



**Mediation Program Annual Report
January 1, 2016 - December 31, 2016
(As of December 5, 2017)**

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Introduction

In 2016, a total of 1072 cases were referred into the SDNY Mediation Program of which 1051 have closed.

Cases enter the Mediation Program either through a process of automatic referral or by referral of a specific case from the assigned judge (“Judge Referred”). Since 2011 the SDNY has had automatic referrals of counseled employment cases and certain § 1983 cases against the New York City Police Department. In October 2016, the § 1983 program was expanded as a pilot in White Plains, and a pilot program for FLSA cases was initiated in which FLSA cases assigned to seven of the Court’s judges are automatically referred to mediation. The automatic referral programs allow for mediation at the early stages of the litigation process before formal discovery has occurred.

In 2016, there were approximately 315 mediators on the SDNY roster. The Mediation Procedures require mediators to accept at least two cases per year. On average, panel mediators were offered eight cases over the course of the year and mediated four. Some mediators were offered as many as 25 cases and mediated as many as 15. The range in the amount of cases offered to mediators is due to many variables such as the location in which the mediator is available (Manhattan, White Plains, or both), whether or not the mediator accepts cases in the automatic referral programs, and the number and types of areas of expertise.

Settlement Trends for Automatic Referrals

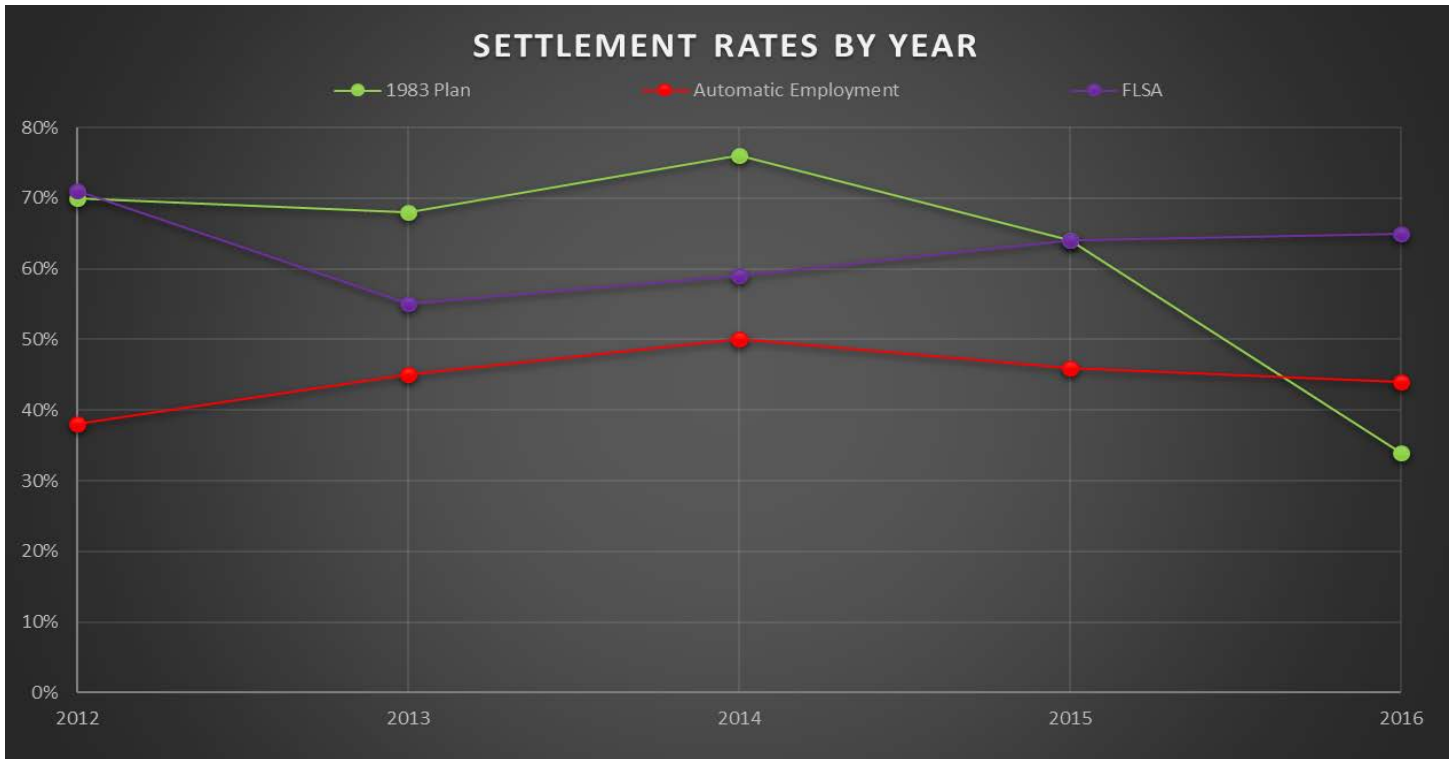
The SDNY Mediation Program gathers mediation information from a number of different sources, primarily statistical data from CM/ECF (PACER), and post-mediation feedback from mediators and mediation participants.

Employment: The SDNY began automatic referral of counseled employment discrimination cases in 2011. In October 2015, the automatic order to mediation was modified to include a pre-mediation discovery protocol. Although we are hopeful that the exchange of information has increased the overall utility of the mediation process, it has had no measurable impact on settlements achieved in early mediation.

Local Rule 83.10 (1983 Plan Cases): Cases under Local Civil Rule 83.10 began to be automatically referred to mediation in 2012. The Court expanded this protocol to White Plains in October 2016. From 2012-2014 approximately 70% of Plan referred cases settled through early mediation. Since 2015, both the overall number of filings and the settlement rates have been in decline.

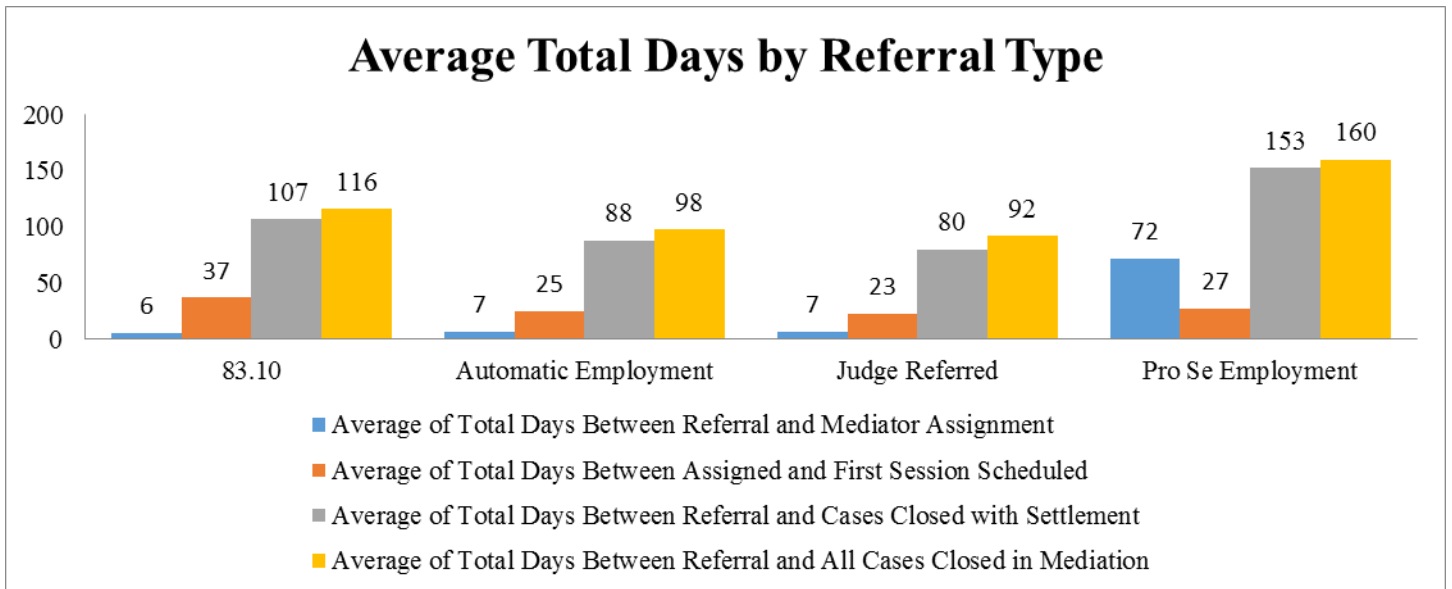
Fair Labor Standards Act: From 2012-September 2016, cases filed under the FLSA were referred to mediation on a case-by-case basis. Starting in October 2016, FLSA cases came to mediation both as individual referrals and as automatic referrals for seven of the Court’s judges. The overall settlement rate for FLSA cases has been relatively consistent.

(Chart on page 3)



Mediation Timing

For General Information about Referrals and Timing, please consult the Mediation Program Procedures. Average days for key mediation events are illustrated by the chart below, including for pro se employment cases in which the deadlines are extended to account for the appearance of limited scope mediation counsel.



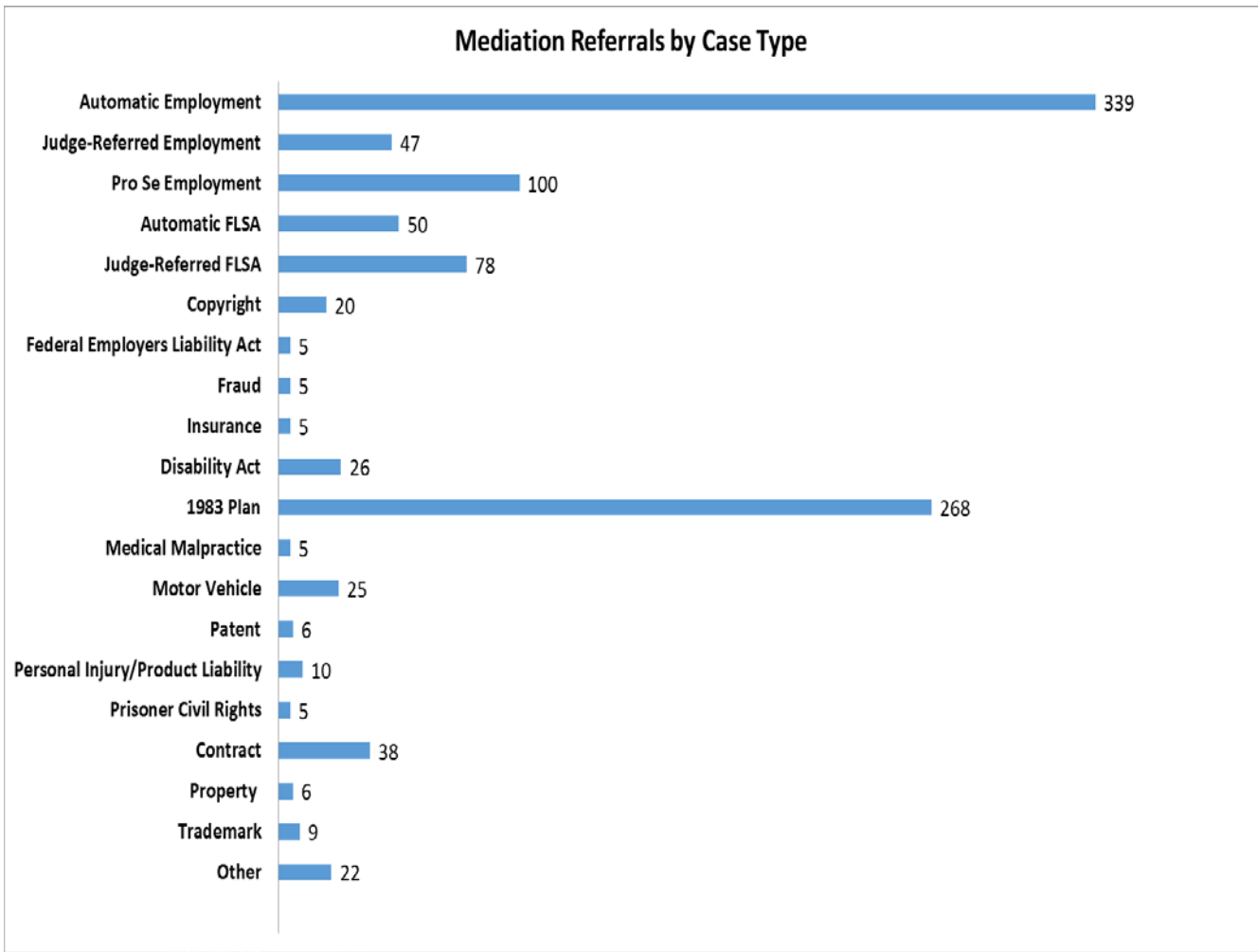
Information about Judge Referred Cases (non-automatic): Judges may refer cases to mediation at any point in the litigation process. In 2016, 340 matters were referred to mediation in a variety of case types including intellectual property, commercial, personal injury, disability, and maritime. In addition, judges referred 100 pro se employment cases with limited scope pro bono counsel.

A common concern for judges making mediation referrals is that the referral to mediation will cause an unnecessary delay in the case. In 2016, the average time for assigning mediators was 7 days. Except in referrals where judges ordered specific timelines for holding the mediation, the average time to schedule the initial session was 23 days from referral (for pro se employment cases, the average time to schedule the initial session was 27 days from the mediator's assignment). The average total time in mediation for fully counseled judge referred cases was 92 days.

Continuing a practice that started in 2015, in 2016 a number of judges were proactive in embedding in the Mediation Referral Order specific timelines for the mediation, or even a date certain on which the initial session must be held. These practices were very helpful both to the mediators and the Mediation Office in facilitating timely scheduling of mediation sessions. In addition, judges have occasionally indicated specific mediator specialties that may be useful and may not be evident from the information on the docket (e.g. "although this is a contracts case a mediator with experience in technology would be useful" or "experience working with families is a plus"). This additional information assists the Mediation Office in locating a mediator with experience that may be particularly useful.

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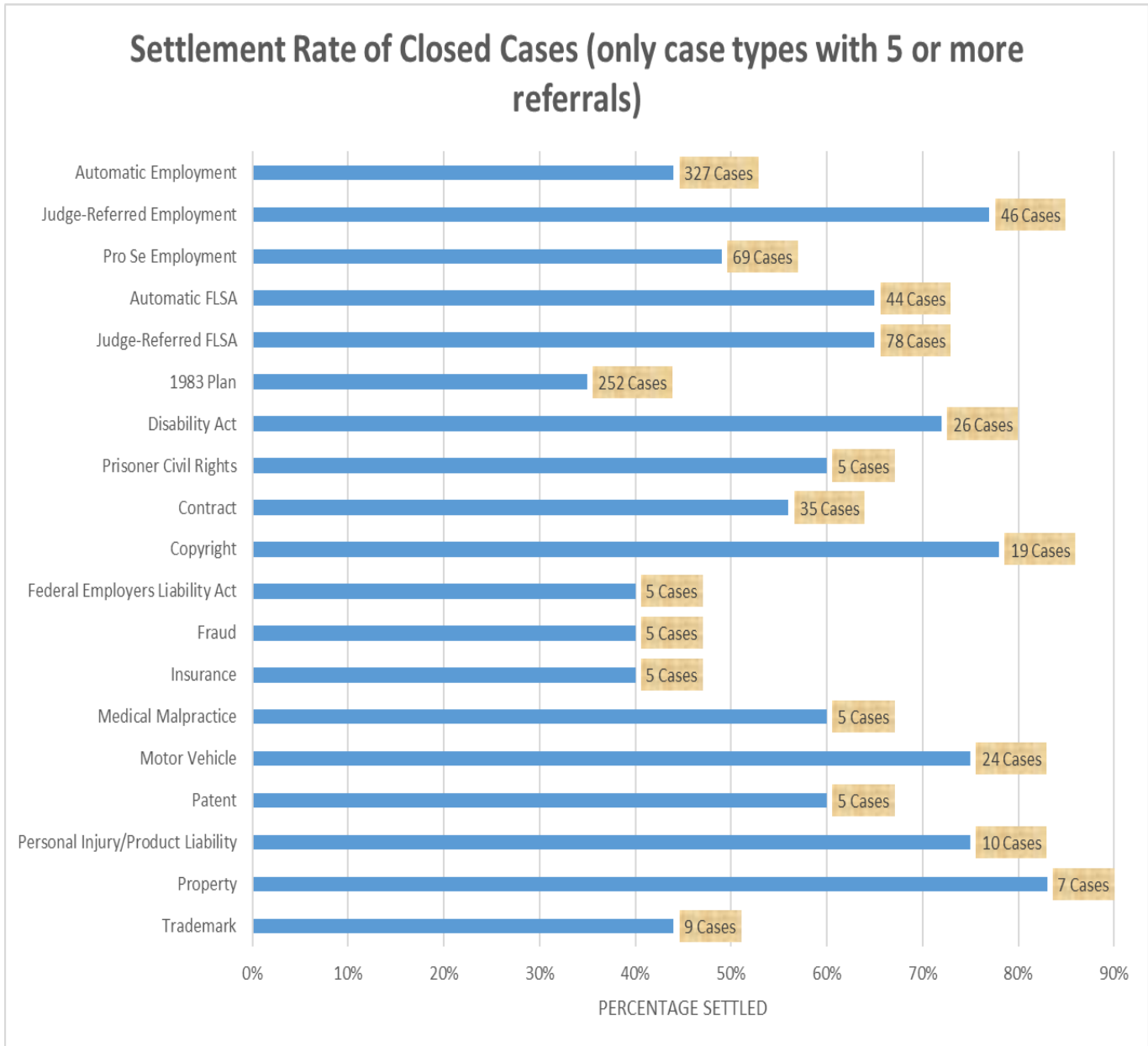
Causes of Action and Referral Numbers



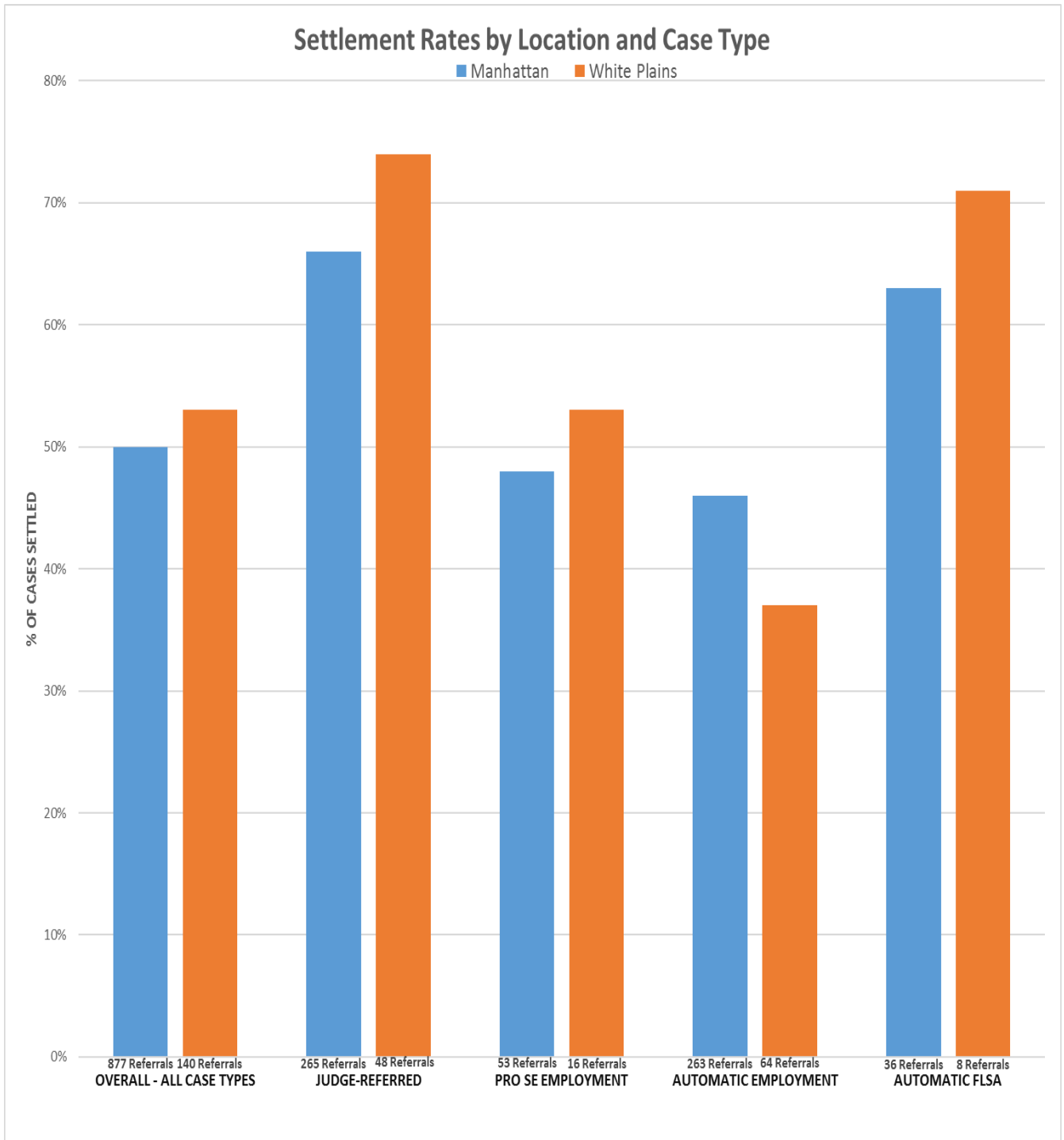
* “Other” consists of case types in which fewer than five referrals were made to mediation, including: Securities, Racketeering, Intellectual Property, Construction, Education, Federal Communications Act, Fair Credit Reporting Act, Fair Housing Act, Consumer Credit, Interstate Commerce, Maritime, Admiralty, and ERISA.

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Settlement Rates by Cause of Action



Settlement Rates by Location and Type of Referral



Selected Initiatives 2016

Outreach: Mediation Program staff coordinated and participated in many events to increase awareness about mediation and the Court's program.

Presentations and panels included:

- the State and City Bar ADR Committees;
- New York County Lawyers Association Federal Courts and ADR Committees;
- the Association for Conflict Resolution for Greater New York;
- various groups of foreign judges/mediators who visited the Court.

Educational programs included:

- coaching at the Basic and Advanced Commercial Mediation Trainings at the NYC Bar;
- presenting to the New York State court referees and attorneys;
- presenting at various schools including Columbia Law School, Brooklyn Law School, CUNY, NY Law School, Fordham Law School and City College.
- The Mediation Office also offered two trainings to staff from the City Commission on Human Rights on effective communication and working with high emotion. SDNY mediators and staff participated as coaches in those trainings.

Development of Program for Limited Scope Mediation Counsel: For many years, the Mediation Program has worked in collaboration with the Office of Pro Se Litigation to mediate pro se employment cases with the assistance of limited scope mediation counsel. In 2016, there was particular focus in promoting this initiative including:

- “From the Southern District of New York, A Success Story: Limited-Scope Pro Se Program Provides Access and Justice” Dispute Resolution Magazine (Spring 2016);
- Streaming video “Court to Court: Limited Scope Pro Bono Representation for Pro Se Litigants” (Federal Judicial Center February 2017);
- a day-long training and mentoring program for junior attorneys who might be interested in serving in this role.

Mediator Development: The Mediation Office offered half-day trainings on implicit bias in mediation to approximately 150 mediators in Manhattan and White Plains, and trained White Plains mediators about § 1983 police cases. The Mediation Program has continued to evaluate current and prospective panel mediators using the protocol developed in collaboration with the NYC Bar Association ADR Committee. In addition, Mediator Practice Groups were expanded to four in Manhattan and one in White Plains. These groups of mediators meet every other month for two hours to discuss common issues in SDNY mediations.

Mediator Advisory Committee (“MAC”): MAC members participated actively in efforts to increase diverse applicants to the mediation panel, developed strategies for increasing mediation referrals, identified training opportunities, and provided advice on ethical issues. MAC members assisted in developing the pilot FLSA protocol and the expansion of § 1983 protocol to White Plains.

Diversity Efforts: In 2016, the Mediation Program continued efforts to increase the number of diverse applicants to the mediation panel. Program staff and the MAC conducted outreach to various affinity bar committees and alumni groups and worked with the City and State Bar Associations to encourage them to develop scholarships for diverse applicants for the basic and advanced mediation trainings hosted by those organizations.

Program Expansions – One Year Update: In 2016 the Mediation Program implemented new pilot mediation programs for FLSA cases assigned to seven of the District Judges, and § 1983 cases in White Plains. Following is a summary of the first year of these two programs. From the start of the FLSA pilot program on Oct 1, 2016 to Oct 1, 2017, 182 cases were automatically referred to mediation. 111 mediation referrals have closed with a settlement rate of 60%. During the same period, 12 Section 1983 cases were referred to mediation in White Plains. Of the 9 matters now closed, the settlement rate was 33%.

