CIVIL JUSTICE REFORM ACT OF 1990

EASTERN DISTRICT OF NORTH CAROLINA

ADVISORY GROUP

REPORT AND RECOMMENDED PLAN

June 15, 1993

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David W. Daniel, Reporter

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I. Introduction

Pursuant to the provisions of the Civil Justice Reform Act of 1990, 28 U.S.C. §471 et seq., (hereinafter "CJRA" or "the Act"), the Local Advisory Group on Expense and Delay Reduction presents this Report to the judiciary of the United States District Court for the Eastern District of North Carolina. This report contains all of the requirements mandated by the CJRA, including recommendations to improve the efficiency of the court by alleviating unnecessary cost and delay within the system.

As its initial premise, this group believes that the Eastern District of North Carolina functions in a productive manner, with no major areas of unnecessary cost or delay. Two separate surveys sent out by the Advisory Group indicate that practitioners in the state feel essentially the same way, especially in comparison to state court practice. This efficiency in the system stems from the court's foresight in developing procedures to deal with problematic areas, such as pro se prisoner matters, and prior to 1991, asbestos cases. In addition, coordination between the staff in the Clerk of Court's office and each judge's chambers facilitates the quick and efficient movement of cases through the federal court system.

The following is a brief synopsis of this report. Part II provides an overview of the court, including a breakdown of current case management procedures and a description of the court. Part III is a candid evaluation of the court's criminal and civil dockets, including an assessment of cost and delay

problems within the district, as well as nationally. Part IV provides this group's recommendations to the court on modification of the current system to reduce cost and delay.

II. Description of the Court

A. Characteristics of the Court

28 U.S.C. §113 divides North Carolina into three judicial districts -- Eastern, Middle and Western. The Eastern District is divided administratively into divisions comprised of the following counties (Local Rule 3.02):

> Elizabeth City: Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Northampton, Pasquotank, Perquimans, Tyrell, and Washington counties.
>
> Fayetteville: Cumberland, Robeson and Sampson counties
>
> New Bern: Beaufort, Carteret, Craven, Greene, Hyde, Jones, Lenoir, Martin, Onslow, Pamlico and Pitt counties
>
> Raleigh: Edgecombe, Franklin, Granville, Harnett, Johnston, Nash, Vance, Wake, Warren, Wayne, and Wilson counties
>
> Wilmington: Bladen, Brunswick, Columbus, Duplin, New Hanover and Pender counties.

The Eastern District convenes regularly scheduled sessions of court in Raleigh, Fayetteville, Wilmington, New Bern, and Elizabeth City. Additionally, Greenville has been designated as a place for holding court, and the court is in the process of constructing a courtroom facility in Greenville at this time. Bankruptcy Court for the district is also convened at Wilson, in addition to other locations.

Cases are assigned to one of the five divisions upon filing, in accordance with the assignment procedures in the local rules, with the exception that state prisoner cases are assigned to a

special docket in the Raleigh division, regardless of the prisoner's location at the time of filing.

The Eastern district has four active judges -- Chief Judge James Fox, Judge Terrence Boyle, Judge Earl Britt, and Judge Malcolm Howard. Presently, there are no judicial vacancies. In addition, the district also has one senior judge, Judge Franklin Dupree, who continues to handle civil matters and perform substantial duties. There are two bankruptcy judges within the district. In addition, there are three full-time magistrate judges and one part-time magistrate judge.

All civil cases are randomly assigned to a district judge upon filing. All judges do not take cases in all divisions. However, at least two judges take cases in each division, and in Raleigh all judges share assignments. Once assigned, the case remains with the judge until termination.

The clerk of court is headquartered in Raleigh, where the majority of his staff is located. In addition, there are small divisional offices in Fayetteville, New Bern and Wilmington.

The Eastern District of North Carolina accepts filings for any case in any of its four offices, regardless of the division in which the action is pending. All criminal case files for the entire district are in Raleigh. Civil case files are maintained in the division in which the case is pending, except the Raleigh office maintains the records for both Raleigh and Elizabeth City cases.

B. Special Statutory Requirements

The Eastern District of North Carolina is not a demonstration district, pilot program district or an early implementation district.

C. Case Management Procedures in the Eastern District of North Carolina

The Eastern District of North Carolina is an efficient, functional court system, with little to no detectable delay in the handling of cases. Much of this is attributable to the Court's effective local rules, as well as the court's standing orders and internal procedures for handling problematic areas. The following sections detail the specific areas which the court has implemented procedures to control the court's docket.

1. Local Rules and Internal Operating Procedures

a. Monitoring Service of Process and Answer

When a complaint is filed, the court begins to monitor the 120 day service period prescribed by Rule 4(j) of the Federal Rules of Civil Procedure. If no return of service is made within 120 days after filing of the complaint, the court asks counsel to show cause why the action should not be dismissed. If the plaintiff fails to respond to this notice, the case is dismissed. Similarly, the court monitors those cases in which a return of service was made but no answer was timely filed. In those instances, the plaintiff is directed to proceed in accordance with Rule 55 to reduce the matter to judgment. The plaintiff's failure to do so will result in the action's dismissal for failure to prosecute. Through these methods, the court ensures that cases stay on track during the early stages and do not

result in unnecessary cost or delay to the litigants or the court. Court documents reflecting this process can be found in Appendix 4.

b. Developing the Scheduling Order

Local Rule 23.00 requires a discovery conference to be held with all of the parties in every civil action at the earliest practicable date following the close of the pleadings, the purpose of which is to set a preliminary plan and schedule discovery, pre-trial conferences and trial. Rule 16 requires the court to enter a scheduling order in every civil case, except those exempted, within 120 days of filing of the complaint. Since the discovery conference forms the basis for the Rule 16 scheduling order, the court demands rigorous compliance with these provisions.

When the final responsive pleading is filed, the case manager responsible for a particular action issues, as a matter of course, the Request for Discovery Stipulation. If counsel are able to agree on the contents of the scheduling order and the court agrees, the provisions are incorporated into the Order on Scheduling. If counsel do not respond, the default schedule set out in the Request is utilized. If counsel are in serious disagreement, a discovery conference before one of the magistrate judges is scheduled. At that time the disagreement is worked out, and the case proceeds immediately into the discovery process, with discovery being conducted in accordance with the Rule 16 scheduling order. Local Rule 24.01. A copy of the

court's Request for Discovery Stipulation and Rule 16 scheduling order can be found in Appendix 5.

c. Setting the Trial Date

The Eastern District works from a two-year calendar that assigns sessions of court to judges and magistrate judges throughout the district for the period. Each judge is assigned to court throughout the district at the rate of two sessions per month, each session scheduled to last up to two weeks. By using this schedule, a case is routinely provided an early trial date. Generally, a case is placed on the first calendar of the assigned judge in the appropriate division that occurs more than ninety days after the close of discovery. Currently, all cases in the district in which issue has been joined have a trial setting.

Currently, there is no civil trial backlog in this district. Criminal and civil cases are usually calendared at the same term of court, with criminal matters taking priority (due to Speedy Trial Act considerations.) Although it appears that more cases are calendared than can be tried, the court has found that the natural attrition of civil and criminal cases will allow the court to conclude its docket. When a legitimate overload appears, the judges are very cooperative about providing backup for each other to keep the docket current.

d. Motion Practice

Local Rule 4.00 et seq. deal with motion practice in this district. Local Rule 4.01 requires that all motions except those relating to the admissibility of evidence at trial must be filed

within thirty days following the conclusion of the discovery period. In addition, Local Rule 4.04 requires that all motions, except for those made in a hearing or at trial, must be filed with an accompanying supporting memorandum. The only motions excluded from this requirement are those which the clerk may grant, including orders enlarging time limits, orders cancelling liability on bonds, consent orders substituting attorneys or dismissing an action, and any other motion which may be granted as a matter of course or without notice. Local Rules 4.04 and 4.05 also set the time limit in which response and reply briefs must be filed with the court. Opposing counsel have 20 days after service in which to serve a memorandum in opposition to the motion, after which the movant has ten days to file a reply brief. The motion is then submitted to the court for decision. Whether to schedule oral argument on the motion is solely the prerogative of the judge deciding the motion, and is determined on a case-by-case basis after review of the documents filed with the court. Local Rule 4.09. The local rules on motion practice also authorize the court to assess costs in instances where the court finds that a motion is frivolous or is filed to delay the proceedings. Local Rule 4.10.

e. Final Pre-Trial Conference

Two to three months before the trial date set in the scheduling order, counsel are sent formal trial and pre-trial conference calendars. The trial calendar confirms the previously-set trial date, and importantly, shows the placement

of the case and thus the order in which it will be called for trial. The pre-trial conference calendar schedules the conference approximately two to three weeks before the trial date. These conferences are usually conducted by magistrate judges, although recently, some of the judges have begun to handle their own conferences, time and workload permitting.

Local Rule 25.03 sets forth the form of the pre-trial order, which includes the following sections: stipulations, contentions, exhibits, designation of pleadings and discovery materials, witnesses. Local Rule 25.04 mandates that counsel be prepared to present the court with all of the information and documentation necessary for the completion of the pre-trial order. The order is very detailed; however, since it is possible for a trial judge to have little familiarity with the case prior to trial, development of a complete pre-trial order is crucial. Failure to prepare the required pre-trial order will subject counsel to sanctions, including a monetary fine.

f. The Role of Magistrate Judges

The Eastern District of North Carolina is fortunate to have four exceptionally well-qualified magistrate judges, and the local rules in the district allow those magistrate judges considerable authority to perform their duties. Magistrate judges, among other things, may dispose of criminal misdemeanor cases, handle preliminary matters in prisoner cases, act as a special master, conduct discovery or pre-trial conferences, and conduct civil trials upon the consent of parties. In addition,

magistrate judges handle both dispositive and non-dispositive motions. In this district, non-dispositive motions are referred to a magistrate judge for decision, without specific referral from a district judge. Over the years, this procedure has worked extremely well, with few appeals to district judges being filed. Regarding dispositive motions, the district judge reviews the motion and decides whether to refer it to a magistrate judge for a recommended decision. The magistrate judges take an even draw of civil motions without regard to the division in which they arise or the judge to whom the case is assigned.

In addition, federal law allows a United States Magistrate Judge to try any civil case on the docket with the consent of the parties. The court has always supported this procedure, as it increases the trial strength of the court and thus allows the court to cope with the docket more efficiently. See Local Rule 21.00. The Eastern District magistrate judges have the full confidence of the bar, and frequently the parties consent to this type of jurisdiction.

g. Settlement Costs

The local rules in the Eastern District of North Carolina also make special provisions for the taxation of juror costs in the event a case is either settled immediately before trial or after trial has begun. Local Rule 16.01 provides that when a civil action is settled and notice is not given to the court within one business day (five business days for asbestos cases) prior to the scheduled trial date, juror costs, including attendance fees, per

diem, mileage, and parking, shall be taxed equally against the parties and their counsel. Local Rule 16.02 provides that when a civil jury trial is settled at trial in advance of the verdict, the court shall assess the juror costs equally against the parties and their counsel.

2. Case Management Procedures in Special Types of Cases

a. Prisoner Cases

Approximately, one third of the court's civil docket consists of cases filed by state and federal prisoners, falling into two categories -- habeas corpus filings and suits challenging the constitutionality of conditions of confinement. Included within this second group are cases brought by federal prisoners housed at Federal Correctional Institute Butner, located within the jurisdiction of the Eastern District of North Carolina. The number of prisoner cases is expected to increase within the next two to three years, when FCI Butner expands its prisoner capacity. In addition, the state's largest maximum security prison facility is located within the Eastern District of North Carolina, thereby contributing to the large case load of state prisoner matters.

The court has implemented a procedure for handling prisoner petitions. First, all of the filings are processed in Raleigh, and the cases are managed by experienced deputy clerks in a separate pro se unit. Second, the court is assigned a permanent staff attorney under the direction of the clerk to assist in analysis and opinion drafting.

In addition, there are several procedures that have been implemented specifically for prisoner cases. Whenever a prisoner files a proper Bivens or 42 U.S.C. §1983 complaint and requests filing of the complaint in forma pauperis, the motion to proceed is tentatively allowed and the action is filed under the authority of a standing order issued by the court.

Pursuant to 28 U.S.C. §1997e(2), the Eastern District of North Carolina in conjunction with the North Carolina Attorney General's Office and the North Carolina Legislature have created a grievance procedure within the state prison system that is certifiable as adequate under federal law. Since its adoption by the court in February 1989, the court now requires state prison inmates to exhaust this grievance procedure before initiating a lawsuit based on the same facts. Therefore, in §1983 cases involving state prisoners, the case is initially forwarded to an experienced staff attorney to determine whether the complainant has properly exhausted his claims through the state administrative grievance procedure. In Bivens actions seeking money damages and those cases involving prisoners housed in county jail facilities, there is no comparable exhaustion requirement.

After the exhaustion determination, the case is forwarded to the judge assigned to the case for a determination of frivolity or maliciousness, pursuant to 28 U.S.C. §1915(d). Complaints found to be frivolous are dismissed, while non-frivolous complaints are forwarded to the pro se deputy clerk for an in

forma pauperis determination. To assess a prisoner's in forma pauperis status, the deputy clerk requests the Division of Prisons to supply the court with a computer printout of the particular prisoner's income during the preceding six months. A partial filing fee of fifteen percent (15%) of that amount is assessed. A form order is then issued, allowing the inmate 30 days either to pay the filing fee, request an extension of time in which to pay, or demonstrate that he lacks sufficient funds to make the payment.

Depending upon the prisoner's response, one of several courses of action follows. If a prisoner pays the filing fee, process is issued and the case proceeds. If an extension of time is requested, it is almost invariably granted. If the plaintiff responds by attempting to demonstrate inability to pay the fee, his response is carefully scrutinized in light of the information obtained from the Division of Prisons. If the plaintiff fails to respond, leave to proceed in forma pauperis is denied and the action is dismissed without prejudice.

To satisfy the mandate Smith v. Bounds, 430 U.S. 817 (1977), governing state prisoners' access to legal information, the court has entered into an agreement with North Carolina Prisoner Legal Services ("NCPLS") setting forth procedures to be followed in providing legal representation to inmates. As a result, all cases involving state prisoners are stayed for ninety days, pending the results of an investigation by NCPLS.

Finally, to satisfy the requirements of Roseboro v. Garrison,

528 F.2d 309 (4th Cir. 1975), the district has developed a "Rule 56(e) letter" which is sent to all pro se prisoners to notify them that a motion for summary judgment has been filed against them, thus allowing them the opportunity to defend against dismissal.

The majority of the prisoner cases are resolved through dispositive motions, although a sizeable number are tried each year. All documents reflecting the way in which prisoner cases are handled in this district can be found in Appendix 6.

b. Social Security

In 1992, this district received 62 cases involving claimants who appeal their denial of social security disability benefits by the Secretary of Health and Human Services. In these cases, the court sits in an appellate capacity, and there is no trial. The cases are handled with a special briefing order.

c. Bankruptcy Appeals

The United States Bankruptcy Court for the Eastern District, although legally a part of the district court, operates as a separate administrative unit with its own clerk and chief judge. Appeals from decisions of the bankruptcy judges come to the district court and are handled with a special briefing order.

3. Other Issues

a. Automation

The Eastern District of North Carolina has attempted to stay current with the automation process. Currently, the court is in the process of networking the Clerk of Court's office in

Raleigh, as well as the judges' chambers located in the Raleigh courthouse. This procedure should be completed in early 1993. In the future, the divisional offices will be able to access the Raleigh network by telephone modem.

The Eastern District of North Carolina is the home of the National Fine Center. The Center, when completely operational, will receive and provide current information on payments of fines, restitution, and special assessments within the entire federal system, as well as perform the accounting and administrative support for fine collection and enforcement, collect payments, furnish current balances, compute interest, send monthly statements and notices to debtors, track delinquencies and defaults, and provide information to probation officers, clerks, United States Attorneys and the Bureau of Prisons. As a result of the proximity of the Center to the court, the Eastern District of North Carolina has been chosen as a pilot program to implement the start up of the Center, including all aspects of automation and software testing.

Additionally, the court has fully computerized its civil docketing system for civil cases filed after 1989, and within the next two years, when the software becomes available, the court intends to do the same with its criminal docket. Finally, all judges and their staff have been given instruction on PC/CHASER training (Chambers Access to Selected Electronic Records), and the court has implemented this software for all district and magistrate judges' chambers in the district. PC/Chaser allows

the judges and their staff to access civil case information and court docket reports using a modem-equipped personal computer or terminal. Additionally, PACER (Public Access to Court Electronic Records), a similar but more limited system in comparison to CHASER, has been made available to members of the bar and the general public.

III. Assessment of Conditions in the District

A. The Status of the Criminal and Civil Dockets

The following sections provide a detailed analysis of the court's civil and criminal dockets, and offers some commentary on potential causes of cost and delay in the system such as court procedures, court resources, personnel, facilities, and recent federal legislation.

1. The Civil Docket

During statistical year ("SY") 1992[1], 1822 cases were filed in the Eastern District of North Carolina, including 1509 civil matters and 309 criminal felony indictments. During the same time period there were 1838 case terminations, leaving 1287 cases pending. The number of pending cases within the District has remained relatively constant over the past six years, ranging

[1]The statistical year runs from July 1 through June 30. The information presented in this section was obtained from the booklet published by the Administrative Office of the United States Courts, entitled "Federal Court Management Statistics" for years 1971-1992. In addition, information and supplements provided by the Federal Judicial Center in the "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990," as well as the annual reports of the Administrative Office of the United States Courts, were instrumental in formulating this section of the report.

from a low of 1203 pending cases in 1987 to a high of 1321 pending cases in 1988.

On a per judgeship basis in the Eastern District of North Carolina, there were 456 case filings per judge, while nationwide, there were only 403 filings per judge. Of the 456 filings in the district, 377 of the cases were civil matters. This compares to the national figures of 350 civil filings per judge.

In 1979, the Federal Judicial Center conducted a Time Study which developed weights for individual types of cases, with more complex cases having more weight than non-complex matters. The FJC was then able to transform the individual court's filings into weighted filings, thereby equalizing the types and number of filings nationwide by giving the appropriate weight to each case filed.[2] In SY 1992, the Eastern District of North Carolina had 372 "weighted filings," compared to a national figure of 405.

In SY 1992, the Eastern District of North Carolina had 460 case terminations per judge, while nationally only 416 cases were terminated on a per judge basis. In addition, the Eastern District of North Carolina completed eight more trials per judge than the national average -- 39 in the Eastern District of North Carolina, as compared to 31 nationally.

In SY 1992 in the Eastern District of North Carolina, the

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[2]For a further discussion of "weighted filings", see the 1979 **Federal District Time Study** published by the Federal Judicial Center in 1980.

median time for civil cases to proceed from filing to disposition was 8 months, compared to the national average of 9 months, ranking the Eastern District of North Carolina 15th in the nation (out of 94 district courts) in this category. However, in the Eastern District of North Carolina it took seventeen months for a civil matter to progress from issue to trial -- three months longer than the national average and four months longer than it took in this district in 1991 -- ranking the district 51st in the nation in this category.

In SY 1992, the Eastern District of North Carolina had 44 cases which had been pending over three years, which is equivalent to only 4.2% of the overall case load in the district. Nationally, 8.7% of the civil docket is over three years old. Therefore, in SY 1992, the Eastern District of North Carolina had roughly one-half the percentage of three year old cases than the national average. This finding indicates that the district has its older cases well in hand. However, there was a noticeable increase in the number of older cases in the district, from 1.4% in 1990 and 1991 to 4.2% in 1992, calling into question the court's efficiency in managing its older cases. Upon closer inspection, however, this rise was attributable to two sets of companion cases pending in the district -- (1) an extremely complex securities matter involving numerous parties and related actions; and (2) a series of federal land condemnation actions with complicated title problems. Consequently, after eliminating those identified cases from the three year old case statistics,

the number of pending three year old cases in SY 1992 is roughly equivalent to the preceding two years.

In SY 1992, the Eastern District of North Carolina ranked number one in all districts in terms of its juror usage. In the Eastern District of North Carolina, only 4.3% of the jurors chosen for jury selection were not selected or challenged, compared to a national figure of 34.3%.

In SY 1992 there were 1509 civil cases filed in the Eastern District of North Carolina, in the following categories: 62 **(4.1%)** social security appeals; 514 **(34.1%)** pro se prisoner matters; 192 **(12.7%)** matters involving recovery of overpayments or enforcements of a judgment; 80 **(5.3%)** forfeiture and tax lawsuits; 13 **(0.9%)** matters involving real property; 48 **(3.2%)** labor cases; 194 **(12.9%)** contract matters; 154 **(10.2%)** tort actions; 34 **(2.3%)** copyright actions; 130 **(8.5%)** cases alleging civil rights violations; 0 **(0.0%)** antitrust actions and 88 **(5.8%)** other types of cases.

During the same time period nationally, there were 8415 **(3.7%)** social security appeals; 46452 **(20.5%)** prisoner petitions; 17475 **(7.7%)** overpayment and enforcement actions; 7797 **(3.4%)** forfeiture and tax actions; 10143 **(4.5%)** real property suits; 15800 **(7.0%)** labor actions; 33771 **(14.9%)** contract matters; 36469 **(16.1%)** tort lawsuits; 5670 **(2.5%)** copyright cases; 23419 **(10.3%)** civil rights suits; 506 **(0.2%)** antitrust actions; and 2097 **(9.2%)** other civil matters.

Figure 1 provides a comparison of the breakdown of civil cases

in the Eastern District of North Carolina and nationally for SY 1992.

The Federal Judicial Center has prepared current information for SY 1992, including data regarding the life expectancy of a case in this district and the indexed average lifespan of all civil cases in the district from 1983-1992. Life expectancy is a timeliness measure used to assess the change in the trend of actual case lifespan, while the indexed average lifespan is used for comparisons among districts. Both the life expectancy and the indexed average lifespan in cases in the Eastern District of North Carolina was approximately 8.5 months. See Figure 2 for a comparison of the life expectancy and indexed average life expectancy of all civil cases filed in the Eastern District of North Carolina.

The Advisory Group submitted two surveys to attorneys who practice within the Eastern District of North Carolina.[3] The first survey came about as a result of a thorough examination of a small sample of cases by the Advisory Group's Case Tracking and Management Subcommittee. The Advisory Group undertook an assessment of cost and delay problems by examining the docket sheets from 110 randomly-selected cases in the district, and then submitted a survey to the attorneys in those cases to obtain their impressions of the litigation process.

A second, more general, survey was sent out in summer/fall

[3]For a further discussion of the survey process, along with copies of the surveys and the results, see Appendix 7.

Civil Filings Profile, By Percent, SY 1992

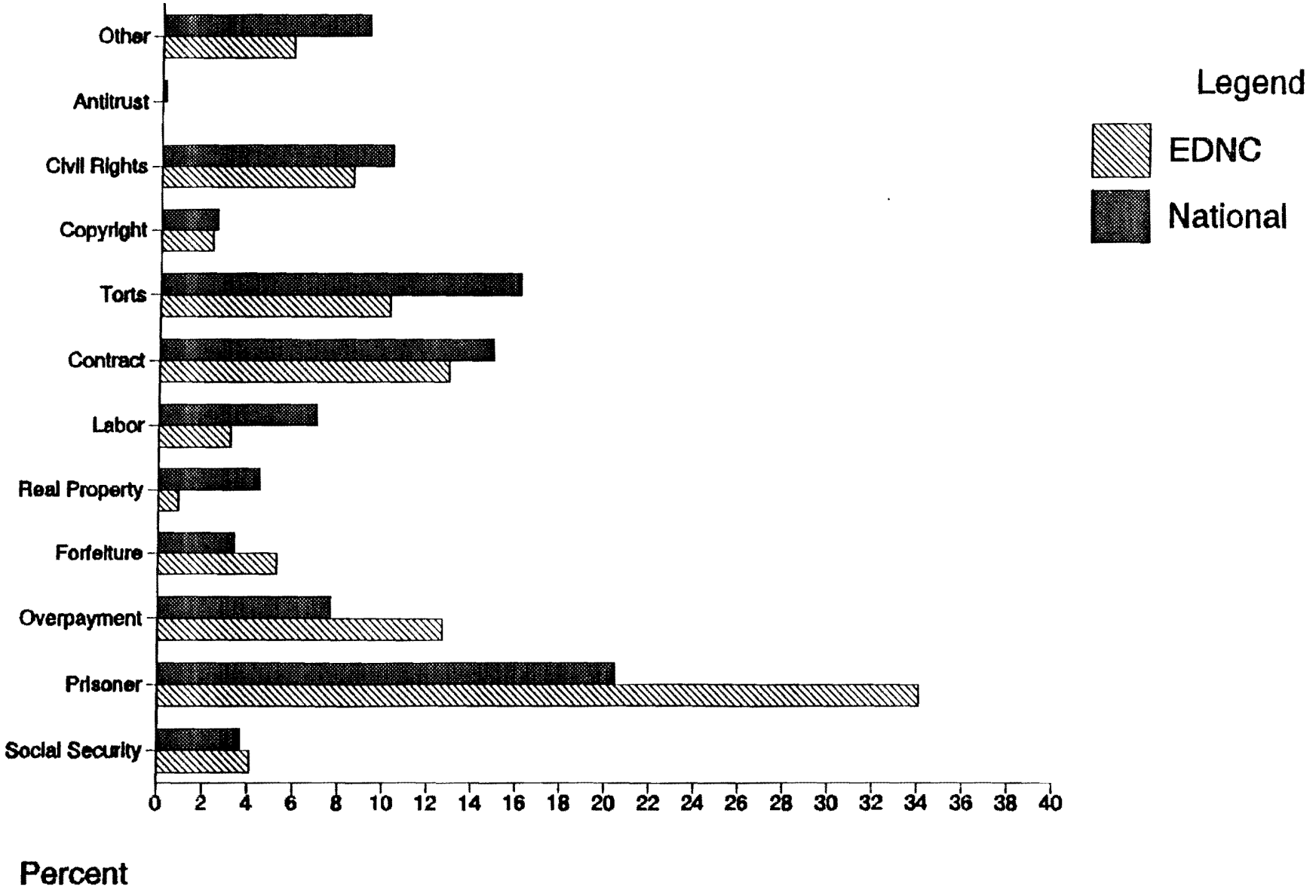

FIGURE 1

Life Expectancy and Indexed Average Lifespan, All Civil Cases SY83-92

Eastern District of North Carolina

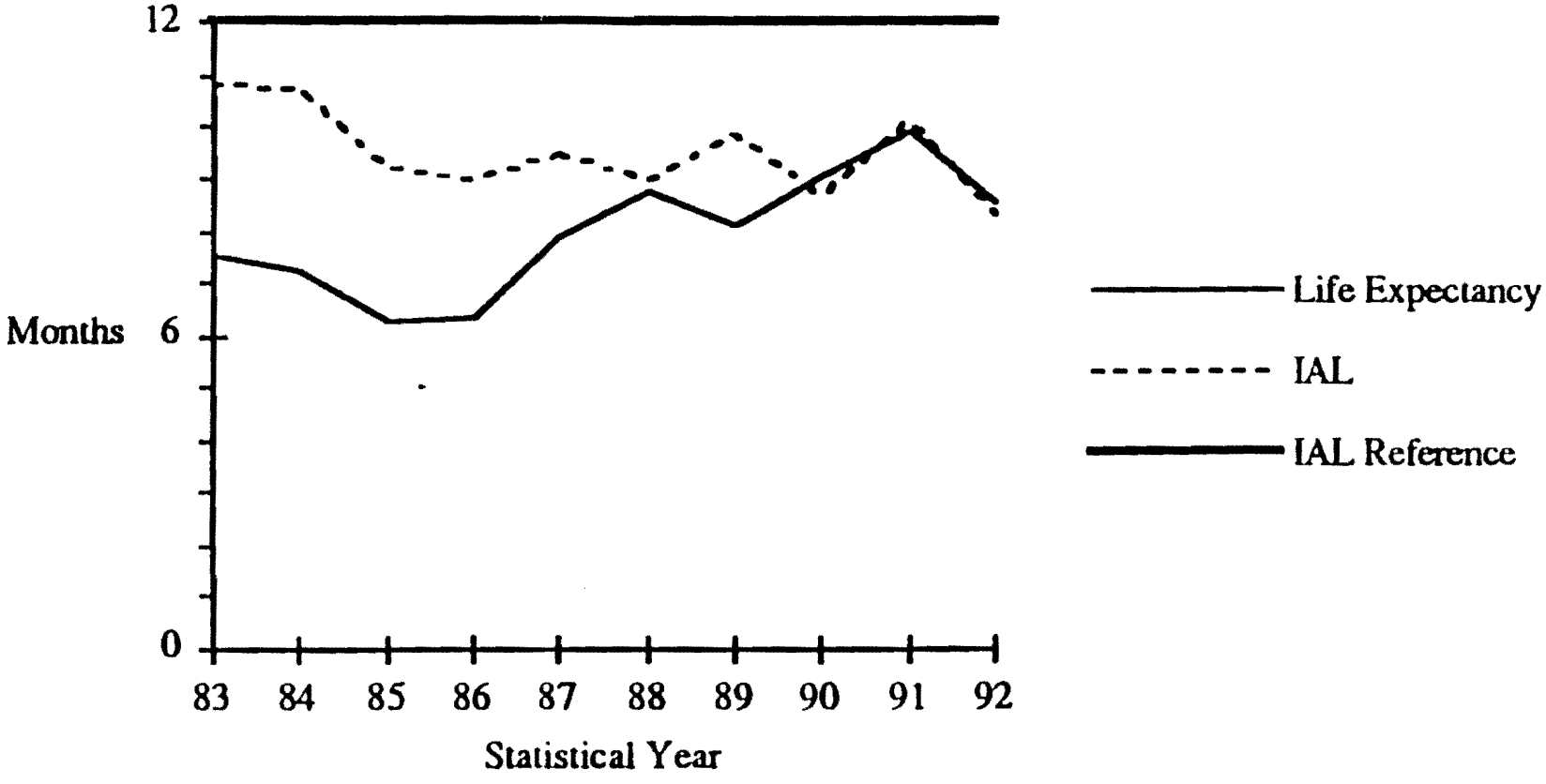

FIGURE 2

1992 to a random sample of 387 attorneys who practice in the Eastern District of North Carolina. These attorneys were also questioned regarding their impressions on cost and delay in this district. In the general survey, 80.6% of the respondents felt that in the last case in which they participated, they did not experience unreasonable delay. Only 15.1% felt that there was some undue delay in this district.

Of those that did experience delay, only 1.9% felt that court inefficiencies significantly contributed to the delay, while only 7.1% felt that court inefficiencies were a slight or moderate cause.

On the issue of unnecessary cost, approximately one-half (50.4%) of the respondents felt that federal litigation is not unnecessarily expensive.

2. The Criminal Docket

The Civil Justice Reform Act is specifically directed toward improving the movement of civil cases through the federal court system. However, one of the mandates of the Act requires the individual courts to assess the impact of the criminal docket on the civil case flow. 28 U.S.C. §472(c). This impact may be felt as a result of the requirements of two criminal procedures: (1) the Speedy Trial Act, 18 U.S.C. §3161-62, 3164, which mandates that a federal criminal defendant be brought to trial within seventy days of indictment, thereby preempting civil cases set at the same session; and (2) the Federal Sentencing Guidelines, which, according to some members of the judiciary, have made

sentencings more complex and time-consuming, causing more judicial time and focus to be spent on criminal matters, at the expense of civil cases. In addition, there has been discussion that the focus by the federal government on drug crimes in the nation has increased the criminal docket, which may have an effect on civil docket management.

During SY 1992, there were 309 criminal felonies filed in the Eastern District of North Carolina, comprising 5.9% of the total filings in this district. These cases have been categorized by the Administrative Office as follows: 22 **(7.1%)** Robbery cases; 2 **(0.6%)** immigration matters; 16 **(5.2%)** embezzlement cases; 53 **(17.1%)** weapons/firearm actions; 1 **(0.3%)** escapes; 25 **(8.1%)** actions involving burglary/larceny; 16 **(5.2%)** cases involving marijuana/controlled substance; 92 **(29.6%)** narcotics actions; 21 **(6.8%)** forgery/counterfeiting cases; 38 **(12.3%)** fraud actions; 2 **(0.6%)** homicide/assault matters; 22 **(7.1%)** other criminal matters.

Nationally, during the same time period, there were 33,994 criminal felonies, totalling 7.7% of the national filings in the federal system. These cases were categorized by the Administrative Office as follows: 1804 **(5.3%)** robberies; 1906 **(5.6%)** immigration matters; 1490 **(4.4%)** embezzlement cases; 4005 **(11.7%)** weapons/firearms actions; 606 **(1.8%)** escapes; 1685 **(5.0%)** burglaries/larcenies; 4602 **(13.5%)** marijuana/controlled substances cases; 6994 **(20.6%)** narcotics actions; 1060 **(3.1%)** forgery/counterfeiting matters; 6169 **(18.2%)** fraud cases; 624

(1.8%) homicides/assaults; 3049 (9.0%) other matters. See Figure 3 for a comparison of the 1992 criminal statistics for the nation and the Eastern District of North Carolina.

These results reveal that felony drug cases comprise approximately 34.8% of the felony criminal docket, as compared to 34.1% of the national felony caseload.

In SY 1992, there were 1374 criminal defendants, misdemeanor and felony, prosecuted in the Eastern District of North Carolina, a 16.9% increase over SY 1991. Of those 1374 defendants, there were 476 felony defendants and 891 misdemeanor defendants. Drug defendants in the district totalled approximately 16.9% of the total offenses charged in the district.

In SY 1992 there were 1204 criminal cases filed, 309 felony matters and 895 misdemeanor/other cases, ranking the Eastern District of North Carolina in the top 15 districts nationwide for total criminal filings in SY 1992. Drug cases in the district totalled approximately 9.8% of the total offenses charged in the district.

On a per judgeship basis, during SY 1992 each judge in the district received 79 criminal felonies, as compared to the national average of 53, ranking the Eastern District of North Carolina 18th in the nation in the number of criminal felonies per judge. This is a very accurate figure, as the court's senior judge does not receive criminal filings, and the indictments are divided relatively equally among the judges.

The median time from filing to disposition in the Eastern

Criminal Filings Profile By Percent SY 1992

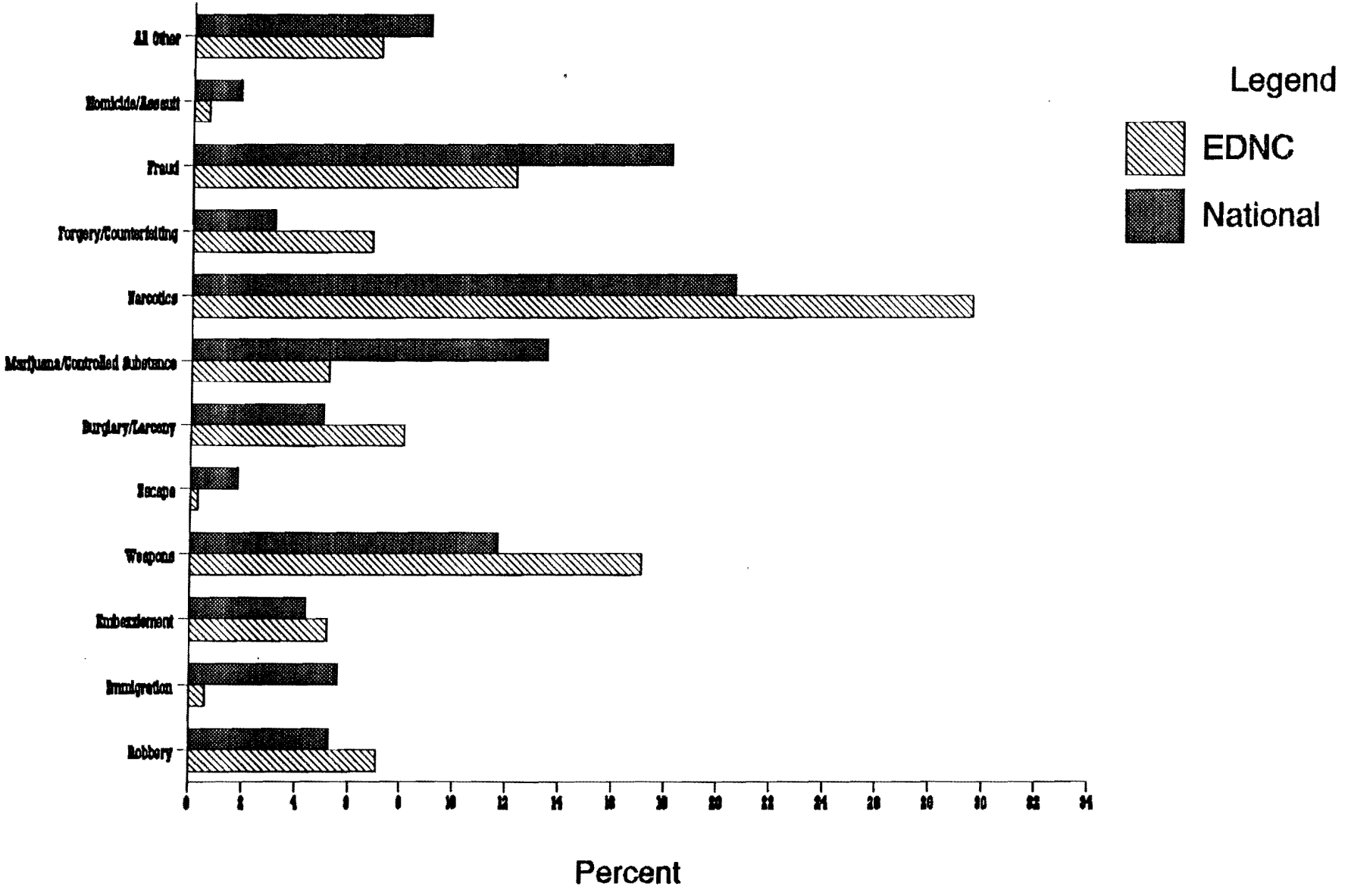

FIGURE 3

District of North Carolina was 6.4 months, as compared to the national average of 5.9 months, ranking the Eastern District of North Carolina 60th out of 94 districts in this category.

Several questions in the general survey addressed the practicing attorneys' perception of the criminal docket in the Eastern District of North Carolina and its effect on civil case delays. 58.4% of the survey respondents perceived no effect on delay in civil case management caused by the criminal caseload in the district. 26.4% perceived slightly increased delay; 5.6% perceived significantly increased delay and 2.3% perceived slightly decreased delay.

Regarding the criminal docket and its effect on civil case costs, 76.9% respondents felt that the criminal docket had no effect on civil costs; 10.8% perceived slightly increased costs; and 4.2% perceived significantly increased costs.

3. Trends in Civil Filings

In 1992, 1822 cases were filed in the Eastern District of North Carolina, 11.2% more than were filed in 1991, 28% less than were filed in 1985,[4] an increase of 50.5% over 1978, and an increase of 112.4% over 1971. Figure 4 provides a breakdown of all civil and criminal felony filings since 1970.

In 1992, 1838 cases were terminated in the Eastern District

[4]During the mid-1980s, the number of civil cases in the district increased significantly because of the large number of student loan recovery actions instituted by the United States. Most of those cases resulted in a default judgment and utilized few judicial resources, and the overall number of cases in the district dropped markedly after these cases were resolved.

Total Filings (Civil and Criminal Felony) SY 1970-1992

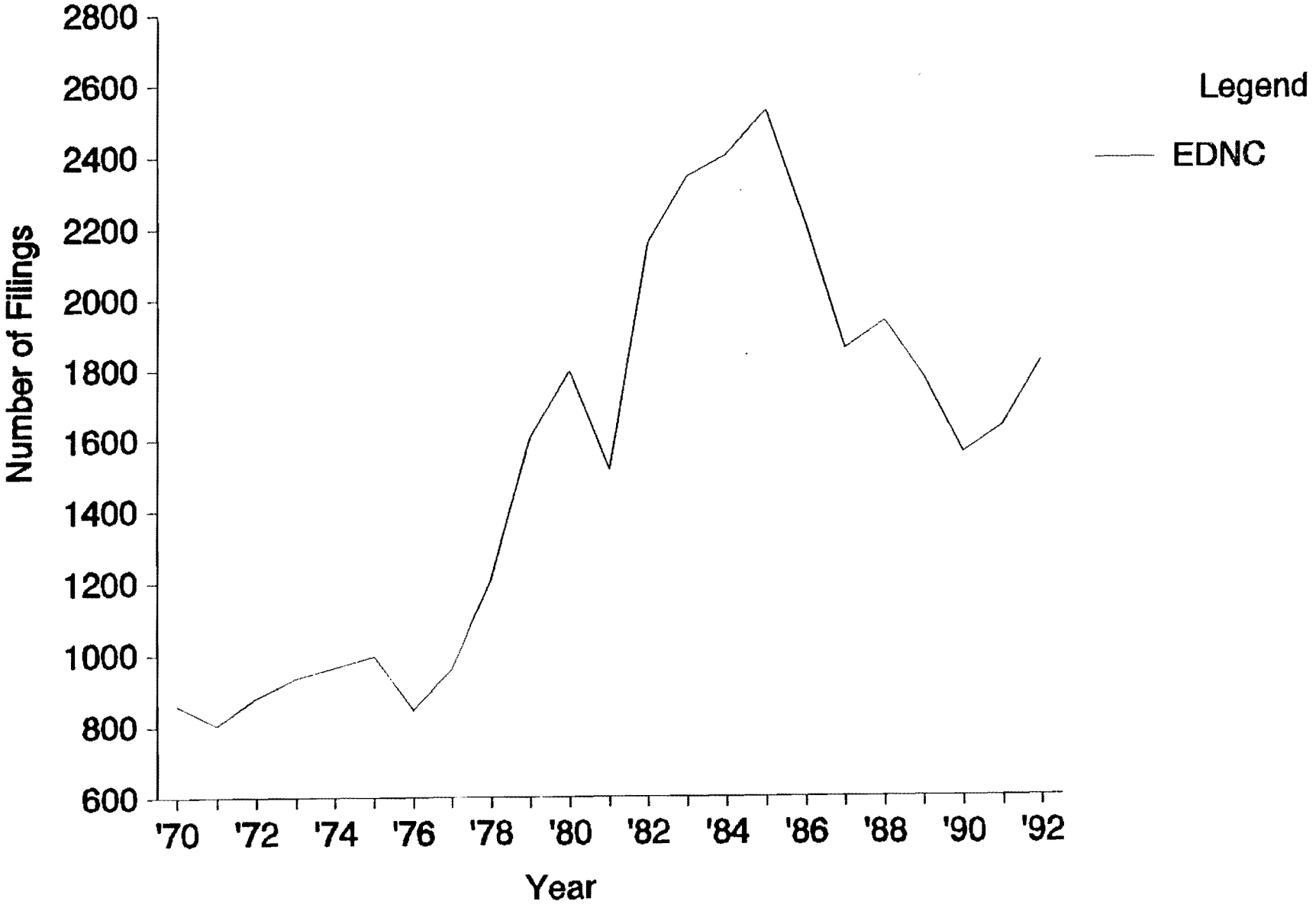

FIGURE 4

of North Carolina, 21.7% more than were terminated in 1991, 30.14% less than were terminated in 1985, an increase of 40% over 1979, and an increase of 142.8% over 1971. See Figure 5 for an analysis of terminations in the district for SY 1971-1992.

In 1992, there were 1287 cases pending in the Eastern District of North Carolina. This figure was 0.6% less than 1991, 4.7% less than 1985, 0.7% less than 1979, and 136% higher than 1971. Over the past six years, the number of pending cases has remained relatively constant, ranging from a low of 1203 pending cases in 1987 to a high of 1321 pending cases in 1988. Figure 6 demonstrates the total number of pending cases in the district since 1971.

According to the Federal Judicial Center, a court can assess its efficiency by calculating the ratio of pending cases to terminated cases. If the ratio is less than 1, then the court is determined to be efficient, terminating more cases than are filed in a given time period. In SY 1992, the Eastern District of North Carolina's ratio of pending to terminated cases was 1287/1838 or .70. This figure represented a decrease in the ratios from 1979 (.99) and 1971 (.72) and an increase from SY 1985 (.51). Nationwide, in SY 1992, the ratio of pending to terminated cases was .97. Figure 7 illustrates the ratio of pending to terminated cases in the Eastern District of North Carolina and nationally since 1971.

In SY 1992, the median time from filing to disposition in civil cases in the Eastern District of North Carolina was 8

Total Terminations SY 1971-1992

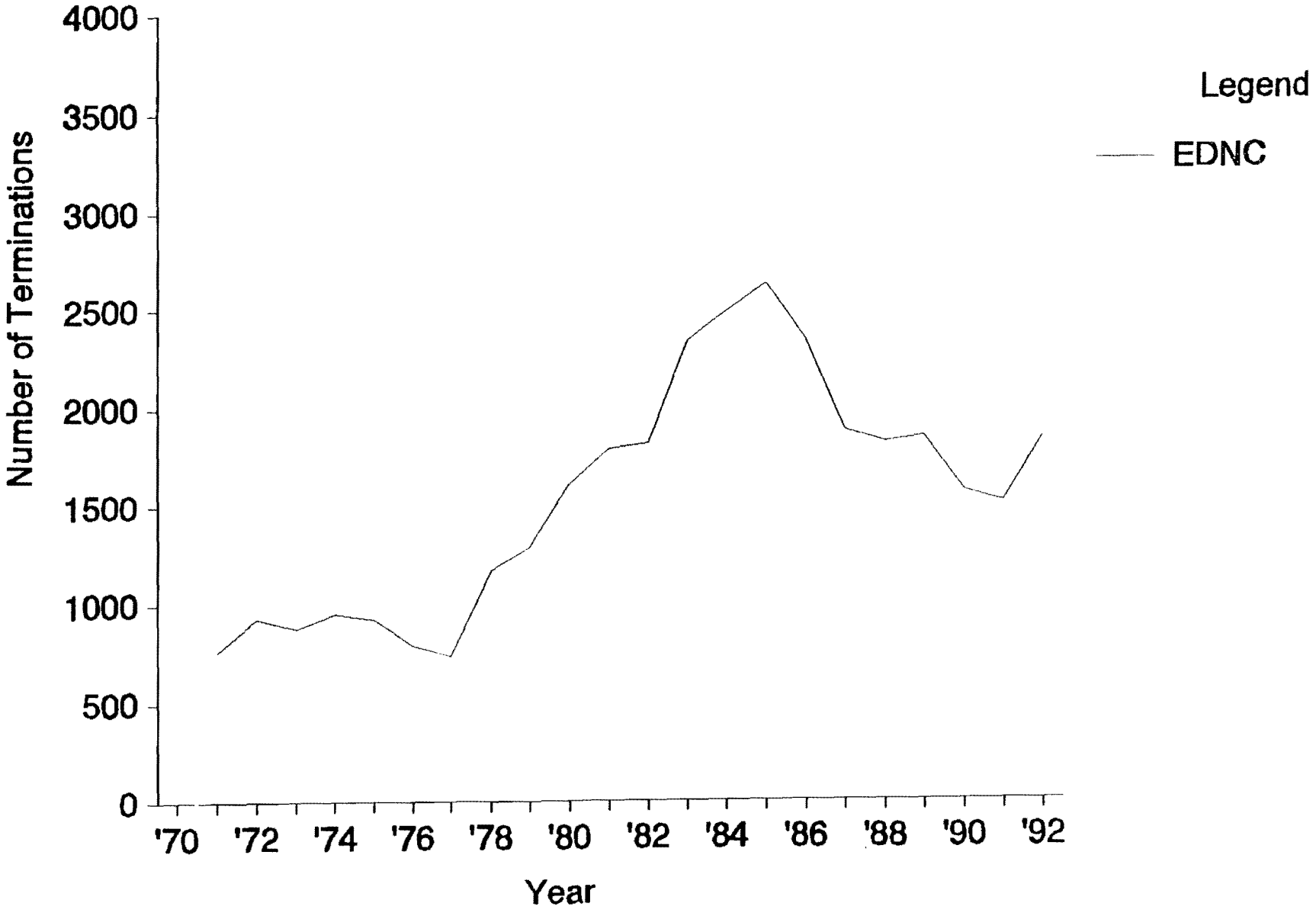

FIGURE 5

Total Pending Cases SY 1971-1992

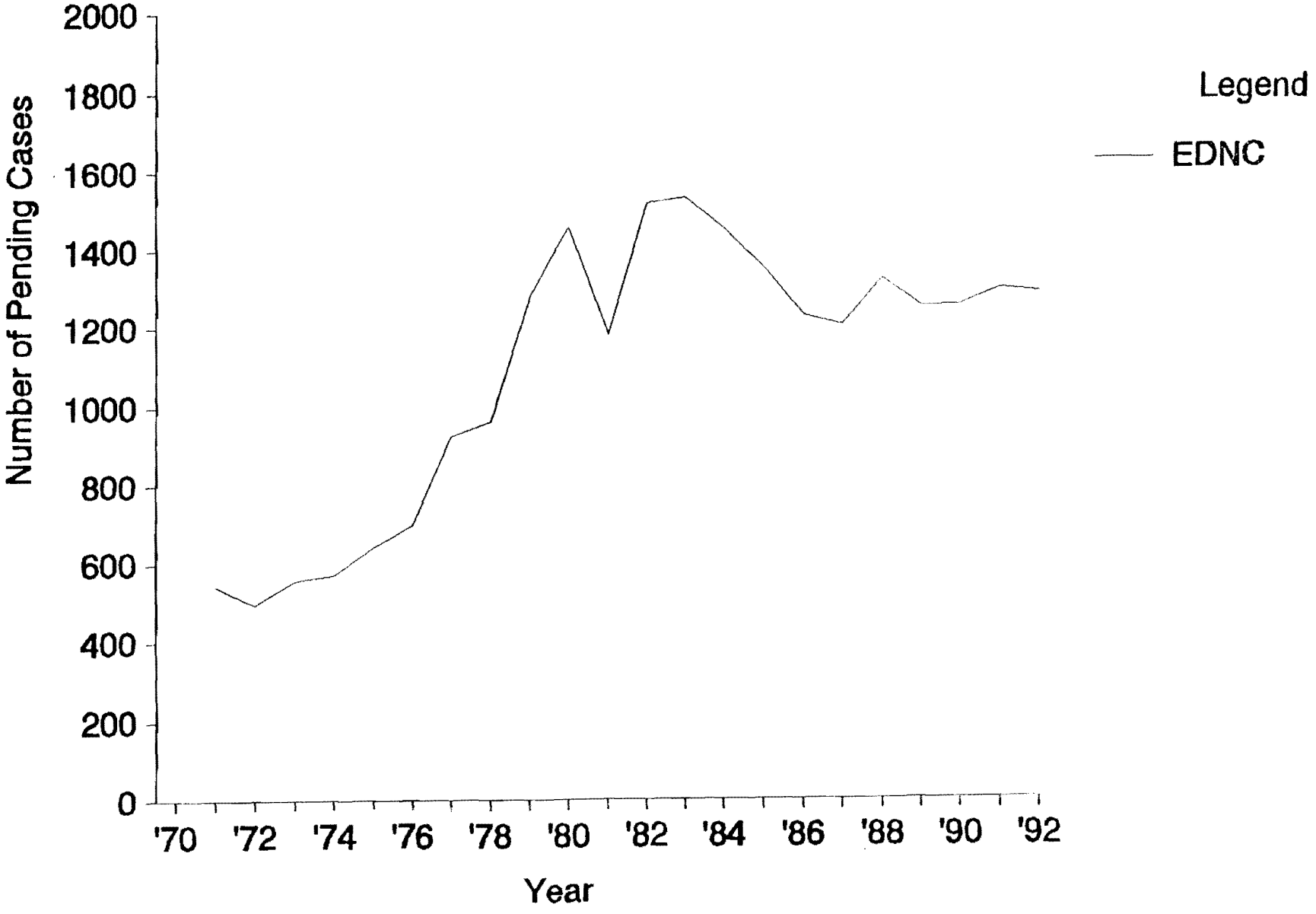

FIGURE 6

Ratio: Pending to Terminated Cases SY 1971-1992

FIGURE 7

months. This figure has fluctuated between 8 and 9 months over the past 6 years, but it represents an increase over earlier years. In 1985, the time from filing to disposition was only 4 months, and in 1975, this figure was 3.1 months. See Figure 8 for a breakdown of disposition times for cases in the Eastern District of North Carolina and nationally for statistical years 1971-1992.

In SY 1992, the median time from issue to trial in civil matters was 17 months, up four months from the 13 month figure in 1991. In 1985, the median time was 11 months, although it had reached a high of 22 months in 1981, and during the earlier 1970s, the figure ranged from 15 to 18 months. This trend indicates that the court once had a problem moving cases through the system, but effectively resolved it. Now, however, there are indications that another slowdown in case movement could be forthcoming. See Figure 9 for an analysis of median times from issue to trial for this district and the nation during SY 1971-1992.

During SY 1992, there were 44 cases over 3 years old in the district, representing 4.2% of the civil docket. The 4.2% figure is a threefold increase since 1991. In the Eastern District of North Carolina in SY 1985 only 2.5% of the civil docket was over three years old, while this number was much higher in earlier years -- 8.7% in 1979 and 8.1% in 1971. These figures indicate that the court has cut its percentage of older cases in half over the past 20 years, even with an increasing number of cases being

Months From Filing to Disposition SY 1971-1992

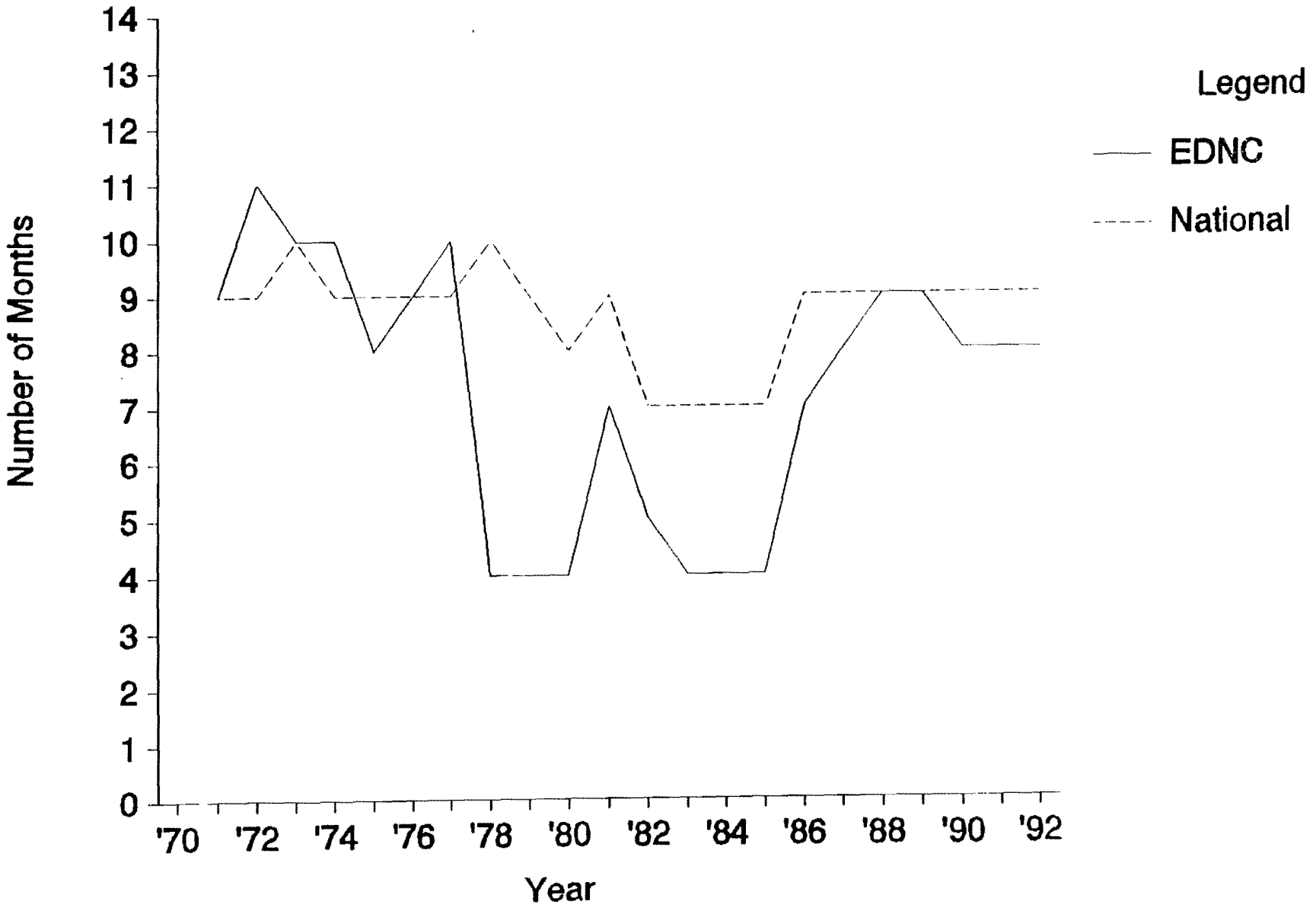

FIGURE 8

Months From Issue to Trial SY 1971-1992

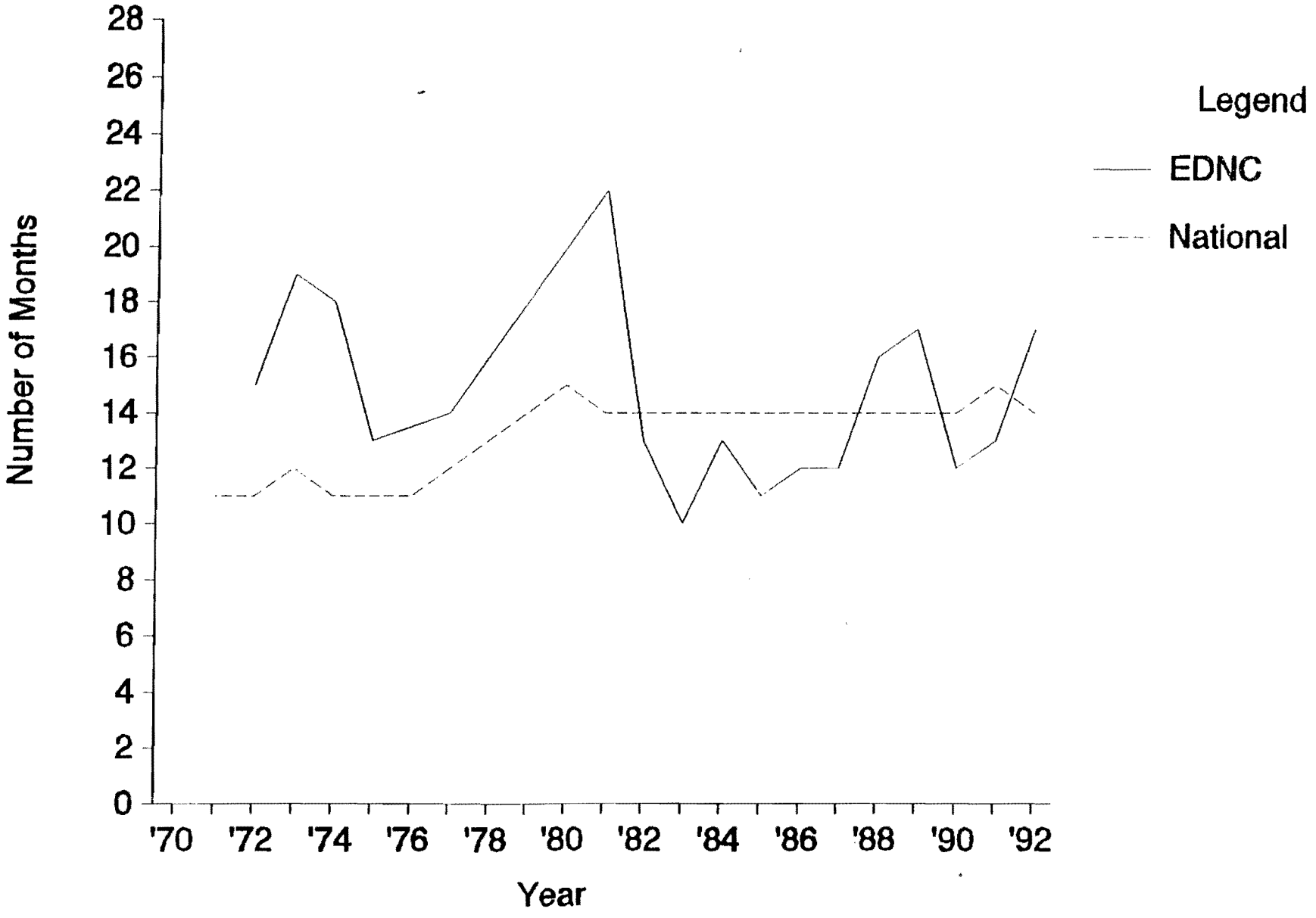

FIGURE 9

added to the civil docket. As discussed previously, the threefold increase in the past year could indicate less efficient management of older cases; however, since this increase stems from two sets of readily identifiable cases involving securities and land condemnations, the increase may be somewhat illusory. Nationally, in SY 1992, the percentage of civil cases over 3 years old was 8.7%. Figure 10 illustrates the percentage of cases more than three years old, both in this district and nationwide, during SY 1971-1992.

Per Judgeship Statistics.

In SY 1992, there were 456 filings per judgeship in the Eastern District of North Carolina, an increase of 46 filings per judge over SY 1991. Nationally, during the same time period, there were 403 filings per judgeship. In SY 1985, there were 633 filings per judgeship in the district, while in 1979 and 1971, there were 536 and 268 filings per judgeship, respectively. Between SY 1971 and 1992, there has been a 70.2% increase in the number of filings per judgeship in the Eastern District of North Carolina. See Figure 11 for a breakdown of the total filings per judgeship in civil and criminal felony cases during SY 1971-1992.

In SY 1992 there were 377 civil case filings per judgeship in the district. This was a 13.9% increase over 1991 and a 124.4% increase over 1971, and a decrease of 34.8% and 19.1% from SY 1985 and 1979, respectively. However, as previously noted, the huge filings during the mid-1980s in student loan cases skewed

Percentage of Cases More Than Three Years Old
SY 1971-1992

FIGURE 10

Total Filings Per Judgeship (Civil and Criminal Felony) SY 1971-1992

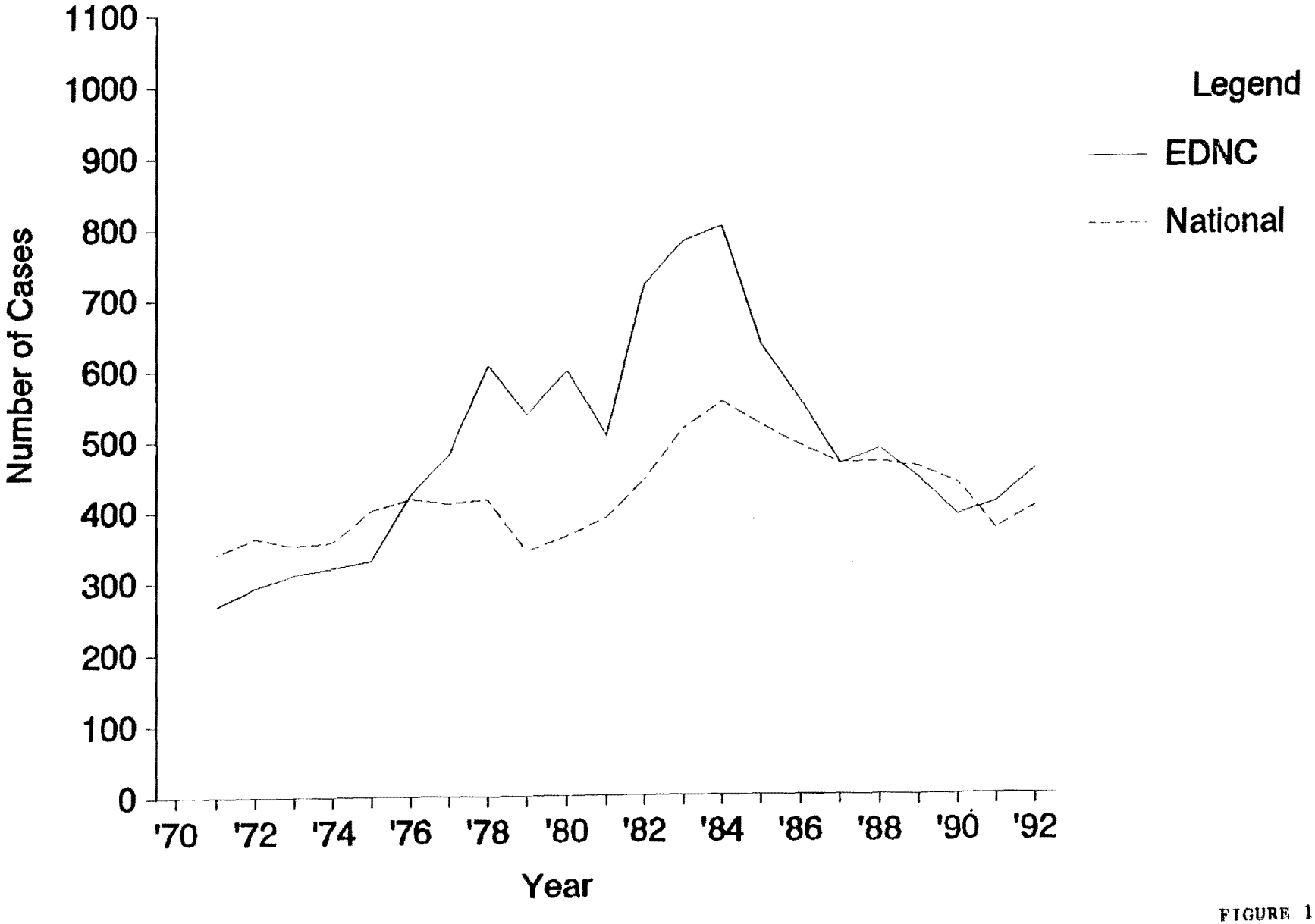

FIGURE 11

the statistics relating to the number of cases during those years. Figure 12 provides an analysis of the civil filings per judgeship during SY 1971-1992 in the Eastern District of North Carolina and nationally.

The terminations per judgeship statistics have improved over the past 20 years. In SY 1992 each judge in the district terminated 460 cases, as compared to 378 cases in SY 1991, an increase in terminations of 21.7%. It was also an increase of 7.0% over SY 1979 and an increase of 82.5% over SY 1971. See Figure 13 for a breakdown of the terminations per judgeship during SY 1971-1992 for the district and the nation.

As a result, the number of pending cases per judge has steadily declined over the past 13 years. In SY 1992 there were 322 pending cases per judgeship in the district, a decrease of 0.6% from SY 1991, a decrease of 4.7% from SY 1985 and a decrease of 24.4% from SY 1979. Figure 14 illustrates the number of pending cases per judgeship during SY 1971-1992.

In terms of weighted civil filings per judgeship, the number has continued to rise over the past twenty years. In SY 1992, there were 372 weighted civil filings per judgeship in the Eastern District of North Carolina, an increase of 4.2% over SY 1991, an increase of 10.4% over SY 1985, and an increase of 34.8% over SY 1971. Figure 15 depicts the weighted civil filings per judgeship during SY 1971-1992.

Finally, the number of trials completed per judgeship has risen substantially over the past twenty years. In SY 1992 there

Civil Filings Per Judgeship SY 1971-1992

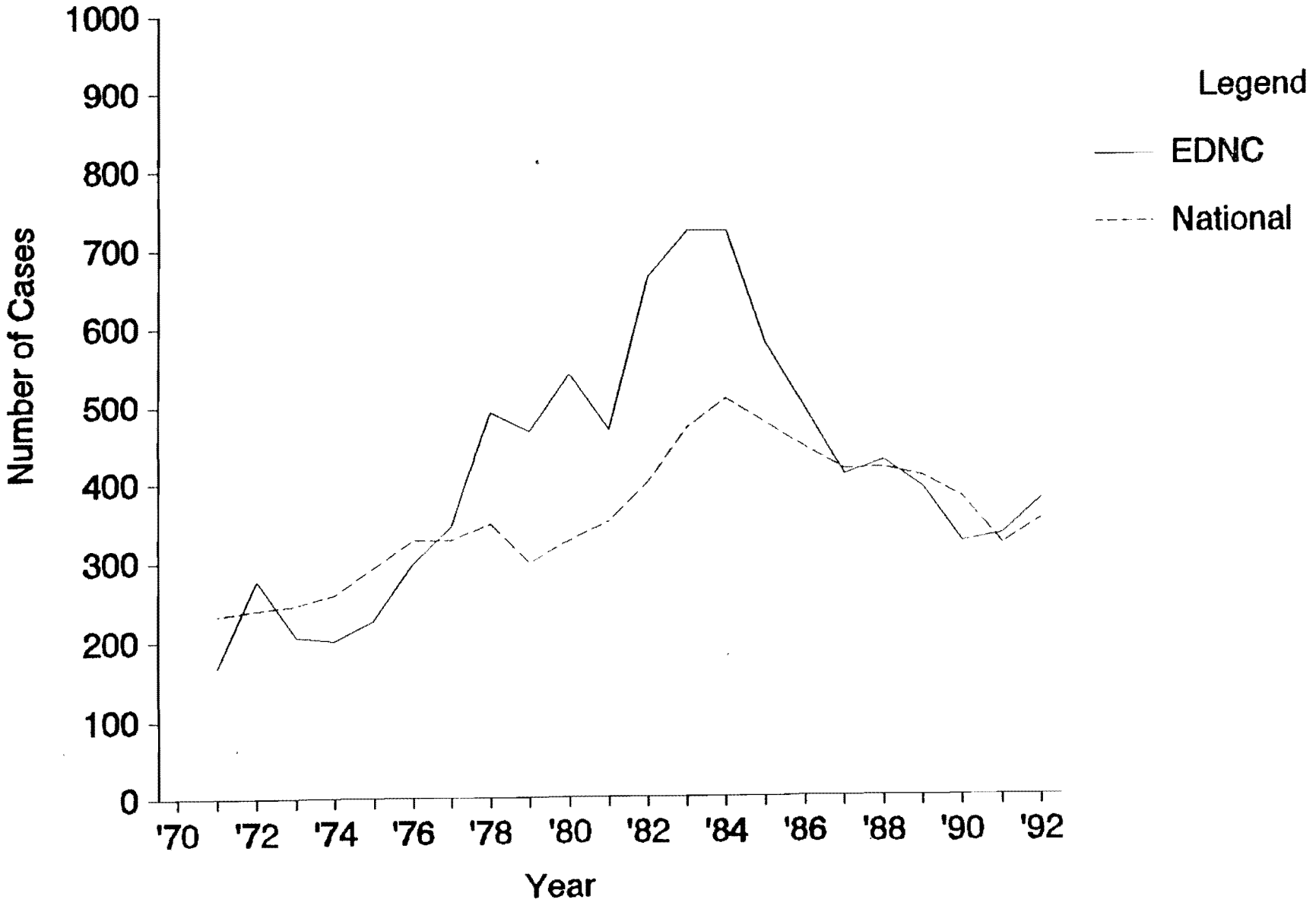

FIGURE 12

Terminations Per Judgeship SY 1971-1992

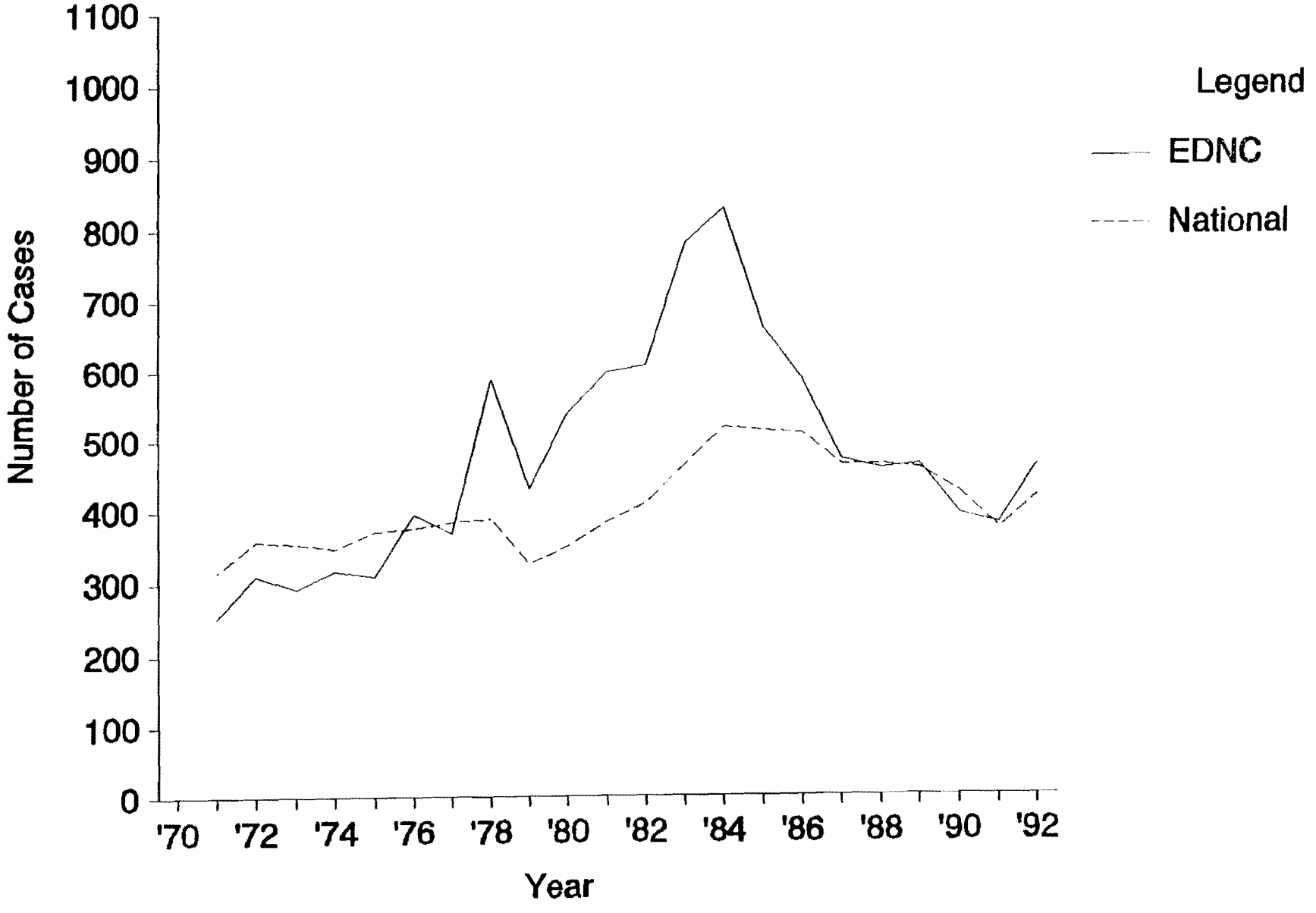

FIGURE 13

Pending Cases Per Judgeship SY 1971-1992

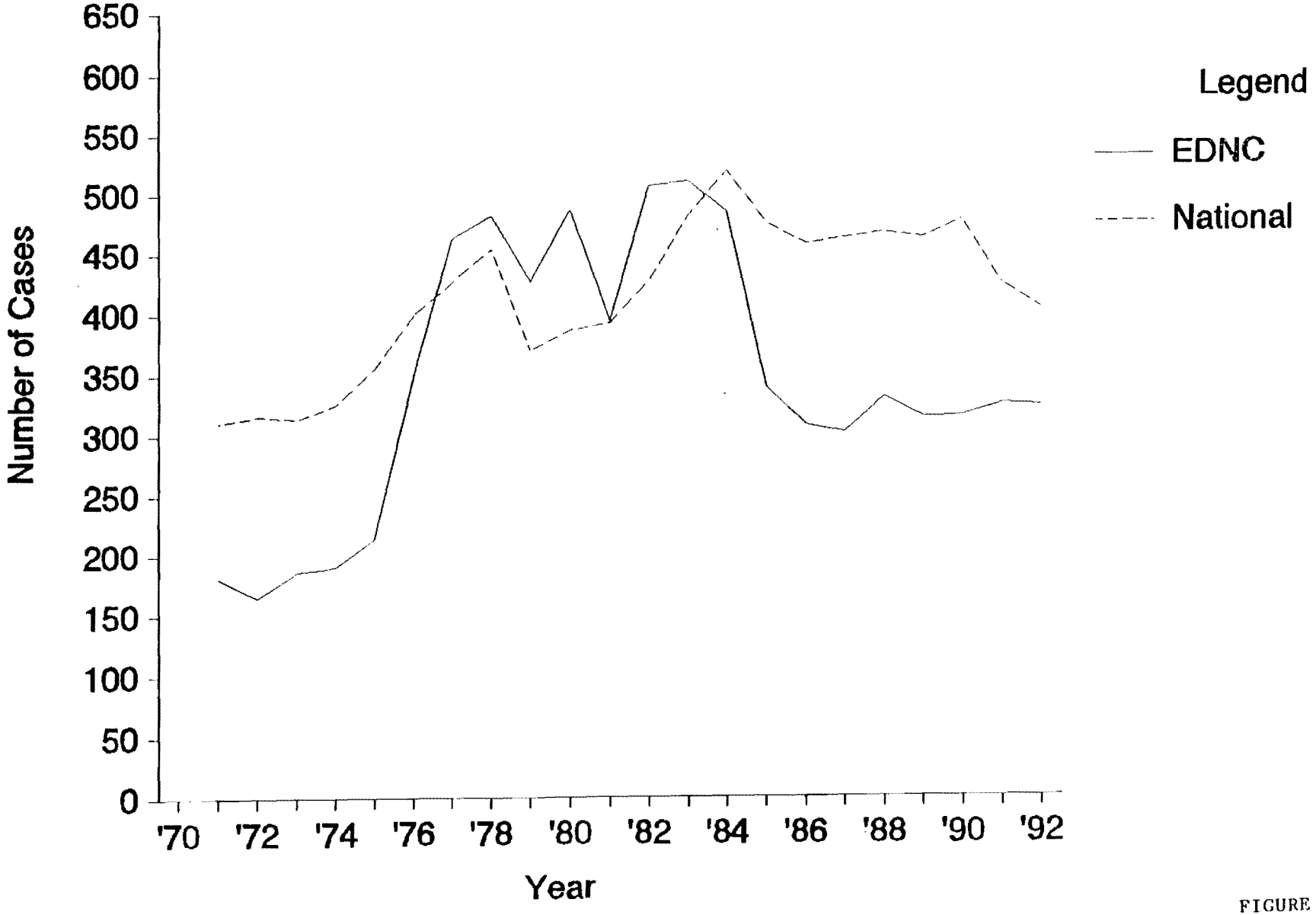

FIGURE 14

Weighted Civil Filings Per Judgeship SY 1971-1992

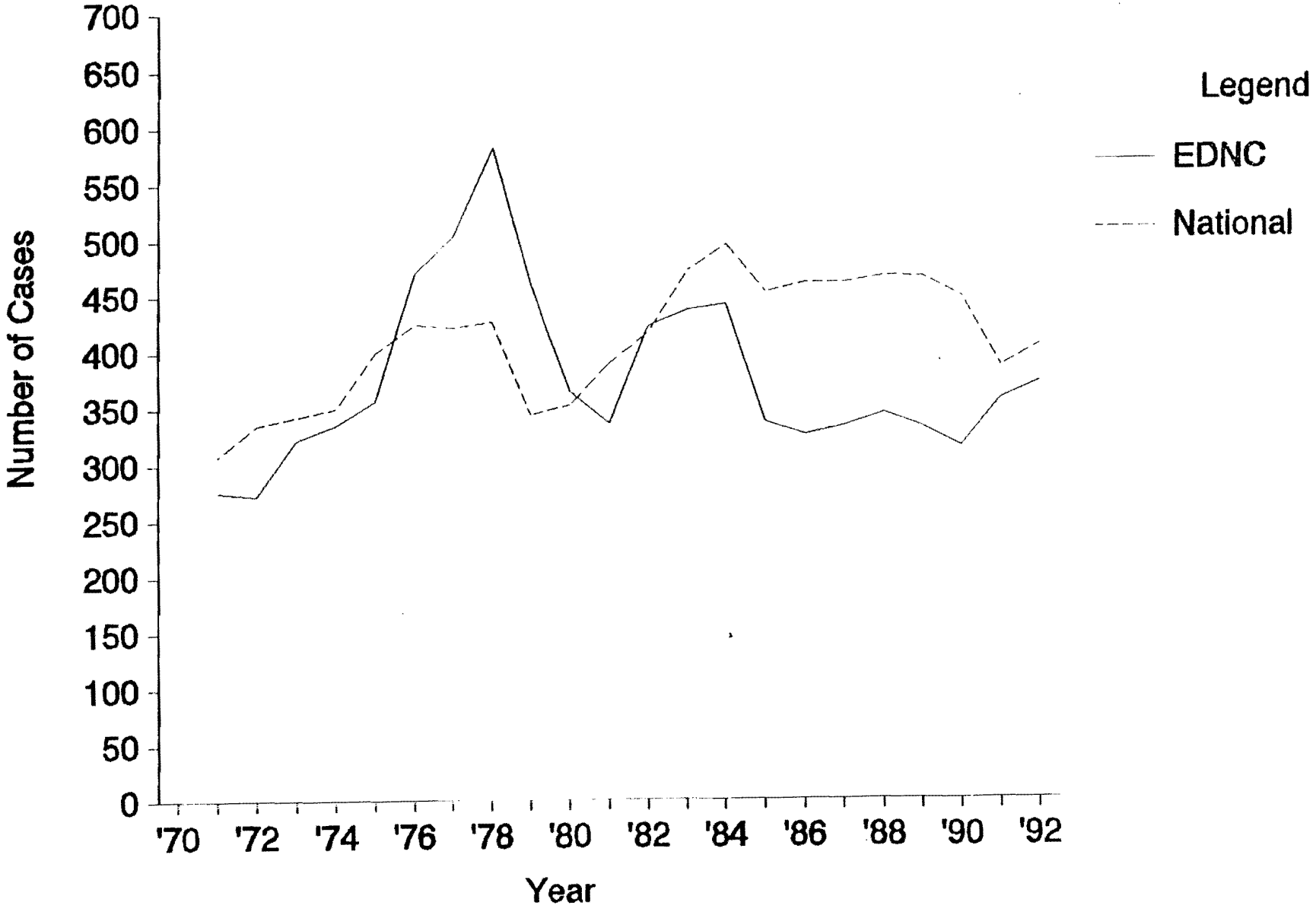

FIGURE 15

were 39 trials completed per judge in this district, an increase of 11.4% over 1991, an increase of 69.6% over SY 1985, an increase of 143.8% over SY 1979, and an increase of 62.5% over SY 1971. These numbers indicate that the judges in this district are trying more cases, and the trend indicates that the number of trials will continue to rise in the future. Figure 16 traces the number of trials completed on a per judgeship basis during SY 1971-1992, nationally and within this district.

4. Trends in Criminal Filings

In SY 1992, there were 1204 criminal cases commenced in the Eastern District of North Carolina, 309 felony filings, 894 misdemeanor cases, and 6 cases reopened or transferred into the district. The total number of criminal filings increased by 16.2% from SY 1991, 61.3% from SY 1985, and 187% from SY 1981. See Figure 17 for a breakdown of misdemeanor and felony criminal cases filed during SY 1981-1992.

The 309 criminal felony filings represent an increase of 1% over 1991, as well as an increase over other years -- 44.9% higher than SY 1985, 68.5% higher than SY 1979, and 3.3% higher than SY 1971.

In SY 1992 there were 1374 total criminal defendants commenced in the district, an increase of 16.9% over SY 1991, 45.7% over SY 1985, and 181% over SY 1981. Figure 18 provides a graph depicting misdemeanor and criminal defendants commenced during SY 1981-1992.

In SY 1992, criminal filings comprised 17% of the total number

Trials Completed Per Judgeship SY 1971-1992

FIGURE 16

Misdemeanor and Felony Criminal Cases Commenced SY 1981-1992

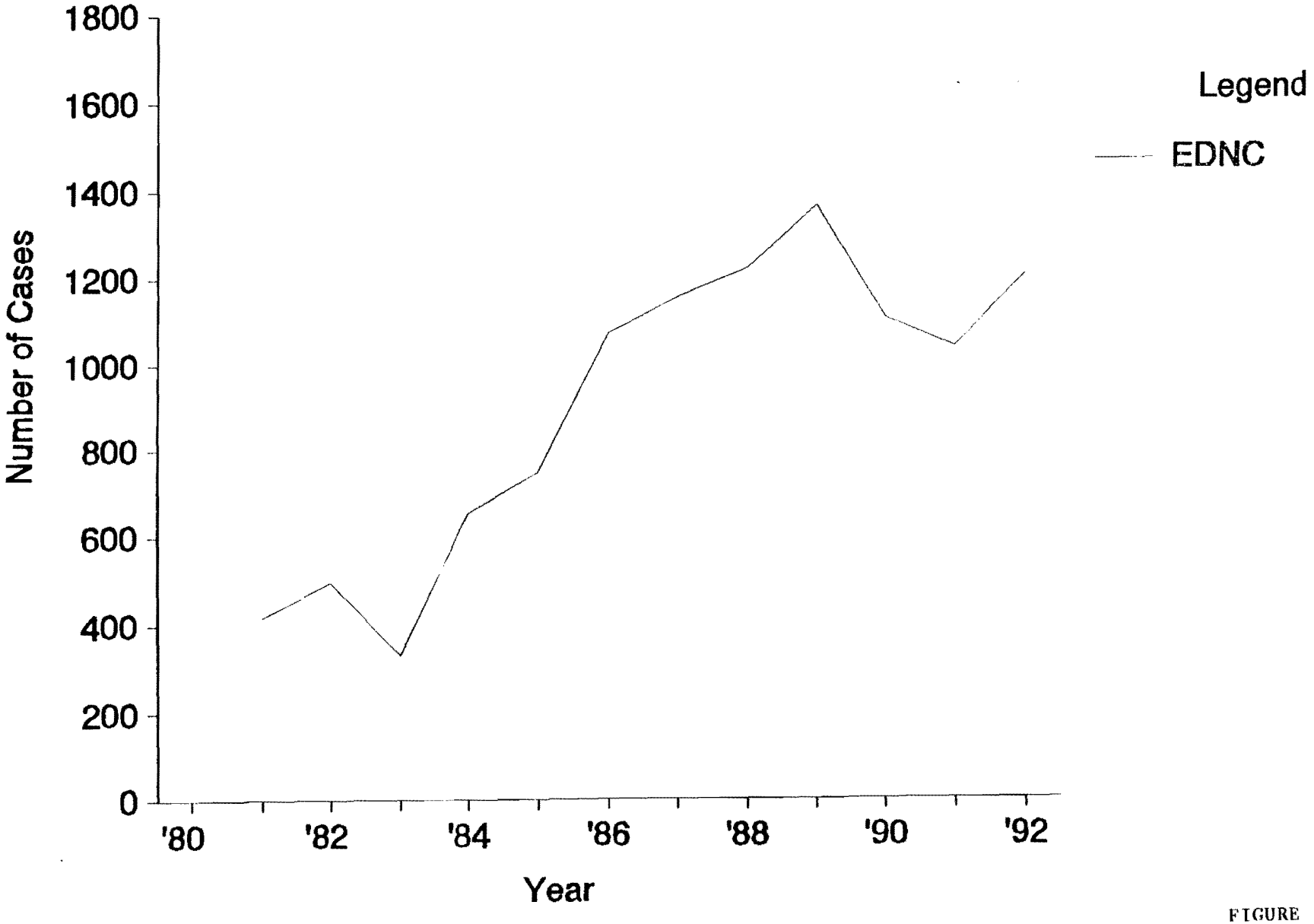

FIGURE 17

Misdemeanor and Felony Criminal Defendants Commenced SY 1981-1992

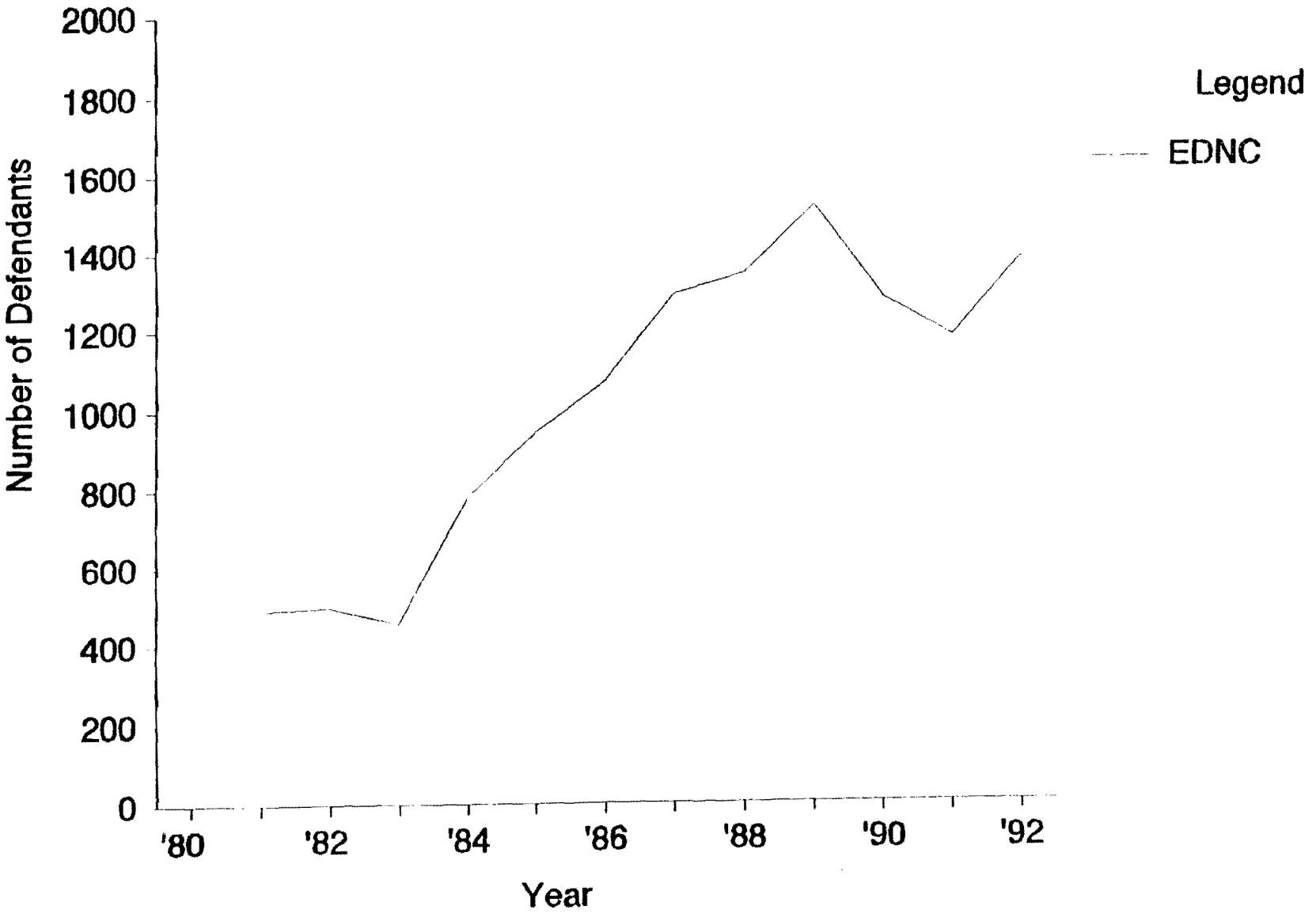

FIGURE 18

of filings in the district, as compared to the national figure of 13%. The percentage was down from SY 1991, when criminal filings were 18.8% of the total number of filings. However, it was an increase over previous years -- up 7.7% over SY 1985 and up 5.4% over SY 1979.

The median time from filing to disposition in criminal matters was 6.4 months in 1992, .5 months higher than the national average of 5.9 months. This number has experienced a steady increase over the past twenty years, from 3.2 months in SY 1971, to 3.6 months in SY 1979, to 4.4 months in SY 1985, to 6.1 months in SY 1991. This increase is due largely to the increased number of filings in the district over the past twenty years. However, it may cause some room for concern that the district is slightly ahead of the national average in this category. Figure 19 illustrates the median time from filing to disposition in criminal felony cases filed during SY 1971-1992 in the Eastern District of North Carolina and nationally.

The number of drug defendants prosecuted in the Eastern District of North Carolina in SY 1992 accounted for 16.9% of the total offenses charged in district, an increase of 2.5% and 3.5% over SY 1991 and 1981, respectively, but a decrease of 7.4% from SY 1985.

In SY 1992 drug cases in the district totalled approximately 9.8% of the total offenses charged in the district, a decrease of .3% from SY 1991, 9.9% from SY 1985, and 1.6% from SY 1981. See Figure 20 for an analysis of the percentage of criminal drug

Median Months From Filing to Disposition: Felony Criminal Cases
SY 1971-1992

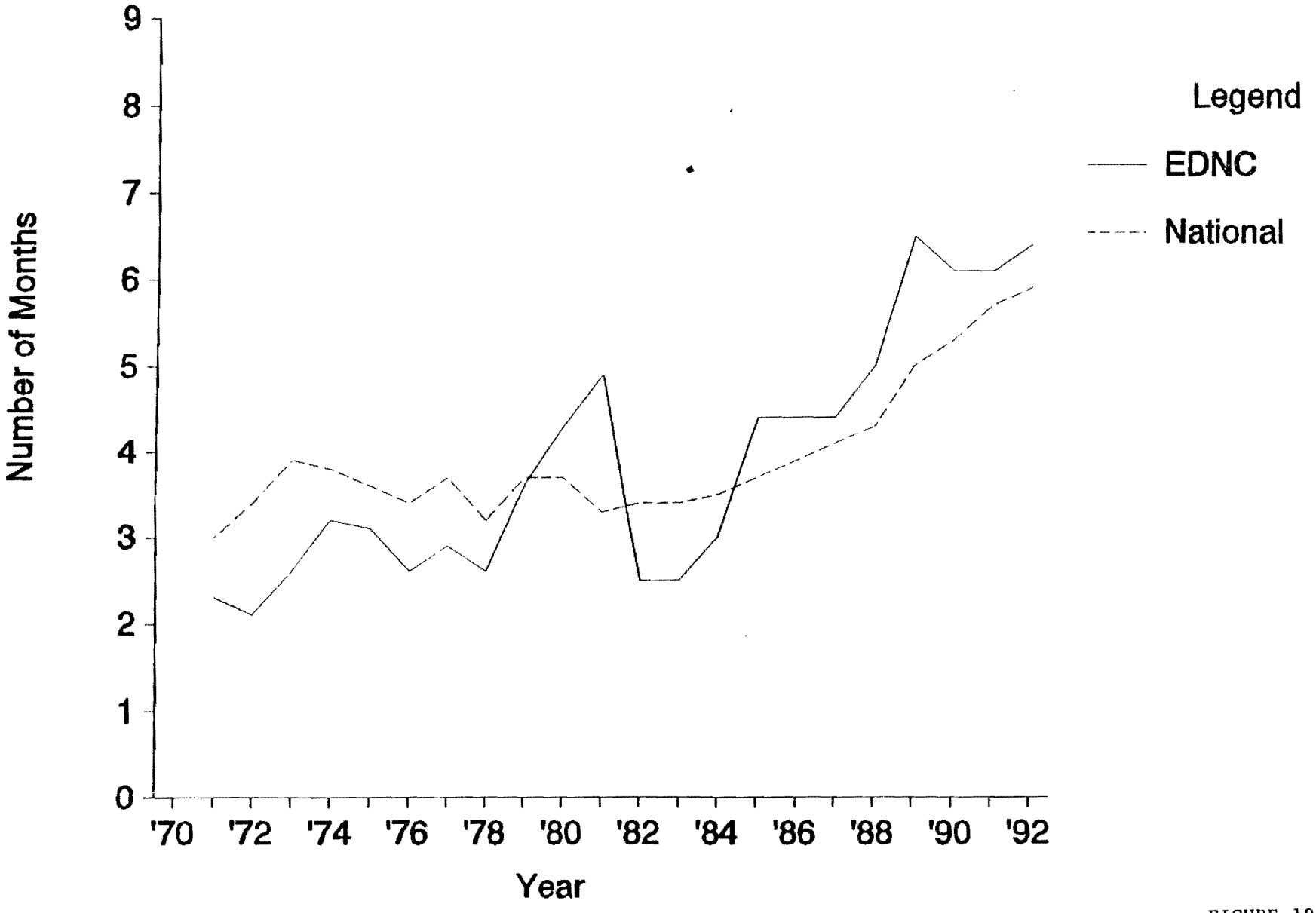

FIGURE 19

cases prosecuted in the district and nationwide during SY 1981-1992.

Regarding per judgeship statistics, there were 79 criminal felony filings per judge in the district in SY 1992, remaining the same as in SY 1991. This figure is an increase of 43.6 % over SY 1985 (with 55 criminal felony filings per judge), and an increase of 14.5% over SY 1979 (with 69 criminal felony filings per judge). Figure 21 depicts the number of criminal felony filings per judgeship during SY 1971-1992.

B. Trends in Court Resources

Between 1970 and 1984 the Eastern District of North Carolina fluctuated between two and three active judges, as a result of periods of time in which judicial vacancies remained unfilled. Since 1988, however, the court has operated with a full complement of four active judges. At present, there are no judicial vacancies.

Presently, with the current number of district and magistrate judges, the court has adequate space and facilities in which to hold court throughout the district. However, due to federal budget constraints, the district has experienced personnel losses which have not been funded for rehire. As a result, the clerk of court's office is operating at a high level of efficiency to maintain day-to-day operations with less personnel and less resources.

In SY 1993 for the first time, the operating budget of the Eastern District of North Carolina was decentralized by the

Percentage of Criminal Drug Cases Prosecuted
SY 1981-1992

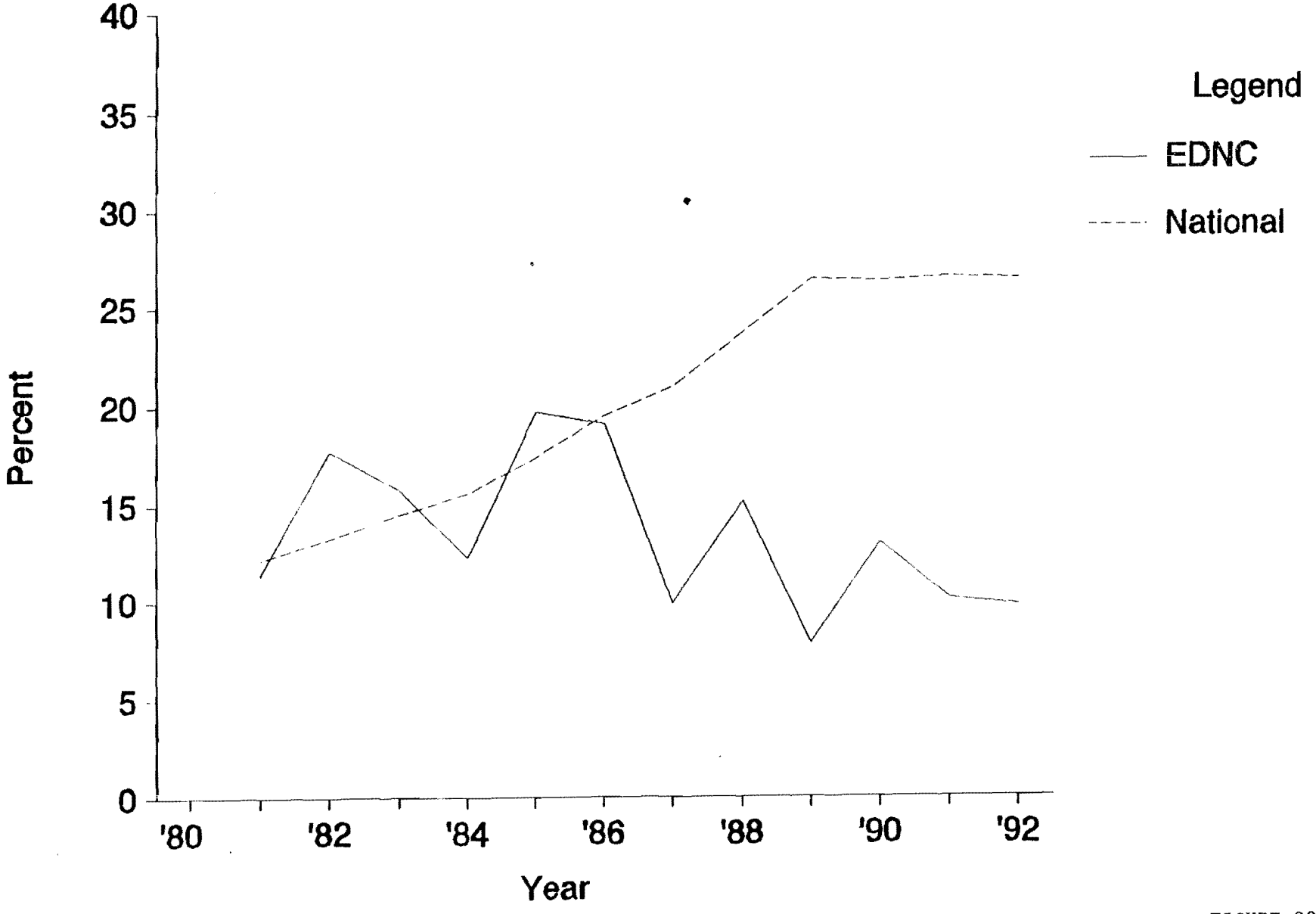

FIGURE 20

Criminal Felony Filings Per Judgeship SY 1971-1992

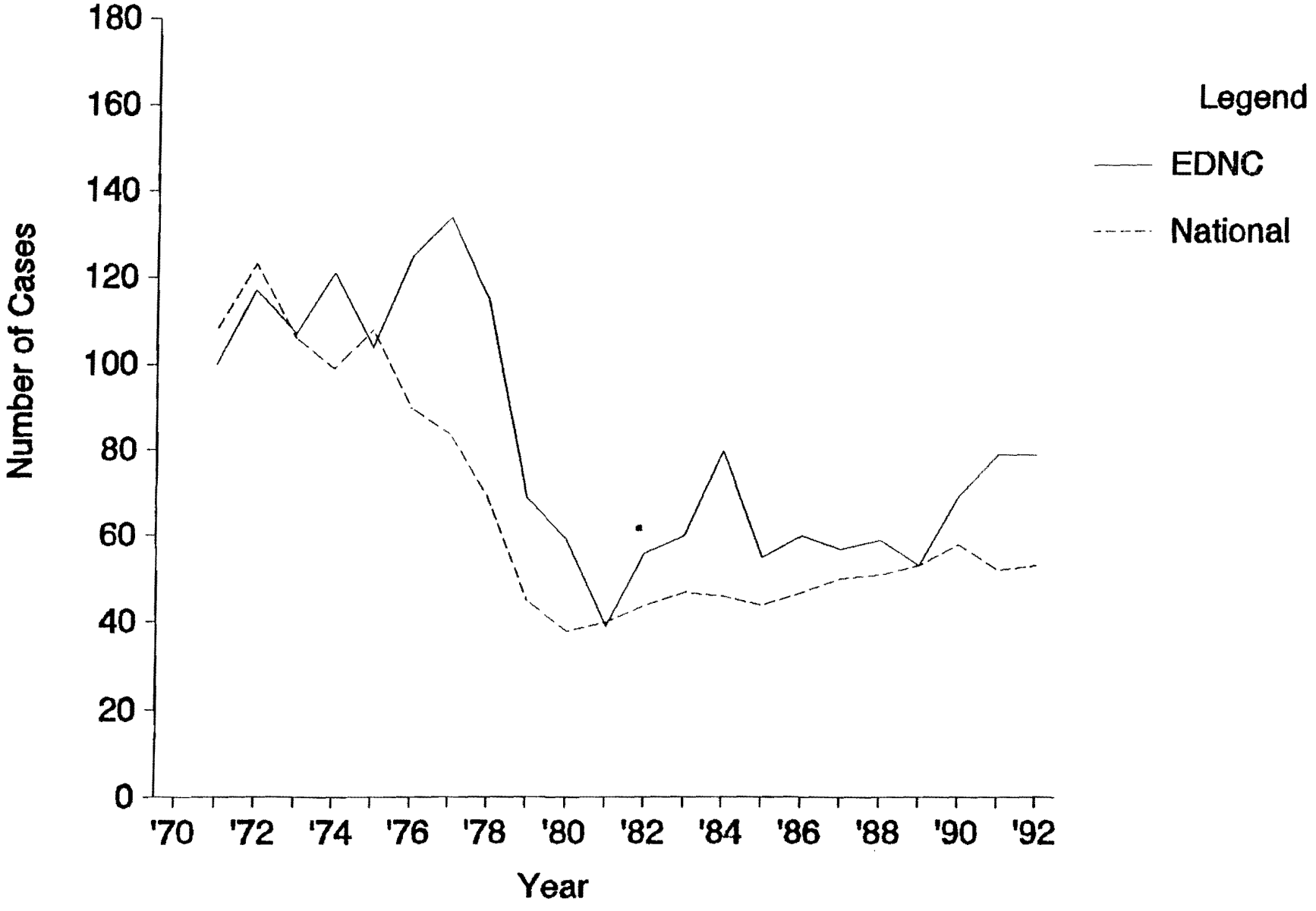

FIGURE 21

Administrative Office of the United States Courts. Consequently, the court has greater control over expenditures and planning in budgetary and financial matters. The court feels that this greater control over finances should help make resources go further and enable the court to function more productively.

C. Assessments of Cost and Delay

Based upon the results of the surveys completed by practitioners in the Eastern District of North Carolina, it appears that this district functions very efficiently. Eighty percent (80%) of the general survey respondents stated that they had not experienced unreasonable delay in this district. In the case-specific questionnaire, 71.4% of the respondents believed that the duration of their case was less than or equal to the length they anticipated for their case.

Undoubtedly, the survey results indicate an overall level of satisfaction with the district's performance. However, the Advisory Group's own experiences, as well as specific findings from the surveys and discussions with practitioners in the district led the Advisory Group to examine several areas of practice which warranted consideration and possible change.

1. Case Tracking and Case Management

The Advisory Group viewed as its initial mission the assessment of the overall state of the civil docket in the Eastern District. In particular, it was interested in determining how well the district manages its caseload and keeps cases moving toward a prompt disposition. It sought to determine

whether there are any points in the process at which cases get delayed or whether any further procedures are needed to eliminate unnecessary costs or delay.

The Advisory Group based its assessment on information obtained from a variety of sources. First, it reviewed the workload statistics for the district compiled by the Administrative Office of the Courts. Next, a subcommittee undertook a review of randomly selected docket sheets for cases recently closed. It examined 110 docket sheets in all, representing eleven categories of cases that were closed between April 1, 1990 and March 31, 1991. The selection process intentionally overrepresented the cases whose disposition had taken the longest. The Advisory Group sent out questionnaires to the attorneys involved in the 110 sampled cases, seeking their views about the efficiency with which those particular cases had been managed, and it also reviewed the results of the larger, general questionnaire that was sent out to approximately 400 attorneys who have appeared in cases in the Eastern District.

The overall conclusion of the Advisory Group is that the Eastern District does a good job in managing its caseload so as to minimize unnecessary costs and delay. Especially effective are the court's procedures for the entry of Rule 16 scheduling orders and the setting of trial dates at the outset of cases. The early establishment of a presumptively firm trial date keeps the parties on track in their preparations and eliminates delays experienced in other districts between the completion of pre-

trial preparation and the availability of a trial date.

Attorneys responding to the two surveys generally shared the Advisory Group's assessment of the effectiveness of the Eastern District's case management techniques. A majority of those responding to the case-specific questionnaire indicated that in their case the court kept pre-trial activities on a firm schedule, set and enforced limits on discovery, ruled promptly on pre-trial motions, kept the trial date firm, and exercised firm control over the trial itself. A majority also indicated that the duration of the litigation was shorter than or no longer than what they had expected and that the case could not have been litigated at less expense in another court (state or federal). Responses to the general questionnaire were likewise supportive of the district's current cases management procedures. Specifically, 84.9% and 90.6% of the respondents to the general survey found that the current scheduling practice is satisfactory in terms of both delay and cost, respectively.

Despite the overall picture of active and effective case management in the Eastern District, there are indications that some case management techniques effectively utilized by other districts are not currently used with any frequency by this court. For example, a majority of respondents to the case-specific questionnaire indicated that the court engaged in no narrowing of the issues prior to trial and made no efforts to encourage the parties to settle the case. All respondents agreed that no alternative dispute resolution techniques were utilized

in their case.

While the Advisory Group's assessment of the district's case management was positive, members did note some concern about the recent workload statistics for the 1992 statistical year. Particular concern was expressed about the significant increase in median time from issue to trial of civil cases in the district, which increased from 13 months in 1991 to 17 months in 1992, three months longer than the national average. Also disturbing was the increase in the percentage of civil cases over three years old, which went from 1.4% in 1991 to 4.2% in 1992.

A number of explanations might be given for these apparent indications of less efficient case management during the last year. Among them are the temporary unavailability of a senior judge due to illness, the change of personnel in the clerk's position, and the resulting loss of a half-time magistrate's position. Thus, it is not clear that these statistics provide any cause for alarm. Nevertheless, the Advisory Group believes that the statistics serve to point out the need for continuing attention to improvement in case management techniques and may suggest the desirability of considering procedures previously thought to be unnecessary in this district. Because the district's efficient operation over the last decade is in part attributable to the availability of a hard-working senior judge whose services will not be available forever, the Advisory Group believes it important for the district to move toward even greater efficiency in the future. Consequently, the Advisory

Group believes that the use of alternative dispute resolution and settlement techniques is essential.

Among the issues considered by the Advisory Group was the desirability of establishing a differentiated case management program. The Advisory Group understands that a number of districts have included in their Cost and Delay Reduction Plans provisions for a multi-tracked case management system. Under these programs cases are assessed at the time of filing and are then placed in a particular track with a prescribed level of judicial intervention and case management. For example, a case might be categorized as complex and thus be the subject of early judicial involvement, lengthier deadlines for completing discovery, and more vigorous judicial efforts to resolve the case without trial. On the other hand, a case determined to be relatively uncomplicated might be placed on a fast track with short deadlines and little judicial pre-trial involvement. The idea, of course, is to utilize judicial resources where they are most needed and to tailor time limits appropriately.

While the Advisory Group understood the goals of such differentiated case management programs, it did not see a need at the present time for the Eastern District to adopt an elaborate new case tracking system. For the most part it appears that the appropriate level of case management is already being applied to cases on an individual, as opposed to a categorical, basis. The attorneys, rather than court staff, are given the first opportunity to suggest appropriate deadlines for their

cases, and this system seems to be operating well. The Advisory Group also notes that the Eastern District in fact already has some form of differentiated case management. Three categories of cases -- prisoner petitions, social security and bankruptcy appeals -- are handled on a "differentiated" basis because they present special needs, and certainly the clerk's office should be alert to see if other classes of cases need specialized treatment.

2. Discovery

The Advisory Group generally believes that the discovery process in the Eastern District works well and does not require major change. However, discovery disputes add significant cost and delay to the resolution of any civil action, and the Advisory Group seeks to recommend changes intended to provide incentive for attorneys to resolve their own disputes, or, lacking that, to provide mechanisms within the court system which are quicker and less expensive than those currently in place.

The Advisory Group's approach to changes in the discovery process has been complicated by the pendency of significant changes to the Federal Rules of Civil Procedure relating to discovery. As of the preparation of this report, the outcome of the proposed changes to the federal rules is still unknown. The Advisory Group believes that the Federal Rules of Civil Procedure serve a salutary goal of uniformity, and it is hesitant to recommend any drastic changes to the district's local rules which would be viewed as conflicting with the Federal Rules of Civil

Procedure.

Nevertheless, the Advisory Group has determined the following areas to be of concern in the discovery process:

Use of Experts

Based upon its own perception, as well as discussions with members of the judiciary and evaluation of survey results, the Advisory Group notes that there is a significant level of abuse in the use of expert witnesses. There appears to be an increasing tendency to use more and more experts, and there is difficulty in defining the scope and particulars of an expert's testimony prior to trial, as well as a tendency to allow persons to testify as experts with minimal experience and training in an area. In addition, many experts are moving targets who refuse to be pinned down prior to the moment that they step up on the stand to testify. The Advisory Group believes that such gamesmanship should not be a part of civil litigation.

The Advisory Group feels that the practice of disclosure of expert witnesses prior to the end of discovery and taking of expert depositions under our present "scheduling order" practice is workable. The Advisory Group feels that prior to the taking of an expert's deposition that there should be a "meaningful disclosure" or "meaningful report" provided to adverse parties as to the scope, nature and particulars of the expert's trial testimony. One member of the judiciary shared his concerns regarding expert witnesses, including some of the techniques he had used to control experts, such as requiring depositions of

experts to be filed with the court prior to trial, requiring objections to an expert's qualifications prior to trial, and limiting an expert's trial testimony to the opinions and matters established in his or her deposition. The Advisory Group considered these ideas, and its recommendations can be found in Section IV.B.4.

Counsel's Failure to Confer Before Filing Discovery Motions

As mandated by the Act, the Advisory Group considered whether the district should require that discovery motions be accompanied by a certification that the moving party has made a good faith effort to resolve the disagreement prior to filing a formal discovery motion. 28 U.S.C. §472(a)(5). The Advisory Group determined that such a requirement would encourage the parties to resolve their disputes without court intervention, especially when dealing with motions to compel discovery. A minority position of the Advisory Group even feels that a face-to-face meeting of counsel before filing a discovery motion would further increase swifter resolution of discovery disputes and reduce the number of discovery motions filed.

Need for Immediate Ruling on Discovery Disputes

In evaluating the discovery process, the Advisory Group determined that there is a need for immediate rulings on discovery disputes. This requirement arises because of the relatively brief period in place in this district for the completion of discovery. With the time limits provided for memoranda in support of a motion, memoranda in opposition to a

motion, and reply memoranda, at least thirty days can be tied up just in the briefing of a single discovery dispute. Further delays follow awaiting the issuance of a written ruling. As a result, the Advisory Group considered and approved options involving a "discovery hotline" and an abbreviated process for handling discovery matters.

3. Motions Practice

One of the Advisory Group's primary areas of study involved the relationship between unresolved dispositive motions and an impending trial date. Specifically, the Advisory Group was concerned that costs were significantly increased when a dispositive motion remained pending with the court, while the parties were required to prepare for trial -- a trial that might not occur if the dispositive motion terminated all or part of the case.

Under the current system, dispositive motions must be filed thirty days after the close of discovery, with a pre-trial and trial date set at least 90 days afterward. The Advisory Group felt that this 90 day period did not allow sufficient time for subsequent decision by the court, and as a result, attorneys were sometimes faced with the prospect of incurring the cost of preparing for trial with the possibility of the dispositive motion obviating the need for trial, or at least some of the issues. Therefore, the Advisory Group sought some way to balance the competing interests of keeping cases on a firm trial schedule with allowing the court adequate time to complete well-reasoned

decisions on the dispositive motions in a case.

Survey results reflect the Advisory Group's concern. Seventy percent (70%) of those who responded to the survey felt that unnecessary cost and delay would be prevented if the parties could inform the court that significant post-discovery motions were anticipated and request that the court incorporate it into the scheduling order. However, 65% of the respondents indicated that they would not be able to determine this information until near the end of the discovery period. Consequently, the Advisory Group determined the need to address this issue in its recommendations. See Section IV.C.1 for recommendations.

The Advisory Group also considered whether the requirement in the district that every motion be accompanied by a written memorandum of law unnecessarily increased costs for the parties. However, in the survey, only twenty-four percent (24%) of those who responded felt that briefing requirements were a moderate or substantial cause of increased costs, while the majority considered them to have little effect on increased costs. In addition, the Advisory Group recognizes considerable savings to the court in requiring issues to be adequately briefed, by saving judicial resources and reducing judicial delay in the decision-making process. Thus, no recommendation for eliminating this requirement was considered necessary.

In a related consideration, the Advisory Group investigated the court's willingness to allow extensions of time and continuances relative to motions. Survey results indicate that

forty-six percent (46%) of the respondents felt that the court was flexible in allowing extensions and continuances, while only four percent (4%) felt that the court was never flexible in this area. Consequently, the Advisory Group determined that a recommendation in this area was unnecessary.

Presently, in this district, hearings on motions are only held when ordered by the court. The Advisory Group sought to determine whether conducting hearings as a matter of right would reduce delay or cost in the litigation. Survey results demonstrated that fifty-eight percent (58%) of the respondents felt that allowing oral argument as a matter of right would not promote just and expeditious resolution of pending motions. In addition, sixty-three percent (63%) of the respondents stated that they had never been denied a hearing when they had requested it. The survey results suggest that allowing oral argument as a matter of right would not reduce cost or delay in the system, and although hearings on motions are only scheduled upon order of the court, the court often grants parties' requests for hearings. Consequently, the Advisory Group chose not to recommend oral argument as a matter of right; however, in those instances where a party strongly believes that oral argument would assist the court in resolving the issues or would further the court's understanding of the facts or issues, the party may request oral argument. If requested, oral argument should generally be granted, unless the court, in its discretion, determines that oral argument would not be of assistance in its

determinations.

The Advisory Group also perceived complications resulting from the current rule allowing motions in limine to be filed five business days prior to the beginning of the session at which a case is calendared for trial. Specifically, the Advisory Group's concern was twofold: (1) Do litigants use delayed filing of motions in limine as a tactic to harass their opponents who are completing trial preparation; and (2) Does the requirement of written responses to motions in limine force counsel to neglect trial preparation to complete written responses to motions in limine. Survey results revealed overwhelmingly (64%) that practitioners do not feel that motions in limine are used to detract an opponent from trial preparation. However, over half of the respondents felt that costs would be reduced if the court eliminated the requirement for a written response to a motion in limine filed after the pre-trial conference had taken place.

4. Final Pre-Trial Conference and Trial

The Advisory Group is of the opinion that few changes need to be made in the pre-trial and trial practice and procedures in the Eastern District of North Carolina. However, the Advisory Group recognizes that there are certain practices and procedures which do, in fact, contribute to a certain amount of delay and unnecessary costs which could be avoided with certain modifications to the local rules and practices. Some of the practices which contribute to delay and additional costs are confusion and uncertainty in preparation of the pre-trial order,

refusal of counsel to approach stipulations in good faith, and little emphasis on settlement or the use of alternative dispute resolution techniques.

Frequently, and most often in complex multi-party litigation, it is impossible to finalize a workable, meaningful pre-trial order with only one conference with the Court. The inability to resolve all matters at one pre-trial conference is exacerbated by the fact that the pre-trial is often only two weeks prior to the trial. Consequently, the Advisory Group sought a method for effecting a meaningful pre-trial process, without interrupting the case management and firm trial date.

There is also a general feeling that parties frequently fail to address pre-trial stipulations in a meaningful and realistic manner. The Court may need to become more involved in the stipulation process and develop a process which allows the Court to address stipulations with the parties and attempt to determine if a more realistic approach could be taken in order to save trial time.

Members of the judiciary in the district requested that the Advisory Group consider the possibility of having a pre-trial conference on jury instructions. The judges envision the parties ultimately providing the court with a joint submission containing a proposed verdict form and jury instructions prior to the beginning of trial. The Advisory Group considered this proposal at length, but finds that such a modification to the current practice in the district is unwarranted. The present system

works well, and some members of the Advisory Group have serious concerns about implementing a procedure in which jury instructions are addressed prior to the presentation of evidence at trial.

Alternative Dispute Resolution

Pursuant to §472(a)(6) of the Act, the Advisory Group considered the advisability of implementing, on a formal basis, various alternative methods for dispute resolution. The Advisory Group recognizes that approximately 95% of all civil litigation is resolved by settlement but notes that, at times, the settlement may be reached after considerable expenditure of time and resources when, in many cases, the settlement could or should have been explored earlier.

The Advisory Group considered and discussed six (6) methods of alternative dispute resolution:

(1) Early neutral evaluation;
(2) Mediation;
(3) Arbitration (voluntary or involuntary);
(4) Judge hosted settlement conferences (a form of mediation);
(5) Mini trials; and
(6) Summary trials.

The Advisory Group conducted lengthy discussion and consideration of various pilot programs and actual experiences with the various methods of alternative dispute resolution, with special attention to the methods identified by statute, i.e., mediation, minitrial, summary trials, and early neutral evaluation. Recommendations by the Advisory Group concerning alternative dispute resolution can be found in Section IV.E.

5. Impact of Legislation and Executive Action

Since there is no backlog of cases in the Eastern District of North Carolina, legislative enactments or executive orders do not appear to have created major problems for the district's case management procedures. However, the Advisory Group believes that recent Congressional attentiveness to federal drug crimes has had an impact on the federal civil docket, as is demonstrated by the national increases in drug prosecutions and the comparable increases in the staff of the United States Attorneys' offices, as well as probation and pre-trial services.

On a related front, the recent, severe budget cutbacks experienced by the federal court system present a unique problem for courts nationwide. With increased criminal prosecutions and civil filings, there must be equivalent increases in resources for the court system. The Eastern District of North Carolina, in conformity with a national mandate, is presently funded at approximately 79% of its allocated positions, i.e., the clerk's office is operating at 79% capacity. Although the staff in the clerk's office works diligently to maintain the level of service to which the public and bar has become accustomed, these severe financial constraints may, in the future, cause services to be lessened or curtailed. Consequently, the Advisory Group urges the Congress to consider additional funding for the federal court system, especially in the area of personnel.

IV. Recommendations

In light of the cost and delay problems noted by the Advisory Group in the previous section, the Advisory Group makes the following recommendations:

A. Case Tracking & Case Management

1. Notification of Need for Early Judicial Intervention

As previously stated, the Advisory Group performed substantial analysis of the court's case management procedures and found that the district's case load is well under control. However, in rejecting the concept of "differentiated case management," the Advisory Group notes that there is a need for continued case management in the current system. Consequently, because there may be some complicated cases that are not brought to the court's attention quickly enough under the present system, the Advisory Group recommends that attorneys be asked on the civil cover sheet or other form at the outset of the case whether they believe the case is one that would benefit from early judicial involvement. Such an indication could then alert the clerk's office to have the case reviewed by a magistrate judge for possible implementation of special case management techniques. In this regard the Advisory Group notes with regret the loss of the combined clerk/magistrate judge position, since such a dual official would be in an especially good position to monitor and administer heightened case management for complex cases.

2. Scheduling Orders in Prisoner Cases

The Advisory Group's second recommendation relates to the management of prisoner cases. As set forth in Section IV.C.2.a., approximately one-third of the civil docket is comprised of prisoner litigation. As a result, it is imperative that prisoner matters be handled in an expeditious and efficient manner. Because most prisoner cases are resolved by dismissal or summary judgment with limited discovery, the court's general practice for the entry of scheduling orders is not followed in these cases. For those prisoner cases that are not disposed of by summary judgment, however, the lack of a scheduling order may mean that they are permitted to languish unnecessarily on the court's docket. The Advisory Group therefore recommends that the court adopt a practice of entering Rule 16 scheduling orders in prisoner cases at the point that the parties' motions for summary judgment have been denied, in order to ensure the case's prompt movement toward final disposition.

3. Elimination of Unnecessary Appeals from Magistrate Judge's Rulings

Another case management issue considered by the Advisory Group concerns the feasibility of eliminating unnecessary appeals from rulings by magistrate judges. Under the United States Court of Appeals for the Fourth Circuit's ruling in United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), a party must file written objections to a magistrate judge's proposed findings and recommendations within ten days of service in order to be able to appeal from the district court's judgment based on

those findings and recommendations. The result of this requirement is that some attorneys feel compelled to appeal from a generally favorable ruling by a magistrate judge to preserve for potential appeal to the United States Court of Appeals for the Fourth Circuit any issues that were decided against their clients. The district court thereby becomes burdened unnecessarily, and the parties are put to extra expense and delay.

The Advisory Group recognizes that the district court is powerless to alter the court of appeals' ruling on this issue or the wording of Fed. R. Civ. P. 72(b), which requires "specific, written objections" to a magistrate judge's proposed findings and recommendations. The Advisory Group however advocates either a statutory change or the implementation of a procedure for conditional objections that might reduce the burden for the parties and the court.

4. Assignment of Magistrate Judges

At present, the Eastern District of North Carolina assigns one judge to a civil case, and the assigned judge handles the case until its disposition. Magistrate judges, however, hear motions on a random basis, and there is no guarantee that a single magistrate judge will hear all of the motions in a given case. Accordingly, the Advisory Group recommends that a magistrate judge be assigned to a civil case at the same time that a district judge is selected, and unless circumstances require otherwise, all non-dispositive motions, hearings, and

conferences be assigned to the same magistrate judge. The Advisory Group believes that assigning cases to both district judges and magistrate judges for the duration of the case will avoid unnecessary duplication of work and encourage the expeditious resolution of cases.

5. Certification Process

It is the Advisory Group's view that a procedure for certifying substantive state law issues from a federal court sitting in diversity to the North Carolina Supreme Court would be desirable. As things now stand, no such mechanism exists under state law. In the Advisory Group's view, this procedural void is most unfortunate, since significant state law issues of first impression are ones obviously best left to state courts to authoritatively decide. Federal courts can only act as predictors of state law, and "prediction is a hazardous occupation at best." Jackson v. Volkswagen of America, No. 84-857-CIV-5 (E.D.N.C. June 4, 1986). The expense of litigating questions of first impression concerning state substantive law, questions over which the federal courts in each of North Carolina's three districts can reasonably differ, simply cannot be justified: the costs are unfair to the judicial system, the individual litigants, and the public. Therefore, the Advisory Group recommends that the Eastern District of North Carolina urge the adoption of a certification process of state substantive law issues in diversity cases to the North Carolina Supreme Court.

B. Discovery

1. Discovery Hotline

The Advisory Group strongly believes that discovery disputes increase costs and delay more than any other area of litigation practice. This increase in time and money is often caused by the parties' inability to receive immediate rulings on important discovery matters, thereby slowing the progress of the case and occasioning increased legal fees in preparing and briefing discovery disputes. As a solution to this chronic problem, the Advisory Group recommends the adoption of a local rule establishing a discovery hotline. The telephone number and the availability of this service would be publicized to counsel with a goal of providing a prompt hearing on the record and, as appropriate, a verbal ruling, mediation, or guidance on discovery disputes or requests to enforce any provisions of the local rules or the rules of civil procedure which pertain to discovery. The following local rule change is suggested:

> **Proposed Local Rule 24.05: Discovery Hotline.** In any civil action, there shall be available to all parties a "discovery hotline," which consists of a dedicated phone number at which there will be a judicial officer on call during business hours to rule or offer guidance on discovery disputes and to enforce the local discovery rules of the Eastern District of North Carolina.

2. Requirement of Certification that Counsel Have Conferred in an Attempt to Resolve Discovery Disputes Prior to Filing Formal Motions

The Advisory Group feels that many attorneys may file discovery motions without first attempting to resolve the dispute through a simple discussion. Many discovery motions could be

avoided if counsel conferred informally before resorting to more formal procedures. Therefore, the Advisory Group recommends that a local rule be implemented to require that as a condition precedent of filing any discovery-related motion (and in particular motions to compel discovery) counsel certify that they have conferred and had a full and frank discussion in an effort to informally resolve their dispute.

The Advisory Group contemplates that a requirement that counsel confer might also provide opportunities for recourse to the discovery hotline set forth in Proposed Local Rule 24.05. For example, if counsel had resolved most, but not all of their dispute, it is entirely likely that the final disagreements could be resolved with the guidance of a judicial officer in a phone conference, thereby alleviating the necessity of a formal motion.

> **Proposed Local Rule 24.06 Certification of Attempt to Resolve Discovery Disputes.** Prior to filing a motion or objection relating to discovery, counsel for the moving party must first certify to the court in writing that counsel has conferred and had a full and frank discussion in a diligent attempt to resolve the dispute, but the parties were unable to reach an accord.

3. Expedited Schedule for Resolution of Discovery Disputes

In those instances where a formal motion relating to discovery is unavoidable, the Advisory Group recommends that the present rules regarding such motions and their supporting memoranda be amended to shorten and abbreviate the process. The Advisory Group contemplates that if a "discovery hotline" is initiated, the judicial officer assigned to that duty on any given day could

also hear discovery-related motions during that day.

Proposed Local Rule 24.07 Discovery Disputes - Expedited Briefing Schedule. Any motion relating to a discovery conflict shall be handled on an expedited basis:

(a) Memoranda in support or opposition to a discovery motion shall not exceed ten (10) pages in length. Reply memoranda, when allowed by these rules, shall not exceed five (5) pages in length.

(b) Responses and accompanying documents relating to discovery motions shall be filed within ten (10) days after service of the motion in question unless otherwise ordered by the court. Reply memoranda, when allowed by these rules, shall be filed within five (5) days after service of the motion in question, unless otherwise provided by the court.

(c) If oral argument is requested and scheduled by the court, the option of a reply memorandum shall be eliminated. If, however, oral argument is not scheduled by the court, a reply will be allowed.

(d) In any instance in which oral argument is scheduled, counsel shall be given the option of oral presentations by telephone in lieu of a live appearance.

Proposed Local Rule 5.05: Length of Memoranda. Except as otherwise provided by Local Rule 24.07, memoranda in support of or opposition to a motion (other than a motion regarding discovery) shall not exceed thirty (30) pages in length without prior court approval. Memoranda in support of or opposition to a discovery motion shall not exceed ten (10) pages in length without prior court approval. Reply memoranda (other than reply memoranda regarding a discovery motion) shall not exceed ten (10) pages in length without prior court approval. Reply memoranda addressing a discovery motion shall not exceed five (5) pages in length without prior court approval. These limitations apply to memoranda submitted in connection with an appeal in a bankruptcy proceeding.

Proposed Local Rule 4.05: Responses to Motions. Any party may file a written response to any motion. The response may be a memorandum in the manner prescribed by Local Rule 5.01 and may be accompanied by affidavits and other supporting documents. When the response is not a memorandum, the written response shall be accompanied by a supporting memorandum in the manner prescribed by Local Rule 5.01 and, when appropriate, by affidavits and other supporting documents. Responses and accompanying documents shall be filed within 20 days after service of the motion in question unless otherwise ordered by the court or prescribed by the applicable Federal Rules of Procedure. Responses and accompanying documents relating to discovery motions shall be filed within ten (10) days after service of the motion in question unless otherwise ordered by the court.

Proposed Local Rule 4.06: Replies.
(a) **Non-Discovery Motions:** Replies to responses are discouraged. However, except as provided in Local Rule 4.06(b), a party desiring to reply to matters initially raised in a response to a motion or in accompanying supporting documents shall file the reply within 10 days after service of the response, unless otherwise ordered by the court.

(b) **Discovery motions:** If oral argument is requested and scheduled by the court regarding a discovery motion, the option of a reply memorandum shall be eliminated. If, however, oral argument is not scheduled by the court, a reply will be allowed. However, a party desiring to reply to matters raised in a response to a discovery motion or in accompanying supporting documents shall file the reply within five (5) days after service of the response, unless otherwise ordered by the court.

4. Discovery Pertaining to Experts

The Advisory Group believes that one of the major areas of unnecessary cost and delay in the federal system involves the use of unregulated expert testimony. The Advisory Group was very concerned with the problem of enforcement of the existing rules

of civil procedure pertaining to experts, especially Fed.R.Civ. P. 26(a)(4). In considering modifications to this area of practice, the Advisory Group considered the changes contemplated by the proposed Federal Rules of Civil Procedure pertaining to experts. After exhaustive discussions on this topic, the Advisory Group felt that many of the proposed revisions to Rule 26 should not be implemented in this district, especially in light of the approaching deadline for adoption or rejection of these rules by Congress. However, the Advisory Group does believe that a modification of the current rules of practice regarding experts is necessary. Consequently, the Advisory Group recommends the following mandatory disclosure requirements pertaining to expert testimony:

> **Proposed Local Rule 24.08: Discovery of Expert Testimony.**
> (a) A party may through interrogatories require any other party to provide (1) the name and address of each person the other party expects to call as an expert witness at trial; (2) the substance of the facts to which the witness will testify; (3) a meaningful statement of each opinion to which the expert witness is expected to testify and the basis for each opinion; (4) any exhibits to be used as a summary of or support for the opinions; (5) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (6) the compensation to be paid for the study and testimony; and (7) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
>
> (b) All designated expert witnesses shall be subject to examination by deposition by the opposing party.
>
> (c) Any opinions not expressed by the expert witness in deposition or by statement required

by Local Rule 24.08(a) shall not be admitted into evidence at trial.

(d) The designation statement required by Local Rule 24.08(a) shall not be admissible at trial, except for the limited purpose of cross-examination.

C. Motions

1. Early Resolution of Dispositive Motions

As discussed previously, the Advisory Group is unanimous in its belief that one of the primary causes of increased cost in the system involves a ruling on a dispositive motion on the eve of trial which terminates the action or eliminates claims or defenses. The Advisory Group believes that costs could be reduced significantly if the court allows ample time between the ruling on dispositive motions and the trial date set by the court. With regard to this issue, the Advisory Group recognizes the competing interests between cost and delay -- any decrease in costs occasioned by a longer time period for resolution of the dispositive motion would consequently increase the delay in the case reaching a trial on the merits. However, in such a situation, the Advisory Group believes that the cost savings outweigh the increased delay. As a result, the Advisory Group believes that the current practice of scheduling cases for trial should be modified, and the following local rule adopted:

> **Proposed Local Rule 23.01(a): Scheduling in Cases with Dispositive Motions.** No final pre-trial conference shall be scheduled to take place until at least thirty (30) days have elapsed from a ruling on a dispositive motion. The trial shall not be scheduled to take place less than fourteen (14) days after the pre-trial conference.

In addition, the Advisory Group recommends that the Request for Discovery Stipulation be modified to include the question, "Does any party anticipate dispositive motions to be filed in this case?" Alternatively, the court could require parties to file a Notice of Dispositive Motions.

In recommending these changes, the Advisory Group strongly feels that significant cost reduction will occur because litigants will no longer be faced with preparing a case for trial unnecessarily. In addition, the Advisory Group believes that such a rule may ultimately encourage settlement during the thirty day time period between the resolution of the dispositive motion and the pre-trial conference.

2. Oral Argument

As set forth in Section IV.C.3., the Advisory Group believes that hearings should generally be allowed by the court, unless the judge believes that oral argument would not assist him in his determinations. In addition, when a hearing is scheduled on a discovery motion, the Advisory Group believes that counsel should be given the opportunity of appearing by telephone, in lieu of a live appearance, thereby reducing costs in resolving those matters. The following local rule change is recommended:

> **Proposed Local Rule 4.09: Hearings on Motions.** (a) Except as provided in Local Rule 24.07, hearings on non-discovery motions may be ordered by the court in its discretion. Unless so ordered, motions shall be without hearing. However, if a party believes that oral argument would assist the court in resolving the issues or further the court's understanding of the facts or issues, the party should so state in the

motion and request oral argument. If requested, oral argument will generally be granted, unless the court, in its discretion, determines that oral argument would not be of assistance in its determinations.

(b) When a discovery motion has been set for hearing before the court, counsel shall be given the option of oral presentations by telephone in lieu of a live appearance.

3. Motions in Limine

The Advisory Group believes that the current practice of requiring written responses to motions in limine immediately prior to trial is too burdensome and may force the parties to neglect trial preparation to prepare a response to a motion in limine filed immediately prior to trial. Consequently, the Advisory Group recommends that Local Rule 26 be amended to provide that no written response is required when a motion in limine is filed shortly before trial.

Proposed Local Rule 26.00 et seq.:

Five business days preceding the first day of the session at which a civil action is set for trial, counsel for all parties shall file with the clerk:

26.01: In All Cases.
(a) A concise memorandum of authorities on all anticipated evidentiary questions and on all contested issues of law;

(b) motions relating to the admissibility of evidence; however, no party shall be required to file a written response to a motion in limine which is filed after the pre-trial conference has taken place.

D. Final Pre-Trial Conference and Trial

1. Deposition Numbering

To save time and money during the pre-trial process, the Advisory Group recommends that deposition exhibits be numbered consecutively during the discovery process and, where possible, the same numbers should be maintained as trial exhibit numbers. Additionally, the Advisory Group believes that the parties should change deposition testimony references and deposition exhibits numbers to trial exhibit numbers to save time and confusion at trial. The following Local Rule change is recommended:

> **Proposed Local Rule 24.05: Deposition Exhibits.** The parties are encouraged to mark all deposition exhibits consecutively during discovery without reference to the deposition taken or the party using the exhibit.
>
> **Proposed Local Rule 25.03(c)(III): Form of Pre-Trial Order:** Exhibits. A list of exhibits that each party may offer at trial, including any map or diagram, numbered sequentially, which numbers shall remain the same throughout all further proceedings. Copies of all exhibits shall be provided to opposing counsel not later than the attorney conference provided for in Rule 25.02. The court may excuse the copying of large maps or other exhibits. Except as otherwise indicated in the pre-trial order, it will be deemed that all parties stipulate that all exhibits are authentic and may be admitted into evidence without further identification or proof. Grounds for objection as to authenticity or admissibility must be set forth in the pre-trial order.
>
> When practicable, trial exhibits should carry the same number as in the depositions and references to exhibits in depositions should be changed to refer to the trial exhibit number.

2. Pre-Trial Orders

The Advisory Group recommends that the responsibility for preparing the pre-trial order should be a shared responsibility of all of the attorneys rather than plaintiff's counsel, thereby

ensuring that the pre-trial order is completed in a timely manner, with an equitable sharing of costs between the parties. The following Local Rule change is suggested:

> **Proposed Local Rule 25.04(d):** Counsel for all parties shall be responsible for preparing the final pre-trial order and presenting it to the Court properly signed by all counsel at a time designated by the Court. Upon approval by the Court, the original shall be filed with the Clerk.

3. Use of Trial Exhibits

The Advisory Group recommends that the use of trial exhibits during opening statements should be addressed in the local rules. Specifically, parties should be allowed to use trial exhibits during opening statements as long as the exhibits are not objected to in the pre-trial order or if the objection has been overruled by the Court prior to opening statements.

> **Proposed Local Rule 27.01(c):** Counsel may use trial exhibits during opening statements if no objection to the exhibit has been made in the pre-trial order or if the Court, prior to the opening statements, has overruled the objection.

4. Juror Evidence Notebooks

The Advisory Group feels that the use of evidence notebooks for jurors should be more closely regulated and suggests that the use of juror notebooks, including form and content, be addressed at the pre-trial conference. Further, no exhibit should be included in a juror notebook that has been objected to in the final pre-trial order unless the Court had overruled the objection prior to submission of the notebooks to the jurors.

It is suggested that the local rules remind the parties to be prepared to discuss juror notebooks at the final pre-trial conference.

RULE 25.04 CONDUCT OF THE FINAL PRE-TRIAL CONFERENCE

> **Proposed Local Rule 25.04(b): Conduct of the Final Pre-Trial Conference:** Counsel shall be fully prepared to present to the Court all information and documentation necessary for completion of the pre-trial order and to discuss the matters listed in Rule 16, F.R.Civ.P. and, among other things:
>
> (1) Stipulations;
> (2) Contentions;
> (3) Length of trial;
> (4) Bifurcation;
> (5) Opening statements;
> (6) Juror notebooks;
> (7) Settlement.
>
> Failure to do so shall result in sanctions provided by this rule.

5. Working Pre-Trial Conference

In complex cases, a "working" pre-trial conference, in addition to the final pre-trial conference, would be helpful. Many of the issues that arise during the preparation of the pre-trial order could be addressed by the Court, and the Court could provide guidance, minimizing the time and cost aspects of the pre-trial order. In addition, such a conference would be an excellent opportunity for the Court to address stipulations and contentions with the parties and attempt to determine if a more realistic approach could be taken to save trial time.

> **Proposed Local Rule 25.01: Scheduling and Notice.** A final pre-trial conference shall be scheduled in every civil action after the time

for discovery has expired. The Clerk shall give at least 25 days notice of such conference.

In the Court's discretion and upon request of any party or on the Court's own initiative, a preliminary or "working" pre-trial conference may be scheduled.

6. Designation of Deposition Testimony

The Advisory Group recommends that the local rules specify that a deposition need not be designated in the pre-trial order if it is to be used solely for cross-examination purposes.

> **Proposed Local Rule 25.03(d)(IV) Designation of Pleadings and Discovery Materials.** The designation of all portions of pleadings and discovery materials, including depositions, interrogatories and requests for admission that each party may offer at trial by reference to document volume, page number, and line. Objection by opposing counsel shall be noted by document volume, page number and line, and reasons for such objections shall be stated. It is not necessary to designate a deposition, or any portion of a deposition, that is to be used solely for cross-examination.

E. Alternative Dispute Resolution

After considerable discussion and deliberation on the multiple methods of alternative dispute resolution, the Advisory Group believes that the Eastern District of North Carolina should formally adopt local rules for summary jury trials, mediated settlement conferences and court-hosted settlement conferences.

It is recommended that the U.S. District Court for the Eastern District of North Carolina adopt the following Local Rules:

> **RULE 30.00 COURT-HOSTED SETTLEMENT CONFERENCES**
>
> The Court, upon its own initiative or at the request of any party, may order a settlement conference at a time and place to be fixed by the

Court. Upon request by all parties to an action, the Court shall order a settlement conference. A District Judge other than the Judge assigned to the case, or a Magistrate Judge, will normally preside at such a settlement conference. At least one attorney for each of the parties who is fully familiar with the case shall attend the settlement conference for each party. Each individual party or a representative of a corporate or governmental agency party with full settlement authority also shall attend the settlement conference. Other interested parties, such as insurers, shall attend through fully authorized representatives and are subject to the provisions of this Rule. The settlement conference Judge or Magistrate Judge may, however, upon prior written application, allow a party or representative having full settlement authority to be telephonically available. The parties, representatives and attorneys are required to be completely candid with the settlement conference Judge or Magistrate Judge so that he or she may properly guide settlement discussions. The Judge or Magistrate Judge presiding over the settlement conference may make such other and additional requirements of the parties and conduct the proceedings as shall seem proper to the Judge or Magistrate Judge in order to expedite an amicable resolution of the case. The settlement Judge or Magistrate Judge will not discuss the substance of the conference with anyone, including the Judge to whom the case is assigned, and has the right to excuse the parties or the attorneys from the conference any time. During the settlement conference, the settlement Judge or Magistrate Judge also has the right to confer ex parte with any parties, representatives or attorneys, to meet jointly or individually with the parties and/or representatives without the presence of counsel, and to elect to have the parties and/or representatives meet alone without the presence of the settlement Judge or Magistrate Judge or counsel with the specific understanding that any conversation relative to settlement will not constitute an admission and will not be used in any form in the litigation or in the event of trial.

RULE 31.00 SUMMARY TRIALS

31.01 Eligible Cases. The assigned Judge may, after consultation with counsel, refer for

summary jury trial any civil case in which jury trial has been properly demanded. Either or both parties may move the Court to order summary jury trial; however, the Court will not require a party to participate against its will.

31.02 Selection of Cases. Cases selected for summary jury trial should be those in which counsel feel that a non-binding verdict by the jury could be helpful in a subsequent settlement negotiation. Since an investment of time by counsel and by the Court is necessary for the procedure, it should be used only in those cases that would take more than seven (7) trial days to try.

31.03 Procedural Considerations. Summary jury trial is a flexible ADR process. The procedures to be followed should be determined by the assigned Judge in advance of the scheduled summary jury trial date, in light of the circumstances of the case and after consultation with counsel. The following matters should be considered by the assigned Judge and counsel in structuring a summary jury trial.

a. Presiding Judge. Either a District Judge or a Magistrate Judge may preside over a summary jury trial. During the process, the summary jury trial judge will ordinarily participate in on-going settlement negotiations and may have ex-parte conferences with each side. For this reason, normally a judge other than the trial judge will be selected to preside over the summary jury trial.

b. Submission of Written Materials. Counsel must submit proposed jury voir dire questions, jury instructions and briefs on any novel issues of law within three (3) working days before the date set for summary jury trial. In addition, counsel may also choose to submit other items, such as a statement of the case, stipulations, and exhibit lists.

c. Attendance. Summary jury trials are effective in promoting settlement because, among other reasons, they

give parties their "day in court" (meeting a need to voice their position in a public forum), and because they allow parties to see the merits of their opponent's position. It is therefore critical that the parties and all other persons or entities involved in the settlement decision attend the summary jury trial. This includes all individual parties and representatives of corporations and other parties and insurers vested with full settlement authority. Since absence of any decision maker makes the process less likely to proceed, this attendance requirement can be waived only by order of the Court.

d. Size of jury panel. The jury shall consist of 6 to 12 members.

e. Voir dire. Each counsel may exercise a maximum of 2 peremptory challenges. There will be no alternate jurors. Counsel will be assisted in the exercise of challenges by a brief voir dire examination to be conducted by the Court.

f. Transcript or recording. Upon consent of the parties, counsel may arrange for the proceedings to be recorded by a court reporter at his or her own expense. However, no transcript of the proceedings will be admitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

g. Conference between counsel. Prior to trial, counsel are to confer with regard to the use of physical exhibits, including documents and reports, and reach such agreement as is possible. Prior to the day of the summary jury trial, the court will hear all matters in dispute and make appropriate rulings.

h. Timing. The summary jury trial should take no more than 1 and 1/2 days from jury selection to jury deliberation. In consultation with counsel before the summary jury trial, the Court shall establish a scheme of time allotment for presentations by counsel.

i. Case presentations. The attorney presentations shall be organized in the manner of a typical trial, except that no witness testimony will be allowed, absent the court's permission. First, the plaintiff shall present an opening statement, followed immediately by defendant's opening statement. Next, plaintiff and defendant shall present their cases-in-chief by informing the jury in more detail than the opening statement who the witnesses are and what their testimony would be. Finally, the plaintiff and then defendant will make closing arguments to the jury. Plaintiff may present a final rebuttal if his or her presentation time limit has not expired. The parties are free to divide their allotted time among the three trial segments as they see fit.

j. Manner of presentation. All evidence shall be presented through the attorneys for the parties. The attorneys may summarize and comment on the evidence and may summarize or quote directly from depositions, interrogatories, requests for admissions, documentary evidence and sworn statements of potential witnesses; however, no witness' testimony may be referred to unless the reference is based upon one of the products of the various discovery procedures, or upon a written, sworn statement of the witness, or upon sworn affidavits of counsel that the witness would be called at trial and will not sign an affidavit, and that counsel has been told the substance of

the witness' proposed testimony by the witness. Demonstrative evidence, such as videotapes, charts, diagrams, and models may be used unless the Court finds, on objection, that this evidence is neither admissible nor accurately reflects evidence which is admissible.

k. Objections. Formal objections are discouraged. Nevertheless, in the event counsel makes a representation not supported by admissible evidence, an objection will be entertained. If such an objection is sustained, the jury will be instructed appropriately.

l. Jury instructions. Jury instructions will be given in an abbreviated form, adapted to reflect the nature of the proceeding. The jury will be instructed to return a unanimous verdict, if possible. Barring unanimity, the jury may be instructed to submit a statement of each juror's findings.

m. Jury deliberations. Jury deliberations should be limited in time.

n. Settlement negotiations. While the summary jury is deliberating, the presiding Judge should direct the parties to meet and explore settlement possibilities. The Judge may participate in this process.

o. Continuances. The proceedings may not be continued or delayed other than for short recesses at the discretion of the Court.

p. Final Determination. Although ordinarily non-binding in nature, counsel may stipulate among themselves that a consensus verdict by the summary jury will be a final determination on the merits of the case and judgment may be entered thereon by the Court. In addition,

counsel may stipulate to any other use of the verdict that will aid in resolution of the case. For example, the parties should consider a bracketed settlement with specific minimum and maximum settlement amounts and being bound by the summary jury's verdict within the brackets.

q. Trial. If the case does not settle as the result of the summary jury trial, it should proceed to trial on the scheduled date.

r. Limitation on admission of evidence. The assigned Judge shall not admit at a subsequent trial any evidence that there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:

(1) The evidence would otherwise be admissible under the Federal Rules of Evidence; or
(2) The parties have otherwise stipulated.

s. Purpose. These rules shall be construed to secure the just, speedy, effective, and inexpensive conclusion of the summary trial procedure. Bearing in mind that the summary jury trial should be flexible to meet the needs of any case in which it is used, the Judge presiding over the procedure may modify or disregard any of these rules and fashion instead an alternative deemed more likely to produce settlement.

31.04 Non-Jury Summary Trials. The Assigned Judge may, after consultation with counsel, refer any civil case for summary non-jury trial. Either or both parties may move the court to order summary non-jury trial; however, the Court will not require a party to participate against its will. The procedure for a summary non-jury trial shall be directed by the Court on a case-by-case basis.

RULE 32.00 MEDIATED SETTLEMENT CONFERENCES

32.01 Definition. Mediation is a supervised settlement conference presided on by a qualified, certified and neutral mediator to facilitate and promote conciliation, compromise and the ultimate resolution of a civil action.

32.02 Referral. The Court may, upon its own initiative or at the request of any party, order any action, or portion thereof, to be referred for a mediated settlement conference. Upon request by all parties to an action, the Court will refer the action for a mediated settlement conference.

32.03 Motion to Dispense with Mediation. A party may move, within 10 days after the Court's order referring an action, or portion thereof, to mediation, to dispense with or defer the conference. The Court shall grant the motion only for good cause shown.

32.04 Referral Order. The Court's order referring a civil action for a mediated settlement conference shall:

(1) require the mediated settlement conference be held in the case,

(2) establish a deadline for the completion of the conference,

(3) appoint a mediator, and

(4) state the rate of compensation of the appointed mediator.

Provided, however, in lieu of appointing a mediator in the referral order, the Court may direct the parties to notify the Court, within fourteen days of the entry of the Order referring the action for a mediated settlement conference, of the nomination of a mediator agreeable to all parties, together with the rate of the mediator's compensation. Upon notification of a mutually agreeable mediator, the Court will appoint the mediator nominated by the parties at the agreed date, unless the Court finds the mediator nominated is not qualified by training or experience to mediate all or some of the issues

in the action. In the event of the failure of the parties to nominate a mediator within fourteen days, the Court shall appoint the mediator and state the rate of compensation of the appointed mediator.

32.05 Mediators. The Court may appoint as mediator any person certified as provided in Local Rule 32.06.

32.06 Certified Mediators.

(a) **Certification of Mediators.** The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this rule, in such numbers as the chief judge shall deem appropriate. Thereafter, the chief judge shall have complete discretion and authority to withdraw the certification of any certified mediator at any time.

(b) **List of Certified Mediators.** Lists of certified mediators shall be maintained in each division of the Court and shall be made available to counsel and the public upon request.

(c) **Qualifications of Certified Mediators.** An individual may be certified to serve as a mediator if:

(1) He or she is a former state judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he presided; or

(2) He or she is a retired federal judicial officer; or;

(3) He or she has been certified as a mediator by the Administrative Office of the Courts pursuant to the Rules Implementing Court Ordered Mediated Settlement Conferences adopted by the

Supreme Court of North Carolina pursuant to N.C.G.S. § 7A-38(d); or

(4) He or she has been a member of the North Carolina Bar for at least 10 years and is currently admitted to the Bar of this Court.

(d) **Oath Required.** Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 upon qualifying as a mediator.

(e) **Disqualification of a Mediator.** Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate governed by 28 U.S.C. Section 455.

(f) **Compensation of Mediators.** Mediators shall be compensated at the rate provided by standing order of the Court, as amended from time to time by the chief judge. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediated settlement conference.

(g) **Limitations on Acceptance of Compensation or Other Reimbursement.** Except as provided by these rules, no mediator shall charge or accept in connection with the mediation of any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

(h) **Mediators as Counsel in Other Cases.** Any member of the bar who is certified and designated as a mediator pursuant to these rules shall not for that reason be disqualified from

appearing and acting as counsel in any other case pending before the Court.

RULE 32.07 The Mediated Conference.

(a) **Where Conference Is to Be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in a United States District Courthouse. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys and unrepresented parties of the time and location of the conference.

(b) **When Conference Is to Be Held.** Unless otherwise ordered by the Court, the mediated settlement conference shall begin no later than 60 days after the court's referral order. It shall be completed within 30 days after it has begun.

(c) **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(d) **The Mediated Settlement Conference Is Not to Delay Other Proceedings.** The mediated settlement conference shall not be cause for the delay of other proceedings in this case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

(e) **Memoranda.** Each party may, at any time after appointment of the mediator, provide the mediator with a memoranda presenting his contentions and positions. The memoranda need not be served on other parties.

(f) **Preparation.** All parties shall be prepared to discuss, in detail and in good faith, the following:

(1) all liability issues;
(2) all damage issues; and
(3) his or her position relative to settlement.

(g) **Settlement Documentation.** In the event settlement is reached at the mediated settlement conference, the essential terms and conditions of the settlement should be noted and signed or initialled by all parties and/or counsel before departing the conference. More formal documentation may be prepared later on an agreed timetable if appropriate.

(h) **Proceedings Privileged.** All proceedings of the mediated settlement conference, including any statement made by any party, attorney or other participant, shall, in all respects, be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be binding upon all parties to the agreement.

Rule 32.08 Attendance at Mediated Settlement Conference.

(a) The following persons shall physically attend a mediated settlement conference:

(1) All individual parties; or an officer, director or employee having authority to settle on behalf of a corporate party; or, in the case of a governmental agency, a representative of that agency with full

authority to settle on behalf of the agency;

(2) The party's counsel of record, if any; and

(3) For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.

(b) In the event any party desires to be represented at the settlement conference other than as provided in Local Rule 32.08(a), the party shall promptly apply to the Mediator for leave to appear otherwise. Said application shall be delivered (not filed) to the mediator not later than eleven (11) days prior to the conference and shall contain:

(1) The reasons which make it impracticable for a party or a party's representative to appear as required by Local Rule 32.08(a);

(2) a detailed description of the authority to be exercised at the conference; and

(3) alternative proposals by which full authority may be exercised at the conference.

Such application shall be made only after all other alternatives have been, in good faith, considered and rejected. The application need not be transmitted to the opposing parties. Upon consideration of the application, the mediator, in his discretion, may excuse a party or representative from attending the settlement conference, may allow a party or representative to be available by telephone during the

conference, to appear with limited authority or may, notwithstanding the application, require appropriate persons to appear as may be necessary to have full settlement authority at the conference.

Rule 32.09 Authority and Duties of Mediator.

(a) **Authority of Mediator.** The mediator shall, at all times be in control of the mediated settlement conference and the procedures to be followed subject to the orders of the Court and this Rule.

(b) **Duty of Impartiality.** The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on his or her possible bias, prejudice or lack of impartiality. Any person selected as a mediator shall be disqualified for bias, prejudice or impartiality as provided for by Title 28, U.S.C. Section 144 and shall disqualify themselves in any action in which they would be required under Title 28 U.S.C. Section 455 to disqualify themselves if they were a judge or magistrate. Any party may move the Court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their qualifications which would be grounds for disqualification. If the Court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(c) **Duties at Conference.** The mediator shall define and describe the following to the parties at the beginning of mediated settlement conference:

(1) The process of mediation.

(2) The differences between mediation settlement conference and other forms of conflict resolution.

(3) The costs of the mediated settlement conference.

(4) The fact that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement.

(5) The circumstances under which the mediator may meet alone with either of the parties or with any other person.

(6) Whether and under what conditions communications with the mediator will be held in confidence during the conference.

(7) The inadmissibility of conduct and statements as provided by Rule 408 of the Rules of Evidence.

(8) The duties and responsibilities of the mediator and the parties.

(9) The fact that any agreement reached will be reached by mutual consent of the parties.

(d) **Private Consultation.** The mediator may meet and consult privately with any party or parties or their counsel during the conference.

(e) **Declaring Impasse.** It is the duty of the mediator to timely determine when

mediation is not viable, that an impasse exists, or that mediation should end.

(f) **Reporting Results of Conference.** The mediator shall report to the Court in writing within 5 days of the conclusion of the mediated settlement conference. The report shall include the parties attending the conference, and whether or not an agreement was reached by the parties. If an agreement is reached, the report shall state whether the action will conclude by consent judgment or voluntary dismissal and shall identify the person designated to file such a consent judgment or dismissal. If an agreement is not reached, the report shall state whether or not there has been compliance with the mediation requirements of this Rule and if not, in what respects compliance was not met.

Rule 32.10 Sanctions. In the event a party fails to attend or to participate in good faith in a mediated settlement conference ordered by the Court without good cause, the Court may impose upon the party any lawful sanction, including but not limited to assessments of attorney fees, mediator fees and expenses, expenses incurred by parties attending the conference, contempt, or any other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

Rule 32.11 Judicial Immunity. A mediator appointed by the Court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge.

F. Role of the Court, Litigants and Bar

1. Contributions by the Court

Over the years, the judges in the Eastern District of North Carolina have demonstrated an interest in active case management, and the procedures established by the court have worked very well

to keep cost and delay problems to a minimum. In addition, the recommendations suggested by the Advisory Group provide even further judicial involvement in the areas of case management, settlement, alternative dispute resolution, and trial preparation. Consequently, the Advisory Group firmly believes that the proposed changes include a significant contribution by the court.

2. Contributions by Counsel

The Advisory Group also believes that the attorneys in the district are actively involved in case management, and the proposed recommendations will strengthen this involvement. Specifically, the availability of alternative dispute resolution mechanisms will require attorneys to become knowledgeable about their cases at an earlier point in the litigation process. In addition, attorneys will be required to learn about alternative dispute resolution and be prepared to use it. Finally, the modified pre-trial procedures, including "working" pre-trial conferences, will also require more interactive involvement with the court, which will reduce cost and delay in the district.

3. Contributions by Litigants

Since parties to the litigation will have the ultimate decision on whether to participate in the various alternative dispute resolution procedures, the litigants will become more seriously involved in the litigation process. In addition, ADR techniques, such as summary jury trials, will require the presence of parties or their representatives in court well before

the scheduled trial date. Consequently, the litigants will have greater control over the handling of their cases.

G. Compliance with the Requirements of §473 of the Civil Justice Reform Act

Section 473 of the Civil Justice Reform Act states that each district court, in consultation with the local advisory group "shall consider and may include" six "principles and guidelines of litigation management and cost and delay reduction." The principles of litigation management include the following: (1) systematic, differential treatment of civil cases tailored to the individual case, 28 U.S.C. §473(a)(1); (2) early and ongoing control of the pre-trial process through involvement of a judicial officer, 28 U.S.C. §473(a)(2); (3) monitoring complex cases through discovery-case management conferences, 28 U.S.C. §473(a)(3); (4) encouragement of cost-effective discovery through cooperative discovery devices, 28 U.S.C. §473(a)(4); (5) requiring the parties' certification of their effort to reach agreement before filing discovery motions, 28 U.S.C. §473(a)(5); (6) authorizing referral of cases to alternative dispute resolution, 28 U.S.C. §473(a)(6).

The litigation management techniques include: (1) a requirement that counsel jointly prepare a discovery-case management plan, 28 U.S.C. §473(b)(1); (2) a requirement that each party be represented at the pre-trial conference by an attorney with authority to bind the party in matters to be discussed at the conference, 28 U.S.C. §473(b)(2); (3) a

requirement that all requests for extensions of the discovery period or for postponement of the trial be signed by the attorney and the client, 28 U.S.C. §473(b)(3); (4) a neutral evaluation program, 28 U.S.C. §473(b)(4); (5) a requirement that representatives of the parties with full settlement authority be available by telephone during settlement discussions, 28 U.S.C. §473(b)(5).

Section 472(b)(4) requires the local Advisory Group to explain "the manner in which the recommended plan complies with section 473" of the Act. In addition, section 472(b)(2) has been interpreted by the Judicial Conference to require the local Advisory Group to explain in its report how the group's proposals incorporate these principles and techniques, and why any techniques or principles have not been adopted or implemented.

1. Statutory Principles and Guidelines for Litigation Management

a. Systematic, Differential Treatment of Civil Cases

Section 473(a)(1) requires the court to consider systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to factors such as case complexity, trial preparation, and resources required for the disposition of the case. In its discussions and deliberations, the Advisory Group considered the adoption of a differentiated case tracking system. However, such a measure was rejected by the group as unnecessary in this district. As discussed previously, the court already engages in individualized

case management of civil matters which allows cases to move quickly through the system without rigid "tracking" mechanisms. In addition, the court has developed specific procedures for dealing with matters such as pro se prisoner litigation, as well as bankruptcy and social security appeals. These procedures, although not specified as "individualized case management" by the court, appear to fall within this statutory provision.

b. Early and Ongoing Control of the Pre-Trial Process by a Judicial Officer

Section 473(a)(2) recommends early and ongoing control of the pre-trial process through involvement of a judicial officer through measures such as: (1) assessing and planning the progress of the case; (2) setting firm trial dates within eighteen months after the filing of the complaint; (3) controlling the discovery process; and (4) setting deadlines for filing and ruling on motions.

The Advisory Group believes that the procedures in existence in this district include these suggested procedures. Specifically, after a responsive pleading is filed, the parties are required to stipulate to discovery matters or appear before a magistrate judge to address scheduling disputes. This "Request for Discovery Stipulation" forms the basis of the court's scheduling order which sets the amount of discovery to be undertaken, the deadlines for the end of discovery and filing of dispositive motions, as well as setting the case for trial well within the eighteen month period, usually no later than ninety days after the close of discovery. These procedures indicate the

court's control over the discovery process and demonstrate the court's compliance with this requirement.

c. Discovery-Case Management Conference

Section 472(a)(3) suggests that the court monitor cases through a discovery-case management conference at which the presiding judicial officer explores settlement options, discusses issues in contention and the possibility of bifurcation, as well as preparing a discovery schedule which identifies and limits the volume of discovery and discusses the possibility of phased discovery.

The Advisory Group believes that it has adequately addressed these issues in the following ways. The Request for Discovery Stipulation and resulting Rule 16(b) Scheduling Order which are already in effect in the district require the parties to discuss and prepare a discovery schedule which limits number and types of discovery available. This discovery schedule will be set, with or without court intervention. In addition, several judges in the district have shown an interest in the area of trial bifurcation; consequently, it is already in use in the district. In addition, the proposed local rules dealing with court-hosted settlement conferences, as well as the recommendation for a "working" pre-trial conference offer many possibilities for settlement discussions, as well as a narrowing of the issues in contention.

d. Encouragement of Cost-Effective Discovery

Section 472(a)(4) requires the local Advisory Groups to consider "encouragement of cost-effective discovery through voluntary exchange of information among litigants." As stated previously in this report, the Advisory Group encourages voluntary exchange of information. [5]

e. Certification of Effort to Resolve Discovery Disputes

Section 472(a)(5) recommends "conservation of judicial resources by prohibiting consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion." As set forth in Section IV.B.2, the Advisory Group is proposing such a change in its recommendations section.

f. Alternative Dispute Resolution

Section 472(a)(6) proposes that Advisory Groups consider "authorization to refer appropriate cases to alternative dispute resolution . . . including mediation, minitrial, and summary jury trial." As set forth in Sections IV.E., not only did the Advisory Group consider these options, but it has recommended adoption of both mediation and summary trials in this district,

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[5]The Advisory Group reviewed the proposed changes to Rule 26 of the Federal Rules of Civil Procedure, and it awaits the Congressional determination on those rules. However, the Advisory Group was reluctant to advocate changes which are incongruent with the existing rules of civil procedure. Additionally, there is a strong sentiment by some members of the Advisory Group in opposition to the adoption of Proposed Rule 26 of the Federal Rules of Civil Procedure.

and has proposed local rule modifications to effect these changes.

2. Litigation Management and Cost/Delay Reduction Techniques

Section 473(b) requires the Court to consider five litigation management and cost and delay reduction techniques as a way of integrating the six principles and guidelines for litigation management. The following is a brief comment on how the proposed plan assimilates these techniques into practice.

a. Joint Preparation of Discovery-Case Management Plan

Section 473(b)(1) suggests a "requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pre-trial conference, or explain the reasons for their failure to do so." As explained in Section II.C.1.b., this district already has in place a requirement that parties confer and present a joint discovery plan. Failure to present such a joint plan results in judicial intervention of either a default schedule being set or a conference before a judicial officer on the points that have not been agreed upon by counsel.

b. Counsel with Binding Authority at Pre-Trial Conference

Section 473(b)(2) suggests a "requirement that each party be represented at each pre-trial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters." The Advisory Group believes that

such a rule is unnecessary in this district. The local rules in the district contemplate that attorneys attending the pre-trial conference will be knowledgeable about the matters at issue in the case, especially because the pre-trial conference is usually only two to three weeks prior to the scheduled trial date. Because the Advisory Group does not perceive that such a rule is necessary to ensure an efficient, effective pre-trial conference, and because it has recommended other measures to streamline the pre-trial conference procedures, the Advisory Group declines to recommend this measure for the Eastern District of North Carolina.

c. Signature of Party and Counsel on Extension Requests

Section 473(b)(3) recommends a "requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request." The Advisory Group believes that such a requirement would only increase cost and delay, in that more time and money will be expended in an attempt to coordinate obtaining a party's signature for filing with the court. In addition, there is no evidence to suggest that attorneys in this district file unnecessary or dilatory motions for extensions of time. Due to its impracticability and the fact that there is nothing to demonstrate that such a measure will reduce costs or delay, the Advisory Group declines to recommend this suggestion.

d. Neutral Evaluation Program

Section 473(b)(4) recommends a "neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation." As presented in Section IV.E. and II.C.4, the Advisory Group expended considerable energy discussing the desirability and feasibility of numerous alternative dispute resolution techniques, including early neutral evaluation. The Advisory Group, however, feels that a neutral evaluation program would not be beneficial at this time. This finding is due to the large number of new measures recommended by the Advisory Group, one of which is the court-hosted settlement conference, which will contain many of the same techniques as early neutral evaluation. In addition, there is no evidence to suggest this group that early neutral evaluation will significantly reduce cost or delay. Consequently, the Advisory Group believes that this measure is not necessary at present.

e. Availability of Party Representative with Settlement Authority

Section 473(b)(5) suggests a "requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference." Since the judges in this district already possess the inherent authority to order counsel, parties, or their representatives to appear before the

court, the Advisory Group believes that such a recommendation is unnecessary in the district.

H. Recommendation Regarding Adoption of a Plan

Pursuant to Section 471 of the Act, each district may adopt a plan developed by the district court or a model plan developed by the Judicial Conference of the United States. The Local Advisory Group for the Eastern District of North Carolina recommends that the court adopt its own plan for reducing cost and delay in civil litigation. The proposed Expense and Delay Reduction Plan is set forth in Appendix 3.

V. Conclusion

The Advisory Group wholeheartedly believes that the Eastern District of North Carolina is an effective and efficient court in which to litigate disputes. An indepth examination of the court's docket, including an analysis of survey results, discussions with other practitioners, and reflection upon personal experiences only serve to reinforce the Advisory Group's initial perception -- that the district need only implement relatively minor changes to "fine-tune" an already productive operation.

The Advisory Group recognizes that the congressional mandate set forth in the CJRA requires ongoing scrutiny and evaluation of the efficiency of the court, in conjunction with periodic assessments of any procedures implemented by the court. Consequently, the Advisory Group looks forward to a sustained

relationship with the court that will assist in maintaining and increasing a high level of productivity within the district.

The Advisory Group wishes to recognize the hard-working members of the clerk's office who oversee the day-to-day management of cases and ensure that they continue to move through the system toward a prompt and fair disposition.

Finally, the Advisory Group gives sincere thanks to the judges of the district who work very diligently to control the growing civil and criminal docket and who conduct prompt and timely trials, for the benefit of all of those involved in the case.

APPENDIX 1

MEMBERSHIP OF THE CJRA LOCAL ADVISORY GROUP
EASTERN DISTRICT OF NORTH CAROLINA

The Civil Justice Reform Act Local Advisory Group is comprised of the following members:

David W. Long, Chairperson: Mr. Long is an attorney at the law firm of Poyner & Spruill in Raleigh, North Carolina.

David W. Daniel, Reporter: Mr. Daniel is the Clerk of Court for the United States District Court for the Eastern District of North Carolina.

Charles D. Barham: Mr. Barham is Executive Vice-President at Carolina Power & Light Company in Raleigh, North Carolina.

Daniel L. Brawley: Mr. Brawley is an attorney at the law firm of Ward & Smith in Wilmington, North Carolina.

James R. Dedrick: Mr. Dedrick is the United States Attorney for the Eastern District of North Carolina.[1]

Joyce Davis: Ms. Davis is an attorney at the law firm of Crisp, Davis, Schwentker, Page, Currin & Nichols in Raleigh, North Carolina.

Carole S. Gailor: Ms. Gailor is an attorney at the law firm of Womble, Carlyle, Sandridge & Rice in Raleigh, North Carolina.

S. Elizabeth Gibson: Ms. Gibson is a professor at the University of North Carolina at Chapel Hill School of Law in Chapel Hill, North Carolina.

Richard Glazier: Mr. Glazier is an attorney at the law firm of Beaver, Holt, Richardson, Sternlicht, Burge & Glazier in Fayetteville, North Carolina.

Thomas E. Harris: Mr. Harris is an attorney at the law firm of Harris, Shields & Creech in New Bern, North Carolina.

L. P. Hornthal, Jr.: Mr. Hornthal is an attorney at the law firm of Hornthal, Riley, Ellis & Maland in Elizabeth City, North Carolina.

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[1]Margaret Person Currin, former United States Attorney for the Eastern District of North Carolina, was a member of this Advisory Group until April 1993, at which time she was replaced by Mr. James R. Dedrick, United States Attorney for the Eastern District of North Carolina.

Irving L. Joyner: Mr. Joyner is the Associate Dean of the North Carolina Central University School of Law in Durham, North Carolina.

James R. Leutze: Dr. Leutze is the Chancellor of the University of North Carolina at Wilmington in Wilmington, North Carolina.

Spencer Parris: Mr. Parris is an attorney at the law firm of Michaels and Jones in Raleigh, North Carolina.

Marvin Sparrow: Mr. Sparrow is the Executive Director of North Carolina Prisoner Legal Services in Raleigh, North Carolina.

Sylvia Thibault: Ms. Thibault is an attorney at the North Carolina Department of Justice in Raleigh, North Carolina.

Marcus W. Williams: Mr. Williams is the Director of Legal Services of the Lower Cape Fear in Wilmington, North Carolina.

John Williamson: Mr. Williamson is an attorney at Maupin, Taylor, Ellis and Adams in Raleigh, North Carolina.

In addition, **United States District Judge W. Earl Britt** and **United States Magistrate Judge Charles McCotter, Jr.** acted in an advisory capacity to the committee.

APPENDIX 2

PUBLIC LAW 101-650 [H.R. 5316]; December 1, 1990

JUDICIAL IMPROVEMENTS ACT OF 1990

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans ..... 471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2XA) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

APPENDIX 3

I. INTRODUCTION

The Civil Justice Reform Act Local Advisory Group for the Eastern District of North Carolina presents this recommended plan to the judges of the United States District Court for the Eastern District of North Carolina. The Advisory Group believes that it accurately reflects the recommendations contained in its report on expense and delay reduction.

II. STANDING COMMITTEE ON LOCAL RULES

To implement this Plan by the Court, it is recommended that the Court create a standing committee to consider the draft changes to the local rules proposed by the report of the CJRA Local Advisory Group. The local rules committee should implement the modifications suggested by the Local Advisory Group and approved by the Court in this Plan. In addition, the local rules committee should consider the project urged by the September 1988 resolution of the Judicial Conference of the United States and outlined in the March 25, 1992 letter by Judge Keeton regarding uniform renumbering of the district's local rules.

This standing committee should be comprised of members who represent a broad segment of the Federal Bar, having experience litigating different types of cases. The Court should select and appoint the committee no later than August 1, 1993. Initially, the committee should be responsible for the clarification and implementation of proposed local rule changes suggested by the CJRA Report on Expense and Delay Reduction. The Court should then adopt new rules or amendments to the local rules as soon as is

practicable. In addition, at least once per year, the standing committee should be required to review the effectiveness of the rules and consider other modifications to the local rules.

III. RECOMMENDED EXPENSE AND DELAY REDUCTION MODIFICATIONS

A. Change the civil cover sheet to ask attorneys to state whether their case requires early judicial involvement. See Section IV.A.1.

B. Adopt Rule 16(b) scheduling orders in prisoner cases. See Section IV.A.2.

C. Adopt a procedure assigning one magistrate judge to a civil case for the duration of the case. See Section IV.A.4.

D. Urge the adoption of a certification process of state substantive law issues to the North Carolina Supreme Court in diversity cases. See Section IV.A.5.

E. Adopt proposed local rule 24.05 implementing a "discovery hotline." See Section IV.B.1.

F. Adopt proposed local rule 24.06 requiring certification that counsel have conferred in an attempt to resolve discovery disputes prior to filing formal motions. See Section IV.B.2.

G. Adopt proposed local rule 24.07 and amend local rules 5.05, 4.05, 4.06, and 4.09 setting expedited schedules for resolution of discovery disputes. See Sections IV.B.3. and IV.C.3.

H. Adopt proposed local rule 24.08 regarding discovery and disclosure of expert testimony. See Section IV.B.4.

I. Adopt proposed local rule 23.01(a) setting pretrial conferences thirty days after a ruling on a dispositive motion. See Section IV.C.1.

J. Adopt proposed local rule 4.09 allowing oral argument as a general rule, when requested by a party. See Section IV.C.2.

K. Adopt proposed local rule 26.00 et seq. eliminating the requirement of filing a written response to a motion in limine which is filed after the pretrial conference has taken place. See Section IV.C.3.

L. Adopt proposed local rules 24.05 and 25.03(c)(III) regarding renumbering of deposition testimony and exhibits. See Section IV.D.1.

M. Adopt proposed local rule 25.04(d) changing the responsibility for preparation of pretrial orders to all attorneys. See Section IV.D.2.

N. Adopt proposed local rule 27.01(c) governing the use of trial exhibits during opening statements. See Section IV.D.3.

O. Adopt proposed local rule 25.04 concerning the conduct of the final pretrial conference, including the use of juror evidence notebooks. See Section IV.D.4.

P. Adopt proposed local rule 25.01 implementing the use of a "working" pretrial conference in appropriate cases. See Section IV.D.5.

Q. Adopt proposed local rule 25.03(d)(IV) providing that it is unnecessary to designate a deposition used solely for impeachment purposes. See Section IV.D.6.

R. Adopt proposed local rules 30.00, 31.00 and 32.00 allowing mediation, summary tirals, and court-hosted settlement conferences. See Section IV.E.

APPENDIX 4

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
_____ DIVISION

NO. _____

Plaintiff	)
VS.	)
Defendant	)

NOTICE TO COUNSEL OF FAILURE TO MAKE SERVICE WITHIN 120 DAYS

The docket in this action does not reflect that service has been obtained upon defendant _____ within 120 days of filing of the complaint. Rule 4(j) provides that the action shall be dismissed without prejudice as to this defendant unless you can demonstrate good cause to the court why such service was not made within the period. You are hereby notified that you must comply with this requirement within ten days of receipt of this notice. At the end of the period, the record will be forwarded to the district judge to whom the action is assigned for a determination of whether you have demonstrated good cause. Failure to respond to this notice within the time allotted will result in a dismissal of the action without prejudice.

David W. Daniel, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
_____DIVISION

Plaintiff	)	No._____
VS.	)	
Defendant	)	

ORDER DISMISSING ACTION WITHOUT PREJUDICE
FOR FAILURE TO OBTAIN SERVICE

The record in this action not indicating that plaintiff has obtained service upon defendant _____ within 120 days after filing of the complaint, and plaintiff after notice not having demonstrated good cause why such service was not made within the period, this action is dismissed without prejudice as to defendant _____.

SO ORDERED.

This _____ day of _____, 198__.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

VS.

No. _____

ORDER DIRECTING PLAINTIFF TO PROCEED AFTER FAILURE TO ANSWER

The docket in this action indicates that defendant _____ has not filed responsive pleadings within the appropriate time periods. Please proceed in accordance with Rule 55 of the Federal Rules of Civil Procedure to reduce this matter to judgment. If no steps have been taken within twenty (20) days of service of this Order, the court will require you to show cause why the action should not be dismissed for failure to prosecute.

SO ORDERED. This the _____ day of _____, 19___.

_____

United States Magistrate

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

NO._____

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
VS.	)	ORDER DIRECTING PLAINTIFF
	)	TO SHOW CAUSE WHY ACTION
	)	SHOULD NOT BE DISMISSED
	)	FOR FAILURE TO PROSECUTE
	)	
Defendant	)	

On _____, plaintiff was directed to proceed to reduce this matter to judgment. The docket does not reflect that any action has been taken. Accordingly, plaintiff is directed to show cause within ten days of this date why the action should not be dismissed for failure to prosecute. In the event of no response from plaintiff within the time period, an order of dismissal will be forthcoming.

SO ORDERED.

_____

UNITED STATES MAGISTRATE

APPENDIX 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
_____ DIVISION

) NO. _____
)
)
)
)
)
) REQUEST FOR
) DISCOVERY STIPULATION
)
)
)
)
)

Pursuant to Rule 16(a), F.R.Civ.P., the court must enter a scheduling order within 120 days after filing of the complaint. Please confer with opposing counsel and present to the court within 20 days a stipulation addressing the following issues:

1. The length of discovery, including a date by which all discovery will be concluded.
2. The number of interrogatories each party will serve on the others.
3. The number of depositions to be taken by each party.
4. The time for disclosure of identity of expert witnesses, and the scheduling of depositions of experts.

If counsel cannot agree, please submit your respective positions on these issues directly to the Clerk in Raleigh and the court will resolve the disputed issues. Following court approval, modifications of the scheduling order will be allowed only by motion and for good cause shown.

Failure to comply with this order will result in entry of a scheduling order limiting non-responding counsel to a discovery period of four months, 50 interrogatories, ten depositions, and disclosure of expert witnesses at least 30 days prior to the expiration of discovery.

Note that Local Rule 4.00 requires that all motions (except those relating to the admissibility of evidence at trial) must be filed within 30 days after discovery concludes. Untimely motions may be summarily denied. Also note that cases are currently being docketed for trial within 60 to 90 days after discovery terminates, with a final pre-trial conference scheduled approximately two weeks prior to trial.

SO ORDERED this _____ day of _____, 19____.

BY THE COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
_____ DIVISION

NO. _____

Plaintiffs	)	
v.	)	**ORDER ON SCHEDULING PURSUANT TO RULE 16(a), F.R.Civ.P.**
Defendants	)	

After reviewing the submissions of counsel regarding an appropriate scheduling order, it is hereby ORDERED that all discovery be concluded on or before _____. Pursuant to Local Rule 4.00, all motions of any nature (except those relating to the admissibility of evidence at trial), must be filed within thirty days of the close of discovery, on or before _____. Untimely motions may be summarily disregarded.

It is further ordered that no party may serve on any other interrogatories in excess of _____ inclusive of subparts, and no party may notice in excess of _____ depositions. The identity of expert witnesses will be disclosed by each party on or before _____.

This action is calendared for trial before Judge _____ at his _____ session beginning on _____. A trial calendar indicating the order in which cases will be

called for trial at that term will be distributed approximately two months beforehand. At the same time, a final pretrial conference will be scheduled approximately two weeks before the trial. Requests for modification of the scheduling order that will require a continuance of the trial will be granted only upon a strong showing of due diligence and good cause.

SO ORDERED this _____ day of _____, 1991.

_____

United States Magistrate Judge

APPENDIX 6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

ORDER SETTING THE PROCEDURE FOR HANDLING OF SECTION 1983 CASES BY STATE PRISONERS

It appearing to the court that a substantial revision is required in the procedures by which motions to proceed in forma pauperis are determined in cases brought by state prisoners under 42 U.S.C. § 1983, the following procedures are hereby adopted:

1. Whenever a state prisoner files a proper complaint pursuant to 42 U.S.C. §1983 and requests filing of the complaint in forma pauperis, the motion to proceed shall be tentatively allowed and the action filed under authority of this order in those cases in which it appears, from the affidavit in support of the motion to proceed in forma pauperis, that the prisoner has less than the statutory filing fee in his trust fund account.

2. The Clerk shall make a preliminary scrutiny of each complaint to determine whether it may be frivolous or malicious under 28 U.S.C. §1915. Complaints falling into this category shall immediately be forwarded to the appropriate judge or magistrate for determination and the entry of appropriate orders if the complaint is determined to be frivolous or malicious.

3. In complaints stating a cause of action requiring response by defendant, the Clerk shall request from the Director of the Division of Prisons of the North Carolina Department of Corrections a certified copy of the trust fund account of the plaintiff for the six-month period preceding submission of the complaint.

4. A plaintiff will be allowed to proceed in forma pauperis conditioned upon payment of a partial filing fee based on the income received within the six-month period preceding submission of the complaint and such other factors as plaintiff may draw to the court's attention. The partial filing fee required to be

submitted by the plaintiff shall not in any circumstances exceed 15% of the income received by the prisoner within the preceding six months, as demonstrated by the certified copy of his prison trust fund account supplied by the Division of Prisons.

5. The Clerk shall inform the prisoner by copy of the attached form of the amount of the filing fee required to be submitted by him. In the event that the set fee is not received within twenty days, the motion to proceed in forma pauperis is denied and the action is closed.

6. If a partial filing fee as set by the court is tendered within twenty days, service of process upon defendant shall issue without further order of the court. Upon receipt of a partial payment, plaintiff's motion to proceed in forma pauperis shall be allowed as to any additional portion of the filing fee and any other costs and plaintiff shall be treated as proceeding in forma pauperis for all further purposes.

7. This order applies to all §1983 state prisoner actions filed since the court's initial partial payment order of January 29, 1980, and to all such actions subsequently filed.

SO ORDERED.

This 30th day of April, 1980.

F. T. DUPREE, JR.
CHIEF JUDGE

EASTERN DISTRICT PRISONER
REPRESENTATION PLAN

I. Department of Correction Employee Defendants

The Clerk of United States District Court for the Eastern District of North Carolina, North Carolina Prisoner Legal Services (NCPLS), the North Carolina Department of Correction, and the Attorney General of North Carolina hereby establish the following procedures for handling pro se lawsuits filed by North Carolina prison inmates against employees or officials of the North Carolina Department of Correction and arising from the terms and conditions of confinement in the Department of Correction.

1. When the lawsuit has survived the administrative exhaustion test, passed frivolity review, the plaintiff has been granted in forma pauperis status (if justified), and any required filing fee has been paid, the Clerk will transmit to NCPLS an "Order of Investigation" (Form A) and a copy of the Complaint.

2. Within ten days of receipt of the Order of Investigation, NCPLS will submit to the Attorney General, Correction Section, a "Request for Documents" (Form B), asking for relevant documents or medical records in the possession of the Department of Correction.

3. The Attorney General and the Department of Correction will deliver to NCPLS, within 30 days of receipt of the Request for Documents (unless NCPLS is notified of the need for more

time), copies of all requested documents. Documents covered by these provisions are Grievance Forms, Use-of-Force Reports, Incident Reports, Disciplinary Reports, and inmate medical records. In the event any of the documents requested include statements which indicate that they were made by inmates who requested that their information be kept confidential (hereafter, "confidential statements"), such statements will be forwarded to the Correction Section of the Attorney General's Office for review. If the Attorney General's Office believes that the information contained in the confidential statements is relevant and necessary to NCPLS's determination of whether to provide representation, NCPLS will be offered the opportunity to view the confidential statements at the Attorney General's offices. NCPLS will not be given a copy of the confidential statements and the attorney from NCPLS will be bound by the protective order which is made a part of this plan and which states that the existence and contents of the confidential statements will not be divulged to the potential inmate-client or any other person outside of those NCPLS staff who need to be involved in the decision-making process. If the Attorney General's Office decides that the information contained in the confidential statements is not relevant to NCPLS's decision-making process it will inform the NCPLS requesting attorney of the number of confidential statements that are being withheld. During the investigative period, all contact seeking the above documents or all other information from Department of Correction employees shall be made to the Attorney General's office.

4. Within 90 days of receipt of the Request for Investigation, NCPLS will file with the court a Response to Order of Investigation (Form C). The Response will indicate a) that NCPLS will provide representation; b) that in the opinion of the NCPLS attorney, appointment of counsel is not necessary; c) that the plaintiff does not want NCPLS to provide counsel for him; or d) that the plaintiff has not cooperated in the investigation, and therefore NCPLS cannot complete its investigation. If NCPLS declines representation or the inmate rejects NCPLS' representation, NCPLS will return to the Attorney General's office all material produced by the Department of Correction pursuant to the expedited voluntary discovery procedures of this plan and any copies made thereof.

5. During the investigation period, the Clerk will issue process to the United States Marshal for service upon defendants. The clerk will also send a copy of the complaint to the Attorney General's office. NCPLS will provide clerical help to the Clerk for this task.

6. If, during the investigation period, the Attorney General decides not to provide representation to any defendant, it will immediately notify NCPLS.

7. If the court determines, in any particular case, at any stage of the proceeding, that appointment of counsel is necessary to preserve the prisoner plaintiff's rights, or is in the interests of justice, or would assist the court or the parties, then NCPLS will accept appointment as ordered by the court.

8. The Clerk will send a copy of the Order of Investigation to the plaintiff. It will include notice to the prisoner plaintiff of the investigation and its role in the court's process, and will include a form by which the plaintiff can indicate if he wishes to cooperate with the investigation, or to reject help from NCPLS.

II. Defendants not employed by the Department of Correction

The Clerk of the United States District Court for the Eastern District of North Carolina and North Carolina Prisoner Legal Services (NCPLS) hereby establish the following procedures for handling pro se lawsuits filed by prison or jail inmates, in which the claim or cause of action does not arise from terms or conditions of confinement in the North Carolina Department of Correction.

1. When the lawsuit has survived the administrative exhaustion test, passed frivolity review, the plaintiff has been granted in forma pauperis status (if justified), and any required filing fee has been paid, the Clerk will transmit to NCPLS an "Order of Investigation" (Form A) and a copy of the Complaint.

2. Within 90 days of receipt of the Request for Investigation, NCPLS will file with the court a Response to Order of Investigation (Form C). The Response will indicate a) that NCPLS will provide representation; b) that in the opinion of the NCPLS attorney, appointment of counsel is not necessary; c) that the plaintiff does not want NCPLS to provide counsel

for him; d) that the plaintiff has not cooperated in the investigation, and therefore NCPLS cannot complete its investigation; or e) NCPLS cannot obtain adequate information to form an opinion regarding the need for counsel, but will accept an appointment to conduct discovery, subject to a later motion to withdraw as counsel, if such a motion is justified.

3. During the investigation period, the Clerk will issue process to the United States Marshal for service upon defendants. NCPLS will provide clerical help to the Clerk for this task.

4. If the court determines, in any particular case, at any stage of the proceedings, that appointment of counsel is necessary to preserve the prisoner plaintiff's rights, or is in the interests of justice, or would assist the court or the parties, then NCPLS will accept appointment as ordered by the court.

5. A copy of the Order of Investigation will be sent to the plaintiff and to the defendant, if possible. The Order will inform the prisoner plaintiff of the investigation and its role in the court's process, and will include a form by which the plaintiff can indicate whether he wishes to cooperate with the investigation, or to reject help from NCPLS.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

JOHN PRISONER, Plaintiff, v. JOE OFFICER, Defendant.	No. _____ ORDER OF INVESTIGATION

This action having been filed pro se by an inmate of the North Carolina Department of Correction, and it appearing to the Court that an investigation of the claims of the plaintiff is warranted prior to the appointment of Counsel,

IT IS ORDERED,

1. That pursuant to this Court's Eastern District Prisoner Representation Plan, North Carolina Prisoner Legal Services is requested to investigate the claims of the plaintiff and respond to the court within 90 days of the date of entry of this Order.

2. That the North Carolina Department of Correction furnish, upon request, copies of the appropriate documents as called for by the Plan.

3. The time for defendants to answer the complaint is hereby extended until 30 days after the Response filed by NCPLS.

_____
Clerk, U.S. District Court

NOTICE TO PLAINTIFF

You are hereby notified that North Carolina Prisoner Legal Services (NCPLS) has been ordered to conduct an investigation of the claims raised in your complaint and to report to the court whether NCPLS is willing to provide representation for you.

During the investigation period, NCPLS is not representing you. However, information you give to NCPLS regarding your claim will be held in confidence, consistent with the Rules of Professional Conduct.

You are not required to cooperate with the investigation, and you can decide now that you do not want NCPLS to investigate your claims or to represent you. However, failure to cooperate with the investigation, or a decision not to accept representation from NCPLS, may be interpreted by the court as a waiver of any right to court-appointed counsel. If you do not cooperate with the investigation, or if you reject representation by NCPLS, it is highly unlikely that the court will appoint other counsel for you.

Please fill out the enclosed waiver form indicating whether you want NCPLS to investigate you claim, and return it immediately to:

Clerk, United States District Court
Post Office Box 25670
Raleigh, North Carolina 27611

REJECTION OF INVESTIGATION BY NCPLS

I have read the "Notice to Plaintiff" in the Order of Investigation. Even though I understand that my decision may be interpreted as a waiver of any right to court-appointed counsel, I do not want North Carolina Prisoner Legal Services (NCPLS) to investigate my claims, and I hereby reject any assistance, including legal representation, from NCPLS.

_____
Plaintiff

Date _____

Case No. _____

ACCEPTANCE OF INVESTIGATION BY NCPLS

I have read the "Notice to Plaintiff" in the Order of Investigation. I agree to cooperate with the North Carolina Prisoner Legal Services' investigation.

_____
Plaintiff

Date _____

Case No. _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

JOHN PRISONER, Plaintiff, v. JOE OFFICER, Defendant.	No. _____ RESPONSE TO ORDER OF INVESTIGATION

In response to the Court's request, I have conducted the factual investigation and legal research that I find to be warranted and adequate for the claims raised. As a result of my investigation:

___ a) North Carolina Prisoner Legal Services (NCPLS) will provide representation to plaintiff.

___ b) In the opinion of the undersigned attorney, appointment of counsel is not required in this action. NCPLS has provided advice and assistance to the plaintiff.

___ c) The plaintiff has declined the services of NCPLS.

___ d) The plaintiff has not cooperated with the investigation and NCPLS cannot complete its investigation or render any opinion.

[For non-Department of Correction cases]

___ e) NCPLS has not been able to obtain adequate information to evaluate the claim. NCPLS will accept appointment

as counsel, and will conduct discovery, but may later request permission to withdraw as counsel.

Staff Attorney
N.C. Prisoner Legal Services, Inc.
Post Office Box 25397
Raleigh, North Carolina 27611
(919) 828-3508

CERTIFICATE OF SERVICE

I certify that the foregoing document has been served upon the defendants by mailing a copy to their attorney at the following address:

Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

This the ____ day of _____, 1990.

Attorney for Plaintiff

Misc. 08356 p. 78

FILED

SEP 24

J. RICH LEONARD, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN THE MATTER OF EASTERN DISTRICT PRISONER REPRESENTATION PLAN	)	PROTECTIVE ORDER

Pursuant to the Eastern District Prisoner Representation Plan agreed to between the Office of the Attorney General and North Carolina Prisoner Legal Services (NCPLS) pertaining to certain relevant documents which will be made available to NCPLS without the formality of discovery to facilitate their preliminary investigation of lawsuits filed by inmates committed to the North Carolina Department of Correction against state employees and/or a state contractor, it is hereby ORDERED;

When pursuant to the aforementioned agreement counsel becomes aware of the existence of, the content of, or the identity of the maker of a confidential statement, they will not in any manner divulge such information to the potential inmate-client or any other person outside of those NCPLS staff who need to be involved in the decision whether to provide representation.

For the purposes of this Order, confidential statements are those which indicate that they were made by inmates who requested that their information be kept confidential. Counsel

will treat as "confidential" any such statement so designated by the Office of the Attorney General.

Chief Judge
United States District Court

AGREED TO:

Lucien Capone III 9/11/90
Lucien Capone, III
Special Deputy Attorney General

Marvin Sparrow 9/11/90
Marvin Sparrow
Director, North Carolina Prisoner Legal Services

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

ORDER OF PROVISIONAL CERTIFICATION
OF ADMINISTRATIVE REMEDY PROCEDURE

The North Carolina Department of Correction has requested the court to certify its Inmate Grievance Procedure, 5 North Carolina Administrative Code 2G, Section .0300 through .0313, as in compliance with 42 U.S.C. § 1997(e). The court has offered the bar and the public an opportunity to comment on this request, and has carefully considered the comments and the response of the Attorney General thereto. After this review, the court has determined that the Inmate Grievance Procedure is substantially in compliance with the pertinent statute and regulations issued thereunder, with the proviso that the Secretary of Correction increases the thirty-day period provided by Section .0306(b)(2) within which a grievance must be filed to one year.

The effective date of this certification is March 1, 1989, if the Secretary of Correction has notified the court prior to that time that the necessary modification has been made. Otherwise, the certification will be deferred until that action is taken.

This 1st day of February, 1989.

W. EARL BRITT
Chief U. S. District Judge

JAMES C. FOX
United States District Judge

TERRENCE W. BOYLE
United States District Judge

MALCOLM J. HOWARD
United States District Judge

JOHN D. LARKINS, JR.
Senior U. S. District Judge

F. T. DUPREE, JR.
Senior U. S. District Judge

APPENDIX 7

SAMPLE SELECTION METHOD: CASE SPECIFIC QUESTIONNAIRE

The Advisory Group began with the all cases (1183 in all) closed between April 1, 1990 and March 31, 1991, regardless of the date on which a case was filed. The Advisory Group excluded those cases which lasted less than six months and either were disposed of by default judgment or were disposed of before issue and without judicial action. The remaining 947 cases were grouped into 12 subject-matter categories by the Federal Judicial Center. The Advisory Group eliminated one of the twelve categories of cases from consideration -- asbestos -- since all pending asbestos cases were transferred to the Eastern District of Pennsylvania, thereby eliminating the handling of this unique group as a present concern of the court.

Ten cases were selected from each of the remaining eleven categories. In most categories, five cases were selected from those in the upper 20% of age at disposition and the other five from the remaining 80% (thereby intentionally overrepresenting cases that had taken longer to conclude.)

The Advisory Group reviewed the docket sheets from each of those cases, recording time intervals between various stages of the case, including time from filing to disposition. The Advisory Group then analyzed the results and prepared the case specific questionnaire for submission to the participants in those 110 cases.

QUESTIONNAIRE TO ATTORNEYS IN SELECTED CASES

I. Case Management in this Case.

"Case management" refers to oversight and supervision of litigation by a judge or magistrate judge or by routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.

1. How would you characterize the level of case management in <u>this</u> case? Please circle one answer.

   b. high
   c. moderate
   d. low
   e. minimal
   f. none
   g. not sure

2. Did the court hold pretrial activities to a firm schedule in this case?
   a. yes
   b. no
   c. not sure
   d. not applicable

3. Did the court set and enforce limits on allowable discovery in this case?
   a. yes
   b. no
   c. not sure
   d. not applicable

4. Did the court narrow the issues through conferences or other methods in this case?
   a. yes
   b. no
   c. not sure
   d. not applicable

5. Did the court rule promptly on pretrial motions in this case?
   a. yes
   b. no
   c. not sure
   d. not applicable

6. Did the court refer the case to alternative dispute resolution, such as arbitration or mediation?
   a. yes
   b. no
   c. not sure
   d. not applicable

c:\wptext\^F5^

7. Early in this case, did the court set a trial date?
   a. yes
   b. no
   c. not sure
   d. not applicable

8. Was the trial date continued?
   a. yes
   b. no
   c. not sure
   d. not applicable

9. If the trial date was continued, who requested the continuance?
   a. you or your client
   b. another party
   c. joint request
   d. the court
   e. Other. Please explain: _____

10. If the trial date was continued, why was it continued? (You may choose more than one answer)
   a. conflicts in the calendars of the attorneys involved in the case
   b. conflicts in the calendars of the litigants or witnesses
   c. extensions of the discovery period
   d. extensions of the motions period or the motions briefing schedule
   e. conflicts in the court's calendar
   f. Other. Please explain: _____

11. Did the court conduct or facilitate settlement discussions in this case?
   a. yes
   b. no
   c. not sure
   d. not applicable

12. Did the court exert firm control over the trial?
   a. yes
   b. no
   c. not sure
   d. not applicable

II. Timeliness of Litigation in this Case

13. Our records indicate this case took about ^F4^ months from filing date to disposition date. Please circle the one answer below that reflects the duration of the case for your client.

   a. The duration given above is correct for my client.
   b. The duration given above is not correct for my client. My client was in this case approximately _____ months.
   c. I do not recall the duration of this case for my client.

14. How long do you expect this case would have taken for your client from filing to disposition under circumstances in which the court, all counsel and all parties acted reasonably and expeditiously, and there were no obstacles such as a backlog of cases in the court? _____

15. If the case actually took longer than you believe reasonable, please indicate what factors contributed to the delay: (circle one or more)
    a. Excessive case management by the court
    b. Inadequate case management by the court
    c. Dilatory actions by counsel
    d. Dilatory actions by the litigants
    e. Court's failure to rule promptly on motions
    f. Backlog of cases on court's calendar.
    g. Other. Please Specify: _____
    _____
    _____
    _____
    _____
    h. not applicable

16. If you think delay is a problem in this district in disposing of civil cases, what suggestions or comments do you have for reducing those delays?

_____
_____
_____
_____
_____
_____
_____

III. Costs of Litigation in this Case

17. Please estimate the amount of money at stake in this case.
    $_____

18. Please describe the "stakes" which were not susceptible to monetary valuation, if any:

_____
_____

19. What type of fee arrangement did you have in this case?
    a. Hourly rate
    b. Hourly rate with a maximum
    c. Set fee
    d. Contingency
    e. Pro Bono
    f. Government Attorney
    g. Contingency with prospect for statutory fee shifting
    h. Other. Please describe: _____
    _____
    _____

20. Approximately how many hours were spend on this case by <u>attorneys</u> representing your client? _____

21. Excluding costs attributable to travel to court, do you believe this case could have been litigated at less cost to your client in another court (either in another federal district court or in a state court)?
a. yes
b. no
c. not sure
d. not applicable

22. If you answered yes to the previous question, please explain your answer, indicating in particular the practices of this district that you believe contributed to the increased costs.

_____

_____

_____

23. What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to <u>each</u> of the following activities?

Preliminary investigation of the case, drafting complaint or answer	_____%
Discovery, including motions related to discovery	_____%
Other motions (e.g., summary judgment, TRO)	_____%
Negotiations for settlement or other stipulated disposition	_____%
Status conferences, scheduling conferences or hearings, final pretrial conferences, and other case management related activities	_____%
Trial preparation and trial	_____%
Other. Please specify: _____ _____	_____%
TOTAL	**100%**

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

CIVIL JUSTICE REFORM ACT LOCAL ADVISORY GROUP

QUESTIONNAIRE TO ATTORNEYS IN SELECTED CASES

DATA ANALYSIS REPORTS

JUNE 15, 1992

I. Case Management in this Case.

"Case management" refers to oversight and supervision of litigation by a judge or magistrate judge or by routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.

Question 1: How would you characterize the level of case management in this case? Page 1

Category	high	moderate	low	minimal	none	not sure	no answer	total
Student Loan and Veteran Cases	20.0% (1)	60.0% (3)					20.0% (1)	100.0% (5)
Other Contract Actions	54.5% (6)	18.2% (2)		18.2% (2)	9.1% (1)			100.0% (11)
Other Tort	20.0% (3)	26.7% (4)	26.7% (4)	20.0% (3)	6.7% (1)			100.0% (15)
Civil Rights (except prisoner)	15.4% (2)	53.8% (7)		23.1% (3)		7.7% (1)		100.0% (13)
Prisoner Civil Rights		16.7% (1)		66.7% (4)	16.7% (1)			100.0% (6)
Other Prisoner Cases	50.0% (3)			33.3% (2)	16.7% (1)			100.0% (6)
Potentially Complex Cases	22.7% (5)	50.0% (11)	13.6% (3)	13.6% (3)				100.0% (22)
"Other" Forfeiture and Penalty	14.3% (2)	14.3% (2)	28.6% (4)	28.6% (4)	14.3% (2)			100.0% (14)
Labor	58.3% (7)	25.0% (3)	8.3% (1)	8.3% (1)				100.0% (12)
Social Security	53.3% (8)	33.3% (5)	6.7% (1)	6.7% (1)				100.0% (15)
All Other	46.2% (6)	30.8% (4)		7.7% (1)			15.4% (2)	100.0% (13)
ALL CATEGORIES	32.6% (43)	31.8% (42)	9.8% (13)	18.2% (24)	4.5% (6)	0.8% (1)	2.3% (3)	100.0% (132)

Question 2: Did the court hold pretrial activities to a firm schedule in this case? Page 2

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases	20.0% (1)	20.0% (1)		60.0% (3)		100.0% (5)
Other Contract Actions	36.4% (4)	9.1% (1)		54.5% (6)		100.0% (11)
Other Tort	53.3% (8)	20.0% (3)	6.7% (1)	20.0% (3)		100.0% (15)
Civil Rights (except prisoner)	61.5% (8)	7.7% (1)	7.7% (1)	23.1% (3)		100.0% (13)
Prisoner Civil Rights	16.7% (1)	33.3% (2)		50.0% (3)		100.0% (6)
Other Prisoner Cases		33.3% (2)	16.7% (1)	50.0% (3)		100.0% (6)
Potentially Complex Cases	54.5% (12)	13.6% (3)	9.1% (2)	22.7% (5)		100.0% (22)
"Other" Forfeiture and Penalty	35.7% (5)	14.3% (2)		50.0% (7)		100.0% (14)
Labor	41.7% (5)	8.3% (1)	16.7% (2)	25.0% (3)	8.3% (1)	100.0% (12)
Social Security	60.0% (9)			40.0% (6)		100.0% (15)
All Other	38.5% (5)	15.4% (2)		38.5% (5)	7.7% (1)	100.0% (13)
ALL CATEGORIES	43.9% (58)	13.6% (18)	5.3% (7)	35.6% (47)	1.5% (2)	100.0% (132)

Question 3: Did the court set and enforce limits on allowable discovery in this case?

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases				100.0% (5)		100.0% (5)
Other Contract Actions	27.3% (3)	9.1% (1)		63.6% (7)		100.0% (11)
Other Tort	46.7% (7)	20.0% (3)	6.7% (1)	26.7% (4)		100.0% (15)
Civil Rights (except prisoner)	69.2% (9)	15.4% (2)		15.4% (2)		100.0% (13)
Prisoner Civil Rights		50.0% (3)		50.0% (3)		100.0% (6)
Other Prisoner Cases		33.3% (2)		66.7% (4)		100.0% (6)
Potentially Complex Cases	40.9% (9)	22.7% (5)	9.1% (2)	27.3% (6)		100.0% (22)
"Other" Forfeiture and Penalty	35.7% (5)	14.3% (2)		50.0% (7)		100.0% (14)
Labor	50.0% (6)	8.3% (1)		33.3% (4)	8.3% (1)	100.0% (12)
Social Security	6.7% (1)			93.3% (14)		100.0% (15)
All Other	53.8% (7)			46.2% (6)		100.0% (13)
ALL CATEGORIES	35.6% (47)	14.4% (19)	2.3% (3)	47.0% (62)	0.8% (1)	100.0% (132)

Question 4: Did the court narrow the issues through conferences or other methods in this case?

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases		40.0% (2)		60.0% (3)		100.0% (5)
Other Contract Actions	36.4% (4)	9.1% (1)	9.1% (1)	45.4% (5)		100.0% (11)
Other Tort	20.0% (3)	53.3% (8)		26.7% (4)		100.0% (15)
Civil Rights (except prisoner)	15.4% (2)	38.5% (5)		46.2% (6)		100.0% (13)
Prisoner Civil Rights		50.0% (3)		50.0% (3)		100.0% (6)
Other Prisoner Cases		50.0% (3)	16.7% (1)	33.3% (2)		100.0% (6)
Potentially Complex Cases	40.9% (9)	36.4% (8)	4.5% (1)	18.2% (4)		100.0% (22)
"Other" Forfeiture and Penalty	14.3% (2)	21.4% (3)		64.3% (9)		100.0% (14)
Labor	41.7% (5)	33.3% (4)		16.7% (2)	8.3% (1)	100.0% (12)
Social Security	13.3% (2)	6.7% (1)		80.0% (12)		100.0% (15)
All Other	23.1% (3)	46.2% (6)		30.8% (4)		100.0% (13)
ALL CATEGORIES	22.7% (30)	33.3% (44)	2.3% (3)	40.9% (54)	0.8% (1)	100.0% (132)

Question 5: Did the court rule promptly on pretrial motions in this case?

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases				100.0% (5)		100.0% (5)
Other Contract Actions	45.4% (5)		9.1% (1)	45.4% (5)		100.0% (11)
Other Tort	53.3% (8)	26.7% (4)		20.0% (3)		100.0% (15)
Civil Rights (except prisoner)	46.2% (6)	7.7% (1)	7.7% (1)	38.5% (5)		100.0% (13)
Prisoner Civil Rights	33.3% (2)	16.7% (1)		50.0% (3)		100.0% (6)
Other Prisoner Cases	66.7% (4)	16.7% (1)		16.7% (1)		100.0% (6)
Potentially Complex Cases	63.6% (14)	13.6% (3)	9.1% (2)	13.6% (3)		100.0% (22)
"Other" Forfeiture and Penalty	35.7% (5)	7.1% (1)		57.1% (8)		100.0% (14)
Labor	75.0% (9)	16.7% (2)			8.3% (1)	100.0% (12)
Social Security	80.0% (12)		6.7% (1)	13.3% (2)		100.0% (15)
All Other	61.5% (8)			30.8% (4)	7.7% (1)	100.0% (13)
ALL CATEGORIES	55.3% (73)	9.8% (13)	3.8% (5)	29.5% (39)	1.5% (2)	100.0% (132)

Question 6: Did the court refer the case to alternative dispute resolution, such as arbitration or mediation?

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases		80.0% (4)		20.0% (1)		100.0% (5)
Other Contract Actions		54.5% (6)		45.4% (5)		100.0% (11)
Other Tort		93.3% (14)		6.7% (1)		100.0% (15)
Civil Rights (except prisoner)		69.2% (9)		30.8% (4)		100.0% (13)
Prisoner Civil Rights		66.7% (4)		33.3% (2)		100.0% (6)
Other Prisoner Cases		33.3% (2)		66.7% (4)		100.0% (6)
Potentially Complex Cases		90.9% (20)		9.1% (2)		100.0% (22)
"Other" Forfeiture and Penalty		14.3% (2)		85.7% (12)		100.0% (14)
Labor		75.0% (9)		16.7% (2)	8.3% (1)	100.0% (12)
Social Security		33.3% (5)		66.7% (10)		100.0% (15)
All Other		69.2% (9)		30.8% (4)		100.0% (13)
ALL CATEGORIES	0.0% ( )	63.6% (84)	0.0% ( )	35.6% (47)	0.8% (1)	100.0% (132)

Question 7: Early in this case, did the court set a trial date?

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases		20.0% (1)		80.0% (4)		100.0% (5)
Other Contract Actions	18.2% (2)	36.4% (4)	9.1% (1)	36.4% (4)		100.0% (11)
Other Tort	26.7% (4)	40.0% (6)	6.7% (1)	26.7% (4)		100.0% (15)
Civil Rights (except prisoner)	30.8% (4)	38.5% (5)	23.1% (3)	7.7% (1)		100.0% (13)
Prisoner Civil Rights	16.7% (1)	50.0% (3)		33.3% (2)		100.0% (6)
Other Prisoner Cases	16.7% (1)	16.7% (1)		66.7% (4)		100.0% (6)
Potentially Complex Cases	13.6% (3)	36.4% (8)	27.3% (6)	22.7% (5)		100.0% (22)
"Other" Forfeiture and Penalty		28.6% (4)		71.4% (10)		100.0% (14)
Labor	16.7% (2)	16.7% (2)	33.3% (4)	25.0% (3)	8.3% (1)	100.0% (12)
Social Security		20.0% (3)		80.0% (12)		100.0% (15)
All Other	7.7% (1)	53.8% (7)		30.8% (4)	7.7% (1)	100.0% (13)
ALL CATEGORIES	13.6% (18)	33.3% (44)	11.4% (15)	40.2% (53)	1.5% (2)	100.0% (132)

Question 8: Was the trial date continued?

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases		20.0% (1)		80.0% (4)		100.0% (5)
Other Contract Actions	18.2% (2)	36.4% (4)	9.1% (1)	36.4% (4)		100.0% (11)
Other Tort	20.0% (3)	33.3% (5)	6.7% (1)	40.0% (6)		100.0% (15)
Civil Rights (except prisoner)	7.7% (1)	53.8% (7)	7.7% (1)	30.8% (4)		100.0% (13)
Prisoner Civil Rights	33.3% (2)			66.7% (4)		100.0% (6)
Other Prisoner Cases		16.7% (1)		83.3% (5)		100.0% (6)
Potentially Complex Cases	31.8% (7)	13.6% (3)	4.5% (1)	50.0% (11)		100.0% (22)
"Other" Forfeiture and Penalty		14.3% (2)		71.4% (10)	14.3% (2)	100.0% (14)
Labor	8.3% (1)	41.7% (5)	8.3% (1)	33.3% (4)	8.3% (1)	100.0% (12)
Social Security		20.0% (3)		80.0% (12)		100.0% (15)
All Other	7.7% (1)	38.5% (5)	7.7% (1)	46.2% (6)		100.0% (13)
ALL CATEGORIES	12.9% (17)	27.3% (36)	4.5% (6)	53.0% (70)	2.3% (3)	100.0% (132)

Question 9: If the trial date was continued, who requested the continuance?

Category	you or your client	another party	joint request	the court	other	no answer	total
Student Loan and Veteran Cases						100.0% (5)	100.0% (5)
Other Contract Actions	9.1% (1)	9.1% (1)				81.8% (9)	100.0% (11)
Other Tort			26.7% (4)		6.7% (1)	66.7% (10)	100.0% (15)
Civil Rights (except prisoner)			7.7% (1)		7.7% (1)	84.6% (11)	100.0% (13)
Prisoner Civil Rights			16.7% (1)		16.7% (1)	66.7% (4)	100.0% (6)
Other Prisoner Cases						100.0% (6)	100.0% (6)
Potentially Complex Cases		9.1% (2)	22.7% (5)		9.1% (2)	59.1% (13)	100.0% (22)
"Other" Forfeiture and Penalty					7.1% (1)	92.8% (13)	100.0% (14)
Labor					8.3% (1)	91.7% (11)	100.0% (12)
Social Security						100.0% (15)	100.0% (15)
All Other			7.7% (1)		7.7% (1)	84.6% (11)	100.0% (13)
ALL CATEGORIES	0.8% (1)	2.3% (3)	9.1% (12)	0.0% ( )	6.1% (8)	81.8% (108)	100.0% (132)

Question 9: Breakdown of "Other" Response

Category	bankruptcy	settlement or motions terminated case before trial date	other	no answer	total
Student Loan and Veteran Cases				100.0% (5)	100.0% (5)
Other Contract Actions				100.0% (11)	100.0% (11)
Other Tort		6.7% (1)		93.3% (14)	100.0% (15)
Civil Rights (except prisoner)		7.7% (1)		92.3% (12)	100.0% (13)
Prisoner Civil Rights			16.7% (1)	83.3% (5)	100.0% (6)
Other Prisoner Cases				100.0% (6)	100.0% (6)
Potentially Complex Cases		4.5% (1)	4.5% (1)	90.9% (20)	100.0% (22)
"Other" Forfeiture and Penalty		7.1% (1)		92.8% (13)	100.0% (14)
Labor			8.3% (1)	91.7% (11)	100.0% (12)
Social Security				100.0% (15)	100.0% (15)
All Other	7.7% (1)			92.3% (12)	100.0% (13)
ALL CATEGORIES	0.8% (1)	3.0% (4)	2.3% (3)	93.9% (124)	100.0% (132)

Question 10: If the trial date was continued, why was it continued? (Note: respondents could choose more than one answer.)

Category	attorney calendar conflicts	litigants/ witnesses calendar conflicts	extensions of discovery	extensions of motions	court calendar conflicts	other	no answer	total
Student Loan and Veteran Cases							100.0% (5)	100.0% (5)
Other Contract Actions						18.2% (2)	81.8% (9)	100.0% (11)
Other Tort	6.7% (1)	6.7% (1)	13.3% (2)			13.3% (2)	66.7% (10)	100.0% (15)
Civil Rights (except prisoner)			7.7% (1)			7.7% (1)	84.6% (11)	100.0% (13)
Prisoner Civil Rights	33.3% (2)	16.7% (1)					66.7% (4)	100.0% (6)
Other Prisoner Cases							100.0% (6)	100.0% (6)
Potentially Complex Cases		4.5% (1)	9.1% (2)			31.8% (7)	59.1% (13)	100.0% (22)
"Other" Forfeiture and Penalty						7.1% (1)	92.8% (13)	100.0% (14)
Labor					8.3% (1)		91.7% (11)	100.0% (12)
Social Security							100.0% (15)	100.0% (15)
All Other						7.7% (1)	92.3% (12)	100.0% (13)
ALL CATEGORIES	2.3% (3)	2.3% (3)	3.8% (5)	0.0% ( )	0.8% (1)	10.6% (14)	82.6% (109)	100.0% (132)

Question 10: Breakdown of "Other" Response

Category	new parties/ consolidation	settlement/motions terminate case before trial	other	plaintiff in prison	no answer	total
Student Loan and Veteran Cases					100.0% (5)	100.0% (5)
Other Contract Actions				18.2% (2)	81.8% (9)	100.0% (11)
Other Tort	6.7% (1)				93.3% (14)	100.0% (15)
Civil Rights (except prisoner)		7.7% (1)			92.3% (12)	100.0% (13)
Prisoner Civil Rights					100.0% (6)	100.0% (6)
Other Prisoner Cases					100.0% (6)	100.0% (6)
Potentially Complex Cases	4.5% (1)	18.2% (4)	9.1% (2)		68.2% (15)	100.0% (22)
"Other" Forfeiture and Penalty					100.0% (14)	100.0% (14)
Labor					100.0% (12)	100.0% (12)
Social Security					100.0% (15)	100.0% (15)
All Other			7.7% (1)		92.3% (12)	100.0% (13)
ALL CATEGORIES	1.5% (2)	3.8% (5)	2.3% (3)	1.5% (2)	90.9% (120)	100.0% (132)

Question 11: Did the court conduct or facilitate settlement discussions in this case? Page 13

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases		40.0% (2)		60.0% (3)		100.0% (5)
Other Contract Actions	36.4% (4)	27.3% (3)		36.4% (4)		100.0% (11)
Other Tort	20.0% (3)	60.0% (9)		20.0% (3)		100.0% (15)
Civil Rights (except prisoner)	23.1% (3)	61.5% (8)		15.4% (2)		100.0% (13)
Prisoner Civil Rights		66.7% (4)		33.3% (2)		100.0% (6)
Other Prisoner Cases		33.3% (2)		66.7% (4)		100.0% (6)
Potentially Complex Cases	40.9% (9)	31.8% (7)		27.3% (6)		100.0% (22)
"Other" Forfeiture and Penalty		35.7% (5)		64.3% (9)		100.0% (14)
Labor	16.7% (2)	50.0% (6)		25.0% (3)	8.3% (1)	100.0% (12)
Social Security		40.0% (6)		60.0% (9)		100.0% (15)
All Other	7.7% (1)	69.2% (9)		23.1% (3)		100.0% (13)
ALL CATEGORIES	16.7% (22)	46.2% (61)	0.0% ( )	36.4% (48)	0.8% (1)	100.0% (132)

Question 12: Did the court exert firm control over the trial?

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases				100.0% (5)		100.0% (5)
Other Contract Actions	27.3% (3)			63.6% (7)	9.1% (1)	100.0% (11)
Other Tort	13.3% (2)		6.7% (1)	73.3% (11)	6.7% (1)	100.0% (15)
Civil Rights (except prisoner)	23.1% (3)			76.9% (10)		100.0% (13)
Prisoner Civil Rights	16.7% (1)		16.7% (1)	66.7% (4)		100.0% (6)
Other Prisoner Cases	16.7% (1)			83.3% (5)		100.0% (6)
Potentially Complex Cases	13.6% (3)	4.5% (1)	4.5% (1)	77.3% (17)		100.0% (22)
"Other" Forfeiture and Penalty		14.3% (2)		85.7% (12)		100.0% (14)
Labor	25.0% (3)			66.7% (8)	8.3% (1)	100.0% (12)
Social Security	6.7% (1)			93.3% (14)		100.0% (15)
All Other				92.3% (12)	7.7% (1)	100.0% (13)
ALL CATEGORIES	12.9% (17)	2.3% (3)	2.3% (3)	79.5% (105)	3.0% (4)	100.0% (132)

II. Timeliness of Litigation in this Case

Questions 13-14: Comparison of actual to expected case duration

Category	Expected < Actual	Expected = Actual	Expected > Actual	incomplete	total
Student Loan and Veteran Cases		40.0% (2)	60.0% (3)		100.0% (5)
Other Contract Actions	27.3% (3)	27.3% (3)	9.1% (1)	36.4% (4)	100.0% (11)
Other Tort	46.7% (7)	26.7% (4)	13.3% (2)	13.3% (2)	100.0% (15)
Civil Rights (except prisoner)	30.8% (4)	38.5% (5)	15.4% (2)	15.4% (2)	100.0% (13)
Prisoner Civil Rights	50.0% (3)	16.7% (1)	33.3% (2)		100.0% (6)
Other Prisoner Cases	50.0% (3)	16.7% (1)		33.3% (2)	100.0% (6)
Potentially Complex Cases	54.5% (12)	22.7% (5)	4.5% (1)	18.2% (4)	100.0% (22)
"Other" Forfeiture and Penalty	28.6% (4)	71.4% (10)			100.0% (14)
Labor	16.7% (2)	50.0% (6)	8.3% (1)	25.0% (3)	100.0% (12)
Social Security	20.0% (3)	60.0% (9)	6.7% (1)	13.3% (2)	100.0% (15)
All Other	15.4% (2)	38.5% (5)	15.4% (2)	30.8% (4)	100.0% (13)
ALL CATEGORIES	32.6% (43)	38.6% (51)	11.4% (15)	17.4% (23)	100.0% (132)

Question 15: If the case actually took longer than you believe reasonable, please indicate what factors contributed to the delay.
(Note: respondents could choose more than one answer.)

Category	excessive case mgmt	inadequate case mgmt	dilatory actions by counsel	dilatory actions by litigants	slow rulings	backlog of cases	other	N/A	no answer	total
Student Loan and Veteran Cases								20.0% (1)	80.0% (4)	100.0% (5)
Other Contract Actions				9.1% (1)		9.1% (1)	18.2% (2)	54.5% (6)	18.2% (2)	100.0% (11)
Other Tort		6.7% (1)			13.3% (2)		26.7% (4)	40.0% (6)	20.0% (3)	100.0% (15)
Civil Rights (except prisoner)			7.7% (1)			15.4% (2)	23.1% (3)	69.2% (9)	15.4% (2)	100.0% (13)
Prisoner Civil Rights		16.7% (1)	16.7% (1)			16.7% (1)	33.3% (2)	50.0% (3)		100.0% (6)
Other Prisoner Cases					16.7% (1)	50.0% (3)	33.3% (2)	33.3% (2)	16.7% (1)	100.0% (6)
Potentially Complex Cases		4.5% (1)	13.6% (3)	18.2% (4)		9.1% (2)	45.4% (10)	22.7% (5)	13.6% (3)	100.0% (22)
"Other" Forfeiture and Penalty			7.1% (1)		7.1% (1)			57.1% (8)	28.6% (4)	100.0% (14)
Labor						16.7% (2)	8.3% (1)	33.3% (4)	41.7% (5)	100.0% (12)
Social Security			6.7% (1)		6.7% (1)		6.7% (1)	40.0% (6)	46.7% (7)	100.0% (15)
All Other			15.4% (2)				15.4% (2)	46.2% (6)	23.1% (3)	100.0% (13)
ALL CATEGORIES	0.0% ( )	2.3% (3)	6.8% (9)	3.8% (5)	3.8% (5)	8.3% (11)	20.4% (27)	42.4% (56)	25.8% (34)	100.0% (132)

Question 15: Breakdown of "Other" Response

Category	U.S. govt	limited # of sessions	pro se litigant practice	nature of case	court problems	problems from parties	not a problem	other answer	no answer	total
Student Loan and Veteran Cases									100.0% (5)	100.0% (5)
Other Contract Actions						18.2% (2)			81.8% (9)	100.0% (11)
Other Tort		6.7% (1)	6.7% (1)			6.7% (1)	6.7% (1)		73.3% (11)	100.0% (15)
Civil Rights (except prisoner)				15.4% (2)				7.7% (1)	76.9% (10)	100.0% (13)
Prisoner Civil Rights			33.3% (2)						66.7% (4)	100.0% (6)
Other Prisoner Cases			33.3% (2)						66.7% (4)	100.0% (6)
Potentially Complex Cases	18.2% (4)			13.6% (3)	4.5% (1)	9.1% (2)			54.5% (12)	100.0% (22)
"Other" Forfeiture and Penalty									100.0% (14)	100.0% (14)
Labor						8.3% (1)			91.7% (11)	100.0% (12)
Social Security	6.7% (1)								93.3% (14)	100.0% (15)
All Other						15.4% (2)			84.6% (11)	100.0% (13)
ALL CATEGORIES	3.8% (5)	0.8% (1)	3.8% (5)	3.8% (5)	0.8% (1)	6.1% (8)	0.8% (1)	0.8% (1)	79.5% (105)	100.0% (132)

Question 16: If you think delay is a problem in this district in disposing of civil cases, what suggestions or comments do you have for reducing those delays?

Category	actions of U.S. Govt or counsel	court delay in ruling on motions	cases move too fast	case mgmt issues	no opinion	delay not a problem	other	no answer	total
Student Loan and Veteran Cases								100.0% (5)	100.0% (5)
Other Contract Actions			9.1% (1)	9.1% (1)		18.2% (2)	9.1% (1)	54.5% (6)	100.0% (11)
Other Tort		13.3% (2)		6.7% (1)	6.7% (1)	26.7% (4)	6.7% (1)	40.0% (6)	100.0% (15)
Civil Rights (except prisoner)		7.7% (1)		7.7% (1)		23.1% (3)		61.5% (8)	100.0% (13)
Prisoner Civil Rights		33.3% (2)		16.7% (1)				50.0% (3)	100.0% (6)
Other Prisoner Cases								100.0% (6)	100.0% (6)
Potentially Complex Cases	9.1% (2)	4.5% (1)	4.5% (1)		4.5% (1)	9.1% (2)	4.5% (1)	63.6% (14)	100.0% (22)
"Other" Forfeiture and Penalty				7.1% (1)	7.1% (1)	7.1% (1)		78.6% (11)	100.0% (14)
Labor			25.0% (3)	8.3% (1)			8.3% (1)	58.3% (7)	100.0% (12)
Social Security	13.3% (2)							86.7% (13)	100.0% (15)
All Other						30.8% (4)		69.2% (9)	100.0% (13)
ALL CATEGORIES	3.0% (4)	4.5% (6)	3.8% (5)	4.5% (6)	2.3% (3)	12.1% (16)	3.0% (4)	66.7% (88)	100.0% (132)

III. Costs of Litigation in this Case

Question 17: Please estimate the amount of money at stake in this case.

Category	1-49,999	50,000 - 99,999	100,000 - 199,999	200,000 - 499,999	500,000 - 999,999	1,000,000 and over	other answer	total
Student Loan and Veteran Cases	100.0% (5)							100.0% (5)
Other Contract Actions	18.2% (2)	18.2% (2)	9.1% (1)	27.3% (3)		9.1% (1)	18.2% (2)	100.0% (11)
Other Tort	33.3% (5)	6.7% (1)	6.7% (1)	20.0% (3)	13.3% (2)	6.7% (1)	13.3% (2)	100.0% (15)
Civil Rights (except prisoner)	38.5% (5)	30.8% (4)	15.4% (2)				15.4% (2)	100.0% (13)
Prisoner Civil Rights	50.0% (3)		16.7% (1)				33.3% (2)	100.0% (6)
Other Prisoner Cases							100.0% (6)	100.0% (6)
Potentially Complex Cases	27.3% (6)	22.7% (5)	4.5% (1)		4.5% (1)	22.7% (5)	18.2% (4)	100.0% (22)
"Other" Forfeiture and Penalty	50.0% (7)	28.6% (4)	14.3% (2)	7.1% (1)				100.0% (14)
Labor	33.3% (4)	33.3% (4)			16.7% (2)	8.3% (1)	8.3% (1)	100.0% (12)
Social Security	13.3% (2)	13.3% (2)					73.3% (11)	100.0% (15)
All Other	46.2% (6)	23.1% (3)		15.4% (2)			15.4% (2)	100.0% (13)
ALL CATEGORIES	34.1% (45)	18.9% (25)	6.1% (8)	6.8% (9)	3.8% (5)	6.1% (8)	24.2% (32)	100.0% (132)

Question 18: Please describe the "stakes" which were not susceptible to monetary valuation, if any. (Note: This question is continued on next page.)

Category	prisoner conditions	social security	environ issues	asset forfeiture	questions of law	habeas issues	contract issues
Student Loan and Veteran Cases							
Other Contract Actions							18.2% (2)
Other Tort							
Civil Rights (except prisoner)							7.7% (1)
Prisoner Civil Rights	33.3% (2)						
Other Prisoner Cases					16.7% (1)	66.7% (4)	
Potentially Complex Cases			31.8% (7)		9.1% (2)		9.1% (2)
"Other" Forfeiture and Penalty				42.8% (6)	7.1% (1)		
Labor					8.3% (1)		8.3% (1)
Social Security		80.0% (12)					
All Other					15.4% (2)		15.4% (2)
ALL CATEGORIES	1.5% (2)	9.1% (12)	5.3% (7)	4.5% (6)	5.3% (7)	3.0% (4)	6.1% (8)

Question 18: Please describe the "stakes" which were not susceptible to monetary valuation, if any. (Note: This question is continued from prior page.)

Category	injunctive relief	civil rights	punitive damages	other	no answer	total
Student Loan and Veteran Cases					100.0% (5)	100.0% (5)
Other Contract Actions			9.1% (1)	18.2% (2)	54.5% (6)	100.0% (11)
Other Tort				6.7% (1)	93.3% (14)	100.0% (15)
Civil Rights (except prisoner)		30.8% (4)		15.4% (2)	46.2% (6)	100.0% (13)
Prisoner Civil Rights	16.7% (1)				50.0% (3)	100.0% (6)
Other Prisoner Cases					16.7% (1)	100.0% (6)
Potentially Complex Cases			4.5% (1)	4.5% (1)	40.9% (9)	100.0% (22)
"Other" Forfeiture and Penalty					50.0% (7)	100.0% (14)
Labor		16.7% (2)		8.3% (1)	58.3% (7)	100.0% (12)
Social Security					20.0% (3)	100.0% (15)
All Other				15.4% (2)	53.8% (7)	100.0% (13)
ALL CATEGORIES	0.8% (1)	4.5% (6)	1.5% (2)	6.8% (9)	51.5% (68)	100.0% (132)

Question 19: What type of fee arrangement did you have in this case?

Category	hourly rate	hourly with maximum	set fee	contingency	Pro Bono	govt atty	contingency w/ statutory fee shifting	other	no answer	total
Student Loan and Veteran Cases						100.0% (5)				100.0% (5)
Other Contract Actions	63.6% (7)					9.1% (1)		27.3% (3)		100.0% (11)
Other Tort	53.3% (8)			20.0% (3)		20.0% (3)		6.7% (1)		100.0% (15)
Civil Rights (except prisoner)	69.2% (9)					15.4% (2)	7.7% (1)	7.7% (1)		100.0% (13)
Prisoner Civil Rights	16.7% (1)					33.3% (2)		50.0% (3)		100.0% (6)
Other Prisoner Cases						100.0% (6)				100.0% (6)
Potentially Complex Cases	45.4% (10)			13.6% (3)		36.4% (8)		4.5% (1)		100.0% (22)
"Other" Forfeiture and Penalty	21.4% (3)					64.3% (9)		7.1% (1)	7.1% (1)	100.0% (14)
Labor	41.7% (5)			16.7% (2)			8.3% (1)	16.7% (2)	16.7% (2)	100.0% (12)
Social Security				26.7% (4)		60.0% (9)		13.3% (2)		100.0% (15)
All Other	38.5% (5)			7.7% (1)		38.5% (5)		15.4% (2)		100.0% (13)
ALL CATEGORIES	36.4% (48)	0.0% ( )	0.0% ( )	9.8% (13)	0.0% ( )	37.9% (50)	1.5% (2)	12.1% (16)	2.3% (3)	100.0% (132)

Question 19: Breakdown of "Other" Response

Category	hourly and contingency	local and trial counsel	court-appointed NCPLS	legal services	in house counsel	contingency reasonable	contingency plus costs	no answer	total
Student Loan and Veteran Cases								100.0% (5)	100.0% (5)
Other Contract Actions	27.3% (3)							72.7% (8)	100.0% (11)
Other Tort		6.7% (1)						93.3% (14)	100.0% (15)
Civil Rights (except prisoner)	7.7% (1)							92.3% (12)	100.0% (13)
Prisoner Civil Rights			50.0% (3)					50.0% (3)	100.0% (6)
Other Prisoner Cases								100.0% (6)	100.0% (6)
Potentially Complex Cases				4.5% (1)				95.4% (21)	100.0% (22)
"Other" Forfeiture and Penalty					7.1% (1)			92.8% (13)	100.0% (14)
Labor				16.7% (2)				83.3% (10)	100.0% (12)
Social Security				13.3% (2)				86.7% (13)	100.0% (15)
All Other						7.7% (1)	7.7% (1)	84.6% (11)	100.0% (13)
ALL CATEGORIES	3.0% (4)	0.8% (1)	2.3% (3)	3.8% (5)	0.8% (1)	0.8% (1)	0.8% (1)	87.9% (116)	100.0% (132)

Question 20: Approximately how many hours were spent on this case by attorneys representing your client?
(Note: This question is continued on next page.)

Category	< 10	10 - 19	20 - 29	30 - 39	40 - 49	50 - 59	60 - 69	70 - 79	80 - 89
Student Loan and Veteran Cases	100.0% (5)								
Other Contract Actions	9.1% (1)	9.1% (1)				9.1% (1)			
Other Tort		6.7% (1)	13.3% (2)	20.0% (3)	13.3% (2)		6.7% (1)		
Civil Rights (except prisoner)						15.4% (2)		7.7 % (1)	
Prisoner Civil Rights	16.7% (1)	50.0% (3)							
Other Prisoner Cases	50.0% (3)		16.7% (1)						
Potentially Complex Cases			4.5% (1)	4.5% (1)	9.1% (2)	4.5% (1)	9.1% (2)		9.1% (2)
"Other" Forfeiture and Penalty	28.6% (4)	7.1% (1)	21.4% (3)	7.1% (1)	7.1% (1)	7.1% (1)	7.1% (1)	7.1 % (1)	
Labor		8.3% (1)		16.7% (2)		33.3% (4)	8.3% (1)		8.3% (1)
Social Security	13.3% (2)	20.0% (3)	20.0% (3)	6.7% (1)	20.0% (3)	6.7% (1)		6.7 % (1)	
All Other	23.1% (3)		7.7% (1)		7.7% (1)	23.1% (3)	7.7% (1)		
ALL CATEGORIES	14.4% (19)	7.6% (10)	8.3% (11)	6.1% (8)	6.8% (9)	9.8% (13)	4.5% (6)	2.3% (3)	2.3% (3)

Question 20: Approximately how many hours were spent on this case by attorneys representing your client?
(Note: This question is continued on next page.)

Category	90 - 99	100 - 125	126 - 150	151 - 175	176 - 200	201 - 225	226 - 250	251 - 275	276 - 300
Student Loan and Veteran Cases									
Other Contract Actions		27.3% (3)	9.1% (1)	9.1% (1)					9.1% (1)
Other Tort		6.7% (1)			13.3% (2)				6.7% (1)
Civil Rights (except prisoner)	7.7% (1)	15.4% (2)	15.4% (2)				7.7% (1)		
Prisoner Civil Rights		33.3% (2)							
Other Prisoner Cases									
Potentially Complex Cases		9.1% (2)	9.1% (2)						
"Other" Forfeiture and Penalty									
Labor									8.3% (1)
Social Security									
All Other		7.7% (1)		7.7% (1)					
ALL CATEGORIES	0.8% (1)	8.3% (11)	3.8% (5)	1.5% (2)	1.5% (2)	0.0% ( )	0.8% (1)	0.0% ( )	2.3% (3)

Question 20: Approximately how many hours were spent on this case by attorneys representing your client?
(Note: This question is continued from prior page.)

Category	301 - 500	501 - 1000	1001 - 1500	1501 - 2000	other answer	total
Student Loan and Veteran Cases						100.0% (5)
Other Contract Actions					18.2% (2)	100.0% (11)
Other Tort		6.7% (1)			6.7% (1)	100.0% (15)
Civil Rights (except prisoner)	7.7% (1)	7.7% (1)			15.4% (2)	100.0% (13)
Prisoner Civil Rights						100.0% (6)
Other Prisoner Cases					33.3% (2)	100.0% (6)
Potentially Complex Cases		4.5% (1)	4.5% (1)	18.2% (4)	13.6% (3)	100.0% (22)
"Other" Forfeiture and Penalty					7.1% (1)	100.0% (14)
Labor					16.7% (2)	100.0% (12)
Social Security					6.7% (1)	100.0% (15)
All Other					15.4% (2)	100.0% (13)
ALL CATEGORIES	0.8% (1)	2.3% (3)	0.8% (1)	3.0% (4)	12.1% (16)	100.0% (132)

Question 20: Approximately how many hours were spent on this case by attorneys representing your client?
(Note: This question is continued on next page.)

Category	< 10	10 - 19	20 - 29	30 - 39	40 - 49	50 - 59	60 - 69	70 - 79	80 - 89
Early Conclusion	23.4% (19)	12.3% (10)	9.9% (8)	8.6% (7)	7.4% (6)	11.1% (9)	6.2% (5)	2.5 % (2)	1.2% (1)
Late Conclusion			7.5% (3)	2.5% (1)	7.5% (3)	10.0% (4)	2.5% (1)		2.5% (1)
Trial								9.1 % (1)	9.1% (1)
ALL CATEGORIES	14.4% (19)	7.6% (10)	8.3% (11)	6.1% (8)	6.8% (9)	9.8% (13)	4.5% (6)	2.3% (3)	2.3% (3)

Question 20: Approximately how many hours were spent on this case by attorneys representing your client?
(Note: This question is continued on next page.)

Category	90 - 99	100 - 125	126 - 150	151 - 175	176 - 200	201 - 225	226 - 250	251 - 275	276 - 300
Early Conclusion	1.2% (1)	2.5% (2)		1.2% (1)					1.2% (1)
Late Conclusion		12.5% (5)	7.5% (3)	2.5% (1)	5.0% (2)		2.5% (1)		
Trial		36.4% (4)	18.2% (2)						18.2% (2)
ALL CATEGORIES	0.8% (1)	8.3% (11)	3.8% (5)	1.5% (2)	1.5% (2)	0.0% ( )	0.8% (1)	0.0% ( )	2.3% (3)

Question 20: Approximately how many hours were spent on this case by attorneys representing your client?
(Note: This question is continued from prior page.)

Category	301 - 500	501 - 1000	1001 - 1500	1501 - 2000	other answer	total
Early Conclusion		1.2% (1)			9.9% (8)	100.0% (81)
Late Conclusion	2.5% (1)	2.5% (1)	2.5% (1)	10.0% (4)	20.0% (8)	100.0% (40)
Trial		9.1% (1)				100.0% (11)
ALL CATEGORIES	0.8% (1)	2.3% (3)	0.8% (1)	3.0% (4)	12.1% (16)	100.0% (132)

Question 21: Excluding costs attributable to travel to court, do you believe this case could have been litigated at less cost to your client in another court (either in another federal district court or in a state court)?

Category	yes	no	not sure	not applicable	no answer	total
Student Loan and Veteran Cases		60.0% (3)			40.0% (2)	100.0% (5)
Other Contract Actions	9.1% (1)	54.5% (6)	27.3% (3)		9.1% (1)	100.0% (11)
Other Tort	20.0% (3)	66.7% (10)	6.7% (1)	6.7% (1)		100.0% (15)
Civil Rights (except prisoner)	7.7% (1)	69.2% (9)	15.4% (2)	7.7% (1)		100.0% (13)
Prisoner Civil Rights		83.3% (5)		16.7% (1)		100.0% (6)
Other Prisoner Cases		66.7% (4)		33.3% (2)		100.0% (6)
Potentially Complex Cases		72.7% (16)	4.5% (1)	22.7% (5)		100.0% (22)
"Other" Forfeiture and Penalty	7.1% (1)	71.4% (10)			21.4% (3)	100.0% (14)
Labor		83.3% (10)			16.7% (2)	100.0% (12)
Social Security		80.0% (12)		13.3% (2)	6.7% (1)	100.0% (15)
All Other	15.4% (2)	69.2% (9)		7.7% (1)	7.7% (1)	100.0% (13)
ALL CATEGORIES	6.1% (8)	71.2% (94)	5.3% (7)	9.8% (13)	7.6% (10)	100.0% (132)

Question 22: If you answered yes to the previous question, please explain your answer, indicating in particular the practices of this district that you believe contributed to the increased costs.
(Note: This question is continued on next page.)

Category	Code 1	Code 2	Code 3	Code 4	Code 5	Code 6	Code 7	Code 8	Code 9
Student Loan and Veteran Cases									
Other Contract Actions									9.1% (1)
Other Tort	6.7% (1)	6.7% (1)		6.7% (1)					6.7% (1)
Civil Rights (except prisoner)								7.7 % (1)	
Prisoner Civil Rights									
Other Prisoner Cases									
Potentially Complex Cases							4.5% (1)	4.5 % (1)	
"Other" Forfeiture and Penalty					7.1% (1)				
Labor									
Social Security									
All Other						7.7% (1)			
ALL CATEGORIES	0.8% (1)	0.8% (1)	0.0% ( )	0.8% (1)	0.8% (1)	0.8% (1)	0.8% (1)	1.5% (2)	1.5% (2)

Question 22: If you answered yes to the previous question, please explain your answer, indicating in particular the practices of this district that you believe contributed to the increased costs.
(Note: This question is continued from prior page.)

Category	Code 10	Code 11	Code 12	no answer	total
Student Loan and Veteran Cases				100.0% (5)	100.0% (5)
Other Contract Actions	9.1% (1)			81.8% (9)	100.0% (11)
Other Tort				73.3% (11)	100.0% (15)
Civil Rights (except prisoner)				92.3% (12)	100.0% (13)
Prisoner Civil Rights				100.0% (6)	100.0% (6)
Other Prisoner Cases				100.0% (6)	100.0% (6)
Potentially Complex Cases				90.9% (20)	100.0% (22)
"Other" Forfeiture and Penalty				92.8% (13)	100.0% (14)
Labor				100.0% (12)	100.0% (12)
Social Security				100.0% (15)	100.0% (15)
All Other		7.7% (1)	7.7% (1)	76.9% (10)	100.0% (13)
ALL CATEGORIES	0.8% (1)	0.8% (1)	0.8% (1)	90.2% (119)	100.0% (132)

Question 22:
CODE:

1. This case took unusually long
2. no particular practices of this district. Plaintiff's pleadings clearly revealed that the case should be tried or heard in the state of Florida.
3. no answer
4. I believe it could have been tried in less time in superior court. Some procedures in federal court take a lot of time and they do not accomplish anything.
5. arbitration would have been less time consuming
12. The problems regarding cost were largely caused by inefficient litigation of opposing counsel
6. answer given is not responsive to question
7. Requiring supporting memoranda for each motion drastically decreases delay. Also, alleviating requirement of scheduling order or discovery until answer has been filed permits court to address dispositive motions expeditiously. (NOTE: likes the way procedure works here)
8. (1) I believe the Local Rules for trial, including the detailed pretrial order, are unnecessarily expensive.
   (2) Pre-trial order and pre-trial conferences.
9. civil cases move in this district. Any delay is at request of parties, not court. In fact, cases can be heard by agreement just as soon as counsel can get ready because in this district the civil docket is not at all backed up.
10. Federal court proceedings in my experience cost roughly 3 to 4 times what the same proceeding would cost in state court, generate far too much lawyer work for the court and do not achieve commercially comparable results.
11. Answer not responsive. Case itself was complaint, not litigation procedures.

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
1	1	10.0%			90.0%			
3	1	50.0%			50.0%			
6	1	10.0%			90.0%			
7	1							
9	1	10.0%			90.0%			
11	1	10.0%	40.0%		10.0%	40.0%		
13	1	50.0%	20.0%			10.0%	20.0%	
14	1	50.0%			50.0%			
14	2	10.0%			90.0%			
15	2	80.0%	20.0%					
15	3	5.0%	50.0%	5.0%	5.0%	5.0%	30.0%	
16	1	30.0%	5.0%	5.0%	30.0%	15.0%	15.0%	
16	2	20.0%		20.0%				60.0%
16	3	10.0%	20.0%	10.0%	30.0%	30.0%		
17	1	40.0%	20.0%		5.0%	10.0%	25.0%	
17	2	35.0%	10.0%		20.0%	10.0%	25.0%	
21	1	25.0%	25.0%	25.0%	25.0%			
22	1	85.0%		15.0%				

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
22	2	10.0%		80.0%		10.0%		
23	1			100.0%				
24	2	60.0%	10.0%		10.0%			20.0%
24	3	40.0%	20.0%	20.0%	20.0%			
25	1	30.0%		70.0%				
26	1							
27	1	20.0%	20.0%	30.0%	10.0%	10.0%	10.0%	
27	2	20.0%	15.0%	40.0%	20.0%	5.0%		
27	3	10.0%	20.0%	65.0%	5.0%			
28	1	10.0%	40.0%		10.0%	40.0%		
29	1	20.0%	40.0%	10.0%	10.0%	10.0%	10.0%	
30	1							
30	2	20.0%	40.0%	5.0%	5.0%	5.0%	25.0%	
32	1							
33	1	75.0%			20.0%	5.0%		
33	2	50.0%	25.0%		25.0%			
34	1	38.0%	35.0%	5.0%	13.0%	3.5%		4.0%
35	1	35.0%	45.0%		20.0%			

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
36	1	30.0%	30.0%	30.0%		5.0%	5.0%	
37	1	20.0%	40.0%	30.0%	10.0%			
37	2	5.0%	75.0%	5.0%	5.0%		10.0%	
37	3	11.9%	59.0%	10.0%	10.6%		8.5%	
39	1	10.0%	70.0%		20.0%			
39	2	10.0%	25.0%	20.0%	5.0%	10.0%	30.0%	
40	1	5.0%	10.0%	25.0%	5.0%	5.0%	50.0%	
40	2	15.0%	15.0%	10.0%	5.0%	5.0%	50.0%	
42	1	25.0%		25.0%	25.0%			25.0%
47	1							
47	2	5.0%	15.0%		5.0%		75.0%	
49	1	10.0%	20.0%	40.0%	5.0%	5.0%	20.0%	
50	1							
50	2	100.0%						
51	1	50.0%		50.0%				
52	1	1.0%					99.0%	
53	1	25.0%		75.0%				
54	1			100.0%				

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
57	1	50.0%		50.0%				
60	1	10.0%		90.0%				
61	1	50.0%		50.0%				
61	2	10.0%		30.0%		5.0%		55.0%
61	3	20.0%		80.0%				
62	1	5.0%	30.0%	20.0%	30.0%	15.0%		
62	2	10.0%	25.0%	50.0%	15.0%			
63	1	5.0%	5.0%	10.0%	75.0%	5.0%		
63	2	10.0%			90.0%			
64	1	10.0%	35.0%	15.0%	25.0%	10.0%		
66	1	5.0%	10.0%	15.0%	60.0%	5.0%	5.0%	
66	2	10.0%	5.0%	5.0%	60.0%	10.0%	10.0%	
66	3							
66	7	10.0%	20.0%	10.0%	40.0%	15.0%	5.0%	
66	8	10.0%	20.0%		50.0%	20.0%		
66	10							
66	11							
66	12	20.0%	30.0%	5.0%	15.0%	25.0%	5.0%	

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
66	13	5.0%	60.0%	5.0%	15.0%	5.0%	10.0%	
67	1	10.0%	30.0%	20.0%	25.0%	5.0%	10.0%	
67	2	15.0%	50.0%	10.0%	10.0%		15.0%	
68	1	25.0%	5.0%		75.0%			
69	1	10.0%	40.0%	50.0%				
70	1	20.0%	35.0%	25.0%	5.0%	15.0%		
71	1	30.0%	10.0%	10.0%	50.0%			
72	1							
72	2	60.0%			40.0%			
73	1	90.0%	10.0%					
73	2	75.0%	10.0%	10.0%	5.0%			
74	2	50.0%	30.0%	20.0%				
75	1	50.0%			50.0%			
76	1	75.0%			25.0%			
77	1	30.0%	10.0%		60.0%			
77	2	10.0%	10.0%	70.0%	10.0%			
78	1	10.0%	10.0%	70.0%	10.0%			
79	1	80.0%		20.0%				

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
80	1	10.0%	25.0%		35.0%		25.0%	5.0%
80	2	20.0%	20.0%	50.0%	10.0%			
82	1	50.0%		50.0%				
82	2							
84	1	75.0%		10.0%		15.0%		
84	2	20.0%		80.0%				
84	3	20.0%		80.0%				
86	1							
86	1	15.0%	50.0%		30.0%	5.0%		
87	1	20.0%	50.0%	5.0%	15.0%	5.0%	5.0%	
88	1	10.0%	20.0%	20.0%		10.0%	40.0%	
88	2	15.0%	15.0%	15.0%	2.0%	2.0%	49.0%	2.0%
89	1	50.0%	30.0%		20.0%			
90	1	60.0%	40.0%					
91	1	10.0%		90.0%				
92	1							
92	2	50.0%		40.0%	10.0%			
93	1	50.0%		50.0%				

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
94	1							
94	2	40.0%		50.0%	10.0%			
95	1							
95	2				100.0%			
96	1	25.0%		50.0%	25.0%			
96	2	30.0%		60.0%	10.0%			
97	1							
97	2	100.0%						
99	1	15.0%		75.0%	10.0%			
100	1							
100	2	90.0%		10.0%				
102	1			100.0%				
102	2	40.0%			40.0%	20.0%		
103	2			100.0%				
104	1	50.0%			50.0%			
105	1							100.0%
106	1	15.0%	25.0%			60.0%		
107	1	10.0%	30.0%		60.0%			

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
108	1	25.0%	25.0%	40.0%	5.0%	5.0%		
108	2	10.0%	40.0%	50.0%				
109	1	50.0%	50.0%					
109	2	75.0%			20.0%			5.0%
110	1	5.0%	10.0%	50.0%	10.0%	5.0%	20.0%	
110	2	10.0%	10.0%	60.0%	5.0%	5.0%	10.0%	

Question 23: Breakdown of "Other" Response

Category	monthly status reports	researching legal issues	client-related	post-trial	no answer	total
Student Loan and Veteran Cases					100.0% (5)	100.0% (5)
Other Contract Actions	9.1% (1)				90.9% (10)	100.0% (11)
Other Tort		6.7% (1)			93.3% (14)	100.0% (15)
Civil Rights (except prisoner)			7.7% (1)		92.3% (12)	100.0% (13)
Prisoner Civil Rights			16.7% (1)		83.3% (5)	100.0% (6)
Other Prisoner Cases					100.0% (6)	100.0% (6)
Potentially Complex Cases				4.5% (1)	95.4% (21)	100.0% (22)
"Other" Forfeiture and Penalty			7.1% (1)		92.8% (13)	100.0% (14)
Labor				8.3% (1)	91.7% (11)	100.0% (12)
Social Security					100.0% (15)	100.0% (15)
All Other		7.7% (1)		7.7% (1)	84.6% (11)	100.0% (13)
ALL CATEGORIES	0.8% (1)	1.5% (2)	2.3% (3)	2.3% (3)	93.2% (123)	100.0% (132)

Question 23: Breakdown of "Other" Response

Category	monthly status reports	researching legal issues	client-related	post-trial	no answer	total
Early Conclusion	1.2% (1)	2.5% (2)	3.7% (3)	2.5% (2)	90.1% (73)	100.0% (81)
Late Conclusion					100.0% (40)	100.0% (40)
Trial				9.1% (1)	90.9% (10)	100.0% (11)
ALL CATEGORIES	0.8% (1)	1.5% (2)	2.3% (3)	2.3% (3)	93.2% (123)	100.0% (132)

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
17	1	40.0%	20.0%		5.0%	10.0%	25.0%	
17	2	35.0%	10.0%		20.0%	10.0%	25.0%	
30	1							
30	2	20.0%	40.0%	5.0%	5.0%	5.0%	25.0%	
36	1	30.0%	30.0%	30.0%		5.0%	5.0%	
40	1	5.0%	10.0%	25.0%	5.0%	5.0%	50.0%	
40	2	15.0%	15.0%	10.0%	5.0%	5.0%	50.0%	
47	1							
47	2	5.0%	15.0%		5.0%		75.0%	
88	1	10.0%	20.0%	20.0%		10.0%	40.0%	
88	2	15.0%	15.0%	15.0%	2.0%	2.0%	49.0%	2.0%

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
1	1	10.0%			90.0%			
3	1	50.0%			50.0%			
6	1	10.0%			90.0%			
7	1							
9	1	10.0%			90.0%			
13	1	50.0%	20.0%			10.0%	20.0%	
14	1	50.0%			50.0%			
14	2	10.0%			90.0%			
15	2	80.0%	20.0%					
15	3	5.0%	50.0%	5.0%	5.0%	5.0%	30.0%	
16	1	30.0%	5.0%	5.0%	30.0%	15.0%	15.0%	
16	2	20.0%		20.0%				60.0%
16	3	10.0%	20.0%	10.0%	30.0%	30.0%		
22	1	85.0%		15.0%				
22	2	10.0%		80.0%		10.0%		
23	1			100.0%				
24	2	60.0%	10.0%		10.0%			20.0%
24	3	40.0%	20.0%	20.0%	20.0%			

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
25	1	30.0%		70.0%				
33	1	75.0%			20.0%	5.0%		
33	2	50.0%	25.0%		25.0%			
34	1	38.0%	35.0%	5.0%	13.0%	3.5%		4.0%
42	1	25.0%		25.0%	25.0%			25.0%
49	1	10.0%	20.0%	40.0%	5.0%	5.0%	20.0%	
50	1							
50	2	100.0%						
51	1	50.0%		50.0%				
52	1	1.0%					99.0%	
53	1	25.0%		75.0%				
54	1			100.0%				
57	1	50.0%		50.0%				
60	1	10.0%		90.0%				
61	1	50.0%		50.0%				
61	2	10.0%		30.0%		5.0%		55.0%
61	3	20.0%		80.0%				
62	1	5.0%	30.0%	20.0%	30.0%	15.0%		

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
62	2	10.0%	25.0%	50.0%	15.0%			
68	1	25.0%	5.0%		75.0%			
71	1	30.0%	10.0%	10.0%	50.0%			
72	1							
72	2	60.0%			40.0%			
73	1	90.0%	10.0%					
73	2	75.0%	10.0%	10.0%	5.0%			
74	2	50.0%	30.0%	20.0%				
75	1	50.0%			50.0%			
76	1	75.0%			25.0%			
77	1	30.0%	10.0%		60.0%			
77	2	10.0%	10.0%	70.0%	10.0%			
78	1	10.0%	10.0%	70.0%	10.0%			
79	1	80.0%		20.0%				
80	1	10.0%	25.0%		35.0%		25.0%	5.0%
80	2	20.0%	20.0%	50.0%	10.0%			
82	1	50.0%		50.0%				
82	2							

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
84	1	75.0%		10.0%		15.0%		
84	2	20.0%		80.0%				
84	3	20.0%		80.0%				
90	1	60.0%	40.0%					
91	1	10.0%		90.0%				
92	1							
92	2	50.0%		40.0%	10.0%			
93	1	50.0%		50.0%				
94	1							
94	2	40.0%		50.0%	10.0%			
95	1							
95	2				100.0%			
96	1	25.0%		50.0%	25.0%			
96	2	30.0%		60.0%	10.0%			
97	1							
97	2	100.0%						
99	1	15.0%		75.0%	10.0%			
100	1							

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
100	2	90.0%		10.0%				
102	1			100.0%				
102	2	40.0%			40.0%	20.0%		
103	2			100.0%				
104	1	50.0%			50.0%			
105	1							100.0%
106	1	15.0%	25.0%			60.0%		
109	1	50.0%	50.0%					
109	2	75.0%			20.0%			5.0%

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
11	1	10.0%	40.0%		10.0%	40.0%		
21	1	25.0%	25.0%	25.0%	25.0%			
26	1							
27	1	20.0%	20.0%	30.0%	10.0%	10.0%	10.0%	
27	2	20.0%	15.0%	40.0%	20.0%	5.0%		
27	3	10.0%	20.0%	65.0%	5.0%			
28	1	10.0%	40.0%		10.0%	40.0%		
29	1	20.0%	40.0%	10.0%	10.0%	10.0%	10.0%	
32	1							
35	1	35.0%	45.0%		20.0%			
37	1	20.0%	40.0%	30.0%	10.0%			
37	2	5.0%	75.0%	5.0%	5.0%		10.0%	
37	3	11.9%	59.0%	10.0%	10.6%		8.5%	
39	1	10.0%	70.0%		20.0%			
39	2	10.0%	25.0%	20.0%	5.0%	10.0%	30.0%	
63	1	5.0%	5.0%	10.0%	75.0%	5.0%		
63	2	10.0%			90.0%			
64	1	10.0%	35.0%	15.0%	25.0%	10.0%		

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
66	1	5.0%	10.0%	15.0%	60.0%	5.0%	5.0%	
66	2	10.0%	5.0%	5.0%	60.0%	10.0%	10.0%	
66	3							
66	7	10.0%	20.0%	10.0%	40.0%	15.0%	5.0%	
66	8	10.0%	20.0%		50.0%	20.0%		
66	10							
66	11							
66	12	20.0%	30.0%	5.0%	15.0%	25.0%	5.0%	
66	13	5.0%	60.0%	5.0%	15.0%	5.0%	10.0%	
67	1	10.0%	30.0%	20.0%	25.0%	5.0%	10.0%	
67	2	15.0%	50.0%	10.0%	10.0%		15.0%	
69	1	10.0%	40.0%	50.0%				
70	1	20.0%	35.0%	25.0%	5.0%	15.0%		
86	1							
86	1	15.0%	50.0%		30.0%	5.0%		
87	1	20.0%	50.0%	5.0%	15.0%	5.0%	5.0%	
89	1	50.0%	30.0%		20.0%			
107	1	10.0%	30.0%		60.0%			

Question 23: What is the approximate portion (percentage) of the total litigation costs for your client that may be attributed to each of the following activities?

Case Type	Sequence #	preliminary investigation	discovery	other motions	negotiations	status conferences	trial preparation	other
108	1	25.0%	25.0%	40.0%	5.0%	5.0%		
108	2	10.0%	40.0%	50.0%				
110	1	5.0%	10.0%	50.0%	10.0%	5.0%	20.0%	
110	2	10.0%	10.0%	60.0%	5.0%	5.0%	10.0%	

SAMPLE SELECTION METHOD: GENERAL QUESTIONNAIRE

The Advisory Group contacted the Federal Judicial Center and asked for a random list of civil cases terminated between July 1, 1991 and January 31, 1992, omitting cases involving student loans, veterans, prisoners, and asbestos. The Federal Judicial Center provided a list of 371 cases in random order.

The Advisory Group took the first 250 cases from the randomly selected sample and obtained a list of all attorneys in those 250 cases. Pro se litigants and members of the Advisory Group were omitted from the list of potential survey recipients. In addition, any attorney who appeared more than once in the list received only one survey form.

In all, 387 surveys were submitted to the attorneys from the selected 250 cases. After an initial response rate of approximately forty to forty-five percent, the Advisory Group chose to resubmit the survey a second time to increase the number of responses. As a result, the Advisory Group ultimately secured responses from approximately 55% of those attorneys who were sent a survey form.

QUESTIONNAIRE FOR SELECTED ATTORNEYS PRACTICING IN THE EASTERN DISTRICT OF NORTH CAROLINA

Please use the enclosed answer sheet form and a number 2 pencil to answer the questions. Begin with the line numbered "1" and continue through "100." You do not need to fill in your name or other identification information. The numbers filled in on the answer sheet identification area are for purposes of compiling data only. Remember to fill in only one response for each question.

I. Background Information

Please mark only one answer per question on your answer sheet.

1. For how many years have you been practicing law?
   A. 0-3 B. 4-8 C. 9-15 D. 16-25 E. more than 25

2. Estimate the percentage of your practice (in terms of time spent) devoted to civil litigation.
   A. 0-20 B. 21-40 C. 41-60 D. 61-80 E. 81-100

3. During the past three years, what percentage of your civil litigation practice was in the Eastern District of North Carolina?
   A. 0-5 B. 6-15 C. 16-25 D. 26-40 E. 41-100

4. During the past three years, what percentage of your civil litigation practice was in the North Carolina state courts?
   A. 0-5 B. 6-15 C. 16-25 D. 26-40 E. 41-100

5. Estimate the percentage of your civil litigation practice that consists of representing plaintiffs.
   A. 0-5 B. 6-15 C. 16-25 D. 26-40 E. 41-100

6. Estimate the percentage of your civil litigation practice that consists of representing defendants.
   A. 0-5 B. 6-15 C. 16-25 D. 26-40 E. 41-100

7. How would you best describe your practice setting?
   A. private law firm
   B. government
   C. corporate counsel
   D. legal services or non-profit organization
   E. other

8. If you practice in a government setting, which of the following best describes your practice?
   A. federal government
   B. state government
   C. local government
   D. other
   E. not applicable

9. How many other practicing lawyers are there in your firm or organization?
A. 1-3 B. 4-8 C. 9-15 D. 16-25 E. more than 25

II. Unnecessary costs and delay

The Civil Justice Reform Act of 1990 requires the local advisory group to study ways in which the costs and delays associated with civil litigation can be reduced in this district. Please answer the questions below in terms of your civil litigation practice in the Eastern District of North Carolina. Please mark only one answer for each question.

10. In the last closed case in which you participated, indicate whether the time from filing to disposition was
A. too long B. reasonable C. too short

11. In the last closed case in which you participated, did you experience what you consider unreasonable delay?
A. yes B. no C. not sure

If you experienced unreasonable delay in your last case closed, please answer questions 12 through 17 indicating how much, if any, each of the following factors contributed to this delay. Please mark only one answer for each question. If you did not experience unreasonable delay in your last case closed, please mark "E" on your answer sheet for questions 12 through 17.

	No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Apply
12. tactics of opposing counsel	A	B	C	D	E
13. conduct of clients	A	B	C	D	E
14. conduct of insurers	A	B	C	D	E
15. attorney inefficiencies in conducting litigation	A	B	C	D	E
16. court inefficiencies in managing litigation	A	B	C	D	E
17. judicial time in resolving contested matters	A	B	C	D	E

18. Some attorneys believe that federal litigation is unnecessarily expensive. Do you share this view with regard to practice in the Eastern District of North Carolina?
A. yes B. no C. not sure

If you do think civil litigation in this district is **unnecessarily expensive**, please answer questions 19 through 23 indicating to what extent, if any, the following factors contribute to unnecessary costs. Please mark only one answer per question. If you do not think civil litigation in this district is unnecessarily expensive, please mark "E" on your answer sheet for questions 19 through 23.

	No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Apply
19. court control of scheduling rather than attorneys setting hearing dates	A	B	C	D	E
20. less willingness on the part of the court to allow continuances	A	B	C	D	E
21. briefing requirements before motions are submitted to the judge or calendared for hearing	A	B	C	D	E
22. less experience in federal litigation makes compliance with local rules more cumbersome and costly to the client	A	B	C	D	E
23. preparation for the pre-trial conference	A	B	C	D	E

If you think civil litigation in this district is **unnecessarily expensive**, please answer questions 24 through 29 indicating how much, if any, each of the following contribute to the unnecessary costs. Please mark only one answer per question. If you do not think civil litigation in this district is unnecessarily expensive, please mark "E" on your answer sheet for questions 24 through 29.

	No contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Apply
24. conduct of counsel	A	B	C	D	E
25. conduct of clients	A	B	C	D	E
26. conduct of insurers	A	B	C	D	E
27. attorney inefficiencies in conducting litigation	A	B	C	D	E
28. court inefficiencies in managing litigation	A	B	C	D	E
29. judicial time in resolving contested matters	A	B	C	D	E

If you believe that conduct of counsel is a **moderate or substantial** cause of unreasonable costs or delay, please answer questions 30 through 40 indicating the extent, if any, to which each of the following tactics of counsel contribute to unreasonable costs or delay. Please mark only one answer per question. If you **do not** believe that conduct of counsel is a moderate or substantial cause of delay, please mark "E" on your answer sheet for questions 30 through 40.

	No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Apply
30. unnecessary use of interrogatories	A	B	C	D	E
31. too many interrogatories	A	B	C	D	E
32. too many depositions	A	B	C	D	E
33. too many deposition questions	A	B	C	D	E
34. overbroad document requests	A	B	C	D	E
35. overbroad responses to document production requests	A	B	C	D	E
36. unavailability of witness or counsel	A	B	C	D	E
37. raising frivolous objections	A	B	C	D	E
38. failure to attempt in good faith to resolve issues without court intervention	A	B	C	D	E
39. unwarranted sanctions motions	A	B	C	D	E
40. lack of professional courtesy	A	B	C	D	E

41. Has the criminal case docket had an impact on any civil litigation in the Eastern District of North Carolina in which you have been involved?
    A. yes B. no C. not sure

42. What has been the effect of the criminal docket on <u>delay</u> in your civil cases in this district?
    A. significantly increased delay
    B. slightly increased delay
    C. perceive no effect on delay
    D. slightly decreased delay
    E. significantly decreased delay

43. What has been the effect of the criminal docket on <u>costs</u> in your civil cases in this district?
    A. significantly increased costs
    B. slightly increased costs
    C. perceive no effect on costs
    D. slightly decreased costs
    E. significantly decreased costs

III. Case Management

"Case management" refers to oversight and supervision of litigation by a judge or magistrate judge or by routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.

Please answer the questions below in relation to your practice in this district. Please mark only one answer per question.

44. This court currently enters a Rule 16 scheduling order by asking the parties to agree on the length of the discovery period and the number of depositions and interrogatories and usually entering an order based on that agreement. The court holds a hearing on these scheduling matters only if counsel are unable to agree or if the discovery requested seems unnecessarily protracted. Do you find this current practice a satisfactory one, in terms of costs, to resolve pre-trial scheduling issues?
A. yes B. no C. not sure

45. Do you find this current practice regarding scheduling orders a satisfactory one, in terms of delay, to resolve pre-trial scheduling issues?
A. yes B. no C. not sure

46. If you do not find the current scheduling practice satisfactory, what procedure do you think would be the <u>most</u> <u>helpful</u> to address these scheduling issues in terms of reducing costs and delay in litigation? (If you think the current practice is satisfactory, please mark "E" on your answer sheet.)
A. mandatory hearing involving all attorneys before the district judge or magistrate judge
B. telephone conference of all attorneys and the district judge or magistrate judge
C. entry of order based on written submissions
D. other
E. current practice is satisfactory

47. Have you found that trial dates set in the Eastern District are firm trial dates?
A. always B. often C. sometimes D. never E. not sure

48. Have you found that the court's practice of scheduling hearings on its own rather than using a system similar to the state's "Notice of Hearing" system results in the case or motion being heard on the date scheduled?
A. always B. often C. sometimes D. never E. not sure

49. Do you find the court in this district is flexible in allowing extensions of time and continuances relative to motions?
A. always B. often C. sometimes D. never E. not sure

50. Do you find the court in this district is flexible in allowing extensions of time and continuances relative to trial dates?
A. always B. often C. sometimes D. never E. not sure

51. Do you believe costs would be reduced if a party could obtain a continuance of the trial date as a matter of right if dispositive motions remained unresolved a certain number of days before trial?
A. yes, would have a slight effect on costs
B. yes, would have a moderate effect on costs
C. yes, would have a substantial effect on costs
D. no, would have no effect on costs
E. not sure

52. If you think costs would be reduced, what minimum number of days before trial should a party be able to obtain a continuance as a matter of right because dispositive motions are unresolved?
A. 15 days B. 20 days C. 25 days D. 30 or more days E. not apply

53. Please choose the area in which you practice most frequently in this court.
A. personal injury
B. business litigation
C. civil rights cases (including prisoner litigation)
D. social security or other administrative work
E. other

54. Indicate the average number of depositions per case in the type of case you chose in the previous question.
A. 0-3 B. 4-6 C. 7-10 D. 11-15 E. more than 15

55. Indicate the average length of a deposition in this type of case.
A. 2 hours or less
B. 3-4 hours
C. 5-6 hours
D. 7-10 hours
E. more than 10 hours

If the average deposition in this type of case is longer than six (6) hours, please answer questions 56 through 59 indicating to what extent, if any, the following factors contribute to the length of the depositions. Please mark only one answer per question. If the average deposition is six hours or less, please mark "E" on your answer sheet for questions 56 through 59.

	No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Apply
56. significant number of objections	A	B	C	D	E
57. uncooperative witness	A	B	C	C	E
58. complicated factual issues	A	B	C	D	E
59. complicated field of "expert" inquiry	A	B	C	D	E

60. Do you think that the Eastern District of North Carolina provides a forum for quick consideration of a temporary restraining order on an emergency basis?
    A. yes, in all cases
    B. yes, except in rare cases
    C. no
    D. no opinion

61. Have you had experience in a case in this district in which one of the parties sought a temporary restraining order?
    A. yes B. no C. not sure

62. If you have had experience with cases in which one of the parties sought a temporary restraining order, what was the approximate time from the filing of the motion to an order ruling on the motion?
    A. 0-2 days B. 3-5 days C. 6-10 days D. over 10 days E. not applicable

63. Do you think that the Eastern District of North Carolina provides a forum for quick consideration of a preliminary injunction on an emergency basis?
    A. yes, in all cases
    B. yes, except in rare cases
    C. no
    D. no opinion

64. Have you had experience in a case in this district in which one of the parties sought a preliminary injunction?
    A. yes B. no C. not sure

65. If you have had experience with cases in which one of the parties sought a preliminary injunction, what was the approximate time from the filing of the motion to an order ruling on the motion?
    A. 0-10 days B. 11-20 days C. 21-30 days D. over 30 days E. not applicable

66. On any type of motion, have you ever requested and been denied oral argument in this district?
A. yes, on a routine basis
B. yes, on a few occasions
C. yes, on one occasion
D. no
E. not sure

67. Do you think that allowing a party to request oral argument as a matter of right rather than as a matter of discretion with the district judge or magistrate judge would promote the just and expedient resolution of motions in this district?
A. yes, in all cases
B. yes, except in rare cases
C. no
D. no opinion

68. Do you think that the usual 30 days between the scheduled close of discovery and the motions deadline are generally sufficient to prepare motions and briefs for dispositive motions?
A. yes, in all cases
B. yes, except in rare cases
C. no
D. not sure

69. Do you think unnecessary costs and delay in this district would be prevented if you were able to inform the court at the beginning of the case that significant post-discovery motions are anticipated and request the court to incorporate a longer motions period into the scheduling order?
A. yes, in all cases
B. yes, except in rare cases
C. no
D. not sure

70. If you do think it would be helpful to inform the court early in the case of anticipated motions, when is the earliest you would be able to do so?
A. when formulating the time periods for the Rule 16 scheduling order
B. prior to the close of discovery but near the end of the discovery period
C. after the close of the discovery period
D. not applicable

71. Do you find the Eastern District of North Carolina's current page limits on briefs sufficient to adequately present your arguments?
A. yes, in all cases
B. yes, except in rare cases
C. no
D. not sure

72. Have you ever requested from this court permission to file a brief in excess of the page limit and had that request denied?
    A. yes, on a routine basis
    B. yes, on a few occasions
    C. yes, on one occasion
    D. no
    E. not sure

73. What effect do you think the availability of Rule 11 sanctions has had on litigation costs for your clients?
    A. increased costs
    B. decreased costs
    C. no effect
    D. not sure

If you do think Rule 11 has **increased** costs to clients, please answer questions 74 through 77 indicating the effect, if any, each of the following factors have had with respect to increased costs. Please mark only one answer per question. If you **do not** think Rule 11 has increased costs, please mark "E" on your answer sheet for questions 74-77.

	No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply
74. "satellite litigation" over the appropriateness of Rule 11 sanctions	A	B	C	D	E
75. "satellite litigation" over the amount of Rule 11 sanctions	A	B	C	D	E
76. certain filings which might not otherwise have been made in an attempt to ward off or prevent a Rule 11 motion filed by the opposing party	A	B	C	D	E
77. less resolving issues between counsel before filing a motion (for example, a motion to compel) with the court	A	B	C	D	E

If you think Rule 11 has **decreased** costs to clients, please answer questions 78 through 81, indicating the effect, if any, each of the following factors has had with respect to decreased costs. Please mark only one answer per question. If you **do not** think Rule 11 has decreased costs, please mark "E" on your answer sheet for questions 78-81.

	No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply
78. parties engage in greater factual discovery before asserting claims and defenses	A	B	C	D	E
79. parties conduct more extensive legal research before asserting claims and defenses	A	B	C	D	E
80. parties more willing to voluntarily dismiss claims when it becomes apparent they are not based on facts or law	A	B	C	D	E
81. court more willing to sort out meritless claims or defenses	A	B	C	D	E

82. Has it been your experience that motions in limine are used to detract an opponent from trial preparation by filing numerous motions in limine in the days prior to trial?
A. yes B. no C. not sure

83. If yes, how often have you had this experience?
A. once or twice
B. on several occasions
C. on numerous occasions
D. not applicable

84. Do you think costs would be reduced if no written response were required to motions in limine filed after the final pre-trial conference?
A. yes B. no C. no opinion D. not applicable

85. What role do you think the district judges and magistrate judges of this district play in settlement of cases?
A. encourage settlement
B. hinder settlement
C. take no position with regard to settlement
D. not sure
E. not applicable

86. Have you ever participated in a civil trial in the Eastern District of North Carolina conducted with the parties' consent by a United States Magistrate Judge?
A. yes B. no C. not sure

87. If you have been involved in a civil trial in the Eastern District of North Carolina conducted by a United States Magistrate Judge, do you think the assignment of the case to the magistrate judge significantly delayed the trial date?
A. yes B. no C. not sure D. not applicable

88. Once a trial date has been set before a magistrate judge, do you think that date is a firm trial date?
A. yes B. no C. not sure D. not applicable

89. If you have been involved in a civil trial in the Eastern District of North Carolina conducted by a United States Magistrate Judge, what effect do you think the assignment of the case to the magistrate judge had on the costs to the client?
A. significantly increased costs
B. slightly increased costs
C. slightly decreased costs
D. significantly decreased costs
E. no effect on costs or not applicable

90. If you have been involved in a civil trial in the Eastern District of North Carolina conducted by a magistrate judge, would you consider consenting to such a trial in the future?
A. yes B. no C. not sure D. not applicable

Please answer questions 91 through 97 indicating the effect of each of the following factors on your decision whether to consent to magistrate judge jurisdiction. Please mark only one answer per question.

	No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply
91. scheduling considerations such as trial date	A	B	C	D	E
92. choice of magistrate judge	A	B	C	D	E
93. experience of magistrate judge	A	B	C	D	E
94. choice of district judge to whom case is assigned	A	B	C	D	E
95. costs	A	B	C	D	E
96. client's desire as to choice of trial judge	A	B	C	D	E
97. type or complexity of case	A	B	C	D	E

98. Considering the amount of time and money involved in a case, do you think it is efficient in terms of costs and delay to refer dispositive motions (for example, motions to dismiss and motions for summary judgment) to a magistrate judge for a memorandum and recommendation?
A. yes B. no C. not sure

99. Considering the amount of time and money involved in a case and the possibility of an appeal from the ruling of the magistrate judge, do you think it is efficient in terms of costs and delay to have non-dispositive motions (for example, discovery motions) decided by a magistrate judge?
A. yes B. no C. not sure

100 Bearing in mind the restrictions on the issues that may be addressed at the appellate level if they are not raised in the appeal from the magistrate judge to the district judge, would you appeal from the ruling of a magistrate judge if the motion was decided in your favor but some of the issues you raised were decided against your client?
A. yes
B. no
C. would depend on the particular facts and circumstances of the case but I would consider appealing
D. not sure

*Thank you for taking the time to participate in the survey. Please return the answer sheet, **unfolded**, in the enclosed envelope. If you would like to make any additional comments or suggestions, you may do so by enclosing a separate page with your comments. Please do not write on the answer sheet except to fill in the spaces for the answers.*

If you would like additional information or another copy of the answer sheet, please call or write Mr. Long's assistant:

Sandy Chrisawn
Poyner & Spruill
Post Office Box 10096
Raleigh, North Carolina 27605
(919) 783-2807

I. BACKGROUND INFORMATION

Question 1: For how many years have you been practicing law?

0-3	4-8	9-15	16-25	More than 25	No Answer
9 (4.2%)	40 (18.8%)	68 (32.1%)	61 (28.8%)	34 (16%)	0 (0.0%)

Question 2: Estimate the percentage of your practice (in terms of time spent) devoted to civil litigation.

0-20	21-40	41-60	61-80	81-100	No Answer
18 (8.4%)	27 (12.7%)	31 (14.6%)	36 (16.9%)	100 (47.1%)	0 (0.0%)

Question 3: During the past three years, what percentage of your civil litigation practice was in the Eastern District of North Carolina?

0-5	6-15	16-25	26-40	41-100	No Answer
53 (25.0%)	52 (24.5%)	37 (17.4%)	29 (13.6%)	41 (19.3%)	0 (0.0%)

Question 4: During the past three years, what percentage of your civil litigation practice was in the North Carolina state courts?

0-5	6-15	16-25	26-40	41-100	No Answer
27 (12.7%)	18 (8.4%)	13 (6.1%)	29 (13.6%)	125 (58.9%)	0 (0.0%)

Question 5: Estimate the percentage of your civil litigation practice that consists of representing plaintiffs.

0-5	6-15	16-25	26-40	41-100	No Answer
34 (16.0%)	31 (14.6%)	16 (7.5%)	30 (14.1%)	100 (47.1%)	1 (0.4%)

Question 6: Estimate the percentage of your civil litigation practice that consists of representing defendants.

0-5	6-15	16-25	26-40	41-100	No Answer
30 (14.1%)	24 (11.3%)	10 (4.7%)	31 (14.6%)	116 (54.7%)	1 (0.4%)

Question 7: How would you best describe your practice setting?

Private Law Firm:	184	(86.8%)
Government:	20	(9.4%)
Corporate Counsel:	0	(0.0%)
Legal Services or Non-profit Organization:	8	(3.8%)
Other:	0	(0.0%)
No Answer:	0	(0.0%)

Question 8: If you practice in a government setting, which of the following best describes your practice?

Federal Government:	13	(6.1%)
State Government:	6	(2.8%)
Local Government:	5	(2.3%)
Other:	1	(0.4%)
Not Applicable:	169	(79.7%)
No Answer:	18	(8.4%)

Question 9: How many other practicing lawyers are there in your firm or organization?

1-3	4-8	9-15	16-25	More than 25	No Answer
55 (25.9%)	51 (24.0%)	20 (9.4%)	11 (5.2%)	74 (34.9%)	1 (0.4%)

II. Unnecessary Costs and Delay

Question 10: In the last closed case in which you participated, indicate whether the time from filing to disposition was:

too long	reasonable	too short	No Answer
27 (12.7%)	176 (83.0%)	5 (2.3%)	3 (1.4%)

Question 11: In the last closed case in which you participated, did you experience what you would consider unreasonable delay?

yes	no	not sure	No Answer
32 (15.1%)	171 (80.6%)	5 (2.3%)	2 (0.9%)

Questions 12-17 (Those who experienced unreasonable delay were asked to evaluate whether the following factors contributed to the delay)

Question 12: Tactics of Opposing Counsel

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
4 (1.9%)	5 (2.3%)	11 (5.2%)	13 (6.1%)	163 (76.9%)	16 (7.5%)

Question 13: Conduct of Clients

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
20 (9.4%)	7 (3.3%)	5 (2.3%)	2 (0.9%)	162 (76.4%)	16 (7.5%)

Question 14: Conduct of Insurers

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
15 (7.1%)	2 (0.9%)	6 (2.8%)	4 (1.9%)	169 (79.7%)	16 (7.5%)

Question 15: Attorney Inefficiencies in Conducting Litigation

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
9 (4.2%)	10 (4.7%)	7 (3.3%)	8 (3.8%)	162 (76.4%)	16 (7.5%)

Question 16: Court Inefficiencies in Managing Litigation

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
16 (7.5%)	7 (3.3%)	8 (3.8%)	4 (1.9%)	163 (76.9%)	14 (6.6%)

Question 17: Judicial Time in Resolving Contested Matters

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
7 (3.3%)	7 (3.3%)	7 (3.3%)	14 (6.6%)	162 (76.4%)	15 (7.1%)

Question 18: Some attorneys believe that federal litigation is unnecessarily expensive. Do you share this view with regard to practice in the Eastern District of North Carolina?

yes	no	not sure	No Answer
80 (37.7%)	107 (50.4%)	24 (11.3%)	0 (0.0%)

Questions 19-29 (Those who believed that litigating in this district is unnecessarily expensive were asked to evaluate whether the following factors contributed to the delay)

Question 19: Court Control of Scheduling Rather than Attorneys setting Hearing Dates

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
25 (11.8%)	24 (11.3%)	16 (7.5%)	17 (8.0%)	115 (54.2%)	15 (7.1%)

Question 20: Less willingness on the part of the court to allow continuances

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
22 (10.4%)	31 (14.6%)	15 (7.1%)	14 (6.6%)	117 (55.2%)	13 (6.1%)

Question 21: Briefing requirements before motions are submitted to the judge or calendared for hearing

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
14 (6.6%)	17 (8.0%)	18 (8.4%)	33 (15.6%)	117 (55.2%)	13 (6.1%)

Question 22: Less experience in federal litigation makes compliance with local rules more cumbersome and costly to the client

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
22 (10.4%)	23 (10.8%)	15 (7.1%)	19 (8.9%)	120 (56.6%)	13 (6.1%)

Question 23: Preparation for the pre-trial conference.

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
12 (5.6%)	17 (8.0%)	26 (12.3%)	24 (11.3%)	120 (56.6%)	13 (6.1%)

Question 24: Conduct of counsel

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
10 (4.7%)	19 (8.9%)	30 (14.1%)	19 (8.9%)	117 (55.2%)	17 (8.0%)

Question 25: Conduct of Clients

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
31 (14.6%)	28 (13.2%)	15 (7.1%)	4 (1.9%)	119 (56.1%)	15 (7.1%)

Question 26: Conduct of Insurers

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
22 (10.4%)	15 (7.1%)	18 (8.4%)	14 (6.6%)	128 (60.4%)	15 (7.1%)

Question 27: Attorney inefficiencies in conducting litigation

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
13 (6.1%)	34 (16.0%)	20 (9.4%)	12 (5.6%)	117 (55.2%)	16 (7.5%)

Question 28: Court inefficiencies in managing litigation

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
29 (13.6%)	23 (10.8%)	16 (7.5%)	11 (5.2%)	118 (55.6%)	15 (7.1%)

Question 29: Judicial time in resolving contested matters

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
23 (10.8%)	24 (11.3%)	19 (8.9%)	13 (6.1%)	118 (55.6%)	15 (7.1%)

Questions 30-40 (Those who believed that conduct of counsel was a moderate or substantial cause of unreasonable costs or delay were asked to evaluate whether the following factors contributed to the delay)

Question 30: Unnecessary use of interrogatories

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
23 (10.8%)	24 (11.3%)	19 (8.9%)	13 (6.1%)	118 (55.6%)	15 (7.1%)

Question 31: Too many interrogatories

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
15 (7.1%)	33 (15.6%)	30 (14.1%)	32 (15.1%)	87 (41.0%)	15 (7.1%)

Question 32: Too many depositions

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
21 (9.9%)	30 (14.1%)	30 (14.1%)	27 (12.7%)	89 (41.9%)	15 (7.1%)

Question 33: Too many deposition questions

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
22 (10.4%)	19 (8.9%)	25 (11.8%)	41 (19.3%)	89 (41.9%)	16 (7.5%)

Question 34: Overbroad document requests

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
14 (6.6%)	17 (8.0%)	34 (16.0%)	44 (20.8%)	89 (41.9%)	14 (6.6%)

Question 35: Overbroad responses to document production requests

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
34 (16.0%)	32 (15.1%)	23 (10.8%)	18 (8.4%)	91 (42.9%)	14 (6.6%)

Question 36: Unavailability of witness or counsel

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
38 (17.9%)	32 (15.1%)	24 (11.3%)	13 (6.1%)	91 (42.9%)	14 (6.6%)

Question 37: Raising frivolous objections

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
17 (8.0%)	32 (15.1%)	33 (15.6%)	28 (13.2%)	88 (41.5%)	14 (6.6%)

Question 38: Failure to attempt in good faith to resolve issues without court intervention

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
10 (4.7%)	22 (10.4%)	43 (20.3%)	36 (16.9%)	86 (40.6%)	15 (7.1%)

Question 39: Unwarranted sanctions motions

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
43 (20.3%)	28 (13.2%)	17 (8.0%)	18 (8.4%)	92 (43.4%)	14 (6.6%)

Question 40: Lack of professional courtesy

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
22 (10.4%)	36 (16.9%)	33 (15.6%)	18 (8.4%)	88 (41.5%)	15 (7.1%)

Question 41: Has the criminal case docket had an impact on any civil litigation in the Eastern District of North Carolina in which you have been involved?

yes	no	not sure	No Answer
62 (29.2%)	54 (25.4%)	92 (43.4%)	2 (0.9%)

Question 42: What has been the effect of the criminal docket on <u>delay</u> in your civil cases in this district?

Significantly increased delay:	12	(5.6%)
Slightly increased delay:	56	(26.4%)
Perceive no effect on delay:	124	(58.4%)
Slightly decreased delay:	5	(2.3%)
Significantly decreased delay:	0	(0.0%)
No Answer:	15	(7.1%)

Question 43: What has been the effect of the criminal docket on <u>costs</u> in your civil cases in this district?

Significantly increased cost:	9	(4.2%)
Slightly increased cost:	23	(10.8%)
Perceive no effect on cost:	163	(76.9%)
Slightly decreased cost:	0	(0.0%)
Significantly decreased cost :	2	(0.9%)
No Answer:	15	(7.1%)

CASE MANAGEMENT

Question 44: This court currently enters a Rule 16 scheduling order by asking the parties to agree on the length of the discovery period and the number of depositions and interrogatories and usually entering an order based on that agreement. The court holds a hearing on these scheduling matters only if counsel are unable to agree or if the discovery requested seems unnecessarily protracted. Do you find this current practice a satisfactory one, in terms of costs, to resolve pre-trial scheduling issues?

yes	no	not sure	No Answer
192 (90.6%)	4 (1.9%)	14 (6.6%)	2 (0.9%)

Question 45: Do you find this current practice regarding scheduling orders a satisfactory one, in terms of delay, to resolve pre-trial scheduling issues?

yes	no	not sure	No Answer
180 (84.9%)	10 (4.7%)	19 (8.9%)	2 (0.9%)

Question 46: If you do not find the current scheduling practice satisfactory, what procedure do you think would be the <u>most</u> <u>helpful</u> to address these scheduling issues in terms of reducing costs and delay in litigation?

Mandatory hearing involving all attorneys before the district judge or magistrate judge:	4	(1.9%)
Telephone conference of all attorneys and the district judge or magistrate judge:	7	(3.3%)
Entry of order based on written submissions:	6	(2.8%)
Other:	6	(2.8%)
Current practice is satisfactory:	173	(81.6%)
No Answer:	16	(7.5%)

Question 47: Have you found that trial dates in the Eastern District are firm trial dates?

Always	Often	Sometimes	Never	Not Sure	No Answer
17 (8.0%)	106 (50.0%)	39 (18.4%)	2 (0.9%)	46 (21.7%)	2 (0.9%)

Question 48: Have you found that the court's practice of scheduling hearings on its own rather than using a system similar to the state's "Notice of Hearing" system results in the case or motion being heard on the date scheduled?

Always	Often	Sometimes	Never	Not Sure	No Answer
56 (26.4%)	87 (41.0%)	23 (10.8%)	1 (0.4%)	42 (19.8%)	3 (1.4%)

Question 49: Do you find the court in this district is flexible in allowing extensions of time and continuances relative to motions?

Always	Often	Sometimes	Never	Not Sure	No Answer
23 (10.8%)	75 (35.4%)	68 (32.1%)	8 (3.8%)	36 (16.9%)	2 (0.9%)

Question 50: Do you find the court in this district is flexible in allowing extensions of time and continuances relative to trial dates?

Always	Often	Sometimes	Never	Not Sure	No Answer
9 (4.2%)	21 (9.9%)	101 (47.6%)	25 (11.8%)	53 (25.0%)	3 (1.4%)

Question 51: Do you believe costs would be reduced if a party could obtain a continuance of the trial date as a matter of right if dispositive motions remained unresolved a certain number of days before trial?

Yes, would have a slight effect on costs:	18	(8.4%)
Yes, would have a moderate effect on costs:	50	(23.6%)
Yes, would have a substantial effect on costs:	81	(38.2%)
No, would have no effect on costs:	17	(8.0%)
Not sure:	43	(20.3%)
No Answer:	3	(1.4%)

Question 52: If you think costs would be reduced, what minimum number of days before trial should a party be able to obtain a continuance as a matter of right because dispositive motions are unresolved?

15 days	20 days	25 days	30 or more days	Not Apply	No answer
21 (9.9%)	43 (20.3%)	22 (10.4%)	68 (32.1%)	49 (23.1%)	9 (4.2%)

Question 53: Please choose the area in which you practice most frequently in this court.

Personal injury:	53	(25.0%)
Business litigation:	95	(44.8%)
Civil rights cases (including prisoner litigation):	26	(12.3%)
Social security or other administrative work:	4	(1.9%)
Other:	30	(14.1%)
No Answer:	4	(1.9%)

Question 54: Indicate the average number of depositions per case in the type of case you chose in the previous question.

0-3	4-8	9-15	16-25	More than 25	No Answer
56 (26.4%)	71 (33.4%)	51 (24.0%)	19 (8.9%)	11 (5.2%)	4 (1.9%)

Question 55: Indicate the average length of a deposition in this type of case.

2 hours or less:	64	(30.2%)
3-4 hours:	88	(41.5%)
5-6 hours:	33	(15.6%)
7-10 hours:	12	(5.6%)
More than 10 hours:	11	(5.2%)
No Answer:	4	(1.9%)

Questions 56-59 (Those who stated that depositions took longer than 6 hours were asked to evaluate whether and to what extent the following factors contributed to the delay)

Question 56: Significant number of objections

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
9 (4.2%)	8 (3.8%)	6 (2.8%)	2 (0.9%)	168 (79.2%)	19 (8.9%)

Question 57: Uncooperative witness

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
3 (1.4%)	8 (3.8%)	10 (4.7%)	4 (1.9%)	167 (78.8%)	20 (9.4%)

Question 58: Complicated factual issues

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
2 (0.9%)	2 (0.9%)	11 (5.2%)	10 (4.7%)	168 (79.2%)	19 (8.9%)

Question 59: Complicated field of "expert" inquiry

No Contribution	Slight Contribution	Moderate Contribution	Substantial Contribution	Not Applicable	No Answer
1 (0.4%)	5 (2.3%)	10 (4.7%)	9 (4.2%)	167 (78.8%)	20 (9.4%)

Question 60: Do you think that the Eastern District of North Carolina provides a forum for quick consideration of a temporary restraining order on an emergency basis?

Yes, in all cases:	27	(12.7%)
Yes, except in rare cases:	46	(21.7%)
No:	3	(1.4%)
No opinion:	115	(54.2%)
No answer:	6	(2.8%)

Question 61: Have you had experience in a case in this district in which one of the parties sought a temporary restraining order?

yes	no	not sure	No Answer
78 (36.8%)	122 (57.5%)	7 (3.3%)	3 (1.4%)

Question 62: If you have had experience with cases in which one of the parties sought a temporary restraining order, what was the approximate time from the filing of the motion to an order ruling on the motion?

0-2	3-5	6-10	Over 10 days	Not Applicable	No Answer
30 (14.1%)	22 (10.4%)	21 (9.9%)	4 (1.9%)	120 (56.6%)	15 (7.1%)

Question 63: Do you think that the Eastern District of North Carolina provides a forum for quick consideration of a preliminary injunction on an emergency basis?

Yes, in all cases:	27	(12.7%)
Yes, except in rare cases:	51	(24.0%)
No:	5	(2.3%)
No opinion:	109	(51.4%)
No answer:	5	(2.3%)

Question 64: Have you had experience in a case in this district in which one of the parties sought a preliminary injunction?

yes	no	not sure	No Answer
81 (38.2%)	114 (53.8%)	9 (4.2%)	5 (2.3%)

Question 65: If you have had experience with cases in which one of the parties sought a preliminary injunction, what was the approximate time from the filing of the motion to an order ruling on the motion?

0-10	11-20	21-30	Over 30 days	Not Applicable	No Answer
23 (10.8%)	30 (14.1%)	12 (5.6%)	16 (7.5%)	118 (55.6%)	13 (6.1%)

Question 66: On any type of motion, have you ever requested and been denied oral argument in this district?

Yes, on a routine basis:	5	(2.3%)
Yes, on a few occasions:	38	(17.9%)
Yes, on one occasion:	17	(8.0%)
No:	134	(63.2%)
Not sure:	12	(5.6%)
No Answer:	6	(2.8%)

Question 67: Do you think that allowing a party to request oral argument <u>as a matter of right</u> rather than as a matter of discretion with the district judge or magistrate judge would promote the just and expedient resolution of motions in this district?

Yes, in all cases:	15	(7.1%)
Yes, except in rare cases:	49	(23.1%)
No:	124	(58.4%)
No opinion:	18	(8.4%)
No answer:	5	(2.3%)

Question 68: Do you think that the usual 30 days between the scheduled close of discovery and the motions deadline are generally sufficient to prepare motions and briefs for dispositive motions?

Yes, in all cases:	8	(3.8%)
Yes, except in rare cases:	122	(57.5%)
No:	63	(29.7%)
Not sure:	14	(6.6%)
No answer:	5	(2.3%)

Question 69: Do you think unnecessary costs and delay in this district would be prevented if you were able to inform the court at the beginning of the case that significant post-discovery motions are anticipated and request the court to incorporate a longer motions period into the scheduling order?

Yes, in all cases:	50	(23.6%)
Yes, except in rare cases:	99	(46.7%)
No:	27	(12.7%)
Not sure:	30	(14.1%)
No answer:	5	(2.3%)

Question 70: If you do not think it would be helpful to inform the court early in the case of anticipated motions, when is the earliest you would be able to do so?

When formulating the time periods for the Rule 16 scheduling order:	19	(8.9%)
Prior to the close of discovery but near the end of the discovery period:	119	(56.1%)
After the close of the discovery period:	36	(16.9%)
Not applicable:	31	(14.6%)
No answer:	5	(2.3%)

Question 71: Do you find the Eastern District of North Carolina's current page limits on briefs sufficient to adequately present your arguments?

Yes, in all cases:	47	(22.1%)
Yes, except in rare cases:	142	(66.9%)
No:	4	(1.9%)
Not sure:	16	(7.5%)
No answer:	3	(1.4%)

Question 72: Have you ever requested from this court permission to file a brief in excess of the page limit and had that request denied?

Yes, on a routine basis:	0	(0.0%)
Yes, on a few occasions:	18	(8.4%)
Yes, on one occasion:	6	(2.8%)
No:	181	(85.4%)
Not sure:	5	(2.3%)
No answer:	2	(0.9%)

Question 73: What effect do you think the availability of Rule 11 sanctions has had on litigation costs for your clients?

Increased costs:	69	(32.5%)
Decreased costs:	20	(9.4%)
No effect:	77	(36.3%)
Not sure:	38	(17.9%)
No answer:	4	(1.9%)

Questions 74-77 (Those who felt that Rule 11 has increased costs to clients were asked to evaluate whether and to what extent the following factors contributed to the increased costs)

Question 74: "Satellite litigation" over the appropriateness of Rule 11 sanctions

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
2 (0.9%)	6 (2.8%)	24 (11.3%)	33 (15.6%)	132 (62.3%)	15 (7.1%)

Question 75: "Satellite litigation" over the amount of Rule 11 sanctions

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
12 (5.6%)	19 (8.9%)	14 (6.6%)	20 (9.4%)	132 (62.3%)	15 (7.1%)

Question 76: Certain filings which might not otherwise have been made in an attempt to ward off or prevent a Rule 11 motion filed by the opposing party

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
6 (2.8%)	13 (6.1%)	22 (10.4%)	24 (11.3%)	132 (62.3%)	15 (7.1%)

Question 77: Less resolving issues between counsel before filing a motion (for example, a motion to compel) with the court

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
11 (5.2%)	8 (3.8%)	26 (12.3%)	22 (10.4%)	130 (61.3%)	15 (7.1%)

Questions 78-81 (Those who felt that Rule 11 has decreased costs to clients were asked to evaluate whether and to what extent the following factors contributed to the decreased costs)

Question 78: Parties engage in greater factual discovery before asserting claims and defenses

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
2 (0.9%)	6 (2.8%)	14 (6.6%)	9 (4.2%)	162 (76.4%)	19 (8.9%)

Question 79: Parties conduct more extensive legal research before asserting claims and defenses

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
2 (0.9%)	5 (2.3%)	12 (5.6%)	12 (5.6%)	162 (76.4%)	19 (8.9%)

Question 80: Parties more willing to voluntarily dismiss claims when it becomes apparent they are not based on facts or law

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
2 (0.9%)	6 (2.8%)	14 (6.6%)	9 (4.2%)	162 (76.4%)	19 (8.9%)

Question 81: Court more willing to sort out meritless claims or defenses

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
4 (1.9%)	12 (5.6%)	7 (3.3%)	8 (3.8%)	162 (76.4%)	19 (8.9%)

Question 82: Has it been your experience that motions in limine are used to detract an opponent from trial preparation by filing numerous motions in limine in the days prior to trial?

yes	no	not sure	No Answer
26 (12.3%)	135 (63.6%)	43 (20.3%)	5 (2.3%)

Question 83: If yes, how often have you had this experience?

Once or twice:	18	(8.4%)
On several occasions:	8	(3.8%)
On numerous occasions:	3	(1.4%)
Not applicable:	154	(72.6%)
No answer:	14	(6.6%)

Question 84: Do you think costs would be reduced if no <u>written</u> response were required to motions in limine filed after the pre-trial conference?

yes	no	not sure	No Answer
108 (50.9%)	42 (19.8%)	40 (18.8%)	5 (2.3%)

Question 85: What role do you think the district judges and magistrate judges of this district play in settlement of cases?

Encourage settlement:	120	(56.6%)
Hinder settlement:	7	(3.3%)
Take no position with regard to settlement:	41	(19.3%)
Not sure:	38	(17.9%)
Not applicable:	3	(1.4%)
No answer:		

Question 86: Have you ever participated in a civil trial in the Eastern District of North Carolina conducted with the parties' consent by a United States Magistrate Judge?

yes	no	not sure	No Answer
73 (34.4%)	134 (63.2%)	2 (0.9%)	2 (0.9%)

Question 87: If you have been involved in a civil trial in the Eastern District of North Carolina conducted by a United States Magistrate Judge, do you think the assignment of the case to the magistrate judge significantly delayed the trial date?

yes	no	not sure	Not applicable	No Answer
0 (0.0%)	76 (35.8%)	7 (3.3%)	111 (52.3%)	11 (5.2%)

Question 88: Once a trial date has been set before a magistrate judge, do you think that date is a firm trial date?

yes	no	not sure	Not applicable	No Answer
78 (36.8%)	8 (3.8%)	29 (13.6%)	81 (38.2%)	11 (5.2%)

Question 89: If you have been involved in a civil trial in the Eastern District of North Carolina conducted by a United States Magistrate Judge, what effect do you think the assignment of the case to the magistrate judge had on the costs to the client?

Significantly increased costs:	0	(0.0%)
Slightly increased costs:	2	(0.9%)
Slightly decreased costs:	41	(19.3%)
Significantly decreased costs:	15	(17.1%)
No effect on costs or not applicable:	134	(63.2%)
No Answer:	20	(9.4%)

Question 90: If you have been involved in a civil trial in the Eastern District of North Carolina conducted by a magistrate judge, would you consider consenting to such a trial in the future?

yes	no	not sure	Not applicable	No Answer
74 (34.9%)	4 (1.9%)	10 (4.7%)	92 (43.4%)	15 (7.1%)

Questions 91-97 (Indicating what effect each of the following factors would have on the survey participant's decision to consent to magistrate judge jurisdiction)

Question 91: Scheduling considerations such as trial date

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
25 (11.8%)	21 (9.9%)	50 (23.6%)	69 (32.5%)	34 (16.0%)	13 (6.1%)

Question 92: Choice of magistrate judge

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
13 (6.1%)	18 (8.4%)	45 (21.2%)	87 (41.0%)	35 (16.5%)	14 (6.6%)

Question 93: Experience of magistrate judge

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
11 (5.2%)	20 (9.4%)	46 (21.7%)	88 (41.5%)	34 (16.0%)	13 (6.1%)

Question 94: Choice of district judge to whom case is assigned

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
14 (6.6%)	23 (10.8%)	60 (28.3%)	68 (32.1%)	34 (16.0%)	13 (6.1%)

Question 95: Costs

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
35 (16.5%)	52 (24.5%)	51 (24.0%)	24 (11.3%)	37 (17.4%)	13 (6.1%)

Question 96: Client's desire as to choice of trial judge

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
32 (15.1%)	49 (23.1%)	31 (14.6%)	48 (22.6%)	39 (18.4%)	13 (6.1%)

Question 97: Type or complexity of case

No Effect	Slight Effect	Moderate Effect	Substantial Effect	Not Apply	No Answer
16 (7.5%)	20 (9.4%)	58 (27.3%)	72 (33.9%)	33 (15.6%)	13 (6.1%)

Question 98: Considering the amount of time and money involved in a case, do you think it is efficient in terms of costs and delay to refer dispositive motions (for example, motions to dismiss and motions for summary judgment) to a magistrate judge for a memorandum and recommendation?

yes	no	not sure	No Answer
108 (50.9%)	58 (27.3%)	39 (18.4%)	7 (3.3%)

Question 99: Considering the amount of time and money involved in a case and the possibility of appeal from the ruling of the magistrate judge, do you think it is efficient in terms of costs and delay to have non-dispositive motions (for example, discovery motions) decided by a magistrate judge?

yes	no	not sure	No Answer
161 (75.9%)	22 (10.4%)	23 (10.8%)	6 (2.8%)

Question 100: Bearing in mind the restrictions on the issues that may be addressed at the appellate level if they are not raised in the appeal from the magistrate judge to the district judge, would you appeal from the ruling of a magistrate judge if the motion was decided in your favor but some of the issues you raised were decided against your client?

Yes:	21	(9.9%)
No:	2	(0.9%)
Would depend on the particular facts and circumstances of the case but I would consider appealing:	159	(75.0%)
Not sure:	20	(9.4%)
No answer:	9	(4.2%)