

Virginia Court-Connected ADR



Dispute Resolution Services
Supreme Court of Virginia

Development of Dispute Resolution

- 1989 Futures Commission Report –
Vision 3: Judicial system needs to provide
an array of dispute resolution options
- April 1991 - Department of Dispute
Resolution Services created
- 1993 - Enabling legislation passed

Goals of Alternative Dispute Resolution

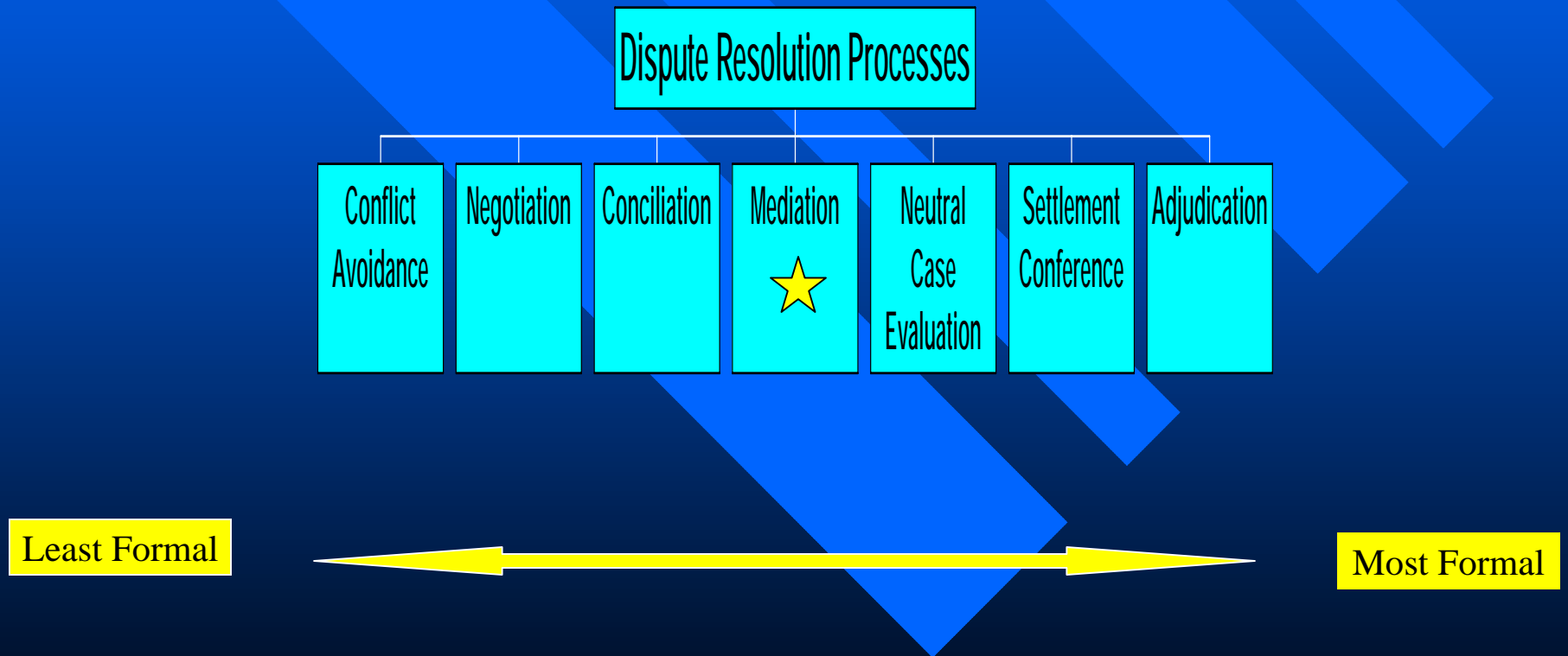
- To reduce the cost for litigants and the judicial system
- To enhance the quality of the court process
- To offer a range of options for resolving disputes
- To provide faster resolution of cases
- To improve public satisfaction and perception of the court

Goals Continued

- To encourage parties to take responsibility for their disputes
- To broaden access to dispute resolution services
- To encourage innovation and create new methods of dispute resolution



Continuum of Dispute Resolution Processes



Mediation

- Process in which a neutral facilitates communication between the parties to help them resolve their dispute
- Mediator does not make decisions for the parties
- Parties are responsible for the resolution of their own dispute
- Process is voluntary
- Attorneys may attend



Stages of Mediation

- Introduction
- Sharing of Information
- Identification of Issues
- Generation of Solutions
- Agreement/Resolution



Why Mediate?

- Allows parties to express their feelings
- Helps parties understand each other's perspectives
- Transforms miscommunication into understanding/trust/problem-solving
- Helps parties recognize their underlying interests, overlapping interests and areas of agreement
- Helps parties devise their own solutions, building on interests they identified
- Establishes a safe, informal environment
- Offers a voluntary and confidential process
- Ability to negotiate win/win outcomes

Advantages of Mediation

- Improved communication
- Creative solutions
- Stronger ownership of agreement
- Opportunity to deal with underlying interests
- Reduced time and expense
- Model for future conflict resolution

Virginia – Leader in ADR

- Legislation authorizing use of ADR
- Guidelines for the Training and Certification of Court-Referred Mediators
- Searchable Mediator Directory
- Standards of Ethics/Grievance Procedures
- State Funding for access to mediation services
- Rules of Professional Conduct encourage ADR
- Exit surveys indicate >90% party satisfaction and 80 – 85% settlement rate

Virginia Model

- Judges have explicit authority to refer all civil matters to a dispute resolution orientation session
- Mediation Coordinators assist with screening and referral process
- Parties may opt out of free orientation session
- Further participation in mediation is voluntary
- Rules of Professional Conduct require attorneys to consider ADR with the client in every case
- Mediation is held within 15-30 days after referral
- Mediation services available state-wide at no cost in J&DR and General District Courts through a system of contracts/state funding

Current Court Procedures

- Court shall set date for parties to return in accordance with regular docket .
- Parties may **voluntarily** agree to pursue mediation or other ADR process following the orientation session.
- Parties may select mediator from searchable directory at www.courts.state.va.us.
- For mediations conducted under an OES contract and for J&DR custody, visitation and support cases, services are free. Otherwise, parties pay mediator.

Confidentiality of Mediation Process

- All memoranda, work product, and case files are confidential
- Final written agreement not confidential
- Materials and communications can be disclosed (1) if all parties agree, (2) if there is a dispute between parties and neutral, (3) where a threat to inflict bodily injury is made, (4) where communications are used to plan, commit or conceal a crime, or (5) where material is otherwise subject to discovery

Cases Appropriate for Mediation

- Parties have an ongoing relationship
- Communication problems exist
- Parties want to tailor a solution to meet their specific needs
- Privacy is important
- Parties want control over the outcome
- Incentive to settle due to time, money, etc.

Cases Inappropriate for Mediation

- Party wishes to establish legal precedent
- Party cannot negotiate for herself or himself
- Physical or psychological abuse impairs ability to protect his or her interests
- Inequity of knowledge is extreme
- Public policy development - openness/record needed
- Options are dictated or limited by law

Coordinators

OES has contracts with 29 mediation coordinators statewide who assist clerks' offices in managing the mediation program in various courts. Coordination and provider models vary depending on the need of the court.

Coordinators:

- Serve as a liaison between the court and the mediation providers
- Provide case management services
- Perform other duties identified by the individual court

Orientation Session

- Parties may opt out of no-cost orientation session by stating in writing that they do not wish to participate.
- Conducted by coordinator or mediator
- Assess appropriateness of ADR
- If adjudication selected, case continues as originally docketed
- If ADR selected, information on private neutral selection and free contract mediators provided
- Decision to proceed with ADR is voluntary

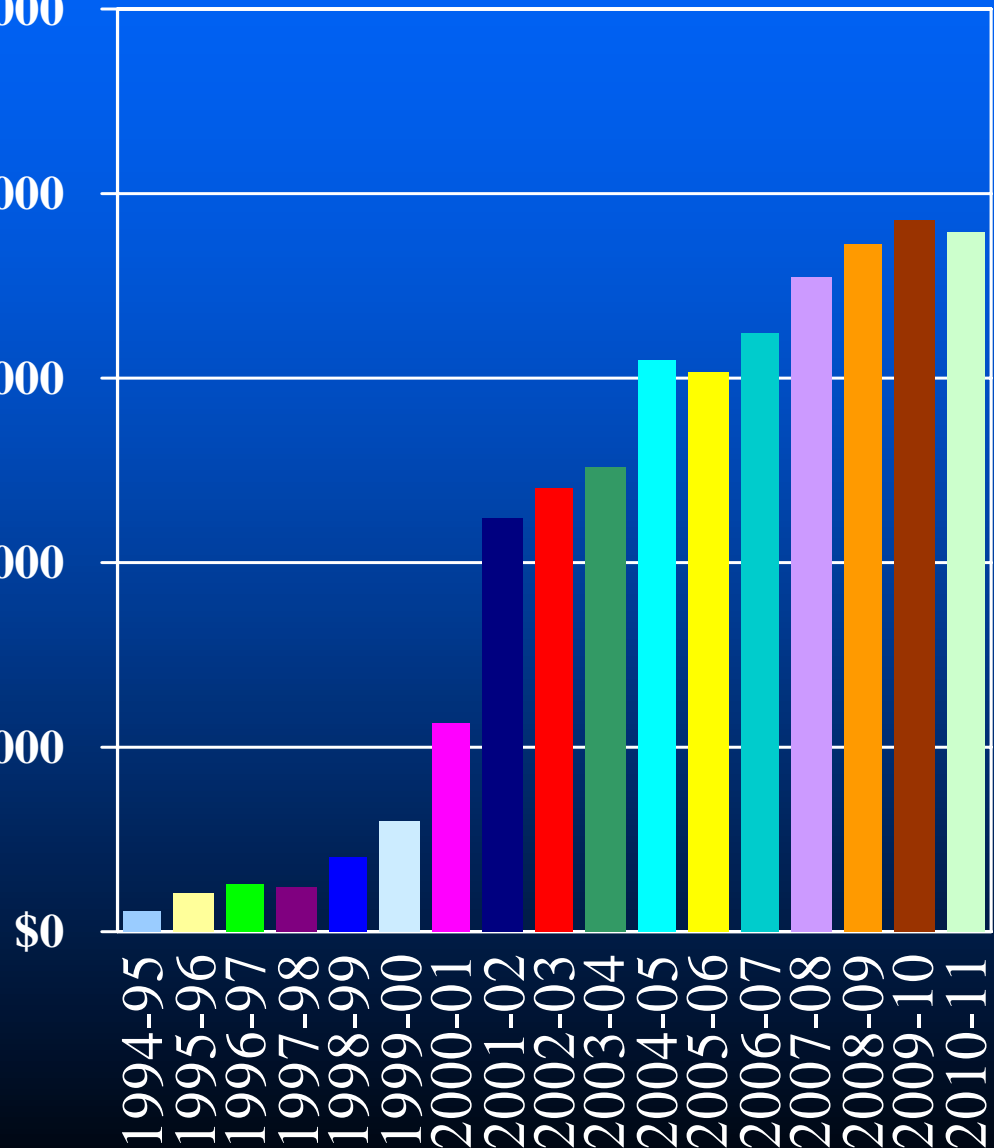
Contracts

- OES has mediation services contracts with 39 mediation providers statewide
- Contractors include non-profit community mediation centers, attorney-mediators and private providers
- Services are provided at no cost to the parties at J&DR and General District Court levels throughout most of Virginia

Court-Referred Mediation Expenditures

Expenditures by Fiscal Year

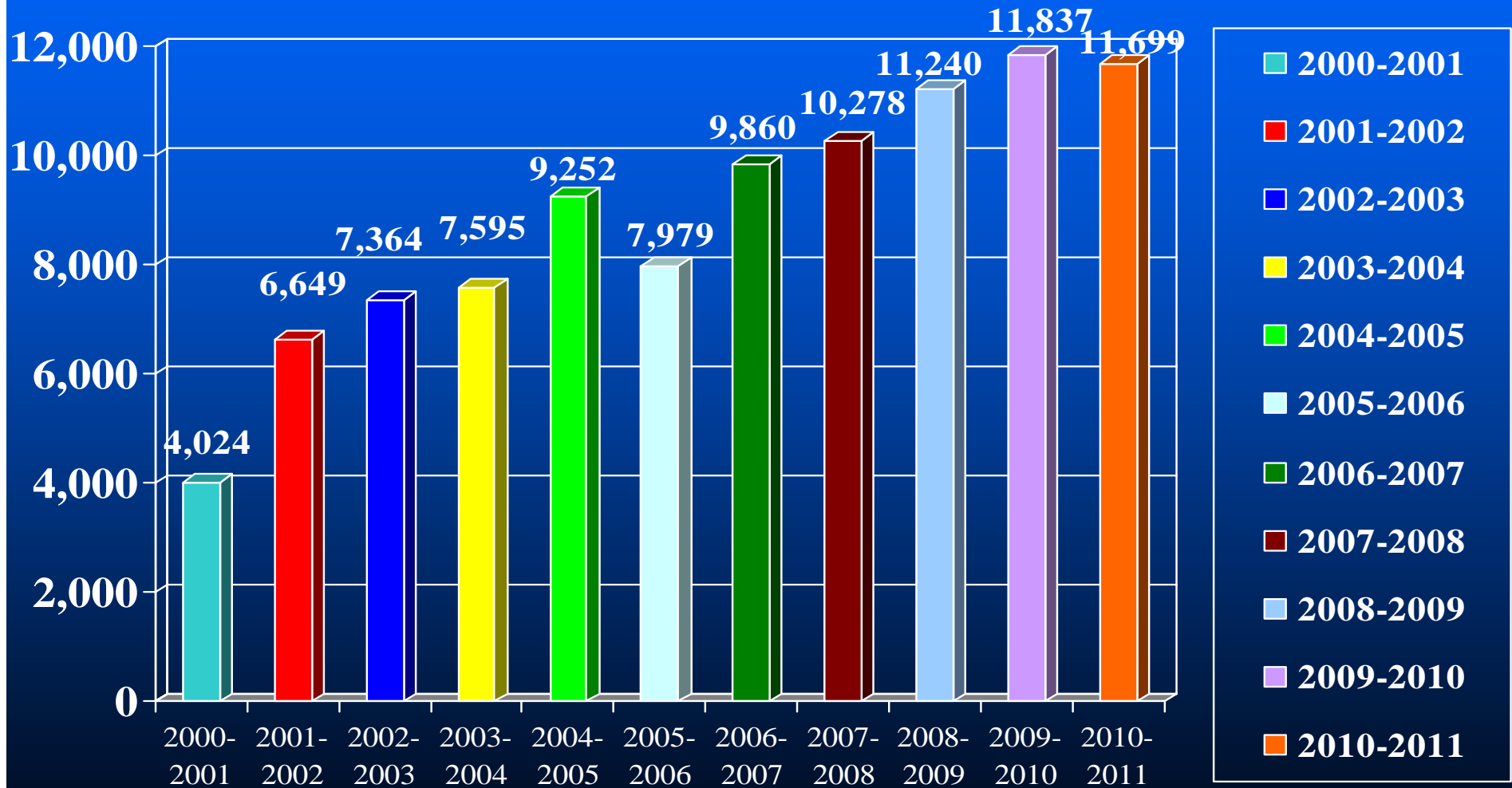
■ 1994-95	\$ 55,715	\$2,500,000
■ 1995-96	\$ 104,965	
■ 1996-97	\$ 126,655	\$2,000,000
■ 1997-98	\$ 118,947	
■ 1998-99	\$ 204,247	\$1,500,000
■ 1999-00	\$ 296,299	
■ 2000-01	\$ 567,280	\$1,000,000
■ 2001-02	\$1,124,784	
■ 2002-03	\$1,204,410	\$500,000
■ 2003-04	\$1,255,180	
■ 2004-05	\$1,551,410	\$0
■ 2005-06	\$1,519,000	
■ 2006-07	\$1,618,797	
■ 2007-08	\$1,777,074	
■ 2008-09	\$1,860,775	
■ 2009-10	\$1,923,452	
■ 2010-11	\$1,882,329	



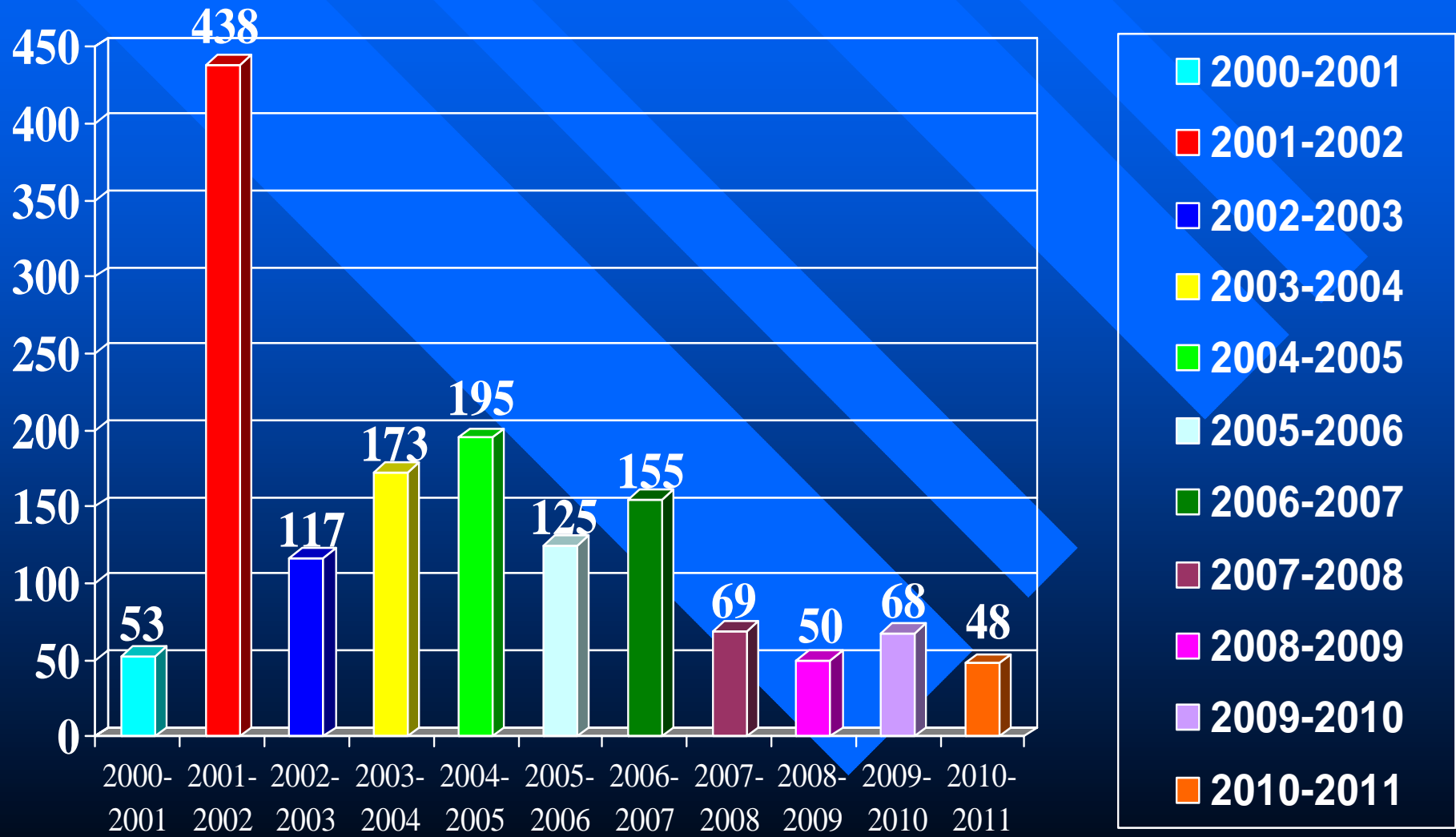
Family Mediation

- Section 20-124.4 of the Code of Virginia authorizes payment of \$100 for each custody, visitation and support mediation.
- This legislation has been tremendously helpful in increasing the volume of family mediation statewide.
- Nearly 12,000 family mediations were conducted during the 2010-11 fiscal year at no cost to the parties.

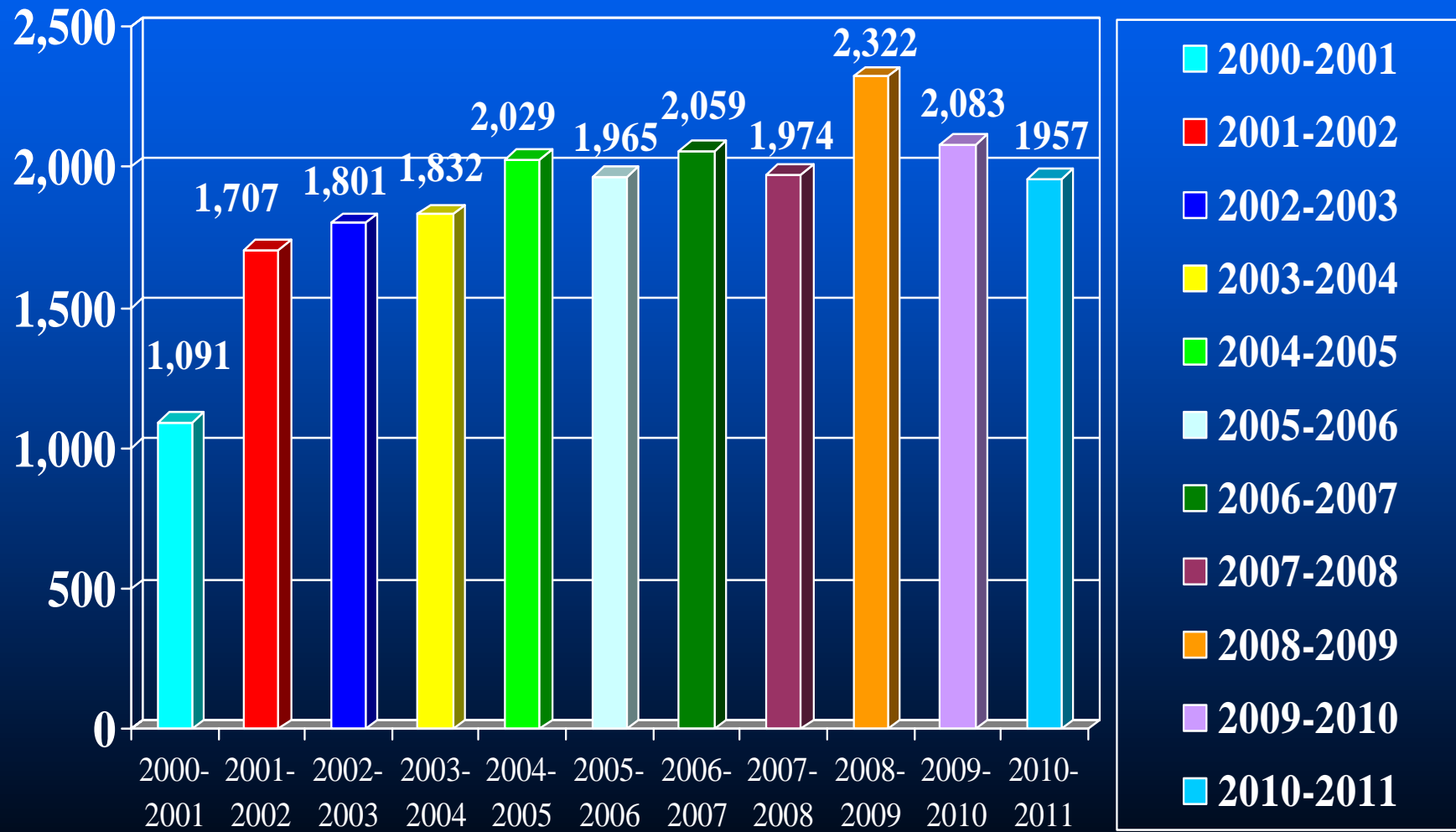
Custody, Visitation & Support State-Funded Mediations



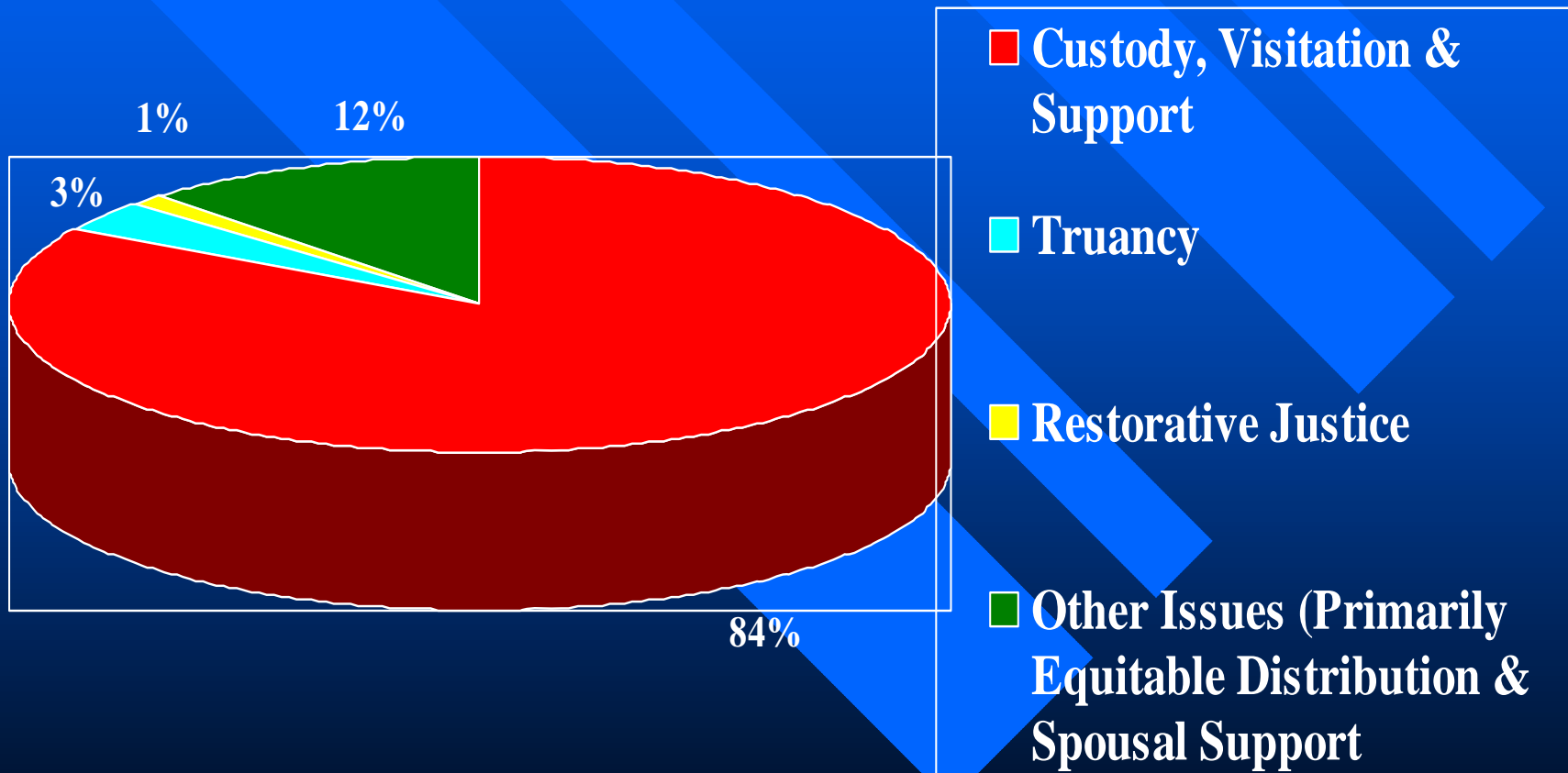
J&DR Non-CVS State-Funded Mediations



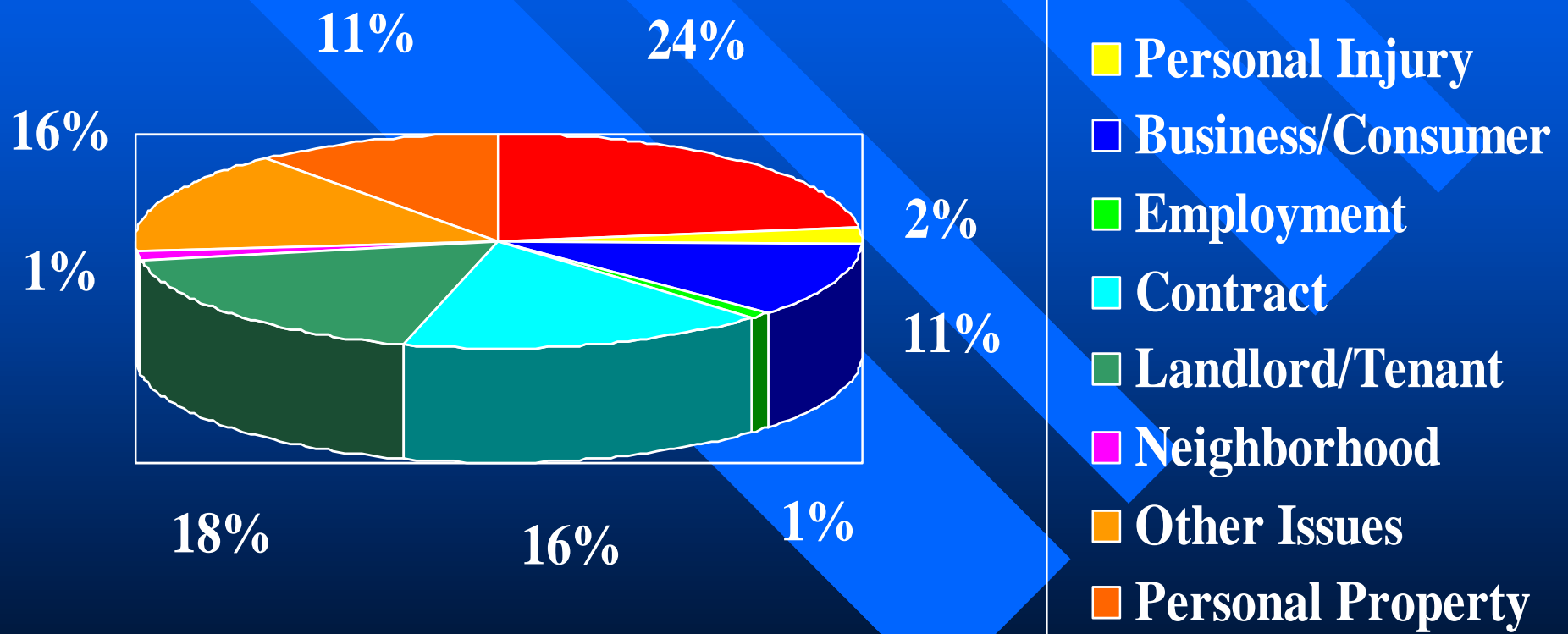
General District Court State-Funded Mediations



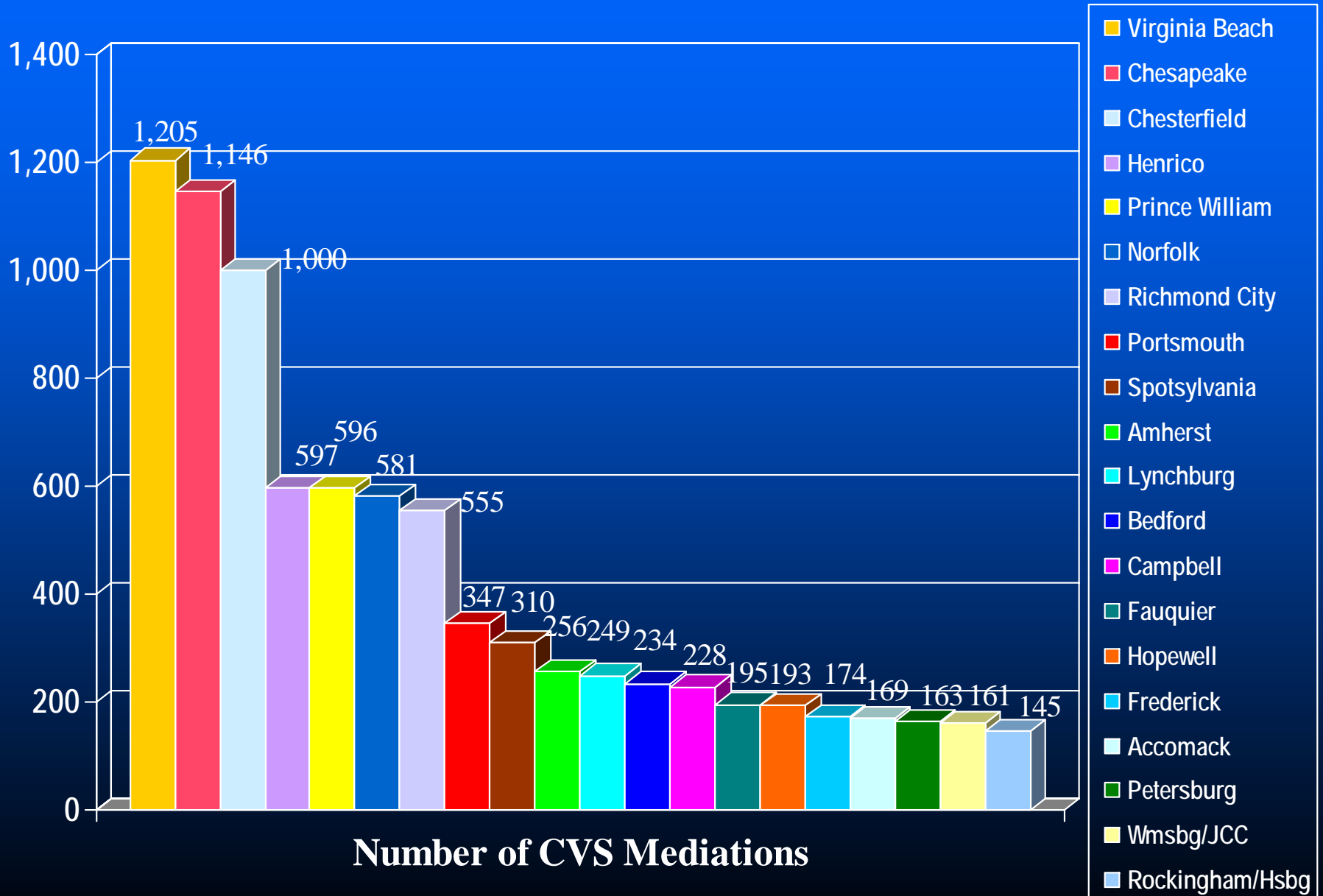
Types of Family Cases



Types of Non-Family Cases



Top 20 Juvenile Courts – 2010-11 Fiscal Year Custody, Visitation & Support Mediation



Client Satisfaction

■ Mediation Process Was:

- Very Helpful 73.9%
- Somewhat Helpful 19.7%
- Not At All Helpful 4.5%
- No Response 1.1%

■ Use Mediation Again:

- Yes 91.4%
- No 5.7%
- No Response 1.8%

■ Recommend Process To Others:

- Yes 94.7%
- No 2.5%
- No Response 1.7%

■ Ended With Agreement On:

- All Issues 64.0%
- Some Issues 19.9%
- None of the Issues 13.4%
- No Response: 1.9%

Agreement Reached

- Agreements are enforceable as any other contract
- Upon request of all parties and consistent with law and public policy, court shall incorporate the terms of agreement into final decree disposing of case
- Judge should review agreements
- Mediator should inform court if orientation session or mediation does not occur

How ADR Process Concludes

- Agreement reached should be put in writing and terms provided to court.
- Ideally, agreement is enforceable.
- If parties do not reach an agreement, that should be reported back by the neutral, without any comment or recommendation.
- Where there is no settlement, court might consider scheduling a pre-trial conference and ask the parties whether the issues were narrowed or streamlined as a result of the ADR process.

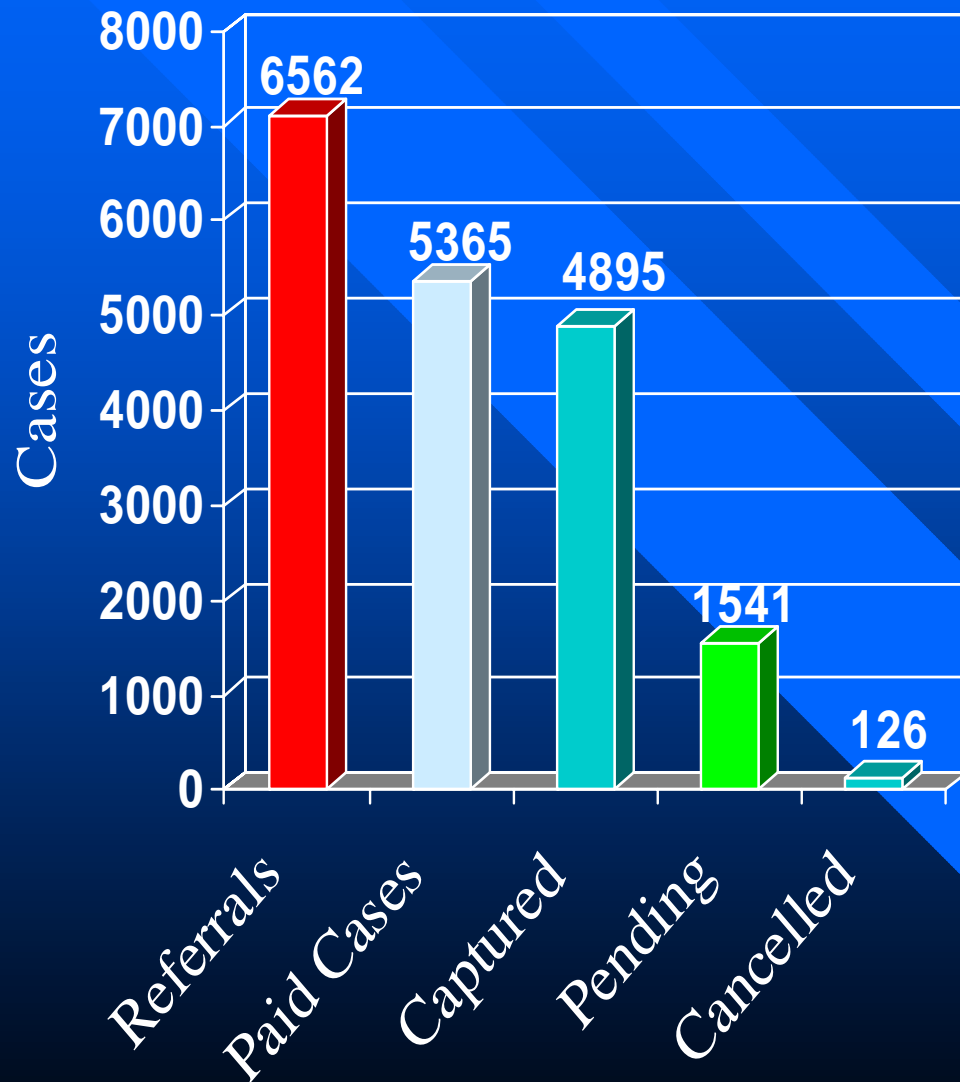


Virginia Judicial
Settlement Conference Program

Cumulative Statistical Update
November 2003 – June 30, 2011

Retired Circuit Court Judges
Bringing Calm to the Storm

Referred Cases



6,562 cases have been referred to settlement conferences since 11/03.

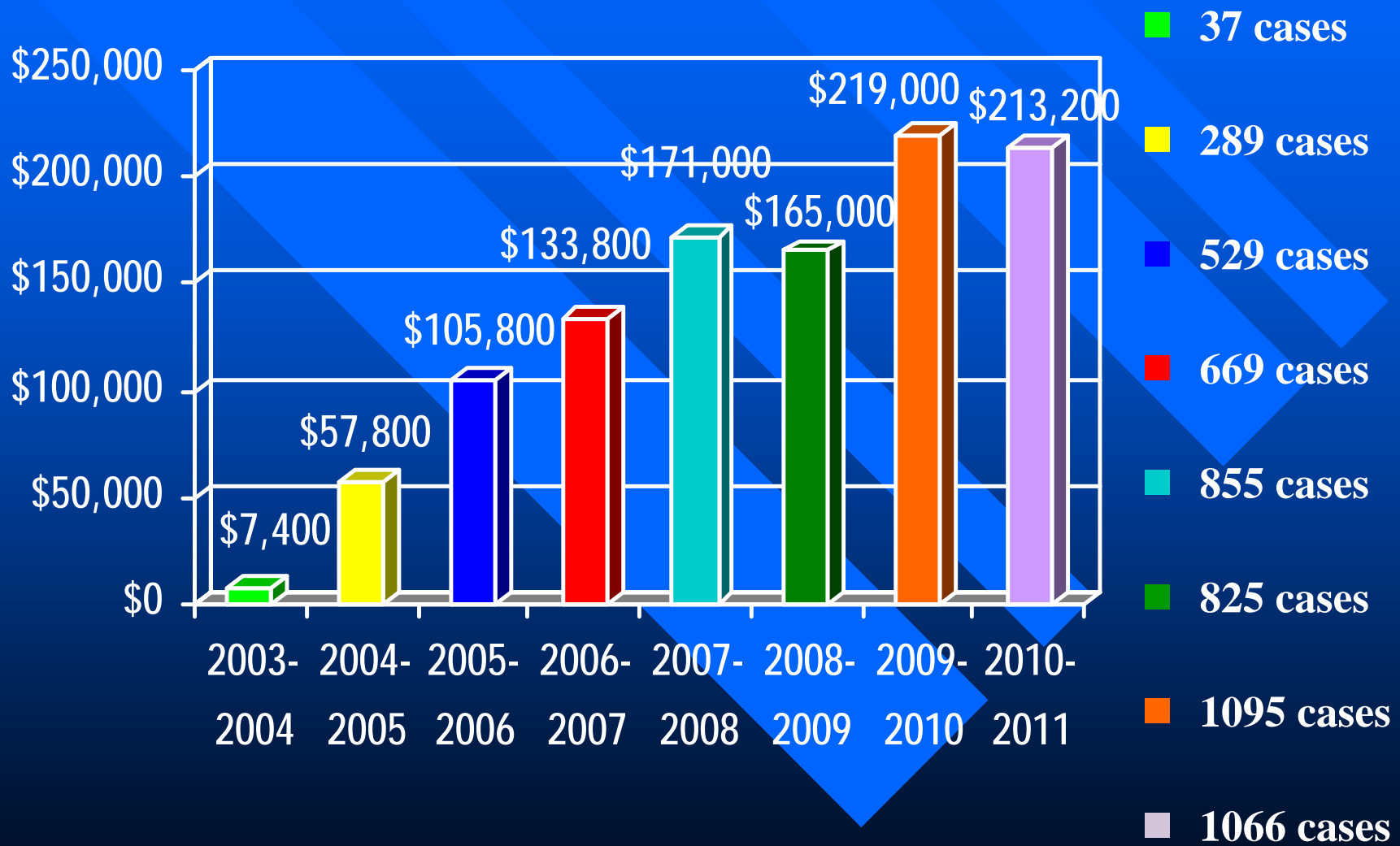
5,365 cases have been paid for since 11/03.

4,895 cases have been captured and are graphically displayed on the following charts.

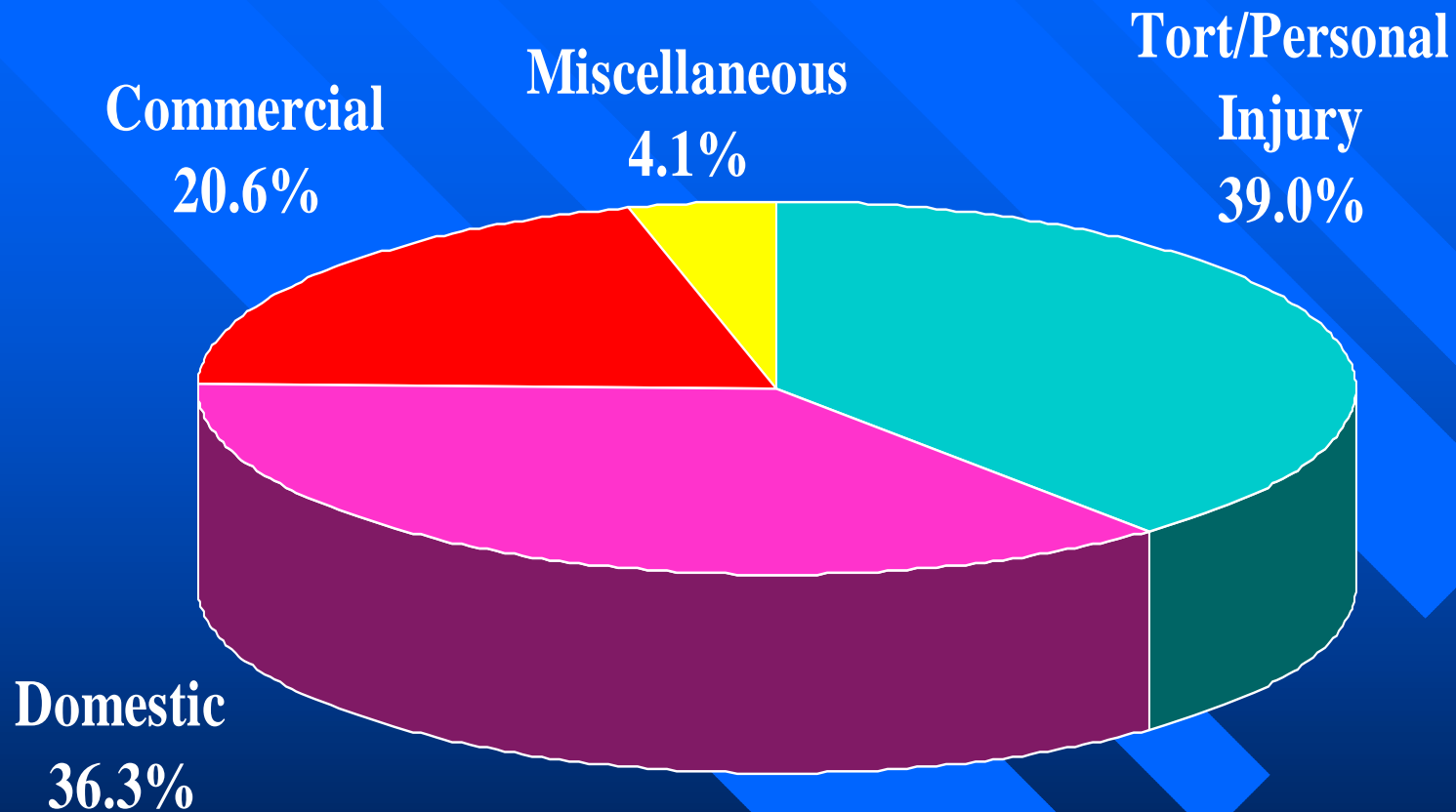
1,541 cases are pending receipt of reports or actual conference.

126 cases were cancelled before reaching conference.

Settlement Conference Expenditures



Categories of Case Types



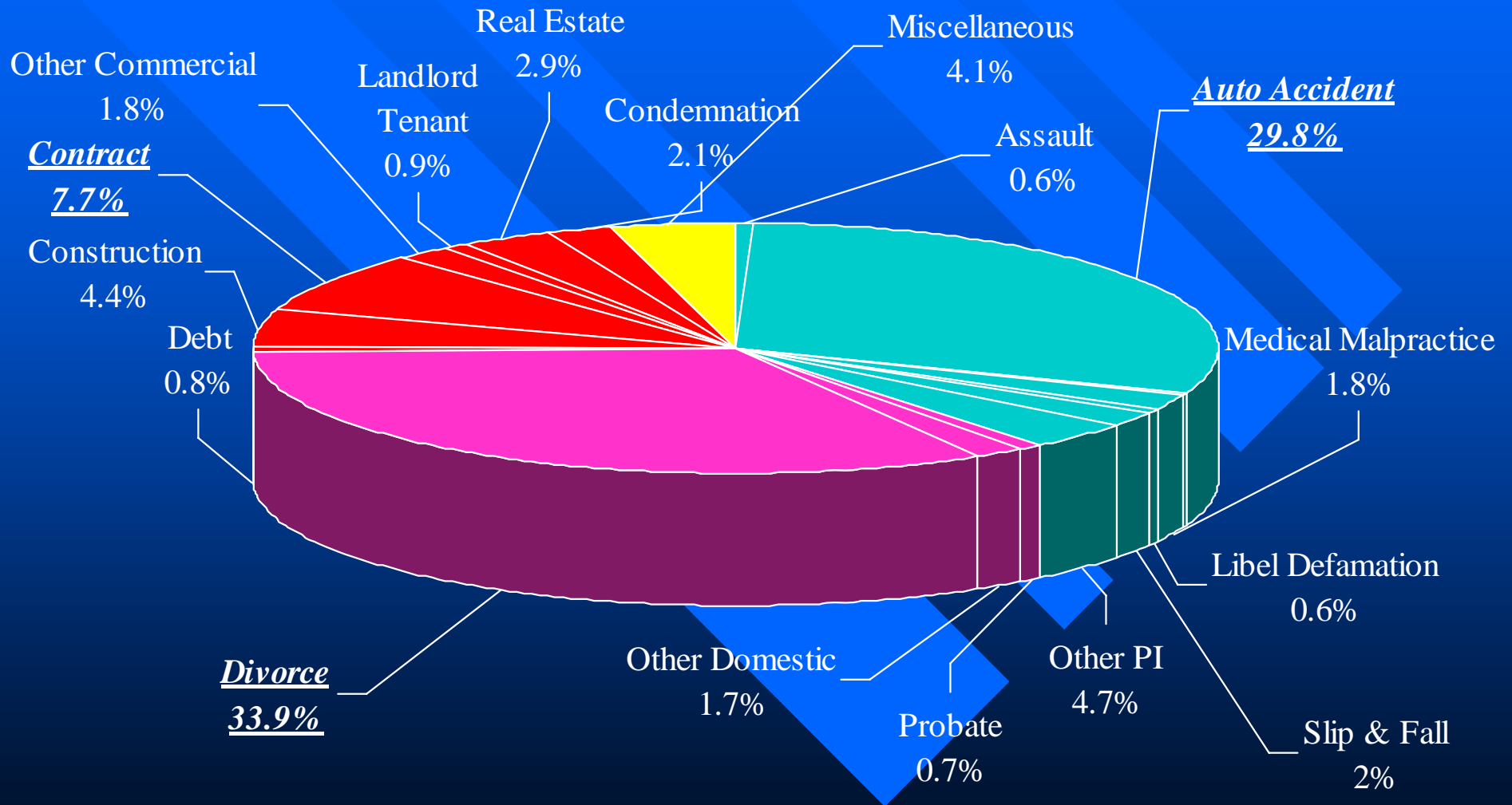
■ Tort/PI

■ Domestic

■ Commercial

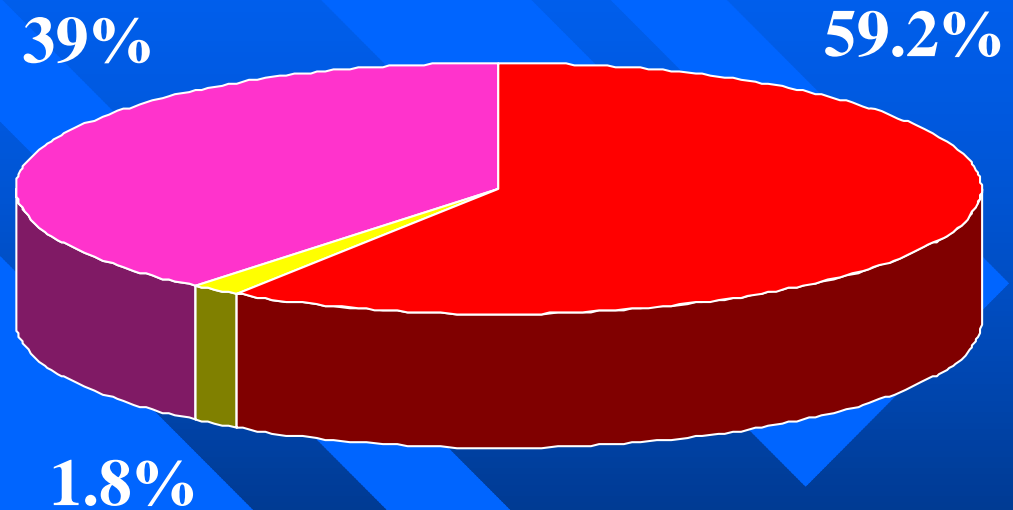
■ Miscellaneous

Types of Cases



Agreement Rate

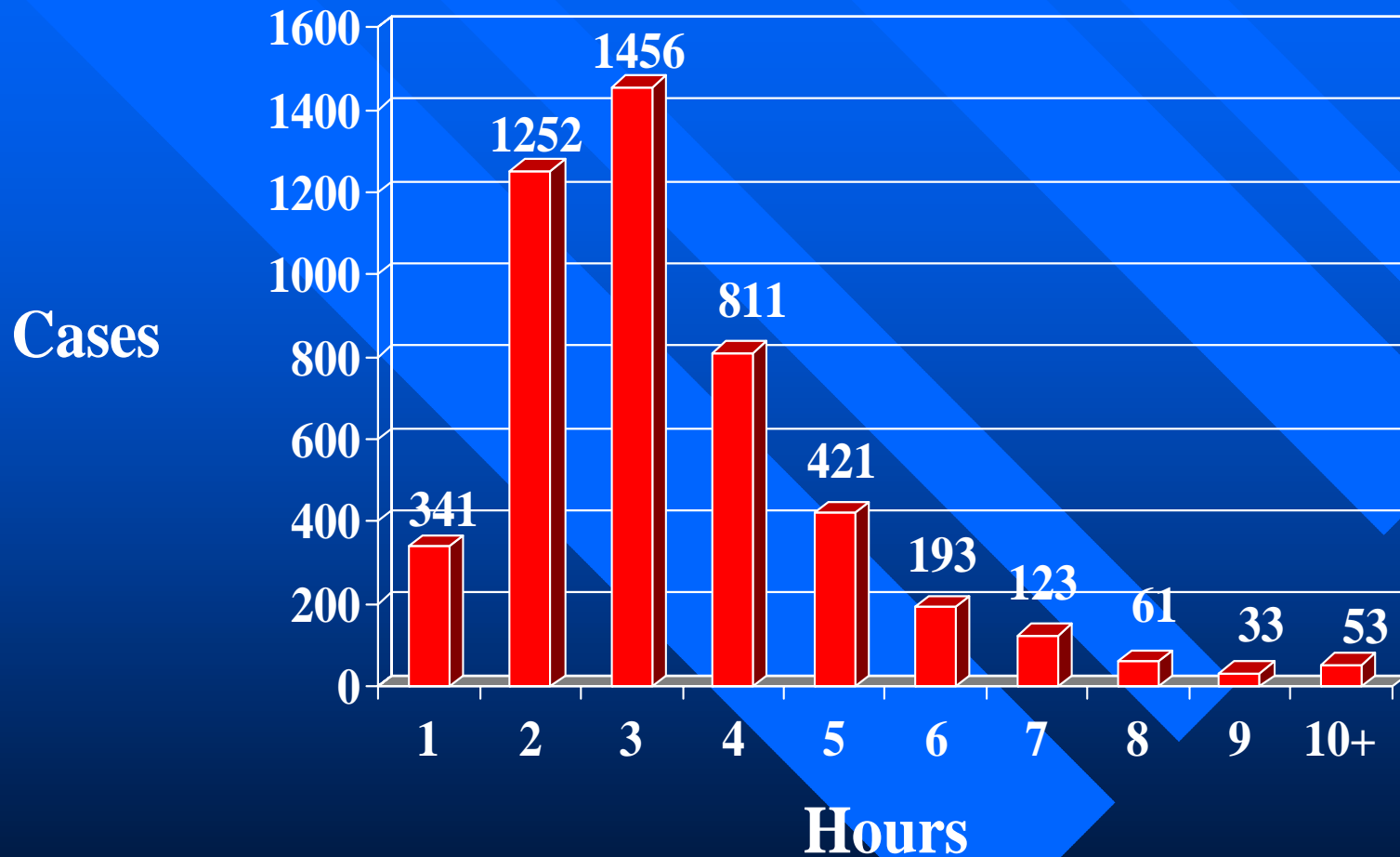
61% of referred cases successfully reached an agreement either during or soon after the conference



- Reached at time of conference
- Reached after, but as result of conference
- Not Reached

Note: This does NOT include pending cases

Length of Conferences

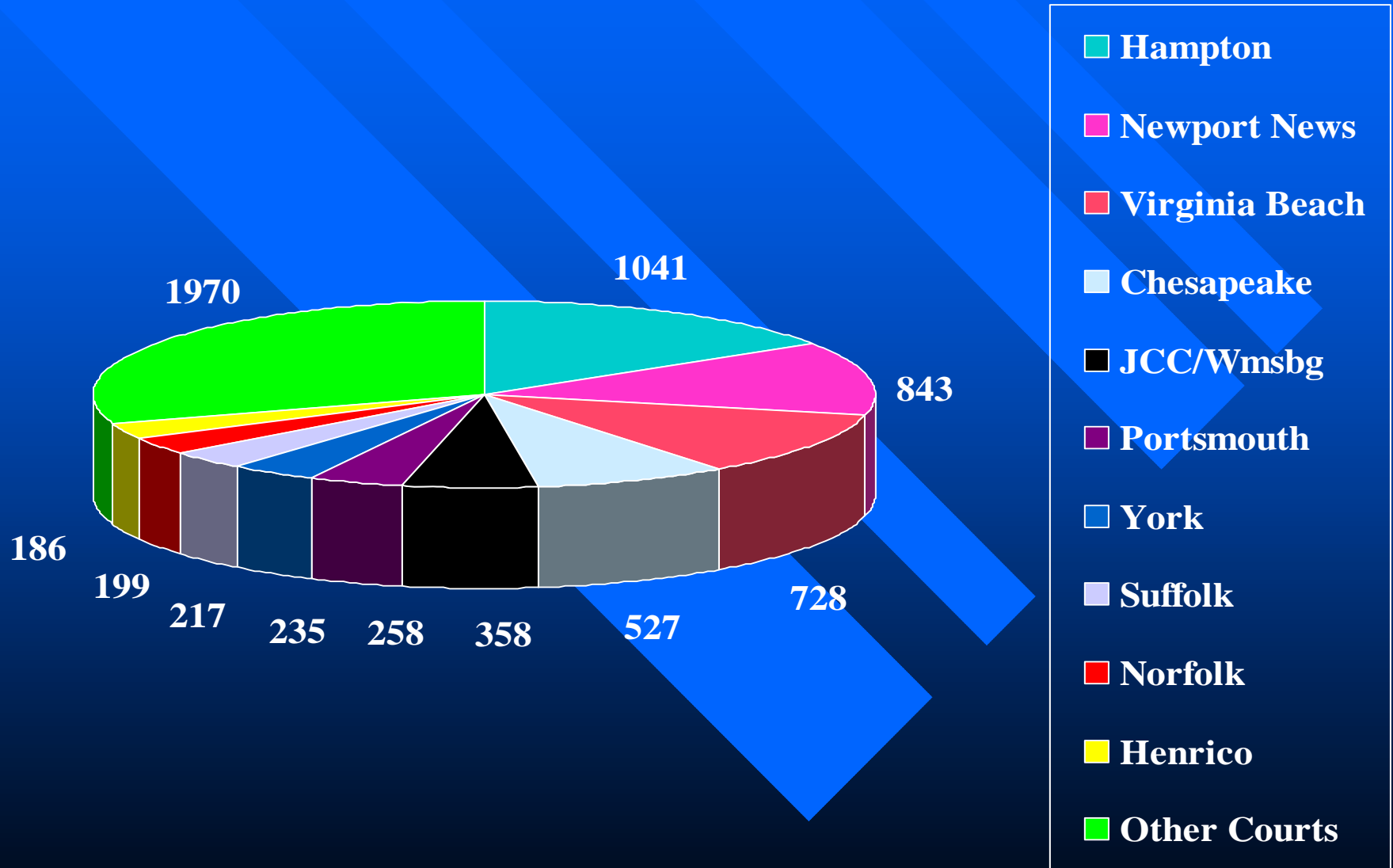


The average length of a conference is 3.4 hours.

Referring Circuit Courts

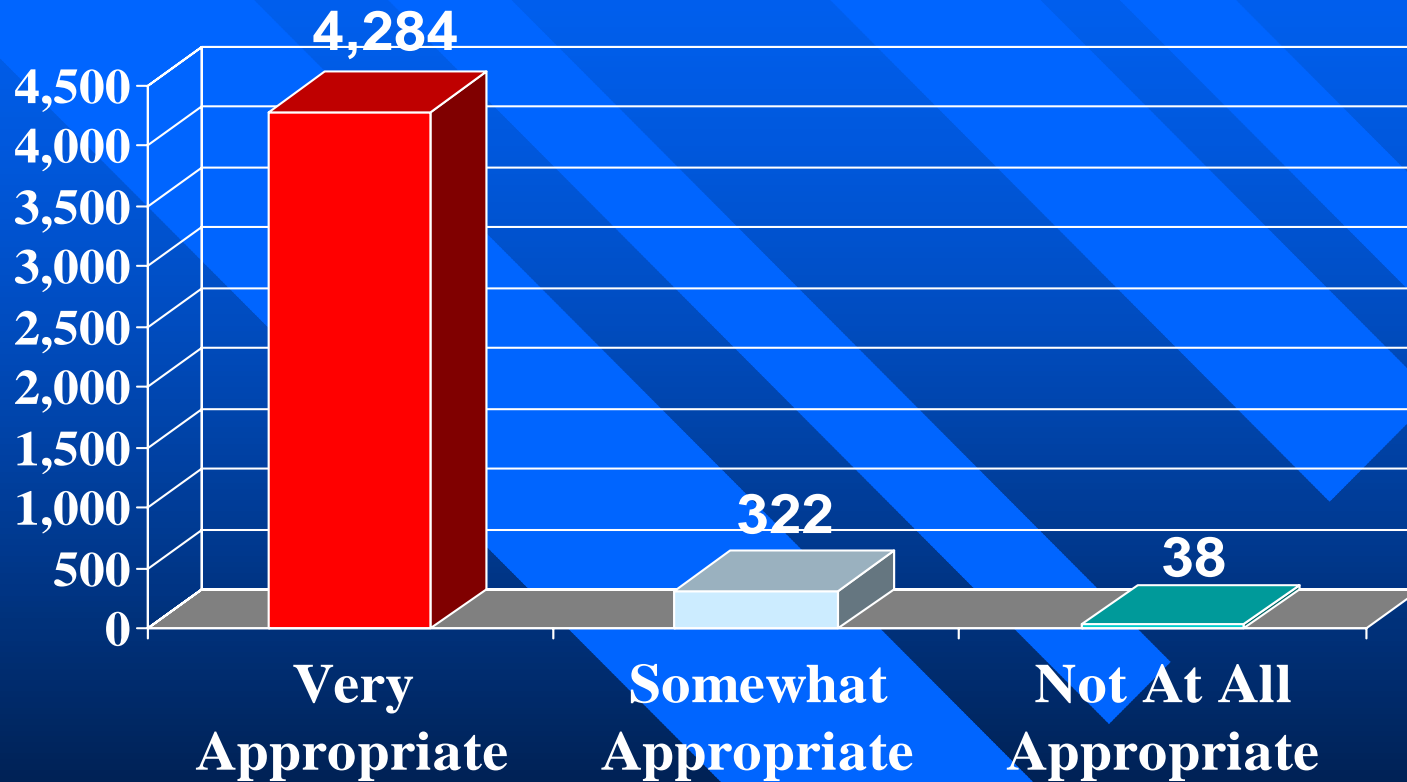
- Of the cases referred to date, Hampton has referred 15.9%.
- 68% of all cases have been referred by 10 courts in the Tidewater Area (Hampton, Suffolk, Virginia Beach, James City/Williamsburg, Norfolk, Newport News, Isle of Wight, Portsmouth, York and Chesapeake).
- 32% of the cases to date have been referred by 106 other courts across Virginia.
- A total of 116 circuit courts have referred cases.
- Only 4 courts have never referred a case.

Number of Cases Referred By Court



Party Satisfaction

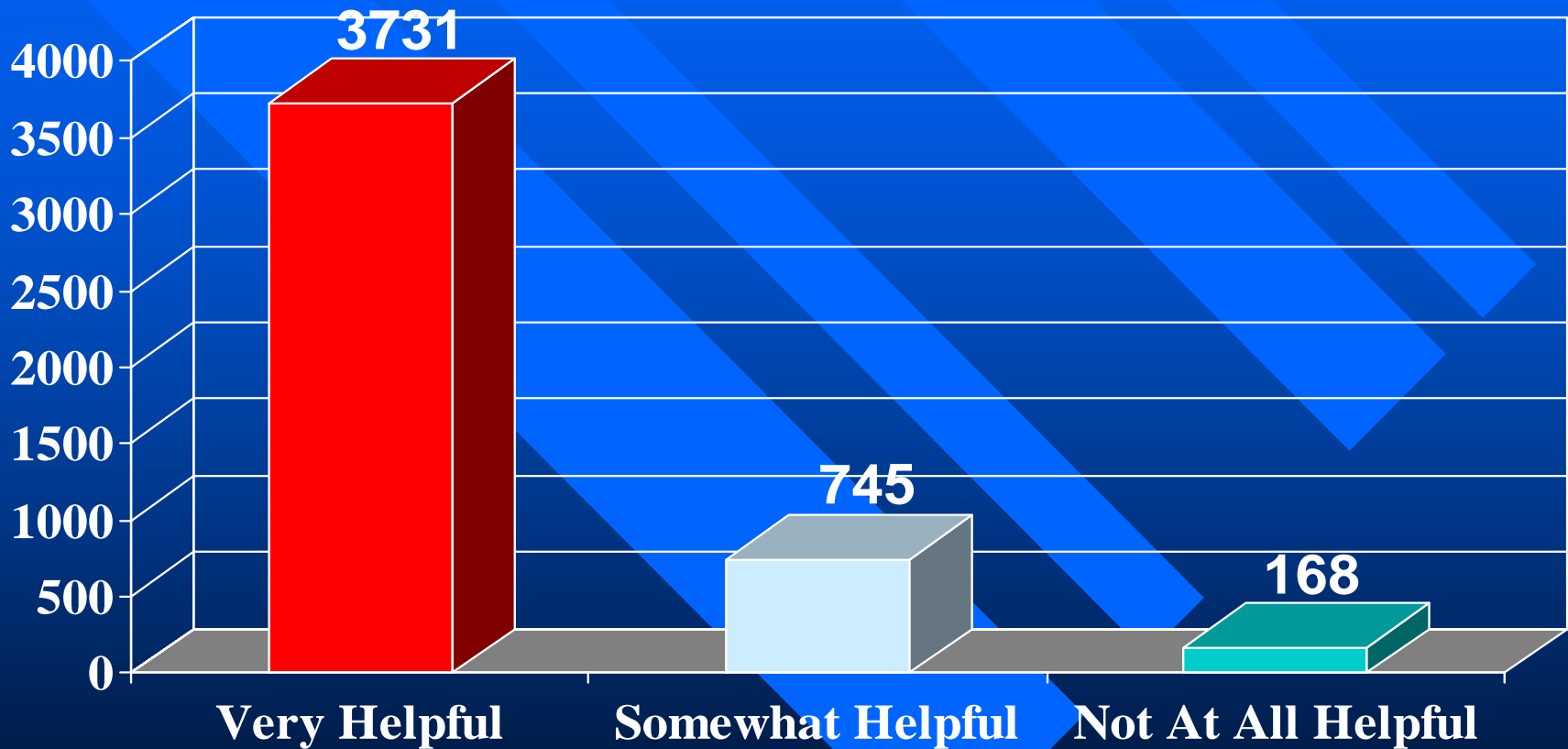
Settlement Conference Was:



4,644 exit surveys received to date. 99.2% of parties viewed settlement conference as appropriate.

Party Satisfaction

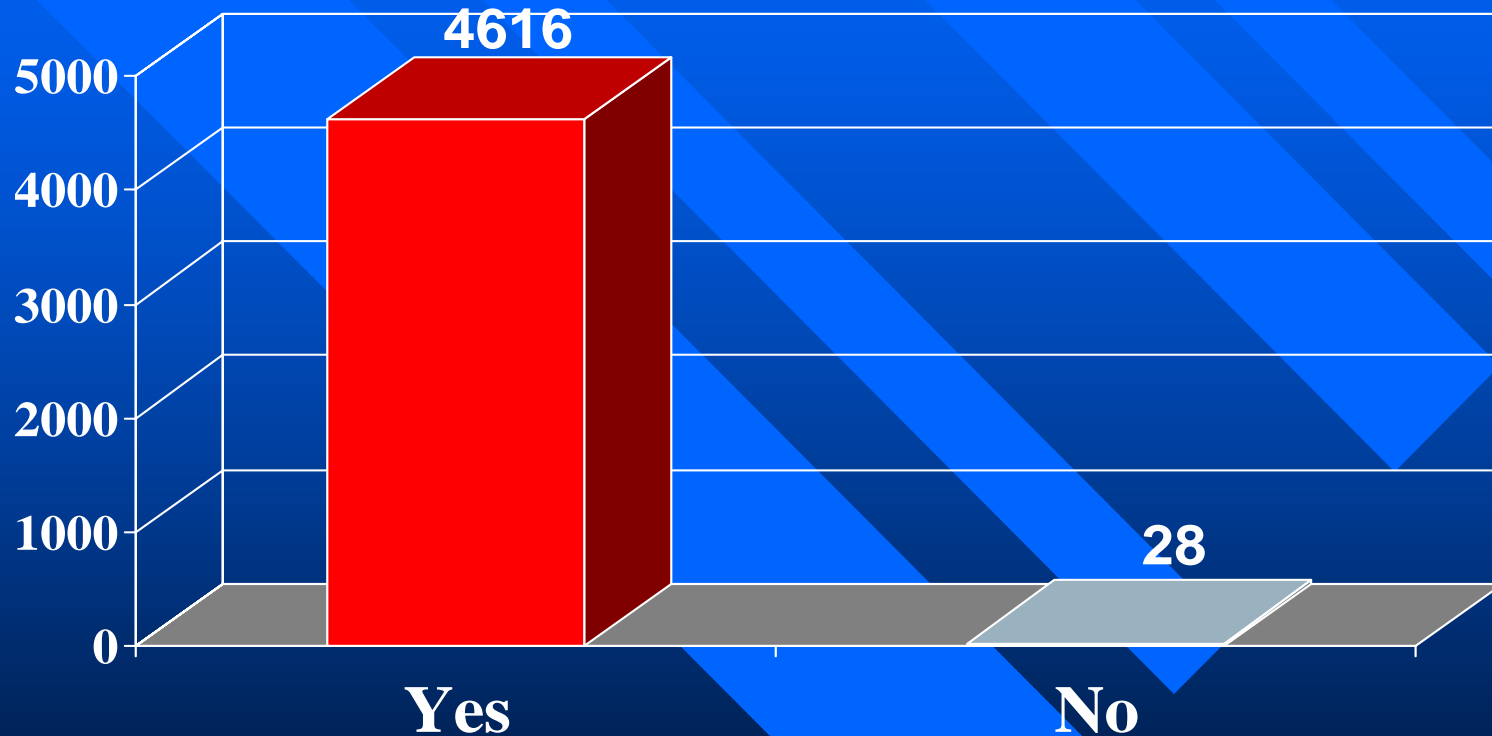
Settlement Conference Process Was:



Data reported from 4,644 exit surveys received to date. 96.4% of parties viewed conference as very or somewhat helpful.

Party Satisfaction

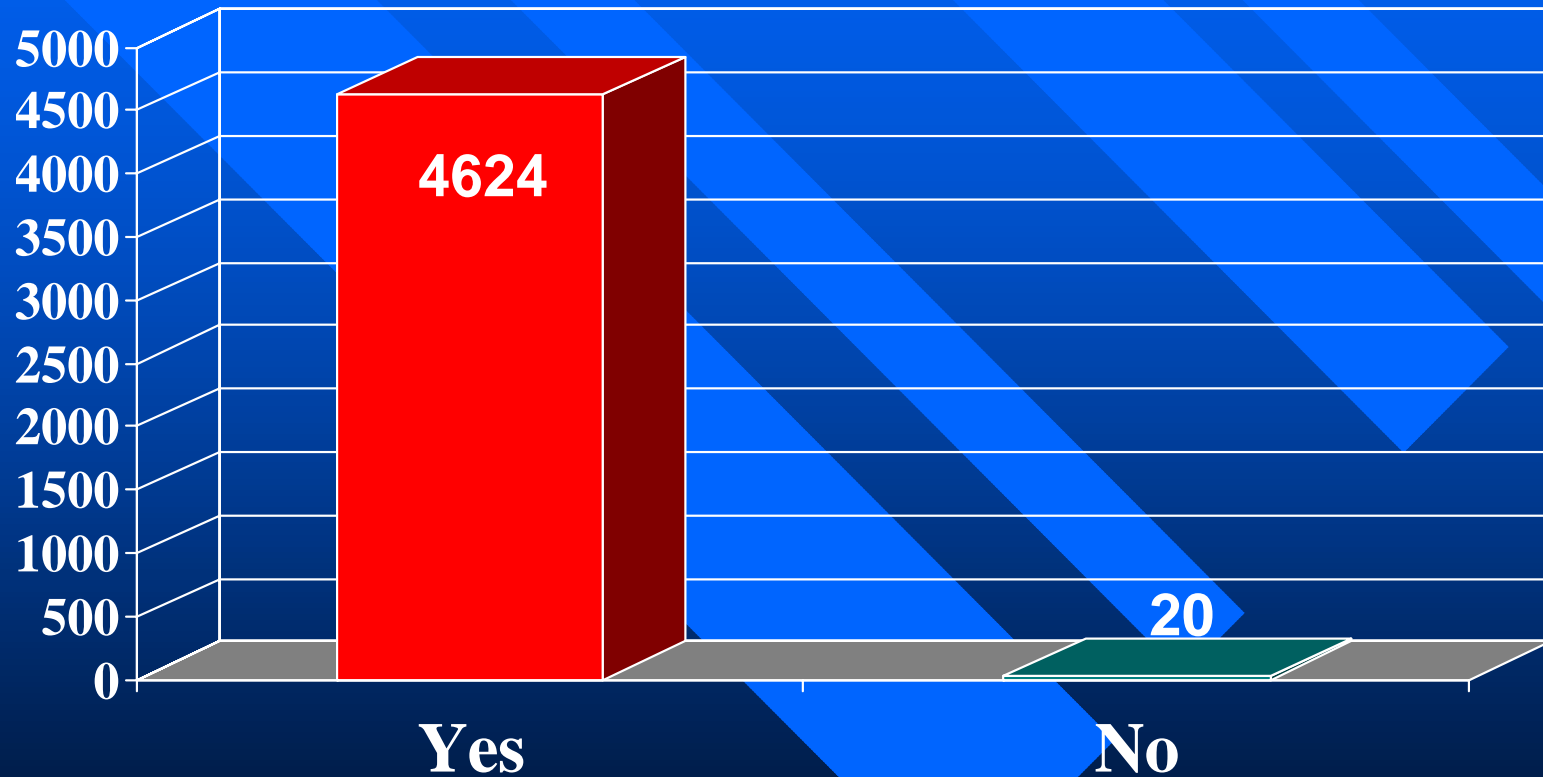
Would You Request a Conference Again?



Data reported from 4,644 exit surveys received to date. 99.4% of parties would request a settlement conference again.

Party Satisfaction

Would You Recommend
Settlement Conference?



Data reported from 4,644 exit surveys received to date.
99.6% of parties would recommend settlement conference.

Feedback: Exit Survey Comments

- “This process was extremely effective. The demeanor and knowledge of the judge carried tremendous goodwill and weight with my clients.”
- “This is one of many settlement conferences in which I have participated and I highly recommend the process; it is wonderful for the “little man” with limited resources to be heard without going broke in the process.”
- “This is probably the best system the Supreme Court has devised to resolve matters inexpensively and completely.”
- “Settlement in this case was nothing short of a miracle! The judge has my sincere gratitude as well as that of my client.”

Feedback: Exit Survey Comments

- “It took three hours to settle what we could not settle in six years. Excellent process!”
- “The judge leveraged his time on the bench to offer perspective to the parties that bridged the gap in this case!”
- “Even though the case did not settle, the judge added new perspective and offered insightful proposals to consider. Well worth the time and effort.”
- “The judge was able to help the parties to use their common sense while making decisions about emotional issues. He was able to help them arrive at a settlement after nine years of feuding. Excellent!”
- **“The judges who conduct settlement conferences are the unsung heroes of the judicial system. They are real public servants!”**

Parent Education

§16.1-278.15 & § 20-103 provide that all parties to contested custody, visitation and support cases must attend a four-hour class on:

- 1) the effects of separation or divorce on children
- 2) parenting responsibilities
- 3) options for conflict resolution
- 4) financial responsibilities

Many parent education providers around the state have received training to implement this program.