Mediation Program

Annual Report

January 1, 2014 - December 31, 2014
(As of March 23, 2015)

Rebecca Price
Mediation Supervisor

Introduction

In 2014 a total of 1011 cases were referred into the Court's Mediation Program including 223 referrals from individual judges, an increase of over 100 non-automatic referrals since 2013. Cases enter the Mediation Program either through a process of automatic referral or by referral of a specific case from the assigned judge. Since 2011 the SDNY has had automatic referrals of non-*pro se* employment cases and certain § 1983 cases against the NYPD. Both of these programs allow for mediation at the early stages of the litigation process before formal discovery has occurred. Of the cases referred in 2014, 828 have closed with the following rates of settlement: Automatic Employment (50%), *Pro Se* Employment (68%), Referrals from Individual Judges (non-*pro se* employment) (65%), § 1983 Plan (76%). What follows in this report are more detailed statistics about the functioning of the Mediation Program and some of the initiatives undertaken in 2014.

Statistical Reports

1. The charts below show average timelines for each stage of the mediation process in 2014. Cases that entered the program through referral orders from individual judges or through the program of automatic referral for employment cases all share the same 30-day deadline for scheduling the first session. *Pro se* employment referrals have a deferred deadline for scheduling to allow for appointment of counsel. Cases that enter the program through the Court's pilot Plan for Certain § 1983 Cases have a 60-day deadline for scheduling the first session. Mediators should be assigned within 10 days of the referral to mediation except for *pro se* employment cases where the mediator is typically assigned within 10 days of the appearance of counsel.

   NOTE FOR INDIVIDUALLY REFERRED CASES (non-*pro se* employment): The average time for assigning mediators in cases referred by Mediation Referral Orders was 7 days. Except in referrals where judges ordered specific timelines for holding the mediation, the average time to schedule the initial session was 22 days from referral. The average total time in mediation for individually referred cases was 87 days.

   NOTE FOR *PRO SE* EMPLOYMENT REFERRALS: In some instances judges are referring *pro se* employment matters to mediation before the defendant has been served and in these cases the mediator is assigned within 10 days of the referral. Cases referred before the defendant has been served show a much longer time between referral and scheduling.

Average Total Days From Referral to Closure in Mediation Program
Days
120
100
80
60
40
20
0
Employment
Pro Se Employment
Individual Referrals (non-pro se employment
1983

2. As of March 23, 2015, there are 352 mediators on the SDNY mediation panel. The following chart lists the number of mediators who identify as having specific areas of expertise. Employment is the only category of expertise where the Mediation Program has established a baseline level of knowledge or experience.

Employment Discrimination	300				Entertainment	27
1983	233				Medical Malpractice	25
Commercial	174				Accounting	24
Securities	102				Trusts and Estates	22
Labor Law	95				Patent	22
Contracts	90				ERISA	21
General Business	93				Landlord/Tenant	21
Corporate	73				Environment	20
Finance	71				Education	20
Intellectual Property	62				Municipal	19
Civil Rights	60				Healthcare	16
Torts	60				Media	16
Real Estate	57				Family	12
Personal Injury	52				Maritime	12
Insurance	46				Aviation	11
Antitrust	46				Probate	10
Professional Liability	46				Energy	10
Product Liability	45				Foreclosure	8
Shareholder Disputes	45				Admiralty	8
Legal Malpractice	40				Taxation	6
Trademark	39				Veterans Claims	4
Bankruptcy	38					
Construction	36					
Electronic Discovery	36					
Copyright	34					
Class Actions	34					
Disability Act	33					
Banking	31					
International	29					
Mergers and Acquisitions	29					
Libel/Slander	28					

3. The following charts provide information about cases referred through mediation referral orders or mediation referral orders for *pro se* employment (non-automatic).

4. MEDIATION SETTLEMENT STATISTICS 2011/2012/2013/2014YTD

Definition of Successful Mediation: The Mediation Program of the Southern District of New York considers mediation in this program to be "successful" when communications with a mediator facilitate full or partial settlement of a case. The determination of whether a case is successful or not is made at the time the mediation referral is closed (typically when the mediator ceases to be actively engaged with the case) with the docketing of a final mediator report. Because the program encourages mediators and parties to begin conversations prior to a formal mediation session, and many cases settle as a result of these conversations, cases that settle post-referral but before the first mediation session has been held are also considered successful mediations. The Mediation Program also recognizes that many cases that do not settle before the referral is closed are positively impacted by the experience of mediation. Such benefits include narrowing of the issues and/or settlement range, clarifying the parties' interests, and establishing rapport between and among counsel and parties.

Final Mediator Reports: In July 2014 the Final Mediator Report was updated to more accurately reflect the outcomes available through the Mediation Program. The new report numbers/descriptions are: #1 (Held and agreement was reached on all issues), #2 (Held and agreement was reached on some but not all issues), #3 (Held and agreement was reach as to some, but not all, parties), #4 (Held but was unsuccessful in resolving any issue in the case), #5 (Not held as parties represent that they reached settlement on all issues), #6 (Not held as a stipulation settling all of the issues was entered into prior to mediation), #7 (Not held as parties failed, refused to attend, or refused to participate in mediation), #8 (Not held as case was removed from mediation by the judge).

Overview 2014 (YTD)

	TOTAL REFERRALS	TOTAL CLOSING REPORTS	TOTAL SUCCESSFUL* OUTCOMES (*see defintion above)	SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS (minus removed cases)	Full settlement	Partial settlement	Settled before first mediation session	No settlement	Parties refused	Case removed by judge
1983	382	319	226	76%	124	4	98	69	2	23
Emplo	357	303	147	50%	124	0	23	146	1	9
Pro Se Emplo yment	49	28	17	68%	15	0	2	7	1	3
Civil	223	181	115	65%	84	5	26	61	0	5

1983 Plan	TOTAL REFERRALS	TOTAL CLOSING REPORTS	TOTAL SUCCESSFUL* OUTCOMES (*see defintion above)	SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS (minus removed cases)	Full settlement	Partial settlement	Settled before first mediation session	No settlement	Parties refused	Case removed by judge
2011	1	1	1	100%	0	0	1	0	0	
2012	449	378	264	70%	132	7	125	111	3	
2013	427	347	236	68%	151	0	85	109	2	
2014	382	319	226	76%	124	4	98	69	2	23

Automatic Employment	TOTAL REFERRALS	TOTAL CLOSING REPORTS	TOTAL SUCCESSFUL* OUTCOMES (*see defintion above)	SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS (minus removed cases)	Full settlement	Partial settlement	Settled before first mediation session	No settlement	Parties refused	Case removed by judge
2011	364	317	133	42%	109	2	22	181	3	
2012	321	280	105	38%	88	0	17	172	3	
2013	349	296	133	45%	118	1	14	161	2	
2014	357	303	147	50%	124	0	23	146	1	9

Civil: Not Pro Se Employment	TOTAL REFERRALS	TOTAL CLOSING REPORTS	TOTAL SUCCESSFUL* OUTCOMES (*see defintion above)	SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS (minus removed cases)	Full settlement	Partial settlement	Settled before first mediation session	No settlement	Parties refused	Case removed by judge
2011	168	143	94	66%	74	4	16	49	0	
2012	136	121	65	54%	53	0	10	56	0	
2013	116	103	54	52%	43	1	10	47	2	
2014	223	181	115	65%	84	5	26	61	0	5

Pro Se Employment	TOTAL REFERRALS	TOTAL CLOSING REPORTS	TOTAL SUCCESSFUL* OUTCOMES (*see defintion above)	SUCCESSFUL OUTCOMES AS A % OF TOTAL REPORTS (minus removed cases)	Full settlement	Partial settlement	Settled before first mediation session	No settlement	Parties refused	Case removed by judge
2011	23	20	13	65%	10	0	3	7	0	
2012	47	40	18	45%	17	0	1	21	1	
2013	33	28	18	64%	17	0	1	10	0	
2014	49	28	17	68%	15	0	2	7	1	3

Selected Initiatives 2014

1. Mediator Training: In 2014 the Mediation Program offered training opportunities to panel mediators including: basic and advanced employment CLEs developed by and provided in conjunction with Cornell ILR and various employment bar associations, mediating under the 1983 Plan, and mediation representation presented by the Federal Bar Association.

2. District Court ADR Administrators Network: A network with other district court ADR Administrators was established including a listserv, monthly call, and 3-day conference to share information and ideas about administering district court ADR programs.

3. Outreach: Mediation Program staff coordinated and participated in many events to increase awareness about the Mediation Program including: the annual meeting of the New York State Bar Association's ADR Committee, an ADR Symposium hosted by Penn State, the ABA ADR conference, the New York Center for Interpersonal Development (a community mediation center), a PLI panel on municipal mediation, panel discussions at the New York County Lawyers Association and the Brooklyn Bar Association, and lunches with the Board of Judges and members of the Mediator Advisory Committee.

4. Mediator Development: In 2014 a protocol was developed to assess new applicants to the mediation panel. Prospective panel mediators participate in a mentorship program where they observe at least three mediations conducted by SDNY mediators and then mediate a case under observation before being approved to mediate cases independently. In addition, all panel mediators are offered opportunities to observe and co-mediate should they wish to do either. In collaboration with the New York City Bar Association's ADR Committee, a Mediator Assessment Pilot was designed in which panel mediators volunteered to mediate with a trained observer present and to participate in a post-mediation conversation geared towards identifying strengths and areas of improvement. Final reports and recommendations from this pilot are currently being prepared.

5. Mediator Advisory Committee (MAC): In year two of the MAC, two of the original members stepped down and an additional seven MAC members were selected for two year terms. The 2014-2015 agenda for the MAC includes: an initiative to diversify the mediation panel, the mediator assessment pilot and other forms of quality control, developing strategies for increasing mediation referrals, enhancing outreach materials (website etc.), and exploring an increase in service to *pro se* litigants. MAC members are also extraordinarily helpful in the mentoring program (mentioned above), in providing advice on ethical issues, and generally fielding questions and generating ideas for the program.

6. This past year there was significant work on the Court's Pilot Plan for certain § 1983 cases as it went through rulemaking.