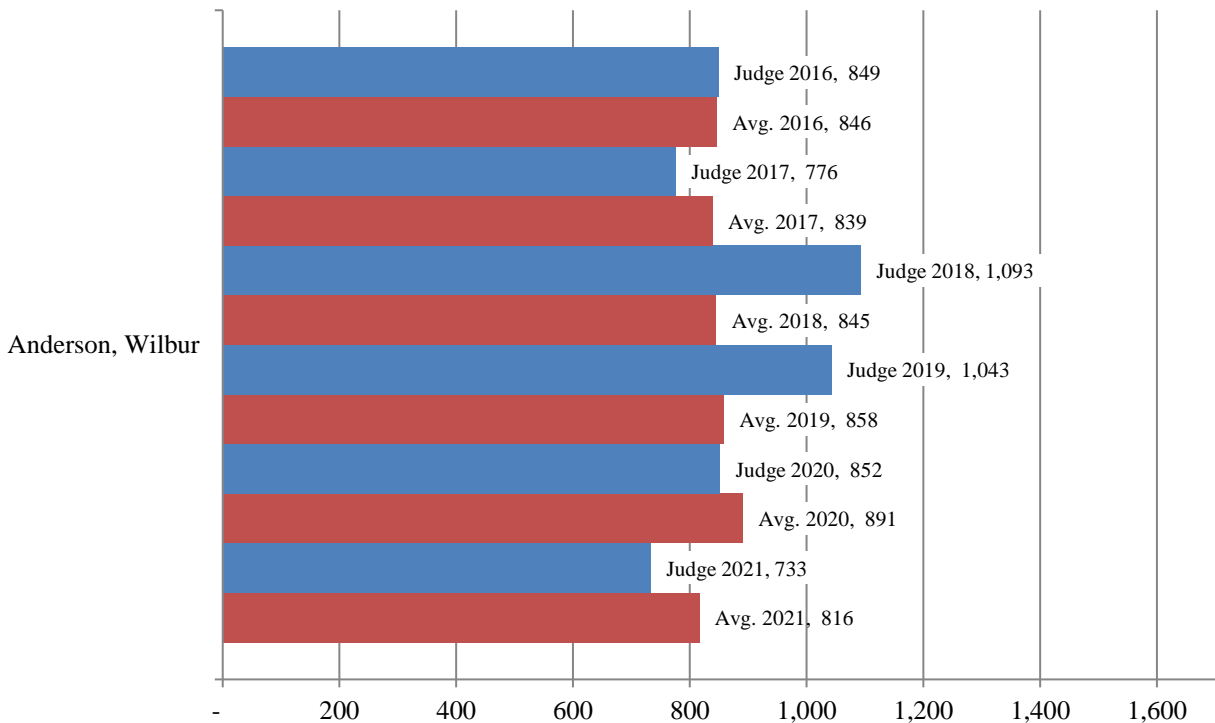
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



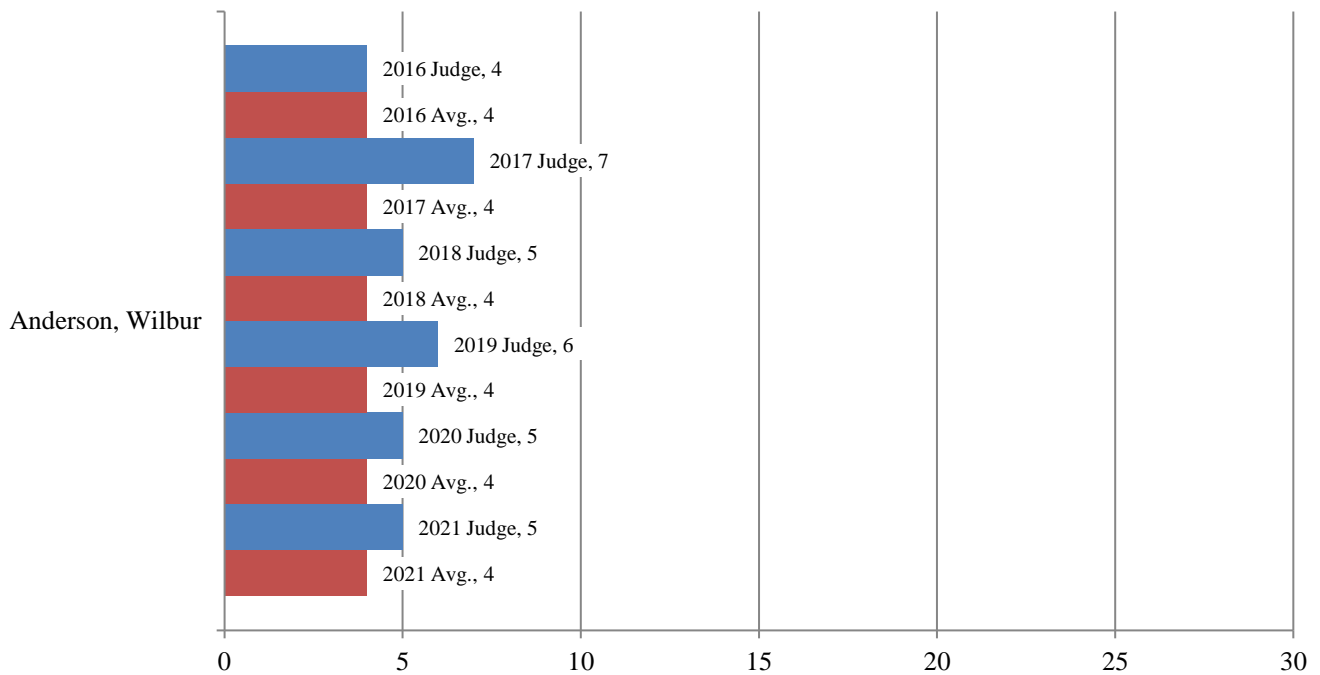
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



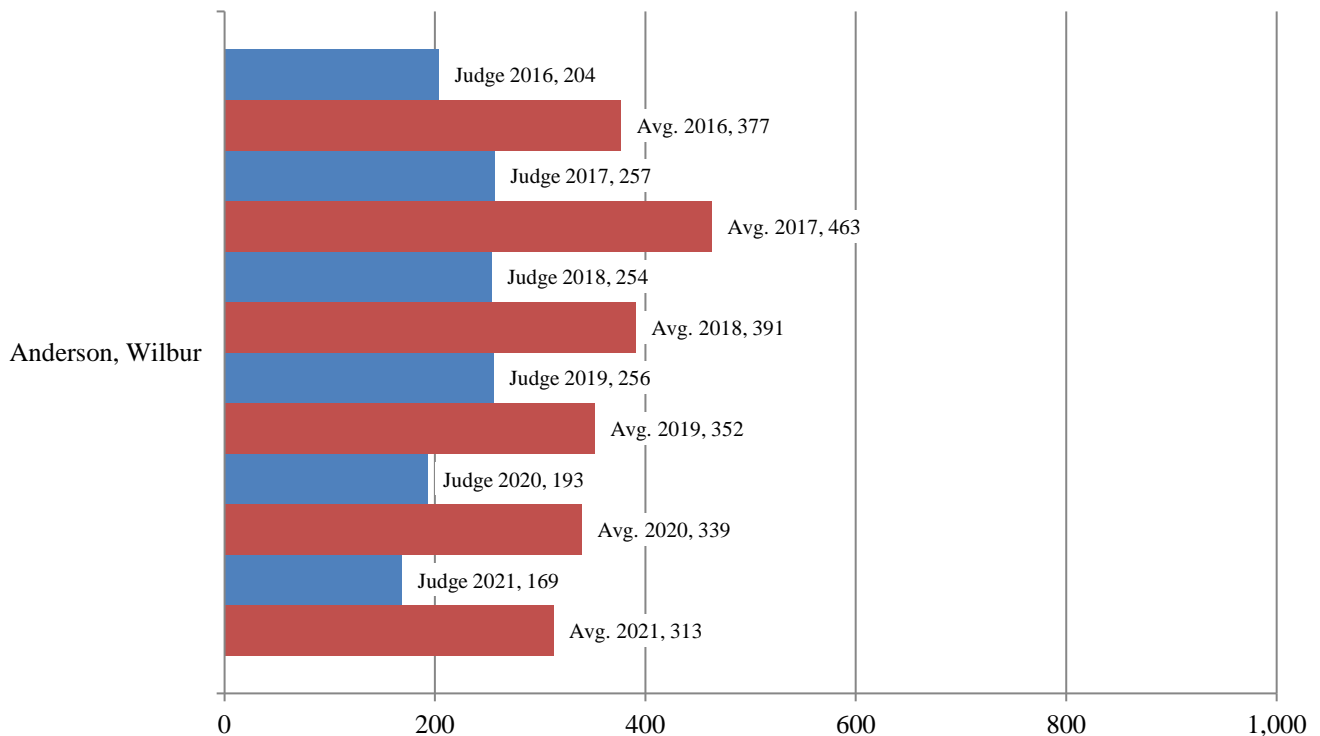
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



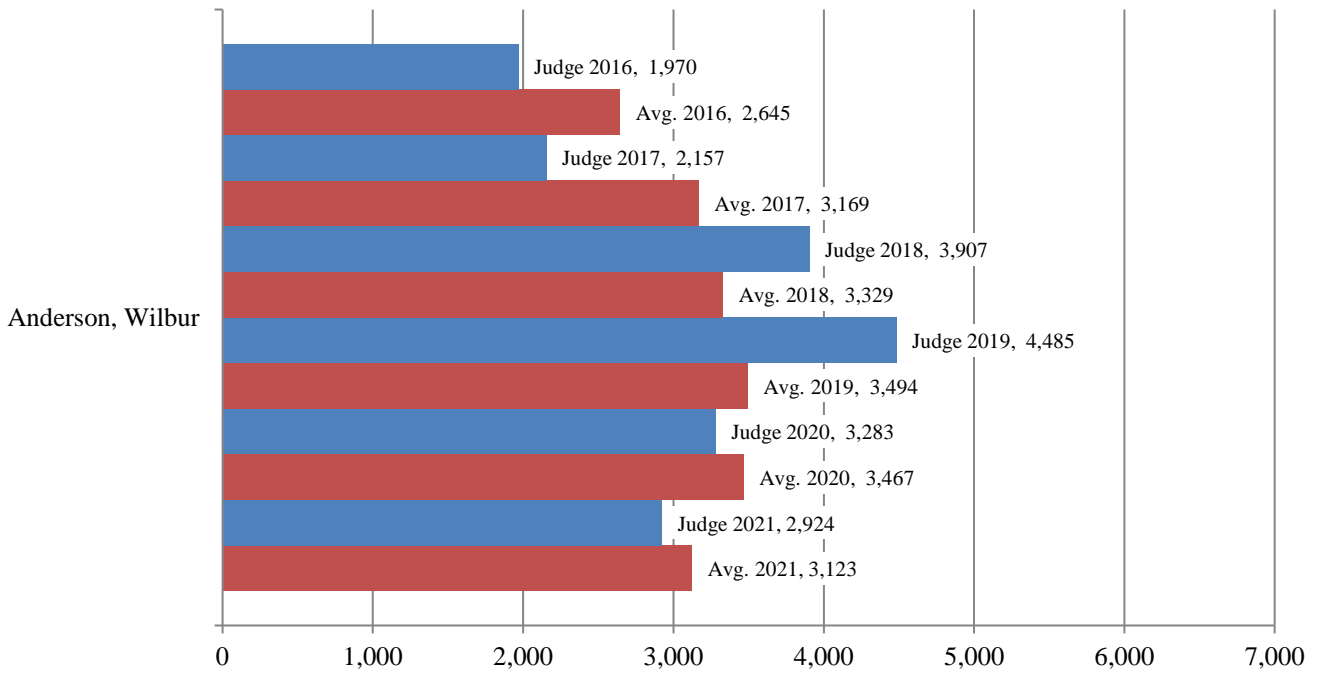
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



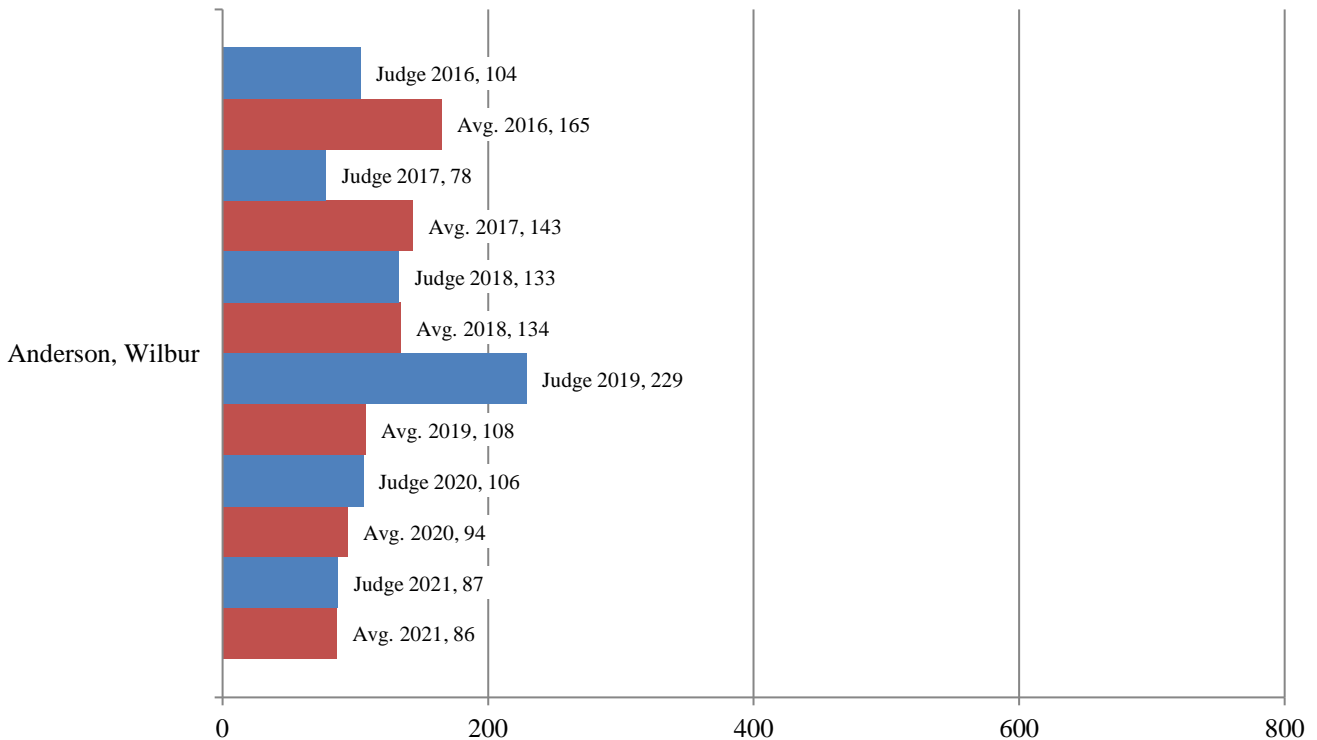
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “2” District FTL (JCC Forte, JCC Lewis, JCC Ring³⁰³):

District FTL includes only Broward County.

PFB 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 Petition filing volumes increased while “new case” volumes have remained remarkably consistent. Petition filing volumes are well above the statewide average for all three Ft. Lauderdale Divisions.

FTL was one of the three District Offices to lose a mediator in the 2012 budget cuts discussed above (*see* page 10). 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 then became dedicated to FTL full time.

The trial volume in District FTL for 2020-21 was overall consistent with the statewide average. The time to mediation was within the statutory parameter of 130 days and generally consistent with the statewide average. The time to trial in all three Divisions exceeded the statutory parameter of 210 days. The time to order, however, remains within the statutory 30 days in all three FTL Divisions. Each of the FTL judges enters a volume of settlement orders that is consistent with the statewide average, and enters stipulation orders more frequently than the statewide average.

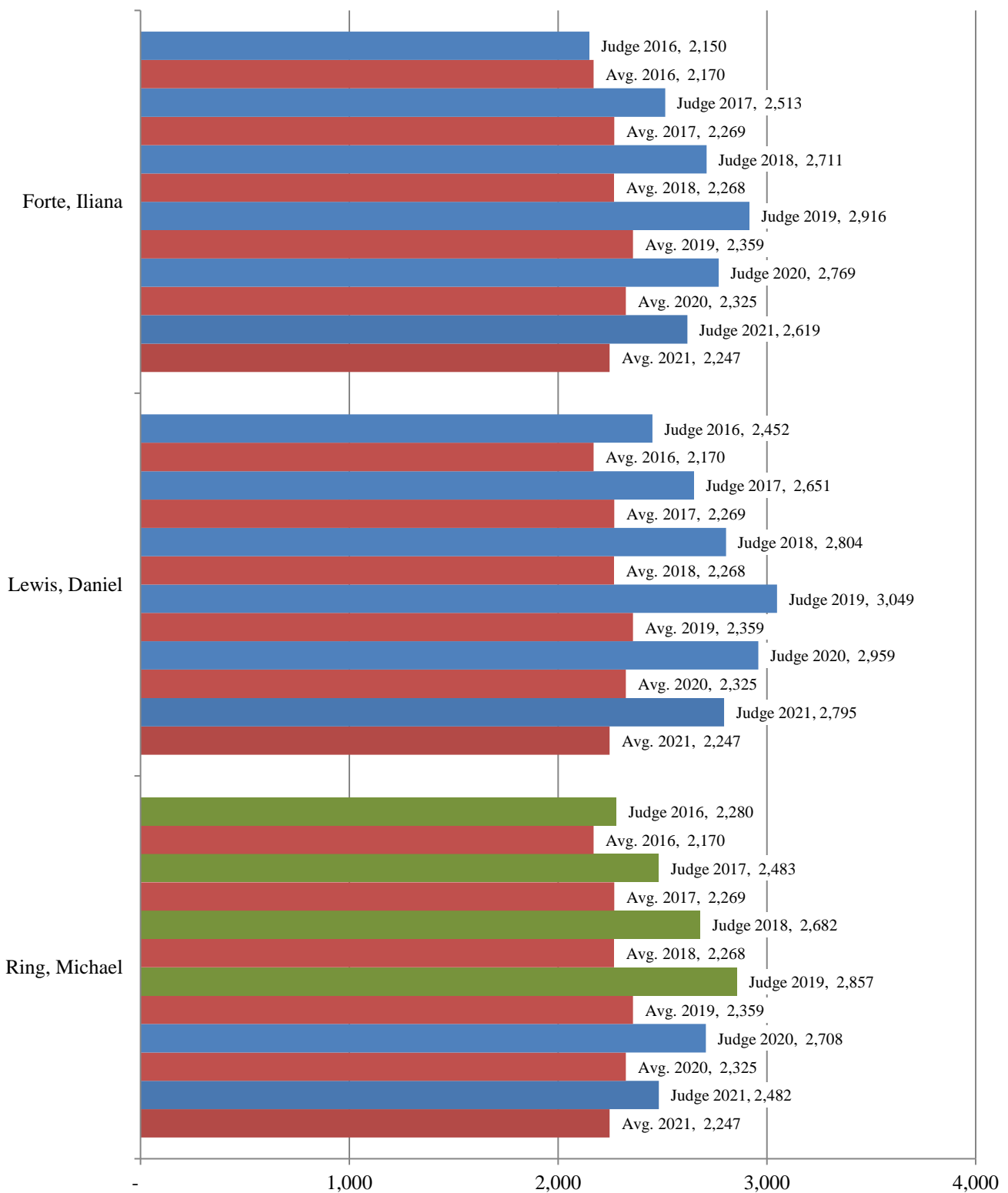
Despite the challenges brought forth by the COVID-19 pandemic in 2020-2021, Judge Forte remained very active and was very proactive in making sure that our practitioners were kept informed of the changes and procedures implemented during the pandemic. After speaking at the last live Broward Bar Association conference on February 28, 2020, on June 10, 2020 Judge Forte participated in a telephonic CLE program put on by the Broward Bar Worker's Compensation Section Learn at Lunch Program devoted to COVID-19 issues. On June 26, 2020 Judge Forte once again participated in a CLE round table webinar where practicing during COVID-19 was again discussed. On February 26, 2021 Judge Forte lectured at the Virtual Workers' Compensation Winter Seminar; and, on February 26, 2021 she spoke at the Broward Bar Workers' Compensation Virtual Conference. On April 15, 2021 Judge Forte returned to live attendance as an invited speaker at the 2021 Workers' Compensation Forum; and, on April 27, 2021 she also spoke at the annual Palm Beach Bar Workers' Compensation Seminar.

In 2020-21, Judge Lewis remained active in the Broward County Bar Association. On February 26, 2021, he presented a "Question and Answer Session with the Broward JCCs" for the Broward County Bar Association 2021 Workers' Compensation Virtual Conference. 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.

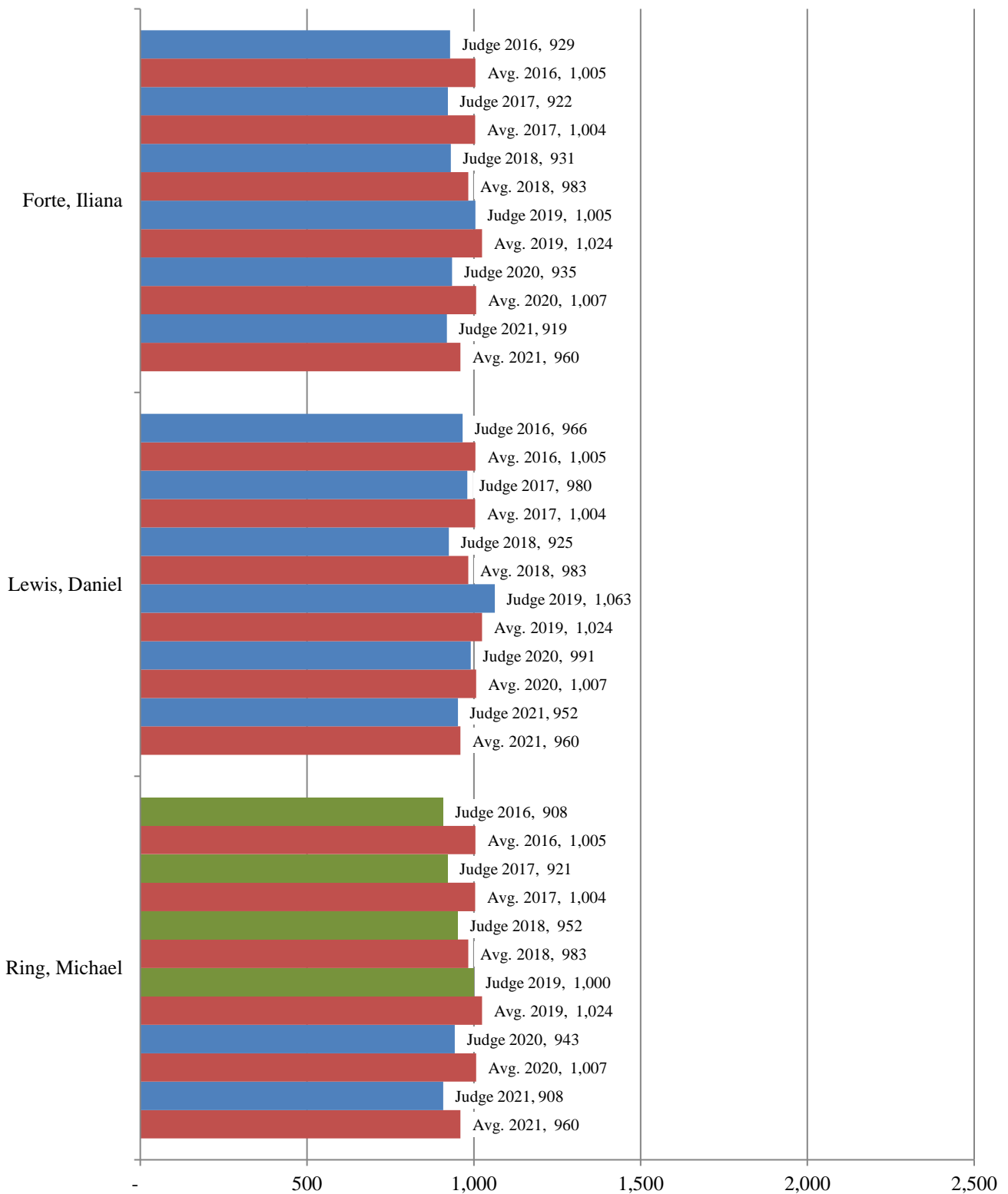
Mediator Adam Ross continues to serve on the Board of Directors of the Professional Mediation Institute (PMI). He will be serving as both a moderator and a panelist in seminars at the Professional Mediation Conference on December 12, 2021 and December 13, 2021.

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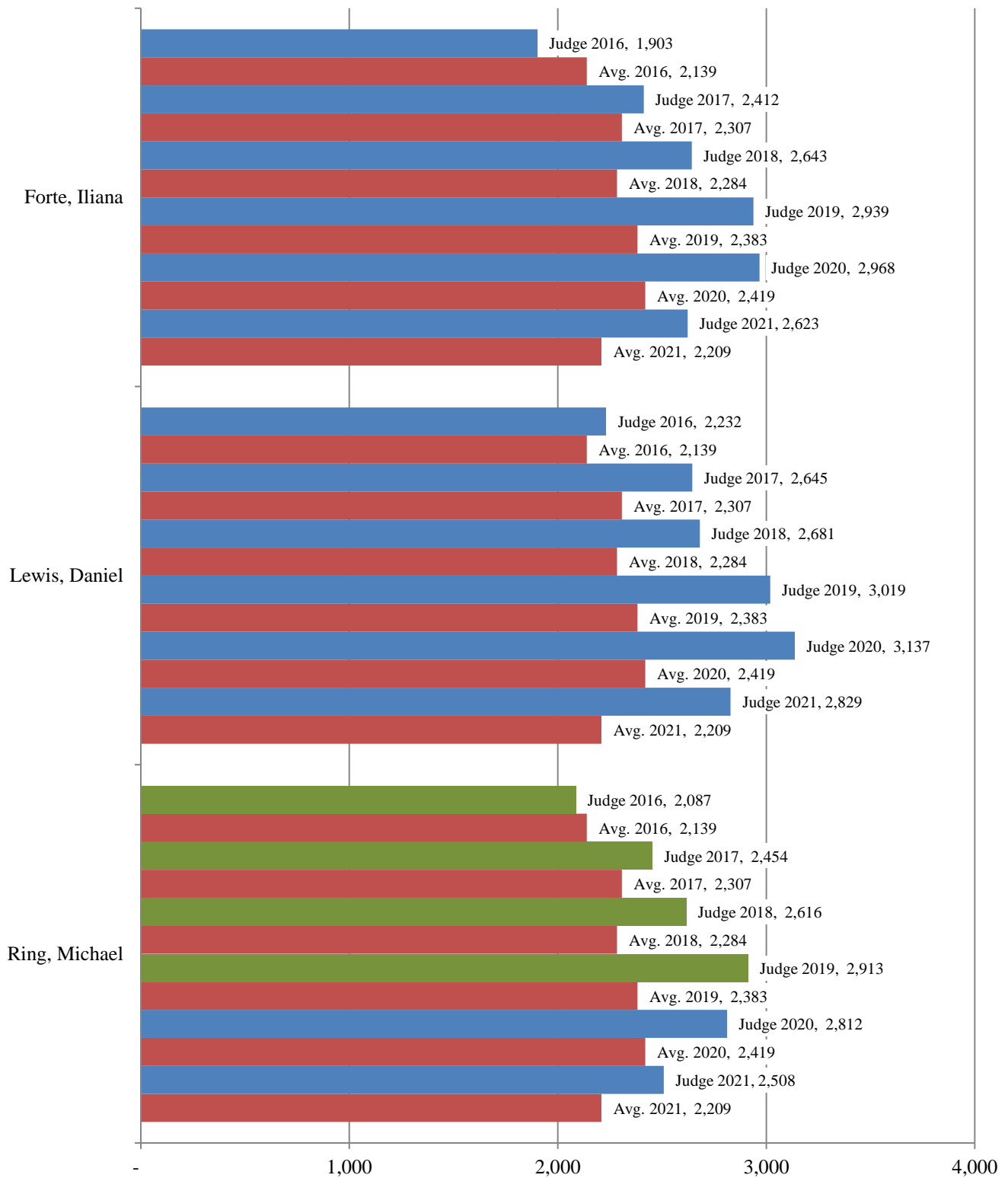
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



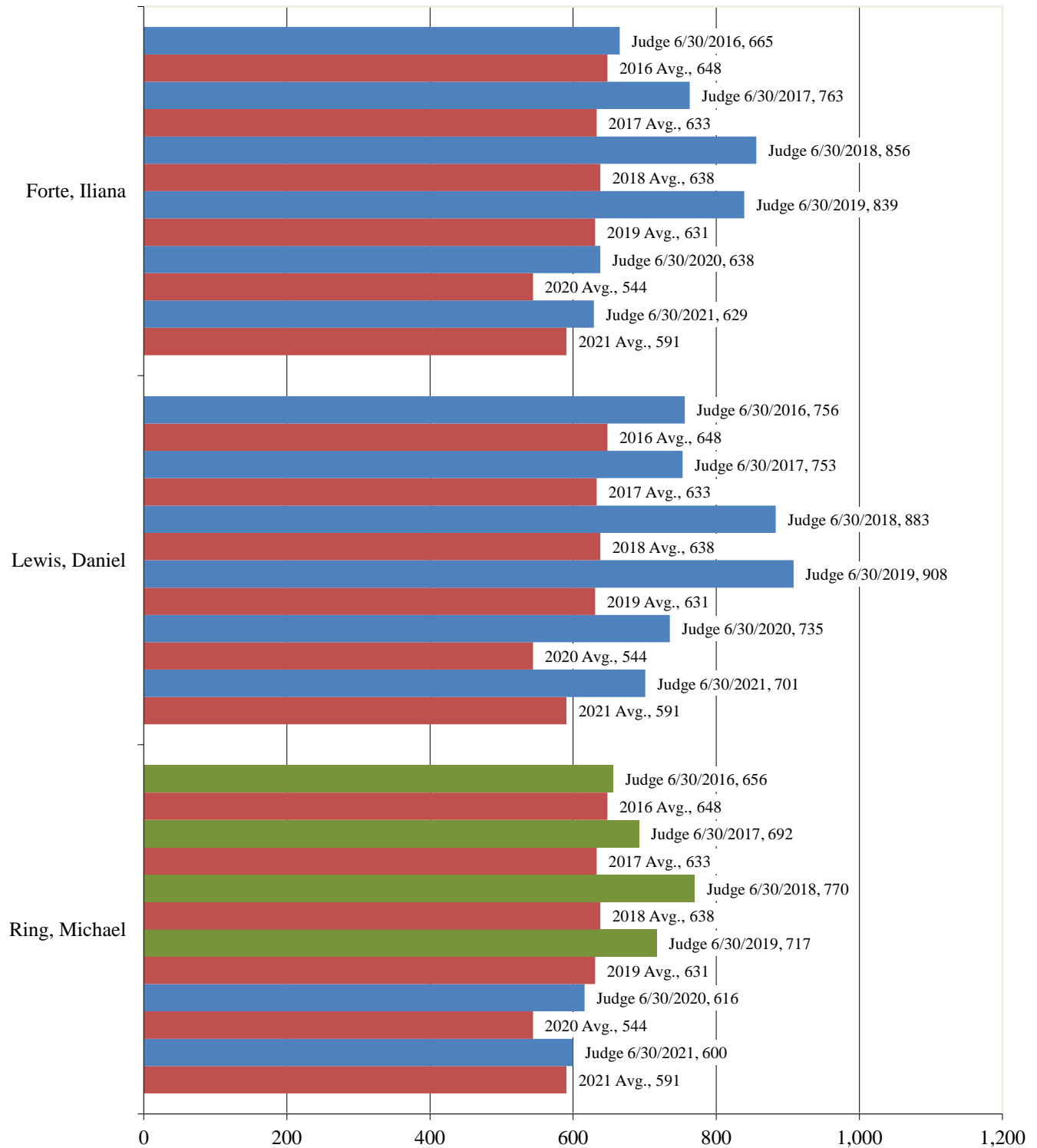
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



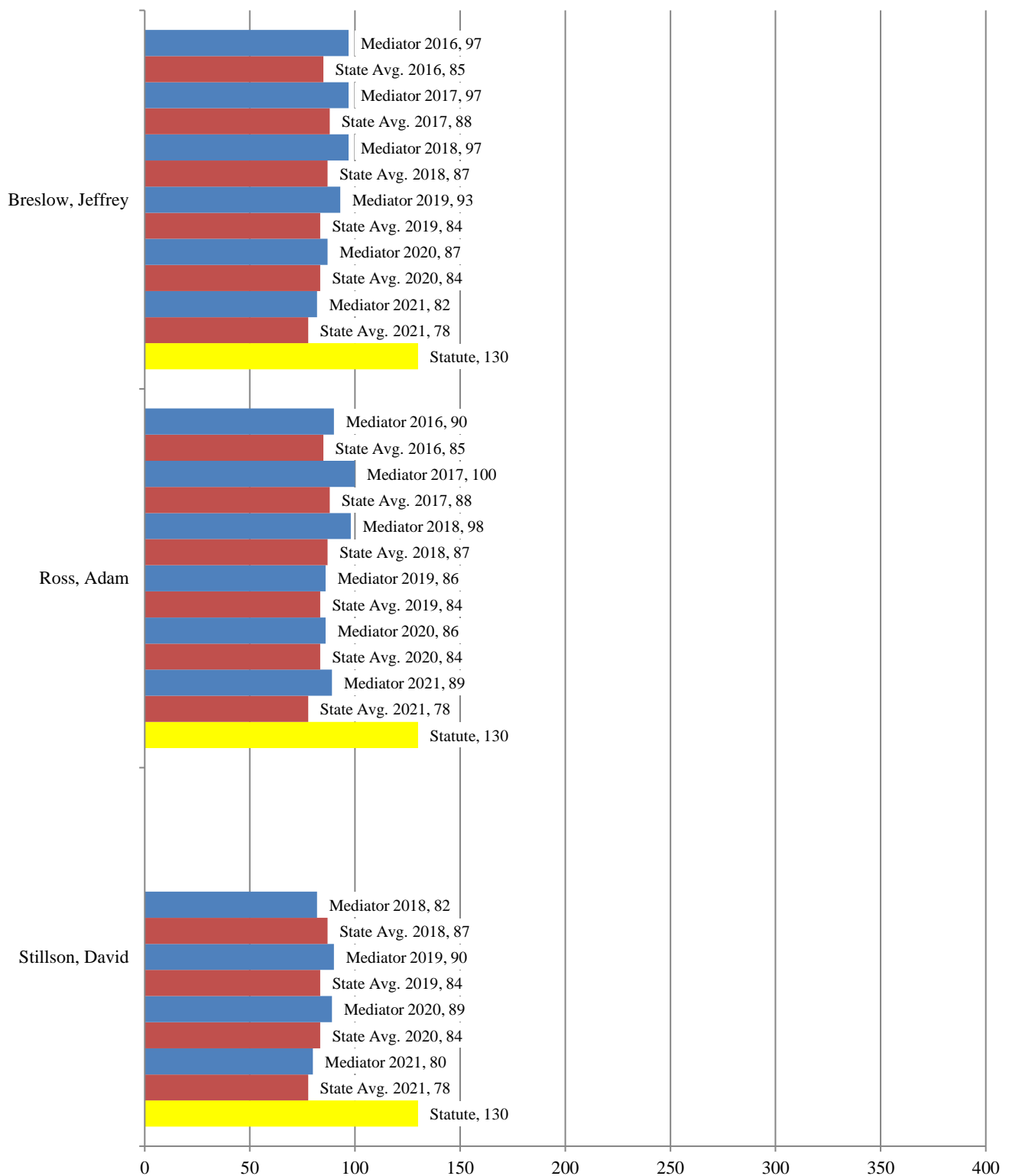
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



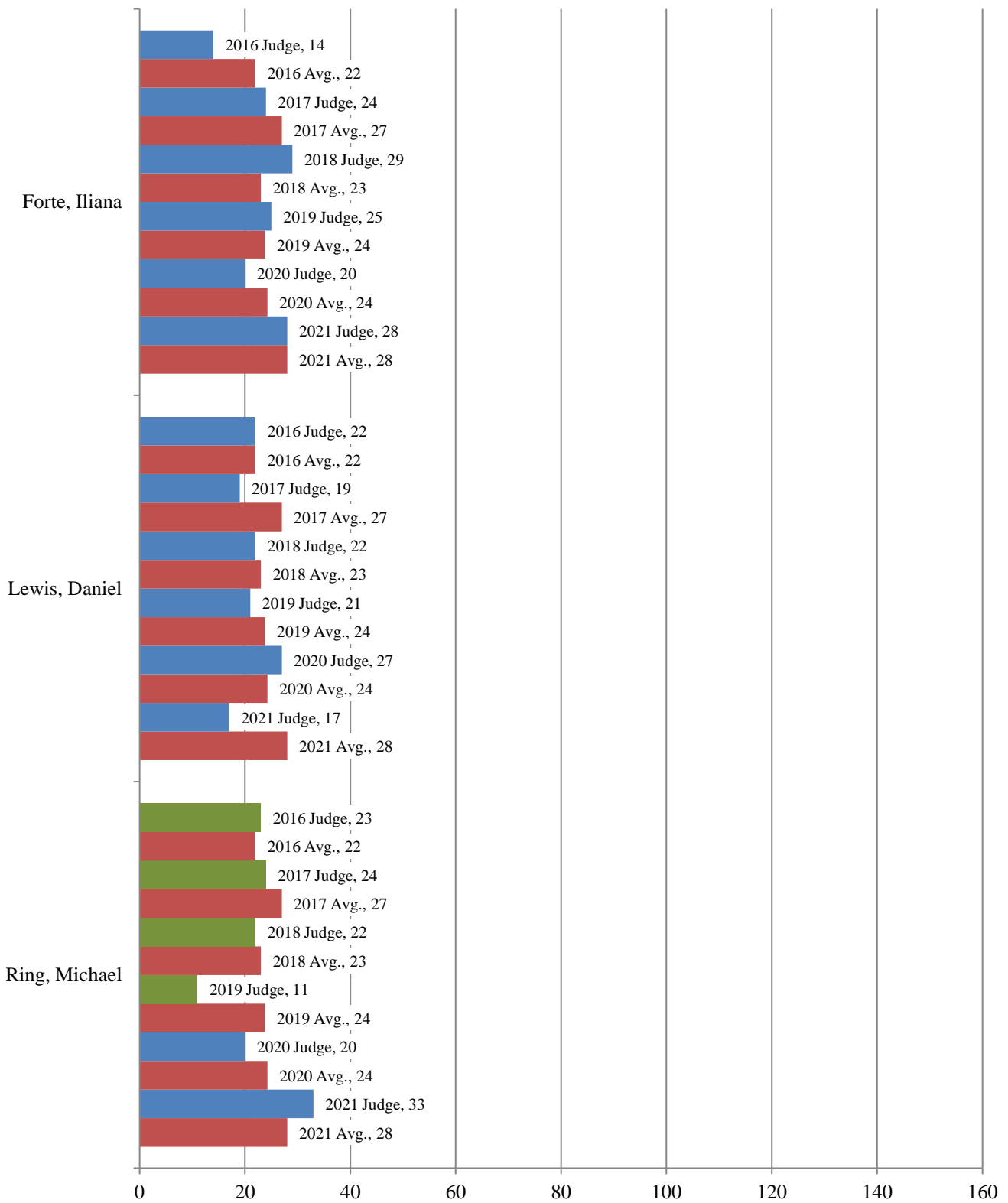
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



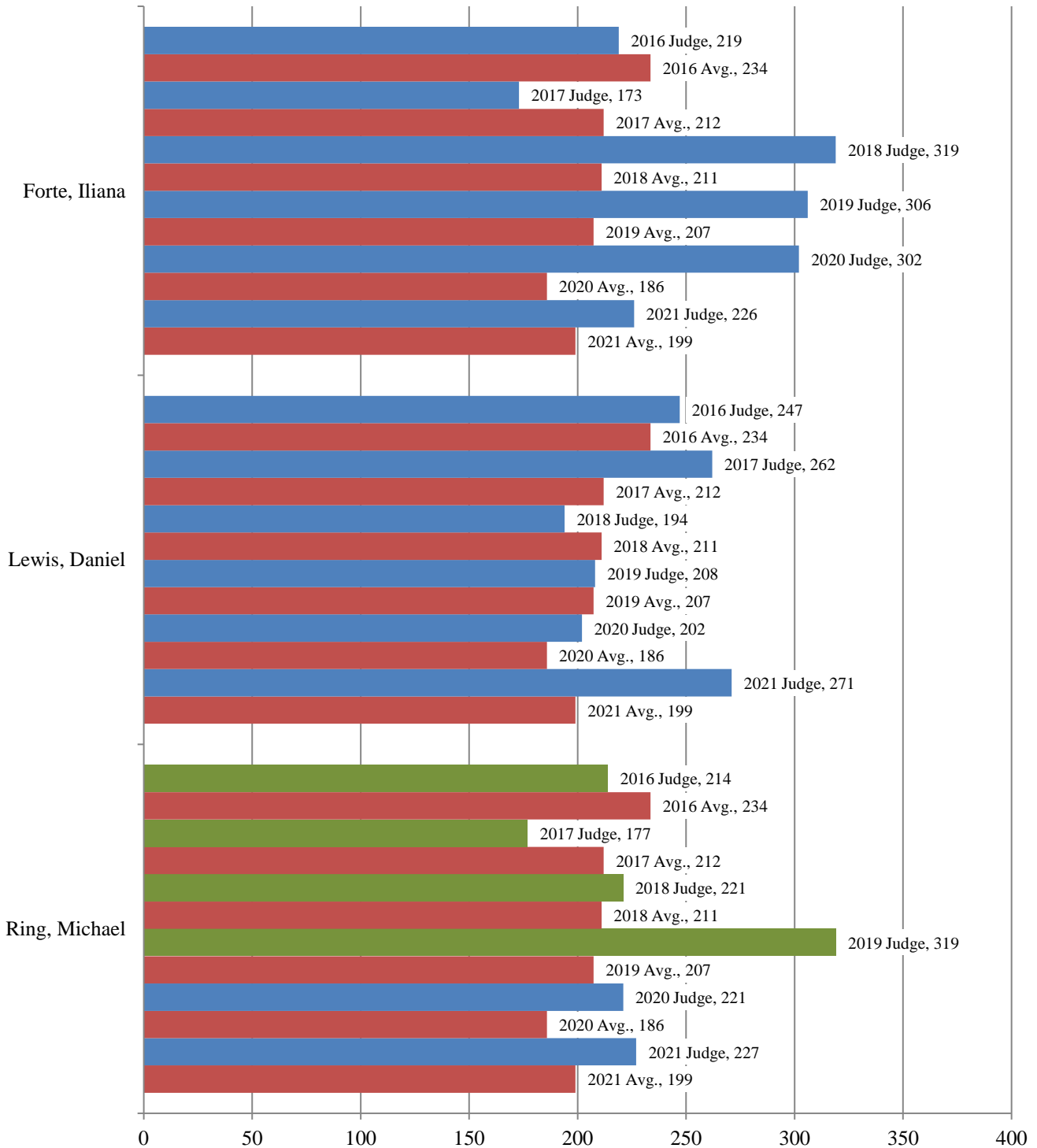
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



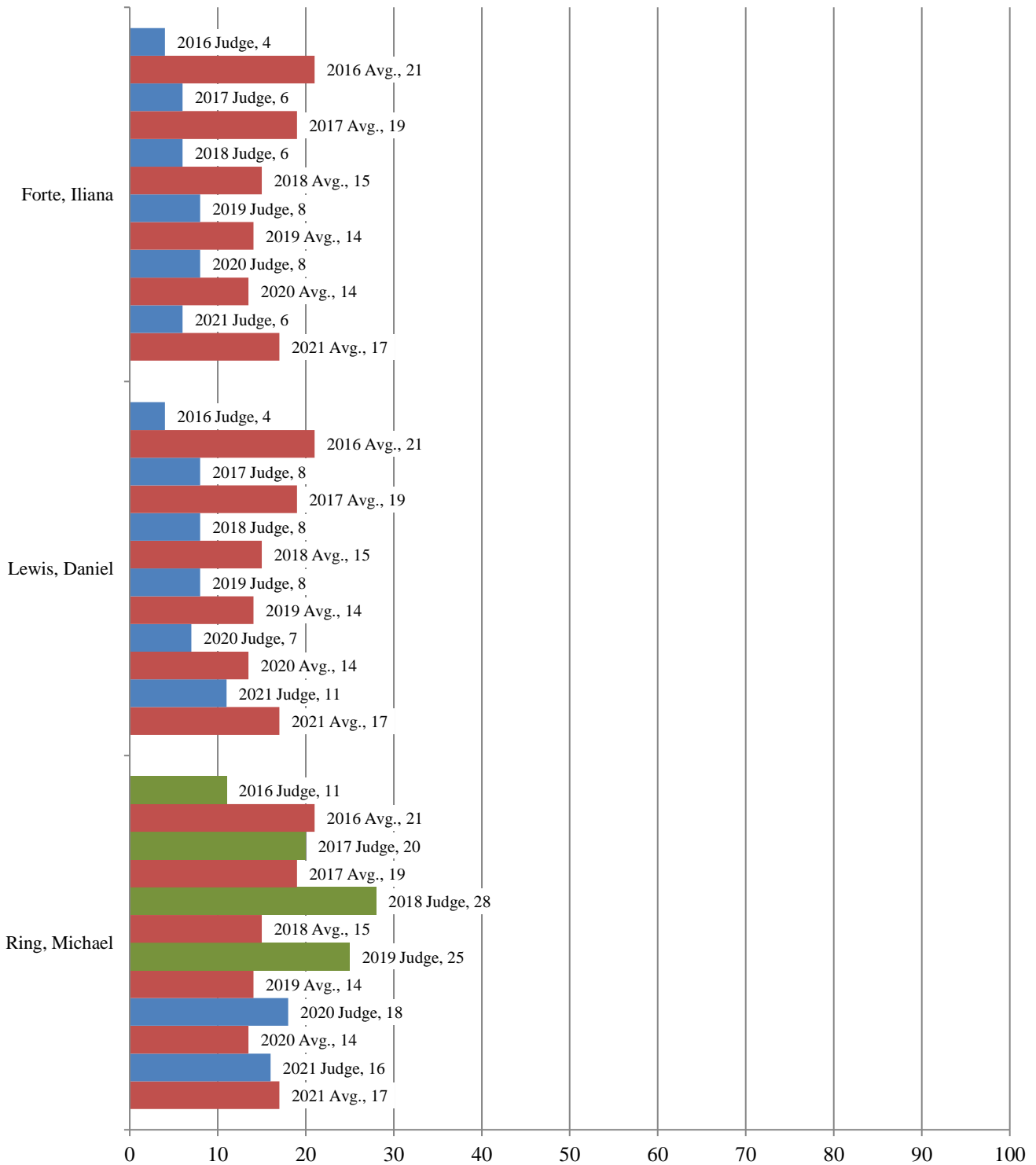
The following graph depicts the total volume of trial orders³⁰⁴ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



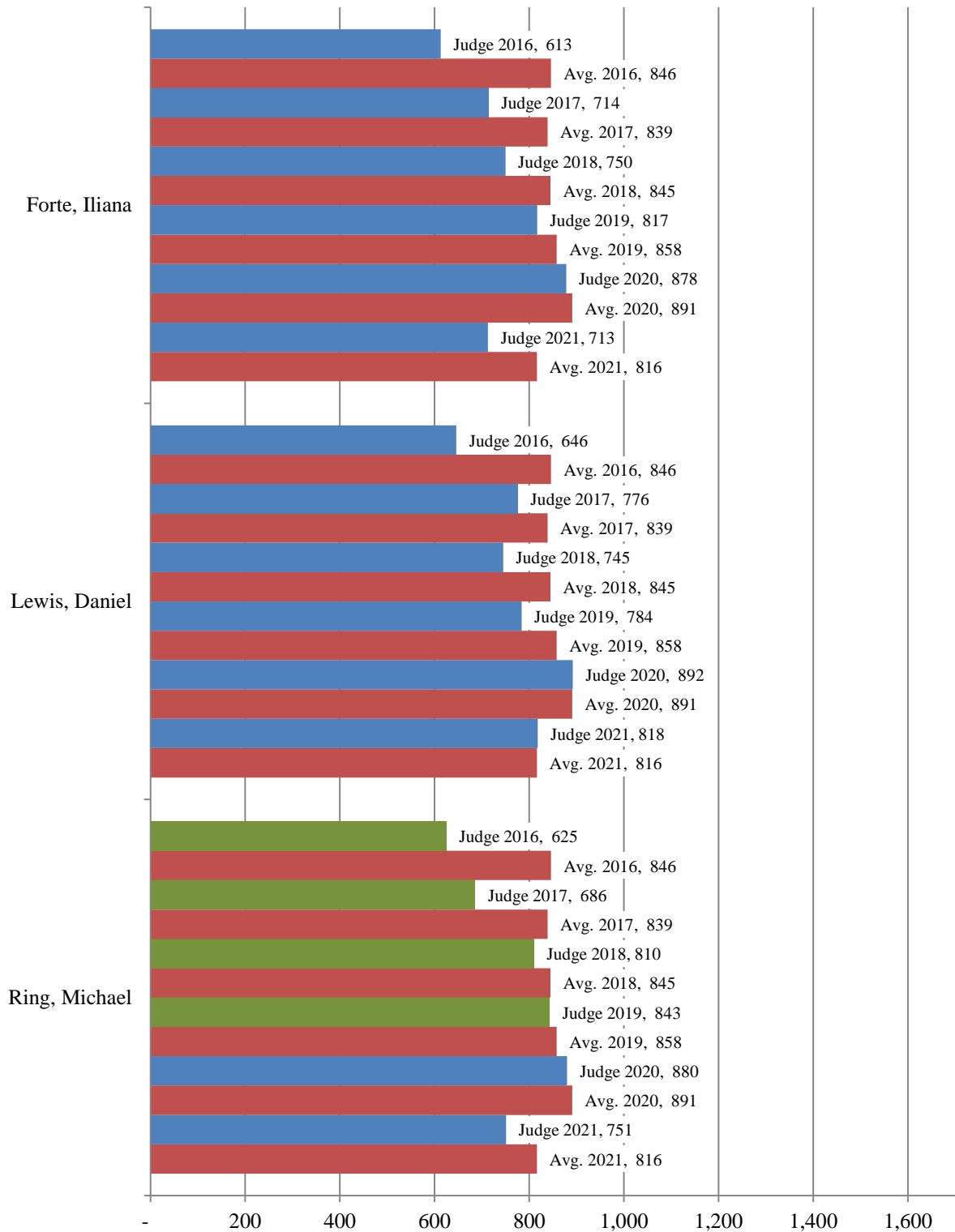
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



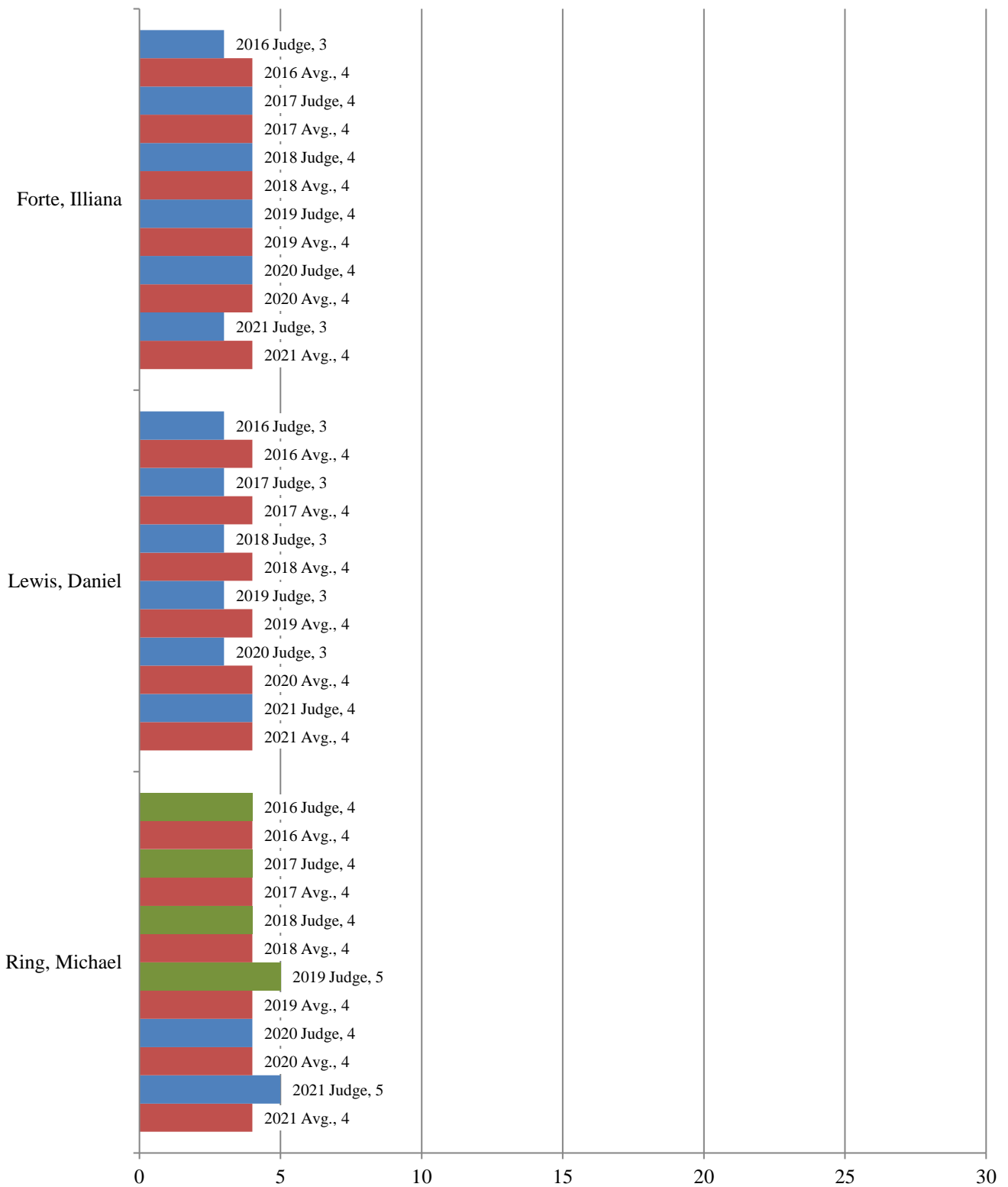
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



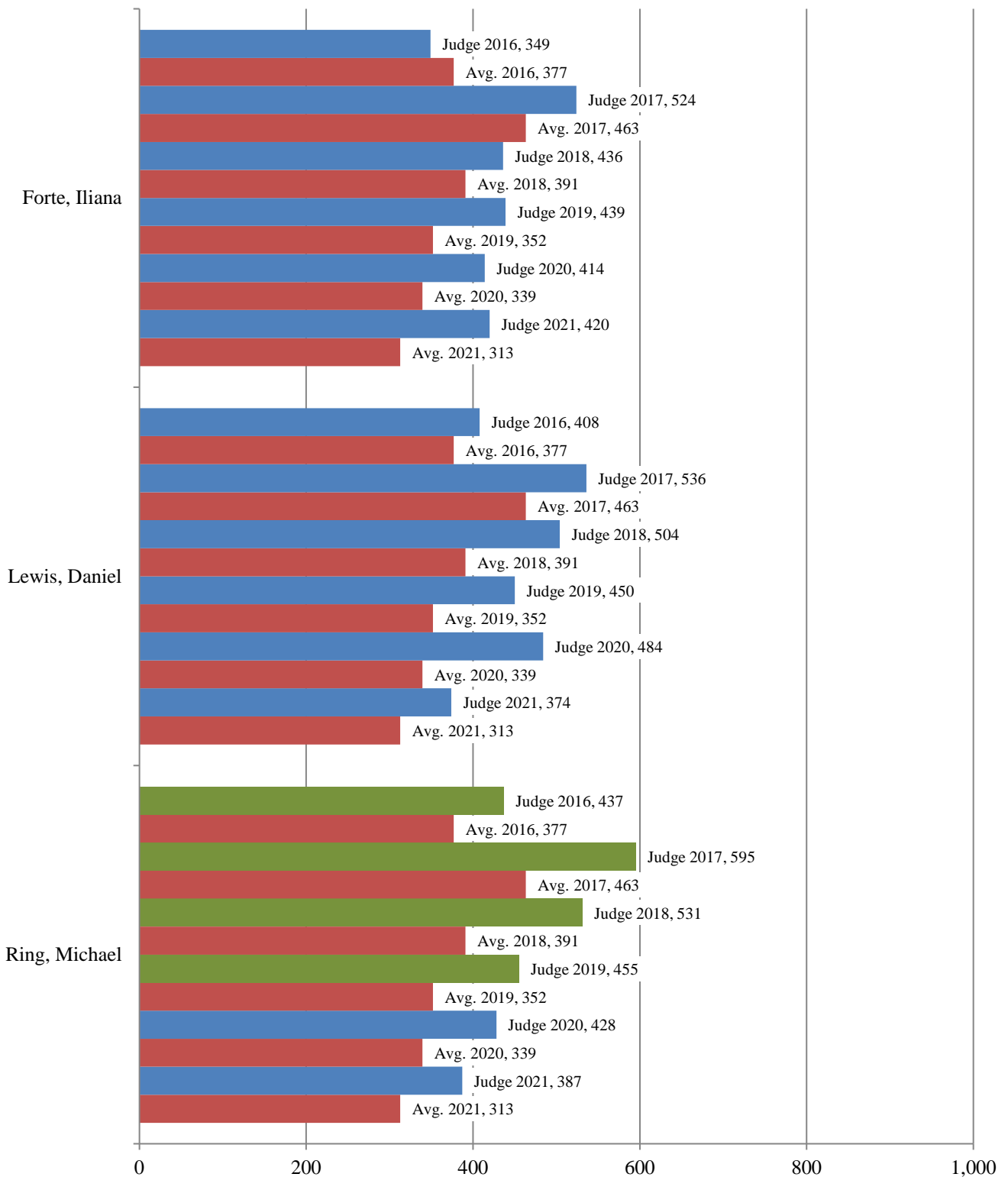
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



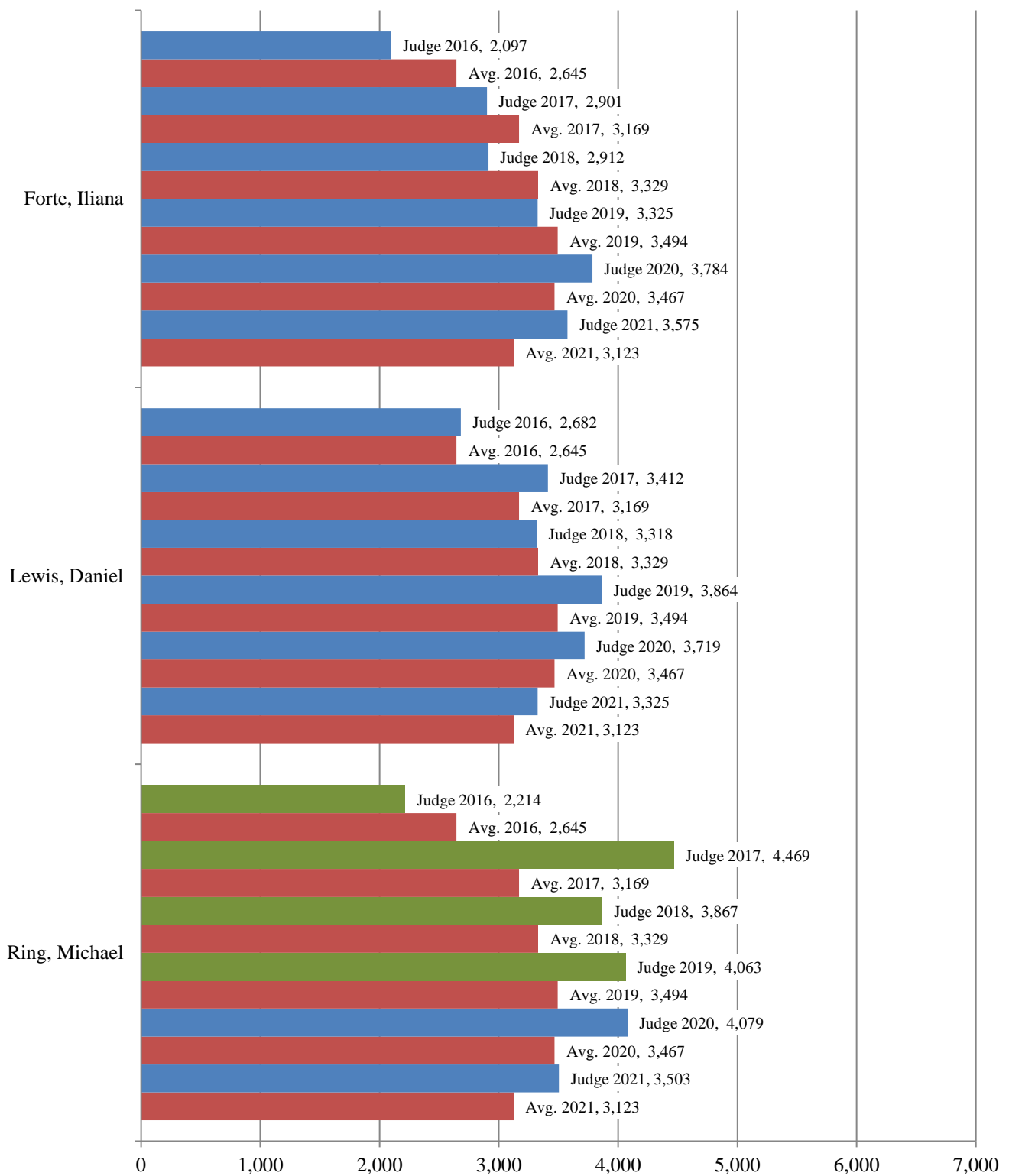
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



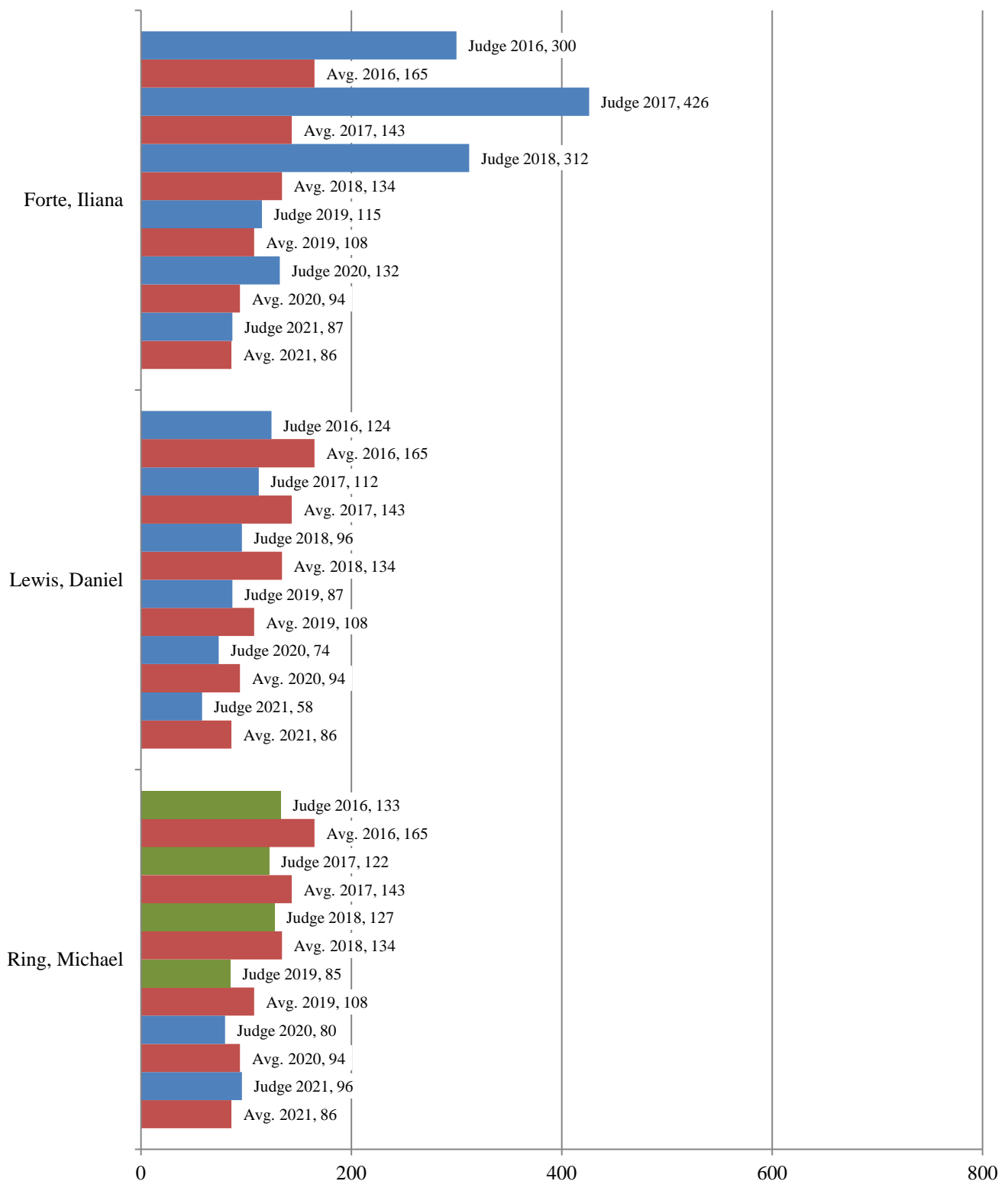
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “3” District FTM (JCC Clark³⁰⁵, JCC Weiss):

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

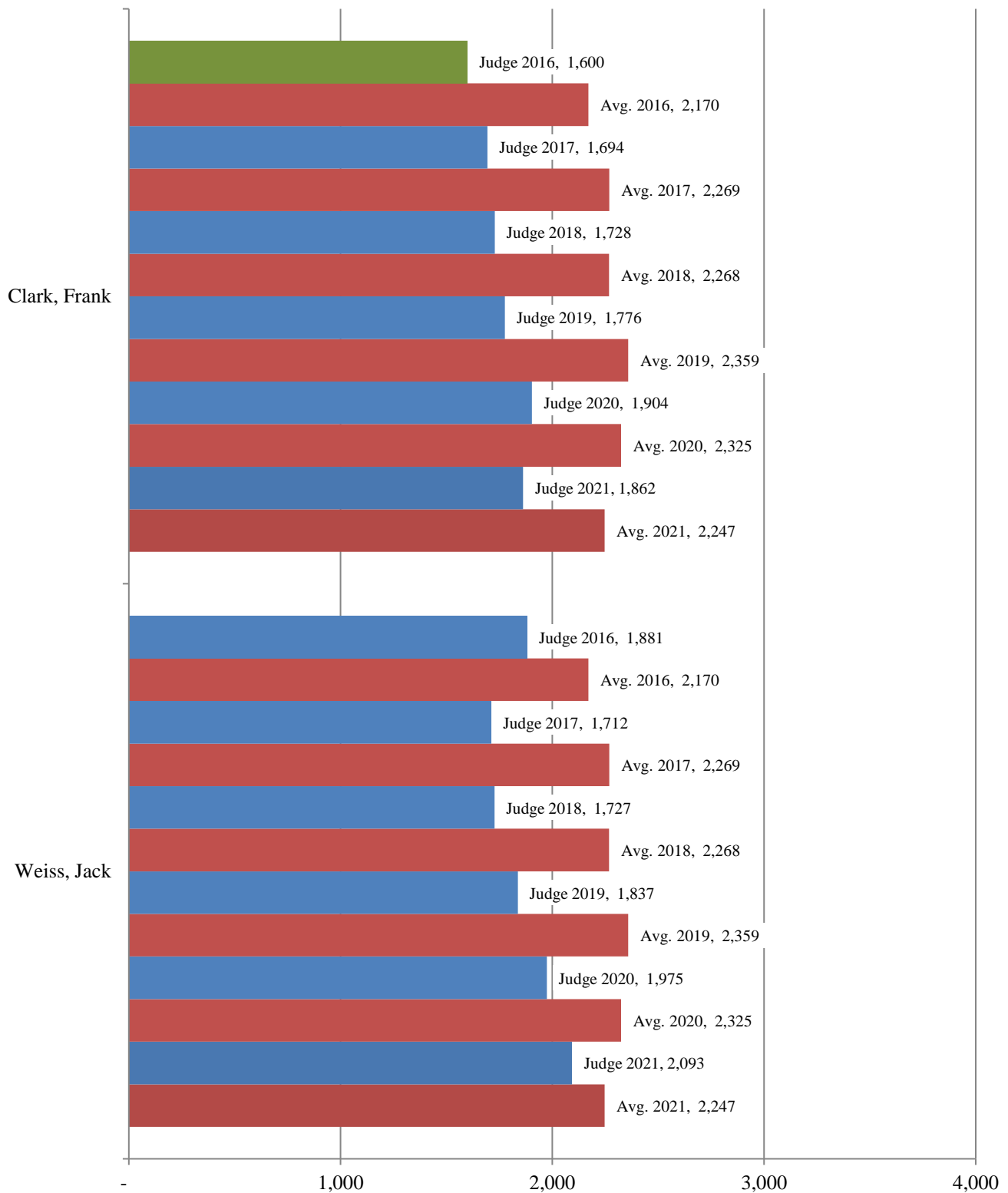
“New case” volume in District FTM is above the statewide average, but Petition volume is below. That is demonstrated with reasonable consistency in this District. This suggests that volume of cases is average, but the amount of litigation overall is less intense. Both Divisions in FTM demonstrate below 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. The FTM judges have historically entered considerably more “other” orders than the statewide average, but the 2020-21 data shows that moderating.

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 again redirected from other Districts with greater volumes, it is likely some of that assistance will necessarily come from FTM.

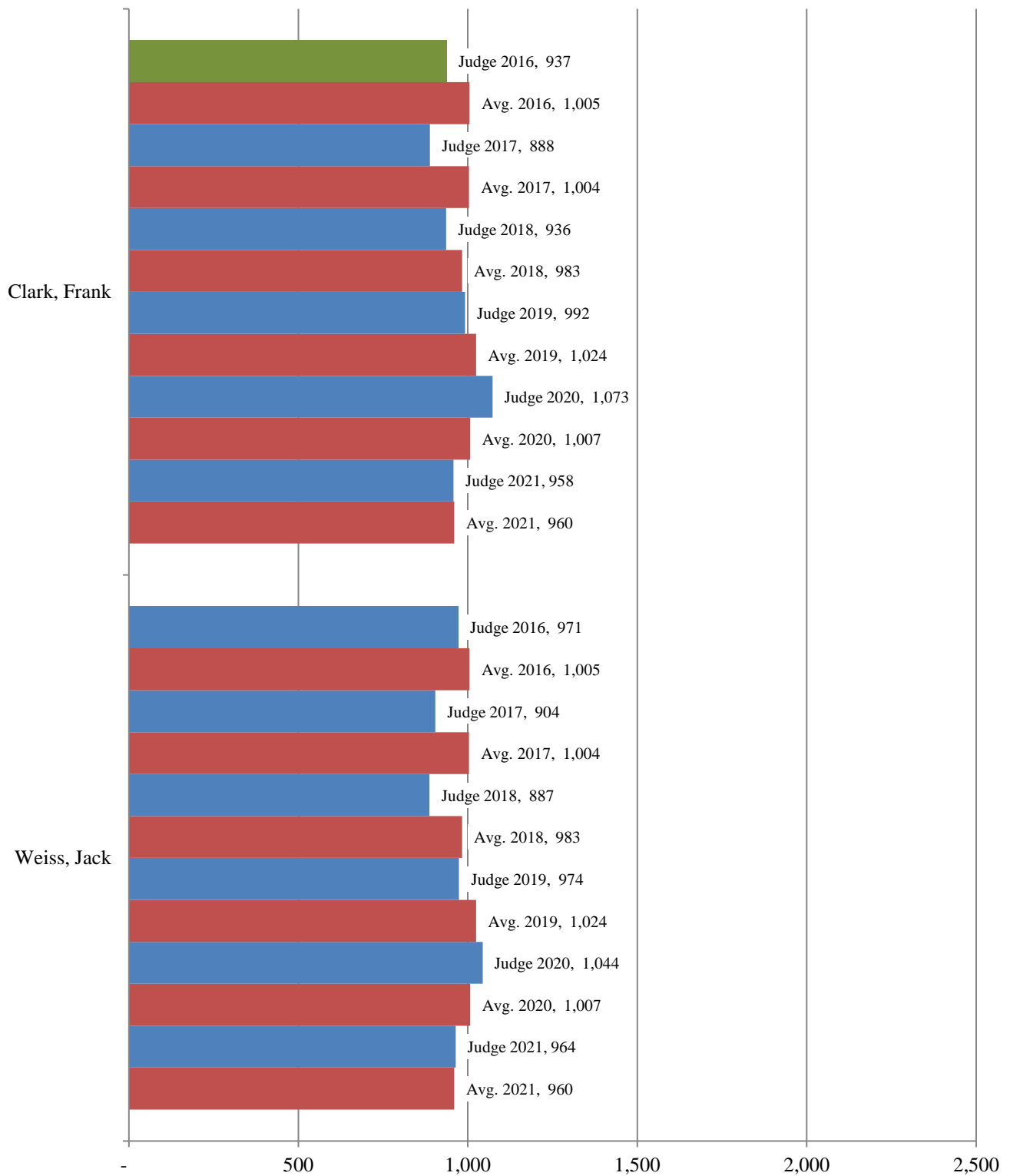
In 2020-21 Judge Weiss was a panelist on *Legal Ethics & Professionalism* at the Florida Workers' Advocates Annual Educational Conference in June and on *The Art of Ethical Withdrawal* at the Calusa American Inn of Court in April. Judge Weiss serves on The Florida Bar’s Standing Committee on Professionalism and Workers’ Compensation Rules Advisory Committee, and the National Association of Workers’ Compensation Judiciary’s Conference Committee. 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.

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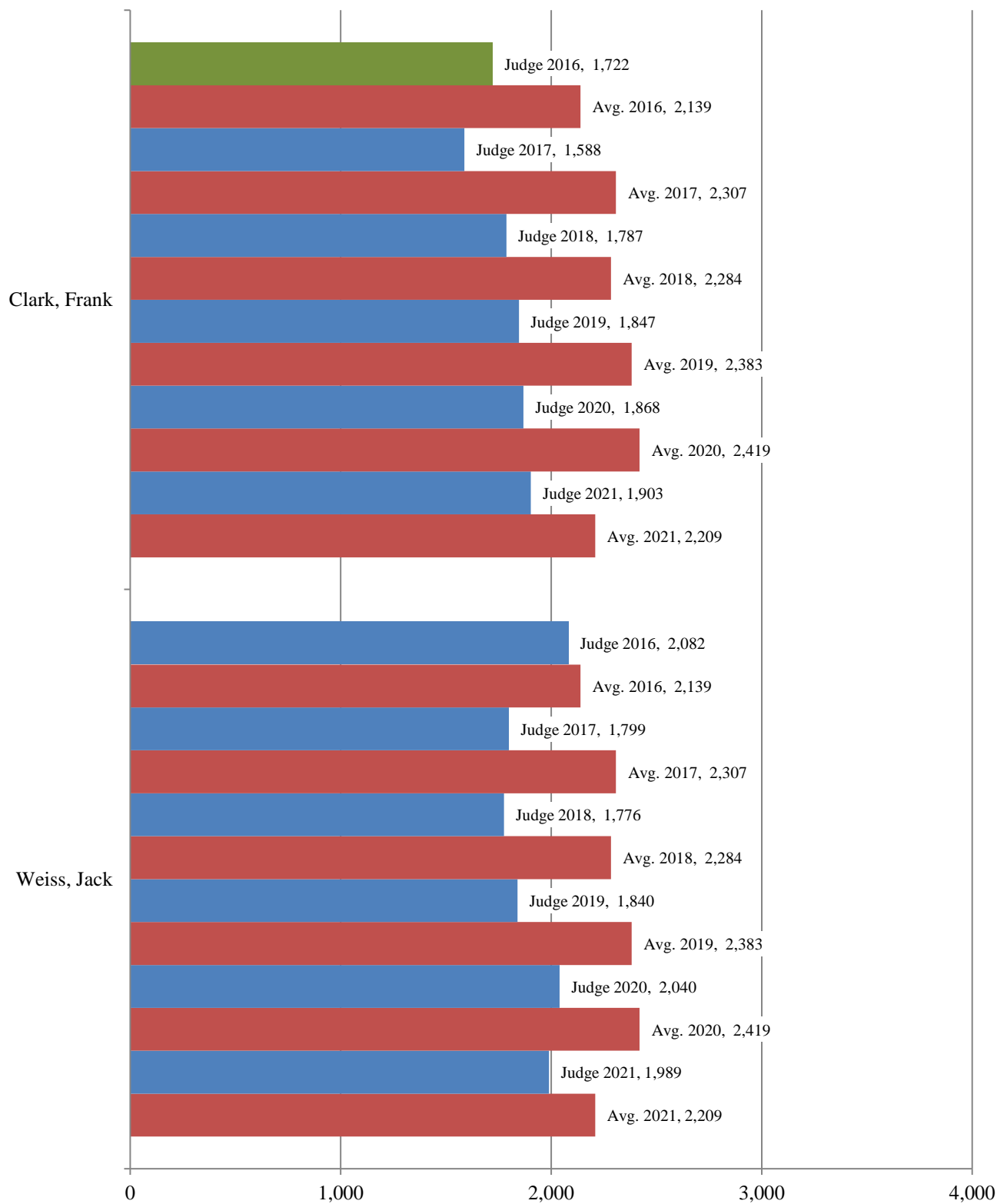
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



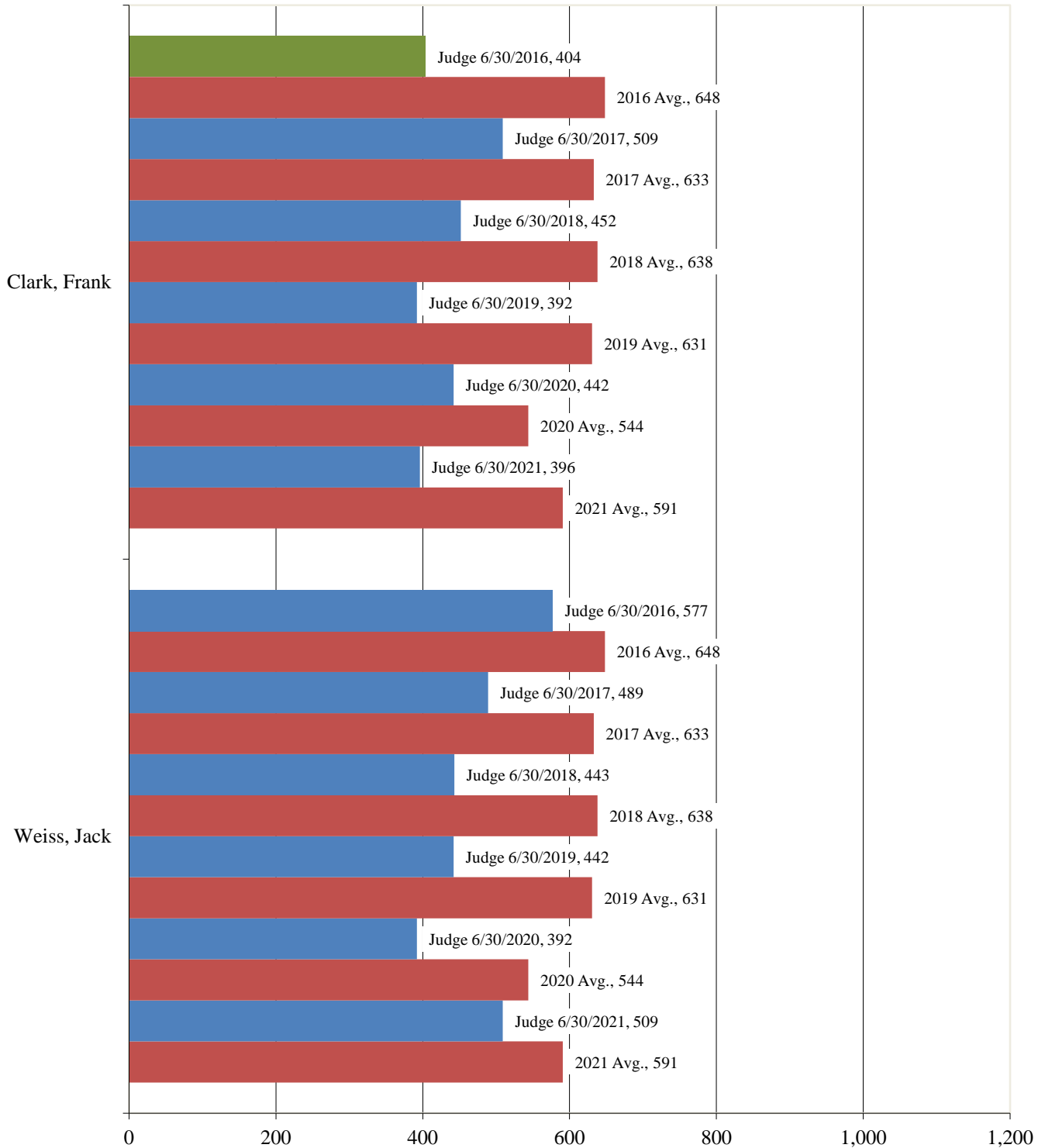
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



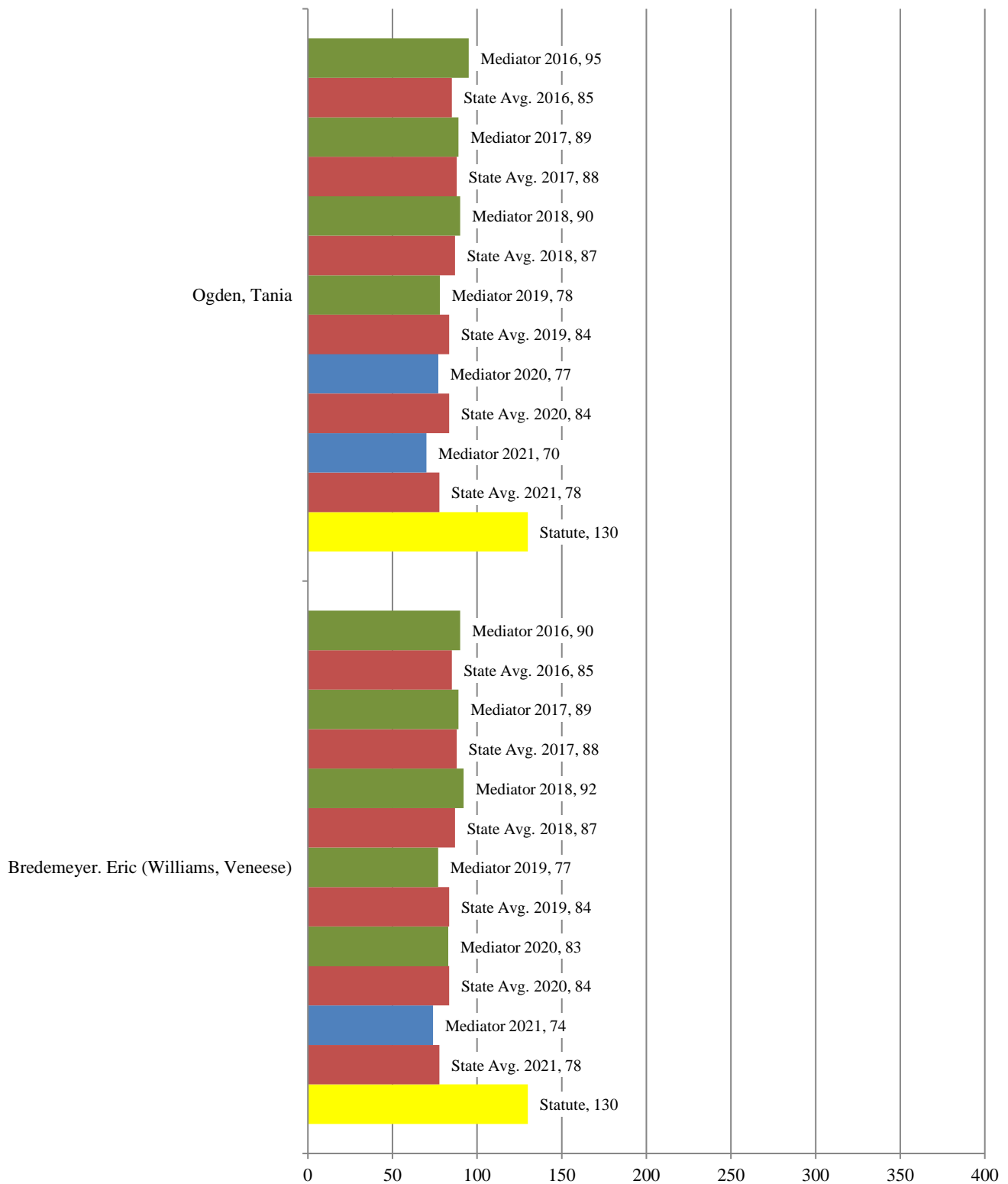
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



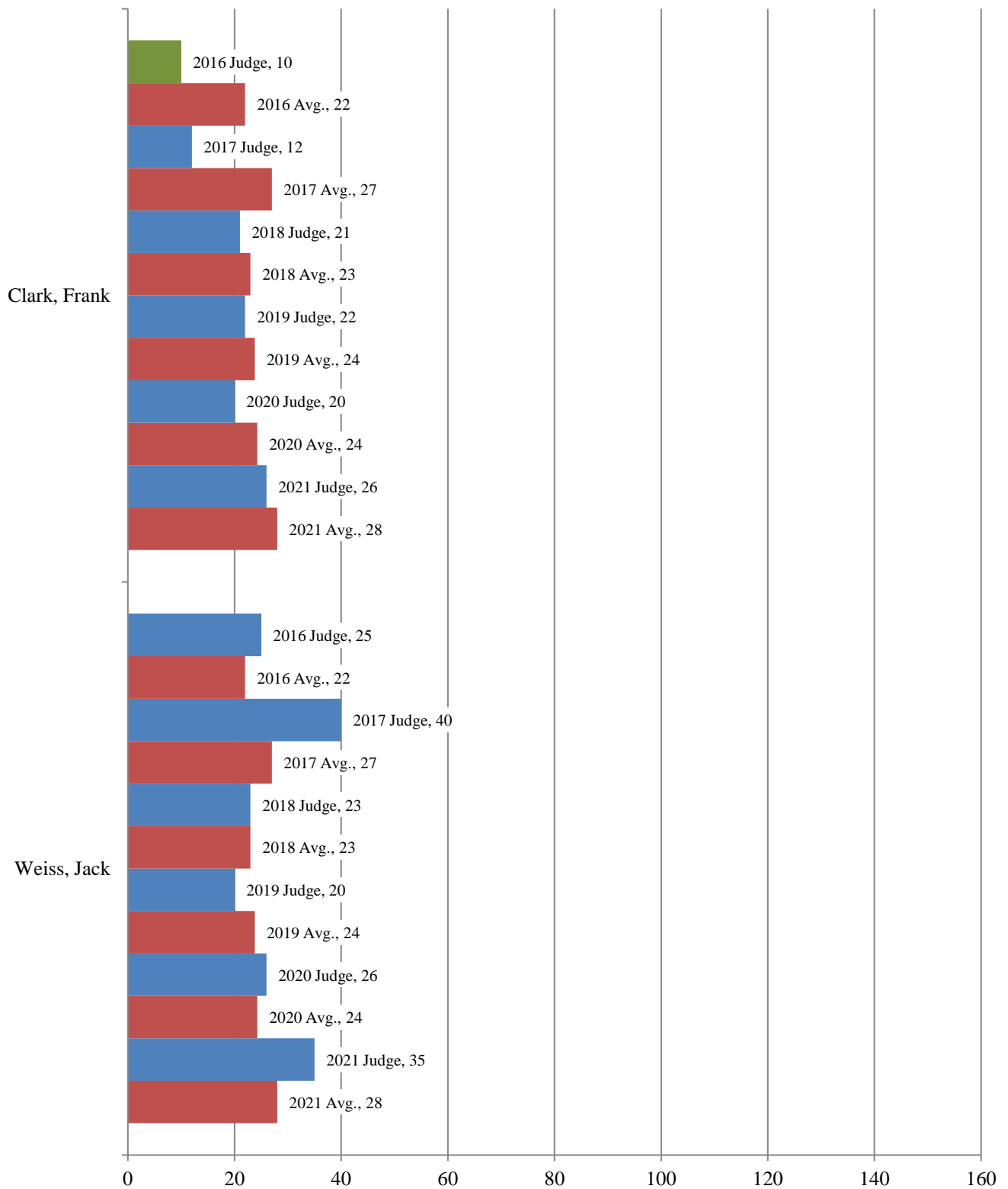
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



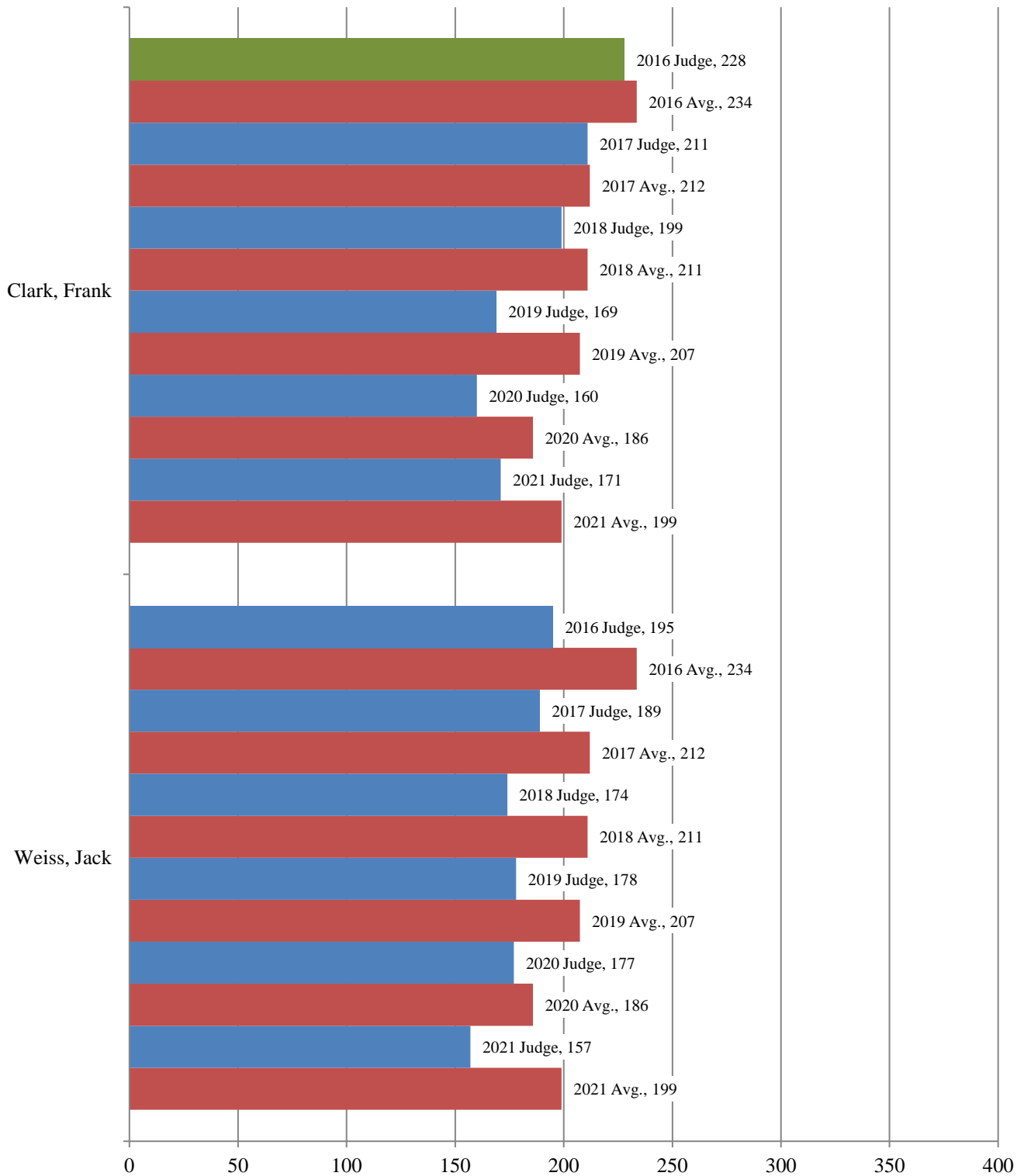
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



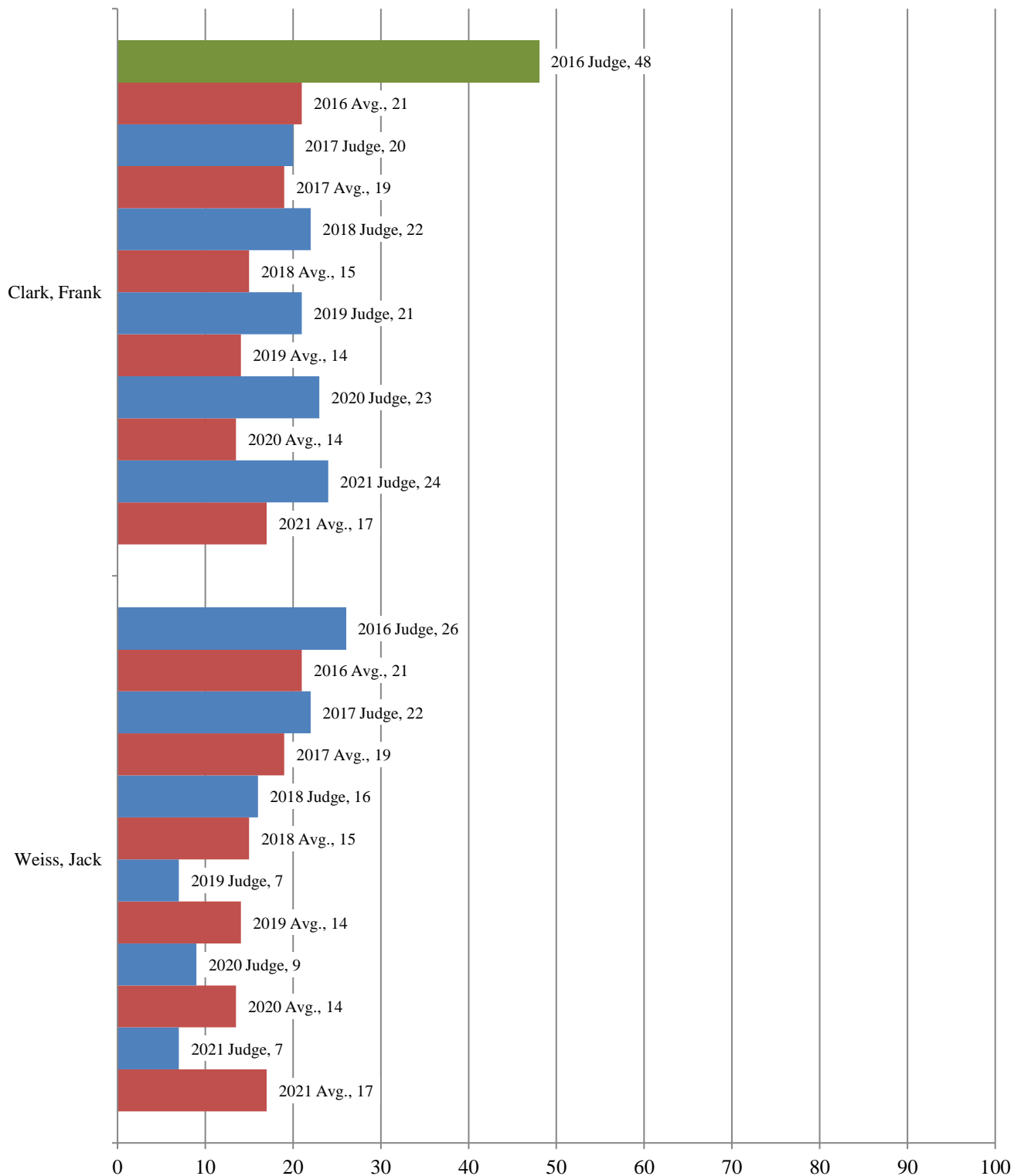
The following graph depicts the total volume of trial orders³⁰⁶ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



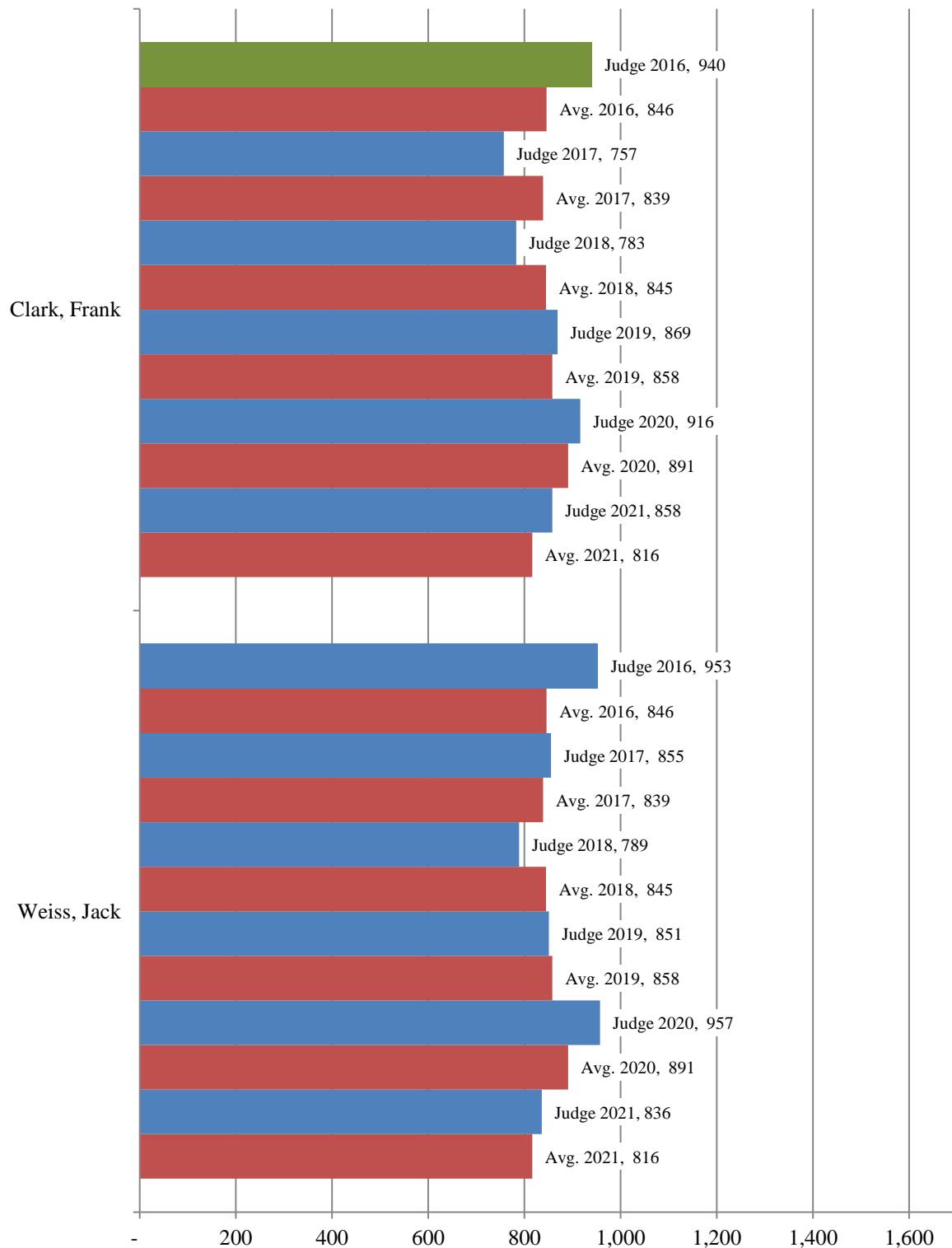
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



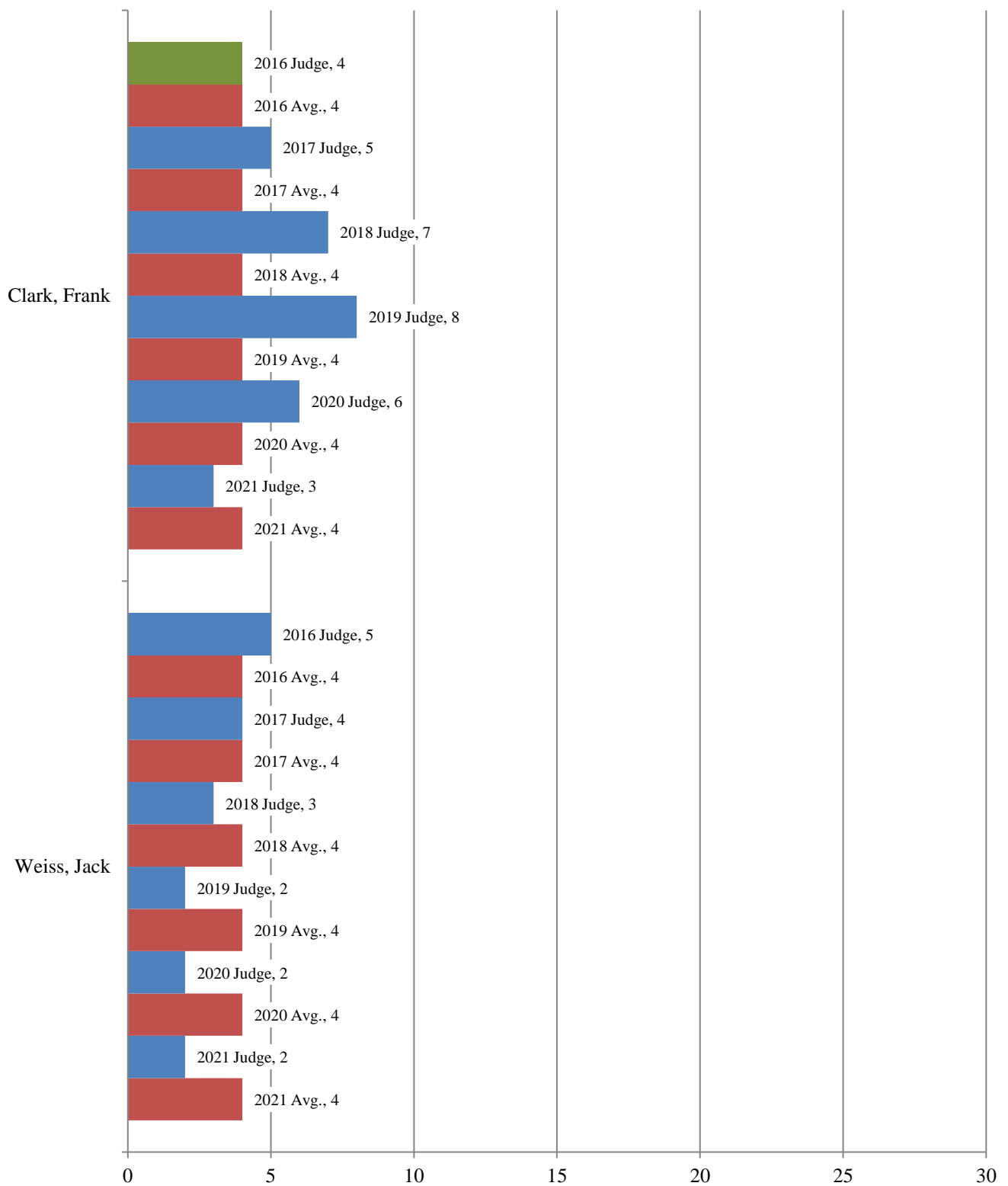
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



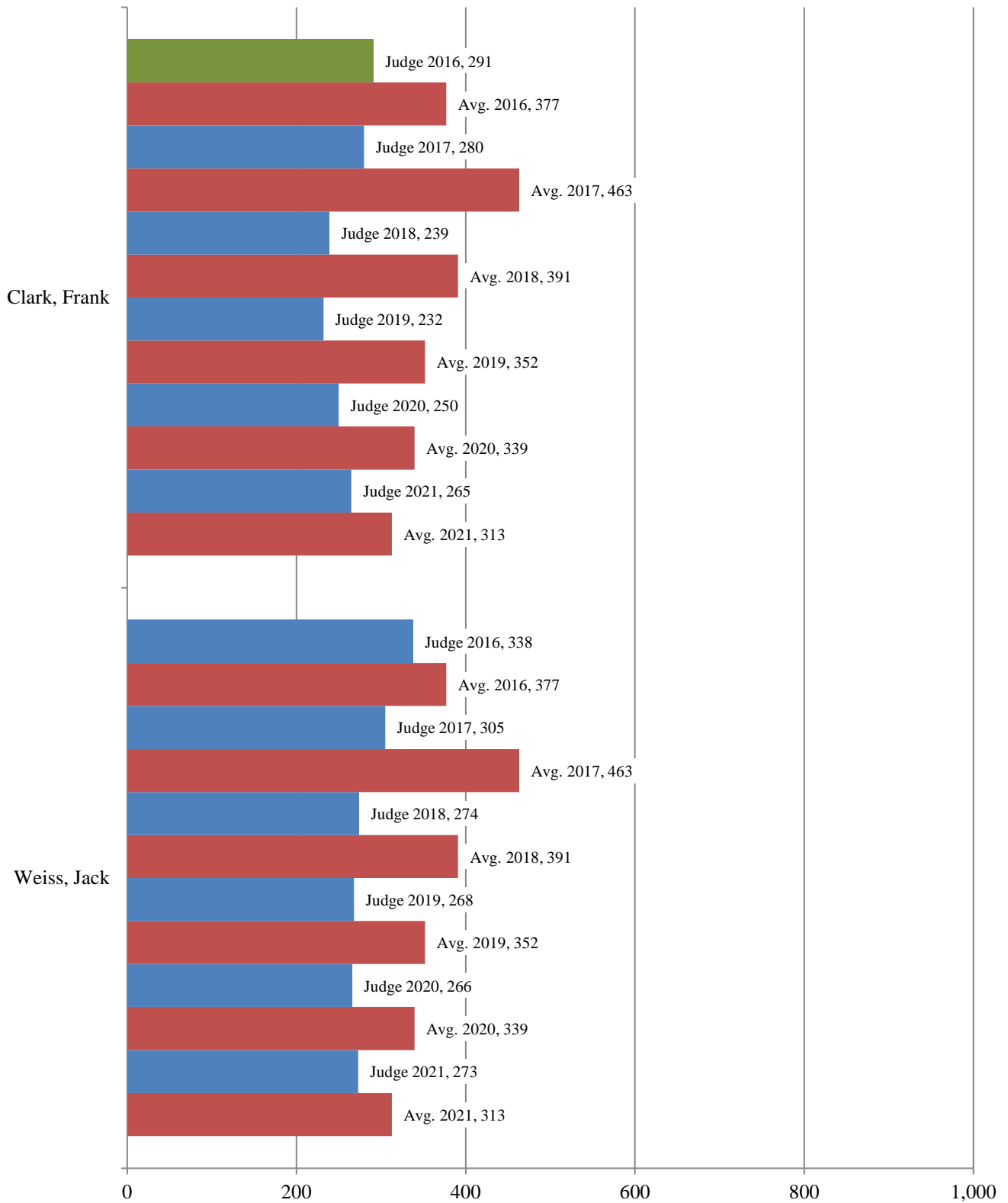
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



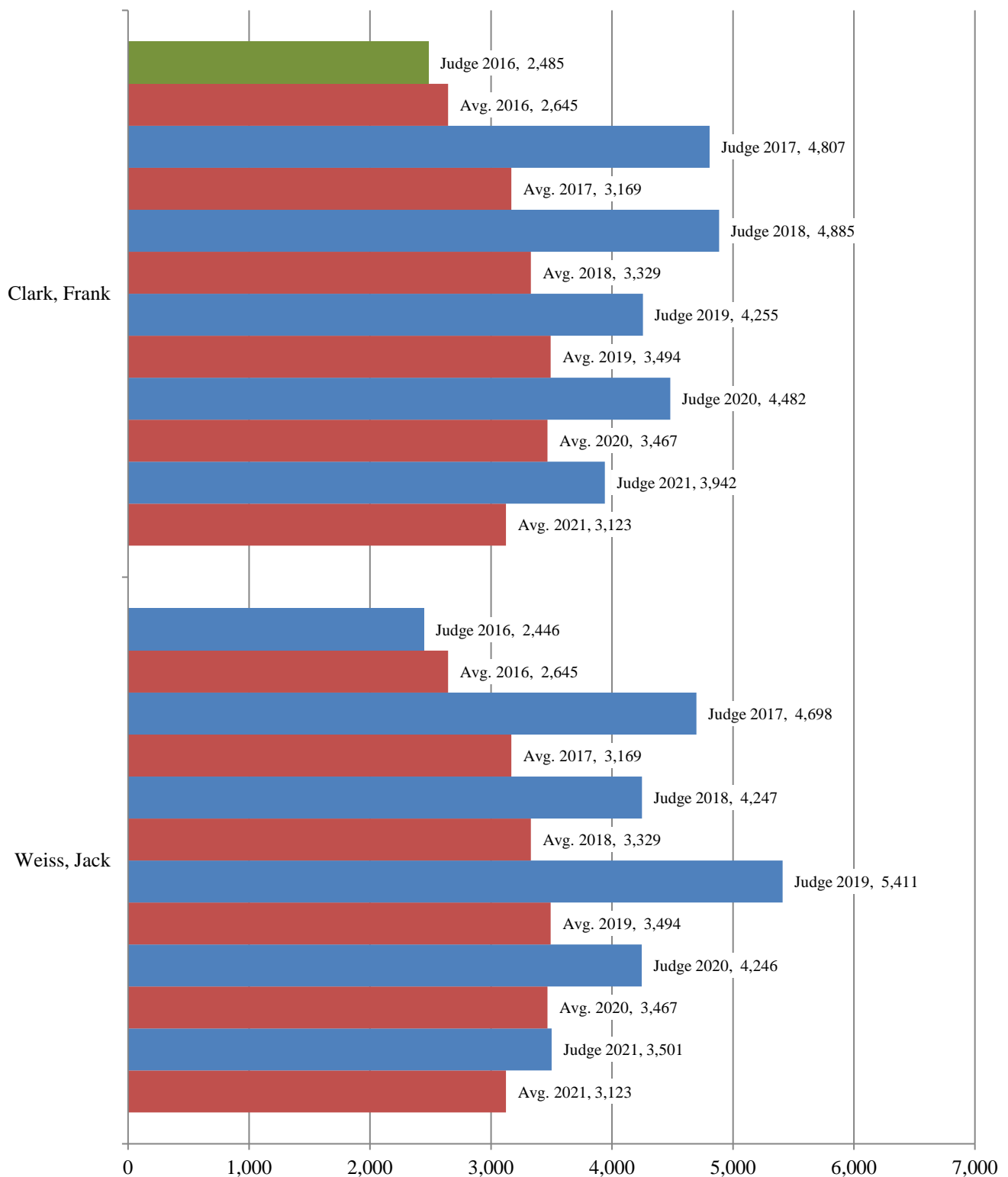
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



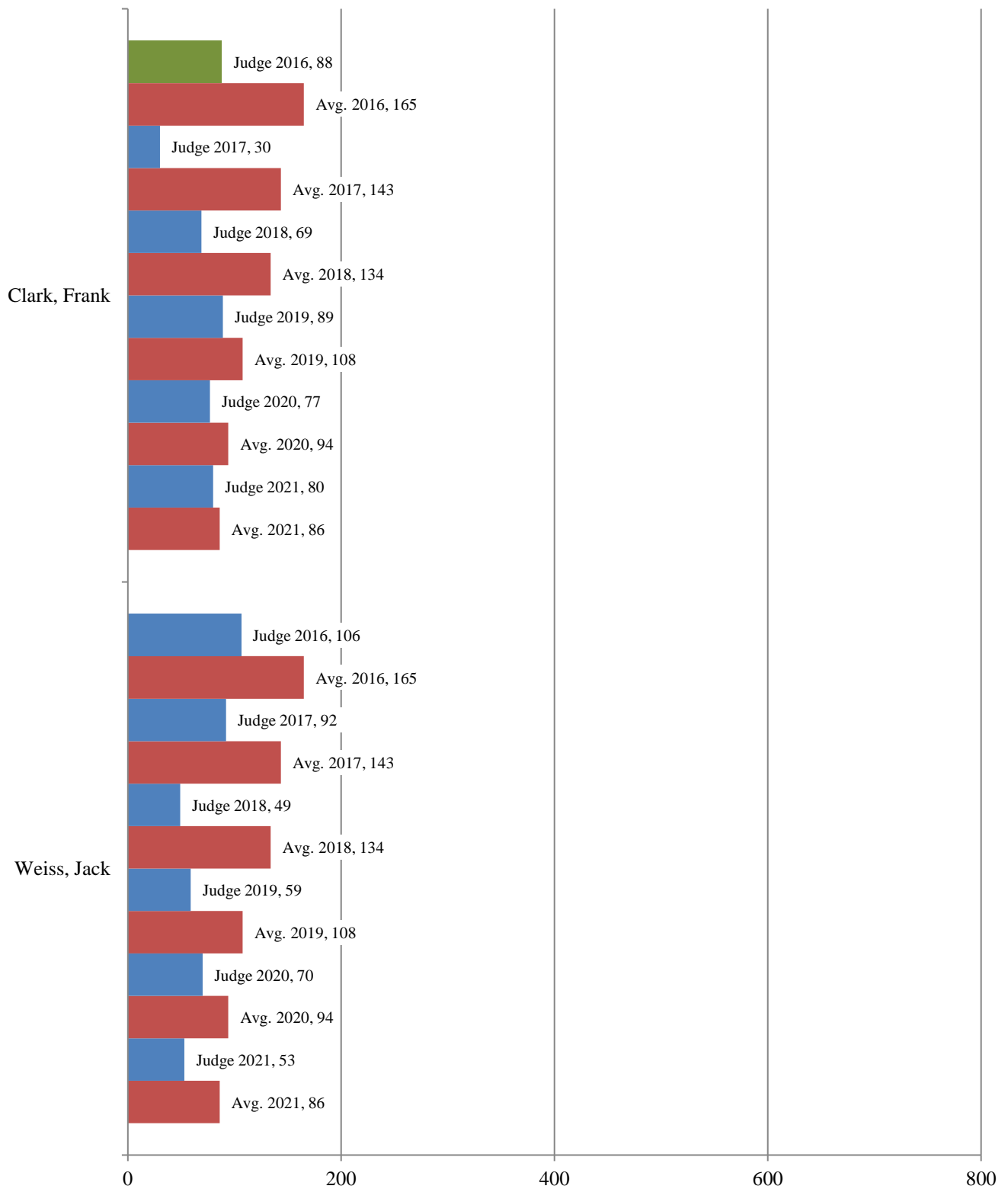
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



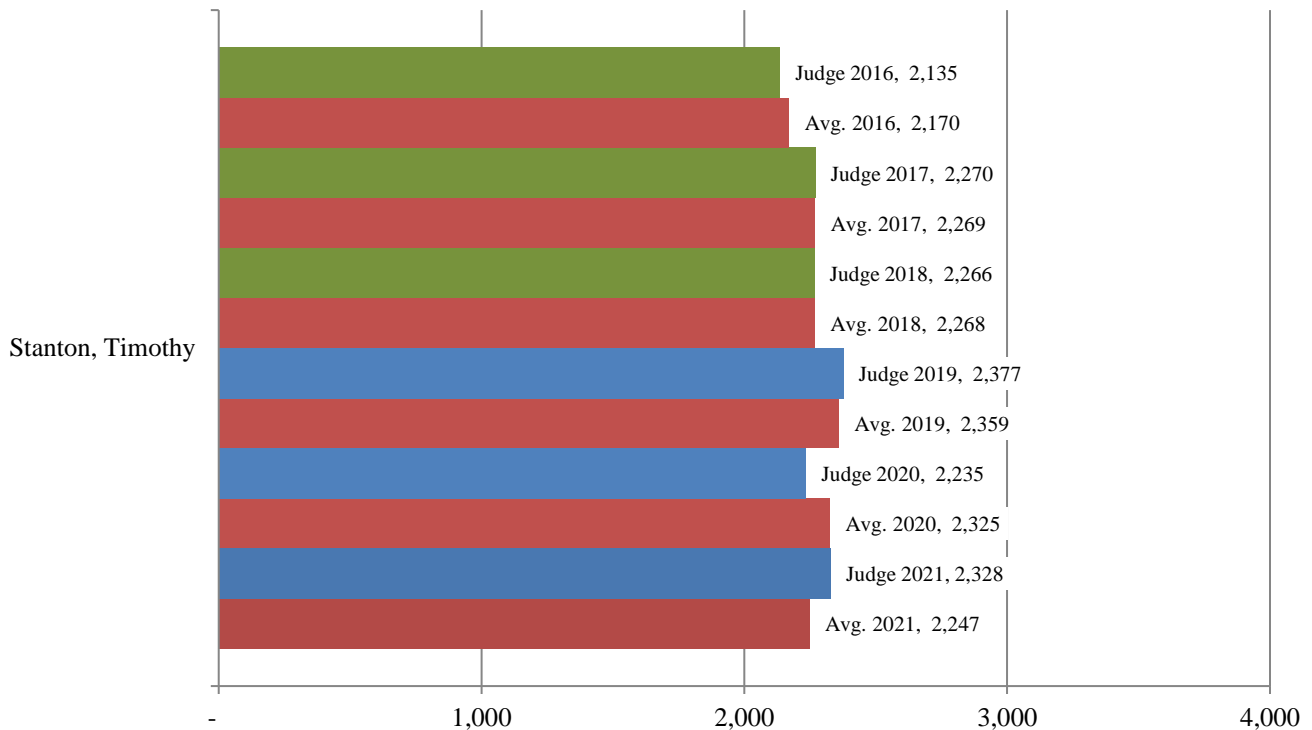
Appendix “4” District GNS (JCC Stanton³⁰⁷):

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

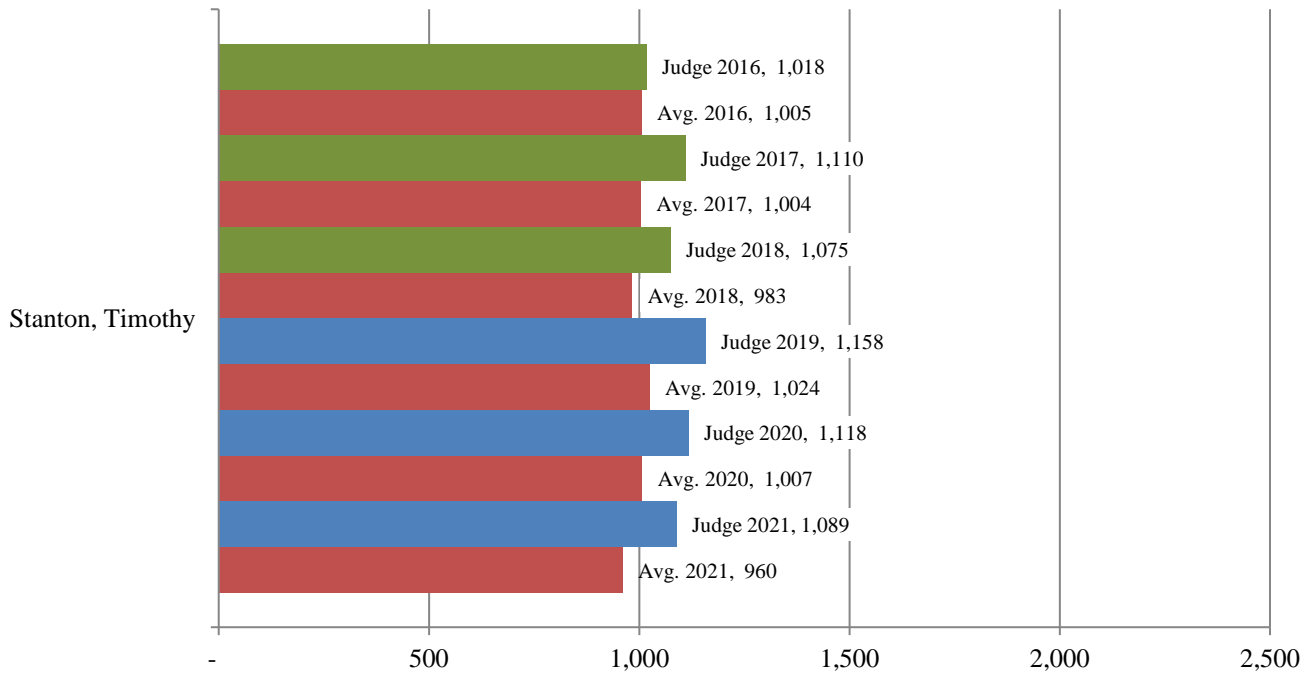
Gainesville recently demonstrates consistent average Petition filing rates. Notably, the Petition volume maintained in 2020-21, slightly above the statewide average. The “new case” filings are consistently above average in District GNS. The trial volume is below average, but the average times to mediation, to trial, and to final order are all within the statutory parameters in Gainesville. The volume of “other orders” entered there is notably below average, about 63% below average.

Judge Stanton was a committee member for the OJCC/WCI *A Virtual Tour of Florida Workers’ Compensation Seminar*. He also served as the moderator on the panel of *Hot Topics of Mediation* at that seminar. Judge Stanton is a member of the National Association of Workers’ Compensation Judiciary, the Conference of Judges of Compensation Claims, and an honorary member in the E. Robert Williams Inn of Court, in Jacksonville, Florida.

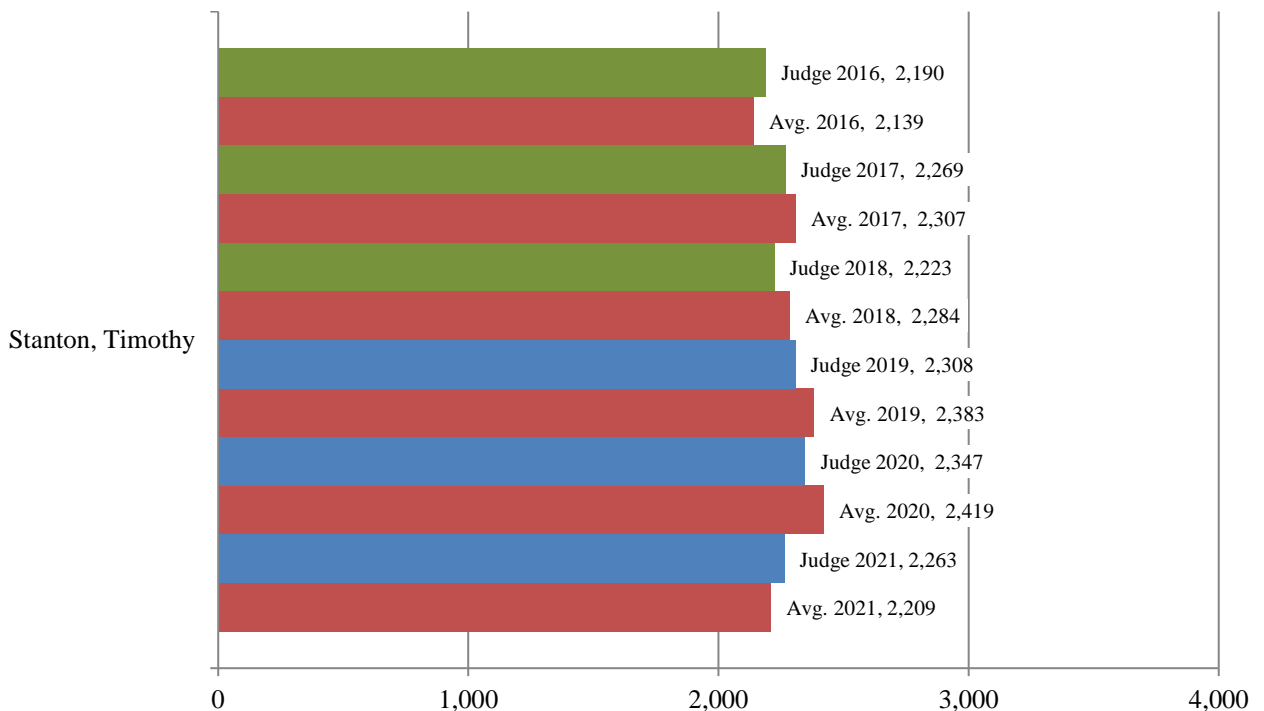
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



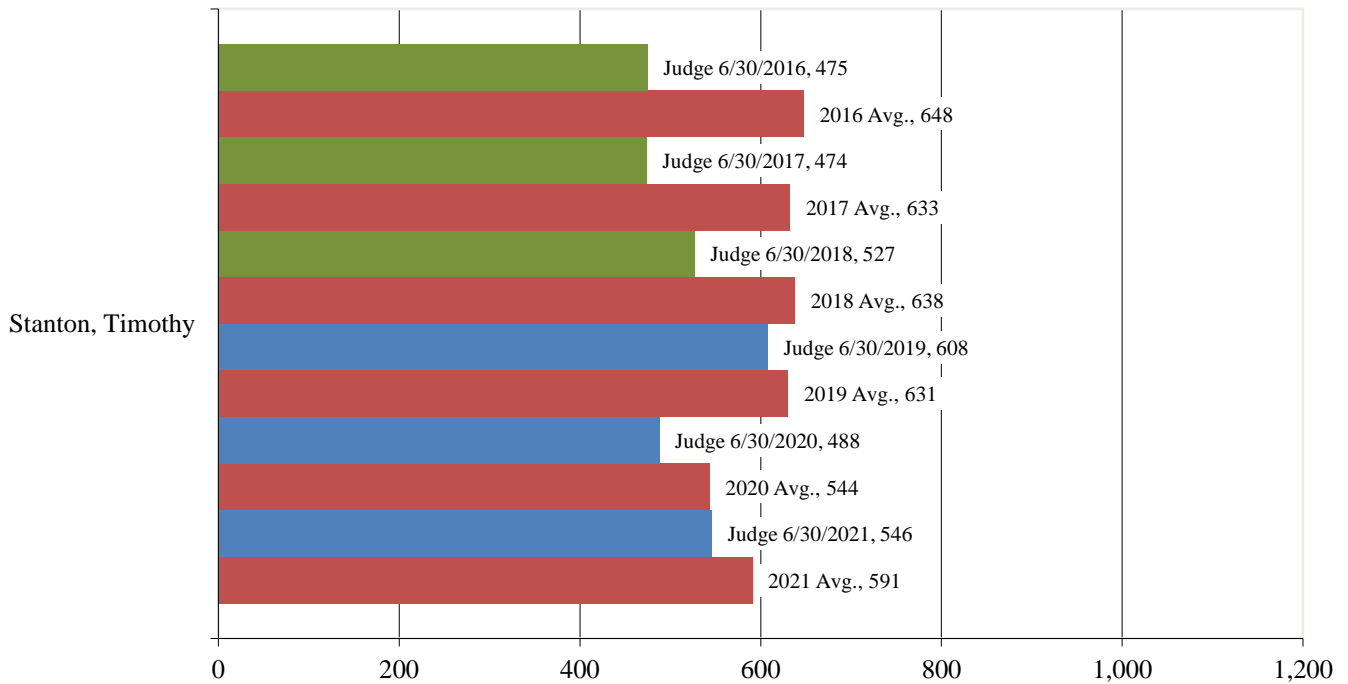
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



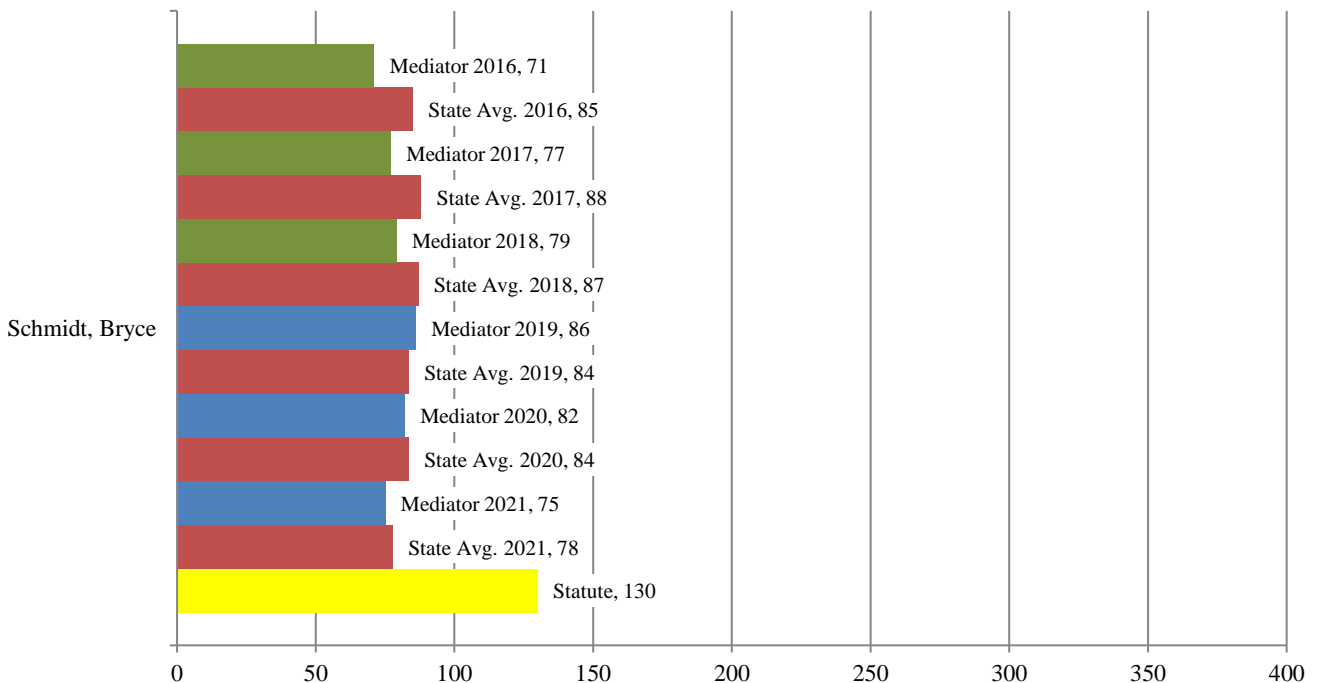
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



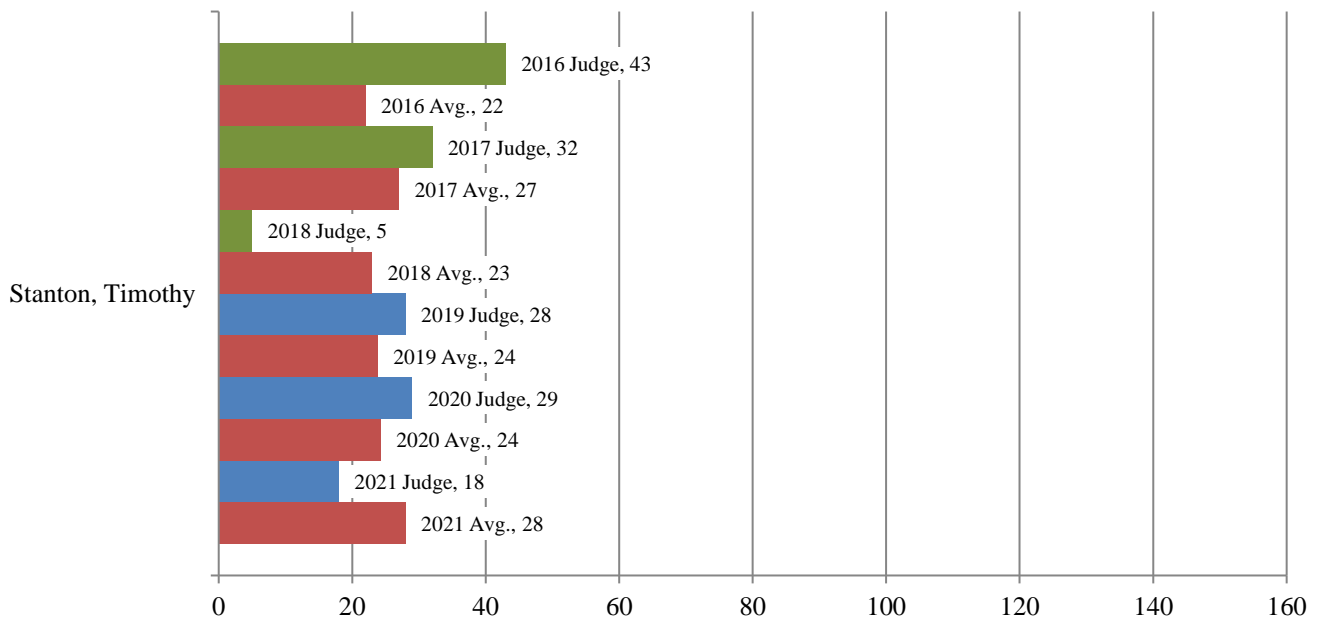
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



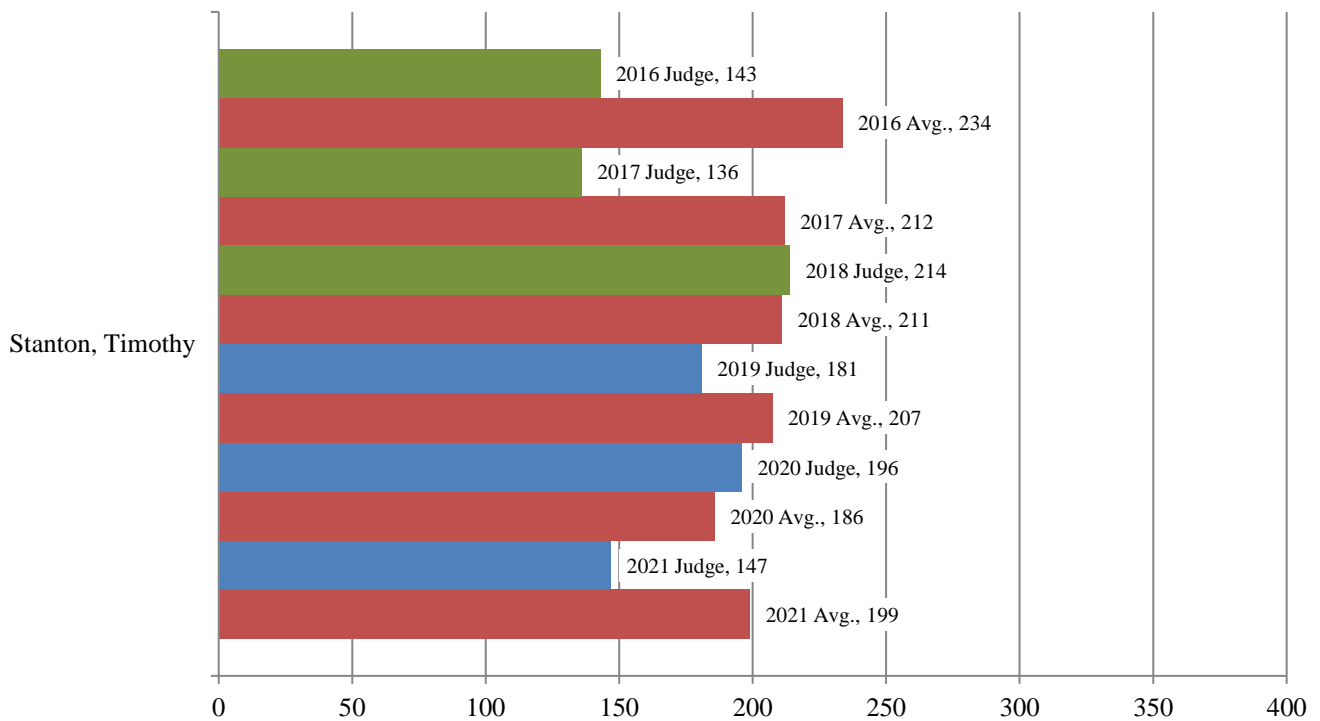
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



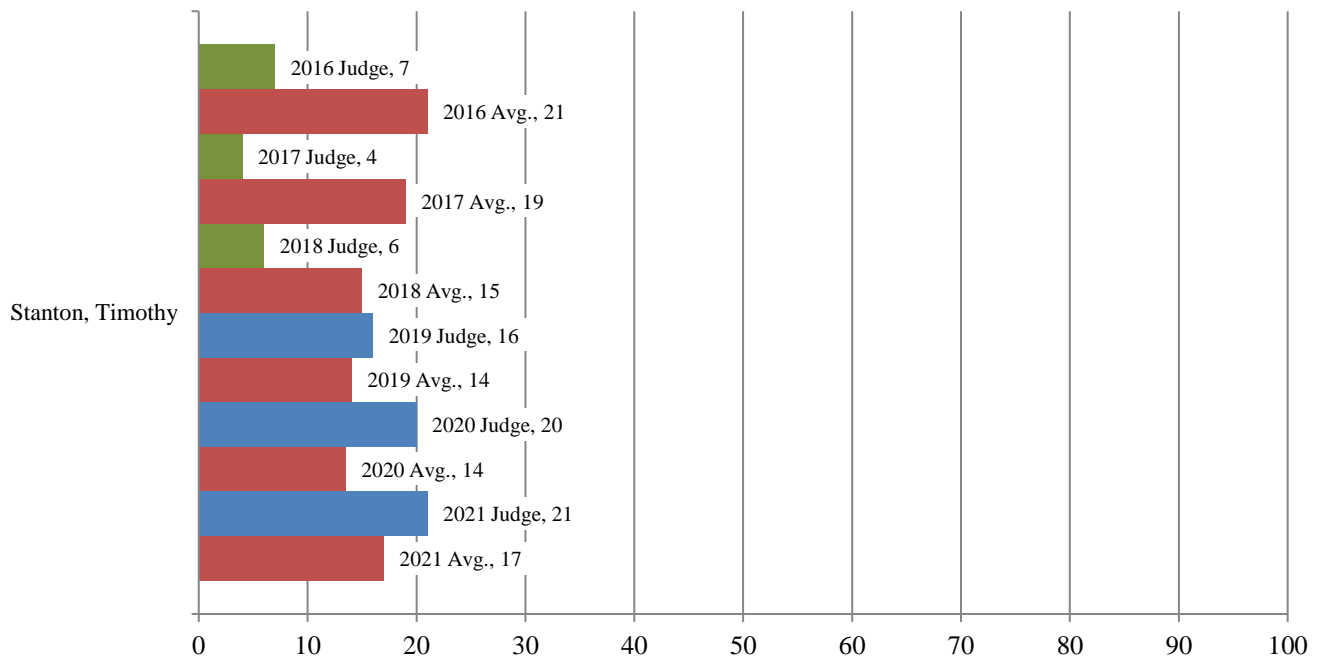
The following graph depicts the total volume of trial orders³⁰⁸ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



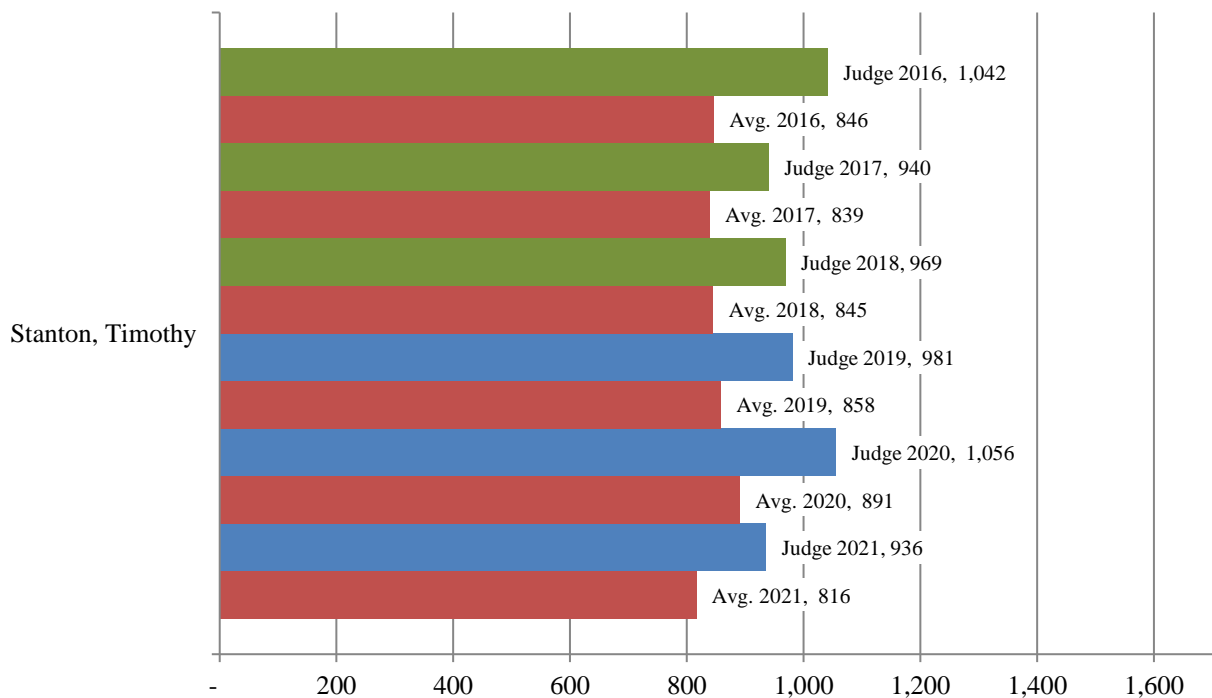
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



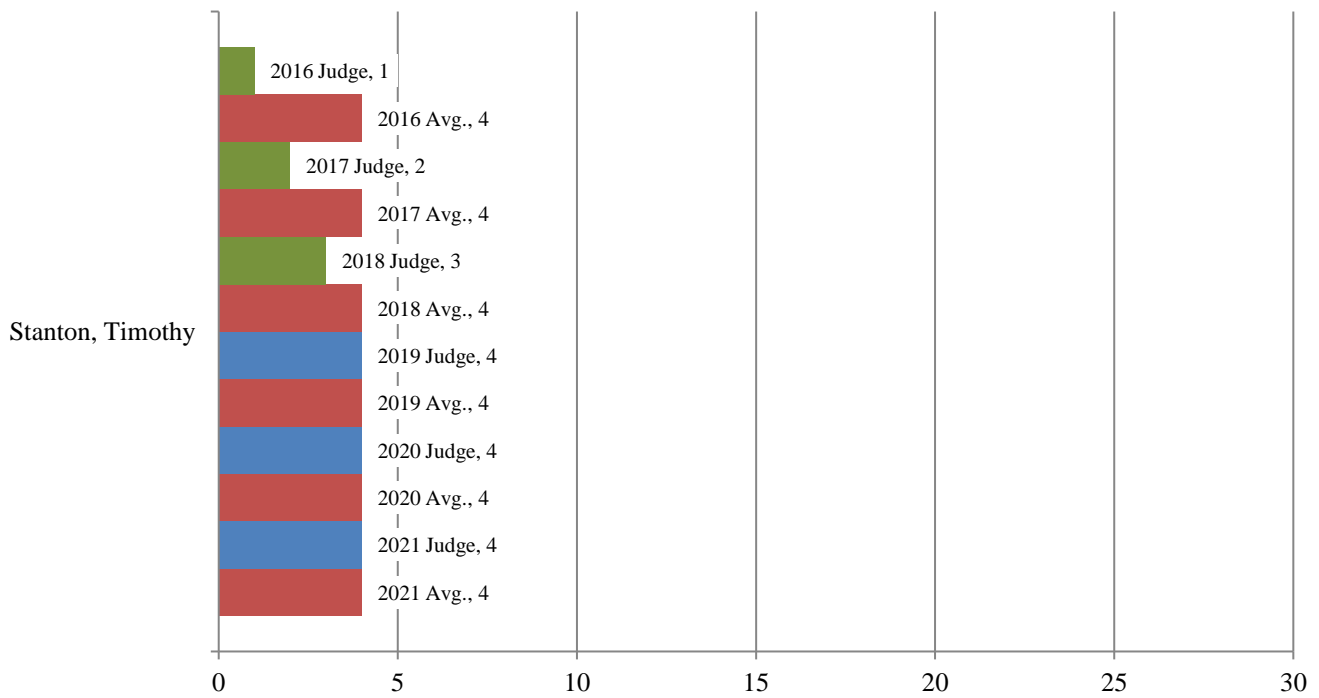
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



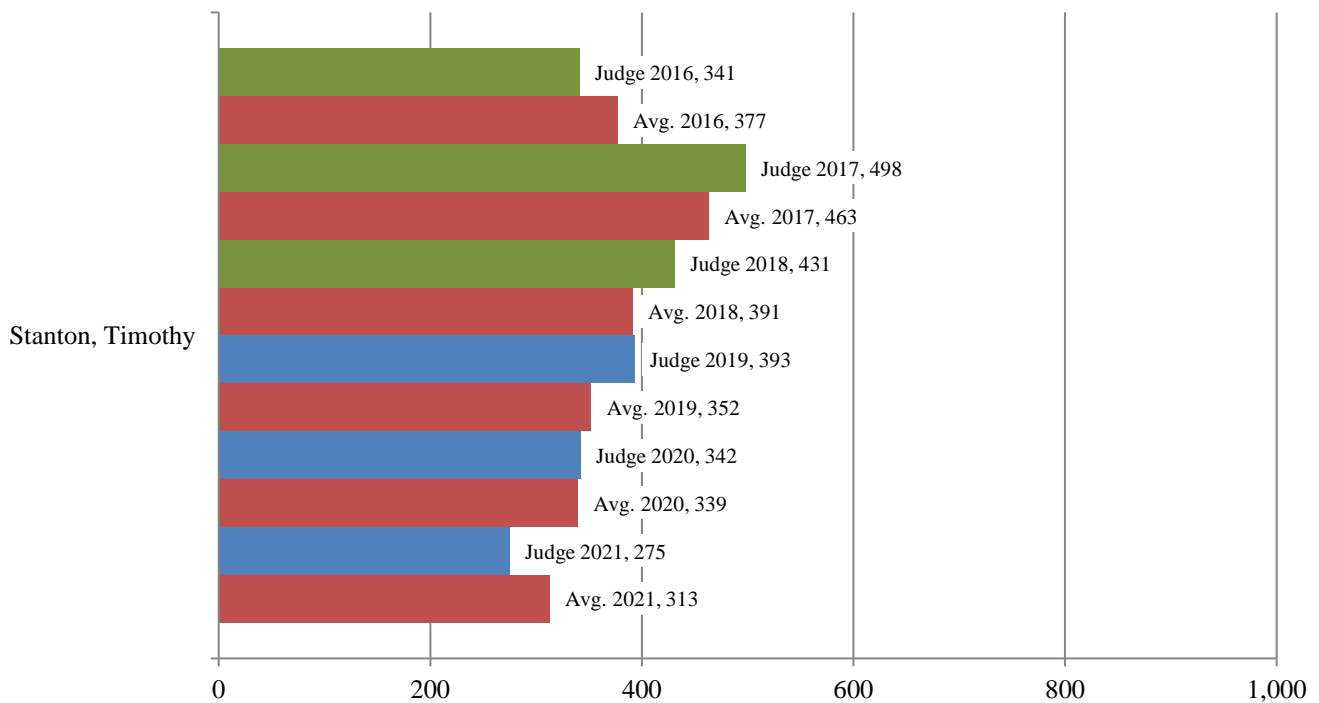
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



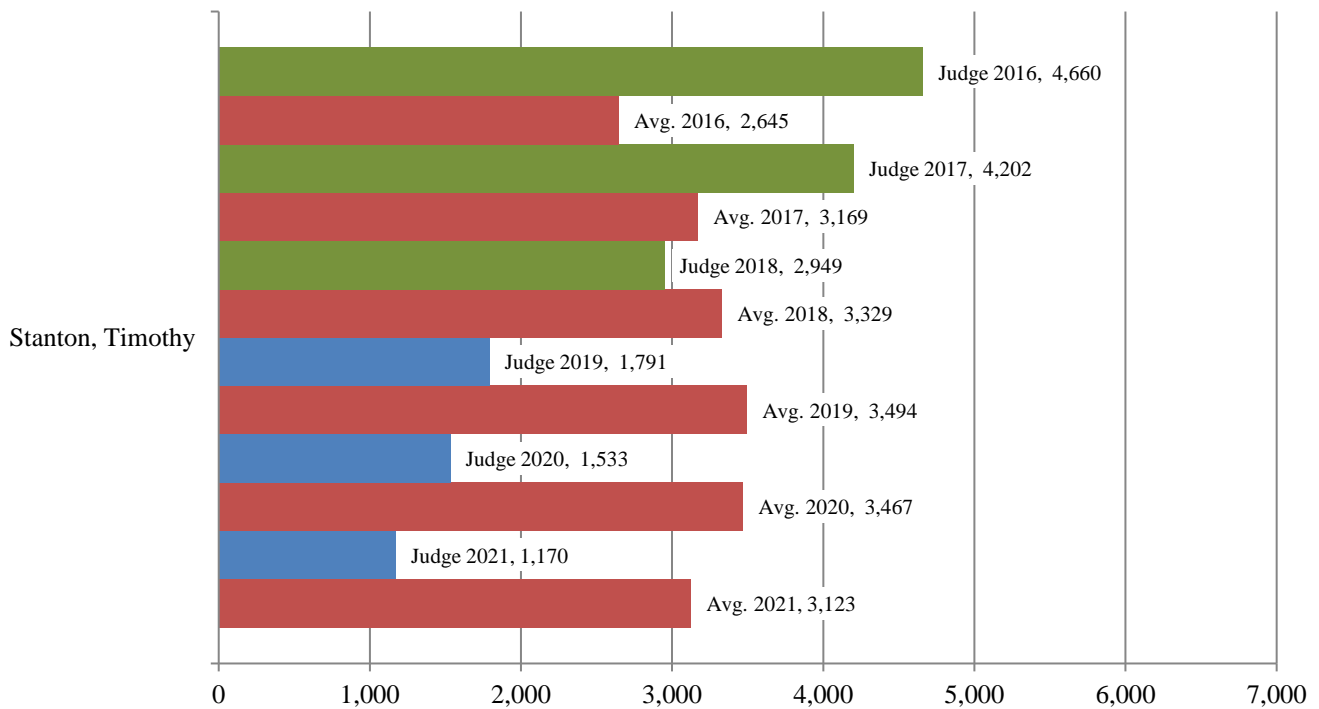
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



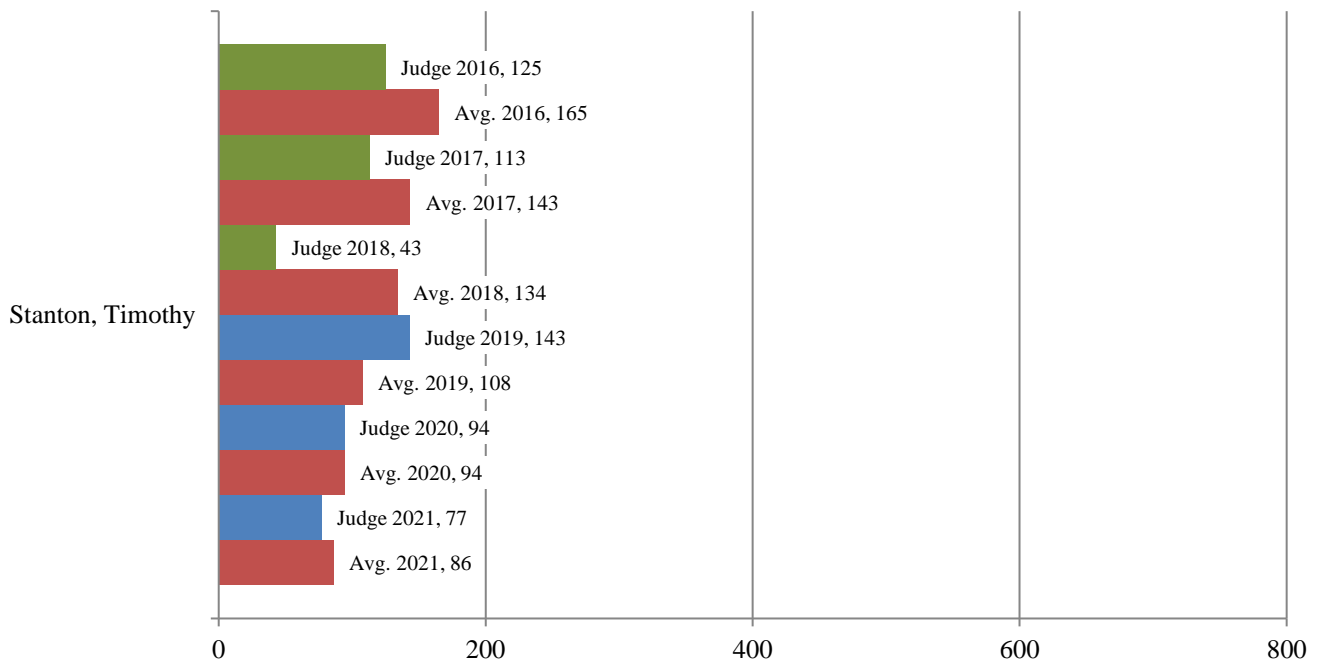
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



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

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

District Jacksonville 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; for the past two years, Petition volume has been notably consistent with the average. Trial volume is notably below average historically in District Jacksonville, and 2020-21 was consistent with that. The times to mediation and to final order are within statutory parameters for 2020-21. The time to trial is consistent with the statutory parameter in one Division and markedly above that parameter in the other.

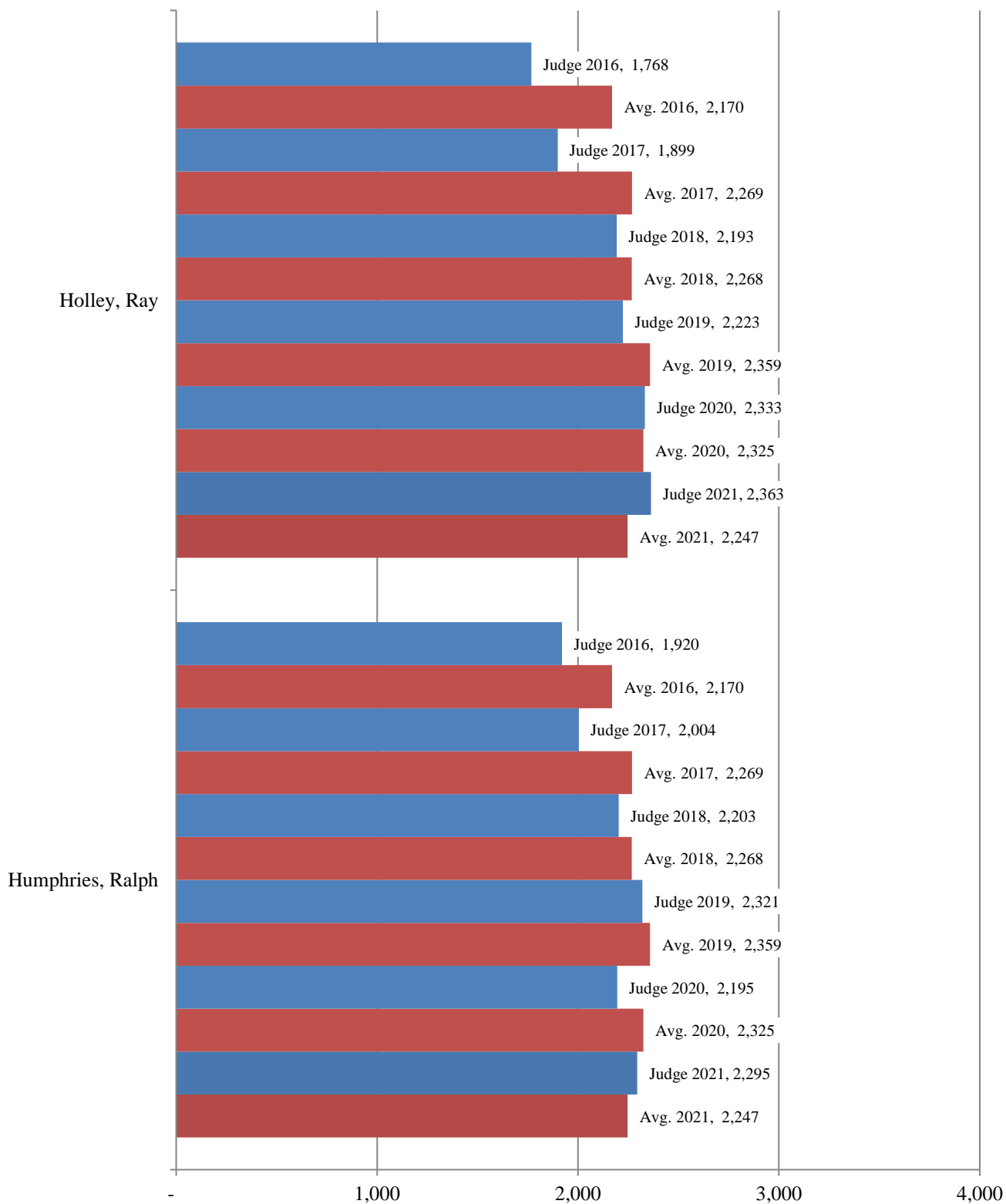
The volume of settlement orders in District Jacksonville consistently exceeds the statewide average, while the stipulation order volume is notably and consistently below the average. The volume of “other orders” is below average in Jacksonville, particularly notable in one Division.

Judge Holley is a Master of the Bench and Past President of the E. Robert Williams Inn of Court. Judge Holley continues to serve the legal profession through his involvement with the Conference of the Judges of Compensation Claims (President Elect), E. Robert Williams Inn of Court (Executive and Program Committees), Friends of 440 Scholarship Fund (Vice President of Scholarship Selection, and State and local Board member), and Jacksonville Bar Association (Appellate and Professionalism Committees). He is actively involved in his community including his time spent with such organizations as the Rotary Club of Jacksonville (member), the University of North Florida Alumni Board (board member), the National Society of the Sons of the American Revolution (member), and the Stetson University College of Arts and Sciences Board (board member). Judge Holley has presented as a speaker and/or panelist on several occasions in the past year.

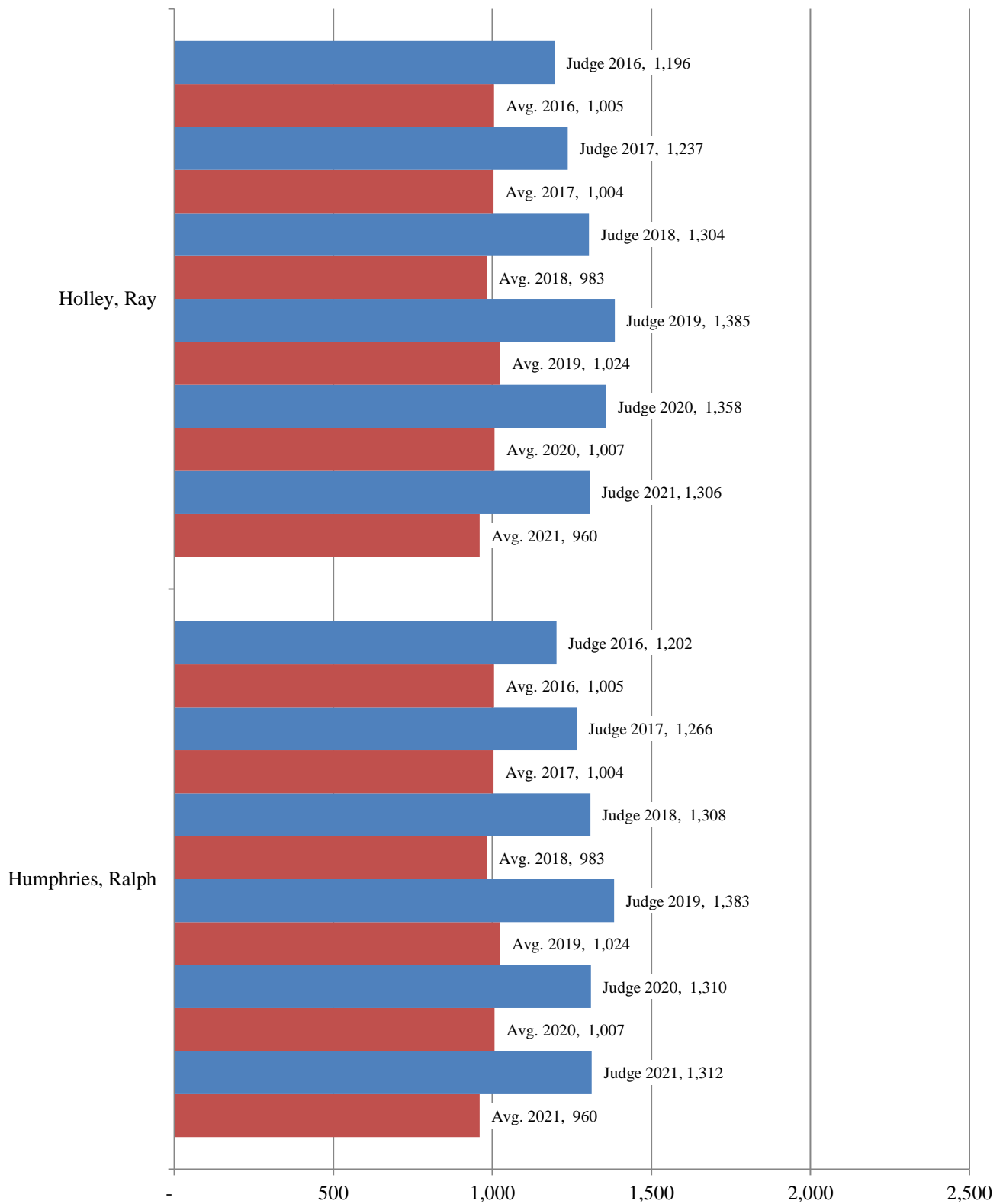
Mediator Kahlil Day continues to participate with his colleagues in several collectives intended to promote legal ethics, civility, service, solutions to worker voice, economic inclusion, and labor transforming technologies. He is an honorary member of the E. Robert Williams American Inn of Court, a Benefactor Fellow of the American Bar Foundation, an Active Life Member of Phi Delta Phi, and a Fellow of the Royal Society for the Arts. In 2021 Mr. Day was commissioned as a Kentucky Colonel by Governor Andy Beshear and invited to join the RSA Good Works Guild.

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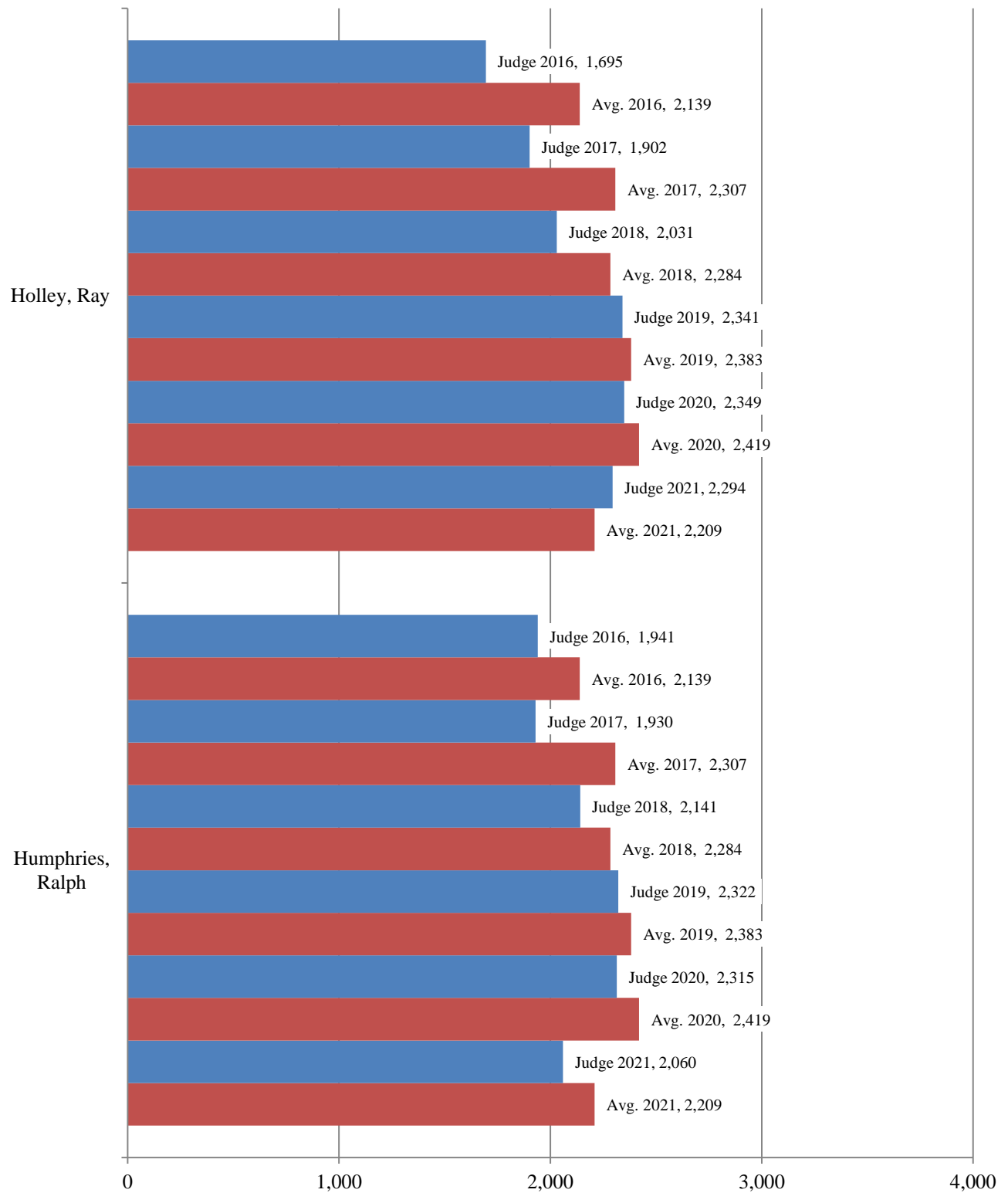
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



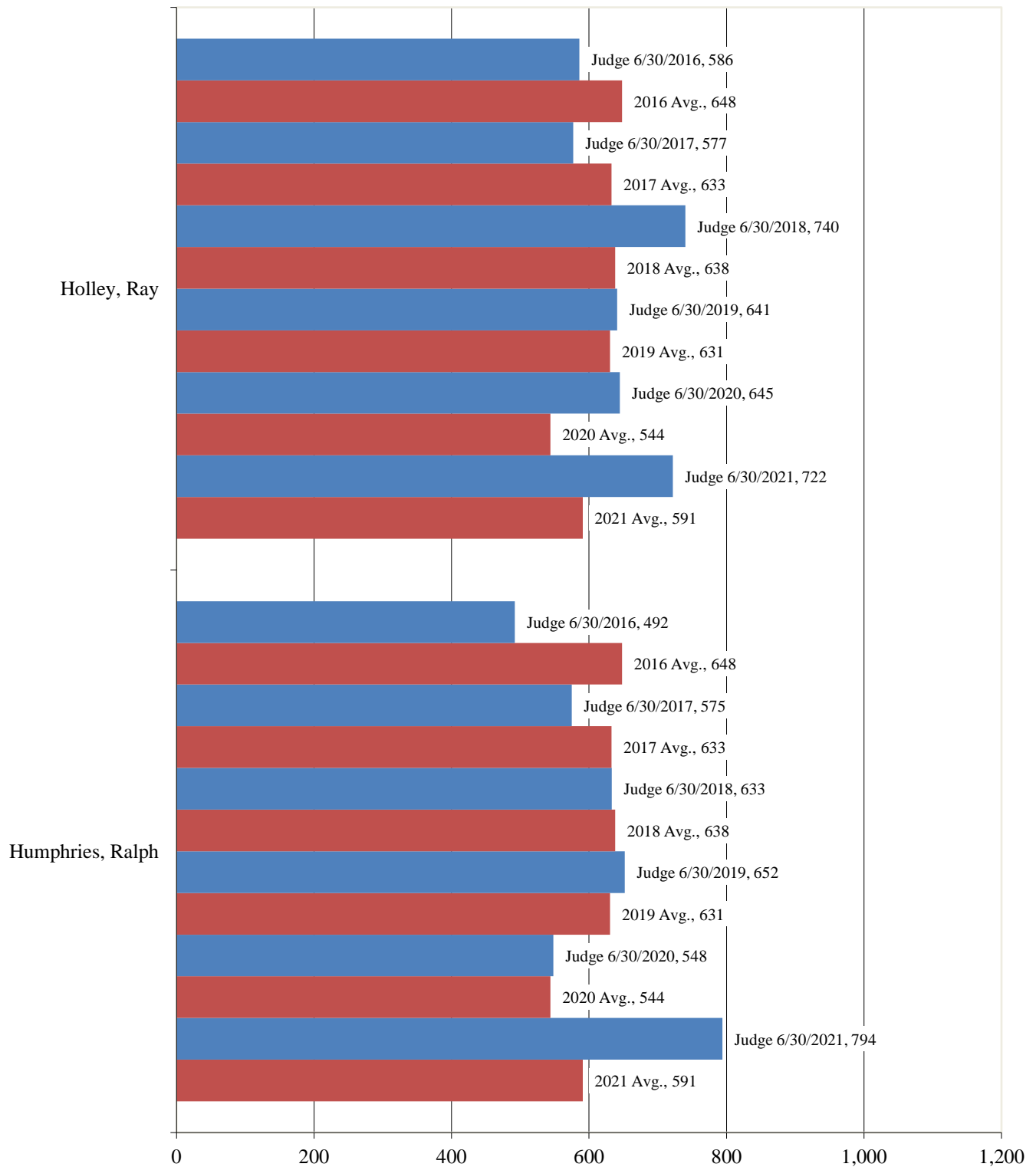
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



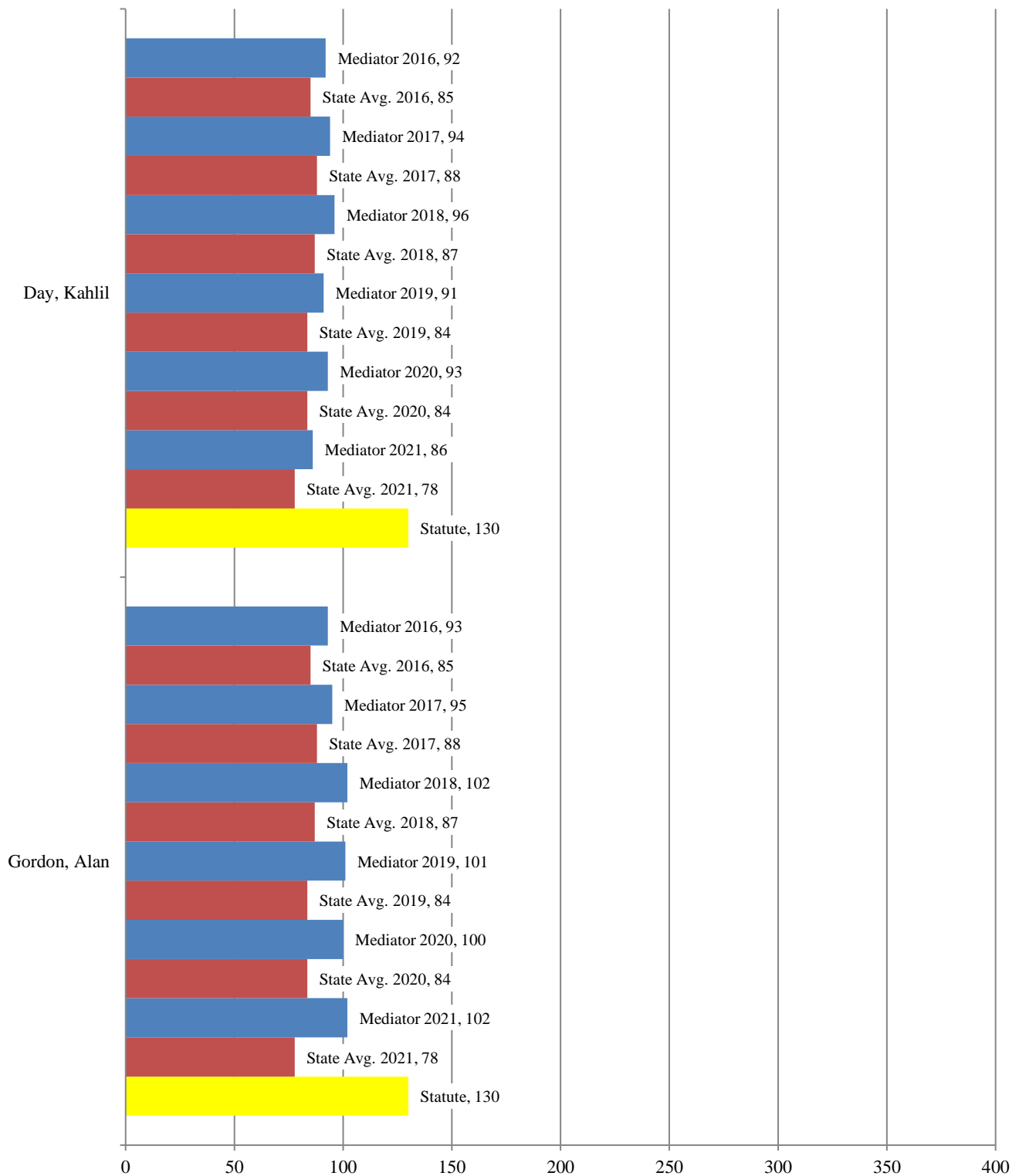
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



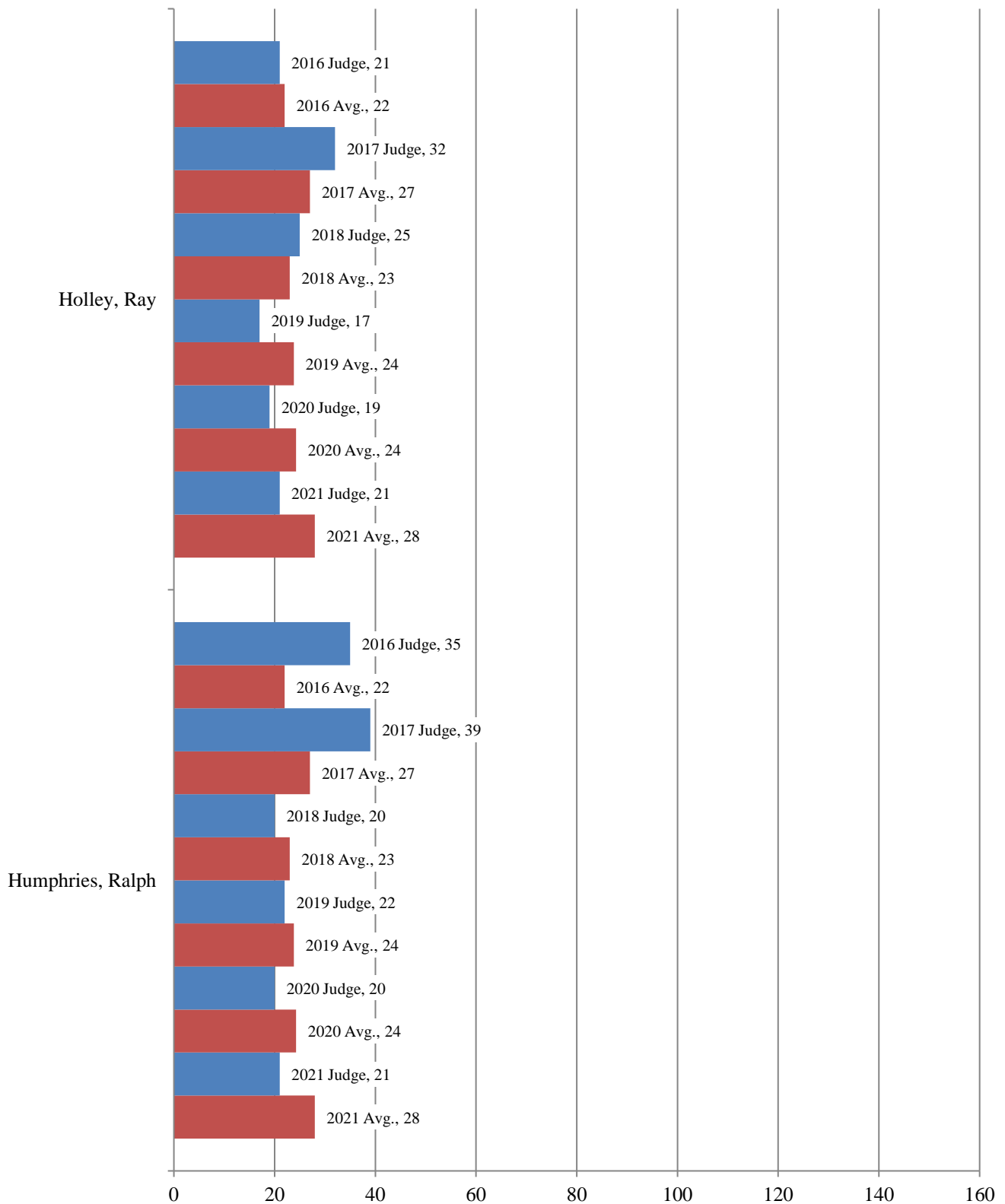
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



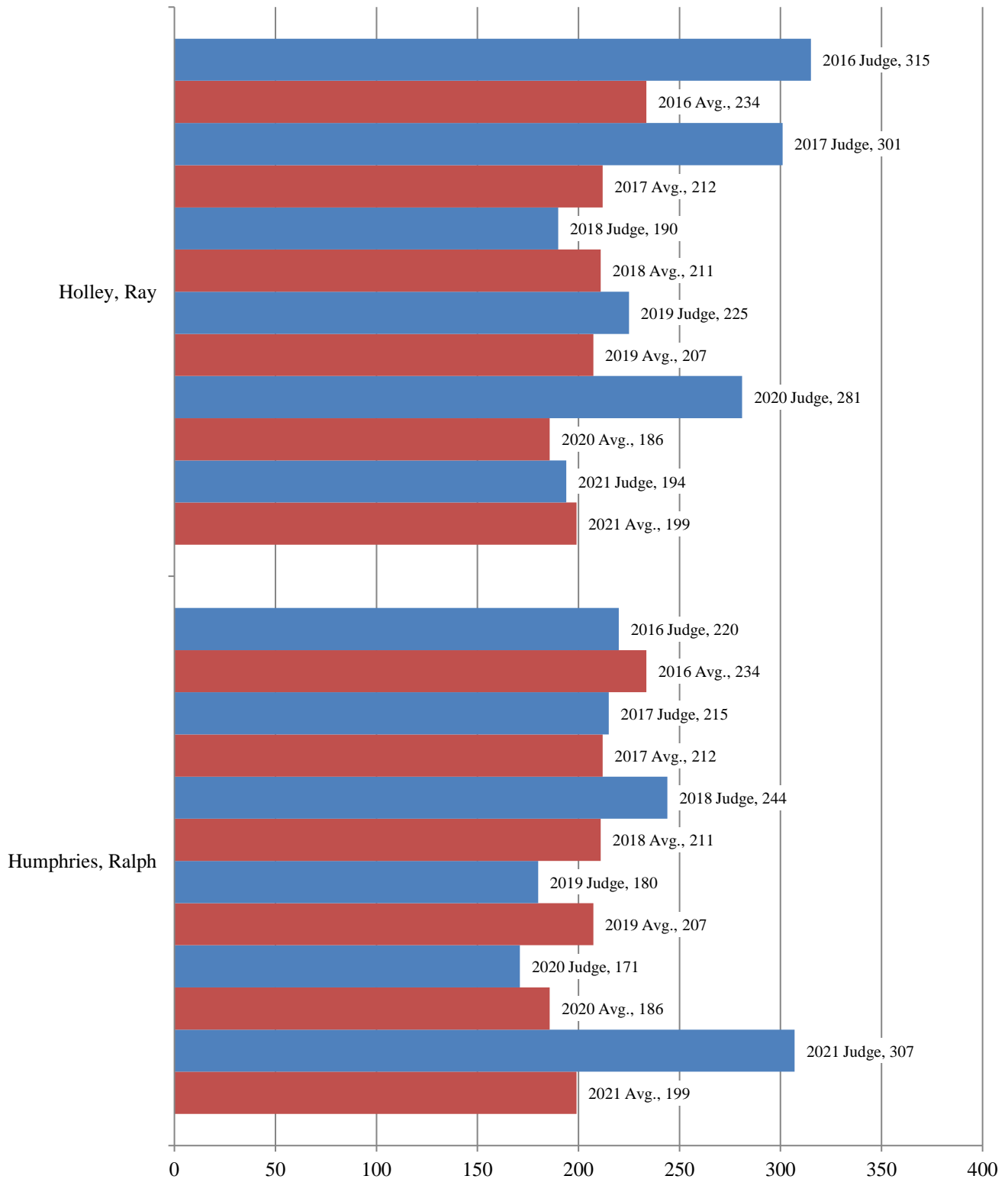
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



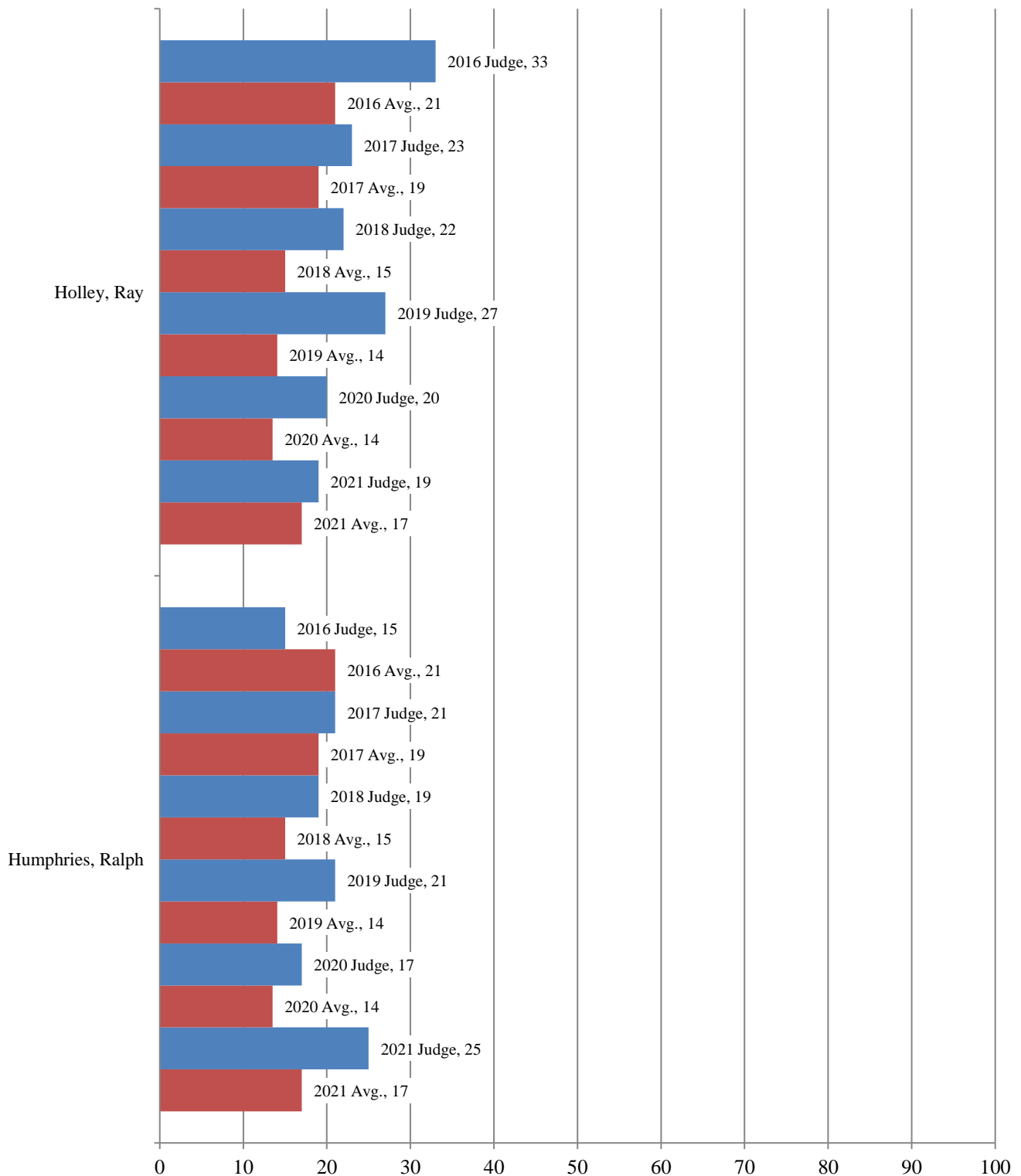
The following graph depicts the total volume of trial orders³⁰⁹ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



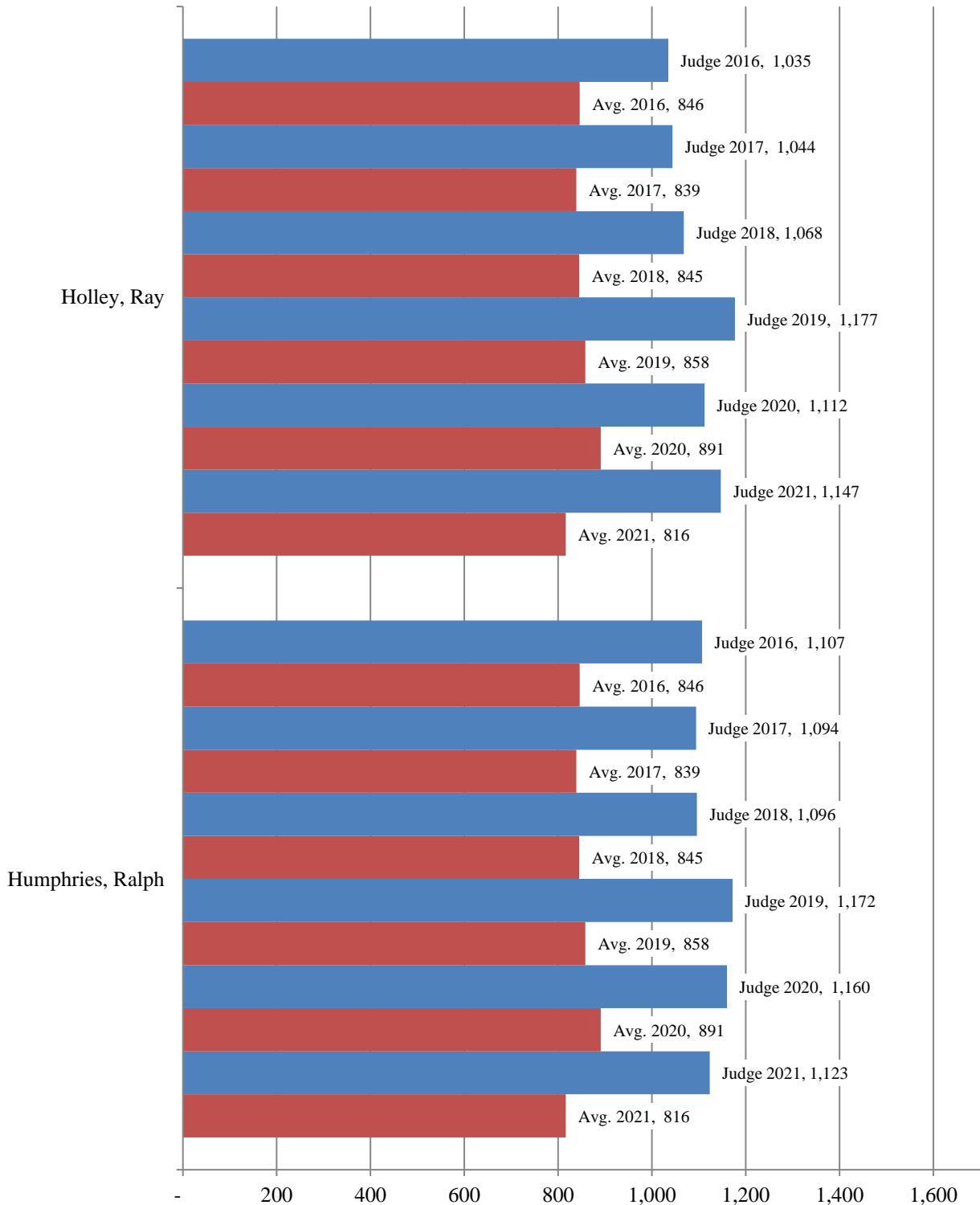
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



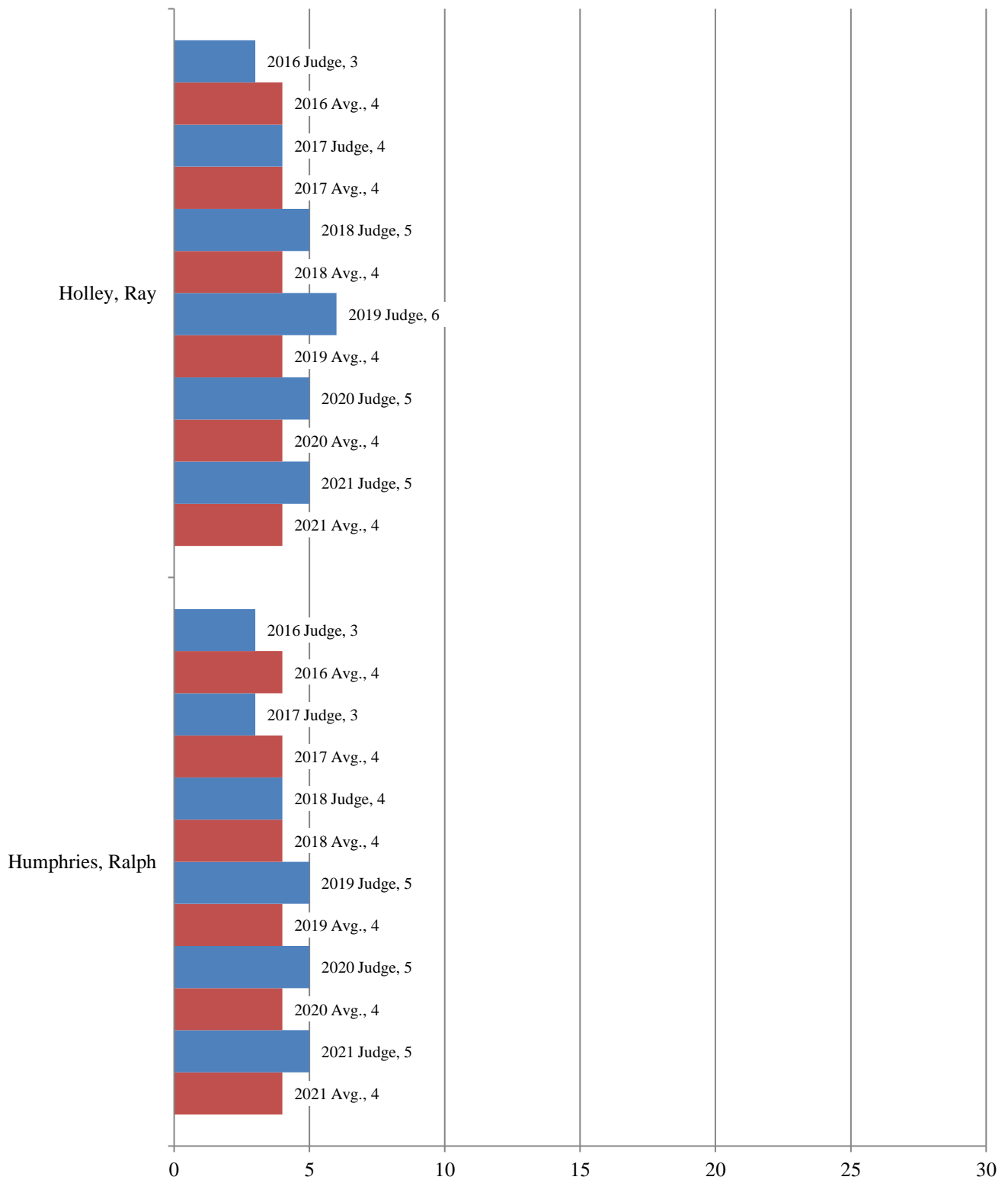
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



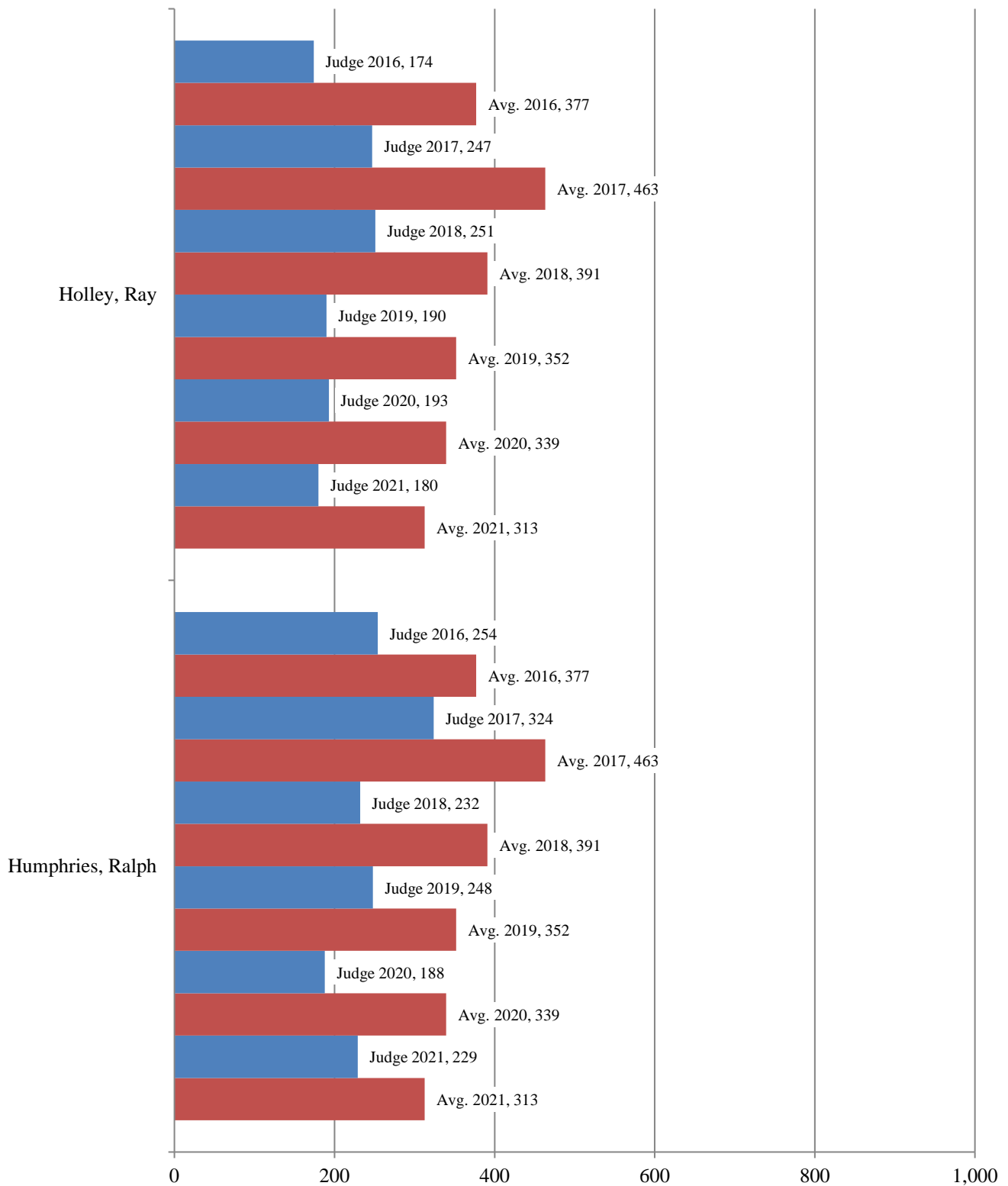
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



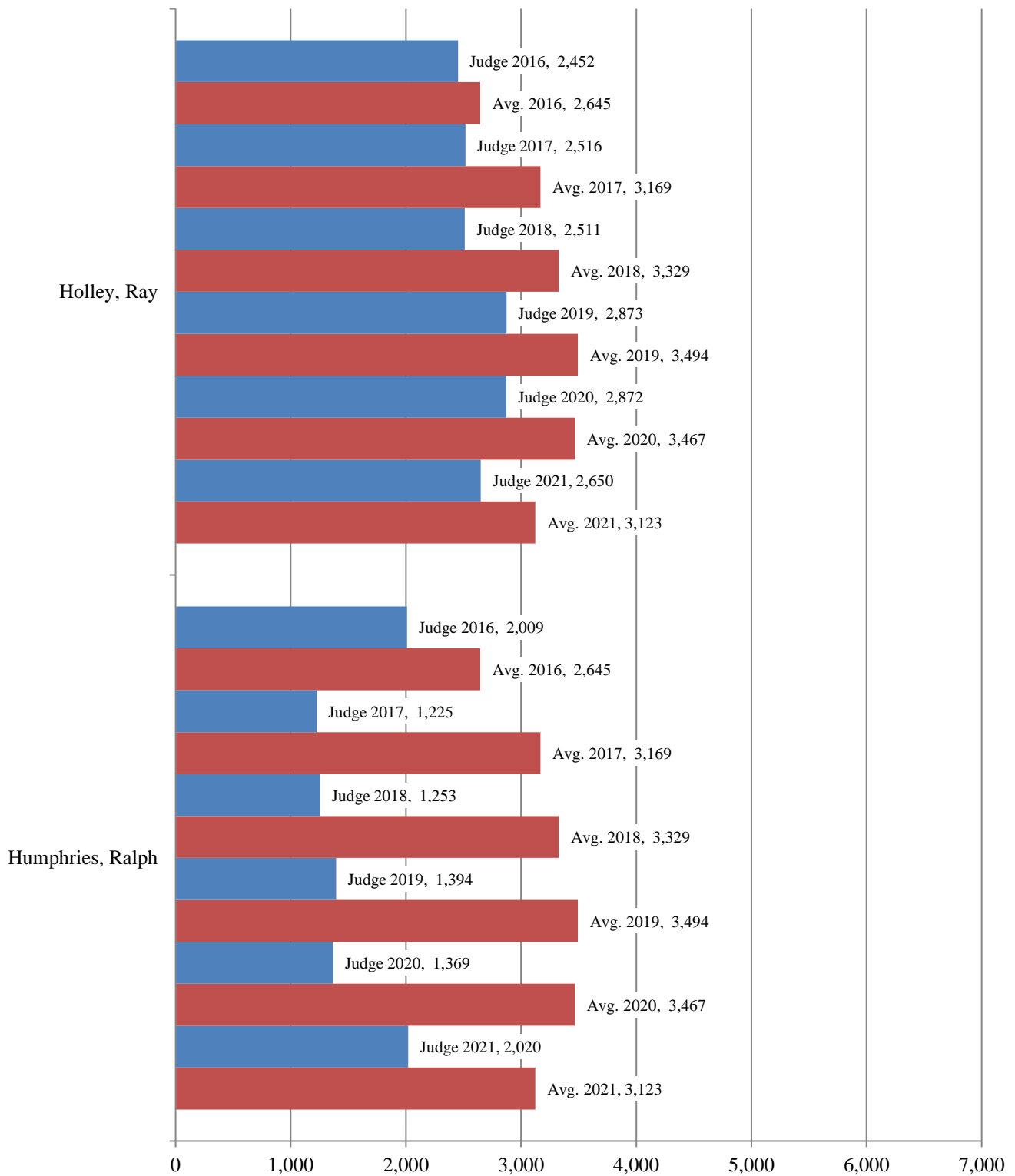
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



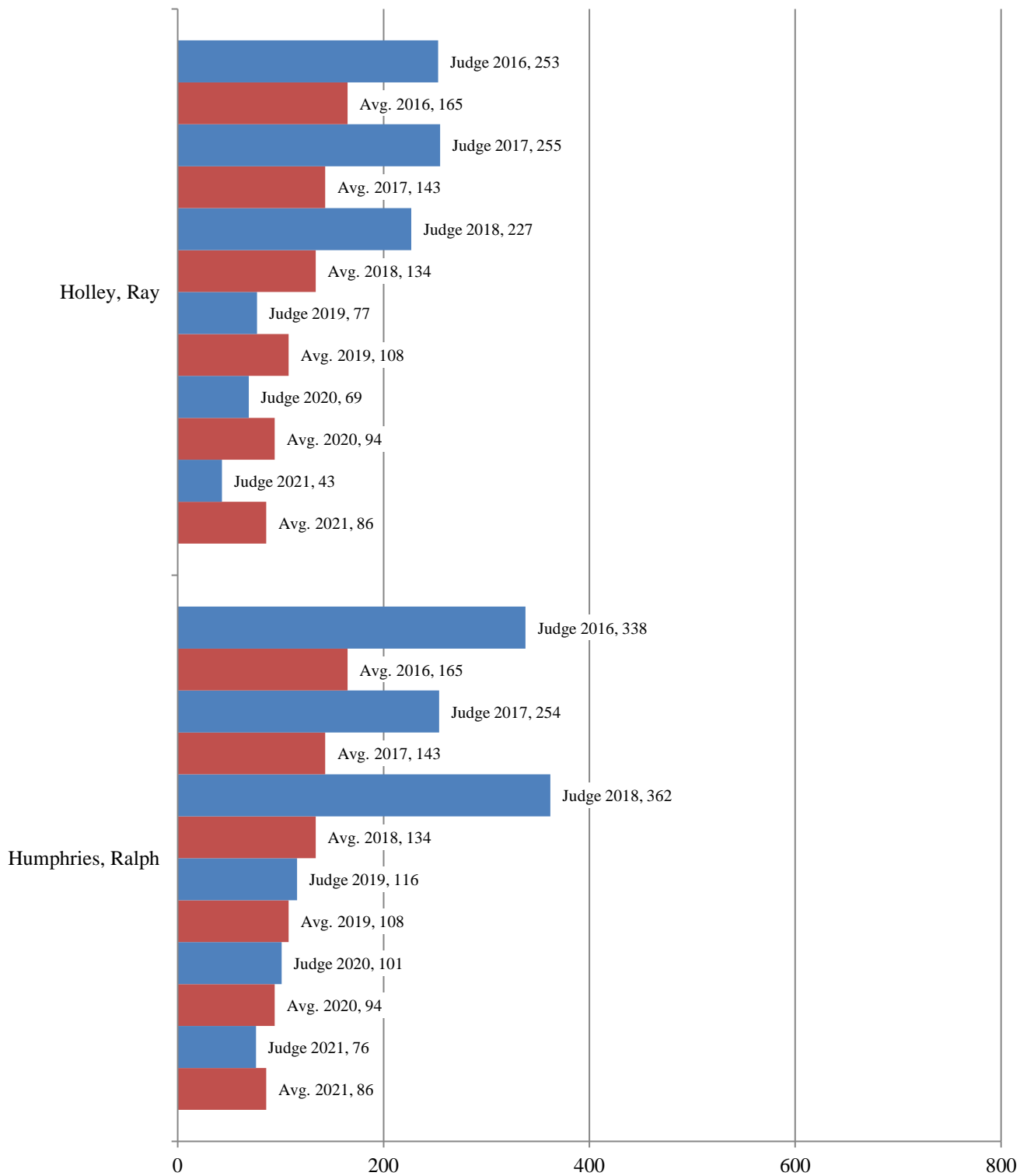
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



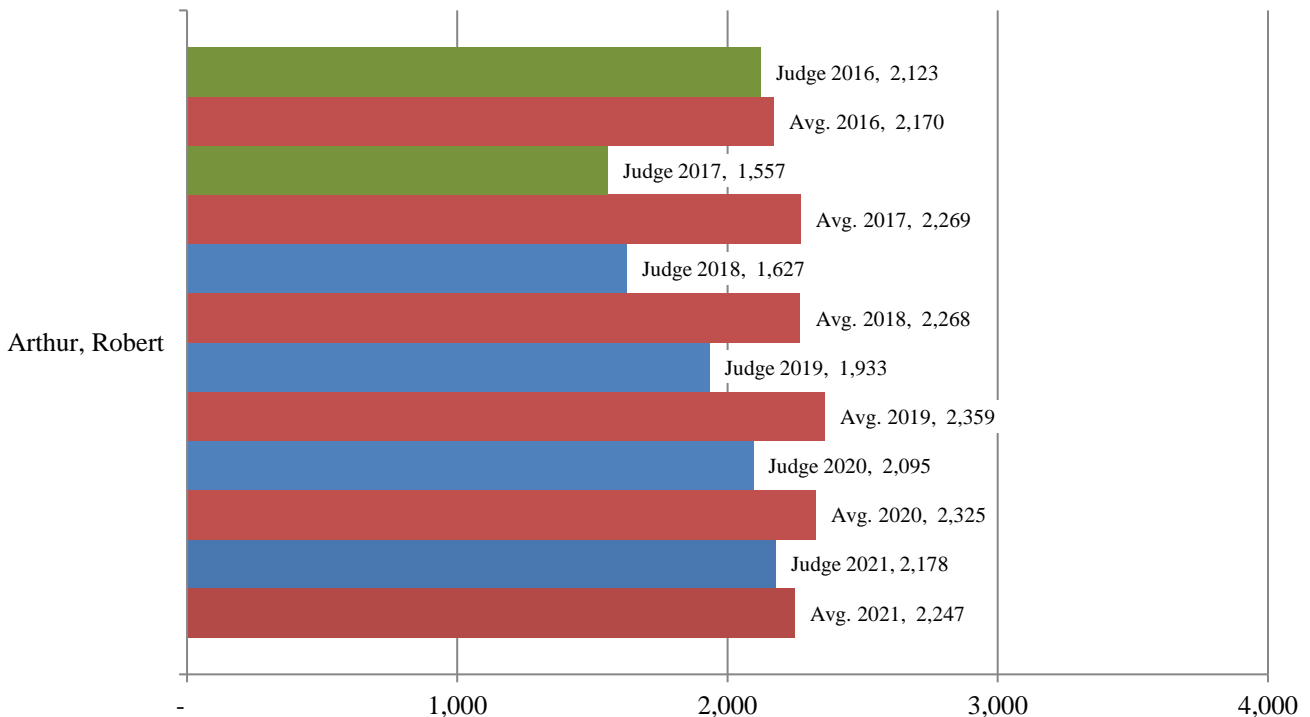
Appendix “6” District LKL (JCC Arthur³¹⁰):

District LKL includes Hardee, Highlands, and Polk counties.

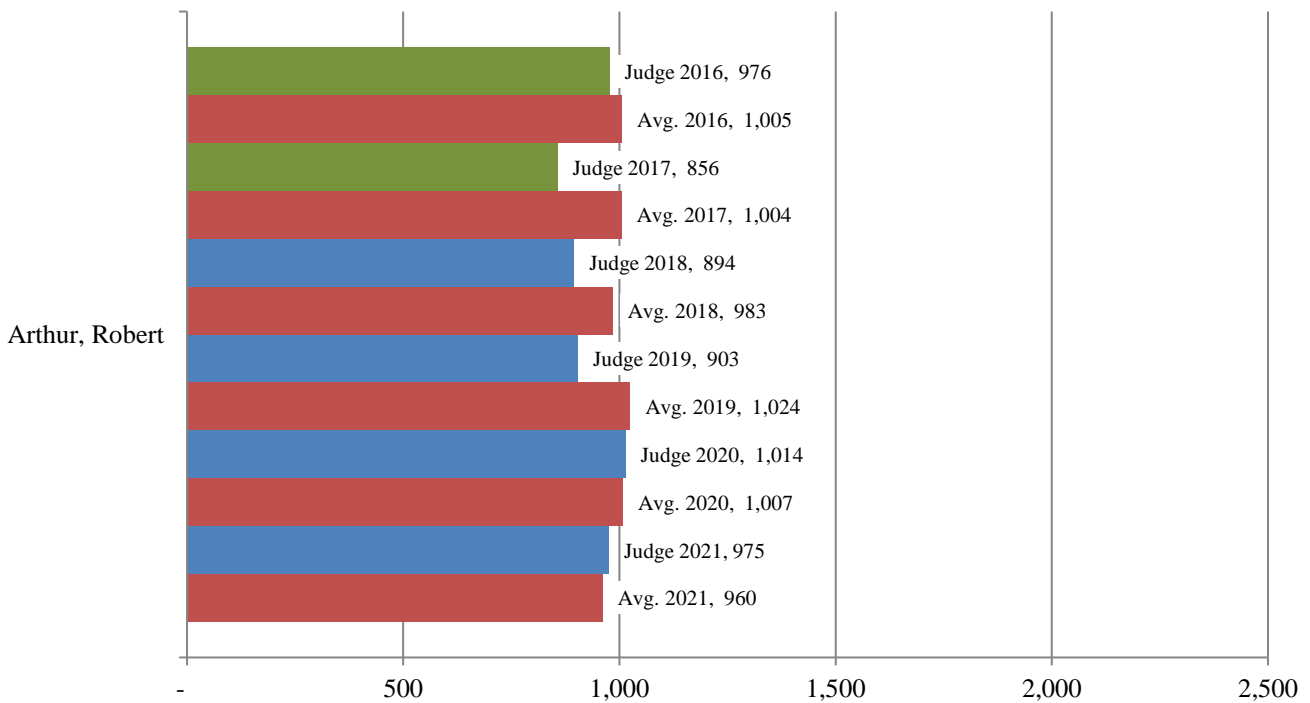
Both “new cases” and Petition volumes in District LKL are consistently below average. This may be due in part to the reassignment of cases from LKL due to recusals since the appointment of Judge Arthur in 2017. The volume of each has trended upward, with Petitions in 2020-21 very close to the average and the “new cases” exceeding the average slightly for the second consecutive year. The volume of trials in LKL is notable, with double the statewide average in 2020-21. Despite that volume, the average days to trial was close to the statutory parameter of 210 days and the time to mediation and to final order were both within the statutory parameters. The metrics for settlements and “other orders” are consistent with the statewide averages, while the stipulation orders are notably below average. The volume of “other hearings” in District LKL is significantly above average.

Through the fiscal year Judge Arthur continued to serve as the President of the Tampa Bay Workers' Compensation/Disability Inn of Court, and as a member of the Executive Committee of the Conference of Judges of Compensation Claims. Due to limits imposed by the ongoing COVID-19 pandemic Judge Arthur's speaking engagements were limited, but he did speak virtually at the Workers' Compensation Winter 2021 WCI Seminar.

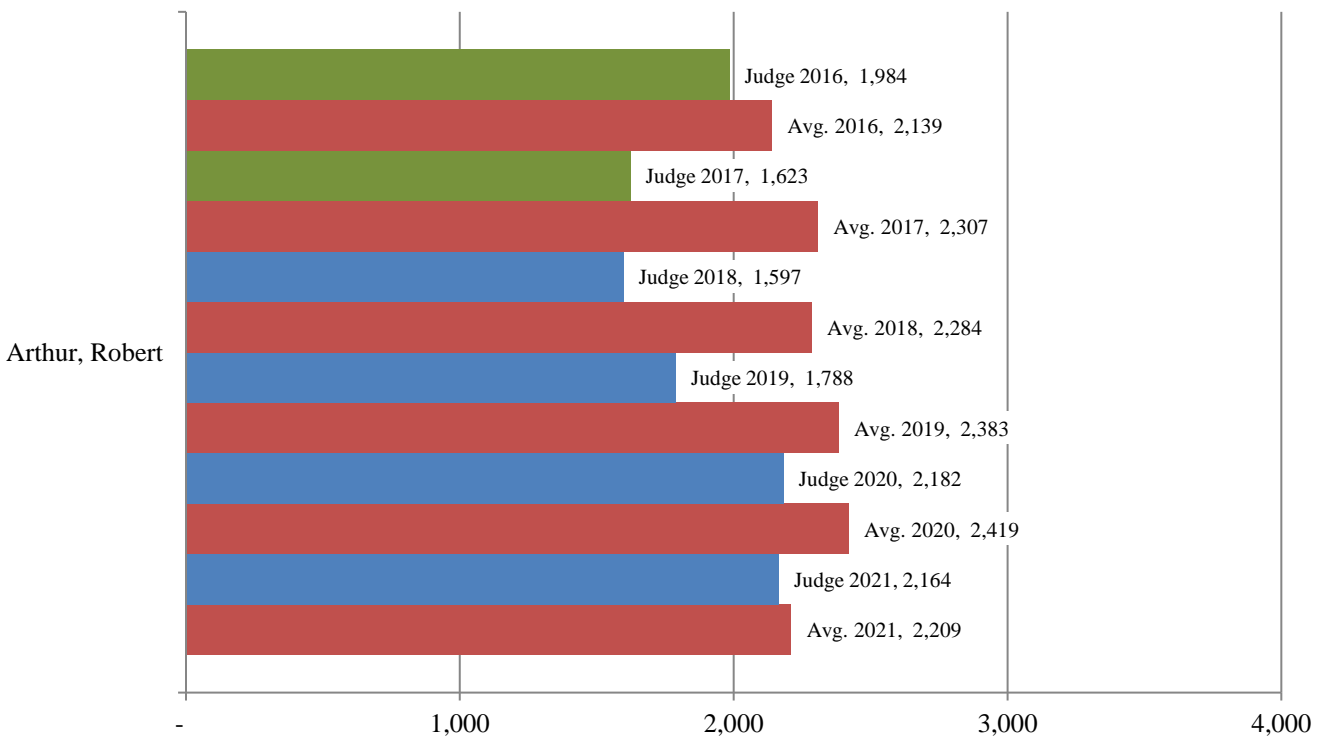
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



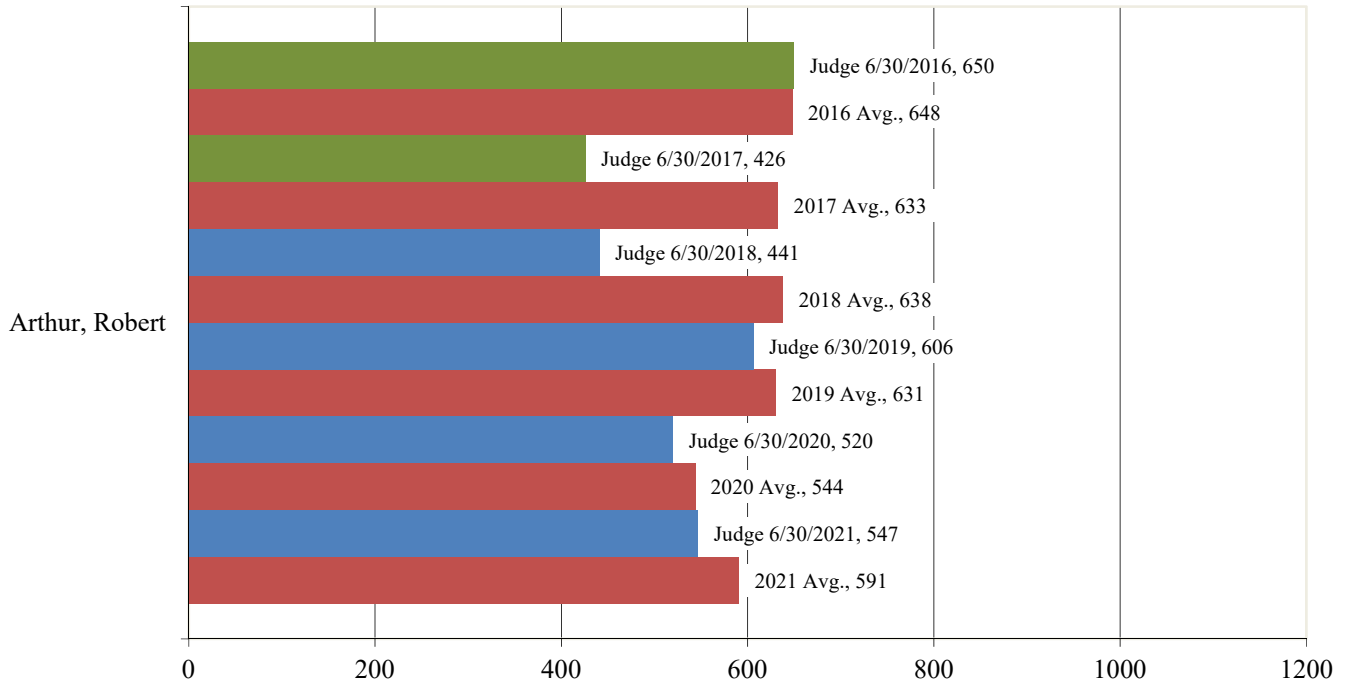
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



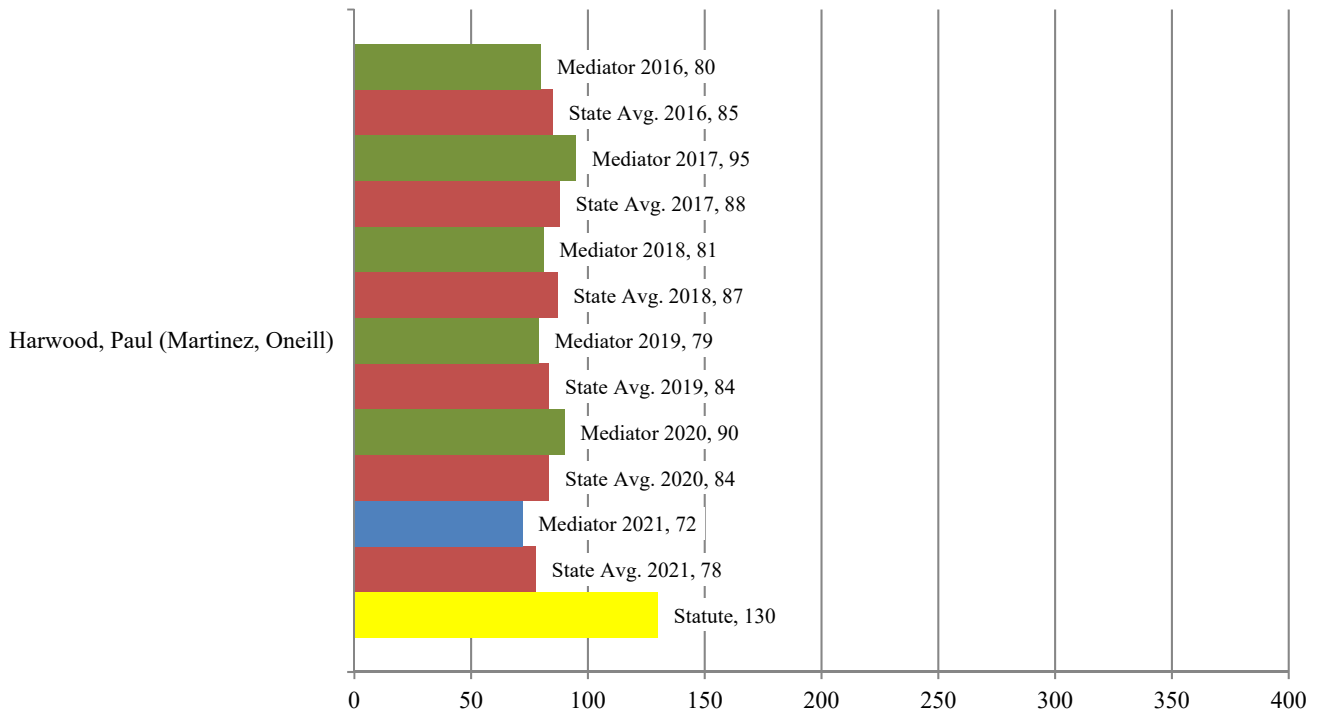
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



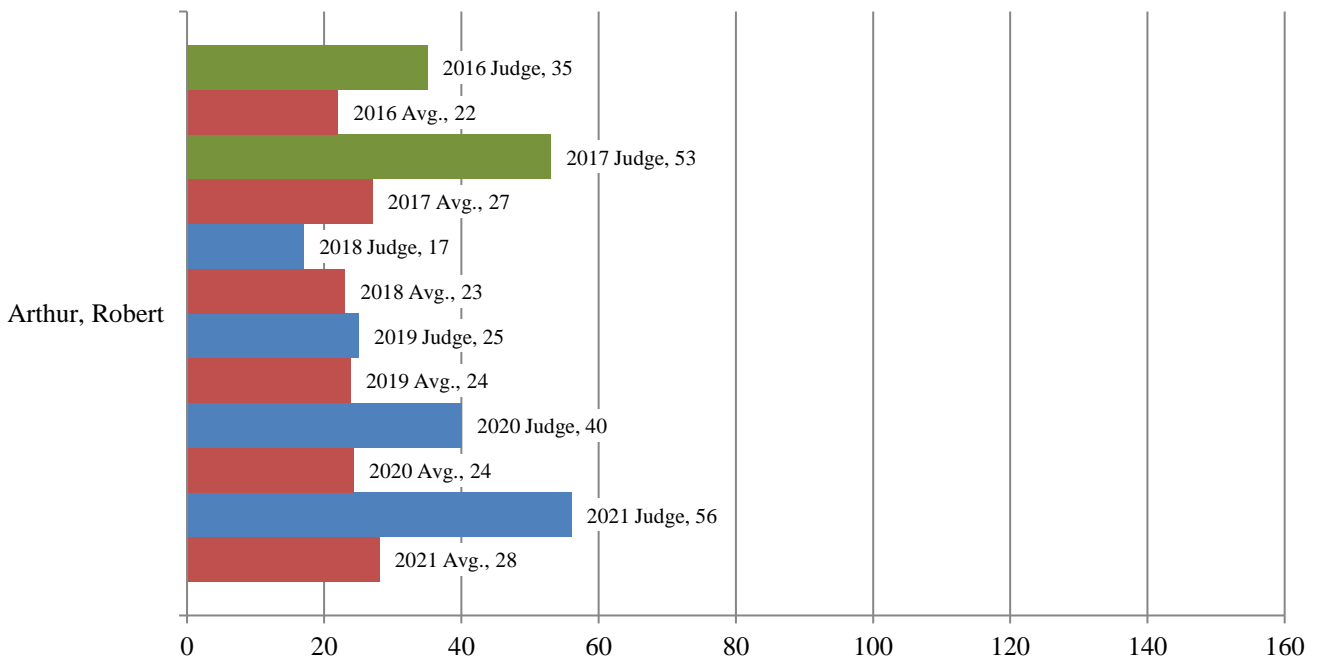
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



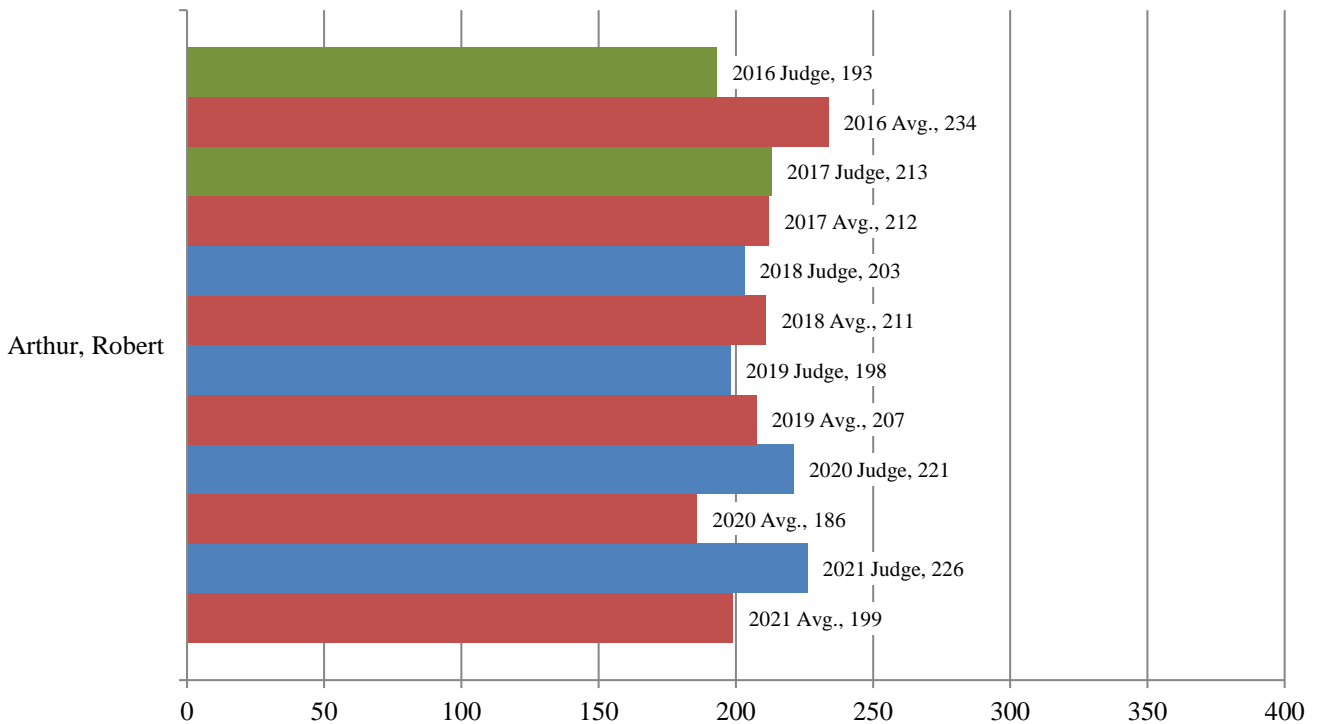
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



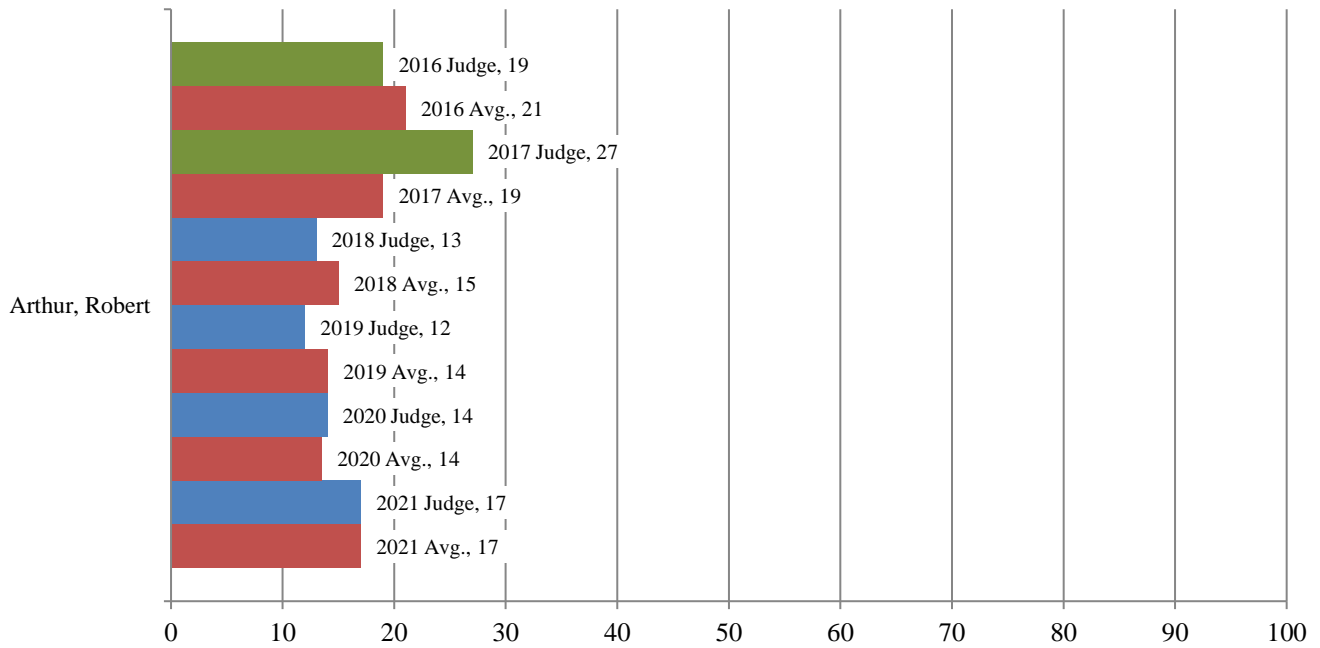
The following graph depicts the total volume of trial orders³¹¹ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



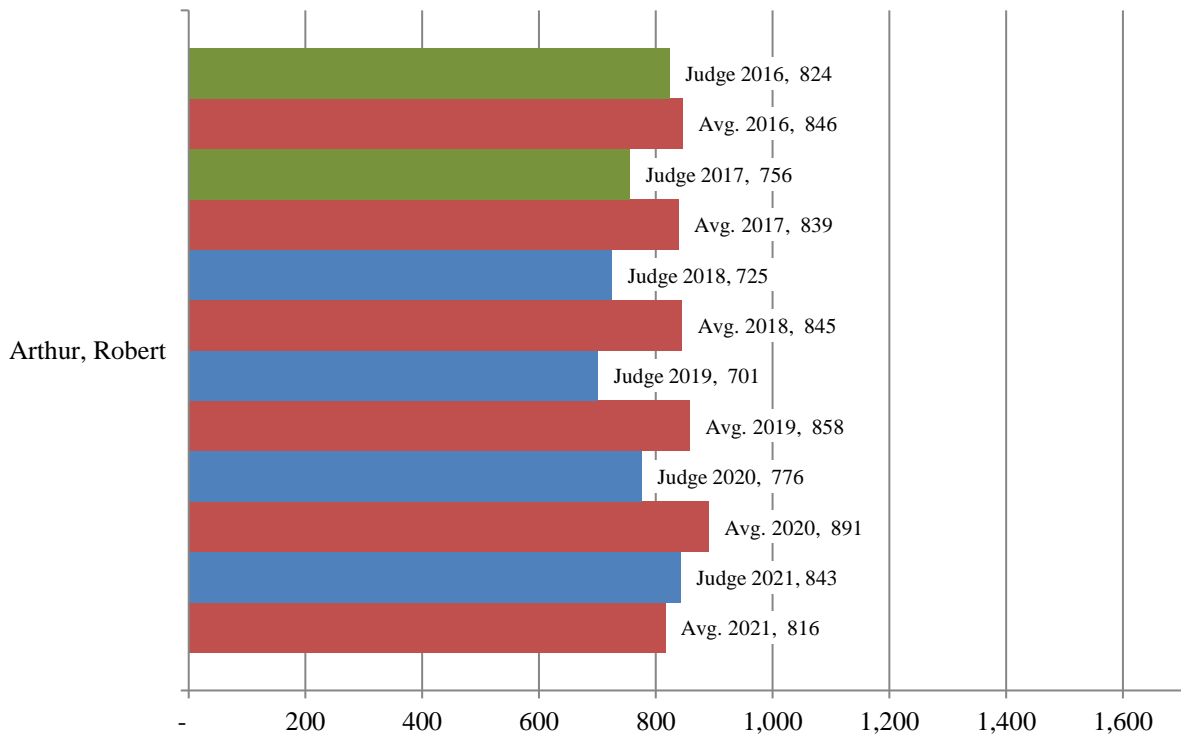
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



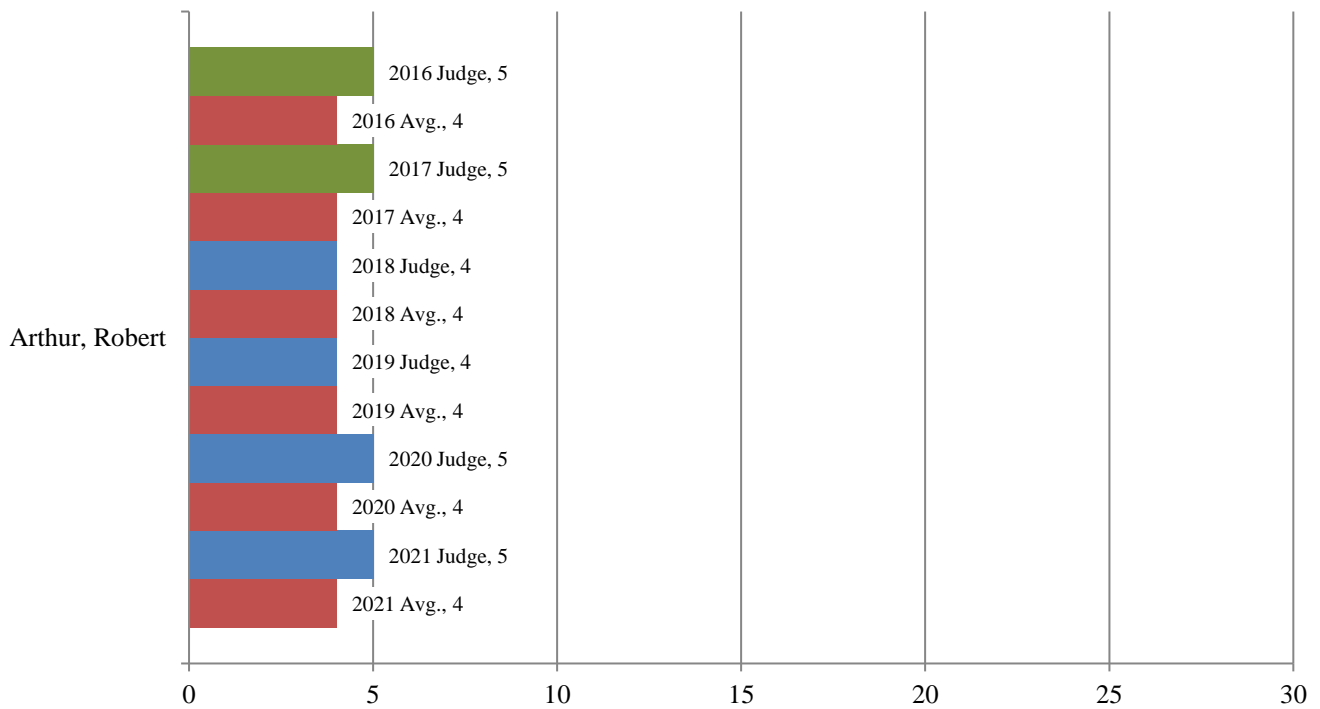
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



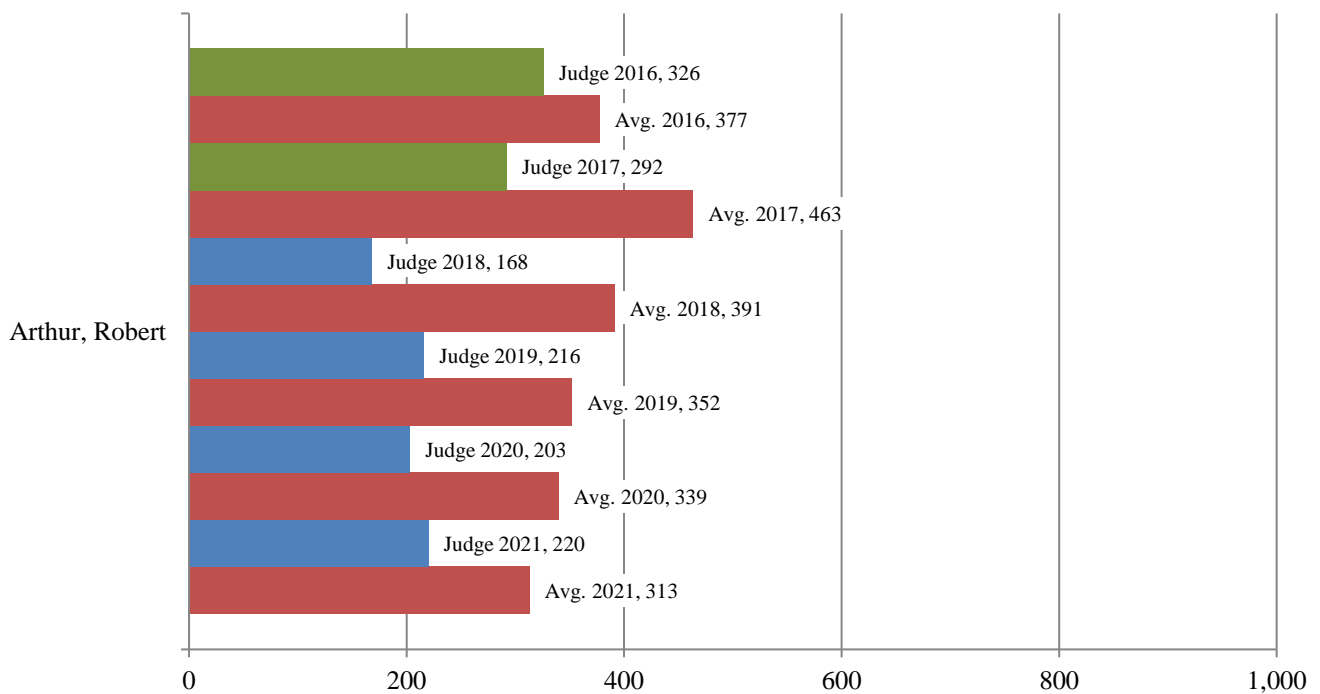
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



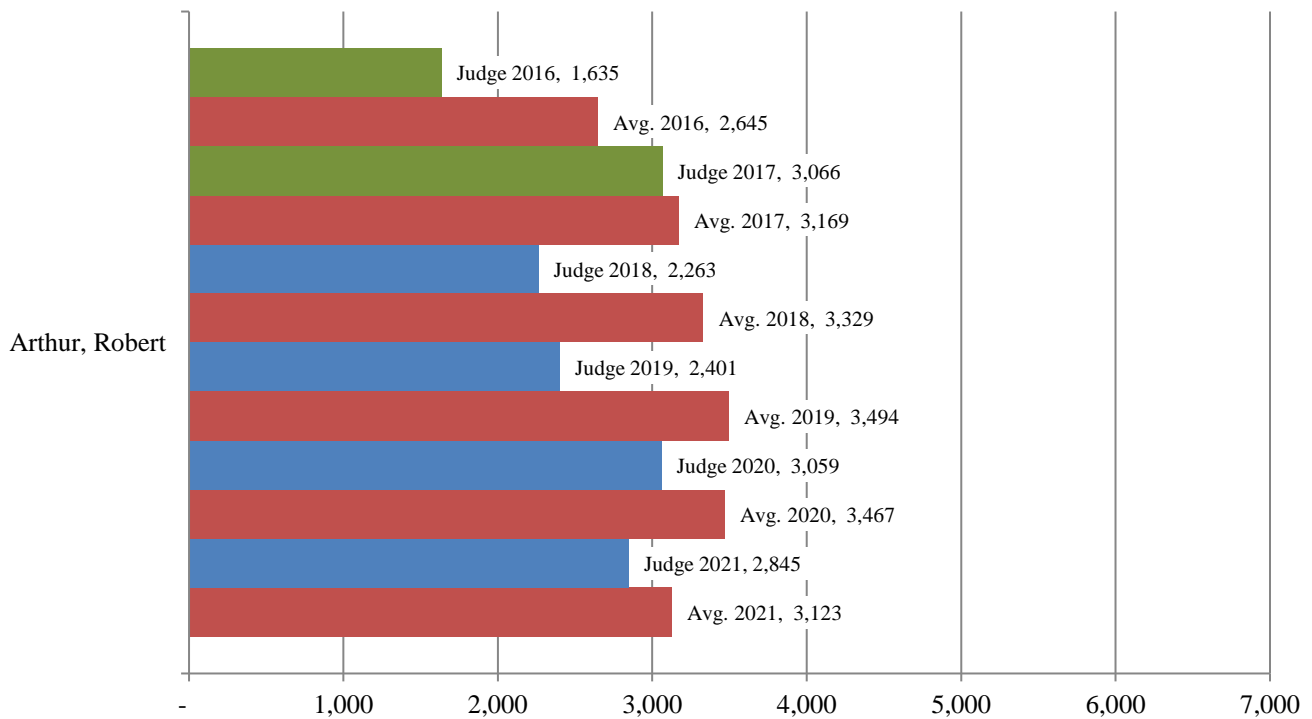
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



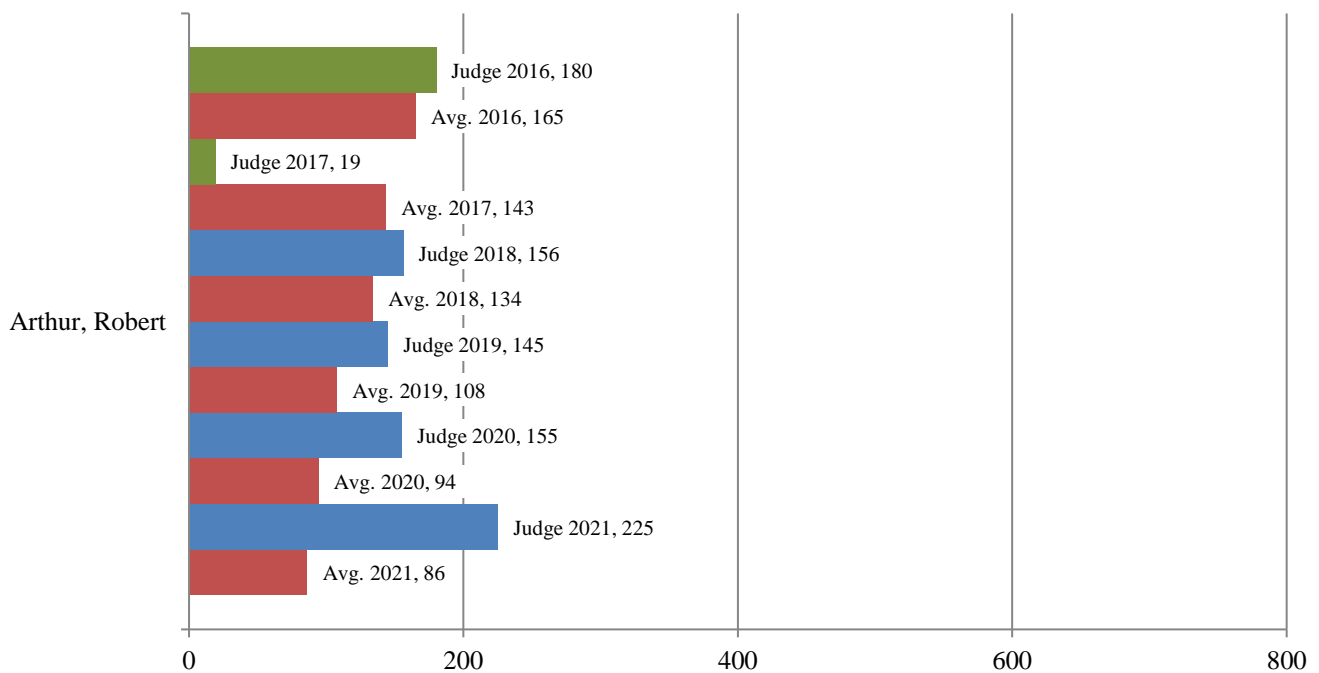
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “7” District MEL (JCC Dietz):

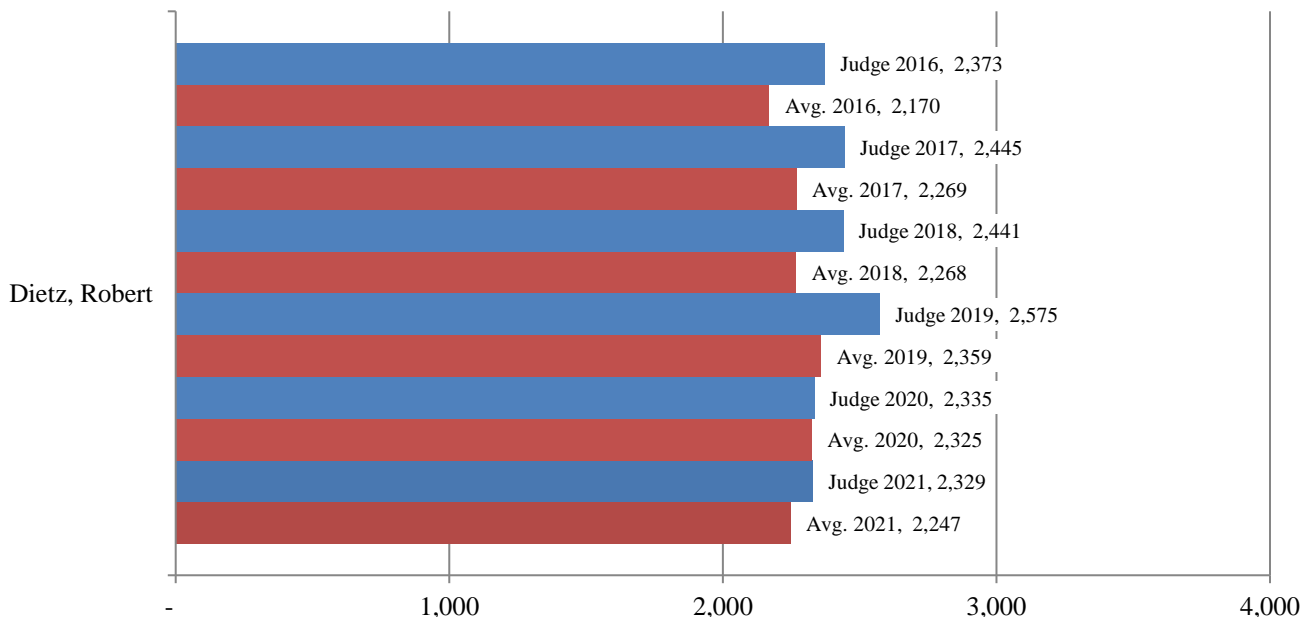
District MEL³¹² includes Brevard, Indian River, and Okeechobee counties.

PFB filings and “new case” filings in District MEL have consistently exceeded the statewide average for several years; that trend as regards Petitions moderated slightly in 2020-21, but remained slightly above average. Trial volume is above average in District MEL, however the time to mediation, to trial, and to final order are all within the statutory parameters. The volume of settlement orders is consistently above average and stipulation orders below average. The frequency of “other orders” is notably below average, while “other hearings” are consistent with the statewide average.

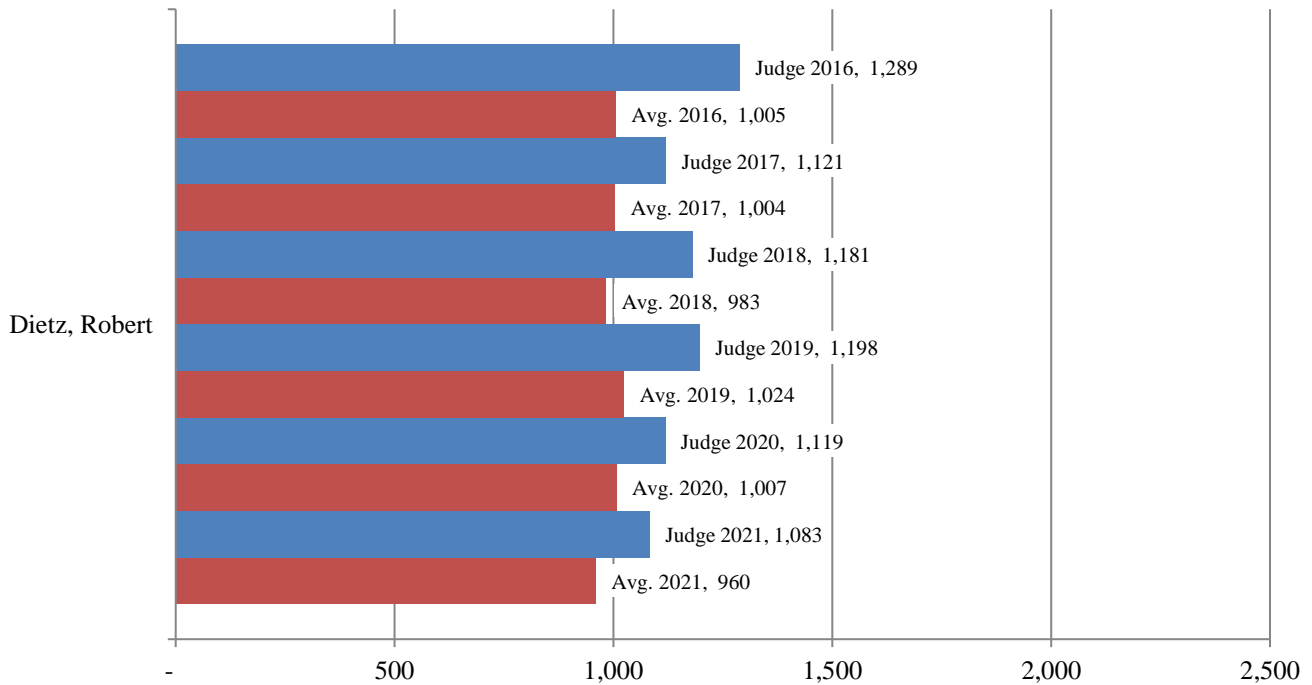
Judge Dietz is a member of the Brevard and Indian River County Bar Associations, the William M. Wieland Inns of Court in Orlando, the Robert D. McAliley Inns of Court on the Treasure Coast, the National Association of Workers' Compensation Judiciary, the board of the Professional Mediation Institute, and the Workers' Compensation Institute's Hall of Fame. He is a Fellow of the College of Workers' Compensation Lawyers and Treasurer of the Florida Conference of Judges of Compensation Claims. In 2020-2021, he spoke in the WCI First District Court of Appeal Seminar on *Filing Proper Motions, Stipulations and Settlement Agreements* and at the William M. Wieland Inns of Court on *So You Think You Know the History of Workers' Compensation? Not So Fast, My Friend ...* He moderated the Evidence presentation by Professor Mitch Frank of Barry Law School for the Judge's Second Friday seminar, the Robert D. McAliley Inns of Court group presentation on *Mentoring in the Time of COVID*, and The Florida Bar Workers' Compensation Section's Webinar *How to Try Motions to Enforce*. Judge Dietz participated in The Florida Bar Workers' Compensation Section's JCC Roundtable and continues to teach the Workers' Compensation Law course at Barry Law School in Orlando. He authored an article in The Florida Bar Workers' Compensation Section's 440 NEWS & REPORT: *Upping Your Game and Impressing the Judge*. He served as a judge in the UCF National Moot Court Competition and the semi-finals of the Vanderbilt Mock Trial Competition.

Following Judge Young’s transfer to District SPT, Judge Dietz (MEL) and Judge Newman (TLH) provided significant assistance with management of the motion practice and docket in the vacant TPA Division in fiscal year 2020-21.

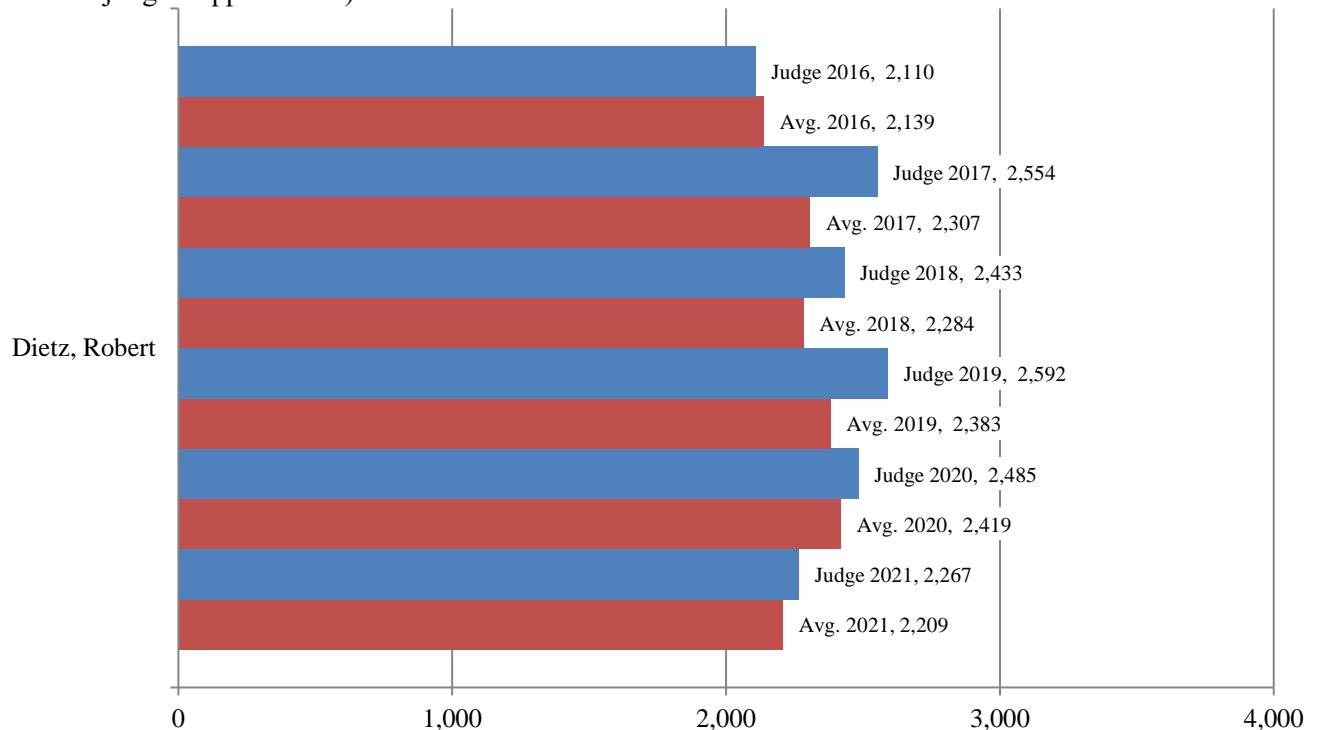
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



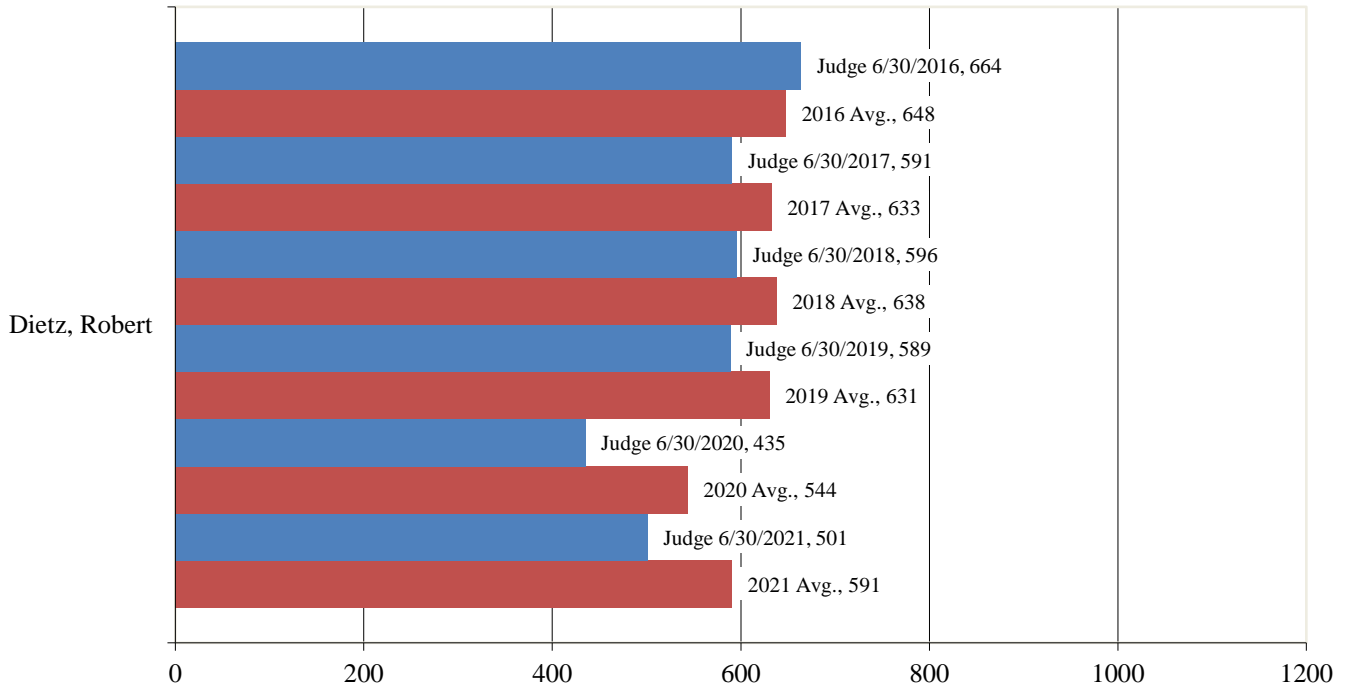
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



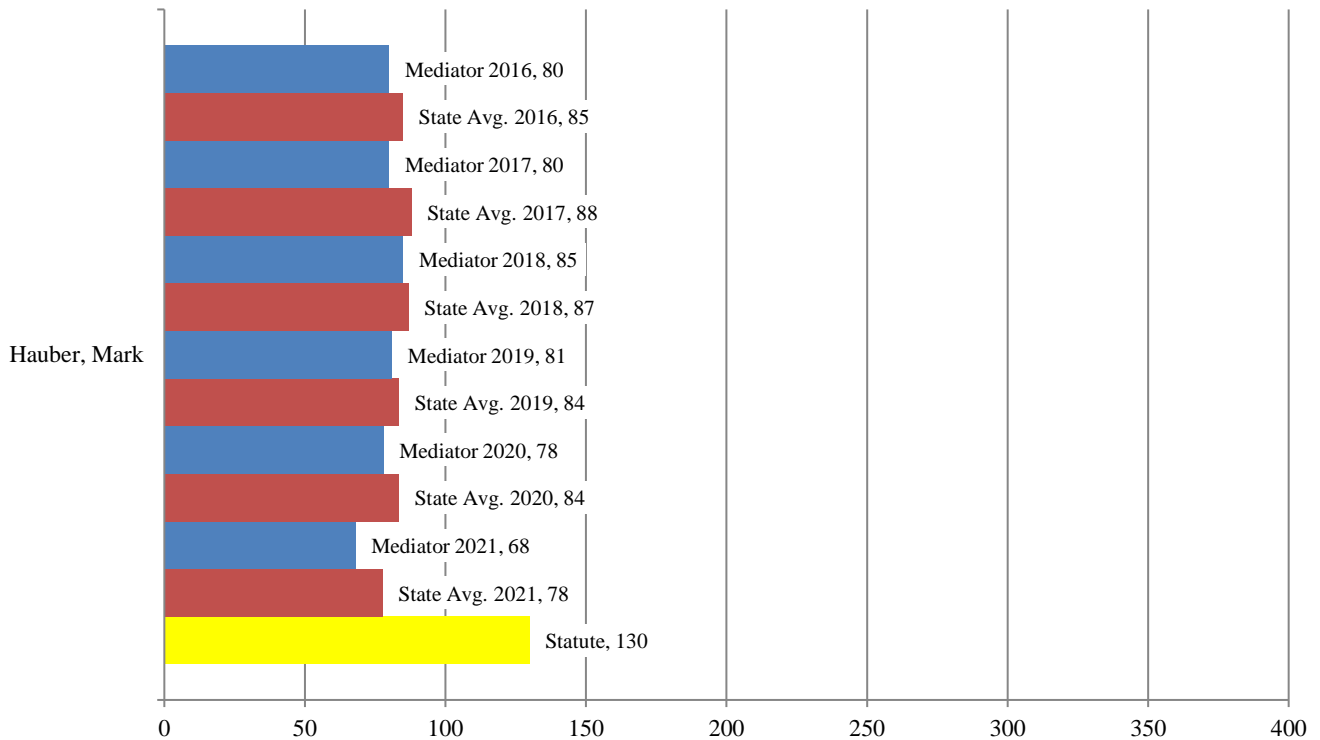
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



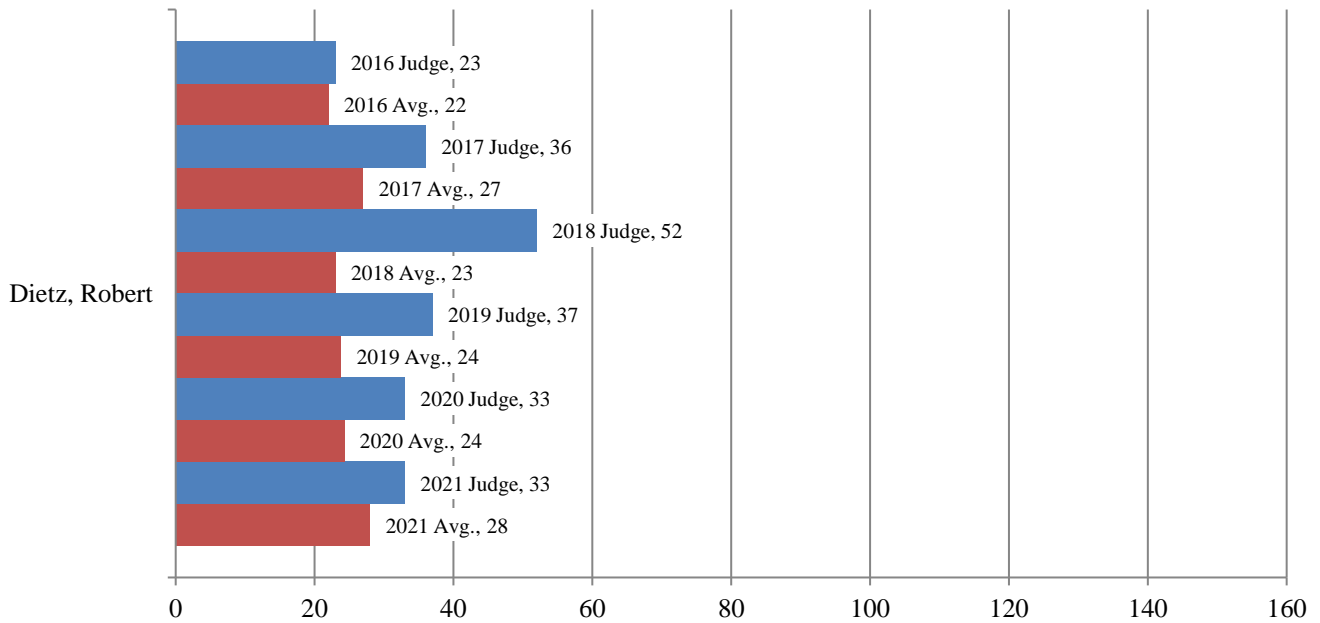
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



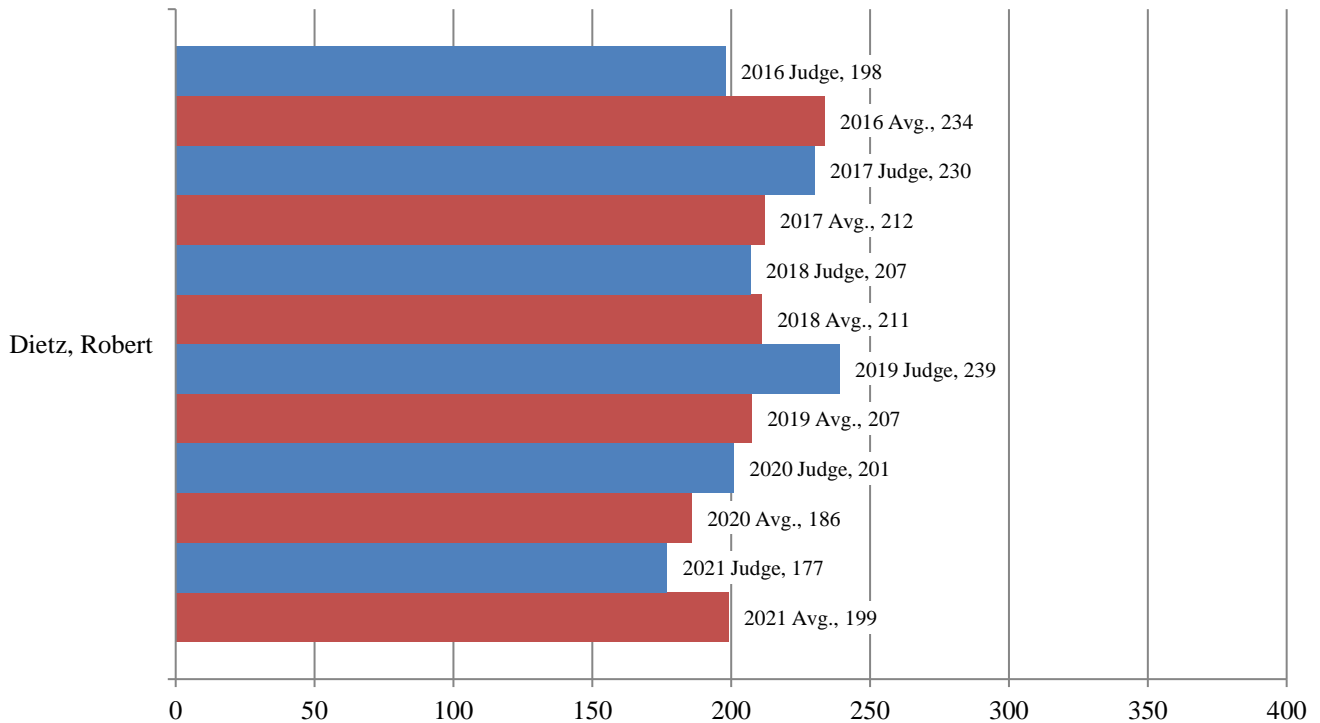
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



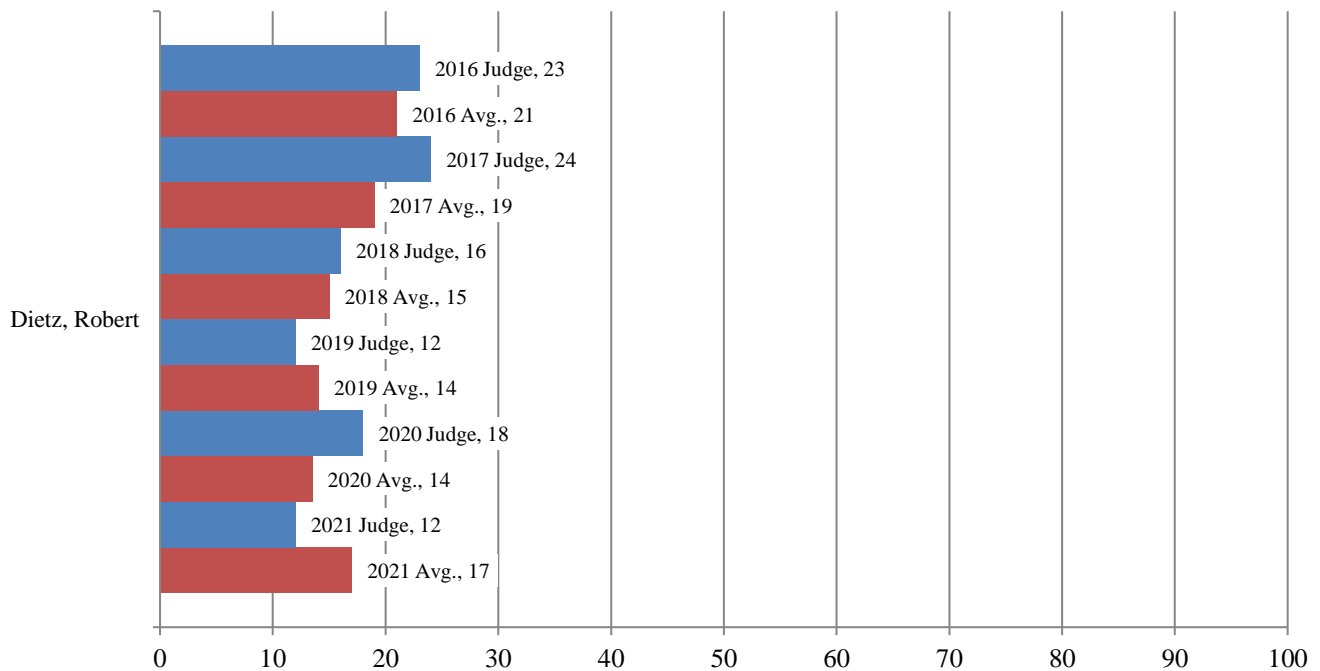
The following graph depicts the total volume of trial orders³¹³ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



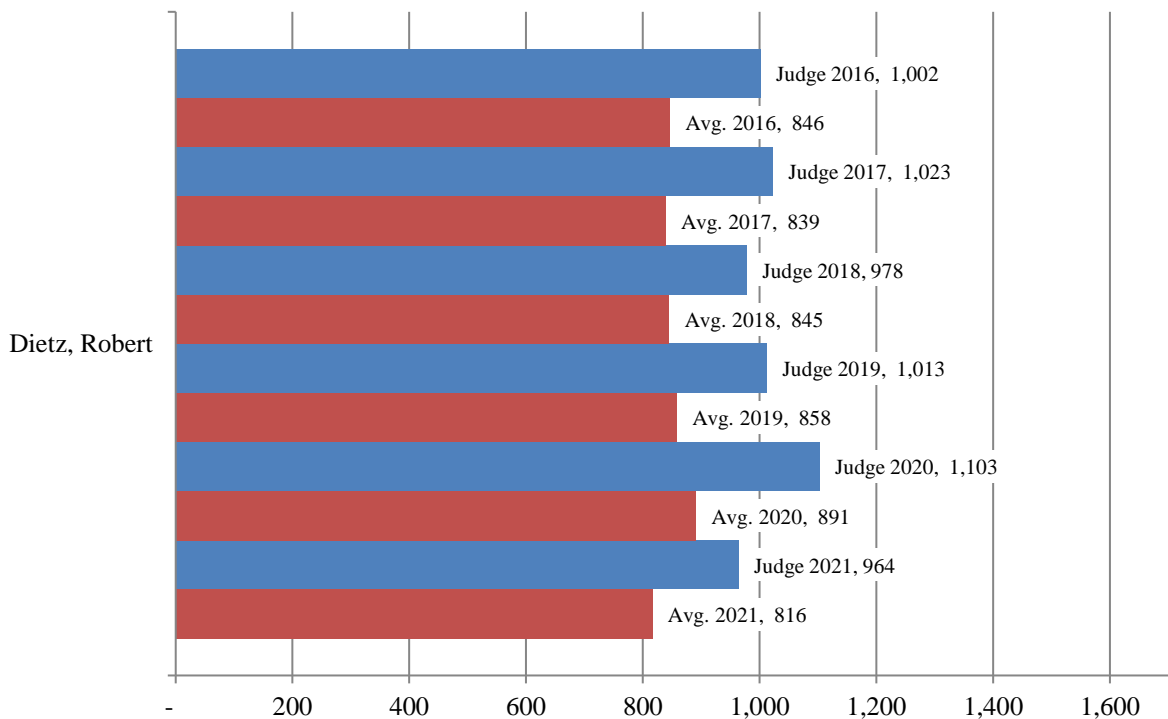
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



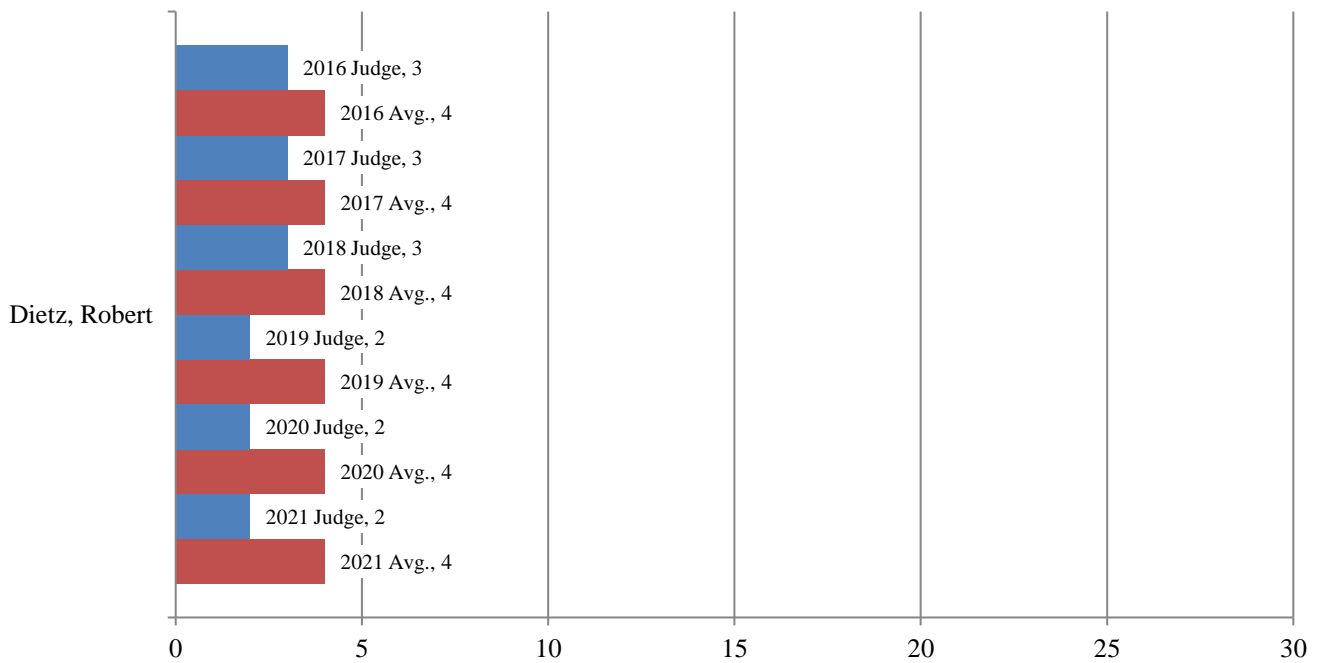
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



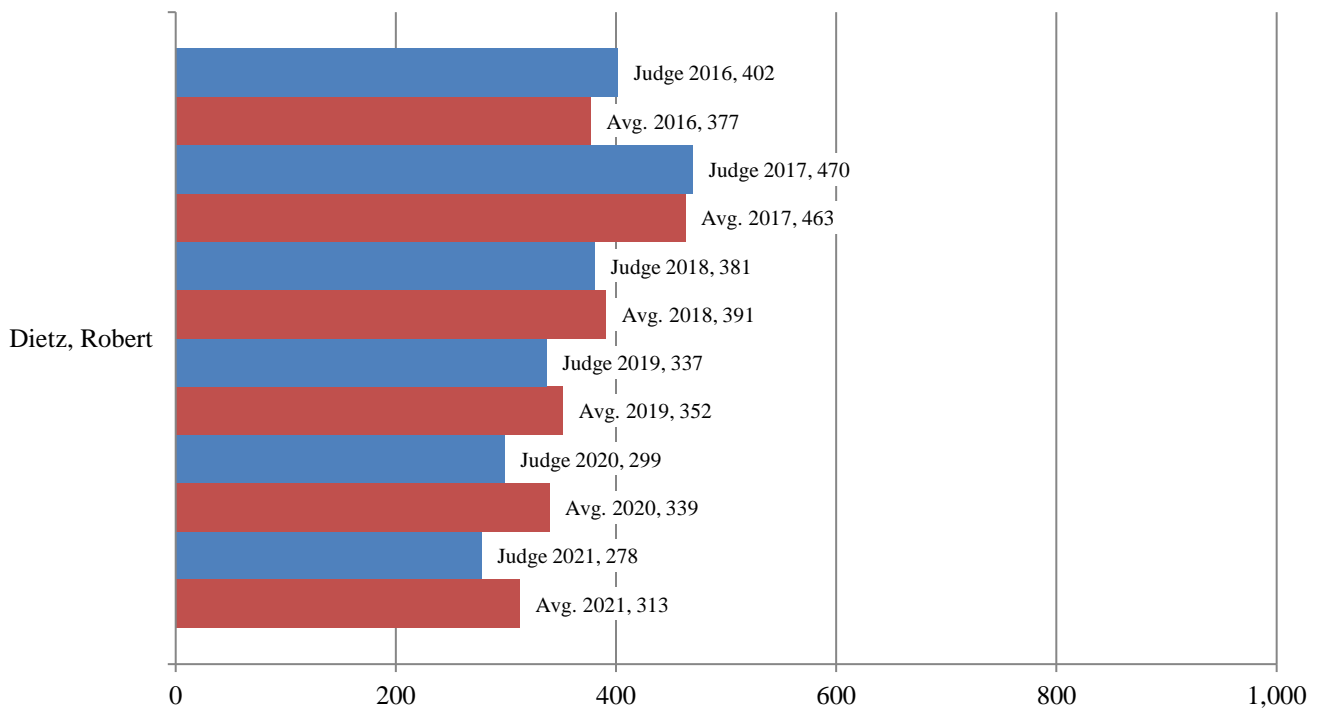
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



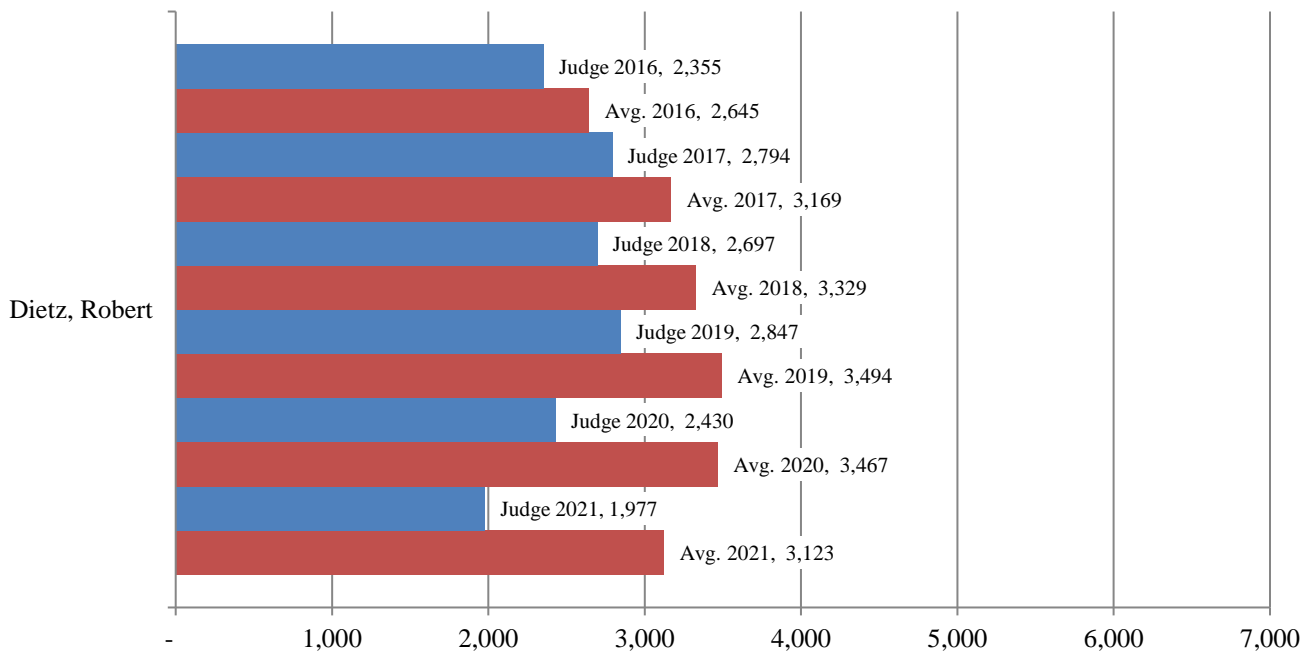
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



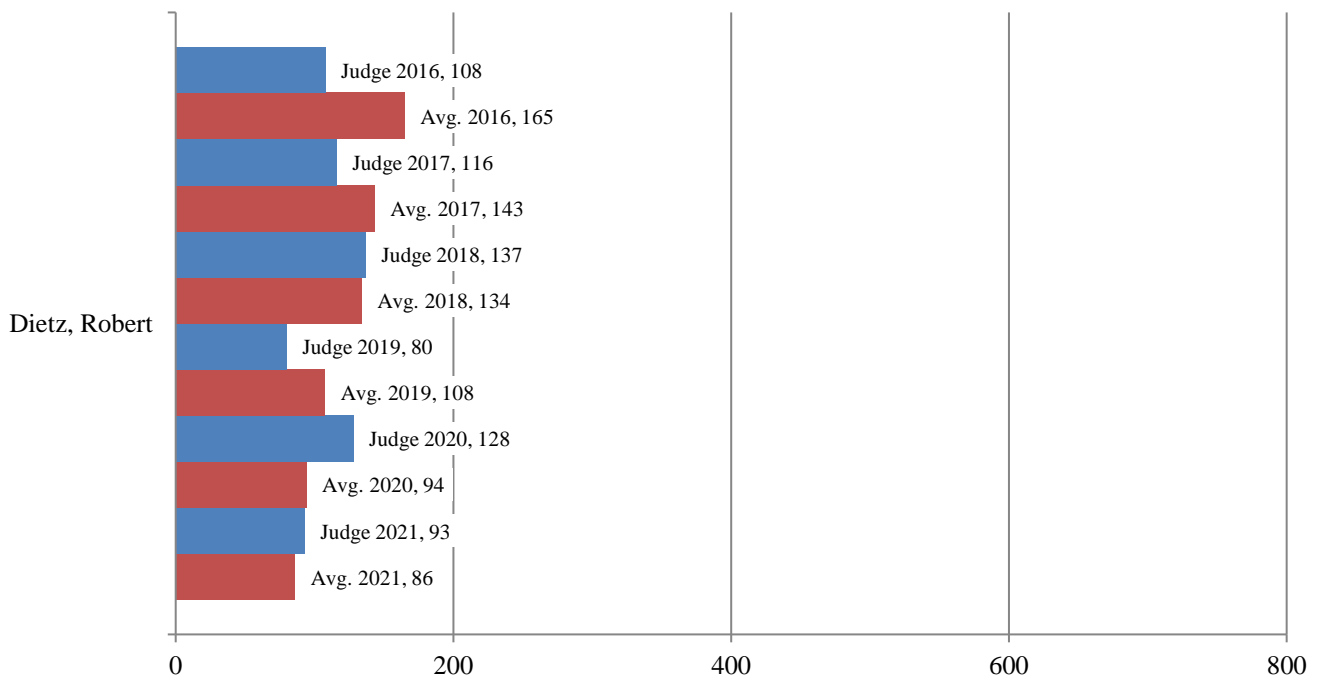
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “8” District MIA (JCC Almeyda, JCC Havers³¹⁴, JCC Jacobs³¹⁵, JCC 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 nine 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 or below the statewide average in 2020-21. 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 (TPA) and Spangler (TPA). This reduced the number of judges to which Miami practitioners were regularly exposed.

Trial volumes in District MIA are generally consistent with the statewide average. Notably, two Divisions had significantly above-average trial volume in 2020-21; one was essentially double the average. The times to mediation, to trial, and to trial order are within the statutory parameters in all five Miami Divisions again for 2020-21. 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 Havers is a member of the Richard A. Sicking Inn of Court and the National Association of Workers’ Compensation Judiciary. Judge Havers was a presenter on Technology & The Law: Protecting the Practice at the 2021 Florida Bar Workers’ Compensation Forum.

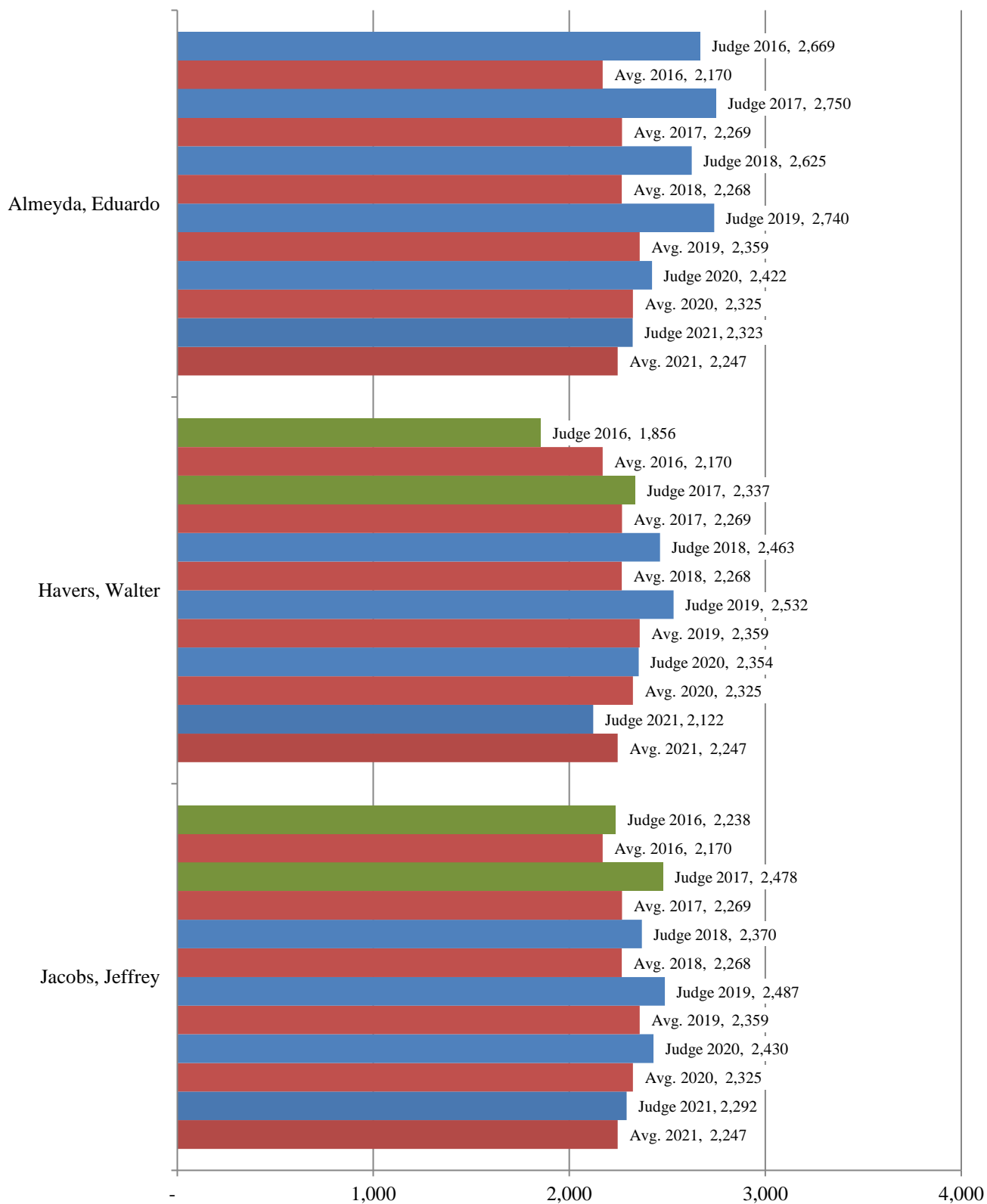
Judge Jacobs currently serves as President of the Richard A. Sicking Inn of Court. In addition to his responsibilities as JCC, Judge Jacobs remains an active adult leader with the Boy Scouts of America and, in 2020, received the Silver Beaver Award from the South Florida Council for exceptional character and distinguished service.

In 2020-21, Judge Kerr served as a judge at the District and the State competitions for the Florida High School Mock Trial in March and April, 2021. At the 2021 The Florida Bar Workers’ Compensation Section Spring Forum on April 15, 2021, Judge Kerr served on a panel *Current Trends in Workers’ Compensation* and served as Secretary of the Conference of JCCs until August 2021. In addition to her judicial duties, she is a member of the Richard A. Sicking Inn of Court in Miami, 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.

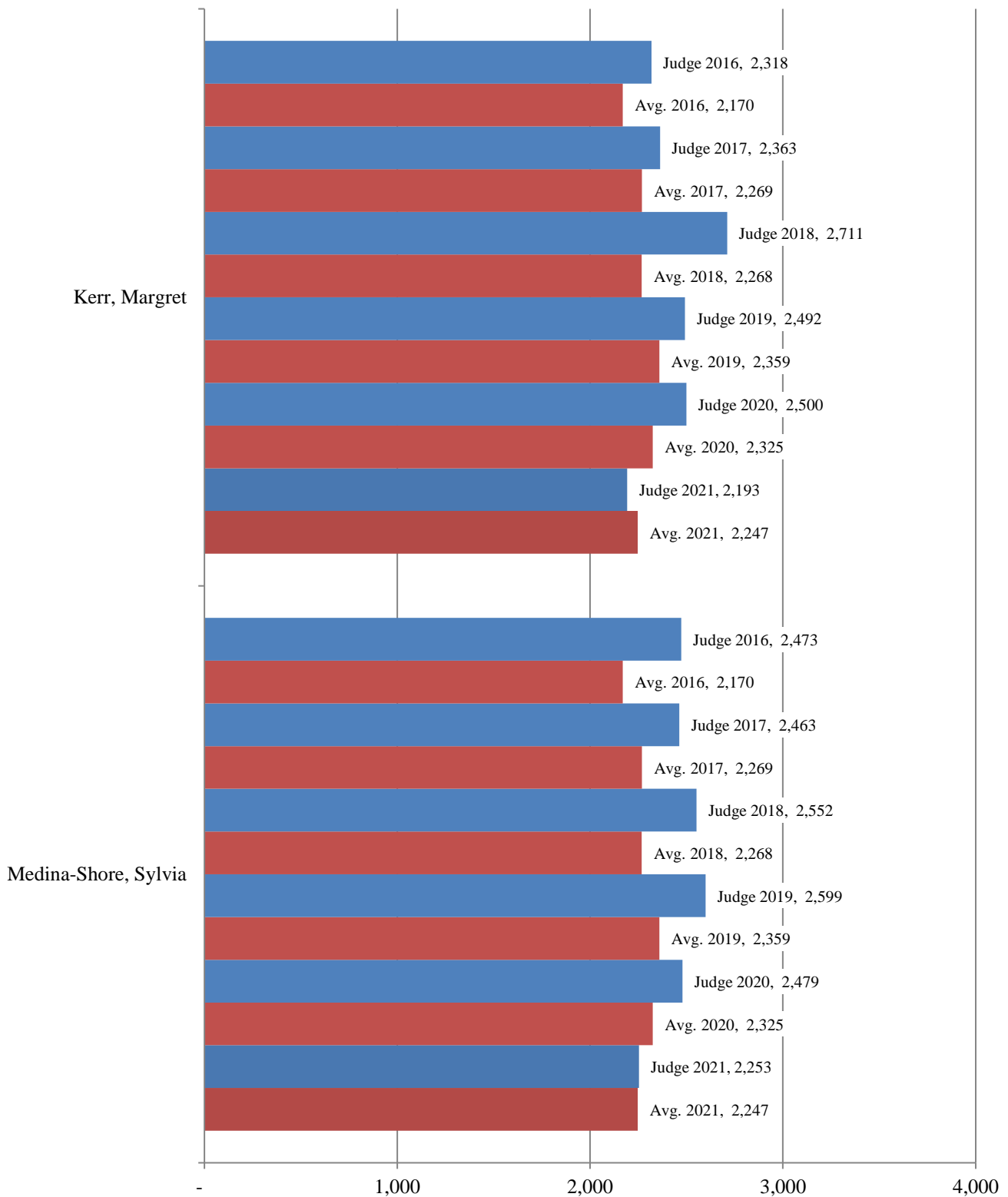
In 2020-21 Judge Medina-Shore continued to serve as the Administrative Judge for the Miami office, a role she has performed for the last 15 years. In 2020-21, she participated in the Judges and Lawyers Roundtable at the Florida Workers’ Compensation Forum, lectured to graduate students at Florida International University, and participated in a Town Hall Meeting of the Workers’ Compensation Section of The Florida Bar. Judge Medina-Shore and Norma M. Goonen co-authored an article entitled *Hot Issues in Workers’ Compensation in Colleges and Universities: Graduate Assistants and Teaching Assistants* which was published in Volume 53, Issue 3 of the *Compensation and Benefits Review*.

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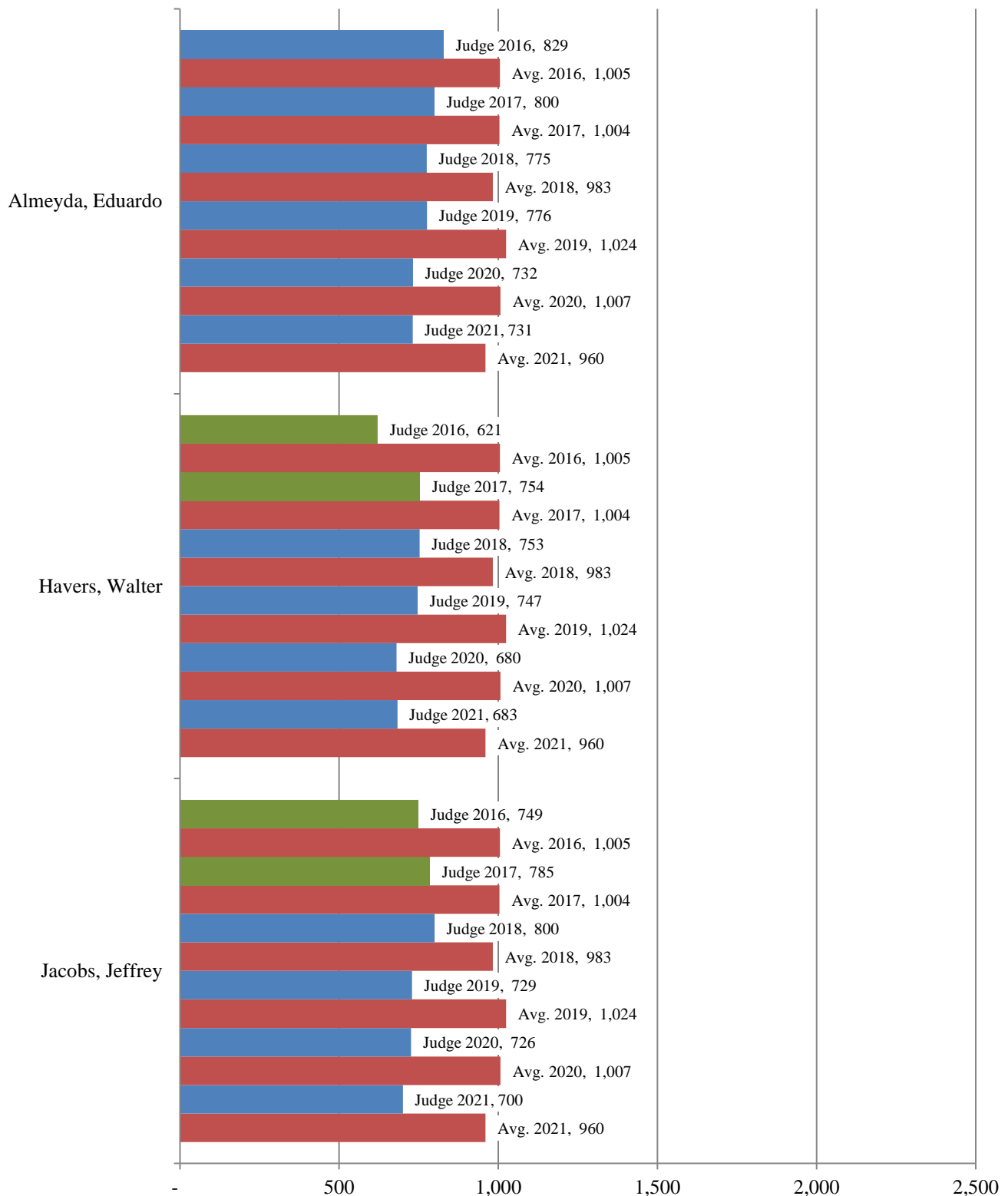
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



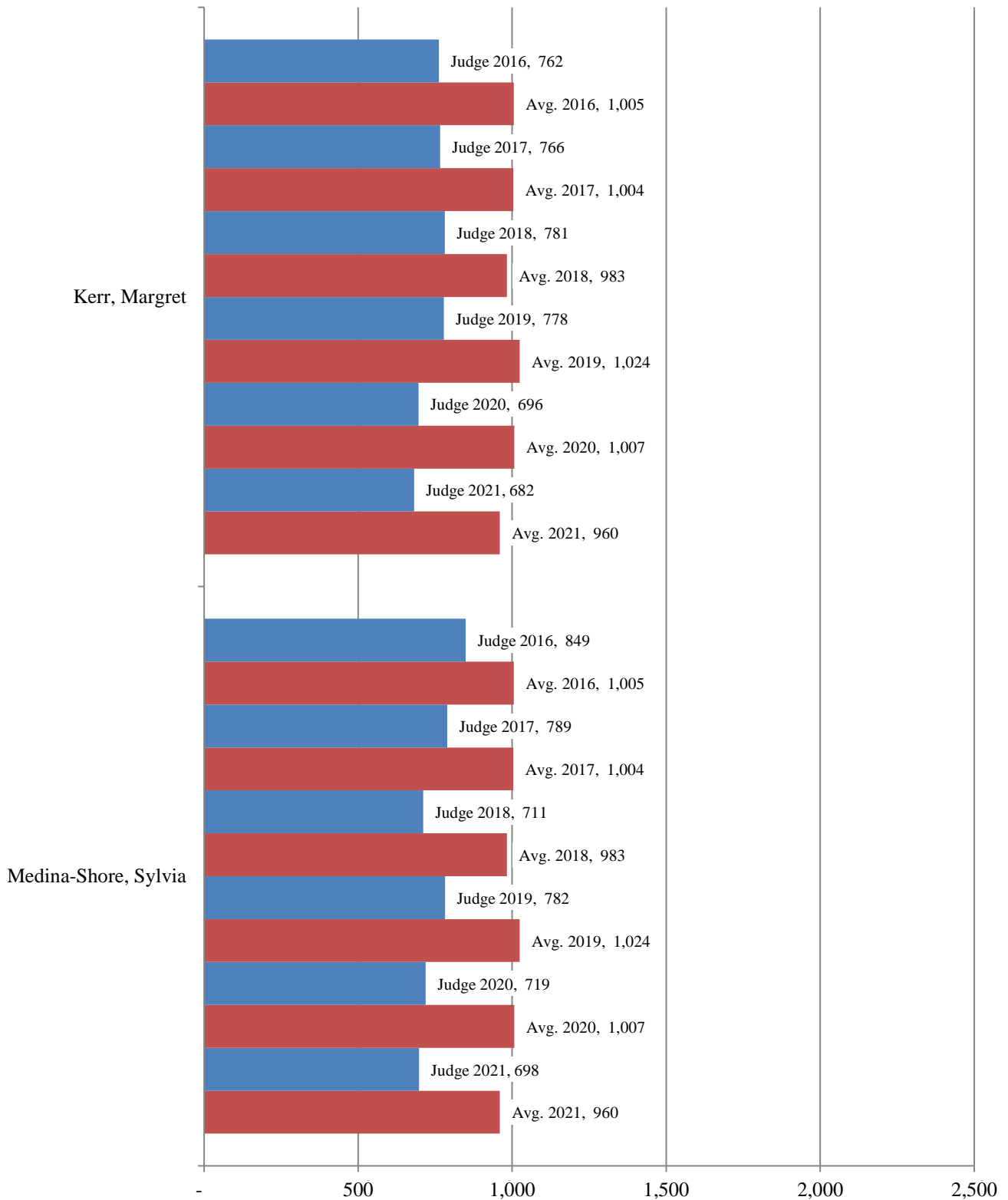
(Continued) The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



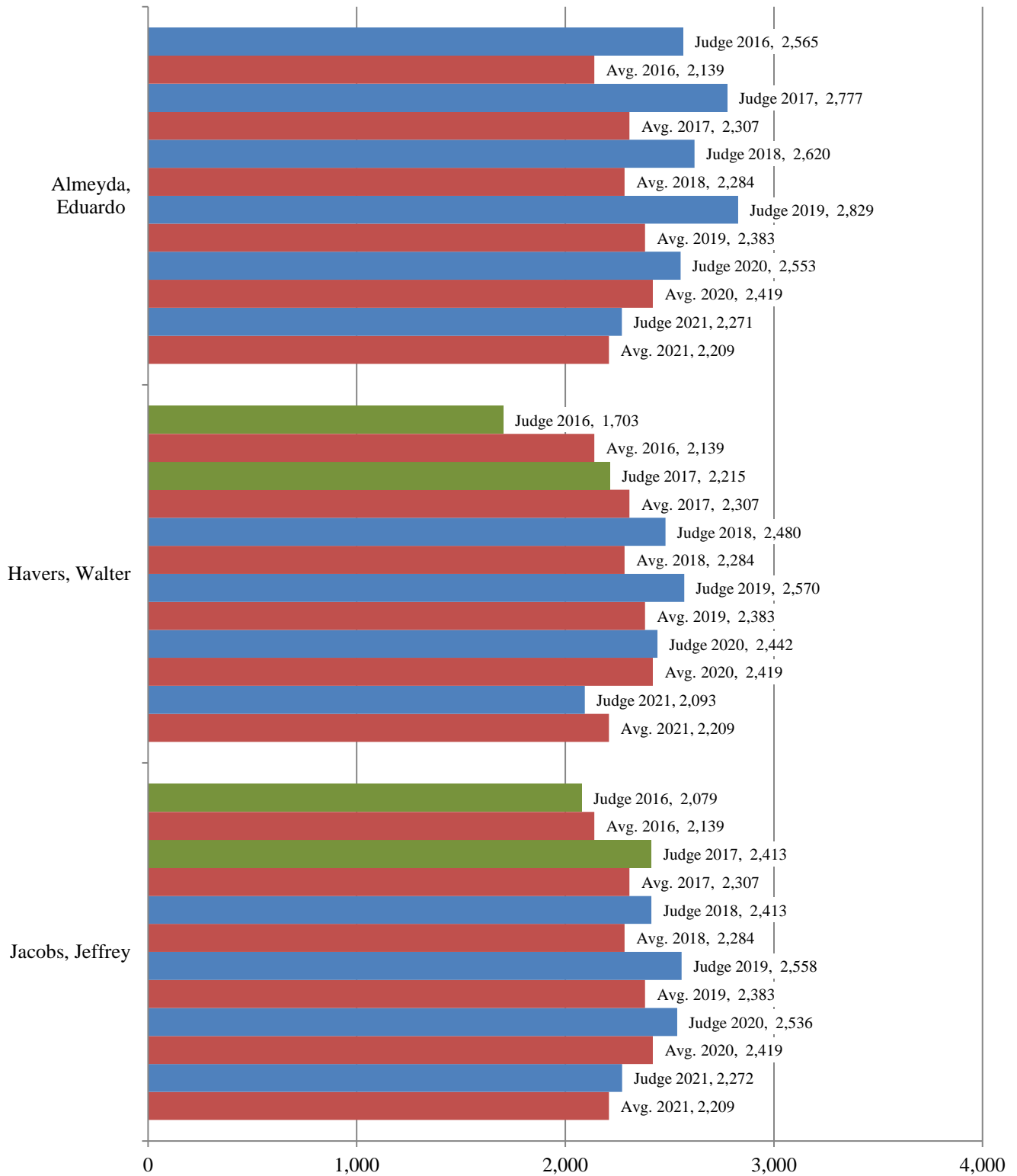
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



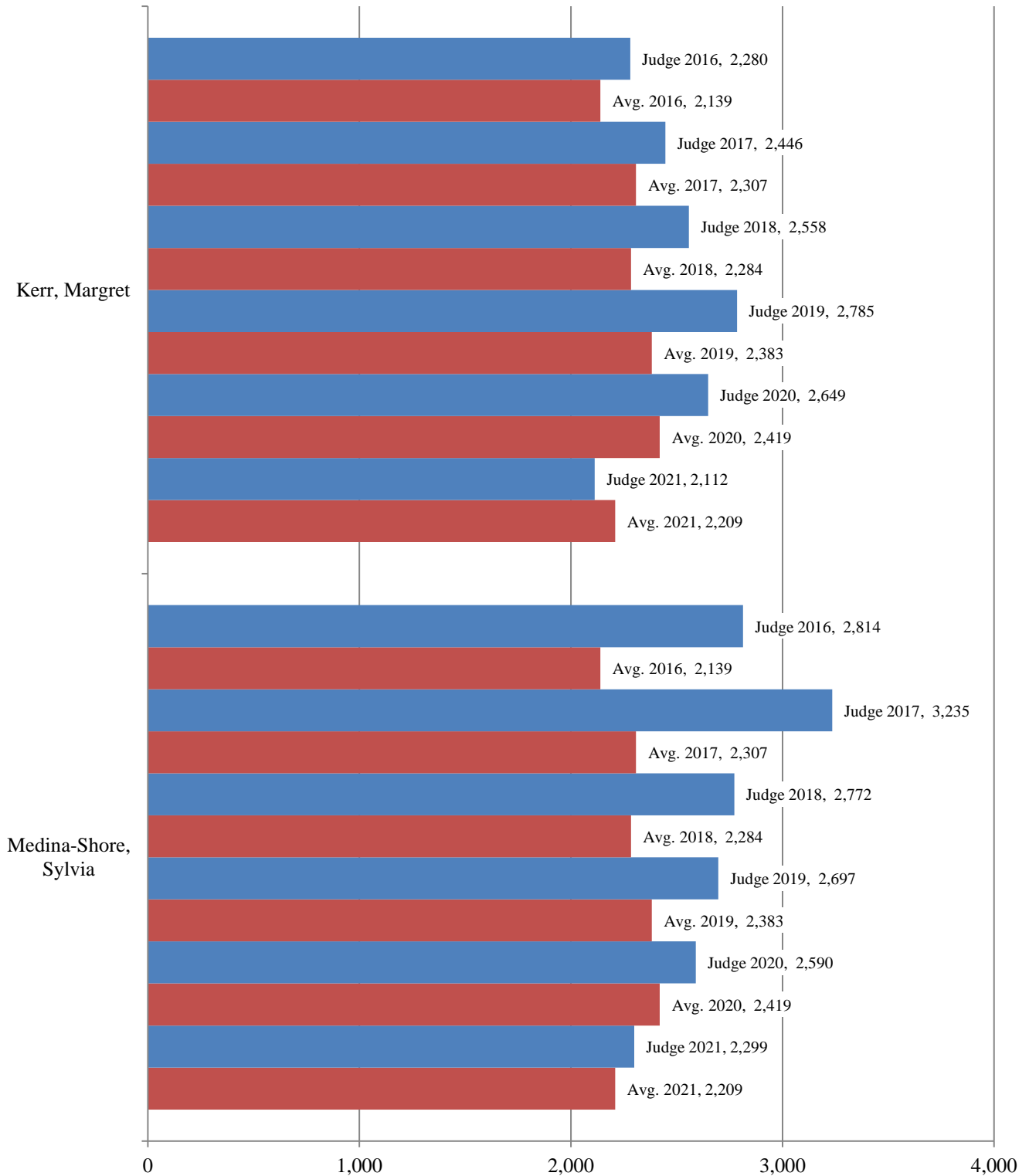
(Continued) The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



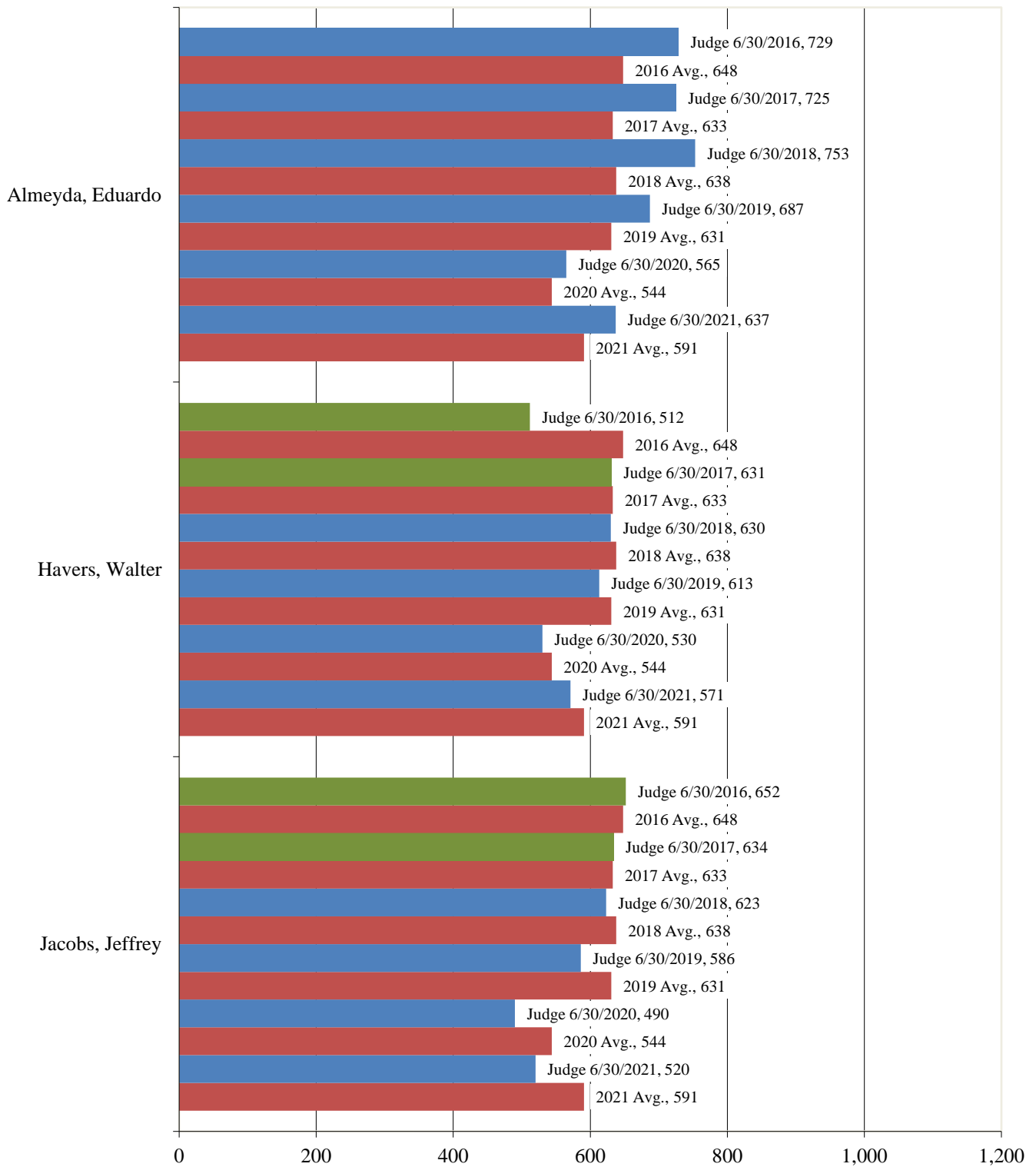
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



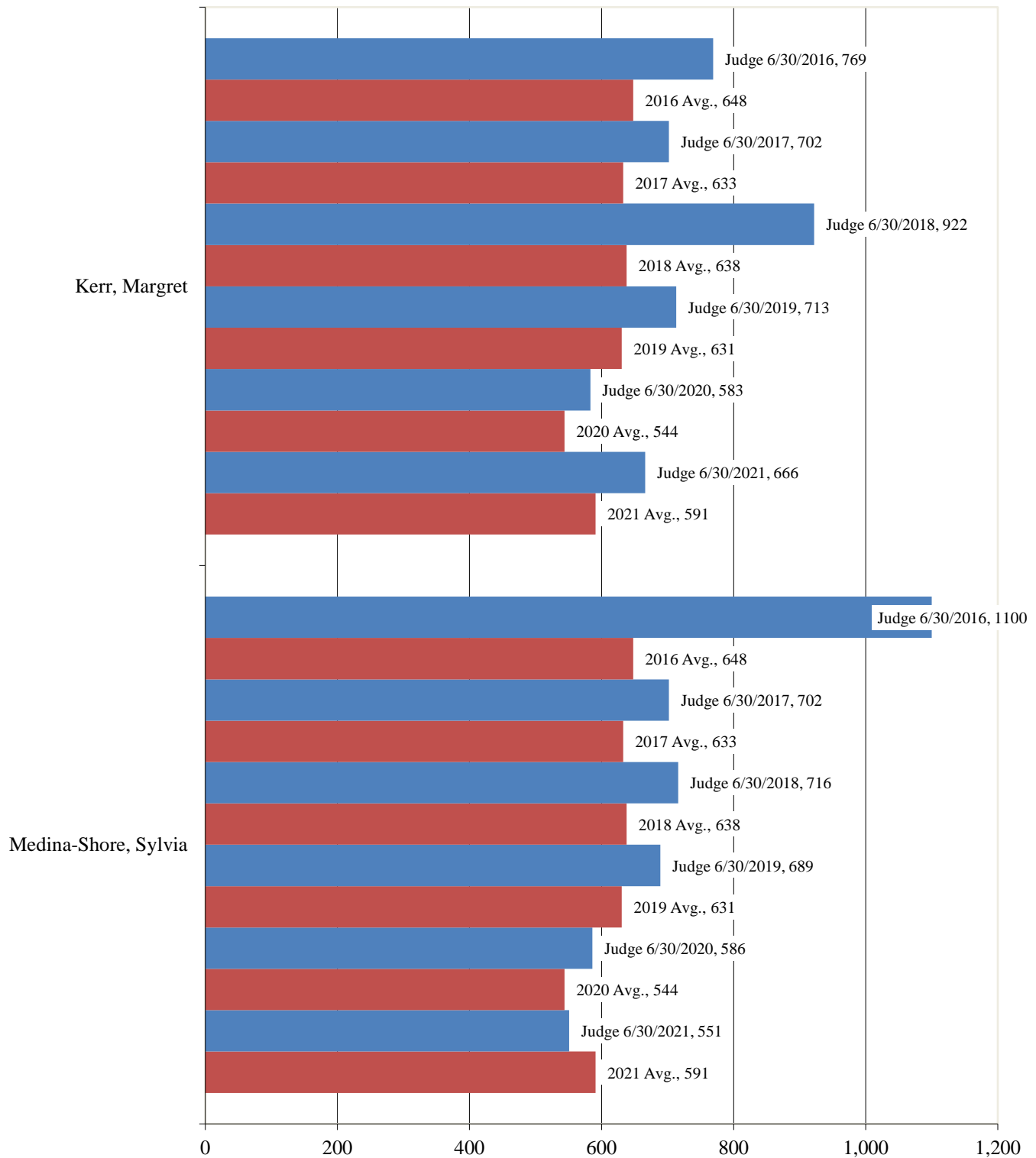
(Continued) The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



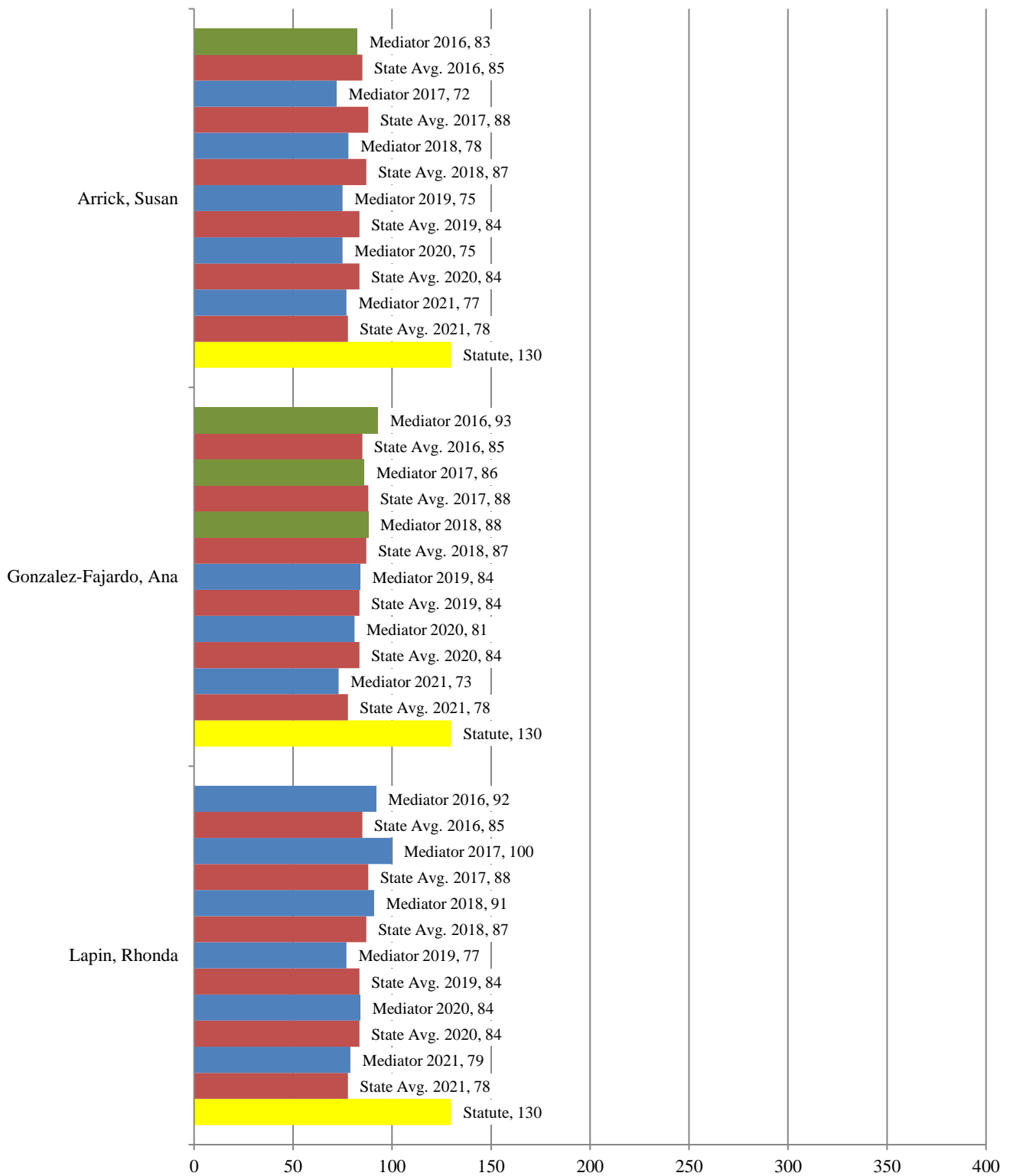
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label.



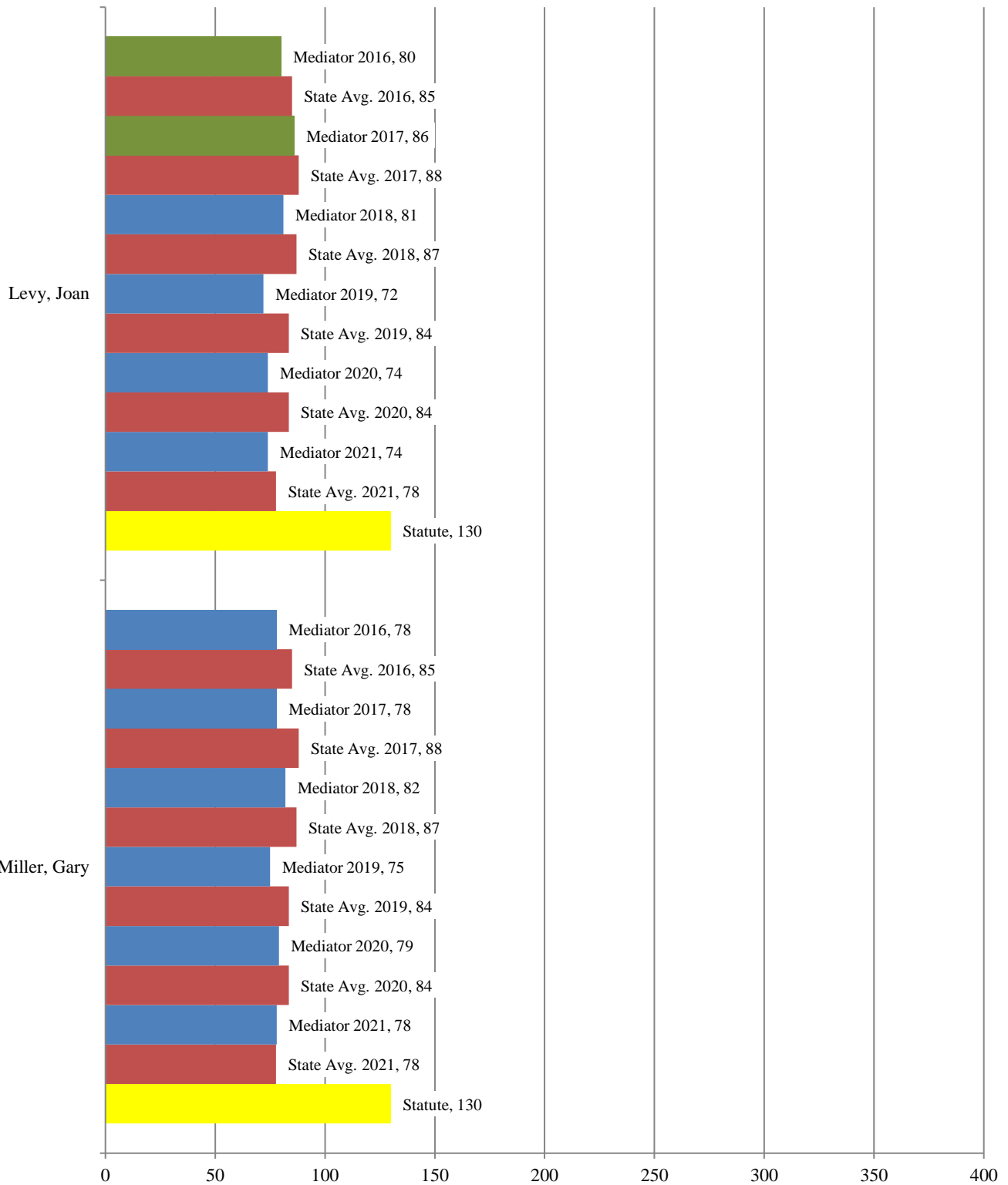
(Continued) The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



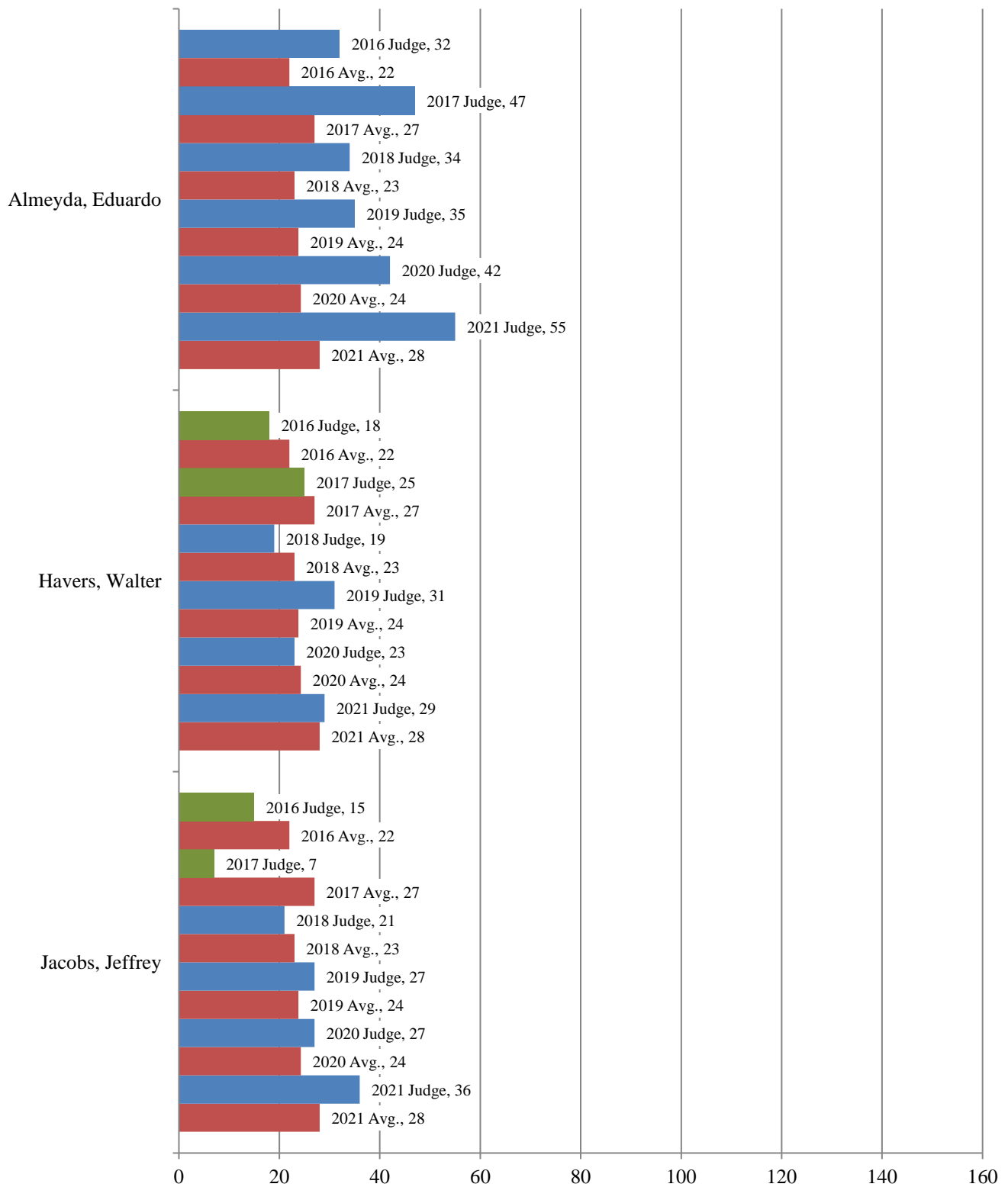
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



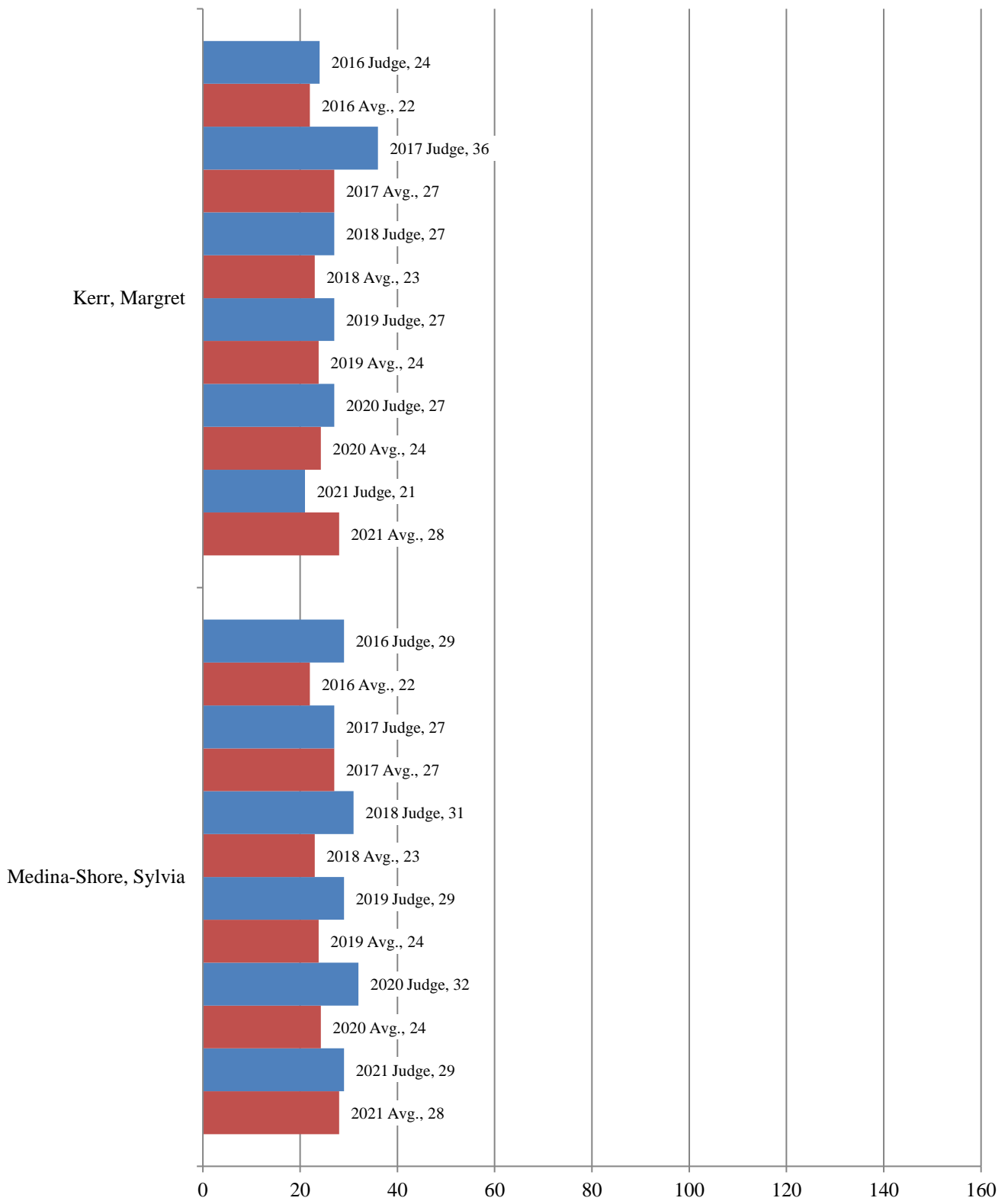
(Continued) The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



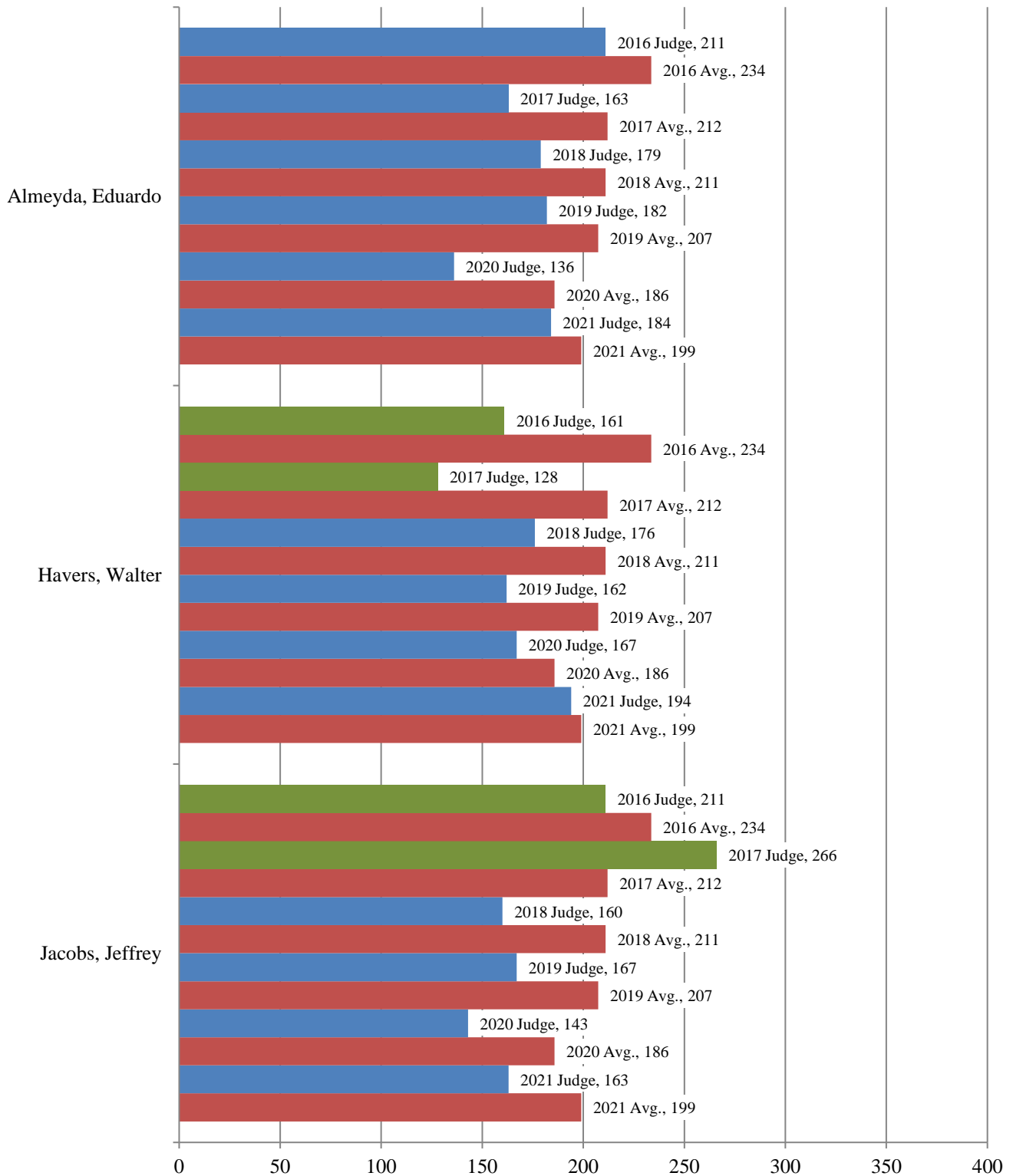
The following graph depicts the total volume of trial orders³¹⁶ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



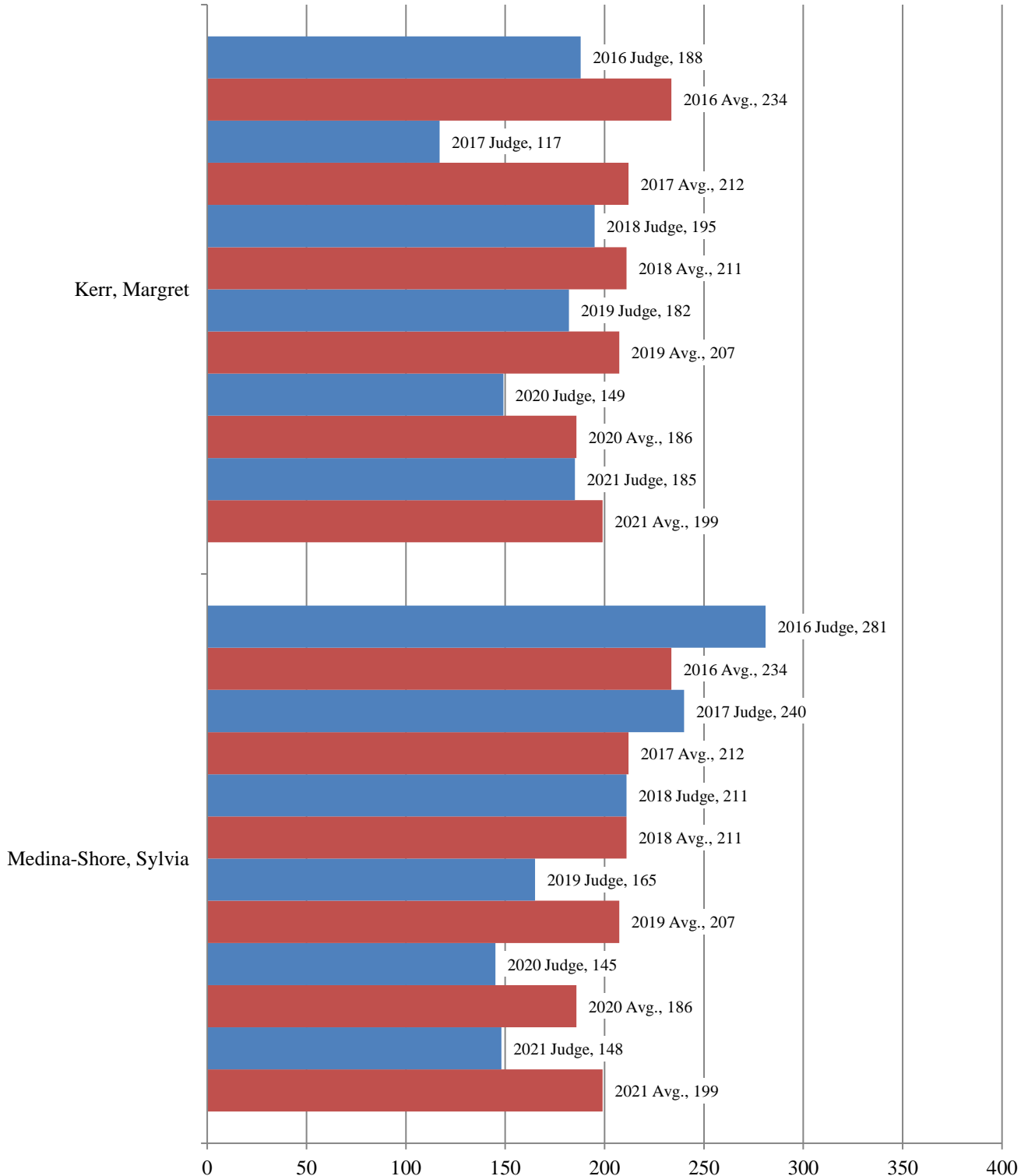
(Continued) The following graph depicts the total volume of trial orders³¹⁷ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



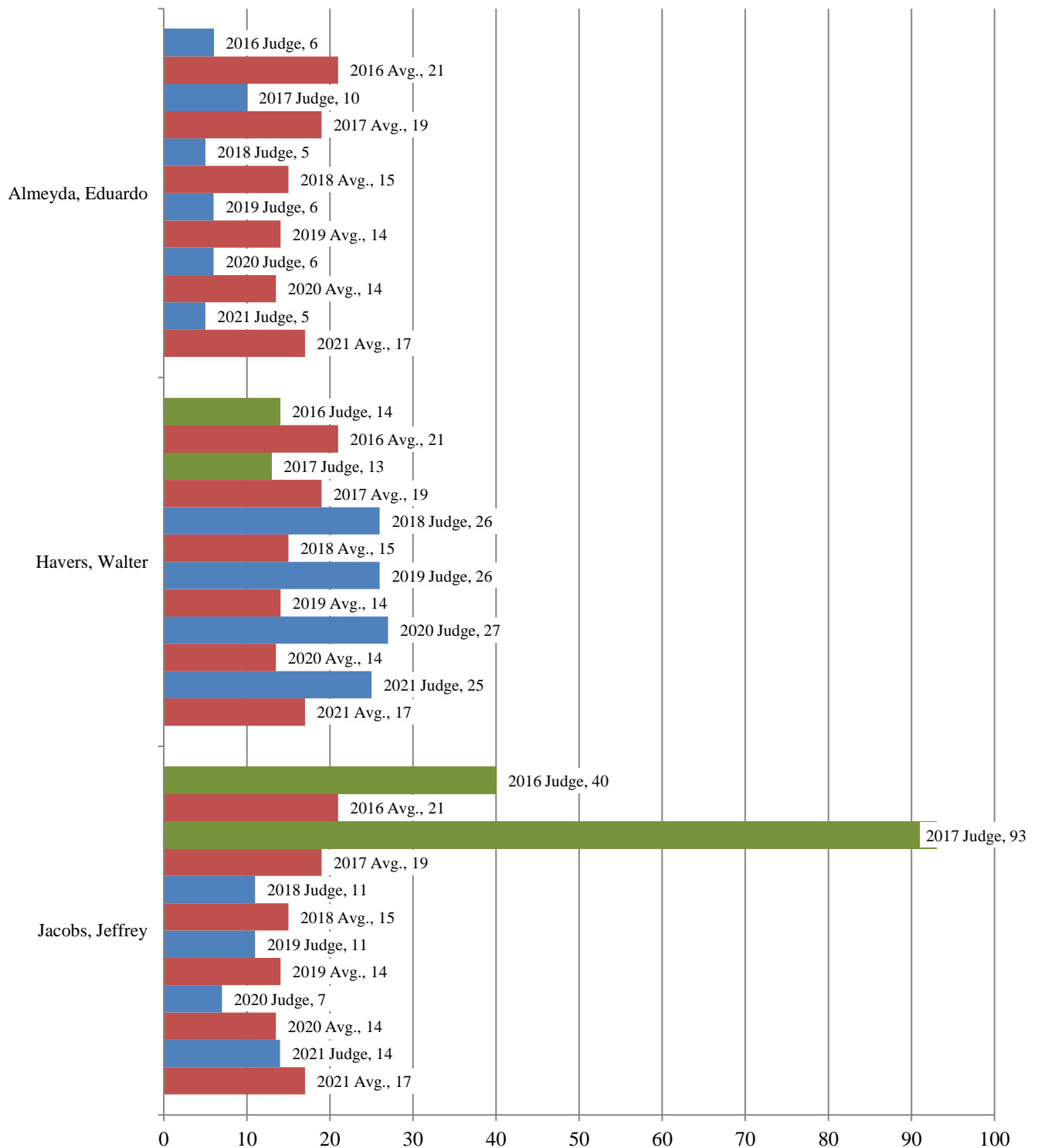
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



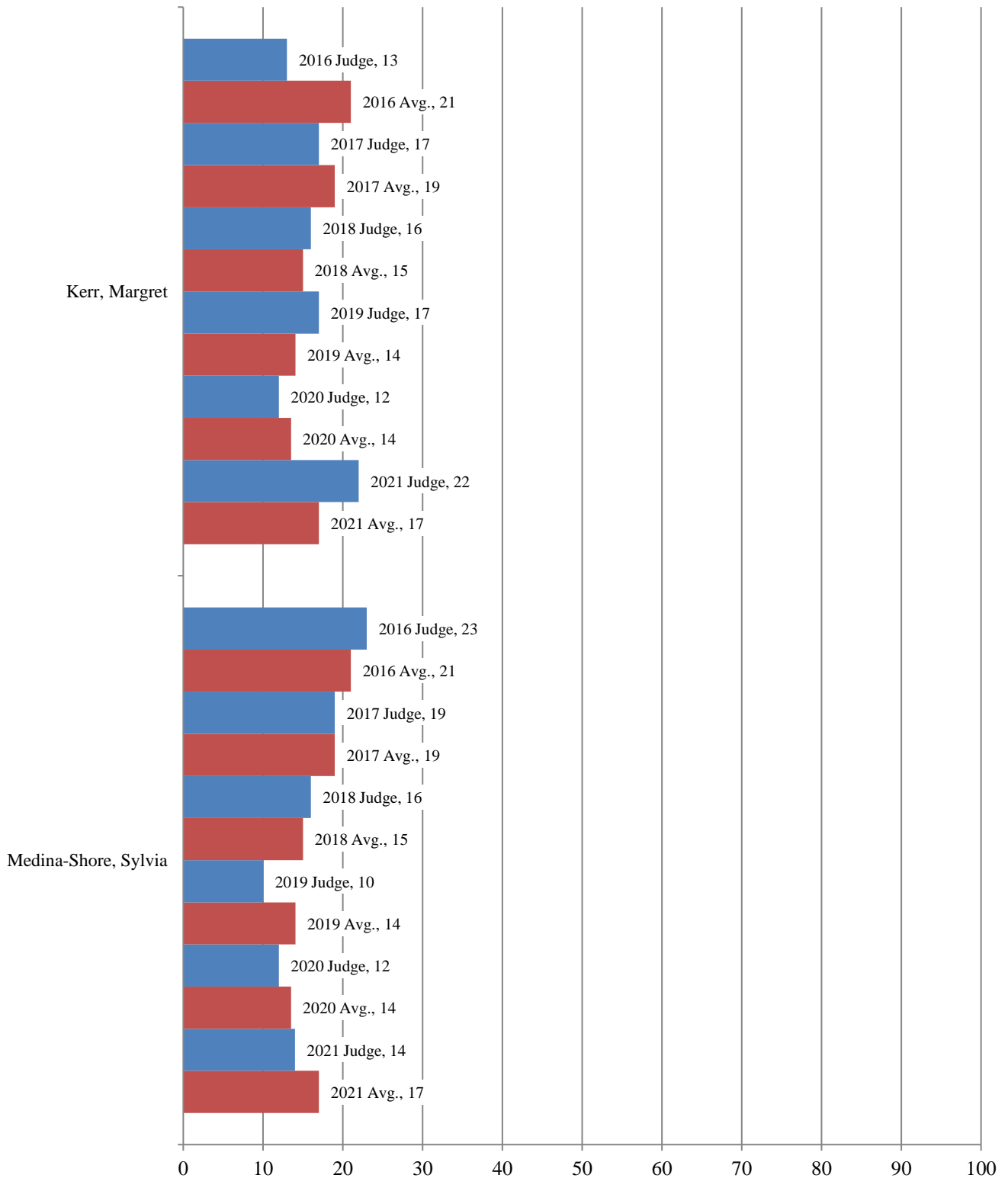
(Continued) The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



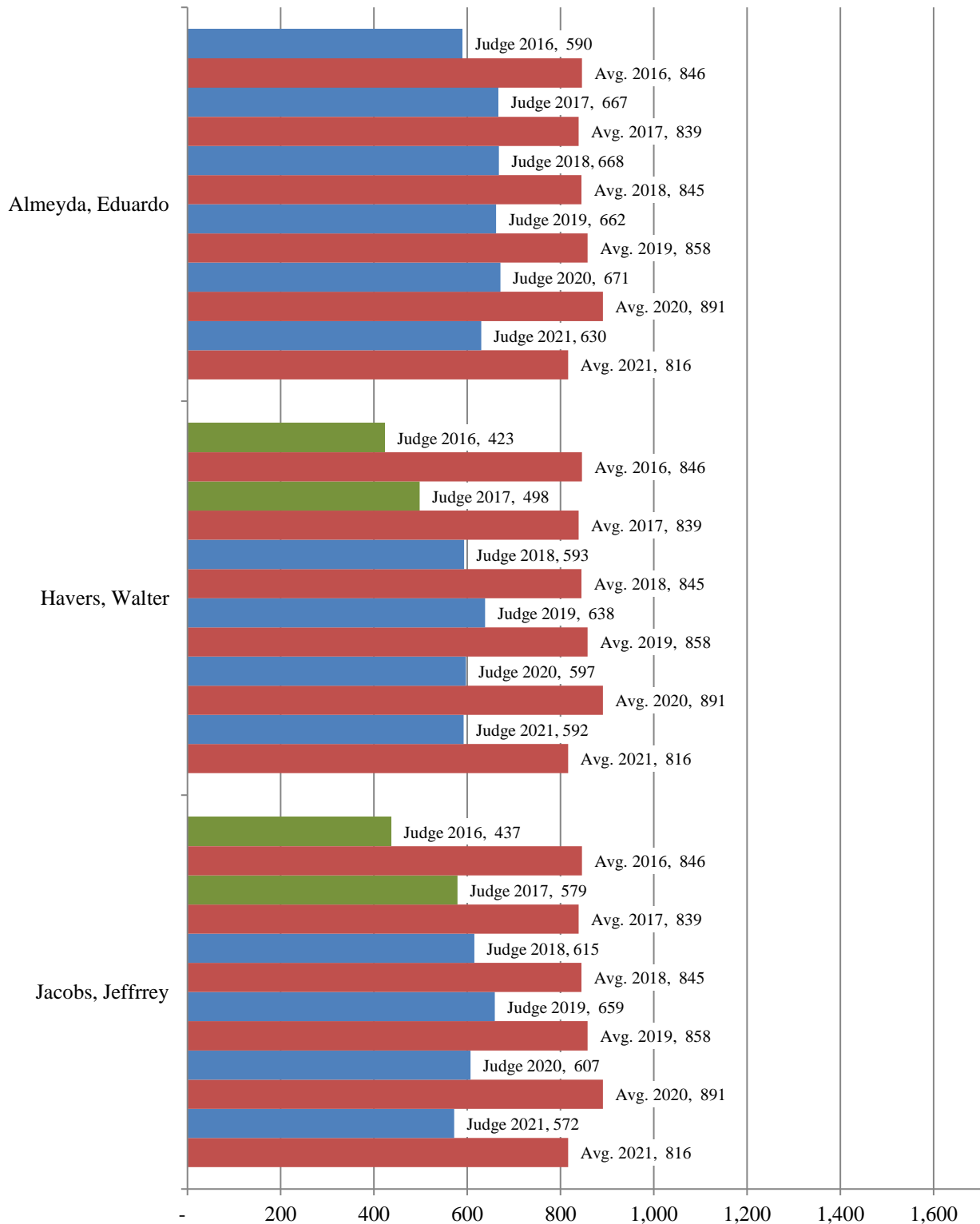
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



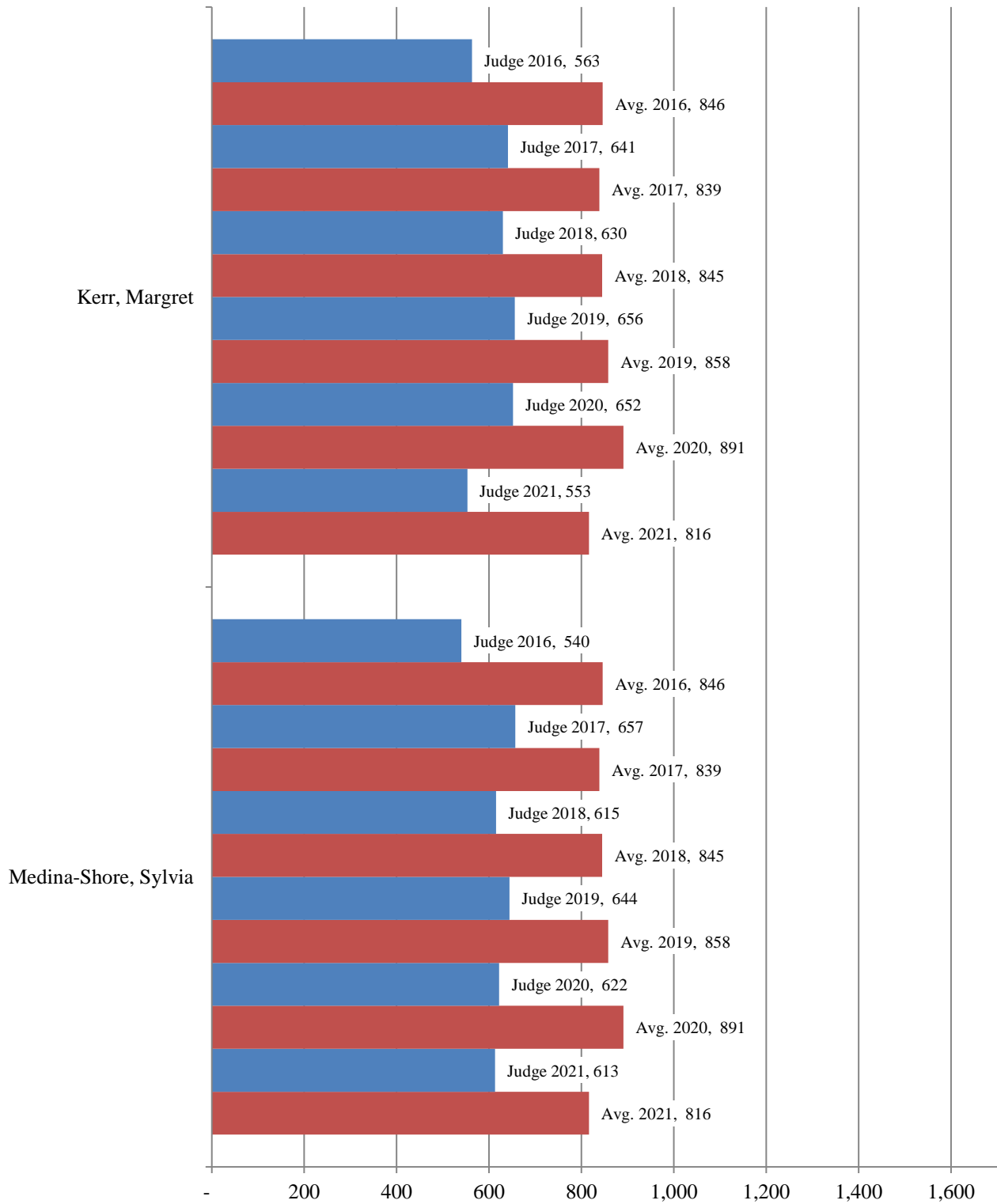
(Continued) The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



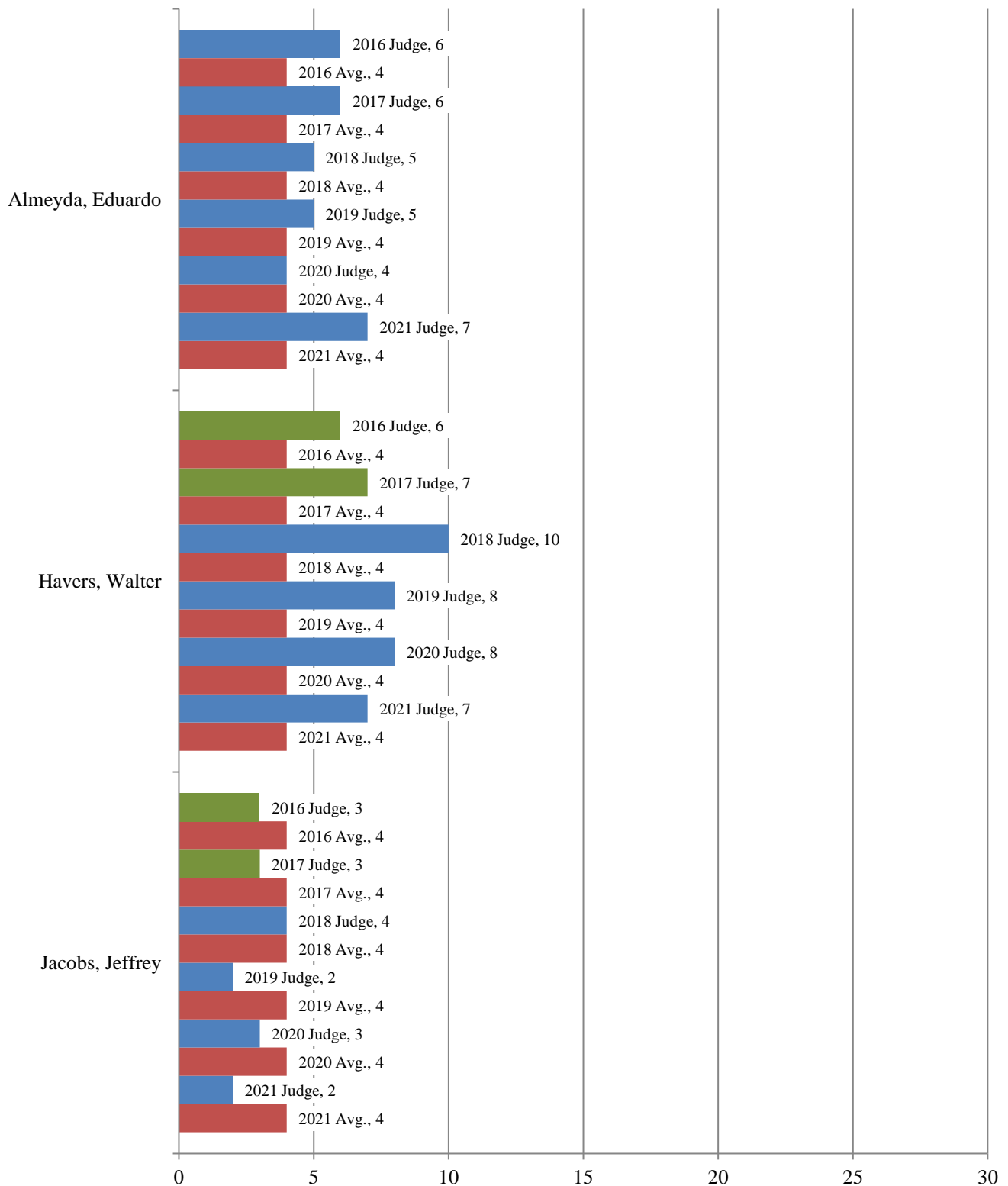
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



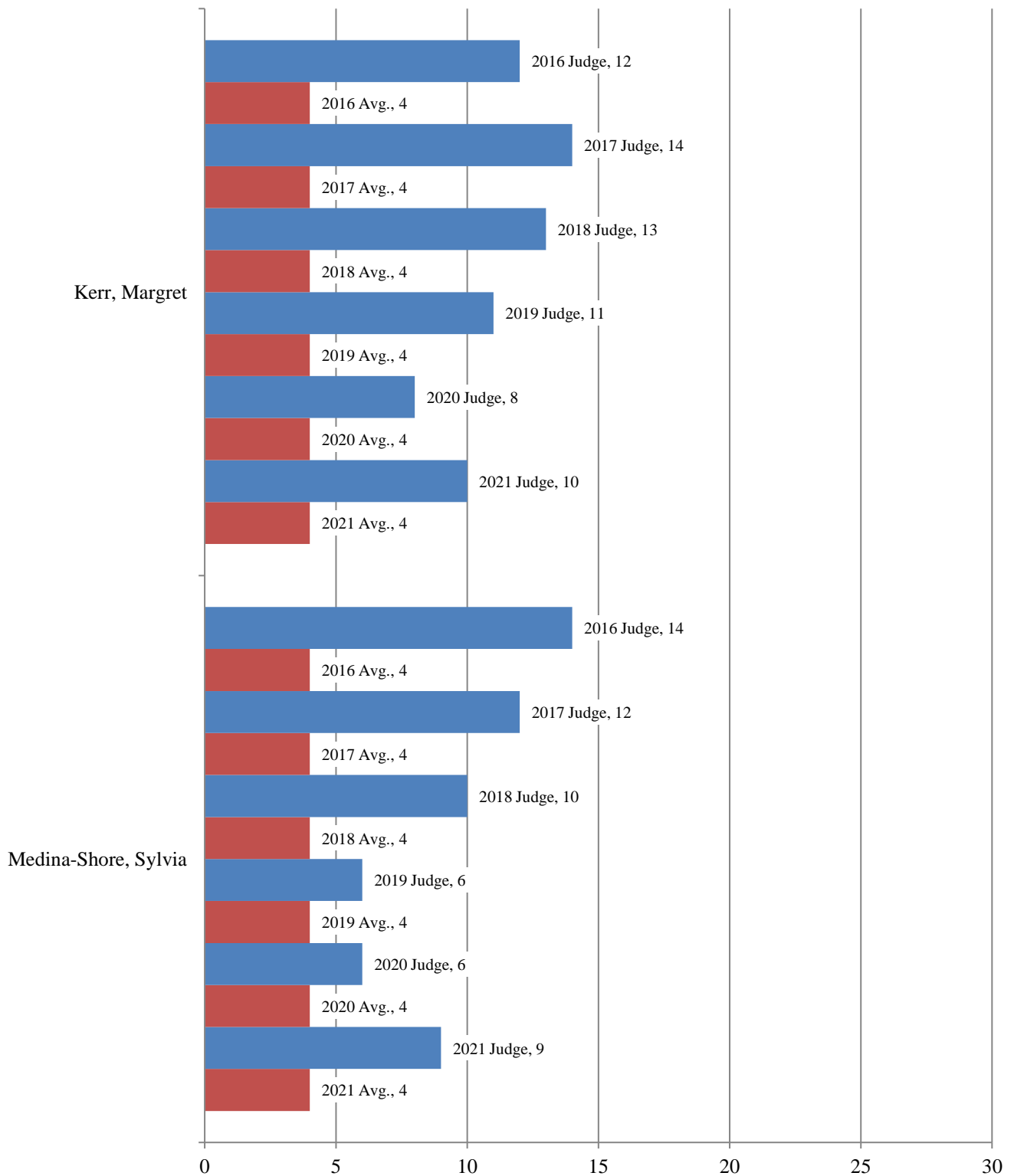
(Continued) The following depicts the volume of settlement orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



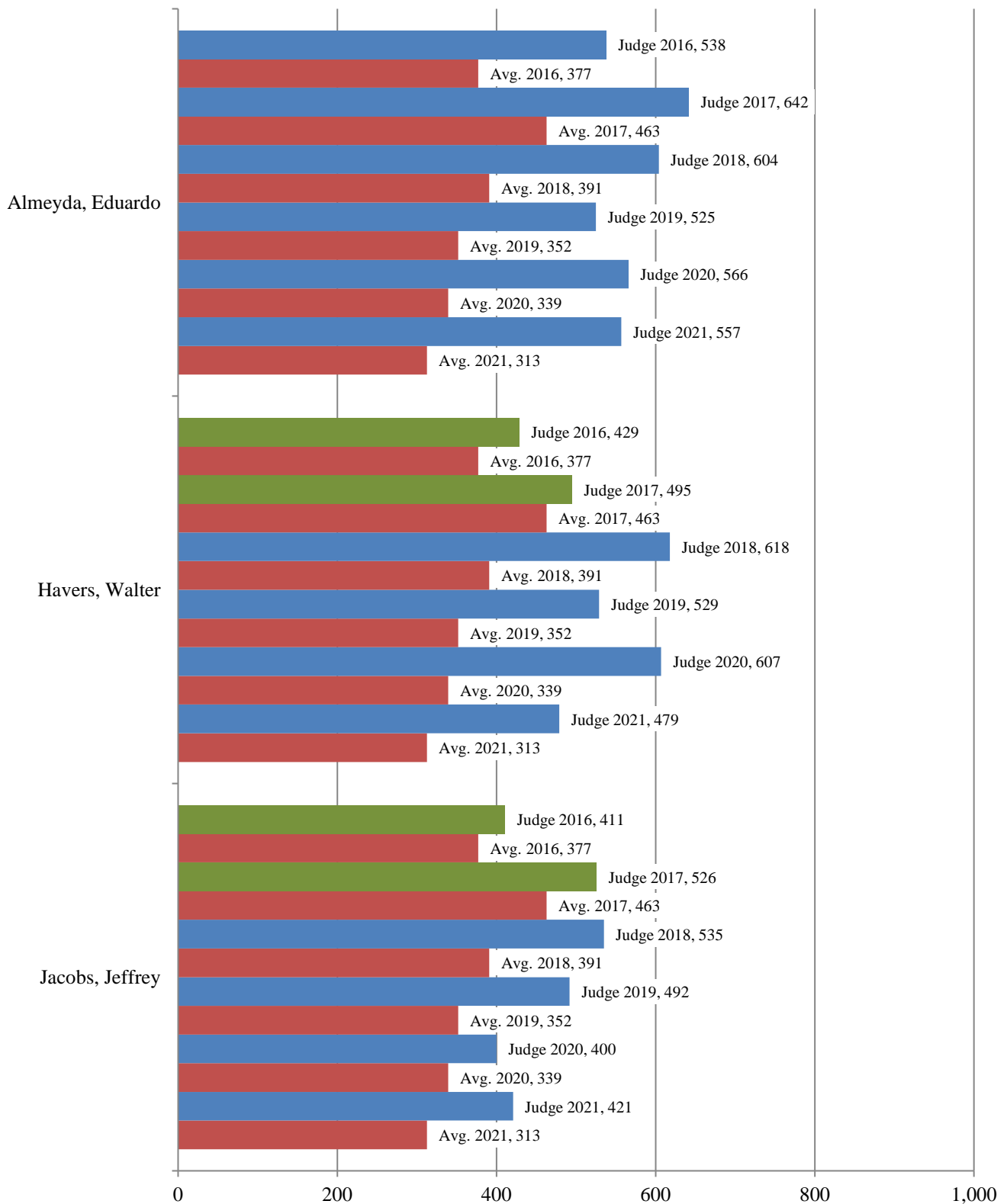
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



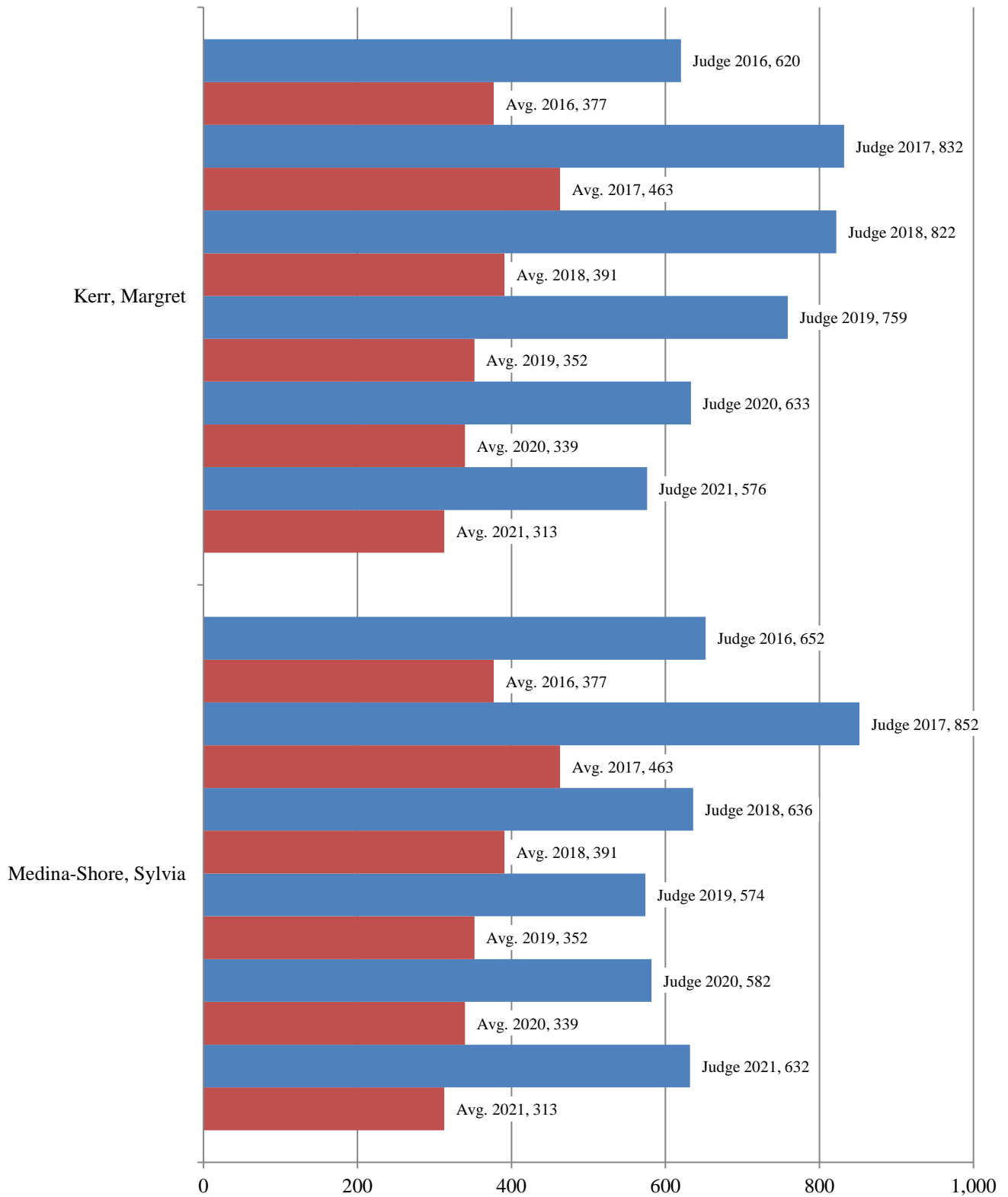
(Continued) The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



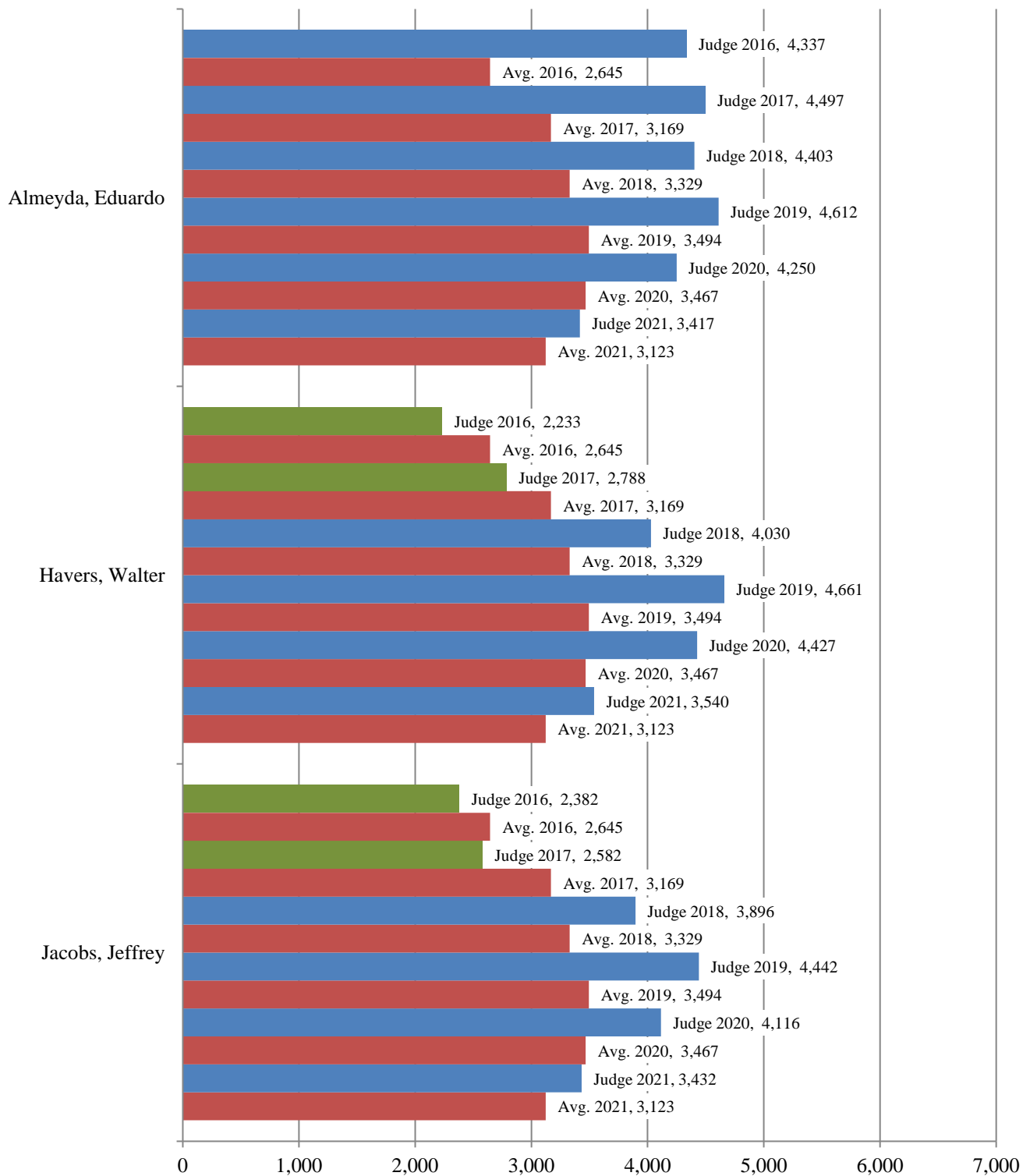
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



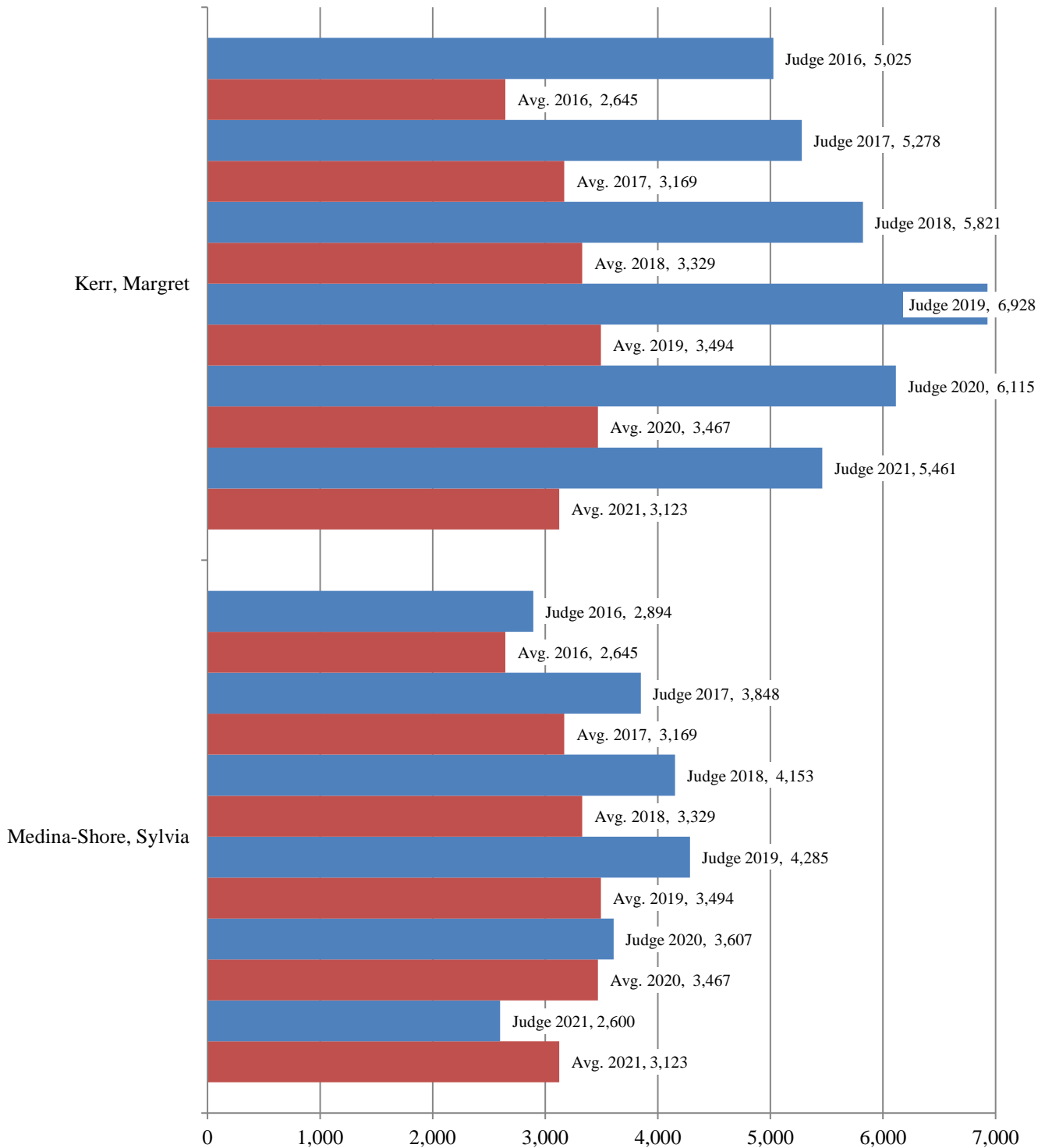
(Continued) The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



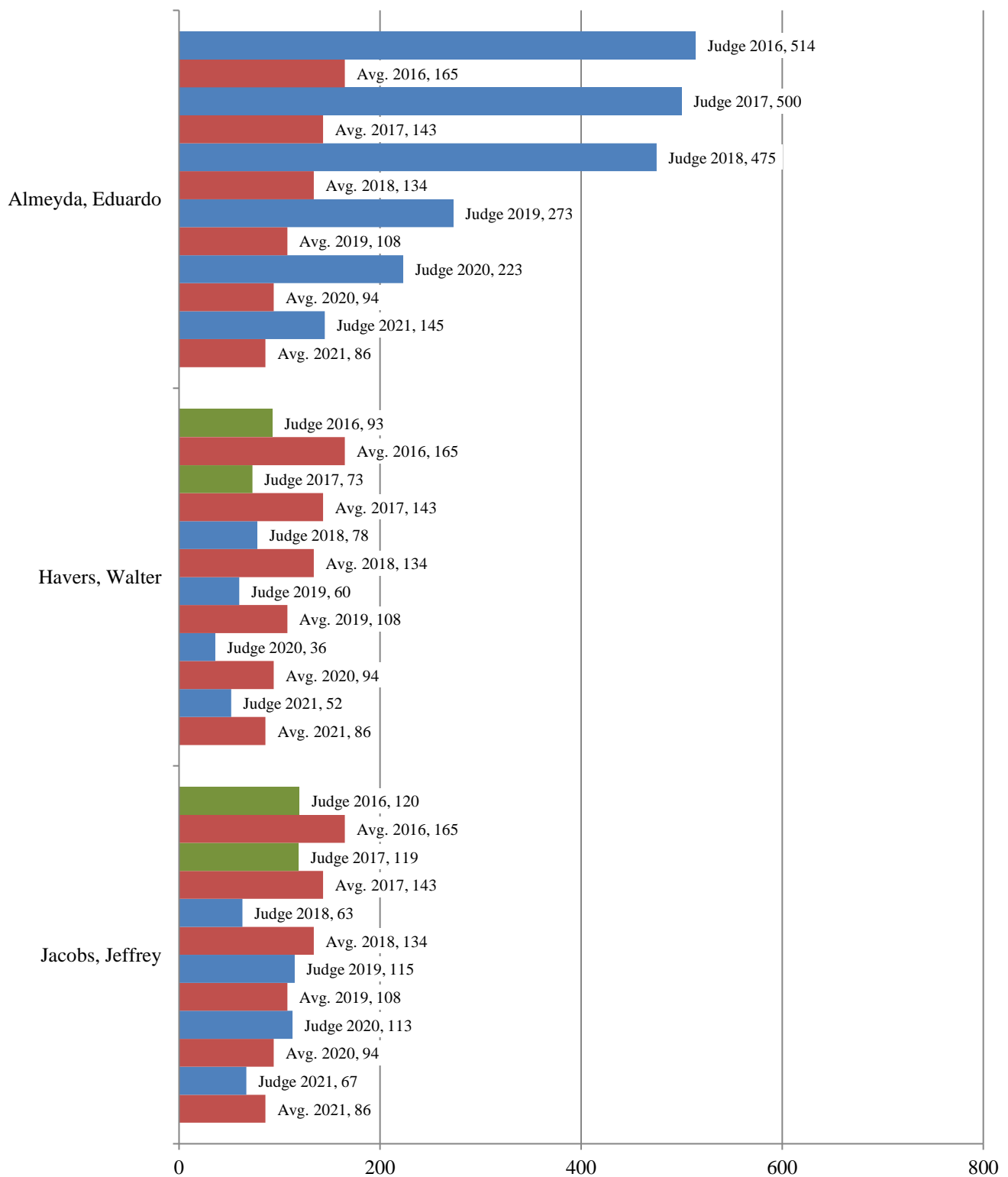
The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



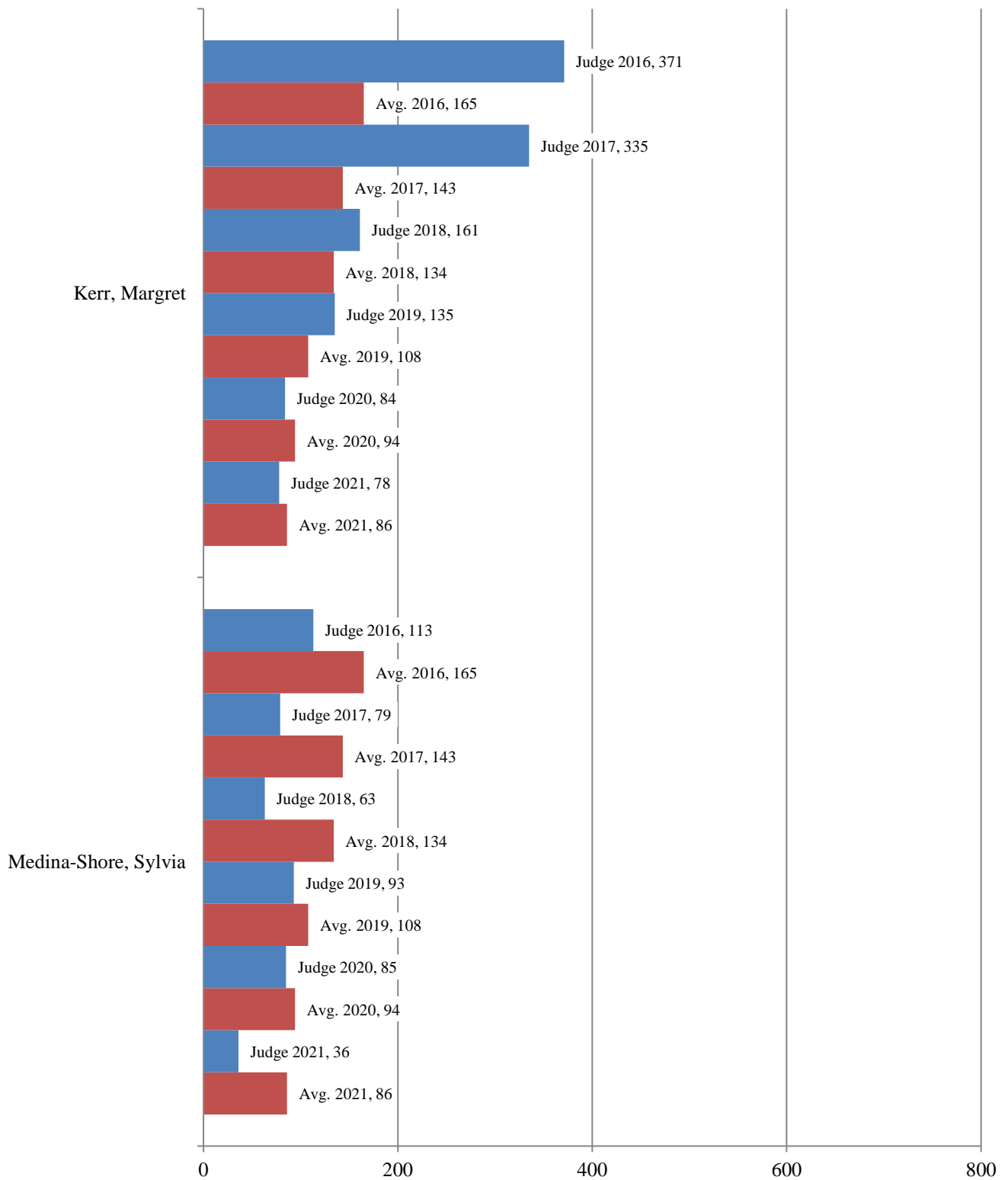
(Continued) The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



(Continued) The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each Judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



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

District ORL includes Lake, Orange, Osceola, and Seminole counties.

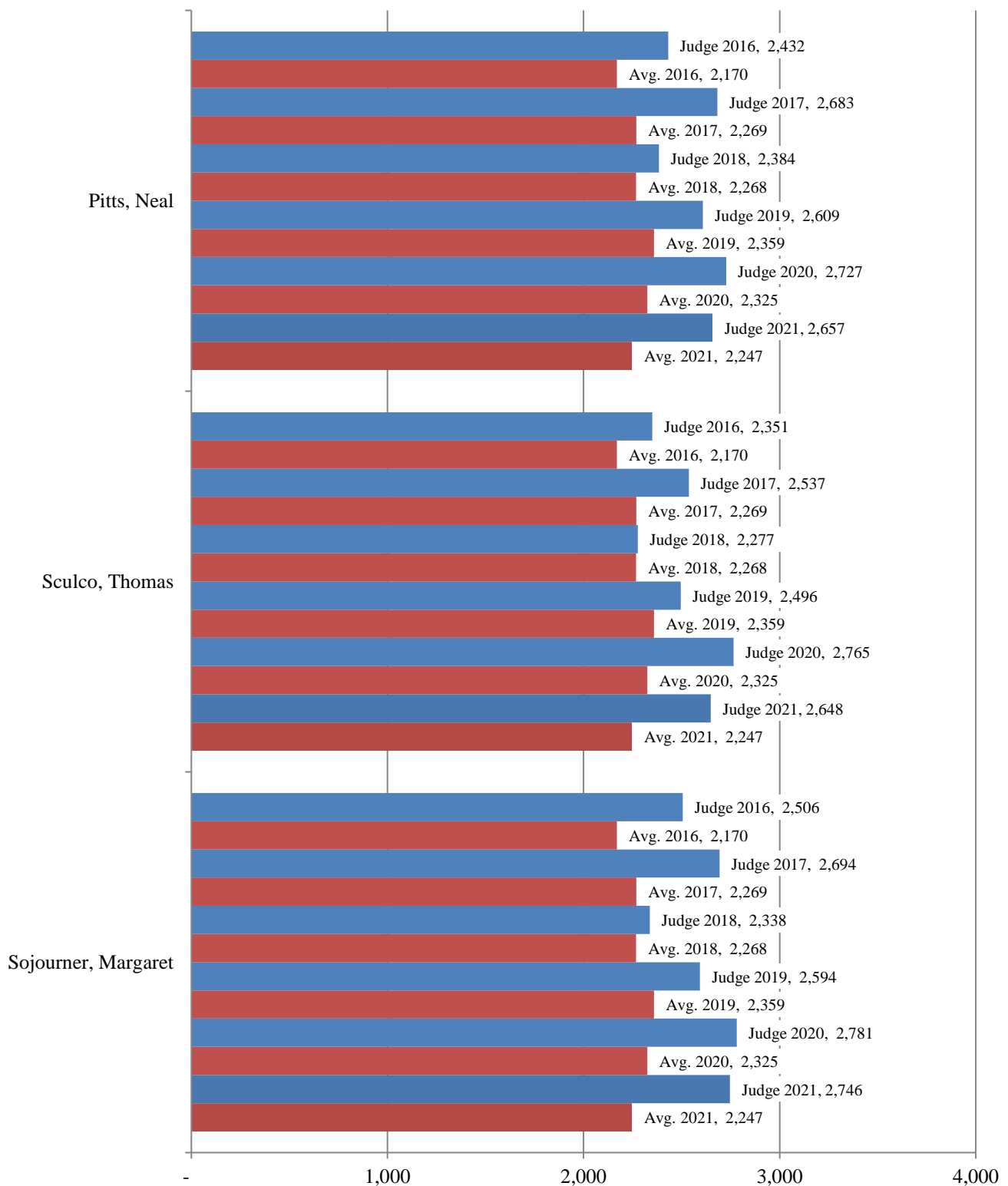
Both “new cases” and Petition filing remain above average in District Orlando in 2020-21. This has been demonstrated with striking consistency over the last 8 years. The figures for 2018 are a notable exception of moderation, attributable to the temporary assignment of Seminole County to District Daytona, prior to the relocation of the Orlando office to Seminole County.

Trial order volume is overall consistent with the statewide average in District Orlando. The times to mediation are within the statutory parameters in all three Orlando Divisions. The time to trial and to order in 2020-21 each exhibited examples in excess of the statutory parameters. The volume of settlement orders is noteworthy in District Orlando, while the stipulation order volume is more consistent with statewide average.

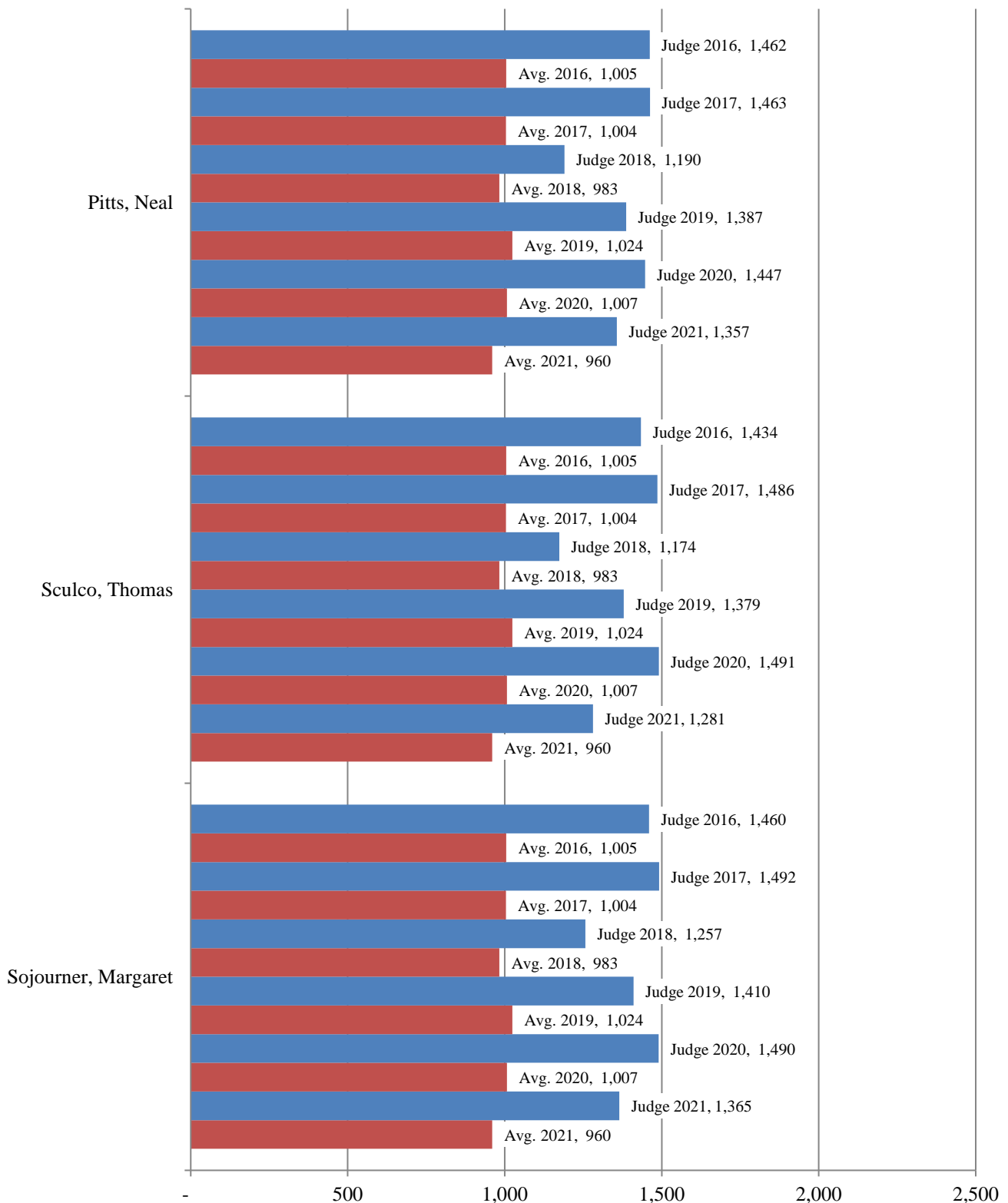
AnneMarie Kim chaired a Judge William Wieland Inn of Court joint Mentorship event on October 27, 2021 where new young members were given the opportunity to meet with more experienced attorneys to discuss topics such as civility, professionalism, and experiences with regard to workers' compensation and the practice of law.

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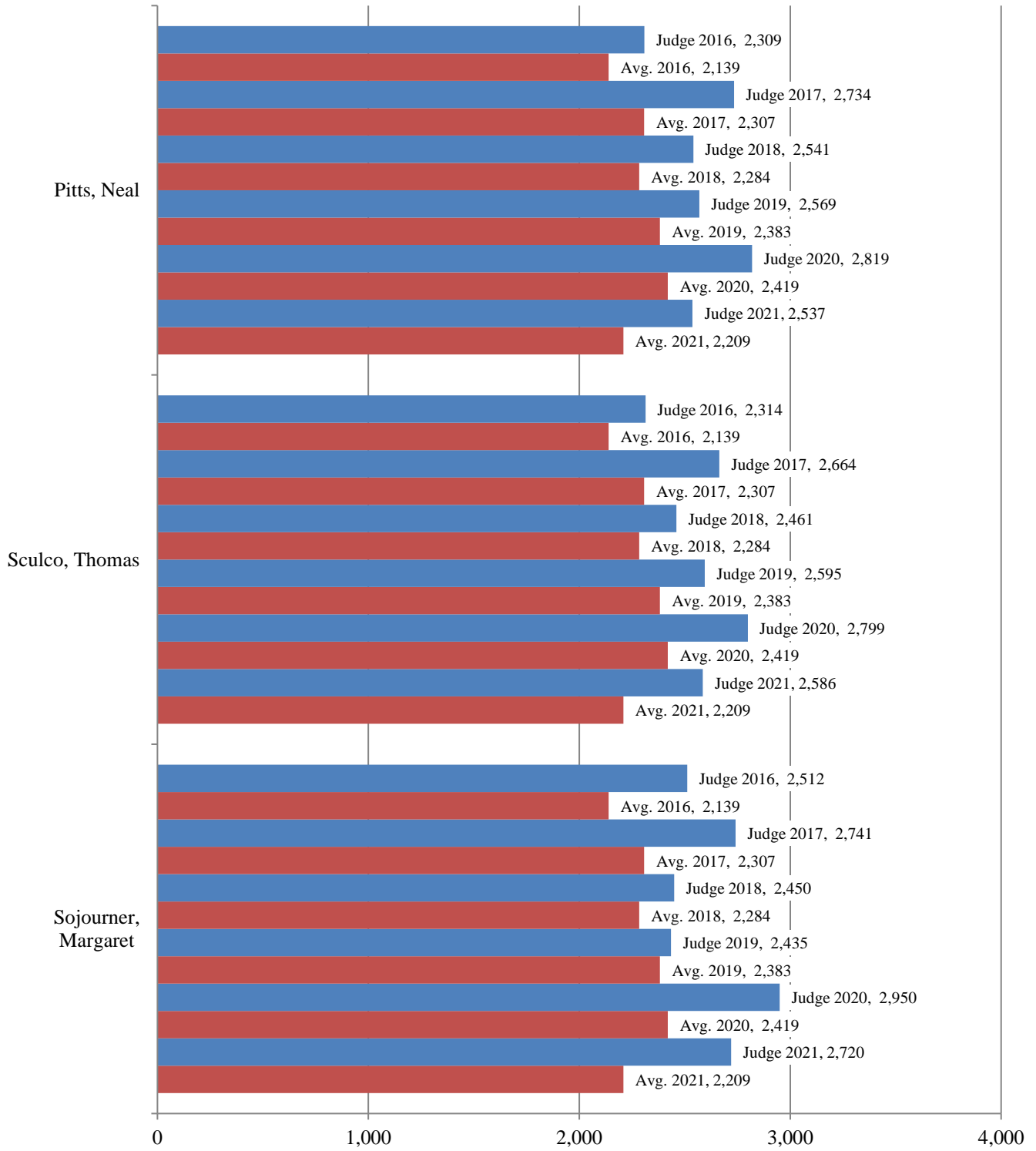
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



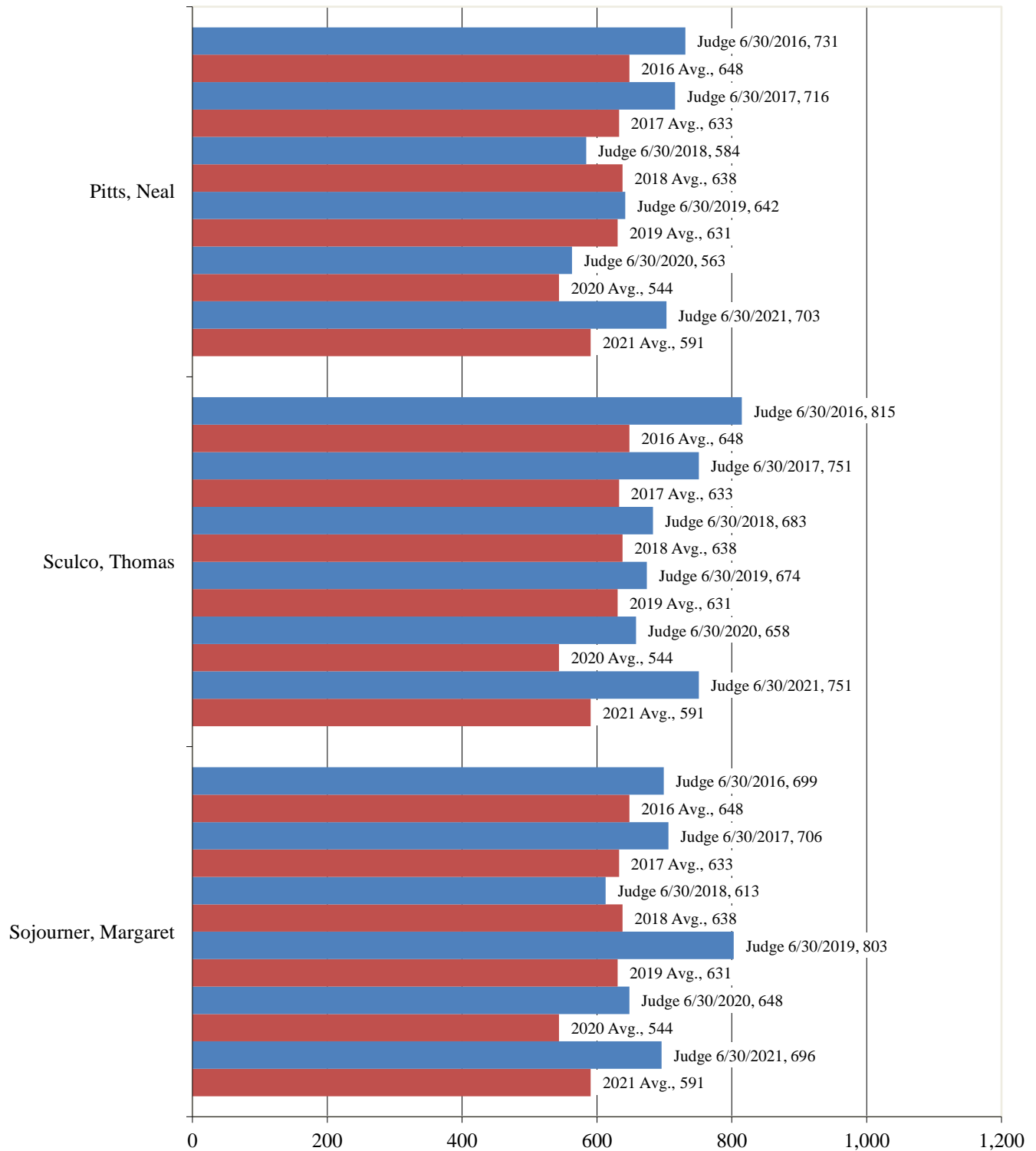
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



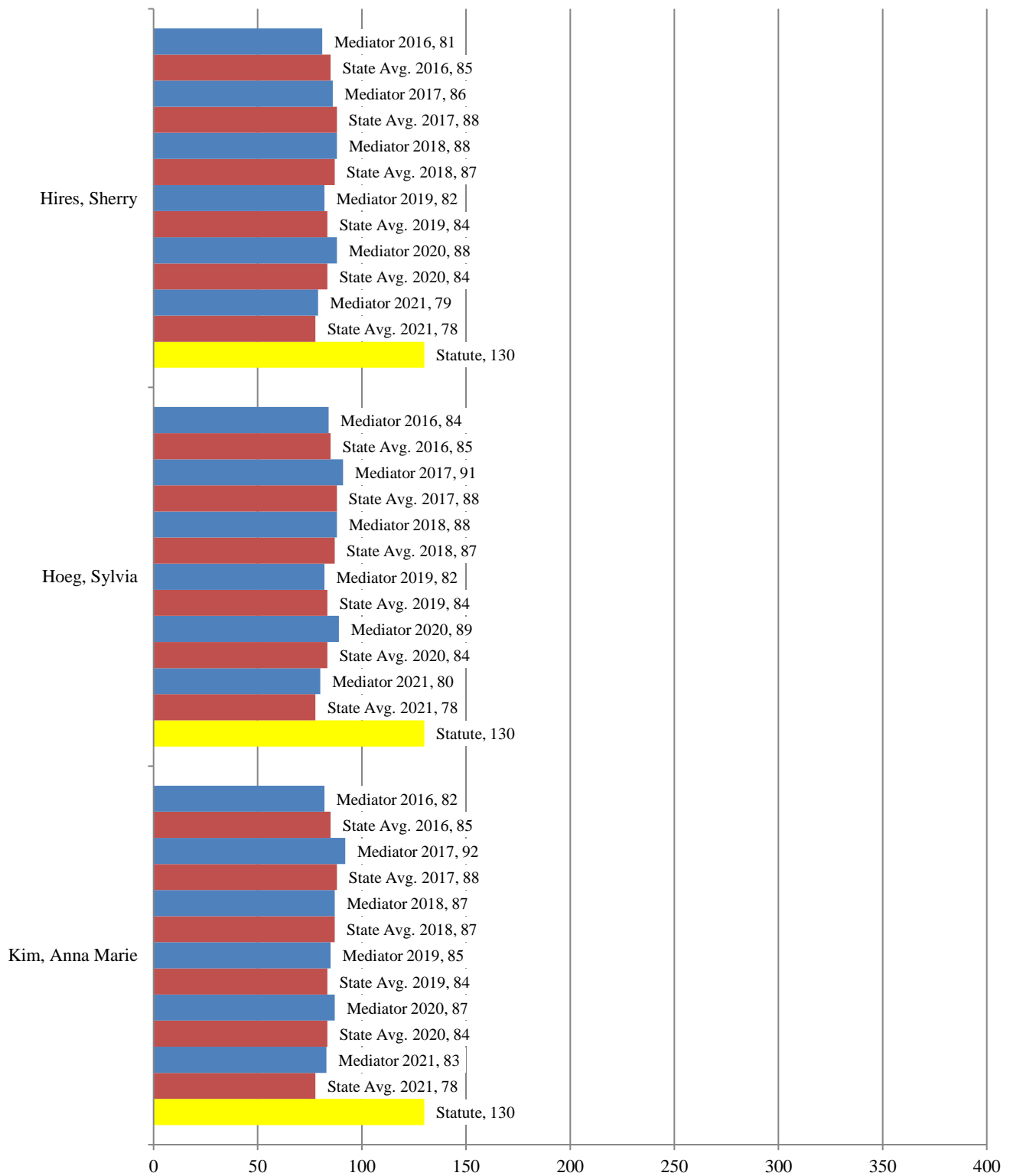
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



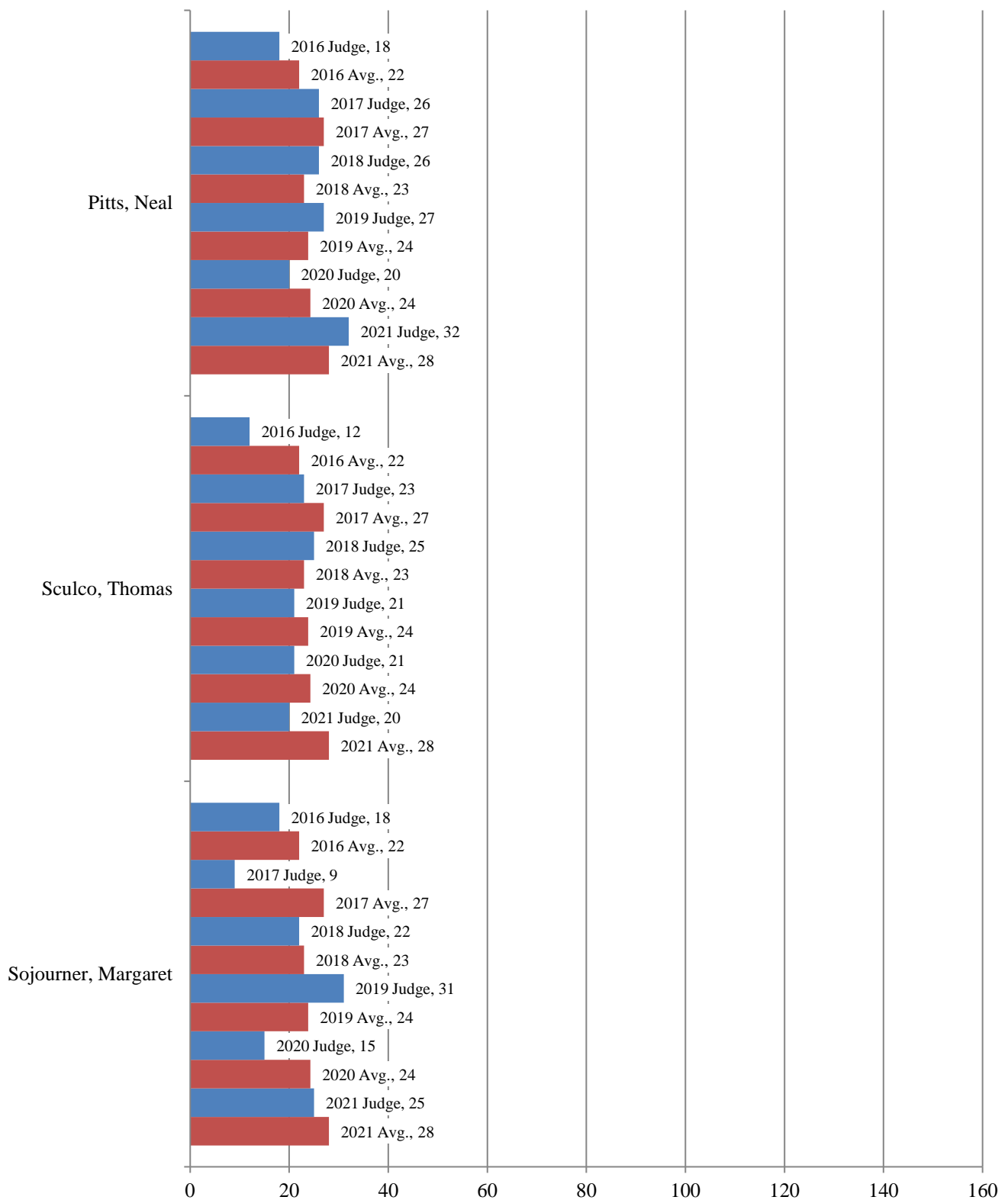
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



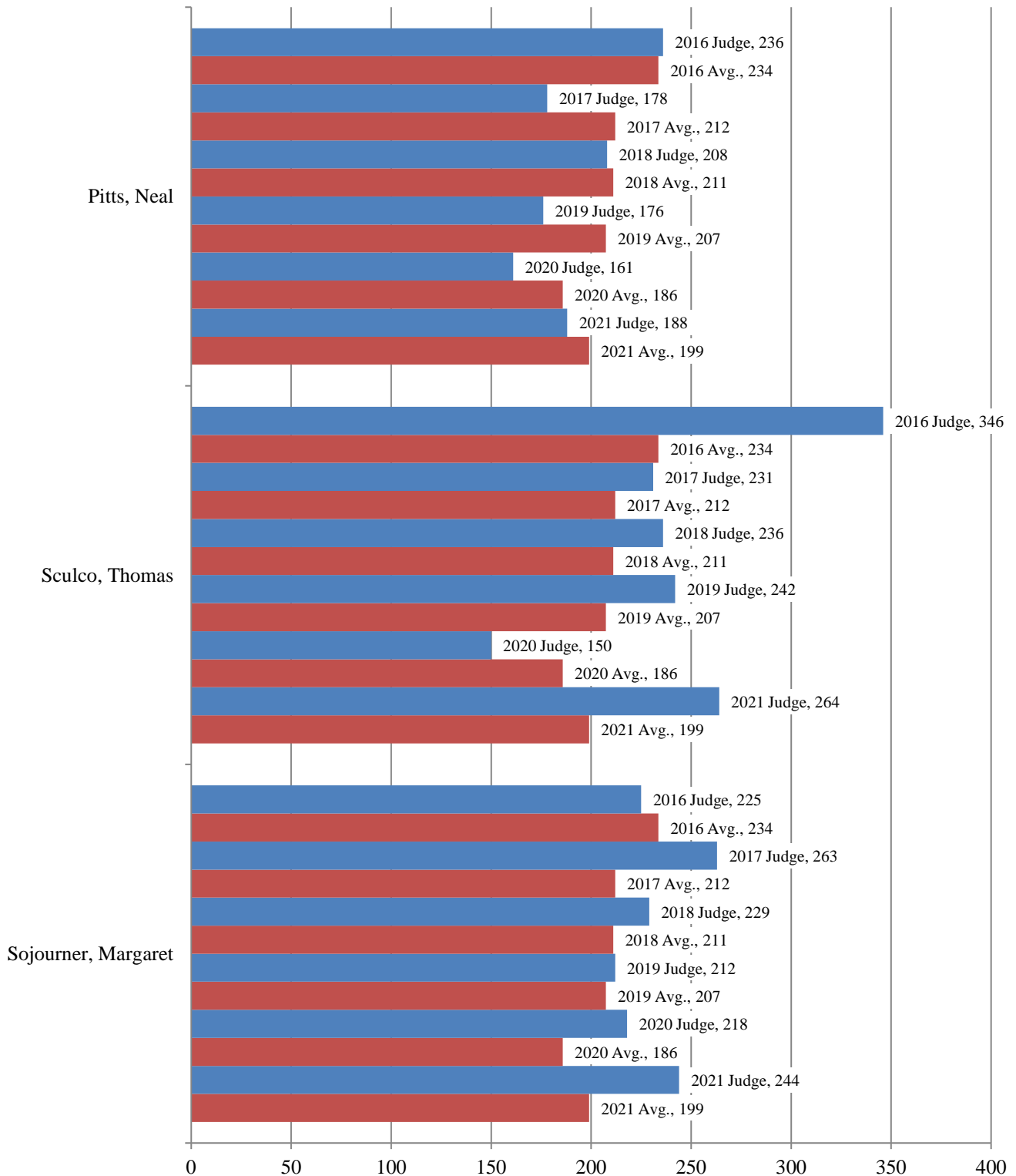
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



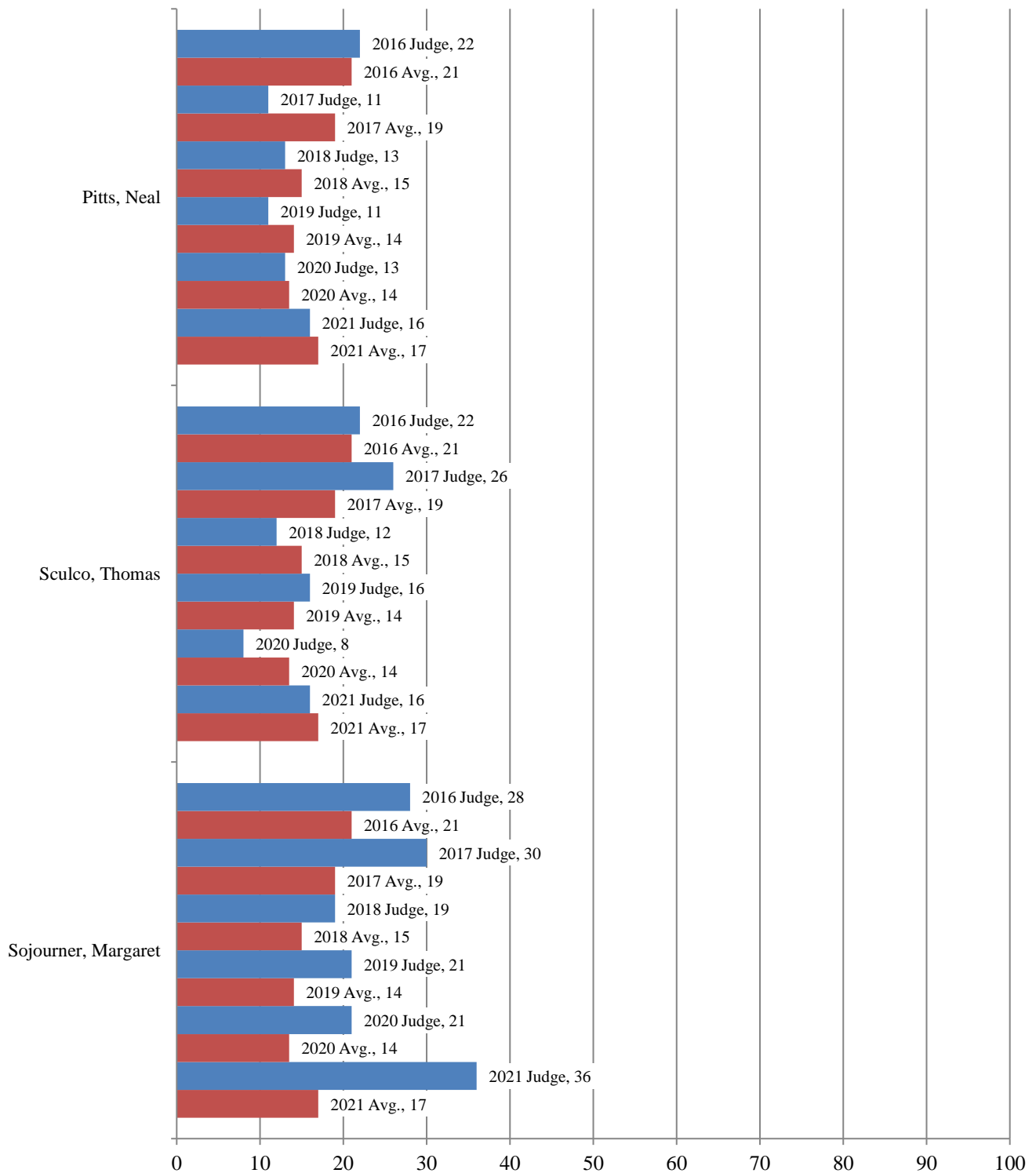
The following graph depicts the total volume of trial orders³¹⁸ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



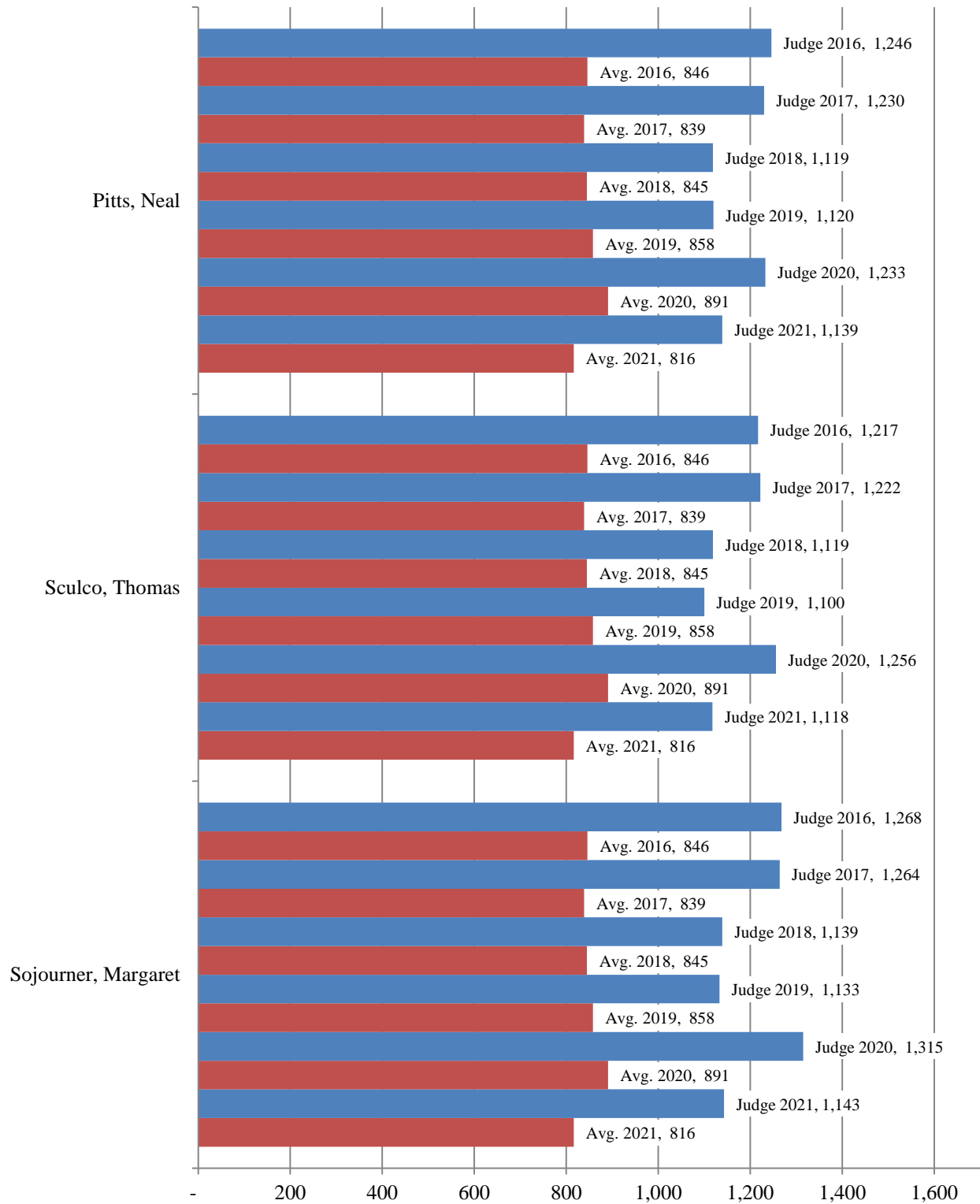
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



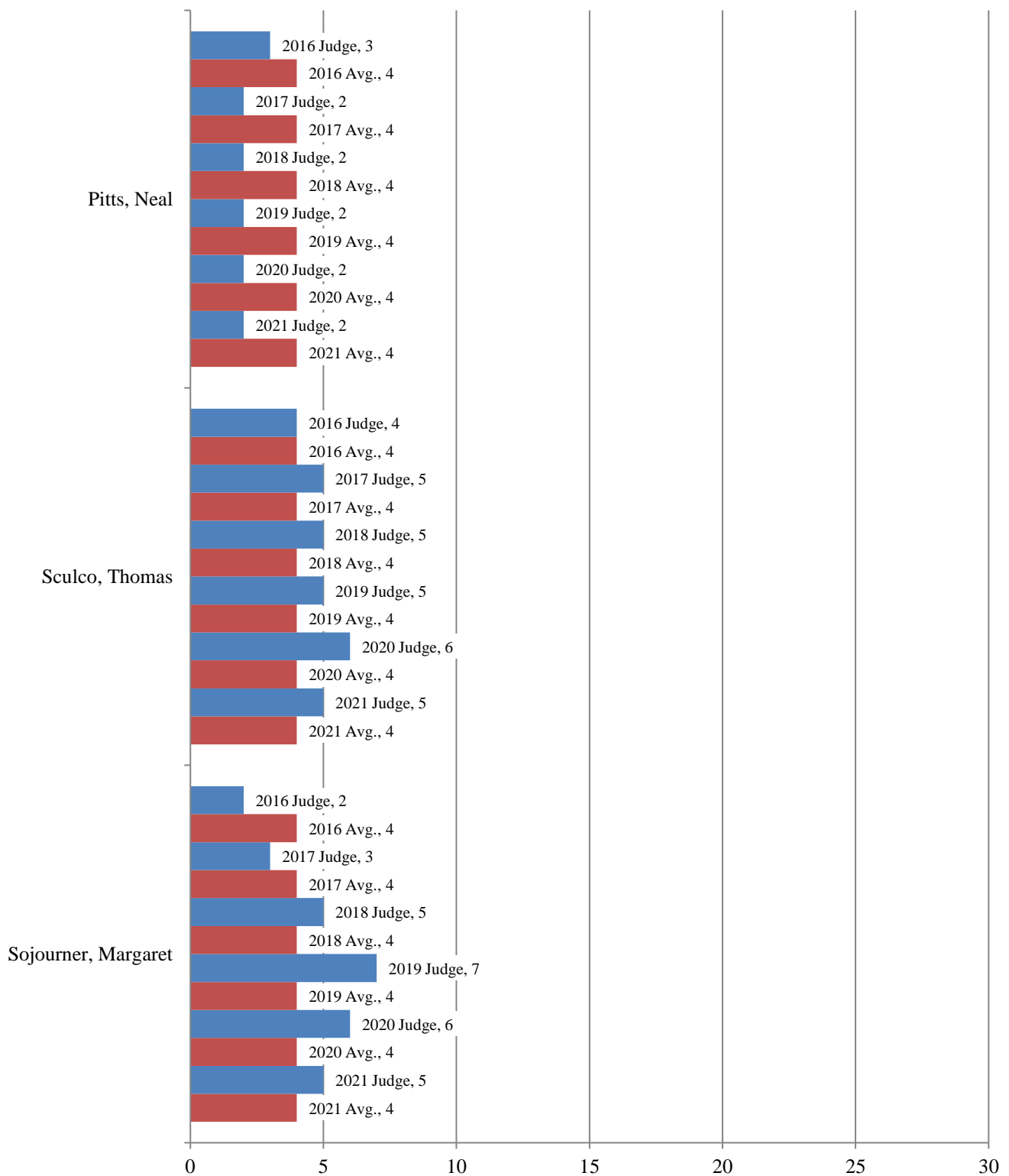
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



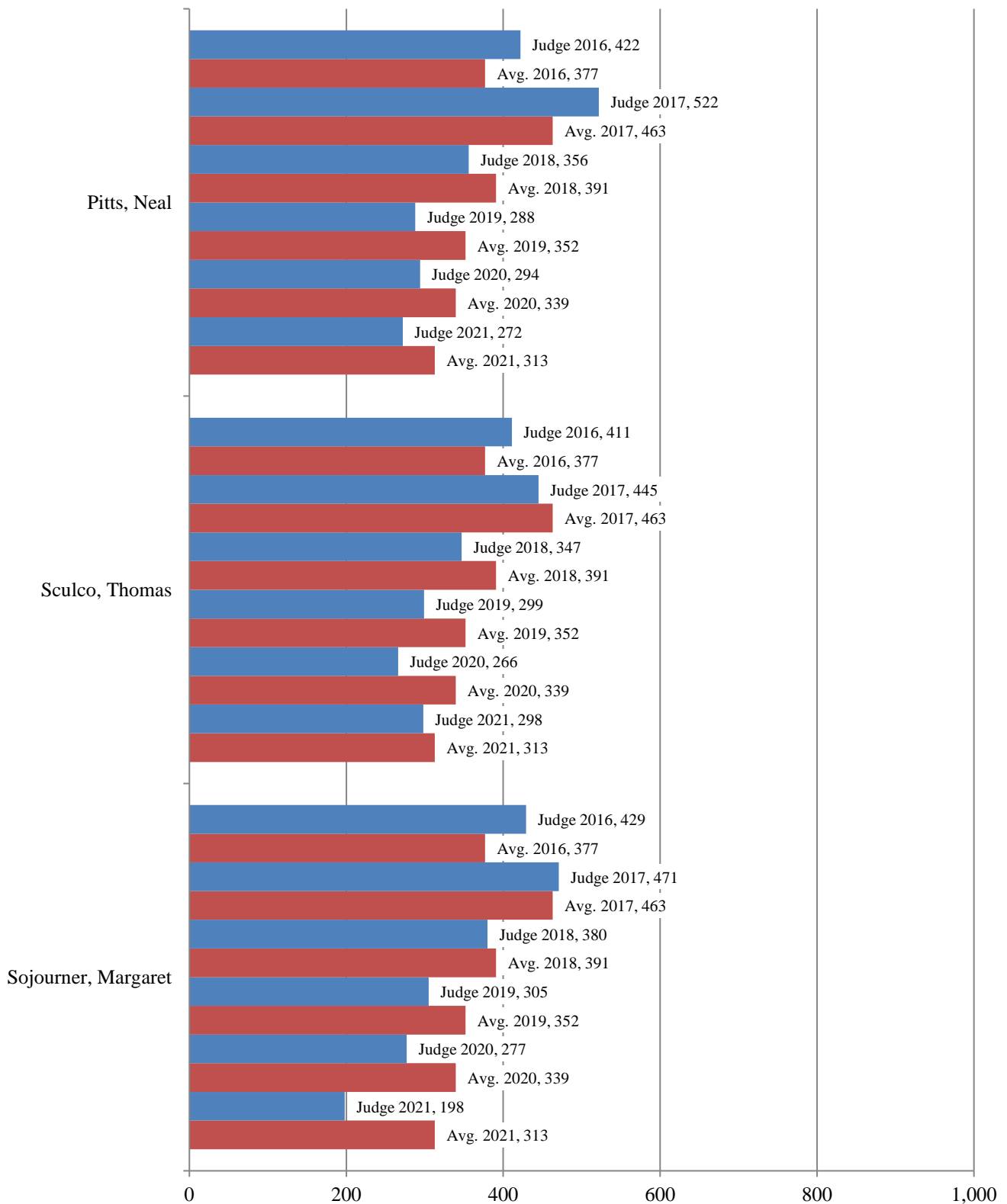
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



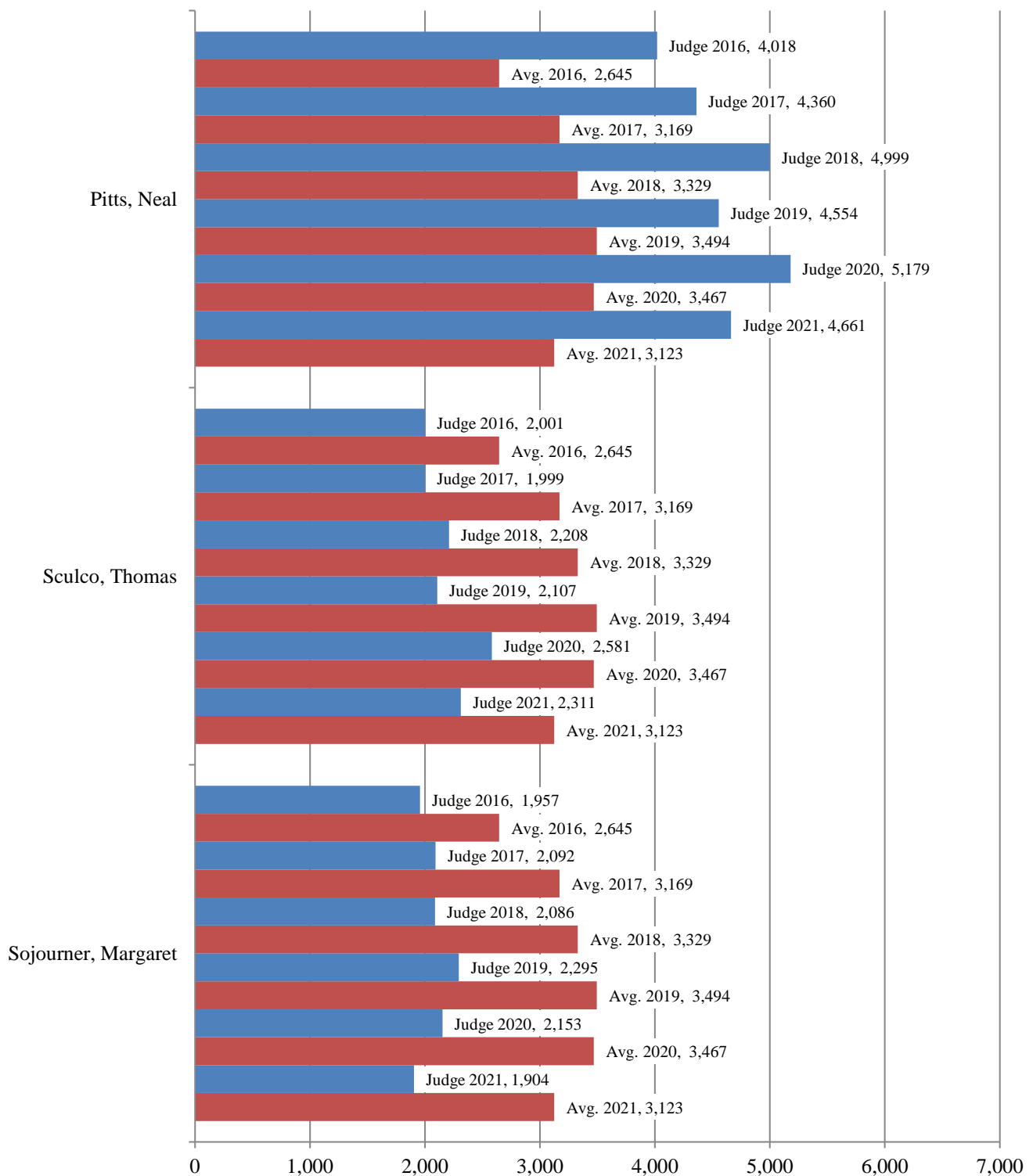
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



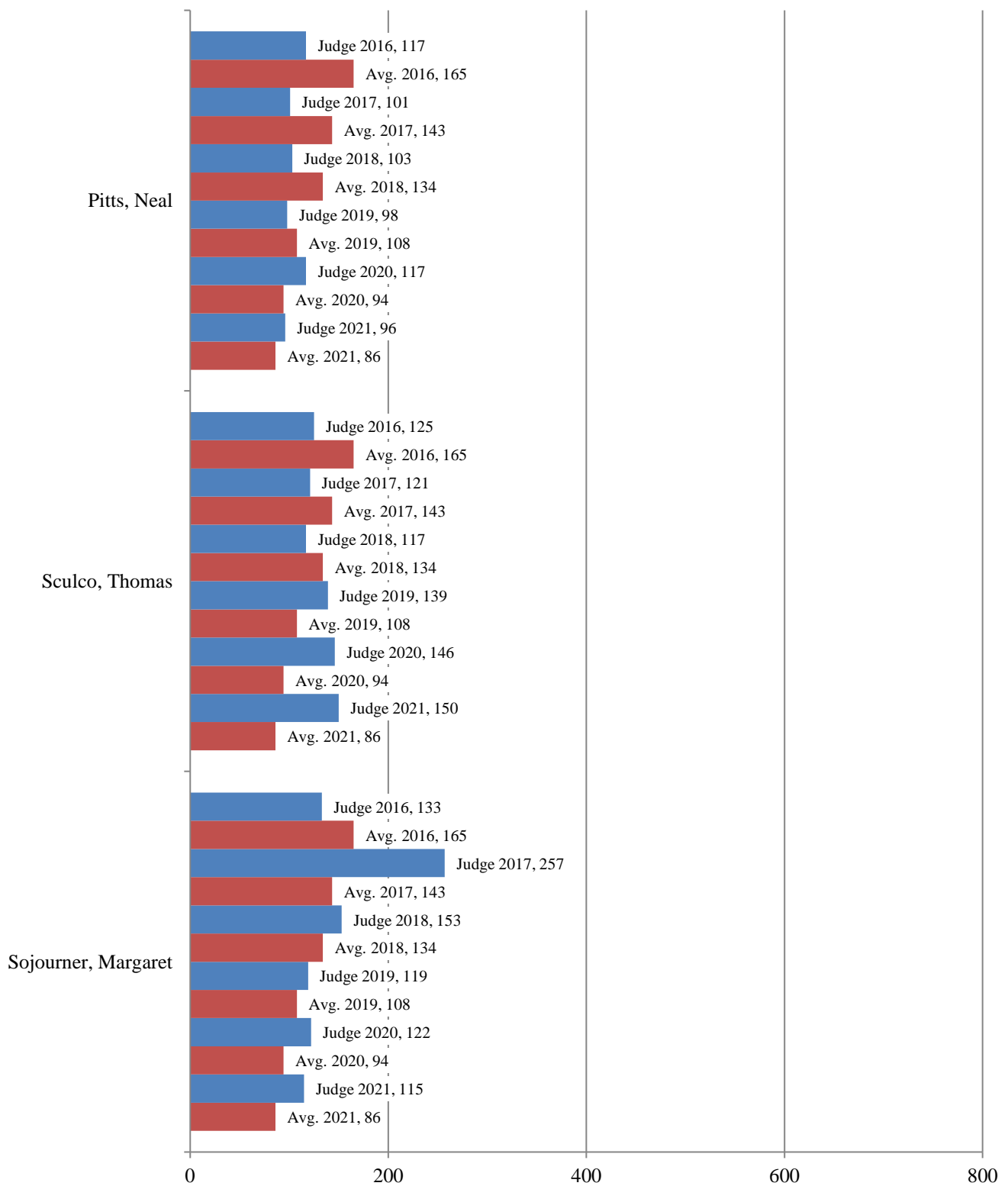
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “10” District PMC (JCC Moneyham³¹⁹):

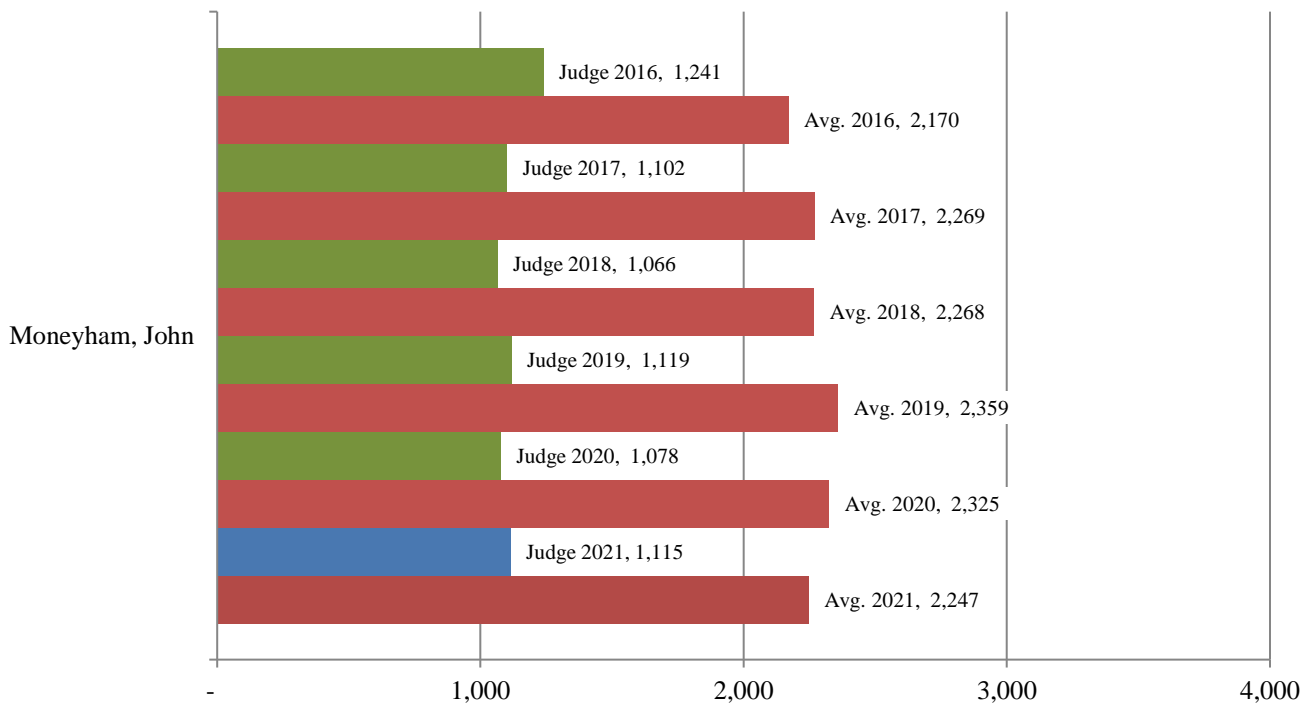
District PMC in Panama City includes Bay, Calhoun, Gulf, Holmes, Jackson, Liberty, Walton, and Washington counties.

District Panama City 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. Historically, this has made travel common for the assigned judge. However, with the pandemic, the OJCC has begun regular use of Internet-based video teleconferencing software. It is anticipated that travel for hearings will be increasingly rare.

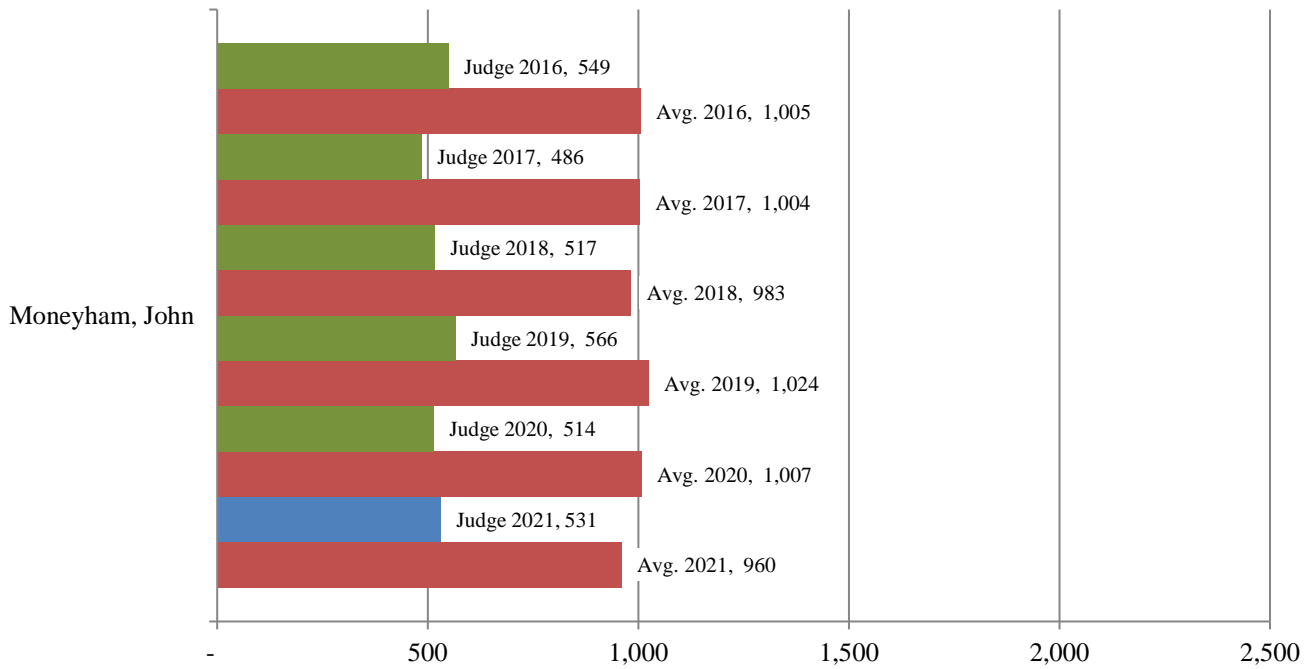
In Panama City, the Petition and “new case” filing rates remain well below, approximately half, the statewide averages. The settlement and stipulation volumes are likewise well below the statewide average. Trial volumes in District Panama City in 2020-21 were less than half the statewide average, despite that District being reassigned out-of-district cases during the year. The times to mediation and to final order are within the statutory parameters in Panama City. The time to trial was notably over the statutory 210 days in 2020-21.

Judge John Moneyham served as a committee member and moderated a panel regarding the filing of a proper motion, stipulation, and settlement agreement for the 2021 Winter OJCC/WCI Webinar. He, along with Judges Walker and Newman, was a panelist for the third Judge of Compensation Claims Town Hall sponsored by The Florida Bar Workers’ Compensation Section. He was a panelist, along with Deputy Chief Judge Langham, Judge Almeyda and Mediator Jessica Carrier, for an Office of the Judges of Compensation Challenges with Mediation seminar. Judge Moneyham’s board certification in workers’ compensation, which he has held since 1995, was renewed for another five years, and he also served as a pre-tester of the workers’ compensation board certification examination for The Florida Bar Board of Legal Specialization & Education. Finally, he participated as a moot court judge for the Florida High School Mock Trial Competition.

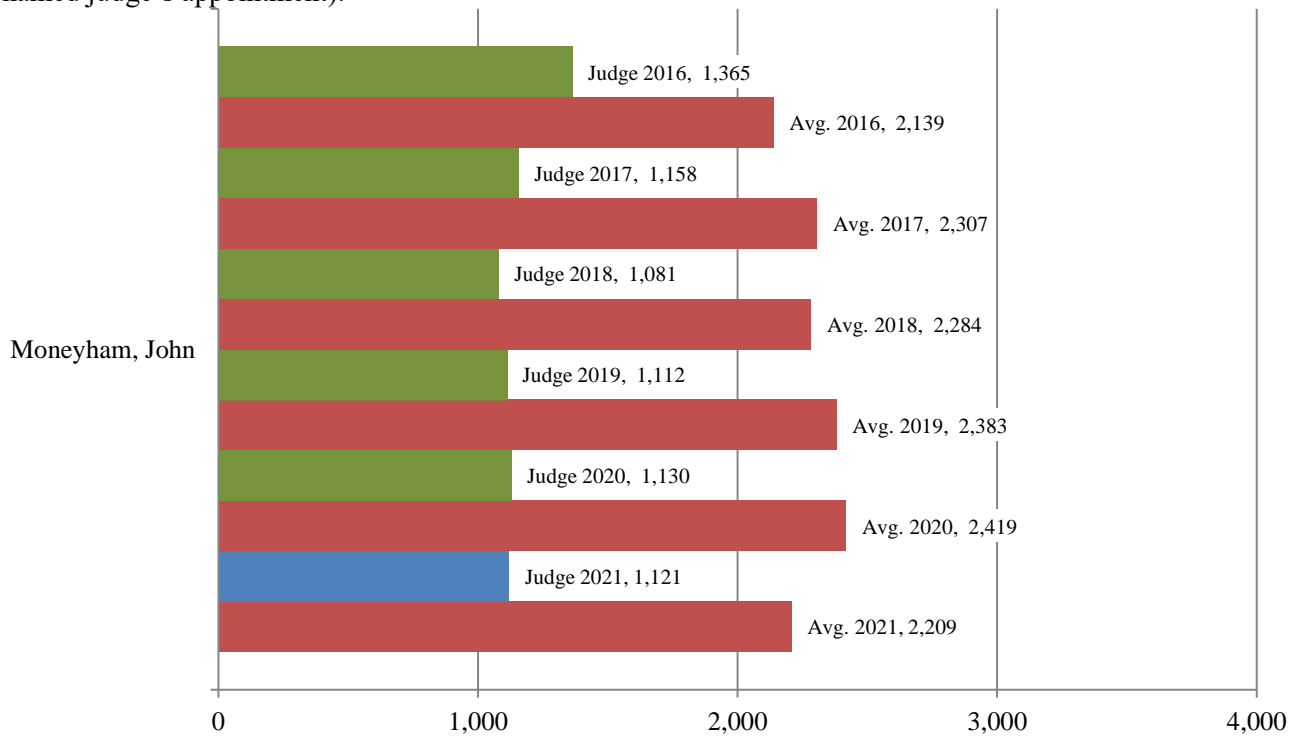
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



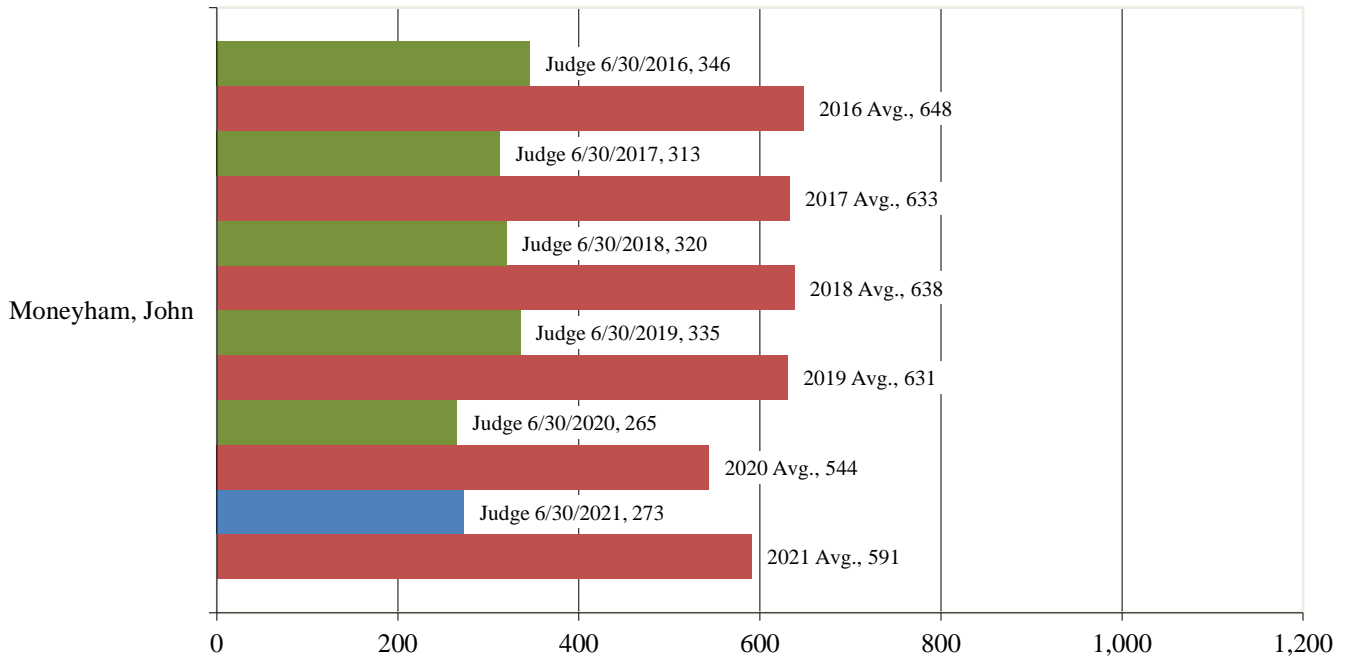
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



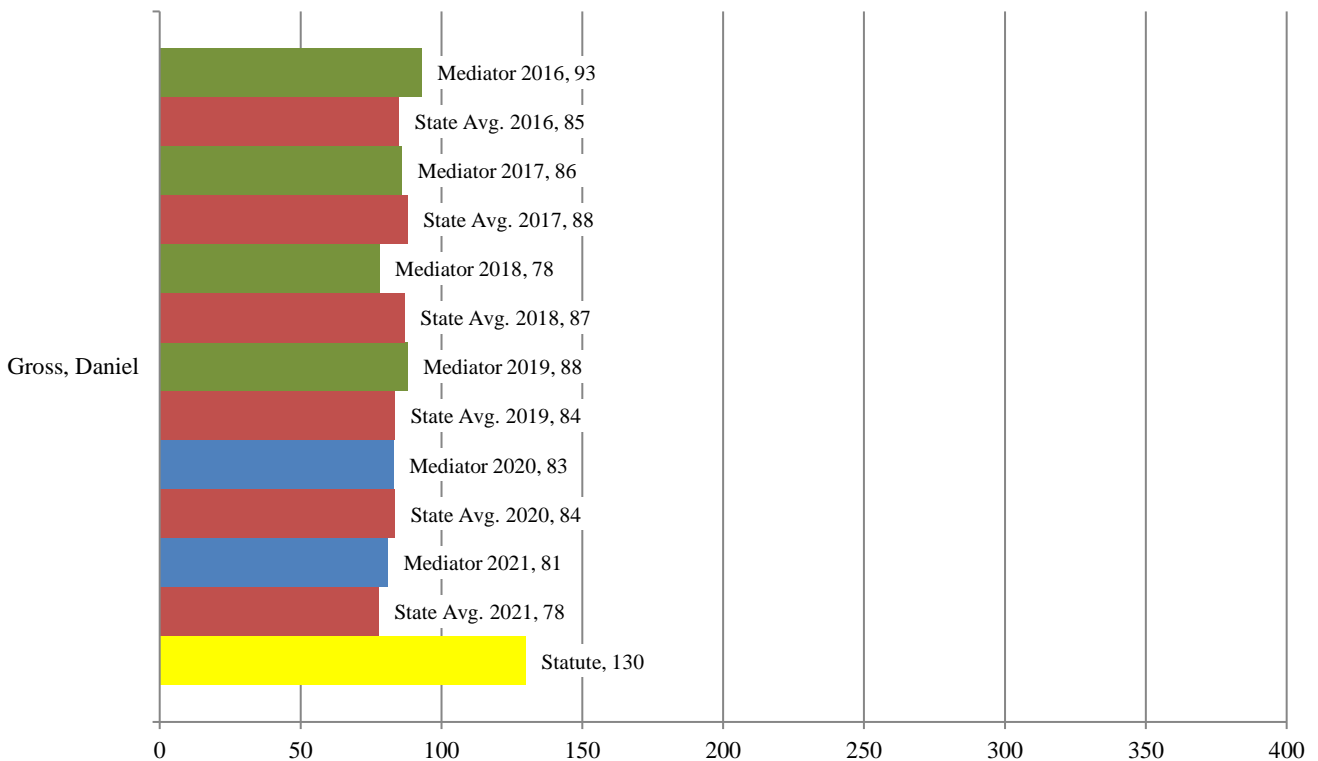
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



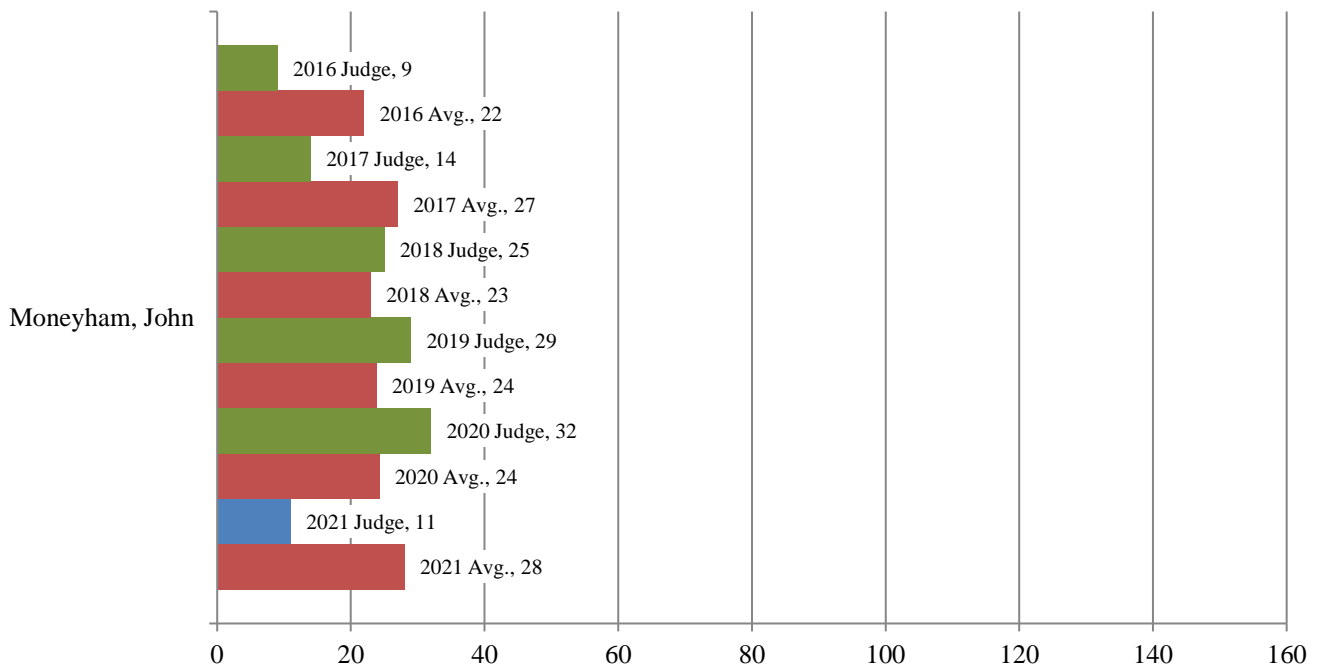
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



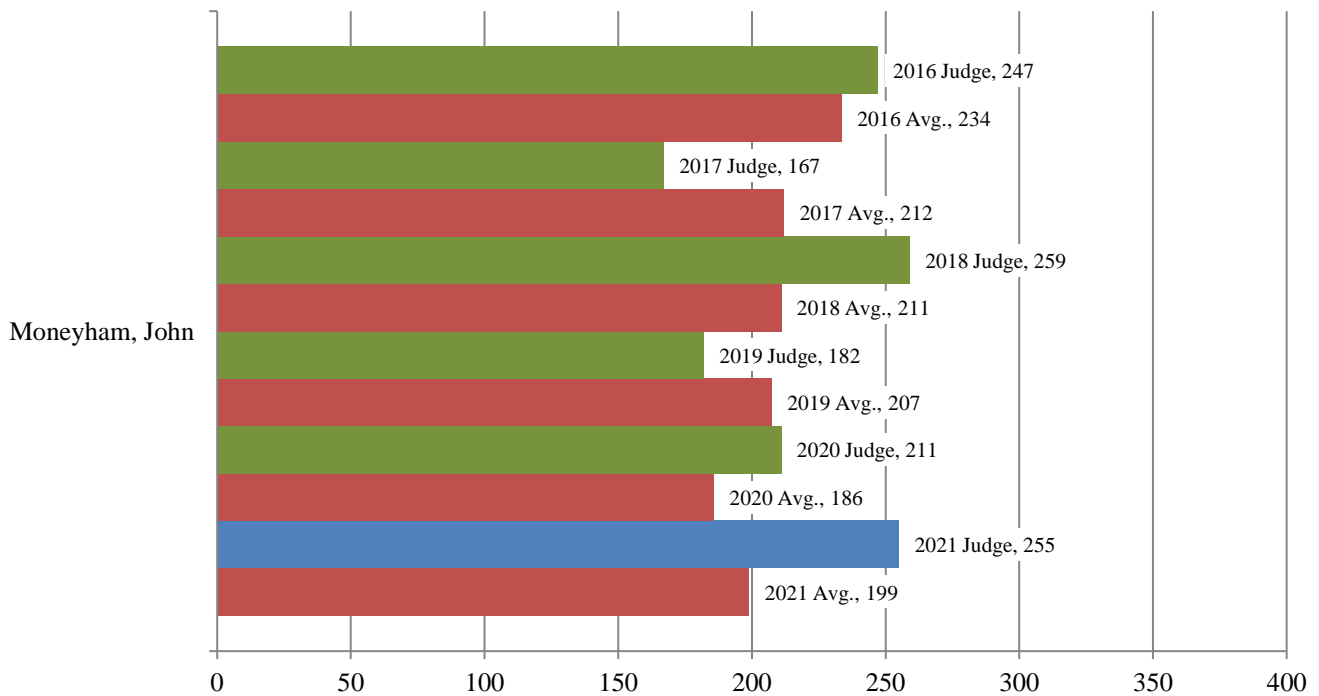
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



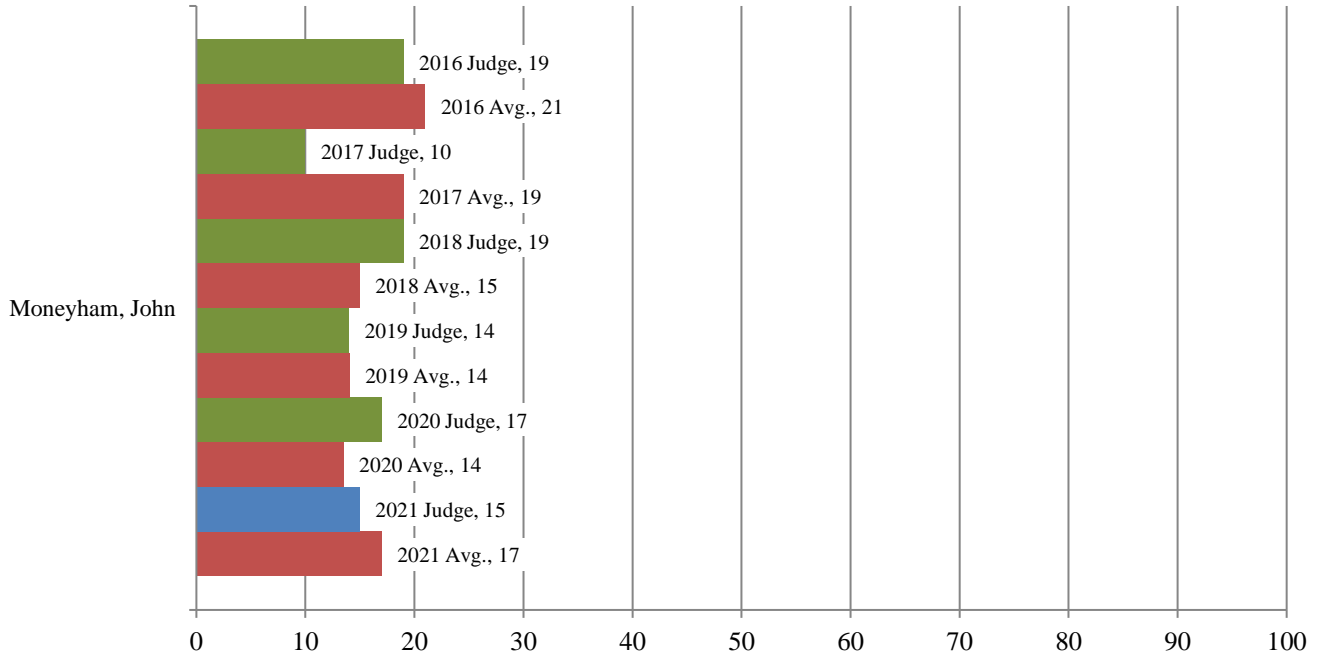
The following graph depicts the total volume of trial orders³²⁰ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



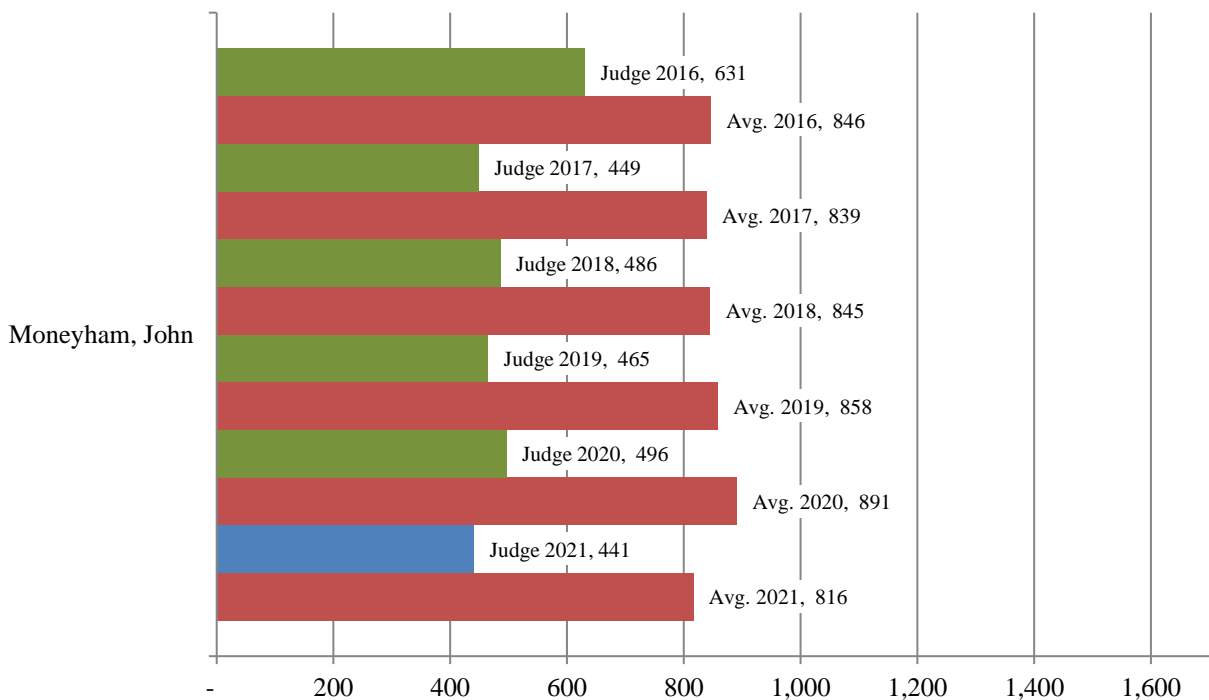
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



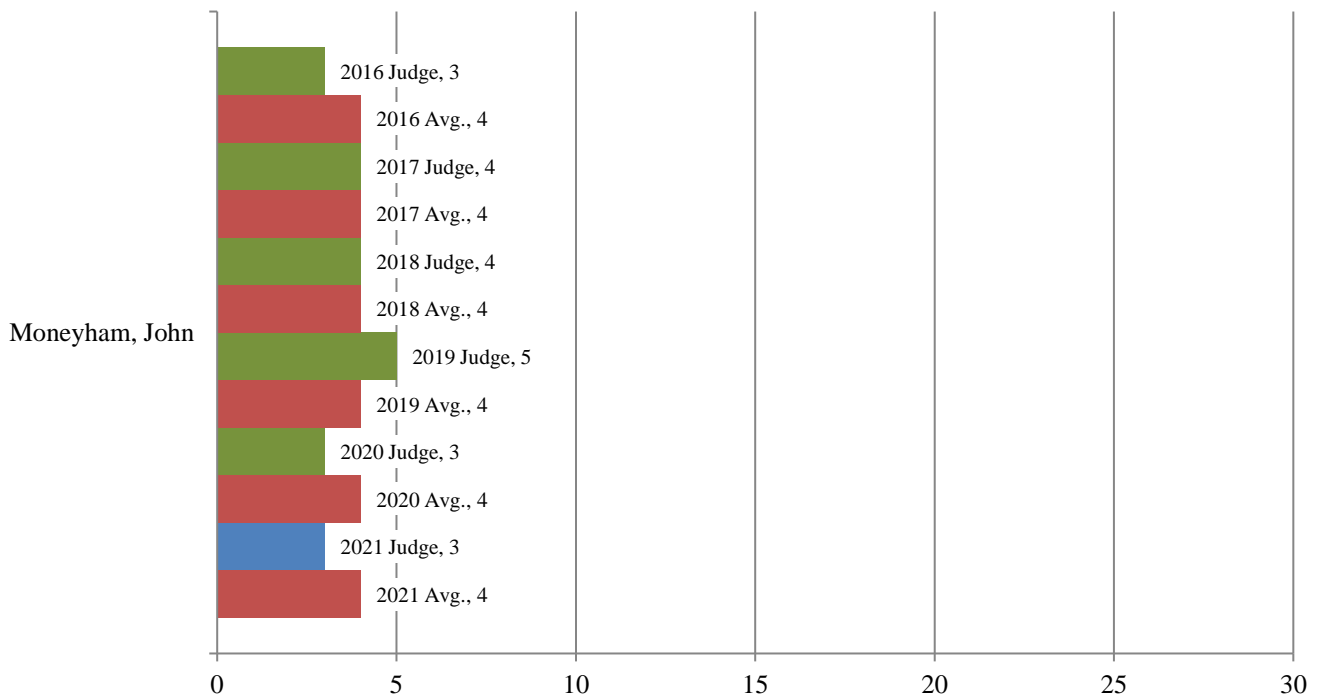
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



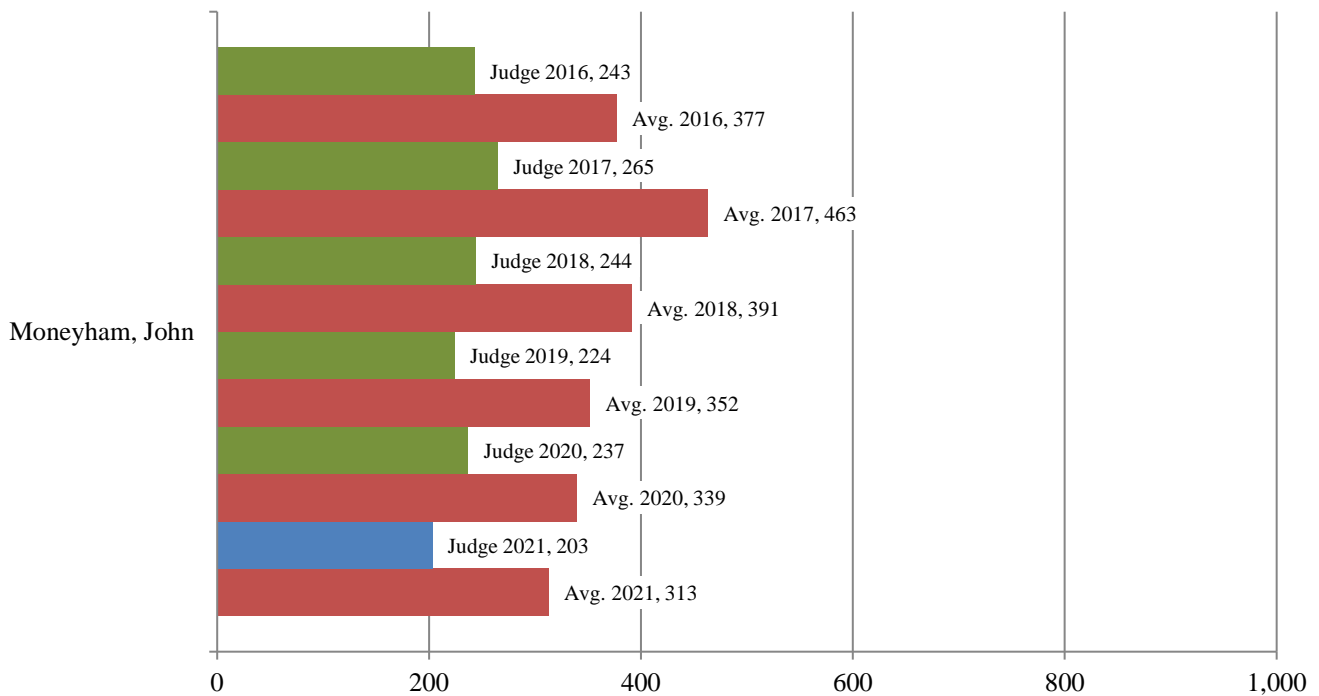
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



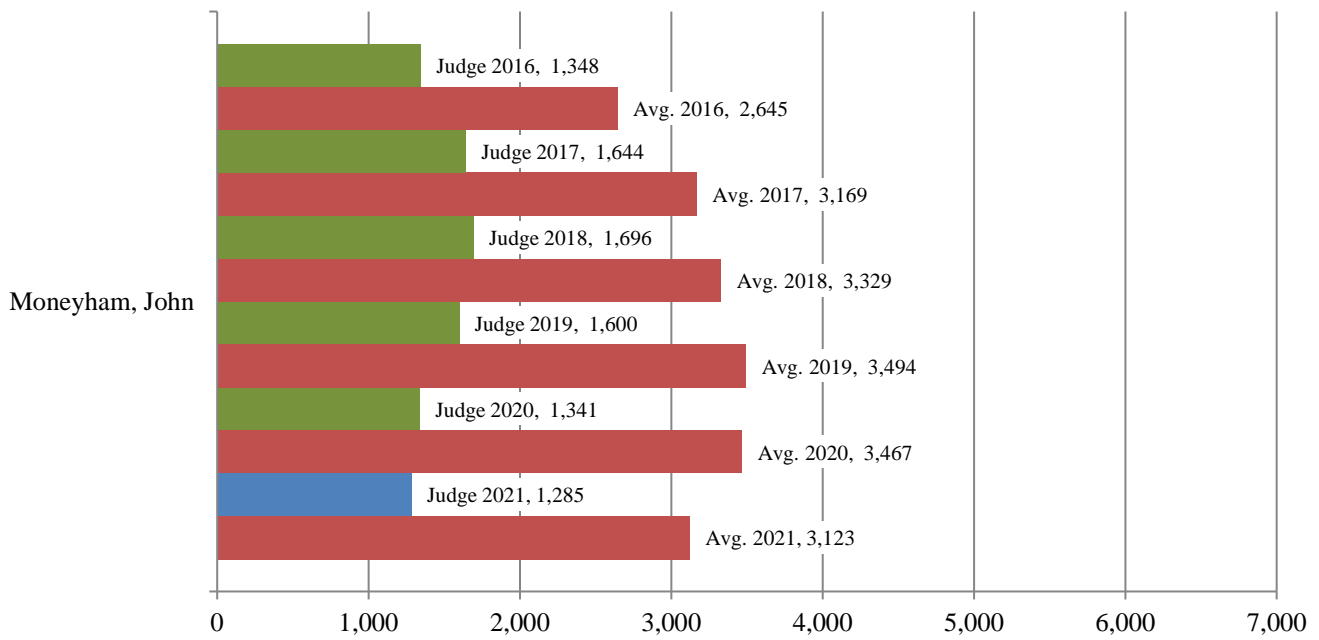
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



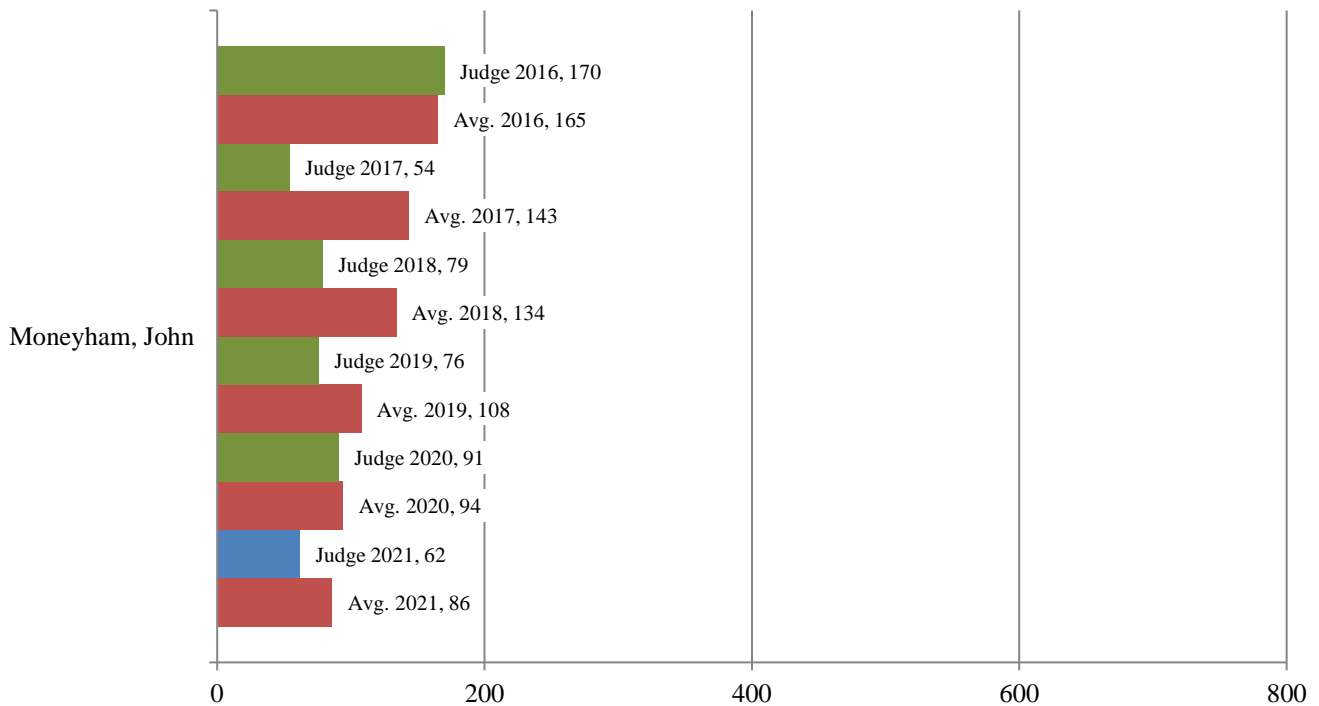
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “11” District PNS (JCC Walker³²¹):

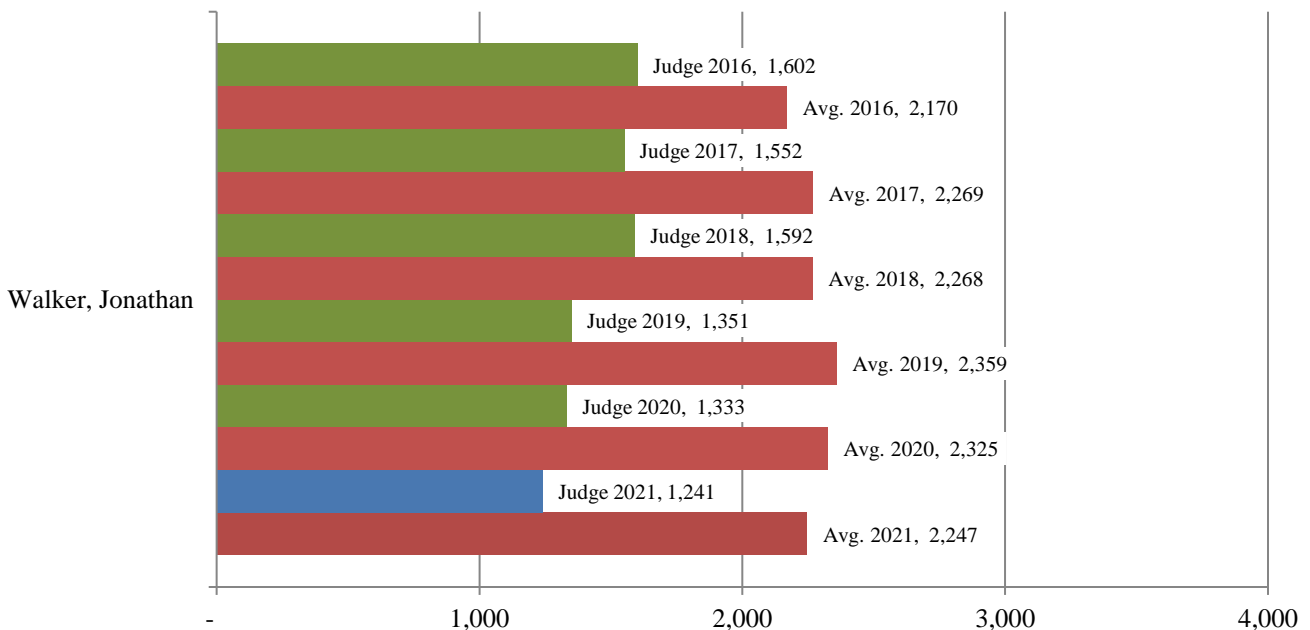
District PNS includes Escambia, Santa Rosa, and Okaloosa counties.

The Petition filing and “new case” volumes in Pensacola are just below the statewide averages. Despite decreases elsewhere, the volumes in PNS were remarkably consistent in 2020-21. The volume of trial orders is notably above the statewide average, with the times to mediation and final order within the statutory parameters. The time to trial was notably in excess of the 210-day requirement in 2020-21. Settlement and stipulation volumes are below the statewide average, as are “other hearings” and “other orders.”

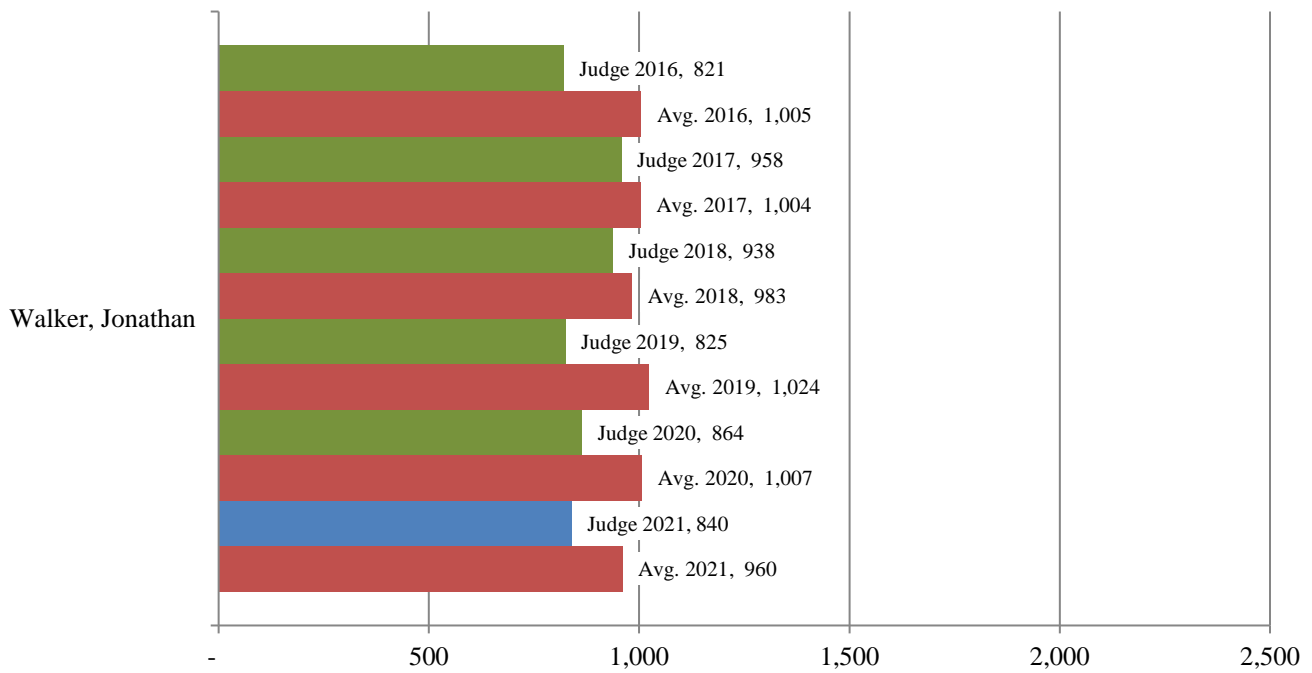
During the fiscal year, Judge Walker served as the chair of the OJCC/Workers’ Compensation Institute’s Winter 2021 seminar, *A Virtual Tour of Florida’s Workers’ Compensation*. He also continued to work as a member of the OJCC Second Friday seminar committee, which coordinates monthly continuing legal education topics for judges and mediators. He served as a team leader in the C. Roger Vinson American Inns of Court (Pensacola chapter) during the fiscal year. And, he functioned as a local trial judge at the Florida High School Mock Trial Competition, held in March.

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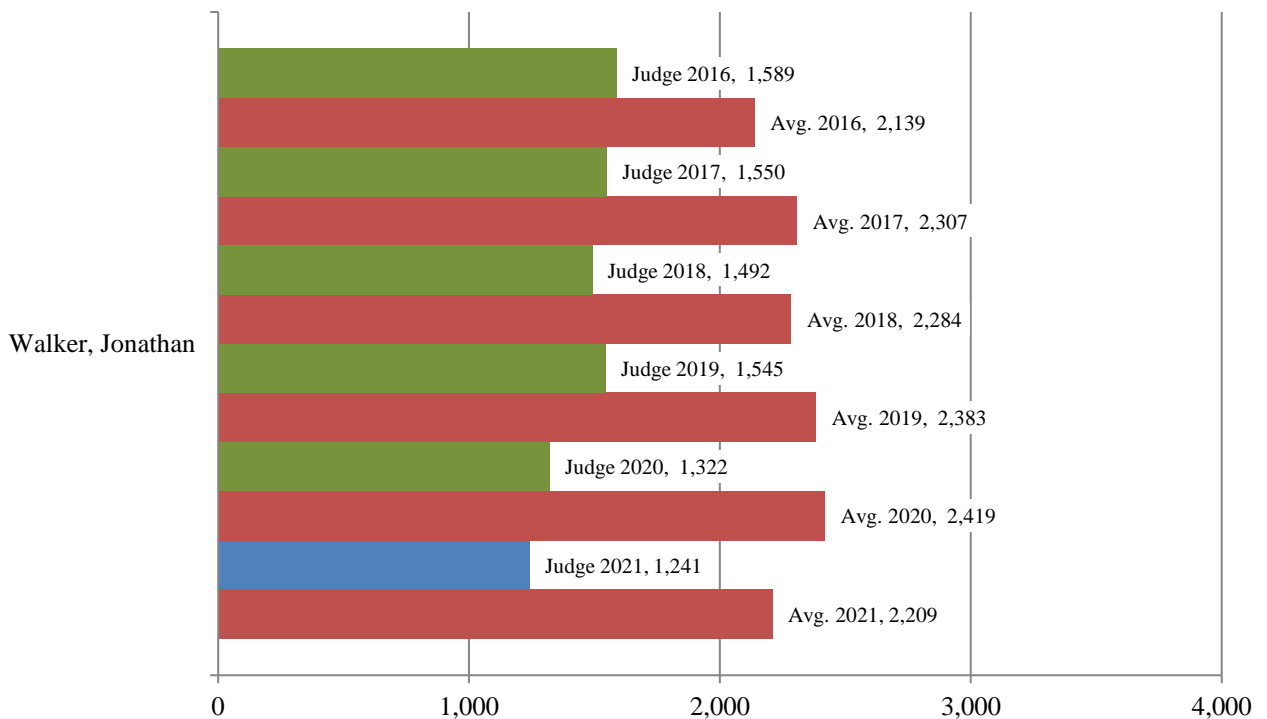
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



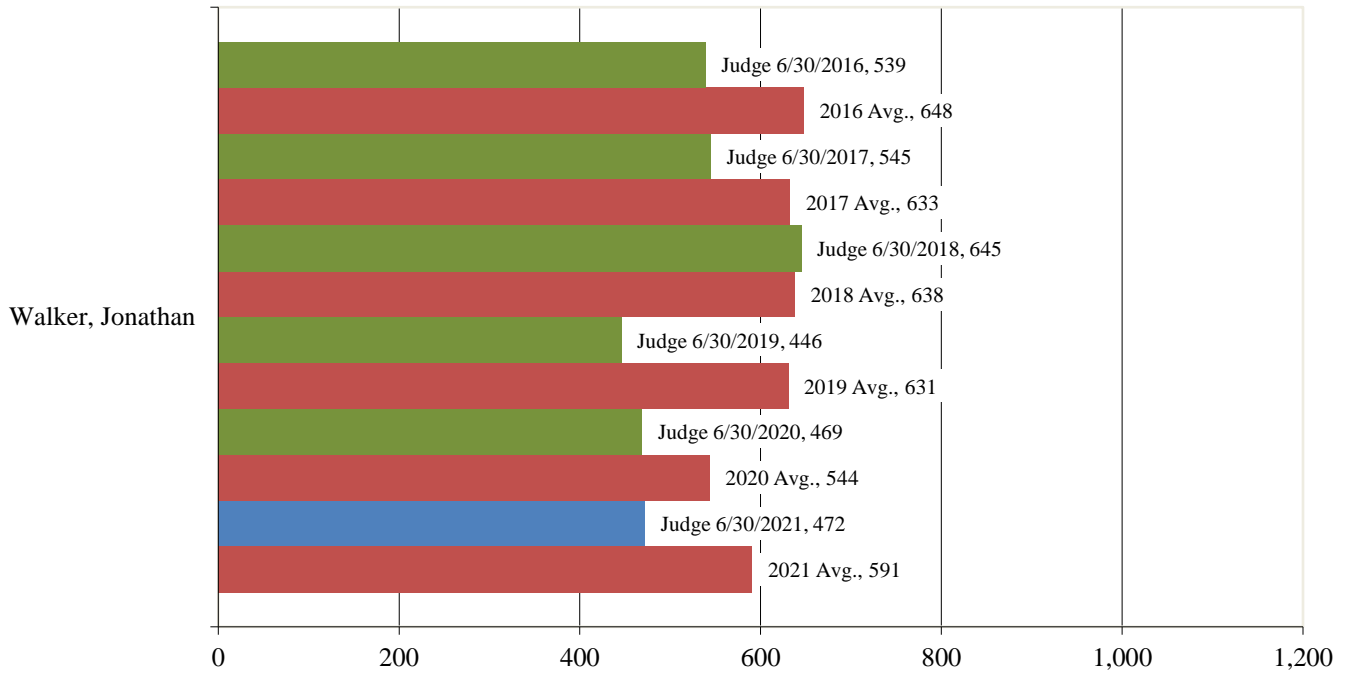
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



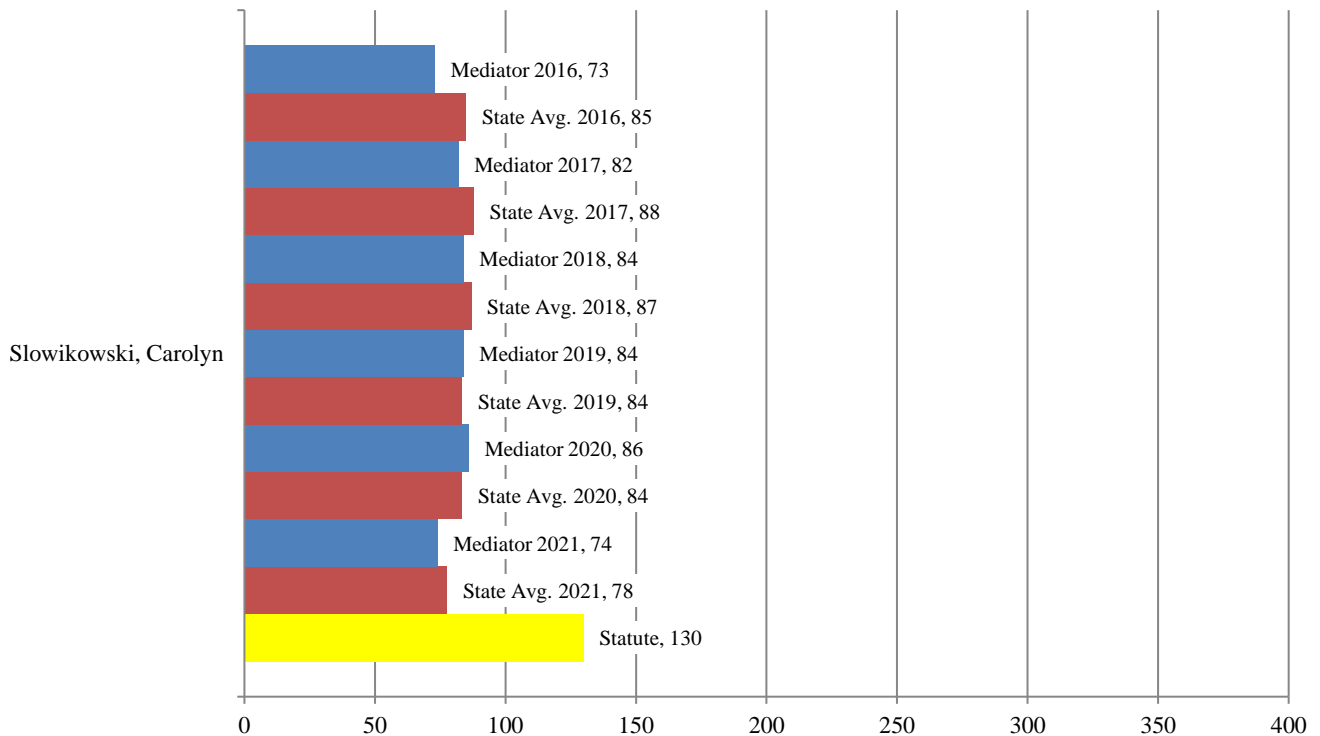
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



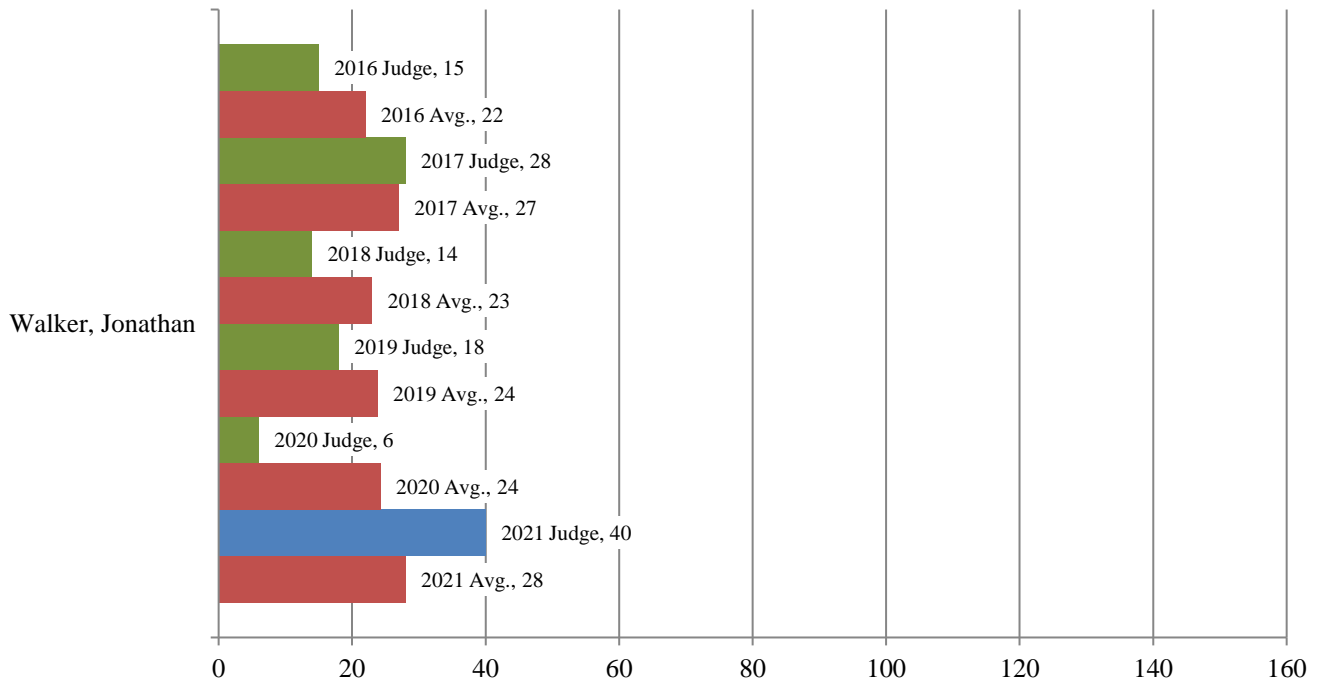
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



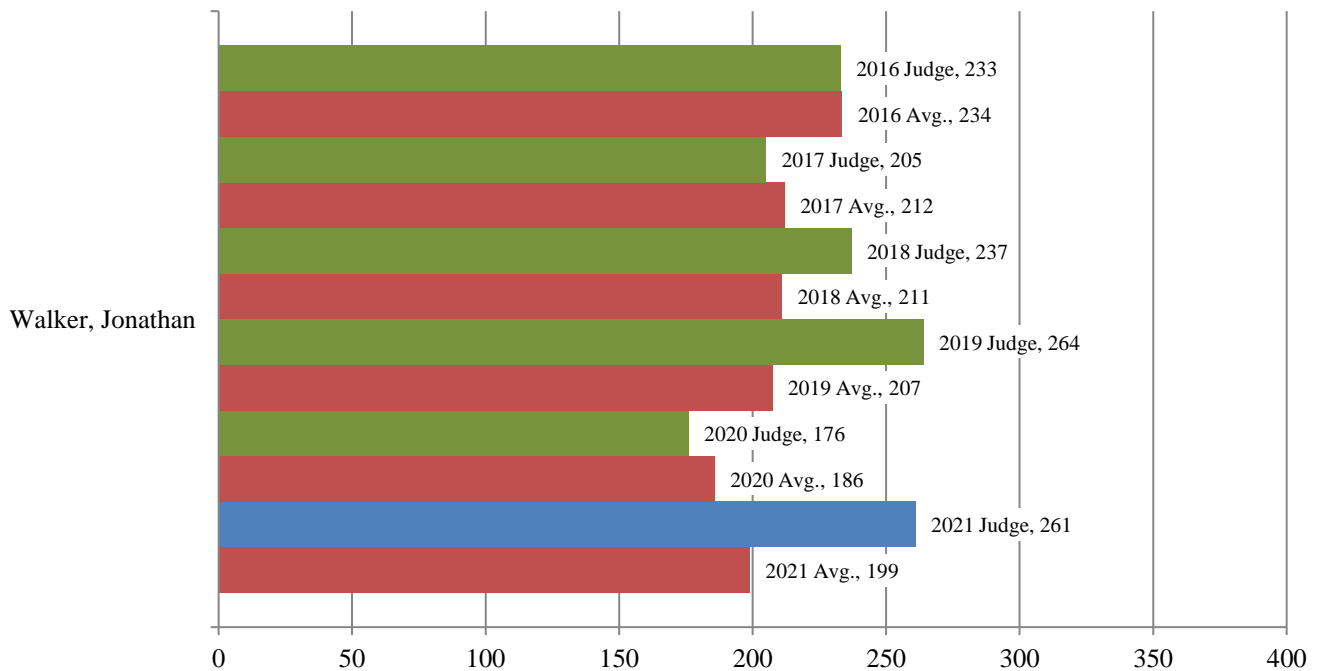
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



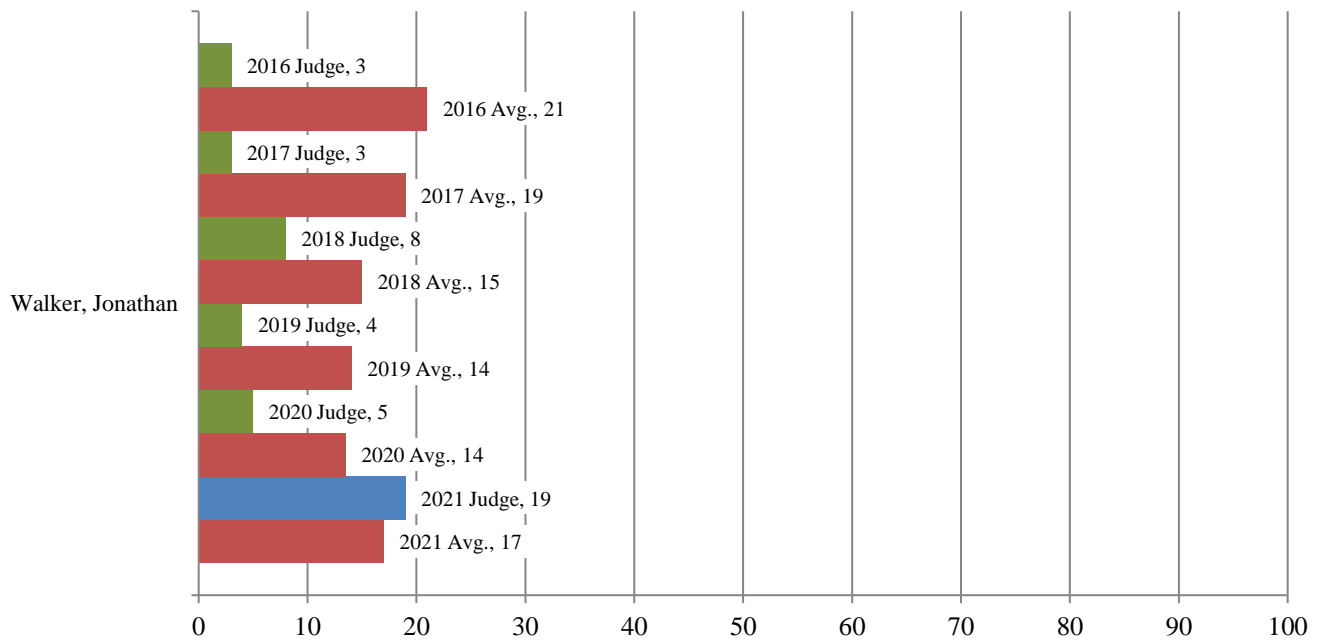
The following graph depicts the total volume of trial orders³²² uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



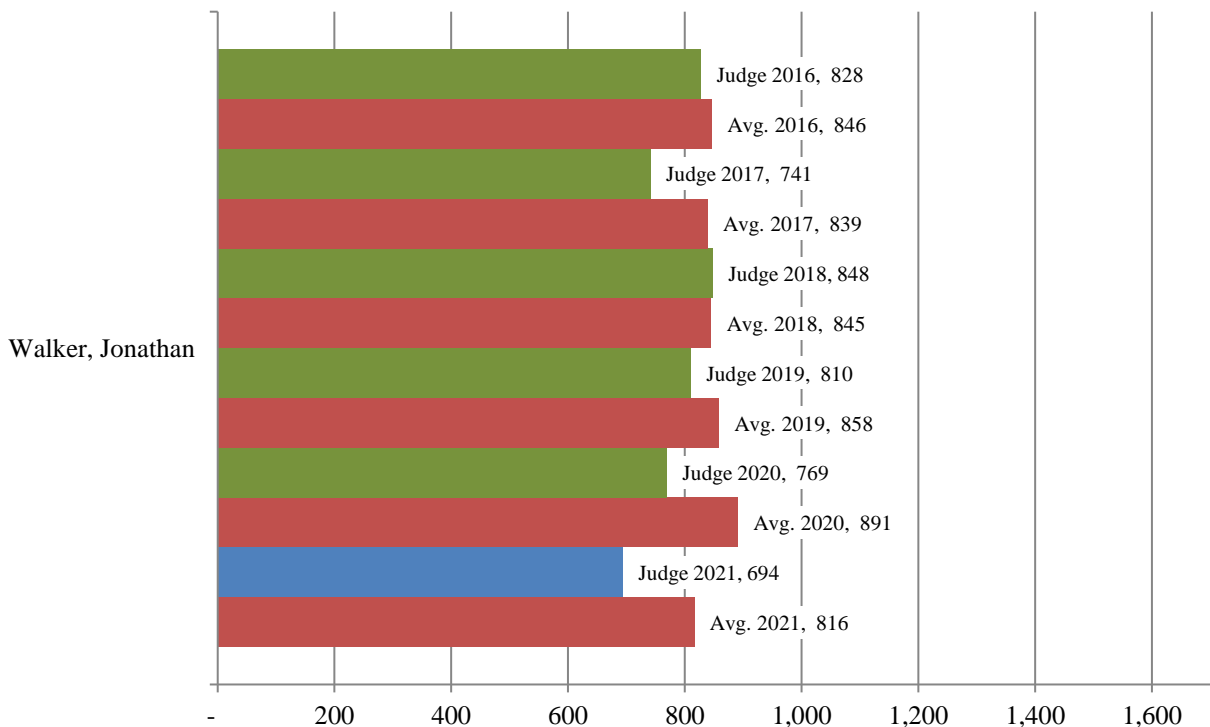
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



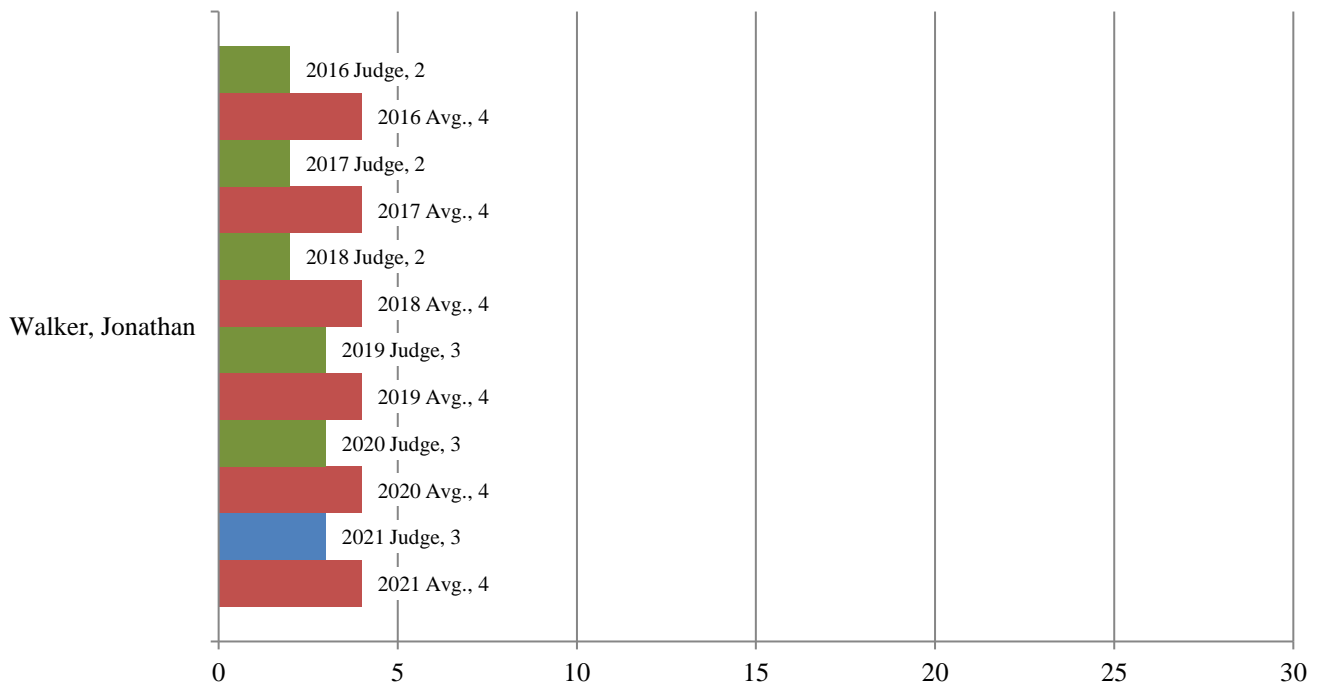
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



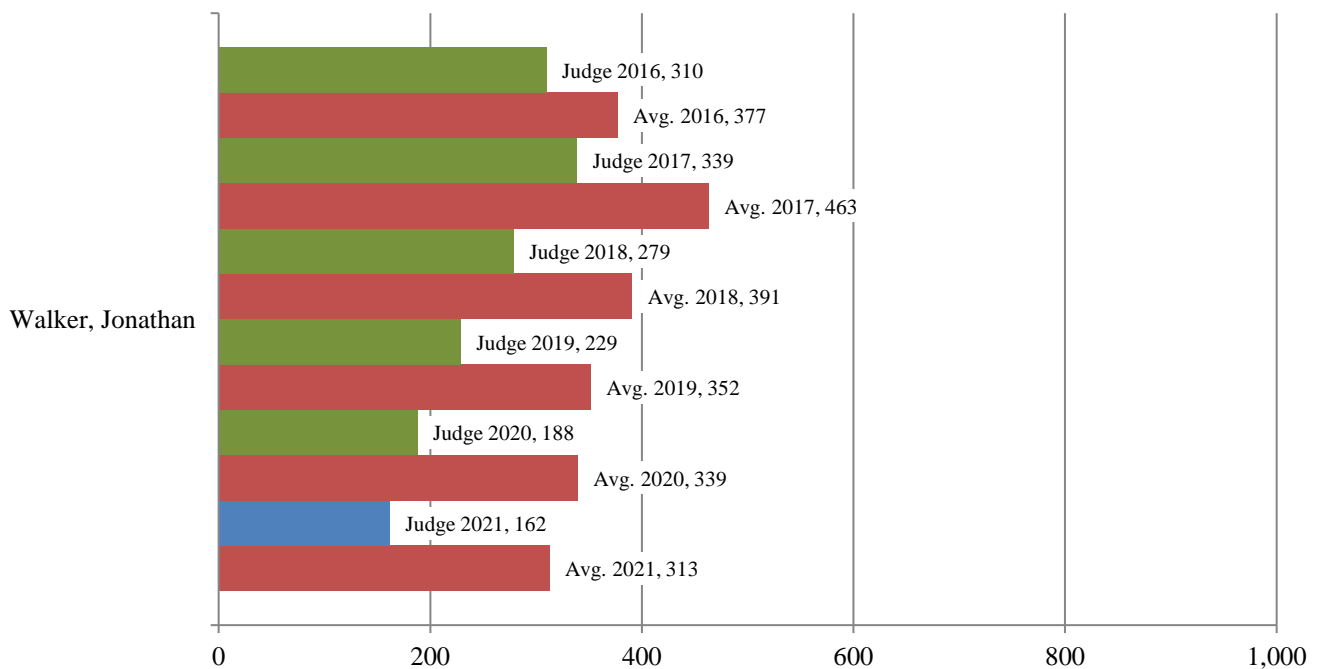
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



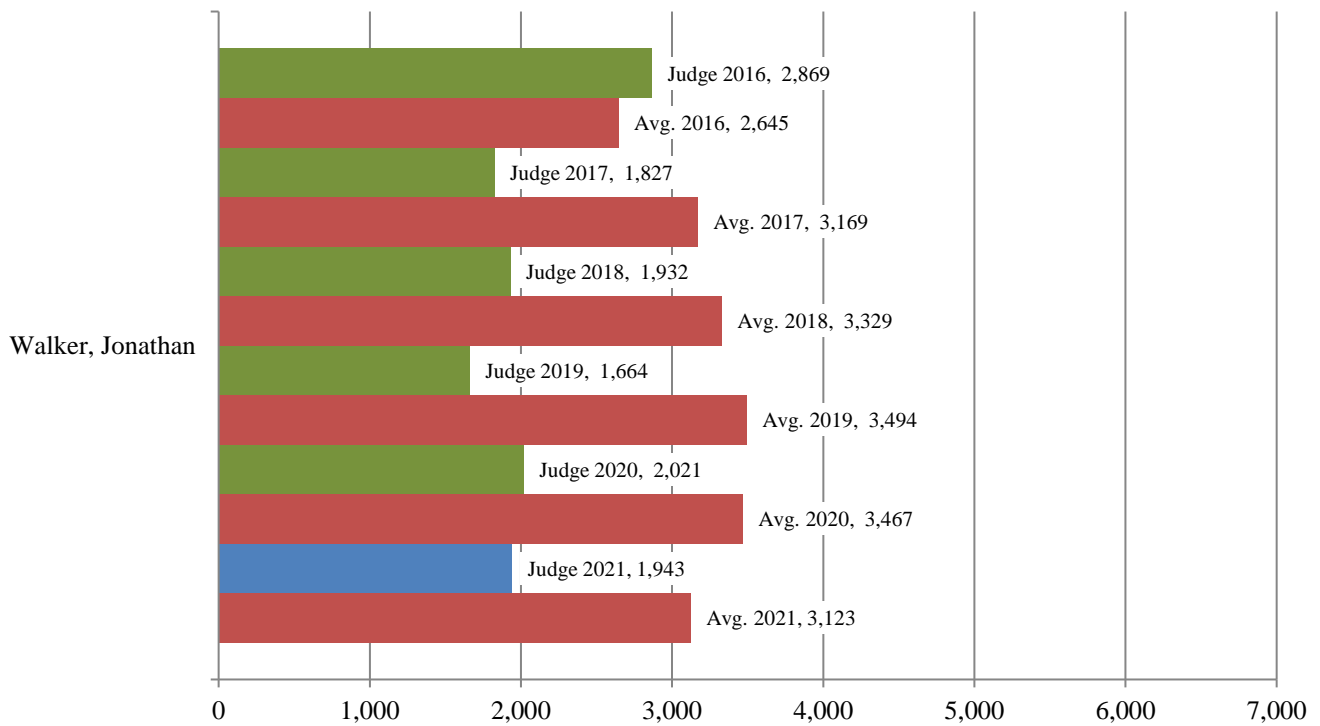
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



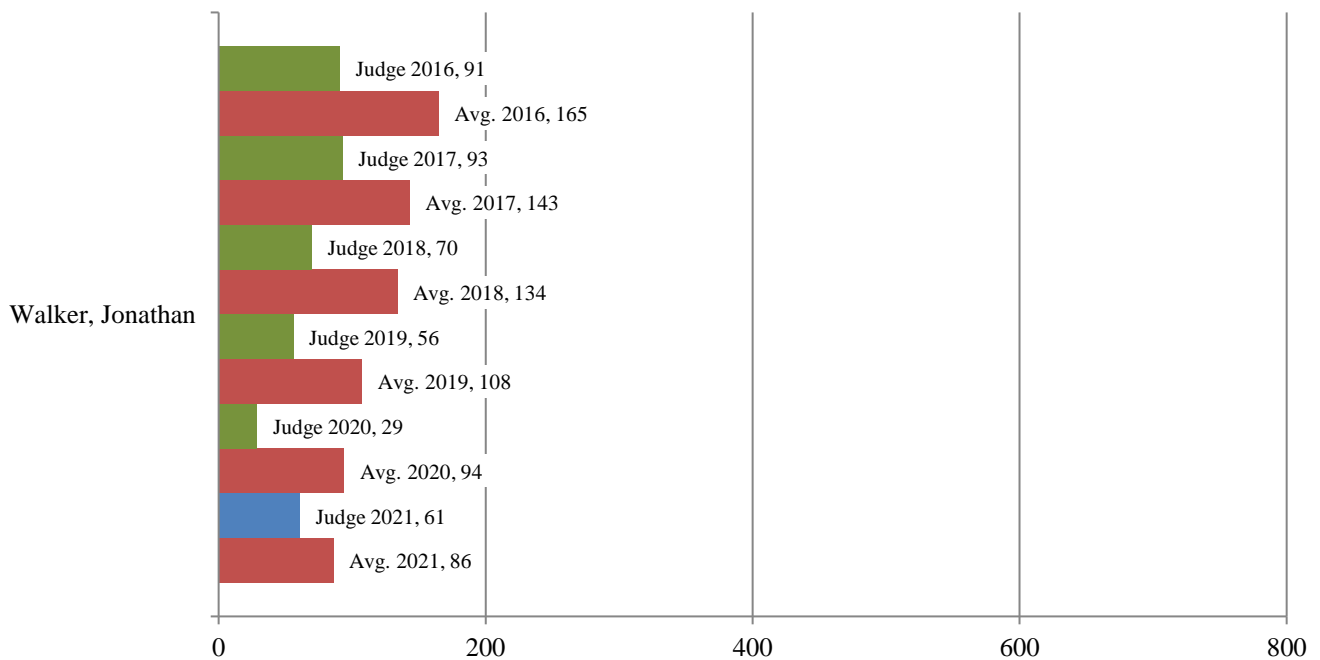
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



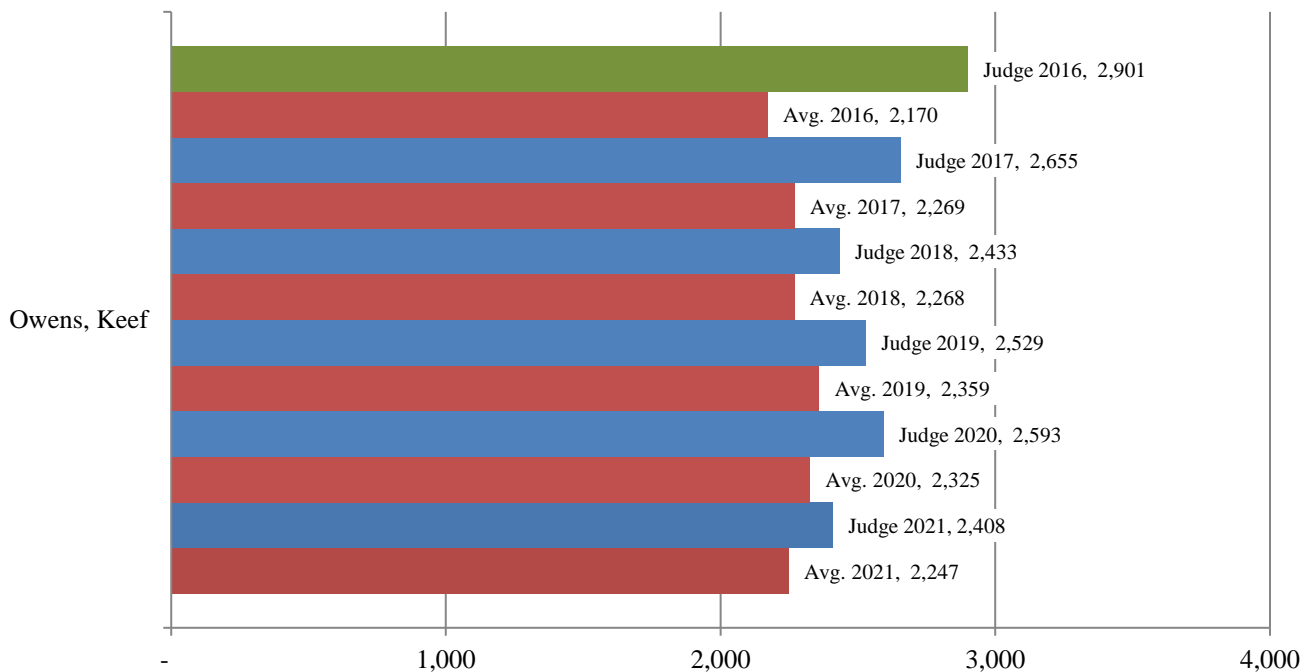
Appendix “12” District PSL (JCC Owens³²³):

District PSL³²⁴ includes Martin, Monroe, and St. Lucie counties.

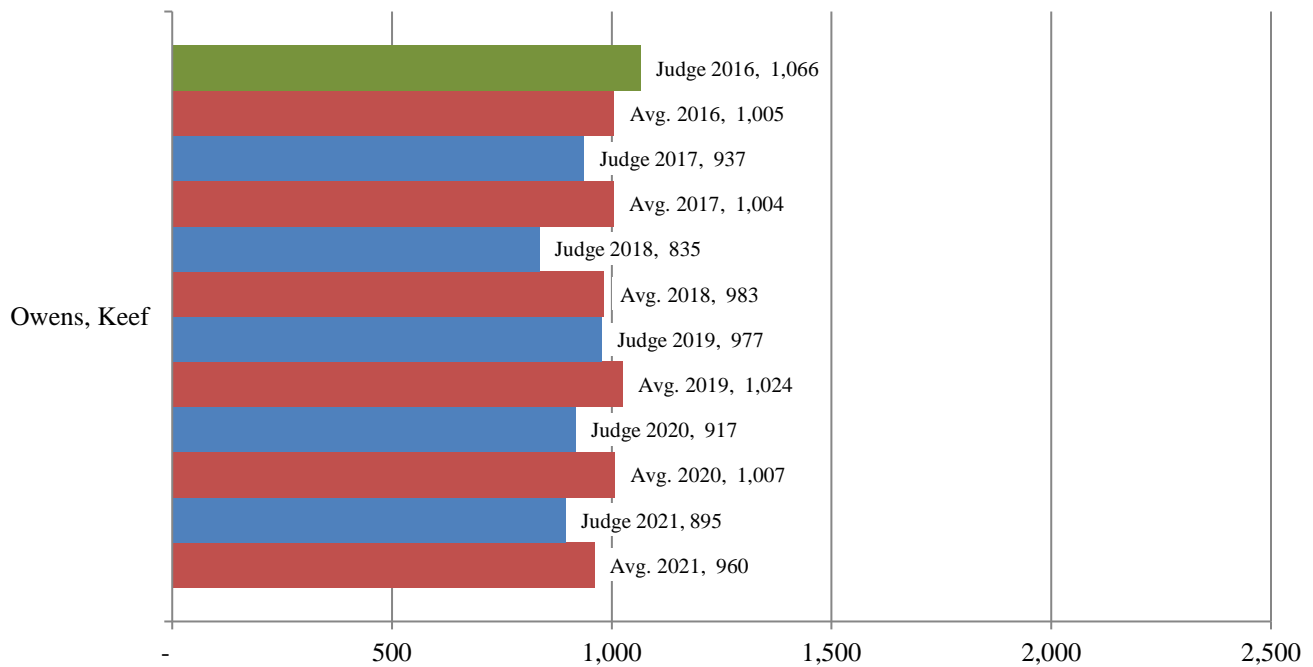
District Port St. Lucie similarly evidences a Petition filing volume exceeding the statewide average, but a “new case” filing volume slightly below the average. This is reasonably consistent with metrics seen in other south Florida Districts. The volume of trials in PSL was below average in 2019-20 and 2020-21. The times to mediation, to trial, and to final order are all below statewide average and within the statutory parameters again in 2020-21. Settlements, stipulations, and “other hearings” are all consistent with statewide averages. The volume of “other orders,” however remains notably above average.

Judge Owens moderated and presented a seminar on evidence and objections at the February 19, 2021, Winter WCI Webinar. On March 16, 2021, Judge Owens participated in a three-judge *Judge of Compensation Claims Town Hall* presented by the Workers’ Compensation Section. Judge Owens, a member of the Robert D. McAilley Inns of Court, co-presented a seminar on May 26, 2021, titled *Florida Workers’ Compensation Essential Facts and Esoteric Trivia*. Finally Judge Owens has continued to serve as an administrative member of his local section of the Friends of 440.

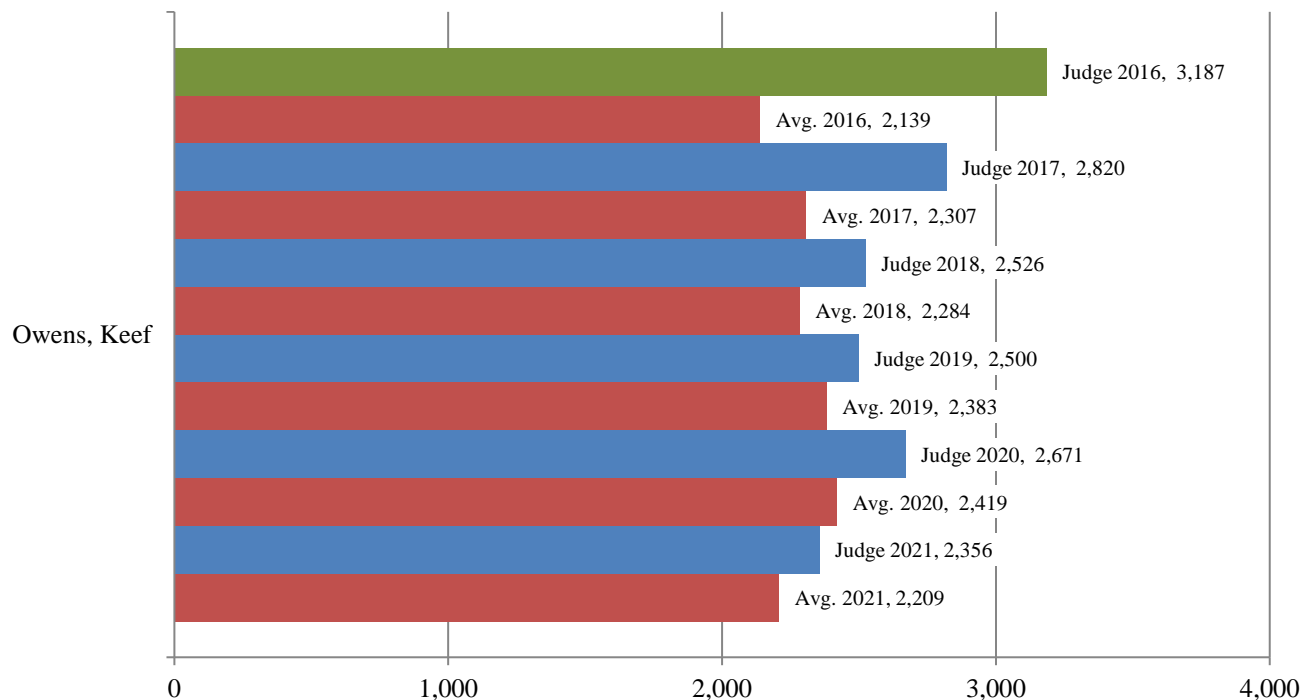
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



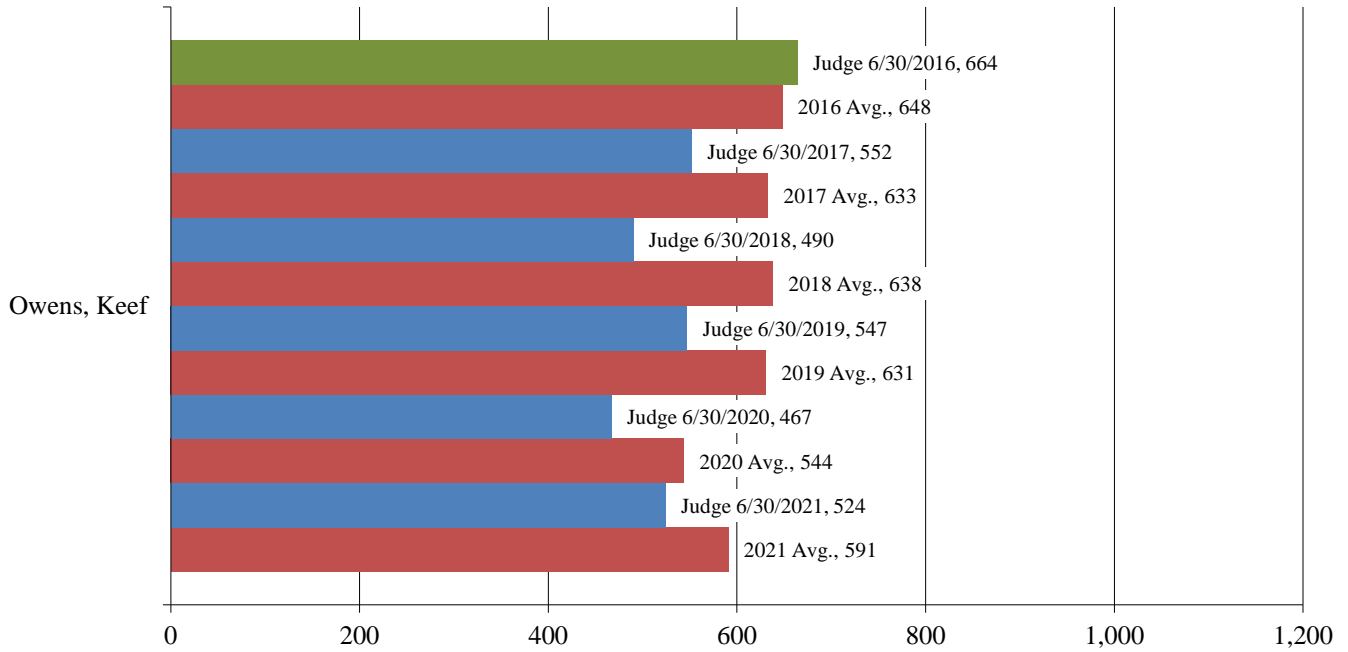
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



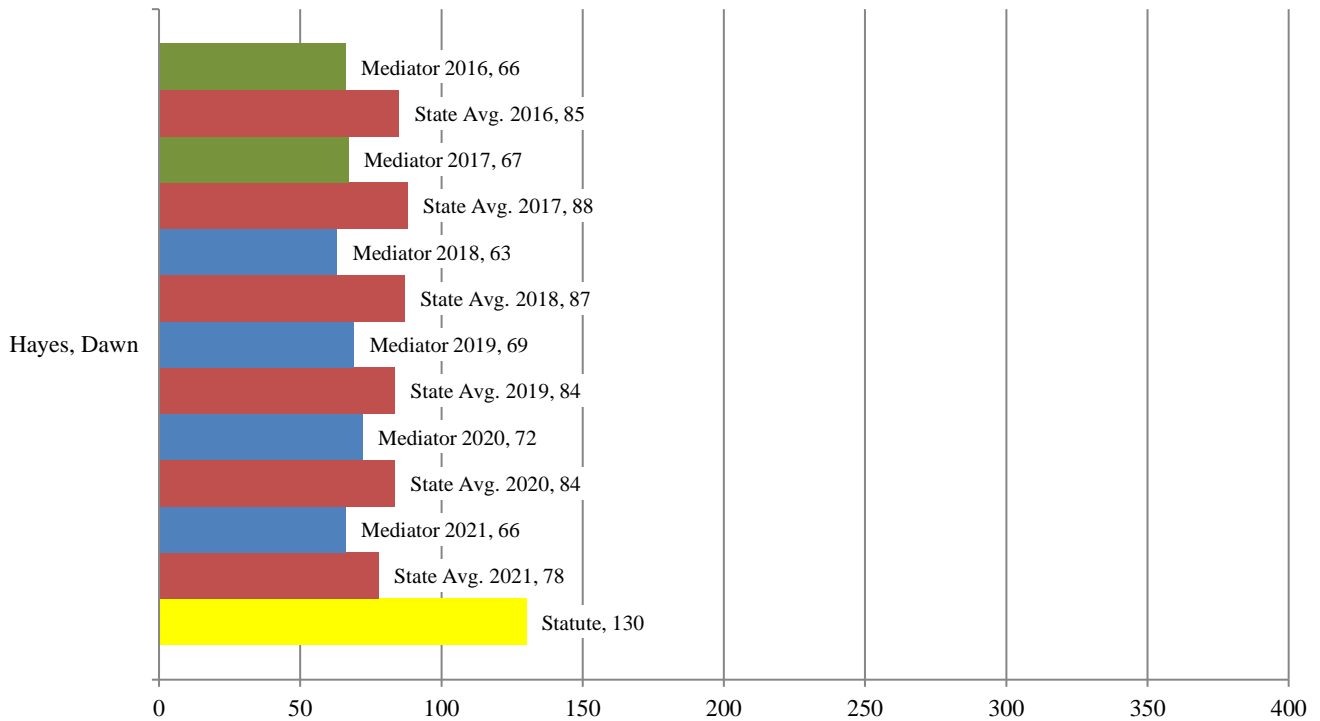
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



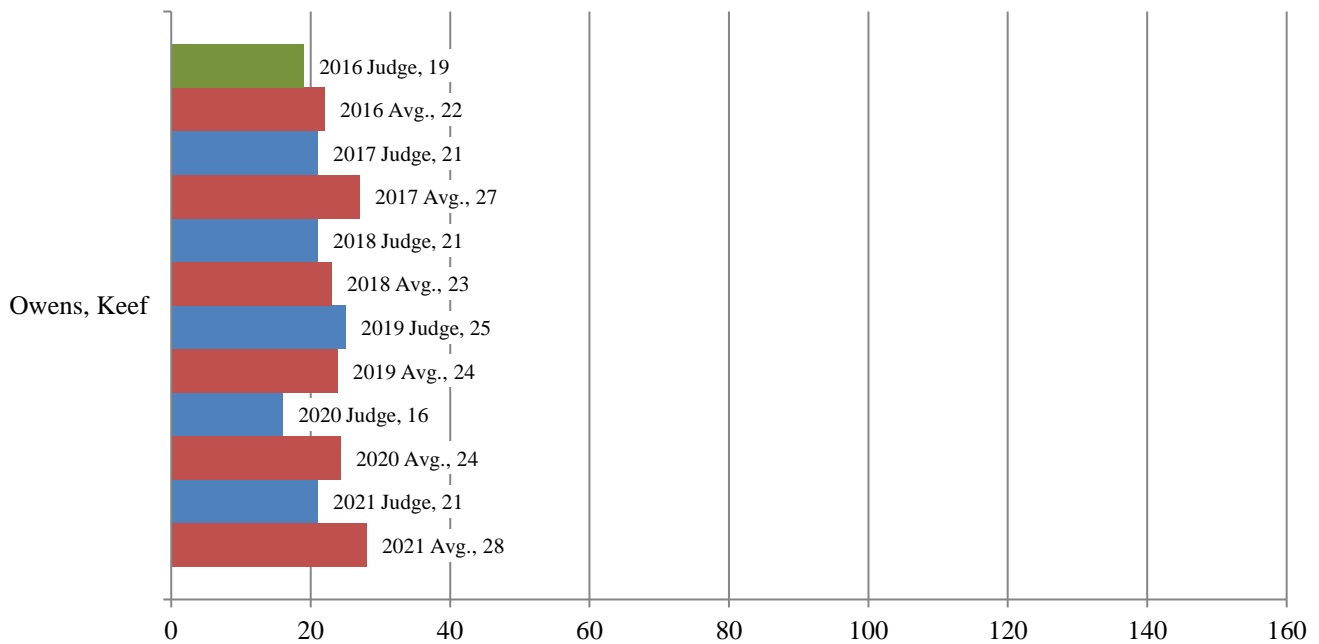
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



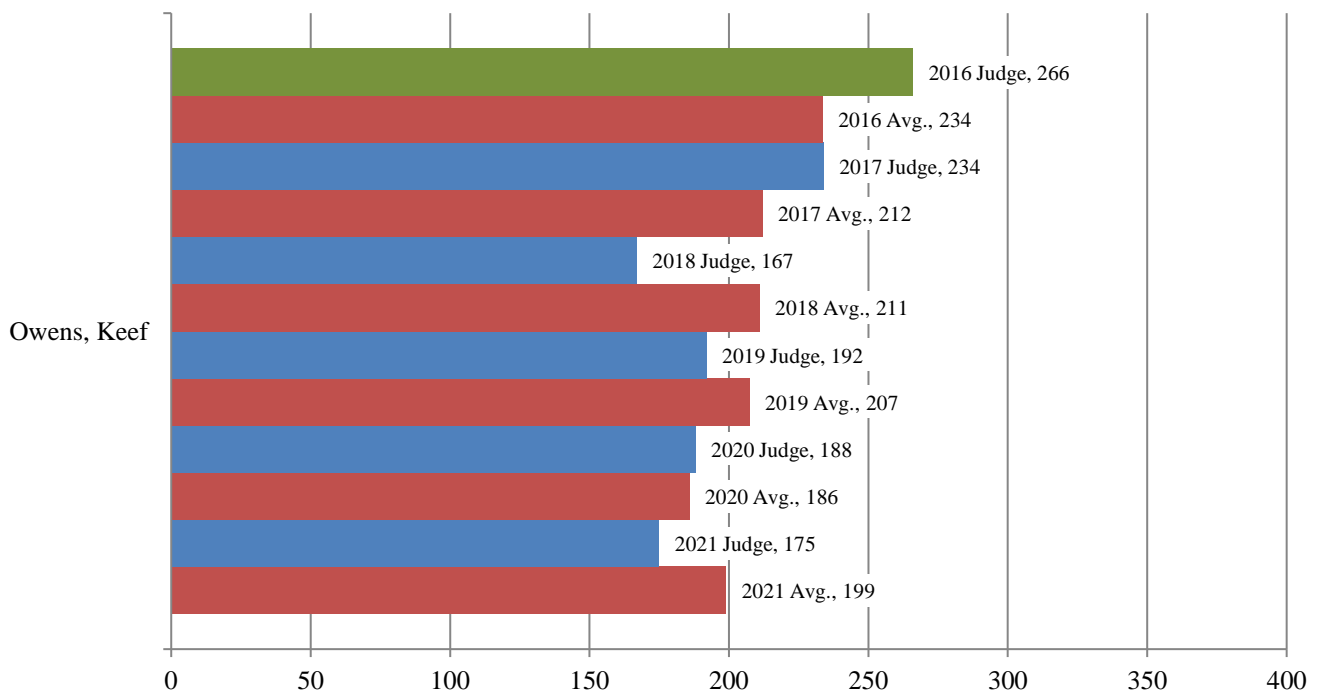
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



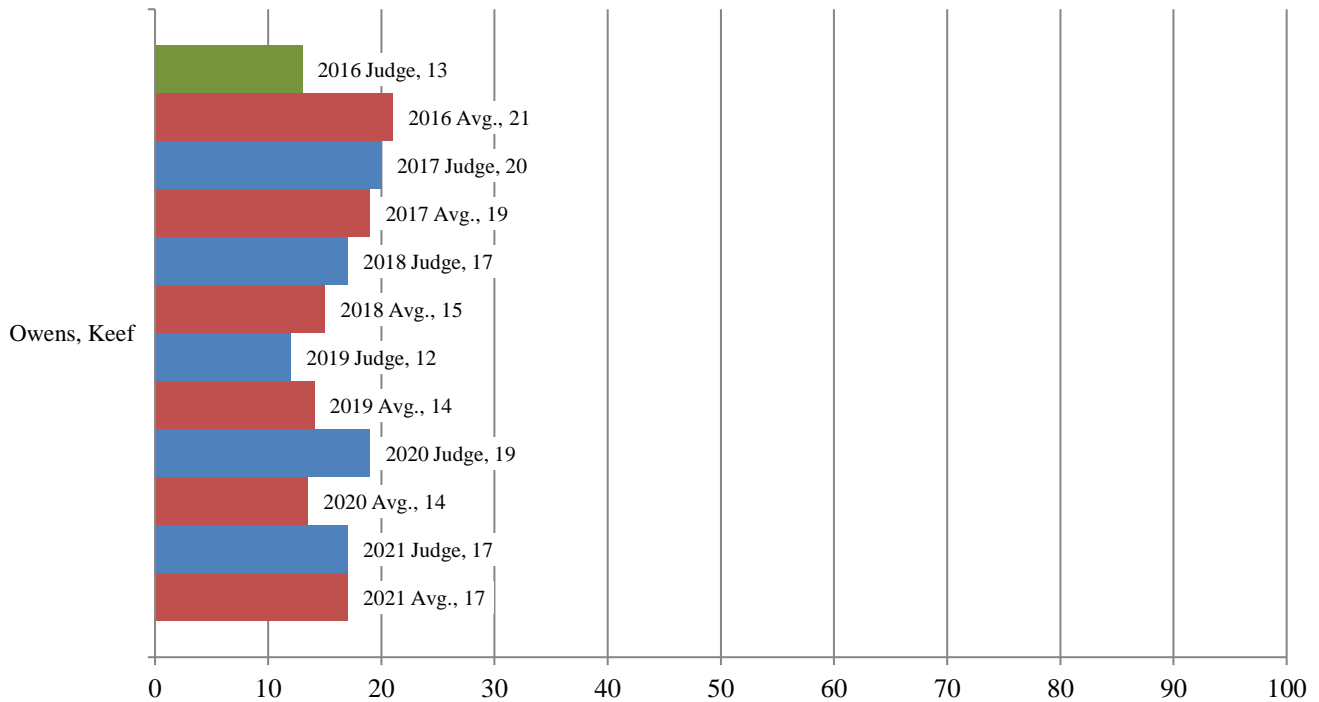
The following graph depicts the total volume of trial orders³²⁵ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



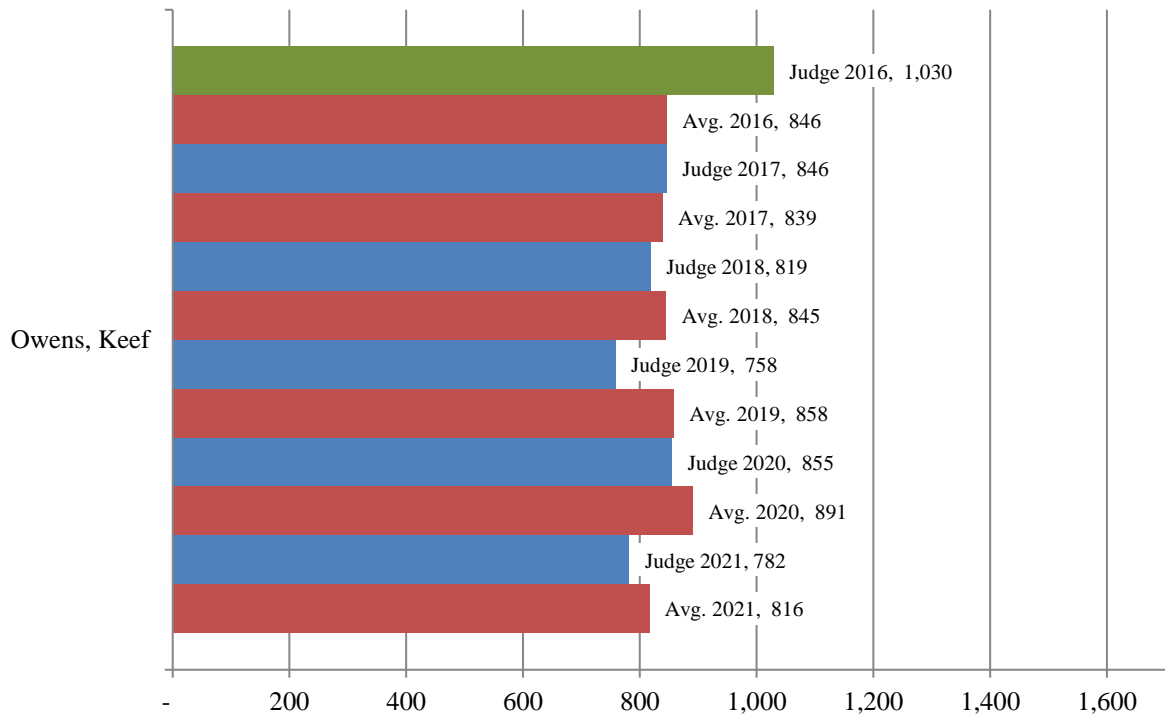
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



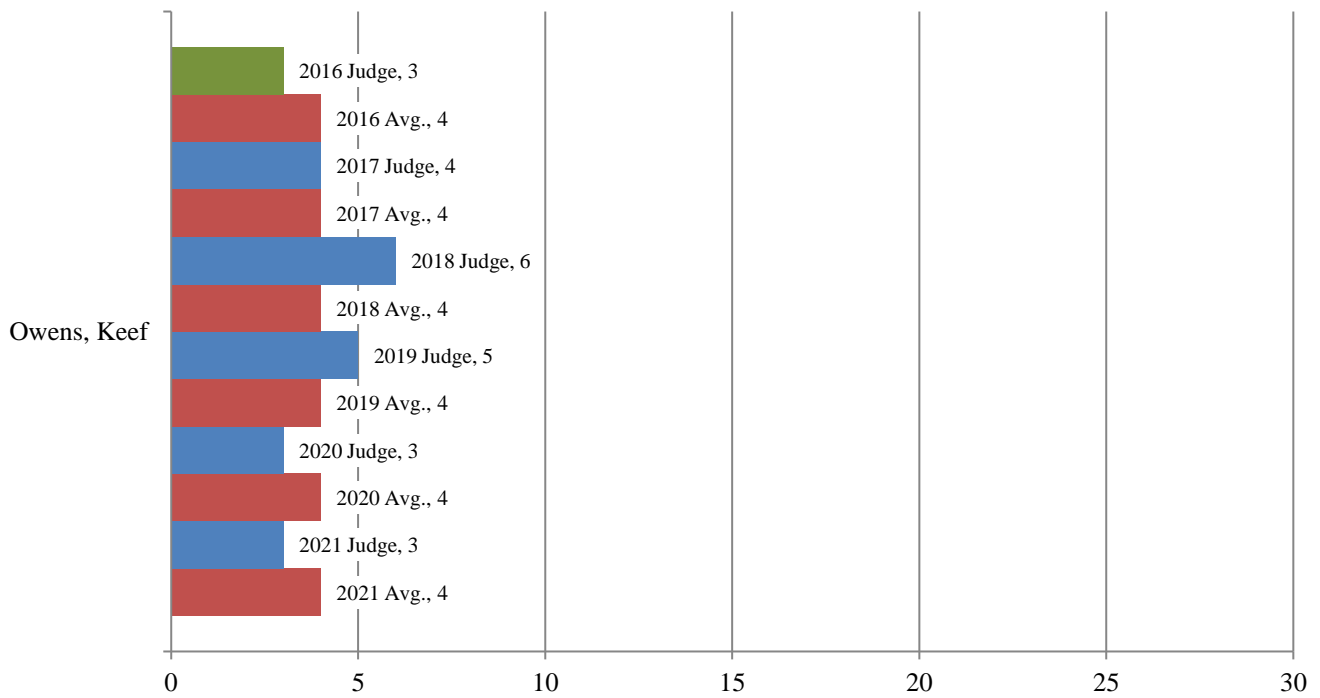
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



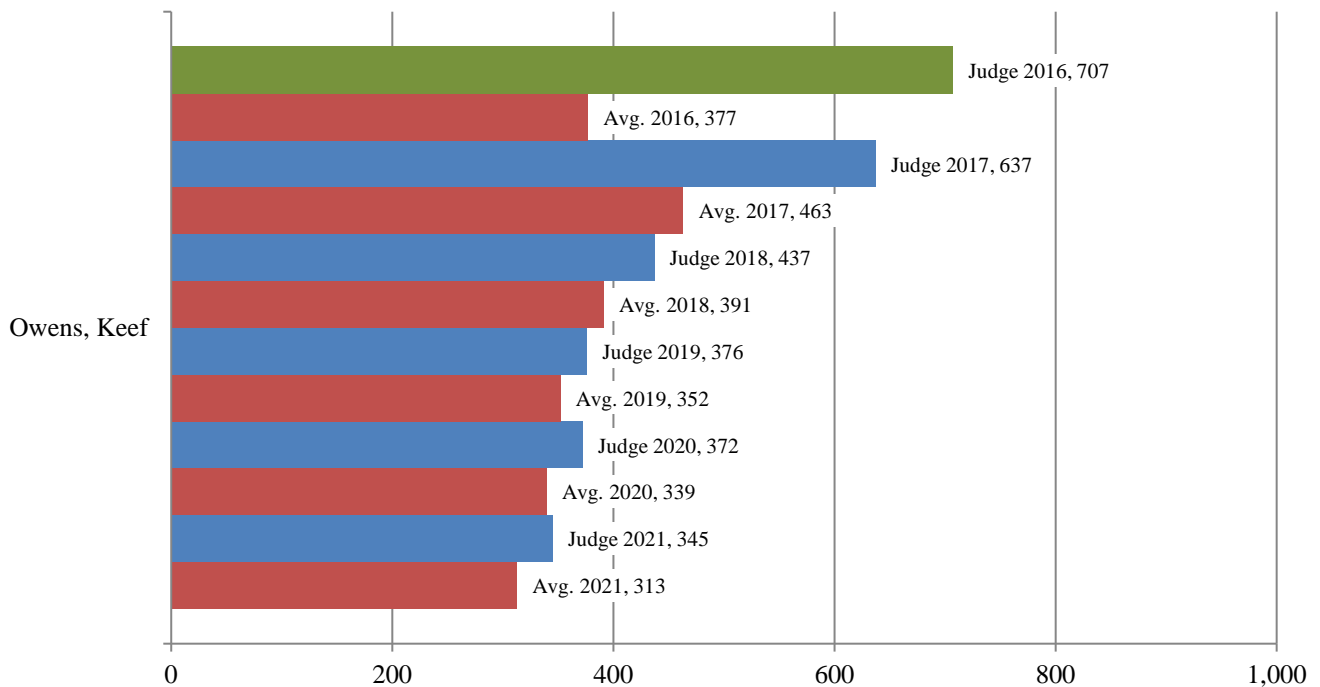
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



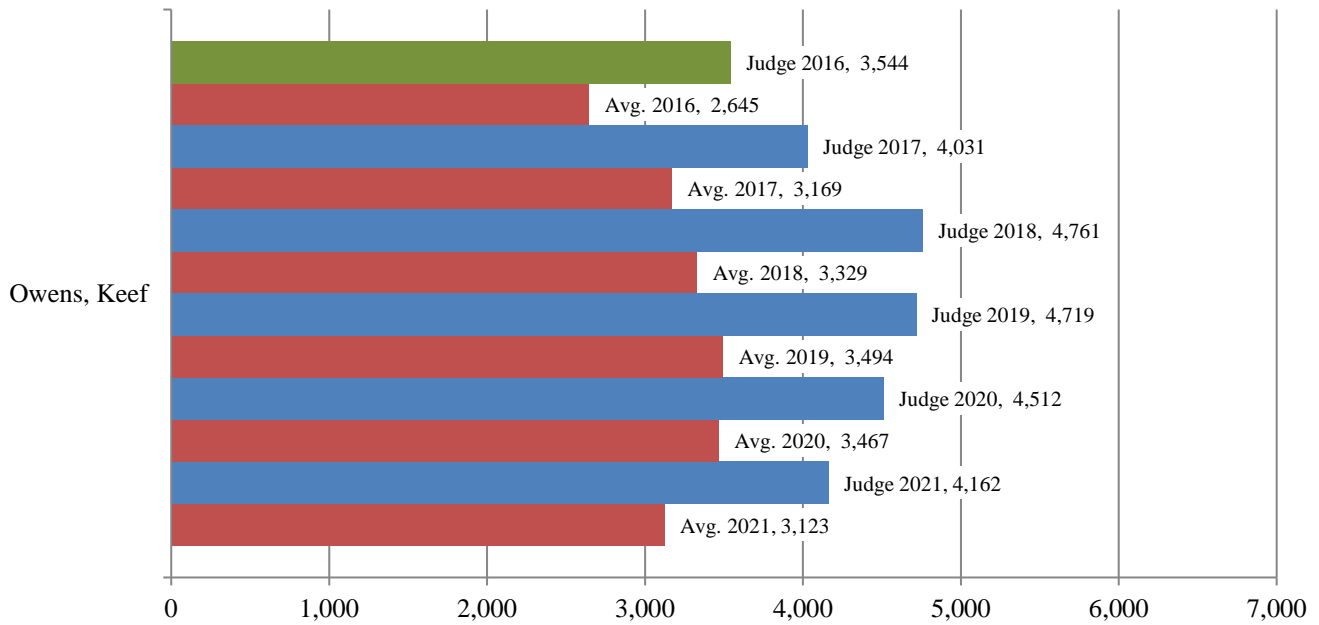
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



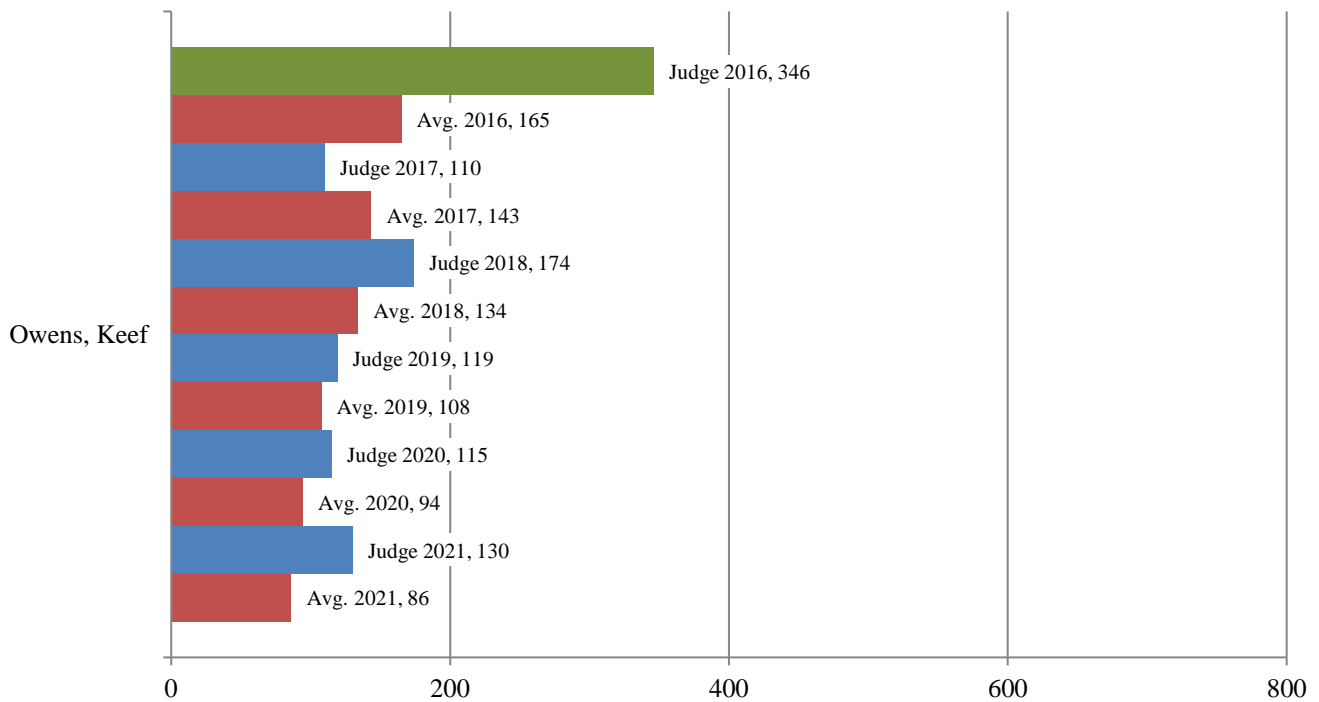
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “13” District SAR (JCC Grindal³²⁶):

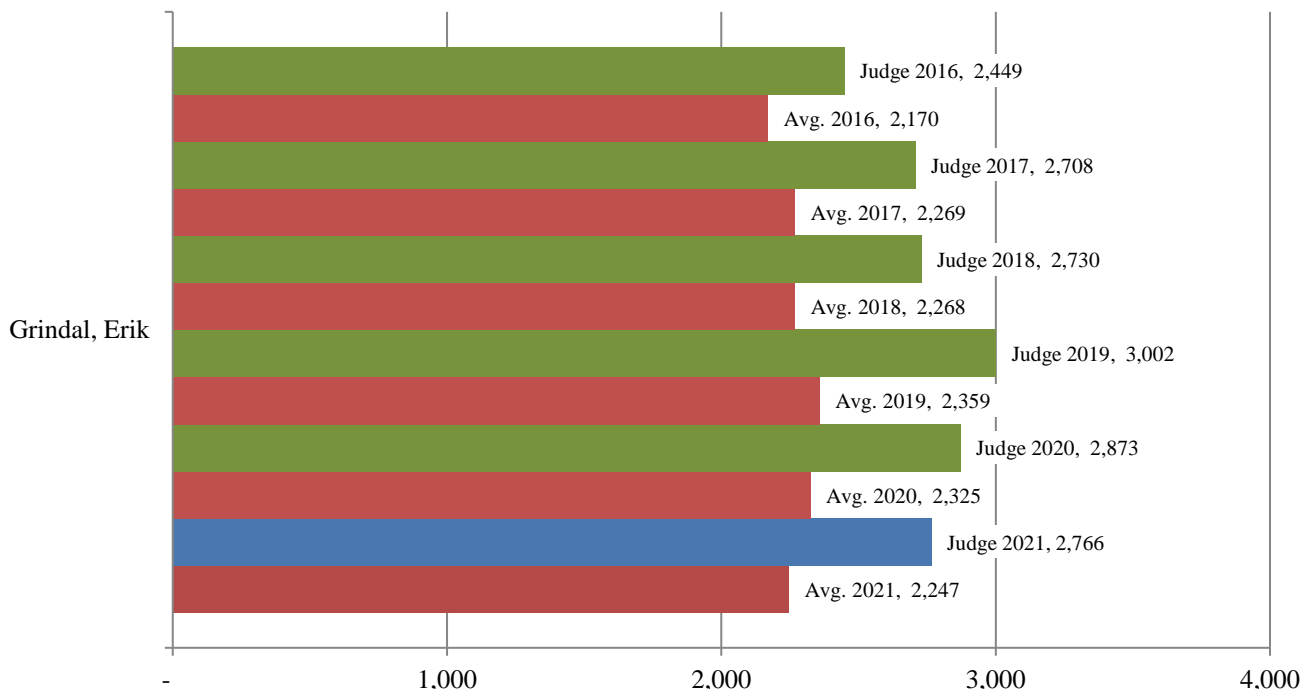
District SAR includes Manatee and Sarasota counties.

The Petition and “new case” filing volumes in District Sarasota both have been notably above the statewide averages for most of the last thirteen years. The metrics there demonstrate efficiency and effectiveness. The end-of-year Petition inventory was notable in 2018-19, but an above average closure rate in 2019-20 demonstrated improvement. The inventory at the end of 2020-21 is again well in excess of the statewide average.

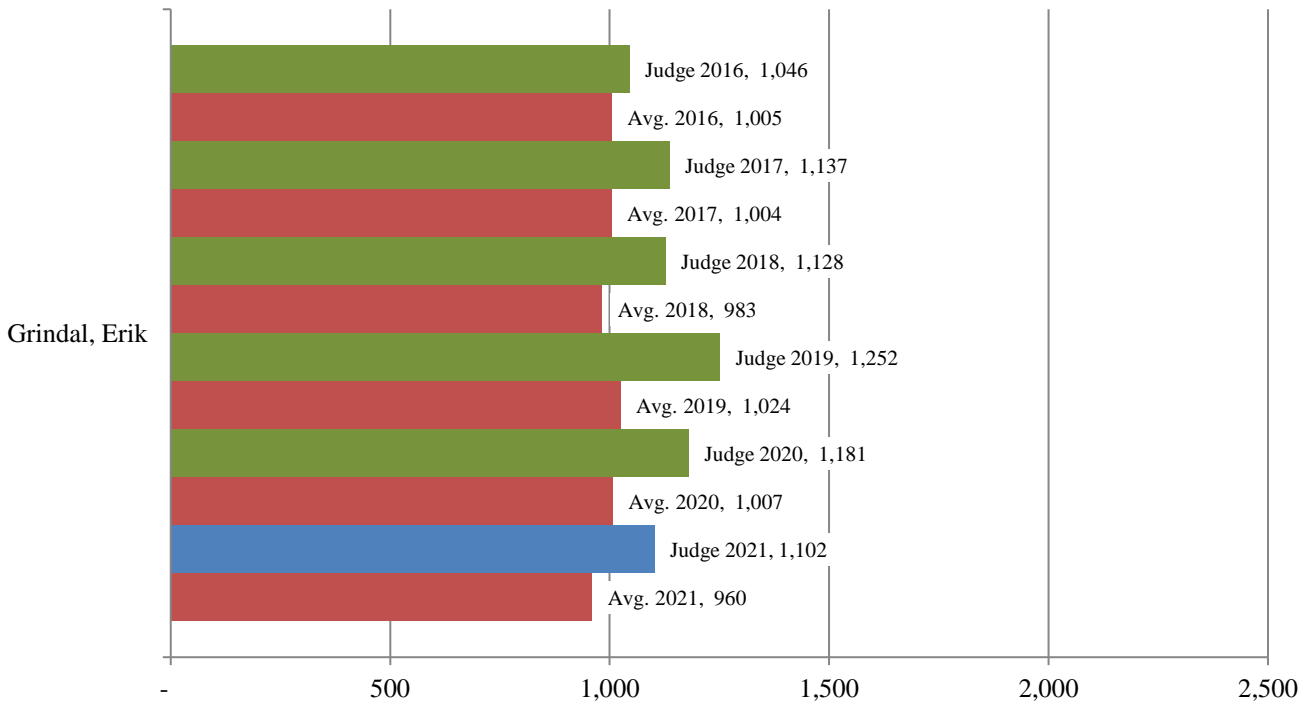
Despite the consistently notable filing volumes, the trial volume is below average and the times to mediation, to trial, and to final order are all within the statutory parameters. The volume of settlement orders has been notably above average, but in 2020-21 is only slightly so. The stipulation volume is persistently below average.

Mediator Jessica Carrier served as a presenter and panelist in the Continuing Legal Education Winter 2021, Workers’ Compensation Educational Institute Webinar, A Virtual Tour of Florida Workers’ Compensation, which was presented via Zoom on February 19, 2021 discussing *Hot Topics in Mediation*. Jessica Carrier served as a presenter and panelist in the State of Florida Office of the Judges of Compensation Claims Continuing Legal Education Program discussing Challenges with Mediation, along with Deputy Chief Judge Langham, Judge Almeyda, and Judge Moneyham, which was released on July 7, 2021 on FLJCC You Tube.

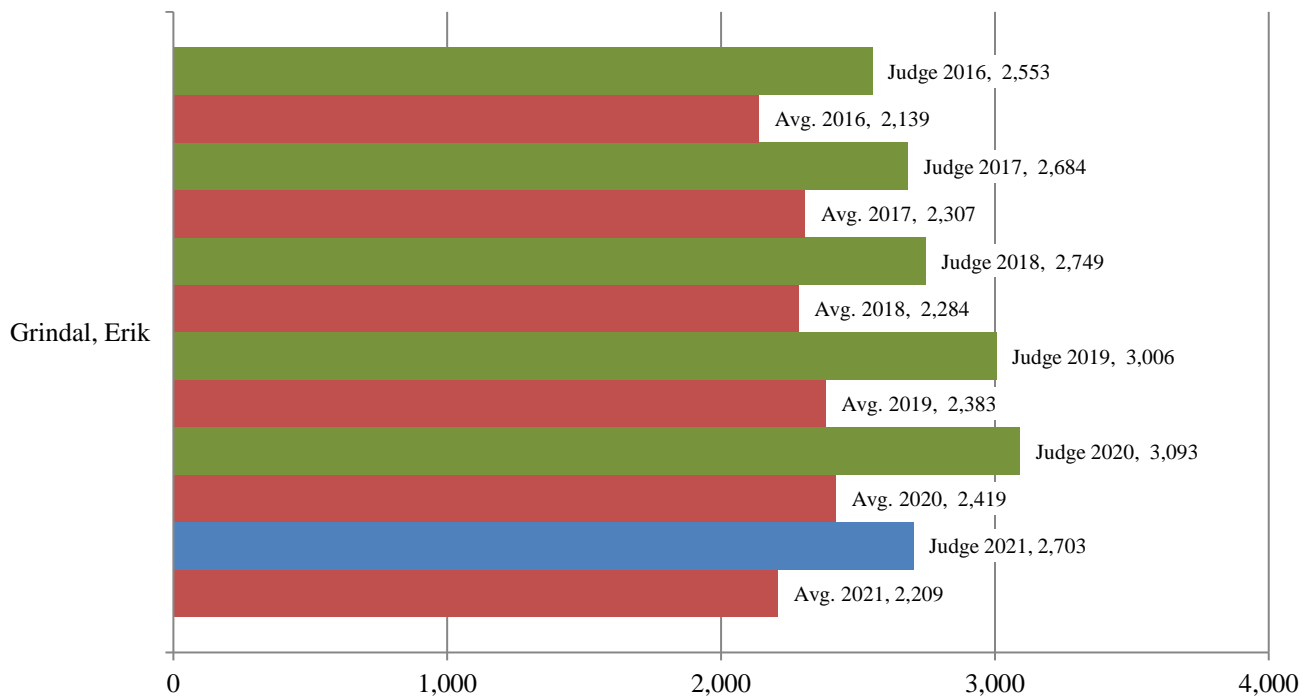
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



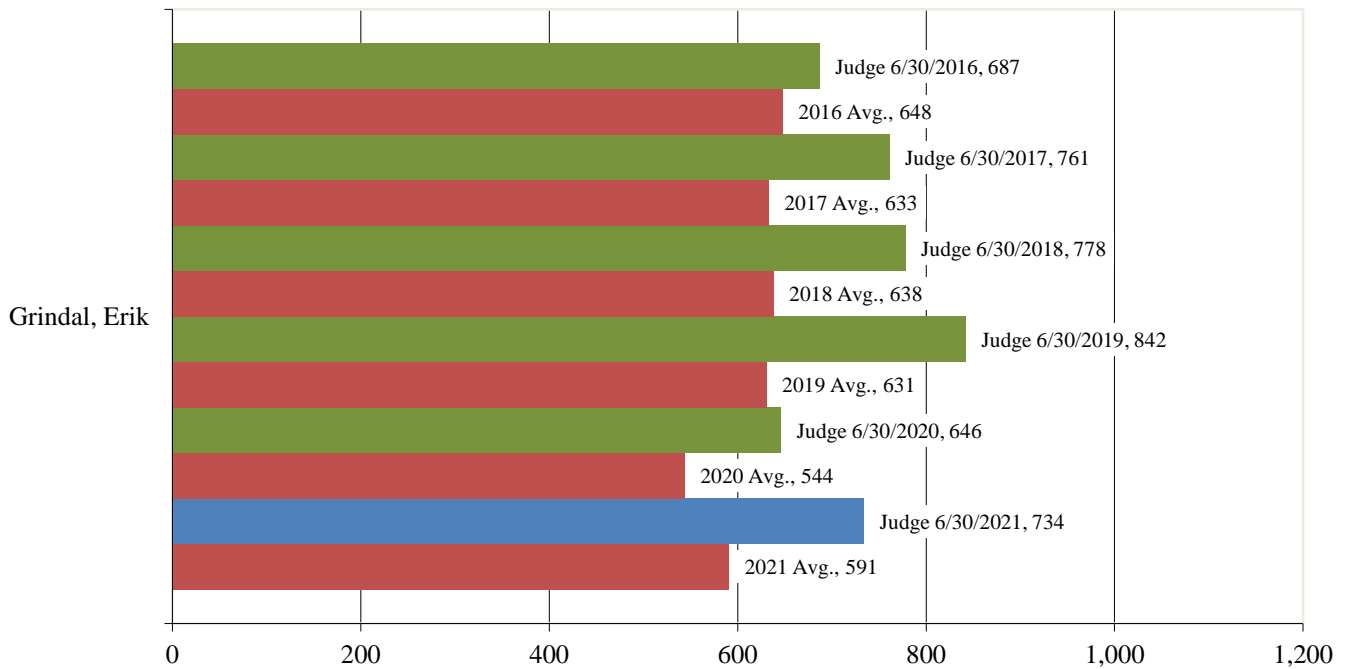
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



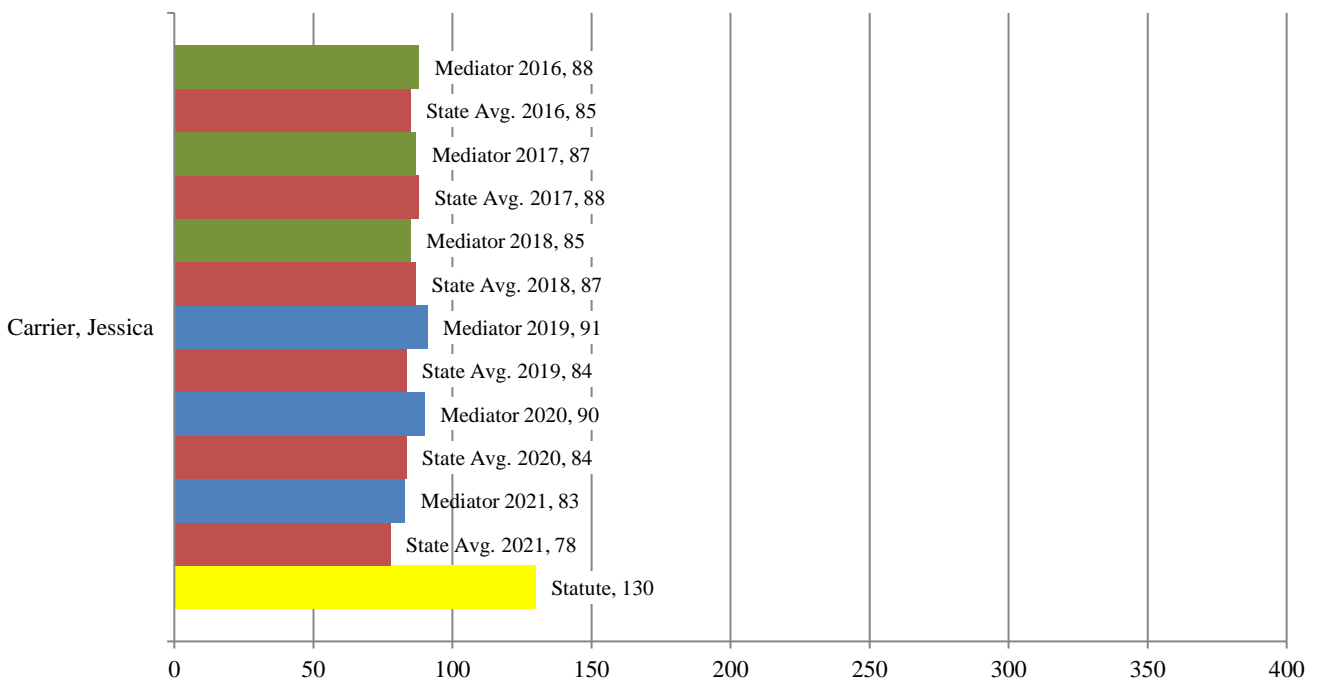
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



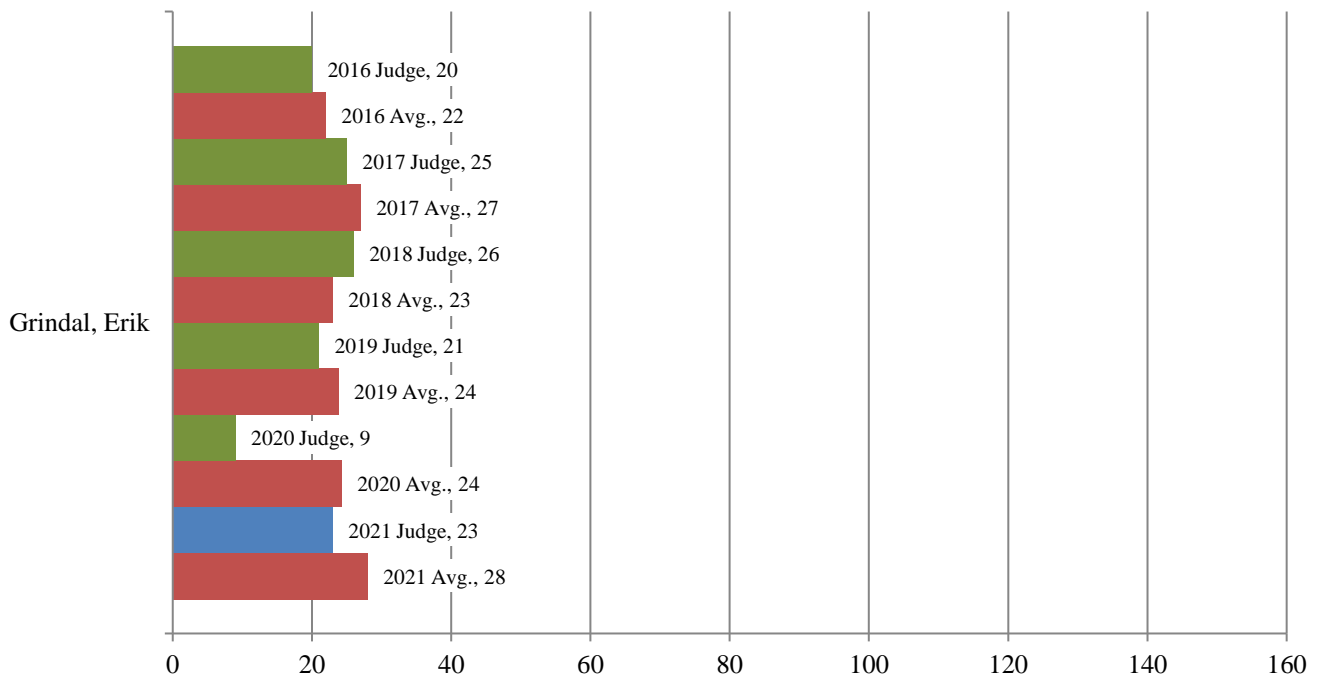
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



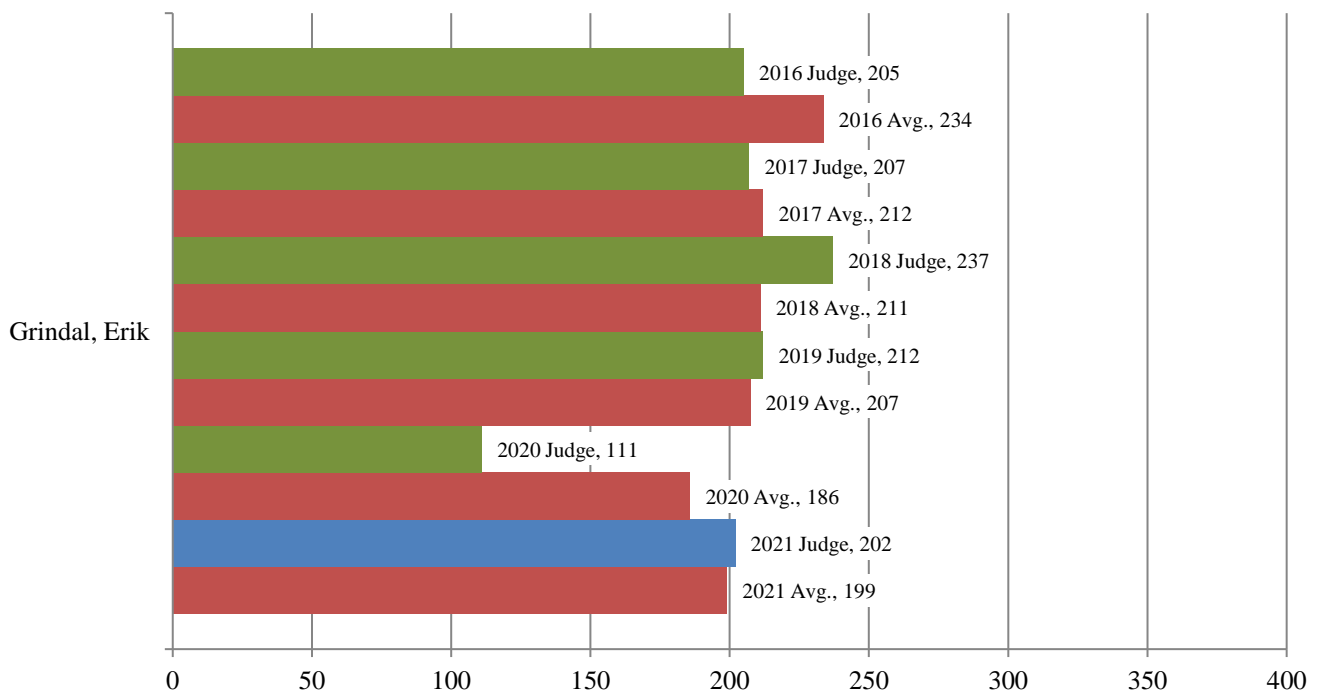
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



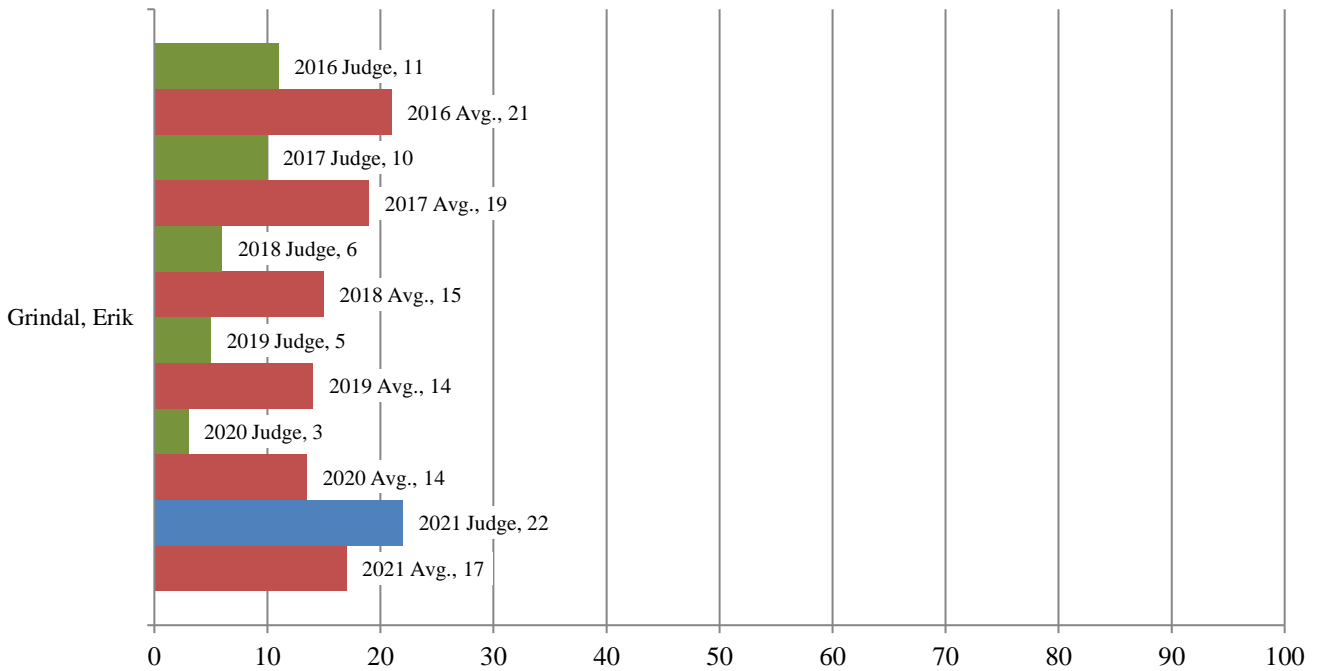
The following graph depicts the total volume of trial orders³²⁷ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



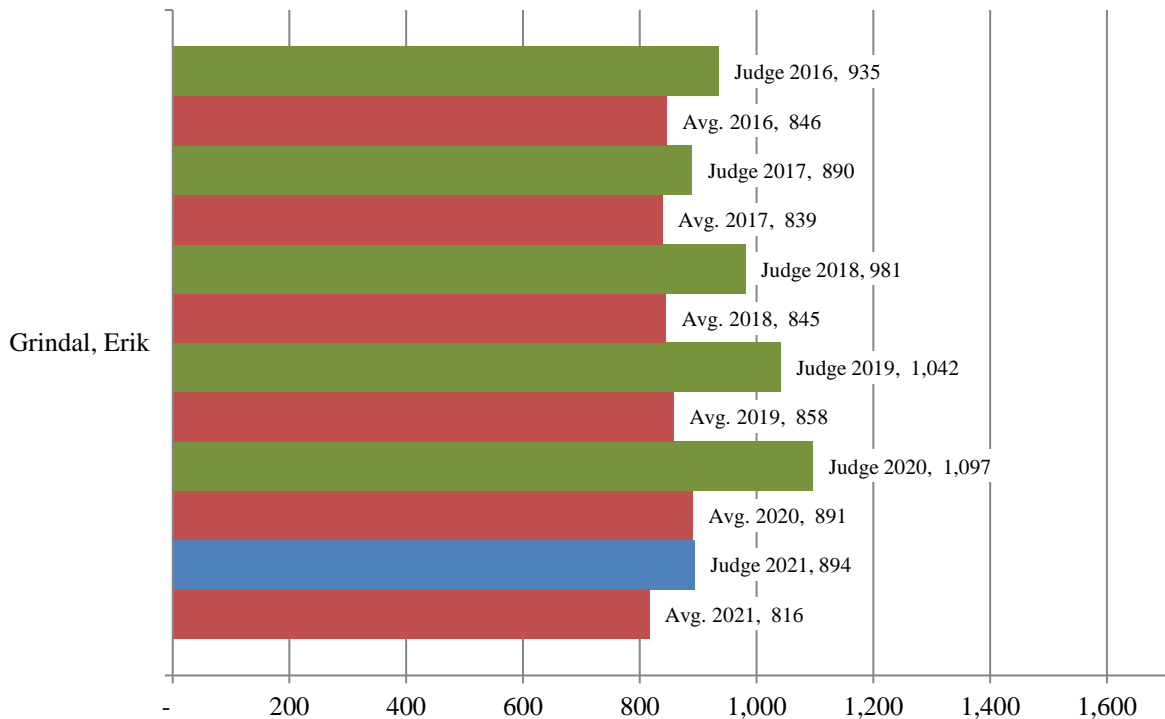
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



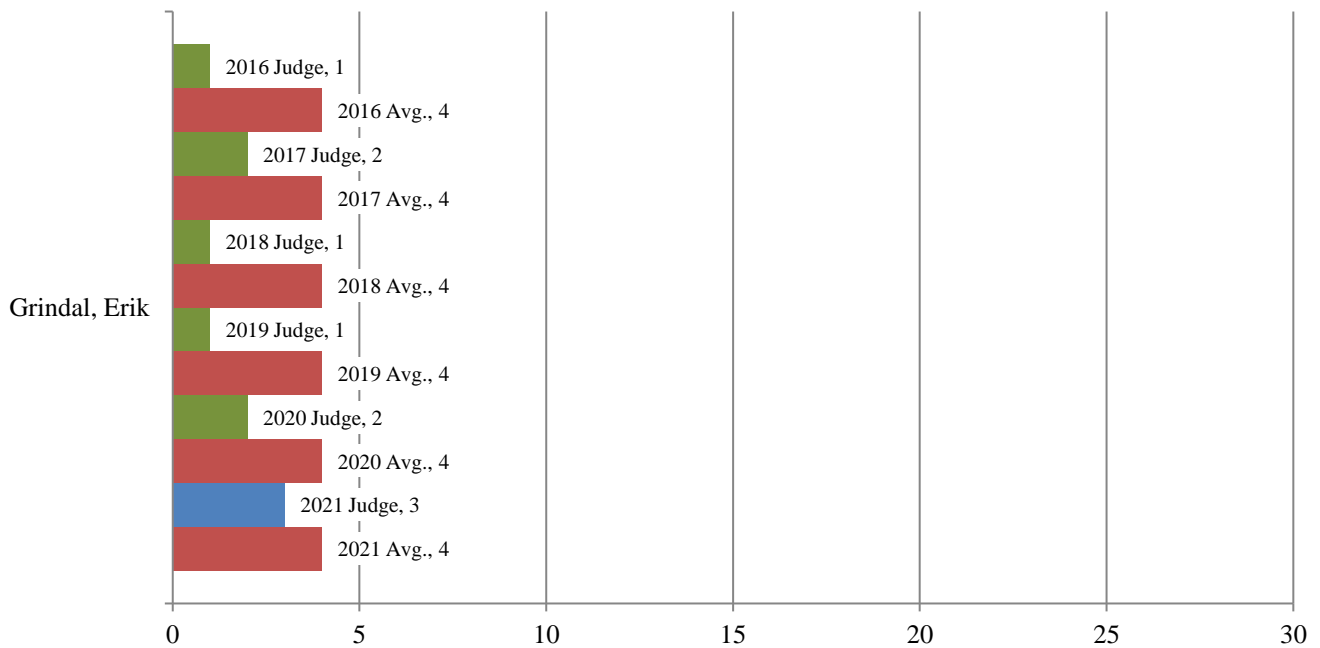
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



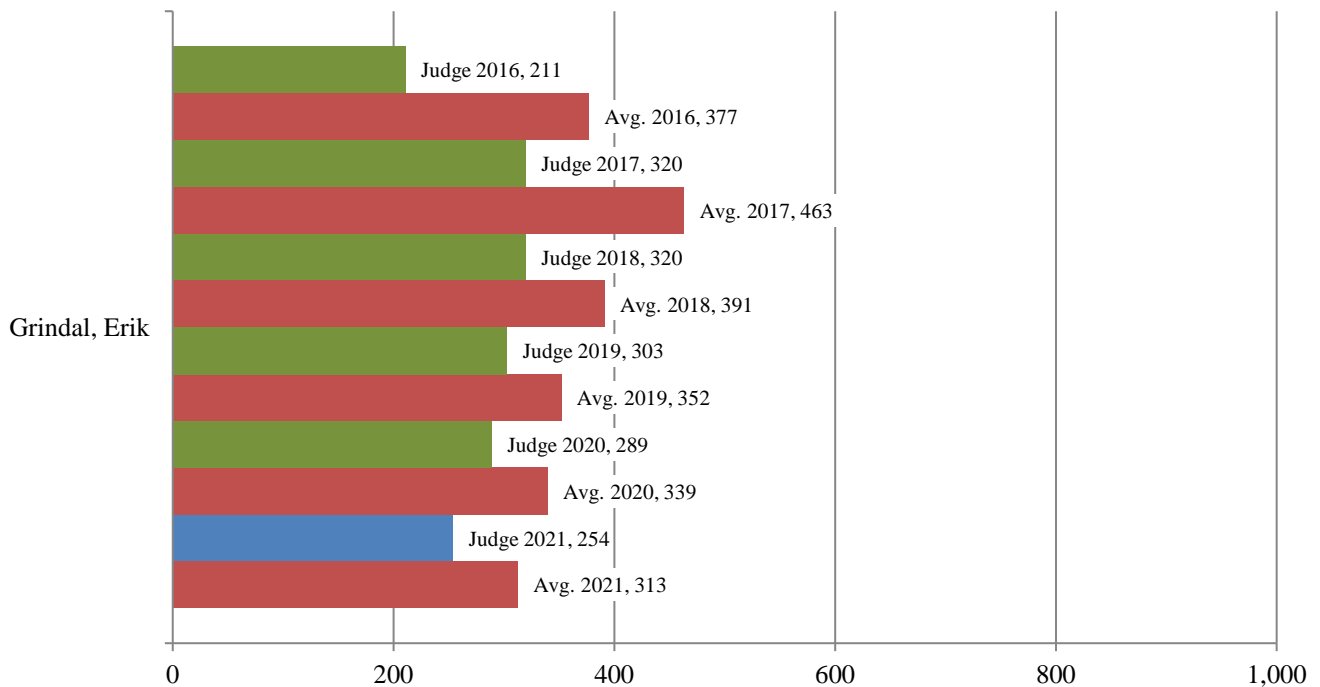
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



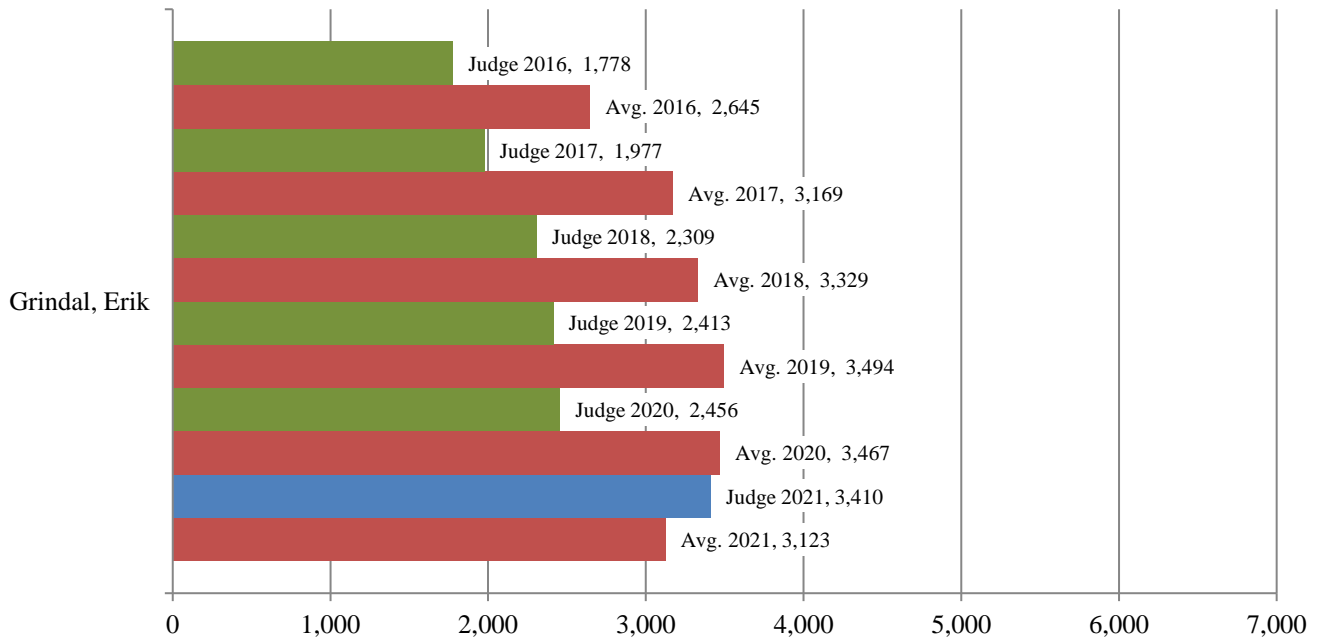
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



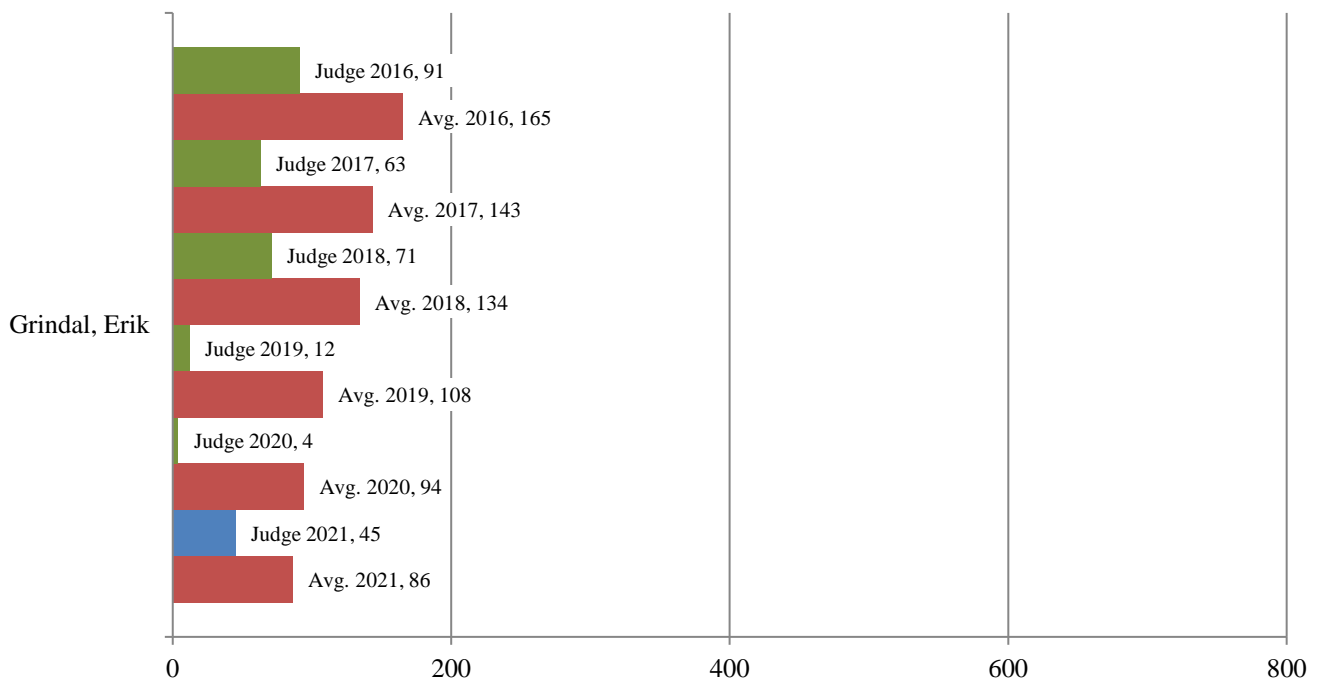
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “14” District STP (JCC Rosen [Young³²⁸]):

District STP includes Pasco and Pinellas counties.

District St. Petersburg 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, STP 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 St. Petersburg. Each is persistently 50% or more above the average. This has been consistent for the last ten years. Previous reports have suggested that these volumes are likely not sustainable for a single judge. However, following Judge Rosen’s retirement, Judge Young has admirably managed this extensive docket. It is nonetheless possible that at some point efforts of other judges will be required to maintain the timeliness and efficiency of this exceptional office.

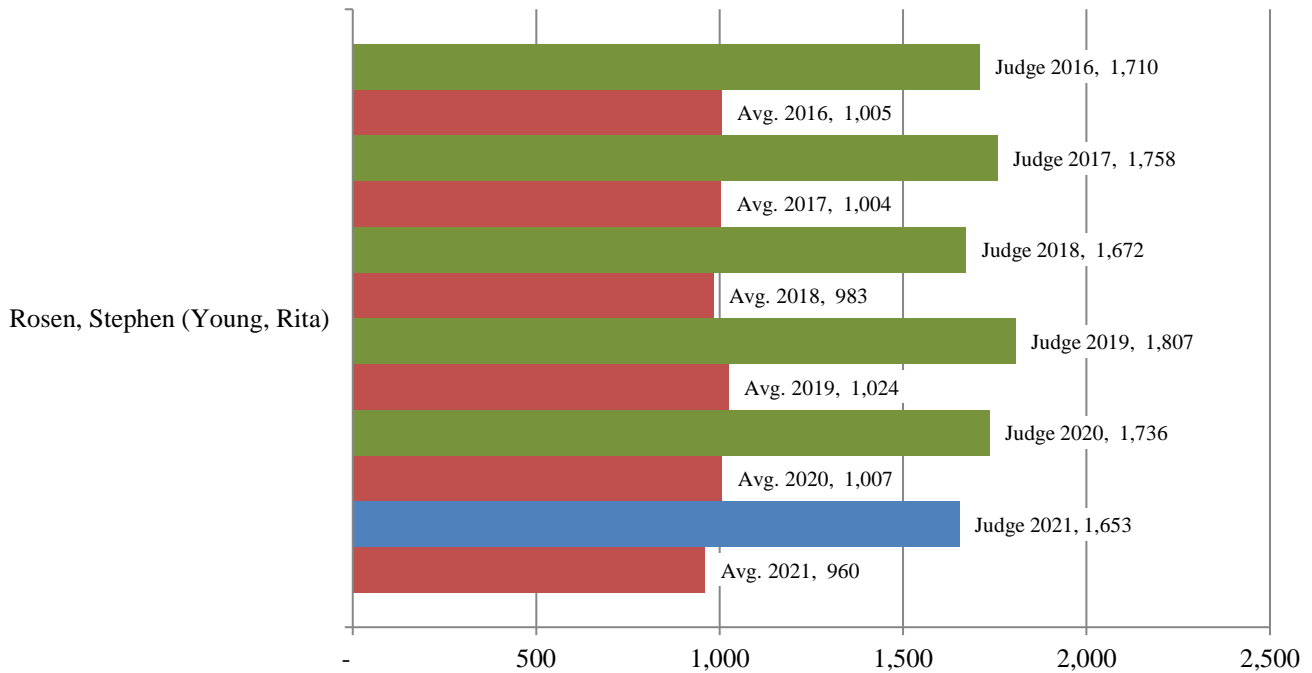
Trial volumes in District St. Petersburg were notably above average in 2020-21, despite the COVID-19 onset and the challenges it brought. That trial volume includes cases heard by Judge Young while assigned to District Tampa for the first half of 2020-21. The time to mediation, to trial, and to order have each been within the respective statutory parameters. Settlement volume is well in excess (50%) of the statewide average. St. Petersburg is notable for the above-average volume of stipulation orders.

In 2020-21 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. Judge Young was a panelist in April, 2021 at the 2021 Florida Bar Workers' Compensation Forum presenting: *A View from the Bench, Bear Traps and Miles Fees*. She has been a member and active participant in the Bench/Bar meetings for the Tampa, St. Petersburg, and Lakeland Divisions. She participated as a judge in the Florida High School Mock Trial Competition Finals.

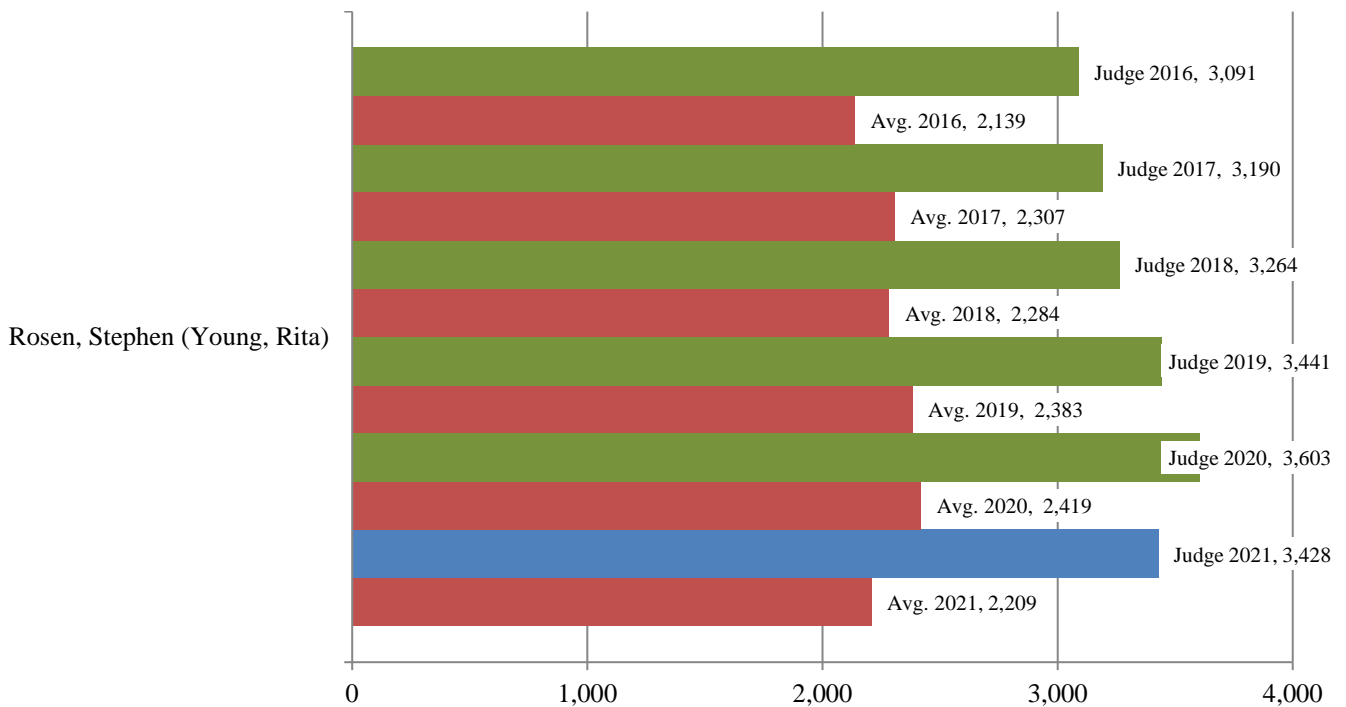
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



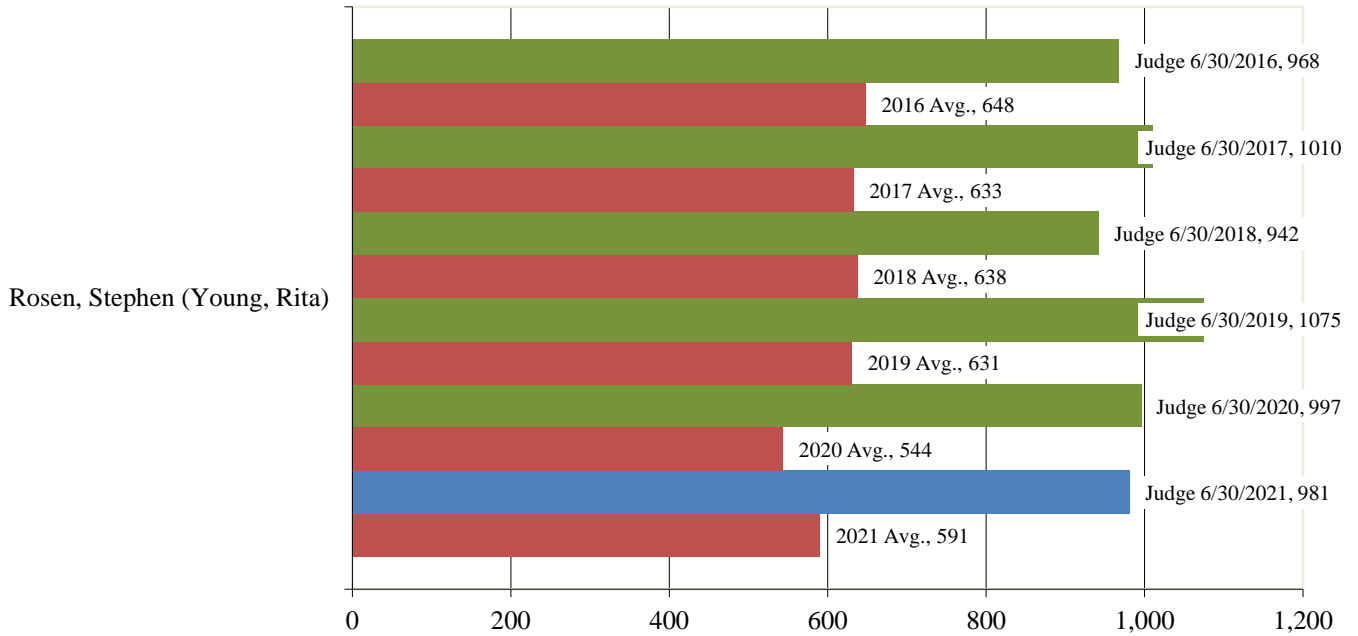
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



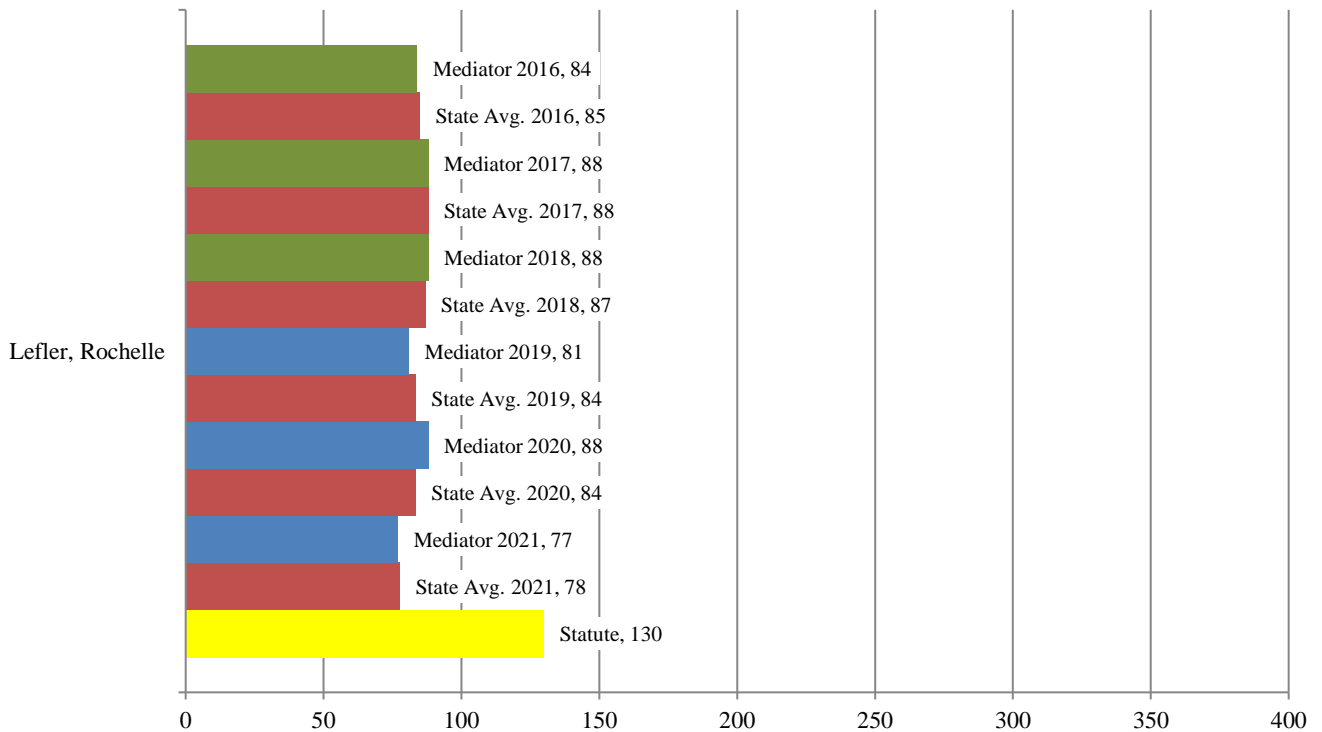
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



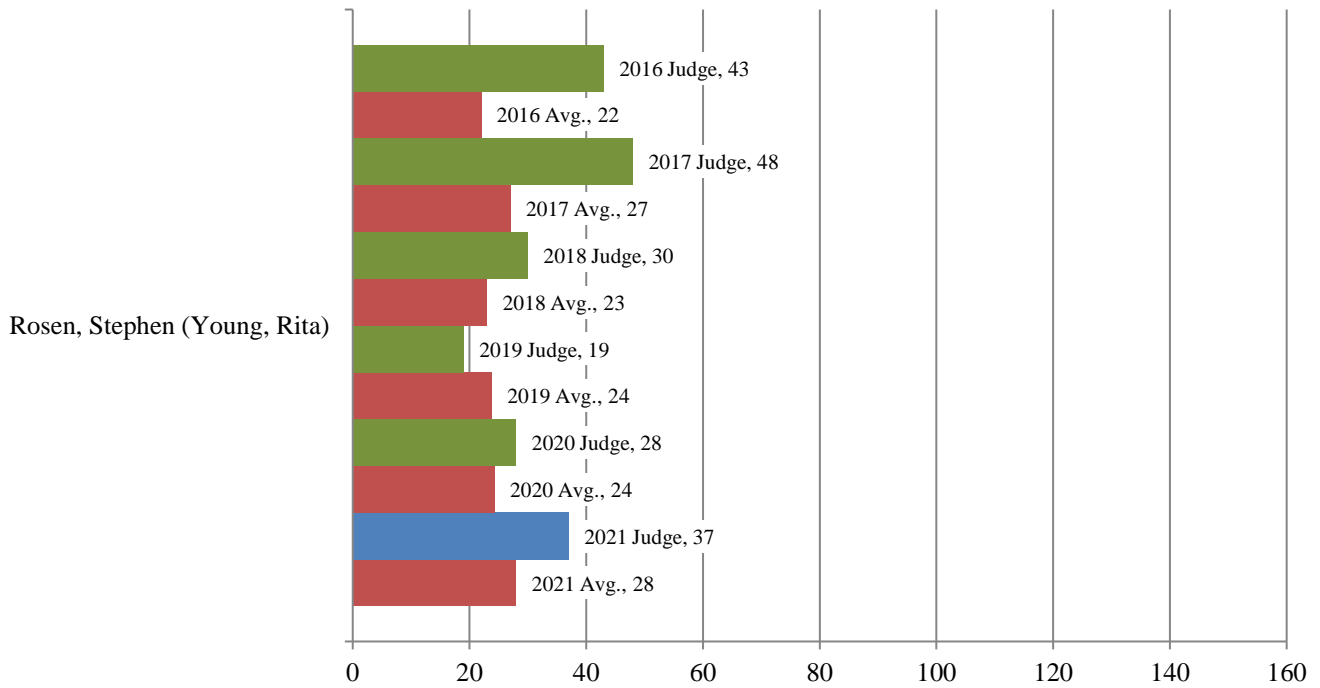
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



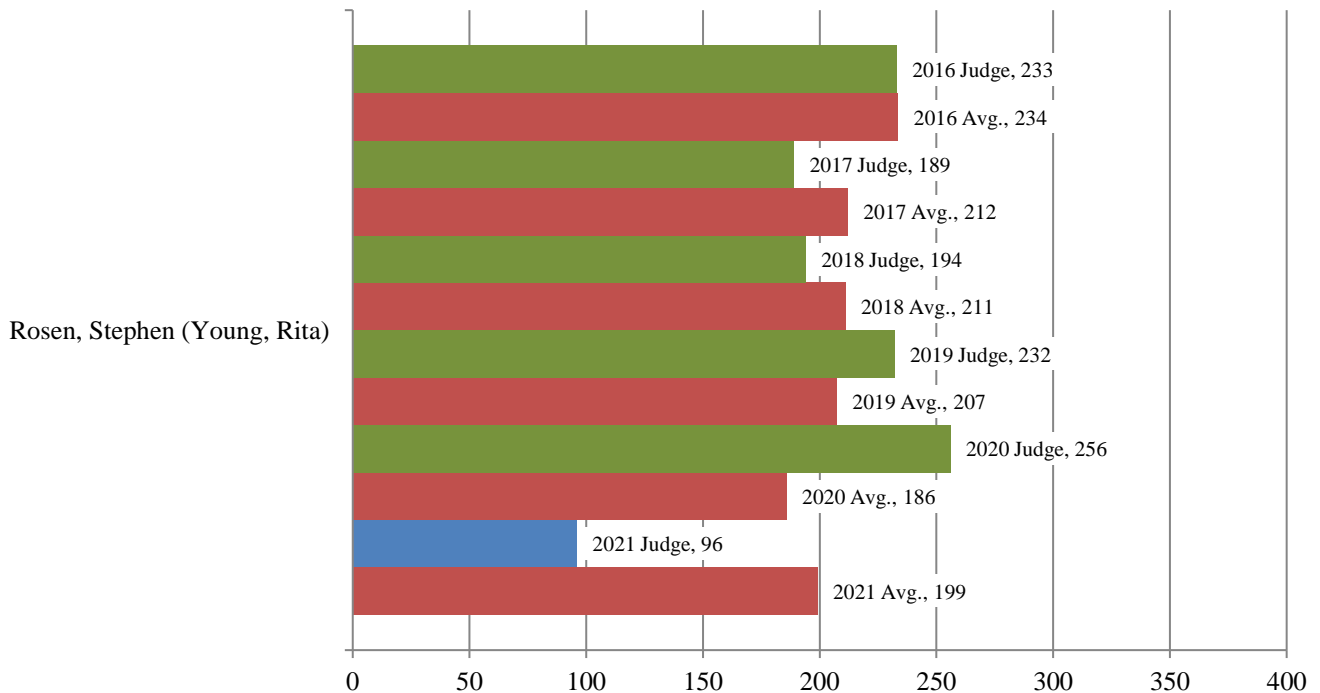
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



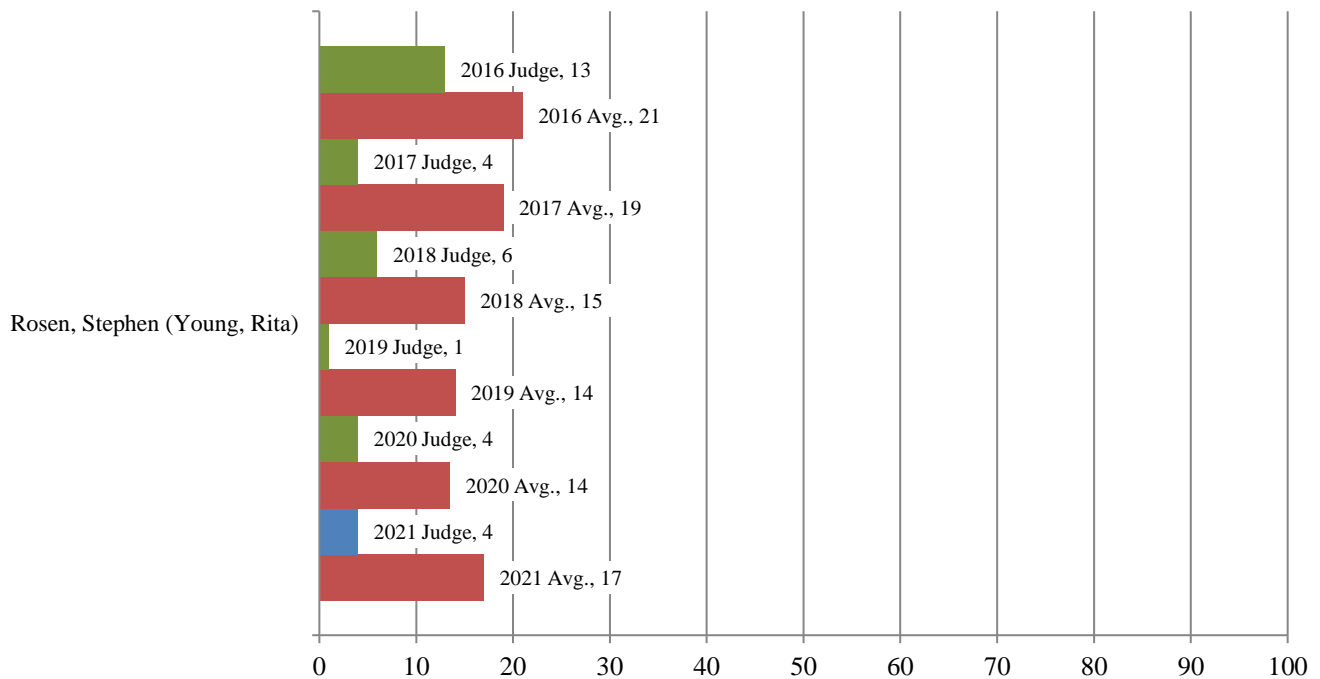
The following graph depicts the total volume of trial orders³²⁹ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



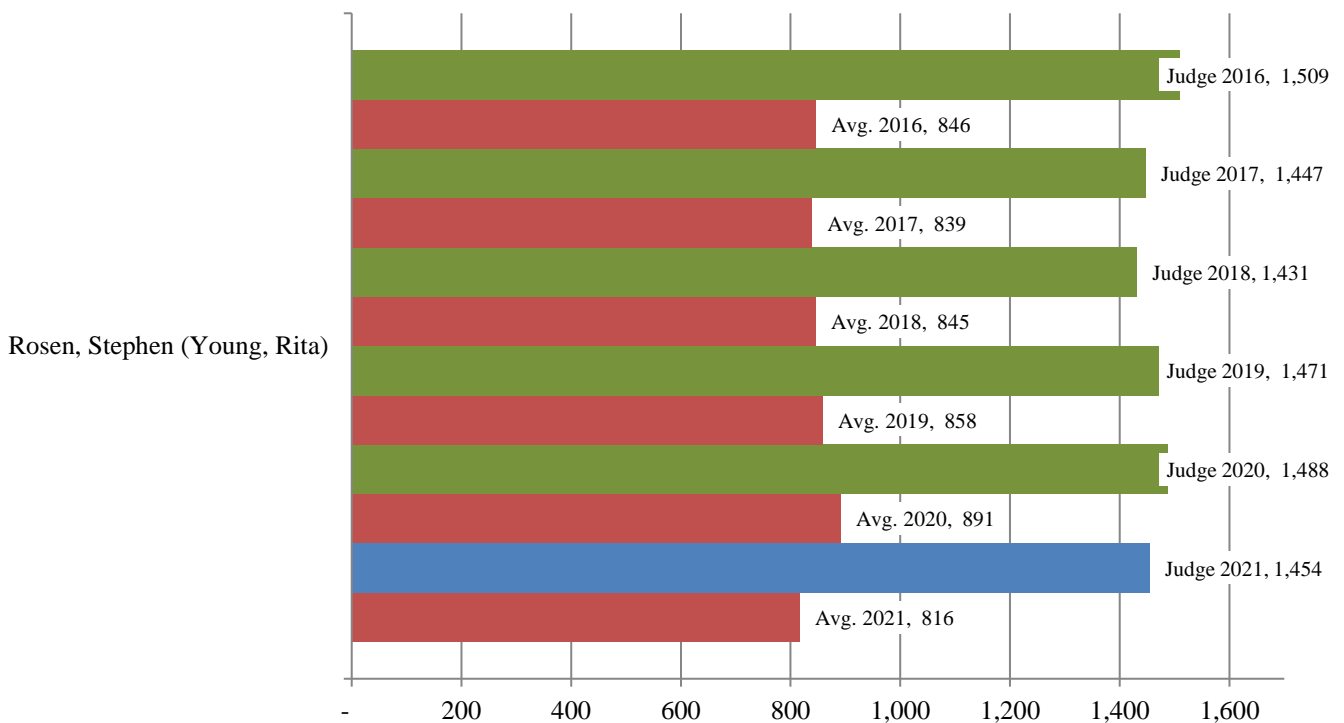
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



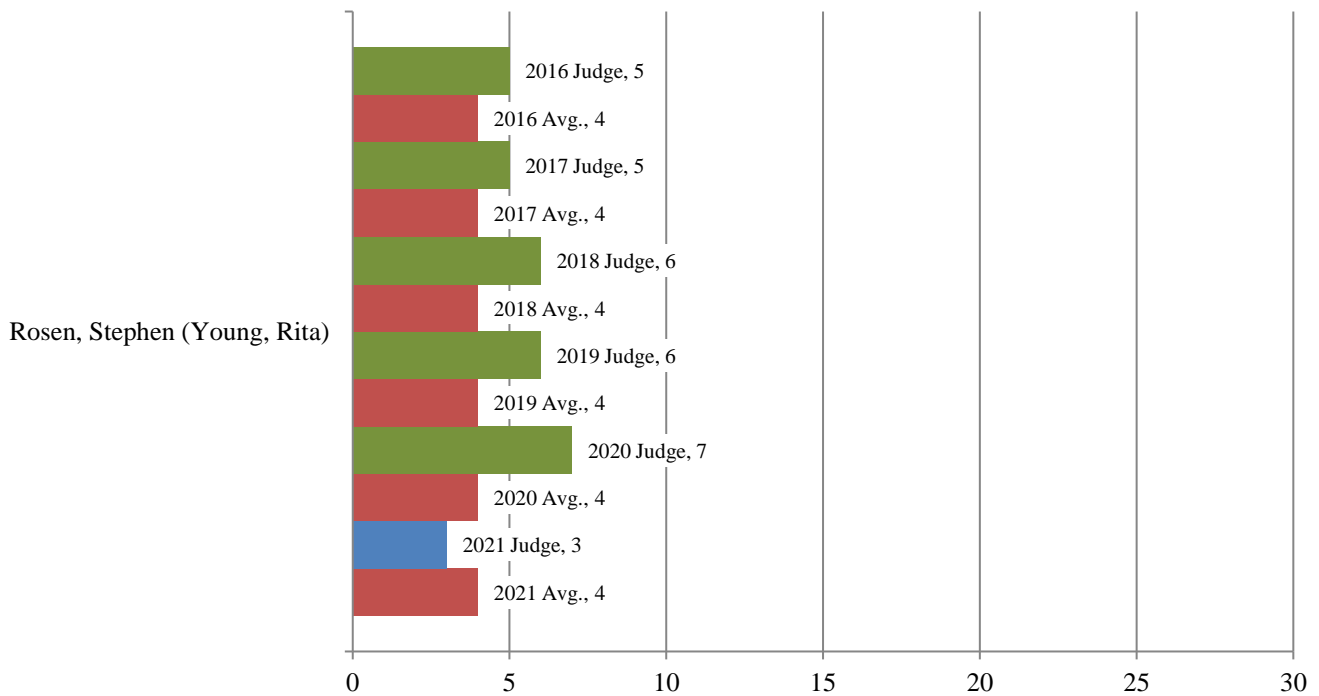
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



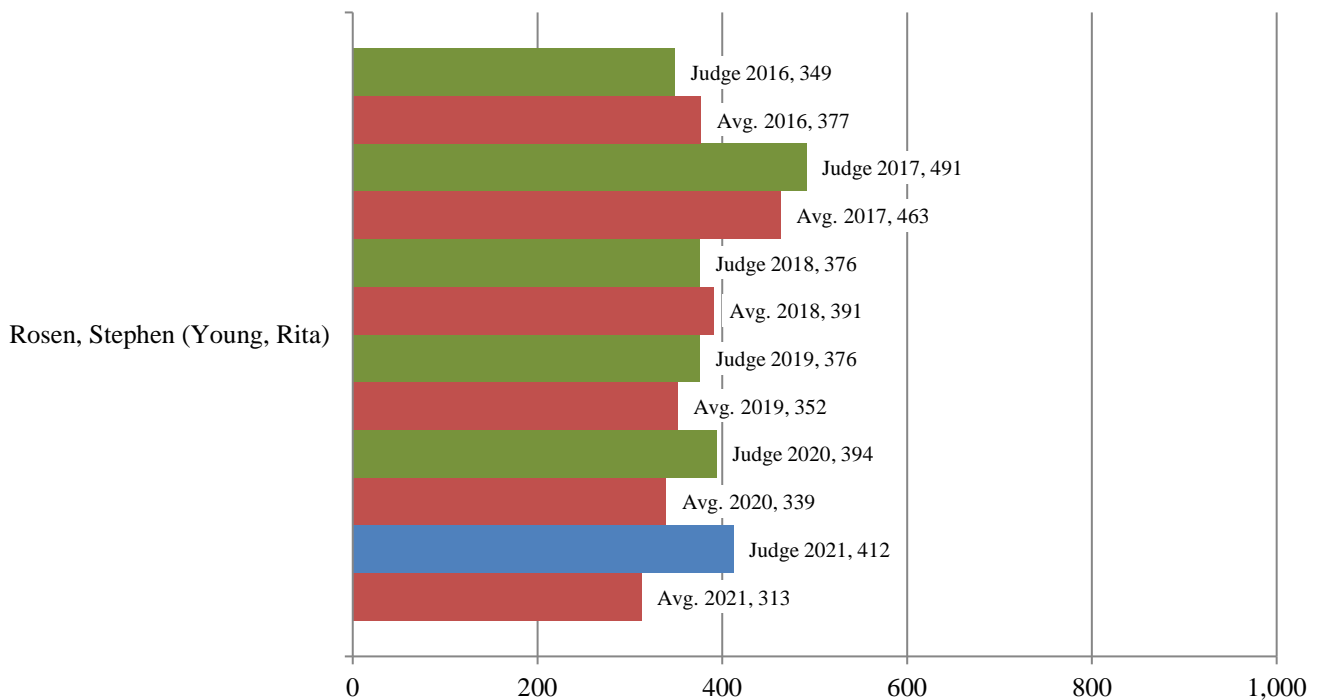
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



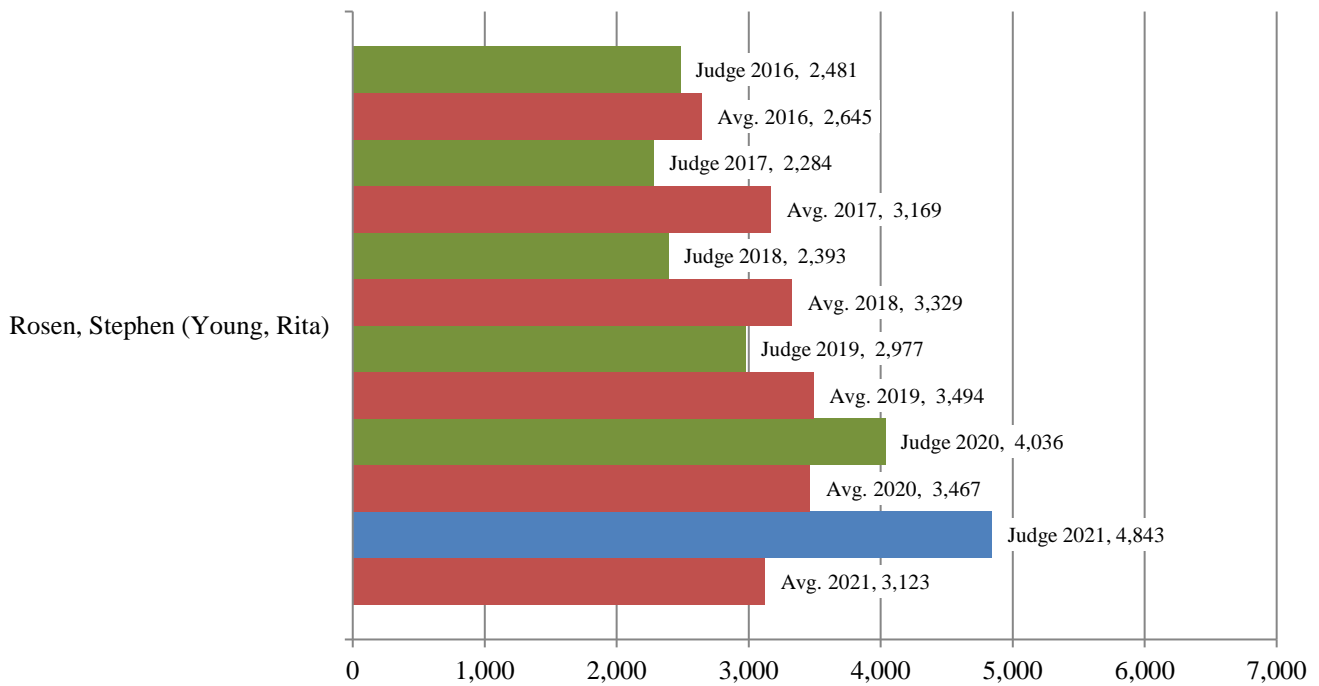
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



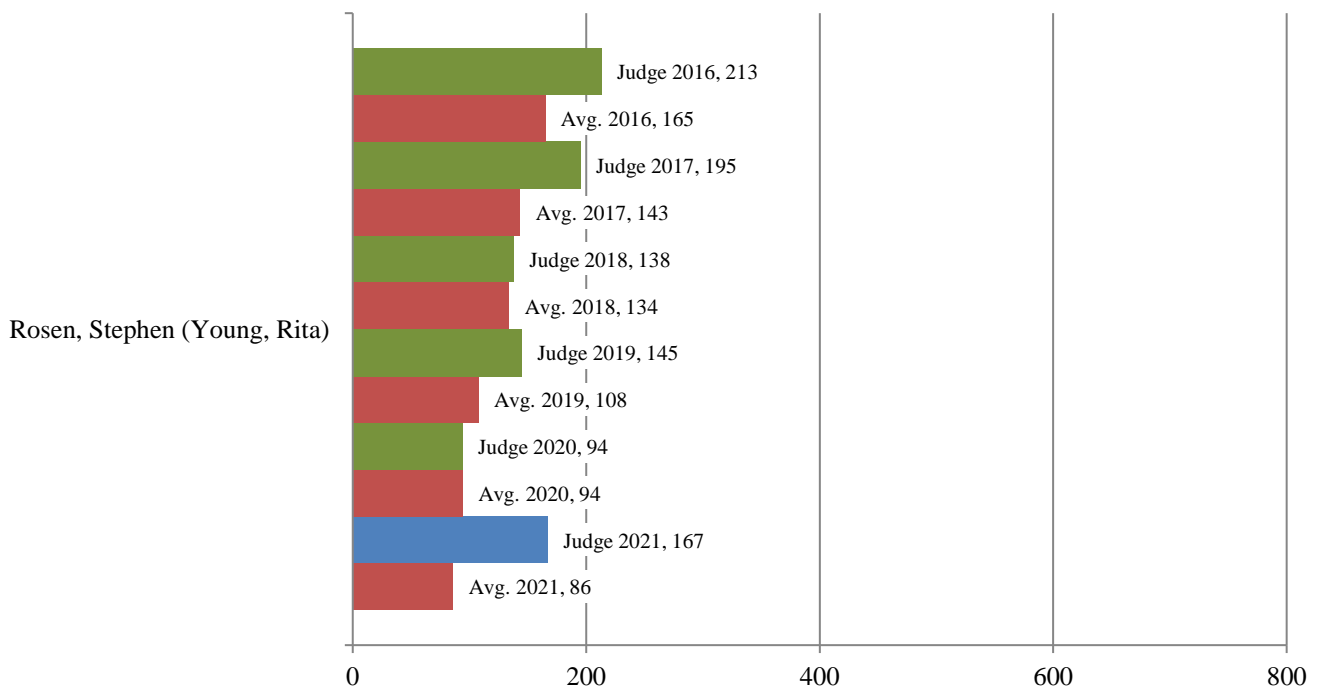
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “15” District TLH (JCC Newman³³⁰):

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

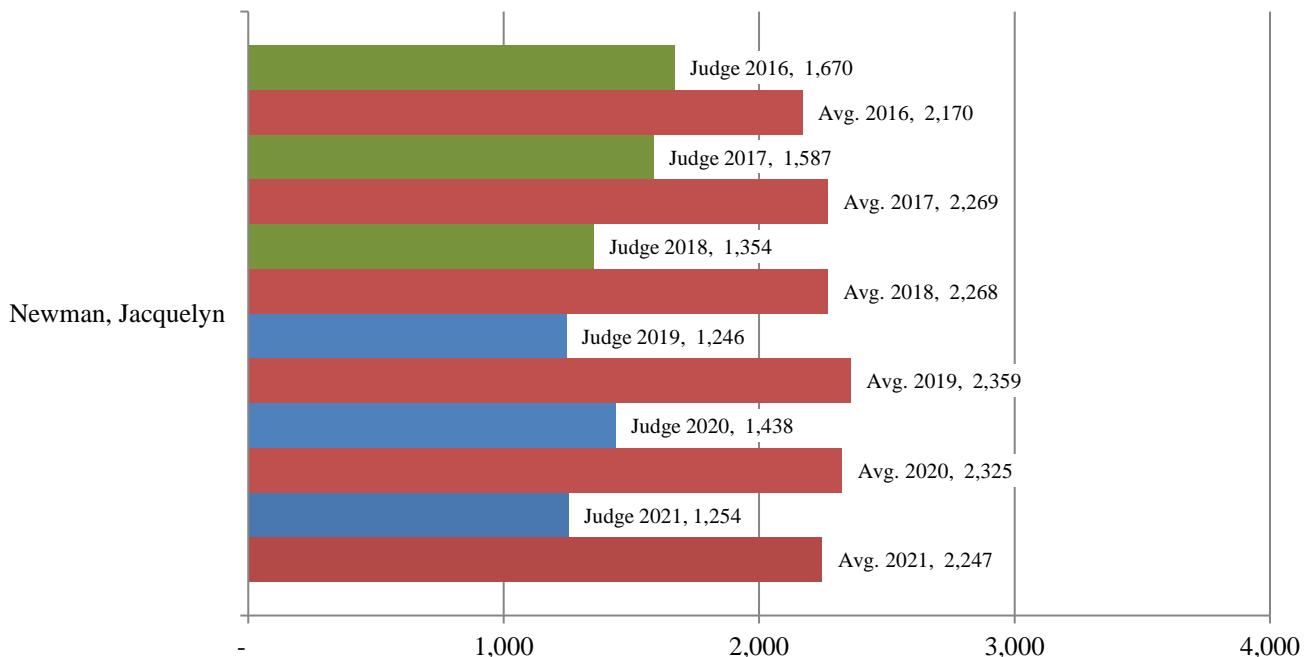
Although some of these counties have low population density, there was historically an exceptional level of effort required in this District due to the statutory obligation for the hearings to periodically occur in the county in which the accident occurred, if requested by the parties. The use of Internet-based video teleconference platforms during the COVID pandemic has likely changed the practice and process in this regard.

The Petition and “new case” volumes in District Tallahassee are markedly below average, consistent with those of District PMC. The trial volume is well below average despite Judge Newman covering trials for other Districts. 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 each below average in Tallahassee.

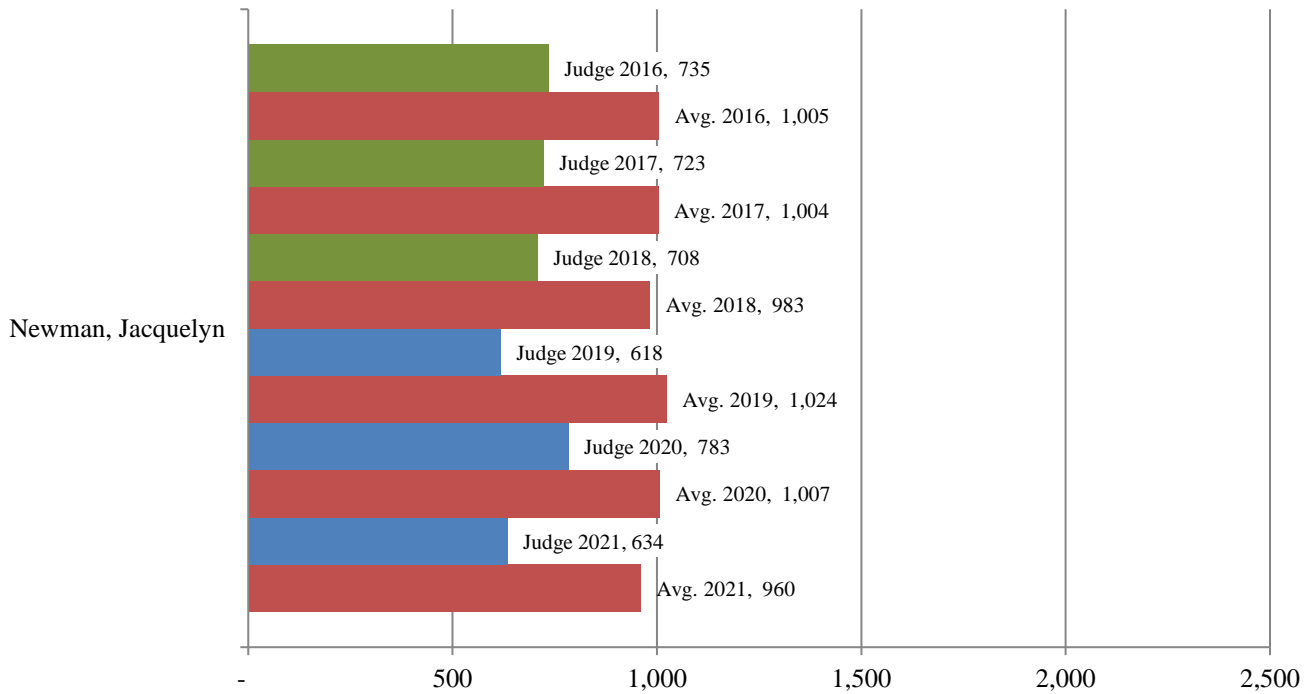
In 2020-21, Judge Newman participated in several continuing education events involving the workers’ compensation community. Judge Newman participated in the committee that planned and hosted the OJCC/WCI seminar *A Virtual Tour of Florida Workers’ Compensation* on February 19, 2021. Judge Newman moderated the panel *Technology Considerations in Workers’ Compensation* at that annual February seminar sponsored by the Office of the Judges of Compensation Claims and WCI. At the Workers’ Compensation Claims Professionals and The Florida Bar Workers’ Compensation Forum, on April 16, 2021, in Orlando, Florida, Judge Newman served as a panelist for the presentation *Evidence Matters*. She also participated as a speaker at the 2021 Florida Workers’ Advocates Educational Conference in Orlando, Florida on June 3, 2021. Judge Newman participated in the panel discussion *Legal Ethics and Professionalism – A View from the Bench*.

Following Judge Young’s transfer to District SPT, Judge Dietz (MEL) and Judge Newman (TLH) provided significant assistance with management of the motion practice and docket in Tampa.

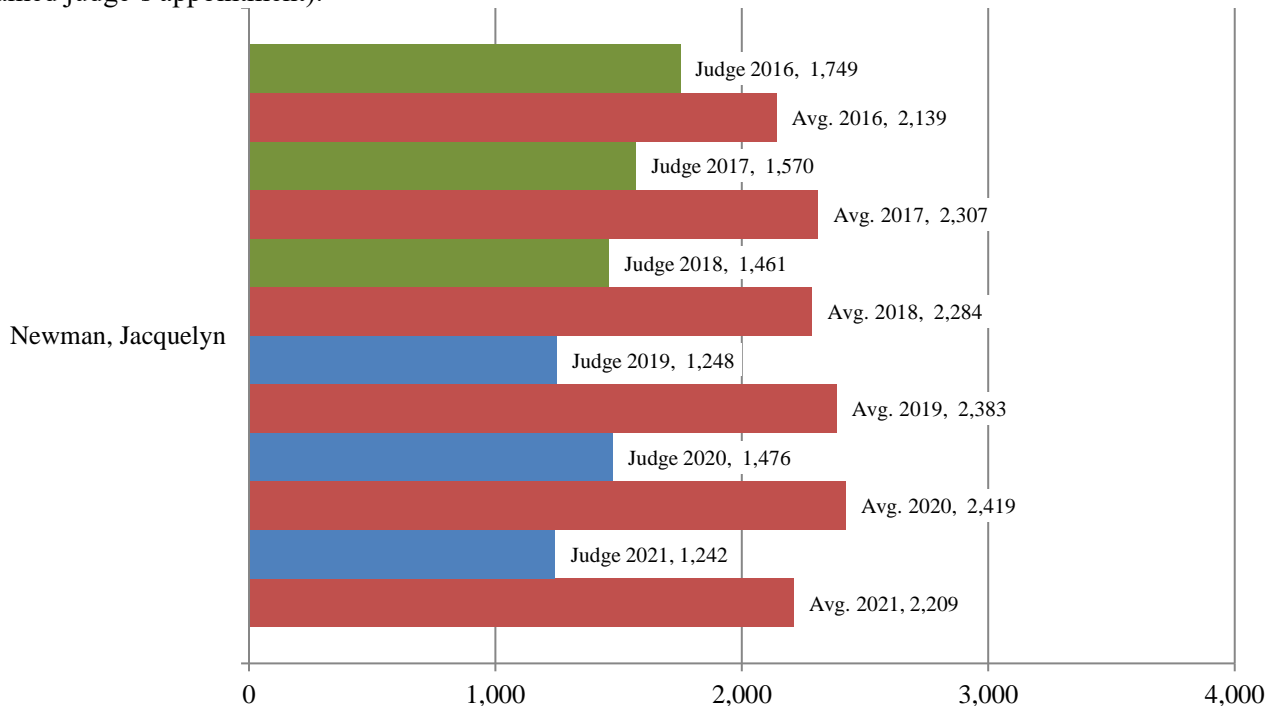
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



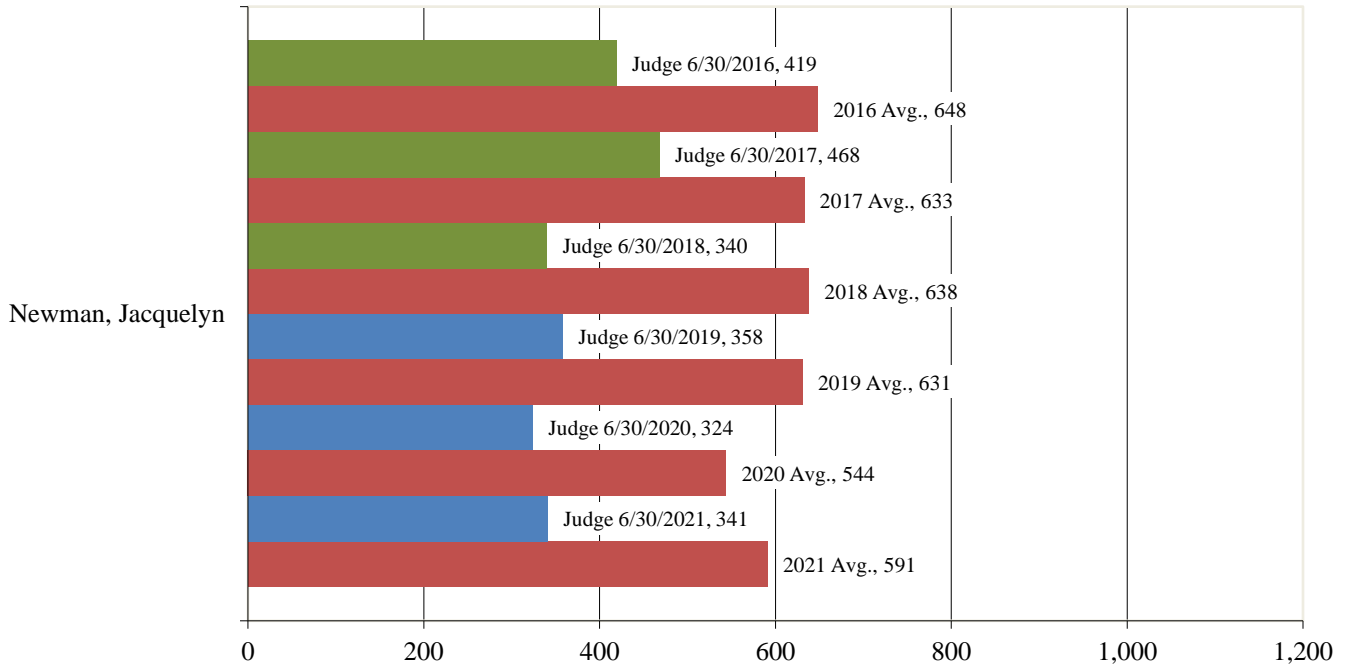
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



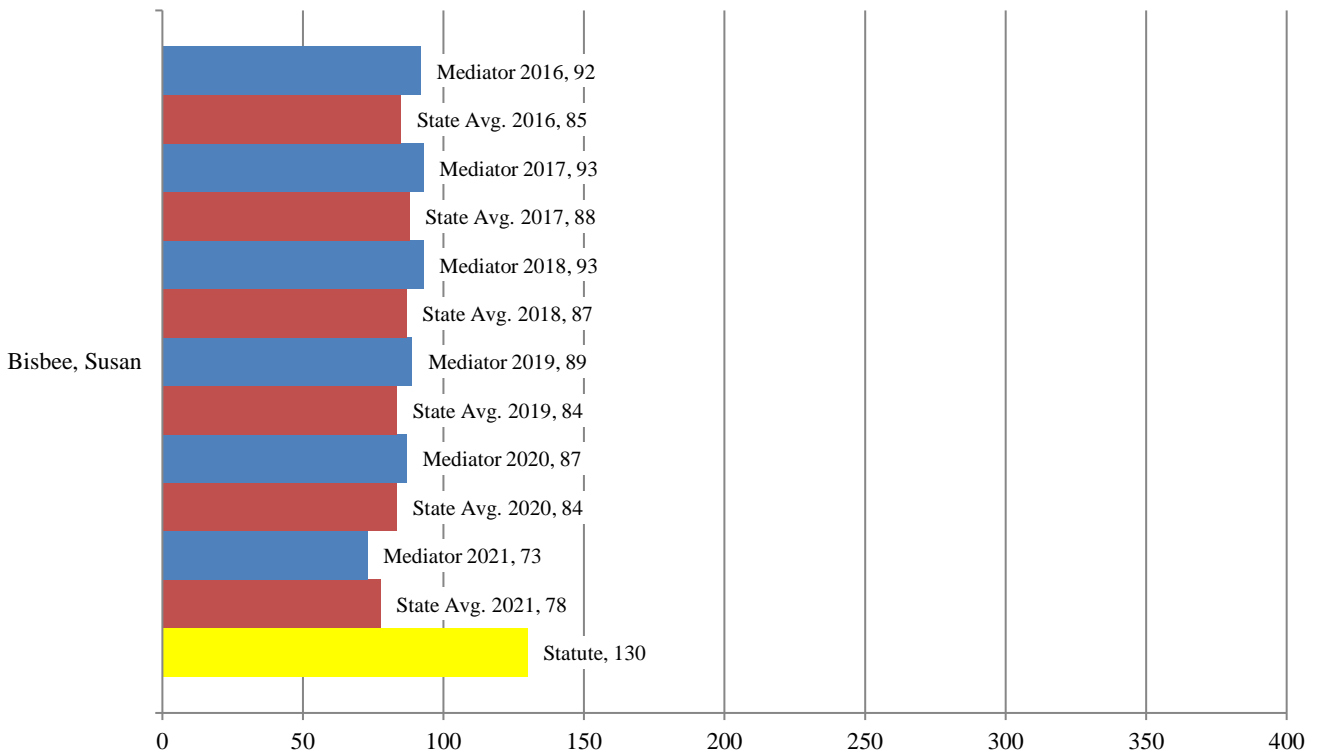
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



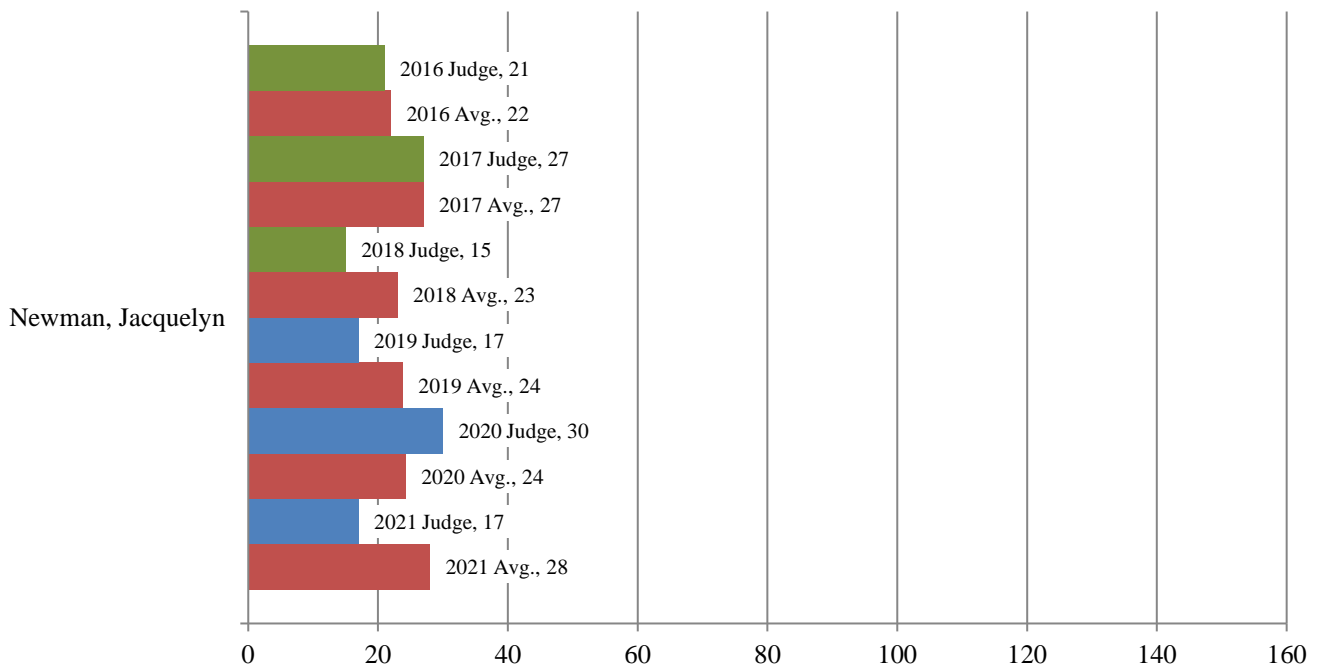
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



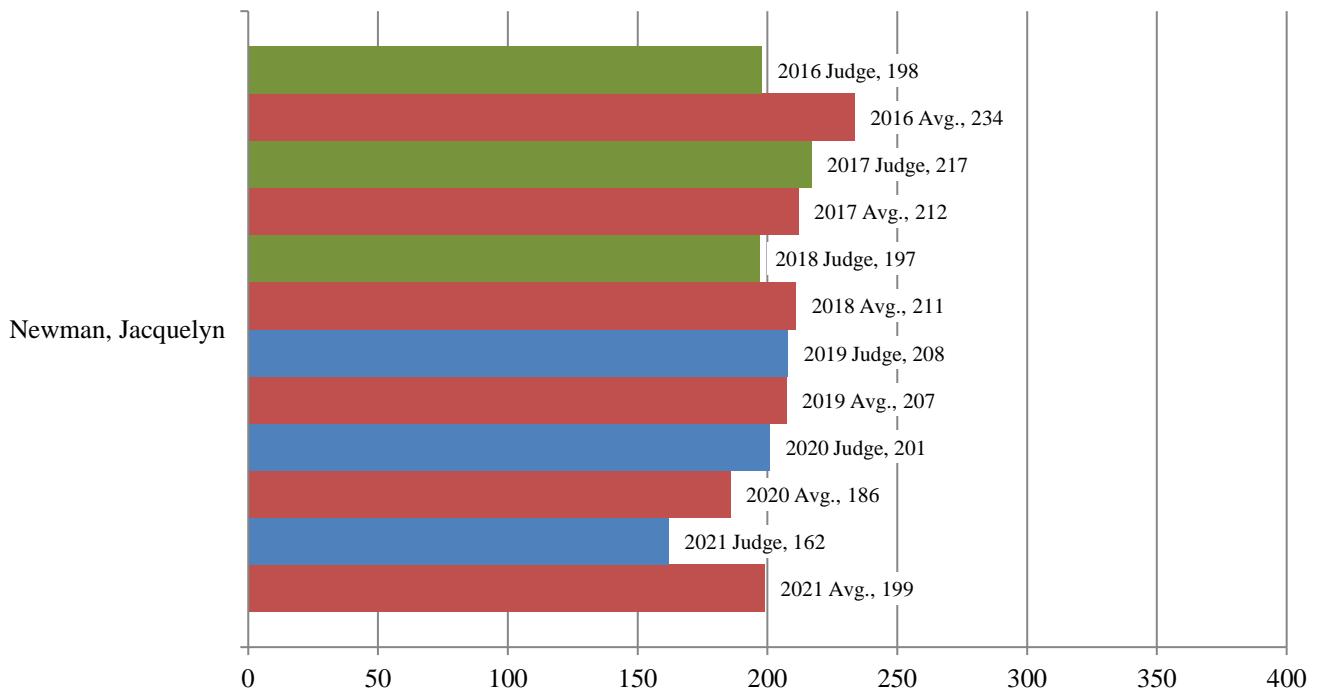
The following depicts the average days between PFB filing, and the first mediation held thereon, for the mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



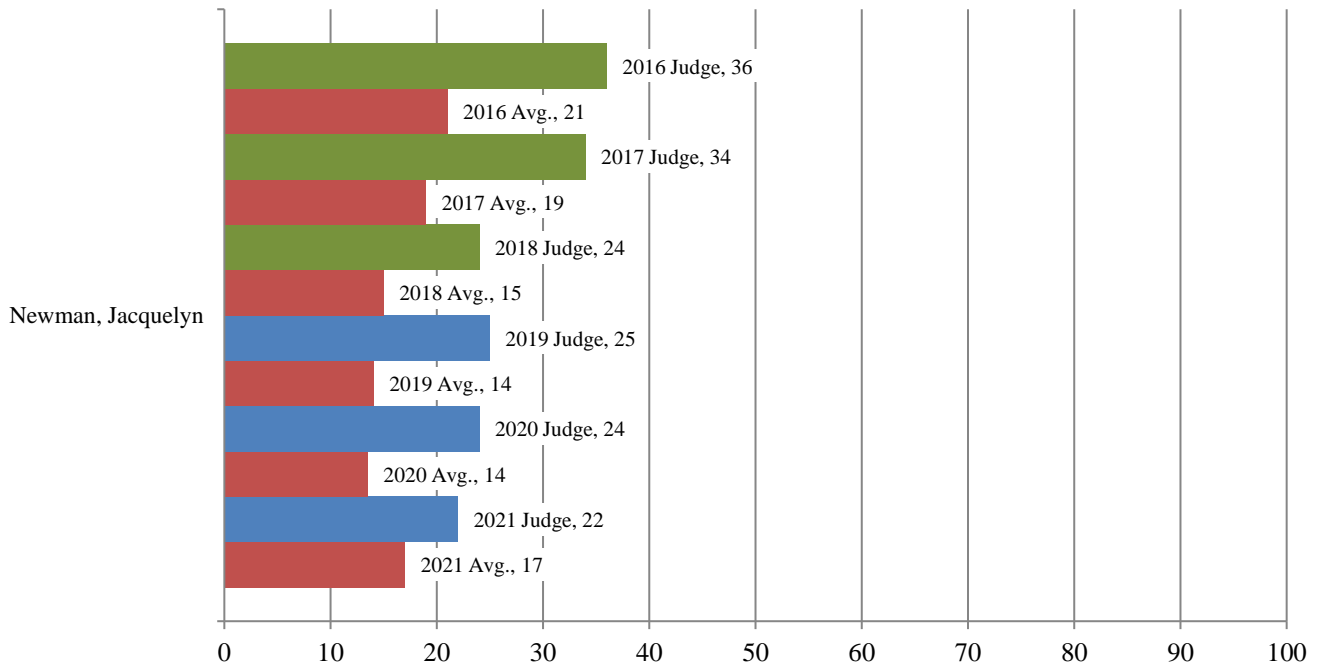
The following graph depicts the total volume of trial orders³³¹ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge’s appointment).



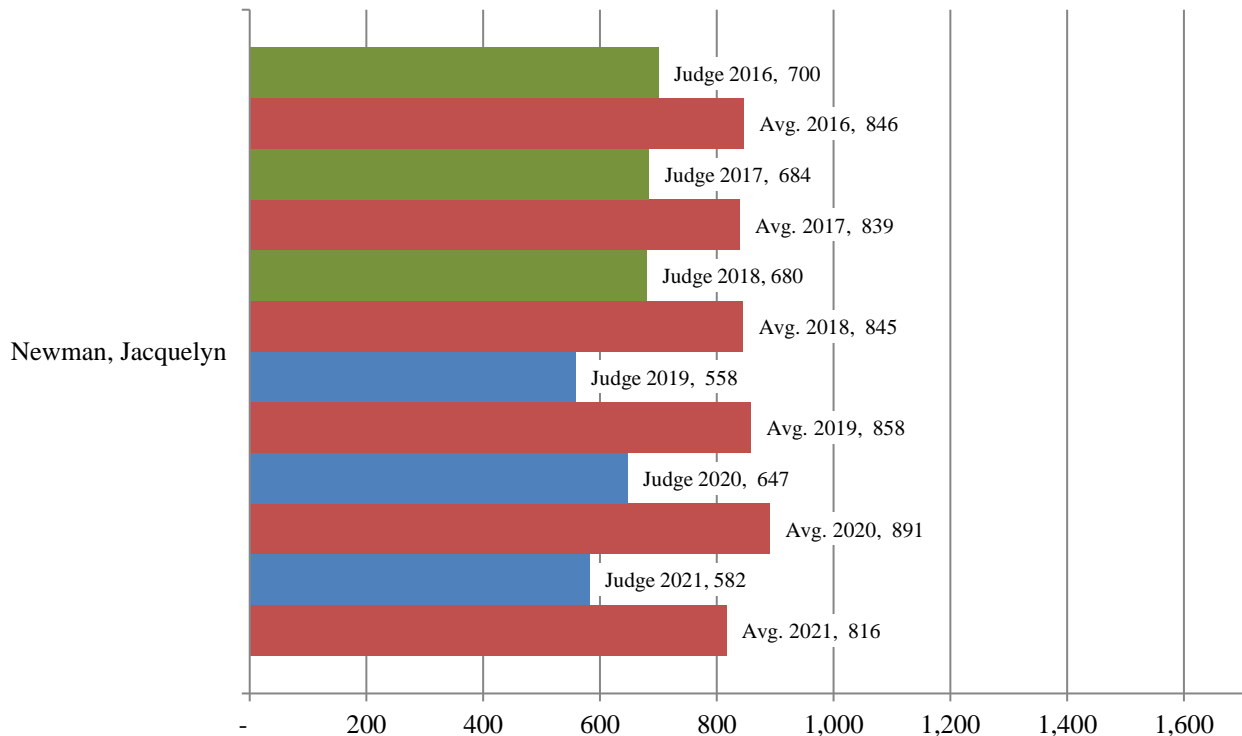
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



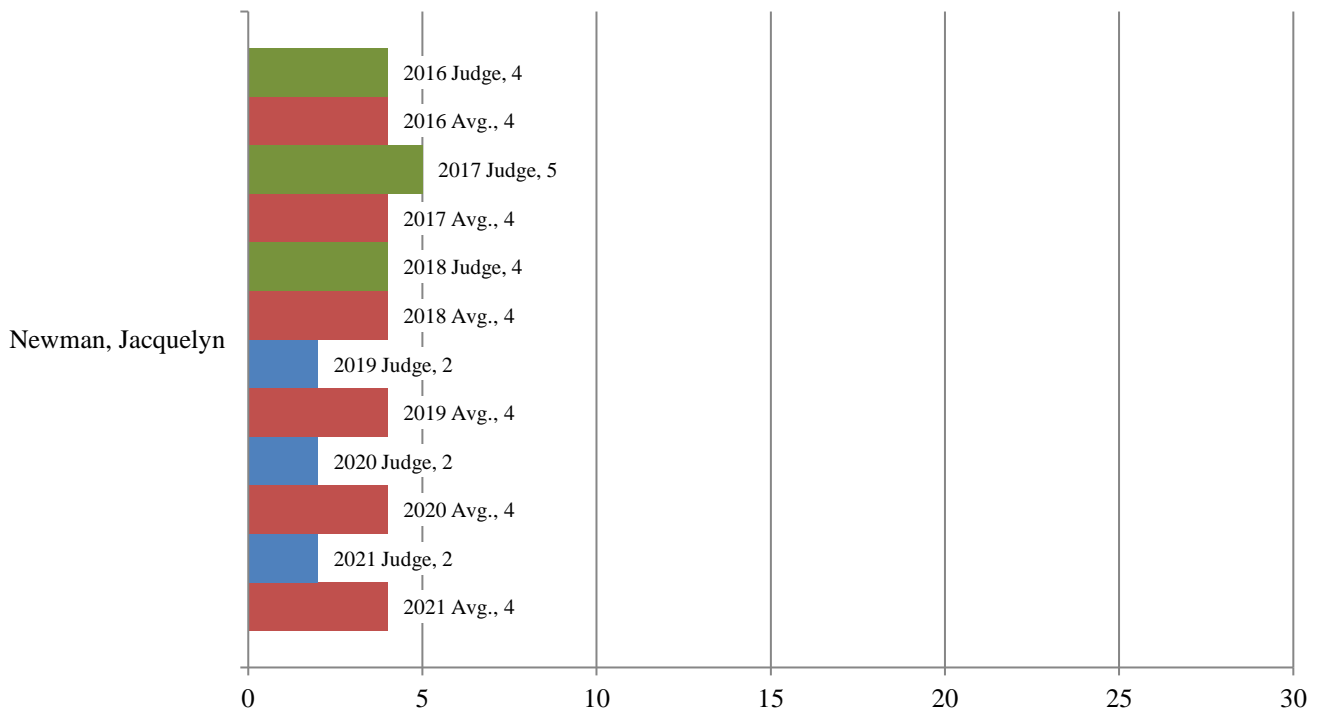
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



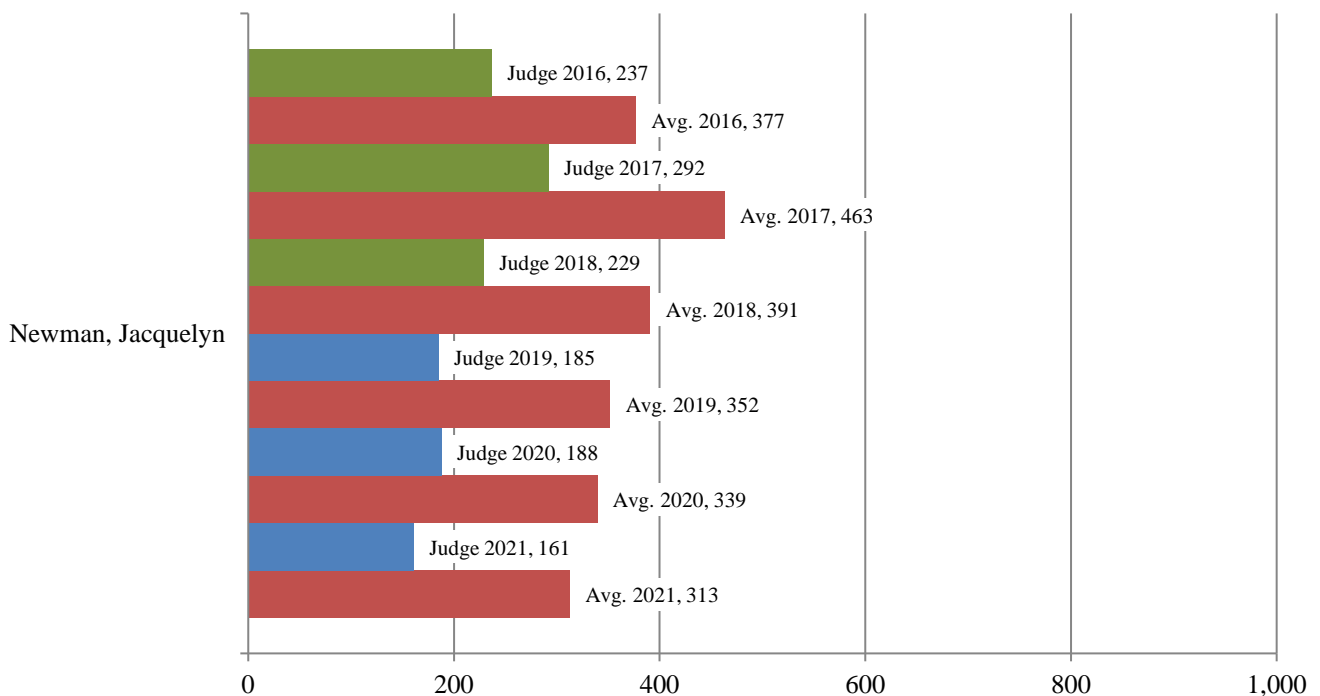
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



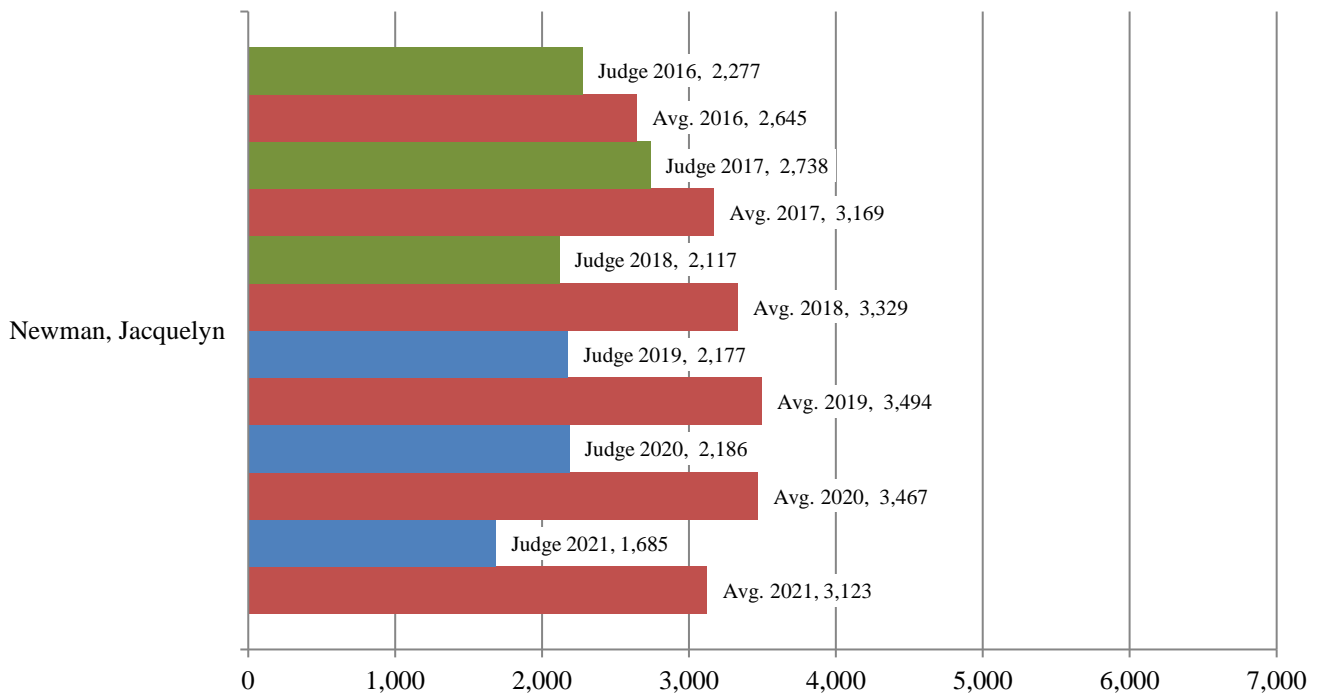
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



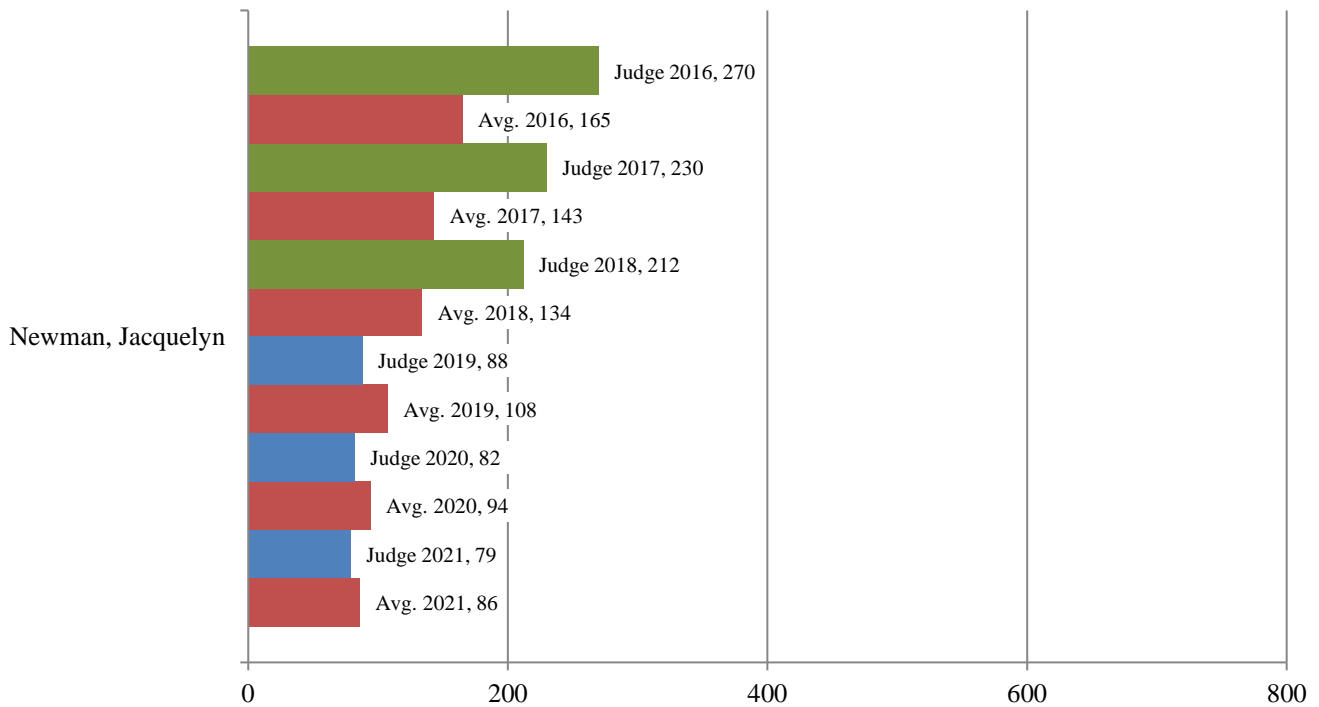
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by the judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “16” District TPA (JCC Anthony³³², JCC Massey, JCC Young³³³:

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

District Tampa has historically been a remarkably stable District. That historically 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 Tampa 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 Tampa. The replacement for Judge Lorenzen was not named until the end of the 2019-20 fiscal year. Thus, the District has been less stable recently as adjustment and accommodation were necessary. Many judges have helped 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 (now JCC Anthony) and Spangler (now vacant again) Divisions. The frequency of those assignments was somewhat tempered during the vacancies 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.

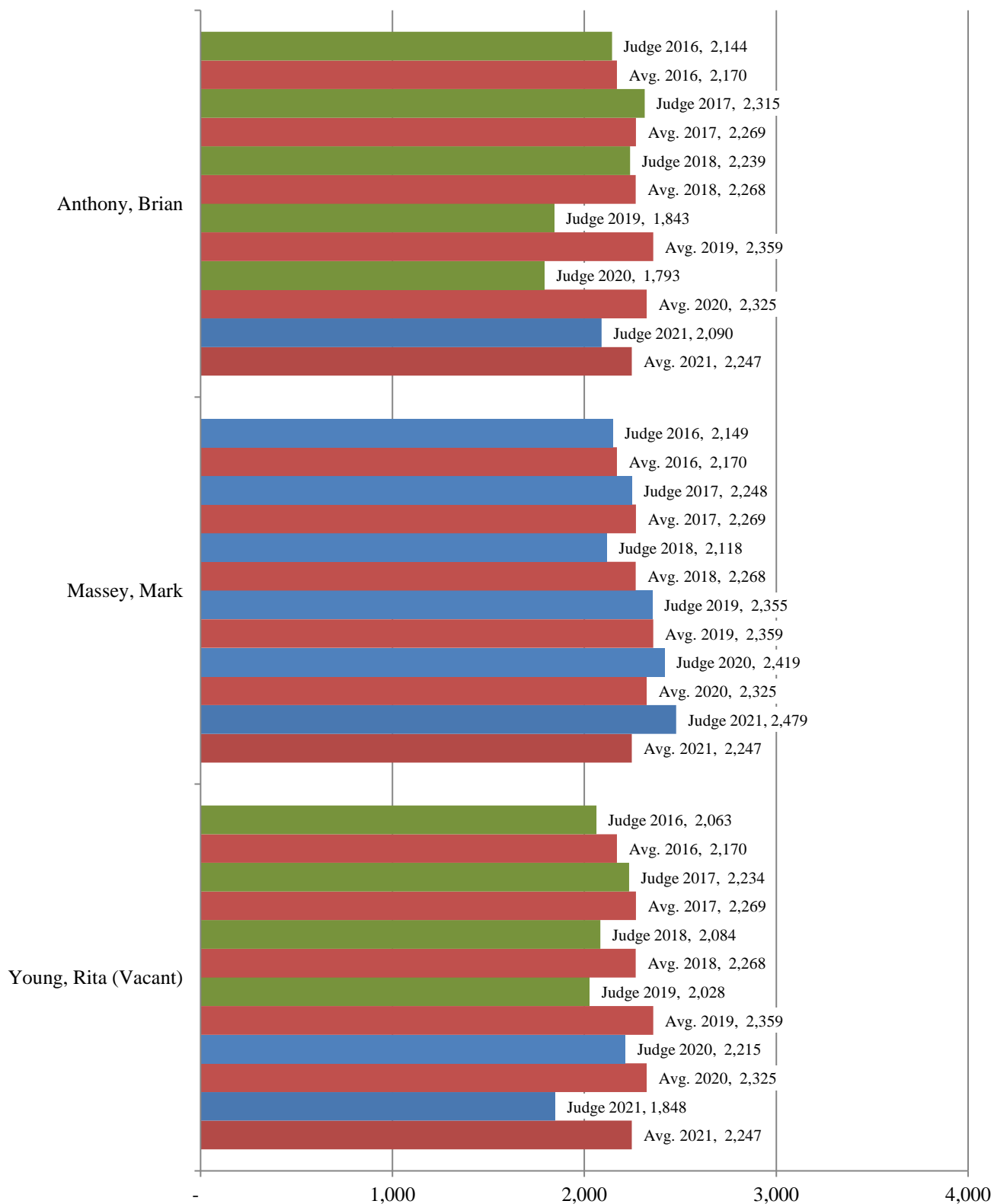
The trial volumes are generally below average, with the exception of Judge Massey’s Division in 2020-21. This is due in large part to the assistance of many judges regarding trials in the former Young Division (now vacant). TPA times to trial improved with regard the statutory 210 days. The time to mediation, to trial, and to order were each overall consistent with the statutory parameters in 2020-21, though time to trial was slightly above the 210 days in one Division.

The last three years, since Judges Lorenzen and Spangler retired, have been challenging in District Tampa. The District has been fortunate to have Judge Mark Massey. His dedication, patience, and focus have led that Division through this difficult time of multiple transitions. The credit he is due cannot be overstated. Notably

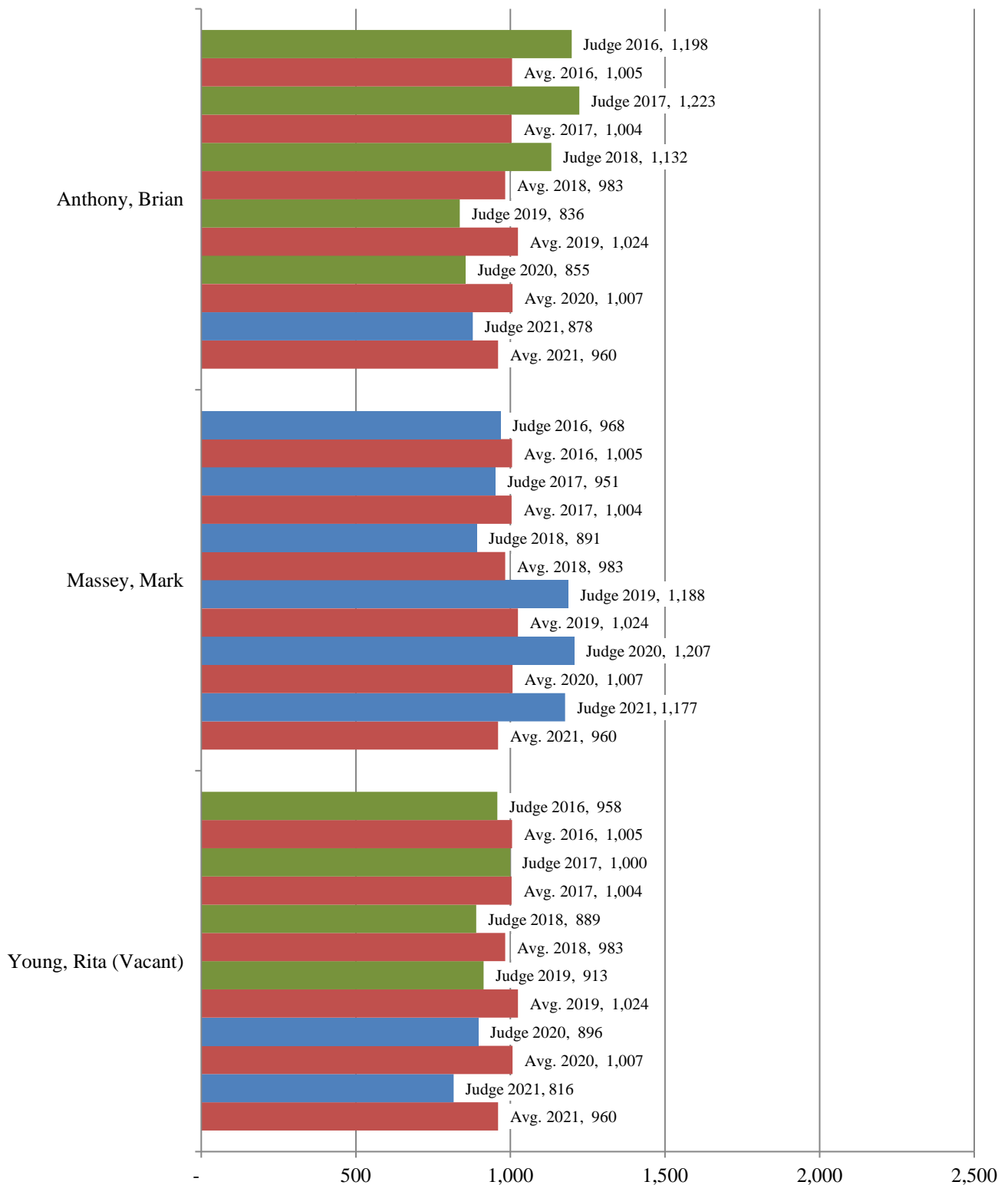
Following Judge Young’s transfer to District SPT, Judge Dietz (MEL) and Judge Newman (TLH) provided significant assistance with management of the motion practice and docket in the vacant TPA Division in fiscal year 2020-21.

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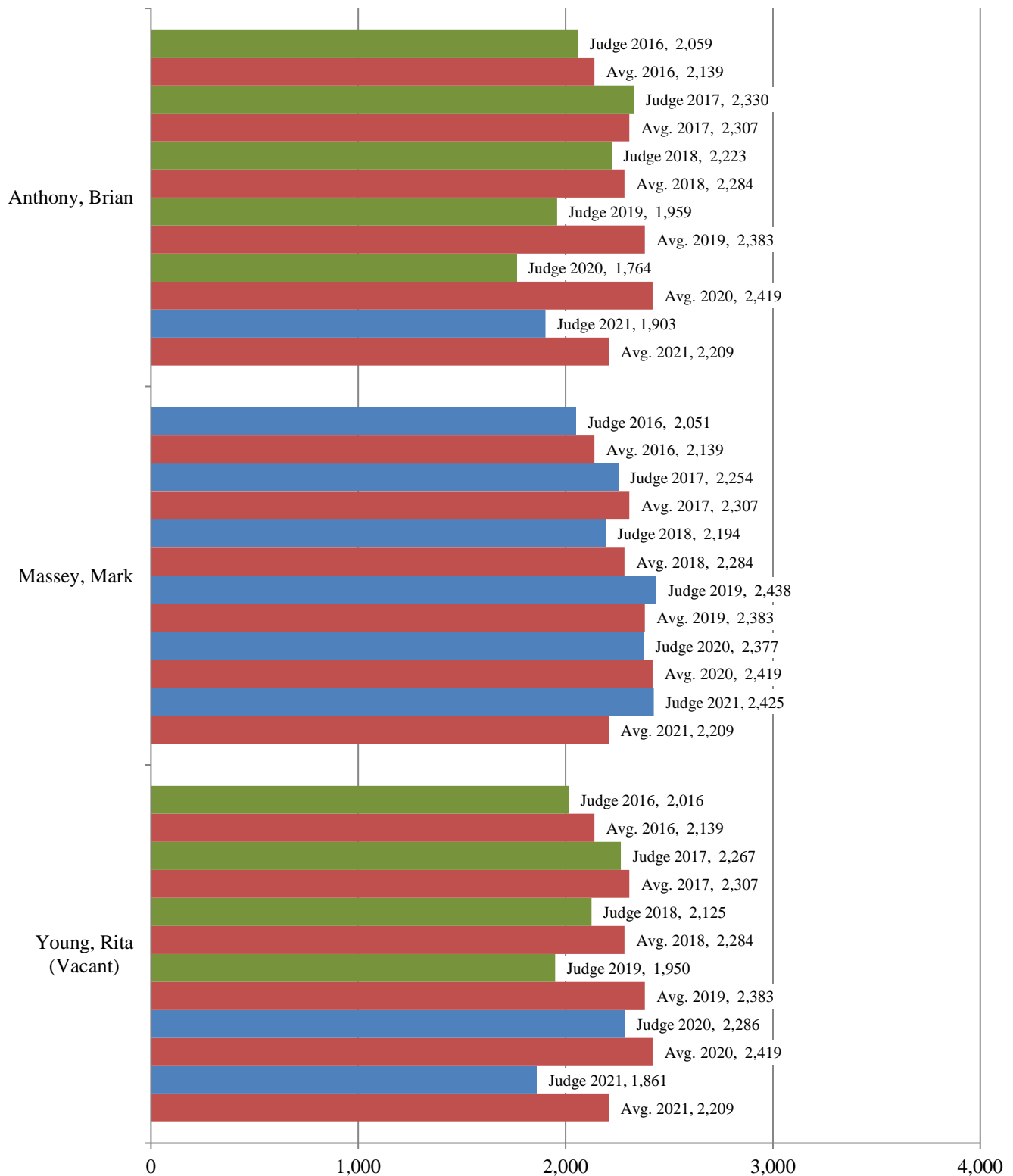
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



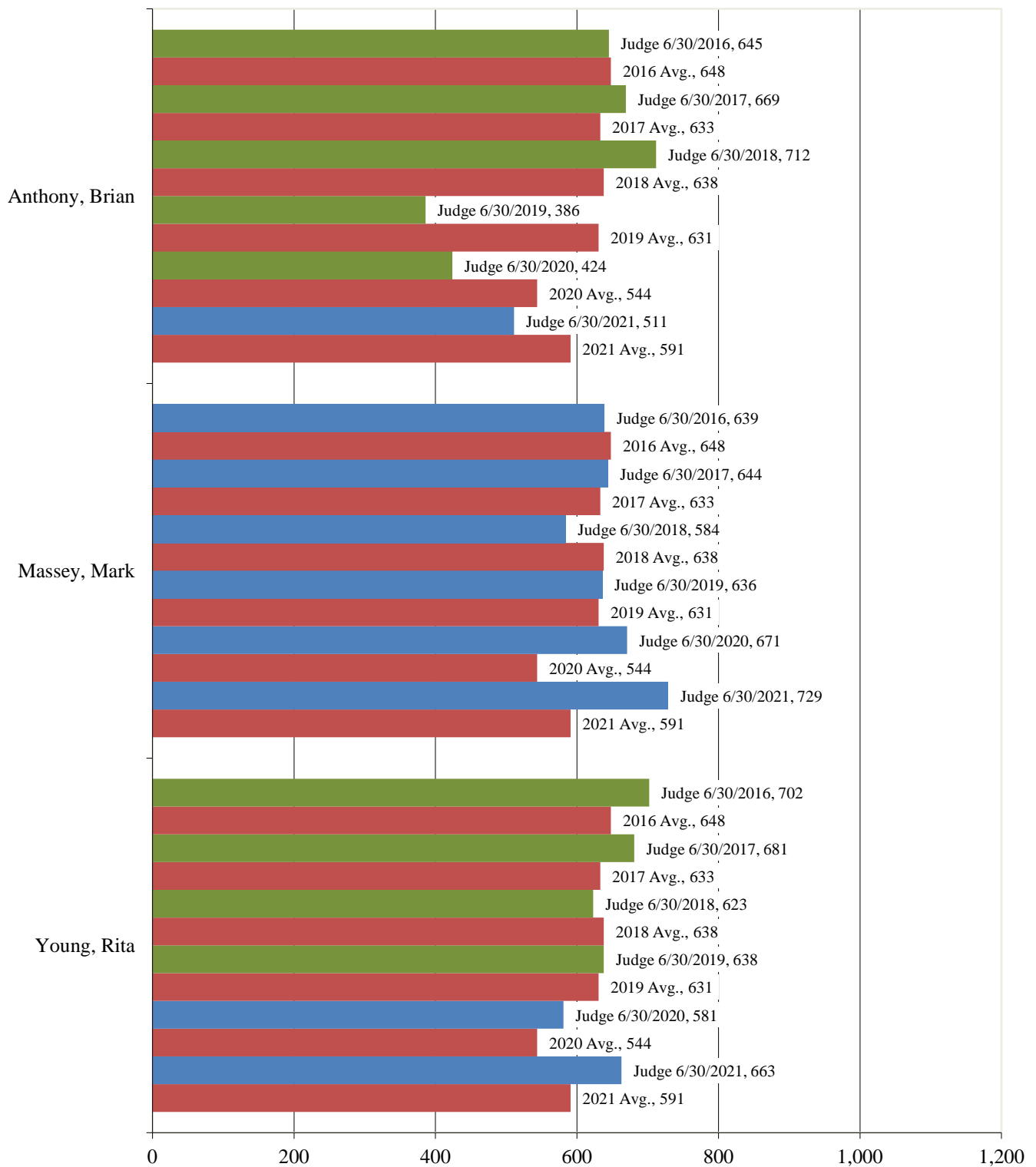
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



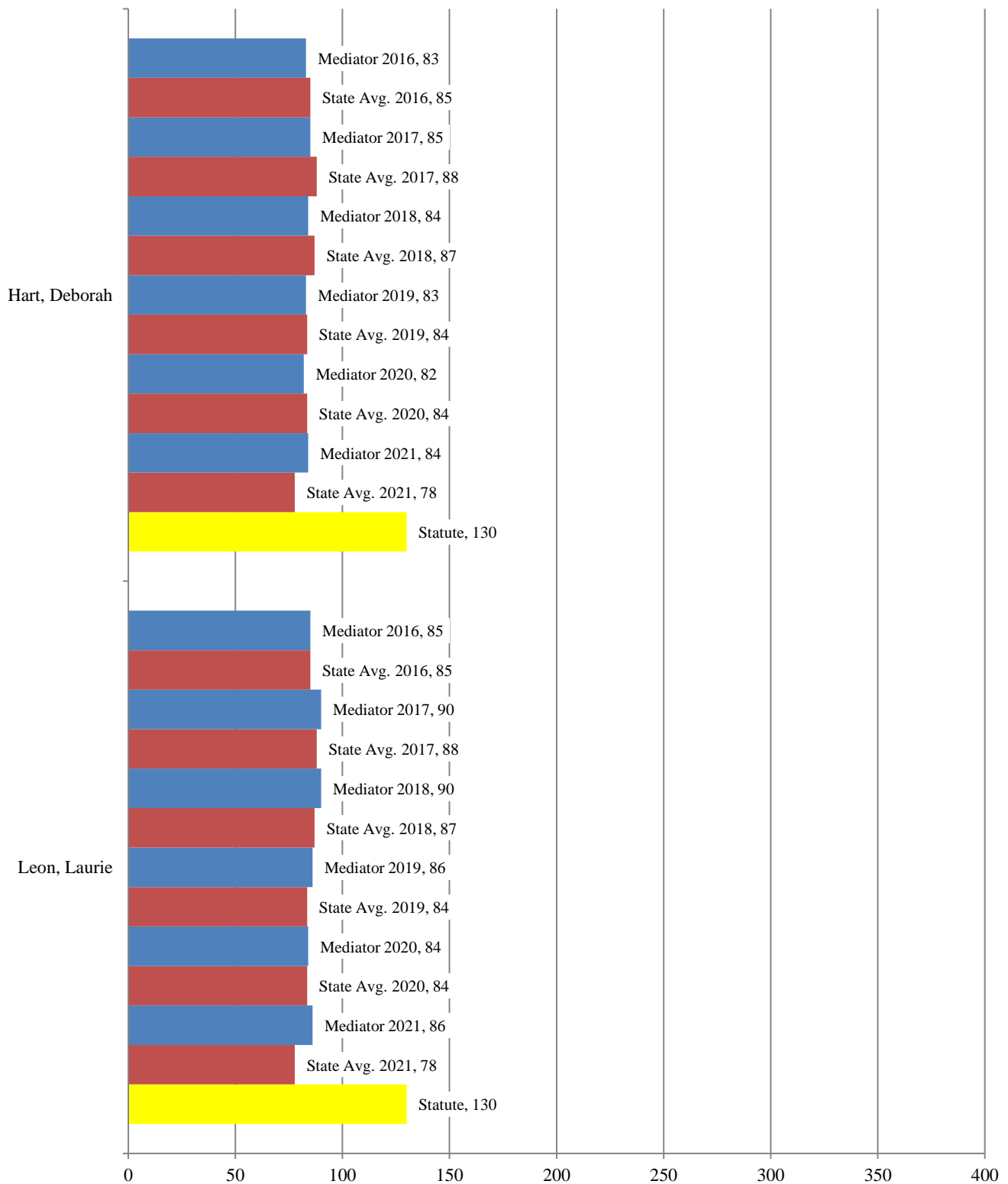
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



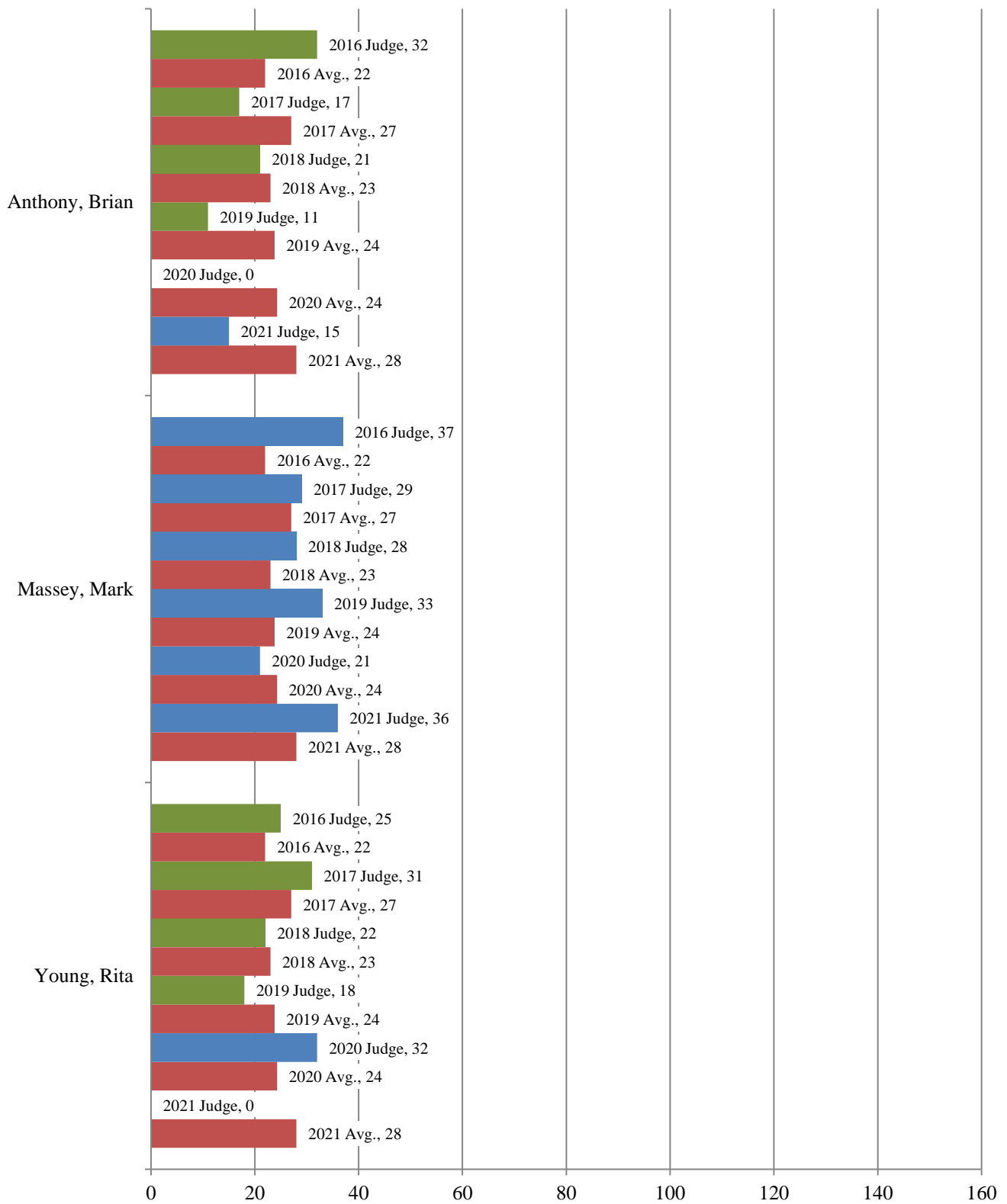
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



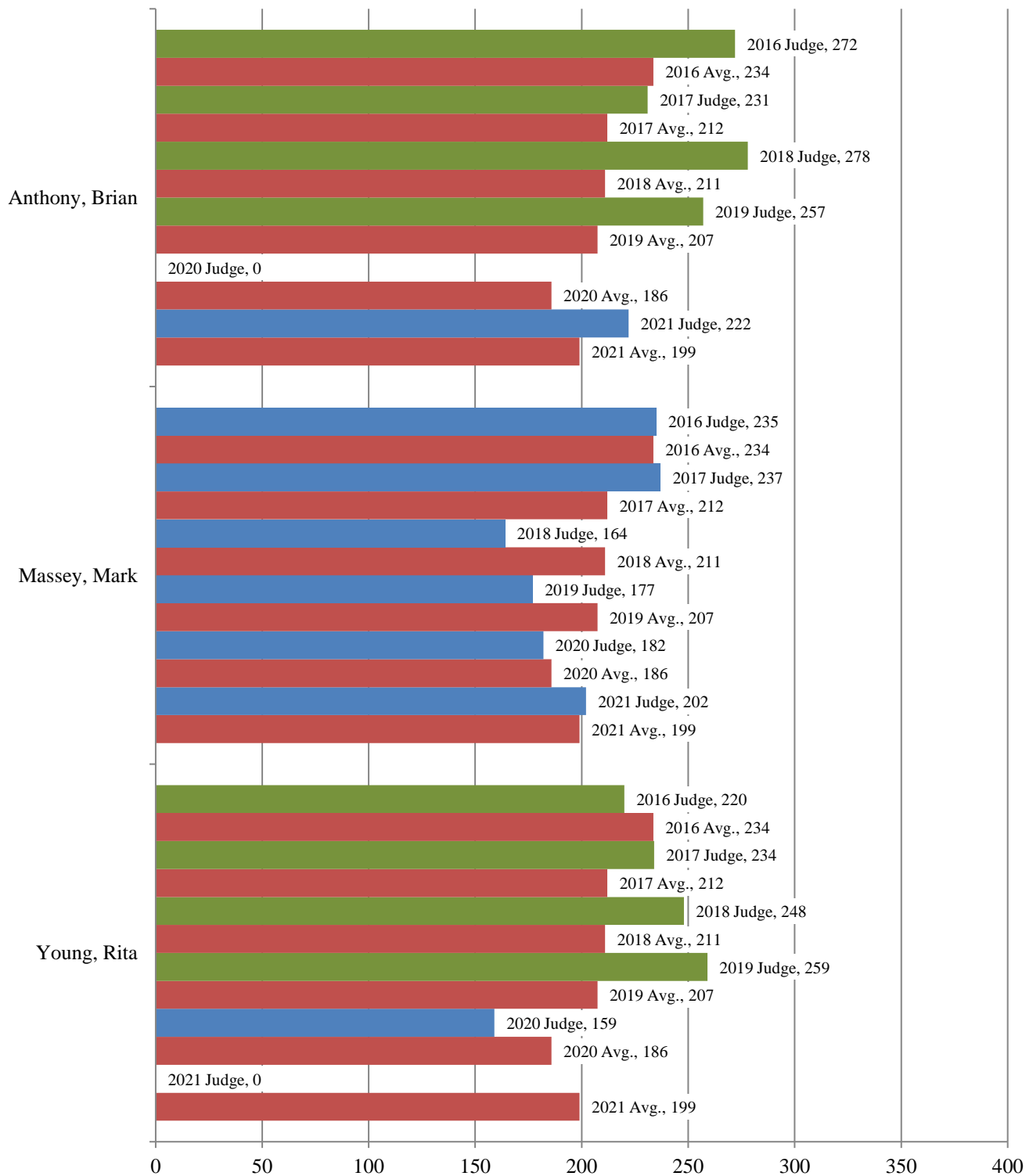
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.



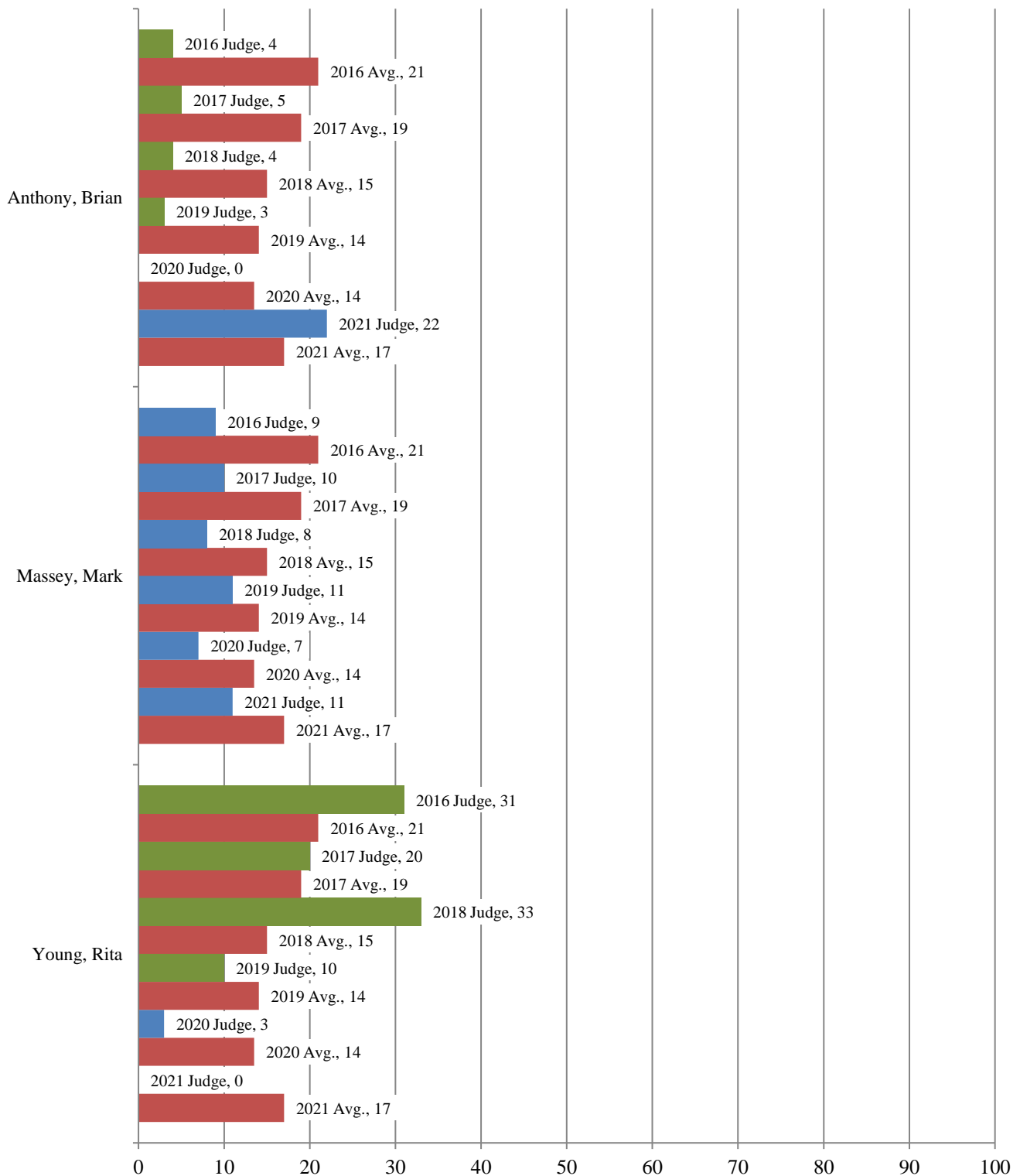
The following graph depicts the total volume of trial orders³³⁴ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



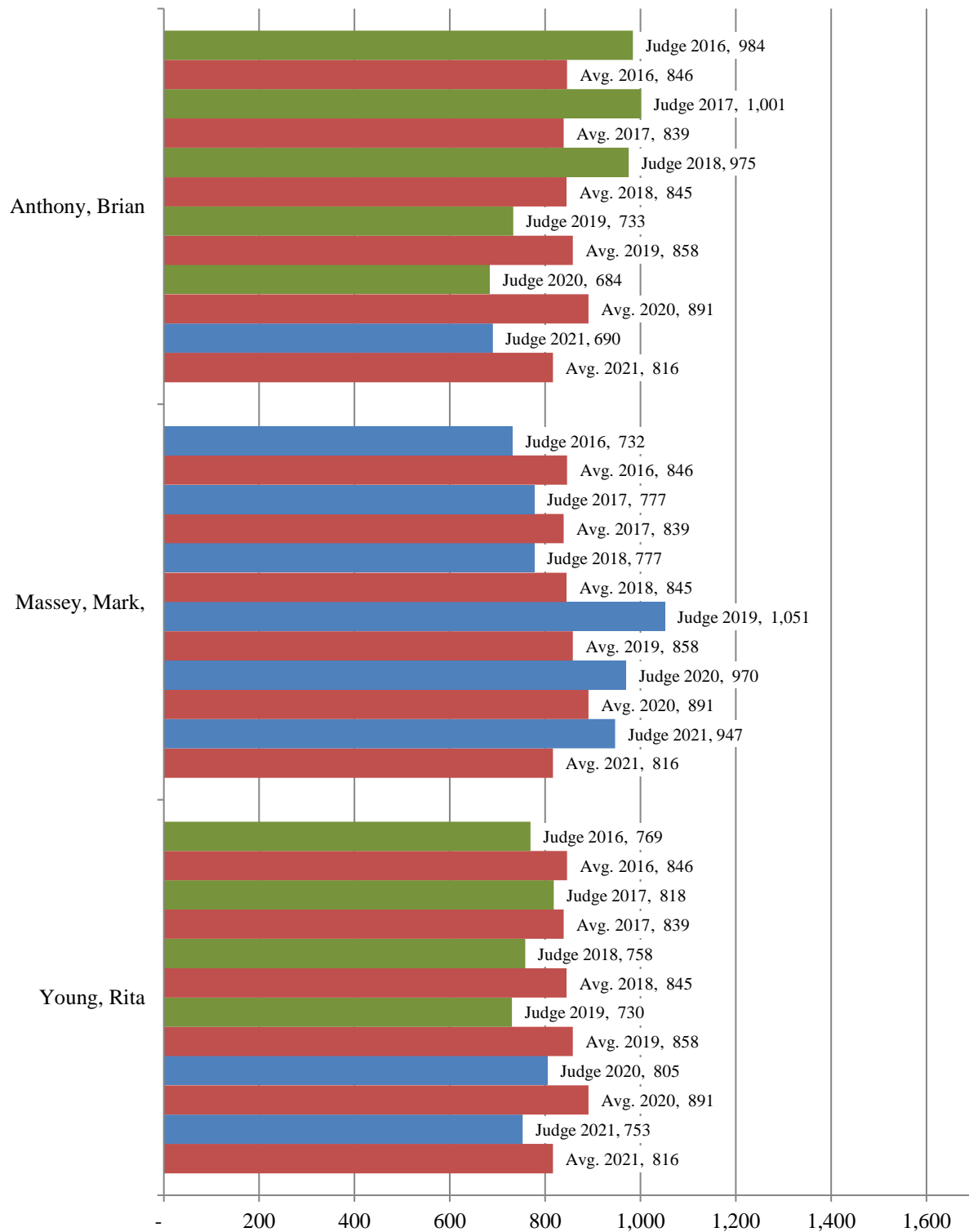
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



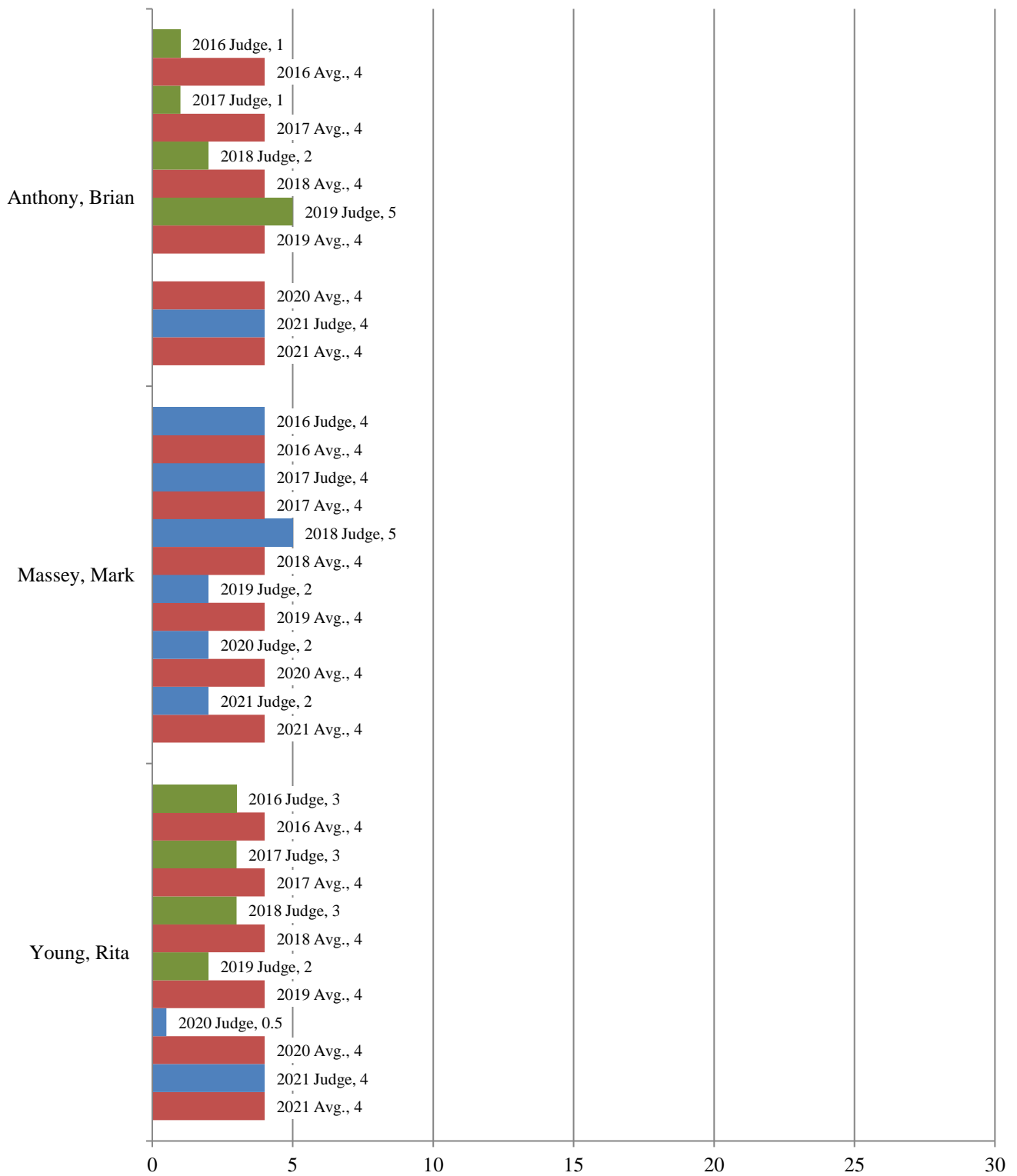
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



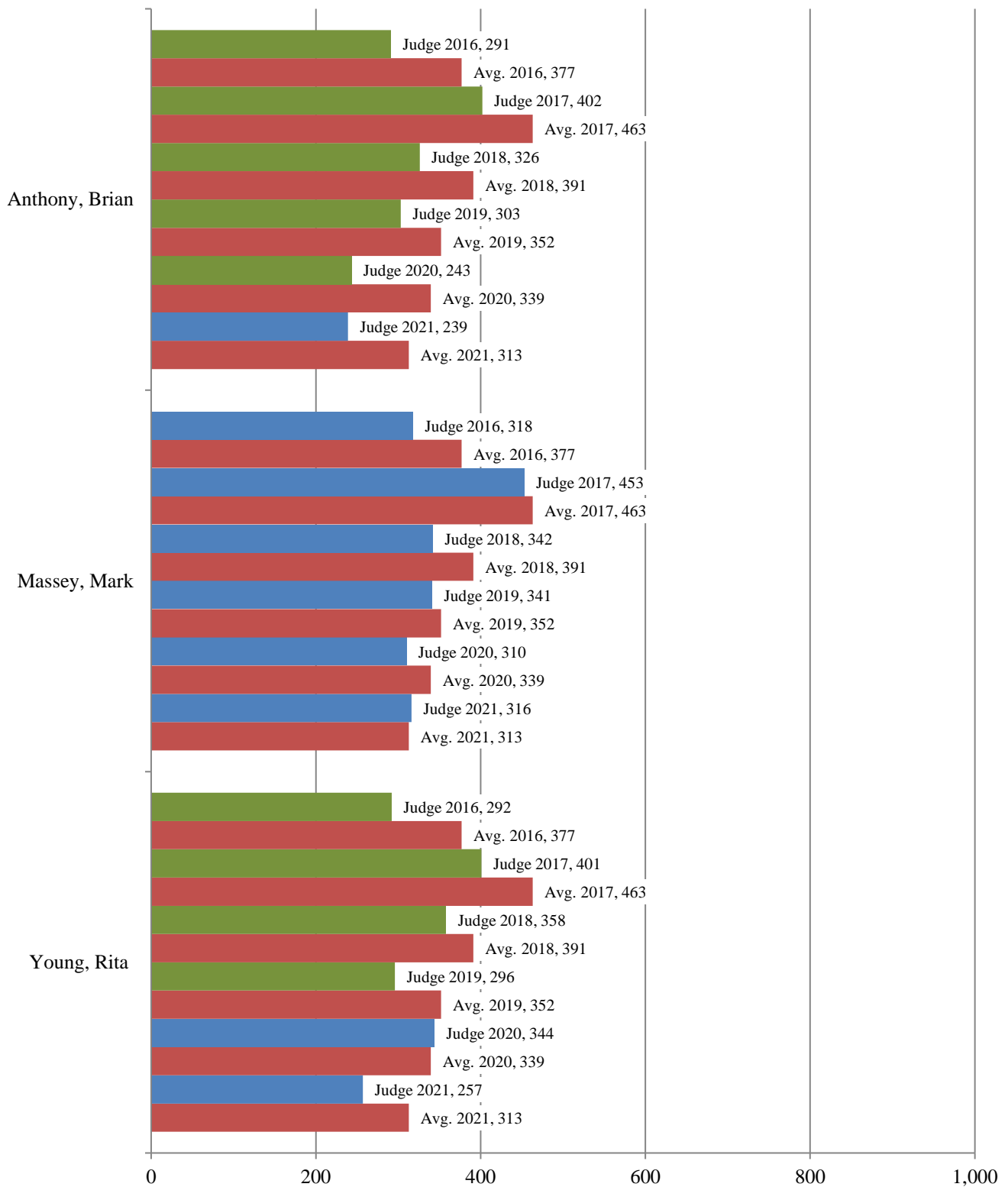
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



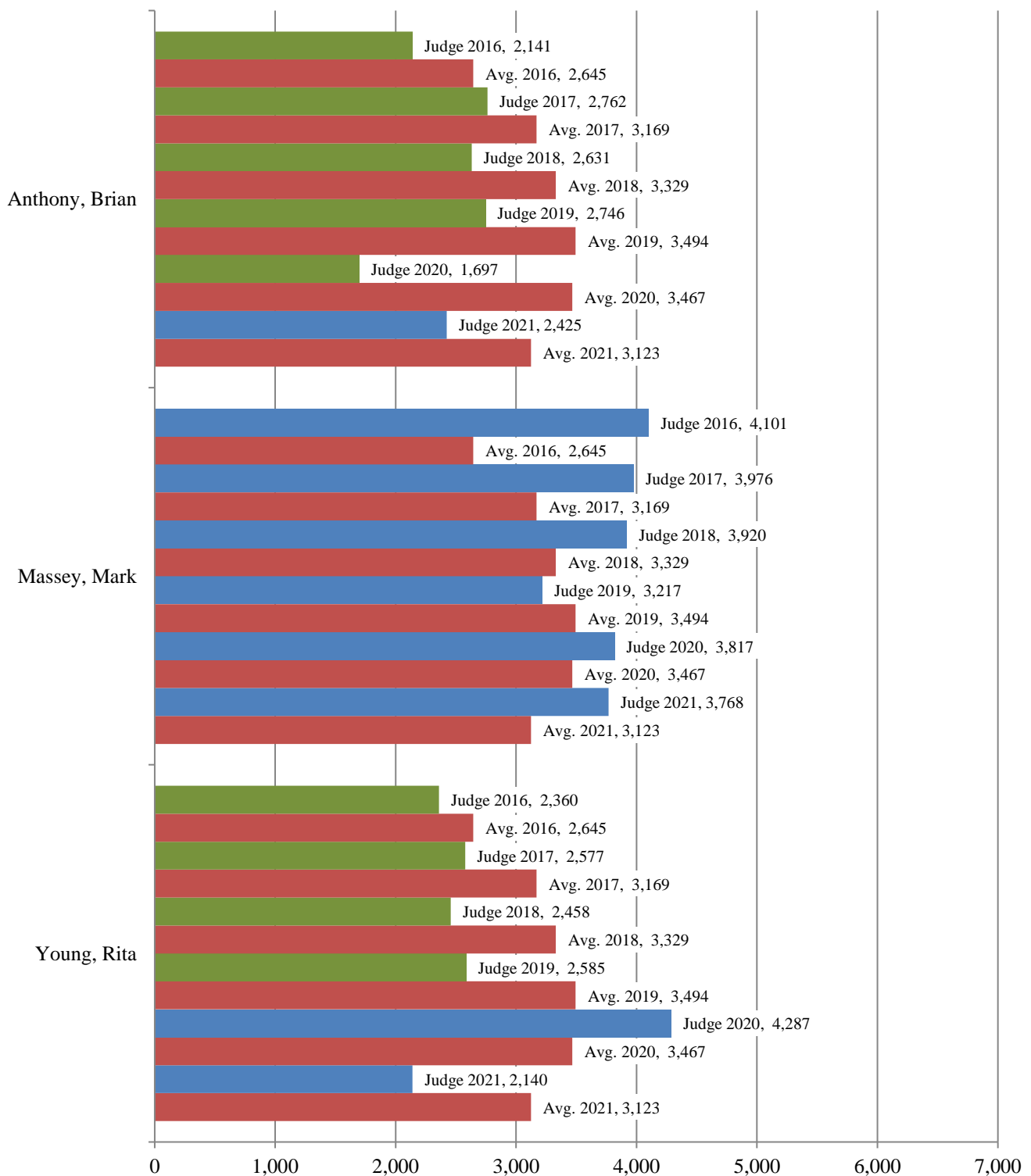
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



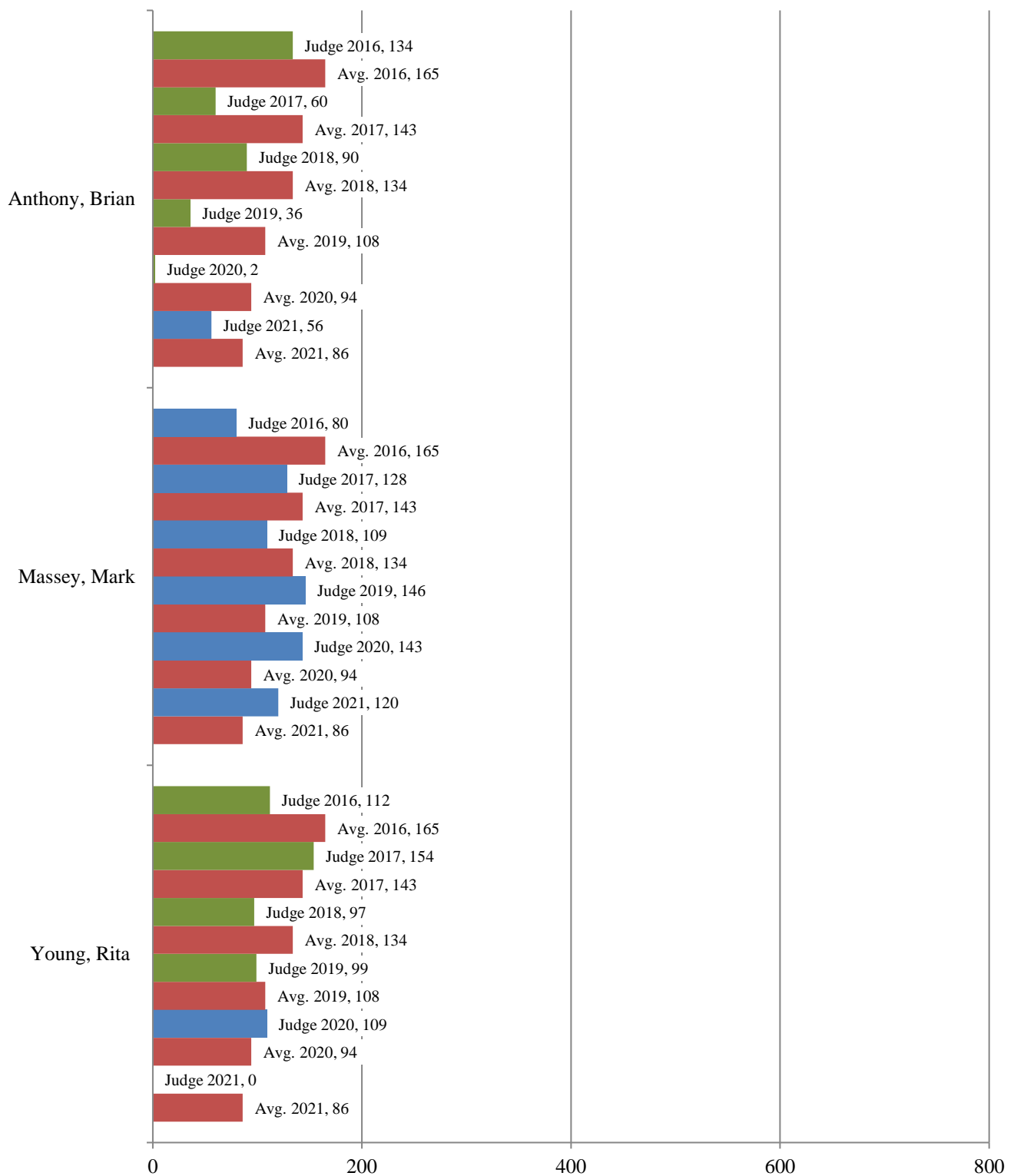
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



Appendix “17” District WPB (JCC Hedler³³⁵, JCC Johnsen³³⁶, JCC Stephenson³³⁷):

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

The Petition filing volumes in District West Palm Beach have historically been above average. The trend has been downward, however, and for 2020-21 the filings are very close to the statewide average. The “new case” volume in all three WPB Divisions is below average, which is a consistency in southeast Florida from Port St. Lucie to Miami.

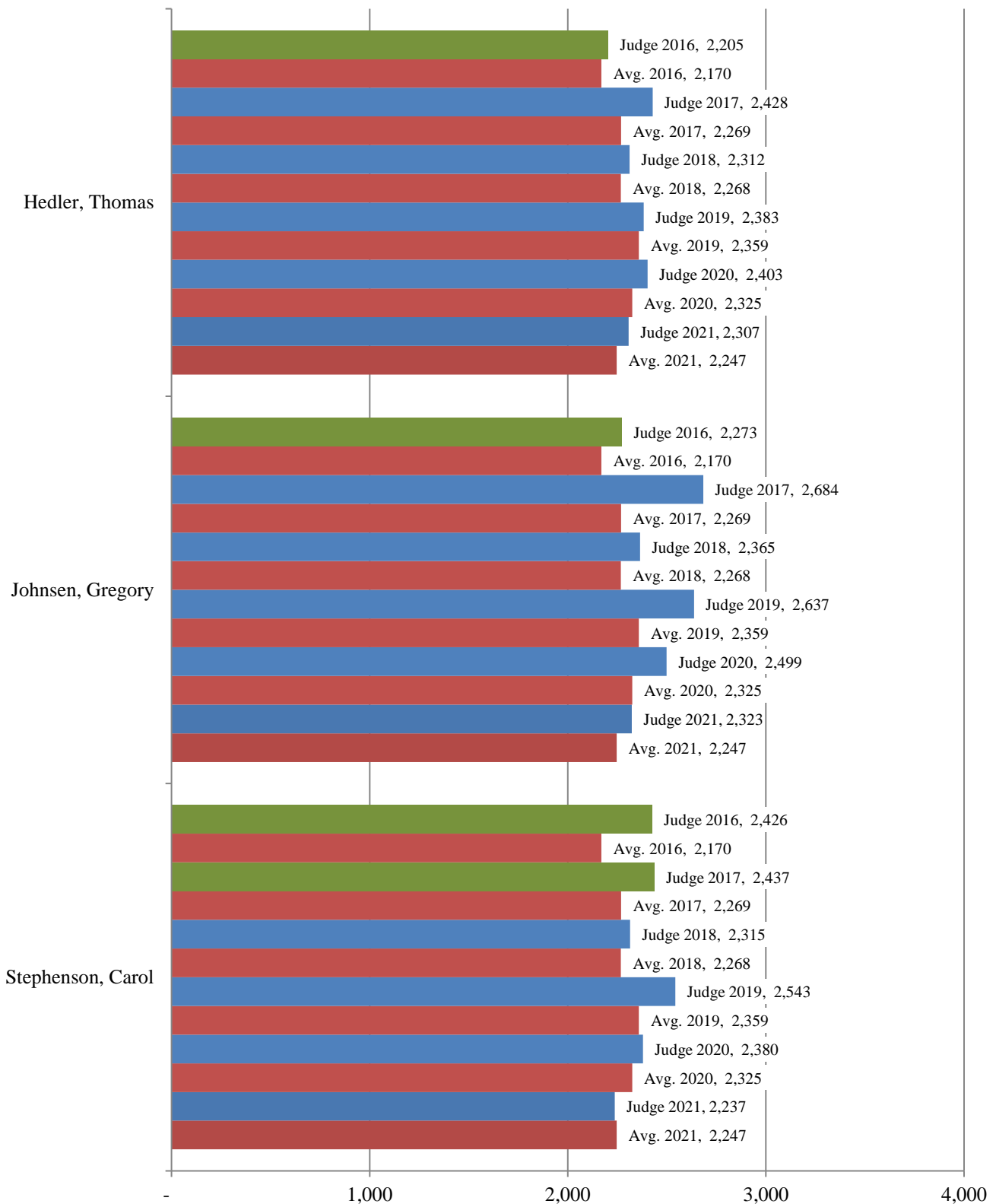
The trial order volume in District West Palm Beach are generally consistent with the statewide average; the exception is Judge Stephenson’s Division which was notably higher in 2020-21. The times to mediation, to trial, and to final order were all within the statutory parameters in District West Palm Beach in 2020-21. 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 2020-21, Judge Hedler remained active in community organizations, including the Palm Beach County Bar Association Workers’ Compensation Executive Committee and the Robert D. McAliley Inns of Court. On April 16, 2021, he participated in a judicial panel of speakers at The Florida Bar Workers’ Compensation Forum Conference. On April 27, 2021, he participated in a judicial panel of speakers at the Palm Beach County Bar Association Workers’ Compensation Section Seminar. On June 3, 2021, he participated in a judicial panel of speakers at the Florida Workers’ Advocates Education Conference. 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.

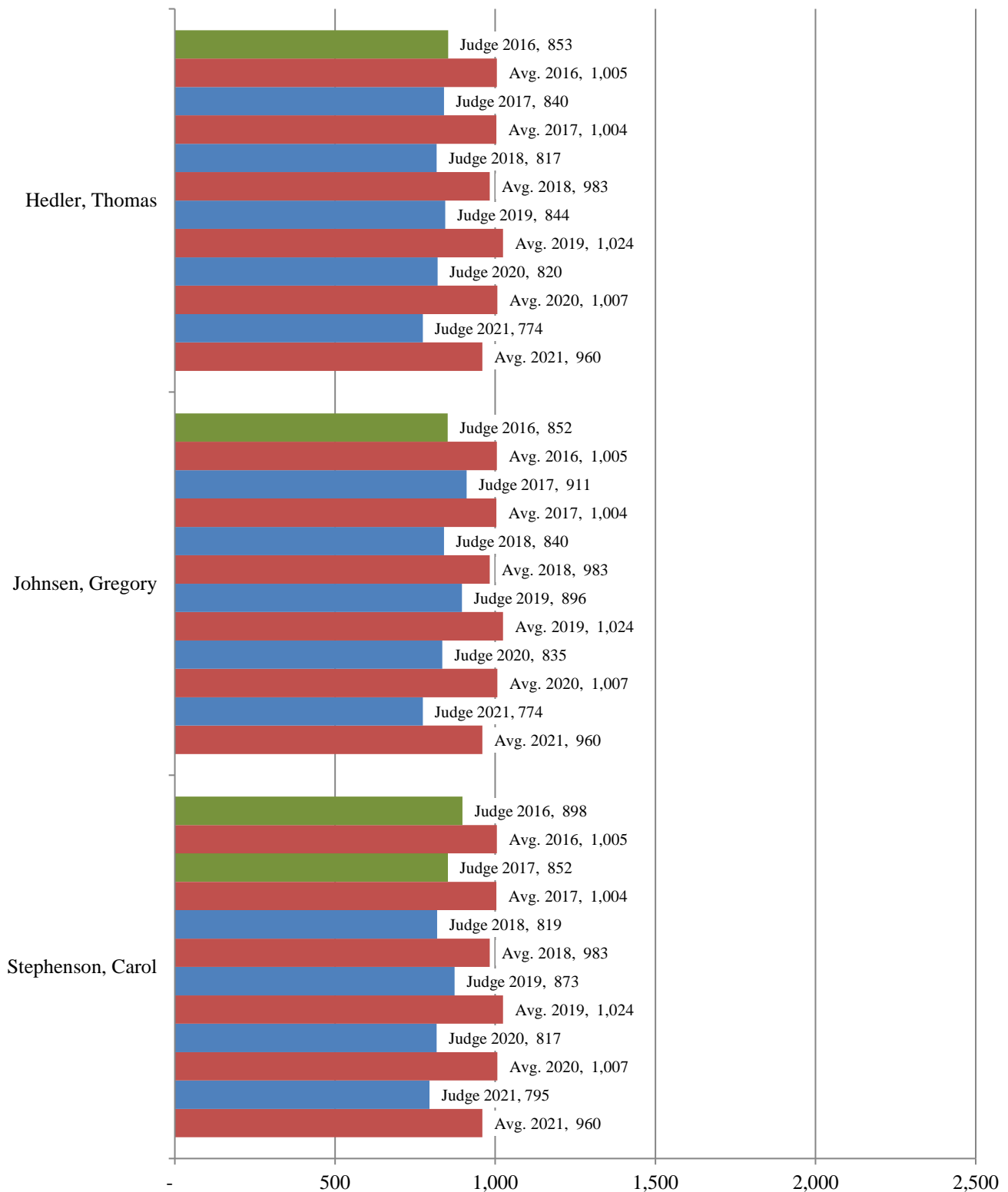
In April of 2021 Judge Johnsen moderated a live panel at the Palm Beach County Bar Association seminar on the topic of *Trial Strategy: How to Present Your Case before the Judge of Compensation Claims, Submission of Evidence, Trial Memoranda, The Pretrial Stipulation, Evidentiary Objections, and Courtroom Demeanor*. Judge Johnsen also participated in a question and answer Judicial Panel at the Palm Beach County Bar Association seminar. Judge Johnsen is a member of the Robert D. McAliley Inns of Court, National Association of Workers’ Compensation Judiciary (NAWCJ), and the Conference of the JCCs.

In 2020-21, Judge Stephenson spoke on the ethics panel for the 2021 OJCC Winter Seminar. She also participated on the judicial panel for the 2021 Workers’ Compensation Seminar, *Trial Presentation and Other Issues in the COVID-19 Era*, presented by the Palm Beach County Bar Association. Judge Stephenson continues to actively serve on the Palm Beach County Association’s Workers’ Compensation Section, the Treasure Coast Division of Friends of the 440 Scholarship Fund, and the Robert D. McAliley Inns of Court.

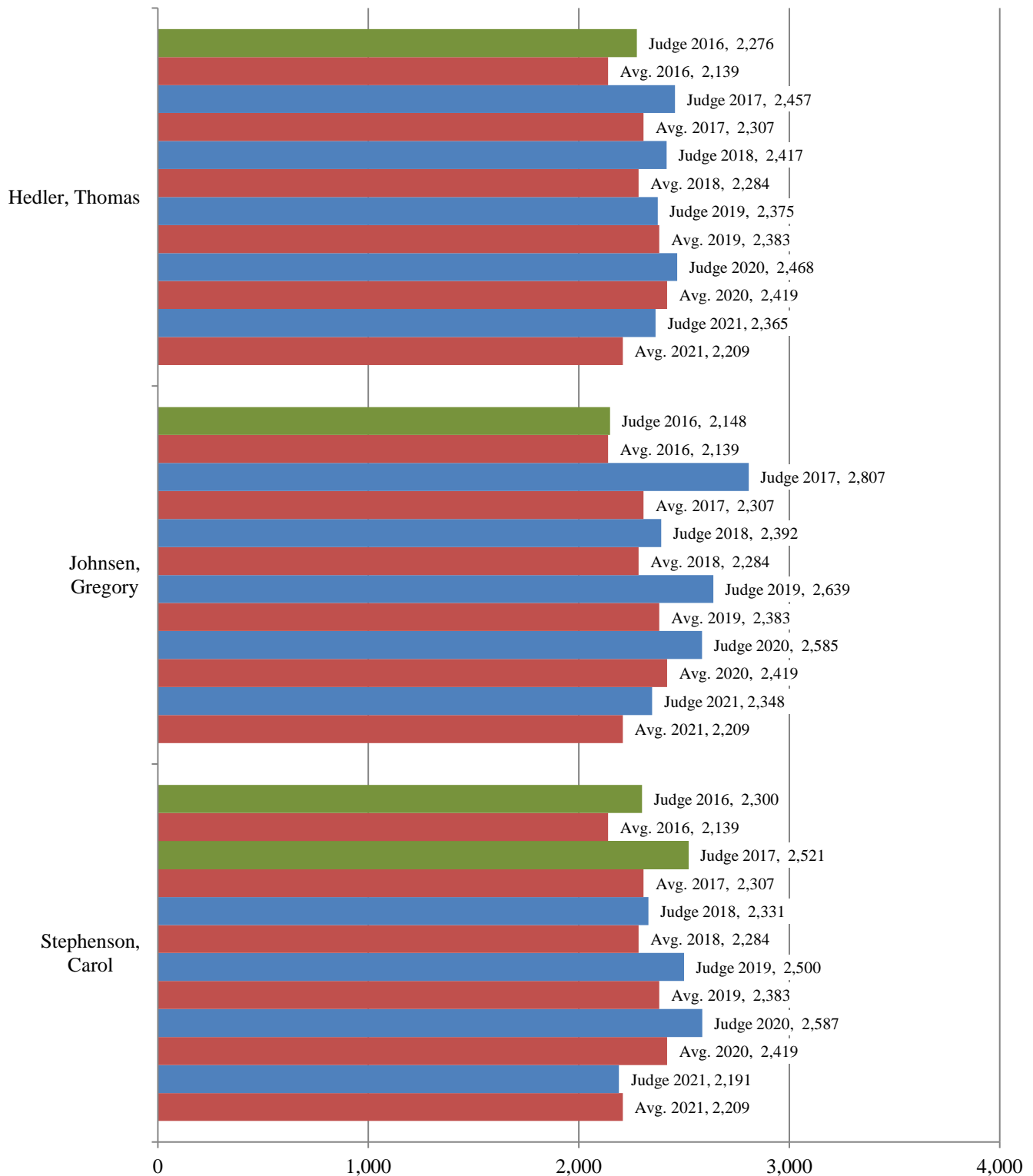
The following depicts the volume of PFBs filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



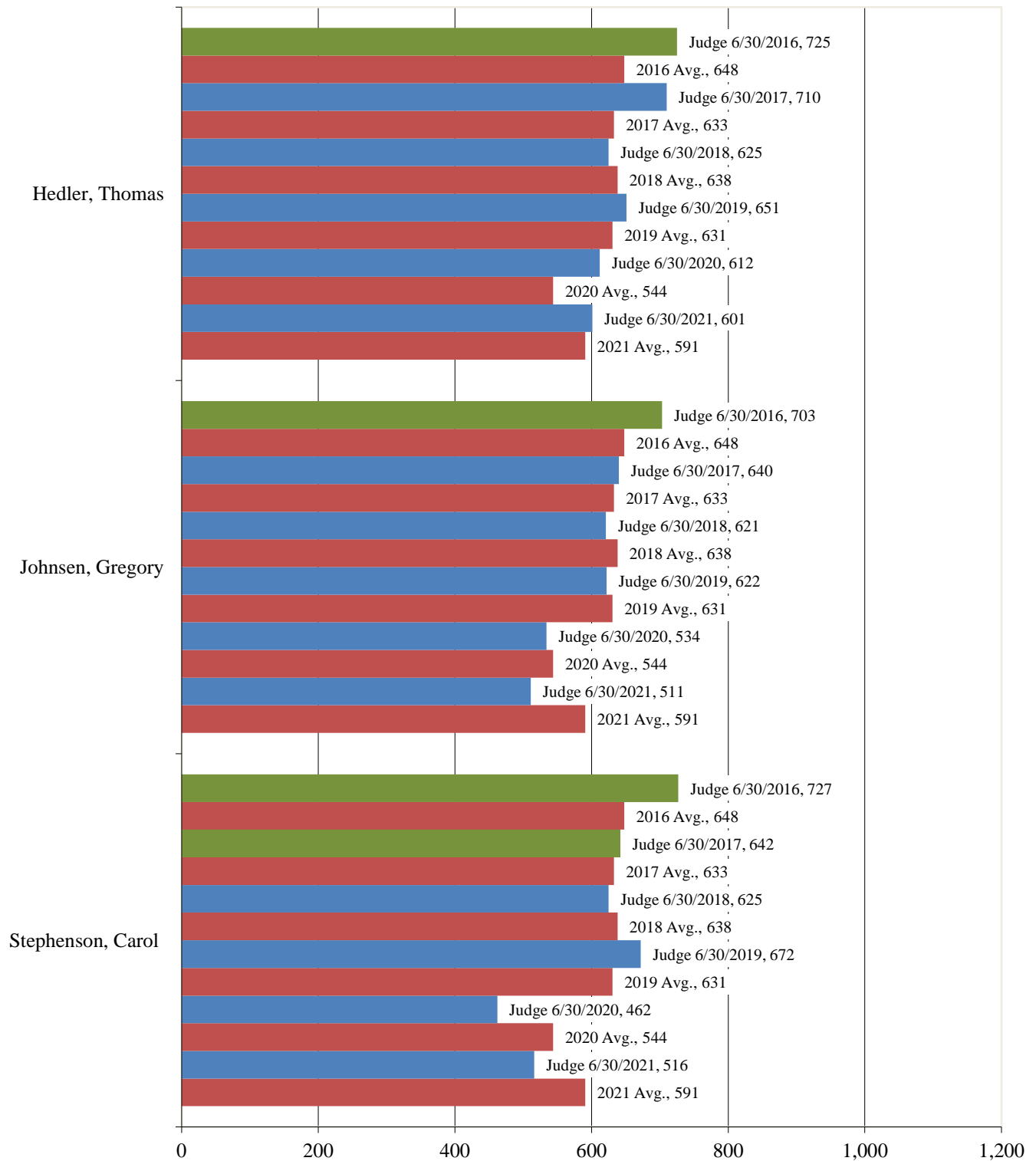
The following depicts the volume of “new cases” filed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



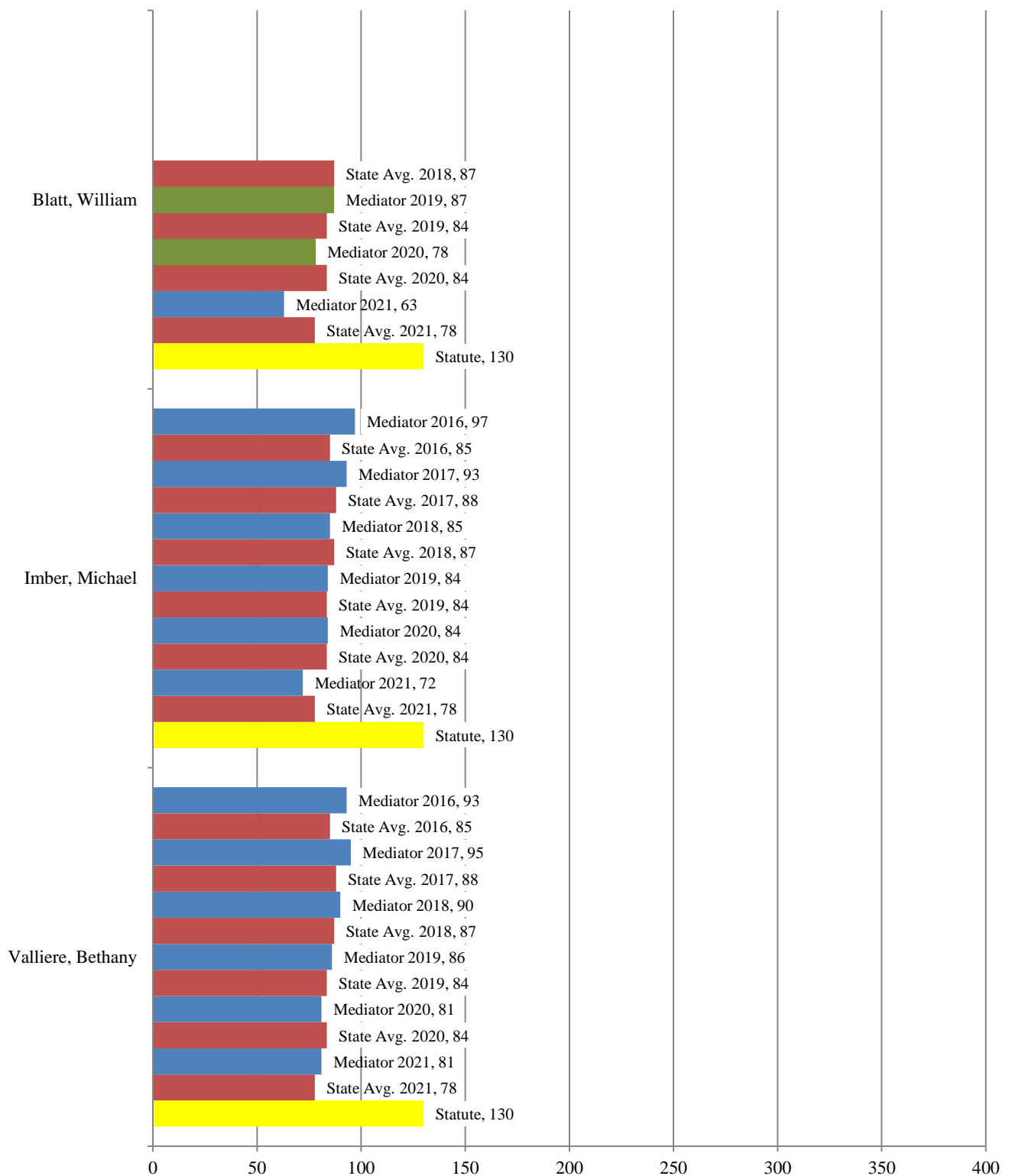
The following depicts the volume of PFBs closed in this District and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



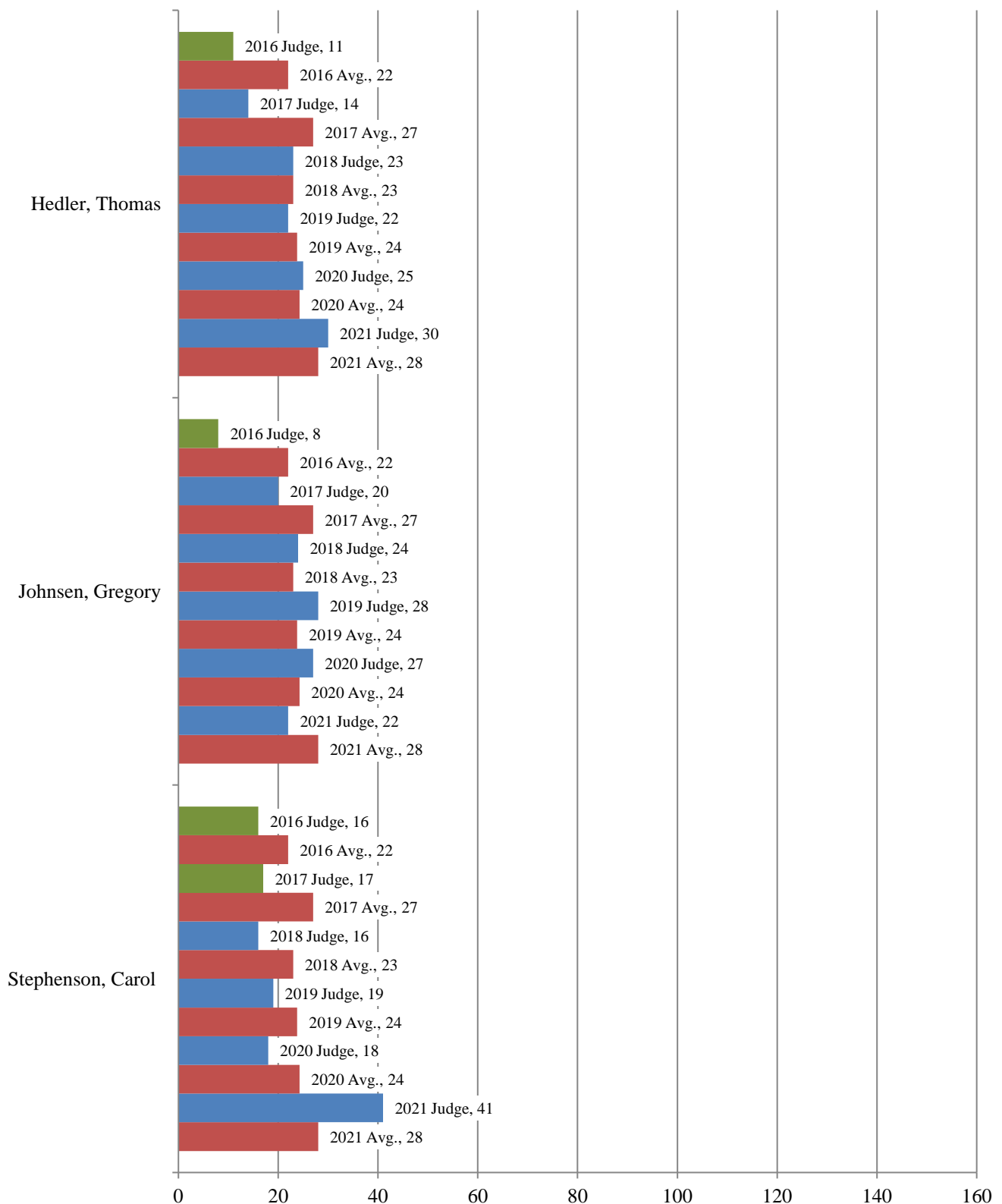
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



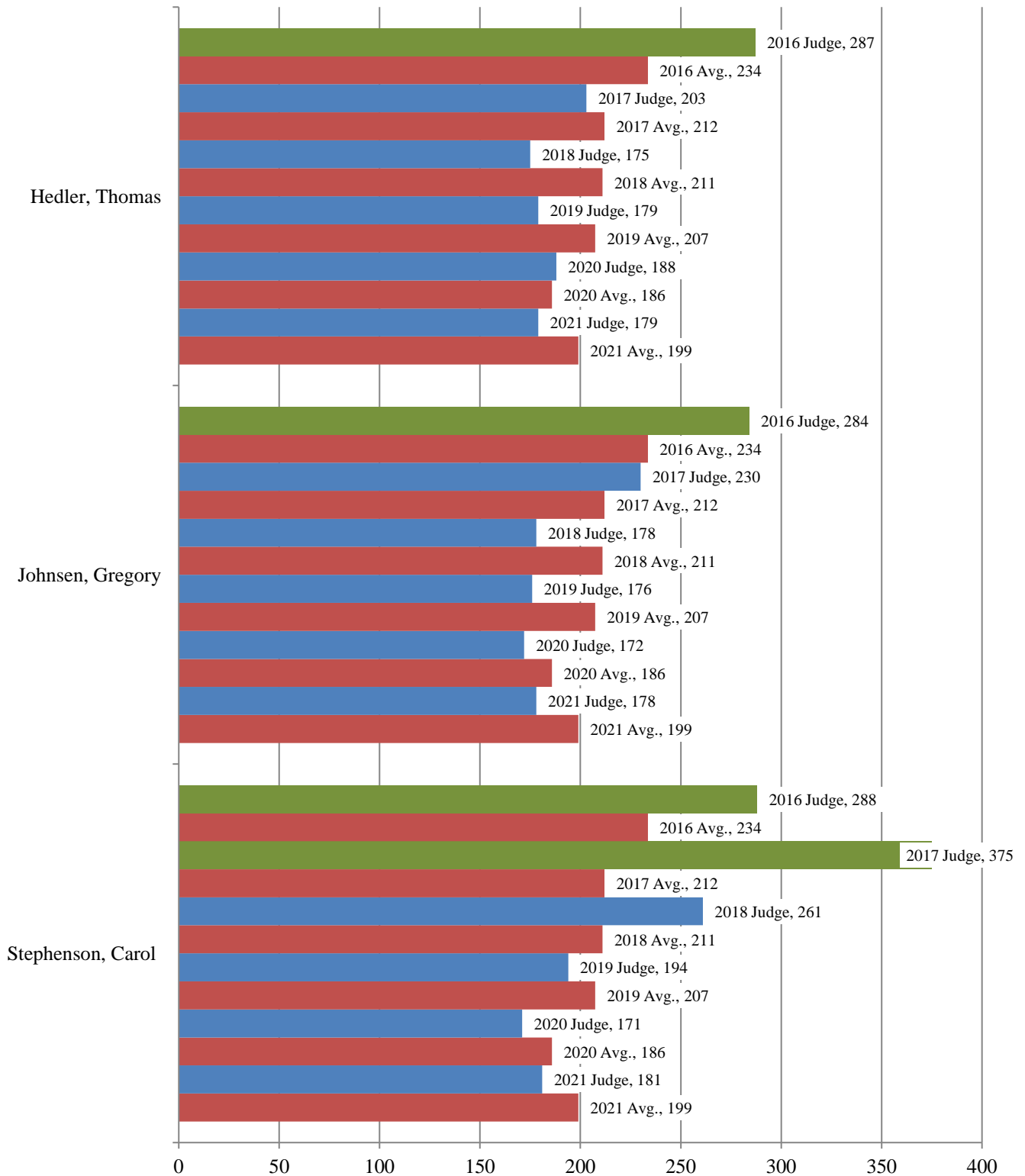
The following depicts the average days between PFB filing, and the first mediation held thereon, for each mediator in the District between 2015-16 and 2020-21. The identification and values for each year are in each bar label. The yellow bar represents the statutory 130 days. Green bars are time prior to the current mediator.³³⁸



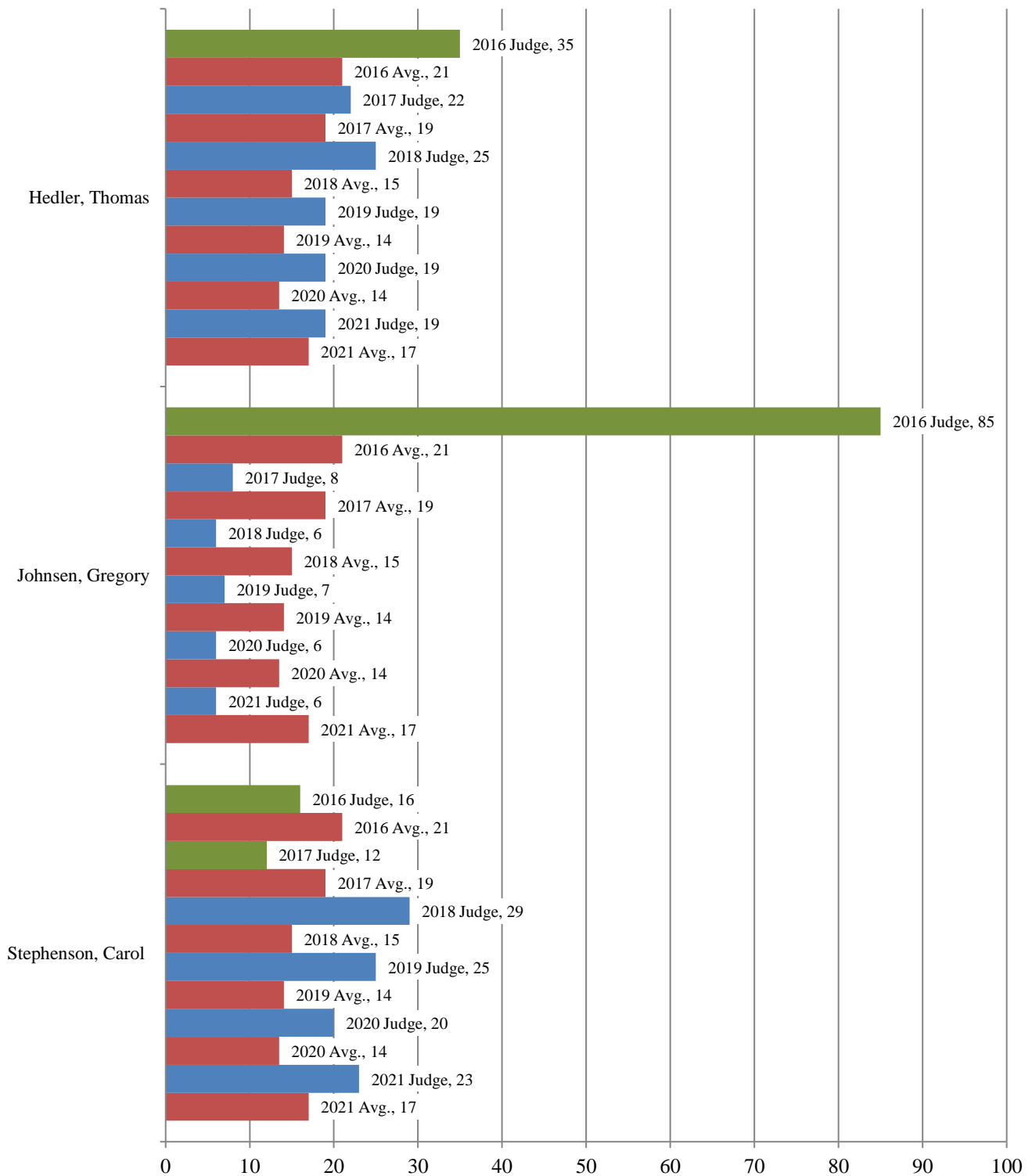
The following graph depicts the total volume of trial orders³³⁹ uploaded in this District and statewide averages between 2015-16 and 2020-21. The identification and values for each year are in each bar label (green bars denote statistics prior to the named judge's appointment).



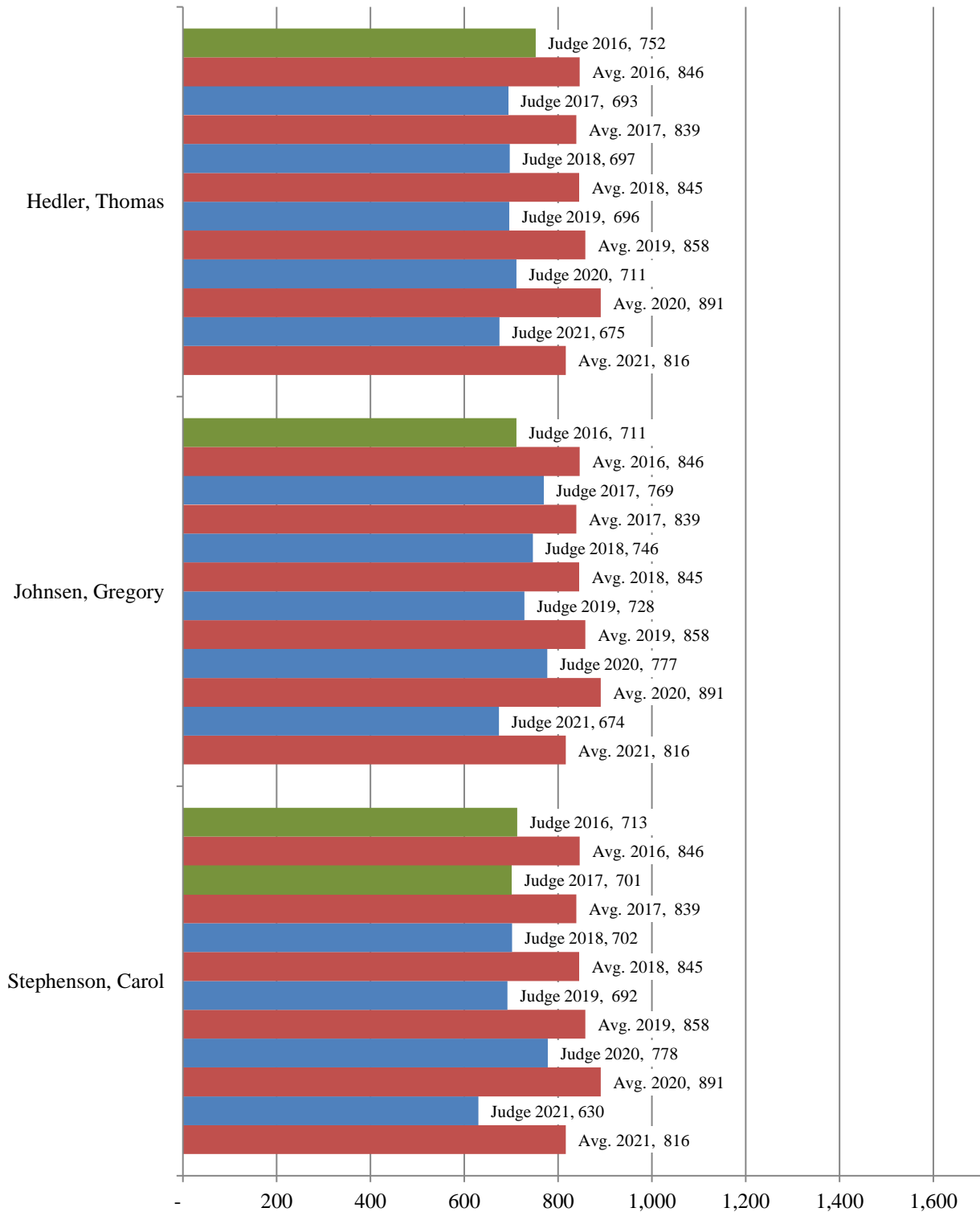
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2015-16 and 2020-21. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



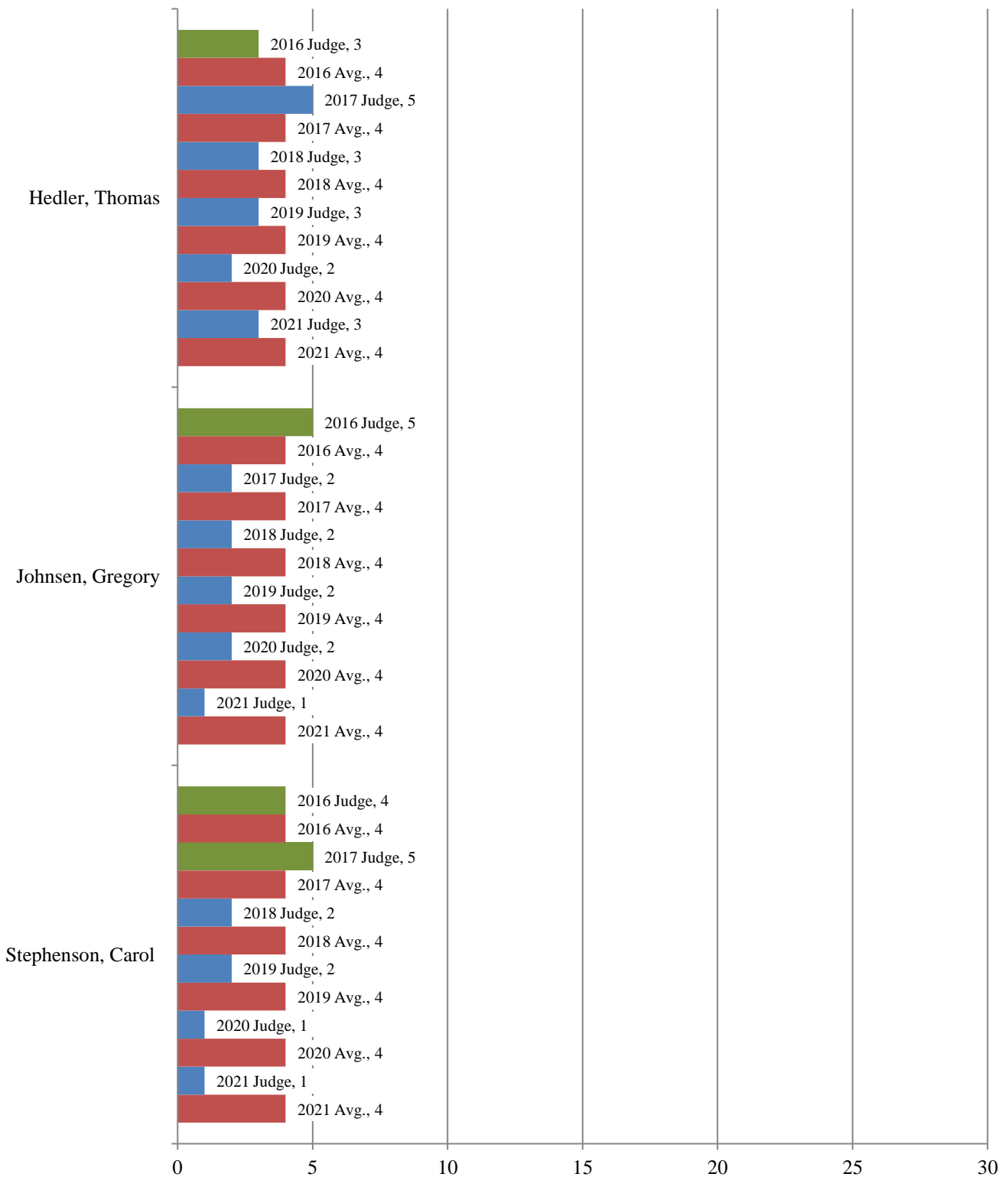
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2015-16 and 2020-21. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



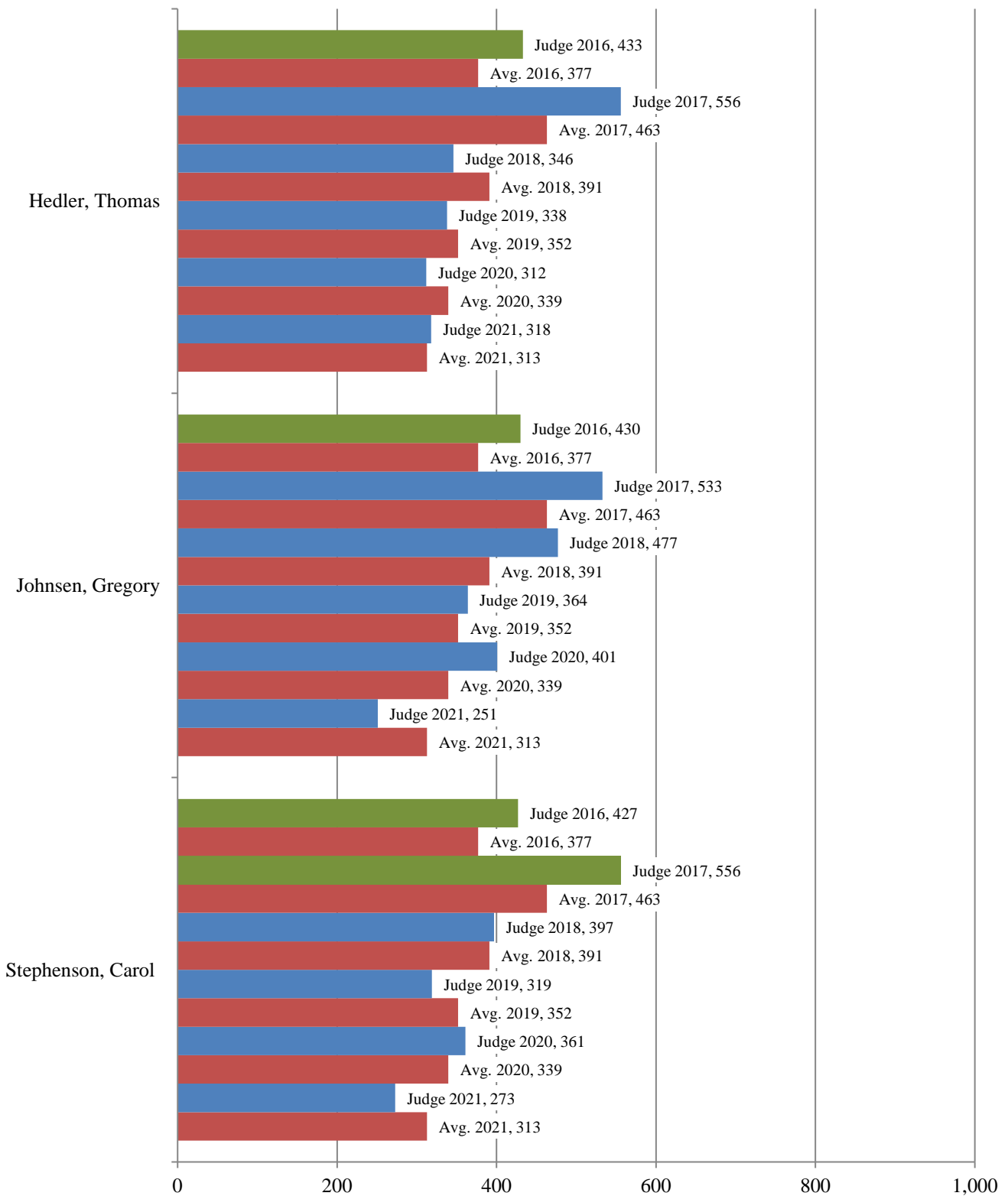
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



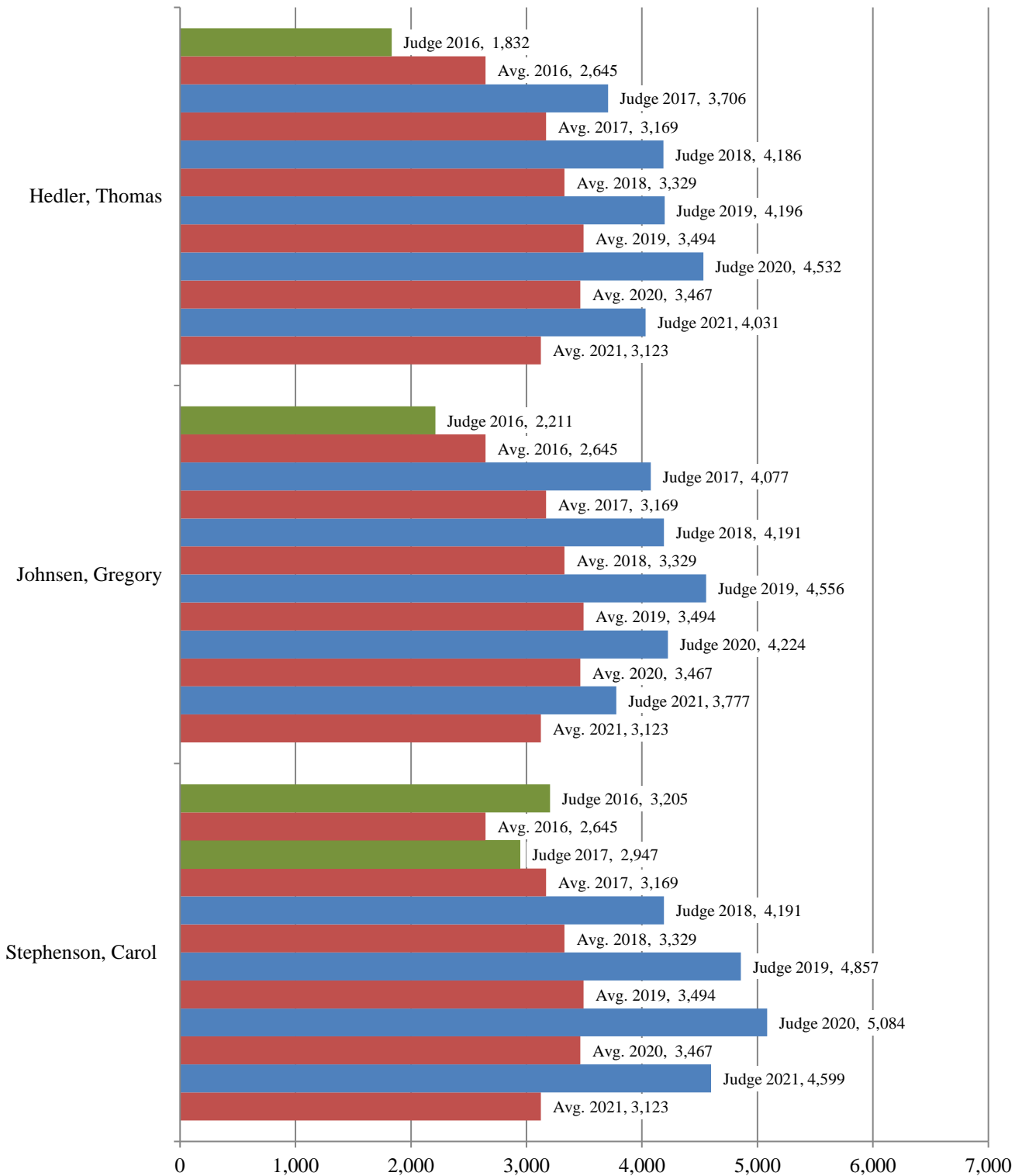
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



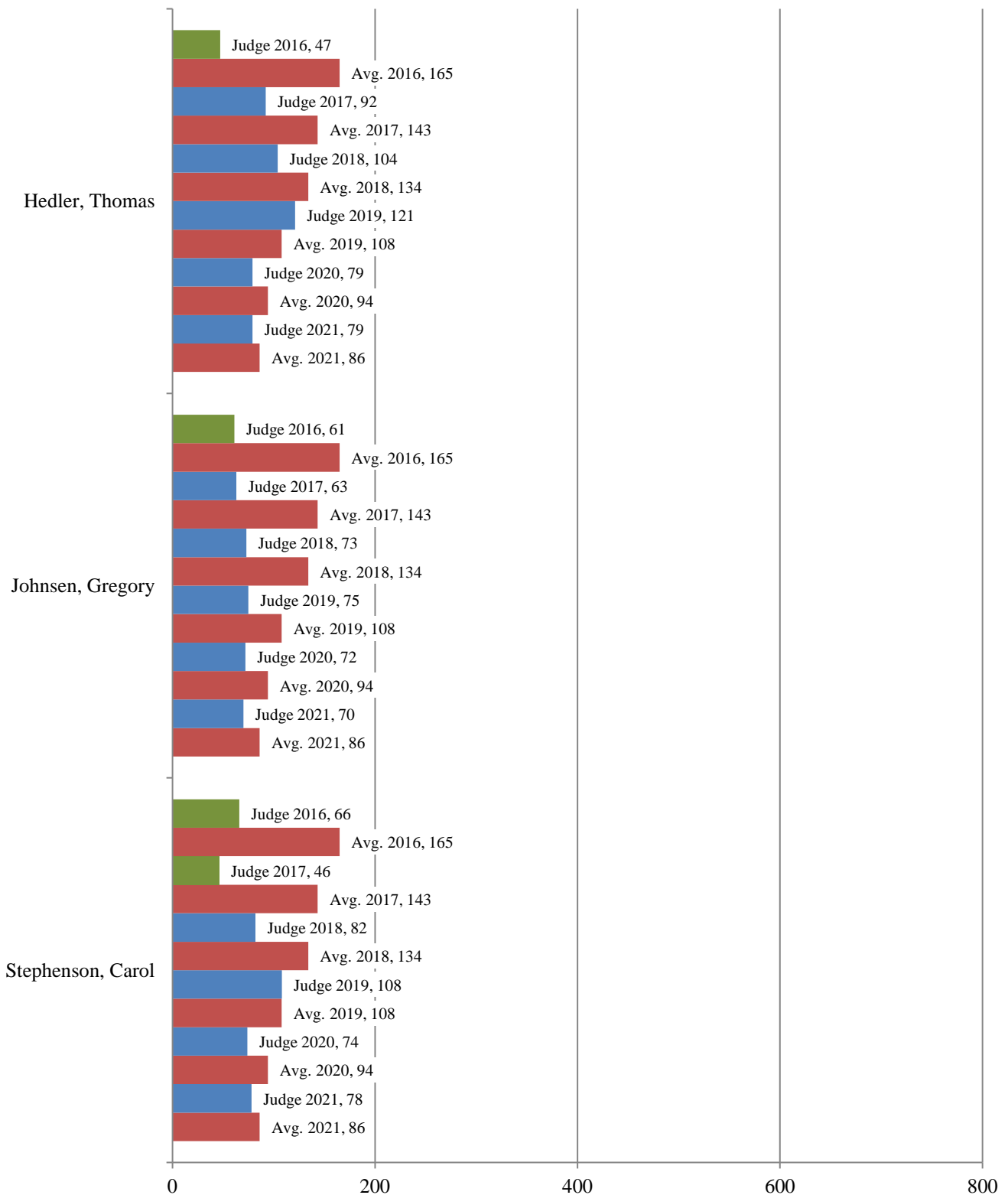
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge's appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2015-16 and 2020-21. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



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 Florida 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,³⁴⁰ the Florida Office of Judges of Compensation Claims (OJCC) consisted of 31 Judges, and operated 17 offices throughout the state; each judge was responsible for approximately 407,742 Floridians.³⁴¹ 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,³⁴² 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).³⁴³ This amounts to \$218.8 million since 2001-02. In 2013, the OJCC budget was decreased by eliminating three state mediator positions (and a judicial position that had been added in 2006).

In 2021, the state population is 21.9 million,³⁴⁴ and the OJCC remains staffed by 31 judges and 30 state mediators in 17 offices.³⁴⁵ Each JCC is now responsible for approximately 707,890 Floridians.³⁴⁶ Despite increased responsibility, the OJCC today is staffed with far fewer personnel than in 2001.

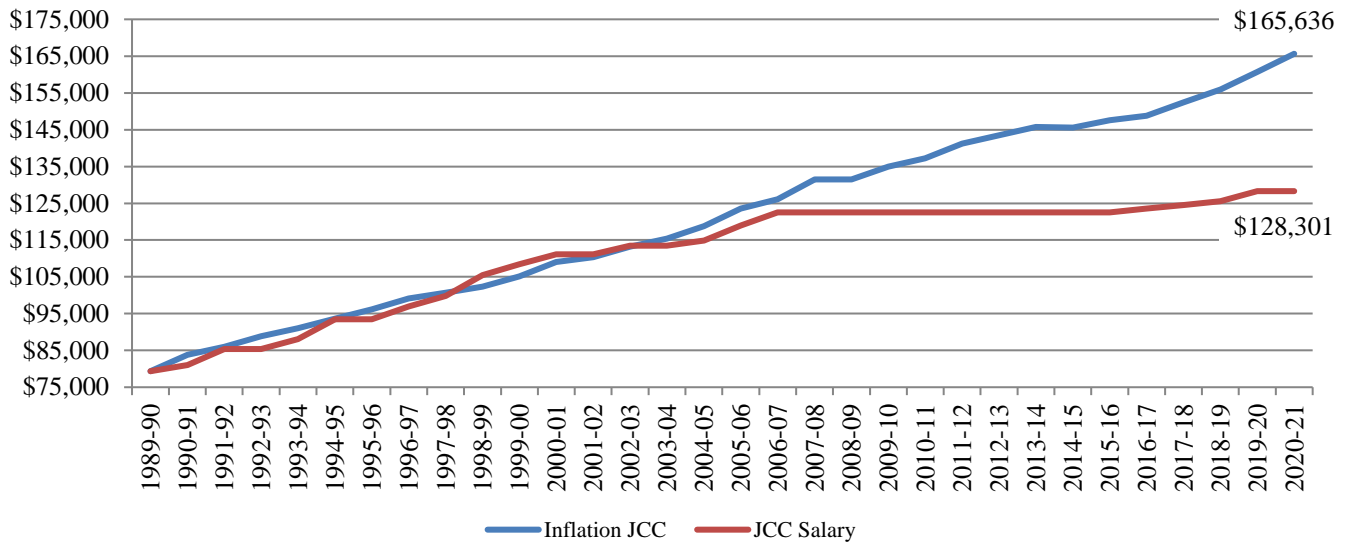
Judges of Compensation Claims³⁴⁷ were originally part-time positions. In 1989, after the positions were changed to full-time, the pay of JCCs was codified in section 440.45(4).³⁴⁸ That section requires all OJCC salaries to be paid from the Workers’ Compensation Administrative Trust Fund (WCATF). When workers’ compensation mediation became mandatory in 1993, the state mediator salary was similarly set statutorily in section 440.25(3)(b).³⁴⁹ These provisions set professional 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.³⁵⁰ A salary increase in the OJCC would have no impact on general revenue expenditures.³⁵¹

According to the Florida Supreme Court, Florida’s Circuit Courts have “599 judges,” the County Courts “322 judges,” the District Courts of Appeal “64 judges,” and the Supreme Court “seven justices.” Thus approximately 992 judges, of which 921 are trial court judges in 20 circuits.³⁵² The Circuit Judges have an incorporated Conference to represent their interests.³⁵³ The County Judges likewise have a Conference.³⁵⁴ The Florida appeals court judges³⁵⁵ have a conference.³⁵⁶ The Article V. judges in Florida is comprised of a significant volume, which 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).

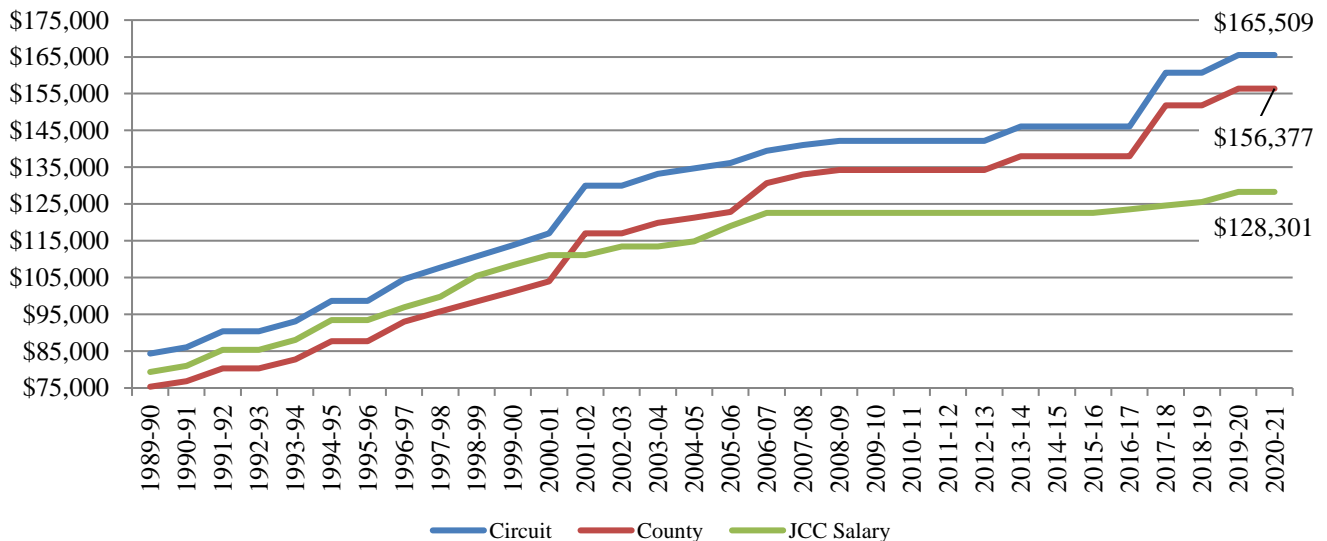
In 1989-90, the salary of a Florida Judge of Compensation Claims was \$79,359. That salary was increased thereafter periodically, even after the “tie in” was removed from chapter 440 in 1994. However, that salary has not consistently kept pace with inflation, as illustrated in the chart below. The difference between the current salary and the inflation-adjusted 1989-90 figure as of 2021 is \$37,335.

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 inflation³⁵⁷ since the early 2000s. The JCC salary, in actual purchasing power, has since diminished approximately \$27,956 compared to the Consumer Price Index (CPI).³⁵⁸ 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.”³⁵⁹ The maximum compensation rate is calculated annually from wages reported by employers across the state and published by the Division of Workers’ Compensation.³⁶⁰ 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 2021, that rate had increased to \$1,011.00, an increase of \$649.00 per week.³⁶¹ That is an increase of 179%. 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 \$221,635. That is \$93,334 more than the 2019 JCC salary in actuality (\$128,301).

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 2020-21, 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 10% percent pay raise for Article V. Judges.³⁶² 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 JCCs were paid about 78% of the Circuit Judge salary, and about 82% of the County Judge salary.

salary. The JCC's retirement is less than 50% of the Circuit Judge. Though sporadic, there have been pay periodic JCC 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.³⁶³

In October 2021, Law360 noted a "growing gap between private practice and the bench." This suggests that applications are down, and in some states, "vacancy rates have increased in recent years." An official of the National Center for State Courts questioned "Do you want anybody who has a bar license? Or do you want to retain judges of superior ability?"³⁶⁴ 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.³⁶⁵ 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 at least \$38,565.12 ($\$160,688 \times .03 = \$4,820.64 \times 8 \text{ years of service} = \$38,565$). The Judge of Compensation Claims retirement based upon those dates would be \$19,930.24 ($\$124,564 \times .02 = 2,491.28; \times 8 \text{ years of service} = \$19,930.24$). The Circuit Judge retirement is approximately 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.³⁶⁶

In order to vest in the state retirement pension, 8 years of service is required.³⁶⁷ An attorney with exceptional experience and an established practice may be unwilling to assume the risks of appointment as a JCC,³⁶⁸ 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.³⁶⁹ Thus, the lack of interest in that Tallahassee appointment required that vacancy be re-advertised, and the applicants interviewed at another Commission meeting. For the Gainesville vacancy, the Commission's role was to eliminate one of the four applicants from consideration. Upon the retirement of Judge Hogan in Ft. Lauderdale, the vacancy drew only four applicants.

With Judges Lorenzen and Spangler each retiring in Tampa, a total of six applications were submitted. The Commission deemed four of those names worthy of submission to the Governor.³⁷⁰ One of the Tampa vacancies was filled in 2019. The other had to be re-advertised and was filled in October 2020. With Judge Young's transfer to District SPT, District TPA was fully staffed briefly in 2020, but again has a vacancy.

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. The demonstrated tepid applicant interest has been illustrated in other application cycles, as illustrated in this chart.

City (OJCC District Office)	JNC Meeting Date	Applicants
Tampa (Spangler/Young)	12/13/2021	Unknown
Reappointments only	02/21/2021	
Tampa (Spangler/Young)	08/17/2020	3 ³⁷¹
Panama City	02/10/2020	3 ³⁷²
Tampa (Lorenzen)	02/10/2020	5 ³⁷³
Sarasota	11/15/2019	3 ³⁷⁴
Sarasota	8/12/2019	2 ³⁷⁵
Tampa (Spangler)	8/20/2018	3 (6) ³⁷⁶
Tampa (Lorenzen)	8/20/2018	3 (6) ³⁷⁷
Ft. Lauderdale	8/20/2018	4 ³⁷⁸
Tallahassee	2/26/2018	4 ³⁷⁹
Gainesville	8/7/2017	4 ³⁸⁰
Tallahassee	8/7/2017	1 ³⁸¹
Miami (Castiello)	2/17/2017	2.5 ³⁸²
Miami (Hill)	2/17/2017	2.5 ³⁸³
Lakeland	11/1/2016	4 ³⁸⁴
West Palm Beach (D'Ambrosio)	11/1/2016	6 ³⁸⁵
Miami (Castiello)	2/17/2017	1
Miami (Hill)	2/17/2017	2 ³⁸⁶
Reappointments only	8/22/2016	
West Palm Beach (Punancy)	3/21/2016	9 ³⁸⁷
Panama City	3/21/2016	4 ³⁸⁸
Ft. Myers (Sturgis)	9/28/2015	4 ³⁸⁹
Pt. St. Lucie	9/28/2015	8 ³⁹⁰
West Palm Beach (Basquill)	9/28/2015	4 ³⁹¹
Ft. Myers (Spangler)	2/16/2015	8 ³⁹²
Ft. Lauderdale (Pecko)	2/24/2014	6 ³⁹³
Melbourne	2/24/2014	9 ³⁹⁴
Miami (Kuker)	8/19/2013	4 ³⁹⁵
Daytona	2/11/2013	9 ³⁹⁶
Miami (Harnage)	8/20/2012	4 ³⁹⁷
Tampa (Murphy)	8/20/2012	5 ³⁹⁸
Melbourne	1/23/2012	Cancelled ³⁹⁹
Reappointments only	9/27/2011	
Reappointments only	2/7/2011	
Jacksonville (Rosen)	8/16/2010	8.5 (17) ⁴⁰⁰
Jacksonville (Pitts)		8.5 (17) ⁴⁰¹
Lakeland (Hofstad)	8/16/2010	11 ⁴⁰²
Reappointments only	4/5/2010	

Gainesville (Thurman)	2/2/2009	13 ⁴⁰³
Reappointments only	4/20/2009	
Jacksonville (Dane)	8/18/2008	10 ⁴⁰⁴
Gainesville (Thurman)	8/18/2008	
Reappointments only	4/25/2008	
Reappointments only	8/14/2007	
Orlando (Thurman)	6/22/2007	14 ⁴⁰⁵
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.⁴⁰⁶ 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.⁴⁰⁷

In the 2020 session, the House and Senate each passed a bill to rectify the situation. House Bill (HB) 1049⁴⁰⁸ 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.⁴⁰⁹ 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 continue to 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 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 September 21, 2021. 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 September 21, 2021.
- ² *Miles v. City of Edgewater*, 190 So. 3d 171 (Fla. 1st DCA 2016).
- ³ This includes \$868,286,379 in settlements approved, *see* page 44, \$40,181,964 in unrepresented settlements approved, and over \$1.13 billion that was extrapolated based upon parties’ assertions regarding attorney fee motions and orders.
- ⁴ 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.”
- ⁵ The website is www.fljcc.org. Reports are under the “Publications” and then “Reports” tabs.
- ⁶ 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.
- ⁷ *Id.* *See also* Glossary, Page 59.
- ⁸ 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. In 2020-21, a similar reclassification of position effort was implemented to increase the mediator cohort to 30, bringing Districts FTL and WPB to full strength. 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.”).
- ⁹ Section 440.192, Florida Statutes (2011); ch. 2011-208.
- ¹⁰ 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.
- ¹¹ 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.

12 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.

13 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 has continued through 2020-21.

14 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.

15 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.

16 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).

17 This is defined by § 440.50, Fla. Stat. The Workers’ Compensation Administrative Trust Fund (WCATF) balance is
currently \$172,663,279. *See* endnote 348.

18 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 .

19 The aggregate reached \$1 million in 2014-15. The total as of the end of 2019-20 is less than \$1.8 million.

20 The credit due to the DOAH IT staff is substantial. Their efforts have deployed a comparatively inexpensive
electronic process and presence. *See* endnote 72 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.

21 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 9, 2021.

22 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.

23 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.”

24 Illustrated by the District Court’s analysis of temporary indemnity in *Matrix Employee Leasing v. Hadley*, 78 So. 3d
621 (Fla. 1st DCA 2011)(*en banc*), followed by the same court’s declaration of constitutional infirmity regarding the
temporary benefits statute, construing “natural law” in the *Westphal* panel decision, followed by the District Court’s
decision in *Westphal, en banc* (2013), followed by the Florida Supreme Court’s striking of the temporary indemnity
statute on non-“natural law” constitutional grounds in 2016. Currently, some perceive the reasonably recent 2019
analysis in *Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133 (Fla. 1st DCA 2019), *reh'g denied* (May 30,
2019), *rev. denied*, No. SC19-1044, 2019 WL 5546111 (Fla. Oct. 28, 2019) as a similar issue of consistency; there is
therefore attention to the volume of cases currently under appellate review upon analyses of “arising out of,” *see*
page 9 herein.

25 *See* Florida’s Plan For Recovery, Florida Department of Health, [https://floridahealthcovid19.gov/plan-for-floridas-
recovery/#:~:text=Phase%20of%20the%20Plan,%2C%2014%20and%2015%2C%202020](https://floridahealthcovid19.gov/plan-for-floridas-recovery/#:~:text=Phase%20of%20the%20Plan,%2C%2014%20and%2015%2C%202020)., last visited
October 9, 2021.

26 *Safe. Smart. Step-by-Step. Plan For Florida’s Recovery*, [https://www.flgov.com/wp-
content/uploads/covid19/Taskforce%20Report.pdf](https://www.flgov.com/wp-content/uploads/covid19/Taskforce%20Report.pdf), last visited October 8, 2021.

27 Tamara Lush, Chris O'Meara, Bobby Caina Calvan, 'Historic' moment in Florida as first COVID vaccines given, Associated Press, December 14, 2020, <https://apnews.com/article/florida-coronavirus-pandemic-ron-desantis-coronavirus-vaccine-tampa-d4524c6a627eeb1e1d1bfc9cdf892ea0#:~:text=TAMPA%2C%20Fla.,Ron%20DeSantis%20looking%20on>, last visited October 8, 2021.

28 Florida set to make vaccines available to all adults next month, WESH TV, March 26, 2021, <https://www.wesh.com/article/florida-vaccine-eligibility-all-adults/35936042#>, last visited October 9, 2021.

29 David Peck, *Considerations for Florida Health Care Providers as They Resume Elective Surgeries*, Greenberg Traurig, May 7, 2020, <https://www.gtlaw.com/en/insights/2020/5/considerations-for-florida-health-care-providers-as-they-resume-elective-surgeries>, last visited October 11, 2021.

30 HCA hospitals in Central Florida halt elective surgeries again, Orlando Sentinel, July 14, 2020, <https://www.orlandosentinel.com/coronavirus/os-ne-hca-central-florida-suspends-elective-surgeries-20200714-7el2qevdkneqton2yhqepclwzy-story.html>, last visited October 11, 2021.

31 Alia Paavola, More Florida hospitals postpone elective surgeries, Becker Hospital Review, July 29, 2020, <https://www.beckershospitalreview.com/patient-flow/more-florida-hospitals-postpone-elective-surgeries.html>, last visited October 11, 2021.

32 Florida hospitals cancel elective surgeries due to virus surge, Miami Herald, July 1, 2020; <https://www.miamiherald.com/news/coronavirus/article243937167.html>, last visited October 11, 2021.

33 Christopher O'Donnell, Tampa Bay hospitals suspend surgeries, limit visits as COVID admissions rise, August 4, 2020, <https://www.tampabay.com/news/health/2021/08/04/tampa-bay-hospitals-suspend-surgeries-limit-visits-as-covid-admissions-rise/>, last visited October 11, 2021.

34 Florida Division of Workers' Compensation 2020 COVID-19 Report, p. 17, July 31, 2020, <https://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/2020-COVID-19-August-Report.pdf>, last visited October 11, 2021.

35 Florida Division of Workers' Compensation 2020 COVID-19 Report, p. 23, June 30, 2020, <https://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/2021-COVID-19-July-Report.pdf>, last visited October 11, 2021.

36 <https://e-jccupgrade.blogspot.com/2020/03/covid-19-all-ojcc-mediations.html>, last visited October 26, 2020.

37 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."

38 *2020-2021 Office of Judges of Compensation Claims Settlement Report and Mediation Statistics Report*, September 2021, <https://www.fljcc.org/JCC/publications/reports/2021SR-MSR.pdf>, last visited October 11, 2021. (included in this report, see page 270.

39 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.

40 Available for download at <https://www.myfloridacfo.com/division/wc/publicationsformsmanualsreports/reports/default.htm>, last visited October 9, 2021.

41 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.

42 2021 State Activity: COVID-19 Wc Compensability Presumptions, NCCI, October 5, 2021, https://www.ncci.com/Articles/Documents/II_Covid-19-Presumptions-2021.pdf, last visited October 12, 2021.

43 Rob Wile, *Florida's jobless rate is now lowest among large states. But its economy may be forever changed*, Miami Herald, March 17, 2021, <https://www.miamiherald.com/news/business/article249980969.html>, last visited October 12, 2021.

44 *Valcourt-Williams v. Sedgwick*, 271 So. 3d at 1134 (Fla. 1st DCA 2019).

45 *Gen. Properties Co. v. Greening*, 18 So. 2d 908, 911 (1944).

46 *Bryant v. David Lawrence Mental Health Ctr.*, 672 So. 2d 629, 631 (Fla. 1st DCA 1996).

47 *Vigliotti v. K-Mart Corp.*, 680 So.2d 466 (Fla. 1st DCA 1996).

48 *Sentry Ins. Co. v. Hamlin*, 69 So. 3d 1065, 1068 (Fla. 1st DCA 2011).

49 Though *en banc*, the decision was not unanimous. Two judges filed dissenting opinions.
50 *Ladley v. Wellington Regional*, 21-003475 (08/20/21); *Centano v. Osceola County*, 20-025383 (07/08/21); *Ramirez v. Publix Super Markets*, 21-000138 (06/22/21); *Bouayad v Value Car Rental*, 19- 020798 (05/05/21); *Ballard v. Hardee Correctional Institution*, 20- 021918 (04/22/21); *Damiscar v. Jupiter Medical Center*, 20- 014368 (03/05/21); *Caba v. PeopLease*, 20- 001208 (02/15/21); *Rivera v. International Paper Co.*, 20-006618 (01/12/21); *Rodriguez v. Sunrise Landscaping Contractors*, 18- 028462 (01/04/21); *Rosa v. Salvation Army*, 20- 008766 (12/14/20); *Soya v. Health First, Inc.*, 20-008027 (12/10/20); *Wall v. Staff Zone*, 19-032768 (12/23/20); *Santiago v. SBA Communication Corp.*, 20- 001834 (11/04/20); *Rodgers v. Winn Dixie*, 20- 010060 (11/10/20); *Castano v. Nobel Learning Communities*, 20- 006592 (11/02/20); *Marrero v. D.R. Horton*, 19-23521 (08/28/20); *Crouse v. Precision Mechanical*, 19-031519 (07/23/20); *Luraschi v. Blacktip Services, Inc.*, 19- 028322 (06/08/20); *Galas v. Winn Dixie Stores*, 19- 029119 (04/24/20); *Long v. City of Melbourne*, 19- 016164 (01/24/20); *Tola v. Winn Dixie Stores*, 19- 016663 (12/23/19); *Young v. CEMEX*, 09-005255 (12/23/19); *Silberberg v. Palm Beach County School Board*, 19- 006573 (11/26/19); 18-029274 (06/12/19); *Ugalde v. Garden of Memories*, 18-014602 (05/01/19).

51 Section 440.11(1), Florida Statutes (“The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability”).

52 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 18, 2021. 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, 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.

53 See page 6, regarding general revenue.

54 See endnote 18, regarding the 2018 leasing of new office space in Jacksonville, Orlando, and Panama City.

55 Salaries = \$14,433,252; Rent = \$2,299,396; Security = \$679,830; total = \$17,412,478; \$17,412,478/\$18,413,933 = 94.56%. The security cost was notable decreased in 2020-21 through retention of a new vendor; however, coverage and continuity issues resulted in a termination of that contract which will impact the security expenditures in 2021-22.

56 Section 440.44(5), Fla. Stat. (“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.”).

57 See endnote 4.

58 See <https://www.fljcc.org/JCC/publications/reports/2006AnnualReportAmended.pdf>, last visited October 9, 2021.

59 See <https://www.fljcc.org/JCC/publications/reports/2007AnnualReport.pdf>, last visited October 9, 2021.

60 The user manual was revised in 2013-14, 2017-18, and 2020-21.

61 This report includes corrections, see endnotes 216, 217, 218 220, 231, 232, 234; previous reports have similarly included corrections, see endnote 210

62 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.”

63 *Brodsky v. Wintake Employment Services*, 18-000558WRH; see correspondence to claimant, docket number 167.

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

65 E-filing in the Circuit Courts was legislatively supported in 2008 and standards adopted in 2009. The “portal went live” in January 2011, six years after e-JCC. *History of Court Processes, Programs, and Initiatives*, <https://www.flcourts.org/Publications-Statistics/Publications/Short-History/Modernizing-Administration>, last visited October 15, 2021. Mandatory e-filing was implemented by the Article V. Courts in April 2013; Gary Blankenship, *Mandatory E-Filing for Civil Cases Starts April 1*, The Florida Bar News, April 1, 2013; <https://www.floridabar.org/the-florida-bar-news/e-filing-begins/>, last visited October 15, 2021.

66 See endnote 9.

67 “Service,” the providing of copies of filed documents to others involved in the litigation. *See* endnote 12.

68 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.

69 *See* <https://www.fljcc.org/JCC/publications/reports/2007AnnualReport.pdf>, last visited October 9, 2021. 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.

70 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 (\$301,749). 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. In the years since, postage has increased. Despite a small decrease in filings in 2020-21, likely attributable to the pandemic, this figure remains a reliable conservative estimate.

71 Savings of \$20,499,161 from an investment of less than \$1.9 million is over 1,000% return.

72 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 \$1.9 million.

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

73 Section 440.45(4), Fla. Stat.

74 In this same regard, there is no clear definition of many of the terms that are drawn upon for statistical analysis. *See* endnote 6 regarding the definitions for “trial” and thus the foundation for calculations.

75 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, e.g. 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.

76 Some have suggested that the PFB volume measures “system intensity,” rather than volume per se.

77 This is discussed more fully in the report section on attorney fees by accident years (*see* page 46).

78 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. *See* endnote 244.

79 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.

80 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 6).

81 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 September 21, 2021. 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* endnotes 79 and 80.

82 The 2020-21 Settlement Report and Mediation Statistics Report is incorporated in this report and is available at <https://www.fljcc.org/JCC/publications/reports/2021SR-MSR.pdf>; last visited October 3, 2020.

83 Because of that small data set, the OJCC has long advocated the abolishment of the special and separate “denied claim” settlement report. *See* 2020-21 Settlement Report and Mediation Statistics Report of the Office of the Judges of Compensation Claims, page 6. “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/2021SR-MSR.pdf>; last visited October 3, 2021.

84 There is some tendency to interpret any denial of a benefit to a denial of compensability. Because failure to plead a claim may result in waiver, it has become commonplace to allege compensability as a matter of course. *See Betancourt v. Sears Roebuck & Co.*, 693 So. 2d 680, 682 (Fla. 1st DCA 1997).

85 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.

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

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

88 Notably, the filing rate in September 2018 (4,319) was a significant decrease (-30%) from September 2017 (6,125). Hurricane Irma made landfall in south Florida and affected much of the state. *See Farewell Irma, I Never Liked You*, <https://fiojcc.blogspot.com/2017/09/farewell-irma-i-never-liked-you.html>, last visited September 24, 2020; and, *Tomorrow, Tomorrow, I Love Ya, Tomorrow*, <https://fiojcc.blogspot.com/2017/09/a-day-late-and.html>, last visited October 8, 2021.

89 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.

90 *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 October 6, 2021. *See also*, Executive Order Number 20-91, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf, last visited October 6, 2021.

91 *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 October 6, 2021.

92 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 October 6, 2020.

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

94 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. 3d 171 (Fla. 1st DCA 2016) and *Castellanos v. Next Door Co.*, 192 So. 3d 431 (Fla. 2016).

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

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

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.

Press Release from Florida Office of Insurance Regulation, (October 26, 2009): <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=1777>; last visited October 5, 2021.

Press Release from Florida Office of Insurance Regulation, (October 15, 2010): <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=1839>; last visited October 5, 2021.

Cinicerros, Business Insurance, *Florida Insurance Commissioner Approves 8.9% Workers Compensation Rate Hike*, <http://www.businessinsurance.com/article/20111024/NEWS08/111029952>, October 24, 2011; last visited October 5, 2021.

Press Release from Florida Office of Insurance Regulation, (October 26, 2012): <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=1984>; last visited October 5, 2021.

Press Release from Florida Office of Insurance Regulation, (October 23, 2013): <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2033>; last visited October 5, 2021.

Press Release from Florida Office of Insurance Regulation, (August 22, 2014): <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2074>; last visited October 5, 2021.

Press Release from Florida Office of Insurance Regulation, (November 3, 2015): <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2125>; last visited October 5, 2021.

Press Release from Florida Office of Insurance Regulation, (October 6, 2016): <http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2179>; last visited October 5, 2021.

Press Release from Florida Office of Insurance Regulation, (November 9, 2017): <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2221>; last visited October 5, 2021.

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 October 5, 2021; 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 October 5, 2021.

Press Release from Florida Office of Insurance Regulation, (October 24, 2019): <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2274>; last visited October 5, 2021. Order of October 24, 2019: <https://www.floir.com/siteDocuments/NCCI252466-19OORF.pdf>; last visited October 5, 2021.

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 October 5, 2021. An amended filing in early November increased the reduction.

This is the proposal rate filing as of August 30, 2021; <https://floir.com/newsroom/archives/item-details/2021/08/30/oir-receives-annual-workers-compensation-rate-filing-august-2021>, last visited November 9, 2021. There was a hearing held October 14, 2021, and a decision on the rate is expected at any time.

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.

Id.

Had the trends of the first three quarters of 2019-20 continued, the PFB filing rate was projected at 4%. It was the marked decreases in PFB filing in May and June of the fourth quarter that was sufficiently significant to equate instead a 1.4% decrease for the fiscal year.

Also 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.

In 2017-18, fees were approved on a 66-year-old claim, *see* endnote 244.

Coincident with court decisions regarding attorney fees in 2016.

How Has COVID-19 Changed Workers' Compensation So Far?, Marsh,

<https://coronavirus.marsh.com/us/en/insights/research-and-briefings/covid-19-impact-on-workers-compensation.html>, last visited October 11, 2021.

Some contend that retirement is being prioritized due to the pandemic. Nelson D. Schwartz and Coral Murphy Marcos, *They Didn't Expect to Retire Early. The Pandemic Changed Their Plans*, New York Times, July 2, 2021; <https://www.nytimes.com/2021/07/02/business/economy/retire-early-pandemic-social-security.html>, last visited September 16, 2021. Alexandre Tanzi and Michael Sasso, *Covid Early Retirees Top 3 Million in U.S.*, *Fed Research Shows*, Bloomberg, October 21, 2022; <https://www.bloomberg.com/news/articles/2021-10-22/covid-early-retirees-top-3-million-in-u-s-fed-research-show>, last visited October 26, 2021.

Joanne Lipman, *The Pandemic Revealed How Much We Hate Our Jobs. Now We Have a Chance to Reinvent Work*, Time, June 1, 2021; <https://time.com/6051955/work-after-covid-19/>, last visited September 16, 2021. *The future of work after COVID-19*, McKinsey Global Institute, February 18, 2021; <https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-after-covid-19>, last visited September 16, 2021.

Alana Semuels, *Millions of Americans Have Lost Jobs in the Pandemic—And Robots and AI Are Replacing Them Faster Than Ever*, Time, August 6, 2020; <https://time.com/5876604/machines-jobs-coronavirus/>, last visited September 16, 2021. Matt O'Brien and Paul Wiseman, *Do we need humans for that job? Automation booms after COVID*, Associated Press, September 5, 2021, <https://apnews.com/article/technology-business-health-coronavirus-pandemic-d935b29f631f1ae36e964d23881f77bd>, last visited September 16, 2021.

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.

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.

See endnote 85.

See endnote 94.

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

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

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.

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.

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.

See endnotes 164, 165, 244, 272, 273, 275, 276, 277.

131 *McBride v. Pratt & Whitney*, 909 So. 2d 386, 386 (Fla. 1st DCA 2005).

132 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.

133 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.

134 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, 21,538,187, came from <https://www.census.gov/popclock/>, last visited September 16, 2021. The 2020 figure, 21,538,187, less the 1994 figure (13,953,000) results in a difference of 7,585,187, which is 54% of the 14 million residents reported for 1994.

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

136 This reduction of 21 positions is 12% of the 175 positions in the OJCC.

137 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.

138 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.

139 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).

140 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 11, 2021.

141 *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 October 11, 2021.

142 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.

143 The \$269.00 cost of litigation per petition figure for 2020-21 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 tens of millions of dollars in child support arrearages.

144 This example uses the county charges published at <https://www2.duvalclerk.com/about/fee-schedules/>; last visited September 17, 2021.

145 *Id.*

146 Calculated with <https://www.usinflationcalculator.com/>, last visited September 17, 2021.

147 See endnotes 244 and 337.

148 See endnotes 135, 136.

149 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 179. 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 149.

150 § 440.20(11)(d)1. Fla. Stat. (2001): "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."

151 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 streamlined 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.

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

153 The OJCC undertook this task, streamlined the process, and has delivered this service to Floridians for 9 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.

154 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 (one mediation in fiscal 20-21) are waived each year by order of the Deputy Chief Judge of Compensation Claims.

155 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 20, 2021.

156 Notices and Publications, <https://www.fljcc.org/JCC/publications/>; last visited September 20, 2021.

157 The Deputy Chief Judge mandated telephonic process by order on March 14, 2020. That remained in effect until
March 1, 2021, thus the majority of fiscal year 2020-21. Even thereafter, anecdotally, there were significant volumes
of requests for telephonic appearance pursuant to Rule 60Q6.110(5).

158 In budget reductions, the third mediator position was removed from District WPB in 2012, *see supra*, endnote 8.
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 each of 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.

159 This figure, \$157.69, represents a cost per mediation held. The overall cost of litigation, discussed at pages 24-26
addresses the cost per petition, mediated or not. That is a broader consideration of system cost which does not
directly correlate to this “per mediation” calculation.

160 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. The total cost in 2020-21 was
\$3,415,735; divided by the 19,442 in 2020-21 yields \$175.69. These figures do not include the costs of staff support
or facilities or equipment. Therefore, this is a conservative cost figure.

161 Mediator staff was reduced from 32 to 28 in 2012-13, *see* endnote 8. With the additions back of two mediator
positions, the OJCC is currently staffed by 30 state mediators.

162 An attorney suggested that the value of state mediation would be aptly expressed by multiplying the 19,442 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 \$9,721,000. 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.

163 *See* endnote 143.

164 § 440.25(1), Fla. Stat.: “A mediation, whether private or public, shall be held within 130 days after the filing of the
petition.”

165 § 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.”

166 *See* endnote 281.

167 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.

168 *See* endnote 281.

169 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 continued to serve as a state mediator until 2020. 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, similar to the
Chapter 440 requirement. That requirement was eliminated in 2003. *See*
<http://onlinedocketssc.flcourts.org/DocketResults/CaseDocket?Searchtype=Case+Number&CaseYear=2005&CaseNumber=998>, last visited September 20, 2021. 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.

170 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 20, 2021.

171 § 440.25(3)(a), Fla. Stat.

172 Rules for Certified and Court-Appointed Mediators, <http://www.flcourts.org/core/fileparse.php/422/urlt/Mediator-Rules-Tab-3.pdf>, last visited September 20, 2021.

173 MEAC Opinion 2004-002, <https://www.flcourts.org/core/fileparse.php/283/urlt/MEAC-Opinion-2004-002.pdf>, last visited September 20, 2021.

174 *Id.*

175 *See supra* note 16. The Florida Office of Judges of Compensation Claims 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, 477 (Fla. 2004)(“The Office of the Judges of Compensation Claims (OJCC) is not a court of this State.”)

176 Art. V. § 15, Fla. Const.

177 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.”

178 *Id.*

179 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 30 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 20, 2021. 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 123,660 (540 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.

180 The 30 full-time OJCC mediators more likely could schedule 12 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 360 per day statewide, multiplied by 229 working days, equals 82,440. The current petition volume, 69,676, is approaching this, and pre-pandemic the volume was tending to growth.

181 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.

182 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.”).

183 *Id.*

184 Fla. Admin. Code R. 60Q6.110(2)(d); Rule 60Q6.110, Fla.R.Pro.Work.Comp.

185 § 440.25(1), Fla. Stat.: “A mediation conference may not be used solely for the purpose of mediating attorney fees.”

186 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 179), this equates to 4.1 mediations daily.

187 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.

188 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.

189 See endnote 157.

190 A motion to disqualify filed in 2020-21 alleged such perception specifically.

191 This report referencing the failure to include new hearing dates in all continuance orders has not alleviated the
practice of not complying with section 440.25(4)(a). Though it is possible that the serial “reconvene” practice has
ameliorated due to the definition and publication regarding the calculation of timely trial orders, see page 48.

192 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 has been, 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.

193 See page 12, Electronic Filing Initiative, generally; see endnote 70.

194 Though there is “service” (see supra endnotes 21 and 67) 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.

195 See page 28; see also endnote 165. 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.

196 See supra, endnote 182.

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

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

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

200 *Murray v. Mariners Health/ACE USA*, 994 So. 2d 1051 (Fla. 2008); see also *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).

201 *Aguiar 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).

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

203 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. See also endnote 149.

204 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 70.

205 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
September 18, 2021.

206 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). It is believed that this could not occur with an
unrepresented workers’ compensation claimant. See, *Cabrera v. Outdoor Empire*, 108 So. 3d 691 (Fla. 1st DCA
2013).

207 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.”

208 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.

209 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."

210 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 September 19, 2021.

211 *Id.*

212 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. It is also impractical to determine if any other such costs might be included systemically or periodically.

213 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 9, 2021: "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. In 2020-21, anomalies were detected in some reporting, believed to be related to dissemination of flawed data by a servicing agent. The anomalies were communicated and amended filing corrections were made. It is believed that the data herein is therefore accurate.

214 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.

215 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.

216 Due to the dollar figure error, *see* end note 207, this percentage change, 11.05% was erroneously reported in 2019-20 as 10.91%.

217 This figure, \$240,867,847, was erroneously reported in 2019-20 as \$240,567,847, through typographical error.

218 Due to the dollar figure error, *see* end note 207, this percentage change, 11.05% was erroneously reported in 2019-20 as 10.91%.

219 *See* Page 43 regarding *Castellanos* Effect and *Miles* Effect.

220 *See* endnote 217. The aggregate total was likewise off because of that error.

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

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

223 In real dollars. *See infra*, page 42 regarding historical figures adjusted for inflation and expressed in 2021 dollars.
224 Calculated with <http://www.usinflationcalculator.com/>, last visited October 11, 2021.
225 These calculations are made using the beginning year in any fiscal combination, thus this figure uses 2002 and 2020.
226 The manner in which the data is represented in the DLES report does not provide clarity as between fiscal or
calendar year.
227 Calculated with <https://www.usinflationcalculator.com/>, last visited September 17, 2021.
228 *Castellanos v. Next Door Company*, 192 So. 3d 431 (Fla. 2016).
229 *Miles v. City of Edgewater*, 190 So. 3d 171 (Fla. 1st DCA 2016).
230 *Castellanos v. Next Door Company*, 192 So. 3d 431 (Fla. 2016).
231 This was previously reported as \$75,353,918, and was adjusted following further analysis and adjustment in 2020-
21. The difference is \$389,999.
232 This was previously reported as \$94,422,559, and was adjusted following further analysis and adjustment in 2020-
21. The difference is \$5,450.
233 *Miles v. City of Edgewater*, 190 So. 3d 171 (Fla. 1st DCA 2016).
234 This was previously reported as \$161,083,119, and was adjusted following further analysis and adjustment in 2020-
21. The difference is \$2,000.
235 This increase was erroneously reported as 10% in 2019-20 as the total volume of settlements (27,609) was included
rather than the “represented settlements.” Some significant volume of cases is settled each year by pro se claimants;
those were inadvertently and inappropriately included in error.
236 *Id.*
237 *See infra* page 41. In 2020-21 percentage attorney fees were approved between 0% and 39%. The effective hourly
rates approved appear to range between \$0.00 and \$9,190.24 per hour. There are various interpretations of both
statutory and decisional law as regards the role of judges in the consideration of attorney fees. Explanatory fee data
sheets are required by Rule 60Q6.123(2)(a)5. and Rule 60Q-6.124(1), (2). It is presumed that all information
proffered, subject to a judge’s determination of relevance, is referenced in the consideration process. The Florida
Supreme Court has concluded that a fee, specifically an effective hourly rate, may be “patently unreasonable” in the
context of “prevailing party” fees pursuant to section 440.34. *Castellanos v. Next Door Co.*, 192 So. 3d 431, 435
(Fla. 2016)(“\$1.53 hourly fee award”). The Court there noted that “Other factors, such as Rule Regulating The
Florida Bar 4-1.5 already prevent against excessive fees.” It concluded that the statutory fee calculation was
unconstitutional and remanded that case to the Judge “for entry of a reasonable attorney’s fee.” In *Miles v. City of*
Edgewater, 190 So. 3d 171, 184 (Fla. 1st DCA 2016), the Florida First District concluded that a claimant may be
able to “agree to pay her attorney with her own (or someone else’s) funds, subject to a JCC’s finding that the fee is
reasonable.” Thus, it is believed that all fees approved, and reported herein, have each been determined to be
reasonable.
238 *Id.*
239 *Miles v. City of Edgewater*, 190 So. 3d 171 (Fla. 1st DCA 2016).
240 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.
241 *Jacobson v. Se. Pers. Leasing, Inc.*, 113 So. 3d 1042, 1048 (Fla. 1st DCA 2013).
242 *Miles v. City of Edgewater*, 190 So. 3d 171, 179 (Fla. 1st DCA 2016).
243 Three cases were appealed in 2016: *Hood v. Delta Fire Sprinklers, Inc.*, Case 17-002745, DCA case 1D171915;
Shanks v. Rams RPG, Case 16-026146, DCA case 1D17-1980; *Hill v. Fields Appliance Service*, Case 17-003894,
DCA case 1D172095. All were consolidated, first “for purposes of travel only,” per order of August 7, 2017. They
were later consolidated for oral argument. All three were voluntarily dismissed prior to the scheduled oral argument.
244 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.
245 When the OJCC was part of the Department of Labor, there were no “case numbers” assigned to disputes. The
injured worker’s social security number was the identifier with both the Division of Workers’ Compensation and
this Office. Therefore, prior to the transfer to DOAH, a case might be litigated without any case number assignment,
nor anything else to clearly support a conclusion as to whether there had or had not been previous litigation therein.
246 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.

247 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).

248 Historically, until the 21st century, trial orders were very slow in workers’ compensation cases. Judges were inclined to delegate order preparation to attorneys (proposed orders), which contributed to the delays. However, the judge’s conclusions, delivered in “ruling letters” often took many months to render, sometimes years. The system was unruly, undisciplined, and Floridians suffered as a result.

249 *Id.*

250 *Id.*

251 Section 440.25(4)(d), Fla. Stat.

252 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.

253 *See* endnote 248.

254 *See* endnote 248.

255 Langham, *Tomorrow, Tomorrow, I Love Ya, Tomorrow*, Florida Workers’ Comp Adjudication Blog, September 22, 2017; <https://fiojcc.blogspot.com/2017/09/a-day-late-and.html>; last visited October 9, 2021.

256 *See* endnotes 179 and 180.

257 Section 440.25(3)(b), Fla. Stat.

258 *See* endnote 52.

259 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.

260 *See* endnote 237.

261 In the 2017-18 OJCC Annual Report, it was noted that only 152 Expert Medical Advisors were available statewide. The 2020-21 report noted a population of only 149. Presently, there are only 130 listed. *See* Division of Workers’ Compensation Expert Medical Advisor List, <https://apps.fldfs.com/provider/>; last visited October 8, 2021. Of those, 40 (decrease from 53 in 2020) were in either Dade or Broward Counties, 29 (decrease from 31 in 2020) are in Orlando, 22 (decrease from 26 in 2020) are in Tampa/St. Petersburg, and 15 are in Palm Beach. Of the 130, 106 (82%) are in six counties. Pensacola has 1, Tallahassee has 0, Lakeland has 3 (who are also listed in other locations, Daytona has 2, Gainesville has 3, Key West has 0, and Jacksonville has 4. 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. The volume of providers is insufficient and the population is decreasing.

262 *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 9, 2020.

263 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 9, 2021.

264 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 9, 2021.

265 [Broward Health pays nearly \\$70 million to settle fraud case; whistleblower named](https://www.miamiherald.com/news/health-care/article35356422.html), *Miami Herald*, September 15, 2015, <https://www.miamiherald.com/news/health-care/article35356422.html>, last visited October 9, 2021.

266 Section 440.25(1), Fla. Stat.

267 Section 440.25(4)(d), Fla. Stat.

268 *Id.*

269 The District Court has concluded that a conflict in medical opinions may become ripe at trial, or thereafter (when order is issued). If this occurs, the judge is mandated, upon making a ruling that ripens the conflict, to appoint an EMA even after trial. Thus, a delay in entry of such an order would clearly be beyond the judge’s control. *ABM Indus., Inc. v. Valencia*, 46 Fla. L. Weekly D2159, Case No. 1D20-2027 (Fla. 1st DCA Sept. 29, 2021)(Mandate issued October 20, 2021; no permanent citation reflected as of publication).

270 *Id.*

271 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.

272 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 6.

273 *See* endnote 6.

274 *Id.*

275 The 210-day parameter applies by definition to the trial of PFBs. 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 6). 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.

276 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.

277 § 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).

278 § 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 attorney’s fees.”

279 § 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.”

280 § 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.”

281 § 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.”

282 § 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.”

283 § 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.”

284 § 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.”

285 This is a recognition that 14 days is sufficient notice in this context. Though the OJCC has striven to provide 30
days’ notice of mediations, this statutory section is suggestive that 14 days would be acceptable. However, in light
of the busy schedules of attorneys and claims professionals, the 30 day process has been deemed more appropriate.
See endnotes 279 and 288.

286 <https://www.fjcc.org/JCC/publications/reports/2021SR-MSR.pdf>, last visited September 23, 2021.

287 In 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-
20, and 2020-21.

288 § 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 or by electronic means approved by
the Deputy Chief Judge.”).

289 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.

290 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.

291 Section 440.25(1), Fla. Stat. (“Any order granting a continuance must set forth the date of the rescheduled mediation
conference”); Section 440.25(4)(b), Fla. Stat. (“Any order granting a continuance must set forth the date and time of
the rescheduled hearing.”).

292 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. 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. In 2019-
20 orders failing to comply were noted for nineteen judges.

293 See endnote 280.

294 § 440.34(2), Fla. Stat.: “In awarding a claimant’s attorney’s 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.”

295 See endnotes 115 and 244. The estimation of benefits “authorized” in 2020-21, see page 4, Executive Summary, was
derived in part by extrapolation of representations made in the process of obtaining attorney fee approval or
adjudication that year. See endnote 3.

296 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 6, and the Glossary of Terms, pages 59-60.
The term “trial order” necessarily means the order resulted from a trial.

297 See endnotes 237 and 259.

298 *Id.*

299 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](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 18, 2021.

300 *Id.*

301 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 6.

302 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 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 2020-21 conducted 2,663
(89 average per judge) other hearings, entered 96,866 (3,229 average per judge) other orders, entered orders
approving 25,278 (843 per judge) settlements, and 9,694 (323 per judge) stipulations.

303 Judge Ring was appointed in January 2019. Therefore, the statistics listed are attributable to the Division he
manages, including those of his predecessor Hon. Geraldine Hogan (the years prior to Judge Ring’s appointment are
in green).

304 See endnote 301.

305 Judge Clark was appointed in 2016. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Katherine Sturgis. Mediator Eric Bredemeyer retired in 2020. Therefore, the mediation statistics in this section are attributable to his successor Veneese Williams and prior thereto to Mr. Bredemeyer.

306 *See* endnote 301.

307 Judge Stanton was appointed in 2018. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Marjoree Hill.

308 *See* endnote 301.

309 *Id.*

310 Judge Arthur was appointed in 2017. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Margaret Sojourner (transferred to District ORL). Mediator Paul Harwood retired in 2020. Therefore, the mediation statistics in this section are attributable to his successor Oneil Martinez and prior thereto to Mr. Harwood.

311 *See* endnote 301.

312 Currently located in Sebastian, Florida. The office was moved when repeated requests for proposal efforts yielded no acceptable real estate alternatives in Melbourne.

313 *Id.*

314 Judge Havers was appointed in 2017. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Gerardo Castiello.

315 Judge Jacobs was appointed in 2017. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Charles Hill.

316 *See* endnote 301.

317 *Id.*

318 *Id.*

319 Judge Moneyham was appointed in 2020. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Jonathan Walker (transferred to District PNS).

320 *See* endnote 301.

321 Judge Walker transferred to District PNS in 2020. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Nolan Winn.

322 *See* endnote 301.

323 Judge Owens was appointed in 2016. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Robert McAliley.

324 Currently located in Ft. Pierce. This Office has moved between these two municipalities over the 21st century, based primarily upon real estate challenges.

325 *See* endnote 301.

326 Judge Grindal was appointed in 2020. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Diane Beck.

327 *See* endnote 301.

328 Judge Young transferred to District SPT at the end of 2020. Therefore, the statistics listed are attributable to the Division she now manages, including those of her predecessor Hon. Stephen Rosen. All of the trials over which Judge Young presided, in District SPT and TPA are combined here in District SPT. The procedural orders, hearings, settlements, are included in the information for her former TPA Division, *see* page 215.

329 *See* endnote 301.

330 Judge Newman was appointed in 2018. Therefore, the statistics listed are attributable to the Division she manages, including those of her predecessor Hon. John Lazzara.

331 *See* endnote 301.

332 Judge Anthony was appointed in 2020. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Ellen Lorenzen.

333 Judge Young was appointed in 2019 to a position in District TPA. The statistics listed are attributable to the Division she formerly managed (transferred to District SPT), including those of her predecessor Hon. Douglas Spangler. All of the trial orders for Judge Young are included in the section regarding District SPT, *see* page 201.

334 *See* endnote 301.

335 Judge Hedler was appointed in 2016. Therefore, the statistics listed are attributable to the Division he manages, including those of his predecessor Hon. Timothy Basquill.

336 Judge Johnsen was appointed in 2016. Therefore, the statistics listed are attributable to the Division he manages,
including those of his predecessor Hon. Shelley Punancy.

337 Judge Stephenson was appointed in 2017. Therefore, the statistics listed are attributable to the Division she manages,
including those of her predecessor Hon. Mary D’Ambrosio.

338 Mr. Blatt was hired in 2020. The statistics presented include his efforts, and those of Mr. David Stillson (District
FTL) who split time between WPB and FTL after this position was recreated in 2018.

339 See endnote 301.

340 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 9, 2021.

341 407,742 Floridians = 12.64 million divided by 31 judges.

342 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.”

343 See *supra* pages 25-26.

344 <http://worldpopulationreview.com/states/florida-population/>, last visited October 18, 2021.

345 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.

346 707,890 Floridians = 21,944,577 million divided by 31 judges. See <http://worldpopulationreview.com/states/florida-population/>, last visited October 18, 2021.

347 Historically also referred to as “Deputy Commissioners” and “Judges of Industrial Claims.”

348 “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).

349 “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).

350 See Florida Assessments, <http://www.myfloridacfo.com/division/wc/Insurer/Assessments/wcatf.htm>, last visited
October 8, 2021.

351 According to the Division of Workers’ Compensation, the WCATF currently has a balance of \$172,663,279. Email
from Leah Gardner, October 18, 2021, retained by author. According to the Division of Workers’ Compensation,
Over the last ten 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)
to \$195,070,196 (2019) to \$182,674,345 (2020) to \$172,663,279 (2021). The WCATF is healthy and fully funded.

352 Florida’s Court Structure, <https://www.flcourts.org/content/download/216616/file/Court-Structure.pdf>, last visited
October 25, 2021.

353 The Conference of Circuit Judges 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 9, 2021.

354 See <http://floridacountyjudges.com/>, last visited October 9, 2021.

355 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 9, 2021.

356 See Florida Judges Hire Lobbyist, *Miami Herald*, December 30, 2015, <http://www.miamiherald.com/news/politics-government/state-politics/article52344720.html>, last visited October 9, 2021.

357 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 9, 2021.

358 The current salary of \$128,301 in 2020 would be equal to \$80,541.84 in 2000. The difference between \$80,542 and
the actual 2000 salary paid (\$108,408) is \$27,956.

359 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 9, 2021.

360 Bureau of Monitoring and Audit Statistics, Minimum/Maximum Compensation Rate Table, http://www.myfloridacfo.com/division/wc/Insurer/bma_rates.htm, last visited October 9, 2021.

361 https://www.myfloridacfo.com/division/wc/insurer/bma_rates.htm, last visited October 9, 2021.

362 Florida State Workers to see Pay Raise, Pension Changes, *Palm Beach Post*, May 1, 2017; <https://www.palmbeachpost.com/news/state--regional-govt--politics/florida-state-workers-see-pay-raise-pension-changes/pkhE3ugsrMnftprLTHLTCL/>, last visited October 9, 2021.

363 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 9, 2021.

364 Aeбра Coe, *Lagging Judicial Pay Is Hurting Courts’ Recruiting Efforts*, October 22, 2021, <https://www.law360.com/pulse/articles/1433450/lagging-judicial-pay-is-hurting-courts-recruiting-efforts>, last visited October 25, 2021.

365 § 121.091, Fla. Stat. (2017).

366 § 440.45(2)(a), Fla. Stat. (2017).

367 § 121.021(3), Fla. Stat. (2017).

368 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.

369 § 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).

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

371 Jessica Carrier, Todd Sanders, Mathew Wheeley. Mr. Wheeley later withdrew from the process and the Governor’s Office asked that the position be re-advertised as the list was no longer three names.

372 John Brooks, John Moneyham, and Gus Soto.

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

374 Jessica Carrier, Erik Grindal, Jacqueline Steele.

375 Jessica Carrier, Jacqueline Steele.

376 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.

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

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

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

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

381 Robert Wells.

382 Two vacancies were simultaneously interviewed. 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.

383 *Id.*

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

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

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

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

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

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

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

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

392 George Boring, Eric Bredemeyer, Frank Clark, Kenneth Kugler, Tania Ogden, James Radloff (withdrew prior to
interview), Timothy Stanton, Jack Weiss.
393 Iliana Forte, Gregory Johnsen, Roberto Mendez, Kenneth Schwarz, Carol Stephenson, Wendy Sweeny.
394 Robert Dietz, Mark Hill, Keefe Owens, Kenneth Schwartz, Timothy Stanton, Wendy Sweeny, Larry Wang, Michael
Wilkes.
395 Eugene Flinn, Gregory Johnsen, Eduardo Almeyda, Stephen Renick.
396 Jane Loewinger, Wilbur Anderson, Robert Dietz, Bruce Epple, Clay Meek, Keef Owens, Steven Pyle, Timothy
Stanton, Michael Wilkes.
397 Gregory Johnsen, Margret Kerr, Steve Renick, Arthur Sevak.
398 Deborah Hart, Mark Massey, Lawrence Anzalone, Ya' sheaka Campbell, Hillarey McCall.
399 Applications were submitted, but no appointment was made because of budget reductions, *see supra* note 6.
400 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.
401 *Id.*
402 Don Allen, Robert Arthur, John Brooks, John Darrin, Dawn Hayes, Debra Pierce, Margaret Sojourner, Timothy
Stanton, Jack Weiss, Michael Wilkes, James Spears.
403 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.
404 Wilbur Anderson, Douglas Daze, Alan Gordon, Clayton Harland, Marjorie Renee Hill, Lyle Platt, Melanie
Rodriguez, Stephen Rosen, Roland Tan, William Wieland.
405 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.
406 In fairness, some volume of vacancy has occurred recently due to non-reappointment.
407 In 2019, the same language was proposed in HB 795 sponsored by Representative Stone and SB 780 sponsored by
Senator Simmons.
408 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 9, 2021.
409 <https://www.flgov.com/wp-content/uploads/2020/06/Letter-3.pdf>, last visited October 9, 2021.

STATE OF FLORIDA

Division of Administrative Hearings

Office of Judges of Compensation Claims



2020-2021 Settlement Report and Mediation Statistics Report

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Overview of Florida Workers' Compensation:

The Office of the Judges of Compensation Claims ("OJCC") is part of the Division of Administrative Hearings, referred to throughout this Report as DOAH. Each year, the OJCC publishes an Annual Report, which provides the Florida Legislature and Governor with statistical measures of the volumes of litigation and the operations of this Office, 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."¹ 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.² Mediation is mandatory in most Florida workers' compensation claims. Section 440.25(1) Florida Statutes. 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.³

Organizationally, the OJCC is comprised of thirty-one Judges. Each is appointed by the Governor for terms of four years. The Judges serve in seventeen District Offices throughout Florida. Generally, the OJCC has been staffed by an equal number of mediators.

Mediation is statutorily mandated to occur within 130 days after the PFB is filed. If no OJCC mediator can 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 periodic ongoing litigation of the issues surrounding entitlement to various 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 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. In 2019, a similar reclassification added a full-time mediator to District 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.⁷ 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 defined in section 440.20(11), Florida Statutes.⁸

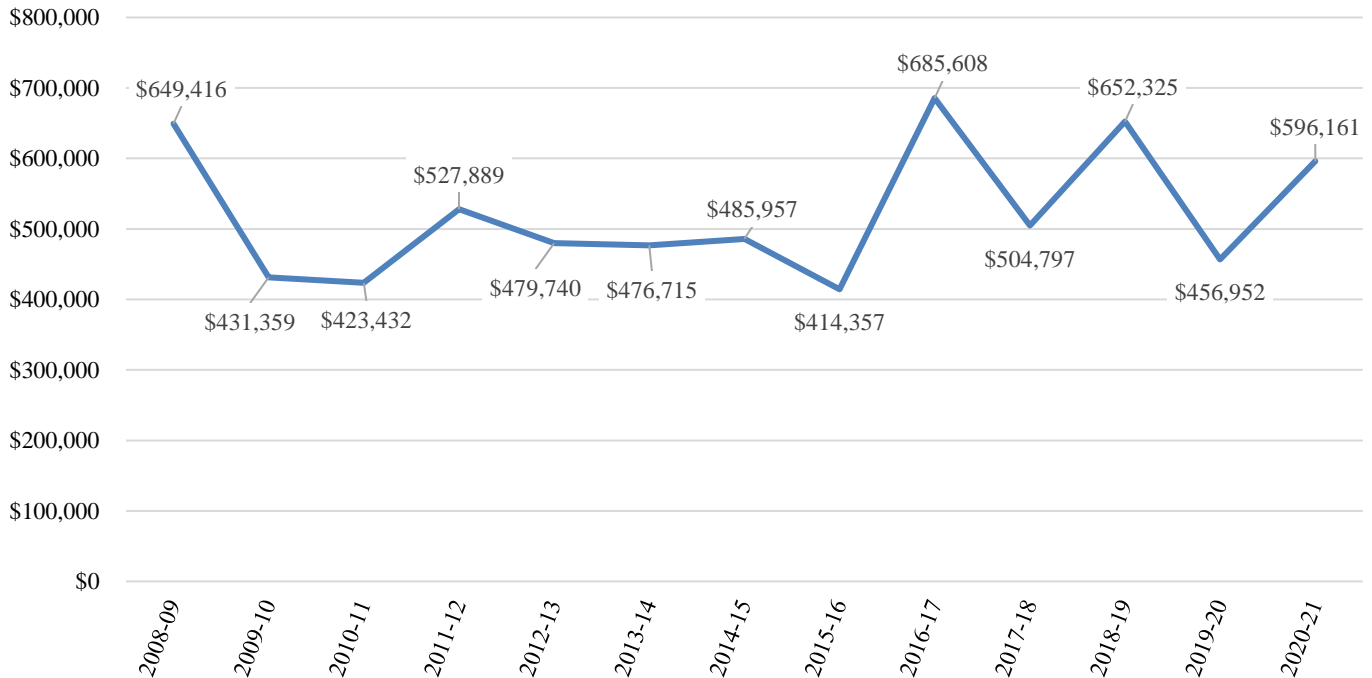
Injured workers represented by an attorney may settle their cases without the approval of a judge of compensation claims.⁹ However, unrepresented injured workers may settle their cases only if the judge approves, and that approval can only be granted if (a) the employer has denied compensability of the 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.¹¹

Year	Aggregate Value 11(a) Settlements	Percent Change	Volume of 11(a)	Percent Change
2008-09	\$649,416		99	
2009-10	\$431,359	-34%	89	-10%
2010-11	\$423,432	-2%	77	-13%
2011-12	\$527,889	25%	83	8%
2012-13	\$479,740	-9%	75	-10%
2013-14	\$476,715	-1%	94	25%
2014-15	\$485,957	2%	79	-16%
2015-16	\$414,357	-15%	76	-4%
2016-17	\$685,608	65%	87	14%
2017-18	\$504,797	-26%	70	-20%
2018-19	\$652,325	29%	78	11%
2019-20	\$456,952	-30%	70	-10%
2020-21	\$596,161	30%	54	-23%

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.¹² The aggregate value of "11(a) settlements" for 2020-21 increased notably (+30%) to \$596,161, following a similar 30% decrease in 2019-20. The fluctuations apparent are interesting, but not attributable to any patent causation. The very low overall volume of such settlements renders the sample very amenable to the influence of relatively minor changes in settlement volume and amounts. Notably, however, 2020-21 demonstrated the most significant reported variance of volume (-23%) to dollar value (+30%). It is valid to conclude that the amounts paid for such settlements in 2020-21 was higher than in previous years.

The following chart illustrates a notable period of consistency in the aggregate value of "11(a) washouts" and the more recent marked fluctuations, including the lowest recorded volume (54).

Aggregate Value 11(a) Settlements



In the fiscal year (“FY”) ending June 30, 2021, there were 54 reported 11(a) settlements, a decrease from the 70 reported in FY 2019-20, and the lowest volume in the last 13 years. That the volume would decrease precipitously is curious; the conjunction of that change with the marked increase in aggregate dollar value is worthy of contemplation.

The settlements in fiscal year 2020-21 were classified by the reason stated for denying compensability of the claim. Two of the categories in which settlements occurred in 2019-20 (“Not an Employee” and “Misrepresentation”) had no settlements reported for 2020-21. Notably, the “causal connection lacking” category decreased in 2020-21 to 11, compared to 18 the prior year. This contradicts the predictions of some that COVID-19 claims might be settled under this allegation. It also belies predictions that the reasonably recent re-analysis of “arising out of”¹³ might impact denial of claims and thus this “causal connection lacking” category.

Reason for Denial	Volume	Percent	Total	Average	High	Low
Causal Connection Lacking	11	20.37%	\$180,400	\$16,400	\$50,000	\$3,800
No Accident Occurred	11	20.37%	\$60,627	\$5,512	\$30,000	\$1,677
Injury Not Timely Reported	9	16.67%	\$123,934	\$13,770	\$40,000	\$2,400
Not in Course and Scope of Employment	7	12.96%	\$42,450	\$6,064	\$10,000	\$3,550
Positive Drug Test	6	11.11%	\$61,500	\$10,250	\$20,000	\$5,000
No injury occurred	6	11.11%	\$53,750	\$8,958	\$23,000	\$1,250
Unspecified	2	3.70%	\$38,500	\$19,250	\$35,000	\$3,500
Statute of Limitations	2	3.70%	\$35,000	\$17,500	\$30,000	\$5,000
Not an employee	0	0	0	0	0	0
Misrepresentation on Application for Employment	0	0	0	0	0	0
	54		\$596,161			

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 2020-21 there were 25,279 workers’ compensation settlement orders entered. That was a notable decrease (-7%) from the 27,209 in 2019-20; that total is also lower than the 2018-19 volume of 26,581 (-5%). Thus, settlements decreased generally in 2020-21.

The number of 11(a) washouts in 2020-21 (54) was only 0.21% (54/25,279) 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 reports for the past 15 years.

Number of Mediation Conferences Held:

The volume of mediations held each year decreased markedly after the statutory reforms in 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. Furthermore, the auto-scheduling of mediations likely drove timely mediation and thus better docket management. 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 2012-13 through 2017-18, the annual volume of mediations conducted vacillated, but remained reasonably similar, around 16,000. More recently, the last three years have trended upward. The 19,442 mediations in 2020-21 is the highest volume since 2009-10. The OJCC mediation operations were mandated to telephonic process in reaction to COVID-19 in March 2020, and remained so until February 2021. The convenience of telephonic processes and the overall challenges of legal practice in the midst of the pandemic may have influenced volumes and outcomes. This is of particular interest in light of the notable decrease in petition for benefit filing in 2020-21 (the lowest annual volume in the last 5 years).

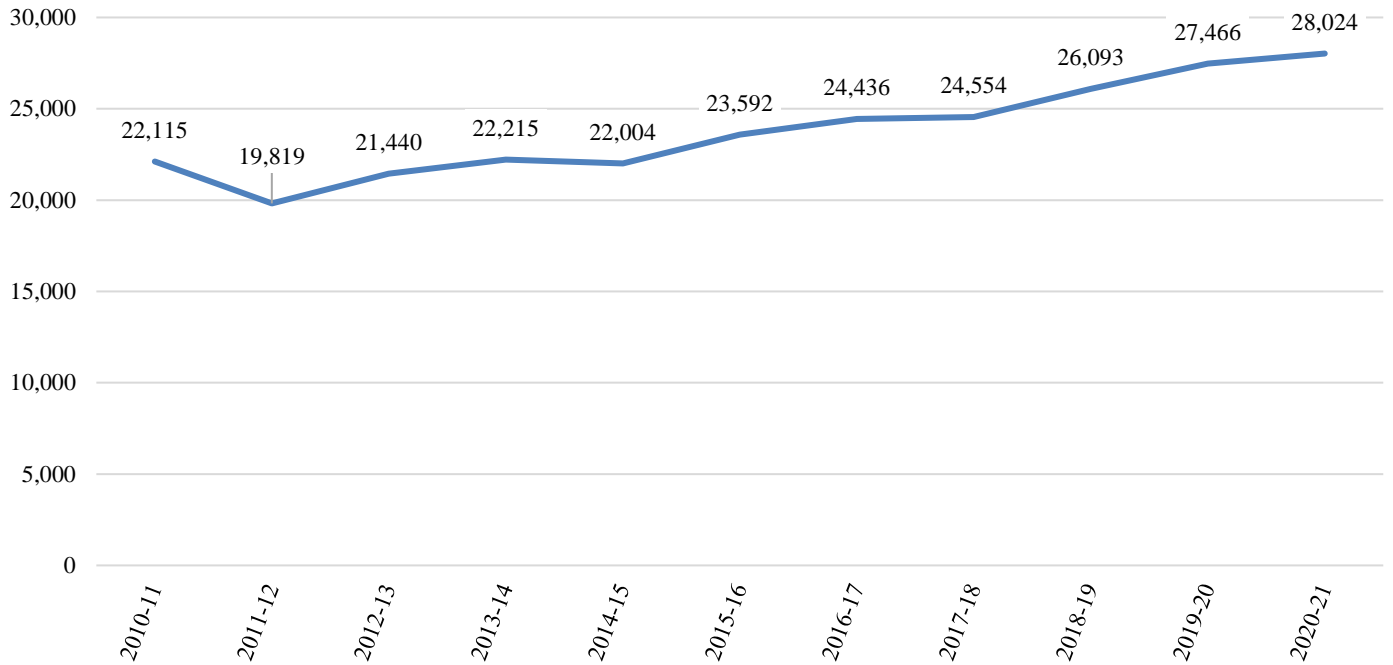
The Florida workers’ compensation law requires that PFBs are filed only when benefits are ripe, due, and owing.¹⁴ After a PFB is filed, an OJCC mediation conference is scheduled with the assigned mediator. Thereafter, it is not uncommon for additional PFBs to be filed prior to that mediation. Therefore, 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. This chart summarizes the PFB filing volumes and mediation volume over the last 19 years.

It has been recently discerned that some cases are not being consolidated¹⁵ and thus the outcome of one mediation appointment is periodically being recorded redundantly.

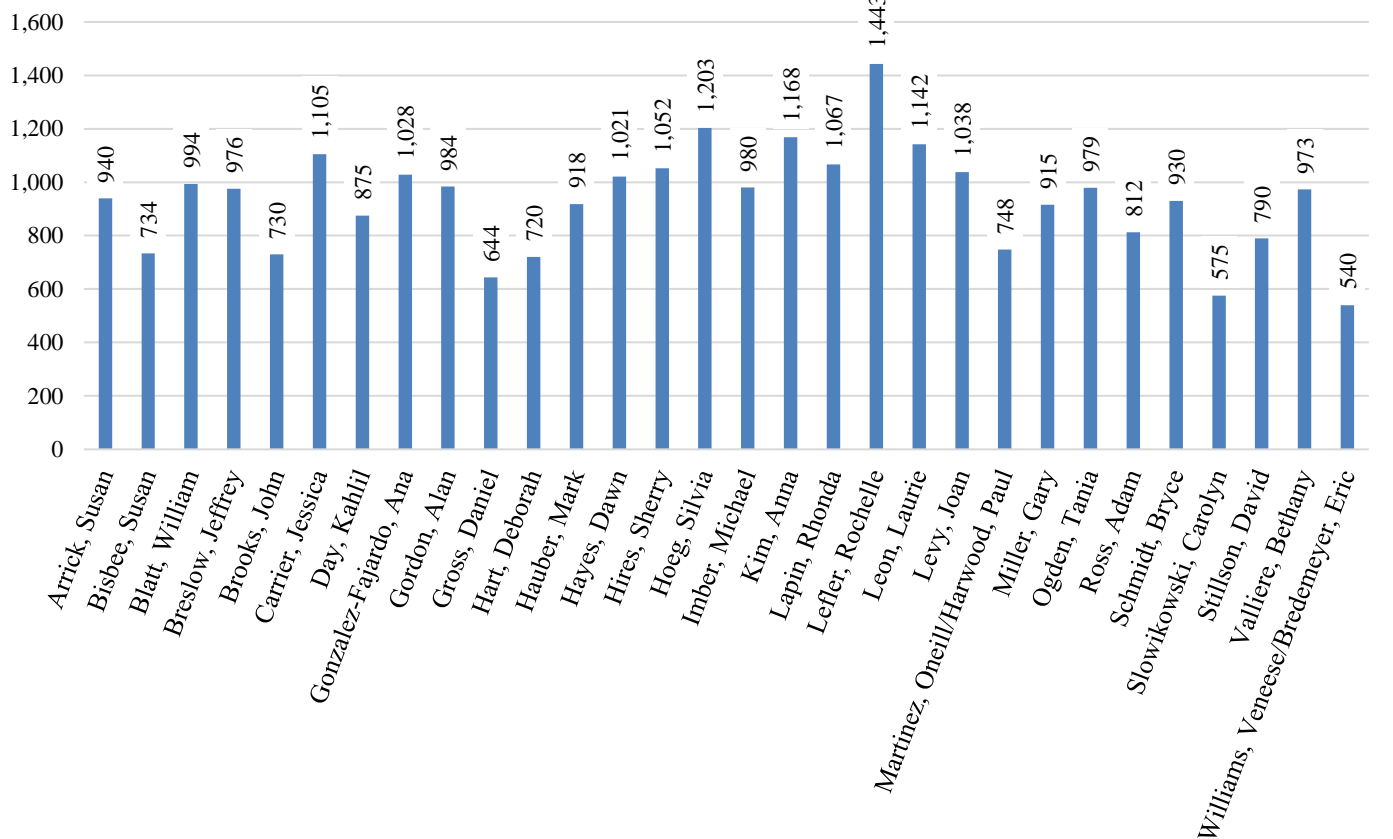
Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
2002-03	151,021		29,253	
2003-04	127,611	-15.50%	28,072	-4.04%
2004-05	107,319	-15.90%	26,410	-5.92%
2005-06	90,991	-15.21%	25,522	-3.36%
2006-07	82,607	-9.21%	22,258	-12.79%
2007-08	72,718	-11.97%	20,021	-10.05%
2008-09	73,863	1.57%	20,812	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%
2020-21	69,676	-3.34%	19,442	6.76%

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Overall Volume of PFB Mediated



Volume of PFBs Mediated by Each Mediator 2020-21

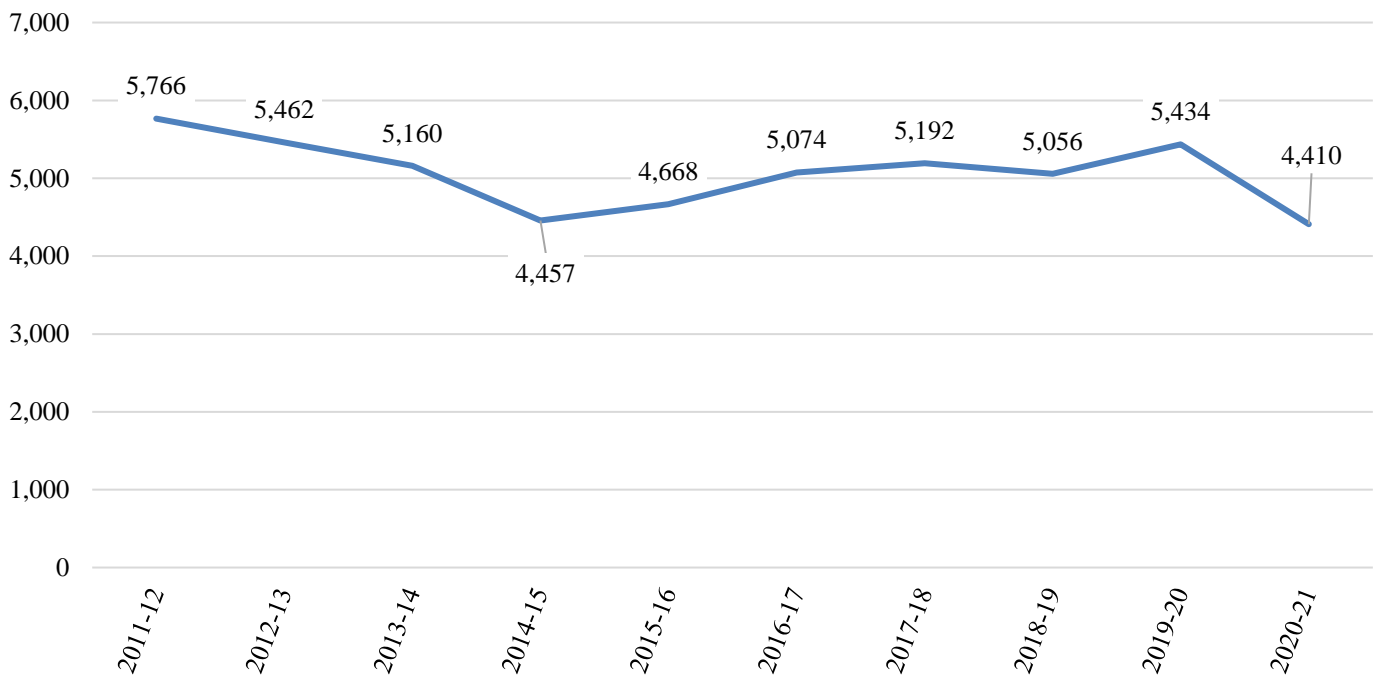


Dismissed and Resolved Prior

Some volume of petitions does not reach the mediation process. These may be dismissed before the mediation conference is scheduled, or after the notice is issued the parties may report that they have either settled the case or resolved the pending issues prior to the mediation. Still other cases are reset for private mediation. Through various paths, a significant volume of litigation is resolved among the parties after PFB filing, but without state mediation. (19,442 mediations conducted in 2020-21; a significant volume of others, 14,365 [75% of the 19,442 cases that went to mediation], were “resolved or settled prior”). These two represent about 49% of the 69,676 petitions filed that year.

Similar 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. The 2019-20 report suggested that some COVID-19 related impact might have driven private mediation settings higher; however, the marked decrease in private mediation resets in 2020-21 is contrary to such a conclusion. The private resets in 2020-21 was the lowest in the last decade, though barely below the 2014-15 level. This is consistent with both the decreased petition filing volume (-3.34%) and the notable increase in state mediations (+6.76%).

Reset Private

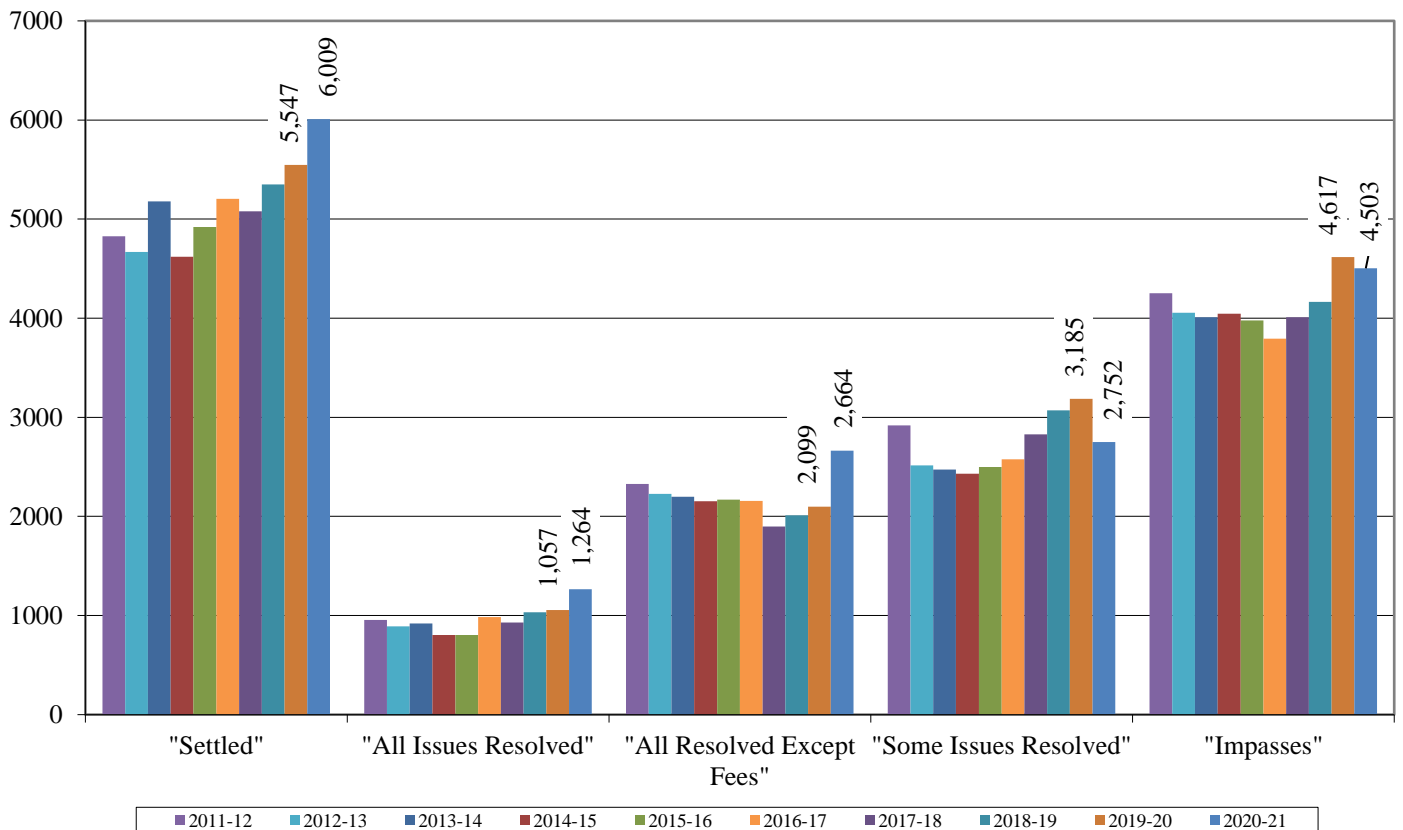


Disposition of Mediation Conferences:

A petition for benefits (“PFB”) may seek only one substantive benefit (i.e. authorization of an orthopedic surgeon), or could contain many issues (i.e. orthopedic authorization, neurological authorization, diagnostic testing authorization, correction of the average weekly wage, payment of temporary total, temporary partial, supplemental benefits, and/or permanent total disability benefits, etc.). Virtually all PFBs also include claims for ancillary benefits related to one or more of these substantive benefits, such as penalties and/or interest on late paid indemnity benefits,¹⁶ and attorney’s fees and costs for the prosecution of all claimed benefits in the PFB. Notably, a mediation conference may include the issues from one PFB or several.¹⁷

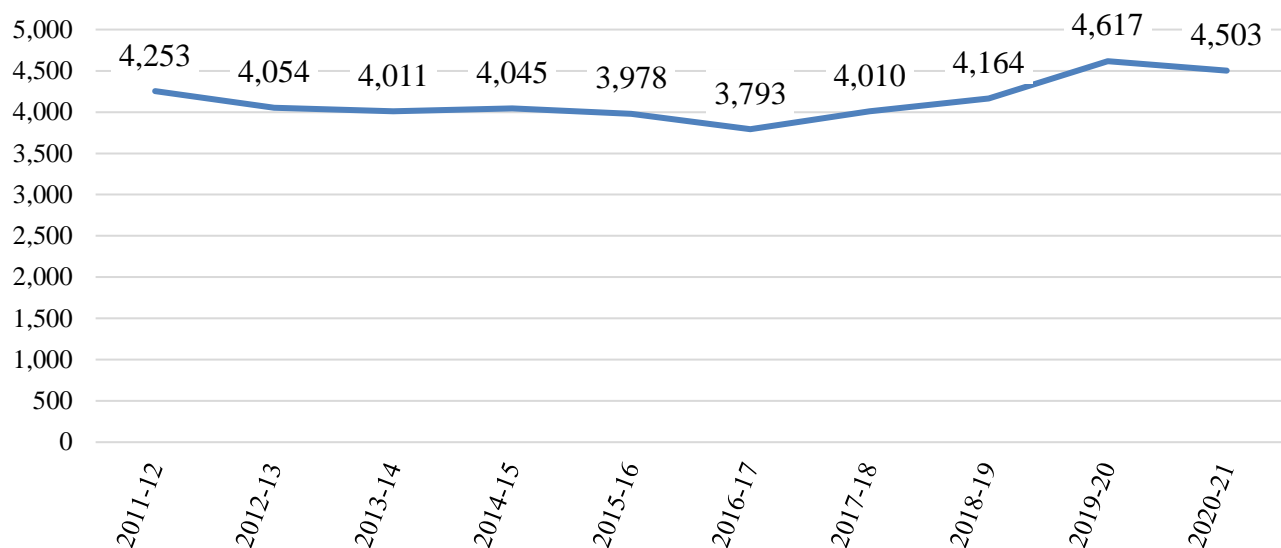
Therefore, the outcome of mediations is expressed in terms of what was resolved at that particular mediation. The characterization “impassé” is used to reflect that no issues were resolved at mediation. The characterization “settled” reflects that the entire case, including the pending PFB issues and all future benefits as yet undue and unclaimed, were resolved. Between these two extremes of “impassé” (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 (though the data for the last ten years has been monitored for such error). Those erroneously characterized outcomes dictate that comparisons of that historic 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 (“impassé”) to the most resolution (“settled”). The overall results of mediations are reflected in this graph, illustrating this continuum from “all,” or “settled” on the left side to the least “none” or “impassé” 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 “impassé” 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 a history of reasonable consistency, but has trended upward in recent years. The increase in impassé was notable (+11%) in 2019-20, and the moderate decrease from that in 2020-21 did not return to prior consistency. All outcomes increased some that year, due in part to the notable increase in mediations conducted. Notably, the impassé volume decreased some in 2020-21, while all of the “complete resolution” categories increased with the increasing volume of mediations generally. It is encouraging, as the volume increased during the pandemic, the state mediator’s continued effectiveness was illustrated in those resolutions. They persevered admirably.

Overall "Impasses" 2020-21



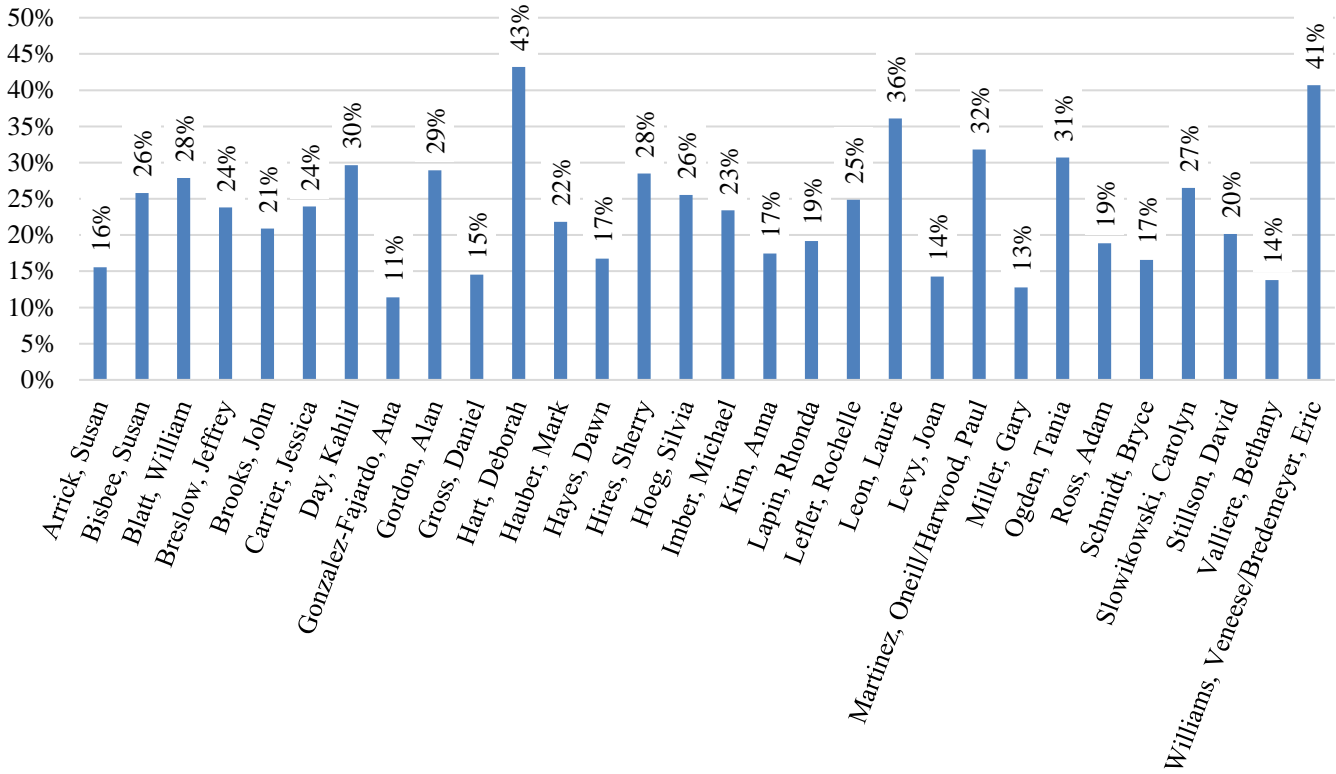
The marked decreases in “impasse” between 2009 and 2013 are illustrative of efforts by the OJCC mediators to resolve at least some aspect of the cases which are presented to them. Despite decreasing volumes of mediations overall, the percentages of convened mediations resulting in impasse were impressive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

11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21
25.20%	25.60%	24.80%	26.20%	25.30%	23.60%	24.80% ¹⁸	24.40%	25.40%	23.16%

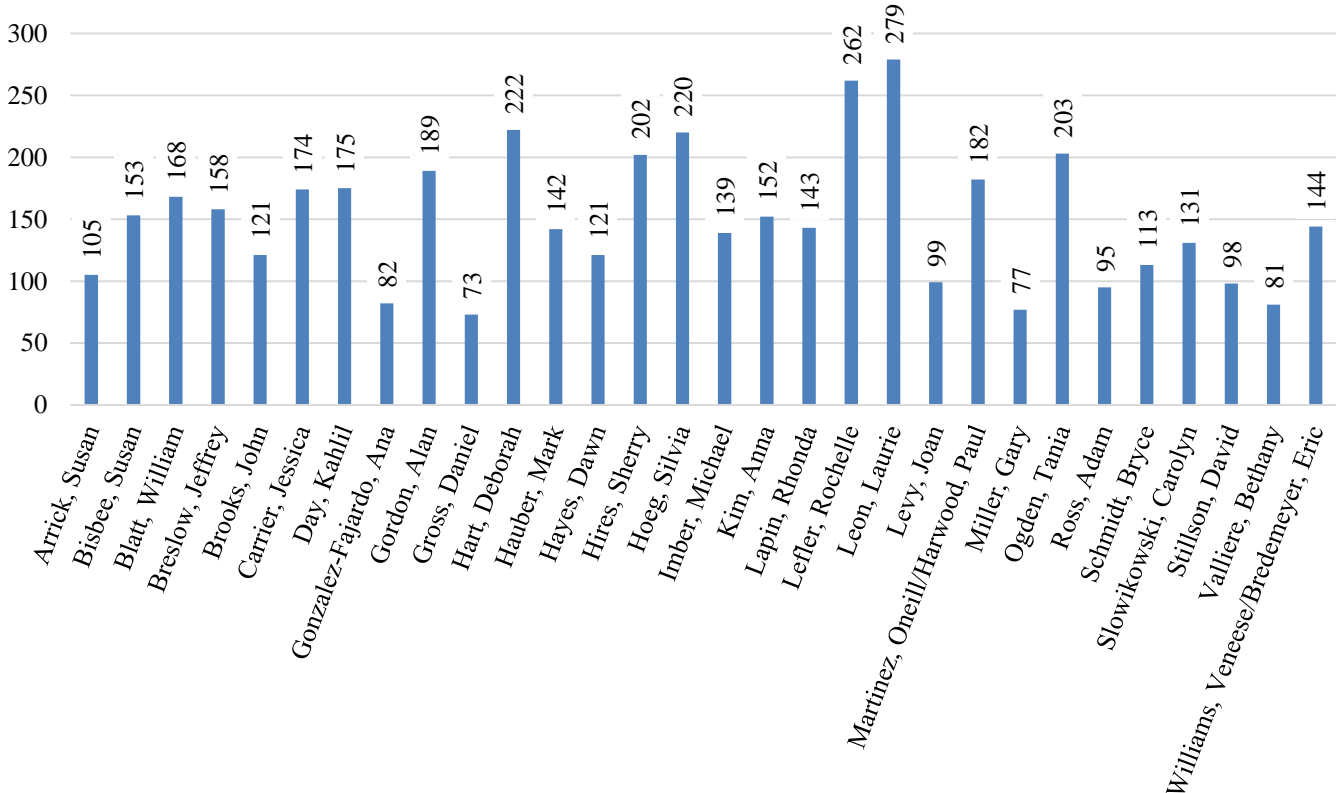
The corollaries of these figures represent the volume of OJCC mediations in which at least some volume of issues was resolved. In approximately seventy-seven percent (76.84%) of 2020-21 OJCC mediations, at least some issues were resolved. This is an important fact, more so even than a measure of “settlements.” It is pertinent 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.

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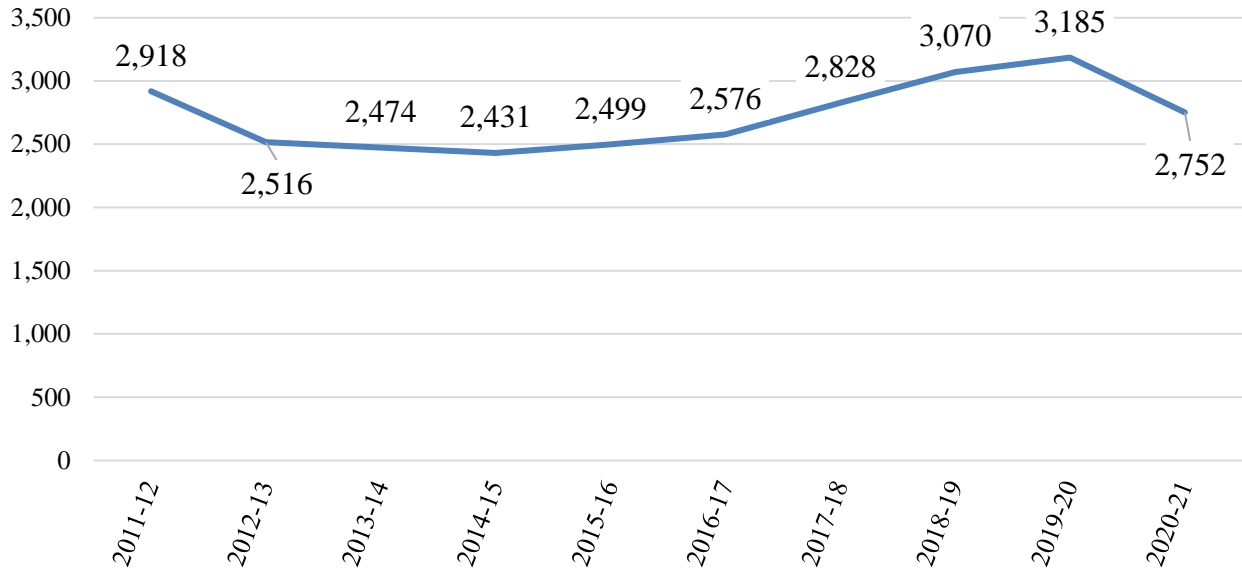
"Impasse" % by Each Mediator 2020-21



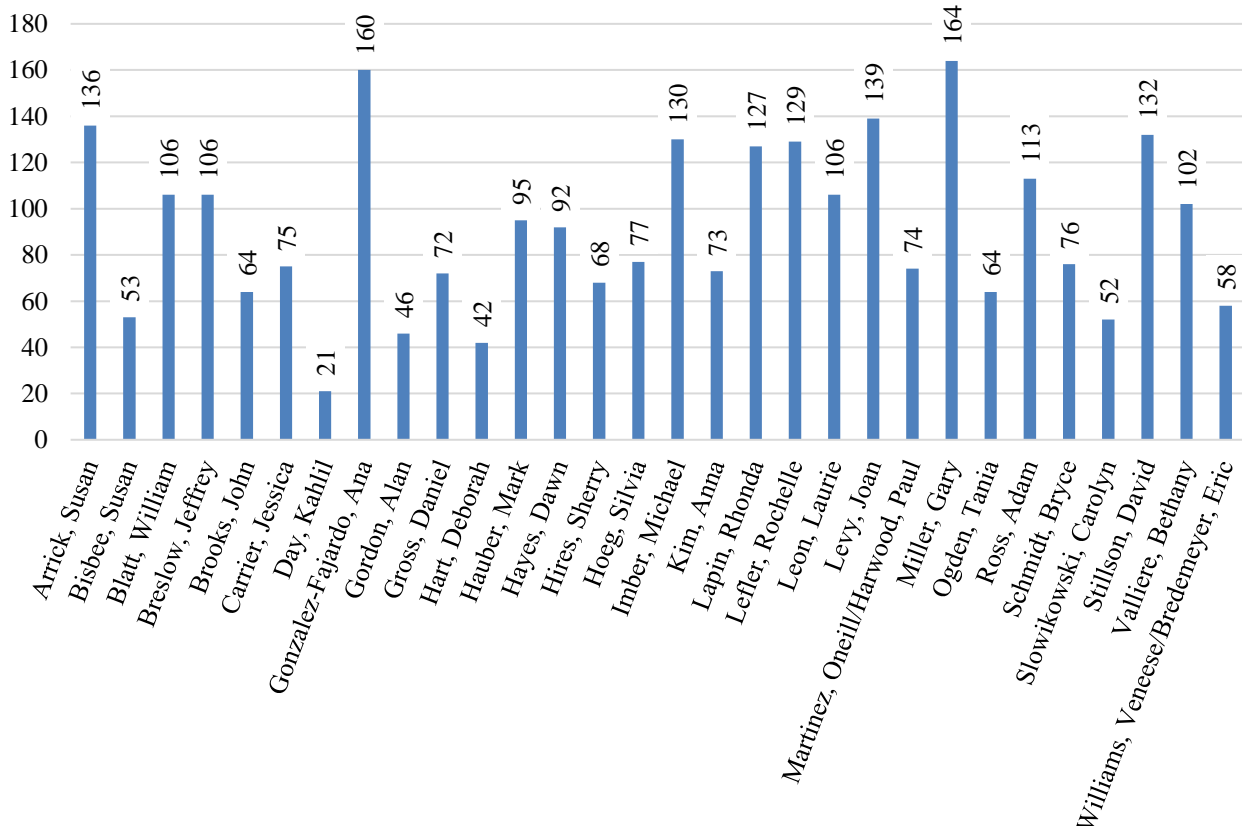
"Impasse" by Each Mediator 2020-21



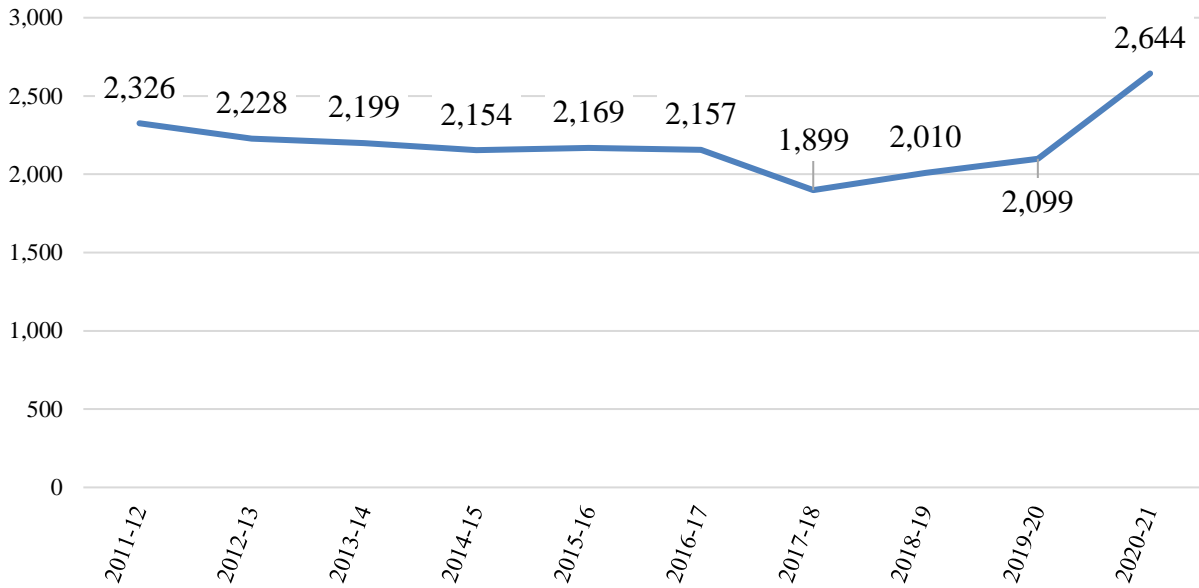
Overall "Some Issues Resolved" 2020-21



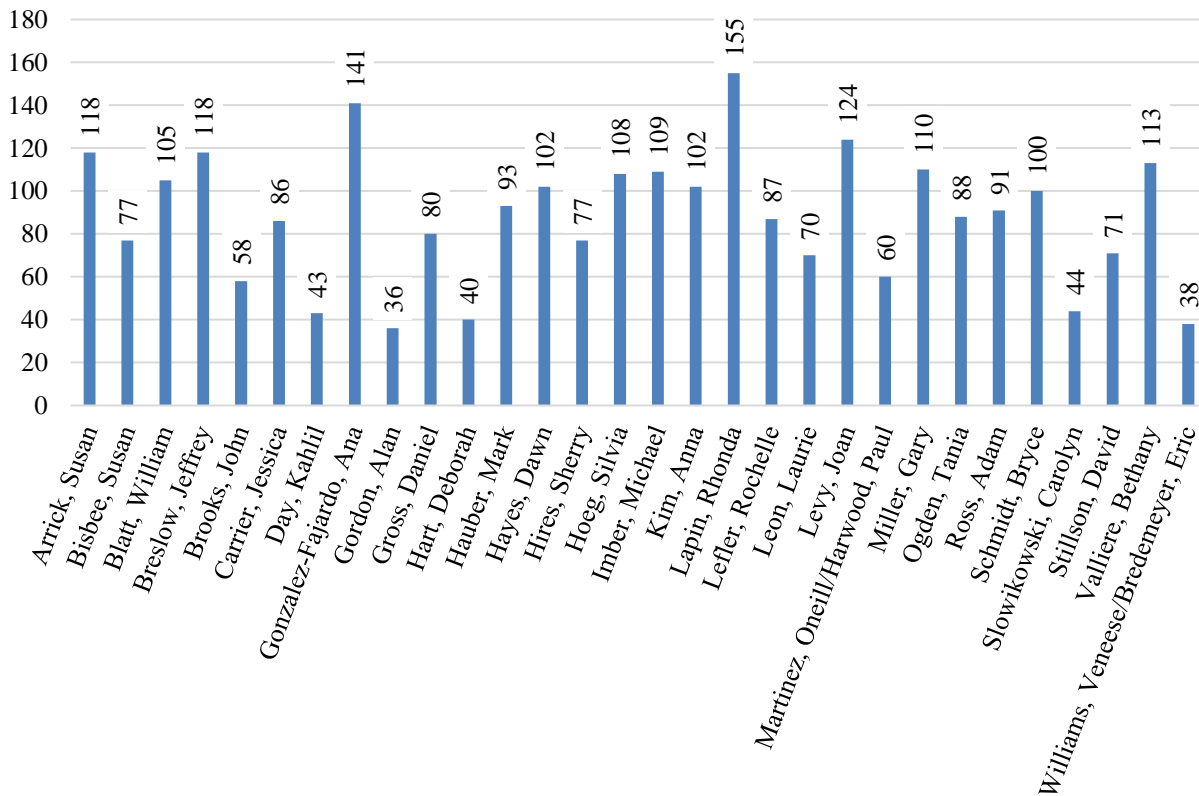
"Some Issues Resolved" for Each Mediator 2020-21



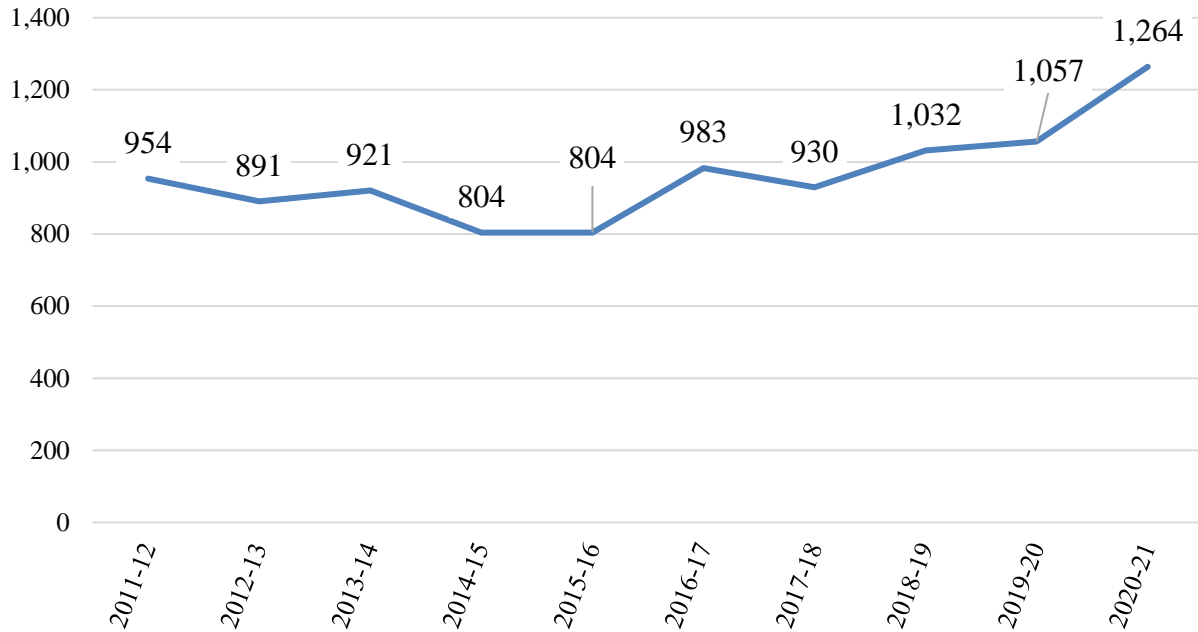
Overall "All Resolved Except Fees" 2020-21



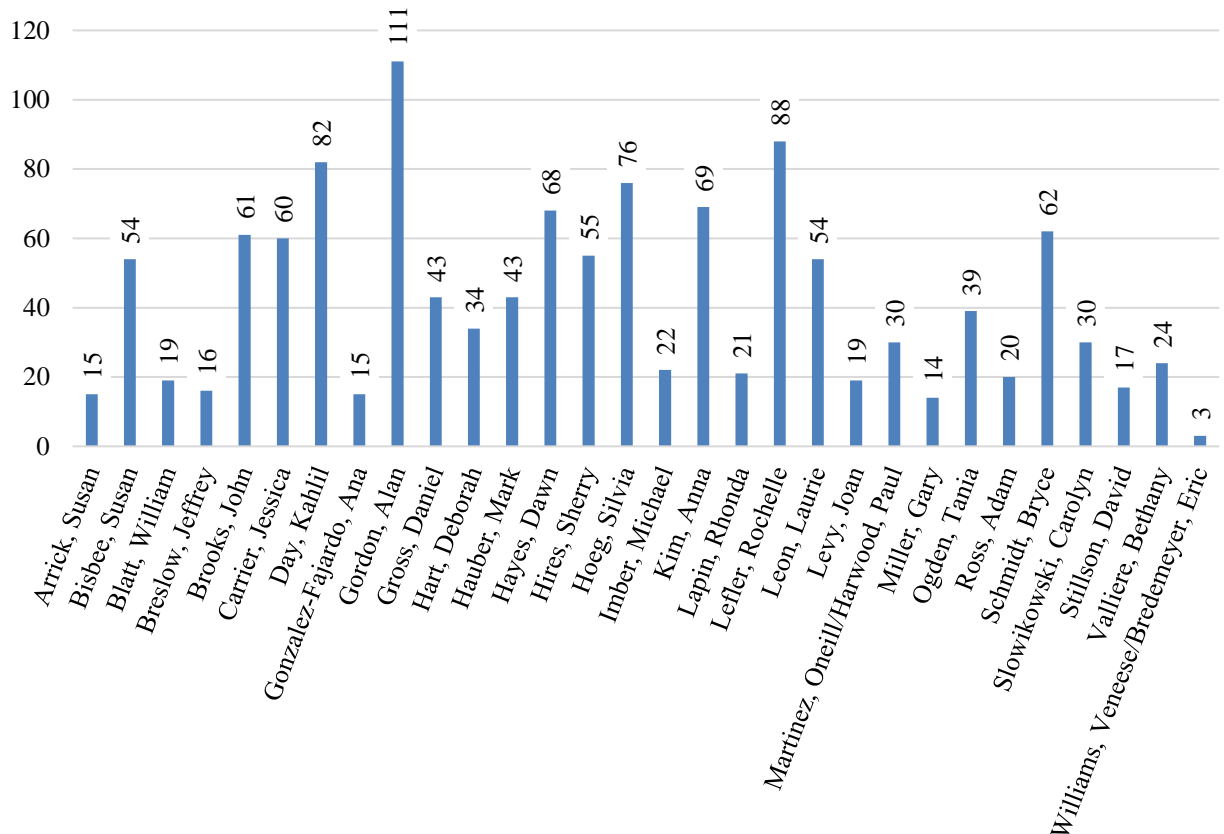
"All Resolved Except Fees" for Each Mediator 2020-21



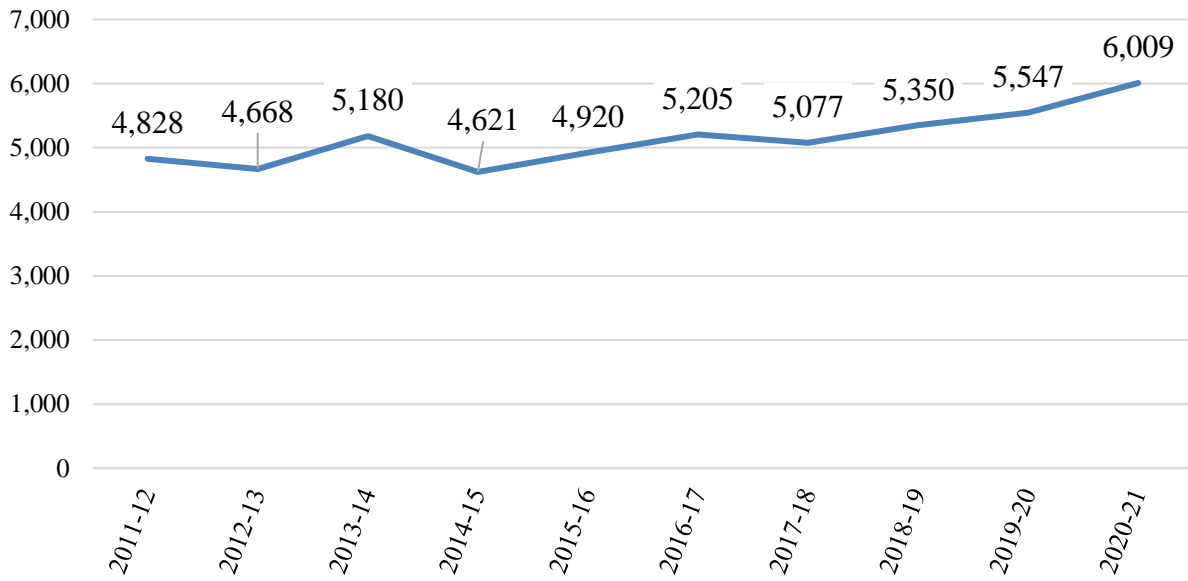
Overall "All Issues Resolved" 2020-21



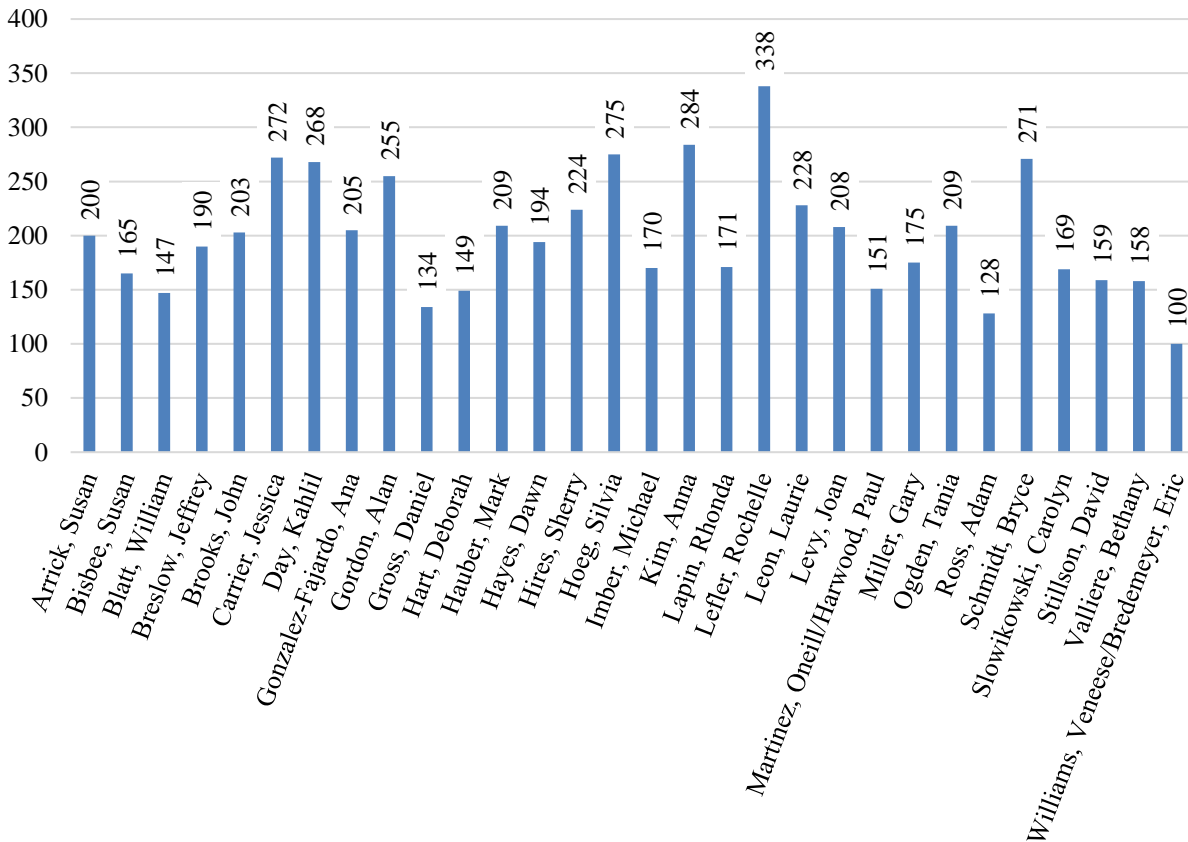
"All Issues Resolved" for Each Mediator 2020-21



Overall "Settled" 2020-21



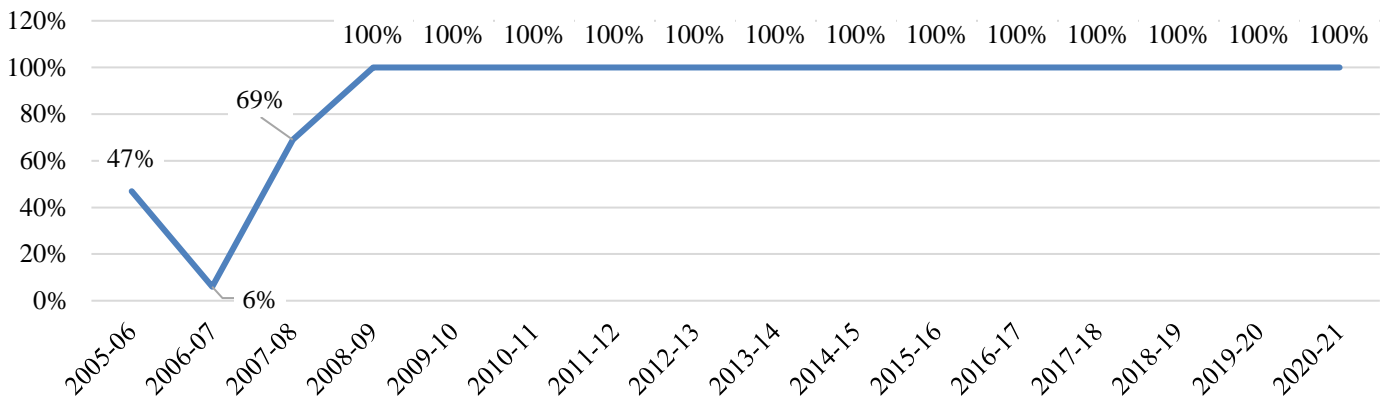
"Settled" for Each Mediator 2020-21



Timeliness of Mediations:

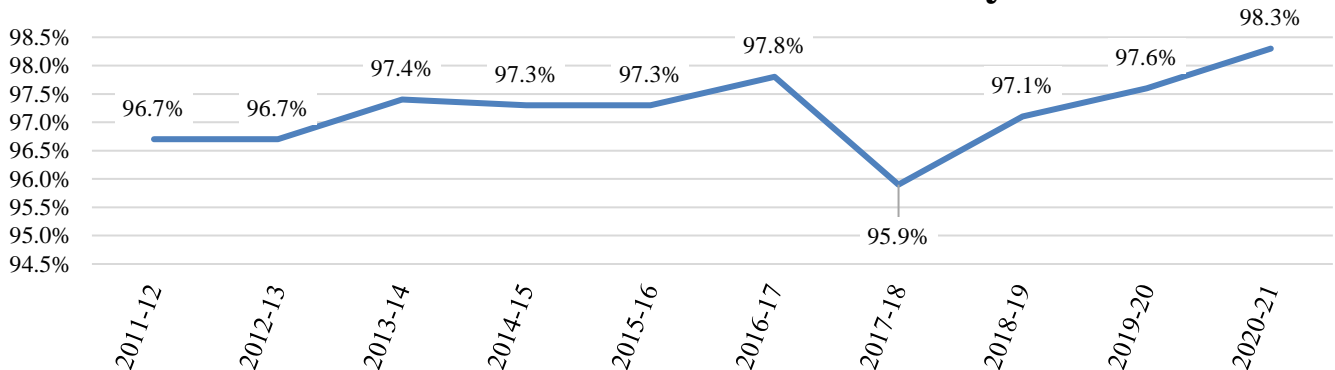
The Florida workers’ compensation law requires that mediation occur within 130 days of the PFB filing. There are nonetheless situations in which this parameter cannot be met. In personal injury actions, it is common that mediation is occurring after the rendition of medical modalities and the injured 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 the 130-day parameter (section 440.25(1)) in this context, the OJCC mediators have performed with notable consistency in recent years. In each of the last thirteen fiscal years, all of the OJCC mediators averaged less than 130 days between Petition filing and the initial mediation.

Percent of OJCC Mediators Averaging Less than 130 Days to First Mediation

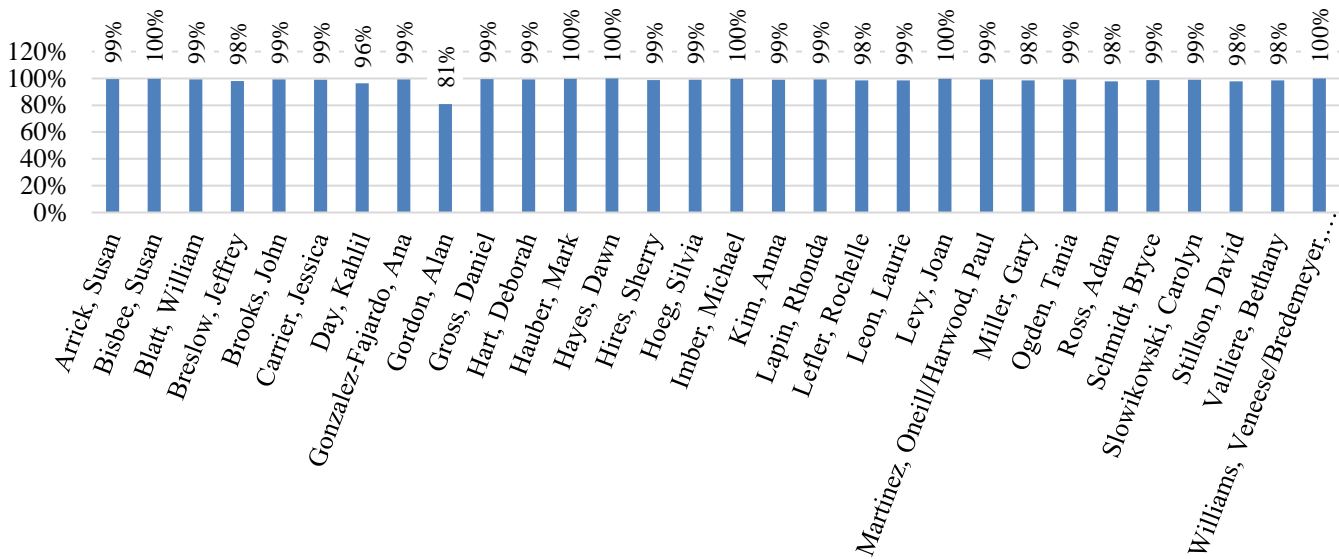


In fact, in 2020-21 the OJCC mediators mediated approximately 98% of the PFBs within the 130-day statutory parameter. That is an improvement over 2019-20, and is reasonably consistent with the overall average in recent years. The persistence of this average compliance is also noteworthy in light of the consistency of pre-pandemic petition-filing rates (see chart, page 6) pre-pandemic and the challenges of the pandemic more recently.

Percent Mediated within 130 Days



Percent Mediated within 130 days for Each Mediator 2020-21



Mediations Continued:

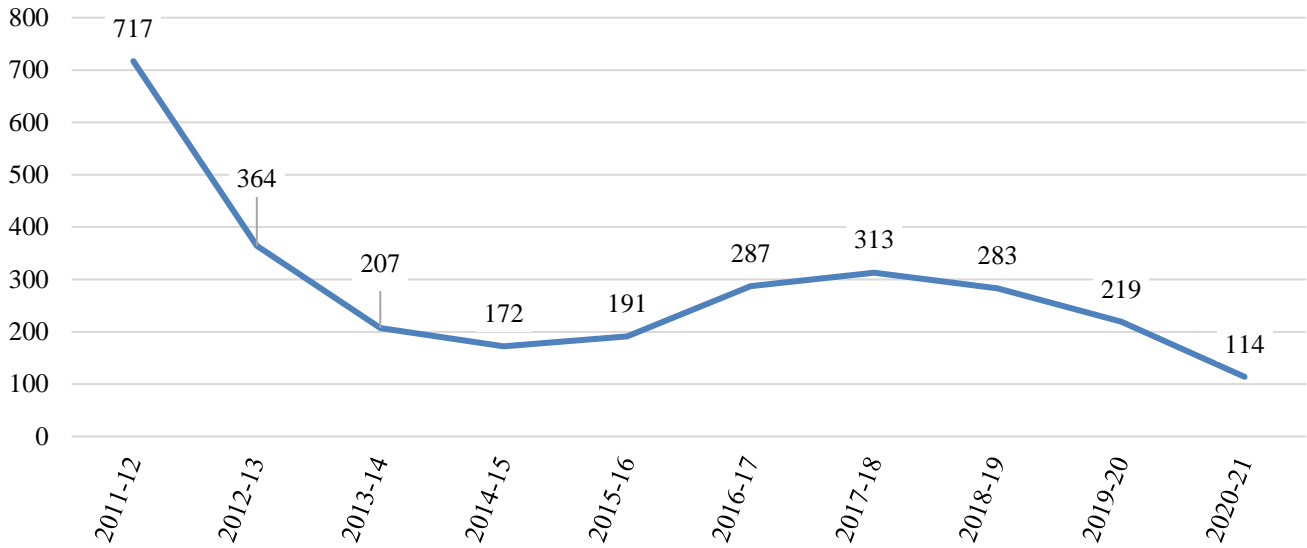
Mediation continuances increased markedly in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. However, those volumes may have been increased by the volume of weather-related office closures that year, as Florida’s cyclone season affected virtually every Florida county. Those 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 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) were significant in their return to a downward trend. In the pandemic period of 2020-21, with mediations largely conducted telephonically, the volume of continuances was an all-time low of 114.

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 use of these characterizations has improved in recent years also.

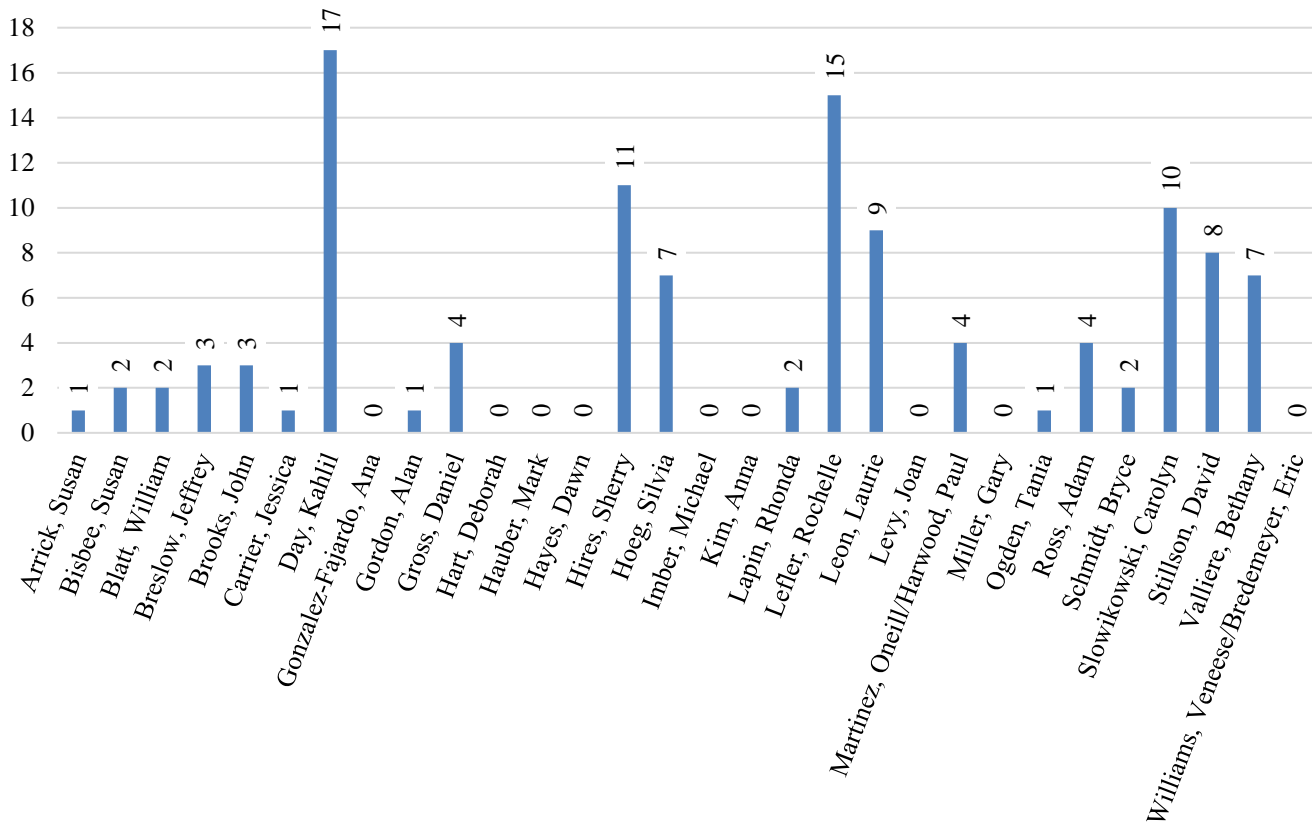
Some portion of both the stabilizing of these figures and the marked decrease in the number of mediation conference continuances had been previously deemed likely attributable to the annually decreasing volume of PFB filings. It was therefore encouraging to see the continuance rate remaining below one percent despite the recent years of significant increase in PFB filings. The all-time low figure for 2020-21 is a tribute to the mediators staffing the various offices.

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%
2020-21	69,676	114	0.16%

Overall Mediations "Continued"

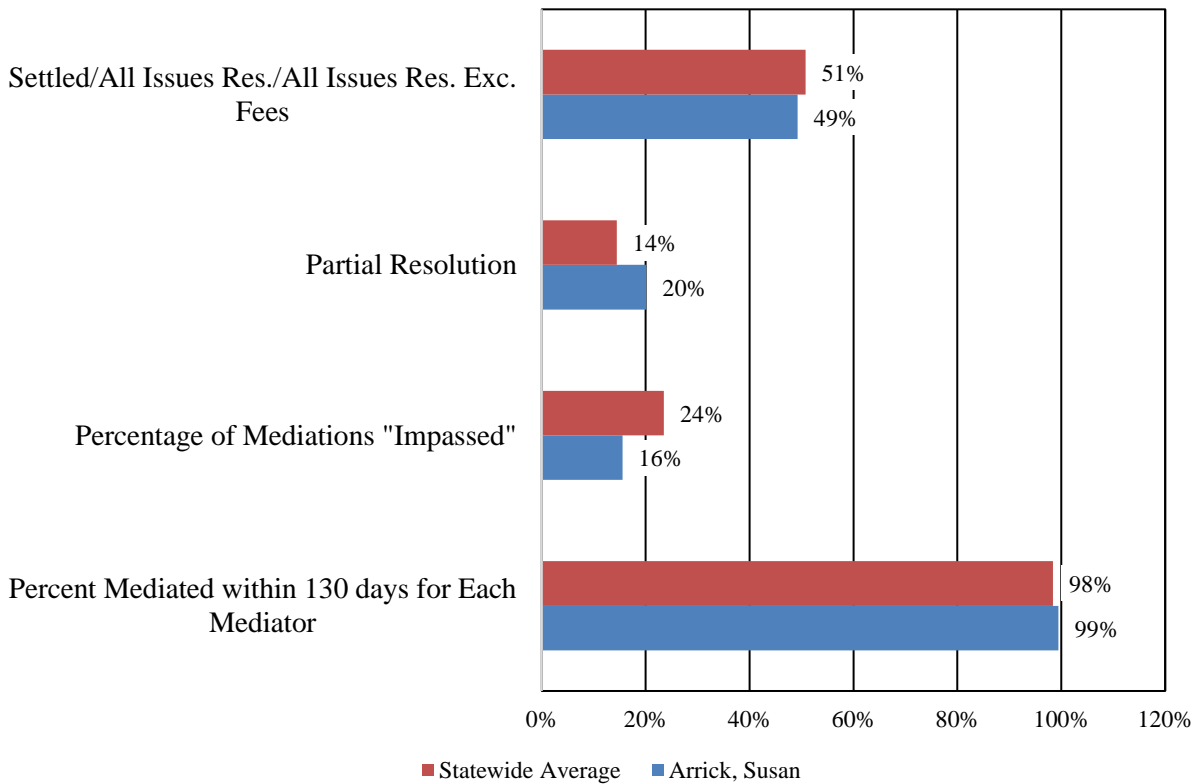
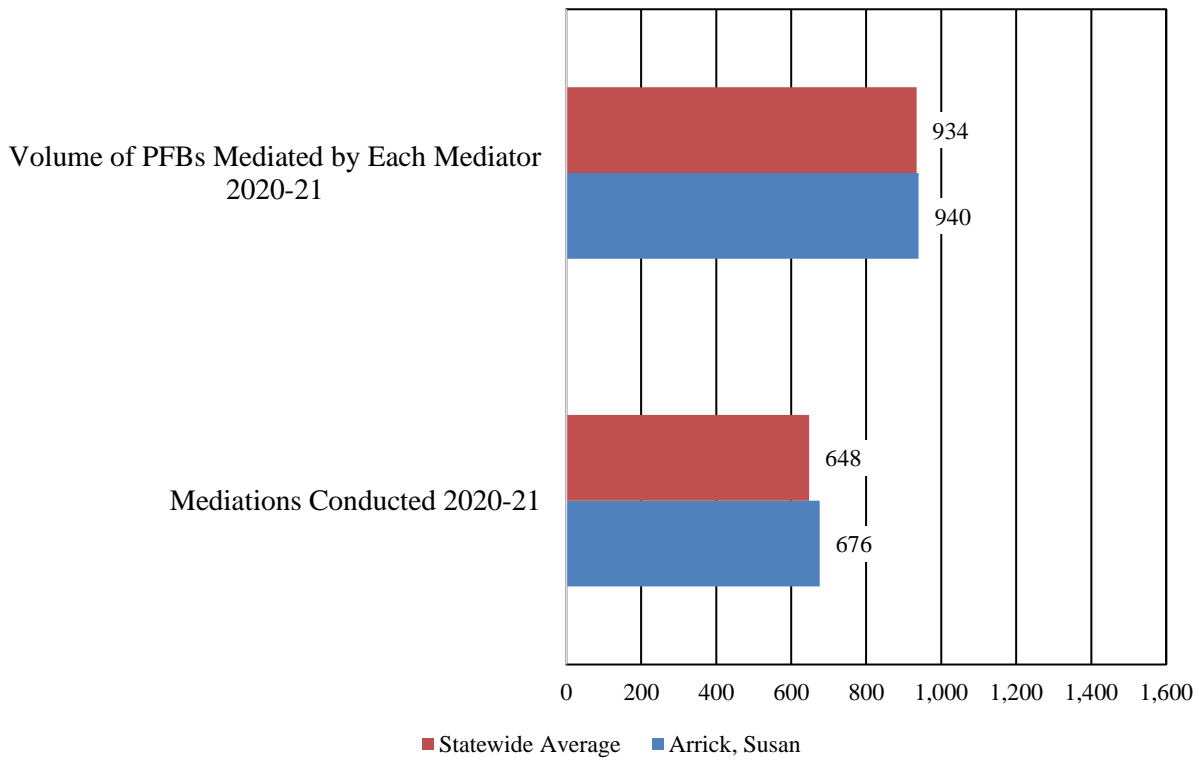


"Continued" for Each Mediator 2020-21

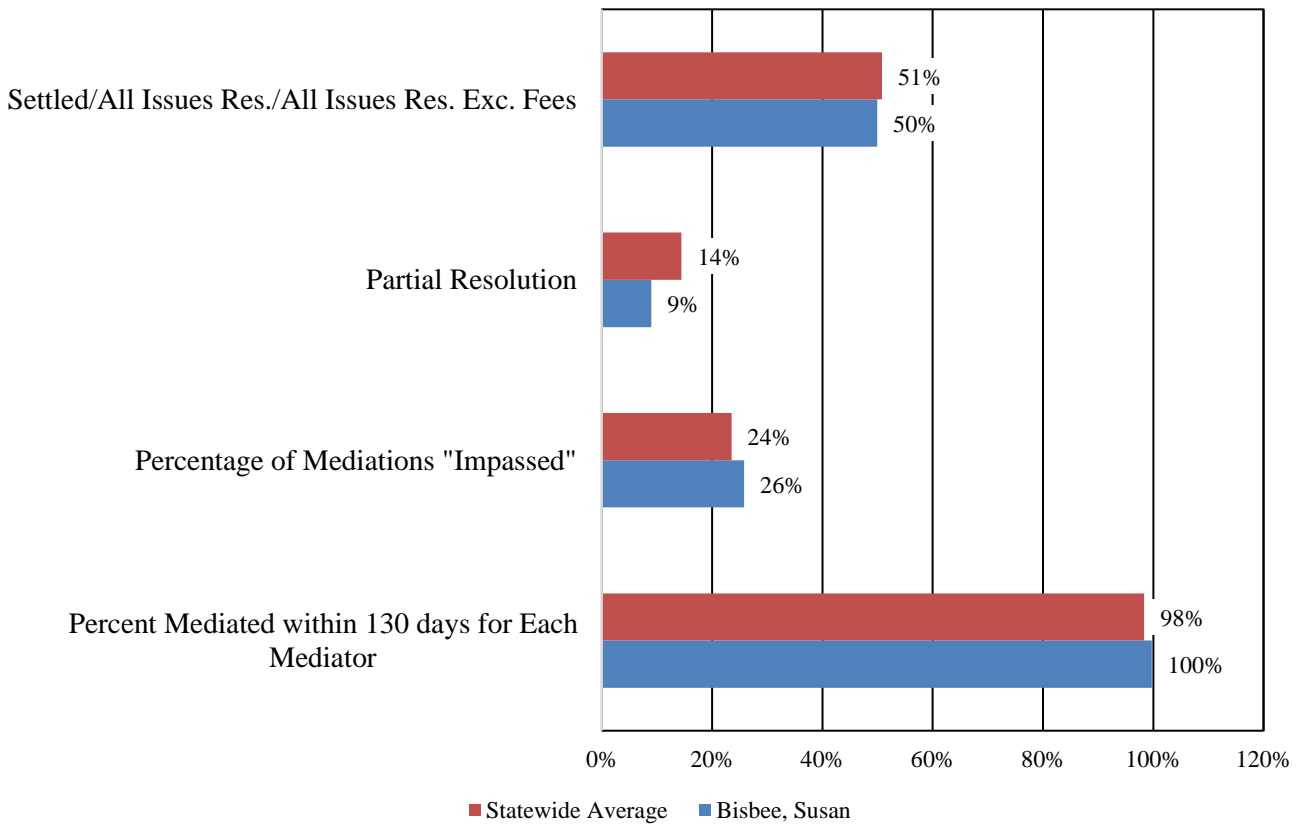
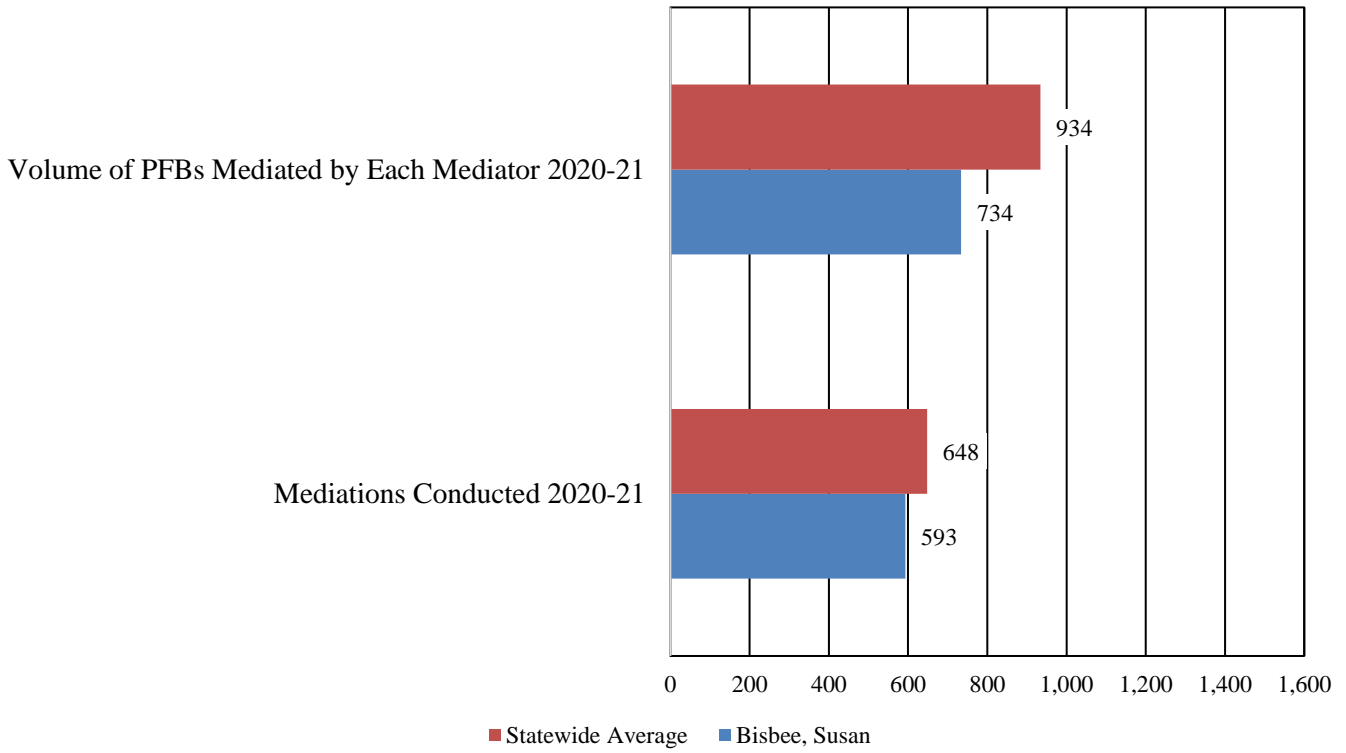


Individual Mediator Statistics:

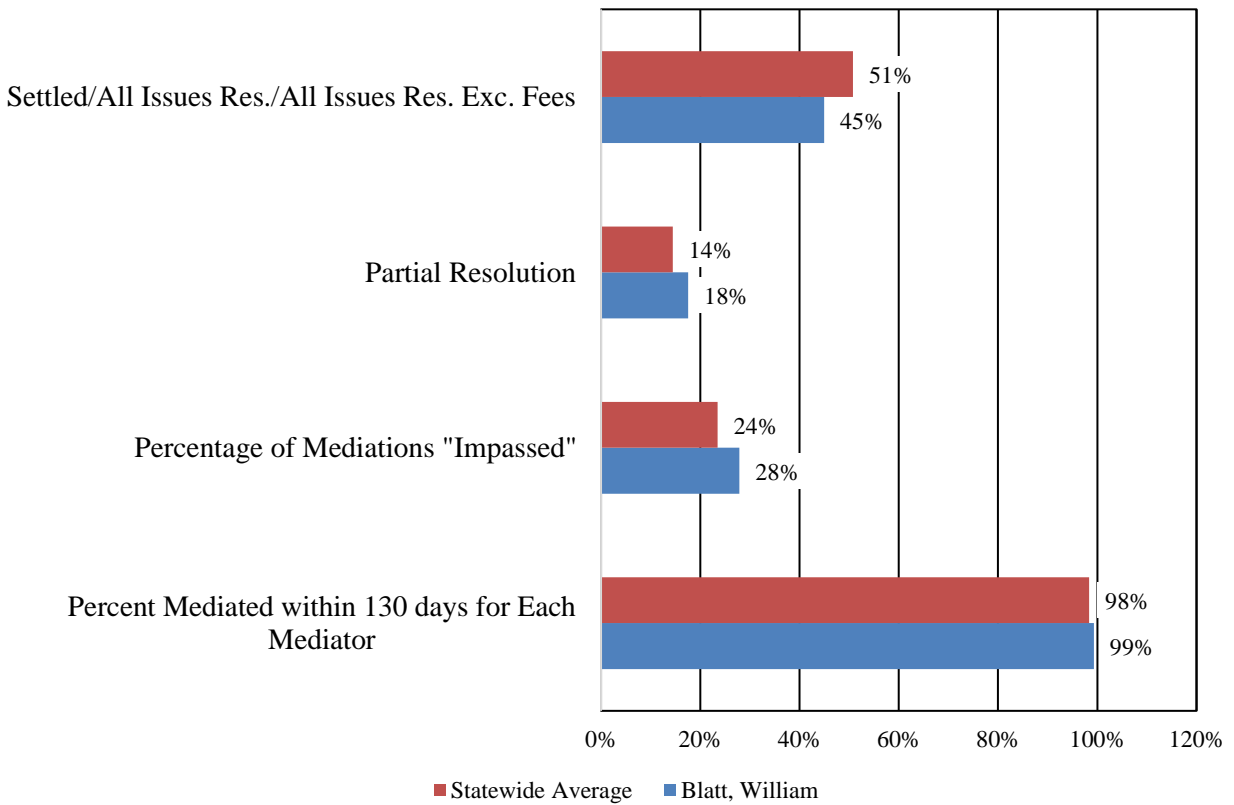
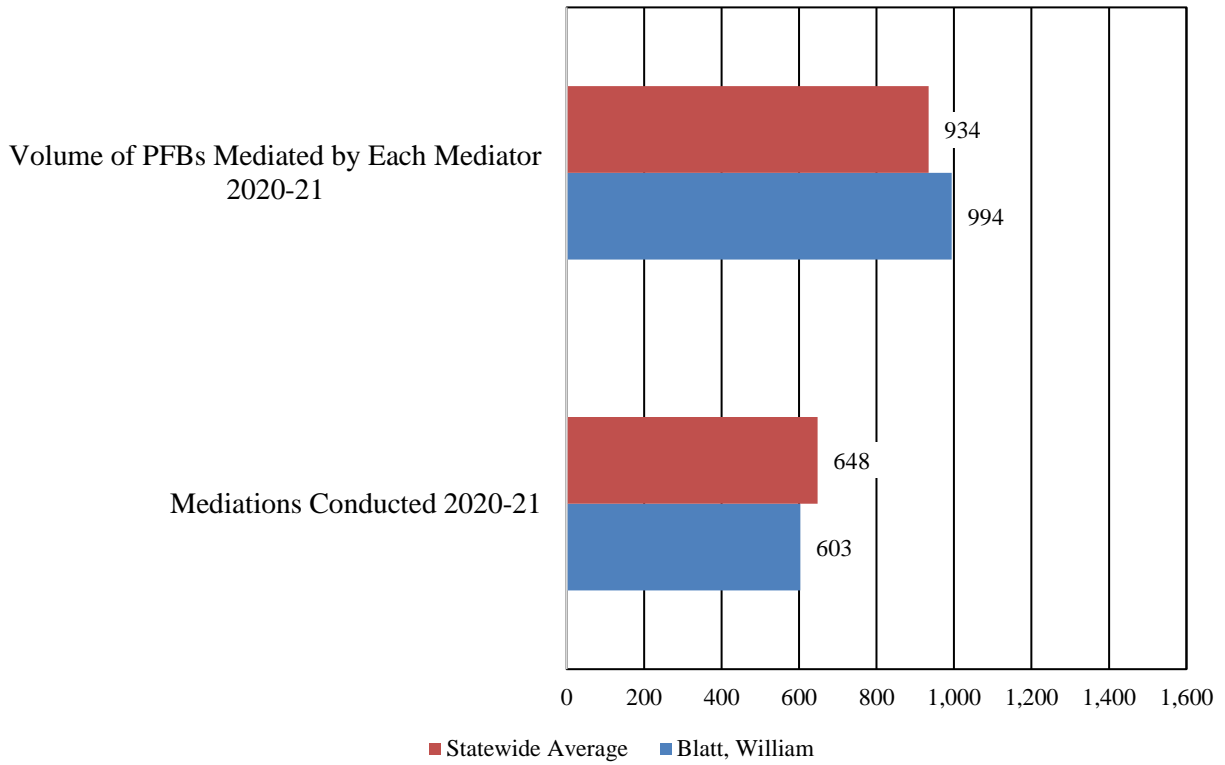
Arrick, Susan (MIA)



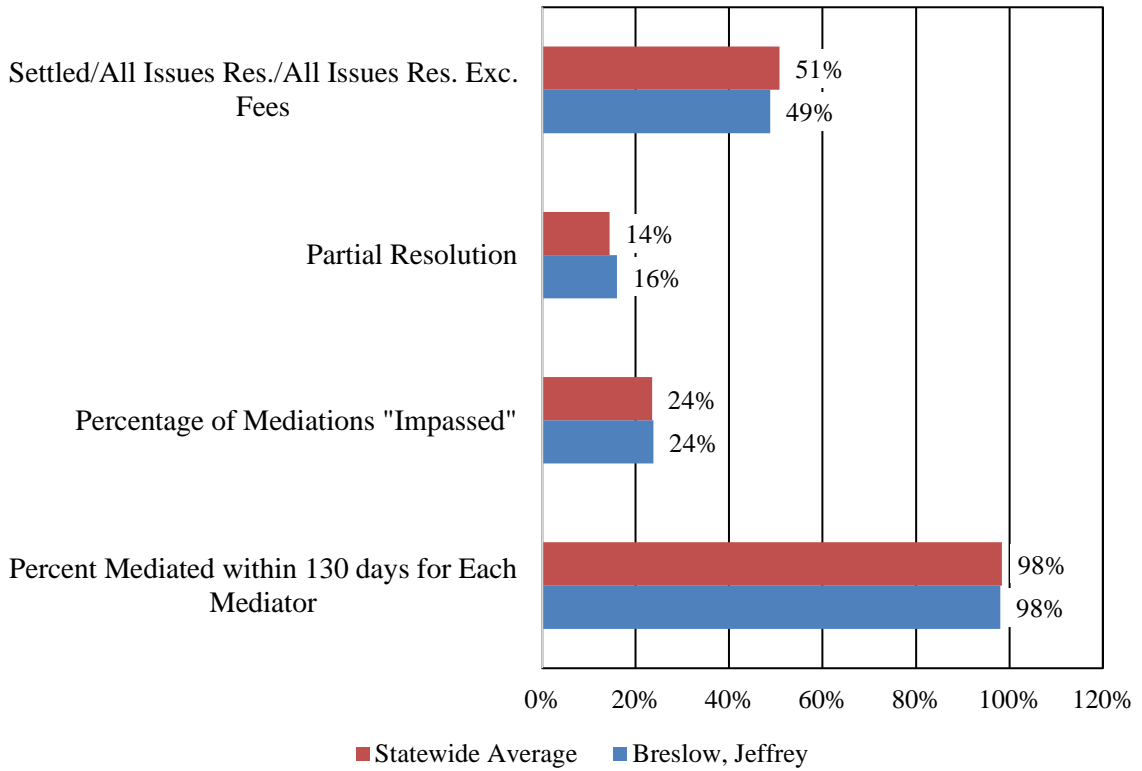
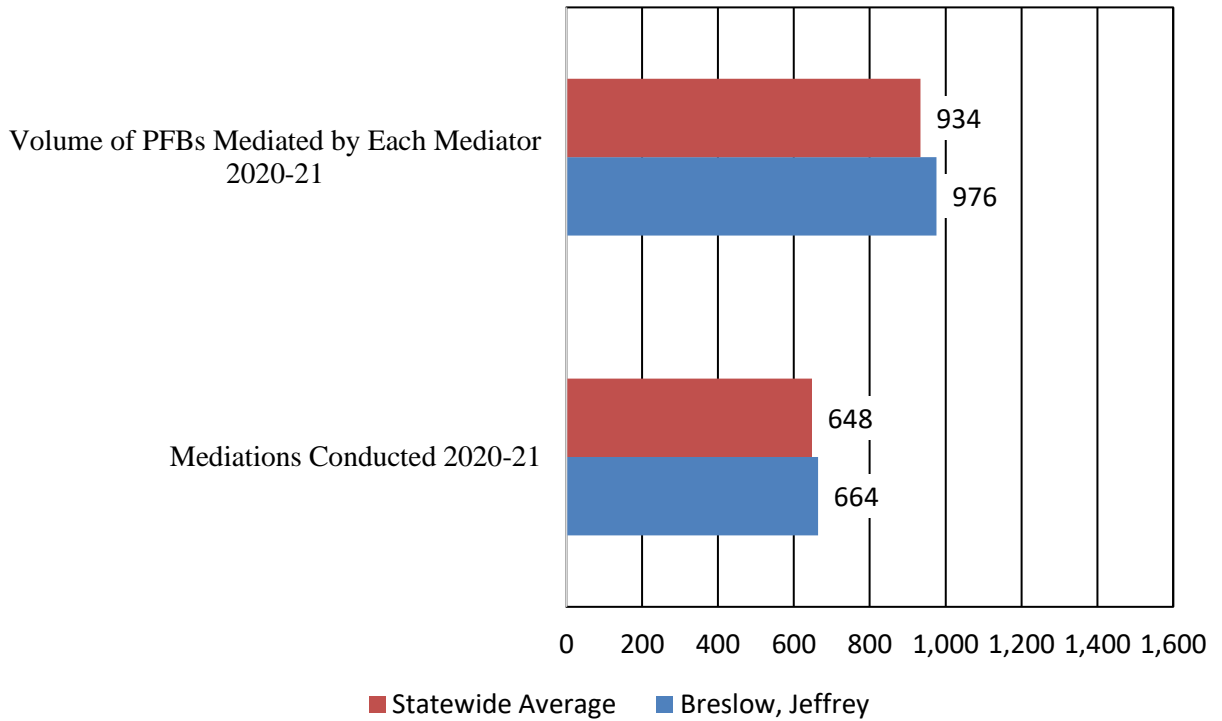
Bisbee, Susan (TLH)



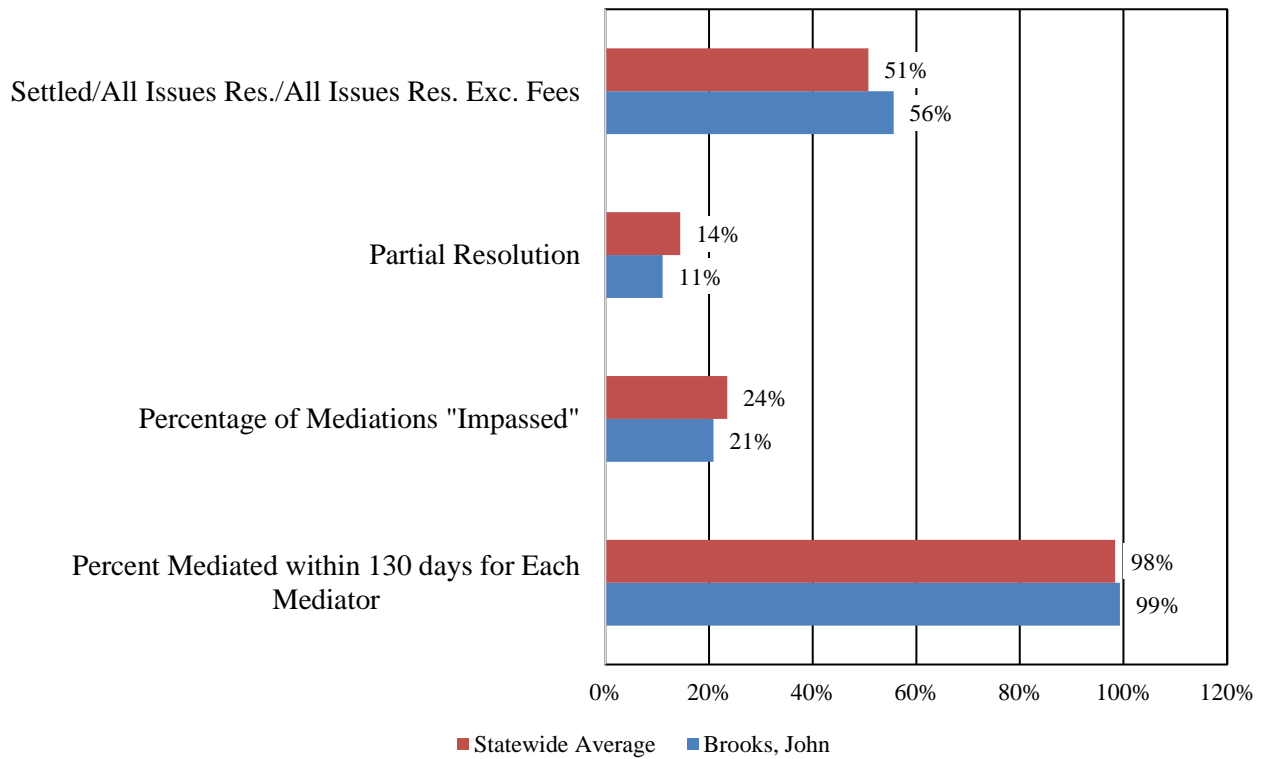
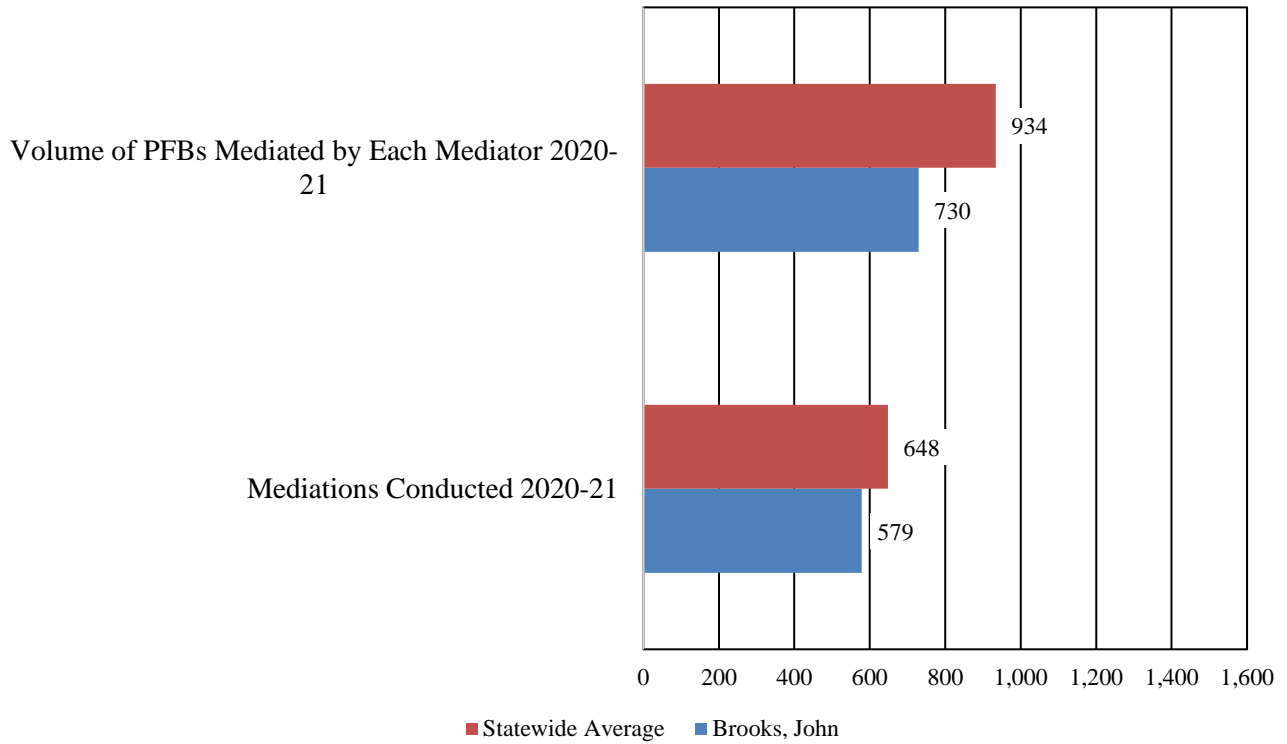
Blatt, William (WPB)



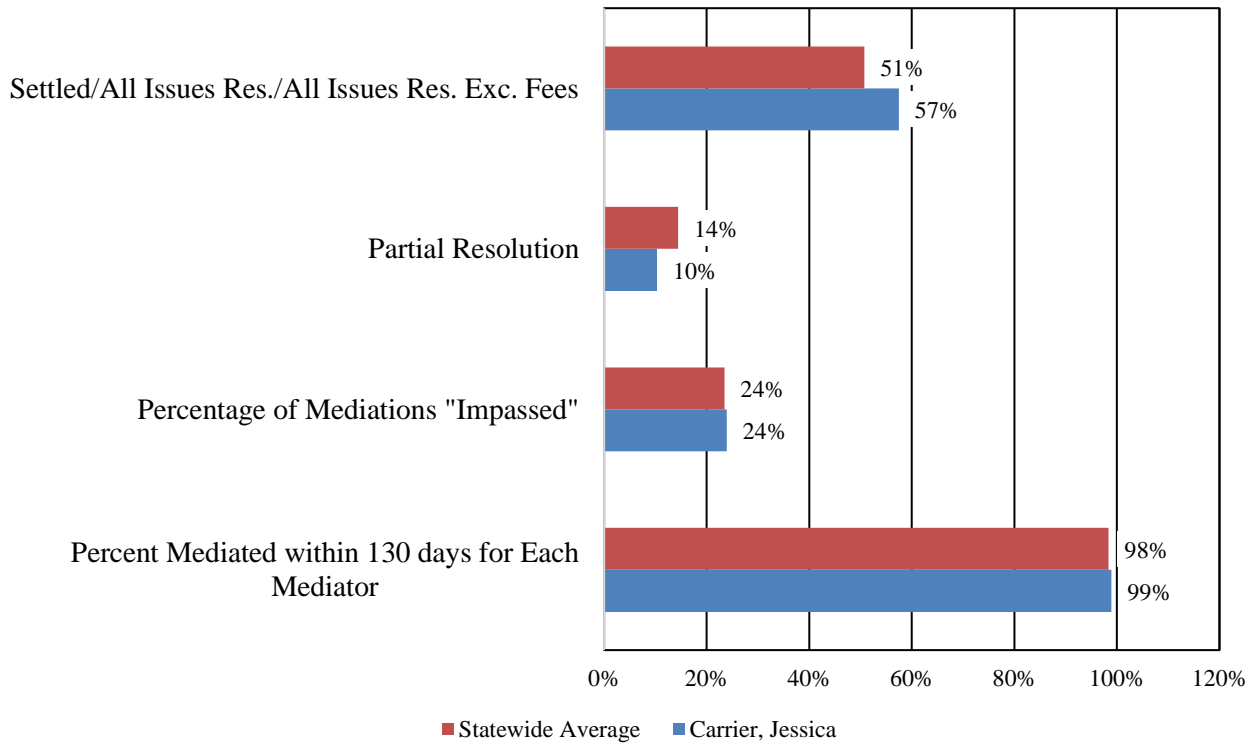
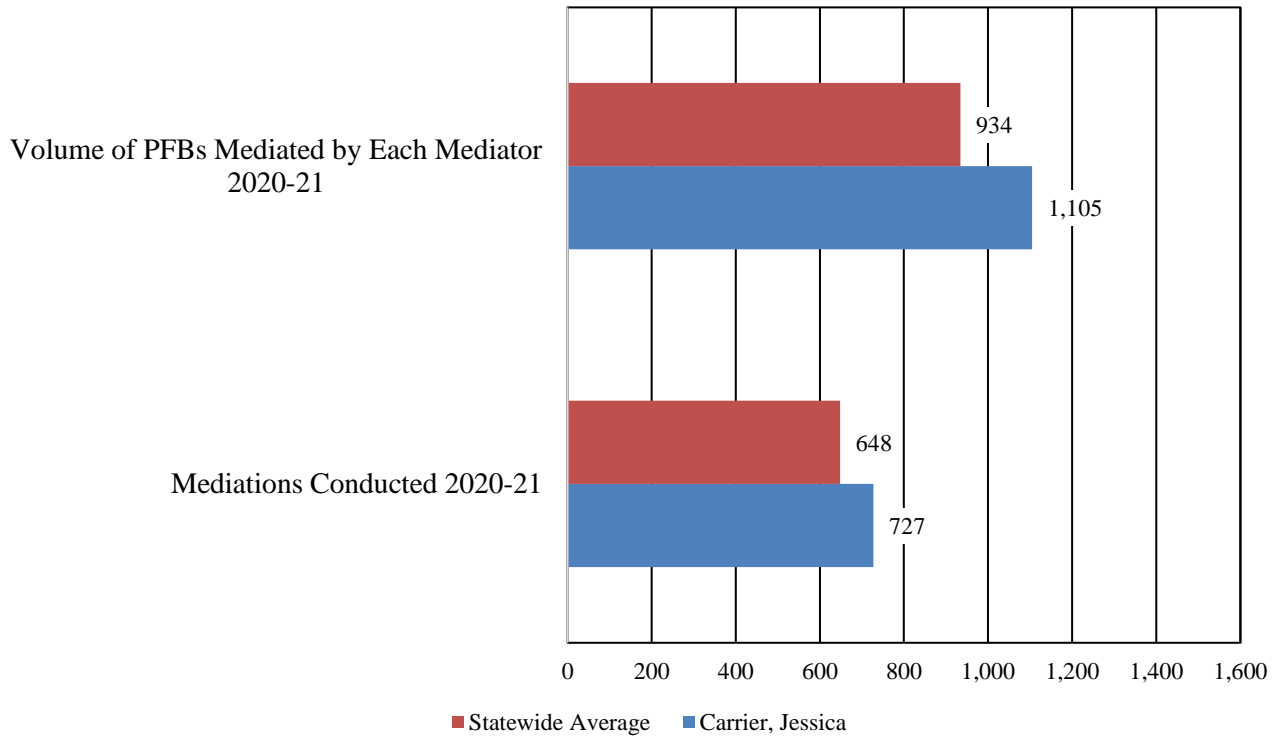
Breslow, Jeffrey (FTL)



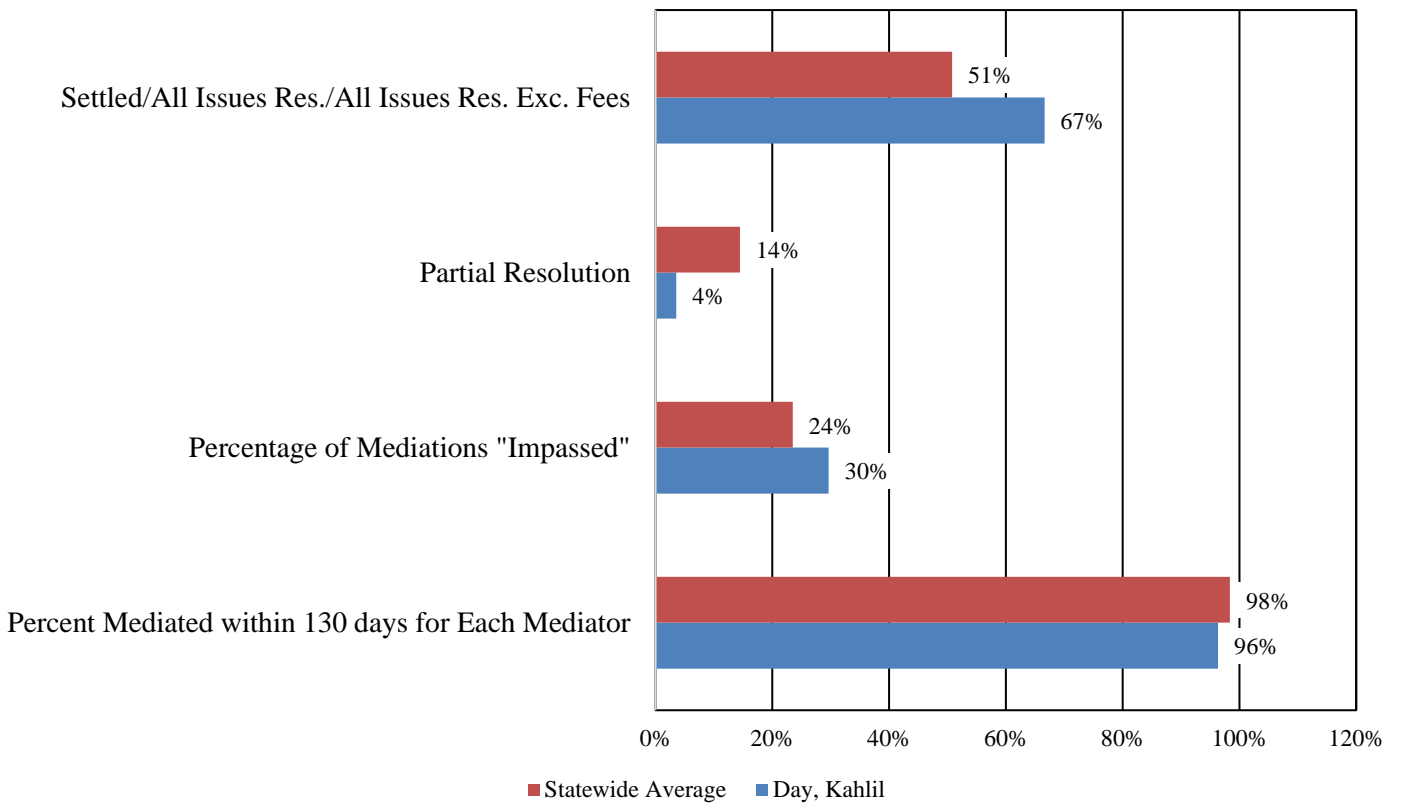
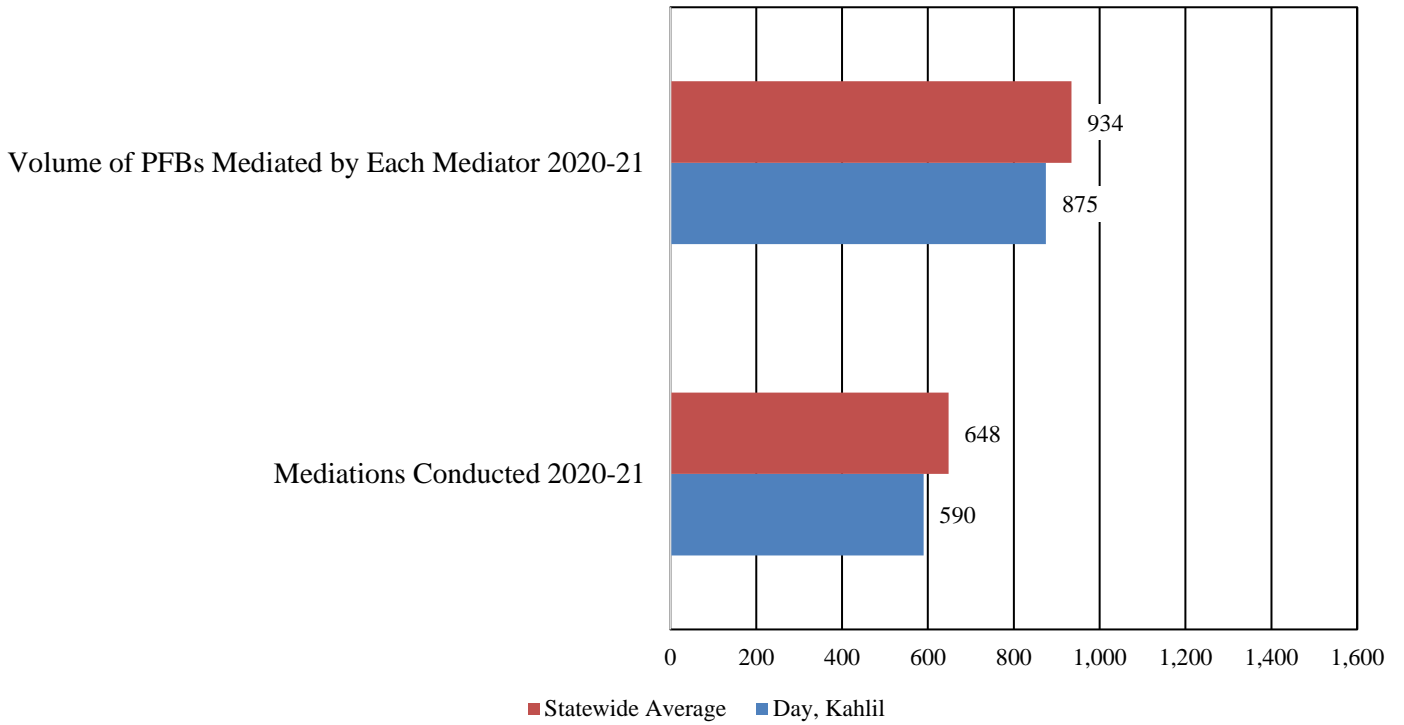
Brooks, John (DAY)



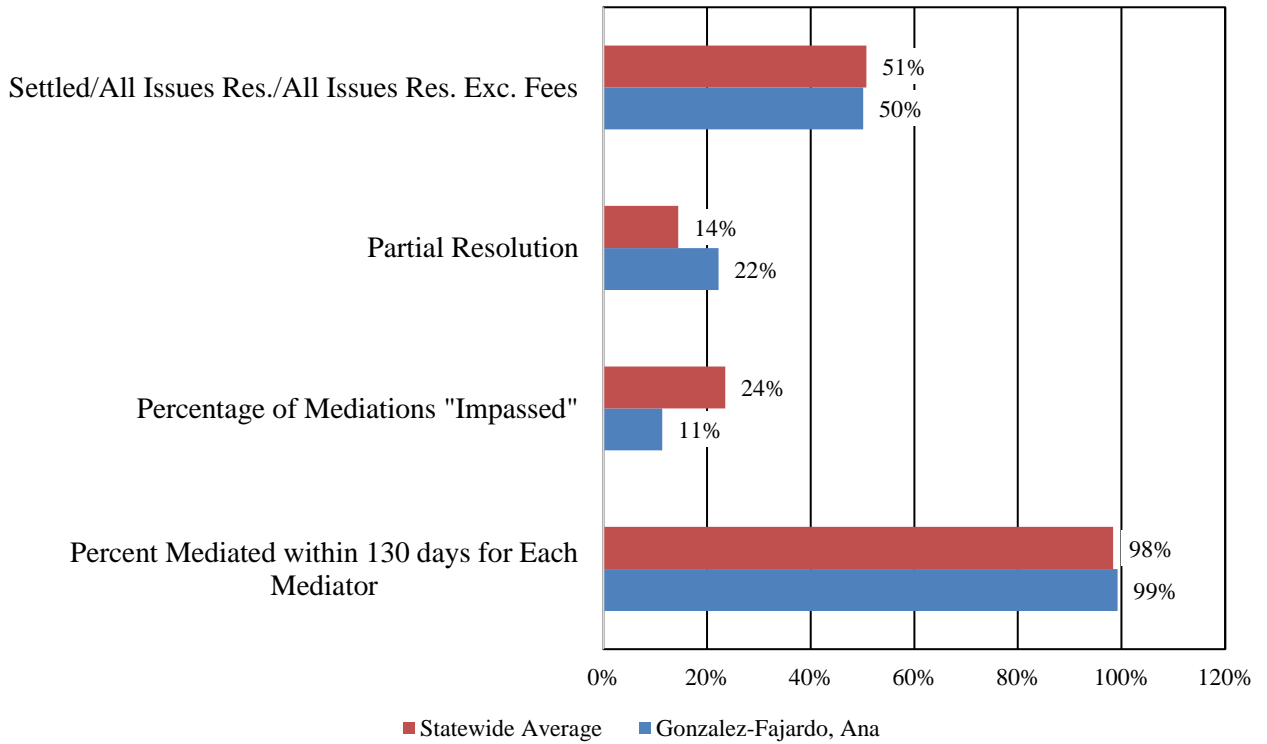
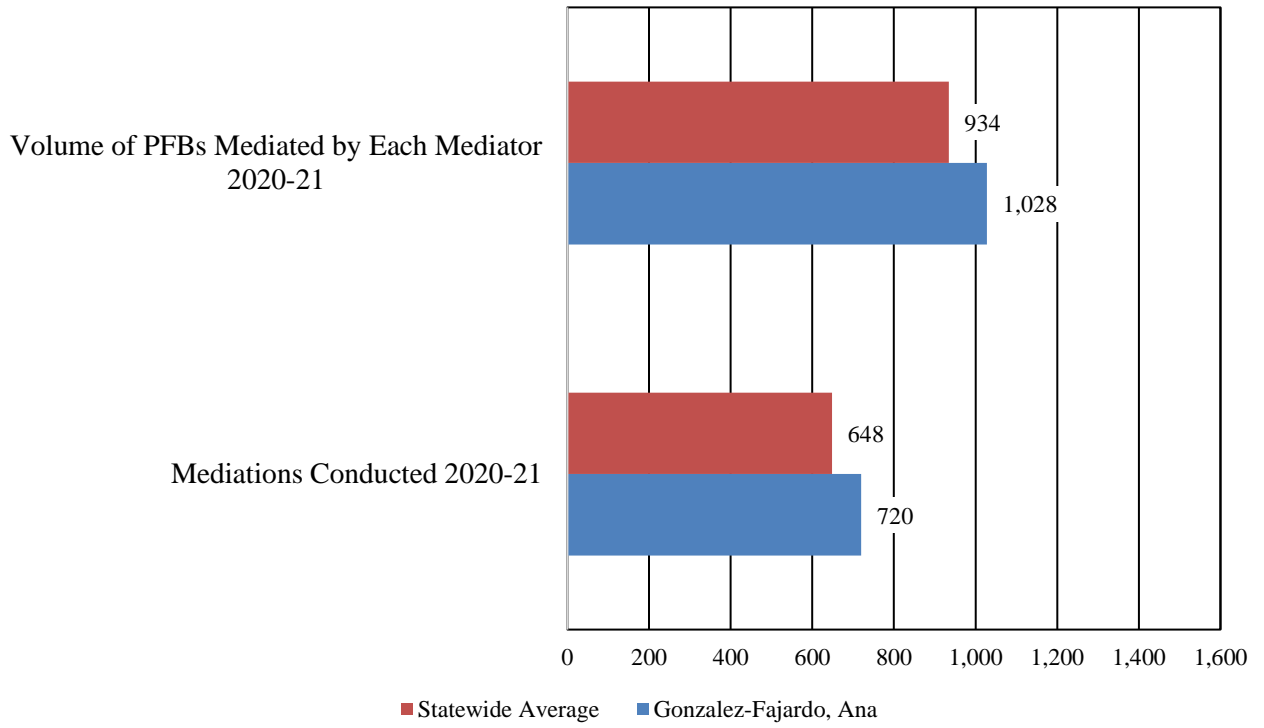
Carrier, Jessica (SAR)



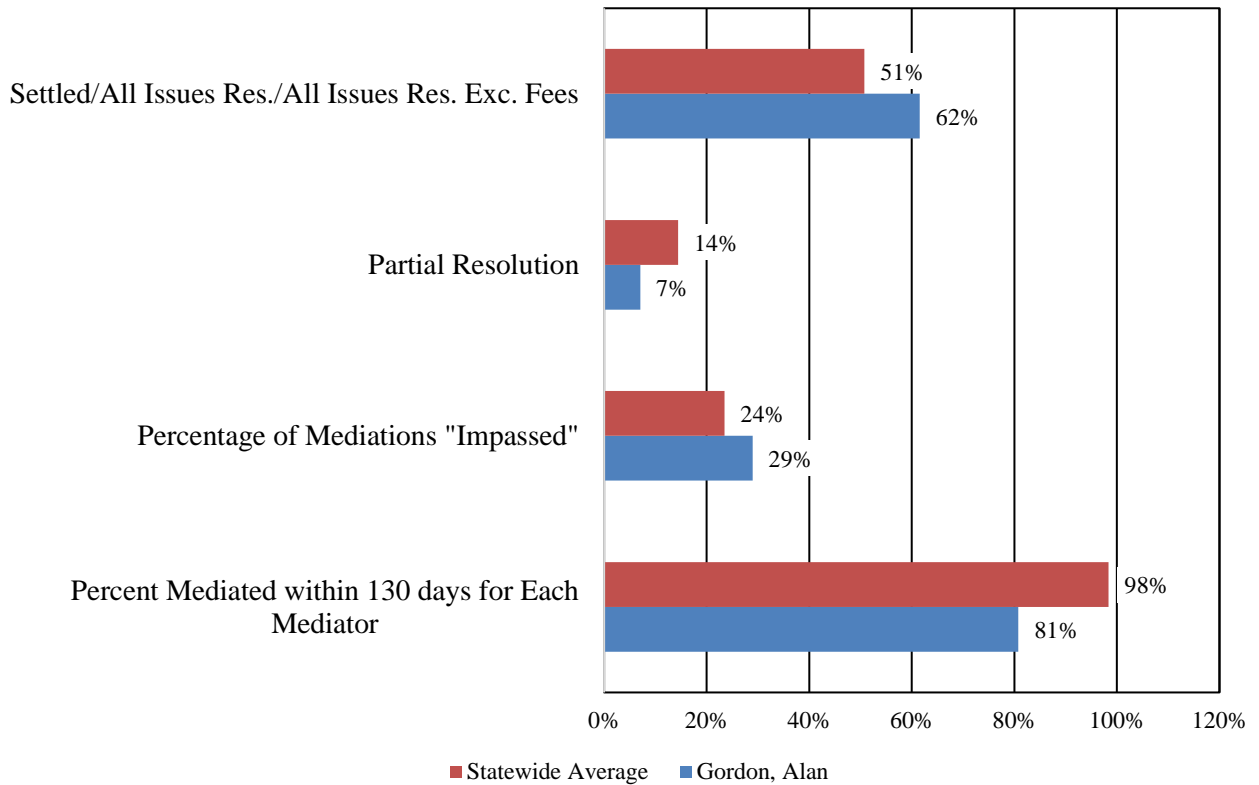
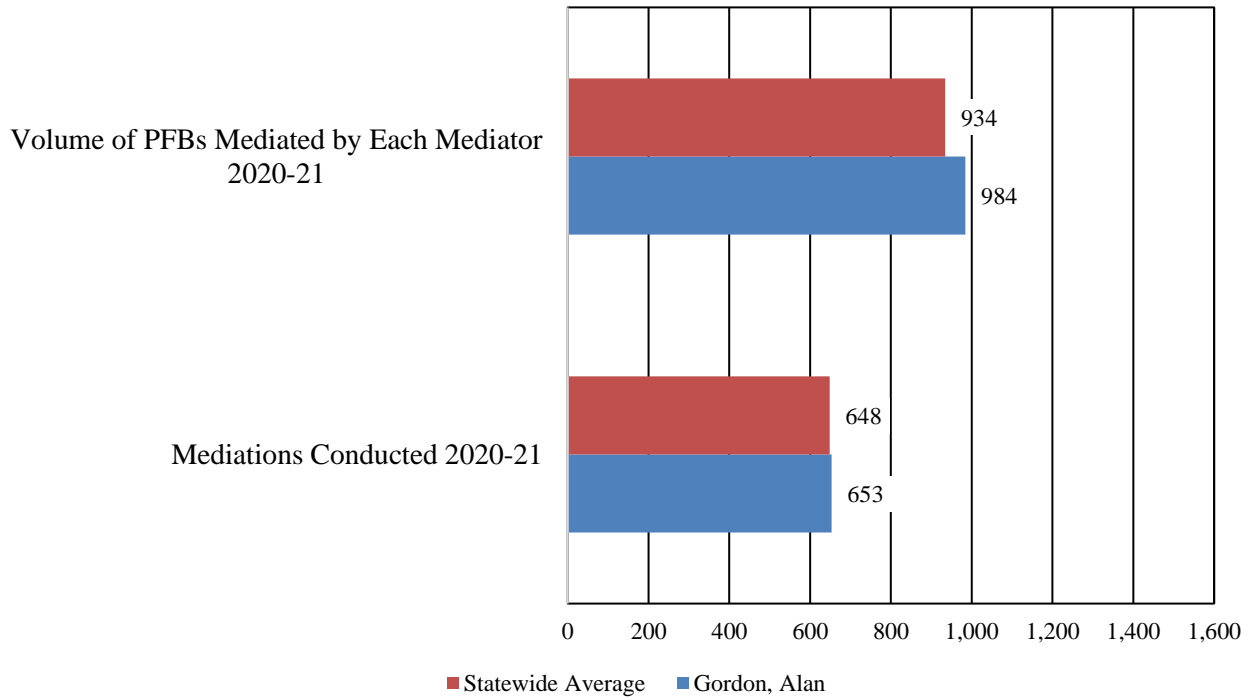
Day, Kahlil (JAX)



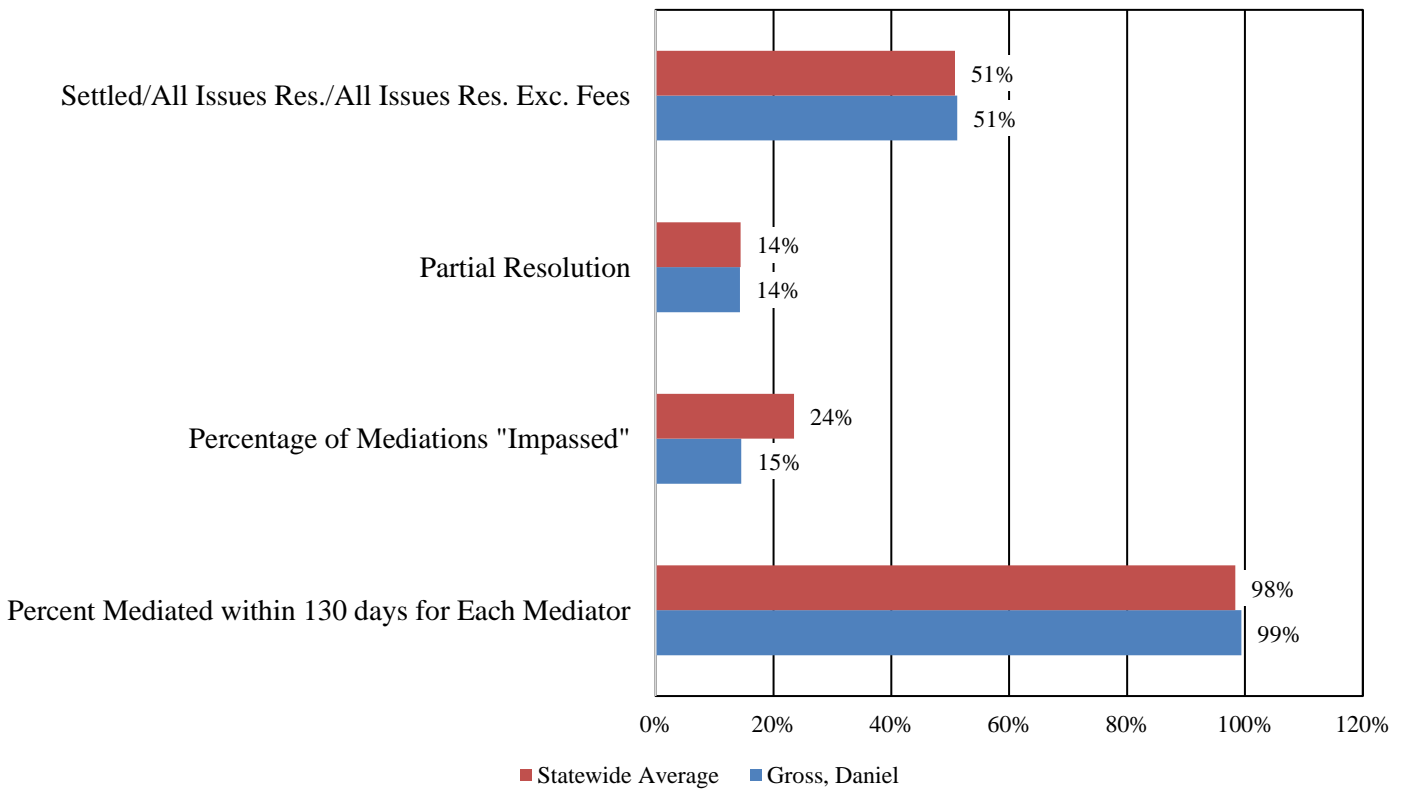
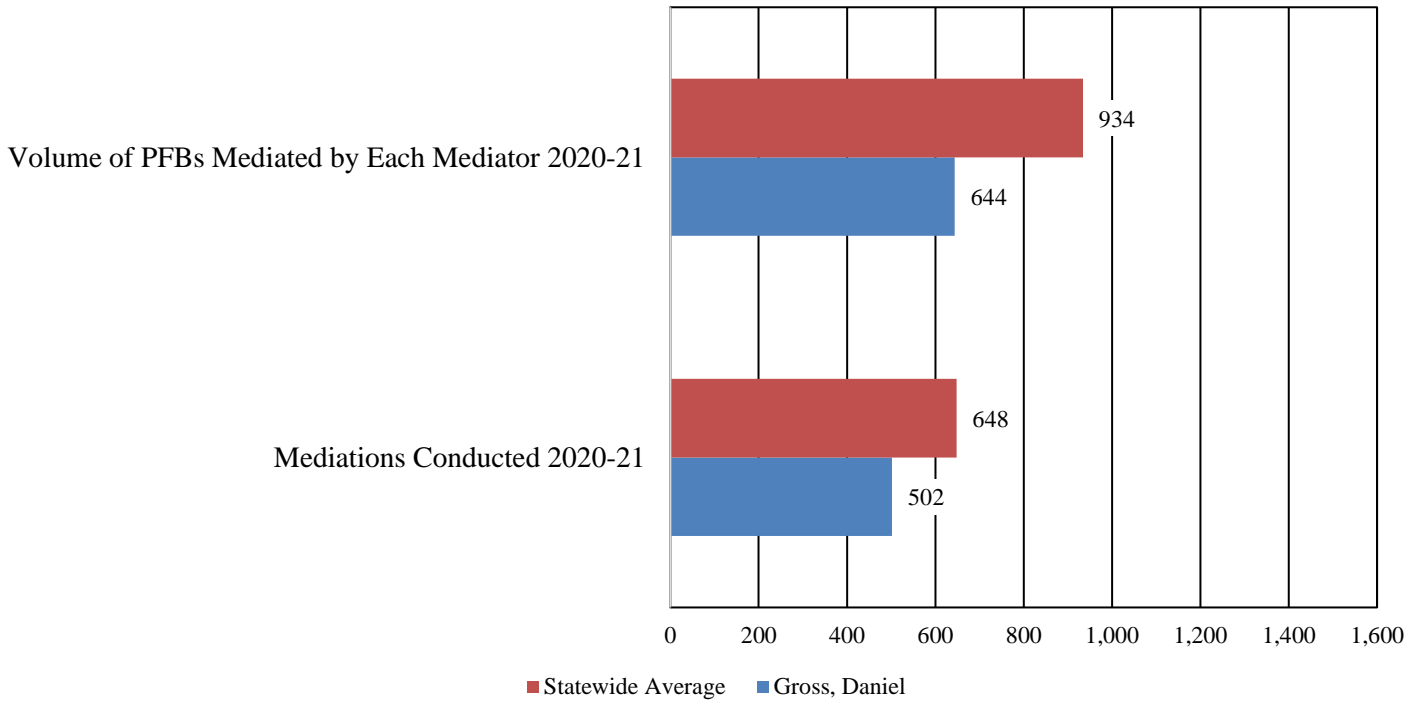
Gonzalez-Fajardo, Ana (MIA)



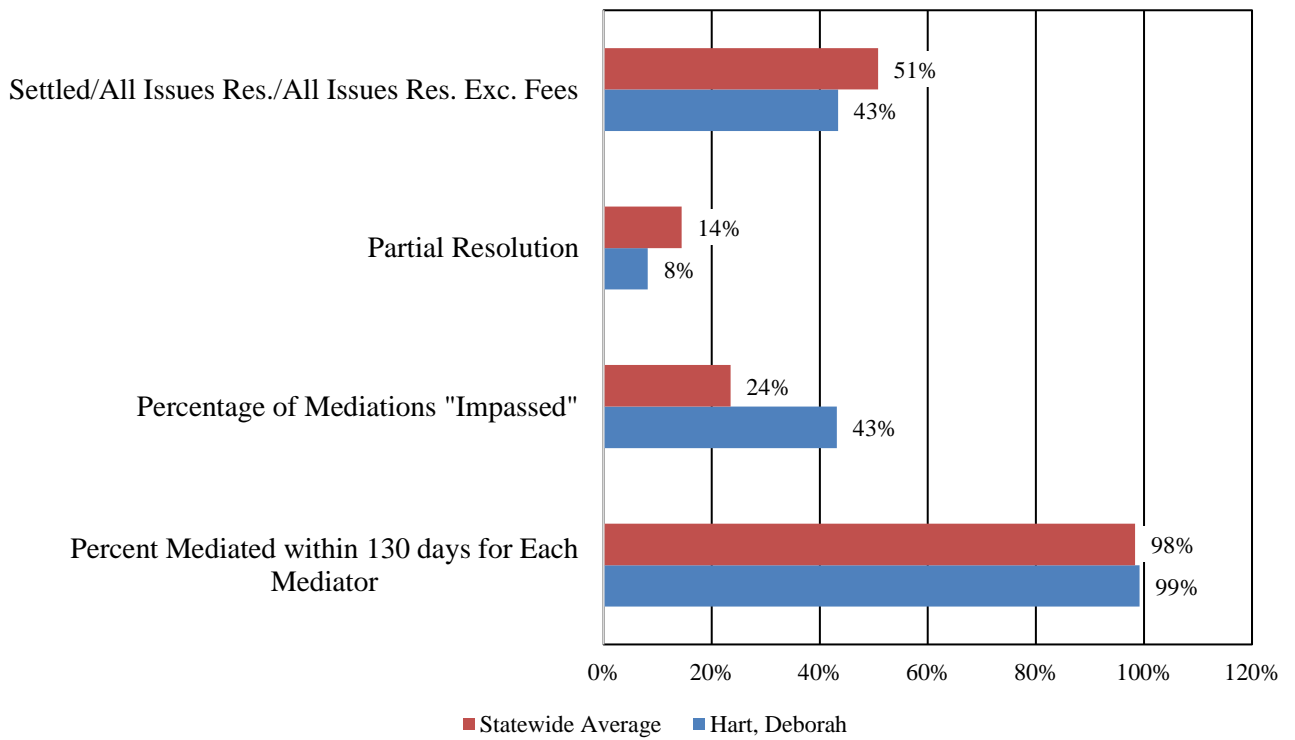
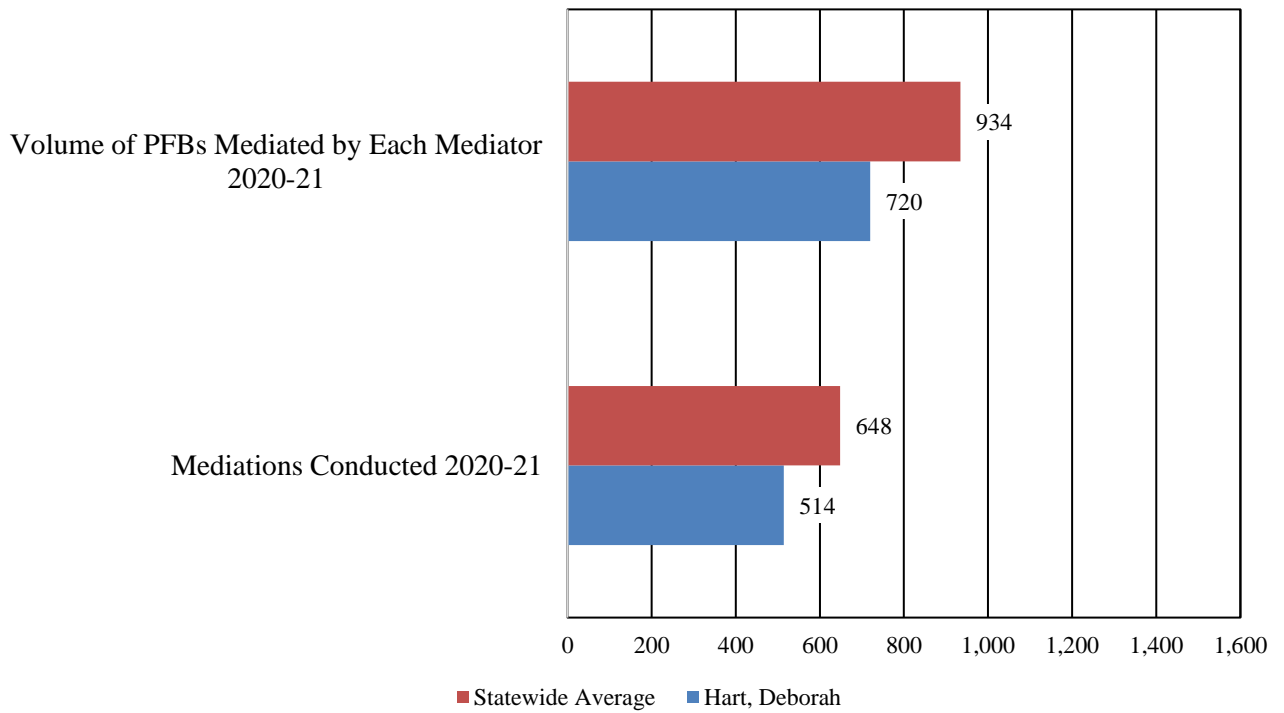
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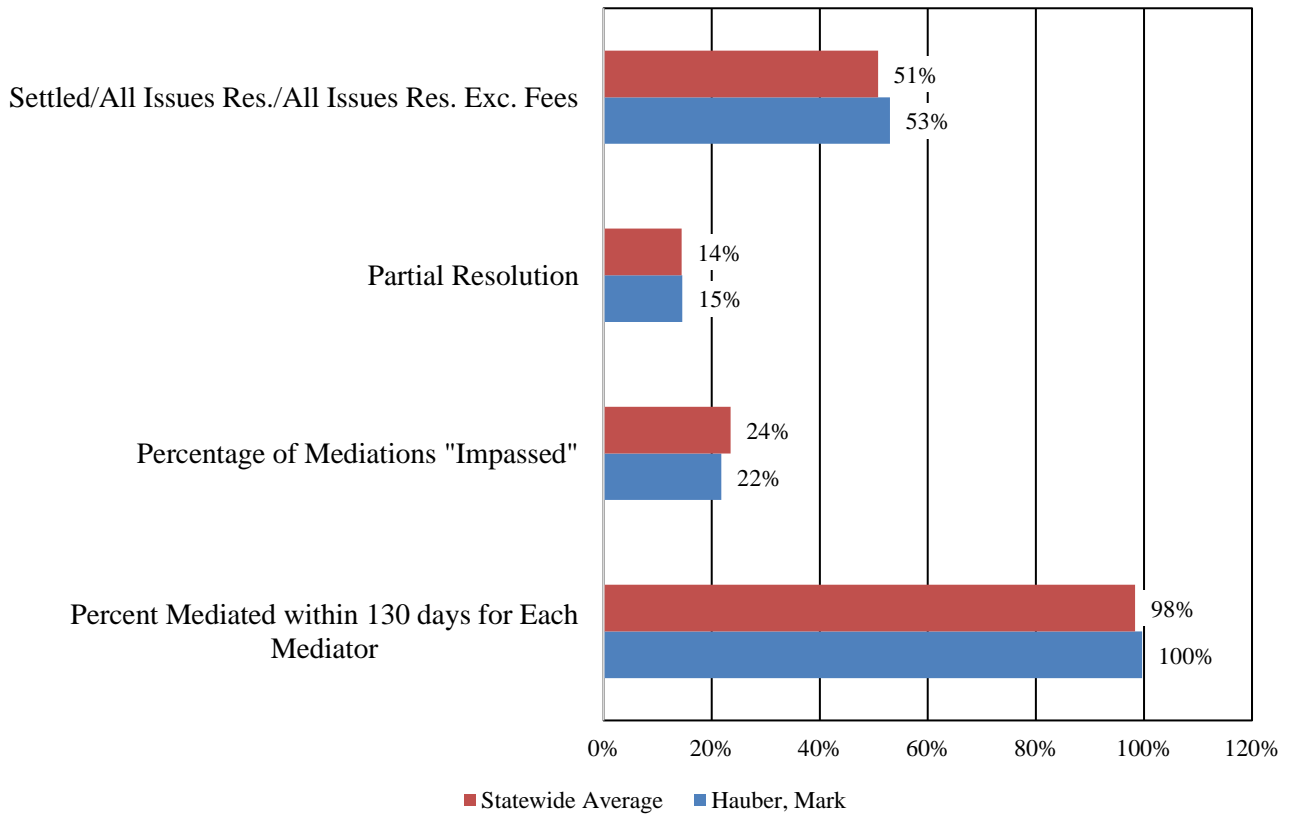
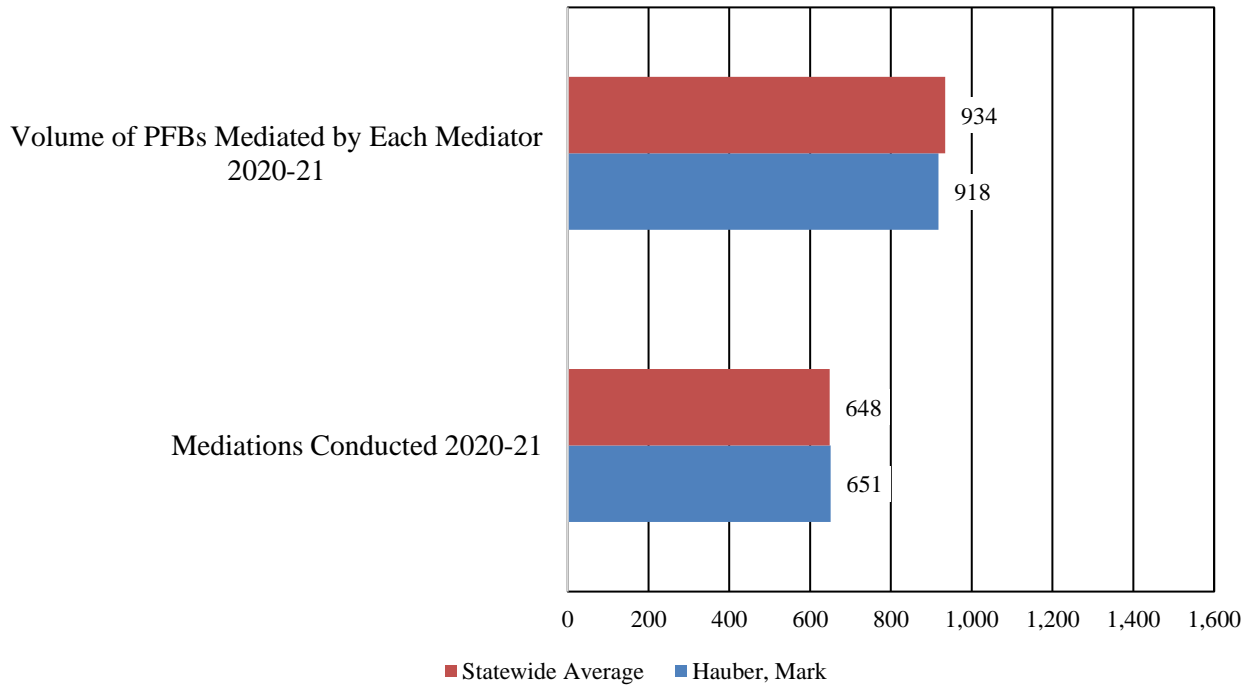
Gross, Daniel (PMC)



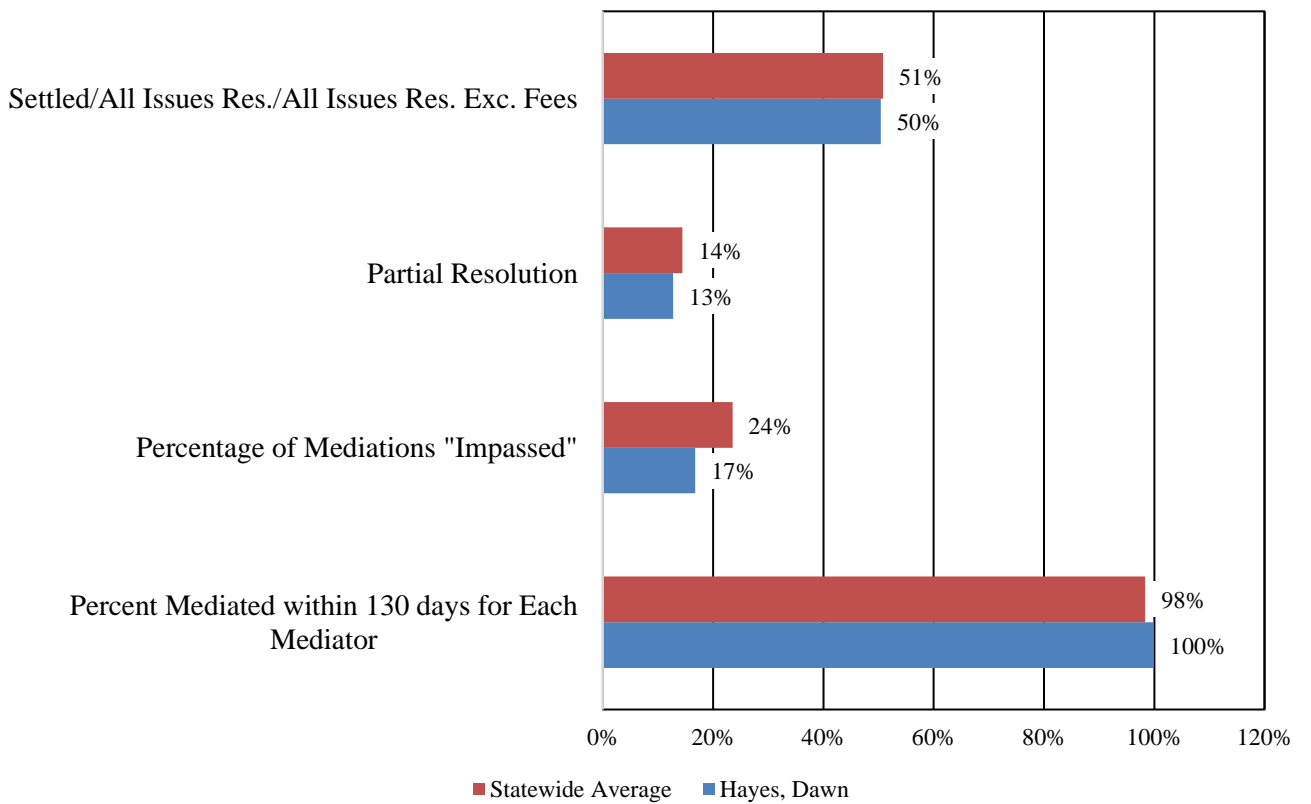
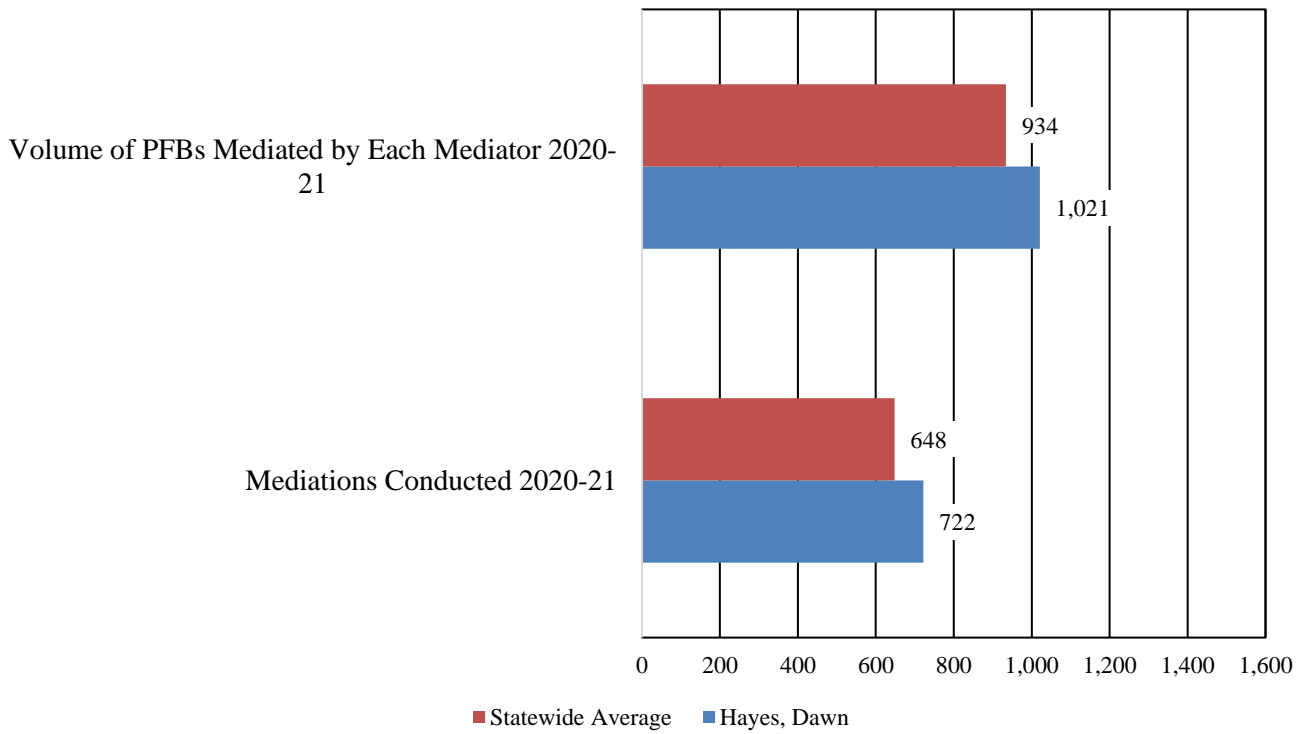
Hart, Deborah (TPA)



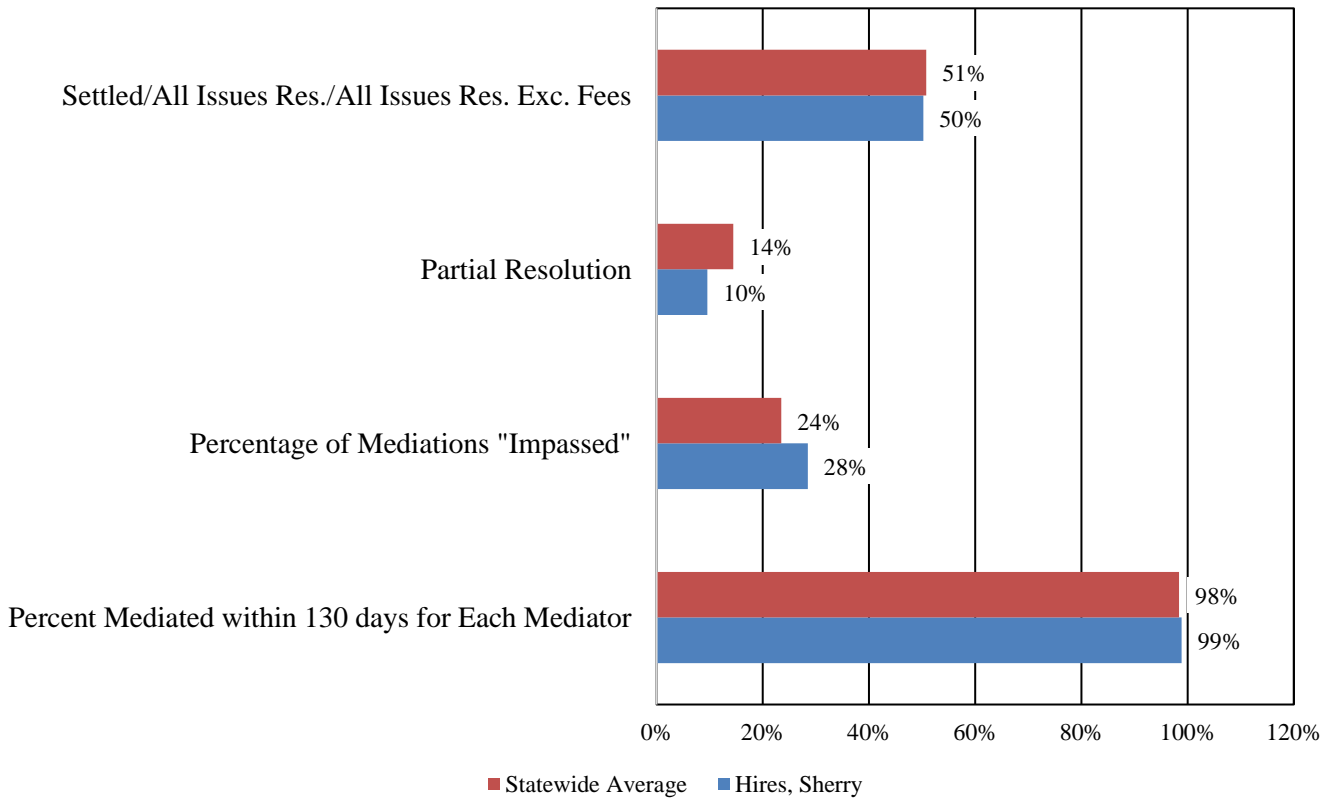
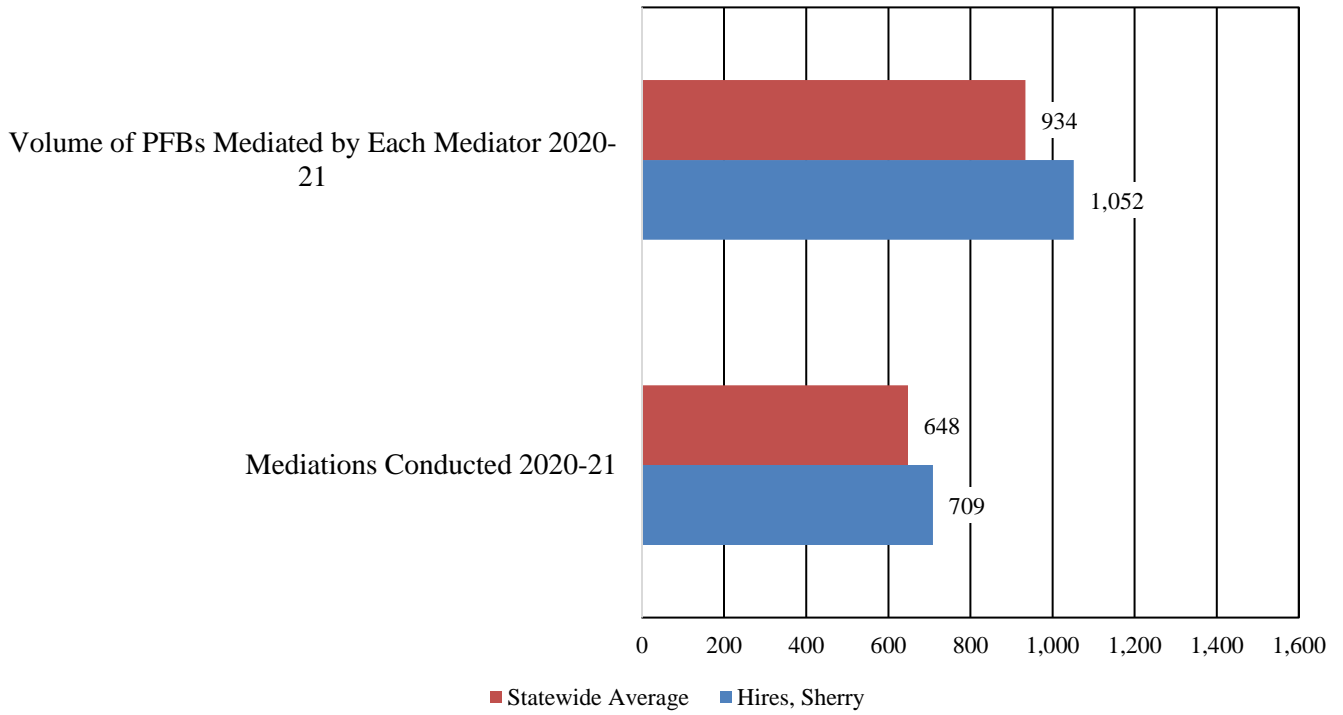
Hauber, Mark (MEL)



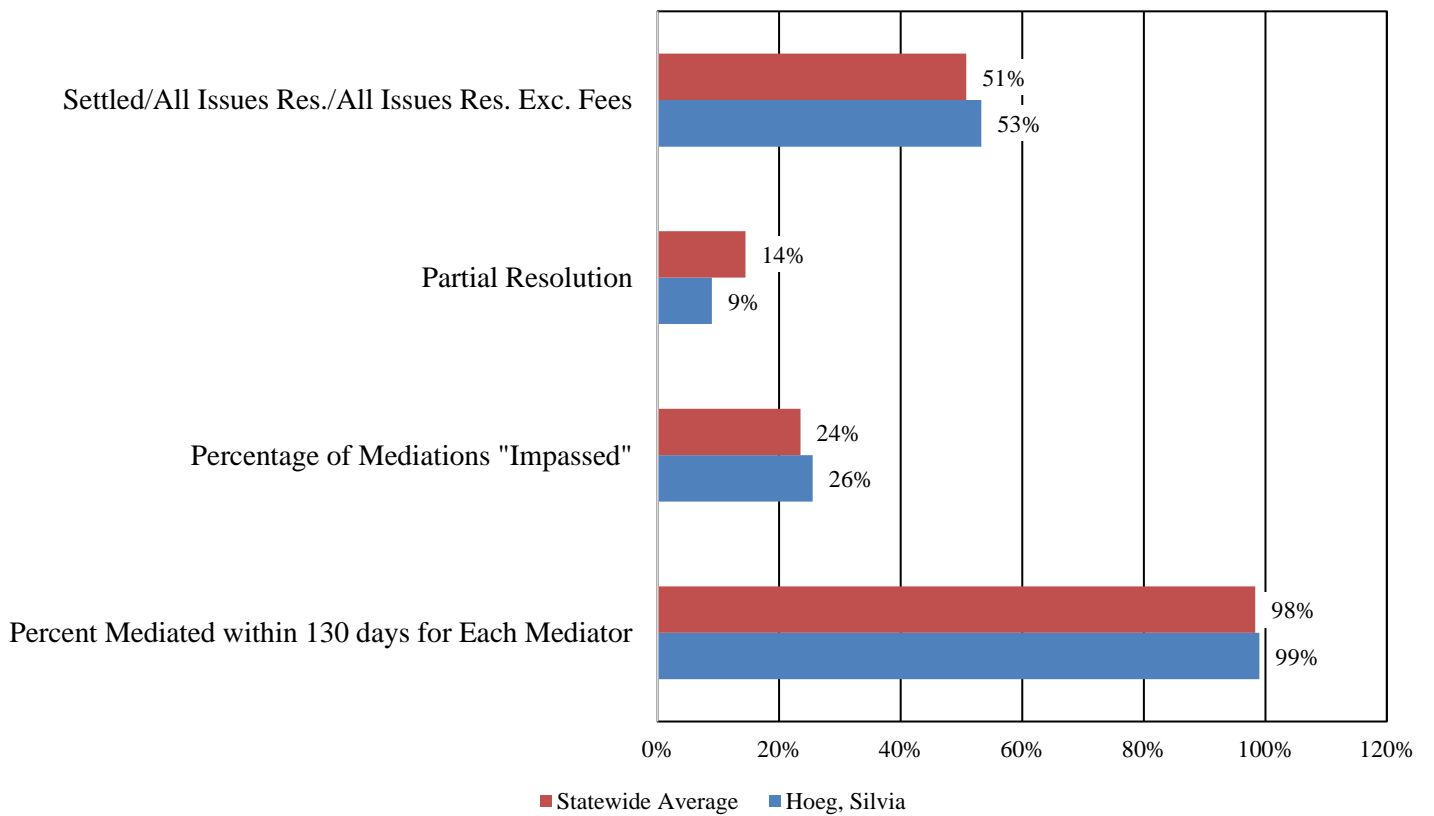
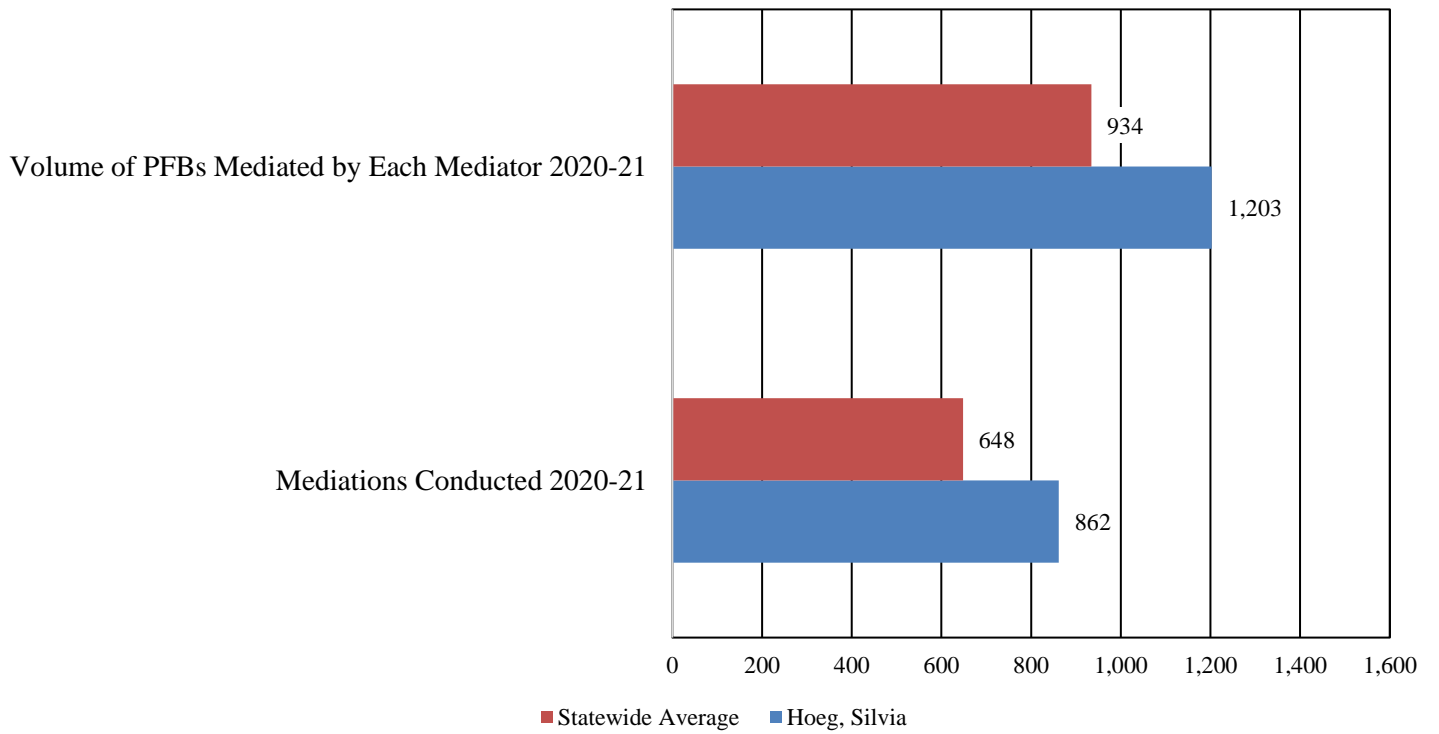
Hayes, Dawn (PSL)



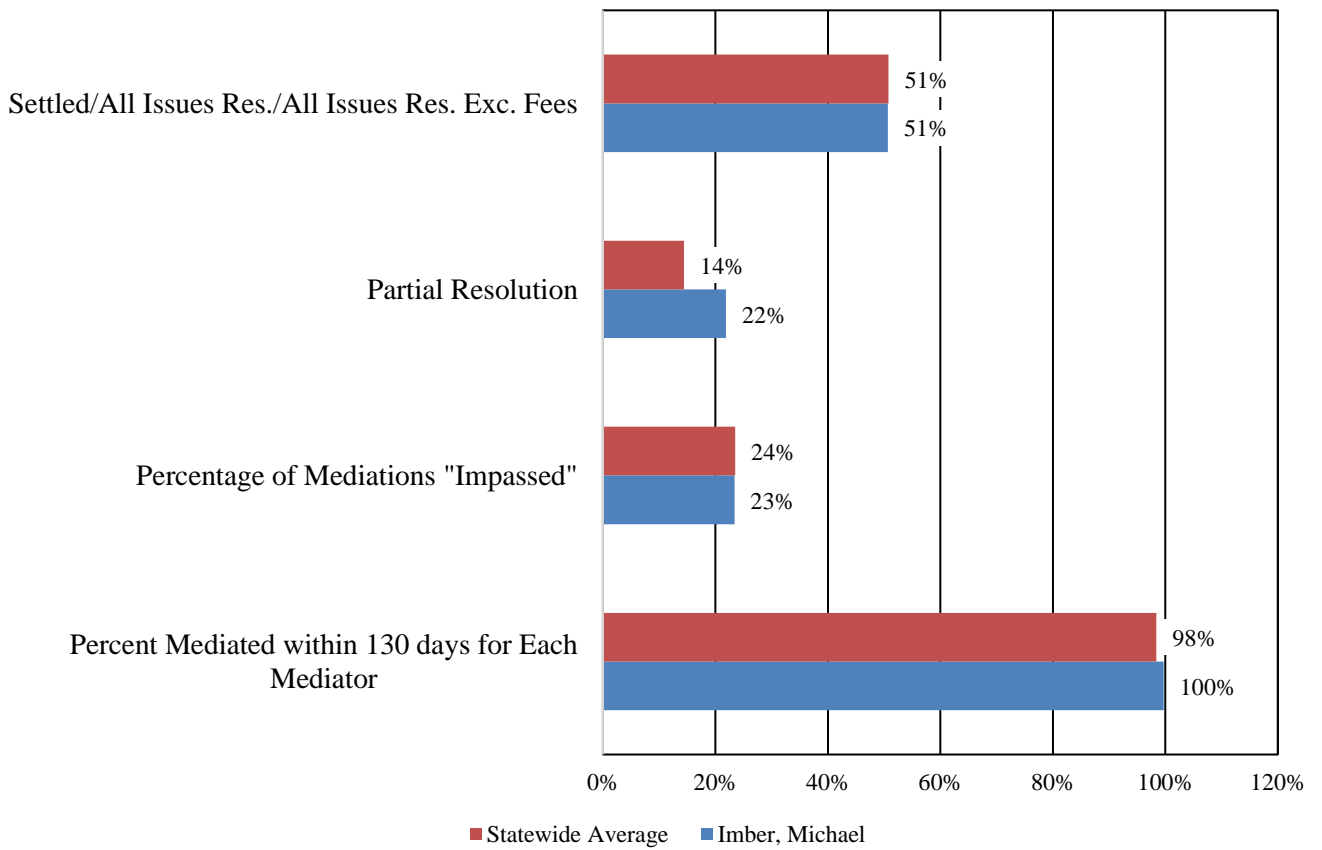
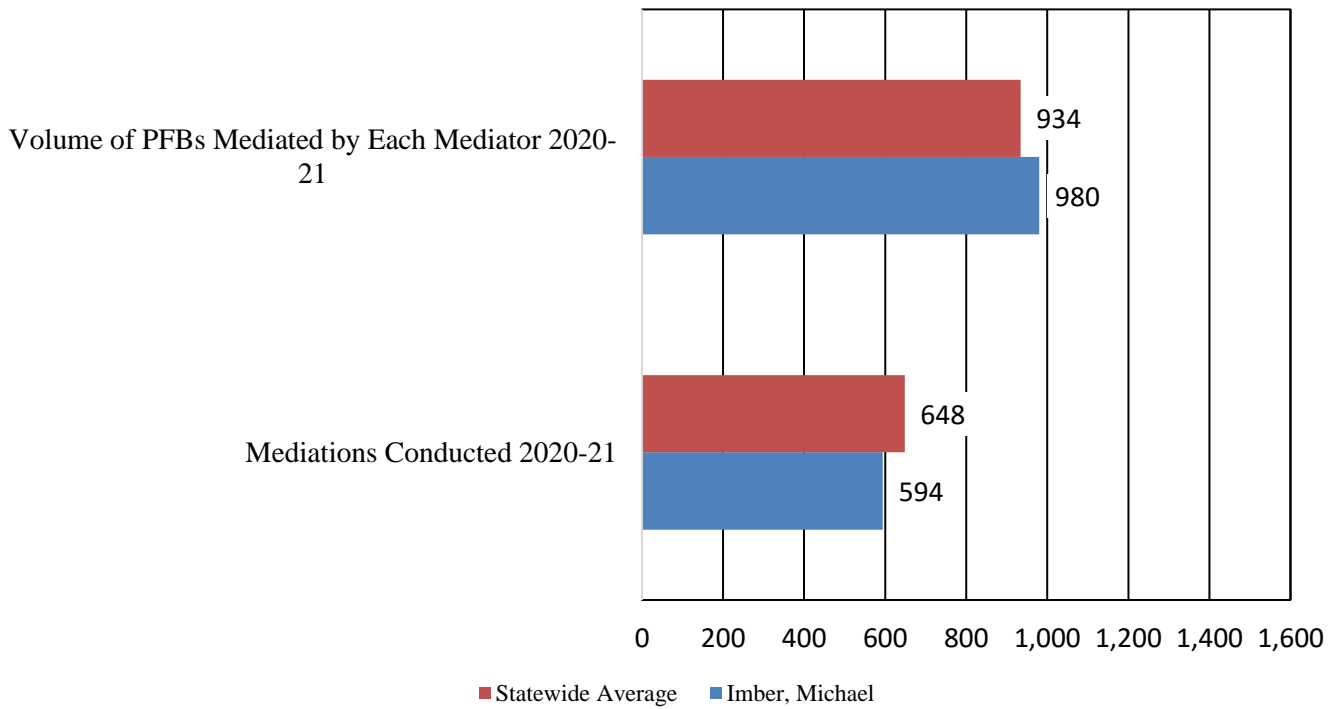
Hires, Sherry (ORL)



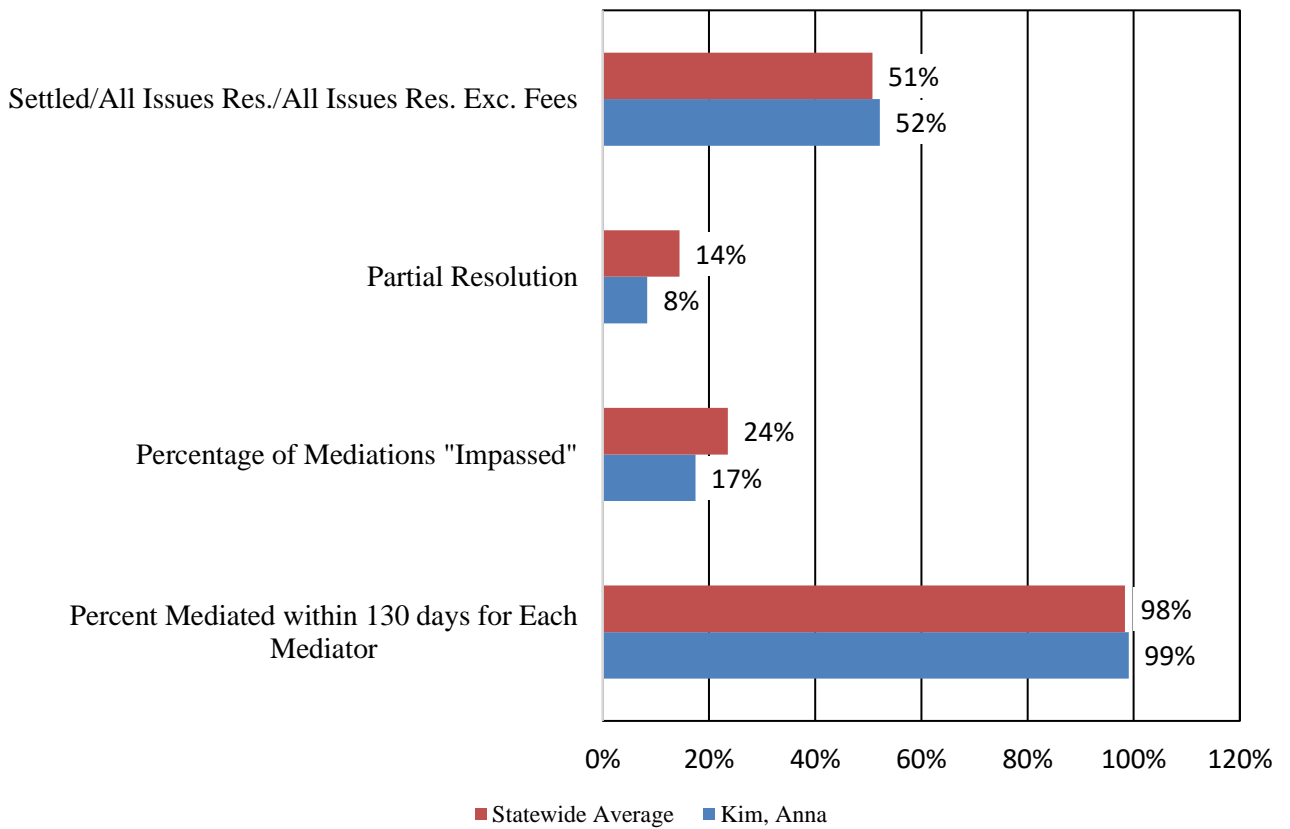
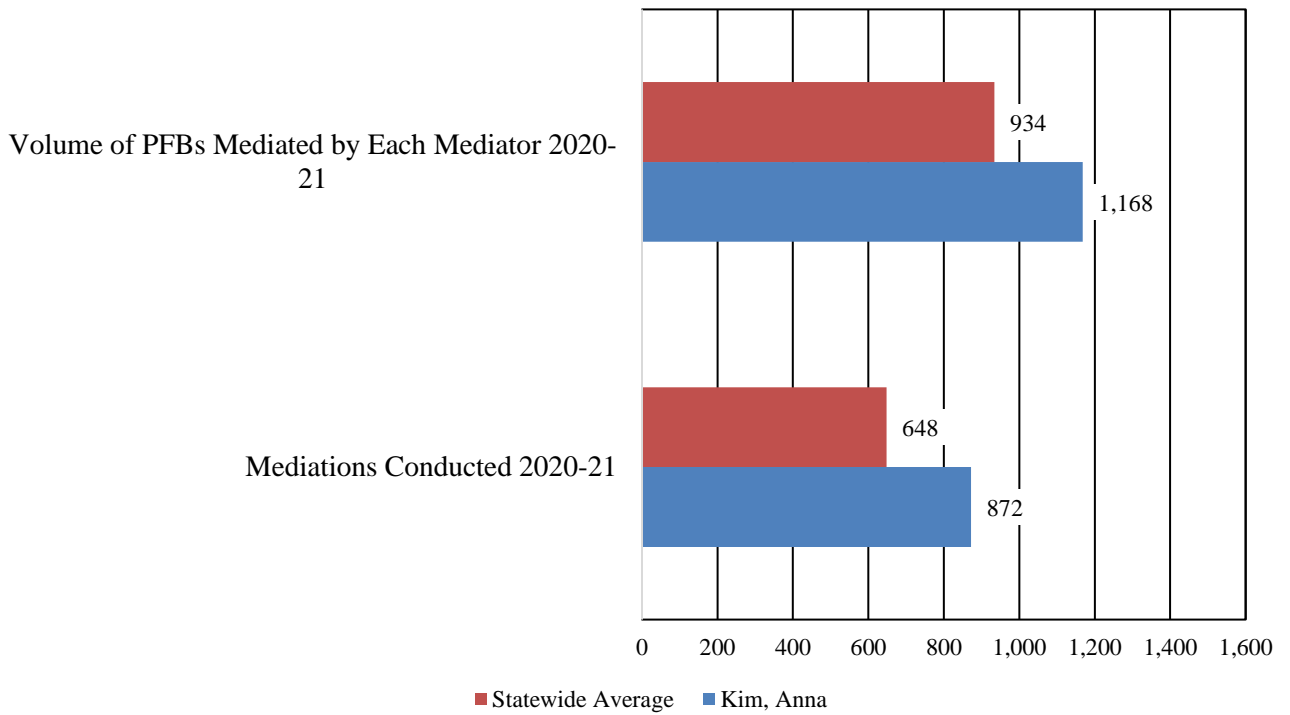
Hoeg, Silvia (ORL)



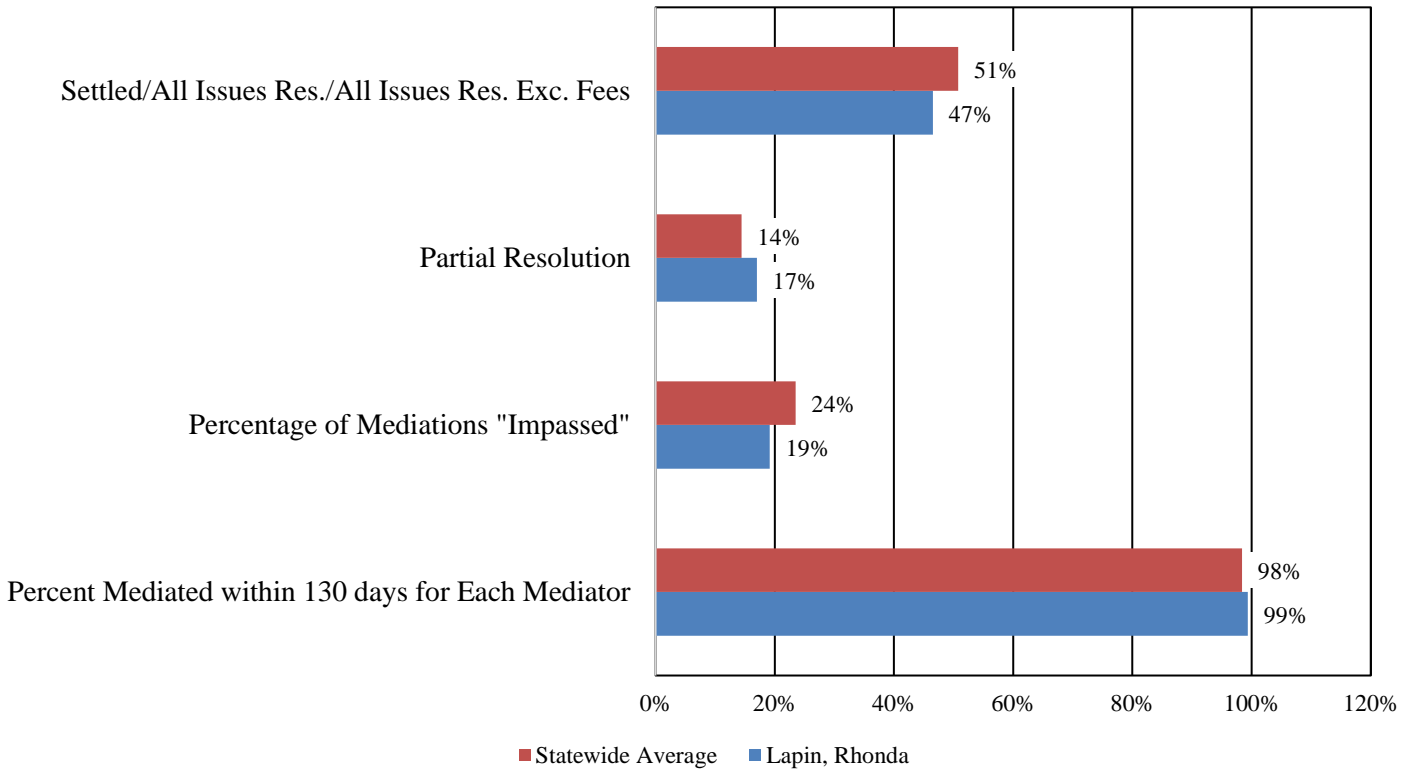
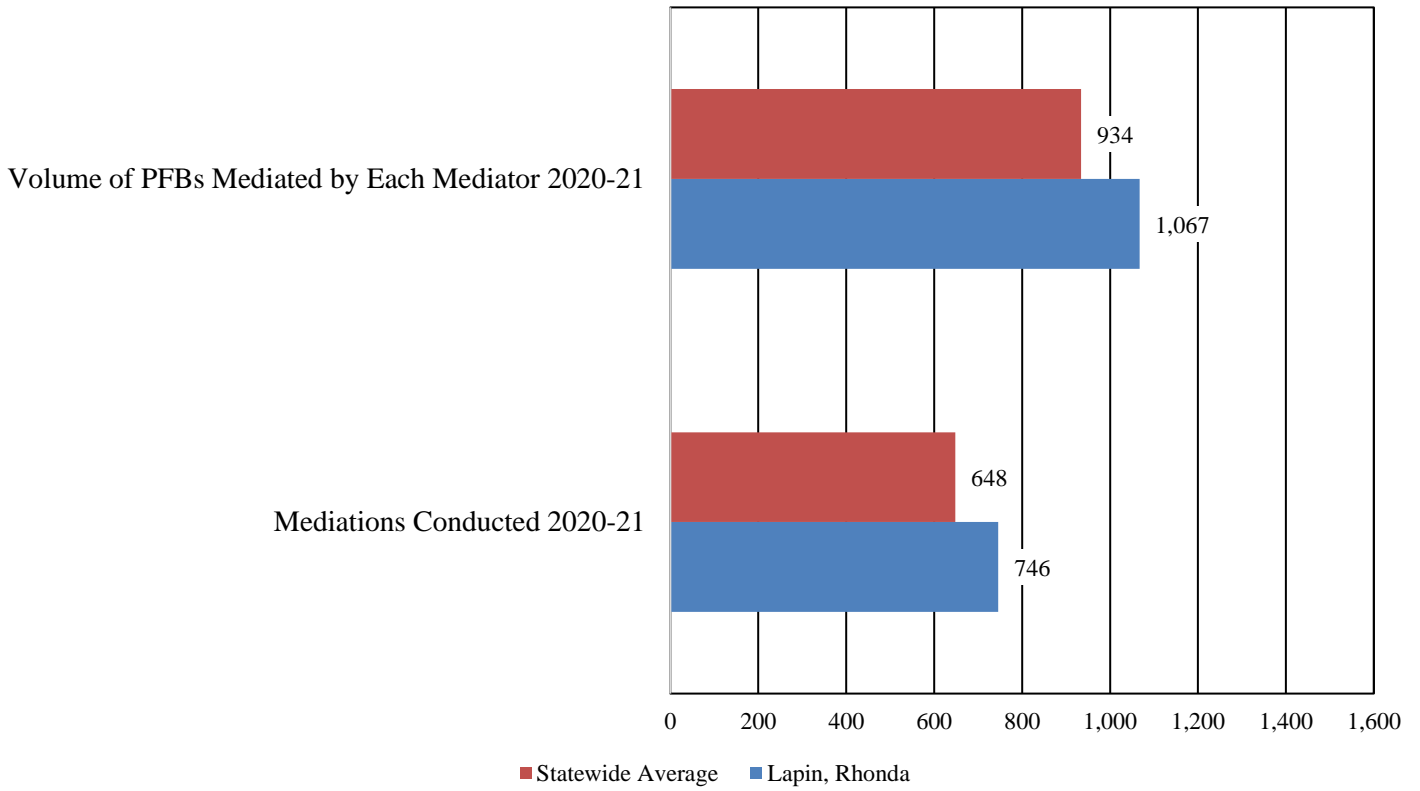
Imber, Michael (WPB)



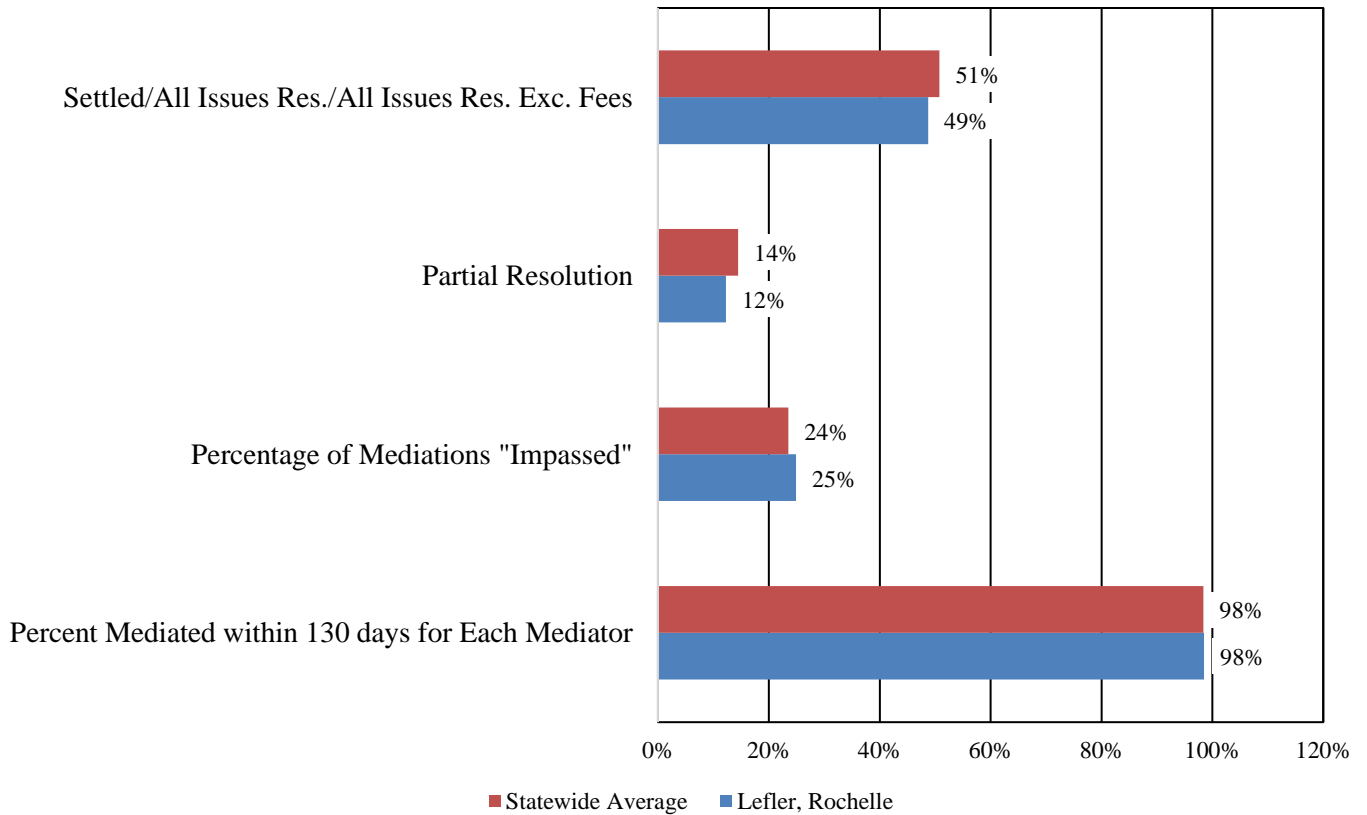
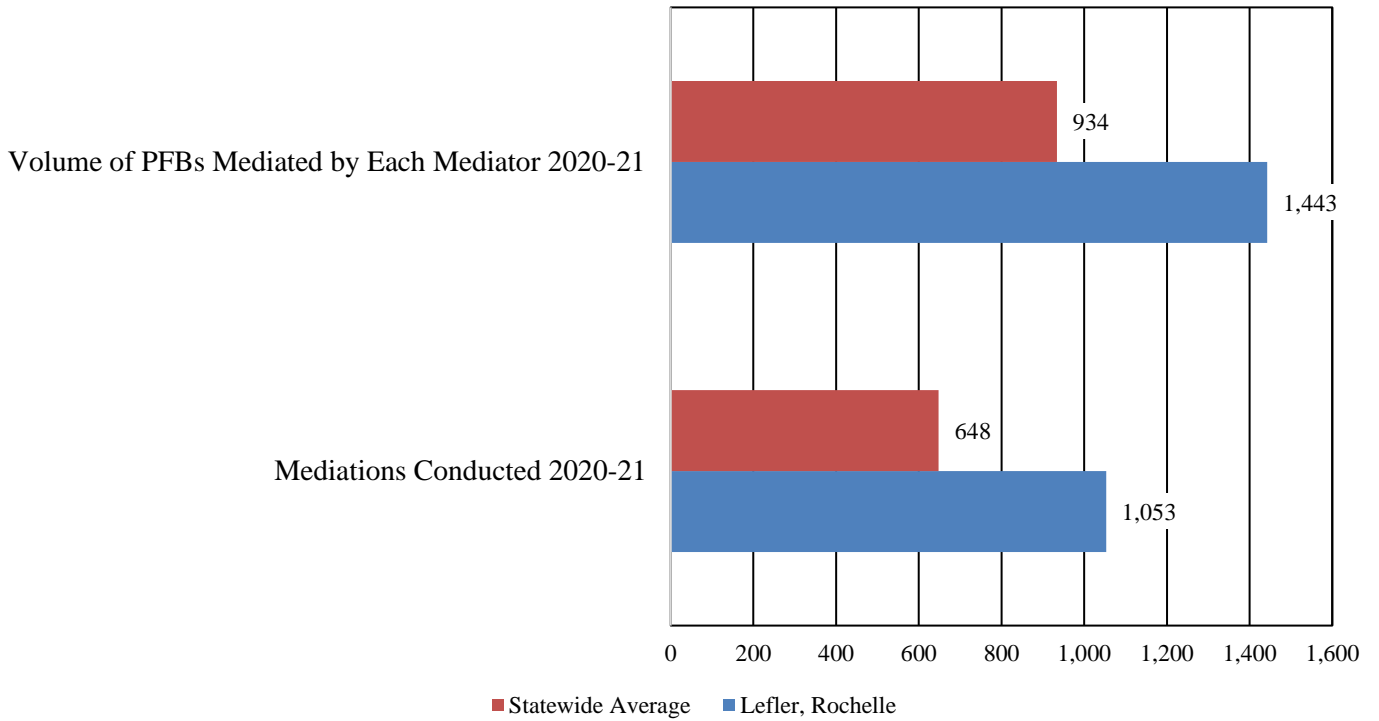
Kim, Anna (ORL)



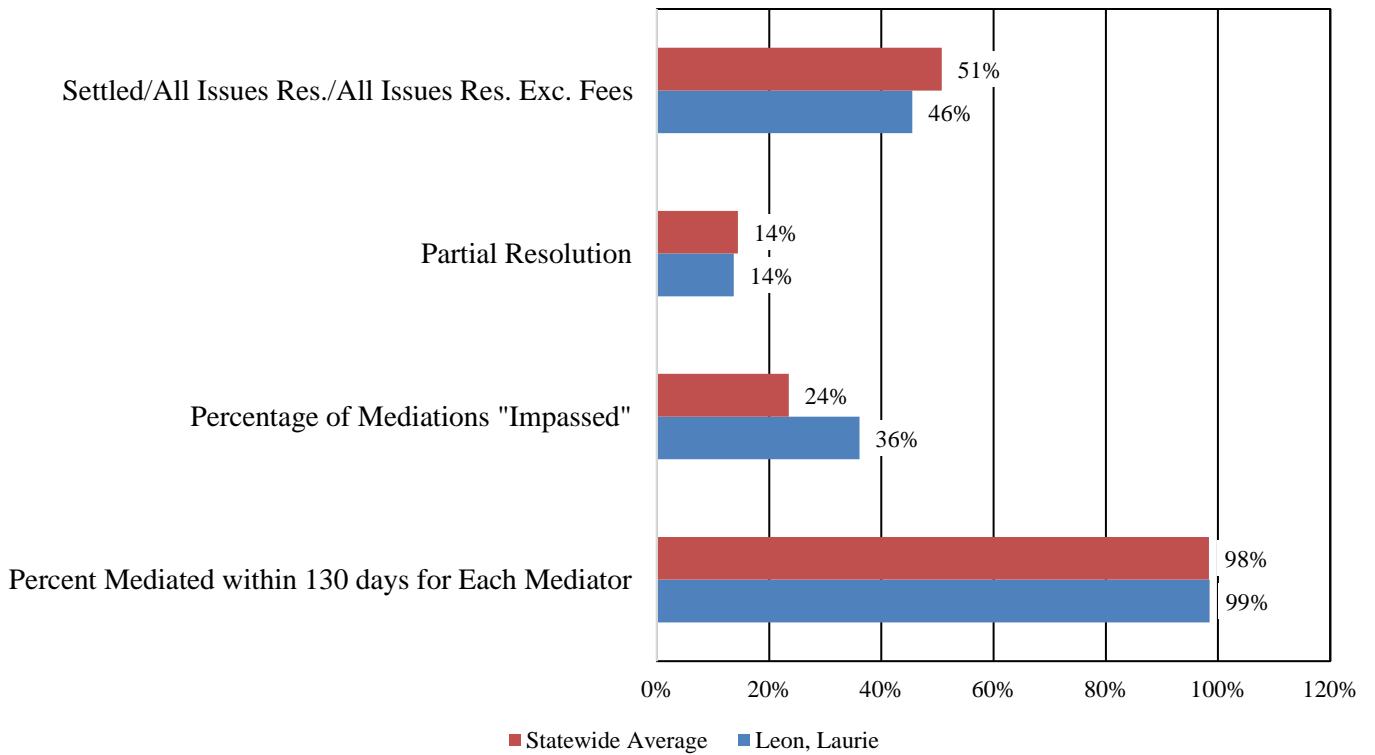
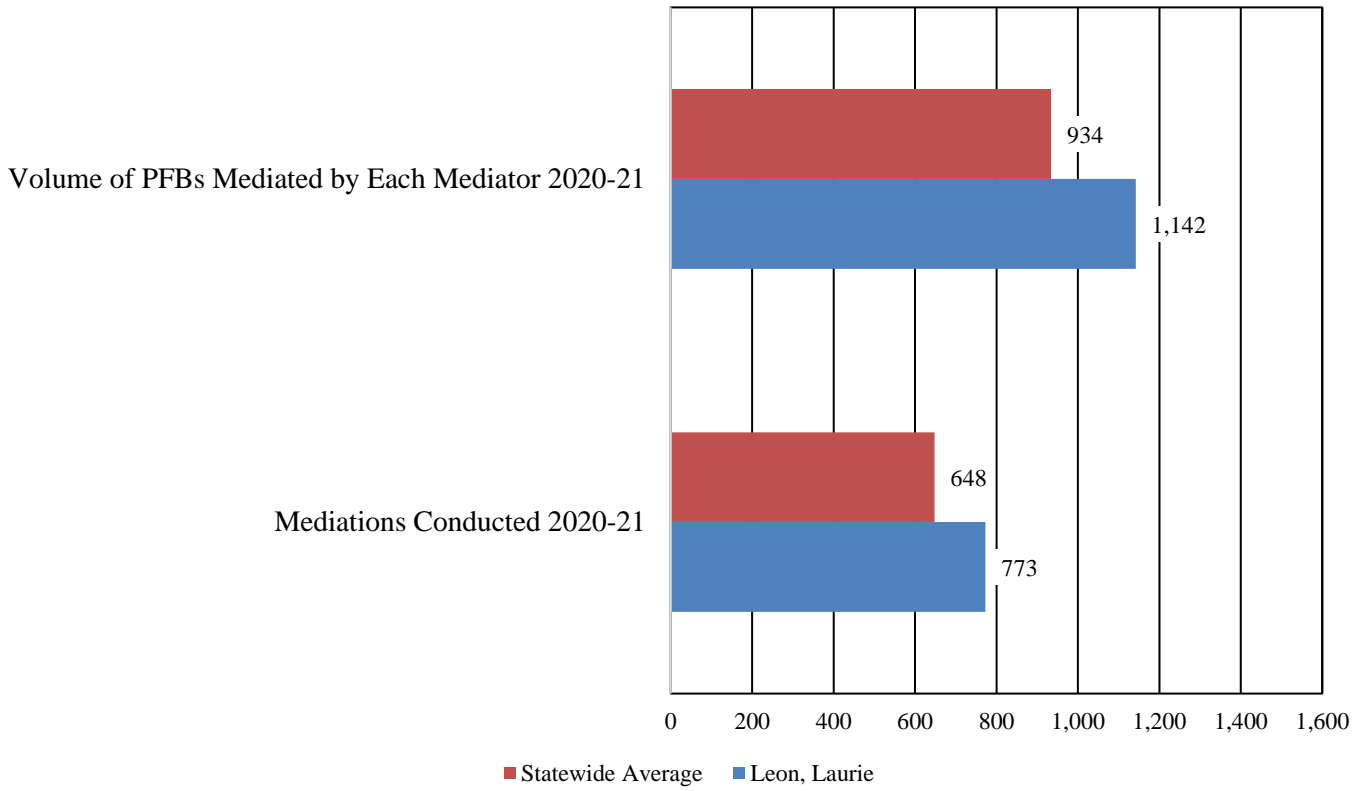
Lapin, Rhonda (MIA)



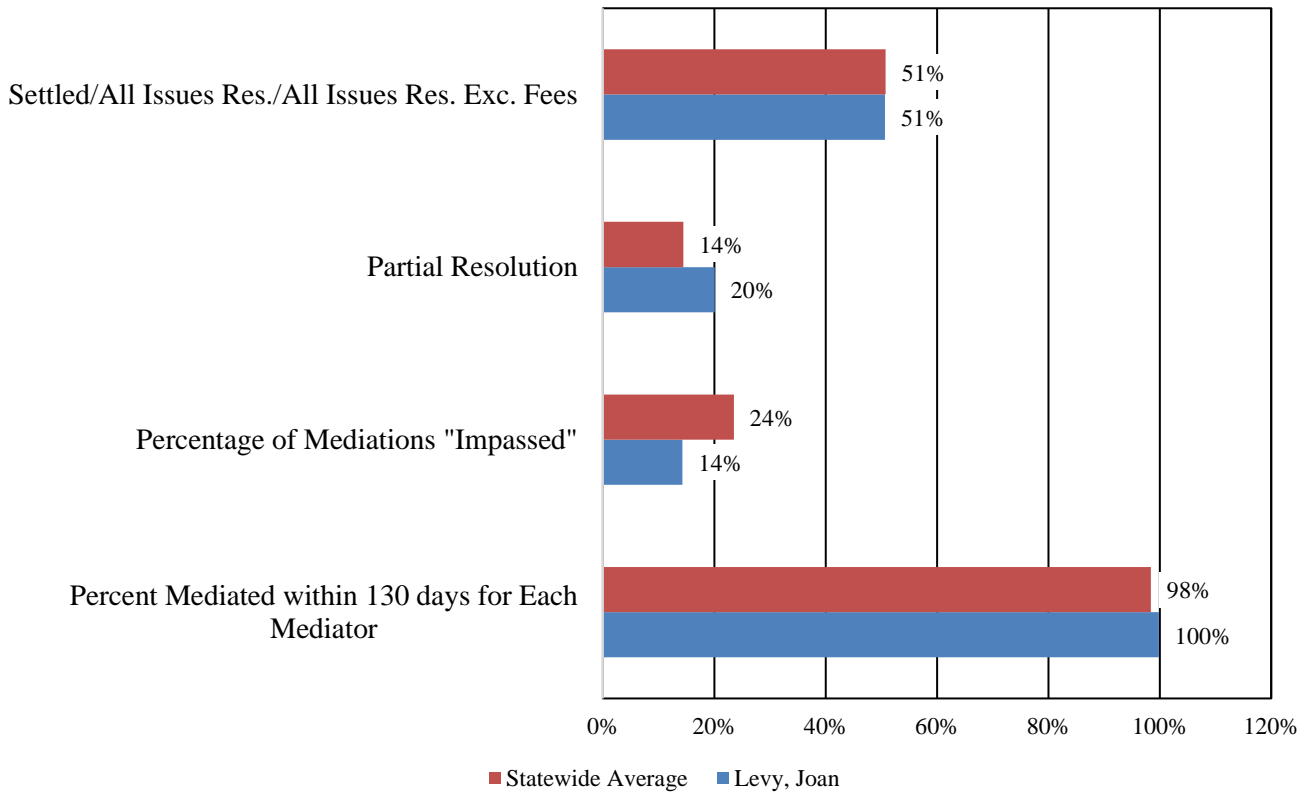
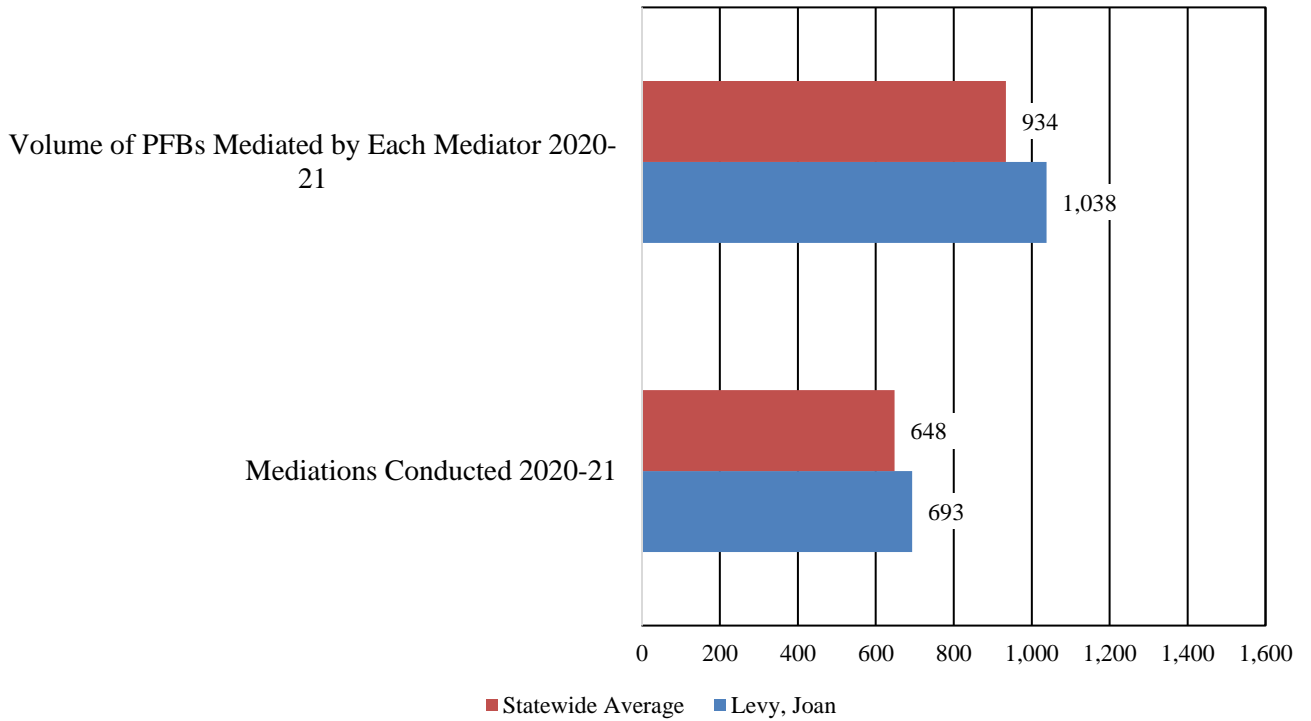
Lefler, Rochelle (SPT)



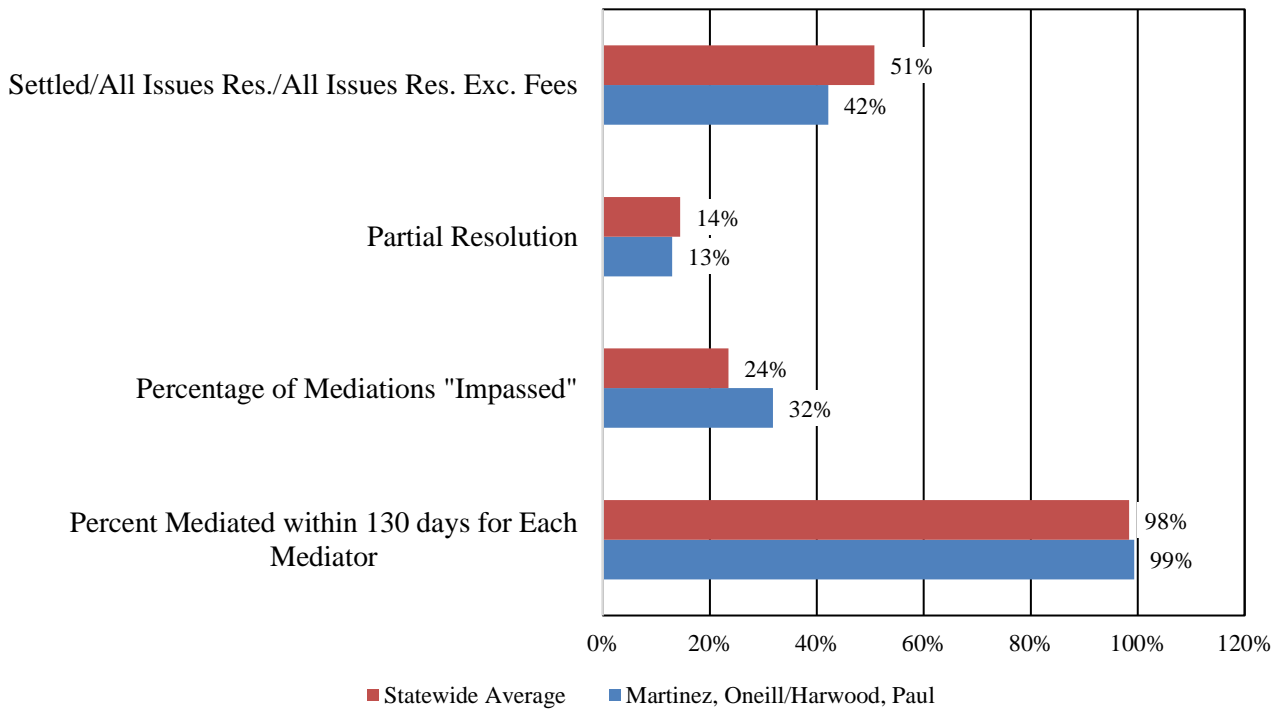
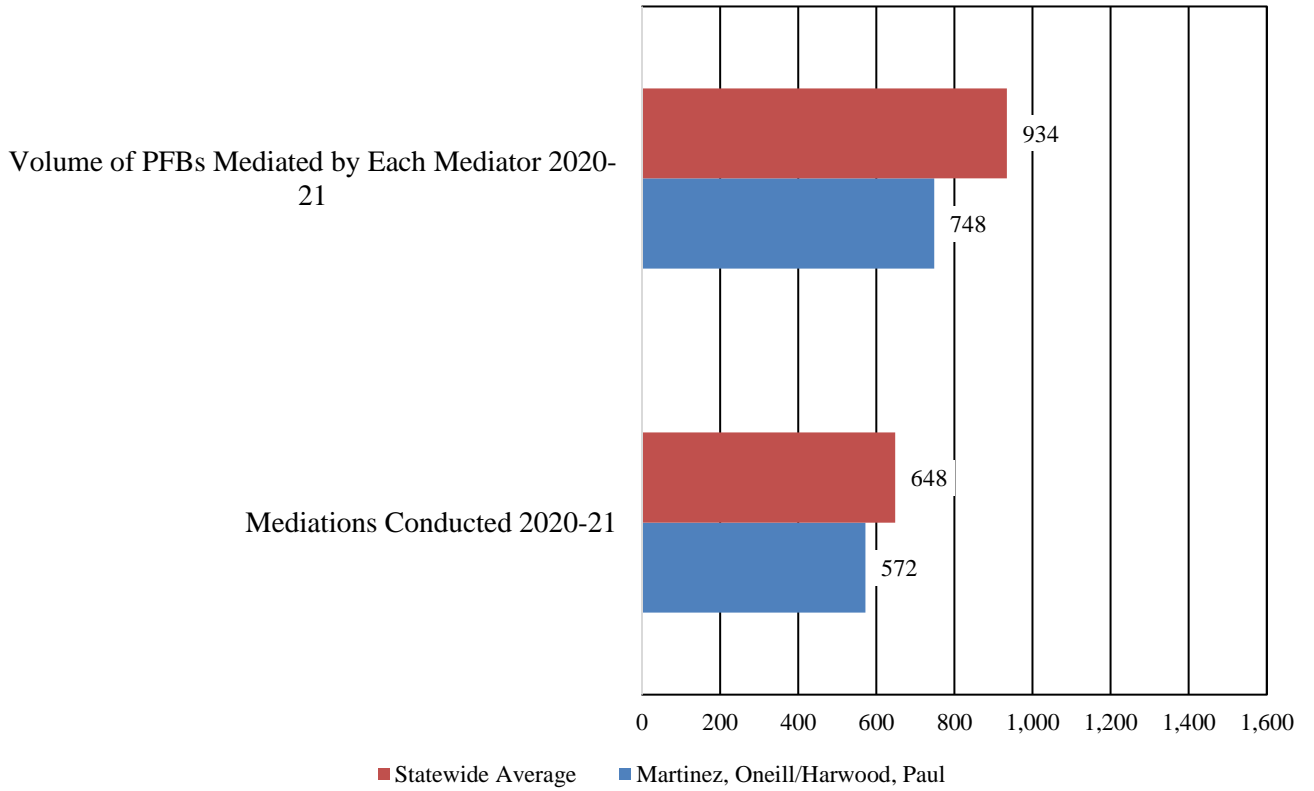
Leon, Laurie (TPA)



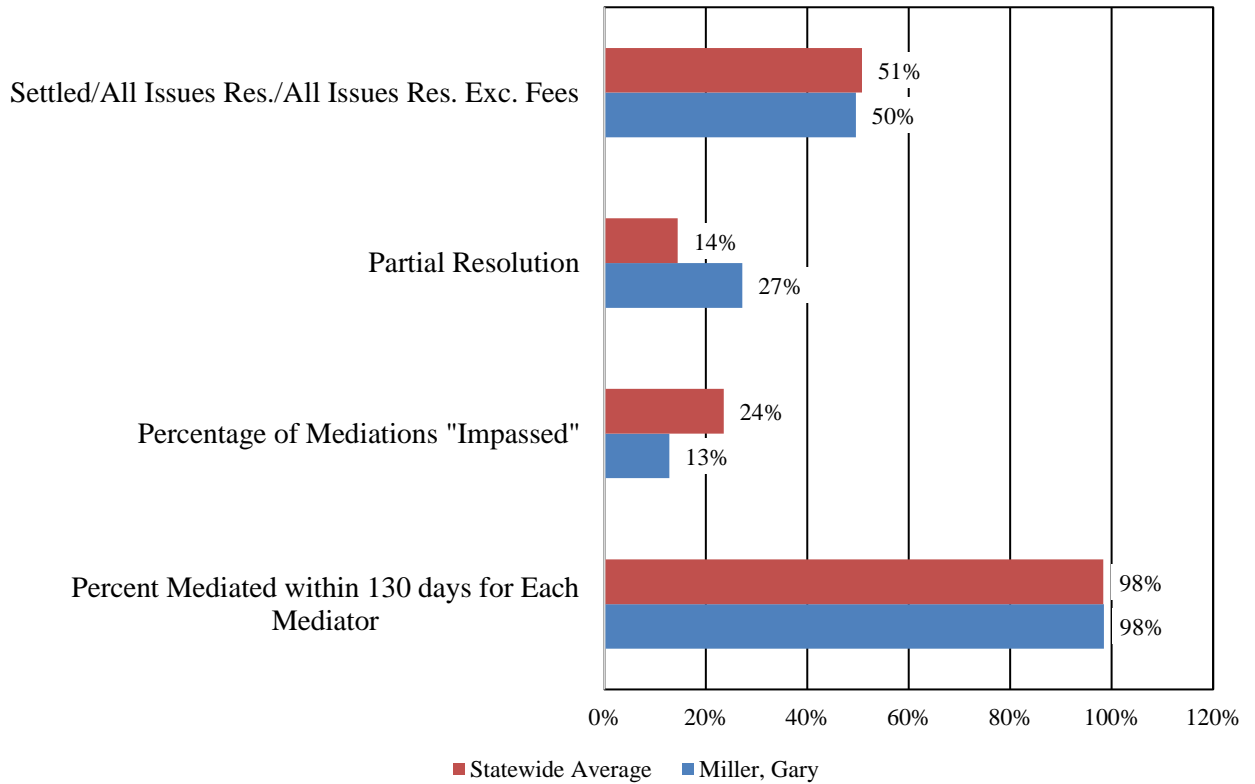
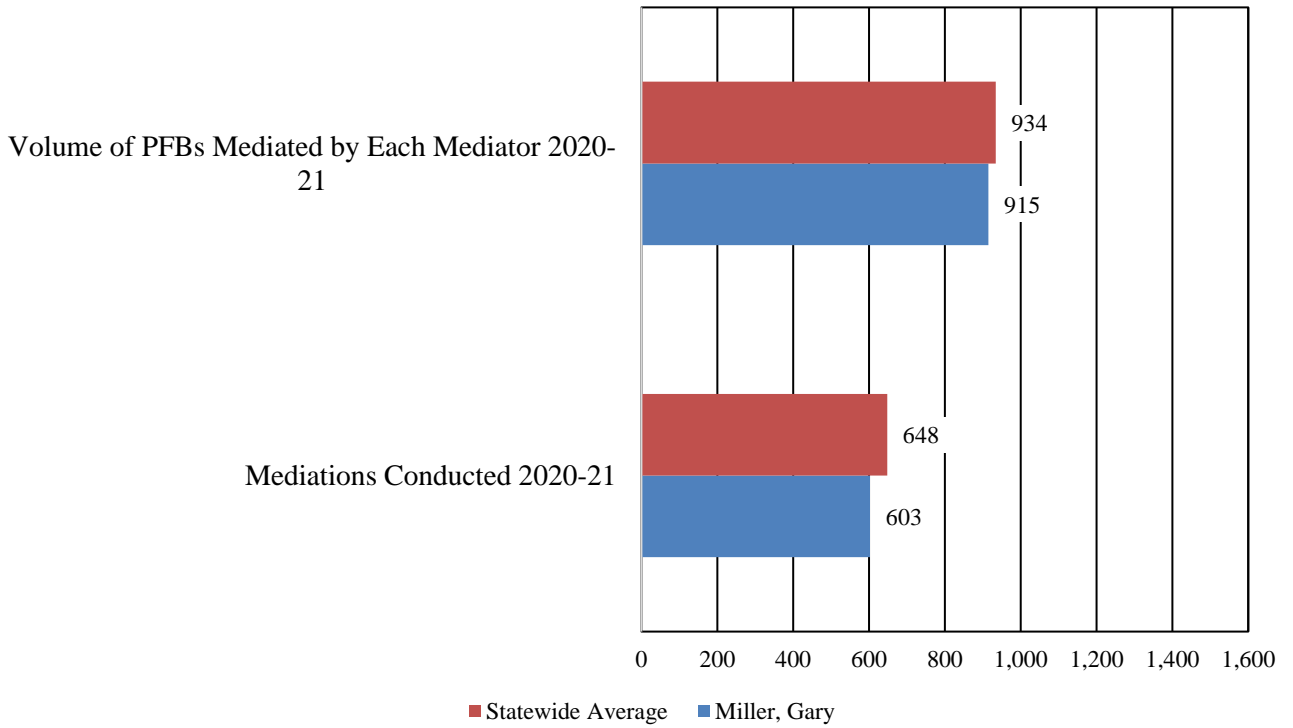
Levy, Joan (MIA)



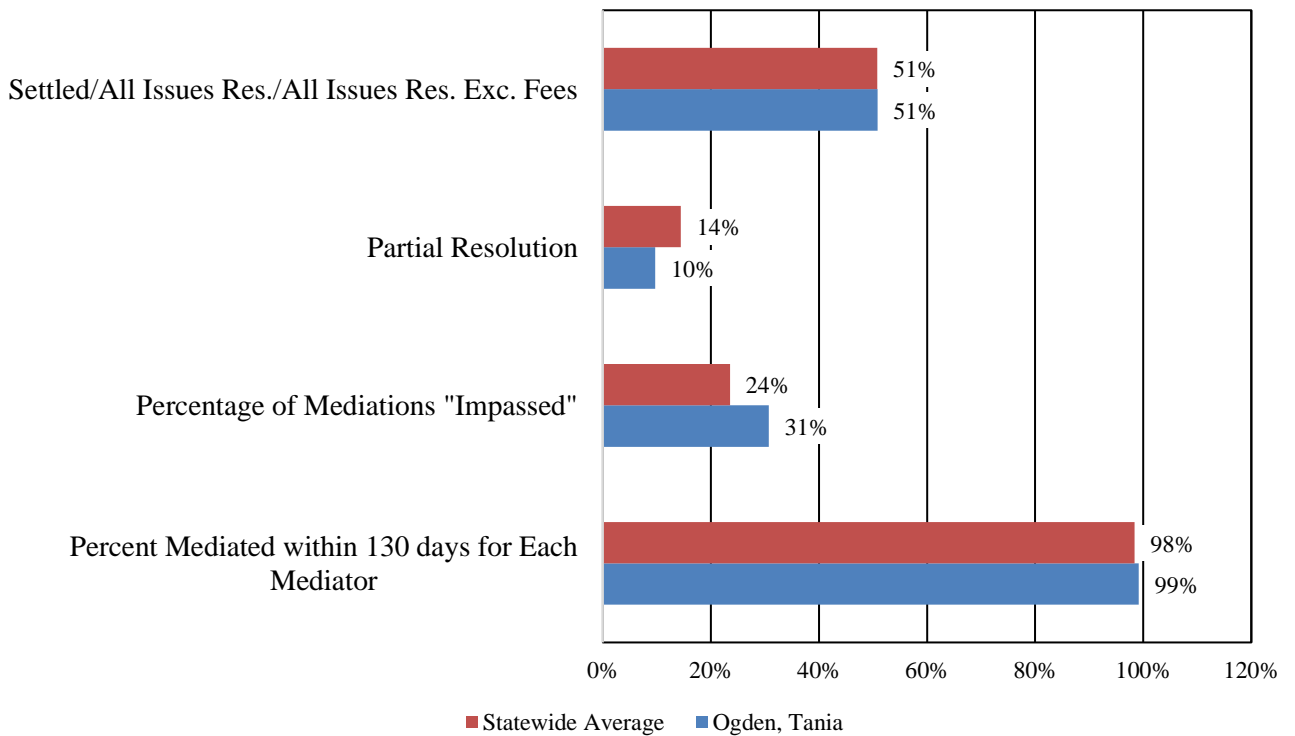
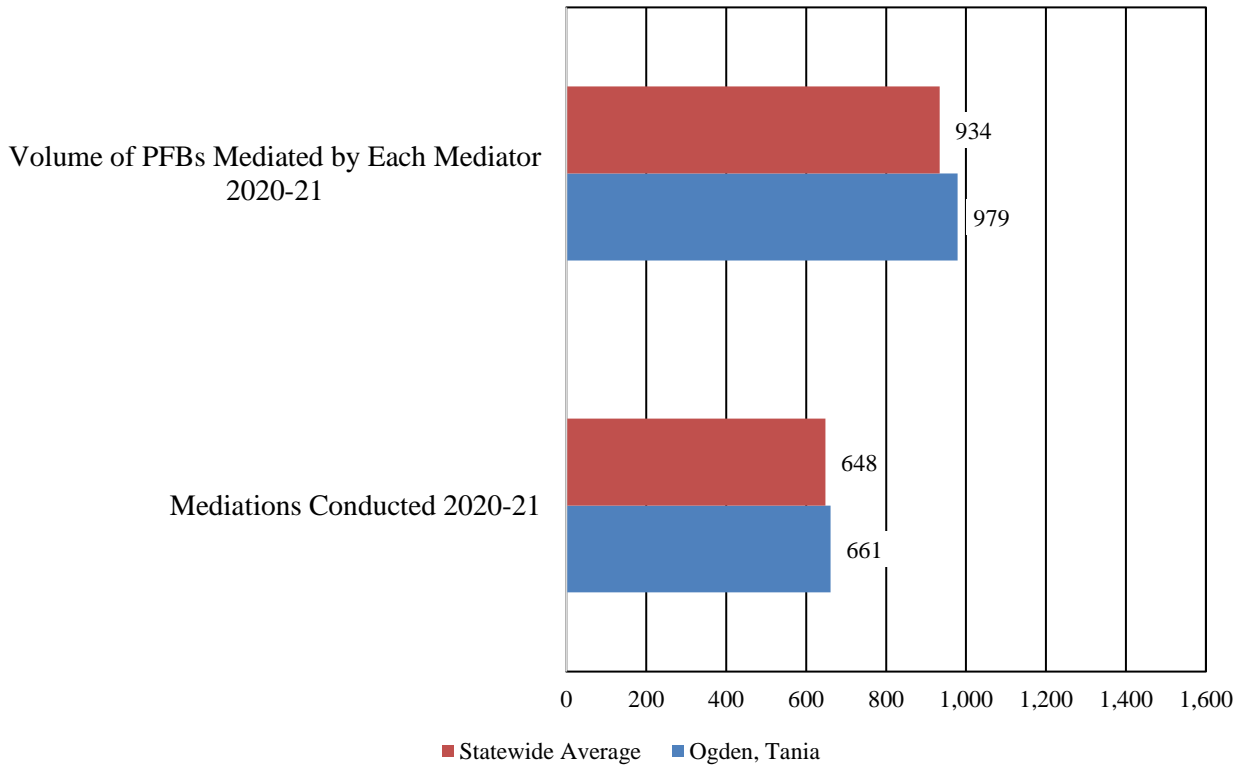
Martinez, Oneill/Harwood, Paul (LKL)¹⁹



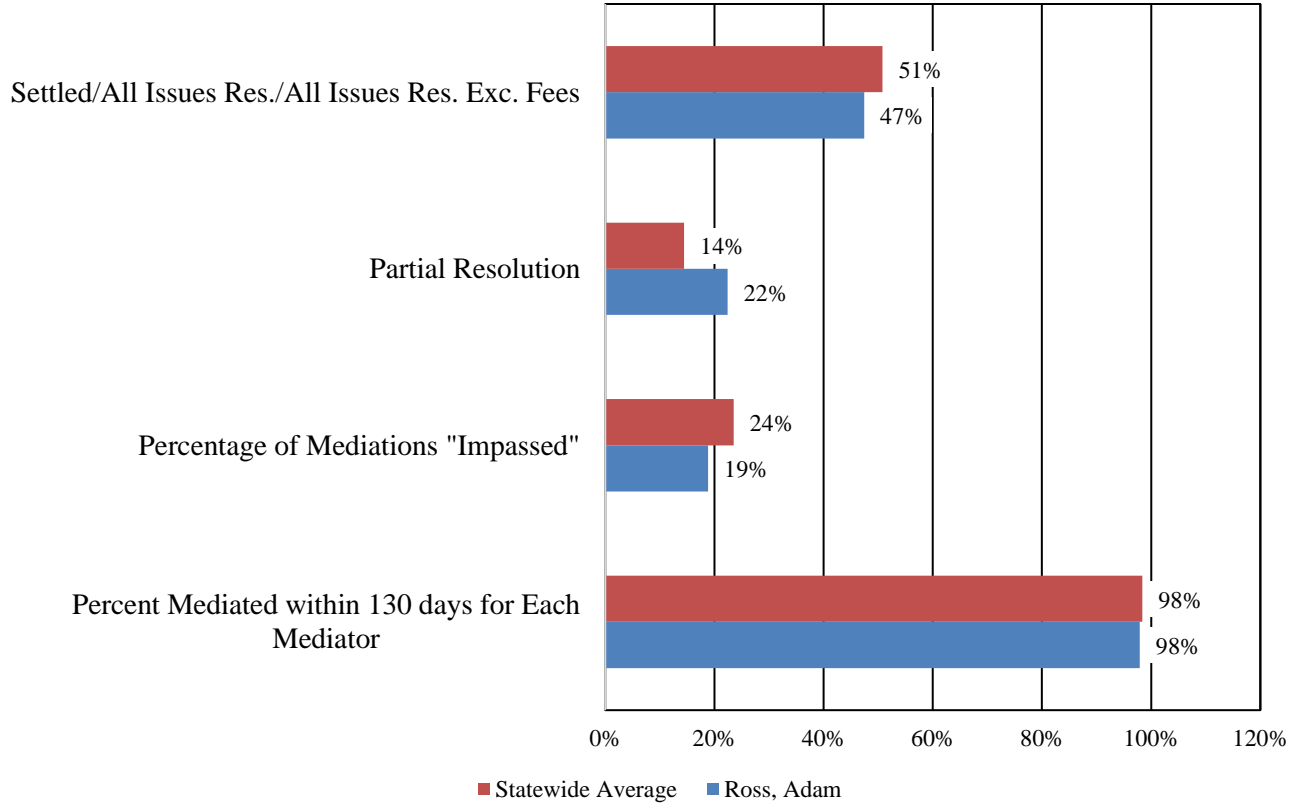
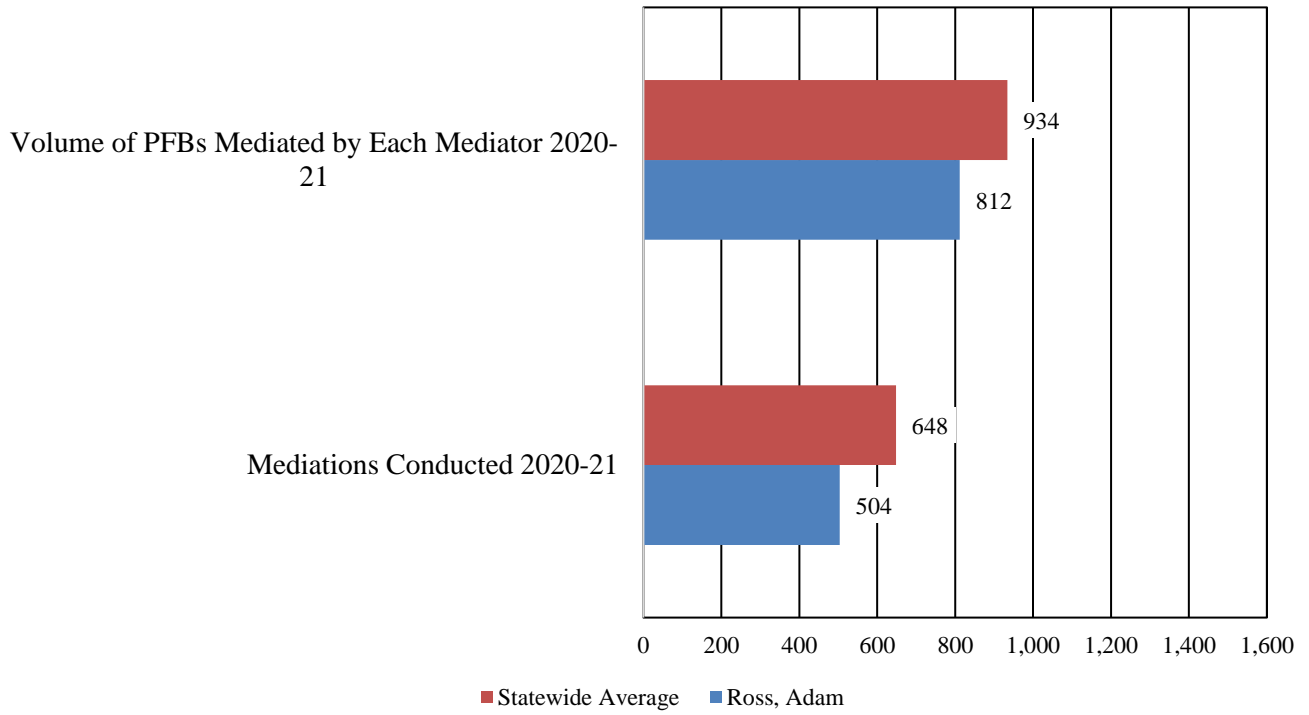
Miller, Gary (MIA)



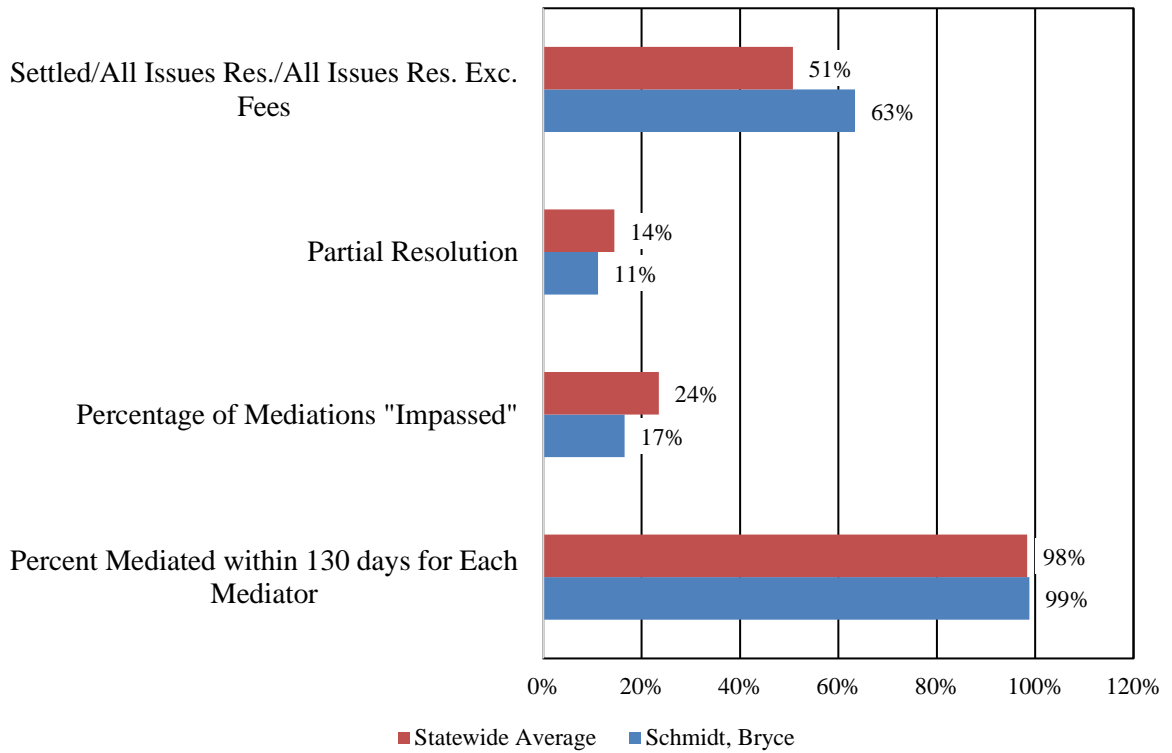
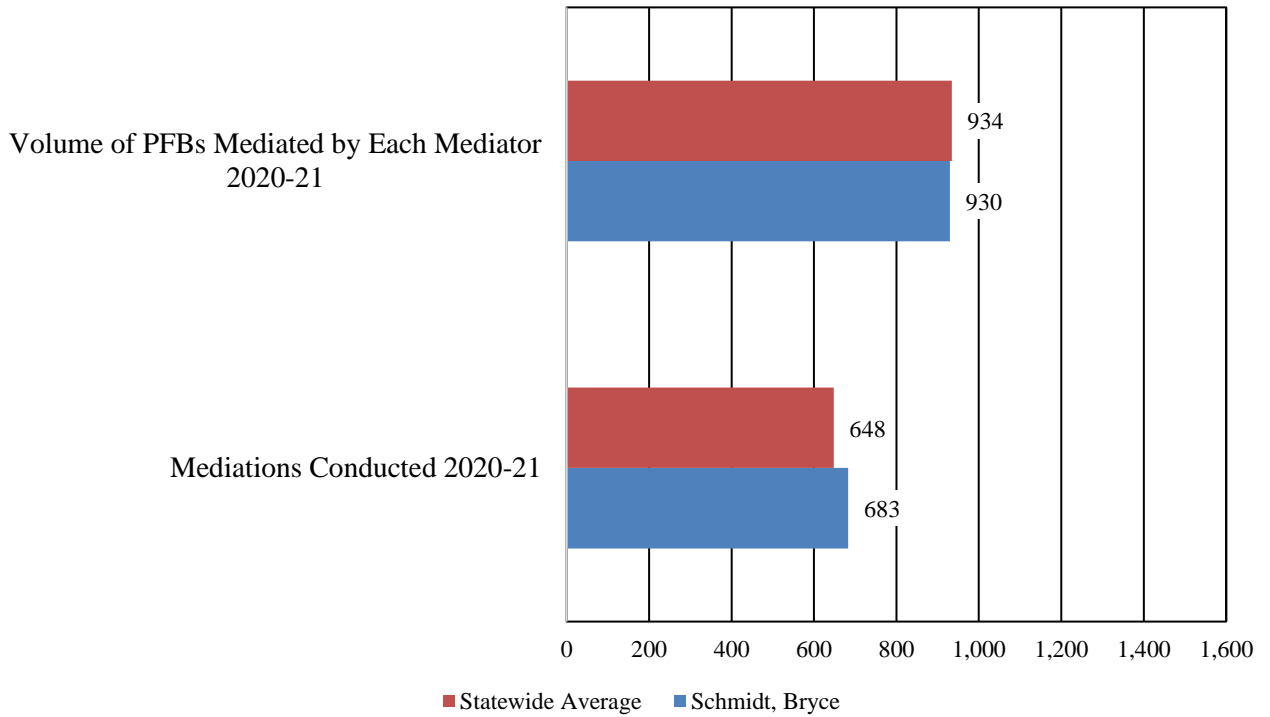
Ogden, Tania (FTM)



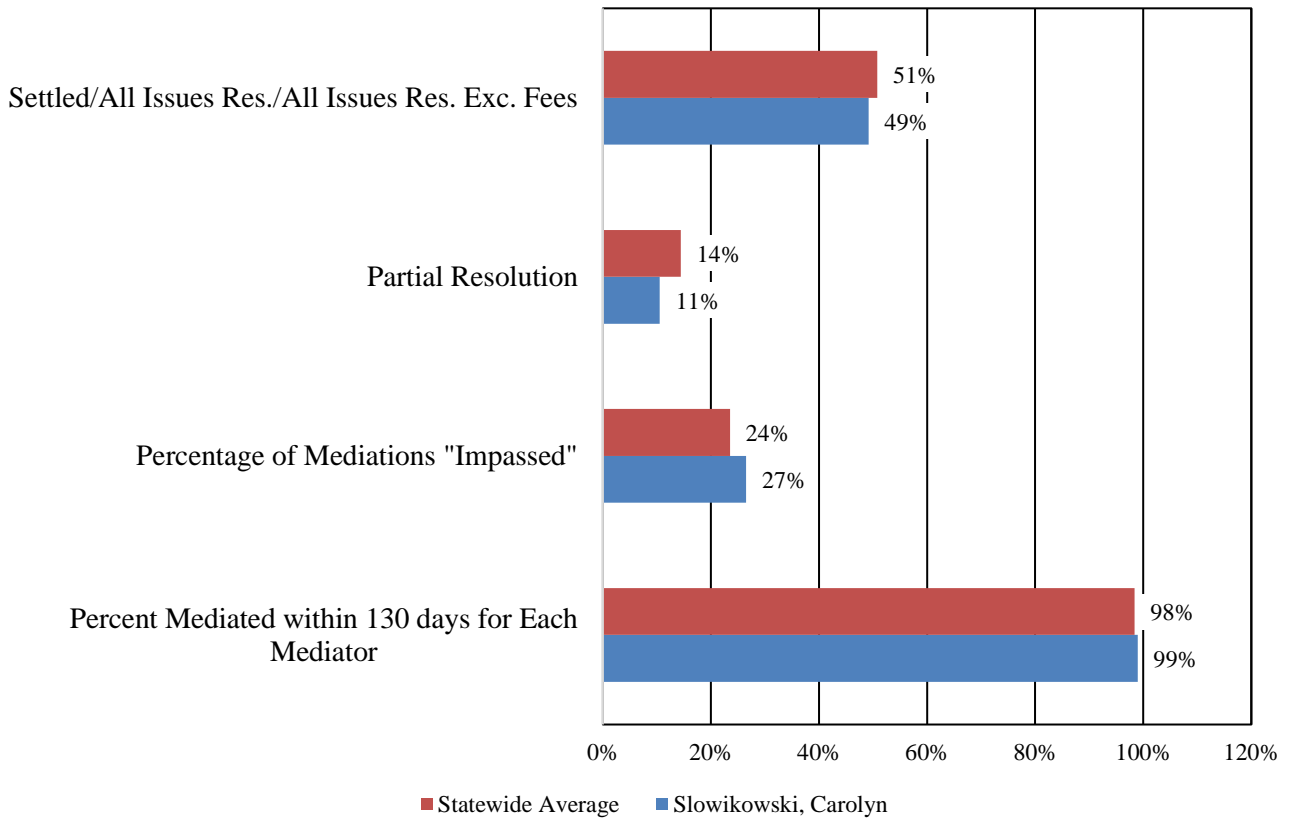
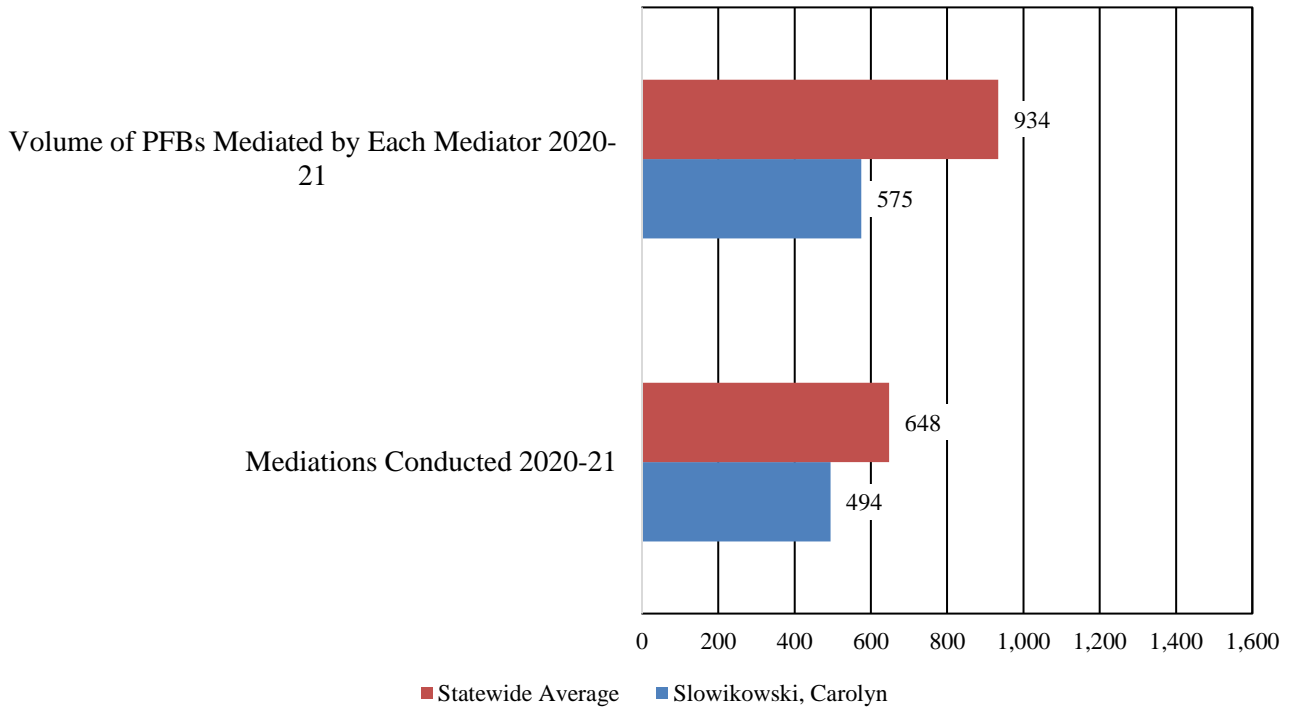
Ross, Adam (FTL)



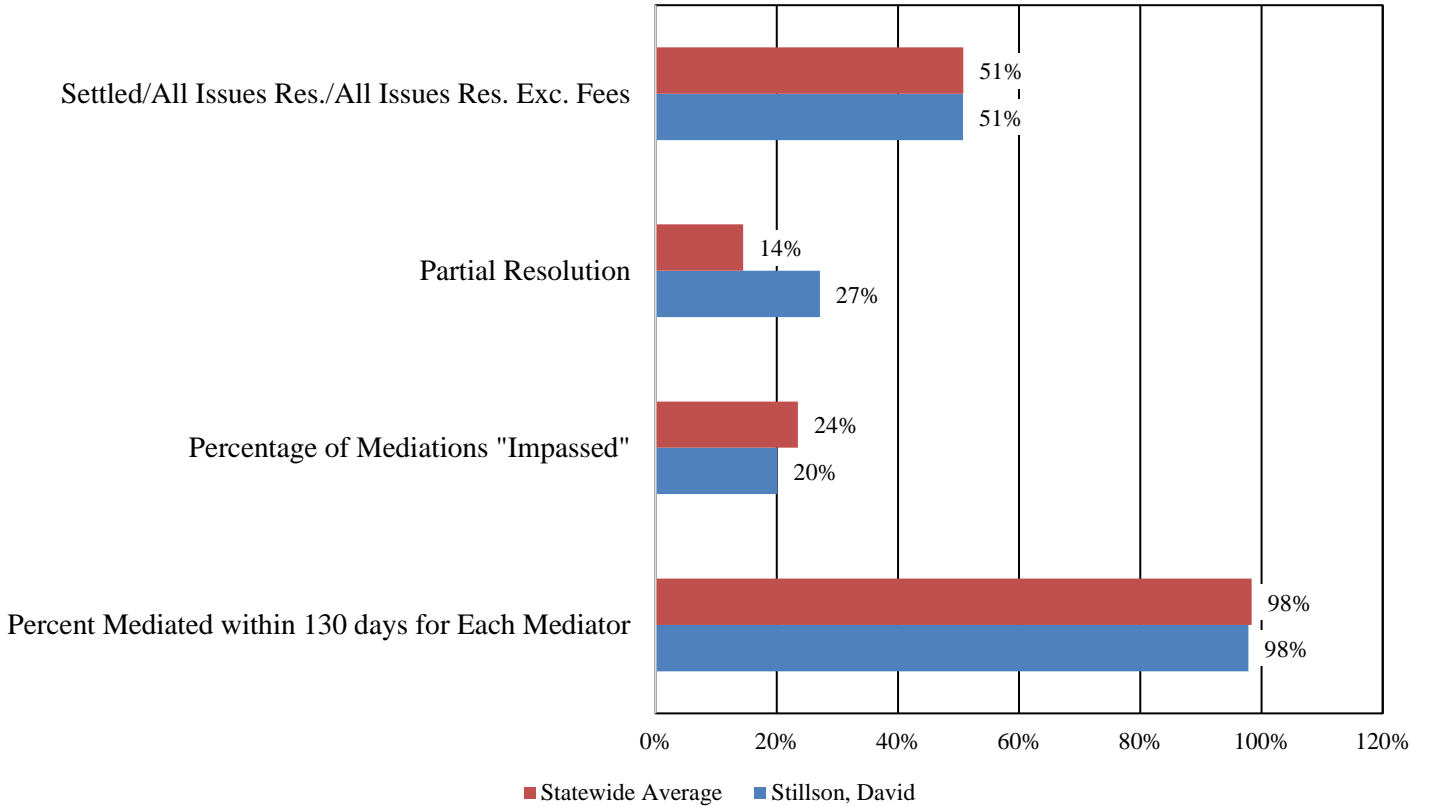
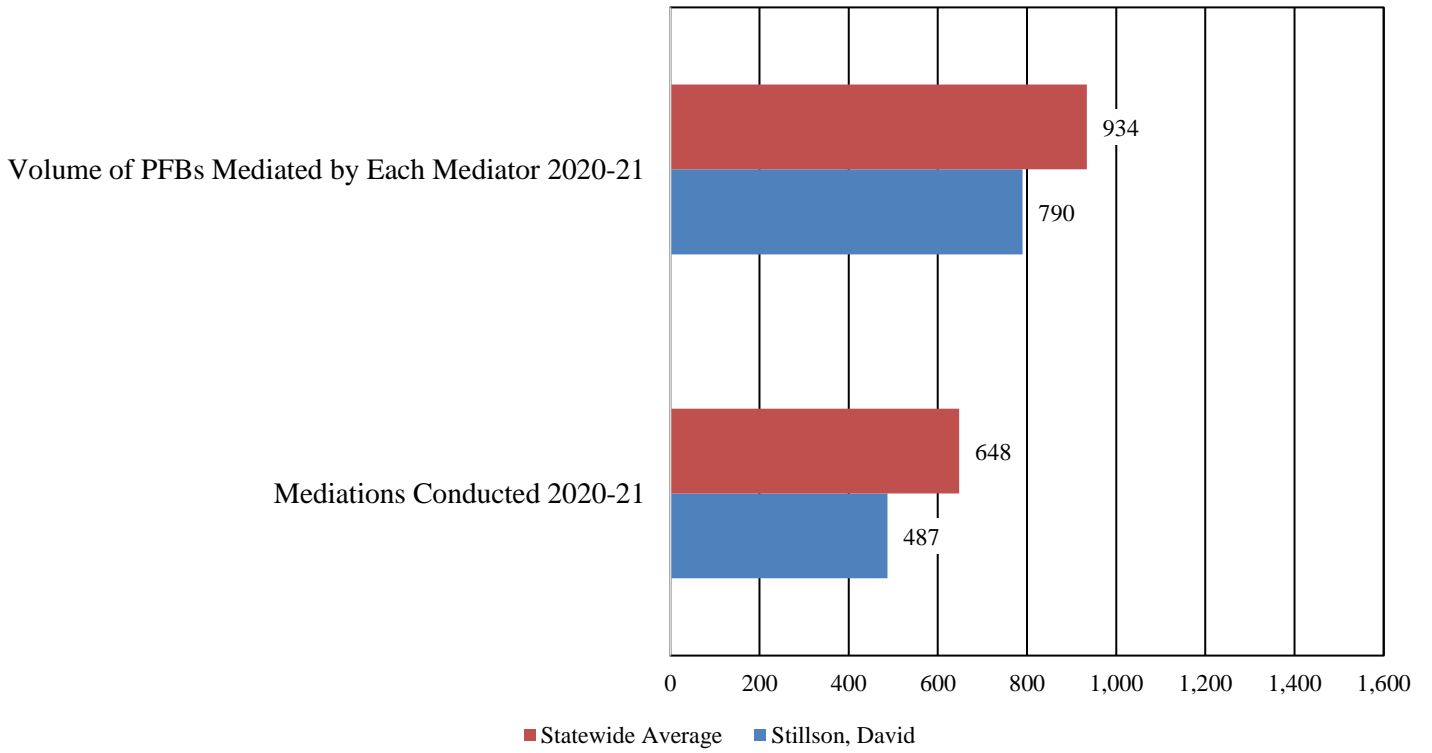
Schmidt, Bryce (GNS)



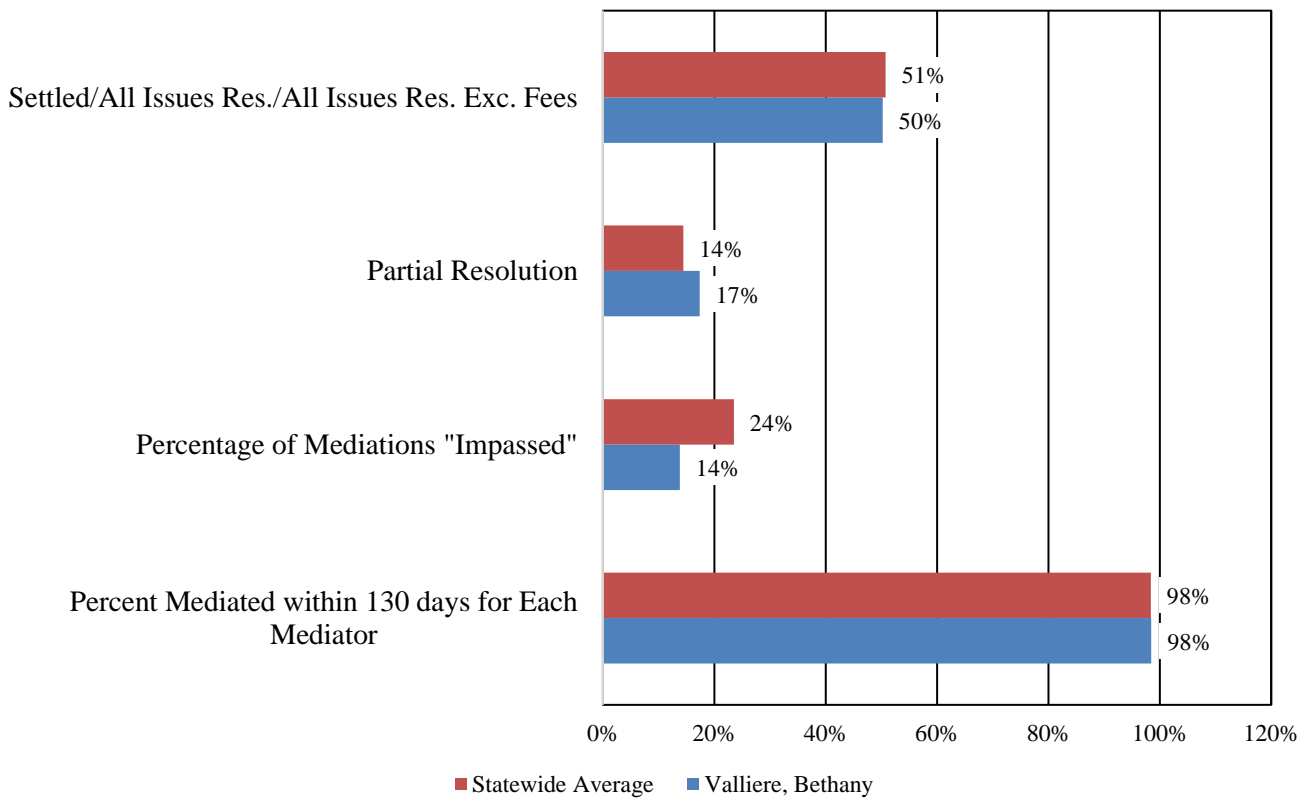
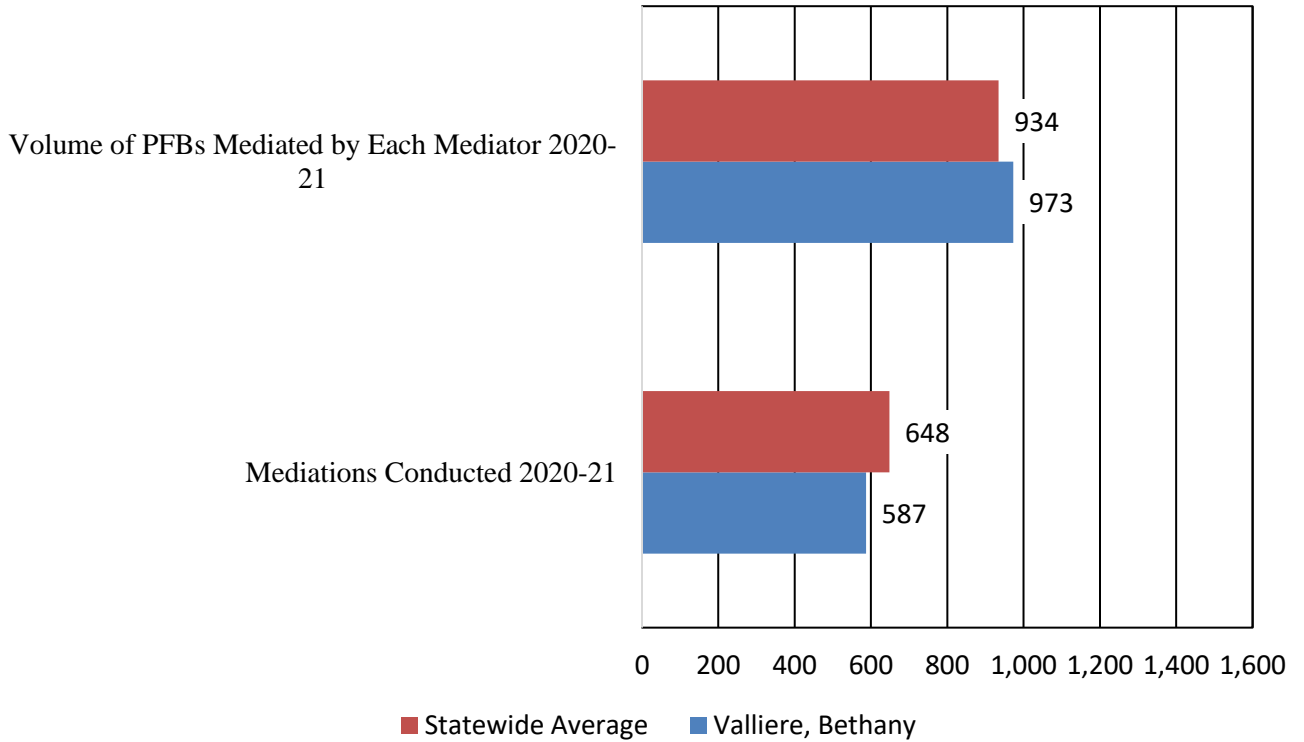
Slowikowski, Carolyn (PNS)

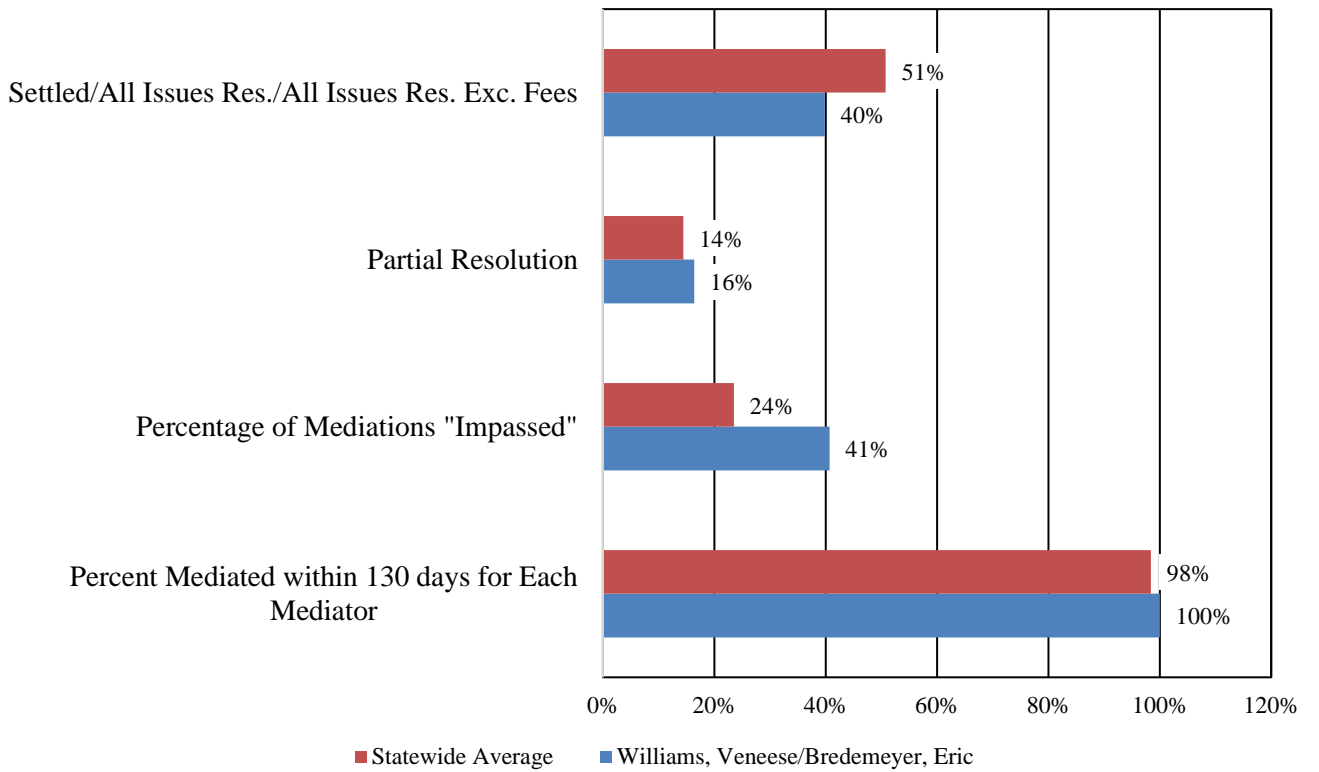
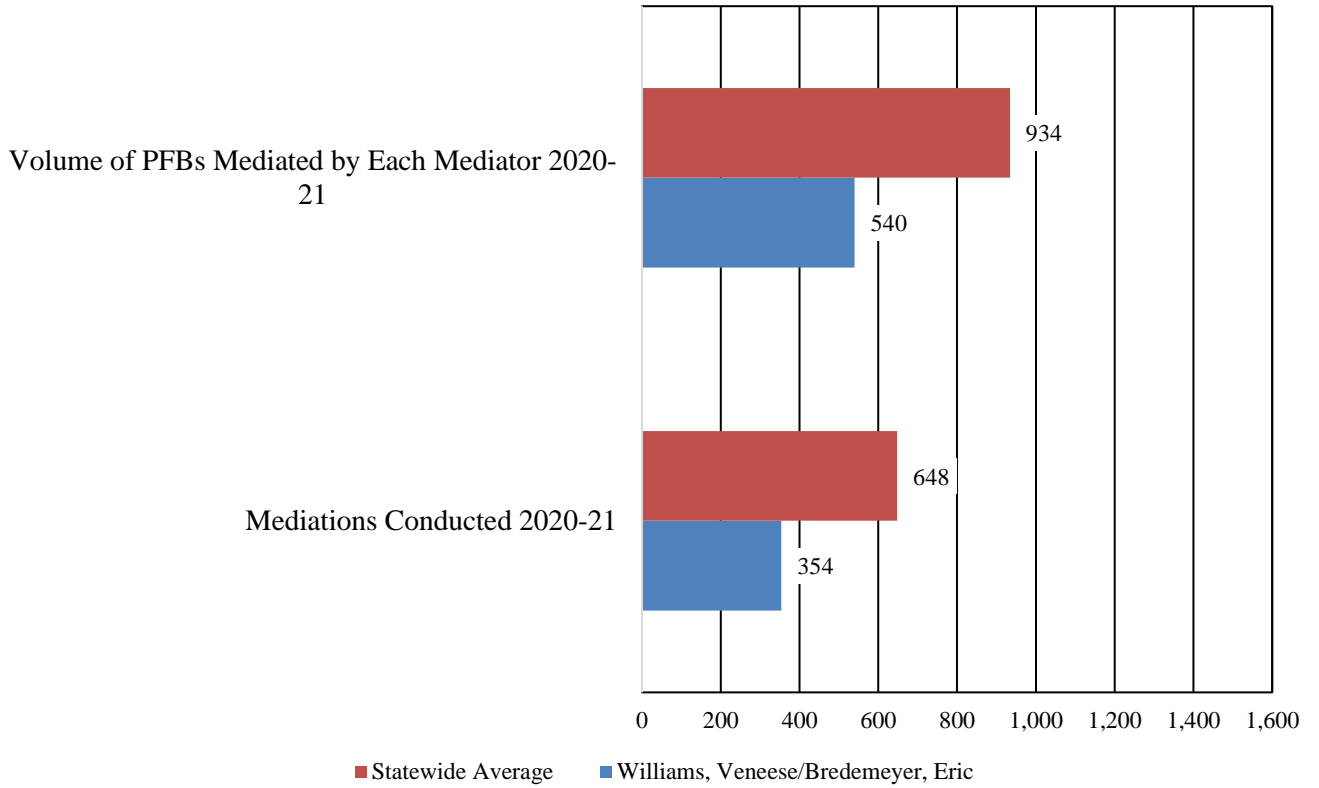


Stillson, David (FTL)



Valliere, Bethany (WPB)





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- ¹ The law specifically provides for a carrier to become substitute for an employer upon effective contractual transfer of liability (§ 440.41, Fla. Stat.)
- ² 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.).
- ³ Waiver is available through order of the Deputy Chief Judge, (§ 440.25(2), Fla. Stat.)
- 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.”).
- 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 *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).
- ⁸ 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”).
- ⁹ *Patco Transp., Inc. v. Estupinan*, 917 So. 2d 922 (Fla. 1st DCA 2005).
- 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 Section 440.20(11)(a), Fla. Stat.
- ¹² 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 which is the Deputy Chief Judge under § 440.45(1)(a), Fla. Stat.
- ¹³ *Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133 (Fla. 1st DCA 2019), *reh'g denied* (May 30, 2019), *review denied*, No. SC19-1044, 2019 WL 5546111 (Fla. Oct. 28, 2019).
- ¹⁴ Section 440.192(1), Fla. Stat.
- ¹⁵ 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 occurring in a small volume of instances).
- ¹⁶ *Supra*, endnote 2.
- ¹⁷ Section 440.25(1), Fla. Stat. (“If multiple petitions are pending, or if additional petitions are filed after the scheduling of a mediation, the judge of compensation claims shall consolidate all petitions into one mediation.”).
- ¹⁸ In the 2017-18 report, this figure was erroneously reported as 26.8%. The correct figure is 24.8%.
- ¹⁹ Mediator Paul Harwood retired in January 2021. Oneil Martinez began with the OJCC on April 21, 2021. As such, the statistics here are an amalgam of the efforts of these two.
- ²⁰ Mediator Eric Bredemeyer retired in November 2020. Veneese Williams began with the OJCC on April 26, 2021. As such, the statistics here are an amalgam of the efforts of these two.