

1994

CJRA Report

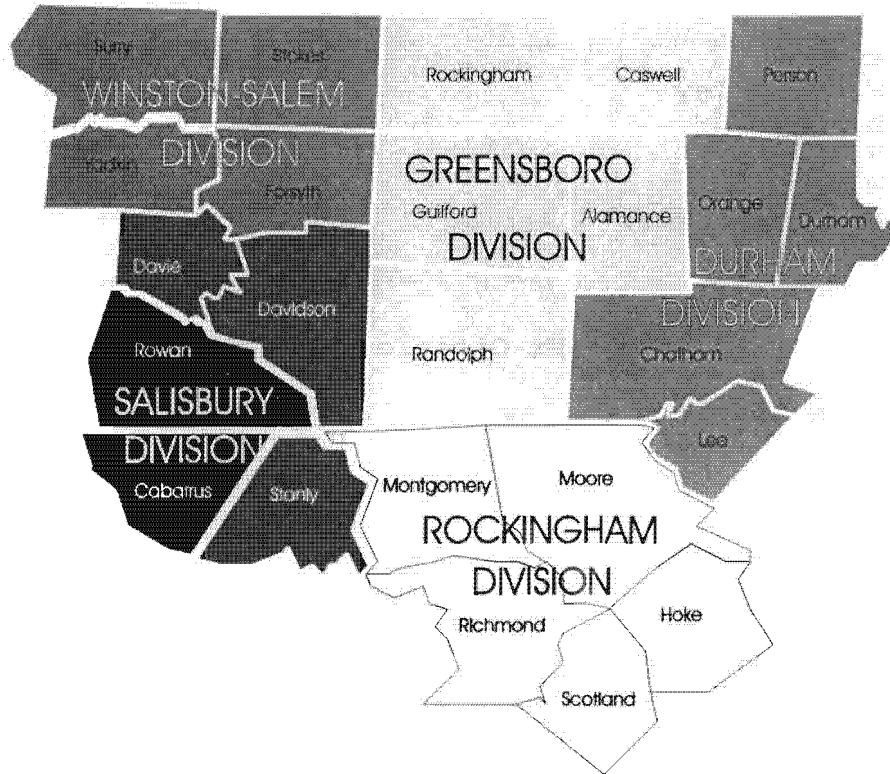
*UNITED STATES DISTRICT COURT*

*MIDDLE DISTRICT OF NORTH CAROLINA*



June 9, 1995

MIDDLE DISTRICT OF NORTH CAROLINA  
DIVISIONAL ALIGNMENT



1994 Annual Assessment of the Condition of the  
Civil and Criminal Dockets of the United States  
District Court for the Middle District of  
North Carolina as Required by the Civil  
Justice Reform Act of 1990

June 9, 1995

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## EXECUTIVE SUMMARY

Written pursuant to 28 U.S.C. § 475, this 1994 Annual Assessment finds that the U.S. District Court for the Middle District of North Carolina has taken significant steps toward providing for less costly dispositions and more time-efficient civil case management techniques. The principal reasons for this are the procedures implemented through the Court's CJRA Plan and 1993 amendments to the local rules of court.

The Assessment concludes that these methods and procedures, among others, could result in further reduction of cost and delay in civil litigation:

- o Authorization for a third magistrate judge position, two law clerks for each magistrate judge, and, alternatively, a staff law clerk position for the growing number of prisoner cases;
- o Adoption of additional alternative dispute resolution techniques after experience in State and other federal courts in North Carolina demonstrates their utility.
- o Seeking authorization through legislation or executive regulation for payment of mediators in cases where the United States, the most frequent litigant in the federal courts, is a party. Currently these cases are exempted from the Court's successful civil case mediation program.

The general goal, restated in Civil Rule 1, remains achieving justice through speedy, inexpensive management of the civil and criminal dockets. See also Judicial Conference of the United States, Committee on Long Range Planning, Proposed Long Range Plan for the Federal Courts 6 (Mar. 1995) (Proposed Long Range Plan).

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## I. Introduction

This 1994 Annual Assessment of the Condition of the Civil and Criminal Dockets of the United States District Court for the Middle District of North Carolina (Assessment) is submitted pursuant to 28 U.S.C. § 475 of the Civil Justice Reform Act of 1990 (CJRA or the Act).

The Report of the Advisory Group of the United States District Court for the Middle District of North Carolina Appointed Under the Civil Justice Reform Act of 1990, and Recommended Plan (CJRA Report) was filed December 10, 1992. The Court filed its CJRA Plan December 1, 1993. By Order Adopting Amended Rules of Practice and Procedure filed November 18, 1993, effective December 1, 1993, the Court promulgated, pursuant to Fed. R. Civ. P. 83, extensive amendments to the local rules of court. These amendments implemented fundamental changes in civil case management, changes consonant with those recommended in the CJRA Report but much more comprehensive and far-reaching. The Court also continued to operate under Standing Order No. 30, filed January 8, 1993 (Standing Order 30), Appendix B, by which each 12th and 13th civil case, excluding Bankruptcy Court appeals and suits under 28 U.S.C. § 2255, are randomly assigned to the Court's two magistrate judges for conduct of all proceedings unless a party affirmatively rejects magistrate judge trial jurisdiction. (Since District Judge James A. Beaty, Jr. has been appointed, each 15th and 16th civil case has been randomly assigned to a magistrate judge under Standing Order 30.)

This Assessment evaluates the impact of the revised local rules, and other procedures adopted by the Court, on the condition of the Court's civil and criminal dockets in Part II. Part III discusses proposed amendments to the local rules that were commented upon favorably by the Local Rules Advisory Committee on January 31, 1995, Appendix C. Part IV projects future trends. Part V concludes by assessing the state of the civil and criminal dockets in the light of the CJRA Report, the CJRA Plan, the likely impact of the proposed 1995 local rules

amendments, and other factors bearing on the Court's goals of reducing cost and delay in civil litigation and improving litigation management practices as mandated by the Act, 28 U.S.C. § 475.

## II. The Condition of the Civil and Criminal Dockets

Two sets of statistics, one showing decreased filings and the other showing increased dispositions of civil actions, indicate the court is in better control of its civil and criminal dockets than before adoption of the measures outlined in the court's CJRA Plan. The Administrative Office of the United States Courts, Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990: SY94 Statistics Supplement (Oct. 1994) (SY94 Statistics Supplement)<sup>1</sup> reports on filings through the end of Statistical Year 1994 (SY 1994, *i.e.* July 1, 1993 through June 30, 1994). The Court's CJRA Annual Report and Statistics (Jan. 11, 1995) (Court Report), Appendix D, covers civil case filings, dispositions, and trial data between December 1, 1992, about when the CJRA Report was filed, and November 30, 1994, when the new rules and procedures contemplated in the Plan, as augmented by Standing Order 30, had been in effect a year. The SY94 Statistics Supplement and the Court Report use different reporting years (*e.g.* July 1, 1993 - June 30, 1994 for the Supplement and December 1, 1993 - November 30, 1994 for the Court Report); nevertheless, these studies taken together indicate that the Court's civil and criminal dockets are in better condition than just over two years ago.

### A. Condition of the Civil Docket

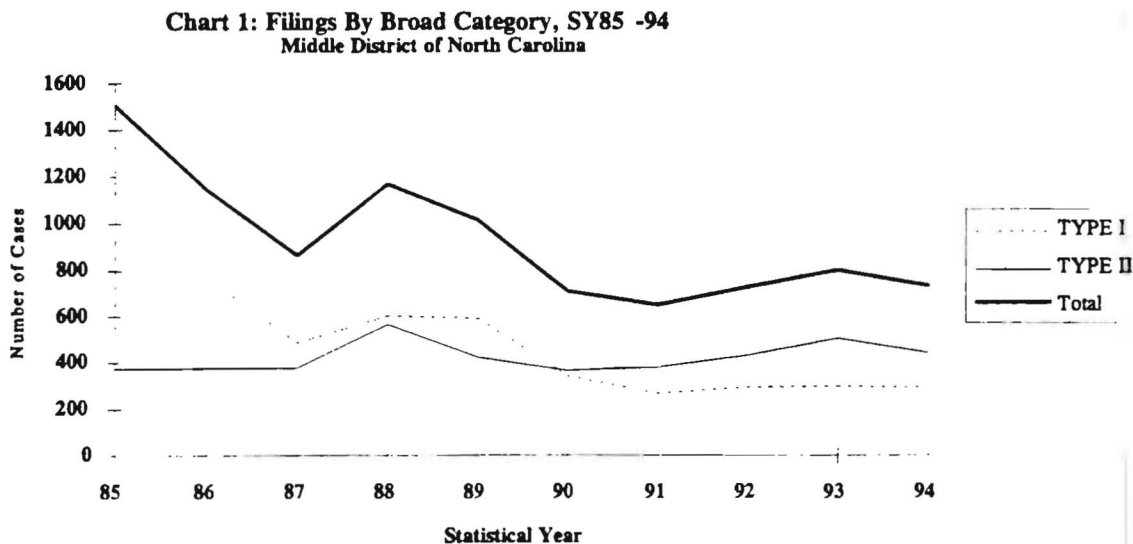
After an upsurge from SY 1992 to SY 1993, nearly all kinds of case filings declined from SY 1993 to SY 1994. Total civil cases filed rose from 727 in SY 1992 to 802 in SY 1993, then declined in SY 1994 to 733. The latter data corresponds closely with the Court Report, which states that 780 cases were filed between December 1, 1992 and November 30, 1993, while 746 were filed between December 1, 1993 and November 30, 1994. The SY94 Statistics Supplement data, p. 12, also roughly corresponds with Administrative Office of the United States Courts, Federal Judicial Caseload: A Five Year Review (Oct. 1994), (Federal

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<sup>1</sup> Unless otherwise noted, all statistics in the remainder of this Assessment were derived from the SY94 Statistics Supplement.



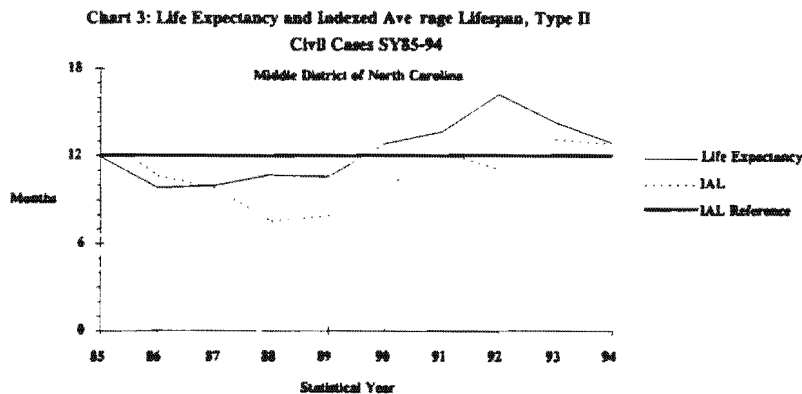
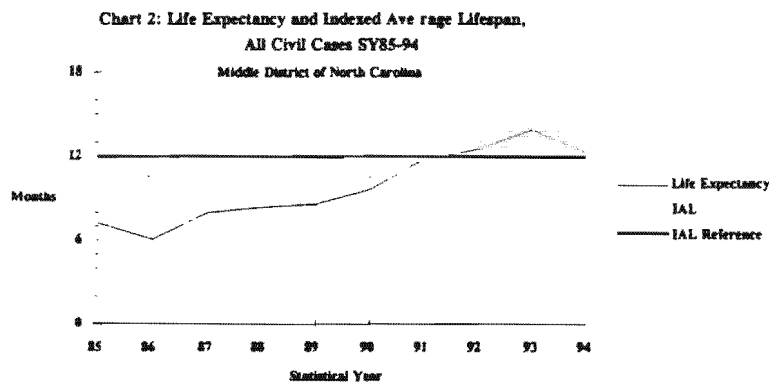
Judicial Caseload) which shows a comparable dip in national civil case filings for calendar year (CY) 1990, followed by a slowing rise through CY 1993. From these three sources it can be assumed that the Middle District has followed and may continue to follow, albeit roughly and with smaller numbers, the national trend in total civil case filings.



**Table 1: Filings by Case Type, SY85-94**

Middle District of North Carolina	Year									
	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Asbestos	0	6	15	11	14	20	15	18	9	7
Bankruptcy Matters	23	19	16	30	21	12	18	23	30	24
Banks and Banking	3	1	0	1	1	0	3	2	2	0
Civil Rights	79	69	66	75	83	56	64	83	115	105
Commerce: ICC Rates, etc.	4	1	4	128	15	1	4	6	7	2
Contract	106	132	120	175	151	116	80	77	90	77
Copyright, Patent, Trademark	25	31	37	29	7	26	19	29	37	32
ERISA	3	2	6	10	10	15	13	25	23	19
Forfeiture and Penalty (excl. drug)	19	20	18	36	32	8	4	12	5	5
Fraud, Truth in Lending	5	7	1	4	8	1	5	3	5	2
Labor	15	16	16	18	11	13	13	13	17	11
Land Condemnation, Foreclosure	1	1	0	1	0	2	1	0	0	1
Personal Injury	43	37	35	31	44	34	42	54	46	62
Prisoner	238	261	243	259	313	178	163	89	119	155
RICO	0	0	1	1	3	2	1	1	1	2
Securities, Commodities	7	2	12	6	4	6	11	16	8	3
Social Security	56	18	45	51	22	20	6	64	116	95
Student Loan and Veteran's	817	466	168	252	221	111	64	101	24	10
Tax	13	6	4	5	5	7	11	5	7	14
All Other	50	51	58	47	49	82	111	106	141	107
All Civil Cases	1507	1146	865	1170	1014	710	648	727	802	733

Both the SY94 Statistics Supplement and the Court Report show that disposition times for civil cases have decreased. In SY 1992, the life expectancy of a civil case (i.e., how long it could be expected that a case would "live" on the docket from filing to disposition, e.g. by dismissal on the merits or judgment) was just over 12 months, the national average from filing to disposition. In SY 1993, the expectancy had jumped to 14 months; this was reflective of a general upward trend from SY 1986, when life expectancy was only 6 months, the national average from filing to disposition. In SY 1994, however, civil case life expectancy went down to 12 months. The Indexed Average Lifespan (IAL), which compares the Court's disposition of cases with all district courts, follows the same pattern except for SY 1994, when IAL shows a slow rise for all cases. In the situation of the more complex, nonroutine Type II cases, a steep decline in life expectancy began in SY 1992 (16 months), to 14 months in SY 1993, and 13 months in SY 1994. IAL for these cases rose in SY 1993 to 13 months, from 11 months in 1992, and held at 13 months for SY 1994.



Court Report statistics support the foregoing. Between December 1, 1992 and November 30, 1993, when the CJRA Plan and the new rules and procedures went into effect, 780 civil cases were filed and 736 were closed, a net gain on the docket of 44. During the next year under the Plan and new rules, 746 cases were filed and 786 were closed, a net loss of 40.

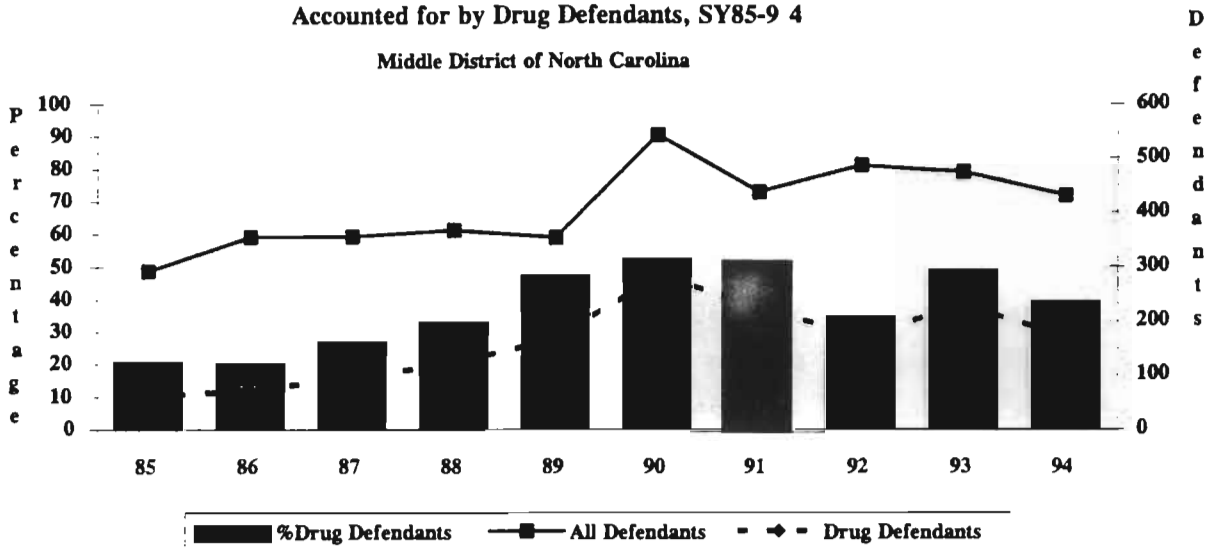
Whether this leveling trend will continue is not certain. National projections for the district courts' civil caseload show the possibility of a dramatic rise in diversity, federal question and U.S. as defendant cases. The same is predicted for state and federal prisoner cases. Only where the United States is plaintiff is the trend line projected to go only slightly upward. The overall trend for total adjusted civil cases is projected to go sharply upward after 1995. Judicial Conference of the United States, Committee on Long Range Planning, Proposed Long Range Plan for the Federal Courts 137-42 (Mar. 1995) (Proposed Long Range Plan). The trend line from SY 1985 to SY 1990-91 in Chart 1 is overall descending, with two short drops, combined with a leveling in the national graph, id. at 122, but both graphs show a dip thereafter. There would therefore appear to be a very rough similarity between the experience of the Middle District and the national statistics in the immediate past. If the Proposed Long Range Plan projections are a reasonably accurate prediction for the future for the Middle District, the current statistics for this Court may indicate a lull before a storm of incoming civil cases.

#### B. Condition of the Criminal Docket

One factor for the upsurge in disposition times for civil cases in SY 1993, besides the increased civil filings, undoubtedly was increased criminal defendant filings in SY 1992 and SY 1993. Criminal cases are governed by the Speedy Trial Act, 18 U.S.C. §§ 3152-56, 3161-74, which mandates that criminal proceedings occur within specific time limits and therefore often ahead of civil proceedings. In SY 1992 there were nearly 500 criminal defendant filings; there were about 475 in SY 1993. By

SY 1994, however, filings had dropped off to about 425.<sup>2</sup> Drug defendant filings followed a 2-year decline in SY 1992, rose in SY 1993, and fell again in SY 1994.

**Chart 4: Criminal Defendant Filings with Number and Percentage Accounted for by Drug Defendants, SY85-9 4**  
Middle District of North Carolina



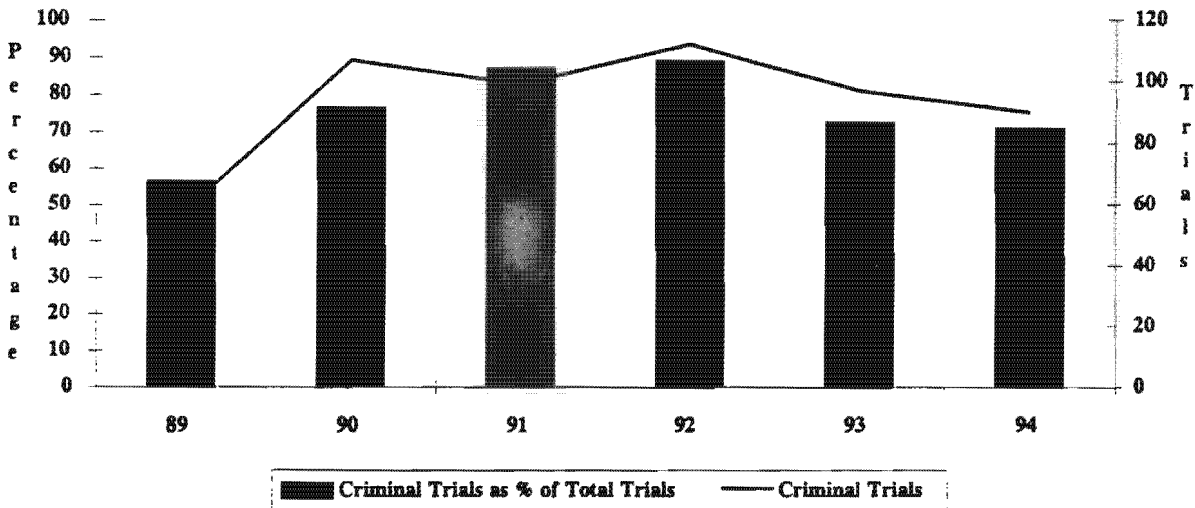
<sup>2</sup> Rather than counting criminal cases, which might involve multiple defendants in, e.g. a drug ring, the SY 1994 Statistics Supplement counts filings against individual criminal defendants because the burden of a criminal case is proportional to the number of defendants in the case.

Except in one aspect, Chart 4 does not follow national trends for criminal filings, whether drug-related, non-drug related or total criminal cases. Both Chart 4 and the Proposed Long Range Plan, p. 120, show a steep rise in non-drug criminal filings for SY 1990. While criminal filings have declined in the Middle District within the last two years, the national trend has been upward, and steeply upward for drug cases. Future national projections are for sharply rising criminal filings. Proposed Long Range Plan, pp. 140, 142. As in the case of civil filings projections under the Proposed Long Range Plan, if the latter's predictions are reasonably accurate, the number of criminal filings may rise, perhaps precipitously, in the future. On the other hand, the number of criminal cases filed - whether drug-related or not - has been relatively stable except for an upswing in CY 1992. Federal Judicial Caseload, p. 6. As id., p. 7 says, criminal cases - as opposed to filings against individual defendants reported in the SY94 Statistics Supplement - have become more complex and have required more time to disposition, from 4.6 months in CY 1990 to 5.5 months in CY 1993. Moreover, drug case filings - which often involve complex trials with multiple defendants - have been going up in numbers. Federal Judicial Caseload, p. 7.

C. Trial of Criminal and Civil Cases

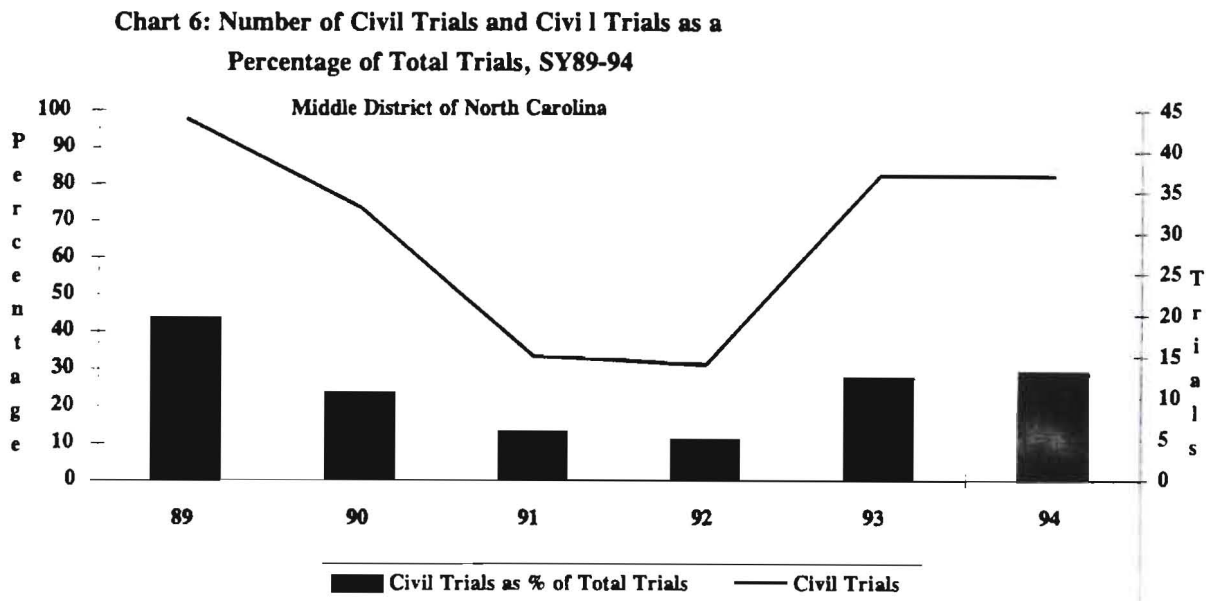
The statistics on the number of criminal trials follows the same pattern as the number of filings discussed in Part II.B: a peak of about 130 trials or 90 percent of all trials in SY 1992, followed by a decline in SY 1993 to just under 100 trials (about 85 percent of all trials), and to 90 trials (75 percent of all trials) in SY 1994.

**Chart 5: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY89-94**  
Middle District of North Carolina



At the same time the percentage and number of civil trials increased, albeit for reasons additional to the decline in criminal trials.

In SY 1992 there were 15 civil trials, about 10 percent of all trials. The number jumped to 35 civil trials in SY 1993 (about 25 percent of the total), and the numbers were slightly higher for SY 1994.



Court Report statistics are comparable. Between December 1, 1992 and November 30, 1993, 55 civil cases were scheduled for trial, with 15 trials and 36 settlements. Between December 1, 1993 and November 30, 1994, under the new procedures and rules establishing a master calendar as well as disposing of the last of the cases under the old rule, there were 103 cases scheduled for trial with 20 trials and 59 settlements. Of the old cases remaining under the former procedure, of 26 cases set for trial, 11 were settled and 11 were tried. Under the new master calendar procedure, 77 cases were set for trial, 9 were tried and 48 were settled. Undoubtedly the new policy of setting a firm trial date as provided in Local Rule 207(a) is having an impact on

settlement rates, more than the former method of pretrying a case, under which a case would be put "on the shelf" for eventual trial after the final pretrial conference was held.

Under present procedures many cases are set for one time on a master calendar, called by two district judges and one magistrate judge, with the expectation that most will settle close to the trial date, and the remaining cases will be tried. Under the former method a settlement just before trial might result in open court time. See CJRA Report, pp. 44-45. Under the new procedure employing a master calendar, the number of continued cases, i.e. those cases set for trial but postponed for various reasons, remained about the same as under the old "shelf" plan. In SY 1992-93, 2 of 55 cases scheduled for trial were continued under the old plan, and 3 of 26 cases scheduled for trial in SY 1993-94 under the old plan were continued. Under the master calendar plan for SY 1993-94, 77 cases were scheduled for trial and 5 were continued. Of the 5 continued cases, one was settled except for one defendant in bankruptcy, and another was awaiting disposition of an issue on appeal. Thus the number of cases experiencing a further wait for trial remains about the same under the new procedure. However, the percentage of continued cases has gone down or has remained about the same, if the ratio of continuances to cases set for trial is considered: 2 of 55 or 3.6 percent of SY 1992-93 cases under the old procedure; 3 of 26 or 11.5 percent of SY 1993-94 cases under the old procedure; 3 of 77 or 3.9 percent of SY 1993-94 cases under the new master calendar procedure. (Even if the 2 cases continued for other reasons--bankruptcy or awaiting appellate decision--are included for a ratio of 5 of 77, the result is 6.5 percent, about half of the percentage for remaining old procedure cases in the same statistical year.)

Thus under the new procedure settlements are up in number, and the absolute number of trials has increased while continuances have remained stable in number. The high number of trials under the old procedure in SY 1993-94 (11) relative to the number of trials under the new procedure (9) resulted from the age of the old procedure cases relative to the newer filings that



were subject to the master calendar.

Standing Order 30 cases, i.e. those cases assigned to a magistrate judge who hears and decides all matters including trial unless a party objects, are having an impact on clearing the docket. Of 127 cases under Standing Order 30, the Court Report notes that 40 have been assigned to magistrate judges, 25 have opted out, 10 have been closed, and others are pending. Besides these cases, in 16 other cases parties have consented to magistrate judge trial where the case was not subject to Standing Order 30. The local rules of court also provide for maximum utilization of magistrate judges in other civil and criminal matters. This is consistent with Recommendation 67 of the Proposed Long Range Plan, p. 93.

Mediated settlement conferences have also helped with early, and therefore less costly, disposition of civil cases. Modeled on the State procedure now in the closing months of a pilot program, mediation has taken the place of court-annexed arbitration. During CY 1994, according to Court records, 338 cases--about 45 percent of all civil filings --were assigned to mediation. Of these, 55 have been mediated, with 25 settled by mediation. Since the local rules provide that mediated cases do not lose their place on the docket, this means a net gain in resolution of disputes for cases that settle and no time loss for trial of cases that do not settle.

Informal reports to the Clerk and questionnaire responses indicate that parties and counsel are pleased with the mediation procedure as being cost-saving and promotive of settlement.

### III. 1995 Amendments to the Local Rules of Court

The proposed 1995 amendments to the local rules are in four categories: (1) those considered necessary to conform to the Civil or Criminal Rules, e.g. Local Rule 112(d), number of civil case jurors; (2) those recognizing the new title of magistrate judge; (3) gender neutralization; (4) those affecting the relative cost or time involved in disposition of civil cases. Part III analyzes only the last category.

Local Rule 108(a)(2) will no longer authorize clerk-issued consent orders, for good cause shown, for extensions of time to answer interrogatories, respond to requests for production of documents, or respond to requests for admissions. Civil Rule 29 will govern. The amendment will save clerk and lawyer time in that attorneys might otherwise continue to think that the old procedure continues in effect as a local modification, under Civil Rule 83, of Civil Rule 29.

Local Rule 201(c) will provide for a working copy of briefs, proposed findings of fact and conclusions of law, and requests to charge, for Court use. Experience has shown that an extra copy of these is necessary; there will be less time and expense involved if counsel duplicates one more copy when other copies are prepared.

Local Rule 202(a) now provides that each motion in a civil case be set out in a separate pleading. While this may make motions more visible, it could result in lawyers separating out motions to permit them to use the 20-page brief limit for each motion, one CJRA Group member has observed. The operation of the separate-page requirement for motions will be watched carefully to see if abuses crop up.

Local Rules 202(d) and 206 will provide that the limit for opening and responsive briefs on motions is 20 pages; 10 pages is the limit for reply briefs. Briefs responsive to summary judgment motions must be filed within 30, instead of 20, days after service of the motion. The Court believes that these amendments will not result in undue cost or delay in civil cases and will encourage brevity.

Local Rule 202(i)(1) will exempt discovery motions from a

briefing requirement in cases where litigants have agreed to Local Rule 204(d) expedited resolution of discovery disputes by telephone conference or short court hearing, a procedure introduced in the 1993 local rules amendments. Although Local Rule 204(d) specifically provides for no briefing in these situations, it was thought appropriate to add the exemption in Local Rule 202(i)(1) as well.

The Court's decision to opt out of Civil Rule 26(a)(1) disclosure will be moved from Local Rule 203(f) to Local Rule 203(b), a more logical place. This amendment should make Civil Rule 26(a)(1) opt-out more visible.

Local Rule 204(b)(4) will provide that notices to take depositions, along with other discovery materials, should not be filed unless the Court so orders or unless the Court needs them for a pretrial proceeding. This amendment will result in less papers filed, with saving in court filing and storage costs and parties' duplication costs.

Local Rules 205(b) and 602(a) provide that cases in which the United States is a party are exempted from mediation because the government may lack authority to pay mediator fees. This is an oversight that either the Congress or the executive should correct. The United States is the most frequent litigant in the courts of the United States; it is party in more than a fourth of the civil cases in the district courts. Charles Alan Wright, Law of Federal Courts § 22 (5th ed. 1994). Executive Order 12778, § 1, 56 Fed. Reg. 55195-96 (1991) directs government lawyers to promote use of settlement conferences--which is what mediation is all about--and other alternative dispute resolution (ADR) mechanisms in federal litigation. If the biggest user of the federal courts--the United States--would promote ADR, it should be prepared to pay for such cost-cutting devices like other fee-paying parties. Thus, litigants whose cases are delayed because cases involving the United States go to trial instead of being resolved by mediation or whose case involves the United States as a party are compelled to wait their turn and be denied the benefits of an earlier settlement through ADR methods. This situation may become more serious if the number of cases in which

the government is a party, as well as the number of general civil and criminal cases, rises as predicted. See Parts II.A and II.B.

Besides specifically applying Local Rule 202(d)'s page limits to summary judgment motions, Local Rule 206 has been revised to restate Local Rule 107 general briefing requirements. Although redundant, these additions should make these requirements absolutely clear.

Local Rule 402 will be revised to take into account Standing Order 30, Appendix B, discussed in Parts I and II.C, which states an opt-out procedure for declining magistrate judge trial. The Rule also will be amended to assure intervenors of a right to consent to trial by the magistrate judge, and to require parties seeking to withdraw such consents to appear before the district judge who signed the reference order. Similarly, Local Rule 403 has been amended to require parties, seeking withdrawal of consent to referral to a magistrate judge as a special master, to seek approval of the referring district judge. These amendments should clarify where the withdrawal motion should go, thereby promoting efficiency. The district judge who referred the matter knows more about the case than any other district judge.

#### IV. Future Trends

During SY 1993-94 the Court experienced a downturn in both civil and criminal case filings. See Charts 1 and 4 and Table 1 in Part I.A. Whether this is the beginning of a trend or a 1-year dip, followed by a rise, as occurred in SY 1986-88 and again in SY 1990-92, cannot be determined at this point. What is more encouraging is the reduced life expectancy of cases, now close to the national norm of 12 months for the first time since SY 1989 (Type II, Chart 3) or SY 1990 (all cases, Chart 2). Although reduced filings undoubtedly played a role in reducing judicial and administrative time tied up with incoming cases, particularly criminal matters, the new procedures also helped in clearing civil cases and in affording more opportunities for civil trials. Statistical years 1995 and 1996 should provide more evidence of how well the new procedures are working, particularly if other factors--criminal filings, civil filings, and the number of Type II cases--remain about the same. The long-range prediction of trends in civil and criminal filing is for a rise, perhaps a rapid rise, in each district across the Nation. If the Middle District is part of this trend, the new procedures will receive a real testing in the near future.

Beyond the caseload statistics, there are other, nonquantifiable factors, some positive and some negative.

The fourth judge's position, authorized by 28 U.S.C. § 133(a), has been filled. District Judge James A. Beaty, Jr., an experienced former State Superior Court Judge, is now on the federal bench, occupying the position vacated when Judge Richard C. Erwin took senior status and Judge Frank W. Bullock, Jr. became Chief Judge. While the Court continues to rely on its three senior district judges,<sup>3</sup> having district judge positions filled should contribute positively to reducing case life

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<sup>3</sup>This policy of the Middle District follows Recommendation 62 of the Proposed Long Range Plan, p. 76: "The courts should use senior and recalled judges -- a significant portion of federal judge power -- as much as possible to achieve the goal of carefully controlled growth."

expectancies and increasing the number of civil trials. See Recommendation 74 of the Proposed Long Range Plan, p. 96.

Analysis of the vacant position among the four authorizations for district judges was included in the CJRA Report. There are no known or projected vacancies for the foreseeable future among district judges or magistrate judges. The CJRA Group will consider the recommendations of the Clerk's office for recommended procedures for the eventuality of a sudden vacancy, e.g. extended illness, of a judge, and for the further eventuality of a longstanding vacancy among the judges, during SY 1995.

The CJRA Report, pp. 78-80, recommended provision for a third magistrate judge position, a second law clerk for each magistrate judge, and, alternatively, a staff law clerk for prisoner and similar cases. The CJRA Plan, p. 11, concurred with these recommendations and stated that the Court would pursue them by appropriate means. As noted in the Court Report, magistrate judge involvement in Standing Order 30 cases has been significant; see Part III.C. The number of prisoner cases shot up dramatically in SY 1994; see Part III.A and Table 1. If these trends continue as predicted in the Proposed Long Range Plan, pp. 140-42, magistrate judges and their clerks may become saturated as the district judges try the criminal docket and conduct more civil trials. For these reasons, these recommendations should be pursued.

The other major factor for clearing civil cases is use of ADR techniques. The CJRA Report, pp. 65-66, 69-74, recommended continuing the then-existing court-annexed arbitration program, adoption of court-annexed mediation and early neutral evaluation (ENE), increasing the \$150,000 cap imposed by Congress on court-annexed arbitration in 28 U.S.C. §§ 651-52, and amendment of 28 U.S.C. § 653(b) to permit arbitration after cases are at issue but before judicial resolution of dispositive motions. The CJRA Plan, pp. 6, 11, and the revised local rules implemented court-annexed mediation while ending court-annexed arbitration because of the statutory stricture on arbitration before decision on

pending dispositive motions.

The 1995 State General Assembly has received proposed legislation to extend mediated settlement conferences to all Superior Courts, with rules to be promulgated by the Supreme Court of North Carolina. All U.S. District Courts in North Carolina have mediation rules. Initial reports from mediation in this Court are that the procedure has been received well by the bench and bar and has promoted settlement. The State program, and other federal court programs, will be studied to determine if improvements can be made in Middle District procedures and if the local rules can be harmonized with State and other federal courts' practice. This should minimize the time parties and counsel must spend to become familiar with another set of rules.

Other State and federal courts have begun using other ADR techniques in North Carolina. Results under these ADR techniques will be considered for possible Middle District implementation. This is in line with Proposed Long Range Plan, p. 65, Recommendation 41: "District courts should be authorized to make available a variety of alternative dispute resolution techniques, procedures, and resources to assist in achieving a just, speedy, and inexpensive determination of civil litigation."

Congress has extended the life of the court-annexed arbitration legislation, 28 U.S.C. §§ 651-58. Judicial Amendments Act of 1994, Pub. L. No. 103-420, § 3, 108 Stat. 4343, 4345. Neither the \$150,000 cap nor the restrictions on arbitration, stated above, have been modified. Amendments to this legislation should be sought so that larger cases can be subject to this option and these cases can be arbitrated before dispositive motion decisions.

As noted in Part III, Local Rules 205(b) and 602(a) will exempt from mediation cases in which the United States is a party because the government may lack authority to pay mediator fees. This is a serious omission, since the government is the Court's most frequent litigant. The CJRA Advisory Group recommends curative legislation or executive regulations to assure the promise of Executive Order 12778, which directs government counsel to promote settlement conferences and other ADR

techniques.

In general, the proposed 1995 local rules amendments do not appear to raise problems of additional cost or delay. In many instances they should promote cost and time savings. However, the Local Rule 202(a) requirement that each civil case motion be set out in a separate pleading will be scrutinized in practice to determine whether this requirement, when coupled with page limits in Local Rules 202(d) and 206, results in paperwork proliferation, i.e attorneys' filing a 20-page brief for every separately-filed motion. See generally Part III.



## V. Conclusions: Assessing the State of the Civil and Criminal Dockets

As Parts I-IV demonstrate, the state of the civil and criminal dockets has improved since implementation of Standing Order 30, the CJRA Plan, and the 1993 amendments to the local rules of court. This has been due in part to a decline in filings, but also to better and more efficient civil case management under the new rules and procedures.

On the negative side, all of this could change if there are new influxes of filings, perhaps due to additional Congressional enactments, e.g. the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796-2151.

On the positive side, there is prospect for even better civil case management if filings remain relatively stable. The Court is up to its full complement of four judges. Further improvement in case management might be achieved through implementation of some or all of the recommendations stated in Part IV.

In sum, this Assessment shows steady, yet significant, progress in providing for less costly and more time-efficient civil case management as mandated by the CJRA. As additional opportunities for increased efficiency arise, the Court will seize them. However, the Court must always "appreciate that no demand for statistics . . . can ever replace [the] . . . duty to hear cases with patience and respect for the rights of the parties who seek justice from [it]." Paul R. Connolly, Civility in the Courtroom: The Judge's Obligation, 1 Litig. 14, 17 (No. 1 1975); accord, Civil Rule 1.

APPENDICES

APPENDIX A

A. Membership of the Advisory Group

The CJRA, 28 U.S.C. § 478, provides for appointment of the advisory group by the chief judge of the district court, after consultation with the other judges of the court. The Advisory Group "shall be balanced and include attorneys and other persons who are representative of major categories of litigants" in the court. Group members may serve for four years, with the U.S. Attorney as a permanent member of the group.

Pursuant to the Act, Chief Judge Erwin appointed this advisory group for 1990-94:

William K. Davis, Esquire, Chairman  
Bell, Davis & Pitt, P.A.  
Winston-Salem

Daniel W. Fouts, Esquire, Vice-Chairman  
Adams, Kleemeier, Hagan, Hannah & Fouts  
Greensboro  
Professor George K. Walker, Reporter  
Wake Forest University School of Law  
Winston-Salem

Walter F. Brinkley, Esquire  
Brinkley, Walser, McGirt, Miller, Smith & Coles  
Lexington

B. Ervin Brown, II, Esquire  
Moore & Brown  
Winston-Salem

Joseph P. Creekmore, Clerk,  
ex-officio member  
U.S. District Court for the Middle District  
of North Carolina  
Greensboro

Ronald H. Davis  
Vice President-Administration  
Carolina Steel Corporation  
Greensboro

Mickey W. Dry  
Executive Vice President  
Wachovia Corporation  
Winston-Salem

Walter T. Johnson, Esquire  
Greensboro

Kathy E. Manning, Esquire  
Smith Helms Mullis & Moore  
Greensboro

James B. Maxwell, Esquire  
Maxwell & Hutson, P.A.  
Durham

Grover C. McCain, Jr., Esquire  
Chapel Hill

William L. Osteen, Sr., Esquire  
Osteen & Adams  
Greensboro

C. Edward Pleasants, Jr.  
President and Chairman of the Board  
Pleasants Hardware Co.  
Winston-Salem

Honorable P. Trevor Sharp  
Magistrate Judge, ex officio member  
U.S. District Court for the Middle District  
of North Carolina  
Greensboro

Norman B. Smith, Esquire  
Smith, Follin & James  
Greensboro

Carmon J. Stuart, Esquire  
Retired Clerk of Court, currently of counsel,  
Patton, Boggs & Blow  
Greensboro

Honorable Jerry G. Tart  
 Bankruptcy Judge, ex officio member  
 U.S. District Court for the Middle District  
 of North Carolina  
 Greensboro

David K. Tate, Esquire  
 Senior Counsel and Assistant Secretary  
 Law Department  
 R.J. Reynolds Tobacco Company  
 Winston-Salem

Daniel R. Taylor, Esquire  
 Petree Stockton & Robinson  
 Winston-Salem

Honorable N. Carlton Tilley, Jr.  
 District Judge, ex officio member  
 U.S. District Court for the Middle District  
 of North Carolina  
 Durham

Benjamin H. White, Jr., Esquire  
 Chief Assistant U.S. Attorney  
 Middle District of North Carolina  
 Greensboro

The appointment of William L. Osteen, Sr. as U.S. District Judge for the Middle District of North Carolina was confirmed by the U.S. Senate after the Group was constituted, and Judge Osteen continued to serve with the Group. Miriam M. Murphy, Esquire, Head of Public Services of the Wake Forest University Law School Library, was appointed by the Group to serve as statistician for the CJRA Report. When Judge Erwin took senior status and Judge Bullock became Chief Judge, the Group membership was not changed

On April 19, 1995, pursuant to 28 U.S.C. § 478, Chief Judge Bullock made these appointments for membership on the Group:

Guy F. Driver, Esquire  
 Womble Carlyle Sandridge & Rice  
 Winston-Salem

Robert M. Elliott, Esquire  
Elliott Pishko Gelbin & Morgan  
Winston-Salem

Susan Gottsegen, Attorney At Law  
Legal Aid Society of Northwest  
North Carolina, Inc.  
Winston-Salem

Bynum M. Hunter, Esquire  
Smith Helms Mulliss & Moore  
Greensboro

Romallus O. Murphy, Esquire  
Greensboro

John A. Northen, Esquire  
Northen, Blue, Rooks, Thibaut,  
Anderson & Woods  
Chapel Hill

Charles Robert Rhodes, Esquire  
Rhodes Coats & Bennett  
Greensboro

James T. Williams, Esquire  
Brooks Pierce McLendon Humphrey & Leonard  
Greensboro

EX OFFICIO:

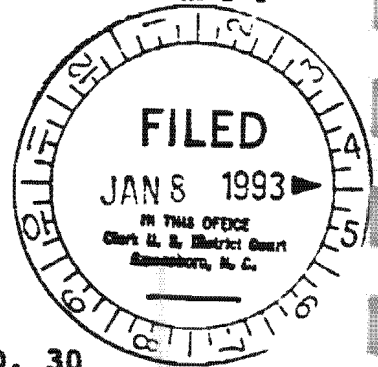
William K. Davis, Esquire  
Bell Davis & Pitt  
Winston-Salem

Daniel W. Fouts, Esquire  
Adams Kleemeier Hagan Hannah & Fouts  
Greensboro

APPENDIX B

Standing Order No. 30, filed Jan. 8, 1993

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



RE: MODIFICATION OF )  
CIVIL CASE ASSIGNMENT )  
PLAN )

STANDING ORDER NO. 30

In order to alleviate the backlog of civil cases, which has been created by the extremely heavy and time-consuming criminal docket of this court, and attain the objectives of the Civil Justice Reform Act of 1990 of reducing delays in the trial of civil cases, it is necessary to modify the Civil Case Assignment Plan of this district to more effectively benefit from the talents and abilities of the magistrate judges of this court in the disposition and trial of civil cases. Before making this modification the district judges have found that Magistrate Judges Russell A. Eliason and P. Trevor Sharp are experienced judicial officers who for over ten years have regularly handled civil cases from discovery through dispositive motions and trial. They are fully qualified to rule upon and try any civil case arising before this court. Accordingly:

1. One case out of each thirteen cases, excluding cases arising under 28 U.S.C. 2255 and appeals from Bankruptcy Court, will be randomly assigned to each magistrate judge to conduct all proceedings, including the ultimate trial upon consent. A district judge will be paired with each case assigned to a magistrate judge at the time the case is initially assigned. The pairing of district judges in these cases will be rotated so that the same

judge is not always paired with the same magistrate judge. The name of the district judge paired on a particular case will not be disclosed by the clerk's office.

2. The magistrate judge to whom the case is assigned will rule or make recommendations upon all motions, both non-dispositive and dispositive. If either party objects to a decision of the magistrate judge on a motion prior to trial in a case wherein consent has not been given, the objection will be ruled upon by the district judge paired with the magistrate judge. Subsequent motions in the case will be referred to the magistrate judge for ruling or recommendation.

3. When the issues are joined in these cases, the parties shall be given notice of this administrative assignment. The notice and forms sent to the parties shall inform them of their opportunity to consent to the trial jurisdiction of the magistrate judge, their duty to communicate their decision to the Clerk, and the fact that a failure to respond timely will be deemed a consent to the magistrate judge's complete jurisdiction. The notice and forms shall be substantially in the form of the attachments to this Order.

4. The Clerk shall hold confidential the decisions of the parties on the issue of consent, and shall not inform any district judge or magistrate judge of the parties' responses unless all parties consent, by affirmative response or failure to respond.

5. If all parties consent to the trial jurisdiction of a magistrate judge, the Clerk shall prepare for the Chief Judge an Order of Reference pursuant to 28 U.S.C. § 636(c). On entry of




such an order, the Clerk shall file any responses that have been submitted by the parties.

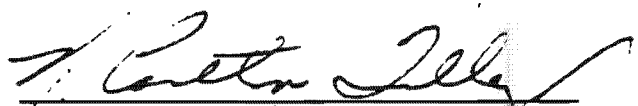
6. Appeal of a judgment entered by a magistrate judge will be to the Court of Appeals of the Fourth Circuit.

7. This rule shall be interpreted and enforced so as to protect the voluntariness of the parties' consent. No official of the court shall take any action that implies that the parties are not free to withhold consent without adverse substantive consequences.

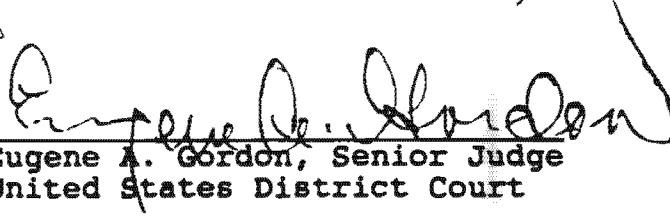
This modification of the Case Assignment Plan for this district will take effect JANUARY 19, 1993.


This the 5<sup>th</sup> day of JANUARY 1993.

  
Frank W. Bullock, Jr., Chief Judge  
United States District Court

  
N. Carlton Tilley, Jr., Judge  
United States District Court

  
William L. Osteen, Sr., Judge  
United States District Court

  
Eugene A. Gordon, Senior Judge  
United States District Court

  
Hiram H. Ward, Senior Judge  
United States District Court

  
Richard C. Erwin, Senior Judge  
United States District Court

# United States District Court

Middle District of North Carolina  
 Post Office Box 3223  
 Greensboro, North Carolina 27402

\_\_\_\_\_, 1993

Members of

Frank W. Bullock, Jr.

Chief Judge

Dear Counsel:

RE: \_\_\_\_\_ v. \_\_\_\_\_  
 \_\_\_\_\_:93CV000\_\_\_\_\_

The above-entitled case has been randomly selected and administratively assigned to Magistrate Judge \_\_\_\_\_ to conduct all proceedings, including the ultimate trial if necessary. Because of the dramatic increase in the number of criminal cases in recent years, district judges have had to give priority to the criminal docket as required by law. Under these circumstances your case can experience a significant delay, which can result in cost increases, before it can be tried by a district judge. Congress's enactment of the Civil Justice Reform Act has required the court to give increased attention to addressing costs and delays in resolving civil disputes. The Judicial Conference of the United States has encouraged the designation of magistrate judges to conduct all proceedings in civil cases, both jury and non-jury.

Magistrate Judges Russell A. Eliason and P. Trevor Sharp are experienced judicial officers who for over ten years have regularly handled civil cases from discovery through dispositive motions and trial. Trial before a magistrate judge, in addition to an earlier trial date, will also enable the court to give counsel and the parties a special setting. Appeal from a judgment entered by a magistrate judge will be to the Court of Appeals for the Fourth Circuit.

After discussion with your client, please return the enclosed decision form to the Clerk's Office within twenty (20) days. Cases in which consent is not given will nevertheless be first considered by the magistrate judge, who will make rulings or recommendations on all motions, including dispositive ones. **SINCE YOU ARE REQUIRED BY LAW TO COMMUNICATE YOUR DECISION TO THE CLERK, FAILURE TO RETURN THE FORM WILL BE DEEMED A CONSENT TO THE EXERCISE OF COMPLETE JURISDICTION BY THE MAGISTRATE JUDGE UNDER 28 U.S.C. § 636(c).**

Very truly yours,

Frank W. Bullock, Jr.  
 Chief Judge

FWB,jr.:jdl

Enclosure

DECISION REGARDING CONSENT TO PROCEED  
BEFORE A MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
\_\_\_\_\_ DIVISION

Plaintiff, )  
                  ) )  
v.                    )                    92:CV \_\_\_\_\_  
                  ) )  
Defendant.         )

DECISION REGARDING CONSENT TO PROCEED  
BEFORE A MAGISTRATE JUDGE

In accordance with the provisions of Title 28, U.S.C. § 636(c), the undersigned party hereby communicates its decision whether or not to voluntarily waive its right to proceed before a district judge and consent to have the assigned magistrate judge conduct any and all further proceedings in the case, including trial, and the entry of a final judgment. Any appeal from the judgment shall be taken to the Fourth Circuit Court of Appeals in the same manner as an appeal from any other judgment of the district court.

I consent \_\_\_\_\_

I do not consent \_\_\_\_\_

Date \_\_\_\_\_

**NOTICE OF RIGHT TO CONSENT TO THE  
EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C. § 636(c), you are hereby notified that the United States magistrate judges of this district court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case including a jury or non-jury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States magistrate judge must be entirely voluntary. Only if all the parties in the case consent to the reference to a magistrate judge will either the judge or magistrate judge to whom the case has been assigned be informed of your decision.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

APPENDIX C

Amendments to the Rules of Practice and Procedure  
of the United States District Court for the  
Middle District of North Carolina, Adopted  
May 11, 1995, to become effective July 1, 1995.

ADAMS KLEEMEIER HAGAN HANNAH & FOUTS  
 A PROFESSIONAL LIMITED LIABILITY COMPANY  
 ATTORNEYS AND COUNSELLORS AT LAW  
 GREENSBORO, NORTH CAROLINA

WALTER L. HANNAH  
 DANIEL W. FOUTS  
 ROBERT G. BAYNES  
 JOSEPH W. MOSS  
 CLINTON EDDY, JR.  
 M. JAY DEVANEY  
 MICHAEL H. BOOMIN  
 W. WINDLORNE KING III  
 F. COOPER BRANTLEY  
 BRUCE H. CONNORS  
 CHARLES T. HAGAN III  
 LARRY I. MOORE III  
 ELIZABETH DUNN WHITE  
 W. B. ROOMAN DAVIS  
 THOMAS W. BRAWNER  
 MARGARET SHEA BURKHAM  
 PETER G. PAPPAS

WILLIAM M. WILCOX IV  
 KATHERINE BONAN MCDIARMID  
 DAVID A. SENTER  
 J. ALEXANDER S. BARRETT  
 CHRISTINE L. MYATT  
 TRUDY A. ENNIS  
 A. SCOTT JACKSON  
 AMIEL J. ROSSAB  
 JAMES W. BRYAN  
 BETTY P. BALCOMB  
 EDWARD L. BLEYNAT, JR.  
 STEPHEN A. MAYO  
 LOUISE ANDERSON MAULTSBY  
 R. HARPER HECKMAN  
 D. BETH LANGLEY  
 DAVID S. POKELA

(910) 373-1600

TELECOPIER (910) 273-5357

JOHN A. KLEEMEIER JR. (1911-1973)  
 WILLIAM J. ADAMS JR. (1908-1983)

OF COUNSEL  
 CHARLES T. HAGAN, JR.

MAILING ADDRESS  
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 GREENSBORO, N.C. 27402

OFFICE  
 SUITE 500  
 NORTH CAROLINA TRUST CENTER  
 301 NORTH ELM STREET  
 GREENSBORO, N.C. 27402

MORACE R. KORNEGAY, COUNSEL

January 31, 1995

Honorable Joseph P. Creekmore  
 Clerk  
 United States District Court  
 Middle District of North Carolina  
 Post Office Box 2708  
 Greensboro, NC 27402

RE: Local Rules Advisory Committee --  
Middle District of North Carolina

Dear Joe:

The suggestions from the Local Rules Advisory Committee concerning the draft amendments to the Local Rules have been sparse. They are as follows:

1. Rule 202(f) contains a male gender reference in the next to last line. The suggestion is that the word "his" be changed to "any".
2. Rule 212(b) provides that a party wishing to present oral testimony in support of class certification must inform the Court in the class determination motion. It is suggested that any who oppose class certification be given an equal opportunity to present oral testimony. Perhaps the last sentence of Rule 212(b) could be changed to provide that any party wishing to present oral testimony in support of or in opposition to class determination set forth such request in the motion or opposition filed by such person.
3. A suggestion has been made that the Court might wish to consider amending Rule 120 to provide that the libraries are for the exclusive use of the judges and the clerk.

**RECEIVED**  
**In This Office**

JAN 31 1995

CLERK, U. S. DISTRICT COURT  
 GREENSBORO, N. C.

Honorable Joseph P. Creekmore  
January 31, 1995  
Page 2

4. Additional suggestions and comments are contained in a letter to you from Professor Walker dated October 27, 1994, a copy of which is attached hereto and incorporated herein by reference.

These are the only suggestions and comments which have been made by members of my committee.

Please do not hesitate to let me know if you want the Local Rules Advisory Committee to give any further thought to the proposed amendments.

With kindest regards, I am

Cordially yours,



Daniel W. Fouts

DWF/jah

SUMMARY OF PROPOSED LOCAL RULE CHANGES (Nov. 22, 1994)

- to provide for gender neutrality in all rules
- to reflect change in title of "magistrate" to "magistrate judge"
- to reflect that stipulations to discovery extensions that do not affect the end-date of discovery are effective without court order under Rule 29, and no order by the Clerk is needed
- to provide that a civil jury consists of 6 or more members
- to provide for working copies of proposed findings and jury instruction requests
- to limit principal briefs to 20 pages and reply briefs to 10 pages in all motions, including summary judgment motions
- to provide that each motion shall be filed in a separate pleading
- to provide that no briefs are needed in expedited discovery procedures
- to relocate our order to "opt out" of Rule 26(a)(1) to a more logical place in the local rules
- to provide that deposition notices no longer need be filed
- to exempt the United States from mediation
- to highlight that all motions allow for a 20 day response period, except for summary judgment motions which allow for 30 days
- to include the "form of brief" instructions (Local Rule 107 -- statement of facts, nature of matter, questions before the court) in our rule regarding summary judgment briefs
- to correct citation for authority for forfeiture of collateral in misdemeanor cases
- to delete prior rule that § 636(c) consent cannot be to a particular magistrate judge in view of current practices under Standing Order 30
- to recognize existing caselaw that intervening parties cannot be presumed to consent to magistrate judge even if all other parties have previously consented
- to recognize that existing caselaw requires that a motion to withdraw a consent reference to a magistrate judge must be ruled upon by a district judge



**RULES OF  
PRACTICE AND PROCEDURE  
of  
THE UNITED STATES  
DISTRICT COURT  
FOR THE MIDDLE DISTRICT  
OF NORTH CAROLINA**

- . GENERAL RULES
- . CIVIL RULES
- . CRIMINAL RULES
- . MAGISTRATE JUDGE RULES
- . RULES OF DISCIPLINARY  
ENFORCEMENT
- . MEDIATION RULES
- . FORMS

~~January 1, 1985~~  
April 1, 1995

## RULE 102

## SCOPE OF RULES

These rules shall govern the procedure in all proceedings before this court, except for proceedings before the bankruptcy court. As used in these rules, the terms "judge" ~~refers to a United States district court judge, and the term "magistrate" refers to a full-time United States magistrate~~ and "court" refer to either a United States District Judge or United States Magistrate Judge, unless the context or any rule of law indicates otherwise.

[Reason for change--magistrate judge title change]

## RULE 103

## ATTORNEYS

(a) Roll of Attorneys. [No change]

(b) Eligibility and Admission. To be eligible for admission to the bar of the court, a person must be admitted to the practice of law in this state and in good standing with the Supreme Court of North Carolina. A judge ~~or magistrate~~ will consider a request for admission only upon motion made in open court by a member of the bar of this court. Prior to being admitted to practice, an attorney must certify that ~~he~~ the attorney has read and is familiar with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Local Rules of this court, and the North Carolina Code of Professional Responsibility. Attorneys seeking admission to practice in this court must take an oath or make an affirmation in a form approved by the court and pay the filing fee.

(c) Litigants Must be Represented by Member of the Bar of This Court. [No change]

(d) Special Appearance.

(1) Attorneys who are members in good standing of the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court. By entering an appearance, an attorney agrees that:

(i) ~~he~~ the attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings; and that

(ii) ~~he~~ the attorney submits ~~himself~~ to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation for which ~~he~~ the attorney is specially appearing.

(2) [No change]

(e) Withdrawal of Appearance. No attorney who has entered an appearance in any civil or criminal action shall be permitted to withdraw ~~his~~ an appearance, or have it stricken from the record, except on order of the court.

[Reason for changes--magistrate judge title change; gender neutrality]

~~Amended July 1, 1988~~

**RULE 104**

**COURT SCHEDULE AND  
CONDUCT OF BUSINESS**

- (a) **Headquarters.** The headquarters of the court shall be located in Greensboro. All pleadings and papers submitted for filing shall be presented to the clerk in Greensboro, except that papers may be filed in open court in any court location when permitted by a judge ~~or magistrate~~.
- (b) **Scheduling.** [No change]
- (c) **Naturalization.** [No change]
- (d) **Divisions of the Court.** [No change]

[Reason for change--magistrate judge title change]

~~Amended July 1, 1988~~

RULE 107

BRIEFS

- (a) Contents. [No change]
- (b) Citation of Cases. [No change]
- (c) Citation of Unpublished Decisions. [No change]
- (d) Citations of Decisions Not Appearing in Certain Published Reports. [No change]
- (e) Additional Copies of Briefs for Court Use. At the time the original of a brief is filed, a working copy of the brief for use by the judge ~~or magistrate~~ shall be delivered to the clerk.

[Reason for changes--magistrate judge title change]

~~Amended July 1, 1988~~

## RULE 108

ORDERS AND JUDGMENTS GRANTABLE BY  
CLERK

(a) ~~Orders and Judgments.~~ The clerk is authorized to grant the following orders and judgments without direction by the court:

(1) Consent orders for the substitution of attorneys.

(2) Upon a showing of good cause, consent orders in civil actions for ~~extending for not more than 30 days (plus an additional 30 days in exceptional circumstances) the time within which to answer or otherwise plead, to answer interrogatories, to respond to requests for production of documents, to respond to requests for admission,~~ or to respond to motions.

(3) Consent orders dismissing an action, except in cases governed by Fed. R. Civ. P. 23 or 66.

(4) Entry of default and judgment by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1).

(5) Orders canceling liability on bonds other than orders disbursing funds from the court's registry account.

(6) Orders appointing persons to serve process pursuant to Fed. R. Civ. P. 4(c).

(7) ~~Ex parte orders as authorized in Local Rule 203(f).~~ Applications for extensions of time, orders or judgments shall be accompanied by a proposed order.

(b) Clerk's Action Reviewable. [No change]

[Reason for change--consent stipulations to discovery extensions that do not affect the end-date of the discovery period are effective without court order under new Fed. R. Civ. P. 29]

Amended ~~July 1, 1988~~

## RULE 109

## ACCESS TO COURT RECORDS

(a) Access. The public records of the court are available for examination in the clerk's office during normal business hours.

(1) No file, pleading or paper, or index card may be removed from the clerk's office without the approval of a judge ~~or~~ magistrate.

(2) When removal of a file or document is authorized, the clerk will set a date for its return and will require a written receipt for its release.

(b) Copies. The clerk will make and furnish copies of official court records upon request and upon payment of prescribed fees. The official court record consists of items filed on the right hand side of the case folder. Items filed on the left hand side of the case folder, while available for public examination, may not be copied without the written approval of a judge ~~or~~ magistrate. Requests for copies of items filed on the left hand side of the case folder must be submitted in writing to the clerk of court, who will refer the matter to the appropriate judge ~~or~~ magistrate and advise the requester of the judge's ~~or~~ magistrate's decision.

[Reason for changes--magistrate judge title change]

~~Amended July 1, 1988~~

RULE 110

SURETIES

- (a) Security. [No change]
- (b) Individual Sureties. [No change]
- (c) Approval. All bonds, guaranties, undertakings, and individual sureties must be approved by a judge, ~~magistrate~~, or the clerk. Individual sureties who justify on the basis of ownership of real or personal property may be required to provide proof of ownership such as a certificate of title, and a title search conducted by an attorney other than the attorney representing the party on whose behalf the bond is being posted, and give security in the form of a proper security instrument or deed of trust.

[Reason for change--magistrate judge title change]



RULE 112

JURIES IN CIVIL AND CRIMINAL CASES

- (a) Examination of Jurors. [No change]
- (b) Contacts Prohibited. [No change]
- (c) Disclosure of Names and Addresses of Prospective Jurors.  
[No change]
- (d) Number of Jurors in Civil Jury Cases. In civil jury cases the jury shall consist of six or more members.

[Reason for change--current practices of the court result in civil juries ranging from 6 to 12 members]

## RULE 119

PHOTOGRAPHS, RECORDINGS, AND  
BROADCASTS

Radio or television broadcasting and the use of photographic, electronic, or mechanical reproduction or recording equipment without court permission is prohibited in courtrooms or their environs. "Environs" is defined to mean the courtrooms, the offices of the judges, ~~magistrates~~, clerk, probation officers, or any corridor connecting or adjacent thereto. Ceremonial proceedings such as the administration of oaths of office to appointed officials of the court, naturalization, and presentation of portraits, may be photographed in or broadcast from the courtroom, under the supervision of the court. This rule does not apply to courtroom proceedings by other government agencies.

[Reason for change--magistrate judge title change]

RULE 120

COURT LIBRARIES

The court's libraries are maintained for the exclusive use of the judges ~~and magistrates~~.

[Reason for change--magistrate judge title change]

## RULE 122

## SANCTIONS

(a) Imposition of Sanctions. If an attorney or a party fails to comply with a local rule of this court, the court may impose sanctions against the attorney or party, or both. The court may make such orders as are just under the circumstances of the case, including the following:

(1) an order that designated matters or facts shall be taken as established for purposes of the action;

(2) an order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting ~~him~~ the party from introducing designated matters in evidence;

(3) an order striking out pleadings or parts thereof, or staying proceedings until the rule is complied with, or dismissing the action or any part thereof, or rendering a judgment by default against the failing party;

(4) an order imposing costs, including attorney's fees, against the party, or ~~his~~ the party's attorney, who has failed to comply with a local rule.

(b) Sanctions Within the Discretion of the Court. [No change]

[Reason for changes--gender neutrality]

RULE 201

COMMENCEMENT OF ACTIONS AND FILING OF  
PAPERS

- (a) Civil Docket Cover Sheet. [No change]
- (b) Records to be Removed. [No change]
- (c) Additional Copies for Court Use. A copy of the following documents shall be delivered to the clerk for use by the court when the original is filed:
  - (1) A brief.
  - (2) Proposed findings of fact and conclusions of law.
  - (3) Requests for jury instructions.

[Reason for change--to provide for working copies of proposed findings and jury requests]

## RULE 202

## MOTION PRACTICE

(a) Form. All motions, unless made during a hearing or at trial, shall be in writing and shall be accompanied by a brief ~~except~~ as provided in section (hi) of this rule. Each motion shall be set out in a separate pleading.

(b) Content. All motions shall state with particularity the grounds therefor, shall cite any statute or rule of procedure relied upon, and shall set forth the relief or order sought.

(c) Decided on Motion Papers and Briefs.

(1) Motions shall be considered and decided by the court on the pleadings, admissible evidence in the official court file, and motion papers and briefs, without hearing or oral argument, unless otherwise ordered by the court. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the court's attention in the motion or response.

(2) The clerk shall give at least five days' notice of the date and place of oral argument. The court, however, for good cause shown may shorten the five-day notice period.

(d) Limitations on Length of Briefs. Briefs in support of motions and responsive briefs are limited in length to 20 pages, and reply briefs are limited to 10 pages.

(~~de~~) Movant's Supporting Documents and Briefs. When allegations of facts not appearing of record are relied upon to support a motion, affidavits, parts of depositions, and other pertinent documents then available shall accompany the motion. If supporting documents are not then available, the party may move for an extension of time in accordance with section (~~fg~~) of this rule.

(~~ef~~) Response to Motion and Brief. The respondent, if opposing a motion, shall file a response, including brief, within 20 days after service of the motion (30 days if the motion is for summary judgment; see Local Rule 206[d] and [e]). If supporting documents are not then available, the respondent may move for an extension of time in accordance with section (~~fg~~) of this rule. For good cause appearing therefor, a respondent may be required to file his response and supporting documents, including brief, within such shorter period of time as the court may specify.

(~~fg~~) Extension of Time for Filing Supporting Documents and Briefs. Upon proper motion accompanied by a proposed order, the clerk may enter an ex parte order, specifying the time within which supporting documents and briefs may be filed pursuant to sections (~~de~~) and (~~ef~~), if it is shown in writing that such documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response shall not run during any such extension. If good cause to grant the motion is not apparent upon the face of the motion, the clerk may direct that the motion be served upon the opposing party, who shall be allowed 10 days to respond.

(~~gh~~) Reply Brief. A reply brief ~~of no more than ten pages~~ may be filed within 10 days after service of the response. A reply brief is limited to discussion of matters newly raised in the

response. A suggestion of subsequently decided controlling authority, without argument, may be filed at any time prior to the court's ruling and shall contain only the citation to the case relied upon, if published, or a copy of the opinion if the case is unpublished.

(~~h~~<sub>i</sub>) **Motions Not Requiring Briefs.** No brief is required by either movant or respondent, unless otherwise directed by the court, with respect to the following motions: (1) discovery motions in which the parties have agreed to the expedited procedures described in Local Rule 204(d); (~~2~~<sub>2</sub>) for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed or as extended by previous orders; (~~3~~<sub>3</sub>) to continue a pretrial conference, hearing, or the trial of an action; (~~4~~<sub>4</sub>) to add parties; (~~5~~<sub>5</sub>) to amend the pleadings; (~~6~~<sub>6</sub>) to file supplemental pleadings; (~~7~~<sub>7</sub>) to appoint a next friend or guardian ad litem, (~~8~~<sub>8</sub>) for substitution of parties; and (~~9~~<sub>9</sub>) to stay proceedings to enforce judgment. The above motions, while not required to be accompanied by a brief, must state good cause therefor and cite any applicable rule, statute, or other authority justifying the relief sought. These motions must be accompanied by a proposed order.

(~~i~~<sub>j</sub>) **Failure to File and Serve Motion Papers.** The failure to file a brief or response within the time specified in this rule shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect. A motion unaccompanied by a required brief may, in the discretion of the court, be summarily denied. A response unaccompanied by a required brief may, in the discretion of the court, be disregarded and the pending motion may be considered and decided as an uncontested motion. If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.

[Reason for changes--to provide that each motion shall be in a separate pleading; to provide a page limitation for briefs on all motions of 20 pages for principal briefs and 10 pages for reply briefs; to provide that no briefs are necessary in expedited discovery procedures under new Local Rule 204(d)]

## RULE 203

## INITIAL PRETRIAL PROCEDURES

(a) Requirement for Initial Pretrial Order. [No change]

(b) Meeting of the Parties. Within the time set by Fed. R. Civ. P. Rule 16(b), the clerk shall schedule an initial pretrial conference and give at least thirty (30) days notice thereof. The parties must hold their Fed. R. Civ. P. 26(f) meeting at least 14 days before the scheduled initial pretrial conference and submit to the court their report within 10 days thereafter. The parties may not stipulate out of the Rule 26(f) meeting but must meet to discuss a proposed discovery plan. The parties are not required to make the initial disclosures identified in Fed. R. Civ. P. 26(a)(1), as the court elects to be exempt from the provisions of Rule 26(a)(1). At the Rule 26(f) meeting, the parties shall discuss:

- (1) All matters identified in Rules 16(b) and (c) and 26(f),
- (2) The possibility of settlement,
- (3) The proper management track for the case under Local Rule 204,
- (4) The timing of any mediated settlement conference under Local Rules 205 and 602, and the identity of any agreed-upon mediator.
- (5) The nature of the documents and information believed necessary for the case,
- (6) Issues of burden and relevance and the discoverability of different types of documents, and
- (7) A preliminary schedule for depositions, to be updated at reasonable intervals upon communication between the parties.
- (8) The decision of each party whether or not to consent to the trial jurisdiction of a magistrate judge.

Lead counsel for each party must meet and discuss the above-listed matters in a face-to-face meeting unless the offices of the parties' lead counsel are separated by more than 150 miles, in which event lead counsel may conduct the conference by telephone. In the absence of agreement to the contrary, the meeting of the parties shall be held in the office of the attorney nearest the court location where the initial pretrial conference is scheduled.

The parties shall jointly prepare a Rule 26(f) Report (Local Rule Form 1) if they are in agreement concerning a discovery plan for the case. If they do not agree, each shall file a separate Rule 26(f) Report (Local Rule Form 2), setting forth its position on disputed matters. The Reports must be filed with the court within 10 days of the Rule 26(f) meeting.

(c) Initial Pretrial Order by Conference. [No change]

(d) Initial Pretrial Order upon the Joint Rule 26(f) Report. [No change]

(e) Discovery With Respect to Expert Witnesses. [No change]

~~(f) Exception from Fed. R. Civ. P. 26(a)(1). Fed. R. Civ. P.~~



26(a)(1), which creates a requirement for initial disclosures without a discovery request, provides that any district court may opt out of its provisions. This court does so. The provisions of that rule shall not apply in civil proceedings in this court.

[Reason for change--to move the election to opt out of Rule 26(a)(1) from the very end of the rule (Section [f]) to a place earlier in the rule (Section [b]), where it more logically belongs]

## RULE 204

## DIFFERENTIATED CASE MANAGEMENT AND DISCOVERY

- (a) Differentiated Case Management. [No change]
- (b) Discovery Procedures and Materials.
  - (1) [No change]
  - (2) [No change]
  - (3) [No change]
  - (4) Depositions and deposition notices, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless the court so orders or unless the court will need such documents in a pretrial proceeding. All discovery papers must be served on other counsel or parties. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court when needed or ordered. Any party seeking to compel discovery or other pretrial relief based upon discovery material which has not been filed with the clerk must identify the specific portion of the material which is directly relevant and ensure that it is filed as an attachment to the application for relief.
- (c) Conference of Attorneys With Respect to Motions and Objections Relating to Discovery. [No change]
- (d) Expedited Resolution of Some Discovery Disputes. [No change]
- (e) Award of Expenses of Discovery Motion. [No change]
- (f) Completion of Discovery. [No change]
- (g) Extension of Time for Discovery the Discovery Period or Request for More Discovery. [No change]
- (h) Trial Preparation After the Close of Discovery. [No change]

[Reason for change--to provide that deposition notices not be filed with the clerk]

## RULE 205

## MEDIATED SETTLEMENT CONFERENCES

(a) Mediated Settlement Conferences during Discovery. [No change]

(b) Automatic Selection by these Rules. Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the court. These categories include, according to designations on the civil cover sheet (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/exchange [category 850], and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed. R. Civ. P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See Local Rule 203(b)(c) and (d). Cases wherein the United States is a party or the plaintiff appears pro se are not included within this automatic selection for mediation.

(c) Exemption from Mediated Settlement Conference. [No change]

[Reason for change--the United States is exempted from mediation because it may lack authority to pay mediator fees]

## RULE 206

## SUMMARY JUDGMENT MOTIONS

(a) Notice of Dispositive Motion. [No change]  
 (b) Filing of Dispositive Motions. [No change]  
 (c) Limitations on Length of Briefs. The page limitations for briefs on all motions, established by Local Rule 202(d), apply to summary judgment briefs. Principal briefs are limited to 20 pages, and reply briefs are limited to 10 pages.

(ed) Form of Briefs -- Summary Judgment Motion by Claimant. ~~A party requesting summary judgment upon its claim(s) shall set out in no more than 4 pages per claim.~~ A party requesting summary judgment on its claim shall set out a statement of the nature of the matter before the court, a statement of facts, and a statement of the questions presented as provided in Local Rule 107(a)(1)-(3). The party shall also set out the elements that it must prove (with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of those elements.

In a responsive brief ~~of no more than 4 pages per claim,~~ the opposing party may, within 30 days after service of the summary judgment motion and brief, set out the statements required by Local Rule 107(a)(1)-(3) and also set out the elements that the claimant must prove (with citations to supporting authority), and either identify any element as to which evidence is insufficient (and explain why the evidence is insufficient), or point to specific, authenticated facts existing in the record or set forth in accompanying affidavits that show a genuine issue of material fact, or explain why some rule of law (e.g., an applicable statute of limitations) would defeat the claim. The failure to file a response may cause the court to find that the motion is uncontested.

In a reply brief ~~of no more than 2 pages per claim,~~ the claimant may, within 10 days of service of the response, address matters newly raised in the response.

~~Page limitations set by this rule are exclusive of a cover page and conclusion page for each brief.~~

(de) Form of Briefs -- Summary Judgment Motion by Defending Party. A party moving for summary judgment upon an opposing party's claim(s) shall set out a statement of the nature of the matter before the court, a statement of facts, and a statement of the questions presented as provided in Local Rule 107(a)(1)-(3). ~~The party shall also set out in no more than 4 pages per claim~~ the elements that the claimant must prove (with citations to supporting authority), and explain why the evidence is insufficient to support a jury verdict on an element or elements, or why some other rule of law would defeat the claim.

In a responsive brief ~~of no more than 4 pages per claim,~~ the party having made the challenged claim may, within 30 days after service of the summary judgment motion and brief, file with the court a response that sets out the statements required by Local

Rule 107(a)(1)-(3) and also sets out the elements that it must prove (with citations to supporting authority), and the specific, authenticated facts existing in the record or set forth in accompanying affidavits that would be sufficient to support a jury finding of the existence of the disputed elements. The failure to file a response may cause the court to find that the motion is uncontested.

In a reply brief ~~of no more than 2 pages per claim~~, the defending party may, within 10 days of service of the response, address matters newly raised in the response.

~~Page limitations set by this rule are exclusive of a cover page and conclusion page for each brief.~~

(e) Summary Judgment Motions and Trial Dates. [No change]

(f) Failure to Timely File Dispositive Motions. [No change]

[Reason for changes--to specifically apply the "universal" page limitations on briefs of 20 and 10 to summary judgment briefs; to require specifically the briefing format set out in Local Rule 107]

## RULE 208

## TRIAL PROCEDURE

(a) Opening Statements in Civil Actions. [No change]

(b) Documents, Other than Exhibits, Used at Trial. When counsel expects to examine or cross-examine a witness concerning a document which will not be offered as an exhibit, counsel shall have at trial a copy of the document for use by the judge—~~ex~~ magistrate.

(c) Absence During Return of Verdict. In a jury trial, if a party or counsel is voluntarily absents ~~himself~~ from the courtroom prior to the return of the verdict, it shall be conclusively presumed that such party or counsel waived ~~his~~ presence.

[Reason for changes--magistrate judge title change; gender neutrality]

RULE 210

AWARD OF STATUTORY ATTORNEY'S FEES

[No change]

[Reason for no change--New Fed. R. Civ. P. 54(d)(2) requires that motions for attorney's fees be filed within 14 days of entry of judgment unless the court otherwise orders. This is too short a time to allow for the parties to attempt to reach an agreement, as is required under our current Local Rule that allows 60 days for the filing of the motion]

## RULE 212

## CLASS ACTIONS

(a) Class Action Complaint. [No change]

(b) Motion for Class Action Determination. Within 90 days after the filing of a complaint in a class action, unless this period is extended by court order, the plaintiff shall file a separate motion for a determination under Rule 23(c)(1), Fed. R. Civ. P., as to whether the case may be maintained as a class action. If a party wishes to present oral testimony to support the class action motion, ~~he~~ the party must so inform the court in ~~his~~ the motion. In ruling upon such a motion, the court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the court for renewal of the motion.

(c) Class Action Counterclaims or Cross-Claims. [No change]

(d) Burden of Proof; Notice. [No change]

[Reason for change-- gender neutrality]



## RULE 213

MINORS AND INCOMPETENTS  
AS PARTIES

- (a) Capacity to Sue or Be Sued. [No change]
- (b) Appointment of Guardian *ad litem*.
  - (1) Application for the appointment of a guardian *ad litem* to sue on behalf of a minor or incompetent may be made by motion submitted contemporaneously with a complaint. The complaint may be filed when the appointment is made by a judge ~~or magistrate~~.
  - (2) [No change]
  - (3) [No change]
- (c) Termination of Actions; Court Hearing and Approval. [No change]
- (d) Fees. [No change]
- (e) Consent Judgments Approving Settlement. [No change]
- (f) Payment of Judgment. [No change]

[Reason for change--magistrate judge title change]

## RULE 304

PAYMENT OF FIXED SUM  
IN LIEU OF APPEARANCE IN  
CERTAIN MISDEMEANOR CASES

Pursuant to ~~Rule 4(a), Rules of Procedure for Trial of Misdemeanors Before United States Magistrates~~ Fed. R. Crim. P. 58(d) and in the interest of justice and good court administration, collateral may be posted in lieu of the appearance of an offender for certain misdemeanors under federal statutes and regulations or state statutes made applicable by the Assimilative Crimes Statute (18 U.S.C. § 13). There shall be maintained in the office of the clerk a list of the misdemeanors and fines applicable thereto for which forfeiture of collateral security may be posted.

The posting of collateral signifies that the defendant does not contest the charge nor request a trial. Such collateral shall be administratively forfeited to the United States. Forfeiture of collateral in lieu of personal appearance is not permitted for any listed offense denominated a "mandatory appearance" offense, for an aggravated or major offense, or for multiple offenses arising out of the same facts or sequence of events.

The clerk shall certify the record of any forfeiture of collateral for a traffic violation to the proper state authority.

[Reason for change--the old rules for the trial of misdemeanors now appear in Fed. R. Crim. P. 58]

## RULE 305

## FAIR TRIAL DIRECTIVES

## (a) Prohibited Statements; Attorney's Obligations.

(1) [No change]

(2) [No change]

(3) Section (a)(2) above does not preclude an attorney from announcing:

- (i) The name, age, residence, occupation, and family status of the accused.
- (ii) Any information necessary to aid in the apprehension of an accused or to warn the public of any dangers ~~he may present~~.
- (iii) A request for assistance in obtaining evidence.
- (iv) The identity of the victim of the crime.
- (v) The fact, time, and place of arrest, resistance, pursuit, and use of weapons
- (vi) The identity of investigating and arresting officers or agencies and the length of the investigation.
- (vii) The nature, substance, or text of the charge.
- (viii) Quotations from or references to public records of the court in the case.
- (ix) The scheduling or result of any step in the judicial proceedings
- (x) That the accused denies the charges ~~made against him~~.

(4) The foregoing provisions of this rule do not preclude an attorney from replying to charges of misconduct publicly made against the attorney or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(b) Attorney's Employees and Associates. An attorney must exercise reasonable care to prevent ~~his~~ employees and associates from making any extrajudicial statement which the attorney would be prohibited from making under this rule.

[Reason for changes--gender neutrality]

**IV. MAGISTRATE JUDGE RULES**

[Reason for change--magistrate judge title change]

## RULE 401

AUTHORITY OF MAGISTRATES JUDGES

## (a) Designation to Conduct Trials and to Perform Other Duties.

(1) Magistrates judges are authorized and designated to exercise the powers and authority and to perform the duties enumerated in 28 U.S.C. § 636(b)(1) and (2).

(2) Magistrates judges serving this court are specially designated to:

(i) exercise civil jurisdiction to conduct any or all proceedings in jury or nonjury cases and order the entry of judgment in any case referred to them for that purpose, pursuant to 28 U.S.C. § 636(c), and

(ii) exercise jurisdiction to try persons accused of, and sentence persons convicted of, criminal misdemeanors.

(b) Authority to Perform Additional Duties. Pursuant to 28 U.S.C. § 636(b)(3), magistrates judges are authorized to perform additional functions and duties, including the following:

(1) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings;

(2) Conduct calendar and status calls for civil and criminal calendars, and determine motions to expedite or postpone the trial of cases;

(3) Conduct arraignments in cases not triable by the magistrate judge to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendere* and ordering a presentence report in appropriate case;

(4) Conduct voir dire and select petit juries for the court;

(5) Accept petit jury verdicts in civil cases in the absence of a district judge;

(6) Conduct preliminary proceedings relating to the potential revocation of probation;

(7) Issue subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum*, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings;

(8) Order the exoneration or forfeiture of bonds;

(9) Conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);

(10) Conduct examinations of judgment debtors, in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(11) Review petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act;

(12) Conduct such hearings as are necessary or appropriate, and submit to a district judge proposed findings of fact and recommendations for disposition of applications for judgment by default pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, or motions to set aside judgments by default pursuant to Rule 55(c) of the Federal Rules of Civil Procedure;

(13) Consider an application by complainant pursuant to 42 U.S.C. § 2000e-5(f)(1), and in such circumstances as may be deemed just, appoint an attorney for such complainant, and authorize the commencement of an action without payment of fees, costs, or giving security therefor;

(14) Issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States Government;

(15) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184;

(16) Supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. § 1782;

(17) Require compliance with local rules with regard to pro se petitions under 42 U.S.C. § 1983;

(18) Issue orders of withdrawal from the court registry of funds pursuant to 28 U.S.C. § 2042; and

(19) Perform any additional duty which is not inconsistent with the Constitution and laws of the United States.

[Reason for changes--magistrate judge title change]

## RULE 402

CONSENT TO CIVIL  
TRIAL JURISDICTION

## (a) Consent to Exercise of Civil Trial Jurisdiction.

(1) The consent of a party to the exercise of civil trial jurisdiction authorized in 28 U.S.C. § 636(c)(1) may be communicated to the clerk by letter, or by a form available in the clerk's office, signed by the party or his the party's attorney.

~~(2) The consent shall be communicated to the clerk prior to the time of trial. The consent may not be limited to trial by a particular magistrate.~~

~~(3)~~(2) The consent of a party will be placed in the public court file only when the court has ordered the case referred to a magistrate judge.

~~(4) Parties intervening by permission after reference are deemed to have consented.~~

(b) Withdrawal of Consent. After a case has been referred, the consent of the parties to the exercise of a magistrate's judge's jurisdiction may not be withdrawn without the approval of the ~~court~~ district judge who signed the order of reference.

(c) Reference Discretionary. Reference of a case to a magistrate judge after consent of all parties is within the discretion of the court.

[Reason for changes--Standing Order 30 permits the parties to consent to a designated magistrate judge, and that rule has been successful in encouraging consents; parties who intervene must, under existing caselaw, affirmatively consent to the magistrate judge or the reference must be withdrawn; motions to withdraw consent should be directed to the referring district judge]

## RULE 403

CONSENT TO DESIGNATION  
OF MAGISTRATE JUDGE  
AS A SPECIAL MASTER

(a) Consent. Upon the written consent of the parties, a magistrate judge may be designated to serve as a special master in any civil proceeding without a showing of exceptional conditions or that the issues are complicated.

(b) Reference. Reference of a case to a magistrate judge as a special master is within the discretion of the court, but the consent of the parties may not thereafter be withdrawn without approval of the ~~court~~ referring district judge

[reason for changes--magistrate judge title change; the referring district judge must, under existing law, decide questions of withdrawal of the reference].



**RULE 404**

**ASSIGNMENT OF MATTERS  
TO MAGISTRATES JUDGES**

Duties and cases may be assigned or referred to a magistrate judge by a court order entered in the action or by the clerk in compliance with standing orders or the instructions of a district judge.

[Reasons for changes--magistrate judge title change]

## RULE 405

OBJECTIONS; APPEALS;  
STAYS OF ORDER

(a) Objections to Magistrate's Judge's Order. The procedure for filing objections to an order in a nondispositive matter shall be as set forth in Rule 72(a), Fed. R. Civ. P.

(b) Objections to Magistrate's Judge's Recommendation. The procedure for filing objections to a recommendation on a dispositive or other matter shall be as set forth in Rule 72(b), Fed. R. Civ. P.

(c) Appeal From Judgment. The procedure for appeal from a judgment in an action tried by consent to a magistrate judge shall be as set forth in Rules 73 through 76, Fed. R. Civ. P.

(d) Application for Stay of Magistrate's Judge's Order. Application for stay of a magistrate's judge's order pending review of objections made thereto must first be made to the magistrate judge.

[Reason for changes--magistrate judge title change]

## RULE 507

DISBARMENT ON CONSENT WHILE UNDER  
DISCIPLINARY INVESTIGATION OR PROSECUTION

- (a) Consent to Disbarment. [No change]
  - (1) ~~his~~ the attorney's consent is freely given.
  - (2) ~~he~~ the attorney is aware of the pending investigation or proceeding,
  - (3) ~~he~~ the attorney acknowledges the material facts of misconduct, and
  - (4) ~~he~~ the attorney consents because ~~he~~ the attorney knows that he or she could not defend ~~himself~~ successfully against charges of misconduct.
- (b) Order of Disbarment. [No change]
- (c) Record. [No change]

[Reason for changes--gender neutrality]

## RULE 508

## REINSTATEMENT

(a) Automatic Reinstatement; Reinstatement by Order. [No change]

(b) Time for Petition. [No change]

(c) Procedure. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the court. Upon receipt of the petition, the chief judge shall assign the matter for a prompt hearing before a judge (or judges) of the court and may, in ~~his~~ the chief judge's discretion, refer the petition to counsel for investigation. The judge assigned to the matter shall schedule a hearing at which petitioner shall have the burden of demonstrating by clear and convincing evidence that ~~he~~ the attorney has the moral qualifications, competency and learning of the law required for admission to practice law before this court, and that ~~his~~ the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or the administration of justice or subversive of the public interest. In all proceedings upon a petition for reinstatement, cross-examination of the witness of the attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel if the matter has been referred to counsel by the court.

(d) Costs. [No change]

(e) Order of Reinstatement. If the petitioner is found to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found to be fit to resume the practice of law, the judgment shall reinstate ~~him~~ the petitioner, provided that the judgment may make reinstatement conditions upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for 5 years or more, reinstatement may be conditioned, in the discretion of the judge, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of North Carolina of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(f) Successive Petitions. [No change]

[Reason for changes--gender neutrality]

## RULE 510

## SERVICE OF PAPERS AND OTHER NOTICES

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the attorney. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the attorney or to ~~his~~ the attorney's counsel and is posted by regular mail.

[Reason for changes--gender neutrality]

## RULE 602

## SELECTION OF CASES FOR MEDIATED SETTLEMENT CONFERENCES

(a) **Automatic Selection by these Rules.** Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the court. These categories include, according to designations on the civil cover sheet (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-444], (4) labor [all categories, 710-791], (5) property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/exchange [category 850], and (9) environmental matters [category 893]. The parties to these actions shall discuss mediation plans at the Fed. R. Civ. P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. See Local Rule 203(b)(c) and (d). Cases wherein the United States is a party or the plaintiff appears pro se are not included within this automatic selection for mediation.

- (b) **Discretionary Selection by the Court.** [No change]
- (c) **Stipulated Selection by the Parties.** [No change]
- (d) **Exemption from Mediation.** [No change]

[Reason for change--the United States is exempted from mediation because it may lack authority to pay mediator fees]

APPENDIX D

CJRA Annual Report and Statistics (Jan. 11, 1995)

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

*Clerk's Office  
Greensboro, North Carolina*

**To: Judges and Magistrate Judges**

**From: J.P. Creekmore** 

**Date: January 17, 1995**

**Subject: CY 94 Statistics**

\*\*\*\*\*MEMORANDUM\*\*\*\*\*

I have previously provided you a copy of certain raw statistics for the first twelve months operation of our CJRA plan--December 1, 1993 to November 30, 1994. The attached statistics are the ones normally provided for the entire calendar year--except I have added the number of criminal defendants pending sentence, since the number (120) seems significant.

Terminations of civil cases increased by 12.05% in CY 94 over CY 93. The number of pending civil cases declined by 3.25% during calendar year 94 despite a 2.99% increase in the number of civil cases filed.

Civil prisoner cases, which increased by 53 in CY 93 over CY 92, increased again in CY 94 by 27 cases or 12%. Seven of those cases opened and closed on the same date.

Employment discrimination cases increased by 15.3% or 10 cases (which is approximately two cases per judge).

Sixty-six or 13.44% fewer criminal defendants were terminated in CY 94 than in CY 93. However, only nineteen more defendants were pending at the close of CY 94 than CY 93--lending some doubt about the significance of the 120 defendants pending sentence or the fact that 13.44% fewer defendants were terminated--especially since 6.88% more cases were terminated. In the past I have not tracked the number of defendants awaiting sentence. I began to track it this year because of the extra days now allowed for the presentence report which elongates the period that a case remains open.

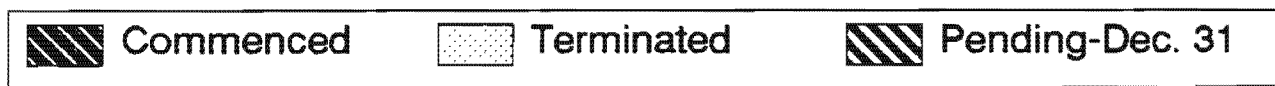
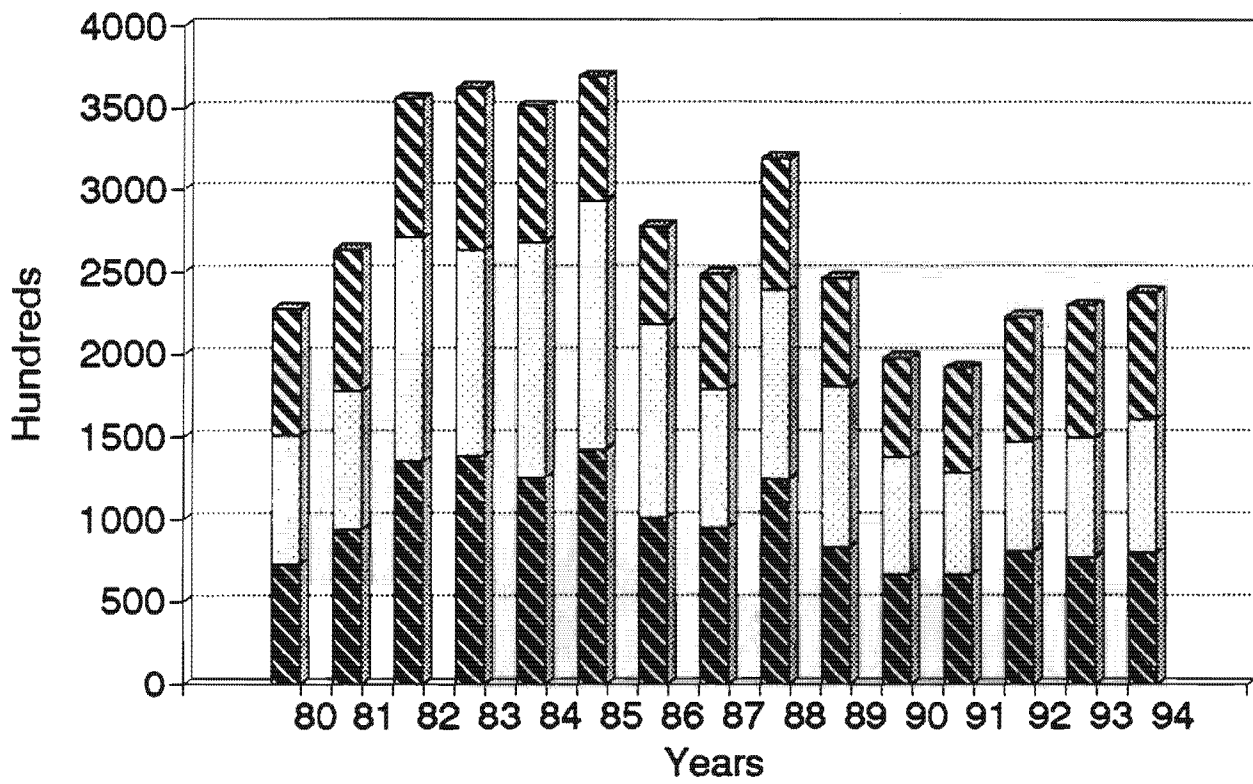
Criminal cases increased by 10.07% during the periods compared. This increase in the number of cases only amounted to an increase of 15 defendants--3.5% compared to CY 93.



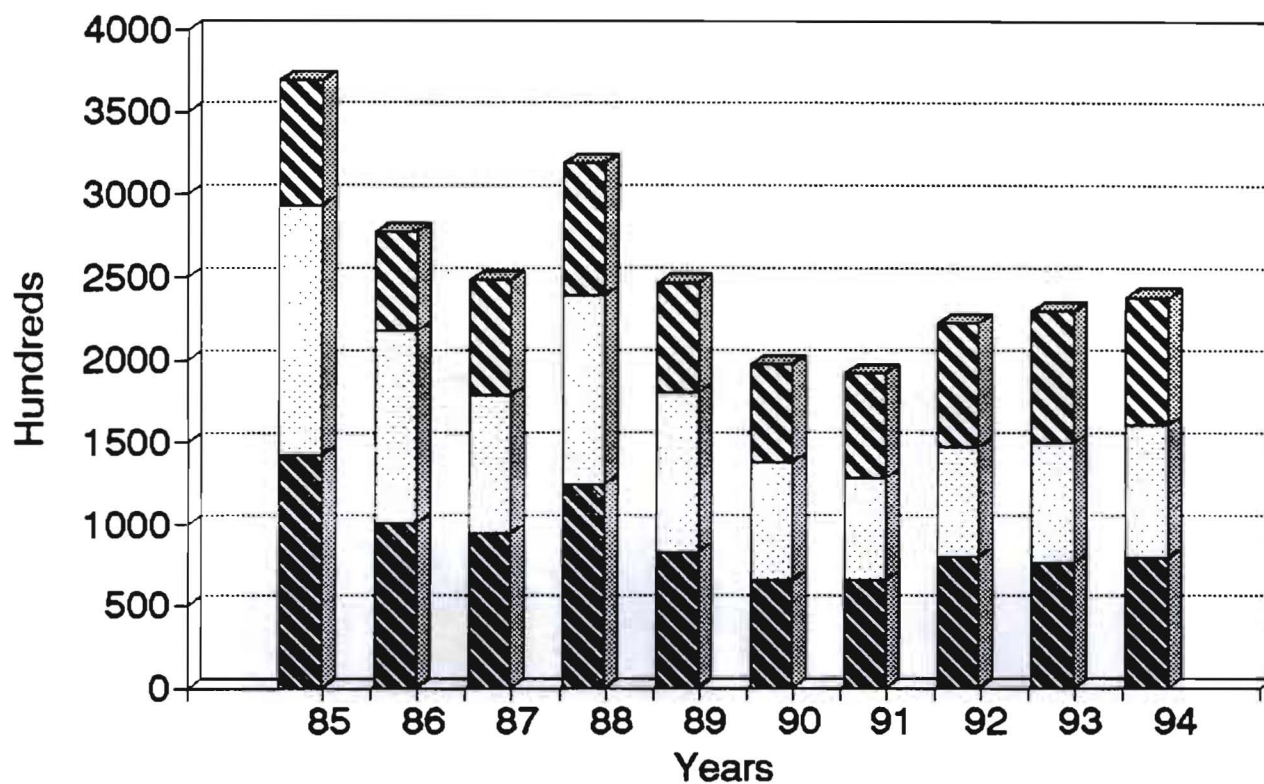
MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL CASES COMMENCED AND TERMINATED  
BY CALENDAR YEAR, AND PENDING AT THE  
CLOSE OF YEAR 1994

TOTAL CIVIL CASES				
CALENDAR YEAR	COMMENCED	TERMINATED	PENDING DEC. 31	
80	726 (295 govt)	782 (311 govt)	769	
81	940 (520 govt)	846 (337 govt)	863	
82	1348 (934 govt)	1360 (935 govt)	851	
83	1391 (933 govt)	1245 (800 govt)	997	
84	1261 (781 govt)	1426 (926 govt)	832	
85	1429 (904 govt)	1506 (926 govt)	755	
86	1015 (449 govt)	1171 (597 govt)	599	
87	945 (373 govt)	843 (316 govt)	701	
88	1248 (421 govt)	1148 (456 govt)	801	
89	835 (323 govt)	977 (347 govt)	659	
90	661 (243 govt)	723 (274 govt)	597	
91	659 (233 govt)	624 (186 govt)	631	
92	801 (345 govt)	670 (241 govt)	762	
93	769 (262 govt)	730 (272 govt)	801	
94	792 (259 govt)	818 (256 govt)	775	
<hr/>				
INCREASE	2.99%	12.05%	-3.25%	
DECREASE				
94 v 93				

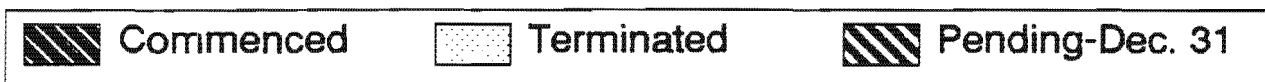
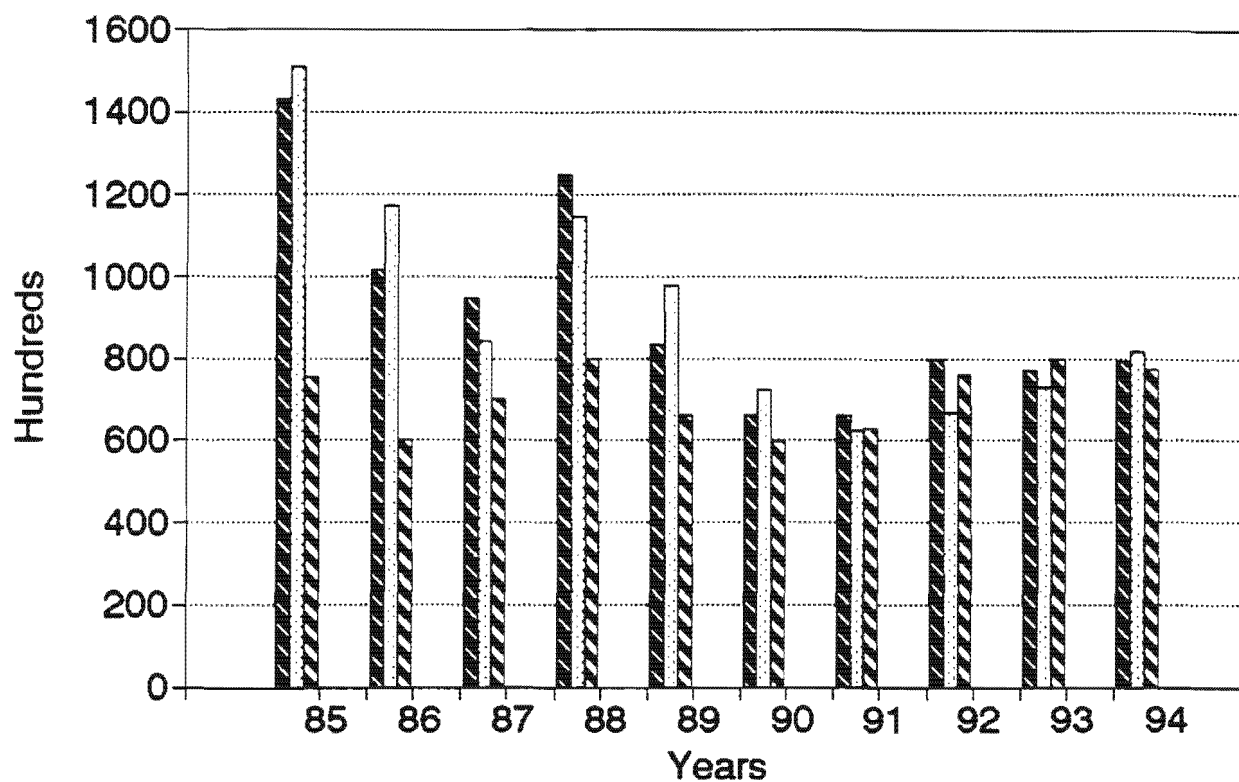
**CIVIL CASES-COMMENCED, TERMINATED  
& PENDING-CLOSE OF CY 1994, USDC,MDNC**



**CIVIL CASES-COMMENCED, TERMINATED  
& PENDING-CLOSE OF CY 1994, USDC, MDNC**



**CIVIL CASES-COMMENCED, TERMINATED  
& PENDING-CLOSE OF CY 1994, USDC,MDNC**



MIDDLE DISTRICT OF NORTH CAROLINA  
CRIMINAL CASES COMMENCED AND TERMINATED  
BY CALENDAR YEAR AND PENDING AT THE  
CLOSE OF YEAR 1994

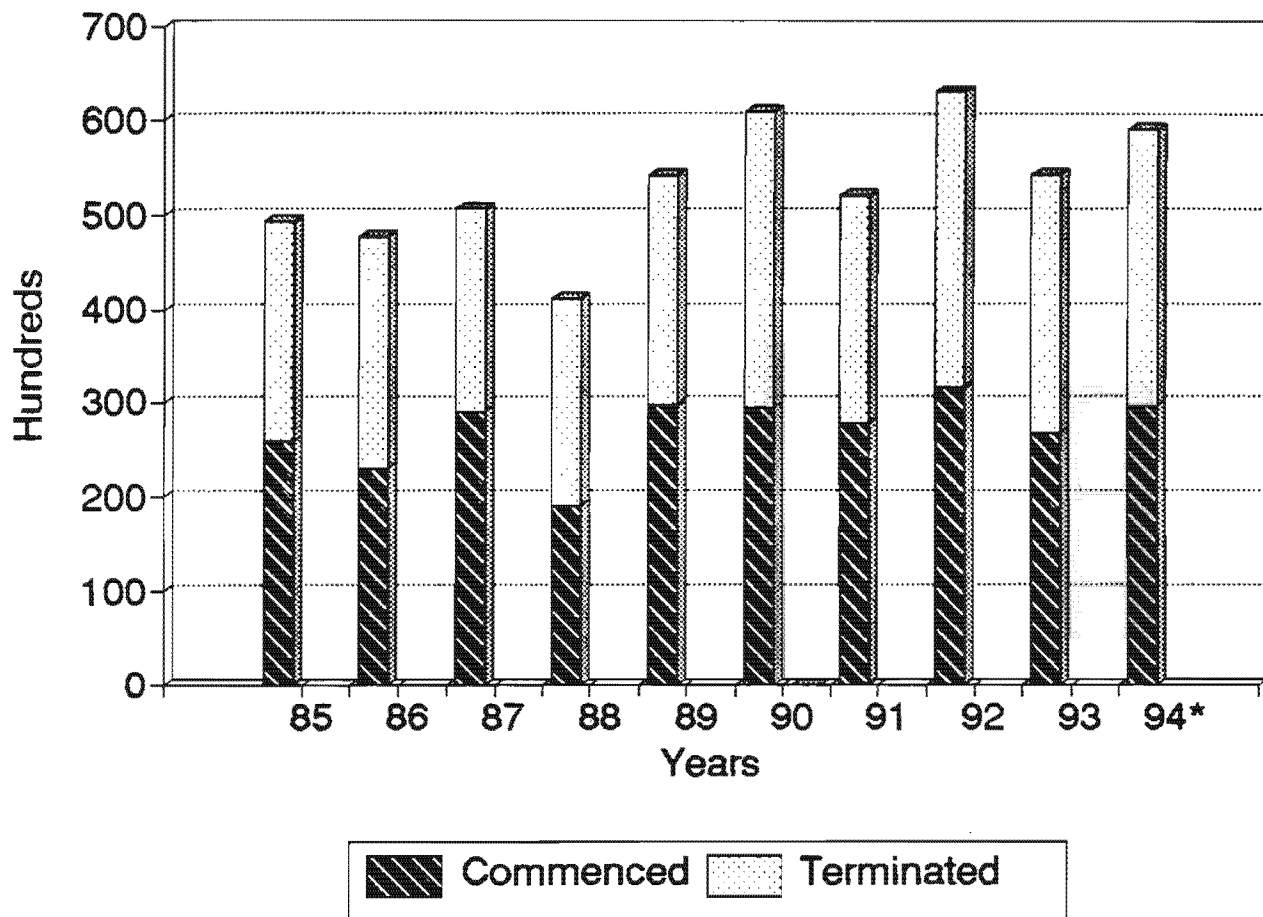
TOTAL CRIMINAL CASES			
CALENDAR YEAR	COMMENCED	TERMINATED	DEC. 31
80	153	162	40
81	151	151	40
82	213	180	73
83	228	226	75
84	219	211	93
85	260	235	108
86	229	248	89
87	291	217	163
88	190	222	131
89	298	244	185
90	294	316	163
91	278	245	196
92	317	314	199
93	268	276	191
94*	295	295	191
INCREASE/ DECREASE 94 v 93	10.07%	6.88%	0.00%

\* 444 Defendants Commenced

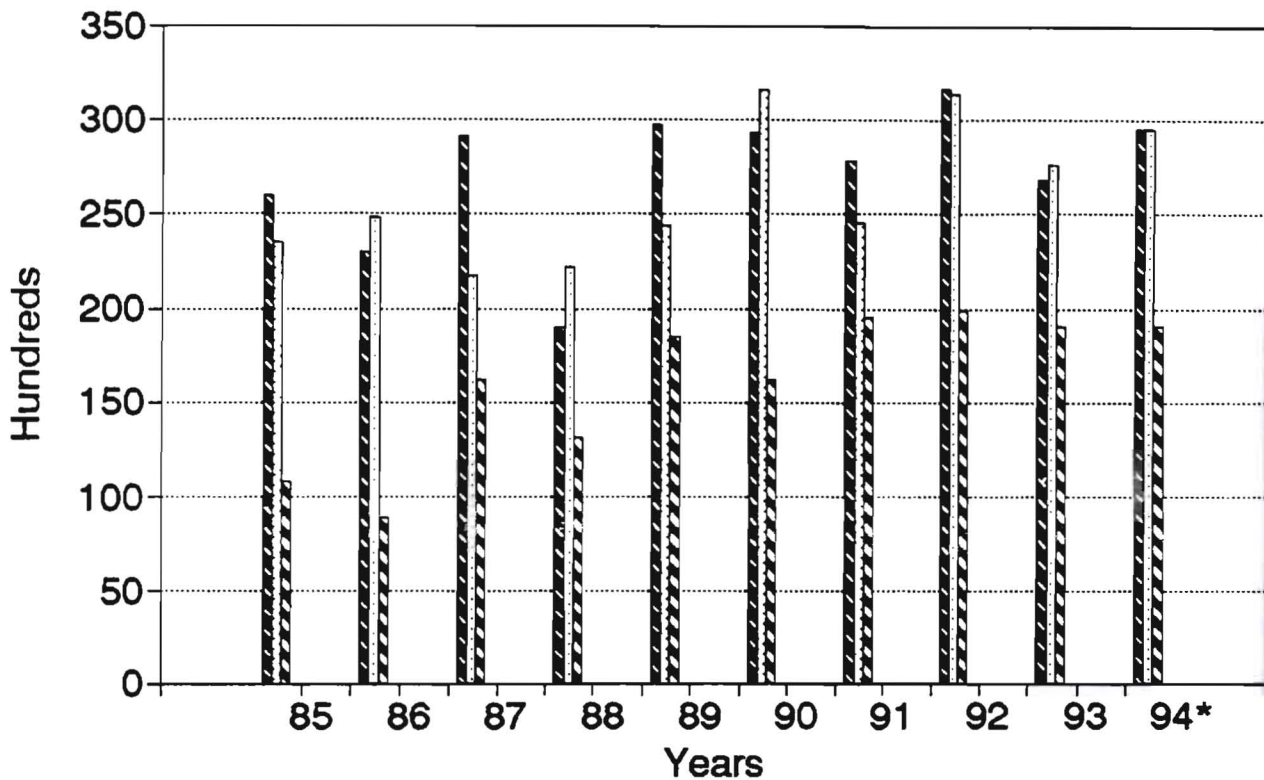
\* 425 Defendants Terminated

\* 267 Defendants Pending

*CRIMINAL CASES COMMENCED, TERMINATED*  
 CLOSE OF CY YEAR 1994, MDNC



*CRIMINAL CASES COMMENCED, TERMINATED  
& PENDING-CLOSE OF CY YEAR 1994, MDNC*



MIDDLE DISTRICT OF NORTH CAROLINA  
CRIMINAL DEFENDANTS  
CALENDAR YEAR  
CLOSE OF YEAR 1994

YEAR	COMMENCED	TERMINATED	PENDING
1985	339	304	163
1986	341	334	129
1987	418	330	218
1988	305	324	199
1989	482	386	295
1990	510	536	269
1991	480	454	295
1992	509	494	310
1993	429	491	248
1994	444	425	267
INCREASE/ DECREASE 94 v 93	3.50%	-13.44%	7.66%



**CRIMINAL DEFENDANTS-CALENDAR YEAR  
CLOSE OF YEAR 1994**

