

**1993 ANNUAL ASSESSMENT UNDER THE CIVIL JUSTICE REFORM ACT
OF THE STATE OF THE CIVIL AND CRIMINAL DOCKETS AND OF
THE CJRA EXPENSE AND DELAY REDUCTION PLAN
OF THE DISTRICT OF KANSAS**

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October 18, 1994

I. Introduction

On December 16, 1991, the federal district and magistrate judges of the District of Kansas adopted a Civil Justice Reform Act Expense and Delay Reduction Plan, pursuant to the provisions of the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82 ("CJRA"). The Plan was based on the findings and recommendations of the Court's CJRA Advisory Group, which were set forth and explained in **Report and Recommendations of the Civil Justice Reform Act Advisory Group for the District of Kansas (October 25, 1991)** [hereinafter **CJRA Report**]. The Plan envisioned immediate implementation of some aspects of the Plan, and gradual implementation of other aspects. The District of Kansas has been certified by the Judicial Conference as an "early implementation district" pursuant to 28 U.S.C § 471.

Section 475 of the Civil Justice Reform Act requires each district court which has adopted a CJRA Plan to

"assess annually the condition of the 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 the advisory group]."

In accordance with this requirement, the Honorable Patrick Kelly, Chief Judge of the District of Kansas, has requested the Court's CJRA Advisory Group to prepare an assessment of the condition of the court's civil and criminal dockets, and, where practicable, to report on whether the Plan adopted on December 31, 1991 has made progress towards achieving its intended goals.¹

¹ The Advisory Group's 1992 Annual Assessment, filed with the Court in July 1993, is available from the Clerk's office.

On January 27-28, 1994, the Advisory Group met with the judges and magistrate judges of the Court and with the Court's Local Rules Committee to discuss, inter alia, whether and to what extent the Advisory Group should recommend changes to the Court's CJRA Plan in view of the Court's experience after two years under the Plan. The Advisory Group also participated in discussions concerning how the Court should approach the 1993 amendments to the Federal Rules of Civil Procedure, some of which contain a local option opt-out provision,² in light of its adoption in 1991 of a comprehensive CJRA Plan. It was agreed at the January meetings that the 1993 annual assessment should include a discussion of the Court's approach to the 1993 rules amendments.

This report constitutes the section 475 annual assessment for the District of Kansas for the federal fiscal year 1993. The assessment is based on (1) review and analysis of **1993 Federal Court Management Statistics (Administrative Office 1994)** and of the District of Kansas's own internal case management statistics provided to the Advisory Group by the Clerk's Office, (2) several documents prepared by the Clerk's Office for use by the Advisory Group at its January 1994 meeting which encompass a variety of case management information specific to the District of Kansas, (3) internal information related to pending motions and related matters which is compiled monthly by the Clerk's Office; (4) information on pending motions and cases in the District of Kansas reported by the Administrative Office in **Civil Justice Reform Act Report of**

² The wording of the opt-out provisions in the 1993 amendments is such that the amendments automatically took effect in a district court unless that court specifically opts out. The District of Kansas took no action regarding the amendments until January, when, as will be discussed below, the Court elected to opt-in to most aspects of the 1993 amendments. Thus, from December 1, 1993 until the Court's Standing Order 94-1 (pertaining to the 1993 amendments) became effective, the Court was operating under the 1993 amendments as promulgated by the Supreme Court.

Motions Pending Over Six Months, Bench Trials Submitted Over Six Months, Civil Cases Pending Over Three Years on September 30, 1993 (Administrative Office of the U.S. Courts) pursuant to 28 U.S.C. § 476; (5) a working paper prepared for the Advisory Group by Co-Reporter Professor Kim Dayton entitled **Summary of the Federal Judicial Center's Analyses of Case Management Statistics for the District of Kansas, 1990-93** (January 13, 1994); and (6) the Advisory Group's discussions at its meeting January 1994 of the need for additions or changes to the Plan.³

Part II of this report discusses those changes in the Court's pre-trial procedures which were adopted pursuant to the 1993 amendments of the Federal Rules of Civil Procedure and which have the potential to impact the Court's CJRA Plan. Part III contains an assessment of the state of the civil and criminal dockets of the District of Kansas as of September 30, 1993,⁴ and trends in this District's case management statistics compared to national trends. Part IV discusses the extent to which the Court has met certain case management goals articulated in the Plan in 1991. Finally, Part V discusses briefly those matters which are the subject of on-going study by Advisory Group subcommittees, and also contains the Advisory Group's recommendation that the Plan remain intact, except as it is implicitly affected by the 1993 rules amendments, at least until

³ Copies of all documents, memoranda, and other materials to which this assessment cites or upon which it relies are on file with the Co-Reporters.

⁴ In 1992, the Administrative Office of the United States Courts changed the 12-month period for reporting case management statistics from the "statistical year" (July 1 to June 30) to the federal government's fiscal year (October 1 to September 30). Except as noted, all references in this report and assessment to years 1987-92 are references to the federal fiscal year.

It should also be noted that, with respect to some case and motions dispositions statistics discussed in this assessment, the Advisory Group evaluated statistics covering periods other than the federal fiscal year. See, e.g., Part III, *infra* (discussing case and motions dispositions for calendar year 1993).

federal case management statistics for FY 1994 become available for the Group's review and assessment.

II. Effect of the 1993 Amendments to the Federal Rules on the Court's CJRA Plan

On December 1, 1993, sweeping amendments to the Federal Rules of Civil Procedure took effect. The amendments were extensive and affected many areas of pre-trial procedure, particularly discovery. By their very nature, the amendments had the potential to overlap with and in some instances disrupt the mechanics of the CJRA Plans adopted in particular district courts. Some of the more controversial provisions of the 1993 amendments contained language allowing individual district courts to "opt-out" of the amendments through a standing order or local rule.⁵

At the January 1994 meetings with the Court, the CJRA Advisory Group for the District of Kansas and the Court's Local Rules Committee engaged in extensive discussions of the merits of and potential drawbacks to the 1993 amendments. Advisory Group members heard from the Court about how the amendments could be expected to operate if they remained in effect in the Court. Federal District Judge John Lungstrum detailed the changes effected by the Rules amendments. Magistrate Judge Ron Newman, who had been utilizing many of the procedures articulated in the 1993 amendments since November 1, 1993, described the experiences of litigants operating under the procedures and indicated areas of potential conflict between the Court's local rules and the newly amended Federal Rules. Martin Bauer, an attorney and member

⁵ For a complete discussion of the changes wrought by the 1993 amendments to the Federal Rules of Civil Procedure, *see, e.g.*, Nick Badgerow, A Practical Approach to Using the New Federal Rules, *Journal of the Kansas Bar Association*, April 1994, at 26.

of the Advisory Group, provided a practitioner's view of the amendments' potential impact. Ultimately, the CJRA Advisory Group and the Local Rules Committee agreed that the Court should, at least temporarily, "opt-in" to most aspects of the 1993 amendments. On January 1994, the Court entered D.Kan. Standing Order Number 94-1 [hereinafter Order 94-1], which adopts with minor modifications most aspects of the 1993 amendments to the Federal Rules of Civil Procedures. A copy of Order 94-1 is attached to this assessment as Appendix A.

The effect of Order 94-1 is to clarify that the 1993 Rules amendments (as modified by Order 94-1) are applicable to all cases pending as of December 1, 1993, and to modify slightly the amended rules as applicable in the District of Kansas. The Order as entered provides, inter alia, that in the event of conflicts between the amended national rules and local rules of the District of Kansas, the federal rules shall prevail; that certain types of cases, including social security appeals, pro se prisoner matters, forfeiture proceedings, eminent domain proceedings, and bankruptcy appeals, are not subject to amended Fed. R. Civ. P. 16's scheduling requirements; that discovery may commence in certain kinds of cases despite the provisions of the amended federal rules; and that the rules amendments shall not apply retroactively to cases files before December 1, 1993 unless the court specifically so orders. The effect of Order 94-1 (due to its conformity in most respects with the 1993 amendments) is to alter in some significant respects the conduct of pre-trial litigation in Kansas.

The extent to which the Court's new procedures under Order 94-1 will require modification of the CJRA Plan was, in January 1994, unclear. It was the consensus view of the Advisory Group that the new discovery procedures envisioned by the amendments were, at least facially, compatible in all respects with the Plan adopted in December 1991. The Group thus

determined that no major changes were needed in the Plan to accommodate Order 94-1. This determination will be evaluated at the close of FY 1994, once the Court has accumulated significant experience with the standing order.

III. State of the Civil and Criminal Dockets

Section 475 of the CJRA requires each district court which has adopted a CJRA Plan to assess annually the state of its civil and criminal dockets, in much the same way that it was required to do prior to adopting a Plan.⁶ The time frame spanned by this year's assessment is FY 1988-93. The Advisory Group evaluates trends over the given time frame with full knowledge that 1) the Plan adopted by the District of Kansas had been in place for only nine months at the conclusion of FY 1992, with some components in place for an even shorter time period, and 2) the Court's adoption of a number of new pretrial provisions pursuant to the 1993 amendments to

⁶ It has been the view of the Advisory Group and this Court that the state of an individual district court's dockets cannot be evaluated in isolation, but only relative to those of other courts. Thus, in June 1992, in accordance with a requirement of the Plan, the Advisory Group identified a total of twelve federal district courts which, by virtue of their caseloads, case management histories, and other factors, constitute "peer" courts to the District of Kansas. Three categories of peers and twelve total peer courts (four courts per category) were identified: "structural peers", that is, district courts whose historic caseloads have been very similar to those of the District of Kansas; "administrative peers", that is, those courts whose case management statistics, have in the recent past been very similar to this court's; and "absolute peers", that is, the district courts which, overall, have historically "looked" the most like the District of Kansas. By comparing these peer districts to the District of Kansas over time, the Advisory Group hopes eventually to make judgments about the relative success of this Court's CJRA Plan in meeting the statutory goals of expense and delay reduction.

In its Annual Assessment for 1992, tendered to the Court in July 1993, the Advisory Group presented an extensive comparison of case management statistics for the District of Kansas and its twelve peers. At its meeting in January 1994, the Group determined that such an extensive comparison need not be included in the 1993 Assessment, in part because many of the peer courts did not adopt CJRA Plans until the end of 1992. The Group believes that another complete comparison of the District of Kansas and its peers will be useful only after all peer courts have implemented their Plans and have developed experience under them.

the Federal Rules of Civil Procedure may ultimately confound the Advisory Group's ability to assess the impact of the Plan, as distinguished from the Court's new procedures prompted by the 1993 amendments, on the Court's case management statistics.

A. State of the Civil Docket⁷

During the fiscal year ending September 30, 1993, a total of 2239 new cases were filed in the District of Kansas, of which approximately 1987 were civil cases. This is an increase of 4.0% from FY 1992. In FY 1993, 2352 cases were terminated, an increase of 3.3% over the prior year's terminations. At the close of FY 1993, 1930 cases were pending before the court, down 167 cases, or 8.0%, from the close of the previous year.

Expressed in terms of per judgeship statistics, these figures reflect 331 civil and 42 criminal felony filings per judgeship, 322 pending cases per judgeship, 388 weighted filings⁸ per judgeship, and 392 terminations per judgeship. Each judge in the district completed an average of 35 trials in FY 1993, down from 38 in FY 1992.

⁷ This assessment does not include any specific discussion of the District's pro se prisoner civil docket. The Advisory Group's subcommittee on the pro se docket anticipates that it will produce a separate report shortly on this aspect of the Court's civil caseload.

⁸ Until last year, the Administrative Office calculated each district's weighted caseload according to a formula developed in 1979. The weighted filings formula was revised for FY 1993, and the Administrative Office has recalculated weighted filing rates going back to FY 1988 using the new formula. The AO's weighted filings formula "weights" civil cases according to their presumptive complexity. For additional information on the subject of the AO's weighted filings formula, see **How the Judicial Conference Assesses the Need for More Judges (GAO, January, 1993)**, at 73-74; **1993 Federal Court Management Statistics**, at 167.

In the past, some judges and administrators in the District of Kansas have expressed the view that 1979 formula did not accurately reflect the realities of processing different categories of cases, and that the court's weighted caseload was actually higher than the AO's calculations would suggest. When the District of Kansas' weighted caseload for FY 1988-92 was recalculated using the new formula, however, its weighted caseload declined.

The median time from filing to disposition⁹ of a civil case in the District of Kansas was 9 months in FY 1993, down one month since 1992. The median time from issue to trial,¹⁰ in cases going to trial, was 18 months, up one month from the 1992 figure. Only 4.0% of the court's civil cases were more than three years old, reflecting a decrease from 4.4% in 1992. The Advisory Group regards the continued downward trend in the median filing-to-disposition time and the reduction in the docket of three-year-old cases as an indication that the Plan as implemented is capable of achieving its intended goals.

B. Trends in the Civil Docket

Several figures set out below illustrate the trends in various civil caseload and case management statistics for the District of Kansas FY 1988 through FY 1993.¹¹ Trends are described first in terms of all-court statistics, and then in terms of per judgeship statistics. Trends in national case management statistics are incorporated in some figures for comparison purposes but are not discussed separately. In describing the trends that these figures illustrate, the Advisory Group refrains for the most part from attempting to draw any conclusions from or make value

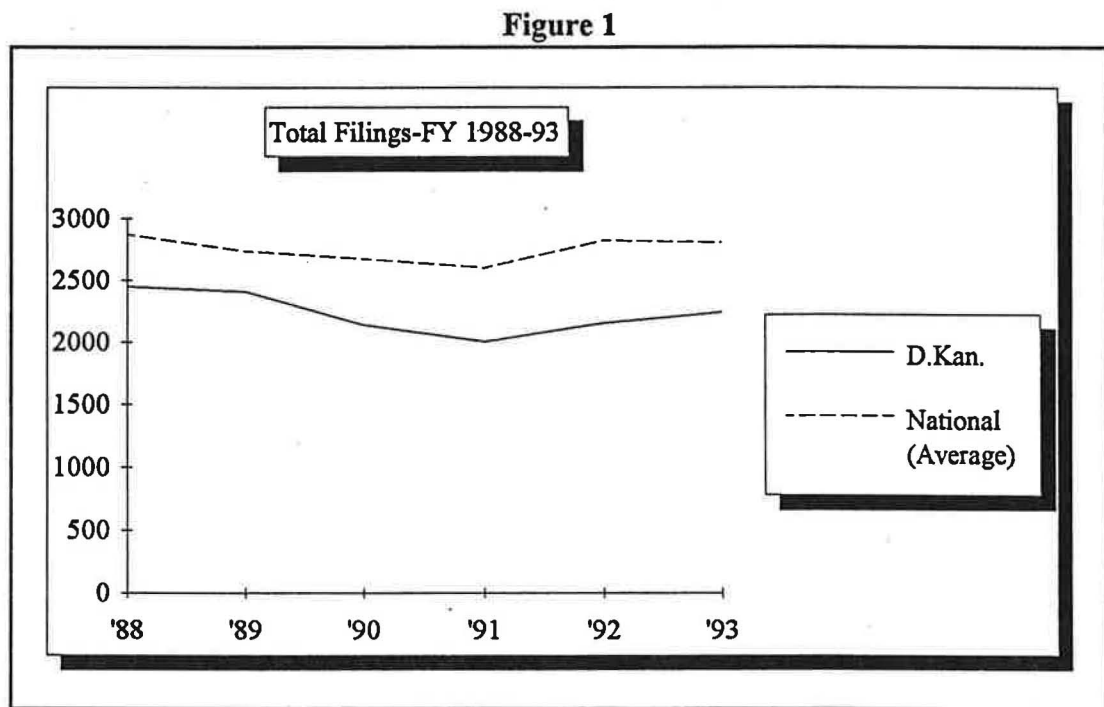
⁹ The median time from filing to disposition reflects the time interval in months from the filing of the complaint to termination of the case, whether by trial or other disposition, for the middle (median) cases. In determining the median time from filing to disposition for civil cases, the Administrative Office excludes land condemnation, recovery of overpayments, and enforcement of judgments cases, prisoner petitions, and deportation reviews. **1990 Federal Court Management Statistics f (Administrative Office 1990).**

¹⁰ The median time from issue to trial reflects, for all cases going to trial during the year in question, the time interval in months from the filing of an answer or other response to the date trial begins for the middle (median) case. **1990 Federal Court Management Statistics f (Administrative Office 1990).**

¹¹ Last year's annual assessment included as part of its discussion of current trends information concerning trends in the courts twelve peer districts. Trends for peer districts are not included in this year's assessment for reasons explained above.

judgments based on the numerical information, because such conclusions and judgments would at this point be premature.

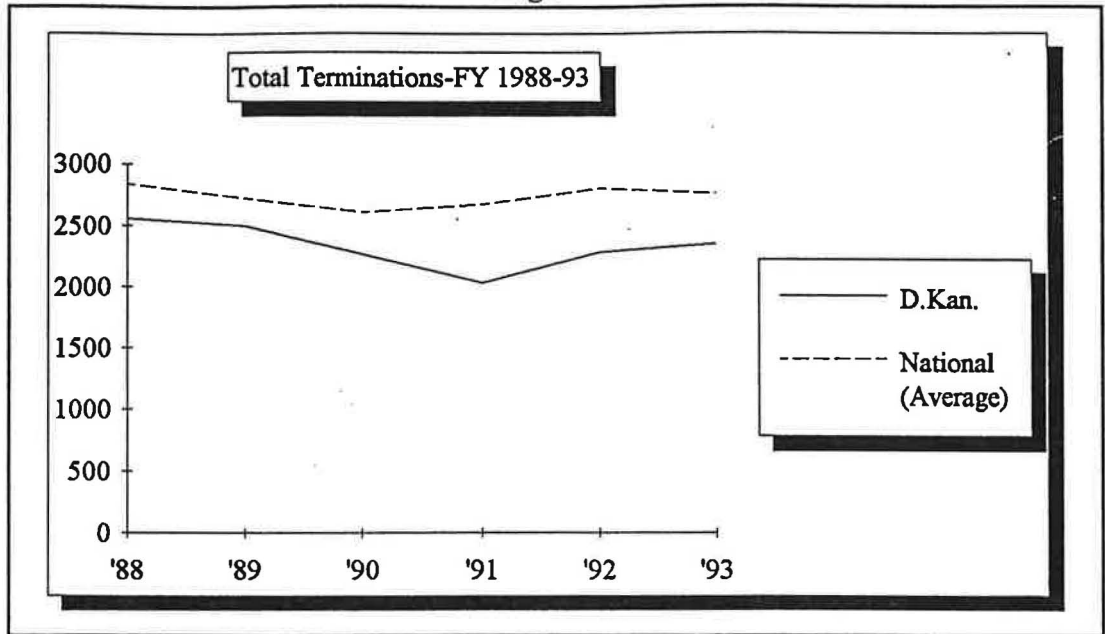
Figure 1 below illustrates the trend in total filings (civil and criminal) for the District of Kansas.



This figure shows that total filings have largely stabilized for the District of Kansas, with only a slight upward trend during the last two years.

Figure 2 illustrates the trend in total terminations for FY 1988-93.

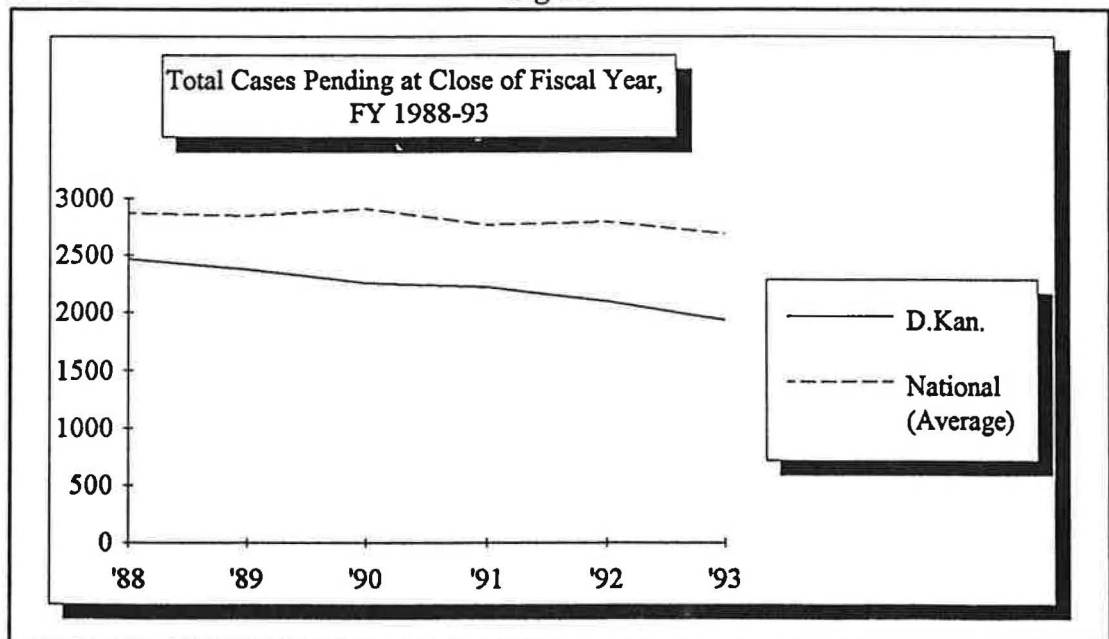
Figure 2



It shows that the termination rate in the District of Kansas has essentially stabilized and correlates roughly to total filings figures.

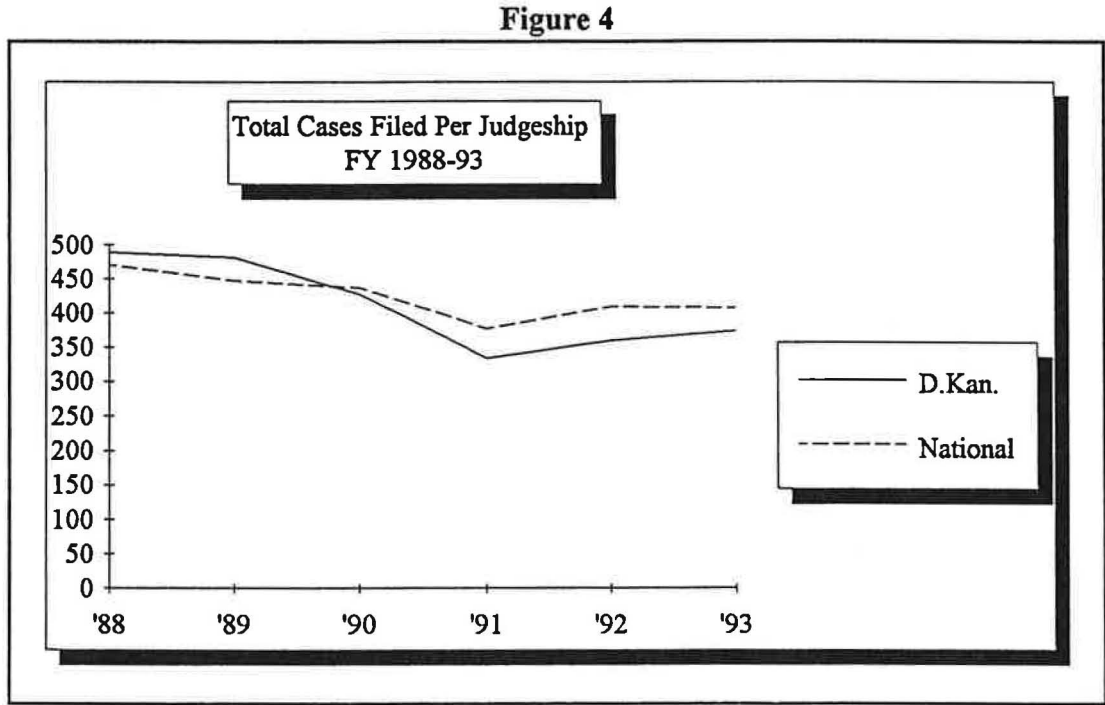
Figure 3 shows the trend in total pending cases at the close of the relevant fiscal year for the District of Kansas.

Figure 3



It indicates that the pending caseload has been declining in the District of Kansas, thus documenting that terminations continue to exceed filings in this Court. The favorable ratio of filings-to-terminations in turn contributes to reduced congestion in the District of Kansas since adoption of the Plan.

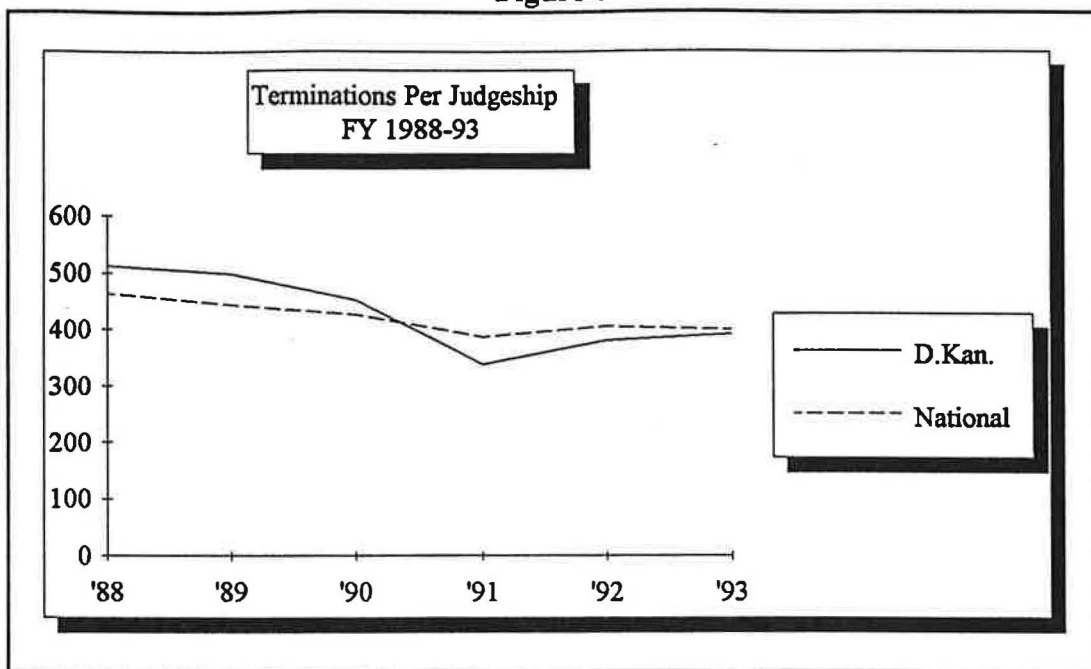
Figure 4 shows the number of civil cases filed per judgeship for FY 1988-93.



This figure indicates that per judgeship civil filings had been in decline in recent years but have increased slightly in each of the last two fiscal years in this Court.

Figure 5 shows the trend in case terminations per judgeship for FY 1988-93.

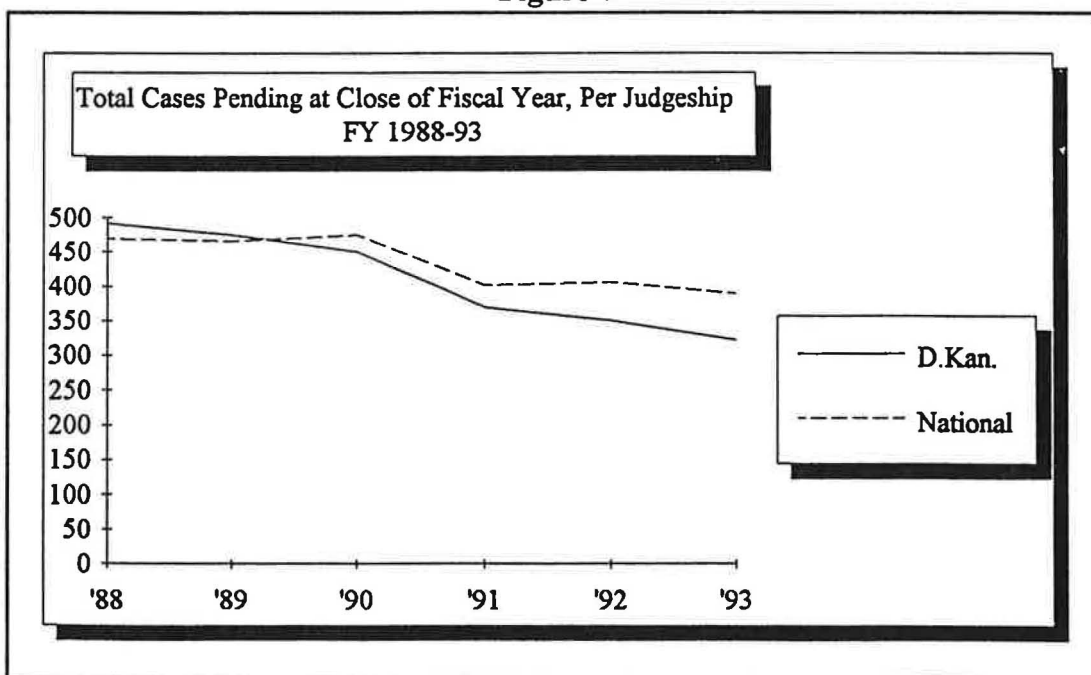
Figure 5



This figure shows that per judgeship case terminations were up slightly in the District of Kansas for both FY 1992 and FY 1993.

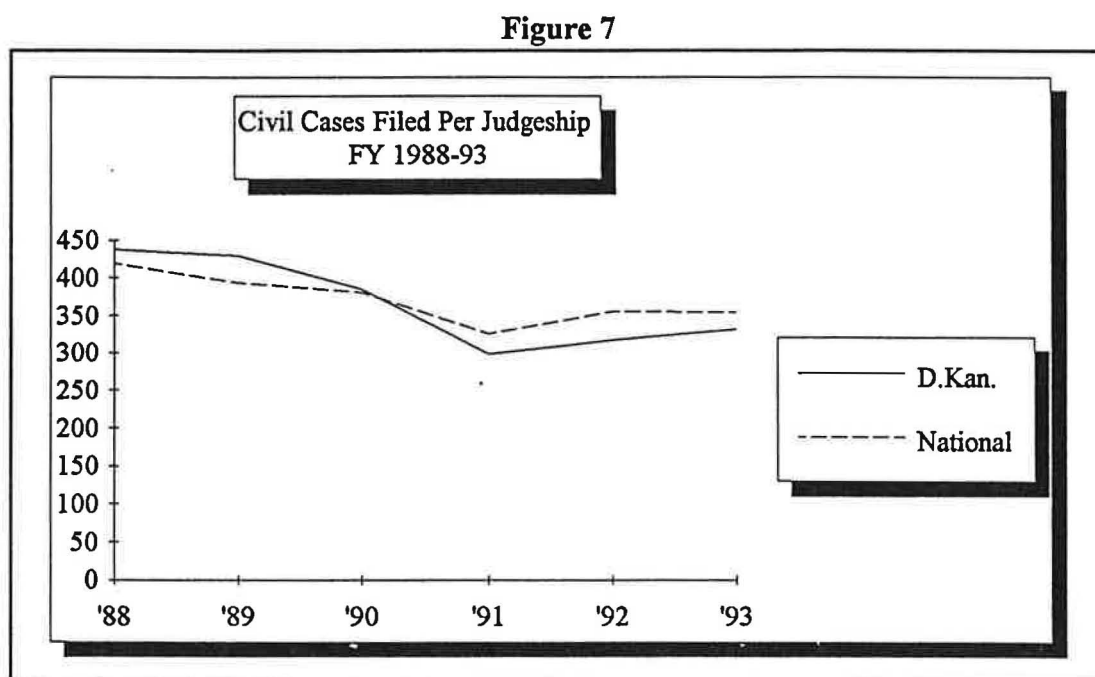
Figure 6 illustrates the pending caseload per judgeship in the District at the close of SY 1987-92.

Figure 6



This figure suggests that the number of pending cases has largely stabilized in recent years. In this District, the modest decrease in the per judgeship pending caseload since 1990 is partially attributable to an increase in the number of judgeships authorized to the District of Kansas by the Judicial Improvements Act of 1990, from five to six.

Figure 7 reflects the trend in the number of civil filings per judgeship for FY 1988-93.

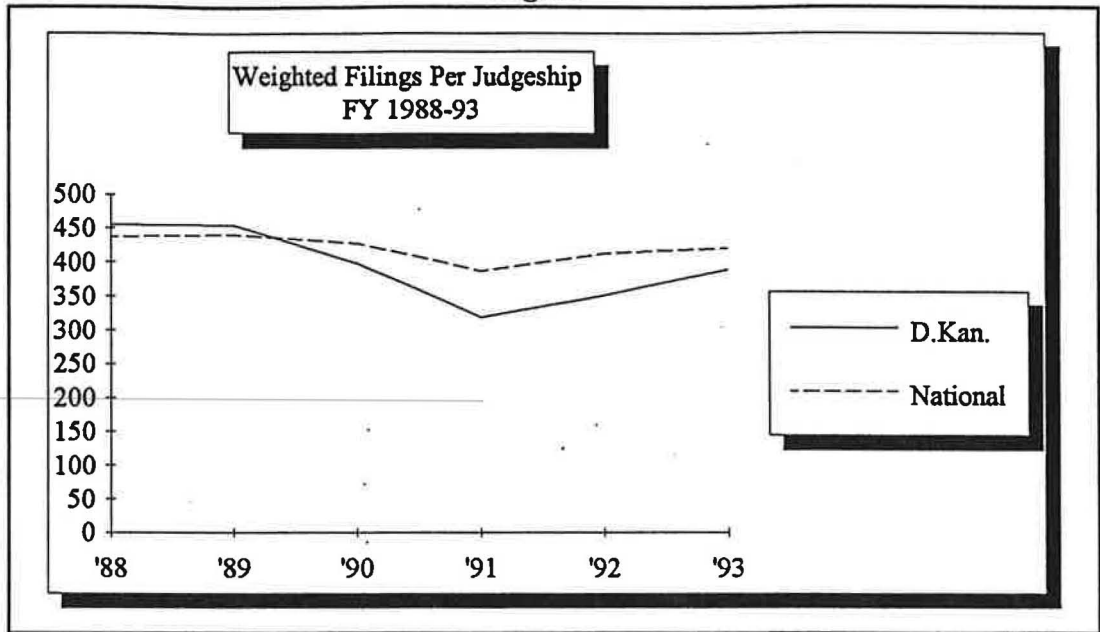


It indicates that civil filings per judgeship have declined significantly since 1988, with slight increases in each of the last two years. This decline is attributable in part to increased judicial capacity in the federal courts.

Figure 8 reflects the trend in the number of weighted case filings per judgeship for the District of Kansas and nationally.¹²

¹² As noted, the AO recalculated the weighted filings formula for use in FY 1993. Figure 8 is based on weighted filings for FY 1988-93 under the new formula. Figure 8 thus uses different weighted filings figures than the comparable figure in last year's annual assessment.

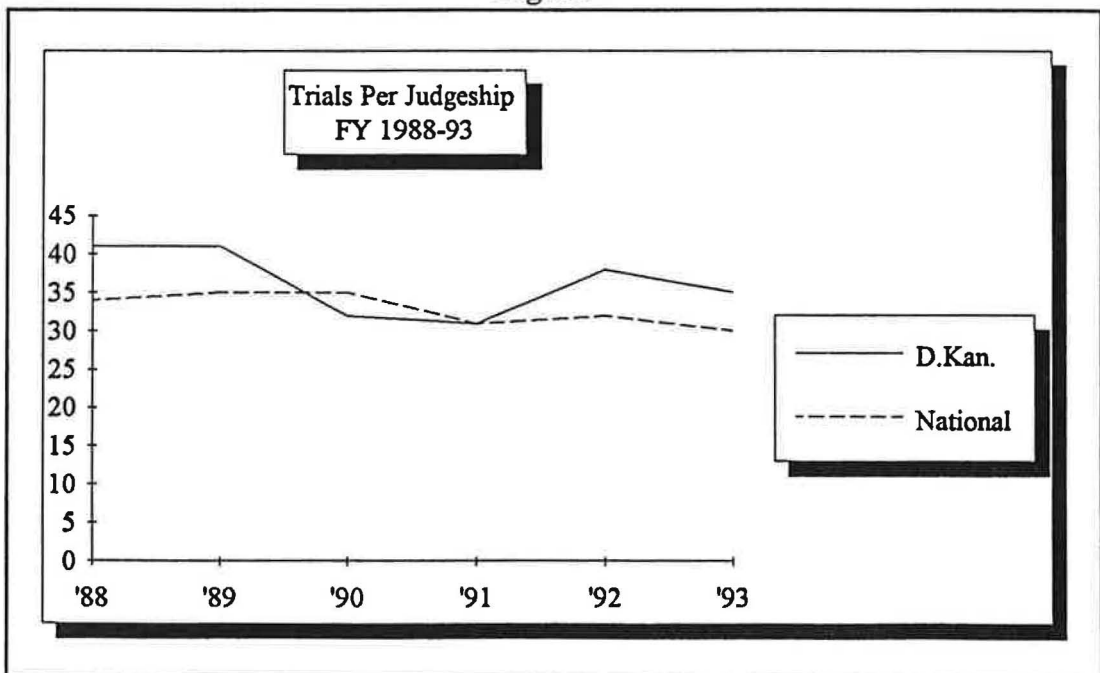
Figure 8



It indicates that weighted caseloads had generally been in decline since FY 1988, but increased substantially in FYs 1992 and 1993.

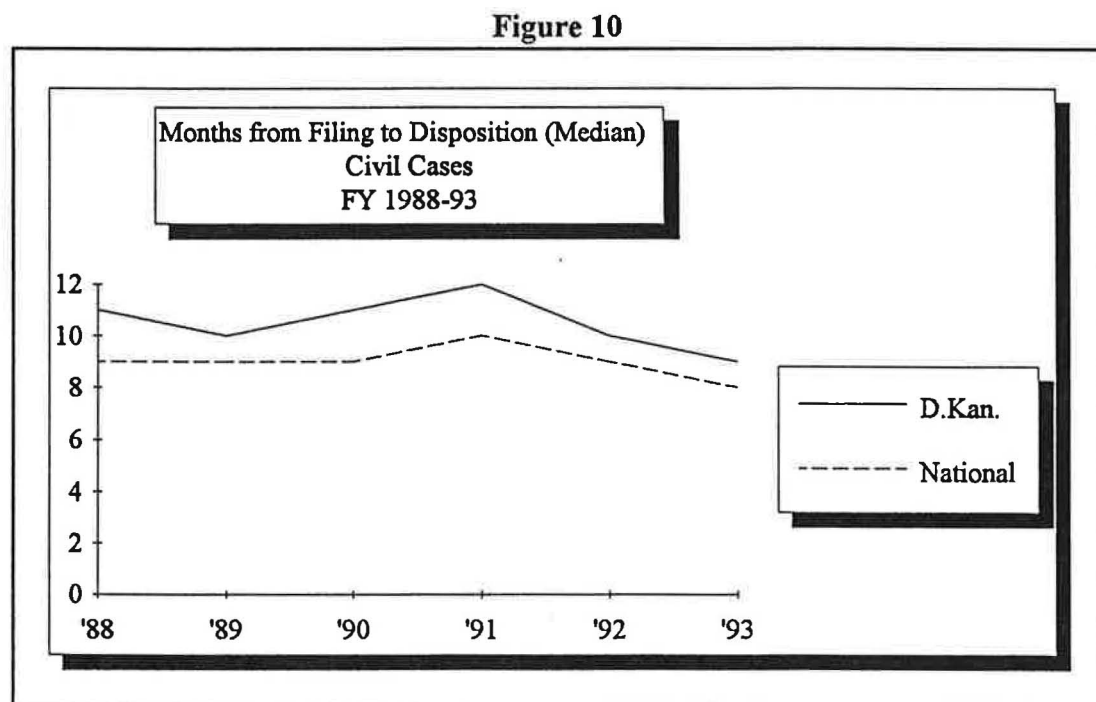
Figure 9 shows the number of trials completed per judgeship for the District of Kansas from FY 1988-93.

Figure 9



It indicates that the individual judges of the District are trying fewer cases than in years past, which is certainly due in part to increased judicial capacity on the Court.

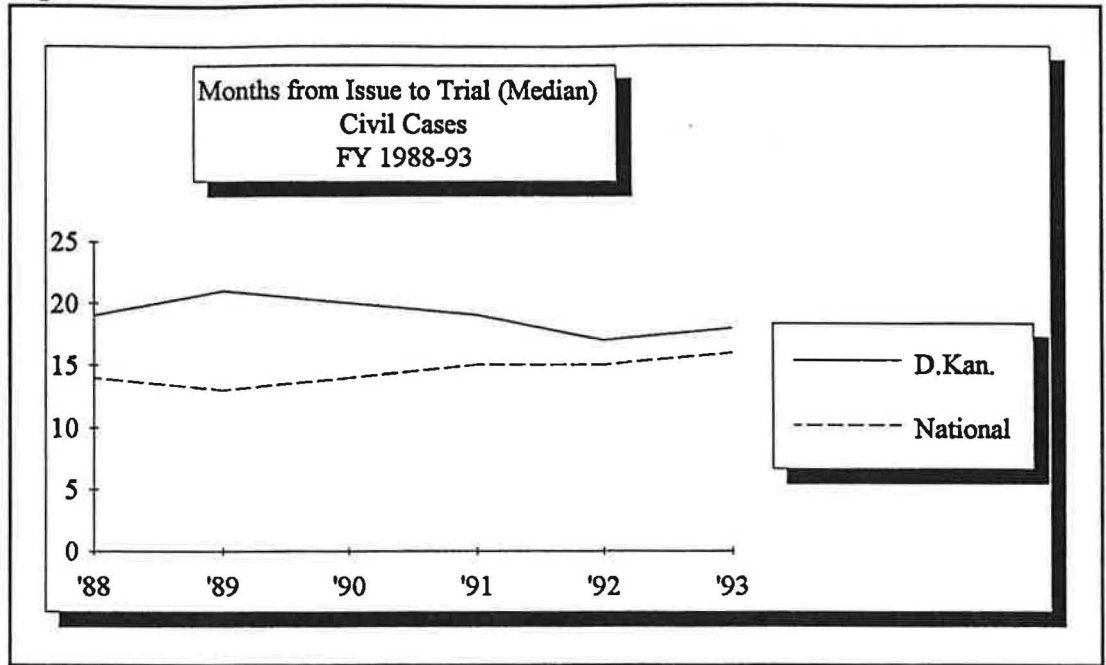
Figure 10 shows the trend in median months from filing to disposition from 1988-93.



It indicates that, although the District of Kansas' filing-to-disposition median exceeds the national average, the Court continues to make progress towards reducing delay as to this variable.

Figure 11 shows the trend in median months from issue to trial (for cases going to trial).

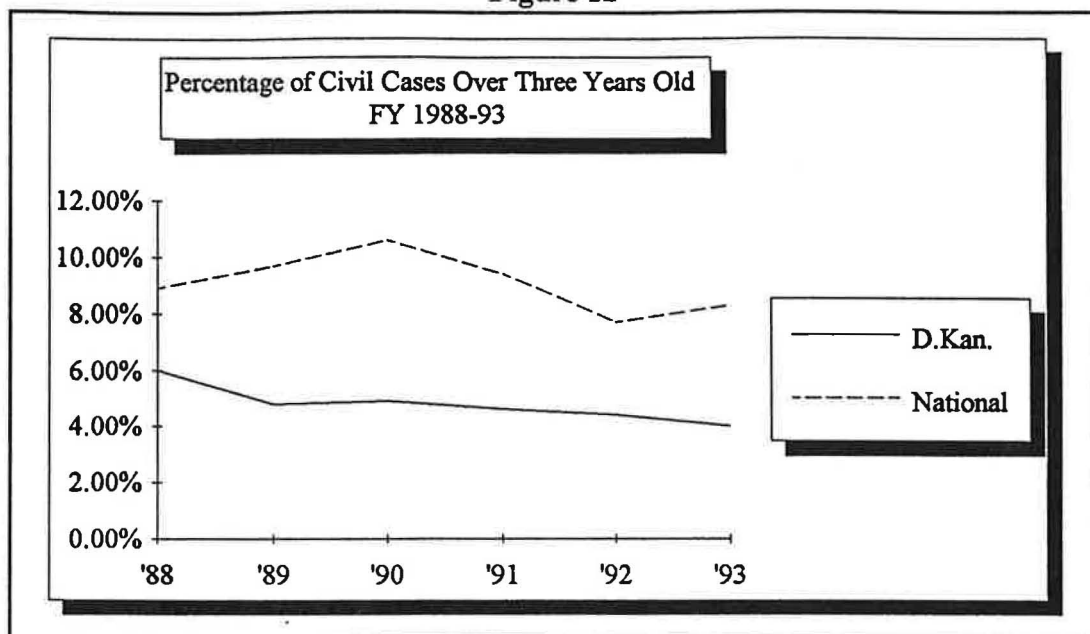
Figure 11



The median time from issue to trial has consistently been higher than the national average, but the Court has shown some improvement in this median time in recent years. The one-month increase in the issue-to-trial median in FY 1993 corresponds to an identical one-month increase in the national average median time.

Figure 12 shows the trend in percentage of civil cases more than three years old during FY 1988-93.

Figure 12



The District of Kansas has consistently had one of the lowest percentages of older civil cases among all federal courts in the nation. The Advisory Group is pleased to note that this percentage figure has shown a steady decline in this District since 1988.

C. Civil Docket Statistics Reported

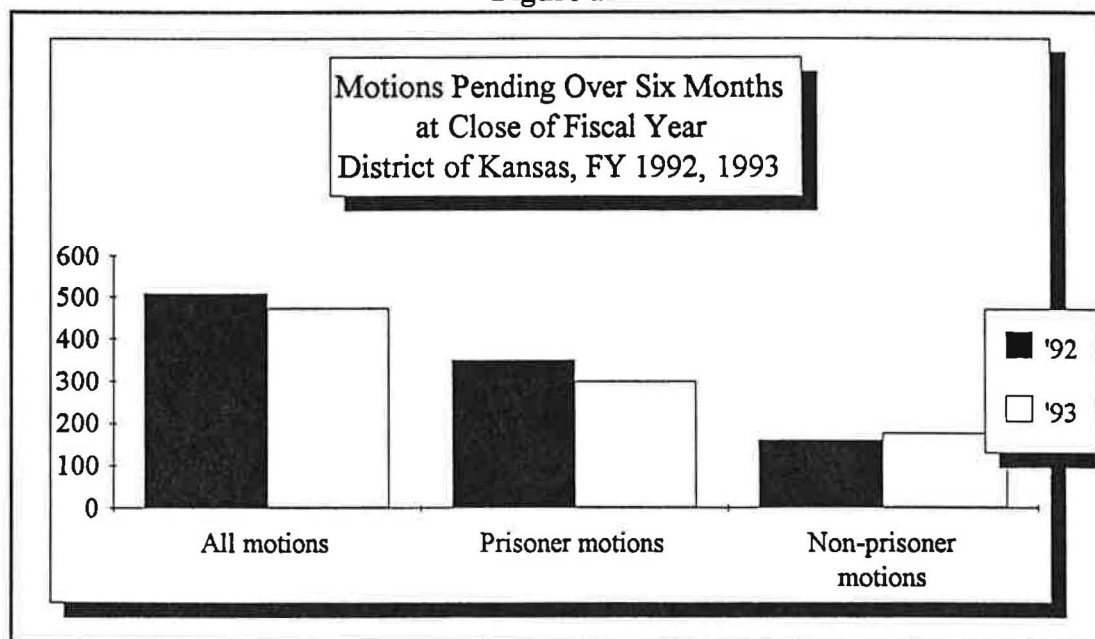
Pursuant to 28 U.S.C. § 476

Section 476 of the CJRA requires that certain case management statistics be reported on a semi-annual basis to the Administrative Office, which in turn makes these statistics available for review in a public document. Statistics reported include, for each active, senior, and magistrate judge maintaining a caseload: the number of motions pending for more than six months, the number of bench trials submitted for more than six months, and the number of civil cases that are more than three years old. These statistics are published twice a year, but only those statistics reported at the close of the fiscal year (September 30, 1993) are included in this assessment.

At the close of FY 1993, there were 474 pending motions more than six months old among the court's 12 active, senior, and magistrate judges. 298 of these, or 63%, however, were

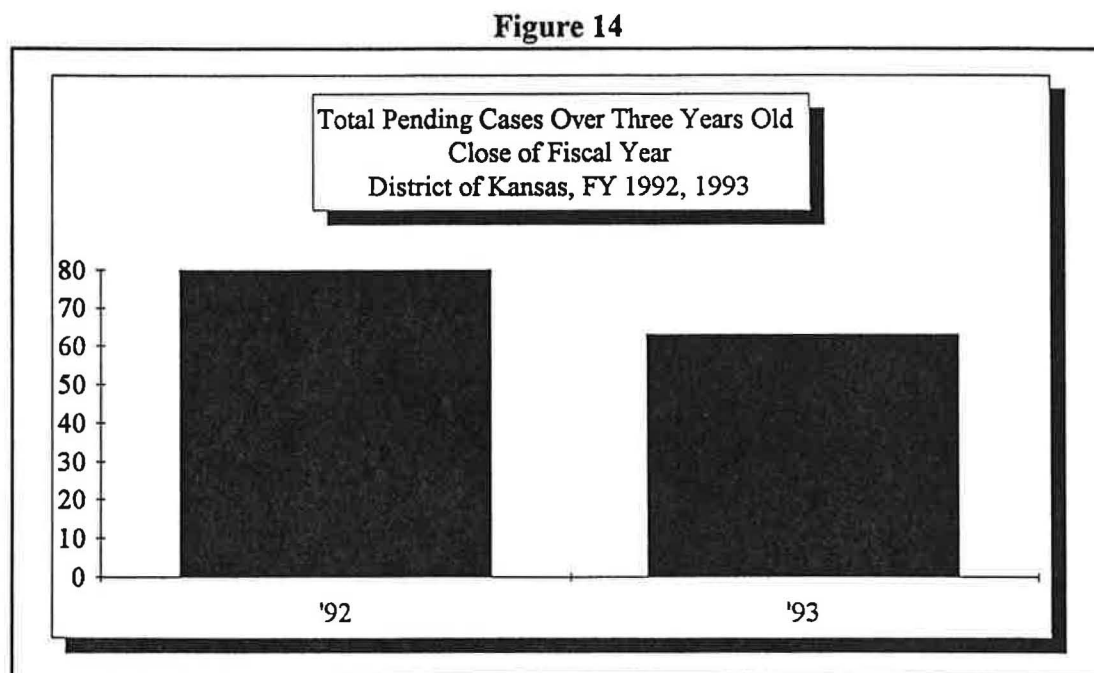
motions filed in pro se prisoner actions. The 176 non-prisoner-related six-month motions reflects an increase of 10% in the number of non-prisoner six-month pending motions since the end of FY 1992 in this variable. Figure 13 shows the September 30, 1992 and September 30, 1993 submitted pending motions figures for the District of Kansas for both prisoner and non-prisoner related civil cases.

Figure 13



At the close of FY 1993 there were no bench trials that had been submitted more than six months reported by the District of Kansas. This is comparable to the national norm.

Finally, at the close of FY 1993, there were 63 three-year old civil cases pending in the District of Kansas, compared to 80 at the end of FY 1992. **Figure 14** shows the total number of



three-year old cases pending in the District of Kansas as of September 30, 1992 and September 30, 1993. As noted previously, the 63 three-year-old civil cases pending on September 30, 1993 represent only 4.0% of the total pending civil caseload.

D. State of the Criminal Docket¹³

During FY 1993, 252 criminal felony indictments or informations were filed in or transferred to the District of Kansas, the same number as in FY 1992. There were an average of 1.5 felony defendants prosecuted per criminal filing, up from 1.3 per filing in 1992. This resulted

¹³ Beginning in 1993, the Administrative Office began calculating criminal case weights based in part on the number of defendants tried jointly in a single case. Criminal case management statistics affected by this new practice were recalculated for prior years. See **1993 Federal Case Management Statistics**, at 167. Thus, criminal caseload figures in this section may not be directly comparable to those contained in last year's assessment.

in a total of 378 individuals prosecuted. Criminal cases made up about 11.3% of total filings in the District in FY 1993, up only slightly from the prior year.

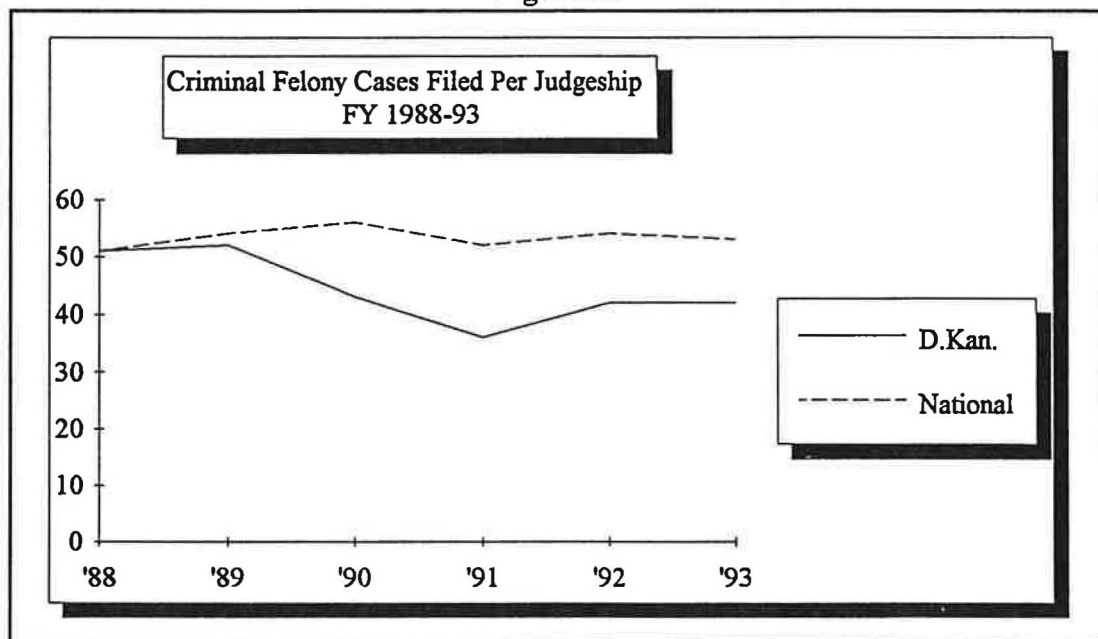
The defendants prosecuted in the District represented a per judgeship defendant load of about 63 felony defendants per judgeship.

The median time from filing to disposition of a felony case was 5.9 months in FY 1993, the same median time for these cases as in 1992.

E. Trends in the Criminal Docket

Figures 15-19 below illustrate certain trends in the criminal caseload of the District of Kansas from 1988-93, and the national trend. **Figure 15** shows the trend in criminal felony filings per judgeship for FY 1988-93.

Figure 15



It indicates that total criminal filings are comparable to such filings at the beginning of the relevant time period.

Figure 16 depicts the trend in the total number of felony defendants charged per judgeship from 1988-93. It shows that the number of defendants prosecuted per judgeship has declined in recent years.

Figure 16

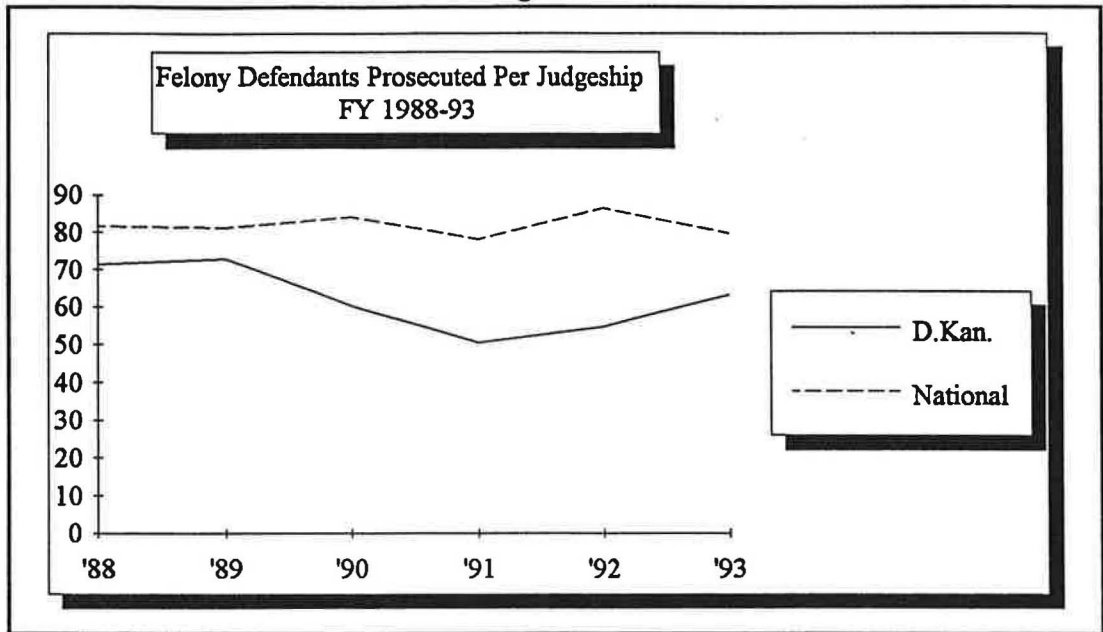
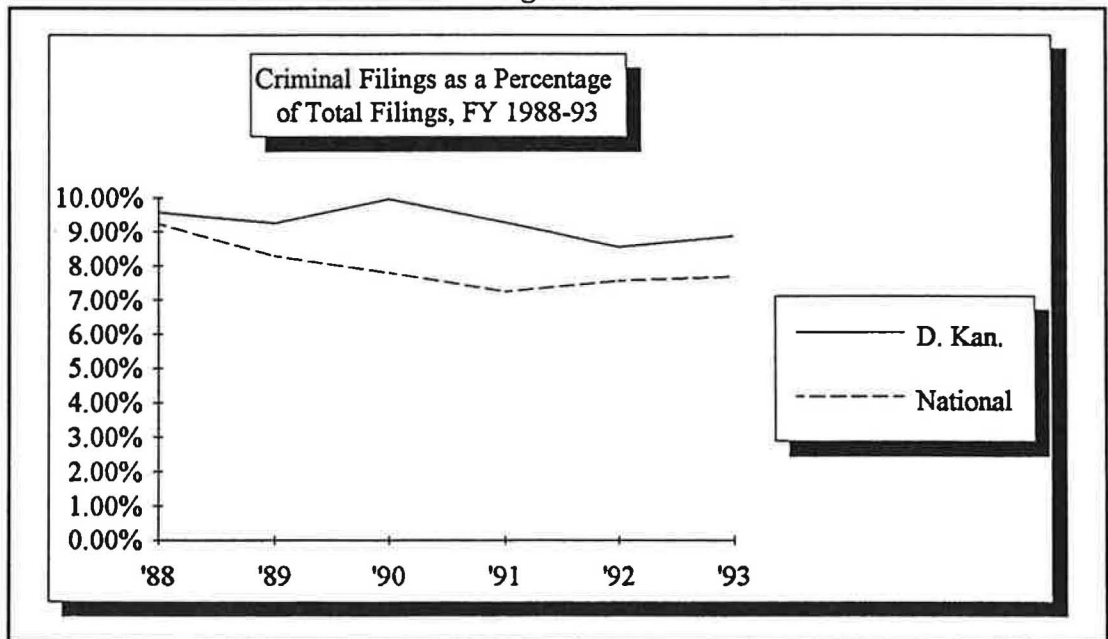


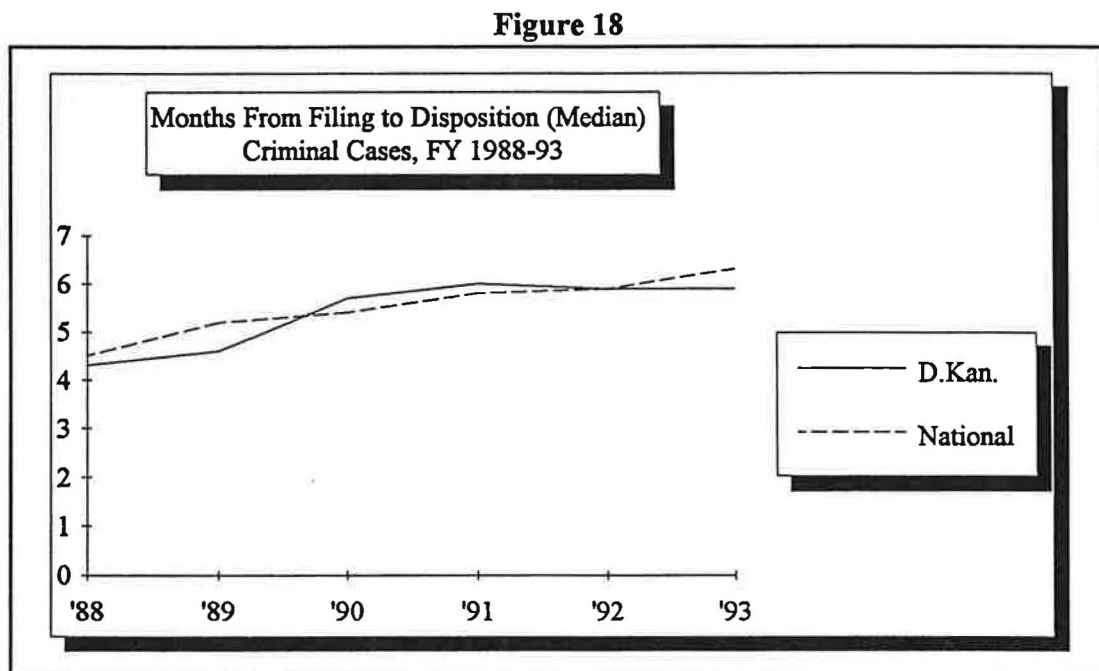
Figure 17 illustrates the criminal caseload as a percentage of total caseload for the District of Kansas compared to the national average criminal caseload.

Figure 17



It indicates that the criminal caseload has changed little as a percentage of the total caseload over the last several years.

Figure 18 shows the median filing-to-disposition time, in months, for criminal felony cases.



III. Status Report on the Court's CJRA Plan

The Plan that the District of Kansas's CJRA Advisory Group proposed, which the Court adopted with relatively minor revisions on December 31, 1991, focused on several measures designed to reduce needless expense and delay within the district. The specific components of the Plan are summarized in detail in the Advisory Group's 1992 assessment. This subsection discusses the extent to which the Court has achieved various quantitative case management goals articulated in the Plan.¹⁴

¹⁴ It should be noted that the Plan contained a number of provisions designed to encourage the District's judges and magistrate judges to take a more active role in pre-trial case management. It also required or recommended certain actions by the Clerk's Office and the Local Rules Committee. The Advisory Group did not discuss these aspects of the Plan at its January meeting, and therefore this assessment does not address them.

Effect of monthly status reports. The practice of the Clerk's Office to circulate a monthly status report to all active and senior judges in the District of Kansas continued in FY 1993. This status report indicates specific docket information for each of the district, senior district, and magistrate judges on the court. The circulation of these monthly status reports coincides with a record of more timely disposition of motions and cases in the District by most of the court's judges and magistrate judges. The monthly status reports required by the Plan are internal documents and not available for public inspection. The Court's public semi-annual pending motions/bench trial reports filed with the Administrative Office¹⁵ show that from September 30, 1991-September 30, 1993, the Court reduced the total number of six-months or older pending motions in civil cases by 395, down from 869 to 474. Sixty-three percent of the 474 six-month-old motions were motions filed in pro se prisoner cases and are a product of the court's heavy backlog in that portion of its civil docket. When these pro se prisoner-related motions are excluded from the total, the number of older pending motions went from 261 on

The Plan also contained provisions relating to the Court's pro se prisoner caseload. As noted earlier, the Advisory Group's assessment of the pro se docket will be reported in a separate document prepared by the relevant subcommittee, which is chaired by Professor Bill Rich. The subcommittee has already made certain recommendations to the Chairs of the Advisory Group, and a follow-up report will be provided to the Court within the next sixty days.

Finally, the Court's Plan required implementation of a mediation program pursuant to amended Local Rule 214, with an evaluation of the program to follow once mediation programs were underway. For a more complete discussion of mediation under the Court's CJRA Plan, see the 1992 Assessment, at 33-35. An empirical evaluation of the mediation program is on-going; results of that evaluation will be reported in a future assessment or in a separate report.

¹⁵ Section 476 of the CJRA requires the semi-annual public reporting of certain case management statistics for each federal district judge in the nation. These statistics are compiled and published by the Administrative Office. See, e.g., Civil Justice Reform Act Report of Motions Pending Over Six Months, Bench Trials Submitted Over Six Months, Civil Cases Pending Over Three Years on September 30, 1993 (Administrative Office 1994).

September 30, 1991 to 159 on September 30, 1992 to 176 on September 30, 1993, for an overall decline of 32.5% since 1991. The Advisory Group interprets this improvement as an indication that the circulation of status reports may be having its intended effect of reducing the Court's backlog insofar as six-month, non-prisoner pending motions are concerned.

2. Effect of articulating case management goals. The District of Kansas was one of the few federal district courts which used its CJRA Plan as a vehicle for articulating specific quantitative case and motions dispositions goals for various categories of civil cases and civil administrative appeals. In recommending that the Court articulate such goals, it was the Advisory Group's understanding that these goals are not "time limits" for the disposition of particular kinds of motions or cases, but rather reflections of what the Advisory Group and the Court agree to be reasonable disposition times for most cases or motions subject to a particular goal.¹⁶

The Court appears to have made some progress since the Plan was implemented towards achieving the case and motions disposition goals set by the Plan. The Advisory Group's analysis of the Court's internal case and motion management statistics indicates that the Court has made the following progress towards meeting these goals:

1. Goal: Median filing to disposition time reduced to national median by the end of FY 1993. One of the Plan's most important objectives was to bring the median civil filing-to-disposition time in the District of Kansas in line with the national median, which in SY 1990 was nine months. In FY 1993, the national median filing-to-disposition time dropped to eight months (see **Figure 10**). The median civil filing-to-disposition time in the District of Kansas during FY

¹⁶ The goals articulated in the Plan are applicable only to cases and motions filed after December 31, 1992.

1993 dropped to nine months from SY 1990's figure of eleven months and FY 1992's figure of ten months. Because, as noted, the national median filing-to-disposition time declined from nine to eight months over FY 1992-93,¹⁷ the Court did not achieve the specific goal articulated in the Plan. Nevertheless, the Advisory Group views the Court's progress in reducing its filing-to-disposition median to nine months as an indication that the Plan is having its intended effect on the problem of delay, and that the Plan's overall objective to achieve the national median is feasible and will ultimately be met.

2. Goal: Median issue to trial time reduced to national median by the end of FY 1993.

Another important objective of the Plan was to reduce the issue-to-trial time, for cases going to trial, from its SY figure of 20 months to what was then a national median of 14 months. In FY 1992, the national median civil issue-to-trial time increased to 15 months, and in FY 1993, it increased to 16 months. During those years, the median issue-to-trial time for civil cases in the District of Kansas dropped to 17 months in FY 1992 but increased to 18 months in FY 1993. It is unclear why the median issue-to-trial time increased both nationally and within this district in light of the overall decline in civil filings and the increase in judicial capacity experienced within the district. Nevertheless, the Advisory Group is confident that the Court will ultimately achieve its goal concerning its median issue-to-trial time.

3. Goal: Average life expectancy reduced from 14 to 12 months by the end of FY 1993.

The average life expectancy of a civil case in the District of Kansas was 14 months in SY 1990.

¹⁷ In its Report to the Court, the Advisory Group explicitly recognized that national median case disposition times might decline during the seven year life of the CJRA. See **CJRA Report**, at 51.

In FY 1993, that figure had dropped to 11 months.¹⁸ The Court has met and exceeded the Plan's goal respecting average case life expectancy.

4. Goal: Social security appeals decided with 60 days of submission. As of December 31, 1993, the Court had met this goal with respect to 25% of all social security appeals subject to the Plan's goal.¹⁹

5. Goal: Bankruptcy appeals decided within 120 days of when reply brief filed or due. As of September 30, 1993, the Court attained this goal with respect to 66% of all bankruptcy appeals subject to the Plan's goal.

6. Goal: Pro se prisoner habeas corpus actions resolved within 180 days of filing (interim goal). The Court met this goals with respect to 37% of all habeas cases subject to the Plan's goal.

7. Goal: Non-dispositive motions in pro se prisoner cases decided within 90 days of filing (interim goal). The Court met this goal with respect to 64% of all non-dispositive motions subject to the goal.

8. Goal: Non-dispositive motions in all other cases decided within 60 days of filing. The Court met this goal with respect to 80% of all non dispositive motions subject to the Plan's goal.

¹⁸ See **Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY93 Statistics Supplement** (Federal Judicial Center, September 1993) (prepared for the District of Kansas) (on file with the Co-Reporters).

¹⁹ All goal-accomplished percentages are based on figures reported as of December 31, 1993. The percentages are based on appeals or motions filed on or after January 1, 1992, when the Plan formally took effect. As noted, the Plan's goals are applicable only to those cases and motions filed after the Plan was implemented. The Court must, of course, attend to older cases and motions not subject to the Plan's goals as well as newly filed cases which are. The Advisory Group anticipates that as the backlog of, for example, older social security appeals is reduced, the percentage of cases disposed of within the Plan's recommended time frame will increase.

9. Goal: Dispositive motions, all cases, decided within 120 days of filing of reply brief or due date.²⁰ The Court met this goal with respect to 60% of all dispositive motions subject to the goal.

V. Advisory Group Recommendations

The Advisory Committee agreed at its January meeting that no changes or additions to the Plan were warranted at this time. The Court's case management statistics, particularly those relating to its pending motions docket and its pro se prisoner docket, suggest that the substantive components of the Plan may be having their intended effect of reducing needless delays, which in turn will contribute to reducing the cost of litigation in the District. The Court's embrace of most of the substance of the 1993 Rules amendments through Order 94-1 also militates against modification of the Plan during 1994. The Advisory Group anticipates that, with the Court's assistance, it will have the opportunity in early 1995 to re-evaluate its judgment that the Plan should remain intact in light of the District's experience with another full year of the Plan and with those new pre-trial procedures which have been adopted pursuant to Order 94-1.

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²⁰ In calculating motion-disposition figures, the Clerk's office uses a period of 150 days from the date of filing to approximate the period which is "120 days of filing of reply brief or due date", with the agreement of the Advisory Group. The Group recognizes that using the 150 day-period as a surrogate for the time period actually specified in the Plan does not account for extensions of time that may have been granted in particular cases.

Appendix A

NOTICE

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JAN 31 9 30 AM '94

RALPH L. FELLOUGH
CLERK

MEMORANDUM AND RESOLUTION

BY _____, DEPUTY
AT WICHITA, KS.

On January 27 and 28, 1994, Chief Judge Patrick F. Kelly convened a joint meeting of the Civil Justice Reform Committee, the Rules Committee, and the District Court. The purpose of the meeting was to review the newly amended Federal Rules of Civil Procedure which became effective on December 1, 1993, and to consider the impact with regard to the court's local rules.

Following full discussion and deliberation, the Rules Committee elected not to opt out from Fed.R.Civ.P. 26 as amended, and proposed certain changes in the District of Kansas Local Rules which have the concurrence of the Kansas Court.

In summary, the following transpired and is now in place:

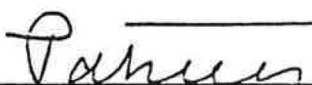
1. The Kansas Court adopted Standing Order No. 1994-1, a copy of which is attached hereto.
2. Certain local rules are under consideration for change and changes to others have been adopted, all of which are subject to the statutory notice requirements.

At the instance of those in attendance at the meetings, the Rules Committee further proposed the following resolution, which, in turn, was adopted by the Kansas Court:

IT IS AGREED that while the new amendments to the Federal Rules of Civil Procedure are in place, they are deserving of close scrutiny as time and experience dictate. The Court assures the lawyers and litigants

that the application of these rules will be closely monitored, and from time to time within the year they will be reviewed for further modification.

FOR THE COURT:



PATRICK F. KELLY, CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS
JAN 28 1 18 PM '94

STANDING ORDER NUMBER 1994-1

RALPH L. DELOACH
CLERK
Allison West
DEPUTY
AT WICHITA, KS

This Standing Order is adopted by the court to provide guidance to litigants and counsel concerning the applicability of the amendments to the Federal Rules of Civil Procedure which became effective December 1, 1993. The following rules were amended: 1, 4, 5, 11, 12, 15, 16, 26, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 50, 52, 53, 54, 58, 71A, 72, 73, 74, 75, and 76; new Rule 4.1 was adopted. It is necessary for the court and its bench-bar committee to make a detailed study of the local rules of this court in order to bring them into conformity with the amendments. The court and its committee have not had sufficient opportunity to make such a study. Therefore, it is

ORDERED:

1. All provisions of the local rules of this court which conflict with or provide direction other than that which is supplied in the amendments to the Federal Rules of Civil Procedure which became effective December 1, 1993, are abrogated. Where such conflicts occur, the provisions of the Federal Rules of Civil Procedure shall be controlling.

2. Within 15 days of receipt of an executed waiver of service under Fed.R.Civ.P. 4(d), the plaintiff shall file such waiver with the Clerk of the District Court.

3. The following categories of actions shall continue to be exempted from the requirements of Fed.R.Civ.P. 16 as inappropriate

for the holding of scheduling conferences and the issuance of scheduling orders:

(a) Social security cases and other actions for review of administrative decisions;

(b) All cases filed by pro se prisoners or directly related to the litigants' incarceration;

(c) Governmental administrative enforcement proceedings;

(d) Forfeiture proceedings;

(e) Eminent domain proceedings;

(f) Bankruptcy appeals; provided, however, cases in which reference is withdrawn by order of the district court remain subject to the rules.

4. Except as otherwise stipulated in writing by the parties or ordered by the court in a particular case:

(a) Formal discovery under Fed.R.Civ.P. 30, 31, 33, 34 and 36 may not be commenced before the meeting of the parties under Fed.R.Civ.P. 26(f) except in the following cases:

(i) cases exempted under paragraph 5 from the requirement of a meeting of the parties;

(ii) cases in which a temporary restraining order or preliminary injunction is sought; and

(iii) cases in which discovery is needed to resolve a preliminary motion such as an objection to personal jurisdiction or venue.

5. Unless otherwise ordered by the court in a particular case, the provisions of Fed.R.Civ.P. 26 (a) (1), Fed.R.Civ.P. 26(f), and the limitations on the number of depositions under Fed.R.Civ.P. 30 and interrogatories under Fed.R.Civ.P. 33 apply to all civil actions in this court, except for the following:

(a) cases filed in, removed to, or transferred to this court before December 1, 1993;

(b) cases instituted pro se by prisoners or directly related to the litigants' incarceration;

(c) cases consolidated with a case in which the parties have met as provided in Fed.R.Civ.P. 26(f) or in which a scheduling order under Fed.R.Civ.P. 16(b) has been entered; and

(d) cases transferred to this court under 28 U.S.C. §1407 or consolidated with cases so transferred, and cases subject to potential transfer to another court under 28 U.S.C. §1407 pursuant to a motion pending before the Judicial Panel on Multidistrict Litigation or a conditional transfer order entered by that Panel;

(e) cases exempt under paragraph 3 above.

6. Unless otherwise ordered by the court in a particular case, the parties may, if the offices of their principal counsel

are not within 100 miles of one another, agree to conduct the meeting pursuant to Fed.R.Civ.P. 26(f) by telephone.

7. Without leave of court or written stipulation, the number of written interrogatories which any party may serve upon any other party shall not exceed 30 in number including all discrete subparts.

This standing order shall be effective upon its adoption by the court and shall remain in effect until June 1, 1994, unless sooner revoked.

ADOPTED this 28th day of January, 1994.

FOR THE COURT:



PATRICK F. KELLY, CHIEF JUDGE

U.S. DISTRICT COURT)
DISTRICT OF KANSAS)^{ss:}

I hereby certify that
the foregoing is a true copy
of the original on file in
this court and cause.

RALPH L. DeLOACH, Clerk

By Allison West

Deputy

Dated: 1-28-94