

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Michael E. Hegarty**  
United States Magistrate Judge

**2016 STATISTICS FOR THE  
U.S. DISTRICT COURT, DISTRICT OF COLORADO**

This memorandum analyzes trial results and statistics<sup>1</sup> in civil and criminal cases in the District of Colorado ("the District") from January 1, 2016 through December 31, 2016, as well as information concerning dispositive motions practice, ADR, and Magistrate Judge consent.

**TRIALS**

**I. SUMMARY**

In 2016, the District saw sixty-six total cases tried to verdict. This included forty-five civil jury trials and ten criminal jury trials, for a total of fifty-five (last year saw forty-two civil and sixteen criminal for a total of fifty-eight), in addition to six civil bench trials<sup>2</sup> and five criminal bench trials.<sup>3</sup> Although this represents a negligible change from 2015, it nevertheless shows a continuing decline compared with recent years: sixty-two civil and criminal jury trials in 2014; seventy-four in 2013; and ninety-one in 2012.

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<sup>1</sup> Statistics reflect trial verdicts as opposed to dispositions entered by the court through some other mechanism.

<sup>2</sup> The District held seven civil bench trials in 2016. However, one of the cases is currently awaiting a final judgment.

<sup>3</sup> Four civil cases settled during jury trials, and one jury trial saw a judgment as a matter of law at halftime. These are not included in the statistics; although, this obviously leaves the 2016 numbers slightly understated when viewed in the light of a litigant's access to jury trials in our court.

## II. CIVIL JURY TRIALS

### A. Overview

The District tried forty-five civil cases to jury verdicts in 2016. Litigants filed a total of 3,216 cases in 2016; 2,857 in 2015; 3,517 in 2014; 3,532 in 2013; and 3,380 in 2012. The variation from 3,532 filings in 2013 to 2,857 filings in 2015 is quite significant—a nearly 24% decrease. Taking the average cases filed in 2012 through 2016 of exactly 3,300 and comparing it with the forty-five jury verdicts in 2016 represents a 1.36% trial rate, a slight increase over last year's 1.27% rate using the same 3,300 case total. The filing date for each case tried to verdict in 2016 is reported below:

<u>Year Filed</u>	<u>No. Tried in 2016</u>
2015	6
2014	17
2013	20
2012	2

### B. Time to Trial

The average time from civil case filing to a jury trial in 2016 was 28.6 months, a slight increase from the 26.4 months in 2015. This compares to thirty-three months in 2014. The shortest time from filing to trial included three cases tried in fifteen months (insurance claim, gender discrimination, and fraud/negligent misrepresentation), while the longest time was forty-four months (breach of contract and bad faith). Further, fifteen of the forty-five cases were tried within two years of filing (33.3%), compared with twenty-three of forty-two cases last year (54.76%). Only three of the cases were tried to Magistrate Judges (average 26.6 months),

compared with five cases last year.

**C. Volume of Trials**

The number of civil jury trials to verdict in 2016 (forty-five) rose slightly over that in 2015 (forty-two) and significantly over that in 2014 (thirty-three). This is an increase of 36.5% in two years. Additionally, the number of civil cases filed in 2016 (3,216) was statistically consistent with the 2012-16 five-year average of 3,300. However, 2016 saw a statistically significant increase over the number filed in 2015 (2,857), 12.5%. Indeed, prior to 2016 the biggest change year to year in raw case filings since the District (*i.e.* Magistrate Judge Boland) began tracking numbers was a 244-case increase from 2011-12 (a 7.7% increase), while the biggest percentage change was in 2002-03 (8.4% increase). Thus, 2016 saw the most significant change in case filings year to year in recorded history.

The number of civil jury trials to verdict in each of the last fifteen years is reported below:

<u>Year</u>	<u>No. of Cases Filed</u>	<u>No. of Civil Jury Trials</u>	<u>Rate of Trials (%)</u>
2016	3,216	45	1.4
2015	2,857	42	1.47
2014	3,516	33	.94
2013	3,444	40	1.16
2012	3,380	53	1.57
2011	3,136	30	.96
2010	3,177	25	.79
2009	3,042	34	1.12
2008	2,838	29	1.02
2007	2,726	36	1.32
2006	2,607	38	1.46
2005	2,679	35	1.30
2004	2,698	51	1.89
2003	2,672	47	1.75
2002	2,464	52	2.10
<b>Average</b>	<b>2,963</b>	<b>39.5</b>	<b>1.33</b>

The five-year average from 2012 through 2016 is approximately forty-three trials per year, thus trending slightly higher than the fifteen-year average of 39.5 trials per year.

**D. Parties' Success Rates**

Defendants prevailed in twenty-nine of the forty-five civil jury trials (64.5%), while plaintiffs prevailed in sixteen of the trials (35.5%). As noted above, four cases settled during trial and one resolved before verdict on judgment as a matter of law (a case in which the court granted a Rule 50 motion for the defendant, then entered judgment as a matter of law for the defendant on a counterclaim for \$412,000).

Rates of success since 2003 are reported below:

<u>Year</u>	<u>No. Of Civil Jury Trials</u>	<u>Plaintiff(s) Prevailed</u>	<u>Defendant(s) Prevailed</u>	<u>Split Verdicts</u>
2016	45	16 (35.5%)	29 (64.5%)	0
2015	42	20 (47.6%)	22 (52.4%)	0
2014	33	13 (39.4%)	20 (60.6%)	0
2013	40	14 (35.0%)	26 (65.0%)	0
2012	53	25 (47.2%)	28 (52.8%)	0
2011	30	15 (50.0%)	15 (50.0%)	0
2010	25	13 (52.0%)	11 (44.0%)	1
2009	34	15 (44.1%)	16 (47.1%)	3
2008	29	12 (41.4%)	17 (58.6%)	0
2007	36	15 (41.75)	21 (58.3%)	0
2006	38	24 (63.2%)	14 (36.8%)	0
2005	35	23 (65.7%)	11 (31.4%)	1
2004	51	25 (49.0%)	26 (51.0%)	0
<u>2003</u>	<u>47</u>	<u>26 (55.3%)</u>	<u>21 (44.7%)</u>	<u>0</u>
TOTAL	538	256 (47.6%)	277 (51.5%)	5 (0.9%)

Although since 2003 cumulative success rates of plaintiffs and defendants are similar, a different view shows that for the nine-year period from 2003 through 2011, plaintiffs prevailed in 51.6% of trials and defendants 46.7%. However, in the five-year period from 2012 through 2016, plaintiffs have prevailed only 41.2% of the time, while defendants have prevailed 58.7% of the time—a statistically significant trend, particularly considering the defense success rate of 64.5% in 2016.

**E. Amount of Plaintiffs' Verdicts**

The largest civil jury verdict in 2016 was \$6,986,538.00 in an intellectual property/patent infringement case, while the smallest was \$700.00 in an FDCPA case. In contrast, the largest verdict in 2015 was \$14,968,100.00 in a race/national origin employment discrimination case. The average civil jury verdict in 2016 was \$1,140,200.90, but eliminating the largest and smallest verdicts, the average was \$724,958.88. In 2015, the average verdict amount was \$1,410,087.10, but eliminating the large \$15 million verdict, the average was \$696,507.47, which is very close to the adjusted 2016 average. The following chart reports the jury verdicts in 2016 from high to low.

<b>Rank</b>	<b>Amount</b>	<b>Type of Case</b>
1	\$6,986,538.00	Intellectual Property: Patent Infringement
2	\$4,190,000.00	Breach of Contract: Fraud/Negligent Misrepresentation
3	\$1,915,595.00	Breach of Contract: Bad Faith
4	\$1,669,177.56	Civil Rights: Taking, Due Process, and Defamation
5	\$1,303,357.64	Breach of Contract: Fraud/Negligent Misrepresentation
6	\$218,966.00	Employment: Disability Discrimination
7	\$199,547.78	Insurance Claim Dispute
8	\$150,000.00	Employment: Disability and Age Discrimination
9	\$130,000.00	Section 1983: False Arrest & Excessive Force
10	\$99,422.00	Employment: FLSA

11	\$98,160.92	Common Law Tort: Negligence
12	\$70,97535.371	Employment: Gender Discrimination
13	\$43,620.44	Insurance Claim Dispute
14	\$33,648.75	Common Law Tort: Negligence
15	\$26,952.23	Common Law Tort: Negligence
16	\$700.00	Unfair Debt Collection

Note: One of the trials involved a defendant who counterclaimed, and the defendant prevailed on the counterclaim in the amount of \$367,801.00, while the jury found against the plaintiff. I am including this case as a defense verdict and not a plaintiff's verdict. First, it is true that the defendant prevailed. Second, in my experience, a defendant often has a claim that it never would have raised had the defendant not been sued in the first place; therefore, including this case as a defense verdict is consistent with these statistics serving as information on which a plaintiff could assess whether to file a lawsuit in the first place.

Active District Judges presided over twenty-five jury trials (compared with twenty-four last year); senior District Judges presided over seventeen jury trials (compared with thirteen last year); and Magistrate Judges presided over three jury trials (compared with five last year).

The following is a breakdown of the civil jury trials in 2016 by presiding judge:

Judge	Type of Case	Prevailing Party	Amount of Verdict
MSK	Civil Rights: Prisoner Rights	D	\$26,952.23
	Common Law Tort: Negligence	P	
	Unfair Debt Collection	D	
	False Advertising and Defamation	D	

PAB	Breach of Contract/Bad Faith	P	\$1,915,595.00
	Common Law Tort: Product Liability	D	
	Common Law Tort: Product Liability	D	
	Insurance Claim Dispute	D	
CMA	Breach of Contract: Fraud/Negligent Misrepresentation	P	\$4,190,000.00
	Employment: Gender Discrimination	D	
	Employment: Gender and Religious Discrimination	D	
WJM	Civil Rights: Excessive Force	D	\$6,986,538.00
	Intellectual Property: Patent Infringement	P	
RBJ	Breach of Contract: Fraud/Negligent Misrepresentation	P	\$1,303,357.64
	Civil Rights: Prisoner Rights	D	
	Civil Rights: Taking, Due Process, Defamation	P	\$1,669,177.56
	Common Law Tort: Trespass/Conversion/Interference	D	
	Civil Rights: False Arrest and Excessive Force	D	\$130,000.00
	Civil Rights: False Arrest and Excessive Force	P	
	Civil Rights: False Arrest and Excessive Force	D	
	Negligent Misrepresentation and Fraud	D	
RM	Breach of Contract: Trade Secrets, Interference/Conspiracy	D	\$98,160.92
	Common Law Tort: Negligence	P	
	Unfair Debt Collection	P	
	Insurance Claim Dispute	P	
RPM	Employment: Disability and Age Discrimination	P	\$150,000.00
	Employment: Disability Discrimination	P	\$218,966.62
	Insurance Claim Dispute	P	\$43,620.44
LTB	Employment: Age Discrimination	D	
	Insurance Claim Dispute	D	
	Insurance Claim Dispute	D	
WYD	Civil Rights: Free Speech	D	\$33,648.75
	Common Law Tort: Negligence	P	
	Employment: Gender and Age Discrimination	D	\$70,935.71
	Employment: Gender Discrimination	P	
	Employment: Gender and Race Discrimination	D	
	Employment: Disability Discrimination	D	
	Insurance Claim Dispute	D	
REB	Breach of Contract: Fraud/Negligent Misrepresentation	D	\$367,801.00
	Breach of Contract: Fraud/Negligent Misrepresentation	D	
	Taxation Issue	D	
	Insurance Claim Dispute	D	
CBS	Employment: FLSA	P	\$99,422.00
	Intellectual Property: Patent Infringement	D	

MEH	Employment: Sexual Orientation and Age Discrimination	D	
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### F. Trial Lengths

Civil jury trials that went to verdict in 2016 required 258 trial days compared with 202 in 2015. The longest lasted fifteen days (an intellectual property/patent infringement case); the shortest was two days (common law tort: negligence, false arrest and excessive force, and unfair debt collection). The average trial length was 5.73 days, while the most common trial length was five days (twelve cases). The trials days/case were as follows: fifteen days (1), fourteen days (1), eleven days (1), ten days (4), eight days (4), seven days (1), six days (3), five days (12), four days (10), three days (5), and two days (3).

### G. Nature of Claims

The jury trials conducted in 2016 fall into the following categories:

Category	Number of Cases	Percent of Cases Tried
Breach of Contract	6	13.3%
Employment	11	24.4%
Civil Rights	8	17.7%
Common Law Torts	8	17.7%
Insurance Claims	7	15.5%
Fair Debt Collection	2	4.4%
Intellectual Property	2	4.4%
Tax Claim	1	2.2%

These totals and percentages are very consistent with prior years, other than for tax claims and fair debt cases, which are not tried every year.

**1. Breach of Contract (non-insurance)**

We had fewer breach of contract cases than in 2015 (eleven) and 2014 (eight). During the last fifteen years, there have been 100 jury trials alleging breach of contract, an average of 6.66 per year. Of those, the plaintiffs prevailed in sixty-one cases, the defendants prevailed in thirty-six cases, and there were three split verdicts.

In 2016, plaintiffs and defendants each prevailed in three cases. The average verdict for breach of contract was a very lucrative \$2,469,650.60, and the median was \$1,915,595.00. These insurance trials lasted from three to eleven trial days, with the average being 6.5 days.

**2. Breach of Insurance Contract**

Of the seven insurance cases, only two resulted in a verdict for the plaintiff, with an average verdict of \$121,583.00.

**3. Employment**

Employment cases stayed the same in 2016 as 2015, with eleven trials. Approximately 25% of all jury trials in 2015 and 2016 were employment cases. The plaintiffs prevailed in 36% (four) of the cases, while the defendants prevailed in the remaining seven cases (64%). The results by nature of the alleged discrimination are reported below.

<b>Nature of Claim</b>	<b>Prevailing Party</b>	<b>Verdict</b>
Age	D	
Gender/Age	D D	
Gender	P D	70,935.71

Gender/Race	D	
Gender/Religion	D	
Disability/Age	P	150,000.00
Disability	P D	218,966.62
FLSA	P	99,422.00

In the last fifteen years, 181 employment cases have been tried to verdict. The employment claims most frequently tried are retaliation (forty-one, although none in 2016) and gender (forty-three). The plaintiffs have prevailed in eighty-five employment cases (47%), and the defendants have prevailed in ninety-six cases (53%). Historical verdicts rendered by nature of the claim asserted during the past fifteen years are reported below:

<b>Nature of Claim</b>	<b>Cases Tried</b>	<b>Cases Won by Plaintiff</b>	<b>Plaintiff's Success Rate</b>
retaliation	41	26	63%
gender	43	18	42%
race/national origin	31	8	26%
disability	26	14	54%
age	12	3	25%
public employee	10	5	50%
religion	2	2	100%

public policy violation	5	3	60%
luring	1	0	0%
breach of contract	4	2	50%
negligent misrep.	2	2	100%
FSLA	2	2	100%
<b>Total</b>	<b>181</b>	<b>85</b>	<b>47%</b>

#### 4. Common Law Torts

Common law torts increased from five jury trials in 2014 to six in 2015 to eight in 2016. These cases made up 18% of all cases tried to a jury in 2016. Three cases alleged premises liability, two alleged product liability, while the remaining cases brought claims regarding trespass, negligent misrepresentation, and defamation. Plaintiffs prevailed in all three of the premises liability cases but no other. Tort claims for the past fifteen years are summarized below.

<b>Nature of Claim</b>	<b>Cases Tried</b>	<b>Cases Won by Plaintiff</b>	<b>Plaintiffs' Success Rate</b>
Personal Injury General	18	13	72.2%
Product Liability	22	10	45%
Medical Malpractice	15	0	0%
Legal Malpractice	1	0	0%

Ski Accidents	8	5	62.5%
Auto Accidents	11	7	63.6%
Premises Liability	9	4	44.4%
Property Damage	2	1	50%
Antitrust	1	1	100%
Trespass	1	0	0%
Negligent Misrepresentation	1	0	0%
Defamation	1	0	0%
<b>Total</b>	<b>90</b>	<b>41</b>	<b>44.4%</b>

In the last fifteen years, litigants have tried ninety negligence claims to verdict. Plaintiffs have prevailed forty-one times (44.4%) and defendants have won forty-nine times (55.6%). The total amount of damages awarded to plaintiffs in negligence cases in the last fifteen years is \$65,905,603.00, for an average of \$1,611,325.00 per plaintiff's verdict. Notably, while fifteen medical malpractice cases have been tried to verdict, no plaintiff has prevailed in any of the cases, although we had none in 2016.

### 5. Civil Rights

The number of civil rights cases remained the same from the previous two years at eight trials. In 2016, there were four false arrest and/or excessive force, two prisoner rights, one free speech, and

one taking/defamation. Plaintiffs prevailed in only two of the eight cases.

Nature of Claim	Prevailing Party	Verdict
Taking, Due Process, Defamation	P	\$1,669,177.56
False Arrest and Excessive Force	P	\$130,000.00
Prisoner Rights	D	
Prisoner Rights	D	
False Arrest and Excessive Force	D	
False Arrest and Excessive Force	D	
False Arrest and Excessive Force	D	
Free Speech	D	

In the last fifteen years, ninety-six civil rights cases have been tried to verdict. The plaintiffs won twenty-four cases (25%), and the defendants prevailed in seventy-two cases (75%). This year was precisely another 1/4 split, plaintiff to defense verdicts.

Historically, the largest verdict in the last 15 years was a deliberate indifference claim resulting in an \$11,399,936.00 verdict. In contrast, juries have returned a \$1.00 verdict three separate times.

Plaintiffs' verdicts over the last 15 years are reported below:

Nature of Claim	Amount of Verdict
Deliberate Indifference	\$11,399,936.00
Excessive Force	\$4,650,000.00
Disability Discrimination	\$2,200,000.00
Unlawful Arrest	\$1,790,000.00
Taking/Due Process/Defamation	\$1,669,177.56

Unlawful Arrest	\$1,000,000.00
Employment Discrimination	\$650,000.00
Excessive Force	\$400,000.00
Unreasonable Search and Seizure	\$190,000.00
False arrest and Excessive force	\$130,000.00
4 <sup>th</sup> and 14 <sup>th</sup> Amendment Violations	\$72,583.00
Excessive Force	\$45,000.00
Excessive Force	\$40,000.00
Cruel and Unusual	\$32,002.00
Excessive Force	\$10,000.00
Unlawful Arrest	\$10,000.00
Unreasonable Search	\$6,500.00
Unlawful Arrest	\$5,000.00
Cruel and Unusual	\$2,000.00
Retaliation: 1 <sup>st</sup> Amendment	\$1,791.00
Retaliation	\$1,500.00

Equal Protection	\$630.00
Unlawful Arrest	\$1.00
Excessive Force	\$1.00
Unreasonable Search	\$1.00
Average	\$971,980.87
Total	\$24,306,122

The average verdict in civil rights cases is \$971,980.87. After excluding the anomalous \$11 million verdict from 2014, the average is \$535,980.00.

#### 6. Intellectual Property

For the second year in a row, juries saw two intellectual property trials. Both involved patent infringement, with plaintiff and defendant each achieving a verdict.

Historically, plaintiffs have fared well in intellectual property cases in this District. In the last fifteen years, twenty-six intellectual property cases have been tried to verdict, and the plaintiffs prevailed in twenty-one of them (80.7%).

The results over the last fifteen years are reported below:

Nature of Claim	Cases Tried	Cases Won by Plaintiffs	Plaintiffs' Success Rate
patent infringement	12	9	75%
trademark infringement	5	3	60%

breach on non-disclosure	1	1	100%
piracy	1	1	100%
theft of trade secrets	3	3	100%
copyright infringement	3	3	100%
Lanham Act	1	1	100%
<b>Total</b>	<b>26</b>	<b>21</b>	<b>80.7%</b>

### III. CIVIL BENCH TRIALS

Judges in this District issued judgments in six bench trials in 2016, compared with nine in 2015. The plaintiffs prevailed in two employment discrimination cases (one based on race and one based on gender and age) and a trademark infringement case. The defendants prevailed in a taxation case, a tort-to-land negligence case, and a Fair Credit Reporting Act case.

The average time from filing to a judgment for bench trials in 2016 was 29.2 months, which is slightly more than the 28.6 months for jury trials. However, after excluding a complicated class action case against the City and County of Denver that took sixty-five months to get to judgment, the average time from filing to judgment was twenty-two months. The average length of a bench trial was 4.9 days. The longest was a trademark infringement case, which took eleven days.

The nature of the bench trials and their outcomes are reported below.

Judge	Type of Case	Time to Judgment (mos.)	Prevailing Party	Award
MSK	Civil: Employment – Race Class Action	65	P	\$1,674,807.00
RBJ	Improper Taxation	15	D	
RPM	Tort to Land: Negligence	21	D	
RBJ	Trademark: Declaratory Judgment	37	P	N/A
RPM	Employment Discrimination – Gender/age	26	P	Pending
NYW	Fair Credit Reporting Act	11	D	

#### IV. CRIMINAL TRIALS

There were 396 criminal cases filed in 2016, *nearly 100 fewer* than 2015’s total of 495 and much lower than 2014’s total of 512. This represents a *20% decrease* in case filings. The District had only nine felony cases proceed to jury trial, as did one misdemeanor jury trial. This compares to fifteen felony trials in 2015. Four misdemeanor cases were tried to the bench. The government achieved convictions in every criminal jury trial and in three of the four criminal bench trials.

##### A. Felony Trials

Defendants have been sentenced in all nine cases. The most severe sentence imposed was in a gun and drugs case, involving guilty verdicts on seven counts, including felon in possession under Section 922(g)(1); distribution of heroin; distribution of cocaine; distribution of methamphetamine; and possession of a firearm during a drug trafficking offense. The one co-defendant who went to trial received 240 months. The other co-defendant who pleaded guilty received a 120-month sentence concurrent with a state sentence. The least severe sentence was in

a tax fraud case in which several defendants received supervised release.

The average time from a defendant's initial appearance to trial in 2016 was 16.4 months, similar to last year's fifteen months. No felony cases were brought to trial within seventy days. The shortest times were two cases in six months and one in five months. The longest case from the defendant's initial appearance to trial was eight months. This was a "Mailing Threatening Communications" case in which the defendant insisted on proceeding *pro se* (although counsel was appointed).

The felony trials involved the following types of charges (the totals add up to more than nine): distribution, possession of, or conspiracy to distribute a controlled substance (2); possession of a firearm or ammunition by a prohibited person (2); false statement to a firearms dealer; bribery; fraud; illegal re-entry; false claim for tax refund; interference with flight crew; mailing threatening communications; and child pornography.

The felony prosecutions in 2016 are reported below:

Judge	Crime Charged	Verdict	Sentence
MSK	Bribery Conspiracy to Defraud/Fraud	Convicted Convicted	18 mos. 120 mos.
CMA	Child Pornography	Convicted	Pending
WJM	False Stmt to Firearms Dealer Drugs/Guns	Convicted Convicted	60 mos. 240 mos.
RBJ	Mailing Threatening Comms	Convicted	78 mos.
RM	False Claim for Tax Refund (8 defendants)  Interference w/ Flight Crew	Convicted  Convicted	70, 51, 27 & 9 mos. Supv. Rel. for 3 def'ts Restitution for 1 def't  4 mos.

REB	Illegal Re-Entry	Convicted	27 mos.
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The trials for these nine felony cases took up forty-one days, for an average of 4.6 days per trial.

**B. Misdemeanor Jury Trials**

The only misdemeanor jury trial was a Driving Under Restraint (Alcohol Related) trial by Magistrate Judge Hegarty. It resulted in a conviction. Sentencing has been stayed pending an appeal to Judge Brimmer. It was a two-day trial that was conducted two months after the initial appearance.

**C. Petty Offense Bench Trials**

Four Magistrate Judges presided over bench criminal trials. Magistrate Judge Tafoya held a trial in a DUI case, resulting in a conviction and a sentence of ten days (ten days suspended). It was a one-day trial conducted within three months of the initial appearance. Magistrate Judge Hegarty held a trial in a DWAI/Child Abuse case, resulting in a conviction and a sentence of ten days (ten days suspended). It was a one-day trial conducted within three months of the initial appearance. Magistrate Judge Wang held a trial in a speeding ticket case, resulting in a conviction and a fine of \$90.00. It was a one-day trial conducted within nine months of the initial appearance. Finally, Magistrate Judge Mix held a trial in a Use of Weapon in National Park case, in which the defendant was acquitted. It was a one-day trial conducted within seven months of the initial appearance.

**OTHER RELEVANT DISTRICT INFORMATION**

**V. CONSENT**

In February 2014, the District initiated a Pilot Project on Consent, utilizing the full-time

Magistrate Judges in the drawing of civil lawsuits. Under this project and the subsequent Local Rule arising therefrom, the Magistrate Judges are given an equal draw of civil cases with the active District Judges.

Through December 2016, under the direct assignment of cases, the Magistrate Judges received collectively 2,599 cases in thirty-five months, so about 12.5 cases per Magistrate Judge per month. In those 2,599 cases, a consent decision was made in 1,727, with 755 consenting and 972 not consenting, for a consent success rate of 43.7%.<sup>4</sup> For the other 872 cases in which no consent decision had been made, there were 187 awaiting a consent decision, 550 were terminated prior to a consent decision (21%), and the remaining thirty-eight cases were re-drawn due to the assigned judicial officer recusing or transferring the case.

As of December 31, 2016, the Magistrate Judges had 463 consent cases among them, for an average (per full-time Magistrate Judge) of sixty-six. In December 2013 (the year prior to the Pilot Project), the Magistrate Judges had thirty-seven cases, or six each. Obviously, this has been a substantial change in the District.

By way of comparison, as of December 31, 2013, the active District Judges in Colorado averaged 224 civil cases, while as of December 31, 2016, they averaged 202. The Senior District Judges averaged 161 cases in December 2013, and 126 in December 2016.

The following is a year-by-year comparison of the consent rate in the District:

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<sup>4</sup> This appears to compare very favorably with other districts which utilize our system of direct assignment with early decision making on consent. There are districts in which parties have both a direct draw and may engage in traditional consent until the time of trial and, indeed, are encouraged to do so by both District Judges and Magistrate Judges. Such districts experience a higher rate of consent.

YEAR	CONSENT DECISIONS	ACHIEVED	DECLINED	SUCCESS RATE
2014	556	222	334	40%
2015	552	272	278	49.2%
2016	619	261	360	42.1%
<b>TOTALS</b>	1727	755	972	43.7%

## VI. ALTERNATIVE DISPUTE RESOLUTION

In November 2011 the District instituted a new paradigm concerning ADR, offering an Early Neutral Evaluation (ENE) as the presumptive process, with settlement conferences occurring only on motion to the presiding judicial officer. In 2009, the first full year with six full-time Magistrate Judges, the District had 717 settlement conferences. In 2011, the last (essentially) full year of Magistrate Judges conducting settlement conferences on a regular basis, the District held 486 settlement conferences.

After the ENE was instituted, the District has experienced the following ADR activity:

2012:	166 settlement conferences	18 ENEs
2013:	116 settlement conferences	15 ENEs
2014:	122 settlement conferences	8 ENEs
2015:	79 settlement conferences	15 ENEs
2016:	114 settlement conferences	8 ENEs
<b>Totals:</b>	<b>597 settlement conferences</b>	<b>64 ENEs</b>

Therefore, we have moved from approximately 700 settlement conferences per year to approximately 120 settlement conferences and twelve ENEs.

## VII. DISPOSITIVE DECISIONS

Magistrate Judge Boland had not previously provided statistics concerning dispositive motions in the District. At one of my presentations to members of the bar in 2016, attorneys expressed a sincere interest in learning the average time from the filing of a dispositive motion to a decision, in order to more effectively advise their clients on what to expect in federal cases. I chose 2015 as a baseline and sought to determine judicial time to decide : (1) a motion to dismiss; (2) a motion for summary judgment; (3) and merits briefing in administrative review cases (Social Security, natural resource, and other record review cases), including those cases in which such motions were referred to Magistrate Judges.

This is a difficult subject to study for several reasons. First, it is not infrequent that a motion to dismiss is pending for quite some time, and then an amended complaint is filed. This usually moots the pending motion, yet the time from filing of the motion to the court's order denying it as moot is relevant to this analysis. However, I did not include motions that resulted in this outcome. Second, it is very frequent that a motion to dismiss or for summary judgment is pending for quite some time, and the parties settle. Did the length of time the motion was pending affect the parties' willingness to settle? In many cases, probably, but again, this statistic is not included in my analysis. I only included cases in which the court issued a substantive decision on the motion/briefs. Third, because the wait times begin at the filing of the motion, instead of when the moving party filed the reply brief, the parties' requests for extensions of time on the briefing often skews the decision time upward. For example, I had a case referred to me in which the recommendation was issued nine months after the motion to dismiss was filed. However, the parties requested discovery upon the filing of the motion to dismiss (during which time briefing

was informally stayed), and then they requested extensions on the briefing. The motion was fully briefed eight months after filing. I am sure other judges have similar stories. In collecting and analyzing the data, there is simply not enough time to weed out the out-of-the-ordinary cases; this is not, after all, Major League Baseball. Finally, although I have the raw data to demonstrate the average time per judge, and to demonstrate the rates of granting or denying such motions/appeals, I am not including that in any analysis for obvious reasons.

All that said, given the fairly large statistical database (989 motions or appeals), we still can obtain a fairly accurate picture of wait times in this District.<sup>5</sup> The raw data shows the following:

<b>Motions to Remand (21):</b>	2.7 months all cases
	2.7 months without recommendation
	4.0 months with recommendation
<b>Motions to Dismiss (438):</b>	6.0 months all cases
	5.0 months without recommendation
	7.9 months with recommendation
<b>Motions for Partial Dismissal (39):</b>	5.3 months all cases
	4.1 months without recommendation
	7.8 months with recommendation
<b>Motions for Summary Judgment (243):</b>	5.6 months all cases
	5.4 months without recommendation
	6.6 months with recommendation

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<sup>5</sup> I also collected data for APA cases (9.8 months), bankruptcy appeals (5.6 months), and motions for judgment on the pleadings (4.9 months). However, I did not include wait times for these cases above, because the sample size was too small to receive a statistically significant result.

**Motions for Partial Summary Judgment (63):** 5.3 months all cases

5.4 months without recommendation

4.7 months with recommendation

**Social Security Cases (156):** 7.3 months

Overall, for the 2015 measuring period, District Judges referred 32% of dispositive motions to Magistrate Judges. One key to viewing this statistic, however, is the fact that two of the District Judges do not refer dispositive motions, so for the remaining nine District Judges (both active and senior), the referral rate would be 38%.

The following table shows the percentages of referrals by motion type:

Motions to Remand	35%
Motions to Dismiss	43%
Motions for Partial Dismissal	33%
Motions for Summary Judgment	18%
Motions for Partial Summary Judgment	10%