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The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

May 18, 2020

Via Email

Hon. Lawrence K. Marks
Chief Administrative Judge, State of New York
Office of Court Administration
25 Beaver Street
New York, NY 10004

Re: Proposed Task Force Regarding Active Judicial Case Management

Dear Judge Marks,

Thank you for all that you are doing to keep New Yorkers safe and the courts functioning during this challenging time. The task is extraordinary and we are grateful for your leadership.

Although we understand that the court system is presently facing a tough challenge in returning to normal functionality, we wanted to apprise you of a pilot project that we believe is worth pursuing at the appropriate time. The New York City Bar Association spends a considerable amount of time and energy conceiving, proposing and assisting in the implementation of innovations, small and large, to help improve the efficiency of litigation in the New York State courts. The City Bar's numerous committees each contribute to the cause, including the Council on Judicial Administration, the State Courts of Superior Jurisdiction Committee and the Litigation Committee. Also, as you know, former City Bar president John Kiernan established, in 2017, a Committee for the Efficient Resolution of Disputes, whose work has continued under the leadership of co-chairs Erin Gleason Alvarez and Daniel F. Kolb, and with the strong support of current City Bar president Roger Juan Maldonado.

In February of this year, Judge Jennifer Bailey of the Eleventh Judicial Circuit of Florida joined a meeting of the Council on Judicial Administration, via videoconference, and presented the results of a pilot project that enjoyed considerable success in facilitating the expedited resolution of civil matters in her court. The project grew out of the work of the Conference of Chief Justices and State Court Administrators, held in 2016. The Eleventh Judicial Circuit of Florida, and three other courts, implemented the project, focusing on active judicial case management, pursuant to which, *inter alia*: (i) an initial case management order is entered based on the nature of the case; (ii) the assigned judge presides over the initial case conference and at subsequent conferences; (iii) deadlines are established in the case management order after triaging the case to identify the core factual and legal issues; and (iv) the judge keeps the parties on track by enforcing the deadlines in the case management order. We have enclosed a performance report that provides more information about the project, as carried out in Florida.

The call for active judicial case management is not new in New York. Indeed, as set forth (on page 7) of the June 2018 “Report and Recommendations by the President’s Committee for the Efficient Resolution of Disputes¹,” it is recommended that, *inter alia*: “Rather than keeping hands off and allowing the process to be self-executing, [the judiciary] should actively engage in promoting the negotiated resolution of disputes and their efficient management to affordable decision.” The very same principle applies to this project – involving the assigned judge early in the process to identify the key issues, narrow the dispute, and chart a sensible course for efficient resolution.

We understand that the Supreme Court, New York County has a great number of diverse and frequently complex cases to contend with, and that there is a tradition of affording the parties a significant degree of latitude in shaping the scope and pace of their own cases. At the same time, there is a growing sense among judges, practitioners and members of the public that a “cultural change” is warranted in order to promote greater efficiency and access to justice in New York State courts (and courts throughout the country, for that matter). The Chief Justice’s recent initiatives – including the Excellence Initiative and the Presumptive ADR Program – have inspired belief that meaningful change is possible. With your support, we would like to create a task force, with judicial participation, to design a pilot project that would incorporate many of the elements of, but would not necessarily be identical to, the Florida project, for implementation in New York.

The architects of the project in Florida were meticulous in tracking their results, so that statistical comparisons could be made against the cases following their traditional model. Although it will depend on the work and consensus of the task force, we envision rolling out a similar project in several courtrooms in New York, and likewise tracking the results for future analysis and discussion.

We thank you for your consideration and look forward to discussing this potential task force with you in greater detail. And we hope that you, your family and your colleagues remain healthy and well.

Respectfully,

Roger Juan Maldonado
President, New York City Bar Association

Michael P. Regan
Chair, Council on Judicial Administration

Bart J. Eagle
Chair, State Courts of Superior Jurisdiction
Committee

John M. Lundin
Chair, Litigation Committee

Steven M. Kayman
Chair, Efficiency Working Group of the
Council on Judicial Administration

Mitchell Berns
Member, Council on Judicial Administration

¹ New York City Bar Association, “Report and Recommendations by the President’s Committee for the Efficient Resolution of Disputes,” June 27, 2018.

https://s3.amazonaws.com/documents.nycbar.org/files/PresCom_Efficient_Dispute_Resolution_6.27.18.pdf

Cc (by email):

Hon. Janet DiFiore
John S. Kiernan, Esq.
Eileen Millett, Esq.



ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA
MIAMI

CIVIL JUSTICE INITIATIVE PILOT PROJECT

PERFORMANCE REPORT

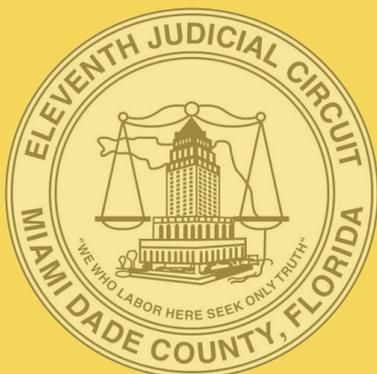


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The Eleventh Circuit is grateful for the support of the SJI, NCSC, and the Judicial Branch of Florida for this project, and the Circuit Civil Division is grateful to Chief Judge Bertila Soto and Trial Court Administrator Sandra Lonergan.

PROJECT OVERVIEW

Summary

In July 2016, the Conference of Chief Justices and the Conference of State Court Administrators adopted a set of 13 recommendations focused on ensuring courts are affordable, efficient, and fair for all. The Steering Committee for the Civil Justice Initiative Implementation Project, the National Center for State Courts, and the Institute for the Advancement of the American Legal System selected award recipients based on a competitive application process. Four courts were selected to receive grant funding to implement pilot projects following the 13 recommendations of the Conference of Chief Justices' (CCJ) Civil Justice Improvements Committee.

The Eleventh Judicial Circuit of Florida was one of the four jurisdictions nationally selected as a pilot project jurisdiction to conduct a demonstration project to study the implementation of innovations aimed at reducing cost and delay in civil cases. The grant period was January 1, 2017 through December 31, 2017. The Circuit's Civil Justice Initiative Pilot Project (CJIPP) tested team case management, which is the utilization of highly skilled civil case staffing teams to support the judiciary by providing consistent oversight to ensure that cases were progressing toward resolution in a meaningful way. Project activities included program mapping, assessing core responsibilities of staff and training, developing procedures and forms and conducting tailored case reviews. Business practices were developed to identify and manage cases according to three identified pathways. Track assignments include: complex, standard and streamlined cases and are based on specific case types and characteristics. Case Managers triaged cases and prepared case management plans proportionate to the needs of distinct case types within the recommended timeframes for each track assignment to assure timely and cost-effective resolution, monitoring and enforcement of the existing rules of civil procedure, setting deadlines for discovery and maintaining firm and realistic trial dates.

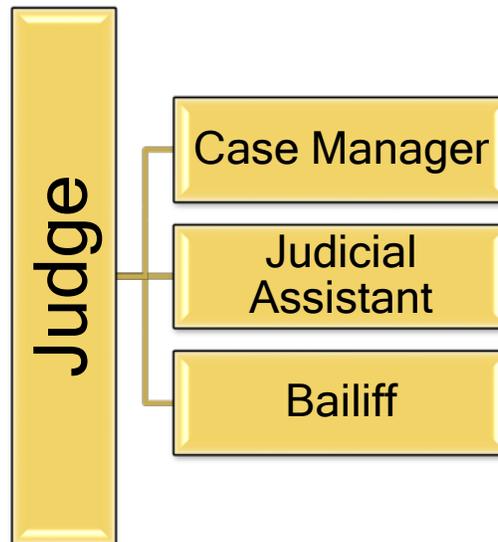
Judges observed the following;

- CJIPP promotes the attorneys, litigants/parties to work cooperatively and expeditiously because of the case management conference
- The cases resolved timely without extensive and unnecessary litigation
- Discovery issues were resolved early as a result of the deadlines imposed
- Cases settled or resolved expeditiously because of the firm deadlines

Administrative Judge Jennifer D. Bailey (lead), Judge Thomas Rebull, and Judge Rodney Smith have participated since inception. Judge Reemberto Diaz/Judge Norma Lindsay, and Judge Rodolfo Ruiz/Monica Gordo participated in divisions that transitioned judges during the project. Division Director Maria Harris, Lisette Sanabria and Yanitza Madrigal worked on project design, administration and technology/reports. Case Managers Darline Biennestin, Mikaela Koons-Velazquez and Aleta McDaniel served in the court team. The Judge's Judicial Assistants: Patsy Garbalosa, Evelyn Arvizu, Virginia Elguezabal were also critical members of the case management team.

PROJECT OVERVIEW

CASE MANAGEMENT TEAM STRUCTURE



CASE MANAGEMENT DUTIES RESPONSIBILITIES

The program utilizes staff on routine matters, such as deadline reviews, so that judges can focus on the important due process and substantive issues in the case

Judge	Case Manager	Judicial Assistant	Bailiff
<ul style="list-style-type: none"> • Perform tasks that require unique skills and legal expertise • Rule on pending motions 	<ul style="list-style-type: none"> • Review Case Issues • Make Recommendations • Draft Case management plan • Review Substantive and dispositive motions • Highlight Legal Issues 	<ul style="list-style-type: none"> • Schedule Cases for Trial • Monitor Court Compliance • Prepare documents for hearings • Communicate with lawyers and parties • Prepare Court Orders 	<ul style="list-style-type: none"> • Provide security to Judge • Prepare courtroom for hearings • Intake of Cases • Initial Track/Pathway Assignment • Assemble documents for hearings

PROJECT OVERVIEW

CJIPP AND CONTROL GROUP DIVISIONS

A total of four divisions were selected to be a part of the demonstration project. The control group consists of 15 judicial sections with similar case filing types and caseload.

CJIPP Judicial Sections	Control Group Judicial Sections
02	4
13	5
30	6
34	8
	9
	10
	11
	15
	21
	22
	23
	24
	27
	31
	32

DATA OVERVIEW

Number of Cases Filed

CJIPP	
Total Number of Cases	5,855
Average Number of Cases	1,464

CONTROL GROUP	
Total Number of Cases	21,992
Average Number of Cases	1,466

Number of Cases Closed

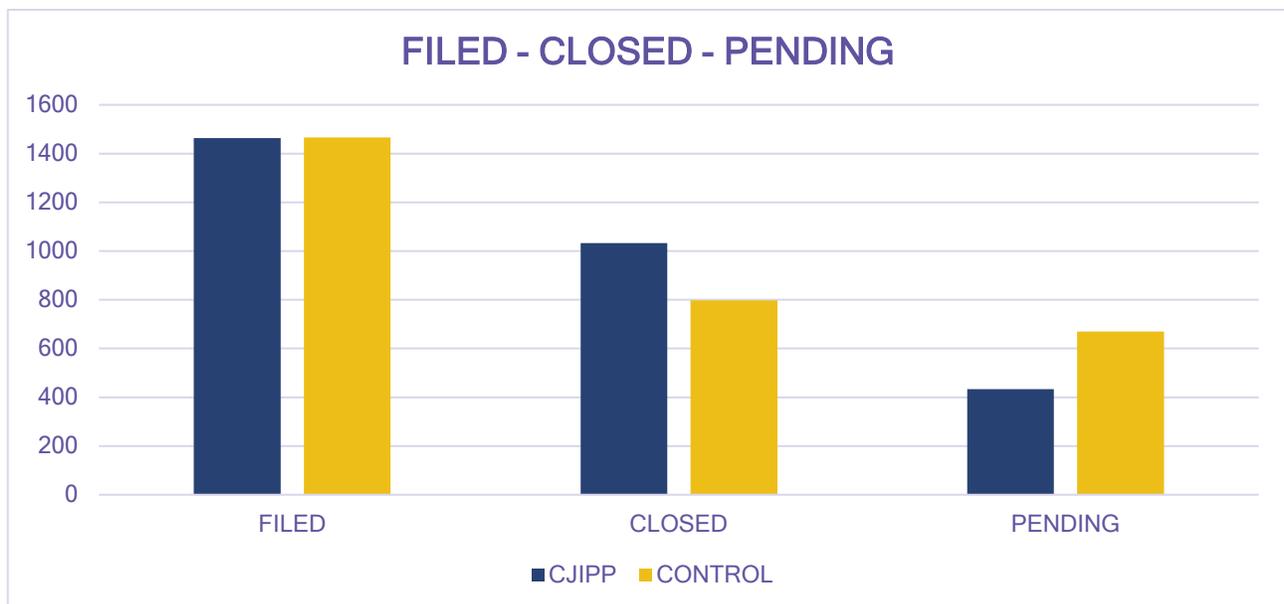
CJIPP	
Total Number of Cases	4,132
Average Number of Cases	1,033

CONTROL GROUP	
Total Number of Cases	11,951
Average Number of Cases	797

Number of Cases Pending

CJIPP	
Total Number of Cases	1,730
Average Number of Cases	433

CONTROL GROUP	
Total Number of Cases	10,041
Average Number of Cases	669



*Cases filed between grant period: 11/1/2016-10/31/2017

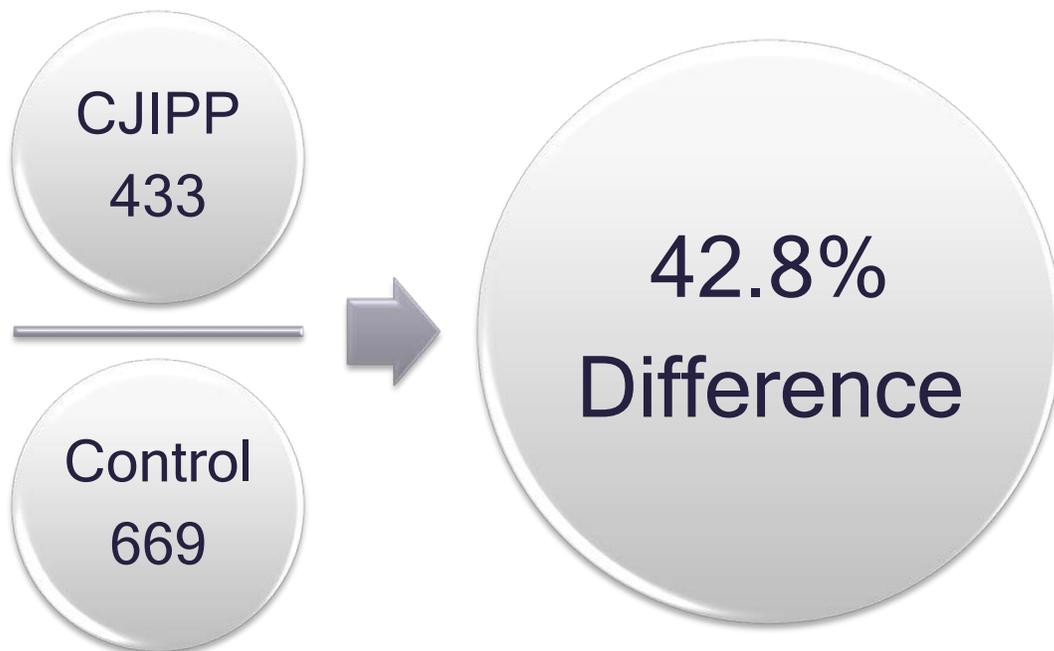
Data as of 7/16/2018

PERFORMANCE MEASURES

Pending Caseload: Percent Difference

CJIPP	
Total Number of Cases	1,730
Average Number of Cases	433

CONTROL GROUP	
Total Number of Cases	10,041
Average Number of Cases	669



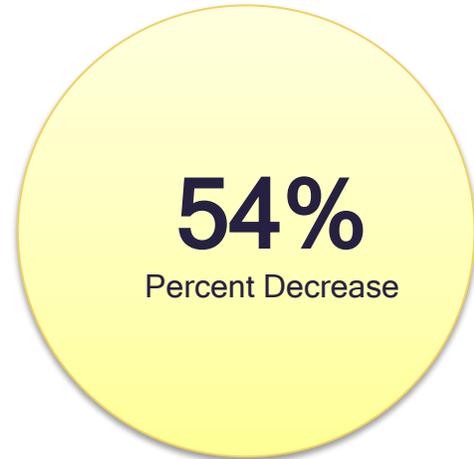
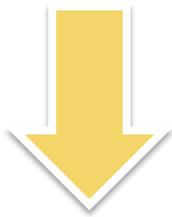
Percent difference is used to calculate the difference in percentage between two values. This metric compares two independent measurements to find out how much the measurements differ. Currently, there is a **42.8 percent difference** between the average number of cases pending in the CJIPP divisions and the average number of cases pending in the Control Group.

PERFORMANCE MEASURES

Pending Caseload: Percent Change

CJIPP	
	Average Number of Cases
Start of Project:	1464
Current:	433

CONTROL GROUP	
	Average Number of Cases
Start of Project	1466
Current:	669



Percent change is used to compare current and previous values over a period of time. This metric compares two measurements to illustrate the relative change between the two values. Here, the data shows that there was a **70 percent decrease** in the average pending caseload for those divisions in the CJIPP group versus a **54 percent decrease** in the average pending caseload for those divisions in the Control Group.

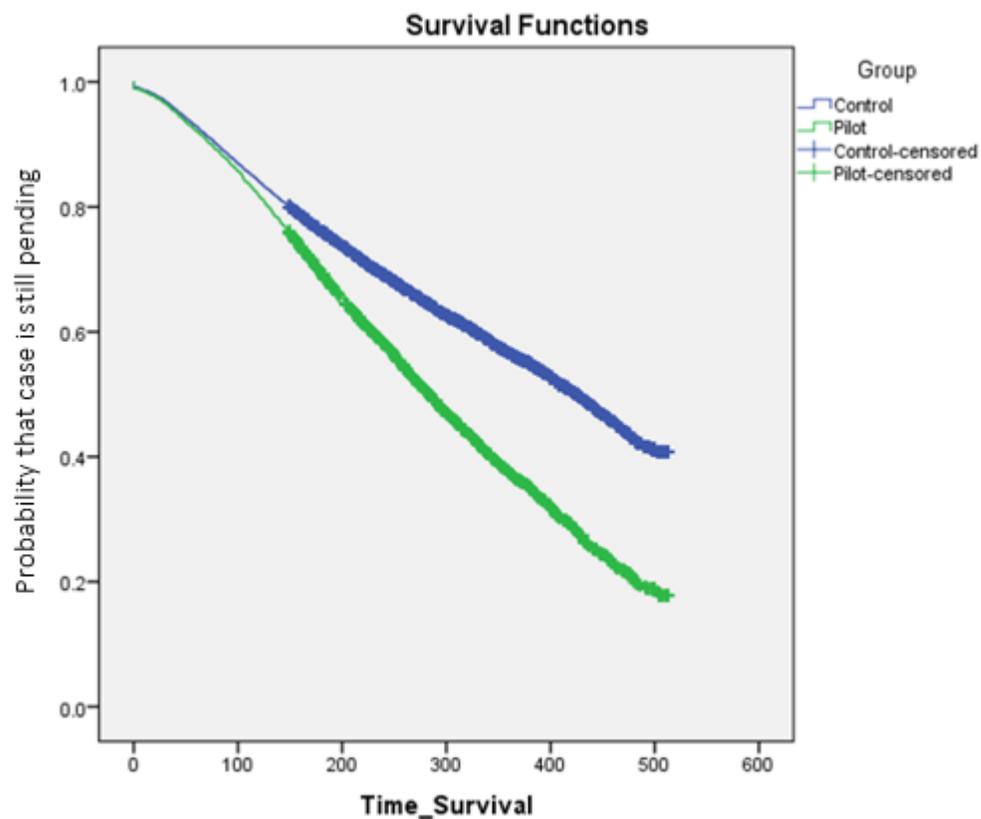
PERFORMANCE MEASURES

Time to Disposition

The National Center for State Courts conducted a study used to measure the time to disposition of cases assigned to CJIPP in comparison to cases assigned to the Control Group. The study revealed that on average CJIPP cases were closing **four months earlier** than cases in the Control Group.

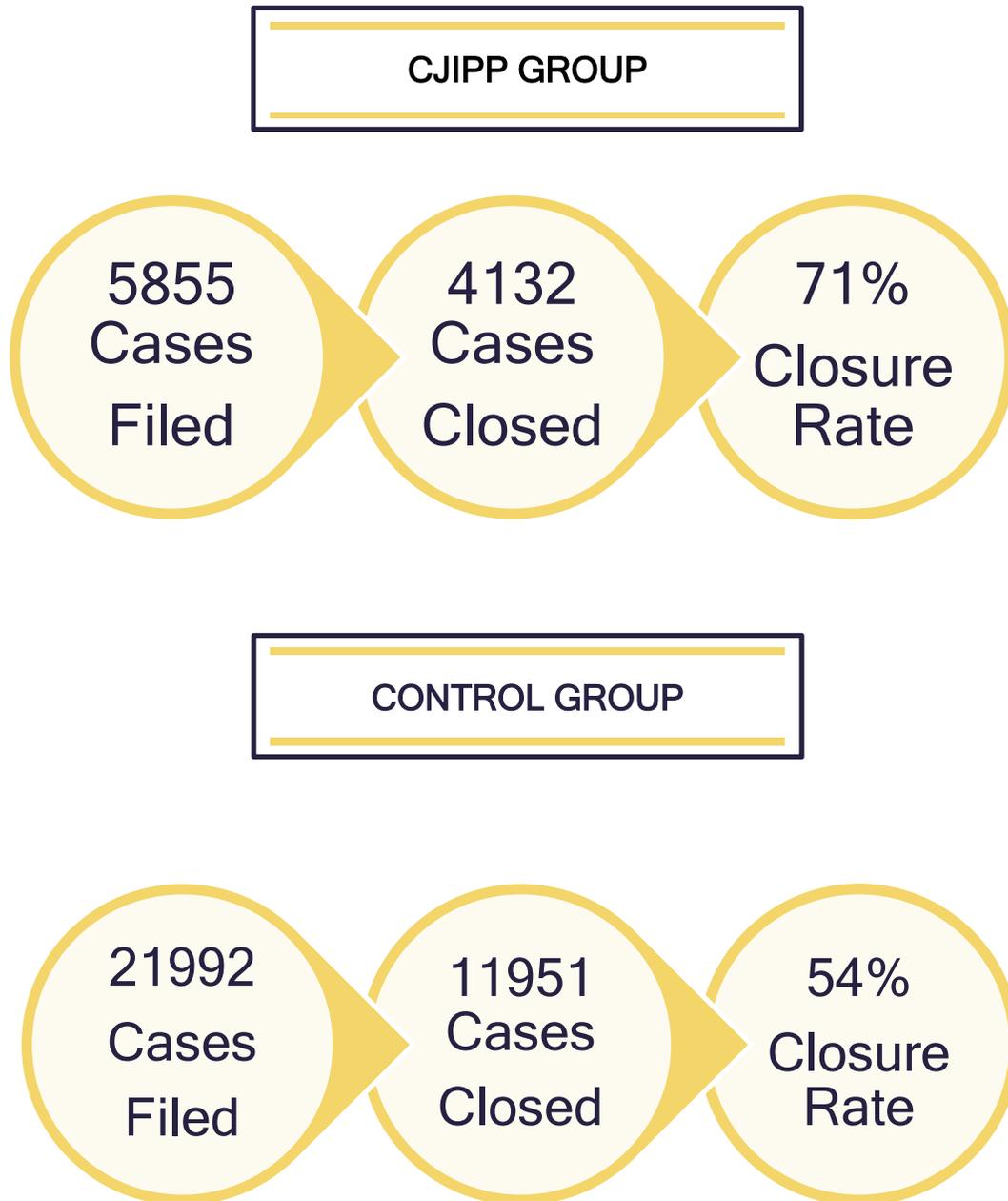
Average Days to Disposition

CJIPP Group	291 Days
Control Group	352 Days



PERFORMANCE MEASURES

Closure Rate



*Cases filed between grant period: 11/1/2016-10/31/2017

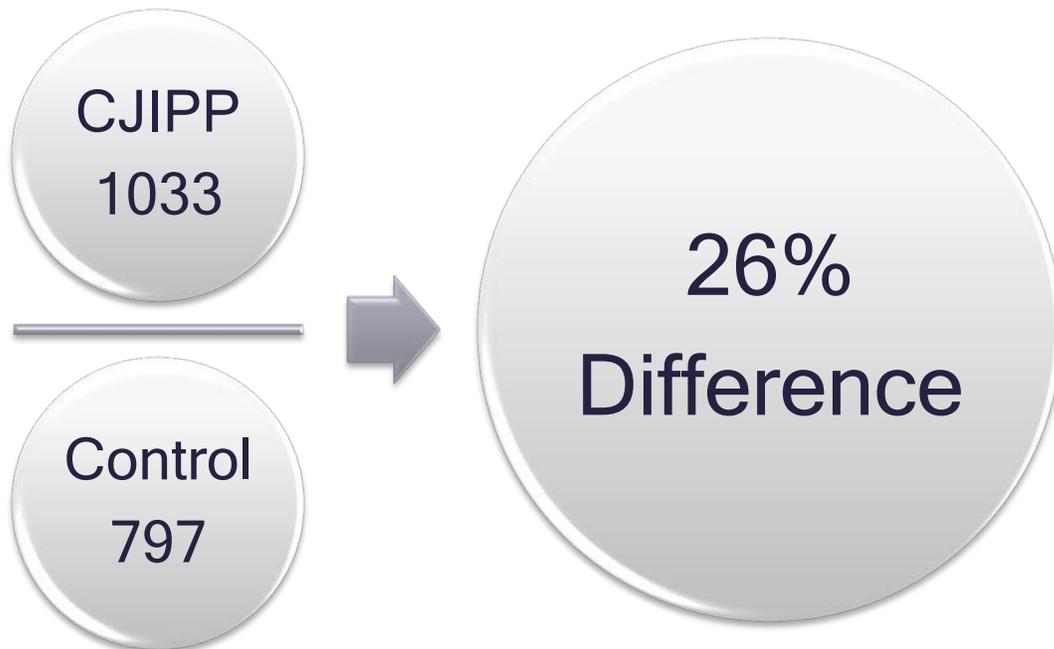
Data as of 7/16/2018

PERFORMANCE MEASURES

Closure Rate: Percent Difference

CJIPP	
Total Number of Cases Closed	4132
Average Number of Cases Closed	1033

CONTROL GROUP	
Total Number of Cases Closed	11951
Average Number of Cases Closed	797



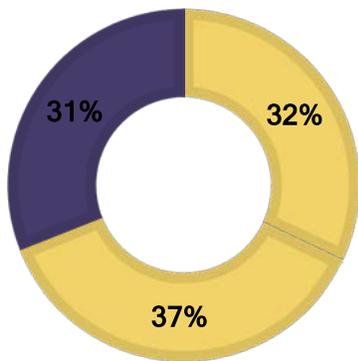
Percent difference is used to calculate the difference in percentage between two values. This metric compares two independent measurements to find out how much the measurements differ. Currently, there is a **26% percent difference** between the average number of cases closed in the CJIPP divisions and the average number of cases closed in the Control Group.

PROJECT REVIEW

Attorney Survey Results

RESPONDENT CHARACTERISTICS

■ Mixed Practice ■ Plaintiff ■ Defense



Clear Expectation provided for meeting key deadlines



Deadlines were reasonable

YEARS IN PRACTICE



78%
More than 10
Years



13%
6 to 10 Years



9%
2 to 5 Years



Early Structure of Cases and Case Management Plan better approach



Court should control the pace of litigation

PROJECT REVIEW

Attorney Focus Group Results

Expectations:	<ul style="list-style-type: none"> • Cases move faster • Streamlining of cases • Mandatory submission of dates and deadlines • Similar process to Federal Courts procedures • Heavy Case Management
Case Management Plan/Deadlines	<ul style="list-style-type: none"> • Help push attorneys to think about reaching settlement • Pushes case forward • Deadlines should be considered with input from all parties • Helpful to see dates • Helpful to keep track of cases • Allows for better planning • Makes attorneys organized, allows to schedule calendar to meet deadlines • Everyone on the same page
Case Management Conferences	<ul style="list-style-type: none"> • Leads to initial settlement discussions • If issues unresolved good to know issue will be addressed at conference • Motivating to see the judge • Earlier Conferences needed to review facts of case and to determine pathway • Encourage cases to keep moving forward • Discourages bad practices exercised when not scheduled before judge • Allows for issues to be resolved • Helps understand expectations • Cuts wasted time
Others:	<ul style="list-style-type: none"> • Attorneys might feel intimidated by program since it makes them change their business practices • High tenure attorneys may benefit from system that does not monitor cases closely • Doable for attorneys with larger portfolios • More calendars preferred for setting pending issues • Culture change, issue with making people change behavior and respect deadlines, etc. • If enforced uniformly and consistently, could take a few months to shift if not a year or two • Eventually culture/behavior will follow • Doesn't add cost to lawyers by imposing earlier deadlines: Same amount of work, just faster