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October 13, 1998

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To: CJRA Committee Members
Article III Judges
Magistrate Judges

Re: Final Assessment and Recommendations Arising
From Civil Justice Reform Act

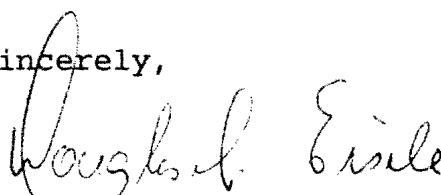
Dear Colleagues and Judges:

I enclose copy of the Final Assessment and Recommendations arising from the work of the Civil Justice Reform Act Committee pursuant to the sunset provisions of 28 U.S.C. §475 (the Civil Justice Reform Act of 1990). I believe you will find that this report correctly describes our significant efforts and the consensus reached by the Court to the benefit of the judicial system in the Western District.

It has been a signal pleasure for me to work with every lawyer, every member of the Court, and its distinguished Clerk in contributing to our joint final product. Each of you is to be commended for your assistance, which I found to be unanimously and enthusiastically given.

You need to be aware that, even as we conclude our work, new proposals for amendments to the Federal Rules of Civil Procedure are being considered, the most significant of which is the mandatory application of Rule 26 (with which we did not agree). I will be in touch with the Court to frame this district's comments upon that proposal.

Sincerely,



Douglas G. Eisele, Chairman

DGE:lbj

**FINAL ASSESSMENT AND RECOMMENDATIONS
ARISING FROM THE CIVIL JUSTICE REFORM ACT
IN ANTICIPATION OF ITS SUNSET
ON DECEMBER 1, 1997.**



FINAL ASSESSMENT

OCTOBER 1998

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP 1991-1996

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Ex-Officio Members

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Honorable Robert D. Potter, U.S. District Court Judge
Honorable Graham C. Mullen, U.S. District Court Judge
Honorable Woodrow W. Jones, Senior U.S. District Court Judge
Honorable James B. McMillan, Senior U.S. District Court Judge
Honorable Marvin R. Wooten, Chief U.S. Bankruptcy Judge
Honorable George R. Hodges, U.S. Bankruptcy Judge
Honorable J. Toliver Davis, Chief U.S. Magistrate Judge
Honorable Carl Horn, U.S. Magistrate Judge
Honorable H. Brent McKnight, U.S. Magistrate Judge
Honorable Thomas J. McGraw, Clerk of Court

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP, 1996 -

ADVISORY GROUP

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Honorable George R. Hodges, Chief U.S. Bankruptcy Judge
Honorable Marvin R. Wooten, Recalled U.S. Bankruptcy Judge
Honorable Carl Horn, Chief U.S. Magistrate Judge
Honorable H. Brent McKnight, U.S. Magistrate Judge
Honorable Max O. Cogburn, U.S. Magistrate Judge
Honorable Frank G. Johns, Clerk of Court, Reporter

INTRODUCTION**

This Final Assessment and Recommendation Arising From the Civil Justice Reform Act in Anticipation of its Sunset on December 1, 1997 (Final Assessment) is submitted pursuant to 28 U.S.C. §475 of the Civil Justice Reform Act of 1990.

The Civil Justice Reform Act (CJRA) of 1990 was enacted by Congress in an attempt to reduce delay and expense of civil litigation within the federal courts. The Act required the appointment of an Advisory Group in each district for the purpose of conducting an examination of the condition of the docket of the district and to develop a local plan for civil case management to reduce costs and delay.

The first Advisory Group was appointed in February of 1991 by the Honorable Richard L. Voorhees, Chief Judge of the United States District Court for the Western District of North Carolina. This Group examined the status and history of civil and criminal litigation in the Western District, studied model plans and reviewed plans from other districts. On July 9, 1993, the Group filed the Report of the Advisory Group of the United States District Court for the Western District of North Carolina Appointed Under the Civil Justice Reform Act of 1990 (CJRA Report). This CJRA Report contained the first Civil Justice Expense and Delay Reduction Plan (CJRA Plan) for the Western District and was approved and adopted by the District Court on September 23, 1993.

**This report of the Final Assessment and Recommendations arising from activities of the CJRA Committee for the United States District Court for the Western District of North Carolina, and all attachments thereto, were prepared through the skilled efforts of the Honorable Frank G. Johns, Clerk of the Court and ex-officio member of the Committee, to whom the Committee is forever grateful.

Douglas G. Eisele, Chairman

**A. Civil Justice Expense and Delay Reduction Plan
September 23, 1993**

The District Court, after considering the recommendations of the Civil Justice Reform Act Advisory Group, adopted the first CJRA Plan in the history of the Western District. This CJRA Plan contains the following significant components:

- Differentiated Case Management is utilized through five case tracks:
 - a. expedited (six months from filing through completion);
 - b. standard (twelve months from filing through completion);
 - c. complex (twenty-four months from filing through completion);
 - d. administrative (three months from filing through completion);
 - and,
 - e. mass torts (completion date as set by the Court).
- A case Management Plan is established which is unique for each case, which deals with discovery, alternative dispute resolution, settlement and trial.
- An Initial Attorneys Conference is to be held within fifteen (15) days of the filing of the last responsive pleading. The elements of a case management plan is discussed at this conference. A brief report of the conference is to be filed in the form of a certificate.
- An Initial Pretrial Conference is to be held among counsel and the Judicial Officer within thirty (30) days of the filing of the Certificate of Initial Attorneys Conference. At that conference, a Case Management Plan is adopted including an appropriate case track assignment.

- Discovery is strictly controlled according to the terms of the Case Management Plan.
- Mandatory mediation and formal settlement conference is considered in each case, and may be required in any case in the discretion of the Court.
- Magistrate Judges are included in the civil case assignment rotation with the District Court Judges. Litigants retain the right to "opt out" of using a Magistrate Judge for trial.

**B. Civil Justice Expense and Delay Plan
As Amended December 16, 1994**

The District Court amended the CJRA Plan on December 16, 1994. Section Four: Alternative Dispute Resolution Program (ADR) was the only Section of the CJRA Plan which was amended. The significant components of the amended Section are:

- A mediated settlement conference or some other form of ADR is mandatory in all civil actions filed on or after January 1, 1995. The following are examples of an ADR procedure:
 - a. Mediated Settlement Conference;
 - b. Arbitration;
 - c. Summary Jury Trial;
 - d. Mini-Trial;
 - e. Early Neutral Evaluation; or
 - f. Any ADR procedure stipulated to by the parties.

- Mandatory ADR does not apply to habeas corpus proceedings or other actions for extraordinary writs, appeals from rulings of administrative agencies, forfeitures of seized property, bankruptcy appeals, and any case in which the Judicial Officer, either *sua sponte* or on application of any party, deemed the case not suitable for ADR.
- A mediated settlement conference is the mandatory ADR procedure unless the parties stipulate otherwise.
- The North Carolina State *Rules Governing Mediated Settlement Conferences In Superior Court Civil Actions* govern all Mediated Settlement Conferences.
- Other general rules applicable to ADR procedures are:
 - a. ADR proceedings are non-binding;
 - b. ADR proceedings shall not delay the case;
 - c. ADR proceedings and information are governed by Rule 408 of the Federal Rules of Evidence and are generally inadmissible;
 - d. No record shall be made of the ADR proceeding;
 - e. Ex-parte communications between the ADR Neutral and counsel or parties is prohibited;
 - f. ADR Neutral shall have judicial immunity;
 - g. Attendance of all parties, (or their designated agent), with full authority to settle the claim, is required at all ADR proceedings;
 - h. Subpoenas may be issued for the ADR proceeding;
 - i. The ADR Neutral shall reduce their fee for any indigent parties;
 - j. A Judicial Officer may impose sanctions for failure to attend an ADR procedure; and,

- k. The ADR Neutral is to file a report of outcome of the ADR proceeding within seven (7) days.
- Judicial settlement conferences conducted by a judicial officer satisfy the requirement for a mandatory ADR proceeding.

C. Local Amendment to the Civil Justice Expense and Delay Reduction Act Plan May 14, 1996

The District Court approved amendments to the CJRA Plan for all cases filed in the Asheville, Bryson City and Shelby Divisions of the District. This Revised Plan for those divisions was effective on all cases filed on or after May 14, 1996. The significant components of this Revised Plan are:

- Elimination of the requirement of an initial attorneys conference and the filing of a certificate of initial attorneys conference;
- Elimination of the disclosure requirements of Rule 26;
- Elimination of the requirement of a brief separate and apart from a motion. Such requirement is now met by a "brief statement of law and fact" supporting the relief sought, which can either be in the motion itself or in a separate memorandum;
- Reduction of the response period for motions to 14 days and elimination of a reply without leave of court;
- A 12-page limit on any brief;
- Setting firm and early trial dates at the initial pretrial conference;
- Elimination of the "opt-out" procedure by requiring signed consents be filed by all parties in cases assigned to a magistrate judge;

- The time frames to dispose of cases assigned to the different case management tracks are reduced to reflect the goal of disposing of all but the most complex cases within one year of filing:
 - a. administrative (case resolved within 60 days);
 - b. expedited (case resolved within 90 days);
 - c. standard (case resolved within 120 days);
 - d. complex (case resolved in excess of 120 days); and
- Elimination of the mandatory requirement that all civil cases participate in some type of ADR procedure.

D. Appointment of Second Advisory Group

The Civil Justice Reform Act of 1990 limited the terms of service of the advisory group members to four years. Only the United States Attorney or their designee was designated as a permanent member of the advisory group. Pursuant to 28 U.S.C. §478 of the Civil Justice Reform Act of 1990, the terms of service of the members of the initial Advisory Group for the Western District of North Carolina expired in February of 1995.

On October 11, 1996, a second advisory group (Advisory Group Two) was appointed to prepare a final assessment of the local CJRA Plans and make recommendations to the court in light of the pending sunset provision of the Civil Justice Reform Act. Pursuant to 28 U.S.C. §482(b)(2) of the Civil Justice Reform Act of 1990, the sunset provision of the Act will take effect on December 1, 1997. Accordingly, all local CJRA Plans expire unless otherwise authorized by the local rules of the District. In light of this development, Advisory Group Two agreed that an important part of this Final Assessment would be to identify what case management techniques found in the CJRA

Plans should be continued in effect, and would recommend to the court that the local rules be amended to authorize the continuance of those practices or procedures.

II. FINAL ASSESSMENT - METHODOLOGY AND FINDINGS ADVISORY GROUP TWO

A. First Meeting August 22, 1997

The first meeting of Advisory Group Two was held on August 22, 1997, in Hickory, North Carolina. The first part of this meeting was devoted to reviewing the history of the Civil Justice Reform Act and the subsequent adoption of the three Civil Justice Reform Act Plans for this District. This assured that every member of Advisory Group Two had detailed knowledge of each Plan.

1. Key Areas of Review.

Advisory Group Two identified certain components of the CJRA Plans which quickly became the key areas of review for the Advisory Group. These key discussion points were:

- Application of Federal Rule of Civil Procedure 26(a)(1);
- Consent procedures for cases assigned to a magistrate judge;
- Initial attorney conference;
- Early involvement of a magistrate judge;
- Motions practice and length of briefs;
- Mediation;
- Timely resolution of discovery disputes; and
- Incorporate the local CJRA Plans into new or amended local rules.

The Advisory Group agreed that an important step in assessing the effectiveness of the local CJRA Plans in the identified key areas would be for members of the Advisory Group to conduct personal interviews with each judicial officer. Various members of the Advisory Group agreed to contact each District Judge and Magistrate Judge to discuss with that judge their observations and experiences. Those members of the Advisory Group conducting these judicial interviews were asked to be prepared to report their findings to the Advisory Group at the second meeting.

2. The Condition of the Civil and Criminal docket.

The Clerk presented a detailed statistical analysis of the condition of the civil and criminal docket. This statistical assessment is found in its entirety as Appendix A to this Final Assessment. The highlights of the statistical assessment reflect that the CJRA Plans had limited effect on reducing delay and expense of civil litigation in this district. Specifically, the statistical analysis presented in Appendix A reveals:

- Civil case dispositions have increased;
- Civil cases pending three years or more have decreased significantly;
- 25% of all civil cases mediated settled;

But:

- Civil case filings continue to increase;
- Civil cases pending continue to increase;
- Median time to dispose of civil cases continue to increase;
- Number of civil trials as a percentage of total trials, continue to decrease; and

- Civil cases continue to be filed in the Charlotte Division at almost twice the rate as filed in the other divisions.

The criminal caseload continues to dominate the court's docket, causing delay in the disposition of civil cases. Specifically, the statistical analysis presented in Appendix A reveals:

- Median time to dispose of criminal cases has increased;
- There are five times more criminal trials held each year than civil trials;
- Over 50% of all defendants are drug case defendants;
- Over 60% of all criminal cases are drug cases; and
- Criminal cases continue to be filed in the Charlotte Division at more than twice the rate as filed in the other districts.

3. RAND Report

The Judicial Conference of the United States and the Administrative Office of the U.S. Courts commissioned RAND's Institute for Civil Justice to evaluate the effects of the local CJRA Plans in ten districts. These ten districts were the first courts to implement CJRA Plans, thus providing an empirical basis for assessing the effects of the plans. The Research Brief published by RAND's Institute for Civil Justice is found in Appendix B. The RAND Report found that the Civil Justice Reform Act of 1990 did little to reduce delay and expense of civil litigation within the Federal courts. Specifically, the RAND Report discovered:

- The CJRA Plans in the ten courts had little effect on time to disposition, litigation costs, satisfaction, or views of fairness;
- Some case management procedures, i.e. ADR, have no major effects on cost and delay;
- Early judicial management in a civil case can reduce time to disposition by about 1.5 months, BUT, can also significantly increase the direct cost of litigation;
- Early mandatory disclosure neither significantly affected time or costs nor generated an explosion of ancillary motions;
- Lawyers were significantly more satisfied when magistrate judges managed the pretrial process; and
- The overall result of the CJRA was disappointing.

The findings contained in the RAND Report were extremely insightful to the members of Advisory Group Two. The report provided an objective basis to compare the effectiveness of our local Plans to a national snapshot. Unfortunately, the experience in this district with our local Plans mirror the national experience.

**B. Second Meeting
September 11, 1997**

The second meeting of Advisory Group Two was held on September 11, 1997, in Hickory, North Carolina. The first part of this meeting focused on three topics which the Advisory Group had requested be reported on at this meeting. They were:

- Analysis of the direct operating costs to distribute the CJRA Plans showed that it cost approximately \$15,000 per year to send out the Plans;
- It was confirmed that the Mitchie Company and other publishers would publish the local CJRA Plan with the district's local rules. Therefore, the Advisory Group recommended that the Court substitute the mailing of the local Plans by publication; and
- Circuit opinions regarding the need to have written consents on file for all cases assigned to a magistrate judge were discussed in detail. The Advisory Group agreed that new procedures are needed to secure a written consent by all parties.

1. Report of Judicial Interviews.

The reports by Advisory Group members on their judicial interviews were received at this meeting. The time that each judicial officer devoted to this process proved invaluable to the Advisory Group in accomplishing its work. The interviews covered many areas of interest which each judicial officer had, and provided critical information on the key areas of the CJRA Plans which the Advisory Group had identified earlier. These interviews revealed that the judges:

- Questioned the effectiveness of the initial attorney conference;
- Recognized the differences between the various Plans within the district, depending upon the division in which a case is filed;
- Were flexible regarding Fed.R.C.P.26(a)(1);

- Were flexible regarding the use of ADR programs;
- Desire to have shorter briefs filed with motions;
- Desire to reduce discovery disputes;
- Preferred to have the CJRA Plans incorporated into the local rules;
- and
- Recognized the need to develop uniform consent procedures that comply with Fourth Circuit Opinions.

2. Initial Findings and/or Recommendations.

As the result of these interviews, the Advisory Group was able to proceed to develop a consensus on the key areas of the Final Assessment. The following findings and/or recommendations were agreed upon by the Advisory Group.

- The Western District of North Carolina should opt-out of Federal Rule of Civil Procedure 26(a);
- The opt-out provisions of the district relating to magistrate judge jurisdiction need to be revised to conform to existing case law while still maintaining the initial assignment of civil cases to magistrate judges;
- Realistic deadlines for the completion of discovery is needed. It appears to be best provided at an initial pre-trial conference conducted by either the district judge or a magistrate judge;
- The effectiveness of the initial attorneys conference appears suspect as it occurs too early in the process and is not perceived as forceful

- or meaningful as an initial pre-trial conference;
- The length or page limit of briefs is an issue best addressed in a judge's pre-trial order, but the brief should not exceed 25 pages without leave of the court;
 - The time frame for responding to motions and the time frame to reply to the response of the motions should be uniform throughout the district. Responses to motions, if any, should be filed within 14 days of the date on which the certificate of service is signed. When a party serves a motion by mail, the respondent shall have an additional three days to file a response. A reply to the response of a motion, if any, should be filed seven days from the filing of the response; and
 - The district should continue with its practice of mandatory mediation or other ADR technique, except as allowed by the judge.

As the result of these two meetings and the input from the individual judges during their interviews, the Advisory Group felt comfortable presenting their findings and/or recommendations to the entire court. A meeting was scheduled with all the members of the Advisory Group and the Board of Judges.

**C. Third Meeting with the Board of Judges
October 10, 1997**

The third meeting of Advisory Group Two was held on October 10, 1997, in Charlotte, North Carolina. This was a joint meeting between the Advisory Group, the U.S.

District Court Judges and the U.S. Magistrate Judges. The findings of the RAND Report were discussed, particularly how our experiences and statistics are similar to other districts throughout the country.

Having all of the judges present for this meeting was invaluable as the Advisory Group was able to present each of the key points of discussion to the court, and after sometimes lengthy and detailed discussion, a consensus was reached on each item. This has resulted in the Advisory Group presenting the following nine specific recommendations in this Final Assessment.

1. Nine Recommendations

- Federal Rule of Civil Procedure 26(a)(1). The Advisory Group recommends that the Western District of North Carolina opt-out of Federal Rule of Civil Procedure 26 as a district wide policy.
The Court has agreed to opt-out of Federal Rule of Civil Procedure 26.
- Consent to Magistrate Judge Jurisdiction. The Advisory Group recommends that consent to Magistrate Judge jurisdiction be secured by having a written consent executed and filed in the case. General discussion was held regarding our existing different procedures and the various options available to the court. Such issues as client dynamics, lawyer's inertia and existing case law were discussed. *The court has agreed to try a hybrid approach with several key elements. The existing standing order of reference will remain in effect which*

permits the continued initial assignment of civil cases to a Magistrate Judge. The Clerk will provide a revised consent/denial form to the Plaintiff at the time of filing whereby the Plaintiff can exercise their right to consent to Magistrate Judge jurisdiction. If the Plaintiff grants consent, the Plaintiff shall then serve a copy of the consent/denial form on all defendants. Defendants must file their executed consent/denial form with their first pleading. In the event counsel fail to file the consents on cases initially assigned to a Magistrate Judge, the Magistrate Judge will present counsel with the "Ratification of Consent Form" as developed by Magistrate Judge McKnight at the pretrial conference. See Appendix C for the consent/denial forms.

- Initial Attorney Conference (IAC). It was the consensus of the Advisory Group that no meaningful purpose is served by an initial conference between counsel prior to a pretrial conference with the Court. The Advisory Group therefore recommends to eliminate the mandatory IAC. *The court agrees to adopt this recommendation.*
- Advantages of early involvement of a Magistrate Judge in Civil Matters. The Advisory Group recommends that there be early involvement by a Magistrate Judge in civil matters, specifically by conducting an initial pretrial conference in each case. Counsel should be required to be present at these conferences and discovery issues

and deadlines would be resolved at this time. *The court agrees that these conferences are helpful and agrees to have an initial pretrial conference in civil cases. Either a Magistrate Judge or the District Court Judge will conduct the conference.*

- Filing and Length of Briefs. The Advisory Group recommends that briefs be filed with the motion and that briefs be limited in length to 25 pages. *The court agrees to limit briefs to 25 pages unless otherwise ordered by the judge.*
- Time Frames For the Filing of Responses to Motions and For Reply Motions. The Advisory Group recommends that the time frame for responding to motions and the time frame to reply to the response to the motions be the same throughout the district. The Advisory Group recommends that the responses to motions, if any, be filed within 14 days of the date on which the certificate of services is signed. When a party serves a motion by mail, the respondent shall have an additional three days to file a response. A reply to the response of a motion, if any, shall be filed seven days from the date on which the certificate of service of the response is signed, with an additional three days allowed if service is by mail. *The court agrees to adopt the recommendation.*
- Mediation. The Advisory Group recommends that mediation be directed in all civil cases unless otherwise ordered by the court.

General discussion was held noting that parties have an opportunity to request that mediation be waived. *The court agrees to adopt the recommendation.*

- Timely Resolution of Discovery Disputes. The Advisory Group discouraged involvement in detailed procedures and reports to the Court regarding discovery issues and why counsel have been unable to resolve them. Rather, the Advisory Group recommends that the Court invoke the provisions of Rule 37 of the Fed.R.C.P. to enforce compliance with the intent and purpose of discovery rules. *The Court agrees to adopt this recommendation.*
- Incorporation of Plan(s) into Revised Local Rules. General discussion was held regarding the incorporation of the above items into the revised local rules. This would eliminate the Plan(s) as a separate document. *The Court agrees to adopt this approach thereby eliminating the Plan(s) as a separate document.* Chairman Eisele agreed to review the Plan(s) to be sure that all items have been included for adoption as a local rule. Revised or new local rules have been written for the above recommendations and are presented as Appendix D.

IV. Conclusion.

When Congress enacted the Civil Justice Reform Act of 1990, there were high expectations that this Act, and the subsequent local CJRA Plans, would result in substantial change in the federal courts. At minimum, the sponsors of this monumental national undertaking assumed that delay in federal litigation of civil matters and the costs incurred by the litigants would both decrease. We now know that unfortunately this has not happened, and the reality is that the effects of the CJRA have been disappointing. This has contributed to the Judicial Conference and Congress allowing the sunset provision of the Act take effect on December 1, 1997.

While the CJRA may not have fulfilled all of its promises to its founders, it has been a worthwhile endeavor for the District Courts, including the Western District of North Carolina. For the first time in the history of the district, advisory groups, including non-lawyers, were appointed and charged with the task of examining the practices and procedures of the court and making substantive recommendations for change. In the federal court environment where the individual calendar system has reigned forever, this was no easy task. Getting federal judges to change some of their case management practices and replace them with uniform procedures is a major accomplishment and is a credit to the court's commitment to adopt better practices.

The Judicial Conference has recognized the important role that the Advisory Groups have played in assisting the local courts by bringing the bench and bar together in common pursuit of constructive solutions. The partnership of judges and advisory groups inspired by the Act has moved the local legal community as a whole toward greater concern for

overall efficiency in federal litigation. This has led the Judicial Conference to recommend that the local advisory groups continue in their advisory role despite the sunset provision of the Act. Recognizing that continued dialogue and experimentation will continue to produce information and experiences that will aid the judiciary with the administration of the federal courts at the local level, the Advisory Group will continue to serve the local court in this fashion. The Advisory Group looks forward to serving the court in this fashion and welcomes this new partnership.

The Advisory Group and the Court share a strong commitment in keeping this court's local rules as brief as possible. The purpose of local rules is not to duplicate the subject matter found in the Federal Rules, nor is it their purpose to micro manage the practice of law. The purpose of the local rules for this district is to provide counsel with the practices and procedures which supplement the subject matter of the federal rules and provide guidance to the bar in those areas of case management unique to this district. This is the philosophy which has guided the Advisory Group and the court in amending the local rules.

The amended local rules are presented in this Final Assessment as Appendix D. These rules replace the CJRA Plans for the Western District of North Carolina, as the recommendations approved by the court arising from this Final Assessment have been incorporated into the amended local rules. The rules have also been re-numbered and re-formatted in accordance with the Uniform Numbering System as approved by the Judicial Conference of the United States and in accordance with Federal Rule of Civil Procedure No.

83.



APPENDIX A

THE CONDITION OF THE CIVIL AND CRIMINAL DOCKETS

The Condition of the Civil and Criminal Dockets

One of the goals of the Civil Justice Reform Act (Act) is to reduce delay of civil litigation in the federal courts. While the Act focuses on civil litigation by encouraging experimentation with different principles and guidelines of case management techniques, the Act also clearly recognizes that the status of the criminal docket directly effects the status of the civil docket in each local court. The initial Report of the Advisory Group of the United States District Court for the Western District of North Carolina Appointed Under the Civil Justice Reform Act of 1990 (Report) identified the criminal docket as “a significant element causing delay in the final resolution of civil cases.” Therefore, it is important to review statistics of both the civil and criminal docket as part of assessing the condition of the court’s docket.

The Administrative Office of the United States Courts Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990: FY96 Statistics Supplement (Dec.1996) and this court’s own Monthly Activity Report(s) of the U.S. District Judges and U.S. Magistrate Judges for the Western District of North Carolina provide the statistical data used for this assessment, unless otherwise noted.

This statistical assessment provides two points of reference to aid the reader in determining the condition of the civil and criminal dockets. One point of reference is a general overview of the dockets including a detailed breakdown of the types of civil cases on the docket. The second point of reference compares statistics from the three years preceding the implementation of the Civil Justice Expense and Delay Reduction Plan Under the Civil Justice Reform Act of 1990 (Plan), 1991, 1992 and 1993, to the statistics from the three years of 1994, 1995, and 1996 when the Plan was in place.

The variety of civil cases making up the caseload is an important feature of the civil docket. Different types of civil cases tend to move through the court in different ways. Some cases are routinely disposed of by default judgment (student loan); some cases are in the nature of an appeal (bankruptcy); and some cases are a subset of another category (asbestos cases in the personal injury category). Therefore, for some of the following statistical charts, civil cases have been sorted into two different categories, Type I civil cases and Type II civil cases.

Type I civil cases are distinctive because within each case type the majority of the cases are handled the same way; for example, most Social Security cases are disposed of by summary judgment. Type I civil cases generally account for about 40% of all civil filings in the district and include the following case types:

- ◆ student loan collection cases;
- ◆ cases seeking recovery of overpayment of veterans’ benefits;
- ◆ appeals of Social Security Administration benefit denials;
- ◆ condition-of-confinement cases brought by state prisoners;

- ◆ habeas corpus petitions;
- ◆ appeals from bankruptcy court decisions;
- ◆ land condemnation cases; and,
- ◆ asbestos product liability cases

Type II civil cases are generally disposed of by a greater variety of methods and follow more varied paths to disposition; for example, one contract action may settle, another go to mediation, another go to trial, another end in summary judgment, and so on. Type II civil cases account for about 60% of civil filings in the district and include the following case types:

- ◆ contract actions other than student loan, veterans' benefits, and collection of judgment cases;
- ◆ personal injury cases other than asbestos;
- ◆ non-prisoner civil rights cases;
- ◆ patent and copyright cases;
- ◆ ERISA cases;
- ◆ labor law cases;
- ◆ tax cases;
- ◆ securities cases; and,
- ◆ other actions under federal statutes; e.g., FOIA, RICO, and banking laws.

A. Condition of the Civil Docket

The following charts illustrate various trends in civil filings and dispositions and also illustrate what effect implementation of the Plan had on the civil docket in the Western District of North Carolina. The more noteworthy trends include the continued increase in total civil cases filed; a significant increase in the total number of civil cases disposed; and an increase in the filing of Type II civil cases. The most noteworthy accomplishment illustrated in the charts is the sharp decrease in the number of civil cases pending three years or more in the first two years in which the Plan was in place.

Chart 1 shows the distribution of civil case filings by case type and the percentage that type of case is of the court's whole civil docket. This data is provided for the Plan years of 1994, 1995 and 1996.

Chart 1: Distribution of Civil Case Filings, FY94-96
Western District of North Carolina

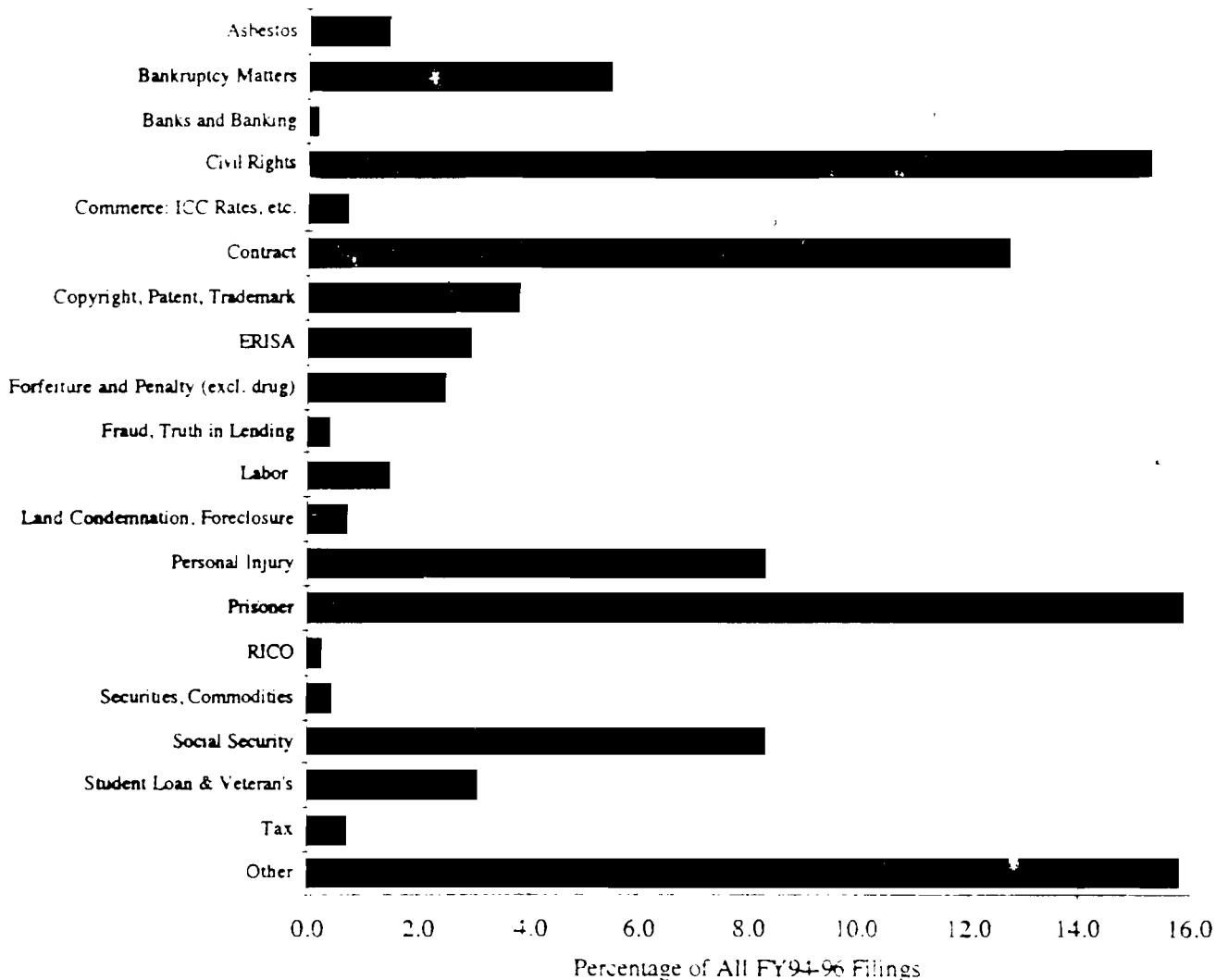


Chart 2 shows the trend of case filings over the past ten years for Type I civil cases and Type II civil cases. Table 1 under Chart 2 shows filing trends in more detail based upon civil case types. Note that Type II civil case filings have increased significantly.

Chart 2: Filings By Broad Category, FY87-96
Western District of North Carolina

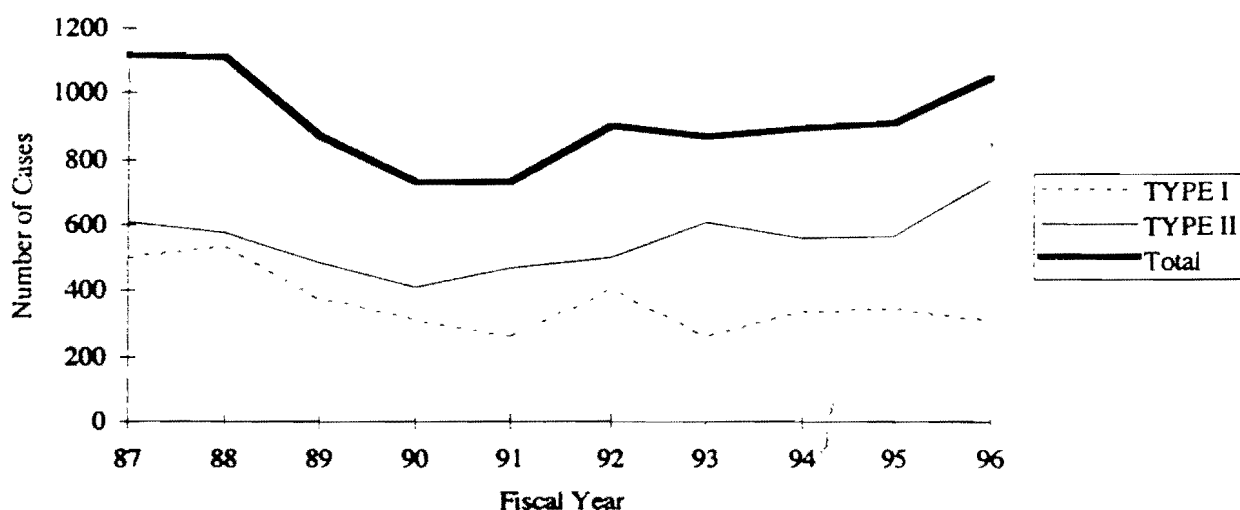


Table 1: Filings by Case Type, FY87-96

Western District of North Carolina	YEAR									
	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Asbestos	20	11	33	35	19	45	11	22	3	15
Bankruptcy Matters	24	19	15	29	50	45	55	76	50	30
Banks and Banking	1	0	0	1	1	0	4	3	1	0
Civil Rights	100	90	90	66	66	83	112	133	129	176
Commerce: ICC Rates, etc.	7	11	6	10	5	6	31	4	13	3
Contract	244	188	184	158	152	134	123	111	129	124
Copyright, Patent, Trademark	27	33	32	21	35	17	37	37	37	34
ERISA	7	14	6	11	17	21	17	24	25	35
Forfeiture and Penalty (excl. drug)	9	25	30	15	14	34	42	33	17	21
Fraud, Truth in Lending	7	10	6	5	6	10	8	2	6	3
Labor	24	17	11	14	16	16	9	18	12	12
Land Condemnation, Foreclosure	1	2	2	1	2	3	0	2	11	7
Personal Injury	92	89	50	45	45	62	102	71	55	110
Prisoner	176	165	147	127	101	98	93	129	172	152
RICO	1	1	2	1	3	0	3	2	2	2
Securities, Commodities Tax Co	1	9	3	6	3	1	2	6	3	3
Social Security	127	86	35	37	17	140	81	81	84	71
Student Loan and Veteran's	156	254	150	87	73	74	21	25	22	40
Tax	7	10	4	9	5	3	4	15	3	2
All Other	83	78	65	53	104	116	118	100	138	213
All Civil Cases	1114	1112	871	731	734	908	873	894	912	1053

Chart 3 shows that the number of civil cases filed has steadily increased since 1991. This Chart also shows that the number of civil cases disposed also increased during the Plan years of 1994, 1995 and 1996.

CHART 3

CIVIL CASES FILED AND DISPOSED OF BY YEAR

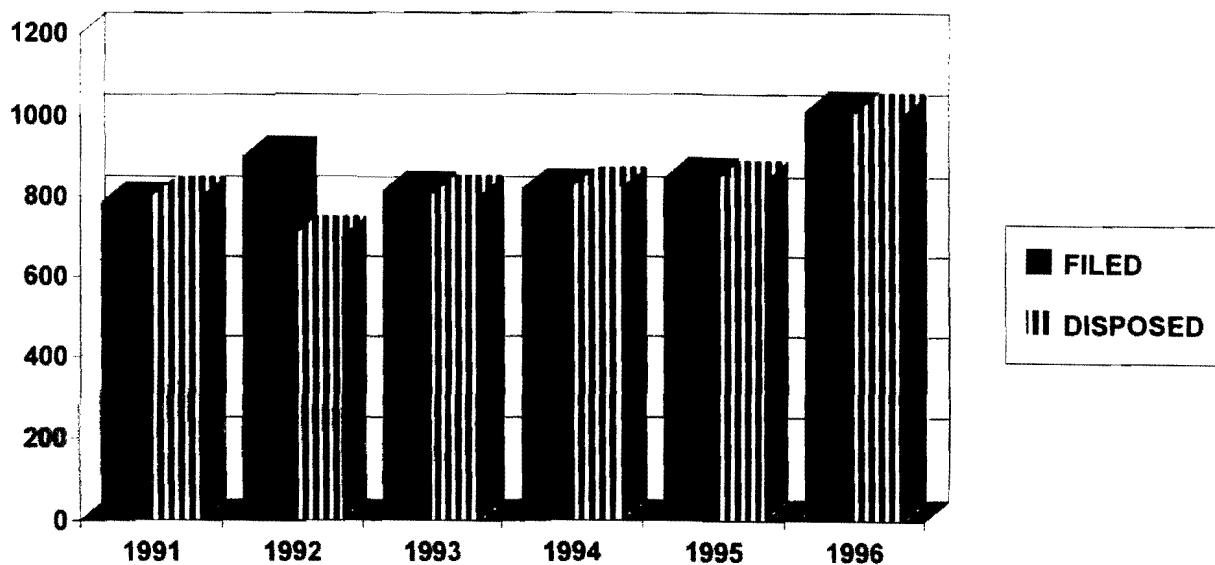


Chart 4 shows that despite the increase in civil cases disposed (Chart 3), the number of civil cases pending is now the highest it has been since 1991. It should be noted that progress was made in reducing the number of pending civil cases in the Plan years of 1994 and 1995. However, the increase in civil cases pending, beginning in 1996, is partially explained by the steady increase in civil cases filed (Chart 3), and the continued increase in the number of criminal cases filed (Chart 20), resulting in less judicial time for the civil docket.

CHART 4

CIVIL CASES PENDING END OF CALENDAR YEARS

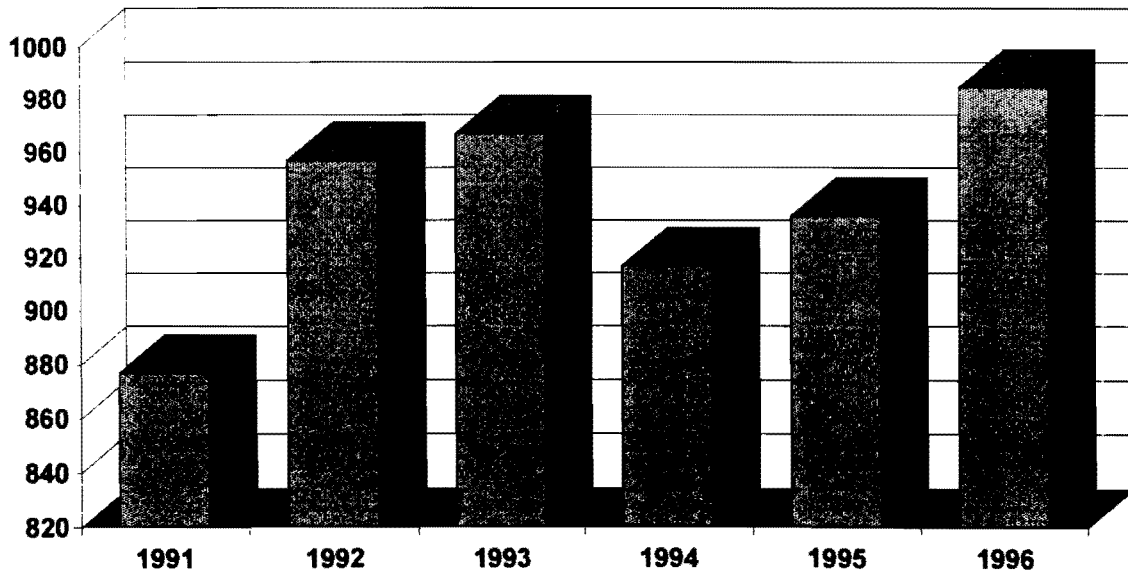


Chart 5 shows that the number of civil cases pending for three years or more has decreased significantly during the Plan years of 1994, 1995 and 1996. Unfortunately, Chart 5 also shows that the gains made during those years are being lost in 1997 as the number of civil cases pending three years or more are on the rise, beginning in 1997.

CHART 5

**TOTAL CIVIL CASES PENDING THREE YEARS OR MORE
BY CALENDAR YEAR**

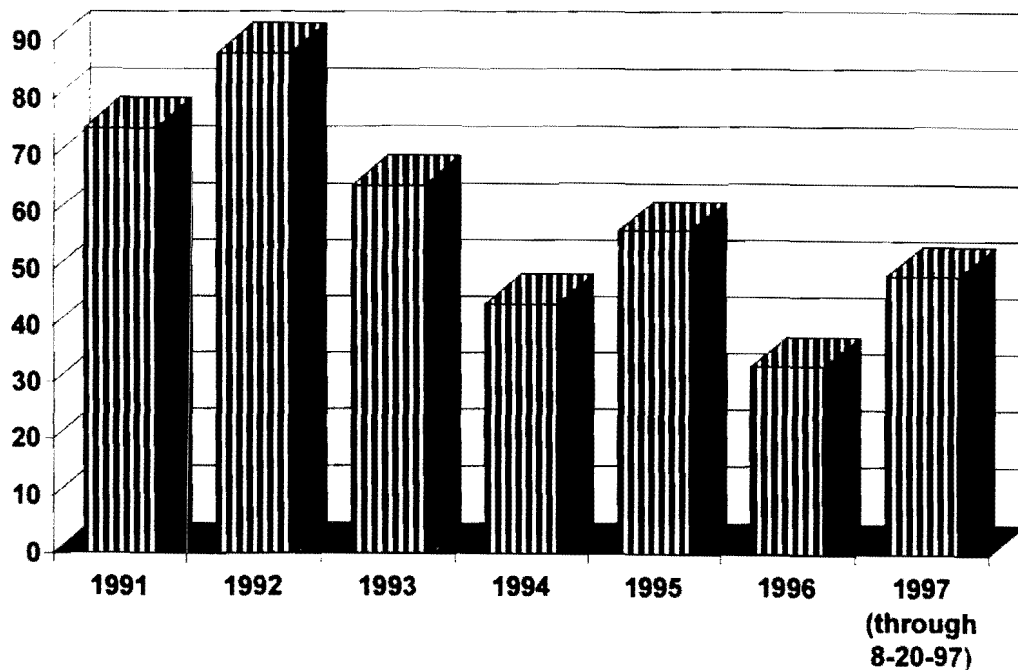
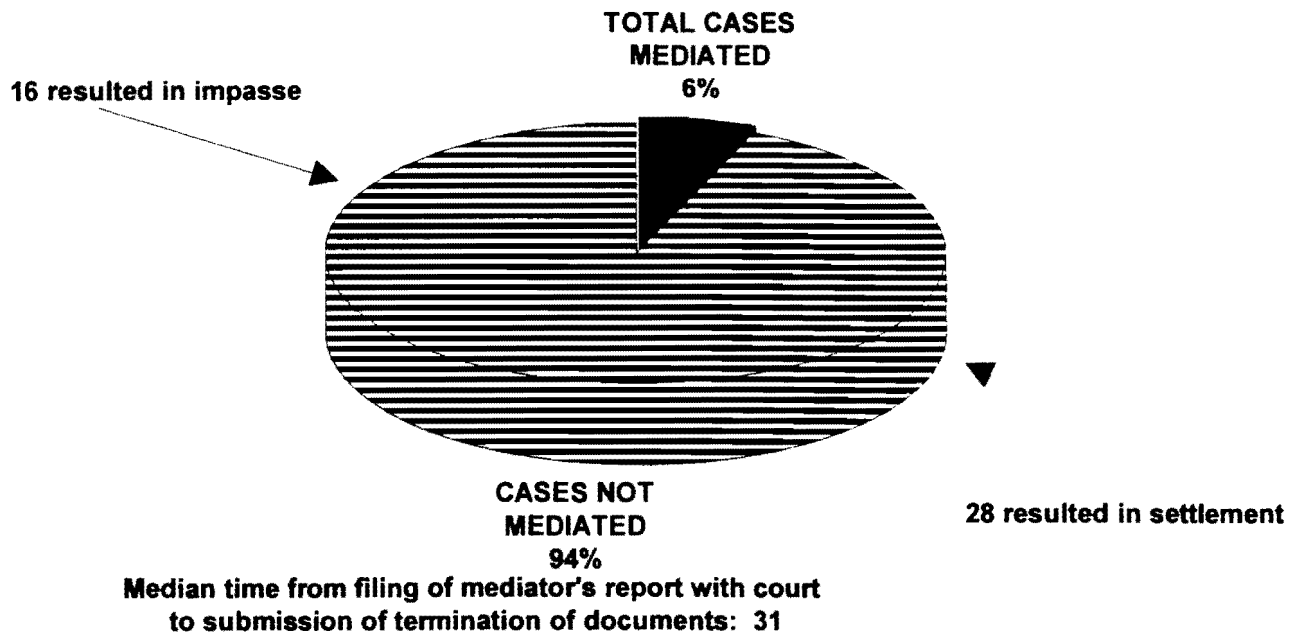


Chart 6 shows the effect that mandatory mediation has had on the civil docket. The Plan was amended in 1994 to require that all civil cases filed after January 1, 1995, proceed to some form of Alternative Dispute Resolution (ADR) program. The ADR program by choice, and by court order if counsel failed to stipulate to an ADR program, is mediation. Chart 6 shows that out of the 114 cases mediated through August of 1997, 28 cases or 25% of these cases settled.

CHART 6

**TOTAL CIVIL CASES FILED AND TERMINATED
SINCE IMPLEMENTATION OF MANDATORY MEDIATION
(January 1, 1995 through August 19, 1997)**



Charts 7, 8 and 9 assist in determining what effect the Plan has had on addressing the issue of delay in civil litigation in the district. Delay is measured in terms of the median time in months it takes the court to dispose of cases from the date of filing to the date of disposition (Chart 9), and in terms of life expectancy of a civil case (Charts 7 and 8).

Life expectancy is a familiar way to answer the question: "How long is a newborn likely to live?". Life expectancy can be applied to anything that has an identifiable beginning and an end and therefore is readily applied to cases filed in the court.

A second measure, Indexed Average Lifespan (IAL), permits comparison of the lifespan of the court's cases to that of all other district courts over the past ten years. The IAL is indexed at a value of 12 because the national average disposition time is 12 months. A value of 12 thus represents an average speed of case disposition, shown on Charts 7 and 8 as IAL Reference. Values below 12 indicate that the court disposes of cases faster than the national average, and values above 12 indicate that the court disposes of its cases more slowly than the national average.

Chart 7 shows the life expectancy and indexed average lifespan for ALL civil cases for the past ten years. The life expectancy for all civil cases dropped below the national average of 12 months beginning in 1995, showing that the court disposed of its civil cases faster than the national average.

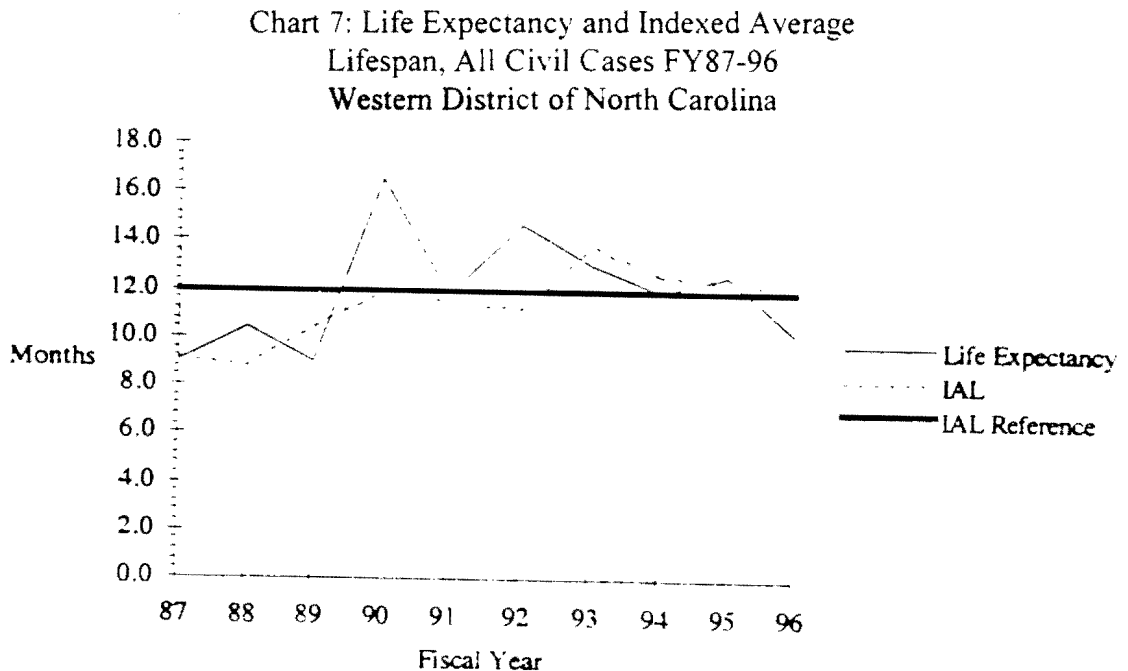


Chart 8 shows the life expectancy and indexed average lifespan of **Type II civil cases** over the last ten years. The life expectancy for Type II civil cases has been greater than 12 months for every year except 1996. Therefore, it takes this court longer than the national average of 12 months to dispose of Type II civil cases. This is due to the more complex nature of Type II cases.

Chart 8: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases FY87-96
Western District of North Carolina

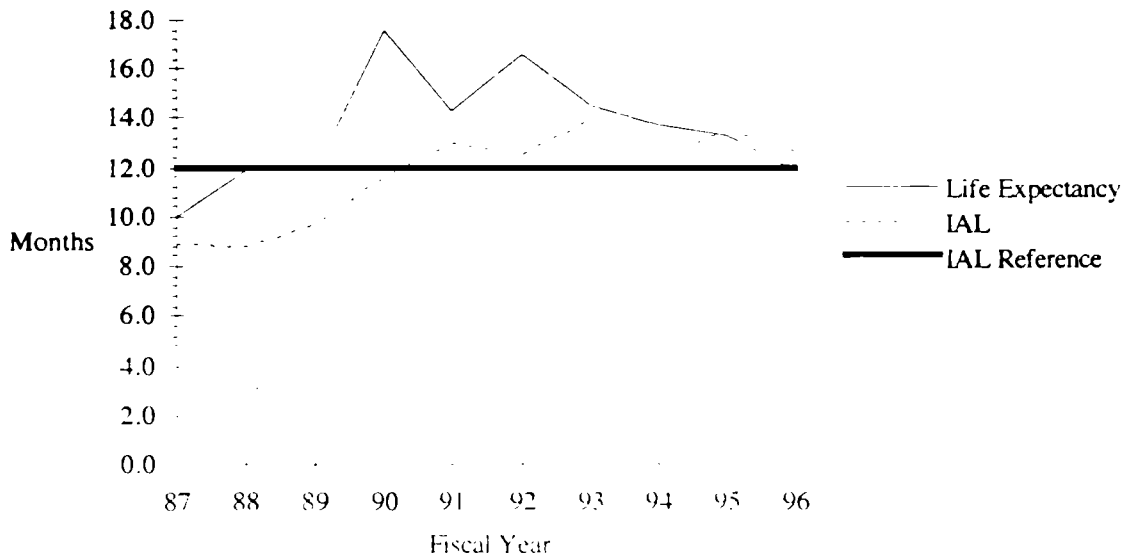


Chart 9 shows that the median time in months to dispose of civil cases in 1996 was 12 months from the time of filing to disposition, the longest median time in either the pre-Plan years of 1991, 1992 and 1993 or the Plan years of 1994 and 1995. Chart 9 also shows that the median time for the disposing of criminal cases has also increased.

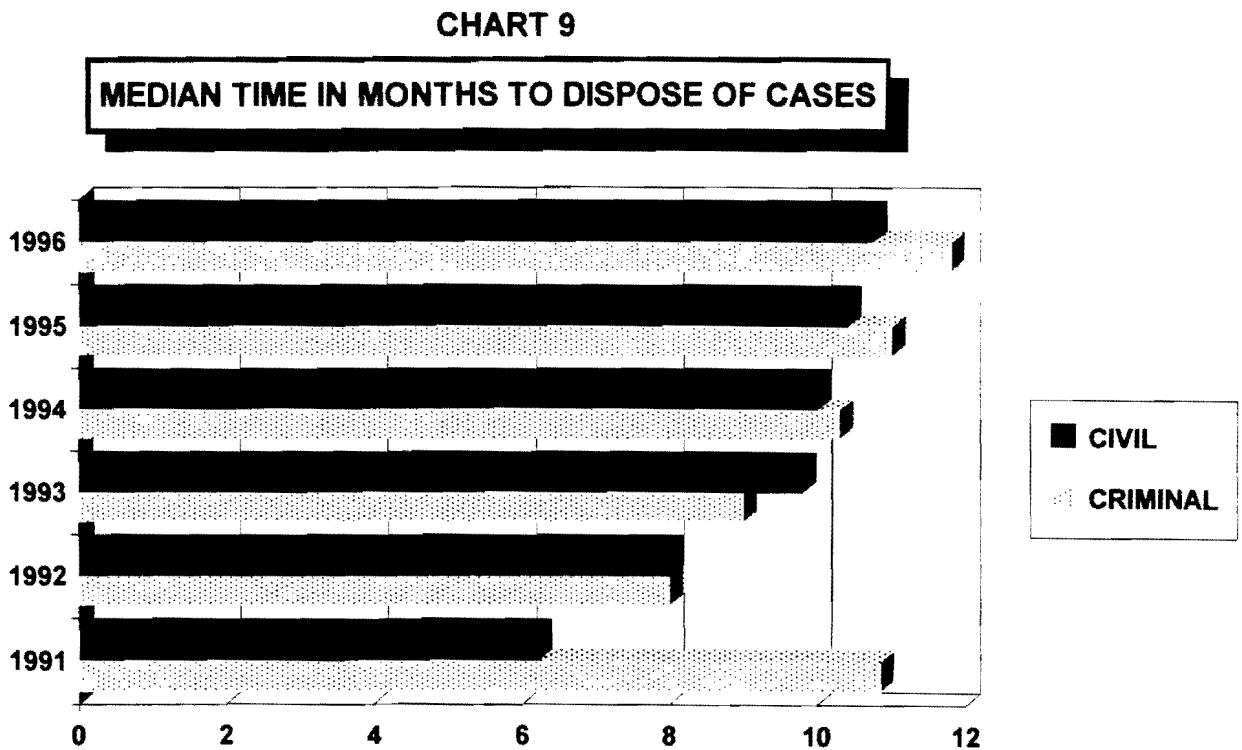


Chart 10 shows the percentage of civil cases terminated at specific stages of civil case processing. Chart 10 also shows the percentage of the cases which were disposed at each stage as well as what part of that percentage were cases which were 3 or more years old at time of disposition.

Chart 10: Cases Terminated in FY94-96, By Termination Category and Age
Western District of North Carolina

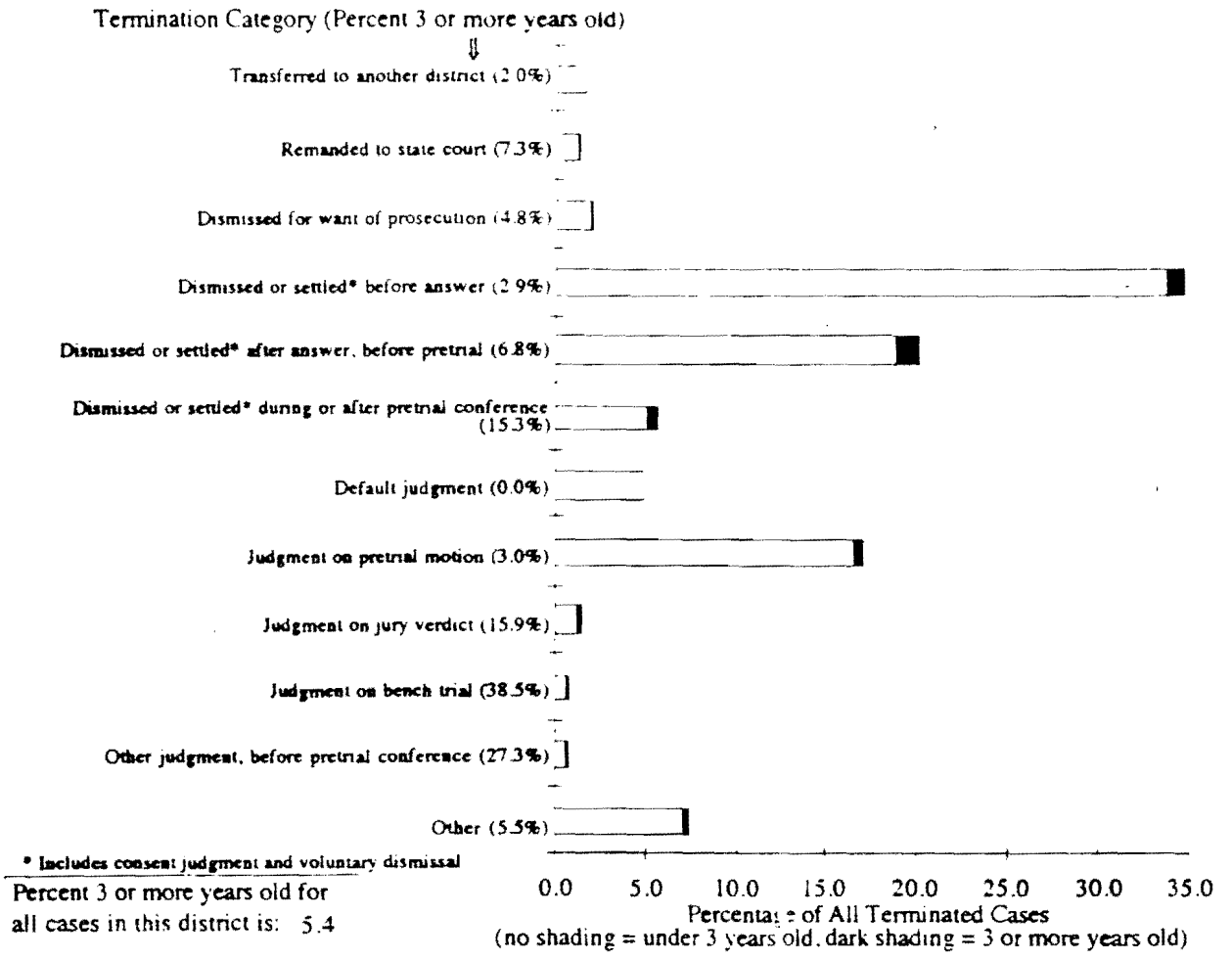


Chart 11 shows terminations by major case type and shows within each type the percentage of cases that were three years old or more at termination.

Chart 11: Cases Terminated in FY94-96, By Case type and Age
Western District of North Carolina

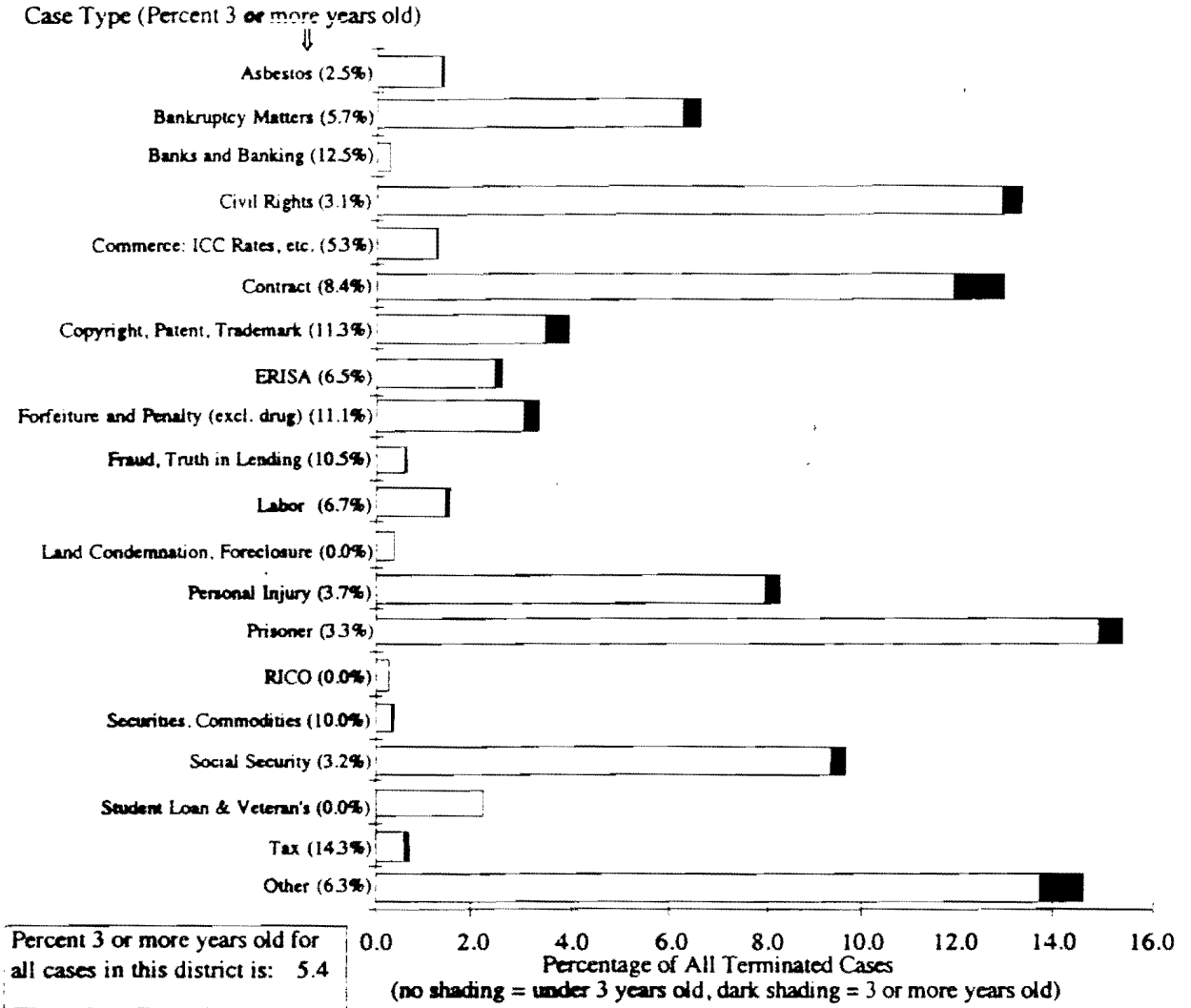


Chart 12 shows that, unfortunately, the number of civil trials decreased during the Plan years of 1994, 1995 and 1996.

Chart 12: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, FY91-96
Western District of North Carolina

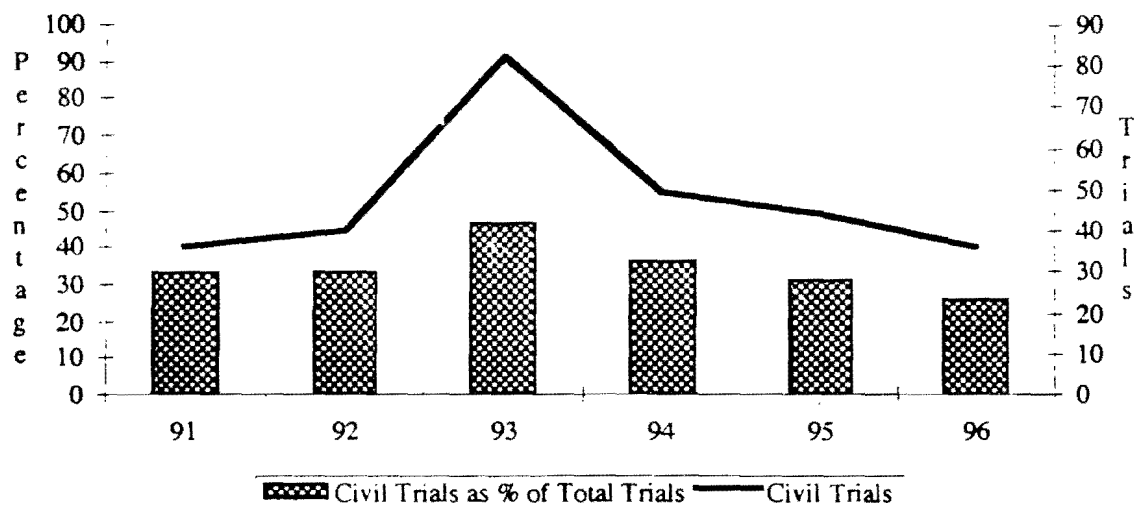


Chart 13 shows that the number of **criminal** jury trials held increased in the Plan years of 1994, 1995 and 1996, partially explaining the decrease in the number of civil jury trials.

CHART 13

TOTAL TRIALS HELD BY CALENDAR YEAR

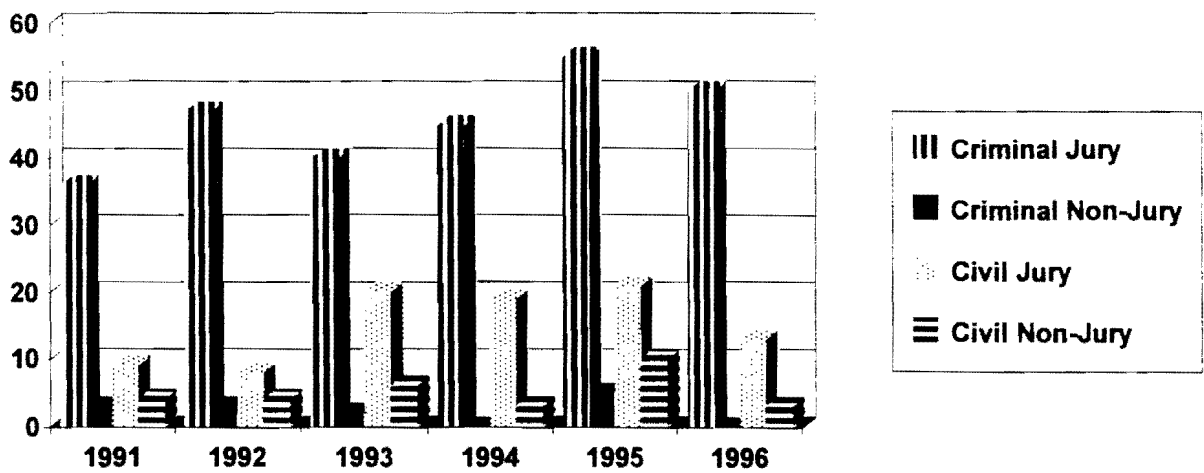
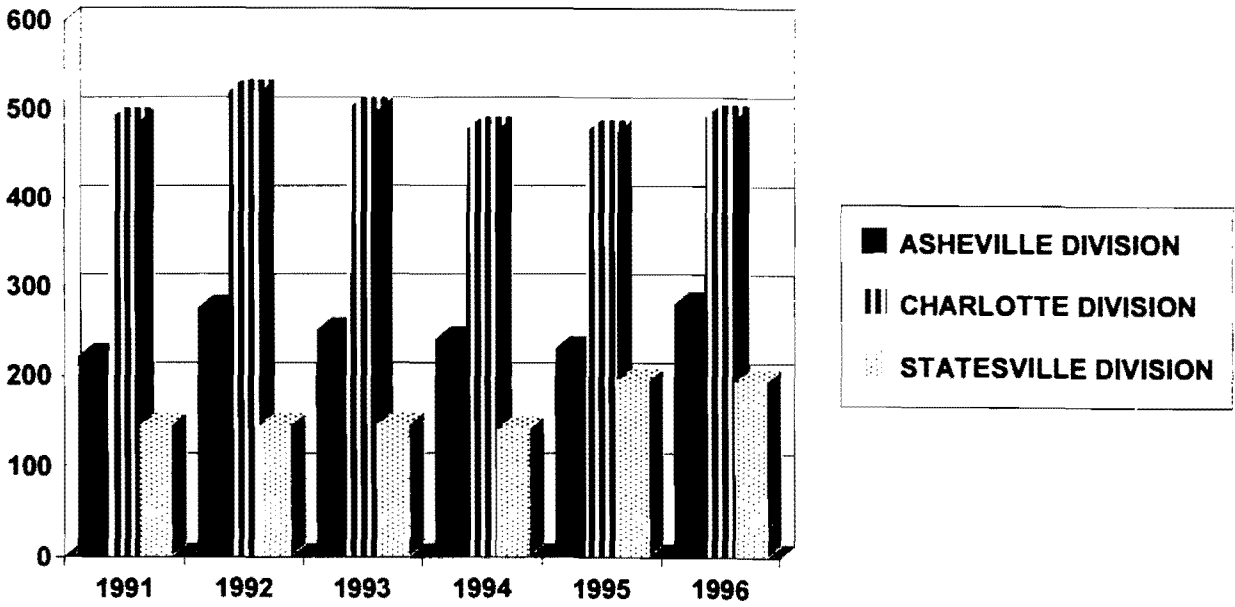


Chart 14 shows that the majority of the civil cases continue to be filed in the Charlotte division at a rate almost twice as great as any other division.

CHART 14

**TOTAL CIVIL CASES PENDING END OF CALENDAR YEARS
BY DIVISION**



Charts 15, 16 and 17 show the number of civil cases filed and disposed by division.

CHART 15

**CIVIL CASES FILED AND DISPOSED OF BY CALENDAR YEAR
CHARLOTTE DIVISION**

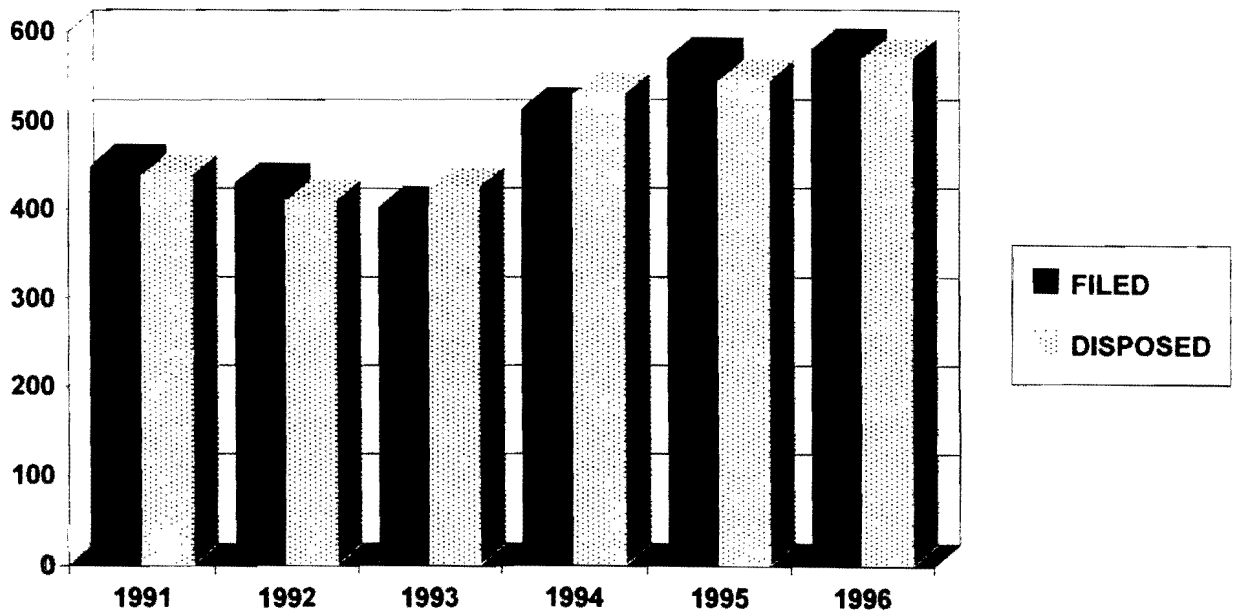


CHART 16

**CIVIL CASES FILED AND DISPOSED OF BY CALENDAR YEAR
ASHEVILLE DIVISION**

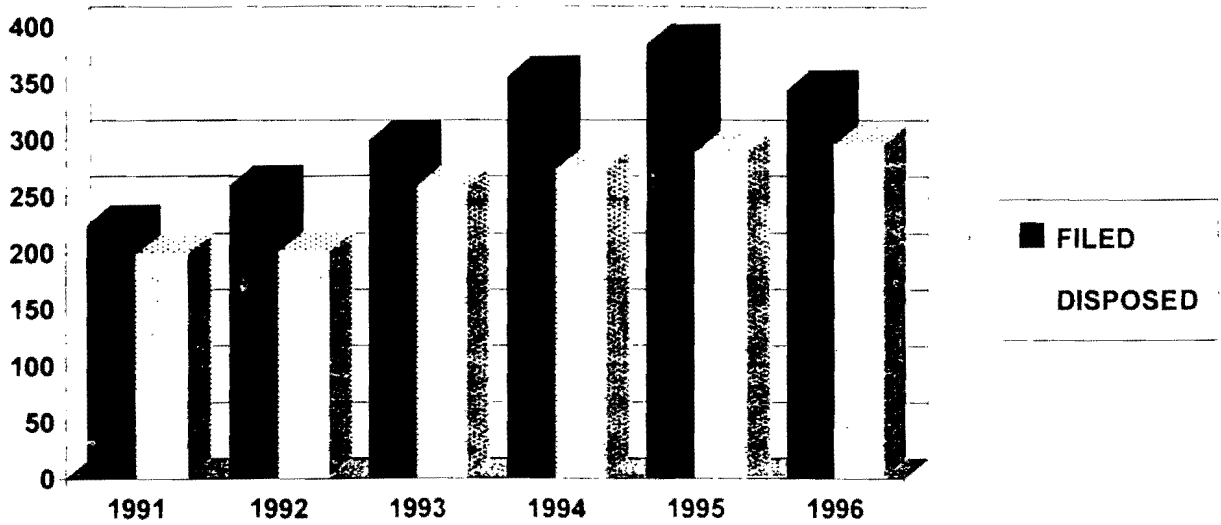
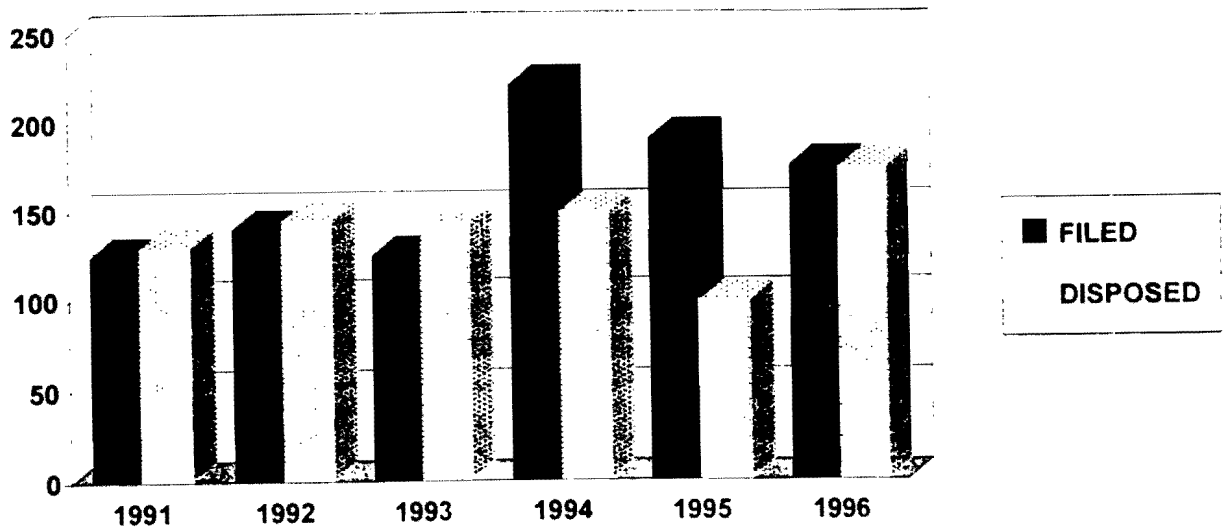


CHART 17

**CIVIL CASES FILED AND DISPOSED OF BY CALENDAR YEAR
STATESVILLE DIVISION**



B. Condition of the Criminal Docket

The Act recognizes that the criminal caseload of each district limits the resources available for the court's civil caseload. The Speedy Trial Act mandates that criminal proceedings occur within specified time limits, which interfere with the prompt disposition of civil matters.

The trend of increased criminal filings are shown in the following charts. It is important to distinguish between criminal cases and criminal defendants. The Western District of North Carolina averages 2.2 defendants per felony case, one of the highest number of defendants per case in the country. Therefore, the statistics provided for the assessment of the criminal docket include charts showing defendants.

The original Advisory Group noted in the Plan that the federal government's "War on Drugs" contributed significantly to the dramatic increase in this court's criminal docket. Unfortunately, the following charts document that the number of criminal cases filed in this district continue to rise in number and continue to consist primarily of drug cases.

Chart 18 shows that the number of criminal defendant filings and the percentage of those filings which were drug defendants. At least 50% of all defendants were drug defendants during the Plan years of 1994, 1995 and 1996. This is a significant change from the pre-Plan years when less than 50% of all defendants were drug defendants.

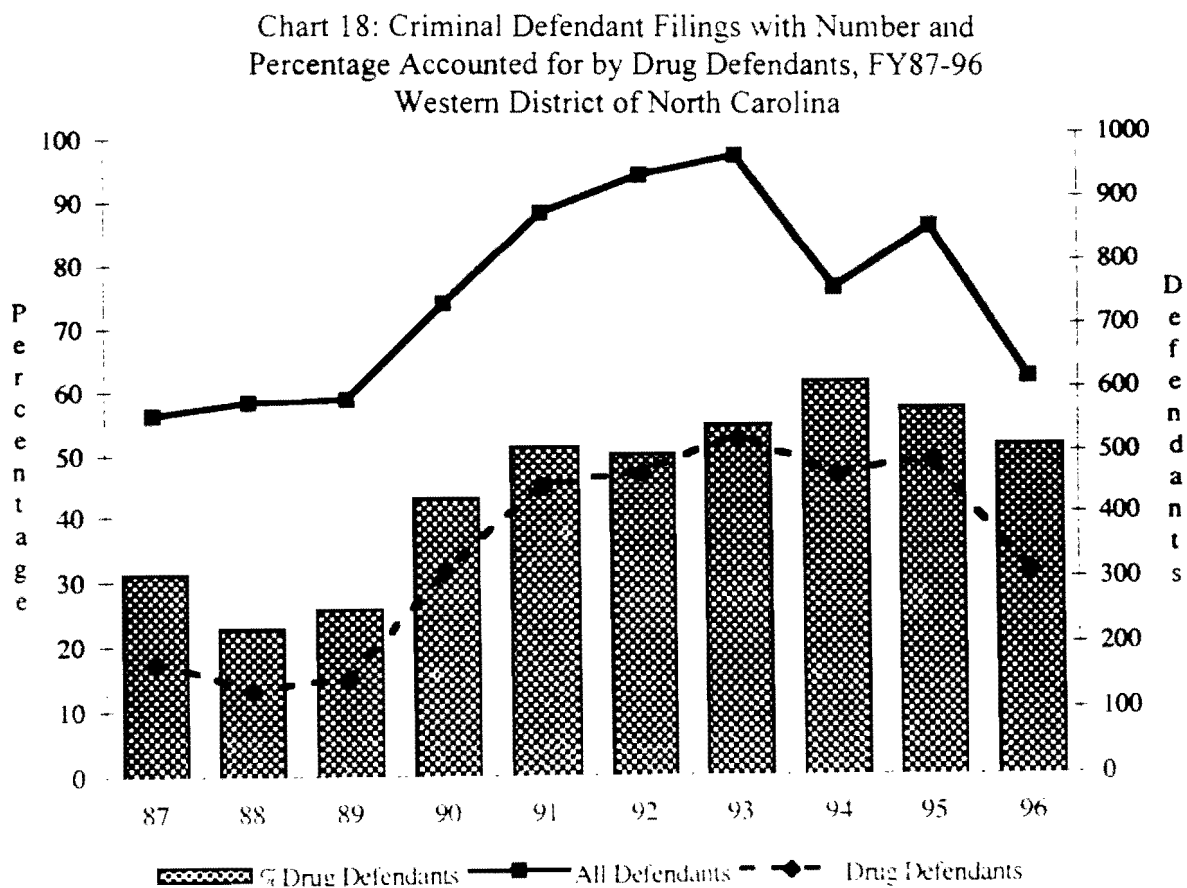
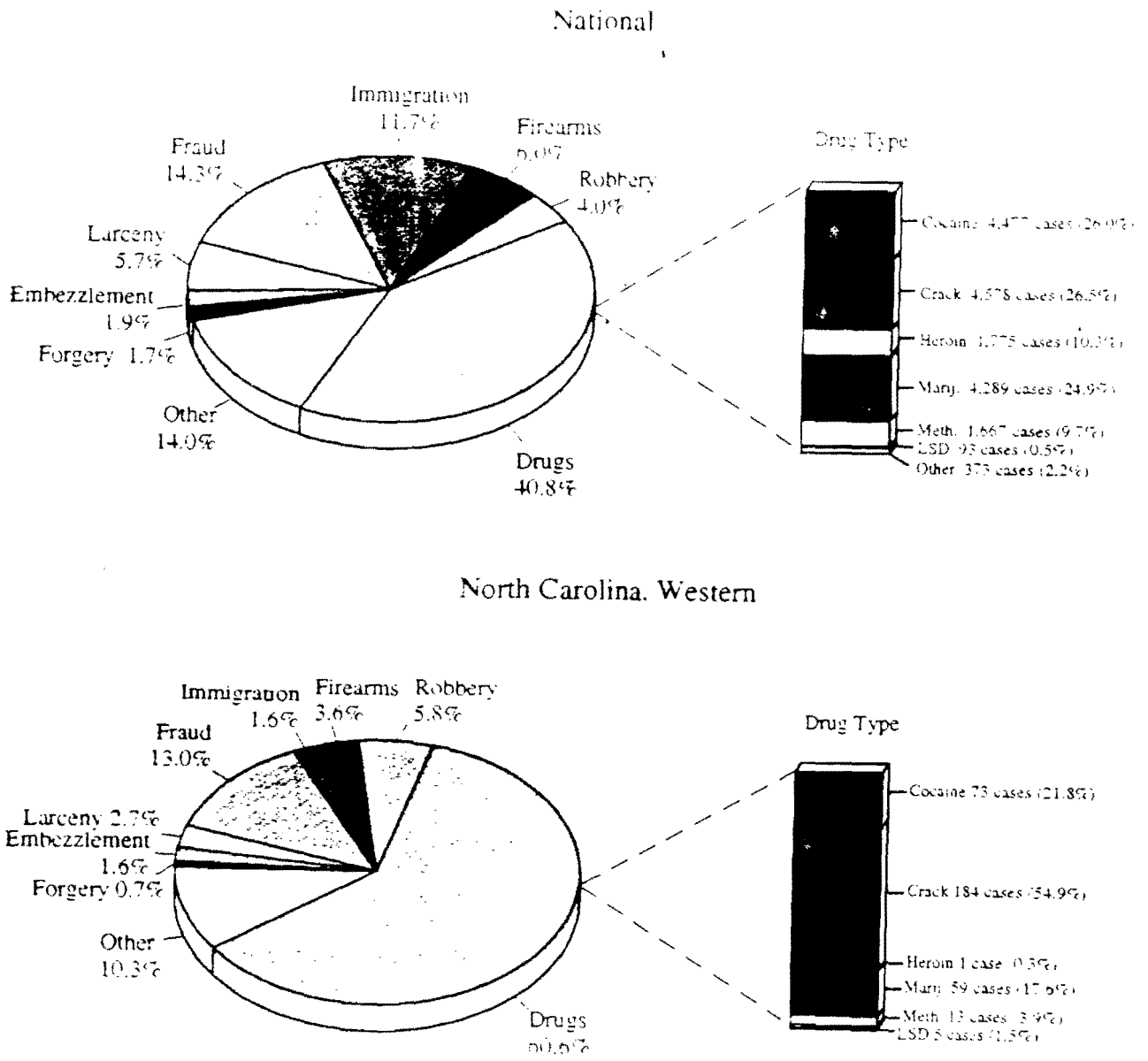


Chart 19, provided by the United States Sentencing Commission, shows that **60.6%** of this court's criminal docket consists of drug cases. The national average for a court's criminal docket consisting of drug cases is only **40.8%**.

Chart 19

GUIDELINE DEFENDANTS SENTENCED BY PRIMARY OFFENSE CATEGORY
(October 1, 1995, through September 30, 1996)



Of the 42,436 guideline cases, 75 cases with missing primary offense category were excluded. Of the 17,211 drug cases (including trafficking, etc.), 14 communication facilities and simple possession drug cases with missing drug type were excluded from the bar chart.

Chart 20 shows the number of criminal cases filed and disposed in both the pre-Plan years of 1991, 1992 and 1993, and the Plan years of 1994, 1995 and 1996.

CHART 20

CRIMINAL CASES FILED AND DISPOSED OF BY YEAR

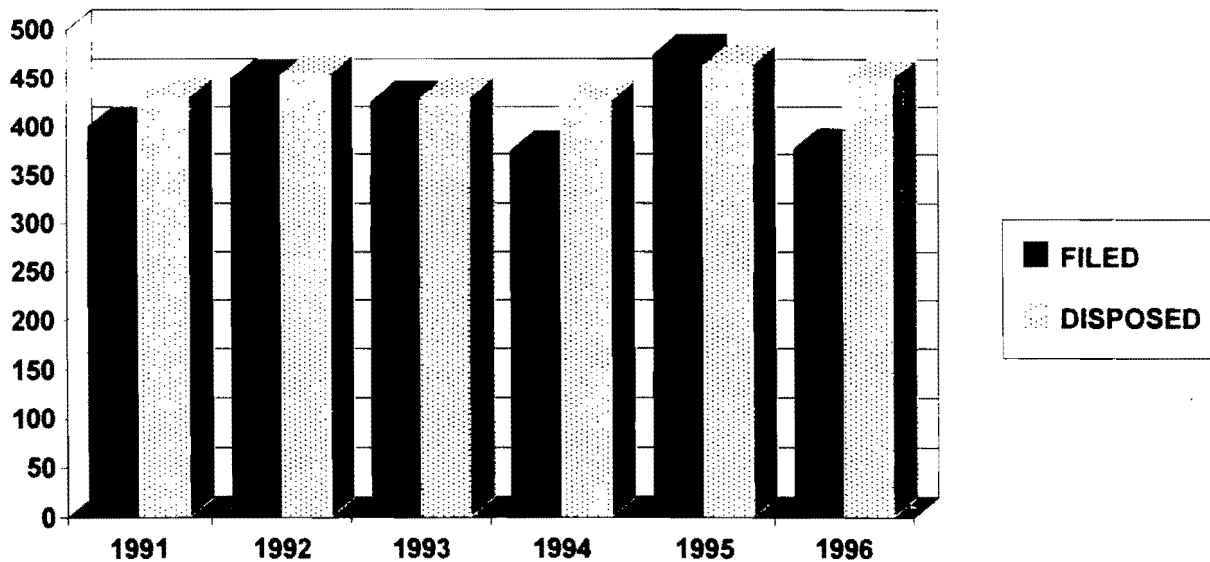


Chart 21 shows that the number of criminal cases pending in the Charlotte division is more than twice the number of cases pending in any other division.

CHART 21

**TOTAL CRIMINAL CASES PENDING END OF CALENDAR YEARS
BY DIVISION**

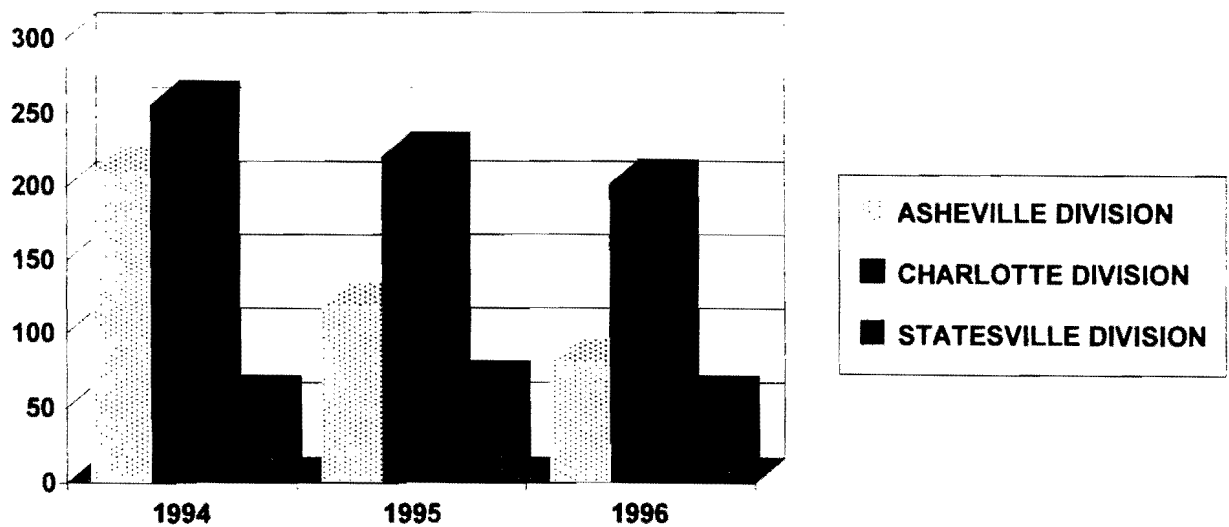
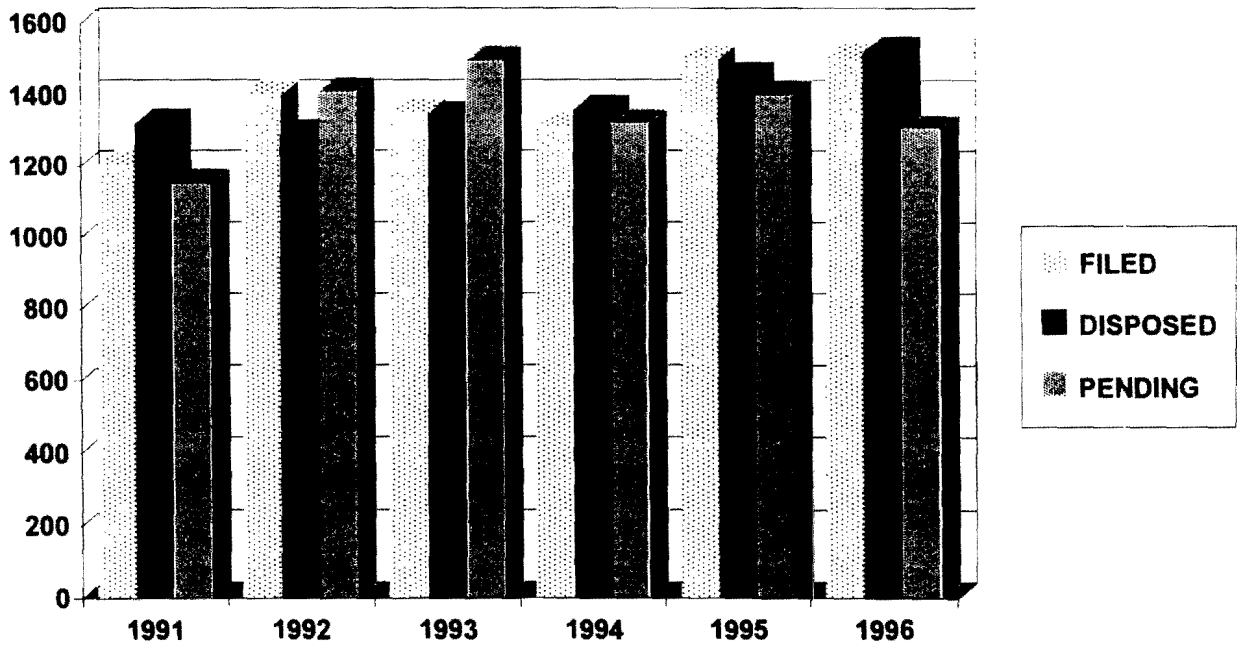


Chart 22 shows the total number of cases filed, disposed and pending for the pre-Plan years of 1991, 1992 and 1993, and the Plan years of 1994, 1995 and 1996. Total cases disposed increased each year of the Plan years, exceeding cases disposed for each year of the pre-Plan years. Cases disposed in 1994 and 1996 were greater than the number of cases filed for those years, contributing to the subsequent decrease in the number of total cases pending.

CHART 22

TOTAL CASES FILED, DISPOSED OF AND PENDING BY YEAR



B

APPENDIX B

RAND RESEARCH BRIEF

Research Brief

RAND

❖ *Institute for Civil Justice*

Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management Under the CJRA

The Civil Justice Reform Act (CJRA) of 1990 is rooted in more than a decade of concern that cases in federal courts take too long and cost litigants too much. In the late 1980s, several groups began formulating reform proposals. One of these—the Task Force on Civil Justice Reform, initiated by Senator Joseph Biden and convened by the Brookings Institution—produced a set of recommendations that ultimately led to legislation.

The new legislation, the CJRA, required each federal district court to assess its dockets and to develop a plan for civil-case management to reduce costs and delay. To establish an empirical basis for assessing new procedures adopted under the Act, the legislation also provided for an independent evaluation. Ten district courts, denoted “pilot” courts, were required to adopt plans that incorporated certain case management principles. Expectations were high that the implementation of those principles would have substantial effects.

The mandated evaluation, which focused on the consequences of the pilot program, was conducted by RAND’s Institute for Civil Justice (ICJ). In a comprehensive five-year effort, the ICJ research team, led by James Kakalik, examined the effects of the CJRA’s case manage-

ment principles on time to disposition, costs, and participants’ satisfaction and views of fairness.

To preview the main findings of the evaluation:

- The CJRA pilot program as implemented had little effect on time to disposition, litigation costs, satisfaction, or views of fairness.
- Some case management procedures—for example, certain types of alternative dispute resolution—have no major effects on cost and delay.
- However, a package of procedures containing early judicial management, early setting of a trial date, and shorter discovery cutoff could reduce time to disposition by 30 percent, with no change in direct litigation costs, satisfaction, or perceived fairness.

OVERVIEW OF THE CJRA EVALUATION

The CJRA’s pilot program required ten federal district courts to incorporate certain case management principles into their plans and to consider incorporating certain other case management techniques. To permit comparisons, the evaluation included ten other districts; these districts were not required to adopt any of the case

RAND research briefs summarize research that has been more fully documented elsewhere. This research brief describes work done in the Institute for Civil Justice and published as Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management Under the Civil Justice Reform Act, by J. S. Kakalik, T. Dunworth, L. A. Hill, D. McCaffrey, M. Oshiro, N. M. Pace, and M. E. Vaiana, RAND MR-800-ICJ, 1996, 51 pp., \$3.00, ISBN: 0-8330-2472-8; Implementation of the Civil Justice Reform Act in Pilot and Comparison Districts, by J. S. Kakalik et al., RAND MR-801-ICJ, 1996, 283 pp., \$20.00, ISBN: 0-8330-2455-8; An Evaluation of Judicial Case Management Under the Civil Justice Reform Act, by J. S. Kakalik et al., RAND MR-802-ICJ, 1996, 386 pp., \$20.00, ISBN: 0-8330-2474-4; and An Evaluation of Mediation and Early Neutral Evaluation Under the Civil Justice Reform Act, by J. S. Kakalik et al., RAND MR-803-ICJ, 1996, 492 pp., \$20.00, ISBN: 0-8330-2475-2. These documents are available from National Book Network (Telephone: 800-462-6420; FAX: 301-459-2118) or from RAND on the Internet (order@rand.org). RAND is a nonprofit institution that helps improve public policy through research and analysis; its publications do not necessarily reflect the opinions or policies of its research sponsors.

management principles or techniques. Neither the pilot nor the comparison districts had the option of not participating in the evaluation.

The pilot and comparison districts, which are comparable and represent the full range of districts in the United States, encompass about one-third of all federal judges and one-third of all federal case filings.

The pilot districts were required to implement their plans by January 1992; the other 84 districts, including the comparison districts, could implement their plans any time before December 1993.

The case management principles and techniques mandated in the pilot program fall into four basic categories:

Differential case management: Tailoring the type of management to the needs of the case, rather than processing every case the same way.

Early active judicial management: Having the judge play an active role rather than leaving management of the case to the lawyers.

Judicial management of discovery: Having the judge set time limits and perhaps other controls on the process by which each side discovers information about the other side's case.

Referral of appropriate cases to nonbinding alternative dispute resolution such as arbitration, mediation, and neutral evaluation to supplement the normal court processes.

To evaluate the effects of these principles, the ICJ team compiled the largest and most comprehensive database on the federal courts to date. Selecting a random sample of more than 12,000 cases, they followed them from filing to termination. They surveyed lawyers, litigants, and judges associated with those cases, and received responses from judges on about 3,000 cases, from about 10,000 lawyers, and from about 5,000 litigants. They also used data from court databases and records; from districts' plans, rules, and documents; and from time sheets reflecting a judge's work on each case. Much of this information had never before been available for independent analysis.

The team used multivariate statistical analyses to estimate the relationship between case management and time, cost, satisfaction, and perceptions of fairness. They also interviewed hundreds of people to place the study findings in the context of how the court system operates.

HOW THE COURTS REACTED TO THE CJRA

The CJRA called for the creation of advisory groups in each district. The groups' mandate was to assess the condition of the civil dockets, identify the principal causes of delay and excess cost, and make recommendations, which the court was free to accept or reject, for dealing with these problems. The advisory groups were also to provide input to an annual reassessment for each district.

In general, the advisory groups approached their mission with dedication and conscientiousness, and most courts adopted their advisory group's recommendations.

All of the pilot and comparison districts created plans that complied with the loosely worded statutory language of the Act. But the amount of real change varied widely. Some districts did not plan major changes, and, in some districts, planned changes were not fully implemented. Thus, if the spirit of CJRA was experimentation and change, then the districts met that spirit to varying degrees.

Table 1 illustrates this point with respect to differential case management. There are two principal approaches to differential case management, both of which comply with the language of the CJRA. In the **judicial discretion** approach, the judge individually tailors management for each case. In the **track** approach, each case is assigned to a specific management track such as standard or complex; the type of management that the case receives is at least partly determined by the track assignment.

Table 1
Pilot Districts Did Not Fully Implement
Differential Case Management

Stage	Judicial Discretion Approach	Track Approach
Before CJRA (12/91)	10 districts	0 districts
Pilot district plans	4 districts	6 districts
Implementation of plans	4 districts - 5 districts de facto	1 district

Before CJRA, all ten pilot districts used the judicial discretion approach. Subsequently, six districts adopted plans that incorporated tracking. However, only one of them implemented the plan with a substantial volume of cases; the remaining five actually retained the judicial discretion approach in managing the vast majority of their general civil cases.

Interviews with judges and lawyers suggested some reasons a tracking system was not successfully implemented. They include the difficulty in determining the correct track assignment for most civil cases if only the objective data available at case filing are used, and judges' desire to tailor case management to the needs of specific cases and to their own style of management.

EFFECTS OF THE CJRA PILOT PROGRAM

As implemented, the CJRA's package of case management policies had little effect on time, costs, or attorneys' satisfaction or views of fairness. This assessment is based on statistical analysis of cases in the pilot and comparison districts, on the results of judicial time studies, and on the survey of judges about how they managed cases before and after CJRA.

Figures 1 and 2 illustrate these findings.

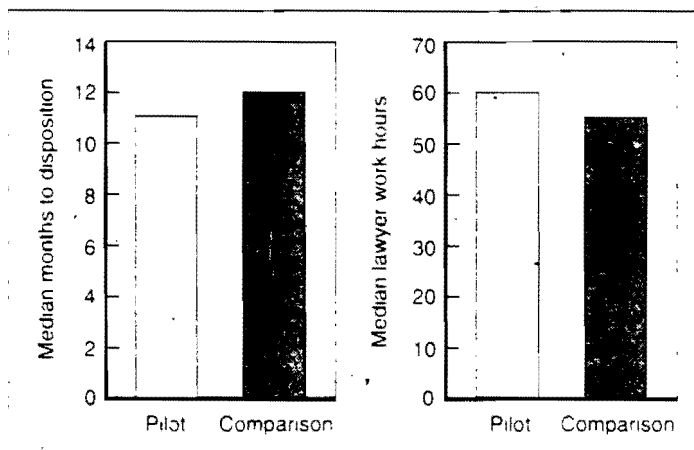


Figure 1—Pilot Program Had No Significant Effects: Time and Cost

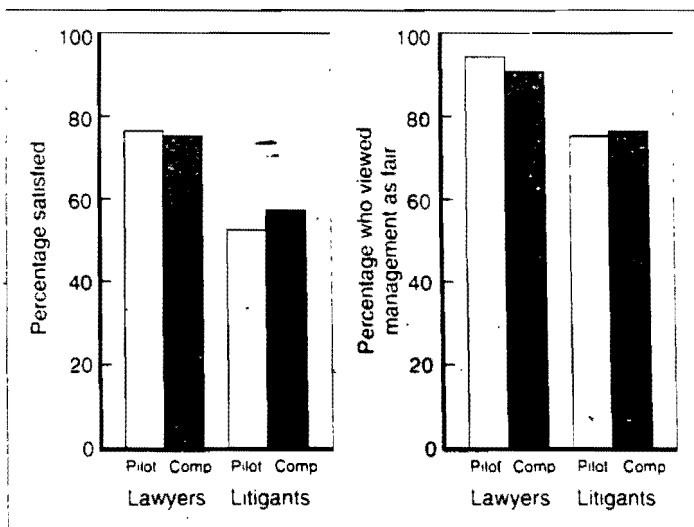


Figure 2—Pilot Program Had No Significant Effects: Satisfaction and Views of Fairness

Figure 1 shows median months to disposition and median lawyer work hours. The small differences depicted in Figure 1 are not statistically significant. Figure 2 shows a similar pattern of results for participants' satisfaction and views of fairness.

An analysis of the time judges spent on cases sheds further light on the failure of the CJRA pilot program—as implemented—to have much of an effect. The time sheets that judges filled out for each case in the sample revealed that judges did not change the amount of time they spent on civil cases, on average, after CJRA. In addition, judges overwhelmingly said that they did not manage cases any differently after CJRA than before.

However, one aspect of CJRA appears to have had an effect. The Act requires a semiannual report, available to the public, disclosing how many “old” cases each judge has. Although the total number of pending cases has been rising since the CJRA was enacted, the number of 3-year-old cases pending has been declining since this public reporting began.

WHY THE CJRA PILOT PROGRAM HAD LITTLE EFFECT

Why didn't the CJRA generate much change in most districts? There are at least three reasons:

- First is the Act itself, which was loosely worded to allow districts to experiment with different forms of case management. However, that wording also allowed many districts and judges to interpret their prior practices as complying with the Act.
- Second, the pilot program incorporated in the Act was viewed by many as an attempt by Congress to mandate judges' behavior; this view gained credence from the fact that the driving force behind the legislation was a task force that did not include any active judges. (It did include four former federal district court judges.) Such perceptions did not foster implementation. Some judges and others viewed the congressional mandates as curtailing judicial independence accorded judges by the Constitution. Others viewed the Act's procedural innovations as placing undue emphasis on speed and efficiency at the possible expense of justice.
- Finally, the Act lacked effective mechanisms for ensuring that the policies adopted in district plans were carried out.

EFFECTS OF CASE MANAGEMENT POLICIES

Despite the fact that the pilot program, as implemented, had little overall effect, the wide variation in how individual judges manage cases made it possible to evaluate the effect of specific case management policies, using detailed data from the study's sample of more than 12,000 cases. And the analysts found that what judges do to manage cases does indeed matter. Among the procedures assessed, three warrant particular attention: early judicial case management, early setting of a trial date, and reducing the time to discovery cutoff.

Early Judicial Management

The case-level analysis clearly showed that early judicial management significantly reduced time to disposition, lowering the median time by about 1.5 months. (In this instance, *early judicial case management* is defined as beginning management within six months of the case's being filed. Alternative definitions of *early* produced similar results.)

The component of early management that had the biggest effect was setting the trial date early. Indeed, early management that includes setting the trial date early reduces median time by an additional 1.5 to 2 months. Figure 3 illustrates the effect of this component of early management.

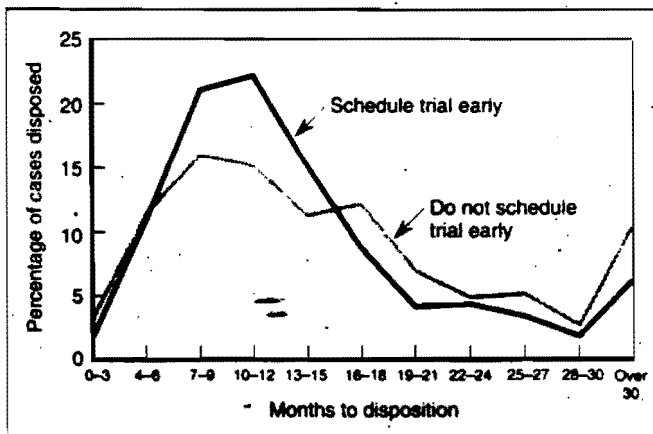


Figure 3—Early Judicial Management That Includes Setting the Trial Date Early Further Reduces Time to Disposition

However, the study also found that early judicial management significantly *increases* the direct cost of litigation, thus debunking the myth that cutting time to disposition necessarily cuts costs. As Table 2 illustrates, cases receiving early management have costs per litigant—legal fees and expenses—that are \$3,000 higher and lawyer work hours that are 35 hours longer than they are for other cases.

Table 2

Early Judicial Management Increases Costs

Measures of Cost	Early	Not Early
Costs per litigant (median)	\$12,000	\$9,000
Lawyer work hours (median)	95	60

Why would litigation costs rise if time to disposition declines? The lawyers appear to do much the same work, but in a shorter period. And they also assume some extra tasks that are precipitated by judicial management—for example, extra meetings between lawyers and parties, extra documents to submit to the court, travel, time spent meeting with the judge, etc. In addition, once the judge sets a discovery cutoff date, many lawyers feel compelled to begin discovery, even though the case might otherwise be settled soon.

In contrast to its effects on time and costs, early judicial management does not significantly affect lawyers' satisfaction with case management or their views of its fairness.

Judicial Control of Discovery

One of the components of judicial control of discovery appears to be a win-win situation: Shortening the median time to discovery cutoff from six to four months

- reduces time to disposition by 1.5 months (about 10 percent)
- reduces lawyer work time by 17 hours (about 25 percent)
- does not change lawyer satisfaction or views of fairness.

Another component of discovery control failed to produce either the benefits that advocates hoped for or the dire results that critics had predicted: Early mandatory disclosure neither significantly affected time or costs nor generated an explosion of ancillary motions.

A Note of Caution

Successful use of a case management procedure by some judges on some cases in some districts does not necessarily mean that the procedure will be equally effective if all judges are asked to implement it for all cases. Nevertheless, practices that are effective among judges who currently use them are good candidates for wider implementation. The estimated effects of the policies described above should be viewed as an upper bound on

what might be anticipated if the procedures were implemented more widely.

Alternative Dispute Resolution

The CJRA evaluation assessed the effects of six different alternative dispute resolution (ADR) programs that included mediation and early neutral evaluation. The study found that, once litigation had begun, referral to ADR was not a panacea, nor was it detrimental. Neither time nor costs nor lawyer views of satisfaction or fairness changed significantly as a result of referral to any of these programs. The finding that ADR had no major effect on litigation cost or delay is generally consistent with the results of prior empirical research on court-related ADR.

The total costs to courts of administering the ADR programs in the districts studied ranged from \$130 to \$490 per case (1995 dollars). Program start-up costs to district courts ranged from \$10,000 to \$69,000 (1995 dollars), depending on whether the advisory group or the court did most of the start-up work and whether the district provided training for ADR providers.

The only statistically significant ADR finding pertains to outcomes: Cases referred to ADR were more likely to have a monetary outcome. ADR is a process intended to facilitate settlement, and in a settlement, money is likely to change hands. In addition, fewer cases are dropped without payment or decided by a judge on the basis of motions.

Participants in these ADR programs—both lawyers and litigants—liked them. However, many lawyers and ADR providers thought that the ADR sessions were being held before the parties were ready to settle.

Magistrate Judges

The CJRA included a technique called “other features,” intended to give districts some latitude in their plans. One case management approach included in this category is the increased use of magistrate judges in the civil pretrial process.

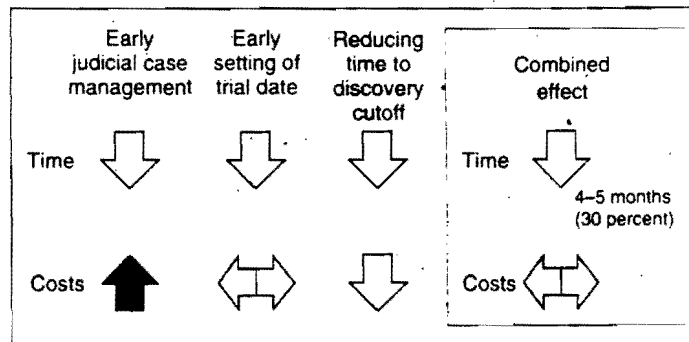
The evaluation showed that substituting magistrate judges for district judges in pretrial case management did not significantly affect time, costs, or attorneys’ views of fairness. However, lawyers were significantly more satisfied when magistrate judges managed the pretrial process, perhaps because the lawyers found them more accessible.

IMPLICATIONS OF THE CJRA RESULTS

Two broad principles emerge from the CJRA evaluation:

- **Judicial case management policy appears to have a limited role to play in reducing litigation costs. Indeed, case management policy accounted for only about 5 percent of the explained variation in lawyer work hours.** Case and lawyer characteristics, especially the case’s complexity and stakes, accounted for the rest.
- **In contrast, case management procedures have a substantial effect on time to disposition, and case management policy accounted for about 50 percent of the explained variation in time.**

These principles help to define a case management package that could speed cases without significantly affecting costs, satisfaction, or views of fairness. Figure 4 profiles this package.



NOTE: ↔ indicates no significant effect.

Figure 4—Profile of Balanced Case-Management Package

On the time dimension: In combination, early judicial case management, early setting of a trial date, and shortening the time to discovery cutoff could reduce median time to disposition by four to five months—about 30 percent of the median time for cases lasting at least nine months.

On the cost dimension: If early management is packaged with reduced time to discovery cutoff, then the increase in costs predicted by the former is offset by the decrease in costs predicted by the latter. The net effect is no significant change in litigation costs.

None of these case management policies affects satisfaction or views of fairness.

TAKING A BROAD PERSPECTIVE

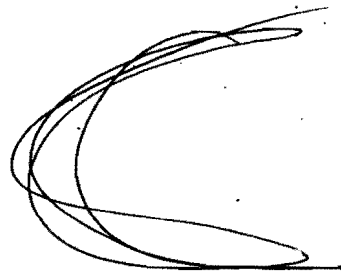
For those who hoped that passing the CJRA statute would bring about substantial change in the federal courts, the results described above may be disappointing. But the CJRA experience contains important lessons, well worth our attention:

- For the first time, every federal district court established an advisory group of court users, including some nonlawyers, to address important issues of court management. Although some might wish that these groups had included a broader spectrum of litigants, and others might wish that the groups had played a greater role in guiding change, the advisory groups provided a model of how courts can engage the public in assessing and responding to the needs of the civil justice system.
- The ICJ's evaluation produced some unanticipated results: Some highly touted reforms had no effect,

others proved difficult or impossible to implement, and still others had effects that were contrary to those hoped for. Clearly, there is an important role for evaluation in the rule-making process.

- The evaluation also highlighted the complicated relationship between time and costs. In particular, achieving reductions in one does not guarantee reductions in the other. And those who want to reduce the costs of litigation must look beyond court procedures for answers.

Taken together, the experiences of all those involved with this historic Act—the members of the original task force, the advisory committees, the judges and lawyers who worked to implement the Act, and the researchers who evaluated its effects—provide rich food for thought and lively debate. The next step for the ICJ research team is to engage with the bench, the bar, and other experts in what will surely be an extended and spirited discussion.



The mission of the Institute for Civil Justice is to help make the civil justice system more efficient and more equitable by supplying policymakers and the public with the results of objective, empirically based, analytic research. ICJ research is supported by pooled grants from corporations, trade and professional associations, and individuals; by government grants and contracts; and by private foundations. The Institute disseminates its work widely to the legal, business, and research communities, and to the general public.

For additional information about the Institute for Civil Justice, call Deborah Hensler at (310) 393-0411, x6916, or write to: 1700 Main St., P.O. Box 2138, Santa Monica, CA 90407-2138. Internet (Deborah_Hensler@rand.org).

A profile of the ICJ, abstracts of its publications, and ordering information can be found on RAND's home page on the World Wide Web (<http://www.rand.org/centers/icj>).



APPENDIX C

CONSENT FORMS AND PROCEDURES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

CASE NO. _____

)
)
Plaintiff)
)
v.)
)
)
Defendant)
_____)

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with 28 U.S.C. §636© and Rule 73(b) of the Federal Rules of Civil Procedure, the undersigned counsel of record **CONSENTS** to have a United States Magistrate Judge conduct all further proceedings in this case, including bench or jury trial, and order the entry of final judgment.

Signed and dated this ____ day of _____, _____

Attorney for _____

MAGISTRATE JUDGES DO NOT CONDUCT TRIALS IN CRIMINAL FELONY CASES. ACCORDINGLY, CRIMINAL TRIALS DO NOT INTERFERE WITH THE SCHEDULING AND PROCESSING OF CIVIL CASES ASSIGNED TO MAGISTRATE JUDGES AND ARE THEREFORE RESOLVED SOONER.

REFUSAL TO CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

Consent to proceed before a United States Magistrate Judge for trial or order of an entry of final judgment is denied. I understand that a United States Magistrate Judge may retain jurisdiction of this matter for purposes of resolving non-disposition motions.

Signed and dated this ____ day of _____, _____

Attorney for _____

- *PLAINTIFF IS TO SERVE THIS FORM ON ALL DEFENDANTS WITH THE COMPLAINT.
- *PLAINTIFF SHALL FILE THIS FORM ON OR BEFORE THE DATE THAT PLAINTIFF FIRST SEEKS SERVICE OF THE COMPLAINT UPON THE DEFENDANT(S) IN ANY MANNER PROVIDED BY RULE 4, Fed. R. Civ. Proc.
- *DEFENDANTS MUST FILE THIS FORM WITH THEIR FIRST RESPONSIVE PLEADING.

Please see the reverse side for further information and directions.

CONSENT FORM INSTRUCTIONS

In the Western District of North Carolina, a new civil action is randomly assigned to either a district judge or a magistrate judge at the time of filing. Upon filing, the plaintiff is to provide a copy of the Consent/Refusal Form to all defendants. **The plaintiff must serve this form on all defendants with their copy of the complaint.**

Plaintiff must file their Consent/Refusal Form on or before the date that plaintiff first seeks service of the complaint upon the defendant(s) in any manner provided by Rule 4, Fed. R. Civ. Proc.

Defendants must file their Consent Form with their first responsive pleading.

A United States Magistrate Judge may, with the consent of the parties, conduct all proceedings in this civil action, including a bench or jury trial, and order the entry of final judgment. See 28 U.S.C. §636 and F.R.C.P. 73. The statute provides for direct appeal to the U.S. Court of Appeals for the Fourth Circuit.

If this case has been randomly assigned to a district judge and all parties consent to have the magistrate judge conduct all proceedings, the case may be referred to a magistrate judge.

If this case has been randomly assigned to a magistrate judge and not all parties consent, the magistrate judge may still be responsible for the pretrial processing of the case. The magistrate judge may hear and decide all non-dispositive pretrial and discovery matters. The magistrate judge may consider dispositive motions by issuing proposed findings and a recommendation to the district judge in accordance with F.R.C.P. 72(a) and (b). When the magistrate judge has issued proposed findings and a recommendation on a dispositive motion, the case will be sent back to the Clerk of Court for random reassignment to a district judge. Thereafter, if the dispositive motion does not resolve the case, the district judge will return the file to the magistrate judge who will preside over the case until it is ready for trial. When the case is ready for trial, it will be returned to the district judge for all further proceeding(s).

EACH PARTY HAS THE DUTY TO RESPOND TO THIS ADMINISTRATIVE ORDER BY FILING THE CONSENT/REFUSAL FORM. File the form on the reverse side of this Order with the Clerk of Court.

IT IS THEREFORE ORDERED, that Plaintiff(s) serve a copy of the Consent/Refusal form on all defendants with the complaint.

Plaintiff must file an executed form on or before the date that plaintiff first seeks service of the complaint upon the defendant(s) in any manner provided by Rule 4, Fed. R. Civ. Proc.

Defendant(s) must file their Consent/Refusal Form with their first responsive pleading(s).

Frank G. Johns
Clerk, United States District Court

APPENDIX D

AMENDED RULES OF COURT

REVISED LOCAL RULES

CHRONOLOGICAL EVENTS

- August 24, 1998 Chief Judge Mullen, Judge Voorhees and Judge Thornburg approve circulation of draft rules to bar and public for comment.
- July 1998 Cheryl Nuccio, Official Court Reporter, reviews and edits local rules for proper format, punctuation, grammar and gender.
- December 1, 1997 Draft rules amended per the Board of Judges Meeting on October 10, 1997.
- October 10, 1997 Joint meeting between the Advisory Group and the Board of Judges. Consensus reached by Article III Judges in each division of the Western District to uniformly conform existing Rules to CJRA Committee recommendations as accepted and approved by the Judges.
- August 22, 1997 Civil Justice Reform Act Advisory Group includes a review of the revised local rules as part of their overall assessment.
- April 15, 1997 Effective date by which all local rules were to be re-numbered in accordance with the new Uniform Numbering System adopted by the Judicial Conference.
- May 4, 1996
(Judge's Meeting) Judges approved revisions to existing Local Rule 12, Forfeiture of Collateral Security in Lieu of Appearance. Revisions to be included in revised local rules.
- January 26, 1996
(Judge's Meeting) Judges review re-numbered and re-formatted draft local rules. Judges agree to defer adopting the revised local rules until the new Civil Justice Reform Act Advisory Group can meet and provide comments on the revised rules.
- January 4, 1996 Existing rules re-numbered and re-formatted per the Uniform Numbering System as approved by the Judicial Conference. Rules circulated to court for upcoming meeting.
- December 18, 1995 Revised local rules are re-numbered and re-formatted and are ready for the court to review.

September 26, 1995 Judge Thornburg's written comments are received and incorporated into the revised rules.

September 13, 1995 Judge Mullen and Magistrate Judge McKnight advise that the revised local rules have been drafted and are being circulated among the judges for comments. Chief Judge Voorhees requested that all judges review the rules and provide written comments to Judge Mullen by September 30, 1995.

September 8, 1995 Administrative Office of the U.S. Courts advises all courts to re-number their local rules per the proposed Uniform Numbering System.

August 1, 1995 Magistrate Judge McKnight completes initial review of local rules and recommends that the revised local rules be structured in a more logical format based upon subject matter.

July 25, 1995 Written comments received from David Davis regarding local rules on the use of magistrate judges are provided to Magistrate Judge McKnight.

June 1995 Judge Mullen and Magistrate Judge McKnight agree to oversee the revising of the local rules.

April 7, 1995 Written comments are received from Mark Calloway, U.S. Attorney, regarding revisions to the local rules of criminal procedure.

March 1, 1995 Clerk sends initial package to Chief Judge Voorhees, Judge Mullen and Senior Judge Potter regarding the revising of our local rules in anticipation of the proposed Uniform Numbering System.

DRAFT December 1, 1997

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

*LOCAL RULES OF CIVIL PROCEDURE

*LOCAL RULES OF CRIMINAL PROCEDURE

*LOCAL RULES OF BANKRUPTCY REFERRALS

Effective _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

IN THE MATTER OF RULES)	ORDER ADOPTING
OF PRACTICE AND)	RULES OF PRACTICE
PROCEDURE IN THIS)	AND PROCEDURE
COURT)	

For good cause appearing to the Court,

IT IS ORDERED that :

1. The following Rules of Practice and Procedure in the United States District Court for the Western District of North Carolina be and they are hereby adopted effective at 12:01 a.m. on the ____ day of _____, _____. At that time these local rules shall supersede local rules and all Civil Justice Expense and Delay Reduction Plans theretofore in effect and shall apply to all pending cases, unless the Court finds that their application in a specific case would result in injustice or hardship.

2. These rules are adopted in compliance with and pursuant to the authority of Rule 83, Fed. R. Civ. P.; Rule 57, Fed. R. Crim. P.; and other federal rules and statutes providing for district court local rules. Those rules are adopted without providing the public or bar with an opportunity to comment as the needs of the administration of justice require that these rules be adopted in an expedited manner.

3. These local rules supplement the Federal Rules of Civil Procedure as necessary in all civil suits in the United States District Courts for the Western District of North Carolina. Where applicable, these rules also supplement the Federal Rules of Criminal Procedure and Bankruptcy. In keeping with the spirit of the Federal Rules, these rules are designed, and will be construed and administered, to enhance speed and flexibility, control expense, and direct the efforts of all involved to the ends of justice.

4. The Clerk is directed to make appropriate arrangements to see that these rules are published promptly and that copies of the rules are made available for distribution to the bar and the public.

This, the ____ day of _____, 19____.

Chief Judge
United States District Court

Judge
United States District Court

Judge
United States District Court

Senior Judge
United States District Court

RULES OF PRACTICE AND PROCEDURE

I. Local Rules Civil Procedure

- LR 3.1 Filing Fee, Bond, Security and Prohibited Sureties
- LR 5.1 Filing of Papers, Presenting Judgments, Orders and Communications to Judge and Sealed Records
- LR 7.1 Motions in Civil Actions
- LR 7.2 Briefs
- LR 16.1 Pretrial Conferences
- LR 16.2 Mediation or Alternative Dispute Resolution (ADR)
- LR 16.3 Rules Applicable to Mediation or ADR
- LR 26.1 Discovery Material Not to be Filed Unless Ordered or Needed
- LR 26.2 Exemption from Federal Rule of Civil Procedure 26(a)(1)
- LR 47.1 Jurors
- LR 47.2 Contact with Jurors
- LR 54.1 Taxation of Costs
- LR 67.1 Registry Funds
- LR 72.1 Authority of United States Magistrate Judges in Civil Matters
- LR 72.2 Assignment of Matters to United States Magistrate Judges
- LR 73.1 Trial by Consent Before United States Magistrate Judges
- LR 77.1 Orders and Judgments Which the Clerk May Grant
- LR 79.1 Custody and Disposition of Evidence, Models, Exhibits and Depositions
- LR 83.1 Attorney Admissions
- LR 83.2 No Photographing, Televising, or Broadcasting of Court Proceedings

II. Local Rules Criminal Procedure

- LCrR 11.1 Electronic Recording of Rule 11 Inquiry
- LCrR 20.1 Transfers for Plea and Sentence
- LCrR 23.1 Fair Trial and Free Press in Criminal Cases
- LCrR 32.1 Disclosure of Presentence or Probation Records
- LCrR 46.1 Release From Custody - Recognizance
- LCrR 55.1 Sealed Records
- LCrR 57.1 Authority of United States Magistrate Judges in Criminal Matters
- LCrR 57.2 Pending Cases Involving Same Defendant
- LCrR 58.1 Forfeiture of Collateral Security In Lieu of Appearance

III. Local Rules Bankruptcy Referrals

- LRBR 1002.1 Filing of Bankruptcy Papers
- LRBR 1070.1 Bankruptcy Resolution and References
- LRBR 1070.2 References to United States Magistrate Judges
- LRBR 1070.3 Powers of a United States Magistrate Judge Handling Bankruptcy Matters

I. LOCAL RULES OF CIVIL PROCEDURE

CITE THESE RULES AS:

LOCAL RULE _____

"LR _____"

LR 3.1. FILING FEE, BOND, SECURITY AND PROHIBITED SURETIES.

(A) ***Filing Fee and Cost Bond.*** In every civil action commenced in or removed to this court, there shall be filed at the time of commencing or removal a filing fee in such amount as determined according to law. In a civil case commenced in this court, no bond, or cash deposit in lieu of such bond, as security for costs shall be required except on motion.

(B) ***Security.*** In both civil and criminal actions, bonds shall be allowed and taken with security, or one or more securities, as provided by the federal statutes, the Federal Rules of Civil Procedure, and the Federal Rules of Criminal Procedure. The judges of this district may, for good cause, enter orders restricting any bonding company or surety company from being accepted as surety upon any bond in any case or matter in this district.

(C) ***Prohibited Sureties.*** Members of the Bar, administrative officers or employees of this court, the United States Marshal, his deputies or assistants, shall not act as surety in any suit, action or proceeding pending in this court.

LR 5.1. FILING OF PAPERS, PRESENTING JUDGMENTS, ORDERS, AND COMMUNICATIONS TO JUDGE AND SEALED RECORDS

(A) *Filing of Papers.* All orders and judgments shall be filed with the court in duplicate. All papers of every sort may be filed at Statesville, Charlotte or Asheville regardless of the Division in which the case may be pending as may suit the convenience of counsel.

(1) A motion for consolidation shall be filed only in one of the cases involved with a notice of the motion being filed in the proposed member case(s). After consolidation, each pleading filed shall continue to note all case numbers involved with sufficient copies for each case file.

(2) All pleadings shall be filed in duplicate, an original and one copy.

(B) *Presenting Judgments, Orders, and Communications to Judges.* Judgments and orders submitted by counsel will ordinarily be sent to the clerk in the appropriate division and not to the judge, unless shortness of time or other good reason appears for sending them directly to the judge. Copies as may be needed will be certified by the clerk.

All communications (letters, briefs, enclosures, etc.) sent to a judge about a case must be sent to opposing counsel and must show that a copy has been sent to opposing counsel.

(C) *Seeking A Continuance.* Any motion filed seeking continuance of a hearing or suit shall be filed immediately upon counsel's learning of the need for same and must, in any event, be timely filed and shall be signed by the client as well as counsel, except where the client for good cause stated is not available to sign the motion.

(D) *Sealed Matters.*

(1) **New Civil Cases:** A civil complaint may be sealed at the time the case is filed if the complaint is accompanied by an ex parte motion of the plaintiff/petitioner accompanied by an order sealing the case. The case will be listed on the clerk's index as Sealed Plaintiff vs. Sealed Defendant.

(2) **Pending Cases:** A pending case may be sealed at any time upon motion of either party and execution by the court of a written order. Unless otherwise specified in the order, the clerk's case index nor the existing case docket will be modified.

(3) **Documents:** Documents ordered sealed by the court or otherwise required to be sealed by statute shall be marked as such within the document caption and submitted together with the judge's copy prepared in the same manner. If the document is sealed pursuant to a prior order of the court, the pleading caption shall include a notation that the document is being filed under court seal and include the order's entry date.

No document shall be designated by any party as "filed under seal" or "confidential" unless:

(a) It is accompanied by an order sealing the document;

(b) It is being filed in a case that the court has ordered sealed; or

(c) It contains material that is the subject of a protective order entered by the court.

(4) **Case Closing:** Unless otherwise ordered by a court, any case file or documents under court seal that have not previously been unsealed by the court order shall be unsealed at the time of final disposition of the case.

(5) **Access to Sealed Documents:** Unless otherwise ordered by the court, access to documents and cases under court seal shall be provided by the clerk only pursuant to court order. Unless otherwise ordered by the court, the clerk shall make no copies of sealed case files or documents.

LR 7.1. MOTIONS IN CIVIL ACTIONS

(A) *Motions in Writing.* Unless made during a hearing or trial, all motions must be put in writing and shall state with particularity the grounds of the motions and shall set forth the relief or order sought. Any motions other than for dismissal, summary judgment, or default judgment should show that counsel have met and attempted to resolve areas of disagreement and should set forth which issues remain unresolved.

(B) *Time Frames for the Filing of Responses to Motions and for Reply Motions.* Responses to motions, if any, shall be filed within fourteen (14) days of the date on which the certificate of service is signed. When a motion is served by mail, the respondent shall have an additional three (3) days to file a response.

A reply to the response to the motion, if any, shall be filed within seven (7) days of the date on which the certificate of service is signed. When a response is served by mail, an additional three (3) days is granted in which to file the reply.

LR 7.2 . BRIEFS

Briefs shall be filed with the motion. Briefs shall not exceed 25 pages in length without leave of the court.

LR 16.1 . PRETRIAL CONFERENCES

A pretrial conference initiated by the court will be conducted in all civil matters except cases involving pro se prisoners. Unless otherwise directed by an Article III Judge, Magistrate Judges will preside over the pretrial conference irrespective of whether consent to disposition of a case by a Magistrate Judge has been given. Counsel for all parties must appear either in person or by telephone for the conference as determined by the judicial officer. No initial attorneys' conference shall be required prior to the pretrial conference.

Matters to be determined during the pretrial conference shall include but not be limited to:

- ◆ discovery guidelines and deadlines;
- ◆ Rule 26 disclosures;
- ◆ response to interrogatories and requests for admission;
- ◆ maintenance of discovery material;
- ◆ video depositions;
- ◆ protective orders;
- ◆ motions deadlines;
- ◆ motions hearings;
- ◆ response to motions;
- ◆ trial subpoenas;
- ◆ counsel's duties prior to trial;
- ◆ trial date;
- ◆ proposed jury instructions;
- ◆ exhibits; and
- ◆ mediation.

LR 16.2. MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION (ADR).

(A) *Mandatory Mediated Settlement Conference.* All parties to civil actions are required to attend a Mediated Settlement Conference, unless otherwise ordered by the court. The procedure for the conference shall be as provided in Local Rule 16.3.

(B) *Cases Not Suitable For ADR.* These rules for mandatory ADR shall not apply to habeas corpus proceedings or other actions for extraordinary writs, appeals from rulings of administrative agencies, forfeitures of seized property, and bankruptcy appeals. The Judicial Officer may determine, either *sua sponte* or on application of any party, that any other case is not suitable for ADR, in which case no ADR procedure will be ordered.

LR 16.3 . RULES APPLICABLE TO MEDIATION OR
ALTERNATIVE DISPUTE RESOLUTION (ADR).

(A) Time for Proceeding. Within 30 days after the deadline for discovery, the parties shall file with the court a Stipulation for Alternative Dispute Resolution, at which time the Judicial Officer shall enter an Order for Alternative Dispute Resolution. In the event a Stipulation for Alternative Dispute Resolution is not timely filed by the parties, the Order for Alternative Dispute Resolution will specify Mediated Settlement Conference as the designated ADR procedure. The selected ADR proceeding shall be completed within 90 days after entry of the Order for Alternative Dispute Resolution or the appearance of the case on a trial calendar, whichever is earlier.

(B) Rules for Proceeding. Upon entry of the Order for Alternative Dispute Resolution, the case shall proceed as follows:

- (1)** If a Mediated Settlement Conference is ordered, the ADR proceeding shall be governed by and a mediator shall be selected in accordance with the *Rules Governing Mediated Settlement Conferences in Superior Court Civil Actions* promulgated from time to time by the North Carolina Supreme Court pursuant to N.C.G.S. §7A-38 (the "Mediation Rules"), and by the supplemental rules set forth herein.
 - (a)** Wherever the Mediation Rules refer to "Senior Resident Superior Court Judge" and "Administrative Office of the Court," it shall mean "Judicial Officer" and "Clerk of the United States District Court," respectively.
 - (b)** Rule 3(a) of the Mediation Rules is modified to permit the mediated settlement conference to be held in an appropriate facility anywhere in the division in which the case is pending.
- (2)** If an Alternative ADR Procedure is ordered, the ADR proceeding shall be governed by these Rules and by such other procedural rules submitted by the parties and approved by the Judicial Officer. The rules submitted by the parties shall include, in addition to rules regarding the actual proceeding, provisions setting a deadline for completion of the proceeding; the location for the proceeding; pre-proceeding submissions; and the method for selection and compensation of a mediator, evaluator or other "neutral" to preside over the proceeding ("Neutrals").
- (3)** Nothing in this Alternative Dispute Resolution Program shall be deemed to override the Federal Arbitration Act or any other provision of the United States Code.
- (4)** The Judicial Officer may, either *sua sponte* or on application of any party, permit exceptions or deviations from these rules.

(C) Supplemental Rules for Mediated Settlement Conferences. In addition to the Mediation Rules, the following rules shall also apply to mediated settlement conferences in the Western District:

- (1) No Record Made.** There shall be no record made of any proceedings under these rules.
- (2) Telephonic Attendance.** A party or person required to attend who resides more than 200 miles away by the usual highway route may appear at the mediated settlement conference through telephone communication with the Judicial Officer's prior consent.
- (3) Mediator's Report of Outcome.** The mediator's report required by the Mediation Rules shall be issued within seven (7) days of the conclusion of the Mediated Settlement Conference on a report form provided by the Clerk of Court

(D) Judicial Settlement Conference.

- (1) Mandatory Consideration.** The Judicial Officer to whom a case is assigned may, at any time, order the parties to participate in a settlement conference to be convened by the court. Any party may also file a request for a settlement conference.
- (2) Mandatory Attendance by Representatives with Full Authority to Effect Settlement.** At the time of the conference, attorneys for all parties and either the party or a person with the full authority to settle all pending claims must be present. For purposes of this rule, the "person with full authority to settle" shall not be the attorney.
- (3) Presiding Judicial Officer.** Any Judicial Officer of the district other than the Judicial Officer to whom the case is assigned for disposition may preside over a settlement conference convened by the court.

**LR 26.1 . DISCOVERY MATERIAL NOT TO BE FILED UNLESS
ORDERED OR NEEDED**

Disclosures made pursuant to Rule 26 of Federal Rules of Civil Procedure, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto are not to be filed unless on order of the court or for use in proceeding or in support of a motion or petition. Materials filed in support of a motion or petition shall be appropriately labeled and attached as an Appendix thereto and shall be limited to those portions of the material directly necessary to support the motion or petition. All such papers must be served on other counsel or parties entitled to service of papers filed with the Clerk. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the Court if needed or so ordered.

LR 26.2 . EXEMPTION FROM FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1).

Parties are not required to make initial disclosures identified in Federal Rule of Civil Procedure 26(a)(1). The court elects to be exempt from the provisions of Federal Rule 26(a)(1).

LR 47.1 . JURORS

Ordinarily, in the interest of time, the court will conduct the examination of prospective jurors, but may permit counsel to do so. If the court conducts the examination, counsel may suggest additional questions.

When jurors for a term of court are drawn, members of the bar of this court, upon request, shall be furnished with a copy of the list; and if questionnaires are used, responses will be made available to attorneys. The list shall include the address for each juror. However, no juror shall be contacted, either directly or through any member of his immediate family, in an effort to secure information concerning his background.

LR 47.2 CONTACT WITH JURORS

No attorney or party to an action shall personally or through their designees, directly or indirectly, interview, examine or question any juror, relative, friend or associate thereof during the pendency of the trial or with respect to the deliberations or verdict of the jury in any action, except on leave of the presiding judge upon good cause shown.

LR 54.1. TAXATION OF COSTS

(A) Filing Bill of Costs.

- (1) A prevailing party may request the clerk to tax allowable costs in a civil action as a part of a judgment or decree by filing a bill of costs, on a form available in the clerk's office, within 30 days:
 - (i) after the expiration of time allowed for appeal of a final judgment or decree; or
 - (ii) after receipt by the clerk of an order terminating the action on appeal.
- (2) The original of the bill of costs shall be filed with the clerk, with copies served on adverse parties.
- (3) The failure of a prevailing party to timely file a bill of costs shall constitute a waiver of any claim for costs.

(B) Objections to Bill of Costs.

- (1) If an adverse party objects to the bill of costs or any item claimed by a prevailing party, that party must state its objection in a motion for disallowance with a supporting brief within ten (10) days after the filing of the bill of costs. Within five (5) days thereafter, the prevailing party may file a response and brief. Unless a hearing is ordered by the clerk, a ruling will be made by the clerk on the record.
- (2) A party may request review of the clerk's ruling by filing a motion within five (5) days after the action of the clerk. The court's review of the clerk's action will be made on the existing record unless otherwise ordered.

(C) Taxable Costs.

- (1) Items normally taxed include, without limitation:
 - (i) those items specifically listed on the bill of costs form. The costs incident to the taking of depositions (when allowable as necessarily obtained for use in the litigation) normally include only the reporter's attendance fee and charge for the original transcript of the deposition;
 - (ii) premiums on required bonds;
 - (iii) actual mileage, subsistence, and attendance allowances for necessary witnesses at actual cost, but not to exceed the applicable statutory rates, whether they reside in or out of this district;
 - (iv) one copy of the trial transcript for each party represented by separate counsel.
- (2) Items normally not taxed include, without limitation:
 - (i) multiple copies of depositions;
 - (ii) daily copy of trial transcripts, unless prior court approval has been obtained.

(D) Costs in Settlements. The court will not tax costs in any action terminated by compromise or settlement. Settlement agreements must resolve any issue relating to costs. In the absence of specific agreement, each party will bear its own costs.

(E) Payment of Costs. Costs are to be paid directly to the party entitled to reimbursement.

LR 72.2 . ASSIGNMENT OF MATTERS TO UNITED STATES MAGISTRATE JUDGES.

Duties and cases may be assigned or referred to a magistrate judge by random initial assignment, by court order, and by the clerk in compliance with standing orders or the instructions of a district court judge or the chief magistrate judge.

LR 73.1 . TRIAL BY CONSENT BEFORE A MAGISTRATE JUDGE.

(A) *Consent to the Exercise of Civil Trial Jurisdiction.* The consent of a party to the exercise of civil trial jurisdiction authorized in 28 U.S.C. §636 (c) (1) shall be communicated to the clerk by letter, or by a form available in the clerk's office, signed by the party or the party's attorney.

- (1)** The Plaintiff's consent/denial form shall be mailed to or filed with the Clerk on or before the date that plaintiff first seeks service of the complaint upon the defendant(s) in any manner provided by Rule 4, Fed.R.Civ.Proc.
- (2)** The plaintiff shall serve a copy of the consent/denial form on all defendants with the complaint.
- (3)** The defendant(s) shall file an executed consent/denial form with their first responsive pleading. For purposes of this rule, any pleading filed by the defendant shall be deemed their first responsive pleading.

(B) *Failure to File Executed Consent/Denial Form.* In the event any party fails to file an executed consent form, the magistrate judge shall continue to be responsible for the pretrial proceedings of the case and will advise the parties of the availability of the magistrate judge during the pretrial conference.

LR 77.1 . ORDERS AND JUDGMENTS WHICH THE CLERK MAY GRANT.

Pursuant to the provisions of Rule 77(c), Federal Rules of Civil Procedure, the Clerk of Court and an authorized deputy clerk at Asheville, Charlotte and Statesville are authorized to grant and enter the following orders and judgments without further direction by the court, but his action may be suspended, altered or rescinded by the court for cause:

- (1)** Consent orders for the substitution of attorneys only after determining such substitution will not delay a scheduled hearing or trial.
- (2)** Consent orders extending for not more than 20 days the time within which to answer or otherwise plead, answer interrogatories submitted under Rule 33, Federal Rules of Civil Procedure. Care will be taken not to extend the time for so long as to delay unreasonably the trial. Matters in bankruptcy and those matters set forth in Rule 6(b), Federal Rules of Civil Procedure, are not included in this authorization. Where convenience and necessity are thought to require it; e.g., unavailability of a judge, and except where an extension may delay a scheduled trial or hearing, the clerk or deputy clerk(s) in the division in which the proceeding is pending is/are authorized to extend for not more than ten (10) days the time within which to answer or otherwise plead, answer interrogatories submitted under Rule 33, or requests for admission as provided for in Rule 36. If the other party is aggrieved, he may immediately appeal the action of the clerk's office to one of the district judges.
- (3)** Consent orders extending for not more than thirty (30) days the time to file the record on appeal and to docket the appeal in the appellate court, except in criminal cases.
- (4)** Consent orders dismissing an action, except in bankruptcy proceedings and in causes to which Rule 23(c) and Rule 66, Federal Rules of Civil Procedure, apply.
- (5)** Judgments of default as provided for in Rule 55(a) and 55(b)(1), Federal Rules of Civil Procedure.
- (6)** Orders canceling liability on bonds.
- (7)** Judgments authorized by Rule 58, Federal Rules of Civil Procedure.
- (8)** Orders directing inmates to file sworn statements showing exhaustion of all administrative remedies through the North Carolina Department of Corrections pursuant to 42U.S.C. §1997(e).
- (9)** Orders directing inmates and the correctional facility in which the inmate is housed to file a copy of the inmate's trust fund account statement (or institutional equivalent) pursuant to 28U.S.C. §1915.
- (10)** Orders waiving the filing fee or directing a partial filing fee be paid by the inmate pursuant to Section 804 of the Prison Litigation Reform Act of 1995. These orders may also include directing the correctional facility at which the inmate is incarcerated to deduct monthly payments from the inmate's trust fund account and forward said payment to the clerk.

LR 79.1. CUSTODY AND DISPOSITION OF EVIDENCE, MODELS, EXHIBITS AND DEPOSITIONS.

(A) Custody with the Clerk. Unless otherwise directed by the court, all trial exhibits admitted into evidence in criminal and civil actions shall be placed in the custody of the clerk, except as provided in Section (B) below.

(B) Custody with the Offering Party. All exhibits not suitable for filing and transmission to the court of appeals as a part of a record on appeal shall be retained in the custody of the party offering them, subject to the orders of the court. Such exhibits shall include, but not be limited to, the following types of bulky or sensitive exhibits: narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight.

At the conclusion of a trial or proceedings, the party offering such exhibits shall retain custody of them and be responsible to the court for preserving them in their condition as of the time admitted until any appeal is resolved or the time for appeal has expired. The party retaining custody shall make such exhibits available to opposing counsel for use in preparation of an appeal and be responsible for their safe transmission to the appellate court, if required.

(C) Disposition of Exhibits, Sealed Documents, and Filed Depositions by Clerk. Any exhibit, sealed document, or filed deposition in the clerk's custody more than 30 days after the time for appeal, if any, has expired or an appeal has been decided and mandate received, may be returned to the parties or destroyed by the clerk. Complaints, answers, motions, responses and replies, whether sealed or not, must be forwarded to the General Services Administration for permanent storage. The confidentiality of sealed documents cannot be assured after the case file is transferred to the General Services Administration for records holding.

(D) Depositions. Depositions read into the court record are considered exhibits for which the parties shall be responsible as provided in Section (B) above. Depositions on file admitted into evidence but not read into the record shall be retained in the clerk's custody and disposed of as authorized in Section (C) of this rule.

LR 83.1. ATTORNEY ADMISSIONS

(A) *Eligibility and Admission.* Any lawyer who is a member in good standing of the North Carolina State Bar is eligible for admission to the bar of this court, which admission shall be granted as a matter of course upon the payment of a fee in the amount of \$75.00 and upon taking the prescribed oath in open court which reads as follows:

I do solemnly swear that I am a member in good standing of the North Carolina State Bar entitled to practice law in the courts of general jurisdiction of the State of North Carolina, and I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same and that I will demean myself as an attorney and officer of this court in accordance with the Canons of Ethics of the North Carolina State Bar and American Bar Association, and according to law.

I take this obligation freely without any mental reservation or purpose of evasion, so help me God.

Attorneys already admitted to the bars of either the United States District Court for the Eastern District of North Carolina or the United States District Court for the Middle District of North Carolina may be admitted to the bar of this court upon tendering the application and fees required by this rule, together with a copy of the order admitting the attorney to practice in either of the aforementioned districts.

It shall be necessary for a member in good standing of the North Carolina State Bar to be formally admitted in this district in advance of making an appearance and filing papers; such an attorney may be admitted nunc pro tunc at trial time.

(B) *Special Admissions.* Litigants in civil and criminal actions, except governmental agencies and parties appearing pro se, must be represented by at least one member of the bar of this court or by an attorney admitted to practice by this court pursuant to this section. Any lawyer who is a member in good standing of the Bar of the Supreme Court of the United States or the Bar of the Supreme Court of any state in the United States may, in the discretion of the judges of this court, be permitted to appear in a particular case. If such permission is granted, and if a member of the bar of this court is not associated, said attorney and his client shall be deemed to have consented that service of all pleadings and notices may be made upon a deputy clerk in the appropriate division of this court as process agent. The court encourages such out-of-state attorneys to associate a member of the bar of this court in *all* cases, but will not require such association where the amount in controversy or the importance of the case does not appear to justify double employment of counsel. Special admissions will be the exception and not the rule, and no out-of-state counsel will be permitted to practice frequently or regularly in this court without the association of local counsel.

Where justice requires, the authorized deputy clerks at Asheville, Statesville and Charlotte may permit the filing of papers at the request of out-of-state counsel; provided, however, the further participation of out-of-state counsel shall be governed as herein above provided.

All counsel, except governmental agencies, must pay a fee in the amount of \$75.00 each through special admission or when Pro Hac Vice is granted for each case or such admittance.

(C) *Withdrawal of Counsel.* Counsel seeking to withdraw shall file written consent of their client to their withdrawal which shall become effective on determination that a scheduled hearing or trial will not be delayed and upon court approval. Over objection of the client, withdrawal may still be obtained upon good cause shown if it is determined that a scheduled hearing or trial will not be delayed.

**LR 83.2. NO PHOTOGRAPHING, TELEVISIONING, OR BROADCASTING
OF COURT PROCEEDINGS.**

The taking of photographs in the courtroom, or in the corridors immediately adjacent thereto, during the progress of judicial proceedings, or during any recess, and the transmitting or sound recording of such proceedings for broadcasting by radio or television, shall not be permitted. Proceedings other than judicial proceedings designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the court, presentation of portraits, and similar ceremonial occasions, may be photographed in, broadcasted or televised from the courtroom, with the permission and under the supervision of the court.

II. LOCAL RULES OF CRIMINAL PROCEDURE

CITE THESE RULES AS:

LOCAL CRIMINAL RULE _____

"LCrR _____"

LCrR 11.1. ELECTRONIC RECORDING OF RULE 11 INQUIRY

When an appropriate inquiry under Rule 11, Federal Rules of Criminal Procedure, is conducted by a United States Magistrate Judge, the electronic recording of the proceeding shall constitute the verbatim record of the proceeding.

LCrR 20.1. TRANSFERS FOR PLEA AND SENTENCE

(A) Upon transfer of the pleadings from the transferor district, the clerk in the appropriate divisional office shall assign a criminal case number and randomly assign a district judge.

(B) Pending Related Case(s): If a related case is pending before another district judge, the U.S. Attorney shall move for consolidation of both actions before the judge assigned to the lowest case number and submit a proposed order for the court. The motion for consolidation may be filed in either of the cases with proper notice of motion in the related case. Upon execution of the order, the clerk shall reassign the later case to the judge presiding on the lowest case number, unless otherwise set forth in the order.

LCrR 23.1. FAIR TRIAL AND FREE PRESS IN CRIMINAL CASES

(A) It is the duty of the lawyer not to release or authorize the release of information or opinion for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in the investigation shall refrain from making any extrajudicial statement, for dissemination by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

- (1)** The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer may make a factual statement of the accused's name, age, residence, occupation, and family status; and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;
- (2)** The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
- (3)** The performance of any examination or tests or the accused's refusal or failure to submit to an examination or test;
- (4)** The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;
- (5)** The possibility of a plea of guilty to the offense charged or a lesser offense;
- (6)** Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer during this period, in the proper discharge of his official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, for

dissemination by any means of public communication, except that the lawyer may quote from or refer without comment to public records of the court in the case.

After completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement, for dissemination by any means of public communication, if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

(B) All courthouse personnel, including, among others, marshals, deputy marshals, court clerks, bailiffs, and court reporters, shall not disclose to any person, without authorization by the court, information concerning arguments and hearings in criminal cases held in chambers or otherwise outside the presence of the public, or disclose any other information relating to a pending criminal case that is not part of the public records of this court.

(C) In a widely publicized or sensational case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

LCrR 32.1. DISCLOSURE OF PRESENTENCE OR PROBATION RECORDS

The probation officer's recommendation on the sentence is a confidential record and shall not be disclosed, except pursuant to an order of the court. No confidential records of this court maintained by the probation office shall be sought by an applicant except by written petition to this court establishing with particularity the need for specific information in the records.

LCrR 46.1. RELEASE FROM CUSTODY - RECOGNIZANCE

Release on personal recognizance shall be granted by United States Judges in accordance with the provisions of the Federal Rules of Criminal Procedure. Recognizance shall be left to the discretion of the judge within the requirements of the rules.

LCrR 55.1. SEALED RECORDS

(A) At the time of filing a complaint or information, or on the return of a grand jury indictment, the charging document must be accompanied by an ex parte motion and order requesting that all or a portion of the documents in the criminal case be sealed. The clerk shall seal the case or documents as specified in the court's order. The case shall be listed on the clerk's index as United States of America vs. Sealed Defendant. Unless otherwise ordered by the court, upon referral, the magistrate judge on a showing of good cause by the United States Attorney or a defendant, the case or documents shall be unsealed as follows:

- (1)** Where the case involves a single defendant, at the time of the defendant's initial appearance before the magistrate judge;
- (2)** Where the case involves more than one defendant, at the time the last defendant appears in this district before the magistrate judge, unless written motion to unseal is submitted earlier with a proposed order to be executed by the court.

(B) Pending Cases: A pending case may be sealed at any time upon motion of either party and execution by the court of a written order. Unless otherwise specified in the order, the clerk's case index nor the existing case docket shall be modified. The motion and proposed order presented to the court should state with specificity as to what portion of the record is to be sealed, such as:

- (1)** the case file;
- (2)** the case docket;
- (3)** a specific pleading; or
- (4)** only the identity of new defendants brought into the case.

(C) Documents: Documents ordered sealed by the court or otherwise required to be sealed by statute shall be marked as such within the document caption and submitted together with the judge's copy prepared in the same manner. If the document is sealed pursuant to a prior order of the court, the pleading caption shall include a notation that the document is being filed under court seal and include the order's entry date.

No document shall be designated by any party as "filed under seal" or "confidential" unless:

- (1)** it is accompanied by an order sealing the document;
- (2)** it is being filed in a case that the court has ordered sealed; or
- (3)** it contains material that is the subject of a protective order entered by the court.

(D) Case Closing: After final disposition of the criminal case, unless otherwise ordered by the court, the United States Attorney shall be responsible for filing a motion unsealing the matter with a proposed order for the court's execution, in any case where the file or documents under court seal that have not previously been unsealed by court order.

(E) Access to Sealed Documents: Unless otherwise ordered by the court, access to documents and cases under court seal shall be provided by the clerk only pursuant to court order. Unless otherwise ordered by the court, the clerk shall make no copies of sealed files or documents.

LCrR 57.1. AUTHORITY OF MAGISTRATE JUDGES IN CRIMINAL MATTERS

(A) ***Magistrate Judges are Authorized and Designated to Exercise the Following Functions and Duties Regarding Criminal Actions in the Western District.***

- (1) To perform the duties prescribed in 28U.S.C. §636(a).
- (2) To try and, if found guilty, to sentence persons charged with petty offenses and misdemeanors, and to direct the probation office to prepare a presentence report in any such case, as provided by 18U.S.C. §3401.
- (3) To hear and decide non-dispositive procedural or discovery motions and other pretrial matters, as provided by 28U.S.C. §636(b)(1)(A).
- (4) To hear any dispositive motions involving cases in which the parties have not consented to jurisdiction of the magistrate judge and thereafter to submit to the district court proposed findings of fact and recommendations for disposition of such motions, as provided by 28U.S.C. §636(b)(1)(B).
- (5) To issue preliminary orders and conduct necessary evidentiary hearings or other appropriate proceedings in connection with cases filed pursuant to 28U.S.C. §2254 and §2255, and to submit to the district court a report containing proposed findings of fact and recommendations for disposition of such cases (unless consent is obtained for final disposition).
- (6) To make a final determination upon any dispositive motion in a case wherein the parties have consented to the jurisdiction of the magistrate judge, subject to right of appeal to the United States Court of Appeals for the Fourth Circuit.
- (7) To accept returns of true bills of indictment from the Grand Jury.
- (8) To issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States Government pursuant to 28U.S.C. §636(b)(3).
- (9) To conduct proceedings of the court under the Federal Debt Collection Procedures Act, consistent with the Constitution and the laws of the United States, as authorized by 28U.S.C. §3008 (1990).
- (10) To perform any additional duties that are not inconsistent with the Constitution or the laws of the United States, as shall be assigned or delegated by the district court.

LCrR 57.2 . PENDING CASES INVOLVING SAME DEFENDANT

Where there are two or more cases pending against the same defendant before more than one assigned judge, the United States Attorney or the defendant may move by written motion and proposed order to have any or all of the cases reassigned to the presiding judge with the lowest case number. This motion may be filed before any of the assigned judges with notice of the motion to the other assigned judge(s). Time is of the essence with this motion.

LCrR 58.1. FORFEITURE OF COLLATERAL SECURITY IN LIEU OF APPEARANCE

Pursuant to Rule 58, Federal Rules of Criminal Procedure, and Title 28, United States Code, Section 636(b)(3), and upon motion made by the United States of America in the interest of justice, good court administration, and sound law enforcement, the Collateral Forfeiture Schedule is hereby amended by adding a collateral forfeiture in the amount of \$250 for first offense simple possession of marijuana having a weight not exceeding 1/4 ounce or 7.78 grams occurring in the national parks or forests within the Western District of North Carolina. Such collateral may be made mandatory if, in the opinion of the arresting or citing officer, the offense was aggravated.

Such revision is reflected in the amended schedules annexed hereby and hereby incorporated into the overall Collateral Forfeiture Schedule.

NATIONAL PARK SERVICE

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
PART 1 - GENERAL PROVISIONS		
36 CFR 1.5	Closures and public use limit (f) Closure, designation, restriction, Condition, visiting hours, public use limit	\$25.00
	(see Compendium - not included here)	
36 CFR 1.6	Permits (h) Terms/conditions of permit	\$25.00
	(see Compendium - not included here)	
PART 2 - RESOURCE PROTECTION - PUBLIC USE AND RECREATION		
36 CFR 2.1	Preservation of natural, cultural and archaeological resources (a) (1) Possessing, destroying, injuring, defacing or distributing natural, cultural or archaeological resources Minor Major (2) Introducing wildlife, fish or plants (3) Throwing/rolling rocks (4) Using/possessing wood Minor Major (5) Walking on, climbing, entering, etc. (6) Possessing, disturbing, etc., a structure or cultural or archaeological resource Minor Major (7) Possession or use of mineral or metal detector Minor Major	\$50.00 Mandatory \$50.00 \$25.00 \$25.00 Mandatory Mandatory \$50.00 Mandatory \$50.00 Mandatory

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
36 CFR 2.1	(b) Shortcutting trail/walkway	\$25.00
	(c) (3) Gathering/possessing undesignated natural products	\$25.00
36 CFR 2.2	Wildlife Protection	
	(a) (1) Hunting/taking of wildlife	Mandatory
	(2) Disturbing wildlife	\$25.00
	(3) Possessing unlawfully taken wildlife/parts	Mandatory
	(d) Transporting lawfully taken wildlife - violation of conditions	\$50.00
(e) Using artificial light to view wildlife in closed areas	\$50.00	
36 CFR 2.3	Fishing	
	(a) Fishing in violation of State Laws	\$50.00
	(d) (1) Fishing with other than hook and line	\$50.00
	(2) Possessing/using unauthorized bait, etc.	\$50.00
	(3) Feeding/attracting fish	\$25.00
	(4) Commercial fishing	Mandatory
	(5) Illegal fishing aids (drugs, poison, explosives, etc.)	Mandatory
	(6) Digging for bait	\$25.00
(7) Improper catch and release Plus for each illegal fish [Prohibited species use 7.14(a)(4)]	\$50.00 \$25.00	
(8) Fishing from bridges, docks, etc.	\$25.00	
36 CFR 2.4	Weapons, Traps and Nets (P)	
	(a) Possessing, carrying, using	\$100.00
	(b) Improper transportation	
	Plain view	\$50.00
	Concealed	\$150.00
	(c) Use endangering persons or property	Mandatory
(d) Violations of terms and conditions of permit	\$150.00	
(f) Compliance with Federal/State laws	Mandatory	
36 CFR 2.5	Research Specimens	
	(a) Taking without permit	\$25.00
(b) Terms/conditions of permit	\$25.00	

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>	
36 CFR 2.10	Camping and Food Storage		
	(b) (1) Digging/leveling ground at campsite	\$25.00	
	(2) Abandoning equipment after departure	\$25.00	
	(3) Camping too near water	\$25.00	
	(4) Unreasonable noise between 10:00 p.m. - 6:00 a.m.	\$25.00	
	(5) Permanent camps	\$100.00	
	(6) Displaying wildlife carcasses/parts	\$25.00	
	(7) Utility connections	\$25.00	
	(8) Failure to obtain permit	\$50.00	
	(9) Superintendent's designated conditions	\$25.00	
	(10) Undesignated area	\$50.00	
	(c) Terms/conditions of permit	\$25.00	
	(d) Failure to properly store food	\$25.00	
36 CFR 2.11	Picnicking		
	Violation of established picnicking conditions	\$25.00	
36 CFR 2.12	Audio Disturbances - unreasonable noise	\$25.00	
36 CFR 2.13	Fires		
	(a) (1) Fire in undesignated area	\$50.00	
	(2) Improper use of stove/lantern	\$25.00	
	(3) Stove/lantern creating a hazard	\$50.00	
	(4) Unattended fire		
		Minor	\$50.00
		Major	Mandatory
	(5) Improper disposal of lighted/smoldering matter	\$50.00	
	(b) Failure to extinguish fires	\$50.00	
	(c) Violation of Superintendent Closures	\$50.00	

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
36 CFR 2.14	Sanitation and Refuse	
	(a) (1) Improper disposal of waste	\$75.00
	(2) Unauthorized use of disposal receptacles	\$100.00
	(3) Deposit of refuse in plumbing fixtures/toilets	\$50.00
	(4) Improper draining of refuse from vehicle/trailer	
	Minor	\$50.00
	Major	Mandatory
	(5) Improper use of public water outlets	\$25.00
	(6) Polluting/contaminating park water	\$100.00
	(7) Improper disposal of fish remains	\$25.00
	(8) Improper disposal of human body waste in developed areas	\$50.00
	(9) Improper disposal of human body waste in undeveloped areas	\$50.00
	(b) Violating conditions for disposal, containerization or carry out of body waste	\$50.00
36 CFR 2.15	Pets	
	(a) (1) Pets in closed area	\$25.00
	(2) Failure to crate, cage, restrain on leash	\$25.00
	(3) Unattended pet	\$25.00
	(4) Allowing pet to make unreasonable noise	\$25.00
	(5) Failure to comply with pet excrement disposal	\$25.00
	(e) Terms/conditions of pet permit by park residents	\$25.00
36 CFR 2.16	Horses and Pack Animals - improper use	\$50.00
	(g) Violation of conditions	\$50.00
36 CFR 2.17	Aircraft and Air Delivery - illegal use of	Mandatory
36 CFR 2.18	Snowmobiles violation of regulations	\$25.00
36 CFR 2.19	Winter activities violation of restrictions	\$25.00
36 CFR 2.20	Skating, skateboards and similar devices. Use of roller skates, skateboards, roller skis, coasting vehicles, etc., in undesignated areas	\$25.00
36 CFR 2.21	Smoking	\$25.00

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
36 CFR 4.12	Traffic control devices Failure to comply with directions of traffic control device prohibited (parking)	\$25.00
	Failure to comply with directions of traffic control device prohibited (other than above)	\$25.00
36 CFR 4.13	Obstructing traffic	
	(a) Stopping or parking vehicle on park road excepting authorized or conditions beyond operator's control	\$50.00
	(a) (Parking)	\$25.00
	(b) Operating vehicle so slowly as to interfere With normal flow of traffic prohibited	\$25.00
36 CFR 4.14	Open container of alcoholic beverage	
	(b) Carrying or storing a container, containing an alcoholic beverage that is open or whose seal has been broken within a motor vehicle in a readily accessible location, including the glove compartment, is prohibited and is the responsibility of the operator	\$50.00
36 CFR 4.15	Seat belts required (use state law)	
36 CFR 4.20	Right of way Failure to yield to pedestrian, saddle horse, pack animal or animal-drawn vehicle	\$25.00
36 CFR 4.21	Speed limits	
	(c) Operating vehicle in excess of posted speed limit:	
	1-10 m.p.h. over limit	\$25.00
	11-15 m.p.h. over limit	\$35.00
	16-20 m.p.h. over limit	\$50.00
	21-25 m.p.h. over limit	\$75.00
26+ m.p.h. over limit	Mandatory	

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
36 CFR 4.22	Unsafe operations	
	(b) (1) Operating motor vehicle without due care (careless driving)	\$75.00
	(2) Squealing tires	\$50.00
	(3) Failure to maintain control	\$50.00
	(4) (i) Allowing person to ride on or within trailer or conveyance towed, not designed to carry passengers	\$50.00
	(ii) Allowing person to ride on exterior portion of motor vehicle not designed for passengers	\$50.00
36 CFR 4.23	Operating vehicle under influence of alcohol or drugs	
	(a) (1) Operating or being in actual physical control of vehicle while under influence of alcohol, drugs or combination of both	Mandatory
	(c) (2) Refusal to submit to breath or blood test	Mandatory
36 CFR 4.30	Bicycles	
	(a) Use in undesignated area	\$25.00
	(c) Failure to obey applicable traffic regulations for motor vehicle except 4.4, 4.10, 4.11 and 4.14	\$25.00
	(2) Operating bicycle during periods of low visibility; such as, between sunset and sunrise without lights and/or reflectors	\$25.00
	(3) Operating bicycles abreast	\$25.00
	(4) Operating bicycle while consuming alcohol or possession of open container in hand	\$50.00
36 CFR 4.31	Hitchhiking	\$25.00

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
PART 5 - COMMERCIAL AND PRIVATE OPERATIONS		
36 CFR 5.1	Advertising without a permit	\$75.00
36 CFR 5.2(a)	Sale of alcoholic beverages or intoxicants	Mandatory
36 CFR 5.3	Unauthorized soliciting or engaging in business	\$50.00
36 CFR 5.4(a)	Unauthorized commercial passenger-carrying motor vehicle	\$50.00
36 CFR 5.5	Commercial photography, motion pictures filming and television or sound track production without a permit	\$100.00
36 CFR 5.6	Commercial vehicles Use of park roads prohibited. Pickup trucks, station wagons, vans and cars Trucks over 1½ tons and semi-trailers	\$50.00 \$100.00
36 CFR 5.7	Construction of buildings or other facilities Constructing or attempting to construct without permit, contract, etc.	Mandatory
36 CFR 5.8	Discrimination in employment practices	Mandatory
36 CFR 5.9	Discrimination in furnishing public accommodation and transportation services	Mandatory
36 CFR 5.10	Selling food, drink or lodging - permit required	\$50.00
36 CFR 5.13	Creation/maintenance of nuisances prohibited	\$50.00
36 CFR 5.14	Prospecting, mining and mineral leasing Prospecting, mining and location of mining claims except as authorized by law	Mandatory

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
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PART 7 - SPECIAL REGULATIONS

36 CFR 7.14	Great Smoky Mountains	
	(a) Fishing	
	(1) No valid fishing license	\$50.00
	(2) Fishing in closed or excluded waters	\$50.00
	(4) Taking protected fish	\$50.00
	Each additional fish (after 1 st fish)	\$50.00
	(5) Fishing other than daylight hours	\$50.00
	(6) One rod and line per person	\$50.00
	(i) Artificial bait and single hook only	\$50.00
	(ii) Use or possession of bait other than artificial	\$50.00
	(7) Size limits	\$25.00
	Each fish under the limit	\$25.00
	(8) Possession limit	\$50.00
	Each fish over the limit	\$25.00
	(9) Violation of posted rules for Specially designated waters	\$50.00
	(b) Possession of open container of beer or alcoholic beverage other than in picnic, camping or overnight lodging	\$25.00

TITLE 16, UNITED STATES CODE

Sec. 403h-3	Hunting, killing, wounding or capturing at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited within the limits of said park, nor shall any fish be taken in any other way than by hook or line, and then in only such manner as directed by the Secretary of Interior	Mandatory
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TITLE 18, UNITED STATES CODE

Sec. 113(d)	Assault by striking, beating, or wounding	Mandatory
Sec. 113(e)	Simple assault	\$50.00

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
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TITLE 21, UNITED STATES CODE

Sec. 844	Simple possession of Controlled substance Marijuana	Mandatory Mandatory
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SPECIAL REGULATIONS APPLICABLE TO BLUE RIDGE PARKWAY

36 CFR 7.34(b)	Fishing within the Blue Ridge Parkway boundaries in violation of regulations as to places, times, bait, creel, and size limits	\$50.00
	Plus for each fish under-size or over limit	\$25.00
36 CFR 7.34(k)	Use of boats or vessels on waters of Blue Ridge Parkway	\$50.00
36 CFR 7.100(a)	Use of bicycles, motorcycles, or other motor vehicles on Appalachian National Scenic Trail	\$50.00
36 CFR 7.100(b)	Horses or pack animals in prohibited areas Of the Appalachian National Scenic Trail	\$50.00

ASSIMILATED U.S. COAST GUARD REGULATIONS

AUTHORITY: 36 CFR 3.1(a)

33 CFR 81	Lights required	\$25.00
33 CFR 95	Operating a vessel while intoxicated	Mandatory
33 CFR 175.15	Personal flotation devices required	
	(a) Vessels less than 16' and all canoes and kayaks	\$25.00
	(b) Vessels greater than 16'	\$25.00
33 CFR 175.19	Stowage	
	(a) Type I/II/III readily available	\$25.00
	(b) Type IV immediately available	\$25.00

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
33 CFR 175.21	Condition; size and fit; approval marking	
	(a) Serviceable condition	\$25.00
	(b) Of an appropriate size	\$25.00
	(c) Legibly marked	\$25.00
33 CFR 177.07	Other safe conditions	
	(a) Navigational lights required	\$25.00
	(b) Boating while intoxicated	Mandatory
	(c) Fuel leaking from engine system or an accumulation of fuel in bilges or compartments	\$25.00
	(d) Ventilation requirements for tanks or compartments	\$25.00
	(e) Backfire flame control	\$25.00
	(f) Improper operation in a regulated boating area	\$25.00
	(g) Manifestly unsafe voyage	\$25.00
33 CFR 183.23	Capacity marking required	\$25.00
46 CFR 25.35	Flame arrestor	\$25.00
46 CFR 25.40	Ventilation	\$25.00

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.6(d)	Illegally stamping or marking timber	Mandatory
261.6(e)	Removing timber cut under permit without required identification	Mandatory
261.6(f)	Selling timber or forest products obtained under FREE USE	\$100.00
261.(g)	Violating any timber EXPORT	Mandatory
261.6(h)	Removing any timber or forest product without a permit	\$100.00
261.7(a)	Unauthorized livestock	\$25.00
261.7(b)	Failure to remove livestock	\$25.00
261.7(c)	Failure to re-close gate	\$25.00
261.7(d)	Releasing or removing impounded livestock	Mandatory
261.8(a)	Hunting, fishing, trapping or catching wild animals, birds or fish illegally	\$50.00
	Exceeding creel or bag limit	\$50.00
	Plus, for each fish over limit	\$10.00
	Keeping undersized fish	\$100.00
	Plus, for each fish undersize	\$25.00
261.8(b)	Possession of a firearm	\$35.00
261.8(c)	Possession of hunting or trapping equipment	\$25.00
261.8(d)	Possession of dog unconfined	\$25.00
261.9(a)	Damaging any natural feature or property	\$35.00
261.9(b)	Removing any natural feature or property	\$25.00
261.9(c)	Damaging endangered or sensitive plants	\$25.00

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.9(d)	Removing endangered or sensitive plants	\$150.00
261.9(e)	Entering building closed to the public	Mandatory
261.9(f)	Herbicide or pesticide use	Mandatory
261.9(g)	Disturbing or damaging archaeological site	Mandatory
261.9(h)	Removing historic archaeological artifact or resource	Mandatory
261.10(a)	Constructing or maintaining improvements without permit	\$100.00
261.10(b)	Squatting (illegal occupancy)	Mandatory
261.10(c)	Selling merchandise without a permit	\$75.00
261.10(d)	Discharging firearms	\$100.00
261.10(e)	Abandoning any personal property	\$75.00
261.10(f)	Placing vehicle or object in such a manner as to be a hazard	\$25.00
261.10(g)	Posting signs or notices without permit	\$35.00
261.10(h)	Using device which produces noise to disturb others	\$25.00
261.10(i)	Operating a P.A. System without permit	\$25.00
261.10(j)	Use of land or facilities without authorization	\$35.00
261.10(k)	Violating the terms of authorization contract or plan	\$75.00
261.10(l)	Failing to stop vehicle on officer's order	\$100.00
261.11(a)	Depositing in any toilet a substance to interfere with its operation	\$75.00

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.11(b)	Leaving refuse in unsanitary condition	\$75.00
261.11(c)	Polluting a stream with any substance	Mandatory
261.11(d)	Failing to dispose of all garbage	\$100.00
261.11(e)	Dumping into government receptacles garbage not generated in forests	\$75.00
261.12(a)	Violating load, weight, height, length or width limitations of state law	\$75.00
261.12(b)	Failure to weigh vehicle at Forest Service Station	Mandatory
261.12(c)	Leaving a road or trail damaged	\$100.00
261.12(d)	Blocking a road, trail or gate	\$35.00
261.12(e)	Using a motorized vehicle in excess of 40" on trail	\$25.00
261.13	Operating vehicle off roads prohibited as follows:	
	(a) without valid license	\$25.00
	(b) without braking system	\$25.00
	(c) without lights during hours of darkness	\$25.00
	(d) in violation of noise standards	\$35.00
	(e) under influence of alcohol or drugs	Mandatory
	(f) creating excessive smoke	\$25.00
	(g) reckless driving	\$50.00
	(h) damaging land, vegetation or wildlife	\$50.00
	(i) in violation of state off-road laws	\$25.00

**SECTION
NUMBER**

OFFENSE

COLLATERAL

261.14

Prohibited at developed recreations sites:

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|-----|--|---------|
| (a) | occupying site for other than recreational purposes | \$25.00 |
| (b) | building fire outside fire ring | \$25.00 |
| (c) | cleaning or washing anything at a hydrant not provided for that purpose | \$25.00 |
| (d) | discharging fireworks | \$35.00 |
| (e) | occupying day-use areas between 10 p.m. and 6 a.m. | \$35.00 |
| (f) | failure to remove equipment | \$25.00 |
| (g) | placing, maintaining or using camping equipment except in places designated | \$75.00 |
| (h) | failing to occupy camping area first night | \$50.00 |
| (i) | leaving equipment unattended for 24 hours | \$50.00 |
| (j) | unleashed animals | \$50.00 |
| (k) | animals in swimming area | \$50.00 |
| (l) | unauthorized pack, saddle or draft animal | \$50.00 |
| (m) | parking in non-designated area | \$25.00 |
| (n) | operating bicycle, motorbike or motorcycle on non-designated trail | \$50.00 |
| (o) | operating motorbike, motorcycle or other vehicle except to enter or leave the site | \$50.00 |
| (p) | distributing handbill, circular, paper or notice | \$50.00 |
| (q) | depositing body waste where not authorized | \$75.00 |

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.15	Failure to pay admission, entrance or use fees	\$25.00
261.16(a)	Possessing or using motor vehicle, motorboat, or motorized equipment in wilderness area	\$100.00
261.16(b)	Possessing or using hang glider or bicycle in wilderness area	\$75.00
261.16(c)	Landing of aircraft or dropping material in wilderness area	Mandatory
261.19(a)	Landing of aircraft or using boat in primitive areas where not in use prior to 9/3/64	Mandatory
261.19(b)	Possessing or using undesignated motor or motorized equipment in primitive areas	\$75.00
261.20(a)	Unauthorized use of "Smokey Bear" symbol	\$75.00
261.20(b)	Unauthorized use of "Woodsy Owl" symbol	\$75.00
261.52	When provided by an order, the following are prohibited:	
	(a) building, maintaining, attending or using a fire, campfire or stove fire	\$75.00
	(b) using an explosive	\$100.00
	(c) smoking	\$50.00
	(d) smoking, except within an enclosed vehicle Or building or a developed recreation site	\$50.00
	(e) going into or being upon an area	\$75.00
	(f) possessing, discharging or using fireworks or pyrotechnic devices	\$75.00
	(g) entering area without firefighting tool	\$50.00

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.52	(h) operating an internal combustion engine	\$50.00
	(i) welding or operating a torch	\$50.00
	(j) operating or using any internal or external combustion engine without spark-arresting device	\$75.00
	(k) violating state burning laws	\$75.00
261.53	When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of:	
	(a) threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish	\$100.00
	(b) special biological communities	\$100.00
	(c) objects or areas of historical, archeological, geological, or paleontological interest	\$100.00
	(d) scientific experiments or investigations	\$75.00
	(e) public health or safety	\$100.00
	(f) property	\$75.00
261.54	When provided in an order, the following are prohibited on Forest Development Roads:	
	(a) using any type of prohibited vehicle	\$75.00
	(b) using by any type of prohibited traffic	\$75.00
	(c) unauthorized using for commercial hauling	\$75.00

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.54	(d) operating a vehicle in violation of speed, load, weight, height, length, width, or other limitations specified by the order; or	\$75.00
	(1) operating motor vehicle without valid driver's license	\$100.00
	(2) operating vehicle without valid license plate and registration	\$75.00
	(3) operating motor vehicle without proper and workable safety equipment	\$75.00
	(4) failure to display valid driver's license upon request of any authorized officer	\$75.00
	(5) operating a vehicle while under the influence of intoxicating liquor or drugs	Mandatory
	(e) being on the road	\$75.00
	(f) operating a vehicle carelessly, recklessly or without regard for the rights or safety of other persons or in a manner or at a speed that would endanger any person or property	\$100.00
261.55	When provided in an order, the following are prohibited on Forest Development Trails:	
	(a) being on the trail	\$75.00
	(b) using any prohibited vehicle	\$75.00
	(c) use by prohibited traffic or mode of transportation	\$75.00
	(d) operating a vehicle in violation of width, weight, height, length, or other limitations specified	\$75.00
	(e) shortcutting a switchback	\$75.00

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.56	Possessing or using a vehicle off forest development roads in violation of an order	\$75.00
261.57	When provided by an order, the following are prohibited in National Forest wilderness:	
	(a) entering or being in the area	\$75.00
	(b) possessing specified camping or pack-outfitting equipment	\$75.00
	(c) possessing a firearm or firework	\$75.00
	(d) possessing any non-burnable food or beverage containers, including deposit bottles, except those containers designed and intended for repeated use	\$75.00
	(e) grazing	\$75.00
	(f) storing equipment, personal property or supplies	\$50.00
	(g) disposing of debris, garbage, or other waste	\$100.00
	(h) possessing or using a wagon, cart, or other vehicle	\$75.00
261.58	When provided by an order, the following are prohibited:	
	(a) camping longer than allowed	\$50.00
	(b) entering or using a developed Recreation site or portion thereof	\$75.00
	(c) non-occupants entering or remaining in campground during night periods prescribed	\$75.00
	(d) occupying a developed recreation site with prohibited camping equipment	\$75.00

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.58	(e) camping	\$50.00
	(f) using a campsite or other area described in the order by more than the number of users allowed by the order	\$50.00
	(g) parking or leaving a vehicle in violation of posted instructions	\$25.00
	(h) parking or leaving vehicle outside a parking space assigned to one's camp unit	\$25.00
	(i) possessing, parking, or leaving more than two vehicles, except motorcycles or bicycles, per camp unit	\$25.00
	(j) being publicly nude	\$75.00
	(k) entering or being in a body of water	\$75.00
	(l) being in the area after sundown or before sunrise	\$75.00
	(m) discharging firearm, air rifle, or gas gun	\$75.00
	(n) possessing or operating a motorboat	\$75.00
	(o) water skiing	\$75.00
	(p) storing or leaving a boat or raft	\$50.00
	(q) operating any water craft in excess of a posted speed limit	\$50.00
	(r) launching a boat except at a designated launching ramp	\$50.00
	(s) possessing, storing, or transporting any specified bird, fish or other animal or parts thereof	\$75.00

**SECTION
NUMBER**

OFFENSE

COLLATERAL

261.58

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| (t) | possessing, storing, or transporting any part of a tree or other specified plant | \$75.00 |
| | first offense simple possession of marijuana not exceeding ¼ ounce or 7.78 grams | \$250.00 |
| (u) | being in the area between 10 p.m. and 6 a.m., except a person who is camping or one who is visiting a camper | \$50.00 |
| (v) | hunting or fishing | \$100.00 |
| (w) | possessing or transporting any motor or mechanical device capable of propelling a water craft through water by any means | \$50.00 |
| (x) | using any wheel, roller, or other mechanical device for the overland transportation of any water craft | \$50.00 |
| (y) | landing of aircraft, or dropping or picking up any material, supplies, or person by means of an aircraft, including a helicopter | \$75.00 |
| (z) | entering or being on lands or waters within the boundaries of a component of the National Wild and Scenic Rivers System | \$75.00 |
| (aa) | riding, hitching, tethering, or hobbling a horse or other saddle or pack animal in violation of posted instructions | \$75.00 |
| (bb) | possessing a beverage defined as alcoholic by state law | \$75.00 |
| (cc) | possessing or storing any food or refuse as specified in the order | \$75.00 |

SECTION
NUMBER

OFFENSE

COLLATERAL

All pleas of not guilty	Mandatory
At discretion of United States Attorney, pursuant to 18 U.S.C. Section 13, any violation of state law, including felonies	Mandatory
All federal felonies	Mandatory
Defendant charged with more than two violations (other than multiple collateral fishing violations)	Mandatory

(Other miscellaneous state statutes not specifically covered in Code of Federal Regulations)

Assimilated Crimes Act, 18 U.S.C. Section 13:

<u>NCGS Section</u>	<u>Offense</u>	
14-269	Carrying a concealed weapon about one's person, except on own premises	Mandatory
90-113.22	Possession of drug paraphernalia with intent to use	Mandatory
113-291.1(b)(2)	Taking, or attempting to take, wildlife with the use of an artificial light, electronic recorded call, or fire	Mandatory

	All pleas of not guilty	Mandatory
	All felonies	Mandatory
	Individual charged with more than two violations (other than multiple collateral fishing violations)	Mandatory

NATIONAL FOREST SERVICE VIOLATIONS
TITLE 36, CHAPTER II
CODE OF FEDERAL REGULATIONS

<u>SECTION NUMBER</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
261.3(a)	Interfering with Forest Officer or volunteer in performance of duties	Mandatory
261.3(b)	Giving false or fictitious report or information to Forest Officer	Mandatory
261.4(a)	Engaging in fighting	\$100.00
261.4(b)	Offensive, derisive or annoying communication directed to others tending to cause violence	\$100.00
261.4(c)	Inciting or producing imminent lawless actions	Mandatory
261.4(d)	Causing unreasonably loud noise, annoyance or alarm	\$75.00
261.5(a)	Throwing or placing ignited or other substance that may cause fire	Mandatory
261.5(b)	Firing tracer bullets or other incendiary ammunition	Mandatory
261.5(c)	Burning without a permit	Mandatory
261.5(d)	Leaving a fire without extinguishing it	\$35.00
261.5(e)	Allowing a fire to escape	Mandatory
261.5(f)	Not removing flammable material from around campfire	\$25.00
261.6(a)	Cutting timber not authorized by permit	\$35.00
261.6(b)	Cutting trees under permit prior to marking	Mandatory
261.6(c)	Removing forest products under permit prior to scaling	Mandatory

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
20-146(a)	Failing to keep vehicle on right half of the road	\$25.00
20-146.1(b)	Operating motorcycles within lanes, no more than two abreast	\$25.00
20-148	Failing to give oncoming vehicle at least half of the road	\$50.00
20-149(a)	Failing to safely clear a passed vehicle before returning to the right side of the road	\$50.00
20-149(b)	Failing to give audible signal when passing another vehicle	\$25.00
20-150(a)	Passing another vehicle when left side of road was not clear for a sufficient distance	\$50.00
20-150(b)	Passing on the crest of a grade or curve when view was obstructed within 500 feet	\$50.00
20-150(c)	Passing in a marked intersection	\$50.00
20-150(d)	Driving to the left of the center line upon the crest of a grade or curve	\$50.00
20-150(e)	Passing in a posted or marked no passing zone	\$25.00
20-151	Failure of overtaken vehicle to give way to the right in favor of the overtaking vehicle	\$25.00
20-152(a)	Following too closely	\$25.00
20-154(b)	Failure to give a turn signal	\$25.00
20-155(a)	Failing to yield to the right at an intersection	\$25.00
20-155(b)	Failing to yield when turning left to oncoming traffic	\$25.00
20-157(a)	Failure to obey visual and audible signal from an emergency or law enforcement vehicle	\$100.00

<u>TITLE</u>	<u>OFFENSE</u>	<u>COLLATERAL</u>
20-158(b)(1)	Failing to yield, when at a stop sign, to through traffic	\$50.00
20-166(b)	Failure to leave written notice of name and address if involved in a collision with an unattended vehicle	Mandatory
20-174.1(a)	Standing, sitting, or lying upon the road to impede traffic	\$50.00
20-181	Failing to dim headlights when meeting an oncoming vehicle or following another vehicle within 200 feet	\$10.00
20-183.2(a)	No current inspection sticker (Defense: provide inspection certificate receipt within 30 days of expiration)	\$25.00
20-313	Owning and operating, or permitting operation of a motor vehicle without financial responsibility (insurance)	\$50.00
36 CFR 4.4	Report of motor vehicle accident	
	(a) Failure to report motor vehicle accident	\$100.00
	(b) Moving/towing vehicle involved in motor vehicle accident prohibited	\$100.00
36 CFR 4.10	Travel on park roads and designated routes	
	(a) Operating motor vehicle off designated roads and parking areas	\$50.00
	(c) (2) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a park road or route	\$100.00
36 CFR 4.11	Load limitation, weight and size limits Exceeding a load, weight or size limit designated by superintendent	\$25.00

III. LOCAL RULES OF BANKRUPTCY REFERRALS

CITE THESE RULES AS:

LOCAL RULES BANKRUPTCY REFERRALS _____

"LRBR _____"

LRBR 1002.1 . FILING OF BANKRUPTCY PAPERS.

The clerk of the bankruptcy court and all deputies, assistants and employees in the office of the clerk of the bankruptcy court who were serving on June 27, 1984, shall continue to serve thereafter in the same positions as a separate administrative unit of the district court clerk's office. The unit is designated to maintain all files in bankruptcy cases and adversary proceedings. All papers in cases under Title 11 or civil proceedings arising under Title 11 or arising in or related to cases under Title 11 shall be filed with the unit regardless of whether the case or proceeding is pending before a district judge or a magistrate judge.

Any State Court Removal forwarded to the United States District Court for the Western District of North Carolina shall be filed with the clerk of the bankruptcy court.

LRBR 1070.1 . BANKRUPTCY RESOLUTION AND REFERENCES

The purpose of this rule is to convey to the bankruptcy judge of this district authority to act in bankruptcy matters and to provide for the bankruptcy court clerk under and in accordance with the provisions of the "Bankruptcy Amendments and Federal Judgeship Act of 1984," and in the light and after consideration of Memoranda of the Administrative Office of the United States Courts dated June 28, 1984, July 20, 1984, and July 11, 1984.

The judges of the district court find and conclude that it is the clear intent of Congress to refer bankruptcy matters to bankruptcy judges; that the judge, clerk and their staff have the specialized expertise necessary for the determination and handling of bankruptcy matters, all of which is in place for the continuation of the appropriate handling of the existing bankruptcy caseload, administratively and otherwise; and that the bankruptcy judge has this date certified to the Judicial Council of the Fourth Circuit and to the Director of the Administrative Office of the United States Court that the number of cases and proceedings pending within the jurisdiction under Section 1334 of the "Bankruptcy Amendments and Federal Judgeship Act of 1984" within this judicial district warrants the appointment by the bankruptcy judge of an individual to serve as clerk of such bankruptcy court.

Therefore, pursuant to the provisions of the "Bankruptcy Amendments and Federal Judgeship Act of 1984," the orderly conduct of the business of the court in the handling of bankruptcy matters requires this referral to the bankruptcy judge.

(A) Reference to the bankruptcy judge is hereby made of:

- (1)** All cases under Title 11 and all core proceedings arising under Title 11, or arising in a case under Title 11, subject to the reference exception and powers of the bankruptcy judge as set out in the provisions of the "Bankruptcy Amendments and Judgeship Act of 1984".
- (2)** All proceedings that are not core proceedings but that are otherwise related to a case under Title 11, subject to the reference exception and powers of the bankruptcy judge as set out in the provisions of the "Bankruptcy Amendments and Judgeship Act of 1984".

(B) Clerk of court

- (1)** The bankruptcy judge having certified the need for a bankruptcy clerk as provided for in Section 156 of the Act, all functions of the "clerk" as provided by law are hereby referenced to the bankruptcy clerk appointed by the bankruptcy judge.

LRBR 1070.2 . REFERENCE TO UNITED STATES MAGISTRATE JUDGES

- (1)** All cases under Title 11 of the United States Code and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the magistrate judges of this district who have been authorized to handle bankruptcy matters.
- (2)** The reference to a magistrate judge under this rule may be withdrawn by the district judge. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a magistrate judge unless a specific stay is issued by the district judge or the magistrate judge. If a reference is withdrawn, the district judge may retain the entire matter, may refer part of the matter back to the magistrate judge, or may refer the entire matter back to the magistrate judge with instructions specifying the powers and functions that the magistrate judge may exercise. Any motion for withdrawal of a reference shall be assigned to a district judge in accordance with the court's usual system for assigning civil cases, and the assigned judge shall thereafter hear the matter if it is withdrawn.

**LRBR 1070.3 . POWERS OF A MAGISTRATE JUDGE HANDLING
BANKRUPTCY MATTERS**

The magistrate to whom a bankruptcy matter has been referred may perform all acts and duties necessary to handle the case or proceeding and may exercise in that matter all the authority conferred under 28U.S.C.§636.