

# STATE OF FLORIDA

## Division of Administrative Hearings



## 2022-23 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	2,284 (unchanged from 2,287 in 2021-22 <sup>1</sup> )	
Total eFiled documents	573,394 (.013% decrease from 574,169 in 2021-22)	
Total savings to date	Over \$24 million	
Number of Litigated Cases		14
Gross Petitions (PFB) filed	76,633 (6.8% increase from 2021-22)	16
New cases filed	32,045 (3.8% increase from 2021-22)	19
<i>Pro se</i> cases	8.22% (Lowest since 2003 reforms)	21
Amount of Litigation Resolved		22
Petitions (PFB) closed	75,887 (8.2% increase from 2021-22)	
Cost of Litigation Resolved		25
OJCC budget	\$17,926,835 (3.2% increase from 2021-22)	
Per Petition (PFB) closed	\$236.00 (twenty-year avg. = \$236.00)	
Civil court comparison	\$300.00 to \$400.00 Filing Fee	
Child support collected	\$13.6 million in 2022-23, total to date \$244.1 million	
Number of Mediation Conferences Held		28
Mediations held	19,917 (1% decrease from 2021-22)	
100% of mediators averaged less than 130 days to mediation each year 2008-09 to 2020-21)		
Disposition of Mediation Conferences		31
At least some resolution	67.92% (unchanged from 67.47% in 2021-22)	
Settled case/all issues resolved	36.06% (decrease from 38.39% in 2020-21)	
Number of Continuances Granted for Mediations		33
Mediation continuances	159 (16% increase from 137 <sup>2</sup> in 2021-22)	
Number of Continuances Granted for Final Hearings		34
Trial continuances	1,284 <sup>3</sup> (11.3% decrease from 1,447 in 2021-22)	
Outcome of Litigated Cases		36
Amount of Attorney Fees Paid		40
Claimant fees approved	\$228,162,186 (3.60% decrease from 2021-22)	
Defense fees reported	\$265,959,585 (0.6% decrease from 2021-22)	

Attorneys’ Fees Paid in Each Case According to Accident Year	49
Number of Final Orders Not Issued Within 30 Days After the Final Hearing Not within 30 days 11.09% (increased from 7.65% in 2021-22) 90% of judges averaged less than 30 days to final order in 2022-23	51
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## **Executive Summary**

The Office of Judges of Compensation Claims (OJCC) is efficient and effective in delivering this critical service to Florida's economy at a 2022-23 cost under \$17.9 million. The office continues to monitor the systemic impact of *Miles v. City of Edgewater*,<sup>14</sup> which has driven claimant attorney fees higher while the aggregate value of settlements has decreased. Evolving after the SARS-CoV-2 virus impacts, the OJCC has persisted through reductions in budget, personnel, and facilities. Critical performance data for 2021-22 are as follows:

### **Case Filings**

New cases filed – **32,045**  
An increase of 3.8% from 2021-22  
Gross Petitions (PFB) filed – **76,633**  
An increase of 6.8% from 2021-22

### **Timeliness of Mediation**

Average days to mediation -- **88 days**  
An increase from 83 in 2021-22  
Statutory requirement: 130 days.  
100% of mediators averaged less than 130 days to mediation 2008-09 to 2022-23

### **Timeliness of Trials**

Average days to trial -- **197 days**  
An increase from 193 in 2021-22  
Statutory requirement: 210 days.

### **Timeliness of Orders**

Average days from trial to order -- **19 days**  
Increased from 17 days in 2021-22  
Statutory requirement: 30 days  
90% of Judges averaged less than 30 days

### **Child Support Arrearages Collected**

\$13.6 million in 2022-23, total to date \$244.1 million

### **Electronic Filing Cost Savings to date**

Total eFiled documents in 2021-22 – 573,394  
An increase of .13 % from 2021-22  
Total user savings to date -- **\$6,602,820**

### **Attorney Fees paid**

Claimant fees approved -- **\$228,162,186** (46.2% of total)  
A decrease of 3.60% from 2021-22  
Defense fees reported -- **\$265,959,585** (53.8% of total)  
A decrease of 0.60% from 2021-22

## **Introduction**

This report of the Office of the Judges of Compensation Claims (OJCC) is published pursuant to section 440.45(5), Florida Statutes.<sup>15</sup> It documents that the OJCC continues to develop, innovate, and deliver consistent performance. This agency has persistently leveraged technology; the pandemic of 2020 highlighted the efficacy and efficiency that history enabled. As the OJCC exited the pandemic, return to “normal” operations was frustrated by customer preferences and the benefits of technology efficiency. The stunning success of the OJCC in continued operations, innovation, and service belied the arguments and excuses of inability voiced in agencies elsewhere across the country. While systems struggled and adapted, the OJCC in 2021-22 enjoyed the fruits of decades spent developing, deploying, and integrating technology into the litigation process. That efficiency and efficacy was shown again in 2022-23 as the consolidation and closure efforts proceeded in Daytona, Gainesville, Panama City, and Sarasota.

The OJCC annual reports issued since 2002 are maintained for review on the agency website.<sup>16</sup> These reports memorialize the struggles this agency experienced with data uniformity and reporting through the early twenty-first century. There is evidence of persistent and incremental improvement in data collection and maintenance processes. Technology remains a significant investment for this Office, and the public that interacts with it. Despite budget reductions, personnel turnover, and legislative change, this agency has persevered over the last twenty years, including pioneering electronic filing and service, video hearings, and more. The OJCC adjudicatory functions are as forward-thinking and 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 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 have been 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 fifteen fiscal years (2008-09 through 2022-23), 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 reported performance is a clear indication of their team-first attitude and focus on serving Florida’s employees and employers. The ongoing success of this process has been a prime concern among the challenges of the ongoing consolidation of offices in 2022-23.

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,”<sup>17</sup> though requirements for reporting results and volumes long preceded that effort. These definitions and standardizations in the collection and reporting of data enabled uniformity and consistency. That said, abuses by a minority of judges demanded revision in 2016 of the “trial” definition.<sup>18</sup> The OJCC data collection process is not perfect, and errors are accepted because of human involvement. All the same, 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 2022-23, trial orders were entered within the 30-day parameter 88.91% of the time; 90% 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 on this agency to “do more with less,” and the OJCC has consistently heeded that call. Despite budget and staff reductions,<sup>19</sup> 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. Senate Bill 170 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

2007-08 and 2009-10 OJCC annual reports.<sup>20</sup> Even before the legislative mandate, the OJCC had mandated electronic filing in the Rules of Procedure for Workers' Compensation Adjudications.<sup>21</sup> As a result, the volume of incoming U.S. Mail dwindled in 2010-11 and OJCC receipt of U.S. Mail now remains uncommon.<sup>22</sup>

Electronic service<sup>23</sup> 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 began with three employers<sup>24</sup> and has expanded since.

DOAH pioneered the use of video teleconference systems (VTS) for trials throughout Florida. In the pandemic, the OJCC shifted to an Internet-based video teleconference paradigm, Zoom. This was consistent with the need to provide ongoing due process and uninterrupted trial and hearing services. While other state systems pause or closed, the Florida OJCC adapted and remained effective. The early adoption of the legacy VTS likely eased the transition to this Internet platform. Throughout, however, the discretion for live, remote, or hybrid hearings remained in the discretion of each JCC. That discretion remains at the close of 2022-23 and is expected to facilitate judge's individual determination of the appropriate method case-by-case. This has raised some consternation in the community, and some advocacy for forced or at least presumptive process selection. The OJCC has concluded that the path of discretion and party advocacy is the most viable process. Thus, expense, convenience, and necessity can be examined and determined by the assigned judge.

## **Overview of Florida Workers' Compensation**

Understand that Florida workers' compensation is a self-executing system defined by chapter 440.<sup>25</sup> 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 because of an accident or illness. Chapter 440 defines which workers and employers participate in the workers' compensation system and delineates the participant's rights and responsibilities. The participants depend on predictability and consistency in the interpretation of the law.

In the beginning of Florida workers' compensation, hearings and first-level appellate review were administrative, within the Florida Industrial Commission (FIC) and later the Industrial Relations Commission (IRC); further appellate review was by the Florida Supreme Court. With abolition of the IRC in 1979, initial appellate review was vested in the Florida First District Court of Appeal, where it has remained. Some contend that the court's history in workers' compensation reveals a periodically unpredictable appellate atmosphere.<sup>26</sup> Florida's appellate courts must be consistent and correct. Distinctions between decisions must be explained clearly. Too many Floridians rely on workers' compensation for there to be perceptions of vacillation and uncertainty.

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 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 often referred to collectively as "E/SA." For 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 centers on the impartial processing, mediating, and adjudicating of disputes over 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 61-62.

The OJCC is an adjudicatory system, a "tribunal," situated within the Executive branch.<sup>27</sup> The OJCC is funded entirely by assessments on the workers' compensation industry, through the Workers' Compensation Administrative Trust Fund<sup>28</sup> (surcharges on workers' compensation insurance premiums). Thus, every expense of operating this unique system is borne by the industry which requires it. The OJCC utilizes precisely \$0.00 in general revenue funds. The vast majority, about ninety-six percent (96.26%), of the OJCC budget is expended on

payroll, rent for the nine<sup>29</sup> OJCC District Offices<sup>30</sup> and the OJCC Central Clerks office, and security for those offices to protect 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 database and electronic filing system with existing resources over two decades. The cumulative expense associated with the development and deployment of these tools, including staff contribution in the testing and development has not exceeded \$5 million.<sup>31</sup> By comparison, other states have developed systems through special appropriations, deploying less robust processes, at a far greater cost.<sup>32</sup> There is no more capable litigation management tool in any jurisdiction, or any that was developed and deployed more economically. The Florida OJCC electronic system is unique, unparalleled, and efficient.

The eJCC system provides electronic service (eService) of filed documents<sup>33</sup> to all insurance carriers and servicing agents, at the same time as filing. Such eService is also available for employers that register, also affording such employers full access to litigation details and filed documents. The use of eService for employers eliminates a significant postage expense for attorneys representing injured workers. The law requires that PFBs 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.<sup>34</sup> The OJCC's ability to innovate and the resulting monetary savings to system and customers has been possible because of the flexibility of a small agency. Minimization of bureaucracy, localized control of tools and resources, and pragmatism have been hallmarks of the enthusiastic embracing and leveraging of technology and change.

## **Court Decisions and Precedent**

The *2020-21 OJCC Annual Report* noted the community discussion regarding one of two compensability tests, the "arising out of." The District Court in 2019 rendered *Valcourt-Williams v. Sedgwick*,<sup>35</sup> and provided new insight into the "arising out of" test for compensability. This *en banc* decision was seen as an influential decision with potential effects on a broad array of workers' compensation disputes. The decision seemed disruptive of historical interpretations of compensability, and there was a perception of increased litigation of compensability determinations after its rendition.

Historically, compensability depended on 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."<sup>36</sup> These were judicially created, but in 1994, the Legislature provided a statutory definition for "arising out of."<sup>37</sup> About two years later, the Court declined to follow that statutory definition, concluding that to do so would not be "efficient nor self-executing,"<sup>38</sup> which the court interpreted as overriding concerns pursuant to section 440.015, Florida Statutes (1994). The Court stressed that "expensive and time-consuming judicial inquiry" would be required in "a broad range of cases," and thus frustrate the rapid provision of benefits.<sup>39</sup> The Court concluded that in defining "arising out of," the Legislature could not have "intend(ed) to change prior case law concerning the phrase 'in the course and scope of employment,'"<sup>40</sup> and thus re-intertwined the two compensability tests.<sup>41</sup> Years of litigation ensued and some degree of confusion or uncertainty. Litigation, it should be noted, that is perhaps likewise troublesome in terms of "expensive and time-consuming judicial inquiry." In short, the effort to avoid litigation through the *Vigliotti*<sup>42</sup> interpretation was not without challenges.

The "arising out of" test then 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*,<sup>43</sup> a panel decision by three appellate judges. The *Hamlin* Court was drawn to the statutory "arising out of" in deciding questions of causation. Later, however, other panel decisions were rendered that skirted or ignored the *Hamlin* analysis and the statutory definition, continuing instead to apply broader prior 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 on the statutory definition as written in 1993.<sup>44</sup>

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.<sup>45</sup> Many of those cases were before the Court for review, but during 2021-22 only two resulted in published opinions.<sup>46</sup> 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.” Clarity in interpretations of “arising out of” will be sought because of the foundational nature of the two compensability analyses, and the questions they will control. There is discussion of the potential for impact on worker lawsuits for tort damages and the protections of exclusive remedy.<sup>47</sup> In all, the Court’s *Valcourt* reasoning and the ongoing determinations will warrant analysis and consideration.

## **Litigation Trends**

The 2020 pandemic profoundly impacted the challenges for litigants, attorneys, claims professionals, physicians, and more. The *2020-21 OJCC Annual Report* focused upon the perceptions of PFB filing rates in the months following the pandemic onset in March 2020. Florida was indeed fortunate to have stable accessibility to the OJCC adjudication process throughout. No doubt the dedication of the judges, mediators, and staff was exemplary and enviable. The 2020-21 report noted that various weather and health events have been perceived as impacting PFB filing in this litigation system in recent years. The effect of the pandemic can be readily perceived in review of the filing rates discussed in the 2020-21 report, and reiterated here on page 17.

The pandemic brought change, office consolidation, office closure, presumptively virtual mediation process, and a persistent desire for virtual hearings from some perspectives. While there are parties that appreciate and welcome in-person proceedings and trials, there is a population that remains enamored with virtual processes and minimized travel. Neither perspective is right or wrong. The OJCC has remained focused on judicial discretion and the process for seeking relief. Thus, various judges are scheduling in-person, virtual, or hybrid. Parties are seeking alteration of such decisions by motion. And this is appropriate. Some lament that the Deputy Chief Judge has not mandated some method or presumption. That said, discussions have revealed that those who desire such a mandate are only supportive so long as the method mandated matches her/his/its personal procedural preference.

The effect of the pandemic has coincided with the ascension of a new generation largely comfortable with digital communication and social media. This has coincided with acceptance that Generation Z is as different from the Millennials as they both are from the Baby Boomers and Generation X. There has been a history of American generations exhibiting differing perspectives, attitudes, and priorities. That has been a consistency. Still, with the constriction of claimant attorney fees in the 2003 statute amendments, there was a period during which firms involved in workers’ compensation did prevalently not hire and train young lawyers. As the Boomers aged, and as perceptions of the Millennials and, then, Gen Z festered, firms were perceived as focusing on lateral hires and eschewing the “next generation.” Many biases and perceptions about the young have been voiced.

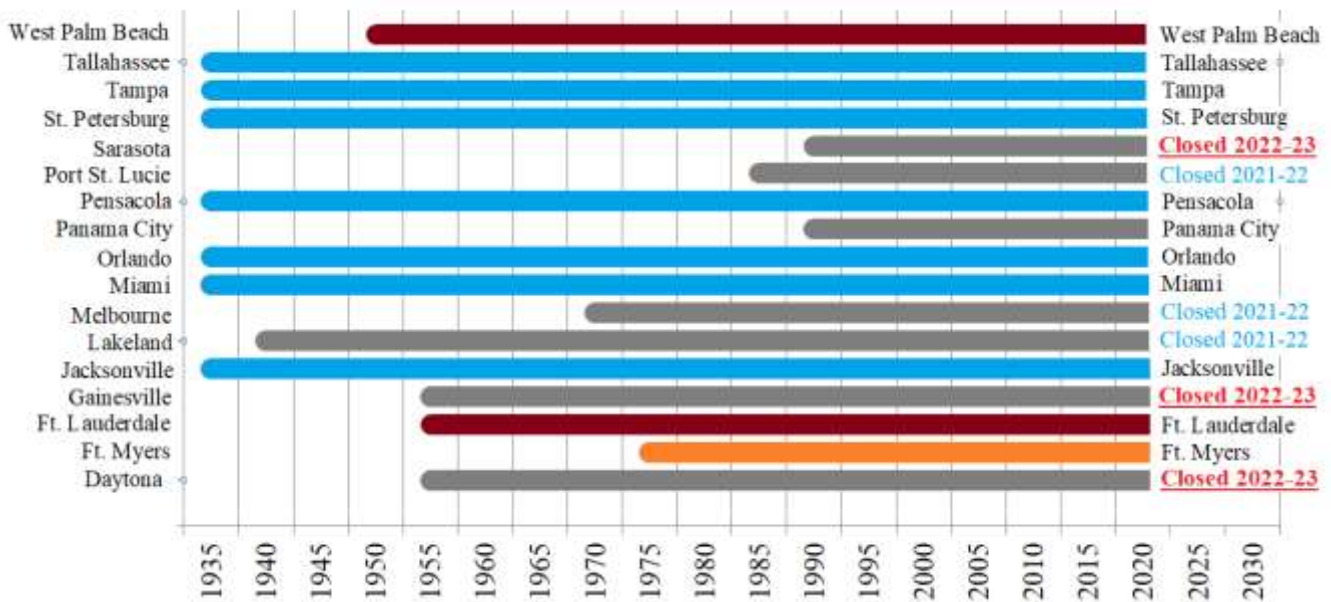
With the pandemic’s end, there was perception that law firms were hiring and retaining younger lawyers. With that came criticism of the professionalism in workers’ compensation practice. Common refrains included inconsistent or nonexistent mentoring, insufficient training, missing knowledge and skills, and deficient professionalism writ large. The Workers’ Compensation Section of The Florida Bar led efforts directed at community and education. This included virtual opportunities, dubbed “town halls,” that drew hundreds of attendees and focused on effective practice. In addition, in-person roundtables were instituted. In 2022-23, those were held in Orlando, Jacksonville, and Ft. Myers. In an effort directed more intensely at the next generation, the OJCC assisted with the DOAH Trial Academy in Tallahassee, with multiple JCCs participating. In the spring of 2023, the OJCC produced and presented an OJCC Academy in Orlando, a one-day intensive preparatory program for lawyers new to this practice. The effort was directed at engaging lawyers and striving for in-person activities. The emphasis is not to deride the virtual opportunities, but to strive for more in-person communication, interaction, and collegiality. Those efforts will continue in 2023-24.

The OJCC footprint and community commitment continued to diminish in 2022-23. In 2021-22, the DOAH leadership began legislative efforts to allow flexibility to close various OJCC Districts perceived as inefficient. The local structure of the OJCC had been considered critical in the integration of the OJCC into DOAH in 2001.



In that transition, much of Chapter 440 required revision, and the Legislature constrained the DOAH somewhat regarding OJCC operations. Section 440.44(5)<sup>48</sup> mandated the continued operations of the “17 district offices” as well as the structure of judges and mediators. In 2021-22, the DOAH leadership sought repeal of those constraints, which passed despite community concerns and objections.

The removal of this statutory constraint had immediate impact. Immediately following *sine die*<sup>49</sup> of the 2022 legislative session, plans began to close district offices in Gainesville, Lakeland, Melbourne, and Port St. Lucie (*see infra*). The announcements of these closures were met with community questions and some criticisms. There were generations of workers’ compensation professionals with no recollection of Florida without these offices. While it had been longstanding, the construct of “17 offices” persisted only around three decades. This chart illustrates the establishment of the OJCC’s various district offices, beginning shortly after the enactment of the original Florida workers’ compensation statute in 1935, Title II, Ch. V, Article 5, section 5966, *et seq.*



In the earliest times, beginning around 1936-37 (86 years ago), offices existed only in seven population centers: Jacksonville, Miami, Orlando, Pensacola, St. Petersburg, Tampa, and Tallahassee (light blue). The next decade brought the addition of only Lakeland.<sup>50</sup> In the 1950s, expansion came to Daytona, Ft. Lauderdale, Gainesville, and West Palm Beach. The 1970s brought offices to Ft. Myers (orange) and Melbourne. The additions of Sarasota, Port St. Lucie, and Panama City were more recent, in the 1980s and 1990s. Florida has indeed witnessed much evolution and progress in the 88 years since workers’ compensation came to Florida.

Of the offices closed in 2021-22, the longest established was Lakeland, dating to 1941 (81 years). What ultimately became the Gainesville District was established in 1953 (69 years), first in Lake City, then for many years in Trenton. The Melbourne office was established in 1972 (50 years), and Port St. Lucie was established reasonably recently, in 1986 (36 years). The offices closed in 2022-23 included Daytona, dating to about 1957 (66 years), Sarasota dating to 1992 (31 years), and Panama City dating to 1991 (32 years). The opening of these various offices perhaps shows recognition of Florida’s growth in the age of the automobile. The closure of offices over the last two fiscal years is also perhaps demonstrative of evolving technology, the age of information, and a return to population centers and regional accessibility.

In the 88 years of workers’ compensation in Florida, the adjudicators have thus been distributed throughout the state. For half that time, until the IRC was abolished in 1979 (44 years), the OJCC was within the quasi regulatory/appellate structure of the two Commissions. From 1979 to 2001 (22 years), it was within the Department of Labor, though there were changes in that department’s status. The most recent twenty-two years the OJCC has been a part of DOAH. It is reasonably fair to characterize the OJCC as in its third era. And it is

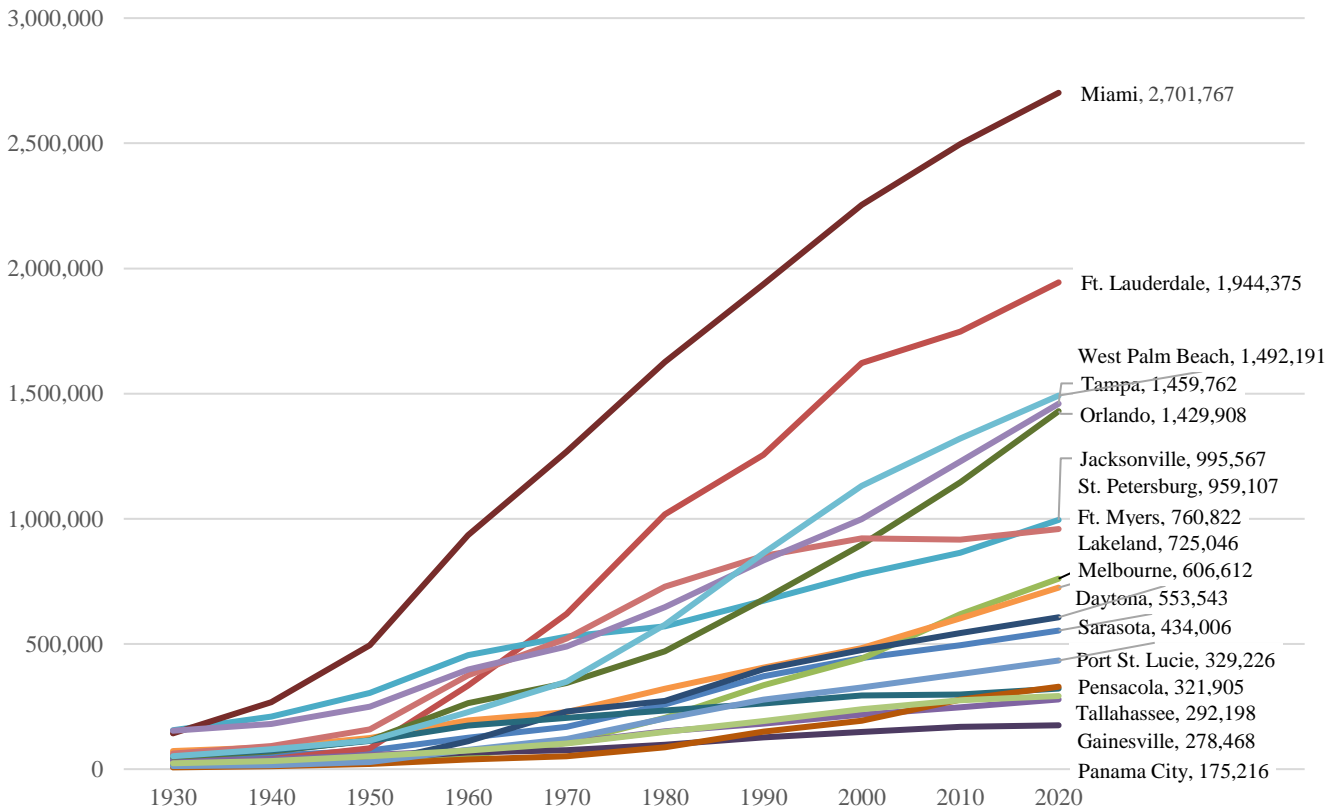
notable that Florida’s organizational structure in this regard is reasonably unique, and its efficiency has been augmented by the structure.

The expansion of district offices is reflected in this illustration, as is the more recent regression. The OJCC today operates offices in the original seven population centers: Jacksonville, Miami, Orlando, Pensacola, St. Petersburg, Tampa, and Tallahassee (light blue). In addition, Ft. Lauderdale (1950s), West Palm Beach (1950s), and Ft. Myers (1970s) also remain.

The consolidations have been largely accomplished without diminishment of efficiency and customer convenience. There are lawyers, employers, and employees who now face travel for hearings. That said, as to final hearings, the parties have a right to insist on proceedings in the county of accident (within Florida). Thus, there may be some resulting increase in judge travel or video proceedings to accommodate such requests. The ultimate outcome on convenience and service is difficult to predict, but it appears likely that both efficiency and service will be largely unaffected by the closure/consolidation of the last two fiscal years.

Unlike the final hearing, there is no county mandate regarding mediation. The OJCC has streamlined the mediation process in recognition of the consumer’s preferences. The ability to effectively mediate telephonically was shown in the necessity of the pandemic of 2020. When that urgency subsided, the lawyers and parties resisted returning to district offices for in-person mediation. The transition of OJCC mediation to video (Zoom) has accommodated the community, and this has softened the effect of the closures and consolidations. The process now defaults to an internet-videoconferencing paradigm (Zoom), with in-person mediation remaining an option that must be requested.

Over these decades, Florida has changed. Population has grown markedly,<sup>51</sup> but not necessarily proportionally. In 1935 when workers’ compensation came to Florida, 1,613,000 people lived here. By 1986, that had grown to about 12 million. Presently, about 22 million live here.<sup>52</sup> While the population was distributed with reasonable consistency in the 1930s, the growth has since ranged from moderate to exponential. The interrelationship of populations, convenience, and system efficiency have been balanced. The OJCC will likely remain both efficient and effective with management, judicial discretion, and persistence of the distributed judicial population.



## **Budget and Training Issues**

The duties of the OJCC staff have evolved. Formerly “secretaries” of various descriptions, office staff are now predominantly clerks. Their duties are far more like 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 like 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.

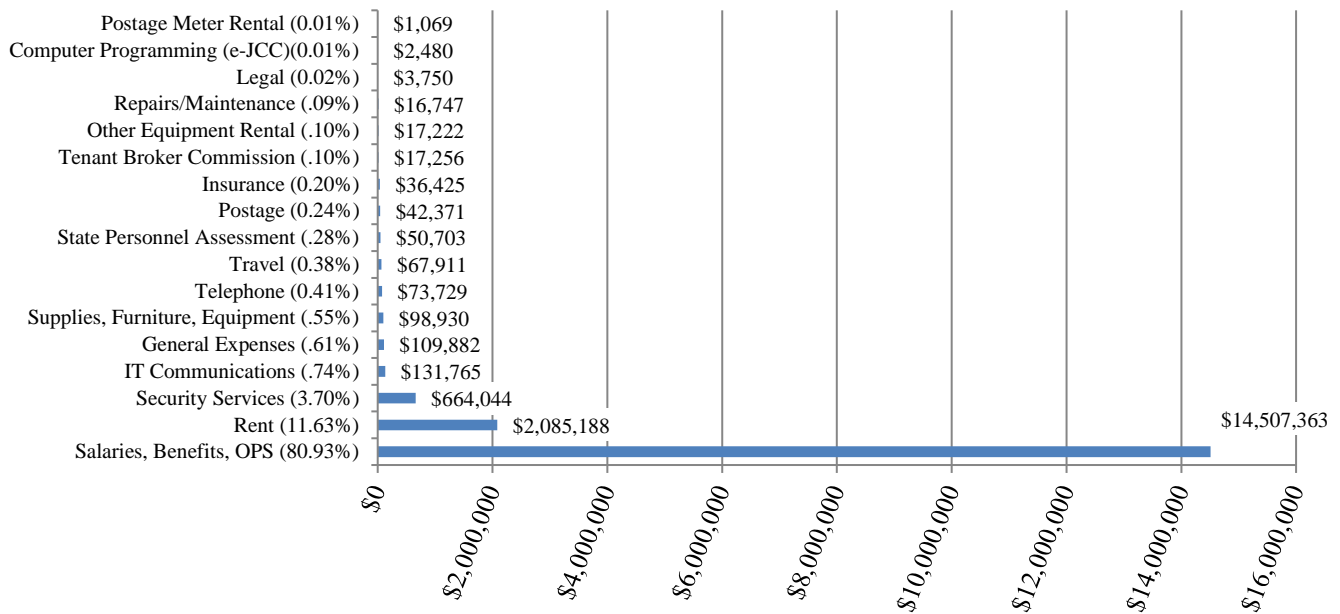
The Florida court system defined in Article V. is subject to different budgetary constraints and pay rates than the Executive branch. Article V. court employees, performing less technical or specialized, and more clerical services in that litigation adjudication system, earn starting annual salaries significantly higher than the OJCC budget allows. In prior reports, it has been noted that court personnel were paid up to \$7,291.56 more than comparably titled OJCC paraprofessionals.<sup>53</sup> Research in 2021-22 revealed that this difference is becoming greater. The salaries of ten randomly selected Court Judicial Assistants was compared to ten randomly selected OJCC Clerk II around the state. The difference between the two averages was \$10,450.42, or about 28%. The OJCC cannot compete with the Article V. courts in this regard and can expect continued staff turnover as a result.

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 struggles 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.<sup>54</sup>

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 (JCC). 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 JCCs for adjudication is almost limitless. In this regard, JCCs’ duties are more comparable to Circuit Court Judges than County Court Judges. That said, 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. Even so, each trial requires preparation and publication of a substantive final order. Virtually all these orders are time-consuming and involved, usually 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 match these duties (*see* Appendix “12”).

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-PFB 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 vertical axis) have not traditionally varied markedly. The effects of inflation continue to impact lease rates on premises and legislative approval of much needed cost-of-living salary adjustments in 2021-22 and 2022-23 have increased expenditures for salaries and benefits. The effects of office consolidation can be observed in the 2022-23 rent total (\$2,085,188), decreased 10% from 2021-22 (\$2,316,367), despite the inflation escalation at the remaining offices. The effect of closure is also seen in the security cost in 2022-23 (\$664,044) a decrease of 13% from 2021-22 (\$763,110). The effect of salary increases is as apparent in the 2022-23 total (\$14,507,363), which increased 10% from 2021-22 (\$13,319,264).

In 2022-23, about ninety-six percent (96.26%)<sup>55</sup> of the OJCC budget was devoted to salaries/benefits, rent, and security services. In 2021-22, with some impact from staff reductions and office closures, that was about ninety-four percent (94.37%).<sup>56</sup> As the Legislature considers the budget of this Office, it is critical that the clear majority of this agency’s budget is critical to the effective management of significant and consistent volumes of litigation, as discussed fully below. Though the statutory mandate regarding structure<sup>57</sup> has been eliminated, and despite the convenience afforded by virtual proceedings, there will remain purpose for the OJCC physical premises, personnel, and facilities in a geographical distribution that affords the public access and service.

## **Data Collection and Reporting**

This report is produced and published pursuant to statutory mandate. *See* §440.45(5), Florida Statutes.<sup>58</sup> The accuracy of the data in this report depends on the efforts of district staff working in thirty-one Divisions in seventeen District Offices (as they existed for most of the fiscal year) throughout Florida. The *2005-06 OJCC Annual Report*<sup>59</sup> described prior data flaws resulting from antiquated hardware, outdated software, and long neglect of staff training before the transfer of the OJCC to the DOAH in 2001. Since fiscal year 2006-07, the OJCC has devoted significant resources to staff training to enhance the accuracy of that data. Those efforts are explained in the *2006-07 OJCC Annual Report*,<sup>60</sup> and included the publication of an illustrated database user manual, as well as central and regional staff training. That database user manual was revised periodically<sup>61</sup> and is now in a biennial review and update cycle under the guidance of the OJCC Central Clerk’s Office. The annual reports since 2006-07, have documented improvements in effectiveness and efficiency 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 to try to identify any potential basis for such errors or omissions. Corrections are sometimes necessary.<sup>62</sup> 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.<sup>63</sup> A second area of concern was 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 exceptional example documented in the *2020-21 OJCC Annual Report*, a case was continued ten times over a two-year period often without written motions or orders complying with the statute.<sup>64</sup> In 2022-23, an instance was identified in which a case remained pending 790 days after the petition was filed. There were at least six continuances, three without any motion, long delays regarding motions, and transparency challenges. This also involved the EMA appointment process.

Judicial independence dictates interpretation of statutes and rules must be left to the individual adjudicator presiding in a matter. Still, 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 filing<sup>65</sup> (eFiling, or eJCC), the OJCC has continued to revise and leverage this process. In 2011-12, the OJCC began to enforce the mandatory<sup>66</sup> 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. 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 before the legislative mandate.

In 2012-13, programming was completed to allow electronic service<sup>67</sup> (eService) of pleadings among and between lawyers and insurance carriers. The result is a neatly integrated electronic filing and service system that is exemplary.<sup>68</sup> In 2019, the programming was completed to allow electronic service upon Registered Employers also. This added function is likely the final enterprise-deployment of eService.<sup>69</sup>

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 were the first significant decrease in e-filed documents since the system deployed. The 2021-22 filing was notable, and the 2022-23 volume is statistically similar. In each of those years, there was a surge in PFB filing volume also. *See infra*, pages 16-19. The changing ratio of PFB filing to overall filing might be of import. The petition to overall filings in 2022-23 was 748%, the lowest it has been since 2010-11. This is evidence of increased PFB filing, but a diminished intensity of litigation

2005-06	361	
2006-07	24,133	6585%
2007-08	193,745	703%
2008-09	328,660	70%
2009-10	380,897	16%
2010-11	451,649	19%
2011-12	461,820	2%
2012-13	502,448	9%
2013-14	521,205	4%
2014-15	522,321	0.21%
2015-16	545,695	4.5%
2016-17	583,485	6.9%
2017-18	582,762	-0.12%
2018-19	601,378	3.19%
2019-20	603,499	0.35%
2020-21	559,481	-7.29%
2021-22	574,169	2.63%
2022-23	573,394	-0.13%

about them. This may relate to the pandemic, but as the workplaces and economy recover, that explanation is increasingly difficult to support.

In 2022-23, the cumulative volume of electronically filed documents exceeded eight million. Using the parameters described in the *2006-07 OJCC Annual Report*,<sup>70</sup> the cumulative end-user savings generated by this eFiling system, by the end of fiscal year 2022-23, were at least six million six hundred two thousand eight hundred twenty dollars (\$6,602,820).<sup>71</sup> The other savings to the OJCC is at least eight million eight hundred eight thousand six hundred nine dollars (\$8,808,609). The combination of savings from eFiling alone is therefore over fifteen million dollars (\$15,411,429).

The OJCC added electronic service to the eJCC platform in January 2013. This feature allows significant volumes of documents to be served electronically upon opposing counsel, insurance carriers, and a growing population of employers alongside eFiling. This process change has enabled another annual savings to practitioners and carriers of more than one million dollars, and more likely over one and one-half million,<sup>72</sup> because of the ability to serve each other documents electronically. The eFiling savings (\$15,039,147), combined with eService savings (\$9.5 million = 9.5 years at \$1 million each), is over twenty-four million dollars. The JCC return on investment from eFiling/eService has been admirable and shows great innovation and efficacy. 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.<sup>73</sup> The OJCC's success with eFiling and eService has been achieved with no need for extraordinary budget allocations.

The effect of Registered Employer eService continues to further enhance those system savings, provide more persistent and regular communication with employers, and better serve the Florida marketplace. As the confidence in the Registered Employer program grows, it is hoped more employers will partake. Fiscal year 2022-23 has seen increased use of this alternative and suggests the probability of further registrations. The potential for mandating registration for some categories or types of employers remains a possibility.

## **Number of Litigated Cases**

It is hard 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 the electronic filing and service 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](http://www.fljcc.org)). The *2008 OJCC Annual Report* noted an unprecedented level of confidence in the figures expressed there; it is believed that the statistics in the annual reports since that time warrant that same confidence.

There remains one irreconcilable issue with the reporting of the "number of cases."<sup>74</sup> In workers' compensation, there simply is no clear definition for "cases."<sup>75</sup> Litigation in Florida workers' compensation is usually instigated with a PFB. Each PFB might seek a single benefit, or many benefits.<sup>76</sup> A single PFB could theoretically seek 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 singular 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. A given workers' compensation trial might decide the issues in one PFB or several PFBs serially filed before trial. The overall number of PFBs filed is therefore only one measure of system volume.<sup>77</sup> The reality 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 2022-23 could seek resolution of an issue about an accident that occurred that year or perhaps many years earlier.<sup>78</sup>

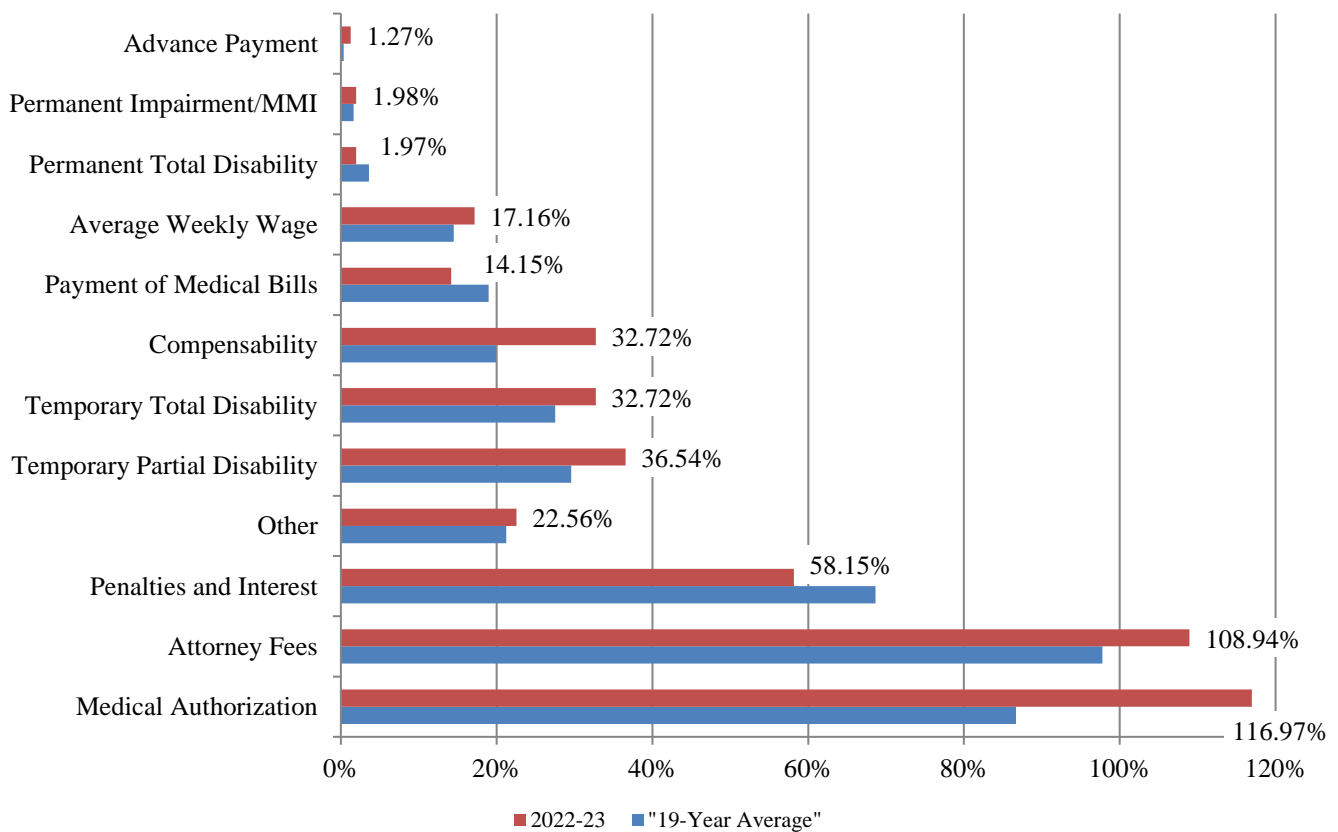
Another viable measure of volume is the "new case" PFBs filed annually. "New cases" may begin with a motion or PFB, which likewise reference a date of accident that is either recent or remote. That said, each "new case" PFB represents an accident for that particular injured worker that is new to litigation: "new" to the OJCC.<sup>79</sup>

This metric measures “new” litigation, but ignores the intensity of litigation. On the other hand, 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<sup>80</sup>; frequent examples include motions for attorney fees, prevailing-party costs, enforcing agreements, and similar evidentiary motions.<sup>81</sup> Such motions occur in both existing litigation and as “new cases.” 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 motions<sup>82</sup> also represent “litigated” cases, it is believed that cases instigated by PFB filing effectively represent litigation volume trends statistically.

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 nineteen-year period 2003-04 through 2021-22 (blue bars on the bottom of each category) and the rate of filing for those categories in the current fiscal year, 2022-23 (red bars). The rate of medical authorization claims has been noteworthy for the last eleven fiscal years (2011-12 through 2021-22). For the last seven 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 PFB 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 ten fiscal years (2012-13 through 2021-22). Even so, as reported in the various annual Settlement and Mediation Reports,<sup>83</sup> the volume of settlements on denied compensability cases has not fluctuated similarly. This is chiefly attributable to the very small data set represented by the denied cases reported there<sup>84</sup> and the over-pleading of compensability when it is not necessarily denied, but is perceived so in the instance of missing or unclear communication regarding medical care.<sup>85</sup>



Comparison to the chart published in 2021-22 demonstrates multiple points of interest. Temporary total, temporary partial, and compensability claim frequency were each higher in 2022-23. Payment of medical bills, penalties, and interest are each slightly lower in 2022-23. Medical Authorization is markedly higher at 116.97% compared to 106.72% in 2021-22. Attorney fee claim frequency also increased notably in 2022-23 (108.94%) compared to 2021-22 (100.86%).

### **Gross Petition for Benefits 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 18). Just before 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 year 2012-13, save for a slight increase in 2008-09.<sup>86</sup>

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*<sup>87</sup> and *Miles*.<sup>88</sup> The five percent (4.6%) PFB filing increase in 2016-17 could have perhaps suggested a continued trend of increased filings. That said, the PFB filing volume in 2017-18 was nearly unchanged from 2016-17, a decrease of 70 PFBs, or one-tenth of one percent.<sup>89</sup> 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.<sup>90</sup>

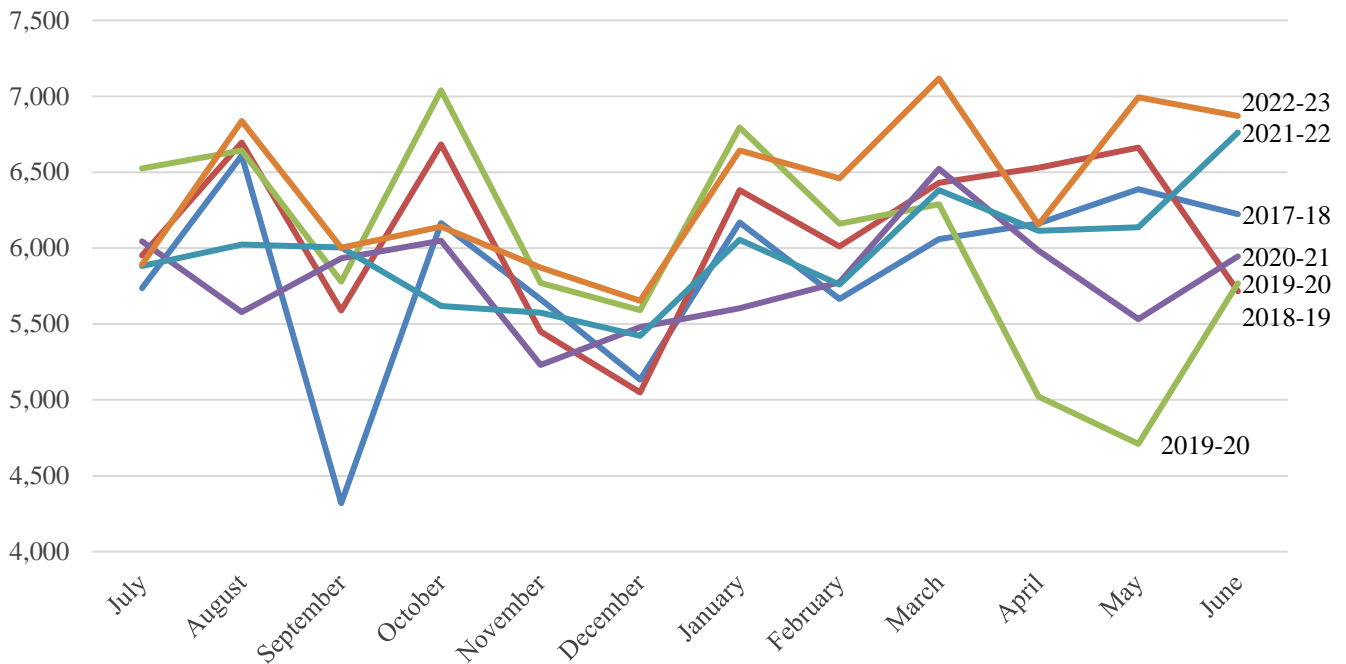
Fiscal year 2019-20 brought a small (-1.4%) decrease in PFB volume. The relationship between that decrease and the onset of the COVID-19 pandemic is now clear. For the first nine months of 2019-20 (July 2019 through March 2020), PFB volumes were up 4.3% compared to the same three quarters of 2018-19. Volumes plummeted in April (-23%) and May 2020 (-29%), but then increased slightly (1%) in June. The COVID-19 “lockdown” in Florida coincidentally began April 1, 2020.<sup>91</sup> The state was significantly constrained through the beginning of “phase one” reopening on May 4, 2020.<sup>92</sup> “Phase two” of the reopening was instigated in June 2020, but multiple local governments implemented broader restrictions and constraints.<sup>93</sup> Thus, the impacts during the fourth quarter of 2019-20 are patent. Furthermore, the statistics for 2020-21 illustrated persistent effect on the volume of litigation.

Fiscal year 2021-22 demonstrated a notable increase in PFB filings, but not to the pre-pandemic level of 2018-19. In 2022-23, the increase seemingly became an upward trend. This is a pause in the reasonably consistent vacillation since 2015-16, the first two-year increase. This is particularly interesting because the 2022-23 increase (6.8%) is the biggest change since 2015-16 (12.1%). As significant, the 2022-23 volume (76,633) is the highest recorded since 2006-07. The overall volume may be influenced by Floridians returning to work post-pandemic, changing jobs, or other familiarity issues.<sup>94</sup> But the evidence shows that accident frequency is decreasing despite the apparent<sup>95</sup> increase in litigation.<sup>96</sup>

The following illustrates PFB filing monthly for the last five years. The probable Hurricane Irma impact in September (blue, 2017-18) is apparent as is the marked pandemic decreases late in 2019-20 (green). The relative consistency of lower filings in 2020-21 is also apparent (purple); rarely were 2020-21 filings on par with prior years (September and March were notable exceptions). Any analysis of suggestion of a trend in the 2022-23 increase (6.8%) might also consider that each month equaled or surpassed the 2021-22 figures.

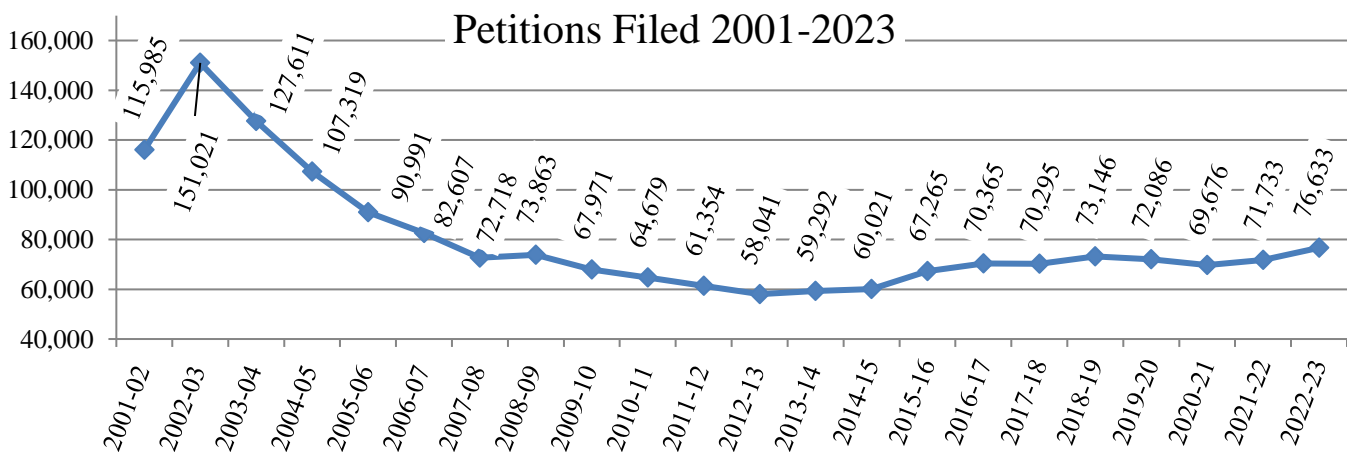
Fiscal Year	Petitions Filed	% Change
2002-03	151,021	
2003-04	127,611	-15.5%
2004-05	107,319	-15.9%
2005-06	90,991	-15.2%
2006-07	82,607	-9.2%
2007-08	72,718	-12.0%
2008-09	73,863	1.6%
2009-10	67,971	-8.0%
2010-11	64,679	-4.8%
2011-12	61,354	-5.1%
2012-13	58,041	-5.4%
2013-14	59,292	2.2%
2014-15	60,021	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%
2021-22	71,733	3.0%
2022-23	76,633	6.8%





The 2021-22 OJCC Annual Report suggested that volumes reflect a new normal since 2016-17, and the potential that 2021-22 volumes were influenced by court decisions. That references the 2016-17 OJCC Annual Report<sup>97</sup> and analysis of potential impacts of the 2003 statutory amendments and various court decisions. It is fair to say the perceptions regarding Florida’s statute and decisional law remain varied and at times unpredictable, though previous reports have concluded that prediction of increased litigation were largely unfounded in the wake of the 2016 decisions.<sup>98</sup> Despite that evidence, there is some potential that the filing change in 2022-23 may be significant. This might be seen in either the frank increase (highest volume since 2006-07) or the rate (largest single-year increase since 2015-16; second largest single-year increase since 2003 reforms).

Perhaps perceptions of the outcome of cases, *Castellanos* or *Miles* for instance, continue to impact PFB filing volumes currently. But 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.<sup>99</sup> While the effect of COVID-19 in 2019-20 and 2020-21 is seemingly more apparent, there is less foundation for broad conclusions about the 2022-23 volumes.



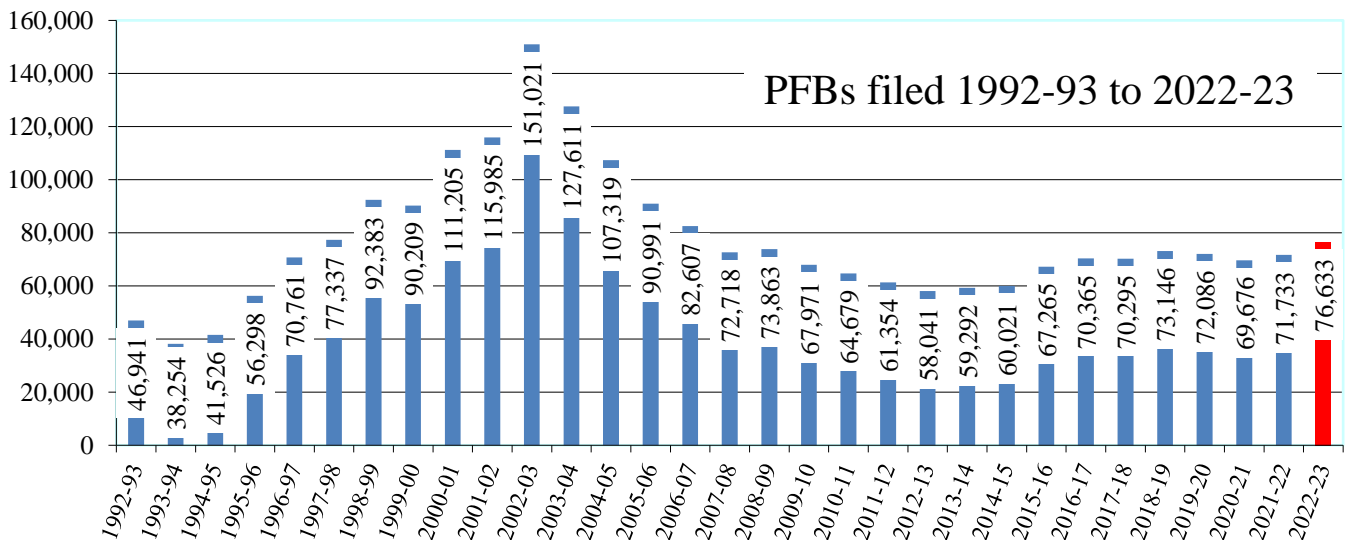
Florida workers' compensation premiums decreased significantly after the 2003 statutory reforms. The cumulative premium decrease through fiscal year 2008-09 was around 58%. Interestingly, in that same period, PFB filings had decreased around fifty-two percent (51.85%), which some may have interpreted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

Despite consistently decreasing PFB filing rates between 2009-10 and 2012-13, workers' compensation rates increased annually. The rate changes are approved in the fall of each year. Those rate changes are reactive to past experience and thus logically relate, if at all, to activity or PFB volumes before each described premium change. (See Fee by Accident Year discussion, page 49). The apparent lack of congruity between PFB 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. Most workers' compensation injuries are administratively managed and paid. Thus, most accidents never enter the OJCC's system for mediation or trial. Thus, the PFB 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.

Fiscal Year	PFB change	Premium change
2009-10	-8.0%	-6.80% <sup>100</sup>
2010-11	-4.8%	7.80% <sup>101</sup>
2011-12	-5.1%	8.90% <sup>102</sup>
2012-13	-5.4%	6.10% <sup>103</sup>
2013-14	2.2%	0.7% <sup>104</sup>
2014-15	1.2%	-2.50% <sup>105</sup>
2015-16	12.1%	-5.10% <sup>106</sup>
2016-17	4.61%	14.50% <sup>107</sup>
2017-18	-0.10%	-9.60% <sup>108</sup>
2018-19	4.10%	-13.80% <sup>109</sup>
2019-20	-1.40%	-5.40% <sup>110</sup>
2020-21	-3.30%	-6.60% <sup>111</sup>
2021-22	3.00%	-4.90% <sup>112</sup>
2022-23	6.80%	-8.40% <sup>113</sup>
2023-24	tbd	-15.10% <sup>114</sup>

The following graph represents PFB filing since 1992-93.<sup>115</sup> This belies the 1994 reform's intention to curtail litigation. Instead, the PFB filings increased markedly and reasonably steadily afterward. The OJCC was staffed by 31 judges in 1993. Following the 2012 budget/position reductions, the OJCC is again staffed by 30 judges (31 positions, one of which is under consideration in Miami as this report was prepared). 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 2021-22 PFB filings (71,733) remain about 87.5% higher than in 1993-94 (38,254).

Presuming the accuracy of these Department of Labor and Employment Security (DLES) volumes below,<sup>116</sup> the PFB filing rate in 2012-13 was the lowest in eighteen years, since 1995-96. The trend recently changed, and PFB filing increased. It appeared a trend to increase was interrupted by the effect of COVID-19/SARS-CoV-2 in 2019-20,<sup>117</sup> and the decrease in 2020-21 was more pronounced. But the filings in 2021-22 (71,733) and 2022-23 (76,633) demonstrate a return to increasing volume.



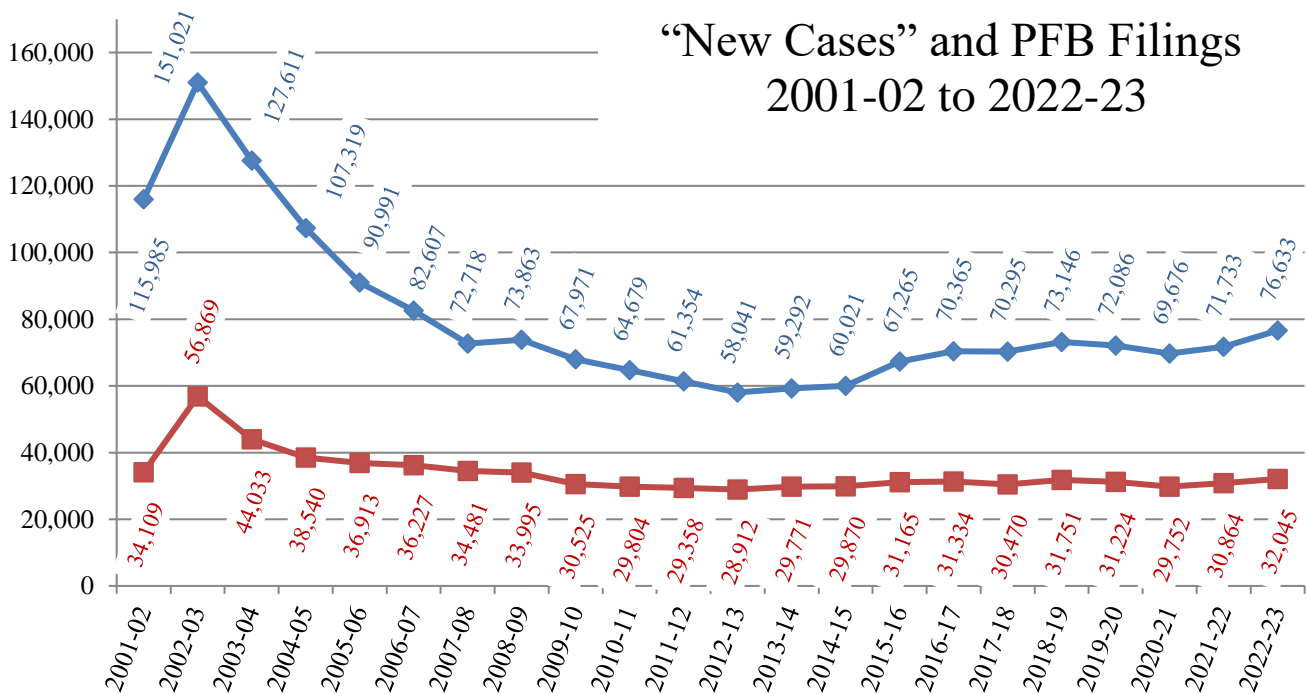
## New Case Filing

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,<sup>118</sup> 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 suggests 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, “new case” measure is the inverse of the volume of settlements approved in a year, which shows the measurable (some cases become dormant and expire of their own accord) rate at which cases are permanently leaving the OJCC litigation process. Although individual claims can be resolved without settlement, cases that are not settled can return to the litigation process for some future claims or issues. The “new case” measure may also be a more accurate indicator than PFB filing volume of the effect of legislative changes to the substantive benefits provided to Florida employees through chapter 440, Florida Statutes.

That said, a “new case” filed in 2022-23 could involve an accident that year, or could involve an accident that occurred years prior, even before 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.<sup>119</sup> 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 the 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 2021-22 (30,864) was a 3.74% increase from the prior fiscal year, following two years of decreasing volume. Despite an increase in PFBs filed, beginning in 2015-16,<sup>120</sup> the “new case” filings remained relatively stable over the same period. The 2020-21 “new case” volume was the third lowest volume in the last 20 years. The 2022-23 volume is the highest volume in the last fourteen years (since 2008-09). The 2022-23 increase of 3.8% also marks the first instance of notable back-to-back new case increases (3.74% and 3.83%) since 2003.

The following graph depicts the historical OJCC “new case” filings (red), and the PFB filings (blue) since 2001-02. The persistent consistency of “new cases,” as PFB volume trended upward beginning in 2015-16, seems to support that injury frequency; and new litigation has remained reasonably stable, but litigation intensity has recently increased with some consistency.



This comparison has consistently shown that “new case” filings have not been as elastic as PFB filings. Over the last ten years, the “new case” filings have only demonstrated two years in which variation exceeded a standard deviation from the mean. The PFB volumes in the same period have fluctuated more than a standard deviation three times. Standard Deviation measures dispersion of values around the average, and the lower its value, the more logical or consistent one may perceive the studied data. The “new case” filing rates have been more consistent than PFB volume.

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*,<sup>121</sup> the suggestion was made that the downward PFB trend might be ending. The data afterward substantiated that prediction, until the pandemic began in 2020. Current conventional wisdom in 2020-21 held that filings would return to that upward trend when COVID-19 impacts were past. The 2021-22 increases (+3% PFB and +3.7% “new case” volume) supported those predictions, as did the more notable and consistent 2022-23 increases (+6.8% PFB and +3.8% “new case” volume). While the potentials for long-term COVID-19 remain,<sup>122</sup> in terms of workforce retirement, occupation change,<sup>123</sup> and adaptation of technology,<sup>124</sup> other forces are also at work. Inflation in 2022-23 reached its highest levels in 40 years.<sup>125</sup> Some predict that retirement trends are changing and workers over 55 are returning to the workforce.<sup>126</sup> The current news has been notable for the 2023 debut of artificial intelligence, and the potential it brings for increased automation.<sup>127</sup> In short, the workplace is changing, technology and safety are changing, and the workforce is changing. There are a multitude of potential factors that may produce long-term changes in accident frequency, severity, and the resulting workers’ compensation functions.

The volume of “new cases” filed may also be expressed as a percentage of the gross volume of PFB filed during the same time. 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 consistent immediately after the 2003 reforms, in fiscal years 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” increased as a portion of the overall filing rate. The comparison exceeded fifty percent in 2013-14. The ratio remained notably consistent from 2017-18 through 2021-22, in the range of 43%. The ratio for 2022-23 is notable in its decrease. The ratio decreased despite marked increases in both “new case” and PFB filings. Because the PFB increase was so significantly greater, the ratio for 2022-23 is the lowest since 2005-06. Despite the increase in “new case” filings, this demonstrates greater litigation intensity is probable.<sup>128</sup>

The intuitive conclusion from this analysis might focus on attorneys’ fee payments, as amended in 2003. One might postulate that there was a perception that litigation early in a claim was then more lucrative than subsequent litigation. Such a perception might be shown in a willingness to file “new cases,”<sup>129</sup> but reluctance to litigate arguably minor issues after due to fee compression.<sup>130</sup> Perhaps 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.<sup>131</sup>

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%
2021-22	71,733	30,864	43.0%
2022-23	76,633	32,045	41.8%

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.<sup>132</sup> That said, since the courts decided *Castellanos*<sup>133</sup> and *Miles*,<sup>134</sup> neither “new case” nor PFB filing volumes immediately soared, except for PFB volume immediately following the decisions. The data now supports that both volumes are increasing. It remains possible that two years do not make a trend. In any event, the potential for a trend warrants monitoring. This is particularly valid in light of the broader evidence of ongoing decreases in accident/injury frequency.<sup>135</sup>

**Pro se Cases**

The Office of Judges of Compensation Claims (OJCC or Office) 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 claimant is represented or not at a given moment in time (a “snapshot”<sup>136</sup>) can be determined with reasonable accuracy. This does not answer whether a claimant in fact *filed* any *pro se* PFB.

Fiscal Year	New Cases	Pro Se June 30	
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%
2021-22	30,864	2,597	8.41%
2022-23	32,045	2,633	8.22%

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 later ceased to be represented, and filed another *pro se* PFB, the database would then reflect four “open” PFBs attributable to a *pro se* claimant, even though 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, even though one of those five was in fact filed *pro se*. Thus, the comparison in the charts is accurate in a particular moment (*see* endnote 136).

The JCC Application database can report the total volume of “new cases” opened in a given fiscal year and the percentage of them that are “represented” or that are *pro se* cases on a given day. The chart above depicts the comparison of *pro se* cases at the end of the year compared with the volume of “new cases” filed in the year. This comparison is of potential interest because the “new case” rates have shown less elasticity than PFBs.

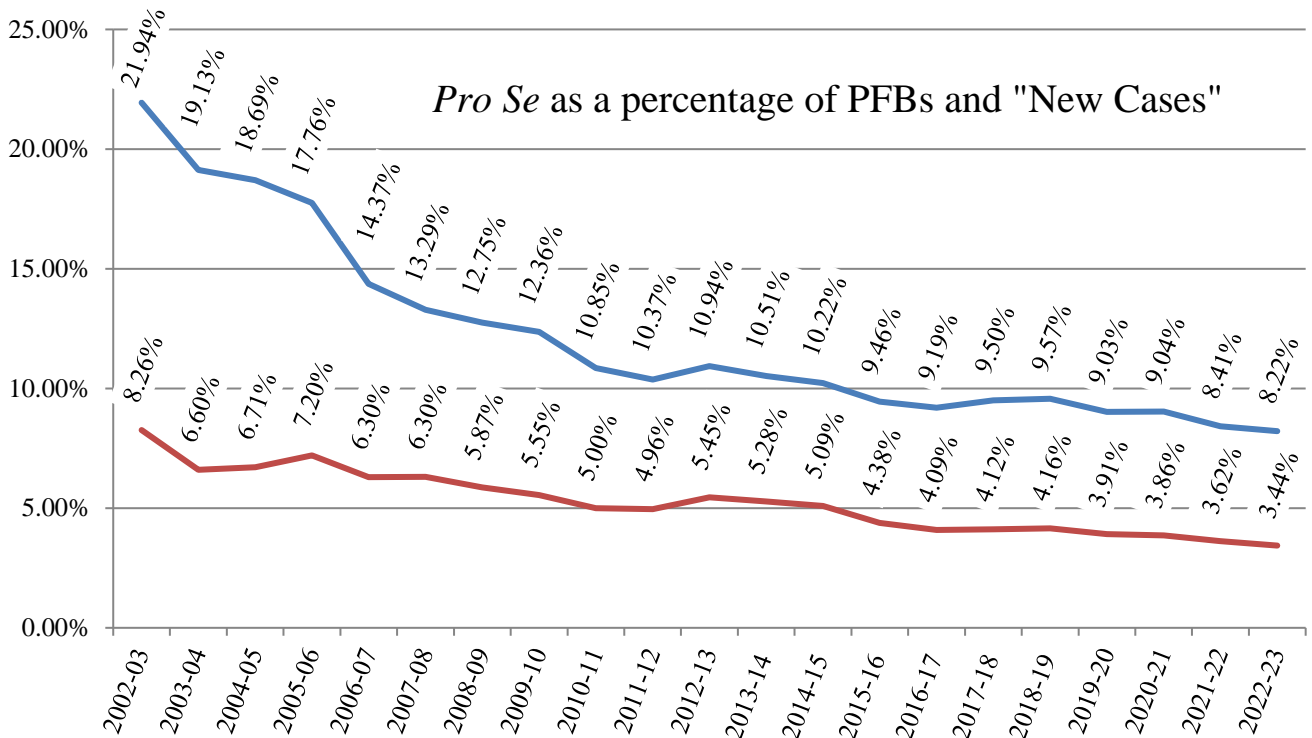
Likewise, the OJCC can calculate the percentage of *pro se* PFB, compared to the total volume of PFBs filed during the year before (chart on the right). The chart (right) depicts the percentage of all PFBs filed each year, and the pending PFB population attributable to *pro se* claimants at the end of that same fiscal year (each ends on June 30). These figures are impacted by both the volume that are *pro se* and the overall filing volumes. 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. In any event, these two calculations are the best answer the OJCC can currently provide to the question of *pro se* litigant volume.<sup>137</sup>

Fiscal Year	PFB	Pro Se June 30	
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%
2021-22	71,733	2,597	3.62%
2022-23	76,633	2,633	3.44%

Despite the difficulty with a concise answer to how many are *pro se*, the data demonstrates remarkable consistency over time, but the *pro se* percentage in June 2023 was the lowest on record. The consistent trend of decrease has persisted for the last four fiscal years. The raw number of *pro se* increased 36% in 2022-23; the decrease in the percentage results from the marked increase in both “new cases” and PFBs.

The available data does not prove that the *pro se* claimant population is increasing,<sup>138</sup> or markedly changing except for the steady decrease. The

data supports that there has been minimal fluctuation in the *pro se* volume and percentages. That said, the trend has been consistently lower *pro se* participation overall, with reasonable consistency in both comparison of PFB and “new cases” over the last seven years. This is emphasized further in the graph below.



This depicts the ratios of “new cases” (blue) and of the PFBs (red) to the population of *pro se* PFBs pending on June 30 of each of the last twenty (20) fiscal years. The overall trend is consistently to decrease. These comparisons show 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* continues to trend down.

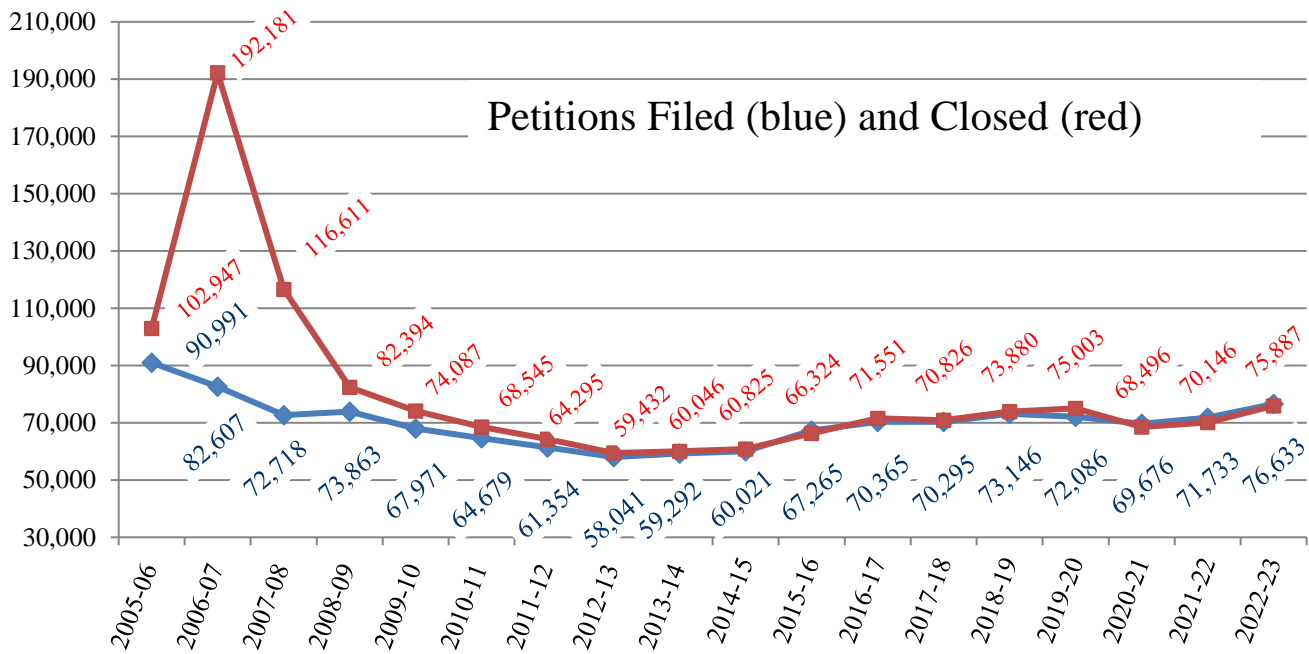
### **Amount of Litigation Resolved**

The OJCC struggled early in the twenty-first century with the closure of PFBs. The legislature has defined statutory time parameters for the mediation and trial of PFBs in section 440.25, Florida Statutes.<sup>139</sup> This legislative mandate for timely adjudications is inconsistent with a prior marketplace practice of utilizing a PFB (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,<sup>140</sup> 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 to remain pending indefinitely and act as a “tolling” of the statute of limitations.<sup>141</sup> Additionally, PFB closure was a difficult issue for the OJCC following the massive influx of PFBs in 2002-03 (151,021).<sup>142</sup> The sheer volume of PFBs in 2003 markedly affected workload and therefore effectiveness in most Districts.

In the context of litigation volumes, Florida has grown significantly, *See* page 10. Since 1994, Florida’s population grew over 50%, from fourteen million to over twenty-one million people.<sup>143</sup> The OJCC has operated without significant increases in either judges or staff since the addition of the mandatory mediation process in 1994. In fact, in 2021-22 the staff was reduced more than 10%. Between 2006 and 2021-22, the OJCC has fully integrated the child support information provision process alleviating workload at both the Department of Revenue and Clerks of Courts, with attendant savings for the workers’ compensation litigants and counsel. 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.<sup>144</sup> In 2020-21, the Division of Administrative Hearings elected not to fill approximately 21 OJCC administrative staff positions as vacancies occurred, and most of those positions were removed from the OJCC workforce permanently.<sup>145</sup> In 2021-22 that DOAH process resulted in more staff reductions, which have become permanent. Despite these decreases, the Office remains effective and efficient. Even so, as discussed below, various extended periods without significant 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 (*see also* Budget and Training, page 11).

Discussion of litigation resolution begins with reiteration of the PFB filings compared to the PFB closures. This graph demonstrates the congruity of these two figures over the last eighteen years.



Most PFBs filed must be mediated.<sup>146</sup> After a PFB is filed, issues claimed in it may be resolved among the parties before mediation, at mediation, or later any time until a final order is issued. There are even exceptional times that the parties conduct a trial on the PFB issue(s), but then nonetheless resolve them before the assigned judge enters an order adjudicating them.<sup>147</sup> 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.<sup>148</sup> Remaining issues, such as an injured worker’s attorney fees and costs, may yet be tried upon the later filing of a verified motion.<sup>149</sup> 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 primarily emphasize 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 on 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 when 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 PFB was filed.<sup>150</sup> Though PFBs in that case were reflected in the database as “closed,” they were never

dismissed after the last payments were made in 2005.<sup>151</sup> A closure order could have clarified perceptions of status, prompted review and further discussion, perhaps leading to a timelier trial and decision.

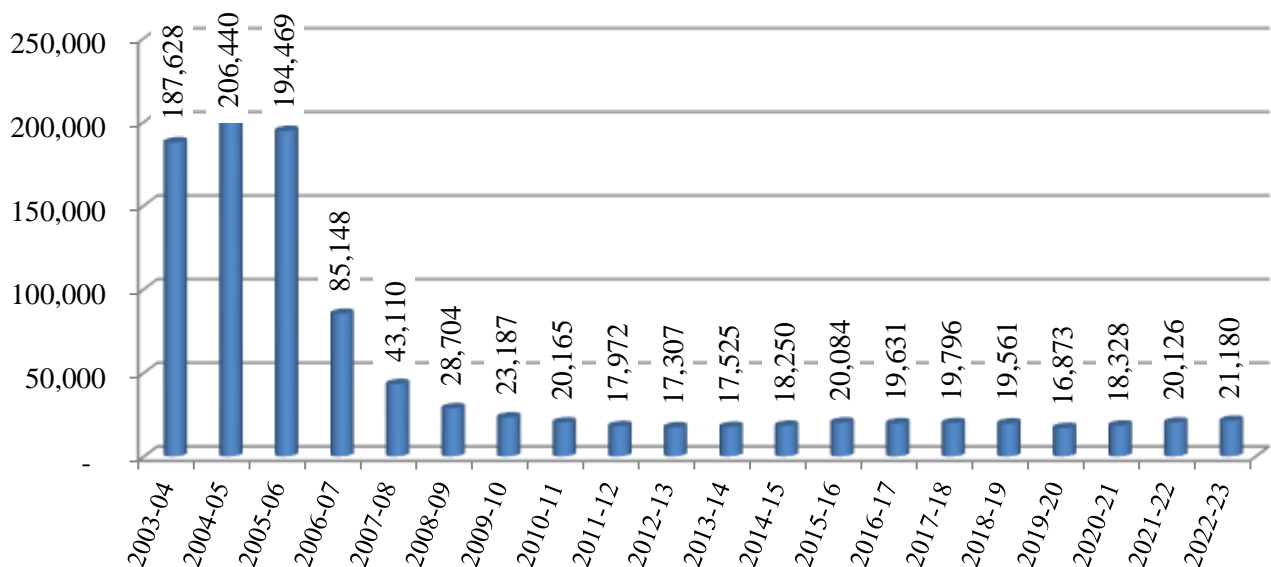
Some Divisions (each judge and her/his staff is a “Division”) were historically more efficient than others in documenting the closure of PFBs, as noted in previous OJCC annual reports (available at [www.fljcc.org](http://www.fljcc.org), under the “Publications” and then “Reports” tabs). Several Divisions began 2006-07 with accurately documented PFB inventories, meaning their inventory included only PFBs that appropriately should have been reflected 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 spiked in 2006-07 and 2007-08. The volume moderated in 2008-09 and has remained reasonably consistent the last fourteen fiscal years. The ten-year average, 2012-13 through 2022-23, was around 102%, illustrating a system in balance, and the effective management of incoming litigation.

The result is seen in the graph above showing a smooth progression in the last fourteen fiscal years to equilibrium in the OJCC system, meaning that in a given year, the OJCC will close around the same volume of PFBs as are filed that year. The extensive efforts of various judges and staff throughout Florida have dramatically improved the management of pending PFBs.

The year-end systemwide OJCC inventory of “pending” PFBs for the last twenty 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. Later, the year-end open inventory held between 17,000 and 20,000 with reasonable consistency, though the volume has shown an upward trend the last two fiscal years. In previous reports, it has been suggested that the notable decrease at the end of 2019-20 should be viewed as a similar anomaly, while the 2020-21 volume was likely related to the decreased PFB filings noted above. Thus, these two years likely illustrate impacts and effects of the pandemic. All the same, the year-end volume bears future scrutiny because the 2021-22 volume is not anomalous, but appears perhaps to begin an upward trend that must be scrutinized.

These two analyses, PFB closure versus PFB filing, and the aggregate year-end inventory support that the OJCC currently continues 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. Still, there may be instances like that described above in which all PFBs 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. While the potential for those is diminished by regular use of the closure order process that engages all parties in status verification, the possibility remains.





Over the last twenty fiscal years (2002-03 forward), one million six-hundred forty-eight thousand six hundred eighty-seven (1,648,687) PFBs have been filed, and one million six-hundred eighty-eight thousand three hundred five (1,688,305) PFBs have been closed. This is an approximate overall closure rate of one hundred two percent (102%). This further suggests that the OJCC continues to demonstrate consistently managed dockets.

This chart illustrates the marked increase in closure rates beginning in fiscal year 2005-06, followed by significant closure rates in 2006-07 (232.6%) and 2007-08 (160.4%), resulting from staff training. 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 several years, until 2003, the steadily increasing PFB filing rates, coupled with the lack of closure documentation, generated a growing apparent inventory (backlog) of PFBs in some Divisions. Staff training and focus since 2006 have overcome that challenge. But it is notable that equilibrium has been more elusive in recent years, resulting in a corresponding increase in year-end inventory. That said, despite the marked increase in PFB filing (+6.8%), the closure volume also appropriately increased notably, again approaching the 100% that would signal true equilibrium.

### **Cost of Litigation Resolved**

The OJCC budget (actual expenditure), divided by the number of PFBs closed, reflects the overall cost per PFB closed. This historically fluctuated (*see* chart, right; graph, below), largely because of the significant fluctuation in PFB closure rates. Of note was 2006-07 following efforts to correct data mischaracterizations, leading to an exceptional volume of PFBs closed that year.

These figures reveal relevance when considered in comparison to filing fees in Florida’s Circuit Courts.<sup>152</sup> For “small claims” filings, the Circuit Court 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 Court filing fee may be as high as four hundred dollars (\$400.00).<sup>153</sup> The OJCC is more financially efficient, with a per-PFB cost well below the Circuit Court filing fees. Those fees do not fully account for the court’s cost of operations, as the cost per PFB does. Additionally, usually, the OJCC cost is inclusive of mediation services, which generally are an additional cost to the parties in other civil litigation.<sup>154</sup> Admittedly, a given dispute in the OJCC might include multiple PFB, and so this comparison is not definitive. It is illustrative however. Over the last twenty fiscal years, the average cost per PFB closed was \$236.00, around 59% of the comparable Circuit Court filing fee.

The fluctuations of “per PFB” costs are also due in part to the minimal OJCC annual budget growth through 2008, followed by five consecutive budget reductions 2009 to 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 fiscal year 2006-07. The 2002-03

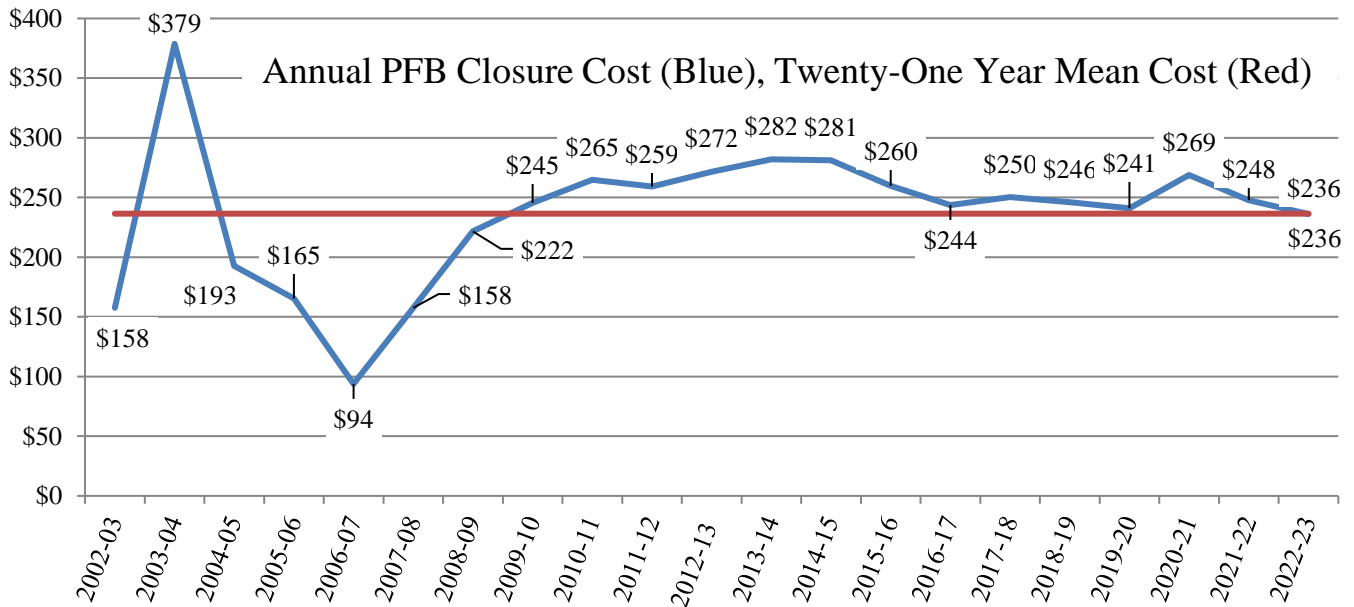
Fiscal Yr.	Annual Budget	Petitions Closed	Cost Each
2002-03	\$16,522,910	104,884	\$158
2003-04	\$16,225,513	42,843	\$379
2004-05	\$16,792,731	87,102	\$193
2005-06	\$17,022,942	102,947	\$165
2006-07	\$18,032,059	192,181	\$94
2007-08	\$18,367,869	116,611	\$158
2008-09	\$18,253,550	82,394	\$222
2009-10	\$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
2021-22	\$17,376,901	70,146	\$248
2022-23	\$17,926,835	75,887	\$236

of PFBs closed, reflects the overall cost per PFB closed, largely because of the significant

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%
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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%
2021-22	71,733	70,146	97.8%
2022-23	76,633	75,887	99.0%
Aggregate	1,648,687	1,688,305	102.4%

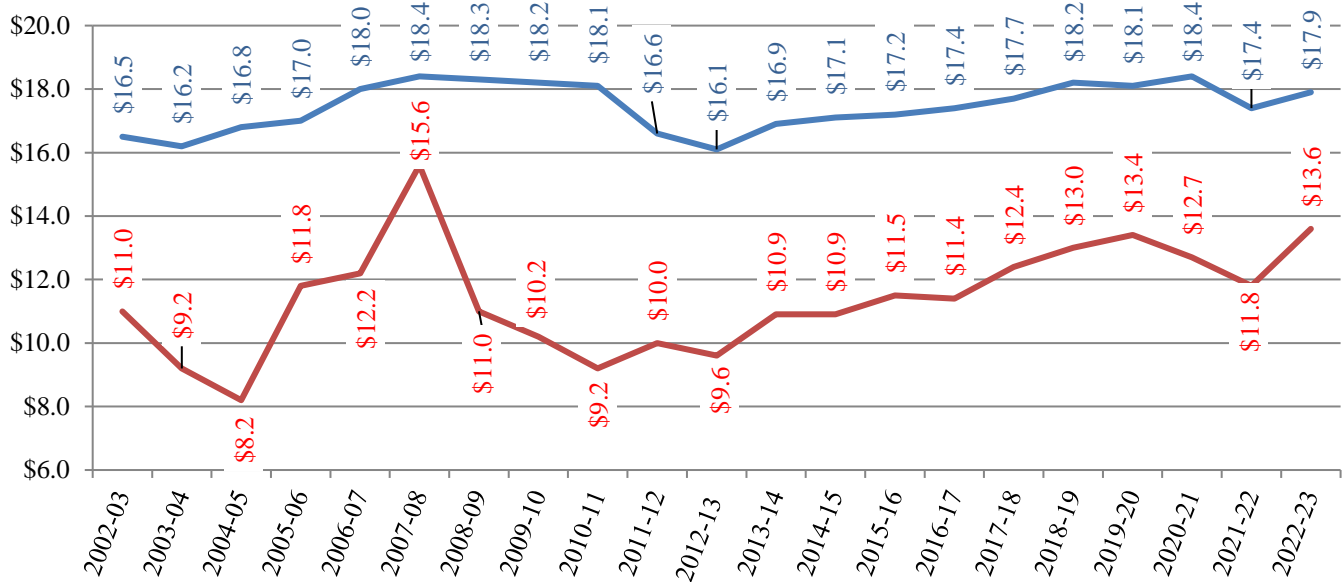
budget, adjusted for inflation, would have equaled a 2022-23 budget of \$27,570,451 instead of \$17,926,835, a difference of \$9,643,616, or around 54% of the actual budget.<sup>155</sup> The OJCC today is spending less per full-time employee (“FTE”), adjusted for inflation, than in 1992-93. During the 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.<sup>156</sup> At the same time, the number of judges and staff has remained almost static over the same period. In fact, as fiscal year 2020-21 concluded, the staff was reduced significantly, and staff reductions continued in 2021-22.<sup>157</sup> These facts illustrate that the OJCC has been exceptional at wisely managing the resources afforded and providing services to Floridians. In the graph below, the varying cost of PFB closure (blue), twenty-year average cost (red), and the average calculated as of each year (green) are depicted. The decrease in cost per closed PFB for fiscal years 2005-06 through 2007-08 is each overstated because of the extraordinary PFB closure rate during these years.



PFB closure rates have stabilized and closely follow the current filing rates. There is every reason to believe that trend will continue.<sup>158</sup> 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 closure volumes decrease, and to decrease if volumes increase. This is illustrated with the 2022-23 increase in PFB closure balanced against a reasonably static budget expenditure total in the graph above.

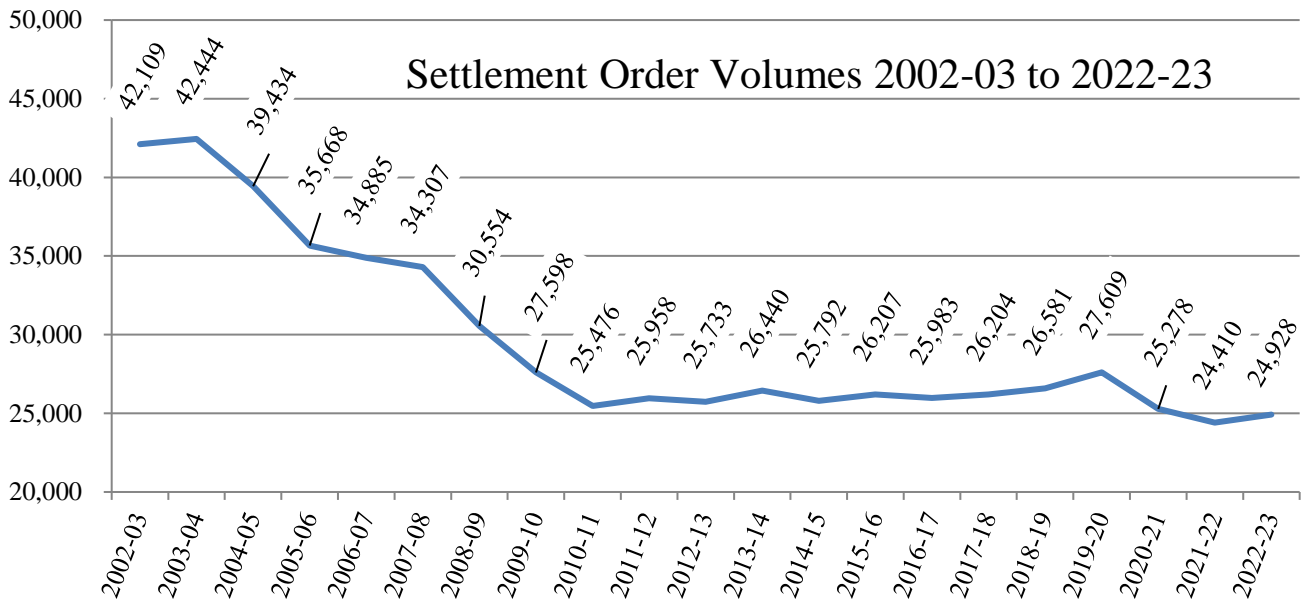
Another illustration of the cost-effectiveness of the OJCC is the volume of child support arrearages collected through the judges’ efforts since statutory authority was enacted in 2001. The Judges of Compensation Claims are statutorily required to ensure that the rights of child support recipients are considered when support payers settle their workers’ compensation case.<sup>159</sup> 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 extensive child support collected through these efforts for the last twenty-two (22) fiscal years is represented in this table, which total over \$244 million (\$244,141,695). The volume of child support arrearages collected is particularly interesting given the overall OJCC budget discussed above. Over the last twenty-two (22) 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 Court 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 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 new staff or funding for the OJCC operations.<sup>160</sup> The comparison of child support recovery (red) and the OJCC overall budget (blue) is illustrated in the chart (right) and graph below (in millions). That internalized process within the OJCC has saved both the parties<sup>161</sup> and public<sup>162</sup> significant money while supporting the recovery of an average of about \$11 million per year.

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%
2021-22	\$17.4	\$11.80	68%
2022-23	\$17.9	\$13.6	76%

The decrease in child support collected in 2008-09 was seemingly significant. That said, that appearance results mostly 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 twenty-first 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 41-50). The volume of settlement orders eased (8.4%) in 2020-21, and another 3.4% in 2021-22. The 2021-22 figure showed an all-time low in settlement volume for the twenty-first century, which was noteworthy. One might attribute the 2020-21 decrease in part to the pandemic. The continued decrease in 2021-22 is perhaps harder to attribute to that. The small (2.1%) increase in 2022-23 could not return the volume to pre-pandemic. It is interesting that the most recent three years are the three lowest settlement volumes since the 2003 reforms. The decrease in settlement may relate to decreased injury frequency during the pandemic or a diminished population of open cases to settle. Even so, with “new case” and PFB volume increases, the persistence of these volumes is difficult to fully explain.



### **Number of Mediation Conferences Held**

In Florida workers’ compensation, most<sup>163</sup> PFBs must be mediated before they may proceed to final hearing. To provide greater detail about mediation efforts of the OJCC, a *Settlement and Mediation Statistics Report* was first published in August 2010.<sup>164</sup> The OJCC has published that report annually since. All are available at [www.fljcc.org](http://www.fljcc.org) under the “Publications” and then “Reports” tabs.<sup>165</sup>

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.

The volume of mediations held each year steadily decreased in 2002-03 through 2012-13, except for 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 in 2013-14 through 2017-18. Beginning in 2018-19, the volume trended to notable increase consistently for four years.

This was perhaps influenced by the pandemic, the transition to telephonic mediation,<sup>166</sup> evolution to video mediation, and closure of district offices. Furthermore, some of the increase reflects the addition of new mediator positions added to the system capacity in recent years.<sup>167</sup> The volume in 2022-23 interrupts the increase trend. Yet

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%
2021-22	71,733	3.0%	20,109	3.43%
2022-23	76,633	6.8%	19,917	-0.95%

the 2022-23 volume exceeded every annual volume in the last fourteen years other than the exceptional volume in 2021-22 (20,109).

In 2021-22, over twenty thousand (20,109) mediations were held by state mediators, at an average cost of around \$181.08.<sup>168</sup> That was an increase of 3% from the 2020-21 average cost of \$175.69.<sup>169</sup> Fiscal year 2021-22 was notable as it marked the first time the conducted mediation volume exceeded twenty thousand since 2008-09. In recent years, there has been cost savings partially because of the legislative action reducing the number of state mediators,<sup>170</sup> and efforts to return mediator staffing to parity with judicial positions. This cost of mediation is a component<sup>171</sup> of the overall cost per PFB closed (*see* page 25).

Cost is relative. Many private mediators charge *hourly* rates well above the OJCC average cost, commonly two hundred fifty dollars (\$250.00) per hour or more. Anecdotal evidence also supports that some private mediators charge minimum time commitment (such as a two-hour minimum) for all mediations convened.<sup>172</sup> Therefore, services comparable to those delivered by the OJCC mediators, from private mediators, would likely cost an average of around five hundred dollars (\$500.00) or more, compared to the OJCC cost in 2022-23 of around one hundred ninety-six dollars (\$196.17). The cost-efficiency of State mediation is clear, averaging about eighty percent (78.5%) of the cost of one hour of private mediation.

This cost is included in the overall OJCC budget discussed above (*see* pages 11-12 and 25), thus, part of the cost per PFB closed rather than another 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.<sup>173</sup> 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. On the other hand, if the volume of mediations decreases, the unit cost will rise unless reductions are made in the mediator staffing levels. Since fiscal year 2017-18 the OJCC has striven to increase the volume of mediations conducted by the state mediators, with the view toward further increasing efficiency and productivity. The addition of mediators was part of that effort, as well as publishing all state mediator calendars online to carry out parties' scheduling efforts.

There are multiple issues that influence state mediation efficiency. The OJCC is compelled to mediate cases within 130 days of PFB filing.<sup>174</sup> But there is also a statutory prohibition on noticing mediations until 40 days after the PFB is filed.<sup>175</sup> In giving notice of mediation, the OJCC must be conscious of the constraints of due process, that is, reasonable notice for mediation participants. It has become a practice to strive to provide parties with 30-days' notice of mediation, though some shorter notice could likely fulfill constitutional requirements.<sup>176</sup> That said, attorneys, adjusters, and workers have schedules; providing less notice could be calamitous to the ability to plan for, and effectively engage in, productive mediation. There is thus 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 into the claimed issues.<sup>177</sup> It is purportedly in hopes that such discovery will lead to rapid resolution that supported the statutorily mandated 40-day period. Unfortunately, the historical performance supports that 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 (notice<sup>178</sup>). Such cancellation may allow the mediator to assist with another mediator's calendar, but not to adjust her or his own. The shorter the notice of such cancellation, the harder it is to repurpose that time effectively. Thus, the inefficiency of the marketplace impairs the efficiency of the OJCC.

The Florida OJCC is not a court.<sup>179</sup> And as such, the Florida OJCC is not governed by the rules set forth by the Florida Courts pursuant to their constitutional authority.<sup>180</sup> 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.<sup>181</sup> The statutory OJCC mediator qualifications are distinct. There is no longer any general requirement that Florida Certified Mediators must be attorneys, yet OJCC mediators are statutorily required to be attorneys with "at least 5 years" experience, and undergo an approved training.<sup>182</sup> 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.

All OJCC mediators are certified by the State of Florida.<sup>183</sup> The certification standards have been established by The Florida Supreme Court through the Dispute Resolution Center,<sup>184</sup> and essentially adopted by the OJCC in selecting that standard for state mediators.<sup>185</sup> Certified mediators are governed by Rules for Certified and Court-Appointed Mediators.<sup>186</sup> 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 each mediator’s activity, and the MEAC advisory opinions assist with interpretation. While those opinions are not binding, they are widely referenced and relied on. 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. If the OJCC adopted some other “approved training,” the constraints of both Court rules and the MEAC would be diminished.

The specifics of workers’ compensation mediation are addressed in MEAC Opinion 2004-002.<sup>187</sup> 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.”<sup>188</sup> For clarity, there has never been any OJCC policy limiting the duration of OJCC mediation. That said, 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. 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. All the same, this may result in a mediator conducting multiple mediations simultaneously. As the OJCC has evolved in 2021-22 into a presumptively virtual mediation pattern using Zoom, the potential for a mediator simultaneously working on multiple mediations has likely increased.

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 potential mediation appointments that can be offered by the OJCC to Florida’s employers and employees. The annual maximum is likely around 123,660 appointments.<sup>189</sup> Such a volume would be untenable and unworkable. But a more practical volume is likely around 82,440,<sup>190</sup> which notably remains close to the current PFB filing volume.<sup>191</sup> With the implementation of the new mediation paradigm, which defaults to virtual mediation by Zoom, each mediator currently schedules seven mediations per day, equating to an overall annual appointment availability of 48,090.<sup>192</sup> It is projected that the increased PFB filing will at some point enhance the probability of PFBs being referred to private mediation.<sup>193</sup> During the 2021-22 fiscal year, multiple cases were ordered to private mediation because of staff resignations and delays in replacement. That was not necessary in 2022-23 due to the addition of mediators and the change in mediation assignment to mediators throughout the state.

The volume of state mediations conducted has not changed proportionately with the changes in PFB filing volume. Overall, since 2002-03, PFB volume is 49.3% lower and State mediation volume is down only 31.9% overall, as shown by 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, because of 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	
2022-23	76,633	-49.26%	19,917	-31.91%

As a result 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 fifteen fiscal years (2008-09 through 2022-23). 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](http://www.fljcc.org) (under the “Publications” and then “Reports” tabs).

The statutory requirement to send cases to private mediation<sup>194</sup> may also have helped facilitate more timely mediations in recent years. The action of sending a case to private mediation represents a significant cost to the 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.<sup>195</sup> 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.<sup>196</sup> 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. As the OJCC has transitioned to the new “statewide” mediator assignment process and the chiefly virtual (Zoom Internet conferencing) mediation practice, mediation appointment availability has been strained. The volume of PFB mediations renders voluntary mediation appointments scarce.

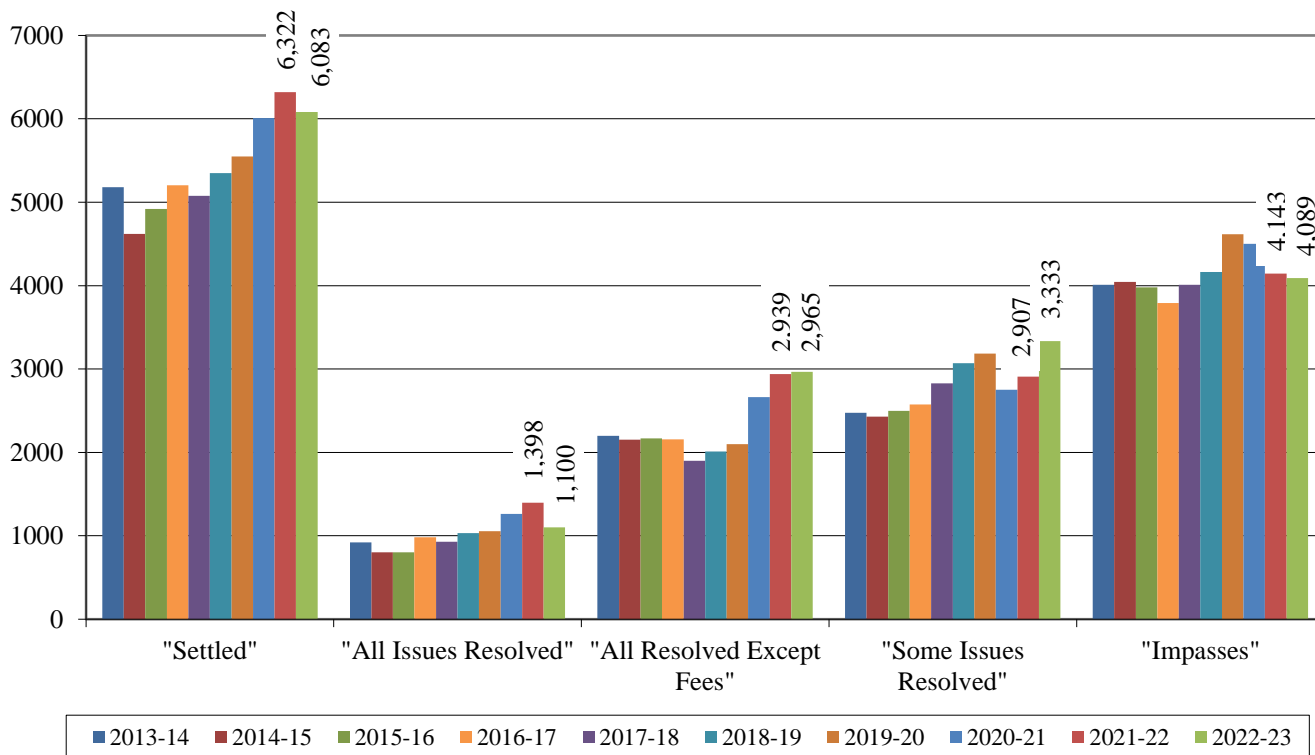
## **Disposition of Mediation Conferences**

A 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 benefits, temporary partial benefits, supplemental benefits, and/or permanent total disability benefits, and so on). 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 15 of this report.

The outcome of mediation is expressed in terms of what was resolved at that particular mediation. The characterization “impasse” is used to reflect that no issues were resolved. The characterization “settled” reflects that the entire case, including the pending issues in the PFB(s) and all future benefits yet undue and unclaimed, was resolved. Between these two extremes of “impasse” (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 (“impasse”) to the most resolution (“settled”). The results of mediation are reflected in this graph, illustrating this continuum from “all” or “settled” on the left side, to the least “none” or “impasse” on the right side of the graph. The graph below reflects the last ten (10) fiscal years for each of these outcome characterizations.

Previously, some mediators mislabeled resolutions that occurred before 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.<sup>197</sup> 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 still did not resolve at that mediation. Those actions no doubt resulted in misinterpretation of outcomes in prior OJCC reports. During preparation of the *2017-18 OJCC Annual Report*, an anecdotal example surfaced 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 mediations, rather than a single mediation for the consolidated cases/issues.<sup>198</sup> 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 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 (not pictured). In 2019-20 there was a notable increase in the volume of “impassé” outcomes, but any concern about that should be weighed against the increases in all of the substantive outcomes that year and the 6.8% increase in mediations held in 2019-20. That the volume of “impassé” has not increased is important as regards the presumptively virtual mediation process adopted in 2021-22. There were concerns expressed that mediation would not be as effective as in-person had been. The success of telephonic mediation in 2019-20 and 2020-21 was trivialized by some critics who suggested that success was not affirmation of telephonic but evidence of the pandemic exigency. The mix of outcomes notably changed in 2022-23, with fewer cases “settled” or “all issues resolved.” That said, there was increase in the other categories, and no increase in “impassé.” Thus, mediation remained successful and viable, though there was shift in the specific outcomes. None of those outcome volumes were unprecedented.

This is notable in the decrease in “settled” to 6,083 in 2022-23. That said, that is higher than the 6,009 “settled” in 2020-21. Thus, there is a valid argument that the 2022-23 volume is not extraordinary, but that the increased settlement in 2021-22 was. This comparison in the various categories, with the context of overall mediation volume is clearer in the chart below. This illustrates “settled,” as a percentage of total (30.5%), remained above the twenty-year average (29.4%). In that regard, the “impassé” remained below that average. There is some notable increase in the category of “recessed and reconvened,” which is essentially an outcome of no resolution but continuing discussion. The parties elect to part company with a commitment to reconvene and discuss further. This may be to afford time for procuring documents or developing evidence. The increase in that outcome in the last three fiscal years may result from the virtual process, and from the ongoing challenges of strained medical provider populations and the delays that may cause in developing evidence.

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Year	Med. 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%	11.68%
2021-22	20,109	31.44%	6.95%	14.62%	14.46%	20.60%	11.93%
2022-23	19,917	30.54%	5.52%	14.89%	16.73%	20.53%	11.79%
Average		29.37%	6.39%	12.69%	15.46%	27.27%	8.73%

Over the last twenty (20) years, the convened state mediations have resolved an average of at least “some issues” approximately sixty-four percent (63.91%) of the time (the sum of averages for outcomes excluding “impasse” and “recess and reconvene”). In 2022-23, approximately sixty-eight percent (67.92%) of convened mediations resulted in resolution of at least some issues,<sup>199</sup> which is very consistent with the resolution success in recent years. This demonstrated improvement in resolution remains notable as mediation volumes increase, the challenges of the pandemic were overcome, and the mediation process shifted to a new virtual/video paradigm. The “impasse” rate for 2021-22 was a record low. That said, the 2022-23 “impasse” rate is still lower. Though the mediation volume has increased in recent years, some of the increase can be attributed to the increase in recess and reconvene (R&R) outcomes.

## **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. The notably low percentage of mediation continuance is because of the recognition that an appointment might change without that being labelled “continued.” The term was not defined, and the OJCC therefore defined it by rule in 2010.<sup>200</sup> Rescheduling an appointment for a different date within the 130-day statutory parameter is considered a “rescheduling,” rather than a “continuance.” While the continuance volume increased slightly in each of the last two years, it remains exceptionally rare for mediation to be continued. It is likely that the 2020-21 nadir resulted in part from the pandemic, alterations in work practices,<sup>201</sup> and other interrelated business and personal demands. Even so, it is also likely that the transition to presumptively video mediation, coupled with the availability of all state mediators without geographic constraint, has resulted in the continuity of very low continuance rates.

For historical context, it is important to note the marked continuance increase in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. All the same, it coincided roughly with a high volume of weather-related office closures, as Florida endured serial cyclone landfalls, which affected virtually every Florida county. 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 year 2003-04 (*see* page 35). Before implementing 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 marked an avoidance of the statutory parameters, and some perceived it as a somewhat contemptuous reaction to the legislative imposition of those time frames.

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; 14 consecutive fiscal years.

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%
2021-22	71,733	137	0.19%
2022-23	76,633	159	0.21%

## **Number of Continuances Granted for Final Hearings**

Despite the challenges of COVID-19, continuance volume remained reasonably stable in 2019-20, decreasing slightly. The OJCC remained open and functional throughout the pandemic and judges retained full discretion over the trial process. Though this consistently offered in-person trial opportunities, many trials and procedural hearings were conducted over Internet video platforms, primarily Zoom. The hearing continuance volume has persisted to decrease. The totals for 2022-23 are the lowest continuance figures in the last 21 years. This likely has some relation to the ongoing availability of video trials. Still, that alternative has been available for some time. The second potential explanation is an increasing tendency to settle rather than proceeding to trial. That trend may be alleviating calendar congestion and affording parties ready trial date alternatives when rescheduling is required. When a hearing is changed to a different date, but within the 210-day statutory parameter, it is labelled “rescheduled” rather than “continued.”

Anecdotally, attorneys have complained that continuance occurs too infrequently. A perception has been periodically 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. This generalized criticism may refer either to the volume of continuances, the measure of days between

PFB filing and trial, or otherwise.<sup>204</sup> Though one must concede the potential for such influence, it is doubtful any of the current JCCs would be so inclined.<sup>205</sup> Despite that confidence, there are periodic times when a judge has repeatedly continued a final hearing. The record in those instances can be difficult to track and decipher based on insufficient and sometimes inaccurate data collected and recorded by the assigned judge. Though it is unfortunate, some adjudicators struggle with the responsibility of enforcing the statute as written and actively managing a docket. 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.<sup>206</sup>

Understanding of process is of benefit in this regard. Some judges schedule trial on each 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. The benefit of this method is maximized notice of trial, the detriment is congested judicial calendars and significant staff effort. 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, but shorter notice of trial. 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 support greater efficacy of either alternative. That said, 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* § 440.25(4)(b), Fla. Stat.

The available data supports that trial continuances per JCC have declined from seventeen and one-half (17.5) per month in fiscal year 2002-03, to four (3.6) per month in fiscal 2022-23. 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 since the early twenty-first century, and the availability of video hearings, flexibility, and convenience. The confluence of available technology, coupled with increasing technology acceptance by judges and lawyers, is likely a major contributor to the marked decrease in trial continuances.

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 Operations Manual,<sup>207</sup> 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 after that. As with any change, there has likely been some challenge with familiarizing technology and definitional changes throughout the many process changes during the last 20 years.

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
2021-22	1,447	48 <sup>202</sup>	4.0
2022-23	1,284	43 <sup>203</sup>	3.6

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## **Outcome of Litigated Cases**

When a PFB is filed, it is usually filed electronically.<sup>208</sup> 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, a great modern convenience. The ease of information access is empowering and democratizing. Even so, 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 as to process, access, and function.

Once the PFB is in the database, it is assigned to a judge and the OJCC Database Application (JCCA) auto-schedules an appointment for State mediation (*see* page 36). 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.<sup>209</sup>

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."<sup>210</sup> 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), becomes the OJCC "original," and is viewable by any judge in the state, and by registered attorneys and parties associated with each case, as are all subsequently filed documents. The flexibility and dynamism of this process facilitates great flexibility and responsiveness, which was notable during the pandemic perseverance of this Office and the workers' compensation community.

Thus, when the PFB assignment arrives in its assigned Division (each judge and assigned staff is a 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 after that, until forty days following the PFB filing.<sup>211</sup> Although an appointment is "set" when the PFB arrives, attorneys have an ample window of opportunity to call the assigned mediator or staff and select a different convenient date, before 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. That said, the use of this process by some savvy attorneys may be decreasing the need to seek continuance of mediation appointments (*supra*, page 33).

In 2021-22 DOAH leadership elected to begin closing OJCC District Offices; that persisted in 2022-23.<sup>212</sup> The closure of offices impacts communities, and potentially results in extensive distances between injured workers, employers, and remaining District offices. This deterioration of OJCC community presence concerned OJCC leadership. DOAH leadership acquiesced in a major alteration of mediation services, adoption of virtual mediation as the presumptive paradigm. By 2022-23, all mediators transitioned to consistent use of virtual mediation using the Zoom Internet video platform. By the end of the fiscal year, this had markedly equalized the volume of work assigned to the various mediators. The increased efficiency in mediator scheduling has been immediate. potentials remain for further economy through limited security services at the remaining offices.

This affords greater consistency in calendar availability, and random mediator assignment was implemented late in fiscal 2021-22. As part of that adjustment, all state mediator calendars were standardized, and time zone distinctions were eliminated. Before this realignment, various mediators each had complete schedule autonomy. This meant that one mediator might start at 08:00, another at 08:30, and yet another at 08:45. The scheduling

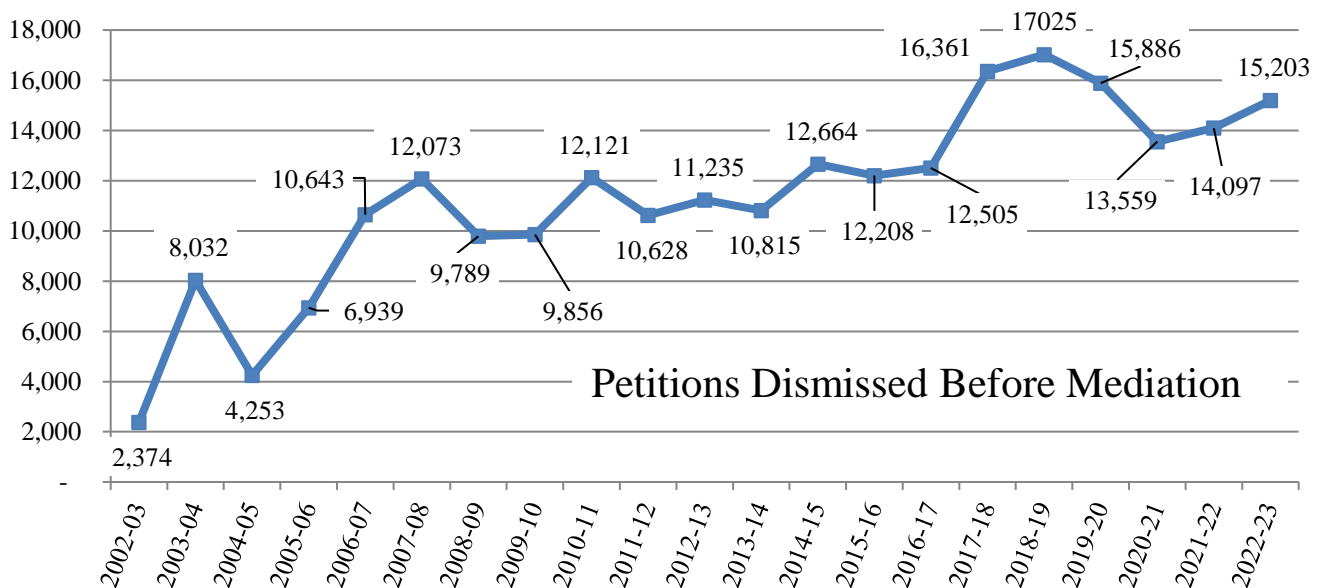
Fiscal Year	PFB Filed	PFB Dismissed Before Mediation	% Dismissed Before Mediation
2002-03	151,021	2,374	2%
2003-04	127,458	8,032	6%
2004-05	107,268	4,253	4%
2005-06	90,948	6,939	8%
2006-07	82,607	10,643	13%
2007-08	72,718	12,073	17%
2008-09	73,863	9,789	13%
2009-10	67,971	9,856	15%
2010-11	64,679	12,121	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%
2021-22	71,733	14,097	20%
2022-23	76,633	15,203	20%

intervals might be for 30, 45, or 60 minutes. Thus, there was significant variety and inconsistency from one mediator to the next. This frustrated professionals with the potential for multiple calendar commitments, and increased the potential for calendar conflicts. The new standardized scheduling has all state mediators scheduling one-hour appointments at 09:00, 10:00, 11:00, 12:30, 13:30, 14:30, and 15:30 Eastern Time. There is thus increased consistency, which should facilitate calendar management and minimize mediation conflicts. The elimination of Central Time, avoids the potential for confusion or error both in scheduling and calendar coverage.

The workers' compensation community, including attorneys, adjusters, risk professionals, and others has raised questions and even criticisms of the change in presumptive mediation process. The previous process afforded those with localized practices or businesses significant predictability through familiarity with a likewise local mediator(s). The new paradigm exposes all litigants and professionals to the full spectrum of 30 state mediators, styles, backgrounds, and strengths. As predicted, the complaints and criticism have decreased markedly during 2022-23; familiarity and comfort with the new process has increased.

Most PFBs must be mediated.<sup>213</sup> Alternatively, 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 minor expense<sup>214</sup> as mediation is not required on claims suitable for expedited final hearing. That said, this practice has declined with the decreasing volume of PFB filings. With increasing PFB volumes, coupled with decreased mediator staffing (30 currently), it is likely that the expedited process will bear further scrutiny in coming years. PFB filing increases may influence judicial decision-making regarding the choice between the expedited hearing process and a private mediation referral.<sup>215</sup>

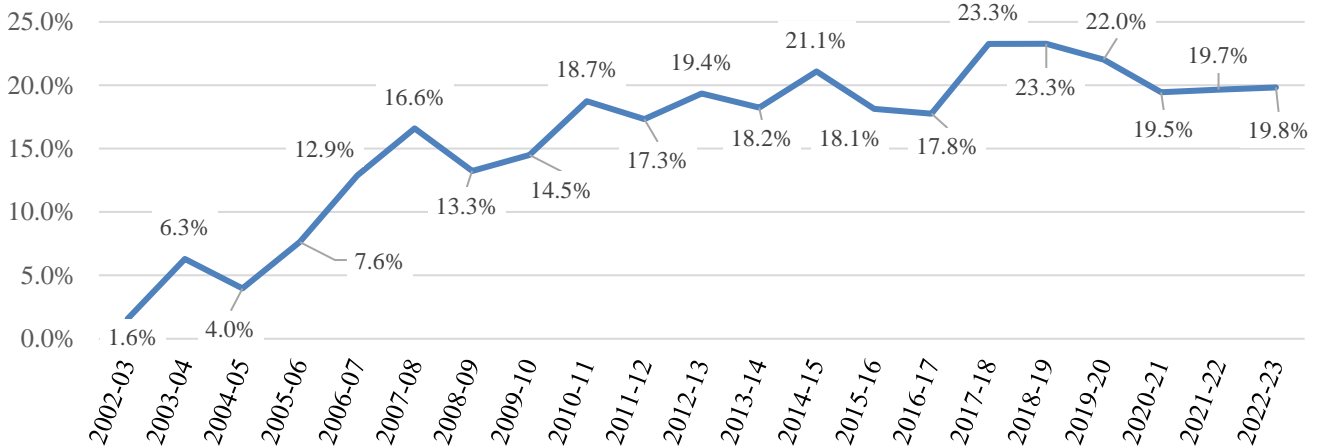
A reasonable volume of PFBs, already scheduled for mediation, will be dismissed before that event. The volume of PFBs dismissed before mediation had historically fluctuated markedly, as shown by the graph below, but has trended toward notable increase until moderating somewhat the last three years. Though the 2019-20 volume of dismissed PFBs was notably lower than in 2018-19, the decreased volume of filed PFB resulted in the percentage (22%) remaining reasonably stable. Both PFB volume and pre-mediation dismissals decreased notably in 2020-21, resulting in a lower percentage (19.5%), more consistent with the era predating *Castellanos*<sup>216</sup> and *Miles*.<sup>217</sup> With the pandemic fading into history, and the return of economic growth and jobs, the volume of petitions has increased in 2022-23, and the volume of dismissed petitions is also trending upwards. The percentage is remaining markedly consistent however.



The increase in dismissals, illustrated in this graph, was significant in gross terms since the turn of the century. Any PFB might be dismissed in the same fiscal year during which it was filed. Similarly, however, a PFB might be filed one fiscal year and dismissed in some year after the filing year. Despite the potential of such temporal differences, the comparison between PFB filed and PFB dismissed before mediation, admittedly not a perfect comparison, depicts a notable trend of a seemingly increasing propensity to resolve issues and dismiss

PFBs, which moderated since the pandemic. This is also likely influenced by changes in process, such as telephonic and other virtual mediation attendance. It therefore bears monitoring the frequency of dismissal. With three years of uniformity, perhaps the system process is in a new normal of consistency.

### PFB Dismissed Before Mediation as % of PFB Filed

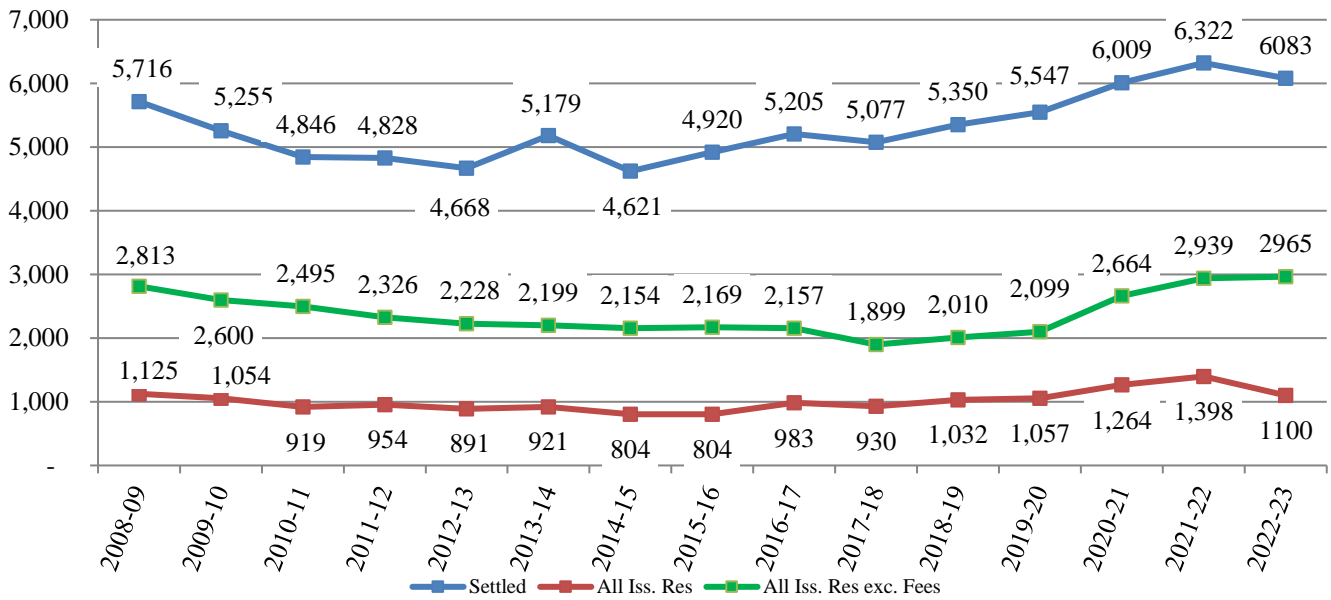


As for the increase beginning in 2017-18, attorneys may have been more inclined to file PFBs following the judicial interpretations of section 440.34, Florida Statutes, in *Castellanos*<sup>218</sup>; though there are no indicia<sup>219</sup> of any significant similar increase following the *Murray*<sup>220</sup> 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 PFBs more readily. Though that 2003 amendment is eighteen years past, 2010 and 2011 appellate decisions brought the issues into clearer focus.<sup>221</sup> Still, there is no indicia of changed dismissal frequency at that time; this should be monitored for potential influence of hourly fee availability following the Supreme Court’s *Castellanos*<sup>222</sup> decision.

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 about<sup>223</sup> the fortieth (40<sup>th</sup>) 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. Some JCCs schedule and provide notice of the pretrial and final hearing concurrently with mediation notice. This single notice for three hearings affords significant opportunity to plan litigation calendars 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).

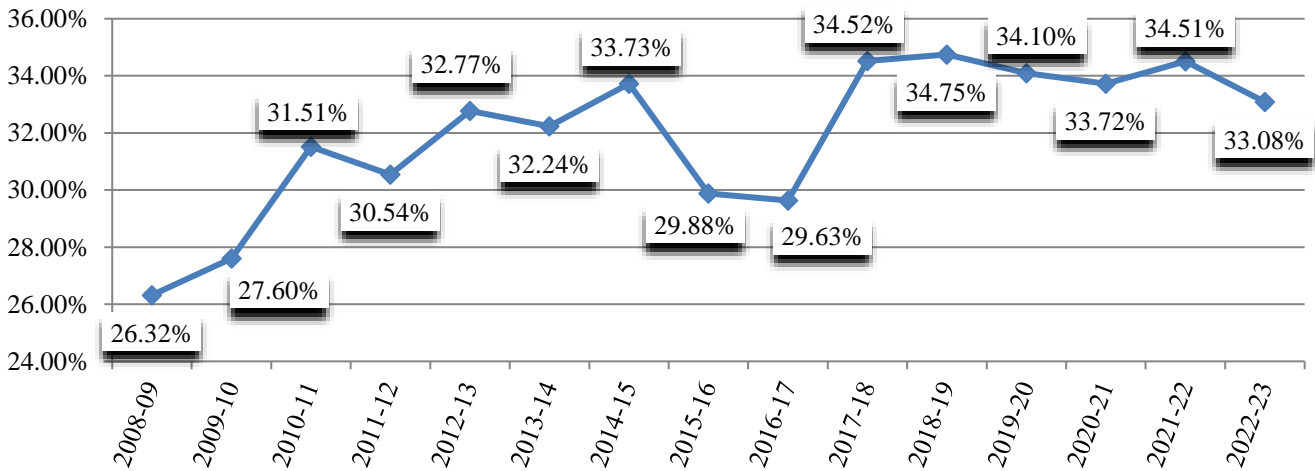
Sending notices was a manual process for many years, with each notice requiring word processing, an envelope, and First-Class postage. In 2004, the innovated automated postcard notices, eliminating significant supply, postage, and labor expense. But some judges mail manual notices earlier (before the 40<sup>th</sup> day statute),<sup>224</sup> to afford parties more notice of the hearing dates and in further attempts to forestall the need for continuances. 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.<sup>225</sup>

Once a mediation conference is convened, any of the following mediation outcome characterizations would reflect that the pending 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.” The full spectrum of potential mediation outcomes is discussed more fully on pages 32-33. When these three (3) mediation “resolution” 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. All three are positive mediation outcomes, and each is generally trending upward in recent years.



This measure reflects only the resolution of all substantive issues in that PFB (“Settled,” “All Issues Resolved,” and “All Issues Resolved except Fees”). Thus, this metric somewhat 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. Partial resolutions also suggest progress through mediation, *see* pages 32-33.

Often, it is the resolution of small issues that helps 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 other 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. But if that medical evaluation then results in information on 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. (*See* page 33). When the total reported volume of PFBs resolved at mediation is expressed as a percentage of the PFBs “filed” during the same fiscal year, the graph below illustrates the overall percentage frequency of resolution at mediation over the last fifteen (15) years. This metric has been remarkably consistent for five of the last six years.



An important issue for JCCs is the volume of PFBs that remain for resolution or adjudication after mediation has occurred. Those that remain after mediation has concluded must be scheduled for pretrial hearing and final hearing (unless the PFB was already scheduled for these at the time mediation was scheduled). These remaining PFBs are also very likely to contribute to the assigned JCC's motion volume.<sup>226</sup> 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 before 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 2022-23, approximately sixty-seven percent (66.92%) of PFBs include some issue or issues that remain unresolved at the end of mediation. The year-end total of trial order volume supports that almost all of those with remaining issues after mediation still resolve before trial as evidence and arguments become increasingly clear to the parties.

An approximate volume of PFB unresolved at the conclusion of mediation has consistently been between 65% and 70% over the last thirteen 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 ("some issues resolved," *see* page 32-33), and yet the PFB itself remains "unresolved," because of other pending issues therein. The success of mediation, as a process for narrowing issues and focusing disputes, cannot be adequately measured by the volume of "total" resolutions achieved, but this metric is a significant measure of the trial and motion calendar workload of the OJCC overall.

## **Amount of Attorney Fees Paid in 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.<sup>227</sup> §440.34, Fla. Stat.<sup>228</sup> There is no such specific requirement for the approval of fees paid by employer/carriers for their defense counsel representation.<sup>229</sup> Despite the absence of such a specific requirement for defense fee approval, the broad language of section 440.105(3)(b), Florida Statutes<sup>230</sup> might require OJCC approval of defense attorney fees. That said, 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 employers and insurance carriers to report their individual total annual expenditures for aggregate defense fees.<sup>231</sup> Since fiscal year 2010-11 the OJCC rules have required that reporting by September 1 of each year (it is reasonably common for stragglers to still file during September). The final reporting in 2021-22 was in mid-October, in 2022-23 it was in late September. At one point, the figures set forth here for 2002-03 through 2013-14 were amended after discovery of significant errors after publication of those annual reports.<sup>232</sup> The potential for error, redundancy, and omission remain a persistent concern with these aggregate reports.

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.<sup>233</sup> Furthermore, this information about defense fees expended during the fiscal year does not provide any edification regarding the respective dates of accident involved when those fees were paid during that fiscal year.

In 2021-22, another flaw was discovered and investigated. In case number 17-023664, the assigned judge entered a March 28, 2022 order approving<sup>234</sup> a fee stipulation regarding Claimant fees. That approved a sum certain through the date of the order and prospectively approved the Claimant's attorney recouping future fees of a fixed percentage (15%) of future payments Claimant received. Those future payments will likely never be reported to this Office. It is therefore very likely that some level of underreporting of Claimant fees has occurred and will continue. It is impractical to quantify the extent.

Using the defense fees reported pursuant to rule<sup>235</sup> and the actual claimant fees approved, the aggregate fees in the Florida workers' compensation system in fiscal year 2022-23 were back under five hundred million dollars for the second time (\$494,121,771). For two prior years (2019-20 and 2021-22), the aggregate had been over one-half-billion dollars. While this is noteworthy, the value of aggregate attorney fees has exceeded the half-billion-dollar mark in multiple prior years, if the actual figures in those years is instead expressed in present dollars (adjusted for inflation for comparison, *see* page 42); that illustrates that aggregate fees in 2004-05 and 2005-06 each exceeded \$700 million in 2022 dollars.



## Order Year 2022-23 Attorney Fees

Previous OJCC annual reports detailed payment of claimant attorney fees based on 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, 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, for fees approved in prior fiscal years different annual totals for claimant attorney fees, from what was reported in OJCC annual reports for those years. It is believed that after the initial calculation of those figures, and issuance of those prior OJCC annual reports, additional information was entered by District staff.<sup>236</sup> Those figures have therefore been corrected in more recent annual reports, as noted in the chart on the following page.

During 2022-23, four hundred ninety-four million one hundred twenty-one thousand seven hundred seventy-one dollars (\$494,121,771) was paid in combined claimant attorney fees and defense attorney fees<sup>237</sup> (and perhaps defense “costs,” see endnote 233) in the Florida worker’s compensation system. This represents a 2% decrease from the 2021-22 aggregate fee total of five hundred four million two hundred forty-three thousand seven hundred sixty-three dollars (\$504,243,763), and returns to below the total reported in 2020-21, four hundred ninety-four million five hundred five thousand seven hundred sixteen dollars (\$494,505,716). The aggregate attorney fee total for the system had increased for five fiscal years (since 2015-16), until 2020-21. In the last four years, that total has shown fluctuation and no trend can be discerned.

Perhaps the recent fluctuations reflect challenges related to the pandemic and the return to economic and employment trends more consistent with the pre-pandemic era. But the actual cause of the fluctuations is difficult to discern in light of the incongruity between claimant and defense. Defense fees have varied notably in the last four fiscal years. Claimant fees highlighted a notable trend to increase in 2018-19 and 2019-20, but have shown a trend downward beginning as Florida began its transition out of the pandemic in early fiscal 2020-21.

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. The distribution of the fee aggregate demonstrates significant change in the twenty-first century. Early, the aggregate was relatively even, 49.3% Claimant and 50.7% defense in 2002-03. That near parity eroded with significant

Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	\$210,660,738		\$216,698,474	
2003-04	\$215,322,360	2.21%	\$226,585,434	4.56%
2004-05	\$211,157,073	-1.93%	\$259,021,415	14.32%
2005-06	\$208,369,260	-1.32%	\$290,172,000	12.03%
2006-07	\$191,197,443	-8.24%	\$277,386,580	-4.41%
2007-08	\$188,701,256	-1.31%	\$260,160,946	-6.21%
2008-09	\$181,660,686	-3.73%	\$269,280,414	3.51%
2009-10	\$176,996,765	-2.57%	\$269,657,104	0.14%
2010-11	\$157,081,084	-11.25%	\$259,323,175	-3.83%
2011-12	\$152,848,003	-2.69%	\$242,446,703	-6.51%
2012-13	\$151,889,627	-0.63%	\$240,894,494	-0.64%
2013-14	\$141,858,184	-6.60%	\$237,364,154	-1.47%
2014-15	\$136,180,202	-4.00%	\$234,592,581	-1.17%
2015-16	\$136,461,404	0.21%	\$242,112,498	3.21%
2016-17	\$185,676,766	36.07%	\$253,932,265	4.88%
2017-18	\$198,653,393	6.99%	\$254,525,798	0.23%
2018-19	\$216,905,845	9.19%	\$257,031,186	0.98%
2019-20	\$240,867,847	11.05%	\$266,787,990	3.80%
2020-21	\$241,105,336	0.10%	\$253,400,379	-5.02%
2021-22	\$236,691,235	-1.85%	\$267,552,528	5.58%
2022-23	\$228,162,186	-3.60%	\$265,959,585	-0.60%

Fiscal Year	Aggregate Fees	Claimant %	Defense %
2002-03	\$427,359,212	49.29%	50.71%
2003-04	\$441,907,794	48.73%	51.27%
2004-05	\$470,178,488	44.91%	55.09%
2005-06	\$498,541,260	41.80%	58.20%
2006-07	\$468,584,023	40.80%	59.20%
2007-08	\$448,862,202	42.04%	57.96%
2008-09	\$450,941,100	40.28%	59.72%
2009-10	\$446,653,869	39.63%	60.37%
2010-11	\$416,404,259	37.72%	62.28%
2011-12	\$395,294,706	38.67%	61.33%
2012-13	\$392,784,121	38.67%	61.33%
2013-14	\$379,222,338	37.41%	62.59%
2014-15	\$370,772,783	36.73%	63.27%
2015-16	\$378,573,902	36.05%	63.95%
2016-17	\$439,609,031	42.24%	57.76%
2017-18	\$453,179,191	43.84%	56.16%
2018-19	\$473,937,031	45.77%	54.23%
2019-20	\$507,655,837	47.45%	52.55%
2020-21	\$494,505,716	48.76%	51.24%
2021-22	\$504,243,763	46.94%	53.06%
2022-23	\$494,121,771	46.18%	53.82%

consistency through 2015-16, which was near the Claimant fee nadir of 2014-15, \$136,180,202. Though there has been recent progress, and near parity in 2020-21, the predominance of defense fees has nonetheless persisted over the last two years, and shows signs of increasing imbalance.

Beginning with the marked increase in Claimant fees in 2016-17, 36.07%, Claimant fees demonstrated notable increases for four years, through 2019-20. Those increases did not bring parity between Claimant and defense. Still, the defense fees decrease in 2020-21 (-5.02%) brought the two the closest to parity since 2003-04. The notable change in 2020-21 was the 5% decrease in defense fees, which now appears to have been an anomaly rather than trend, as it was followed by a similar 5.38% increase in 2021-22. It has been noted that defense fees appeared more elastic in the pandemic as travel and in-person appearances waned. Defense fees are predominantly on a per-hour basis, and this is therefore more subject to impact from time-saving or time-wasting factors.<sup>238</sup> 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. Consistent with the trend reversal in 2021-22, the defense fees in 2022-23 returned to about 54% of the aggregate total.

There is some tendency to focus on the aggregate of attorney fees exceeding one-half billion dollars, as it did in 2019-20 for the first time, and in 2021-22. That said, if the last 21 years are considered in light of inflation,<sup>239</sup> the significance of those two years pales. Adjusted for inflation, in 2023 dollars, the aggregate of attorney fees has exceeded that threshold in 17 of those years. In fact, ranked by the inflation-adjusted values, the aggregate in 2022-23 is the fourth lowest total in the twenty-one-year history (noted in this chart in red text). The 2021-22 inflation-adjusted figure is the only year in the lowest five that postdates the significant increase in Claimant fees in 2016-17 (36.07%). The twenty-year average of the inflation-adjusted aggregates (\$593,740,567) is notably higher than the 2022-23 figure (\$494,129,425), over twenty percent (20.2%) higher.

The Claimant fee increases in 2016-17, following *Castellanos*<sup>240</sup> and *Miles*<sup>241</sup> was significant and was seen then as supporting probability of ongoing fee increases. The trend after supported that hypothesis. The 2019-20 increase of 11% resulted in the highest claimant attorneys’ fee total (\$240,867,847, *see* endnote 238) ever reported by the OJCC.<sup>242</sup> Though the increase in 2020-21 was very modest (0.10%), that total (\$241,105,336) still is now the highest claimant total ever reported (*but see* page 42 regarding inflation; The 1999 Claimant fees of \$222,690,750, discussed on pages 45-46, adjusted for inflation in 2023 dollars would be \$410,395,259).

Fiscal Year	Aggregate Fees	Adjusted for inflation in 2023 dollars
2002-03	\$427,359,212	\$713,099,943
2003-04	\$441,907,794	\$718,248,715
2004-05	\$470,178,488	\$739,155,251
2005-06	\$498,541,260	\$759,251,631
2006-07	\$468,584,023	\$693,865,586
2007-08	\$448,862,202	\$640,085,677
2008-09	\$450,941,100	\$645,346,221
2009-10	\$446,653,869	\$628,895,104
2010-11	\$416,404,259	\$568,362,685
2011-12	\$395,294,706	\$528,610,296
2012-13	\$392,784,121	\$517,670,375
2013-14	\$379,222,338	\$491,818,387
2014-15	\$370,772,783	\$480,289,956
2015-16	\$378,573,902	\$484,286,003
2016-17	\$439,609,031	\$550,633,985
2017-18	\$453,179,191	\$554,097,633
2018-19	\$473,937,031	\$569,164,900
2019-20	\$507,655,837	\$602,229,198
2020-21	\$494,505,716	\$560,305,982
2021-22	\$504,243,763	\$529,004,957
2022-23	\$494,121,771	\$494,121,771

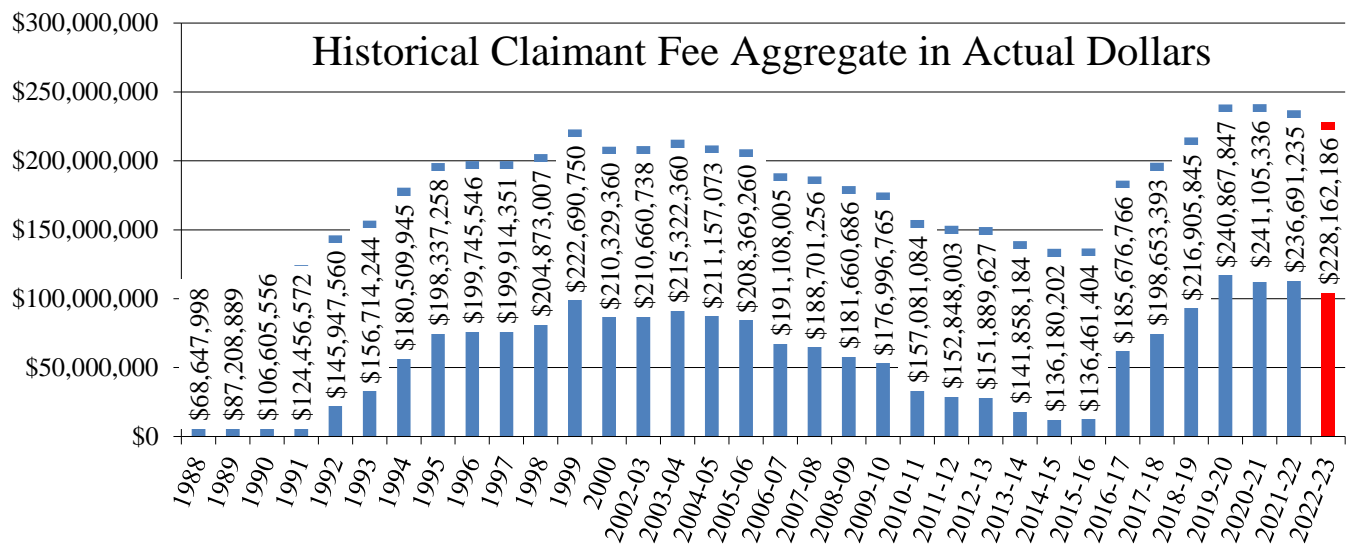
Defense fees remain the greater portion of the overall aggregate fees paid, at 53.82%. The defense-fee portion had trended consistently down beginning in 2016-17 (following *Castellanos*<sup>243</sup> and *Miles*<sup>244</sup>) for five years, until 2021-22. The 2021-22 (46.94%/53.06%) and 2022-23 (46.18%/53.82%) are each much like the largely pre-pandemic figures in 2019-20 (47.45%/52.55%). As explained on pages 49-50, there is a tendency for notable delay between date of accident and settlement of a workers’ compensation case. It is likely that the workplace pauses, lockdowns, and decreased injury frequency in the period March 2020 to March 2021 will continue to impact frequency of settlement and therefore volume of claimant fees (largely settlement-dependent, and therefore at the end of litigation). As noted above, defense fees are less directly related to settlement, and therefore likely to demonstrate different trends (fees generated throughout litigation and with persistence).

This report first noted the inflation effect about fees in the *2011-12 OJCC Annual Report*. Since then, each present-year Claimant and defense fees have been compared to the 2002-03 figures for context. The analysis above is more detailed, and provides historical overview, but only as to aggregate figures. The comparison of the 2002-03 figures for each component, however, provides a broad comparison illustrative of change without the

various intervening fluctuations and trends. According to the U.S. Inflation Calculator,<sup>245</sup> the 2002-03 aggregate (\$427,359,212), in 2023 inflation-adjusted dollars, would have been \$713,099,943.<sup>246</sup> This is \$218,978,518 more than the actual 2022-23 aggregate of \$494,121,771. Adjusted for inflation in 2023 dollars, aggregate attorney fees in Florida workers' compensation have *decreased* about two hundred nineteen million dollars in the last twenty years, despite some notable recent increases in fees. Frankly stated, aggregate attorney fees have not kept pace with inflation for either Claimant or defense.

The notable increase in Claimant attorney fees in 2016-17 mostly stemmed from 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 remained almost unchanged in 2021-22 (+.02%, \$68,033,704 compared to \$67,901,987). The hourly fees decreased more notably in 2022-23 (-5.3%, \$64,401,933 compared to \$68,033,704). Non-settlement statutory percentage fees continued to decrease in 2021-22 (-40%, \$5,701,288 compared to \$9,368,017). Those fees decreased again in 2022-23 (-14%, \$4,883,619 compared to \$5,701,288). Settlement fees remain the preponderant component. Over the nineteen years since the 2003 legislative reforms, claimant fees are up about 8.31% (down from 12.3% in 2021-22) and defense fees are up about 22.73% (down from 23.5% in 2021-22). Each remains notably less than they would have been had the 2002-03 figures increased linearly consistently with inflation.

The DLES compiled data regarding the attorney fees paid to claimants' counsel for several 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. But the DLES figures may be for calendar years,<sup>247</sup> 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. On the other hand, 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 combined with costs) paid from 1988 through 2000 and the claimant fees paid from fiscal years 2002-03 through 2022-23.



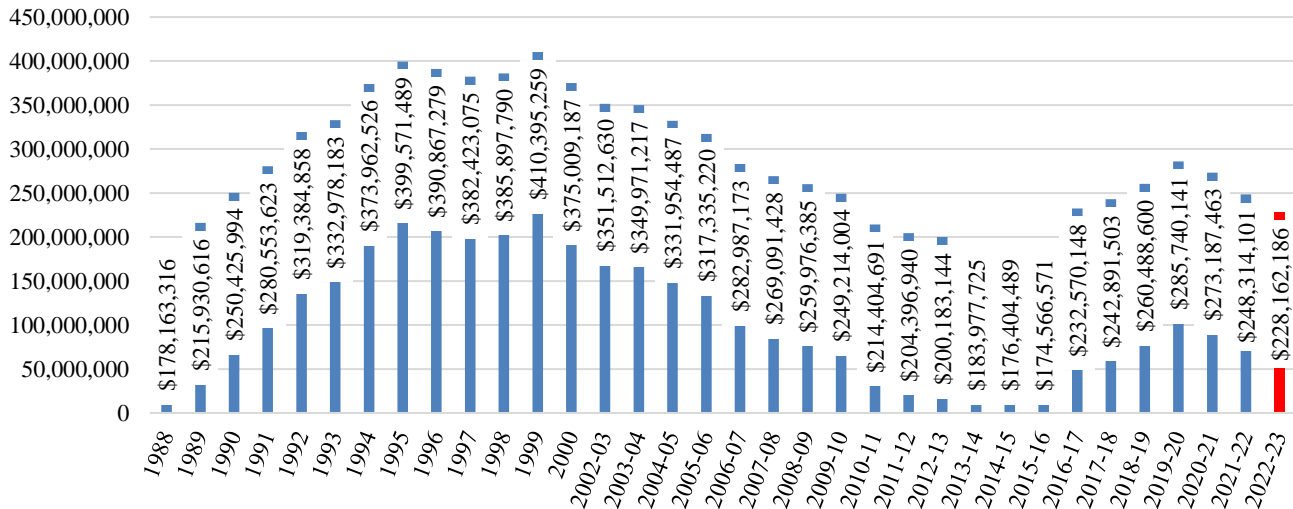
The 2020-21 claimant fees are the highest in this illustration period. Over the four fiscal years following 2015-16, claimant fee annual totals increased notably and persistently (36.07%, 6.99%, 9.19%, and 11.05%). But if the previous high in 1999 (\$222,690,750) were adjusted for inflation, it would equal \$410,395,259 in 2022-23 dollars,<sup>248</sup> significantly more than the actual 2022-23 figure of \$228,162,186. Thus, reinforcing again that while fees are increasing, the figures

Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	\$210,660,738		\$216,698,474	
2022-23	\$228,162,186	8.31%	\$265,959,585	22.73%
2002-03 Inflation-adjusted	\$342,695,488	-50.20%	\$352,517,465	-32.55%

have not kept pace with inflation (*see* pages 42-43).

The overall claimant fees in workers' compensation are illustrated in the following graph from 1988 to present (although data for 2001 has been difficult to determine), adjusted for inflation in 2023 dollars. These figures show fluctuation in fees, but notably a reasonably steady decrease in annual aggregate following the 2003 statutory reforms. The trend changed in 2016-17, as discussed above, coincident with the decisions in *Castellanos*<sup>249</sup> and *Miles*.<sup>250</sup> The following provides clearer context regarding the trends and volumes of Claimant's fees over a period that spans more.<sup>251</sup> Viewed in this inflation-adjusted perspective, aggregate claimant fees are currently close to the 2010-11 and 1989 totals.

## Historical Claimant Fee Aggregate in 2023 Dollars



### The *Castellanos* effect

The effects of the *Castellanos*<sup>252</sup> 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. Most 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 \$75,743,917<sup>253</sup> in 2016-17, an increase of almost \$50 million (+193%). By comparison, there was a much less significant increase in the settlement fees (at least nominally Claimant-paid<sup>254</sup>) from \$94,428,009<sup>255</sup> 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 seven-year period, trending slowly downward, but remaining well above the 2015-16 baseline. The hourly fees in 2022-23 remain more than double the 2015-16 total. If inflation is considered, the impact is moderated somewhat, but the cumulative increase still exceeds 91%:

	Non-Settle, Hourly	Actual
2015-16	\$25,866,295	
2022-23	\$64,401,933	148.98%

	Non-Settle, Hourly	Inflation Adjusted
2015-16	\$33,589,831	
2022-23	\$64,401,933	91.73%

### The *Miles* effect

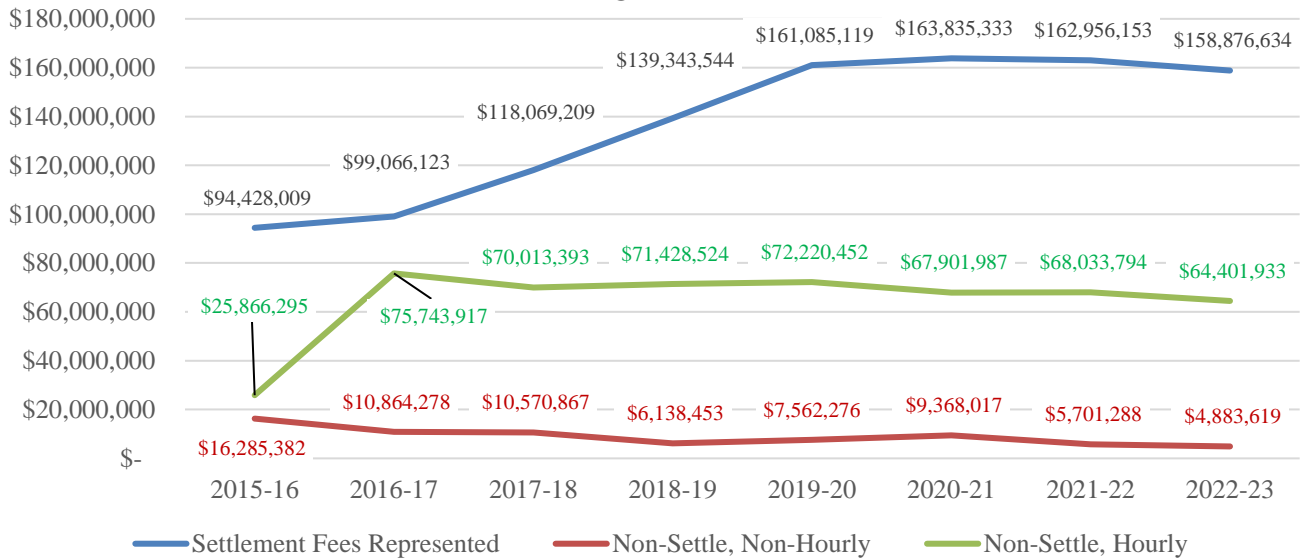
The effects of *Miles*<sup>256</sup> (settlement fees in blue below) were comparatively less apparent in 2015-16, but are increasingly predominant afterward. The settlement fees (*Miles*) increased from \$99,066,123 in 2016-17 to \$118,069,209 (+19%) in 2017-18; the increase continued at similar pace up to \$139,343,544 in 2018-19 (+18%), and further still to \$161,085,119<sup>257</sup> in 2019-20 (+16%). The aggregate settlement fee volume has remained remarkably stable for the last four years, but is trending down. If inflation is considered, the impact is moderated notably, but the cumulative increase is still around 30%.

	Settlement Fees Represented	Actual
2015-16	\$94,428,009	
2022-23	\$158,876,634	68.25%

	Settlement Fees Represented	Inflation Adjusted
2015-16	\$122,623,704	
2022-23	\$158,876,634	29.56%

Thus, some portion of the increased or decreased fees year-over-year might be explained by a change in the volume of represented settlements, a higher or lower value of those settlements, or a different portion of those settlements being paid in fees.<sup>258</sup> Similarly, the aggregate value of settlements, and the average represented settlement might be impacted by inflation. The settlement fees in 2019-20 were significantly increased (+16%), but the volume of settlements was notably higher as well (+4.6%).<sup>259</sup> But that caveat is not seen about some other years since *Miles*. Despite a 9.7% decrease in the volume of settlements in 2020-21, the settlement fees increased (+1.7%) rather than decreased. Despite a 2.2% decrease in settlement volume in 2021-22, settlement fees decreased less than 1%. In 2022-23, settlement volume increased 7.6% but fees decreased 2.5%. The fluctuations are thus not strictly mathematical.

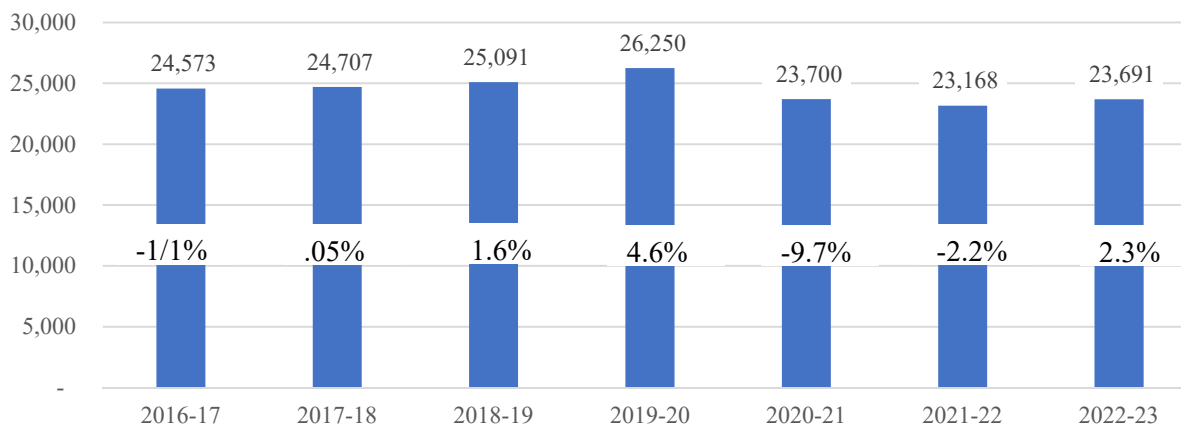
### Claimant Fees categorized 2015-16 to 2022-23



The volume of represented settlements has been reasonably consistent between 2014-15 (not pictured) and 2018-19 (graph below). In 2019-20, there was a notable increase (4.6%),<sup>260</sup> followed later by an ebb in 2020-21 to the lowest volume of settlements in seven years. The trend to decrease continued in 2021-22. It has been suggested that the pandemic may have contributed to the diminished volume of settlements in that period.<sup>261</sup> PFB volume was trending up through three-quarters of 2019-20, until the arrival of the SAR-CoV-2 virus, and various government reactions. The moderating volume of litigation generally (PFBs) and “new cases” may explain the decreasing volume in part. The trend reversed in 2022-23 and the volume returned to the pre-pandemic range demonstrated in 2016-17 through 2018-19.

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## Volume of Represented Settlements

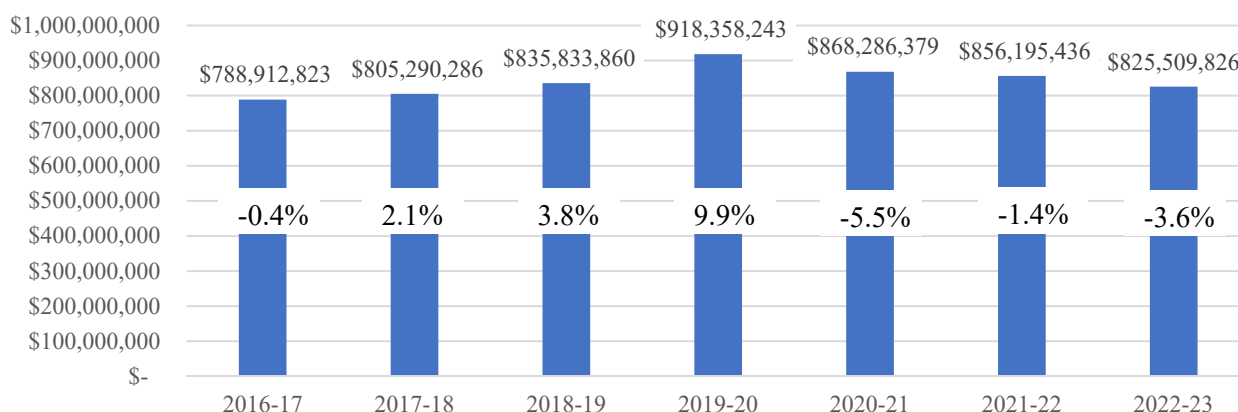


The data does not support that the aggregate value of settlements increased significantly in 2017-18 (+2.1%), though the increase in 2018-19 (3.8%)(graph below) is somewhat more significant, as is the 9.9% increase in 2019-20. Thus, the increase in settlement fees in those years, 2017-18 was 19% and in 2018-19 was 18%, is necessarily explained by settlement value.

In 2020-21, the trend reversed. The volume decreased (-9.7%), the aggregate dollar value decreased (-5.5%), around \$50 million, but settlement attorney fees increased almost three million dollars (+1.7%). In 2021-22, the volume decreased further (-2.2%), as did the aggregate dollar value (-1.4%). but settlement attorney fees decreased slightly less noticeably (-.5%). In 2022-23, volume increased (2.3%), but the aggregate value decreased (-3.6%), and settlement fees decreased reasonably consistently (-2.5%).

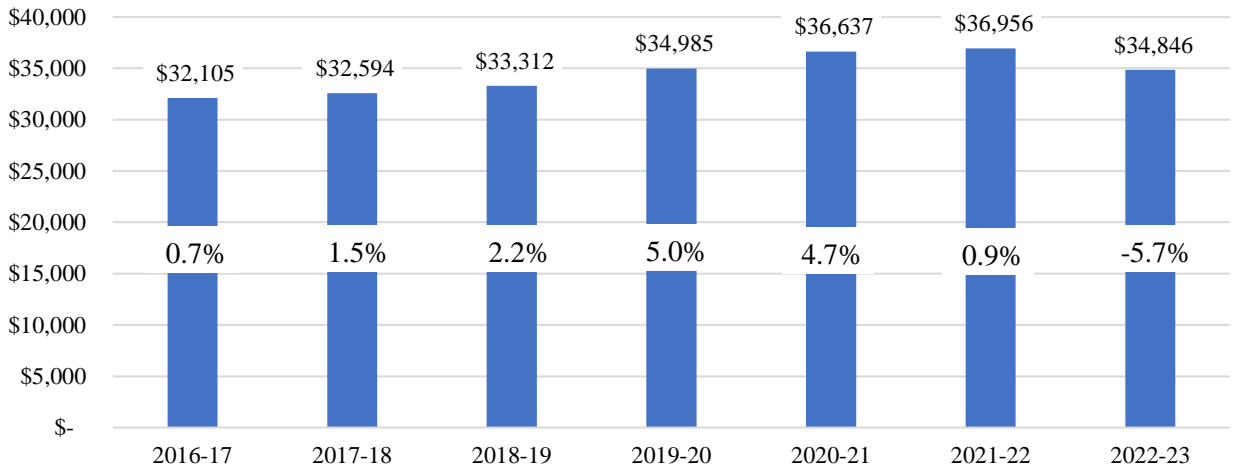
Thus, the increase in settlement fees since 2016 seems appropriately attributed largely to *Miles* interpretations through 2018-19. One *Miles* interpretation held by some essentially equates to more extensive attorney fees in all cases and outright abandonment of the statutory formula in section 440.34(1), Florida Statutes.<sup>262</sup> Anecdotally at least, it appears some judges approve fees without substantive consideration of the time invested by counsel or the effective hourly rate.<sup>263</sup>

## Aggregate Represented Settlement Dollars



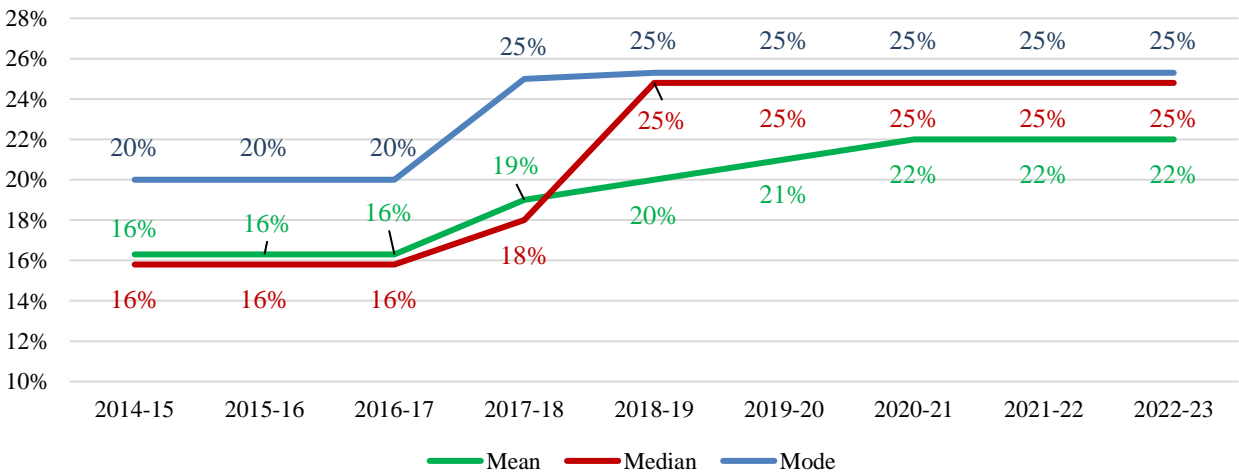
At the same time, in addition to the aggregate value of represented settlements, which once approached one billion dollars annually, the average (mean) settlement amount demonstrated notable increase in two of the last three years, but the trend turned downward in 2022-23. The reason for this trend downward in aggregate (-3.6%) and average (-5.7%) is unclear, and must be considered alongside the significant increase in settlement volume (+7.6%).

## Average (Mean Value of Represented Settlement



The “average” attorney fee on settlements has increased following the appellate decisions in 2016. By any measure, however, one must acknowledge significant stability in the last three fiscal years. 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 discrete value that appears most often in that data distribution. Each warrants consideration. The upward shifts following the 2016 appellate decisions are each notable and apparent in the following graph. That said, so also is the consistency in these measures in the last three fiscal years, and the reasonable consistency over the last five years, with minimal change in the mean in 2018-19 and 2019-20.

## Settlement Attorney Fees



*Miles v. City of Edgewater*<sup>264</sup> is open to multiple characterizations and interpretations. The Court discussed there the interplay or relationship between constitutionally recognized individual rights<sup>265</sup> and the “governmental interests advanced there 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.*<sup>266</sup> 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 involved times that 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.”<sup>267</sup> Whether that analysis would remain consistent in consideration of fees in other disputes is unclear.

Similarly, the Court addressed the more general state “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 increasing fees, perhaps suggested by the average value of settlements, *see* page 47, though that analysis must also consider 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 the *Miles* analysis is “as applied” or more general (“facial”) may remain a matter of discussion and opinion. That said, 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 immaterial. Attorney fees and the application of section 440.34 has not returned to the Court since the 2016 decisions.<sup>268</sup> The holding of the case, as distinct from dicta, is somewhat subtle, leading to multiple interpretations. Until further decisions are rendered by the appellate court, the interpretations applied to settlement fees may challenge the workers’ compensation community. If the decision is facial, and section 440.34 is in fact unconstitutional in any instance or application, then there is no requirement in the statute that mandates judges approve fees in any regard.<sup>269</sup>

Another challenge may be the appropriate interpretation of “reasonable,” as well as the application of that term to “statutory” fees. The most significant settlement attorney fee ordered in 2021-22 was \$1.33 million. For reference, the second most significant was \$525,000 (25%).<sup>270</sup> The \$1.33 million fee involved a settlement for \$13.5 million regarding a 1993 accident resulting in quadriplegia (9.85%). The \$1.33M was to be divided among multiple attorneys for services rendered, alleged to be “past” and “present.”<sup>271</sup> Following the approval of the overall fee by order of April 6, 2022, further proceedings addressed and approved the fee claims of three former counsel,<sup>272</sup> totaling \$525,000. Thus, reducing the overall remaining approved amount to \$805,000 (\$1.33 million - \$525,000). Another order addressed the fee claim of present counsel, who had represented Claimant since July 2021 (around 9 months) and who alleged investment of 205 hours of time in the matter, including prosecution of PFBs filed in October 2021, November 2021, and January 2022 (which had not apparently resulted in the award of fees or the provision of any additional benefits). The judge acknowledged the “statutory fee,”<sup>273</sup> based on the accident date in 1993, noted the appearance of “a question of law for which appellate clarification is invited,” and concluded that despite that statutory calculation, the “reasonableness of a fee” remained for determination. Ultimately, the judge determined that the resulting hourly rate of \$3,926.83 “shocks the undersigned’s conscience,” and awarded to present counsel (at that time, counsel has since withdrawn) a fee of \$123,000,<sup>274</sup> instead of the full remaining \$805,000. That order is currently pending appellate review by the Florida First District Court of Appeal.<sup>275</sup> The Court’s interpretation of “reasonable” and perhaps of judicial role and or discretion in the approval of fees will interest the workers’ compensation community.

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## Attorney Fees by Accident Year

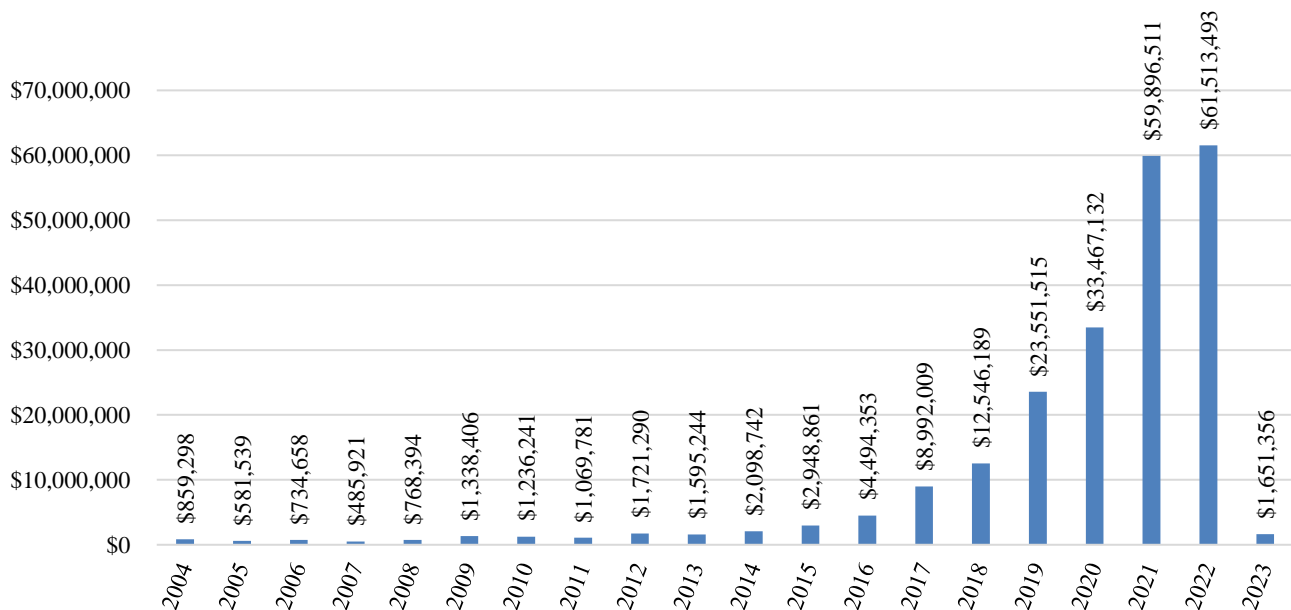
The figures above represent only the amount of fees “approved” during each fiscal year. During any fiscal year, fees might be approved in cases for which the date of accident was also during that particular fiscal year, or even the calendar year in which a fiscal year ends. More likely, the approved fee relates to a date of accident before the year in which a particular fiscal year ends, perhaps many years before. In 2022-23, fees were approved regarding 47 distinct accident-date years. This is reasonably consistent with prior years, in which fees have been documented around 44 to 53 different calendar years. There have also been instances documented in which the date of accident was misstated in a PFB or request for assignment of case number (*see* glossary, page 61). 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.<sup>276</sup> Therefore, the possibility for misstatement of the accident year could impact the population, e.g., fewer distinct accident-date years in 2022-23, for a particular fiscal year.

That said, In 2017-18 attorney fees were approved on a verified 1952 date of accident.<sup>277</sup> This example illustrates how claims can occur, and yet not come within the OJCC jurisdiction for a long time. There may have been previous litigation on this case, before the OJCC becoming part of DOAH.<sup>278</sup> Even so, the first record that this agency has regarding this case occurred in 2017-18, 66 years post-accident.

Most fees approved during any fiscal year will be linked to accidents that occurred before the calendar year in which the fiscal year ends; most fees approved in 2022-23 involved accidents before calendar year 2023. This is because most cases in the OJCC system are unrelated 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 July 1 through June 30) 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 before any current fiscal year.

The claimant fees approved in fiscal year 2022-23 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 has marked similarities to prior year's data.

### Distribution of 2022-23 Claimant fees over 20 Accident Years



The vast majority, around ninety percent (92.5%) of the claimant fees approved in 2022-23 related to accident dates in the ten years between January 1, 2013 and December 31, 2022. For comparison, the similar ten-year periods reported in fiscal years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 were each between 88% and 91%. While this data suggests reasonable consistency in the contribution of the most recent accident years, there is a notable curiosity in the graph above and the data in the table (right). Fiscal year 2022-23 is the only year in which the most predominant contributing accident year is not the year two years before the fiscal year conclusion. In 2023, the most predominant accident year was 2022. This might be attributable to more significant accidents that year, or may indicate a trend towards more rapid settlement of cases following the accident. This is noteworthy because of the remarkable history of consistent preponderance of the year two years before the conclusion of each OJCC Annual Report.

Report Year	Claimant Fee Total	Most Preponderant Accident Year	Fee Amount most Preponderant Year	Percent of Total
2007-08	\$188,701,256	2006	\$31,929,514	16.92%
2008-09	\$181,660,686	2007	\$32,890,123	18.11%
2009-10	\$176,996,765	2008	\$40,364,949	22.81%
2010-11	\$157,081,084	2009	\$30,636,291	19.50%
2011-12	\$152,848,003	2010	\$27,632,737	18.08%
2012-13	\$151,889,627	2011	\$25,875,607	17.04%
2013-14	\$141,858,184	2012	\$27,095,077	19.10%
2014-15	\$136,180,202	2013	\$25,675,747	18.85%
2015-16	\$136,461,404	2014	\$28,119,286	20.61%
2016-17	\$185,676,766	2015	\$42,953,079	23.13%
2017-18	\$198,653,393	2016	\$50,536,898	25.44%
2018-19	\$216,905,845	2017	\$56,754,841	26.17%
2019-20	\$240,867,847	2018	\$63,006,425	26.16%
2020-21	\$241,105,336	2019	\$67,840,351	28.14%
2021-22	\$236,691,235	2020	\$59,189,149	25.01%
2022-23	\$228,162,186	2022	\$61,513,493	26.96%

Overall, the twenty years of data supports two points. First, the most recent accidents historically account for most claimant attorney fees approved, or awarded each fiscal year; second, the most significant accident year for claimant attorney fees has been consistently two years before the reporting year. Whether the departure from that in 2022-23 is significant or a transient anomaly will await future data. It bears reiteration that despite the notably short statutory time frames for mediation (130 days) and trial (210 days), most cases will probably not reach the point of fee awards or approvals in the first six months<sup>279</sup> after the accident date. Thus, the 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 before that fiscal year. That percentage rose and then stabilized for much of recent history, until increasing notably for 2013-14 through 2015-16. Later, the volume in that category declined notably in 2016-17, and more so in 2018-19 through 2019-20. It was suggested that the return to 5% in 2021-22 could mark a return to earlier levels, but the return to 3% in 2022-23 is more consistent with the period just before the pandemic.

Fiscal Year	2009 -10	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15	2015 -16	2016 -17	2017 -18	2018 -19	2019 -20	2020 -21	2021 -22	2022 -23
Fees on Accident dates > 20 years	6%	5%	5%	6%	8%	7%	7%	5%	5%	3%	3%	4%	5%	3%

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## **Number of Final Orders Not Issued Within 30 Days After the Final Hearing or Closure of the Hearing Record**

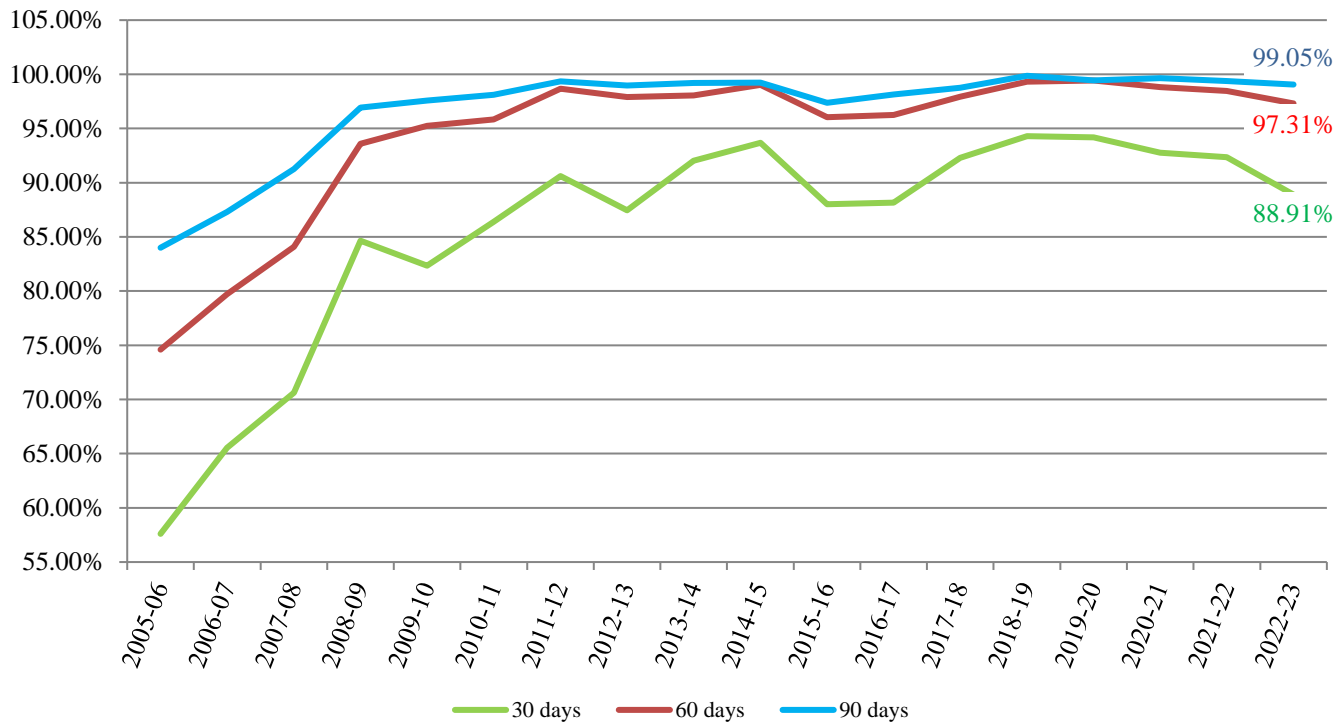
Most PFBs are brought to trial within the 210-day statutory parameter.<sup>280</sup> Many legitimate reasons may require a trial to be reconvened on a second or even third day after the initial trial date. That said, anecdotal evidence supports that such a reconvene process was historically employed by a minority of judges to delay record closure and artificially extend statutory deadlines for entry of a final order.<sup>281</sup> Determination of the legitimacy of such subsequent proceedings in any 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 first convening. This calculation no doubt slightly understates the number of final orders entered within thirty days of legitimate “closure of the hearing record.”<sup>282</sup> At the same time, this calculation also permits no overstatement of achievement by inappropriate employment of the “reconvene,” and presents an illustration of performance 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 during fiscal 2021-22, supports that several final orders were entered within a day of the final hearing (7%). Overall, the JCCs entered timely (within the 30 days required by statute<sup>283</sup>) final orders approximately fifty-eight percent (57.6%) of the time in fiscal 2005-06. This increased steadily later, and was in excess of 92% for five years until decreasing to approximately eighty-nine percent (88.91%) in 2022-23. While the decreases in 2020-21 and 2021-22 might be attributed in part to the pandemic, that has concluded and the timely order volume continues to decline. There remains a notable consistent recent performance in compliance with the statutory requirement,<sup>284</sup> but signals some challenge that bears monitoring.

Days	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	Days
30 days	92.29%	94.29%	94.18%	92.78%	92.35%	88.91%	30 days
40	96.83%	97.42%	97.30%	97.23%	96.64%	93.50%	40
50	97.52%	98.91%	99.01%	98.80%	98.47%	96.20%	50
60 days	97.93%	99.32%	99.43%	98.82%	98.47%	97.31%	60 days
70	98.48%	99.46%	99.43%	99.28%	99.08%	98.42%	70
80	98.76%	99.73%	99.43%	99.40%	99.08%	98.89%	80
90 days	98.76%	99.86%	99.43%	99.64%	99.39%	99.05%	90 days
100	98.76%	99.86%	99.57%	99.64%	99.69%	99.52%	100

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 (99.52%) of the cases in 2022-23. The percentage within 100 days has been consistently over 99% from 2011-12 through 2014-15. That percentage similarly decreased slightly later, most likely because of the change in definition of “trial order,”<sup>285</sup> and has since returned to over ninety-nine percent (99.64%). 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,<sup>286</sup> and judges drafting their own orders. This is illustrated in the graph on the next page.

For final orders entered during fiscal 2006-07 through 2022-23, 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 around eight years. In 2022-23 the longest period was one hundred sixty-two (162) days.<sup>287</sup> The overall figures evidence far more consistent achievement of the statutory parameter<sup>288</sup> in recent years, and a greater focus upon timely order issuance. Order delays have persisted since the mandate of expert medical advisors (EMA) in 1994. It is likely that the statutory transition<sup>289</sup> from mandate (“shall”) to permission (“may”) will decrease the potential for that law to delay final orders. The evolution of timely orders is reflected in the graph below.



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

The workers’ compensation adjudication team has struggled with various changes in the post-pandemic era, and those changes have been significantly disruptive to the workers’ compensation community, injured workers, and employers. There are arguable merits to the financial savings effected with closure of district office and the resulting lack of convenience and accessibility. The Legislature has shown significant deference with the elimination of statutory constraint on deployment of resources. Even so, the workers’ compensation system would likely benefit from some structure about the persistence of a distributed system that includes various District locations. While a strict mandate as previously constrained innovation was perhaps too restrictive, the absence of any constraint presents the potential for a variety of troubling potentials. Section 440.44 should be amended to include some broad requirements to maintain a distributed system and to assure appropriate expenditure and accounting of trust fund proceeds specifically to operate the workers’ compensation functions for which that fund is established.

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 have improved some, but continue to frustrate the efficient operation of this agency and are wasteful of resources. Those disparities invariably lead 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 “12”).
- State mediator pay should be increased and tied to the JCC salary.
- Resources should be provided to establish pay equity for all OJCC staff.<sup>290</sup>

The history of judicial consideration of “costs” is explored in the *2006-07 OJCC Annual Report*. The suggestions and recommendations in it 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*,<sup>291</sup> and the distinct potential that judicial oversight of such fees has become languid.<sup>292</sup>

The procedural and practical inefficiencies of the Expert Medical Advisor (EMA) process are detailed in the *2005-06 OJCC Annual Report*. In 2023, the Legislature rendered the EMA process discretionary, removing the “shall” that the appellate court had interpreted as mandatory. The interpretation of this provision has not yet been presented to the court, but we expect that the mandate no longer persists and this recommendation is moot.

The challenges with waste and fraud were detailed in the *2018-19 OJCC Annual Report*. Significant fraud or abuse exists in the general delivery of medical care.<sup>293</sup> 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.”<sup>294</sup> 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.<sup>295</sup> In 2015, a Florida company paid almost \$70 million to settle a fraud case involving “physician kickbacks, complicit hospital administrators and negligent financial oversight.”<sup>296</sup> A whistleblower provision in Chapter 440, 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.

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

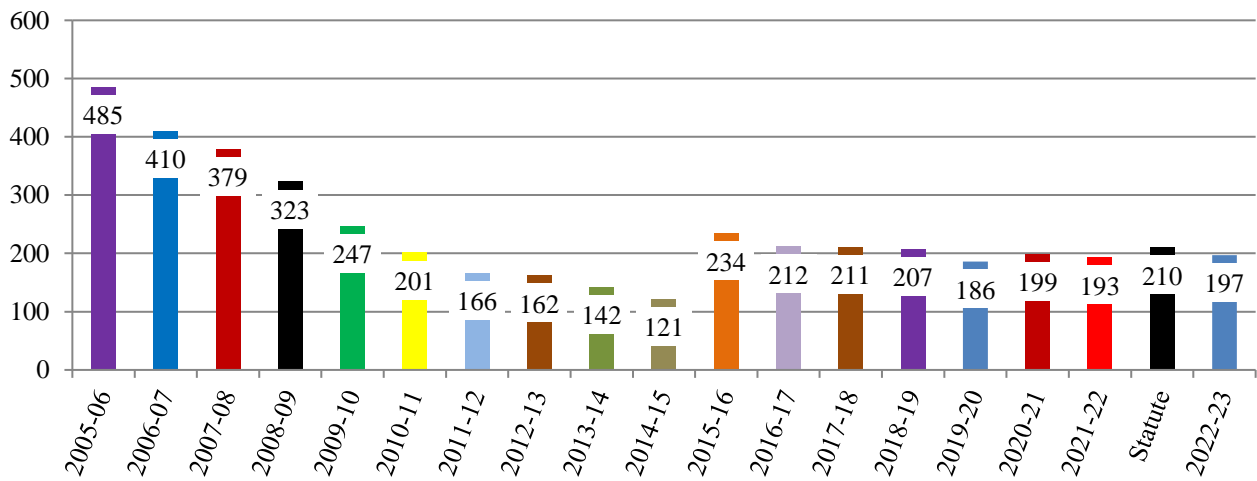
There are three main statutory requirements for the Judges of Compensation Claims. Judges are expected to have their assigned cases proceed to mediation within 130 days<sup>297</sup> and to trial within 210 days.<sup>298</sup> These two are somewhat within the control of the presiding judge, although many circumstances 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.<sup>299</sup> This parameter is more consistently within the control of the assigned judge, though the EMA issue can influence it also. Despite the recent statutory change, the discretionary appointment of an EMA will still tend to increase time required for final adjudication.<sup>300</sup>

Each statutory requirement can be accomplished in nearly all 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, because of the facts of that particular case.<sup>301</sup> 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 staff. Overall, the OJCC did not meet all these measures on overall statewide average until 2010-11, which continued through 2014-15.

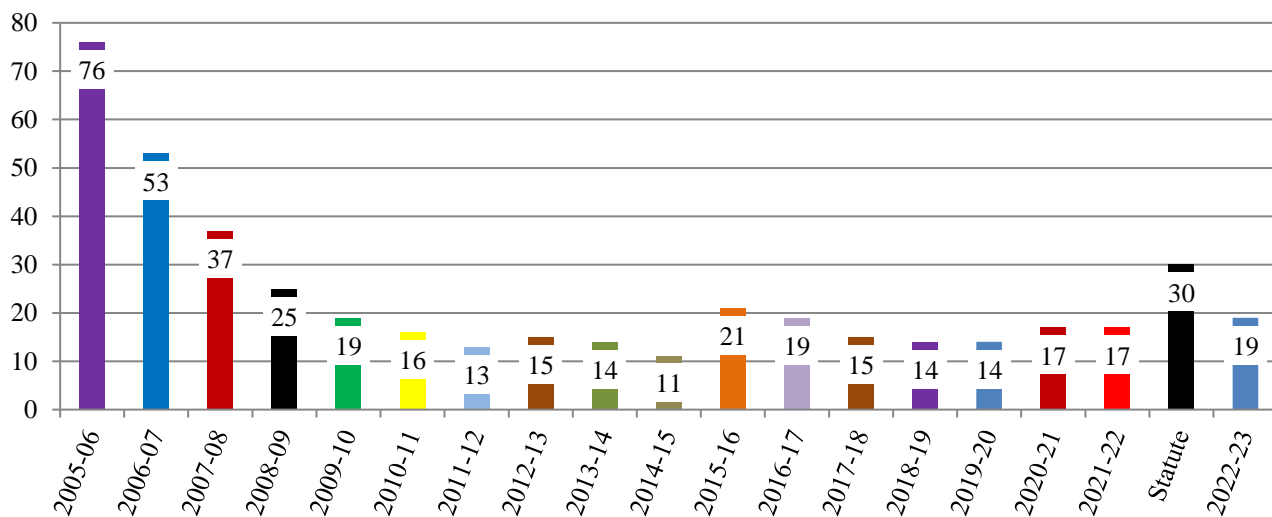
For this report, “final hearings” include only final merits hearings regarding claims and issues in PFBs, contested attorney fee/cost hearings resulting in substantive final orders, and Fund Hearings.<sup>302</sup> This is a change from prior years. Until 2015-16, “trials” included: Evidentiary Motion Hearings, Expedited Final Hearings, Fee

Amount Hearings, Fee Entitlement Hearings, Final Hearings, and Fund Hearings.<sup>303</sup> “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.<sup>304</sup>

With the 2016 change in definition of “trial,”<sup>305</sup> the OJCC did not collectively meet all three of these standards again until 2018-19. The time to mediation and time to final order aggregates for the entire OJCC remained within the statutory parameters despite that definitional change. That said, following the change in the definition of “trial,” the overall average time barely (234, 212, 211) exceeded the statutory 210<sup>306</sup> days for three fiscal years, but compliance overall has improved in the most recent five fiscal years, despite the pandemic and other challenges.

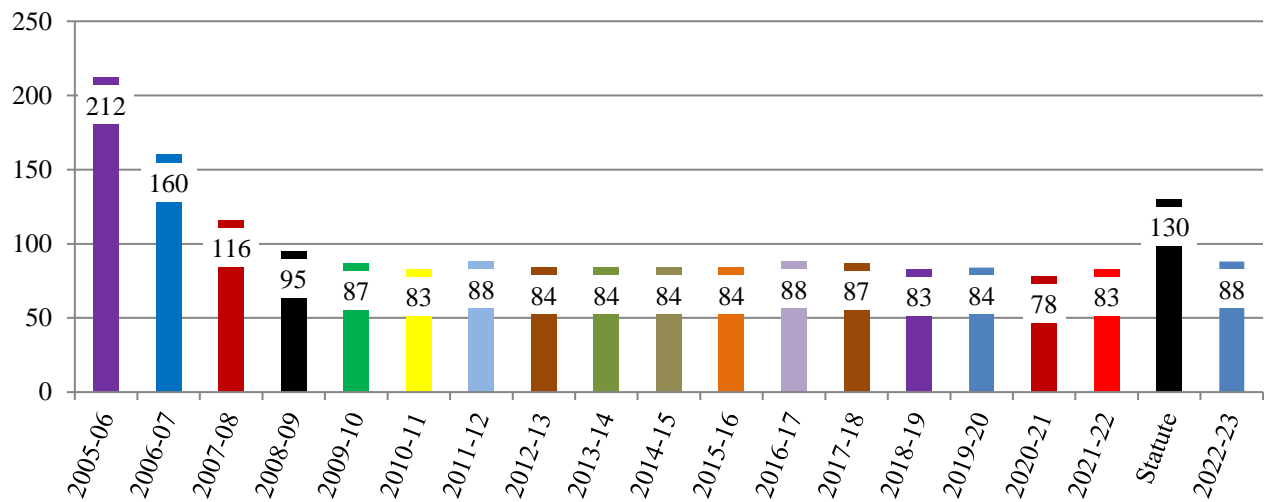


The Office of the Judges of Compensation Claims has also made significant improvement in the average time between the start of the trial and the entry of the final order thereon.<sup>307</sup> The overall statewide average period, from trial to the entry of the trial order, has decreased markedly since 2005-06, and remains well within the statutorily defined 30 days, as shown by 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 and 2021-22, that performance dropped again to 97%, and in 2022-23 it dropped to 90%.

Another impressive improvement is the marked reduction, in the overall statewide average time, between PFB 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 fourteen fiscal years. 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 then be re-appointed by the Governor for successive four-year terms. The re-appointment process is to be initiated about six (6) months before 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,<sup>308</sup> mandates that the SNC consider “the extent to which the judge has met the requirements of this chapter, including, but not limited to” these eight specific statutory provisions: section 440.25(1), Florida Statutes,<sup>309</sup> (timely mediation); section 440.25(4)(a), Florida Statutes,<sup>310</sup> (pretrial procedure); section 440.25(4)(b), Florida Statutes,<sup>311</sup> (appropriate continuance grounds and orders); section 440.25(4)(c), Florida Statutes,<sup>312</sup> (timely final hearing notice); section 440.25(4)(d), Florida Statutes,<sup>313</sup> (timely final hearings and final orders); section 440.25(4)(e), Florida Statutes,<sup>314</sup> (final order filing); section 440.34(2), Florida Statutes, (appropriate fee order findings); and section 440.442, Florida Statutes,<sup>315</sup> (compliance with Code of Judicial Conduct). Despite the clear statutory mandate for such reporting, these statutory measures were not previously specifically 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 detailed 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](http://www.fljcc.org)), under the “Publications,” and then “Reports” tabs.

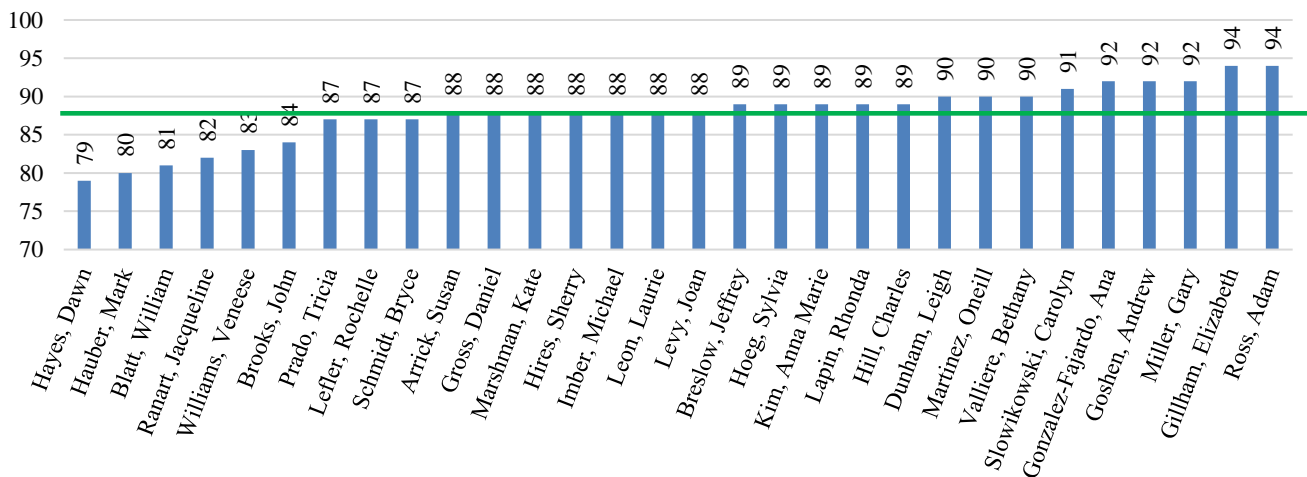
**Pretrial Hearing**

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.<sup>316</sup> The JCC Application can generate notices of any of the events common to the processing of a PFB, 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 (88 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 about the success of state mediation within the OJCC is provided in the 2022-23 Settlement and Mediation Report,<sup>317</sup> available under the “publications” and then “reports” tabs on the OJCC website, [www.fljcc.org](http://www.fljcc.org).

Days PFB to First Mediation





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 88 days. In 2007-08, twenty-two (or sixty-nine percent, 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,<sup>318</sup> **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.<sup>319</sup> 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. That said, 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 2022-23 was 1,447, the lowest ever reported, and an average of 52 per judge for the year.

In this context, the meaning of "continuance" warrants reiteration. Many cases cannot be mediated or tried on the date on 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."<sup>320</sup> Any hearing characterized as "continued" in the database should have a corresponding continuance order in the case docket.<sup>321</sup> The order should document the circumstances. The order shall also set forth the new event (trial or mediation) date.<sup>322</sup>

Ten continued final hearings were randomly selected for each judge during 2022-23 (except those judges whose assignments demonstrated fewer than 10 continuances overall). Each selected case docket was searched for a corresponding order "continuing" that hearing. Previous such audits have been documented.<sup>323</sup>

Each order that grants a continuance is required by section 440.25(4)(b)<sup>324</sup> 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 2021-22 were Judges Almeyda, Anthony, Anderson, Arthur, Clark, Grindal, Havers, Hedler, Holley, Humphries, Jeff Jacobs, Jill Jacobs, Johnsen, Kerr, Lewis, Medina-Shore, Moneyham, Newman, Pitts, Ring, Sancerni, Stanton, Walker, and Weiss (83%). This is a marked improvement from 2021-22 audit results and may signal more attention to this statutory requirement.

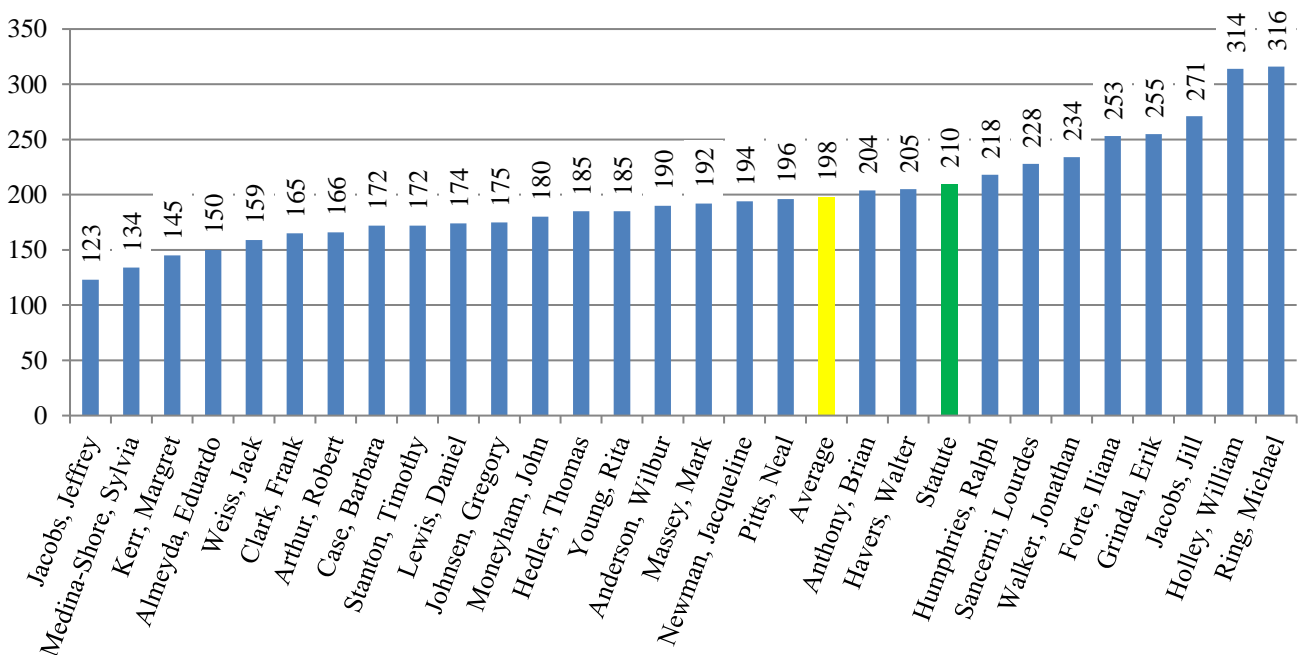
### **Final Order Filing**

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 have complied with this statutory requirement. As an aid to the public, the OJCC began a program in 2009-10 which lists "recent trial orders" for

the public on the OJCC website, [www.fljcc.org](http://www.fljcc.org). This listing is automatically updated each time a Division complies with this statutory requirement and uploads a trial order.

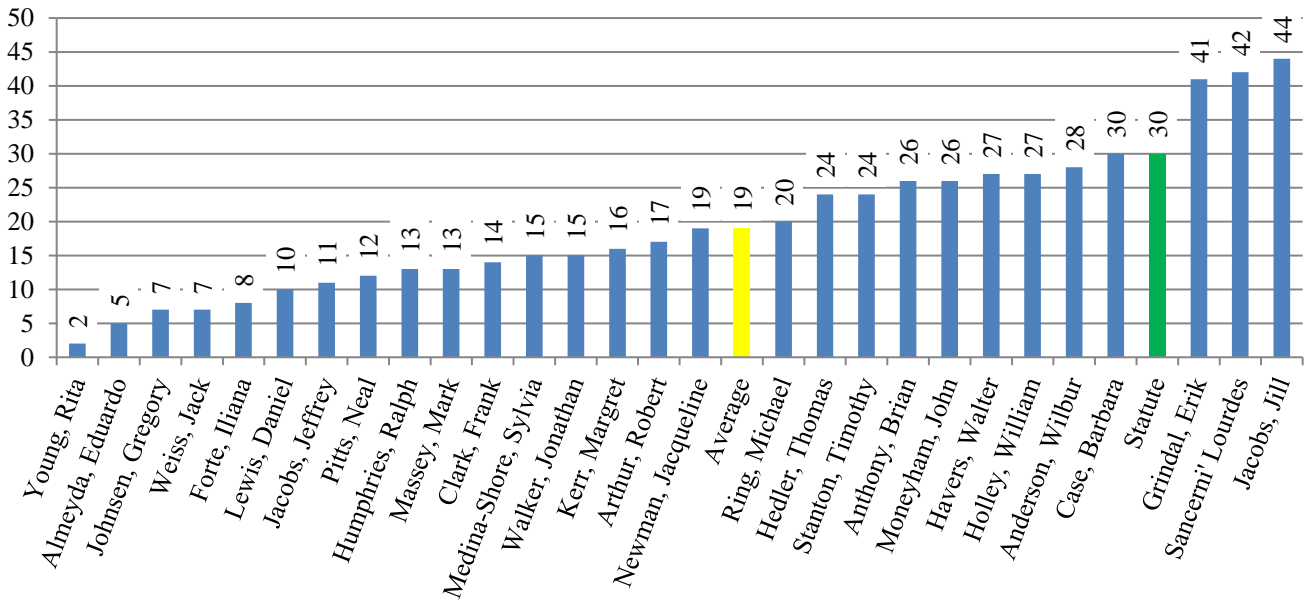
### **Timely Final Hearings and Final Orders**

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-eight (198) days in 2022-23. Seventy-five percent of judges averaged less than 210 days in 2022-23.



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 19 days in 2022-23. The green bar represents the 30-day statutory parameter. Ninety percent of judges averaged less than 30 days in 2022-23.

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**Attorney Fee Orders**

Contents of attorney fee orders are addressed in section 440.34(2), Florida Statutes.<sup>325</sup> This statutory measure requires the JCC to identify the amount, statutory basis, and type of benefits obtained through legal representation which must 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.<sup>326</sup> The current OJCC leadership construes nothing 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 pled in the PFB 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. Without 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 later. A bifurcated process is the norm.

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 later pleaded for adjudication in a motion or PFB for attorney fees and/or costs. The subject motion or PFB is sometimes filed years after the underlying benefit is provided or awarded. This is one reason that fees awarded or approved in each fiscal year often include fees for dates of accident in the reasonably remote past.<sup>327</sup> The OJCC regularly holds hearings on attorney fee issues divided into two main categories, fee entitlement hearings and fee amount hearings. The trial orders<sup>328</sup> 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 along with a settlement of the claimant's entire case. Those instances are known 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 2022-23. These audits 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 six 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.

While auditing fee orders in the last three fiscal years, 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 for the value of benefits obtained or the number of hours invested in obtaining the benefit.<sup>329</sup> It is not known what factual justification might support a determination of "reasonable" without any examination of such foundational facts.<sup>330</sup>

## **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 about failure to comply with this Code are investigated by the Director of the Division of Administrative Hearings (DOAH). In 2022-23, 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 shown 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. 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 IT department.

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 not kept pace with inflation. The downsizing and consolidation effected by DOAH management beginning in 2021-22 has reduced resources and strained efficiency and effectiveness. The OJCC has striven to fulfill its mission despite these challenges. As PFB filing rates increase and litigation intensity is exacerbated further, the diminished 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. The retention of qualified staff has never been of a similarly critical nature and will likely continue to challenge the workers' compensation adjudication process.

## **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. <sup>331</sup>
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, and 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 JCCA.
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. <sup>332</sup>
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. <sup>333</sup>
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 FTL (JCC Forte, JCC Lewis, JCC Ring):

District FTL includes only Broward County.

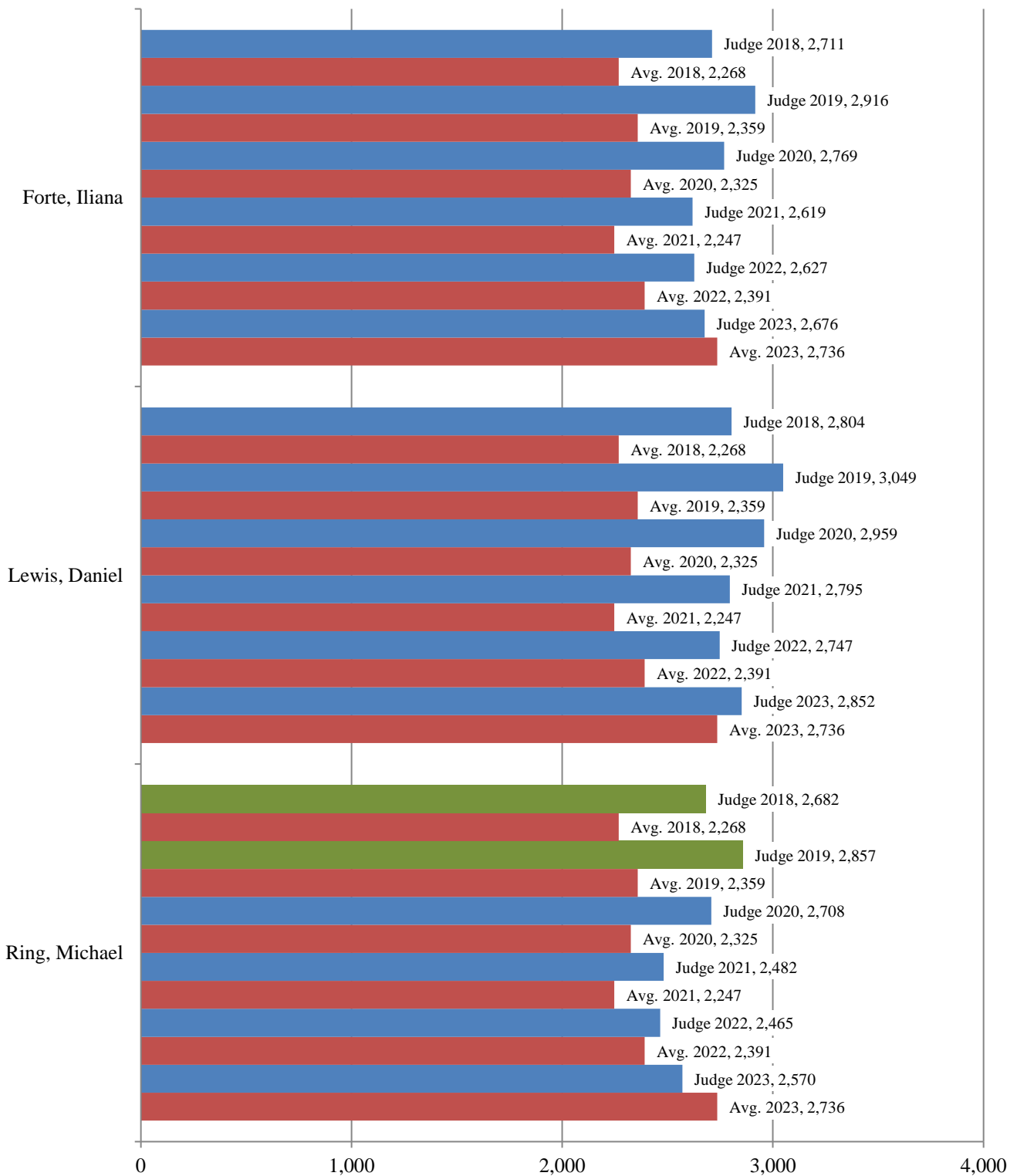
District Ft. Lauderdale was one of the few districts that experienced no direct impact from the consolidation efforts in 2022 or 2023. PFB Volumes have been consistently above the statewide averages in recent years, but 2022-23 breaks from that trend. The “new case” volume has remained in slightly below average, which remained consistent in 2022-23. This indicates that the volume of incoming cases is reasonably typical and predictable, but the intensity of that litigation has been above average and is moderating. Petition closure pace is consistent with the filings, and evidences near-equilibrium.

On February 25, 2022, Judge Forte participated in the annual Broward County Bar Association Workers’ Compensation Conference 2022. Judge Forte, along with Judge Lewis and Judge Ring presented a question and answer session on topics and issues important to the members of the bar. On April 7, 2022, Judge Forte presented *Evidence Matters* at the 2022 Florida Bar Workers’ Compensation Forum in Orlando. On May 14, 2022, Judge Forte participated in the Trial Advocacy Program, which takes place every two years. The Trial Advocacy Program provides an opportunity for new and more experienced lawyers to prepare and participate in a mock trial before an actual Judge of Compensation Claims.

In 2022-2023, Judge Lewis remained active in the Broward County Bar Association. On February 24, 2023, he presented *Question and Answer Session with the Broward JCCs* for the Broward County Bar Association 2023 Workers’ Compensation Section Conference. On July 28, 2023, Judge Lewis served as a Judge Participant for the annual E. Earle Zehmer Moot Court Competition. Along with his docket and case responsibilities, Judge Lewis serves as the Administrative Judge in District Fort Lauderdale, handling premises, equipment, security, and personnel issues.

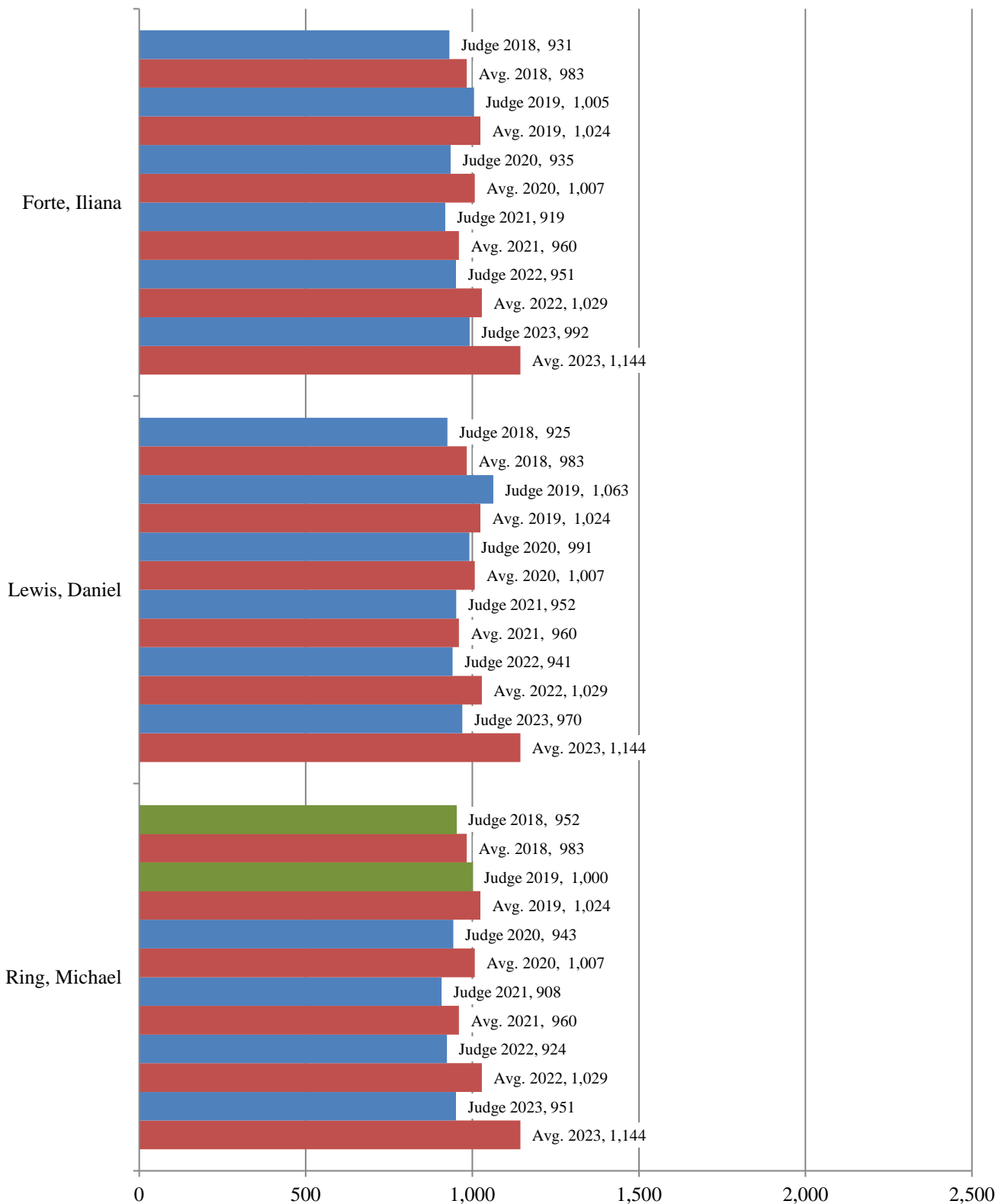
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The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).

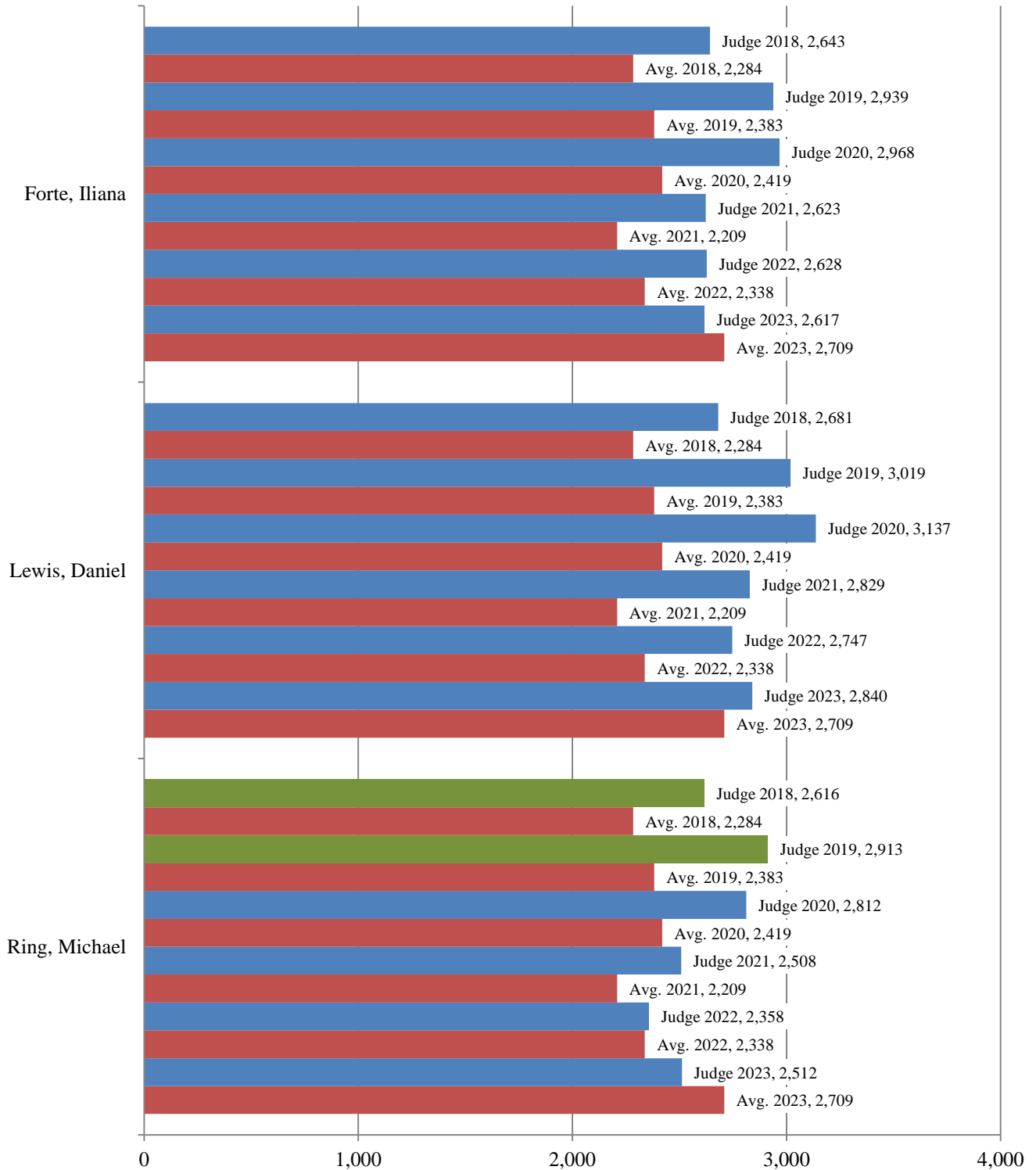




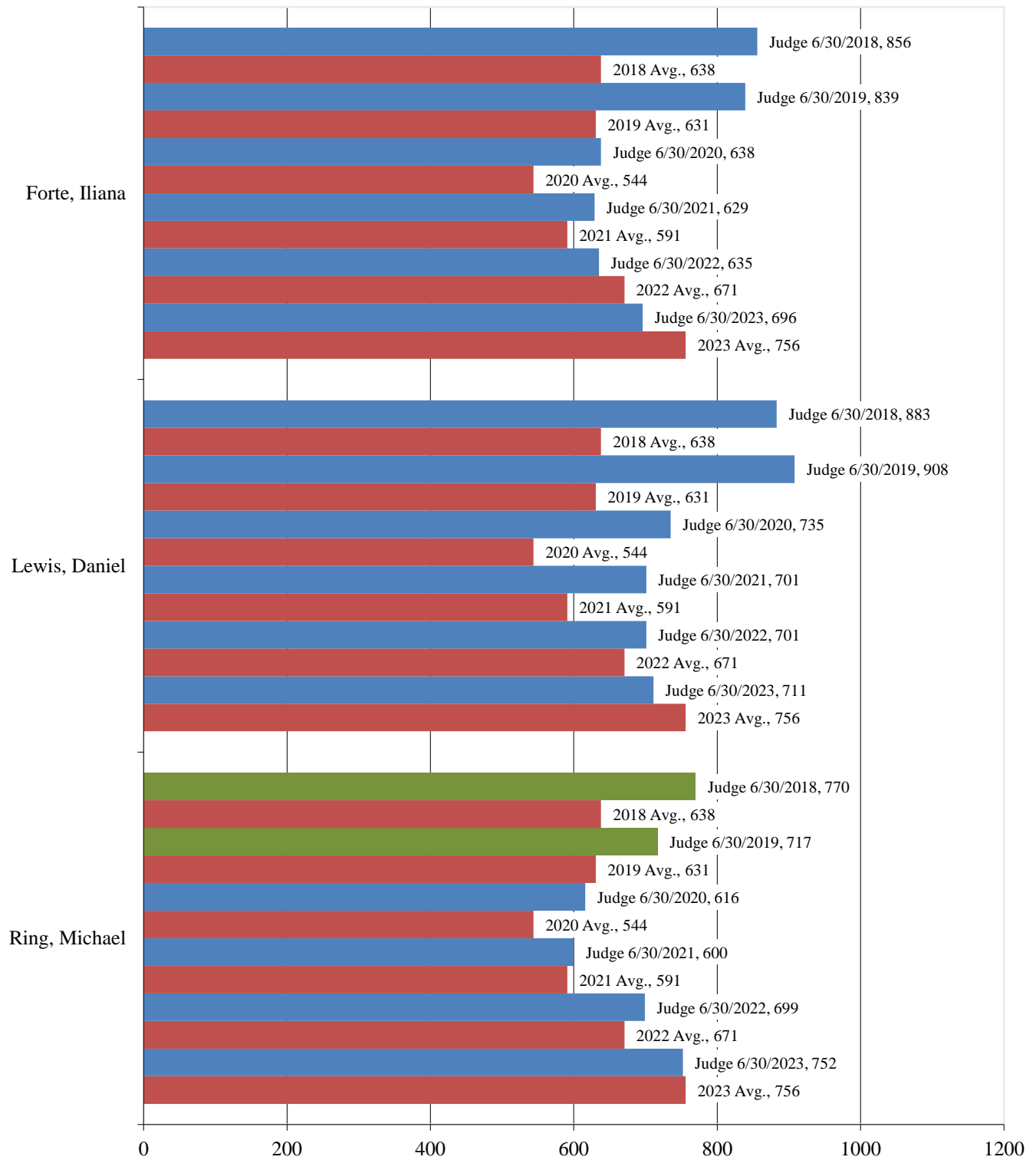
The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).

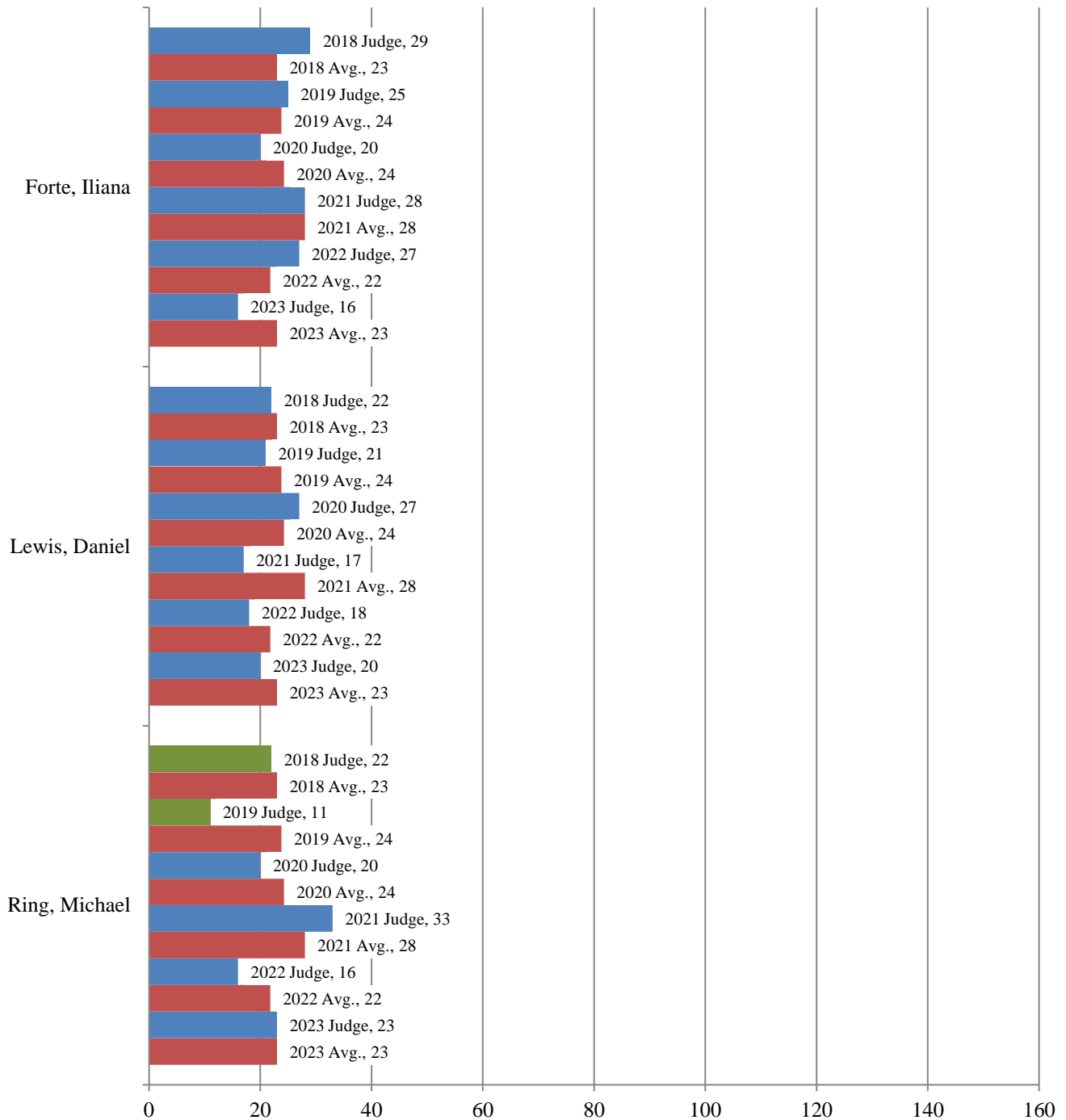


The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).

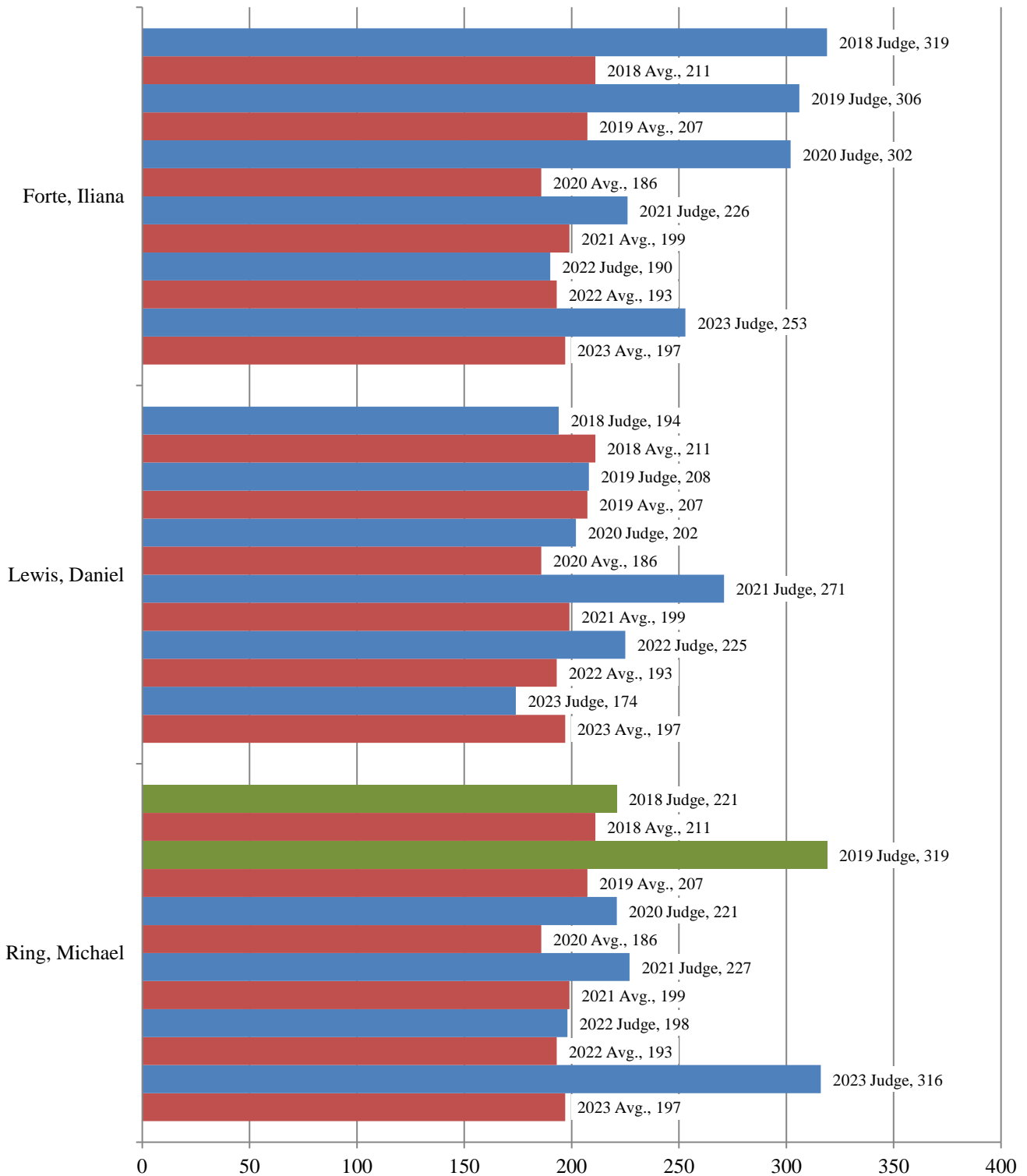


Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore, that graph is not included here, but in Appendix 11.

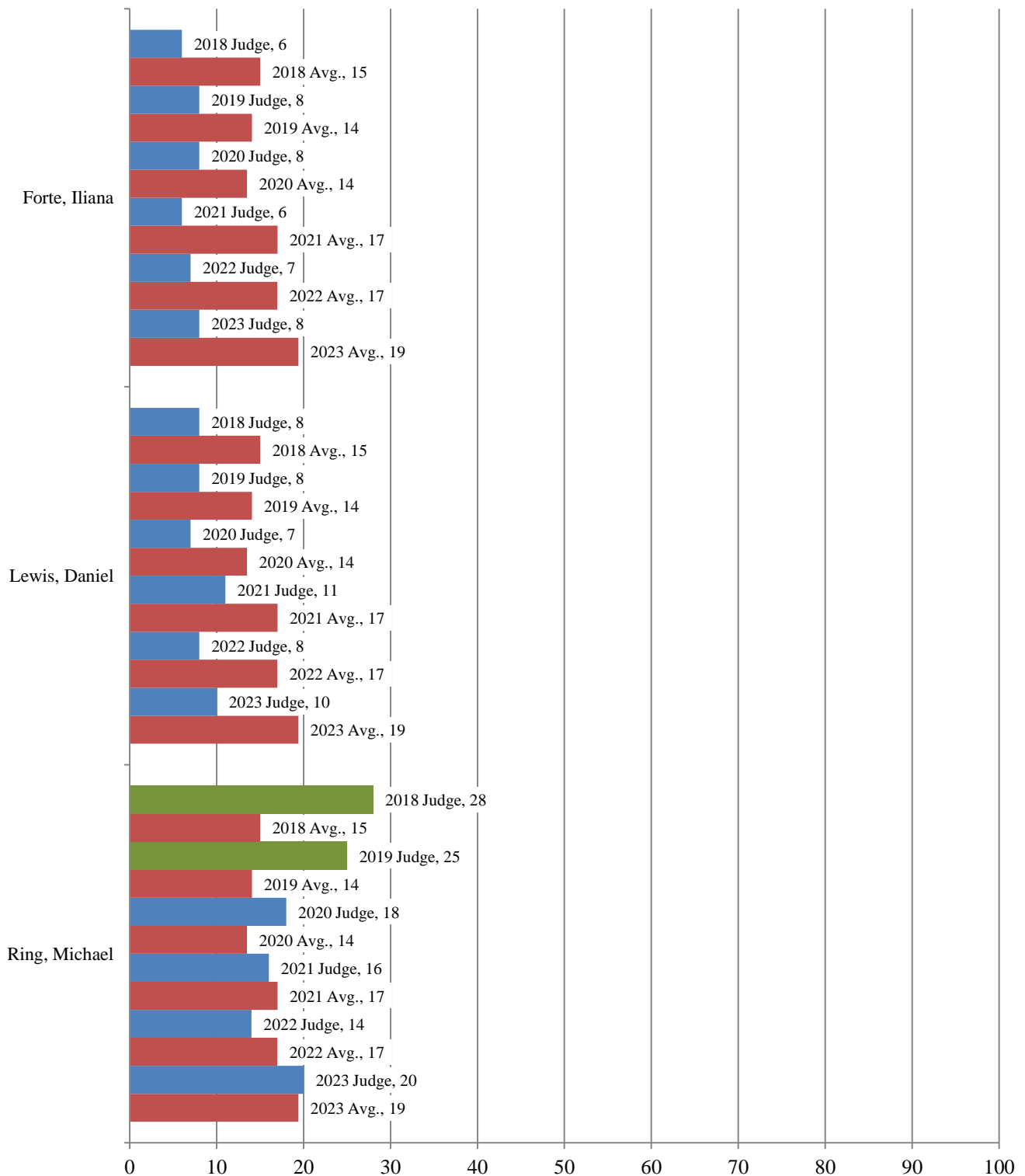
The following graph depicts the total volume of trial orders<sup>334</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge's appointment).



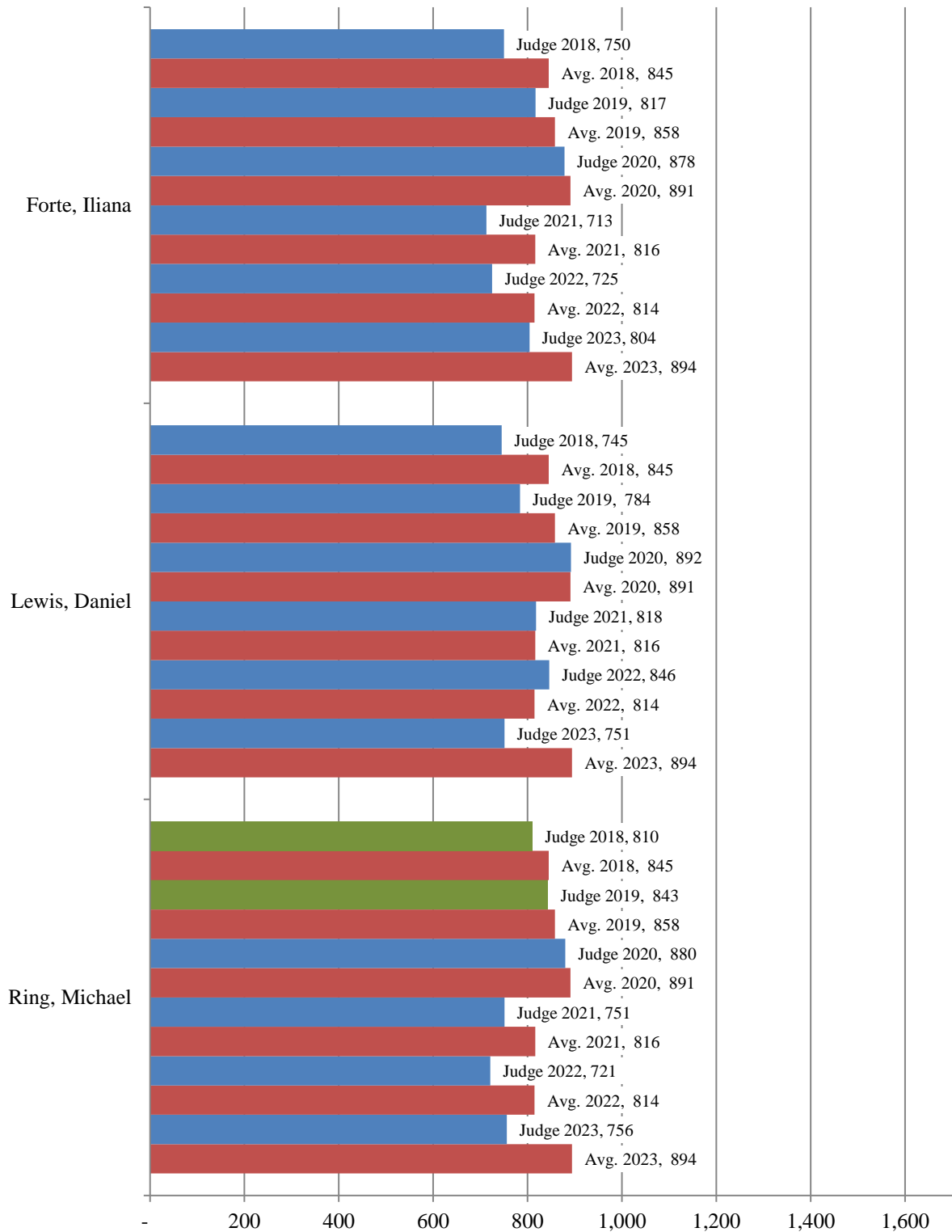
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



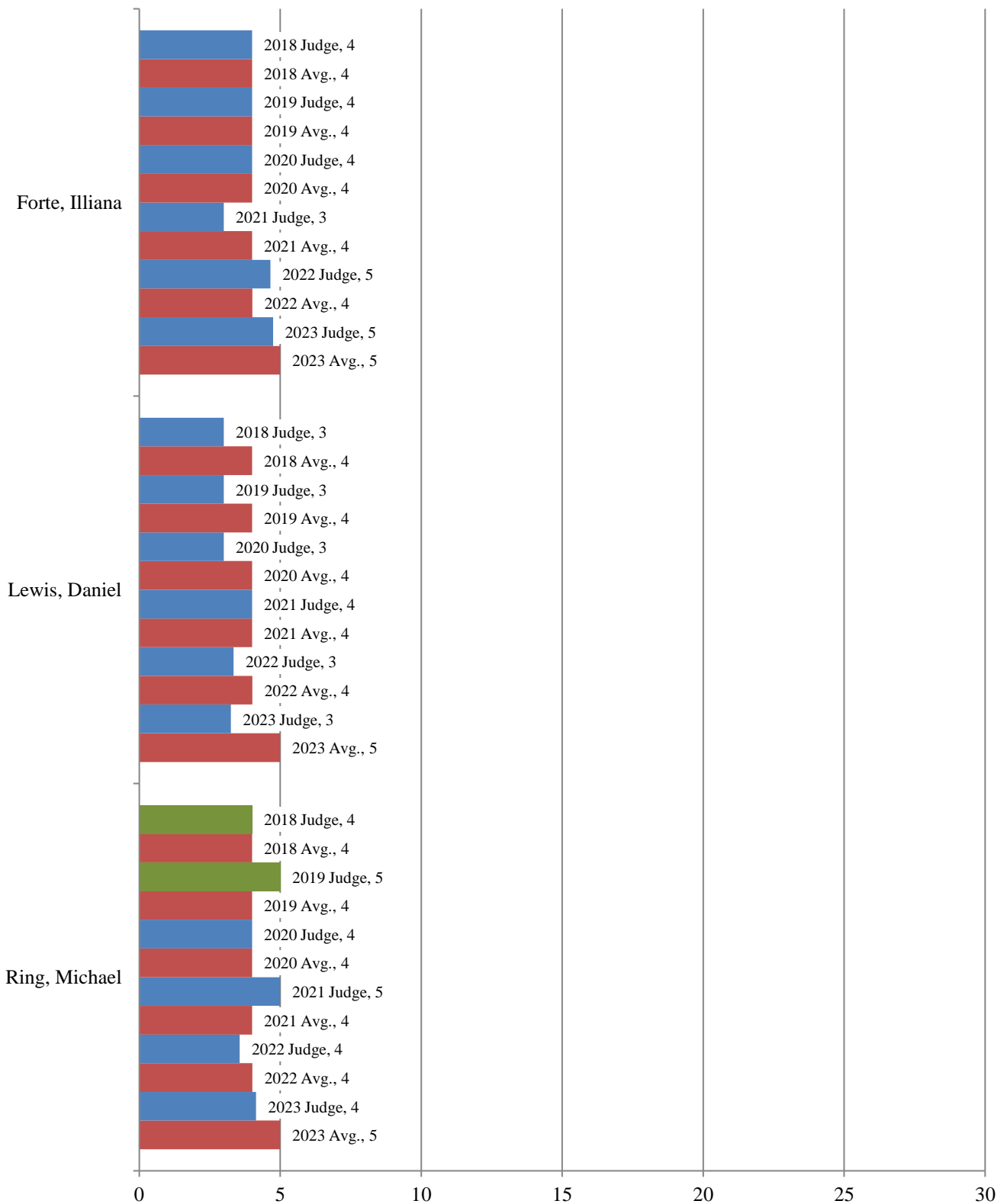
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



The following depicts the volume of settlement orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

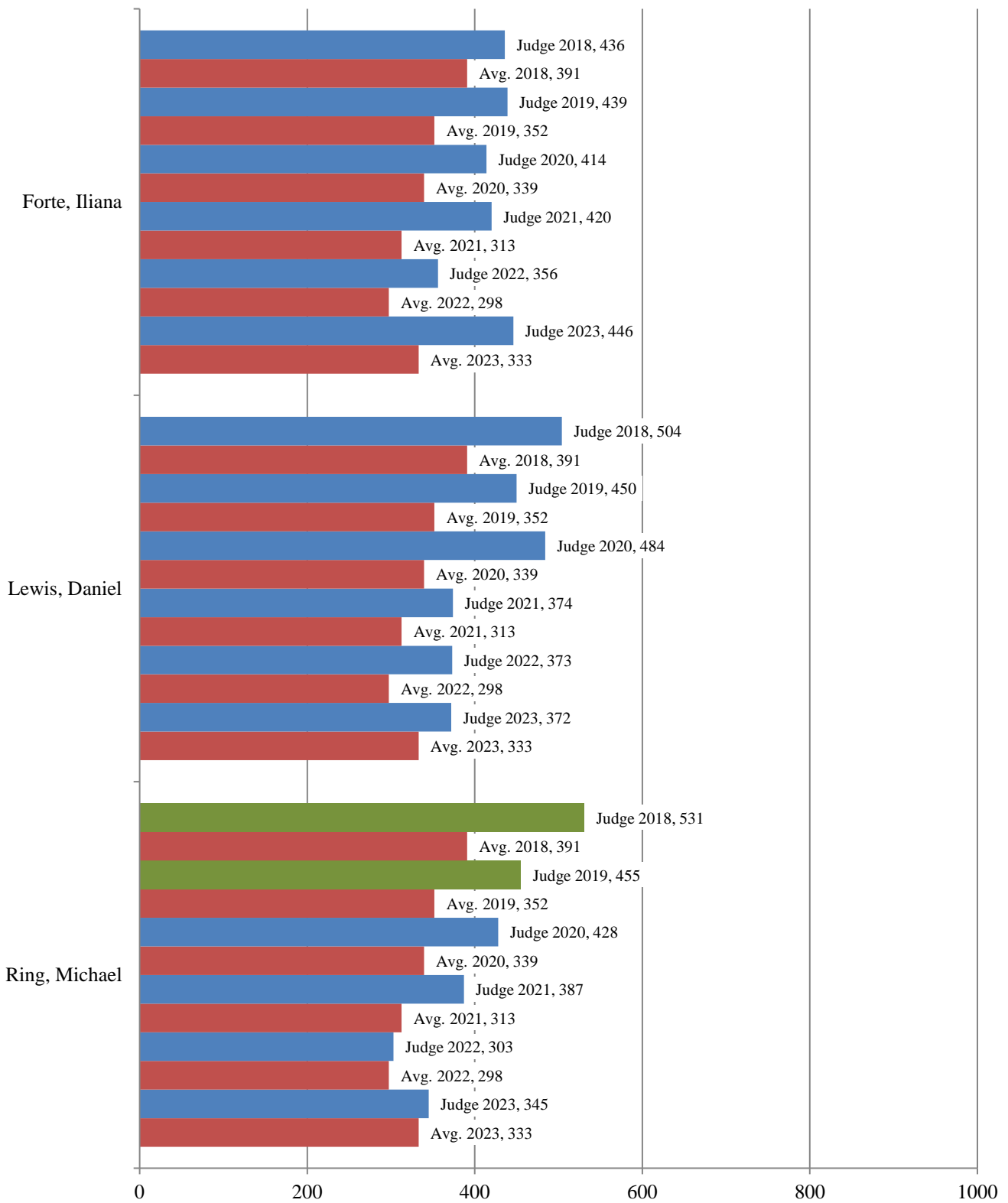


The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

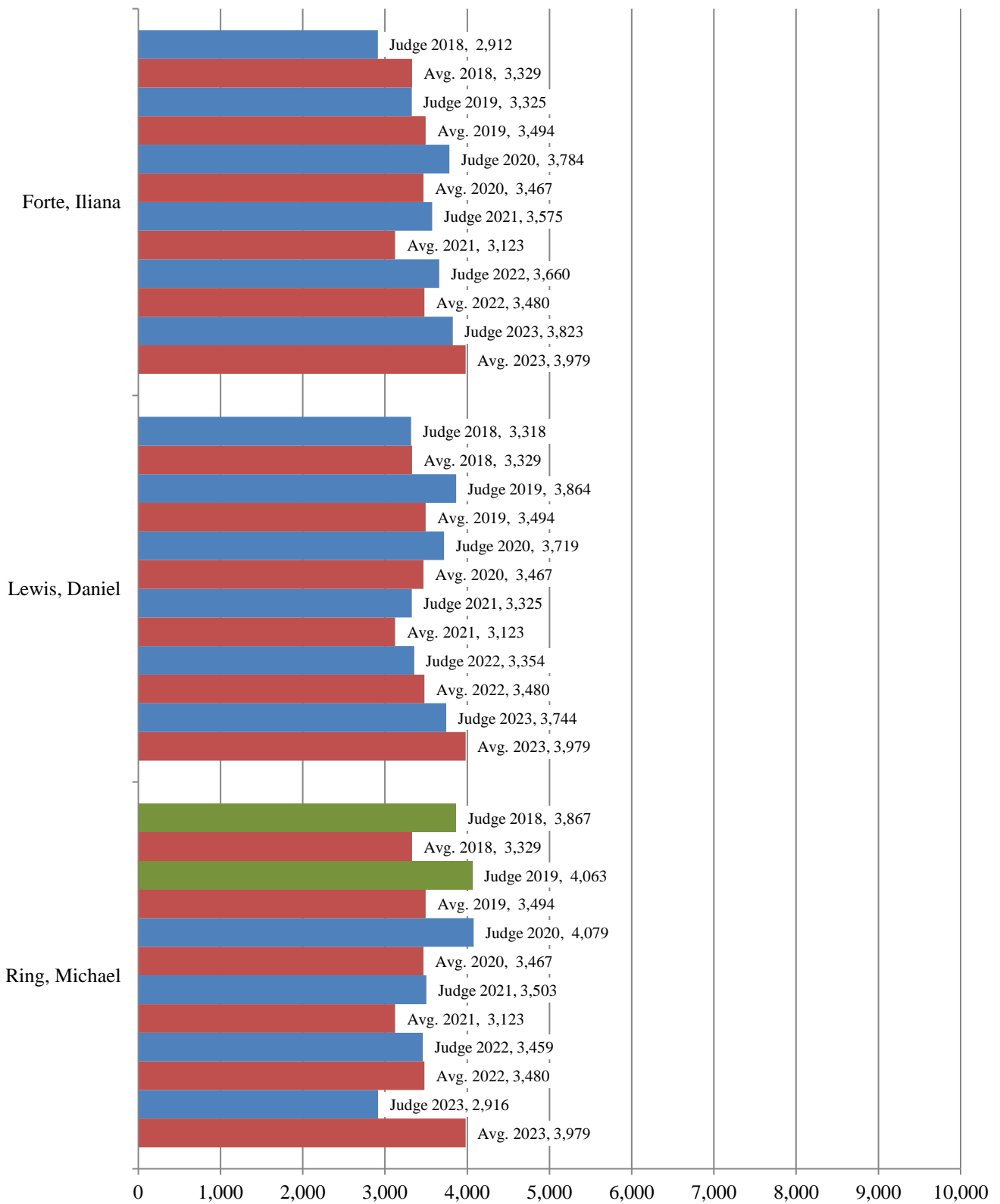




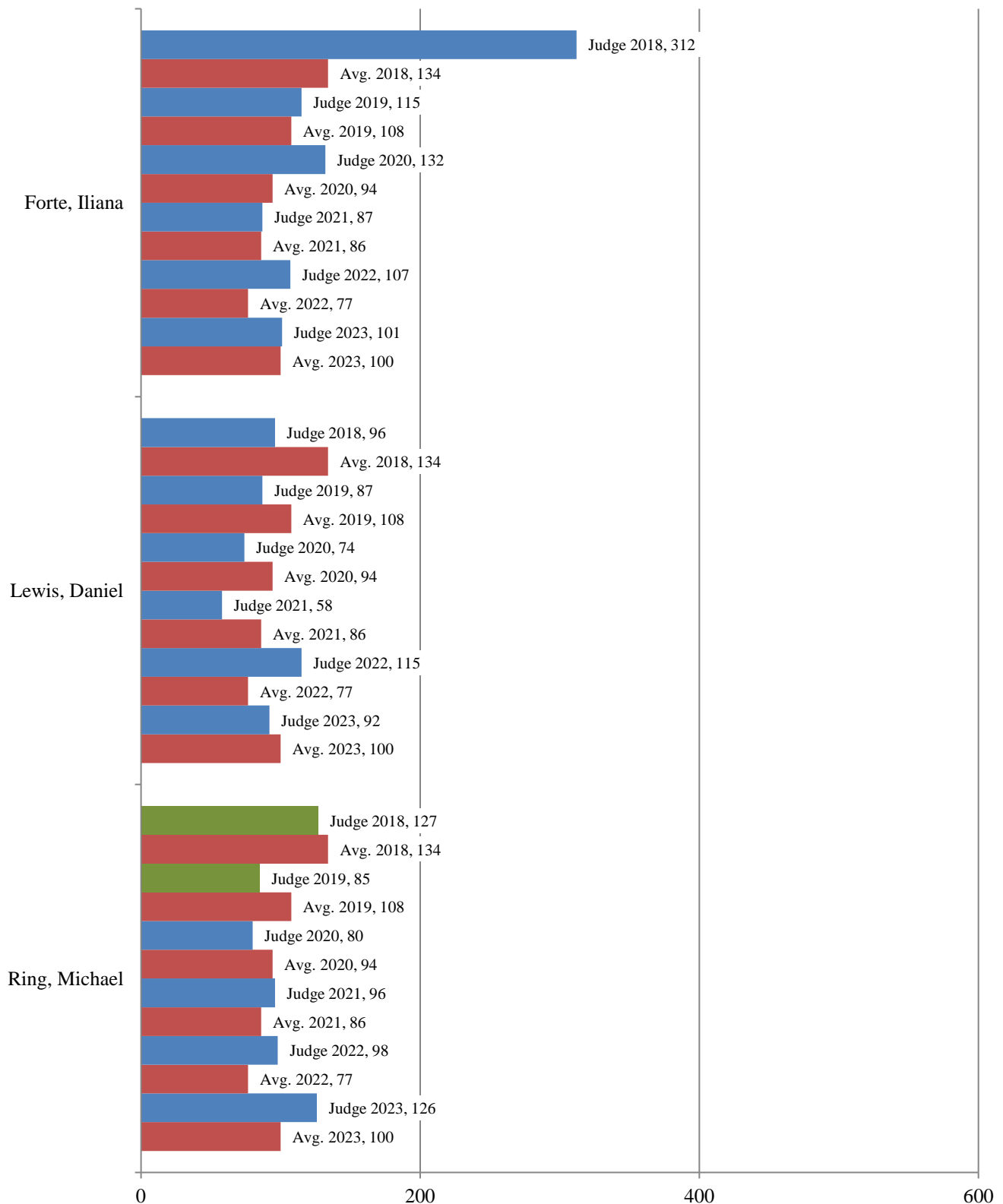
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



## Appendix “2” District FTM (JCC Clark, JCC Weiss):

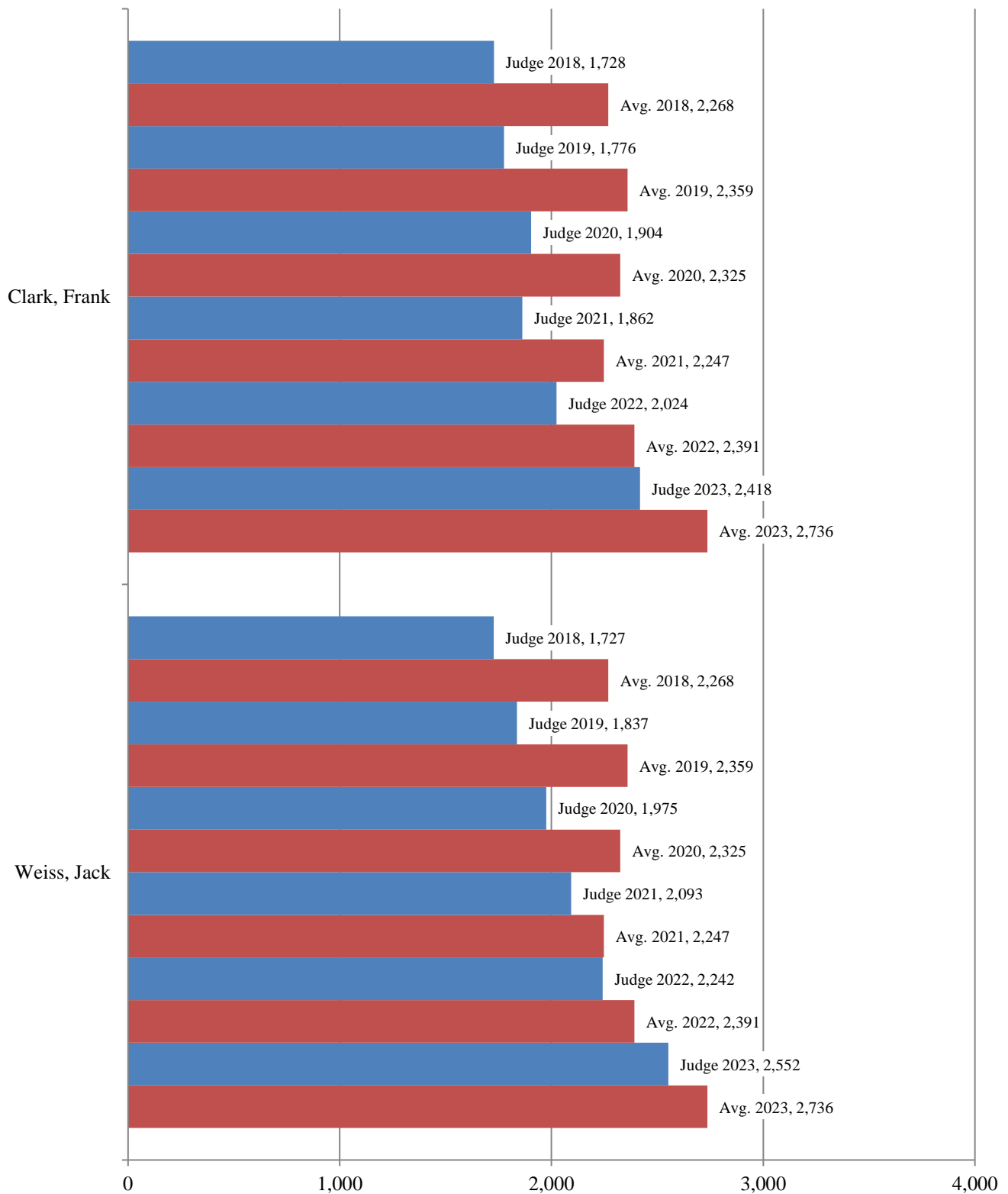
District FTM included Charlotte, Collier, DeSoto, and Lee counties. Late in 2021-22, as part of the consolidation and office closure process, Glades, and Hendry counties were transferred to District Fort Myers<sup>335</sup> in accommodation of the significant work volume transferred into District West Palm Beach as a result of closure of both Melbourne and Port St. Lucie Districts. The cases in DeSoto County were transferred to District Sarasota.<sup>336</sup>

“New case” volume in District FTM is close to the statewide average. The PFB volume is notably below average, but demonstrated increase in 2022-23. The closure rate is remarkably similar to the PFB filing rate, evidencing diligent management of petitions. That is consistent with the increase in “new case” volume.

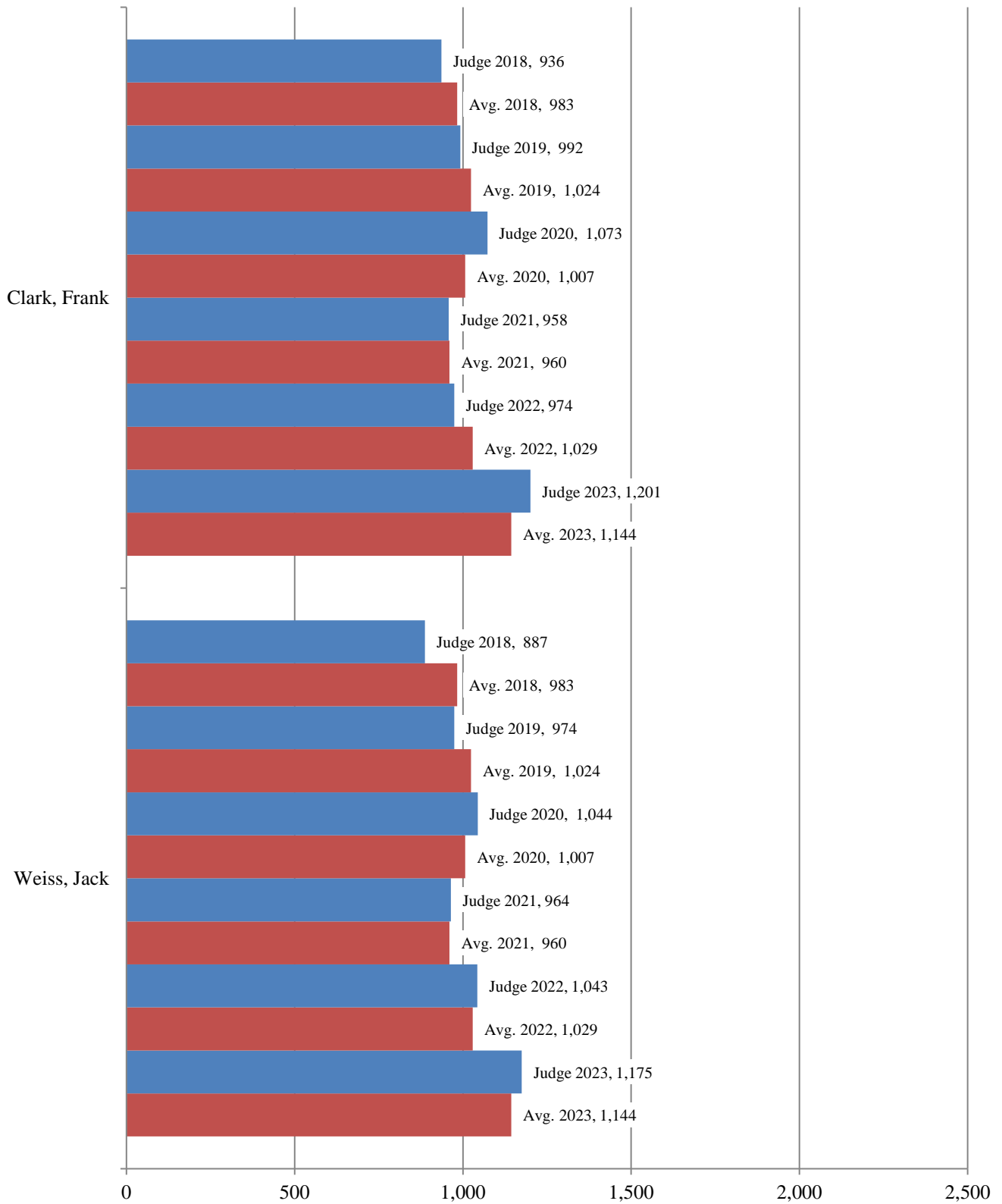
In 2022-23 Judge Weiss spoke at the Calusa American Inn of Court in October: *Mental Health and Substance Use: How to Deal with Personal Issues and What to do if you Notice Symptoms in Others*, and the OJCC-WCI First District Court of Appeal Seminar in February: *Tools for Reaching Mediation Agreements that will Weather the Hurricane of Motions to Enforce*. Judge Weiss continues to serve the legal community through his involvement with the Florida Conference of Judges of Compensation Claims (Treasurer), The Florida Bar (Standing Committee on Professionalism and Workers’ Compensation Rules Advisory Committee), E. Earle Zehmer National Moot Court Competition (Judge), and the National Association of Workers’ Compensation Judiciary (Conference Committee). He also remains an active member of the Calusa American Inn of Court and the Lee County Bar Association.

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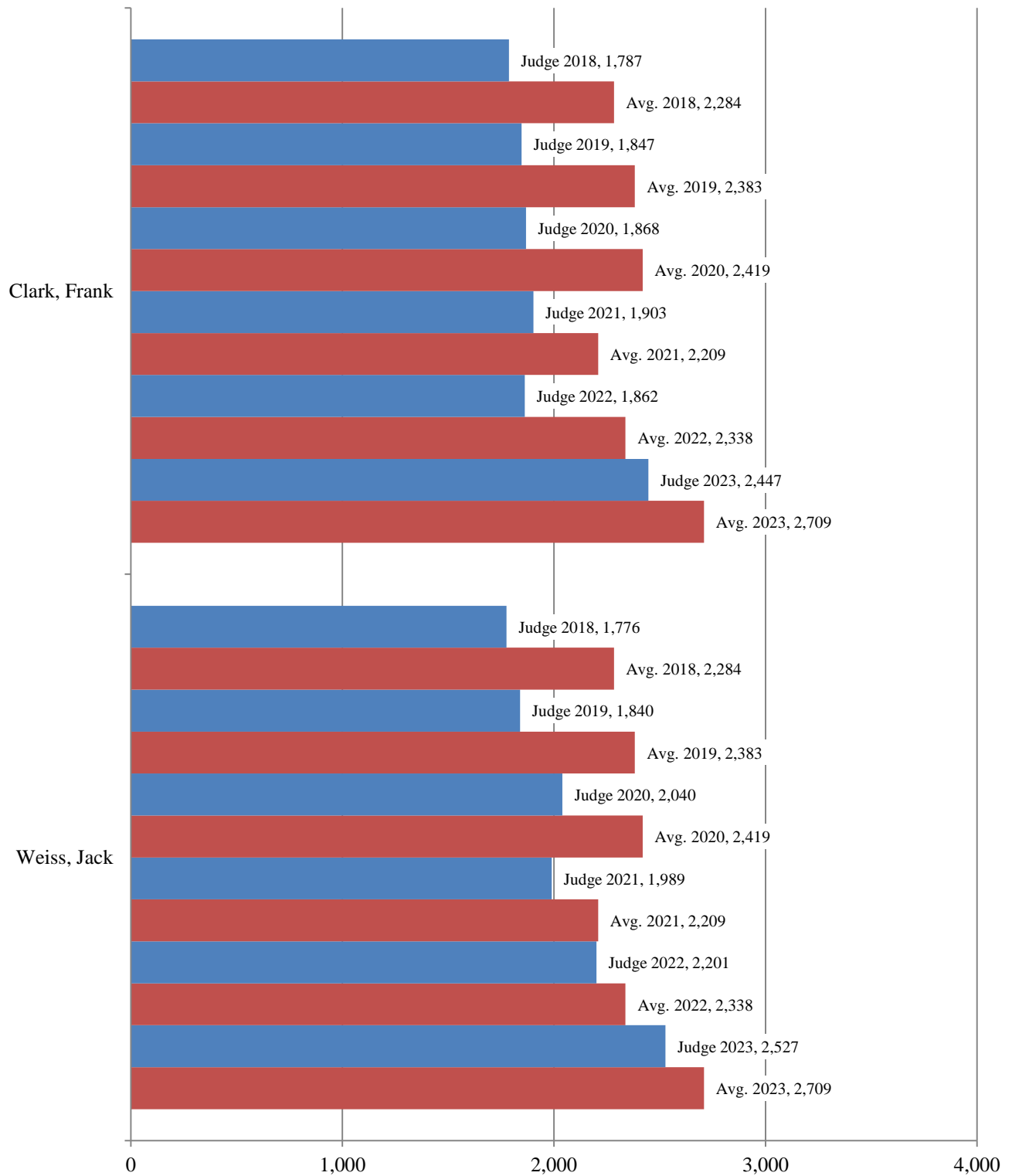
The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



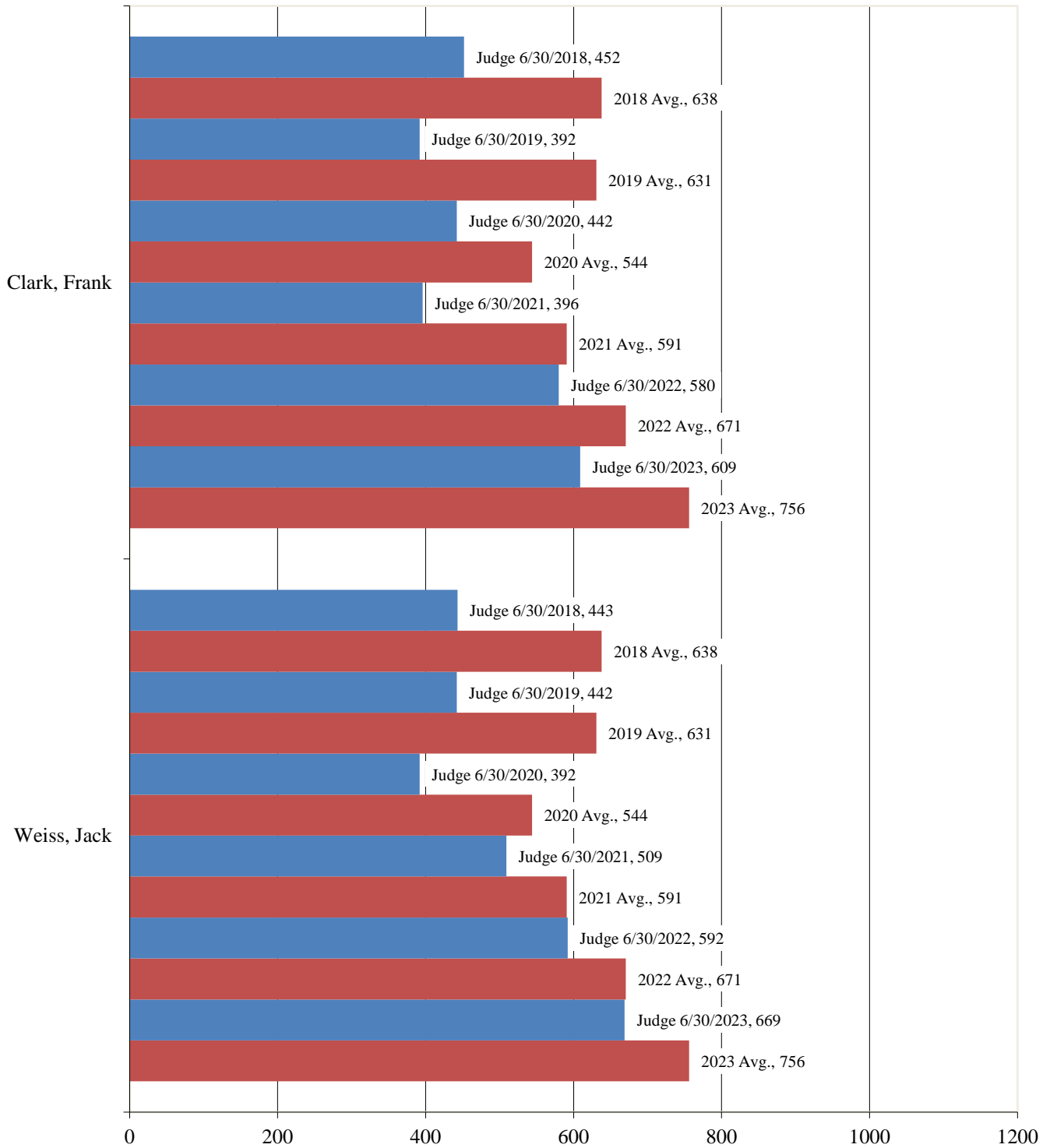
The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



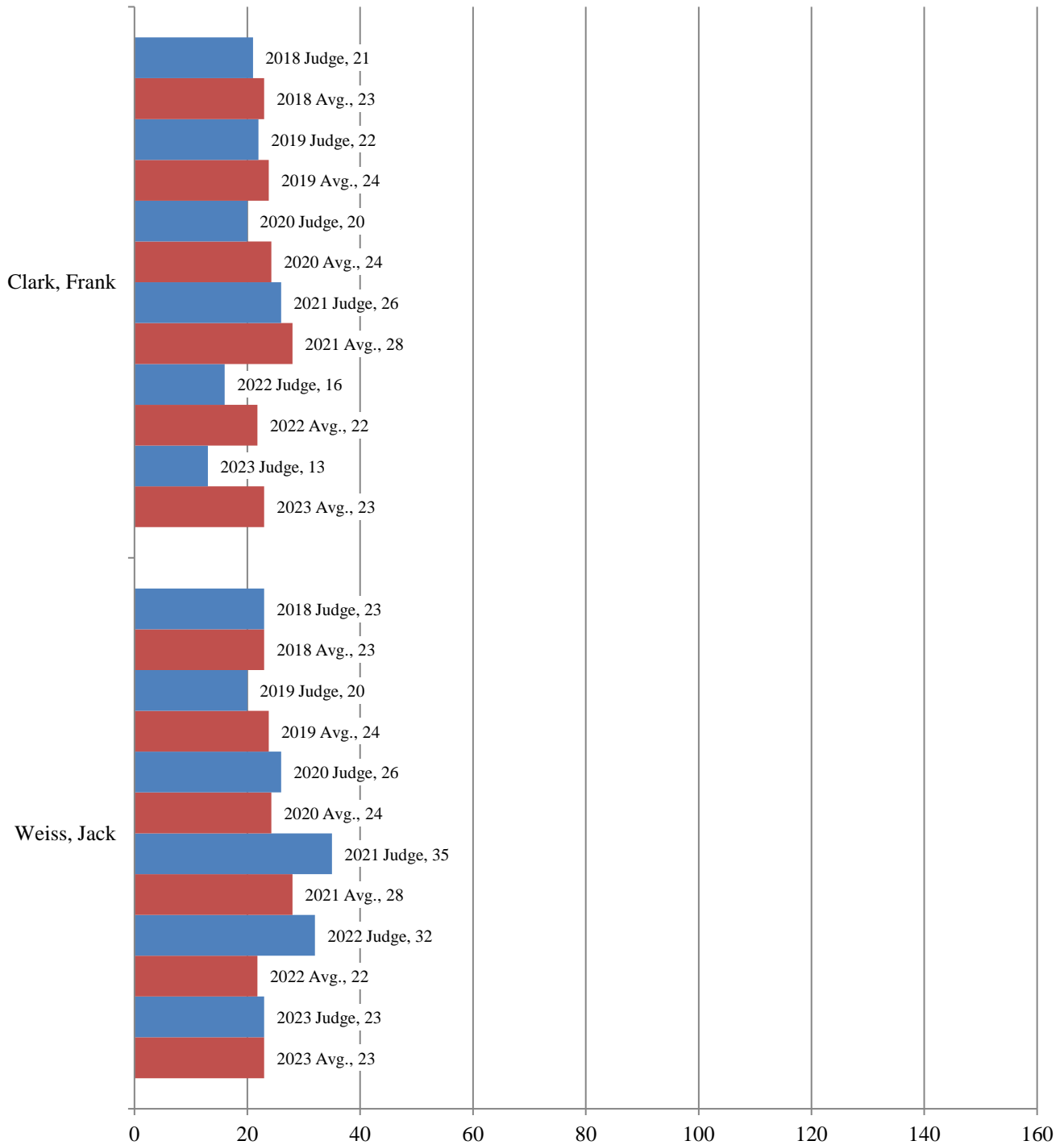
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



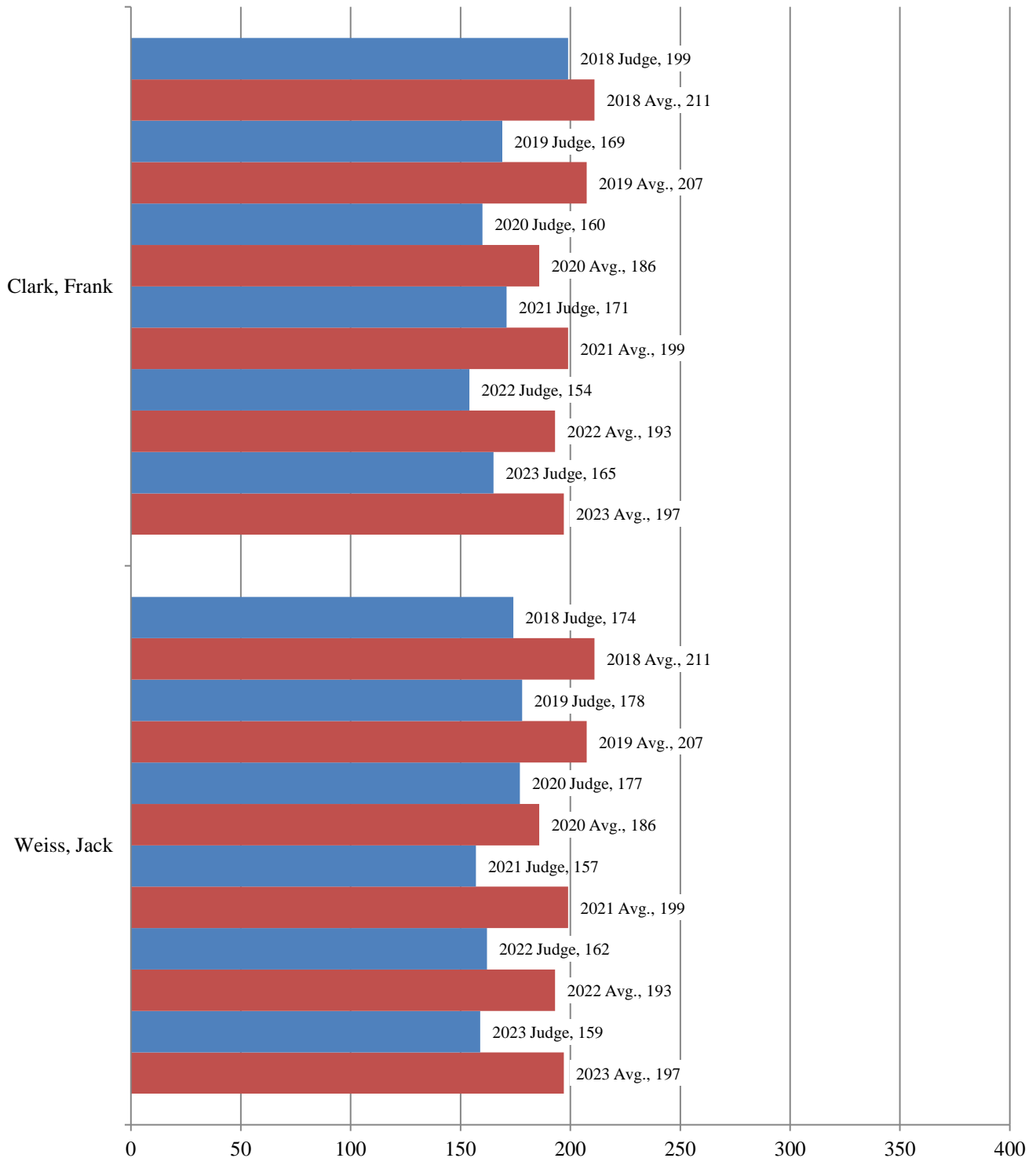


Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore, that graph is not included here, but in Appendix 11.

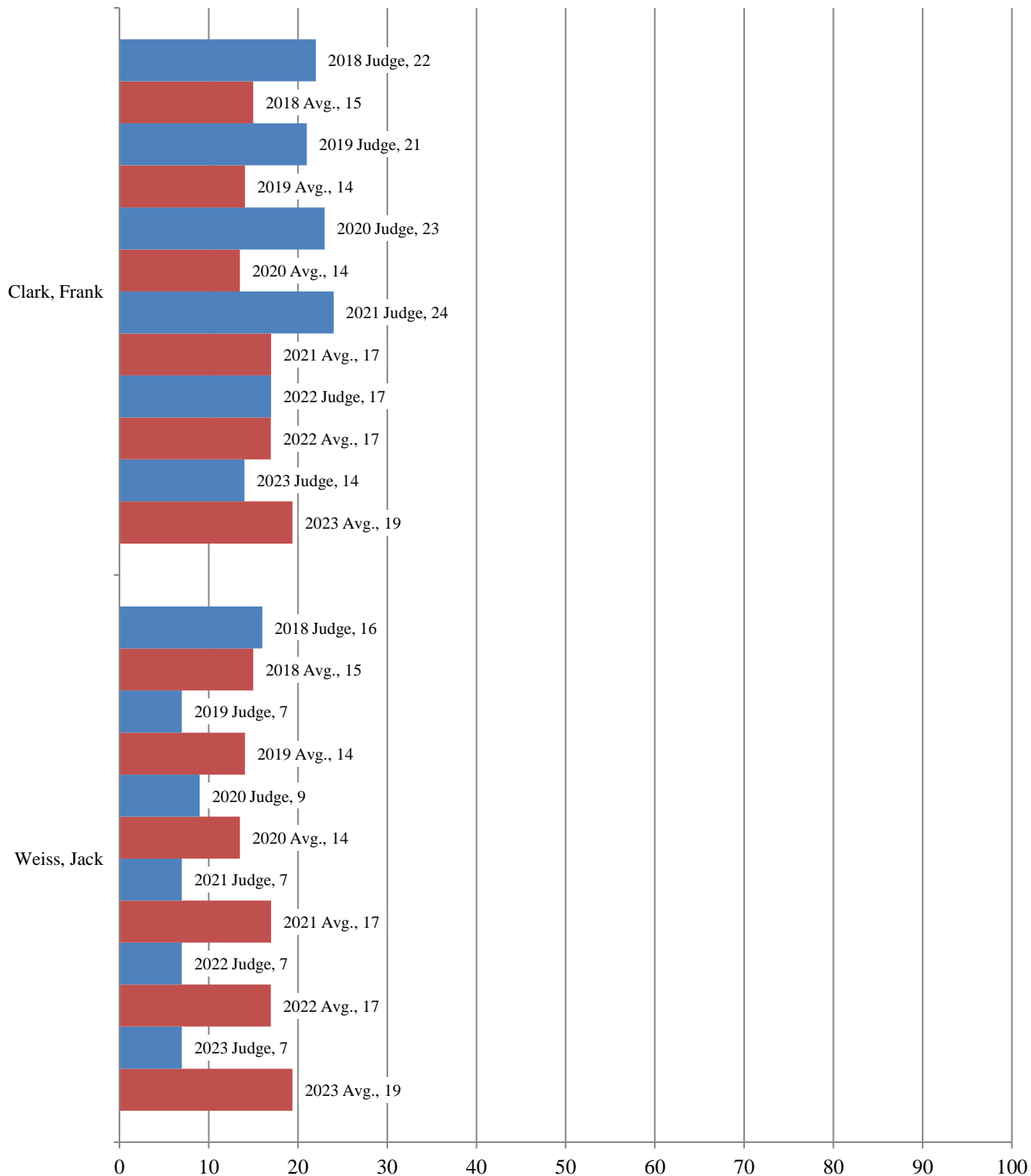
The following graph depicts the total volume of trial orders<sup>337</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



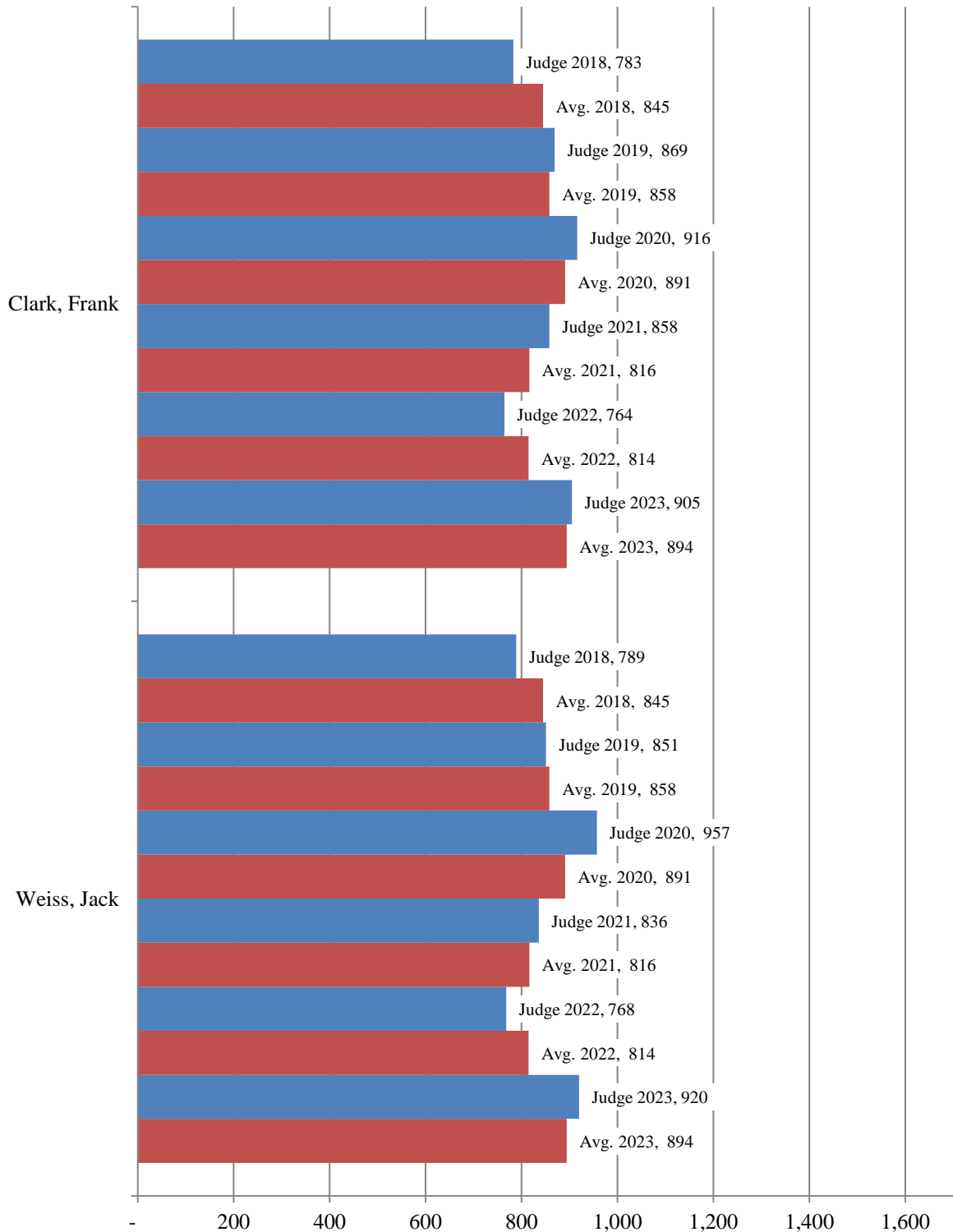
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics prior to the named judge’s appointment).



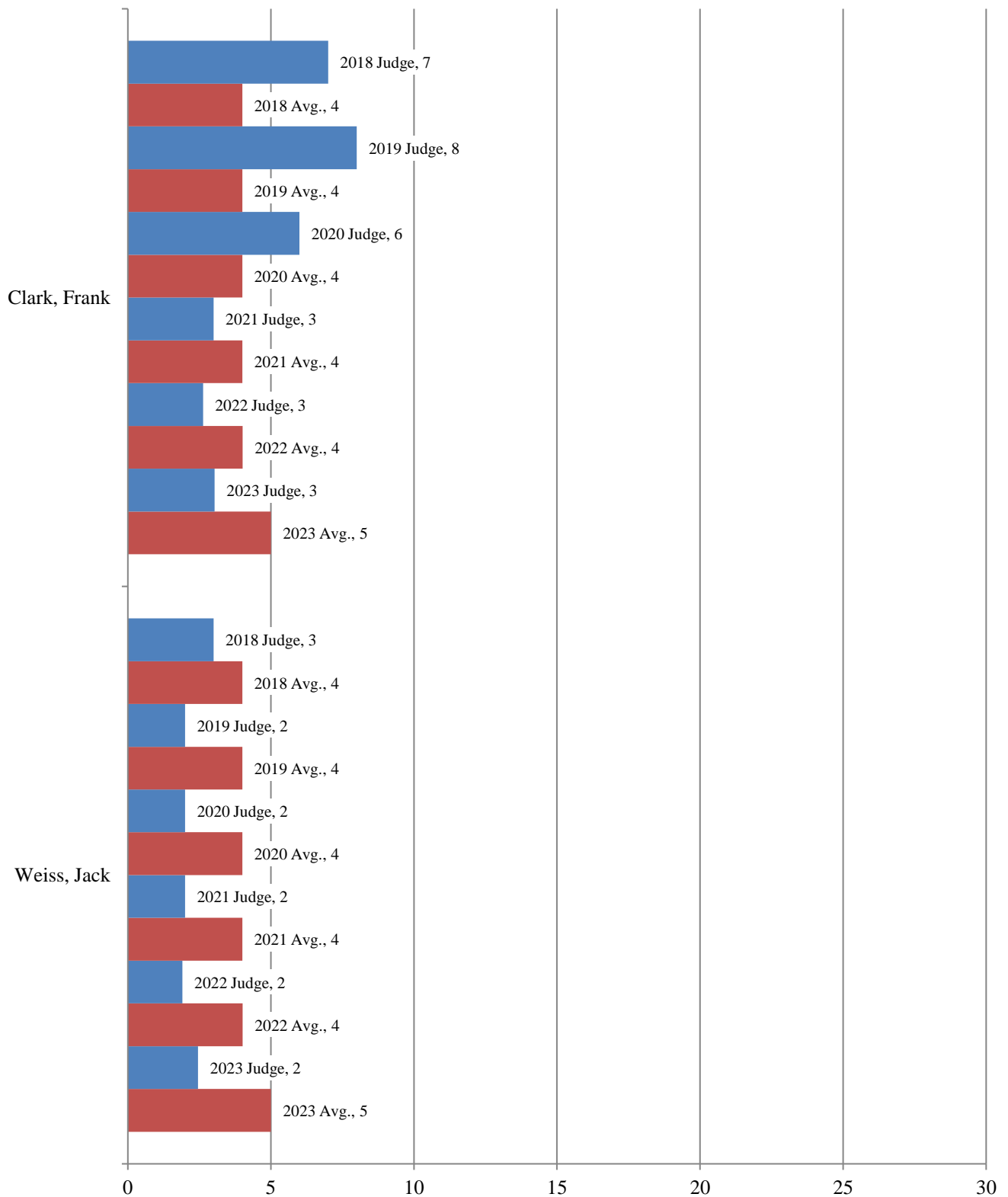
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



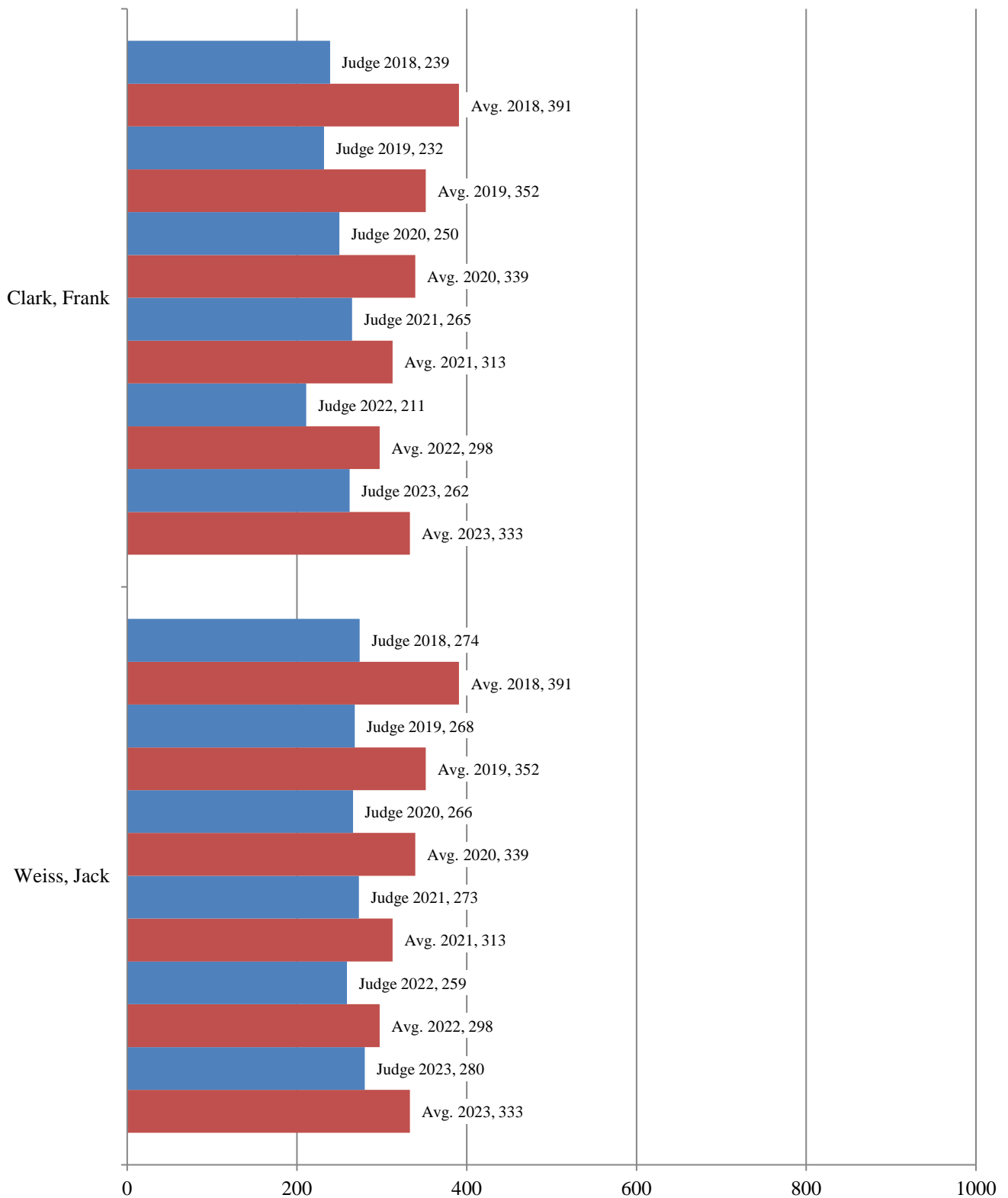
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



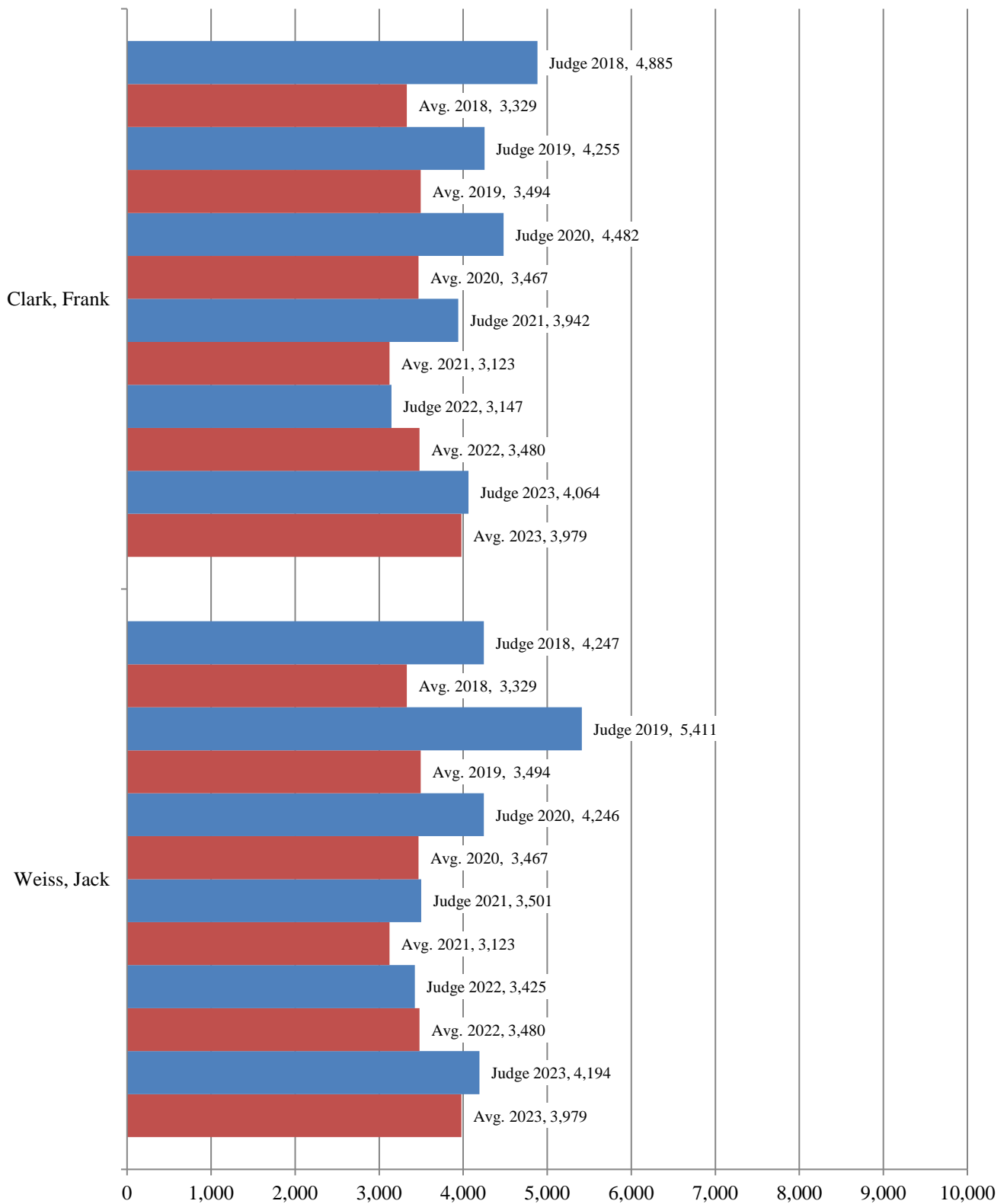
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



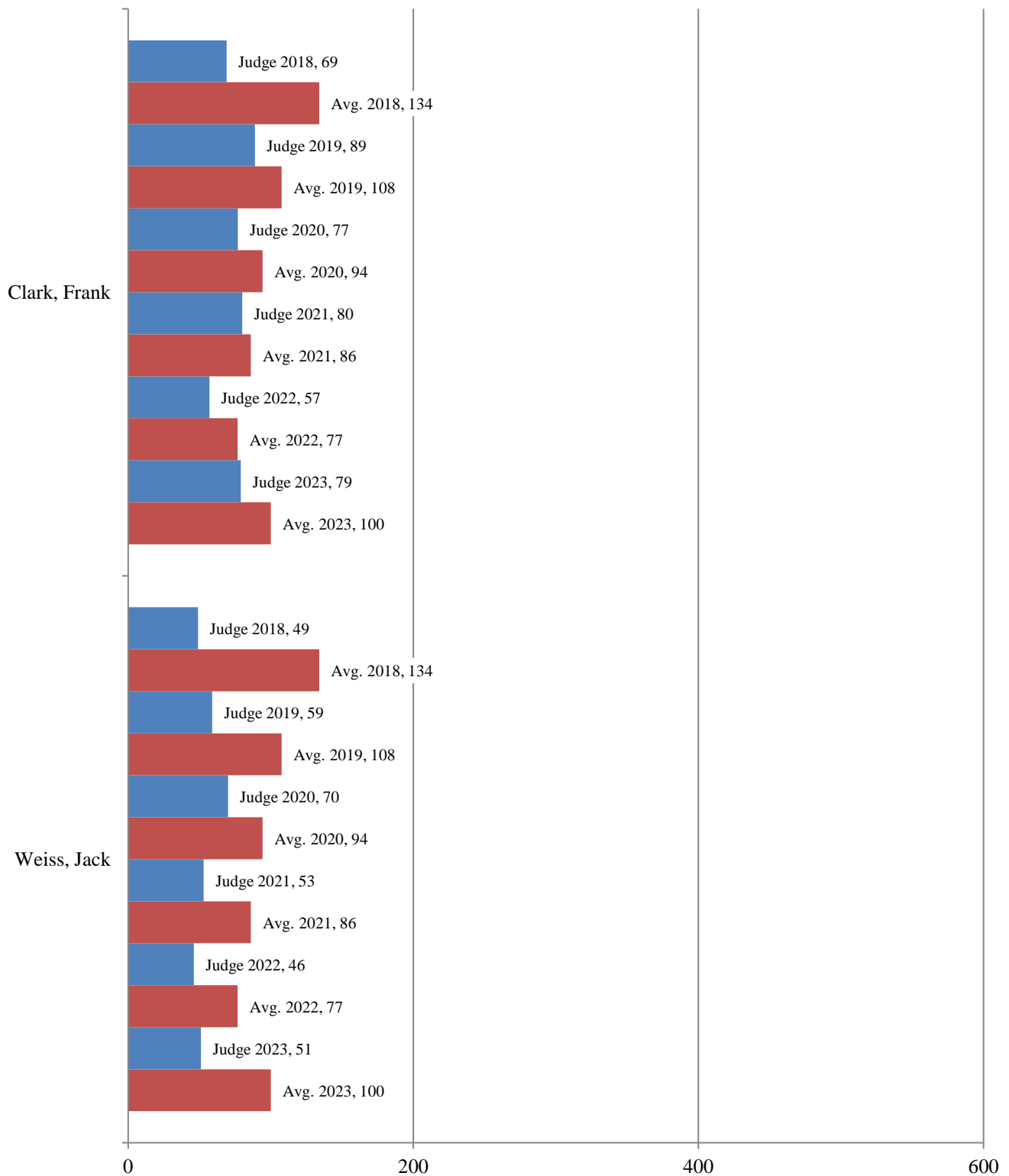
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).





## Appendix “3” District JAX (JCC Holley, JCC Humphries, JCC Stanton<sup>338</sup>):

District JAX includes Alachua,<sup>339</sup> Baker, Bradford, Clay, Columbia,<sup>340</sup> Duval, Flagler,<sup>341</sup> Marion,<sup>342</sup> Nassau, Putnam, St. Johns, and Union counties. In 2022-23 District Gainesville was closed and counties were consolidated into District Jacksonville, along with Judge Stanton.<sup>343</sup> This represents a significant expansion in the geography and scope of this district.

District Jacksonville has consistently experienced a notable volume of “new cases,” about thirty percent above the statewide average. That said, the overall volume of PFBs in District Jacksonville usually remained below the statewide average. Again in 2022-23, the PFB volume was notably below the average, despite the addition of Flagler County and the consolidation of District Gainesville. Notably, Judge Stanton’s PFB filing rate was higher, likely reflecting his initial retention of former Gainesville District cases in the transition. These levels should show greater parity as the random assignment of future cases from those counties distributes that work among the three judges.

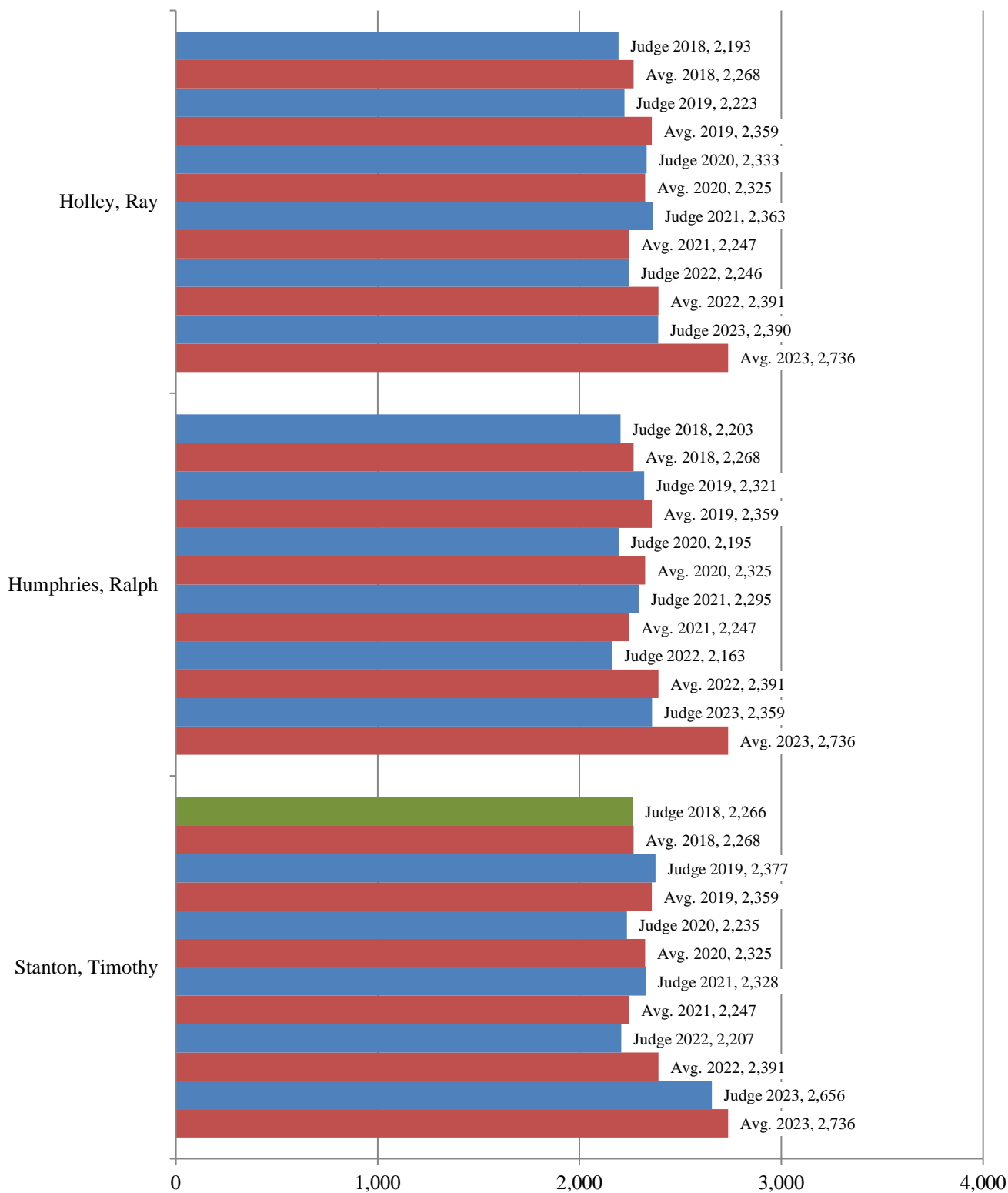
Judge Holley is a Past President of the E. Robert Williams Inn of Court. Judge Holley continues to serve the legal profession through involvement with the Conference of the Judges of Compensation Claims (President), E. Robert Williams Inn of Court (Executive and Program Committees), Friends of 440 Scholarship Fund (Vice President of Scholarship Selection, and State and local Board Member), and Jacksonville Bar Association (Appellate and Professionalism Committees). He is involved in his community, including 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 several times in the past year.

Judge Humphries participated in the FWA Educational Conference Professionalism Panel with Judges Margret Kerr, Iliana Forte, and David Langham moderated by Mark Touby, Esq. He also presented at the 2023 Workers’ Comp Forum on a panel moderated by Rick Thompson, Esq., and including Judge Michael Ring and Judge Lourdes Sancerni.

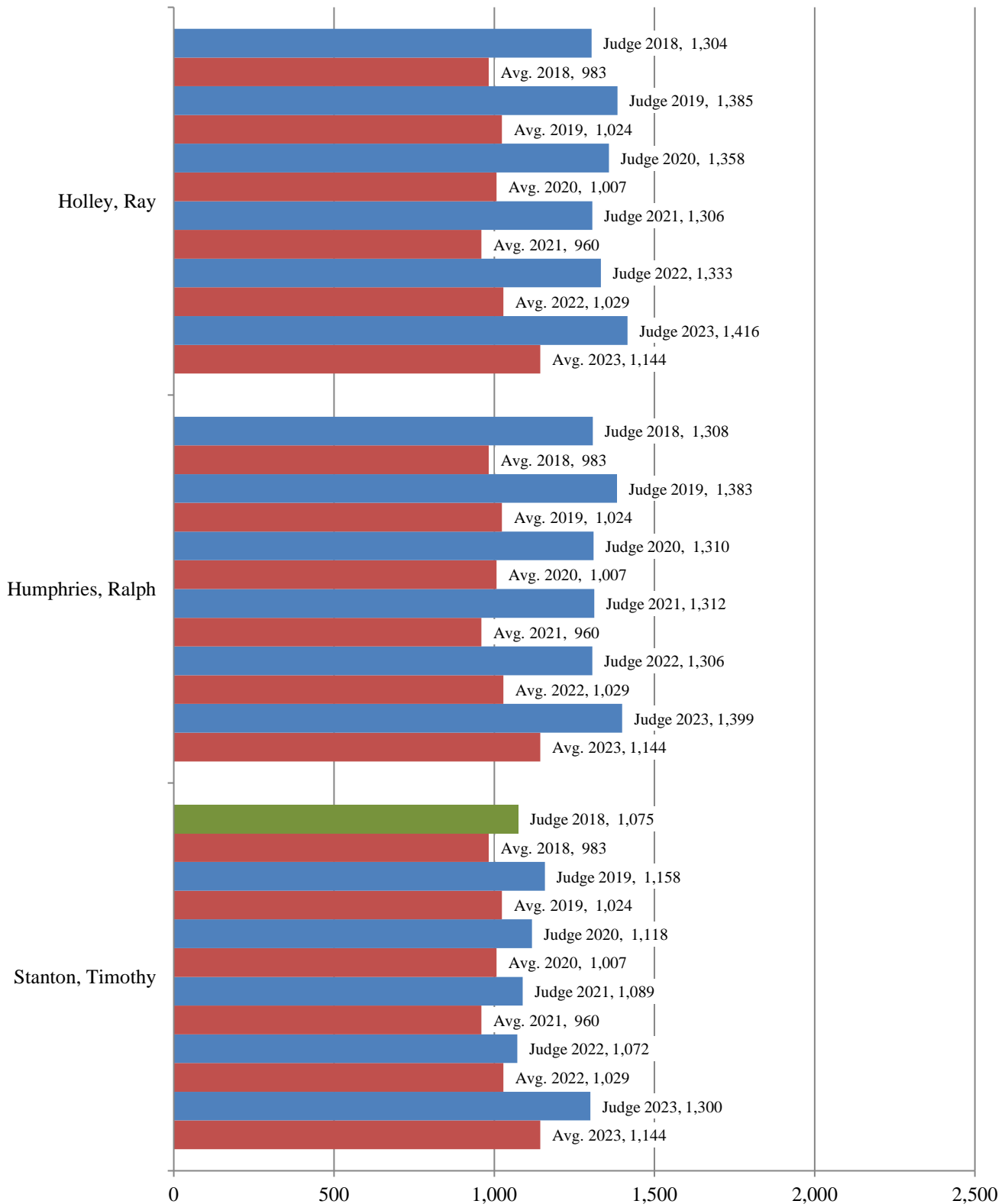
In 2022-23, Judge Stanton was honored to serve as a judge in the E. Earle Zehmer National Moot Court Competition. Judge Stanton also served as a speaker for the Florida Bar’s Workers’ Compensation Section Meet and Greet in Jacksonville and as a speaker at the Workers’ Compensation Academy in Orlando. 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. Roberts Inn of Court in Jacksonville, Florida.

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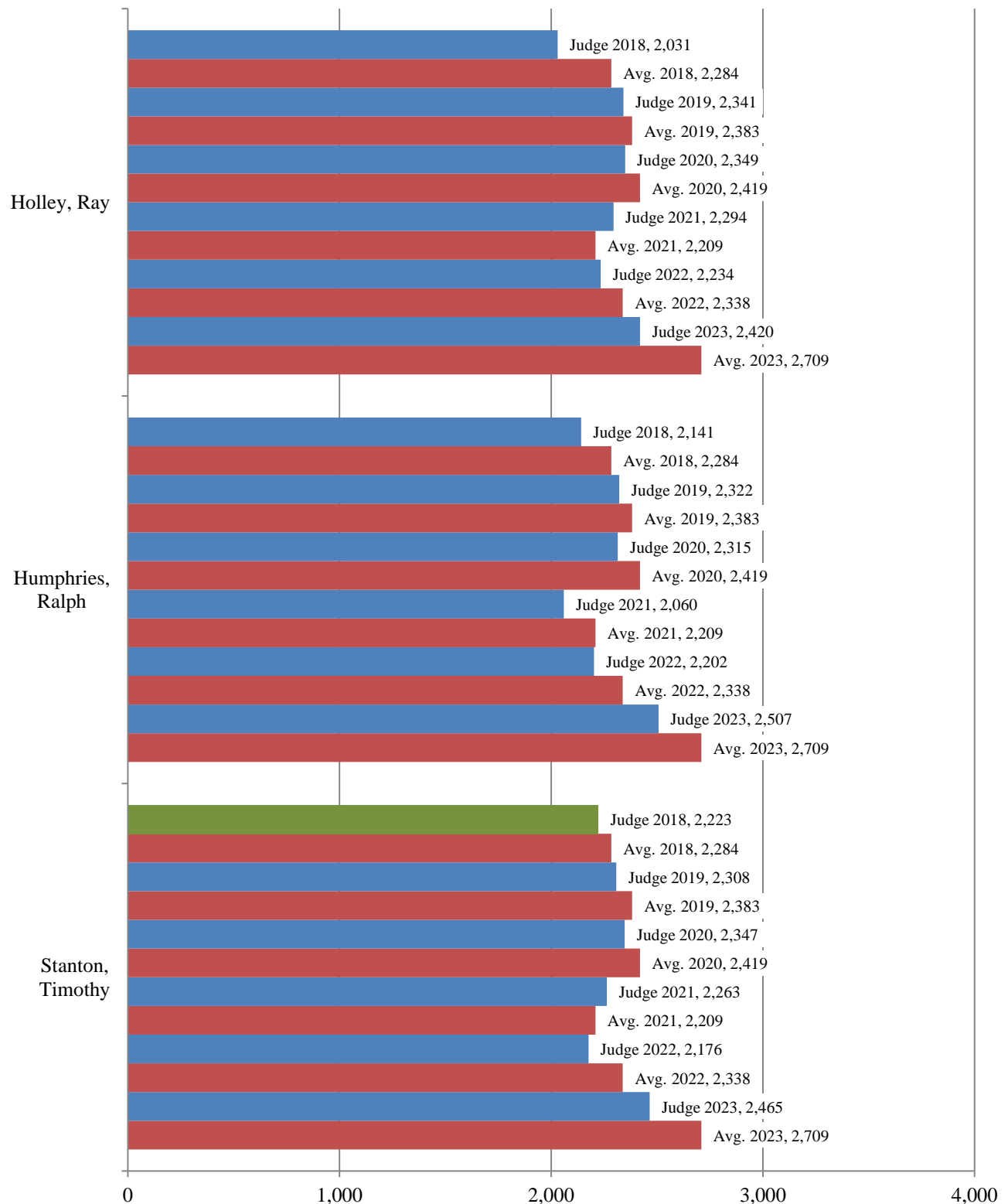
The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



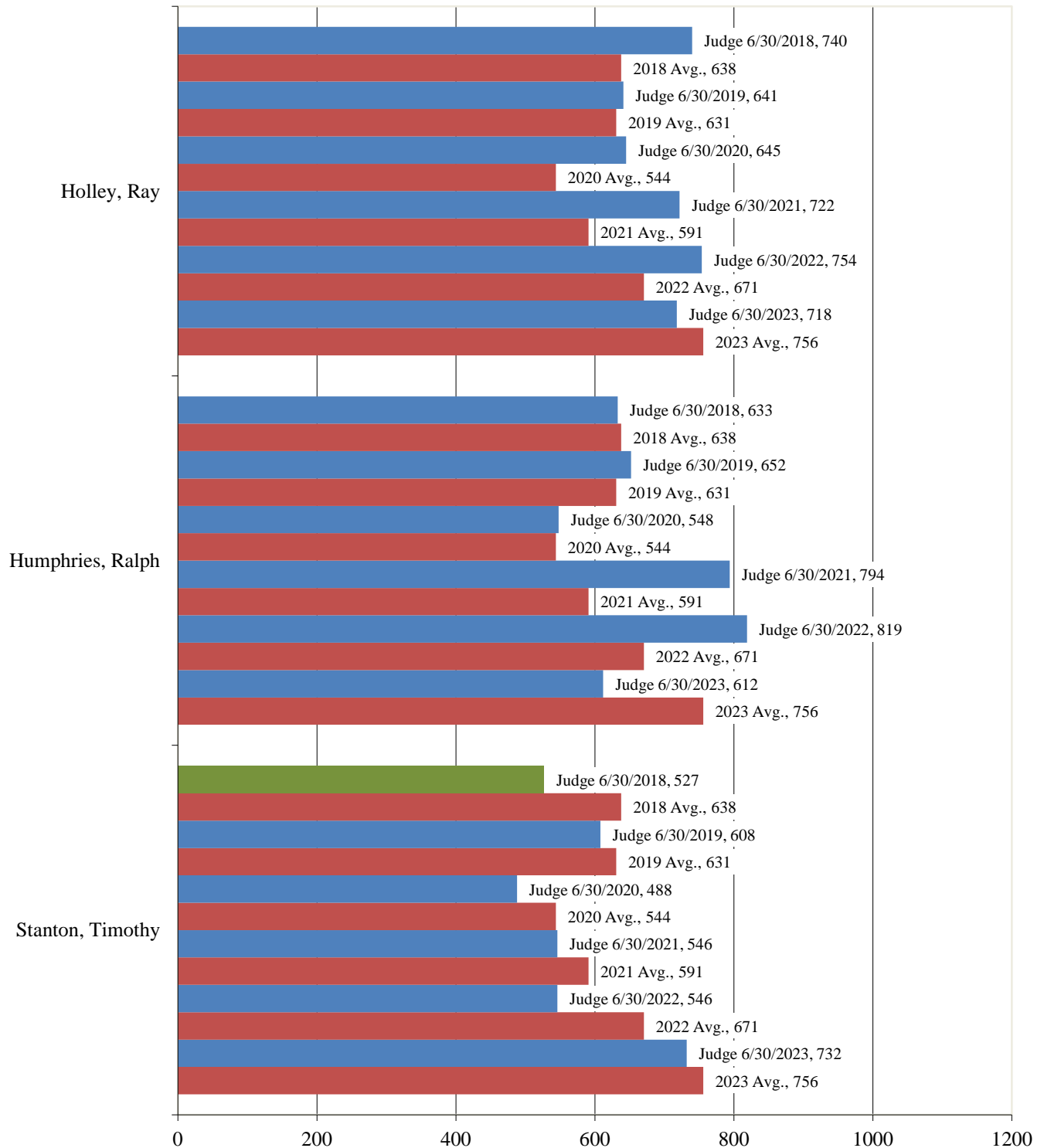
The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).

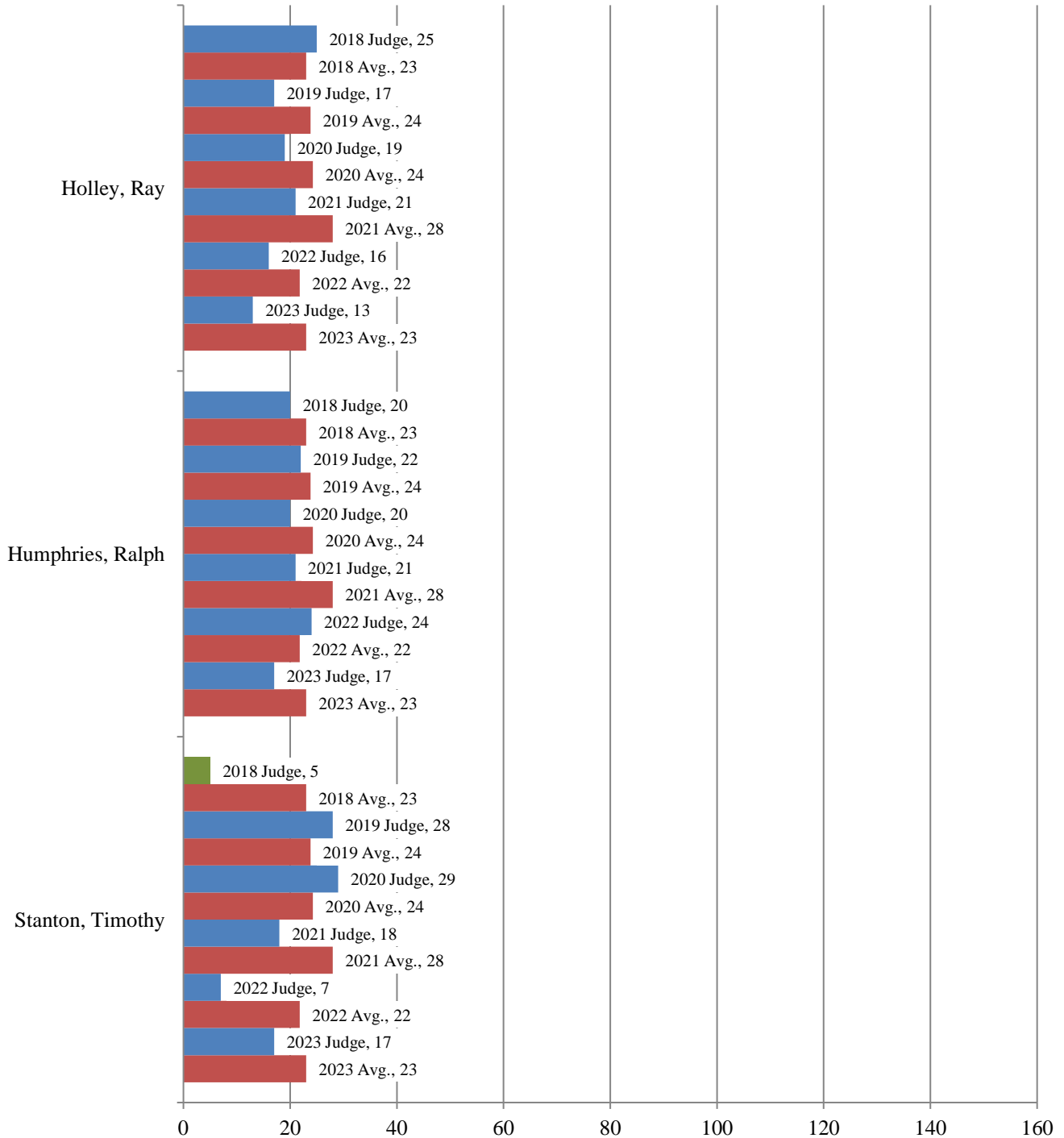


The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).

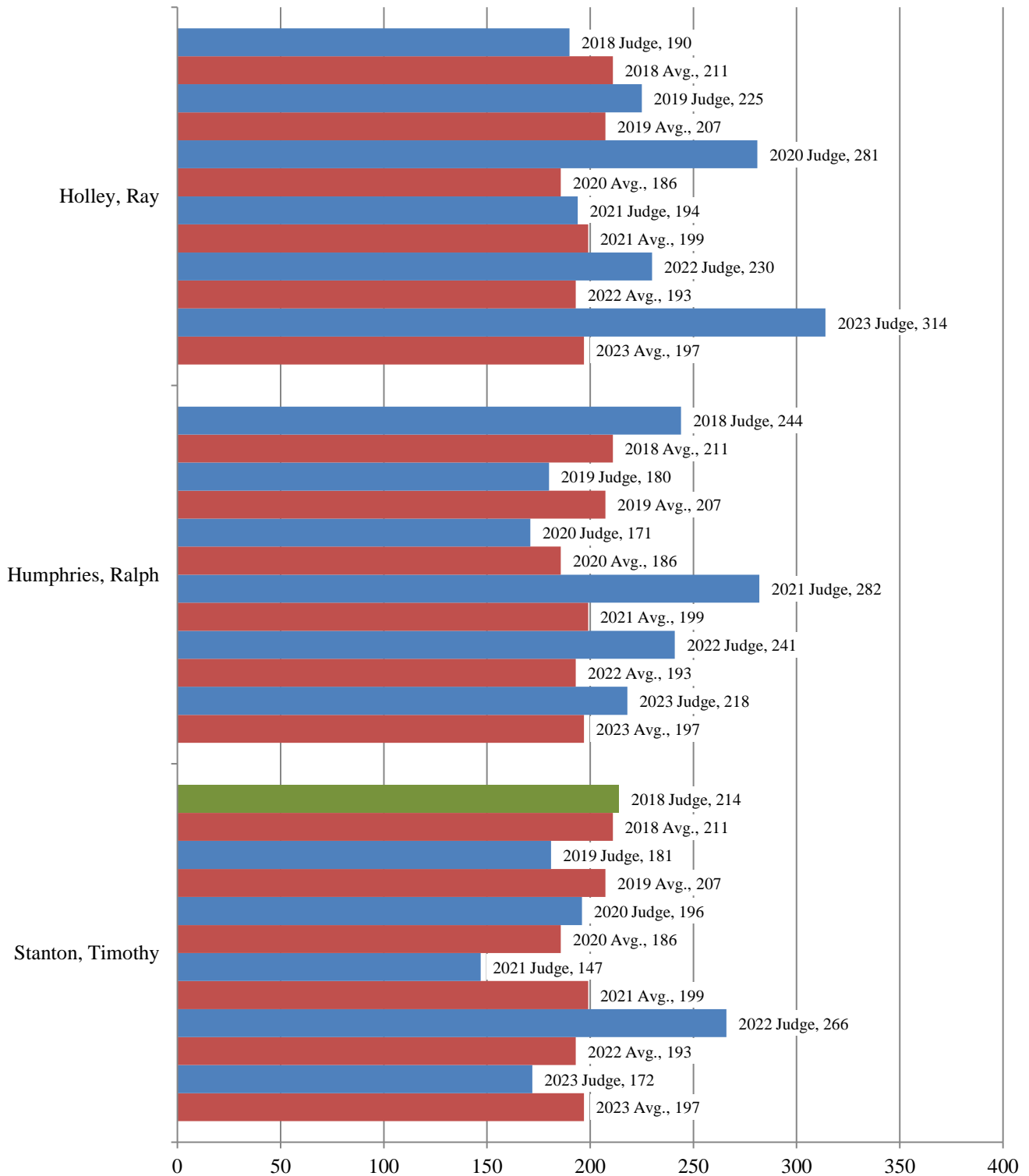


Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore, that graph is not included here, but in Appendix 11.

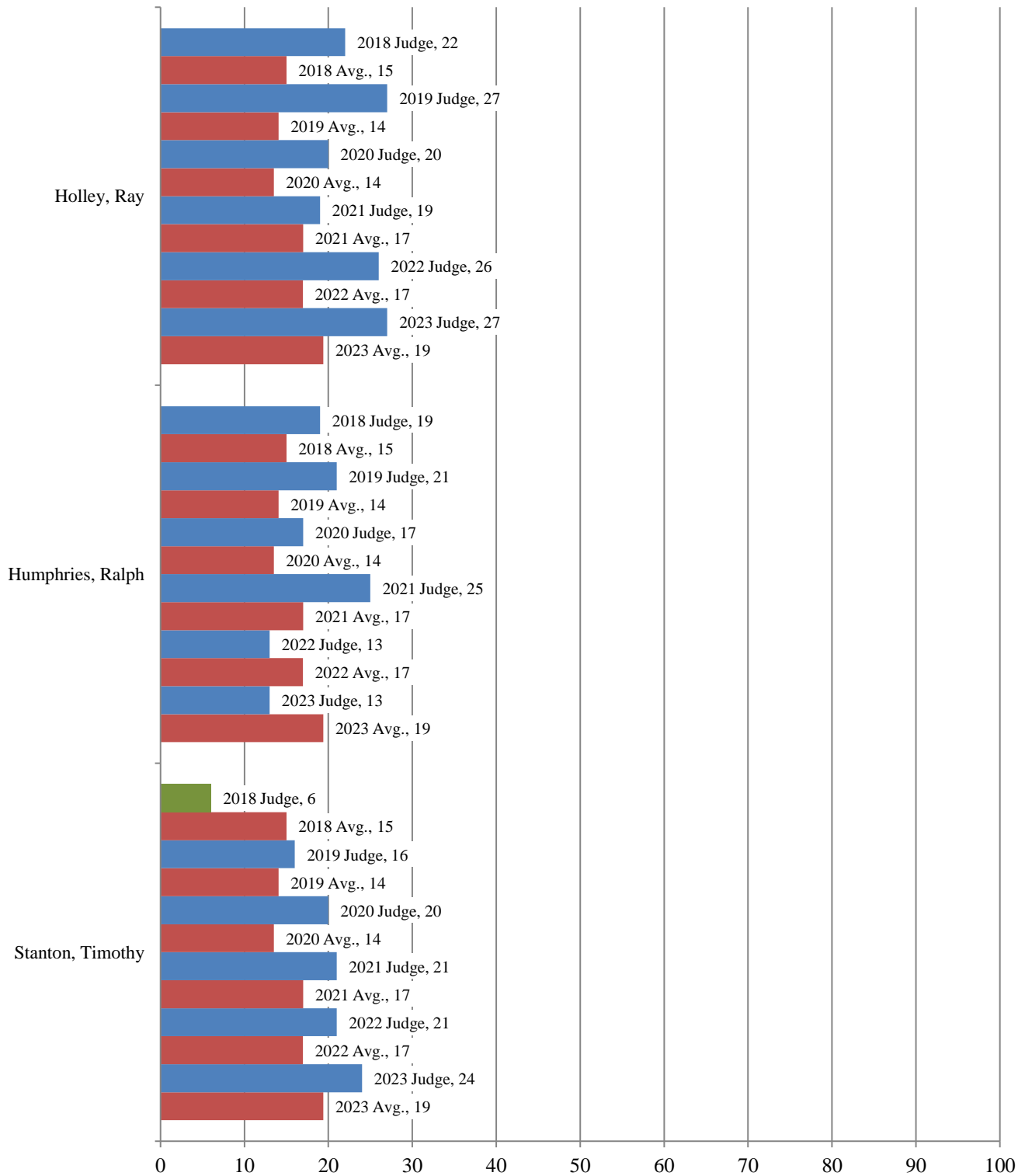
The following graph depicts the total volume of trial orders<sup>344</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge's appointment).



The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2017-18 and 2022-23.<sup>345</sup> 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 before the named judge’s appointment).

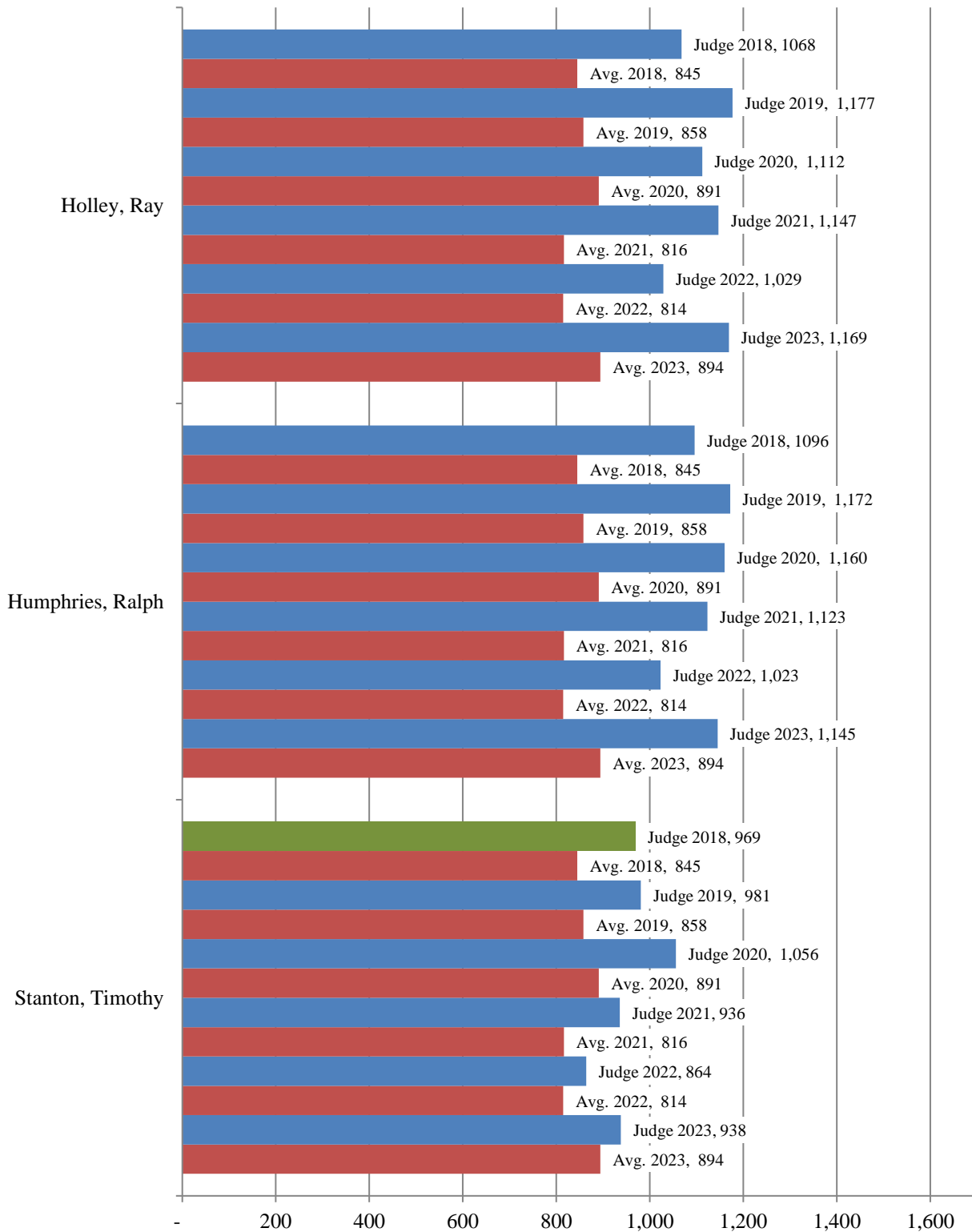


The following depicts the average days between trial commencing<sup>346</sup> and entry of the trial order for each judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).

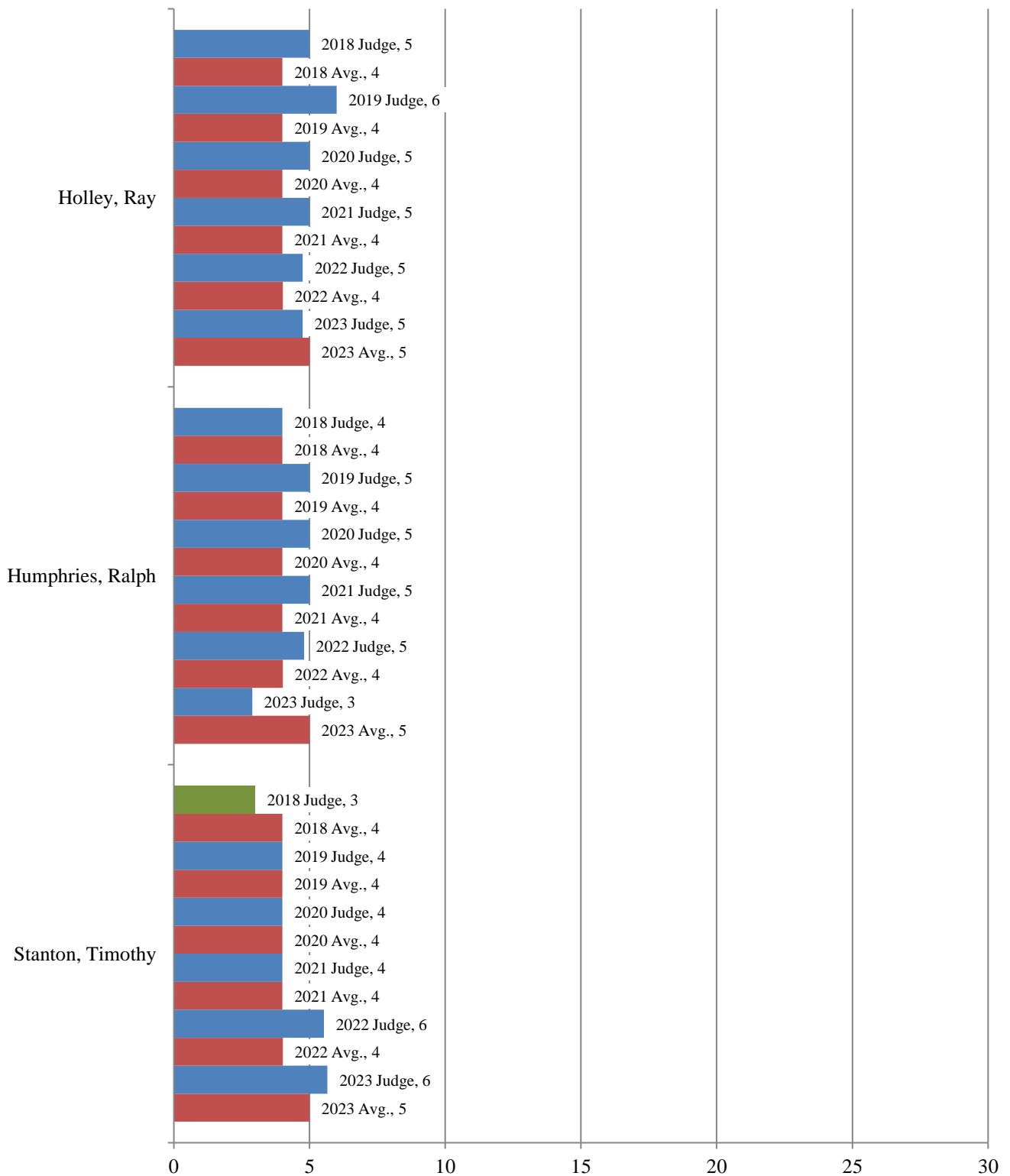




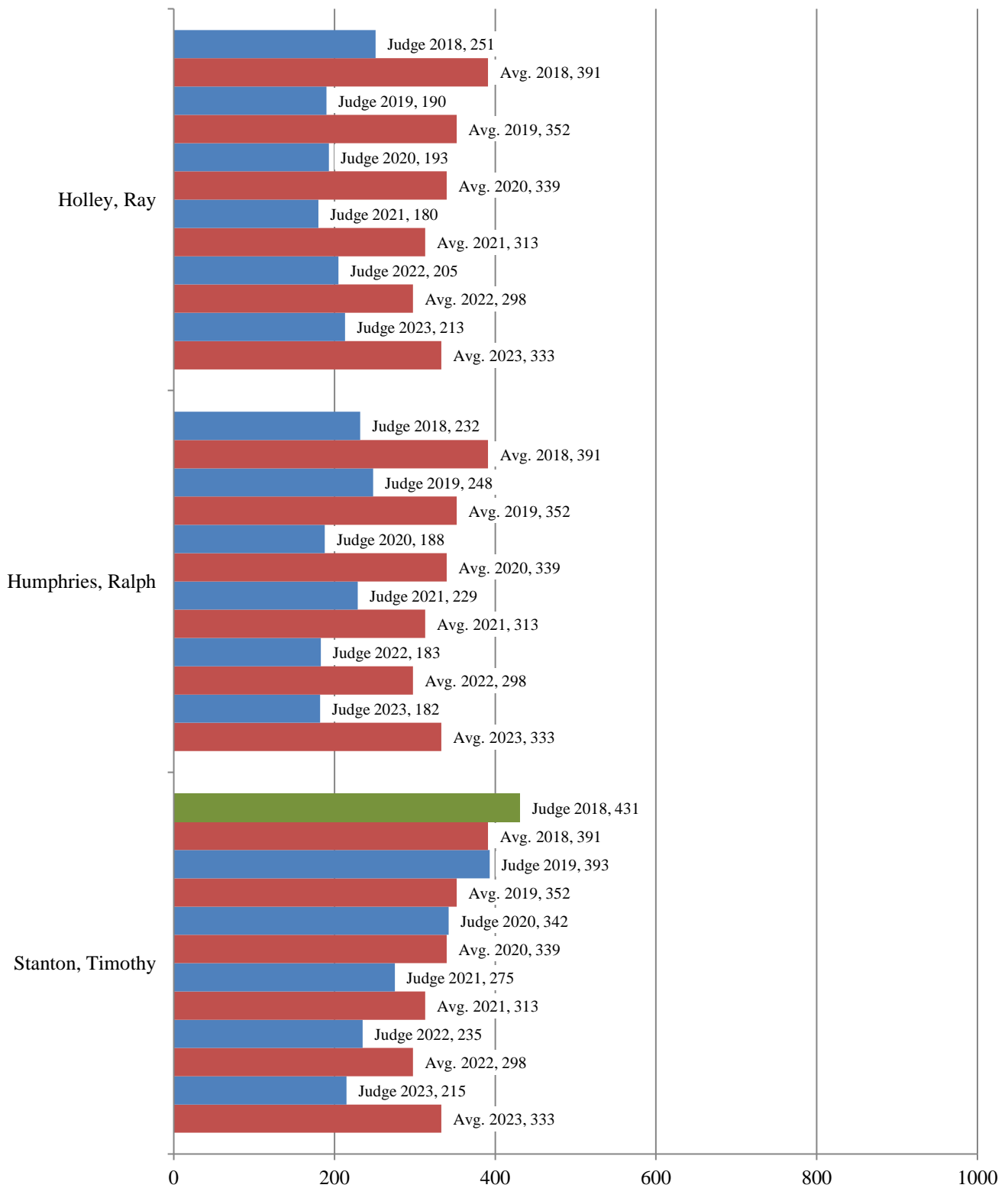
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



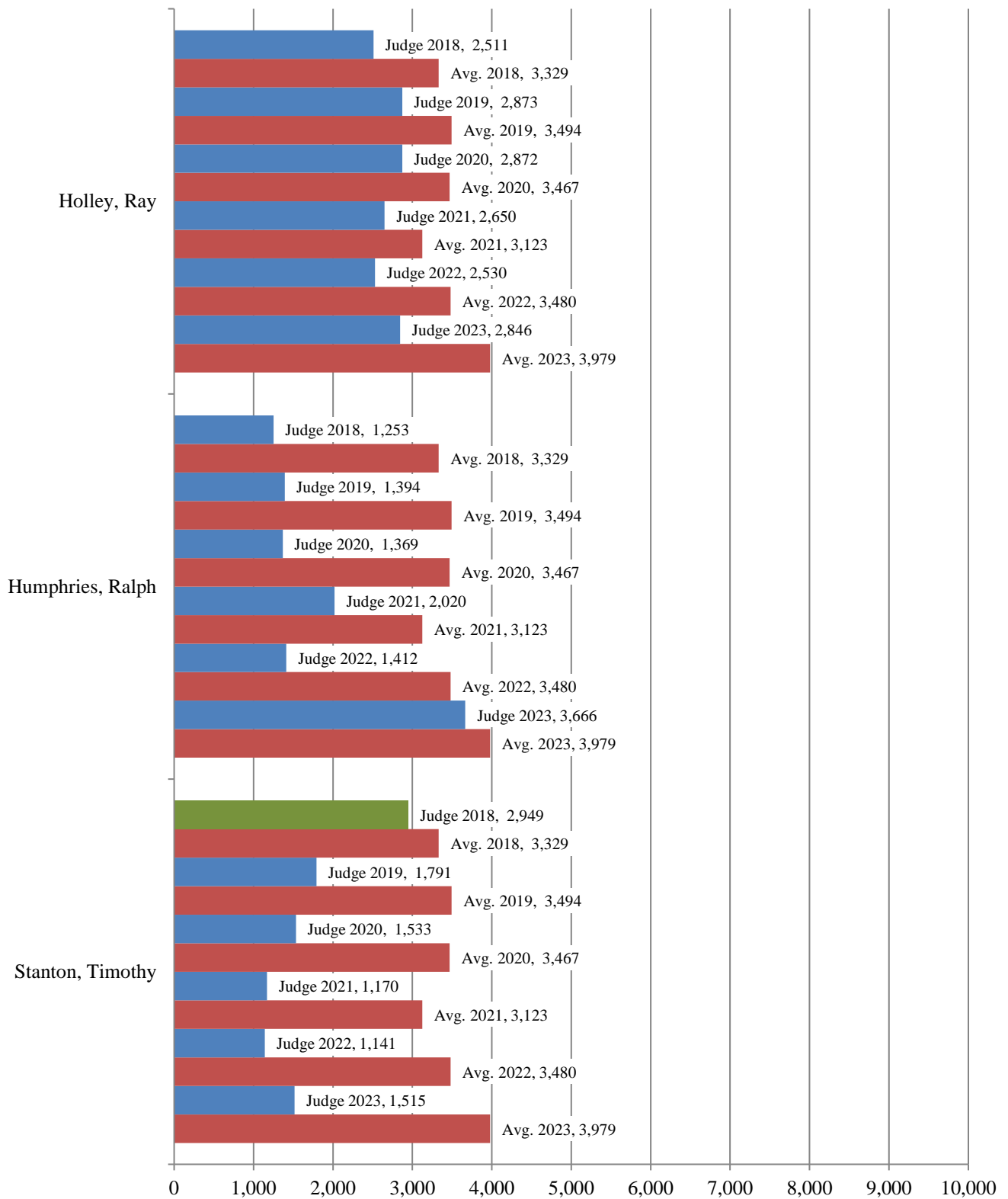
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



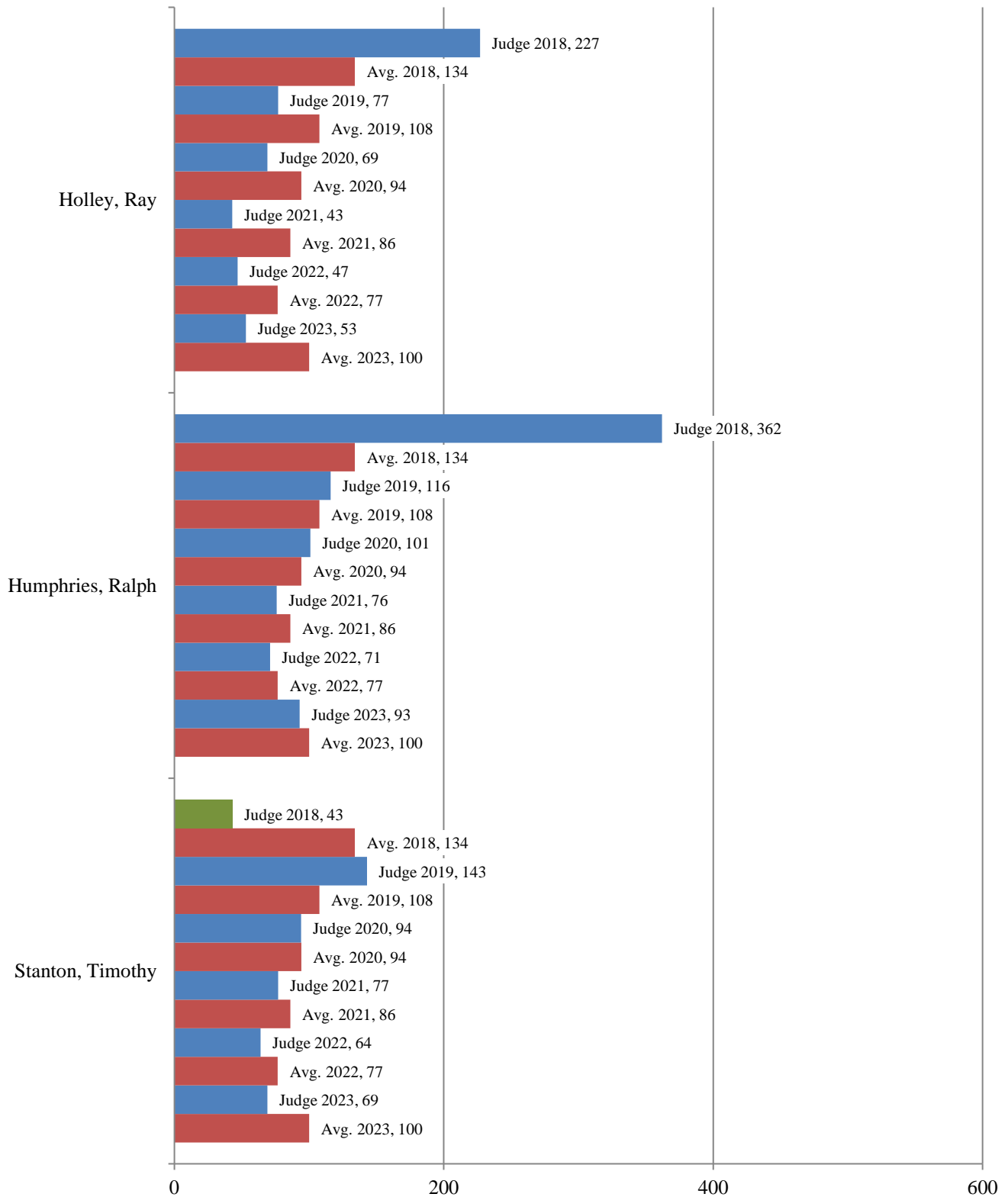
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



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## Appendix “4” District MIA (JCC Almeyda, JCC Havers,<sup>347</sup> JCC Jacobs,<sup>348</sup> JCC Kerr and JCC Medina-Shore):

District MIA includes Dade County. District MIA historically included Dade and Monroe counties. In 2011-12, Monroe County was transferred to District Panama City briefly and in 2012-13 to District Port St. Lucie, to alleviate disparity in workloads. With the closure of District Port St. Lucie at the end of 2021-22, Monroe County was transferred back to District MIA.

“New case” volumes remain consistently below the statewide average in District Miami for the last ten years. On the other hand, the PFB volume had been consistently above the statewide average since the out-of-district judge reassignment process was amended in 2015-16. In 2022-23, that trend ended and all five Judges had petition volume well below the statewide average. Prior to 2015-16, a volume of “new cases” had been assigned to Judges Humphries (JAX), Massey (TPA), Pitts (ORL), Spangler (TPA), and Sturgis (FTM). In 2015-16, the process was reformed with new MIA cases being assigned outside of Miami only to Judges Massey (TPA) and Spangler (TPA). This reduced the number of judges to which Miami practitioners were regularly exposed. With the consolidation in 2021-22, that reassignment process to Tampa ceased, and Judge Moneyham (PMC) took over a volume of District MIA workload. In 2022-23, District Panama City closed and Judge Moneyham was assigned a St. Petersburg docket. This resulted in fewer MIA cases being covered from other districts, and some formerly reassigned cases have been sporadically returned to Miami.

Judge Almeyda has been on the bench since 2013. Last year, he was inducted as a Fellow in the College of Workers’ Compensation at a ceremony in New Orleans, Louisiana. He has been an active participant in the various programs geared to improving the practice of workers’ compensation.

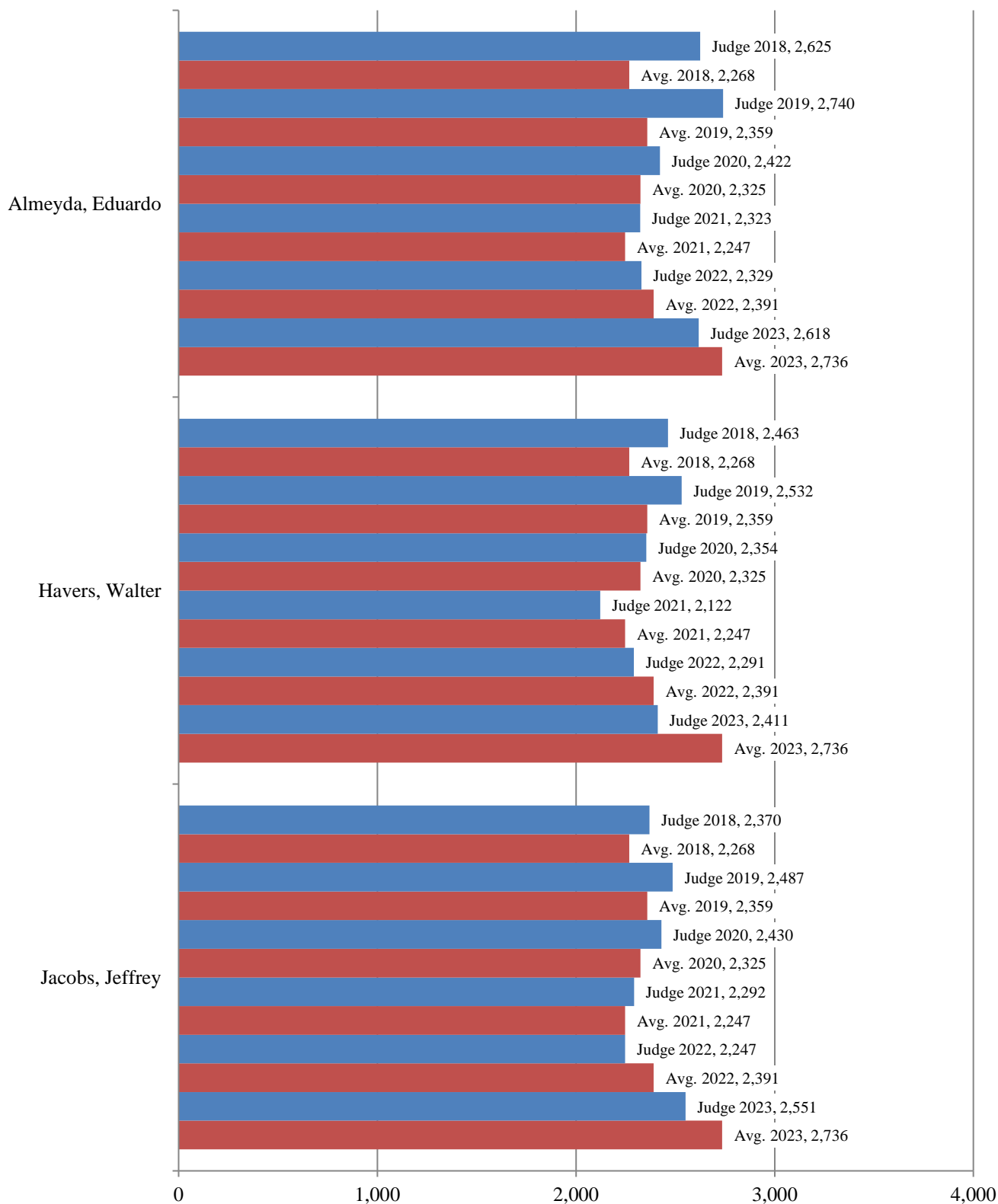
Judge Havers is a member of the Richard A. Sicking Inn of Court and the National Association of Workers’ Compensation Judiciary. He served as a panelist for a presentation on Technology in the Workers’ Compensation Practice at the 76th Annual Workers’ Compensation Conference in 2022. Judge Havers also served as a panelist for a presentation *Admitting Evidence at Final Merit Hearings in Workers’ Compensation Cases* for the Miami-Dade Bar in 2023.

Judge Jacobs served as President of the Richard A. Sicking American Inn of Court and as a member of The Florida Bar Workers’ Compensation Rules Advisory Committee until his term expired at the end of 2022. He participated in a panel discussion, *The Workers’ Compensation Practice from The Judicial Perspective* at the Annual Workers’ Compensation Educational Conference in August 2022. Judge Jacobs served as a judge for the 2022 E. Earle Zehmer National Moot Court Competition. In February 2023, he spoke at a Miami-Dade County Bar Association seminar, *Admitting Evidence at Final Merit Hearings in Workers’ Compensation Cases*. Judge Jacobs participated in a panel discussion *Evidence Matters* at The Florida Bar Workers’ Compensation Forum in April 2023. In May 2023, Judge Jacobs became a Fellow of The College of Workers Compensation Lawyers.

In 2022-23, Judge Kerr was a panelist at the Miami Dade County Bar Association WC Section seminar *Motion Practice/Changes to the Rules of Procedure with the Miami-Dade JCCs*. Judge Kerr served as a judge at the 2022 E. Earle Zimmer Moot Court Competition. She was a presenter at the 13th Annual National Workers’ Compensation Judiciary College on *Promoting Professionalism Inside and Outside the Courtroom*. Judge Kerr was a moderator at *Adding to and Sharpening the Tools in Your Toolbox* presented at the First District Court of Appeals, and served on a panel at the Florida Bar Workers’ Compensation Forum: *Practicing with Professionalism in a Remote Environment*. She was a panelist at the Workers’ Compensation Section of the Florida Bar Town Hall Meeting and was a presenter at the OJCC Workers’ Compensation Academy: *Trial Memoranda*. She was a panelist at the FWA Educational Conference: *They Understood the Assignment*. Along with her judicial duties, she is co-chair of the North American Advisory Board for Kingswood School, U.K.

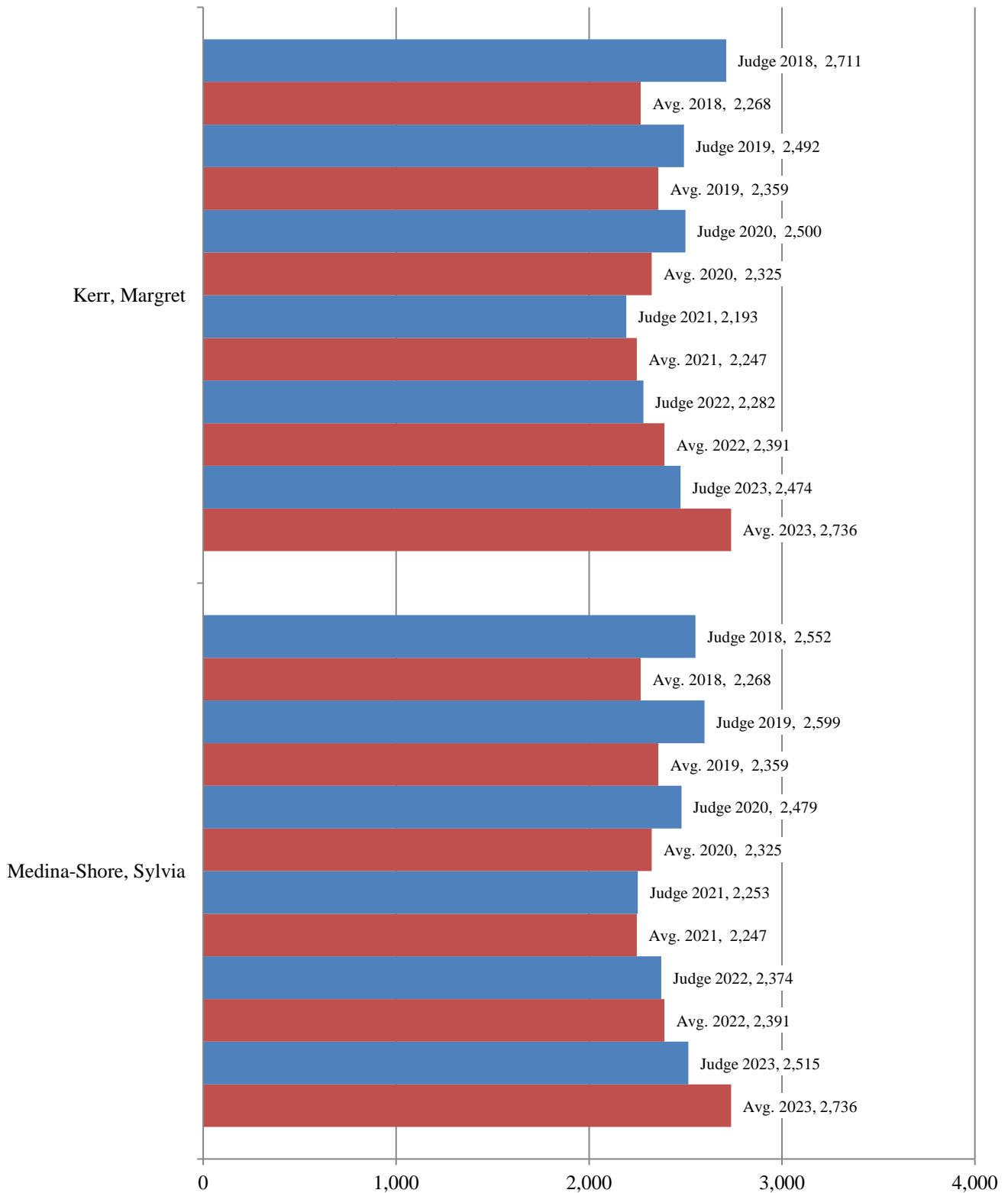
In 2021-22, in addition to her judicial duties, Judge Medina-Shore continued to serve as the Administrative Judge for the Miami office, a role she has performed for the last 16 years. She served on the Board of Directors of the National Association of Workers’ Compensation Judiciary (NAWCJ).

The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).

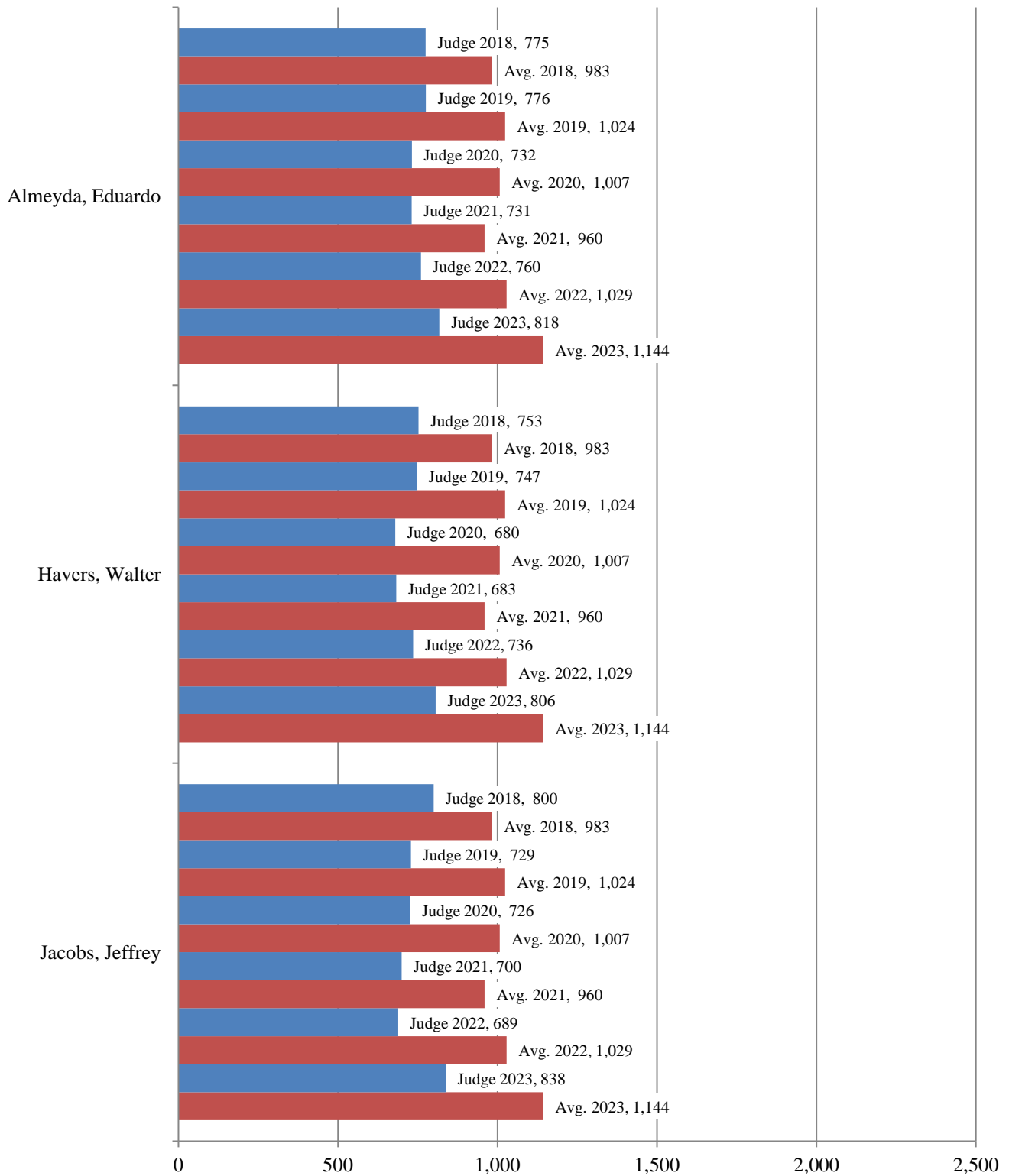




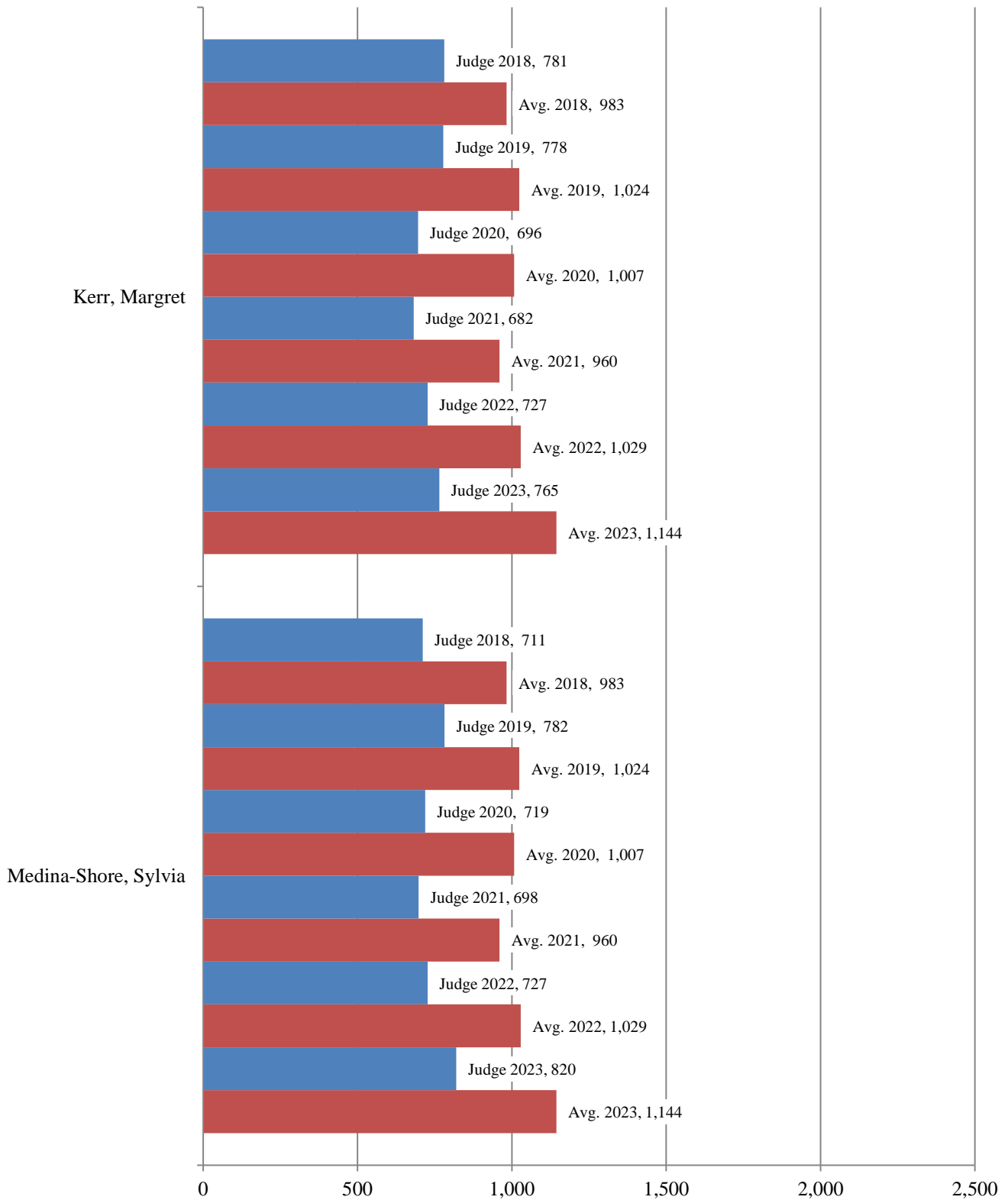
(Continued) The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



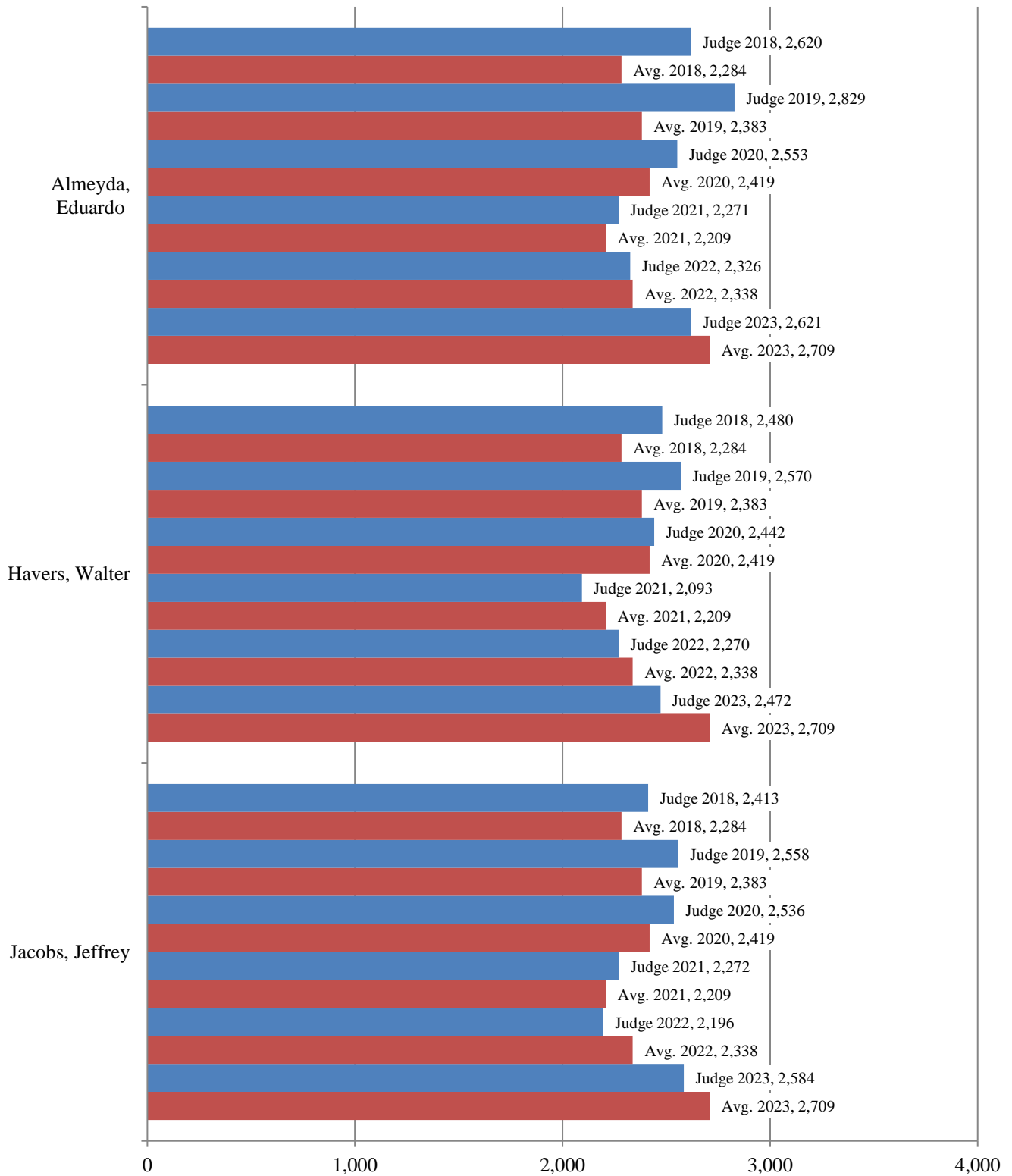
The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



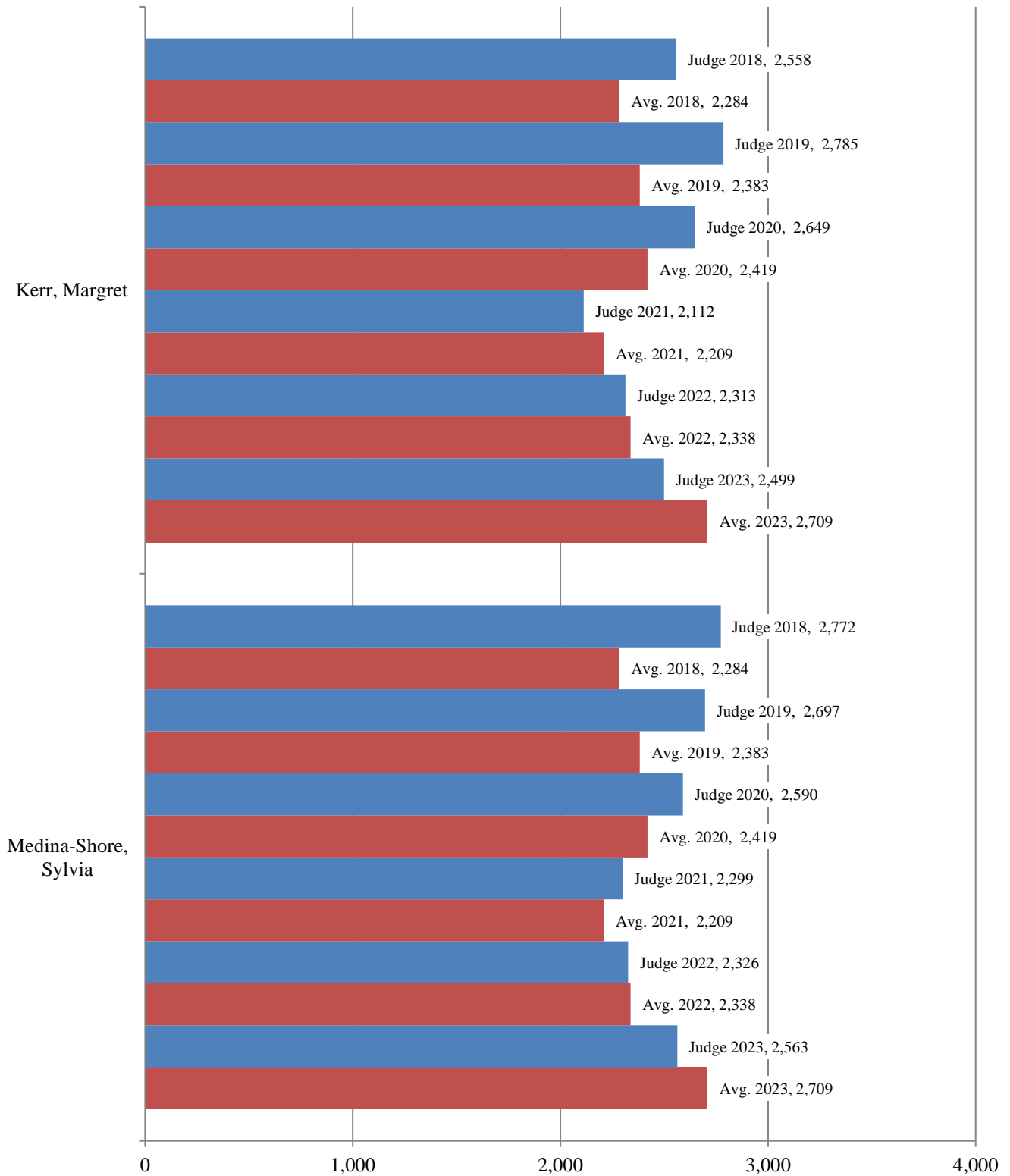
(Continued) The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



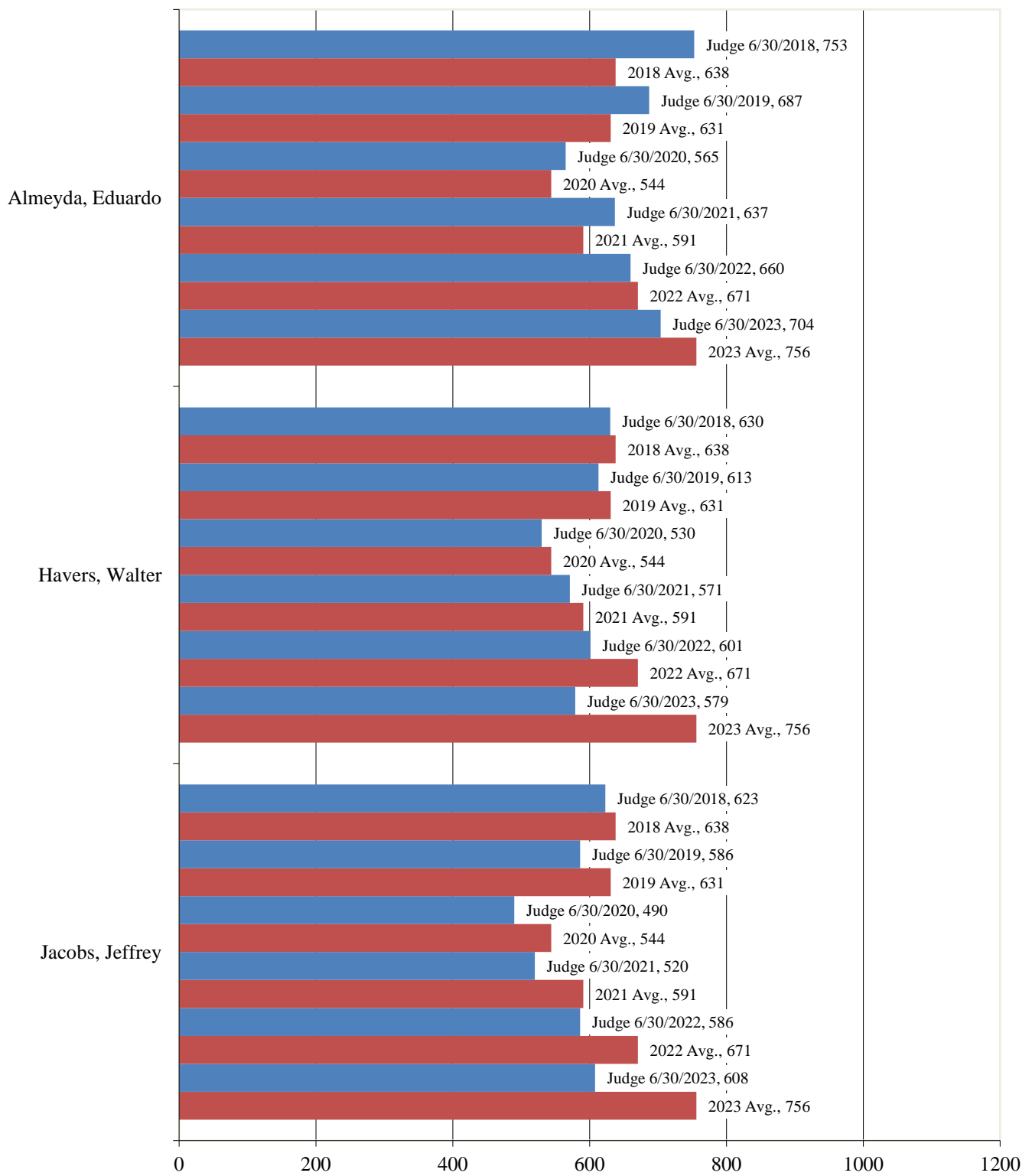
The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



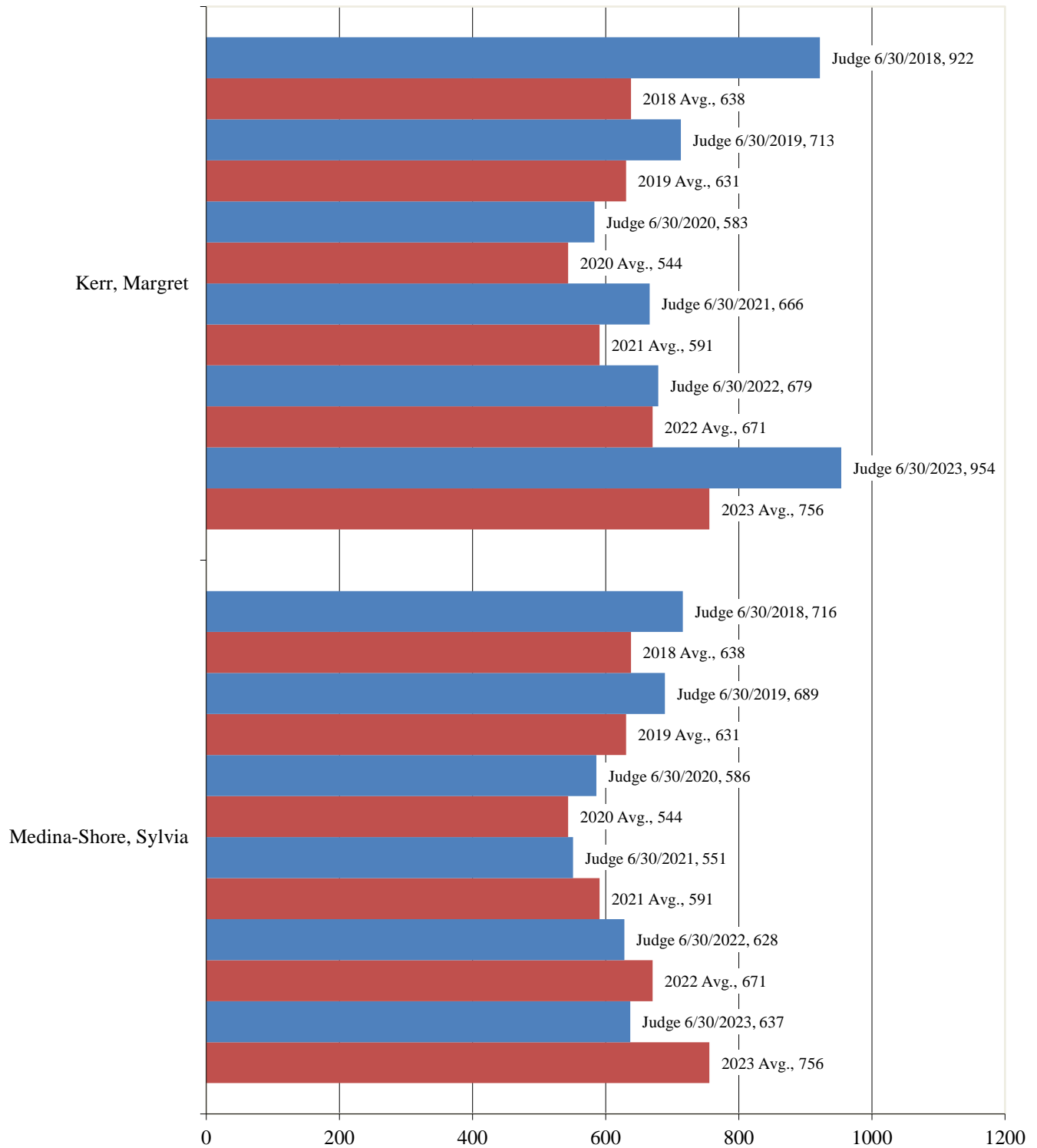
(Continued) The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label.

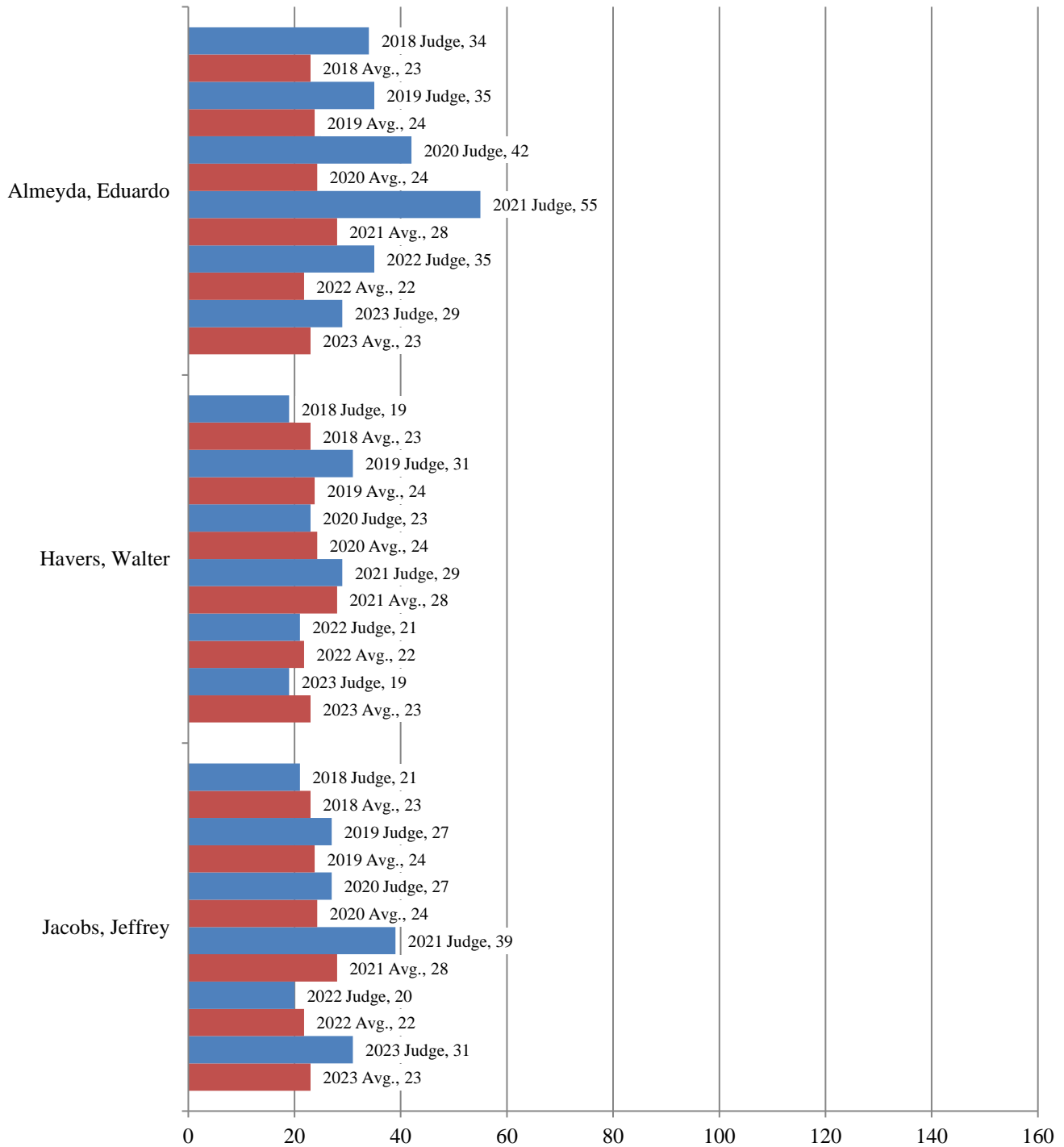


(Continued) The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



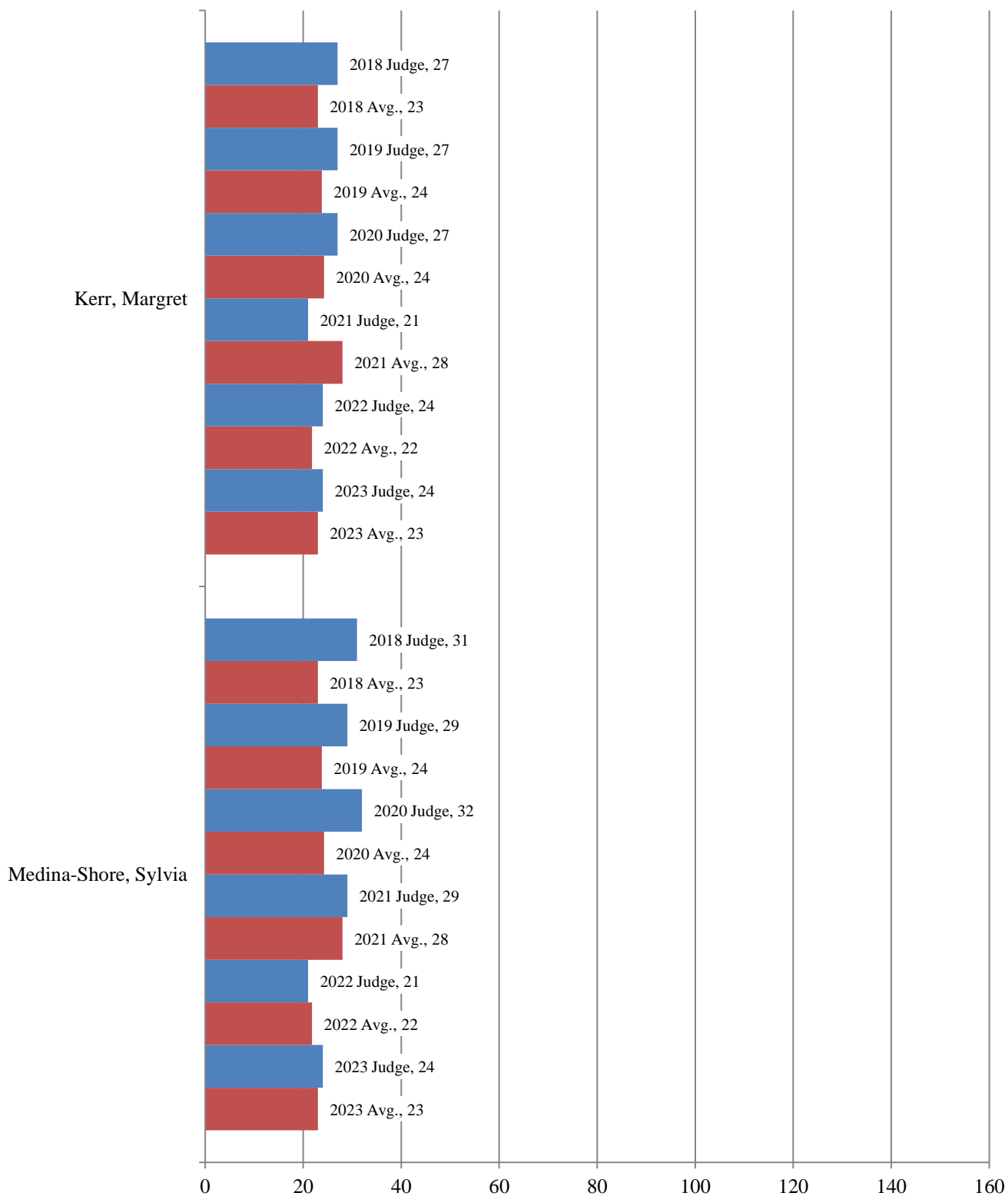
Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore, that graph is not included here, but in Appendix 11.

The following graph depicts the total volume of trial orders<sup>349</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).

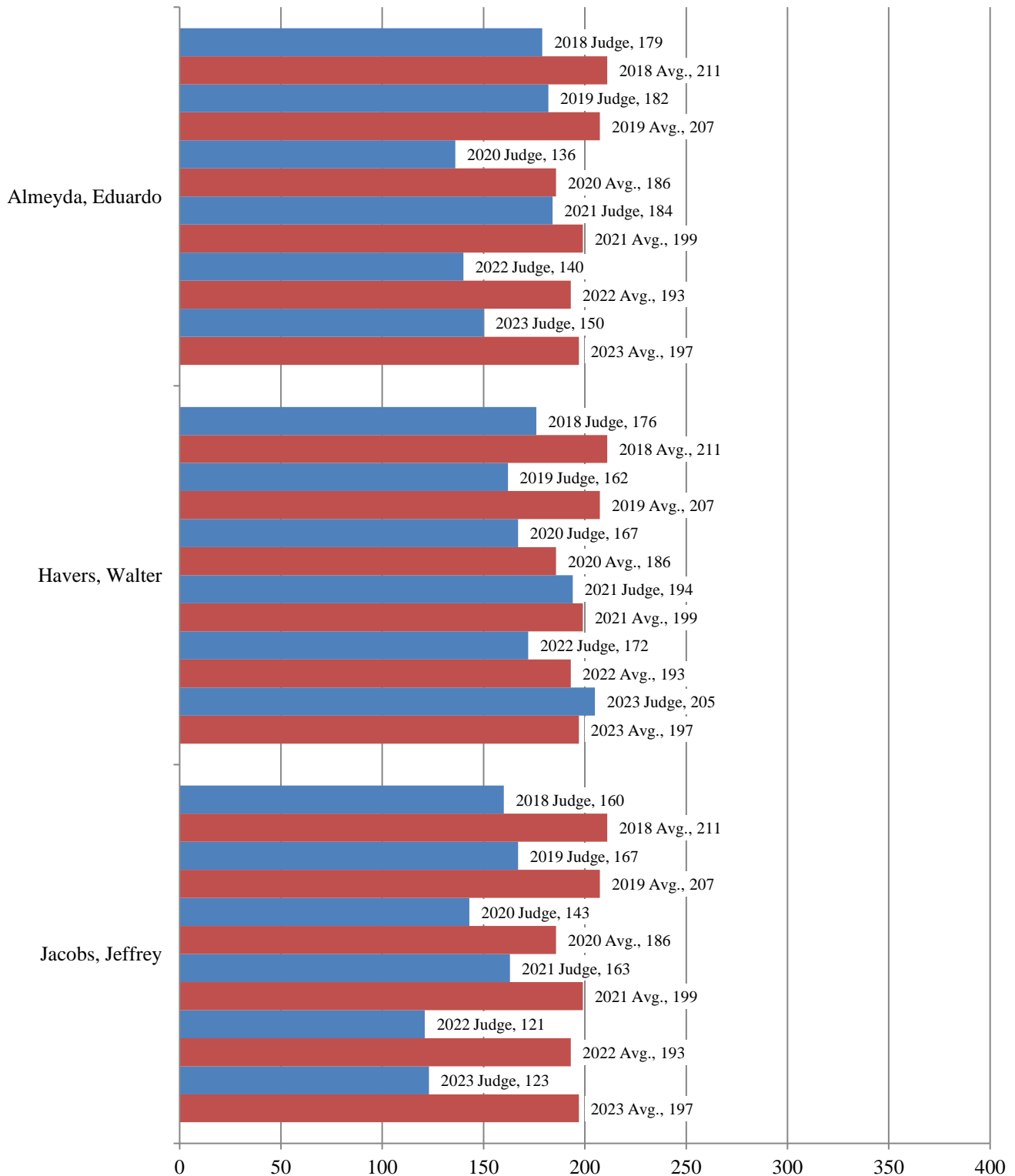




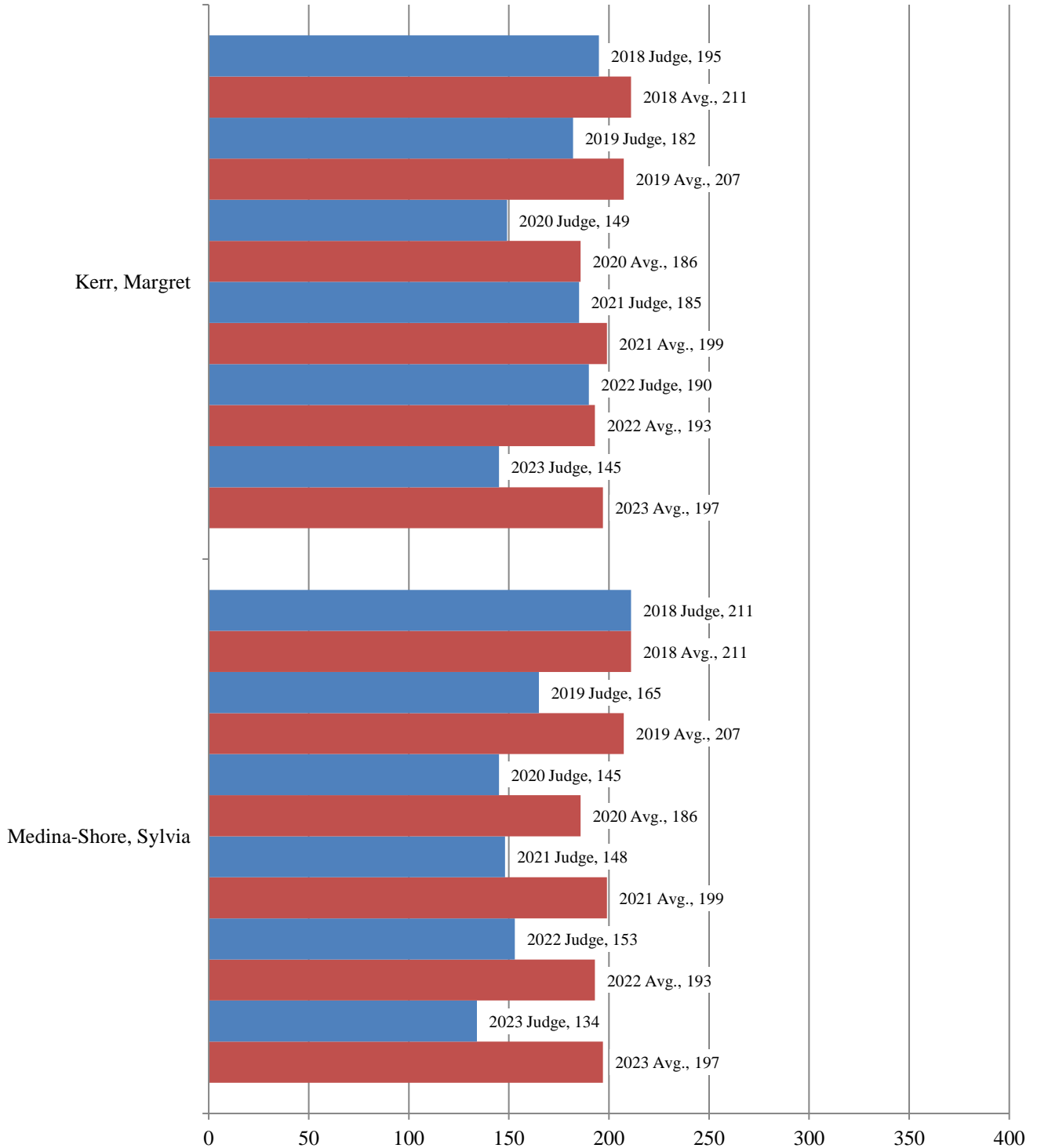
(Continued) The following graph depicts the total volume of trial orders<sup>350</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



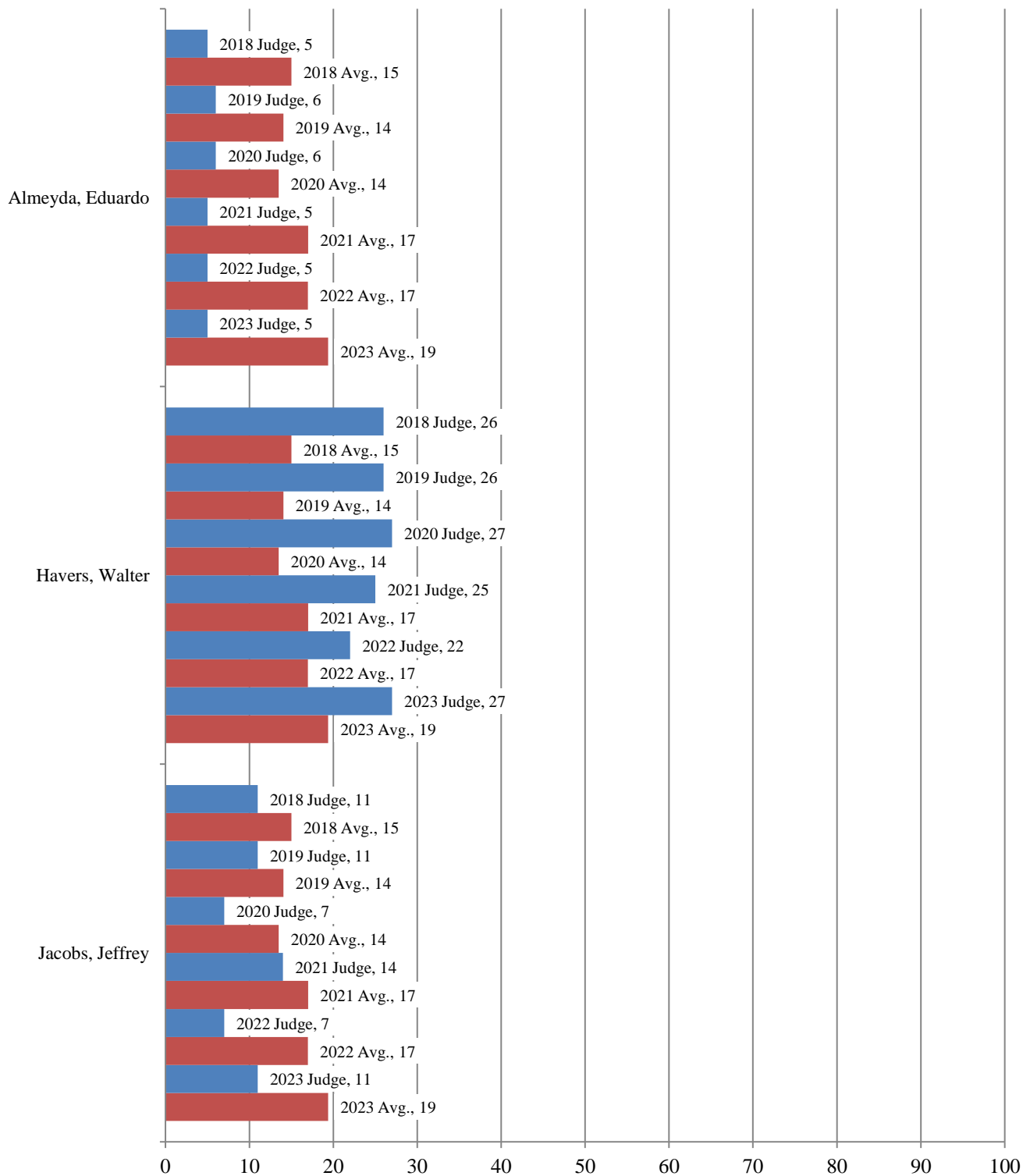
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



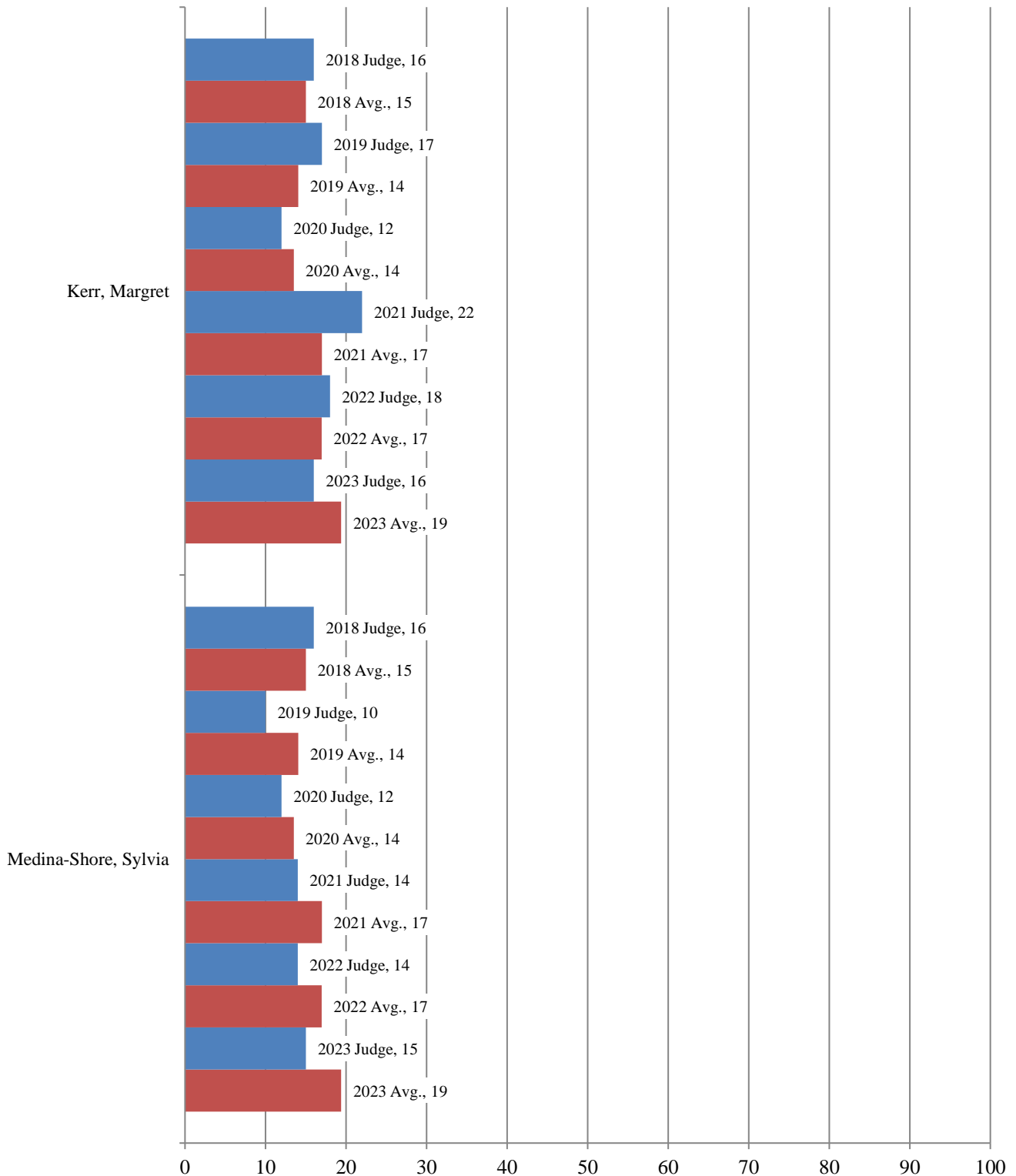
(Continued) The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



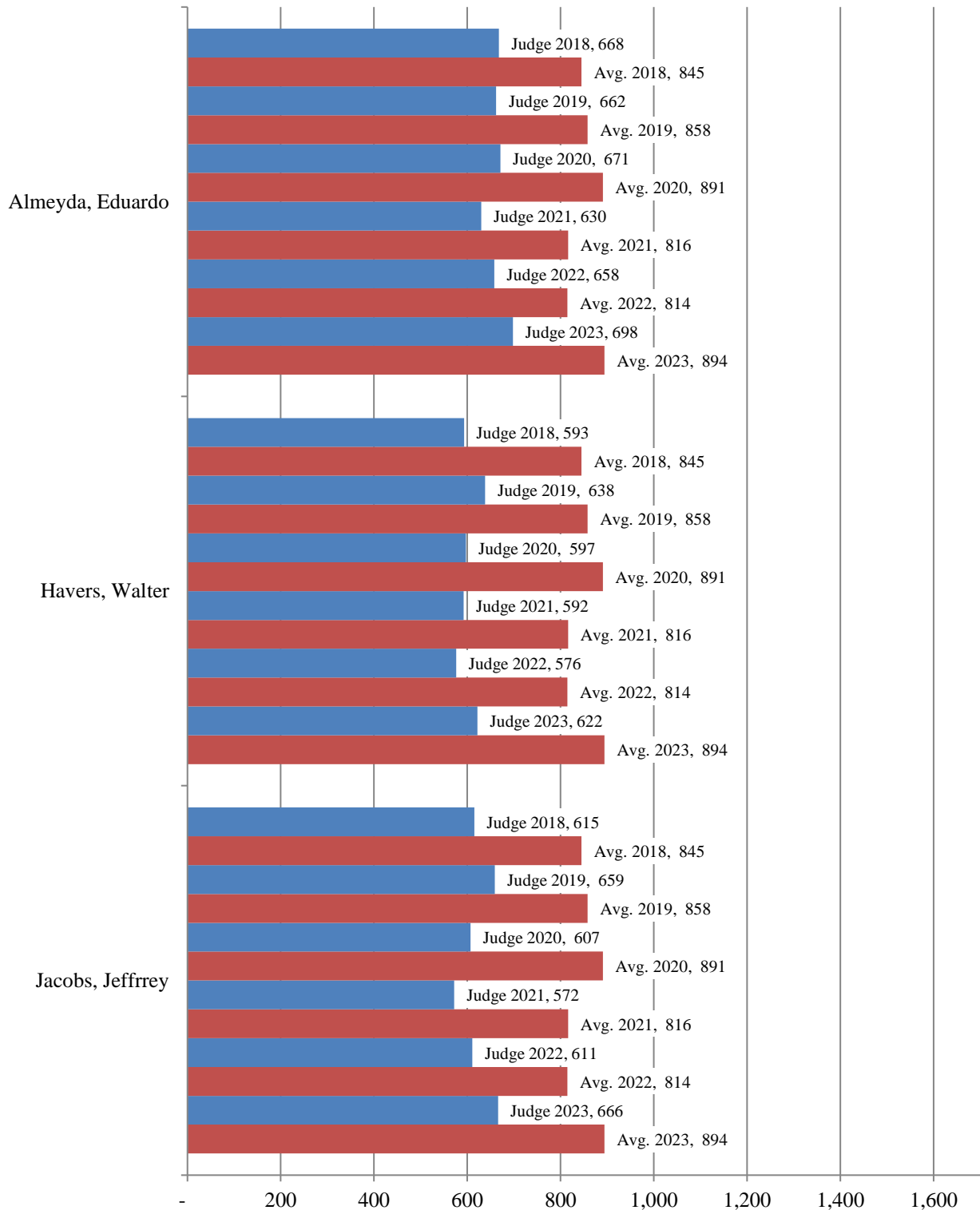
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



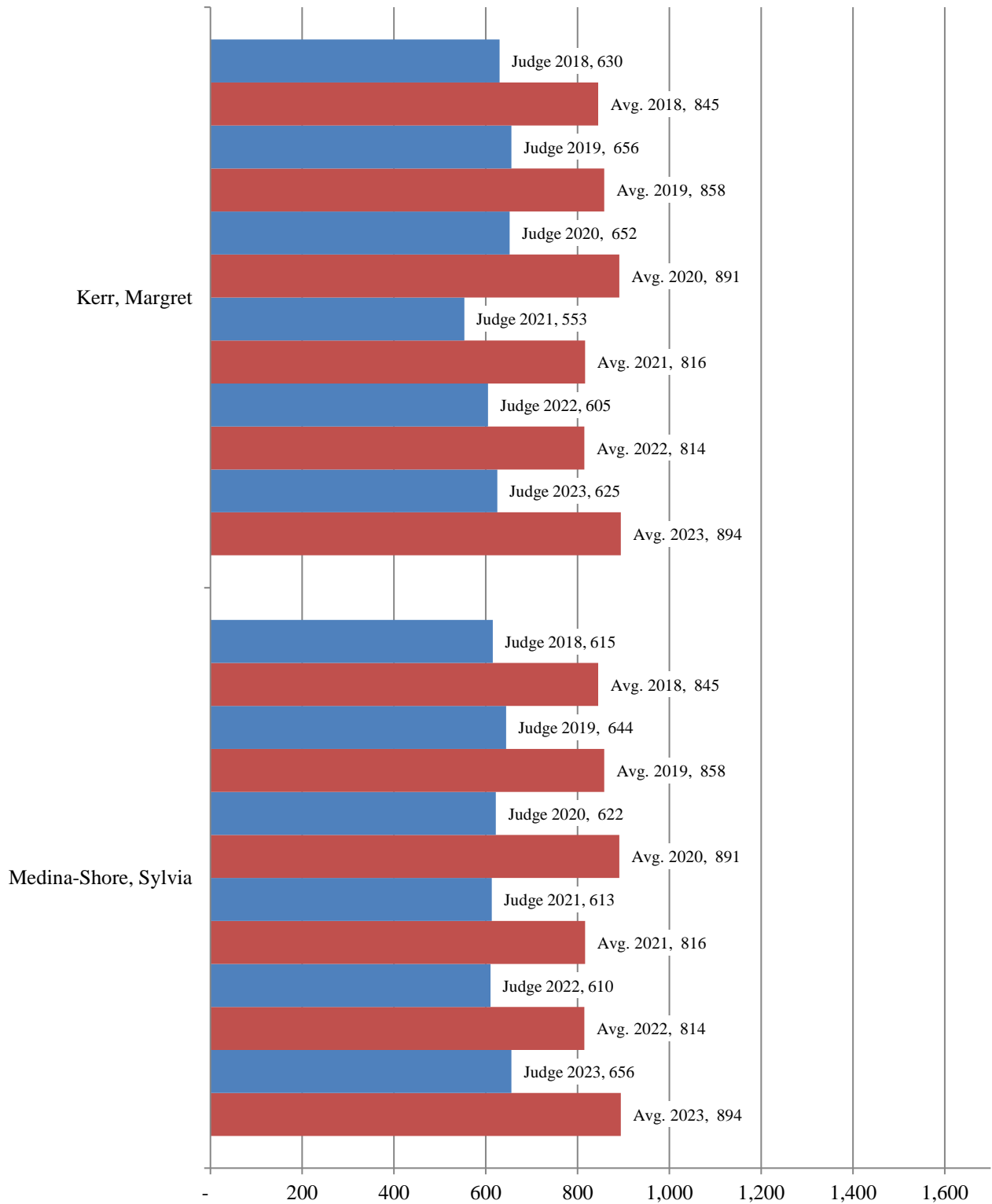
(Continued) The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



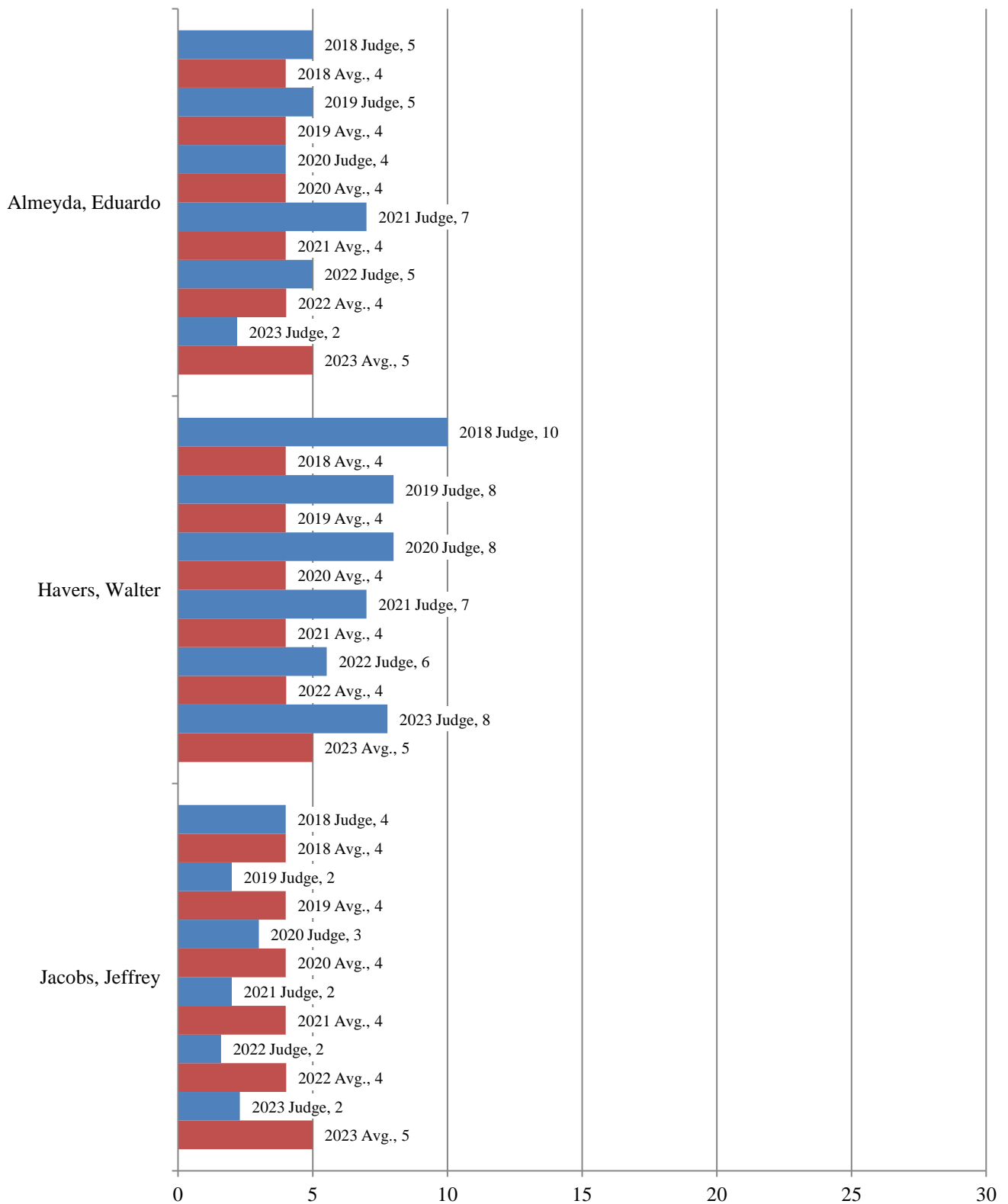
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



(Continued) The following depicts the volume of settlement orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

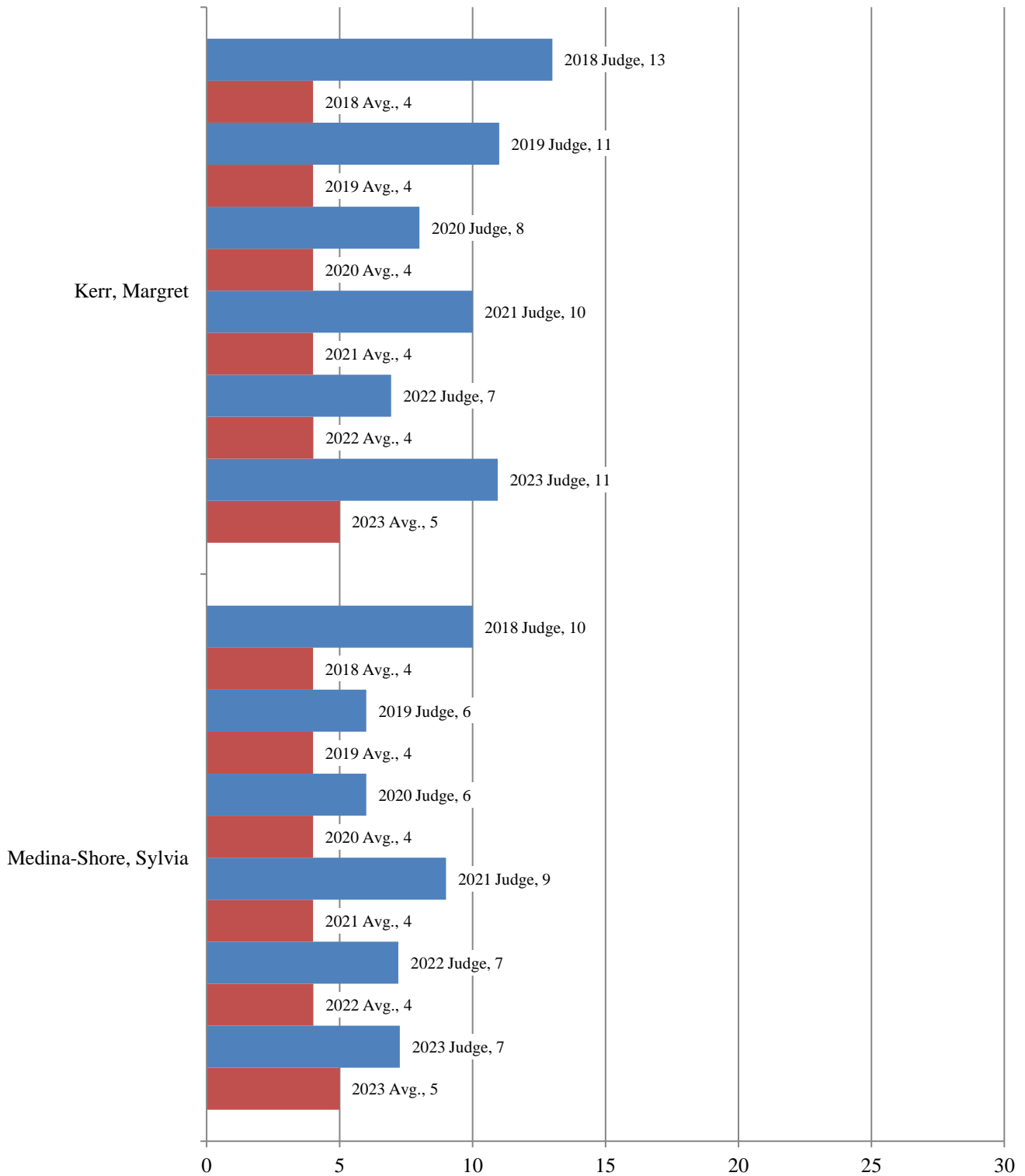


The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

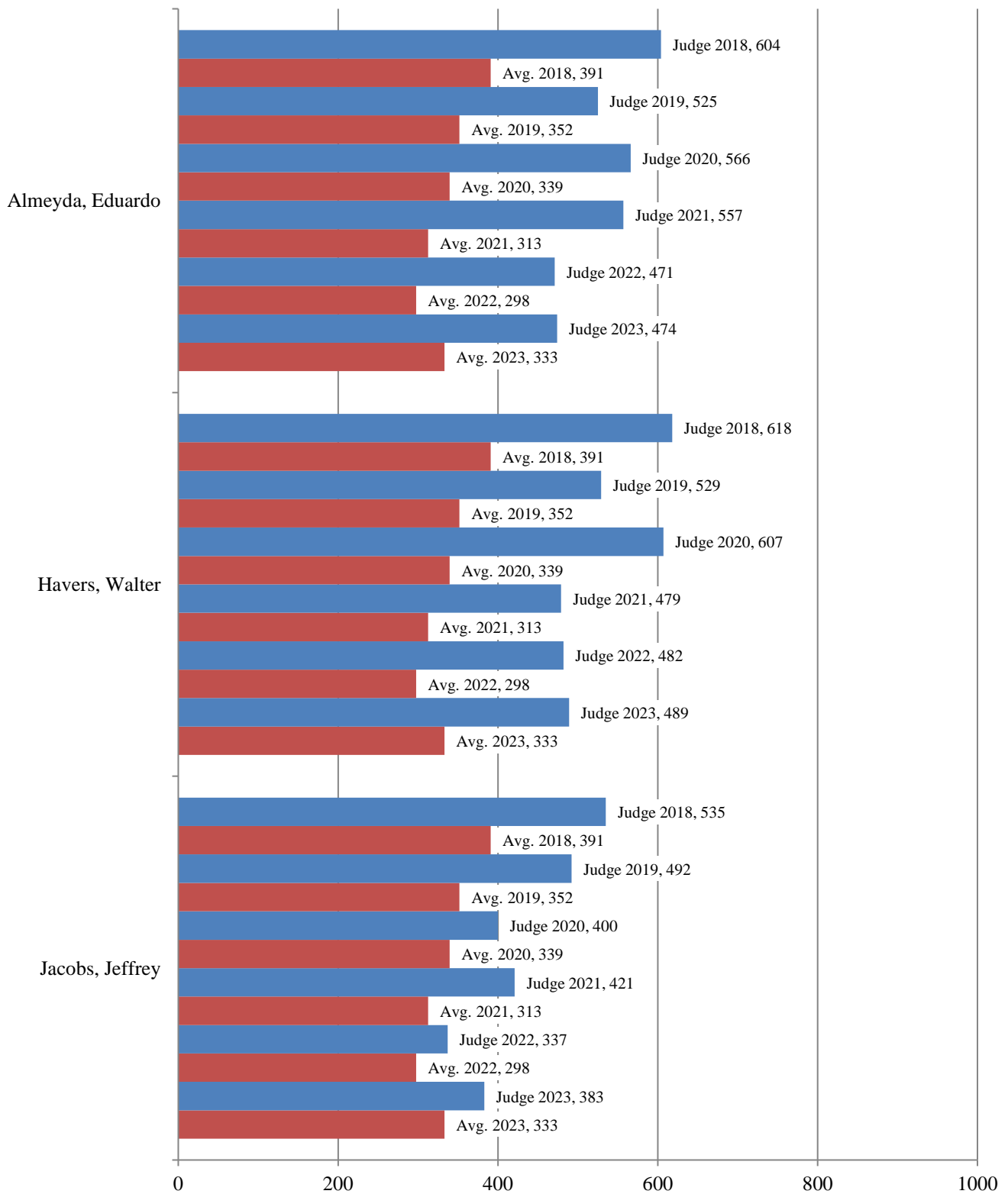




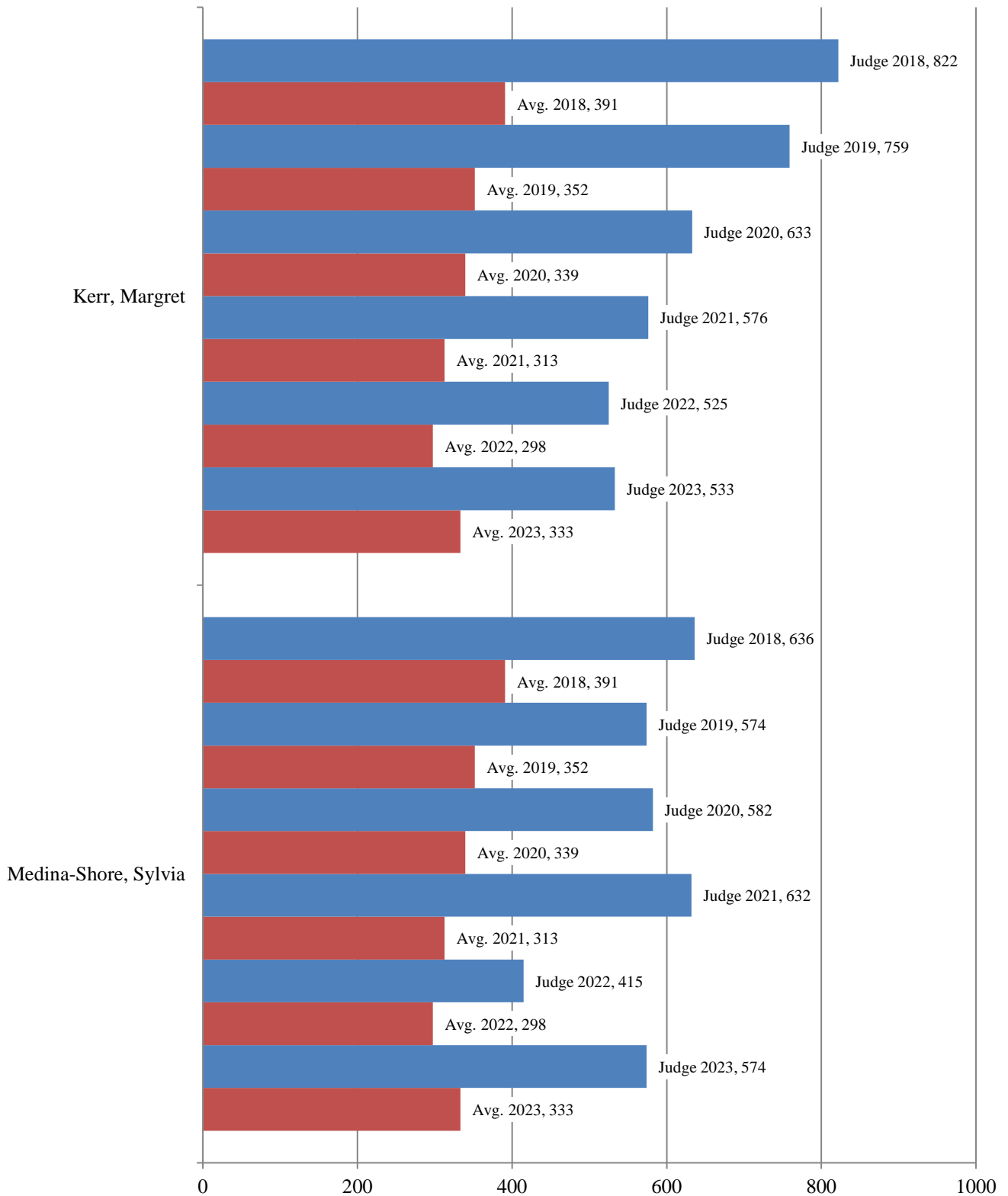
(Continued) The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



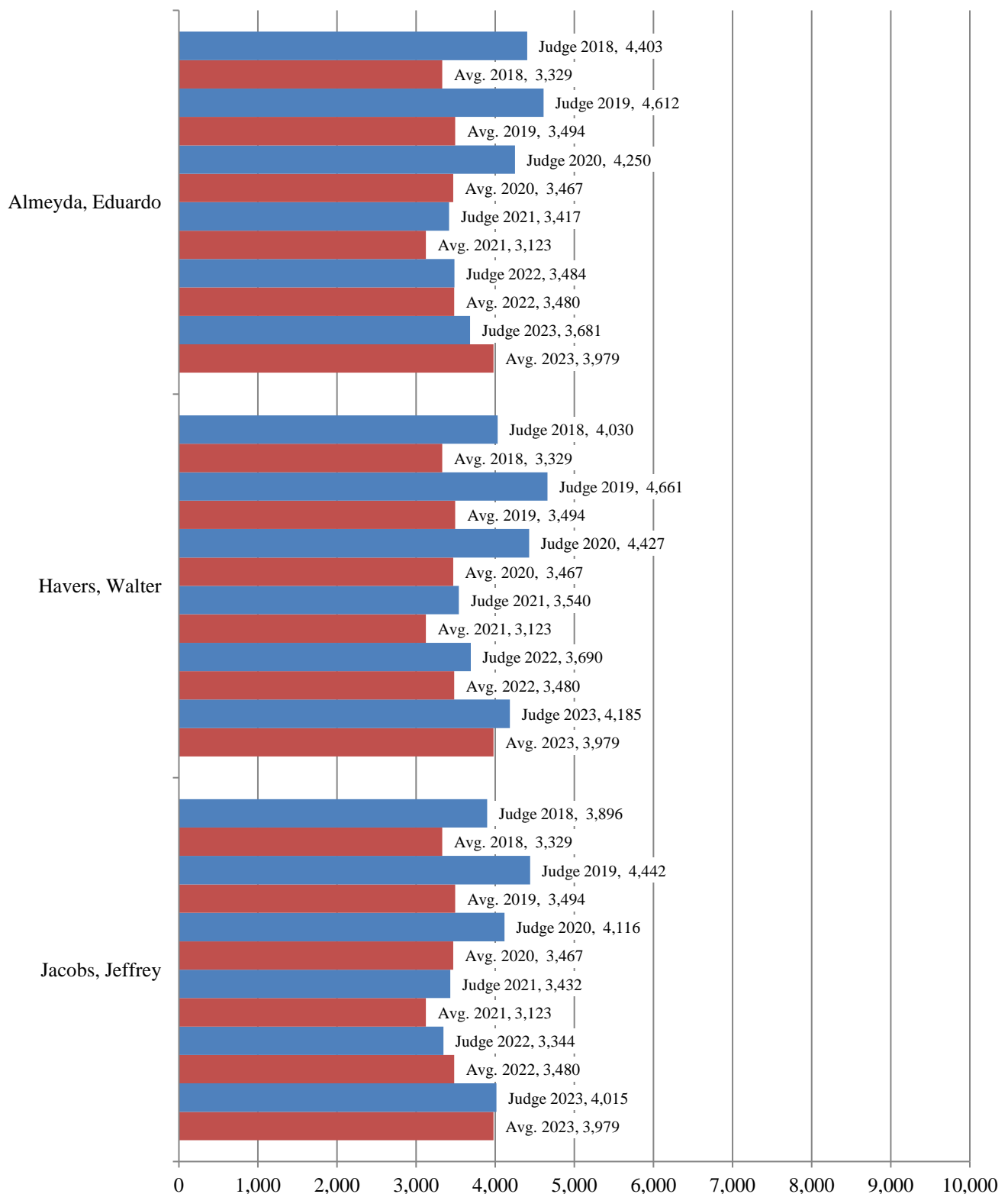
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



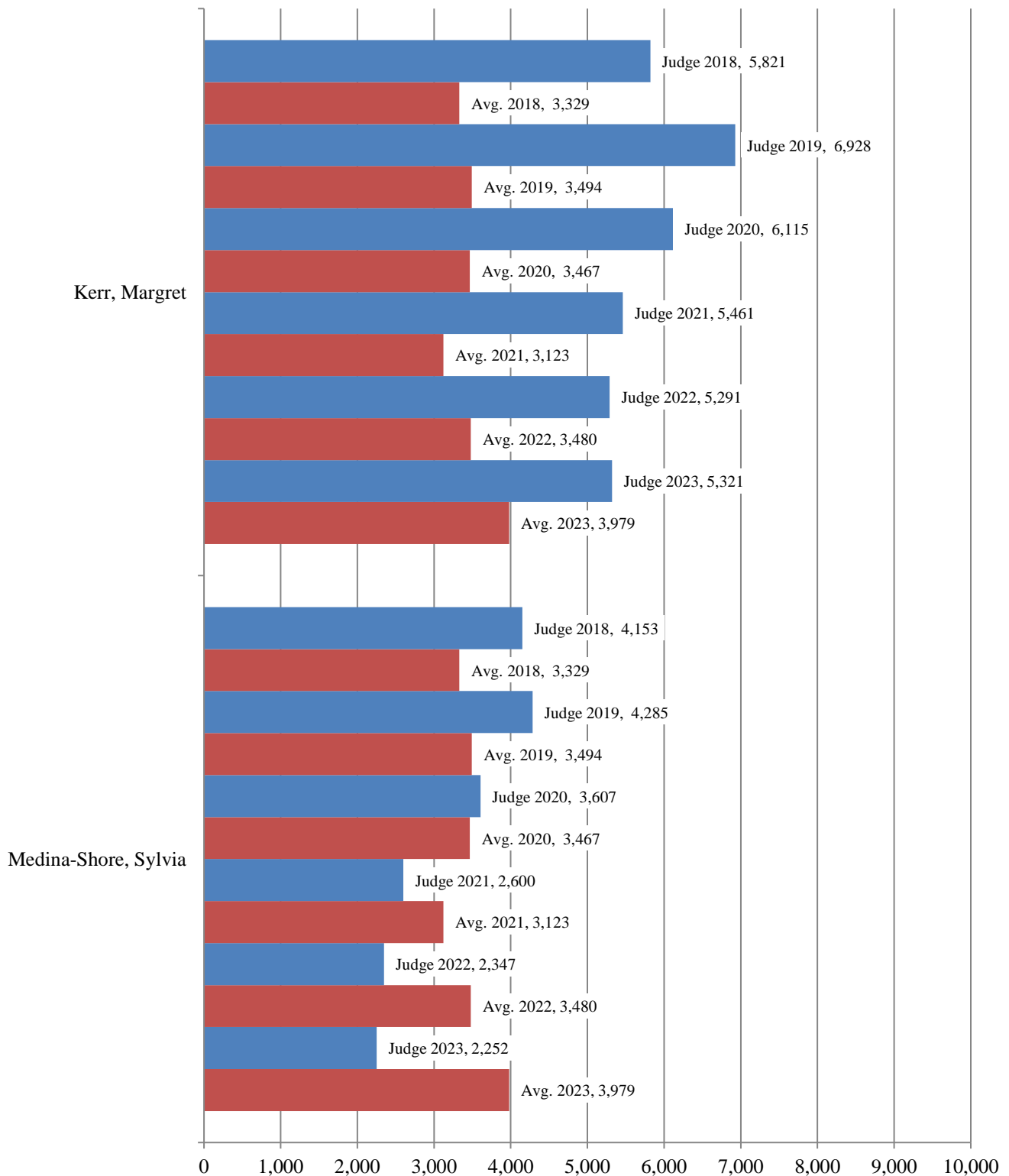
(Continued) The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



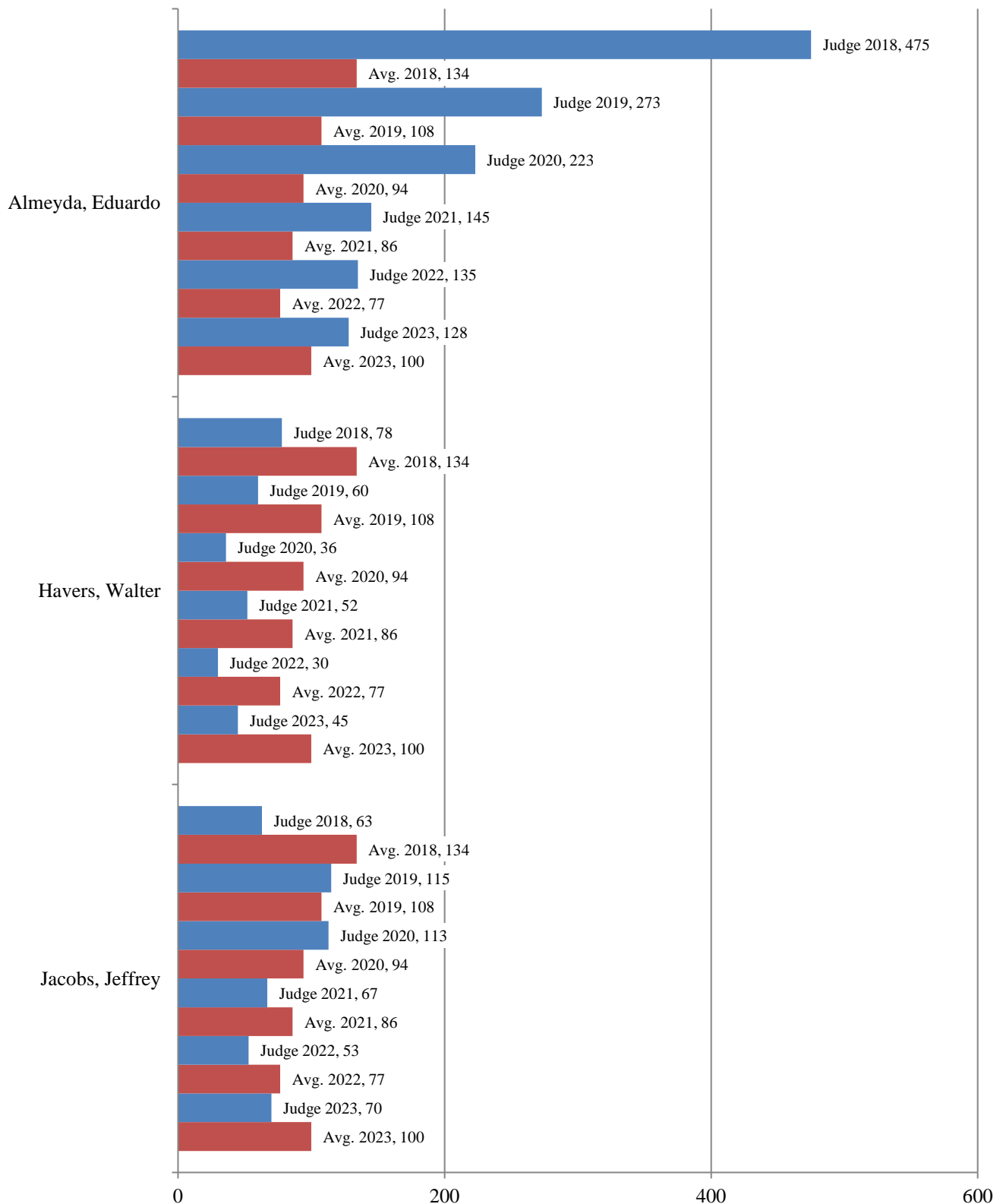
The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



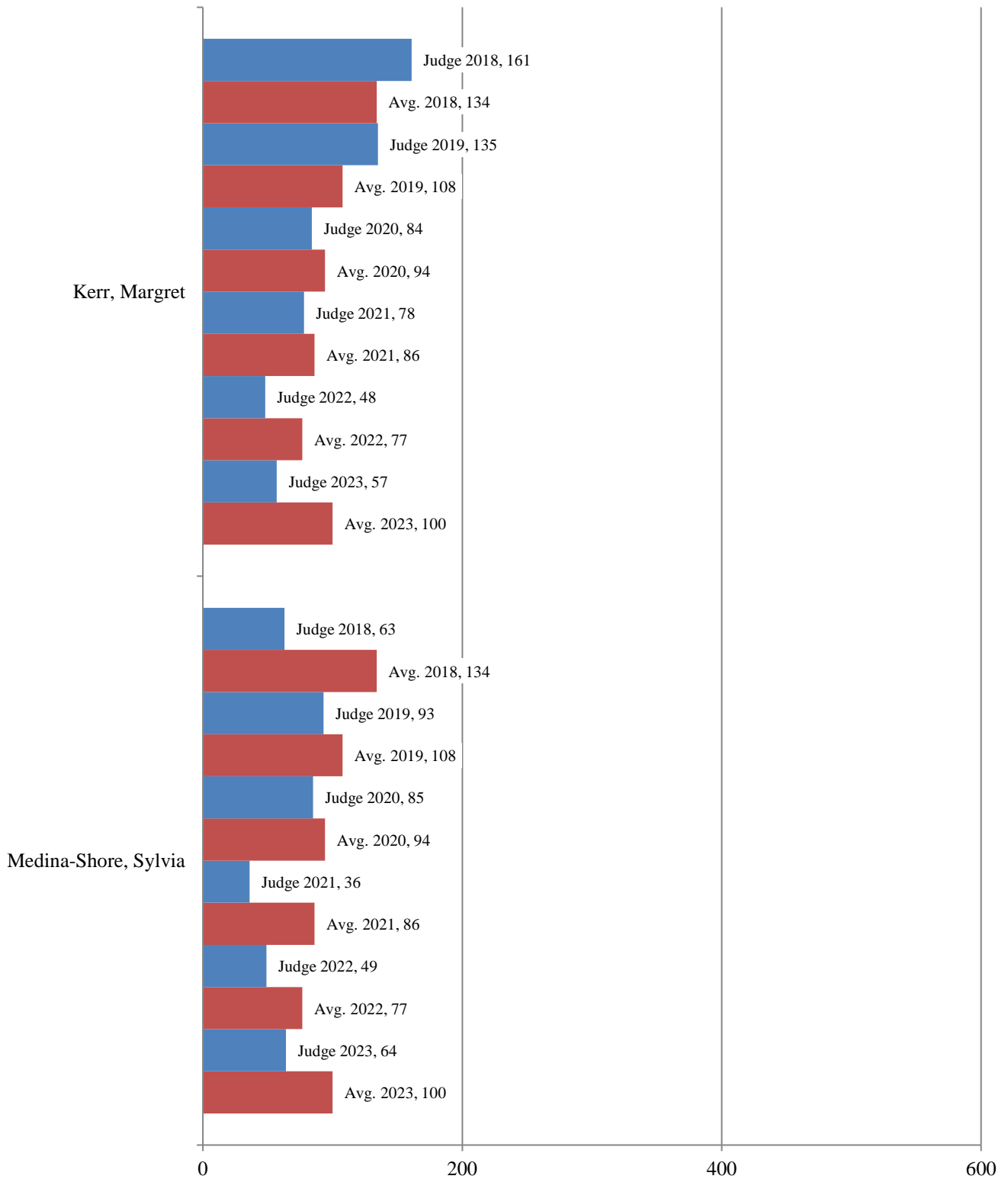
(Continued) The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count



The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



## Appendix “5” District ORL (JCC Anderson,<sup>351</sup> JCC Jacobs, JCC Pitts, JCC Sancerni,<sup>352</sup>):

District ORL includes Brevard,<sup>353</sup> Lake, Orange, Osceola, Seminole, and Volusia<sup>354</sup> counties.

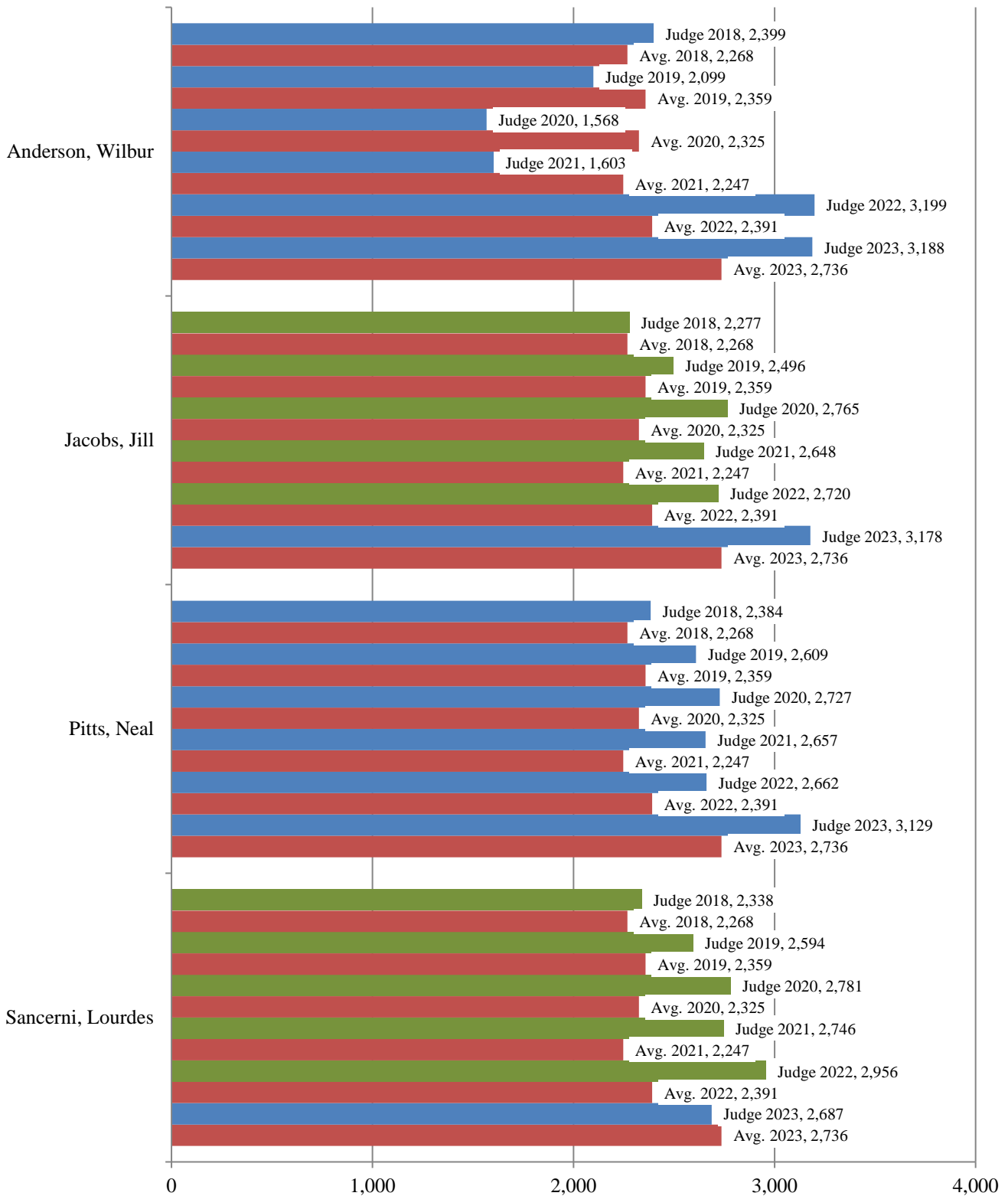
District Daytona was closed and those cases were consolidated into District Orlando along with Judge Anderson. Initially, that involved no reassignment of Judge Anderson’s cases. However, as time progresses, new cases from the former Daytona counties will be distributed equally to the four Orlando judges. Both “new cases” and PFB filing remain markedly above average in District Orlando in 2021-22. This has been demonstrated with striking consistency over the last nine years. Judge Jill Jacobs was appointed at the end of 2021-22 and took office in 2022-23, replacing Judge Sculco. A fourth JCC, Judge Lourdes Sancerni, was appointed at the same time, and the OJCC had planned to staff the Orlando district with four judges. Those plans were changed in 2022-23. The work load volume in District Orlando seems to support an additional judge there, but that conclusion has been renounced by others, leading to a withdrawal of a posted judicial vacancy there. It is hoped that the workload there will be more evenly distributed as the effects of Judge Anderson’s reassignment are seen. It is possible that work will be referred out of Orlando to alleviate the significant workload disparity evidenced by the “new case” and PFB volumes.

In 2022-23, Judge Anderson served as vice-president and pupilage group chair of the Judge William Wieland American Inn of Court. He spoke at several Bench and Bar events sponsored by the Volusia County Bar Association and the Workers' Compensation Section of The Florida Bar. Judge Anderson continued as an active member of the National Association of Workers’ Compensation Judiciary and the Volusia County Bar Association.

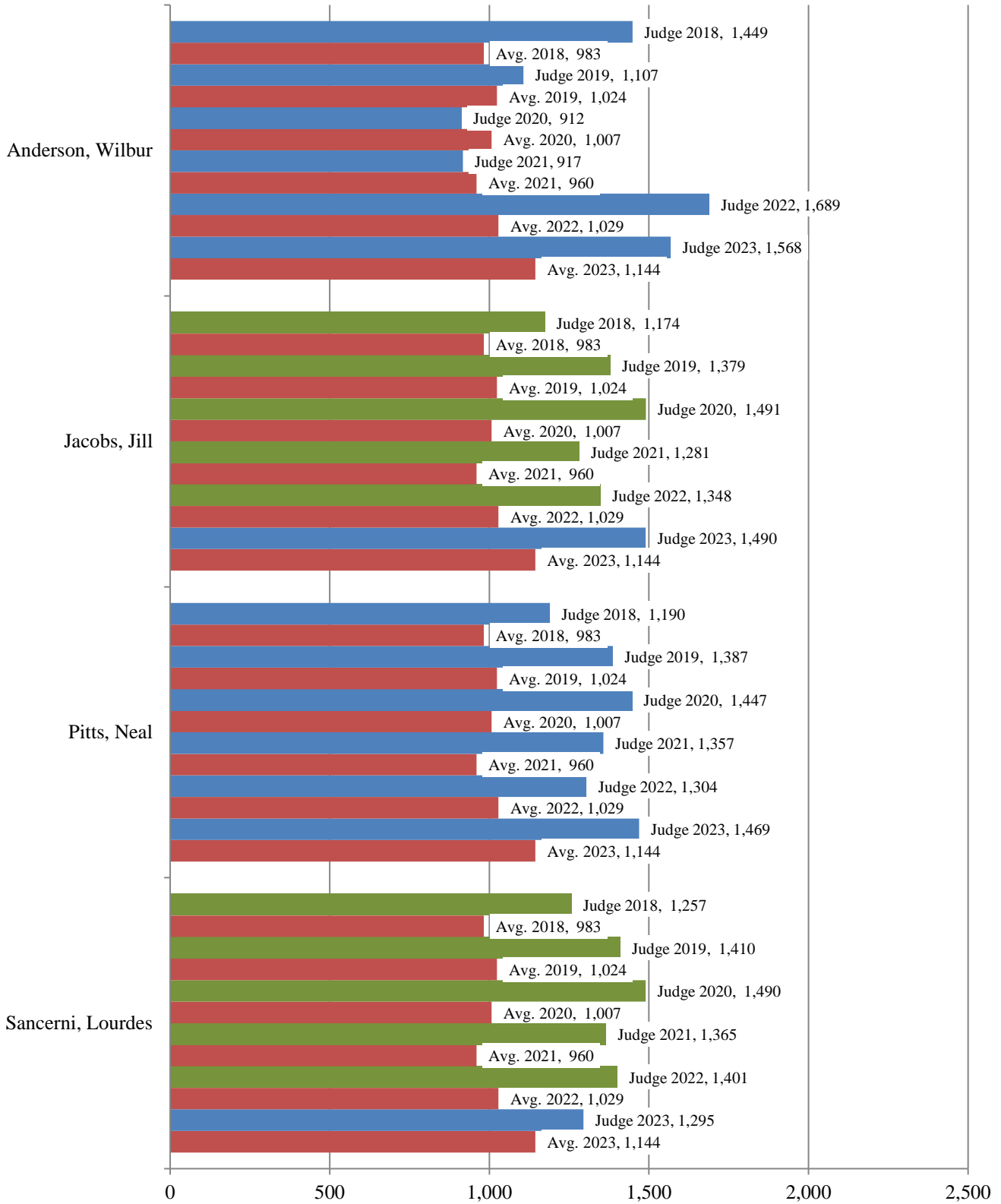
[Space intentionally blank]



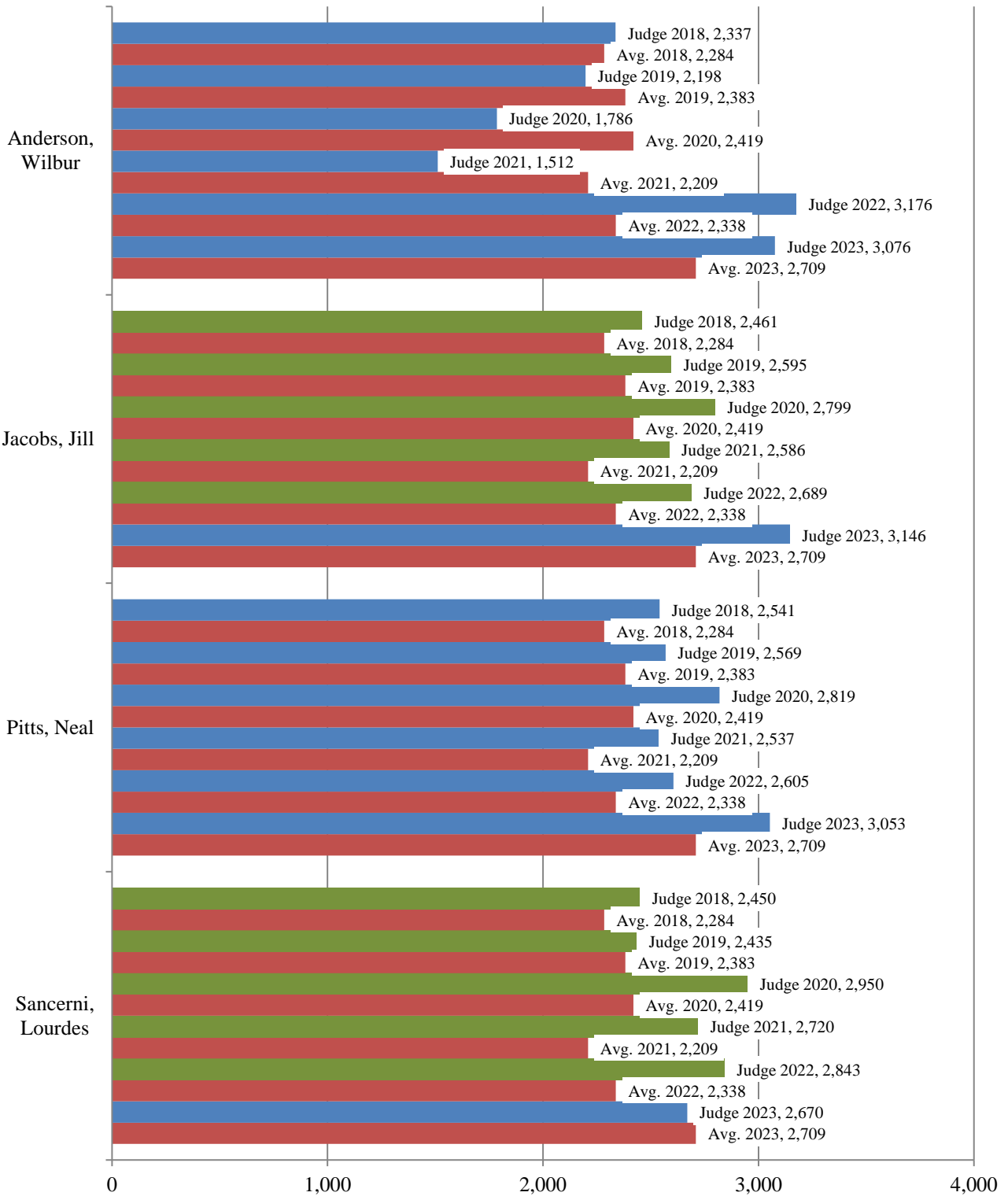
The following depicts the volume of PFBs filed in this District<sup>355</sup> and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



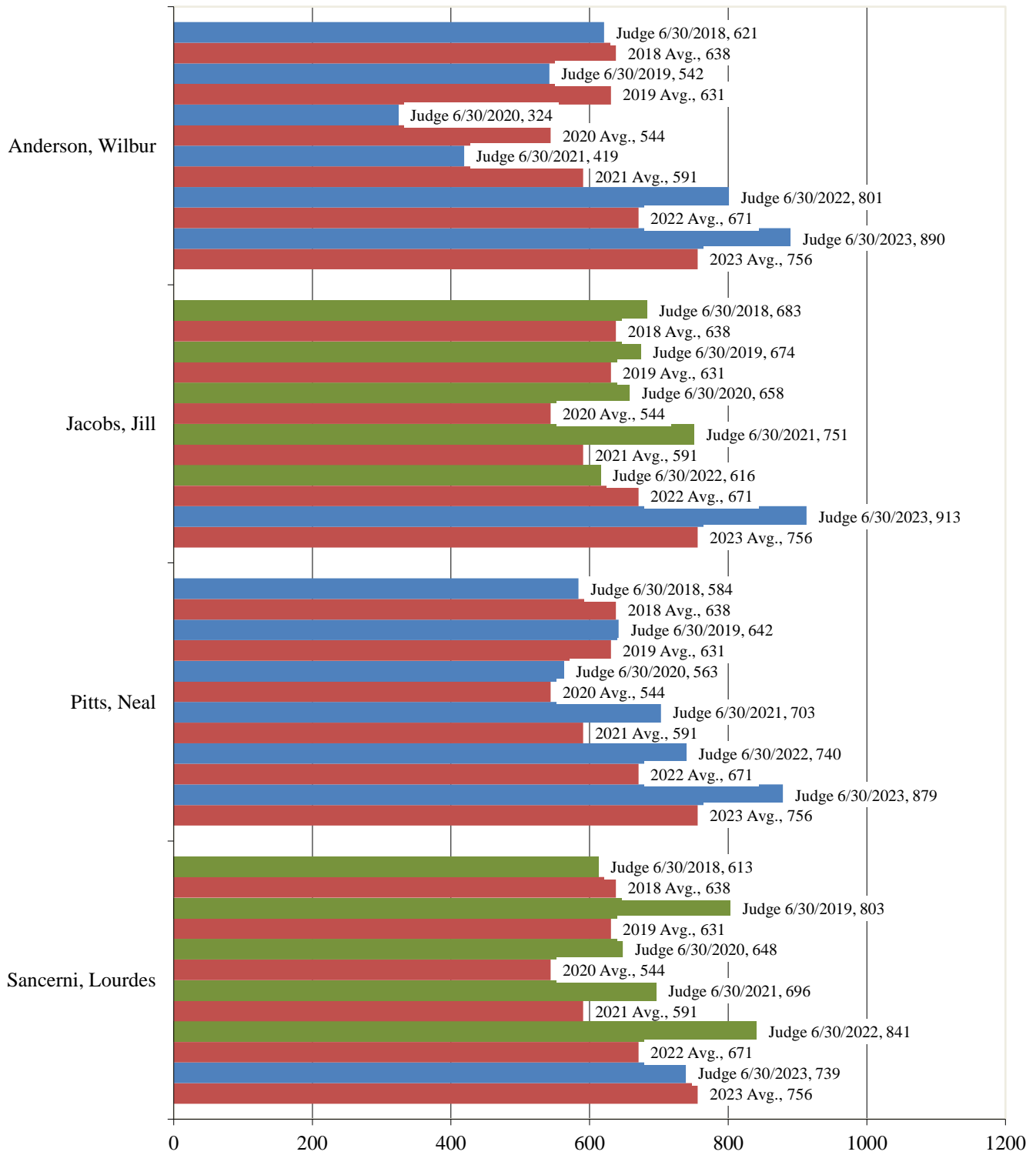
The following depicts the volume of “new cases” filed in this District<sup>356</sup> and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of PFBs closed in this District<sup>357</sup> and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).

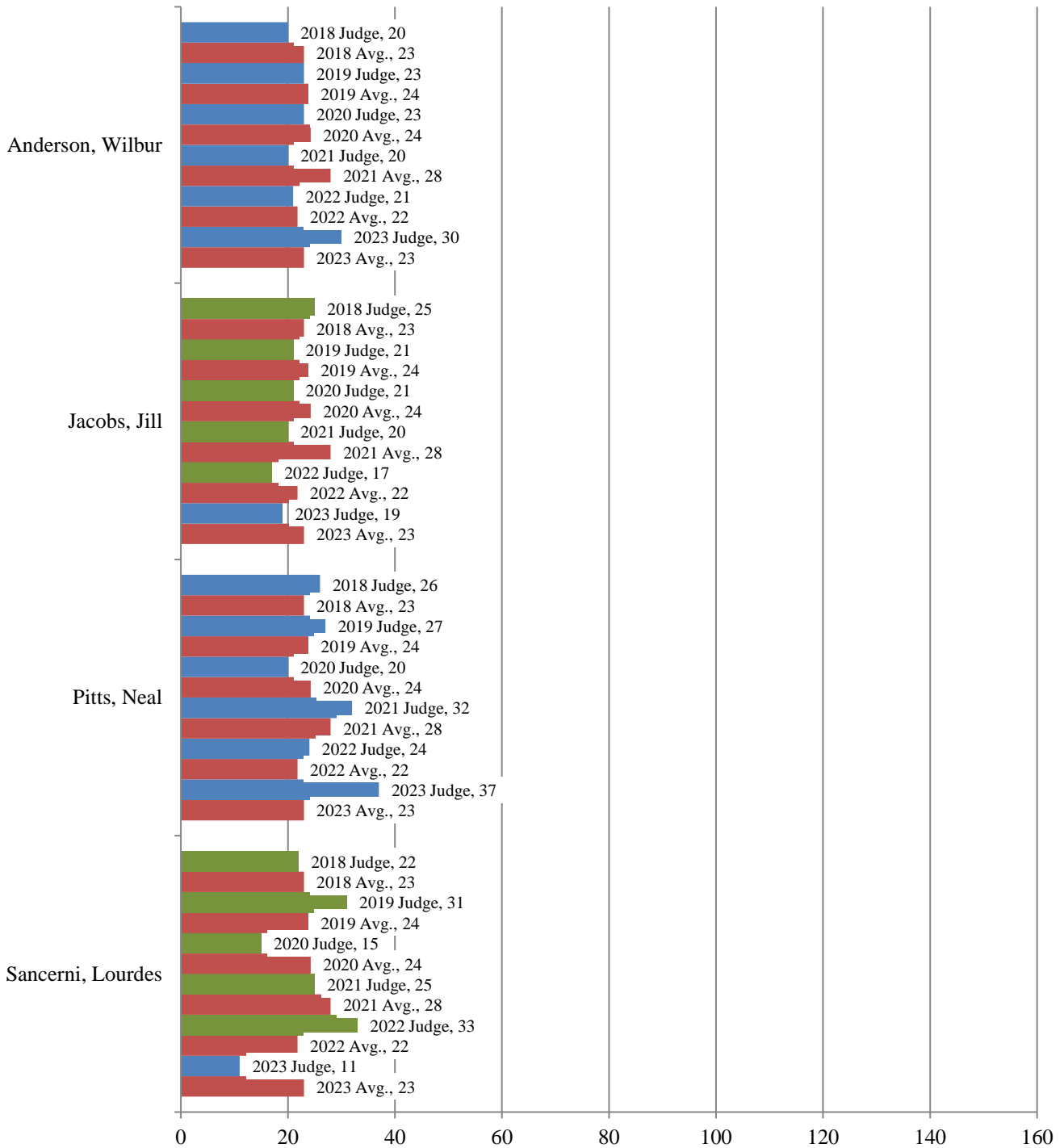


The following depicts the inventory of pending PFBs in this District<sup>358</sup> and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge's appointment).

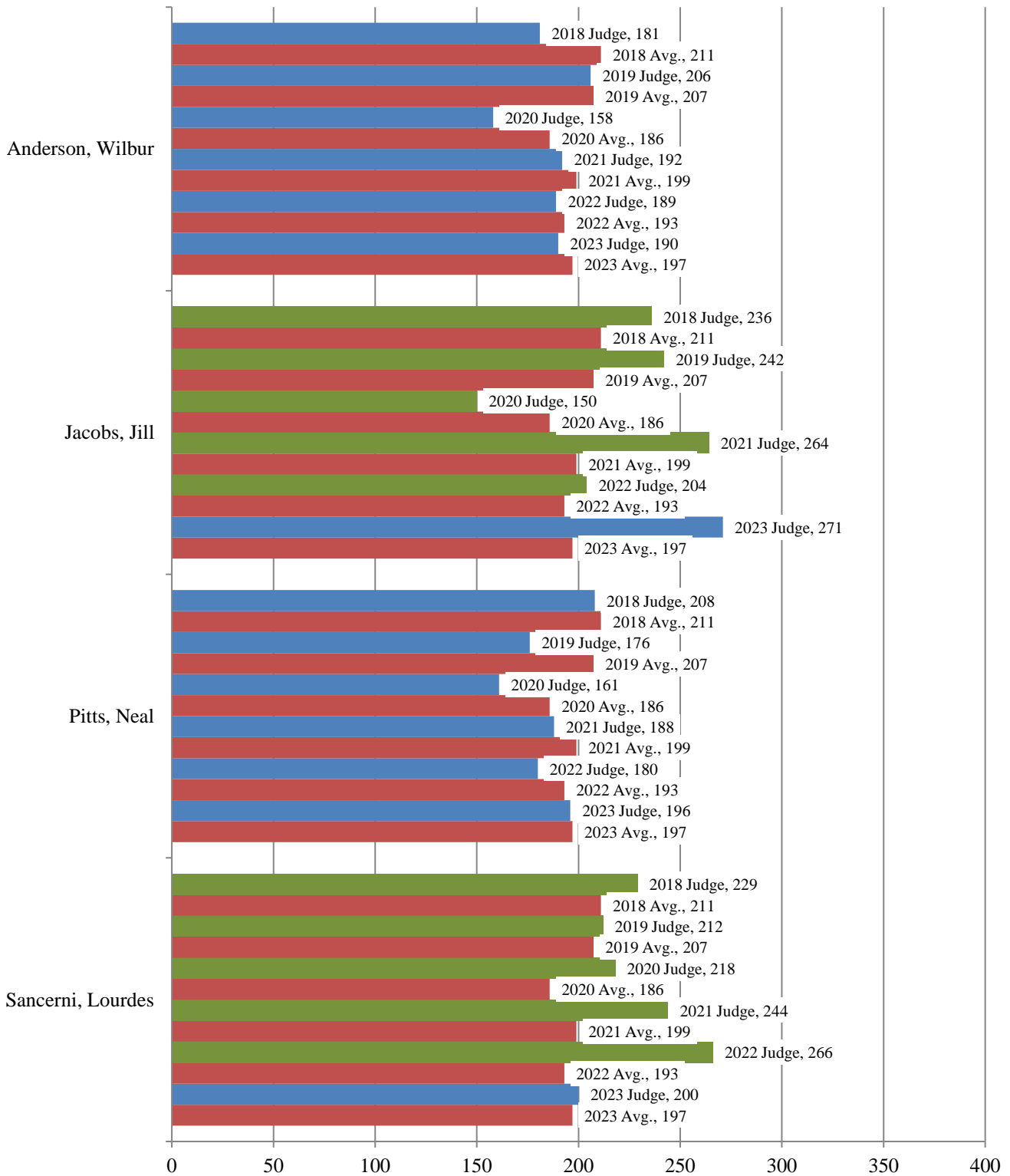


Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore, that graph is not included here, but in Appendix 11.

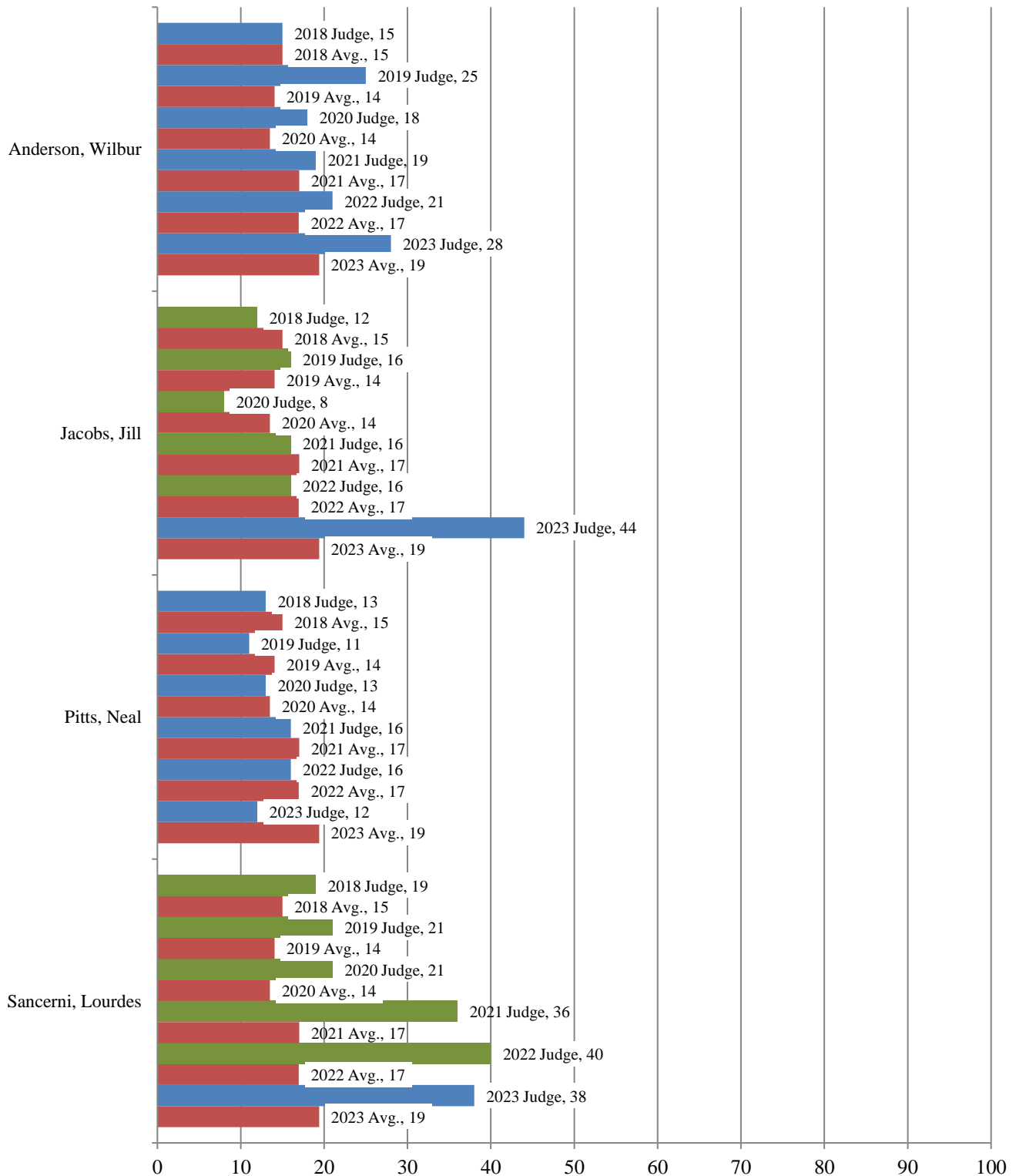
The following graph depicts the total volume of trial orders<sup>359</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



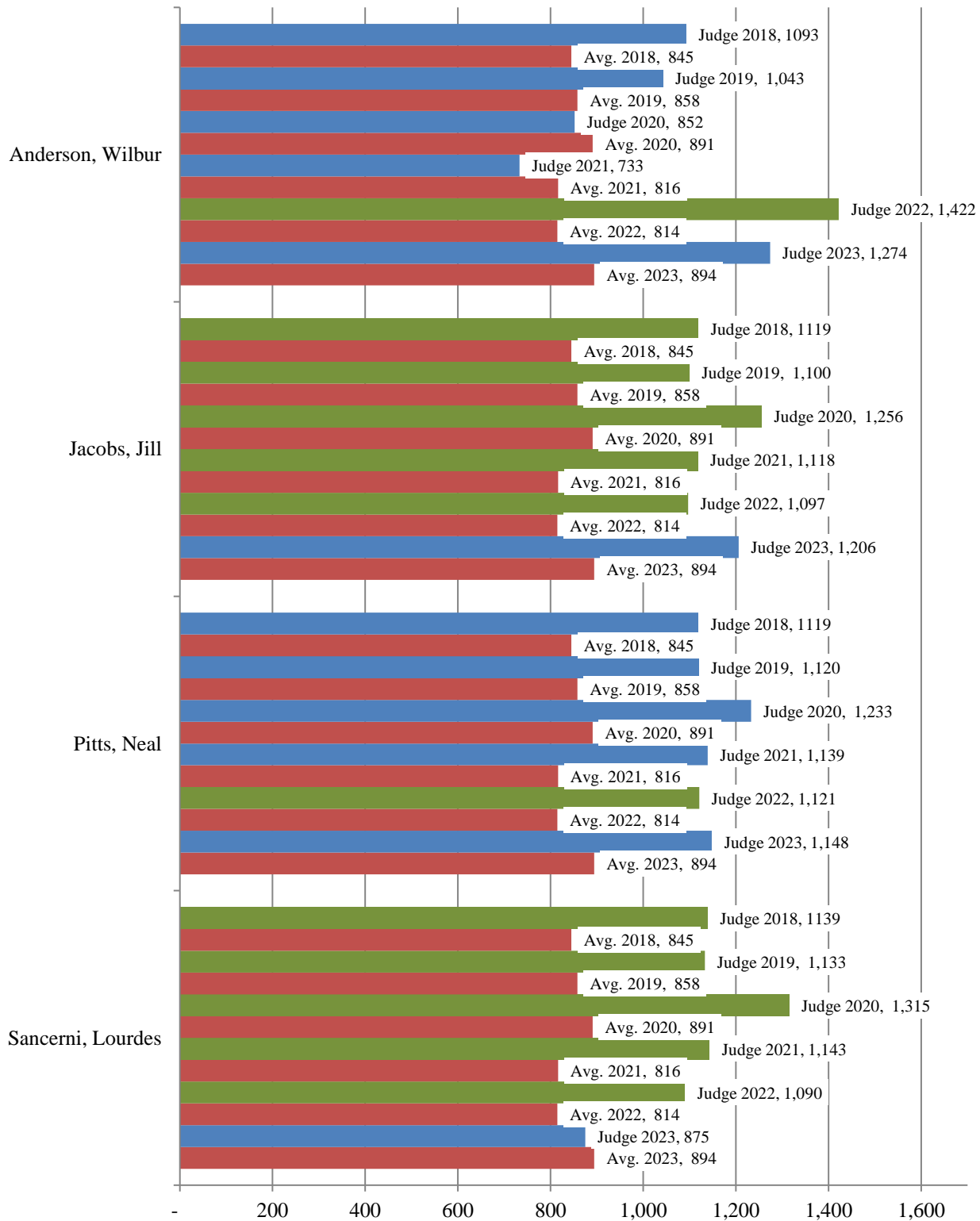
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. 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 before the named judge's appointment).

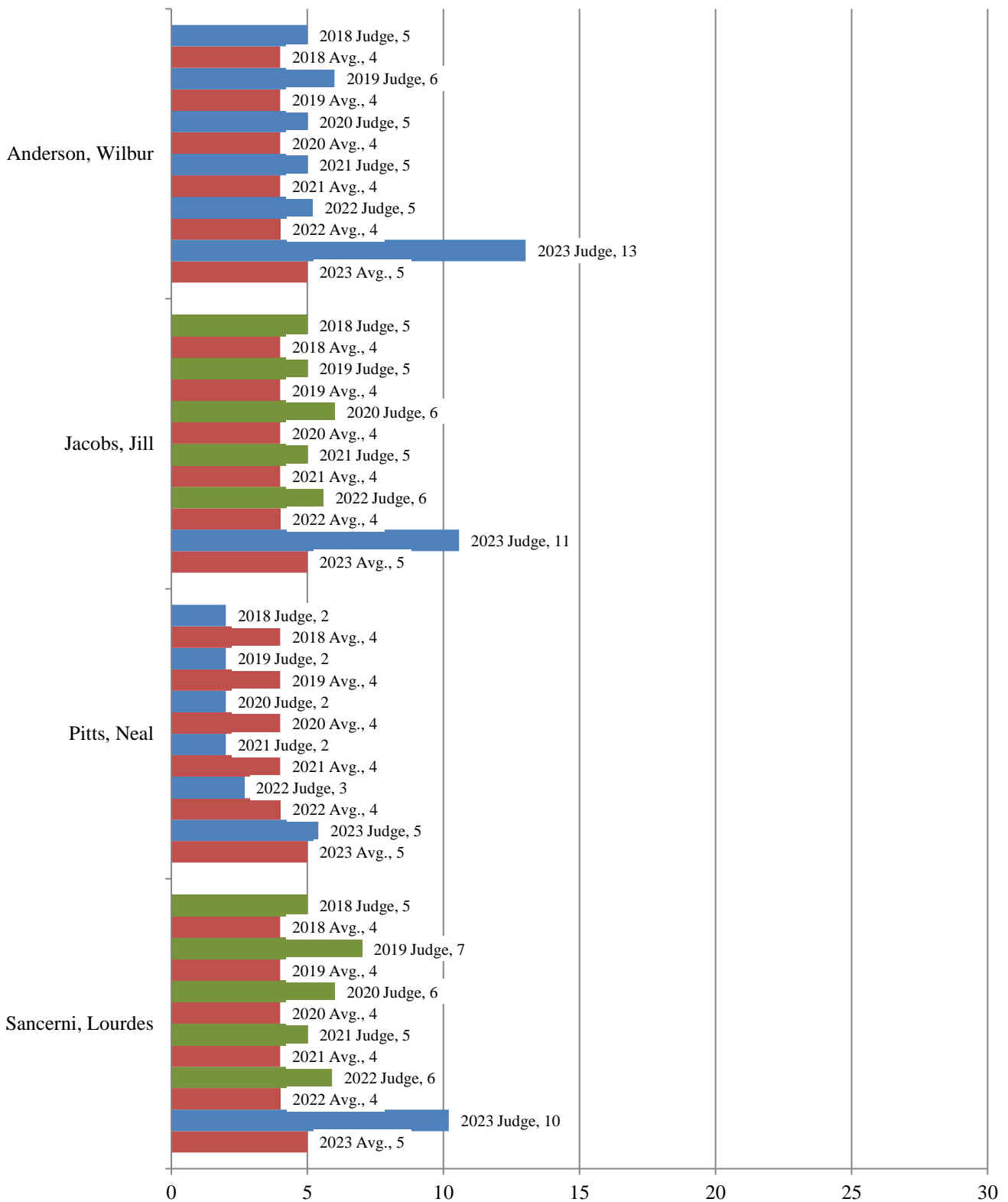


The following depicts the volume of settlement orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

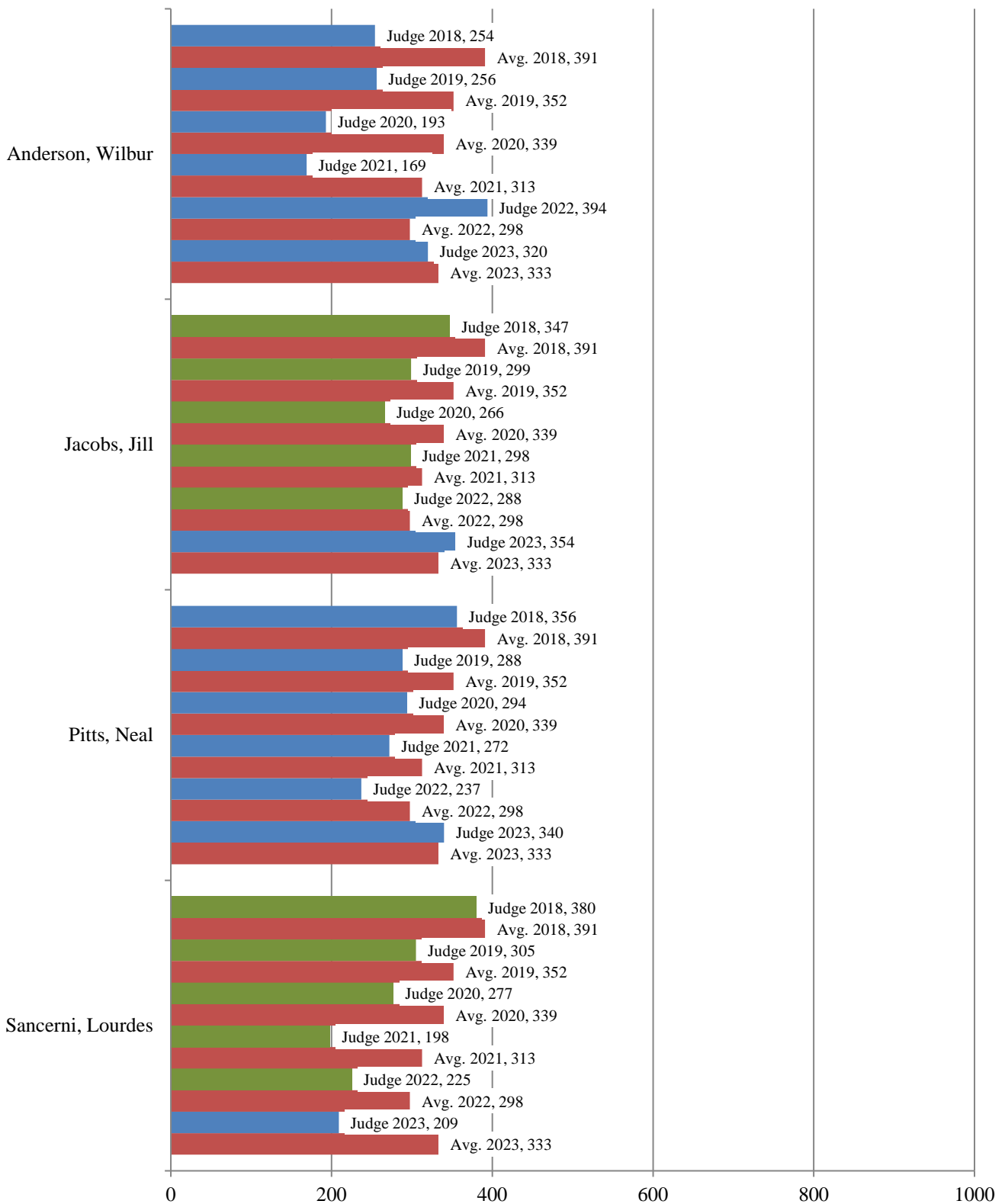




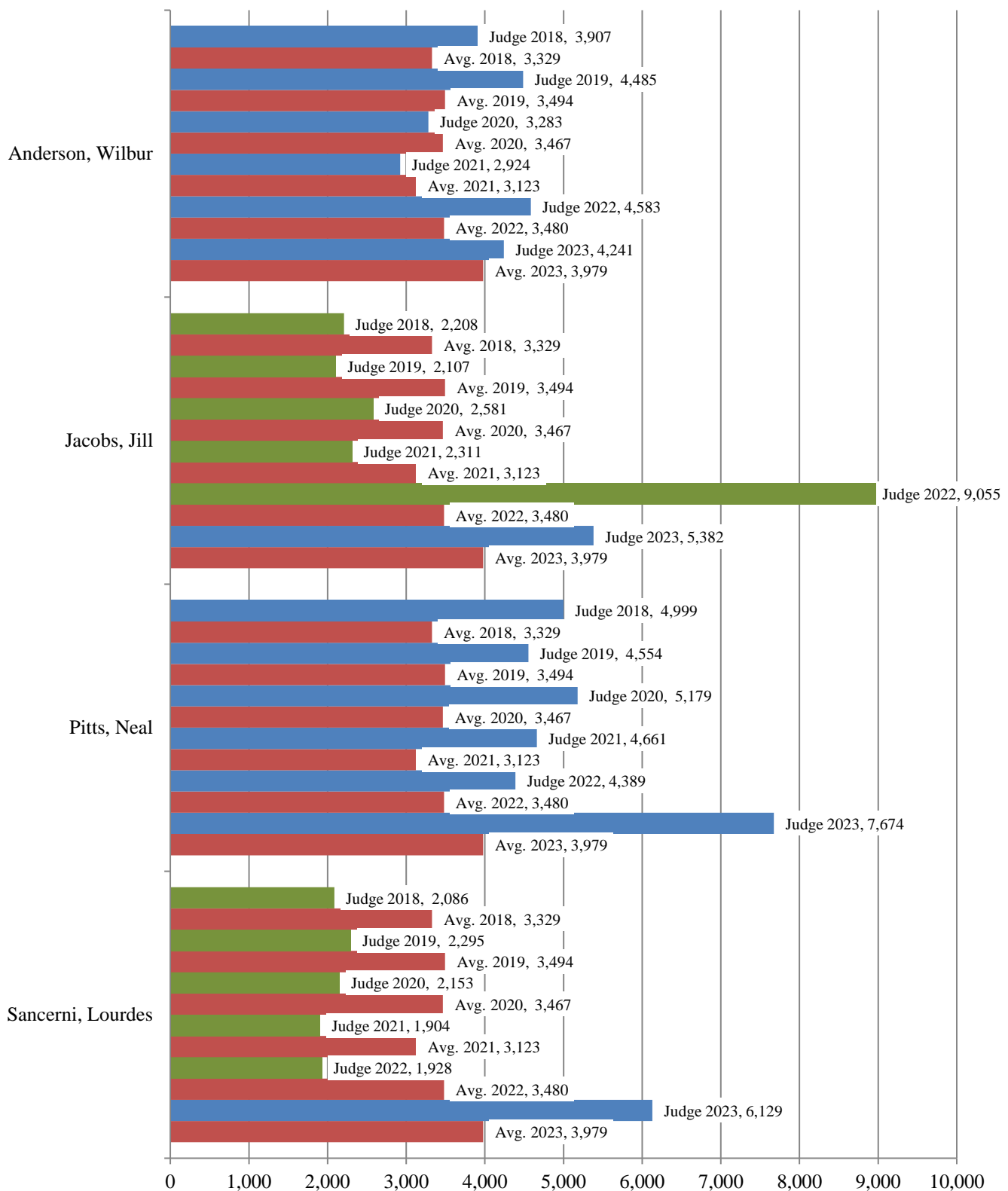
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



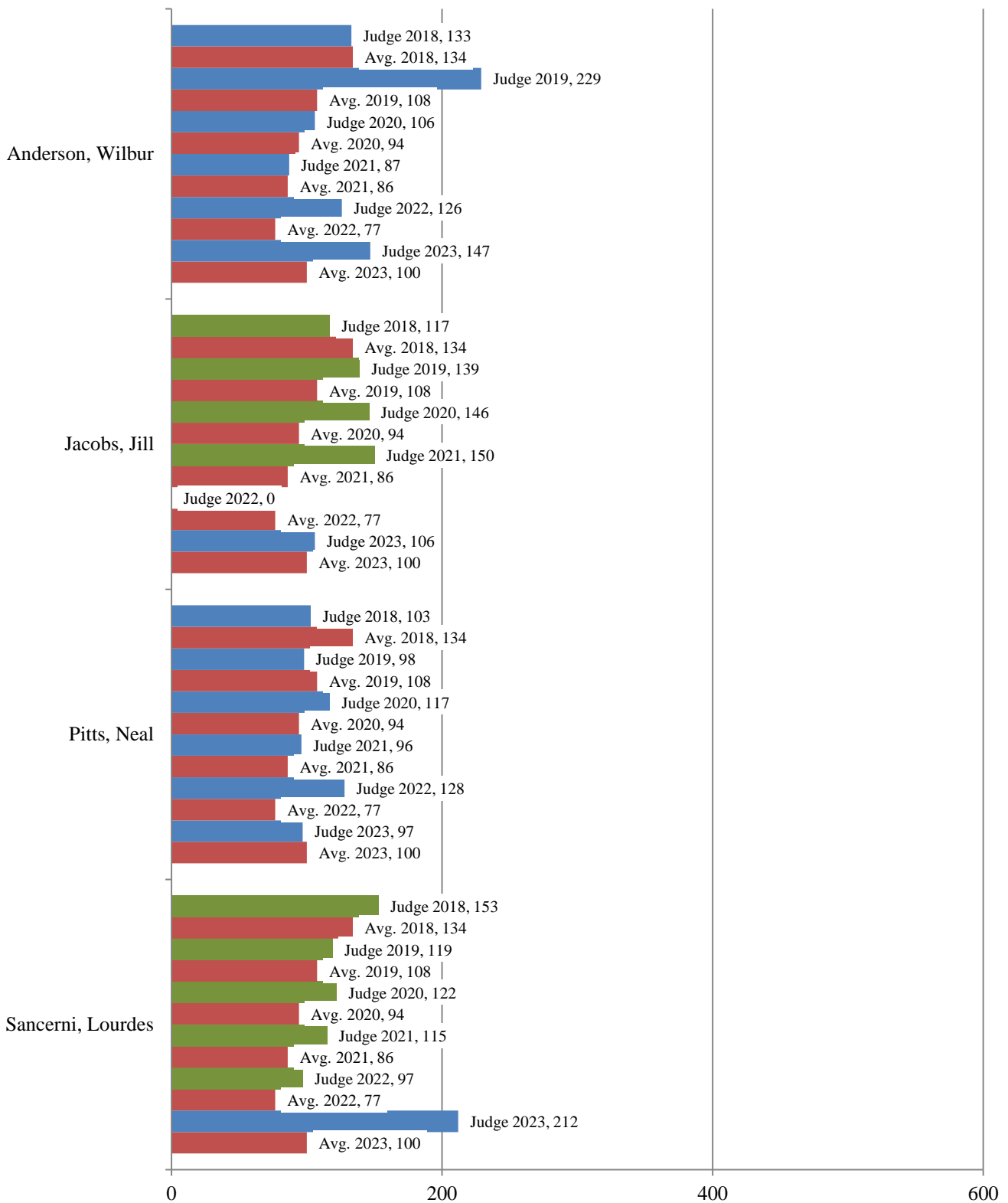
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named appointment).judge’s



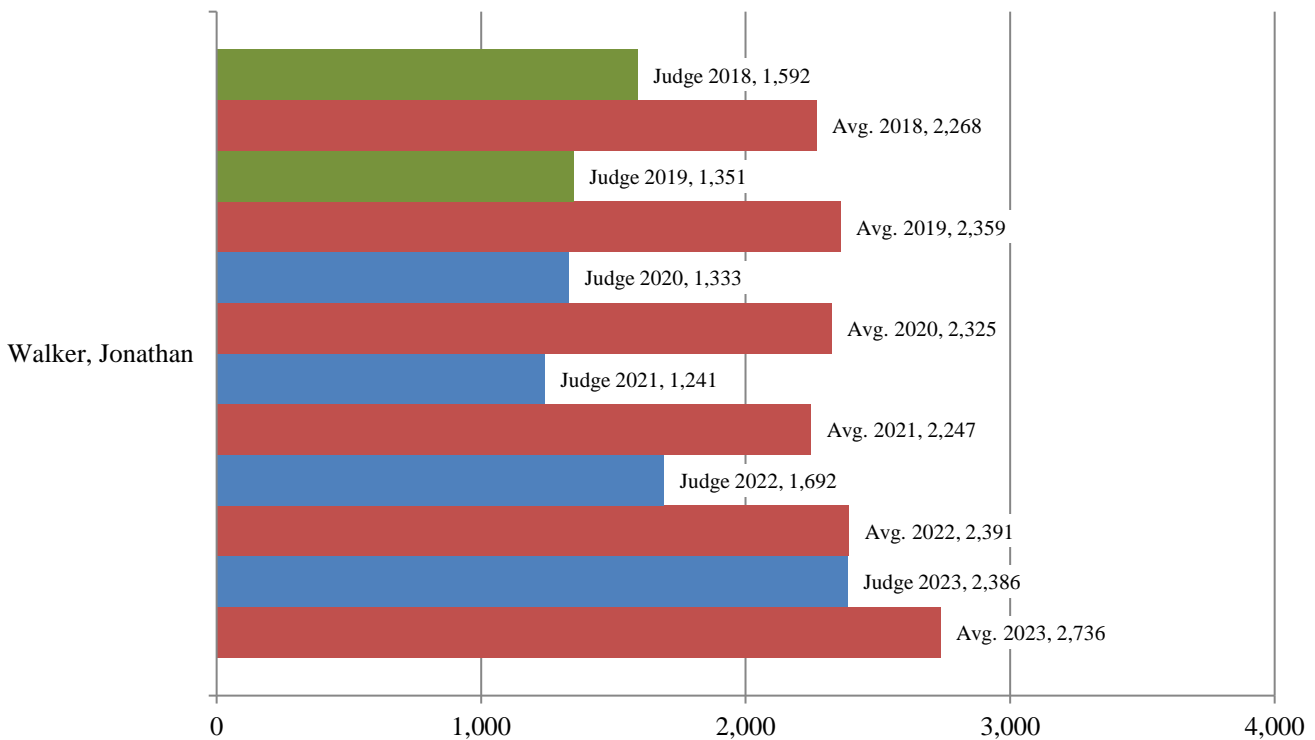
## Appendix “6” District PNS (JCC Walker<sup>360</sup>):

District PNS includes Bay,<sup>361</sup> Escambia, Okaloosa, Santa Rosa, and Walton<sup>362</sup> counties.

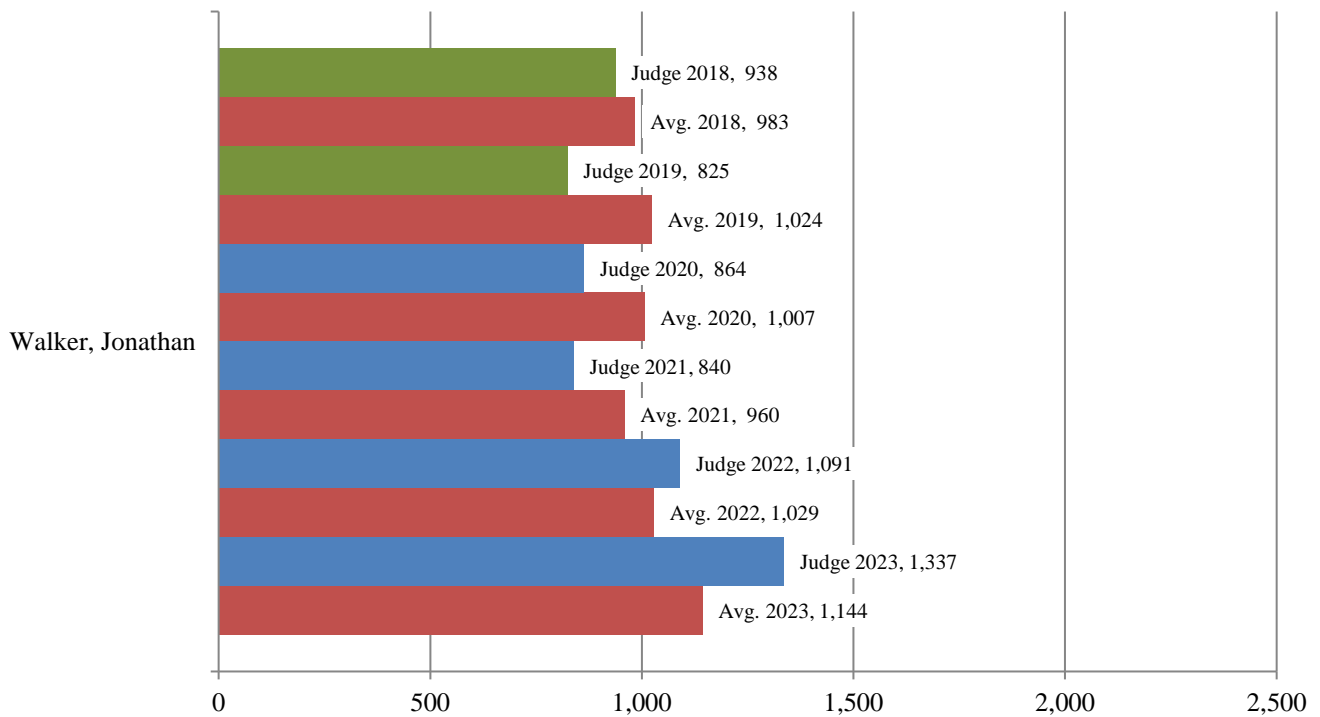
Despite the closure of Panama City and the reassignment of Bay County, the “new case” and PFB volumes in Pensacola remained below the statewide averages in 2022-23. In the event it becomes necessary to transfer cases from some more busy districts, Pensacola remains an apparent destination for those cases.

In 2022-2023, Judge Walker was a panelist on *The Workers’ Compensation Practice of Law from the Judicial Perspective*, at the August 2022 Workers’ Compensation Conference. In November 2022, he served as a moderator at a program coordinated by the DOAH Second Friday Seminar Committee, which coordinates monthly continuing legal education topics for judges and mediators. In February 2023, he served as a moderator at the OJCC’s Tallahassee seminar presenting *Final Hearings in the Modern Era*. In April 2023, he served as a panelist on the topic, *Evidence Matters*, presented at the Workers’ Compensation Forum. During the fiscal year, Judge Walker volunteered as a local trial judge at the Florida High School Mock Trial Competition, in addition to serving as an appellate judge in preliminary and semi-final rounds at the E. Earle Zehmer National Moot Court Competition for law schools held in Orlando. Locally, Judge Walker served as a team leader in the C. Roger Vinson American Inn of Court (Pensacola chapter).

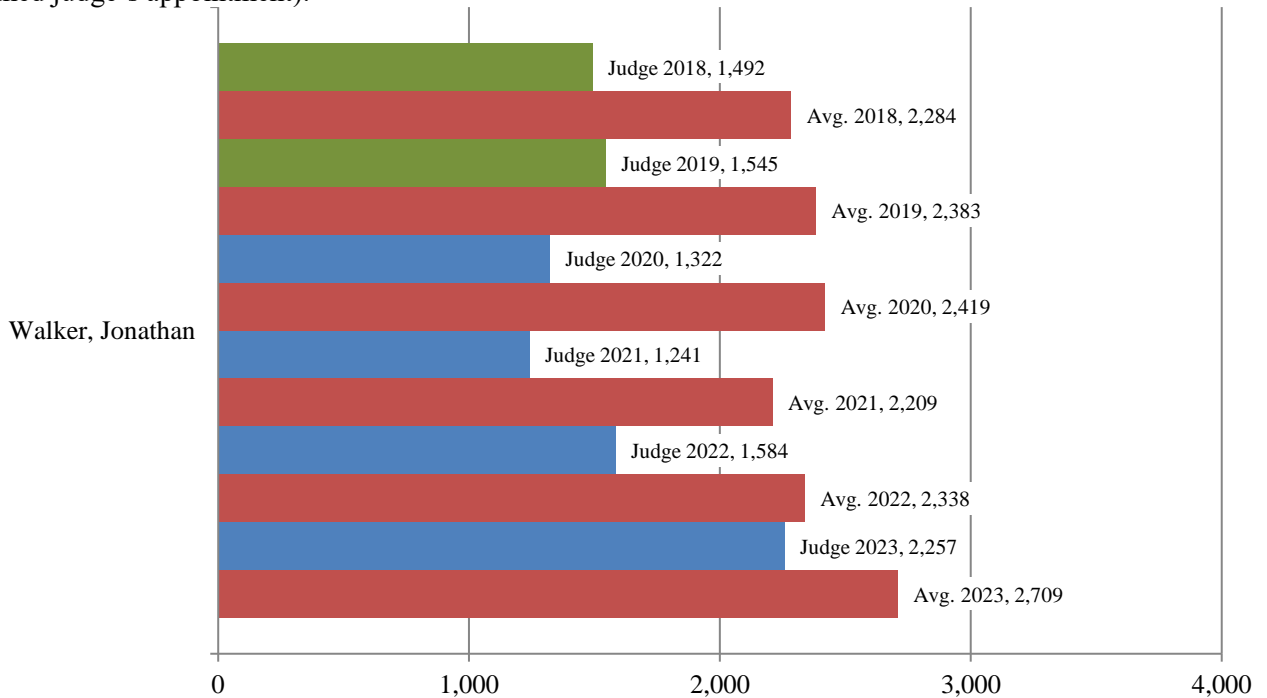
The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



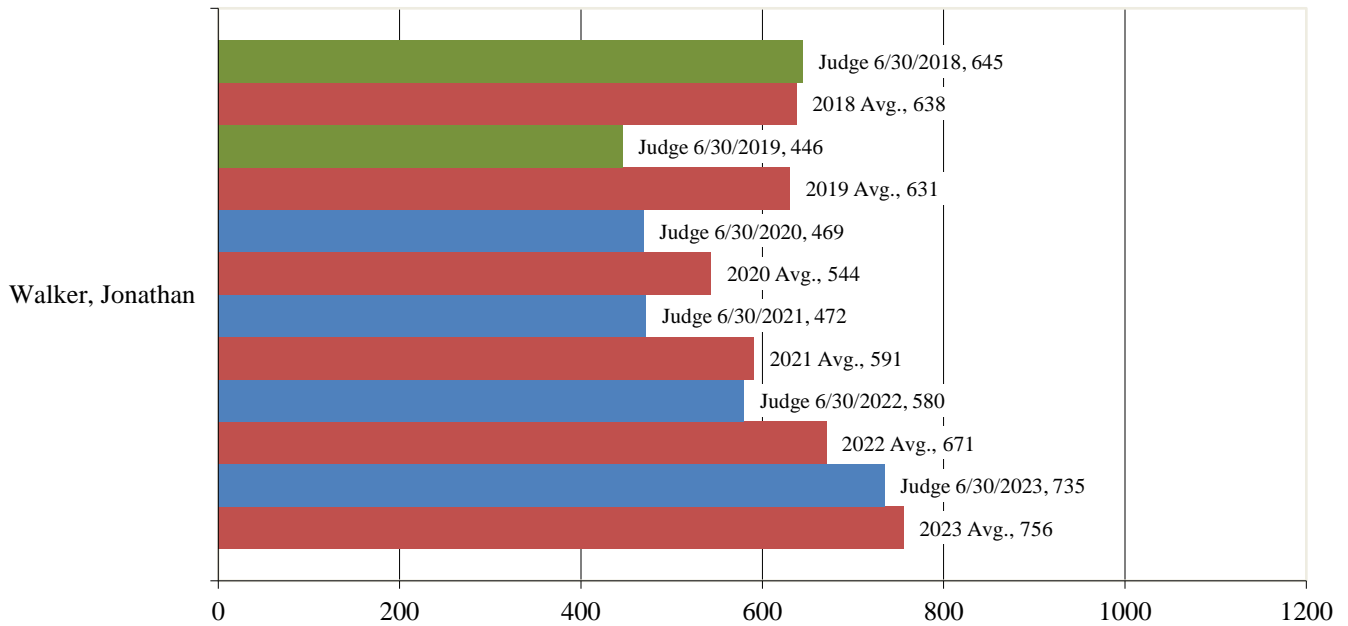
The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

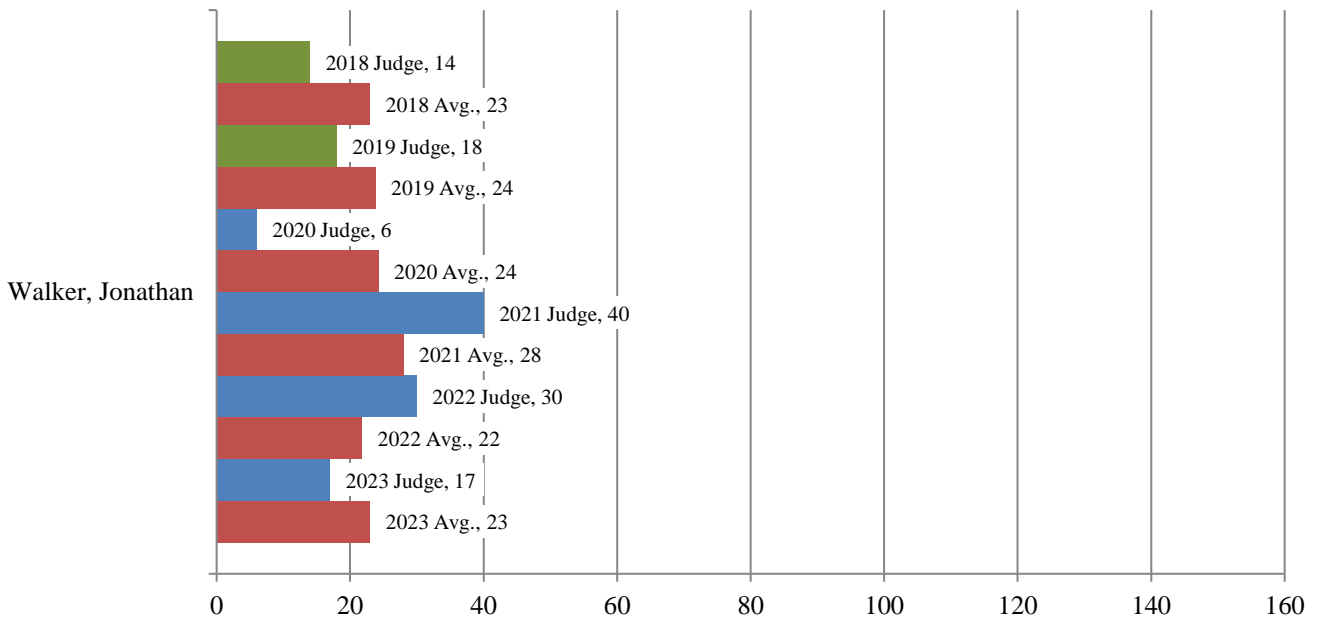


The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).

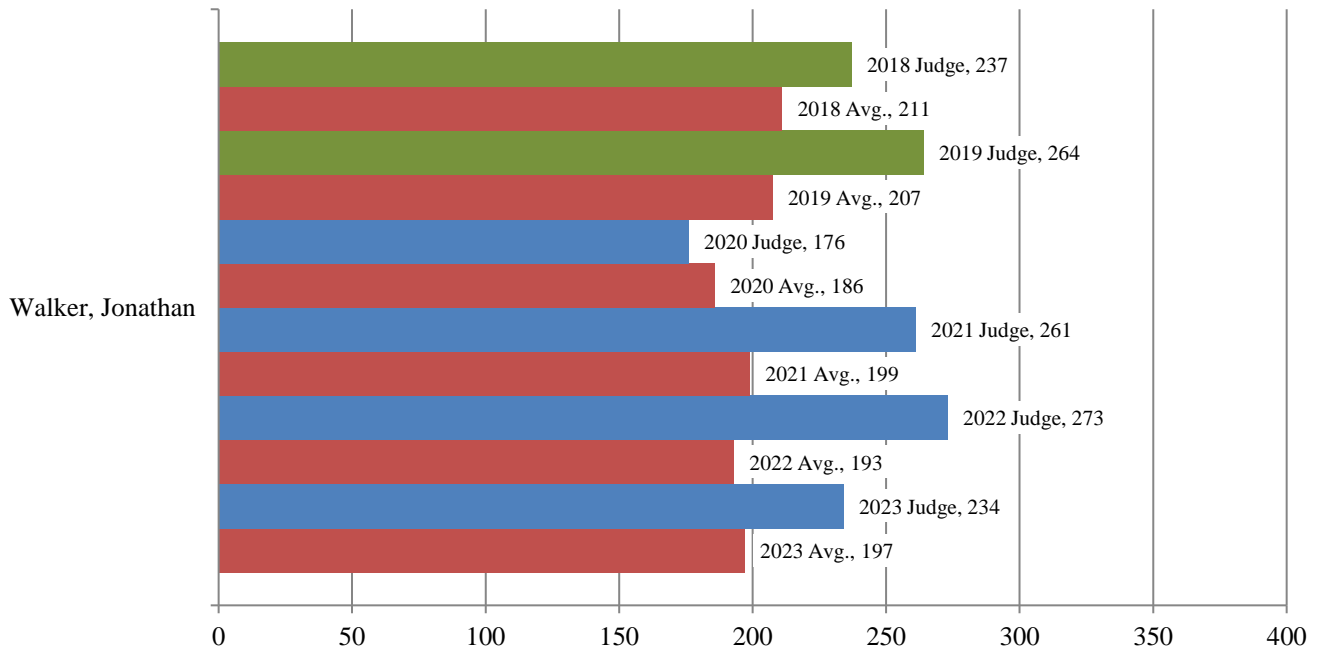


Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore that graph is not here, but appears in Appendix 11.

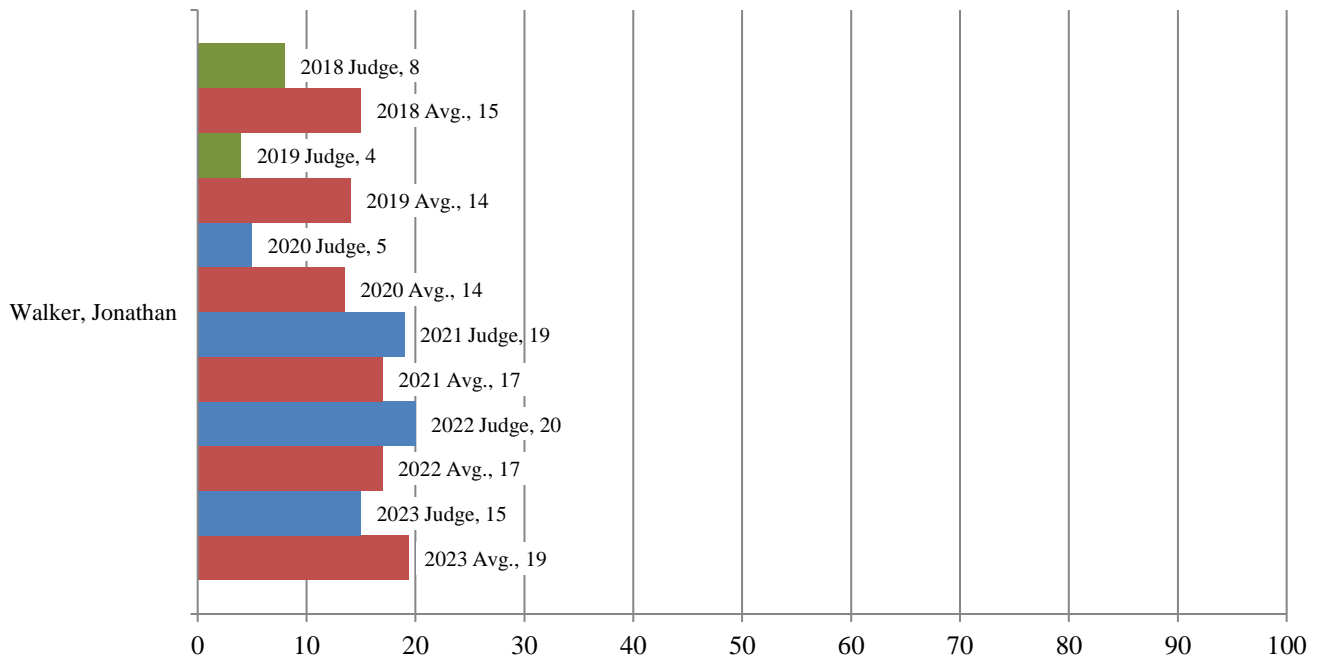
The following graph depicts the total volume of trial orders<sup>363</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2017-18 and 2022-23. 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 before the named judge’s appointment).

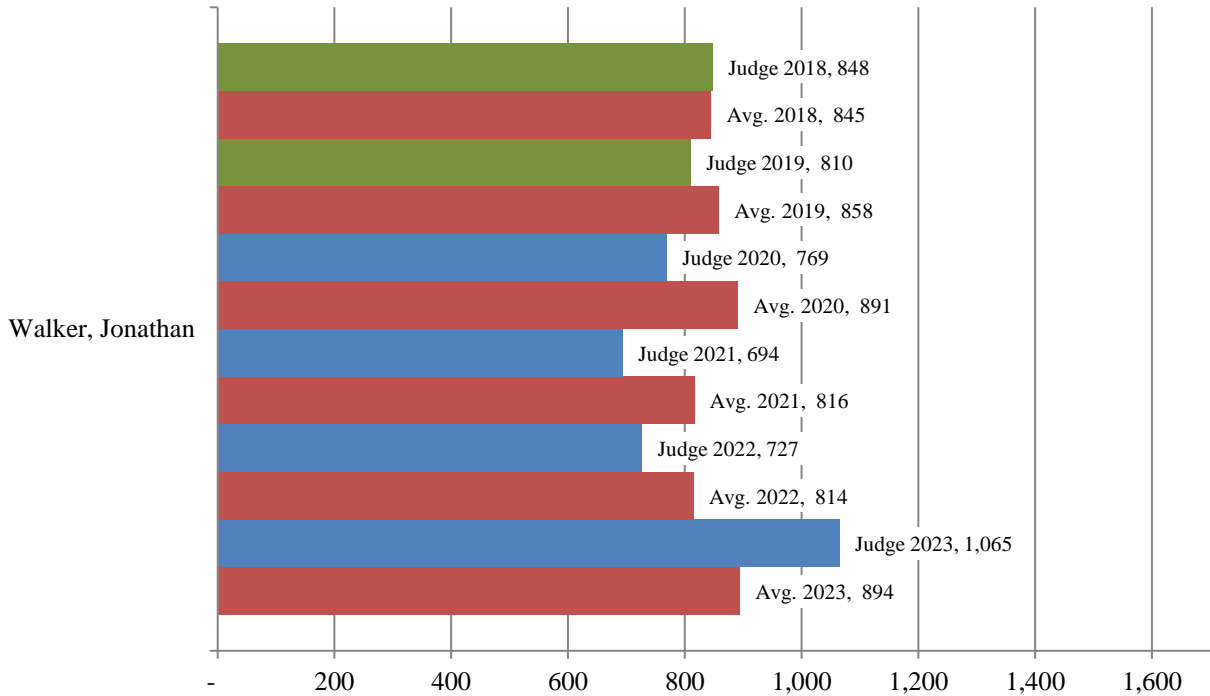


The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

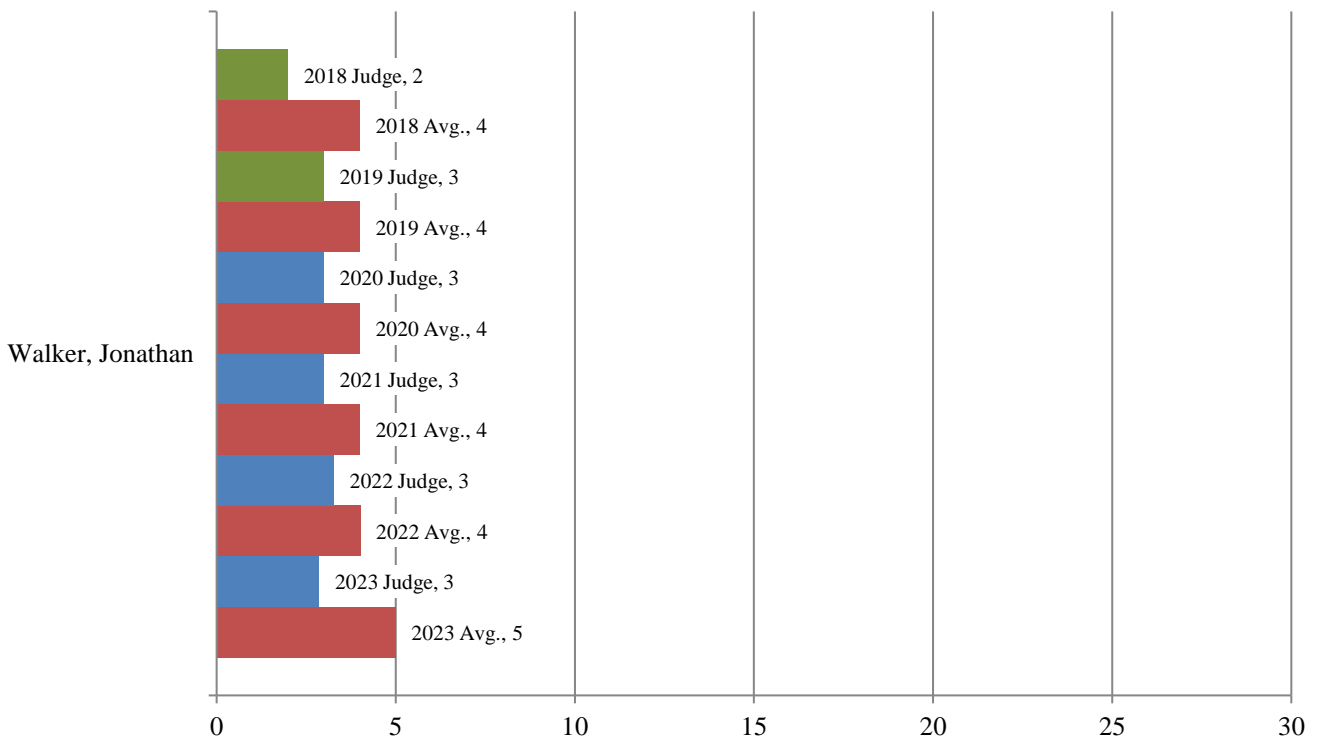




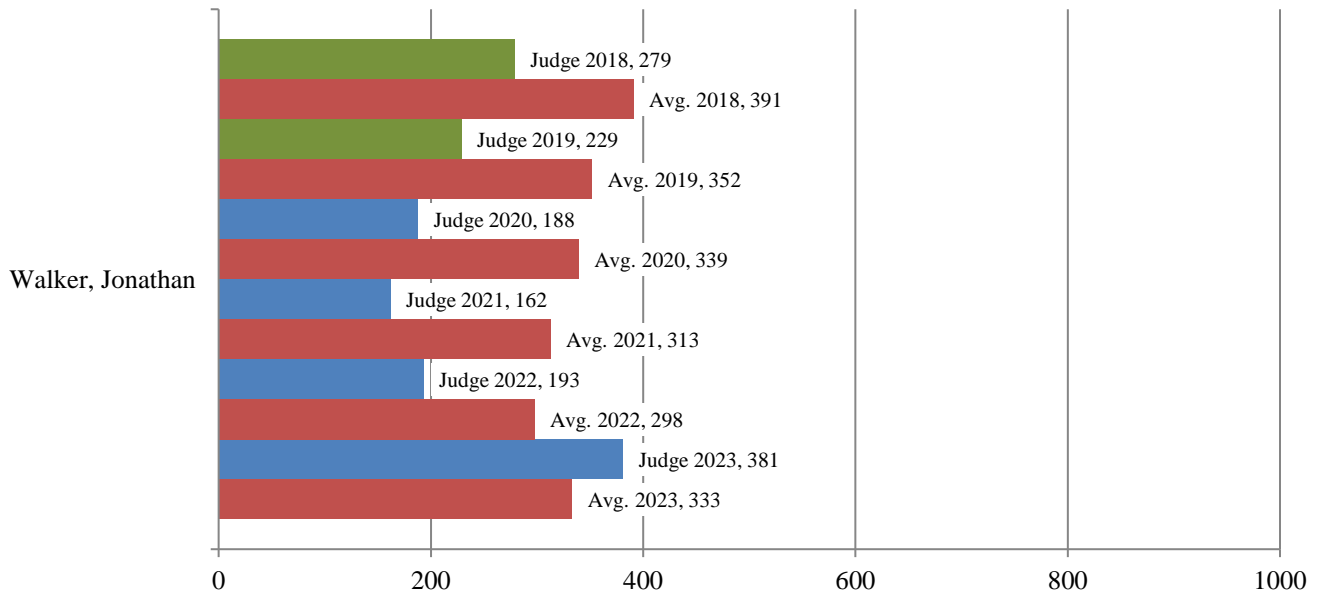
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



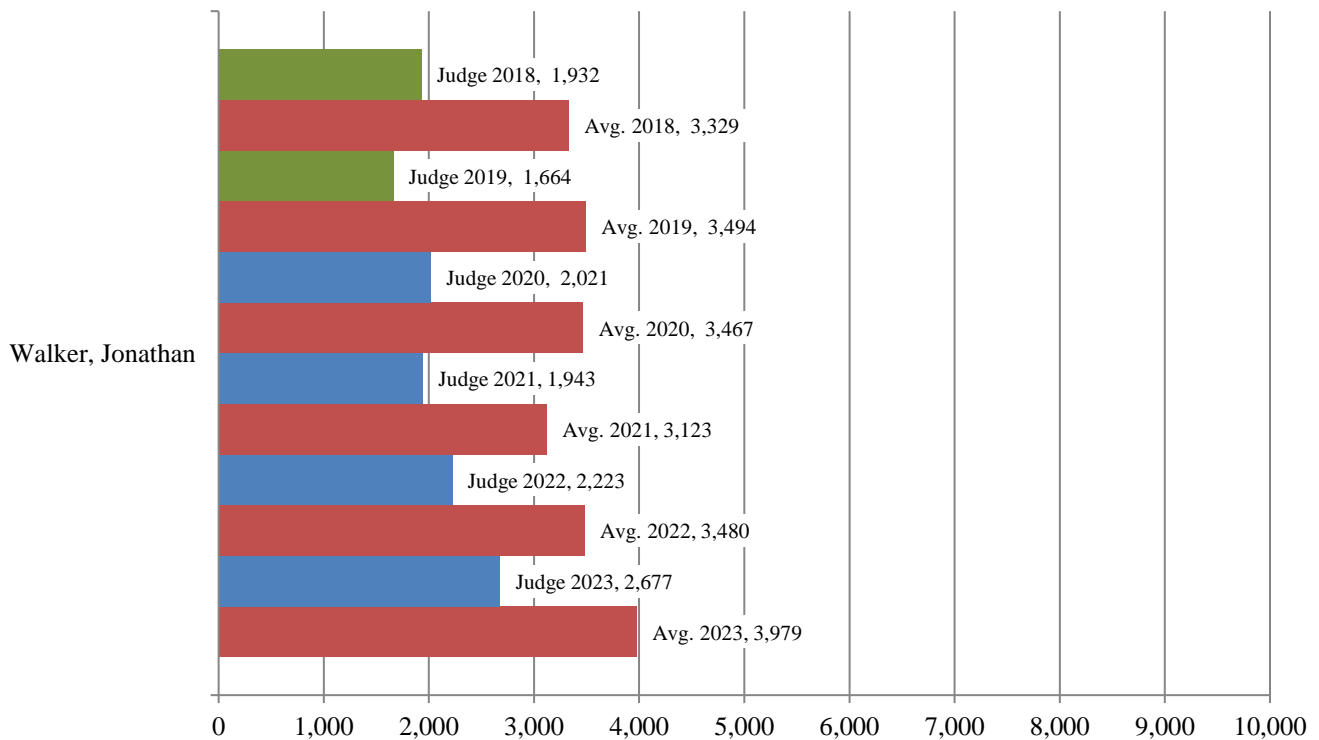
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



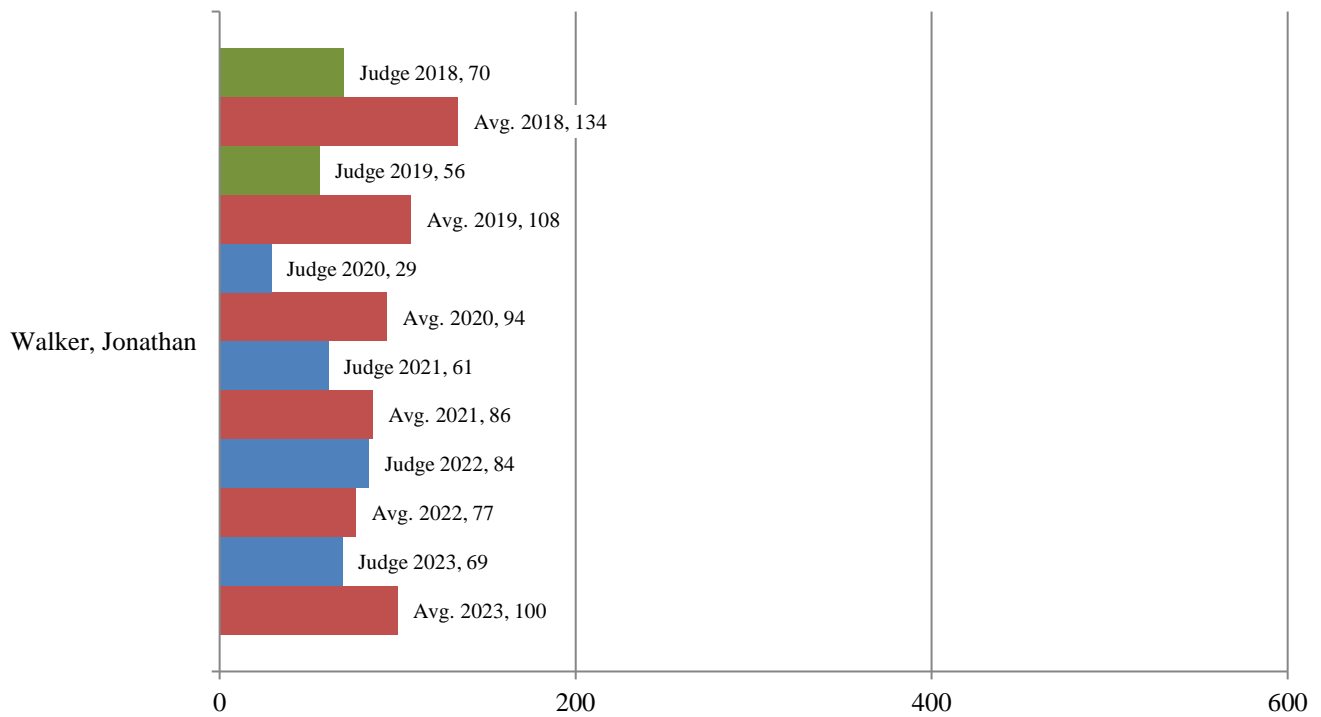
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



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## Appendix “7” District STP (JCC Grindal,<sup>364</sup> JCC Moneyham,<sup>365</sup> JCC Young<sup>366</sup>):

District STP includes Desoto,<sup>367</sup> Hardee<sup>368</sup> Highlands,<sup>369</sup> Manatee,<sup>370</sup> Pasco, Pinellas, and Sarasota<sup>371</sup> 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. Judge Young’s efforts there are patently apparent in the efficiency with which the district still persistently operates. In 2022-23, Districts Panama City and Sarasota were closed. Sarasota was consolidated into District St. Petersburg (Desoto, Hardee, Highlands, Manatee, and Sarasota Counties). Judge Moneyham was reassigned from District Panama City to District St. Petersburg.

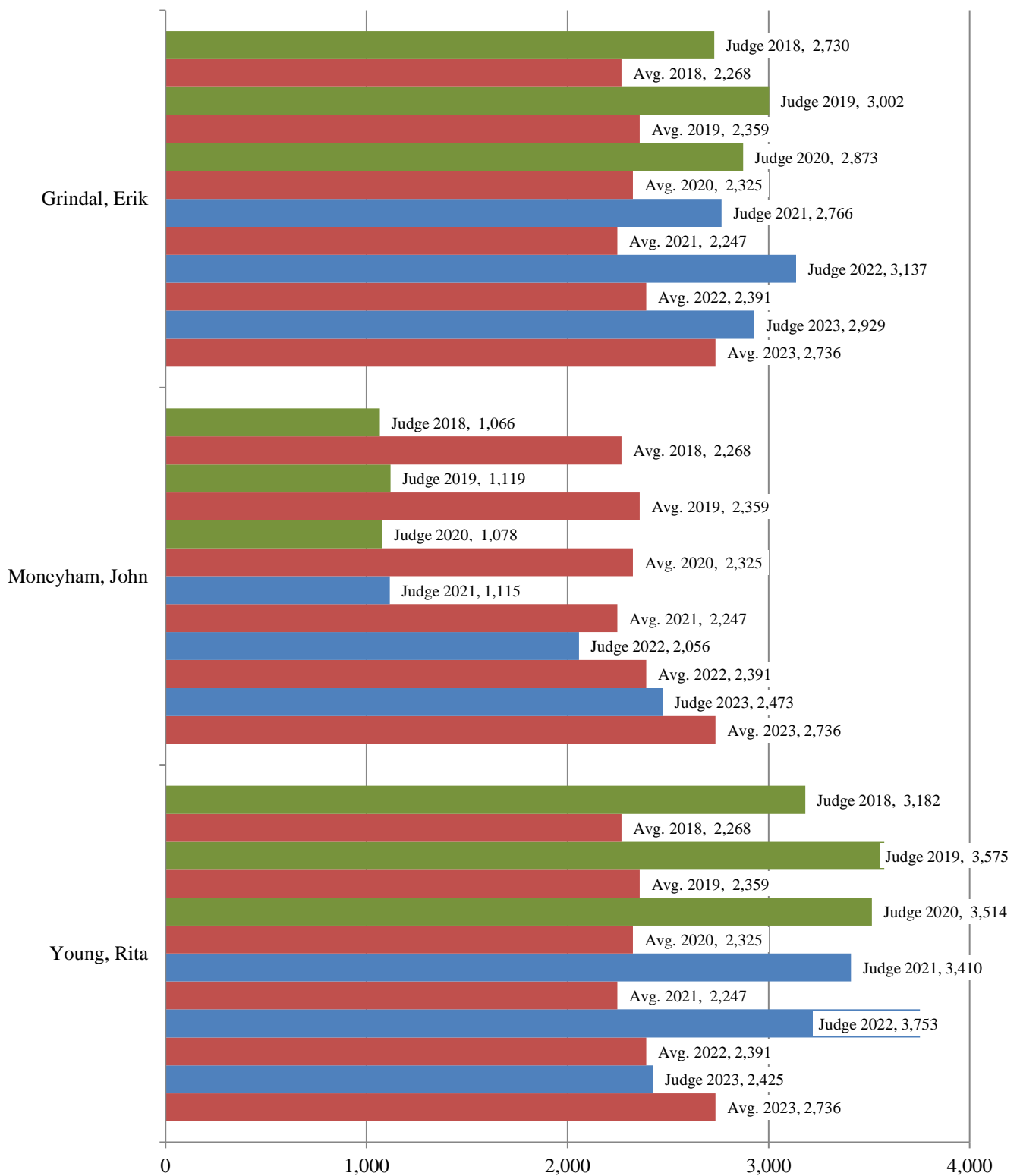
The impacts of these reorganizations is evident in both the PFB and “new case” volumes. Judge Young’s figures are below statewide average in both categories. Though Judge Moneyham’s are likewise below average, they each show marked increase compared to prior years in Panama City. Judge Grindal’s figures also demonstrated moderation in 2022-23 as the impact of the consolidation and redistribution have taken hold.

Judge Grindal is an active member of the Tampa Bay Workers’ Compensation Disability Inns of Court. He served on the Executive Council of the Florida Conference of Judges of Compensation Claims. Judge Grindal was appointed as the liaison between the Florida Conference of Judges of Compensation Claims and the Workers’ Compensation Section of the Florida Bar. Judge Grindal presented lectures on evidence at The Forum, legal research for the Sarasota Bradenton Claims Association, professionalism for the Florida Bar’s Townhall series, enforcement of stipulations for the Palm Beach County Bar Association, and was published in the Florida Bar News. Judge Grindal served as a team coach for the DOAH Trial Academy, a Judge for the E. Earle Zehmer National Moot Court Competition, and a Judge for the Florida High School Motion Court Completion. Judge Grindal was recertified by the Florida Bar as Board Certified in Workers’ Compensation Law.

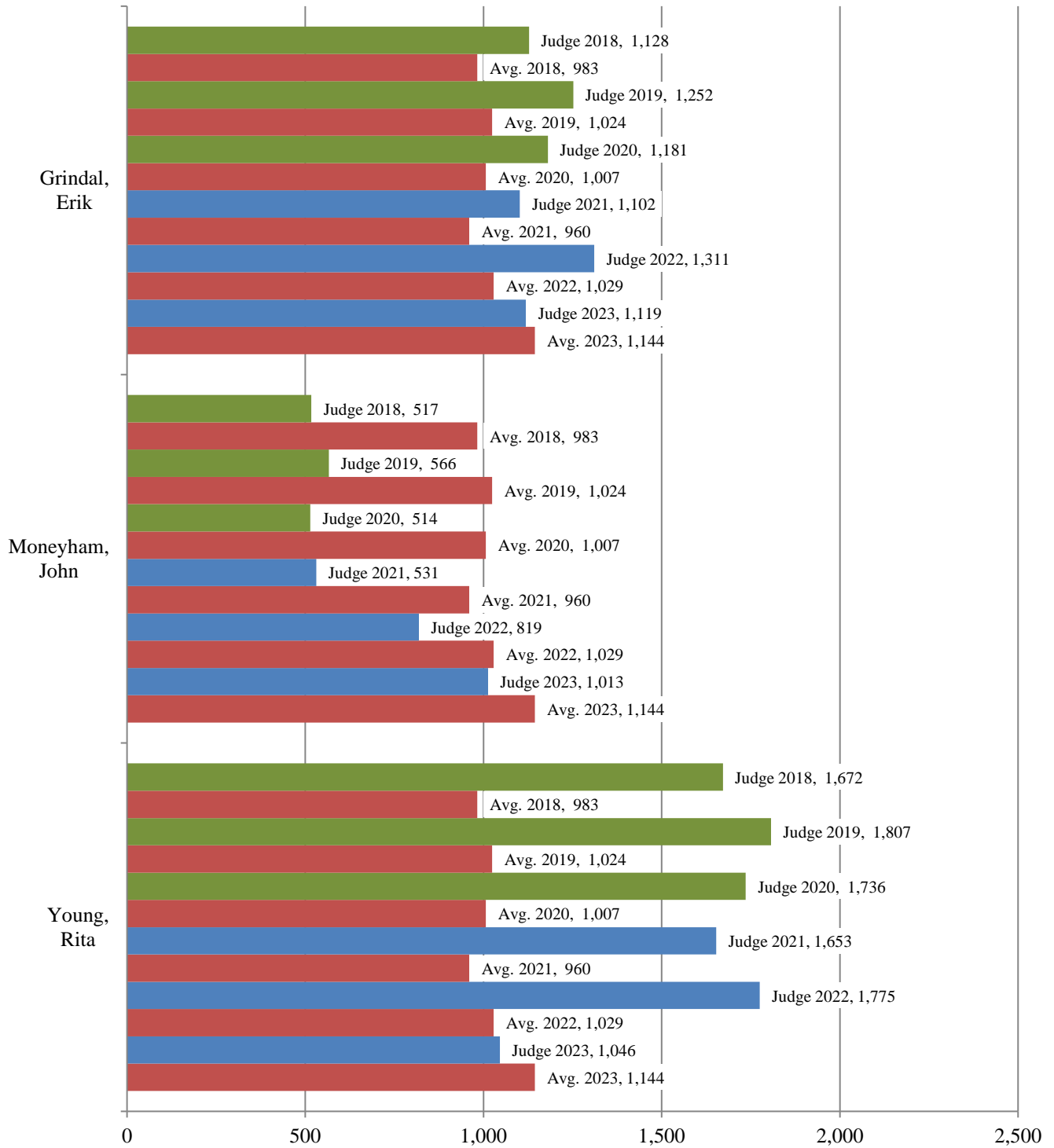
In 2022-23, Judge Moneyham was a moot court judge in the E. Earle Zehmer National Moot Court Competition. He wrote an article, *Benefits of Workers’ Compensation Board Certification for Judges of Compensation Claims*, published in the News & 440 Report. He and Judge Hedler co-wrote, with research assistance from attorney Patrick Drake, an article, *Miles Settlement Fees: Differing Interpretations are Miles Apart*, published in the News & 440 Report. He helped organize the 2023 OJCC/WCI Educational Seminar held at the First District Court of Appeal. There, he moderated a panel discussion: *Pre-petition Case Handling, Responses to Petitions, Discovery and Motions*. He was part of a JCC Town Hall panel discussion. He was part of a panel discussion: *Promoting Professionalism Inside and Outside the Hearing Room*, which was presented at the National Association of Workers’ Compensation Judiciary College. Judge Moneyham was part of two panel discussions on pretrial stipulations and opening and closing statements, which were presented at the OJCC Workers’ Compensation Academy. He spoke on workers’ compensation at the Rotary Club of Lynn Haven. Judge Moneyham was a coach at the DOAH Trial Academy. He helped start the Florida State University Panama City Pre-Law Club and serves as an advisor to such club.

In 2022-2023 Rita Young has been the leader of a pupilage group in the Tampa Bay Workers’ Compensation Disability Inns of Court where she participates in quarterly meetings and panel discussions. She served as a committee member of the Work Process Innovation Group. Judge Young serves as an active member of the Board of Directors of the National Association of Workers’ Compensation Judiciary. Judge Young was a panelist in the Workers’ Compensation Section of The Florida Bar Town Hall present in May 2023. Judge Young was a co-host and panel presenter for the Hillsborough County Bar Association Annual Workers’ Compensation Seminar. Judge Young served as a volunteer judge on the Annual E. Earle Zehmer National Moot Court Competition.

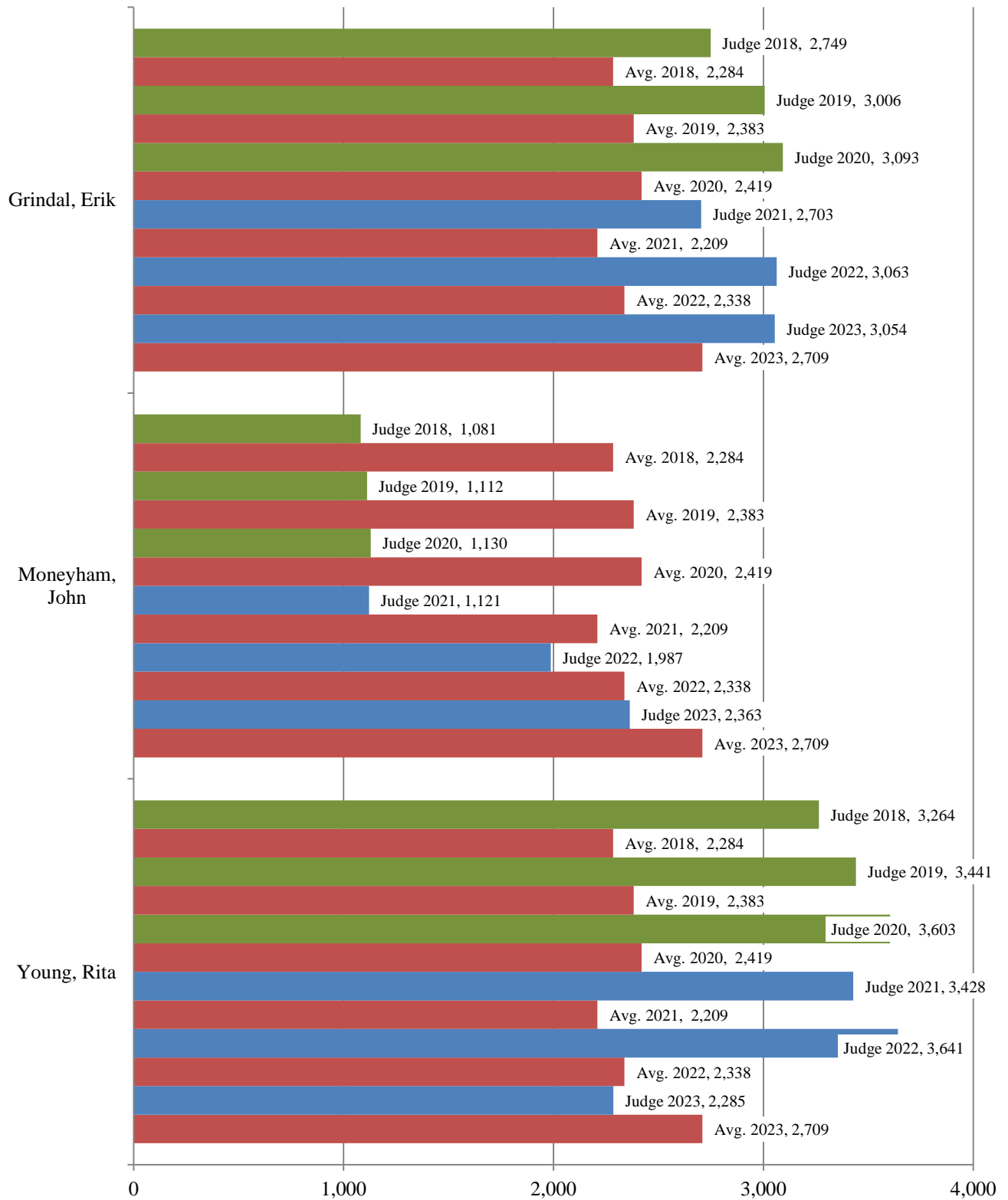
The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



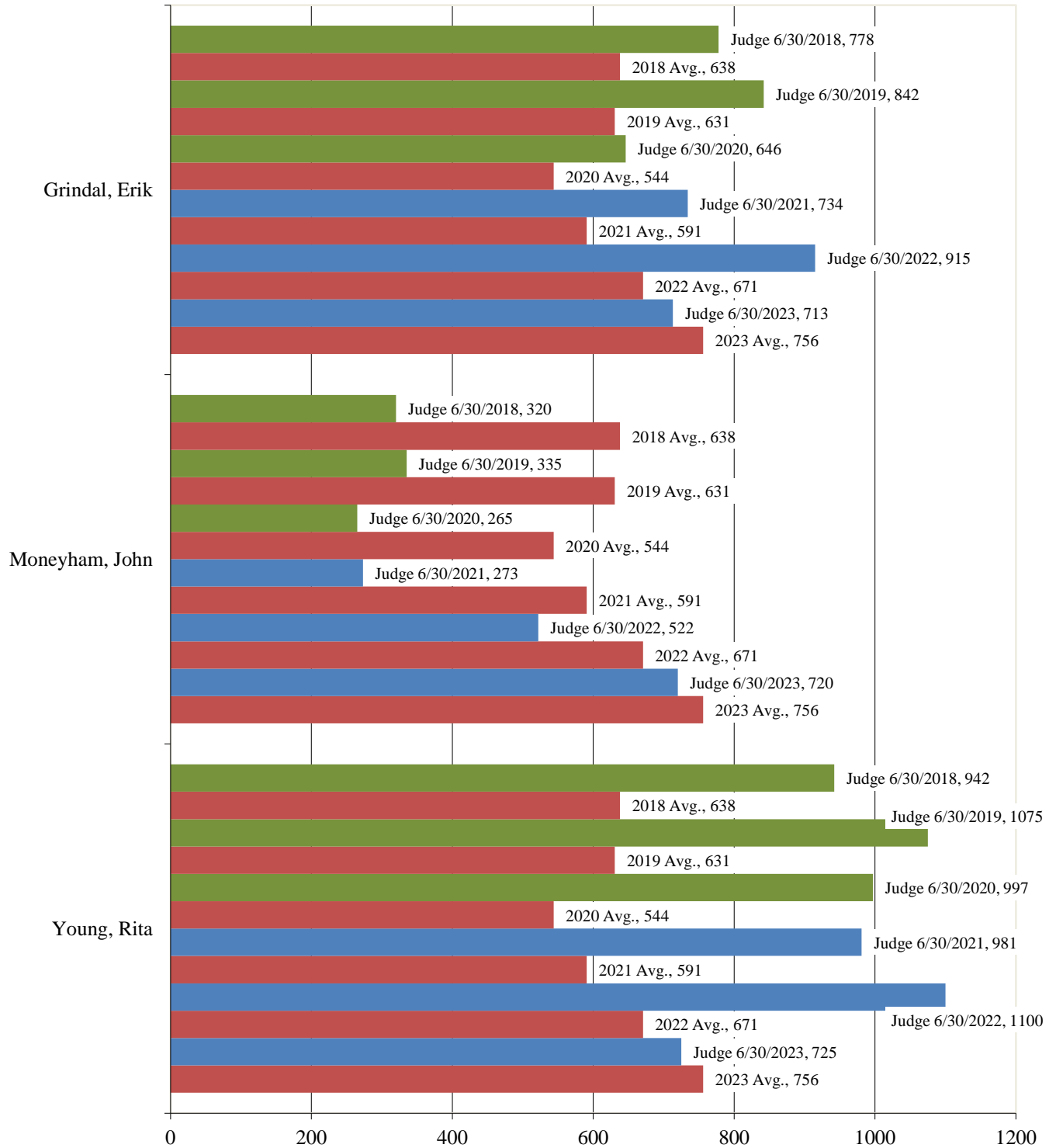
The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



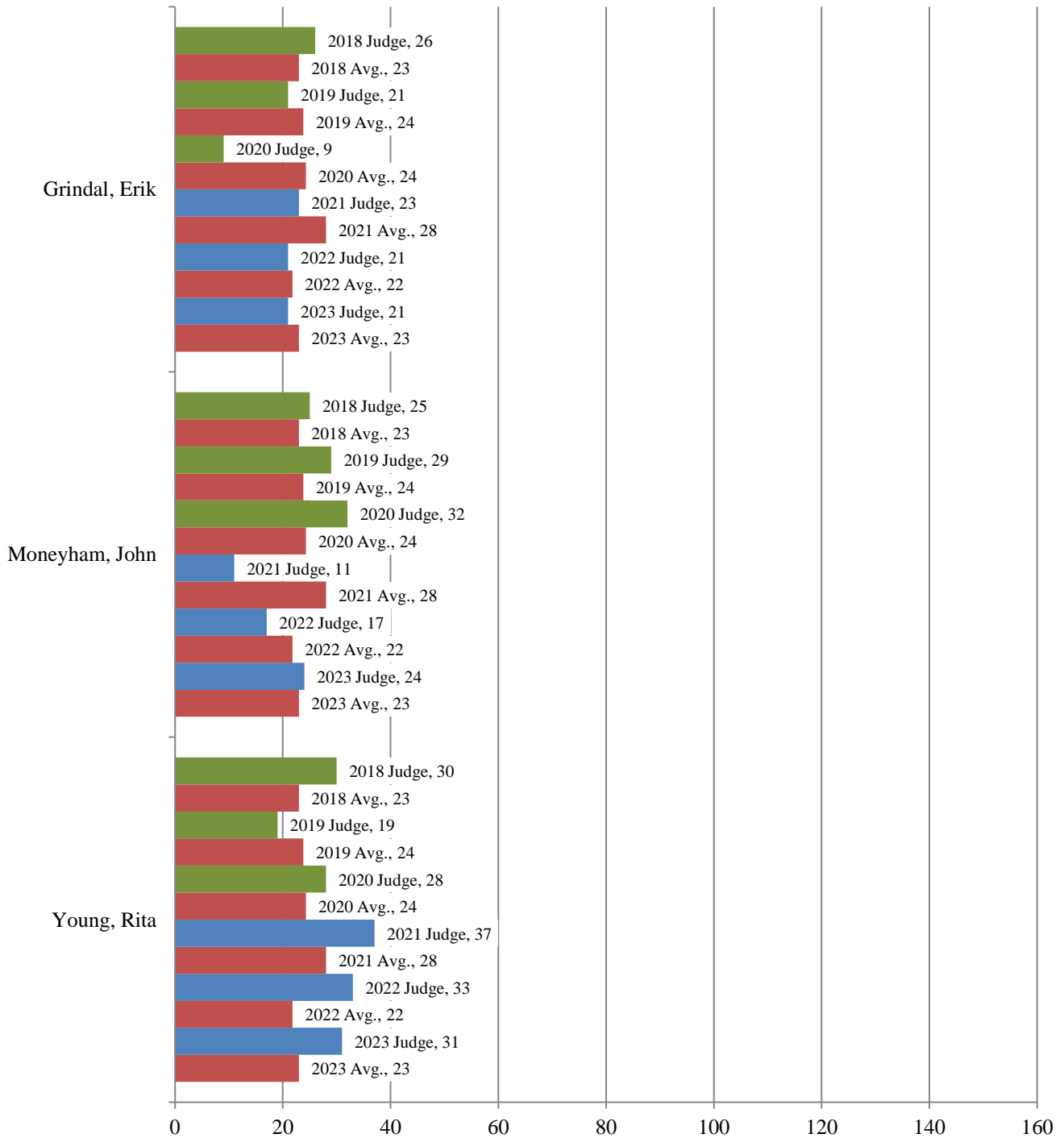
The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



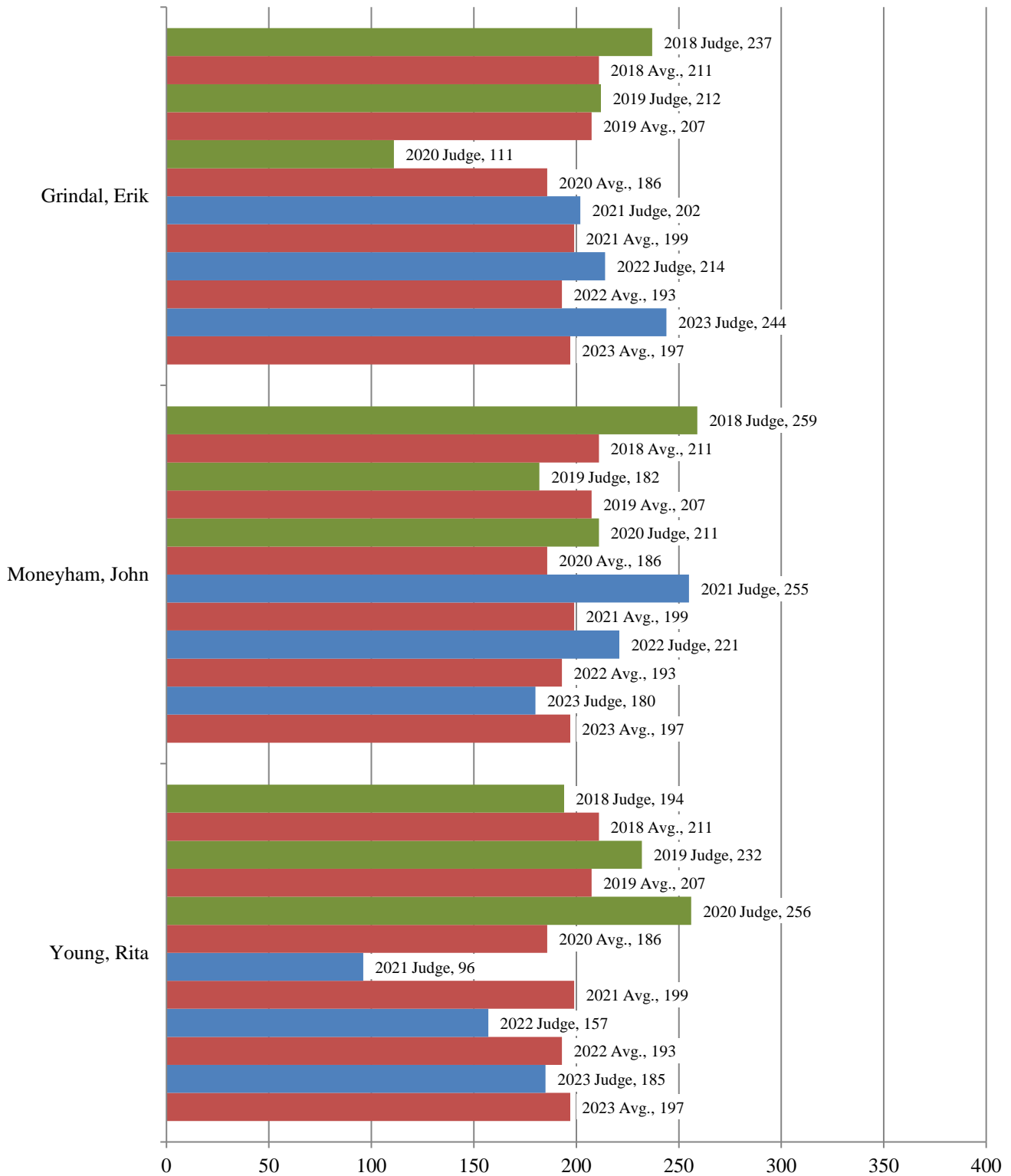


Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore, that graph is not included here, but in Appendix 11.

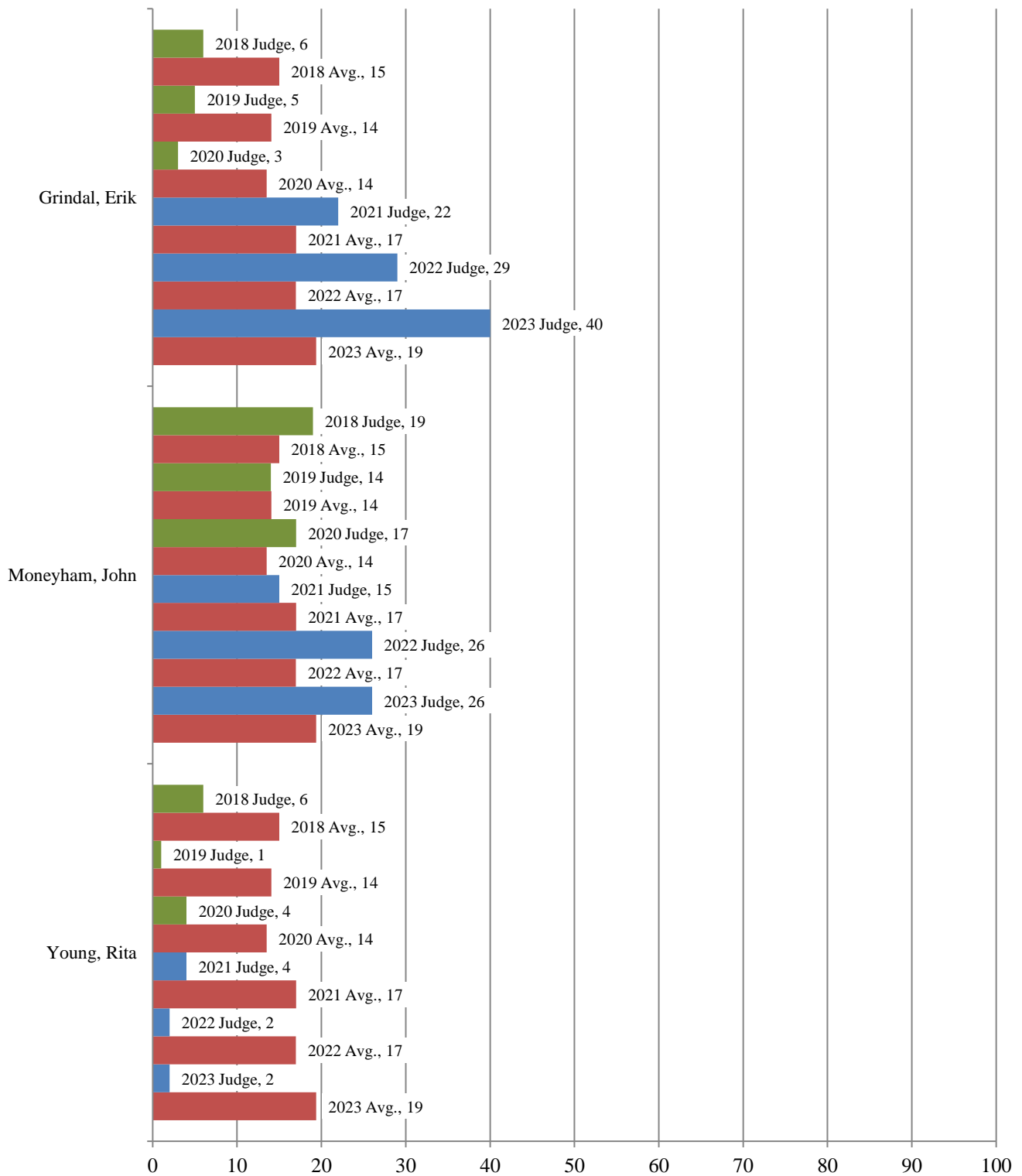
The following graph depicts the total volume of trial orders<sup>372</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge's appointment).



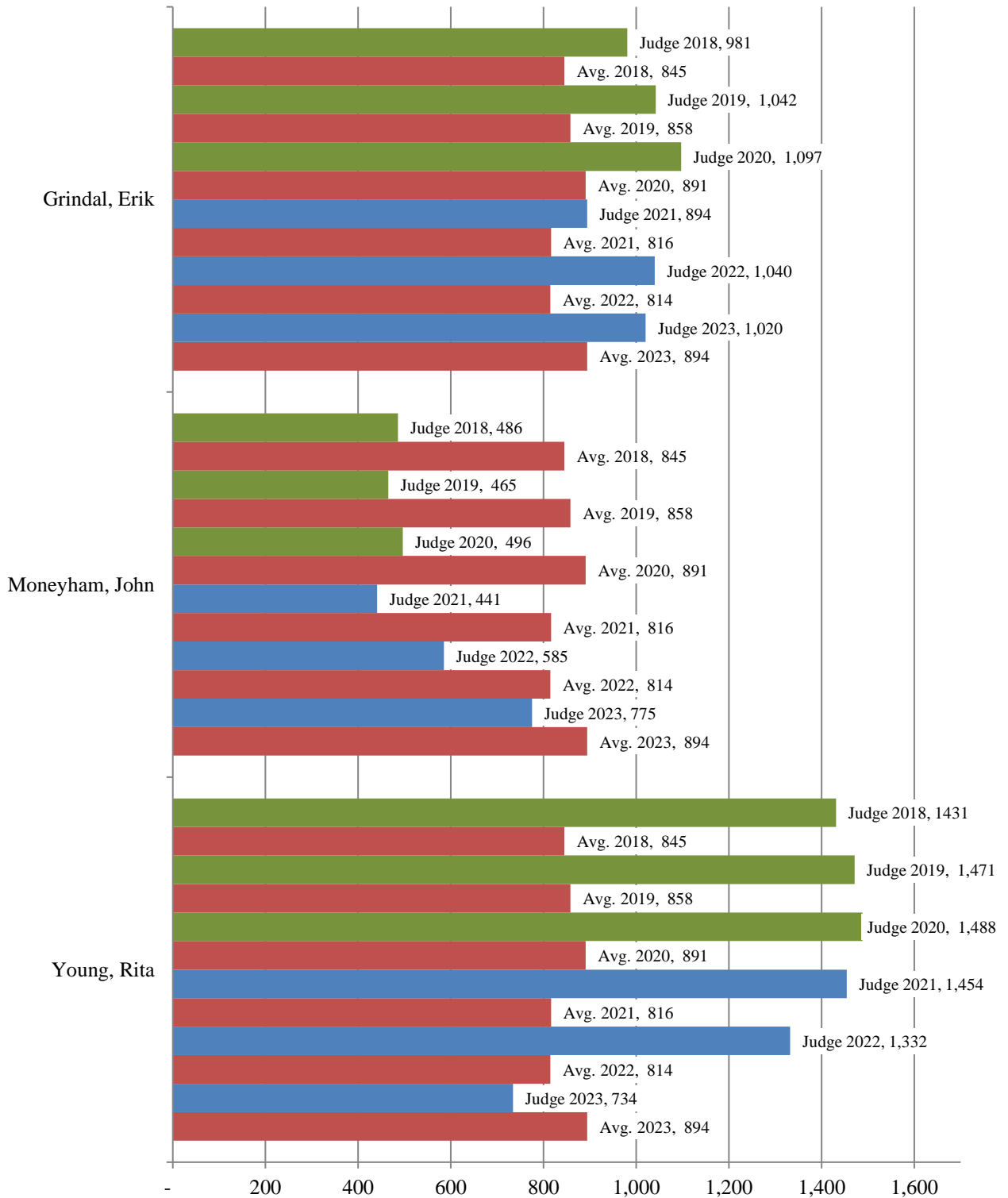
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



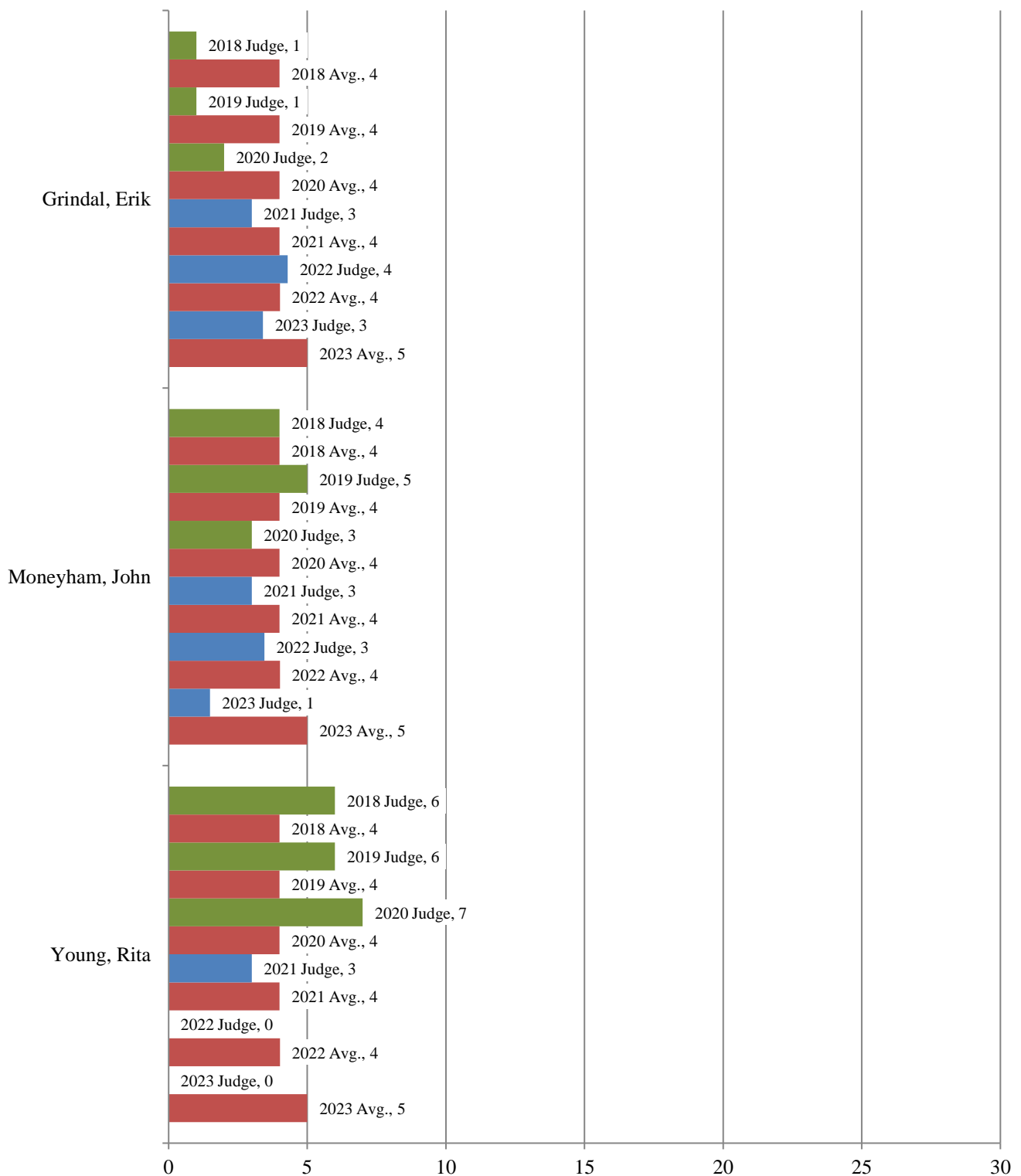
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



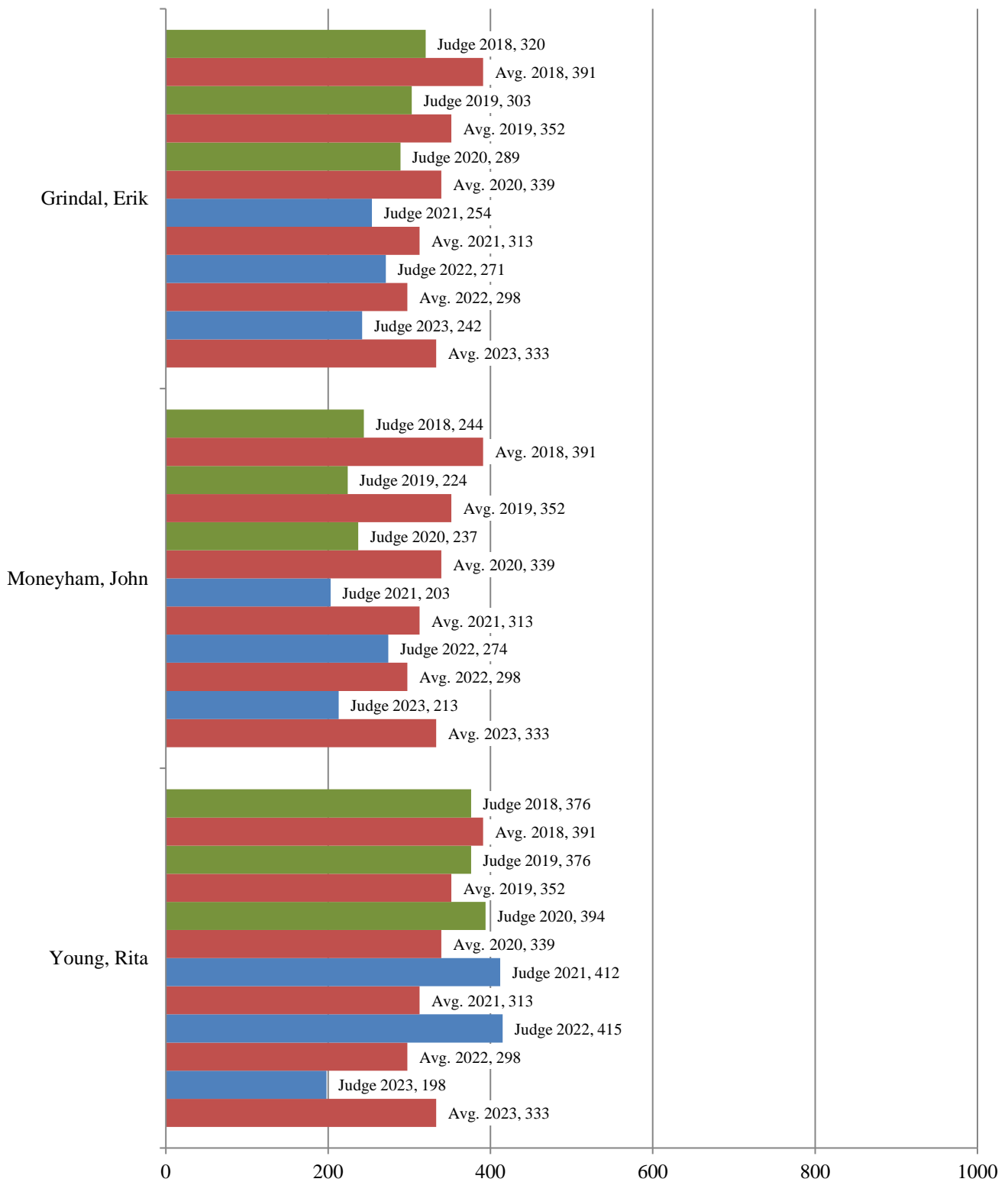
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



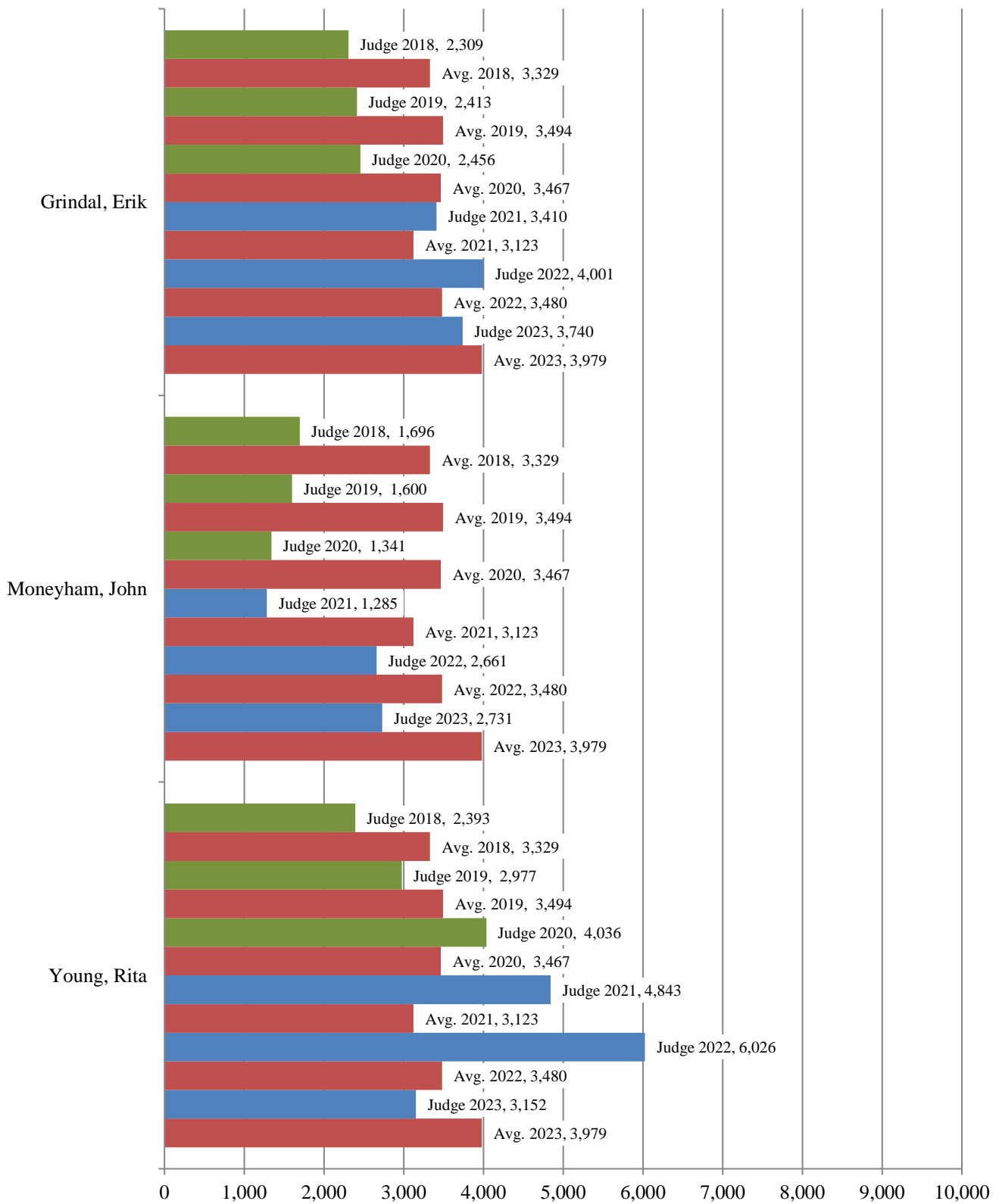
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



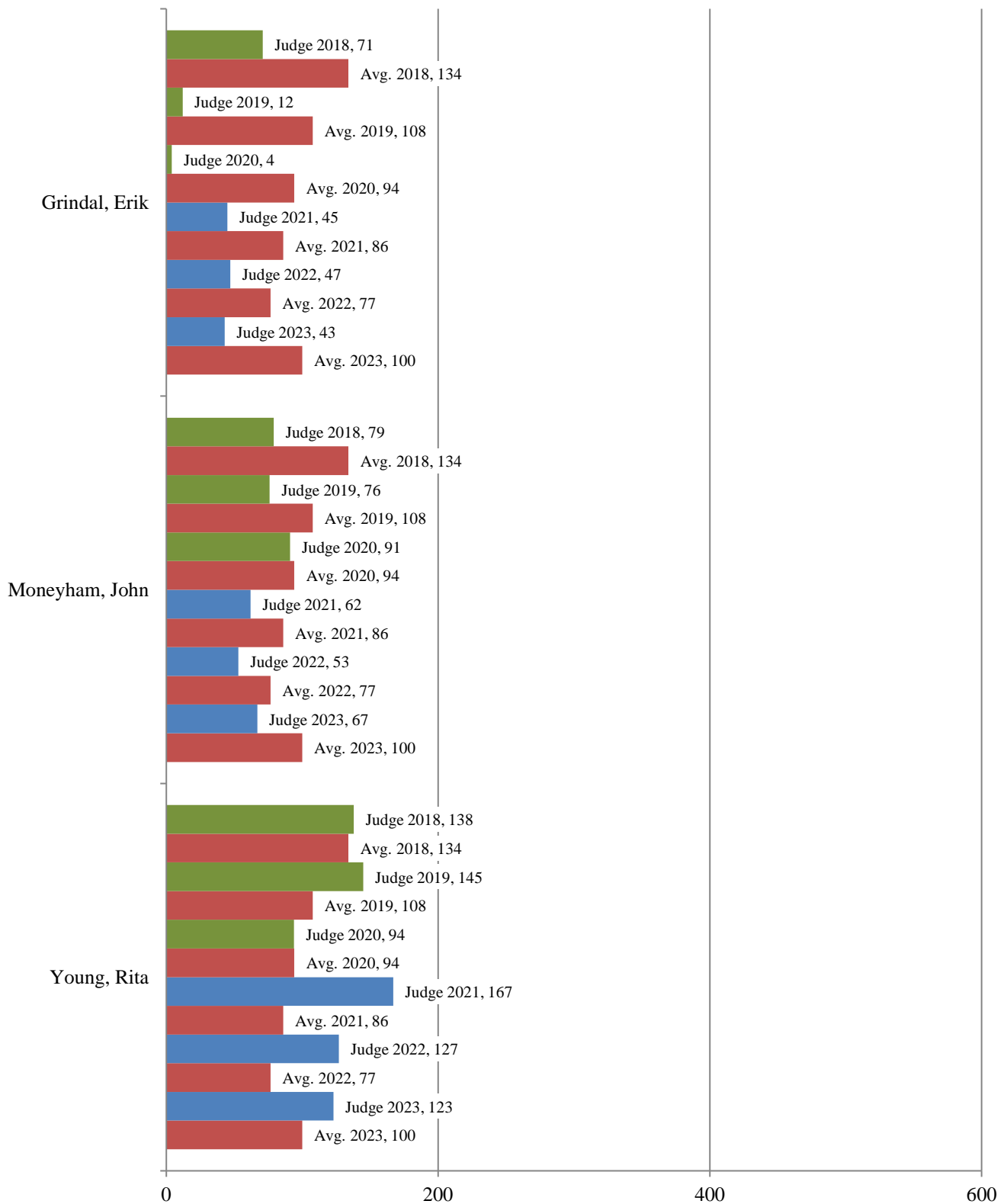
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).





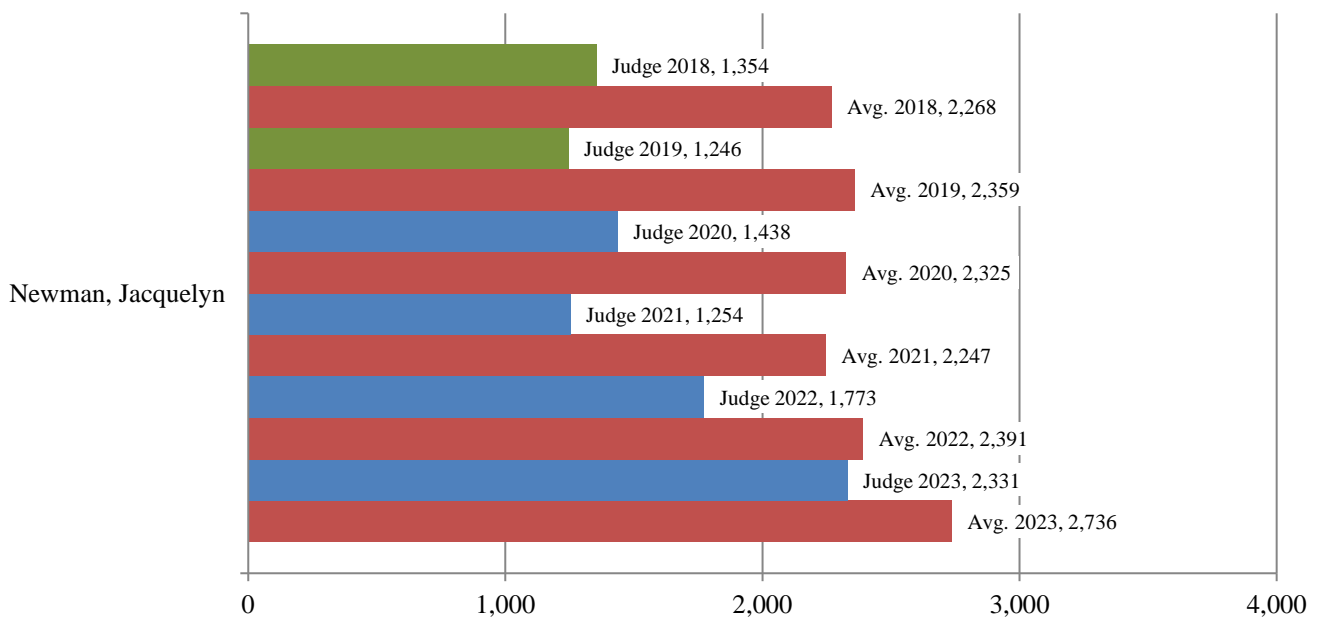
## Appendix “8” District TLH (JCC Newman<sup>373</sup>):

District TLH is the largest geographic District, and includes Calhoun,<sup>374</sup> Franklin, Gadsden, Gulf,<sup>375</sup> Hamilton, Holmes,<sup>376</sup> Jackson,<sup>377</sup> Jefferson, Lafayette, Leon, Liberty,<sup>378</sup> Madison, Suwannee, Taylor, Wakulla, and Washington,<sup>379</sup> counties. Late in 2021-22, Calhoun county was transferred to District Tallahassee from District Panama City, and Dixie, Gilchrist, and Levy counties were transferred to District Tallahassee from District Gainesville. In 2022-23, Calhoun, Gulf, Holmes, Jackson, and Washington counties were consolidated into Tallahassee. Though District Tallahassee remains below average in terms of PFB and “new case” volume, despite the transfer of the Panama City workload, the figures for 2022-23 are markedly more consistent with average workload.

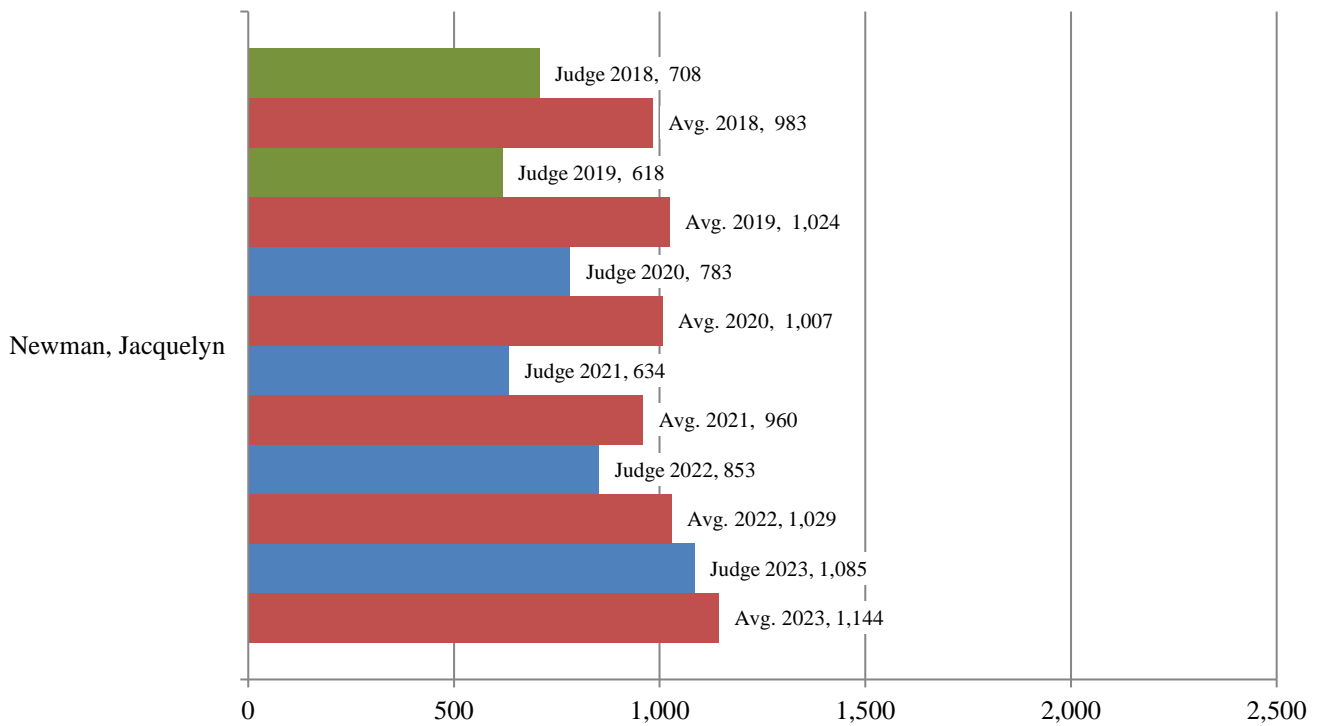
Although some of these counties have low population density, there was historically an exceptional level of effort required in this District because of the statutory obligation for the hearings to periodically occur in the county in which the accident occurred, if requested by the parties. The use of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

During 2022-23, Judge Jacquelyn Newman participated in several continuing education events involving the workers’ compensation community. At the Workers’ Compensation Institute Annual Education Conference in Orlando in August 2022, Judge Newman served as a panelist for *The Workers Compensation Practice of Law from the Judicial Perspective* seminar and volunteered as a judge for the annual E. Earle Zehmer Moot Court Competition preliminary rounds held in July. Judge Newman also participated in the committee that planned and hosted the seminar *Sharpening and Adding to the Tools in Your Trial Toolbox*, held at the First District Court of Appeal in Tallahassee on February 24, 2023, hosted by the Office of the Judges of Compensation Claims and WCI. Judge Newman planned and participated in the panel *Professionalism in Workers’ Compensation*. At the Workers’ Compensation Forum, held by The Florida Bar Workers’ Compensation Section and WCCP on April 20, 2023, in Orlando, Judge Newman served as a panelist for the presentation *Current Trends in Workers’ Compensation*. Judge Newman also served as an *ad hoc* member of the workers’ compensation subcommittee for the Appellate Court Rules Committee.

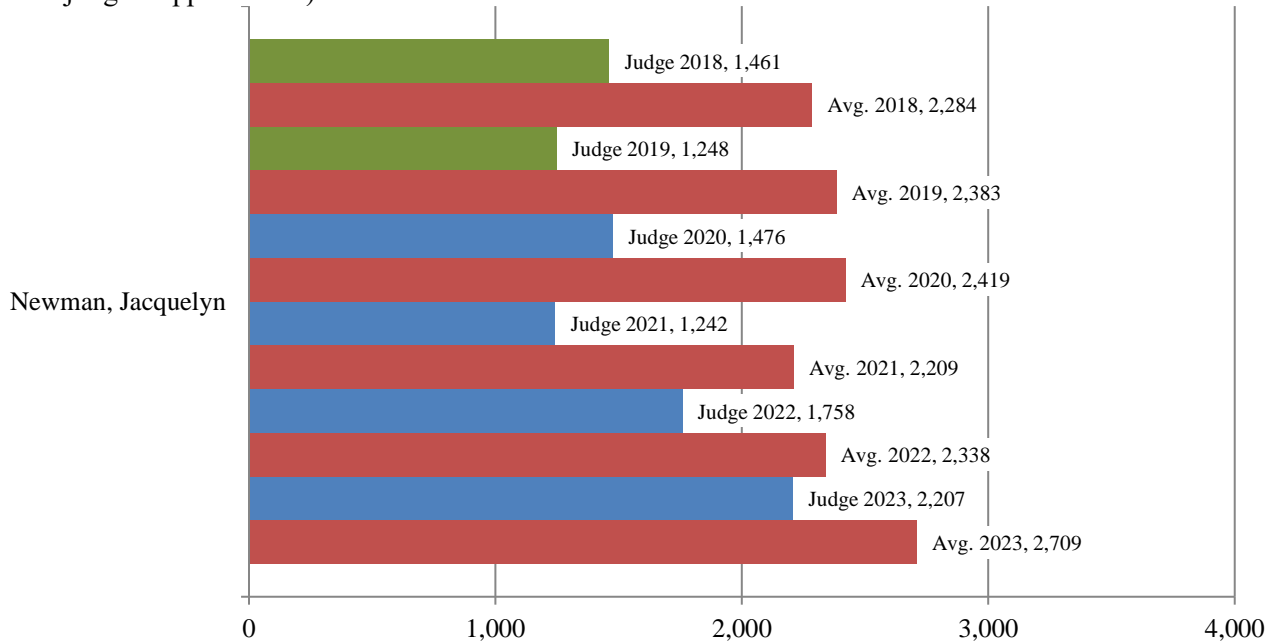
The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



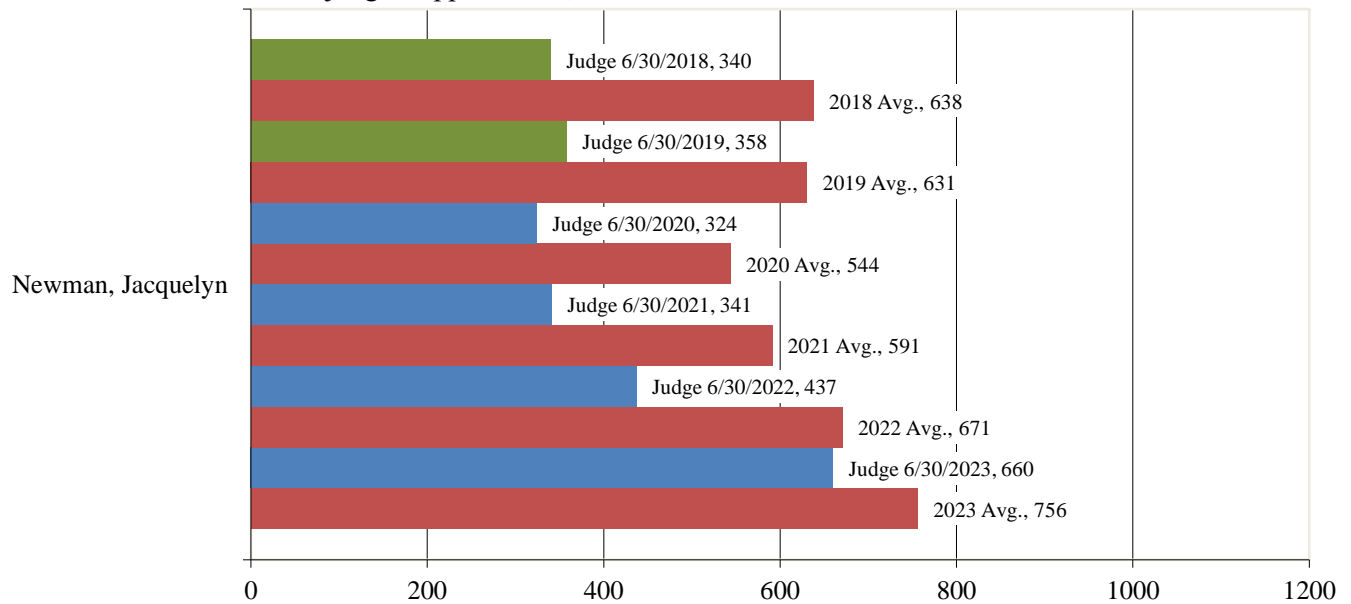
The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

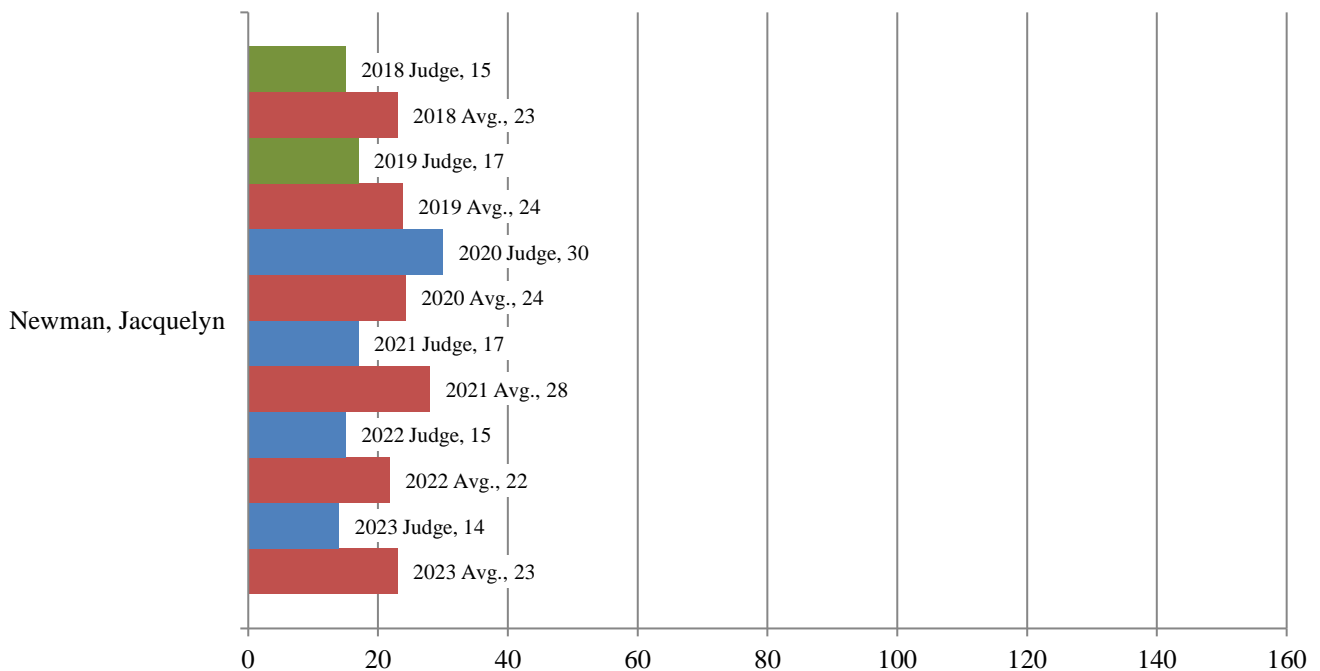


The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).

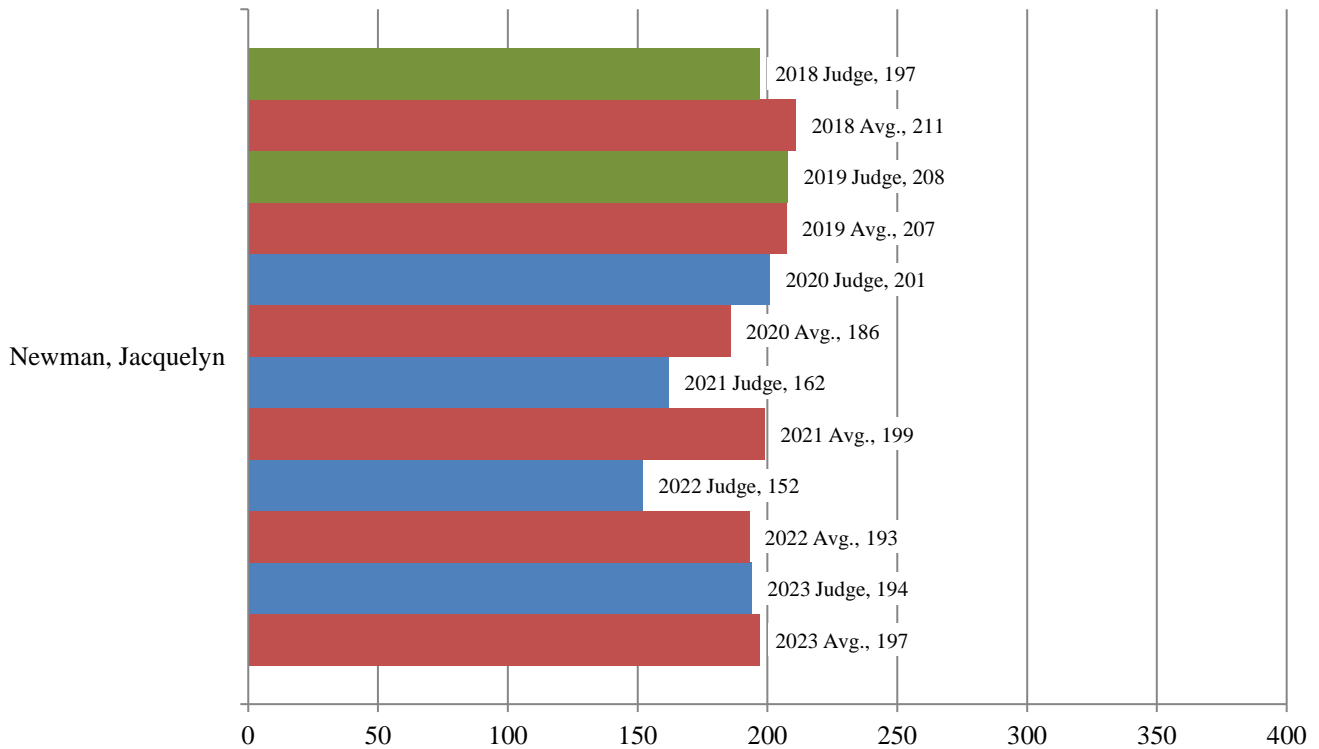


Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore, that graph is not included here, but in Appendix 11.

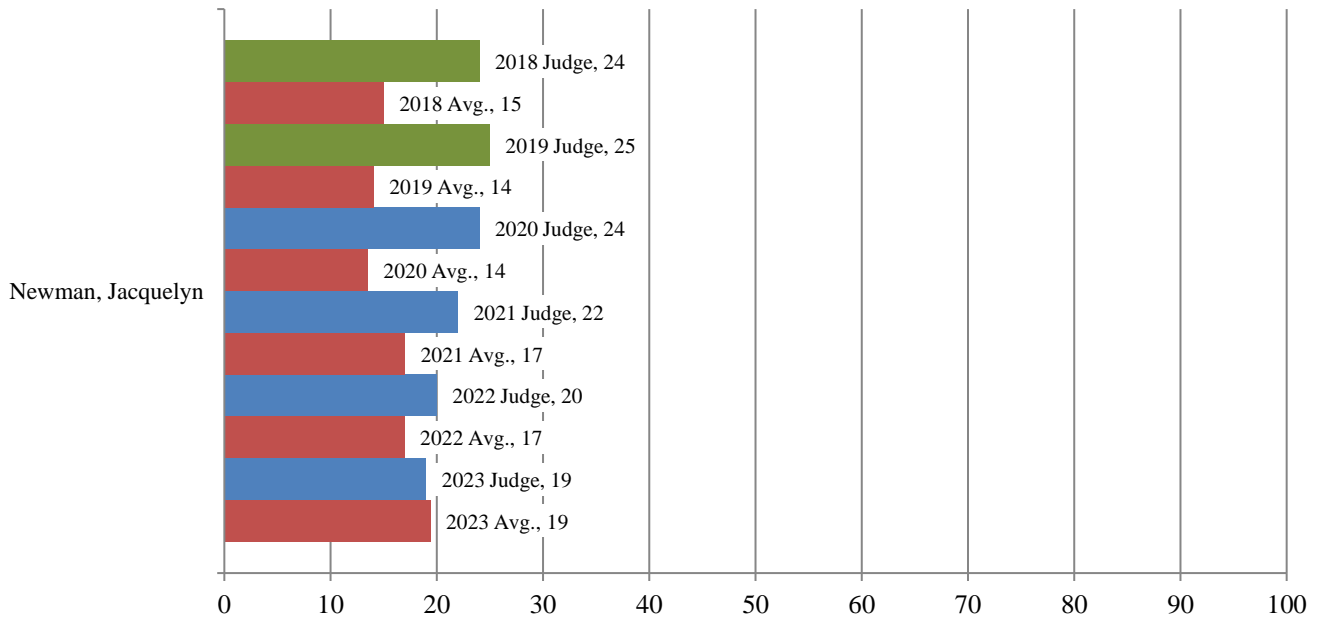
The following graph depicts the total volume of trial orders<sup>380</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



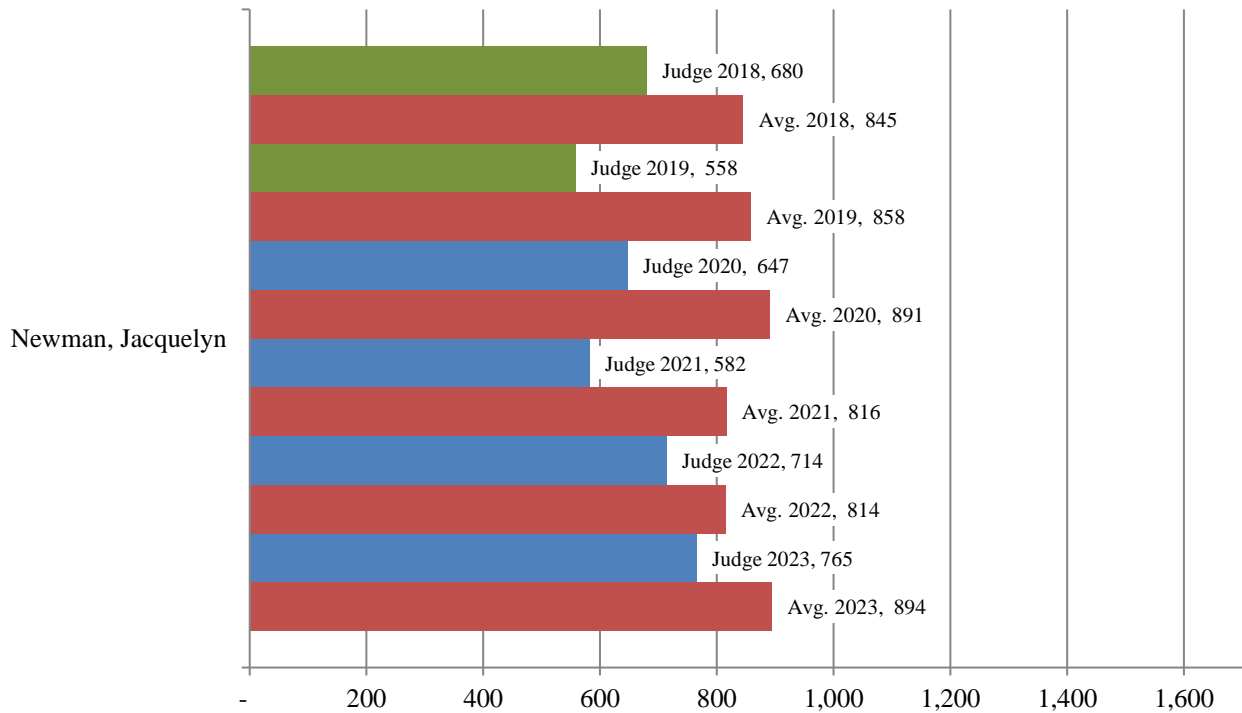
The following depicts the average days between PFB filing and trial commencing for the judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



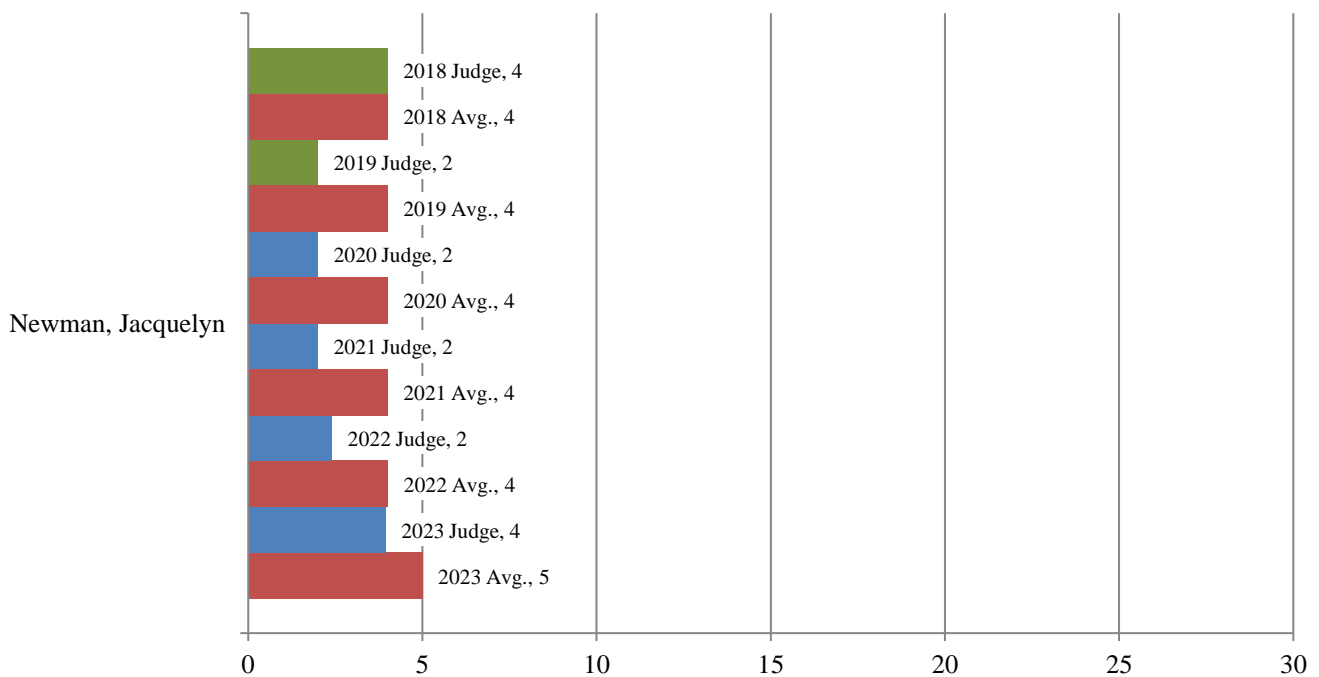
The following depicts the average days between trial commencing and entry of the trial order for the judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



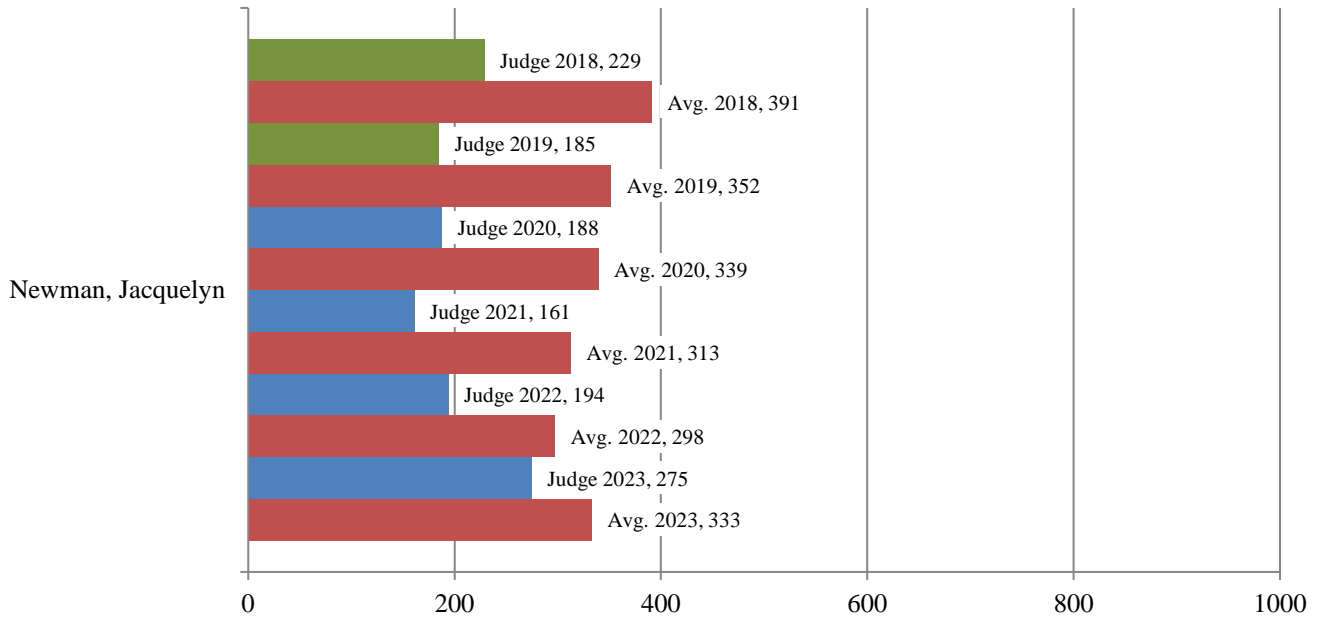
The following depicts the volume of settlement orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



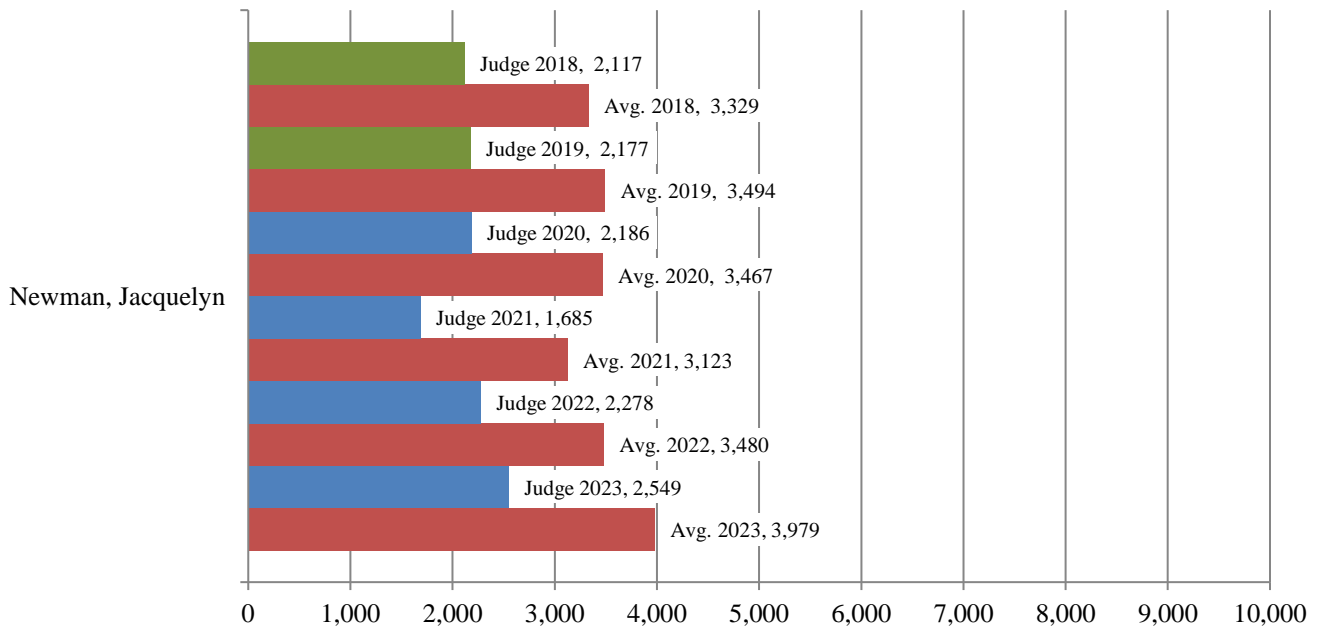
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



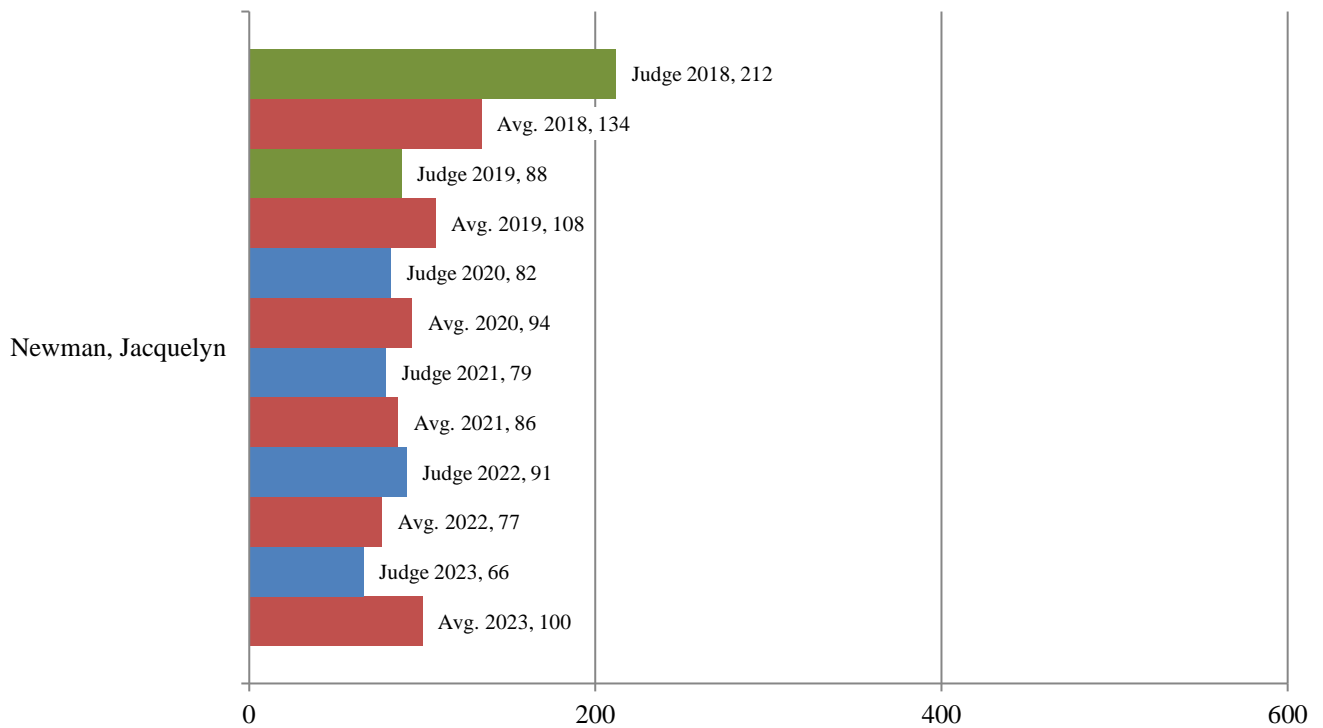
The following depicts the volume of stipulation orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by the judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



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## Appendix “9” District TPA (JCC Anthony<sup>381</sup>, JCC Massey, JCC Arthur<sup>382</sup>):

District TPA includes Citrus, Hernando, Hillsborough, Polk, 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. District TPA has been challenged with a judicial vacancy as described in the *2021-22 OJCC Annual Report*. With the consolidation of District Lakeland, the workload has remained significant, with both “new case” and PFB volume exceeding the statewide average for all three judges there. As cases assigned there from Miami are reopened, those are being shifted to less busy districts in an effort to moderate the workload.

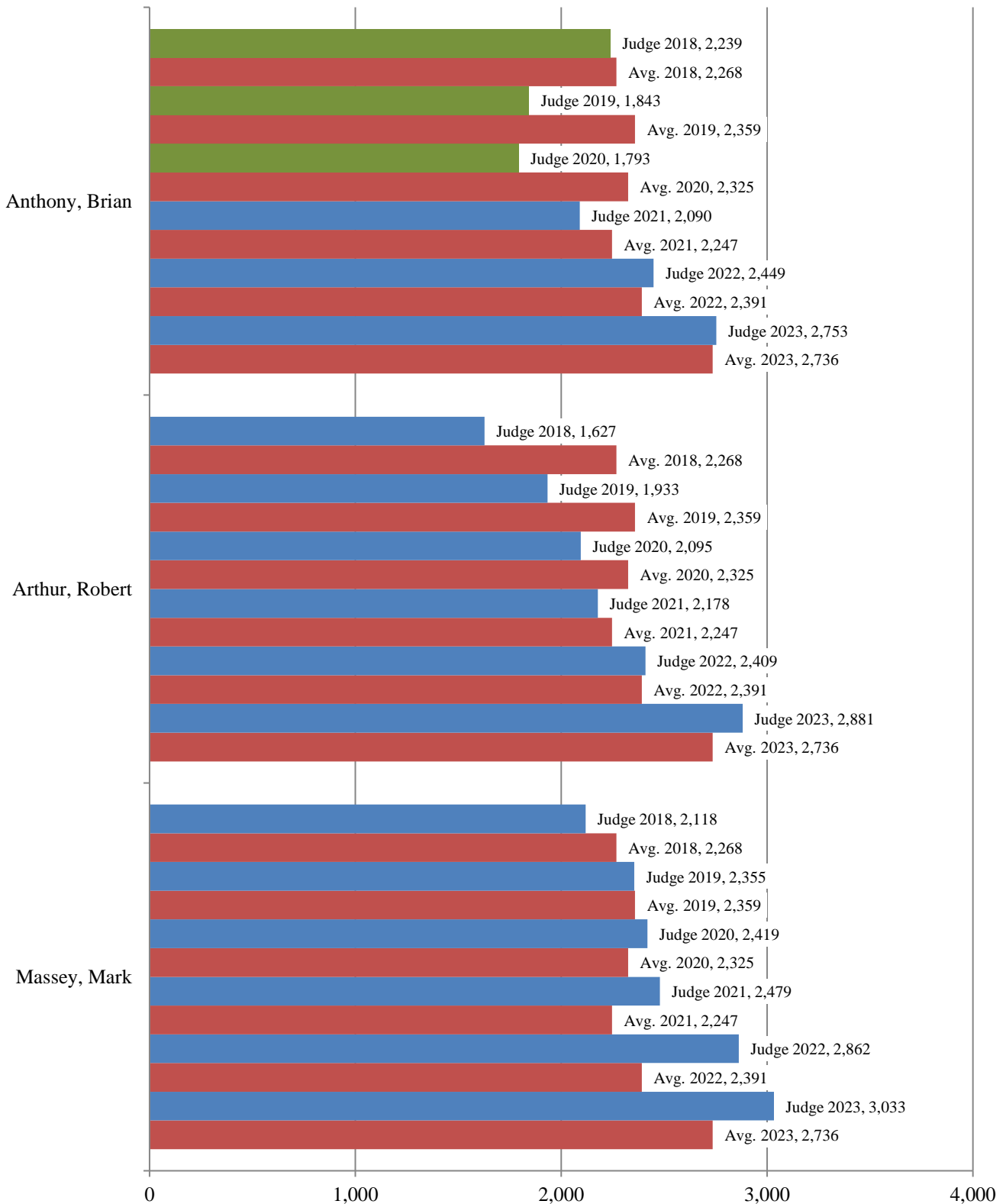
In fiscal year 2022–23 Judge Arthur maintained a busy speaking schedule. He presented at both the Professional Mediator’s Institute and the Workers’ Compensation Institute’s (WCI) annual convention in Orlando in August 2022. He spoke to the Hillsborough County Bar Assoc., Workers’ Compensation Section in September 2022. In February 2023, he moderated a panel at the OJCC/WCI conference at the First District Court of Appeal in Tallahassee. He served as a faculty member at the Workers’ Compensation Academy in Orlando in May 2023, and organized and participated in Florida Bar Workers’ Compensation Section luncheon held in the Tampa District Office in June. In addition, Judge Arthur continued to serve as the past president of the Tampa Bay Workers’ Compensation Disability Inn of Court throughout the fiscal year.

In 2022-23, Judge Anthony participated in several engagements. He had the privilege of acting as a Judge in the E. Earle Zehmer Moot Court Competition. He also presented, with Judge Kerr and Judge Moneyham, to the National Association of Workers' Compensation Judges on *Professionalism Outside the Courtroom*. He and the other Tampa and St. Petersburg Judges also spoke at the Hillsborough County Bar Association's Workers' Compensation Section on *Practice and Professionalism*. He again attended Career Day at Dale Mabry Elementary speaking about the importance of staying in school and reaching goals. Judge Anthony also spoke at the OJCC program at the First District Court in February 2023 on *Pretrial Stipulations and Trial Memorandums*. He was a panel member who spoke at the Forum in Orlando on *Practicing Professionalism in a Remote Environment*. Finally, Judge Anthony was a faculty member of the Workers' Compensation Academy held in Orlando, where he led discussion panels on various topics with attorneys who have been in the workers’ compensation practice for less than 7 years.

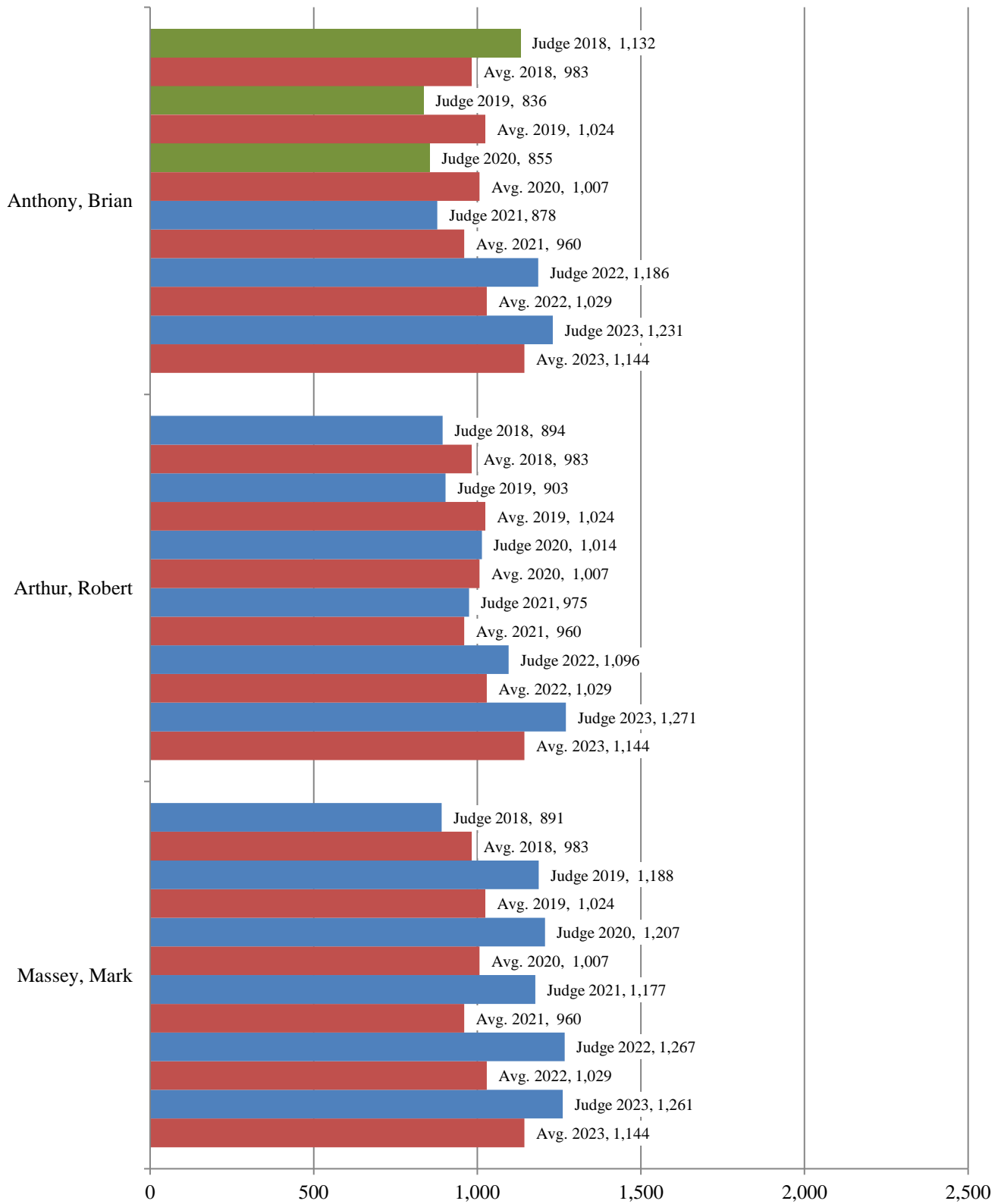
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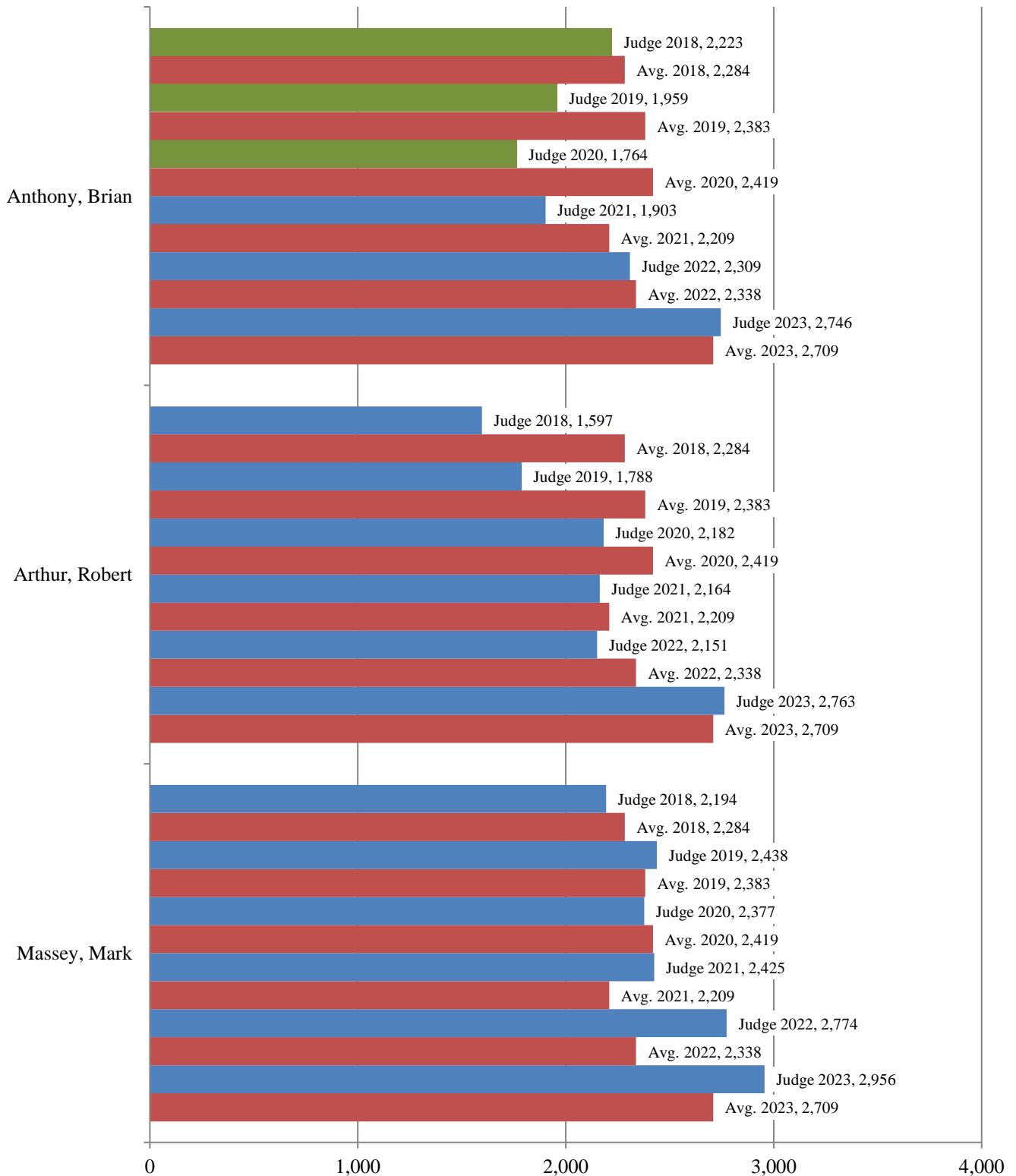
The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



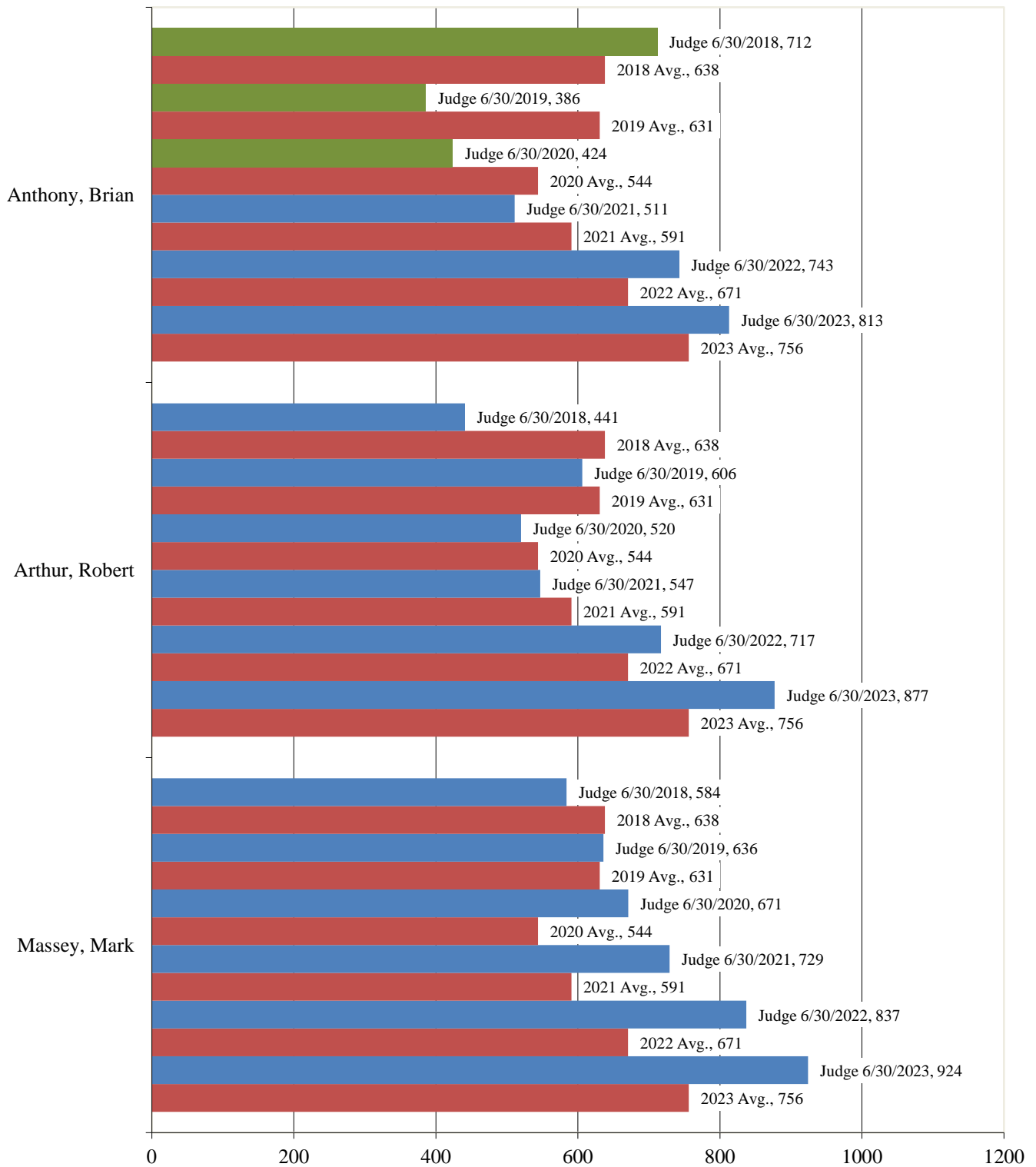
The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).

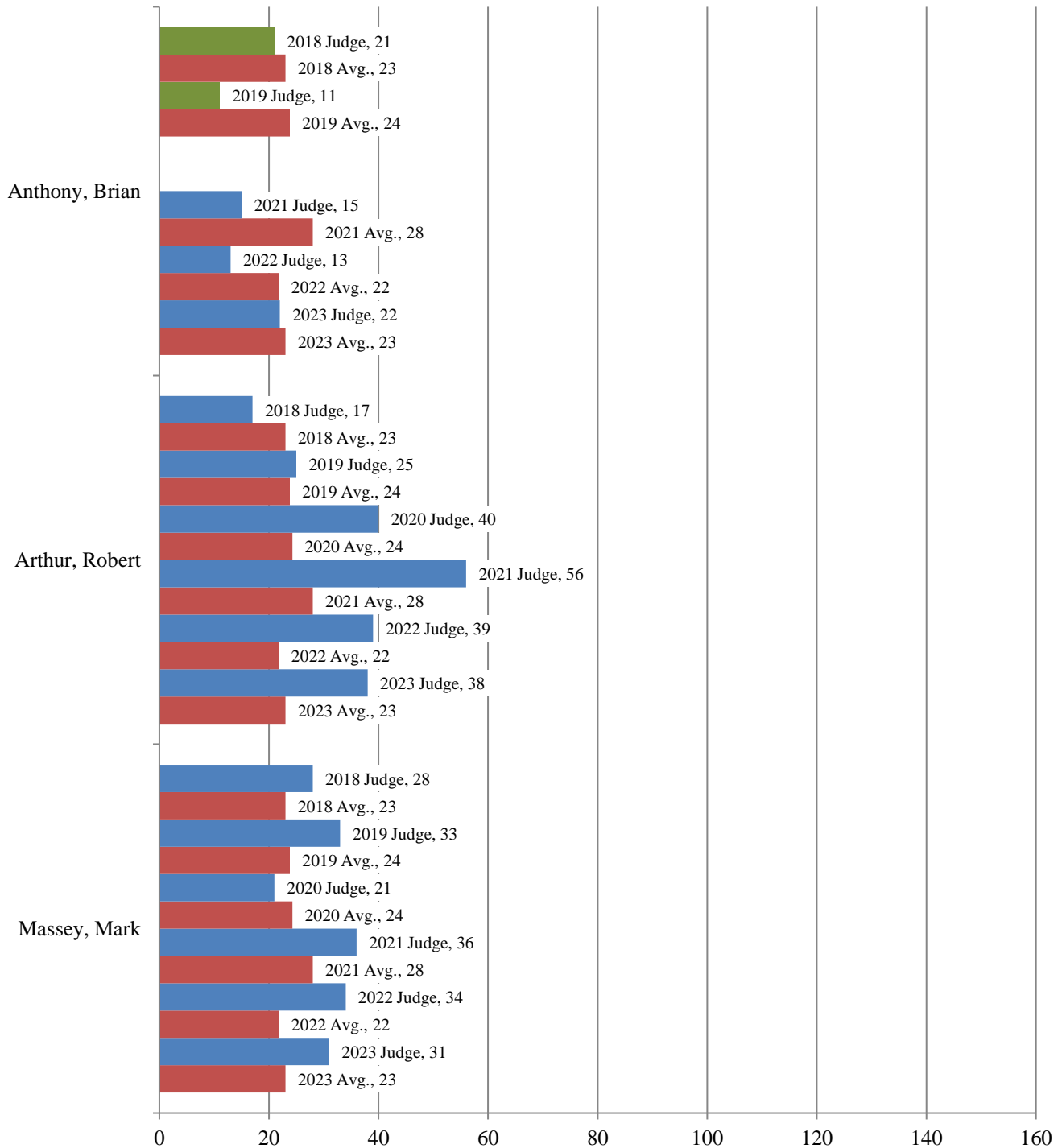


The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).

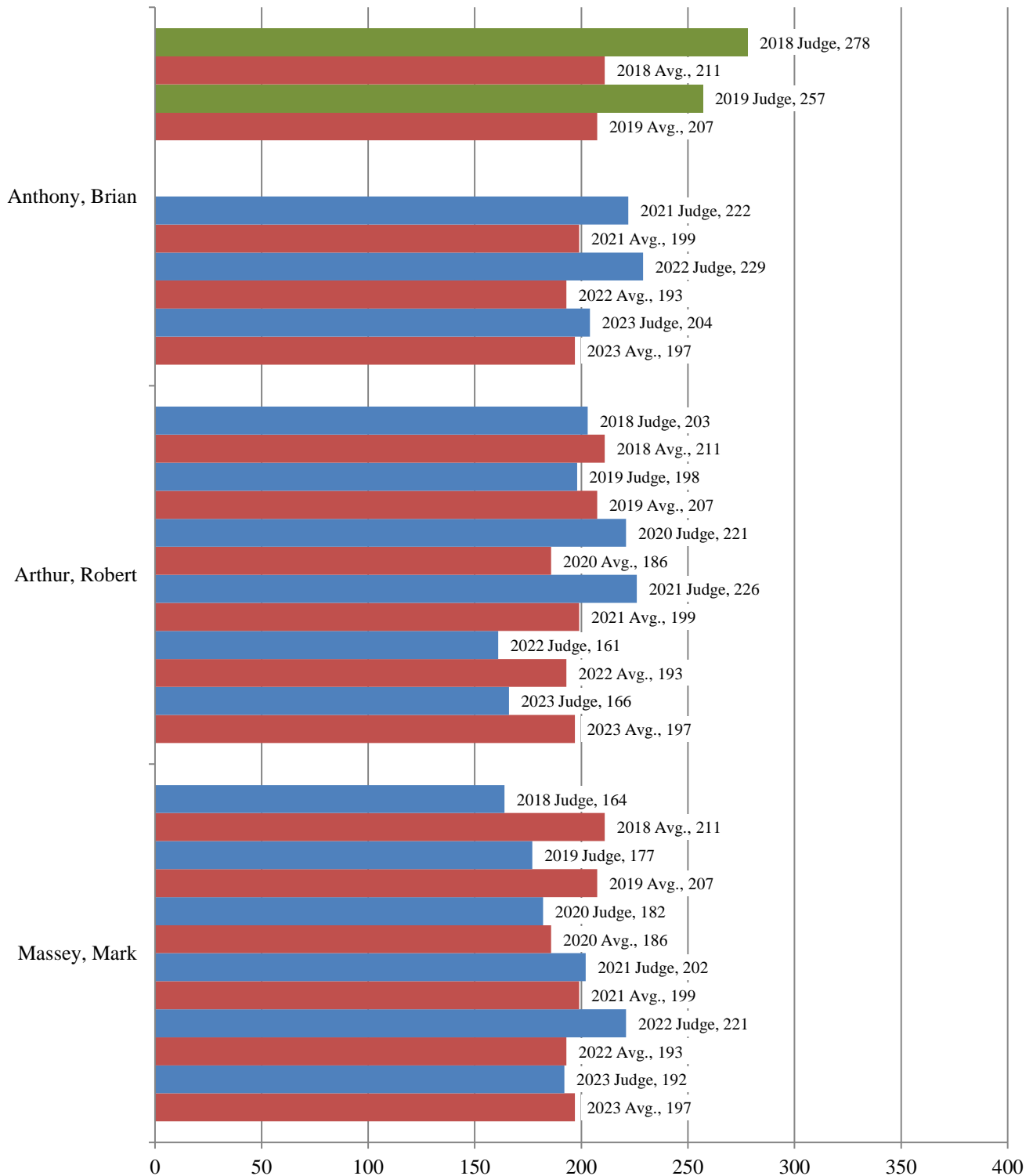


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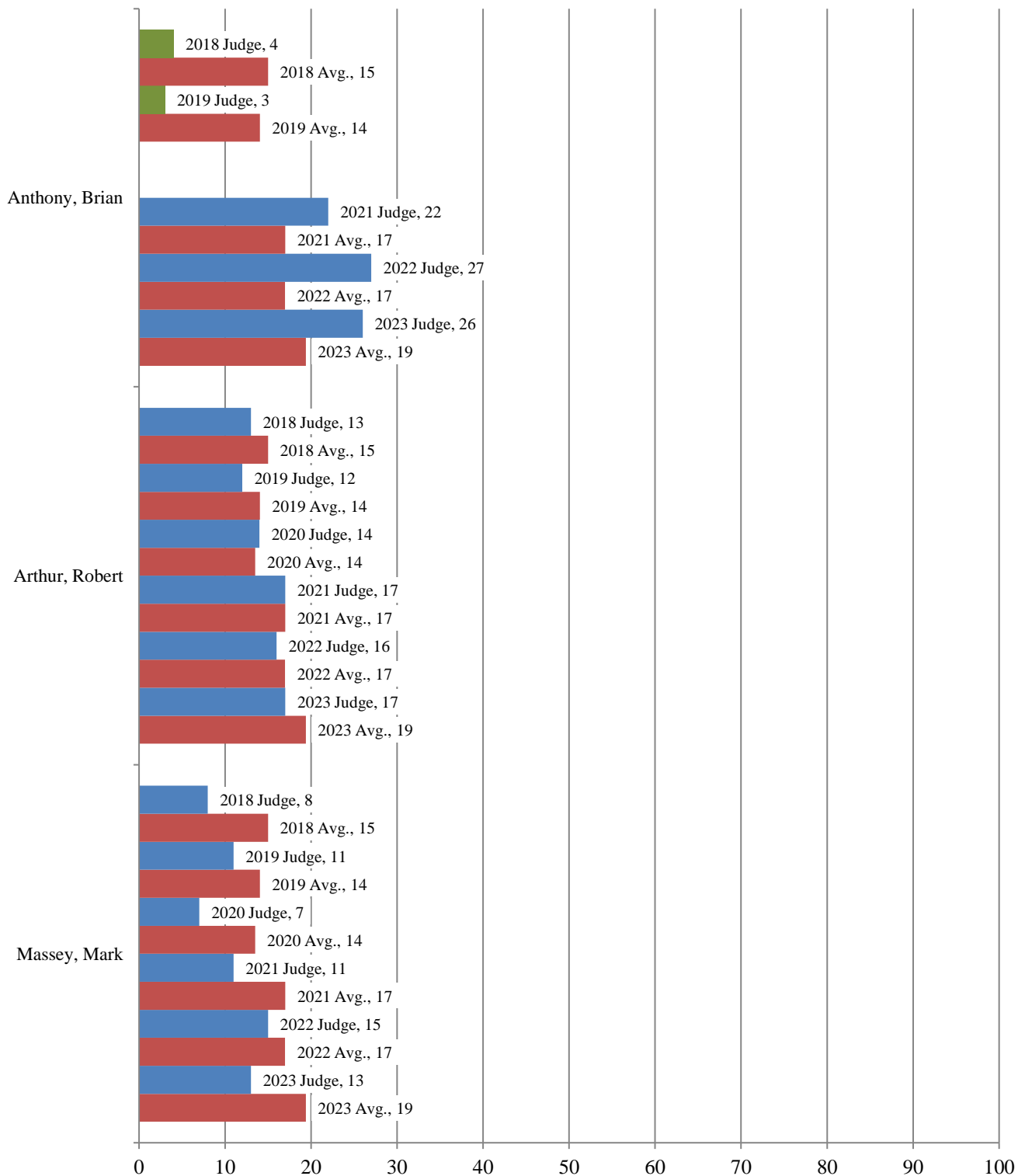
The following graph depicts the total volume of trial orders<sup>383</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge's appointment).



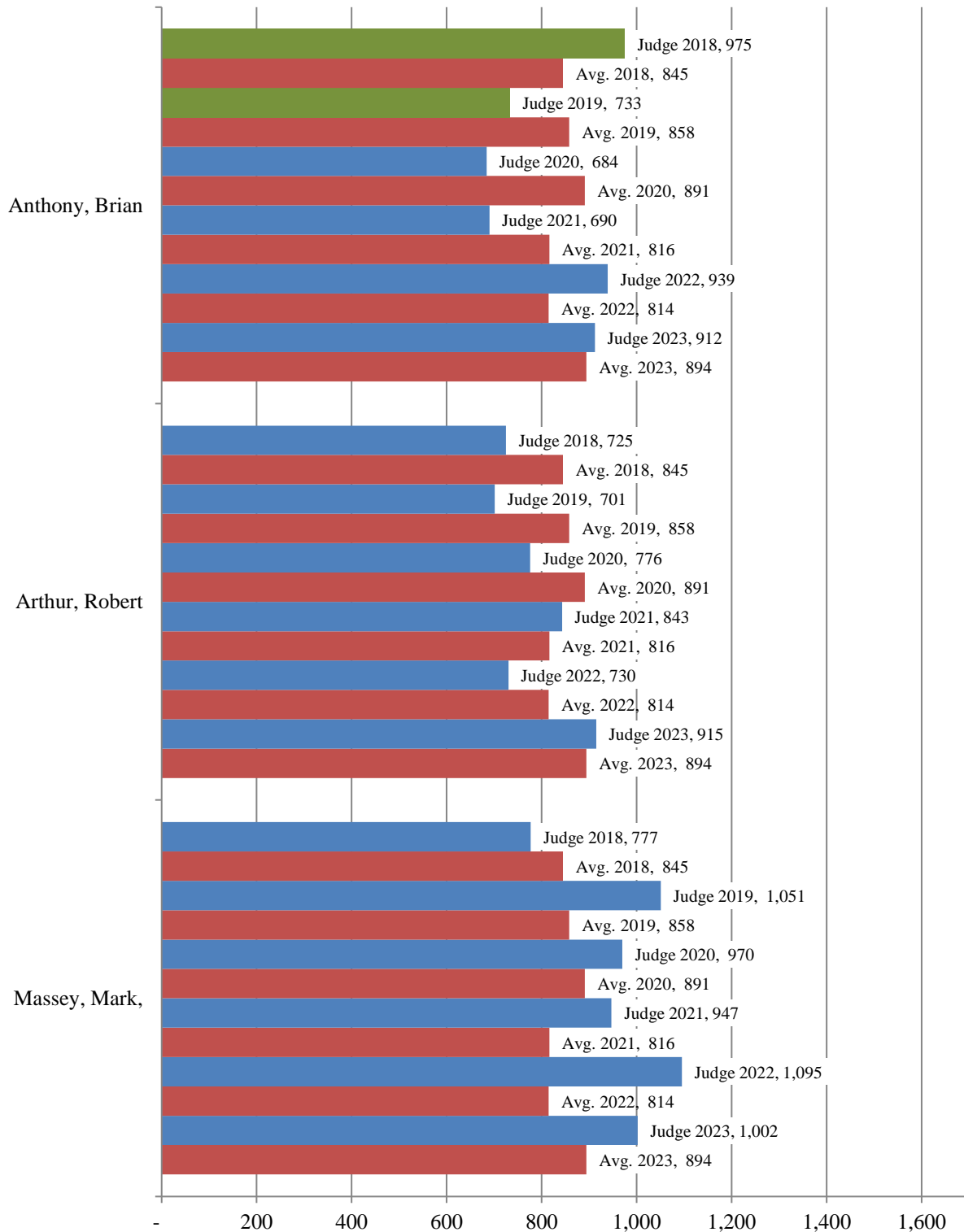
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. 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 before the named judge's appointment).

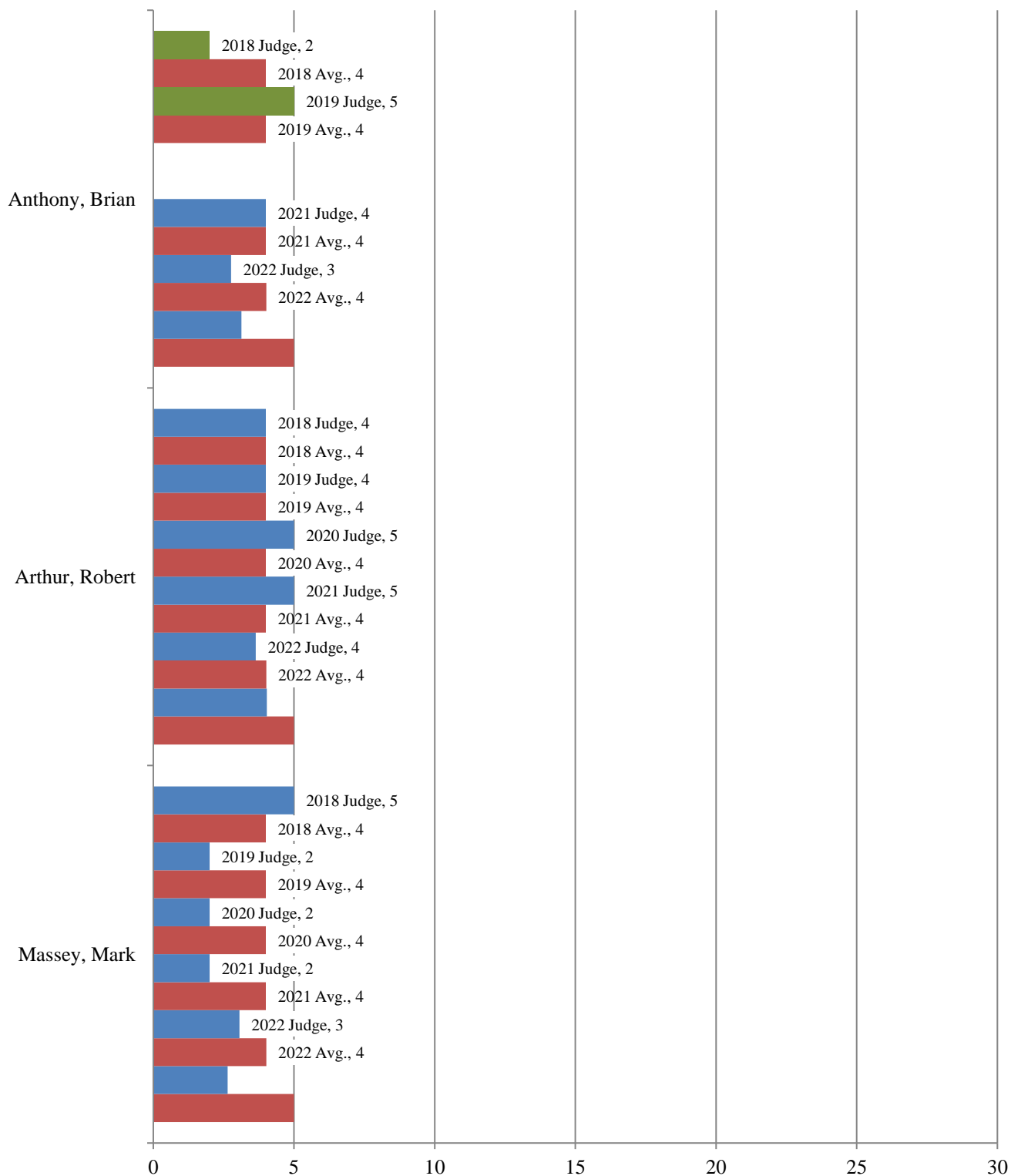


The following depicts the volume of settlement orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

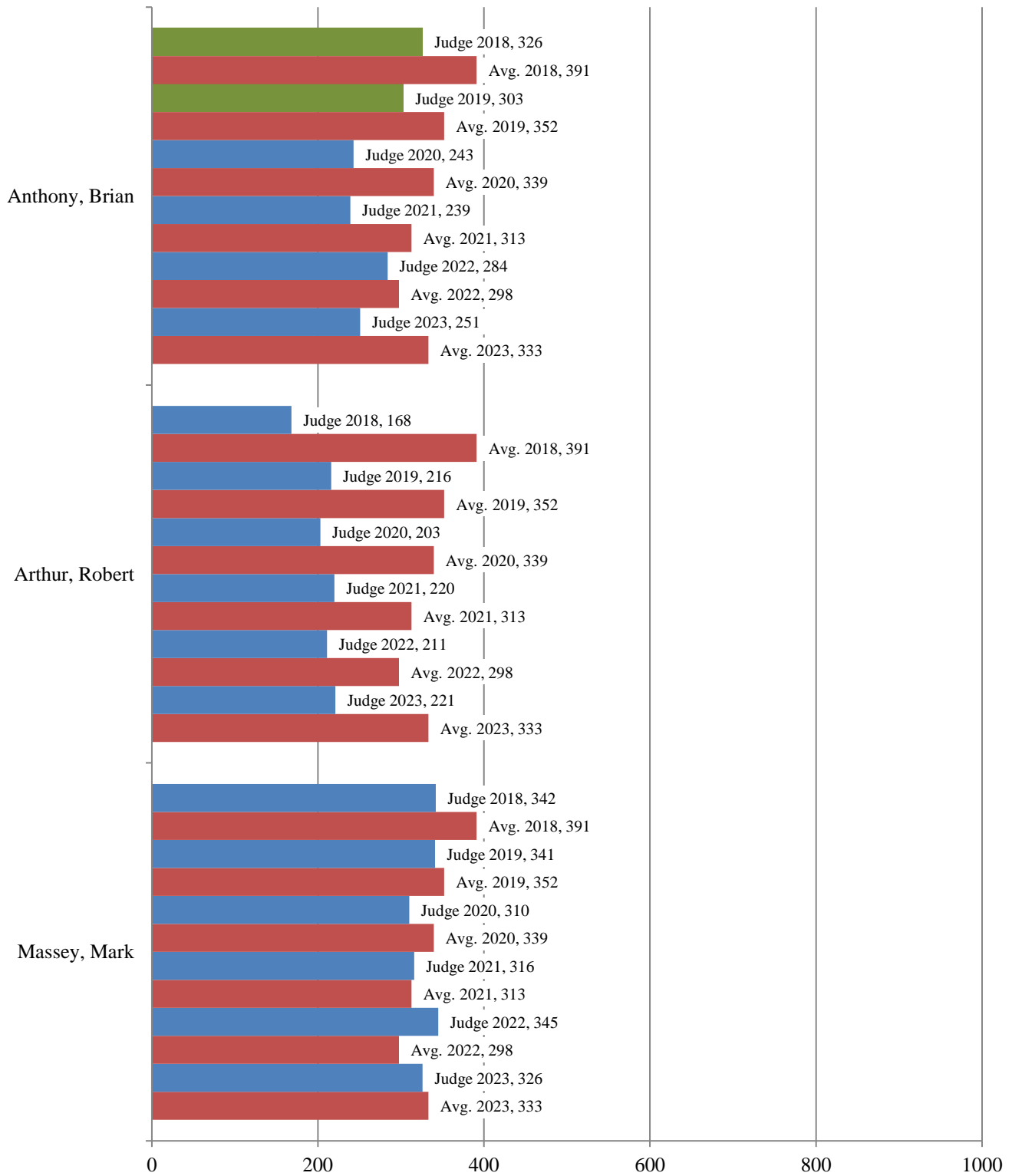




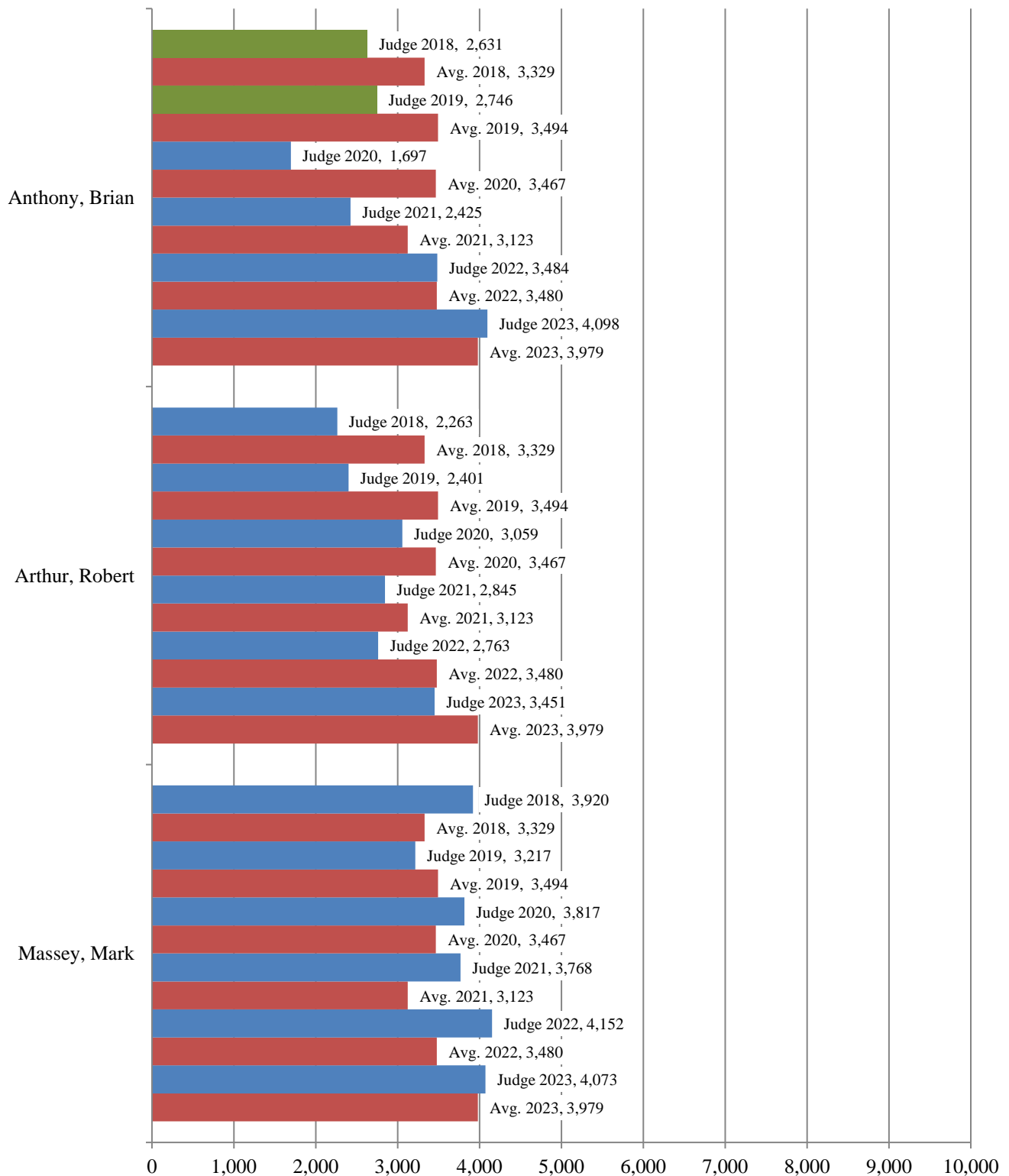
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



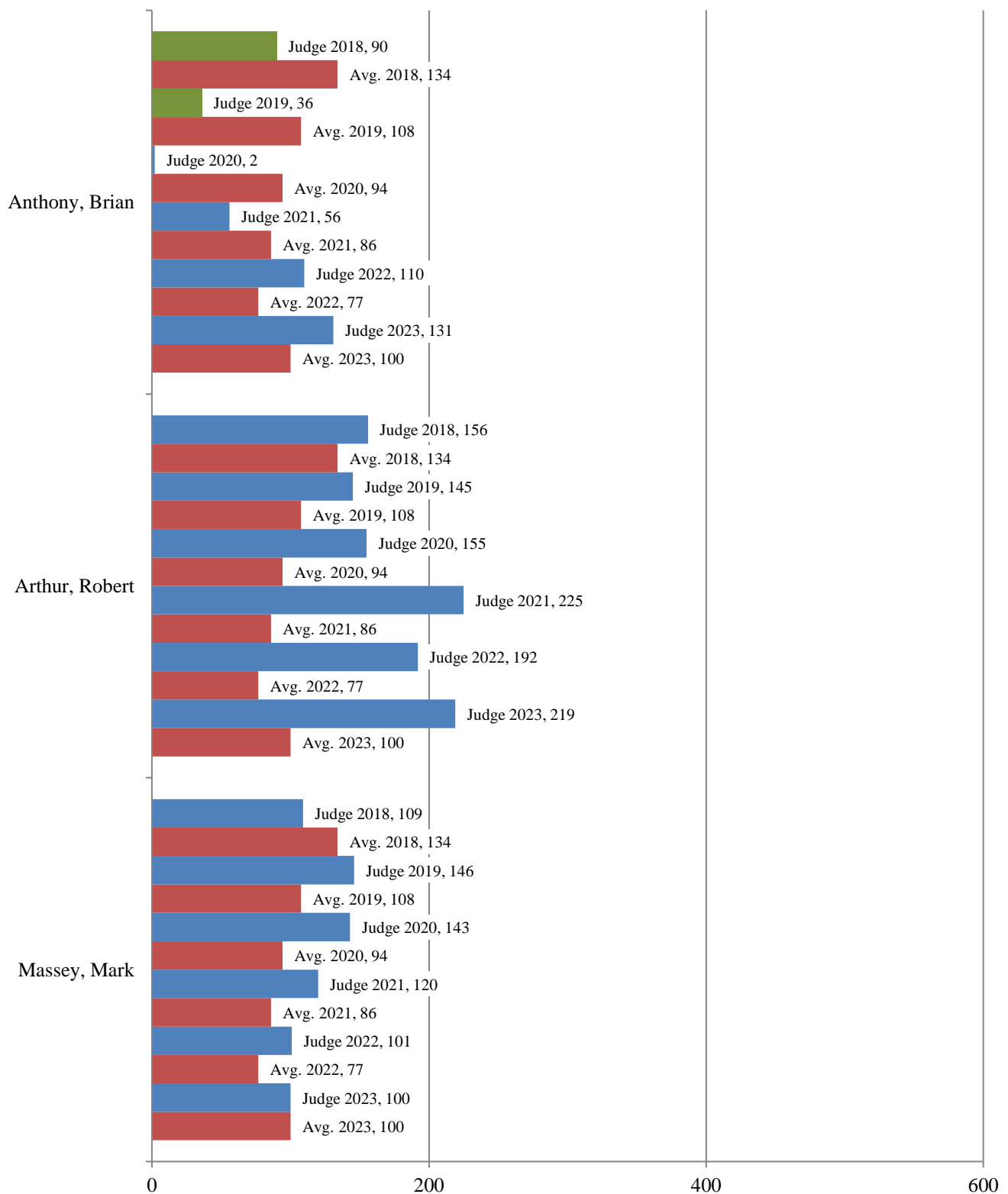
The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before 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 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



## Appendix “10” District WPB (JCC Hedler, JCC Johnsen, JCC Case<sup>384</sup>):

District WPB includes Glades, Hendry, Martin, Okeechobee, and Palm Beach Counties. Near the end of 2021-22, all of District Port St Lucie was consolidated into District West Palm Beach. This added St. Lucie and Martin counties. Some of District Melbourne was also consolidated into District WPB, which added Martin, and Okeechobee counties. In some amelioration of those impacts, Glades and Hendry counties were transferred from District WPB to District Ft. Myers. In 2023-24, a fourth judicial position was filled in West Palm Beach, Judge Kimberly Hill. But throughout 2022-23, three judges presided there over the four-judge workload resulting from the consolidations of these counties.

The consolidation led to markedly increased petition filing volumes and “new case” volumes that exceeded the historical levels in West Palm Beach. As the impact of Judge Hill becomes more apparent, it is expected that PFB volumes will moderate closer to the statewide average and the “new case” volumes there should be notably below average. The workload in West Palm is significant and will bear close monitoring.

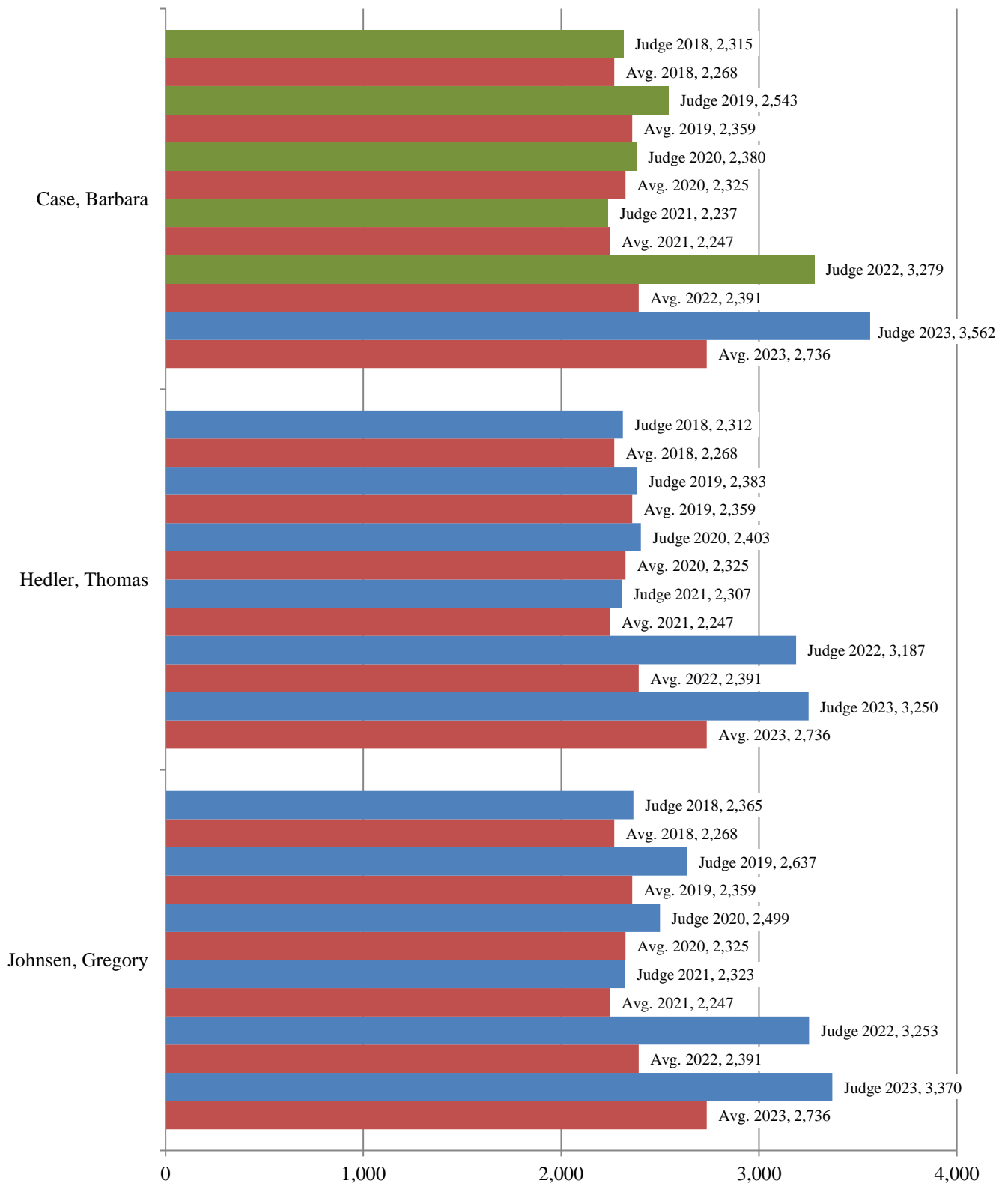
On August 1, 2022, Judge Case began her tenure as a Judge of Compensation. On May 19, 2022, she participated as a faculty member in the first annual Workers' Compensation Academy in Orlando, Florida. On May 23, 2023, she presented *Case Law Update* at the Palm Beach Bar Association Annual CLE program. In addition, Judge Case participates in the Robert D. McAliley Inns of Court.

In 2022-2023, Judge Hedler remained active in community organizations, including the Palm Beach County Bar Association Workers' Compensation Executive Committee, the Robert D. McAliley Inns of Court, and the National Association of Workers' Compensation Judiciary. He co-authored an article, *Miles Settlement Fees: Differing Interpretations are Miles Apart*, in the Fall 2002 edition of *News and 440 Report*. On February 24, 2023, he moderated a panel on appellate matters at the WCI/OJCC seminar at the First DCA. On May 23, 2023, he moderated a panel discussion on attorney's fees, and he participated in a judicial panel of speakers at the Palm Beach County Bar Association, Workers' Compensation Section Seminar. Along with 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.

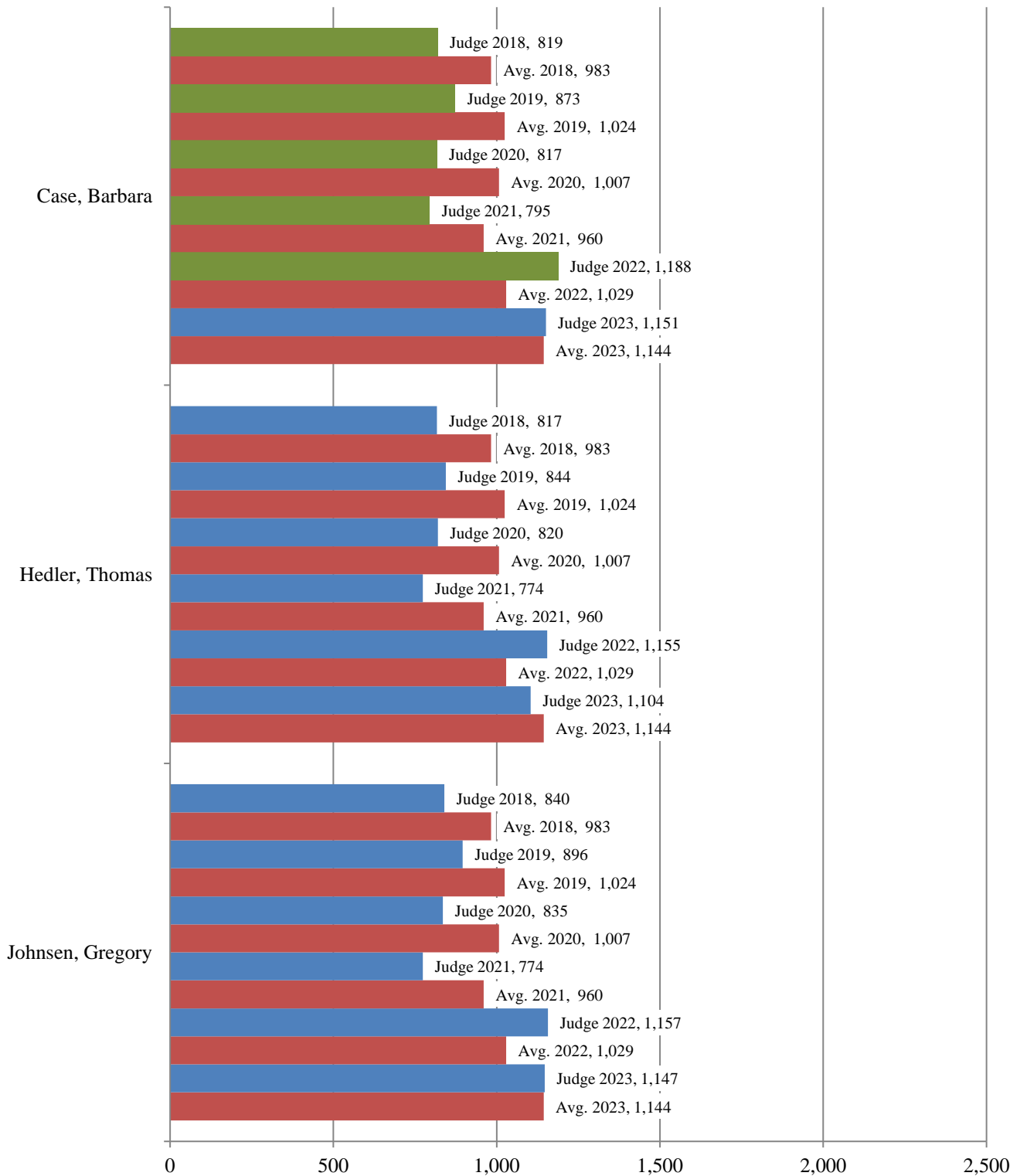
In August 2022, Judge Johnsen served as a panelist with other judges at the PMI conference presenting *A View from the Bench by Former Mediators*. In May 2023, Judge Johnsen moderated a panel entitled *Deal or no Deal, Motions to Enforce and Third-Party Liens* and participated in a Judicial question-and-answer panel at the Palm Beach County Bar Association Workers' Compensation 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.

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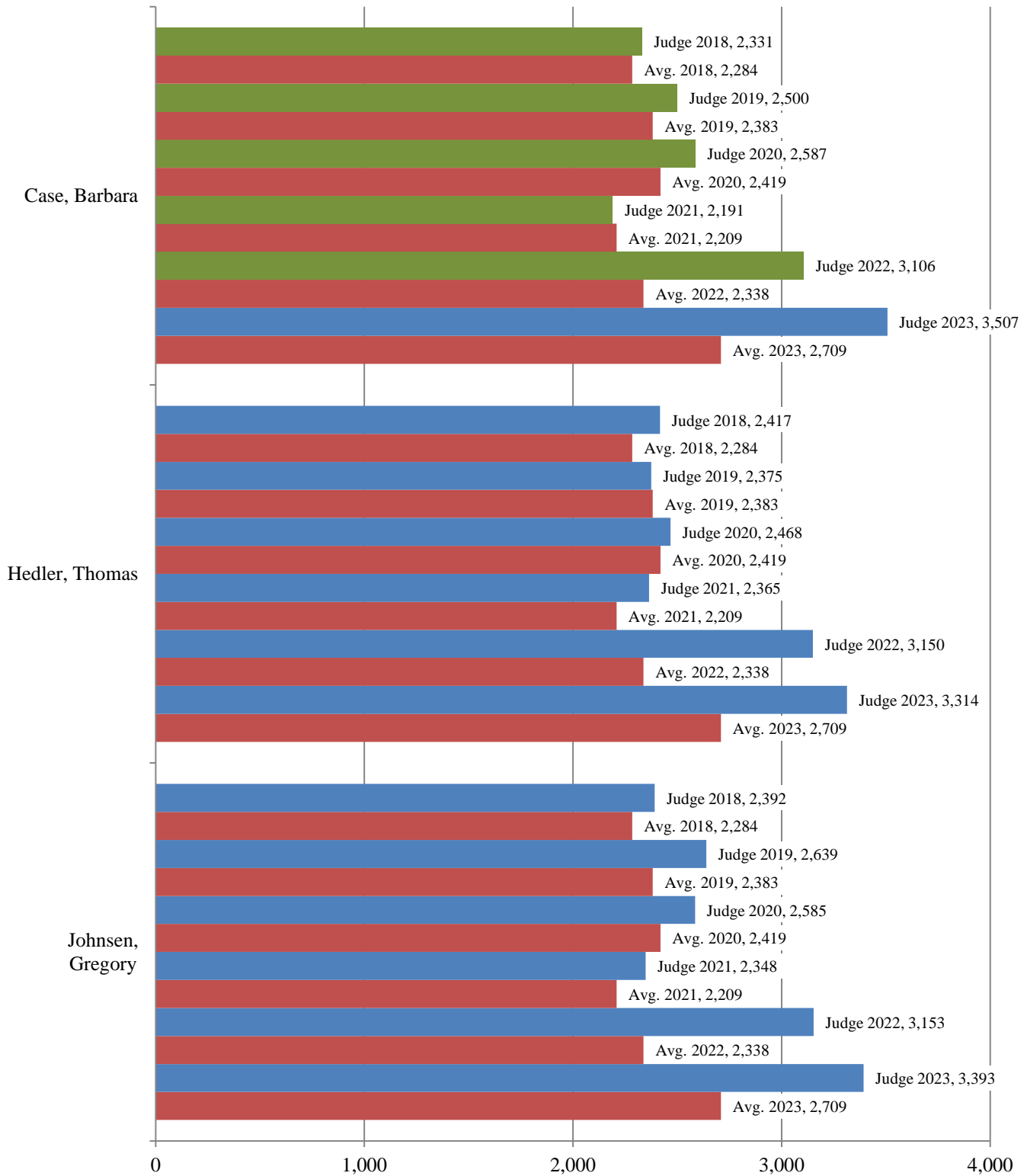
The following depicts the volume of PFBs filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of “new cases” filed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

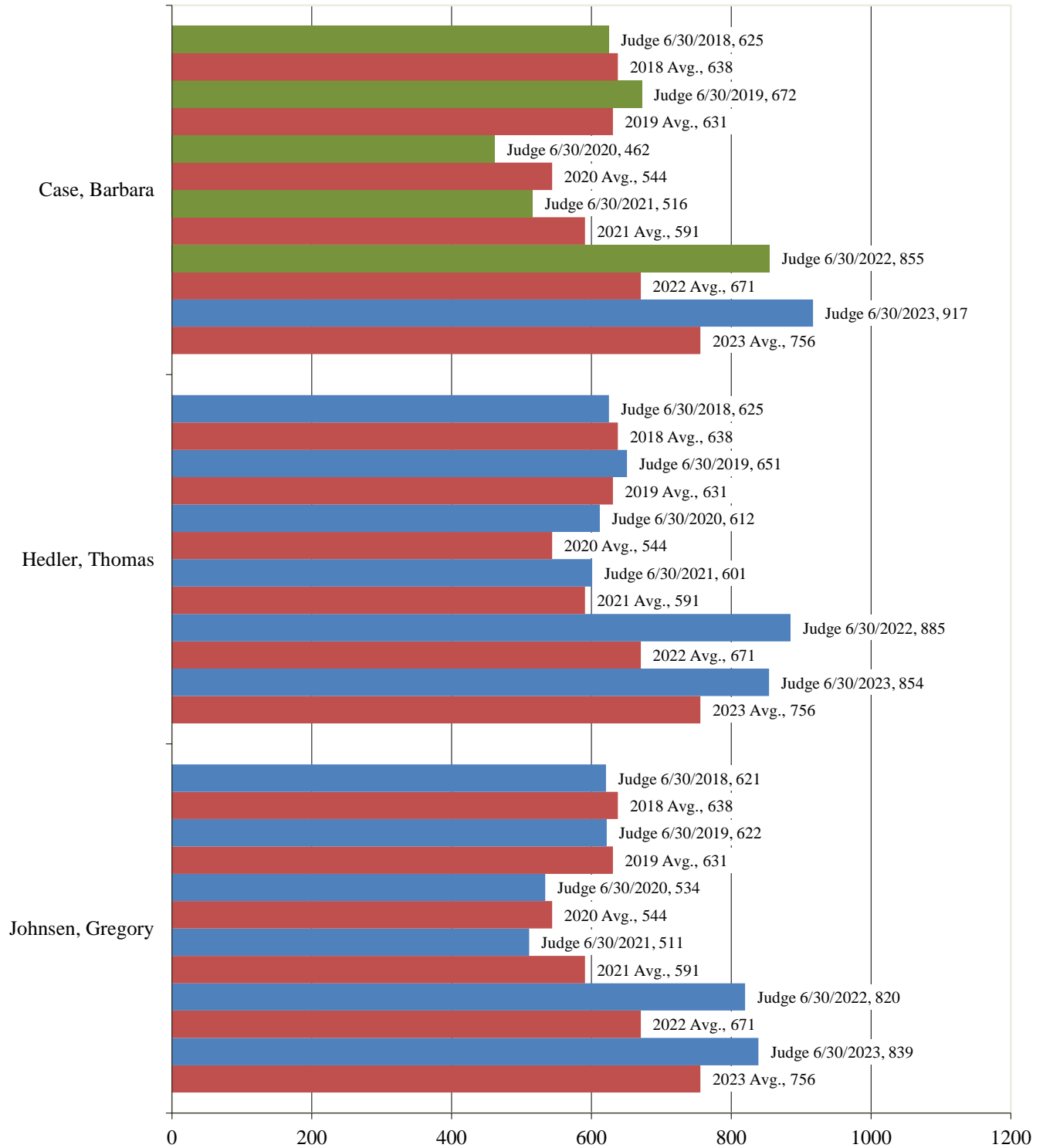


The following depicts the volume of PFBs closed in this District and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge's appointment).



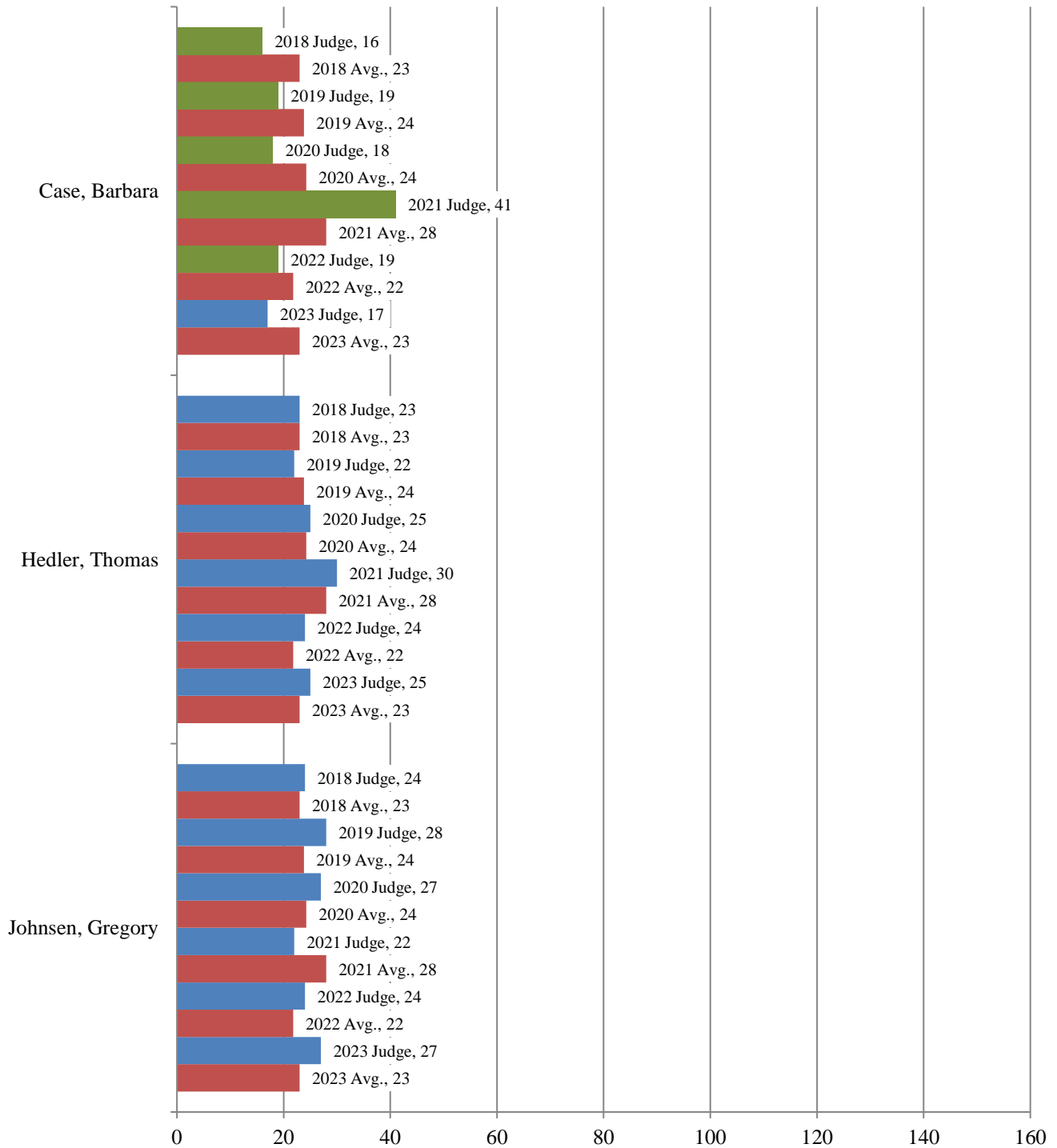


The following depicts the inventory of pending PFBs in this District and the statewide average at year end (06.30) between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).

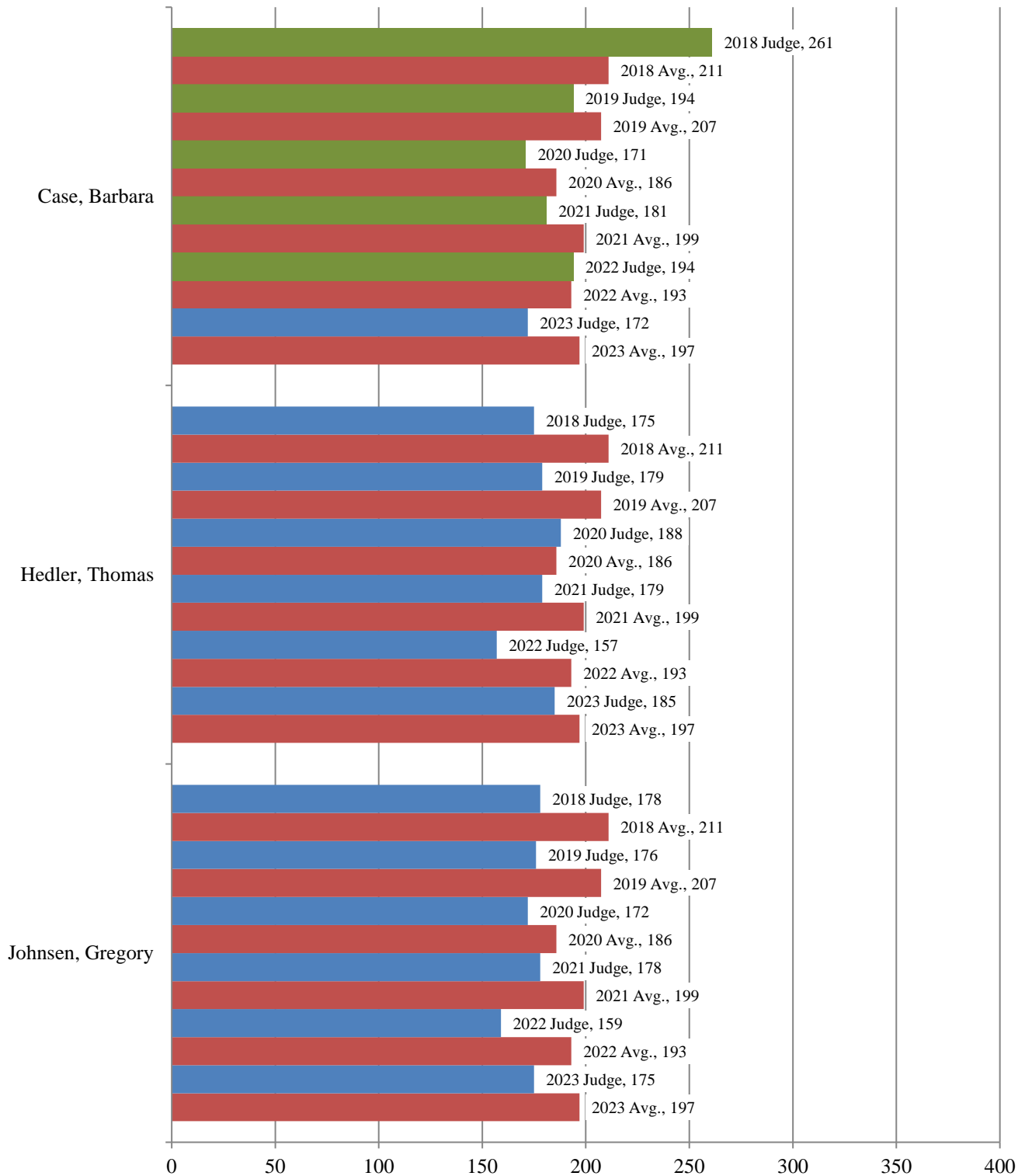


Until 2022-23, mediators were each assigned to a specific judge. Days to mediation statistics were then reported in each Appendix. In 2022-23, the mediators were disconnected and statewide random assignments began. Therefore, that graph is not included here, but in Appendix 11.

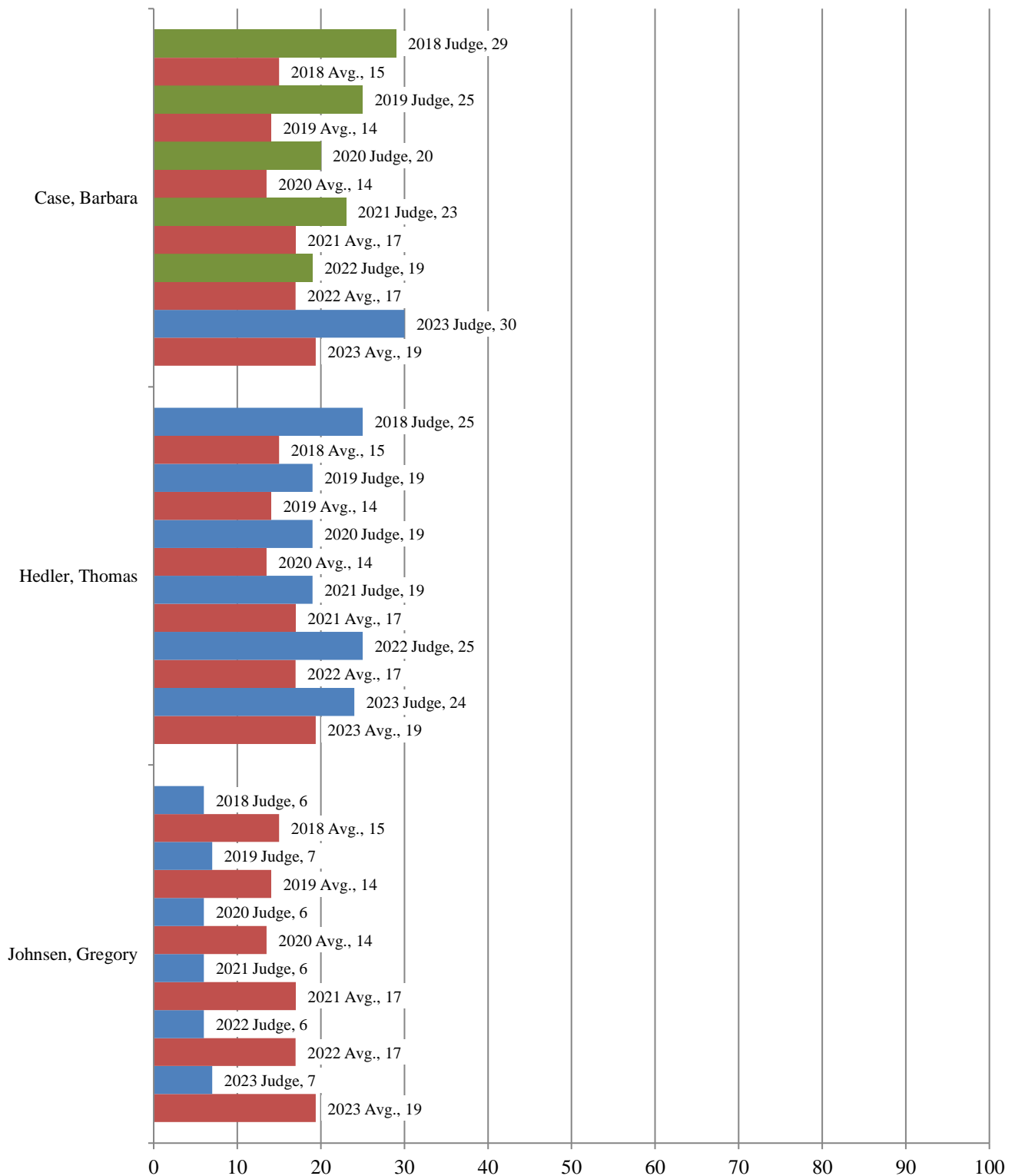
The following graph depicts the total volume of trial orders<sup>385</sup> uploaded in this District and statewide averages between 2017-18 and 2022-23. The identification and values for each year are in each bar label (green bars denote statistics before the named judge’s appointment).



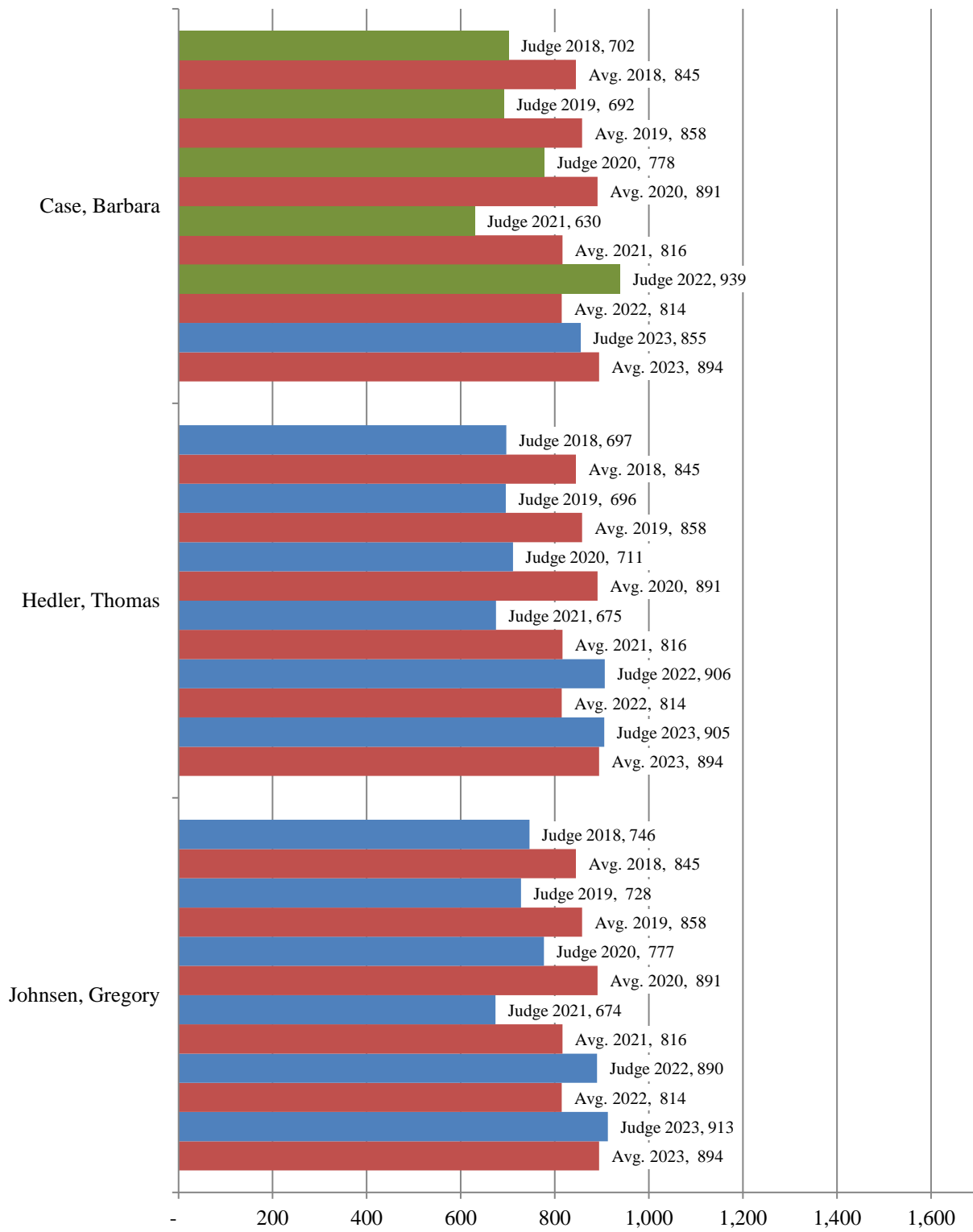
The following depicts the average days between PFB filing and trial commencing for each judge and the statewide average between 2017-18 and 2022-23. For these calculations, only the first day of trial is considered, and days after the first trial day are included in the days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



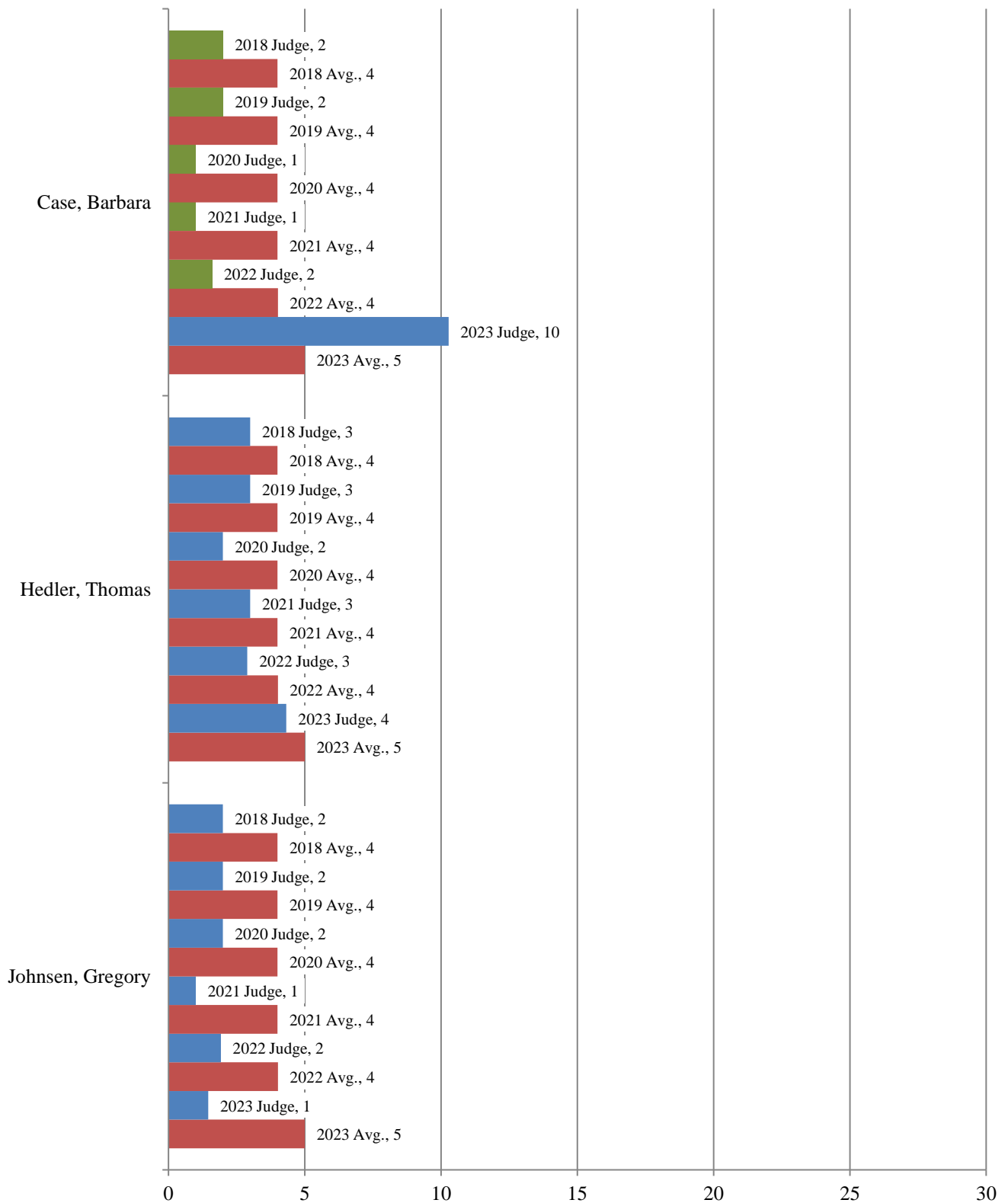
The following depicts the average days between trial commencing and entry of the trial order for each judge and the statewide average between 2017-18 and 2022-23. All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



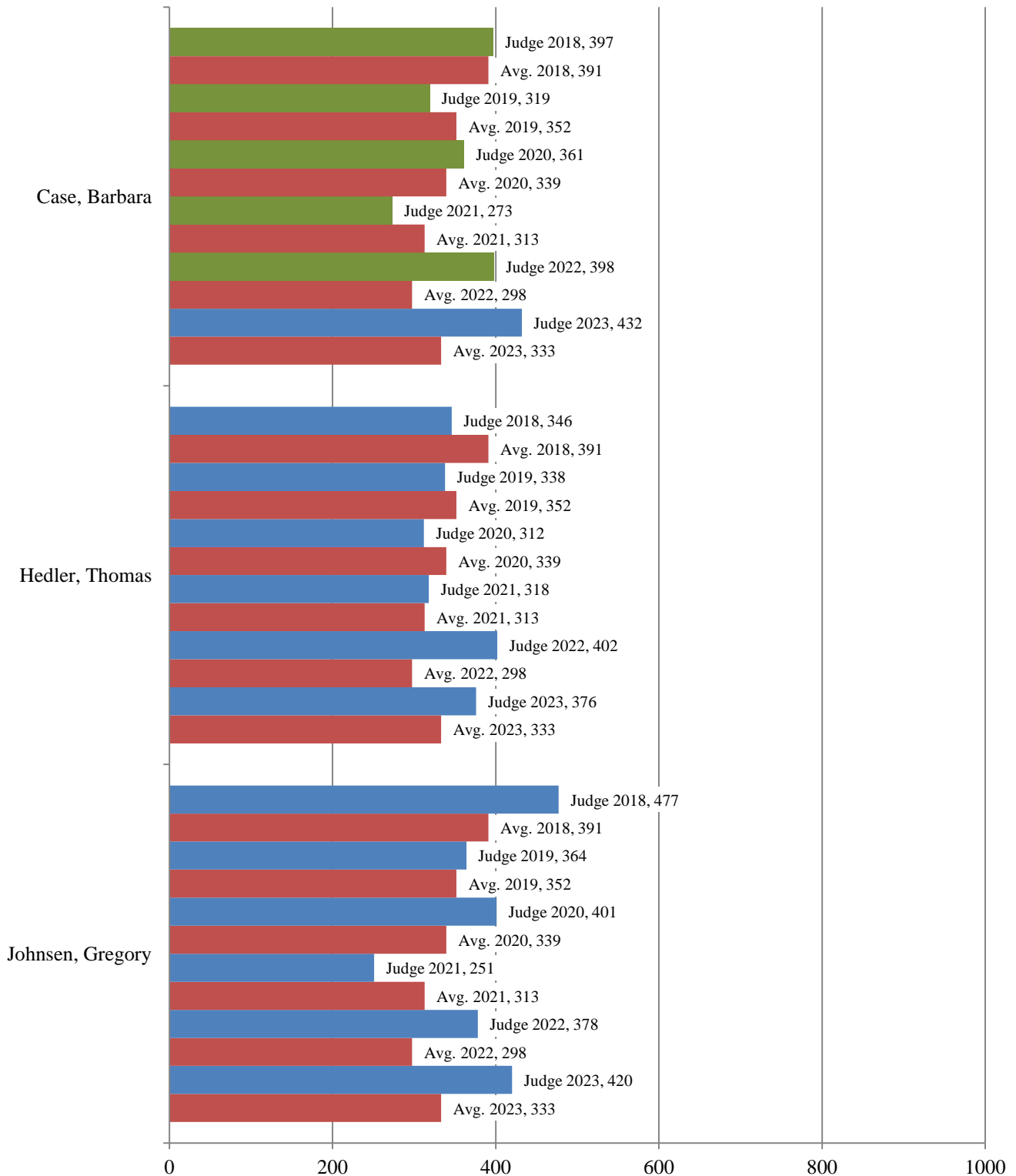
The following depicts the volume of settlement orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



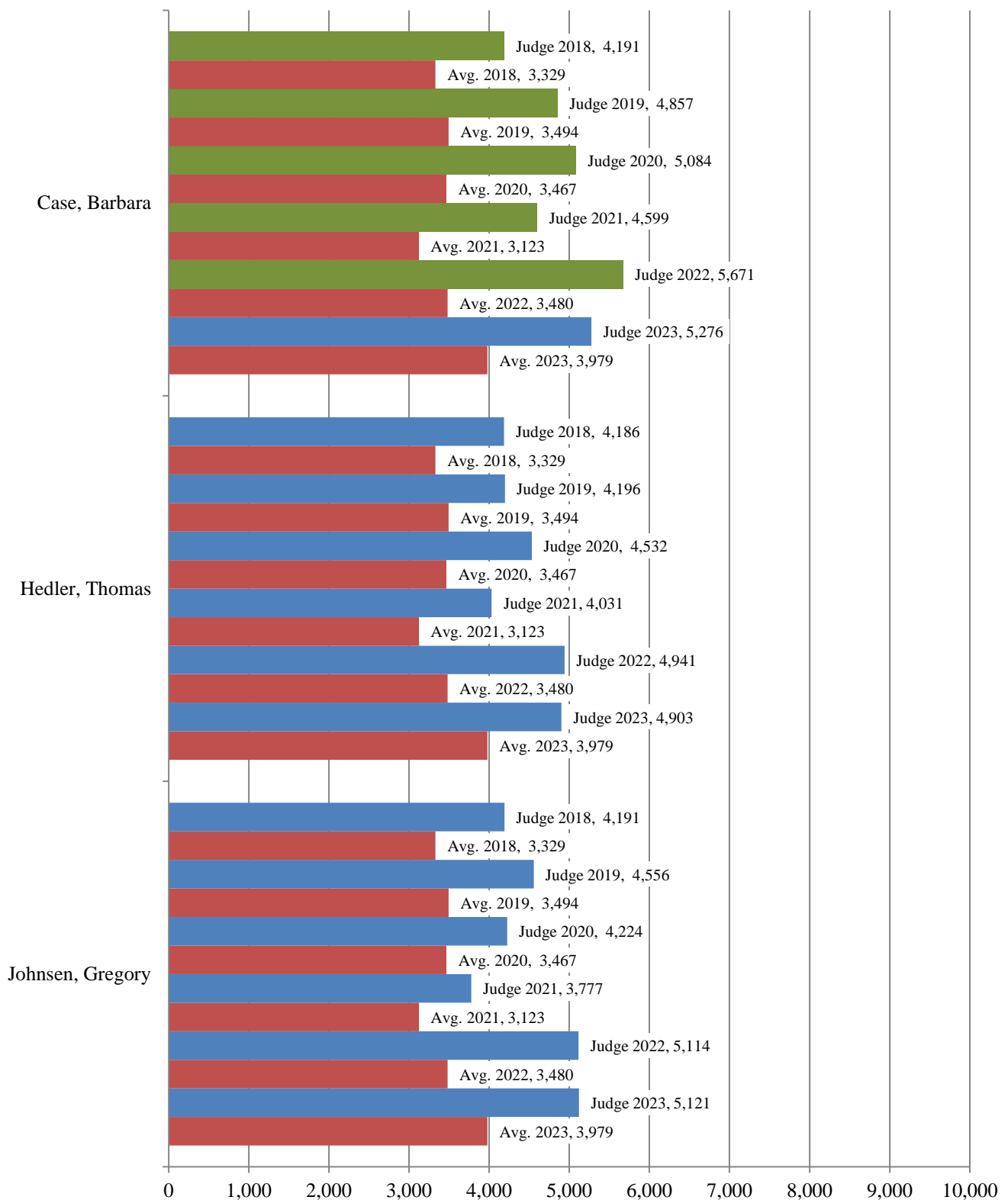
The following depicts the average number of days between filing of a settlement motion and entry of a settlement order by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



The following depicts the volume of stipulation orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

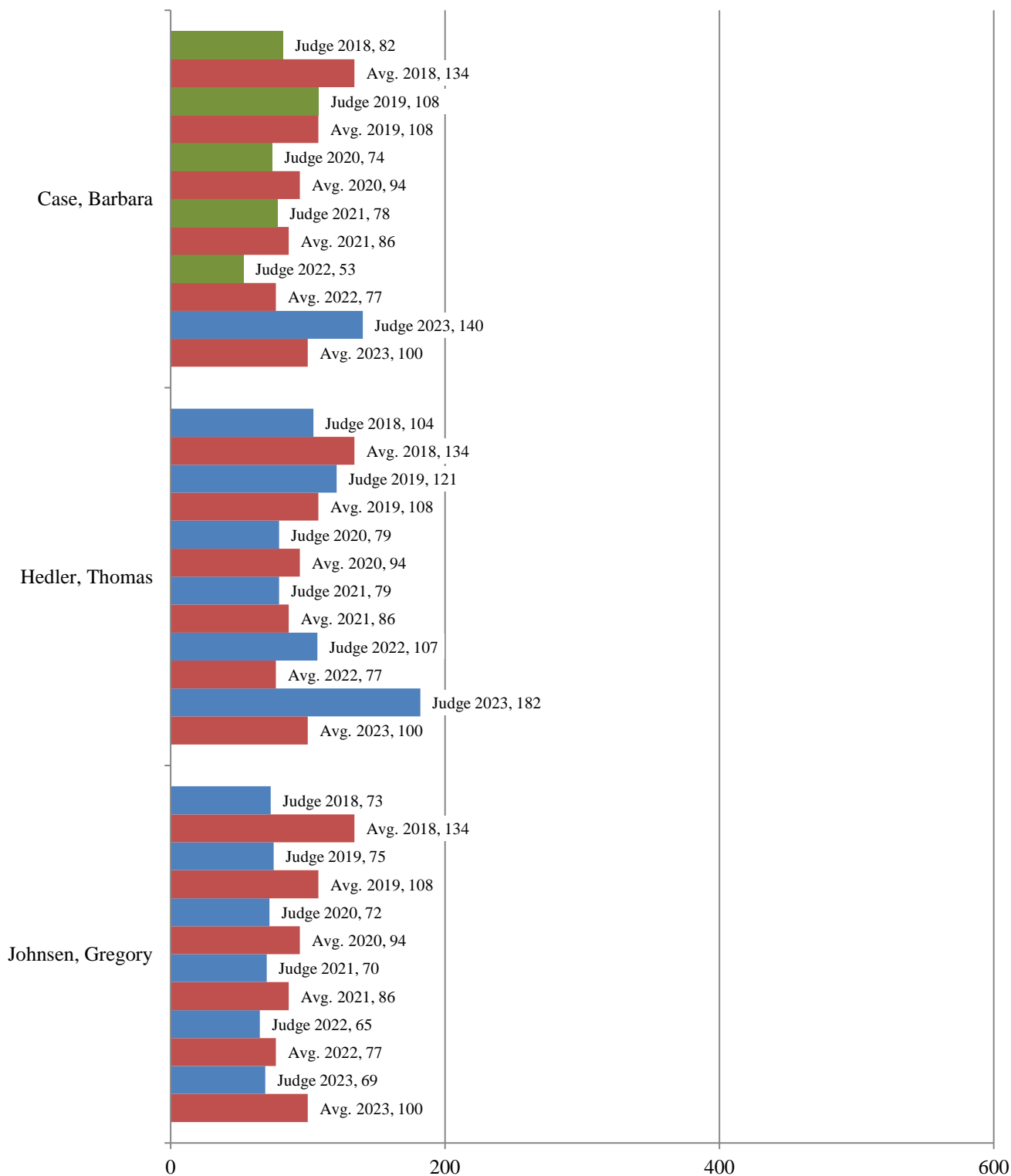


The following depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).

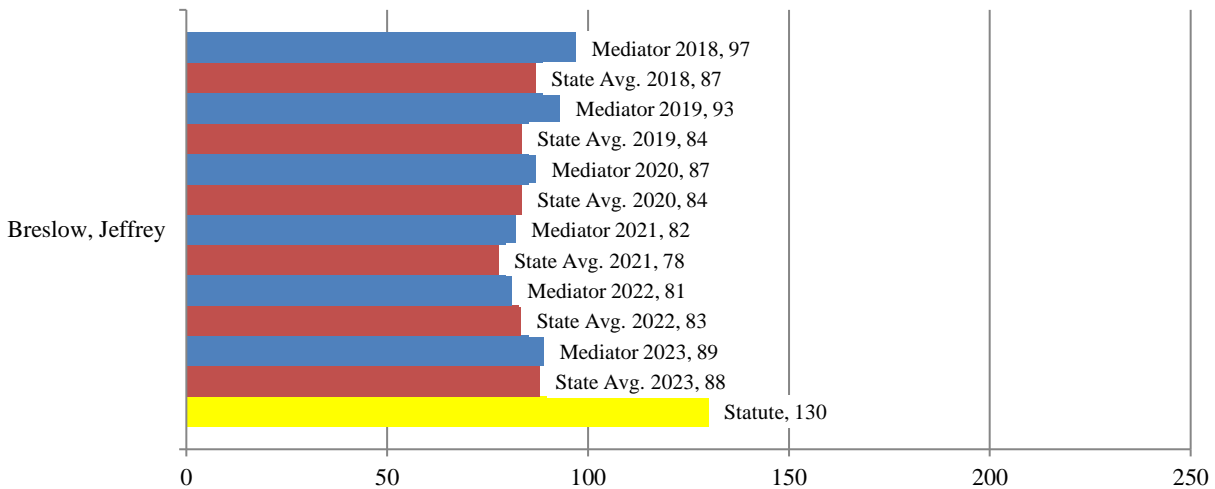
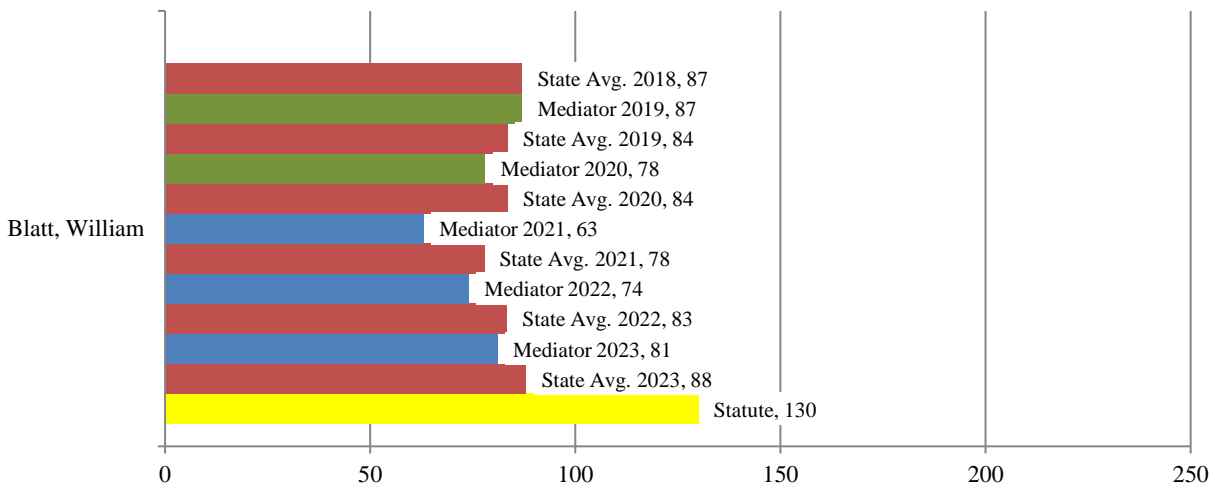
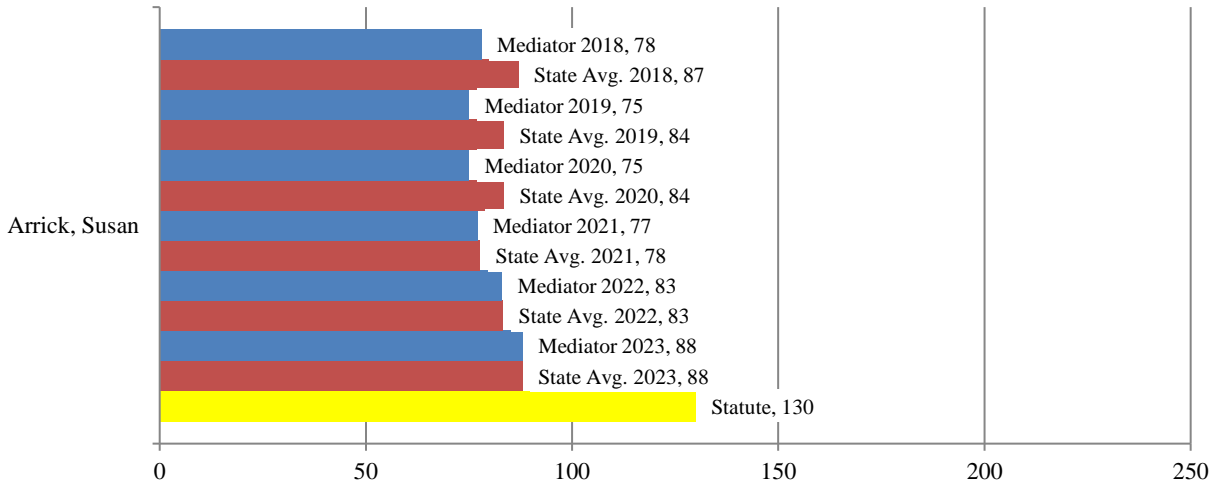




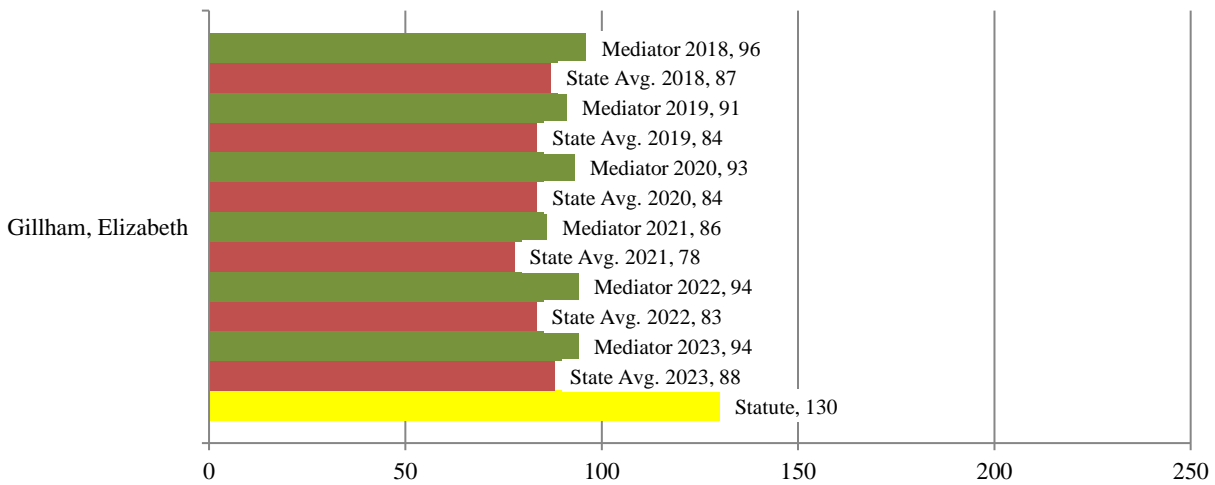
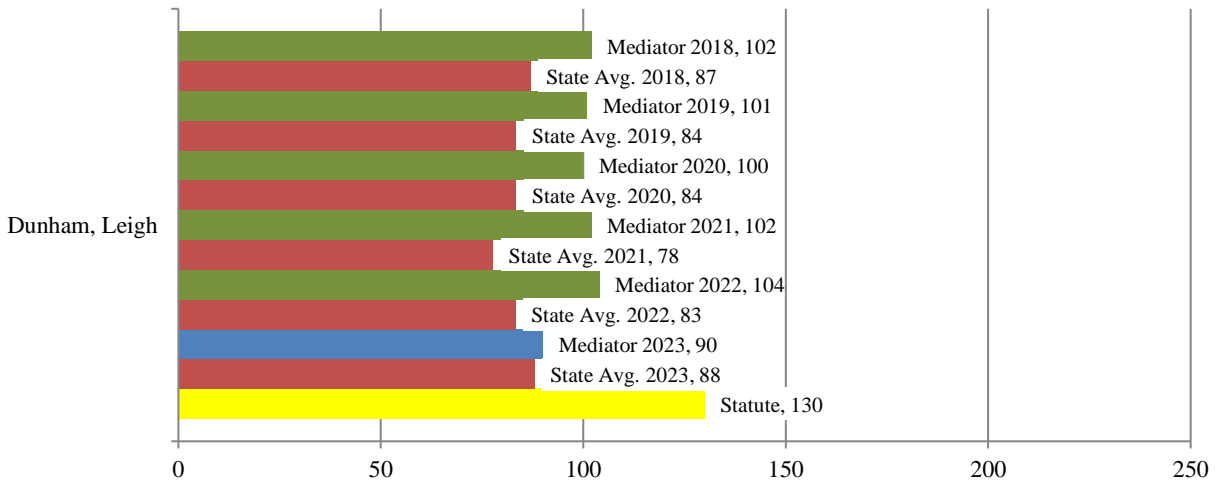
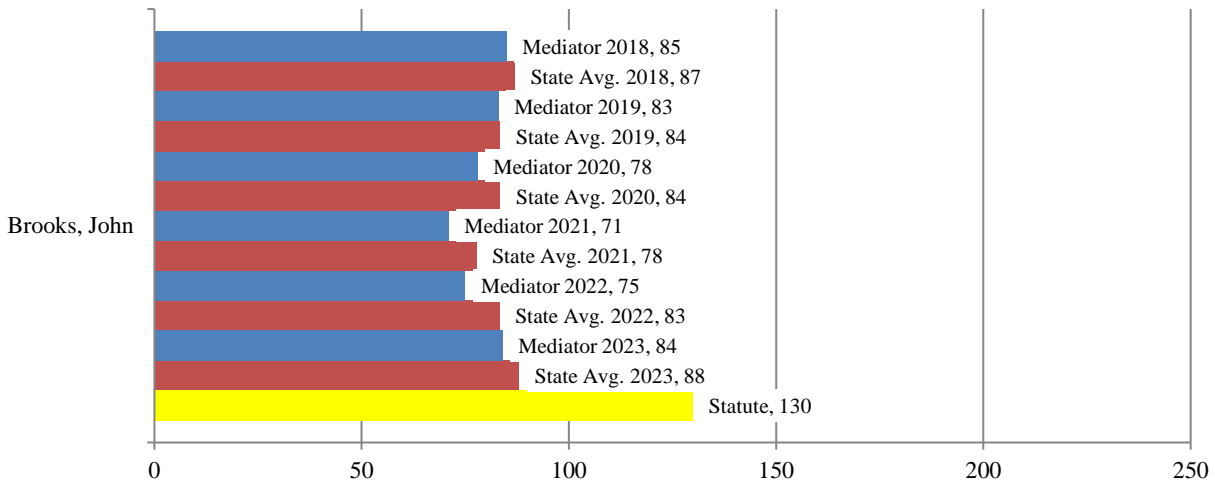
The following depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each judge and the statewide average between 2017-18 and 2022-23. Each bar label identifies the year and provides the numerical count (green bars denote statistics before the named judge’s appointment).



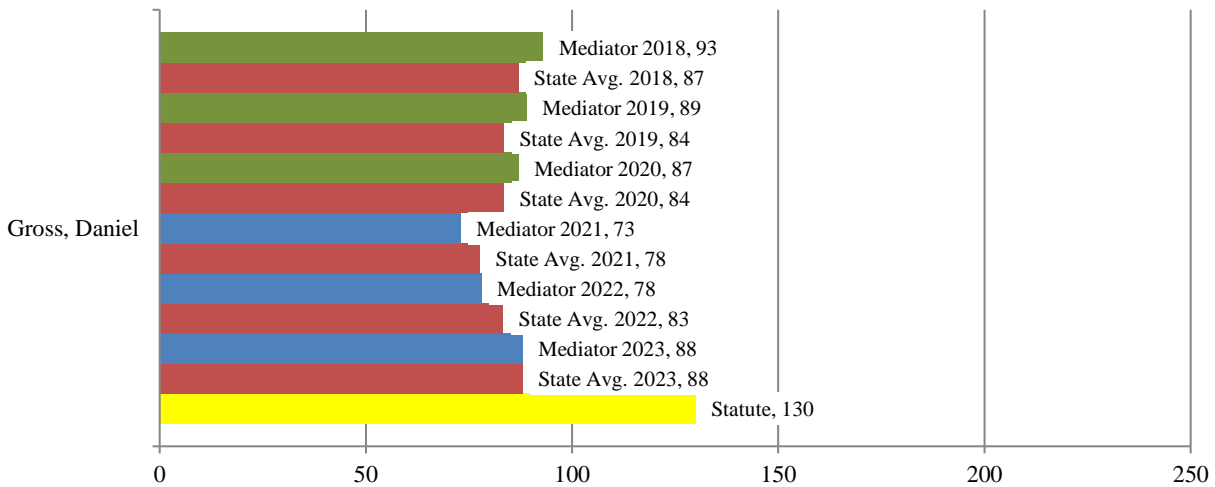
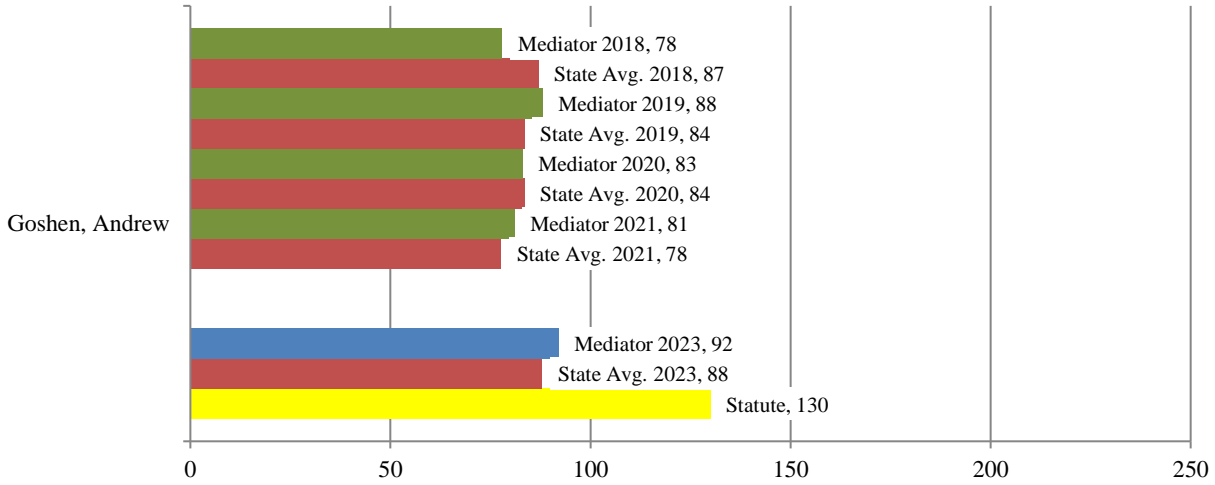
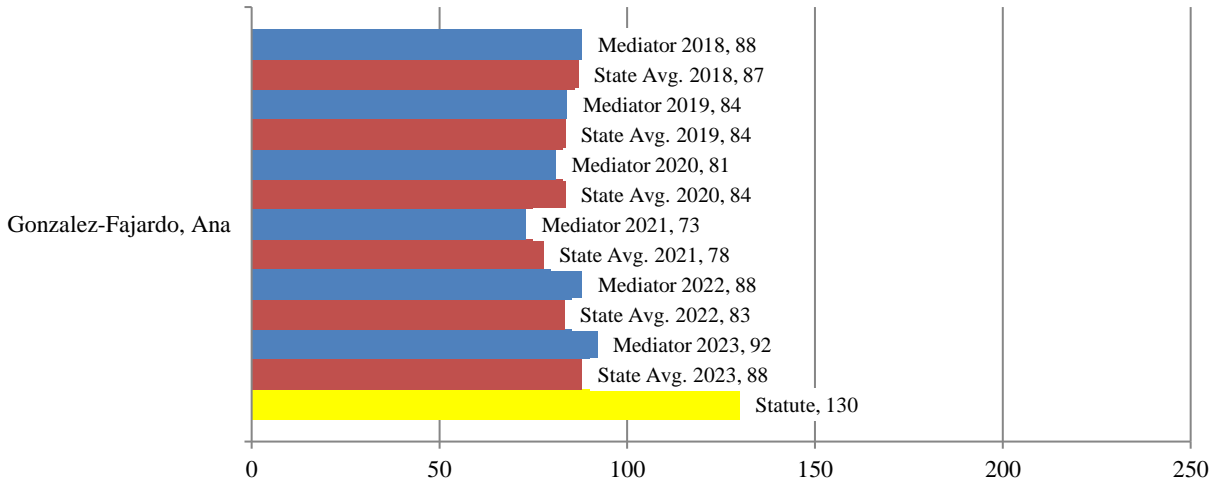
## Appendix “11” Florida OJCC Mediators

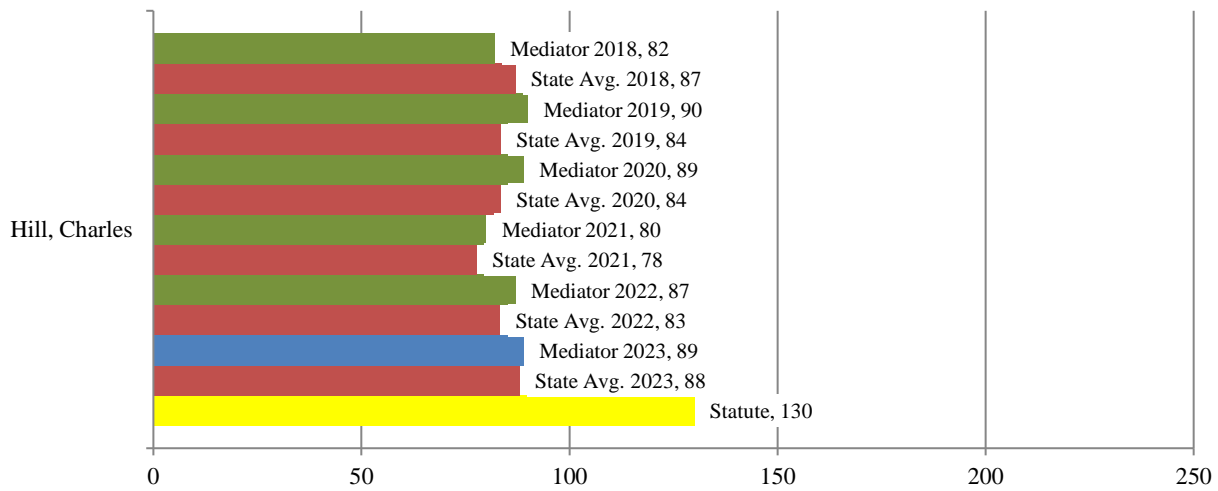
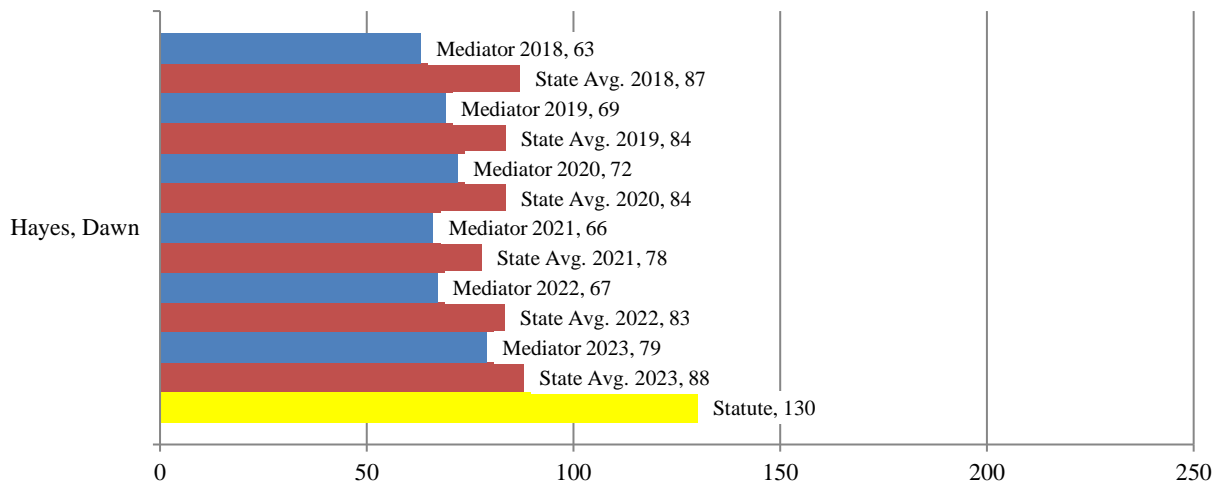
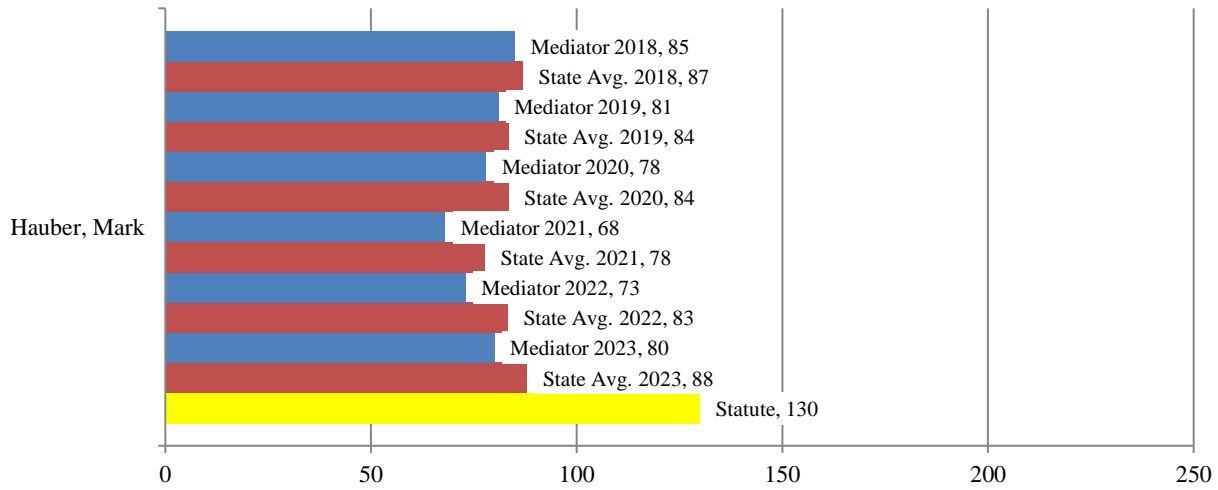


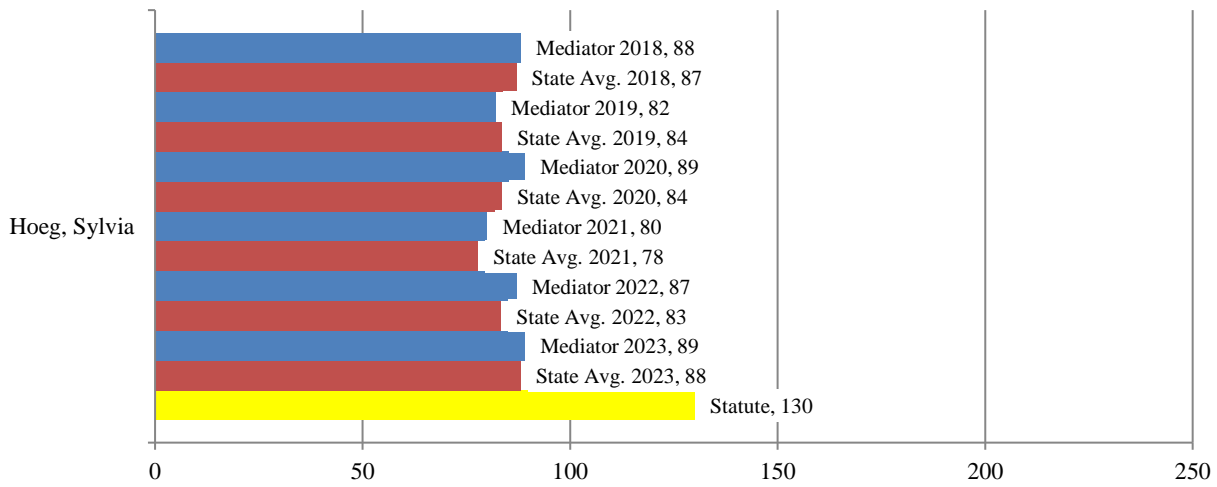
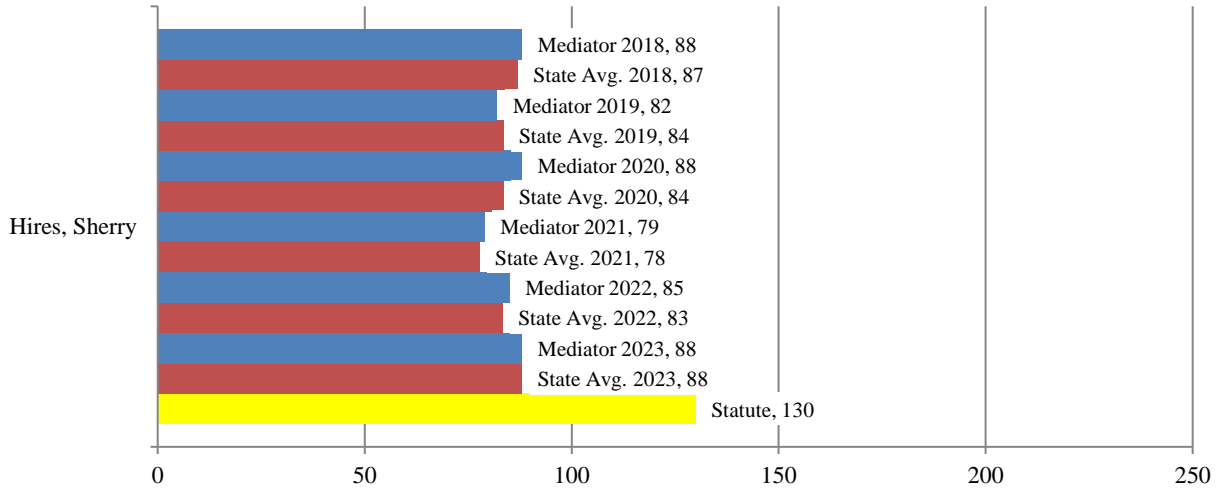
John Brooks participated in the OJCC Academy presentation for young attorneys.



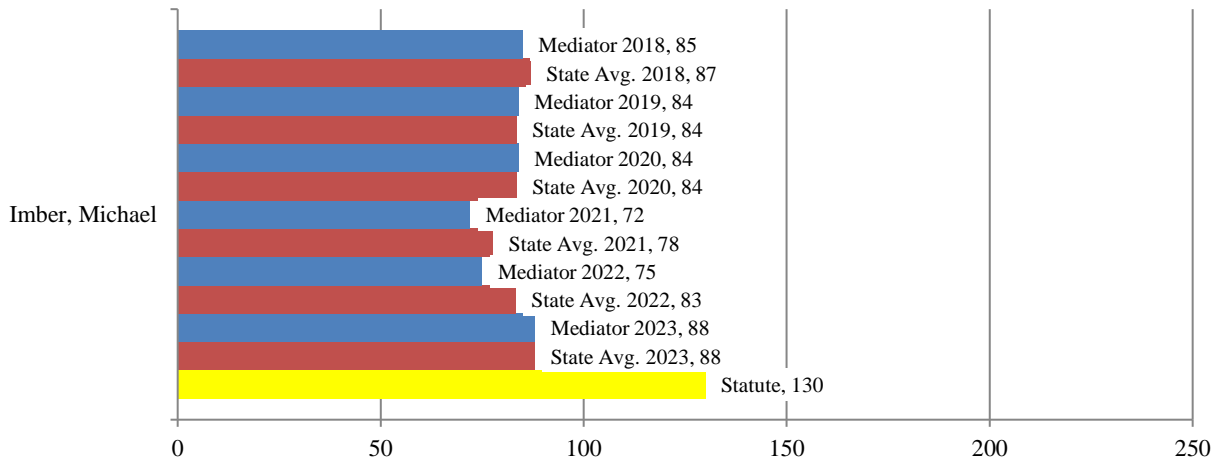
Ana Gonzalez-Fajardo was a faculty member of the WC Academy held in May 2023 and October 2023.

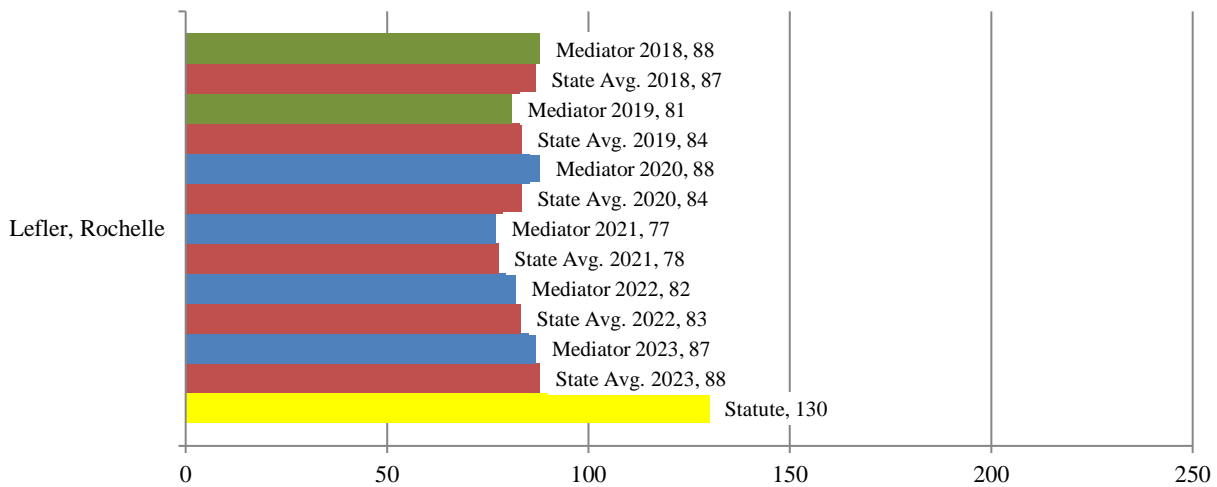
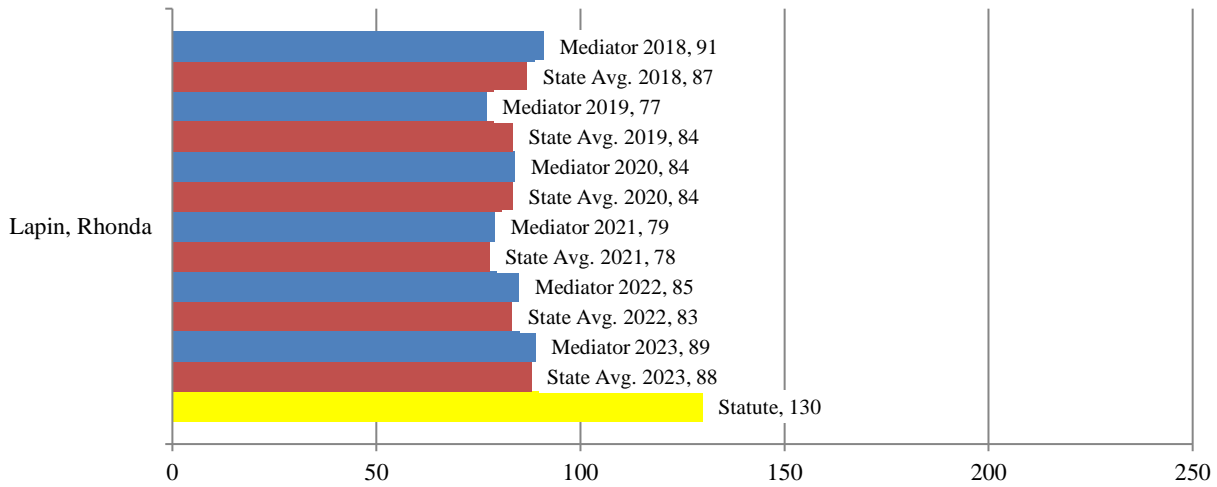
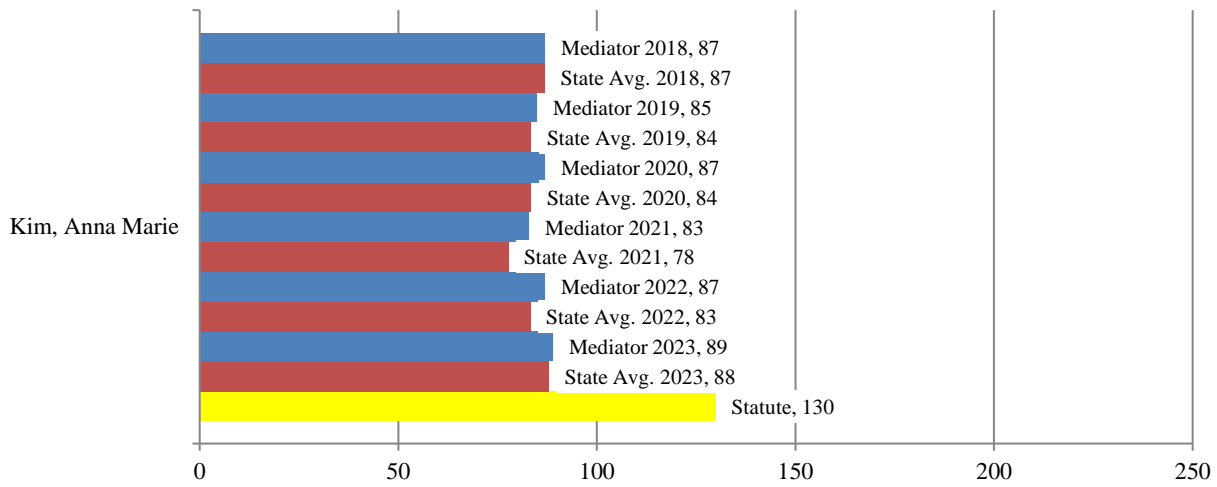


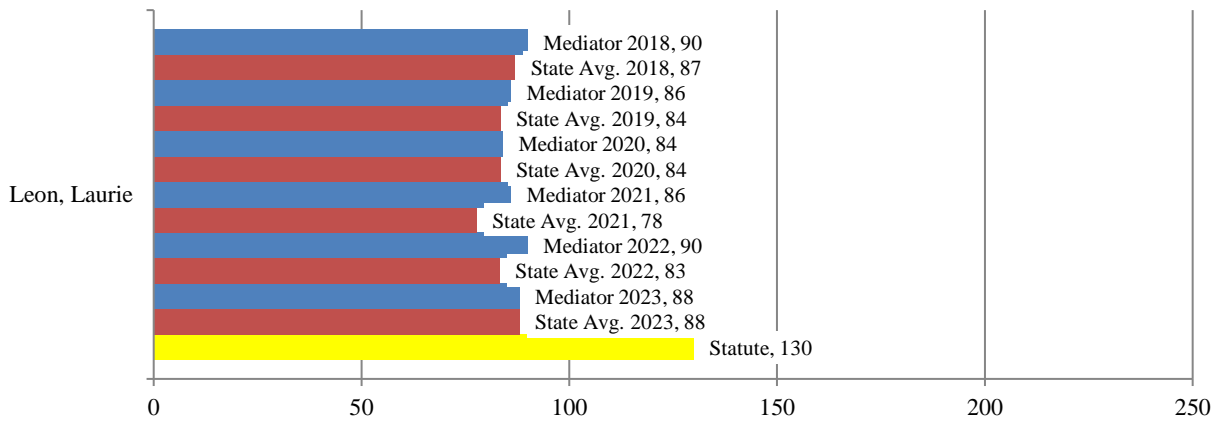




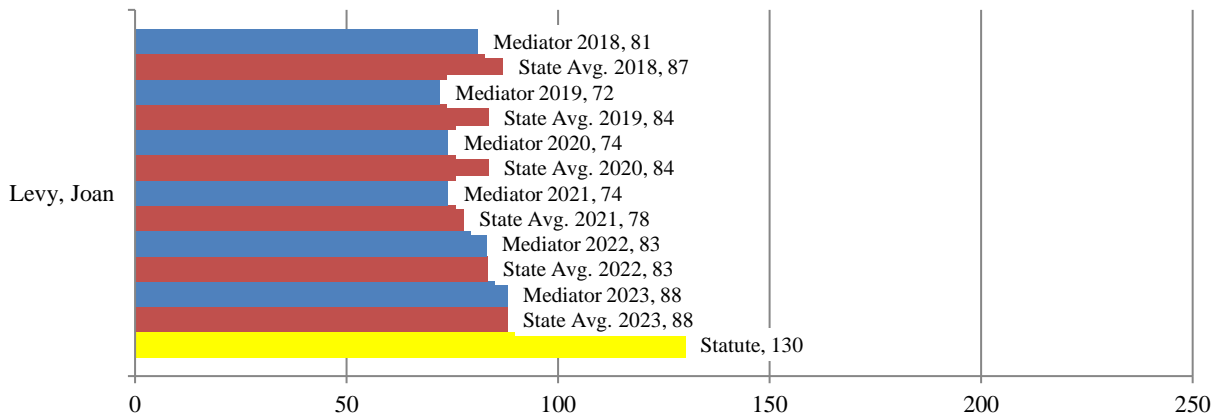
Michael Imber is on the Board of Directors of the Professional Mediation Institute and was a moderator and panelist at the WCI 2023 Conference.



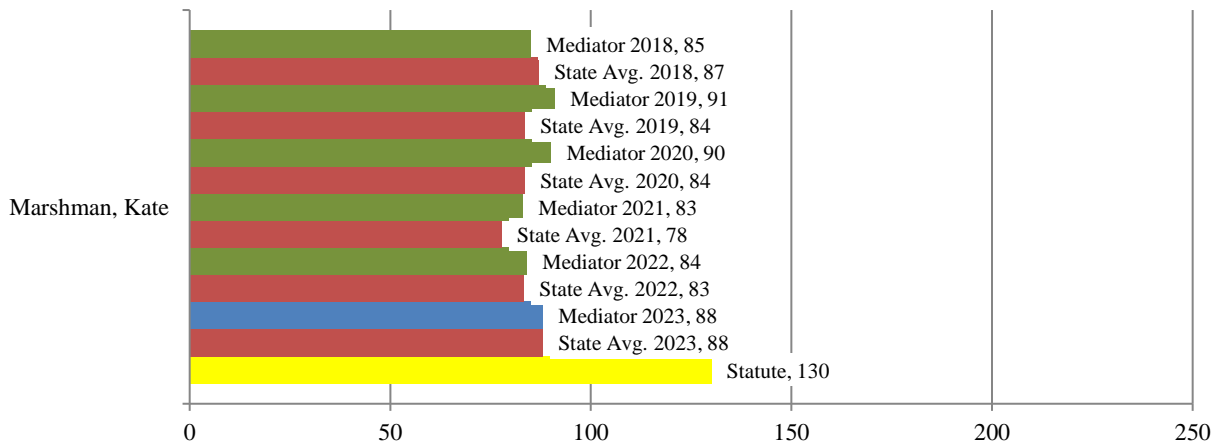




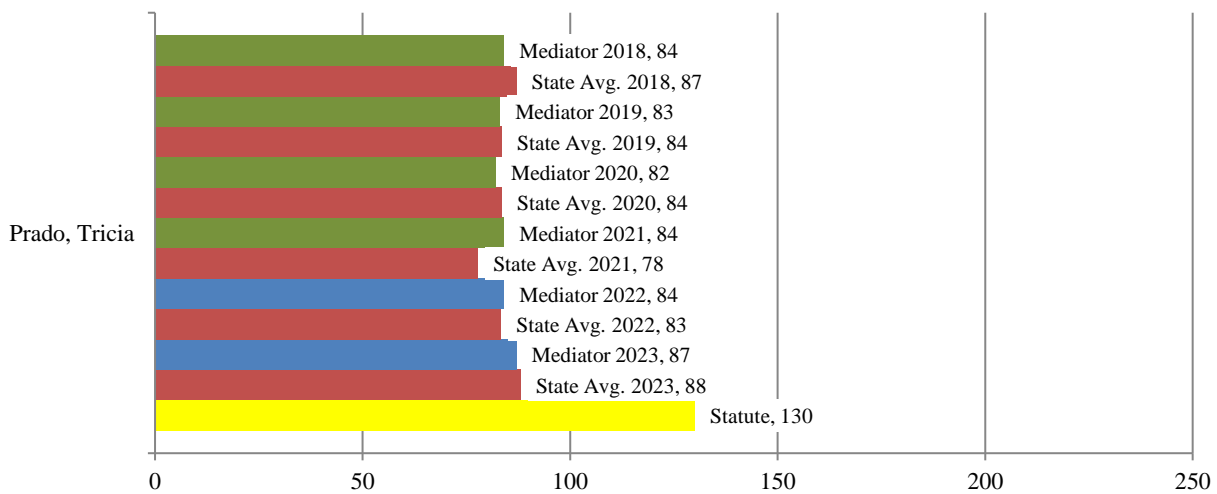
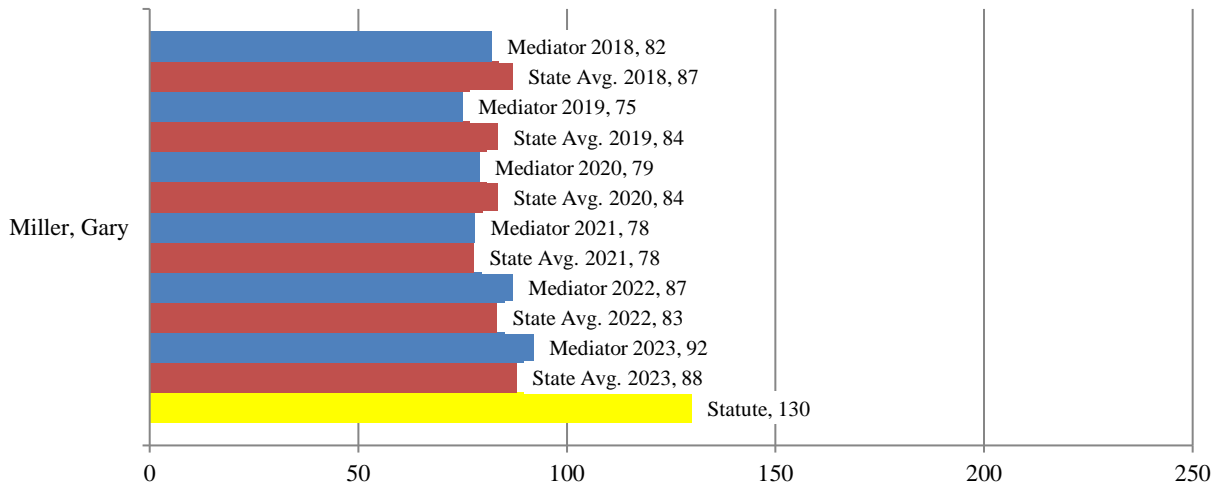
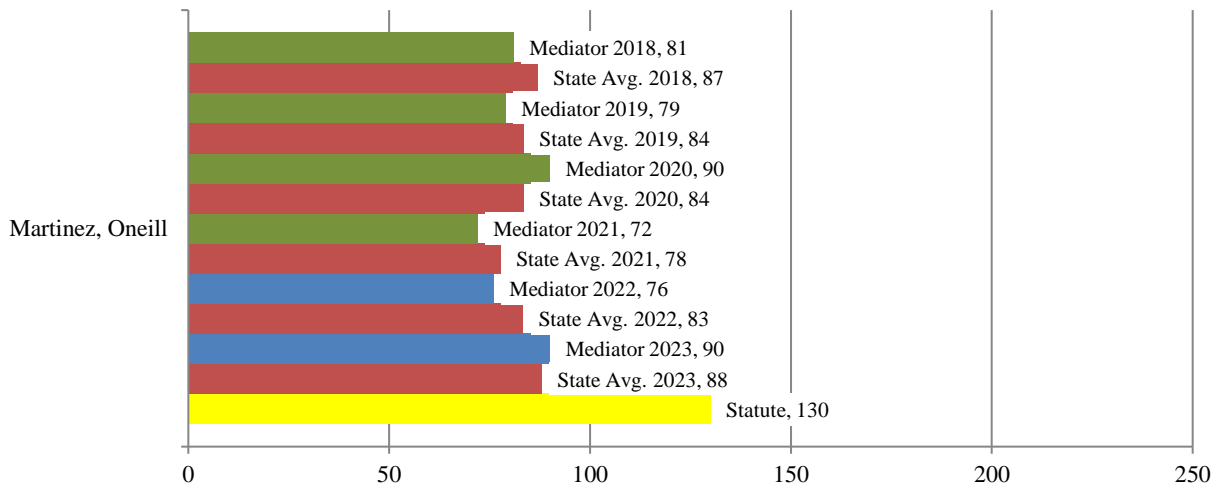
Joan Levy received a Certificate of Appreciation Chief Justice Canady for her service on the Mediation Training Review Board and Mediator Qualifications and Discipline Review Board.

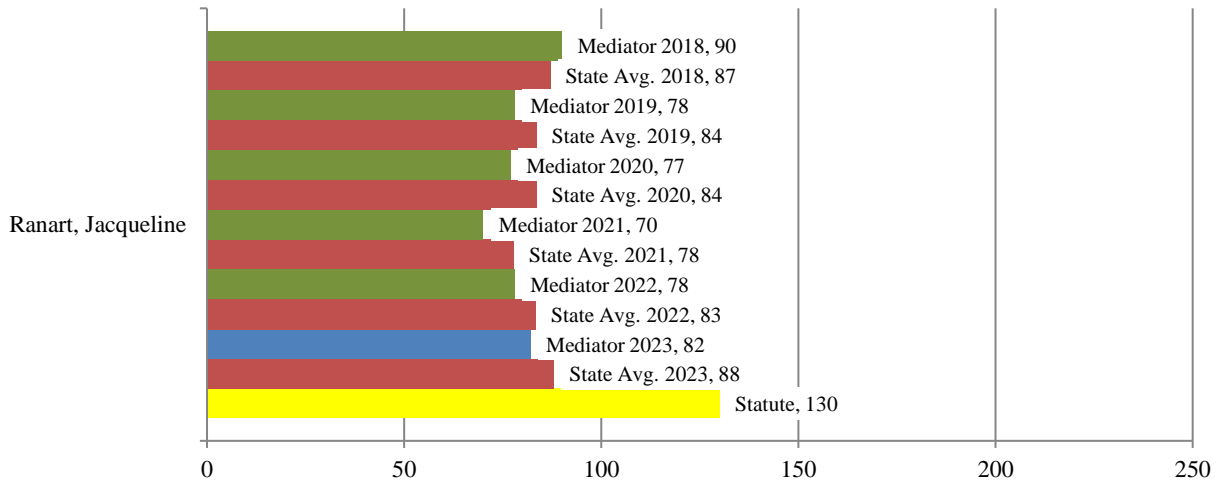


Kate Marshman serves on the Board of Directors of the Professional Mediation Institute. At the WCI 2023 conference she served as a panelist on technology in mediation. In 2023 she developed a workshop on mediator ethics and was selected to present her workshop at the Florida Dispute Resolution Center's 31st Annual Conference. She also presented her mediator ethics workshop to Leon County volunteer county-civil mediators.

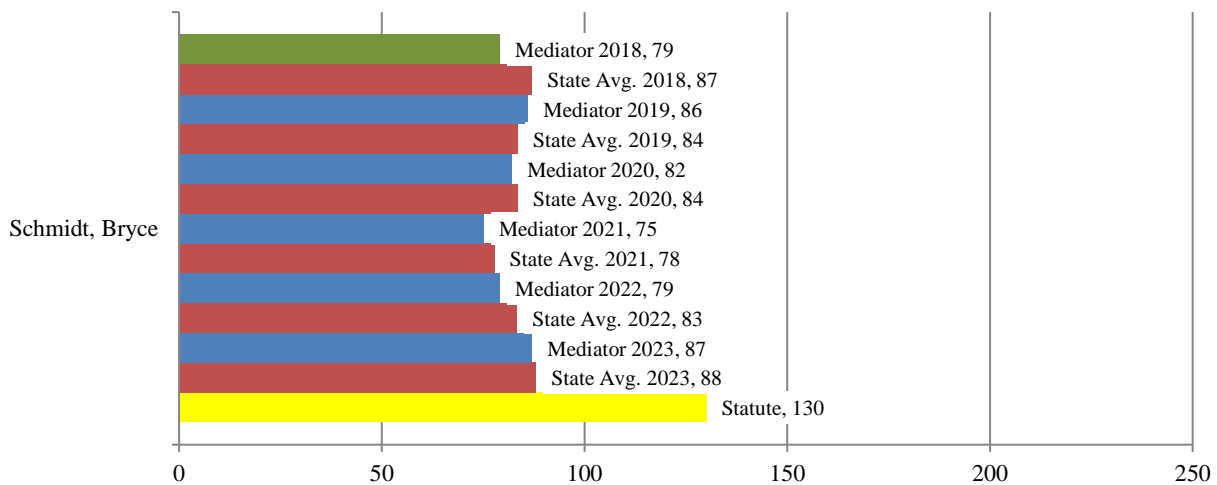
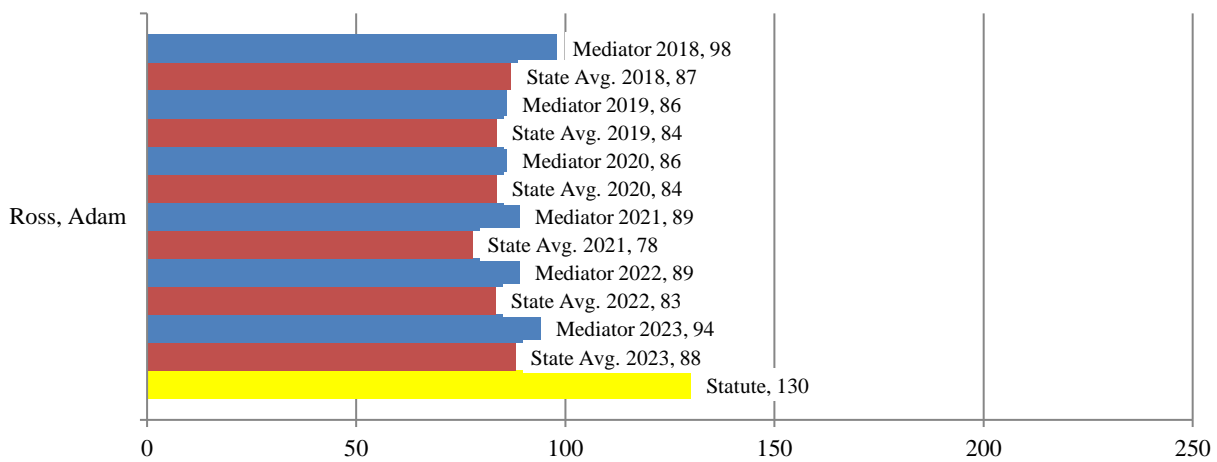




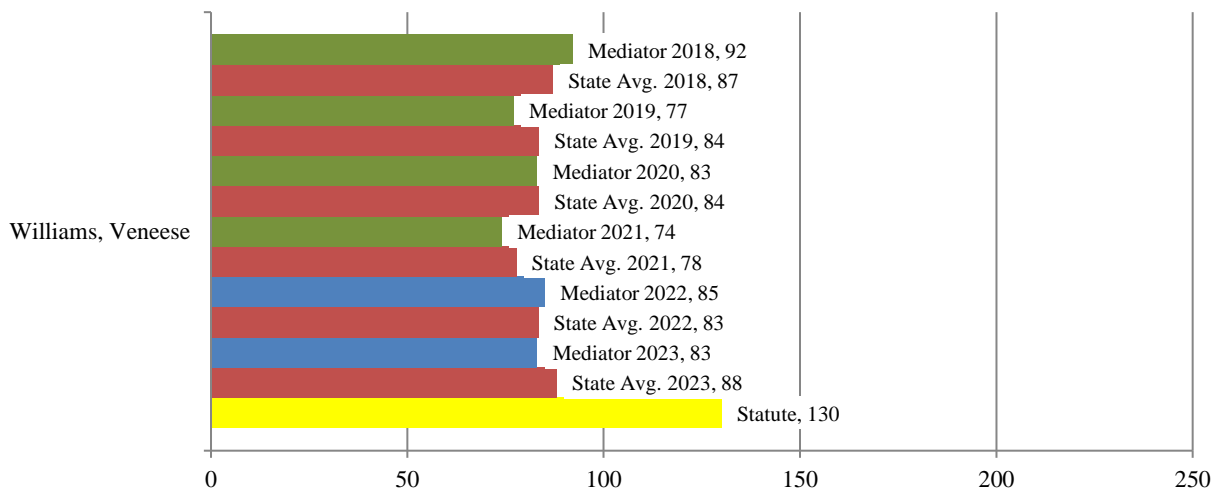
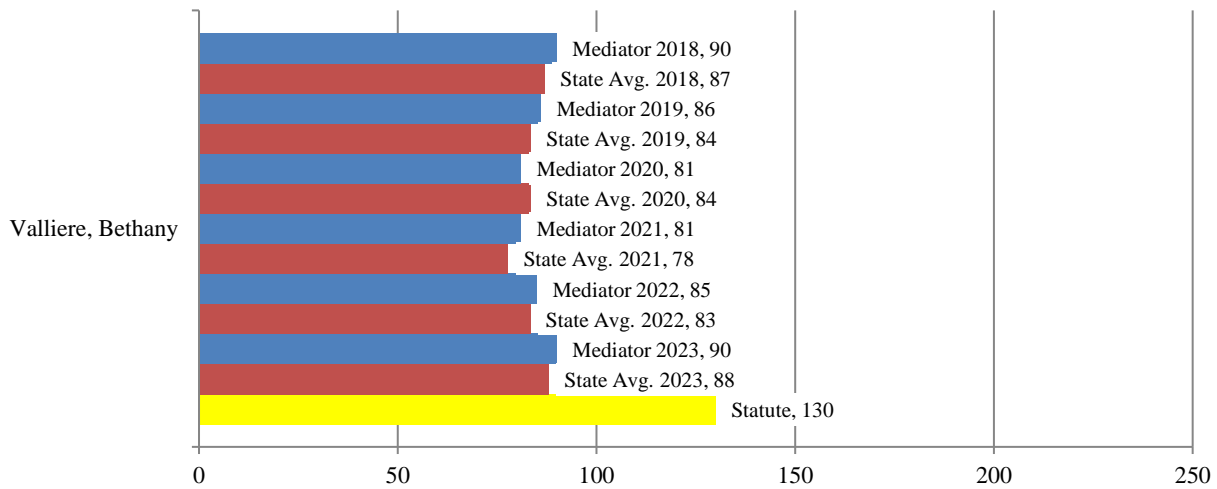
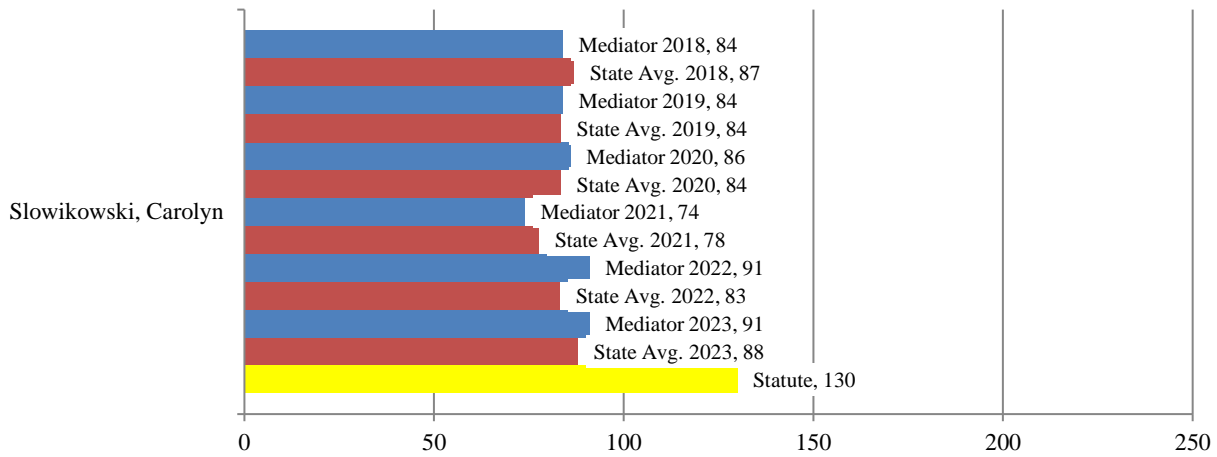




Adam Ross is on the Board of Directors of the Professional Mediation Institute and was a moderator and panelist at the WCI 2023 Conference.



Lynn Slowikowski was a panelist at the WCI 2023 Conference and Professional Mediation Institute. She also participated in the WC Academy mediator video presentation.



## Appendix “12” Judge of Compensation Claims Salary Analysis

There has been a wide disparity in compensation for Florida’s Judges of Compensation Claims. Compensation has not persistently kept pace with inflation. Recruiting and retaining the best and brightest has been challenging in the last decade. The Legislature, in 2022, provided significant remediation. The increase ameliorates the stark difference in OJCC judicial salary, but there remains room for improvement. Despite the significant salary increase, there remain challenges with attracting qualified candidates for judicial vacancies. This was demonstrated most recently in Miami, where only four applicants sought a newly-created judgeship there.

The State of Florida has grown dramatically in the last 30 years. In 1989, the population was 12.64 million,<sup>386</sup> 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 around 407,742 Floridians.<sup>387</sup> 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,<sup>388</sup> though no staff or other resources were provided for this added workload. The OJCC collects an average of about \$11 million in child support annually (about 65% of the overall OJCC budget over the last 22 years).<sup>389</sup> This amounts to \$244.1 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). Over time, those mediator positions were restored. In 2021-22, the state population was just over 22 million,<sup>390</sup> and the OJCC ended the year staffed by 30 judges and 29 state mediators in 14 offices.<sup>391</sup> Each JCC is now responsible for around 736,185 Floridians.<sup>392</sup> Despite increased responsibility, the OJCC today is staffed with far fewer personnel than in 2001. The nature of responsibility remains regarding oversight of litigation, agreements, and settlements of prospective benefits.

Judges of Compensation Claims<sup>393</sup> 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).<sup>394</sup> 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).<sup>395</sup> These provisions set professional salary by reference to other payroll (JCCs tied to Circuit Court and mediators tied to the JCCs). These were called “tie-in” statutes, and both tie-ins were removed from chapter 440 in 1994. Although there is conjecture about the reason for removal, no official justification for removing the tie-ins has been found.

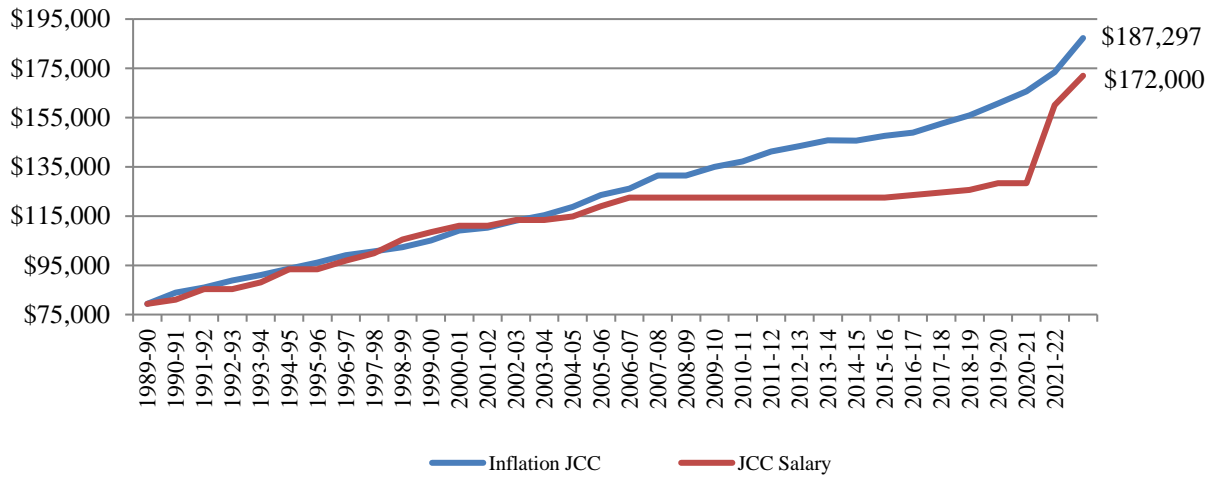
The WCATF is funded 100% by assessments on workers’ compensation premiums and contributions by self-insured employers. No general revenue is contributed to the WCATF. All of the expenses of the OJCC, including all salaries, are paid from the assessments in the WCATF.<sup>396</sup> Any salary increase in the OJCC would have no impact on general revenue expenditures,<sup>397</sup> nor would any savings gleaned through the closure of District offices or reduction in staff.

According to the Florida Supreme Court, Florida’s Circuit Courts have “599 judges,” the County Courts “322 judges,” the District Courts of Appeal “71 judges,” and the Supreme Court “seven justices.” Thus, there are around 999 judges, of which 921 are trial court judges in 20 circuits.<sup>398</sup> The Circuit Judges have an incorporated Conference to represent their interests.<sup>399</sup> The County Judges likewise have a Conference.<sup>400</sup> The Florida appeals court judges<sup>401</sup> have a conference.<sup>402</sup> The Florida Bar perceives the importance of sufficient compensation for these judges. It funds lobby efforts on behalf of those judges,<sup>403</sup> but not on behalf of the Judges of Compensation Claims.<sup>404</sup> The Article V. judges in Florida is made up 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 30 judges (3% of the population of Article V. Judges).

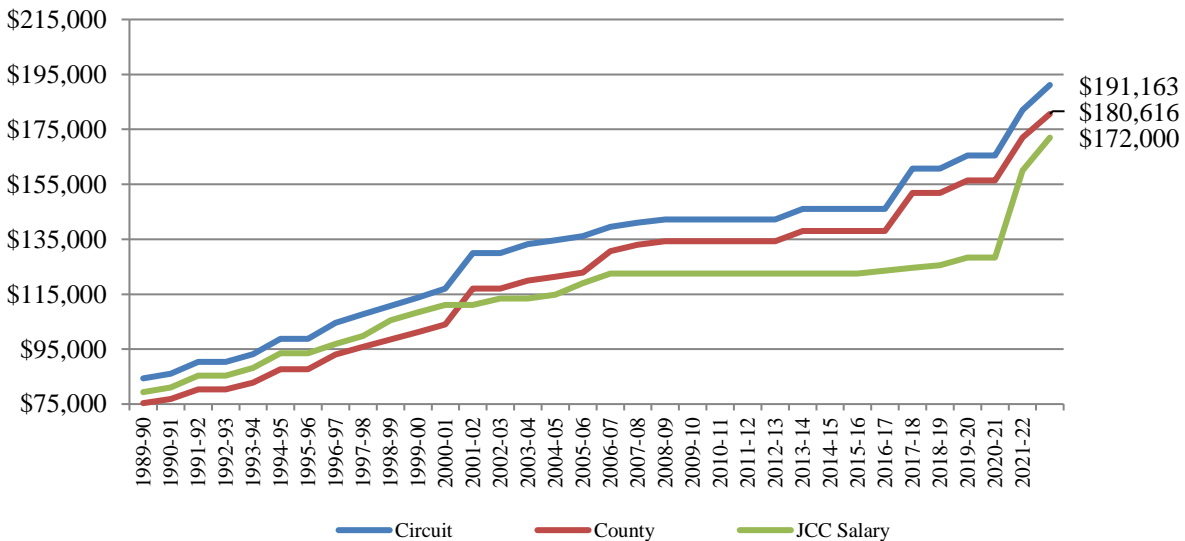
In 1989-90, the salary of a Florida Judge of Compensation Claims was \$79,359. That salary was increased thereafter periodically, even after the “tie in” was removed from chapter 440 in 1994. But that salary has not consistently kept pace with inflation, as shown by the chart below. The difference between the current salary (\$172,000) and the inflation-adjusted 1989-90 figure, as of 2023 (\$191,725.49), remains \$19,725.49, despite the

extraordinary and appropriate efforts in 2022. In the 2021-22, that difference was \$13,419. Inflation is outpacing the efforts.

This illustrates the trend of JCC salary remaining reasonably consistent with inflation until the early part of this century. But the salary has markedly failed to keep pace with inflation<sup>405</sup> since the early 2000s. Until the notable salary increase in 2021-22, the JCC salary, in actual purchasing power, had since diminished markedly compared to the Consumer Price Index (CPI).<sup>406</sup> This illustration of the effects of inflation was perhaps persuasive regarding the 2022 increase. The salary nonetheless lags about \$15,000 below the level that inflation would suggest, adapting the 1989-90 figure. Additionally, the wage inflation in Florida, as shown by the statewide average weekly wage, has been more pervasive than the CPI.



Workers’ compensation benefits in Florida are subject to a maximum allowable amount, commonly referred to as the “maximum compensation rate.”<sup>407</sup> The maximum compensation rate is calculated annually from wages reported by employers across the state and published by the Division of Workers’ Compensation.<sup>408</sup> 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 2023, that rate had increased to \$1,197.00, an increase of \$649.00 per week.<sup>409</sup> 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 2022-23 JCC salary would have been \$262,411. That is \$90,411 more than the 2022-23 JCC salary in actuality (\$172,000). The recent increase was welcome and appropriate, but nonetheless the JCC salary not kept pace.



The effect of eliminating the statutory tie-in for JCCs was profound. That stark difference was significantly amplified by the 2017 10% percent pay raise for Article V. Judges,<sup>410</sup> and has been notably ameliorated by the recent JCC increase. In 1989, Judges of Compensation Claims were paid about 94% of the Circuit Judge salary, and about 105% of the County Judge salary. In 2022-23, the JCCs were paid about 90% of the Circuit Judge salary and about 96% of the County Judge salary. Additionally, the JCC's retirement is less than 50% of the Circuit Judge.

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 in 2019 were viewed as modest.<sup>411</sup> 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?”<sup>412</sup>

The situation regarding judges of compensation claims was as severe or more so. The recent increase has been of great benefit, but because of the retirement disparity, additional effort is urged. All Article V. Florida judges enjoy a retirement benefit based upon more than 3% of salary.<sup>413</sup> But the Judges of Compensation Claims' retirement benefit is based on 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 on 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 around 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). To apply, an attorney must have been practicing law for five years and have significant experience in workers' compensation.<sup>414</sup> Applicants seek this job out of academic interest and a sense of public service. In order to vest in the state retirement pension, 8 years of service is required.<sup>415</sup> An attorney with exceptional experience and an established practice may be unwilling to assume the risks of appointment as a JCC,<sup>416</sup> based on the historical potential for salary stagnation, notable pension calculation differential, and comparison of compensation overall to private practice. The demonstrated tepid applicant interest has been illustrated in other application cycles, as shown by this chart.

City (OJCC District Office)	JNC Meeting Date	Applicants
Miami (additional)	10/23/23	4 <sup>417</sup>
West Palm Beach (additional)	10/04/22 <sup>418</sup>	5 <sup>419</sup>
Orlando (Sojourner)	10/04/22	3 <sup>420</sup>
West Palm Beach	5/22/22	4 <sup>421</sup>
Orlando (additional)	5/22/22	3 (6) <sup>422</sup>
Orlando (Sculco)	5/22/22	3 (6) <sup>423</sup>
Tampa (Spangler/Young)	12/13/2021	Unknown
Reappointments only	2/21/2021	
Tampa (Spangler/Young)	8/17/2020	3 <sup>424</sup>
Panama City	2/10/2020	3 <sup>425</sup>
Tampa (Lorenzen)	2/10/2020	5 <sup>426</sup>
Sarasota	11/15/2019	3 <sup>427</sup>
Sarasota	8/12/2019	2 <sup>428</sup>

Tampa (Spangler)	8/20/2018	3 (6) <sup>429</sup>
Tampa (Lorenzen)	8/20/2018	3 (6) <sup>430</sup>
Ft. Lauderdale	8/20/2018	4 <sup>431</sup>
Tallahassee	2/26/2018	4 <sup>432</sup>
Gainesville	8/7/2017	4 <sup>433</sup>
Tallahassee	8/7/2017	1 <sup>434</sup>
Miami (Castiello)	2/17/2017	2.5 <sup>435</sup>
Miami (Hill)	2/17/2017	2.5 <sup>436</sup>
Lakeland	11/1/2016	4 <sup>437</sup>
West Palm Beach (D'Ambrosio)	11/1/2016	6 <sup>438</sup>
Miami (Castiello)	2/17/2017	1
Miami (Hill)	2/17/2017	2 <sup>439</sup>
Reappointments only	8/22/2016	
West Palm Beach (Punancy)	3/21/2016	9 <sup>440</sup>
Panama City	3/21/2016	4 <sup>441</sup>
Ft. Myers (Sturgis)	9/28/2015	4 <sup>442</sup>
Pt. St. Lucie	9/28/2015	8 <sup>443</sup>
West Palm Beach (Basquill)	9/28/2015	4 <sup>444</sup>
Ft. Myers (Spangler)	2/16/2015	8 <sup>445</sup>
Ft. Lauderdale (Pecko)	2/24/2014	6 <sup>446</sup>
Melbourne	2/24/2014	9 <sup>447</sup>
Miami (Kuker)	8/19/2013	4 <sup>448</sup>
Daytona	2/11/2013	9 <sup>449</sup>
Miami (Harnage)	8/20/2012	4 <sup>450</sup>
Tampa (Murphy)	8/20/2012	5 <sup>451</sup>
Melbourne	1/23/2012	Cancelled <sup>452</sup>
Reappointments only	9/27/2011	
Reappointments only	2/7/2011	
Jacksonville (Rosen)	8/16/2010	8.5 (17) <sup>453</sup>
Jacksonville (Pitts)	8/16/2010	8.5 (17) <sup>454</sup>
Lakeland (Hofstad)	8/16/2010	11 <sup>455</sup>
Reappointments only	4/5/2010	
Gainesville (Thurman)	2/2/2009	13 <sup>456</sup>
Reappointments only	4/20/2009	
Jacksonville (Dane)	8/18/2008	10 <sup>457</sup>
Gainesville (Thurman)	8/18/2008	
Reappointments only	4/25/2008	
Reappointments only	8/14/2007	
Orlando (Thurman)	6/22/2007	14 <sup>458</sup>
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.<sup>459</sup> The data also supports that the applicant pools are recently more consistently small. When vacancies had attracted up to 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 (in 2021-22, the OJCC lost Ms. Carrier (SAR), Ms. Ogden (FTM), and Mr. Stillson (FTL)), 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, a posting in 2021 attracted only two applicants).

These compensation disparities are marked and serious. The nature of this system depends on the service of judges who are timely, dedicated, and efficient. There was no justification for the serious pay gap between Florida Judges of Compensation Claims and the rest of Florida's judges. Though much progress has been made, it is suggested that consistency and predictability would be best accomplished with a statutory tie-in similar to that previously removed in 1994. The OJCC notably faces an experience challenge. In the next 5-10 years, it is possible that 13-15 JCC may elect retirement. The time for recruiting and retaining judges of various ages is here. The very future of this system would be enhanced by the necessary funding to attract and retain the next generation of Judges of Compensation Claims.

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## Annual Report Endnotes

- <sup>1</sup> 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](https://www.dms.myflorida.com/workforce_operations/human_resource_management/for_state_personnel_system_hr_practitioners/state_holidays), last visited October 28, 2022. 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](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0600-0699/0683/Sections/0683.01.html), last visited October 15, 2023.
- <sup>2</sup> The 114 in 2020-21 was the lowest rate on record and was coincident with the mandated telephonic mediation forced by SARS-CoV-2 and resulting COVID-19 lockdowns and other responses. The continuance volume for 2021-22 is the second lowest figure on record, and 2022-23 is the third lowest.
- <sup>3</sup> Lowest volume on record.
- <sup>4</sup> As part of the consolidation process, Glades and Hendry Counties were transferred to District Ft. Myers, alleviating some workload in District West Palm Beach as it absorbed all of former District Port St. Lucie and part of Melbourne. Along with the assumption of those two counties, District Ft. Myers was relieved of Desoto County, which was consolidated into District Sarasota.
- <sup>5</sup> District Gainesville closed effective November 1, 2022, as part of DOAH’s consolidation efforts. Dixie, Gilchrist, and Levy Counties transferred to District Tallahassee during May 2022 in preparation. Alachua, Columbia, and Marion counties transferred to District Jacksonville in 2022-23.
- <sup>6</sup> *Id.*
- <sup>7</sup> Monroe County, essentially the Florida Keys, had been assigned for over a decade to District Port St. Lucie to equalize case assignments. With the closure of District Port St. Lucie, Monroe County was transferred back to District Miami.
- <sup>8</sup> In the 2021-22 consolidation, Brevard County, formerly in District Melbourne, was transferred to District Daytona. Flagler County, formerly in District Daytona, was transferred to District Jacksonville. In 2022-23, Judge Anderson was reassigned to District Orlando; Flagler and Volusia Counties were transferred there.
- <sup>9</sup> At the end of 2021-22, a fourth judge was appointed in District Orlando. However, in 2022-23, with the retirement of Judge Sojourner, the judicial force in Orlando returned to three judges.
- <sup>10</sup> In the consolidation, Judge Grindal and the Sarasota District counties were consolidated into District St. Petersburg.
- <sup>11</sup> In the consolidation, Judge Moneyham was reassigned to District St. Petersburg.
- <sup>12</sup> In the consolidation process, Panama City was closed and the counties redistributed between Pensacola and Tallahassee. Judge Moneyham was reassigned to District St. Petersburg. In 2022-23, Daytona was consolidated into Orlando, Sarasota was consolidated into St. Petersburg, and Panama City was divided into both Pensacola and Tallahassee.
- <sup>13</sup> In the consolidation, Polk County and Judge Arthur were consolidated into District Tampa.
- <sup>14</sup> *Miles v. City of Edgewater*, 190 So. 3d 171 (Fla. 1st DCA 2016).
- <sup>15</sup> § 440.45(5), Fla. Stat. (“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.”).
- <sup>16</sup> The website is [www.fljcc.org](http://www.fljcc.org). Reports are under the “Publications” and then “Reports” tabs.
- <sup>17</sup> 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 PFBs 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.
- <sup>18</sup> *Id.*, *See also* Glossary, Page 61.

19 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 increased 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.”) (See endnote 48).

20 § 440.192, Fla. Stat. (2011); ch. 2011-208.

21 Fla. Admin. Code R. 60Q-6.108(1)(a)(2010); Fla. R. Pro. Work. Comp. Rule 60Q-6.108(1)(a);

22 [https://fljcc.org/JCC/rules/History/CH60Q-6Rules\\_Eff20101031.pdf](https://fljcc.org/JCC/rules/History/CH60Q-6Rules_Eff20101031.pdf), last visited October 28, 2022.

23 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.

24 When a litigation document is filed with this office, and often 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. 60Q-6.108 (2014); Fla.R.Pro.Work.Comp. Rule 60Q-6.108, <https://www.fljcc.org/JCC/rules/#60Q-6.108>, last visited November 2, 2022.

25 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 registered employers have expanded to include Alachua Cty. Bd. of Cty. Commrs.; Atlantic Coast Enterprises LLC; Buena Vista Trading Company; Chipotle Mexican Grill; City Furniture; Inc.; City of Coconut Creek; City of Fort Myers; City of Gulf Breeze; City of Palm Bay; City of Seminole; City of Tallahassee; City of Volusia; Disney Destinations; Disney Vacation Club Mgt.; FedEx; FedEx Express; FedEx Ground Package System; Florida Dept. of Business and Professional Regulation; Florida Fine Wine and Spirits; Florida School Bds. Assoc.; Hope Healthcare; Lee Memorial Health System; Leon Cty. School Bd.; Magical Cruise Co.; Martin Cty. School Dist.; McClure Properties; Memorial Healthcare System; Miami Water Heater; Miami-Dade Cty.; O-I Glass; Inc.; Polk Cty. Bd. of Cty. Commrs.; Publix Super Markets; School Dist. of Indian River Cty.; SeaBd. Warehouse Terminals; St. Johns Cty. School Dist.; Stetson Univ.; The School Bd. of Miami-Dade Cty.; Univ. of North Florida; USAA; Volusia Sheriff’s Office; W.S. Badcock Corporation; Walmart Inc.; Walt Disney Parks & Resorts U. S.; and Walton Cty. Further efforts at expansion are planned for 2023-24.

26 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.”

27 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 constitutional grounds unrelated to “natural law” in 2016. Currently, some perceive the reasonably recent 2019 analysis in *Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133 (Fla. 1<sup>st</sup> 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 7.

28 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).

29 This is defined by section 440.50, Fla. Stat. The Workers’ Compensation Administrative Trust Fund (WCATF) balance is currently \$172,396,856. *See* endnote 397.

30 The OJCC was largely reorganized in 2021-22, discussed more fully in this report, pages 8-9. The Office began the fiscal year with the same 17 District offices that had existed since 1989, and which were mandated by statute, § 440.44, Fla. Stat. Repeal of that statutory mandate afforded DOAH leadership with the flexibility to strip smaller communities of such offices and consolidate operations in larger metropolitan areas. By the end of fiscal 2021-22, three offices had been closed (Lakeland, Melbourne, and Port St. Lucie), and closure of a fourth was imminent (Gainesville). The history of these is discussed on page 9. In 2022-23, public access was similarly eliminated with the consolidation of districts Daytona, Sarasota, and Panama City. Security services for the Tallahassee district office were suspended in 2022-23 to afford DOAH the use of that security guard for patrol of its parking lot and extending the overall coverage for the DOAH headquarters. This effectively consolidated the TLH office into the DOAH operations and discontinuing that independent district.

31 The cost of real estate has been a documented challenge for the OJCC. Despite the closure of various offices around the state, this continues. The OJCC has begun subsidizing broader operations of the Division of Administrative Hearings. Since 2001, there have been occasions on which DOAH ALJs used OJCC hearing facilities on a space available basis. However, in 2022, DOAH began housing ALJs in OJCC district offices as permanent residents.

32 There is challenge in the valuation of the system because various portions of the programming are shared with the DOAH ALJ system and the overall platforms have been jointly developed and tested over 22 years since 2001.

The credit due to the DOAH IT staff is substantial. Their efforts have deployed a comparatively inexpensive electronic process and presence. *See* endnotes 70 and 73 regarding other states’ expenditures. Special credit for the most recent successes in programming and technology leverage is due to the OJCC Central Clerk Office, and Clerk Julie Hunsaker.

33 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. 60Q-6.108(1)(b)(2014); Rule 60Q-6.108, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.108>, last visited October 9, 2021. This is a fundamental element of litigation necessitated by the Due Process Clause and Equal Protection Clause. U.S. Const., amend. V. and amend XIV.

34 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.

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

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

37 § 440.02(32), Florida Statutes (Supp. 1994)("Arising out of" pertains to occupational causation. An accidental injury or death arises out of employment if work performed in the course and scope of employment is the major contributing cause of the injury or death.").

38 *Vigliotti v. K-Mart Corp.*, 680 So. 2d 466, 467 (Fla. 1st DCA 1996).

39 In this regard, perhaps the most efficient process would merely conclude that anyone saying they were injured at work is deemed entitled to benefits, or contrarily that anyone whose employer says he/she was not injured at work would be deemed not entitled. That either is expedient might be accepted, but that either is acceptable is not.

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

41 *Vigliotti v. K-mart Corp.*, 680 So. 2d 466, 467-468 (Fla. 1<sup>st</sup> DCA 1996)("this construction would contravene the legislative intent to ensure the prompt delivery of benefits to the injured worker by an efficient and self-executing system" and "the Legislature presumably did not intend to change prior case law concerning the phrase "in the course and scope of employment").

42 *Id.*, See also note 38.

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

44 Though *en banc*, the decision was not unanimous. Two judges filed dissenting opinions.

45 *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).

46 *Soya v. Health First, Inc.*, 337 So. 3d 388 (Fla. Dist. Ct. App. 2022), *reh'g denied* (Mar. 25, 2022); *Silberberg v. Palm Beach Cnty. Sch. Bd.*, 335 So. 3d 148 (Fla. 1<sup>st</sup> DCA 2022), *reh'g denied* (Mar. 21, 2022); Though there may be clarification in either decision, there are those in the workers' compensation community that do not find full edification from either. Thus, it is likely further cases on the "arising out of" will continue to be litigated. In 2023, the court decided *Normandy Ins. Co. v. Bouayad*, \_\_\_ So. 3d \_\_; 48 Fla. L. Weekly D1637, No. 1D21-1717 (Fla. 1<sup>st</sup> DCA 2023), which certified a question of great public importance to the Florida Supreme Court. It is as yet unknown whether the Court will review the case.

47 § 440.11(1), Fla. Stat. ("The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability").

48 § 440.44(5), Fla. Stat., ("OFFICE. - The department, the agency, and the Deputy Chief Judge shall maintain and keep open during reasonable business hours an office, which shall be provided in the Capitol or some other suitable building in the City of Tallahassee, for the transaction of business under this chapter, at which office the official records and papers shall be kept. The office shall be furnished and equipped. The department, the agency, any judge of compensation claims, or the Deputy Chief Judge may hold sessions and conduct hearings at any place within the state. 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.").

49 This is defined as "with no appointed date for resumption." The Florida Constitution uses this term to denote final adjournment of the legislative session. See FLA. CONST. art. III, § 3(f), 7, 8(a), and 9.

50 In 2021-22, District Lakeland was closed and consolidated into Sarasota and Tampa. District Melbourne was closed and consolidated into Districts Daytona and West Palm Beach. District Port St. Lucie was closed and consolidated into District West Palm Beach. District Gainesville was designated for closure and consolidation into District Jacksonville. In 2022-23, District Gainesville was transitioned as planned. District Daytona was consolidated into District Orlando. District Panama City was closed and the case load divided between Districts Pensacola and Tallahassee. District Sarasota was consolidated into District St. Petersburg.

51 The populations in the following graph are from *Florida Population 1840-2000 by County*, College of Education, University of South Florida, [https://fcit.usf.edu/florida/docs/c/census/Florida\\_counties.htm](https://fcit.usf.edu/florida/docs/c/census/Florida_counties.htm), last visited October 31, 2023; and *Florida Population: Census Summary 2020*, University of Florida, Bureau of Economic and Business Research, [https://www.bebr.ufl.edu/wp-content/uploads/2022/01/census\\_summary\\_2020.pdf](https://www.bebr.ufl.edu/wp-content/uploads/2022/01/census_summary_2020.pdf), last visited October 31, 2023.

52 *Florida Population 1900-2021*, Macrotrends, <https://www.macrotrends.net/states/florida/population>, last visited October 31, 2023.

53 The Article V. Courts in Florida has noted this challenge and has received additional funding to adjust salaries to compete for talent. In 2014-15 “a 3.5 percent adjustment” was sought and deemed “critical” to address “the impact (of) the inflation rate. 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 31, 2023. The disparity between OJCC payroll and court payroll has been mentioned in previous annual reports of this Office. It is axiomatic that inflation is detrimentally affecting all employees of this agency, impairing recruitment, and frustrating retention.

54 See pages 6-7, 203 regarding general revenue. See also endnote 152.

55 Salaries = \$14,507,363; Rent = \$2,085,188; Security = \$664,044; total = \$17,256,595;  $\$17,256,595/\$17,926,835 = 96.26\%$ . The figures for all three categories decreased in 2021-22 and 2022-23. Despite those reductions, these three categories are persistently the clear majority of OJCC operating expense.

56 Salaries = \$13,394,264; Rent = \$2,316,367; Security = \$763,110; total = \$16,398,741;  $\$16,398,741/\$17,376,901 = 94.37\%$ . The figures for all three categories decreased in 2021-22 as staff was reduced to the two-per-judge paradigm in all districts, and offices were closed late in the fiscal year eliminating both rent and security expenses.

57 § 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.”).

58 See endnote 15.

59 See 2005-06 OJCC Annual Report <https://www.fljcc.org/JCC/publications/reports/2006AnnualReportAmended.pdf>, last visited November 9, 2022.

60 See 2006-07 OJCC Annual Report <https://www.fljcc.org/JCC/publications/reports/2007AnnualReport.pdf>, last visited November 9, 2022.

61 The OJCC Operations Manual was revised in 2013-14, 2017-18, and 2020-21.

62 This report includes corrections, see endnote 71, 232, 253, and 259 as examples; previous reports have similarly included corrections.

63 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 31, 2023. 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.”

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

65 E-filing in the Circuit Courts was legislatively supported in 2008 and standards adopted in 2009. That “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 31, 2023. 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 31, 2023.

66 See endnote 20. § 440.192, Fla. Stat. (2011); ch. 2011-208.

67 “Service,” the providing of copies of filed documents to others involved in the litigation. See endnote 23.

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 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 registered employers have expanded to include Alachua Cty. Bd. of Cty. Comms.; Atlantic Coast Enterprises LLC; Buena Vista Trading Company; Chipotle Mexican Grill; City Furniture, Inc.; City of Coconut Creek; City of Fort Myers; City of Gulf Breeze; City of Palm Bay; City of Seminole; City of Tallahassee; Cty. of Volusia; Disney Destinations; Disney Vacation Club Mgt.; FedEx; FedEx Express; FedEx Ground Package System; Florida Dept. of Business and Professional Regulation; Florida Fine Wine and Spirits; Florida School Bds. Assoc.; Hope Healthcare; Lee Memorial Health System; Leon Cty. School Bd.; Magical Cruise Co.; Martin Cty. School Dist.; McClure Properties; Memorial Healthcare System; Miami Water Heater; Miami-Dade Cty.; O-I Glass, Inc.; Polk Cty. Bd. of Cty. Comms.; Publix Super Markets; School Dist. of Indian River Cty.; SeaBd. Warehouse Terminals; St. Johns Cty. School Dist.; Stetson Univ.; The School Bd. of Miami-Dade Cty.; Univ. of North Florida; USAA; Volusia Sheriff’s Office; W.S. Badcock Corporation; Walmart Inc.; Walt Disney Parks & Resorts U. S.; and Walton Cty. Further efforts at expansion are planned for 2023-24.

70 See 2006-07 OJCC ANNUAL REPORT <https://www.fljcc.org/JCC/publications/reports/2007AnnualReport.pdf>, last visited September 18, 2023. 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 must open envelopes, remove and straighten documents, and then file the paper documents for future use.

71 This figure through 2021-22 was erroneously reported in the 2021-22 OJCC ANNUAL REPORT as \$6,861,353 through a clerical  
error. The correct figure through 2021-22 was \$5,998,285.44.

72 For example, if a pleading is filed, the filer saves postage on sending to the OJCC. That savings is captured in the eFiling  
calculation. But, that document must also be mailed to opposing counsel (\$.60). If it is a PFB, then it must be served by certified  
mail (\$4.00 in addition to the first-class mail cost). Thus, in 2022-23, there were approximately 573,394 filings. At least \$.60 was  
saved through e-service on each of these (\$335,036). Each of the PFBs (76,633) would have to be served by certified mail on the  
carrier (\$4.00 x 76,633 = \$306,532). The OJCC uploaded 538,461 documents in 2022-23 that would have been mailed to at least  
two parties each (\$1.20), another \$646,153. Additionally, it is conservatively estimated that at least half of the non-PFB filings  
(496,761 x .60 = \$298,056) 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.). Without consideration of the benefits in child support reporting and investigations, using the minimum U.S. postage, these  
figures total \$1,594,778. An estimated million-dollar annual savings from eService is conservative and demonstrable.

73 According to Workcompcentral.com, these states have spent far more money developing their case management and litigation  
platforms. Notably, their systems are for all workers' compensation claims in their respective states, while the OJCC system is  
for litigated claims only. Pennsylvania is reported to have spent \$45.1 million initially, and contracted for three years of support  
and maintenance at \$5.1 million per year. California has reportedly spent \$61 million to deploy their case management and  
electronic filing platform. The OJCC has deployed its eFiling, eService, and case management platforms using existing budget  
funds. The total expenditures to date are less than \$5 million.  
<https://ww3.workcompcentral.com/news/story/id/a0a2e2759c516074e05f1d022d13c444m>.

74 § 440.45(4), Fla. Stat.

75 In this same regard, there is no clear definition of many of the terms that are drawn upon for statistical analysis. See endnote 17  
regarding the definitions for "trial" and thus the foundation for calculations. In the absence of specificity, the OJCC has published  
definitions in these reports, and striven for consistency.

76 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.

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

78 This is discussed more fully in the report section on attorney fees by accident years (see page 49).

79 This means "new" since the move of the OJCC to DOAH. 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 PFB were filed post 2001 with the OJCC.  
See endnote 277.

80 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 outside of the PFB process, though they are not as  
common as other motions.

81 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 OJCC, 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 17).

82 The appropriate method to seek determination of attorney fee entitlement or amount is usually by verified motion. Fla. Admin.  
Code R. 60Q-6.124(2014); Rule 60Q-6.124, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.124>, last visited  
October 31, 2023. 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 JCC's workload comprises these significant motions that require  
evidentiary hearings. See endnotes 80 and 81.

83 The 2022-23 Settlement Report and Mediation Statistics Report is incorporated in this report and is available at  
<https://www.fljcc.org/JCC/publications/reports/2023SR-MSR.pdf>, last visited October 31, 2023.

84 Because of that small data set, the OJCC has long advocated the abolishment of the special and separate "denied claim"  
settlement report. See 2022-23 SETTLEMENT REPORT AND MEDIATION STATISTICS REPORT of the Office of the Judges of  
Compensation Claims, page 7. "It is suggested that an in-depth study of these settlements in a separate report each September  
serves a minimal purpose and that this analysis could be easily merged with the FLORIDA OJCC ANNUAL REPORT each  
November." <https://www.fljcc.org/JCC/publications/reports/2023SR-MSR.pdf>, last visited October 31, 2023.

85 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. 1<sup>st</sup> DCA 1997).

86 In October 2008, the Florida Supreme Court decided *Murray v. Mariner Health*, 994 So. 2d 1051 (Fla. 2008). The Supreme  
Court's interpretation of § 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.

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

88 See endnote 14.

89 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://fjojcc.blogspot.com/2017/09/farewell-irma-i-never-liked-you.html>, last visited October 4, 2020; and, *Tomorrow, Tomorrow, I Love Ya, Tomorrow*, <https://fjojcc.blogspot.com/2017/09/a-day-late-and.html>, last visited October 4, 2020.

90 Whether the hurricane season played any role in the filing of PFBs 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.

91 *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 4, 2022. See also Executive Order Number 20-91, [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-91-compressed.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf), last visited October 4, 2022.

92 *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 4, 2022.

93 *Reopening has begun. Which Florida communities still have lockdown orders in place?* FLA. POL, 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 31, 2023.

94 *The Risks with New Employees and What to Do About Them?*, Simplified Safety, <https://simplifiedsafety.com/blog/risks-of-being-new-employee/>, last visited September 19, 2023. (“new workers are five times more likely to be injured on the job than their more experienced counterparts”).

95 As noted in this report, a worker could file multiple petitions with a single claim in each or could file one petition with multiple issues. It is impractical to guess whether any change in practices is alone impacting the petition filing volume.

96 *2023 State of the Line*, NCCI, May 9, 2023, [https://www.ncci.com/SecureDocuments/SOLGuide\\_2023.html](https://www.ncci.com/SecureDocuments/SOLGuide_2023.html), last visited September 19, 2023 (“Lost-time claim frequency returned to its 20-year trend, declining 4% in the past year.”).

97 See <https://www.fljcc.org/JCC/publications/reports/2017OJCCAnnRpt/OJCC%202017%20Annual%20Report/>, last visited October 31, 2023.

98 See endnotes 87 and 14.

99 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.

100 Press Release from Florida Office of Insurance Regulation (October 26, 2009): <https://www.flair.com/PressReleases/viewmediarelease.aspx?id=1777>, last visited October 31, 2023.

101 Press Release from Florida Office of Insurance Regulation (October 15, 2010): <http://www.flair.com/PressReleases/viewmediarelease.aspx?id=1839>, last visited October 31, 2023.

102 Ciniceros, Business Insurance, *Florida Insurance Commissioner Approves 8.9% Workers Compensation Rate Hike*, <http://www.businessinsurance.com/article/20111024/NEWS08/111029952>, October 24, 2011, last visited October 31, 2023.

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

<http://www.flair.com/PressReleases/viewmediarelease.aspx?id=1984>, last visited October 31, 2023.

104 Press Release from Florida Office of Insurance Regulation (October 23, 2013):

<http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2033>, last visited October 31, 2023.

105 Press Release from Florida Office of Insurance Regulation (August 22, 2014):

<http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2074>, last visited October 31, 2023.

106 Press Release from Florida Office of Insurance Regulation (November 3, 2015):

<http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2125>, last visited October 31, 2023.

107 Press Release from Florida Office of Insurance Regulation (October 6, 2016):

<http://www.flair.com/PressReleases/viewmediarelease.aspx?id=2179>, last visited October 31, 2023.

108 Press Release from Florida Office of Insurance Regulation (November 9, 2017):

<https://www.flair.com/PressReleases/viewmediarelease.aspx?id=2221>, last visited October 31, 2023.

109 Press Release from Florida Office of Insurance Regulation (August 28, 2018)(proposed a 13.4% decrease):

<https://www.flair.com/PressReleases/viewmediarelease.aspx?id=2233>, last visited October 5, 2022; 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.flair.com/PressReleases/viewmediarelease.aspx?id=2244>, last visited October 31, 2023.

110 Press Release from Florida Office of Insurance Regulation, (October 24, 2019):

<https://www.flair.com/PressReleases/viewmediarelease.aspx?id=2274>, last visited October 5, 2021. Order of October 24, 2019: <https://www.flair.com/siteDocuments/NCCI252466-19OORF.pdf>, last visited October 31, 2023.

This was originally proposed as a 5.7% decrease. Press Release from Florida Office of Insurance Regulation, (September 1, 2020): <https://www.flair.com/PressReleases/viewmediarelease.aspx?id=2288>, last visited October 31, 2023. An amended filing in early November increased the reduction.

This was the proposal rate filing as of August 30, 2021; <https://flair.com/newsroom/archives/item-details/2021/08/30/oir-receives-annual-workers-compensation-rate-filing-august-2021>, last visited October 31, 2023. When the *2020-21 OJCC Annual Report* was finalized, the decision on this rate remained pending following a hearing held October 14, 2021. The Approval occurred November 12, 2021; <https://www.flair.com/newsroom/archives/item-details/2021/11/12/oir-approves-a-4.9-decrease-in-workers-compensation-insurance-rates-for-2022>, last visited October 31, 2023.

On November 7, 2022, the Office of Insurance Regulation approved an 8.4% decrease in premiums for 2023; <https://flair.com/newsroom/archives/item-details/2022/11/07/oir-approves-an-8.4-decrease-in-workers-compensation-insurance-rates-for-2023>, last visited October 31, 2023. There was a hearing held September 23, 2022, and a decision on the rate is expected at any time.

As this report was prepared, the National Council on Compensation Insurance (NCCI) proposed a 15.1% decrease for 2024. No press release was located on the Florida Office of Insurance Regulation website. Summary of the Proposed Florida Workers Compensation Rate Filing Effective January 1, 2024,

[https://www.ncci.com/Articles/Documents/II\\_StateAdvisoryForumState\\_FL\\_2023.pdf](https://www.ncci.com/Articles/Documents/II_StateAdvisoryForumState_FL_2023.pdf), last visited November 1, 2023.

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 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 277.

Coincident with court decisions regarding attorney fees in 2016.

*See* <https://www.fljcc.org/JCC/publications/reports/2015AnnualReport/files/assets/basic-html/page-1.html>, last visited September 19, 2023.

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 October 7, 2022.

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 31, 2023.

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/magazine/us/6051930/june-7th-2021-vol-197-no-21-u-s/>, last visited October 31, 2023. *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 October 31, 2023.

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 October 31, 2023. 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 October 31, 2023.

Kimberly Amadeo, *US Inflation Rate by Year From 1929 to 2023*, The Balance, March 31, 2023,

<https://www.thebalancemoney.com/u-s-inflation-rate-history-by-year-and-forecast-3306093>, last visited September 19, 2023.

Helen Dennis, *What to know about retirement and returning to the workforce*, Los Angeles Daily News, August 27, 2023,

<https://www.dailynews.com/2023/08/27/what-to-know-about-retirement-and-returning-to-the-workforce/>, last visited September 19, 2023.

127 Khurram Akhtar, How AI And Automation Are Transforming The World, Forbes, July 10, 2023,  
<https://www.forbes.com/sites/forbesbusinesscouncil/2023/07/10/how-ai-and-automation-are-transforming-the-world/?sh=2b227f494006>, last visited September 19, 2023.

128 See pages 14-18.

129 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.

130 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.

131 See endnote 86.

132 See endnote 90.

133 See endnote 87.

134 See endnote 14.

135 Bill Donnell, *2023 Marks Critical Milestone for Workers’ Compensation*; January 24, 2023,  
<https://www.ncci.com/Articles/Pages/Insights-2023-Marks-Critical-Milestone-WorkersComp.aspx>, last visited October 31, 2023.

136 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.

137 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 admitted, explained, and the best possible answer is provided.

138 It is notable that some portion of the “new cases” filed each year are not filed because there is a PFB issue, or need for filing a PFB. 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, or Motion for Approval of Attorney Fees. There is also anecdotal allegation that some petitions are filed for no appropriate purpose but merely to force a mandatory mediation in hopes of facilitating a case settlement.

139 See endnotes 174, 175, 306, 307, 309, 311, 313.

140 *McBride v. Pratt & Whitney*, 909 So. 2d 386, 386 (Fla. 1<sup>st</sup> DCA 2005).

141 The PFB 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 PFB by the OJCC does not obviate that fee or cost issue. *Longley v. Miami-Dade Cnty. Sch. Bd.*, 82 So. 3d 1098 (Fla. 1<sup>st</sup> DCA 2012).

142 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 (June 30, 2006), 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.

143 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.

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

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

146 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.

147 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.



148 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).  
149 Fla. Admin. Code R. 60Q-6.124(2014); Rule 60Q-6.124, Fla.R.Pro.Work.Comp.,  
<https://www.fljcc.org/JCC/rules/#60Q-6.124>, last visited October 9, 2022.  
150 *Marshall v. City of Miami*, OJCC Case No. 02-022055ERA;  
[https://fljcc.org/jccdocs20/MIA/Dade/2002/022055/02022055\\_229\\_09242018\\_01041581\\_i.pdf](https://fljcc.org/jccdocs20/MIA/Dade/2002/022055/02022055_229_09242018_01041581_i.pdf), last visited October 9, 2022.  
151 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.  
152 The \$236.00 cost of litigation per petition figure for 2022-23 is a valid comparison to 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 revenue  
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.  
153 This example uses the county charges published at <https://www.hillsclerk.com/about-us/fees-and-fines>, last visited September 25,  
2023.  
154 *Id.*  
155 Calculated with <https://www.usinflationcalculator.com/>, last visited September 26, 2023. *See also* endnotes 242 and 245.  
156 *See* pages 10-11.  
157 *See* endnote 145.  
158 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 due process. Anything less than 30 days might nonetheless be generally  
impractical with the other calendar commitments of claims professionals and attorneys. Thus, the 70-day period after petition  
filing is generally unusable, leaving a 60-day "window" (130 days – 70 days) in which to mediate the petition. With the  
deconstruction of the OJCC District Office network in 2021-22, the 29 state mediators transitioned largely to virtual mediation on  
an Internet video platform (Zoom). The calendars were all synchronized to facilitate rescheduling and support. Each mediator is  
scheduled for a maximum of seven mediations daily. There are 30 state mediators, scheduled for seven mediations per day, or  
210 mediations daily system-wide. There are ten state holidays, and each mediator can be expected to take at least ten days'  
vacation annually, leaving a probable maximum of 48 weeks worked, or about 50,400 potential mediations. A significant volume  
of petitions is dismissed or resolved prior to mediation. Some portion of petitions is voluntarily mediated privately. Thus, the  
system is capable of covering the mediation volume currently, at 76,633 PFB annually. However, because many of the calendar  
vacancies occur on insufficient notice, a great many vacancies cannot be used. The 2022-23 Settlement Report and Mediation  
Report notes that the actual volume of mediations held this fiscal year was 19,917, or 664 per mediator (19,917/30). Dividing that  
figure by 48 weeks yields 13.8, and by 5 days, 2.8 mediations per day actually held (by overall average, particular mediators may  
be above or below that mean).  
159 § 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."  
160 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 by mail 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. Postage is generally eliminated, but remains possible in some cases involving  
unrepresented or unregistered parties. This process was designed and implemented by the OJCC with no special funding or  
increase in staff.  
161 The parties can utilize the OJCC electronic filing system for making requests for information regarding child support.  
162 The OJCC undertook this task, streamlined the process, and has delivered this service to Floridians for nine 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.  
163 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 was  
waived in fiscal 2020-21, two in 2021-22) are waived each year by order of the Deputy Chief Judge of Compensation Claims. §  
440.25(2), Fla. Stat.

164 2009-2010 Settlement Report and Mediation Statistics Report of the Office of Judges of Compensation Claims, <https://www.fljcc.org/JCC/publications/reports/2010SR-MSR.pdf>, last visited September 25, 2023.

165 Notices and Publications, <https://www.fljcc.org/JCC/publications/>, last visited September 25, 2023.

166 The Deputy Chief Judge mandated a 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 60Q-6.110(5).

167 In budget reductions, the third mediator position was removed from District WPB in 2012, *see supra* endnote 19. 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. In 2023, the OJCC filled a mediator position that had previously been assigned to district PMC, and had been vacant since Mr. Gross transferred to TLH. 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.

168 The salary and benefit costs both increased, while volume decreased minimally. Therefore, the average cost increased.

169 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 29<sup>th</sup> state mediator); divided by 17,056 mediations in 2018-19 yields \$186.83. In 2019-20 the 30<sup>th</sup> 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 mediations in 2020-21 yields \$175.69. The total cost in 2021-22 was \$3,641,378; divided by the 20,109 mediations in 2021-22 yields \$181.08. The total cost in 2022-23 is \$3,907,034; divided by 19,917 mediations in 2022-23 yields \$196.17. These figures do not include the costs of staff support or facilities or equipment. Therefore, this is a conservative cost figure.

170 Mediator staff was reduced from 32 to 28 in 2012-13. With the previous additions back of two mediator positions and the restoration of the former Panama City position, *see* endnote 19, the OJCC is currently staffed by 30 state mediators.

171 This figure, \$196.17, represents a cost per mediation held. The overall cost of litigation, discussed at pages 25-28, 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.

172 An attorney suggested that the value of state mediation would be aptly expressed by multiplying the 19,917 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 \$9,958,500. Accepting that math, it is important to also consider whether all of those mediations would justify an expenditure of \$500, in a classic cost-benefit analysis. It is probable that some volume of mediations conducted by the OJCC is for benefits whose monetary value might not justify that expense in a free market exchange. It is also possible that in the absence of a mandatory state mediation process, which is delivered to the parties at no per-use cost, some issues might instead resolve before trial without mediation.

173 *See* endnote 153.

174 § 440.25(1), Fla. Stat.: “A mediation, whether private or public, shall be held within 130 days after the filing of the petition.”

175 § 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.”

176 *See* endnote 312.

177 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.

178 *See* endnote 312.

179 *See supra* note 27. 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.”)

180 Art. V. § 15, Fla. Const.

181 § 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.”

182 *Id.*

183 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 Court requirement was eliminated in 2003. *See* <http://onlinedocketssc.flcourts.org/DocketResults/CaseDocket?Searchtype=Case+Number&CaseYear=2005&CaseNumber=998>, last visited September 25, 2022. 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.

184 How to Become a Florida Supreme Court Certified Mediator, Revised June 2019,  
185 <http://www.flcourts.org/core/fileparse.php/549/urlt/HowtoBecomeaMediatorGuide.pdf>, last visited October 11, 2022.  
186 § 440.25(3)(a), Fla. Stat.  
187 Rules for Certified and Court-Appointed Mediators, <http://www.flcourts.org/core/fileparse.php/422/urlt/Mediator-Rules-Tab-3.pdf>, last visited October 11, 2022.  
188 MEAC Opinion 2004-002, <https://www.flcourts.org/core/fileparse.php/283/urlt/MEAC-Opinion-2004-002.pdf>, last visited  
189 October 11, 2022.  
190 *Id.*  
191 There are 30 full-time OJCC mediators. At best, each might schedule appointments every thirty minutes, with the anticipation  
192 that cancellations and prior resolutions would create sufficient additional time for the mediations that proceed. Without a  
193 programmed lunch period, that would effectively create 18 potential appointments daily (8:00, 8:30, 9:00, 9:30, 10:00, 10:30,  
194 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  
195 mediators). Thus, as petition volumes increase, the availability of state mediation may well decrease. There are approximately  
196 229 available work days for mediation (fifty-two weeks per year, including two weekend days, thus times five work days is 260  
197 days). There are nine state holidays, according to the Department of Management Services,  
198 [http://www.dms.myflorida.com/workforce\\_operations/human\\_resource\\_management/for\\_state\\_personnel\\_system\\_hr\\_practitioners/state\\_holidays](http://www.dms.myflorida.com/workforce_operations/human_resource_management/for_state_personnel_system_hr_practitioners/state_holidays), last visited September 25, 2023. Each mediator earns 176 hours of leave annually (divided by 8 hours is 22  
199 days). If a mediator took no time for illness or injury and exhausted the earned 22 days, this leaves 229 days (260-9-22). Thus,  
200 the projected maximum volume of petitions that could be scheduled for mediation is approximately 123,660 (540 x 229). While  
201 the PFB volumes are not even approaching this volume, the trend is toward increased volumes, and thus decreased opportunities  
202 for state mediation generally. Furthermore, the “every thirty minutes” paradigm is patently unreasonable and frankly irrational. It  
203 does, however, provide an absolute upper limit for the sake of discussion.  
204 The 30 full-time OJCC mediators more likely could schedule no more than 12 potential appointments (8:00, 8:45, 9:30, 10:15,  
205 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, 76,633, is approaching this, and petition volume is increasing.  
Such a scheduling paradigm, while not as irrational as that in endnote 189, would provide insufficient time for mediation to be  
effective.  
Many mediation sessions involve more than one PFB, *see* § 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.  
The 30 full-time OJCC mediators multiplied by seven mediations per day, for the 229 days is 48,090.  
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.”).  
*Id.*  
Fla. Admin. Code R. 60Q-6.110(2)(d); Rule 60Q-6.110, Fla.R.Pro.Work.Comp.  
§ 440.25(1), Fla. Stat.: “A mediation conference may not be used solely for the purpose of mediating attorney fees.”  
If 29,253 mediations were actually held in 2002-03, that means that the 31 state mediators employed that year each conducted  
943 (29,253/31=) mediations. With approximately 229 working days (*see* endnotes 158 and 189), this equates to 4.1 mediations  
daily.  
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 overstated.  
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 recordkeeping improved.  
Rule 60Q6.110(2)(a)(“ Any such change in date (within the 130-day statutory parameter) shall be considered a rescheduling and  
not a continuance of the mediation.”).  
*See* endnote 166.  
The “per JCC” figures have been based on 31 judges. This figure is based instead on 30, as the delays filling the third TPA  
judgeship have reached a confluence with the DOAH leadership consolidation efforts and relocation of former Lakeland  
resources to TPA. While there has long been expectation of the return to 31 judges, that is hoped for in 2023-24.  
*Id.*  
A motion to disqualify filed in 2020-21 alleged such perception specifically.  
Notably, 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). 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 51. Thus, there is both potential for poor practices and  
evidence suggesting it has been constrained or eliminated.

206 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.

207 David Langham and Stephanie Hayes, OJCC Operations Manual, 2020, [http://doahweb/Admin\\_docs/OJCC/OJCCOperationsManual.pdf](http://doahweb/Admin_docs/OJCC/OJCCOperationsManual.pdf), last visited November 9, 2022.

208 § 440.192(1), Fla. Stat.; Fla. Admin. Code R. 60Q-6.108(a)(2006); Rule 60Q-6. 108(a), Fla.R.Pro.Work.Comp.

209 See page 13, Electronic Filing Initiative, generally; see endnote 72.

210 Though there is "service" (see *supra* endnotes 33 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 management.

211 See also endnote 175. 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 40<sup>th</sup> day, these judges prepare manual notices and transmit them prior to that time.

212 In 2021-22, District Lakeland was closed and consolidated into Sarasota and Tampa. District Melbourne was closed and consolidated into Districts Daytona and West Palm Beach. District Port St. Lucie was closed and consolidated into District West Palm Beach. District Gainesville was designated for closure and consolidation into District Jacksonville, to occur on the expiration of that lease in early fiscal year 2022-23. See endnotes 4-13. In 2022-23, District Daytona was closed and consolidated into District Orlando. District Sarasota was closed and consolidated into District St. Petersburg. District Panama City was closed and those counties were distributed into Districts Pensacola and Tallahassee.

213 See *supra* endnote 146.

214 § 440.25(4)(h) Fla. Stat. ("those petitions filed in accordance with s. 440.192 that involve a claim for benefits of \$5,000 or less").

215 See *supra* endnote 193.

216 See endnote 87.

217 See endnote 14.

218 See endnote 87.

219 Filings in 2008-09 increased from 72,718 to 73,863, a total of 1,145 petitions, or less than 2%. Notably, however, *Murray* was decided in late October 2008, and the Legislature made amendments, effective July 1, 2009, that materially altered the *Murray* analysis.

220 *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).

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

222 See endnote 87.

223 This is not an exact measure. The notice is not transmitted prior to the 40<sup>th</sup> day, but due to holidays or weekends, the actual transmittal may be more than 40 days after PFB filing. See also endnote 175.

224 The statute, section 440.25(1) provides: "(1) 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." This section does preclude an earlier notice, though one might argue an earlier notice is antithetical to the "forty days." However, one might as easily conclude that the 40th day is a deadline and that earlier performance is harmless.

225 With the advent of Employer service through eJCC, many of these directed at employers will be sent electronically. This is one example of the technology deployment increasing cost savings. See endnote 72.

226 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 20, 2023.

227 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).

228 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." There are those who contend that this section of the statute was declared facially unconstitutional by the court in *Miles*, see endnotes 14 and 87. Despite that contention, some of

those same lawyers nonetheless submit motions seeking approval of such fees and some contend that the OJCC is obligated to approve those fees of whatever amount or description.

The issue of defense fee approval has been discussed in a variety of forums throughout the twenty-first century. 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.

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." Those who would argue that this section requires judicial approval of defense fees might be asked to explain whether *Miles* is an "as applied" conclusion or a "facial" conclusion as to the constitutionality of section 440.105(3)(c), *see* endnote 228.

Rule 60Q-6.124(6) "(6) No later than September 1 of each year, all self-insurers, third-party administrators, and carriers shall report by e-JCC to the OJCC the amount of all attorney's fees paid to their defense attorneys in connection with workers' compensation claims during the prior July 1 through June 30 fiscal year."

In the preparation of the 2013-14 OJCC 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 OJCC Annual Report*, page 32; <https://www.fljcc.org/JCC/publications/reports/2014AnnualReport/files/assets/basic-html/page-32.html>, last visited October 11, 2022.

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.

An order entered March 28, 2022, in case number 17-023664 approved a fee "for the period November 23, 2021 through March 20, 2022," in the sum certain of \$2,503.72. The order in this regard was both quantifiable and appropriate. The order also approved, sight unseen, fees on "all future payments of permanent total disability and permanent total disability supplemental benefit payments." [https://www.jcc.state.fl.us/JccDocs20/MIA/Dade/2017/023664/17023664\\_317\\_03282022\\_09215145\\_i.pdf](https://www.jcc.state.fl.us/JccDocs20/MIA/Dade/2017/023664/17023664_317_03282022_09215145_i.pdf), last visited October 11, 2022. It is believed that this injured worker is approximately 76 years of age; <https://www.floridaresidentsdirectory.com/person/110295789/williams-willie>, last visited October 11, 2022. If this is accurate, the published life expectancy is approximately 10 years. However, the Claimant might live less or more. Based upon the benefits cited in the March 28, 2022 order (\$11,691.51 for the period November 23, 2021 to March 30, 2022; 117 days), the benefit stream to the Claimant will be at least approximately \$99.93 per day, though supplemental benefits may increase that amount. Thus, if the Claimant passed on March 21, 2022 and only one day of benefits was due beyond the date of the order, then the unreported Claimant attorney fees would be \$14.99 (\$99.93 x .15). However, if the Claimant lives to life expectancy, the benefits may be \$364,735.14 (10 years x 365 days x \$99.93). In that event, the unreported Claimant attorney fees in the various reports issued between now and then will be \$54,710.27. If, perchance, the Claimant lives to 100 years of age, the amount of unreported Claimant's fees would be \$131,304.65. Investigation suggests that this prospective approval practice may be limited in scope, with only a small minority of judges engaging in the practice. However, there is no methodology short of individual manual audit of thousands of fee orders to factually discern the true extent of the understatement of Claimant fees in this report or any such compilation. What is certain is that there has been some level of underreporting.

Fla. Admin. Code R. 60Q-6.124(2006); Rule 60Q-6.124, Fla.R.Pro.Work.Comp., <https://www.fljcc.org/JCC/rules/#60Q-6.124>, last visited September 28, 2023: "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 OJCC 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 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. In 2021-22, there were no known anomalies or shortcomings in the reporting. It is believed that the data herein is therefore accurate.

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.

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.

238 See pages 44-45 regarding *Castellanos* effect and *Miles* effect.

239 Calculated with <https://www.usinflationcalculator.com/>, last visited September 29, 2023. See also endnote 245.

240 See endnote 87.

241 See endnote 14.

242 In real dollars. See *infra* pages 42-44 regarding historical figures adjusted for inflation and expressed in 2022 dollars.

243 See endnote 87.

244 See endnote 14.

245 *Supra*, note 242. Calculated with <http://www.usinflationcalculator.com/>, last visited September 29, 2022. This calculator is persistently updated regarding the present state of inflation. Therefore, all projections were calculated in a single website session. While the exact figures may not be readily recalculated in a future effort, they are accepted as accurate at the time of calculation.

246 These calculations are made using the ending year in any fiscal combination, thus this figure uses 2003 and 2023.

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

248 See endnote 239. Calculated with <https://www.usinflationcalculator.com/>, last visited October 21, 2022. See also endnote 245.

249 See endnote 87.

250 See endnote 14.

251 Workers' Compensation has existed in Florida since 1935, a period of only 87 years. This 34-year period amounts to more than one-third of that history, and a far more significant portion of the history since the system-changing reforms of 1979 (34 of the 43 years since 1979).

252 *Supra*, See endnote 14 and 87.

253 This was previously reported as \$75,353,918, and was adjusted following further analysis and adjustment in 2020-21. The difference is \$389,999.

254 There are those who argue that "net to claimant," that is the amount that an injured worker seeks to pocket through settlement is a figure contemplated and even stated by many injured workers. This school of thought holds that with such a known outcome, one might mathematically "back-in" to a settlement amount that would cover fees, costs, and result in that pre-supposed "net to claimant." In that regard, as the fee and cost component shifts, thus might the overall cost of a settlement, and therefore the system cost that must be covered by premiums collected/invested.

255 This was previously reported as \$94,422,559 and was adjusted following further analysis and adjustment in 2020-21. The difference is \$5,450.

256 See endnote 14.

257 This was previously reported as \$161,083,119, and was adjusted following further analysis and adjustment in 2020-21. The difference is \$2,000.

258 If there is a fourth alternative explanation for the varied fee aggregate, it is not patent from the data.

259 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.

260 *Id.*

261 Data supports that generally, there was "an unusual decrease in workers' compensation claim severity" during the pandemic. A report issued by "the National Council on Compensation Insurance . . . said average claim severity for lost-time claims decreased by about 6% in 2020." The volume of claims remained significantly similar to prior years, but "the pandemic increased the number of small claims." NCCI: Work Comp Claim Frequency Dipped During Height of Pandemic, THE CLAIMS JOURNAL, December 2, 2021; <https://www.claimsjournal.com/news/national/2021/12/02/307331.htm>, last visited October 24, 2022.

262 See *infra* page 40, see also endnotes 129-130. In 2022-23 percentage attorney fees were approved between 0% and 66%. The effective hourly rates approved appear to range between \$0.00 and \$678.26. The upper parameter in 2021-22 was \$1,658.40 per hour and in 2020-21 it was \$9,190.24 per hour," 2020-21 OJCC ANNUAL REPORT, page 261, endnote 237. 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 60Q-6.123(2)(a)5. and Rule 60Q-6.124(1),(2). However, there is anecdotal indicia that these requirements are not always enforced. 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 § 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." (That may be contradicted by the 66% set forth above.) 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 Court of Appeal 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.

263 An order entered June 15, 2022, approved a fee of \$27,500 for appellate work. The assigned judge concluded that the fee was “reasonable and in accordance with section 440.34, Florida Statutes, and *Lee Engineering and Construction Co. v Fellows*.” There was no representation in the parties’ stipulation or any attorney fee data sheet as regards either the value of benefits obtained or the quantum of hours that were compensated with this amount. *Caba v. Peoplease LLC*, 20-001208. The foundation of the finding of “reasonable” may apparently be exclusively the parties’ stipulation to that effect. This was demonstrated in 2022-23 with fees awarded without demonstration of either benefit value or hours compensated in 22-028862, 15-009042, and 22-003592. These conclusions of “reasonable” may have foundation in fact or law, but that is not patent from the orders reviewed.

264 See endnote 14.

265 These include the First Amendment “freedom of speech, association, and to petition for redress of grievances.” *Miles*, 190 So. 3d at 178. These also include the “right to contract.” *Miles*, 190 So. 3d at 182. See *infra* page 16.

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

267 *Miles*, 190 So. 3d at 179.

268 Three cases were appealed in 2016: *Hood v. Delta Fire Sprinklers, Inc.*, Case 17-002745, DCA case 1D17-1915; *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. Multiple appeals regarding fee orders were dismissed in 2023 also.

269 See *Mousadi v. The Learning Care Grp.*, OJCC Case 21-021654, March 8, 2023; [https://www.jcc.state.fl.us/Finals/21021654\\_364\\_04282023\\_11370570\\_i.pdf](https://www.jcc.state.fl.us/Finals/21021654_364_04282023_11370570_i.pdf), last visited October 13, 2023. See also Florida First District Court of Appeal, 1D2023-1312, dismissed September 26, 2023; <https://acis.flcourts.gov/portal/court/b82b30d5-bd3c-46d7-9451-1cb05e470873/case/3ab253e8-78a7-4ff2-842e-ab1d435243af>, last visited October 13, 2023.

270 *Sitzberger v. Workforce Business Services, Inc.*, Case No. 20-023233; the order entered September 10, 2021, noted a settlement amount of \$2.1 million and the fee of \$525,000 (25%). The net to the injured worker after costs and fees was \$1,562,056.80 (74.4%). Claimant’s counsel attested to the investment of 516 hours of attorney time yielding an effective hourly rate of \$1,017.44. Counsel’s affidavit sets forth that until settlement, the case was a “total denial,” thus, perhaps similar to *Miles* and *Jacobson*, see *infra* note 291.

271 *Smith v. The Home Depot*, Case No. 93-010752; this order approved settlement of entitlement to future medical care and noted the indemnity entitlement had been previously settled. This order was entered April 6, 2022, and required the full fee to be held in trust pending further order.

272 *Smith v. The Home Depot*, Case No. 93-010752. An order was entered April 27, 2022, addressed fees payable to “three prior attorneys” from the \$1.33 million: Mr. Malca \$275,000 (450 hours over 2.5 years), Mr. Goldstone \$150,000 (390 hours over 18 years), and Mr. Hutchinson \$100,000 (284 hours over 7 years). The order notes the “statutory” fee calculation in effect in 1993 and the “*Lee Engineering* factors, as statutorily enumerated.” The fees claimed by the three attorneys were approved. This case was reviewed by the First District Court in 2023, with oral argument. As of release of this report, the last docket entry on the court’s record was March 16, 2023 and no decisions has been rendered. <https://acis.flcourts.gov/portal/court/b82b30d5-bd3c-46d7-9451-1cb05e470873/case/32fa256b-24df-49d6-974d-d50b7f89c845>, last visited October 13, 2023

273 § 440.34(1)(1993)(“25% for the first \$5,000.00 in benefits, then 20% up to \$10,000.00, and finally 15% for the remainder.”). This would yield a fee of \$2,025,750 on the sum of \$13,500,000, which would leave for present counsel \$1,500,750 following the deduction of the \$525,000 approved for former counsel. That \$1,500,750 divided by the 205 hours spent negotiating the settlement of the matter would yield an effective hourly rate of \$7,320.73 per hour.

274 This equates to an effective hourly rate of \$600 per hour.

275 This was initially styled *Smith v. The Home Depot U.S.A.* in a May 25, 2022 Notice. The notice stated the appeal was by counsel on behalf of counsel’s law firm, “former counsel for the Claimant.” The District Court styled the case *Rudolph v. Smith, The Home Depot U.S.A., Inc., and Liberty Mutual Ins. Co.*, Case No. 1D22-1627; <http://onlinedocketsdca.flcourts.org/DCAResults/CaseByYear?CaseYear=2022&CaseNumber=1627&Court=1>, last visited October 13, 2023.

276 In 2021-22, case number 22-010183 was settled by order entered May 12, 2022. The Employer listed therein was FedEx. The date of accident listed was 08/25/1959. The FedEx website history notes the company was founded in 1971. It is likely that this date of accident is in error. <https://www.fedex.com/en-us/about/history.html>, last visited October 21, 2022. Similarly in 2022-23. Case number 22-13838 was settled by order of October 224, 2022. The accident date listed in May 23, 1951 and the employer is FW Services, Inc., (d\b\ a Pacesetter Personnel Services). The Pacesetter website says it has been in business 25 years (1998), not 72 years. Thus, it is likely this is a data entry error. That these outliers support this suggests that other accident dates may likewise be erroneous in more recent years.

277 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.

278 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.

279 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.

280 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).

281 Historically, until the 21<sup>st</sup> 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.

282 See endnote 17.

283 *Id.*

284 § 440.25(4)(d), Fla. Stat.

285 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.

286 See endnote 280.

287 This was a four day trial at which substantive objections regarding expert testimony were presented. This devolved into a Motion  
in Limine based on the *Daubert* necessity of avoiding “pure opinion.” A final order was then issued 142 days after trial. That was  
vacated, however, and a final order entered February 28, 2023. *Rosen v. Division of Rehabilitation*, OJCC Case No. 93-005989.

288 See endnote 280.

289 CS/CS/HB 487 (2023).

290 This would be recognition of the role of these critical staff and the increasingly technical nature of their contribution to the  
technologically leveraged litigation process of the twenty-first century. This was stressed in the 2020-21 OJCC ANNUAL REPORT,  
page 250, endnote 52.

291 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, as regards the facts presented there (“as applied”).

292 See endnote 262.

293 See Medicare Fraud & Abuse: Prevention, Detection, And Reporting, <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244-Print-Friendly.pdf>, last visited October 29,  
2022.

294 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 29,  
2022.

295 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 30, 2022.

296 Broward Health pays nearly \$70 million to settle fraud case; whistleblower named, *Miami Herald*, September 15, 2015,  
<https://www.miamiherald.com/news/health-care/article35356422.html>, last visited October 30, 2022.

297 § 440.25(1), Fla. Stat.

298 § 440.25(4)(d), Fla. Stat.

299 *Id.*

300 The District Court had concluded that a conflict in medical opinions may become ripe at trial, or thereafter (when order is  
issued). If this occurred, the judge was 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*, 327 So.  
3d 469 (Fla. 1<sup>st</sup> DCA 2021).

301 *Id.*

302 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.



303 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 17.

304 *See* endnote 17.

305 *Id.*

306 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 17.). 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.

307 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.

308 § 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 § 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).

309 § 440.25(1), Fla. Stat.: “Forty days after a PFB is filed under § 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.”

310 § 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.”

311 § 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.”

312 § 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.”

313 § 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 § 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 § 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.”

314 § 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.”

315 § 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.”

316 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 309 and 311.

317 <https://www.fljcc.org/JCC/publications/reports/2023SR-MSR.pdf>, last visited October 15, 2023.

318 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, 2020-21, 2021-22, and 2022-23.

319 § 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.”).

320 Fla. Admin. Code R. 60Q-6.110(2)(a). 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.

321 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.

322 § 440.25(1), Fla. Stat. (“Any order granting a continuance must set forth the date of the rescheduled mediation conference”); § 440.25(4)(b), Fla. Stat. (“Any order granting a continuance must set forth the date and time of the rescheduled hearing.”).

323 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. In 2021-22, three judges were found to have granted continuances either without a continuance order or without designating a new hearing date in such order.

324 *See* endnote 309.

325 § 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.”

326 The statutory authority for entry of such an advisory opinion is not clear from the notice or from review of chapter 440.

327 *See* endnotes 119 and 277. 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 17.

328 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 17 and the Glossary of Terms, pages 61-62. The term “trial order” necessarily means the order resulted from a trial.

329 *See* endnotes 262 and 291.

330 *Id.*

331 *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 28, 2022.

332 *Id.*  
333 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 17.

334 *See* endnotes 17 and 236.  
335 *See* endnote 4.  
336 *Id.*  
337 *See* endnotes 17 and 236.  
338 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.  
339 Transferred from District GNS upon its closure in 2022-23.  
340 *Id.*  
341 Transferred from District DAY as part of the consolidations in 2021-22 and the addition of Brevard County to District DAY.  
342 Transferred from District GNS upon its closure in 2022-23.  
343 *See* endnote 6.  
344 *See* endnotes 17 and 236.  
345 The 2021-22 report reflected Judge Humphries’ days to trial commencing as 307. This was later determined to be erroneous upon further auditing of the data. The correct figure is 282 days.  
346 The 2021-22 report reflected Judge Humphries’ days from trial commencing to order as 25. This was later determined to be erroneous upon further auditing of the data. The correct figure is 25 days.  
347 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.  
348 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.  
349 *See* endnotes 17 and 236.  
350 *Id.*  
351 District Daytona was closed and those cases were consolidated into District Orlando along with Judge Anderson  
352 Judge Lourdes Sancerni was appointed in 2021-22 and took office officially August 1, 2022. Because of the timing of statistical reporting, a portion of some metrics for Petition, “new case,” PFB closure, and PFB year-end inventory were attributed to Judge Sancerni. Those figures were manually re-attributed equally to the other three judicial positions, which pre-existed the creation of the fourth Orlando docket and redistribution of cases to that docket.  
353 Transferred from District DAY upon its closure in 2022-23.  
354 Transferred from District DAY upon its closure in 2022-23.  
355 These figures for 2021-22 included for each judge an equal share of the 967 petitions reflected as Judge Sancerni when the statistical reports were generated.  
356 These figures for 2021-22 included for each judge an equal share of the 406 “new cases” reflected as Judge Sancerni when the statistical reports were generated.  
357 These figures for 2021-22 included for each judge an equal share of the 557 closed petitions reflected as Judge Sancerni when the statistical reports were generated.  
358 These figures for 2021-22 included for each judge an equal share of the 486 pending petitions reflected as Judge Sancerni when the statistical reports were generated.  
359 *See* endnotes 17 and 236.  
360 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.  
361 Transferred from District PMC upon its closure in 2022-23.  
362 Transferred from District PMC upon its closure in 2022-23.  
363 *See* endnotes 17 and 236.  
364 Judge Grindal was transferred to District STP with the closure of District Sarasota in 2022-23. The figures represented for prior years were for District Sarasota and his predecessor Diane Beck.  
365 Judge Moneyham was transferred to District STP with the closure of District Panama City in 2022-23. The figures represented for prior years were for District Panama City and his predecessor there, Jonathan Walker.  
366 Judge Young transferred to District STP 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 STP and TPA are combined here in District STP. The procedural orders, hearings, settlements, are included in the information for her former TPA Division, *see* page 215.  
367 Consolidated into District STP upon the closure of District SAR in 2022-23.  
368 *Id.*  
369 *Id.*

370 *Id.*  
371 *Id.*  
372 *See* endnotes 17 and 236.  
373 Judge Newman was appointed in 2018. Therefore, the statistics listed are attributable to the Division she manages, including  
374 those of her predecessor Hon. John Lazzara.  
375 Transferred from District Panama City in 2022-23 upon PMC closure.  
376 *Id.*  
377 *Id.*  
378 *Id.*  
379 *Id.*  
380 *See* endnotes 17 and 236  
381 Judge Anthony was appointed in 2020. Therefore, the statistics listed are attributable to the Division he manages, including those  
382 of his predecessor Hon. Ellen Lorenzen.  
383 Judge Young was appointed in 2019 to a position in District TPA. The statistics listed are attributable to the Division she  
384 formerly managed (before transferred to District STP), including those of her predecessor Hon. Douglas Spangler and of Judge  
385 Arthur upon his move to District Tampa, *see* endnote 13.  
386 *See* endnotes 17 and 236.  
387 Judge Case was appointed in 2022. Therefore, the statistics listed are attributable to the Division she manages, including those of  
388 her predecessors Hon. Carol Stephenson and Hon. Mary D’Ambrosio.  
389 *See* endnotes 17 and 236.  
390 Public Data, Google,  
391 [https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude\\_&met\\_y=population&idim=state:12000:06000&hl=en&dl=en](https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude_&met_y=population&idim=state:12000:06000&hl=en&dl=en),  
392 last visited October 31, 2023.  
393 407,742 Floridians = 12.64 million divided by 31 judges.  
394 Section 440.20(11)(d)(2001), Florida Statutes, was added to the statute, stating “with respect to any lump-sum settlement under  
395 this subsection, a judge of compensation claims must consider at the time of the settlement, whether the settlement allocation  
396 provides for the appropriate recovery of child support arrearages.”  
397 *See supra* page 12.  
398 <http://worldpopulationreview.com/states/florida-population/>, last visited October 31, 2023.  
399 Regarding office closures, *see* page 5, endnote 19. The mediator positions were legislatively returned. Over the years since the  
400 reduction, staff positions have been adapted to create these new mediator positions. In the midst of DOAH’s closure of various  
401 District Offices, mediator turnover did not immediately lead to replacement, and the office concluded fiscal 2021-22 with only 29  
402 mediators. As the mediation paradigm shifts to primarily Zoom/virtual, it is hoped that flexibility will remain to increase  
403 mediator staffing as needed.  
404 736,185 Floridians = 22,085,563 million divided by 30 judges. *See* <http://worldpopulationreview.com/states/florida-population/>,  
405 last visited October 31, 2023.  
406 Historically also referred to as “Deputy Commissioners” and “Judges of Industrial Claims.”  
407 “Effective July 1, 1989, each full-time judge of compensation claims shall receive a salary in an amount equal to \$4,000 less than  
408 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  
409 judge of Compensation Claims. These salaries shall be paid out of the fund established in s. 440.50.” § 440.45(4) Fla. Stat.  
410 (1989).  
411 “The general master shall be employed on a full-time basis by the office of the Chief Judge. The rate of compensation for a  
412 general master shall be 60 percent of the salary of a judge of compensation claims.” § 440.25(3)(b) Fla. Stat. (1993).  
413 *See* Florida Assessments, <https://www.myfloridacfo.com/division/wc/Insurer/Assessments/wcatf>, last visited October 31, 2023.  
414 According to the Division of Workers’ Compensation, the WCATF currently has a balance of \$172,396,856. Email from Brittany  
415 O’Neil, October 31, 2023, retained by author. According to the Division of Workers’ Compensation, over the last decade, the  
416 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  
417 \$136,788,771 (2016) to \$160,332,179 (2017) to \$171,042,601 (2018) to \$195,070,196 (2019), and then decreased some to  
418 \$182,674,345 (2020) to \$172,663,279 (2021), and then somewhat stabilizing with \$174,931,289 (2022) to \$172,396,856. The  
419 WCATF is healthy and fully funded.  
420 *Florida’s Court Structure*,  
421 <https://www.flcourts.org/content/download/216616/file/Court-Structure.pdf>, last visited October 31, 2023.  
422 The Conference of Circuit Judges of Florida, Inc. is a Florida Not for Profit Corporation at 215 South Monroe St, Tallahassee,  
423 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 31, 2023.  
424 *See* <http://floridacountyjudges.com/>, last visited October 31, 2023.  
425 There are 72 appellate court judges in Florida. (Supreme Court, 7; First District, 15; Second District, 16; Third District, 11;  
426 Fourth District, 12, and Fifth District, 11); <http://www.flcourts.org/florida-courts/district-court-appeal.stml>, last visited October  
427 31, 2023.

402 See Florida Judges Hire Lobbyist, *Miami Herald*, December 30, 2015, [https://www.miamiherald.com/news/politics-](https://www.miamiherald.com/news/politics-government/state-politics/article52344720.html)  
403 [government/state-politics/article52344720.html](https://www.miamiherald.com/news/politics-government/state-politics/article52344720.html), last visited October 31, 2023 (Pay site).  
404 Steve Bousquet, Florida judges hire lobbyist - a former judge - to fight proposed term limits, *Tampa Bay Times*, December 31,  
405 2015; [https://www.tampabay.com/news/politics/legislature/judges-hire-ex-colleague-hawkes-to-fight-term-limits-](https://www.tampabay.com/news/politics/legislature/judges-hire-ex-colleague-hawkes-to-fight-term-limits-proposal/2259489)  
406 [proposal/2259489](https://www.tampabay.com/news/politics/legislature/judges-hire-ex-colleague-hawkes-to-fight-term-limits-proposal/2259489), last visited October 31, 2023.  
407 A request to The Florida Bar for consideration and support similar to that afforded to the Article V. judges was denied in 2021.  
408 The calculations were done using the calculator provided by the United States Department of Labor, Bureau of Labor Statistics,  
409 [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm), last visited October 31, 2023.  
410 If the salary paid in 1989 (\$79,359) was adjusted for inflation in 2020-21, the value would have been \$165,636, or \$37,335 in  
411 excess of the actual salary paid that year (\$128,301).  
412 See § 440.12(2), Fla. Stat. “compensation shall not exceed an amount per week which is: (a) Equal to 100 percent of the  
413 statewide average weekly wage, determined as hereinafter provided for the year in which the injury occurred; however, the  
414 increase to 100 percent from 66 23percent of the statewide average weekly wage shall apply only to injuries occurring on or after  
415 August 1, 1979; and (b) Adjusted to the nearest dollar.” See, <https://www.myfloridacfo.com/division/wc/insurer/awwrate>, last  
416 visited October 31, 2023.  
417 Bureau of Monitoring and Audit Statistics, Minimum/Maximum Compensation Rate Table,  
418 [http://www.myfloridacfo.com/division/wc/Insurer/bma\\_rates.htm](http://www.myfloridacfo.com/division/wc/Insurer/bma_rates.htm), last visited October 31, 2023.  
419 *Id.*  
420 Florida State Workers to see Pay Raise, Pension Changes, *Palm Beach Post*, May 1, 2017;  
421 <https://www.palmbeachpost.com/story/news/state/2017/05/01/florida-state-workers-to-see/7139392007/>, last visited October 31,  
422 2023.  
423 Florida’s Judicial Pay Still Lags for District and Trial Court Judges, *The Florida Bar News*, September 13, 2019;  
424 <https://www.floridabar.org/the-florida-bar-news/floridas-judicial-pay-still-lags-for-district-court-trial-court-judges/>, last visited  
425 October 31, 2023.  
426 Aebra Coe, Lagging Judicial Pay Is Hurting Courts’ Recruiting Efforts, October 22, 2021,  
427 <https://www.law360.com/pulse/articles/1433450/lagging-judicial-pay-is-hurting-courts-recruiting-efforts>, last visited October 31,  
428 2023 (Pay site).  
429 § 121.091, Fla. Stat. (2017).  
430 § 440.45(2)(a), Fla. Stat. (2017).  
431 § 121.021(3), Fla. Stat. (2017).  
432 There is the risk of government changes in appointment or eligibility through term limits or non-retention. There is the risk of not  
433 vesting in the retirement system. There is often the risk of relocating residence to the geography of the appointment.  
434 Jeffrey S. Breslow, Glenys Domingo, Rosalind Milian, Gary Miller.  
435 This meeting was canceled due to the imminent threat of Hurricane Ian. It was rescheduled and ultimately held on November 14,  
436 2022.  
437 Jeffrey S. Breslow, Glenys Domingo, Mindy Ann Ferrer, Kimberly A. Hill, James Price.  
438 Holly Nicole Akers, Jeffrey S. Breslow, Silvia Maria Hoeg, James Crawford Price. Ms. Akers preemptively withdrew on  
439 September 22, 2022, before the commission meeting was cancelled, *supra*, endnote 358. The advertisement was thereafter  
440 withdrawn as regards a fourth judgeship in District ORL as the consolidation efforts of the OJCC became refocused under new  
441 leadership.  
442 Roseanna Bronhard, Barbara Case, Kimberly Hill, James Price.  
443 Roseanna Bronhard, John Paul Brooks, Sylvia M. Hoeg, Jill Jacobs, Lourdes Maritza Sancerni, Daniel McKnight. The  
444 commission nominated a total of five people for the two positions with one person nominated twice (once for each position).  
445 The same six were eligible for the second position. *Id.*  
446 Jessica Carrier, Todd Sanders, Mathew Wheeley. Mr. Wheeley later withdrew from the process and the Governor’s Office asked  
447 that the position be re-advertised as the list was no longer three names.  
448 John Brooks, John Moneyham, and Gus Soto.  
449 Brian Anthony, Lawrence Anzalone, Mark Capron, Tonya Oliver, Todd Sanders. Of these, only Mr. Sanders presented for  
450 interview.  
451 Jessica Carrier, Erik Grindal, Jacqueline Steele.  
452 Jessica Carrier, Jacqueline Steele.  
453 Brian Anthony, Lawrence Anzalone, Mark Gregory Capron, Tonya Ann Oliver, Merette Leigh Oweis, Rita Lawton Young. Six  
454 applicants in total applied for the two positions, yielding essentially three each. The commission nominated a total of four people  
455 for the two positions, with two of the four nominated twice, once for each position.  
456 The same six were eligible for the second position. *Id.*  
457 Jeffrey Breslow, David M. Goehl, Rosalind Rae Milian, Michael James Ring.  
458 Stephen Andrews, William Gwaltney, Jacquelyn Newman, Michael Peterson, Todd Sanders.  
459 Stephen Armstrong, Laura Buck, Lourdes Sancerni, Timothy Stanton.  
460 Robert Wells.  
461 Two vacancies were simultaneously interviewed. Five total applications (after a sixth withdrew prior to interview) equaled 2.5  
462 per opening: David Goehl, Walter Havers, Jeffrey Jacobs, Michele Ready, Robert Wells.

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436 *Id.*  
437 Lawrence Anzalone, Robert Arthur, Mark Capron, Juliana Curtis.  
438 Jeffrey Breslow, Jill Forman, Jeffrey Jacobs, Marydeneysel Ommert, Ken Schwartz, Carol Stephenson.  
439 This was on the first advertisement for MIA vacancy and two applications were received: Walter Havers, Jeffrey Jacobs.  
440 Lawrence Anzalone, Jeffrey Jacobs, Gregory Johnsen, Marydeneysel Ommert, Michael Peterson, Debra Pierce, Ken Schwartz,  
Carol Stephenson, Janet Tacoronte (withdrew prior to interview).  
441 John Moneyham, Michael Peterson, Tara Said, Jonathan Walker.  
442 Lawrence Anzalone, John Paul Brooks, Frank Clark, Timothy Stanton.  
443 Lawrence Anzalone, John Paul Brooks, Thomas Hedler, Carrie McAliley, Keef Owens, Debra Pierce, Mary Spagnola, Carol  
Stephenson.  
444 Lawrence Anzalone, Jill Forman, Debra Pierce, Thomas Hedler.  
445 George Boring, Eric Bredemeyer, Frank Clark, Kenneth Kugler, Tania Ogden, James Radloff (withdrew prior to interview),  
Timothy Stanton, Jack Weiss.  
446 Iliana Forte, Gregory Johnsen, Roberto Mendez, Kenneth Schwarz, Carol Stephenson, Wendy Sweeny.  
447 Robert Dietz, Mark Hill, Keefe Owens, Kenneth Schwartz, Timothy Stanton, Wendy Sweeny, Larry Wang, Michael Wilkes.  
448 Eugene Flinn, Gregory Johnsen, Eduardo Almeyda, Stephen Renick.  
449 Jane Loewinger, Wilbur Anderson, Robert Dietz, Bruce Epple, Clay Meek, Keef Owens, Steven Pyle, Timothy Stanton, Michael  
Wilkes.  
450 Gregory Johnsen, Margret Kerr, Steve Renick, Arthur Sevak.  
451 Deborah Hart, Mark Massey, Lawrence Anzalone, Ya' sheaka Campbell, Hillarey McCall.  
452 Applications were submitted, but no appointment was made because of budget reductions, *see supra* note 19.  
453 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.  
454 *Id.*  
455 Don Allen, Robert Arthur, John Brooks, John Darrin, Dawn Hayes, Debra Pierce, Margaret Sojourner, Timothy Stanton, Jack  
Weiss, Michael Wilkes, James Spears.  
456 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.  
457 Wilbur Anderson, Douglas Daze, Alan Gordon, Clayton Harland, Marjorie Renee Hill, Lyle Platt, Melanie Rodriguez, Stephen  
Rosen, Roland Tan, William Wieland.  
458 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.  
459 In fairness, some volume of vacancy has occurred recently due to non-reappointment.

# STATE OF FLORIDA

## Division of Administrative Hearings

### Office of Judges of Compensation Claims



## 2022-23 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 (“DOAH”). Each year, the OJCC publishes a comprehensive Annual Report, which provides the Florida Legislature and Governor with statistical measures of the volumes of litigation and details the operations of this Office, section 440.45(5), Fla. Stat. Those reports are available on the OJCC website, [www.fljcc.org](http://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, Fla. Stat., 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. However, very small employers (less than four employees) and various specific occupations are exempted from mandatory coverage, section 440.02(17)(b)2., Fla. Stat.

Some employers purchase workers’ compensation insurance from a “carrier.”<sup>5</sup> 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 often referred to collectively as “E/SA.” In 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 injured workers. Most workers are provided benefits administratively, without litigation. When necessary, 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.<sup>6</sup> Mediation is mandatory<sup>7</sup> in most Florida workers’ compensation claims. There is a limited statutory exception to this requirement in section 440.25(4)(h) for PFBs that only “involve a claim for benefits of \$5,000 or less.” And, the mediation requirement may also be waived in any case upon proper motion.<sup>8</sup>

Organizationally, the OJCC is comprised of thirty-one Judges. Each is appointed by the Governor for terms of four years. Generally, since mediation became mandatory in 1994, the OJCC has been staffed by an equal number of mediators. That parity was removed by the legislative budget process in 2012.<sup>9</sup> Following that reduction of three mediator positions, the OJCC re-established mediator positions by transitioning staff positions to that status. Through the creation of additional mediator positions, the OJCC retained a one-to-one judge/mediator ratio and mediators were each paired with a judge. By 2021, there were thirty judges.<sup>10</sup> Until 2022, the Judges served in seventeen District Offices throughout Florida.<sup>11</sup> The existence of 17 District Offices was statutorily mandated in the 2001 statutory revisions.<sup>12</sup>

The 2020 Pandemic brought challenges to all litigation systems, and the OJCC was not immune. However, operations continued throughout. The Deputy Chief Judge mandated mediation occur telephonically beginning in March 2020, an accommodation to the public and OJCC staff. Video trials had long been part of the OJCC processes, but with expansion from dedicated videoteleconference systems to Internet video platforms such as Zoom it became a more prevalent and consistent process throughout 2020. As the pandemic eased, the OJCC returned to in-person mediation in July 2020, but soon elected to return to mandatory telephonic. In the early months of 2021, the return to normal operations again rendered in-person mediation attendance the default, and those wishing to appear telephonically returned to asking for that accommodation on a case-by-case basis. Despite that availability, there remained marked and persistent resistance to in-person appearance, and the preponderance of mediations persisted in a telephonic manner.

There was therefore a push to experiment with video mediation in early 2022. Coincidentally, it became apparent that private mediators had employed such platforms earlier in the pandemic, and the public was very amenable to video. DOAH leadership sought revision of Section 440.44 in the 2022 legislative session.<sup>13</sup> The 17-office mandate was criticized as was the existence of single-judge/mediator offices. There were perceptions that these offices were not economical or efficient for government. As the statute change progressed, plans were discussed for the closure of various District Offices. However, the resulting impact on Florida’s employers and employees, particularly in the mandatory mediation process, raised concerns. Any office closure was anticipated to result in diminished convenience and potentially significant travel associated with the mediation process mandated elsewhere in the statute.

As the potential for District Office closure became increasingly likely, plans were conceived to adopt Zoom (or similar Internet-video platforms) as the presumptive mediation paradigm. This provides a better mediation experience

than the telephonic process to which many sought to adhere in the post-pandemic world. Further, this provides a far more convenient process than lengthy commutes to remaining offices. In 2021-22, the OJCC began allowing state mediators to transition to remote work, utilizing their own premises but equipped with state-provided technology. The intent was for the mediation process to be presumptively video based, with the mediators retaining individual authority to allow telephonic or in person attendance at her/his discretion. The transition was not seamless or uniform. Various mediators transitioned to remote at different pace. Despite the “remote” and Zoom presumption, some mediators continued to work in a District Office at least periodically (hybrid).

The OJCC deployed a transactional tool, SignEasy to accommodate and facilitate remote document completion, review, and execution. It is fair to characterize 2021-22 as a transition year to the video paradigm. Similarly, 2022-23 brought the opportunity to adapt and adjust aspects of the presumptively remote paradigm, and to further acclimate mediators and the public. It was noteworthy that all of the mediators in 2021-22 transitioned from “in-person” district mediation to virtual. However, in 2022-23, the OJCC undertook the new challenge of on-boarding new mediators in that paradigm. That process was engaged four times with Ms. Ranart,<sup>14</sup> Mr. Goshen,<sup>15</sup> Ms. Dunham,<sup>16</sup> and Ms. Gillham.<sup>17</sup> The success of their transitions to the OJCC demonstrated that this virtual process can be sustained.

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 allows parties to view the calendars and to perceive potential appointment availability. Each mediator was traditionally afforded significant autonomy in calendar management; however, the resulting variety of mediator calendar practices proved difficult for the public and frustrating to the necessary process of calendar coverage when needed. In conjunction with the transitions to video mediation, telecommuting, and District Office closures, the OJCC adopted a standard mediation calendar for use throughout the state. Appointments are at 9:00, 10:00, 11:00, 12:30, 1:30, 2:30, and 3:30. The 2022-23 transition to that singularity was not without challenges, and criticisms. Nonetheless, the consistency is beneficial. The closure of offices around Florida brought the OJCC operations from 17 offices to 9.<sup>18</sup> Panama City was one of those, leaving only Pensacola in the Central Time Zone. In order to better serve the public and to facilitate the single schedule noted above, the Pensacola office operates on Eastern Time.

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. The efficiency and functionality of the OJCC processes are therefore a paramount goal. In 2022-23, the 30<sup>th</sup> mediator was added back to the system as petition volume and the new remote process justified additional staff. There are multiple challenges to scheduling petitions for mediation,<sup>19</sup> the primary being the petition volume. As volumes have grown in 2022-23, the mediation scheduling has approached that 130 day mark occasionally. The volume of mediations conducted, however, has decreased slightly. Volume issues will require monitoring and further adjustment to workflow and assignments may be necessitated.

## **Data Collection and Reporting:**

The data in this report is dependent for accuracy upon the efforts of district staff and mediators in the nine District Offices throughout Florida.<sup>20</sup> Before 2001, the OJCC historically struggled with accurate data collection. Significant effort has persisted since 2005-06 to train and facilitate staff accuracy in data collection. This has included frequent and ongoing audit processes, publication of a process manual, and persistent 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 E/C, 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).<sup>21</sup> 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.<sup>22</sup> 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. It is also not infrequent that one worker will pursue multiple cases simultaneously when causation,

compensability, and employer responsibility remain challenged. This is particularly likely in the construction industry where an employee may pursue both the entity that hired her/him and the general contractor associated with the site of the injury. Too frequently, such parallel cases are not consolidated for a single mediation. This frustrates the challenge of calendar congestion, and may skew some of the data in this report.

## **2022 Staff Changes:**

Secondary to uncertainty as to facility closures, and accommodating the untethering of mediators from an “assigned judge” and a specific District office, there was delay in replacing mediators in 2021-22. At the end of that fiscal year, one mediator position remained vacant. Ms. Ranart joined the OJCC in September 2022. During 2022-23, mediators Gordon and Day retired in Jacksonville. The long-vacant mediator position that had been based in Panama City was also re-authorized. Thus, in early 2023 Ms. Dunham was hired to replace Mr. Gordon, and Mr. Goshen was hired in that former Panama City position. In May 2023, Mr. Day retired and Ms. Gillham was hired to undertake his responsibilities in Jacksonville. These hires marked the first OJCC onboarding of remote personnel and their successful accomplishment will undoubtedly prepare the agency for future retirement transitions. The success of the mediation program through the staff changes, untethering, and transition to virtual is directly attributable to the dedication and commitment of all of the OJCC mediators.

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

Although settlements of litigated disputes are generally favored in the law, Florida workers’ compensation settlements were historically reasonably structured, at least according to the letter of the statute. Beginning in the 1970s, there was a legislative constriction on settlement that can only be viewed as paternalistic. For about two decades, settlement was treated with a dose of skepticism or suspicion.<sup>23</sup> In that era of expanding worker benefits, settlement approval required specific findings and often hearings.<sup>24</sup> That skepticism was excised from the statute in the 1990s, affording broader settlement opportunities and less judicial oversight. The oversight eroded further still in the 2001 amendments. It is currently statutorily permissible to settle all of a worker’s rights under the Florida 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.<sup>25</sup>

Injured workers represented by an attorney may settle their cases without the approval of a judge of compensation claims.<sup>26</sup> 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, “MMI”).<sup>27</sup> 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 micro annual report to the legislature.<sup>28</sup> Notably, there have been a very few instances in which a JCC approved a settlement under the latter (b) without proof of MMI. In those instances, the judge or staff made misrepresentations in the state database in order to upload the resulting order without an MMI date. That practice has been discouraged, but has occurred.

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%
2021-22	\$802,220	35%	65	20%
2022-23	\$433,042	-46%	41	-37%

The “denied case settlements,” 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 (in the vernacular of workers’ compensation, “settlement” and “washout” have become synonymous). Other settlements are reported in the comprehensive Annual Report of the Office of Judges of Compensation Claims (OJCC), published by December of each year.<sup>29</sup>

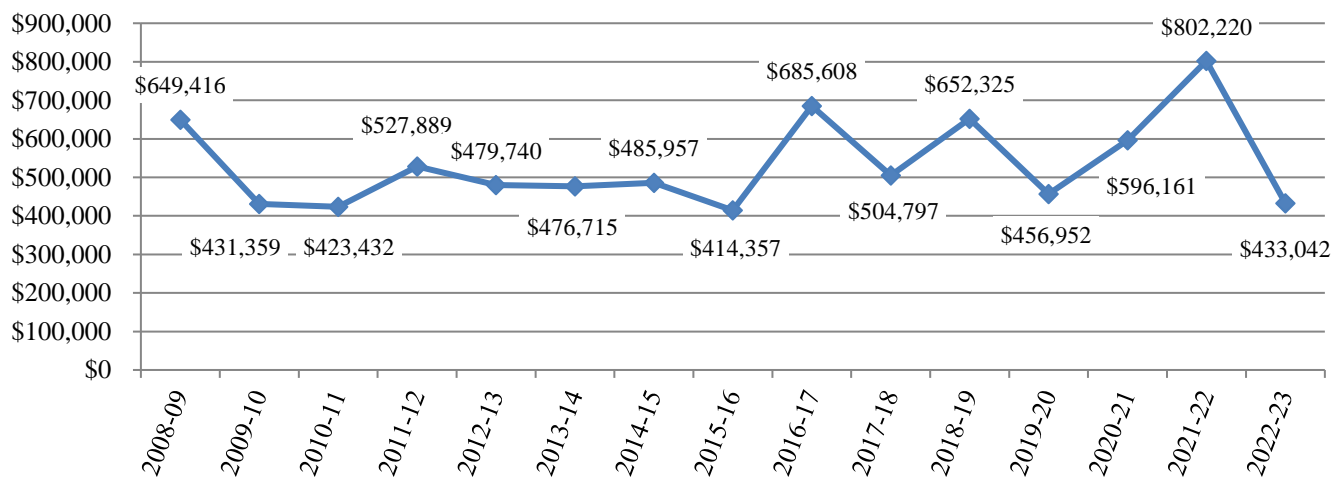
The volume of 11(a) washouts has vacillated notably over the last 15 years, evidenced in the chart (right). While recent years have been generally consistent with each other, the low volume was notable in 2020-21. That was perhaps a product of the pandemic. However, the volume for 2022-23 is the lowest among the 15 years: 46% lower aggregate dollar value and 37% lower settlement volume in this category. The 41 settlements in 2022-23 were well below the 15-year average of 76.

Notably, 2022-23 is the third straight year of markedly below average 11(a) volume. Despite the sentiment to credit some influence to the pandemic, these figures now likely signal a downward trend either in the broad tendency for claim denial or the settlement of those claims. A third potential is that more of those denied claims are being concluded through represented settlements that are not subject to judicial approval or distinctive record keeping.

Despite the decreased volume, the average monetary value has remained above \$10,000, a threshold only breached in 2020-21, and remaining since. It is also possible that the pandemic holds some responsibility for the marked average increase in 2020-21. It is possible that the notable recent inflation has also impacted the value of such settlements. In all, the most notable statistic remains the marked decrease in section 440.20(11)(a) settlement volume. It is that volume decrease that is responsible for the notable 2022-23 change in the following graph.

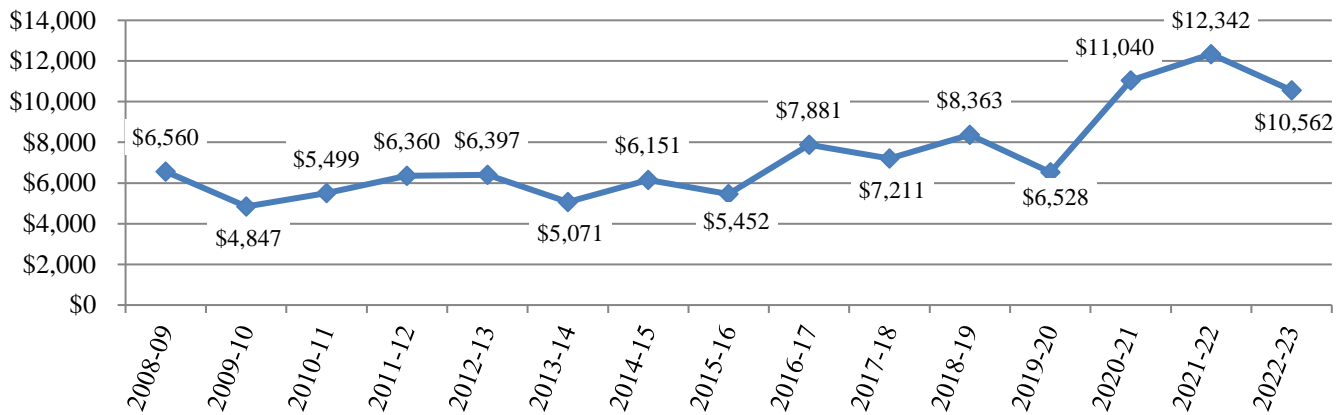
Year	Aggregate Value 11(a) Settlements	Volume of 11(a)	Average 11(a) settlement	Percent change
2008-09	\$649,416	99	\$6,560	
2009-10	\$431,359	89	\$4,847	-26%
2010-11	\$423,432	77	\$5,499	13%
2011-12	\$527,889	83	\$6,360	16%
2012-13	\$479,740	75	\$6,397	1%
2013-14	\$476,715	94	\$5,071	-21%
2014-15	\$485,957	79	\$6,151	21%
2015-16	\$414,357	76	\$5,452	-11%
2016-17	\$685,608	87	\$7,881	45%
2017-18	\$504,797	70	\$7,211	-8%
2018-19	\$652,325	78	\$8,363	16%
2019-20	\$456,952	70	\$6,528	-22%
2020-21	\$596,161	54	\$11,040	69%
2021-22	\$802,220	65	\$12,342	12%
2022-23	\$433,042	41	\$10,562	-14%

### Aggregate Value 11(a) Settlements



The recent trend to increase in average value and the 2022-23 decrease (14.4%) is illustrated further by the following chart depicting the average value of 11(a) washouts over the last fifteen years.

## Average Value 11(a) Settlements



Much might be said about the variety in these figures. There is curiosity perhaps regarding the fluctuation in settlement volume from year to year, the pandemic era increase in average value, and the notable decrease in overall volume in 2022-23. However, it is critical, in any analysis of these figures, to reiterate that the data set studied here is exceptionally small. The total volume of workers' compensation settlements in Florida in fiscal 2022-23 was 24,928 (a 2% increase over 2021-22; 24,410); the 11(a) washout volume of 41 is about .16% of all settlements. It is suggested that in-depth study of these settlements in a separate report each September serves minimal purpose and that this analysis could be easily merged with the Florida OJCC Annual Report each November. That recommendation has been echoed in each of these settlement reports during the twenty-first century.

The settlements in fiscal year 2022-23 were again classified by the reason stated for denying compensability of the claim. Similar classifications are described in each of the OJCC Settlement and Mediation Statistic Reports.<sup>30</sup> Two of the categories in which settlements occurred in 2019-20 ("Not an Employee" and "Misrepresentation") had no settlements reported for 2020-21, and of these only "Not an Employee" was recorded in 2021-22 and 2022-23. The absence of misrepresentation might indicate fewer incidents of such allegations, or that such cases perhaps tend to involve attorneys and thus any settlement is outside the parameters of section 440.20(11)(a).

It is reiterated that the presence of any outliers, that is markedly above or below average instances, will have greater impact on averages when the data set is so limited. The 2021-22 Mediation and Settlement Report details examples impacting those results. In the figures represented below, for example, the "high" in "unspecified" is almost four times the average in that category. That one settlement, the "high" in the category, represents half of the aggregate value of that category. Statistical analysis requires large number sets for reliability. The size of this data set renders any persuasive conclusions challenging.

Reason for Denial	Volume	Percent	Aggregate Value	Average Value	High	Low
Causal Connection Lacking	8	19.51%	\$79,000	\$9,875	\$25,000	\$3,000
No Accident Occurred	6	14.63%	\$38,400	\$6,400	\$9,000	\$4,000
Injury Not Timely Reported	2	4.88%	\$17,400	\$8,700	\$12,500	\$4,900
Not in Course and Scope of Employment	7	17.07%	\$48,500	\$6,929	\$13,500	\$3,000
Positive Drug Test	3	7.32%	\$21,000	\$7,000	\$15,000	\$1,000
No injury occurred	6	14.63%	\$37,600	\$6,267	\$12,500	\$600
Unspecified	7	17.07%	\$131,243	\$18,749	\$71,743	\$2,000
Statute of Limitations	1	2.44%	\$55,000	\$55,000	\$55,000	\$55,000
Not an employee	1	2.44%	\$4,900	\$4,900	\$4,900	\$4,900
Misrepresentation on Application for Employment	0	0.00%	0	\$0	0	0
	41		\$433,043			

## **Number of Mediation Conferences Held:**

The petition volume in 2002-03 belied the legislative intent in 1994 to decrease litigation. Statutory amendments in 2001 also did not affect filing decreases. The impacts of the 2003 statutory amendments were more readily discerned with petition filing volumes decreasing markedly. Petition volumes notably increased for the first time thereafter in 2015-16 (12.07%) and demonstrated some further increases since. The 2022-23 filing volumes represent the highest in Florida since 2006-07. Conversely, mediation volumes have increased since 2014-15; that trend was interrupted in 2022-23, decreasing minimally (.95%). The incongruity of steadily increasing mediation volumes despite fluctuating petition filing rates is likely best explained by the probability of decreasing frequency of private mediation election by litigants.

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. For four years then, through 2021-22, the volume of mediations increased persistently. It is unknown whether the minimal (.95%) decrease in 2022-23 marks a significant trend change, but the extent of this is worthy of monitoring. It remains possible that the increases in recent years were influenced by COVID-19 and the economic impacts it precipitated. The mediation volumes continue to equate to an average of about 3 mediations per mediator per day.<sup>31</sup> As discussed more fully above (Overview of Workers’ Compensation), OJCC mediation operations were mandated to telephonic process by the Deputy Chief Judge in reaction to COVID-19 in March 2020. Though there were attempts to return to more traditional operations, mediation effectively remained mandatorily telephonic until February 2021. Beginning in March 2021, efforts were directed towards in-person mediation, but the volume of requests for permission to attend by telephone remained significant. The convenience of telephonic processes and the overall challenges of legal practice in the midst and wake of the pandemic may have influenced volumes and outcomes in both 2020-21 and 2021-22. Despite decreased PFB filing in 2020-21, mediation frequency increased almost 7%. Despite increased PFB filing in 2022-23, mediation volume decreased. These are each difficult to explain in gross terms. However, each PFB may reach mediation 90 to 130 days after filing and fluctuations in PFB filing rates within a fiscal year could thus influence the filing impact. Notably, the volume of PFBs mediated increased in 2022-23 suggesting that more issues are potentially being addressed despite the minimal decrease in mediation volume.

The OJCC also “de-coupled” the judges and mediators in late 2021-22. There were challenges and adjustments to process in 2022-23. However, by year end, the new organization structure was effective and efficient. While it is likely that a one-to-one ratio of mediators and judges will remain necessary for the workload, all OJCC mediators now report to the Deputy Chief Judge rather than a specific judge. This should enhance the perception of mediator independence within the system. Because mediation is presumptively video and remote, mediation assignments began a rotational and random process in the end of 2021-22. Thus, a mediator now randomly receives mediation assignments from throughout the state. However, once an injured worker is assigned to a particular mediator, various efforts will seek to assure future mediations for that worker will return to the same mediator. By year end, the results of the process changes were manifesting in more equitable mediator workload, more ready rescheduling, and increased efficiency. Though there were numerous complaints about the process initially, the volume and vehemence seem to have markedly declined.

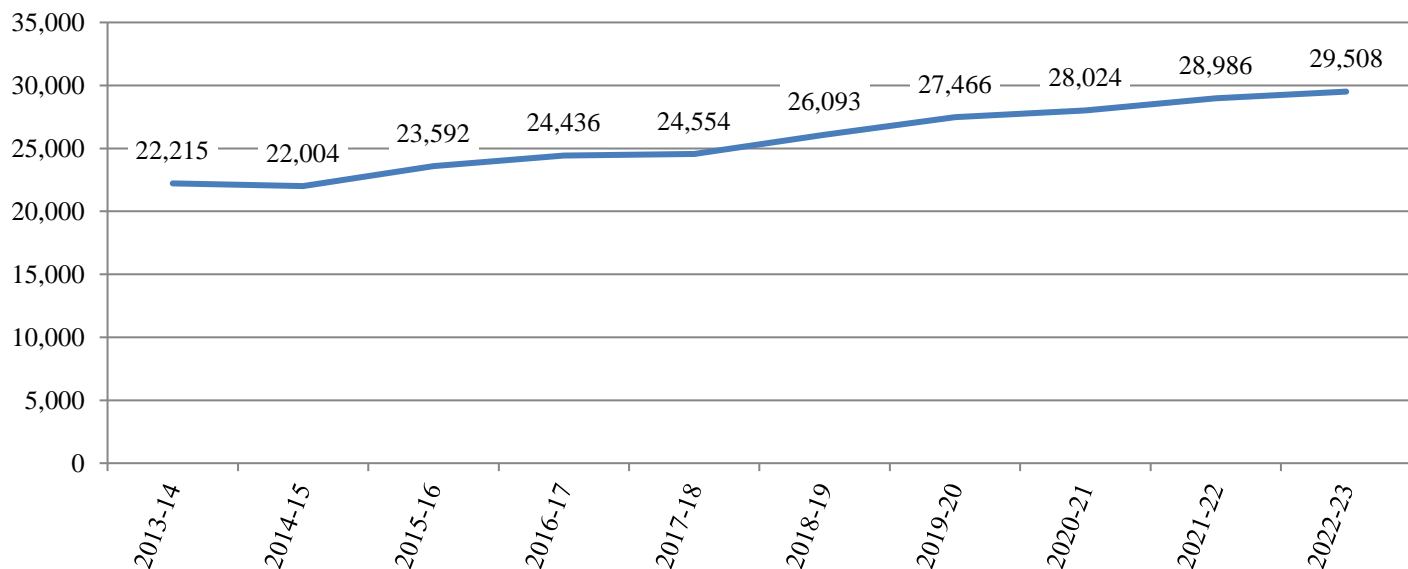
The Florida workers’ compensation law requires that PFBs are filed only when benefits are ripe, due, and owing.<sup>32</sup> After a PFB is filed, an OJCC mediation conference is scheduled with the assigned mediator. Thereafter, it is not

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%
2021-22	71,733	2.95%	20,109	3.43%
2022-23	76,633	6.83%	19,917	-0.95%

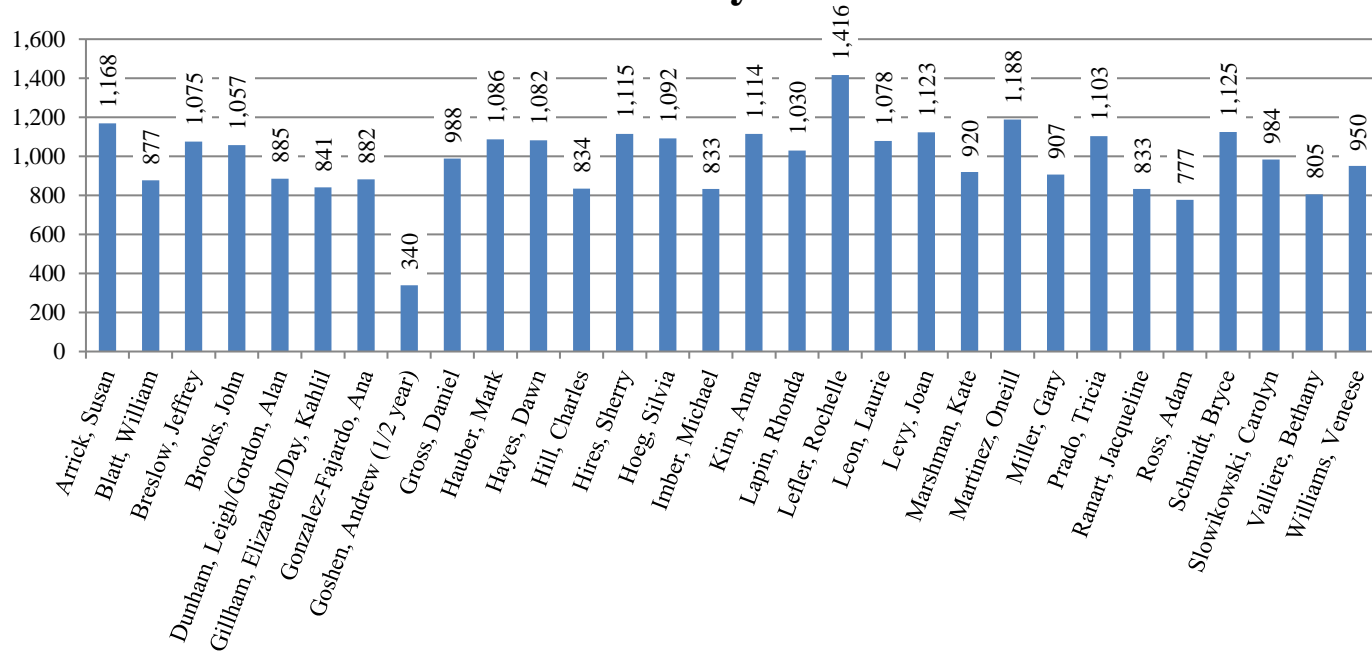
uncommon for additional PFBs to be filed prior to that mediation. Therefore, the volume of PFBs mediated is somewhat higher than the number of mediation conferences actually held, as more than one PFB is often mediated simultaneously. The chart above summarizes the PFB filing volumes and mediation volume over the last 21 years.

These changes render it critical that counsel remain cognizant of notices and assignments. Case consolidation remains an area of concern overall and will receive significant attention in 2023-24. As petition volumes increase, consolidation is an important tool in remaining efficient and avoiding the mandatory referral to private mediation.<sup>33</sup>

## Overall Volume of PFB Mediated



## Volume of PFBs Mediated by Each Mediator 2022-23



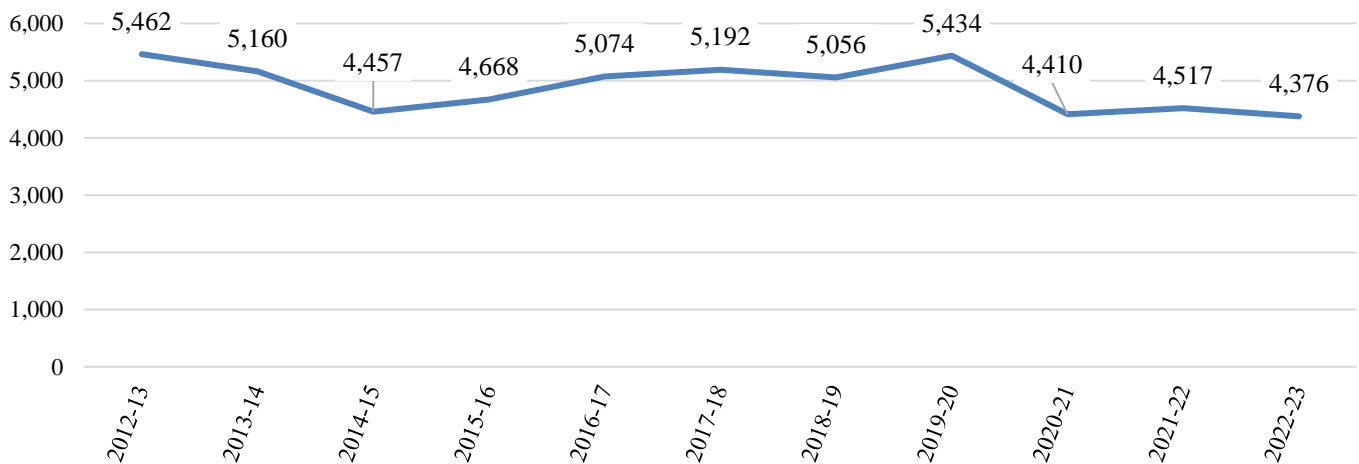
## **Dismissed and Resolved Prior:**

Some volume of PFBs 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. There were 19,917 mediations conducted in 2022-23; a significant volume of others, 16,398 (82% of the volume of mediations conducted) were “resolved or settled prior.” That is a marked increase from 2021-22 when those “resolved or settled prior” were 14,642 (73% of the mediations concluded). This is pertinent in the analysis above regarding increased PFB filing volume compared with the reasonably persistent volume of concluded mediations. A more significant volume of the filed PFBs is being “resolved or settled prior.” An additional 15,203 petitions were dismissed rather than “resolved or settled prior,” a similarity in timing (before mediation), but a distinction of the actual outcome (compromise versus capitulation).

## **Reset Private:**

Like the decline in state mediations, the volume of PFBs that have been reset for private mediation decreased consistently from 2009-10 through 2014-15. In 2012-13, the volume of PFBs mediated by state mediators began to increase (above). 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, returning to volumes not seen since 2012-13. Since the pandemic, however, the volume of OJCC mediations reset for private mediation dropped to the lowest volumes in a decade, and have remained consistently lower for the last three fiscal years. In previous reports, it was suggested 2020-21 might be an anomaly. The last three years of consistent data defies that characterization. It is likely that the convenience of virtual mediation is enhancing demand for OJCC mediation.

### **Reset Private**



## **Disposition of Mediation Conferences:**

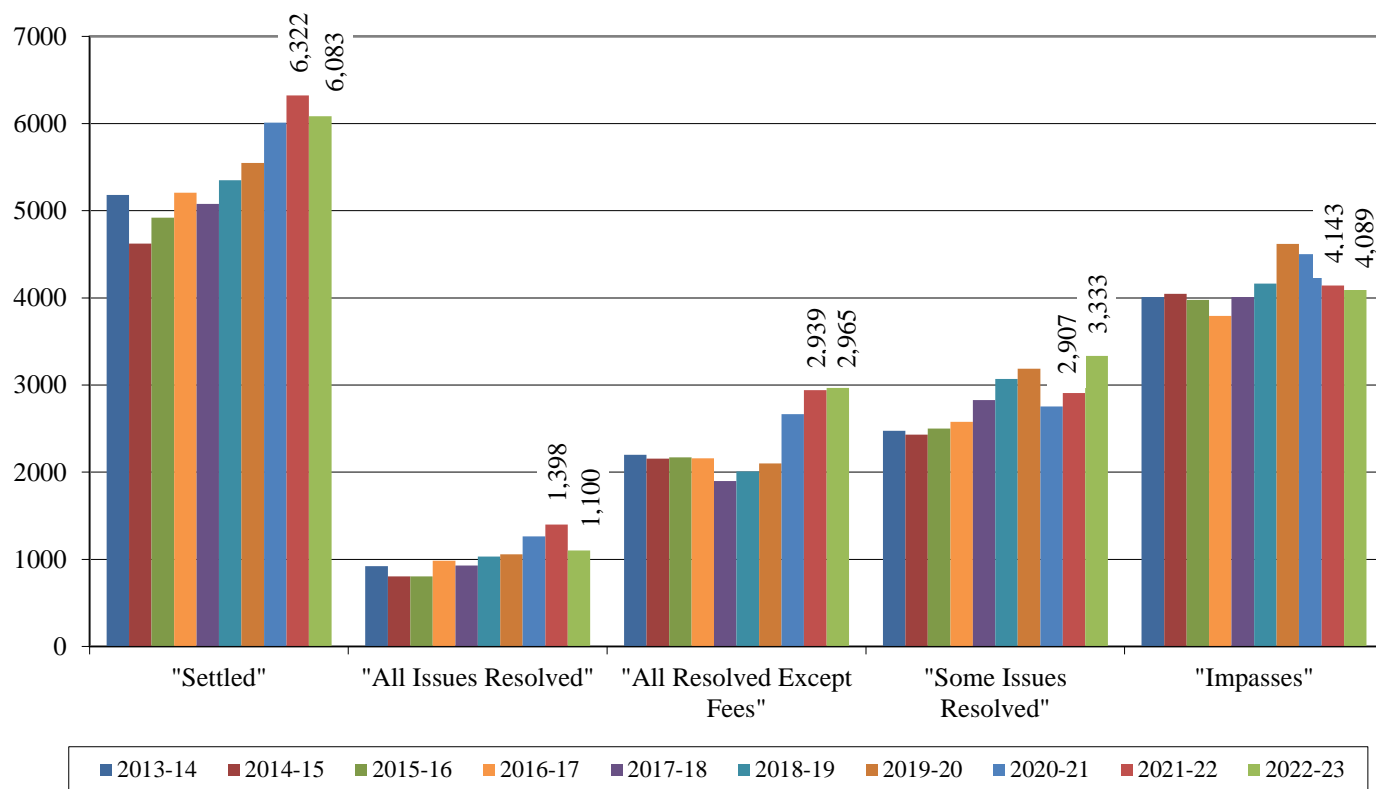
A PFB may seek only one substantive benefit (i.e. authorization of an orthopedic surgeon), or could contain many issues (i.e. orthopedic authorization, neurological authorization, diagnostic testing authorization, correction of the average weekly wage, payment of temporary total, temporary partial, supplemental 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,<sup>34</sup> 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.<sup>35</sup>

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. 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.

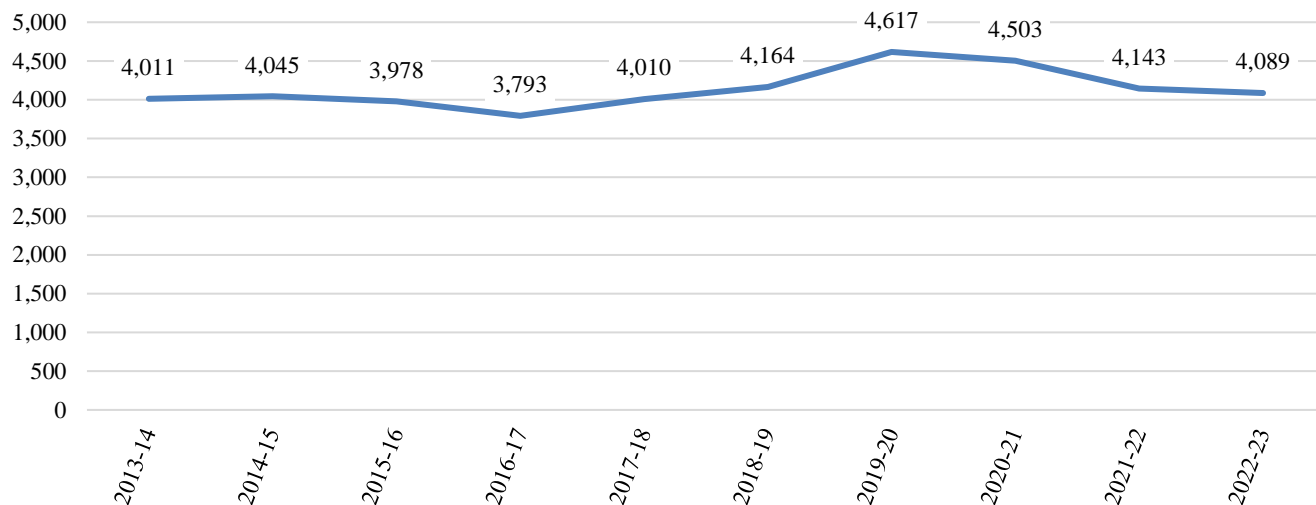
The term “some issues resolved” reflects that some subset of the currently claimed substantive issues has been resolved. The term “all issues resolved except attorney’s fees” reflects that all of the substantive issues and any ancillary penalty and/or interest issues were resolved, but fee/cost entitlement 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, returning to historical levels after increases in 2019-20 and 2020-21. As noted in the 2021-22 Mediation and Settlement Report, the impassé volume was trending back to a pre-pandemic baseline. The results in 2022-23 are consistent with that. The volumes in other categories are largely consistent year over year. However, 2022-23 demonstrated a marked (21%) decrease in “all issues resolved.” While that might cause concern, the increase (15%) in “some issues resolved” is likely a positive correspondence. Perhaps the most critical consideration is resolution generally. In that light, the “impassé” outcome is

twenty-one percent (20.5%) in 2022-23, statistically consistent with 2021-22 (20.6%) and notably better than 2020-21 (23.2%). The OJCC mediators have much about which to be proud regarding 2022-23.

### Overall "Impasses"

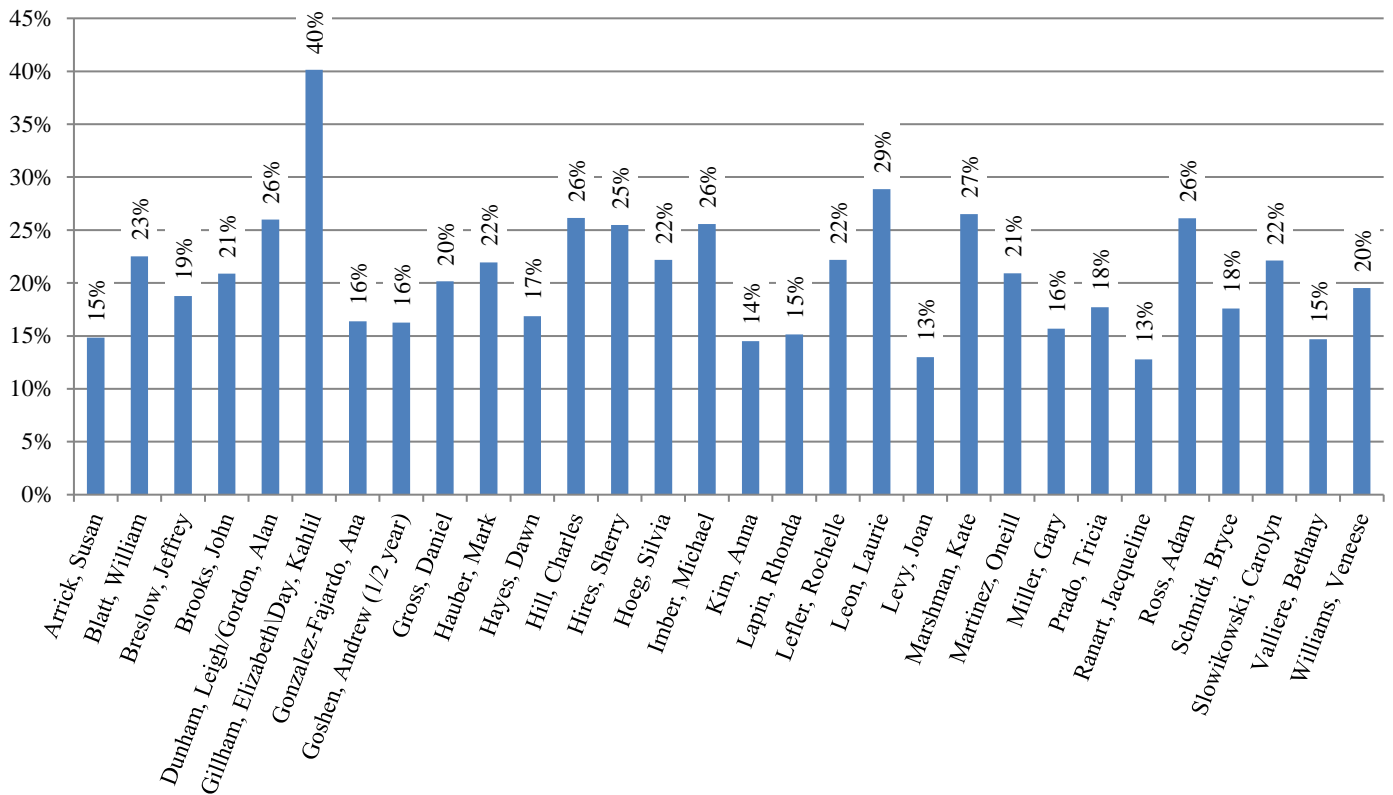


The marked decreases in “impasse” between 2009 and 2013 were illustrative of efforts by the OJCC mediators to resolve at least some aspect of the cases which are presented to them. Individual impasse rates are illustrated below, and for each mediator in the appendices. Impasse increased during the pandemic, but has returned to pre-pandemic levels. Despite significant volumes of mediations overall, the percentages of convened mediations resulting in impasse are impressive and consistent. This is well illustrated when expressed as a percentage of the mediations held by OJCC mediators. The increasing volume of mediations and the decrease in impasse outcomes have combined in recent years to result in the lowest percentage of “impasse” in the last ten years.

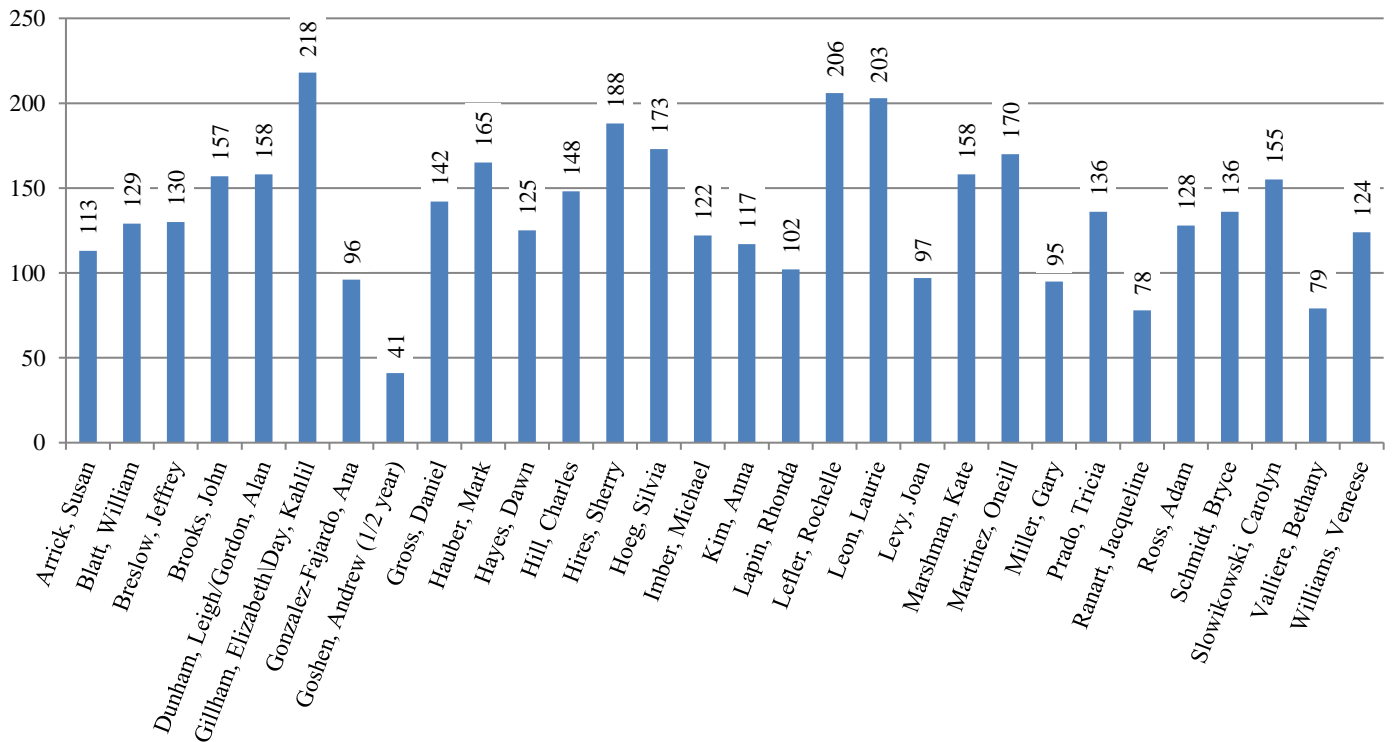
13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	22-23
24.80%	26.20%	25.30%	23.60%	24.80%	24.40%	25.40%	23.16%	20.60%	20.53%

The corollaries of these figures represent the volume of OJCC mediations in which at least some volume of issues was resolved. In approximately seventy-nine percent (79.47%) of 2022-23 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.

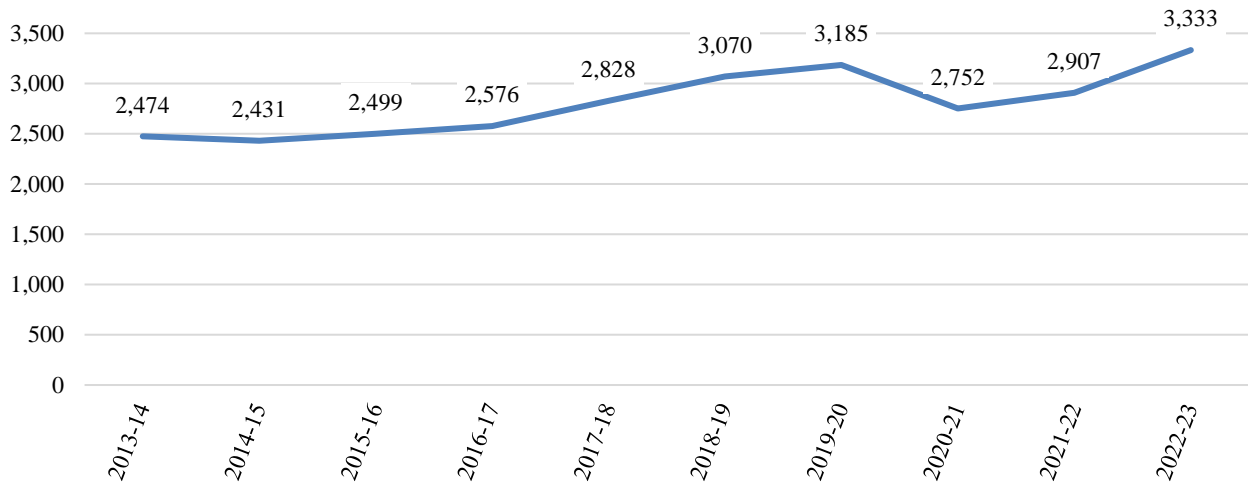
## "Impasse" % by Each Mediator 2022-23



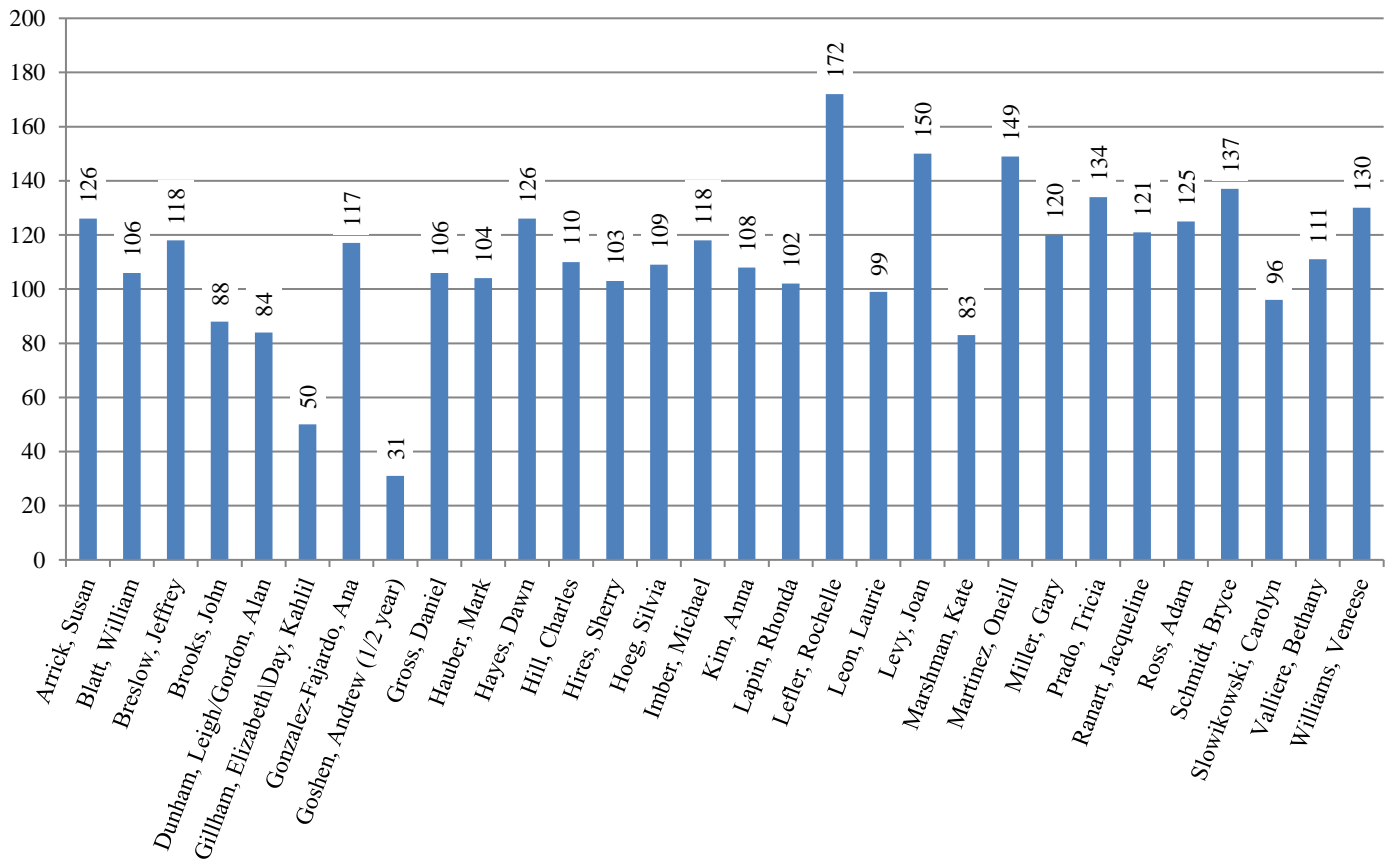
## "Impasse" by Each Mediator 2022-23



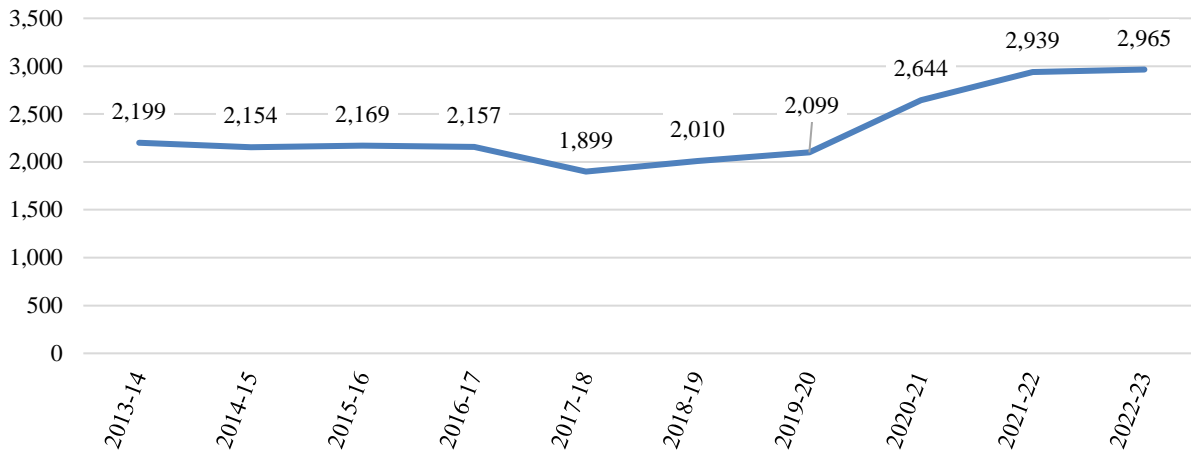
## Overall "Some Issues Resolved"



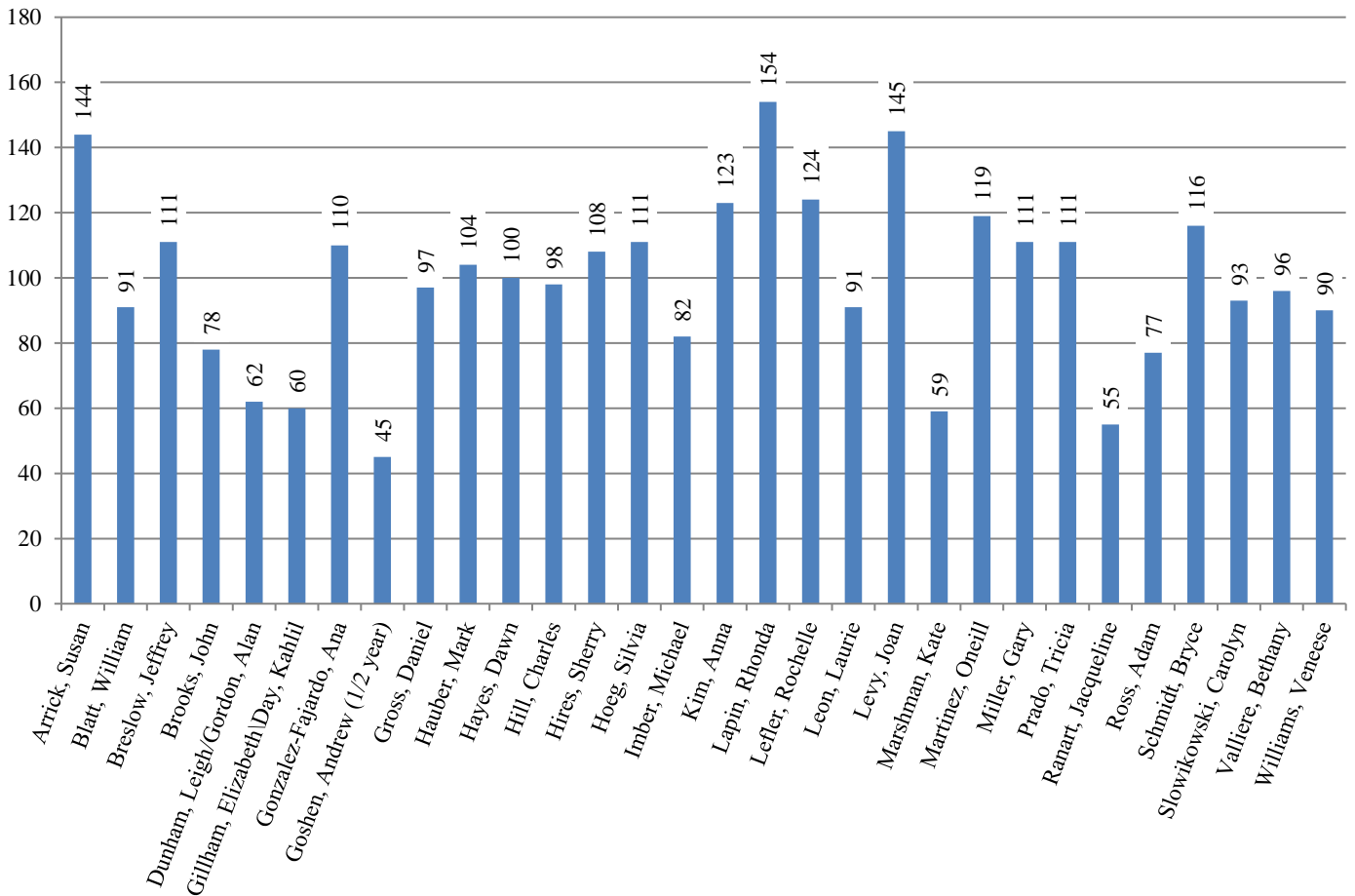
## "Some Issues Resolved" for Each Mediator 2022-23



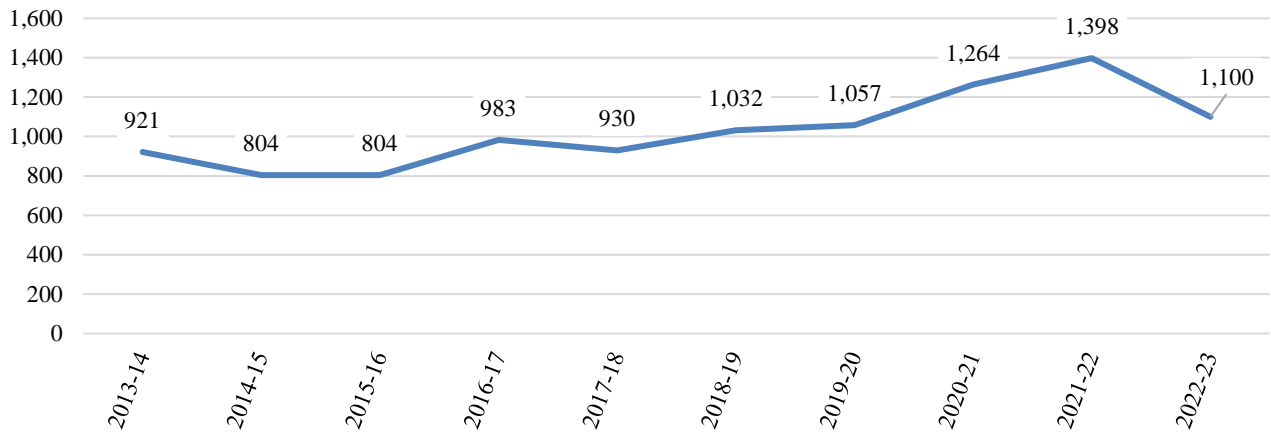
## Overall "All Resolved Except Fees"



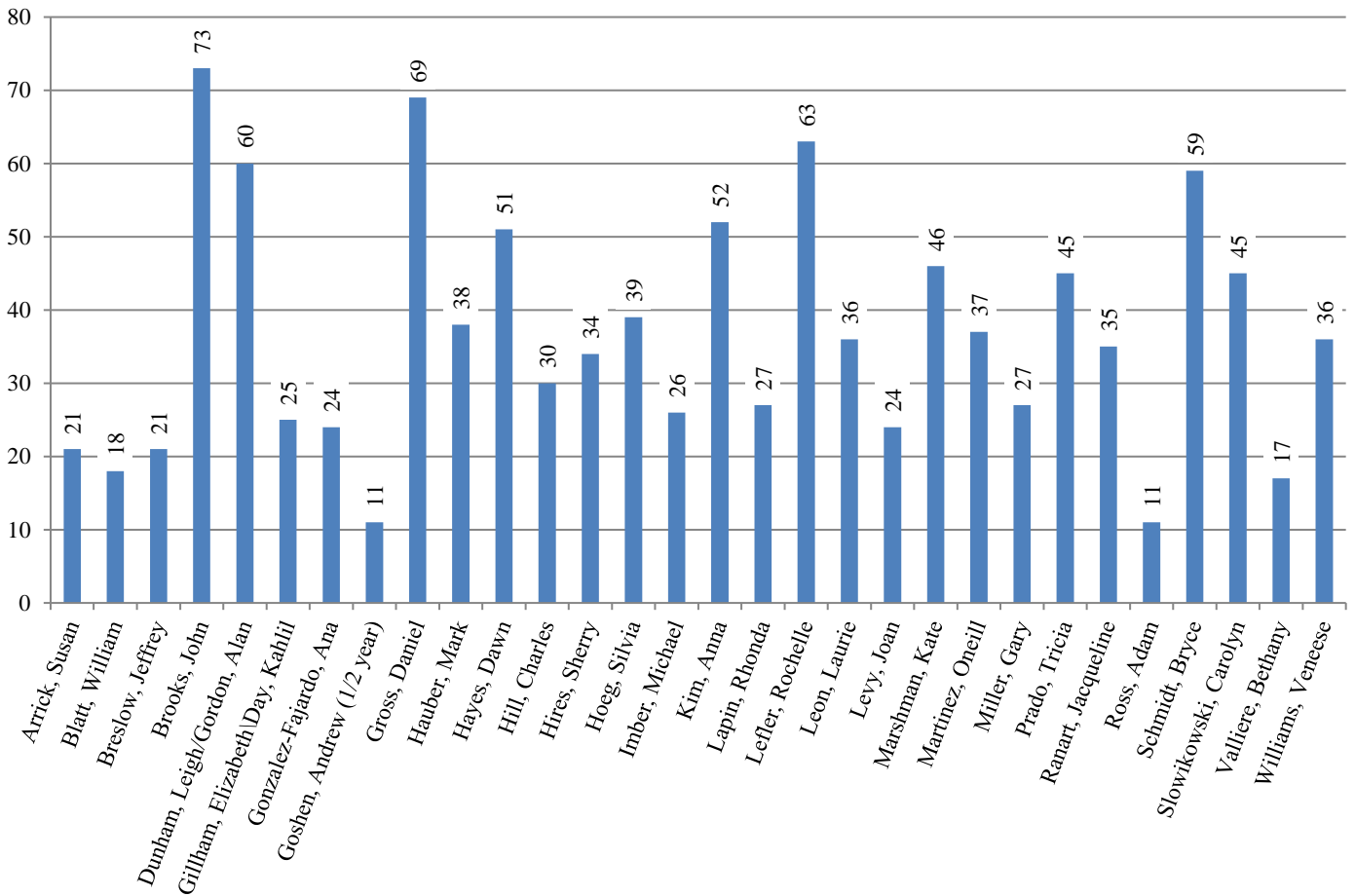
## "All Issues Except Fees" for Each Mediator 2022-23



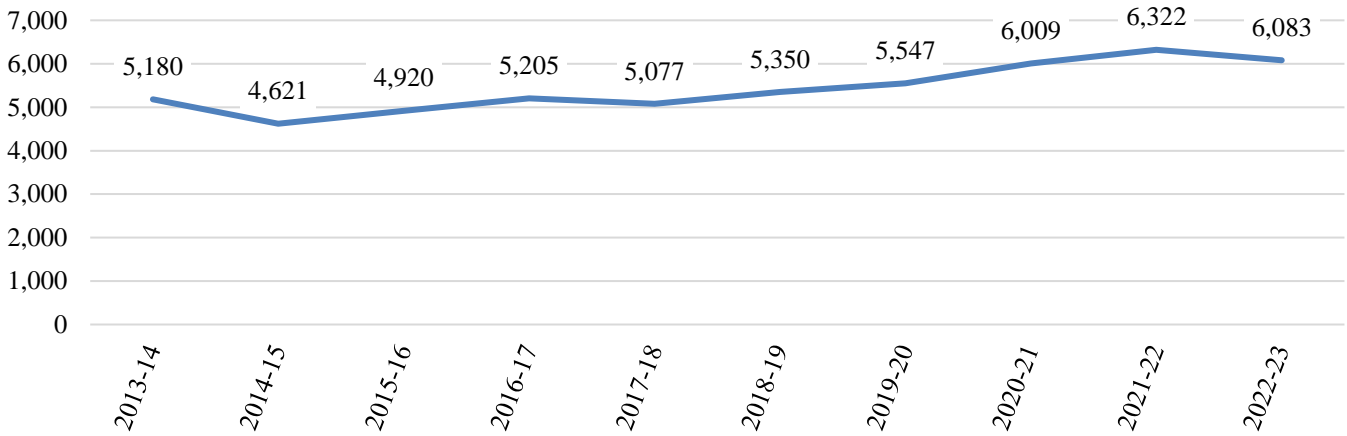
## Overall "All Issues Resolved"



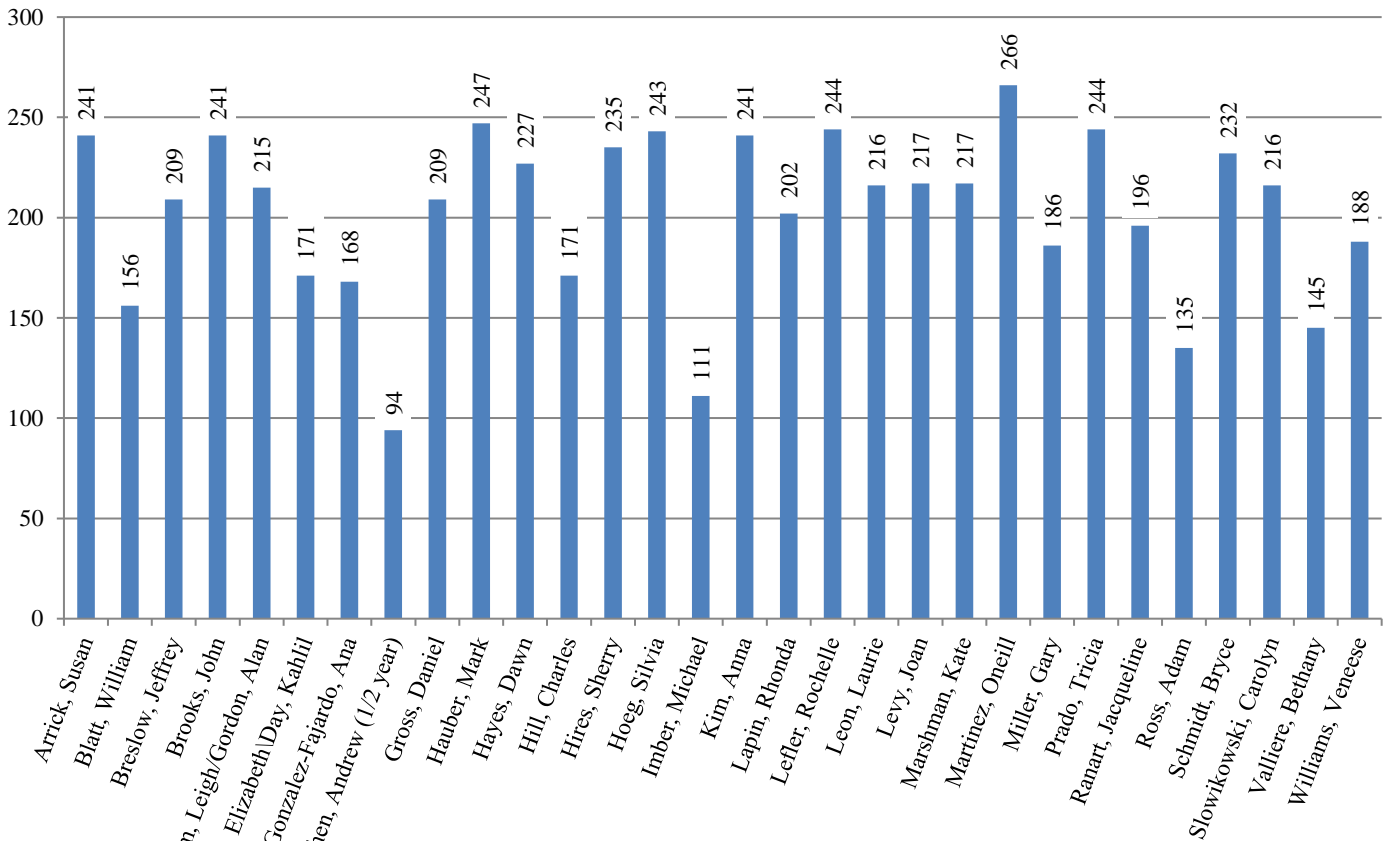
## "All Issues Resolved" for Each Mediator 2022-23



## Overall "Settled"



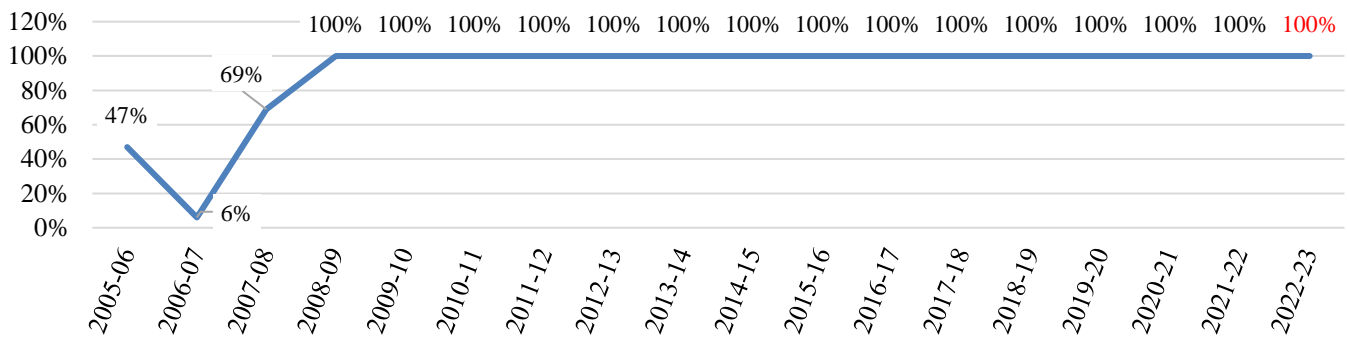
## "Settled" for Each Mediator 2022-23



## Timeliness of Mediations:

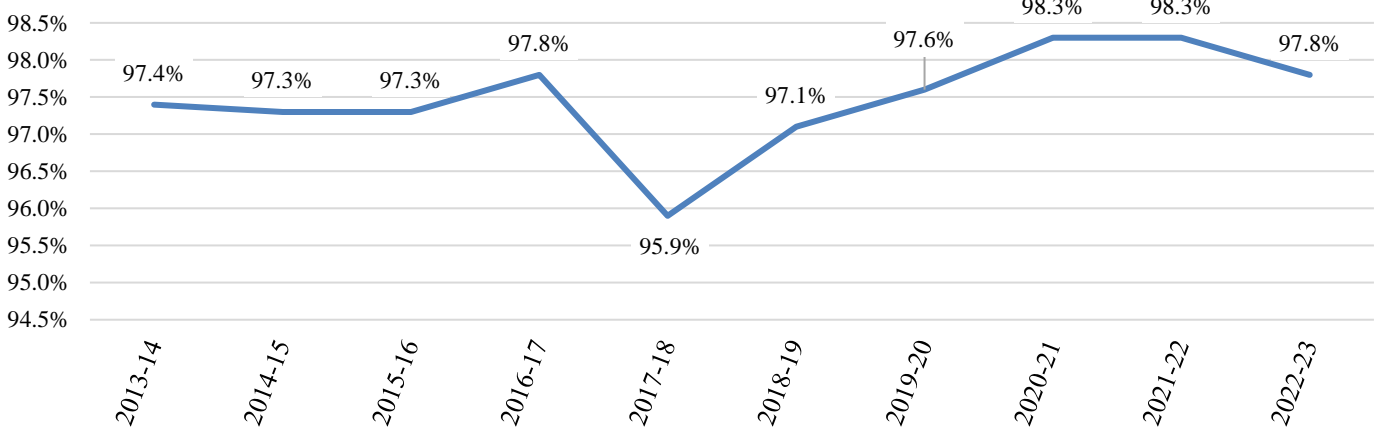
The Florida workers' compensation law requires that mediation occur within 130 days of the PFB filing. There are nonetheless situations in which this parameter cannot be met. In personal injury actions, it is common that mediation is occurring after the rendition of medical modalities and the injured 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 fifteen fiscal years, all of the OJCC mediators averaged less than 130 days between petition filing and the initial mediation.

### Percent of State Mediators Averaging Less than 130 Days to First Mediation



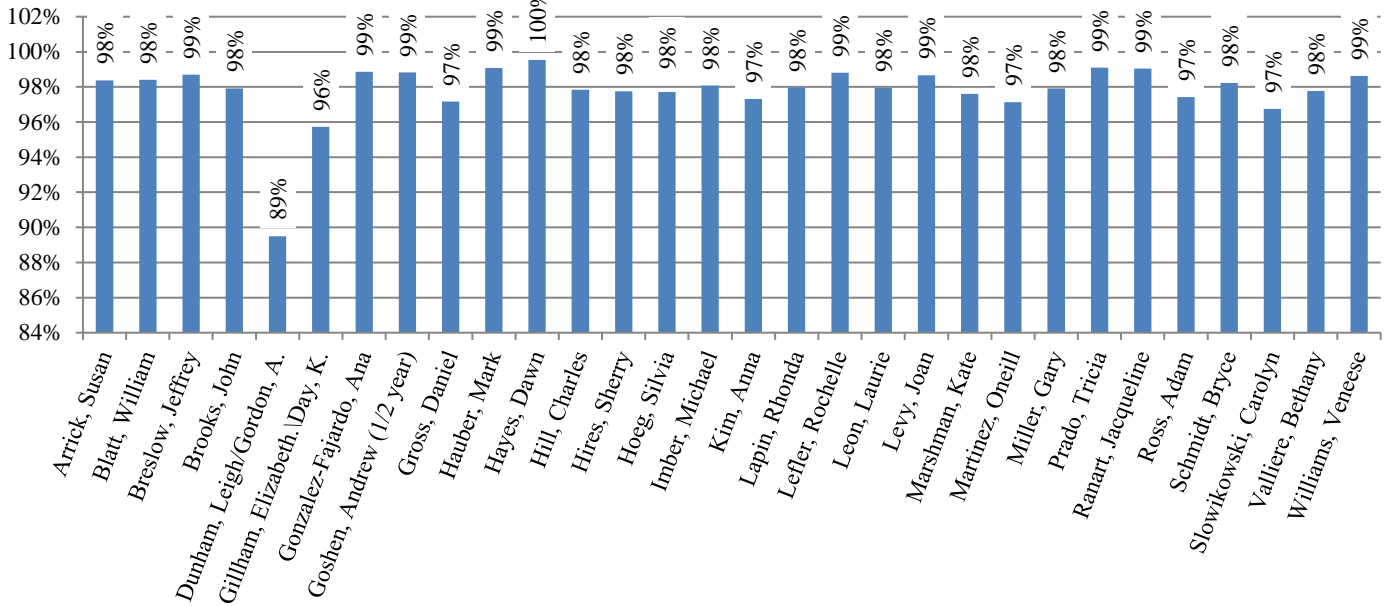
In fact, in 2022-23 the OJCC mediators mediated approximately 97.8% of the PFBs within the 130-day statutory parameter. That is a slight decrease compared to 2021-22. Notably, this is very consistent with the pre-pandemic era. It is fair to characterize the last four years, each approximately 98%, as exemplary in terms of mediation timeliness, despite the challenges the community faced. As the OJCC enters its second year following the random case assignment and presumptively virtual mediation, it is anticipated that the timeliness will remain significantly similar.

### Percent Mediated within 130 Days





## Percent Mediated within 130 days for Each Mediator



### Mediations Continued:

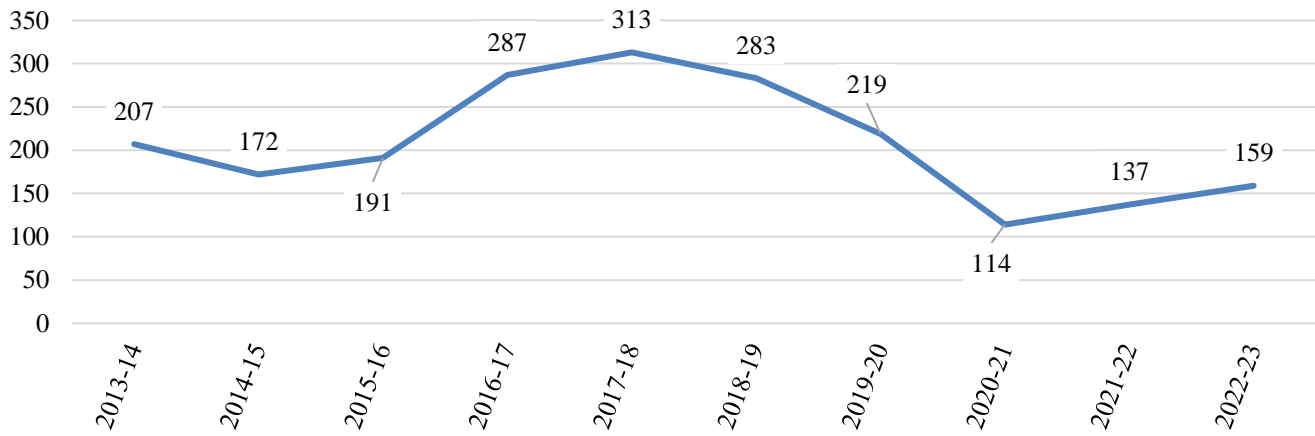
Mediation continuances increased markedly in fiscal years 2004-05 and 2005-06. The cause of that trend remains unknown. However, those volumes may have been increased by the volume of weather-related office closures that year, as Florida’s cyclone season affected virtually every Florida county. Those storms caused carriers to close offices in central Florida (frustrating mediations in unaffected districts elsewhere) and by closing District Offices at which the mediations would otherwise have been held. The digital age was nascent at that time; E-filing, video facilities, and other innovations were just beginning. 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, and has only slightly increased since.

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.” This definition was added to the procedural rules for clarity and transparency. Rule 60Q6.110(2)(a).

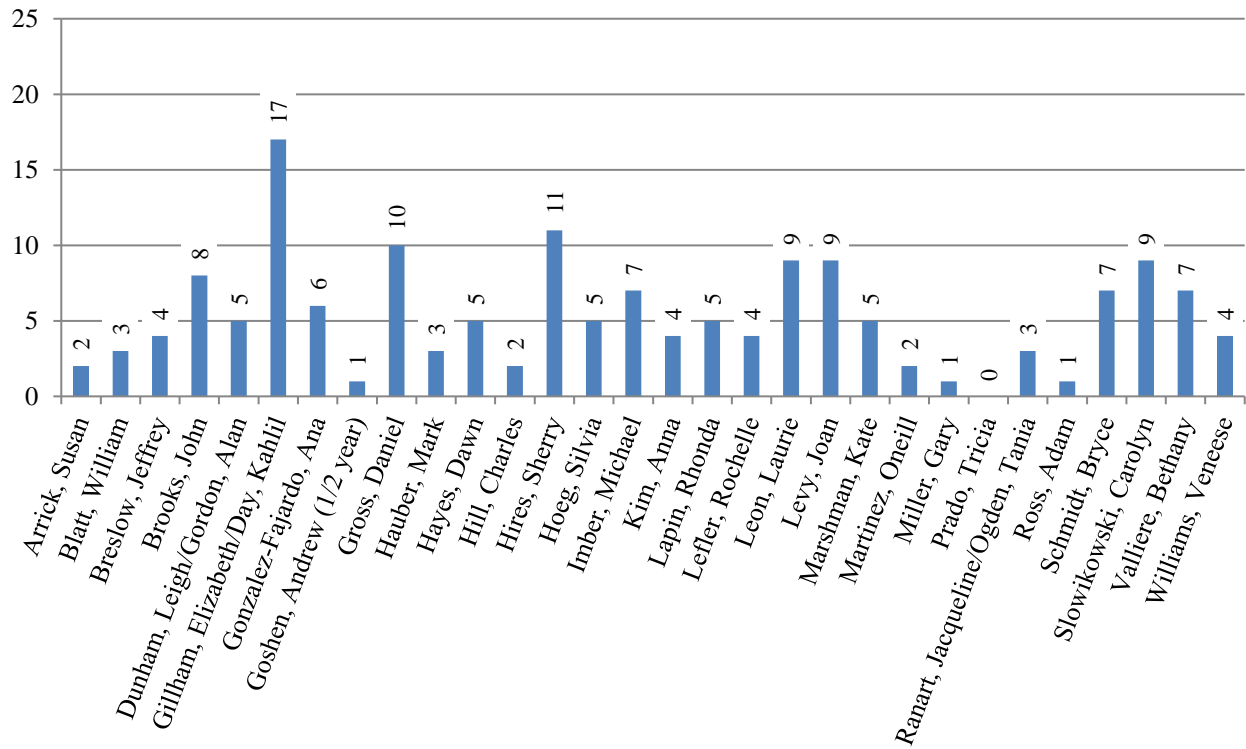
Some portion of both the stabilizing of these figures and the marked decrease in the number of mediation conference continuances had been previously deemed likely attributable to the annually decreasing volume of PFB filings. It was therefore encouraging to see the continuance rate remaining well below one percent despite 2022-23 increase in PFB filings.

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%
2021-22	71,733	137	0.19%
2022-23	76,633	159	0.21%

## Overall Mediations "Continued"

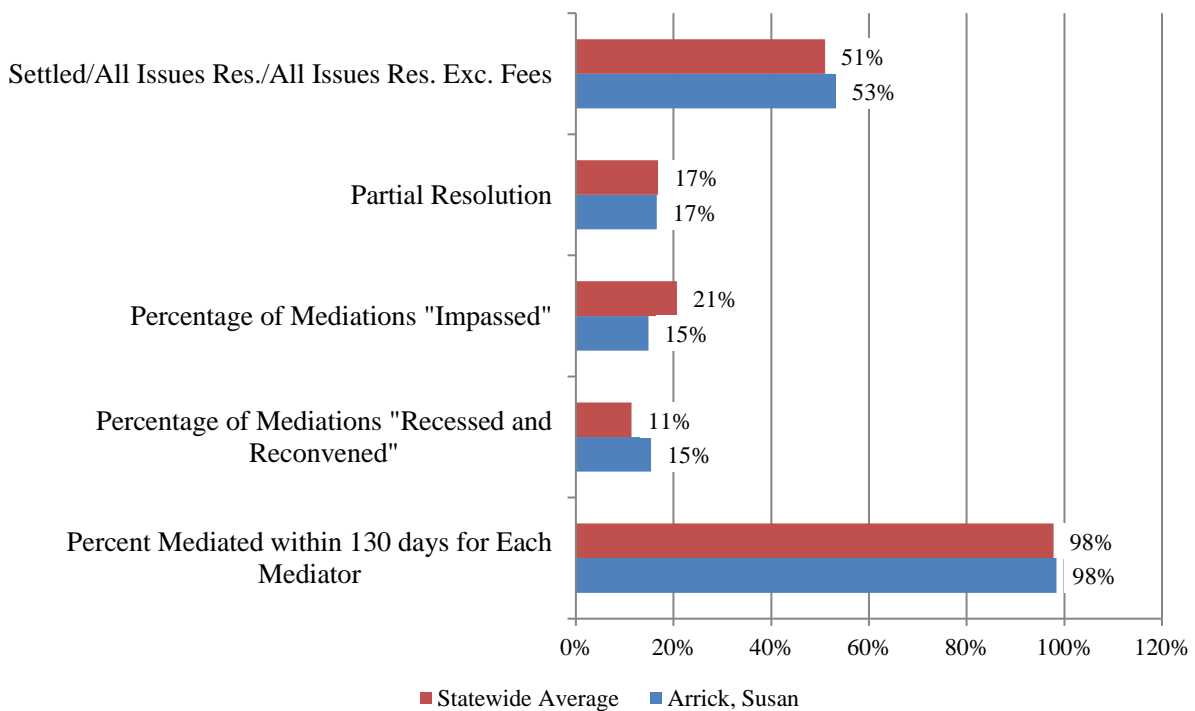
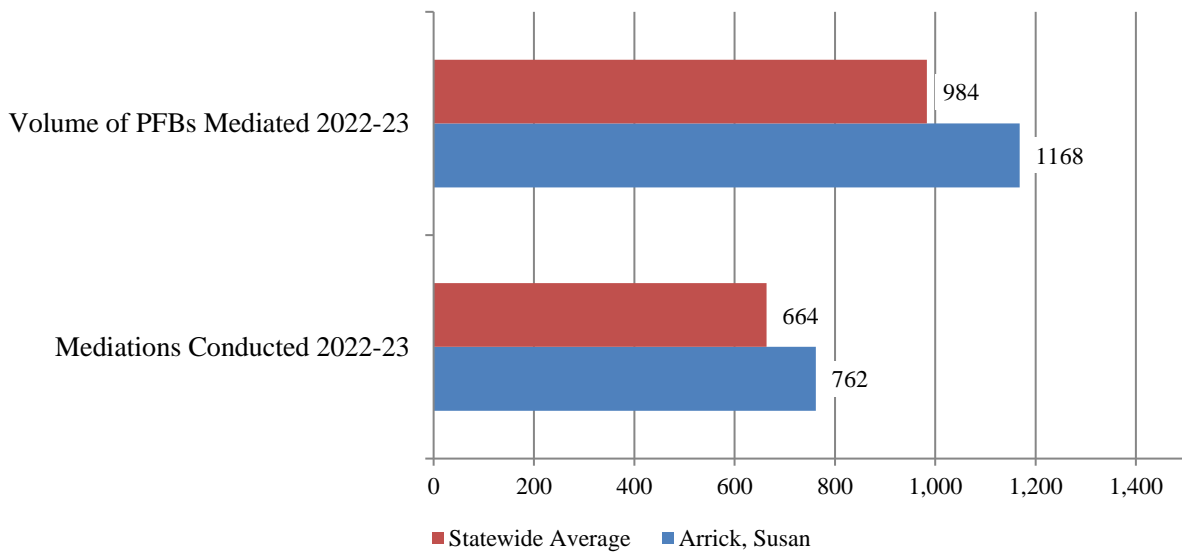


## "Continued" for Each Mediator 2022-23

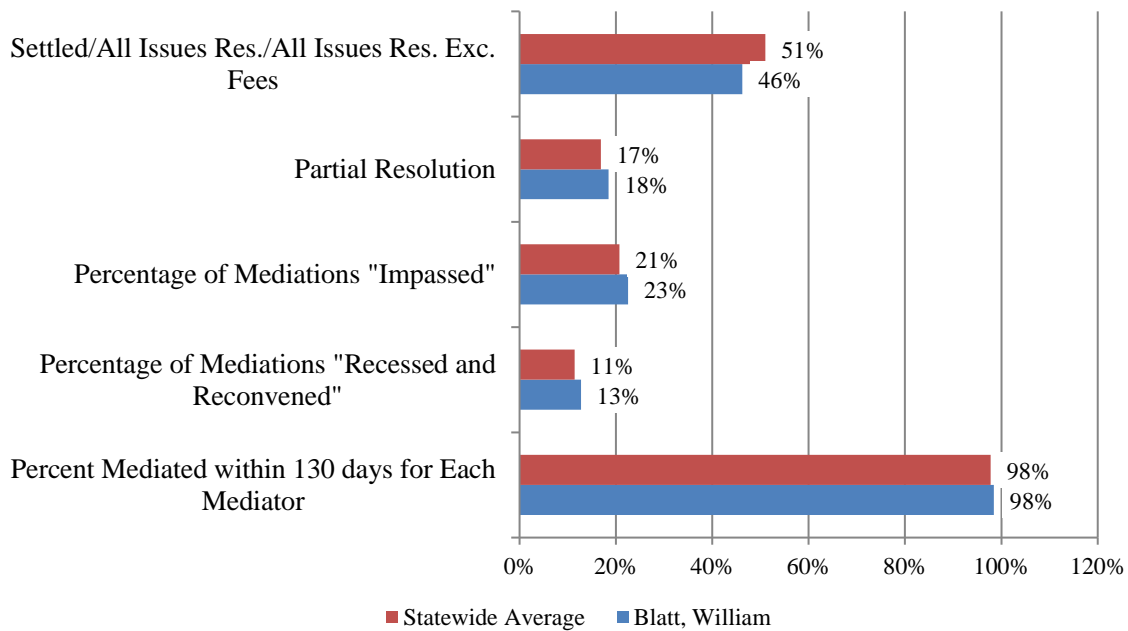
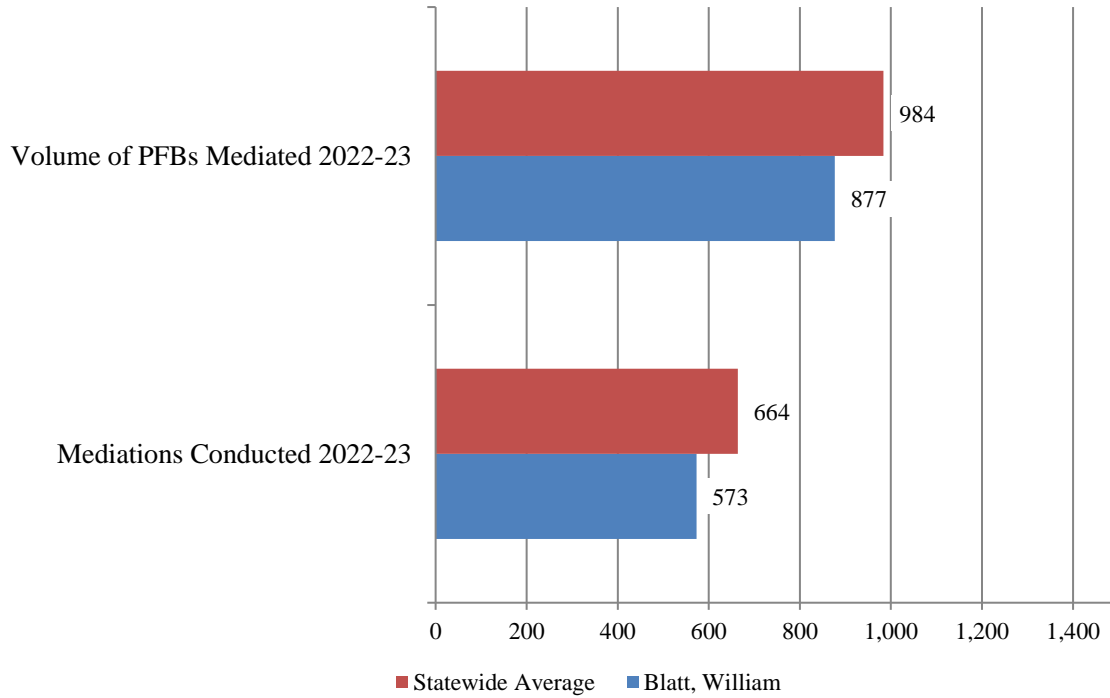


## Individual Mediator Statistics:

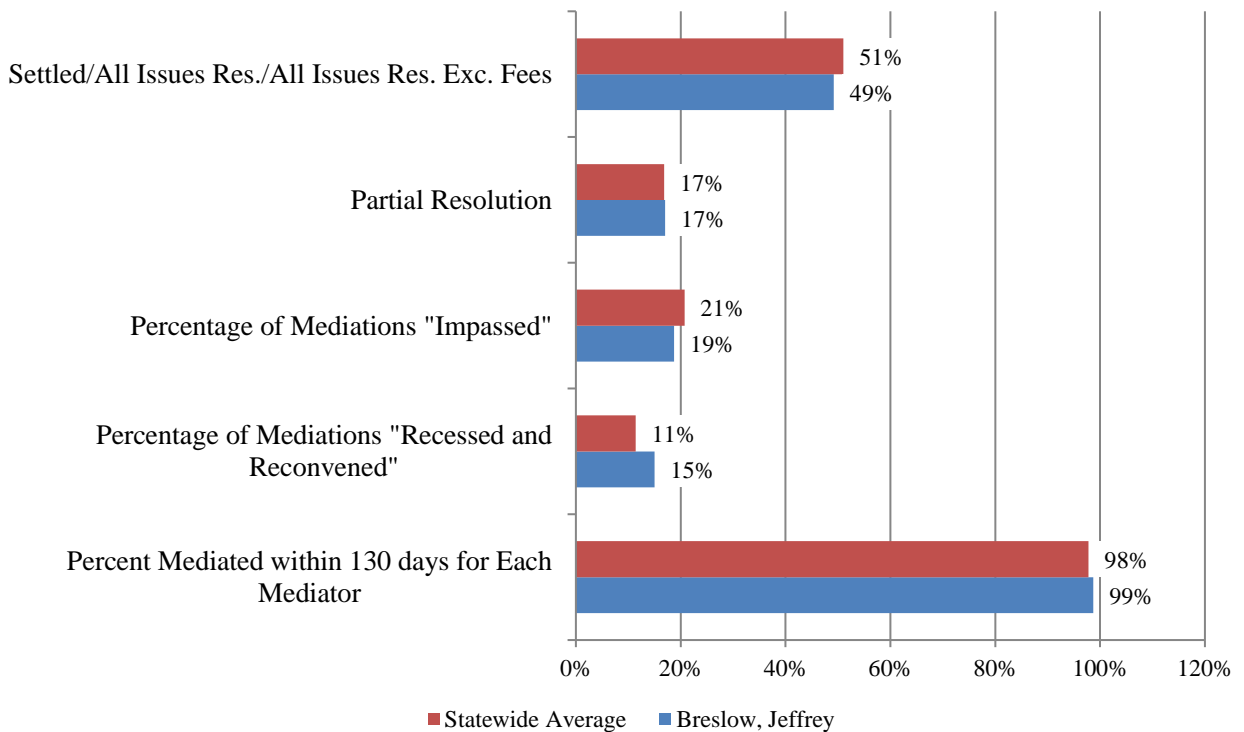
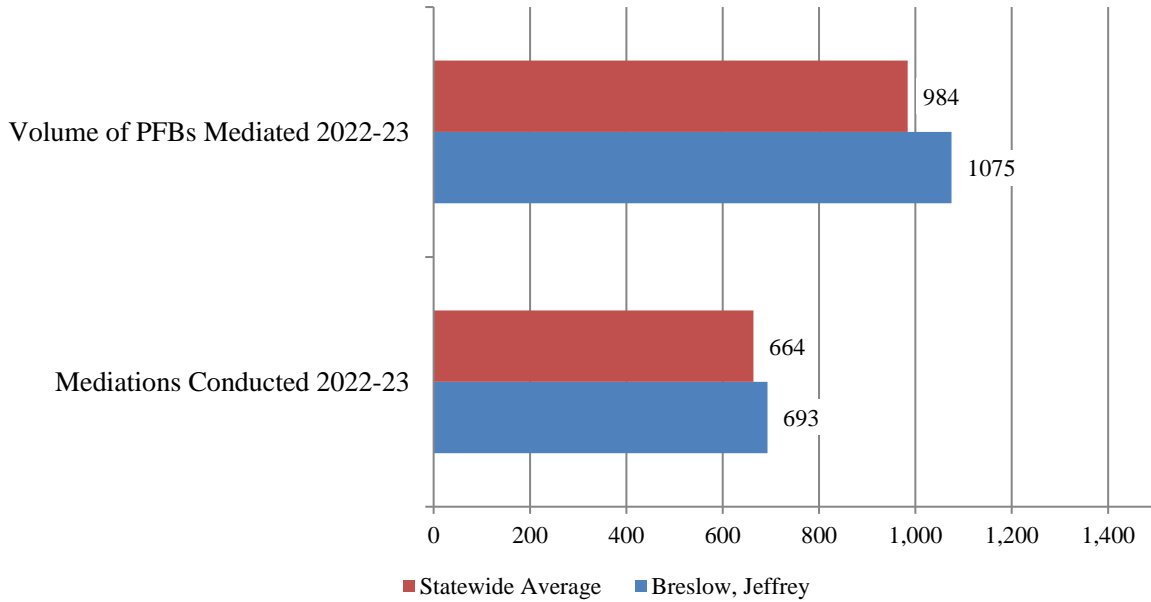
Arrick, Susan



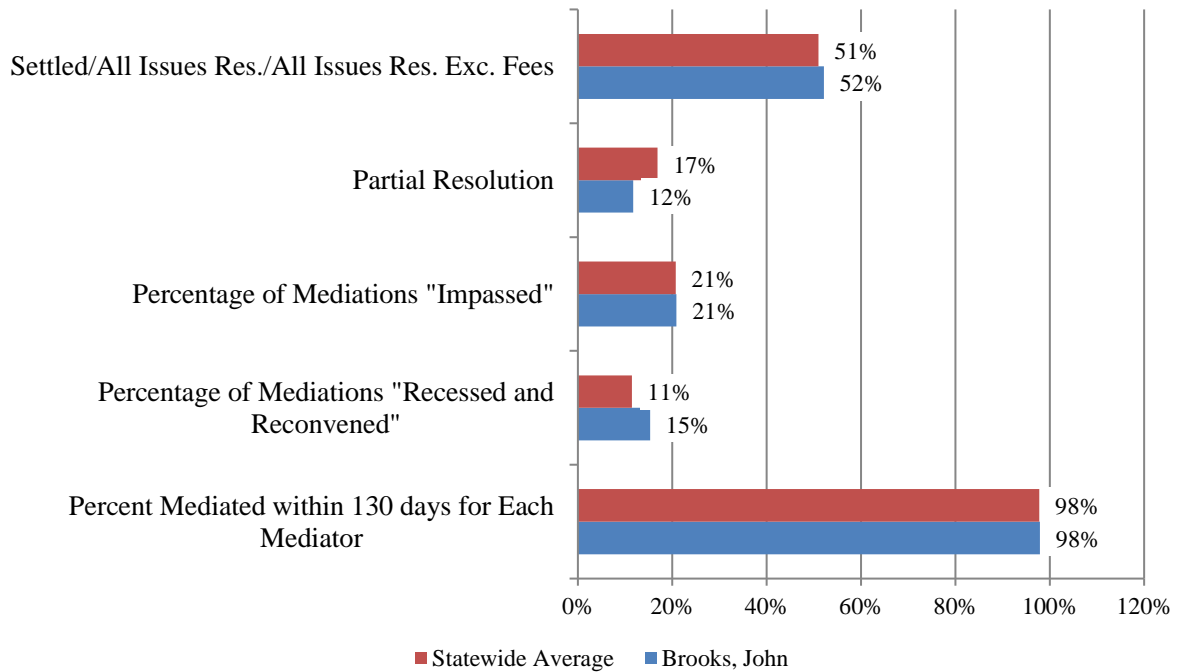
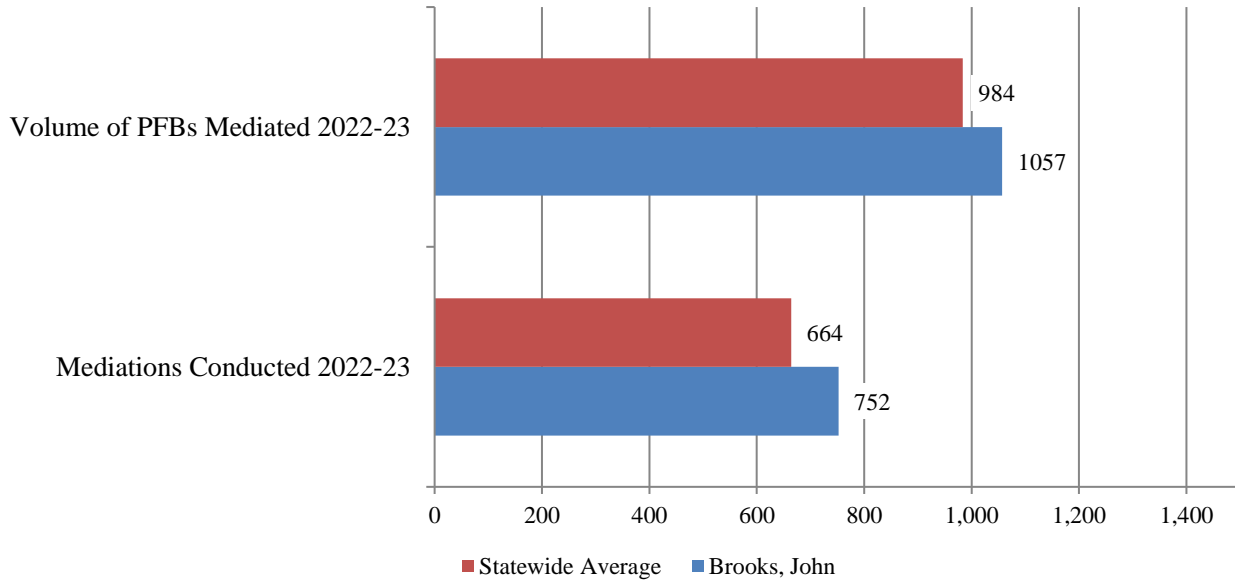
## Blatt, William

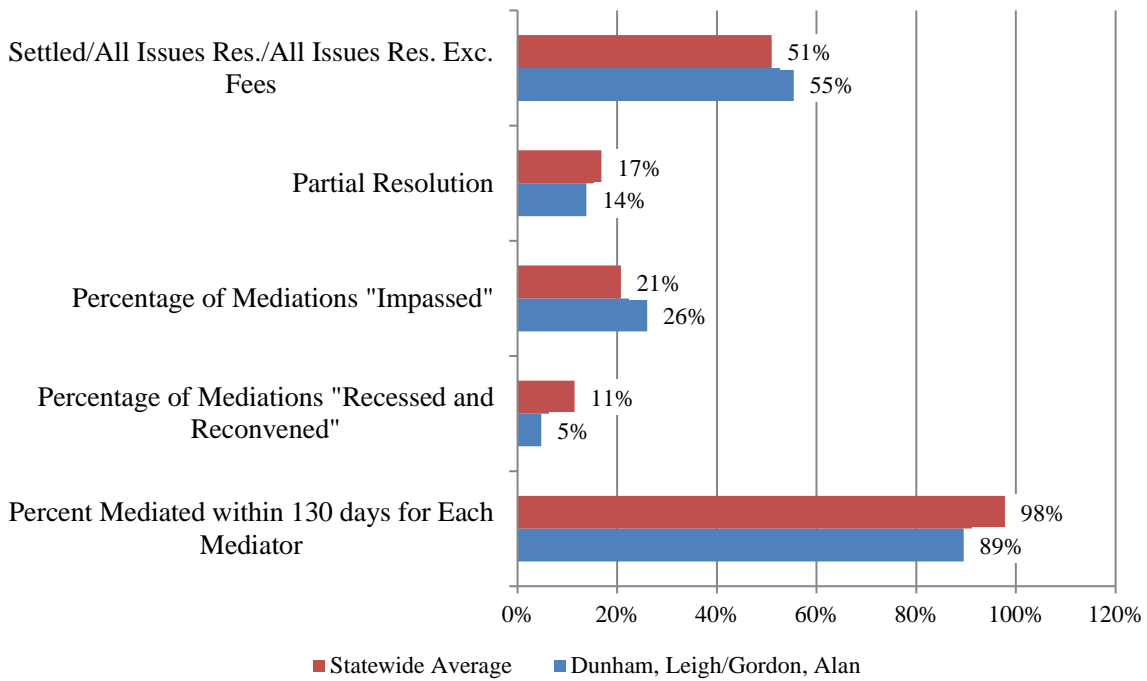
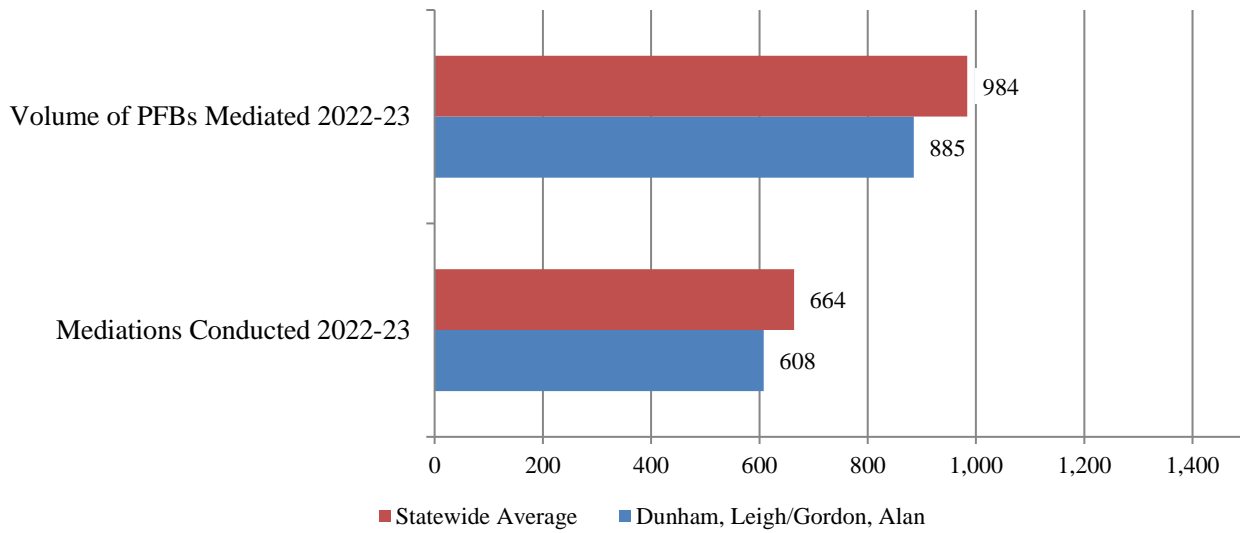


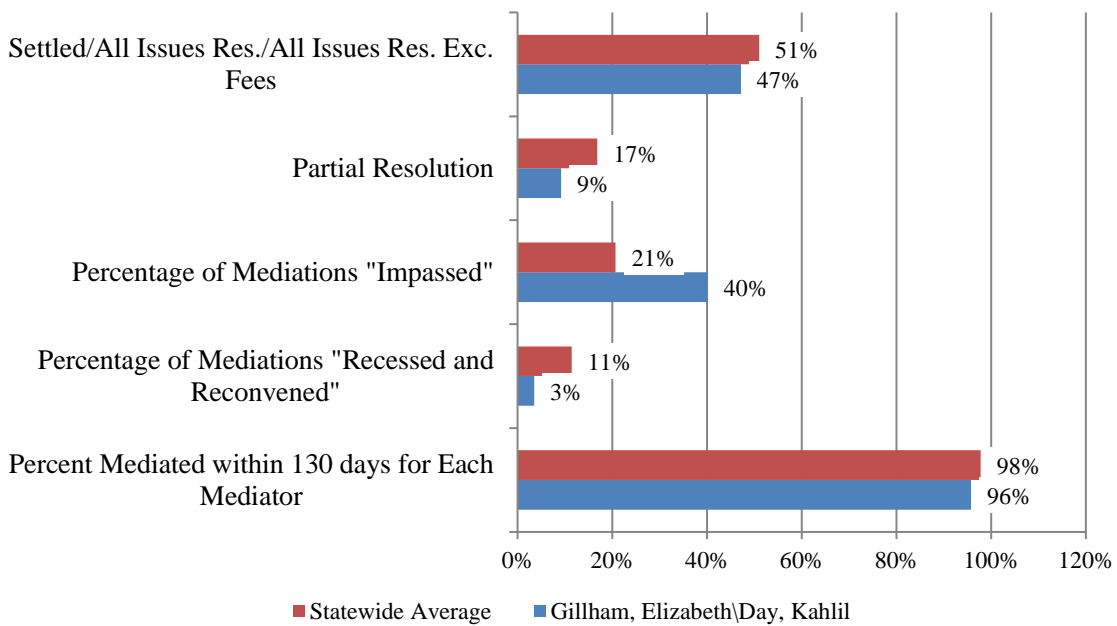
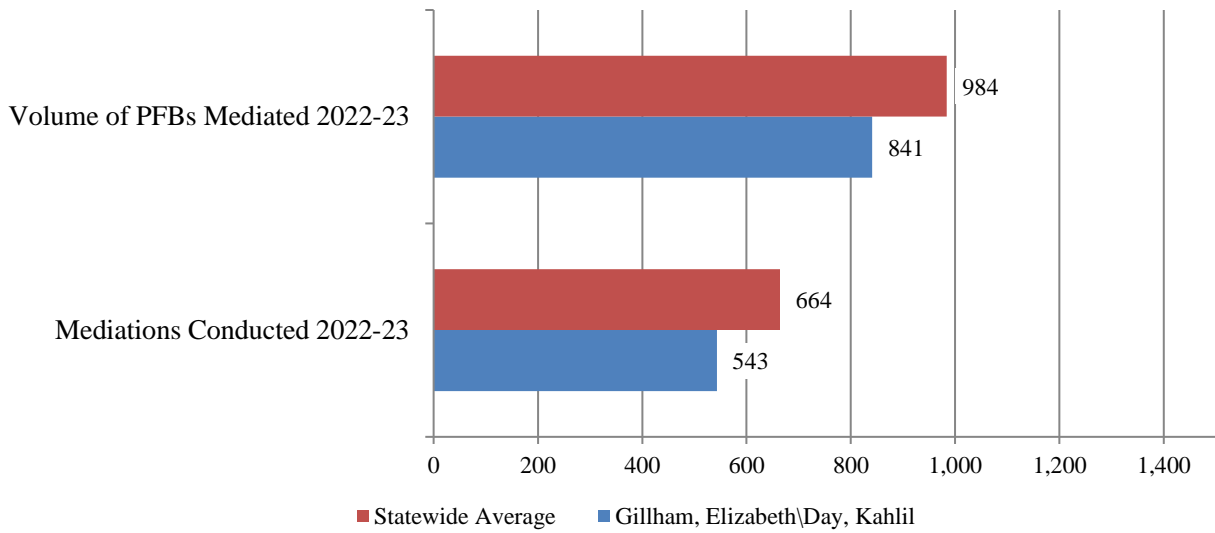
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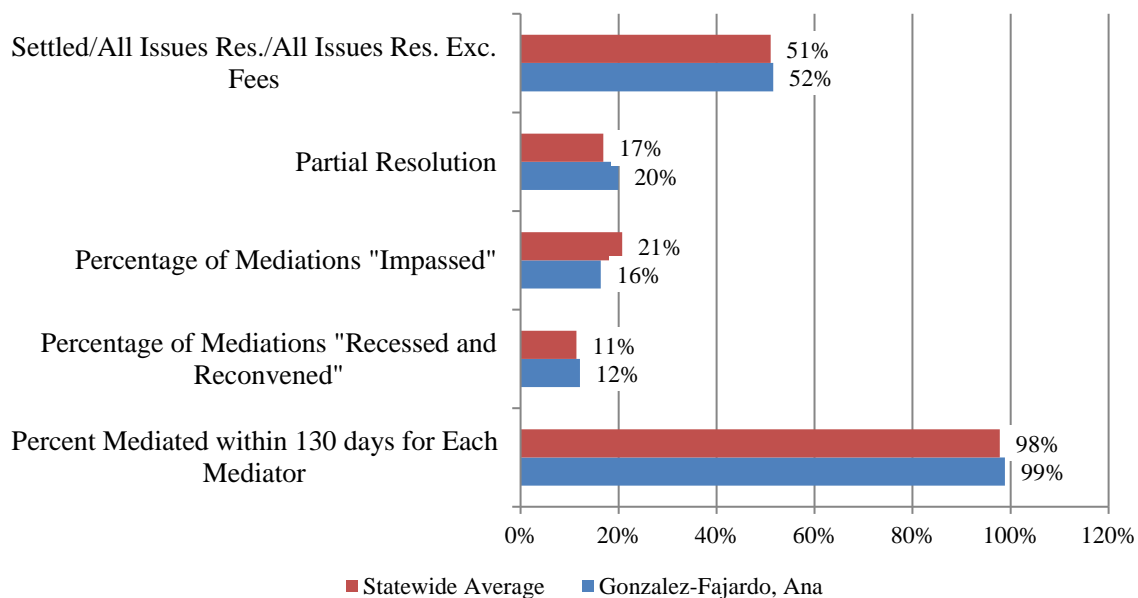
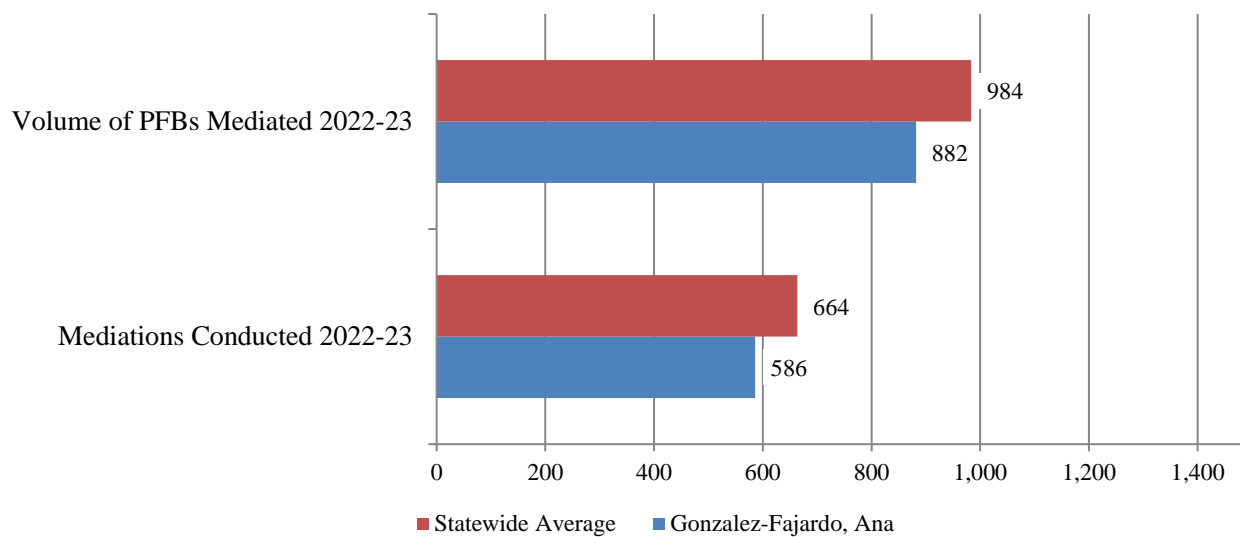


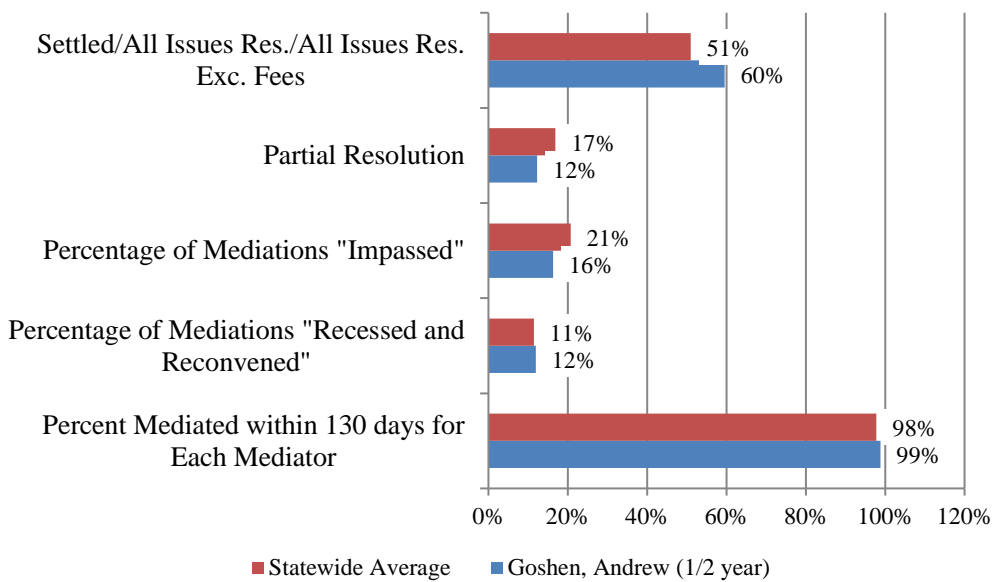
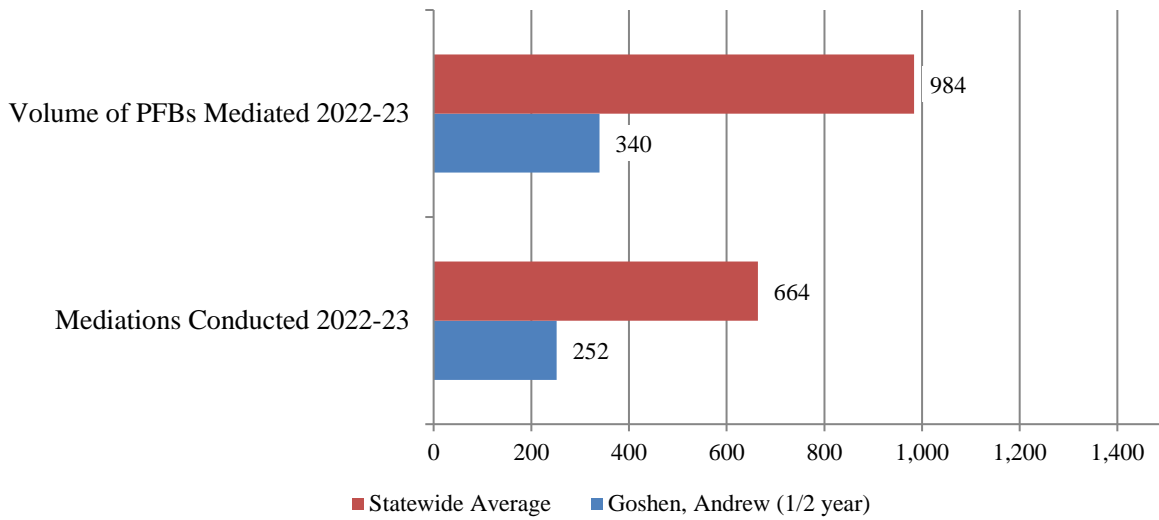


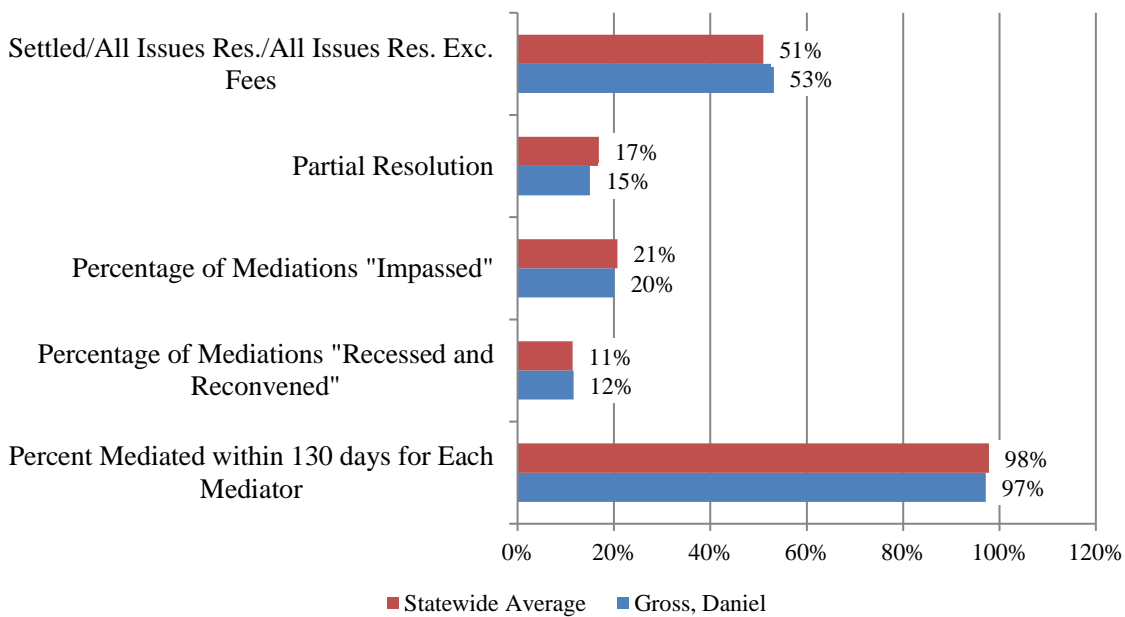
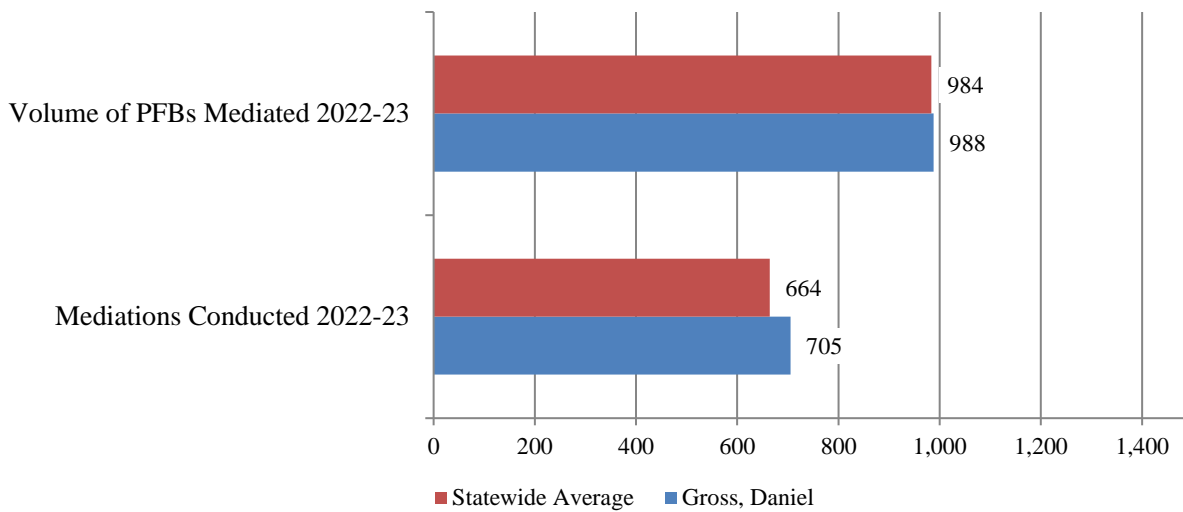




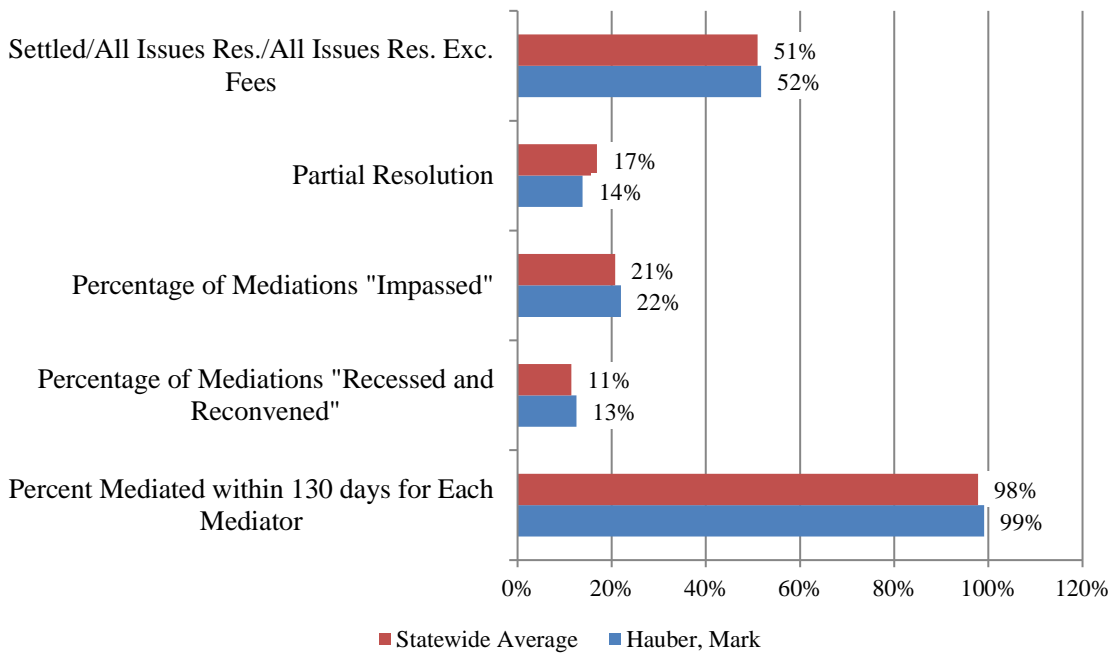
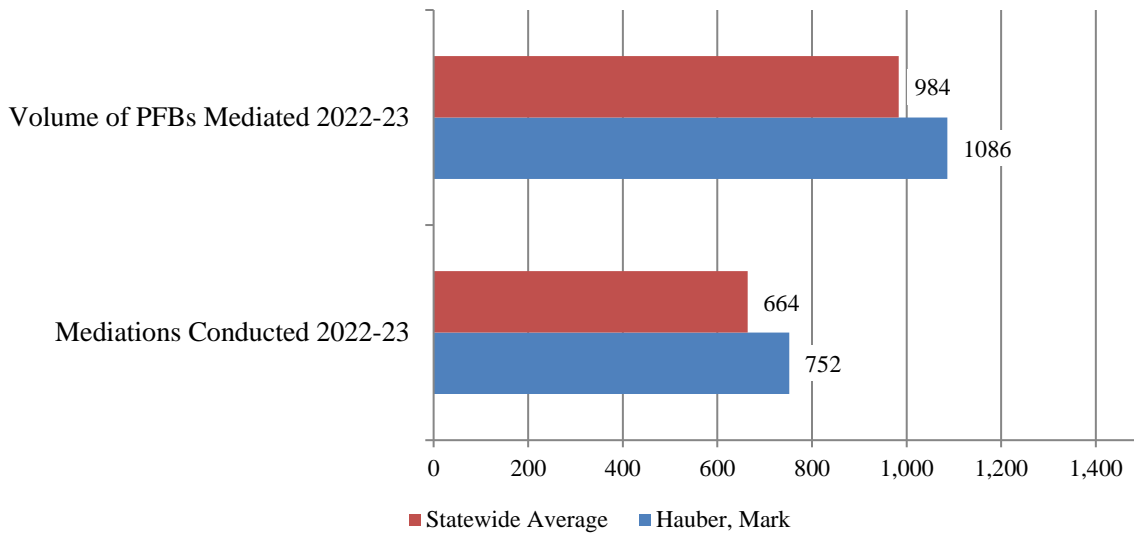
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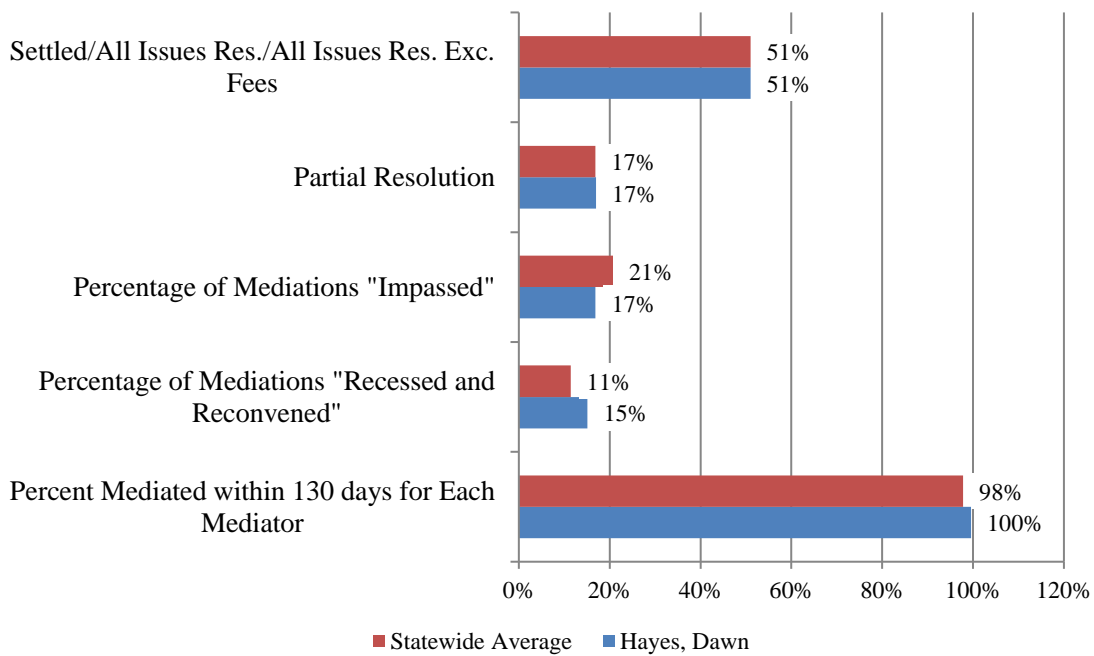
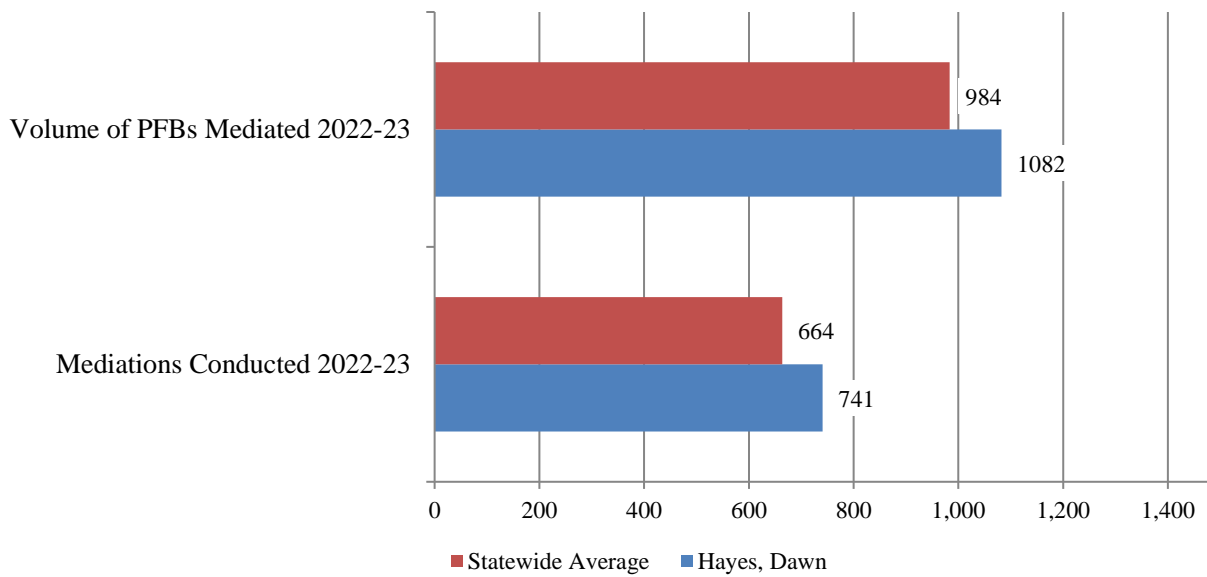




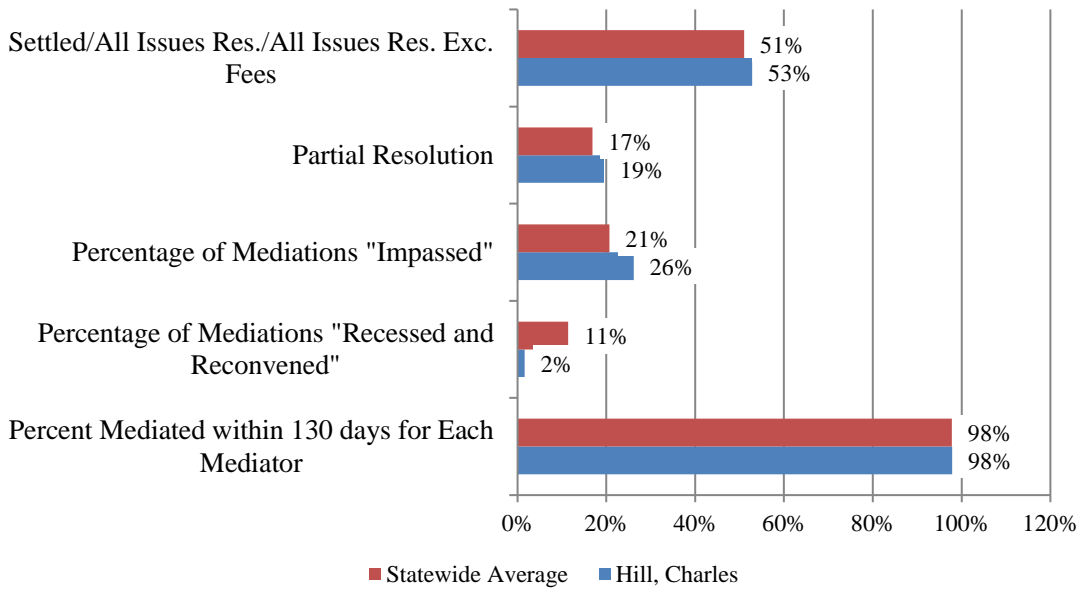
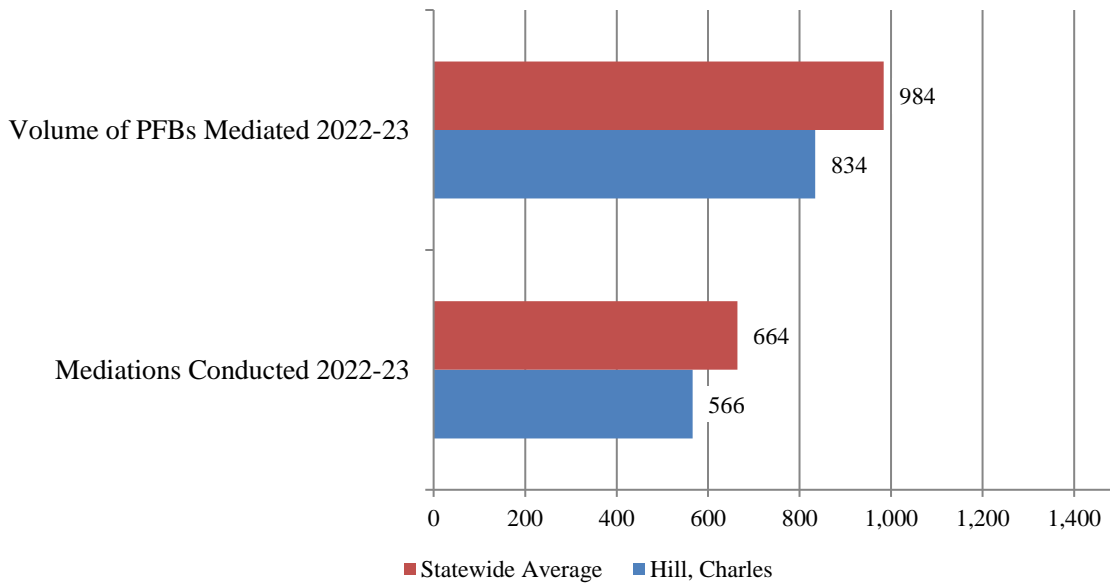
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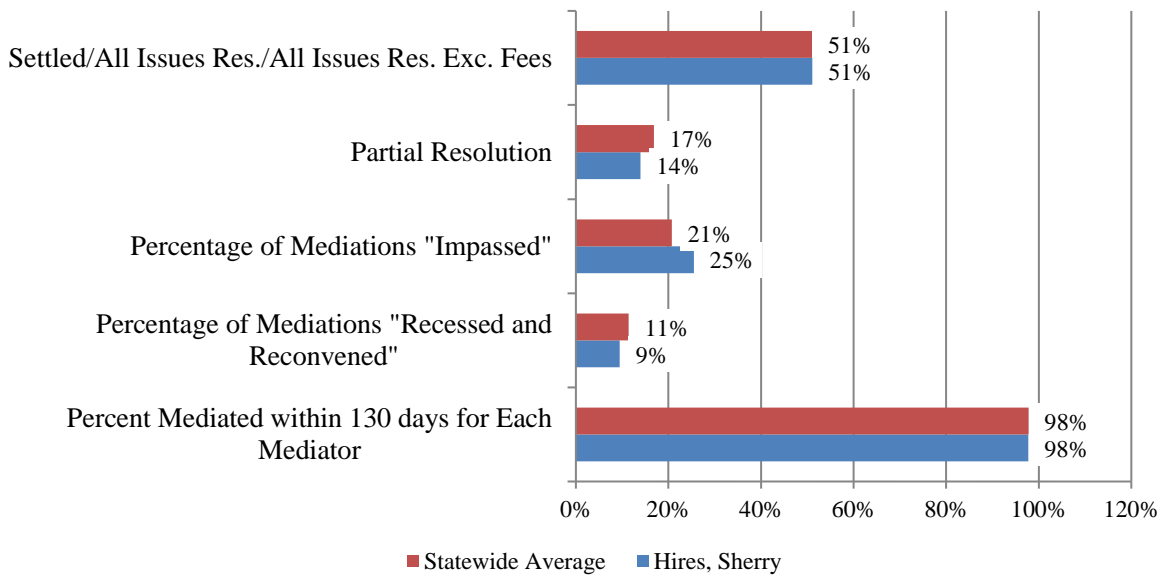
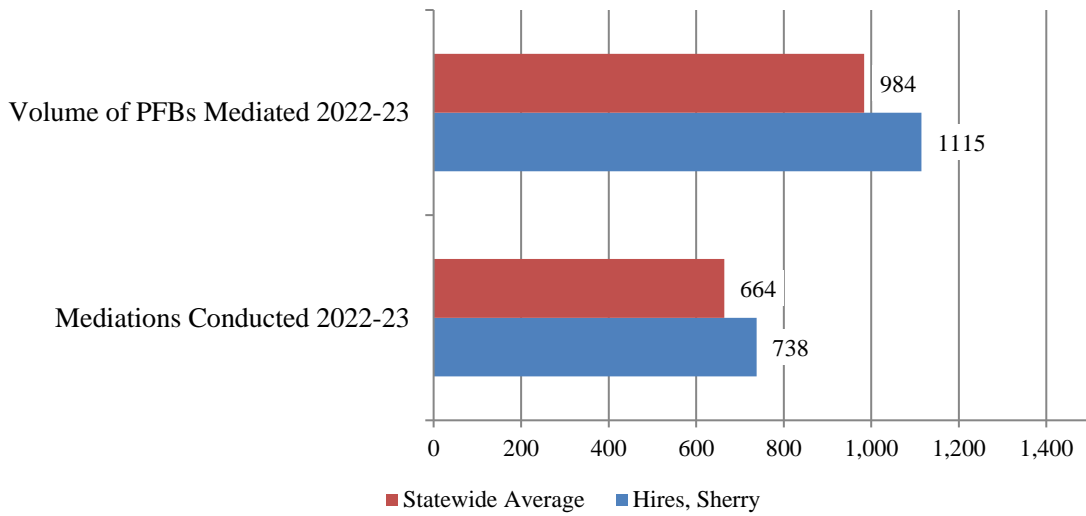
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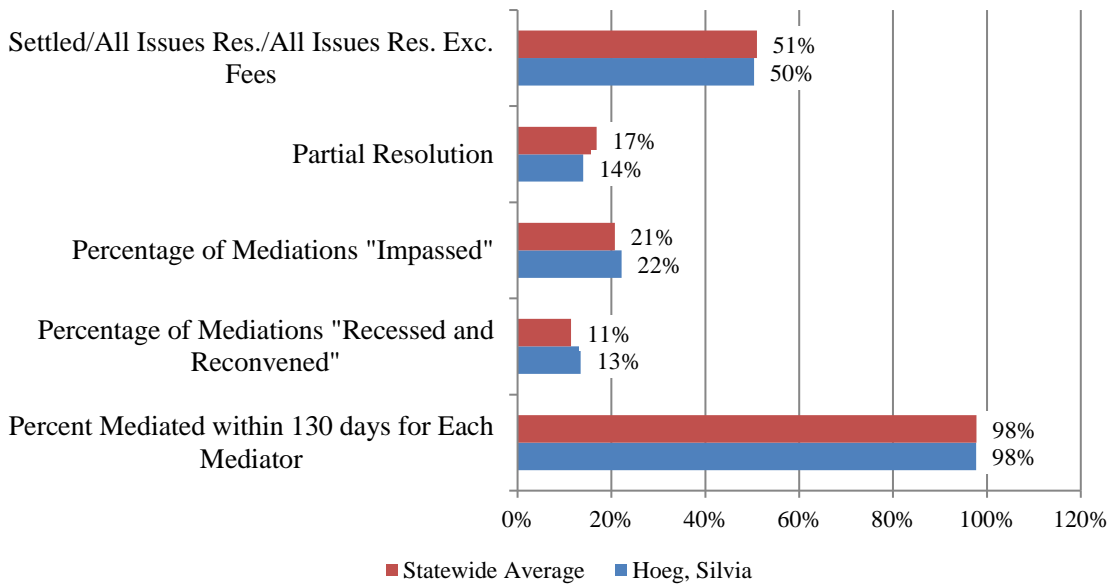
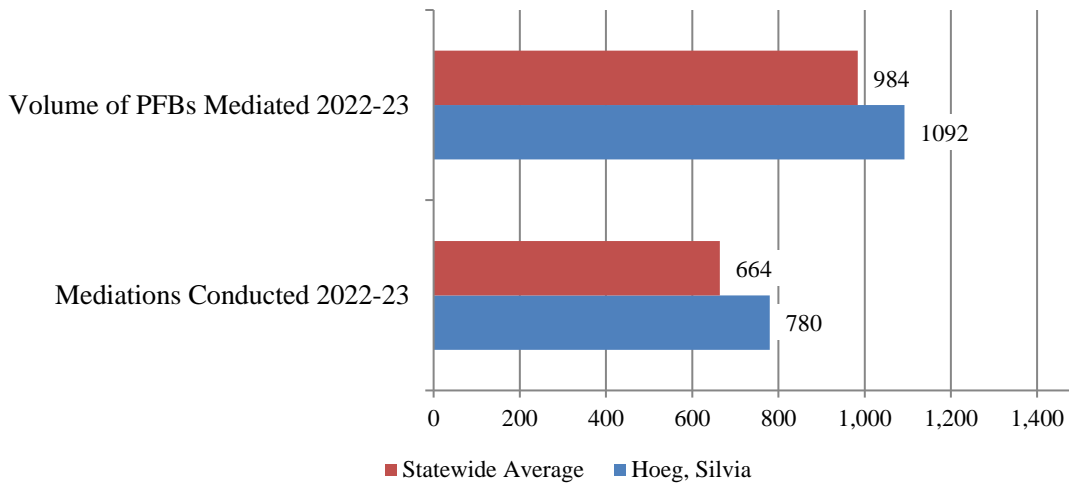
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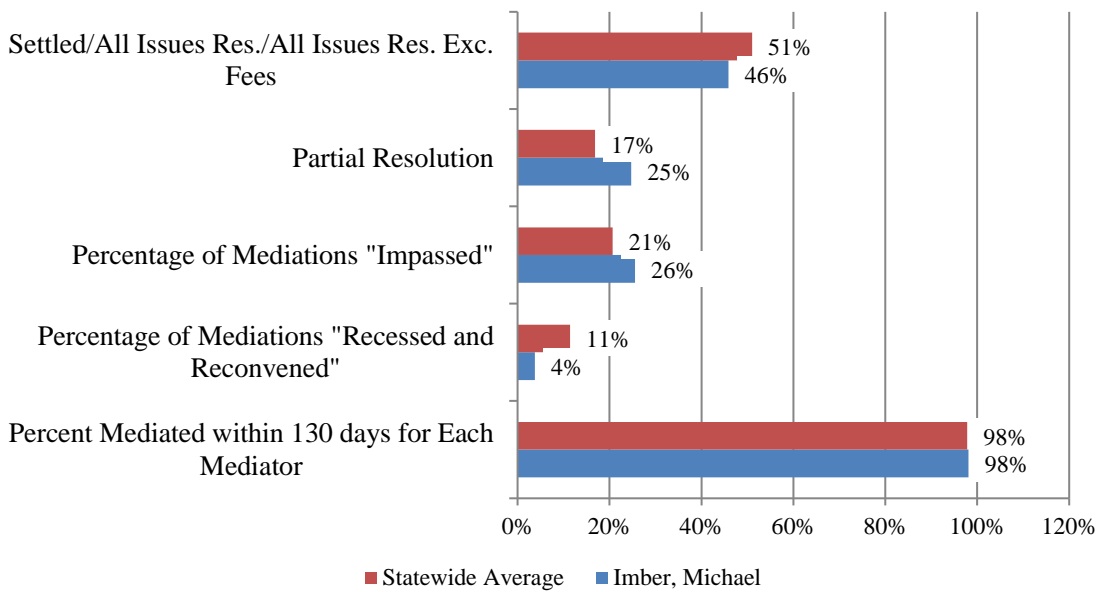
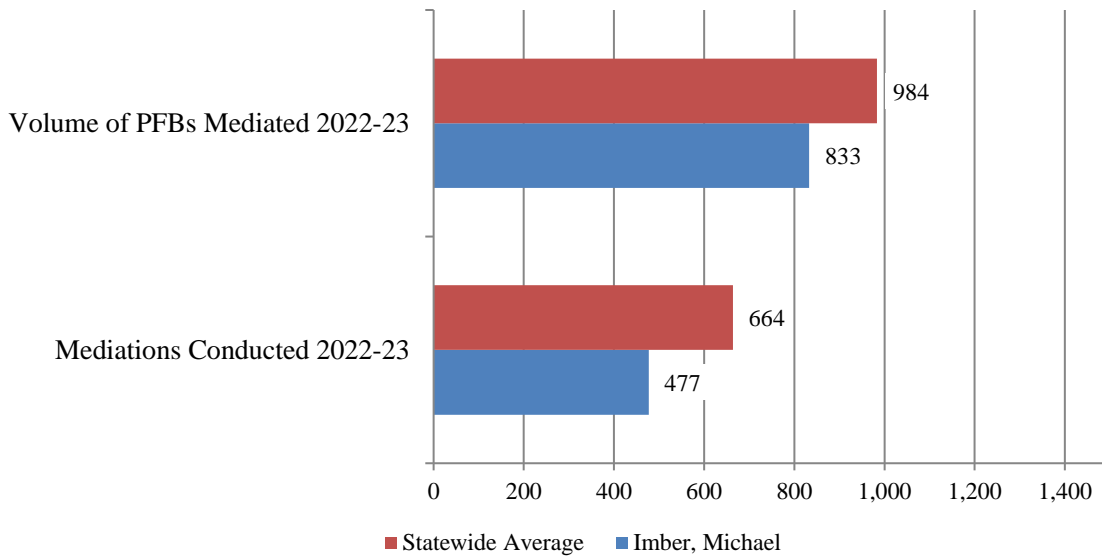


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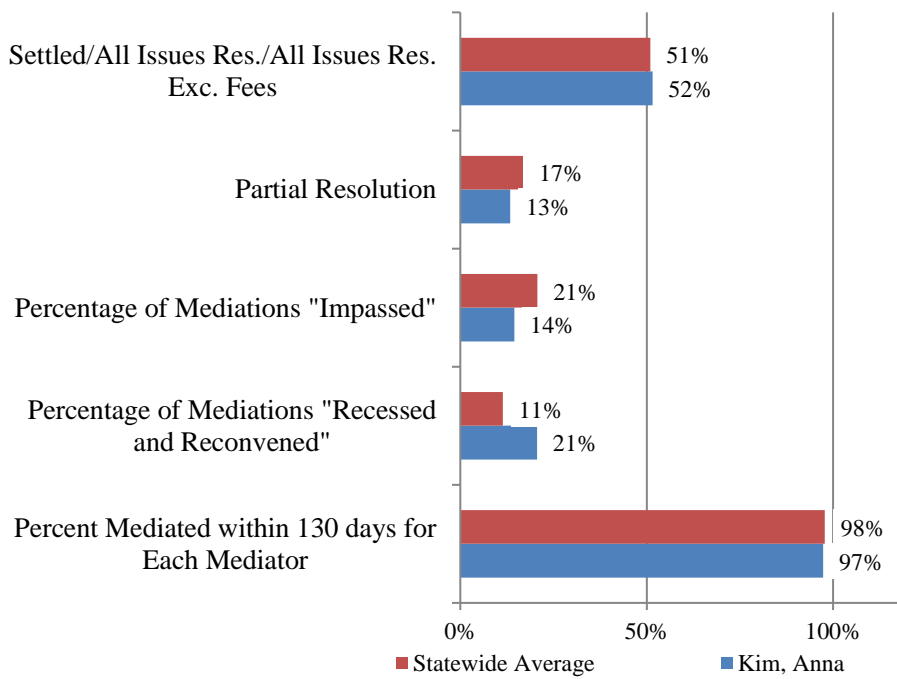
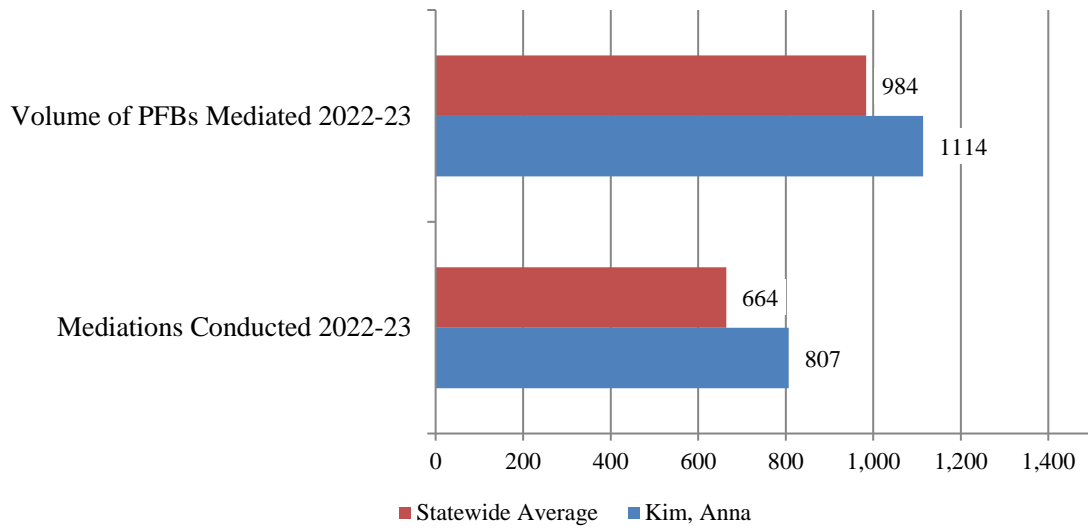




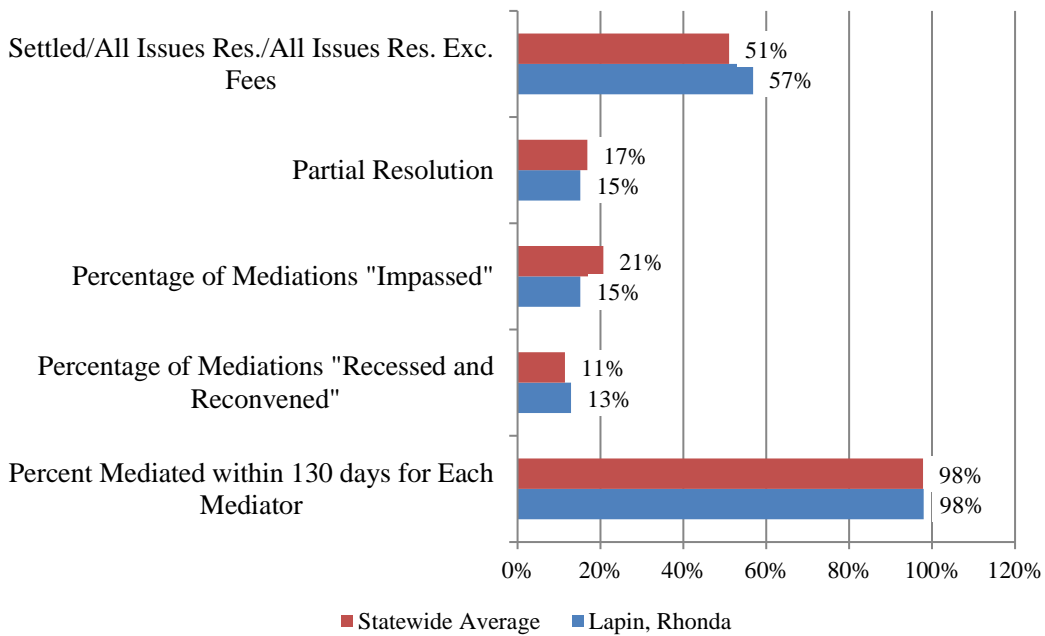
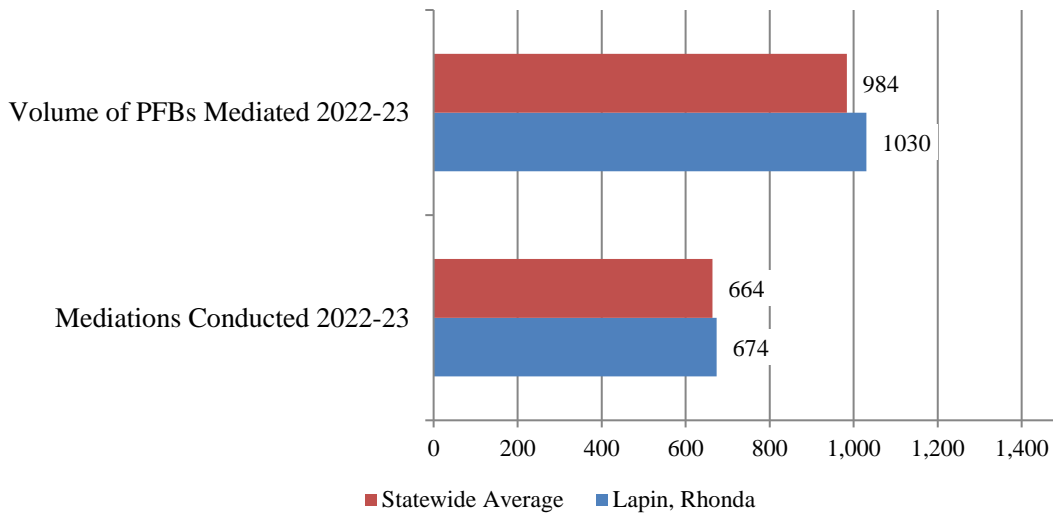
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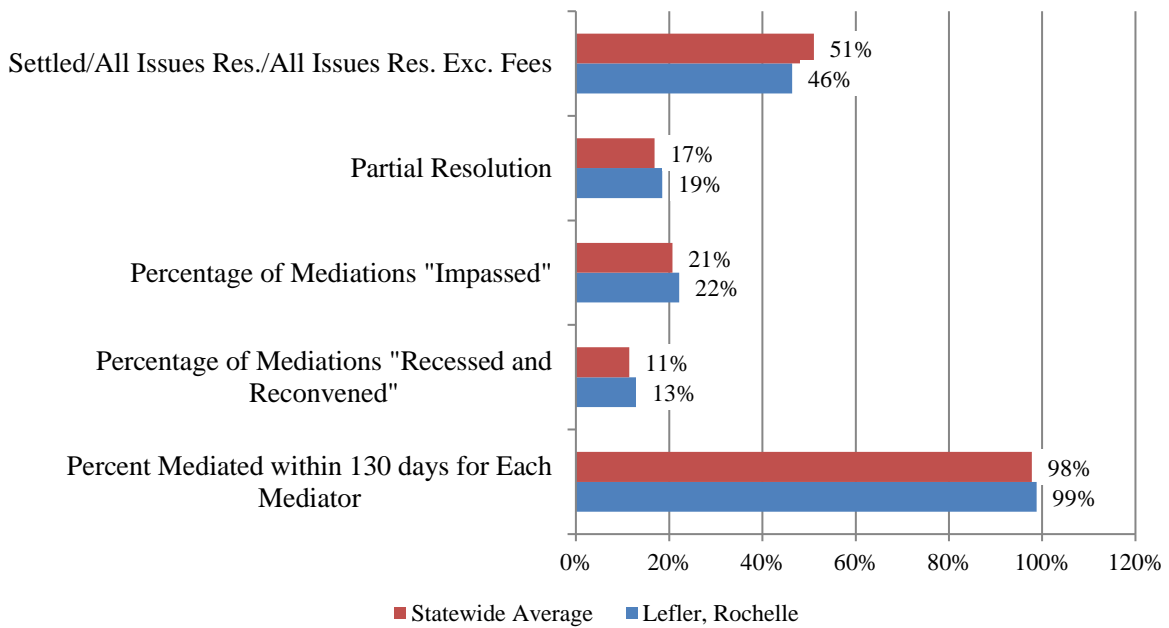
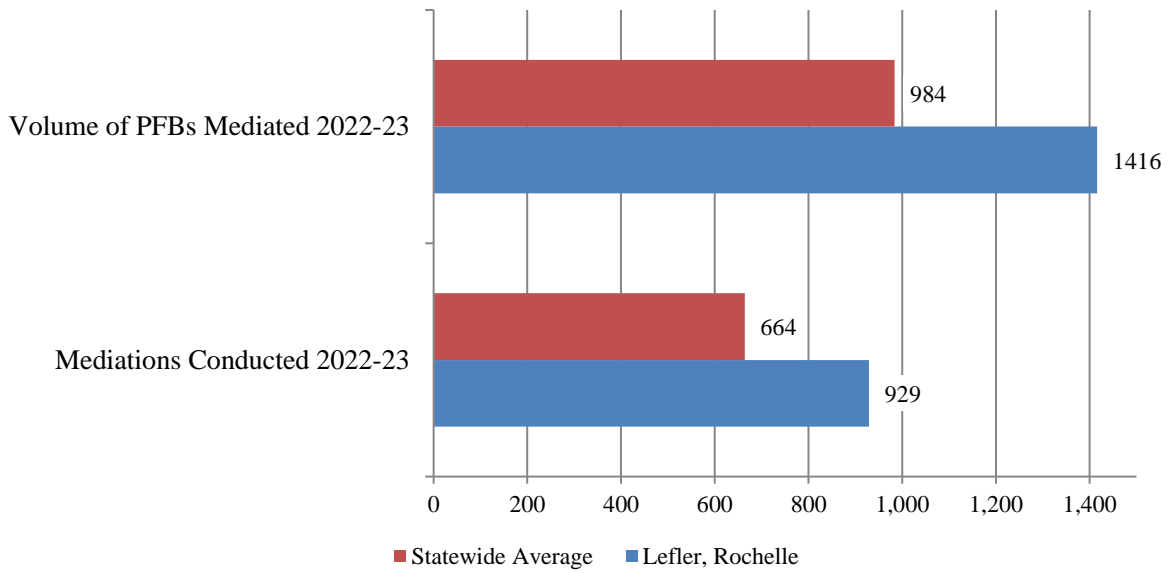
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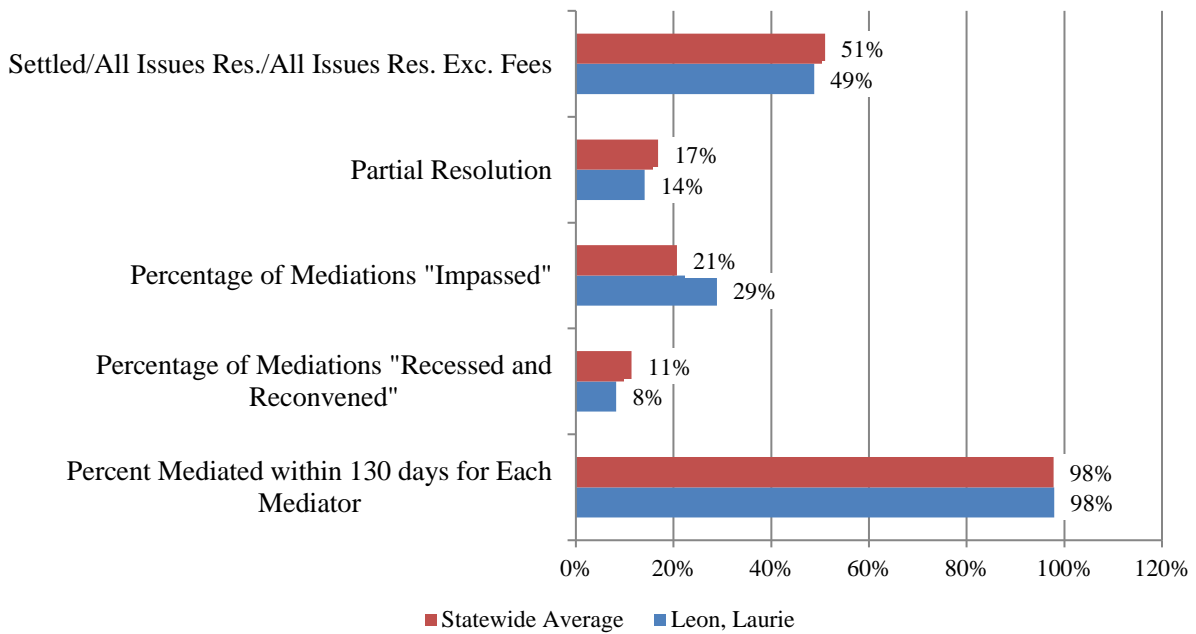
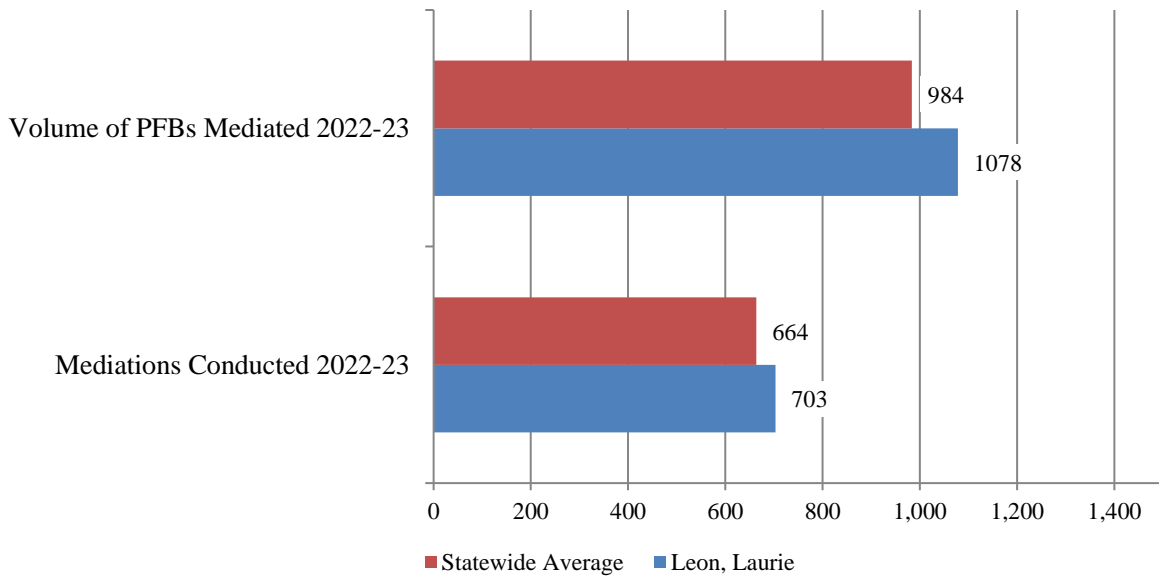
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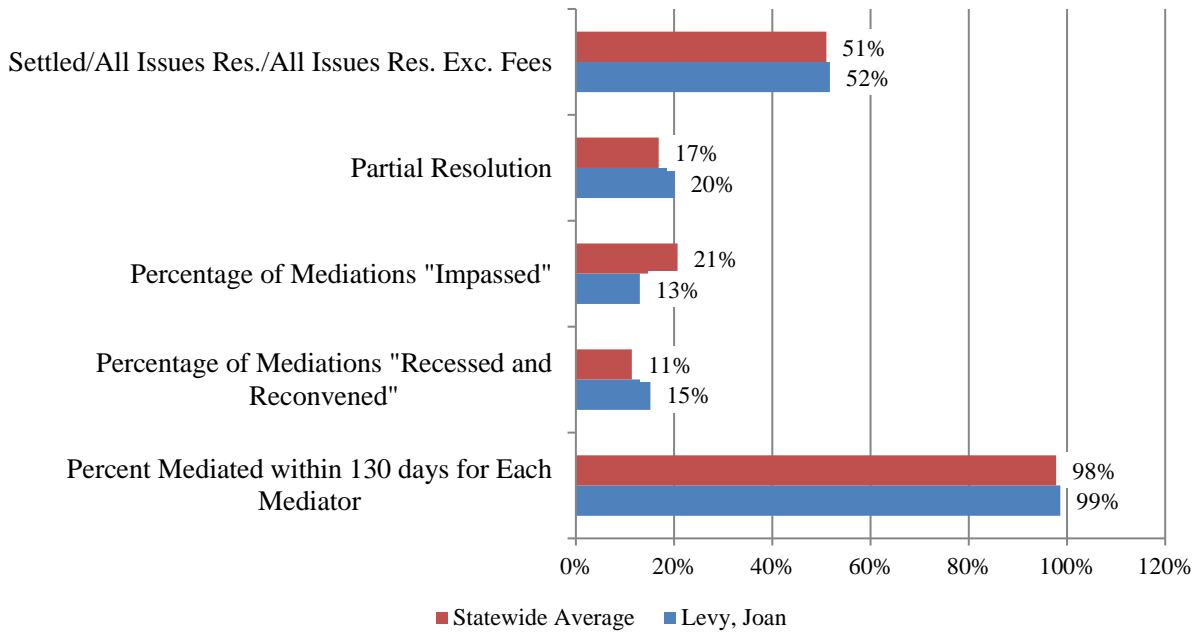
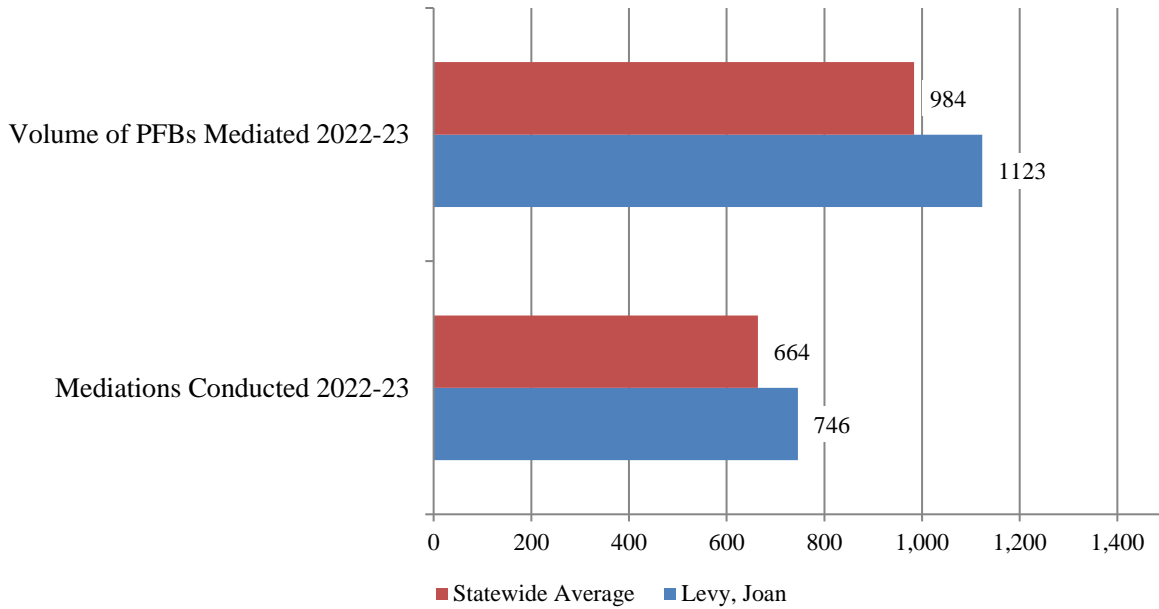
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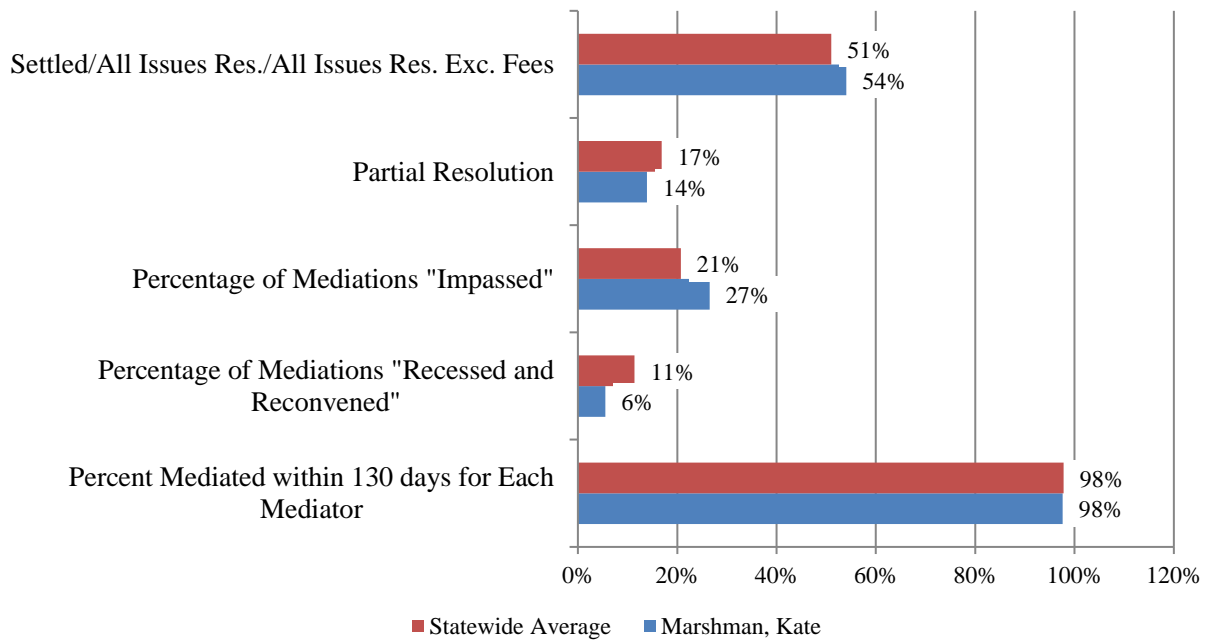
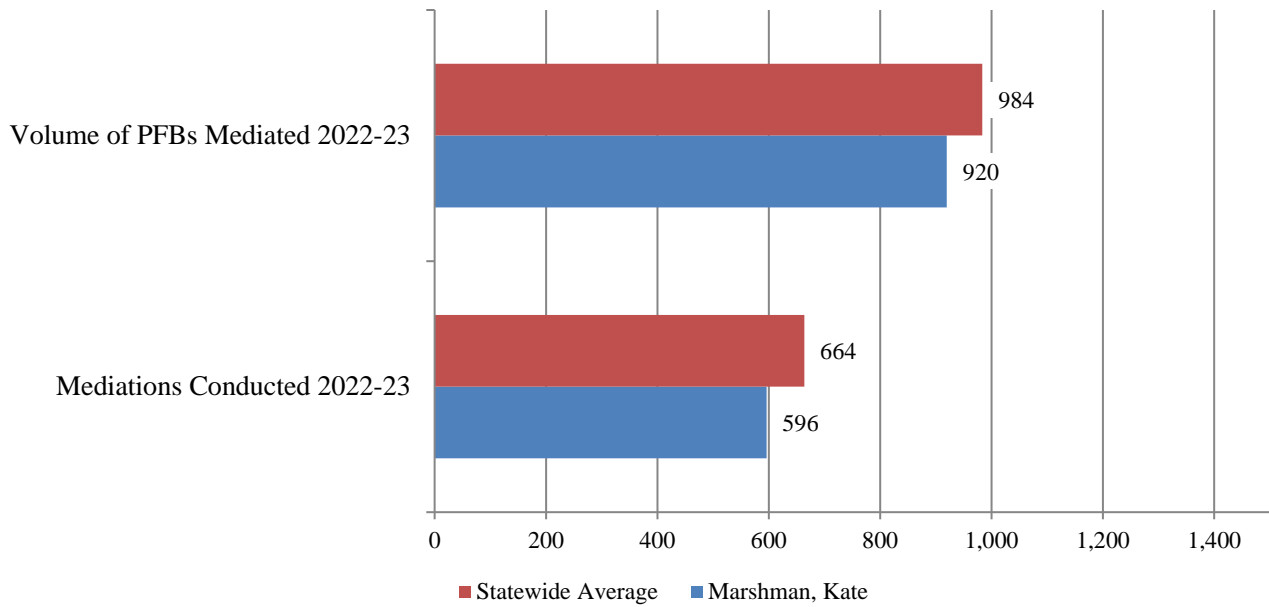
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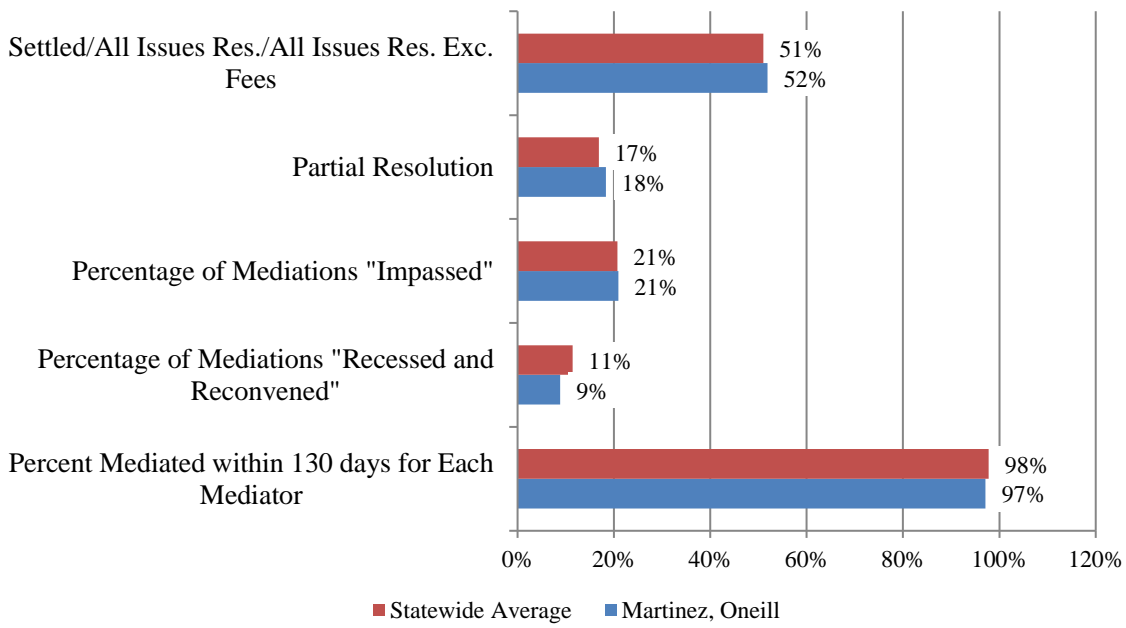
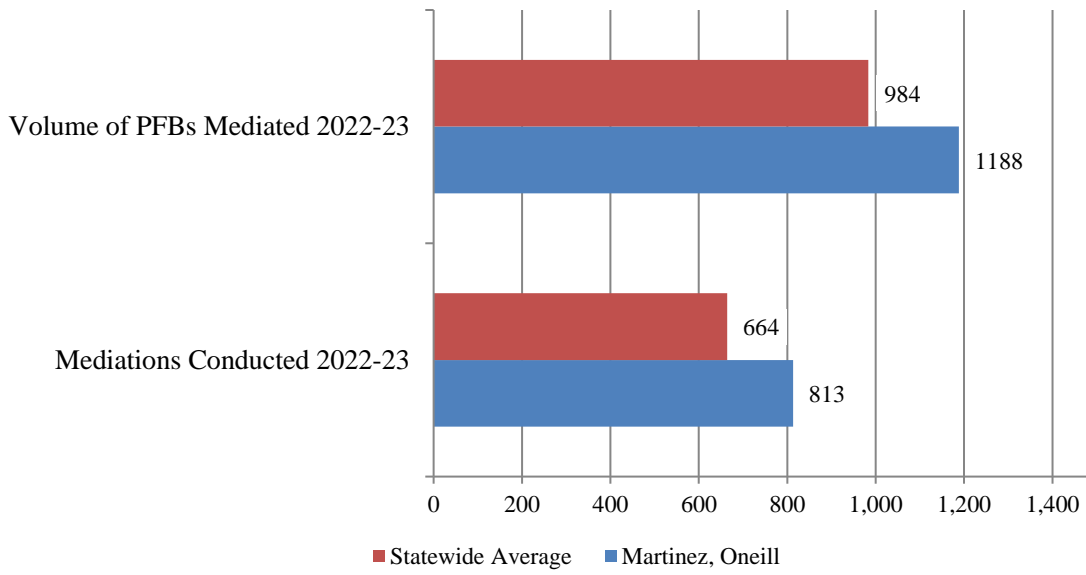
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# Marshman, Kate

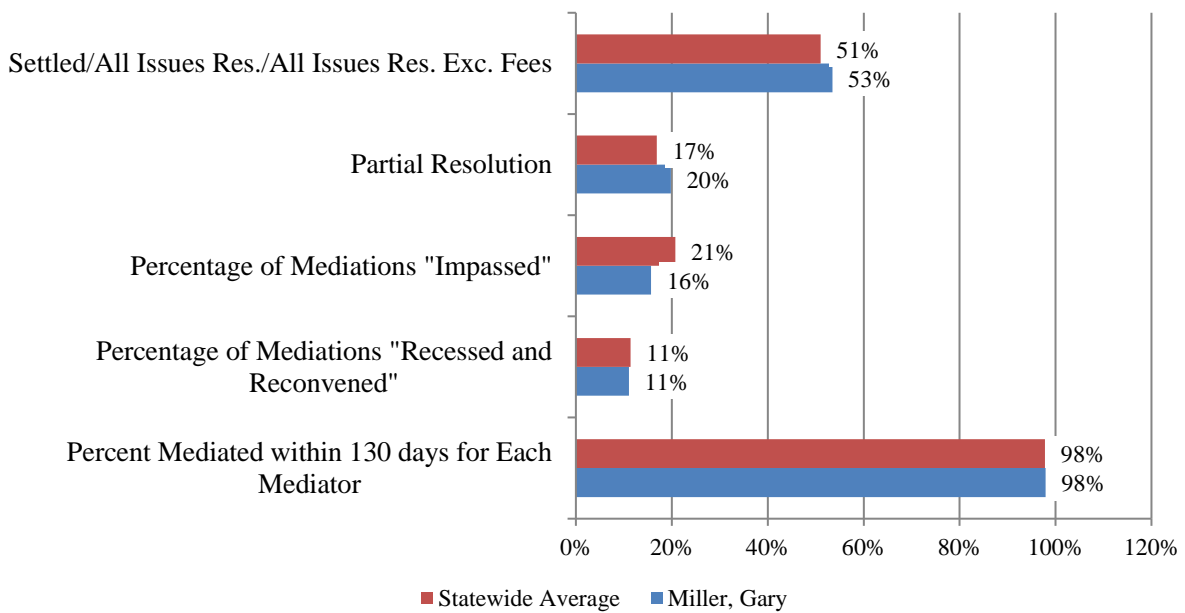
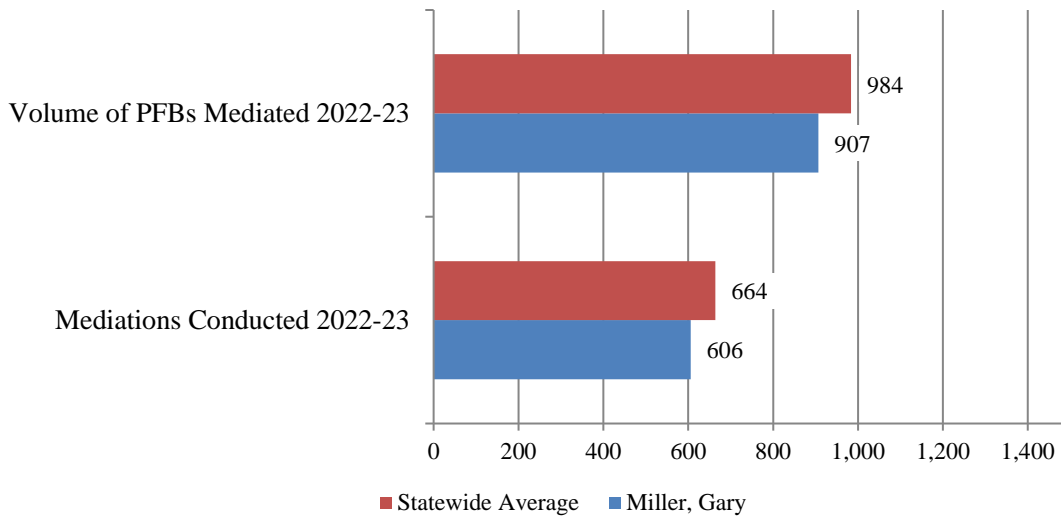


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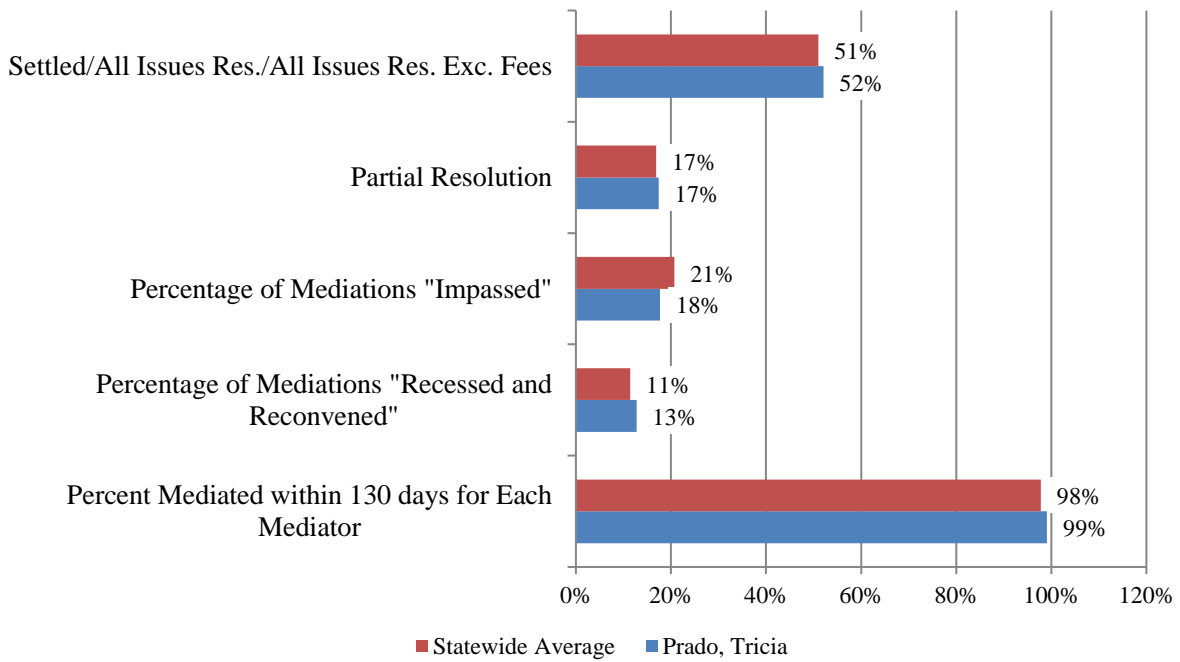
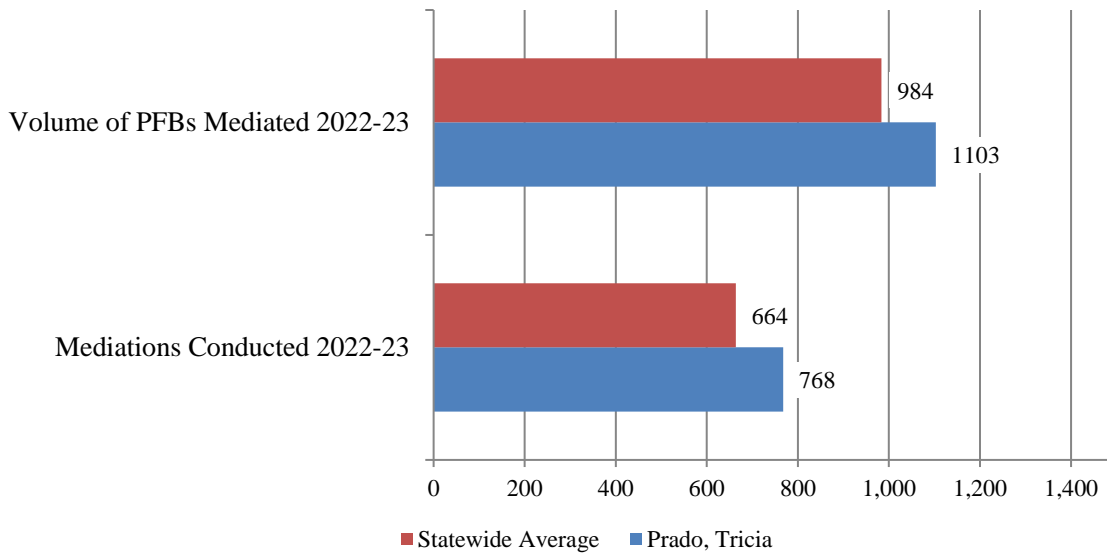


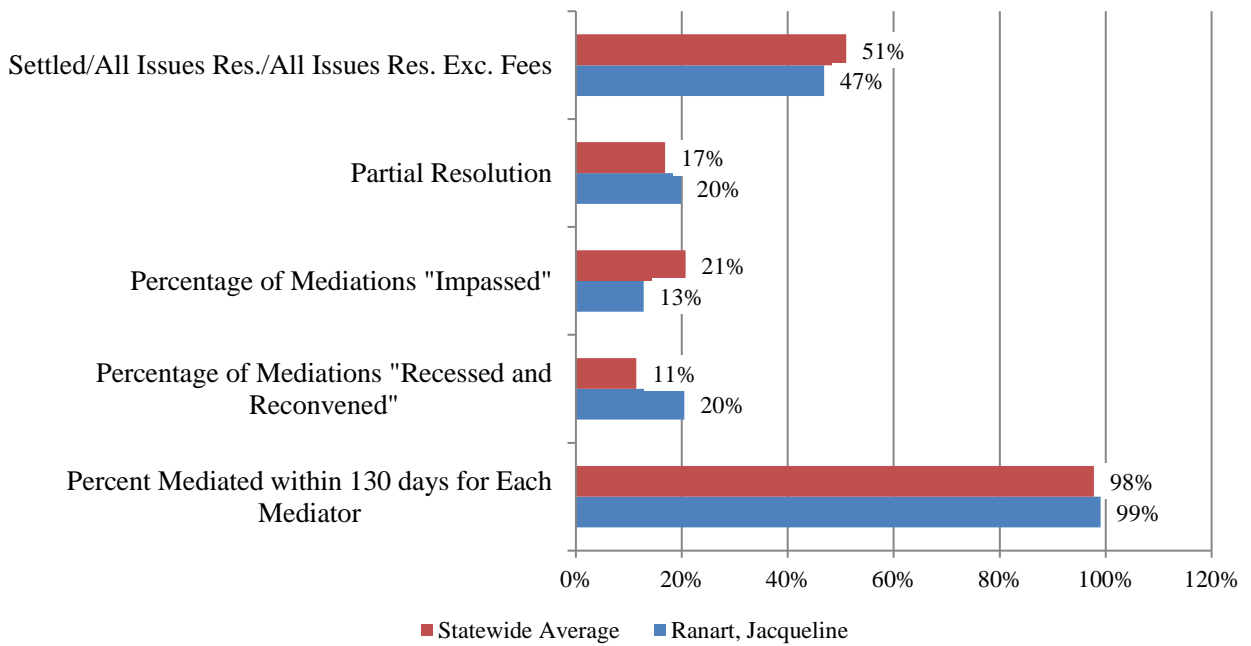
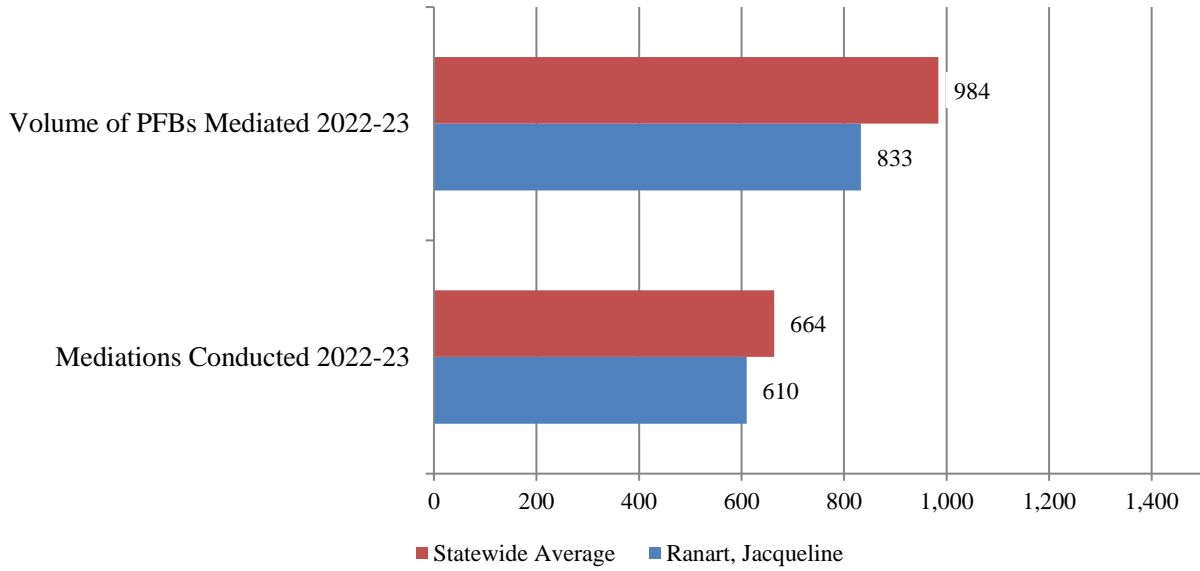


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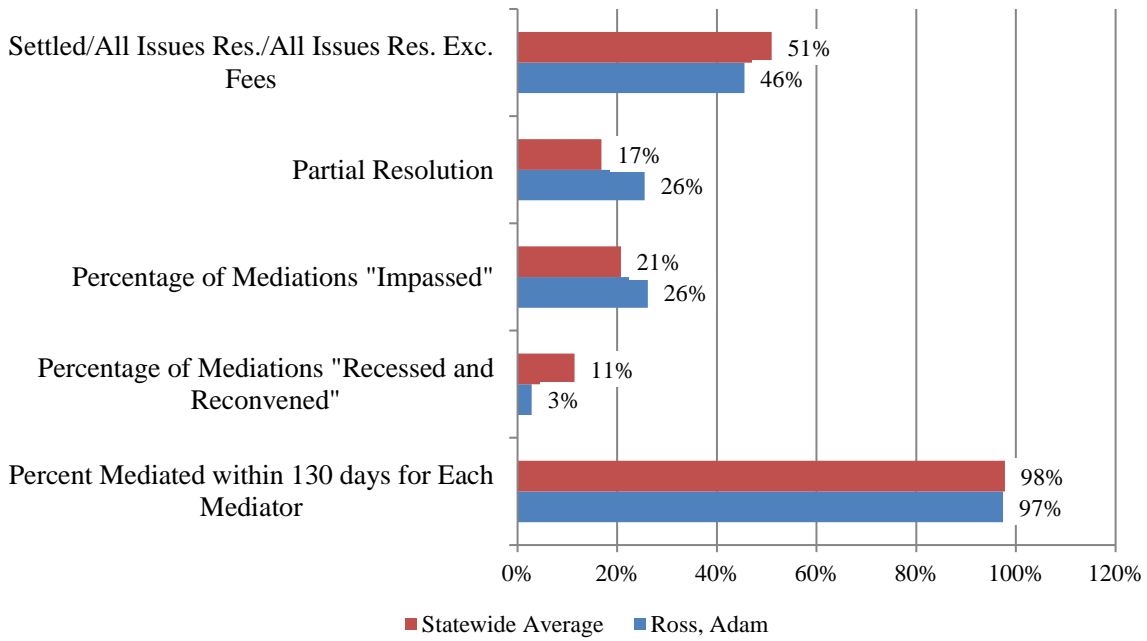
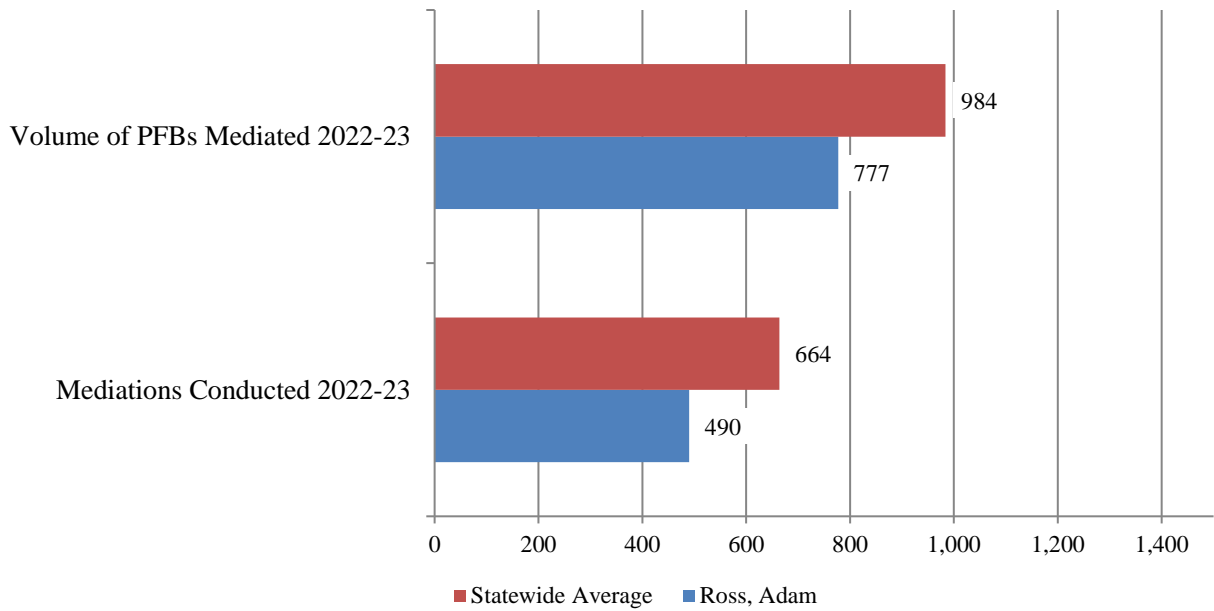


Prado, Tricia

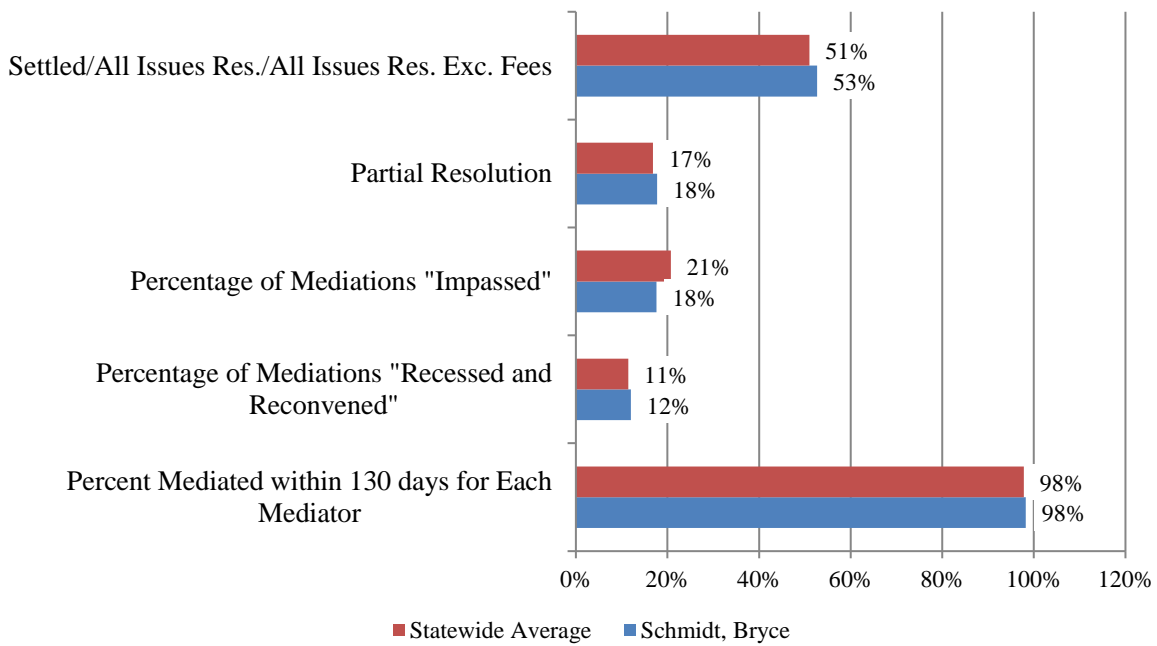
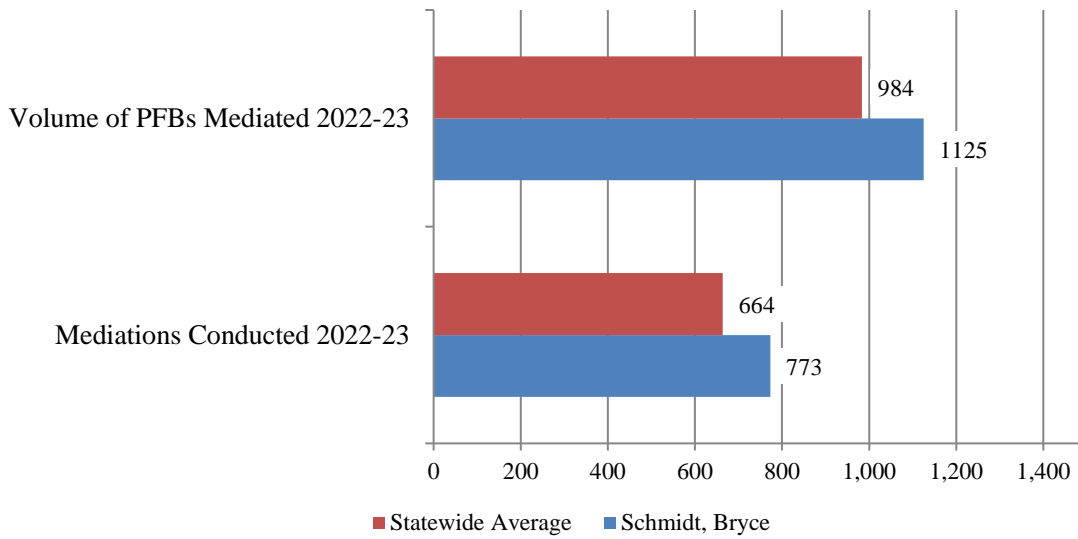




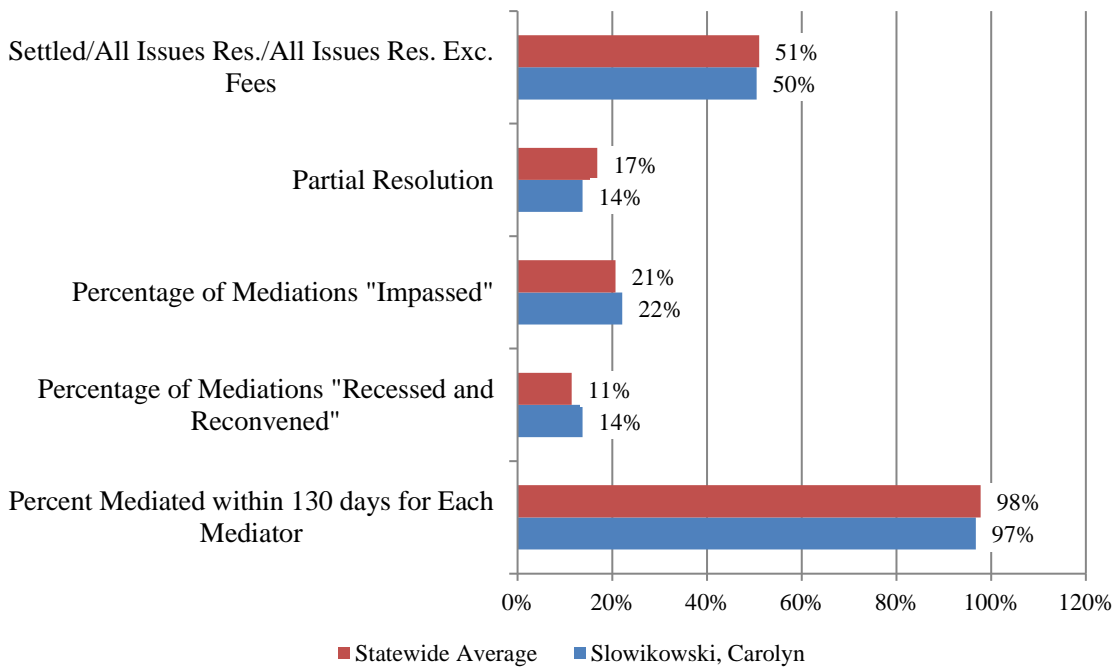
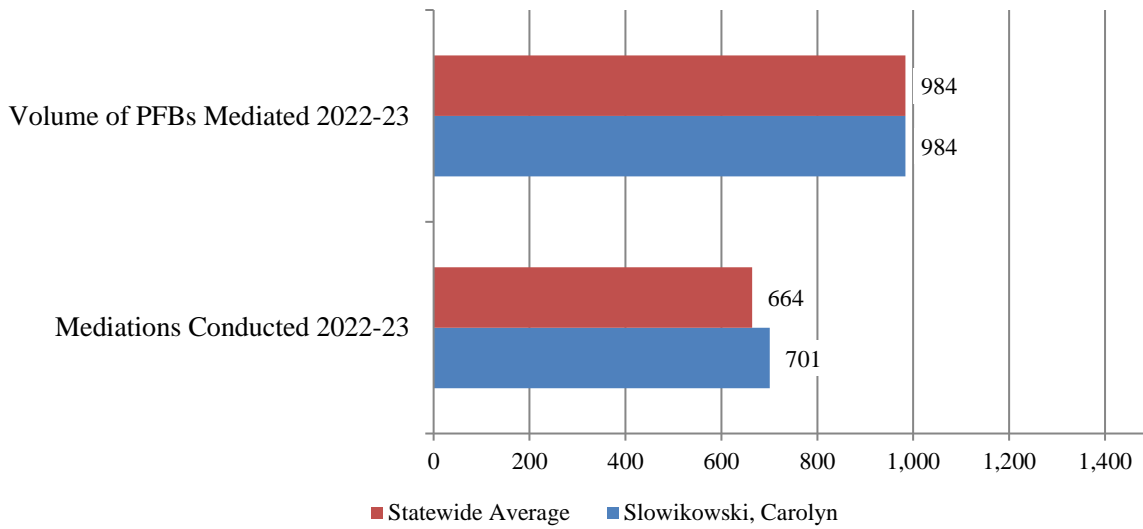
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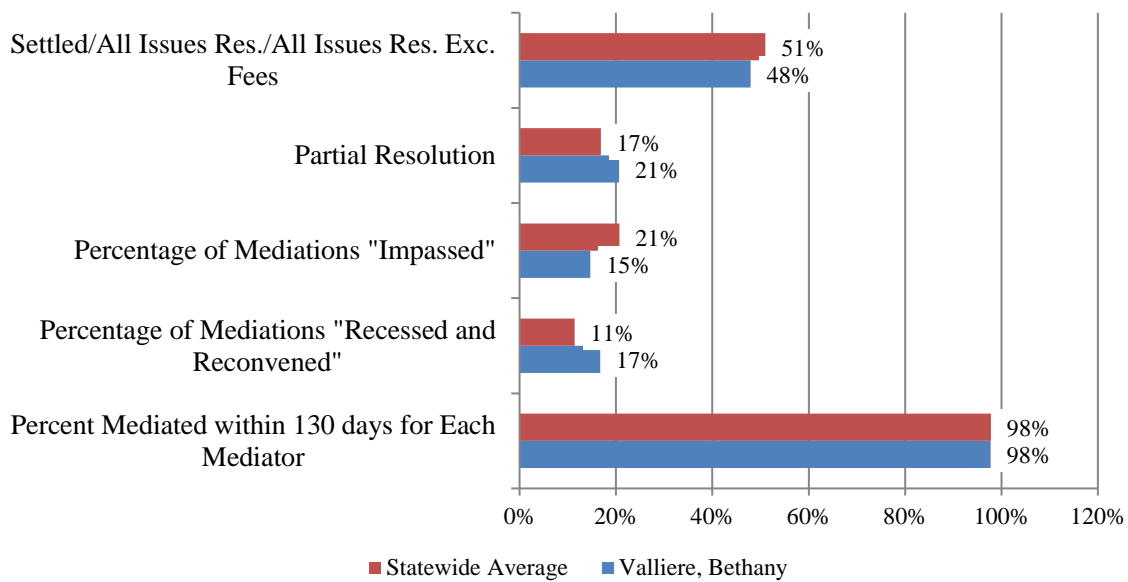
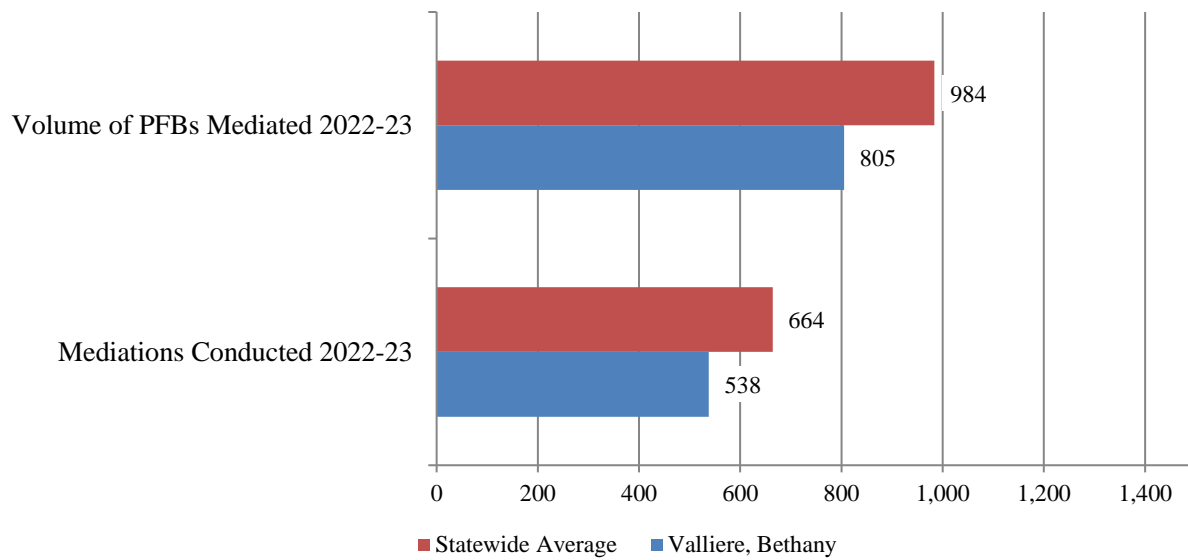
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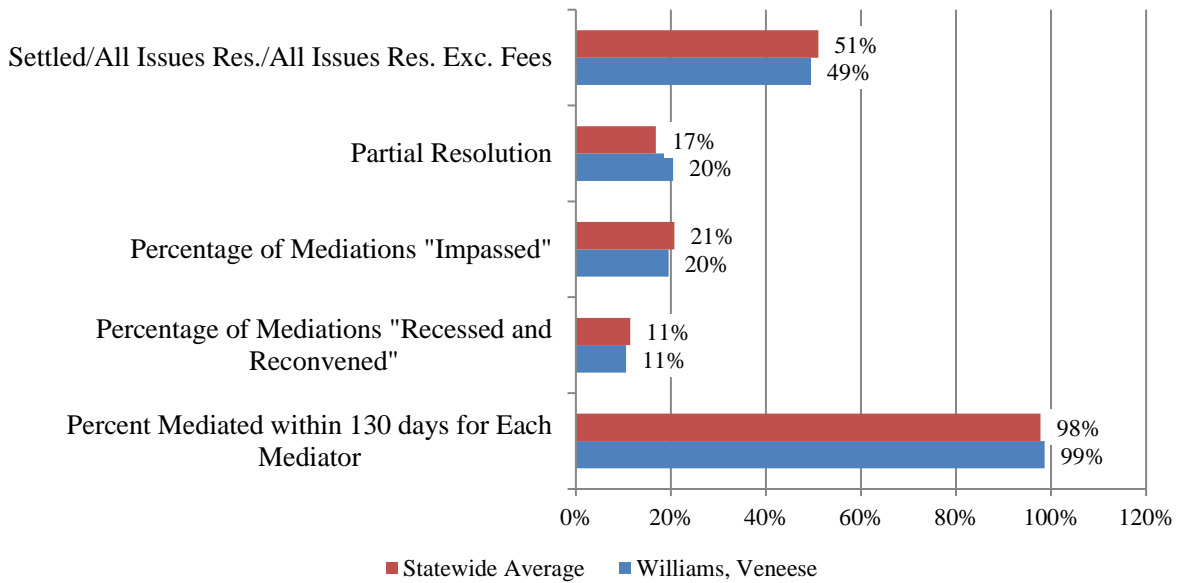
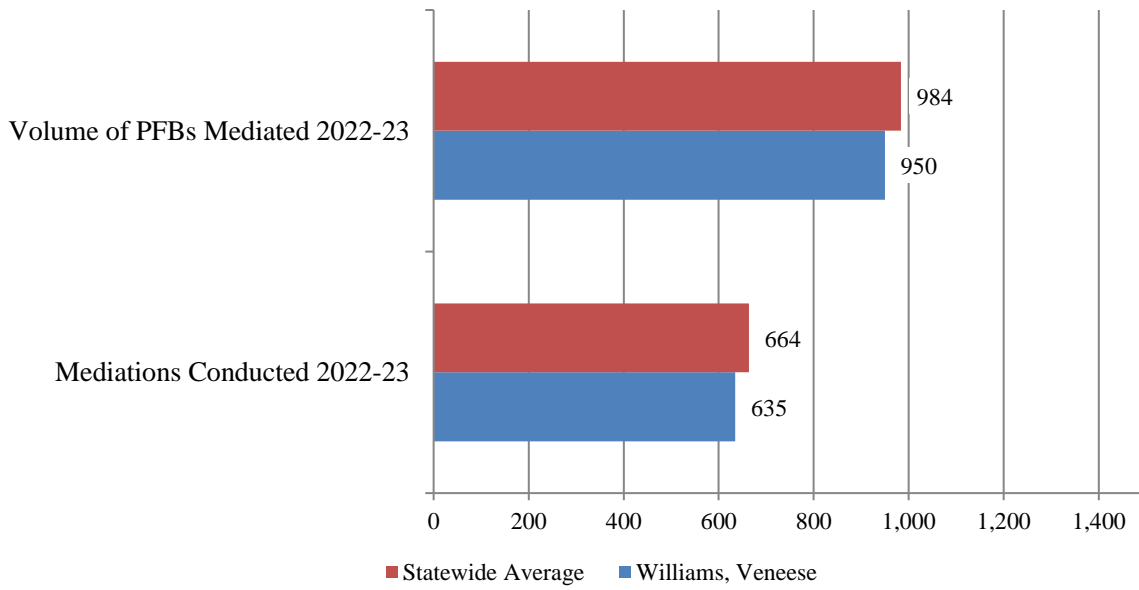
# Slowikowski, Carolyn



## Valliere, Bethany



# Williams, Venese





## Endnotes Mediation Report

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- <sup>1</sup> Alan Gordon retired effective December, 2022, after a long tenure at the OJCC. Mediator Leigh Dunham joined the OJCC February 6, 2023. This data is a conglomeration of these two.
- <sup>2</sup> Kahlil Day retired in May 2023. Mediator Elizabeth Gillham joined the OJCC on June 1, 2023.
- <sup>3</sup> Andrew Goshen was hired to return the OJCC mediator compliment to 30. He began February 16, 2023.
- <sup>4</sup> Mediator Tania Ogden resigned effective March 4, 2022. Mediator Ranart joined the OJCC September 19, 2022. These figures represent approximately  $\frac{3}{4}$  of the fiscal year.
- <sup>5</sup> The law specifically provides for a carrier to become substitute for an employer upon effective contractual transfer of liability (§ 440.41, Fla. Stat.).
- <sup>6</sup> There are a variety of other benefits that could also be claimed. For example, 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.).
- <sup>7</sup> Section 440.25(1) Florida Statutes. The mandate compels attendance and attention to the mediator's description of the mediation process. No party is compelled to participate beyond that. Discussion and resolution of issues and case(s) are discretionary with the parties.
- <sup>8</sup> Waiver is available through order of the Deputy Chief Judge, (§ 440.25(2), Fla. Stat.)
- <sup>9</sup> David Langham, *Florida Office of Judges of Compensation Claims Annual Report*, 2019; *see also*, David Langham, *2020-2021 Settlement Report and Mediation Statistics Report*; [https://www.fljcc.org/JCC/publications/reports/2021AnnualReport/OJCC\\_AnnualReport2020-21.pdf](https://www.fljcc.org/JCC/publications/reports/2021AnnualReport/OJCC_AnnualReport2020-21.pdf), last visited August 18, 2022.
- <sup>10</sup> A position in Tampa had remained unfilled following Judge Lorenzen's retirement in 2019. Shortly after that position was filled, Judge Young transferred to District St. Petersburg upon the retirement of Judge Rosen in 2020, and a Tampa position has remained vacant since.
- <sup>11</sup> The 17<sup>th</sup> District Office was added in 1992, in Sarasota. The 16<sup>th</sup> District Office was added in 1991, in Panama City Beach. The fifteenth was added in 1986 in Port St. Lucie. As of 2022, the other offices had each been open for 50 years or more.
- <sup>12</sup> Section 440.44, Fla. Stat.
- <sup>13</sup> Senate Bill 2516 (2022); <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=s2516er.DOCX&DocumentType=Bill&BillNumber=2516&Session=2022>, last visited August 18, 2022.
- <sup>14</sup> *See* note 4.
- <sup>15</sup> *See* note 3.
- <sup>16</sup> *See* note 1.
- <sup>17</sup> *See* note 2.
- <sup>18</sup> In 2021-22, the following offices were closed: Melbourne – consolidated into Orlando and Daytona; Port St. Lucie - consolidated into District WPB; Lakeland – consolidated into District TPA; In 2022-23, the following offices were closed: Panama City – counties consolidated into Districts PNS and TLH; Daytona Beach – consolidated into District ORL; Sarasota – consolidated into District SPT; Gainesville – consolidated into JAX; Tallahassee – consolidated into the overall DOAH facilities.
- <sup>19</sup> These are detailed in the *2021-22 OJCC Annual Report*.
- <sup>20</sup> District Office closures in 2023-24 began in September, 2022 and continued through the first half of the fiscal year. By year end, the closures had concluded, *see* endnote 13.
- <sup>21</sup> 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.”).
- <sup>22</sup> *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.”).
- <sup>23</sup> David W. Langham, *Fla. Work. Comp.; History, Evolution, and Function*, 2023, Chapter 80.
- <sup>24</sup> *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).
- <sup>25</sup> 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”).
- <sup>26</sup> *Patco Transp., Inc. v. Estupinan*, 917 So. 2d 922 (Fla. 1st DCA 2005).
- <sup>27</sup> *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.”
- <sup>28</sup> Section 440.20(11)(a), Fla. Stat.
- <sup>29</sup> 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

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Administrative Hearings, and actually refers to the head of the OJCC which is the Deputy Chief Judge under § 440.45(1)(a), Fla. Stat.

<sup>30</sup> Available from 2010 to present on the OJCC website, <https://www.fljcc.org/JCC/publications/>, under the “reports” tab.

<sup>31</sup> The current compliment is 30 mediators, with approximately 240 working days per year (52 weeks, or 260 days, minus 10 holidays and two week’s vacation equates to close to 48 weeks or 240 days). Dividing the 19,917 by 30 mediators yields an average mediation volume of 664 mediations per mediator. Dividing that by the approximately 240 working days yields a total of 2.76 (“3”) mediations per day in 2021-22 compared to an average of 289 in 2021-22.

<sup>32</sup> Section 440.192(1), Fla. Stat.

<sup>33</sup> 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).

<sup>34</sup> *Supra*, endnote 7.

<sup>35</sup> 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.”).

<sup>36</sup> *Supra*, endnote 1.

<sup>37</sup> *Supra*, endnote 2.

<sup>38</sup> *Supra*, endnote 3.

<sup>39</sup> *Supra*, endnote 4.