

United States District Court District of Vermont



Early Neutral Evaluation Program

2012 ANNUAL REPORT

January 1, 2012 - December 31, 2012

INTRODUCTION

“The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”
— Sandra Day O’Connor

The purpose of this report is to present relevant historical and statistical data with regard to this district’s ENE program. The reporting period contained herein is *January 1, 2012* through *December 31, 2012*.¹

¹ This is the first Annual Report that contains data covering an actual calendar year rather than the previously used November 1 through October 31 reporting period.

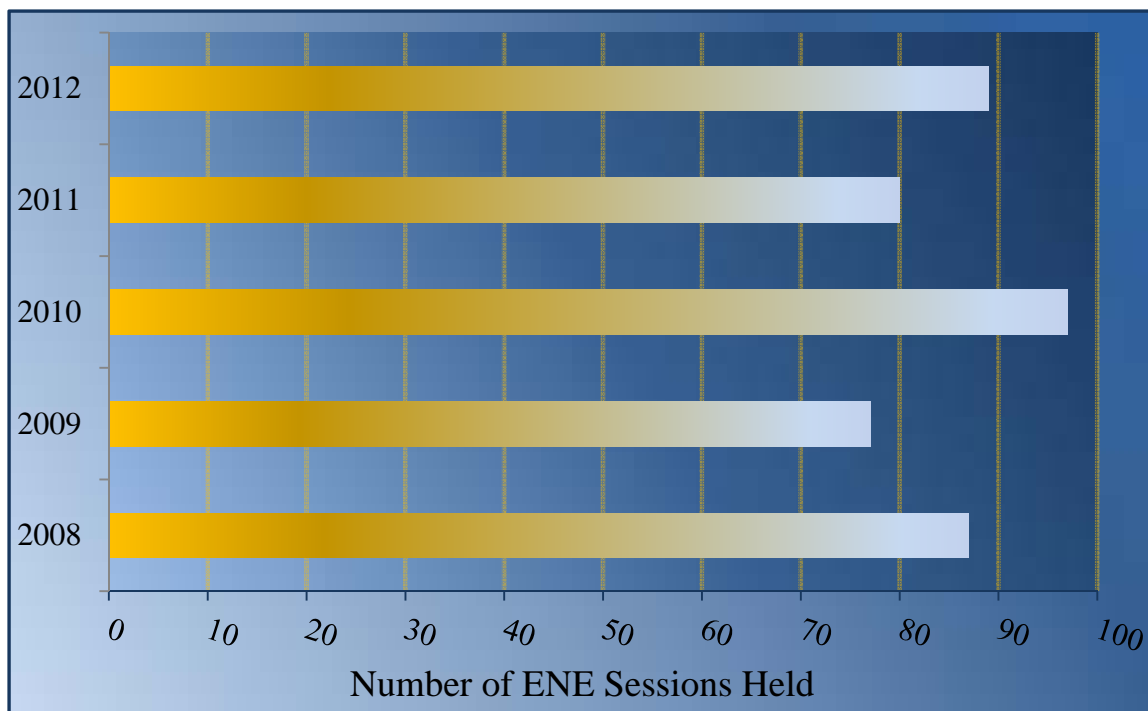
STATISTICAL ANALYSIS

ENE Usage

The aggregate number of cases eligible² for ENE since the program's inception on July 1, 1994 is **3,495**.

1,714 (49%) of eligible cases were either settled or dismissed prior to an ENE session. **36** (1%) of eligible cases successfully opted out of the ENE process.

This graph illustrates the number of ENE sessions held each year for the previous five years.



² Cases filed with nature of suit statistical code categories as specified in L.R. 16.1(b)(1)(A)-(G).

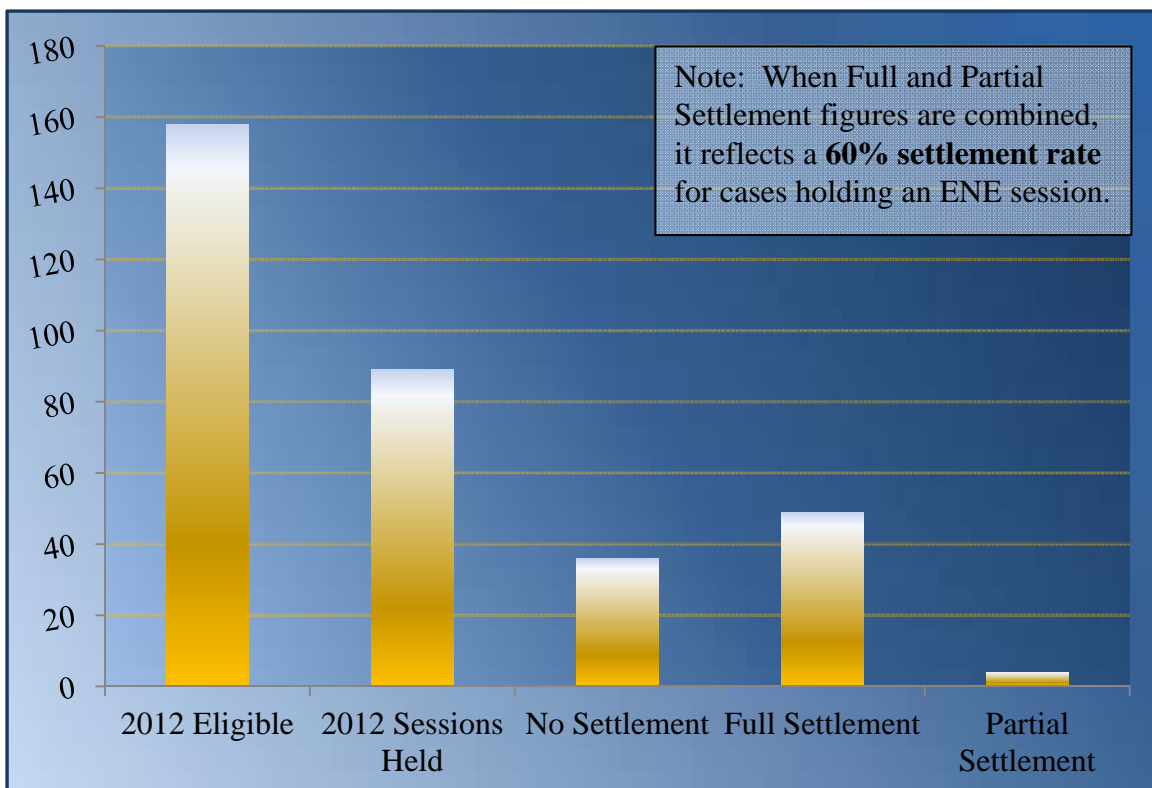
ENE Results

Of the 1,820 sessions held since inception, 1037 (57%) resulted in no settlement; 741 (41%) resulted in full settlement; and 42 (2%) resulted in partial settlement.

2012 Results

As depicted in the graph below, 158 cases were eligible for ENE in the 2012 reporting period. From the 158 cases, 89 sessions occurred. This represents an 11% increase over the 80 sessions held in 2011.

Of the 89 sessions held, 36 (40%) resulted in no settlement; 49 (55%) resulted in full settlement; and four (5%) resulted in partial settlement.



Disposition of ENE Eligible Cases

This table compares the **point of disposition** for ENE eligible cases in specific nature of suit categories. It also displays the mean disposition time for each category. This information suggests what case types benefit most from the program.

NATURE OF SUIT	WHEN DISPOSED			MEAN DISPOSITION TIME (in days)
	Pre-ENE Session	At ENE Session	After ENE Session	
110 Contract: Insurance	50%	20%	30%	376
190 Contract: Other	58%	17%	25%	332
350 PI: Motor Vehicle	25%	35%	40%	374
360 PI: Other	33%	31%	36%	386
362 PI: Med Malpractice	49%	25%	26%	423
365 PI: Product Liability	46%	23%	31%	428
440 Civil Rights: Other	62%	15%	23%	329
442 Civil Rights: Jobs	32%	31%	37%	379
791 Labor: ERISA	48%	27%	25%	303

Comparing the information in the chart above to that in the 2011 reporting period, there is a small but consistent decrease in the percentage of cases that settled pre-ENE, and an increase of those settling at ENE. Interestingly, the increase of cases settling at ENE for nature of suit codes 362 and 365 also saw a 5% increase in the mean disposition time. Perhaps this suggests successful settlement can be achieved a bit later in discovery for these case types.

ATTORNEY FEEDBACK

Case Closing Questionnaires are mailed throughout the reporting period to counsel who participated³ in the ENE process. A summary of responses to the Questionnaires is attached as APPENDIX 1.

Responses continue to be generally quite positive. Most parties see the program as “. . . *very helpful.*” Many expressed appreciation of the significant efforts made by evaluators. “*It was worth the five (5) hour ride to it and the five (5) hour ride back. He helped all of the parties appreciate the reality of all issues.*” It appears parties have come to view the ENE process as an anticipated and useful mechanism for settlement discussions. “*Parties now wait for ENE/mediation to discuss settlement . . .*”

EVALUATOR FEEDBACK

APPENDIX 2 summarizes the responses to the Court’s Annual Early Neutral Evaluator Questionnaire. Overall, the responses indicate the evaluators feel the program works well and is successful. “*The program continues to enjoy great success, thanks to the level of commitment of all involved.*”

EVALUATOR USAGE

Attached as APPENDIX 3, is a spreadsheet presenting the **combined** efforts of **all** evaluators – those who are, or at one time, on the official court roster, and those who have been stipulated to by parties.

³ Participation begins with the assignment of an evaluator. Counsel in cases resulting in full settlement at session were NOT sent questionnaires.

UPDATES

Panel Update

In September 2012, Eileen Blackwood was appointed as Burlington City Attorney, and as a result, is unable to continue to serve as an Early Neutral Evaluator. She has therefore been removed from the roster of evaluators. The Court would like to express its thanks to Attorney Blackwood for her many years of dedication to the ENE program. The Court welcomes Antonio Pyle, Esq. who was selected to fill the roster vacancy. Attorney Pyle's practice is located in Stowe and concentrates on cases related to toxic exposure and related medical issues, negligence, and product liability.

Training

As indicated in the 2011 Annual Report, the Court will sponsor training opportunities every two years. Maintaining that schedule, training will be made available in 2013.

Evaluator Reports and Supplemental Report Procedure

A fillable Evaluator Report Form has been created and posted to the Court's website at [Evaluator Report Form](#). This form is meant to assist evaluators with the process of efficiently filing reports that are consistent and compliant with the requirements of L.R. 16.1(j).

During this reporting period, a procedure was developed for the submission of Supplemental Evaluator Reports within 60 days from the date of the session. This allows an evaluator to report his or her continued efforts with the parties resulting in settlement for matters that did not initially settle at an ENE session. Please see the [Procedure](#) on the Court's website for full information.

Bankruptcy

There were no bankruptcy cases referred to ENE during this reporting period.

CONCLUSION & VISION

2012 was a very successful year for ENE. The program continues to be a viable opportunity for discussion between parties and is received in a positive light.

The Court continues its work to improve the ENE program and looks forward to future developments and success.

Comments

Comments or suggestions related to the ENE program are welcomed and encouraged, and may be forwarded to H. Beth Cota, ENE Administrator, at (802) 951-8113, or to Beth_Cota@vtd.uscourts.gov.

The United States District Court for the District of Vermont would like to thank the evaluators, and members of the legal community for their continued support of, and participation in, its ENE program.

APPENDIX 1

ENE CASE CLOSING QUESTIONNAIRE

DISTRICT OF VERMONT

1. The primary reason(s) this case closed when it did: (check all that apply)

If your Case Closed Before ENE Session was Held

- 35% a. Facts/Issues were straightforward so lengthy discovery was not needed
- 4% b. Settlement was at least partly worked out before the case was filed
- 5% c. Client changed mind – case dropped or to be pursued in another venue
- 18% d. ENE process imminent – discovery checklist, case summary, etc. due soon
- 39% e. Other (please explain) _____

If your Case Closed After ENE Session was Held

- 15% f. Recent receipt of needed written discovery materials, i.e., interrogatories, requests to admit/produce, expert reports
- 21% g. Deposition(s) of experts were completed
- 24% h. Deposition(s) of key fact witnesses were completed
- 0% i. Decision on controlling motions by the Court
- 39% j. Trial date set/approaching
- 0% k. Attorney/client schedule only recently permitted full attention on this case
- 39% l. Other (please explain) _____

2. Was the ENE process *as a whole* helpful in settling this case? (Please consider “intangible effects” of ENE, such as opening communication between the parties, identifying strengths and weaknesses of each side, getting clients to be more realistic, etc.)

- 16% Very helpful
- 38% Somewhat helpful
- 45% No effect
- 1% Detrimental

2a. If you checked “Very” or “Somewhat” helpful above, what about the ENE process helped most in resolution of the case? (check all that apply)

- 33% Active participation of client in the session, i.e., direct communication with other party(ies), hearing strengths and weaknesses of their own case, etc.
- 7% Prompted counsel to exchange information and/or “get moving” on discovery sooner than we otherwise might have
- 1% \$500 fee prompted consideration of settlement before that stage was reached
- 20% Evaluator’s methods of conducting the session and discussing the case
- 16% Prompted all to consider settlement earlier than we otherwise might have
- 4% Combination of all
- 10% Improved pretrial settlement discussion as trial approached, i.e., court pretrial conference
- 9% Other (please explain) _____

3. Do you think this case settled any earlier than it would have if there were no ENE process?

- 21% Yes
- 54% No
- 25% No way to tell

4. Did the ENE process help decrease the costs of the litigation, either because of early settlement, or in other ways?

- 33% Yes If yes, please explain: _____
- 67% No _____

PLEASE USE THE AREA BELOW FOR ANY OTHER COMMENTS OR SUGGESTIONS YOU MAY HAVE REGARDING THE ENE PROGRAM.

“Typically, ENE is very helpful. This was a somewhat unique circumstance not reflective of ENE’s value.”

“We believe the ENE program is very useful, but in this case we did not need it because all parties wanted to resolve their dispute before engaging the ENE process.”

“I continue to believe we should have LNE (Late Neutral Eval.) The “Early” is often THE problem. The idea that the parties will talk again is not as prevalent.”

“I was a skeptic but have learned to live with ENE!”

“We attempted ENE twice, with no impact at all. Some cases just have to be tried.”

“Decision made to defend the case, thus ENE did not impact outcome.”

“There was a great deal of effort put in by the ENE and he helped the parties appreciate all of the issues.”

“The conductor of the ENE session was a motivator. It was worth the five (5) hour ride to it and the five (5) hour ride back. He helped all of the parties appreciate the reality of all issues.”

“This case involved a pro se plaintiff who was perhaps less capable of assessing the weaknesses in his case. This would have been the case had he been assisted by counsel.”

“ENE mediator was insulting to party and attorney.”

“This was a difficult case that had two separate days of mediation and numerous telephone negotiations. Fortunately the parties were willing to convert the ENE to mediation.”

“Parties now wait for ENE/mediation to discuss settlement; evaluator did a good job. ENE settled the case; took time to get paperwork sorted out.”

“Impending ENE encouraged settlement; if not for ENE, further litigation costs likely would have been incurred.”

“The settlement of this case was unaffected by the ENE process because it occurred so early in the case. Counsel for both parties were in agreement with respect to selection of ENE evaluator so it is hard to say that ENE played any role in this particular case. We did run into some difficulty with the court because we selected a mediator who was not on the ENE list provided by the court. Perhaps more thought could be given to facilitating the process when all parties are on board with a mediator. We provided the info requested by the local rules in a letter but were then required to resubmit the same exact information in a different format – which seemed unnecessary.”

2a. Other (please explain):

“Forced plaintiff to realize extreme weakness of claim.”

“Realized that settlement was not an option and doubled efforts to prevail on MSJ.”

“Outlined bankruptcy effect(s).”

“Parties now wait for ENE/mediation to discuss settlement; evaluator did a good job.”

“Impending travel & costs encouraged settlement.”

“Convinced us that trial was most likely outcome.”

4. Did the ENE process help decrease the costs of the litigation, either because of early settlement, or in other ways? Yes or No.

Yes: "Avoided trial preparation."

Yes: "One party did settle and that reduced the number of players and potential issues."

Yes: "Limited trial expense."

Yes: "Case settled."

Yes: "Decreased legal work & ENE fee."

Yes: "Early settlement."

Yes: "Focused on potential financial recovery, if any."

Yes: "Settled before depositions began."

Yes: "Encouraged settlement."

Yes: "Avoided trial costs."

Yes: "Earlier resolution lowered costs of experts and attorney's fees."

Yes: "Expensive depositions were avoided."

Yes: "Avoided expert expenses as trial neared."

Yes: "Decreased costs, decreased need for motion."

Yes: "Costs were reduced due to settlement."

Yes: "ENE settled the case."

Yes: "Moved the parties to settlement sooner."

Yes: "It helped to formulate issues."

Yes: "Impending ENE encouraged settlement; if not for ENE, further litigation costs likely would have been incurred."

No: "Summary judgment motion then pending so all investment already made."

No: "This was an out of the ordinary case. In most cases, ENE is helpful."

No: "They increased."

No: "ENE cancelled at last minute due to snow storm. Parties had direct discussions to settle case."

No: "Wasted \$ and time."

No: "Defendants held out to the last minute."

APPENDIX 2
UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ANNUAL EARLY NEUTRAL EVALUATOR QUESTIONNAIRE

In the Court's continued effort to ascertain the degree of participation in the Early Neutral Evaluation process, please answer the following questions based on your experiences and observations.

1. As to **attorneys'** participation in the process, please indicate what percentage applies to each statement below.

<u>89</u>	%	Excellent – thorough preparation and honest efforts toward success
<u>11</u>	%	Good – some efforts made, but appear hesitant and/or skeptical
<u>1</u>	%	Indifferent – participate minimally to comply with the Local Rule
<u>0</u>	%	Negative – little or no preparation with no chance given to process
<u>0</u>	%	Other – please explain

- 1a. Compared to previous years, do your responses above represent

<u>31</u>	%	An increase in attorney preparedness and participation
<u>69</u>	%	The same level of attorney preparedness and participation
<u>0</u>	%	A decline in attorney preparedness and participation

2. As to **parties'** participation in the process, please indicate what percentage applies to each statement below.

<u>69</u>	%	Full active participation
<u>29</u>	%	Some participation
<u>2</u>	%	Neutral – present, but not actively participating in the process
<u>0</u>	%	Negative participation harming case progress
<u>0</u>	%	Other – please explain

3. In your experience, are there any types of cases that are currently subject to ENE that should not be? **None suggested.**
-

Comments or suggestions regarding the ENE program:

“The program is running fine.”

“Participants’ lack of authority to settle continues to be a problem.”

“The program continues to enjoy great success, thanks to the level of commitment of all involved.”

“I agree, it works.”

“I think the process is working well in all cases.”

APPENDIX 3

Current Court Roster (as of 12/31/2012)

Current Court Roster - Bankruptcy (B) (as of 12/31/2012)

Previous Court Roster

By Stipulation

Evaluator	Cases Assigned	Full Settlement	Partial Settlement	No Settlement	Settled Prior to Session	Dispositive Motion Prior to Session
Affolter, Richard W.	3	1			1	1
Allen, Frederic W.	24	6	1	12	5	
Amidon, Jr., Edwin H.	51	7		29	12	3
Archer, Evan	11			7	3	1
Badgewick, Joseph	16	2		4	8	2
Barnes, Gary H.	12	6		2	4	
Bell, Alison J.	22	5		9	5	3
Bergeron, John J.	16	2		8	4	2
Bisson, Leo A.	40	15	3	15	3	
Blackwood, Eileen M.	56	20	1	22	8	5
Blodgett, Stephen S.	42	8		22	4	8
Bloomberg, Samuel S.	18	1	1	10	5	1
Boylan, III, John J.	9	3		4	1	1
Briggs, Heather	1			1		
Brown, Victoria J.	1				1	
Bryan, Alden T.	24	4	1	6	8	5
Burchard, Daniel L.	1					1
Cahill, Jr., Joseph F.	29	4	1	16	6	2
Carlson, Thomas Z.	3	2		1		
Carroll, James F.	2			1		
Cassidy, Richard T.	91	36		29	16	2
Chadurjian, Mark	3	1			2	
Clapp, Michael	1			1		
Clayton, Gregory S.	6	4				
Cleary, David L.	44	17	1	16	6	
Coffrin, James	1			1		
Cohen, Jerry	1	1				
Collins, John	2			2		
Coughlin, Patrick	3	2		1		
Crampton, Stephen R.	6	1		1	3	
Crawford, Geoffrey	1			1		
Crispe, Lawrin P.	1			1		
Davis, Christopher L.	75	16		37	15	6
Deitz, Roger M.	1	1				
Deschenes, Denise J.	3	1		2		

Evaluator	Cases Assigned	Full Settlement	Partial Settlement	No Settlement	Settled Prior to Session	Dispositive Motion Prior to Session
Diamond, Jerome M.	1			1		
Dier, Jr., Hon. Hilton H.	40	9	1	21	8	1
Dolak, Lisa	1			1		
Dumont, James A.	34	9		13	10	2
Eaton, Gregory M.	1	1				
Ekman, Christopher D.	1			1		
Ellis, Stephen D.	3			1		
Emens-Butler, Jennifer (B)	1	1				
Fallon, Ellen M.	21	4		8	6	3
Fead, William A.	27	8		8	9	2
Feinberg, Kenneth	1			1		
Fitzhugh, John	40	5	1	23	7	3
Foote, Richard P.	2		1	1		
Furlong, Michael G.	1			1		
Gallagher, James C.	35	6		17	9	2
Garvey, John B.	2	2				
Gebauer, Jr., Gordon C. (B)	4	1		2		1
Gerety, Jr., Robert P.	51	10		30	5	6
Geronemus, David	1			1		
Gum, Carl	1			1		
Hall, Peter	72	13	2	42	11	4
Hanley, Michael F.	35	9		14	8	3
Hemley, Robert B.	47	13	2	16	11	2
Hoar, Jr., Samuel	6	1		5		
Holland, Donald S.	1	1				
Hughes, Jr., John R.	20	2	1	7	5	4
Iandiorio, Joseph	2			1	1	
Infante, Edward	1				1	
Jentes, William	1					
Joseph, Ben W.	0					
Joslin, Peter B.	75	21	3	32	15	2
Kaplan, Mark A.	20	7	1	7	1	4
Kasper, Keith J.	1			1		
Kassel, John	1	1				
Katz, Matthew I.	0					
Kauders, Christopher	1			1		
Kehoe, Mary P.	22	5		9	7	1
Keiner, Robert P.	1			1		
Kellner, John L.	1					1
Keyes, Allan R.	1			1		

Evaluator	Cases Assigned	Full Settlement	Partial Settlement	No Settlement	Settled Prior to Session	Dispositive Motion Prior to Session
Kirkpatrick, Mary G.	4			2	2	
Knapp, Spencer	1				1	
Kronk, Catherine	16	4		7	4	1
Kunin, Peter B.	3	2		1		
Lamb, Anthony B.	24	7	2	7	6	2
Lobel, Ira B.	1			1		
Lotty, Robert	1				1	
Luce, Robert B.	1	1				
Maley, John P.	1				1	
Manchester, Robert E.	14	1		10	3	
Manitsky, Andrew D.	4				1	
Mapes, Stephanie	3				1	1
Marks, Michael J.	128	66	5	20	17	5
Martin, Stephen B.	1	1				
Mazzone, David A.	3				1	
McAndrew, Karen	32	7		15	6	2
McClallen, Robert	3	1		2		
McCormick, Thomas E.	71	17		38	11	4
McGee, P. Scott	9	2		4	1	
McKearin, Robert R.	43	9		20	7	4
McNeil, Joseph E.	2			2		
Meaker, John P.	6				1	5
Mello, Robert A.	17	4		11	1	1
Mertz, Gregory	1	1				
Meub, William H.	40	18		12	6	3
Monahan, Jr., John	1			1		
Morgan, Glenn	1				1	
Mulvey, Jr., William A.	7	4		2		
Murdoch, James W.	32	4	1	23	3	
Norton, Richard W.	5	2		2	1	
O'Dea, Arthur J.	264	122	1	78	50	10
O'Neill, Jerome F.	31	11		11	7	1
Obuchowski, Raymond J. (B)	1				1	
Olanoff, Jerrold A.	1			1		
Otterman, David A.	1	1				
Palmer, Michael (B)	1	1				
Pearl, Mitchell	2	1		1		
Pessin, Myron Stuart	2	1		1		
Powers, Donald	13	3		10		
Rachlin, Robert	3		1	1	1	

Evaluator	Cases Assigned	Full Settlement	Partial Settlement	No Settlement	Settled Prior to Session	Dispositive Motion Prior to Session
Reis, Robert K.	1				1	
Rendall, Donald J.	12			5	7	
Richards, Douglas	42	4	1	29	8	
Rothstein, Amy	1				1	
Runcie, James W.	17	5		4	6	2
Sabalys, Patricia M.	1					
Saltonstall, Stephen L.	22	4		10	5	2
Sartore, John T.	3	2		1		
Scholes, Richard A. (B)	2			1	1	
Simons, Richard B.	1			1		
Smith, Jr., Shapleigh	2		1	1		
Spink, James W.	186	63	3	78	28	6
Stewart, Jr., Potter	69	13		27	18	10
Suskin, James S.	67	24	2	30	8	3
Sussman, Susan M.	7	2		3	1	1
Taylor, Julie	3	1		1	1	
Troy, Gordon	1				1	
Valsangiacomo, Jr., Oreste V.	1			1		
Vana, James	1			1		
Watts, Jr., Norman E.	2	1				
Webber, John B.	6	1	1	1	2	1
Wing, Joan Loring	72	32	3	17	13	7
Wolinsky, Douglas J. (B)	3	1		1		1
Woolmington, Robert E.	9	1		4	1	3
Yates, Glen	8			7		1
Yessne, Dinah	4			1	2	1
Zawistoski, John J.	3	1		1		
	2536	741	42	1037	473	161
Sessions Pending	-66	1820				
Opted out after assignment	-16	2454				
	2454					