REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

MAY 23, 1997

Old Court House
St. Louis, Missouri

ANNUAL ASSESSMENT

JANUARY 1, 1996 - DECEMBER 31, 1996

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OVERVIEW

Introduction

The Civil Justice Reform Act (CJRA) provides in part:

> *After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title. (28 U.S.C. § 475).*

In compliance with this section, the CJRA advisory group submits the following report to the U.S. District Court for the Eastern District of Missouri.

Composition and Methodology of the CJRA Advisory Group

In the last year, the CJRA advisory group has met as a whole three times to assess and discuss the court's expense and delay reduction plan. The current membership of the advisory group is as follows: Robert T. Haar (Chair), Jan Bond, Kenneth M. Chackes, J. Bennett Clark, Larry D. Hale, John M. Hessel, Diane C. Howard, Margaret M. Mooney, Austin Parham, Paul J. Passanante, Charles E. Polk, Jr., Gary T. Sacks, Reuben A. Shelton, James E. Spain, Blanche M. Touhill and U.S. Attorney, Edward L. Dowd, Jr. (Permanent Member). In 1997 District Judge Donald J. Stohr and Magistrate Judge Frederick R. Buckles became the judicial liaisons to the Group and ex officio members of the Group. The Group takes this opportunity to welcome Judge Stohr and Judge Buckles and to offer sincere thanks to District Judge Stephen N. Limbaugh and Magistrate Judge David D. Noce for serving as the judicial liaisons to the Group since its inception. Robert D. St. Vrain, Clerk of the Court, Doreen D. Dodson and William G. Guerri are ex officio members of the group and Susan A. FitzGibbon serves as reporter of the group. Jim Woodward, Chief Deputy

Clerk, Lori Miller-Taylor, Operations Manager and Sherry Compton, the ADR/DCM Coordinator, serve as advisors to the group.

Judicial Resources of the Court

Since the CJRA group last considered and reported on the CJRA plan, the makeup of the court has changed somewhat. The district judges are: Chief Judge Jean C. Hamilton, Judge Stephen N. Limbaugh, Judge George F. Gunn, Judge Donald J. Stohr, Judge Carol Jackson, Judge Charles A. Shaw, Judge Catherine D. Perry, and Judge E. Richard Webber. In May of 1996, Judge Limbaugh took senior status and in December of 1996, Judge Gunn took senior status. Judge Limbaugh and Judge Gunn continue to draw full criminal and civil caseloads. Since Judge Filippine took senior status in June of 1995, he reduced his caseload and now assists with administrative matters. Senior Judge John F. Nangle also continues to handle a few cases from this court.

For a second year, the court had a full complement of seven magistrate judges. The magistrate judges are: Judge David D. Noce, Judge Frederick R. Buckles, Judge Lewis M. Blanton, Judge Terry Adelman, Judge Lawrence 0. Davis, Judge Mary Ann L. Medler, and Judge Thomas C. Mummert, III. Magistrate Judge William S. Bahn retired at the end of February of 1996.

General Assessment of the Docket

According to statistics provided by the Federal Judicial Center, (Appendix 1) a total of 3084 civil cases were filed in fiscal year 1996 (the twelve months ending September 30, 1996)[1] representing an 11% increase in filings from the 2771 civil cases filed in fiscal year 1995.

[1]These numbers will not correspond to other statistics cited in this report which are based on calendar (vs. fiscal) year figures.

The CJRA group notes that 735 prisoner cases were filed in fiscal year 1996, a significant decrease (26%) from the total of 998 prisoner case filings in 1995. This is the first real decrease in prisoner case filings in at least six years. Since 1991, prisoner filings have comprised 35% to 40% of the civil case filings. By contrast, the 1996 prisoner case filings represent 24% of the total civil docket. In April of 1996, Congress passed the Prison Litigation Reform Act which requires prisoners to pay a filing fee equal to 20% of their average prison trust account and which provides that the court may refuse to take additional cases after a person has filed three legally frivolous suits, unless the prisoner pays full filing fees and court costs. It is unclear whether this Act contributed to the decline in prisoner case filings in fiscal year 1996.

Public Information

The CJRA group again endorses the efforts of the court and the clerk's office to inform the bar about procedural changes in the court's operations pursuant to the CJRA plan and the adoption of new local rules. Informational opportunities include a continuing series of "town hall" meetings held quarterly at which a rotating panel of district and magistrate judges answer questions from attorneys. In the past year, the judges conducted "town hall" meetings in Cape Girardeau and in Hannibal as well as in St. Louis.

ALTERNATIVE DISPUTE RESOLUTION

The court's alternative dispute resolution (ADR) program began in October 1994. Mediation and early neutral evaluation are the two ADR methods available, but approximately 92% of all referrals are to mediation. Parties are asked to indicate on the track information statement, filed with their initial pleadings, whether the case is suitable for ADR. Most often referral decisions are

made by the judge, in consultation with the parties, at the Rule 16 conference. The order of referral can be entered immediately or the parties may request that it be deferred for a period of time sufficient to permit an initial exchange of discovery. An ADR completion deadline is always set in the order of referral to prevent undue delay and to help ensure trial date certainty.

Attorneys are certified by the court to serve as neutrals in cases referred to ADR. At the end of 1996, there were 117 certified neutrals in the ADR program. Parties are encouraged to agree on their choice of a neutral, but the clerk is authorized to designate a neutral from the certified list if the parties fail to do so.

The pace of referrals to alternative dispute resolution increased dramatically in 1996. While referrals were ordered in only 92 cases in 1995, 459 civil cases were referred to ADR in 1996. Nearly half (217) of the referrals in 1996 were made in cases filed in 1995, but 195 referrals were ordered in new cases filed in 1996. The remaining 47 cases referred to ADR in 1996 were pre-1995 cases. The lag time between the date of filing and the date of the Rule 16 conference at which the ADR decision is normally made generally accounts for the higher number of 1995 cases referred as compared to the number of 1996 cases referred to ADR in the year just ended. The same tendency to refer greater numbers of older cases to ADR was present in the previous year as well. During 1996, cases from all years were referred to ADR at an average age of 287 days from date of filing, down from an average age of 302 days in 1995. If the 1996-filed cases are isolated, however, their average age at the time of referral was just 154 days. This time frame is equivalent to the performance in 1995, which showed that cases filed in 1995 had been pending on average 156 days at the time the ADR referral was ordered. Nevertheless, the timing of ADR referrals in 1996,

as in 1995, appears overall to be consistent with the goal of identifying these cases at an early stage so that negotiated settlements can be facilitated soon after filing.

Judging from the ADR referrals in 1995 and 1996, a rather clear pattern is emerging with regard to the types of cases considered appropriate for mediation. Forty-one percent of the cases referred to ADR in 1995 were civil rights complaints. These cases were predominantly employment-related disputes and did not include any prisoner claims. In 1996, the civil rights category increased to 54% of the referred cases. For the two years combined, 46% of all non-prisoner civil rights cases filed in the court were sent to ADR. In each year, the mix of contract and tort claims referred to ADR was 13% and 16% respectively. Labor claims were 12% of the ADR caseload in 1995 but declined to 5% in 1996. Intellectual property disputes were nearly 8% of the ADR referrals in 1995 but declined to just 3% in 1996. A variety of other case types not representing significant percentages were also referred to ADR in each year.

Accounting for the high number of employment civil rights cases referred to ADR are a number of factors. Because many of these claims first have been filed with and processed by the EEOC, the cases have been through a preliminary administrative investigation which may make the disputes ripe for resolution through ADR. In addition, labor and employment law practitioners typically are more comfortable with ADR processes because ADR is commonly utilized in these areas of practice. Other factors include the opportunity parties have through ADR to obtain forms of relief not available through court adjudication, the fact that informal resolution of these disputes is important when the parties expect to maintain a relationship, and the value parties to employment disputes place on being able to tell their stories in a private non-adversarial setting.

Measuring the rate at which ADR has induced or materially contributed to settlements is an important element in the assessment of this program. Unfortunately, reliable data regarding settlements have been difficult to retrieve from the court's automated case management system. By local rule, each ADR referral should be concluded by the neutral filing a compliance report within 14 days of the last conference with the parties. The neutral must indicate in this report whether the referral has concluded and whether the parties settled the case as a result of ADR. Without the compliance report, ADR referrals which actually have concluded appear to be ongoing, and there is no indication whether a settlement was achieved unless the parties filed a stipulation to dismiss near the deadline for ADR completion. In the year just ended, compliance reports were filed in fewer cases than expected based on the ADR conclusion dates contained in the orders of referral. Had compliance reports been filed in all cases as required, the automated case management system would have indicated a settlement rate for the total of cases concluded by the close of the current reporting period. The clerk's office recently notified all certified neutrals of the need to file compliance reports in the future.

To determine the success rate for cases referred to ADR in this reporting period, the settlement information was retrieved by examining the docket entries in individual cases and by contacting the parties involved. For purposes of this report, dispositions by agreement of the parties are considered to be directly related to the ADR process if entered within thirty days of the end of the referral. Of cases filed in 1995, 277 were referred to alternative dispute resolution as of March 1997. Terminations have been entered in 175 of those cases, and 61 (35%) were concluded by agreement of the parties within thirty days of the end of the referral to ADR. Of cases filed in 1996, 327 were referred to ADR as of March 1997 but only 88 (27%) have concluded the process and 36

(41%) of those terminated as a direct result of ADR. Two hundred-fifty of the 1996 referred cases are still pending. While this settlement data may be incomplete based on the limitations described earlier, it is generally consistent with the results reported by parties in the survey data summarized below.

Surveys of ADR Attorneys and Neutrals

Surveys were conducted in November 1996 of attorneys and neutrals who have participated in ADR in this court. These surveys were developed using several examples of ADR questionnaires obtained from the Federal Judicial Center. The purpose of the surveys was to measure the opinions of these participants about cases that had completed the ADR process. The sample of recipients for each of the two surveys was drawn from those cases.

For all ADR cases that had an ADR compliance report on record, a list of the case numbers was compiled, from which the attorneys and the neutrals involved were listed according to the cases in which they had participated. The final list (arranged in ascending order by case number) revealed that many of the attorneys had participated in more than one ADR case in this court. Because the survey was designed to query participants about a specific case, only the first case listed for the plaintiffs' lead attorney was chosen for the survey sample. Then the first attorney entered for the defendants and the neutrals in these cases were included on the list of survey recipients. This process ensured that none of the neutrals or attorneys surveyed would receive more than one questionnaire. While this was not a purely random process for selecting recipients of the survey, it does constitute a representative sample of cases that are on record as having completed the ADR process.

Surveys were mailed to 131 attorneys. Ninety-three surveys were returned, and 92 responses were used for data analysis, which represents a 70% return rate. For the neutrals' survey, 36 were mailed, with 33 returned for a 92% return rate. These return rates are a very encouraging indication that the survey recipients have a high level of interest in the ADR process.

The survey responses were recorded in an SPSS (Statistical Package for the Social Sciences) database to generate descriptive statistics and to test for relationships among the responses to survey questions. The two surveys asked similar questions. The attorney survey, however, asked opinions about the neutral and asked about how and why the case was referred to ADR. Results from both surveys are highlighted in the following summaries.

Most sections of the attorney survey asked for opinions about key aspects of the ADR process. One section asked for overall impressions about the ADR process for the case, such as their level of satisfaction with the outcome of ADR. The graph below depicts the results for that question.

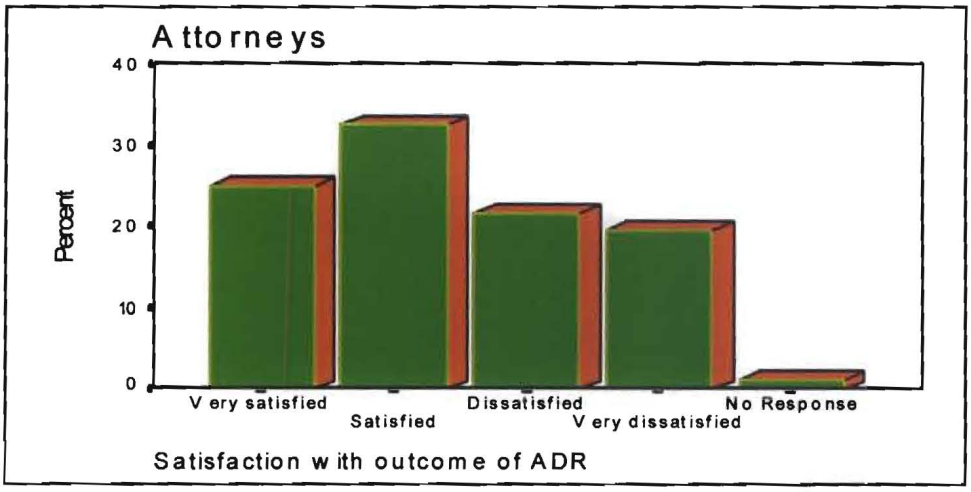

Figure 1

As Figure 1 shows, 58% of the attorneys were satisfied with the outcome of ADR for their case, while 41% were dissatisfied (1% did not answer the question). When asked about the fairness of ADR procedures, 88% of the survey respondents thought that the procedures used for ADR were very fair. When responses to these two questions were tested for correlation, the test showed no relationship between the attorneys' level of satisfaction with the outcome of ADR and their views about the fairness of ADR procedures. This lack of correlation means that most of the 41% who were dissatisfied still found the procedures to be fair. On a question about the costs and benefits of ADR, 64% felt that the benefits of being involved in ADR outweighed the costs. This comparison correlated positively with the satisfaction levels, i.e., those who believed that the benefits exceeded the costs tended to be more satisfied with the outcome, while those who said that the benefits did not exceed the costs tended to be less satisfied.

Responses to several other questions were also tested for correlation both with the level of satisfaction for the outcome of ADR and with responses to a question about the settlement result. Almost one-third of the respondents said that ADR contributed to settlement of the case, while nearly two-thirds said that ADR did not help the case settle. This data correlated with reported satisfaction about the outcome. Those who felt that ADR helped the case settle tended to be more satisfied with the outcome. Whether the case settled as a result of ADR correlated with participants' opinions about benefits over costs. Those who said the case settled because of ADR tended to believe that the benefits outweighed the costs. The attorneys who said the case did not settle as a result of ADR tended to feel that the benefits did not exceed the costs.

Only 17% thought that ADR increased the costs to resolve the case. Those who thought that ADR decreased costs or had no impact tended to be more satisfied with the outcome. Slightly more

than 5% thought that ADR increased the time to resolve the case, and those who believed that ADR either decreased the time or had no effect tended to be more satisfied. Over 40% of the neutrals thought that ADR had helped to decrease both the costs and the time to resolve the case, and approximately 30% thought that ADR had no impact on either costs or time.

In the section of the survey dealing with the attorneys' experience with the ADR process, 72% said that the timing of the initial ADR session for their case was appropriate. Twenty-three percent thought the initial session was too early, and only 5% felt it was too late. The same section in the neutrals' survey yielded similar results. Seventy-nine percent thought that the initial session was held at the right time, while 18% thought it was too early and only 3% too late.

The following table presents a summary of responses to several questions about how helpful the ADR process was in each of several ways. Table 1A lists those factors for which more than 50% of the attorneys believed ADR was moderately to very helpful and those for which more than 50% believed ADR was of no help at all. The factors shown for the neutrals in Table 1B are those for which more than 50% believed ADR was moderately to very helpful and those for which more than 50% thought ADR was of no help at all or did not apply to the case.

TABLE 1A: Attorneys (> 50%)	
ADR Moderately to Very Helpful For:	*ADR of No Help at All For:*
Clarifying/narrowing monetary differences	Assisting case schedule, discovery, or motions
Giving parties chance to "tell their story"	Moving parties toward entering stipulations/eliminating issues
Allowing more client involvement in resolving the case	

TABLE 1B: Neutrals (> 50%)	
ADR Moderately to Very Helpful For:	*ADR of No Help at All In/Not Applicable To:*
Clarifying/narrowing liability issues	Assisting case schedule, discovery, or motions
Clarifying/narrowing monetary differences	Providing a neutral evaluation of the case
Allowing parties to identify strengths and weaknesses of each other's case	Moving parties toward entering stipulations/eliminating issues
Encouraging parties to be more realistic about respective positions	
Improving communication between parties	
Giving parties chance to "tell their story"	
Allowing parties to explore solutions not available through trial or motions	

The attorneys were asked to evaluate the neutral in their case on several characteristics. Ninety percent thought the neutral treated the parties fairly, 89% rated the neutral as a good listener, and 86% expressed a high level of trust in the neutral. Ninety-four percent thought the neutral described the dispute resolution process adequately to the parties, 71% believed the neutral was well prepared to discuss the case, and 72% rated the neutral's assessment of their case as realistic. Only 51% thought the neutral was effective in getting the parties to engage in a meaningful discussion of the issues, and 40% believed that the neutral was not sufficiently forceful. Sixty-eight percent of the attorneys gave the neutral an overall rating of excellent, and 72% thought the neutral had an appropriate level of subject matter expertise for the case.

The attorneys were asked to rate several factors on their influence over the decision to choose the ADR process for their case. Only three factors were evaluated by more than half the

attorneys as being "very important." Fifty-two percent rated their desire to reduce litigation costs as a very important factor in choosing an ADR process. Sixty-two percent said ADR would be very important for helping to resolve the case more quickly. Fifty-seven percent considered ADR very important because they wanted someone to facilitate settlement discussion. A few factors were rated as "not at all a factor" by more than half the attorneys. Fifty-eight percent said that wanting to preserve ongoing relationships between parties was not a factor for choosing the ADR process. Sixty-four percent did not consider wanting help in planning discovery and/or motions as a factor for choosing ADR. Seventy-three percent indicated that choosing their ADR process was not a matter of it being the only one to which the other side would agree. Overall, 74% of the attorneys felt that the ADR process used for their case was appropriate, and 82% of the neutrals had the same assessment.

Both surveys asked about various costs and time factors for ADR. The median number of face-to-face ADR sessions for both the attorneys and neutrals was one session. The median number of hours spent in sessions and telephone conferences for the case was five hours for the attorneys and four hours for the neutrals. The neutrals who reported receiving payment for their services had a median fee of $808.50. The attorneys were asked to consider what their client's total litigation costs would have been if the case had not been assigned to ADR. Thirty percent said that ADR would or did decrease client costs, with an estimated median decrease of $10,000. Thirty-eight percent believed that ADR would or did increase client costs, with a projected median increase of $2,000, and 53% who reported increased costs said the increase was not worthwhile.

The fact that nearly two-thirds of the attorneys surveyed did not report settlement as a direct result of ADR clearly had an impact on their responses to portions of the survey. A review of

terminated ADR cases that do not have an ADR compliance report on file revealed that many of them had stipulations for dismissal instead of the compliance report. The fact that these cases settled may explain why the reports were never filed.

CIVIL ASSIGNMENT SYSTEM

Implemented January 1, 1994, the court's innovative system for assigning civil cases randomly either to an Article III district judge or to a magistrate judge is now in its fourth year. Magistrate judges draw civil cases at the time of filing, after which the parties must either consent to the exercise of dispositional authority by the assigned magistrate judge or elect to have the case randomly reassigned to a district judge. Because this system engages magistrate judges in a significant trial docket of civil cases, the Article III district judges' referrals to magistrate judges for reports and recommendations are limited to habeas corpus and social security cases. The reduced civil caseloads carried by the district judges have allowed more time for meaningful pretrial case management and the trial needs of criminal cases.

In calendar year 1996, 2871 new civil cases were filed in the Eastern District. The magistrate judges initially were assigned 1156 cases (40%), with the balance assigned to Article III district judges. This represented an intentional 11% reduction in the magistrate judges' share of new civil cases in 1996 compared to 1995. When pending caseloads for some magistrate judges exceeded 150 cases early in 1996, the proportion of the draw was reduced for all magistrate judges so as not to create an imbalance in the workload. Periodic adjustments in the district judge/magistrate judge assignment ratio occur as needed under this system in order to maintain an appropriate caseload balance.

To avoid delays in case processing, this system requires the parties, within twenty days of entry of appearance, to file either a consent to the dispositive authority of the assigned magistrate judge or an election to have the case reassigned to a district judge. For 1996 cases, full consents as of the close of the year were obtained in 371 of the 1156 cases assigned (32%). The average time from filing to full consent was 74 days in 1996. This compares favorably to 1995, when 344 cases achieved full consents out of 1459 cases assigned (24%), and the average time from filing to full consent was 87 days. Reassignments as of the close of the year in 1996 totaled 285, 25% of assigned cases. In 1995, 24% of cases (350) were reassigned to district judges.

Because of delays due either to the parties' failure to file the election form or to unsuccessful attempts at service of process upon all defendants, magistrate judges also maintain pending cases in which all consents are not on file but the parties have done nothing to trigger a reassignment. Among all the magistrate judges, those cases carried without the required election totaled 500 (43%) at the close of 1996. This is an improvement over 1995 when cases retained by magistrate judges without consent or reassignment election totaled 765 (52%). Efforts are being made to reduce the number of cases in this category by inducing the prompt filing of the consent or the reassignment request. While some cases in this group may belatedly achieve full consent, many eventually will be transferred to district judges in the absence of any action by the parties. Currently, each magistrate judge's pending caseload includes from 37% to 67% of "retained" assignments in which no election has occurred. A limited percentage of this type of case will always be present in the docket pending before each magistrate judge at any given time because the election is requested immediately after filing and assignment of a case, but it may not be made for some months thereafter.

Goals the court intended to achieve by adding magistrate judges to the assi
civil cases included the reduction of caseloads of district judges, better utilization
judges as judicial officers and decreased time to disposition resulting from im
management. Preliminary findings of an empirical study of the civil assignment system indicate that these goals are being attained. At the end of 1993, just prior to the start of the new assignment system, the court's six district judges (with two vacant judgeships) had average pending civil caseloads of 567. A substantial decrease in the caseloads of the district judges was achieved by the end of 1996 when the court's six active district judges (with two vacant judgeships) had average pending caseloads of 274, while the seven magistrate judges had average pending civil caseloads of 111.

Comparisons of dispositional averages drawn from the multi-year study of civil cases processed before and after the new assignment system was instituted indicate that cases are being resolved faster with magistrate judges participating in the draw of civil cases. Among the cases in the study that were resolved by trial prior to the assignment system change in 1994, the average time from filing to final disposition was 616 days. After the magistrate judges became part of the assignment pool, cases in the study that were resolved by trial were concluded on average 550 days from the date of filing, a reduction in time to disposition by trial of about 10%.

In the charts below, overall dispositional performance for cases in the study is displayed for the periods before (comparison group) and after (treatment group) the civil assignment system changes. The median time from filing to disposition by district judges prior to the change was 288 days, while the median time to disposition by magistrate judges was 560 days (Figure 2). Since the addition of the magistrate judges to the civil assignment pool, the median time to disposition

decreased for district judges to 252 days for all civil cases while magistrate judges' median time decreased to 151 days (Figure 3).

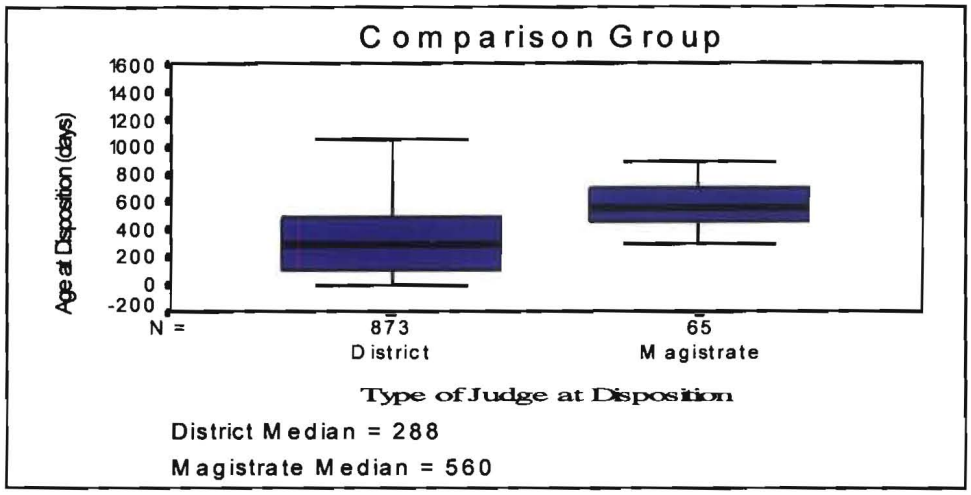

Figure 2

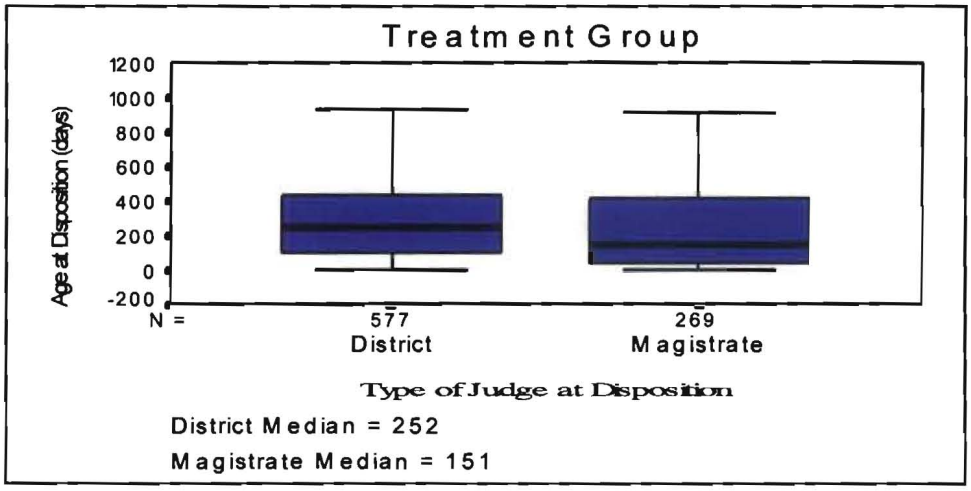

Figure 3

If prisoner civil rights cases are removed from the sample data, the median times to disposition for both types of judges are significantly altered because the effect of rapid frivolity dismissals is eliminated. Without the effect of prisoner civil rights cases, the median time to disposition by

district judges in the period prior to the new assignment system was 315.5 days (Figure 4). Magistrate judges at that time did not have prisoner cases assigned at the frivolity stage. When the magistrate judges were added to the civil assignment draw, the median time to disposition for all cases other than prisoner civil rights cases was 300 days for district judges and 322.5 days for magistrate judges (Figure 5). The shaded boxes on these charts illustrate the disposition ages for 50% of the cases in each category, and the ranges are displayed by the upper and lower ends.

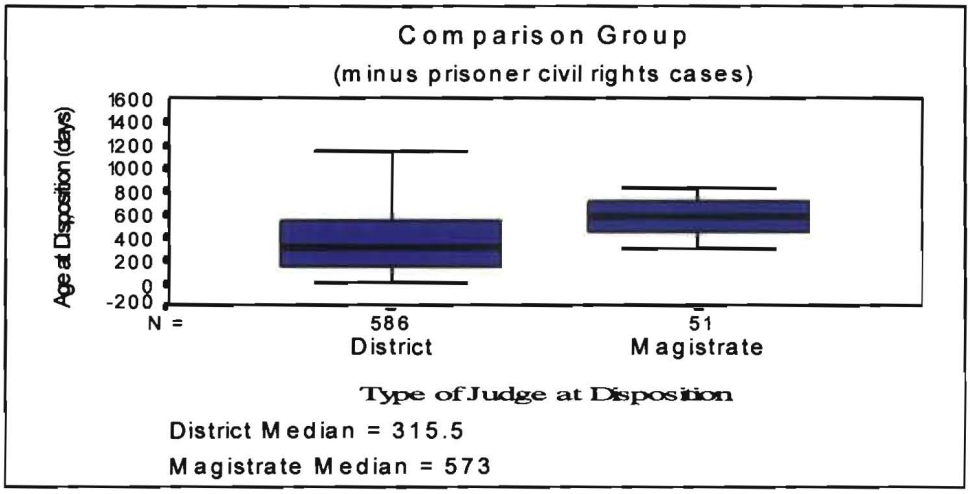

Figure 4

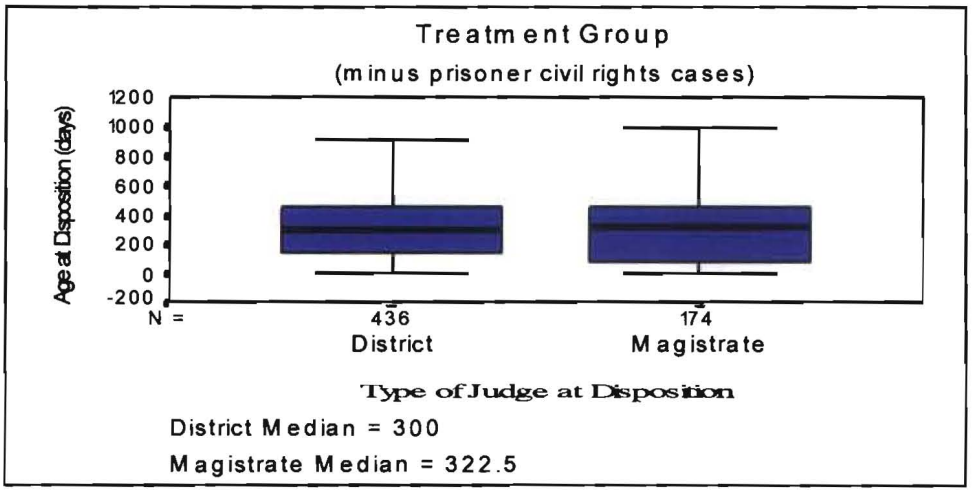

Figure 5

DIFFERENTIATED CASE MANAGEMENT

During the second year of DCM (January 1, 1996 - December 31, 1996), 2871 civil cases were filed. This total reflects an increase of 9 civil cases over 1995's total of 2862 civil cases (see figures 6 and 7 below). A total of 1918 civil cases filed in 1996 received a track assignment from the five track descriptions under the DCM System.

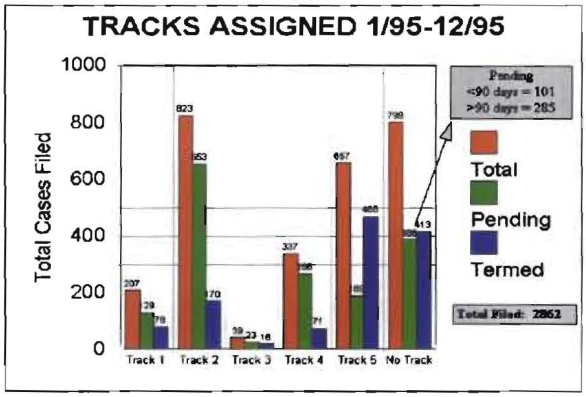

Figure 6

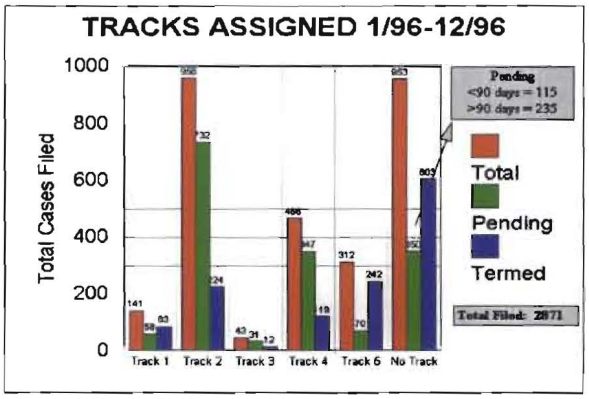

Figure 7

Track Assignment

One hundred forty-one civil cases were assigned to track 1 (Expedited) in 1996. This total reflects a 32% reduction over 1995's total of 207 assignments. Track 2 (Standard) cases saw an increase of 14% for cases assigned to track 2 with 956 track 2 assignments in 1996 compared to 823 track 2 assignments in 1995. Track 3 assignments rose slightly during 1996 with 43 assignments compared to 39 in 1995. Four hundred sixty-six civil cases were assigned to track 4 (Administrative), reflecting a 28% increase over 1995's track 4 assignments totaling 337. The Court experienced a significant decrease in cases assigned to track 5 (Prisoner). A total of 312 cases were assigned to track 5 showing a reduction of 53% over 1995's 657 track 5 assignments. Three hundred fifty cases filed in 1996 are pending without a track assignment. One hundred fifteen cases have been pending for less that 90 days and the remaining 235 cases have been pending for more

than 90 days. The latter category of 235 cases represents an 18% reduction in unassigned cases pending over 90 days from last year's total of 285 unassigned cases pending over 90 days.

DCM Statistical Measures

Time Standards - Track 1

Figure 8 shows the filing to disposition time standard ranges for closed track 1 cases for the first two years of DCM. The filing to disposition time frame for track 1 cases under the DCM System is 12 months. This graph reflects the percentages of all terminated track 1 cases that closed within the 12 month range and those that closed beyond this range for each of the first two years of DCM. As shown in this chart, track 1 terminations within the track range improved in 1996 and there was a decrease in the percentage of cases closing beyond the track range in 1996.

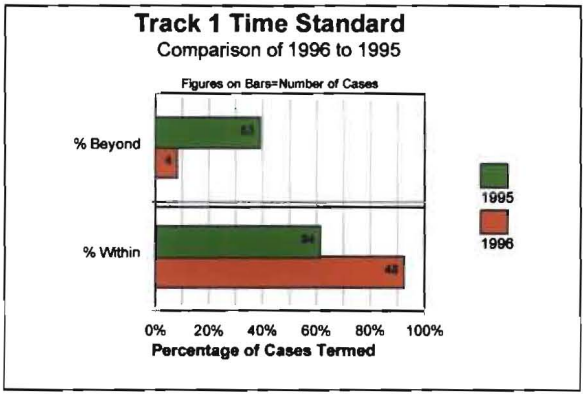

Figure 8

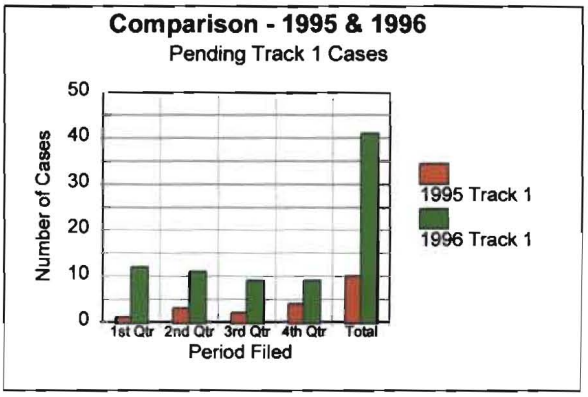

Figure 9

Figure 9 shows open track 1 cases filed in 1995 and 1996 that are still pending beyond the track 1 range. A total of 10 track 1 cases filed in 1995 remain open and a total of 41 track 1 cases filed in 1996 are still pending.

Time Standards - Track 2

Figure 10 shows the filing to disposition time standard ranges for closed track 2 cases filed during the first 6 months of 1995. The filing to disposition time frame for track 2 cases under the DCM System is 18 months. A total of 275 track 2 cases filed between January, 1995 and June, 1995 have closed. Seventy-two percent of those cases closed within the 18 month range (see Figure 10.)

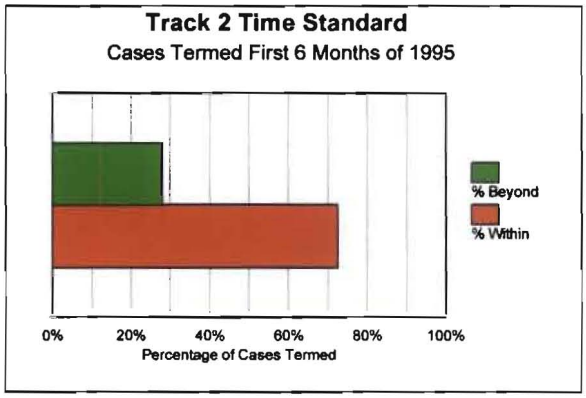

Figure 10

Figure 11 (on next page) shows open track 1 cases which were filed in 1995 or 1996 and open track 2 cases filed from January, 1995 through June, 1996. These percentages represent cases that are still pending beyond their respective track ranges. Seven percent of track 1 cases filed in 1995 are still pending, followed by 13% of track 1 cases filed in the first quarter of 1996 which just ended their 12 month standard range. Twenty-three percent of track 2 cases filed during the first 6 months of DCM (1/95-6/95) are still pending beyond the track range of 18 months.

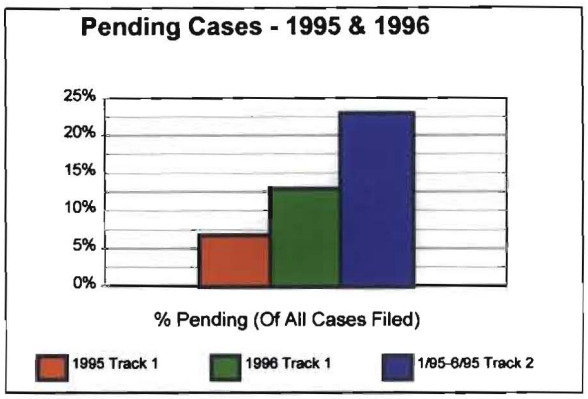

Figure 11

Rule 16 Conferences

The Court continues to provide early judicial involvement by holding Rule 16 Scheduling Conferences in all cases assigned to tracks 2 and 3. Although not mandatory, many scheduling conferences also are held in cases assigned to track 1.

A total of 1009 orders setting Rule 16 Conferences were issued during 1996 compared to 769 orders in 1995, which reflects a 24% increase in the number of orders issued. The average number of days from the filing of a civil case to the issuance of an order setting a Rule 16 Conference in a track 2 case filed in 1996 was 94 days (Table 2). This is an improvement over last year's average of 103 days to issue an Order setting a Rule 16 Conference.

TABLE 2: AVERAGE DAYS FROM FILING TO RULE 16 ORDER

Total Issued	Track 1	Track 2	Track 3
1009	81	94	99

Standardized Case Management Orders

The Court continues to modify and enhance the standardized case management orders for the DCM System. Several new orders have been developed since the beginning of DCM to meet

the changing needs of chambers and the Clerk's Office. In 1996, the Court issued 1387 case management orders compared to 1023 in 1995. The average number of days from the filing of a case to the issuance of a case management order in track 2 cases in 1996 was 136 days and 135 days in 1995 (Table 3).

TABLE 3: AVERAGE DAYS FROM FILING TO CMO

Total Issued	Track 1	Track 2	Track 3	Track 4	Track 5
1387	105	136	142	30	190

Enhanced Case Management Techniques

Computer generated mail messages provide important information which enables the Clerk's Office and chambers to monitor civil cases at critical stages during the pendency of the case. The judges' chambers now have access to the same mail messages as the Clerk's Office which permits an excellent means to cross-check and facilitate the movement of DCM cases from filing to completion.

Trial Date Certainty

One of the components of the DCM system is early, meaningful court involvement. A Rule 16 Conference is held early in each case to assess the individual needs of the case. In addition to discussing the complexities of the suit and discovery deadlines, a realistic, firm trial date is set at the Rule 16 Conference. A goal of DCM is to give parties a realistic trial date so that the Court and the parties can avoid unnecessary costs and delays in trial preparation.

Statistics show an improvement in DCM cases being tried earlier and an improvement in fewer cases being reset for trial (see Figure 12 below). In 1993, 822 cases were set for a jury trial. Of those cases, 105 (13%) went to trial. Fifty (47%) of the 105 cases were tried within 2 years and

55 cases took longer than 2 years to be tried. In 1994, 749 cases were set for a jury trial. Of those cases, 95 (13%) went to trial. Fifty-three cases (55%) were tried within 2 years and 42 cases (45%) took longer than 2 years to be tried. In 1995, 857 DCM cases were set for a jury trial. Of those cases, 67 (8%) went to trial. Of those 67 cases, 48 (72%) were tried within 2 years and 19 cases (28%) took longer than 2 years to be tried. Fewer DCM cases set for jury trial in 1995 were reset than in years past. Thirty percent of civil jury cases were reset for trial in 1995 compared to 43% in 1994 and 49% in 1993. DCM cases set for jury trials in 1995 also showed an improvement in the average time for a case terminated before trial (see figure below). In 1995, for cases terminated before trial, the average termination date was 78 days before the scheduled trial date compared to 34 days before trial in 1994 and 23 days before trial in 1993.

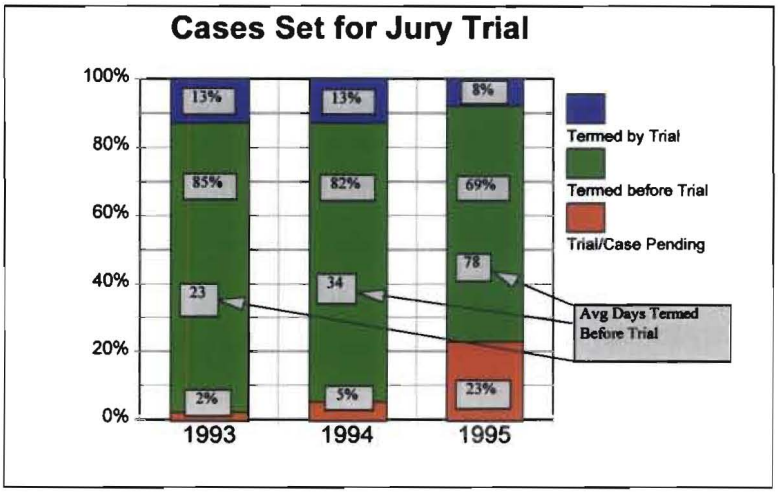

Figure 12

Although statistics show that cases are being tried earlier and fewer cases are being reset, the number of jury cases being tried per calendar year has remained consistent for the past four years (1993 - 1996). Statistical data show that cases tried per year relative to case filings per year have remained in the three to four percent range for the past four years. In 1996, 102 jury cases (4%) were tried compared to 95 jury cases (3%) in 1995, 109 jury cases (4%) in 1994 and 88 jury cases

(3%) in 1993. Although DCM strives to bring cases to a satisfactory conclusion earlier in the litigation process, it does not attempt to reduce the number of civil cases tried. DCM's goal is to identify those cases that need to be tried earlier in the life of the case and to reduce delays and costs in the litigation process.

MOTION ACTIVITY

Discovery and dispositive motions account for a significant portion of the district court's workload. With the CJRA plan's new emphasis on early judicial involvement through scheduling of intermediate case management events, the court's capacity to decide motions in a timely fashion has received greater attention. Timely resolution of motions by the court affects the disposition of cases within the established time standards.

Motions to Compel

Discovery disputes of various types generated 593 motions to compel in 1996, compared to 588 in 1995. In the two years prior to the implementation of the CJRA initiatives, motions to compel totaled 748 and 636 in 1993 and 1994 respectively. While the downward trend in the number of these motions is encouraging, motions to compel remain a significant element of the court's work.

Despite the volume of discovery-related motions, Figure 13 below indicates that relatively few motions are pending as of the date of this report. No motions filed prior to the start of DCM are pending in any 1993 or 1994 cases, and only thirteen motions in 1995 cases and seven motions in 1996 cases are awaiting a ruling by the court. Given that those motions have been pending for

more than sixty days, it is likely they involve issues other than routine points of law or simple factual disputes.

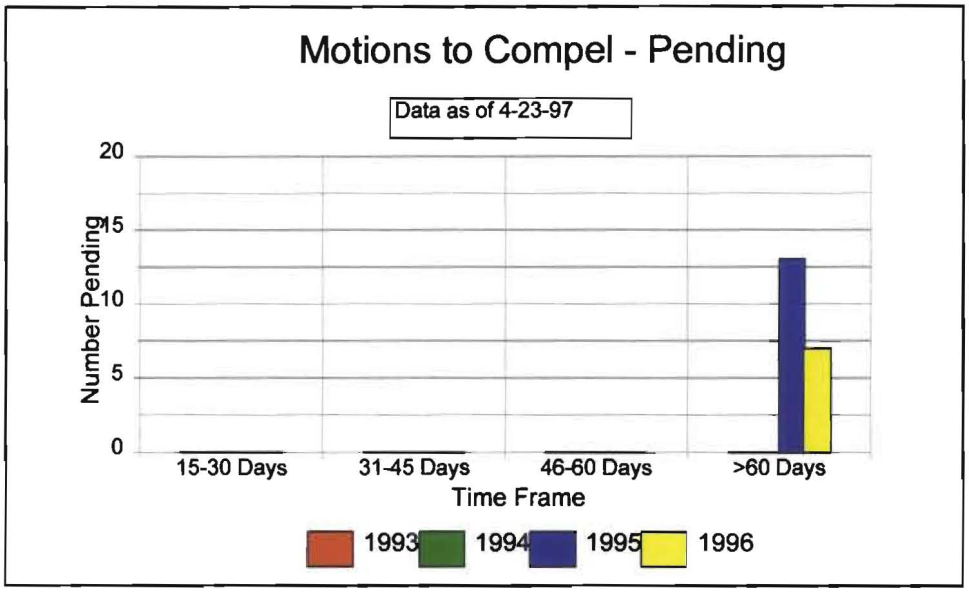

Figure 13

The court's performance with regard to motions to compel that have been terminated as of the date of this report is shown in Figure 14. For the period before DCM (1993 and 1994), 60% of motions to compel were pending more than sixty days when resolved. After the DCM program was initiated, a decline in that percentage was evident in 1995 cases and was reduced to just over 40% of motions ruled in 1996 cases. A corresponding increase, from 15% in 1993 to 30% in 1996, appears in the percentage of motions to compel in less than 30 days. This steady improvement in the prompt resolution of motions to compel is a positive indication that discovery disputes are receiving appropriate attention.

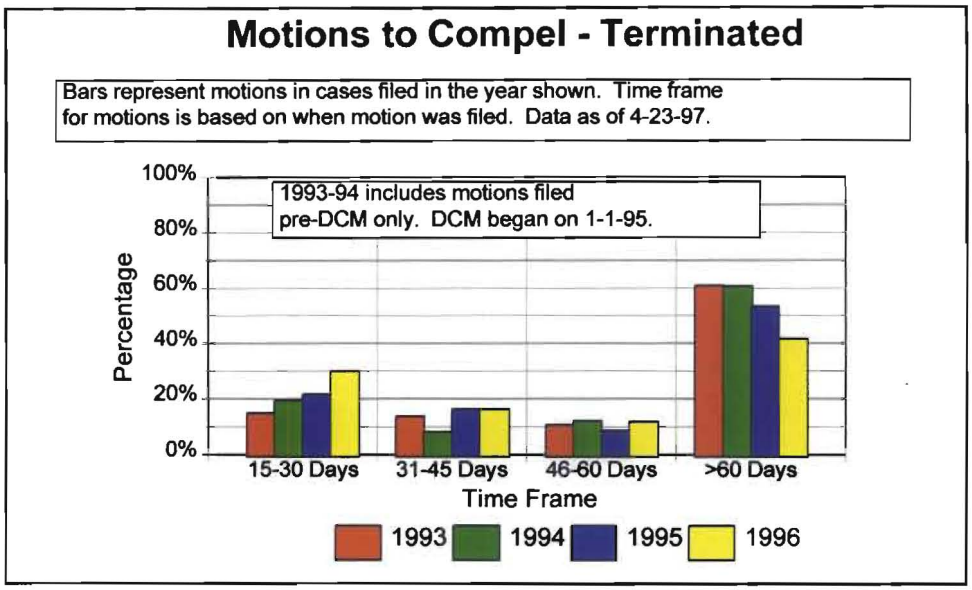

Figure 14

Motions to Dismiss

The pending motions to dismiss are shown in Figure 15, which depicts the total number of motions pending as of the date of this report for cases filed between 1993 and 1996. It also displays time intervals as of April 23, 1997 for those motions based on when they were filed. Most pending motions to dismiss have been on file and awaiting a ruling for more than 121 days, and the majority of those are pending, as would be expected, in 1996 cases. (Note that motions to dismiss cannot be ruled until fully briefed by the parties, which always takes at least twenty days.) When motions in prisoner civil rights cases are removed from the data, Figure 16 indicates only a slight decrease in the overall motion totals and time pending. This data suggest that the largest portion of pending motions to dismiss comes from the court's standard civil caseload. In prisoner cases, a motion to dismiss rather than an answer is typically filed.

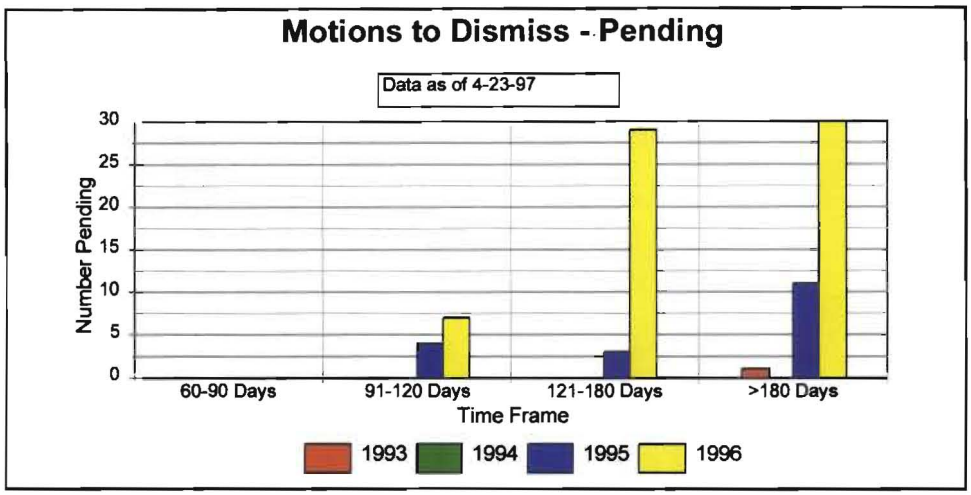

Figure 15

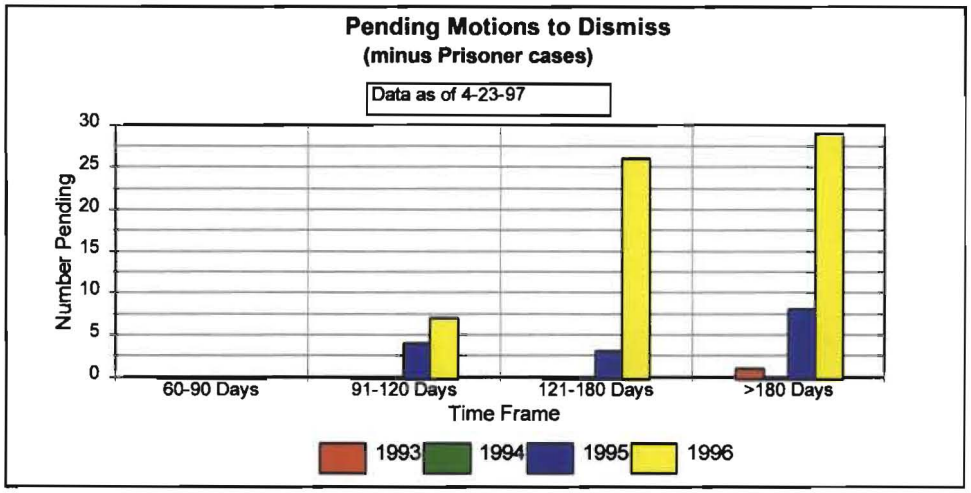

Figure 16

The expected improvement in the court's ability to resolve motions to dismiss, due to enhanced case management practices adopted with the CJRA initiatives, is evident in Figures 17 and 18. For motions filed in 1996 cases, slightly more than 40% were more than 180 days old when decided by the court. This compares favorably to motions filed and resolved in pre-DCM 1993 cases, where more than 60% were over 180 days old at the time of the ruling. On the lowest end

of the scale, the number of motions expeditiously resolved in ninety days or less has risen to 30% for 1996 cases, compared to just 12% for 1993 cases. This demonstrates that in a case filed since the advent of differentiated case management, a motion to dismiss is likely to be resolved in less time than in the pre-DCM period, even though most decisions still take more than 180 days.

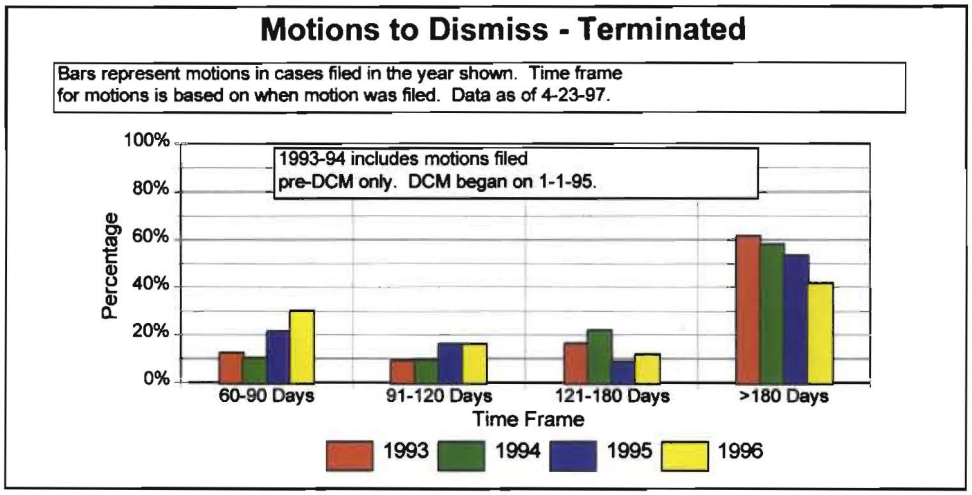

Figure 17

Without motions to dismiss filed in prisoner civil rights cases (Figure 18), the same trends in the court's performance are apparent in standard civil cases, although fewer motions in the standard cases received decisions in under 90 days.

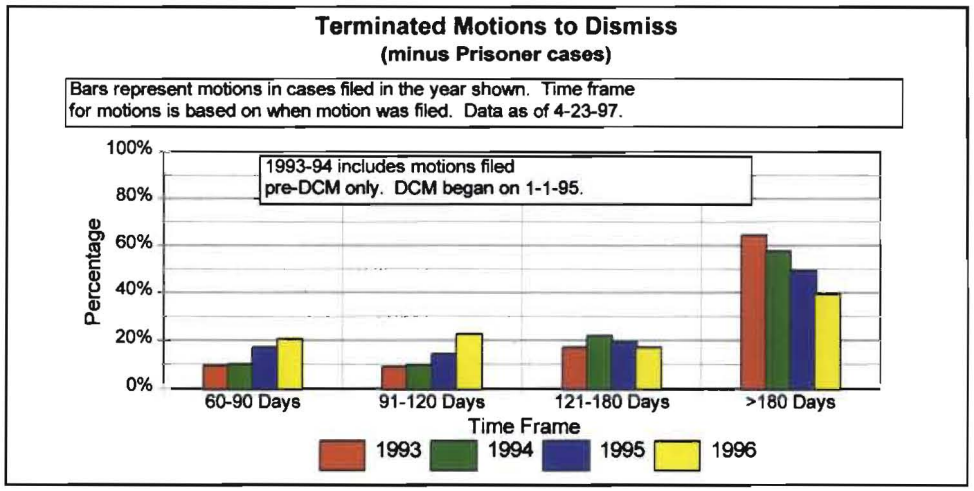

Figure 18

A slight downward trend in the total number of motions to dismiss filed each year since 1993 is evident. By the end of 1996, 650 motions to dismiss were filed, and in 1995 a total of 651 such motions were filed. But just before DCM's implementation, the totals in 1993 and 1994 were 782 and 719 respectively.

Motions for Summary Judgment

Under the DCM system, a filing deadline for motions for summary judgment is set in each case management order entered after a Rule 16 conference. The deadline is set sufficiently before the trial date to give the judge adequate time to decide the issues. Delayed rulings on these motions add to litigants' expenses because trial preparation typically must proceed throughout the time the summary judgment motion is pending. Since the adoption of the CJRA reforms, advancing the summary judgment motion deadline has been regarded as the key to minimizing the number of delayed rulings on potentially dispositive issues just before trial. In 1996 summary judgement motions totaled 838, down from 966 filed in 1993 and 982 filed in 1994.

Results consistent with that objective are being achieved according to the data shown in Figures 19 and 20. There are approximately one-third fewer motions pending in 1995 cases than in 1996 cases. In 1996 there are more motions pending in the 121-180 day category than in the over-180 day category. Although fewer in number, more of the 1995 motions are pending in the over-180-day interval than in any other time interval for that year. It is consistent with expectations that a declining segment of summary judgment motions from each year, presumably the most complex of the group, will gradually shift into the higher pending age intervals as they await a ruling by the court. Figure 19 is a good illustration of that trend over time.

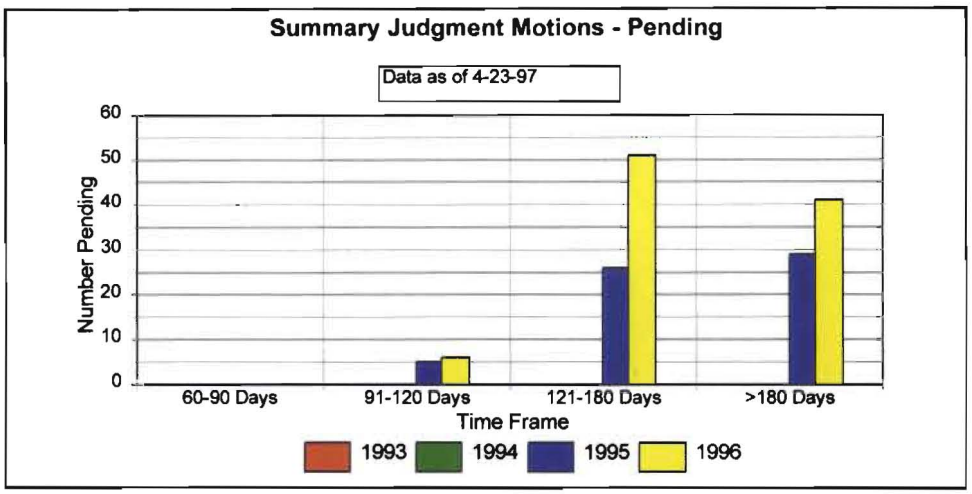

Figure 19

If summary judgment motion activity is examined without the mandatorily filed motions in social security cases, the picture is clearer because only the core civil caseload's motion demands are then illustrated in the data. As Figure 20 indicates, the number of pending summary judgment motions is sharply reduced in 1995 and 1996 when only the standard civil cases are considered. There is also a greater chance of prompt resolution of such motions in 1996 cases because fewer motions are pending at each time interval than are pending for motions filed in 1995 cases. That is not true of the pending motion data that include social security cases (Figure 19).

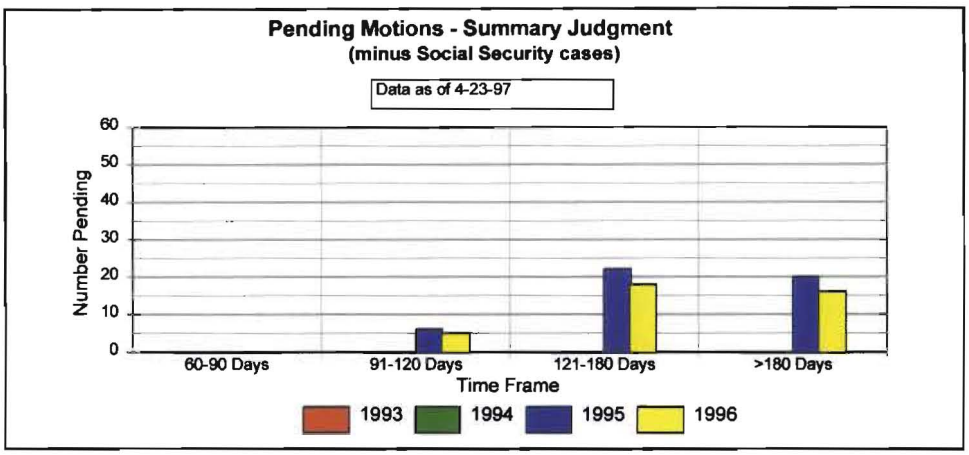

Figure 20

Progress is also being made in the disposition of these motions (Figure 21). Only 30% of all motions for summary judgment filed in 1996 cases required more than 180 days to resolve, compared to more than 70% of motions filed in 1994 cases. Similarly, the number of motions decided in more than 121 but less than 180 days has more than doubled in 1996 cases compared to 1994 cases. This distribution pattern is quite similar even when motions for summary judgment filed in social security cases are removed from the analysis, as shown in Figure 22. Only 20% of the motions in 1996 standard civil cases required more than 180 days to resolve, which is less than one third of the percentage resolved at that time interval in motions for 1994 cases. Significantly more 1995 and 1996 motions were resolved in the shortest time interval of less than 90 days than motions filed in cases in the pre-DCM period. Nevertheless, the largest number of motions for summary judgment in any year required 180 days or more for the court to resolve, reflecting the relatively complex nature of these motions.

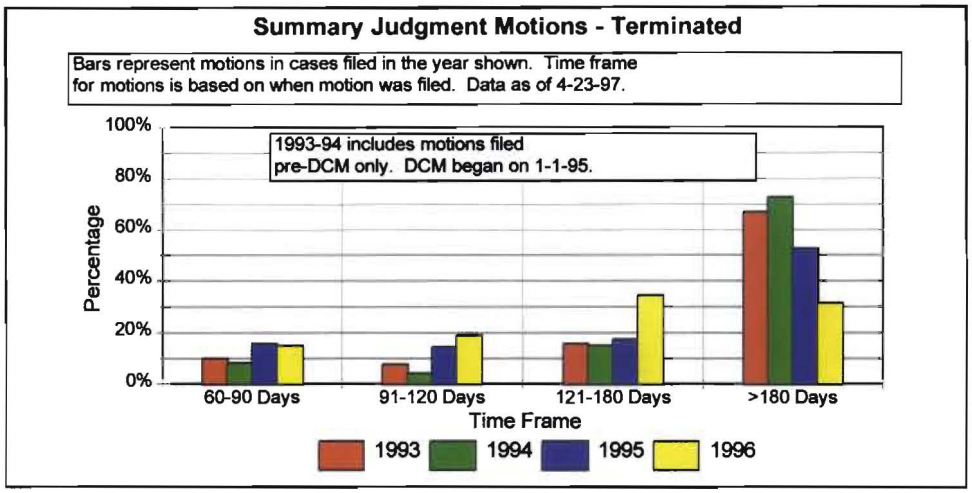

Figure 21

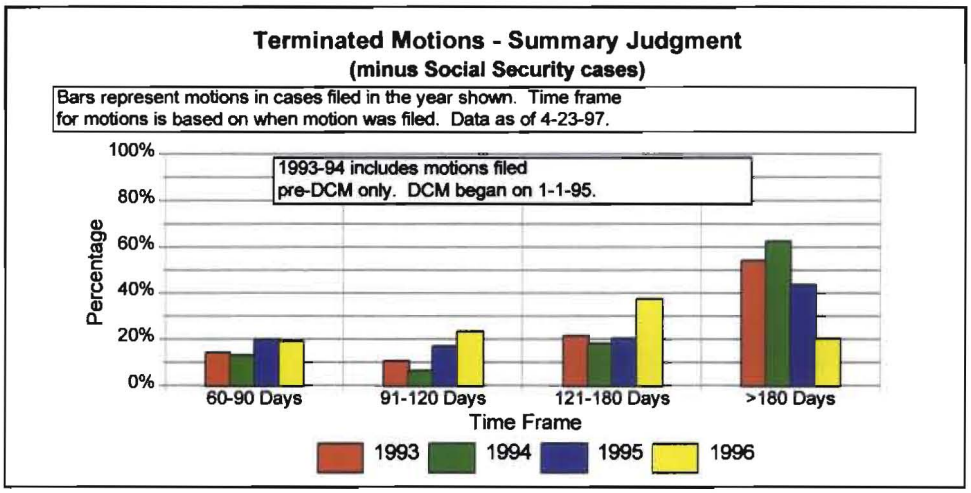

Figure 22

CRIMINAL TRIALS

In 1995, there were 54 criminal cases tried in the Eastern District of Missouri. Of those trials, 11 (20%) were held in the Southeastern Division and 43 (80%) were tried in the Eastern Division. In 1996, the number of criminal cases tried in the Eastern District of Missouri decreased

to 49. Of those, 6 cases (12%) were tried in the Southeastern Division and 43 cases (88%) were tried in the Eastern Division. This decrease was a decline of 46% for the Southeastern Division.

While the trial rate changed, the average number of days to hold a criminal trial remained relatively constant. In 1995, 3.9 days were required to conduct a criminal trial and 3.6 days were required in 1996.

THREE YEAR OLD CASES

In February 1996, there were 3161 civil cases pending in the Eastern District of Missouri. Of those, 170 cases (5%) were pending for three years or more (Table 4). There were 143 cases (84%) in the Eastern Division, 20 cases (12%) in the Southeastern Division and 7 cases (4%) in the Northern Division. Of the 170 cases pending for three years or more, the largest plurality by nature of suit was habeas corpus cases totaling 38 cases (22%) and pending an average of 1478 days. When motions to vacate, prisoner civil rights cases and death penalty cases are combined with habeas corpus cases, the three year old prisoner- related cases pending in 1996 totaled 75 (44%).

In February 1997, there were 2823 civil cases pending in the Eastern District of Missouri. Of those pending cases, 122 (4%) were pending for three years or more (Table 5). There were 111 cases (91%) in the Eastern Division, 6 cases (5%) in the Southeastern Division and 5 cases (4%) in the Northern Division. Of the 122 cases pending for three years or more, the largest plurality by nature of suit continued to be habeas corpus with 25 cases (20%). The average time pending for habeas corpus cases in 1997 was 1300 days. Again, combined with the other prisoner related cases these three-year old cases totaled 44 (36% of all three year old cases), representing a decrease from 1996 of 31 cases.

In 1996 three year old cases represented 5% of the civil pending caseload. By early 1997 the number decreased to 4%, a difference of 48 cases. Although the percentage is small, it represents the commitment of the court to reduce the three year old case backlog.

TABLE 4: **THREE YEAR OLD CASES PENDING**

NATURE OF SUIT	# OF CASES PENDING	AVG.AGE OF CASE*
110,140,190- CONTRACT	21	1536
310,350,360,362,365 & 368- PERSONAL	9	1616
370,380,385- PERSONAL PROPERTY	5	1614
423- BANKRUPTCY	5	1272
430- BANKS AND BANKING	5	1460
440,441,442,443- CIVIL RIGHTS	24	1439**
470- RACKETEERING	2	1349
510- MOTION TO VACATE	4	1642
530- PRISONER HABEAS CORPUS	38	1478
535- DEATH PENALTY	7	2048
550-PRISONER CIVIL RIGHTS (1983)	26	1523
625-DRUG SEIZURE	1	1395
710,740,790- LABOR	4	1602
791- E.R.I.S.A.	8	1480
820,830,840- COPYRIGHT/PATENT/TRADMA	5	1453
850- SECURITIES	1	1541
890- OTHER STATUTORY ACTION/TORT/ADM	4	1715
893- ENVIRONMENT	1	2555
TOTAL	170	

*Average age of case in days
**Liddell vs. City of St.Louis (not included in average)

TABLE 5: THREE YEAR OLD CASES PENDING		
NATURE OF SUIT	# OF CASE PENDING	AVG.AGE O CASE*
110,140,190- CONTRACT	13	1659
310,350,360,362,365 & 368- PERSONAL IN	6	1536
370,380,385- PERSONAL PROPERTY	4	1827
423- BANKRUPTCY	19	1261
430- BANKS AND BANKING	2	1728
440,441,442,443- CIVIL RIGHTS	10	1612**
470- RACKETEERING	4	1475
510- MOTION TO VACATE	4	1879
530- PRISONER HABEAS CORPUS	25	1300
535- DEATH PENALTY	3	1699
550-PRISONER CIVIL RIGHTS (1983)	12	1662
625-DRUG SEIZURE	1	1225
710,740,790- LABOR	3	1581
791- E.R.I.S.A.	4	1317
820,830,840- COPYRIGHT/PATENT/TRADMARK	1	1451
850- SECURITIES	1	1907
890- OTHER STATUTORY ACTION/TORT/ADMIR	8	1517
893- ENVIRONMENT	2	1846
TOTAL	122	****

*Average age of case in days
**Nineteen J.H. Ware Trucking Cases (All related Bankrupct
***Liddell vs. City of St. Louis (not included in average)

CONCLUSION AND ADVISORY GROUP RECOMMENDATIONS

The Court's CJRA expense and delay reduction plan is still in an early stage of implementation, but 1996 yielded more data for review than in previous years. Assessment of the data reveals that the Court is successfully implementing the new civil case assignment, ADR and DCM systems. These changes appear to be contributing to strong improvements in case processing to the satisfaction of the Court and the bar.

The members of the Civil Justice Reform Advisory Group, in consideration of the findings reviewed in this report, offer the following recommendations for consideration by the District Court:

1. To reduce the number of motions to compel, the Court should consider adopting model interrogatories and document requests specific to certain types of law suits, such as Title VII employment claims.
2. To expedite rulings on uncomplicated discovery motions, the Court should consider implementing a regularly scheduled motions docket to facilitate rulings from the bench in appropriate cases.
3. To preserve the viability of a separate expedited track (Track 1) and standard track (Track 2), the Court should consider extending the disposition time standards to fifteen months for Track 1 and twenty months for Track 2.

APPENDIX 1

U.S. DISTRICT COURT -- JUDICIAL CASELOAD PROFILE

	Missouri Eastern		Twelve Month Period Ended September 3 1996	1995	1994	1993	1992	1991	NUMERICAL STANDING WITHIN U.S	CIRCUIT
Overall Caseload Statistics	Filings*		3,410	3,081	3,182	3,330	3,275	3,235		
	Terminations		3,487	3,315	3,292	3,028	2,807	2,850		
	Pending		3,253	3,284	3,563	3,620	3,863	3,395		
	Percent Change In Total Filings Current Year	Over Last Year . . .		10.7					30	7
		Over Earlier Years			7.2	2.4	4.1	5.4	71	9
	Number of Judgeships		8	8	8	8	8	8		
	Vacant Judgeship Months		8.2	4.3	15.1	24	36.9	20		
Actions Per Judgeship	Filings	Total	426	385	398	416	409	404	51	5
		Civil	386	337	358	377	370	371	47	5
		Criminal Felony	40	48	40	39	39	33	60	8
	Pending Cases		407	411	445	453	483	424	33	4
	Weighted Filings		441	393	377	382	356	338	46	5
	95% Confidence	Upper	474	418	402	405	378	360		
		Lower	407	367	352	358	334	316		
	Terminations		436	414	412	379	351	356	42	5
	Trials Completed		27	24	28	28	31	34	43	6
Median Times (Months)	From Filing to Disposition	Criminal Felony	7.4	6.9	7	6.8	5.9	6.5	61	7
		Civil	11	12	12	11	11	11	78	8
	From Filing to Trial (Civil Only)		20	22	20	16	13	17	53	8
Other	Number (and %) of Civil Cases Over 3 Years Old		169	198	167	129	166	148		
			5.5	6.5	5	3.8	4.5	4.6	67	10
	Average Number Of Felony Defendants Filed per Case		1.4	1.5	1.3	1.5	1.3	1.3		
	Jurors	Avg.Present fo Jury Selection	33.22	29.15	25.08	33.4	39.56	36.47	42	4
		Percent Not Selected or Challenged	30.4	29.4	19.6	32.9	48	40.5	43	5

1996 Civil and Criminal Felony Filings by Nature of Suit and Offense

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3084	128	33	882	32	12	259	286	390	56	754	6	246
Criminal*	324	1	15	60	2	13	108	**	8	67	3	16	31

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.